

Guidelines for Review of Local Laws Affecting Temporary Greenhouses

“Temporary greenhouses” are typically used on farm operations to propagate and grow nursery stock, flowers and vegetables. AML §301(2)(d) defines “horticultural specialties” to include nursery stock, ornamental shrubs, ornamental trees and flowers. Although temporary greenhouses are usually found on nursery operations and farms that produce vegetables, they are also used in the animal industry to raise young stock.

It is common practice for greenhouse operations to purchase seeds, seedlings, bareroot stock, plugs and immature plants from agricultural suppliers and then germinate, propagate, and harden-off the plants on the farm. Once the plants are mature, they are sold in the wholesale and/or retail market. Furthermore, the growing of plants in pots on the farm is also a common practice used by nursery and horticultural operations.

In 1992, the Executive Law was amended to define temporary greenhouses as “specialized agricultural equipment.” [Executive Law §372(17)¹] Executive Law §372(3) states that temporary greenhouses are not buildings for purposes of the State Building Code. Therefore, temporary greenhouses that are specifically designed, constructed and used for the culture and propagation of horticultural commodities are exempt from requirements for building permits. However, temporary greenhouses are not exempt from local zoning requirements. The erection and use of temporary greenhouses as part of a farm operation, including nursery/greenhouse operations, produce farms and livestock farms, is protected under AML §305-a .

Real Property Tax Law §483-c² exempts temporary greenhouses from taxes, special ad valorem levies and special assessments. There is a “one-time” filing of a form, as prescribed by the New York State Office of Real Property Services (ORPS), to receive this exemption. The form must be completed and presented to the Town Assessor. Real Property Form 483-c may be obtained from the ORPS’s web site at www.orps.state.ny.us.³

¹ Executive Law §372(17) defines a "Temporary greenhouse" as "...specialized agricultural equipment having a framework covered with demountable polyurethane materials or materials of polyurethane nature and lacking a permanent and continuous foundation, *which is specifically designed, constructed and used for the culture and propagation of horticultural commodities*. A 'temporary greenhouse' may include, but is not limited to, the use of heating devices, water and electrical utilities, and supporting poles embedded in non-continuous concrete. In no instance will a temporary greenhouse be used for the retail sale of any farm or non-farm products." (emphasis added)

² Real Property Law §483-c(1) defines "Temporary greenhouse" as "...specialized agricultural equipment having a framework covered with demountable polyethylene or polypropylene materials or materials of a polyethylene or polypropylene nature *which is specifically designed, constructed and used for agricultural production*. A temporary greenhouse may include, but is not limited to, the use of heating devices, water and electrical utilities, and embedded supporting poles." (emphasis added)

³ When the web site is accessed, click onto “Forms, Publications and Procedures.” On the next screen, click onto “Agency Forms” and on the following screen, click onto “Agency Form Listing by Number.” Scroll down to RP-483-C for the two-page form and RP-483-C-INS for the instructions.

The following are some of the specific matters that the Department considers when reviewing a local law that affects temporary greenhouses:

A. Minimum Lot Size

Establishing a minimum lot size for farm operations within a zoning district that includes land within a State certified agricultural district is problematic and may be unreasonably restrictive. The definition of "farm operation" in AML §301(11) does not include an acreage threshold. Therefore, the Department has not set a minimum acreage necessary for protection under AML §305-a and conducts reviews on a case-by-case basis. For example, a nursery/greenhouse operation conducted on less than 5 or 10 acres may be protected as a "farm operation" under §305-a if the operation is a "commercial enterprise" and more than a backyard garden or hobby farm. For agricultural assessment purposes, however, AML §301(4) states that a farm must have "land used in agricultural production" to qualify (either seven or more acres and gross sales of an average of \$10,000 or more in the preceding two years *or* have less than seven acres and average gross sales of more than \$50,000 in the preceding two years).

B. Maximum Lot Coverage

Establishing a maximum lot coverage that may be occupied by greenhouses may be unreasonably restrictive. It may be difficult for horticultural operations to recoup their investment in the purchase of land if they are not allowed to more fully utilize a lot/acreage. Farm operations should be allowed the maximum use of available land, consistent with the need to protect the public health or safety. Generally, if setbacks between buildings are met and adequate space is available for interior roads, parking areas (where required), and safe operation of vehicles and equipment, health and safety concerns are not likely.

C. Maximum Number of Greenhouses

Establishing a maximum number of greenhouses that may be constructed on a farm operation may be unreasonably restrictive. Generally, a farm operation should be allowed to erect all agricultural structures and specialized agricultural equipment (temporary greenhouses), regardless of size, which are necessary to operate, consistent with the need to protect the public health or safety.

D. Setbacks

Minimum setbacks from front, back and side yards have not been viewed as unreasonable unless a setback distance is unusually long. The establishment of lengthy setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation is usually located within, and adjacent to, the farmstead area or existing farm structures or greenhouses. Excessive setbacks can

also increase the cost of, or make it impracticable to construct, new greenhouses for the farm operation.

E. Screening

A requirement to screen greenhouses from view has been found by the Department to be unreasonably restrictive. Farmers should not be required to bear the extra costs to provide screening unless such requirements are otherwise warranted by special local conditions or necessary to address a threat to the public health or safety. While aesthetics are an appropriate and important consideration under zoning and planning laws, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use.

F. Greenhouses/Nursery Operations as a Permitted Use

The use of greenhouses as part of a farm operation should be a principal permitted use in all local zoning districts located in a county adopted, State certified agricultural district, since the purpose of such districts is to encourage the development and improvement of agricultural land. Agricultural uses and structures within an agricultural district should generally not be subject to special use permits, use variances or non-conforming use requirements.