

Legal Framework Governing Community Agriculture

Note: Statutes
summarized here, full
text not included



RSA 432:32

Defines “Agricultural Operation”

Means
“farm”
“farming”
“agriculture”
as defined in RSA 21:34-a



RSA 21:34-a

1. Farm - land, buildings, or structures
2. Agriculture and Farming – mean the same thing

Quite broad – “all operations of a farm”

Not entirely clear on all points

3. Roadside Stand

4. Farmers Market & Agritourism

Different than agriculture or farming

Not clear how Right to Farm applies to
Markets and Agritourism



RSA 432:33

Immunity from nuisance lawsuit, if

1. conditions change in or around the farm
2. farm has been in operation for at least 1
year
3. farm was not a nuisance when it began

But, if farm “injurious to public health or safety” not immune from lawsuit



RSA 147:1

Health officers of towns (with Selectboard or DHHS approval) may make local laws:

1. That “in their judgment the health and safety of the people require”
2. “Relative to the sanitary and health conditions for issuing a license to food serving establishments”



RSA 432:33 with 147:1



If violate:

1. local laws about health and safety; or
2. local food service license

=

Not immune from lawsuit for nuisance



RSA 432:34

Not immune from lawsuit for
nuisance if negligent or improper
operations

Not negligent or improper if
“conform” to laws (federal, state,
and local)



RSA 432:35

Even though there's a Right to Farm,
Departments of
Environmental Services and
Agriculture
can (must) still enforce their laws



RSA 431:34

Requires N.H. Dept. of Ag to publish

Best Management Practices

for handling manure, agricultural
compost, and commercial fertilizer

Most laws (and other restrictions)
require following BMPs



RSA 431:35

Requires N.H. Dept. of Ag. to investigate improper handling of manure, compost, or fertilizer

No Right to Farm protection if improper handling found



RSA 674:32-a

Agricultural activity not explicitly
permitted by zoning ordinance

“shall be deemed to be permitted”

(so long as comply with BMPs and
laws)



RSA 674:32-b

With 2 exceptions (next slides)

Agricultural uses “deemed permitted” “may without restriction” be

1. Expanded
2. Altered to meet changing technology or markets
3. Changed to another agricultural use

So long as comply with BMPs and laws



RSA 674:32-b(a)

Exception 1

1. New establishment
2. Re-establishment after disuse
3. Significant expansion of keeping of livestock, poultry, or other animal

Town may require special exception, building permit, or other approval



RSA 674:32-b(b)

Exception 2

1. New establishment
2. Re-establishment after disuse
3. Significant expansion of farm stand, retail operation, or other use involving on-site transactions with the public



RSA 674:32-b(b) (cont'd)



Town may

1. require special exception, building permit, or other approval
2. Regulate to prevent traffic and parking from adversely impacting adjacent properties, streets, sidewalks, or public safety



RSA 674:32-c

The clear part:

Tilling of soil and growing and
harvesting of crops may not be
prohibited in any zoning district



RSA 674:32-c (cont'd)



The not-so-clear part:

For new, re-established, or expanded
operations

Towns can generally apply local laws



RSA 674:32-c (cont'd)



But not if “literal application would effectively prohibit an agricultural use” or “would otherwise be unreasonable in the context of an agricultural use”

Waivers shall be granted for such “effective prohibition” and “unreasonableness”



RSA 674:32-c (cont'd)



But not if waiver “would have a demonstrated adverse effect on public health or safety, or the value of adjacent property”

Waiver continues only so long as used for permitted ag purpose



Right to Farm Summary



1. Made of the different laws
2. Has significant limitations and ambiguity
3. Provides a lot of protection for lawful and well-managed farms



Agritourism:



Forster's Christmas Tree Farm v. Town of Henniker



Take Home Message:

Agriculture does not include agritourism

(Agritourism is not agriculture)



Henniker:

“See New Hampshire Revised Statute
Annotated Chapter 21:34-a Farm,
Agriculture, Farming”



Hosting events is not agriculture
because it is not a practice “incident to”
the tree farm under 21:34-a, II(b)



Even if agritourism, agritourism is not agriculture



Hosting events not an accessory use



Does the State preempt municipalities?

Probably not.



Forster:

Whether the municipality's ordinance, which prohibited use of a tree farm for commercial events such as weddings, celebrations, and the like, was preempted by the state statute defining agritourism?



Forster's assertion:

“statutory definition of ‘agritourism’ mandates that the Town “cannot ... prohibit otherwise valid agritourism enterprises that meet the statutory definition.”



Court's rejection of Forster's Assertions:

- “RSA 21:34-a is a set of definitions, not a comprehensive statutory scheme aimed at superseding local regulation.”



- “RSA 21:34-a, VI merely defines
“agritourism.”



- “RSA 21:34-a, VI contains no mandate to municipalities. It does not require that municipalities adopt the same definition. Nor does it mandate that municipalities allow activities that meet the statutory definition of ‘agritourism.’”



**“The other provisions in RSA 21:34-a
likewise contain no mandate to
municipalities.”**



RSA's

674:17, I(i)

672:1, III-b

672:1, III-d

674:32-a

674:17, I(i)

do not “require municipalities to allow
‘agritourism’ within their borders”



Take Home Message:

If a municipality defines agriculture differently than that state definition, whether more broadly or more narrowly, the municipality's definition will likely not be preempted by state law



State Definition of Agriculture: RSA 21:34-a

- I. “farm”
- II. “agriculture” and “farming”
 - a. all operations of a farm
 - b. Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to
- III. farm roadside
- IV. Best Management Practices
- V. “farmers’ market”
- VI. “agritourism”



Definition of Agriculture

Has limits



Not unlimited

Forster - ejusdem generis
(Latin for “of the same kind or class”)



“Hosting such events also is not included in subpart (b) as a practice incidental to farming operations. Although subpart (b) states that its list of practices is not all inclusive, under the principle of ejusdem generis, we construe the general words in that subpart (“any practice on the farm incident to, or in conjunction with such farming operations”) to embrace only practices similar to those included in the enumerated list. Hosting events such as the petitioner proposes is not similar in nature to the practices listed in subpart (b).”



Take Home Message:

While the state definition of agriculture is broad, it does have limits

