On June 12, 2015, the NH Supreme Court released its ruling in a zoning case involving the definition of "agritourism" and whether weddings and other events are permitted on property used as a Christmas tree farm – Forster v. Town of Henniker:
http://www.courts.state.nh.us/supreme/opinions/2015/2015048forster.pdf

The Court's opinion is about 20 pages long, but will make for some interesting weekend reading about how state statutes are interpreted and whether municipal zoning regulations are invalid because they conflict with the purposes of a state statute and are therefore preempted. The Court's ruling also includes a good discussion of the law of accessory uses.

The 110-acre farm is located in the town's rural residential district. About 10 acres is devoted to growing Christmas trees. The owner wanted to hold weddings, celebrations and business and educational events on the farm. The ZBA ruled that such uses were not permitted in the rural residential district and were not accessory uses. The trial court upheld the ZBA's ruling.

At the Supreme Court, the petitioner argued that weddings and other events were permitted because they constitute agritourism under RSA 21:34-a, VI, that agritourism is included in the definition of agriculture in RSA 21:34-a and that the town's zoning ordinance incorporates by reference the definition of agriculture in RSA 21:34-a.

The Court disagreed with petitioner's assertion that "agritourism" is included in the statute's definition of "agriculture." The Court said, "Although growing Christmas trees as part of a commercial Christmas tree operation is listed as a farm operation under [(RSA 21:34-a, II(a)), hosting events such as those the petitioner proposes is not."

Such events also are not included in RSA 21:34-a, II(b) as "a practice incidental to farming operations." Although the statute says the list is not all inclusive, under the principle of ejusdem generis "we construe the general words in that subpart ("any practice on the farm incident to, or in conjunction with such farming operations") to embrace only practices similar to those included in the enumerated list." Hosting weddings and other events is not similar in nature to the practices listed in subpart (b)."

The Court also said that nothing in the definition of agritourism in RSA 21:34-a, VI "provides that activities that constitute agritourism also constitute agriculture. Accordingly, even if we assume that the petitioner's proposed uses constitute "agritourism," the plain meaning of RSA 21:34-a does not provide that they also constitute agriculture." The Court noted that the legislature can amend statute as it sees fit.

The petitioner also suggested that RSA 674:44-e, which authorizes municipalities to establish agricultural commissions, is evidence of legislative intent to include agritourism within the definition of agriculture.

According to the rules of statutory construction, when the plain meaning a statute is unambiguous, which the Court said was the case with RSA 21:34-a, there is no need to review legislative history to determine the legislature's intent in enacting the statute. However, in this case the Court said consulting the legislative history supports the Court's interpretation of the statute. The Court's summary of the

legislative history of the bill on agritourism is well worth the read for its interesting discussion about local zoning and the effect of the statute on local regulations. According to the Court, "The legislative history … reveals that the legislature considered, but ultimately rejected, the notion that "agritourism," as defined by RSA 21:34-a, VI, constitutes "agriculture" within the meaning of RSA 21:34-a, II. … Thus the legislative history demonstrates that the plain language of the statute is in accord with the legislature's intent."

Is the town ordinance preempted?

The Court's opinion also includes an informative discussion of the doctrine of preemption and whether the town's zoning ordinance was preempted by RSA 21:34-a. Generally speaking, municipal legislation is invalid if it is inconsistent with state law. A local ordinance is preempted when the comprehensiveness and detail of the state statutory scheme shows legislative intent to supersede local regulation, or when there is an actual conflict between state and local law, or when a municipal ordinance permits that which a state statute prohibits or vice versa.

The petitioner argued that the purpose of RSA 21:34-a is to create a uniform application of the term agritourism across the state to enhance the economic viability of NH farms and that the agritourism statute mandates that the town cannot prohibit otherwise valid agritourism that meets the statutory definition.

The Court said that RSA 21:34-a is "a set of definitions, not a comprehensive statutory scheme aimed at superseding local regulation." RSA 21:34-a VI merely defines agritourism; it contains no mandate to municipalities. The Court said the statute does not require that municipalities adopt the same definition in their local ordinances. "Nor does it mandate that municipalities allow activities that meet the statutory definition of agritourism. … Because RSA 21:34-a contains no mandate, the town's ordinance necessarily does not conflict either with its language or its purpose."

The petitioner argued that other statutes contain mandates to municipalities, however the Court pointed out that none use the word "agritourism."

Here's what the Court said about each of these other statutes:

RSA 674:17, I(i) "merely requires that zoning ordinances 'encourage' the preservation of agricultural lands and buildings and the 'agricultural operations' described in RSA 21:34-a."

RSA 672:1, III-b "precludes municipalities from unreasonably limiting 'agricultural activities' and from unreasonably interpreting their municipal powers."

RSA 672:1, III-d "explains that a municipality unreasonably interprets its regulatory powers when it fails to recognize that agriculture … when practiced in accordance with applicable laws and regulations, is a traditional, fundamental and accessory use of land throughout New Hampshire, and that a prohibition upon that use cannot necessarily be inferred from the failure of an ordinance … to address it."

RSA 674:32-a "provides that when 'agricultural activities' are not explicitly addressed [in the zoning ordinance] with respect to any zoning district or location, they shall be deemed to be permitted there, as either a primary or accessory use, so long as conducted in accordance with … federal and state laws, regulations and rules."

The Court added: "None [of these statutes] support the petitioner's contention that the legislature intended to require municipalities to allow agritourism within their borders … Moreover, they demonstrate legislative intent to allow reasonable local regulation, not to preempt the entire field." According to the Court, "should town voters want to allow the petitioner's proposed uses in the rural residential district, they are free to amend the town's ordinance as they see fit."

Are the petitioner's proposed uses Accessory Uses?

The petitioner asserted that even if weddings and other proposed events are not agritourism under the statute, they were accessory uses and therefore permitted. The Court discussed the definition of accessory uses: They are "not the principal use of the property, but rather a use occasioned by the principal use and subordinate to it; the accessory use "must be minor in relation to the primary use."

The town ordinance states that accessory uses must be "customarily incidental" to the primary use. The Court said "'customarily' imposes an additional requirement that the accessory use 'has commonly, habitually and by long practice been established as reasonably associated with the primary … use in the local area." The Court said the petitioner's evidence failed to prove that his proposed uses are commonly associated with the operation of Christmas tree farms in the local area.

One of the five justices dissented from the majority opinion. He opened his dissent with this: "It is abundantly clear that none of my four colleagues have spent a summer in East Colebrook, an area where weddings on farms are customary."

The majority opinion and the dissent are well worth your time!

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