

Guidelines for Review of Local Laws Affecting Commercial Horse Boarding Operations

In 2001 the Agriculture and Markets Law (AML) was amended to include commercial horse boarding operations in the definition of a “farm operation” under AML §301, subdivision 11. This amendment recognized that commercial horse boarding operations are farm operations and as such should receive AML §305-a protection from unreasonably restrictive local laws. (Previously, commercial horse boarding operations were only eligible for agricultural assessments.)

Under AML §301, subd. 11, “farm operation” means “...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a ‘commercial horse boarding operation’ as defined in subdivision thirteen of this section and ‘timber processing’ as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous, to each other.” AML §301, subd. 13 defines the term “commercial horse boarding operation” as “...an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.”

The Department has consistently viewed the raising, breeding, boarding and sale of horses as a “farm operation” under AML §301, subdivision 11. A horse boarding operation provides care, housing, health related services and training to animals kept on the premises or on other properties owned or leased by the farm operator. Riding and training activities that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and used for such activities, are part of the farm operation. Horse shows for horses either boarded at or owned by the farm operation, which are not open to the general public, are also part of the farm operation. The Department does not consider a riding academy to be an agricultural activity under the AML. A riding academy generally offers riding lessons to the public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the facility for such riding. Local zoning laws which include definitions and provisions for riding academies or commercial horse boarding operations should include language which distinguishes between the types of operations.

In general, the construction of on-farm buildings and the use of land for agricultural purposes should not require site plan review, special use permits or be subjected to non-conforming use requirements when located in a county adopted, State certified agricultural district. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products is recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation should be permitted uses when the farm operation is located within an agricultural district.

The application of site plan and special permit requirements to farm operations can have significant adverse impacts on such operations. Site plan and special permit review, depending upon the specific requirements in a local law, can be expensive due to the need to retain professional assistance to certify plans or simply to prepare the type of detailed plans required by the law. The lengthy approval process in some local laws can be burdensome, especially considering a farm's need to undertake management and production practices in a timely and efficient manner. Site plan and special permit fees can be especially costly for start-up farm operations. Therefore, absent any showing of an overriding local concern, generally, an exemption from site plan and special use permit requirements should be provided to farm operations located within an agricultural district. However, as discussed in more detail in the Department's *Guidelines for Review of Local Zoning and Planning Laws*, the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders. Therefore, the Department developed a model streamlined site plan review process which attempts to respond to farmers' concerns while ensuring that local issues are examined.

Generally, farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under local law or area variances before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. The Department has found local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code ("Uniform Code") [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal not to be unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

The following are some specific matters that the Department considers when reviewing a local law that affects commercial horse boarding operations¹:

A. Minimum Lot Size

The AML states that a commercial horse boarding operation must be at least seven acres in size. A Town's limitation on the number of horses allowed per acre could be unreasonably restrictive. The Department considers, among other things, the impacts on a particular farm operation to determine if a density limitation is unreasonably restrictive. If pasture is to be used for sustenance, then one acre of pasture per horse is usually appropriate. If the area is to be used for a turn-out area, then five or more head may be carried on one acre of land. Many commercial horse boarding operations are closed systems where they are conducted on smaller acreage, feed is brought in and manure is exported off the farm. However, some horse farms may landspread and/or compost manure on the farm (See Section I of this guideline for further discussion on manure management). Horses are exercised in various arenas, indoor and outdoor, and rotated in small rectangular fenced areas (paddocks).

¹ Please see *Guidelines for Review of Local Zoning and Planning Laws* for further general discussion of each of these issues.

B. Setbacks

Minimum setbacks from front, back and side yards for farm buildings have not been viewed as unreasonable unless a setback distance is unusually long. Setbacks that coincide with those required for other similar structures have, in general, been viewed as reasonable.

A farm operation's barns, storage buildings and other facilities may already be located within a required setback, or the farm operation may need to locate new facilities within the setback to meet the farm operation's needs. Also, adjoining land may consist of vacant land, woodland or farmland. The establishment of unreasonable setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation (e.g., water supply, utilities and farm roads) is often already located within, and adjacent to, the farmstead area or existing farm structures. Setbacks can also increase the cost of, or make it impracticable to construct new structures for the farm operation.

Requiring setbacks from property lines for riding trails may be unreasonably restrictive. If riding trails are located in or adjacent to fields that are used for the production of hay or other field crops, a minimum setback from a property line would take land out of production. In such instances, the trail would generally be located closer to the property line to reduce the amount of land taken out of production and reduce the amount of operating costs and time necessary to maintain a swath of unusable land established by a setback.

C. Screening

Some local laws require a landowner to screen an agricultural activity from adjacent non-agricultural uses. The Department has previously determined that a requirement to screen agricultural activities from adjoining non-agricultural uses is unreasonably restrictive. While aesthetics are an appropriate and important consideration under zoning and planning laws, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use. Screening requirements suggest that agricultural uses are objectionable or different from other forms of land uses that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless it is required to address a threat to the public health or safety.

D. Event Permits

Local laws that require a special permit to hold public events, shows, rodeos, competitive events, etc. are, in general, not unreasonably restrictive when the event involves the general public and not just those individuals who board their horses on the farm. If the event is limited to those individuals who board their horses on the farm, a special permit should not be required.

E. Sign Limitations

The administration of local law provisions which regulate signs may unreasonably restrict a commercial horse boarding farm operation. Such farm operations may need to use signs to advertise the name of the farm and the services it offers. Paddocks and barns may not be visible from the road and therefore the farm may need to use an adequately sized on-premises sign or locate a sign(s) at off-premises locations. Whether or not a limitation on the size and/or number of signs that may be used to advertise a commercial horse boarding operation is unreasonably restrictive depends primarily on the location of the operation. An operation located on a principally traveled road probably will not need as many signs as one which is located on a less traveled road and may need directional signs to direct the public to the premises.

F. Farm Worker Housing

Farm worker housing, including mobile homes (also known as “manufactured homes”), is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. Generally, in evaluating the use of farm labor housing under §305-a, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); and whether the employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The Department does not consider the primary residence of the owner or partner of the farm operation to be protected under §305-a. For further discussion see the Department’s *Guidelines for Review of Local Laws Affecting Farm Worker Housing*.

G. Noise

Some local laws have established maximum permitted sound pressure levels. For example, one local law prohibited noise from exceeding a maximum decibel level, which was reduced by six decibels for lots within two hundred feet of a residence district. Such noise provisions may unreasonably restrict farm operations within an agricultural district. According to an article written by David E. Baker entitled *Noise: The Invisible Hazard* (University Extension, University of Missouri-Columbia, published October 1993), a chain saw has a decibel level of 120 and tractors, farm equipment and power saws have a decibel level of 100. Inside an acoustically insulated tractor cab, the decibel level is 85. This type of equipment is commonly used along and/or near property boundaries and may exceed maximum decibel levels allowed by a local law.

H. Smoke, Dust

Local laws may regulate smoke and other particulate matter. Such laws often prohibit measurable emission of dust or other particulate matter. These provisions may unreasonably restrict farm operations. Some measure of dust usually occurs with the tillage of land and may not subside until the area is populated with crops. Furthermore, horse operations may, from time to time, have bare spots within fields that could be a cause for airborne particulate matter and dust. Horses and other livestock may roll or dig up the turf. Dust may also occasionally come from paths used by livestock and from riding rings. Particulate matter may also become airborne from mowing and other field maintenance activities. Further, the regular operations of a farm typically involve the removal of trees and brush during field clearing and maintenance; the removal or trimming of diseased fruit canes, vines, and trees; and the removal of vegetative material from cultivated wetlands, among other things. These materials are often disposed of on the farm by open burning. On-farm open burning is considered by the Department to be a practice that is part of a “farm operation” and thus protected from unreasonable local restriction. Open burning is regulated by the Department of Environmental Conservation (DEC). Local laws should allow open burning consistent with the DEC’s regulations and/or guidance. For further discussion see the Department’s *Guidelines for Review of Local Laws Affecting On-Farm Open Burning*.

I. Nutrient Management

Nutrient Management Practices are an essential component of any farm operation and are protected under AML §305-a from unreasonable local restrictions. Traditionally, farm operators

use animal waste as a main source of nutrients for crop production. Many commercial horse boarding operations may not have enough land for crop production or may have excess horse manure. Generally, manure from commercial horse boarding operations is either composted and spread on fields or stored and removed off-site. In general, the Department believes that any local waste management laws should provide exemptions to allow the land application, storage, and/or composting of animal waste, for agricultural purposes on farm operations within a county adopted, State certified agricultural district. The DEC regulates most types of solid wastes pursuant to 6 NYCRR Part 360, but exempts animal waste from this regulation. The Department considers the standards and permitting requirements under the DEC's regulations in evaluating whether restrictions on agricultural land use and nutrient management practices are unreasonably restrictive in violation of AML §305-a. For further discussion see the Department's *Guidelines for Review of Local Laws Affecting Nutrient Management Practices*.

Agricultural wastes and by-products, including manure, must be utilized or disposed of in an environmentally safe manner. It is the Department's view that it is not unreasonably restrictive for a local government to require that a commercial horse boarding operation submit a plan that describes how its manure will either be used or removed from the farm (e.g. by landspreading, composting, or periodic removal). Manure should not be stored and remain on the farm for a period in excess of one year. The composting of such agricultural waste is a preferred method because it is recycled and utilized as a soil amendment to enhance plant growth for both crop production and off-farm uses (e.g. landscaping, home gardens, etc.). Agriculture and Markets Law §305-a, subdivision 1 protects the on-farm composting of these materials when the composting is part of the agricultural production function of the farm, that is, the farm composts to rid the farm of its excess agricultural waste *or* the farm composts to create a soil amendment for crop production. For further discussion please refer to the Department's *Guidelines for Review of Local Laws Affecting On-Farm Composting Facilities*.

J. Odor

Some local laws prohibit any land use which emits any discernible odor outside the building in which the use is conducted or beyond the lot line of the property. Livestock operations emit odors associated with the animals themselves, the feed, and livestock manure. The amount of odor that can be tolerated by an individual varies and quantities discernible to one person may not be to another. The actual odor regulation and its administration would have to be examined to determine whether or not a farm is unreasonably restricted.

K. Animal Control

Generally, farmers are responsible for the care, safety and confinement of livestock in their charge. Farm operations must provide adequate fencing and gates to confine livestock in a safe and reasonable manner. The public needs to be protected from livestock that may cause bodily harm and/or property damage if the animals venture off the farm. Therefore, local animal control laws that require livestock to be confined and not "run at large" without restraint, confinement or supervision, are reasonable and help to protect public health and safety. Local governments should be aware that commercial horse boarding farms may need to install fences with a height greater than may be allowed under a local law (e.g., certain horses may not be adequately confined by a maximum three or four feet fence). For further discussion please refer to the Department's *Guidelines for Review of Local Laws Affecting the Control of Farm Animals*.