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ERIE COUNTY LEGISLATURE

92 Franklin Street - 4th Floor
Buffalo, New York 14202

TO: Members of the Erie County Legislature
Thomas Dearing, Commissioner Environment and Planning

FROM: Karen M. McCarthy, Clerk

DATE: November 30, 2015

SUBJECT Documents Received Regarding Requests for Agricultural District Modifications and District Review

The attached documents were received at the Public Hearing held on November 19, 2015 and via email.

Thank you.

Richard and Jennifer Benz
828 East River Rd.
Grand Island, NY 14072

November 19, 2015

RE: Viable agricultural land at 828 East River Rd. and 1270 Baseline Rd., Grand Island, NY 14072. S.B.L.#64.06-3-25;50.00-2-2.2;051.13-4-2;51.13-4-3

To Whom It May Concern:

We ask that you accept the recommendation of the Erie County Agricultural & Farmland Protection Board to include our property in an agricultural district. We currently grow produce and fruit for our restaurant, Dick & Jenny's and would like to add Mangalitsa wooly pigs to the operation. The farm property has a large barn from 1890, chicken house and 1950 ice house. The property has had an agricultural permit from the town since 1972. The land on Baseline would ensure we have enough land for the operation. We believe in farm to table food production in the restaurant industry and are hoping you will support our heritage farm.

Sincerely,

Richard and Jennifer Benz

TO: Honorable members of the Erie County Legislature

RE: **Viable agricultural land at 1101 Ransom Road, Grand Island; SBL #24.16-2-21; Mansard LLC**

We ask that you accept the recommendation of the Erie County Agricultural & Farmland Protection Board to include this property owned by Mansard LLC in agricultural district #17.

This farm has been in continuous operation at its current location since 1967. This unique farm operation specializes in the production of Rock dove and their eggs. The dove are used in part for animal assisted therapy with autistic children, and the elderly.

A core mission of this farm has been advancing avian research and education. To fulfill this mission, the farm operates an animal health diagnostic and research lab that works directly with other farms to quickly identify animal disease processes and treatment, and provide training to improve animal health and husbandry.

The inclusion of this farm operation's land within agricultural district #17 will therefore serve the public interest by assisting in maintaining a viable agricultural industry in the district.

Regards,

Keith Tripi,
Counsel to the Grand Island Agricultural Cooperative

Print

Close

legislation

From: **suzanne bognar** (_ m)
Sent: Thu 11/19/15 4:44 PM
To: suzanne bognar (_)

RE: Viable agricultural land at 1175 & 1183 Whitehaven Rd, Grand Island, NY 14072, SBL #'s 37.02-2-3 & 37.02-2-2.

I ask that you accept the recommendation of the Erie County Agricultural & Farmland Protection Board to include my property in an agricultural district...

Grand Island (if you are not aware) is not very friendly to those that want to utilize their land in a farming manner which is funny because Gr. Island use to be primarily a farming community. I currently have two goats on my 15 acres of land. I have had to litigate wit the Town and spend quite a bit of money to even keep these animals on my property. I still received threats by way of letter and actual town employees looking through binoculars at my house (from my street) and land to spy on what I may or may not have been doing after having a town judge rule in my favor.. Therefore, since that time I have been at a stand still with the potential of future farming. I have been paralyzed due to ridiculous, outdated town rules and zoning as well as outright harassment by town officials.

I would like to breed my animals (goats) as well as acquire chickens, turkeys, pig(s) and a few beef cattle with out fear of being bullied or harassed by the town I have been lightly investigating the goat milk/fiber industry to see if there is an large demand for milk/cheese/cosmetics, fiber. I also intend to have egg laying chickens and meat chickens and turkeys to raise in a free range, organic manner and offer to local residents.

I have family in the southern tier that are farmers and primarily raise beef cattle and are entering into the dairy industry. If given the opportunity, I would love to offer beef cattle to the community. It first depends on if I will have the support of an organization (farm board) and backing by legislation to even continue forward ans start-up/establish a new, small farm to table, female owned farm and have protections and support by county and state laws for myself and those like myself that desire to offer opportunities to our local island community by way of a small farm goods. I currently cannot fight any more legal battles at this point and was ready to pull the plug on my small local farming dream until I was made aware of erie county and the farmland protection plan/formation/inclusion of these ag. districts and that there are established fo those that want to start and grow farming opportunities right here on Grand Isl.

There is a huge desire and need for such operations in our community. As a mother of a toddler who feeds her child as much farm to table diet I can afford and acquire without having to drive long distances to be offered such options would be fantastic. I know first hand that many other mom and dads in my community will jump at the opportunity to have a local farm in their neighborhood offering food product(s)and goods to our families and at affordable prices.

Sadly , anyone that even tries to offer some eggs for sale on the island (there was someone down my street attempting to do this) out by the road gets their hand slapped and shot down by the town of Gr. Island. It is a sad state of affairs. I loved the idea of literal "free range" eggs that I can see in a backyard...You can do it in the City, why not here on G.I. esp. if you have the acreage???

I would like to maintain/preserve my land to have active agricultural and have a supportive business environment on the town and county level for farming operations. I would also be a great benefit to collaborate with the town of Gr. Island and educate as to what contributions farms can make to the town and its citizens. Wouldn't it be great to also include our youth and start up youth ag. programs in town efforts to promote farming on Gr. Island. Time will tell...

Thank you for your time and attention to this matter. I look forward to working with such organization in the future.
Sincerely, Suzanne Langenfeld

November 19, 2015

TO: Honorable members of the Erie County Legislature

RE: **Request for inclusion in an agricultural district of viable agricultural land at 1645 and 1655 Whitehaven Road, Grand Island, SBL #37.01-2-4.2 and #37-2-3.1**

The John and Carolyn Tripi farm operation was mistakenly not recommended for inclusion in agricultural district #17 by the Erie County Agricultural & Farmland Protection Board. Their determination was based upon misinformation that the Erie County Department of Environment & Planning provided to the AFPB. This family farm operation requests the Legislature to reconsider its NY Agriculture & Markets Law §303-b request to include its property in an agricultural district based upon the law and facts.

The property owner timely filed with the DEP on September 30, 2015 an AML §303-b request for inclusion of its viable agricultural land in an existing agricultural district.

On October 22, 2015, the DEP a report to members of the AFPB in which they recommended that the Tripi family farm operation not be included in an agricultural district. At the October 27, 2015 public meeting of the AFPB, the DEP handed out a revised report to AFPB members, again recommending that the Tripi farm not be included in an agricultural district.

Neither the October 22 or October 27 revised DEP reports were posted on the DEP's website or made available to AFPB members before the meeting, in violation of NY Public Officer's Law §103(e). Therefore the owners of the Tripi family farm operation was deprived of their right to know about and comment on the inaccuracy of the DEP reports regarding her property, and respond to them during the public comment period of the October 27 AFPB public meeting.

The Erie County Legislature is required by AML §303-b to include "viable agricultural land" in an existing agricultural district. AML §301(7) states, ""viable agricultural land" means land highly suitable for a farm operation as defined in this section." In turn, AML §301(11) states ""farm operation" means "the land and on-farm buildings...which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise," Therefore any "farm operation" is deemed by the NY Agriculture & Markets law to be viable agricultural land which is entitled to be included in an agricultural district.

The Tripi family farm operation produces as a commercial enterprise compost and mulch as commodity specifically enumerated in AML §301(16). The compost and mulch is derived from biomass crops grown on the property, and off-site organic matter brought to the farm, as permitted by AML §301(16).

The DEP also stated in its attached report to the AFPB that the decision to exclude this farm operation from an agricultural district was based on the location of the parcel within an area of the Town of Grand Island designated as "developed" by the Erie Niagara Framework for Regional Growth. It was wrong as a matter of law to use the Framework to exclude this viable agricultural land from an agricultural district. AML §303-b is a State law that uses criteria set-out

in AML Article 25-AA to include land in an agricultural district. AML §303-b does not permit the County to insert irrelevant and arbitrary criteria such as use of the 2006 Framework to exclude this farm which otherwise qualifies for inclusion in an agricultural district.

The DEP also falsely stated to the AFPB in its attached report that, "The parcel does not meet minimum lot size requirements for agricultural uses...per Town of Grand Island municipal zoning. As a matter of law, Town Code does NOT include compost and mulch production as an "agricultural use." Town Code §407-10 Definitions defines "Agricultural Use" as "The commercial cultivation of the soil for food products or other useful or valuable growths of the field, garden or tillage. It includes necessary structures appurtenant to such use. This definition shall not include dairying or raising of livestock, fowl or other animals, which is only allowed pursuant to the rules for agricultural animals."

It was therefore an error of law for the DEP to recommend to the AFPB that this farm operation be excluded from an agricultural district.

This farm operation also serves as an extremely valuable component in its local community by employing workers who produce and distribute its production of mulch and compost through its owner's construction contracting business.

The farm operator therefore requests that the Legislature include her family farm operation in Erie County Agricultural District #17.

Respectfully submitted,

Keith Tripi
Counsel to the Grand Island Agricultural Cooperative

ERIE COUNTY AGRICULTURAL DISTRICTS INCLUSION OF VIABLE AGRICULTURAL LAND 2015 REPORT

PREPARED BY: ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING

FOR: ERIE COUNTY AGRICULTURAL & FARMLAND PROTECTION BOARD ERIE COUNTY LEGISLATURE NEW YORK STATE DEPARTMENT OF AGRICULTURE & MARKETS

PURSUANT TO: SECTION 303-B OF THE AGRICULTURE AND MARKETS LAW

OVERVIEW

Per section 303-b of New York Agriculture and Markets Law, the Erie County Legislature set the month of September, 2015 as the annual 30-day period to consider property owner requests for predominately viable agricultural land to be added to an agricultural district.

Section 303-b also requires the Erie County Agricultural and Farmland Protection Board (AFPB) to report to the Erie County Legislature with its recommendations as to whether the land to requested to be included in an agricultural district:

- consists of viable agricultural land as defined in 301(7) of New York Agriculture and Markets Law; and
- would serve the public interest by assisting in maintaining a viable agricultural industry within the district.

PROPERTY OWNER REQUESTS

During the 2015 open enrollment period, the AFPB received forty-four applications for the inclusion of seventy-eight total parcels:

#	PARCEL(S)	ACRES (total)	ADDRESS	TOWN	APPLICANT	DISTRICT
1	335.11-1-1.112 335.11-1-10.1 335.11-1-11 332-1-43.1	56.088	4451 Route 78	Springville	Sean Fitzpatrick	Concord 15
2	229.00-2-18.2 229.00-2-19	48.5	8213 Center Street	Holland	Paul M. Cohn	Holland 11
3	188.00-3-23.1	145	1231 Olean Road	South Wales	John B. Hitchings	Wales 12
4	195.00-1-7.2	29.55	3134 Old Lakeview Road	Hamburg	Michael Jablonski	Eden 2

Additionally, the Board feels that a personal horse use operation does not qualify as an agricultural operation as defined in Section 301 of the Agricultural District Law.

- Regarding the John & Carolyn Tripi parcel (41) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel within the area of the Town designated by Erie and Niagara Counties' Framework for Regional Growth as a developed area. The parcel also does not meet minimum lot size requirements for agricultural uses within a Medium-Density Single Family Residential zoned area per Town of Grand Island municipal zoning.
- Regarding the Alex Szur and Szur Builders Inc. parcels (43, 44) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the parcels involved having previously been subdivided for residential development. Additionally, the Board feels that if the applicant abandons the parcels divided for a subdivision, they could then join them as one parcel and apply again next year for inclusion into the Amherst Agricultural District.

NOTES:

- Regarding the parcels that were recommended for inclusion but do not meet the description of a "farm operation", it was determined through the State of New York Department of Agriculture and Markets while the land may be included within an Agricultural District, they are not subject to the protections of the Agriculture and Markets Law until they have become viable farm operations.
- Additionally, being included in an Agricultural District does not exempt landowners from municipal and town laws.

November 18, 2015

To Whom It May Concern,

It is our request that you recognize the viable agricultural land at 2020 Fix Road, Grand Island, New York with the SBL # 64.05-3-13.111 and that you accept the recommendation of the Erie County Agricultural & Farmland Protection Board to include my property Agricultural District #17.

Our rationale for inclusion in the agricultural district is based on the ongoing operations of our start-up farm. We consider this a family business that actively involves our children. We produce a variety of vegetables, garlic, herbs, and grapes. We currently have a thriving apiary operation on our property. Our healthy hives pollinate not only the vegetation and flowers our farm, but farms within an eight mile radius. This past year the sales of honey, honeycomb, queen nuc boxes, and beeswax-based cosmetics exceeded $1,000.

In addition, we educate others in our community. We intentionally set-up farm education opportunities on our property. We have been operating a sugar bush with over one hundred and seventy gallons of sap collected from our on-site maple trees this year. During the sugar bush season each spring we demonstrate the multiple steps involved in creating maple syrup. We have hosted school groups, homeschool groups, outdoor education groups and church groups to participate in this enterprise. It is our desire to ensure the upcoming generations understand and appreciate the importance of local farming practices.

Sincerely,

Bryce and Robin Shipman

Bryce and Robin Shipman

November 19, 2015

TO: Honorable members of the Erie County Legislature

RE: **Request for inclusion in an agricultural district of viable agricultural land at 2076 Stony Point Road, Grand Island, SBL #37.03-3-15**

The Kimberly Leys family farm operation was mistakenly not recommended for inclusion in agricultural district #17 by the Erie County Agricultural & Farmland Protection Board. Their determination was based upon misinformation that the Erie County Department of Environment & Planning provided to the AFPB. This family farm operation requests the Legislature to reconsider its NY Agriculture & Markets Law §303-b request to include its property in an agricultural district based upon the law and facts.

The property owner timely filed with the DEP on September 30, 2015 an AML §303-b request for inclusion of its viable agricultural land in an existing agricultural district.

On October 22, 2015, the DEP issued the attached report to members of the AFPB in which they recommended that the Leys family farm operation be included in an agricultural district.

On October 27, 2015, Agricultural District Program Manager John Brennan from the NYS Department of Agriculture & Markets sent an email to DEP Commissioner Thomas Dearing which stated in part that, "The definition of "farm operation" is independent of size or gross income." Brennan's guidance to Dearing also contained hyperlinks to two guidelines published by the NYS Department of Agriculture & Markets on their website that list the factors the Department of Agriculture & Markets uses to evaluate a "farm operation" (defined at AML §301(11)) which is the principal determinant of whether property is "viable agricultural land" (defined at AML §301(7)), and therefore entitled to be included in an agricultural district.

At the October 27, 2015 public meeting of the AFPB, the DEP handed out the attached revised report to AFPB members. This revised report changed its October 22, 2015 recommendation regarding to now exclude the Leys family farm operation from an agricultural district. The reason the DEP stated for excluding the farm was, "insufficient commercial gross sales." DEP Commissioner Dearing neglected to inform fellow AFPB members at their October 27 meeting that he had been instructed by John Brennan from the NYS Department of Agriculture & Markets to <u>not</u> use gross income as the determinant of eligibility for inclusion in an agricultural district.

Neither the October 22 or October 27 revised DEP reports were posted on the DEP's website or made available to AFPB members before the meeting, in violation of NY Public Officer's Law §103(e). Therefore the owner of the Leys family farm operation was deprived of her right to know about and comment on the inaccuracy of the revised DEP report regarding her property, at the public comment period of the October 27 AFPB public meeting.

The Erie County Legislature is required by AML §303-b to include "viable agricultural land" in an existing agricultural district. AML §301(7) states, ""viable agricultural land" means land highly suitable for a farm operation as defined in this section." In turn, AML §301(11) states ""farm operation" means "the land and on-farm buildings...which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise," Therefore any "farm operation" is deemed by the NY Agriculture & Markets law to be viable agricultural land which is entitled to be included in an agricultural district.

The Kimberly Leys family farm operation produces sheep and wool as a commodity that is specifically enumerated in AML §301(2)(e). This start-up farm is operated as a commercial enterprise for the production of wool fiber. It is currently not profitable because it requires additional sheep, and can only acquire additional sheep if it has the benefit and protection of being included in an agricultural district.

It was therefore an error of law for he DEP to recommend to the AFPB that this start-up farm property be excluded from an agricultural district merely because it currently is not profitable. Profit potential is independent of the act that it is operated as a commercial enterprise. The farm owner was deprived of her right to present this information to the AFPB.

This farm operation also serves as an extremely valuable component in local farmland education. The farm operator, who is a NYS licensed veterinarian, uses her farm and her farm animals for local school outreach and operation of the 4-H program in northern Erie County. Dr. Leys is also an active member of the Grand Island Agricultural Cooperative.

The farm operator therefore requests that the Legislature include her family farm operation in Erie County Agricultural District #17.

Respectfully submitted,

Keith Tripi
Counsel to the Grand Island Agricultural Cooperative

→ DEP 10/22/15 INITIAL REPORT ←

ERIE COUNTY AGRICULTURAL DISTRICTS INCLUSION OF VIABLE AGRICULTURAL LAND 2015 REPORT

PREPARED BY: ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING

FOR: ERIE COUNTY AGRICULTURAL & FARMLAND PROTECTION BOARD ERIE COUNTY LEGISLATURE
NEW YORK STATE DEPARTMENT OF AGRICULTURE & MARKETS

PURSUANT TO: SECTION 303-B OF THE AGRICULTURE AND MARKETS LAW

OVERVIEW

Per section 303-b of New York Agriculture and Markets Law, the Erie County Legislature set the month of September, 2015 as the annual 30-day period to consider property owner requests for predominately viable agricultural land to be added to an agricultural district.

Section 303-b also requires the Erie County Agricultural and Farmland Protection Board (AFPB) to report to the Erie County Legislature with its recommendations as to whether the land to requested to be included in an agricultural district:

- consists of viable agricultural land as defined in 301(7) of New York Agriculture and Markets Law; and
- would serve the public interest by assisting in maintaining a viable agricultural industry within the district.

PROPERTY OWNER REQUESTS

During the 2015 open enrollment period, the AFPB received forty-four applications for the inclusion of seventy-eight total parcels:

#	PARCEL(S)	ACRES (total)	ADDRESS	TOWN	APPLICANT	DISTRICT
1	335.11-1-1.112 335.11-1-10.1 335.11-1-11 332-1-43.1	56.088	4451 Route 78	Springville	Sean Fitzpatrick	Concord 15
2	229.00-2-18.2 229.00-2-19	48.5	8213 Center Street	Holland	Paul M. Cohn	Holland 11
3	188.00-3-23.1	145	1231 Olean Road	South Wales	John B. Hitchings	Wales 12
4	195.00-1-7.2	29.55	3134 Old Lakeview Road	Hamburg	Michael Jablonski	Eden 2

Recommend inclusion of:

- The Fitzpatrick parcels in the Village of Springville and the Town of Concord into the Concord Agricultural District.
- The Cohn parcel in the Town of Holland into the Holland Agricultural District.
- The Hitchings parcel in the Hamlet of South Wales into the Wales Agricultural District.
- The Jablonski parcel in the Town of Hamburg into the Eden Agricultural District.
- The Thompson parcels in the Town of Grand Island into the Amherst Agricultural District.
- The Colosi parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Ash Brooke Court Enterprises parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Sparks parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Luthringer parcels in the Town of Grand Island into the Amherst Agricultural District.
- The Smith parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Hopkins parcels in the Town of Grand Island into the Amherst Agricultural District.
- The Pfalzer parcel in the Town of Grand Island into the Amherst Agricultural District
- The Ardalan parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Birtz/Giordano-Birtz parcel in the Town of Grand Island into the Amherst Agricultural District.
- The R&A Wynne parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Langford parcels in the Town of Grand Island into the Amherst Agricultural District.

- The Nasser parcels in the Town of Grand Island into the Amherst Agricultural District.
- The Heitman parcel in the Town of Grand Island into the Amherst Agricultural District.
- The R. Fisher parcels in the Town of Grand Island into the Amherst Agricultural District.
- The D. Fisher parcel in the Town of Grand Island into the Amherst Agricultural District.
- The B. Fisher parcel in the Town of Grand Island into the Amherst Agricultural District.
- The DeGlopper parcels in the Town of Grand Island into the Amherst Agricultural District.
- The Harper parcel in the Town of Grand Island into the Amherst Agricultural District.

- The Beyer parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Russell parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Benz parcels on Baseline Road in the Town of Grand Island into the Amherst Agricultural District.
- The Gerber parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Stuckert parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Williams parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Leys parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Sandford parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Sondel parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Salamone parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Holly's Horse Haven parcel in the Town of Grand Island into the Amherst Agricultural District.
- The Szur-O'Connor parcel in the Town of Grand Island into the Amherst Agricultural District.

- Regarding the Aurora Community Gardeners parcel in the Town of Aurora, the DEP **does not recommend inclusion** into the Wales Agricultural District. The decision was based upon Agricultural District Law, which states that parcels to be included in agricultural districts must be "viable agricultural land", which is highly suitable for a farm operation as defined in Section 301. It remains the view of DEP that community gardens are not classified as a "farming operation" in Section 301 of the Agricultural District Law. Echoing the Board's decision from the 2013 Open Enrollment Period, DEP does not feel that a community garden is intended for agricultural production, but rather, recreational gardening by non-farmers.
- Regarding the T. Wynne, Shipman, Benz (East River Road), Mansard LLC, Burg, Tripi, Szur, and Szur Builders Inc. parcels in the Town of Grand Island, the DEP **does not recommend inclusion** into the Amherst Agricultural District. The decision was based upon the Town of Grand Island's zoning code, which places the aforementioned parcels within their Medium Density Single Family Residential zone. Agricultural uses are permitted within Medium Density Single Family Residential parcels, however they must meet a minimum lot size of 5 acres, which is a stipulation that none of these parcels meet:
  T. Wynne - 0.56 acres
  Shipman - 2.9 acres
  Benz (East River) - 3.26 acres
  Mansard LLC - 0.73 acres
  Burg - 3.87 acres

→ DEP 10/27/15 REVISED REPORT ←

ERIE COUNTY AGRICULTURAL DISTRICTS INCLUSION OF VIABLE AGRICULTURAL LAND 2015 REPORT

PREPARED BY: ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING

FOR: ERIE COUNTY AGRICULTURAL & FARMLAND PROTECTION BOARD ERIE COUNTY LEGISLATURE NEW YORK STATE DEPARTMENT OF AGRICULTURE & MARKETS

PURSUANT TO: SECTION 303-B OF THE AGRICULTURE AND MARKETS LAW

OVERVIEW

Per section 303-b of New York Agriculture and Markets Law, the Erie County Legislature set the month of September, 2015 as the annual 30-day period to consider property owner requests for predominately viable agricultural land to be added to an agricultural district.

Section 303-b also requires the Erie County Agricultural and Farmland Protection Board (AFPB) to report to the Erie County Legislature with its recommendations as to whether the land to requested to be included in an agricultural district:

- consists of viable agricultural land as defined in 301(7) of New York Agriculture and Markets Law; and
- would serve the public interest by assisting in maintaining a viable agricultural industry within the district.

PROPERTY OWNER REQUESTS

During the 2015 open enrollment period, the AFPB received forty-four applications for the inclusion of seventy-eight total parcels:

#	PARCEL(S)	ACRES (total)	ADDRESS	TOWN	APPLICANT	DISTRICT
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4	195.00-1-7.2	29.55	3134 Old Lakeview Road	Hamburg	Michael Jablonski	Eden 2

- Regarding the Aurora Community Gardeners parcel in the Town of Aurora, the DEP **does not recommend inclusion** into the Wales Agricultural District. The decision was based upon Agricultural District Law, which states that parcels to be included in agricultural districts must be "viable agricultural land", which is highly suitable for a farm operation as defined in Section 301. It remains the view of DEP that community gardens are not classified as a "farming operation" in Section 301 of the Agricultural District Law. Echoing the Board's decision from the 2013 Open Enrollment Period, DEP does not feel that a community garden is intended for agricultural production, but rather, recreational gardening by non-farmers.
- Regarding the Ardalan parcel in the Town of Grand Island, the DEP **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon insufficient gross sales as they relate to a commercial agricultural operation as per Section 301. The majority of the reported sales coming from the applicant's existing agricultural operation in Ransomville. DEP suggests that the applicant continues work and that they re-apply for inclusion into an Agricultural District during the 2016 Open Enrollment period.
- Regarding the Lange parcel in the Town of Grand Island, the DEP **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the presence of a DEC wetland, which occupies the majority of this parcel and is not acceptable agricultural land.
- Regarding the Colosi, Pfalzer, R. Wynne, Langford, Heitman, R. Fisher, D. Fisher, B. Fisher, Harper, Beyer, Russell, Williams, Leys, Sandford, Sondel, Salamone, and Szur-O'Connor parcels in the Town of Grand Island, the DEP **does not recommend** inclusion into the Amherst Agricultural District. This decision was based upon insufficient commercial gross sales from these parcels. DEC recommends that the aforementioned applicants re-apply during the 2016 Open Enrollment period, and that they submit a start-up farmer's application with the State.
- Regarding the T. Wynne, Shipman, Benz, Mansard, Burg, Szur, and Szur Builders parcels in the Town of Grand Island, the DEP **does not recommend** inclusion into the Amherst Agricultural District. This decision was based upon the location of these parcels within areas designated by the Erie-Niagara Regional Framework as developed. DEP does not feel that inclusion of these parcels into the Amherst Agricultural District benefits the public interest based upon existing development patterns.

NOTES:

- Regarding the parcels that were recommended for inclusion but do not meet the description of a "farm operation", it was determined through the State of New York Department of Agriculture and Markets while the land may be included within an Agricultural District, they are not subject to the protections of the Agriculture and Markets Law until they have become viable farm operations.
- Additionally, being included in an Agricultural District does not exempt landowners from municipal and town laws.

Subject: Regarding the proposal for inclusion in the agricultural district, the property at 2300 Fix Rd.

We ask that you accept the unanimous recommendation of the Erie County Agricultural & Farmland Protection Board to include my property in an agricultural district during the current review period.

In brief the operation is a startup distillery operation that will use existing woods, new and existing cropland and new and existing orchards to produce whiskeys, brandies and vodkas. The operation is expected to spend close to $1MM in the county through wages, procurement of raw materials, rent and other items each year after operations begin.

Local agriculture is subjected to many external pressures as identified in executive order 12. In order to ensure agricultural viability it is critical to increase the value of the products created by creating unique differentiated high quality offerings. The market data suggests that newer generations are placing higher value on local, organic and sustainable agriculture. This bodes well for the future of farming operations, but it is necessary to keep current farms alive until the market is well established. Creating an ultra-premium local sustainable whiskey offers a niche product that is currently unfilled. Our new process also greatly contributes to the local agricultural economy by using high value sustainable oak and maple farming practices, allowing forested wetlands to produce substantial value without disrupting the environment. Deriving value from the wetlands and forests will continue to ensure their survivability, creating a more rich and desirable environment for everyone as well as generating more revenue for the local economy without significant development work.

Without the protection of the agricultural district we rightly fear that we be harassed about our farming operations with the previous examples the local government has set by harassing other farmers as well as ourselves with nuisance letters referencing vague and often illegal statutes. Since a startup distillery is a significant investment without the protection of the agricultural district we will be unable to convince investors to start locally as other locations nearby offer greater incentives and protections.

Inclusion of our property also aligns with previous inclusion criteria. At over 14 acres we have sufficient acreage to pass all guidelines by any state organization or incentive plan. At a minimum of $1MM we would also pass all financial guidelines imposed by and state organization or incentive plan. Additionally our property is situated between two 5 acre properties, one of which was recommended for inclusion as well. On the same street, within ½ of a mile are three additional properties recommended for inclusion as well as another farm of 40 acres. In the same block, the town of Grand Island currently owns a large block of property as an open space preserve and roughly 50% of the area is wetlands. On the developing side, a new development under construction is directly bordering the 40 acre farm. Now is the critical time to prevent further development of the surrounding agricultural land by offering the protection of an agricultural district, and ensuring the viability of agricultural lands in the years to come.

Sincerely,

Dr. Ines and Dr. Nicholas Stuckert

Thomas Thompson

11/19/2015

Dear Erie County Legislature,

RE: Viable agricultural land at 2487 Long Road on Grand Island in New York State, SBL numbers 23.08-1-4.11, 11.00-1-11, 11.20-1-1.1 and 50.17-1-3.121

I ask that you accept the recommendation of the Erie County Agricultural & Farmland Protection Board to include my property in an agricultural district. I am currently farming 25 acres in conjunction with a 37 acre leased parcel and an 82 acre leased parcel.

I moved back to Grand Island in 1998 and purchased a piece of an existing farm that has been in continuous operation since 1860. This farm is a piece of Grand Island history that predates the town. I am currently trying to maintain it as farmland for poultry, field crops and maple syrup. Having your support for my effort would help future generations of my family maintain this farm as an example of Agriculture on Grand Island.

I plan to keep land in agricultural production by protecting my farmland by being part of an Agricultural District and helping a new generation to farm. An example of this is my son who is currently working in that respect and hopes to take over the farm at some future date.

As a member of the Farm Bureau and through donations to the American Farmland Trust I am helping to educate local leaders and elected officials about the benefits that farms provide to local economies and to the quality of life in the town of Grand Island.

Regards,

Thomas Thompson

November 19, 2015

TO: Honorable members of the Erie County Legislature

RE: **Request for inclusion in an agricultural district of viable agricultural land at 3030 Stony Point Road, Grand Island, SBL #24.11-1-4.1**

The Patricia Burg farm operation was mistakenly not recommended for inclusion in agricultural district #17 by the Erie County Agricultural & Farmland Protection Board. Their determination was based upon misinformation that the Erie County Department of Environment & Planning provided to the AFPB. This family farm operation requests the Legislature to reconsider its NY Agriculture & Markets Law §303-b request to include its property in an agricultural district based upon the law and facts.

The property owner timely filed with the DEP on September 30, 2015 an AML §303-b request for inclusion of its viable agricultural land in an existing agricultural district.

On October 22, 2015, the DEP a report to members of the AFPB in which they recommended that the Burg family farm operation not be included in an agricultural district. At the October 27, 2015 public meeting of the AFPB, the DEP handed out a revised report to AFPB members, again recommending that the Burg farm not be included in an agricultural district.

Neither the October 22 or October 27 revised DEP reports were posted on the DEP's website or made available to AFPB members before the meeting, in violation of NY Public Officer's Law §103(e). Therefore the owner of the Burg family farm operation was deprived of her right to know about and comment on the inaccuracy of the DEP reports regarding her property, and respond to them during the public comment period of the October 27 AFPB public meeting.

The Erie County Legislature is required by AML §303-b to include "viable agricultural land" in an existing agricultural district. AML §301(7) states, ""viable agricultural land" means land highly suitable for a farm operation as defined in this section." In turn, AML §301(11) states ""farm operation" means "the land and on-farm buildings...which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise," Therefore any "farm operation" is deemed by the NY Agriculture & Markets law to be viable agricultural land which is entitled to be included in an agricultural district.

The Patricia Burg family farm operation produces as a commercial enterprise compost and mulch as commodity specifically enumerated in AML §301(16). The compost and mulch is derived from organic matter and waste generated from the keeping of horses on the property.

The DEP also stated in its attached report to the AFPB that the decision to exclude this farm operation from an agricultural district was based on the location of the parcel within an area of the Town of Grand Island designated as "developed" by the Erie Niagara Framework for Regional Growth. It was wrong as a matter of law to use the Framework to exclude this viable agricultural land from an agricultural district. AML §303-b is a State law that uses criteria set-out in AML Article 25-AA to include land in an agricultural district. AML §303-b does not permit the

County to insert irrelevant and arbitrary criteria such as use of the 2006 Framework to exclude this farm which otherwise qualifies for inclusion in an agricultural district.

The DEP also falsely stated to the AFPB in its attached report that, "The parcel does not meet minimum lot size requirements for agricultural uses...per Town of Grand Island municipal zoning. As a matter of law, Town Code specifically excludes the keeping of livestock as an "agricultural use." Town Code **§407-10 Definitions** defines "**Agricultural Use**" as "The commercial cultivation of the soil for food products or other useful or valuable growths of the field, garden or tillage. It includes necessary structures appurtenant to such use. This definition shall not include dairying or raising of livestock, fowl or other animals, which is only allowed pursuant to the rules for agricultural animals." Patricia Burg was issued an agricultural animal permit by the Town of Grand Island to keep horses at her farm operation. The DEP never corrected its misrepresentation of law and fact to the AFPB.

It was therefore an error of law for the DEP to recommend to the AFPB that this farm operation be excluded from an agricultural district.

This farm operation also serves as an extremely valuable component in local farmland education. The farm operator is the assistant farm manager for the SPCA Serving Erie County, and adopts out SPCA farm animals to fellow members of the Grand Island Agricultural Cooperative of which she is a member.

The farm operator therefore requests that the Legislature include her family farm operation in Erie County Agricultural District #17.

Respectfully submitted,

Keith Tripi
Counsel to the Grand Island Agricultural Cooperative

ERIE COUNTY AGRICULTURAL DISTRICTS INCLUSION OF VIABLE AGRICULTURAL LAND 2015 REPORT

PREPARED BY: ERIE COUNTY DEPARTMENT OF ENVIRONMENT & PLANNING

FOR: ERIE COUNTY AGRICULTURAL & FARMLAND PROTECTION BOARD ERIE COUNTY LEGISLATURE NEW YORK STATE DEPARTMENT OF AGRICULTURE & MARKETS

PURSUANT TO: SECTION 303-B OF THE AGRICULTURE AND MARKETS LAW

OVERVIEW

Per section 303-b of New York Agriculture and Markets Law, the Erie County Legislature set the month of September, 2015 as the annual 30-day period to consider property owner requests for predominately viable agricultural land to be added to an agricultural district.

Section 303-b also requires the Erie County Agricultural and Farmland Protection Board (AFPB) to report to the Erie County Legislature with its recommendations as to whether the land to requested to be included in an agricultural district:

- consists of viable agricultural land as defined in 301(7) of New York Agriculture and Markets Law; and
- would serve the public interest by assisting in maintaining a viable agricultural industry within the district.

PROPERTY OWNER REQUESTS

During the 2015 open enrollment period, the AFPB received forty-four applications for the inclusion of seventy-eight total parcels:

#	PARCEL(S)	ACRES (total)	ADDRESS	TOWN	APPLICANT	DISTRICT
1	335.11-1-1.112 335.11-1-10.1 335.11-1-11 332-1-43.1	56.088	4451 Route 78	Springville	Sean Fitzpatrick	Concord 15
2	229.00-2-18.2 229.00-2-19	48.5	8213 Center Street	Holland	Paul M. Cohn	Holland 11
3	188.00-3-23.1	145	1231 Olean Road	South Wales	John B. Hitchings	Wales 12
4	195.00-1-7.2	29.55	3134 Old Lakeview Road	Hamburg	Michael Jablonski	Eden 2

does not feel that a community garden is intended for agricultural production, but rather, recreational gardening by non-farmers.

- Regarding the Tina Wynne parcel (17) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel within one of the most densely populated areas of the Town. The parcel does not meet minimum lot size requirements for agricultural uses within a Medium-Density Single Family Residential zoned area per Town of Grand Island municipal zoning. Additionally, the Board does not feel that a personal garden is intended for agricultural production, but rather, recreational gardening by non-farmers.
- Regarding the Bryce & Robin Shipman parcel (18) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel within one of the most densely populated areas of the Town. The parcel does not meet minimum lot size requirements for agricultural uses within a Medium-Density Single Family Residential zoned area per Town of Grand Island municipal zoning.
- Regarding the Christie – Robert Harper parcel (26) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel within the area of the Town designated by Erie and Niagara Counties' Framework for Regional Growth as a developed area. Additionally, the Board feels it would be more comfortable recommending this parcel for inclusion if more of the parcel was cleared for cropland.
- Regarding the Richard & Jennifer Benz parcel (SBL: 64.06-3-25) (29) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel in one of the most densely populated areas of the town. The parcel does not meet minimum lot size requirements for agricultural uses within a Medium-Density Single Family Residential zoned area per Town of Grand Island municipal zoning.
- Regarding the Mansard LLC parcel (30) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel in one of the most densely populated areas of the Town. The parcel does not meet minimum lot size requirements for agricultural uses within a Medium-Density Single Family Residential zoned area per Town of Grand Island municipal zoning.
- Regarding the Kim Leys parcel (34) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the Board's determination that participation in a 4-H program does not qualify as an agricultural operation.
- Regarding the Patricia Burg parcel (37) in the Town of Grand Island, the Board **does not recommend** inclusion into the Amherst Agricultural District. The decision was based upon the location of the parcel within the area of the Town designated by Erie and Niagara Counties' Framework for Regional Growth as a developed area. The parcel also does not meet minimum lot size requirements for agricultural uses within a Medium-Density Single Family Residential zoned area per Town of Grand Island municipal zoning.

"To Serve and Strengthen Agriculture"

November 19, 2015

To whom it may concern:

I am writing in support of the work the Erie County Farmland Protection Board did and the recommendation they are putting forth regarding inclusion of new properties in the Ag Districts Program in Erie County.

The New York State legislature provided the Ag District Law as a mechanism whereby farmland can be protected. The legislature's declaration included in the Ag District Law indicates that the purpose of the law is, "to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance". The process set forth – landowners identifying their parcels as agricultural and asking to be included in an Agricultural District, the County Farmland Protection Board review of these parcels and making of a recommendation and the county Legislative approval of new parcels satisfies this locally-initiated mechanism. This is proper and I commend the parties involved for doing such a thorough job of determining which parcels could be important to the future of agriculture and including them.

The New York State Constitution calls for the legislature to provide protection for agricultural land. The reasons are reflected in the declaratory statement in setting the Ag Districts Law. This involves primarily the fact that, "many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes." So, the New York State Legislature followed up with this statement, "It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products." Land allowed to go fallow and grow to brush and then trees is hard to reclaim. Any land that is viable for producing an agricultural product is important. If it is already in agricultural production or if there is a farmer who resides on that property who is dedicated to producing an agricultural product it is even more important.

There is a burgeoning segment of our populace interested in knowing the farmer who grows their food. This trend toward local consumption of food and agricultural products is expanding, especially as uncertainty (and even distrust) of the "unknown" expands. It seems that the more control people can have over where there food comes from, the better they feel about it. Both large and small operations contribute to the availability of local food.

In addition to the protection of local production, including eligible lands in Agricultural Districts is also a rural lifestyle issue. The sights, sounds, even smells associated with rural operations have a deep, intrinsic value. Rural is rural because of farms. Farms create a patchwork of open spaces used for a variety of crops, pastureland and wooded areas that encompasses all that is rural.

The county Farmland Protection Plan written/updated in 2012 highlights the value of retaining farms in a community, starting with the economic value to each community. Added to this review of the financial impact, the Plan added, "Farms also provide jobs, use less in services than they pay in property taxes, maintain wildlife habitat and water quality when well managed, create beautiful scenic vistas, highlight the cultural heritage of many rural areas in the county, and offer fresh, local food to county residents." Indeed, there are numerous socio-economic benefits of agriculture.

It is for these numerous reasons that I encourage you to wholeheartedly support the recommendations of the Erie County Farmland Protection Board to include additional parcels in your county's Agricultural District Program. I know the job of protecting farmland in Erie County is an on-going activity and am encouraged that the Farmland Protection Board remains steadfast in their support of adding new parcels whenever they find farmland that will enhance the future of agriculture in Erie County.

Yours truly,

Timothy Bigham, Area Field Supervisor

New York Farm Bureau

11/15/15

Hello,

My name is Melissa Miller and I am married with three little boys, 6, 4 & 4. I have lived on Grand Island for 22 years and we have made our home here with our family. I am a supporter of growing our agricultural land and farming on Grand Island. I also believe it is possible to have a good balance of agricultural and developed properties. For many years there have been buildings on Grand Island Blvd that have remained vacant and are an eyesore. I am also hoping new small businesses can call Grand Island their home too. I would also like to participate in a local Community Share where we could support local farmers and not have to travel a far distance. I am originally from New York City and I remember shopping at local corner farm stands with my mother but never really understood where it all came from. Since owning a home we have enjoyed a small garden and it has been wonderful having my children learn and even help me in the garden. I know this will help them understand how important it is to eat healthy and to see first hand where fruits and vegetables come from.

Thank you,

Melissa Miller

Robert & Christie Harper

Nov. 19, 2015

Erie County Legislature

We have viable agricultural land at E. River Rd., Grand Island NY 14072, SBL numbers 12.00-2-3.11 and 12.00-2-1.1. We ask that you accept the recommendation of the Erie County Agricultural & Farmland Protection Board to include our property in an agricultural district.

Our agricultural land consists of approximately 145 acres with some wetland. Our intent for purchasing this property was to activate a pre-existing agricultural parcel. This property was part of the 1960's Forsyth Farm, plowed furrows can still be clearly seen on the attached map (1) (some land in the parcel is woodland or scrub land and was not tilled). In 2012, we made our first attempt at farming by clearing about 10 acres and planting clover (map 2). We currently plan on utilizing this farm land to plant soybean, corn and/or hay.

With agricultural practices and farmland steadily decreasing our plan was to purchase land that had been previously farmed to help keep and protect the remaining farmland on Grand Island. Our goal was to provide affordable, local agricultural products to community and county residents, not to sell off agricultural parcels for suburban residential growth and development. We also considered the fact that our son's have also expressed an interest in various agricultural areas thus, a new generation will inherit this land allowing them the opportunity to pursue their agricultural interests.

We want to preserve, protect, and maintained our farmland, plus give communities the opportunity to purchase locally grown products.With this in mind, we are requesting the Erie County Legislature to adopt the recommendation that the Agricultural & Farmland Protection Board made to include our property in an agricultural district.

Thank you for your time and consideration.

Sincerely,

Robert & Christie Harper

Map

Map 2.

Google Maps

Imagery ©2015 Google, Map data ©2015 Google 200 ft

TO: Honorable members of the Erie County Legislature

RE: **Inclusion of "viable agricultural land" in an agricultural district under NY Agriculture & Markets Law §303-b**

The members of the Grand Island Agricultural Cooperative request the addition of the attached correspondence as part of the legislative record.

The attached email was sent by the Cooperative's legal counsel to Erie County Department of Environment & Planning Commissioner Thomas Dearing on November 2, 2015, regarding DEP conduct that openly frustrated the AML §303-b process of adding viable agricultural land on Grand Island to an agricultural district.

While most of the issues presented in the letter were addressed only after the direct involvement of the NYS Department of Agriculture & Markets acting on behalf of family farms on Grand Island, others remained uncorrected, and the DEP needs to improve its processing of AML §303-b requests in a fair, open, transparent, lawful, and publicly accountable manner.

Regards,

Keith Tripi
Counsel to the Grand Island Agricultural Cooperative

From: GI Agricultural Cooperative
Date: November 2, 2015 9:41:21 AM EST
To: thomas.dearing@erie.gov
Subject: Viable Agricultural Land

TO: Thomas Dearing
Commissioner, Erie County Department of Environment & Planning

Dear Mr. Dearing:

The Grand Island Agricultural Cooperative learned at and following the October 27th meeting of the Erie County Agricultural & Farmland Protection Board (**AFPB**), that the Department of Environment & Planning (**DEP**) had (a) neglected to forward to the AFPB at least six Grand Island property owner requests timely-filed with DEP between September 1st through the 30th for inclusion of viable agricultural land within an agricultural district; and (b) failed to comply with the state's Open Meetings Law by not publishing DEP records in advance of the public meeting at which those records were discussed; and (c) recommended that 23 parcels of viable agricultural land be excluded from an agricultural district based solely upon the application of arbitrary and irrelevant criteria that DEP knew were not to be used based upon NY Agriculture & Markets Law (**AML**) and NY Department of Agriculture & Markets guidelines.

DEP failed to forward property owner requests to Agricultural & Farmland Protection Board (AFPB) as required by NY Agriculture & Markets Law.

At least six "Agricultural District Modification Forms" that were timely filed with your department by Grand Island property owners were never forwarded to the AFPB as required by AML §303-b(2)(a). Copies of these modification forms and their transmitting emails are attached. They evidence that:
(1) Jayne Schaber's request was timely filed with DEP on September 30, 2015 at 12:48 a.m.;
(2) Krista and Daniel Drexelius' request was timely filed with DEP on September 30, 2015 at 1:02 a.m.;

(3) Regina Kernin's request was timely filed with DEP on September 30, 2015 at 1:04 a.m.;
(4) Peter and Linda Gottler's request was timely filed with DEP on September 30, 2015 at 1:06 a.m.;
(5) Dennis and Adele Upton's request was timely filed with DEP on September 30, 2015 at 1:15 a.m.;
(6) Lynn Kahn's request was timely filed with DEP on September 30, 2015 at 2:17 a.m.

The Schaber farm operation clusters with the Hopkins and Mansard LLC farm operations on Ransom Road.
The Drexelius farm operation clusters with the Langenfeld farm operation on Whitehaven Road.
The Kernin farm operation clusters with the Thompson and Ash Brooke farm operations on Long Road.
The Gottler and Upton farm operations cluster with the Shipman farm operation on Fix Road.
The Kahn farm operation clusters with the Fisher, Heitman, Sondel, Sandford and Lange farm operations on Staley Road.

NY Agriculture & Markets Law §303-b Agricultural districts; inclusion of viable agricultural land, states in part:

"1. The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period. Such request shall identify the agricultural district into which the land is proposed to be included, describe such land, and include the tax map identification number and relevant portion of the tax map for each parcel of land to be included.

2. Upon the termination of such thirty-day period, if any requests are submitted, the county legislative body shall:

a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land" as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district."

We must determine the full extent to which DEP failed to comply with AML §303-b(2)(a) when it did not refer timely-filed agricultural district modification requests to the county's AFPB. The Grand Island Agricultural Cooperative is aware that DEP has been in contact with the NYS Department of Agriculture and Markets law department, and that the AFPB will need to reconvene a meeting to review those timely-filed agricultural district modification forms that DEP did not transmit to the AFPB. We request the DEP to provide to the Grand Island Agricultural Cooperative significant advance notice of that meeting and all related records so that Grand Island property owners may be present to monitor the meeting and comment therein.

All DEP inquiries regarding these properties should be directed to me as legal counsel to these Grand Island Agricultural Cooperative members.

DEP failed to Comply with NY Public Officers Law – the "Open Meetings Law"

Your department has been intentionally secretive about disclosing public records that were created by public employees using public funds, in violation of New York Public Officers Law Article 7 – the Open Meetings Law. NY Public Officers Law §103(e) states in relevant part:

"Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor...prior to or at the meeting during which the records will be discussed...If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting."

The DEP maintains a regularly and routinely updated website and utilizes a high speed internet

connection. Therefore the DEP was and is mandated by law to publish beforehand all of its records that will be the subject of discussion by the AFPB and the Erie County Legislature. That has not happened so far.

On October 23, 2015, I wrote to DEP planner Mark Rountree in the attached email, stating:

"The Grand Island Agricultural Cooperative was actively involved in submitting Ag district modification requests on behalf of its Grand Island members. The Cooperative would like to know in advance of the Tuesday October 27 meeting of the Erie County Agricultural and Farmland Protection Board which, if any, Grand Island properties may have had a negative recommendation made regarding them for inclusion in an Ag district. We want the opportunity to have those specifically affected property owners or their representatives available at the meeting on Tuesday to respond to any board member questions, as has been recommended to us by board members.

Please advise which properties on Grand Island may now have a negative recommendation made by your department for inclusion in an agricultural district, and the basis for that determination. Ultimately we are all engaged in farmland protection, and want to be "on the same page" so we can work collaboratively. Your help is appreciated."

When I wrote to Mr. Rountree, DEP had already emailed this information to AFPB members the previous day on October 22, 2015, in a report titled "ERIE COUNTY AGRICULTURAL DISTRICTS INCLUSION OF VIABLE AGRICULTURAL LAND 2015 REPORT" along with an accompanying spreadsheet matrix of properties. Since DEP sent that information to AFPB members anticipating that it would be discussed at the board meeting on October 27, Mr. Rountree was obligated under NY Public Officers Law §103 to disclose those records to me, and DEP was obligated to publish them to your department's website. Neither of those things happened.

Your department subsequently revised its report to the AFPB on October 26, 2015 but did not provide a copy of it to AFPB members until after they arrived for the public meeting on October 27. DEP was mandated by NY Public Officers Law §103(e) to publish the revised report on its website before the meeting, but again failed to do so, and blindsided AFPB members by withholding the revised report from them.

On October 28, 2015, I alerted Elias Reden, the planner responsible for aggregating the "Agricultural District Modification Forms," that at least two such timely-filed forms had not been sent to the AFPB. Mr. Reden claimed that he never received the requests "on his desk" by September 30, 2015. He stated it was too late to do anything about them, and the applicants should re-apply next year. In violation of NY Public Officers Law §103(e), Reden refused to provide to me any of the documents DEP provided to AFPB board members, which would have allowed me to determine which Grand Island property owner applications DEP neglected to refer to the AFPB.

Because of the extremely time-sensitive nature of this issue, and the important property owner rights that were violated by your department, I would anticipate your full cooperation in immediately providing to me now, as required by NY Public Officers Law §103(e), a full set of all of the records that DEP delivered to members of the AFPB board, and which DEP will provide to the AFPB at its upcoming reconvened meeting, and which DEP will provide to the Erie County Legislature pursuant to the 2015 agricultural district inclusion process.

DEP failed to comply with NY Agriculture & Markets Law and guidelines and County Executive Order when it used arbitrary and irrelevant criteria to recommend the exclusion of viable agricultural land on Grand Island from an agricultural district

The essential determination that the AFPB and County Legislature must make is whether land being requested for inclusion in an existing agricultural district pursuant to AML §303-b is "predominantly viable agricultural land." The DEP knowingly used the wrong criteria when it made recommendations to the AFPB to exclude several properties on Grand Island that are in law and fact viable agricultural land that is entitled to be included in an agricultural district.

The DEP really should not be making any recommendations to the AFPB at all, because it is not authorized by the NY Agriculture and Markets Law to do so. AML §303-b specifically states that after the county's 30-day period ends for property owners to submit requests for inclusion in an agricultural district, "the county legislative body shall: a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land." Somewhere along the line, DEP has become the tail that wags the dog, and that needs to stop so the AFPB can do its job with your department's assistance rather than with its misdirection.

It has become obvious that a review of the law governing the inclusion of viable agricultural land on Grand Island within an agricultural district is warranted.

NY Agriculture & Markets Law
The NY Agriculture & Markets Law may be found on the Department of Agriculture & Market's website here:
http://www.agriculture.ny.gov/ap/agservices/25-AA.pdf

AML § 300 states, "Declaration of legislative findings and intent. It is hereby found and declared that many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

AML §301(7) states, ""viable agricultural land" means land highly suitable for a farm operation as defined in this section."

AML §301(11) states ""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, a "timber operation" as defined in subdivision fourteen of this section and "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section and "commercial equine operation" as defined in subdivision seventeen 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(2) states ""Crops, livestock and livestock products" shall include but not be limited to the following:
a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
b. Fruits, including apples, peaches, grapes, cherries and berries.
c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.
f. Maple sap.
g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
h. Aquaculture products, including fish, fish products, water plants and shellfish.
i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.
j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony."

In short, it is the public policy of NY State to conserve, protect and encourage the development and improvement of agricultural land on Grand Island, and when there is a farm operation on Grand Island property, that property and its on-farm buildings are deemed to be predominantly viable agricultural land as a matter of law, and including that land on Grand Island in an agricultural district serves the public interest by maintaining agricultural activity in the district.

Erie County Executive Order #012
Executive Order #012 – Implementation of the Erie County Agricultural and Farmland Protection Plan was issued On February 20, 2013 by Erie County Executive Mark Poloncarz issued , and may be found here: http://www2.erie.gov/environment/sites/www2.erie.gov.environment/files/uploads/AGPLAN_ExecOrder012_Implementation.pdf
Executive Order #012 ordered the DEP to "follow the policies and recommendations contained within the Erie County Agricultural and Farmland Protection Plan in connection with all action and decision affecting agriculture and farmland preservation within Erie County."

Erie County Agricultural & Farmland Protection Plan
The Erie County Agricultural and Farmland Protection Plan may be found here: http://www2.erie.gov/environment/sites/www2.erie.gov.environment/files/uploads/AgFarmlandProtectionPlan.pdf
The county's Agricultural and Farmland Protection Plan, which DEP was ordered to follow, contains two guiding strategies, and the first states, "Keep land in agricultural production by protecting farmland, helping a new generation to farm, and improving the viability of all farms in the County...Support Actions to protect farmland and stabilize the land base: Support the state-certified agricultural district program with right-to-farm provisions." In other words, you cannot farm without farmland. The plan also contains a map titled "Framework for Regional Growth Policy Areas." This map represents most of Grand Island as "Developed" or "Developing" areas which are areas at highest risk for the loss of agricultural land. Therefore DEP has a heightened obligation to protect all of this threatened viable agricultural land on Grand Island from further loss to non-agricultural development.

Grand Island Town Code
Code Chapter 145–Farming §145-1(B) [http://ecode360.com/15666085] states:
"It is the general purpose and **intent of this law to maintain and preserve the rural traditions and character of the town**, to permit the continuation of agricultural practices, to protect the existence and operation of farms, and to promote new ways to resolve disputes concerning agricultural practices and farm operations. In order to maintain a viable farming economy in Grand Island it is necessary to limit

the circumstances under which farming may be deemed to be a nuisance and allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction."

Town Code §407-145 Agricultural uses [http://ecode360.com/11853423], states, "Agricultural uses...Shall be conducted on a minimum three-acre lot."

Town Code §407-10 Definitions [http://ecode360.com/11851990], defines "**Agricultural Use**" as "The commercial cultivation of the soil for food products or other useful or valuable growths of the field, garden or tillage. It includes necessary structures appurtenant to such use. This definition shall not include dairying or raising of livestock, fowl or other animals, which is only allowed pursuant to the rules for agricultural animals."

Town Code §407-10 Definitions [http://ecode360.com/11851990], defines "**Agricultural Animals**" as "Animals normally found on farms including horses, cattle, poultry, swine, goats, sheep, mules and donkeys, and not including domestic animals such as dogs and cats."

Town Code §407-144 Agricultural animals [http://ecode360.com/11853417], states that "agricultural animals may be permitted with an agricultural animal permit...provided that...the lot has a ...minimum lot area of two acres for the first agricultural animal and additional area of one acre for each additional agricultural animal."

The NYS Department of Agriculture & Markets contacted DEP several times to provide guidance on correctly applying the law cited above, and the criteria to use for evaluating the inclusion of viable agricultural land within an agricultural district pursuant to AML §303-b. On October 21, for example, Department of Agriculture & Markets Farmland Protection Specialist John Brennan spoke at length with planner Elias Reden about the incorrect screening criteria Mr. Reden was using based on farm operation acreage and gross income.

Then on October 27, John Brennan personally sent you an email prior to the AFPB meeting, stating, "The definition of "farm operation" is independent of size or gross income." Mr. Brennan's email to you contained hyperlinks to two guidelines published by the NYS Department of Agriculture & Markets that list the factors they use to evaluate a "farm operation" (defined at AML §301(11)) which is the principal determinant of whether property is "viable agricultural land" (defined at AML §301(7)), and therefore entitled to be included in an agricultural district:
http://www.agriculture.ny.gov/ap/agservices/guidancedocuments/AgGuideline-FarmOperation.pdf
http://www.agriculture.ny.gov/ap/agservices/guidancedocuments/AgGuideline-StartUp.pdf

The first guideline above that you received from the Department of Agriculture & Markets states:

"Under the AML, a "farm operation" is not required to be eligible for receipt of an agricultural assessment or meet the acreage and gross sales requirements to receive an agricultural assessment [AML §301(4)–Land Used in Agricultural Production].

In the absence of minimum acreage and gross sales requirements, the Department evaluates such factors as the acreage in production; capital investment and business assets; gross sales of crops, livestock and livestock products; the type of enterprise and number of years in operation. If needed, the Department also evaluates a number of other factors, including, but not limited to:

1) the landowner's intent (especially for "start-up" farms);
2) whether the farm is operated in a businesslike manner;
3) time and effort spent on farming;
4) whether the landowner, or their advisors, have the knowledge needed to carry on the farming activity as a successful business;
5) whether the landowner was successful, or has experience with, similar activities in the past;
6) whether the landowner can expect future appreciation of the assets used in the business; and
7) whether the landowner's investment is at risk."

Instead of applying these state and town laws, the county executive order, and the state-issued

guidelines listed above, in determining whether Grand Island property requested to be included in an agricultural district was predominantly viable agricultural land, DEP used other criteria that were arbitrary and irrelevant. Because of misrepresentations of law, policy, and fact that your department made to the AFPB, viable agricultural land otherwise entitled to be included in an agricultural district was incorrectly excluded.

Documents that DEP submitted to AFPB members, and statements made by DEP personnel during the October 27 AFPB meeting, evidence that DEP used property size, gross income, surrounding property density, proximity to other farm operations, current property zoning, Erie-Niagara Regional Framework development designations, and proximity to a sewer line as an indicator of area development, among its screening criteria to exclude viable agricultural land on Grand Island from an agricultural district.

You repeatedly stated to AFPB members at the October 27th meeting that gross income was one of two primary criteria DEP used to determine if land was predominantly viable agricultural land on Grand Island. And you did that after having specifically been told by the Department of Agriculture and Markets that the definition of a "farm operation" – as the principal indicator of the viability of agricultural land – was independent of gross income. DEP's final report to the AFPB states:

"Regarding the...Harper...Leys...parcels in the Town of Grand Island, the DEP does not recommend inclusion into the Amherst Agricultural District. This decision was based upon insufficient commercial gross sales from these parcels."

You also stated to AFPB members that the second primary criteria DEP used to recommend the exclusion of several Grand Island properties from an agricultural district was the public interest in applying the Erie Niagara Framework for Regional Growth planning policies to these properties. DEP's final report to the AFPB states:

"Regarding the...Shipman, Benz, Mansard, Burg, Szur, and Szur Builders parcels in the Town of Grand Island, the DEP does not recommend inclusion into the Amherst Agricultural District. This decision was based upon the location of these parcels within areas designated by the Erie-Niagar Regional Framework as developed."

As a matter of fact, correct application of the Erie Niagara Framework for Regional Growth actually urges the inclusion within an agricultural district of these farm operations located on viable agricultural land located in so-called "developed" areas that threaten their viability. Page 37 of the Erie County Agricultural and Farmland Protection Plan states:

"7. Framework for Regional Growth Policy Areas: identifies agricultural parcels in relation to regional growth policy areas from the Erie Niagara Framework for Regional Growth. The Framework delineates Developed, Developing, and Rural areas as well as Development Centers and Corridors. This is another key map for use in both county and town agricultural planning. The Framework has already identified areas of the county that have high development pressure and are therefore at increased risk of farmland conversion. Farms in any of the three areas have value to their communities and the County and need supportive planning in order to remain viable. Farms located in the Developing area are often at high risk of conversion. These farms are in areas that have experienced sprawling development. When prioritizing farms for protection, this map should always be consulted and other factors and other maps used in conjunction with it."

Had the law and facts been applied by DEP in a fair and truthful manner, the DEP's report recommendations to the AFPB would have been entirely different:

(1) **Shipman** – The DEP matrix states, "Bee harvest expected to be in excess of 200 lbs. Sells queen bees in addition to other apiary products. Intends to keep chickens and pigs on property." The Grand Island Town Code contains no provisions or prohibitions against bee-keeping and apiary production at this start-up farm operation. The DEP report incorrectly rejected this farm operation based upon its location in an area deemed to be "developed" per the Erie Niagara Regional Framework. But in accordance with County Executive Order #012, DEP was mandated to comply with the recommendations of the Erie County Agricultural and Farmland Protection Plan which directed that "developed" land on Grand Island was land in most need of protection from loss to development, and therefore it should be included in an agricultural district.

(2) **Benz** – The Town of Grand Island granted an agricultural animal permit to this farm operation on October 16, 1972. This farm operation includes significant infrastructure including a large barn for the keeping of agricultural animals. The DEP report incorrectly rejected this farm operation based upon its location in an area deemed to be "developed" per the Erie Niagara Regional Framework. But in accordance with County Executive Order #012, DEP was mandated to comply with the recommendations of the Erie County Agricultural and Farmland Protection Plan which directed that "developed" land on Grand Island was land in most need of protection from loss to development, and therefore it should be included in an agricultural district.

(3) **Mansard LLC** – This farm operation consisting of predominantly viable agricultural land withi significant infrastructure including numerous aviaries produces as a commercial enterprise the AML §301(2)(e) commodity of livestock and livestock products consisting of domestic rock dove and their eggs. Town Code §407-10 Definitions – Agricultural Animals, specifically excludes domestic animals from their definition of "agricultural animals," and therefore domestic rock dove are exempt under the Town Code. Since domestic rock dove do not require an agricultural animal permit under Town Code §407-144, there is no limit on the number of domestic birds which may be kept at this farm operation or a minimum lot size for their keeping.

Furthermore, this farm operation was originally part of a larger 200 contiguous acre farm owned by the current property owner on which cows, horses and chickens were also kept. The larger farm had been in continuous operation for over 100 years with animals kept thereon – prior to the existence of a Town of Grand Island zoning code – and for over 48 years at its present permitted on-farm building. The DEP report incorrectly rejected this farm operation based upon its location in an area deemed to be "developed" per the Erie Niagara Regional Framework. But in accordance with County Executive Order #012, DEP was mandated to comply with the recommendations of the Erie County Agricultural and Farmland Protection Plan which directed that "developed" land on Grand Island was land in most need of protection from loss to development, and therefore it should be included in an agricultural district.

(4) **Burg** – The Town of Grand Island granted an agricultural animal permit to the property owner on July 17, 1989 for this demonstration farm operation that includes significant infrastructure including a barn for the keeping of agricultural animals. This demonstration farm is owned and operated by the assistant farm manager for the Erie County SPCA. The DEP report incorrectly rejected this farm operation based upon its location in an area deemed to be "developed" per the Erie Niagara Regional Framework. But in accordance with County Executive Order #012, DEP was mandated to comply with the recommendations of the Erie County Agricultural and Farmland Protection Plan which directed that "developed" land on Grand Island was land in most need of protection from loss to development, and therefore it should be included in an agricultural district.

(5) **Tripi** – This farm operation consists of predominantly viable agricultural land that produces as a commercial enterprise the AML §301(16) commodity of compost, mulch, and biomass crops, from crops grown on its farm. The DEP made no recommendation regarding this farm operation in its final report.

(6) **Leys** – This start-up farm operation owned by a veterinarian is predominantly viable agricultural land because it produces, as a commercial enterprise, the AML §301(2)(e) commodity of livestock and livestock products consisting of sheep and their wool. This demonstration farm is also engaged in 4-H programming and elementary school farm education outreach. The Town of Grand Island granted an agricultural animal permit to this farm operations owner in 2013. The DEP report incorrectly rejected this farm operation based upon its location in an area deemed to be "developed" per the Erie Niagara Regional Framework. But in accordance with County Executive Order #012, DEP was mandated to comply with the recommendations of the Erie County Agricultural and Farmland Protection Plan which directed that "developed" land on Grand Island was land in most need of protection from loss to development, and therefore it should be included in an agricultural district.

(7) **Szur-O'Connor, Szur, and Szur Builders** – DEP recommended excluding 6.64 acres of land adjoining an 18 acre poultry farm operation owned by the same controlling parties and used in the same farm operation because the land was located in an area deemed to be "developed" by the Erie Niagara Framework for Regional Growth. But in accordance with County Executive Order #012, DEP was mandated to comply with the recommendations of the Erie County Agricultural and Farmland Protection Plan which directed that "developed" land on Grand Island was land in most need of protection from loss to development, and therefore it should be included in an agricultural district.

When the AFPB reconvenes to review AML §303-b request forms from Grand Island property owners that

were not forwarded by DEP to the AFPB, we would appreciate you as a board member being the first to make a motion for reconsideration of the inclusion of the properties described above, which should have been included in a district but for recommendations DEP made that were based on the incorrect application of law and policy.

Please contact me at your earliest opportunity so that we can schedule a meeting with representatives of affected property owners, your agency, and representation from the AFPB to resolve these issues prior to further meetings pertaining to them.

Regards,

Keith Tripi
Counsel to the Grand Island Agricultural Cooperative

ATTACHMENTS:

[Six "Agricultural District Modification Forms" originally attached are redacted here.]

From: "Rountree, Mark" <Mark.Rountree@erie.gov>
Date: October 23, 2015 1:44:57 PM EDT
To: Keith Tripi
Subject: Ag and Farmland Protection Board Meeting

Keith,

The Agriculture and Farmland Protection Board (AFPB) provides a recommendation on agricultural district inclusions to the Erie County Legislature, who makes the final decision. The AFPB meeting is open to the public. Applicants will have the opportunity to provide comments for the record at the Erie County Legislature Public Hearing scheduled for November 19 at 6:00 pm at Erie County Cooperative Extension, 21 S. Grove Street, East Aurora.

Mark
--
Mark Rountree | Senior Planner
Erie County | Environment & Planning
95 Franklin St., Room 1056 | Buffalo, NY 14202
P:(716) 858-8008 | F:(716) 858-7248
Mark.Rountree@erie.gov | http://www.erie.gov

From: Keith Tripi
Sent: Friday, October 23, 2015 2:07 PM
To: Rountree, Mark
Cc: gi.agriculture@outlook.com; John.Brennan@agriculture.ny.gov
Subject: Re: Ag and Farmland Protection Board Meeting

Dear Mark,

Thanks for writing.

John Brennan, the farmland protection specialist from NYS Department of Agriculture & Markets, called me on Wednesday to say that he had spoken with Elias Reden. John said that Elias was finalizing his recommendations for inclusion of properties into Erie County Ag districts. John **related to me that Elias was about to make some negative recommendation about several properties that would qualify for inclusion in an Ag district. John said that he provided guidance to Elias, and felt he had put Elias back on the right track.**

The Grand Island Agricultural Cooperative was actively involved in submitting Ag district modification requests on behalf of its Grand Island members. **The Cooperative would like to know in advance of the Tuesday October 27 meeting of the Erie County Agricultural and Farmland Protection Board which, if any, Grand Island properties may have had a negative recommendation made regarding them for inclusion in an Ag district. We want the opportunity to have those specifically affected property owners or their representatives available at the meeting on Tuesday to respond to any board member questions, as has been recommended to us by board members.**

Please advise which properties on Grand Island may now have a negative recommendation made by your department for inclusion in an agricultural district, and the basis for that determination. Ultimately we are all engaged in farmland protection, and want to be "on the same page" so we can work collaboratively. Your help is appreciated.

Thanks much,
Keith

From: "Rountree, Mark" <Mark.Rountree@erie.gov>
Date: October 26, 2015 12:18:52 PM EDT
To: Keith Tripi
Cc: gi.agriculture@outlook.com, John.Brennan@agriculture.ny.gov
Subject: RE: Ag and Farmland Protection Board Meeting

Keith,

The report is being reviewed internally and is not expected to be complete until just before the meeting.

The AFPB meeting on Tuesday is open to the public.

The opportunity to provide public input on the report is the Erie County Legislature's public hearing on the matter which is November 19 at 6:00 pm at the Erie County Cooperative Extension.

Mark
--
Mark Rountree | Senior Planner
Erie County | Environment & Planning
95 Franklin St., Room 1056 | Buffalo, NY 14202
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Mark.Rountree@erie.gov | http://www.erie.gov

James P. Collins, President

AURORA

COMMUNITY GARDENERS INC.

SBL# 175.00

2-27.2 / LIBOR9782 PAGE302

898 Main

Street East Aurora, N.Y. 14052

December 2, 2015

TO: Honorable members of the Erie County Legislature

RE: Request for inclusion in an agricultural district of viabl agricultural land
at 619 South Street, East Aurora, N.Y. 14052 SBL# 175.00-2-27.2

The agriculturally zoned land that has been cultivated by us sinc 1975, and
had been always cultivated for crops for generations before 1975, was mistakenly
not recommended for inclusion in agricultural district #13 {?} by the Erie County Department of Environment & Planning. This agricultural/farming operation requests the Legislature to reconsider its N.Y. Agriculture & Markets Law section 303-b request to include its property in an agricultural district based upon the law and facts.

Again for this year I had timely filed with the DEP on September 30, 2015 an
AML s303-b request, though for this year I included a full paged cover letter
{see attachment} detailing that the property was used for much mo than a
'community garden', and that after talking and meeting with Dr. B Sommers
for years, I believed my application with extra details to be sufficient. I had not
heard any response by the DEP, and only found out about the Ag Districts

hearing November 16, after it was over at the Roycroft Campus, as was looking
for the Historical Society meeting. I was able to talk to Kieth Tripi outside and
found that quite a lot of this area's farm operations were droppe inadvertently
by the DEP.

The DEP wrote in their Erie Co. Ag. Districts Inclusion Of Viable Agricultural
Land Report 2015, "It remains the view of the Board that community gardens
are not classified as a "farming operation" in Section 301 of the Agricultural District Law." If you look at the very simple "Agricultural District Modification Form", the first listing is for "Landowner Information" and nowhere on the
application is a request for "Business Information," which leads that information to be not included unless there is a "cover letter" or a further request by the DEP.

Without debating what a "community garden" is, or what the "nonprofit corporation" registered there is {see the Town's definitions of Farm & Farmer below}, I have had an independent farm production on the property for years
which has been a commercial enterprise marketed to the public, though not
as big as intended since our local East Aurora Farmers Market has denied
many local farms (eg. Arden Farm, Albert Hubbard's descendant).
I have included prove of the sales action below, and a cover letter for my 2015
E.A. Farmers Market application which clearly indicates, "my business venture will be a separate business venture with the DBA as 'Good Green Thumbs.'"

In talking with John Brennan from Ag & Markets in Albany, recently he advised me to inform you that for this request to the Legislature, under N.Y. Ag & Markets
Law, my operation should not be judged by acreage or revenue, while Keith
Tripi notes, "the intent must be at least be that it is run as a business which has the potential to generate revenue." The

development of an independent Community Sponsored Agriculture business is in the works.

There are other important reasons for this operational agricultural property to be
included in the Agricultural Districts program, and I can display those facts any
time by email or presence when you request. Please email or call

and I would be happy to be obliged, as it is important to be included in the
Ag Districts program now, and not have to wait out another application mishap.
Thanks for your consideration.

Sincerely Producing,

James P. Collins

The Town of Aurora's "Right To Farm" Farming definitions of:
FARM - The land, buildings, farm residential buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.
FARMER – Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or
the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

James P. Collins, President
AURORA COMMUNITY GARDENERS INC.
SBL# 175.00-2-27.2 / LIBOR9782 PAGE302
898 Main Street East Aurora, N.Y. 14052

December 2, 2015

TO: Honorable members of the Erie County Legislature

RE: Request for inclusion in an agricultural district of viable agricultural land at 619 South Street, East Aurora, N.Y. 14052 SBL# 175.00-2-27.2

The agriculturally zoned land that has been cultivated by us since 1975, and had been always cultivated for crops for generations before 1975, was mistakenly not recommended for inclusion in agricultural district #13 {?} by the Erie County Department of Environment & Planning. This agricultural/farming operation requests the Legislature to reconsider its N.Y. Agriculture & Markets Law section 303-b request to include its property in an agricultural district based upon the law and facts.

Again for this year I had timely filed with the DEP on September 30, 2015 an AML s303-b request, though for this year I included a full paged cover letter {see attachment} detailing that the property was used for much more than a 'community garden', and that after talking and meeting with Dr. Bob Sommers for years, I believed my application with extra details to be sufficient. I had not heard any response by the DEP, and only found out about the Ag Districts hearing November 16, after it was over at the Roycroft Campus, as I was looking for the Historical Society meeting. I was able to talk to Kieth Tripi outside and found that quite a lot of this area's farm operations were dropped inadvertently by the DEP.

The DEP wrote in their Erie Co. Ag. Districts Inclusion Of Viable Agricultural Land Report 2015, "It remains the view of the Board that community gardens are not classified as a "farming operation" in Section 301 of the Agricultural District Law." If you look at the very simple "Agricultural District Modification Form", the first listing is for "Landowner Information" and nowhere on the application is a request for "Business Information," which leads that information to be not included unless there is a "cover letter" or a further request by the DEP.

Without debating what a "community garden" is, or what the "nonprofit corporation" registered there is {see the Town's definitions of Farm & Farmer below}, I have had an independent farm production on the property for years which has been a commercial enterprise marketed to the public, though not as big as intended since our local East Aurora Farmers Market has denied many local farms (eg. Arden Farm, Albert Hubbard's descendant). I have included prove of the sales action below, and a cover letter for my 2015

E.A. Farmers Market application which clearly indicates, "my business venture will be a separate business venture with the DBA as 'Good Green Thumbs.'"

In talking with John Brennan from Ag & Markets in Albany, recently he advised me to inform you that for this request to the Legislature, under N.Y. Ag & Markets Law, my operation should not be judged by acreage or revenue, while Keith Tripi notes, "the intent must be at least be that it is run as a business which has the potential to generate revenue." The development of an independent Community Sponsored Agriculture business is in the works.

There are other important reasons for this operational agricultural property to be included in the Agricultural Districts program, and I can display those facts any time by email or presence when you request. Please email or call 997-3455, and I would be happy to be obliged, as it is important to be included in the Ag Districts program now, and not have to wait out another application mishap. Thanks for your consideration.

Sincerely Producing,

James P. Collins

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FARM - The land, buildings, farm residential buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.
FARMER – Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

* Please see attached Cover Letter and Picture

AGRICULTURAL DISTRICT MODIFICATION FORM

This form is to be completed by agricultural landowners who wish to request a modification to an existing agricultural district. The information obtained from this form will be used by the County to determine the significance and viability of agriculture.

REQUESTS WILL BE ACCEPTED FROM SEPTEMBER 1 TO SEPTEMBER 30.

LANDOWNER INFORMATION	
OWNER NAME: Aurora Community Gardeners Inc.	PHONE:
ADDRESS:	ALT. PHONE:
CITY ST, ZIP: East Aurora, New York 14052	EMAIL:

FARM DESCRIPTION	
4.12 - 4.36	Total number of acres owned
1 - 4	Total number of acres farmed/cropped
X	Total number of acres rented (from another landowner as part of the subject farm)
EA. Farm Market Full ~~$ min~~/Charity	Approximate annual gross sales (or indicate if farm does not currently have gross sales)

MODIFICATION REQUEST INFORMATION

SBL Number (Tax Identification)	Street Address	Town	Size (acres)	Type of Farm Operation	Owner-Operated or Rented to Another
# 175.00-2-27.2	619 South Street	Aurora	4.12 4.36	Community Garden GS4 // Poultry	Warranty Deed Owned

PLEASE SEND COMPLETED REQUEST FORM TO:

Agricultural District Open Enrollment
Erie County Department of Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202
OR
agriculture@erie.gov

Questions? Contact Elias Reden at (716) 858-1911 or agriculture@erie.gov

James P. Collins, President
AURORA COMMUNITY GARDERS INC.
SBL# 175.00-2-27.2 / LIBOR9782 PAGE302
898 Main Street East Aurora, N.Y. 14052

September 30, 2015

Agricultural District Open Enrollment
Erie County Department of Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Dear Administrators and Legislators:

I have written this cover letter to accompany the application for an AGRICULTURAL DISTRICT MODIFICATION regarding the agricultural land of SBL# 175.00-2-27.2 off of 619 South Street in the Town of Aurora, NY bordering the Village of East Aurora, that has been used for gardening and farming by us since 1975. The inclusion of this land in the N.Y. State Agricultural Districts Program is very important, as it allows aspects like the outfitting of a wind generator without all the 'red tape' permitting from a Town, and most importantly simple protection, as many Towns {even with a "Right To Farm" Law} are trying to change their Codes and Restrictions against agricultural use, which the State of New York would want to protect.

It is important to note here that I had been talking with Dr. Bob Sommers both before and after my application last year, and while he has said that most any agricultural land that is of agriculturally viable quality can be excepted, it seems that the people who reviewed that simple application had dismissed it thinking that since it just stated "community garden", that it could not be worthy of much more. While the property is only 4.12 – 4.36 acres, it is not just a community garden and we are producing more 'unusual' agricultural products for market and charity than anyone else in Western New York {eg, warm weather spinach, French Label Rouge poultry, etc.}. While the value of this small agricultural property has been for community gardening, with the development of our Community Sponsored Agriculture program bordering the Village, the value becomes that young and old can walk to this rare nearby parcel for produce.

In a side note, I am on Senator Gallivan's Agricultural Advisory Committee and I realize how to develop an initiative for branding better New York agricultural produce and business by the startup of a Non-profit to run many new innovative Farmers' Markets for WNY. Please include our property in the N.Y. State Agricultural Districts Program this year. Thank you for your consideration.

Sincerely, James P. Collins

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Gmail

COMPOSE

Inbox (868)
Important
Sent Mail
Drafts (72)
Circles
Personal
rrhead
Travel
More

chickens Inbox x

Diane Lawrence 1:47 PM (3 hours ago)
to me

To whom it may concern:

My name is Diane from the Country Cupboard Natural Foods Store in East Auro

We sell natural products that come from distributors, but also local items; such a produce, eggs, soaps, candles, etc.

We also carry a supply of Freedom Ranger Chickens that are raised by a local m Collins. He brings them in frozen and are packaged as a whole bird for resale.

Thank you.

Manager - owner Diane

Click here to Reply or Forward

3.49 GB (23%) of 15 GB used
Manage
Terms - Privacy
Last account activity: 1

Note: There are many more local purchasers

James P. Collins

n

898 Main Street
East Aurora, New York 14052

February 10, 2015

East Aurora Farmers Market:

Enclosed is an application for the 2015 season for Wednesdays, along with some supporting images and text related to some of the produce that I generate. While I wanted to apply in 2013 for the 2014 season, I was not even given an application, and it is now very important to have the opportunity to direct market the substantial foods I have been developing. My farming days goes back to 1992, and while I am mostly selling just French Heritage Label Rouge Poultry (without the air-chilling processing), I had my own six year business success in Key West, with cigars.

While you may see that I have been producing at the Aurora Community Gardens, besides the seven acre Green Glen B&B lands, my business venture will be a separate business venture with the DBA as "Good Green Thumbs" by sole proprietorship and developing into an LLC, before May. My interest is in providing quality produce that other farmers have not been. I have been producing warm-weather spinachs and lettuces that others have not been at any of the farmers markets. You may see the information on the French Label Rouge poultry and realize that these chickens are flavorful Like the small heritage birds, though they grow faster, forage extensively, and are much healthier that the industry Cornish Cross.

You may also see that I have a long history of supporting the Locally Produced Food relation in my showing of films and personal Ability to learn and talk of the local food movement. One of the aspects that I learned from my parents B&B is that it's like "a cultural exchange, the people learn from you and you learn from them." I have a long history with Multigrain, Porridge, and Sprouted breads, and have found that even the best producers are not offering those styles, and that would also bring people to the E.A. Farmers Market on Wednesdays. I have the Bread permit and will have all necessary other Permits and Certificates.

If you have any questions I will be happy to answer them. Thanks for your consideration.

Sincerely, James P. Collins

James P. Collins

Local Harvest French Label Rouge Poultry Sale

From Craigslist + Posted Signs

Hi. I raised a lot of Freedom Ranger Chickens that are freshly processed by a local State Inspected Facility. These special chicken heritage genetic lines grow healthier and are more flavorful than the common Cornish Cross hybrid that is the industry standard. These whole birds are air vacuum sealed in freezer proof FoodSaver bags, and are $4.00/#, while I will have Fresh Freedom Ranger hens, Noles #22, & Cornish X, that are Air-Chilled on November 11, 2014. Jim 716 997-3455 Thanks for your consideration.

Label Rouge: Pasture-based Poultry Production from France

Label Rouge began 40 years ago as a grassroots movement led by visionary farmers. As poultry became more industrialized after World War II, demand grew in France for the taste of traditionally raised farm chickens. Label Rouge performance has been called stunning and now accounts for 30 percent of poultry sales to the public, in spite of its high price—twice the price of conventional poultry.

The Label Rouge program focuses on high-quality products, mainly meat, with poultry as the flagship product. It emphasizes quality attributes such as taste and food safety and free-range production practices. The average consumer can note a positive difference in taste between Label Rouge poultry and conventional poultry—in fact, regular taste-testing is a certification requirement to prove that these products are "vividly distinguishable" from conventional poultry, according to the program.

The main reason for the superior taste is considered to be the use of slow-growing birds instead of the fast-growing birds used in the conventional industry. The slow-growing birds are from specialty rustic genetic stock, that forage. The meat is flavorful, but not tough.

Real Food, Real Farmers, Real Community℠

W.N.Y. Local Harvest Listing

Farms

What:

Farms, CSAs, Products...

Near:

Home Shop CSA Farms Farmers Markets Events

Menu

In Season

French Label Rouge Freedom Ranger Poultry

East Aurora, New York

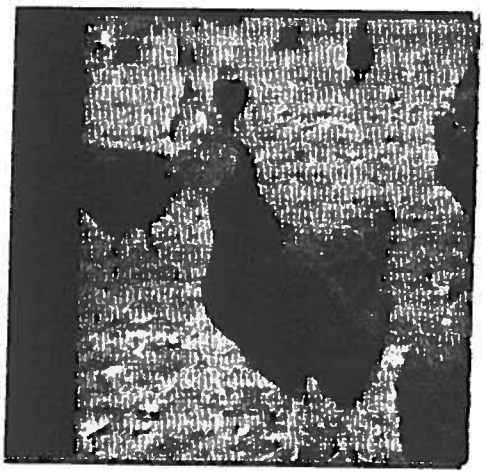
Family Farm

(0 reviews)

Post a Review

Food & Farm Events

Dec-2015						
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2



Hi. I have fresh French Label Rouge Freedom F
Poultry that are of the Heritage genetic lines tha
for flavor and their ability to forage in a complet
environment. They are processed professionall
N.Y. State inspected H.L.W. Acres, and I woul
$4.00/# even though it's
an overworked 'poultry mom' act. I will add mor
listing, I am also in Buffalo, and you may email
questions and/or flavorful poultry. They are mor
and have healthier nutrition. Thanks for your
consideration.

Listing last updated on Nov 7, 2014

LocalHarvest Newsletter

email address

Sign Me Up

Schedule and Location:

This poultry is available by phone contact and arrangement in East Aurora and Buffalo.

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Latest Reviews

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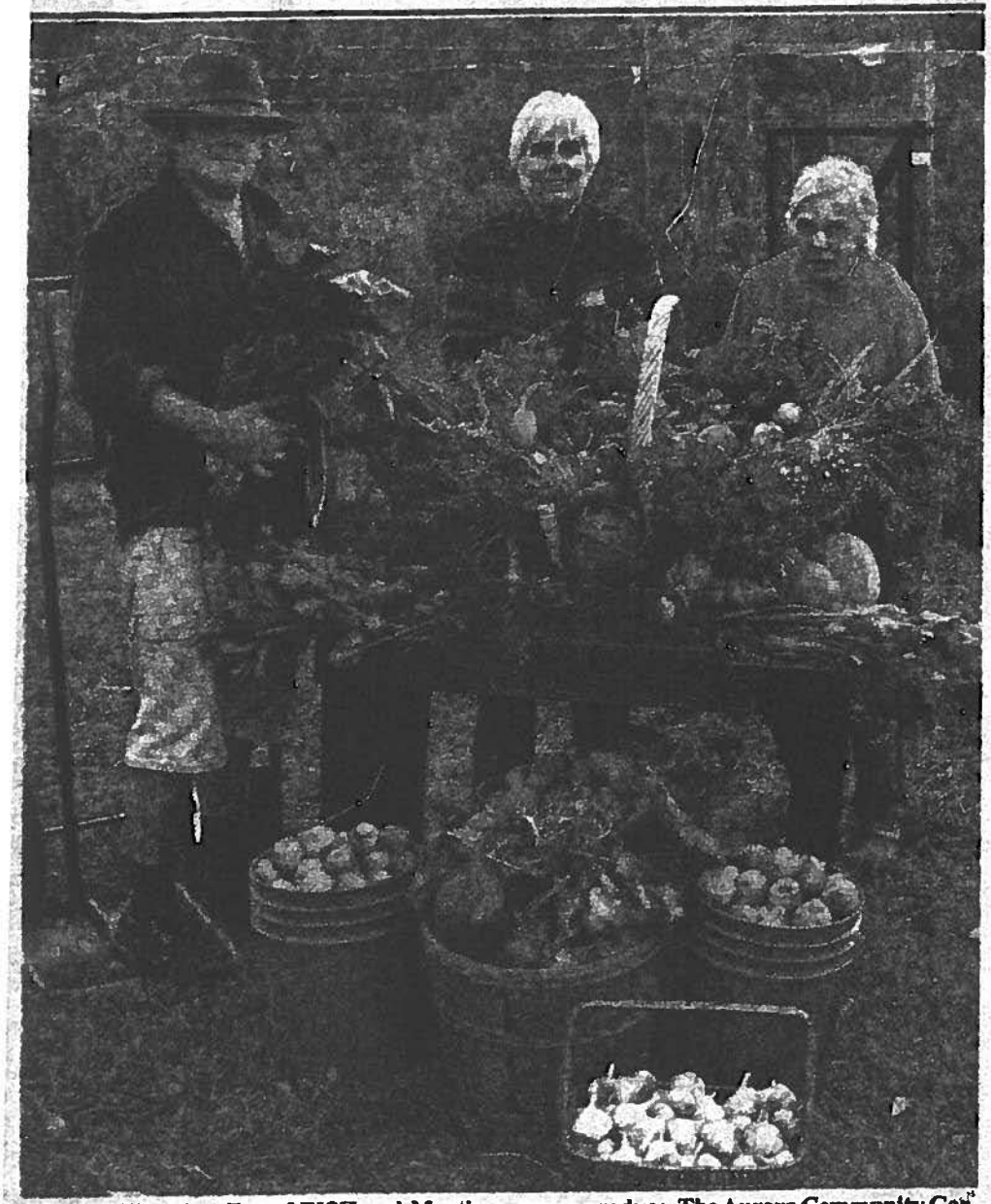


Jim Collins, Sue Fox of FISH and Martha Collins of the Aurora Community Gardens stand beside a bountiful harvest of locally grown produce. The Aurora Community Gardens group is looking to expand to allow the growth of new plants to be donated to FISH.

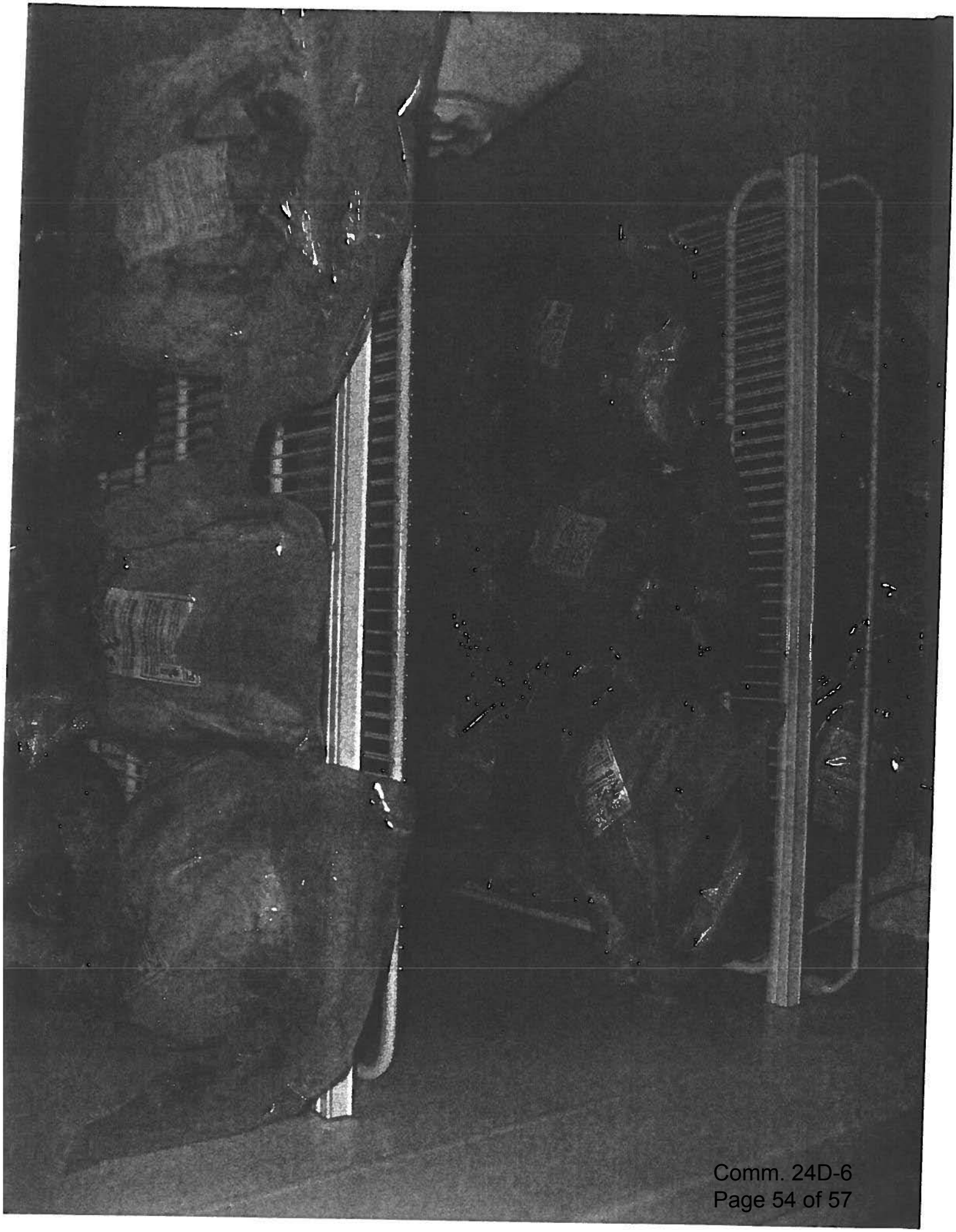
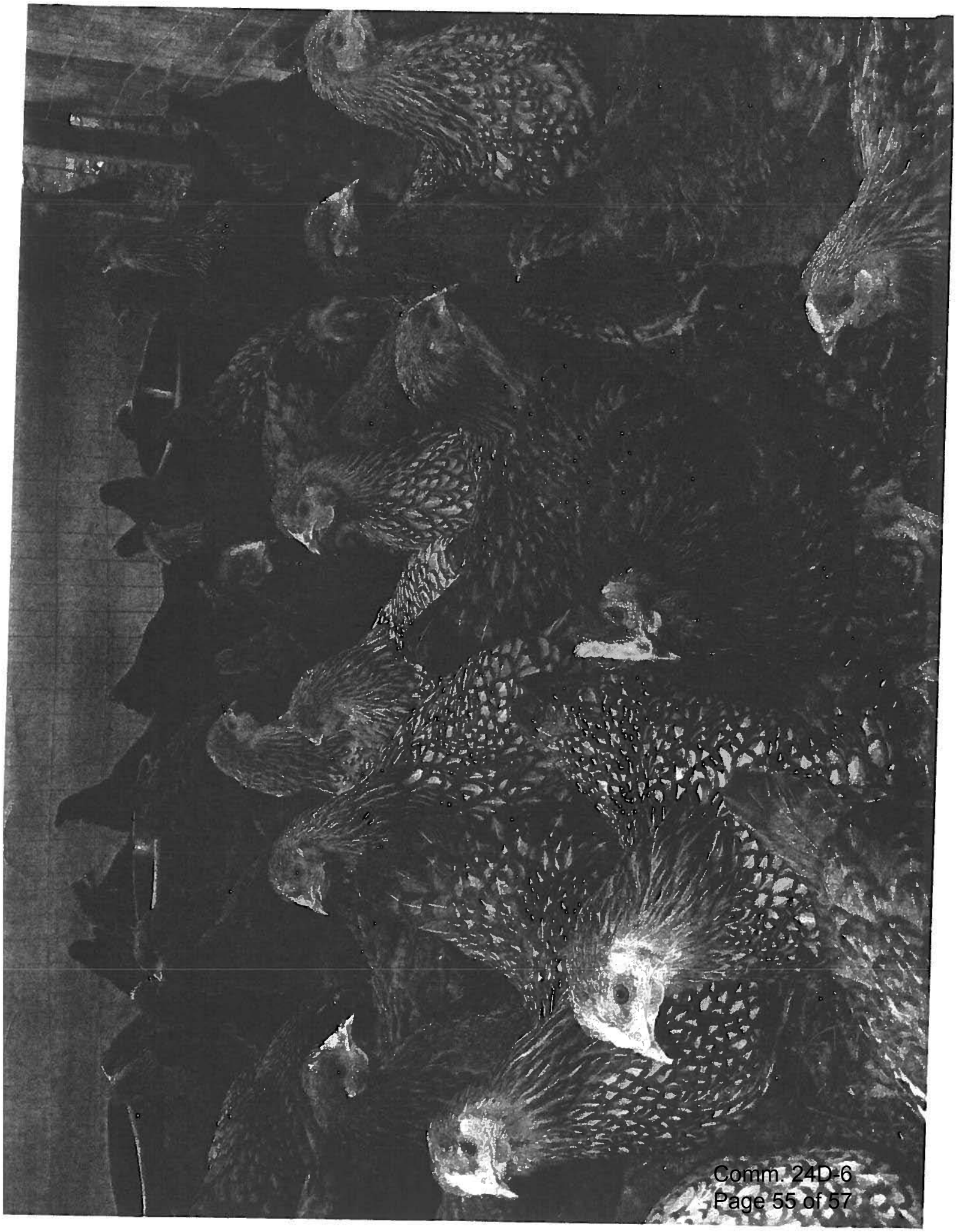
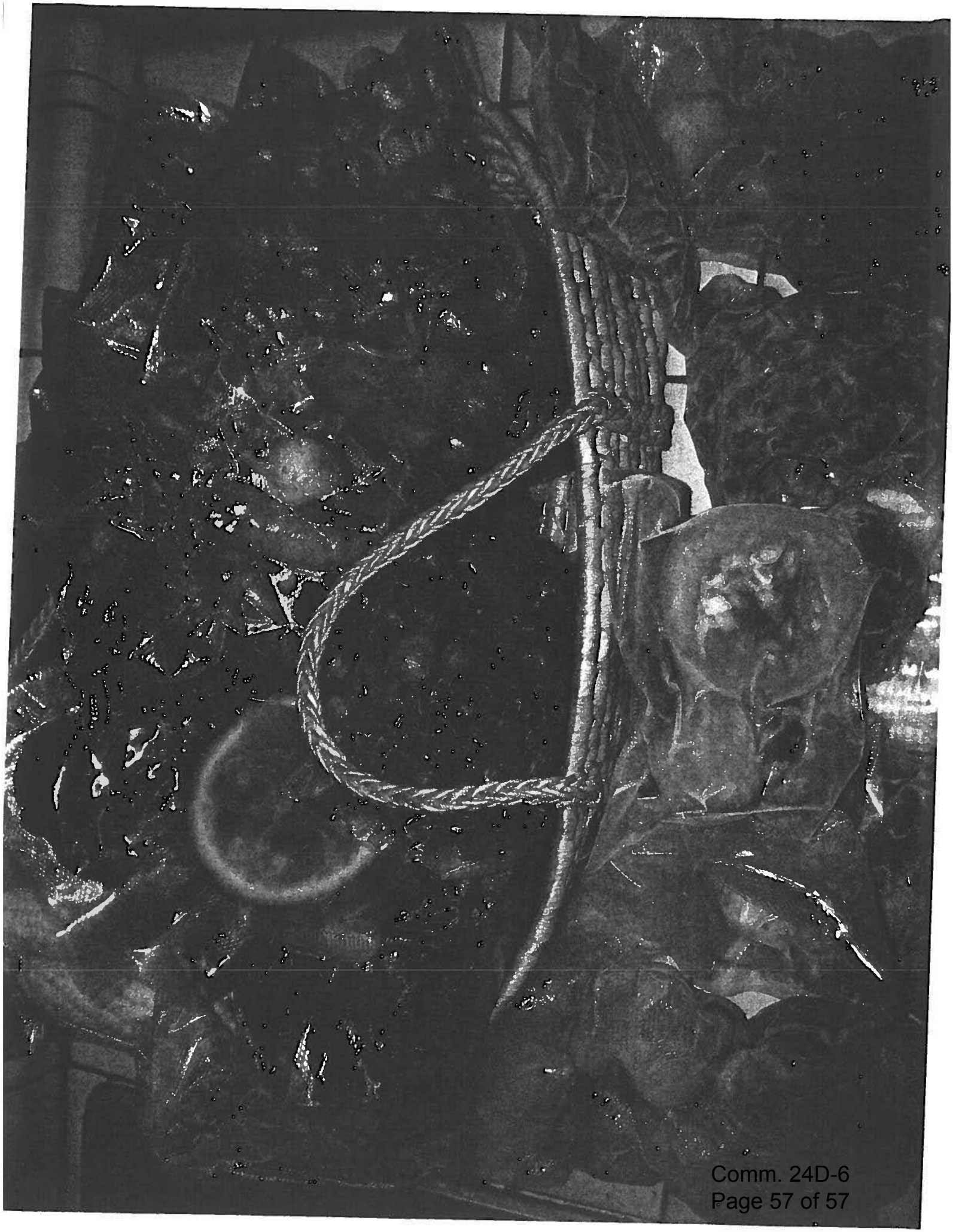
Sharing in Bounty of Gardens

After 36 years of gardening at the Aurora Community Gardens in East Aurora, Martha Collins is celebrating the continued donation of produce to the food pantry at FISH of East Aurora. Collins hopes to open more gardening land at the property to allow even greater donations to FISH during the 2011 season.

Aurora Community Gardens is planning a fall harvest get-together. "All gardeners who are not familiar with this beautiful space on a sloping hillside overlooking the Cazenovia Creek valley are welcome to visit," a press release noted. The event will be Sat. Oct. 23 from noon to 2 p.m.

Master gardeners will be on hand to answer questions, and any garden dishes are welcome. "You may visit to see about helping next year's FISH gardens, or just to enjoy the fresh air and community," the release noted.

The Aurora Community Gardens are located on South Street, through the driveway at 619 South St. The new Major's Park, with elevated walkways to the creek, is in the same scenic area. Call 997-3455 for additional information, or for an alternate location in case of rain on Saturday.

Strings Attached to New Funds

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