

**STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS**

---

**In the Matter of Compelling Compliance with the  
provisions of Agriculture and Markets Law  
§305-a, subdivision 1 by**

**Town of Pomfret  
9 Day Street  
Fredonia, New York 14063**

**DETERMINATION  
AND  
ORDER**

---

**PRELIMINARY STATEMENT**

In October 2005, Mr. Gary Hubert requested that the Department of Agriculture and Markets ("Department") review the Town of Pomfret's Zoning Law with respect to his ability to keep and use two unlicensed passenger-type vehicles on his farm to support the growing, harvesting and handling of grapes, which are sold for the production of juice. The Department investigated to determine whether the Town of Pomfret administered the Town's Zoning Law in a manner consistent with the provisions of Agriculture and Markets Law (AML) §305-a. Subdivision 1.a. of §305-a mandates that when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, local governments do so in a manner as may realize the policy and goals of Agriculture and Markets Law Article 25-AA. The policy and goals include to conserve, protect and encourage the development and improvement of agricultural land for the production of food and other agricultural products; to conserve and protect agricultural lands as valued natural and ecological resources; and to protect and enhance agricultural land as a viable segment of the local and State economies and as an economic and environmental resource of major importance. The statute further provides that local governments "shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened."

In conducting its review, the Department took into account relevant portions of the Town of Pomfret's Zoning Law; an Appearance Ticket dated September 8, 2004 for an alleged violation of §648, paragraph B of the Town of Pomfret Zoning Law (number of junk vehicles that may be stored outdoors); notices of fine, dated December 21, 2004 and September 9, 2005, issued to Mr. Hubert by the Town of Pomfret Justice Court for a conviction after trial of a violation of §648, paragraph B; a notice of appeal by Mr. Hubert of the Town of Pomfret Justice Court decision, dated December 15, 2004; an "Affidavit of Errors," dated December 15, 2004, prepared and signed by Mr. Hubert; a

Decision by the Honorable John T. Ward, Chautauqua County Court Judge, dated August 31, 2005, affirming the Justice Court's decision; pictures submitted by Mr. Hubert demonstrating the use of the two vehicles on his farm; and a letter, dated April 11, 2006, to Department Associate Attorney John Rusnica from Jeffrey Passafaro, Esq., Town of Pomfret Attorney. Based upon the information gathered and consideration of the relevant law, I hereby make the following findings and conclusions.

### FINDINGS

1. By letter dated October 24, 2005, William Kimball, Director of the Division of Agricultural Protection and Development Services, notified Town Supervisor Donald Steger that the Department received a request from Mr. Gary Hubert for a formal review of the Town's Zoning Code for compliance with AML §305-a.
2. The information submitted by Mr. Hubert shows that he is engaged in the production, preparation and marketing of grapes as a commercial enterprise and that the subject property receives an agricultural assessment. Such activity constitutes a "farm operation" as defined in AML §301, subd. 11.
3. Mr. Hubert owns approximately 47.8 acres of land within the Town of Pomfret. The parcel of land which is the subject of this matter (Section 6, Block 1, Lot 55.1) is located within Chautauqua County Agricultural District No. 9, a county adopted, State certified agricultural district. Mr. Hubert grows 11 acres of Concord and Niagara grapes which he sells for the production of juice and has an annual gross income of approximately \$10,000. Mr. Hubert uses two older model passenger sedans to haul tools and supplies to and from the vineyards. In the fall, the vehicles are used to haul grape crates to the vineyard and hand picked grapes back to the barn. Mr. Hubert stated that one of the vehicles (Plymouth), with its positraction, is frequently used to tow a tractor back to the barn for repair. Based upon this information, both of these vehicles are farm equipment used in growing, harvesting and handling farm produce and as such, are part of the farm operation.
4. Mr. Kimball detailed the results of the Department's review of the Town's Zoning Law as administered with respect to Mr. Hubert's farm operation, as follows:
  - a. The Town of Pomfret Zoning Law defines a "junk car" as "[a] motor vehicle (excluding farm vehicle) which is not intended for or in condition for legal use on public highways or which is in the process of being dismantled." The Zoning Law does not define "farm vehicle." Both the Justice Court and County Court, however, ruled that Mr. Hubert's vehicles are not "farm vehicles" for purposes of the Town's Zoning Law. Neither court decision, however, rules on or takes into account the limitation imposed on the Town by AML §305-a.
  - b. Section 648, paragraph A of the Town Zoning Law ("Junk Vehicles") states that "[i]t is the intent of this section to minimize safety, health and aesthetic related problems by limiting, according to district and lot size, the storage outdoors of junk

vehicles.” While the Zoning Law (Section 648, paragraph B) allows one “junk vehicle” to be stored outdoors at his property, Mr. Hubert informed the Department that he keeps three vehicles parked near his barn.

c. The Town was informed of the Department’s view, as expressed in a guidance document concerning “*Junk, Litter and Junkyards*,” that some agricultural operations maintain unlicensed vehicles on the farm for use on that property. Although unlicensed and unable to be used on a highway, such vehicles may be essential to conducting the farm operation. Mr. Hubert’s vehicles are operable and were found to be actively used as part of the farm operation. The Town’s Zoning Law, Section 648, paragraph C, requires that “Junk vehicles be stored out-of-sight as viewed from adjacent properties and roadways to the greatest degree possible. Additionally, junk vehicles shall be placed a minimum of 50 feet from property lines of adjacent land owners and roadways.” This requirement is apparently based on aesthetics which are an appropriate and important consideration under zoning and planning laws. The purpose of the Agricultural Districts Law is, however, to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use and any aesthetics requirement which unreasonably restricts a farm operation is problematic. The Department does not consider as unreasonably restrictive a municipal requirement that inoperable vehicles, farm equipment and tractors be moved to a less visible location.

d. Both of the cars in question appear to be necessary farm vehicles, not “junk vehicles” as defined in the Town Zoning Law, and are farm equipment. Mr. Hubert indicated that if he had to park the cars in the barn he would have to store some of his agricultural equipment outside, where it could be stolen. In light of this, the Department determined that requiring the removal or indoor storage of such cars unreasonably restricted the Hubert farm in possible violation of AML §305-a, subd. 1.

e. The Department suggested that the Town consider defining “farm vehicles” to include passenger vehicles used on farm operations within a county adopted, State certified agricultural district where such vehicles are used by the farm operation for agricultural purposes. It was noted that the definition could include a requirement that the number and type of such vehicles be consistent with the needs and scope of the farm operation.

5. On April 13, 2006, Department Associate Attorney Mr. Rusnica received a letter from Town Attorney Jeffrey Passafaro stating that the Town disagrees with the Department’s interpretation of what is considered a farm vehicle. Mr. Passafaro indicated that the Town would define the vehicles in question by their nature and character, according to the purpose for their manufacture. He indicated that the Town cannot accept that a motor vehicle manufactured as a passenger vehicle and possessing no inherent characteristics that would qualify it for farm or field use could be characterized as an agricultural vehicle. Mr. Passafaro further stated that

it appears that the Department would define a vehicle based upon its use and that the Town cannot accept the Department's interpretation.

6. In a letter dated June 19, 2006, Mr. Rusnica acknowledged Mr. Passafaro's letter and referenced a March 7, 2006 telephone conversation during which he explained to the Town Attorney that farmers adapt for use on the farm many items that might otherwise be considered as junk. He also expressed the Department's position that a local law which excludes from definition as "junk" or "junk vehicle," passenger vehicles used on farm operations within a county adopted, State certified agricultural district where such vehicles are used by the farm operation for agricultural purposes, and requires that the number and type of vehicles be consistent with the needs and scope of the farm operation, would provide appropriate and meaningful regulation. Mr. Rusnica further noted that the Codes Division of the Department of State has expressed the opinion that the *Property Maintenance Code of New York State (PMCNYS)* §302.8 (concerning the keeping of motor vehicles) is not applicable under such circumstances.
7. Mr. Rusnica informed Mr. Passafaro that the Department had concluded that the Town of Pomfret's administration of its Zoning Law, §648 - Junk Vehicles, to require the removal or indoor storage of the two passenger vehicles used at the Hubert farm operation, unreasonably restricts the farm operation in violation of AML §305-a, subd. 1. The Department requested that the Town confirm within 30 days of the date of the letter that it would not impose the unreasonably restrictive requirements or require the removal or indoor storage of the vehicles utilized in the Hubert farm operation. No such confirmation has been received.

### CONCLUSION

Based upon the above findings, I conclude the following:

1. The administration of the Town of Pomfret's Zoning Law to require the Hubert farm operation to comply with Town Zoning Law §648 by removing or storing indoors two unlicensed passenger-type vehicles used as part of the farm operation unreasonably restricts the Hubert farm operation in Chautauqua County Agricultural District No. 9.
2. Although given the opportunity to do so, the Town has not shown that the utilization of the two passenger-type vehicles as part of the Hubert farm operation threatens the public health or safety.

### DETERMINATION AND ORDER

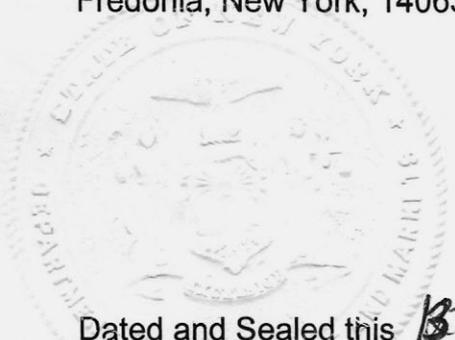
Now, therefore, in consideration of the above-stated findings and conclusions, it is hereby determined that the Town of Pomfret has violated AML §305-a, subd. 1, and it is hereby

ORDERED, pursuant to the provisions of AML §36 that the Town of Pomfret comply with the provisions of AML §305-a, subd. 1 by not administering any provisions of its Zoning Law, or other local laws, with respect to the Hubert farm operation, to require the removal or indoor storage of the two unlicensed passenger-type vehicles used by Mr. Hubert to support the growing, harvesting and handling of farm produce as part of his farm operation.

This Order shall take effect immediately upon service of a certified copy thereof on the Town of Pomfret, by mail to Hon. Donald Steger, Supervisor, 9 Day Street, Fredonia, New York, 14063.



Patrick H. Brennan, Commissioner of  
Agriculture and Markets of the State of  
New York



Dated and Sealed this BTH  
day of December, 2006  
at Colonie, New York