

Legal Q AND A

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Local Regulation of Agricultural and Horticultural Operations

Q: Is there a statutory definition of farm?

A: Yes, RSA 21:34-a defines farm as “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.”

Q: Are there statutory definitions of agriculture and farming?

A: As further provided in RSA 21:34-a, the words “agriculture” and “farming” mean all operations of a farm, including: (1) the cultivation, conservation, and tillage of the soil; (2) the storage, use, and spreading fertilizer; (3) the use of agricultural chemicals; (4) raising and sale of livestock; (5) breeding, boarding, raising, training, riding instruction, and selling of equines; (6) commercial raising, harvesting, and sale of fresh water fish or other aquaculture products; (7) raising, breeding, or sale of poultry or game birds; (8) raising bees; (9) raising and breeding of domesticated strains of fur-bearing animals; (10) production of greenhouse crops; (11) production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops and any practice on the farm incident to, or in conjunction with, such farming operations.

Q: Is there a definition of what constitutes a farm stand?

A: Yes, RSA 21:34-a states that a farm roadside stand shall remain an agricultural operation and not be considered commercial use, 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.

Agricultural Operations: Nuisance Issues and Preservation Restrictions

Q: Are there any laws that limit municipal action regarding land that has been preserved for agricultural purposes?

A: Under RSA 432:26, before a governmental body acquires the development rights or takes action to release or approve an agricultural preservation restriction, the body shall consider the public interest in such agricultural preservation; any national, state, regional, or local program in furtherance thereof; and any state, regional, or local comprehensive land use plan.

Q: Are agricultural operations afforded any protection from nuisance claims by neighbors?

A: Under RSA 432:33, no agricultural operation can be found to be nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This does not exempt farms from public health and applicable environmental regulations.

Planning and Zoning Protective Legislation for Agriculture and Horticulture

Q: Are there declared statutory purposes that all zoning ordinances must follow with regards to agricultural uses?

A: RSA 672:1 (III-b) 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 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. . . . 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[] . . .” These sections express intent and prescribe principles for construing statutes, but are not a direct substantive mandate.

Q: Are agricultural uses afforded any special status as uses of land when not specifically mentioned in a zoning ordinance?

A: 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 that a zoning ordinance “prohibits uses for which it does not provide permission.” See *Treisman v. Kamen*, 126 N.H. 372, 375 (1985).

Q: Are there special rules for the expansion or change of use for existing agricultural uses?

A: 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.

Q: Can a zoning ordinance prohibit growing crops or horticultural plants?

A: No. 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.

Q: Is the ZBA or Building Code Board of Appeals required to give special deference to agricultural operations?

A: 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 the Department of Agriculture, Markets and Food under title XL [RSA 425 through RSA 439] of the statutes.

Real Estate Assessment, Current Use, and Exemptions

Q: Is land used for agricultural purposes entitled to favorable real estate assessment standards?

A: Under RSA 432:23 land designated

as an agricultural preservation site and utilized for agricultural production is assessed for property tax purposes at values no greater than those determined to be the fair market value for such land as determined by the Current Use Board established by RSA 79-A:3.

Q: Is there a minimum amount of acreage necessary to obtain current use taxation status for a farm?

A: Any open space devoted to farm purposes having 10 acres or more is entitled to current use taxation under RSA Chapter 79-A. On the other hand, a tract of land of any size devoted to the growing of agricultural or horticultural crops with an annual gross income from the sale of those crops totaling \$2,500 is also entitled to current use taxation treatment. NH Admin Code Cub 304.01.

Q: What real estate tax exemptions can an agricultural operation qualify for?

A: Under 72:12-d, demountable, plastic-covered greenhouses are exempt from real estate taxation if (1) removal of the greenhouse will not affect the utility of the underlying real estate; (2) the greenhouse is not permanently affixed to the underlying real estate; (3) the removal of the greenhouse can be accomplished without significant damage; (4) the greenhouse is specifically designed and used for agricultural products; and (5) the greenhouse is not used for the retail sale of any non-agricultural products.

Q: What is a discretionary easement and how does a discretionary easement protect farm buildings?

A: RSA Chapter 79-D, Discretionary Preservation Easements, creates a mechanism to encourage the pres-

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ervation of historic New Hampshire barns and other agricultural buildings by authorizing municipalities to grant property tax relief to barn owners who (a) can demonstrate the public benefit of preserving their barns or other historic farm buildings and (b) agree to maintain their structures throughout a minimum 10-year preservation easement. A discretionary easement is imposed for a minimum of ten years and grants tax relief within a range of a 25% to 75% reduction of the structure's full assessed value. Maintaining and repairing the building will not result in an increase to its assessed value for property tax purposes.

Q: Can a municipality grant beneficial real estate tax assessments for property used for agricultural purposes?

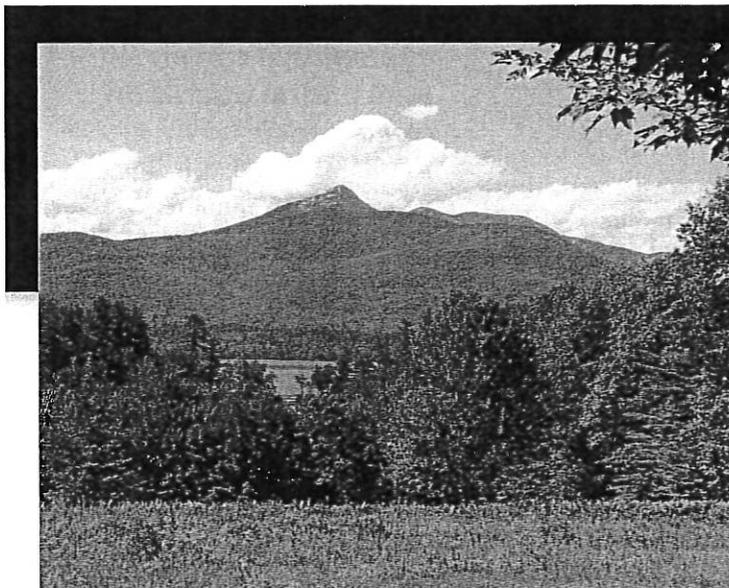
A: A municipality may adopt the provisions of RSA Chapter 79-F, Taxation of Farm Structures and Land Under Farm Structures. The select board or assessing officials in any municipality adopting RSA Chapter 79-A are thereafter required to appraise qualifying farm structures for

no more than their replacement costs less depreciation. In addition, the land under the qualifying farm structure can be assessed at no more than 10 percent of its market value.

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