

Village of Rhinebeck
76 East Market Street
Rhinebeck New York 12572

Village of Rhinebeck Zoning Board of Appeals Minutes

March 16, 2017

Beginning at 7:00 p.m.

Present: Chairman Colton Johnson, Allan DeKrey, Judy Merritt, Ward Stanley, Alternate Brant Neuneker, Zoning Officer John Fenton and Village Conflict Attorney Kyle W. Barnett.

Absent: Rachel Cavell.

Agenda:

Zoning Board Business

Chairman Colton Johnson explained that Village Attorney Richard Olson is recusing himself from counsel for a possible conflict regarding John Marvin's appeal for an interpretation of Zoning Enforcement Officers determination regarding Amalgamated Agricultural Associates allowable use located at 6282 Route 9.

Kyle W. Barnett, Esq of Van DeWater & Van DeWater, LLP was recommended for counsel regarding this application.

IT IS HEREBY RESOLVED that Van DeWater & Van DeWater, LLP Kyle W. Barnett, Esq., of counsel, is retained to represent the Village of Rhinebeck Zoning Board of Appeals in the matter of an application for interpretation of the Zoning Enforcement Officer dated December 8, 2016 pertaining to property located at 6282 Route 9 in the Village of Rhinebeck at the rate of \$215.00 per hour.

Dated: Rhinebeck New York

March 16, 2017

Moved by: Colton Johnson

Seconded by: Ward Stanley

Aye: 5 Nay: 0 Abstained: 0

The motion was carried by a 5 to 0 vote.

John R. Marvin Esq.

29 Mill St.

Public Hearing

**Interpretation of ZEO determination re: Amalgamated Agric. Assoc. allowable use
Located at 6282 Route 9**

Chairman Colton Johnson explained that this application is unusual in that the Board is solely focused on determining the impropriety of a decision by an administrative official. The Board is obliged to uphold, reverse or modify that decision.

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(John R. Marvin Esq. Appeal, continued)**

A request was made by the Attorney for Amalgamated Agricultural Assoc., Victoria Polidoro of Rodenhausen Chale, LLP, who is not in attendance, but Mr. George Rodenhausen is representing for a 30 day postponement of the hearing pending the response from the Department of Agriculture and Marketing. Chairman Johnson explained the uncertainty of when a response could arrive, would probably unduly delay the beginning of the Boards decision and probably unduly prolong the alleged impropriety, if it proves to be an impropriety, on the part of the official who made the decision. He said he thought it wise to go ahead because the Board must make their own decisions based on the Zoning Laws and their own responsibilities.

Chairman Johnson read the Planning Board's recommendation.

Attorney John Marvin introduced himself and explained he learned of this proposal when he received a public hearing notice for special permit/site plan. He said it struck him that this proposal does not belong there because it is within the Residential District. Hobson's has been closed for several years and he assumed it would revert to an allowable residential use. When he saw the Zoning Administrators, John Fenton, determination he submitted an appeal. He also submitted to the Department of Agriculture and included copies in this submission. He followed with a summary of his position: Looking at the proposed use business plan and the Village Code use schedule, a reasonable person would not conclude that the retail proposal is a special permitted agricultural use. Mr. Fenton, being fed some of the Agriculture and Markets law guidelines, came to the conclusion that the use is a specially permitted use and doing so, he overrode the Village Code and said that Agriculture and Markets applies. The building is 3,000 square feet with 50% to 60% devoted to food service. It has 30 tables inside, picnic tables outside, a kitchen, 15 parking spaces with ingress and egress. It's going to sell smoothies, ice cream, milk bread and food service. Looking at the applicable, different uses under the Village code the conclusion is that this is retail use, not an agricultural use. During the Planning review it was brought up that perhaps the structure could be considered incidental to an agricultural use. This doesn't apply for a few reasons. Incident suggests not a primary use. Clearly on a 2.1 acre in a residential district, it is going to be the primary use. He doesn't think one can conclude that the proposed use can be considered incident to an agricultural use. The second thing is that they have defined the parcel as a farm. It is not a farm. A farm requires at least 10 acres. The farming that does go on is not affiliated with the property owner. There has been no proof submitted that each of the separate LLC farms can all be considered as one farming operation. They have not shown that because these entities involved in the farming, unreasonably restricts their ability to farm. This property owner owns many other properties and he has many other outlets. They have what they call a farm market in New York City. They own restaurants in Rhinebeck and Rhinecliff. They sell farm to table. They have outlets and abilities to sell their product. To say that in this one location, in this district, under these circumstances, that there is nothing that unreasonably restricts them. Even if they were allowed, it would have to be predominantly farm related products. They want an operation from 8a.m. to 10p.m. and there is nothing to show that they can meet the minimum requirement of having a majority of items sold there come from their farm.

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This was a piece of property that was put into an Agriculture District, but under the radar and then they wave the flag of Agriculture and Markets and say to that the Village can not tell us it can't be done. This is doing nothing to preserve farm land and prevent intrusion of non-agricultural activities into agricultural areas. That is what the purpose is of the Agriculture Laws. This application should have been denied and a use variance sought. If the Village Code is going to be overwritten and Agriculture and Markets considered, it really needs to be by the Village Board of Trustees, which is why the Agriculture and Markets sent a letter to the Mayor and the Village Board of Trustees to review this situation. Where the Zoning Board may come in, if they agree (with Mr. Marvin), to provide input or feedback to the Village Board of Trustees when the Agriculture and Markets comes in to review the situation, to hear all sides and make a determination. Mr. Marvin's memorandum is in this folder.

Village Attorney Kyle W. Barnett asked Mr. Marvin that one of his arguments is that the Zoning Officer doesn't have authority to review the Agriculture and Markets Law, how does he reconcile that with the application of section 305A, which states that local governments when exercising their powers to enact and administer of comprehensive plans and local law ordinances, rules and regulations shall exercise these powers in such a manner as may realize the policy and goals set forth in this article and to not unreasonably restrict or regulate farm operations within an agricultural districts and contravention of the purposes of this article unless it can be shown that the public health or safety is threatened?

Mr. Marvin responded that the Village Code does not give him the authority; it says he is to interpret Village code. The appropriate thing for Mr. Fenton to do is bring it to the Zoning Board of Appeals or the Village Board, because it is the Village Board's statute. If it (Village Code) is going to be overwritten, not a matter of interpreting, it is a matter of if (Agriculture and Markets Law) trumps it.

Mr. Barnett asked if Mr. Marvin agreed that an agricultural use is permitted for that property now that it is within an agricultural district, however that may be defined.

Mr. Marvin replied that an agricultural use under the Village Zoning Code is a special permitted use in a residential district, but what is proposed is not an agricultural use.

Mr. Barnett asked but an agricultural use by a special permit is permitted on the property?

Mr. Marvin replied that is correct.

Mr. Barnett asked if the 305A is not applicable in the interpretation of local zoning code, that's how you would argue that the guidelines that have been published by the Agriculture and Markets Law that speak to cafes and bake shops do not apply in this particular case.

Mr. Marvin replied not under the Village Code. They are not allowed.

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Mr. Barnett asked because the 305A doesn't apply?

Mr. Marvin replied that the Zoning Officer doesn't have the authority to interpret 305A. Even assuming the Agriculture and Markets Law is applied to this situation it says 7 acres or more. This is a 2.1 acre parcel, not a farm.

Mr. Barnett asked what type of agricultural uses is permitted under the Agriculture and Markets Law.

Mr. Marvin replied a seasonal farm stand that is incidental to agricultural use. Mr. Barnett interjected; some type of retail, but not what is proposed by the applicant? Mr. Marvin agreed and said not even close to what the applicant is proposing. He said that that he felt the Agriculture and Markets was pushed on to Mr. Fenton and that he felt that he had no choice and didn't dig past the surface.

Chairman Johnson interrupted and said this is moving closer towards the Agriculture and Markets Law and both sides of this discussion have asked for their view of this situation. The Zoning Board must still recognize that they are empowered and constrained by the Village Code.

A motion was made by Brant Neuneker, seconded by Al DeKrey, to open the Public Hearing to comments.

Aye: 5 Nay: 0 Abstained: 0 The motion was carried by a 5 to 0 vote.

Chairman Johnson invited Mr. George Rodenhausen to speak first because he is representing Amalgamated Agricultural Assoc.

George Rodenhausen introduced himself as an Attorney with the firm Rodenhausen Chale, LLP. Attorney Victoria Polidoro has been here before but he is replacing her tonight. Mr. Rodenhausen presented his argument: We do not disagree that you have to interpret your own code. We have submitted our interpretation, argument in the letter of March 1, 2017 from Victoria Polidoro which emphasizes that the Village Code defines agricultural use as growing crops for profit, including structures incidental thereto. So the structures incidental to growing crops for profit reasonably includes a farmers market. The Agriculture and Markets law helps interpret that provision which is fairly open ended in that it doesn't address farm markets or farm stands, it simply says that someone must be growing crops for profit and includes structures incidental thereto. That could be many other structures, not just a retail operation. Clearly a retail operation could be a one of the incidental structures for growing for profit. So within the Village Code are the necessary words to allow farmers markets in the Village. A farmers market is an undefined term, so exactly what that means can be discussed. The question before the Board really tonight is whether you will allow a farmers market as an aspect of an agricultural use in the Village. The question before the Board is whether Mr. Fenton was correct in that a farmers

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market is incidental to an agricultural use and therefore permitted by the zoning by special permit. If the Zoning Board says no, then no body can build a farmers market in the Village as an incidental operation connected to a farm. Obviously it is a retail business, but that is what Agriculture and Markets for example allows, that's what somebody has to have it if you are going to selling for profit. Growing crops and selling for profit needs a place to sell them and that is what a farmers market is. Selling the crops from the farm does not disqualify it from being part of the agriculture use. The word sham came up and this is distorting what is going on here. In the letter submitted there are 5 farms under common ownership in Red Hook, Hudson Valley and Rhinebeck, all fairly close farms. All together they are managed as one farm. The farm manager is here tonight and will discuss the farms. There is no sham involved. Neil Bender is the beneficial owner of all 5 farms. They have LLC's owning them because that is the conventional way to own property, it has to do with liabilities for damages. They are all owned beneficially by the same person. It's a long standing farm operation and it's growing. The two properties in Rhinebeck, Town and Village, were acquired more recently in the last 3 or 4 years, but they are part of the same operation and will become more so with this farm market. The intention is to take some of the land in the 30 acre parcel across the road and convert that into the kind of produce that will be sold at the farmers market and also use some of the 2.1 acre land to grow some of the produce to sell at the farmers market. The intent is to make this an outlet for the farm products that are produced at these 5 farms and managed collectively. A great emphasis has been placed on these 2.1 acres, but that is not the way the applicant is looking at it as a manager of agriculture operations. So there is a steady stream of product being produced. A letter has been submitted with close to a hundred of the vegetable and other products that are produced and can be sold and will be sold at this farmers market. As far as Mr. Fenton's opinion, we have argued that you must look at this as to whether it is a rational decision under the Village Code. First, the code does not address farmers markets, so it's a question as to whether it is an incidental use or structure connected to that operation. The Board has to fill in that gap. But because it is not clear as to whether it is or not, there are two reasons to lean in favor of the property owner. One is simply that zoning is a restrictive law and there is a long standing tradition, court rules, that you must read an unclear zoning provision in favor of the land owner. Mr. Fenton has determined rationally that within the Village Code it can be read to allow a farmers market as an incidental use to an agricultural operation. Clearly this is an agricultural operation when you consider all 5 farms together and what is intended to be done with the 2 and 30 acres across the road. The second reason to lean in favor of the property owner is that as a matter of policy and as a matter of law established the policy of the State of New York that when zoning laws can be read this way, they should be read to encourage agricultural operations in the State. If you were to prevent the farmers market from being established because of a very restrictive definition or reading of that definition, you would effectively be restricting the development of agricultural uses in the State. There is a policy to encourage agricultural uses throughout the state when there is a lack of clarity in the zoning law issue should be read in favor of the agricultural use. Whether or not disallowing this particular farmers market would be a burden on this farm is relevant to the Board's decision. There is a broader question of whether or not farmers markets in general are

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incidental to agricultural use. Whether or not this particular proposal bothers you or not it is a question for the Planning Board. The Planning Board has not ruled on the hours of operation, or how much of an area for café or shelves for produce. All that will be worked out with the Planning Board after the question of whether the farmers market is incidental to agricultural use is decided by the Zoning Board. What exactly is proposed has been updated and the Architect can give you a summary is proposed and what has changed.

Board member Ward Stanley asked where is the farm in the Village of Rhinebeck? Mr. Rodenhausen replied that the 2.1 acres is the farm. Mr. Stanley asked if it is currently farmed. Mr. Rodenhausen said not at this point. Mr. Stanley asked if there is room to farm. Mr. Rodenhausen said the intention is to convert that space into a productive farming operation. Mr. Stanley said that all he can see is that this is just a retail outlet, it's not a farm. If it's not a farm, it's a difficult question.

Chairman Johnson asked to return from the question of hearing from the Architect. He said he thinks they are straying from their own responsibility. They are trying to find out if Mr. Fenton's judgment was one that was appropriate or inappropriate. AML 305-A may be irrelevant to the argument, it may be true in terms of the projects being planned, but that is the citation he makes in the last paragraph of his decision.

Mr. Rodenhausen said he thinks it is relevant in the interpretation of the Village Code. The Zoning Board interprets its own code and is not trying to rule from the Department of Agriculture and Markets. They have their own responsibility to do what they do. But when the Village interprets its own code, what is State policy says is if there is a lack of clarity it should be read in favor of the agricultural use. As far as the 2.1 acres, it is not now used a farm, but the intention is to convert it to a farm, the building, parking and the other part of the farm. The farmer who is farming the 30 acres in the Town will be farming this 2 acre parcel.

Mr. Barnett asked one of the things that are mention in the documents that Ms. Polidoro provided that the produce, the crops and the products that are provided are predominantly grown on the farm. But then the assurance is only 51% of the product will be on farm. He asked Mr. Rodenhausen is it your argument that 51% of on farm products would satisfy that predominant requirement?

Mr. Rodenhausen said yes, absolutely. All 5 farms are managed as one operation.

Mr. Barnett clarified that he believes that Ms. Polidoro is arguing that 51% will come from the conglomerate of farms, which means that potential 49% of what is sold will be from on-farm.

Mr. Rodenhausen said yes. At least 51% will be coming from the farms.

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Mr. Barnett asked the issue perhaps is not so much whether an agricultural use is permitted on the property but rather the scope, size and footprint is really a question for the Planning Board.

Mr. Rodenhausen said that they are using an existing building so that footprint is given. The question raised is whether the café is too large, or whether it is just nothing more than retail with a restaurant operation. Referring to the Agriculture and Markets guidelines allow cafes, kitchen in a farm market to promote the sale of agricultural product grown in the State, and particularly grown on the same farm owned by the same person running the farmers market.

Mr. Barnett said that would presume that the ZEO is compelled by AML 305-A to consider the Agriculture and Markets Law in his interpretation. One of the things defined in Village Zoning 120-63 “Agriculture,” as defined in this chapter, does not include all the uses defined as agricultural uses in New York’s Agriculture and Markets Law.

Mr. Rodenhausen said it also establishes a policy of reading the zoning law when there is a lack of clarity in favor of the agricultural use. If there is no clear statement as to what to do with the farmers market and in that situation the weigh should be given to protecting farming in New York State.

Mr. Barnett said and the additional ambiguity is that there isn’t a definition of what a farmers market is.

Mr. Rodenhausen said they believe what is proposed is clearly a farmers market as Agriculture and Markets has defined. But there is the question whether a farmers market is permitted incidental to an agricultural operation. So, at the least 50% from the farm operations, it could be more than that, there is no restriction on that amount.

Ward Stanley asked 50% of 2.1 acres?

Mr. Rodenhausen replied no sir. We are suggestion since all the lands are owned one entity.

Mr. Stanley said but that is not what is being asked. The applicant is buying 2.1 acres and is saying it is a farm in the Village of Rhinebeck and you are going to get enough produce out of that to run a market.

Mr. Rodenhausen replied no. What we are saying because it crosses the Village line there shouldn’t be any distinction between what is in the Village or not. Because we are dealing with a definition of a use and the code doesn’t deal with any of this so it is completely open ended. Other than to say that you are permitted to have an agricultural use, which they will have and to have structures incidental there to.

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Board member Al Dekrey said the key term in the Village definition of an agricultural use is incidental and was wondering, he didn't see much in the way of discussion or materials submittal, he asked Mr. Rodenhausen to elaborate on the applicant's definition of that word (incidental).

Mr. Rodenhausen replied incident clearly relates to a primary use. The primary use of agriculture is what will be done on that property, in a sense that, agriculture is the purpose of that property and all the other properties that are related to it, owned by the same entity, person, managed as one farm and this is the outlet for the farm product. The use is agricultural and when you have an agricultural use we submit a farm market is always an incidental use.

Board member Brant Neuneker said that there is a definition (within the Village Code) that dovetails with incidental use that is really close to the agricultural use alphabetically and that is an accessory use, which is a use that is subordinate or supplemental to the main use on the same lot. That maybe AML 305A will trigger a decision from somewhere else. A similar situation is the cafeteria in the hospital, it's an accessory use and the Village code doesn't talk about cafeterias in a hospital, that doesn't mean the code doesn't cover the situation of having a cafeteria in a hospital, perhaps because of this definition of accessory use which dovetails the word incidental use.

Mr. Rodenhausen said that accessory use is another definition of another use on the property. Incidental to means it's the same use and considered to be the same use, a structure incidental to the agricultural use. Assuming that this is now agricultural use, it is not an accessory to. There's nothing that says the incidental use must be on the same lot.

Mr. DeKrey said that is one of the difficulties the board is having interpreting their own ordinance and certain words. Incident is a word that is not defined, but one can look at the common definitions in a dictionary and incidental means minor, not a major part of something, minor consequence, unimportant part of something else, subordinate or secondary in importance. Those are the definitions the board has to work with and that is a very important part of the decision that has to be made about the interpretation that was made by the ZEO.

Mr. Rodenhausen submitted the latest site plan revisions.

Chairman Johnson asked the audience if there was anyone else who would like to speak about this particular point having to do with the ZEO's determination.

Several neighbors spoke of their concerns and submitted them in writing. These letters are in this applicant's folder. These neighbors were Nicole McGrath (and Michael McGrath included in letter) of 15 Mill St., Mark Stapylton (and Alisa Kwitney) 17 Mill St., (and Gloria Rutgers of 7 Mill St. included in letter), Ann Marvin of 29 Mill St. Their concerns involved: That the proposed use is a much more intense use than a farm market. The restaurant aspect will increase traffic, pedestrian safety, noise, possible smells and lighting.

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Donald Rothchild formerly of 17 Mill St. (currently at Crossmour), spoke of his concerns of using zoning in special cases to allow a use sets a precedent. Someone else will find a way to use that precedent and before you know it, it's like Hyde Park. Keeping the Village and the entry separate makes the Village special.

Other comments were made from individuals that work at the farm in Tivoli. Christine Pizzuti is a farm worker and shared her thoughts about the produce they grow: A venue of once a week farmers market is extremely limited. They need more outlets to sell their produce. Making a sandwich isn't a sham, it makes them smart to sell their produce without going through a middleman producer. Having the ability to refrigerate the produce so it doesn't spoil is huge, but where the public is not only going to say what am I going to do with this turnip, but you have already made a soup and they are much more willing to buy a soup than a turnip. The work the farmers do is not a sham.

Kevin Ferry introduced himself as the manager of the parcels who will be distributing product to the "Hobson's" market. He said they can meet the 51% that is in question. They operate 52 weeks of the year and sell 4 days of the week. They are ramping up and doing their 2017 farm plans with this (farm market) in mind to accommodate it and have those products there. He can't talk about the details of the site plan, but in terms of the product, they are capable of meeting the demand. They have the opportunity to have employees, 4 full time and 2 part time employees. They are part of the community. This is an important avenue and resource to get more product out and to maximize what they can do.

Chairman Johnson said he appreciates everyone coming out, he stressed that many of the things that are being raised are things that the Planning Board in its site plan studies would have to wrestle with. Are there others that would like to speak?

John Clarke (Planning Board member) 25 Beech St., said that he has been thinking about the proposal since the applicant last appeared in front of the Planning Board for their recommendation to the ZBA. He explained that there may be some middle ground. He fully respects agricultural use as an occupation and something necessary for the Village. One of the purposes of the Zoning Code says that the Village should have a rural character. Part of that rural character is that it is surrounded by farm land. We should give a vote of credit to the property owners. They could subdivide the property into 8,000 square foot lots with possibly dozens of houses. The fact that they are maintaining this land at the entrance to the Village as productive farm land they should be given credit for that. And maybe that is part of the solution. Procedurally it would be a mistake to back off and let the State decide. The Boards should interpret the Village Law and put what is best on the table and if the State wants to come in and overturn that, fine, let them try. A village should take a stand and do what is best for the village and interpret their own law. With that being said, John Fenton's letter says nothing about restaurants or cafes. It says farm market is allowed by special permit on that property.

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Therefore, maybe there is middle ground. Mr. Clarke read from the Zoning Code: Section 120-6 Allowable use chart: Agricultural uses are allowed by a special permit in the Residential District. That and the definitions is what we have. In the intro part before the allowable use chart says; It is the purpose of this chapter to allow flexibility of land use in conformance with the dimensional, use and performance criteria contained her in. In reviewing application for special permits and site plan approval, it is the responsibility of the Planning Board and, if necessary, the Board of Appeals to attach such conditions s may be necessary to ensure that a proposed use will be compatible with its surroundings and consistent with the purpose of this chapter.... So it allows flexibility and it allows conditions. He said his contention would be that consistent with what John Fenton said, a farm market would be a use that is incidental to an agricultural use which is allowed under the Village Law. Farms cross municipal boundaries all the time. Maybe there is a minor section in the Village and a large section in the Town, it constitutes one continuous piece of farm land. It's 30 something acres across the street and 2.1 acres in the Village. That is a significant amount of farm land that should be considered. The people on Mill St. would hate to see that go away because they love that view open on to farm land on both sides of the street. Everybody that comes up from the south and drives into the Village around that farm parcel says isn't this a great entrance to our Village. It's worth protecting. He said he things the Boards should make a decision based on the Village Code with a certain degree of flexibility and the ability to do conditions and here is what he recommends: A farm market is an incidental use to an agricultural operations but the condition that would go with that interpretation is that we don't want this farm land, that is part of the entrance into the Village and part of the rural character of our Village, as defined in the code, to go away. If it is approved to let the Agriculture and Markets rule and give them what they want, they could sell the farm land or subdivide the farm land later and keep the farm stand and truck in their stuff from Tivoli. One condition that could be applied is that acts as a farm land only if it is incidental to the farm agricultural uses that are in the Village proper. So they would have to maintain that as farm land in order to have the farm stand in the Village. That is one condition. Mr. Dekrey asked if that included the Town. Mr. Clarke said he would try to make it the Village and Town because they are making the argument that it is continuous and so therefore part of a larger farm operation. He would make the case that the land on both sides of the street is inherent property of the Village of Rhinebeck in terms of its character. The Lawyers will have to say if it is legal, make it a condition that they have to maintain that it is farm land as part of the operation of the farm stand. Second condition would be that it is a farm market, not a restaurant not a café, which is a retail use that is over and above of what is incidental to an agricultural operation. So, therefore a reasonable condition would be that this is a farm market, they could use the building. Part of the incentive is to keep the building used. But no 30 seat restaurant. There could be reasonable conditions about the types of uses in the building to keep it from being a restaurant and more like a true farm market. The third condition would be reasonable hours that are not into the evening, because of the contiguous nature of the Residential District and the compatibility with the neighbor which is mentioned in the code. So, the Board could come up with something that abides by John Fenton's overall ruling, sets conditions this is reasonable to the neighbors and

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maintains the farm land for an indefinite period of time.

Mr. Stanley asked how will they get conditions through both the municipalities?

Mr. Clarke replied that is a legal issue they will have to face. The applicant is making the case with the Town farm land, so the Village has leverage. Mr. Clarke said his last point is that if we don't make a decision and let the Agriculture and Markets decide, they will use their own guidelines. If the Village can come up with something that is reasonable that actually protects the agricultural use, the farm land, there is no way that the Agriculture and Markets will say this unduly restricts farming operations in an agricultural district because the condition actually requires that the farmland be maintained as farm land. The Village has additional leverage with the State if the Village comes up with conditions that protect farm land as part of the conditions.

Chairman Johnson said that he is not sure how the Boards finding about John Fenton's decision is going to necessarily move that forward although remarks like yours (Mr. Clarke) and the thinking you put into it could move the larger question that the Planning Board and the community have been confronted with.

Mr. Clarke said that as a member of the Planning Board he doesn't want to pass the buck, but the conditions would be stronger coming from the Zoning Board of Appeals than the Planning Board. Site plan has certain limitations. It would be difficult to put conditions on the use of the property as part of site plan approval. If the conditions are going to fly, they ought to come from the ZBA rather than the Planning Board.

Mr. Barnett asked can't condition be placed because it's a special permit application.

Mr. Clarke said they can but it would make a stronger case because they are the final determination as to whether a farm market is legal. The code allows for flexibility and if it protects that farm land from being subdivided or used for other purposes than farming that is protection to the residential neighborhood.

Mr. Neuneker said that he didn't think they could condition the parcel across the street, but if this were originally a farm stand and served both parcel, the Board would be here now. This is something more than that.

Mr. Clarke said he felt the proponents of this project have made a decent case that it is all under one ownership, it supports farmland in the area as much as the two particular farm parcels that are in the vicinity of the Village.

Mr. Neuneker said but if the farmers market is an accessory use, it can't be stretched to where it is the principle use of the 2.1 acre parcel.

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Mr. Clarke said it doesn't say it's an accessory use. It says it's a use incidental to the farm agricultural use. A farm market is an agricultural use.

Chairman Johnson interrupted and said that this might be a discussion for the future. He said that his thought is that the meeting will adjourn at this point keeping the public hearing open so that they can accept written comments and meet with the Village Attorney before a determination.

A motion was made by Ward Stanley, seconded by Judy Merritt, to keep the Public Hearing open so that any written comments can be submitted and adjourn the meeting to April 20, 2017 at 7 pm.

Aye: 4 Nay: 1 – Al DeKrey Abstained: 0

The motion was carried by a 4 to 1 vote.

The meeting was adjourned at 8:35pm.

Respectfully submitted,

Karen Macfarlane, Clerk