

**A RESOLUTION TO BE SUBMITTED BY  
LEGISLATOR MILLS**

Re: Inclusion of Viable Agricultural Lands into an Agricultural District

WHEREAS, pursuant to New York State Agriculture and Markets Law (“Agriculture and Markets Law”) Section 303-b(1) the Erie County Legislature adopted Intro 20-15 (2004) on September 23, 2004; and

WHEREAS, Intro 20-15 (2004) designated November 1 through 30 as the annual thirty-day open enrollment period for inclusion of predominantly viable agricultural land within a certified agricultural district outside of the established 8-year review period; and

WHEREAS, during the 2013 thirty-day open enrollment period five landowners requested that eight parcels of land be included in existing agricultural districts; and

WHEREAS, the Erie County Agricultural and Farmland Protection Board reviewed each request to determine if each includes “viable agricultural land” as defined in Agriculture and Markets Law Section 301(7); and

WHEREAS, the Erie County Agricultural and Farmland Protection Board reviewed each request to determine whether the inclusion of such land would serve the public interest and maintain a viable agricultural industry within the district; and

WHEREAS, the Erie County Agricultural and Farmland Protection Board voted to recommend that the County Legislature adopt the inclusion of seven parcels listed below in an existing agricultural district; and

WHEREAS, the Erie County Agricultural and Farmland Protection Board voted to recommend that the County Legislature reject the inclusion of one parcel listed below in an existing agricultural district; and

WHEREAS, pursuant to Agriculture and Markets Law Sections 303-b(2)(b) and 303-b(3) the Erie County Legislature gave the required public notice and set a public hearing and for January 30, 2014; and

WHEREAS, pursuant to Agriculture and Markets Law Section 303-b(3)(b) the Erie County Legislature published a public hearing notice in a newspaper having a general circulation within the County and notified in writing those municipalities whose territory encompasses the lands which are proposed to be included in an agricultural district; and

WHEREAS, a public hearing was held at 10:00 a.m. on January 30, 2014 at the Cornell Cooperative Extension Offices in East Aurora, New York to consider 2013 open enrollment period requests and recommendations of the Erie County Agricultural and Farmland Protection Board; and

WHEREAS, a summary of the comments received during the public hearing and received in writing are attached to this resolution; and

WHEREAS, the Erie County Legislature reviewed the requests pursuant to the NYS Environmental Quality Review Act.

NOW, THEREFORE, BE IT

RESOLVED that the Erie County Legislature adopts the inclusion of the following parcels into an adjacent existing agricultural district; and be it further

Owner	SBL No.	Parcel Address	Town	Agricultural District	Acreage
Engler, Gwen & Pugh, Nancy	326.10-2-17.11	12919 Schutt Road	Sardinia	Sardinia 6	26.2
Farkes, John P.	195.03-1-38	3423 South Creek Road	Hamburg	Eden 2	0.62
Farkes, John P.	195.03-1-39	0 South Creek Road	Hamburg	Eden 2	0.40
Farkes, John P.	195.00-4-5.1	0 South Creek Road	Hamburg	Eden 2	16.92
Lavocat, Donald E.	29.19-1-1.2	8441 County Road	Clarence	Clarence Newstead 14	9.36
Sheridan, Michael	156.02-2-33	251 Hemstreet Road	Elma	Elma 13	7.17
Sheridan, Michael	156.00-2-35.2	0 Hemstreet Road	Elma	Elma 13	4.86

RESOLVED that the Erie County Legislature rejects the inclusion of the following parcel into an existing agricultural district; and be it further

Owner	SBL No.	Parcel Address	Town	Agricultural District	Acreage
Aurora Community Gardeners (Collins, James P.)	175.00-2-27.2	0 South Street	Aurora	Wales 12	4.05

RESOLVED, that the Erie County Legislature has complied with the requirements of the New York State Environmental Quality Review Act and hereby determines that the requested parcel additions to the Agricultural Districts noted above will not have a significant adverse environmental impact and therefore an environmental impact statement will not be required; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the County Executive, the Commissioner of Environment and Planning, the Director of Real Property Tax Services and the Supervisors of the Towns of Aurora, Clarence, Elma, Hamburg, and Sardinia; and be it further

RESOLVED, that the Commissioner of Environment and Planning send a certified copy of this resolution along with the Erie County Agricultural and Farmland Protection Board report and maps for each parcel of land to be included in an existing agricultural district to the Commissioner of New York State Department of Agriculture and Markets for certification and immediate inclusion into existing agricultural districts.

FISCAL IMPACT: None for resolution.

**2013 REQUESTS FOR INCLUSION OF AGRICULTURAL LAND  
WITHIN A CERTIFIED AGRICULTURAL DISTRICT**

Erie County Cornell Cooperative Extension  
21 South Grove Street • East Aurora, NY 14052  
January 30, 2014 • 10 am

**PUBLIC HEARING TRANSCRIPT**

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**IN ATTENDANCE:**

Jennifer Dougherty  
Jonathan Bleuer  
Jim Callahan  
Rachel Chrostowski  
James P. Collins  
Thomas J. Dearing  
Mark Gaston

Earl Gingerich  
Diane Held  
Scott Kroll  
Chris Lavocat  
Don Lavocat  
Donnie Lavocat  
Teri Lavocat

John Long  
Christine Purpura  
Michael Sheridan  
Lisa Smith  
Jack Zhang  
John Zugarek

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*Scott Kroll*

Per New York State Agriculture and Markets Law Section 303-b, the Erie County Legislature designated November 1 through November 30 as the annual thirty-day period during which landowners may submit requests to include predominantly viable agricultural land into an existing certified agricultural district.

During the 2013 enrollment period, five landowners requested inclusions.

The Erie County Legislature must hold a public hearing to consider the abovementioned requests for inclusion as well as the recommendations of the Erie County Agricultural and Farmland Protection Board. The Erie County Legislature shall hold a public hearing at 10am on January 30, 2014 at the Cornell Cooperative Extension at 21 South Grove Street in the Village of East Aurora, NY regarding the above matters.

That will open the public hearing. Our first speaker is Rachel Chrostowski from the Erie County Department of Environment and Planning.

*Rachel Chrostowski*

As Scott said, five property owners requested the inclusion of their parcels during the 2013 enrollment period. I will give a quick summary of each of the requests we received followed by an explanation of what the Ag and Farmland Protection Board's recommendation was.

The first requests we received was from the Aurora Community Gardeners, which was submitted by James Collins who is the president of that organization. He requested that a 4-acre parcel just south of the village of East Aurora, in the Town of Aurora be included. Gwen Engler and Nancy Pugh recommended that their 26-acre parcel on Schutt Road in Sardinia be included. John Farkes that his parcels on South Creek Road in the Town of Hamburg, which totals approximately 18 acres. Don Lavocat requested the inclusion of an approximately 9-acre parcel at 8441 County Road in Clarence. Michael Sheridan requested the inclusion of two parcels on Hemstreet Road in Elma.

The Ag and Farmland protection board did review these requests and has made decisions based upon Agricultural District Law, which states that parcels to be included in the districts must be “land highly suitable for agricultural production” and which continue to be feasible for farming if conditions remain the same.

So, based on that, the Board made the following recommendations by a majority vote of active members.

The Board recommended inclusion of the Engler/Pugh parcel in the Town of Sardinia into the Sardinia Agricultural District, inclusion of the Farkes parcels in the Town of Hamburg into the Eden Agricultural District, inclusion of the Lavocat parcel in the Town of Clarence, into the Clarence Newstead Agricultural District, and inclusion of the Sheridan parcels in the Town of Elma into the Elma Agricultural District.

Regarding the Aurora Community Gardeners parcel in the Town of Aurora, the Board did not recommend inclusion into the Wales Agricultural District. This decision was based upon Agricultural District Law, which states that parcels to be included in agricultural districts must be "viable agricultural land" highly suitable for a farm operation as defined in Section 301. It is the view of the AFPB that community gardens are not classified as a “farming operation” in that section of the law. Additionally, the Board feels that a community garden is not intended for agricultural production, but rather, recreational gardening by non-farmers.

*Scott Kroll*

I’m going to put the microphone out for the speakers list. When you come up, can you also state your name for the record? Our first speaker is Jennifer Dougherty.

*Jennifer Dougherty*

Thank you for accepting public comments today. My name is Jennifer Dougherty. I’m an attorney with Phillips Lytle. I represent Lisa Smith and John Zugarek who are owners of a property that is very near 8441 County Road in the Town of Clarence. We are here in opposition to the Lavocats application to include this approximately 9-acre parcel into the town of Clarence agricultural district. This parcel is currently zoned agricultural rural residential and currently under the town of Clarence code, general retail uses are not permitted. The Lavocats would like to characterize their proposed operations which are clearly a retail operation as an agricultural operation and seek protection of ag and markets law to avoid the zoning constraints that are currently on the property.

I think it’s important to talk a little bit about the background of this application. Previously, in either late 2012 or 2013, the Lavocats entered into an agreement, purchased the property, and prior to proceeding with any applications, parceled off much of the land in the parcel and whittled it down to just a 9-acre parcel. The land was given to the neighbors to extend their parcels and their backyards. The remainder of the parcel, which I measured at 8.8-acres, but approximately 9, would include approximately 5.5 acres of paved parking and access drives. The original proposal that was submitted to the Town of Clarence included 48 parking spaces. The Lavocats, at that time, put in an application to the Town and stated that the property was in an ag district and thus the zoning, the site plan, and other zoning requirements did not apply. At that time, an attorney from our office notified the board that this was not currently in an ag district, that they were very much subject to the zoning requirements and had to go through the process.

Quite simply, this proposed operation should not be allowed to be included in the ag district and receive the protection of ag and markets law simply to thwart the requirements of the zoning code.

I think it’s important to look at the application and to consider what 303-b of the market law requires. The land to be included in an agricultural district must be viable agricultural land and it must be shown that it’s highly suitable for a farm operation. The Lavocat’s application offers no proof of these requirements. They do not mention the soil type, they don’t talk about the agricultural purposes and what the exact uses would be. The soil type, according to my research in the Erie County GIS system, indicates that it is neither USDA designated prime or important soil. The parcel is very small and, as I mentioned previously, much of it was granted to the

Intro. 3-2

neighbors and obviously not needed to farm or to produce crops. And, as shown in the original proposal, this was intended to be a retail operation and intended to be located close to residences, residential areas simply to get to customers, not because of the land or its great use as agricultural operations. All of these factors indicate that the property is not highly suitable for farm operations, but is highly suitable for retail operations.

This designation, if allowed, if the legislature votes to include it in the agricultural district, would presumably allow the applicant to avoid all of the zoning constraints, to work around all of the requirements that the neighbors, who are very actively opposed to this application and adjoining property owners were concerned about, as included in the Lavocat's application they mention if the Lavocats perform and build this project in accordance with the approvals. There is some argument that could be made that they could now skirt those requirements. This application to get into the agricultural district is simply the missing step in what has been a long-term plan to run around the zoning requirements of the Town of Clarence.

Based on the lack of proof that this property is viable agricultural land, based on the lack of showing it is highly suitable for agricultural operations, and the applicant's proven record of attempting to avoid the zoning requirements through the use of agriculture and markets law, we would like to respectfully request that the legislature vote against the inclusion of this property in the agricultural district.

I would like to introduce Lisa Smith, she is here today as I mentioned. She is my client and she has a petition signed by 17 of her neighbors and herself and her husband, that show that they are in opposition to this application.

*Lisa Smith*

I just wanted to say that we moved to Clarence because we liked the farming and rural aspect of Clarence. That was really one of the big reasons we moved to Clarence. We checked the zoning before we bought our house because at our previous house in Amherst, we actually, after we moved in, a retail operation moved in. It was established very close to our previous home and we had not checked the zoning before that, so we were careful this time around. And what we were pretty convinced of, based up on our review of the zoning that applied to our property and the neighboring property, was that it did not permit retail operations. And what's been, frankly, really frustrating about this whole proposal that the Lavocats are making is that it is an attempt to do an end run around the zoning in Clarence. The neighbors, as you can see from the petition, there are other neighbors, as well, who are opposed and have felt that they really haven't been heard by the Town of Clarence. In all honesty, I don't know if that's because the Town Engineer is a Mr. Lavocat. We're just asking for a fair hearing of what's an inaccurate portrayal of what's really going on here. This project was approved by the Town of Clarence based on representations that the property was already in an ag district that was not true. It was also approved on the representation that the retail operation would only sell what was grown on site. This designation of ag district would of course obviate that and other conditions that were conditions for the approval in Clarence. It's all very circular, but at the end of the day, it really is an end run around very clear zoning regulations in Clarence and that's our frustration. We're in favor of farms. We support farmers. We support the Spoths and the Kelkenbergs. We've had family children's birthday parties at Kelkenberg Farms. It's one of our favorite places in Clarence and Akron, but we're not in favor of an entity doing an end run around zoning and putting in what is clearly a retail garden center with a paved lot, with forty or so parking spaces, and lighting 24/7 and trucks going in and out from 7:30/8 in the morning till sundown. Lavocats said they will be selling Christmas trees that they don't grow in the winter. This is going to be a year-round operation and that's not really what the people who've invested in their own properties in Clarence were bargaining for when they made the decision to buy in Clarence. It's really as simple as that. Thank you for hearing us.

*Jennifer Dougherty*

Thank you very much for taking our comments. I would also like to note that we did include a written copy of our comments that we presented today and they will be passed along to the legislature. Thank you very much.

*Chris Lavocat*

My name is Chris Lavocat. I'm Don's son. I just want to touch on some of Jennifer's points that she made. The first one is that Lisa Smith lives in a development, which is over 500 feet from the property. I just wanted to make that known. The second thing is that we've been growers in the Town of Clarence for over 33 years. Our plan is to build a greenhouse to sell what we grow on site and potentially what we grow on our Heroy Road location. The concept plan, which was included with our submission, shows that we have a 20,000 square foot greenhouse. We start up in February. It's not four seasons. We would like to start growing product in February and open for retail in May and continue—right now we sell into July. That might be extended depending on the products we sell, if its mums that we grow, that's our intention.

We went through all the zoning laws with Jim Callahan, who is here. We've discussed this parcel in depth when we were purchasing it. We talked about setbacks, which we've complied with. We talked about the wetlands, which are onsite, avoiding those. Everything that we've done is by the book for the Town of Clarence. We went to several meetings—more than we've had to—and addressed all the neighbors' concerns. The bottom line here is that we're not a retailer; we don't buy product. What we do now is we grow, which currently we're at about 30,000 square feet. We grow 100% of our annuals and perennial and 100% of our mums. We do sell Christmas trees at a market; we do not sell them at our current location. We are in the ag district currently. We would also like to sell ancillary items. Not wheelbarrows, not lawnmowers, but maybe a box of fertilizer. We currently sell a couple of them now but that's not our main goal for going to County Road, which is a road that has 8,500 cars per day going by. Our goal is to expand our growing operations and sell more flowers. That's our main business. That's what we've been doing for 33 years; that's what we want to continue to do.

Regarding the parcel, it's a 9-acre piece of land. We did subdivide it off of about 24 acres and the neighbors did want to protect their backyards. The deal with that land is most of those 15 acres that we did not purchase is wetlands, so it wouldn't have been viable agricultural land, that rear part. About 7 acres of the land that we purchased is viable agriculture. We don't care about the soil conditions because we're building a greenhouse. Our intent is not to grow corn or things like that, which, there's nothing wrong with that, but we're annual and perennial growers and vegetable plant growers. The ag district law clearly states that in an ag district you are able to sell what you grow and you're also able to bring stuff in. Our intent is to strictly sell what we grow. We do grow some shrubs; we may bring some shrubs in. But 99% of this operation is meant to sell our goods that we grow currently and if that's not an agricultural business, I really don't know what is. That's about it. Thanks.

*Don Lavocat*

I'm Don Lavocat. I just wanted to hit on a few points here. The property in question – I don't know if we clearly explained that – if Chris clearly explained the subdividing of that. We didn't buy the whole parcel. We didn't buy the 24 acres and split it up like was stated before, earlier. We were one of the purchasers of the subdivided land. The neighbors didn't want the front section, and so that fit into our plan so we bought the 9.5 acres that was on the road frontage. I heard it mentioned that it was a small piece of property. It has 550 feet of frontage, which I don't consider a small piece of property. We are growers. We have always been growers. The land is agricultural rural residential zoned, so I was told by the Town, I was told by the engineering department that it was an approved use for that property. That's the only reason we bought it. If they would have said the zoning is wrong, then we wouldn't have purchased that piece; we'd have looked elsewhere. So we did everything by the book, and we've gone to all the meetings at the Town. We've gotten approval from all of the boards, the zoning board of appeal, all the boards of the town. Thank you.

*Chris Lavocat*

I just want to give a background of myself. I went to UB for four years and studied finance. I went to work for one of the largest banks in the country. I actually did a little stint on Wall Street. In 2010, our plan was to let my parents finish out this business, retire, and possibly sell the greenhouse. My brother does the landscaping—he was set. I was working finance. My sister's a stay at home mom. So, the intention was to sell the greenhouse or close it up. It doesn't have a lot of value because the structures are older. What I decided in 2010, was why let another agricultural business die? Why let something that draws 2,000 customers a year that love our product,

Intro. 3-2

why force them to go somewhere else? I saw an opportunity—I'm 26 years old—to continue the farm heritage in my family. Without the ag district inclusion, we are being threatened with lawsuits. If we're unable to do this project, what does my future hold? What does my kids' future hold? I'm depending right now on continuing this agricultural operation. Right now we're on Heroy Road, which gets maybe 10 cars a day. We live off of Goodrich Road which is one of the worst roads in the Town of Clarence, possibly even the County. It's hard for us to bring the 2,000 people to our current location. I don't know, as these people age and as we enter into the younger generations purchasing flowers, I don't know if they're going to want to make the drive out to our current location. So my future is in jeopardy. With the landscape business, which relies on our greenhouse customers, my brother's future is in jeopardy. My sister eventually wants to get back into the greenhouse, and her future is in jeopardy. I have employees. We have maybe 20 employees, some full time and some part time. I have one guy who is a 21-year old grower – his future will be in jeopardy. I can't pay these guys going forward unless I'm able to expand, unless I'm able to grow more annuals, perennials, shrubbery, vegetable plants. So you're looking at someone who is 26 years old who is willing to jump into a farming business. You don't see that a lot. I was reading an article the other day about the greying of farmers. It's unfortunate, but there's not a lot of people to step in. I'm one of those first few that want to step in and change the future of agriculture and I don't see how a few neighbors that live on a busy street or in a development hundreds of feet away should be able to stop farmers from continuing to do what they're doing. Clarence was built on its farming heritage. Thanks.

*Jennifer Dougherty*

I would like to harken back to some of the comments in 303b. We're talking about inclusion in an ag district and we're talking about highly suitable agricultural land, which relies on soil conditions. The Lavocats have stated that the soil conditions are not important because they're going to be doing greenhouse growing. I would venture to say 85% of the Town of Clarence is already in an ag district. There are plenty of locations where this could go. This facility is not an existing facility; it could be placed anywhere. We are saying that this is not appropriate for this location and that it's more appropriate on a property that's already included in the ag district. As the soil conditions clearly don't matter, it could go almost anywhere. I would also like to talk about that when we brought up soil conditions, we again heard this can bring up to 2,000 people to this property. This is a retail operation. This is a retail outlet. This concludes my remarks. Thank you again.

*James P. Collins*

Hi, my name is James P. Collins from Green Glen Victorian Inn and also the Frank Lloyd Wright Heath House. I'm a little late because I was just speaking with Dr. Robert Somers. I'm also a little late because while I applied for inclusion on the agricultural district plan on time, of course it was postponed due to weather. And so I was hearing something about January and I called and emailed Rachel and she mentioned this date, which was at the 60-day mark. I've also been tied up, she sent me the whole protocol for inclusion. I'd just like to see if you would consider the Aurora Community Gardeners, which is now an incorporated not-for-profit 501C, in the inclusion in the districts. I don't have a very good presentation but Rachel had mentioned that you weren't likely to consider it because it was a community garden. We're not just a community garden. We're also doing the community sponsored agriculture. We also have a history of educating the public with films both here and in Buffalo near the Frank Lloyd Wright Heath House, and other places. I have an incredible interest in that. So we're not just a community garden, we're really interested in promoting homesteading, mini-farming. I had a hundred chickens—heritage chickens, which I still own, and there was turkeys. There's a lot of things that we would be likely to be doing that other community sponsored agriculture businesses wouldn't be, which would be in the public interest. And which we'd be specifically working to improve the quality of the crops and livestock that we grow. That particular property is only four acres. I just did a lot of this research last night, I'm sorry I'm late. But, of course in your provisions, it's less than seven acres it could be included with another parcel that isn't contiguous. We've had a history...

First of all, the Aurora Community Gardens goes back to 1974. My mother was one of the original people. The other thing is that there's a funny happenstance, almost as odd as the Beilers and Dr. Robert Somers protecting them in the Town of Wales, which I'm not asking for protection from you but the whole agricultural thing

should be protected somehow. Sometimes town boards get out of control and the years – I don't know, I wasn't really here at the time, definitely before... I have the documentation from the Town lawyers, '96 to 2000. They tried to take over the property. And because, actually, here's a Buffalo News article, and because they wanted to, because what had happened was the Town had bought the property below the Aurora Community Gardens for use as this park called Majors Park. And the Town Supervisor at the time, Bill Green, had wanted to put a cemetery, a hockey rink, an amphitheater, a senior citizens center, all this stuff – none of it happened. In the meantime, they tried to take over the property and it's really sad that a town would do that kind of thing just for their own interest and greed, when the Aurora Community Gardens was a viable agricultural entity.

We're kind of changing over to a bigger farming operation now, with, you know, things, and I realize that I'm not the professional here but we would like to be included. And at this late date, and hearing a lot about this stuff, I'd really like to see a little more care. Especially in this day and age, with the way things are going, both with public health through farming, and also the takeover of what is really special viable agricultural use. I don't really have anything more that I can think of because I haven't prepared too well. Thank you for your consideration.

*Chris Lavocat*

I just want to touch on two quick points. The property at 8441 County road has the ag district near it, there's a couple properties a couple hundred feet away, one's just a little bit down the road. They've been actively farmed as long as I've lived in Clarence. One is Spoth's Farm Market. What they did was baked pies and sold some of their vegetables. The other one, I believe they sell some flowers at some greenhouses and I know they also have some farmland. And if we want to get into the topic of soil conditions defining viable agricultural land, this land that we purchased was farmed by Jim Thering up until the early 1980s. After that it was bought by, I believe, speculators that wanted to get into development. They tried to develop houses there, but with the position of the wetlands, they were unable to do so. The wetlands are at the rear of the property and it was 24 acres with roughly 13-14 acres being wetlands they were unable to develop it. I just want to make the point that it was farmed until, I believe, the 1908s when Jim Thering's wife sold it to another property owner. That's all. Thank you.

*Jim Callahan*

I'm Jim Callahan, Director of Community Development for the Town of Clarence. I just wanted to clarify that we tend to combine ag district with zoning and I just want to separate those out. The Town of Clarence had made a determination that the Lavocat's use of a greenhouse was an acceptable land use in the Agricultural Rural Residential zoning classification. That determination was challenged and appealed to the Zoning Board of Appeals in the Town of Clarence. The Zoning Board of Appeals did in fact uphold the determination made by the Town of Clarence that this is an acceptable land use in that zoning classification. I just want to separate the ag district from the zoning. That's my statement.

*Scott Kroll*

Would anyone else like to speak? Would anyone else like to speak? I have to ask for a third time. So third time, would anyone else like to make any comments? *(No response.)*

Thank you very much for all of you for coming out, especially to the speakers. The legislators value your input and they will all receive copies of the audio this afternoon. This public hearing is closed.

**INCLUSION OF VIABLE AGRICULTURAL LAND  
 ERIE COUNTY AGRICULTURAL DISTRICTS**

**JANUARY 30, 2014 • PUBLIC HEARING**

**SIGN IN - PLEASE WRITE LEGIBLY**

#	First and Last Name	Street Address, City, State, Zip Code	Do you wish to speak?
1	JENNIFER DONAHERTY	ONE CARRALSIDE 125 MAIN ST. BUFFALO NY 14205	YES
2	Jim CALLAHAN	1 TOWN PLACE CLARENCE NY	NO
3	Jonathan Beyer	1 Town Place Clarence NY	NO
4	John Zwick	6675 WESTMINSTER DR. E. AMHERST	?
5	Lisa Smith	6675 Westminister Drive East Amherst	YES
6	Michael Shendur	251 Hemstreet Road, East Aurora	NO
7	Chris Lavocat	9855 Heroy rd. Clarence Ctr.	
8	DONNIE LAVOCAT SR	9855 Heroy Rd Clarence Ctr	
9	Don LAVOCAT	9855 HERAY RD CLARENCE	YES
10	Chris Lavocat	9855 Heroy rd. clarence	NO
11	Jane Held	215 Grove St East Aurora 14052	?
12	Mark Garsen	ECSWCD	NO
13	Christine Purpura	603 Delaware Rd. Buffalo, NY 14203	NO
14	Jack Zhang	1405 North Forest Rd Buffalo, NY	NO
15	James P. Collins	898 Main St. East Aurora, N.Y.	Yes
16	Earl Gingerich Jr	4089 Four Rd East Aurora, NY 14052	NO
17			
18			
19			



**Phillips Lytle LLP**

**Via Hand Delivery**

January 30, 2014

Agriculture and Farmland Protection Board  
c/o Rachel Chrostowski, Planner  
Erie County Department of Environment and Planning  
95 Franklin Street, Room 1007  
Buffalo, New York 14202

Re: Comments in Opposition to the inclusion of the approximately 8.8-acre parcel located at 8441 County Road, Clarence New York in Agricultural District No. 14.

Dear Ms. Chrostowski:

We represent Lisa Smith and John Zugarek, owners and residents of 6675 Westminster Drive, Clarence, New York, who oppose the inclusion of 8441 County Road (the "Property") in Agricultural District #14 (the "Ag District"). As the application submitted by the Lavocats (the "Application") shows, the Lavocats do not seek to preserve farmland or open space but rather skirt the zoning restrictions that would otherwise apply to their proposed commercial development in a residential area. Since March of 2013, when the Lavocats first filed their Project application with the Town of Clarence, they have invoked the protections of Agriculture and Markets Law, stated that site plan approval was not required, SEQRA was not required, and stated for the record that their attendance at various zoning meetings was voluntary. (A copy of the March 27, 2013 Town of Clarence Town Board Meeting Minutes are included as Attachment A.)

The Proposed Project

The Lavocats intend to build a greenhouse and "garden center" with thirty-three (33) parking spaces (the "Project") on the Property this spring. See Application page 33. The Application letter states they wish to be included in the Ag District because they hope to "potentially expand in the future" and seek protection from overlay zoning and

JENNIFER DOUGHERTY

DIRECT 716 804 6788 JDougherty@PhillipsLytle.com

ATTORNEYS AT LAW



private nuisance suits in addition to tax benefits and funding opportunities. What the Lavocats do not make clear is that they also hope to seek the protections of Agriculture and Markets Law as soon as possible, presumably to avoid the constraints of the zoning process and the previously granted zoning approvals.

The Property is not "Highly Suitable" for Farm Operations

Under Agriculture and Markets Law §303-b, the county agricultural and farmland protection board shall report to the county legislature as to "whether the land to be included in the agricultural district consists predominantly of 'viable agricultural land'" and whether the inclusion of the land would "serve the public interest by assisting in maintaining a viable agricultural industry within the district". The term "viable agricultural land" is defined by §301(7) as "land **highly suitable** for farm operation" (emphasis added) and "farm operation" is defined as "land or on farm buildings" used for various enumerated agricultural activities.

The Property is currently not farmed and is vacant land with significant tree cover and one residence. The entire Property consists of only 8.81 acres of which approximately one-half acre is scheduled to be paved for parking and access. In addition, the Erie County GIS system reports that the soil at the Property is "not prime or important". The fact that the Property is very small, lacks the characteristics of prime farmland soil and is not currently farmed seems to indicate that the Property is not "highly suitable" for agricultural purposes.

The Application states that the Lavocats chose the Property because of its size and proximity to customers, not because the Property is "highly suitable" for agriculture. In fact, the Lavocats make no claims whatsoever regarding the suitability of the land or the soil for agricultural purposes. Rather, they simply argue that the Property is generally near the Ag District, there are similar greenhouse businesses in the Ag District and they have a track record of agricultural operations at another location. The Applicant's proximity or similarity to other greenhouse does not support a finding by the agricultural and farmland protection board that the Property is "viable agricultural land".



The Ag. District Designation will allow Uses that Conflict with Existing Residences

The Property abuts nearly a dozen single-family residences. For a rural area, the residential uses just west of the Property are fairly dense, making it very important that the current and future owners of the Property obtain the appropriate municipal approvals before building, expanding, or changing the uses on the Property.

As the comments found in the exhibits to the Application show, there was and is significant opposition to the Project from the neighbors. At each step in the process, the Lavocats were allowed to proceed to the next step on the condition that they agree to certain restrictions. Further, the Lavocats stated at the June 11, 2013 Zoning Board of Appeals meeting that they will sell "all plant material." Application page 34. With the protections of an Ag District, the Lavocats will be free to return to their original more expansive plan to open a retail nursery/greenhouse, which if provided the protections of Agriculture and Markets Law will presumably be allowed to sell landscaping tools, fertilizer, etc. There will be few limits and no practical constraints on the retail aspects of the Property, which is immediately adjacent to residential uses.

The Ag District Designation would Thwart the Existing Zoning Restrictions

The Applicant's letters of support are conditioned on the assumption that the zoning conditions would be preserved. Michael Colson's e-mail, Application page 18, addresses the Lavocats' response to Mr. Colson's two concerns: lighting and the distance between the greenhouse and his property line. The expansion of the proposed operation could bring agricultural much closer to Mr. Colson's property line without the need for any Town zoning approvals. The other e-mail of support, from Steve Jacobs, states, "[...] as long as you follow the plan you have presented to the town, I have no issue with this and welcome you to the neighborhood." Application page 19. However, inclusion in the Ag District would mean that not only the future expansions but also the Project's original proposal to sell products produced or manufacture both off-site and on-site would not require the standard zoning process, public hearings, municipal approvals, or "follow[ing] the plan [they] presented to the town". The



January 30, 2014

Project has yet to be built, there are simply too many variables at this stage and the Application does not agree to abide by any of the existing zoning constraints.

The Ag District Designation is an "End-Run" around Zoning

The Property is currently zoned Agricultural-Rural Residential ("A-RR"). The Town of Clarence Zoning Law permits residential "greenhouses or nurseries" in an A-RR. In contrast a "retail nursery or greenhouse" is only listed as a Permitted Use in a Commercial ("C") Zone. The Lavocats are not merely seeking the protections of the Agriculture and Markets Law for future expansions but as an "end-run" around the current conditions and municipal approvals which were placed on the Project just a few months ago. This is not mere speculation. Since the Lavocats first filed their Project application with the Town of Clarence, they have invoked the protections of Agriculture and Markets Law, stated that site plan approval was not required, SEQRA was not required, and stated for the record that their attendance at various meetings was voluntary. Application page 40, 42, 43, 45. The Lavocats only conceded that Agriculture and Markets Law did not apply when challenged by an attorney from our office. Application page 29.

The Property is not currently used for agricultural purposes and, by the Lavocats' own admission, has not been used as such for decades. With regard to the numerous concerns from neighbors, which have yet to be addressed, Chris Lavocat stated at the August 7, 2013 Planning Board meeting that the Lavocats "will address neighbor's (sic) concerns at the Development Plan stage". Application page 23. However, that promise provides little assurance to the neighbors. Agriculture and Markets Law protections presumably will allow the property owners to avoid site plan approval, sale of products grown off-site and non-plant material products in direct contravention of the complaints raised by the neighbors and the protections provided by the zoning code. If the Property is included in the Ag District, the neighbors will have lost the protections of the local zoning process.

The Lavocats state in the Application letter that the Property belongs in an Ag District because of two other greenhouses within the district: Thompson Brothers Greenhouse,



Rachel Chrostowski  
Page 5

January 30, 2014

added to the Ag District in 2012, and Szulis Florist & Greenhouses. The Thompson Brothers farm began in the 1890's and today consists of a 20-acre farm with 2 acres of greenhouses, with the first greenhouses on site being built in the early 1900's. Szulis' property abuts only one residential parcel, has approximately ten (10) parking spaces, and has been around for fifty years. In contrast, the Lavocats, purchased this Property earlier this year and plan to build a brand new 19,008 sq. ft. greenhouse with thirty-three (33) parking spaces. The Property is not currently a farm, and the proposed new use is clearly commercial in nature. Therefore, inclusion in the Ag District is inappropriate.

The petition provided by the Lavocats as Exhibit E to the Application includes the signatures of fourteen (14) farmers within the district but none of the neighbors of the Property. Their professed commitment to work with the neighbors is undermined by the Application, their premature invocations of Agriculture and Markets Law protections, and their delay in addressing the neighbors' concerns.

This is not a case of residences being built next to farms or "coming to the nuisance". To the contrary, the adjacent residences predate the proposed use of the Property, which is not expected to be operational until this spring. With numerous pre-existing homes adjacent to the property, the health and welfare of the community will best be served by requiring both the current Project and future changes to go through the proper municipal approvals because, quite simply, this is a retail storefront, not an agricultural activity. We respectfully request the Board not recommend the Property for inclusion in the Ag District.

Very truly yours,

Phillips Lytle LLP

By

Jennifer Dougherty  
Doc #01-2749262.1

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, March 27, 2013 at the Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell, Jr. called the meeting to order at 7:30 p.m. Pledge to the flag was led by James Blum; followed by a prayer read by Councilman Patrick Casilio.

Members of the Town Board present were Council Members Robert Geiger, Peter DiCostanzo, Patrick Casilio, Bernard Kolber and Supervisor Hartzell. Other Town officials present were Director of Community Development James Callahan, Town Attorney Lawrence Meckler, and Town Engineer Timothy Lavocat.

Motion by Councilman Casilio, seconded by Supervisor Hartzell to accept the minutes of the previous work session held March 6, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Supervisor Hartzell to accept the minutes of the previous work session and regular meetings held March 13, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to approve the following Special Events requests:

- 1 Rotary Club of Clarence - Walk for Celiac Awareness to be held May 11, 2013 from 8 a.m. to 6 p.m. in the Clarence Town Park. The walk route will begin and end at the Main Town Park per the submitted map. A current certificate of insurance has been provided.
2. American Legion Memorial Day Parade to be held on May 27, 2013 beginning at 11:00 a.m. The parade will begin at the Clarence High School and end at the Main Town Park.
3. St. Mary's Church 5K Chowder Chase Run - July 21, 2013 from 11 am to approximately 12:00 pm. This is in conjunction with their Annual Picnic. The Route will start at St. Mary's Church on Stahley Road and finish there as per the submitted map.
4. To grant a Special Events request from the Zion Lutheran Church for the "Miles for Haiti – 2 Mile Run" Fundraiser to be held September 29, 2013 from 1:00 p.m. until 3:00 p.m. subject to Town Attorney review and approval. A current certificate of insurance has been provided.

On the question, Supervisor Hartzell said all the appropriate agencies will be notified. Councilman Casilio said he is a member of Rotary, however this is ministerial and he will be voting. Councilman DiCostanzo and Councilman Geiger said they are both members also. Upon roll call – Ayes: All; Noes: None.

Motion by Supervisor Hartzell, seconded by Councilman Casilio to appoint Lorraine V. Hunt as School Crossing Guard P/T at the budgeted rate of pay of \$11.18/hour effective April 8, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to adopt the following resolution:

**WHEREAS**, the Governor has proposed, as part of his Executive Budget, a provision that would restrict the ability of local courts to plea bargain traffic tickets; and

**WHEREAS**, this provision would unduly infringe upon the discretion of local judges to adjudicate matters on a case-by-case basis; and

**WHEREAS**, without the ability to plea bargain traffic tickets, there will be an increase in the number of trials held in the local courts which will have the result of significantly increasing the cost to the municipality to run its courts system; and

**WHEREAS**, this provision will take away an important funding source that municipalities rely on to run their court systems; and

**WHEREAS**, the Governor has also proposed, as part of his Executive Budget, a provision that would add an eighty dollar (\$80.00) surcharge to all stopping/standing/parking violations, regardless of the circumstances behind the violations; and

- F. Shelia Bailey, 5701 Transit Road
- G. Larry Engasser, 8346 County Road
- H. Gregory Ribbeck, 5750 Shimerville Road
- I. Rose Parlato, 4401 Transit Road
- J. David Burghardt, 8694 Lapp Road

James Callahan said the Town Board approves certain uses on a temporary basis per the Zoning Law. The items on the above list are seeking renewal. Action requires a public hearing be held.

Motion by Councilman Casilio, seconded by Councilman Kolber to consider renewal of the following Temporary Conditional Permits: A. Edward Strickland, 5880 Salt Road; B. David Delagrang, 4545 Transit Road; C. Christopher Morgan, 10165 Main Street; D. Gene Metzger, 8325 Transit Road; E. Brian Thomas, 9920 Main Street; F. Shelia Bailey, 5701 Transit Road; G. Larry Engasser, 8346 County Road; H. Gregory Ribbeck, 5750 Shimerville Road; I. Rose Parlato, 4401 Transit Road; and J. David Burghardt, 8694 Lapp Road. On the question, Councilman Kolber said we have not had any complaints about any of these items. However, it has been determined that item f for 5701 Transit Road has not fulfilled all of the obligations of the original permit relative to landscaping. They will be notified that they must be taken care of before any renewal is granted. Upon roll call - Ayes: All; Noes: None. Motion carried.

Lavocat Family Nursery requests review of a proposed nursery/greenhouse use at 8841 County Road. James Callahan said the location is the south side of County Road, east of Westminster Drive consisting of vacant land in the Agricultural Rural Residential Zone. The request is for a permitted use in that zone.

Sean Hopkins was present with Don Lavocat, Sr., Don Lavocat, Jr. and other family members. The property is zoned Agricultural Rural Residential and one of the expressly enumerated uses listed in the Town Code is greenhouses or nurseries. There were concerns given earlier in the meeting that this would be like Walmart, Lowe's or Niagara Produce. That is absolutely not the case. The Lavocats have been in business for 32 years and intend to grow landscape and nursery products, plants, flowers, etc. on the site and sell them.

Mr. Hopkins said the Town adopted the Right-to-Farm Law several years ago. He read from that law adding that this project is very clearly an example of the potential conflicts of different land uses. The Right-to-Farm Law clearly specifies that those uses should be permitted. If you look at the definitions of this law and the New York State Ag and Markets Law, this use is permitted. This type of use is also regulated by the New York State Dept. of Conservation. They must get a building permit from the Town of Clarence and supply a drainage plan as part of that process.

Mr. Hopkins said they are willing to discuss various issues with the neighbors, but not about whether or not this is a permitted use. It is a Type II Action under SEQRA and does not require an environmental review. New York State Agriculture & Markets Law states that municipality's regulations for agricultural uses are very limited; categorically they are not subject to environmental review pursuant to SEQRA; and they can have a retail component. It is also appropriate to sell products from offsite locations. Anything that would be sold would be related to what they do. They are a local business who has made an additional personal investment. It is consistent with the Zoning Code, the Master Plan and Right-to-Farm Law. These types of businesses should be allowed to exist, grow and thrive.

Mr. Hopkins said it would be acceptable to them to go before the landscape committee to ensure that there is adequate landscaping and screening.

Councilman Kolber said when does something stop being agricultural as it moves to other products becoming a commercial operation. He does not know.

Councilman Casilio said his concern is that they make this investment and then have to be shut down by the Town. Is there a provision that crops have to be grown on the property for a year before they can be sold there? We all know this is going to be watched and he wants to make sure it is done the right way.

Don Lavocat said everything that they sell on this property will be grown here. They have wholesale growing contracts on Heroy Road and that will remain there.

Mr. Hopkins said that moving it from one site to another for sale is not regulated.

Councilman Casilio asked why they are not centering the operation on the site.

Mr. Lavocat said there is a house on the site that is being rented out. There is also a septic system, so it made more sense to move to the west side. They will use the driveway to the house as part of the driveway to the business.

Mr. Hopkins said, with all due respect, this does not require discretionary approval. They know they need approval for a building permit, drainage plan and oversight by the Town.

Councilman Casilio said he understands that if he follows that fine, but if he deviates from that he could be tested and shut down. If he puts a wheelbarrow out there for sale, the Town will be notified and there will be problems.

Mr. Lavocat said they do not do that now and do not plan to do it there. This is going to be strictly agricultural growing of their plants, shrubs and perennials. They have 30,000 sq. ft. at the Heroy Road site and this is 15,000 sq. ft.

Sean Hopkins said they are adding a 6 ft. fence on one side and screening along the parking area as shown on the plan.

Mr. Lavocat said they grow 900 varieties of plants. There was a lot of confusion and rumors spread about them when they presented this project. They grow everything. He does not understand why the Town would want to tie the hands of the growers.

Councilman Kolber said sometimes when you do a project right in the face of the neighbors, you create enemies for life or you can do it in a way that is harmonious.

Mr. Hopkins said they are willing to discuss screening and those types of options with the neighbors, but if it is a discussion of whether or not they are permitted, that they are not willing to engage in.

Motion by Councilman Kolber, seconded by Councilman Casilio to forward the request for the proposed nursery/greenhouse use at 8841 County Road to the Planning Board for their review to make the project amenable and work. On the question, Councilman Casilio said he thinks it is good to work this out and let everyone have a chance to participate in the discussion. Upon roll call - Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Supervisor Hartzell to grant approval for the following: Clubhouse Applications - A. Clarence Lions Club - April 6, 2013; Legion Hall Applications - A. Mindy Sauer - April 12, 2013; B. Patricia Foley - April 21, 2013; C. Shelley Strobel - May 18, 2013; D. Kathleen Fordham - June 9, 2013; E. Don Lavocat, Jr. - June 22, 2013; F. Maria Cahlstadt - Nov. 30, 2013; Pavilion Special Events - A. Rotary Club of Clarence - May 31, June 1 & 2, 2013; and B. Clarence Baseball Association - May 17, 2013. Upon roll call - Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Casilio to grant approval for use of the Nature Center Lodge to the Clarence Senior Center on May 16, 2013 for educational presentation. Upon roll call - Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio that after proper audit and review by the Town Board, the following bills of March 28, 2013 are approved for payment: General Fund - \$204,956.44; Highway Fund - \$63,291.38; Water District - \$1,641.12; Sewer Districts - \$82.90; Capital Fund - \$840.00; Trust & Agency 203 - \$660.00; Trust & Agency 202 - \$15,745.57; and Trust & Agency 205 - \$210.76 for a total amount of \$287,428.17. Upon roll call - Ayes: All; Noes: None. Motion carried.

"For the Good of the Town"

Hans Mobius said he is a member of the Farm Bureau and he is here to support Don Lavocat. The Right-to-Farm Law basically says that if you move to a nuisance such as a farm, that farm is protected. It also protects the neighbors from a farmer who is misbehaving. The Town can take action if this man misbehaves, but he doubts very much that he would.

David Stengel said March 10<sup>th</sup> they received a letter and it states right in it a high-end grower, greenhouse and garden center. Now they are saying it is not a garden center. The agricultural laws that he has been reading give the zoning board the authority to oppose anything they want and the farming laws do not apply. He spoke with Bob Summers from Agriculture & Markets and he said the same thing. Plants have to be in the ground for a year before they are sold.

Councilman Kolber said that is the point of the Planning Board review to flush out all of the issues. It is a permitted use.

James Blum said he was honored to stand in for Bob Fogelsonger to lead in the pledge tonight. He believes Mr. Fogelsonger is in his 90's and has given his whole life to the Town in many ways. He donated the land that became Glenwood Park. Mr. Blum asked the Town Board to consider renaming that park Fogelsonger Park before Mr. Foglesonger is no longer with us.

A resident from County Road said Lavocats might be very nice people who do a great job with growing their plants and all, but she had photos that they took at the site on Heroy Road. (Councilman Casilio suggested she take them to the Planning Board.) She believes there are code violations at the Heroy Road site including propane tanks that are not chained, garbage and stuff all over. It is visible from the road.

Don Lavocat said there is debris associated with a landscaping business. The landscaping portion of their business is not coming to County Road.

There being no further business, Supervisor Hartzell adjourned the meeting at 9:00 p.m. in honor of Dmytro Baranyckj, father of Parks Department employee Jean Ranney who recently passed away.

Nancy C. Metzger  
Town Clerk

**PETITION IN OPPOSITION TO LAVOCAT  
RETAIL GARDEN CENTER**

The following individuals oppose the development of a Lavocat retail garden center at its proposed location on County Road (which is not zoned for retail establishment), and further oppose the designation of the Lavocat County Road property as an Agricultural District.

<u>Name (printed)</u>	<u>Address</u>	<u>Signature</u>
RONALD MOHR	8431 County Rd E. Amherst	Ronald Mohr
Nancy Mohr	8431 County Rd E Amherst	Nancy Mohr
David Herman	8055 County Rd E. Amherst	David Herman
Joanne Kohnen	8430 County E Amherst	Joanne Kohnen
Angeline Stengel	8427 County Rd. E. Amherst	Angeline Stengel
SHARON SIMIUSKI	8489 County Rd. E. Amherst	Sharon Simiuski
JEFF MARQUANT	8522 County Rd E. Amherst	Jeff Marquant
Loti Baranyi	8522 County Rd. E. Amherst	Loti Baranyi
GEORGE NEENDS	5849 Transit rd EAST AMHERST	George M Neends
FRANK PELLEGRINI	8414 County Rd.	Frank Pellegrini
Carolyn Pellegrini	8414 County Rd. E. Amherst	Carolyn Pellegrini
LYNN HONSBROOK	8400 County Rd E. Amherst	Lynn Honbrook
Sandy Horder	8400 County Rd E Amherst	Sandy Horder
DAVID STEWEL	8427 County Rd E. Amherst	David Stewel
KETH ARTIS	8425 County Rd E. Amherst	Keth Artis
Shannon Schapiro	6659 Westminster Dr. E. Amherst	Shannon Schapiro





Where plants are part of the family

Lavocat's Family Greenhouse & Nursery Inc.  
9855 Heroy Road Clarence Center, NY 14032  
Phone: (716) 741-3976  
Fax: (716) 741-6932  
[www.lavocatsnursery.com](http://www.lavocatsnursery.com)

February 2, 2014

Agriculture and Farmland Protection board  
c/o Rachel Chrostowski, Planner  
Erie County Department of Environment and Planning  
95 Franklin St. Room 1007  
Buffalo, NY 14202

Re: Response to Phillips Lytle LLP letter dated January 30, 2014

Dear Ms. Chrostowski

We wanted to provide you with a response and some clarity in regards to some of the false accusations provided in Jennifer Dougherty's letter dated January 30, 2014.

The most prominent accusation provided in the letter is in regard to zoning. We wanted to reiterate that we attended the Zoning Board of Appeals meeting on June 11, 2013 where the board unanimously voted that we met the zoning criteria to build a greenhouse and sell products grown on site. The minutes were included in our original Agriculture District Application on November 19, 2013. We are clearly not trying to "skirt the zoning restrictions" per Ms. Dougherty, as it is clearly a permitted use in the Town of Clarence per James Callahan (see attached letter) and the Zoning Board of Appeals. Ms. Dougherty's letter mentions us as a "commercial development" (page 1, paragraph 1), and "this is a retail storefront, not an agricultural activity" (page 5, paragraph 3) but openly acknowledges (page 3, paragraph 3) that, "The expansion of the proposed operation could bring **agriculture** much closer to Mr. Colston's property line". We have operated as a wholesale and retail plant grower in the Town of Clarence for 33 years, currently growing 100% of our annuals, perennials, vegetable plants, and about 75% of our shrubs. In addition to our agricultural practices we are regulated by the United States Department of Agriculture. We believe that we are clearly an agricultural business and Ms. Dougherty seems to agree as stated in her letter.

Ms. Dougherty also mentions that the land is not suitable for agriculture. With just under 1 acre of greenhouse structures and about ½ acre of outside growing space, currently located on a 5 acre parcel with our residence and landscape operation, we feel 8.81 acres is not "very small" but properly sized for our current greenhouse operation while allowing for some potential growth and green space. The property at 8441 County Road does not have "significant tree cover" as stated in Ms. Dougherty's letter, but is rather an overgrown farm with some brush. Having been farmed up until the 1980's by James Witnauer and his family as well as by some other farmers. Mark Spoth, who is a farmer from Clarence, grew crops on our parcel until the early 1980's and described the

Intro. 3-2

Page 21 of 25

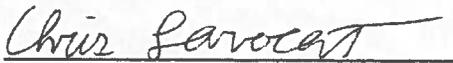
soil as sandy-loam and said it was great farmland for growing corn and hay. We also wanted to correct Ms. Dougherty's statement (page 3, paragraph 1) that "The property abuts nearly a dozen single-family residences." When in fact it abuts six residences, in which two have presented support letters in regards to our project, again included in our original submission. We also wanted to make it clear that the property was purchased in early 2013 after verifying it was suitable for our operation with the Town's Zoning Department, and not purchased "earlier this year" (page 5, paragraph 1). In early 2013, 7 Westminster residents purchased 8441 County Road (originally ~24 acres) and openly sold our farm the front 8.81 acres knowing our intention to build a greenhouse to grow and retail out of. These 7 residents are possibly impacted the most by our operation and have welcomed us into their neighborhood.

We believe in conjunction with the Agriculture and Farmland Protection Board that our property located at 8441 County Road in the Town of Clarence is viable farmland that is highly suitable for agricultural production and our farm operation. As mentioned by Ms. Dougherty and defined in the Ag and Markets Law "farm operation" is defined as "land and on-farm buildings", and greenhouses are a great example of farm buildings. Aside from a few households (many which are located in a development over 500' from the proposed greenhouse), the Town of Clarence, and residents have been very supportive of our project.

Sincerely



Donald Lavocat Sr., President



Chris Lavocat, Vice President

# Memo

**To:** Zoning Board of Appeals  
**From:** James B. Callahan, Director of Community Development  
**CC:** File  
**Date:** 06/05/13  
**Re:** Appeal - 8441 County Road



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I prepared this Memo for the consideration of the Zoning Board of Appeals in connection with the pending appeal filed by Lisa Smith and John Zugarek regarding the proposed use of the property at 8441 County Road. The pending appeal seeks to reverse my previous administrative decision that the proposed greenhouse is an expressly permitted use on the property which is zoned Agricultural Rural Residential ("A-RR") zoning district pursuant to the Town of Clarence Zoning Map.

229-37 of the Zoning Code sets forth a list of expressly permitted uses in the A-RR zoning district and the list of expressly permitted uses is as follows:

1. Single-Family Homes
2. Modular Homes
3. Home Occupations
4. Customary Agricultural Operations
5. Golf Courses
6. Churches (under 10,000 sq. ft.)
7. Parks
8. Playgrounds
9. Schools
10. Riding Academies
11. Cemeteries
12. Greenhouses or nurseries

I determined that the proposed greenhouse is an expressly permitted uses since it falls into two categories of expressly permitted uses listed in Section 229-37 of the Zoning Code. The reasoning utilized in support of my determination is provided below.

The proposed greenhouse clearly qualifies as a "Customary Agricultural Operation." Article 17 of the Zoning Code is titled Definitions and Section 229-168 defines "Agriculture Operation (Customary)" as follows: "The raising or production for compensation, of crops, livestock, poultry, dairy products, fish or other wildlife, trees and other similar pursuits. Tree growing and harvesting, animal husbandry, horticulture operations, forestry operations; and the sale, at wholesale or retail, of farm products upon the premises where the same are grown or produced shall be considered agriculture operations." The proposed greenhouse will be utilized to grow annuals, perennials and nursery stock for sale and such activities clearly fall within the broad definition of expressly permitted agricultural operations in the A-RR zoning district. The above definition states that the sale of farm products at both wholesale or retail is allowed.

Additionally, Section 229-168 of the Zoning Code contains a definition of "Agricultural Support Structure" as follows: "Shall include, but not be limited to, barns, silos, sheds, coops, shops, commodity buildings, machine or equipment storage buildings, **greenhouses**, stables, riding rings or arenas, exercise tracks, runs, dry lots, stalls, paddocks, pens, corrals or fences, windmills, water supply ponds, farm stands, manure storage facilities, wineries or vineyards, maple sugaring facilities or other storage buildings, out buildings or enclosures." The above definition of Agricultural Support Structures includes greenhouses and this supports my determination that the proposed greenhouse is an expressly permitted use in the A-RR zoning district.

The proposed greenhouse also falls within the category of "greenhouses or nurseries" as included in the list of expressly permitted uses in the A-RR zoning district per 229-37 of the Zoning Code. The letter submitted by Jennifer Dougherty, Esq. of Phillip Lytle LLP with the pending appeal dated May 10, 2013 states a retail greenhouse is not permitted in the A-RR zoning district since the list of permitted uses in the Commercial ("C") zoning district pursuant to Section 229-84A of the Zoning Code includes "retail nursery or greenhouse." It was my determination that the distinction made between the A-RR and C zoning districts is between retail nurseries and nurseries and this is supported by the use of the word "or" in Section 229-84A of the Zoning Code. While not relevant with respect to the pending appeal, a "retail nursery" appears to be permitted in the A-RR zoning district since it falls within the definition of an "Agriculture Operation (Customary)" as discussed above.

My previous determination that the proposed greenhouse is an expressly permitted use within the A-RR zoning district is consistent with past determinations made for other existing greenhouses involving the retail sale of farm products. For example, on October 16, 2012, a determination was made that the greenhouse at 8850

Clarence Road is an expressly permitted as an "Agriculture Operation (Customary)" use. The property at 8850 Clarence Center Road is zoned Residential Single-Family ("R-SF") and the list of expressly permitted uses in Section 229-47A of the Zoning Code includes "customary agricultural uses" so long as the property is over five acres in size and agricultural use of the property was established prior to March 9, 2005.

In conclusion, my previous decision that the proposed greenhouse that will be utilized for the retail sale of farm products is consistent with applicable sections of the Zoning Code as cited above and past determinations with respect to greenhouses.