

Neighborhood Farms: Farm-neighbor relationships and “Right-to-Farm” in New Hampshire

John Moulton, of Moulton Farm in Meredith, NH has grown his agricultural operation from a small farmstand in the 1970’s to a thriving multifunctional farm business today. Moulton Farm now includes a garden center, several greenhouses, and various agritourism activities. While these changes have allowed Moulton Farm to succeed, John has spent many hours talking with neighbors about the increased traffic, noise, and inconvenience they might experience as a result of his expanded operations. He also incurred over \$10,000 in expenses to address site plans and architectural reviews with the town. John recognizes that some agritourism activities can be challenging to operate, but “they have become an economic necessity.”

Unlike Moulton Farm, Vernon Family Farm moved into an established residential neighborhood in Newfields in 2014. Jeremiah Vernon met with the planning board, explaining his plans to establish a farm store, raise livestock, and grow vegetables. From the beginning, he received pushback from some of his neighbors. Though the farm is located in an agricultural-residential zone, every new farm activity is reported to town officials by his neighbors, resulting in a town inspection. The town of Newfields holds a conservation easement on Jeremiah’s land, which requires that he maintain the property’s “scenic view.” He has noted that some people may find his chickens, tractors, and plowing as “disturbing” the scenic view, but that regulations and easements must enable farm diversification for a farm to be viable. This story highlights the importance of agricultural conservation easements that emphasize

HIGHLIGHTS

- As farming operations can involve noise and odors, farmers need additional protection against “nuisance complaints” typically filed by neighbors.
- The so-called “Right-to-Farm” legislation is intended to encourage agricultural activity in the state, and protect farmers from nuisance complaints against necessary farm operations.
- While the state has regulations to protect farmers, the statutes can be interpreted and enforced differently at the town level based on variations in zoning ordinances and local officials’ varying levels of awareness of agricultural practices.
- A statewide survey to gauge New Hampshire resident support for farm-friendly legislation, and their willingness to live next to farms revealed that while respondents reported supporting farm-friendly legislation, they rated their willingness to live next to farms lower for five of seven farm types.
- Farmers need easily accessible information to help them navigate local land use boards and state/local regulations.
- Encouraging communication and educating residents in areas that are zoned as agricultural-residential about the realities of everyday farming operations, particularly before residents buy property, could alleviate potential farm-neighbor conflicts and reduce the number of nuisance complaints filed.

Sustainability Briefings are a collection of occasional essays, thought pieces, case studies, and research briefings through which University of New Hampshire (UNH) faculty, staff, and students can connect with larger audiences on the complex issues of sustainability. The collection is sponsored by the Sustainability Institute at UNH, a convener, cultivator and champion of sustainability on campus, in the state and region, and around the world. Learn more at www.sustainableunh.unh.edu.



preserving land for working agriculture over other attributes like scenic view.

What is the Right-To-Farm Law and why is it necessary?

New Hampshire's "Right-to-Farm Law" (RSA Chapter 432) works to protect farmers from undue nuisance complaints.¹ This collection of statutes is a reaction to nuisance complaints and lawsuits that can bankrupt farmers or require farms to stop certain activities. As most claims against farming operations are filed as nuisance claims, courts must balance the needs and enjoyment of personal property owners with the use and preservation of farmland for farmers. This balancing act can be hindered by the impacts (unanticipated by neighbors) of daily farming practices on farm neighbors, making it difficult for town planning boards and courts to ensure the rights of both parties.²

The sprawl and expansion of cities and suburbia into rural areas has led to a number of nuisance suits that have hampered farms and left farmers with fewer options to maintaining profitable operations.³ Limited farmable land, and the increasing rate of farmland conversion, is of serious concern to policymakers (the American Farmland Trust ranks New Hampshire in the top five states for loss of farmland to development). Right-to-Farm (RTF) laws are a mechanism to address the growing concern of residential developments encroaching on farmland, as well as disappearing farmlands, and provide farmers with some immunity from nuisance liability.⁴ Currently, all states have enacted right-to-farm laws protecting qualifying farmers and ranchers from nuisance suits.

As the number of small farms increases after decades of declining numbers, nuisance complaints may also increase. This is a real challenge that can threaten a farm's long-term viability. Theresa Walker, a farmer and member of the Durham Agricultural Commission explains that, "Complicated permit applications and lengthy site plan reviews for agricultural operations may cost farmers thousands of dollars, and ultimately affect long-term farm viability."

While the state has regulations to protect farmers, the statutes can be interpreted and enforced differently at the town level based on variations in zoning ordinances. This can be challenging for farmers as well as municipal officials. New Hampshire land use lawyer, Amy Manzelli notes, "State laws about agriculture are confusing for both farmers and town planning boards. Farmers are often saddled with the burden of educating their neighbors and town officials about agricultural laws."

Resident willingness to live next to farms

In the summer of 2016, the NH Food Alliance conducted a statewide survey to gauge New Hampshire resident perception of agricultural expansion on the landscape, their support for farm-friendly legislation, and their willingness to live next to farms. The study revealed that while respondents reported supporting farm-friendly legislation, they rated their willingness to live next to farms lower for five of seven farm types (Figure 1). The data suggest that respondents are supportive of farm-friendly legislation in theory, but may be expressing the "Not in My Backyard" (NIMBY) phenomenon (farming activities are acceptable, as long as I don't have to live next to them). These findings confirm farmers' experiences of dealing with nuisance complaints and the need to educate neighbors about active farm operations.

Recommendations

Easily accessible information to help farmers navigate local land use boards and state/local regulations. Lynda Brushett, senior partner with the Cooperative Development Institute, is working with partners from the NH Coalition for Sustaining Agriculture to create a toolkit to facilitate the establishment and/or expansion of agricultural operations in the state, "so that farmers are not unfairly affected by time-consuming and costly legal processes." Farmers should become familiar with the planning board process in their town, and review

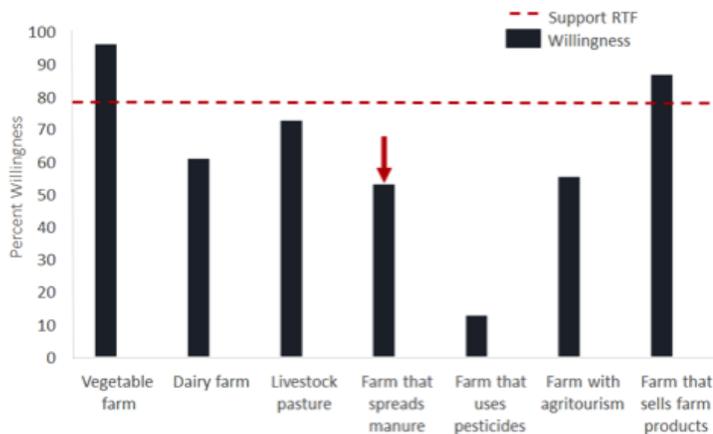


Figure 1. Survey responses about willingness to live next to farms, by percent (original responses: +1=Willing, -1=Not willing, and 0=I don't know). In this figure, support for RTF law is denoted by the red dotted line. "NH's Right-to-Farm (RTF) law protects farmers in conducting day-to-day farm operations on their land, such as the operation of machinery and spreading manure. Generally, would you say that you support or oppose the RTF law?" Source: Wilhelm et al., (in prep).

Educating residents in areas that are zoned as agricultural-residential about the realities of everyday farming operations, particularly before residents buy property, could alleviate potential farm-neighbor conflicts and reduce the number of nuisance complaints filed. Residents who live in areas zoned for agricultural production need to be informed about the related ordinances, and how those ordinances apply to them and their neighbor's property. Educating residents to expand their knowledge of farming and food production should be a part of food system stakeholder action priorities. As the NH Food Alliance study found, many New Hampshire residents are supportive of agricultural production in theory, but don't necessarily want to live next to farms; as farmers throughout the state have experienced, nuisance complaints and lawsuits made by farm neighbors can negatively affect long-term farm viability.

References

The authors would like to thank John Moulton and Jeremiah Vernon for sharing their farm stories. We would also like thank Lynda Brushett, Colleen Flaherty, Erin Hale, Amy Manzelli, Commissioner Lorraine Merrill, and Theresa Walker for their helpful comments.

References

1. New Hampshire Right-to-Farm (RTF) legislation <<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XL-432.htm>> Niblick, B., Monnell, J.D., Zhao, X., and Landis, A.E. 2013. Using geographic information systems to assess potential biofuel crop production on urban marginal lands. *Applied Energy* 103:234-242.
2. Jacqueline P. Hand, *Right-to-Farm Laws: Breaking New Ground in the Preservation of Farmland*. 45 U. Pitt. L. Rev. 289, 305 (1984)
3. Margaret Rosso Grossman, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 Wis. L. Rev. 95, 97 (1983).
4. Margaret Rosso Grossman, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 Wis. L. Rev. 95, 99 (1983).

state agricultural regulations.

It is imperative that each town is consistent in how it enacts the law. Each town must clearly define what sorts of agricultural activities are appropriate; if zoning ordinances are vague, confusion can arise when interpreting the ordinance. By writing specific ordinances related to agriculture, the expectations for farmers, town officials, and residents can be clearly explained. At the same time, it is important not to be so specific that every new idea is seen as non-conforming. Training offered by NH Municipal Association and other agencies is one avenue for educating stakeholders about the RTF law. Agricultural commissions can also help to advocate for agriculture within a town, and work to reduce confusion around land use and zoning issues.

Authors

This briefing was written by Jennifer Wilhelm and Renee Smith of the New Hampshire Food Alliance. The NH Food Alliance envisions a food system that works for all in New Hampshire: people, businesses, communities, and the environment. The NH Food Alliance is coordinated by the UNH Sustainability Institute. Learn more at nhfoodalliance.com