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 (1) by

Town of Kirkland and the Planning Board of The Town of Kirkland
3699 State Route 12b
Clinton, NY 13323

DETERMINATION AND ORDER

PRELIMINARY STATEMENT

By e-mail dated September 10, 2018, Mark Artessa, owner of Blueberry Hill Farms and Nursery ("Blueberry Hill"), requested that the Department of Agriculture and Markets ("Department") review the Town of Kirkland's Zoning Code and the administration of the same, for compliance with Agriculture and Markets Law ("AML") §305-a (1), with respect to Blueberry Hill's operation of a u-pick and nursery blueberry business on land located within Oneida County Agricultural District No. 5.

In the course of the Department's investigation and review, the following was considered: staff visits to the farm operation; information obtained from Mark Artessa; correspondence and accompanying materials submitted by Robert J. Meelan, Town Supervisor ("Supervisor Meelan"), Anthony G. Hallak, Esq., attorney for the Town of Kirkland, and the Town of Kirkland Planning Board ("Planning Board"); meetings and e-mails with the Planning Board addressing Blueberry Hill's site plan requirements; and the Town of Kirkland's Zoning Code.

Based upon the facts ascertained by the Department during the course of its investigation and upon its analysis set forth below, the Department determined that the administration of the Town of Kirkland's Zoning Code and its application to Blueberry Hill by the Planning Board unreasonably restricts the farm operation and that the Town of Kirkland failed to demonstrate that the public health or safety is threatened by Blueberry Hill's u-pick blueberry operation and plant nursery within Oneida County Agricultural District No. 5.

BACKGROUND

On or about September 26, 2017, prior to the Oneida County Agricultural District inclusion of the land on which Blueberry Hill operates, Blueberry Hill submitted its initial Site Plan application to the Planning Board seeking authorization to conduct a u-pick blueberry operation. On October 23, 2017, the Planning Board approved a Site Development Plan ("Site Plan") for Blueberry Hill, conditioned on various restrictions on the use of the land for agricultural purposes. In reviewing the Site Plan, the Board relied on Section 118-2 of the Town Code, which defines a "farm" as requiring 10 or more acres of land. Accordingly, since Blueberry Hill did not meet these requirements, the Board determined that Blueberry Hill is a "home occupation" as defined in the Code and, therefore, requires site plan review by the Planning Board to operate the proposed blueberry u-pick and nursery operations.

Mr. Artessa's 7.2 acre parcel (Tax ID 355.000-2-51.4) was added to Oneida County Agricultural District No. 5, effective July 26, 2018.

On September 10, 2018, Mr. Artessa sent an e-mail to Robert Somers, Ph.D., Manager of the Department's Agricultural Protection Unit ("Dr. Somers"), requesting an AML §305-a review of the restrictions placed upon the Site Plan approved by the Planning Board.

By letter dated September 19, 2018, Michael Latham, Director of the Division of Land and Water Resources, informed Supervisor Meelan that the Department received a request from Mark Artessa to review the Town of Kirkland's Zoning Code and the Planning Board's approved Site Plan for compliance with AML §305-a. Mr. Latham requested that the Town submit any relevant information or documentation that it would like the Department to consider as part of its review.

By letter dated October 12, 2018, Supervisor Meelan replied to the Department's initial letter. Supervisor Meelan asked for clarification concerning the parcel's location within an "agricultural zone." Supervisor Meelan explained that the Planning Board determined Mr. Artessa's activities constituted a "home occupation" due to the property's failure to meet the minimum acreage requirement for a farm and the surrounding areas being mostly residential in nature. He also stated that although Mr. Artessa's use as a u-pick blueberry operation is not permitted in the zone, the Planning Board attempted to find a balance between his use of the property and that of his neighbors, since the parcel is located within the Town's Agricultural Overlay District.

Supervisor Meelan noted that the Planning Board found that there are legitimate concerns for public safety and welfare due to Mr. Artessa's request for the parking of more than 15 vehicles, the number approved in the site plan. Supervisor Meelan indicated that the Town's Police Chief, Dan English, as well as neighbors expressed concerns about traffic and limited site lines due to the parcel's proximity to a hill on a 55 miles per hour, un-posted road. Supervisor Meelan also included a memorandum from Chief English, dated October 10, 2018, regarding public safety and welfare concerns. Chief English states that there is a higher potential for accidents when the volume of traffic associated with the farm increases. However, Chief English's memorandum did not mention any efforts to minimize the public safety concerns, nor any studies performed which support his conclusions.

Dr. Somers visited Blueberry Hill on September 21, 2018. Dr. Somers observed the farm and the surrounding area and discussed the operation with Mr. Artessa. These findings were summarized in the Department's letters dated November 19, 2018 and February 8, 2019 to the Town of Kirkland. During the September 21, 2018 site visit, Dr. Somers observed over 1,600 feet of clear sight distance approaching 3884 Roberts Road from the west.

The Department responded to Supervisor Meelan on November 19, 2018 that the Department would hold Mr. Artessa's AML §305-a review request in abeyance should the Town reopen Blueberry Hill's Site Plan in light of the parcel's recent inclusion into Oneida County Agricultural District No. 5.

On December 17, 2018, Dr. Somers appeared before the Planning Board, by invitation, to discuss the AML §305-a review process in anticipation of a new appearance by Mr. Artessa to discuss his Site Plan. Dr. Somers discussed the Department's findings to date, noting that the

7.2-acre parcel is located within Oneida County Agricultural District No. 5 and that Blueberry Hill qualifies as a farm operation as defined in AML §301(11). Dr. Somers elaborated on the Department's review process and guidance documents pursuant to AML §305-a. During this appearance, the concerns presented by the Planning Board encompassed aesthetic and property value issues. At this meeting, road safety and ingress/egress were also discussed. Dr. Somers proposed various less restrictive means to mitigate safety concerns, including requesting that the State speed limit be lowered and posting warning signs.

On January 29, 2019, Mr. Artessa notified the Department that the Planning Board asked him to rewrite his Site Plan application, identify what restrictions "he can live with" and submit the document to the Board prior to its next meeting.

By its February 8, 2019 letter to Supervisor Meelan and Planning Board Chair Edward Kaido, the Department identified certain restrictions in the approved Site Plan that may be considered unreasonably restrictive; re-affirmed Blueberry Hill is a farm operation; described the types of buildings, activities and practices that should be allowed for the farm operation to conduct its business; and indicated that the Planning Board should review/permit adequate parking for the number of people coming to purchase blueberries. The Department also offered less restrictive methods to reduce the Town's health and safety concerns, including evaluating the posted speed limit and considering the reduction of the speed limit.

The Planning Board met with Mr. Artessa on April 29, 2019 to discuss modifications to the Site Plan. Mr. Artessa informed the Department that the Planning Board intended to treat Blueberry Hill as a commercial operation through various requirements and associated fees.

On April 30, 2019, the Department notified Supervisor Meelan that such conditions may be unreasonably restrictive and requested a written copy of the Planning Board's April 29th decision.

The Planning Board informed the Department by e-mail dated May 10, 2019 that the only matters left unresolved related to the permitted number of vehicles at Blueberry Hill. The Planning Board determined that the requested number of cars would constitute a minor commercial driveway and, therefore, a traffic study would be required. Mr. Artessa objected to sending his site plan to the Town of Kirkland Engineer due to the required fees.

By letter dated July 1, 2019 to Supervisor Meelan and Planning Board Chair Kaido, the Department addressed the Planning Board's findings and determined that it unreasonably restricted Blueberry Hill in possible violation of AML §305-a by requiring that Mr. Artessa hire an engineer to perform a traffic study; and the submission of additional scaled site plans for the driveway and parking area. The Department informed the Town and the Planning Board that the New York State Department of Transportation (DOT) confirmed that Roberts Road is a minor town road; and should not be subject to DOT driveway requirements. The Department further stated that, at present, a 15-car limit appears to be adequate, however the parking area proposed for the farm can accommodate additional cars. If additional parking is needed in the future, Mr. Artessa should be permitted to seek approval from the Planning Board under a streamlined site plan review without the need of a traffic study.

Town Attorney Hallak replied to the Department by letter dated July 31, 2019, stating that the Planning Board re-evaluated Mr. Artessa's approved Site Plan. Mr. Hallak stated that the Board has concerns with Mr. Artessa's proposed 60 car parking lot being served by a one-lane driveway. Mr. Hallak provided a summary of the Planning Board's comments, including that, due to traffic and safety concerns, the number of vehicles that can be safely accommodated should be studied and that, until a study has been conducted, the farm is allowed to park a maximum of 15 vehicles on the property.

The Department contacted the Department of State (DOS), Codes Division, about Blueberry Hill using its existing driveway for customer access to the farm, and whether the State Uniform Fire Prevention and Building Code ("Building Code") would apply. On August 5, 2019, Whitney Russell, Director of the Inspections and Enforcement Unit, DOS, Codes Division stated that, based upon a review of the farm's website and an aerial image of the farm, it appears that no buildings or other structures on the farm are open to the public. Mr. Russell indicated that the "shed" is likely an agricultural structure, and, therefore, would be exempt from the Building Code. Mr. Russell therefore concluded that, since Blueberry Hill has no buildings subject to the Building Code, the Building Code would not apply to the farm's driveway.

On October 10, 2019, the Department notified Supervisor Meelan and Chair Kaido that it had completed its review, finding that the Town's and Planning Board's treatment of a seasonal blueberry operation as a "commercial" use, subject to the costs of hiring professionals and conducting a traffic study, and a limit of 15 vehicles for a seasonal u-pick blueberry operation unreasonably restricts the farm operation in violation of AML §305-a.

Town Attorney Hallak replied by letter dated October 28, 2019 that the Town of Kirkland Planning Board disagreed with the Department's conclusions; their actions are neither arbitrary or contrary to law; and the Planning Board declined to implement any changes contained in the Department's letter.

STANDARD OF REVIEW

AML §305-a (1)(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 AML Article 25-AA. 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."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Blueberry Hill Farms and Nursery grows blueberries for sale to the public utilizing a u-pick operation and sells blueberry bushes. Department staff determined that due to the acreage planted to blueberries, the amount of nursery stock on the property for purchase and the level of investment, Blueberry Hill Farm & Nursery is a "farm operation" for purposes of AML §305-a (1), located within Oneida County Agricultural District No. 5.

2. The Town of Kirkland Planning Board revisited Blueberry Hill Farms and Nursery's Site Plan resolution, adopted on October 23, 2017. The Planning Board considered the farm's placement into a county adopted, State certified agricultural district and modified the Site Plan conditions, except for the need for a traffic study prepared by an engineer/architect and the number of vehicles allowed to park on the farm at any given time.[1]

3. The Department's investigation revealed that the affected road is classified as a minor Town road exempt from Department of Transportation requirements, that State Building Code requirements would not have any applicability to the proposed actions, and that more than 15 vehicles could be safely accommodated without obstructing the rights-of-way. Given the farm's very seasonal product (a typical period of 6 weeks out of the year), occasionally filling the parking lot should be permitted when required as part of a special event and may be subject to a streamlined site plan review approval by the Town of Kirkland without the need of a traffic study.

4. Although given the opportunity to do so, the Town and the Planning Board did not present any information concerning a specific threat to the public health or safety posed by the farm operation, such as accidents that have occurred this season due to inadequate road conditions, if any; or describe any attempts by the Town of Kirkland or the Planning Board to minimize public safety issues using less restrictive means. Therefore, requiring that Blueberry Hill conduct a traffic study and limiting the available on-site parking to 15 vehicles unreasonably restricts the farm operation in violation of AML §305-a (1).

5. Farm operations should be considered a principal use in county-adopted, State certified agricultural districts, without regard to the number of acres in production. As such, Blueberry Hill Farm should be permitted to raise, process and sell blueberries and blueberry bushes grown on the farm with streamlined site plan review by the Planning Board, without regard to the number of acres in production. The Town of Kirkland's Zoning Code and its administration by the Town and the Planning Board classifying Blueberry Hill Farms and Nursery as a "home occupation," requiring a "farm" to have a minimum lot size of 10 acres unreasonably restricts the farm operation in violation of AML §305-a (1).

6. A list of Relevant Documents Considered by the Department in connection with this Determination and Order is attached hereto as Exhibit A.

[1] The Town also referenced a potential restriction on the use of noise devices such as propane cannons. As this proposed restriction was not within the scope of this review, the Department informed the Town that the Department may evaluate such a restriction if requested by Blueberry Hill.

DETERMINATION AND ORDER

Now, therefore, in consideration of the above-stated findings, it is hereby determined that the Town of Kirkland and the Town of Kirkland Planning Board violated AML §305-a (1), and it is hereby

ORDERED, pursuant to the provisions of AML §36, that the Town of Kirkland and the Town of Kirkland Planning Board comply with the provisions of AML §305-a (1) by not requiring Blueberry Hill Farms and Nursery to conduct a traffic study or limiting available on-site parking to 15 vehicles; and it is further

ORDERED that this Order shall take effect immediately upon service of certified copies thereof on the Town of Kirkland and the Town of Kirkland Planning Board, by mail to Hon. Robert J. Meelan, Supervisor and to Mr. Edward Kaido, Chair, Planning Board, Town of Kirkland, PO Box 235, Clinton, NY, 13323 and it is further

ORDERED that the Town of Kirkland and the Town of Kirkland Planning Board shall notify the Department within ten business days of the service of this Determination and Order whether the Order is accepted and will be obeyed.

RICHARD A. BALL, Commissioner of Agriculture
and Markets of the State of New York

Dated and Sealed this 19th
Day of March, 2020 at
Colonie, New York

Pursuant to Agric. & Mkts. Law Section 23, I hereby certify that this document consisting of 3 pages is a true copy of the original thereof on file with the Department of Agriculture and Markets.

Signature

Title: Director Date: 3-26-20

1. New York State Department of Agriculture and Markets ("Department") Section 305-a Review Application submitted by Mark Artessa on behalf of Blueberry Hill Farms, dated September 10, 2018 (4 pages);
   a. Resolution approving site plan review dated November 9, 2017 (4 pages);
   b. Narrative (with pictures) from Mark Artessa dated September 10, 2018. (22 pages);
2. Letter dated September 19, 2018 from Michael Latham, Department Director of the Division of Land and Water Resources, to Supervisor Robert J. Meelan, Town of Kirkland (2 pages);
3. Field Report dated September 21, 2018 by Dr. Robert Somers, Manager, Department Agricultural Protection Unit (6 pages);
4. Local Law Filing for Local Law No. 1 of year 2014 to amend Code of the Town of Kirkland, Chapter 118, filed State record, January 22, 2014 (24 pages);
5. Letter dated October 12, 2018 from Supervisor Robert Meelan, Town of Kirkland (3 pages) with attachments:
   a. Site Plan submissions by Mark Artessa (16 pages);
   b. Letter dated October 10, 2018 from Town Police Department to Supervisor Meelan (6 pages);
   c. Other documents in record underlying Site Plan determination (14 pages);
6. E-mail correspondence dated October 23, 2018 from Mark Artessa to Dr. Somers concerning updated Site Plan application (3 pages);
7. Letter dated November 19, 2018 from Michael Latham to Supervisor Meelan and Town of Kirkland Planning Board (2 pages);
8. Letter dated February 8, 2019 from Michael Latham to Supervisor Meelan and Planning Board Chair Kaido (2 pages) with attachment entitled "Guidelines for Review of Local Zoning and Planning Laws" (13 pages);
9. E-mail correspondence dated March 28, 2019 between Town Planning Coordinator Melinda Albertine, Mark Artessa and Dr. Somers. (3 pages);
10. E-mail correspondence dated March 15, 2019 to April 3, 2019 between Mark Artessa and Melinda Albertine regarding appearances before Planning Board. (4 pages);
11. E-mail correspondence dated April 24, 2019 from Melinda Albertine to Dr. Somers regarding status of Site Plan approval (2 pages);
12. E-mail correspondence dated April 29, 2019 from Mark Artessa to Dr. Somers (1 page);
13. E-mail correspondence dated April 30, 2019 from Dr. Somers to Supervisor Meelan (1 page);
14. E-mail correspondence dated April 30, 2019 between Mark Artessa and Dr. Somers (4 pages);

15. E-mail correspondence dated May 10, 2019 from Melinda Albertine to Dr. Somers (2 pages);
    a. Planning Board Summary of April 29, 2019 meeting to discuss Mark Artessa's site plan (1 page
16. E-mail correspondence dated May 14, 2019 between Mark Artessa and Dr. Somers (2 pages);
17. E-mail correspondence dated May 16, 2019 between Mark Artessa and Dr. Somers (7 pages);
18. Letter dated July 1, 2019 from Michael Latham, to Supervisor Meelan and Chair Kaido. (3 pages);
19. Letter dated July 31, 2019 from Town Attorney Anthony Hallak, Felt Evans, LLP to Dr. Somers (3 pages);
    a. Resolution changes by Town Planning Board's regarding Mark Artessa Site Plan review dated. (3 pages);
20. E-mail correspondence dated August 5, 2019 from Whitney Russell, Director of Inspections and Enforcement Unit, Department of State and Dr. Somers. (2 pages);
21. U.S. Department of Transportation, Federal Highway Administration, Safe Roads for a Safer Future – Local and Rural Road Safety Briefing Sheets (10 pages);
22. Blueberry Hill Farms and Nursery, Line of Sight Distance US DOT (2 pages);
23. Letter dated October 10, 2019, from Michael Latham to Supervisor Meelan and Chair Kaido. (4 pages);
    a. Enclosed Department's Guidelines for Review of Local Zoning and Planning Laws (13 pages);
24. Letter dated October 28, 2019 from Anthony Hallak to Dr. Somers in response to Department's October 10, 2019 communication. (1 page).