

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21

STATUTORY CONSTRUCTION

Section 21:34-a

21:34-a Farm, Agriculture, Farming. –

I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in operations named in paragraph II of this section.

II. The words "agriculture" and "farming" mean all operations of a farm, including:

- (a)(1) The cultivation, conservation, and tillage of the soil.
 - (2) The storage, use of, and spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.
 - (3) The use of and application of agricultural chemicals.
 - (4) The raising and sale of livestock which shall include but not be limited to all beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).
 - (5) The breeding, boarding, raising, training, riding instruction, and selling of equines.
 - (6) The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products.
 - (7) The raising, breeding, or sale of poultry or game birds.
 - (8) The raising of bees.
 - (9) The raising, breeding, or sale of domesticated strains of fur-bearing animals.
 - (10) The production of greenhouse crops.
 - (11) The production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees and tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any other plant that can be legally grown and harvested extensively for profit or subsistence.
- (b) Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to:
- (1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.
 - (2) The transportation to the farm of supplies and materials.
 - (3) The transportation of farm workers.
 - (4) Forestry or lumbering operations.
 - (5) The marketing or selling at wholesale or retail, on-site and off-site, where permitted by local regulations, any products from the farm.
 - (6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.
 - (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).
 - (8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.

IV. Practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, and appropriate agencies of the

United States Department of Agriculture.

V. The term "farmers' market" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

VI. The term "agritourism" means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.

Source. 1961, 140:1. 1977, 95:1. 1979, 60:1. 1985, 6:1. 1997, 250:1. 1999, 191:2. 2005, 107:1. 2006, 11:5; 326:1. 2007, 157:1. 2008, 8:1, eff. July 4, 2008. 2014, 97:2, eff. Aug. 10, 2014.

TITLE LXIV PLANNING AND ZONING

CHAPTER 672 GENERAL PROVISIONS

Purpose

Section 672:1

672:1 Declaration of Purpose. – The general court hereby finds and declares that:

I. Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government;

II. Zoning, subdivision regulations and related regulations are a legislative tool that enables municipal government to meet more effectively the demands of evolving and growing communities;

III. Proper regulations enhance the public health, safety and general welfare and encourage the appropriate and wise use of land;

III-a. Proper regulations encourage energy efficient patterns of development, the use of solar energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;

III-b. Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the state. Natural features, terrain and the pattern of geography of the state frequently place agricultural land in close proximity to other forms of development and commonly in small parcels. Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-c. Forestry, when practiced in accordance with accepted silvicultural principles, constitutes a beneficial and desirable use of New Hampshire's forest resource. Forestry contributes greatly to the economy of the state through a vital forest products industry; and to the health of the state's forest and wildlife resources through sustained forest productivity, and through improvement of wildlife habitats. New Hampshire's forests are an essential component of the landscape and add immeasurably to the quality of life for the state's citizens. Because New Hampshire is a heavily forested state, forestry activities, including the harvest and transport of forest products, are often carried out in close proximity to populated areas. Further, the harvesting of timber often represents the only income that can be derived from property without resorting to development of the property for more intensive uses, and, pursuant to RSA 79-A:1, the state of New Hampshire has declared that it is in the public interest to encourage preservation of open space by conserving forest and other natural resources. Therefore, forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families

of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers;

III-f. New Hampshire commercial and recreational fisheries make vital and significant contributions to the food supply, the economy, the environment, and the aesthetic features of the state of New Hampshire, and the tradition of using marine resources for fisheries production is an essential factor in providing for economic stability and a favorable quality of life in the state. Many traditional commercial and recreational fisheries in New Hampshire's rivers and estuarine systems are located in close proximity to coastal development. Such fisheries are a beneficial and worthwhile feature of the New Hampshire landscape and tradition and should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers.

IV. The citizens of a municipality should be actively involved in directing the growth of their community;

V. The state should provide a workable framework for the fair and reasonable treatment of individuals;

V-a. The care of up to 6 full-time preschool children and 3 part-time school age children in the home of a child care provider makes a vital and significant contribution to the state's economy and the well-being of New Hampshire families. The care provided through home-based day care closely parallels the activities of any home with young children. Family based care, traditionally relied upon by New Hampshire families, should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers; and

VI. It is the policy of this state that competition and enterprise may be so displaced or limited by municipalities in the exercise of the powers and authority provided in this title as may be necessary to carry out the purposes of this title.

Source. 1983, 447:1. 1985, 68:1; 335:3; 369:1. 1989, 42:1; 170:1. 1990, 174:1; 180:1, 2. 1991, 198:1. 2002, 73:1, eff. June 30, 2002. 2008, 299:3, eff. Jan. 1, 2010; 357:2, 3, eff. July 11, 2009.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-a

674:32-a Presumption. – In accordance with RSA 672:1, III-d, whenever agricultural activities are not explicitly addressed with respect to any zoning district or location, they shall be deemed to be permitted there, as either a primary or accessory use, so long as conducted in accordance with best management practices adopted by the commissioner of agriculture, markets, and food and with federal and state laws, regulations, and rules.

Source. 2000, 279:3, eff. July 1, 2001.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-b

674:32-b Existing Agricultural Uses. – Any agricultural use which exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing technology or markets, or changed to another agricultural use, as set forth in RSA 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state laws, regulations, and rules, including best management practices adopted by the commissioner of agriculture, markets, and food; subject, however, to the following limitations:

I. Any new establishment, re-establishment after disuse, or significant expansion of an operation involving the keeping of livestock, poultry, or other animals may be made subject to special exception, building permit, or other local land use board approval.

II. Any new establishment, re-establishment after disuse, or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, may be made subject to applicable special exception, building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety.

Source. 2000, 279:3, eff. July 1, 2001.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-c

674:32-c Other General Provisions. –

I. The tilling of soil and the growing and harvesting of crops and horticultural commodities, as a primary or accessory use, shall not be prohibited in any district.

II. Nothing in this subdivision shall exempt new, re-established, or expanded agricultural operations from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use allowed by this subdivision, or would otherwise be unreasonable in the context of an agricultural use, the board of adjustment, building code board of appeals, or other applicable local board, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use, unless such waiver would have a demonstrated adverse effect on public health or safety, or the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use.

III. Nothing in this subdivision shall apply to any aspect of an agricultural operation determined to be injurious to public health or safety under RSA 147. Nothing in this subdivision shall be deemed to modify or limit the duties and authority of the department of environmental services under RSA 485 or RSA 485-A or the commissioner of the department of agriculture, markets, and food under title XL.

IV. Nothing in this subdivision shall be deemed to affect the regulation of sludge or septage.

Source. 2000, 279:3, eff. July 1, 2001.

New Hampshire
Department of Agriculture,
Markets & Food

an official NEW HAMPSHIRE government website

Laws and Rules

Below is a partial list of laws and rules pertaining to agriculture in New Hampshire. Most are directly administered by the Department of Agriculture, Markets & Food. However, as agriculture is impacted by some regulations administered by other departments within New Hampshire State Government, they are also provided here for your information.

- [Office of the Commissioner](#)
- [Agricultural Development](#)
- [Animal Industry](#)
- [Pesticide Control](#)
- [Plant Industry](#)
- [Regulatory Services](#)
- [Weights and Measures](#)
- [State Conservation Committee](#)

Track Bills/Hearings of interest for the New Hampshire [House of Representatives](#) and [Senate](#) during the Legislative Session (January–June).

Office of the Commissioner

[▲ Back to Top](#)

- Laws
 - [RSA 72:12-d](#) Demountable Greenhouse Taxation
 - [RSA 79-A](#) Current Use Taxation
 - [RSA 79-F](#) Taxation of Farm Structures and Land under Farm Structures
 - [RSA 184:106-110](#) Milk Producers Relief Fund
 - [RSA 259:12-e](#) Commercial motor vehicle (including farm vehicle exemptions)
 - [RSA 259:44](#) Implement of husbandry
 - [RSA 259:108](#) Definition of tractor
 - [RSA 259:113](#) Definition of trailer
 - [RSA 261:82](#) Agricultural plates
 - [RSA 261:83](#) Farm tractor plates
 - [RSA 261:84](#) Farm plates
 - [RSA 266:46-a](#) Slow moving vehicle emblems
 - [RSA 266:72](#) Spillage of materials
 - [RSA 425:2](#) General Functions of the NH Dept. of Agriculture, Markets & Food
 - [RSA 672:1.III-b-d](#) Planning and zoning (including agriculture and forestry)

- [RSA 674:32-a-c](#) Agricultural uses of land

Agricultural Development

▲ Back to Top

- Laws
 - [RSA 21:34-a](#) Definition of Agriculture (including agri-tourism, farmers' markets)
 - [RSA 143-A:12](#) Homestead Food license
 - [RSA 178:8](#) Wine manufacturer's license (including sales at farmers' markets)
 - [RSA 178:12-a](#) Nano Brewery license (including sales at farmers' markets)
 - [RSA 184](#) Selling Milk and Dairy Products (including licensing, pasteurization, selling raw milk and cheese)
 - [RSA 236:70,VI](#) Agriculture exempt from definition of "Commercial" activities in regards to placement of signs along state highway areas
 - [RSA 236:72](#) Farms exempt from permits for signs along state highway areas
 - [RSA 236:73,V-a](#) Farm signage allowed along state highway areas
 - [RSA 349:1,IV\(d\)](#) Farmers' Market Trade Name Registration
 - [RSA 425:2-a](#) The Granite State Farm to Plate Food Policy and Principles
 - [RSA 432:32-35](#) Nuisance Liability of Agricultural Operations (Right-to-Farm Law)
 - [RSA 508:14](#) Landowner Liability Limited
 - [RSA 672:1](#) Planning & Zoning Declaration of Purpose
 - [RSA 673:4-b](#) Agricultural Commissions
 - [RSA 674:32-a-c](#) Agricultural Uses of Land

Animal Industry

▲ Back to Top

- Laws
 - [RSA 427](#) Humane Slaughter; Livestock Auction; Shipment of Livestock
 - [RSA 428](#) Poultry & Poultry Products
 - [RSA 435](#) Breeding Animals; Treatment of Horses; Feeding Garbage to Swine
 - [RSA 436](#) Diseases of Domestic Animals
 - [RSA 437](#) Sale of Pets & Dispositions of Unclaimed Animals
 - [RSA 437-A](#) Animal Population Control Program
 - [RSA 466](#) Dogs and Cats; Wolf Hybrids
 - [RSA 508.19](#) Limitation of Actions Liability; Equine Activities
 - [RSA 644:8](#) Cruelty to Animals
- Rules
 - [Agr 300](#) Rabies Control
 - [Agr 1600](#) Poultry
 - [Agr 1700](#) Sale of Animals and Birds
 - [Agr 1900](#) Livestock Dealer Licensing
 - [Agr 2100](#) Importation of Domestic Animals

- [Agr 2400](#) Equine Infectious Anemia
- [Agr 2600](#) Livestock Events
- [Agr 2700](#) Docking Tails of Horses
- [Agr 2800](#) Animal Population Control (expired)
- [Agr 2900](#) Equine Quarantine From CEM Countries
- [Agr 3000](#) Licensing of Cats
- [Agr 3100](#) Wolf Hybrids
- [Agr 3300](#) Testing of Domestic Animals
- [Agr 3500](#) Breeders Health Certificates for Dogs & Cats
- [Agr 3700](#) Treatment of Horses

Board of Veterinary Medicine

- Laws
 - [RSA 332-B](#) New Hampshire Veterinary Practice Act
- Rules
 - [Vet 100](#) Organizational Rules

Pesticide Control

▲ [Back to Top](#)

- Laws
 - [RSA: 430:28-50](#) Pesticide Controls
 - [RSA 430:33](#) Pesticide Applicator Registration Certificates and Permits
 - [RSA 430:35](#) Pesticide Dealers
 - [RSA 430:36](#) Pesticide Product Registration
 - [RSA 430:50](#) Integrated Pest Management Program
- Rules
 - [Pes 100](#) Organization Rules
 - [Pes 200](#) Procedural Rules
 - [Pes 300](#) Certification, Registration and Licensing Requirements
 - [Pes 400](#) Continued Status (License Renewals/Requirements)
 - [Pes 500](#) Restrictions on the Application of Pesticides by Commercial Applicators and Permittees
 - [Pes 600](#) Aquatic Application of Pesticides
 - [Pes 700](#) Sale and Use of Pesticides
 - [Pes 800](#) Disposal of Pesticides and Pesticide Containers
 - [Pes 900](#) Record Keeping and Reporting
 - [Pes 1000](#) Restrictions on the Use of Pesticides to Protect Ground and Surface Waters
 - [Pes 1100](#) Worker Protection

Plant Industry[▲ Back to Top](#)

- Insect and Plant Pest Suppression
 - Laws
 - [RSA 430:1-8](#)

- Nurseries, Plant Dealers, and Nursery Stock
 - Laws
 - [RSA 433:21-36](#)

 - Rules
 - [Agr 2500](#)

- Invasive Species
 - Laws
 - [RSA 430:55](#)

 - Rules
 - [Agr 3800](#)

- Beekeeping and Hive Products
 - Laws
 - [RSA 429:1-12](#) Beekeeping
 - [RSA 429:13, 429:20-27](#) Honey Products

 - Rules
 - [Agr 1800](#) Beekeeping

Regulatory Services[▲ Back to Top](#)

- Farmland Preservation
 - Laws
 - [RSA 432:18-31-a](#) Agricultural Land Preservation Program
 - [RSA 673:4-b](#) Agricultural Commissions

 - Rules
 - Agr 700 Acquisition of Agricultural Land Development Rights (expired)

- Feed, Fertilizer and Seed
 - Laws
 - [RSA 431:1-21](#) Fertilizer
 - [RSA 431:22-32](#) Liming Materials
 - [RSA 431:33-36](#) Manure, Agricultural Compost and Chemical Fertilizer Handling
 - [RSA 433-A](#) Horticultural Growing Media

- [RSA 433:1-15](#) Seed
- [RSA 435:17-31](#) Commercial Feed & Pet Food
- Rules
 - [Agr 1100](#) Fertilizer
 - Agr 1200 Commercial Feed (expired)
 - Agr 3200 Horticultural Growing Media (expired)
- Food Products
 - Laws
 - [RSA 428:22-30](#) Shell Eggs
 - [RSA 429:13-28](#) Maple and Honey Products
 - [RSA 434:11-18](#) Grading and Marking Potatoes
 - [RSA 434:19-32](#) Apples
 - [RSA 434:40-b-h](#) Cider
 - Rules
 - Agr 901 Apples (expired)
 - Agr 904 Maple Syrup (expired)
 - Agr 905 Eggs (expired)
 - Agr 907 Cider (expired)
- Quality Assurance
 - Laws
 - [RSA 426](#) Standards for Farm Products
 - [RSA 426:5](#) Use of Words "Native," "Local," and "Our Own"
 - [RSA 434:59-61](#) Grading and Certification or Stamping of Native Lumber
 - Rules
 - Agr 908 Grading and Certification or Stamping of Native Lumber (expired)
 - [Agr 910](#) Organic Processors
 - [Agr 911](#) Certification of Organically Produced Plant, Animal, Food or Fiber Commodities
 - Agr 1000 Seal of Quality (expired)
 - Agr 1300 Controlled Atmosphere (expired)

Weights and Measures

▲ [Back to Top](#)

See [RSA 438](#) generally: "Standards for Weights and Measures."

See [RSA 339:30:a](#) Posting of "Gasoline and Diesel Fuel Prices."

See [NIST Handbook 44](#), [NIST Handbook 130](#), [NIST Handbook 112](#) (National Institute of Standards & Technology Handbooks), which have been incorporated by reference into RSA 438.

- Definitions
 - Laws
 - [RSA 438:1](#) Definitions
 - Rules
 - [Agr 1401](#) Weights and Measures Definitions
- Public Weighmasters
 - Rules
 - [Agr 1402](#) Licensure Requirements
 - [Agr 1403](#) Responsibilities and Prohibitions
- Service Technicians
 - Laws
 - [RSA 438:5](#) Standards for Weights and Measures
 - [RSA 438:14-a](#) Registered Service Technician
 - Rules
 - [Agr 1404](#) Registration/Licensure Requirements
 - [Agr 1405](#) Requirements and Reporting Duties (including testing equipment, privileges, reporting duties, requirements, use of security seals, certification stamps, sealing procedure, etc.)
- Sale of Commodities
 - Laws
 - [RSA 438:20](#) Method of Sale of Commodities; General
 - [RSA 438:21](#) Packages; Declarations of Quantity and Origin; Variations; Exemptions
 - [RSA 438:22](#) Declarations of Unit Price on Random Packages
 - [RSA 438: 23](#) Misleading Packages
 - [RSA 438:24](#) Advertising Packages for Sale
 - [RSA 438:25](#) Sale by Net Weight
 - [RSA 438:26](#) Misrepresentation of Price
 - [RSA 438:26-a](#) Grocery Stores; Prices
 - [RSA 438:32](#) Bulk Deliveries Sold in Terms of Weight and Delivered by Vehicle
 - [RSA 438:32-a](#) Services and Bulk Commodities Sold, Rendered, or Delivered in Terms of Weight by Vehicle
 - [RSA 438:32-b](#) Contents of Invoice
 - [RSA 438:33](#) Furnace and Stove Oil
 - Rules
 - [Agr 1406](#) Method of Sale (including labeling, price posting, misrepresentation of quantity, etc.)

- Licensing of Commercial Devices
 - Laws
 - [RSA 438:19](#) Duty of Owners of Incorrect Apparatus
 - Rules
 - [Agr 1407](#) Licensure Application and Annual Requirements (including annual inspection and certification requirements)
- Posting and Advertising of Motor Vehicle Fuel
 - Laws
 - [RSA 438:20](#) Method of Sale of Commodities; General
 - [RSA 438:26](#) Misrepresentation of Price
 - [RSA 339:30-a](#) "Gasoline and Diesel Fuel Prices."
 - Rules
 - [Agr 1408](#) Price Posting Requirements (including retail motor fuel, kerosene, diesel fuel, liquefied natural gas, LPG, etc.)
- Temperature Correction for Refined Petroleum Products
 - Laws
 - [RSA 438:20](#) Method of Sale of Commodities; General
 - Rules
 - [Agr 1409](#) (including testing of automatic temperature-compensating systems, allowable meter error, petroleum products delivery tickets, etc.)
- NH Weights and Measures Fees
 - Laws
 - [RSA 438:10-a](#) Fees for Licensing Commercial Devices
 - Rules
 - [Agr 1410](#) NH Metrology Laboratory Fees, Licensure Fees for Service Technicians and Weighmasters
- Violations of RSA 438:40,I and of Administrative Rules
 - Laws
 - [RSA 438:7](#) General Powers and Duties of Commissioner
 - [RSA 438:8](#) Rulemaking Authority
 - Rules
 - [Agr 1411](#) violations of RSA 438:40,I and of Administrative Weights and Measures Rules; Written Warnings of Violation; Administrative Fines
- Dating Prewrapped Sandwiches
 - Laws

- [RSA 438:12](#) Inspection of Packages
 - [RSA 438:13](#) Stop-Use, Stop-Removal Orders
 - [RSA 438:15](#) Police Powers, Right of Entry and Stoppage
 - [RSA 438:26-b](#) Dating Prewrapped Sandwiches; Rulemaking
 - [RSA 438:40](#) Offenses and Penalties
- Rules
 - [Agr 1412](#) (including expiration dates, manufacturing dates, etc.)

State Conservation Committee

- Laws
 - [RSA 432:10](#) Conservation Districts
 - [RSA 432:12](#) Creation of Conservation Districts

NH Department of Agriculture, Markets and Food
Mailing: PO Box 2042, Concord NH 03302 -2042
Physical: 25 Capitol Street, Second Floor, Concord, NH 03301
(603) 271-3551 | fax: (603) 271-1109

NEW HAMPSHIRE MUNICIPAL ASSOCIATION (1)

 Member Login
(/Account/Login)

New Hampshire Town And City

Balancing Agricultural Use with Growth and Development: An Overview of New Hampshire Law

New Hampshire Town and City, June 2010

By



By David Connell

Throughout the 20th century, residential and commercial development extended into rural areas of New Hampshire, encountering preexisting agricultural uses that were often regarded as incompatible with the new subdivisions and shopping centers. Pesticides and fertilizers; farm equipment and animals; dwellings crowded with seasonal workers; retail roadside stands—all were seen by newcomers as detrimental to property values when conducted near residential developments. Zoning and planning regulations were employed to deal with the problem, typically by segregating agriculture from higher density residential uses.

Today, with renewed enthusiasm for small-scale, local agriculture in New Hampshire and elsewhere, it is reasonable to predict some intensified friction between residential land use and agricultural land uses. A search of Google News using the phrase “livestock and zoning” brought up many articles in the month of April 2010 about land use regulation disputes, ranging from keeping goats as pets in Pittston, Pennsylvania; to sheep on the loose in tony New Canaan, Connecticut; to urban fish farming in Chicago, Illinois; to chicken coops in downtown Saskatoon, Saskatchewan, and in North Hampton, New Hampshire. Attitudes vary from place to place. A North Hampton ZBA member stated that the town benefits from having homes with poultry. In Saskatoon, on the other hand, a city councilor was quoted as saying, “We’ve spent a hundred years getting livestock out of the city, and I just don’t think it’s the appropriate time to start thinking about bringing it back. If you start with chickens it’s just going to keep going from there.”

New Hampshire Legislation Promotes Agriculture

For decades, the New Hampshire legislature has been concerned with the decline of agriculture in the state and the loss of agricultural land to encroaching development. In response, statutes to preserve and protect agriculture have been enacted, including current use property taxation, RSA Chapter 79-A, and the “Right to Farm Law,” RSA Chapter 432, which protects agricultural operations against claims of public nuisance or private nuisance when operations are conducted in compliance with state and local health and safety regulations. Several statutes afford advantageous property tax treatment to agriculture. (See below.) The legislature has also been encouraging agriculture through amendments to the zoning and planning enabling legislation.

Planning and Zoning Protective Legislation

In 1985, RSA 672:1, the declaration of the purpose of planning and zoning regulations, was amended to add Section III-b. It finds and declares that “[a]griculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state,” and “agricultural activities shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers.” RSA 672:1, III-d was added in 1990 to stress that “a prohibition upon [agriculture] cannot necessarily be inferred from the failure of an ordinance or regulation to address [agriculture].” These sections express intent and prescribe principles for construing statutes, but are not a direct substantive mandate.

In 2000, the legislature enacted substantive provisions to implement the policy in favor of agriculture. RSA 674:17, the section listing the purposes of zoning ordinances, was amended to add subparagraph I (i): “To encourage the preservation of agricultural lands and buildings.” At the same time, RSA 674:32-a through 32-c were added specifically to deal with agricultural uses of land.

RSA 674:32-a establishes a presumption that, when a zoning ordinance is silent, agricultural activities are deemed to be permitted either as a principal or accessory use. This reverses the general rule, which is that a zoning ordinance “prohibits uses for which it does not provide permission.” See *Treisman v. Kamen*, 126 N.H. 372, 375 (1985).

RSA 674:32-b creates special protections for existing agricultural uses to expand or change to any other agricultural use, so long as they comply with the commissioner of agriculture’s best management practices. Under ordinary zoning principles, nonconforming uses and most permitted uses do not enjoy such latitude. An important limitation is that establishment, re-establishment or significant expansion of an operation involving livestock, poultry or other animals or a retail farm stand may be made subject to a special exception or other land use board approval.

RSA 674:32-c, I establishes the highest protected status for certain agricultural activities: "The tilling of soil and the growing and harvesting of crops and horticultural commodities, as a primary or accessory use, shall not be prohibited in any district." Thus, while livestock and poultry may be regulated by special exception or prohibited where appropriate, crops and horticultural commodities are permitted in any district.

RSA 674:32-c, II creates a special process for land use boards to grant "waivers" of "generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, vibration restrictions or sign regulations." If such standards are "unreasonable," the board shall grant a waiver unless it "would have a demonstrated adverse effect on public health or safety, or the value of adjacent property."

RSA 674:32-c, III and IV provide that nothing in this set of statutes applies to any aspect of agriculture that is injurious to public health or safety under RSA 147, and nothing affects the regulation of sludge or septage or the authority of the department of environmental services under RSA 485 and 485-A or the commissioner of agriculture, markets and food under title XL (RSA 425 through RSA 439) of the statutes.

Finally, the definitions of "agriculture" and "farming" in RSA 21:34-a, which have been incrementally expanded over the years, cover a wide variety of activities related to the tillage of the soil; production of compost; the raising and sale of livestock, horses, birds, fish and insects; incidental transportation and housing of people; use, storage and transportation of equipment, materials and supplies; marketing at wholesale and retail; etc. The definition should be consulted for the complete list.

New Hampshire Supreme Court Decisions on Agriculture and Zoning

Occasionally, disputes concerning the scope of agricultural-type accessory uses reached the New Hampshire Supreme Court prior to the effective date of RSA 674:32-a to :32-c. These cases serve to illustrate the advantages agricultural uses enjoy under the legislation now in place.

In the early case of *Kimball v. Blanchard*, 90 N.H. 298 (1939), the zoning ordinance allowed sale of "farm produce on the premises" as an accessory use. The ZBA ruled that Kimball's sale of ice cream at a farm stand was prohibited because it is not a natural farm product. But the Court held that the term "farm produce" must have been intended to include such common farm-"manufactured" products as cider, maple syrup, butter and cheese. Thus, ice cream, too, could be sold. This case would have been easier to win today. Under RSA 674:1, III-b, the Court's liberal interpretation would be statutorily encouraged, and RSA 21:34-a, III defines a farm stand as agricultural as long as 35 percent of the product sales in dollar volume comes from products of the farm.

In *Windham v. Alford*, 129 N.H. 24 (1986), stabling of horses was held not to be a permitted accessory use to residential use because, at that time, it was not, as is required for an accessory use, "customarily subordinate and incidental" to residential use in the town. Today, in the absence of specific provisions in the zoning ordinance, stabling of horses would probably be regarded as "agriculture" or "farming" under RSA 21:34-a, and presumably permitted as an accessory use under RSA 674:32-a.

In *Salem v. Wickson*, 146 N.H. 328 (2001), as an accessory use to a pig farm, Wickson mixed stockpiled manure with sand and other materials and trucked it off the site to market. After the working farm ceased operation, Wickson continued the manure business on the site, trucking in manure from elsewhere, mixing, stockpiling and ultimately trucking it off to market. The Court held that, without the pig farm as a permitted principal use, the manure operation was not permitted by the zoning ordinance. Today the outcome might be different, depending on the precise nature of what Wickson was producing. In 2006, "compost" was inserted in the list of agricultural activities in the definition of "agriculture." RSA 21:34-a, II (11). "Compost" is defined in RSA 149-M:4, IV as "a stable, humus-like substance which is derived from a process involving the biological decomposition of any readily biodegradable material, such as animal manure, garbage, yard waste, septage, sludge, or other organic solid wastes, and which can be beneficially re-used for land application." Also, Wickson might be able to re-establish the pig farm under RSA 674:32-b.

Recommendations

If they have not already done so, municipalities should review their zoning ordinances to deal with the revival of agriculture in New Hampshire. The Office of Energy and Planning (OEP) has a chapter titled "Agricultural Incentive Zoning" in its *Innovative Land Use Planning Techniques: A Handbook for Sustainable Development*, together with a model ordinance. These materials are available on the OEP website (<http://www.nh.gov/oep>) under "resource library" and "innovative land use planning." The focus is on promoting agricultural uses in areas well-suited for them and providing appropriate buffers in housing developments near agricultural uses.

Particular attention should also be paid to what sorts of agriculture are appropriate within areas of relatively high-density residential development, since that is where friction is most likely to occur. Crops and horticultural commodities are permitted uses everywhere, but municipalities have discretion concerning farm animals and farm stands and other typical "accessory uses."

Under the statutes summarized here, omission of reference to agriculture will be deemed to permit all sorts of agriculture. Vague or general references to agriculture will be interpreted liberally to permit agricultural activity. If a municipality wishes to draw lines in terms of which agricultural activities to permit and the scale of operations, the ordinance should be specific. For example, it should identify which animals are permitted and how many are permitted. Horses may be deemed appropriate in a district where pigs are not. Ten chickens on a small lot may be acceptable where 40, including roosters, would be a nuisance. A local definition of "agriculture" can be adopted if only some of the

activities in RSA 21:34-a are deemed desirable. (In the case of preexisting agricultural uses, however, the broad definition of RSA 21:34-a controls under RSA 674:32-b). For special exceptions, of course, good zoning practice requires that all relevant criteria must be set forth in the ordinance. RSA 674:33.

New Hampshire law certainly encourages local agriculture and discourages unnecessary barriers in zoning and planning regulations. It is up to municipalities to do the hard work to achieve the proper balance for each community. As the U.S. Supreme Court famously observed in the seminal zoning decision, *Euclid v. Ambler Realty Co.*, "A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard." 272 U.S. 365, 388 (1926). Or a chicken coop in Saskatoon.

David Connell is legal services counsel with the New Hampshire Local Government Center's Legal Services and Government Affairs Department. For more information on this and other topics of interest to local officials, LGC's legal services attorneys can be reached Monday through Friday from 8:30 a.m. to 4:30 p.m. by calling 800.852.3358, ext. 384.

RSA 21:34-a Defines 'Agriculture' and 'Farming'

A wide variety of activities related to: the tillage of the soil; production of compost; the raising and sale of livestock, horses, birds, fish and insects; incidental transportation and housing of people; use, storage and transportation of equipment, materials and supplies; marketing at wholesale and retail; etc.

Note: The RSA should be consulted for a complete definition.

Agriculture-Friendly Property Tax Exemptions

The legislature has passed several measures encouraging agriculture through favorable property taxation treatment.

Current Use Taxation for Farm Land Tracts Smaller than Ten Acres

Most everyone is familiar with current use taxation under RSA 79-A. The criteria for eligibility for current use taxation are adopted through administrative regulations by the Current Use Board. The general rule is that a tract must be at least 10 acres in size to qualify. N.H. Admin. Code Cub 304.01 (b) (1). Less well known, however, is Cub 304.01 (b) (3), which allows current use taxation for "a tract of undeveloped land of any size, actively devoted to the growing of agricultural or horticultural crops with an annual gross income from the sale of crops normally produced thereon totaling at least \$2,500 . . ." The landowner must demonstrate to local assessors each year that at least \$2,500 was earned during the previous year from crops grown on the land. Cub 304.16. The landowner's contiguous land also becomes entitled to favorable current use assessment. Cub 304.17.

Exemption for Demountable, Plastic-Covered Greenhouses

Under RSA 72:12-d demountable, plastic-covered greenhouses and certain appurtenances are exempt from property taxation, so long as they are designed and used for growing agricultural products and not the sale of non-agricultural products.

Discretionary Barn Preservation Easements

The owner of an historical barn or other agricultural structure may apply to the governing body to grant a preservation easement to the municipality under RSA 79-D. The governing body must determine whether the easement would meet the statutory test for a public benefit. The structure must either provide scenic enjoyment to the public; have historical importance; or contribute to the historic or cultural integrity of a property eligible for listing on the national or state registers of historic places or a locally designated historic district. RSA 79-D:3. The statute sets forth the application process, and the governing body's decision is subject to appeal to the superior court or board of tax and land appeals (BTLA). When a discretionary easement is accepted, the qualifying agricultural structure will be assessed during the duration of the easement (at least 10 years) at between 25 and 75 percent of full value. RSA 79-D:7.

Farm Structures and Land Under Farm Structures

When adopted by the legislative body of a municipality, RSA 79-F requires the assessing officials to appraise qualifying farm structures for no more than replacement cost less depreciation and the land under qualifying structures at no more than 10 percent of its market value. RSA 79-F:4. To qualify, a structure must be used for specified agricultural uses and be contiguous to a minimum of 10 acres of open space land. RSA 79-F:3, IX. The statute sets forth an application process, and the assessing officials' decision is appealable to the superior court or BTLA. Similar to current use taxation, upon change of use to a non-qualifying use, the farm structure and land is subject to a use change tax at the rate of 10 percent of the full value assessment. RSA 79-F:5.

David Connell is legal services counsel with the New Hampshire Local Government Center's Legal Services and Government Affairs Department. For more information on this and other topics of interest to local officials, LGC's legal services attorneys can be reached Monday through Friday from 8:30 a.m. to 4:30 p.m. by calling 800.852.3358, ext. 384.

< [Back to Town And City Home \(/TownAndCity\)](#)