

**“AGRITOURISM”
AND
LOCAL LAND USE CONTROLS**

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**N.H. OFFICE OF ENERGY AND PLANNING
ANNUAL SPRING PLANNING & ZONING CONFERENCE**

DISCUSSION OUTLINE: "AGRITOURISM"

PART I: GENERAL BACKGROUND

1. What is "Agritourism"?

- NH RSA 21:34-a, 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.

- NH Farm Viability Task Force Report (2005).

Proposal 5. Add the following definition to RSA 21:34-a. "Agritourism: based on attracting visitors to farm operations for the purpose of eating a meal, making overnight stays, enjoyment, education or active involvement in the activity of the farm or operation."

- U.S. Department of Agriculture.

- N.H. Department of Agriculture.

-Director Jellie's perspective in 2007.

-Commissioner Merrill's perspective in 2012.

- Wikitravel.

2. Some examples of Agritourism in New Hampshire

- Dimond Hill Farm, Concord
- Alyson's Orchard, Walpole
- The Rocks, Bethlehem

3. Henniker Zoning Ordinance Definitions.

AGRICULTURE: See New Hampshire Revised Statute Annotated Chapter 21:34-a Farm, Agriculture, Farming. [Revised 3-8-2005].

ACCESSORY BUILDING OR USE: A building or use subordinate and customarily incidental to the main building or use on the same lot.

Henniker Zoning Ordinance, § 133-3.

PART II
FORSTER'S CHRISTMAS TREE FARM & GIFT SHOPPE
v.
TOWN OF HENNIKER, ET AL

1. The setting.
2. How it started.
 - Complaint.
 - Notice of Violation.
 - Administrative Appeal.
3. Issues before the ZBA.
 - Grandfathering.
 - Accessory use.
 - Permitted by statutes.
 - Preemption.
4. ZBA Decision No. 1.
5. **Its “Agritourism”!** Facts argued by applicant.
 - Excerpts from websites of 9 farms which have weddings.
 - A list of 16 farms which have weddings, which includes the above 9. These farms are located in New Hampshire, Massachusetts, Maine and Vermont.
 - The 2005 “New Hampshire Farm Viability Task Force Report.”
 - U.S. Department of Agriculture press release on its Agritourism Initiative.
 - Wiki travel website on Agritourism.
 - Two letters from the NH Commissioner of Agriculture
 - Testimony from the proprietor of Dimond Hill Farm in Concord.
 - Selected excerpts from the legislative history behind the statutory definition of “agritourism.”

- Applicant did not give the ZBA any specific information about revenues from weddings and special events vs. tree farm operations. Nor did he indicate how many Christmas trees were harvested each year. He also declined to provide information about how many weddings would be held each year.

6. **Its not “Agritourism!** Facts argued by abutters.

- A January 2012 Iowa State University Agricultural Marketing Resource Center profile giving examples of “agritourism” indicating that rural weddings are a related activity, rather than “agritourism.” This publication indicates that the average U.S. wedding costs \$21,000 to \$24,000.
- A 2007 American Forest Foundation Farm Tree Recertification form indicating only 3000+ trees at the Forster farm.
- Projections that income from a reasonable number of weddings would likely dwarf income from the sale of Christmas trees.
- Projections that traffic from weddings would dwarf the traffic generated by Christmas tree harvesters.
- Evidence that of the list of 16 farms provided by petitioner only one is a tree farm (The Rocks), which is a far more substantial agricultural operation than petitioner’s modest tree farm.
- 2007 U.S. Census of Agriculture report indicating that there are 27,000 farms in New Hampshire, Maine, Massachusetts and Vermont.
- A February 6, 2013 newspaper article quoting the petitioner as stating that it is the view which attracts the weddings.
- Excerpts from the legislative history of the definition of “agritourism” which established that the legislature did not intend to make “agritourism” part of the definition of “agriculture.”
- A September 14, 2010 Massachusetts Department of Agricultural Resources “Agricultural Law Memo” outlining a methodology for determining whether a given activity qualifies as “agritourism.”
- Written and oral testimony about the dangers of heavy traffic volumes; potential danger arising from the difficulty that emergency vehicles will have reaching the wedding venue; the lack of a firefighting water supply at the venue; and the impact of the wedding events on the use and enjoyment and values of neighboring residential properties.

7. ZBA Decision No. 2
8. Merrimack County Superior Court Decision.
9. Current Status.
 - Injunction in effect.
 - Appeal filed with N.H. Supreme Court.
 - Attorney's fees dispute.
10. Some other interesting legal issues of case.
 - Method of seating board members for a rehearing.
 - Attorney's fees when municipality prevails on enforcement counterclaim.
 - Delegation of enforcement authority to town planner.
 - Premature Supreme Court Appeal.
11. Site Plan Review?

PART III: WHAT NEXT?

1. Senate Bill 354.
2. MD's Perspective.
3. An Analytical Framework: Massachusetts Department of Agricultural Resources "Agricultural Law Memo" outlining a methodology for determining whether a given activity qualifies as "agritourism."

“AGRITOURISM” MATERIALS

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CHAPTER 21
STATUTORY CONSTRUCTION

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, dairy cows and the production of milk, beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus elephus 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.



Purpose

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-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;

Agricultural Commission

674:44-e. Agricultural Commission.

An agricultural commission may be established in accordance with RSA 673 for the proper recognition, promotion, enhancement, encouragement, use, management, and protection of agriculture and agricultural resources, tangible or intangible, that are valued for their economic, aesthetic, cultural, historic, or community significance within their natural, built, or cultural contexts. The word "agriculture" shall include the entirety of RSA 21:34-a, which is the definition of farm, agriculture, and farming.

Site plan review regulations adopted without consideration for the unique characteristics and needs of agriculture risk discouraging farming and preventing farmers from making changes and improvements needed to remain economically viable. The increasing technical sophistication of local site plan review regulations places excessive burdens on the agricultural community. The planning board in a community that wants to encourage agriculture can take several steps to prevent burdensome regulatory costs. State law (RSA 674:43) allows the local legislative body or the planning board to establish threshold limits below which site plan review is not required, but such thresholds are based only on the size of the project or tract. Communities uncomfortable with complete exemption of farms from this local review process could establish a reduced or modified site plan review process. Modern farm systems can be very complex and specialized. Planning boards can get the expert information and advice they need to understand and evaluate these plans properly from UNH Cooperative Extension, USDA Natural Resources Conservation Service, the New Hampshire Department of Agriculture, Markets, and Food, or conservation districts.

Proposal 4. Rescind RSA 259:3 (Title XXI, Motor Vehicles, Words and Phrases Defined) and RSA 259:32 (Title XXI, Motor Vehicles, Words and Phrases Defined). A more comprehensive and current definition of "Farm, Agriculture and Farming" appears in RSA 21:34-a, which includes substantially all of the content of the RSA's proposed for deletion.

* Proposal 5. Add the following definition to RSA 21:34-a. "Agritourism: based on attracting visitors to farm operations for the purpose of eating a meal, making overnight stays, enjoyment, education or active involvement in the activity of the farm or operation."

Proposal 6. Strike the following from RSA 147:10, "... and no pen or sty for swine, ...". RSA 21:34-a defines agriculture, RSA 147:10 is too vague and can be misconstrued to encompass all swine operations commercial or otherwise.

Proposal 7. Amend RSA 147:13 with the following, "or agricultural operations as defined by RSA 21:34-a.". As written the law is vague and can be misinterpreted to include agricultural activities.

Proposal 8. Rescind RSA 259:32. A better more encompassing definition occurs in RSA 21:34-a.

Proposal 9. RSA 261:84 Farm Plates. Add a section similar to section V of RSA 261:82 Agricultural Plates to this RSA. It would provide a clerk justification for issuing the plate and puts the onus on the applicant to state that they are in fact a farmer.

Proposal 10. Restrict Cities and Towns from overriding an RSA that provides a specific exemption to that RSA. RSA 320:3, II, specifically exempts, "*Any person selling the product of his own labor or the labor of his family or the product of his own farm or the one he tills*" from the requirement for a license under RSA 320:2, which states "*No hawker or peddler shall sell or barter or carry for sale or barter, or expose therefore[e], any goods, wares or merchandise, unless he holds a license to do so as herein provided.*" RSA 47:17 Bylaws and Ordinances, grants certain cities the right to be self-inspecting and to establish their own ordinances that are more restrictive than state RSAs. The City of Nashua, for example, requires both the Nashua farmers' market and the vendors selling at that market to obtain Hawkers and Peddlers Licenses. This places an undue economic burden on the farmers' market and the vendors.

Agritourism

From Wikitravel



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This article is a travel topic

Agritourism means travel organized around farming, small-scale food production or animal husbandry. Visiting a working farm or ranch for the purpose of enjoyment and education are key parts of this often rural experience. Farmer's markets, wine tourism, cider houses and corn mazes all constitute examples of agritourism. Travelers who participate in this type of vacation frequently desire to see how food is grown and prepared or to learn how animals are raised.

Understand

"The small landholders are the most precious part of a state."

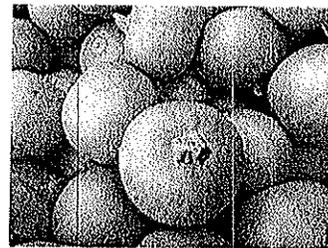
---Thomas Jefferson

Sometimes spelled, "agrotourism," Agritourism the idea of bringing urban residents to rural areas for leisure travel and spending.

In an increasingly mechanized world, many people have lost touch with how their food is produced, or the region where it originated. Agritourism offers tourists a chance to reconnect with the land, providing a "hands on experience" with local foods. Agritourism activities include picking fruits, tasting wine, tending bees, milking cows and other educational pursuits.

Agritourism immerses visitors in the heritage of a particular culture. Take the time to stop by a working farm or ranch, you will most likely discover people with an intimate knowledge of the history and traditions of their region. A traveler to Agros in Cyprus who helps the villagers gather roses in May, will learn something about the area's history producing rose water. Horseback riding on a dude ranch in Montana offers a glimpse into the lives of cowboys from the "Old West" of the U.S.. A visit to a food museum such as the Musee de la Boulangerie Rurale [1] in Luberon can teach about the history of rural breadmaking in the Provence region of France.

For the most iconic agritourism areas, safeguarding the integrity of their products is nothing less than a source of national pride. In the European Union, Protected Designation of Origins (PDOs) look after the integrity of a wide variety of foods, such as Champagne wine in France, Asiago cheese in Italy and Melton Mowbray meat pies in England. All these regions are eponymous with the foods they produce, while a tourism industry has sprung up around that particular food's production.



Pumpkins in a Farmer's Market, Montreal, Canada

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Like ecotourism, agritourism focuses on travel that is low-impact and empowering to local communities, both socially and economically. Recognizing the need to diversify their farm products and supplement their agricultural incomes, many farmers consider agritourism as a viable option for the long-term sustainability of their farms. Agritourism can prop up an agricultural economy when local producers can no longer compete economically. The tourism takes place in a farm setting and is secondary to the primary agricultural operation.

Overnight stays

This can be as sophisticated as a bed and breakfast stay at a winery or as rustic as camping. One common variation is a farm stay, where guests help feed the animals and harvest the crops.

Dude ranches

A resort patterned after a ranch in the Western U.S., featuring camping, cattle ranching, horseback riding, and other outdoor activities. *

- **Dude Rancher's Association [2]** - Created in 1926, the DRA is the governing body of the U.S. West's dude ranch industry.
- **Ranch Heritage**
 - **Farm and Ranch Museum [3]** - Located in Gering, Nebraska, in a series of big red barns, the museum looks at ranching practices of the Great Plains.

Farms

In Europe, it's referred to as "schlaf im Stroh" in German, "aventure sur la paille" in French, or "sleeping in the hay" in English. Spend the night on a farm and help out with domestic chores and demonstrations of native crafts. This could be an overnight stay in a rustic hayloft in Switzerland, a remote cabin or outbuilding in Austria, or even a full-blown apartment and rooms for daily or weekly rent on a farm in France. Here are a few resources:

- **World Wide Opportunities on Organic Farms (WWOOF) [4]** - A chance for a farmstay combined with social activism and ecological practices.
- **The Bed & Breakfast and Farmstay Association [5]** - Serves New South Wales and the Australian Capital Territory, Australia.
- **Help Exchange [6]** - Organization that connects holiday backpackers to farms, ranches and stables in exchange for labor. Travellers agree to a few hours of work for lodging. It is a sometimes rural version of a hospitality exchange.
- **Hungarian Farmhouses** - "Village Tourism" is popular and very well developed in Hungary, and can be a remarkable experience. Start your research with *Hungary* [7], *National Federation of Rural and Agrotourism* [8] and *Centre of Rural Tourism* [9].
- **Romanian Farmhouses** - "Rural Tourism" is popular and well developed in Romania, life moves a little slower and follows ancient rhythms of tradition and culture. Start your research with *Romania* [10], *National Association of Rural Ecological and Cultural Tourism* [11].
- **Kibbutz Program Center [12]** - Nonprofit work studies program for young adults between 18 and 30 to work on a kibbutz farm in Israel.
- **Nekazalturismo Association [13]** - Rural guesthouse and farmhouse accommodation in Euskadi, Basque Country, Spain. Edificio Kursaal, Avda. Zurriola 1, 20002 Donostia-San Sebastian, Tel: +34 902 130 031. Email: agroturismo@nekatur.net.
- **Farm Heritage**
 - **Silos & Smokestacks National Heritage Area [14]** - One of 37 federally designated heritage areas in the U.S. and an affiliate of the National Park Service. Celebrates the history of America's agricultural revolution.
 - **Funen Village [15]** - Open air museum near Odense, Denmark, presenting 19th century agricultural life in the Danish province of Funen.
 - **Muckross House Traditional Farms [16]** - Visit three working farms in Ireland, demonstrating rural life during the 1930s and 1940s.
 - **National Museum of Agriculture Kačina [17]** - A branch of a popular Czech Republic collection in Prague, the Museum of the Czech Countryside features crop and animal production, rural crafts, country life and farm machinery.

Not every farm visit is work related or educational. A common variation is an "entertainment farm." These rural amusement parks offer barrel rides, haunted houses, inflatable bounce and jumps, crop art, displays of old farm equipment and other forms of recreation.

Wineries

Winery stays are popular on every continent save Antarctica. Given the romance, history and cachet of wine, many view vineyard retreats as a "high end" agritourism experience. For more information, see wine tourism.

- **Wine Heritage**
 - **Rheingauer Weinmuseum Brömserburg [18]** - Inside Brömserburg castle in Rudesheim, museum tells the history of wine production in the Rhine River Valley in Germany. Includes the world's oldest wine-related collection, as well as a sizable collection of wine presses dating back to the 17th century.

Recreation

Weddings & honeymoons

Many farmers and ranchers are supplementing their income by offering wedding and event venues. Rehearsal dinners, barbeques and other activities can combine with the wedding ceremony. If there is an inn or bed and breakfast on the premises, newlywed couples can make a rural experience a part of their honeymoon travel.

Hayrides

A ride in a wagon, flat bed trailer or truck piled high with loose straw or bales of hay. A traditional autumn, harvest time activity in North



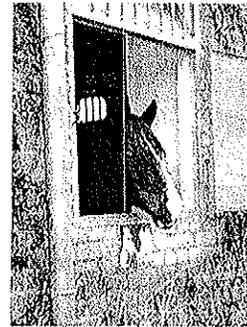
Vineyards in Bacharach along the Rhine Valley, Germany

America.

Horseback riding

Includes rodeos, horse farms and trail riding, the latter often directed by professional guides or outfitters.

- **Hungarian Equestrian Tourism Association** [19] - Countryside tourism in Hungary, as viewed from the back of a horse.
- **British Horse Society** [20] - Charity in the United Kingdom with a large number of resources for equine tourism around the globe.
- **Equestrian Heritage**
 - **Takekoma Inari Shrine and Horsemanship Museum** [21] - in Iwanuma in the Miyagi Prefecture of Japan. One of Japan's three major Inari shrines, featuring a monument inscribed with Matsuo Basho poems.



Careful, I bite: Domäne Mechtildshausen in Wiesbaden, Germany

Corn mazes

A labyrinth or hedgerow made out of a corn/maize field, or some other kind of tall growing grain. There are two main methods for creating a corn maze: growing it from the ground up using special seeding techniques plotted out from a GPS-linked grid map, or to cut the maze pattern through a regular field of corn.

- **Maize Maze Association of United Kingdom and Ireland** - [22]

Tanbo rice murals

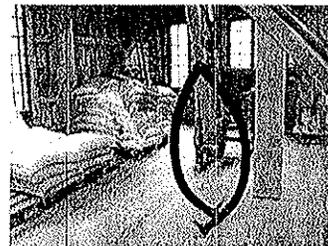
- **Inakadate, Aomori** - A village in Japan famous for growing large murals out of various strains of heirloom and modern rice. The murals can be viewed from a tower behind town hall.

Food production

Milk and cheese

Visit a place where milk, cream and other dairy products are processed and sold.

- **Numbur Cheese Circuit** - Visit this cheesemaking region in the High Himalayas of Nepal.
- **Chimay** - In Belgium, near the French border. Since the 1850s, the Trappist monks in Chimay have produced beer and cheeses to support their order.
- **Ag Heritage & National Dairy Museum of New Zealand** [23] - Explore the development of the dairy industry in New Zealand.
- **Appenzeller Schaukaserei** [24] - Audiovisual exhibits at this museum in Switzerland give information on the manufacture and aging of cheese.
- **Cuba Cheese Musuem** [25] - Located in Cuba, New York, educates visitors on the history of cheesemaking in western New York state.
- **Plansarski muzej** [26] - Museum of Alpine Dairy Farming in Slovenia. 19th century cheese factory, as well as the interior of an alpine dairy hut.
- **Snow Brand Milk Products Historical Museum** [27] - Large museum located in Sapporo, Japan. On the premises of Snow Brand Milk Products factory, where the company first produced butter in 1925. After learning about dairy farming and milk products, visitors can sample ice cream and milk made at the factory.



Grain Sacks and Hoist in a Working 18th Century Water Mill outside Quebec City, Canada

Vegetable gardens

They are "Schrebergartens" in Germany, "dachas" in Russia, "friggebods" in Sweden, or vegetable garden plots and simple country homes where city dwellers plunge their hands into the soil on the weekends. It's possible to rent these allotment gardens in many countries as an alternative stay to a hotel or youth hostel. There is no central directory or database for finding allotment garden lodging; the information must be ferreted out of the various national and regional agritourism bureau websites.

- **Ruralis** [28] - A consortium of rural and agritourism boards in Istria, Croatia. The Roman Emperors used to reward their legionaries with "latifundia", or little stone farm houses and garden plots. You can still stay in a handful along the Dalmation Coast.

Heritage Gardens - Legacy or heritage gardens preserve the biodiversity of heirloom vegetables that may have fallen out of favor.

- **Medicinal Plants and Vegetable Gardens** [29] - List of herb garden and vegetable garden museums in Wallonia, Belgium from the Belgium Tourism Office.
- **Nationaal Asperge en Champignonmuseum** [30] - Housed in an old barn, exhibits focus on old and modern methods of cultivating asparagus and mushrooms in the Netherlands.
- **Celery Flats Interpretive Center** [31] - A museum in Portage, Michigan, dediacted to celery cultivation.

Pumpkin farms

- **Windsor-West Hants Pumpkin Festival** - In Windsor, Nova Scotia, Canada, at the Windsor Waterfront and Exhibition Grounds. - / 902 798-9440 or / 902 798-2728. [32] Mid-October. This festival includes a number of pumpkin-related activities, but the highlight is the Pumpkin Regatta: contestants make boats out of giant pumpkins and paddle or motor them around Lake Pesaquid, often in silly costumes. Free.

Grain production

- **Society for the Preservation of Old Mills** [33] - With the colorful acronym of SPOOM, this organization offers visitor information on historic watermills, stone windmills and grist mills throughout the U.S.
- **Native Seeds** [34] - In an effort to preserve agricultural genetic diversity, this nonprofit group seeks out rare heirloom seeds adapted to

Exhibit 17

Rural Community Building

Resources for Farm Bureaus to help improve the quality of life in rural communities.
Posted by: SHM | 07/12/2010

USDA Announces Agritourism Initiative



United States Department of Agriculture (USDA) Secretary Tom Vilsack recently announced a new grant program, the Voluntary Public Access and Habitat Incentive Program (VPA-HIP). The program is aimed at providing access to private farm and ranch land for public use, on a voluntary basis by landowners, for activities such as hunting, fishing, mountain biking, horseback riding, hiking and bird watching. Secretary Vilsack cited economic development, fighting childhood obesity and the need for people to reconnect with the land as the benefits of this

program.

According to the 2007 U.S. Census of Agriculture, 23,350 farms indicated they provided agritourism and recreation services valued at \$566 million. Of the total farms, 3,637 farms indicated gross farm receipts of \$25,000 or more. Agritourism includes a wide array of farm and farm-related activities, including **outdoor recreation** (nature based tourism, fishing, hunting, wildlife study, horseback riding); **educational experiences** (day camps, hands-on chores, cannery tours, cooking classes, wine tasting, on-farm museums); **entertainment** (harvest festivals, barn dances, "petting" farms); and **hospitality services** (weddings, overnight farm or ranch stays, guided tours, on-farm direct sales, "pick-your-own" operations, roadside stands, farmers markets).

VPA-HIP will open enrolled private land to public use. Enrollment in the program is voluntary for landowners. Up to \$50 million will be available to states and tribal governments through a competitive grant process. Grant recipients will be able to use the funding to provide higher rental payments, and provide technical and conservation services to landowners, thereby increasing the number of acres enrolled in the public access program.



I'm posting this message on behalf of Gail McWilliam Jellie, Director of Agricultural Development in the NH Department of Agriculture, Markets & Food:

It was the intention of the legislature that agritourism activities not be explicitly defined so as not to restrict or prohibit activity. But at the time the bill was discussed there was concern expressed about activities going "too far" and the business becoming too focused on the event or activity and less on the farm—concern that some might use this as a backdoor around local zoning to start something that had very little to do with a farm. The definition states that agritourism activities are ancillary to the farm. In other words the farm business is the main enterprise and agritourism is secondary. Examples of current agritourism activities include corn mazes, farm animal petting areas, pony rides, wagon/sleigh rides (some with seasonal themes like Halloween, Christmas, etc.), even pick your own berries, apples, etc can be considered agritourism. Income from agritourism has become vital to many farm operations.

Gail McWilliam Jellie, Director
Division of Agricultural Development
NH Dept. of Agriculture, Markets & Food
25 Capitol St.
Concord, NH 03301
(mail: PO Box 2042, Concord, NH 03302-2042)
603-271-3788
www.agriculture.nh.gov

posted by Linda Wilson, NHDHR, linda.wilson@dcr.nh.gov

Rec'd at 10/17 mtg

New Hampshire
Department of Agriculture,
Markets & Food

Lorraine S. Merrill, Commissioner

October 12, 2012

Mr. Steve Forster
Forster's Christmas Tree Farm & Gift Shoppe
347 Mt. Hunger Rd.
Henniker, NH 03242

Dear Mr. Forster:

We have received your inquiry regarding whether the weddings held on your Christmas tree farm would be considered to fit within the definition of agri-tourism under RSA 21:34-a.

The statute states, *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.* We interpret on-farm weddings to fall within this statutory definition. There are numerous examples of New Hampshire farms of all types that invite and host weddings in the farm setting for a fee.

Sincerely yours,



Lorraine S. Merrill
Commissioner

Exhibit G

New Hampshire
Department of Agriculture,
Markets & Food

Lorraine S. Merrill, Commissioner

December 13, 2012

Mr. Steve Forster
Forster's Christmas Tree Farm & Gift Shoppe
347 Mt. Hunger Road
Henniker NH 03242

Dear Mr. Forster:

We received your request for further elaboration of the activities considered agritourism under RSA 21:34-a.

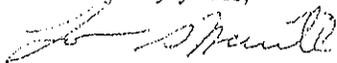
The statute states, "VI. The term "agritourism" means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation."

The department has interpreted this broad definition to include a wide range of activities—including weddings, events and other like functions. Farm businesses of diverse types around the state, the New England region and beyond, host gatherings, meetings, celebrations, retreats and educational opportunities for groups that may include families, schools and colleges, businesses, and charitable or non-profit organizations, in their unique agricultural or farm settings.

Some examples of events open to the public—by no means an exhaustive listing--can be found in the department's annual 'Experience Rural New Hampshire' promotional publication.

<http://www.nh.gov/agric/publications/documents/2012ExperienceRuralNewHampshire.pdf>

Sincerely yours,



Lorraine S. Merrill
Commissioner

Exhibit 6

HOME
TODAY'S PRODUCE
NEWS
SPECIAL EVENTS
CO-CREATION
GALLERY
KIDS CORNER
ABOUT US



Summer Hours

Open Daily from 10am - 6pm

Home Grown Vegetables From Our Farm

Cheeses-Products From New England

Dimond Hill Farm is a unique farm that survives and thrives from the support and dedication from our patrons. The DHF team sends out our gratitude and warm thanks for all our patrons. We hope to see all of you soon and have a great and warm winter season.

Dimond Hill Farm Trails Maps

Dimond Hill would like to thank the Concord City Conservation Commission for mapping our trails and accurate identification of key points of interest along the trail. Listed below are copies of the front page and map page saved as a PDF for quick upload and printing.

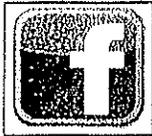
[Dimond Hill Farm Trail Map](#)

[Dimond Hill Farm Trail Map Cover](#)

Click Image Below To Take A Virtual Tour Of Our Beautiful Corn Field

Search:

Search



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- HOME
- TODAY'S PRODUCE
- NEWS
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- CO-CREATION
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- KIDS CORNER
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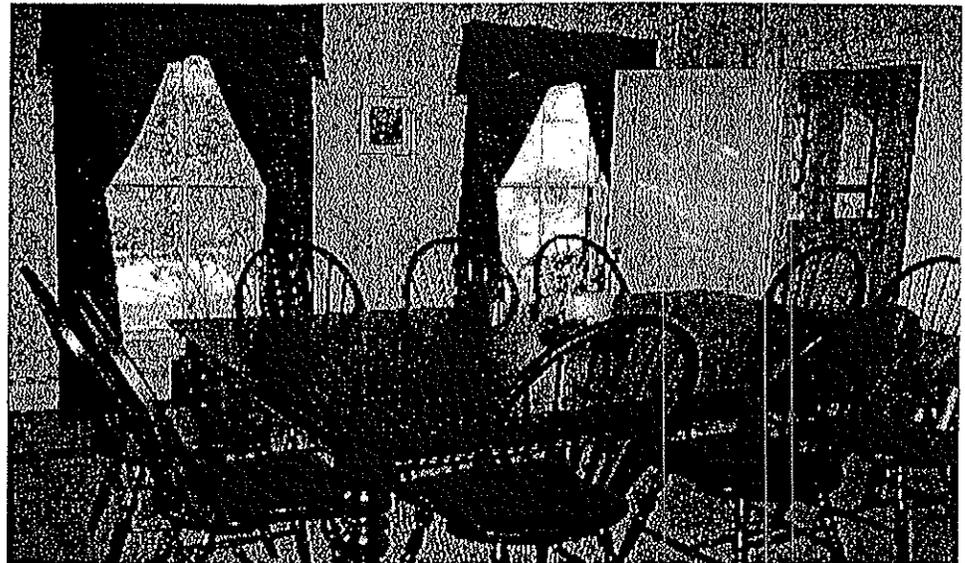
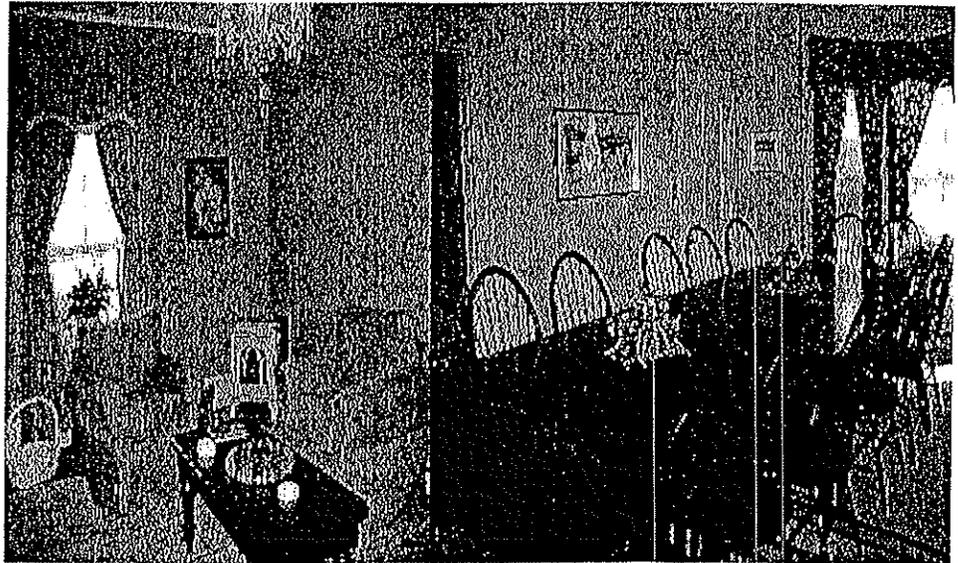
Search:



Special Events

Retreats:

Dimond Hill Farm is a perfect place for professional meetings or retreats ranging from 5-20 people. Indoor capacity is limited to a comfortable 15, and outdoor capacity will hold well over 20-30 on the deck. Other arrangements can be made and accommodations can be worked out. School events are welcomed, as well as small dinner parties. Great benefits include fresh vegetables, baked goods, and products made in New Hampshire, Vermont, and Maine. Any questions can be answered by Pam Clark, phone 603-223-2012.



Weddings/Receptions:

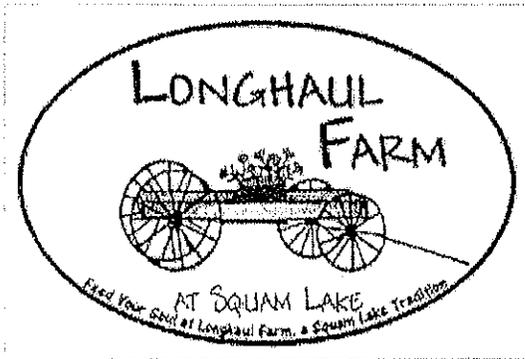
A perfect New England barn, green pastures, and blooming flowers make the farm a perfect place to have your wedding reception. We cater to all who wish to have an inexpensive, yet elegant experience. Indoor capacity is limited to 5-20 but is a perfect size for dinner party rehearsals. We offer the flower garden for the ceremony, or a more private location overlooking a small pond and green hay fields. Tents can be positioned atop of Dimond Hill Farm overlooking Concord and

Longhaul Farm *Exhibit 7*

Organic Farm, Country Store and Garden Centre

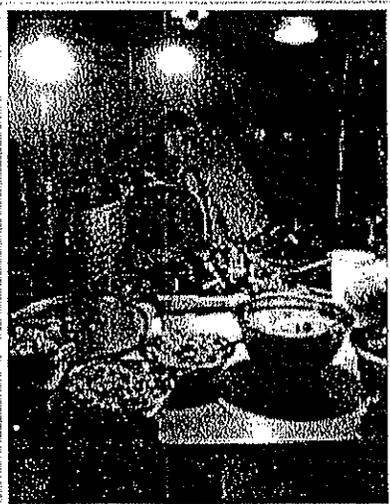
The Pavilion in the Woods at Longhaul Farm

Casual Country Celebrations, Weddings, Special Events, Workshops, Functions, and more!



Longhaul Farm's Pavilion is a rustic building in the lovely wooded landscape of Longhaul Farm. The Pavilion features a spacious open-aired meeting room and a fully-functional, commercial-sized kitchen that allows us to offer you a peaceful and enchanting location for your celebrations.

The Pavilion in the Woods is suitable for a wide variety of events such as private parties, retreats, reunions, workshops, weddings, showers, engagement parties, rehearsal dinners, wedding brunch, catering, and some good old fashioned country dinners where the public is welcome.



Contact us For more information on rates and availability. We can also provide you with the information to arrange for the Pavilion in the Woods to be that perfect location for your next family function.

WINTER EVENTS—PUBLIC WELCOME: -SATURDAYS AND SUNDAYS Jan 1 to Mar 16, 2012. 10 am - 2 pm:
Snowshoe, Walk, Hike...and Real Food Lunches.
-MONTHLY Full Moon Dinners and Moonlight Hikes.

~MONTHLY Garden Workshops.

Check this [upcoming events link](#) for all the details!

SUMMER EVENTS—PUBLIC WELCOME:

~SATURDAY NIGHT BBQ GRILLE from 5:30 - 8 pm

~SUNDAY BRUNCH from 10 am - 2 pm

Check our [calendar](#) or our [facebook page](#) for more events!



Longhaul Farm | Route 113 (PO Box 225), Holderness, NH 03245 | (603) 968-9381

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site design by [BBM Designs](#)

Longhaul Farm

Organic Farm, Country Store and Garden Centre

Local Food Market & Café, and our famed Pavilion in the Woods!

~Feed Your Soul~

Longhaul's Local Food Market open every day 8am - 6pm!

Come in for fresh produce, local meats, homemade pies, jams, eggs, milk, and much more!

posted July 5, 2012 | [read more](#)

Sunday Brunch at Longhaul!

10am - 2pm every Sunday for a great brunch and the best atmosphere in NH!

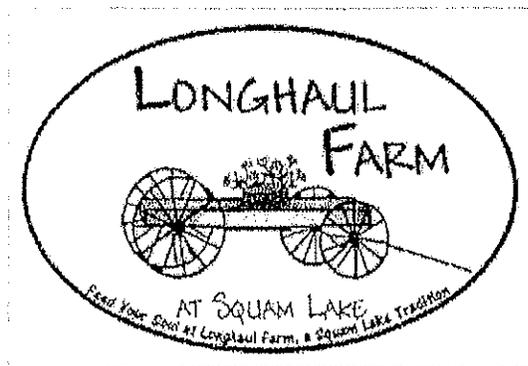
posted July 4, 2012 | [read more](#)

Saturday night BBQ's are in full swing!

And did we mention live music?!

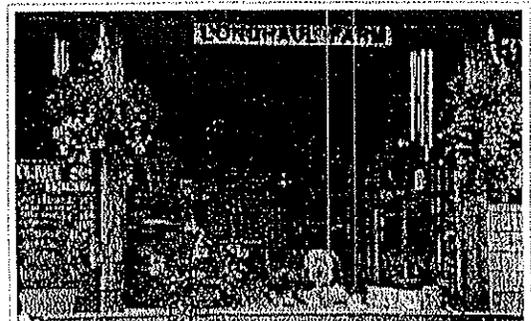
posted July 3, 2012 | [read more](#)

About Longhaul Farm



Longhaul Farm is located on 33 acres of woods and farmland in the Squam Lakes region of Holderness, NH. We began restoration of the farmhouse and land in 1997 with a dream of running a collaborative organic farm for our ever-growing circle of friends and family, opening in 2001.

Our Local Food Market & Cafe is open daily, 8am - 6pm, June through September, providing locally grown and sourced organic vegetables, meats, cheese and dairy, maple products, homemade fudge, jams and jellies, cookies and



pastries, fresh baked breads, and gifts.

At our **Pavilion in the Woods**, we host public and private gatherings year round. Consider us for your engagement party, shower, rehearsal dinner, wedding and reception, company party, business retreat, family reunion, or workshop. The Pavilion's commercial kitchen also provides catering services.

Most winter weekends, from January 1st through March 16th from 10am - 2pm we welcome you for "Soup, Sandwich, Tunes, Tales and Trails." Bring your boots or snowshoes and your musical instruments or story-telling talents. Take a self-guided walk on our trails, then come inside for a bite and warm up to music and storytelling around the Pavilion's woodstove and in the company of friends.

Spring is an exciting time of planting and harvesting from the winter greenhouses with our harvest for sale to the public.

In summer, the Pavilion welcomes the public to our Saturday BBQ at 5:30pm - 8pm and Sunday brunches from 10 am - 2 pm. Feed your soul at Longhaul Farm and become part of a Squam Lake tradition.

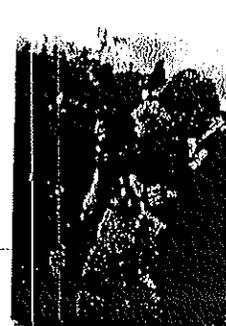
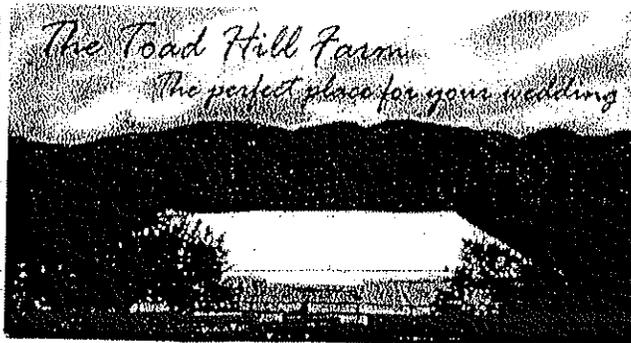
To keep up with all that is happening here, be sure to check our **calendar**, sign up for our **newsletter**, or follow us on **Facebook**.

We hope to see you soon!



FOR A QUICK & FUN LOOK AT WHAT'S HAPPENING, check out our **blog**





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Weddings

Events and Reunions

Accommodations

Dining

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FAQs

Farm History & Legends

Local Information & Vendors

Area Attractions

Directions
Airports
Car

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Man and woman are like the earth, that brings forth flowers in summer, and love, but underneath is rock. Older than flowers, older than ferns, older than foraminiferae, older than plasm altogether is the soul underneath.

And when, throughout all the wild chaos of love slowly a gem forms, in the ancient, once-more-molten rocks of two human hearts, two ancient rocks, a man's heart and a woman's, that is the crystal of peace, the slow hard jewel of trust, the sapphire of fidelity. The gem of mutual peace emerging from the wild chaos of love.

--D.H. Lawrence

Weddings



As you plan your wedding, there are so many factors to consider to make this important day very special. The food, the music, the cake -- even the wedding party -- are all factors which will create the tone of the celebration; perhaps the most important is the location. Why settle for something ordinary like a nondescript reception hall of some random box hotel when you have the opportunity to gather friends and family together in a unique location like The Toad Hill Farm? With a truly exceptional panoramic view of the Presidential Mountains, rolling fields surrounded by rock walls and glorious forest, beautifully manicured lawn, gardens of the Main

House, and the former horse paddock, The Toad Hill Farm offers the perfect setting for your reception on this wonderful day. In addition, should you decide to hold your ceremony outside, the hill above the paddock with additional views of Mount Moosilauke and neighboring mountains is available for the ceremony, making it a short walk down to the reception site.

With 600 acres of farmland, Toad Hill Farm provides a wide open landscape with the intimacy of a private site. Your ceremony and/or reception can include as many people as you want...there is no maximum capacity! Or it can be an intimate gathering of your closest friends and family -- the choice is yours. If you have already hired a wedding planner/coordinator, we look forward to working with him or her. If not, we highly recommend Wendy Manning (www.whitemtnweddings.com) for professional and creative solutions, as well as extensive knowledge of and connections to local caterers, florists, rental equipment, etc. Check our FAQ for specific details about your wedding at The Toad Hill Farm. Contact us for further details or questions, as well as availability and pricing. We look forward to hosting your embarkation into your new life together.



Plan your wedding at The Toad Hill Farm today!

The Toad Hill Farm
157 Fobes Road
Franconia, NH 03580
Phone - (603) 616-7150
Fax - (603) 823-5044

info@thetoadhillfarm.com

Exhibit 9

Non-profit organ.

About Us

Facility Rentals

Education & Events

Products

WELCOME to Stonewall Farm

Ready to celebrate a wedding!



Contact Us

603-357-7278
242 Chesterfield Rd
Keene, NH 03431

Search Stonewall

- ▶ Join us for "Responding to the Call of the Land", a conference on building a community supported food system, September 14-15. [Learn more here.](#)
- ▶ 2012-2013 School Program offerings are here! Read all the options we offer on our [Tapline.](#)
- ▶ Stonewall Farm Ice Cream at the Farmstand! Featuring maple, vanilla, M&M, and cookies & cream flavors.
- ▶ At the Farmstand now (September 1): Garlic, basil, cilantro, cucumbers, zucchini, summer squash, kale, tomatoes, eggplant, onions, arugula, lettuce mix, and pick-your-own flowers!
- ▶ Visit our new [Discovery Room!](#) Activities for ages 3-8, open everyday, 9-4:30pm.

Support *your* community farm.

Become a member today and receive member benefits such as 10% off at the farm stand, and know that you're supporting local food and local education! For more information please click

0036

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About Us

Facility Rentals

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Weddings

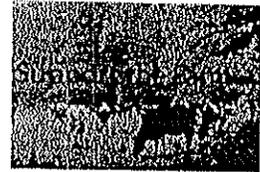
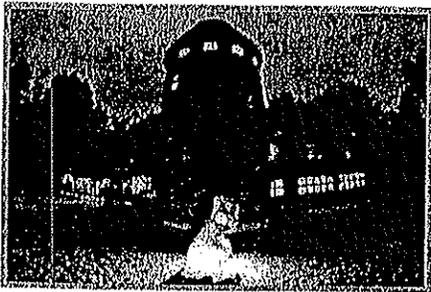
Stonewall Farm is the perfect New England setting for your special day. Enjoy 120 scenic acres and a stunning facility for an event you and your guests are sure to remember. To book, contact our Event Coordinator at (603)357-7278 ext. 111.

What is included in a rental at Stonewall Farm?

Tables and chairs to accommodate 150 for ceremony and reception, full use of the building for the day, noon-midnight, kitchen access for your caterer. One hour can be scheduled free the day before your event for a run through. Ceremony site use. Choice of any color 3/4 length linens for guest tables, head table and buffet, and choice of napkin color. Table linen style can be changed for a nominal fee.

Do you have banquet staff and supplies?

We do not have a caterer, china, glassware, or a commercial kitchen. We do provide potential brides and grooms with a list of local caterers, rental companies, as well as other service providers.



Contact Us

603-357-7278
242 Chesterfield Rd
Keene, NH 03431

Search Stonewall

Do you have ceremony sites on your grounds?

Yes, you can choose from ceremony sites on the knoll, in the garden, or in the carriage barn.



Do you have a bar and bartender?

Yes. We require that all bar services go through Stonewall Farm. We have a full bar with many options and levels of service. Please speak with the Event Coordinator for more details.

How many people can be accommodated?

0038

19

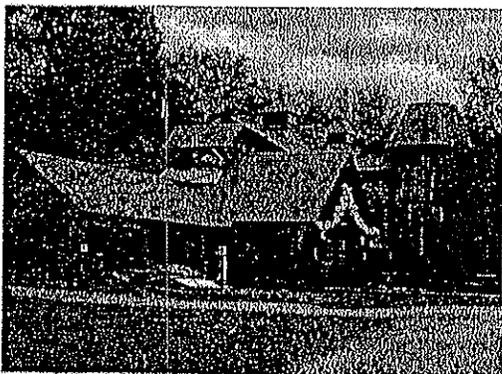
About Us

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What to do at Stonewall Farm



Stonewall Farm grounds and barns are open free to the public, year round, dawn to dusk. We offer public programs, special events, school programs and summer and school vacation camps (fees apply) on a regular basis. If you visit on your own time you can:



Contact Us

603-357-7278

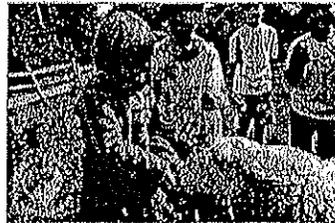
242 Chesterfield Rd
Keene, NH 03431

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▶ Join our small animal feeding program, or just stop by the small animal barn to say hi to our alpacas, chickens, rabbits and sheep.

▶ Visit our Belgian draft horses in the horse barn.

▶ Visit our Dairy Barn and see a 4:30 am or pm milking - there are often new born calves to see as well.



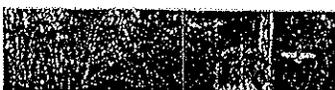
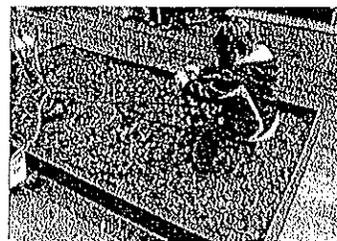
▶ Visit our Farm Stand (in the Sugar House) for our own beef, syrup, cheese, eggs, yogurt and more, and our U-Pick gardens (in-season).

▶ Bring your kids to climb on our playground and watch our goat kids climb on their playground.

▶ Cool off in the creek on a hot day and say hi to the ducks keeping cool in the pond!

▶ Explore our Discovery Room, open 9:00am to 4:30pm daily, with activities for kids age 3 to 8. Located on the first floor of the Learning Center.

▶ Walk through our Learning Center, a beautiful post and beam facility used for our education programs and facility rentals. (Open 9 to 4:30pm daily)



▶ Visit our sugar house during sugarin' season (March to April)

▶ Visit our solar dome greenhouse.

130 in the Community Room; 150 if you use the mezzanine for overflow seating.
150 guests can be seated on the "knoll," a common ceremony site on our grounds.
100-120 guests can be seated in the Program Room for an indoor ceremony.

How long can we rent the building?

12 noon to 12 midnight on the day of the event. You can also schedule an hour long run-through the day prior.

Please note: **Tours are by appointment only** as the Event Coordinator works part-time. Please call ahead to book at (603) 357-7278.

Wedding Facility Rates (updated 3/17/12)

Host your wedding here at Stonewall Farm for \$4000. Hay rides, rides in the Cinderella Carriage, and Farm products such as maple syrup favors, yogurt, meat, ice cream and produce are also available for purchase.

If you have more questions, please contact our Event Coordinator at (603) 357-7278 x 111.

[Events Calendar](#)

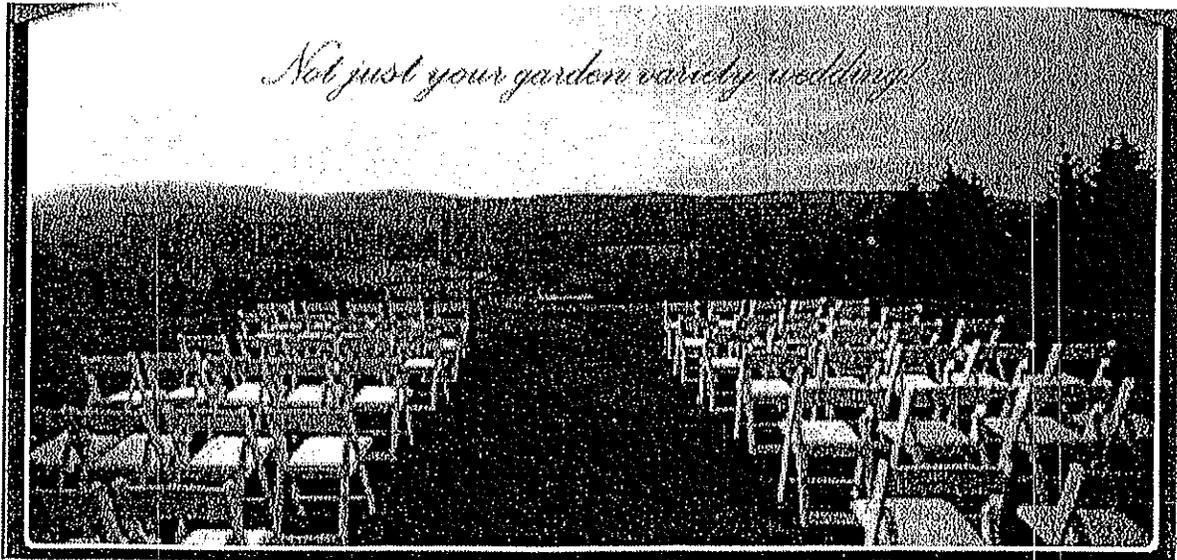
[Community Involvement
Forum](#)

[Volunteer](#)

[Discussion](#)

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Designed by [Winding Trail Consulting](#) .



Weddings at Alyson's

Weddings at Alyson's take place in some of the most beautiful settings that you could ever imagine. There are four distinct ceremony sites to choose from, each with a unique view of the orchard. Choose a wedding site with views of the picturesque town of Walpole, the Connecticut River Valley or a serene spot by one of our spring-fed ponds.

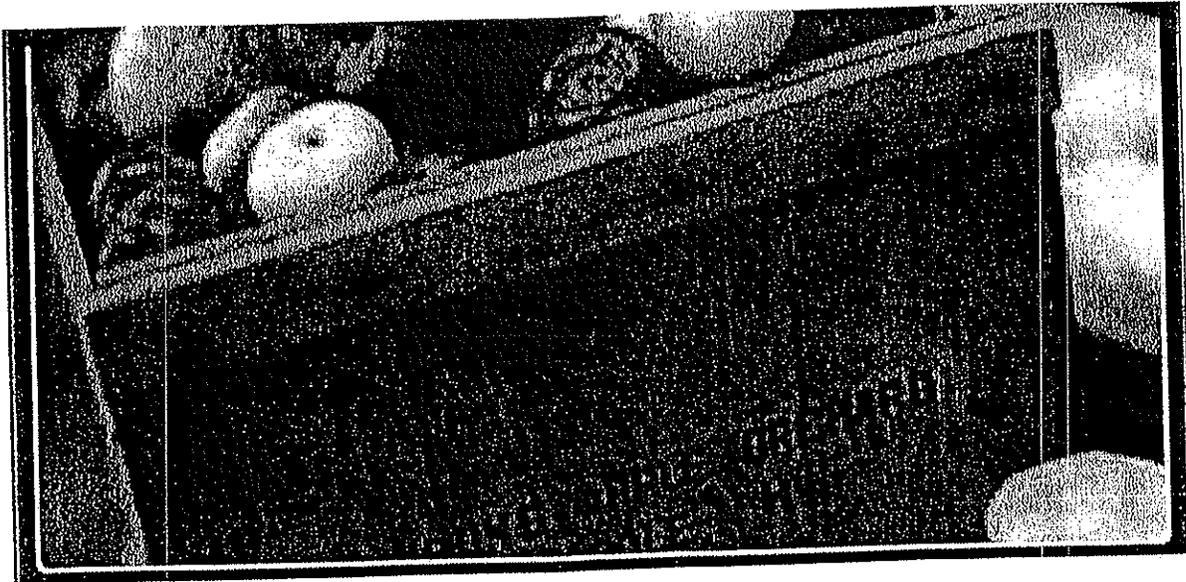
Alyson's is well-known for hosting some of the best destination weddings in New England. Bring your family and friends and stay for a few days. At Alyson's we believe that one of the most important days of your life doesn't have to last just one day! With horseshoe pits, bocce ball, fresh water ponds for swimming and fishing, apples for picking and lots of open space for a variety of activities, a wedding at Alyson's is an unforgettable, unique experience that you and your guests will enjoy and remember and talk about for years to come. Alyson's Orchard is also nearby to great local hiking, ski resorts and the New Hampshire countryside makes for a wonderful bike ride.

With three unique, welcoming lodging facilities, a reception hall for up to 250 guests, and over 23 years of experience in the wedding industry, Alyson's Orchard is renowned as one of New England's finest destination wedding sites. Alyson's has great relationships with local caterers, photographers, florists and musicians and our staff is more than happy to help make the wedding of your dreams become a reality, offering advice and guidance as needed.

Come get married at Alyson's and take advantage of our spectacular wedding facilities, hundreds of acres of rolling fields, spring-fed ponds and comfortable lodging. At Alyson's we believe that one of the most important celebrations of your life doesn't necessarily have to last just one day!

Come see why Alyson's is *the* place in New England to be married. Whether you choose a destination wedding, a mid week wedding or a Sunday sunset wedding, There Is Just No Better Place To Pick than Alyson's Orchard.

Exhibit 10



Alyson's Orchard is a unique, 500 acre working orchard and year-round event and conference center in the heart of historic New England. Experience country elegance as you host your destination wedding, family reunion, corporate retreat or other special events in our stunning reception hall or amid Alyson's rolling lawns surrounded by breathtaking views of the Connecticut River Valley. Alyson's Orchard is the ideal location for any type of get-a-way in any season. Explore Alyson's acres on snowshoes during the winter or hike during the spring. If you visit during warmer months, swim in one of Alyson's ponds or try your luck at fishing. In the Fall, come pick your own fruit in the orchard or visit the farm stand to enjoy our seasonal offerings, including: fresh-baked apple pies, unpasteurized apple cider, a large selection of fruit wines made from Alyson's apples and peaches, unique gifts that capture the essence of New England and more.

Regardless of the season, unwind after your busy day in one of Alyson's lodging accommodations, including a restored 1860's farmhouse or a rustic lodge set amongst our apple trees.

Close to picturesque Walpole and easily accessible from regional centers Boston, Manchester and Hartford, Alyson's also boasts a private landing strip available to guests by prior arrangement.

Whether you're looking for an active family vacation, planning a once-in-a-lifetime event or seeking an extended stay in New Hampshire's beautiful Monadnock region, Alyson's offers you an unparalleled experience. See for yourself by clicking here then selecting the video tab.

Chosen as one of the 12 Top Orchards in the U.S. by *Travel and Leisure*, Alyson's has also been featured in *Yankee Magazine*, and has been chosen numerous times for the "Best



Weddings & Events at The Rocks

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- Trails
- Contact & Directions

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- The NH Maple Experience
- Calendar
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The Rocks Estate
 4 Christmas Lane
 Bethlehem, NH 03574
 603-444-6228
Info@TheRocks.org

Weddings & Events

A collection of beautifully restored historic buildings surrounded by incredible mountain views makes The Rocks Estate the ideal setting for occasions from romantic weddings to corporate retreats. Whether your event is a large celebration or intimate gathering, we'd love to be your host.

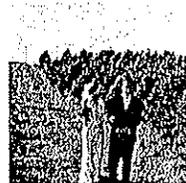
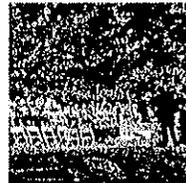
At The Rocks you'll find rolling lawns and formal gardens, artfully crafted stone walls, trails meandering through woods and meadows, magnificent scenery, and charming buildings dating to the turn of the 20th Century. Whether you're seeking romance or team building, sporting good fun or quiet reflection, we're happy to transform our extensive property to your specific needs.

Our knowledgeable staff is available to guide your guests on tours of the property, sharing information about The Rocks' extensive history, modern conservation efforts, and abundant wildlife. We may also arrange horse-drawn carriage rides - perfect for a stunning wedding arrival or for entertaining your guests.

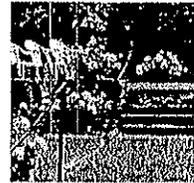
To learn more about what we have to offer for your event, to schedule a time to visit the property, or to begin plans to customize your special day, please call 603-444-6228 or email us at Info@therocks.org.

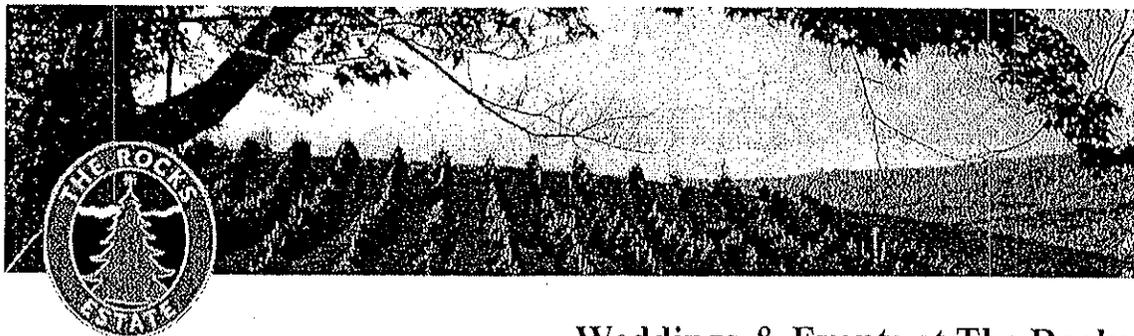
The Rock's Recommended Wedding Resources

[Download our wedding brochure here](#) [1.14 MB PDF]



Click images to enlarge:





Weddings & Events at The Rocks

- About The Rocks
- Christmas Tree Farm
- Education & Adventure
- Groups/Vacation Pkgs
- Trails
- Contact & Directions

- Online Giftshop
- Weddings & Events
- The NH Maple Experience
- Calendar
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 Bethlehem, NH 03574
 603-444-6228
info@TheRocks.org

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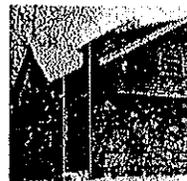
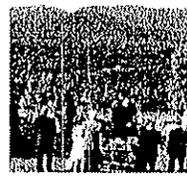
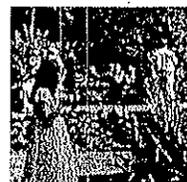
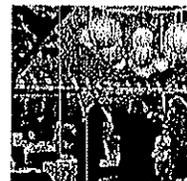
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HB 56 - AS AMENDED BY THE HOUSE

21Feb2007... 0033h

07-0621
08/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seven.

AN ACT relative to the definition of agritourism.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Agritourism. Amend RSA 21:34-a by inserting after paragraph V the
2 following new paragraph:

3 VI. The term "agritourism" means attracting visitors to farm operations for the purpose of
4 eating a meal, making overnight stays, enjoyment, education, or active involvement that is ancillary
5 to the activity of the farm or operation, and as such shall be considered an agricultural use.

6 2 Effective Date. This act shall take effect 60 days after its passage.

→ was
stricken from
final version.

impact for how these, or whether places are zoned agricultural or not, and has some permissions with that to seek.

Representative Jim Martin, Carr/05: In my view, any place in the state that has an area which is zoned for agricultural uses, now, if this were to pass, would have to permit restaurants and hotels and motels, despite the fact that the town doesn't want them in every area where agriculture is permitted; the town right now can say: yes, you can have an agricultural use in this area, and you can also have a 25-seat restaurant, or this, or bed-and-breakfast, or whatever. This would trump local zoning, in my view, and permit restaurants and inns and motels anyplace that's zoned agricultural.

Senator Kathleen G. Sgambati, D. 4: Thank you.

Senator Martha Fuller Clark, D. 24: Are there additional questions for Representative Martin? Seeing none, thank you again.

Representative Jim Martin, Carr/05: I thought of one more thing, if I may, very briefly. I think this may have the opposite effect of what is intended, because towns have large areas which are zoned agricultural, and if this passes they may say we don't want restaurants and motels in some of those areas, and so we're going to change the zoning and take them out of the agricultural zone and make them something else. Thank you.

Senator Martha Fuller Clark, D. 24: Thank you. I'd like to call on Judy Silva.

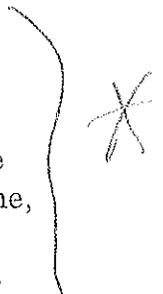
Ms. Judy Silva, New Hampshire Municipal Association: Thank you, Madam Chair. Good afternoon, members of the Committee. I am Judy Silva from the Municipal Association. I just want to say, as I marked on the sheet, that I have comments, and I did not follow this bill in the House, but when I hear testimony like having a concert come within the definition here, that is something I think we would have some considerable concerns with, and I don't think that's how we interpreted the language as it came out of the House. So Rob and I have been whispering in the back, and hopefully not too loud, and we may -- I think we are moving, with the questions that you all are asking, towards something that may be a little clearer.

The original bill in the House talked about "having active involvement in the activity of the farm or operation," which I think would narrow it down so that you're not necessarily using your barn for a concert, but somebody is coming, you know, to do the corn maze or for a pick-your-own, or to stay overnight and, you know, help with lambing or whatever that kind of thing might be. So I wonder if we get back to that kind of language, so that when you get to

rec

that line there, "overnight stays, enjoyment, education, or active involvement in the activity of the farm," and then go to, "and which is ancillary to the activity of the farm" so that you have the active involvement with the farm, but it's also a secondary.

I look at "ancillary" and I was wishing, before you asked the question, when I was driving down here, that I had looked it up in the dictionary. But I think of that as secondary or related to, but there's a primary use and there's an ancillary use, or something that's related, but it's -- I don't know that we need to put a percentage on it, but it's a smaller kind of piece of the pie.

And I would agree with Representative Martin in eliminating the phrase, "and shall be considered an agricultural use." Because certainly, to the extent that you have agricultural zones in municipalities, if you have something that is defining something as an agricultural use, I think you are going to, in some people's minds, be automatically including that in that zone, but perhaps not in the minds of the municipality, and I think at the very least what you do is cause more turmoil and disagreement at the local level. 

So I won't say that I'm speaking for Rob, because we were sort of just talking about some ideas here, but those are the kinds of directions I think that we might be moving in to try and accomplish this.

Senator Martha Fuller Clark, D. 24: Well, thank you very much, Ms. Silva.

Ms. Judy Silva: Thank you.

Senator Martha Fuller Clark, D. 24: So we could expect, hopefully from you and in conjunction maybe with Rob, perhaps a recommendation of some slightly different language that would address and answer some of these questions?

Ms. Judy Silva: I think we could.

Senator Martha Fuller Clark, D. 24: I guess I'd just like to suggest, as it also makes sense that perhaps you consider-- and I don't know if this is worthwhile or not, that it should be limited under a certain number? Because I think that's the other concern, are you going to have 300 people come? A thousand people come? A hundred people come? And then it takes on other different significance.

Yes. Senator Barnes.

HB 56, relative to the definition of agritourism. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Odell for the committee.

Sen. Fuller Clark, Dist. 24
May 2, 2007
2007-1446s
08/09

Amendment to HB 56

Amend the bill by replacing section 1 with the following:
 New Paragraph; Agritourism. Amend RSA 21:34-a by inserting after paragraph V the following new paragraph:

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.

SENATOR ODELL: Thank you, Madam President. I move that House Bill 56 ought to pass with amendment. This amended bill defines "agritourism" as "means of attracting visitors to farm operations 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 in which is ancillary to the farm operation." The amended definition was deemed necessary after concerns were raised of original language that classified agritourism as an "agricultural use," a phrase that could cause local zoning problems. By the changes made by the committee this new definition has the support of the Department of Agriculture, the New Hampshire Farm Bureau, and the New Hampshire Municipal Association. The Energy Environment and Economic Development Committee requests your support for this amended legislation. Thank you, Madam President.

Amendment adopted.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3
May 10, 2007
2007-1567s
08/09

Floor Amendment to HB 56

Amend the bill by replacing section 2 with the following:
 2 Effective Date. This act shall take effect upon its passage.

SENATOR KENNEY: Madam President, I'd like to offer a friendly floor amendment, if I might?

SENATOR LARSEN (In the Chair): You may do that and speak to it as it's being distributed.

SENATOR KENNEY: Thank you. The floor amendment simply asks the Senate if they would pass House Bill 56 on passage. The way it's written right now it's 60 days, which once it's signed and once it's pushed out, it would bring us into August which I think our agritourism probably wants to get started right away. I would also like to add, Madam President, that there's been a lot of support in my area for this bill, in Brookfield, New Hampshire particularly. I've received about 75 emails in supporting this agritourism definition, and I would just like to read a letter to the body from a constituent, Sue Zellock, who said that she



TOWN OF HENNIKER, NEW HAMPSHIRE

May 24, 2012

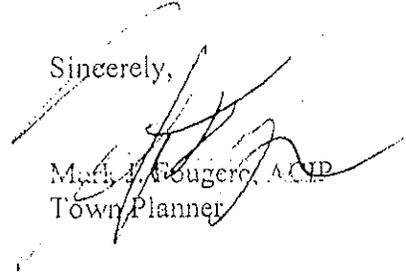
Mr. Steve Forster
347 Mt. Hunger Road
Henniker, NH 03242

Dear Mr. Forster,

It has come to our attention that you are conducting a commercial use operating a wedding/reception function facility at your Mt. Hunger Christmas tree farm property. Under the Henniker Zoning Ordinance, this type of use is not allowed in the RR Rural Residential District per Article VII. As such, you must cease all operations related to this use immediately. It is expected that commercial weddings, functions and like activities will no longer occur on the property. Failure to adhere to this request could result in additional proceedings being brought forth.

If you wish to legally conduct such a use on your property, you must obtain a Use Variance from the ZBA and then site plan approval from the Planning Board. We would appreciate your full cooperation with this matter. Should you have any questions, please feel free to call.

Sincerely,


Mark J. Fougere, AICP
Town Planner

Cc: BOS, Blg. File, Pl. Brd.

Selectmen's Office
Administration, Finance,
Assessing, Planning,
Zoning & Building Permits
18 Depot Hill Rd.
Henniker NH 03242
Ph (603) 428-3221
Fx (603) 428-4366

Town Clerk / Tax Collector
18 Depot Hill Rd.
Henniker NH 03242
Ph (603) 428-3240
Fx (603) 428-4366

Transfer / Recycling Center
Parks and Properties
18 Depot Hill Rd.
Henniker NH 03242
Physical: 1393 Weare Rd.
Ph (603) 428-7604

Jogswell Spring Water Works
146 Davison Rd.
Henniker NH 03242
Ph (603) 428-3237
Fx (603) 428-3362

Wastewater Treatment Plant
18 Depot Hill Rd.
Henniker NH 03242
Ph (603) 428-7215
Fx (603) 428-8312
Physical: 199 Ramsdell Rd.

Highway
18 Depot Hill Rd.
Henniker NH 03242
Physical: 209 Ramsdell Rd.
Ph (603) 428-7200
Fx (603) 428-7200

Police
340 Western Ave.
Henniker NH 03242
Ph (603) 428-3213
(Dial 911 for an Emergency)
Fx (603) 428-7509

Fire & Rescue
216 Maple St.
Henniker NH 03242
Ph (603) 428-7552
Dial 911 for an Emergency
(603) 428-7628

Telephone
603-428-3221
www.henniker.org

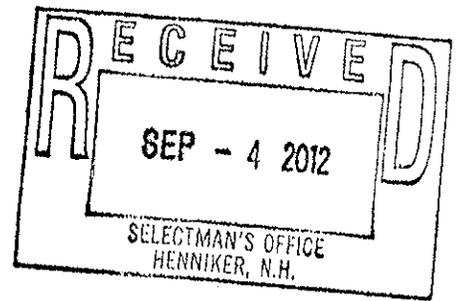
18 Depot Hill Road
Henniker, NH 03242
www.henniker.org

0009

Fax
603-428-4366

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TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT



APPLICATION FOR APPEAL FROM AN ADMINISTRATIVE DECISION

Case No.: Not Yet Assigned

ZBA 2012-04

Name of Applicant: Mr. Stephen E. Forster; Forster's Christmas Tree Farm & Gift Shoppe

Mailing Address: 347 Mt. Hunger Road, Henniker, NH 03242

Telephone: 603-428-8733; 603-496-0494

E-mail address: sforster@mcttelecom.com

Owner of Property: Mr. Stephen E. Forster

Location of Property: 347 Mt. Hunger Road (Lot 727)

Zoning District Where Property is Located: RR/Rural Residential

Reason for Appeal:

August 22, 2012 Notice of Violation/Cease and Desist Letter from Mark J. Fougere, Town Planner to Robert H. Miller, Esq. o/b/o Mr. Steve Forster/Forster's Christmas Tree Farm stating that the above property was being used in violation of the Town Zoning Ordinance, Chapter 133, Article VII RR Rural Residential District, Section 133-26 as follows: *Holding weddings/events and other like functions on the premise that are not allowed uses in the RR zone per the Henniker Zoning Ordinance. See Exhibit 1 (cease and desist correspondence).*

Section of the Henniker Zoning Ordinance relevant to your appeal:

Chapter 133 (Town of Henniker Zoning Regulations)
Article VII (RR Rural Residential District)
Section 133-25; 133-26
Article XVI (Non-Conforming Uses and Non-Complying Structures)
Section 133-68

1st Hearing Date
10-17-2012

Justification for Appeal From Administrative Decision:

I. Grandfathered, Preexisting Use Which Predates the Zoning Ordinance

The Town of Henniker's Zoning Regulations were adopted by the Town of Henniker on June 9, 1987 (25 years ago). See Exhibit 2 (Henniker Ordinance Front Page/History/Table of Contents). Forster's Christmas Tree Farm has existed on Mt. Hunger Road since the mid-1970s and, therefore, is a grandfathered preexisting use that is not subject to the Town of Henniker's Zoning Regulations. See Exhibit 3 (Stephen E. Forster's Justice of the Peace licenses to perform weddings at the farm dating back to September 28, 1979 and renewed on October 24, 1984, and November 1, 1989); Exhibit 4 (Exemplar of Certificate of Marriage for wedding ceremony performed at 347 Mt. Hunger Road, Henniker, NH on October 7, 1984 – five years prior to adoption of Henniker Zoning Ordinance).

As an agricultural use, Forster's Christmas Tree Farm is not even a non-conforming use, because

- (1) agricultural uses are expressly permitted even pursuant to Section 133-25 and 133-26 of the Ordinance. See Exhibit 2 (Article VII RR Rural Residential District, Section 133-25 Purpose: "...low density open areas complement and **encourage agricultural uses...**" and Section 133-26 RR-Permitted Uses include "**Agricultural**" and "Use accessory to permitted use").

and

- (2) Pursuant to N.H. RSA 21:34-a, II(a)(11) ("Statutory Construction"), "**the words 'agriculture' and 'farming' mean all operations of a farm, including... "[t]he 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.**" See Exhibit 5.

Forster's Christmas Tree farm predates the Henniker Zoning Ordinance, which was adopted in June 1987. The Christmas Tree Farm was being used to host weddings and wedding receptions since the 1970s – and therefore that use, too, is grandfathered. See Exhibits 3, 4. Pursuant to Article XVI (Non-Conforming Uses and Non-Conforming Structures), Section 133-68, "Any lawful building or use of a building or premises or parts thereof in existence at the time of the adoption of this chapter, or of any amendment hereto, may be continued although such building or use does not comply to the provisions hereof." Accordingly, even if some activities at Forster's Christmas Tree Farm are deemed to be non-compliant with the Henniker Zoning Ordinance, as long as the farm predated the ordinance (and it did), and as long as those activities predated the ordinance (and they did), or if those activities are otherwise permissible as accessory uses and/or as agritourism activity – then the activities are permitted to occur.

II. Weddings/Events and Other Like Functions are Accessory Uses to Farms/Agricultural Uses

To the extent that the ZBA takes the position that Mr. Forster's pre-existing use of the farm for weddings and wedding ceremonies is insufficient to establish a grandfathered use, the use of a farm for weddings/events and other like functions is, nevertheless, a very common accessory use on farms and other properties with agricultural uses in New Hampshire, New England and beyond. As noted earlier, Article VII, Section 133-26 establishes that "Agricultural" uses are permitted in the RR zone in Henniker *as is* any "Use Accessory to Permitted Use."

An accessory use of property is one that is not expressly permitted by the ordinance itself, but is occasioned by and subordinate to the permitted primary use, and customarily or habitually associated with it. Town of Windham v. Alfond, 129 N.H. 24, 28-29 (1986). As Justice Souter wrote in Alfond, "[w]hile the strength or degree of the customary or habitual association does not lend itself to definition by formula, **and while the combination need not occur in a majority of instances of the principal use, the uses must be associated with a frequency that is substantial enough to rise above rarity.**"

Thus, the two questions needing resolution are (1) whether Mr. Forster's use of his farm for occasional "wedding ceremonies, receptions and other like functions" is occasioned by and subordinate to the use of the property as a farm; and then (2) whether the use of a farm for "wedding ceremonies, receptions and other like functions" is associated with a frequency that is substantial enough to rise above rarity – and thus, to qualify as an accessory use.

There is little issue with the first question. As Mr. Forster and others will attest to, it is precisely because of its rural quality, pastoral landscape dotted with Christmas trees, and smells of balsam that people choose to have their weddings and functions at Forster's Christmas Tree Farm. These ancillary uses are plainly occasioned by the property's primary existence as a farm. The people who schedule their weddings at Forster's Christmas Tree Farm do so because it is a farm, and because they want to be married on a farm. This use is also clearly subordinate to the farm's primary agricultural use. The farm currently has 18,000 to 22,000 Christmas trees in various stages of growth and development, and is also cultivating blueberries, tomatoes, and a variety of other food crops. The Christmas tree business, along with the sale of associated ornaments and handmade collectables, constitutes the farm's primary focus. The occasional, subordinate uses of the farm for wedding ceremonies, receptions and special events are simply survival efforts, well known to nearly all New Hampshire and New England-based farmers, to try to bring in some revenue during the growing seasons when the farm is not generating much income.

As to the combination of the principal use as a farm and the accessory use of a farm for wedding receptions, ceremonies, and other like functions, the standard, again, according to the New Hampshire Supreme Court is that the uses must be associated "with a frequency that is substantial enough to rise above rarity." Alfond, 129 N.H. at 29. In New Hampshire, a great many farms offer themselves up for wedding ceremony sites, wedding receptions, corporate retreats, business meetings, and other like events without any need for special exceptions,

variances, conditional use permits, or other efforts at community regulation. To the contrary, most towns have openly embraced these efforts and welcomed their community-based farms as a shared resource, source of community, and engine for additional economic activity within their towns. A quick search of the Internet reveals dozens of such farms in New Hampshire, a subset of which with functioning websites are abstracted hereto. See, e.g., Exhibit 6 (Dimond Hill Farm in Concord); Exhibit 7 (LongHaul Farm in Holderness); Exhibit 8 (Toad Hill Farm in Franconia); Exhibit 9 (Stonewall Farm in Keene); Exhibit 10 (Alyson's Orchard in Walpole); Exhibit 11 (The Rocks Christmas Tree Farm in Bethlehem); Exhibit 12 (Walpole Valley Farms in Walpole); Exhibit 13 (Curtis Farm in Wilton); Exhibit 14 (Coppal House Farm in Lee). Expanding that search beyond New Hampshire yields hundreds of additional examples, a subset of which, located in Massachusetts, Maine and Vermont, are attached as Exhibit 15. In addition to these exemplars, there is also a website (www.ruralbounty.com) which allows farms offering themselves up for weddings, corporate retreats and other special events to sign up and collectively advertise their amenities in a searchable website. A quick search of this website, which is far from exhaustive, further underscores just how commonly farms offer themselves up for wedding ceremonies, receptions, corporate retreats, and other like events.

Given this significant amount of precedent in communities all over New Hampshire, New England, and the United States – the use of Forster's Christmas Tree Farm for the occasional wedding ceremony, reception, or other like event will pass the New Hampshire Supreme Court's test for an accessory use. The use of the farm for occasional "wedding ceremonies, receptions and other like functions" will be seen as being "occasioned by and subordinate to" the use of the property as a farm – as it is precisely *because* of the property's use as a farm that people want to come and get married there, or host the occasional corporate retreat there. Second, as the above referenced exhibits and resources clearly establish, the use of a farm for wedding ceremonies, receptions, corporate retreats and other like events is a use associated with a frequency that is not only substantial enough to rise above rarity – which is the New Hampshire Supreme Court's test for a permissible accessory use - it is a use that is becoming almost common.

The unfortunate part of this ruling by the Town of Henniker is the missed opportunity it highlights to build and grow community. As noted above, most towns around New Hampshire are embracing their community-based farms, seeing them as a shared community resource, and using them to grow the pie for the entire town. Where there have been concerns about parking, traffic or noise in other communities that have faced these questions, those issues have typically been easily resolved through cooperative meetings, simple discussions between and among reasonable people, and some experimentation to properly calibrate the farm's uses to the neighborhood. This is usually done by agreement. While Mr. Forster authorized undersigned counsel to explore this approach prior to filing this appeal and commencing litigation – the Board of Selectmen has evidently chosen to reject those overtures – which is regrettable. It is hard to see how a prolonged litigation over these issues, which will drain the Town's legal budget, force Mr. Forster to expend money to defend his rights to use his property as the law permits, and polarize the people of Henniker at a time of economic crisis is in anyone's best interest.

III. Weddings/Events and Other Like Functions are Permissible Uses of a Farm Pursuant to the State of New Hampshire's Statutory Definition of Agritourism

N.H. RSA 21:34-a VI defines the term "agritourism" to be "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." See Exhibit 5. This is important because any use fitting into this definition is, by operation of New Hampshire statute, "agriculture" or "farming," and as such – a permissible use in any zoning district where "agriculture" or "farming" is permitted. This definition, and its purpose was promoted by the New Hampshire Farm Viability Task Force, and was contained in the New Hampshire Farm Viability Task Force's Report "Cultivating Success on New Hampshire Farms" as "Proposal 5." See Exhibit 16. It was passed by the New Hampshire Senate and the New Hampshire House and became law on May 31, 2007.

This is important to the case before you because this is the new definition of "agriculture" and "farming" as decided by the New Hampshire legislature. The intent of the legislature was to modernize the definition of agriculture and farming to more accurately reflect the scope of agriculture and farming as they are practiced today. This new definition specifically includes many more activities which are now considered to be "agriculture" and "farming" activities, and expands the definition of agriculture and farming to include practices related to farming activities.

Because this is a New Hampshire statute governing agriculture, farming, and farming activities, your local ordinances cannot provide locally-based agriculture, farming, and farming activities like Forster's Christmas Tree Farm with less protection than that provided in the statute. Any such attempt to regulate agriculture, farming, and farming activities in a way that is inconsistent with this definition would be preempted by the statute, and rendered invalid upon a court challenge. See e.g., Town of Rye Bd. of Selectmen v. Town of Rye Zoning Bd. of Adjustment, 155 N.H. 622 (2007)(State law expressly preempts local law when there is an actual conflict between state and local regulation – actual conflict exists when a municipal ordinance or action prohibits what a state statute permits).

Here, Mr. Forster is attempting to host the occasional wedding ceremony, wedding reception, or corporate outing on his property, Forster's Christmas Tree Farm, which comprises more than 96 acres. In doing so, he is attempting to "attract[] visitors to a working farm for the purpose of eating a meal," and "for the purpose of... enjoyment of the farm environment," both of which are "ancillary to the farm operation." Mr. Forster's activities are squarely within the permitted definition of "agritourism" as promulgated by the New Hampshire legislature – and, thus, fall under the new definition of "agriculture" and "farming." The Town of Henniker is not permitted by law to read the definitions of "agriculture" and "farming" more narrowly – as that issue has already been decided on a statewide level by the New Hampshire legislature. Were the Town of Henniker to prohibit Mr. Forster from engaging in such activities claiming that they do not constitute "agritourism," such an interpretation would create an actual conflict between the Town's interpretation of its ordinance, and a state statute defining the term – which would result in the local ordinance being preempted and the state statute being given its intended effect.

This interpretation of "agritourism" to include the hosting of wedding ceremonies, wedding receptions, or corporate outings on farms is consistent with recent guidance promulgated by the United States Department of Agriculture, which noted that as of 2007, 23,350 farms in the United States were providing "agritourism" activities like weddings, corporate outings, camps, festivals and other like events. According to the USDA, "agritourism" includes "a wide array of farm and farm related activities, including **outdoor recreation** like nature-based tourism, fishing, hunting, wildlife study, horseback riding; **educational experiences** including day camps, hands-on chores, cannery tours, cooking classes, wine tastings, on-farm museums; **entertainment**, including harvest festivals, barn dances, "petting" farms; and **hospitality services including weddings**, overnight farm or ranch stays, guided tours, on-farm direct sales, "pick your own" operations, roadside stands, farmers markets, etc. See Exhibit 17. This definition is also consistent with that of various travel publications, which explain "agritourism" as:

focusing on travel that is "low-impact and empowering to local communities, both socially and economically. Recognizing the need to diversify their farm products and supplement their agricultural incomes, many farmers consider agritourism as a viable operation for the long-term sustainability of their farms. Agritourism can prop up an agricultural economy when local producers can no longer compete economically. The tourism takes place in a farm setting and is secondary to the primary agricultural operation.

Among these travel publications, "agritourism" nearly always includes the use of farms for weddings, honeymoons, corporate retreats, and other similar gatherings. See Exhibit 18 ("Many farmers and ranchers are supplementing their income by offering wedding and event venues. Rehearsal dinners, barbecues and other activities can combine with the wedding ceremony").

For all of these reasons, there is little doubt that Mr. Forster's use of Forster's Christmas Tree Farm for occasional wedding ceremonies, receptions, and like events falls within the statutory definition of "agritourism," and thereby makes such uses permitted farming and agricultural uses under the Henniker Zoning Ordinance.

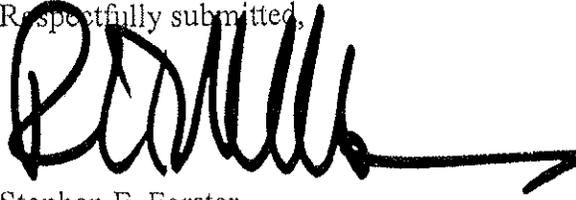
CONCLUSION

For all of the aforementioned reasons: (1) because the use is grandfathered and not subject to the Henniker Zoning Ordinance at all; (2) because the use of the Christmas Tree Farm for wedding ceremonies, receptions, corporate retreats and other like events is an accessory use expressly permitted by the Henniker Zoning Ordinance; and (3) because such uses fall under the statutory definition of "agritourism" as defined by the New Hampshire legislature, the United States Department of Agriculture, and many others – the Town of Henniker's decision to attempt to outlaw Mr. Forster and Forster's Tree Farm from conducting such activities was improper.

Accordingly, we ask that the Town of Henniker's Zoning Board of Adjustment VACATE Town Planner Mark E. Fougere's August 22, 2012 cease and desist letter to Mr.

Forster – and find that the use of Forster’s Christmas Tree Farm for wedding ceremonies, receptions, corporate retreats and other like events is permitted.

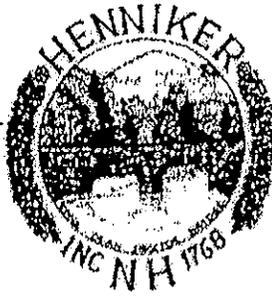
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Forster', with a long horizontal stroke extending to the right.

Stephen E. Forster
Forster’s Christmas Tree Farm & Gift Shoppe

BY AND THROUGH HIS COUNSEL

Robert H. Miller, Esq.
Sheehan Phinney Bass & Green P.A.
1000 Elm Street, 17th Floor
Manchester, New Hampshire 03105-3701
(603) 627-8145
rmiller@sheehan.com



**Town of Henniker
Zoning Board of Adjustment**

Notice of Decision

November 29, 2012

Tabled from October 17, 2012 Case #ZBA2012-04, Application for Appeal of an Administrative Decision made by the Towns' Administrative Officer, Section 133-58, appealing Notice of Violation dated August 22, 2012 to Mr. Steve Forster/Forster's Christmas Tree Farm that stated that the property was being used in violation of the Town Zoning Ordinance, Chapter 133, Article VII, RR Rural Residential District, Section 133-26: Holding weddings/events and other like functions on the premise that are not allowed uses in the RR zone per the Henniker Zoning Ordinance. Mr. Stephen Forster, Forster's Christmas Tree Farm & Gift Shoppe Applicant, 347 Mt. Hunger Road, Lot 727, Zoned RR Rural Residential District.

At their November 15th meeting, the Zoning Board of Adjustment, based upon the evidence presented, made the following findings relative to the four legal matters that were raised in the noted Appeal:

1. The wedding event use is grandfathered: Vote recorded: 0 Yes – 5 No, Board decision that weddings are not permitted because the use does not meet the tests for being a grandfathered use.
2. The wedding event use is an accessory use to the tree farm: Vote recorded: 0 Yes – 5 No, Board decision that weddings are not permitted because the use is not an accessory use to the tree farm as the use is not a customary, incidental or subordinate use.
3. The wedding use is an allowed Farm related use under agritourism: Bob Stamps **MOVED** to overturn the decision carried out by the Town Planner and allow only weddings and civil union ceremonies to be hosted at the farm under the definition of agritourism as defined in RSA 21:34a; the applicant must also go through the Site Plan Review process with the Henniker Planning Board to determine an acceptable plan for the applicant and the abutters. Mr. Parker **SECONDED** the motion. *Vote recorded: 4 Yes – 1 No, Board decision that weddings and civil union ceremonies are permitted under the definition of agritourism, subject to Site Plan Review by the Town Planning Board.*

Relative to the final legal matter raised by the appellate, the Board also discussed whether Henniker's ordinance is pre-empted by comprehensive State regulations authorizing agritourism activity. The Zoning Board decided that no motion needed to be taken on this issue as the Board concluded that Henniker's ordinance is not pre-empted by state regulations.

Doreen Connor, Chair
Zoning Board of Adjustment
November 29, 2012

Under the provisions of RSA 677:2 a request of rehearing must be filed with the ZBA within 30 days after a decision of the ZBA has been made. The request for rehearing is required to set forth fully every ground upon which it is claimed that the decision or order is unlawful or unreasonable. In the event that a rehearing is granted, a new application along with the appropriate fee must be presented to the Land Use Office in accordance with the posted schedule.

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**Town of Henniker
Zoning Board of Adjustment**

Notice of Decision

February 7, 2013
Case 2012-04

After granting the applicant's motion for rehearing, the Board reheard evidence presented by Stephen Forster in his Appeal of an Administrative Decision made by the Town's Administrative Officer, appealing Notice of Violation dated August 22, 2012 to Stephen Forster/Forster's Christmas Tree Farm that holding weddings and other like functions on the premises was not an allowed use in the RR zone. Henniker Zoning Ordinance, Chapter 133, Article VII, RR Rural Residential District, Section 133-26. Mr. Forster's Christmas Tree Farm & Gift Shoppe is located at 347 Mt. Hunger Road, Lot 727, in the Rural Residential District.

At their February 7, 2013 meeting, the Zoning Board of Adjustment, based upon the evidence presented, made the following findings relative to the legal matters that were raised in the noted Appeal:

1. Accessory use to the tree farm. Joan Oliveira **MOVED** that weddings/ like events are not accessory uses to the farm as defined in Section 133-3, Gigi Laberge **SECONDED** the motion. Motion **PASSED, 4 - 1.**

2. Permitted Agricultural use. Chairwoman Connor **MOVED** that the Board affirm the Town Planner's decision that the Applicant's requested use (weddings/like events) are not an allowed use under the Agriculture and Agritourism definition. Gigi Laberge **SECONDED** the motion. Motion **PASSED, 3 - 2.**

Doreen Connor, Chair
Zoning Board of Adjustment
February 11, 2013

Under the provisions of RSA 677:2 a request of rehearing must be filed with the ZBA within 30 days after a decision of the ZBA has been made. The request for rehearing is required to set forth fully every ground upon which it is claimed that the decision or order is unlawful or unreasonable. In the event that a rehearing is granted, a new application along with the appropriate fee must be presented to the Land Use Office in accordance with the posted schedule.

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Stratham Superior Court
163 North Main St./PO Box 2880
Concord NH 03302-2880

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NOTICE OF DECISION

**Michael Lee Donovan, ESQ
Donovan Law Office
72 North Main St
PO Box 2169
Concord NH 03302-2169**

**Case Name: Stephen E. Forster d/b/a Forster's Christmas Tree Farm & Gift Shoppe v Town
of Henniker
Case Number: 217-2013-CV-00204**

Enclosed please find a copy of the court's order of November 13, 2013 relative to:

ORDER

November 13, 2013

William S. McGraw
Clerk of Court

(485)

C: Robert H. Miller, ESQ; Barton L. Mayer, ESQ; Ralph R. Joyce; Kathleen A. LaBonte

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Stephen E. Forster d/b/a
Forster's Christmas Tree Farm & Gift Shoppe

v.

Town of Henniker

No. 13-CV-204

ORDER

The petitioner, Stephen E. Forster d/b/a Forster's Christmas Tree Farm & Shoppe ("Forster"), appeals a decision of the respondent, the Town of Henniker (the "town"), which through its Zoning Board of Adjustment ("ZBA" or the "board") determined that weddings, events and other like functions are not appropriate uses within the Rural Residential ("RR") zone. Abutters Stephen and Spencer Bennett intervened seeking to uphold the ZBA's findings. The respondent filed a cross claim seeking an injunction that would bar the petitioner from engaging in the use of his property prohibited by the ZBA and also seeking attorney's fees and civil penalties. Because the petitioner has failed to sustain his burden of showing that the ZBA decision is unlawful or unreasonable, it is AFFIRMED. Because the respondent has not persuaded the court to exercise its discretion to impose civil penalties, its request for civil penalties is DENIED. Because the respondent has sustained its burden with respect to its request for injunctive relief, that request is GRANTED. Finally, because the court lacks discretion to deny the respondent's request for an award of fees under the circumstances of this case, the respondent's request is GRANTED as set forth below.

The petitioner owns approximately 110 acres located at 347 Mt. Hunger Road in Henniker, New Hampshire. The petitioner owns and operates a Christmas tree farm on his property, which is located in Henniker's RR district. This is permitted, as agriculture is a recognized use in the RR district. *See* Henniker Ordinance, Article VII, 133-26 ("Ordinance 133-26") and Article II, 133-3 (adopting definition of "agriculture" set forth at RSA 21:34). In addition to operating a Christmas tree farm, the petitioner uses his property for commercial weddings, celebrations, business and educational events.

On May 24, 2012, town planner Mark E. Fougere issued a written notice of violation stating that the commercial wedding/function use on the property was prohibited. C.R. at 9. Mr. Fougere did not immediately enforce the violation pending discussions between the petitioner's counsel and the respondent. Ultimately, on August 22, 2012, Mr. Fougere issued a "Notice of Violation" specifically finding that "[h]olding weddings/events and other like functions" is not allowed in the RR zone. C.R. at 8. The May 24, 2012 notice of violation was reinstated on September 4, 2012. The petitioner appealed the notice to the ZBA, which held meetings on October 17, 2012 and November 15, 2012. At these meetings, the petitioner argued that weddings and events were lawful because the uses: (1) were grandfathered; (2) accessory to the farm/agricultural uses; and (3) ancillary to a farm under the definition of agritourism. C.R. at 126. On November 15, 2012, the ZBA members who were seated to vote included Mr. Parker, Mr. Stamps, Dr. Trivellini, Mr. Pagano, and Chairwoman Connor. Both Mr. Pagano and Dr. Trivellini were alternate members who voted because regular members Ms. Laberge and Ms. Oliveira did not vote.

The ZBA unanimously determined that weddings and events were not grandfathered or accessory uses. By a vote of four to one, the ZBA also determined that "weddings and civil un-

ion ceremonies” were permitted as agritourism as defined in RSA 21:34-a. C.R. at 124. The lone dissenter was Chairwoman Connor.

Both the petitioner and the abutting intervenors sought rehearing. On January 3, 2013, the ZBA granted rehearing. On February 7, 2013, the ZBA conducted a *de novo* proceeding. The February 7, 2013 ZBA consisted of Mr. Pagano, Chairwoman Connor, Ms. Laberge, Mr. Parker, and Ms. Oliveira. The petitioner expanded his request for permitted uses to “gatherings, meetings, celebrations, retreats and educational opportunities for families, schools and colleges, businesses and charitable or non-profit organizations which use the unique agricultural or farm setting.” C.R. at 239. The ZBA permitted the parties to resubmit the evidence introduced at the October and November meetings and the petitioner was permitted to enter additional evidence. The petitioner argued that: (1) agritourism uses were permitted by RSA 21:34-a and Ordinance 133-26; (2) RSA 21:34-a pre-empts any contradictory language; and (3) the requested uses are accessory to the farm business. C.R. at 176. The petitioner relied on the following evidence: (1) a report from the New Hampshire Farm Viability Task Force on the subject of agritourism; (2) a letter from Commissioner of Agriculture Lorraine Merrill explaining that agritourism in RSA 21:34-a is a broad term; (3) exhibits and testimony showing that farms throughout New Hampshire use agritourism such as weddings to supplement their income, and (4) testimony from farmers Jane Presby of Dimond Hill Farm in Concord and Tim Bassett of Gould Hill Farm in Hopkinton about agritourism and their farms’ viability. C.R. at 178–79, 266, 333, 335–405.

After deliberation, the ZBA denied the petitioner’s request. The board determined that the petitioner’s proposed use was neither an accessory use, nor “an allowed use under Agriculture and Agritourism definition.” C.R. at 191. Mr. Pagano dissented. Ms. Oliveira likewise dissented, but only on the agritourism issue.

On March 8, 2013, the petitioner filed a motion for rehearing. In addition to seeking reconsideration on the ZBA's agritourism and accessory use rulings, the petitioner asserted that the change in the ZBA membership configuration between the October/November 2012 meetings and the February 7, 2013 meeting was improper. C.R. at 421. The ZBA denied the rehearing motion on March 20, 2013. The instant appeal followed.

Any person aggrieved by a ZBA decision may appeal to the superior court. RSA 677:4. The appealing party must prove that the decision was either unlawful or unreasonable. RSA 677:6; *Labrecque v. Town of Salem*, 128 N.H. 455, 457 (1986). All findings of fact made by the zoning board are considered *prima facie* lawful and reasonable. RSA 677:6; *Korpi v. Town of Peterborough*, 135 N.H. 37, 39 (1991); *Simplex Tech., Inc. v. Town of Newington*, 145 N.H. 727, 729 (2001). The decision will be affirmed unless the board made an error of law, or the court finds, based upon a balance of probabilities, that the decision was unreasonable. RSA 677:6; *Residents of Deering v. Town of Deering*, 151 N.H. 795, 797 (2005). "The review by the superior court is not to determine whether it agrees with the zoning board of adjustment's [factual] findings, but to determine whether there is evidence upon which they could have been reasonably based." *Lone Pine Hunters' Club, Inc. v. Town of Hollis*, 149 N.H. 668, 670 (2003), quotation omitted. If "[i]n another town, on an identical fact pattern, a different decision might lawfully be reached by another ZBA," "[t]his does not mean that either finding or decision is wrong *per se*." *Nestor v. Town of Meredith*, 138 N.H. 632, 634 (1994).

With respect to a ZBA's legal interpretation of a zoning ordinance, a different standard applies. "Construction of the terms of a zoning ordinance is a question of law upon which [the trial] court is not bound by the interpretations of the zoning board." *Cosseboom v. Town of Epsom*, 146 N.H. 311, 314 (2001), quotation omitted. "Because the traditional rules of statutory

construction generally govern [a court's] review, the words and phrases of an ordinance should be construed according to the common and approved usage of the language." *Anderson v. Motorsports Holdings*, 155 N.H. 491, 494–95 (2007). A court will not look beyond the ordinance for indications of legislative intent when the words of the ordinance are plain and unambiguous, nor will it "guess what the drafters of the ordinance might have intended, or add words they did not see fit to include." *Id.* at 495. The court must "determine the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases." *Feins v. Town of Wilmot*, 154 N.H. 715, 719 (2007), quotation omitted.

In his appeal, the petitioner contends that: (1) the ZBA's findings are preempted by RSA 231:34-a; (2) agritourism is a permitted use in the RR district; (3) the petitioner's use is an accessory use; and (4) ZBA member Laberge was improperly seated. In addition, the petitioner seeks attorney's fees. The ZBA's cross claim seeks an injunction, civil penalties, and attorney's fees. The court will consider each of the issues raised in turn.

The petitioner first contends that the ZBA's interpretation of agritourism is preempted by RSA 231:34-a because it is inconsistent with RSA 231:34-a's broad definition of agritourism. The court disagrees.

"The preemption doctrine flows from the principle that municipal legislation is invalid if it is repugnant to, or inconsistent with, State law." *Casico v. City of Manchester*, 142 N.H. 312, 315 (1997). "Thus, preemption will occur when local legislation either expressly contradicts a statute or otherwise runs counter to the legislative intent underlying a statutory scheme." *Town of Hooksett v. Baines*, 148 N.H. 625, 627 (2002). "Generally, a detailed and comprehensive State statutory scheme governing a particular field is demonstrative of the State's intent to preempt that field by placing exclusive control in the State's hands." *Id.* That the state has created a com-

prehensive statutory scheme does not automatically result in preemption, however, because it could nonetheless authorize additional municipal regulation. *Id.*; *see also Casico*, 142 N.H. at 315–16.

In this context, statutes governing agriculture expressly allow local regulation of agricultural activities as long as the regulations are not unreasonable. RSA 672, III-b (“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[.]”); RSA 672, III-d (“‘[U]nreasonable interpretation’ includes the failure of local land use authorities to recognize that agriculture ... when practiced in accordance with applicable laws and regulations, [is] traditional, fundamental and accessory use[] of land throughout New Hampshire, and that a prohibition upon [its] uses cannot necessarily be inferred from the failure of an ordinance or regulation to address [it.]”); *see also* 15 P. Loughlin, *NEW HAMPSHIRE PRACTICE, LAND USE PLANNING AND ZONING* § 2.21, at 60–61 (2000). Because only unreasonable regulation is restricted, it follows that RSA 21:34-a does not preempt the town’s reasonable regulation of agriculture.

In this instance, Ordinances 133-26 and 133-3 specifically adopt RSA 21:34-a’s definition of “agriculture.” As explained below, RSA 21:34-a does not include “agritourism” in its definition of “farming” or “agriculture.” *See* Henniker Ordinance, Article VII, 133-26; RSA 21:34-a. Thus, the Ordinances and the ZBA’s findings do not contradict RSA 21:43-a. Moreover, RSA 21:34-a does not include a detailed and comprehensive statutory scheme governing agritourism. Thus, the petitioner’s preemption argument is inapposite.

The petitioner next claims that the Ordinance 133-26 includes agritourism within its definition of agriculture. The petitioner maintains the ZBA’s findings are inconsistent with the RSA

21:34-a definition of agritourism. The court disagrees. As this question involves the interpretation of an ordinance, the court reviews the ZBA's decision *de novo*. See *Cosseboom*, 146 N.H. at 314.

Agritourism was added to RSA 21:34-a in 2007—two years after Henniker referenced RSA 21:34-a as the source of its definition of agriculture. RSA 21:34-a provides, in relevant part, that the definition of “agriculture” and “farming” include “cultivation, conservation, and tillage of the soil,” and “production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to ... trees and tree products, [and] Christmas trees grown as part of a commercial Christmas tree operation....” The definition encompasses “[a]ny practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to ... [f]orestry or lumbering operations ... marketing or selling at wholesale or retail, on-site and off-site, where permitted by local regulations, any products from the farm.” Absent from these definitions is the term agritourism, which appears in its own separate subparagraph as the following:

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.

RSA 21:34-a, VI. As agritourism is not included within the RSA 21:34-a definition of agriculture, farm, or farming, it was not error for the ZBA to conclude that it is not a permitted use within a RR district under Ordinance 133-26.

Next, the petitioner asserts that the ZBA erred in ruling that the proposed uses are not accessory uses. Ordinance 133-26 permits accessory uses, which are defined as “[a] building or use subordinate and customarily incidental to the main building or use on the same lot.” See Ordinance 133-3. “[T]he language ‘customary, incidental and subordinate’ requires that the accessory

use be minor in relation to the permitted use, bear a reasonable relationship to the primary use, and have been habitually established as reasonably associated with the primary use.” *Marchand v. Town of Hudson*, 147 N.H. 380, 383 (2002). Whether a use is accessory is a question of law that this court reviews *de novo*. See *KSC Realty Trust v. Town of Freedom*, 146 N.H. 271, 273 (2001).

Here, there is record evidence that recognizes a general trend of farms in New Hampshire and throughout the United States to maintain viability by holding commercial events and weddings. Dimond Hill Farm in Concord and Gould Hill Farm in Contoocook are two local examples. With respect to the petitioner:

Mr. Forster stated that he bought his property 35 years ago and began to develop it. He provided the community with a unique destination farm experience. He said that people come from all over New England because of its beauty. He stated that he began hosting events at the farm in the early 1980’s, and last year, approximately seven events were held at the farm. He has made accommodations for parking, lavatories, etc. Agritourism was not a defined term when he began using his property for such purposes. Mr. Forster said that he was trying to generate money during the off season to help pay for the farm. He said that many people refer others to the farm and request to use the area for events. He stated that he is working hard to keep the area ‘green’ and trying to make something out of this property.

C.R. at 130. The record reflects that the petitioner held eight events in 2011 and five events in 2012, and that he makes available commercial weddings and events between May and October with a maximum capacity of 150 people. C.R. at 619. In contrast, the Christmas tree season is limited in duration.

The record contains little information on the petitioner’s Christmas tree farm. Instead, the petitioner generally asserts that commercial weddings and events are essential for the farm’s viability and that such uses are not subordinate or incidental. This is not sufficient. “An aggregation of incidental uses, however, may result in the loss of ‘accessory’ status. If the scope and significance of the proposed use is at least equal to the permitted residential use, the proposed use may

no longer be subordinate or incidental and thus not permitted as an accessory use." *Marchand*, 147 N.H. at 383.

The lack of record support for a finding of accessory use is reinforced by the petitioner's failure to establish a nexus between the weddings and events to the Christmas tree business. Indeed, the record indicates that wedding and event customers are attracted more to the view and less to the Christmas trees. Moreover, the record contains no evidence that other farms in Henniker market weddings and events as accessory uses. *See Becker v. Town of Hampton Falls*, 117 N.H. 437 (1977); *see also Marchand*, 147 N.H. at 384. Consequently, the petitioner has not sustained his burden of showing that the ZBA's accessory use determination was unreasonable or unlawful.

Finally, the petitioner contends that the ZBA improperly seated Ms. Laberge at the February 7, 2013 meeting. There is no dispute that Ms. Laberge was not seated at the November 15, 2012 meeting and was seated at the February 7, 2012 meeting. ZBA members Dr. Trivellini and Mr. Pagano, who did vote at the November 15, 2012 meeting, drew straws to determine who would fill the remaining seat. As a result, Mr. Pagano was seated as a voting member and Dr. Trivellini was an alternate. The petitioner claims that this process mandates reversal of the board decision. The court disagrees.

Dr. Trivellini and Mr. Pagano are alternative members who are only allowed to vote if a regular member is recused or absent. Article II, 2.3 of the ZBA Rules of Procedure states, in relevant part:

Alternate members of the Board shall join the permanent members in all presentations, public hearings, and discussions except that such alternates may not vote on any proposal or motion before the Board unless so directed by the Chair.

In the absence of any permanent member, the Chair shall appoint an alternate to fill such vacancy. The alternates shall be appointed by the Chair on a rotating

basis with the Clerk keeping a record of such appointments. Said alternate shall then act as a permanent member. RSA 673:11.

Moreover, ZBA Rule of Procedure 6.6 states:

When an alternate member has been appointed to fill the position of a full member at a meeting because of the full member's absence, the alternate member shall continue to sit on any continued applications that were started at that meeting, in the place of the full member, at subsequent meetings until the applications are decided.

Here, the petitioner's original application was decided on November 15, 2012. The petitioner and the intervenors requested a rehearing. The rehearing was granted and scheduled for February 7, 2013. The February 7, 2013 hearing was held *de novo*. Each party was allowed to present new evidence. Additionally, the petitioner amended his request for relief to include use of his property for, "gatherings, meetings, celebrations, retreats and educational opportunities for families, schools and colleges, businesses and charitable or non-profit organizations which use the unique agricultural or farm setting" C.R. at 239.

The process adopted by the board is consistent with the rules. Ms. Laberge, a permanent board member, was not present when the original application was decided on November 15, 2012. There is no dispute that the alternates were properly seated at that time. The February 7, 2013 hearing was conducted *de novo*. Because Ms. Laberge was a permanent board member, she was appropriately seated as a voting member under the rules. There also can be no dispute that the chair lacked the authority to fill the remaining voting seat with an alternated selected by drawing straws. Consequently, the petitioner has not sustained his burden of demonstrating that the change in the composition of the board warrants reversal.

Having addressed the petitioner's claims, the court turns to the town's cross claims. As indicated above, the town seeks civil penalties and injunctive relief. The court will address each claim in turn.

First, the town seeks civil penalties for the time in which the petitioner continued to operate his property in violation of the written notice of violation. RSA 676:17 authorizes a \$275 fine for the first offense and a \$275 daily fine for each day after “the violator receives written notice from the municipality that the violator is in violation....” RSA 676:17 (Supp. 2012); *see Town of Atkinson v. Malborn Realty Trust*, 164 N.H. 62 (2012). The imposition of a civil penalty is discretionary. The court recognizes the complexity of legal issues raised by the petitioner, which certainly warrants judicial analysis in the course of appellate relief. Given the nature of the issues and the nature of the petitioner’s conduct while those issues were being adjudicated, the court is not convinced that imposition of civil penalties is appropriate in this case. Accordingly, the respondent’s request for civil penalties is DENIED.

The town also seeks an injunction to prevent the petitioner from further violation of Ordinance 133-26. “Whether to grant an injunction is within the trial court’s sound discretion, exercised after consideration of all the circumstances and controlled by established principles of equity.” *Smith v. N.H. Bd. of Exam’rs of Psychologists*, 138 N.H. 548, 550 (1994). “The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy.” *Murphy v. McQuade*, 122 N.H. 314, 316 (1982). To obtain injunctive relief, the town bears the burden of demonstrating that: (1) it is likely to succeed on the merits; (2) there is a present threat based upon the lack of an adequate, alternative remedy at law of irreparable harm to the town if the court does not grant injunctive relief; (3) the potential harm to the town outweighs any harm to the petitioner; and (4) the public interest would be served. *See UniFirst Corp. v. City of Nashua*, 130 N.H. 11, 13-14 (1987); *Thompson v. N.H. Bd. of Med.*, 143 N.H. 107, 108 (1998).

The record reflects that the petitioner continued to schedule weddings after he received the notice of violation and while this appeal was pending. This order is dispositive of the issue of

the merits. This order is also dispositive of the remaining factors. The town has sustained its burden. Accordingly, the town's request for injunctive relief is GRANTED. The petitioner is enjoined from using his property in a manner prohibited by the town's notice of violation.

The remaining issue is the parties cross requests for attorney's fees. The petitioner seeks attorney's fees based on a claim that he was forced to litigate a clearly established right and the town acted in bad faith in singling him out for enforcement. As the court has explained above, the ZBA's findings are valid. *See Dugas v. Town of Conway*, 125 N.H. 175, 183 (1984). Furthermore, the petitioner has failed to produce evidence of bad faith. Accordingly, the petitioner's request for attorney's fees and costs is DENIED. The town also seeks attorney's fees and expenses in association with this litigation. The town is entitled to a mandatory award of reasonable attorney's fees and costs in accordance with RSA 676:17, II (Supp. 2012). *See Town of Bennett v. Town of Hampstead*, 157 N.H. 477, 484 (2008) (RSA 676:17 requires attorney's fees to be awarded to the municipality when it is the prevailing party in an enforcement action). Thus, the town's request is GRANTED as follows: the town shall submit an itemized list of attorney's fees and costs within 30 days of the date of the clerk's written notice of this order. The petitioner shall be provided with 10 days thereafter to submit a response. The court will then act.

Based on the foregoing, the court concludes that the petitioner has failed to sustain his burden of showing that the ZBA's decision was either unlawful or unreasonable. Accordingly, the ZBA decision is AFFIRMED. The respondent has failed to persuade the court to exercise its discretion to impose civil penalties. Accordingly, the respondent's request for civil penalties is DENIED. In contrast, the respondent has carried its burden of showing the need for injunctive relief. Accordingly, the petitioner is enjoined from using his property in a manner prohibited by the town's notice of violation. Finally, the respondent is entitled to a mandatory award of attor-

ney's fees. Accordingly, the respondent shall submit an itemized list of attorney's fees and costs within 30 days of the date of the clerk's written notice of this order. The petitioner shall be provided with 10 days thereafter to submit a response. The court will rule accordingly.

So ORDERED.

Date: November 13, 2013


LARRY M. SMUKLER
PRESIDING JUSTICE

RULE 7 NOTICE OF MANDATORY APPEAL

FORM.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH. SEE SUPREME COURT RULE 16(3)(b).

1. Whether the trial court erred, as a matter of law, in (a) ignoring the controlling language of RSA 21:34(a); (b) the Town of Henniker Zoning Ordinance's adoption of that statute as its definition of "agriculture;" and (c) the absence of any language to the contrary in the Henniker Zoning Ordinance in concluding that Mr. Forster's on-farm activities did not constitute permissible "agritourism" activities in the Town of Henniker's RR (Rural Residential) zoning district where Mr. Forster's 96+/- acre farm is located, and where agriculture is permitted as of right by the Town of Henniker's zoning ordinance? (Petitioner's Motion for Rehearing at 1; Petitioner's Trial Memorandum at 4)
2. Whether the trial court erred, as a matter of law, in limiting its analysis of what constitutes a legal "accessory use" to activities considered accessory in the Town of Henniker *only*, rather than in similarly situated communities around the State of New Hampshire? (Petitioner's Motion for Rehearing at 7; Petitioner's Trial Memorandum at 16)
3. Whether the trial court erred in refusing to award attorney's fees against the Town of Henniker and in favor of Mr. Forster, a farmer, pursuant to RSA 677:14, RSA 643:1, the New Hampshire Supreme Court's decision in *Funtown USA v. Town of Conway*, and because he was forced to litigate to enforce his clearly-defined statutory right to engage in agritourism activities on his farm in a zoning district where agriculture is a permitted use under the Town of Henniker's zoning ordinance? (Petitioner's Motion for Rehearing at 12; Petitioner's Trial Memorandum at 21)
4. Whether the trial court erred as a matter of law in refusing to find that the Chair of the Town of Henniker's Zoning Board of Adjustment did not engage in impermissible "board stacking" by unilaterally changing the membership of the ZBA while the case was ongoing? (Petitioner's Motion for Rehearing at 17; Petitioner's Trial Memorandum at 27)
5. Whether the trial court's award of "mandatory" legal fees in favor of the Town of Henniker and against Mr. Forster pursuant to RSA 676:17 was legal error where (1) the Town of Henniker had not commenced enforcement proceedings against Mr. Forster sufficient to trigger the attorney's fees provision of RSA 676:17; (b) where the attorneys for Mr. Forster and the Town of Henniker had a "gentleman's agreement" to permit any already-scheduled weddings to occur on Mr. Forster's farm during the summer of 2013 while the appeal of the legal issues worked its way through the court system, and (c) where the trial court recognized the "complexity of the legal issues raised by the petitioner" and the cooperative "nature of the petitioner's conduct while those issues were being adjudicated" and refused to impose civil penalties against Mr. Forster under RSA 676:17. (Petitioner's Motion for Rehearing at 23; Petitioner's Memorandum of Law in Support of his Objection to the Town of Henniker's Motion for Attorney's Fees Pursuant to RSA 676:17 at 1)

Section 1 Header

2014 SESSION

14-2796.0
08/05

SENATE BILL *[bill number]*

AN ACT relative to the definition of "agritourism."

SPONSORS: [sponsors]

COMMITTEE: [committee]

ANALYSIS

This bill further defines "agritourism."

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the definition of "agritourism."

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subparagraph; Agritourism; Definition. Amend RSA 21:34-a, II by inserting after
2 subparagraph (b) the following new subparagraph:

3 (c) Engagement by a farm in agritourism, meaning attracting members of the general
4 public to a working farm for recreational, entertainment, or educational purposes, and to view or
5 enjoy activities and attractions in the farm's rural environment. An activity is an agritourism
6 activity whether or not the participant paid to participate in the activity. For purposes of this
7 statute, a "working farm" means any parcel or parcels of land totaling at least 10 acres that can
8 demonstrate a minimum of \$5000 in agricultural-related gross income in at least 3 of the 5 prior
9 years. No fixed amount of acreage of such parcel or parcels of land is required to be in active
10 agricultural use. Agritourism uses include:

- 11 (1) Wineries and wine tastings;
- 12 (2) Farm and educational tours and classes including native ecology exhibits and
13 opportunities for bird watching and astronomy;
- 14 (3) Community gardens or community supported agriculture (CSAs);
- 15 (4) On-farm historical reenactments, including on-farm collections of old farm
16 machinery;
- 17 (5) Farm-based schools;
- 18 (6) Farm stores including roadside stands selling on-farm other local products and
19 wares;
- 20 (7) Agricultural processing demonstrations;
- 21 (8) Agricultural, harvest, and holiday festivals hosted by the working farm including
22 holiday activities, hayrides, sleigh rides, mazes, or crop art;
- 23 (9) On-farm themed playgrounds for children;
- 24 (10) On-farm petting zoos or farm animal exhibits;
- 25 (11) On-farm fee-for fishing, hunting or trapping;
- 26 (12) Temporary camping sites;
- 27 (13) Pick-your-own operations;
- 28 (14) On-farm entertainment including barn dances, theatrical, or musical
29 performances and concerts;
- 30 (15) Horseback events including riding opportunities, riding sporting events, and
31 training for horseback sporting events;

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- 1 (16) Biking, skiing, snowshoeing and walking trails; and
2 (17) Making the facilities available for on-farm picnics, reunions, weddings, parties,
3 meetings or retreats.

4 2 New Subdivision; Agritourism. Amend RSA 432 by inserting after section 35 the following
5 new subdivision:

6 Agritourism

7 432:36 Agritourism.

8 I. Agritourism shall have the same definition as found in RSA 21:34-a, II(c).

9 II. The commissioner may adopt rules, pursuant to RSA 541-A, relative to farm operations
10 that constitute agritourism.

11 III. This section shall not limit the powers and duties of a local government to make
12 regulations to address any emergency; to act, in clear and unambiguous cases to protect the health,
13 safety and welfare of its citizens pursuant to RSA 674:32-b; or to enforce local noise or nuisance
14 ordinances occurring at or around a working farm at which agritourism activities take place. In any
15 case where a local government enforcement action is reversed by the courts on the grounds that it is
16 improper local regulation of agritourism activities, the prevailing landowner shall be awarded the
17 costs of the suit and reasonable attorney's fees, as determined by the court, as well as any actual
18 damages caused to the landowner by such action.

19 3 Repeal. RSA 21:34-a, III, relative to the definition of agritourism, is repealed.

20 4 Effective Date. This act shall take effect 60 days after its passage.



Agricultural Law Memo

ALM 10-05

September 14, 2010

TOPIC: Agri-tourism and Agriculture

ISSUE: Farmers in the Commonwealth have historically used innovative marketing ideas to capture a larger proportion of the retail dollar for their farm products. Some of these marketing techniques, often referred to as agri-tourism, appear to be non-agricultural activities that would otherwise be regulated as a non-agricultural activity. But because agri-tourism activities are incidental to the primary purpose of agriculture, they are extended the same rights and privileges under the law as agricultural activities. MDAR has established certain criteria for those instances when we must differentiate between agri-tourism and non-agricultural activities. We are also often asked to provide these criteria to others to assist in distinguishing one from the other. The purpose of this memorandum is to provide the criteria by which an activity may be deemed agri-tourism as opposed to its non-agricultural counterpart.

Farming and agriculture have considerable rights and privileges under the laws of the Commonwealth, such as reduced taxation, exemption from certain local zoning provisions and state environmental laws, and even preferential treatment under the state building code. So, activities that would otherwise come under the authority or scrutiny of a law or regulation enjoy a certain level of exemption from such authority or scrutiny because the activities are associated with agriculture.

Consider a farm stand, for example. A farmer may construct a small structure on his property near the road to sell vegetables during the summer. Clearly, this is simply selling vegetables and is considered an agricultural activity as defined by Massachusetts General Laws (M.G.L.) c. 128, Sec. 1A. In contrast, consider a farmer who constructs a large supermarket type of a building at which not only vegetables from the farm but also the full range of supermarket items are sold. In fact, the products sold from this structure that comes from the farm may only account for a very small proportion of the sales. This would be considered a supermarket, not an agricultural structure. The farm stand is protected as agriculture while the supermarket would not be. The conclusions are intuitive for these two extreme cases, but difficulties arise when the circumstances fall somewhere in between. Agri-tourism activities fall into this difficult area.

Agri-tourism refers to a broad category of planned activities by which the activities and property of an agricultural enterprise serve as a destination for visitors whose objective is to experience agricultural life and operations with resulting benefits to agriculture in the Commonwealth and the economic viability of the agricultural enterprise. Some agri-tourism activities are clearly agricultural in that they include the planting, cultivation or harvest of an agricultural product (e.g. Pick Your Own operations). Accordingly, this ALM is intended to help identify agri-tourism activities that may be incidental to, or so directly related to, the agricultural enterprise as to share the agricultural nature of the enterprise. As a simple measure, the less related the activity is to agriculture, the less the activity ought to be considered agri-tourism.

Among the factors to be weighed in concluding that such activities qualify as agri-tourism are the agricultural focus of: (1) the property itself; (2) its commercial aspects; (3) the activities involved; and (4) the accommodations or other benefits accorded to the visitor.

Answers to the following questions are meant to assist in weighing whether an activity is agri-tourism.

The Property: At the most basic level, the primary underlying use of the property must be agricultural as defined by law. The following questions help establish the primary use as agriculture:

- (1) Are "farming" or "agricultural" activities as defined in M.G.L. c. 128, Sec. 1A taking place on the property?
- (2) What is the size of the property?
- (3) What agricultural products derive from the property?
- (3) Does the property enjoy the benefits accorded under M.G.L. c. 61 or 61A, or under M.G.L. c. 40A, Sec. 3?

* The Commercial Aspects: A property may meet the basic threshold of agriculture, but still may not be considered commercial agriculture where revenues from supplemental agri-tourism activities predominate over agricultural revenues:

- (1) What is the primary focus of the commercial activities at the property?
- (2) What percentage of the revenues from the property is generated from commercial agricultural activities as opposed to the revenue derived from the supplemental agri-tourism activities?
- (3) Is the commercial agricultural activity directed at consumers?

(4) What is the potential for improving the economic viability of the enterprise for continued use in connection with the supplemental agri-tourism activity?

(5) Is the property marketed or used as a visitor destination, or is the property marketed or used as ancillary to off-property destinations such as sports venues or museums?

The Activities: Often a property may demonstrate its primary use as agriculture by the preponderance of activities conducted on the property and the relationship of those activities with agricultural activities:

(1) Are agri-tourism activities primary, supplemental, or complementary to the use of the property?

(2) What percentage of the activities occurring on the property are agri-tourism activities?

(3) What is the primary use of the property when agri-tourism activities are not taking place?

(4) Are the agri-tourism activities designed specifically to bring the public to the property for an agricultural related experience?

(5) Are the agri-tourism activities designed to enhance the viability of a traditional agricultural operation?

The Accommodations: The kind of accommodations made available to visitors can shed light on whether those accommodations should be treated as part of the agricultural enterprise or are essentially non-agricultural commerce. Accommodations directed at drawing or keeping consumers on the property so as to participate in agricultural activities of the property support a conclusion of agri-tourism:

(1) What accommodations are provided to visitors?

(2) What is the duration and frequency of visits?

(3) What, if anything, do visitors pay?

(4) Is the agri-tourism activity best described as a farm stay, work exchange, or educational stay?

(5) What products or services are provided to visitors while they are on the property?

(6) Are meals provided to visitors and, if so, are they prepared with products and commodities grown on the property?

(7) What involvement, if any, do visitors have with traditional agricultural operations?

The foregoing is not meant to be an exhaustive list of considerations in reaching a conclusion as to whether an activity is agri-tourism or non-agricultural commerce, but is meant only to suggest some relevant factors to be weighed in reaching that conclusion.

Relevant Laws and regulations: M.G.L. c. 128, Sec. 1A, c. 40A, Sec. 3, c. 61, c. 61A, c. 131, Sec. 40, c. 111, Sec. 125A, 330 CMR 22.02; The State Building Code (Among other sections 780 CMR 312; 780 CMR 120.C)

