

## State Agricultural & Rural Leaders - 2012 Annual Conference Presentation

### Valuation and Taxation of Farmland “Breakout Session” What Exactly is a Farm and Why Does it Matter?

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#### Illustration 1

A farmer in your district who runs a large organic farm has called you because he just got a “cease and desist” order from the local park commission, along with instructions to pay a \$50,000 fine and to apply for a permit. The Order was a result of the fact that this farmer was building three houses for his farm workers on his property – and the commission had determined that the buildings were not an “agricultural use structures.” If they had been, they would have been exempt from the authority exercised by the commission. So the question became whether these houses were “single family dwellings” or “agricultural use structures.”

**Outcome:** The New York State Court of Appeals (they call it their Supreme Court, Appellate Division) sided with the farmer in an opinion released on July 16, 2009. The court acknowledged that the dwelling house for a farm worker could be considered a “single family dwelling” and an “agricultural use structure” at the same time, but that the building’s agricultural use was enough to exempt them from the Commission’s jurisdiction. They relied in part on some language elsewhere in the statutes that made it clear that the state had a policy of protecting and promoting those assets that “contribute to the production, preparation and marketing of crops, livestock and livestock products,” i.e., those things that are “farm operations,” and that the buildings here should be given that deference. Citation: \_\_\_\_\_. See also *McLaughlin v. Howell Tp. Zoning Bd. of Adjustment*, \_\_\_ N.J. Super. \_\_\_, Case No. L-004919-07 (Nov. 1, 2011), 2011 WL 5137782.

#### Illustration 2

You would have never expected it, but a family that you have known for years are turning a 64 acre piece of property that they own into a winery. In 2008, they applied for a zoning permit to use part of the property as a winery. The zoning inspector denied their application and informed them that a crush pad they had built to use to crush and press grapes violated the town’s setback regulations. The inspector and town also claimed that a pavilion intended to be used for selling wine made on the property is subject to zoning. The family believes that the setback requirements should not apply to their crush pad because their entire winery is “agriculture,” and is thus exempt from zoning. They also believe the exemption should extend to the pavilion they use for wine tastings and selling.

**Outcome:** An appellate Court in Ohio ruled in May of 2011 that the pavilion qualified for the zoning exemption. The state law in Ohio specifically states that an agricultural purpose includes “buildings or structures that are used primarily for venting and selling wine and that are located on land any part of which is used for viticulture.” With regard to the crush pad used to crush grapes, the Court ruled that “because the primary purpose of the crush pad is agricultural and that structure is located on land any part of which is used for viticulture, the exemption applies to the crush pad.” Citation: *Schabel v. Troyan*, 2011 Ohio 2452, 2011

Ohio App. LEXIS 2085 (May 20, 2011), *discretionary appeal denied*, *Schabel v. Troyan*, 2011 Ohio 5358, 2011 Ohio LEXIS (Oct. 19, 2011).

### Illustration 3 – And this one is especially for Dr. Anderson!

You have a vertically integrated farming company whose headquarters is located in your district. That company is the major employer in the area, and it contracts with farmers all across your region of the state to grow chickens that it then processes and markets. It also runs its own hatchery where it raises the biddies that will be sent to its contract grower's farms. Like all vertically integrated companies in the poultry world, the company grinds its own feed and provides that feed to its contract growers and uses some of it at its hatchery.

Farmers in your state are entitled to a property tax exemption on land that is "used on a farm or farming operation that annually produces for sale agricultural products." Should the company's hatchery be allowed to claim the exemption? Should its feed mill?

**Outcome:** The West Virginia Supreme Court of Appeals ruled on November 17, 2011, that Pilgrim's Pride was not entitled to claim the exemption for anything other than its hatchery. According to the Court, Pilgrim's Pride was not the "producer" of the birds that it supplied to and later picked back up from its contract growers. The dissent chastised the majority for failing to "understand the nature of the modern commercial enterprise." Citation: *Pilgrim's Pride Corp. v. Morris*, \_\_\_ W. Va. \_\_\_, Case No. 101627 (Nov. 17, 2011), 2011 WL 5827624.

### Illustration 4

Responding to the high costs of diesel, a constituent of yours who happens to be a large soybean producer has opened a "crushing operation" on his farm. One of the products he intends to produce is "biodiesel," of which he would use some and sell the remainder to his neighbors for use in their farming operations. A by-product of the process would be the production of soybean meal which can be used for animal feed. When the constituent ran into trouble getting the land where the operation was housed zoned for manufacturing, he claimed it was exempt from zoning because the crushing operation was an "agricultural use" of the subject property.

**Outcome:** At first, the trial court found that the production of biodiesel by a farmer on farm premises for agricultural purposes was a bona fide farm use and as such the production of biodiesel was exempt from county zoning ordinances pursuant to N.C. Gen. Stat. § 153A-340 (2007). The North Carolina Court of Appeals reversed, holding that the intended biodiesel production was not a bona fide farm use. In its view, "the hauling of raw materials from surrounding farms, and the production of 500,000 gallons of biodiesel per year, when the applicants' farming operation required only 100,000 gallons of biodiesel per year, removed this production from the realm of bona fide farm use to a non-farm independent commercial enterprise." It went on to write that "while the large scale industrial farming operation fit under the bona fide farm exception, the added industrial process was not the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products defined in N.C. Gen. Stat. § 106-581.1. In short, the highest court to have reviewed the case to date concluded that the biodiesel production facility was subject to zoning and was no entitled to the agricultural use exemption. Citation: *N. Iredell Neighbors for Rural Life v. Iredell Co.*, 196 N.C. App. 68 (N.C. App. 2009).