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How Well Has Agricultural Protection Zoning Worked?

By Joel Russell

Local governments in New York's Hudson Valley have adopted various forms of land-use regulatory reform to protect agriculture during the past 20 years. However, there is very little information on how well they have succeeded. This article investigates the extent to which these laws have achieved their goal of protecting agricultural land, and the reasons for their success or failure. It is the result of an examination of the track record of agricultural preservation zoning in the Hudson Valley, which the author conducted in early 2009 for the Glynwood Center in Cold Spring, New York. This empirical study covered zoning laws written by both the author and other professionals. This article is a report on the findings.

The original intention of the project was to develop two pilot case studies through interviews with local and county officials familiar with the results produced by these zoning reforms. The case studies were to have examined the performance of zoning laws adopted during the past 20 years to see how they have worked in practice and what lessons can be learned. As the project evolved, it became apparent that the results would be richer and more worthwhile if the analysis looked at a wider range of communities to generalize some lessons learned from a wider spectrum of municipalities. Each community is so idiosyncratic that in-depth study of only two seemed less valuable than identifying broader patterns and trends. In addition, as discussed below, a thorough empirical research study of a specific community may be of questionable validity and may raise more questions than it answers.

While there have been many books and articles written about agricultural and other forms of natural resource protection zoning, there has been almost no follow-up study of the results of using these tools. A literature review conducted with a colleague (Lacy and Russell 2008) found that existing literature focuses almost exclusively on describing tools and techniques, rather than empirically assessing their effect.

Meaningful empirical studies of the effects of these techniques are difficult, if not impossible, to perform for the following reasons:

- The impacts are usually long term, and difficult to detect in short-term evaluations, especially where development has been slow.
- There is no way to know what would have happened in the absence of the revised zoning. There is no "control," except possibly nearby communities that retained conventional zoning, but these communities often are very different in physical, cultural, and economic conditions.
- It is not clear how to judge success or failure.
- The most important information may not be readily subject to description or quantification.
- Development and preservation of farmland may be influenced by numerous factors besides land-use regulation, such as market conditions, demographics, the profitability of farming, the personal decisions of farm families, and the activity of land trusts and governmental farmland protection programs.
- The mere fact that this type of zoning has been enacted may by itself discourage development. This would make it difficult to determine if the new zoning techniques were working as intended or were just sending an anti-development signal to potential developers.

As a result of these inherent difficulties, this work focused on interviewing people closely involved with farmland protection programs, especially the zoning aspects, to see what practical lessons they had learned from experience on the ground. It also involved a review of articles and reports that assess farmland protection programs regionally and nationally, including zoning components, to see how the existing literature deals with these issues. Not surprisingly, the best reports available look at how a wide variety of techniques work together synergistically to protect farmland and do not attempt to isolate the role zoning plays. What comes across in these reports is that the use of multiple tools together is most effective.

This paper is of necessity anecdotal and based largely upon the personal observations and experiences of the author and his interviewees. It summarizes key findings and illustrates them with examples from specific

communities. In addition to the communities described below, the author looked at but did not describe several other towns in Dutchess County, New York, including Rhinebeck, Stanford, Amenia, and North East, which informed this paper's findings and conclusions.

It should be noted that New York State has an idiosyncratic array of political subdivisions at the local level. All land in New York is situated in either a city or town. Within towns are further political subdivisions called villages, which are municipal corporations that have independent planning and zoning jurisdiction from the towns of which they are a part. Village residents pay taxes to both the village and the town in which the village is located, but their land use is governed exclusively by the village government. Cities are separate municipalities with their own planning and zoning and are not part of any town. Finally, all cities and towns (including the villages nested within them) are grouped into counties, but counties do not have planning or zoning powers and there is no land located in a county that is not also located within a city or town. County governments do have advisory roles in land use, including mandatory referral of certain local zoning actions to the county, as well as general planning and technical assistance functions. For purposes of this article, therefore, only towns were examined. Active farmland in New York State is located almost entirely within towns and very little is found in villages or cities. Farmland protection zoning, as would be expected, is a technique used almost exclusively in town zoning laws.

Summary of Findings

Farmland protection zoning is never a sufficient condition for farmland preservation, and it turns out to be a relatively minor factor compared to others. Communities with successful farmland protection programs have a distinctive culture, in which farming, farmers, and farmland are valued for their own sake, and not just for scenic value or as a way to prevent residential or commercial development of land.

The most important factors in successful farmland protection, in addition to the cultural factor, are leadership from within the agricultural community and support from farmers, a viable farm economy, good communication between the farm community and the non-farm community, stable leadership from elected officials (who may or may not be farmers), and a willingness by the public to support farmland preservation through direct expenditures for purchase of development rights.

While the most successful agricultural preservation programs involved more protective zoning than found in other communities, some communities with agricultural protection zoning were not especially successful at preserving agricultural land because the other factors were not present. It stands to reason that a community that supports farming will support zoning that is protective of farmland, but only insofar as it is not perceived as a threat by farmers. When such zoning is perceived as a threat, it may backfire and set up antagonisms and a culture of conflict rather than cooperation. Relying primarily on zoning to preserve land is usually perceived by farmers as taking something away from them without paying for it. A community's willingness to tax itself to preserve farmland sends a message to farmers that the community is willing to share the cost of land preservation and will not put it all on the back of the farmer.

These findings were somewhat surprising, as "suburban sprawl" zoning often has been said to be a major impediment to farmland protection. While this is clearly true, it does not follow that all that is required is to pass new zoning to solve the problem. A much more wide-ranging approach is necessary, and if that approach is taken, the zoning recedes into the background as less important. Also, when zoning is featured as a prominent strategy, especially before trust has developed between farm and non-farm constituencies, it becomes a flashpoint for controversy and polarizes the community. This makes it harder to build the consensus and culture of support for farming that is a precondition to having a successful agricultural protection program. In the end, it is important to pass the right zoning, but it is even more important to do this through a process that brings a community together and strengthens the culture of agricultural support.

SUCCESSFUL COMMUNITY EXAMPLES

Warwick, New York

The Town of Warwick, in Orange County, New York, is generally considered one of the greatest success stories in farmland preservation in the New York City metropolitan area. Those closest to the issue attribute the success of Warwick's program to a combination of factors, including a long tradition of concern for working farms and farmers, a community consensus on the value of local agriculture, strong and consistent leadership both within the farm community and within the town overall among citizen volunteers and political leaders, and the town's willingness to implement a Purchase of Development Rights (PDR) program.

The PDR program originally was established in 1999 by a bond referendum. It currently is funded through a

Community Preservation Fund (CPF) by a 0.75 percent property tax surcharge, exempting the first \$100,000 in value of improved land. The CPF required state enabling legislation and was approved in a 2006 referendum. As of January 2009, the CPF had raised \$1.3 million, which leveraged state, county, federal, and nonprofit money. So far 13 farms have been protected, encompassing 2,500 acres, and the total funds raised have been leveraged to \$18 million.

Around the same time that the original PDR program was put in place, the town also changed its zoning, reducing rural densities from 2 acres to 4 acres per unit and instituting a mandatory cluster subdivision provision that allows development at 3-acre density as long as 50 percent of the land is preserved. The zoning follows the basic methodology of Randall Arendt's "four-step" planning process, described in *Growing Greener: Putting Conservation into Local Plans and Ordinances* (Island Press, 1999). The result is patches of farmland that have been preserved, adjoining fairly conventional development clusters that occupy about 50 percent of the land. When combined with the land preserved by the PDR program, a large agricultural land base has been permanently preserved.

The agricultural protection zoning in Warwick is not as effective as it could be and does not preserve as much agricultural land as the zoning required by some other communities. However, Warwick enjoys a culture of support for farmland preservation that is shared among farmers and non-farmers alike. And because the zoning is supplemented by a PDR program, the overall programmatic success for agricultural preservation has been more successful in Warwick than in most other communities that have instituted zoning to protect farmland. Also, political support for farmland protection has been steady and reliable, and has not weakened with changing political leadership.

The one area where Warwick has been faulted has been in the provision of affordable housing. The community is highly desirable because of its land protection policies and willingness to spend public dollars on quality-of-life issues such as farmland preservation and schools. However, as a result it also has priced out the people who are needed in the community to teach in its schools, provide emergency services, and work in its businesses and farms. This is a continuing challenge in communities that succeed in preserving quality of life and farming. Because these successes add value to all of the property in the town, they also tend to price out the very people who have made the community successful. Warwick's leaders and their consultants are aware of this issue, and they have taken measures in their zoning to provide for affordable housing.

Warwick is perhaps the best example of a community that has developed an ethic and a culture of farmland preservation, has enlisted the support of the community at large as well as the farmers working together, and has elected leaders who continue to pursue policies that support these goals. Perhaps most importantly, it has been willing to put its money where its mouth is, showing a public willingness to bear much of the cost associated with preserving this resource. The zoning is an incidental piece of this, a necessary but by no means sufficient condition for achieving success.

Montgomery, New York

According to Orange County Planning Commissioner David Church, the Town of Montgomery has done a good job preserving farmland through mainly informal "cultural" means, rather than through formal provisions in the zoning. A few town officials, operating largely under the radar, have steered farmland into protection through good quality cluster developments and a "pay-as-you-go" PDR program that uses a combination of property tax revenues and matching grants to purchase farmland development rights. Their success is attributed to the fact that several town leaders are farmers or are from a farming background, and they have been able to build trust with the owners of farmland. The town's assessor also helped out through knowledge of the land and landowners, and contacts with state and county funding sources. This quiet preservation approach can be nearly as successful as the very open and public process in a town like Warwick, although it, too, hinges on stability of community leadership. If different officials come into power and do not have the same rapport with the agricultural community, the results might be quite different. There would be no significant zoning protections to afford a "backstop" against development allowed by conventional suburban zoning.

It should be noted that Montgomery has gained notoriety in the past few years because of a successful challenge to its zoning as exclusionary. In an important court case decided in 2006, the town's attempt to eliminate all zoning for multifamily housing was overturned by the Orange County Supreme Court, and the decision was upheld in 2008 by New York's Appellate Division, Second Department. This case is consistent with the line of New York cases that began with the landmark decision in *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975). While the town has quietly preserved some farmland using zoning, PDR, and other techniques, its attempts to restrict multifamily housing have discredited its zoning in an important respect.

One of the lessons here is the importance of steering clear of exclusionary forms of zoning in attempting to preserve farmland. There is nothing inherently exclusionary in zoning to protect agriculture as long as a town also has made provision for affordable housing. Warwick was more careful and deliberate than Montgomery both in explicitly choosing to preserve farmland as a matter of policy and in making sure the town did not leave itself open to an exclusionary zoning challenge.

Red Hook, New York

The Town of Red Hook is often cited as the most successful Dutchess County community in protecting farmland. The keys to success, as in Warwick, have been leadership from within the farm community, broad public support, and political stability. A strong PDR program complements regulatory measures by providing funding for purchasing development rights, showing the community's commitment to respecting the financial expectations of farmland owners. In short, Red Hook has a political and social culture that supports farmland preservation, and zoning is one manifestation of this.

Red Hook developed a strong farmland protection plan and has forged intermunicipal cooperation between the Town of Red Hook and the villages of Red Hook and Tivoli, which lie within the town but have their own zoning. The town uses low-density zoning combined with mandatory cluster to encourage farmland preservation, but this is only one of many tools, and it is not the primary one. Red Hook also has recognized that farming is an important business and has proposed an "agricultural business district" with sliding scale density based upon the size of a tract of land, with a density bonus for transfer of development rights. Whether this passes or works will depend largely on how well the political consensus that has been built up over many years can be sustained.

According to county planners, Red Hook is not using agricultural protection as a pretext for exclusionary zoning, as appears to be the case in some other communities. Rather, the town is genuinely committed to protecting agricultural land, and is also making good faith efforts to provide affordable housing to ensure that the people who make the community tick (including the farms) are not precluded from living there.

Washington, New York

The Town of Washington in Dutchess County consists of scenic countryside that is the center of a high-value estate area surrounding the Village of Millbrook, which is part of the town. Once predominantly working farms, most of the land is now owned as country estates. It is used for raising horses, recreational riding, dairy farming (leased to the few remaining dairy farmers in the area) as well as a variety of other agricultural enterprises, including a commercial vineyard and winery, orchards, grass-fed beef, and a fallow deer operation. The Dutchess Land Conservancy is headquartered in the Town of Washington and has very successfully managed to preserve much of its farmland through voluntary conservation easements donated by wealthy landowners. (Disclosure: I was the co-founder and executive director of DLC and continue to serve as conservation easement counsel.)

Washington's culture of farmland preservation is different from Red Hook's because so little of the land is farmed as a primary source of income for its owners. Many landowners in the town share a strong land conservation ethic, which led Washington to be the first town in the region to adopt farmland protection zoning, in 1989. (Disclosure: I was the principal drafter of that zoning law.) The town has the lowest zoning densities in the county (5 acres and 10 acres in most of the town), an agricultural protection overlay zone, and a mandatory cluster provision. However, there has been almost no use of the cluster option in the town, as most of development has been large estates, much larger than the minimum lot sizes (e.g. 40 acres to 100 acres and larger). In the few instances where a cluster has been attempted, it has not been well received by the town's planning board, which has misunderstood key provisions of the zoning. In one example the planning board required homeowner association access to preserved farmland. This contravened a key provision in the zoning, which made a clear allowance for a farmer's need to control access to the farm operation.

Much of the farmland in Washington is permanently preserved by conservation easements limiting its development to 40 acres to 50 acres per principal residence, and making agriculture one of the preferred uses of the land. The result is that Washington has one of the most beautiful and well-preserved agricultural landscapes in the region. Despite the restrictive zoning and conservation easements, it also has some of the highest land values because it has been so well-preserved. While this was done largely by private efforts, it was backstopped by a restrictive and protective zoning law that makes land attractive for estate buyers and unattractive for housing developers.

Washington has been criticized by county planners because it does not have much of what they consider to be

"real farming," where farming is the principal source of income for owner-operators. However, it has probably the best-preserved agricultural land base of any town in the region. Should that land someday become as valuable for "real farming" as it is for estates (for example, if there were a sharp increase in energy costs and local agriculture really came into its own economically), this land would be available as a large critical mass for farming. The wealthy landowners also would be able to make the capital investments needed to convert from an equestrian-focused agriculture to a food-based agriculture. Conversion of preserved land to food production would be much easier to achieve than trying to convert suburban sprawl housing tracts to food-based agriculture. Technical assistance and education for landowners about how to use the land for food production can help them achieve this goal sooner rather than later. The Glynwood Center in Cold Spring, New York, has a "conservation landowner" program designed to provide this kind of assistance, and it has published a report discussing this issue. See www.glynwood.org/assets/PDF's/Land%20Trust%20Report.pdf.

What makes the agricultural zoning work in Washington is its interaction with the culture of land preservation among landowners and their willingness to put their own money (as opposed to the town's) where their mouth is. Washington has no PDR program and does not need one because market forces, combined with the institutional infrastructure of a strong land trust, have been able to preserve farmland at essentially no cost to the town (although federal and state tax deductions have provided indirect subsidies). Some might say this is preservation of farmland but not preservation of "farms." It is certainly a different kind of farming that is being preserved (as compared with Red Hook or Warwick), but permanent protection of the land base has secured the future potential of whatever kinds of farming become most economically viable. And that permanent protection by conservation easement is more secure than even the best forms of zoning, which can change with shifting political winds.

Washington is discounted as an exemplar because its landowner population is so unusual and rarefied. In that sense, the example is not replicable in other places unless they are similarly positioned as high-end estate markets. But there are many areas in the Hudson Valley that have these characteristics (especially central and eastern Dutchess and much of Columbia County), perhaps at least as many as have the unique culture of farmland preservation found in Warwick and Red Hook.

LESS SUCCESSFUL EXAMPLES

Dover, New York

The Town of Dover in Dutchess County adopted a zoning law with substantial protection of farmland in 1999. (Disclosure: I was the principal consultant who drafted this zoning law.) Dover had been a town with very loose land-use regulation and an "anything goes" atmosphere. It had become a place with many abandoned gravel pits and a looming threat of further environmental insults, such as a proposed landfill for construction and demolition debris.

A new town board (the elected governing board and legislative body) came into office in the 1990s and set to work to upgrade the town's land-use laws, adopting a comprehensive plan in 1993 and zoning in 1999. The zoning law had several of the features of the Washington zoning, but the town was not willing to institute densities as low as those in Washington. The landowner base for farmland in Dover is more diverse, including a handful of farm owner-operators, some estate farms, hunting preserves, summer camps, and real-estate developers and speculators.

Unlike Red Hook or Washington, Dover has no unified culture of either farming or land preservation. Its geography and location make it less suitable for effective farmland preservation. Geographically, the town consists of a valley floor with some good farmland, enclosed by steep mountains on both sides. Dover is in the economically depressed Harlem Valley, which is demographically different from the other towns described in this article. The Harlem Valley has suffered from recent closure and staff reductions at two major state institutions that provided large numbers of jobs, some professional, but many relatively low-paying. As the first town north of the New York City watershed, and therefore not subject to tight development restrictions imposed by New York City, it has caught the eye of developers as a location for the next wave of suburbanization in the New York City metro area. Dover also has two commuter railroad stations, and is thus under greater development pressure than Washington or Red Hook.

As a result of all of these factors, Dover's zoning has had only a spotty impact on preserving farmland. A few cluster developments have been done, preserving small areas of somewhat marginal farmland.

The biggest opportunity for farmland preservation was at the defunct Harlem Valley Psychiatric Center, which contained a large farm used by residents of the facility when it was still operating. In its 1999 zoning law, the town included a special zoning district that required the preservation of that farmland, concentrating high-

density, mixed-use development in a "transit-oriented development" located on the closed campus, which has a commuter rail station in the middle of it. However, the property was bought by a developer whose first priority was development of the farmland. After a prolonged battle with town officials, the developer was able to mount a campaign to replace the town board with a slate of candidates willing to turn their backs on farmland preservation and allow much of the farmland to be developed. Political instability, developer influence, and a public polarized by development controversy resulted in the likely failure of the farmland protection zoning in this case.

Goshen, New York



▣ *Figure 1*
Farmland in Goshen that the new zoning law was designed to save



▣ *Figure 2*
Sprawl in Goshen

The Town of Goshen in Orange County adopted the first zoning law in New York State that effectively prohibited sprawl development by requiring all large developments to be clustered with at least 50 percent of the land preserved for agriculture or other open space uses. It also required that most of the future development in the community be concentrated in a few selected hamlet areas that would be served by water and sewer infrastructure. This law was passed in 2004. (Disclosure: I was the principal consultant who drafted this zoning law.)

The process by which all of this occurred was flawed, however. There was insufficient time spent on community process to ensure that the community bought into the new zoning. The town supervisor pushed hard to get the zoning adopted quickly, and the entire task was done from start to finish in about one year. The price of this haste was a lack of public understanding and support. When the town supervisor (the chief elected official) left office to run unsuccessfully for county legislature, her successor proposed several measures gutting essential aspects of the zoning law, and it has been significantly weakened in the ensuing years.

It is apparent that a lack of public buy-in, a weak "culture" of farmland preservation (as compared with Warwick, Red Hook, Washington, and Montgomery), and most importantly, a lack of stable leadership, were the main causes of the failure of this effort.

CONCLUSIONS

This brief and anecdotal survey of some contrasting community experiences bears witness to several key conclusions:

1. Agricultural protection zoning is not a significant cause of farmland preservation, but rather a manifestation of a community culture that values farming, farmland, and farmland preservation.
2. Such zoning is useful as a complement and backstop to other programs, such as PDR and voluntary conservation easements, that together implement the shared vision of a farmland preservation culture. In order to strengthen this culture, it is necessary to have stable political leadership, communication, and mutual understanding between the farm and non-farm communities, and active participation, support, and leadership from within the farm community.
3. The protection of farmland for future generations can be best achieved through programs and community processes that build connections and understanding, promote values represented by farming and land conservation, and provide education in the available tools to maintain a healthy farm economy and protect the land base. One such program is the Glynwood Center's "Keep Farming" program, which works with communities to strengthen the cultural foundation of the agricultural economy. See www.glynwood.org/Programs/KeepFarming.html
4. Supportive zoning laws are needed, but they are not sufficient, and not even always necessary, to achieve successful outcomes. Community culture is more important.

There is a parallel between countryside preservation, which requires an awareness of a panoply of cultural factors that determine a rural community's future, and high-quality urbanism, which requires a culture that values urban design and historic preservation, and that supports the creation and sustenance of communities with a sense of place. Excessive emphasis just on passing the "right code," without the cultural underpinnings to ensure that the code is properly implemented, will not lead to success in either the rural or the urban context. What is required is a broader and deeper understanding, forged through community conversation and cooperation, leading to a shared vision of the future and development of the skills needed to make that envisioned future a reality.

While agricultural preservation zoning is a useful tool, it is only one of many tools needed to save agriculture. In order for a community to succeed, it needs a strong agrarian culture. Such a culture is sustained by weaving together shared values, good communication, mutual respect, a broad appreciation of the economics of agriculture, and understanding of the land and of farming as an art, science, business, and practice. Most of all, such a culture is needed to create the political will and leadership to overcome powerful market forces that threaten farms and the land that supports them.

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LIST OF INTERVIEWEES

Roger Akeley, Planning Commissioner, Dutchess County
David Church, Planning Commissioner, Orange County
John Clarke, Senior Planner, Dutchess County
Glenn Garber, University of Massachusetts
Noela Hooper, Senior Planner, Dutchess County
Virginia Kasinki, Glynwood Center

Judith Labelle, President, Glynwood Center
Jeffrey Lacy, Massachusetts Department of Conservation and Recreation
Andy McLaughlin, Warwick Conservancy
Penny Steyer, Warwick, New York
Michael Sweeton, Town Supervisor, Warwick, New York
Rebecca Thornton, President, Dutchess Land Conservancy
Jill Way, former Supervisor, Town of Dover, New York

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