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Agricultural Districts: Lessons from New York

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Introduction

Over the past 40 years, several different types of publicly sponsored programs have been devised by state and local governments for the express purpose of encouraging owners to maintain land in an agricultural use. Although these units of government can wield considerable police power or regulatory influence, most attention has been given to voluntary, incentive-based approaches. First-generation programs were developed beginning in the mid-1950s with state legislation centered on the provision of direct cash benefits via reduced taxes on farm real estate (Tremblay, *et al.*).

Tax concessions, usually based on use-value farmland assessment, are now commonplace throughout the Nation. State legislatures in the densely populated Northeast were early adopters of these tax concession programs, which exempt the nonfarm component of farmland value from the local real property tax. However, legislative proposals keyed to farmland preservation or protection have evolved in many different ways. Today, some 40 years after Maryland's inaugural efforts with use-value assessments on open land affected by urban pressure, an extensive menu of voluntary, incentive-based approaches has been created. Among these is the idea of a special use or agricultural district, a geographic area where a number of provisions are made to make agriculture a priority land use and to promote the continuation of farming. A Guidebook recently published by the American Farmland Trust chronicles and discusses agricultural district laws in 16 states.

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The district concept was arguably pioneered in New York State. The framers of the New York law were much influenced by legislation and policy discussions of California's 1965 Williamson Act, which provides for tax benefits and the formation of "agricultural preserves". Regardless of one's views on lineage, however, the special use, or agricultural, districts have proliferated in New York and elsewhere without much organized study or evaluation of program performance. The outcomes promoted by these laws have yet to be fully fleshed out by the research community, or carefully analyzed by policymakers.

One reason for limited information is that the performance standard is not widely agreed upon. District proponents and opponents of farmland protection/preservation techniques often stake out expectations for performance in different ways. Is the standard based on: Averting the loss of farms or farm acreage? Influencing the pattern and timing of land development in local communities? Strengthening and growing the farm industry? Mitigating or eliminating conflicts and disputes between farmers and adjacent property owners? One's views on performance can easily shift depending on the standard selected.

Another explanation for the lack of evaluative analysis is that a formal, empirical with/without comparison of the district law is difficult to do. In fact, in the strict sense, the question may well be unresearchable. Our objectives with this paper are far more modest. We want to present a prospective on the New York experience with districts and discuss the law's salient features. We think that it is also instructive to briefly recount the legislative history, along with recent trends in administration. Then we will raise several performance-related issues and sift through the literature, agency files, and recent court cases to shed more light on the program performance question.

Background: The 1971 Agricultural Districts Law and Subsequent Legislative Developments

The adjustments in New York's commercial farm sector and population growth in rural territory are mirrored in developments in public policy. Legislation proposed in two consecutive sessions of the state legislature in the mid-1960s to grant farmland owners a reduced property tax bill through assessing land at use value rather than market value were vetoed by the Governor. This outcome was in sharp contrast to political results obtained in several other states, who were

mimicking Maryland's path-breaking use-value assessment law that was passed in 1957 (Grillo and Seid, 1987).

Similarly, a proposal to institute state-level planning, reversing the State's deference to local "home rule" authority on land use controls in a substantive way, were unacceptable to elected public officials in the state legislature (Conklin and Bryant). To break this impasse while dealing with the growing concern over the future viability of New York agriculture, a Temporary Commission on the Preservation of Agricultural Land was established. The Commission was instrumental in developing and refining the concept of an agricultural district. The agricultural districts were advanced as the cornerstone to an effective and politically feasible approach to farmland retention in New York. At the same time, observers readily admitted that the district proposal was a compromise, an effort to strike a balance between forces who were focused on property tax relief for farm real estate and those who were interested in mechanisms to promote the wider public interests in farmland protection and in promoting the viability of New York's farming industry (Conklin and Leshner).

The Commission's recommendations, combined with input from farm organizations and state agencies, led to enactment of the Agricultural Districts Law in 1971, the focal point for farm protection efforts in New York. The Agricultural Districts Law recognizes that viable agricultural land is one of the State's most important and irreplaceable environmental and economic resources. The declaration of legislative intent states that many of the State's agricultural lands are in jeopardy of being lost for agricultural purposes due to nonfarm development. The purpose of the Agricultural Districts Law is to provide a locally initiated mechanism for the protection and enhancement of agricultural land for agricultural production, and as valued natural and ecological resources which provide needed open space for clean air and aesthetic purposes.

These broad economic, social, and environmental objectives stated in the legislation are promoted through the formation of agricultural districts. The process of creating an agricultural district is initiated with a proposal by interested landowners to the county legislature. Owners forwarding a proposal must collectively own at least 500 acres or 10 percent of the land proposed for a district, whichever is greater. The proposal must include a description of the district boundaries and a recommendation on whether the district, once approved by the county

legislature, should come under review after 8, 12, or 20 years. The steps required for creating an agricultural district are spelled out in detail and are designed to maximize the participation of farmland owners, state agencies, local units of government and the general public.

While the law restricts district size to no fewer than 500 acres, landowners and the county legislature are granted considerable latitude on the configuration of lands included within the boundaries of an agricultural district. The law requires that steps be taken to determine that the district consists predominantly of viable agricultural land and is consistent with state and local comprehensive plans, policies, and objectives. Viable agricultural land is defined as "land highly suitable for agricultural production and which will continue to be economically feasible for such use if real property taxes, farm use restrictions, and speculative activities are limited to those in commercial agricultural areas not influenced by the proximity of nonagricultural development."

Agricultural districting has proved to be popular with farmers in New York. State enabling law prescribes that participation in a district is voluntary for each landowner and, once enrolled in a district, the use of farmland is not regulated by local public officials. Similarly, local governments are often receptive to creating agricultural districts because the district program is relatively easy to administer and, to date, not subject to serious legal or political challenges. Finally, districts do not usually entail substantial outlays of public funds.

Provisions of the Law

The Agricultural Districts Law contains six major provisions that apply in all agricultural districts. These provisions are designed to facilitate the retention of agricultural land in three basic ways. First, the Law restricts some of the usual land management options open to governments whose boundaries overlap those of the agricultural districts. District authority may supersede local ordinances designed to regulate farm structures or practices beyond the normal requirements of public health and safety. Within an agricultural district, the right of government to acquire farmland by eminent domain is modified and can be exercised on actively farmed land only after serious consideration has been given to alternative sites. The right of public agencies to advance funds for construction of public facilities to encourage nonfarm development is modified by a requirement that an agricultural impact statement be prepared. An example of these modified authorities are local decisions to extend water and sewer lines along roads and

highways within the boundaries of an agricultural district. Such funding must be preceded by public notices and hearings, along with reviews by state agencies to assess the project's impact on farming operations.

Second, state agencies must modify their administrative regulations and procedures to facilitate the retention of agricultural land. Such regulations must, of course, be consistent with standards for health, safety and the protection of environmental quality. These provisions are designed to promote a more stable environment for farm operations and to reduce nonfarm competition for scarce rural land resources and the uncertainties that can lead to a gradual disinvestment in agriculture. Some increased costs of production to comply with local ordinances or with procedures and regulations established by state agencies may also be avoided by farmers whose land is in an agricultural district.

Finally, the Agricultural Districts Law may provide direct monetary benefits to farmers who are willing to participate in a district for an extended period of time. Special-use districts that overlap the boundaries of a district are restricted in the imposition of benefit assessments or special *ad valorem* levies on farmland within the district. These restrictions apply to improvements for water, sewer, lighting, nonfarm drainage, and solid waste disposal or other landfill operations. To date, there are no data which would allow an accurate accounting of the assessments and fees avoided under this provision by participating landowners. The anecdotal evidence suggests that the savings can be substantial in developing areas.

A more visible provision deals with treatment of farmland for local property tax purposes. As noted above, the legislation was motivated, in part, by a growing concern with agriculture's exposure to the property tax. By the late 1960s the dimensions of the property tax issue were clearly understood in the farm community. Rapid population growth and spillovers of new residential and commercial development to outlying suburban and exurban areas was generating new pressure on property values and property tax rates. At the same time, and often with prodding from the courts, local officials were coming under increasing pressure to update and modernize local property tax rolls. These administrative changes tended to further disadvantage farm property because of the tendency to let farm property values go out of date compared to other property classes (Boisvert, Bills, and Solomon). Revaluations often provided farmland owners with a rude awakening about the value of their land, and their potential property tax bill.

The Agricultural Districts Law gives some agricultural land a tax preference. In the first instance, landowners of 10 or more acres which have generated gross farm product sales of at least \$10,000 per year during the preceding two years can apply for an agricultural assessment. The differences are measured by comparing the expected farm income, capitalized at a going rate of interest, with the full value of the land parcel. Any difference between the two values is exempt from local tax levies. Assessment at agricultural rather than the prescribed full market value can lead to a reduced property tax bill. Also, operators with fewer than 10 acres may apply if yearly sales are \$50,000 or more. These owners receive an agricultural assessment which has the effect of a tax exemption and removes the land's nonagricultural value from the property tax roll. Thus, taxes are levied based on capacity to produce agricultural commodities. If land receiving the agricultural assessment is converted to a nonagricultural use, the law provides for collection of additional payments by the landowner.

According to unpublished data obtained from the NYS Office of Real Property Tax Services, this feature of the Agricultural District Law allows farmland owners to avoid an estimated \$50 million in property tax payments each year. To place this value in some perspective, the USDA estimates that the aggregate tax paid on farm property is in the vicinity of \$170 million, suggesting that something approaching 25 percent of the New York farm real estate tax bill is avoided by reducing some assessments from market to farm value. As will be discussed below, these tax liabilities are shifted to other property owners, primarily those who own residential or commercial properties.

Recent Legislative Developments

Recent legislation further strengthened the law by giving the Commissioner of Agriculture and Markets new authority to issue opinions on sound agricultural practices, defined as practices necessary for on-farm production, preparation, and marketing of agricultural commodities. Requests for such opinions can come from public officials, neighboring farm operators, or other neighbors who become involved in disputes over these farming practices. The legislation states that sound agricultural practices, based on the Commissioner's opinion, shall not constitute a private nuisance within the boundaries of an agricultural district or on land for agricultural assessment.

A related measure attempts to improve relations between farm and nonfarm neighbors by requiring owners of land parcels in agricultural districts to give prospective buyers written notice that the acreage is in a district and in close proximity to active farming operations. Language for the notice is prescribed by law and stresses that state policy promotes the continuation of farming in agricultural districts. The notice alerts buyers to the possibility of farm noises, odors, dust, and other conditions which might generate future disputes over land use within an agricultural district. Recent legislation now requires that this "disclosure notice" accompany the purchase and sale contract, ensuring earlier notice for prospective buyers.

The role state government plays in protecting land for agricultural uses inside agricultural districts was also altered by strengthening the law's "notice of intent" provisions. Presently, project sponsors -- defined to include state agencies, local governments and public benefit corporations -- must file a notice of intent with the Commissioner of Agriculture and Markets and prepare an agricultural impact statement before acquiring active farmland or advancing funds for nonfarm development inside an agricultural district. The Agricultural Protection Act increases the Commissioner's role in mitigating any adverse effects of such actions on farming operations by strengthening the Department's enforcement authority. The Legislature's intent is to require that project sponsors demonstrate, to the Commissioner's satisfaction, that all practicable steps are taken to avoid any negative impacts on agriculture.

This is accomplished by requiring the project sponsor to file both a preliminary and a final notice of intent. More exhaustive project documentation is also required. The final notice must be accompanied by a detailed agricultural impact statement which spells out the nature of the proposed action and its likely impact on the viability of farming in an agricultural district. Project sponsors who do not, in the Commissioner's judgment, submit complete documentation under a final notice of intent can be subjected to further requests for satisfactory information before receiving a determination of any adverse effects on agriculture. If the Commissioner decides that a project has adverse impacts on farming, the proposed project receives additional review at the state level to seek out alternatives which mitigate agricultural impacts. Project sponsors can opt for any alternative project plan recommended by the Commissioner, or certify in writing before commencing an action, to the extent practicable, that adverse agricultural impacts will be minimized as the project is implemented.

Agricultural and Farmland Protection Boards

Also, in 1992 the Agricultural Protection Act significantly changed the membership and the function of the former County Agricultural District Advisory Boards. They were renamed Agricultural and Farmland Protection Boards and reconstituted with farmer members, an agribusiness member, county officials (planning and real property tax services), cooperative extension, soil and water conservation and farmland protection representatives.

The boards are still required to advise the county legislative body about the proposed "establishment, modification, continuation or termination of any agricultural district" (Sec. 302, Art. 25-AA, Ag and Markets Law), but also were given additional responsibilities, including the opportunity to comment on "notices of intent" requested by the state agency for proposed public projects and to prepare county agricultural and farmland protection plans. County boards may also request the Commissioner of Agriculture and Markets to review any state agency rules and regulations they identify as affecting agricultural activities within existing or proposed agricultural districts. Boards may also review agricultural land use classifications at the request of one or more farmland owners and recommend revisions based on local soil, land and climatic conditions. These additional responsibilities signify an opportunity for Boards to become more active partners with the state agency in affecting state and local policy on farmland protection.

District Creation and Review

Consistent with the voluntary approach of the Agricultural Districts Law generally, all but the agricultural district review functions assigned to Boards are permissive. County Agricultural and Farmland Protection Boards are required to review proposed agricultural districts before they are approved by the county legislative body. Boards must consider the viability of active farming and the presence of viable farmland within the proposed district, the extent of nonfarm land uses, and county developmental patterns and needs when making their determination (Sec 303, Art. 25-AA, Ag and Markets Law).

Similarly, the Boards must review districts every eight years. Upon review, the board must consider the same factors in the creation of the district as well as evaluate the effectiveness of the district. Specifically, there must be findings about the extent to which the district has achieved

its original objective, the degree to which the district is consistent with community economic and land use conditions, and the district's effect on local government policies concerning community development, environmental protection and preservation of the agricultural community (Sec 303, Ag and Markets Law).

District creation and review anticipates a high degree of public participation. The public is given ample opportunity to comment about the relationship of the agricultural district, local land use decisions and the viability of the local farm economy.

Notice of Intent Review

This provision of the Agricultural Districts Law recognizes that public projects can have a significant impact on the State's agricultural resources and that it is important to analyze the effect of proposed projects on agriculture and to avoid or minimize adverse farm impacts before public dollars are spent or land is acquired for those projects. County agricultural and farmland protection boards may review the proposed action and report their findings and recommendations to the Commissioner of Agriculture and Markets. Presumably, the commissioner will give serious consideration to the views of the local board before making his determination about whether a proposed action would have an unreasonably adverse impact on agricultural operations in the district and before deciding whether any reasonable alternatives exist.

Agricultural and Farmland Protection Plans

The 1992 Agricultural Protection Act established a State Agricultural and Farmland Protection Program, codified in Article 25-AAA of the Agriculture and Markets Law. Article 25-AAA directs the commissioner to initiate and maintain a state program to provide financial and technical assistance to counties for local farmland protection efforts (Sec. 321, Art. 25-AA, Ag and Markets Law).

The boards are authorized to develop agricultural and farmland protection plans in cooperation with the local soil and water conservation district and natural resources conservation service. The plans must include the location of any land or areas proposed to be protected, an analysis of the value of these lands to the agricultural economy of the county, their open space value, the

consequences of possible conversion and the level of conversion pressure on the lands or areas proposed to be protected.

The boards must conduct at least one public hearing and the plan must be approved by the county legislative body. In addition, the plan must be submitted to the Commissioner for approval. Article 25-AAA also establishes a matching grant program to fund the cost of county agricultural and farmland protection planning activities. The State provides funding for grants up to \$50,000. For the fiscal year ended in April 1997, \$3.7 million from the Environmental Protection Fund (EPF) was used to finance implementation grants for three counties and four towns. In 1998, \$4.5 million was appropriated. In 1998, \$4.5 million was appropriated. It is expected that \$5-10 million will be available each year from the EPF and the Clean Air/Clean Water Bond Act over the next five years.

Patterns of Implementation

Growth of districts began gradually because the program is voluntary and depends upon initiatives taken by individual landowners. Districted land area increased rapidly during the mid-to-late 1970s, and there have been small but consistent annual increases in enrollments during the 1980s (Table 1). Program enrollment during the 1980 decade is the net effect of newly created districts and changes in the district boundaries during mandated eight-year district reviews. District boundaries are often modified during the review to accommodate the wishes of landowners or to reflect changes in land use (Boisvert and Bills, 1986).

Total district numbers have remained fairly stable during the 1980s and early 1990s because of the eight-year district review process. To streamline administration and reduce the time and expense required to conduct periodic reviews, several county legislatures have consolidated existing districts which were adjacent or nearly so. About one-fifth of the districts originally established by local legislative bodies have been consolidated. Average district size is now about 20,600 acres, up more than 5,000 acres from the late 1970s -- see Table 1.

Agricultural districts have been created in 50 of New York's 57 counties and account for 28 percent of New York's total land area. Of the counties with no districts, most have little active farming due to proximity to New York City or being situated in the Adirondack Mountains.

Table 1. Agricultural Districts in New York State

<u>Year</u>	<u>Number</u>	<u>Acres(1000)</u>	<u>Acres/district</u>
1972	13	72	5,538
1973	97	778	8,021
1974	170	1,752	10,306
1975	247	3,103	12,563
1976	313	4,208	13,444
1977	352	4,811	13,668
1978	386	5,507	14,267
1979	410	5,857	14,285
1980	401	6,462	16,115
1981	404	7,135	17,661
1982	406	7,371	18,155
1983	394	7,449	18,906
1984	393	7,684	19,552
1985	408	7,864	19,275
1986	414	8,006	19,338
1987	418	8,097	19,371
1988	420	8,253	19,650
1989	425	8,458	19,901
1990	425	8,476	19,944
1991	427	8,552	20,028
1995	411	8,481	20,635
1996	411	8,481	20,635
1997	408	8,382	20,543

Source: NYS Dept. of Ag and Markets.

Districted acreage varies substantially from county to county, but both counties experiencing population pressure and urban growth, as well as the more remote counties where farming is affected little by nonfarm pressure, have a substantial portion of total land area in districts. Using the Standard Metropolitan Area (SMA) designation used by the Federal government as a crude measure of urban pressure, efforts to create agricultural districts in rural portions of New York have been roughly proportional to those in urban areas. New York's SMA counties have 47 percent of total land area but account for 65 percent of acreage in districts. Six of the 16 New York counties with over 50 percent of total land area in districts are designated as SMA counties.

Farming in Agricultural Districts

Much districted acreage is not actively used for crop or livestock production. Some districts contain substantial brushland, woodland, or idle farmland. Some districts also encompass scattered residential and commercial developments. This traces to the legislature's intent for the agricultural districts program and the realities of land use in rural New York. The law requires that county legislatures and state agencies take measures to ensure that an agricultural district consists predominantly of viable agricultural land and that the district would not be inconsistent with state and local comprehensive plans, policies, and objectives. In practice, this means that contiguous district boundaries are often drawn around tracts of actively farmed land which are intermingled with land that is idle, forested, or used for a variety of other nonfarm uses.

According to the New York State Department of Agriculture and Markets, about 75 percent (roughly 6.3 million acres) of districted land area is presently owned or leased by active farmers. About 7.5 million acres of farmland and 4.9 million acres of cropland were reported in the 1992 Census of Agriculture (U.S. Department of Commerce).

Performance Issues

The New York program is now mature. We expect few material changes in the deployment of districts. It is important to note that districts are created, modified and, in principle, terminated by county legislative bodies. Marginal changes in boundaries are expected when the character of farming changes or when landowners request inclusion or exclusion from a district. In several cases, counties are attempting to minimize administrative costs by streamlining district reviews and the configuration of district acreage. But does the program make a difference in New York, and just how are those differences manifesting themselves? In this section we advance five issues thought to be germane to agricultural district performance in the New York situation.

Factors Influencing District Participation

Who enrolls land in a district and why? A decision to enroll farmland in an agricultural district is voluntary and conditioned by an individual landowner's perceptions about the benefits and costs associated with participation. Direct financial benefits include the possibility of reduced

property taxes through an agricultural exemption which limits farmland assessments to agricultural use, rather than full market value. Other benefits and costs associated with district participation are less tangible. The law's provisions help insulate farm operators from overly restrictive government regulations and administrative practices, and mitigate the effects of eminent domain proceedings and public spending for nonfarm development. However, enrolling land in an agricultural district does not actually restrict owners' use of farmland. Consequently, the benefits of being in a district are not counter-balanced to any great degree by land use restrictions. It may be, however, that landowners perceive some limitations on these future options simply by being included in a designated "agricultural district".

Individual landowners undoubtedly weigh these potential benefits differently, but statistical analysis of county differences in districted acreage shows that enrollment is tilted toward counties with better quality farmland (Boisvert, Bills and Bailey). Common measures of farm viability -- value of farm sales per crop acre and proportion of farmers who work on the farm on a full-time basis -- also boost district enrollment. Similarly, enrollment is positively related to urban encroachment, as reflected in the fraction of county personal income from nonfarm sources and rates of increase in housing units over the 1970-80 decade.

Average district size also helps explain patterns of enrollment. As district size increases, larger numbers of farmland owners cooperate on proposals to create agricultural districts, thus generating, to some degree, a demonstration effect of neighbors' involvement in the district program. In addition, larger districts also reflect the enthusiasm of government officials in some localities for the creation of large, contiguous districts. There is some evidence that periodic district reviews reinforce this relationship by tending to add additional acreage when consolidating districts that were created in previous years.

Conversely, an important statistical relationship cannot be demonstrated between district enrollment and differentials in property taxes paid by owners who utilize the law's provisions for an agricultural assessment on their land. This contradicts the often-expressed view that the principal reason New York landowners enroll farm acreage in districts is to take advantage of the property tax savings provided by a lower agricultural assessment on farmland. Comparisons of parcel data show that only a fraction of the districted acreage is advantaged by the law's provisions for agricultural property tax assessments. Unpublished data from New York's Office

of Real Property Tax Services suggest that about one-quarter of districted land receive an agricultural assessment. Owners outside districts are also eligible if they agree to pay a tax rollback upon conversion to a nonfarm use.

Tax Shifts Induced by Land Assessment at Use-Value

The most visible and widely discussed feature of the New York program is reduced property tax assessments. Referred to as agricultural assessments in New York, these tax preference programs reduce the taxable base for local governments and shift tax liabilities to nonexempt property owners (including benefited farmland owners themselves because tax preference only covers eligible property). Studies in New York, and elsewhere, have consistently shown this pattern (Boisvert, *et al.* (1980); Dunford and Marousek; Kelsey; Harvey; Morris, *et al.* (1989); Morris, 1997; NYSBEA). In general, rural communities with relatively low nonfarm property wealth are being impacted the most by differences in tax impact and tax incidence. A 1980 study showed that residents in New York's SMA counties realized tax increases of less than 1 percent with agricultural assessments (Boisvert, *et al.*, 1980). A 1991 study by New York's state tax agency confirmed these results but identified individual towns with a configuration of exempt property, tax levies, and land values that lead to far more substantial tax shifts.

A 1996 report by the New York Advisory Council on Agriculture showed that tax levies for local schools account for about two-thirds of total levies on farm real estate. Harvey studied agricultural assessments and 10-year exemptions for new or newly reconstructed farm buildings and their impacts on local schools. He found that either assessments or exemptions are utilized in 452 of New York's 680 school districts. The district-weighted average savings in school taxes amounted to \$6.32 per acre. The largest tax savings were concentrated in districts with high property wealth where the gap between use and market value of farm real estate is very large. Farm properties with the largest tax savings per acre are located in school districts with high student enrollments and high property wealth per student. These districts are near large urban cores. For the "top 30" districts in savings per acre, taxes saved amounted to about \$83 per acre.

Some of these savings are offset when school districts maintain tax revenues with higher tax rates. Harvey estimated that, statewide, nearly 8 percent of the estimated tax savings are offset by higher tax rates. In contrast to tax savings, however, districts with larger offsets are located in

more rural parts of the State where farm property constitutes a larger percent of total property wealth. The offset ranged between 19 and 39 percent in the 30 rural school districts most heavily impacted by tax rate increases.

Movements in Land Values

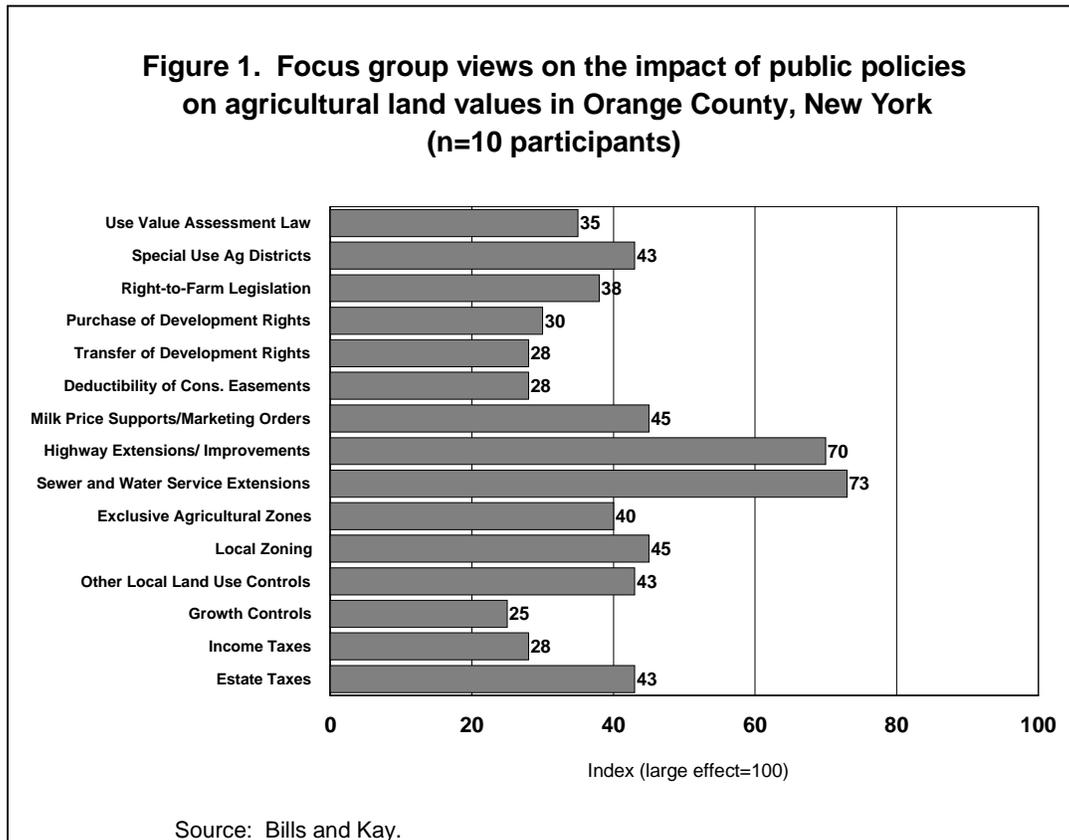
The question arises whether agricultural districts wield some influence over farm real estate values. In principle, these effects should be made up of two components. First, we have demonstrated that provisions for use-value assessment under the New York law reduce exposure to the local property tax. Standard economic theory posits that some of these tax savings may be capitalized into the value of the asset. That is, bid prices for farm real estate may increase as landowners incorporate expectations of lower tax bills, and hence lower land holding costs, into their thinking about land value.

A second, but more illusive, notion is that the market also acknowledges some "district effect" separate and apart from the direct monetary incentives provided by reduced property taxes. That is, will active farmers pay more, other things equal, for real estate located in a district? Similarly, do nonfarm buyers of farm real estate adjust their bid prices if the land parcel is located inside an agricultural or special use district?

We are unaware of any quantitative evidence that disentangles these relationships between agricultural districts, tax breaks, and farm real estate values. An authoritative test of the key hypothesis -- that "district effects" are present in local land markets -- seems to be unresearchable or at least a very tedious research project. An authoritative test would require one to compare farmland transaction prices inside and outside districts, while controlling for other variables influencing price.

However, some qualitative evidence is available from recent case studies in three Northeast counties (Bills and Kay). Focus groups were convened in each county and asked to give their views on the impact of selected public policies on farm real estate values. Focus group participants were very familiar with local land markets and included farmers, farm lenders, real estate brokers, professional appraisers, and local property assessors.

Results for Orange County, New York are summarized in Figure 1. Orange County is located near New York City in the Lower Hudson Valley. This county has more than 160,000 acres enrolled in agricultural districts. Focus group participants downgraded the importance of districts in the context of movements in land values. A strong opinion was that districting exerts only a small marginal impact on land value. One participant's analysis was that a district is a conditioning factor that can probably cut both ways in terms of residential development. That is, to the extent that districts encourage farming and/or impede large scale or tract housing developments, a district may entice the high-end market for residential property on larger land parcels. In all cases, focus group participants stressed that the strength of the nonfarm demand for housing, not the existence of an agricultural district, dictated the reaction to districts in both the farm and nonfarm community.



If districts are not pivotal, how does their influence compare to other land use policies?

Interestingly, local zoning laws were not viewed as important influences on farmland values.

The explanation for this included the observation that most town zoning laws allowed significant

development and were therefore not functionally binding. There was additional general agreement across the three counties that public infrastructure development can wield a very significant influence on farmland values. The provision of water and especially sewer access was perceived as a major stimulus to development. However, it was also noted that the amount of farmland affected by this kind of policy was relatively small on a countywide basis. In addition, agreement was strong on the impacts of major roads and road improvements on increasing development pressures on the land base.

The focus group participants were conflicted on efforts to separate development rights on farm real estate. Some, if not a great deal, of this uncertainty traces to the gestation period for such programs. Orange County has not seen significant development rights purchase activity. Several policies thought to be relatively less significant in terms of land price impacts were each state's right to farm legislation and annual income taxes. Other policies, such as local land use controls other than zoning, exclusive agricultural zones, and the tax deductibility of conservation easements, were generally seen as having little to moderate effects on land value.

New York's Right-to-Farm "Package"

Modern agriculture and continued rural population settlement are intensifying the debate over conflicting property rights. We now examine some indicators of the performance of what we are calling the right-to-farm "package" now embedded in New York's Agricultural Districts legislation. The core performance issues rest with administrative and legal activity dealing with three aspects of New York's right to farm provisions: (1) the law's local ordinance provision, (2) "right to farm" provisions which offer some protection from private nuisance claims, and (3) "notice of intent" provisions requiring agricultural impact statements on proposals to install new infrastructure inside districts.

The commonly stated rationale for right-to-farm protections for farm businesses is that, by strengthening a farmer's potential legal defense in the face of complaints that might lead to future legal action, or by shielding the farmer from unreasonably restrictive local laws, or by protecting the farmer from intrusive and unwanted public infrastructure, the farm business climate will be sufficiently friendly that the farm operator will make new investments and take other steps necessary to promote the economic viability of the farm business. In fact, the New

York Agricultural Districts Law states in its legislative intent and declaration of purpose that: “When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances limiting 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” (Sec. 301, Art. 25-AA, Ag and Markets Law).

Before looking at the specific components of New York’s right to farm package, it is instructive to think about an even more basic issue -- what is agriculture? The number of farm products continues to proliferate, and the lines between production, manufacturing and services continue to blur. All of these changes are occurring among a population with ever-decreasing agricultural literacy.

New York is among the states that has begun to codify the enterprises and circumstances that define "land in agricultural production". The motivation really traces to administrative issues surrounding agricultural property tax assessments. These benefits are restricted, as noted above, to land in agricultural production for those owners who meet annual sales requirements. Over the nearly 30-year life of the law, the state legislature has revisited the law in nearly every legislative session. Some amendments clarify eligibility, but most effectively expand the definition of agriculture. Perceptions of farming change as well. Today such nontraditional enterprises as aquaculture, ratites and production of woody biomass are codified in the law and counted as land in agricultural production. The frequency and ease with which the definition of agriculture has been expanded should not be underestimated. Along with orderly rules for accessing relief from local property tax levies, this expansiveness reflects a legislative consensus that land and farm operations in agricultural districts need to evolve and adapt to changing markets production practices and technology in order to remain economically viable.

Such consensus also magnifies the importance of locating farming operations within agricultural districts. The decision in *Krenzer v. Town of Caledonia Zoning Board of Appeals* (Monroe Co., Sup. Ct., 1995) is a case in point. The Krenzlers began construction of a pole barn to house dairy heifers. Once completed, they planned to raise heifers on contract, utilizing purchased feed and off-site manure disposal. After the barn was 90 percent complete, the local Zoning Board of Appeals rescinded their building permit and issued a stop-work order on the barn. The Krenzlers

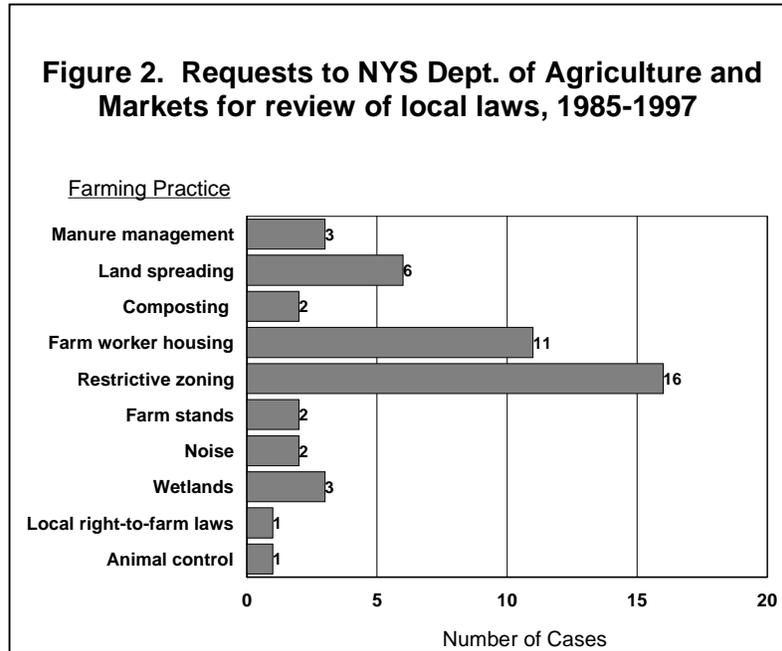
sued to overturn the ZBA's decision in New York State Supreme Court in Monroe County. The judge ruled that the Krenzlers' proposed use was not "agriculture" but "commercial", and therefore not permitted under the local zoning ordinance. Because the ordinance did not define agriculture, the judge looked to case law in other states to determine whether the Krenzlers' proposed heifer operation was agriculture. Because these court cases defined agriculture as only encompassing crop-raising and incidental activities, the judge ruled that the proposed enterprise was, in fact, commercial in nature, not agricultural or farming based on his interpretation of the law.

This outcome amazes students of agriculture who use the term "commercial agriculture" as a matter of course. These words, however, take on a new sense of urgency in a strict legal context among litigants who are unfamiliar with, or hostile to, commercial farm interests. The sobering and expensive lesson of this case can be summarized in the words of Kim Blot, Director of Agricultural and Protection and Development Services at the New York State Department of Agriculture and Markets in his letter to the Krenzlers in 1995: "The Department does wish to note, however, that if your property were located in a county-adopted, state-certified agricultural district, and if it qualified as land used in agricultural production, the Department would clearly consider your operation, as described, as agricultural in nature and subject to the protection afforded under Section 305-A of the Agriculture and Markets Law."

Restrictive Local Ordinances

The Agricultural Districts Law anticipated the now prevalent debate over farming rights and allows the Commissioner of Agriculture and Markets to intervene when local governments enact or administer local laws in ways that would "unreasonably restrict or regulate farm structures or farm operations." Upon request, the Department of Agriculture and Markets reviews proposed laws on a case-by case basis, taking into account the particular facts at issue. The objective is to arrive at a mutually satisfactory solution that balances agricultural and wider community interests. Some of the factors the Department considers include the location of the farm, the existence and date of creation of a certified agricultural district, the extent of restriction or regulation on farm structures or operations, whether the local law is reasonable and whether the local law has a direct relationship to public health or safety.

Figure 2 categorizes 47 total requests to the Department of Agriculture and Markets for review of local laws over the 12-year period 1985-1997. Farmers, local government officials or their attorneys, County Farm Bureaus and County Agriculture and Farmland Protection Boards have made the requests. Not surprisingly, complaints over overly restrictive zoning leads the list, followed by farm worker housing (mobile homes), land spreading of sewage or septage, and manure management.



The farmworker housing issue results from the tension between affordable housing for farmworkers and aesthetics. Mobile homes or trailers, which are usually at issue, are often considered less desirable forms of housing stock for visual reasons but probably rarely represent a significant public health or safety issue. Somewhat more problematic is the manure management issue. Livestock wastes generate unpleasant odors and the movement of wastes to surface or groundwater can raise a number of public health and environmental issues in extreme cases. The farm community generally shares these concerns but is also focused on the reasonableness of any proposed restrictions or regulations.

Land spreading of sewage and septage is in some sense a more difficult issue than manure or farmworker housing because of its relationship to public health. While the debate continues about whether the potential public health threat is real or perceived, the issue raises controversy

and is contentious enough to have made it to court. However, it is interesting to note that two recent court decisions have upheld both the Department of Agriculture and Markets' enforcement authority -- that is, its ability to require local governments to comply with the Agricultural Districts Law -- as well as its determination that application of sewage and septage sludge constituted an agricultural practice in those particular circumstances.

In *Town of Verona v. McGuire* (Sup. Ct. Albany Co., 1996), the case involved composting of municipal sewage sludge for use on the farm for the production of turf in the Town of Verona in Oneida County in Central New York. The court, in its decision, first noted that the Agricultural Districts Law prevents unreasonable restrictions of farming practices within agricultural districts and prohibits such ordinances regardless of whether a municipality enforces them or not. The Court then moved to the merits of the case and discussed the validity of the Commissioner's order and determination that the sewage sludge composting was an agricultural activity protected by the Agricultural Districts Law.

The Court set forth the traditional legal standard for review of administrative determinations; that is, whether such an administrative order is supported by a "rational basis". The decision then quoted a recent decision by New York State's highest court, the Court of Appeals, that explained that an agency's exercise of its administrative powers is accorded a high degree of judicial deference, especially when the agency acts in the area of its particular expertise. The Court then concluded that it would not substitute its discretion for that of the Commissioner because the Department's determination included site visits and interviews, and was based on a full review of the record, was supported by a rational basis.

In the *Town of Butternuts v. Davidsen*, (Sup. Ct. Albany Co., 1997), the Department of Agriculture and Markets had determined that the town had violated the Agricultural Districts Law by enacting a local law in 1993 that had been interpreted to prohibit spreading of residential and restaurant septage on agricultural land. In its decision upholding the Commissioner's order and determination that the local law unreasonably restricted farming practices within an agricultural district, the Court examined the record before it and found that the Commissioner's determination "was neither arbitrary or capricious and had a rational basis." It commented in its written decision that no evidence was offered of any direct relationship to public health and safety to counter the expert opinions and declaration by the Department of Environmental

Conservation that there would be no adverse environmental impact from the land-spreading proposed for these particular farm fields.

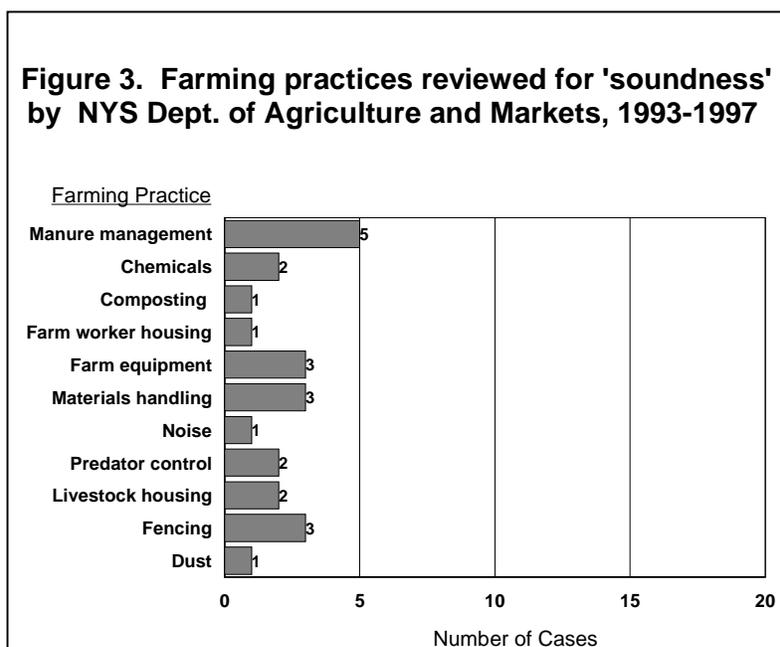
Sound Agricultural Practices

In 1992, as part of the Agricultural Protection Act, the Agricultural Districts Law was amended to add a limited defense to private nuisance lawsuits to farmers who are conducting “sound” agricultural practices. Commonly referred to as “right-to-farm” law, all 50 states have enacted some version of such legislation (Centner; Hamilton and Bolte). These laws attempt to strengthen farmers’ ability to defend themselves in a nuisance suit by a neighbor or a local government. Right-to-farm laws have a somewhat misleading name because of the confusion generated about the legislative intent. Such laws, despite the ambitious tone of their title, are not drafted to shield a farmer from all legal disputes with neighbors or more firmly establish farming as a land use priority in a community. Rather, the scope is narrow and essentially codifies the common law defense known as “coming to the nuisance.” This defense reasons that if the person complaining about an activity as a nuisance (which interferes with his or her enjoyment of property) voluntarily moved into the vicinity of the nuisance activity, they had no right to expect that a court would restrict the activity at issue.

State right-to-farm laws vary, but all exempt more extensive public nuisances and unreasonable or negligent farming practices from right-to-farm protections. In New York, like Maine and Michigan, the state Commissioner of Agriculture has been assigned the task of defining acceptable or “sound” agricultural practices. These are the practices that trigger the private nuisance defense in the statute. States also vary in how their statutes treat changed conditions for a particular farming operation. In New York, we actually have two right-to-farm provisions. Along with the 1992 amendment to the Agricultural District Law, which does not address the “coming to the nuisance” defense, The Public Health Law also contains an early 1980s right-to-farm provision that does contain a “pre-existing use” requirement to trigger its protection. However, as a practical matter, it is likely that the Commissioner will consider changes in the scope and nature of a particular use before making a determination on “sound agricultural practices” based on a discrete set of facts. To help streamline the process, New York, State Advisory Council on Agriculture has also issued a set of guidelines for the Commissioner regarding the sound agricultural practices determinations. These guidelines address four basic

questions: (1) Is the practice legal? (2) Does the practice cause personal or property damage? (3) Is the practice effective? (4) Is the practice necessary?

As of June 1998 the Commissioner had issued 16 formal opinions (Figure 3). The practices at issue range from the expected manure management and noise to fencing, farm equipment, farmworker housing and predator control. In all but a few of the cases, the practices at issue were determined to be sound. However, the opinions are exhaustive and show that the determinations are based on a careful case-by-case review. It is clear that approval in any single instance is not intended to constitute any type of list of approved practices. Interestingly, either the farmers themselves or local government officials who had become involved in the discussions about a particular farming practice requested most of the opinions.



There is little case law on these sound practice determinations. To date, one of the 16 determinations has resulted in litigation, and recently one of New York's appellate courts issued a decision upholding the Commissioner's decision. This case was an important victory for New York's statute and counters the national experience that indicates courts do not generally rule in favor of these statutes or the farm operations they were intended to protect (Hamilton).

In *Pure Air and Water Inc. of Chemung County v. Davidsen* (New York Appellate Division, Third Dept. 1998), also known as the "Trenco" case, the farm operator requested a sound

agricultural practices opinion from the Commissioner in 1995. After an extensive review of the 166-acre/1000-hog operation located in the Southern Tier of upstate New York, the Commissioner issued a determination in September 1995 that the Trengo's manure management practices were sound. A not-for-profit corporation representing nearby residents challenged the opinion in a proceeding in the local trial court. The court dismissed the challenge and the neighbors brought an appeal.

The two most significant issues in the Trengo case involve the validity of the Commissioner's determination -- is the practice sound; and due process -- did the neighbors have sufficient opportunity to participate. The arguments made by the neighboring residents characterized the Commissioner's determination as a misguided effort to save the "mythical family farm". Further, they urged the Court to stem "the growing tide of overreaching legislative action designed to protect agricultural interests from both regulation and the common law, at the expense of private property rights and the environment." What is most intriguing about those arguments is that they utilize private property rights as the justification for overturning an administrative determination that *favours* farm interests, and they call into question the legitimacy of farm protection efforts more generally. This confirms Hamilton's recent observation that in good time the takings aspect of state right-to-farm laws are likely to be raised in the courts.

However, in Trengo, the Appellate Division panel of five judges unanimously upheld the Commissioner's determination and found no right to "due process" was violated. The Court characterized the issue of whether the Commissioner's opinion was arbitrary and capricious as follows:

To properly fulfill his responsibilities under the Right to Farm Law, the Commissioner must accommodate two distinct governmental policies -- the promotion of agriculture and the protection of the environment -- policies that now oftentimes conflict as new technologies and methodologies transform agriculture. To reach a proper accommodation, the Commissioner does not have to consider every conceivable environmental impact; rather he should analyze and assess those impacts that can be reasonably anticipated to flow from the particular agricultural practice.

The Court went on to conclude that the Commissioner's determination was fully supported by facts in the record and, therefore, was not deemed to be arbitrary and capricious. Several aspects of the Trengo decision may be appealed to the Court of Appeals, including the due process issue

and the validity of the Commissioner's determination. In August 1998, Pure Air and Water's motion for leave to appeal to the Court of Appeals was denied.

Another case worth noting is *Concerned Area Residents for the Environment v. Southview Farm* (2d Cir., 1994). The suit resulted from neighbors' objections to the liquid manure spreading operations of a large dairy farm in Western New York. This has gained notoriety for the Second Circuit's decision and interpretation of the Clean Water Act's applicability to Southview's manure handling operations. However, what is most relevant to this discussion is the fact that in addition to the Federal Clean Water Act claims, the lawsuit also included state claims for nuisance, negligence and trespass. While the nuisance and negligence claims were dismissed by the jury after trial, the case is a reminder that private nuisance suits will invariably be combined with other common law and statutory causes of action.

Notice of Intent (Agricultural Impact Statements)

The “notice of intent” or agricultural impact statement requirement in the Agricultural Districts Law recognizes that public projects can have a significant impact on the State's agricultural resources and that it is important to analyze the effect for proposed projects on agriculture and to avoid or minimize adverse agricultural impacts before public dollars are spent or land is acquired for those projects.

While the concept seems clear, the performance issue is the extent to which this provision protects agriculture and farmland from infrastructure improvements or acquisitions that will accelerate conversion of farmland to other uses. At the outset, it is important to recognize that farmland owners themselves can take advantage of a “willing seller waiver”. This waiver short-circuits the review process on infrastructure projects before it even starts. While this escape clause is questionable from land use planning perspective, it reflects the pro-farmer, landowner-oriented approach embedded in the Agricultural Districts Law.

As part of the 1992 Agricultural Protection Act, Agricultural and Farmland Protection Boards (AFPBs) were given the opportunity to comment during the notice of intent process and weigh in with the local perspective on potential agricultural impacts. The reason for this provision is that local board members are thought to have a better sense of potential agricultural impacts. But

again, these can and will be tested in the courts. A recent case in Western New York casts some early doubt on how much influence local Boards are going to have in striking a balance between protecting agriculture and promoting other often-legitimate economic objectives.

In 1995, the Genesee and Wyoming Railroad Company filed the required notices of intent with the Commissioner proposing to acquire prime farmland and construct a rail line between a proposed salt mine and an existing rail line. The proposed line would cut across approximately 2.5 miles of the actively farmed land and run about 1,000 feet north of an existing state highway. Myron Brady, the local farmer who owned and/or operated the land in question, objected to the proposal and suggested that the rail spur be located south of the state highway instead. Ultimately, the Commissioner approved the proposed rail spur over the objections of Mr. Brady and the Livingston County Agricultural and Farmland Protection Board.

Mr. Brady subsequently sued the Commissioner arguing that the rail spur would dissect his land, adversely affect the efficiency of his operation and otherwise negatively impact the viability of his farming operation. He further argued that the Commissioner wrongly concluded that the rail spur would not have an unreasonably adverse impact on the viability of his farming operation and failed to take a close enough look at the potential adverse agricultural impacts. In *Brady v. Davidsen*, (Sup. Ct. Albany Co. 1996), the court disagreed with Mr. Brady's arguments and upheld the Commissioner's determination.

In reaching its decision, the Court utilized the "arbitrary and capricious" standard of review for administrative decisions. The Court recognized that the notice of intent provisions contain several protections for New York farmland and farmers but concluded that the Commissioner's determination was supported by the evidence and, therefore, was not arbitrary and capricious. In reviewing the record, the Court agreed with the Commissioner's argument that the County Agricultural and Farmland Protection Board serves only in an advisory capacity and that it was the Commissioner's responsibility under the statute to determine whether an action would have an unreasonable adverse effect on the continuing viability of farm enterprises within the district. The Court also noted that the Commissioner is under an obligation to consider all factors as part of the process, including the community's economic climate. As the Court stated: "Obviously, while the effect on the farmland in question must be afforded priority in reaching a determination, the potential effect on agriculture must be balanced against a number of other

factors to determine whether such effect may be unreasonable.” Ironically, several months before this decision was issued, AKZO Nobel, the Dutch corporation that owned the proposed salt mine, abandoned plans to develop a mine at the site.

Many of the other notice of intent filings concern proposals to extend water and sewer lines into farming areas inside district boundaries. In these cases, it appears that, at least in the short term, agriculture and farmland fare better. In fact, these filings are so common the Department of Agriculture and Markets has developed guidelines/special permit conditions for water/sewer transmission mains located wholly or partially in an agricultural district. According to the Department, the guidelines are intended to “address primary and secondary impacts on farm enterprises associated with water and sewer mains.” Three of the four guidelines relate to construction and include minimizing the disruption of farm enterprises, the issues of soil compaction and erosion, and repair to any damaged agricultural drainage systems. The fourth guideline recommends the imposition of limits on future service to only agricultural structures, also known as “lateral restrictions.”

Not surprisingly, decisions to deny water and sewer extensions, a common precursor to nonfarm development in a locality, provide the necessary incentives for a court challenge. New York's restrictions were recently put to the test in *Wright v. Town of Kendall*, (Sup. Ct., Orleans Co. 1997). Orleans County is located on the shores of Lake Ontario about halfway between Rochester and Buffalo. This case involved a lawsuit by property owners who were advised that because of lateral restrictions imposed when the water lines were allowed to go through the agricultural district, they could not connect to the waterline. Among the homeowners' arguments was the claim that nonagricultural parcels within the agricultural district are not part of the district and, therefore, not subject to the lateral restrictions. In response the Court stated:

It is impossible to read this analysis of the purpose of the statute and not conclude that the state intended to give localities the ability to put the brake on nonagricultural development inside Agricultural Districts in toto and not simply relating to petitioning and agricultural parcels inside the district.

To conclude otherwise, that the state intended Agricultural District of a crazy-quilt pattern of district and nondistrict portions, would be to conclude that the state intended the construction of leaky boats, inefficient in their function, with development seeping in through the unaffected lands.

The Court also summarily dismissed the claim that the town had no authority to issue the lateral restrictions, and found that New York law clearly affords state and local governments broad powers to regulate land use. The finding reaffirmed the principle that such actions are afforded the usual presumption of validity attending the exercise of the police power.

The question that remains unanswered by this case has to do with the authority of the Department of Agriculture and Markets to condition approval for construction of water and sewer lines on the imposition of these lateral restrictions by the local government. Based on the expansive language in the notice of intent provisions, it would seem to be a reasonable way for the Commissioner to mitigate the adverse impacts on agriculture from these infrastructure extensions.

Discussion

This paper has dealt with New York's attempts to fashion incentive-based programs to increase the visibility of agricultural land uses and promote the continuation of farming. The effort is both ambitious and evolutionary. The approach combines direct cash incentives, arranged with use or agricultural assessments on farmland with other pro-farming measures. Concern over escalating property tax bills clearly fueled early interest in enrollment in agricultural districts. Study of enrollment patterns in the late 1980s has shown that districted acreage is correlated with measures of land quality and the degree on nonfarm pressure on the resource. About a quarter of the districted acreage is taxed at agricultural value, and these savings are shifted to owners of nonexempt property via higher tax rates. Beginning in the early 1990s, much attention has shifted to conflicts between farm and nonfarm neighbors and establishing the property rights regime needed to sustain the State's food and agriculture sector.

Agricultural districts have proved to be a flexible tool and have provided a mechanism for mobilizing local support for agriculture and bundling a package of initiatives and considerations that do affect, to some degree, the longer-term viability of commercial farming. Right-to-farm law provisions added in the 1990s strike a responsive cord inside and outside the farm community in many cases. At the same time, New York is caught up in a wider debate now developing in the U.S. over property rights and the legitimacy of public interventions in private markets for agricultural land. The farm community's quest for "farming rights" will ultimately be balanced against the rights and interests of other groups in the community. The courts will

obviously be involved in striking this balance, but education and awareness of the State's important food system will come into play as well.

In the interim, evidence is just now beginning to accumulate on the extent that farmers and their elected officials can, or really want to, restrict citizen access to the courts to redress disputes over land use in any significant way. Indeed, certain access to a legal remedy to disputes over land use is an integral part of the American land use law. So on practical grounds, part of the future must include steps to educate all citizens on farming and on measures that can be taken to generate mutual understanding and mitigate neighborhood disputes and promote reasoned decisions on the use of farmland. And, farmers, like other business operators, will be held to ever-more-exacting environmental and community standards as we move into the next century. The legislative and legal agenda will continue to evolve to help meet those broad social objectives.

This paper has shown that recent additions to New York case law strongly suggest that farmers in agricultural districts are afforded some very genuine protections from restrictive local ordinances passed by local governments. These "unreasonably restrictive" ordinances are often the result of a single incident or complaint and are justifiably "superseded" by the agricultural district protection. The more vexing question is what happens when the local ordinance truly reflects local sentiment or opinion that a particular agricultural practice or type of farming operation is objectionable. And, most critically, what impact could those cases have on the political standing of agricultural districts in those localities in the future?

In New York it also appears that the sound agricultural practice's right-to-farm provision is working to protect farming operations by keeping nuisance disputes out of the courts and earning judicial deference when they end up there. While the administrative and judicial record is still quite meager, a couple of observations are in order. First is that New York State's Department of Agriculture and Markets is undertaking a rigorous and objective review that can withstand judicial scrutiny, and a review process that does not "rubber stamp" all agricultural practices as sound. As the opinions reveal, several resulted in opinions in which the Commissioner concluded that the practices were "unsound" or he was "unable to conclude that they were sound". Second, the Appellate Division appeared quite willing to defer to the administering agency's expertise in its application of the "arbitrary and capricious" standard of review.

Undoubtedly, this reflects the quality of the administrative record upon which these determinations are based. As the court noted in its decision, the Commissioner's job is to "accommodate" or balance the promotion of agriculture and protection of the environment."

Looking to the future of agricultural districts in New York and its right-to-farm package, it is clear that balance between farming rights and other community interests will be essential. In addition, a more comprehensive approach to agricultural and farmland protection will be necessary. Components of a comprehensive package will include better land use planning at the local and regional levels, additional incentives to strengthen agriculture, and reasonable regulations for agricultural operations. Here, as well, the key will be to strike a balance between farm and nonfarm community interests. As the legislative intent and declaration of purpose of the Agricultural Districts Law states, "When nonagricultural development extends into farm areas, competition for limited land resources results..." The Agricultural Districts Law was created almost 30 years ago to protect those limited land resources. Its provisions have evolved over time and will need to continue to adapt to the ever-changing agricultural industry and the continuing competition for New York State's land resources.

References

- American Farmland Trust. *Saving American Farmland: What Works*. American Farmland Trust, Northampton, MA. 1997.
- Bills, N.L. and R.N. Boisvert. "A Perspective on New Right-to-Farm Legislation in New York State." *Policy Issues in Rural Land Use*, Vol 6, No. 3, Dept. of Agricultural Economics, Cornell University, Ithaca, NY. October 1993.
- Bills, N.L. and R.N. Boisvert. "Information for Evaluating Land Retention Programs: The Agricultural District Approach." In Ralph Heimlich (ed.), *Land Use Transition in Urbanizing Areas: Research and Information Needs*. USDA-ERS, Washington, DC, 1988, pp. 139-152.
- Bills, N.L. and David Kay. "Northeast Policy Audit: Influence of Public Policy on Farm Real Estate Values." Draft report to the American Farmland Trust, (Mimeo). June 1998.
- Boisvert, R.N. and N.L. Bills. "Farmland Protection in New York State." In *Toward a Long-Term Strategy for Farmland Protection and Soil and Water Conservation in New York*. Albany, New York. 1986.
- Boisvert, Richard N., N. L. Bills, and E. Bailey. "A Model to Explain Participation in New York's Agricultural Districts and Use-Value Assessment Programs". *Northeastern Journal of Agricultural and Resource Economics*, Vol. 17, No. 2. pp. 167-177.
- Boisvert, Richard, Nelson Bills, and Robert Soloman. "Evaluation of Farmland Use-Value Assessment in New York." *Journal of the Northeastern Agricultural Economics Association*, Vol. 9, April 1980, pp. 17-22.
- Centner, T.J. "Agricultural Nuisances and Right-to-Farm Laws." Paper presented at the annual meeting of the American Agricultural Economics Association, Reno, Nevada. 1986.
- Conklin, Howard E. and William Bryant. "Agricultural Districts: A Compromise Approach to Agricultural Preservation." *American Journal of Agricultural Economics*, Vol. 56, 1974. pp. 607-613.
- Conklin, Howard E. and William G. Leshner. "Farm-Value Assessment as a Means of Reducing Premature and Excessive Agriculture Disinvestment in Urban Fringes." *American Journal of Agricultural Economics*, Vol. 59, 1977. pp. 755-759.
- Dunford, Richard W. and Douglas Marousek. "Sub-County Tax shifts Attributable to Use Value Assessment on Farmland." *Land Economics*, Volume 57, May 1981. pp. 221-229.
- Grillo, K.A., and D.A. Seid. "State Laws Relating to Preferential Assessment of Farmland." Staff Report No. AGES870326, USDA-NRED-ERS, Washington, DC. 1987.
- Hamilton, Neil D. "Right-to-Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May Be Ineffective", *Drake Journal of Agricultural Law*, Vol.3, No. 1 Spring 1998.

- Hamilton, N.D., and D. Bolte. "Nuisance Law and Livestock Production in the United States: A Fifty-State Analysis." *Journal of Agricultural Taxation and Law*, Vol. 10, No. 2. pp.: 99-136.
- Harvey, David A. "The Effects of Agricultural Assessment and Farm Buildings Exemptions on School District Tax Bases in New York State." Unpublished MS thesis, Department of Agriculture, Resource, and Managerial Economics, Cornell University, August 1997. 254 pp.
- Kelsey, Timothy W. "Farmland Preservation in Pennsylvania: The Impact of 'Clean and Green' on Local Governments and Taxpayers." Extension Circular 411, Penn State Cooperative Extension. 1994.
- Morris, D., J. Kline and G. Frick. "Land Use and Growth in New Hampshire: Tax Impacts of the Current Use Program, 1987." No. 89-2, Department of Resource Economics and Community Development, University of New Hampshire. July 1989.
- Morris, D. "Current Use Tax Shifts in New Hampshire, 1995." Department of Resource Economics and Community Development, University of New Hampshire. March 1997.
- New York State Advisory Council on Agriculture. "Farm Property Taxes in New York State." Albany, New York. February 1996.
- New York State Board of Equalization and Assessment (NYSBEA). "Agricultural Assessment Program Impact: 1986 through 1989." Albany, New York. July 1991.
- New York State Department of Agriculture and Markets. "Agricultural Districts Summary, 1997." (Unpublished). Albany, New York. No date.
- New York State Department of Agriculture and Markets. "Article 25AA—Agricultural Districts: Agriculture and Markets Law (as amended through September 1, 1996)", Circular 1150, Albany, New York (Mimeo). No date.
- Tremblay, R.H., J.H. Foster, J. MacKenzie, D.A. Derr, B.V. Lessley, G.L. Cole, and N.L. Bills. "Use Value Assessment of Agricultural Land in the Northeast." Northeast Regional Research Publication, Agricultural Experiment Station Bulletin 694, University of Vermont, Burlington. 1987.
- U. S. Department of Commerce, Bureau of the Census. *1992 Census of Agriculture--New York, Part 32. Vol. 1 (Geographic Area Series)*. Washington, DC. June 1994.