

State of New York
Department of Environmental Conservation

In the Matter of the Petition of
JAMES SANDERS, for a Declaratory
Ruling

Declaratory
Ruling
11-07

Introduction

Petitioner James Sanders (Petitioner) seeks a Declaratory Ruling pursuant to §204 of the State Administrative Procedure Act and 6 NYCRR Part 619 with respect to the application of Environmental Conservation Law (ECL) §11-0931(4)(a) to the discharge of firearms near buildings located on his property in Elbridge, New York.

Background

On July 18, 1994, Petitioner wrote to the Department of Environmental Conservation concerning the development of his 20-acre property for agricultural use. In his letter he states that, in addition to the building in which his family dwells, he has erected upon his property a tool shed for his tractor and tools. A neighbor has been discharging a firearm for the purpose of target practice within 500 feet of the tool shed. Petitioner also advises of his interest in raising small animals such as chickens and rabbits and, presumably, the erection or use of buildings to house them. For purposes of this ruling, it is

assumed that these buildings have been or will be erected for the purpose of sheltering chickens or rabbits. Petitioner requests a Declaratory Ruling with respect to the applicability of ECL §11-0931(4) (a) to the tool shed and these additional structures. He also requests a ruling on its applicability to "playscapes" (a raised clubhouse with ladder, slide and sand box), green-houses, decks, gazebos and pools.

Analysis

ECL §11-0931(4) (a) provides that no person shall "discharge a firearm or long bow within five hundred feet from a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, or occupied factory or church."

Petitioner's request for a ruling requires an analysis (a) as to whether a tool shed and buildings housing chickens and rabbits are "farm buildings or farm structures actually occupied or used," and (b) whether playscapes, greenhouses, decks, gazebos and pools are structures included within the meaning of the terms used in the statute.

- a. Farm buildings or farm structures actually occupied or used.

Where words of a statute are free from ambiguity and express plainly, clearly and distinctly the legislative intent, resort may not be had to other means of interpretation (McKinney's Statutes §76). With regard to a tool shed used to shelter farm equipment or a structure housing animals, such as rabbits or chickens, on farm property, the statute is clear. These structures are farm buildings or farm structures actually used. Whether or not these buildings are "occupied" is less clear. Where there is doubt as to the meaning of the language of a statute, various extrinsic matters throwing light on the legislative intent may be considered (McKinney's Statutes §120). Memoranda and letters submitted to the Governor recommending his signature or disapproval of a bill are extrinsic matters which may be considered.

Chapter 453 of the Laws of 1963 added the statutory language which is the subject of this Declaratory Ruling. In commenting on the bill, the Association of the Bar of the City of New York in a letter to Sol Corbin, Counsel to the Governor, dated April 16, 1963, stated as follows:

The bill would reorganize the structure of Section 245 [now ECL §11-0931] and would also effect some substantive changes. First, the bill would enlarge the prohibition with respect to discharge near a dwelling

to include also farm buildings, farm structures, school buildings, school playgrounds, factories and churches. We think this enlargement of the prohibition appropriate.

Second, while Section 245 presently applies to any dwelling, whether or not occupied, the proposed bill would exclude certain unoccupied structures from the prohibition. Thus, it would bar discharge within 500 feet of "a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, or occupied factory or church.... [Emphasis supplied.]

It is the apparent intention of the bill to bar discharge of a weapon near a school or playground whether or not "occupied" in any sense. We find, however, some ambiguity in the use of the phrase "actually occupied or used" in connection with dwellings and farm buildings and the use of the word "occupied" in connection with factories and churches. Is it intended, for example, to allow discharge of a weapon near a dwelling from which the occupants are temporarily absent, or is it intended only to allow discharge near an abandoned dwelling? Whatever the answer to that question, does the same standard apply to factories and churches or was it intended that the word "unoccupied" used alone have a meaning different from the phrase "actually occupied or used"?"

As discussed above, a tool shed containing tools and a building containing chickens and rabbits is clearly being used. It is not required under the terms of the statute that farm buildings or farm structures also be occupied. Therefore, we need not pursue such matters as the applicability of the statute to a barn which is temporarily unoccupied by humans or farm animals or its applicability to permanently abandoned structures and buildings. If the building or structure is being used for a farm-related purpose, the statutory language is satisfied.

In order to be a farm building or structure, such building or structure must be located upon a farm. Since the ECL does not contain a definition of a farm, it is necessary to look to other sources, including other statutory definitions and case law. Numerous cases in various jurisdictions have addressed the issue of the meaning of the term "farm." Typical of the holdings in these cases are the following: A "farm" is a body of land usually under one ownership devoted to agriculture, either to the raising of crops or pasture or both. Williams v. Chicago and N.W. Ry. Co., 132 Ill. App. 274. Ordinarily, the word "farm" includes the land and buildings, real estate devoted to agricultural purposes, raising of cattle, dairying and the like. In re Wesche's Will, 169 N.Y.S. 2d 612 (1957). A "farm" is a plot or tract of land devoted to the raising of domestic or other animals; as a chicken farm; a fox farm; a tract of land devoted to agricultural purposes. Hagenburger v. City of Los Angeles, 124 P.2d 345. The word "farm" should be given its commonly understood significance as land used for production of crops, livestock grazing, raising of hay for cows to produce milk and other dairy products, raising of poultry and sale of chickens or eggs, or growing of fruit. Town of Lincoln v. Murphy, 314 Mass. 16.

The New York Legislature, in consolidated laws other than the ECL, has also expressed its view of the meaning of the term "farm." For example, Labor Law §511(6)(b), relating to

unemployment insurance for persons employed as agricultural laborers, defines a "farm" as including "stock, dairy, poultry, fur-bearing animal, fruit, and truck farms, plantations, nurseries, greenhouses or similar structures, used primarily for the raising of agricultural and horticultural commodities, and orchards." Vehicle and Traffic Law §401(13), relating to registration of farm vehicles, states that "farm" shall have the same meaning as "land used in agricultural production" as defined in Agriculture and Markets Law §301(4). That provision of the Agriculture and Markets law defines "land used in agricultural production" as:

not less than ten acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:

- a. Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.
- b. Land of not less than ten acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which qualifies for an agricultural assessment.
- c. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment.

- d. Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.
- e. Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities.
- f. Land of not less than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more, or land of less than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more."

The statutory and case law definitions discussed above indicate that to be a farm the premises alleged to be a farm must be utilized principally for agricultural production for commercial purposes. While Petitioner's letter suggests that his land is being used for agricultural purposes, he has not presented sufficient information to enable us to conclude that his property is a "farm."

- b. Playscapes, greenhouses, decks, gazebos and pools.

As set forth above, ECL §11-0931(4)(a) restricts the discharge of firearms in areas in close proximity to a dwelling house, farm building or farm structure actually occupied or used,

school building, school playground, or occupied factory or church. In construing statutes, the primary consideration is to give effect to the intent of the Legislature (McKinney Statutes §92). The Legislature's intent is ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction (McKinney's Statutes §94). The terms "dwelling," "school building," "school playground," "factory" and "church" are commonly used and universally understood. Had the Legislature intended to include the curtilage, it could have easily done so. In the case of school buildings, the Legislature specifically included the surrounding area by adding the term "school playground." It is a universal principle in the interpretation of statutes that "expressio unius est exclusio alterius." The specific mention of one thing implies the exclusion of other things (McKinney's Statutes, §240).

Since farm buildings were, at common law, often included within the curtilage, the Legislature would not have named them if it intended that the term "dwelling" include them. Also, such an expansive construction would lead to unoccupied and unused farm structures being protected, a clearly unintended result.

There is nothing in the Legislative history of ECL §11-0931(4)(a) that indicates a construction including the curtilage

was intended. Other states' statutes with identical language have been similarly interpreted. Clearly playscapes, decks, gazebos and pools are not dwellings, school buildings, school playgrounds, churches or factories. A greenhouse, while not a dwelling, school building, school playground, factory or church could be a farm building if located on a farm and actually occupied or used, the definition of which is discussed above.


Conclusion

Petitioner's tool shed and structures for housing chickens and rabbits may be farm buildings or structures actually used provided they are located on a farm and are being used for farm purposes. In the event that they are located on a farm, the discharge of a firearm within 500 feet of them is prohibited by ECL §11-0931(4)(a). A greenhouse actually used for farm purposes and located on a farm is a farm building or structure within the meaning of ECL §11-0931(4)(a).

I am constrained to conclude that playscapes, decks, gazebos and pools are not dwellings, farm buildings, school buildings, school playgrounds, churches or factories and, accordingly, ECL

§11-0931(4)(a) has no application to them. This anomalous result should be brought to the attention of the Legislature for its consideration.

Dated: 3/10/95


Frank V. Bifera
Acting General Counsel