

SUPREME COURT OF NEW HAMPSHIRE

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

167 N.H. 745 (2015) · No. Merrimack No. 2013-893 · Decided June 12, 2015

SUMMARY

The Supreme Court of New Hampshire held that commercial weddings and similar events conducted on a Christmas tree farm were not included within the statutory definition of agriculture or agritourism and were not permitted uses under the Town of Henniker's rural residential zoning district. The court also rejected the argument that state law impliedly preempted the town's zoning ordinance. It affirmed the superior court's decision upholding the zoning board of adjustment's determination.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Conboy, J.; Lynn, J.; Bassett, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	June 12, 2015
DOCKET	Merrimack No. 2013-893
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner appealed from the superior court's decision upholding the Henniker Zoning Board of Adjustment's determination that commercial weddings and similar events were neither accessory uses to the petitioner's Christmas tree farm nor permitted uses in the rural residential district.
STANDARD OF REVIEW	The court upheld the superior court's decision unless the evidence did not support it or the decision was legally erroneous. Statutory interpretation and preemption were reviewed de novo; the superior court's application of law to the facts was also reviewed de novo. ZBA factual findings were prima facie lawful and reasonable under RSA 677:6.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Stephen E. Forster d/b/a Forster's Christmas Tree Farm & Gift Shoppe v. Town of Henniker

TOPICS

zoning statutory interpretation ordinances municipal law ejusdem generis

PRACTICE AREAS

land use and zoning municipal law statutory interpretation state-local preemption

QUESTIONS PRESENTED

1. Whether RSA 21:34-a defines agritourism as part of agriculture such that the petitioner's commercial weddings and similar events were permitted agricultural uses under the Town's zoning ordinance.
2. Whether RSA 21:34-a or related New Hampshire statutes impliedly preempted the Town's zoning ordinance insofar as it prohibited the proposed events.
3. Whether the proposed weddings and similar events qualified as accessory uses to the petitioner's permitted Christmas tree farm under the Town's ordinance.

HOLDINGS

1. RSA 21:34-a does not provide that activities constituting agritourism under paragraph VI also constitute agriculture under paragraph II. Hosting commercial weddings and similar events therefore was not an agricultural use merely because it could qualify as agritourism.
2. RSA 21:34-a did not impliedly preempt the Town's zoning ordinance because it was a definitional statute, not a comprehensive regulatory scheme, contained no mandate to municipalities, and did not conflict with or frustrate the statute's purpose.
3. A proposed accessory use must be subordinate and incidental to the permitted principal use and must be customarily associated with that use in the local area. The petitioner failed to prove that commercial weddings and similar events were customarily associated with farming or Christmas tree farming in the local area; therefore, the events were not accessory uses under the Town's ordinance.

KEY QUOTATIONS

“However, nothing in this definition provides that activities that constitute “agritourism” also constitute “agriculture.”” (752-753)

“RSA 21:34-a is a set of definitions, not a comprehensive statutory scheme aimed at superseding local regulation.” (757-758)

“Absent such evidence, we hold that the petitioner’s proposed uses are not accessory uses under the Town’s ordinance.” (760)

FACTUAL BACKGROUND

The petitioner owned approximately 110 acres in Henniker and operated a commercial Christmas tree farm on about 10 acres of the property, which was located in the Town's rural residential zoning district. In addition to farming, he hosted commercial weddings, celebrations, and business and educational events between May and

October, with a maximum capacity of 150 people. After the Town issued a notice of violation, the ZBA determined that the proposed events were not accessory uses and were not permitted uses in the district.

PROCEDURAL HISTORY

The Town planner issued the petitioner a notice of violation for operating a wedding and reception facility. After a de novo rehearing, the ZBA concluded that the proposed weddings, civil union ceremonies, and similar events were not accessory uses and were not permitted in the district. The superior court upheld the ZBA's decision, and the petitioner appealed to the Supreme Court of New Hampshire, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Brandt Dev. Co. of N.H. v. City of Somersworth, 162 N.H. 553, 555 (2011)
- Prolerized New England Co. v. City of Manchester, 166 N.H. 617, 623 (2014)
- Clare v. Town of Hudson, 160 N.H. 378, 384-85 (2010)
- In the Matter of Hennessey-Martin & Whitney, 151 N.H. 207, 211 (2004)
- Appeal of Town of Nottingham, 153 N.H. 539, 566 (2006)
- Town of Carroll v. Rines, 164 N.H. 523, 528 (2013)
- Bond v. Martineau, 164 N.H. 210, 213 (2012)
- Bio Energy v. Town of Hopkinton, 153 N.H. 145, 152-53 (2005)
- Fox v. Town of Greenland, 151 N.H. 600, 606 (2004)
- Becker v. Town of Hampton Falls, 117 N.H. 437, 440-41 (1977)
- Marchand v. Town of Hudson, 147 N.H. 380, 383 (2001)
- Town of Windham v. Alford, 129 N.H. 24, 29 (1986)
- Bartlett v. City of Manchester, 164 N.H. 634, 643 (2013)
- Blagbrough Family Realty Trust v. A & T Forest Products, 155 N.H. 29, 33 (2007)
- State v. Mullen, 119 N.H. 703, 709 (1979)

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