



City of Keene
New Hampshire

AGRICULTURAL COMMISSION AGENDA

Wednesday, December 13, 2017

3:30 PM

2nd Floor **Committee** Conference
Room

Commission Members

Sarah Wilton, Chair
Charles Daloz, Vice Chair
Councilor Bettina A. Chadbourne
Mark Florenz
Aaron Moody

Staff Present

Rhett Lamb, Planning Director
Michele Chalice, Planner

- 1) Call to order
- 2) Approve November 8, 2017 minutes
- 3) Approve 2018 Meeting Schedule
- 4) Discussion: DRAFT Agriculture Regulation Toolkit & DRAFT Right to Farm Flowchart
- 5) Recap. of Planning Board Regulatory Revision Discussion
- 6) Chicken Brochure – Final Revisions Approval
- 7) Agriculture Brochure
- 8) New or Other Business
- 9) Next Meeting – Wednesday, January 10, at 3:30PM
- 10) Adjournment

City of Keene
New Hampshire

AGRICULTURE COMMISSION
MEETING MINUTES

Wednesday, November 8, 2017

3:30 pm

City Hall, 2nd Floor
Conference Room

Members Present:

Sarah Wilton, Chair
Charles Daloz, Vice Chair
Bettina A. Chadbourne, Councilor
Mark Florenz, Member
Catherine Souther, Member
David Souther, Public
Larry Michaelov, Public
Nancy Michaelov, Public

Staff Present:

Michele Chalice, Planner

Members not present:

Aaron Moody, Member

1) **Call to order-**

Chair Wilton called meeting to order at 3:30 pm.

2) **Approve October 11, 2017 minutes-**

Ms. Souther moved to accept October 11 minutes with revisions, Mr. Daloz seconded and motion was passed by unanimous vote.

Mr. Daloz asked for clarification about the ways in which topics in previous month's meetings are discussed. Ms. Chalice responded that if the topic is being continued it will be added to the next month's agenda as a topic item.

Chair Wilton asked about participation at Agway and Ms. Chalice recommended that the committee make a motion about tabling events in the future that any combination of members can attend in advance. Ms. Chalice asked members to allow her a few days' notice and she can provide the display board, copies of brochures, however, they would need to secure their own table for events. Mr. Daloz asked if members were permitted to attend a private company event as well as Ms. Chalice agreed that they could. Mr. Florenz motioned that they allow members of AGC to table events consistent with discussed AGC goals without prior permission from the commission, Mr. Daloz seconded and the motion passed unanimously.

3) PB Regulatory Revision & Review Process

Guests Mr. and Ms. Michaelov introduced themselves. Mr. Michaelov said he is participating in a Natural Resource Stewardship program conducted by UNH Extension and one of his requirements is to attend an agricultural meeting. Ms. Michaelov stated that she participated in the Master Gardener program at UNH Extension as well. Chair Wilton asked if they lived in Keene and inquired whether they would be interested in a position with the committee. Ms. Chalice stated that two alternate positions are available and if they are interested they could write a letter to the Mayor and he would respond directly.

Ms. Chalice stated that given the recent experience with Mr. Florenz's new Livestock Hoop House project, the Planning Board is also concerned that Keene's current Site Plan Regulatory process is more difficult than they would like and have asked for a review. She said she learned that the New Hampshire Municipal Association is providing a tool kit on agriculture and regulation in New Hampshire. She said she will attend the conference next Wednesday and bring a "tool kit" back to AGC and Planning Board as they have purview over the site planning process. The AGC can then make recommendations to the Planning Board.

Chair Wilton stated that based on her research the review process appears cumbersome, however, there are exceptions cited to the site review process. She thought that agricultural review should be included in the exceptions as the plan is geared towards residential areas. She thinks that there is a need for the process to perhaps exempt agricultural facilities. Mr. Florenz responded that agricultural structures perhaps should not be exempted but be allotted a more streamlined process, while also carefully defining what constitutes an agricultural structure.

Ms. Chalice asked that members who attended the prior conference provide their feedback and reach out to people they have networked with. Mr. Florenz said perhaps reaching out to the agricultural contacts would be helpful. Mr. Daloz stated that the review process did not sufficiently address agricultural facilities. He shared that in New York State there are "right to farm" signs upon entering farming communities which is a great example to set. Ms. Chalice stated that the Planning Board is the only entity to review their own planning process but they cannot adjust the Code Departments code, health and safety regulations. She said that planning staff have been introduced to the project as a whole and are currently going from department to department to talk about how the land use update will impact their operations. She said it has not gotten out to the committees or the public yet.

Councilor Chadbourne asked if they can make a recommendation about AGC members participating in Land Use Code committee. Chair Wilton recommended that an AGC member be involved before the Planning Board makes final decisions. Ms. Chalice stated that all committees will have an opportunity to be a part of the process. Mr. Florenz suggested that it would likely be a five year process. Mr. Daloz asked if land use code updates would be part of the municipal code. Chair Wilton suggested that they continue discussion and research and add this item to the agenda next month. Ms. Chalice responded that having examples from other communities would be helpful. Mr. Florenz suggested that they do not overload themselves and keep their eyes on the land use rewrite as something that is coming down the road in the future. Chair Wilton asked

whom else these updates would apply to in Keene. Members agreed that the bigger farms, like Stonewall, small and new farms would be impacted as well. Ms. Souther stated that large farms may need to be differentiated from smaller operations. Ms. Michaelov asked for clarification about what structures on farms are subject to planning review and Ms. Souther stated that additions to farms are considered similarly to new buildings. Chair Wilton suggested that they all research this topic further. Chair Chadbourne suggested that they assign tasks to not duplicate information. Mr. Florenz said he would follow up with the conference members of MFCC.

4) Chicken Brochure Revision Discussion

Chair Wilton asked if there are any comments on the Chicken Brochure draft. She said she liked it as it could create nominal recognition for AGC. Chair Wilton suggested changing the wording under the section “Being a Good Chicken Neighbor” from “successful relationships” to “positive relationships.” Mr. Michaelov asked for clarification on the chicken brochures. Ms. Souther clarified that Keene residents are permitted to keep small scale poultry as long as they are not commercial. Councilor Chadbourne added that more people have started chicken coops and there have been some complaints. She said AGC created the brochure to educate public.

Ms. Michaelov asked if the UNH extension is used in Keene as she fields questions through them about similar sorts of questions. Councilor Chadbourne asked if Ms. Michaelov would review the brochure for the committee. Ms. Chalice asked Ms. Michaelov to please send comments to her email address and she would include the new draft in the next packet. Chair Wilton suggested that perhaps Agway and Horse & Buggy would like to have copies. Ms. Chalice suggested that members enlist those companies’ support by allowing them to include their logo on the brochure to enable AGC to make more copies. Councilor Chadbourne said she would inquire about more funds for printing more copies. Mr. Florenz suggested waiting until spring as people are not getting chickens this time of year. Ms. Michaelov suggested making brochures available anywhere people wait in line. Chair Wilton recommended that members get feedback on printability of chicken brochures. Mr. Daloz asked what the City regulation is on obtaining sponsorship and Ms. Chalice said she would find out for next month. Chair Wilton added sponsorship of brochures to next month’s agenda.

5) Sample Brochure Discussion/MFCC Distinction

Ms. Chalice shared that she printed up sample Agricultural Commission brochures as the Monadnock region already has a good deal of promotion from MFCC as well as Cheshire County Conservation District. Chair Wilton encouraged members to think about what is missing in the brochures. Councilor Chadbourne stated the brochure was interesting but that they have conservation and open land commission and AGC has a more narrow scope. Chair Wilton suggested they could have a community gardens map. Mr. Daloz replied that placing local farms on the brochure is going to overburden it and necessitate frequent revisions. Chair Wilton suggested they could add local businesses who support local agriculture on the brochure as well. Ms. Souther suggested adding restaurants serving locally-sourced food, CSAs, etc. Mr. Florenz added that the only challenge about this path is that brochure will get dated quickly so perhaps the commission should consider keeping the brochure more generic about what the AGC is.

Mr. Souther added that AGC mission statement is written well although it is long. Councilor Chadbourne asked if the mission statement can be found on website. Ms. Chalice replied yes, if the AGC mission can be found on the Keene City website. Chair Wilton stated that it is difficult to navigate the new City website and cannot find the AGC web page. Ms. Chalice instructed Chair Wilton on how to locate the commission on the website.

Ms. Michaelov suggested using a farm scene on the brochure and to ensure there is no repetitive wording. She also suggested turning the brochure into a photo contest to be sent to the City for consideration. Mr. Florenz stated he thinks the brochure will take a lot of time out of the agenda. Ms. Chalice encouraged committee to think about projects for the brochure. Chair Wilton stated there was a yearly update presentation to the Planning, Licensing, and Development committee regarding amending the City Master Plan as it does not specifically mention agriculture. She said what they have envisioned was an update to this Master Plan to include agriculture. Chair Wilton stated that the topics in the City's Master Plan included agriculture as part of Keene's cultural history, open space and green way connections, community health and wellness, hunger and food security, future land use policy Mr, Daloz suggested adding community gardens and farmer's markets.

Mr. Florenz asked members to step back and ask if the brochure is really the right thing for the City of Keene agricultural commission as resources are out there already and it pulls focus from other projects. Ms. Chalice suggested that the pollinator project is one idea. Mr. Florenz admitted he would like to do projects instead of summarizing what AGC does. Ms. Souther said a business card idea might be better to raise awareness and brochure might be a good idea in the long run for tables or events. Councilor Chadbourne filled guests in about the objective of bringing agricultural awareness through different avenues and the community has spoken that it is important to them. For example, she said that parcels that the city owns could be used as community gardens, pollinator gardens or combination of all these things. Mr. Souther asked about parcels and Ms. Chalice said they are managed by Parks and Recreation. She said they looked at one parcel but there was a problem with it being a catchment area for drinking water and they did not want to add amendments to the soil so if they are interested they have to work with Mr. Bohannon. The pollinator project is a simple one and there are grants available.

Mr. Florenz stated that there is not strong farmer demand to allot parcels and each has its own difficulties. Councilor Chadbourne said that there are a couple of parcels that were offered but that particular farmer decided it wasn't worth it. Ms. Souther asked about the size of the parcels. Mr. Florenz said there are different sizes and you would need someone to drive it, actively pursue grant money and manage the process; perhaps this is an item to put on the next agenda.

Chair Wilton asked if they should focus on brochure, looking at land use or both. Ms. Michaelov stated that as a Master Gardener they are also looking for projects in areas and it would never occur to her to look in Keene to look for land. Councilor Chadbourne stated that AGC has a problem networking because it is still unknown to the public. Chair Wilton suggested the flyers as the best route. Ms. Michaelov said that through her Master Gardener program, they could present those ideas about these parcels. Mr. Florenz said the City of Keene manages a lot of property. Chair Wilton suggested moving brochure, parcels/projects into next month's agenda.

Mr. Daloz suggested those who are interested in revising the Good Chicken Neighbor brochure go ahead submit the revisions for next month's meeting.

6) **New or Other Business**

N/A

7) **Adjournment**

Chair Wilton adjourned meeting at 4:29 pm.

8) **Next Meeting – Wednesday, December 13, at 3:30PM**

Respectfully Submitted by,

Ayshah Kassamali-Fox, Minute-Taker

Why Keep Chickens?



This is a good place to briefly, but effectively, summarize your products or services.

City of Keene Agriculture Commission

**3 Washington Street
Keene, NH 03431
Phone: 603 352 0133**

<http://www.ci.keene.nh.us/agricultural-commission>

YOUR LOGO
HERE

Keene Agriculture Commission

Perhaps a List of
Businesses that Sell
Chickens and/or
Supplies??



Main Inside Heading

Considerations

What Are The Rules

Roosters?

Number of Chickens?

Running At Large?

Slaughter?

Selling Eggs?

Storing Feed:

Mandatory Outdoor Enclosure

Coop Suggestions

Waste??

Caption describing picture or graphic.

The City of Keene, New Hampshire's Code of Ordinances allows for the Non-Commercial Raising of Animals in both the Low Density and Medium Density Zoning Districts

Sec. 10-27 of the Keene Code of Ordinances states "The City of Keene's Animal Control Officer has the authority to enforce and to investigate all reports of violations involving animals in this article and of RSA 466:1 et seq." This rule is specifically for dogs and has not yet been utilized for the welfare of chickens.



Caption describing picture or graphic.

Keep Neighbors Informed

Considerations to communicate:

- Letting your neighbors know ahead of time.
- Conservation-Water Quality Considerations?
- Strategic Coop placement
- Anticipate Noise and Odor Issues
- ..
- ..

This area can be used to give the reader clear instructions for the next steps that you hope they will take. It may be a number you want them to call, a Web site you want them to visit.

City of Keene's Agriculture Commission

Keene, NH



Current Members: Sarah Wilton, Chair, Mark Florenz, Asst. Chair, Charles Daloz, Aaron Moody, Councilor Bettina Chadbourne

Assessment for Community Gardens In Keene 2014

Prepared for the Keene Agriculture Commission



Spring 2016. Images from 2014 AUNE Student Presentation

Past and Current Concerns:

- ❖ Location and assistance for the Farmer's Market of Keene
- ❖ Community Gardens in Keene
- ❖ Ashuelot Greenspace
- ❖ Agriculture for City of Keene Public Lands
- ❖ Pollinator Habitat
- ❖ Keene Master Plan and an Ashuelot Agricultural Vision

Committee Charge:

"(This committee has been) created to ensure proper recognition, promotion, enhancement, encouragement, use, management, and protection of agriculture and agricultural resources in the interest of economic prosperity, cultural and aesthetic enrichment, natural resource protection, and general welfare of the community. The word "agriculture" shall include the entirety of RSA 21:34-a, which is the definition of farm, agriculture, and farming.

This purpose will be safeguarded by the establishment of an Agricultural Commission in accordance with RSA 673:4-b."



Purpose of the Agriculture Commission:

- o Advise and Work With Other Boards and Commissions on Issues Facing Farming in the Town
- o Conduct Inventories of Agriculture Resources
- o Conduct Inventories of Historic Farms and Farm Buildings
- o Educate the Public on Matters Relating to Farming and Agriculture
- o Serve as a Local Voice Advocating for Farmers, Farm Businesses and Farm Interests
- o Provide Visibility for Farming
- o Give Farmers a Place to Go for Help
- o Help Resolve Farm Related Problems or Conflicts
- o Help Protect Farmland and Other Natural Resources

Source: Sustaining Agriculture in the Granite State: A Citizen's Guide to Restoring Our Local Foods, Farms and Independence by Jeremy Lougee pg. 28

Meeting Times & Contact Information:

2nd Wednesday at 3:30 in the 2nd floor Committee Conference Room at City Hall, 3 Washington Street, Keene, NH.

For more information, contact Alan Bettler, Chair at Sarah Wilton, Chair at

Swilton12@yahoo.com or Mark Florenz at mark.florenz@gmail.com

Resources:

- *Community Garden Needs Assessment* Dr. McCann, Antioch NE
- *Invasive Species Inventory of Conservation Easement Lands*: Dr. Allen, Keene State Univ.
- *Cheshire County Farms Study*: Dr. Cusack, K.S.U (2012)
- *Cheshire County Farm Needs Assessment*: S. Sullivan, Cheshire City Conservation Dist. (2011)

LOCAL REGULATION OF AGRICULTURE TOOLKIT



Presented by The NH Coalition for Sustaining Agriculture

IS YOUR TOWN FARM FRIENDLY?

2nd Edition

A checklist for municipal planning for agriculture

Farms are thriving and expanding across New Hampshire in new and exciting ways as farmers capitalize on consumer interest in fresh, locally grown and produced food. Farm stands, community gardens, community farms, and summer and winter farmers' markets provide access to New Hampshire grown agricultural products year round, creating opportunities for farmers to build their businesses.

To support this economic development, municipalities can do more to ensure farms are successful. Agricultural land use is often overlooked in local plans and regulations, with emphasis given to residential and commercial activity, transportation networks, and recreation. As a result, farmers can be hindered by uncertainty regarding how state and local regulations are applied to their operations. Municipal plans, regulations and policies that are flexible and clearly promote and support farming can help ensure New Hampshire's traditional working landscape of farms and forests can continue to work in the future.

This checklist, originally developed by the New Hampshire Coalition for Sustaining Agriculture in (year), has been updated to reflect municipal interest in creating economically and environmentally sustainable and resilient communities that recognize the importance of a local and regional food supply, as well as the recognition by local officials that agricultural land in all our communities provides more than food and forest products and rural character, but also water supply protection, flood storage, and wildlife habitat.

Practical Land Use Ordinances and Regulations

Does your town:

Have an Agricultural Resources chapter in the Town Master Plan?

The Master Plan is the vision of what land uses are encouraged, protected, or excluded within a town. To support farms and farming, the Master Plan should include a chapter dedicated to agricultural resources, including an inventory of current agricultural activity, an analysis of the impacts of existing regulations on farming, and goals and recommendations to support agriculture.

Allow

Allow uses in most zones?

Farms are interwoven throughout our communities, operating in areas zoned for residential, commercial, and industrial activity. Farms are often hybrids of all these different kinds of land uses, and ordinances and regulations should provide flexibility for the dynamic nature of farming.

Use the State's definition of agriculture, detailed in NH RSA 21:34-a?

The State of New Hampshire has an official definition of a farm, agriculture, and farming – it's all included in NH RSA 21:34-a. Local adoption of this definition provides consistency with the State's definition and the many references to agriculture in State laws and programs.

GLOSSARY OF TERMS*

Abandon or Abandonment

There is no statutory definition of abandonment for purposes of laws concerning agricultural use. Absent a state definition, the definition provided in the applicable municipal ordinance will govern. Generally these ordinances will define that abandonment as an event that occurs when there is a stated intention or otherwise apparent action to discontinue an agricultural operation, such as by the removal of characteristic equipment or furnishings used in the performance of the operation, without its replacement by similar equipment or furnishings, or the replacement of the operation with a different non-agricultural operation. Cf. Town of Auburn, New Hampshire, Zoning Ordinance, § 2.02 (Mar. 2014) (discussing definition of abandonment in the analogous context of non-conforming uses).

Absent a municipal definition, the meaning is less clear. New Hampshire state law provides that an undefined word shall be given its “common and approved usage.”* Beyond this, the case law suggests that abandonment occurs “upon the concurrence of two factors: (1) an intention to abandon or relinquish the use, and (2) some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use.” *Lawlow v. Town of Salem*, 116 N.H. 61, 62 (1976). The decisive test is “whether the circumstances surrounding such cessation of use are indicative of an intention to abandon the use and the vested rights therein.” *Id.*

Agriculture

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 all beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus 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, of any products from the farm, on-site and off-site, where not prohibited by local regulations. Marketing includes agritourism, which means attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of 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.
Agritourism [“][A]gritourism[”]. . . means attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm. RSA 2:34-a, II(b)(5).

Farm Stands

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. RSA 21:34-a, III

Local Land Use Board

“Local land use board” means a planning board, historic district commission, inspector of buildings, building code board of appeals, zoning board of adjustment, or other board or commission authorized under RSA 673 established by a local legislative body. RSA 672:7.

Municipality

“Municipality” or “municipal” means, includes and relates to cities, towns, village districts, and counties in which there are located unincorporated towns or unorganized places. RSA 672:10.

Town

The word “town” shall extend and be applied to any place incorporated, or whose inhabitants are required to pay any tax, and shall mean that city, town, ward, or place in which the subject-matter referred to is situate, or in which the persons referred to are resident, unless from the context, a different intention is manifest. RSA 21:5.

* The definitions contained in this Glossary of Terms are the verbatim statutory definitions of terms found in the Infographic that have a specific statutory definition under New Hampshire law. Beyond these specific definitions, “[w]ords and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning.” RSA 21:2. This means that the many words used in these laws that are not specifically defined, such as “significant” expansion, would have their “common” meaning, and unfortunately the common meaning is not entirely clear.

Allow simpler design standards for Site Plan Review regulations on agricultural businesses limited to seasonal use?

Simpler standards for certain aspects of Site Plan Review regulations make sense for agricultural uses, such as parking, lighting, and signage requirements for seasonal retailing or events. When agricultural uses are limited in scope an impact, they need not be treated as if they were year-round permanent businesses.

Allow flexibility in regulations to accommodate the unusual needs of agricultural businesses?

Both the land use impact and the off-site impact of a seasonal farm business is much less than that of a full-time business. Pick-your-own fruit or Christmas tree farm businesses can't be viable in a town that treats farms like other retailers. Do your town regulations provide for reduced restrictions such as expanded hours of business operation, temporary signs, parking near pick-your-own fields, or on street parking?

Require buffer zones between farmland and residential uses?

The old saying "good fences make good neighbors" has a modern corollary that says "good buffer zones make new neighbors good neighbors." New development should not place the burden on existing farms to give up boundary land as a buffer zone between agricultural and residential uses. New residential development should provide for its own buffer zone and/or landscape plantings for screening when necessary.

Provide for the agricultural use of open space land created by innovative residential subdivisions, including community gardens?

Many towns have adopted innovative subdivision regulations like cluster housing, which provide for setting aside open space land within the subdivision. Ideally, such land should be the most valuable agricultural land, be big enough for commercial agricultural purposes, and specifically allow long term agricultural use to provide consistent resource management. Smaller plots of land could accommodate community gardens. Land set aside for open space can stay productive agricultural and at the same time contribute to the ecological health and scenic quality of the area, instead of growing up with brush, which is often invasive species.

Allow off-site signs to attract and direct farm stand customers?

Farm stands are often seasonal businesses that need to capture potential sales at harvest time. Signs that give directions to the farm stand and let customers know what's available (such as strawberries, corn, apples) are vitally important.

Allow uses related to agriculture?

Remember, it's not just the farmland that makes farming possible: businesses related to agriculture (veterinarians, equipment and supply dealers, custom farm service providers, feed milling and delivery, etc.) have to be close enough to serve farmers' needs.

Reference Best Management Practices (BMPs) for agriculture in regulations?

Most people, including Planning Board and Conservation Commission members, may be unfamiliar with Best Management Practices (BMPs) for agriculture. The University of New Hampshire Cooperative

Extension Service and the NH Department of Agriculture Markets and Food have developed guidelines for a variety of agricultural practices and these guidelines should be referenced in local regulations impacting agriculture.

Fair Enforcement of Local Regulations

Does your town:

Have a consistent policy approach for local land use procedures that deal with agriculture?

Planning Boards, Zoning Boards, and Conservation Commissions have different responsibilities, but a common regulatory outlook is possible. Update your Master Plan to express the value agriculture contributes to your town's quality of life through open space, wildlife habitat, water quality protection, natural resource preservation, and preservation of rural character. Establish a policy presumption that agriculture is of beneficial use to your town, and fairness will follow.

Have a good idea of how much agriculture there is in town?

Complete an inventory of farms and other agricultural activity in town to demonstrate the economic, cultural, and resource stewardship value of agriculture in your town. People often carry the misperception that "there's no agriculture in our town" if they don't see cows and red barns. Agriculture in New Hampshire stretches from apples and bees to yaks and zinnias!

Allow roadside stand or pick-your-own operations by right?

Zoning ordinances that provide flexibility for certain agricultural operations can be critical to farm success. Write flexibility into ordinances or regulations that may apply to agricultural land uses so the intent is clearly to promote such use, not to deny because the rules don't fit the unique situations that frequently arise with agricultural businesses.

Use zoning definitions such as "agricultural accessory uses" in a broad and inclusive manner?

"Agricultural accessory uses" refers to everything from machinery sheds to housing for seasonal workers. Various agricultural businesses have very different needs that can test the balance of rules and exceptions. Flexibility written into the ordinances and regulations can prevent many denials of the sort where "the rules don't fit".

Allow farms stands to resell produce purchased elsewhere?

Many towns have rules that a certain percentage of farm stand produce be grown on the farm. The unintended consequence of such regulation is to penalize farm operators who have a crop failure! The rational basis for allowing a farm stand shouldn't be only how much is grown on the farm, but what benefit the farm provides to the town from the open space, wildlife habitat, water supply protection, and natural resource preservation it accomplishes.

Properly assess specialize agricultural structures?

Specialized structures such as silos, milking parlors, and permanent greenhouses depreciate in value over time. Providing assessors with depreciation schedules may enable more accurate valuations, which can lead to lower assessments. If your town frequently overvalues agricultural structures, this can have a chilling effect on all types of farm investment.

Allow non-traditional or retail-based farm businesses in an agricultural zoning district?

Agricultural businesses don't all look alike. Trying to decide what constitutes an agricultural business can involve splitting hairs to make unfamiliar distinctions between what is "commercial" and what is "agricultural". Ordinances defining agriculture based on state law may be accurate, yet need local interpretation. Your town should recognize that newer types of farm businesses such as horse arenas, landscape nurseries, or greenhouses are more intensive in land use, but still carry valuable elements of rural character that benefit the town.

Address agricultural structures in building and safety codes?

Building practices that are state of the art for a specialized use in agriculture may not fit the specifics of codes meant for housing or commercial structures. Bringing up to code agricultural buildings that are historic structures may destroy the very qualities that make them special.

Understanding and Encouraging Farming

Does your town:

Established an Agricultural Commission?

As prescribed by NH RSA 674:44-e, municipalities may establish an Agricultural Commission in order to advise town boards and staff and advocate for the interests and needs of agriculture in the community. Citizens can use an Agricultural Commission to ensure the concerns and interests of farmers are better understood in local decision-making, essentially providing farmers with a seat at the table. An Agricultural Commission has no regulatory or enforcement powers but can play an important role in educating the public on matters relating to farming and agriculture.

Consider farmland a natural resource and encourage conservation easements, discretionary easements, and purchase of farmland?

There are other ways for resource preservation besides easement or outright purchase of farmland. But once a town has considered easements, the costs and benefits of keeping farmland in private ownership can be more clearly appreciated. By understanding and allowing for the peculiarities of agricultural land use, towns can encourage working farms that contribute to the town's well being at no cost to the taxpayers.

Use conservation easement language that specifically allows agricultural activities and enables flexibility for farming to continue on the property?

Often in our desire to preserve the open space associated with undeveloped farmland we draft conservation easement language that restricts activities normally associated with the working landscape, such as haying, tilling, and the raising of livestock. If the intent of a conservation easement is to preserve farmland, it is important that the easement language enable farming.

Have any visible demonstration of the value of agriculture?

Does your town have an annual fair, an apple festival, or an Old Home Day parade? Making agriculture visible to the general public helps establish the economic, cultural and resource stewardship value of having active farms in a town.

Respect the state Right to Farm law, which has specific exemptions for odor and noise?

Local control is an important tradition for New Hampshire towns. The State Right to Farm law provides a backstop for farmers if local officials overreach their regulatory authority. Conflicts between agriculture and other land uses can be reduced when town officials are informed about Best Management Practices (BMPs) that may alleviate nuisance complaints. University of New Hampshire's Cooperative Extension has developed BMPs for various agricultural practices based on sound scientific research.

Have farmers serving on local land use Planning and Zoning Boards, Conservation Commissions, and Heritage Commissions?

There are few better ways to incorporate agricultural concerns into local land use ordinance, regulations, and decisions than having farmers serve. Help your town's land use boards keep a broad perspective by asking, "Have you thought of the consequences...?"

Have farmers serving on the local Economic Development Committee?

Agricultural businesses are frequently undervalued in terms of their effect on the community. Most of the economic activity generated by farms stays within the community. Negative impressions about the strength of New Hampshire agriculture may have a similar impact on the availability of credit to viable farm operations. Having successful farmers on Economic Development Committees can change these misperceptions.

Encourage farmers to use the Soil Productivity Index (SPI) calculations to reduce Current Use tax burdens?

Using Soil Productivity Index (SPI) information may reduce the Current Use assessment on less productive agricultural land. By reducing the tax burden on the agricultural land, towns can encourage the maintenance of open space at a relatively low cost.

Know where to go to get advice and assistance on farm questions?

Make the connection to resources such as the Department of Agriculture, Markets and Food (industry regulator, statewide perspective); University of New Hampshire Cooperative Extension (technical questions, Best Management Practices); New Hampshire Farm Bureau (non-governmental farm lobby, broad experience).

INFOGRAPHIC COMPANION

Purpose of RSA 674:32-a through c:

These sections of RSA 674:32 became law in 2001 as a result of House Bill 97 from 1999. Their purpose is to clarify “that farming and agriculture, as defined in RSA 21:34-a, shall not be unreasonably limited by the use of municipal planning and zoning powers.” This purpose should guide interpretation and use of these laws.

As a backdrop to the laws discussed here, note that RSA 672:1, III-b declares that: “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. Agritourism, as defined in RSA 21:34-a, is undertaken by farmers to contribute to both the economic viability and the long-term sustainability of the primary agricultural activities of New Hampshire farms. Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers.”

Also note that RSA 674:17, I(i) includes as one of the purposes of zoning ordinances “to encourage the preservation of agricultural lands and buildings and the agricultural operations described in RSA 21:34-a supporting the agricultural lands and buildings.”

Permissive or Mandatory: It is very important to note that the laws use both the words “shall” and “may.” For example, in certain circumstances, municipalities “may require special exception” or other approval processes. RSA 674:32-b, I-II. This means the municipality has discretion; it may decide to impose such requirements or it may decide to not impose them. So, when certain triggering activities occur, such as “significant expansion” of certain agricultural operations (RSA 674:32-b, I-II), the municipality has discretion to opt to regulate the farm or opt to not regulate the farm. In other sections of the law, the word “shall” is used. For example, the applicable town board “shall grant a waiver” from certain municipal requirements in certain circumstances. When these circumstances are present, the municipality has no discretion; it has to grant the waiver because the law says it “shall.” In light of the mandatory requirement to grant waivers in certain circumstances, when deciding whether to opt to impose requirements or opt to not impose requirements, it is prudent for municipalities to consider whether opting to impose requirements is likely to trigger the requirement to waive certain or all of those requirements.

Animal Cruelty: Municipalities can receive complaints and inquiries from the general public about animals at farms, sometimes with concerns that animals are being abused or neglected. Municipalities should refer these concerns to the police because animal cruelty is part of the Criminal Code. In particular, RSA 644:8 defines animal cruelty and sets forth the penalties for it. The police work with the state veterinarian to investigate such concerns pursuant to RSA 436:8. The laws governing the municipal regulation of agriculture, RSA 674:32, are not designed to address concerns of animal cruelty or neglect. Instead, municipalities should refer these concerns to the police because animal cruelty is part of the

Criminal Code. RSA 436:8. The local police can then decide whether to involve the Division of Animal Industry, which is part of the N.H. Department of Agriculture, Markets & Food.

Manure: Municipalities can also receive complaints and inquiries from the general public about manure or other waste at farms. Municipalities should refer these concerns to the N.H. Department of Agriculture, Markets & Food. State law RSA 431:33 requires the department to respond to complaints involving the mismanagement of manure, agricultural compost and chemical fertilizer. Further information is available the department's webpage: <https://www.agriculture.nh.gov/divisions/regulatory-services/nutrient-management.htm>.

Proof: At the end of RSA 674:32-c, II, there are a lot of hoops to potentially jump through. This raises the question: who has to prove the criteria to jump through the hoops?

First, if a municipality has opted to impose certain requirements, the municipality shall waive any requirement if its literal application would effectively prohibit or unreasonably limit an agricultural use. For this part of the law, the person advocating that the waiver that shall be granted, typically a farmer or a farmer's representative, should be the one to put forward the evidence to show that the requirement would either prohibit or be an unreasonable limit on an agricultural use. If the person seeking the waiver puts forward sufficient (a preponderance) credible evidence and no one challenges that, the municipality shall grant the waiver.

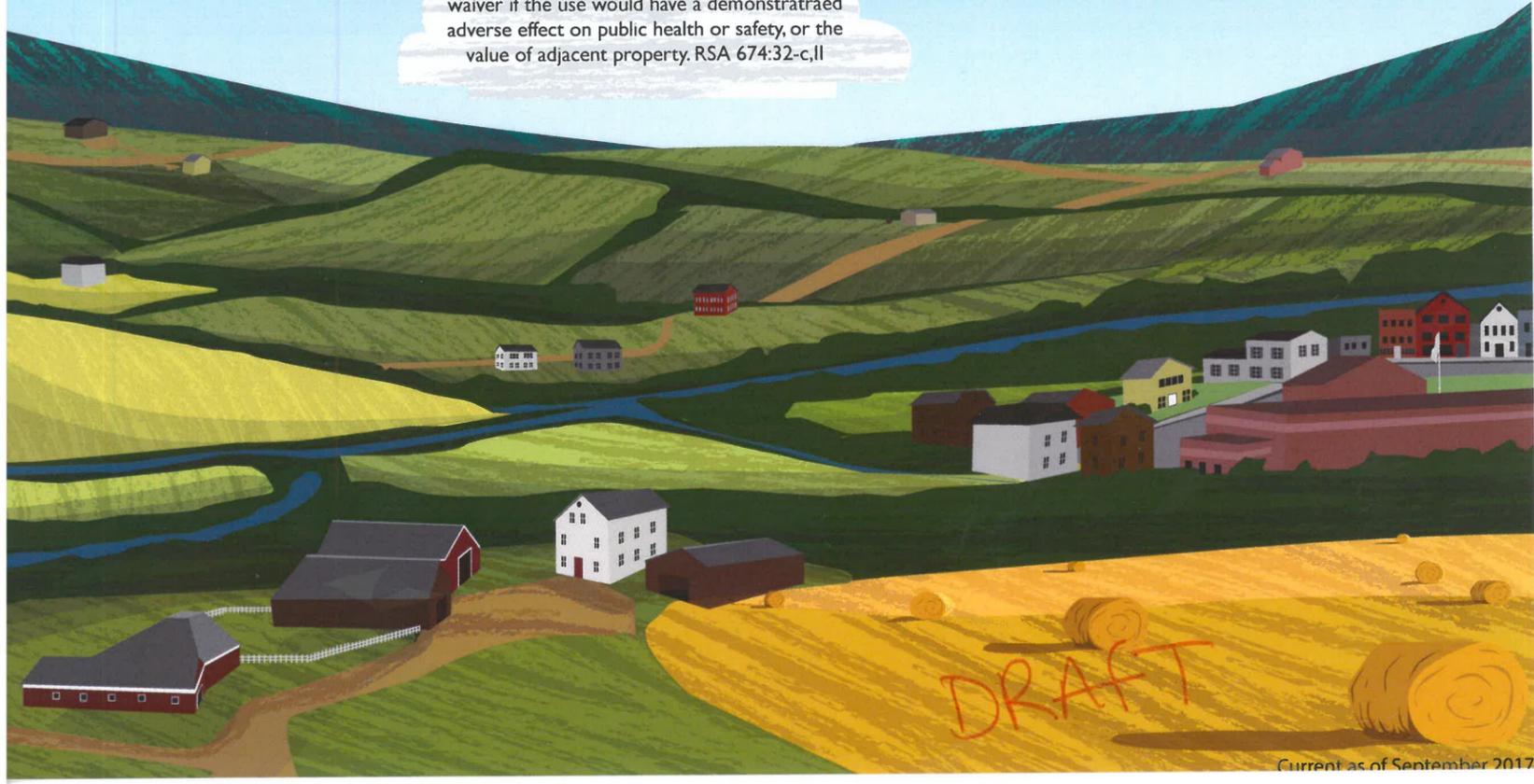
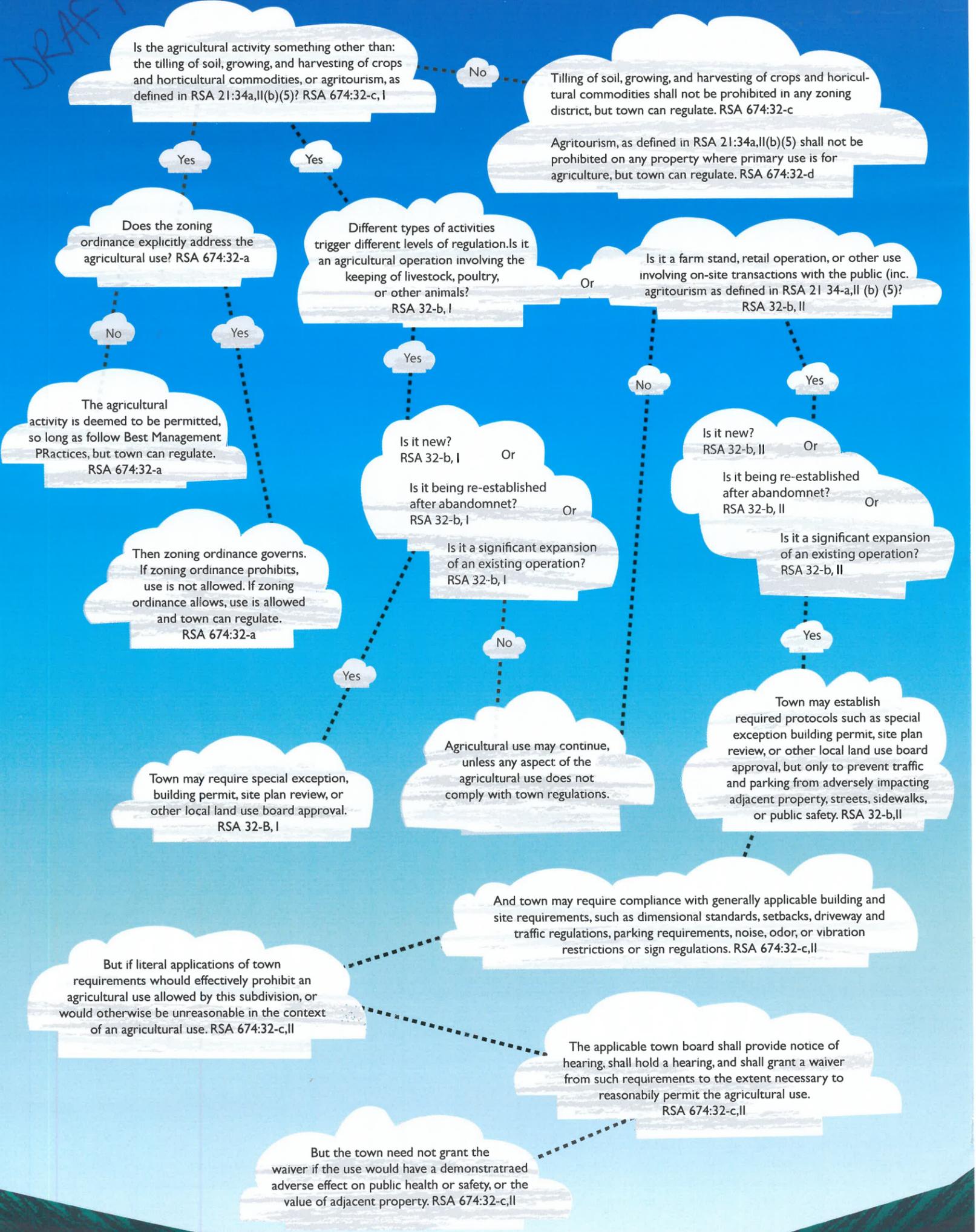
The next part of the analysis requires determining whether the waiver would have a demonstrated adverse effect on: public health or safety, or the value of adjacent property. If so, the municipality is not required to grant the waiver. For this part of the law, the one advocating such demonstrated adverse effect should be the one to put forward the evidence to show that. Typically, this would be a neighbor opposed to the agricultural use in question.

However, for both of these parts of the law, if the municipality desired to, it may hire its own experts and otherwise put forward its own evidence.

Right to Farm: Like every other state, New Hampshire provides a certain amount of protection against lawsuits based in nuisance. In essence, certain farms are immune to lawsuits for nuisance. This does not prevent a farmer from being sued. Instead, it provides a defense and legal grounds for getting rid of a lawsuit early on instead of having to go all the way through to having a trial. RSA 432:33 provides the protections as follows: "No agricultural operation shall be found a public or private nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section shall not apply when any aspect of the agricultural operation is determined to be injurious to public health or safety under RSA 147:1 or RSA 147:2." Note that the protection does not apply if the farm is newer than one year, if the farm was a nuisance when it began, or if the farm is not in compliance with health and safety laws of RSA 147:1 or RSA 147:2.

NEW HAMPSHIRE RIGHT TO FARM FLOWCHART

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Agriculture Commission

2018 Meeting Schedule

All meetings are on the 2nd Wednesday of each month at 3:30 PM
in the 2nd Floor Committee Room

Thursday, January 10

Thursday, February 14

Thursday, March 14

Thursday, April 11

Thursday, May 9

Thursday, June 13

Thursday, July 11

Thursday, August 8

Thursday, September 12

Thursday, October 10

Thursday, November 14

Thursday, December 12

Meeting dates and times are subject to change