

BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA,  
RESOLUTION REGARDING THE INTERPRETATION OF  
VIRGINIA CODE SECTION 15.2-2288.6

IN THAT the 2014 General Assembly of Virginia enacted, and the Governor signed into law, Section 15.2-2288.6 (the Statute), a provision that highlights, underscores and protects certain rights of owners of *agricultural operations* engaged in the *bona fide*, cultivation and harvesting of agricultural products, and

IN THAT the rights of owners of *bona fide agricultural operations* include the right to conduct on-site agritourism activities, the sale of certain specified products *incidental* to the *agricultural operation*, the preparation, processing or sale of certain specified food products, and activities that are *usual and customary on agricultural operations*, and

IN THAT the Board of Supervisors of Rockingham County has been and continues to be in wholehearted support of the goals and objectives enunciated in the Statute, and

IN THAT the Board of Supervisors recognizes that, as with any new statutory initiative, some guidance regarding the interpretation of several key words and phrases in the Statute may be in order to assist owners of land in Rockingham County and the Rockingham County staff with the implementation thereof,

The BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA, resolves as set forth in the following paragraphs:

1. The Board of Supervisors is wholeheartedly in favor of the mutually supportive and compatible objectives of maintaining the rural and agricultural nature of agriculturally zoned districts, and facilitating the efforts of owners of *bona fide agricultural operations* in striving to make their farms successful and prosperous. Successful and prosperous farms are essential to maintaining rural lands.
2. The Board of Supervisors recognizes that the owners of *bona fide agricultural operations* need to explore creative alternative income generators that are *incidental* to, arise out of, and enhance, their traditional farming operations.
3. The Board of Supervisors also recognizes that the creative alternative income generators on *agricultural operations* must not be permitted to *significantly impact* the agricultural and rural character of the area, other agricultural operations, or creative alternatives for supplemental income generation on other agricultural operations.

4. The Board of Supervisors further recognizes its duty to protect County taxpayers from being inequitably burdened in the provision of infrastructure and services.

5. In light of the foregoing but now focusing more specifically on the interpretation of the new legislation, the Board first notes that the Statute applies only to *agricultural operations*. Land uses on a parcel located in an agricultural district that is not being used for an *agricultural operation* are regulated by the County's Zoning Ordinance just as they were prior to the adoption of the Statute.

6. Secondly, the Board notes that, should an owner of an *agricultural operation* conduct, or desire to conduct, one of the activities discussed in the Statute, that has, or will have, a *substantial impact* on the health, safety or general welfare of the public, which includes neighboring properties, then such activity also is regulated by the County's Zoning Ordinance as it was prior to the adoption of the Statute.

7. The term *agricultural operation* is understood by the Board of Supervisors to mean any operation devoted to the *bona fide production* of crops, or animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products, and the production or harvest of products from silviculture activity. *Agricultural operations* can only occur on a parcel located in one of the designated agricultural districts, or a parcel with a legal continuing pre-existing non-conforming agricultural use. Though often used in the singular, the phrase *agricultural operation* shall include an operation that has more than one qualifying activity. For example, land that is used in part for the production of crops, in part as pasture and in part for hay production, shall be considered an *agricultural operation*, including for the consideration of whether the operation satisfies the definition of *bona fide production*. This understanding of *agricultural operation* is principally derived from Section 3.2-300 of the Code of Virginia (1950).

8. The term *bona fide production* is understood by the Board of Supervisors to mean:

A. the *agricultural operation* is the primary use on the land. Factors such as the proportion of capital investment, operating expenses, labor, acreage, and similar considerations, allocated to agricultural activities, shall be taken into account when determining whether the *agricultural operation* is the primary land use, or to the contrary, is a secondary or incidental use. No specific proportion shall be considered conclusively dispositive of whether the *agricultural operation* is the primary land use. Rather, the analysis shall be a total facts and circumstances analysis. However, an *agricultural operation* may never be deemed the primary use on the land if a reasonable person could conclude that the *agricultural operation* exists for the purpose of establishing eligibility for exemption from local regulation under the Statute, and;

- B. the agricultural operation is managed in good faith as a business activity, and;
- C. the agricultural operation qualifies for land use taxation treatment, whether or not land use taxation treatment is applied for in any given calendar year.

9. The term *agritourism activity* is understood by the Board of Supervisors to mean any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an *agritourism activity* whether or not the participant paid to participate in the activity. The words “farm” and “ranch” shall be construed in a manner wholly consistent with the definition of *agricultural operation*. Both are understood to mean one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products. This understanding of *agritourism activity* and the words “farm” and “ranch” is principally derived from Section 3.2-6400 of the Code of Virginia (1950).

10. The term *incidental* is understood by the Board of Supervisors to mean an event or activity that happens or occurs as a minor part of, or subordinate to, or as a result of, a primary event or activity; or as subordinate to, in conjunction with, or in addition to, the primary or regular activity, but is not the main activity; or is of secondary importance to, a minor accompaniment to, or naturally appertaining to, the main activity. For example, when the Statute provides that the sale of agricultural or agriculture-related products *incidental* to the *agricultural operation* may occur, it shall be interpreted to mean that the agricultural or agriculture-related products sold on a particular *agricultural operation* shall be a minor part of, or subordinate to, or a result of, that *agricultural operation*, or shall be subordinate to, or in conjunction with, the *agricultural operation*, but not the main activity on that property; or it shall be in addition to, naturally appertaining to, or a minor accompaniment to that particular *agricultural operation*. The sale of agricultural or agriculture-related products *incidental* to an *agricultural operation* shall not be construed to mean that products which might be considered agricultural in nature, but were produced somewhere other than as a part of the *agricultural operation* in question, may be sold from the property used for that *agricultural operation*.

Notwithstanding the foregoing, this definition of *incidental* shall not be construed to prevent the sale of a finished product that began as an agriculture-related product on the *agricultural operation* in question, was sent off the *agricultural operation* for further processing, and was then brought back onto the *agricultural operation* for sale. Examples of acceptable activities include: meat animals produced on the farm in question but taken off-farm for slaughter, butchering, packaging and further processing such as making into sausage, then brought back onto the farm for sale or; fruits and vegetables produced on the farm in question but taken off-

farm to be included in a finished product such as salsa or other condiments, then brought back onto the farm for sale. These examples are in no way to be construed as all inclusive.

Additionally notwithstanding the foregoing, nothing in this definition of *incidental* shall be construed to prevent Rockingham County farmers from working together in the marketing of their products. For instance, if neighboring *agricultural operations* find it more beneficial to sell agricultural or agriculture-related products produced on several neighboring *agricultural operations* from the location of one *agricultural operation*, rather than establishing multiple similar points of sale, such activity shall not be prevented by this definition.

Finally, also notwithstanding the foregoing, the sale of any products, from any source, that are complementary to agriculture-related products *incidental* to the *agricultural operation*, are not necessarily forbidden so long as the sale of such products constitutes a *de minimis* portion of the sales overall.

11. The term *substantial impact* is understood by the Board of Supervisors to mean that a land use begun or proposed after July 1, 2014, in an agricultural district, or on land that is in agricultural use because of legal pre-existing non-conforming use rights, is of such a nature as to change the character of the area in the vicinity of the new land use from that of a rural and agricultural area, to one that more resembles a business, commercial or industrial area, as those terms are generally understood. Factors to be considered when determining whether a substantial impact will, or has, occurred include, but are not limited to, sight distance and traffic loading on publicly maintained roads, or privately maintained roads that are shared by others; adequate sewage disposal and drinking water ; artificial light emanating from the property in a manner not typical in agricultural or rural areas; volume and nature of sounds emanating from the property not typical in agricultural or rural areas; impact on the view of traditionally rural and agricultural landscapes seen by the public, including but not limited to, the type of structures utilized or to be utilized by the new land use. For example, a use or proposed use that would generate a need for a large parking area often filled with non-farm vehicles could constitute a *substantial impact* on an existing or future agritourism activity located on a nearby parcel, which agritourism activity is or will be partially dependent upon a view of traditionally rural and agricultural landscapes. Similarly, a new or proposed use that would cause sounds to emanate off property which are not *usual and customary* in *bona fide agricultural operations* are likely to be construed as having a *substantial impact* on the public at large. Sounds caused by farm equipment, farm machinery, animals, or other *usual and customary* activity on a *bona fide production, agricultural operation* shall never be construed as having a *substantial impact*.

12. The term *usual and customary* is understood by the Board of Supervisors to mean those activities or events permitted of right in the A-1 or the A-2 zoning district, as applicable.

13. The Board of Supervisors directs staff to develop a procedure whereby the zoning administrator can, with the involvement and participation of the property owner, determine whether a particular activity is exempt from regulation under Virginia Code Section 15.2-2288.6 because (1) the property owner is engaged in an *agricultural operation*, (2) with *bona fide production*, (3) the activity is or will be conducted in a manner that avoids having a *substantial impact* on other properties in the vicinity or the public generally, and (4) that any sale of appropriate products as contemplated by the statute are *incidental* to the *agricultural operation* in question, all as set forth in Virginia Code Section 15.2-2288.6, as interpreted by this Resolution.

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