

Agricultural Law Memo

ALM 15-01

May 18, 2015

TOPIC: Agricultural Activity – Incidental Uses

ISSUE: What types of uses or structures may be considered “as incident to or in conjunction with such farming operations” when farming or agriculture is the primary use of the property.

This ALM addresses the issue of what types of uses or structures may be considered “as incident to or in conjunction with such farming operations” as set forth in the definition of “farming” and “agriculture” under Massachusetts state law.

M.G.L. c. 128, §1A defines “farming” or “agriculture” as follows:

*“Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm **as an incident to or in conjunction with such farming operations**, including preparations for market, delivery to storage or to market or to carriers for transportation to market. (Emphasis added).*

The term “agricultural use” is interpreted broadly, and many uses conducted on land being used primarily for agricultural purposes are allowed. See, Tisbury v. Martha's Vineyard Com., 27 Mass. App. Ct. 1204 (1989). In addition to uses, when a structure “has reasonably direct relation to farming operations of its owner” it will also be allowed. See, Jackson v. Building Inspector of Brockton, 351 Mass. 472, (1966). Identifying whether a use or structure is incidental “is a fact-dependent inquiry, which both compares the net effect of the incidental use to that of the primary use and evaluates the reasonableness of the relationship between the incidental and the permissible uses.” See, Henry v. Bd. of Appeals of Dunstable, 418 Mass. 841, 844 (1994).

Massachusetts courts have held that a variety of uses and structures constituted a permissible incidental use to the primary use of the property for agriculture, including:

- Greenhouse and appurtenant fuel tank needed to grow fruits and vegetables on year-round basis;
- Construction and operation of farm stand for sale of farm products;
- Construction and operation of a slaughterhouse;
- Construction, expansion, or reconstruction of certain new and existing structures used for the sale of certain produce, wine and dairy products;
- A manure and fodder drying machine;
- The sale of prepared food for consumption on or off the property; and
- Outside service windows where members of the public could purchase food items made from products raised, grown, or harvested on the property.

This list highlights only a few examples of what has been considered “incident to or in conjunction with such farming operations.” Ultimately, if the use or structure in question is subordinate and minor in significance to the primary agricultural purpose and is reasonably related to that primary purpose it should be viewed as “incidental” to the agricultural activities.

Relevant Laws: M.G.L. c. 128, Sec. 1A, c. 40A, Sec. 3, c. 61, c. 61A, c. 131, Sec. 40, c. 111, Sec. 125A