

Office of Energy & Planning 2014 Spring Conference

Agriculture, "Agritourism" & Local Land Use Controls

**Presentation by
Daniel Crean
New Hampshire Municipal
Lawyers Association
&
Crean Law Office**



Today's Sessions

- **Presenters:**
 - **Attorney Michael L. Donovan**
 - **Concord, NH**
 - **Daniel Crean**
 - **Pembroke, NH**

Today's Sessions

Topics & Agenda

- Session 1. Statutory Language & Legislative Policy
Attorney Daniel Crean***
- Session 2. Agritourism: Statutes and Ordinance Language
Applied
Attorney Michael Donovan***
- Session 3. Urban & Suburban Agriculture: Selected Issues
Front Yard Gardens, Back Yard Chickens & Pot
Bellied Pigs
Attorney Daniel Crean***
- Session 4. Large-Scale Agriculture and Land Use Controls
Attorney Daniel Crean***

Session 1

Statutory Language & Legislative Policy

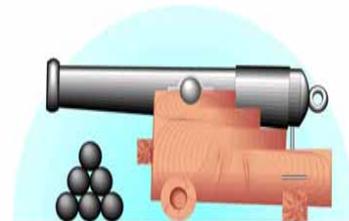
A. Police Power v. Zoning Power

NH RSA Title LXIV (chapters 672-677)

RSA 31:39, I (a), (b), (e), (f), (j), & (k)

“Canons” of statutory construction

- ❖ **Specific takes preference over general**
- ❖ **Interpret so as to give effect to statutory purpose**



Session 1:

Statutory Language & Legislative Policy

B. Policy & Preemptive Effect

General Nature of Preemption in NH

RSA 672:1 Declaration of Purpose

III-b Importance of Agriculture

III-c Importance of Forestry

III-d Unreasonable Interpretation

RSA 21:34-a

(including par. VI – agritourism)



And SB 141? See Appendix 1

- **As amended by Senate, creates RSA 425:2-a**

I. It is the policy of the state of New Hampshire through the department of agriculture, markets, and food and in conjunction with other state agencies to encourage and support local food producers, farming, and fisheries including businesses engaged in agriculture, the raising and care of livestock, dairy, fishing, foraging, and aquaculture, agritourism, and the associated local and regional businesses that process, purchase, distribute, and sell such food throughout the state.

And SB 141? See Appendix 1

- **As amended by Senate, creates RSA 425:2-a**

II. (g) Economic development opportunities among New Hampshire's cities and towns are facilitated by harmonizing local and state law and removing obstacles and excessive financial burdens to farms and associated businesses, including farmers' markets, cooperatives, food hubs, fisheries, and processing centers.

And SB 141? See Appendix 1

- **As amended by Senate, creates RSA 425:2-a**

III. To the extent possible, local governments shall consider the policy and principles of this section when adopting local law, or when enforcing existing law and regulation.

Session 2

Agritourism and Local Land Use Controls

Attorney Michael Donovan

Session 3

Urban & Suburban Agriculture: Selected Issues

Front Yard Gardens, Back Yard Chickens & Pot Bellied Pigs

Attorney Daniel Crean

Urban - Suburban - Residential Agriculture

- **According to the American Planning Association:**
 - **Entails the production of food for personal consumption, education, donation, or sale, and includes associated physical and organizational infrastructure, policies, and programs within urban, suburban, and rural built environments.**
- **Consider “omnipresent” purpose of zoning to “preserve rural environment.”**

Some facts & opinions on food from UNH Prof. John E. Carroll's The Real Dirt

- **NH is 3-4% food self-sufficient.**
- **On average, food travels over 1500 miles from source to table.**
- **90% of our food is transported by truck.**
- **There is a huge inefficiency in the the amount of energy used in fields or farms to the units obtained (due in part to reliance on oil & natural gas).**

NOT NEXT TO MY HOUSE

- **Front Yard Gardens**
 - **What do some ordinances bar?**
 - **Incompatible uses (Euclidean Zoning)**
 - **Express language**
 - **Why prohibit or limit?**
 - **Aesthetics**
 - **Safety**
 - **Nuisance (e.g., odors, waste, noise, and traffic)**



On a larger scale, consider:

***Spur Industries v. Del E. Webb
Development Co.***



More practically speaking . . .

- **Examples of the front yard garden battles . . .**
 - **Keene**
 - **DeKalb, GA**
 - **How much produce is too much?**
 - **Delaware**
 - **Michigan**
- **Appendix 1**
 - **Orlando**
 - **Miami Shores**
- **Back-to-Earth & Accommodation**
 - **Sacramento**

Impacts and Policy

Does it really matter if local zoning ordinances

- **Regulate . . .**
- **Limit . . .**
- **Prohibit . . .**

- **Front yard gardens?**

A CHICKEN IN EVERY ~~POT~~ YARD?

- **Why do disputes arise?**
 - **Language & Specificity**
 - **“Nuisances”**
 - **Changes**
 - **Neighborhoods**
 - **Fashions & Trends**
 - **Property Values**
- **Other concerns:**
 - **Free Ranging**
 - **Ban on Roosters**
 - **Elderly fowl**
 - **Abandoned**



How should/may BYC issues be resolved?

- **Beloit, WI Example**
 - **Right or wrong for NH municipalities?**
- **If not right for NH, what else is there to do?**
 - **How about this as a requirement?**



For elderly fowl, how about “Hensioners”?



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Or Perhaps this. . . .

Chicken Stew



PET ME OR EAT ME?

A Variant on "Pig in a Parlor"

- **The Big Question - Are Pot Bellied Pigs**
 - **Livestock, feedstock, or domestic pets?**
 - **In other words, the issue might be summarized as: "Are they pets or are they dinner?"**



Why the argument?

- **Who are the parties?**
 - **Planners and Officials**
 - **Neighbors**
 - **Animal Rights Activists**
 - **Lawyers (of course)**
- **Source of some problems are like those in other issues discussed here**
 - **Language & Specificity**
 - **“Nuisances” – Perceived Dangers**
 - **Changes**
 - **Neighborhoods**
 - **Fashions & Trends**
 - **Property Values**

If there is a problem, how about a solution

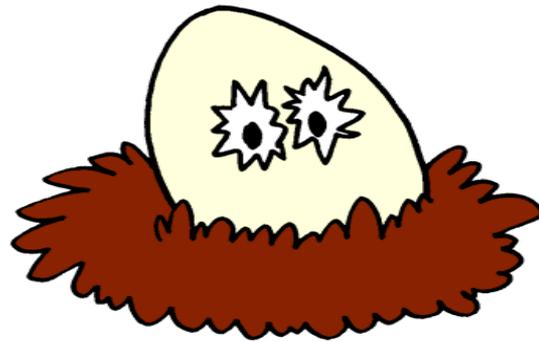
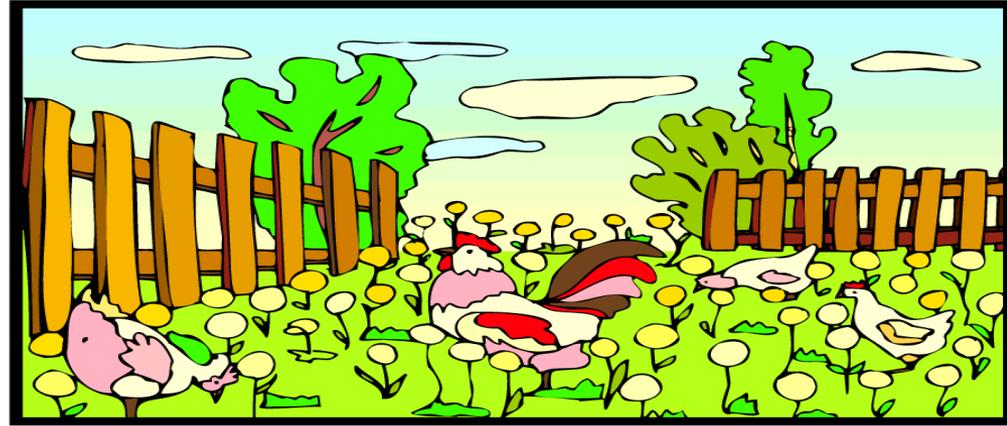
- **Riverside, CA**
 - **License**
 - **Regulation**
 - **Standards**
 - **Leashing**
- **What else might be done?**

Large Scale Agriculture

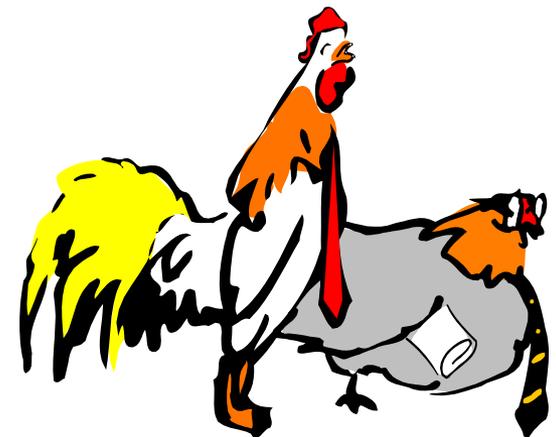
- **How Similar or Dissimilar are Dunbarton & Pennsylvania Examples Cited in Paper**
- **How should large scale operations be controlled?**
 - **Zoning v. SPR**
 - **More importantly:**
 - **Why regulate?**
 - **What effects/concerns need to be addressed?**
 - **Then, decide how to appropriately control!**

Dunbarton: Which Comes First?

- **The Chickens**
or
- **The Eggs**



- **Neither**
 - **THE LAW SUIT**



Dunbarton Case

- **Issues Raised**
 - **Permitted Use or Not?**
 - **SPR For a Permitted Use?**
 - **Sufficiency of Evidence?**
 - **Past Practice?**
 - **Intent in Acquiring Property?**
 - **Reliance of Property Owner?**
 - **Was There an Appealable Decision?**
 - **If an Error Committed, What is the Remedy?**

Questions . . .
and Maybe Some Answers

Thank You

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