Forster v. Town of Henniker

In June, the NH Supreme Court issued its ruling in Forster v. Town of Henniker, a much anticipated zoning case involving the definition of "agritourism" and whether commercial activities such as business retreats, weddings and other events are permitted on property used as a Christmas tree farm.

The Christmas tree farm is located in Henniker's rural residential district, which includes "a mixture of agriculture and low-density rural living," according to the town's zoning ordinance. Permitted uses in the district are agriculture and uses accessory to a permitted use. The farm is 110 acres in size, and about 10 acres is devoted to growing Christmas trees. The owner began to hold weddings, celebrations, and business and educational events on the property. The case began as an enforcement action by the town, and the ZBA eventually ruled that such uses were not permitted in the rural residential district and were not accessory uses to the principal use of the property as a Christmas tree farm. The trial court upheld the ZBA's ruling, and the Petitioner appealed.

The Supreme Court's opinion, which found in favor of the town, is instructive on several legal issues: 1) statutory construction – how courts interpret the meaning of laws; 2) implied preemption – whether state laws on a particular topic are so comprehensive that they preempt conflicting local ordinances; and 3) accessory uses – whether a use is subordinate and incidental to the principal use of the property and, therefore, permitted.

1) Is "Agritourism" included within the definition of "Agriculture"?

At the Supreme Court, the property owner argued that retreats, weddings and other events were permitted because they constitute agritourism under RSA 21:34-a, VI. He argued that agritourism is included within the definition of agriculture found in RSA 21:34-a, which the town's zoning ordinance incorporated by reference.

The Supreme Court disagreed with the property owner's assertion that agritourism is included in the statute's definition of agriculture. The Court said the statute is a list of definitions. Paragraph I defines "farm," paragraph II defines "agriculture" and "farming." Paragraph VI defines "agritourism." The Court said that growing Christmas trees as part of a commercial Christmas tree operation is a "farming" operation as defined in paragraph II, but that "hosting events such as those the petitioner proposes is not."

The Court also said such events are not practices "incidental to farming operations," which are considered "agricultural uses" under RSA 21:34-a, II (b). Although the statute says the list is not all inclusive, the Court construed the list to include "only practices similar to those included in the enumerated list." The Court concluded that hosting weddings and other events is not similar in nature to the practices listed in RSA 21:34-a, II (b).

In addition, the Court said that nothing in the definition of agritourism in paragraph 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 plain meaning of the statute is clear enough to conclude that the legislature intended to structure RSA 21:34-a as it did. Nevertheless, it consulted the legislative history of House Bill 56, the 2007 bill that amended the statute to add the definition of "agritourism." The Court said the legislative history supports its conclusion that "agritourism" is not part of the definition of "agriculture." 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."

In particular, the Court pointed out that the house-passed version of HB 56 defined agritourism and included the phrase: "and as such shall be considered an agricultural use." In the Senate, however, there was testimony warning against including that phrase in the definition of "agritourism" because of its significant impact on municipalities with agricultural zoning districts. One legislator testified that it would mean that restaurants, motels and hotels are agricultural uses. The Senate version of HB 56 did not include this phrase and the House later concurred. The result, the Court concluded, is that the definition of "agritourism" does not equate such uses to agricultural uses.

2) 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 New Hampshire farms. On that basis, he argued that the agritourism statute mandates that Henniker cannot prohibit activities that meet the statutory definition of "agritourism".

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."

Although other statutes relating to agriculture contain mandates to municipalities, the Court pointed out that none use the word "agritourism."

The Court reviewed the relevant statutes (RSA 674:17, I(i); RSA 672:1, III-b; RSA 672:1, III-d; and RSA 674:32-a) and commented that, "[n]one [of these] 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."

3) 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 established under prior case law. Specifically, that accessory uses are "'not the principal use of the property, but rather a use occasioned by the principal use and subordinate to it'," and they "'must be minor in relation to the primary use'."

The Court also looked at Henniker's zoning ordinance which provides 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 failed to prove that his proposed uses are commonly associated with the operation of Christmas tree farms in the local area.

Note on the dissent:

One of the five justices dissented from the majority opinion, arguing that weddings on farms are customary. He criticized the majority for limiting its inquiry into customary uses to only "the local area," rather than a broader geographic area. He also said it seemed unlikely that the legislature would include the definition of agritourism in RSA 21:34-a without intending it to be part of farming or agriculture.

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from *The Granite State Planner*, Summer 2015 - newsletter of the New Hampshire Planners Association