



Planning and Development  
Department

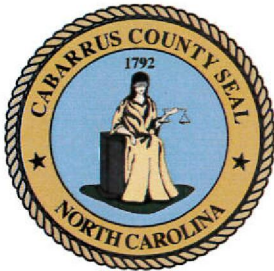
## **Cabarrus County Government**

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Cabarrus County Planning and Zoning Commission Meeting  
October 11, 2016 @ 7:00 P.M.  
Multi-Purpose Room 230, 2<sup>nd</sup> Floor  
Cabarrus County Governmental Center

### **Agenda**

1. Roll Call
2. Approval of September 13, 2016, Planning and Zoning Commission Meeting Minutes
3. Approval of Findings of Fact for VARN2016-00003
4. New Business – Board of Adjustment Function:
  1. **APPL2016-00001** – Appeal of Notice of Violation for illegal reception facility in the AO Zoning District. Jim Scarbrough, acting as agent for Thomas E. Porter Jr., Victoria P. Porter and The Farm at Brushharbor, LLC. Located at 7700 Brushharbor Rd (PIN 5567-84-6569)
  2. **Petition CUSE2016-00001**- Request for Conditional Use Permit for Public Service Facility. Agent is Michael Coleman on behalf of Public Service Company of North Carolina (PSNC). Located on the north side of 101 Running Brook Road PIN#: 5536-12-6269 (**Request to Table**)
5. Directors Report
6. Legal Update



## Cabarrus County Government

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Mr. Chris Pinto, Vice- Chair called the meeting to order at 7:15 p.m. Members present in addition to the Chair, were Ms. Mary Blakeney, Mr. Jeffrey Corley, Mr. Adam Dagenhart, Mr. Dane Laney, Mr. James Litaker, Mr. Richard Price, Mr. Aaron Ritchie and Mr. Stephen Wise. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning, Manager, Ms. Amanda Edwards, Senior Zoning Enforcement Officer, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

### Roll Call

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the September 13, 2016 meeting minutes. The Vote was unanimous.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to **APPROVE** the Findings of Fact for **VARN2016-00003**. The vote was unanimous.

The Chair asked all persons speaking for any of the Board of Adjustment cases or who plan to testify during the public hearings to stand to be sworn in and to complete a blue card. The Chair administered the oath.

The Chair read the following suggested rules of procedures for this meeting:

1. The Cabarrus County planning staff person(s) shall first present the staff report and answer questions from the Commission. There will be no time limit on this presentation.
2. After staff presents, the applicant will have the opportunity to make a presentation and answer questions from the Commission. There will be a 20 minute time limit on this presentation.

The Chair understands there is a video.

Mr. Jim Scarbrough, Attorney for the applicant, said it is about 10 minutes.

The Chair said there will be a 20 minute time limit on this presentation.

Mr. Scarbrough asked if it was on the whole presentation.

The Chair said yes.

Mr. Scarbrough said this is a due process hearing; there is no time limit.



Mr. Koch, County Attorney said that is not true, the Board has the right to set its own rules. If the Board wants to set a time limit on presentations they have the discretion to do so.

Mr. Scarbrough said he has witnesses here to testify.

Mr. Koch said we can just deal with that at that time, but if the Board wants to set a time limit on presentations they have the discretion to do so.

Mr. Scarbrough said you set a time limit on my case, but you did not set one on yours; the staffs. He heard no time limits on them; let's be fair about it.

What Mr. Koch will say, in response to the part about the rules, is that Mr. Scarbrough in representing the Porter's does have the right to ask questions of the staff; that part he does get to do. The staff report includes a lot of materials that have been gathered that relate to the interpretation but also to other materials that have been presented. So it is more than just the staff interpretation. He thinks you will see that in your packets.

He relayed to Mr. Scarbrough earlier, that from the County's perspective, we were putting in everything they had. This matter is really one of legal interpretation that this Board is going to have to make. He thinks Mr. Scarbrough would agree on that. The amount of additional facts that need to be adduced, by other witnesses, would seem to him to be very few.

So, just having people supporting a particular position or not, but not having facts that bare directly on the interpretation that needs to be made, would really not be relevant in this context.

Mr. Scarbrough said human nature being what it is, it is good to have people testify.

Mr. Koch said that is fine, but that gets back to his original point and that is if the Board wants to put a time limit on it, they have the discretion to do so. If we get to the point where it appears there is something additional that is relevant to the decision tonight, that has not had an opportunity to be fully presented, we can deal with that at that time.

Mr. Scarbrough said our witnesses are not that many.

Mr. Koch asked the Chair to continue with the proposed rules.

The Chair continued:

3. After the presentations and questions, the proponents (those speaking generally in favor of the case) will have a total of 10 minutes to speak and/or present documents in support of their position. At the conclusion of the presentation, the Commission has the option to ask questions of the proponents.
4. After the proponents finish, the opponents (those speaking generally against the case) will have a total of 10 minutes to speak and/or present documents in support of their

position. At the conclusion of the presentation, the Commission has the option to ask questions of the opponents.

5. Each side will then have 3 minutes for rebuttal, with the proponents going first. Again, the Commission may direct questions to the speaker. This will conclude the public hearing portion of the meeting and the Commission will proceed to deliberation.
6. Each side is strongly encouraged to use a spokesperson to present the positions commonly held by each. Each side is also strongly encouraged to organize their speakers and presentations to ensure that all persons wanting to speak will have time to do so.
7. If a speaker has questions of a person on the other side, such questions shall be addressed to the Commission members to be redirected to the person to be asked. There will be no direct questioning of one speaker by another except through the Commission.
8. Public demonstrations of support for a speaker's comments should be limited to clapping. Any other type of audible support shall be out of order and subject the offender to being removed from the building. Anyone speaking out of order shall likewise be subject to removal.
9. These rules are designed to have a full and fair hearing that is orderly and expeditious and avoid unnecessarily repetitious presentations.

Mr. Koch said these are pretty much the standard rules that we have employed at other hearings of this type and other matters before the Board of Adjustment so there is nothing particularly unusual. One thing that is not in those rules that he thinks probably should be pointed out is that the time limit for questioning, Mr. Scarbrough, that you have is not counted against the time limit that has been spelled out.

He said the Board can entertain a motion on those rules and see if that is the wish of the Board.

Ms. Mary Blakeney **MOTIONED, SECONDED** by Mr. Richard Price to **APPROVE** the Rules of Procedures. The vote was unanimous.

#### **New Business – Board of Adjustment Function:**

The Chair introduced Petition APP2016-00001, Appeal of Notice of Violation for illegal reception facility in AO Zoning District. Mr. Jim Scarbrough, acting as agent for Mr. Thomas E. Porter Jr and Victoria P. Porter and The Farm at Brusharbor, LLC Located at 7700 Brusharbor Road (PIN5567-84-6569).

Ms. Morris said this is an appeal of an interpretation for the Cabarrus County Zoning and Subdivision Ordinance. The applicant is Mr. Scarbrough, acting as agent for The Farm at Brusharbor.

The appeal is based on a Notice of Violation, ZNC2016-0068 issued on June 14, 2016, for operation of a Reception Facility without proper review and permits and for operating a reception facility as a Home Occupation.

Ms. Morris is not going to read everything in the staff report. She will go through the highlights. Hopefully the Board had the chance to look at it along with the exhibits provided by staff.

As you can see in the history, this case started in December 2012. Mr. Porter emailed her as the Zoning Administrator regarding the requirements for a reception facility that he was contemplating opening in the spring of 2013. He had been put on notice by the Planning and Development Director, Ms. Kelly Sifford that our Ordinance requested and called for a conditional use permit for that type of use. At that time, Mr. Porter emailed Ms. Morris and said he felt like this activity fell under the State's agritourism requirements and he did not require to obtain local permits.

In December 17, 2012, Ms. Morris began emailing Mr. Porter requesting more information, there was some back and forth. We did some Text Amendments attempting to accommodate some issues we were having with reception facilities being located off of private drives.

In June of 2013, she emailed Mr. Porter again to inform him that text amendments had been made and we felt like his reception facility could probably be accommodated and to ask about availability for a pre-application meeting.

She also spoke with Mr. Porter in July 2013. We had a phone conversation about the use again and that a Conditional Use Permit was needed. At that time, Mr. Porter stated that he was going to look into hiring someone to draw the site plan that is needed for the Conditional Use Permit.

In September 2013, Mr. Porter provided Ms. Morris with a citation from the NC Farm Act. Mr. Porter stated again, that he thought that they were exempt from Zoning and Building. It was staff's understanding that with Senate Bill 638, the only exemption for that was related to Building and not to Zoning.

In September, we contacted the School of Government, they supported the position and clarified again that that Bill was related to Building and not to Zoning.

On multiple unknown dates, our Attorney had discussions with Julian Philpott, who was also talking with the Porter Family. He is General Counsel for NC Farm Bureau. Mr. Koch informed Mr. Philpott that we did not agree with that interpretation and that based on our Ordinance, it was commercial use. On other unknown dates, there were multiple verbal communications with the family.

Ms. Morris said going through Mr. Scarbrough's application, he argues that the Ordinance defines a wedding reception facility as one which is used solely for weddings and receptions. He further states that the property is part of a 1,000 acre working farm and is not used solely for weddings and receptions and that this property is used for "bona fide farm purposes".

Mr. Scarbrough contends that pursuant to G.S. 153A-340, property used for bona fide farm purposes is not subject to county zoning ordinances and regulations do not apply to this property. He states that farming includes agritourism. G.S. 106-581.1 and that weddings and receptions are part of "agritourism" as that term is used in the General Statutes of North Carolina. Mr. Scarbrough asserts that this property is not subject to the county zoning ordinances and regulations described in the Notice of Violation.

Ms. Morris will walk through the different sections that are referenced in the violation.

Chapter 1, talks about Bona fide farms, again, for us a reception facility is classified as a commercial use. Therefore, these uses are not considered bona fide farm activities, are considered non-farm purposes, and are not exempt from zoning.

The definition is that the provisions of this Ordinance shall not affect bona fide farms, owner-operated or leased, but any farm property used for non-farm purposes shall be subject to the provisions of this Ordinance.

A web presence was established for The Farm at Brushharbor. The Board has some of that information in their packet.

Ms. Morris said as far as Chapter 2, the Board was provided with some of the rules of construction and definitions applicable to this case. Hopefully you have had the chance to look at those definitions.

As far as violations as it relates to Chapter 3, according to Chapter 3 a Reception Facility is allowed in the AO zoning district contingent upon an issuance of a conditional use permit by the Board of Adjustment. She said no conditional use permit has been secured for this site. It is unclear at this time if the site accommodates the standards that would be required for a conditional use permit to be issued.

As far as Chapter 7, that chapter talks about performance based standards and that is where our general and rural home occupations are located. She said reception facilities are not listed as a permitted home occupation for the general or rural home occupations categories. Again, the permitted use table in Chapter 3 lists a Reception Facility as a commercial use and permitted only upon issuance of a Conditional Use Permit.

Ms. Morris said Chapter 8 talks about what is required for a Conditional Use permit. In section 8-4, #21, Reception Facilities are listed as a conditional use and requires a Conditional Use Permit and there are additional standards that have to be met.

Chapter 12, that citation relates back to a Certificate of Zoning Compliance being required. A Zoning Compliance Permit must be obtained from the Zoning Administrator prior to the use or occupancy of any building or premises, or both, hereinafter created, erected, changed, converted, or wholly or partially altered or enlarged in its use or structure.



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Again, no permits have been issued by Cabarrus County Zoning for a reception facility to be located at the subject site. It is unknown at this time as to whether or not a permit could be secured for the site since the use is permitted based on standards.

According to Section 12-8, Site development plans; if you are filing for a conditional use you have to file a site plan and that site plan comes before this Board for approval, then makes it way to Staff for an administrative approval.

Ms. Morris said at this time, because it is considered a commercial use, again, the site plans would be submitted and reviewed by staff; that has not happened. And again, we are not exactly clear whether or not a permit could be secured for the site, whether or not it would meet those standards if they did try to pursue a Conditional Use Permit.

She would be happy to answer any questions the Board may have about the Staff report. If you do not have any questions at this time we can move to the Applicant's presentation.

Mr. Scarbrough has some questions.

Mr. Koch said let's see if any of the Board members have any questions first, then Mr. Scarbrough is entitled to an opportunity to question Ms. Morris.

There were no questions from the Board. The Chair asked if they should hear from Ms. Amanda Edwards.

Ms. Morris said Ms. Edwards is here this evening. She is the Zoning Officer that ended up issuing the citation. She kind of came in at the end of it. She asked Ms. Edwards if she had anything else to offer.

Ms. Amanda Edwards, Senior Zoning Enforcement Officer, addressed the Board stating that she went to the site during the week and there was nothing going on. Based on the web presence, and the history of conversations with planning staff, she issued the notice of violation and that was all of her involvement.

Mr. Dagenhart asked Ms. Edwards if it was safe to say that during the week that farm was not used for any normal farm activity.

Ms. Edwards cannot say it was not used for any farm activity, there was not a wedding going on at the time that she did the inspection. The notice was based on the history and the web presence advertising it for weddings.

The letter we sent basically says an inspection was done, so she rode out there and looked at it because that is how letter is form written. But the notice was based mainly on the history of conversations and the fact that they still had a web presence advertising it as a reception facility.

Ms. Morris said, "You did not go into the barn" is what she thinks Mr. Dagenhart is asking.

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Ms. Edwards said she did not go into the barn.

Mr. Scarbrough crossed examined Ms. Morris. He said in the Notice of Violation, the violation says operation of a reception facility, is that correct?

Ms. Morris said yes it does.

Mr. Scarbrough said is it Ms. Morris' testimony, that the County contends this is a wedding reception facility.

Ms. Morris said the reception facility as classified by the Ordinance, not a wedding. We do not have a wedding reception facility, it just a broad category.

Mr. Scarbrough said okay, does your Ordinance define reception facility?

Ms. Morris said yes it does.

Mr. Scarbrough asked Ms. Morris to read the definition.

Ms. Morris read the definition of reception facility. Reception Facility - Establishments located in rural Cabarrus County, meant solely for banquets, wedding receptions, private events, etc. Events are by reservation only, with food and beverage brought on site or prepared in an approved kitchen located on the site. A reception facility shall not be operated as a restaurant with entertainment or as a bed and breakfast.

Mr. Scarbrough said the definition contains the word solely.

Ms. Morris said correct.

Mr. Scarbrough said is this property was part of a farm?

Ms. Morris said their application contends it is part of a farm.

Mr. Scarbrough said did the County investigate to whether it was a farm or not?

Ms. Morris said it is listed under present value in the tax card.

Mr. Scarbrough said as a farm?

Ms. Morris said it is listed in the present value program, but we consider a reception facility a commercial use.

Mr. Scarbrough asked if this property is used solely as a reception facility.

Ms. Morris said it is not because there are residences on the property as well.

Mr. Scarbrough asked if there are farm buildings and cattle.

Ms. Morris does not know the answer to the question.

Mr. Scarbrough asked if the County investigated to see whether this was a working farm.

Ms. Morris said this particular property is in the present use value, but did we see if that particular piece was working, no. We go by the tax records.

Mr. Scarbrough asked Ms. Morris if she would agree that this is a bona fide farm, would she not?

Ms. Morris said it has bona fide status as a farm for the farming part, but not for the commercial use of the reception facility.

Mr. Scarbrough said what does the word solely refer to then?

Ms. Morris said it is a basic definition, a standard definition. We cannot anticipate every single use that would be on a property. It is intended to be a use, a reception facility use, a commercial use.

Mr. Scarbrough said but it is on a farm; right? It is a reception facility located on a farm

Ms. Morris said it is located on a present use valued piece of property.

Mr. Scarbrough said are you telling us that you do not know whether it is a farm or not?

Ms. Morris said you contend that it is part of a larger working farm. But, this is only a piece of that farm, so whether this particular piece is actually farmed, no, she cannot answer that question.

Mr. Scarbrough said why we are here if you do not know whether it is a farm or not?

Ms. Morris said because it is a commercial use and they do not have permits for it at all.

Mr. Scarbrough said, so if we present evidence that it is a bona fide farm, which you have admitted it is taxed as that. If we present evidence that this is a working farm, a reception facility on a working farm, are you testifying that that is still a violation?

Ms. Morris said yes.

Mr. Scarbrough asked Ms. Morris if she was familiar with Diefenbach verses Cabarrus County.

Ms. Morris said yes.

Mr. Scarbrough asked Ms. Morris to tell the Board what happened in that case.

Ms. Morris said she will defer that question to the County Attorney.

Mr. Scarbrough will answer the question. In Diefenbach, the Board had a farm, the man had a reception facility for weddings on the property and the Board found that it was still a violation based on your testimony. Is that correct?

Ms. Morris said no, that is not correct. That property was not classified as a bona fide farm. It was classified for the violation, as a commercial use, that did not have a conditional use permit that was required.

Mr. Scarbrough said no.

Ms. Morris said bona fide farm did not come into play with that. That was not part of that violation, nor was it a part of that interpretation.

Mr. Scarbrough said it was being used as a farm though, is that correct?

Ms. Morris said it was being used as reception facility and as a home.

Mr. Scarbrough said and a farm.

Ms. Morris said not at the time that the violation was issued.

Mr. Scarbrough said what do you mean? At the very time that the violation was issued Diefenbach wasn't using it as a farm? He said let's cut to the chase; this Board held that it was a violation. Diefenbach appealed to the Superior Court and you lost; is that correct?

Ms. Morris would need the guidance from our Attorney as to what the Judge's decision means.

Mr. Scarbrough has that decision. He handed out exhibits. He asked Ms. Morris to turn to Tab #12. He asked if Ms. Morris had shown this order to the Board before.

Ms. Morris said the Board has not seen this because we have not been directed yet by our Attorney as to what we need to do with the Judge's decision, as she stated previously.

Mr. Scarbrough said turn to the last page of the Order. Do you see where it says Order?

Ms. Morris said yes.

Mr. Scarbrough said read that sentence.

Ms. Morris read the sentence from the Order. The entirety of this decision of the Board of Adjustment is reversed in the matter remanded for entry of an order, by the Board of Adjustment, consistent with the Courts order.



Mr. Scarbrough said has the Board entered an order consistent with the Courts order? Do you see that? Has Board followed the Court's order?

Ms. Morris deferred the question to the County Attorney.

Mr. Scarbrough is just asking if Ms. Morris knows.

Ms. Morris deferred the question to the County Attorney.

Mr. Scarbrough said you are familiar with the operation of the Board; right?

Ms. Morris said the Board has not considered this case because, again, we are waiting for guidance from our Attorney on what needs to happen.

Mr. Scarbrough said okay, that is a fair answer. He just wants an answer.

Mr. Scarbrough said let's look at the Findings of the Court on Page 2. He is going to paraphrase

1. It was an appeal from the Zoning Inspector
2. The county became aware of wedding related activities
3. The Board of Adjustment affirmed the decision of the Zoning Inspector and concluded that the petitioners were operating an illegal wedding reception facility in an AO zoning district. Because
  - a) they did not have a conditional use permit
  - b) a wedding reception facility is not allowed as a home occupation in a AO zoning district
4. The County Ordinance contains the following definition of a reception facility

Mr. Scarbrough said then there is the definition that you just read, is that correct?

Ms. Morris said yes.

5. There was no evidence before the Board the petitioner used subject property only for wedding receptions.

Mr. Scarbrough said in our case today, here, do you have any evidence that we use this property only for wedding receptions.

Ms. Morris said this particular barn is used for wedding receptions.

Mr. Scarbrough said no.

Ms., Morris said this particular property contains a commercial use and it also contains a house which makes it a home occupation.

Mr. Scarbrough said listen to the question. Do you have any evidence for the Board that the petitioners here tonight use the subject property only for wedding receptions; only?

Ms. Morris said no.

Mr. Scarbrough said okay.

Mr. Scarbrough said this is still the Diefenbach case.

6. The uncontradicted evidence before the Board shows the petitioners use the property for myriad of activities. Petitioner has held approximately 12 wedding receptions each year. In addition, petitioner and six children live in a large home and grows crop on the land. In addition to wedding receptions, petitioners use the barn for horse feed, farm equipment, and movie nights for children. Petitioners have equine activities and operate a home school on the property and provide foster and adoptive family weekend support on the farm.

Mr. Scarbrough skipped number 7.

Mr. Koch asked Mr. Scarbrough if there was a question. Because this is cross examination or examination of this witness and you want to put your documents into evidence which he does not think is going to be an issue. But, if you have a question further, about this particular order to this witness that would seem to be the appropriate thing to do.

Mr. Scarbrough said okay. Basically he is asking her what the difference is in this case here and the Diefenbach and our case tonight. So he has to go over what the Diefenbach case was.

Mr. Scarbrough asked Ms. Morris to skip down to conclusions of the Court.

1. The fore going Ordinance is unambiguous and provides that only a facility used solely for wedding receptions qualifies as a reception facility.

Mr. Scarbrough asked Ms. Morris if she agreed with that statement. He is just asking if she disagrees with the Court or not?

Ms. Morris does not agree with the decision the Judge made; she said no. Is it ambiguous, it just depends on how you look at it?

Mr. Scarbrough appreciates her answer. He said that is fair. You disagree with the conclusion of the Court for # 1.

2. The Court says the Board erred in its interpretation application of the County Ordinance because the reception facility is defined in the County Ordinance as a facility used solely for banquets, wedding receptions, private events, etc.

He said that means the facility must be used solely for wedding receptions to qualify as reception facility. He asked Ms. Morris if she agreed or disagreed with that statement.

Ms. Morris said again she does not agree with the Judge's decision; no.

Mr. Scarbrough said fair enough. He is not going to argue with your opinion; that is your opinion.

Mr. Scarbrough said it is fair to say that the County has no evidence that this subject property was used solely for wedding or reception facility. That is correct, right?

Ms. Morris said it is also used as a home occupation, which does not have permits.

Mr. Scarbrough said do you have evidence that this subject property was used solely for reception facilities?

Ms. Morris said no, because it is also used as residential, so this would be an illegal home occupation as well.

Mr. Scarbrough said so, the answer would be no for that.

He said Ms. Morris is familiar with the definition of agritourism, is that correct?

Ms. Morris said as stated in our Ordinance.

Mr. Scarbrough said no, he means in the State Statute.

Ms. Morris said again, this is about our Ordinance.

Mr. Scarbrough said do you claim your Ordinance trumps the State Statute?

Ms. Morris said we have a definition for agritourism in the Ordinance that we use.

Mr. Scarbrough understands. He said the General Assembly has one too. He asked Ms. Morris if she was familiar with it.

Ms. Morris said this definition was taken from the State's definition.

Mr. Scarbrough said he will have to find the Statute. Let's go to Tab #2 where the Statutes are.

He said the first Statute G.S. 153A-346 – Grant of Power, down in B, this is a Grant of Power to the County's to enact Zoning Ordinances is that correct?

Ms. Morris said correct.

Mr. Scarbrough said B1 says these regulations may affect property used for bona fide farm purposes only, as provided in subsection 3 of this subsection.

Ms. Morris said then it continues to say this subsection does not limit regulation under this part, with respect to the use of a farm property for non-farm purposes.

Mr. Scarbrough said okay. He asked if it is Ms. Morris's argument that a reception facility that is on a working farm can be regulated by the County as a non-farm purpose.

Ms. Morris said correct.

Mr. Scarbrough said what if I have one wedding per year?

Ms. Morris said it is still non-farm purpose.

Mr. Scarbrough said what if I have one wedding in five years?

Ms. Morris said if they are operating a commercial business it is a non-farm purpose.

Mr. Scarbrough said okay. He said continue to flip over to Senate Bill 380; do you see that? An act to clarify the definition of bona fide farm purposes and to exempt property use for bona fide farm purposes from municipal zoning and building code enforcement.

Ms. Morris said yes. It says municipal zoning and building codes.

Mr. Scarbrough understands, it also applies to County zoning too, doesn't it?

Ms. Morris said no it does not.

Mr. Scarbrough said okay, we will disagree on that. He said G.S. 153A generally is the County Statute is that correct; 153A?

Ms. Morris said yes.

Mr. Scarbrough said okay. He said then it has how you qualify; those are some of the ways you can qualify as a bona fide farm is that correct? In that Statute?

Ms. Morris said correct.

Mr. Scarbrough said then it says there are other ways but these are some of them?

Ms. Morris said correct.

Mr. Scarbrough said then let's flip on over to definitions in Chapter 99E – 30. Do you see a definition of agritourism activity?



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Ms. Morris said yes.

Mr. Scarbrough said that definition is a little different than the County definition, is that correct?

Ms. Morris said that is because this is the definition related to liability, not the definition that the State originally had for Agritourism, which is what is in our Ordinance.

Mr. Scarbrough said okay; so you do not want to use this definition do you; today?

Ms. Morris said that is not how our Ordinance defines it.

Mr. Scarbrough said right; so let's look at this definition. An activity carried out on a farm or ranch that allows members of the general public for recreational, entertainment or educational purposes or to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest your own activities or natural activities and attractions. An activity is Agritourism whether or not the participant pays for to participate in the activity

He said is it fair to say that is a lot broader than the County Ordinance; is that correct?

Ms. Morris thinks it depends on how you look at it.

Mr. Scarbrough said okay. He is just about through, but he wants to make sure he understands Ms. Morris's disagreement with Judge Levinson. He asked Ms. Morris if she contends that Judge Levinson's order in Cabarrus County Superior Court does not apply to this case.

Ms. Morris said this case is different.

Mr. Scarbrough said his case was based on the word solely, is that correct?

Ms. Morris said yes.

Mr. Scarbrough said that Ms. Morris said that Mr. Porter has a reception facility and you have no evidence that it is used solely for wedding receptions. He said Ms. Morris said that, correct?

Ms. Morris said correct. But this property also has a residence, so it is a home occupation, which a reception facility is not allowed as a home occupation.

Mr. Scarbrough said alright, thank you.

Mr. Scarbrough has a couple of short questions for Ms. Amanda Edwards. He asked her to state her name.

Ms. Amanda Edwards stated her name.

Mr. Scarbrough asked Ms. Edwards what her job is with the County.

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Ms. Edwards said Code Enforcement Officer.

Mr. Scarbrough asked Ms. Edwards how long she has had that job.

Ms., Edwards said approximately five months here.

Mr. Scarbrough asked Ms. Edwards where she was before here.

Ms. Edwards said the City of Charlotte.

Mr. Scarbrough asked her what she did there.

Ms. Edwards said Code Enforcement Inspector.

Mr. Scarbrough asked her how long she had that job.

Ms. Edwards said two and a half years.

Mr. Scarbrough asked Ms. Edward if she wrote the Notice of Violation in this case; is that correct?

Ms. Edwards said that is correct.

Mr. Scarbrough said it is dated June 23, 2016. It says inspection date June 14, 2016. Would that be the correct date?

Ms. Edwards yes.

Mr. Scarborough asked Ms. Edwards if she went out by herself.

Ms. Edwards said she did.

Mr. Scarbrough said what time of day was it?

Ms. Edwards said she honestly does not know. She said sometime between eight and five, most likely around nine or ten in the morning, but she does not know exactly what time of day.

Mr. Scarbrough said did you see anyone out there?

Ms. Edwards said no.

Ms. Scarbrough said did you meet anybody out there?

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Ms. Edwards said she did not drive into the property. She just went to where the driveway was; to where the signs were. At that point she was not expecting to find evidence of a wedding on that day.

Mr. Scarbrough said is June 14<sup>th</sup> the day Mr. Porter is charged with the violation?

Ms. Edwards said yes, and as she said before, that was based on the history with planning staff. She said based on that history and the web presence that we had. There had been conversations with planning staff for several years that he was in fact operating this business.

Mr. Scarbrough said okay. He said is it fair to say your Notice of Violation was not based on an inspection?

Ms. Edwards said it was based on all of that information. It was based on the fact that there was a history of it, that there was a web presence of it. It was not based on her actually seeing it on the June 14<sup>th</sup>.

Mr. Scarbrough said you did not actually drive up?

Ms. Edwards said she did not actually see a wedding facility or reception or anything like that.

Mr. Scarbrough said you did not go to the building or on to the property?

Ms. Edwards said right.

Mr. Scarbrough said because you did not have permission too?

Ms. Edwards said right, she went to the entrance of the property.

Mr. Scarbrough said okay. He said you do not know, do you, whether the subject property was used solely as a reception facility?

Ms. Edwards said no.

Mr. Scarbrough said okay and thanked Ms. Edwards.

The Chair said Mr. Scarbrough has 20 minutes to present his case.

Mr. Scarbrough said he has a ten minute video.

The Chair said you will be done by 8:20.

Mr. Scarbrough said he cannot and will go ahead with his witness and enter an exception to the record that we were unable to show the tape.

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Ms. Morris said if you listen to the Rules, you have 20 minutes for a presentation; there is then 10 minutes for people to either speak in favor or against the Notice of Appeal.

Mr. Scarbrough said this is this man's livelihood. He depends on these weddings to supplement his farm income and 20 minutes does not mean a whole lot okay. This is a due process hearing by the way. He keenly objects to all of this, we have a right to a fair hearing.

The Chair thinks you are getting one.

Mr. Scarbrough said you put a 20 minute time limit on it.

The Chair yes we did.

Mr. Scarborough said that is not fair.

The Chair thinks it is.

Mr. Scarbrough said we will see what the Supreme Court Judge has to say. He has already said it once.

Mr. Koch said as you know Mr. Scarbrough, in the Diefenbach matter, there was this issue about the reception facility definition. That was the only issue decided by the Judge; there was no issue about Agritourism, which is an issue here.

Mr. Scarbrough said that is correct.

Mr. Koch said there was no ruling by the Judge concerning home occupation as you recall; which is also in the order, as you know.

Mr. Scarbrough said you and I agree on everything.

Mr. Koch said that sort of gets to his point, which is he does not know that there is a real dispute about the facts in this case, unless you see one that he does not.

Mr. Scarbrough said he wants to get on the record.

Mr. Koch said the argument or the difference, is really the interpretation of these different ordinance provisions, which is more a legal argument than it is a factual issue.

Mr. Scarbrough wants to hear the County's contingent on definition of reception facility and how they disagree with the Judge. He thinks that is important.

Mr. Koch said he thinks Mr. Scarbrough already developed that on cross examine didn't you?

Mr. Scarbrough said right. But now we are going to agritourism, right now.



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Mr. Koch said that is fine.

Mr. Scarbrough said but we only have 20 minutes.

Mr. Koch thinks, but he does not want to speak for the Chair. He thinks that depending on how this goes, at the end of 20 minutes, if there is not a lot of repetitive matter and there are still things that the Board needs to hear, he would imagine that they would consider additional time. So why don't we not worry about that right at the moment and go with what you have.

Mr. Scarbrough said he trusts Mr. Koch.

Mr. Scarbrough called on Mr. Tommy Porter. He said you are Tommy Porter is that correct?

Mr. Porter said that is correct.

Mr. Scarbrough said you are the farmer in question, is that right?

Mr. Porter said yes sir.

Mr. Scarbrough said you and I have practically known each other since we were kids, is that right?

Mr. Porter said yes.

Mr. Scarbrough said you used to be a member the Planning Board didn't you?

Mr. Porter said yes; he served on this Board for six years.

Mr. Scarbrough said why don't you tell the Board what other memberships or Boards you have served on and what you have done in the community.

Mr. Porter said besides serving on this Board, he is currently the Chair Person for the Extension Advisory Committee. He is County President for North Carolina Farm Bureau. He sits on the Board of Directors for Carolina Farm Credit on Board of Directors for Ag First Farm Credit, sits on the Board for the North Carolina Poultry Federation and there may be few other things, he is not sure.

Mr. Scarbrough said how many acres is Mr. Porter's farm.

Mr. Porter said approximate 1,000 acres that they own. We actually farm some additional acreages.

Mr. Scarbrough said you have heard the testimony about the property, the parcel in question.

Mr. Porter said yes sir.

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Mr. Scarbrough asked how many acres is it?

Mr. Porter said 360.

Mr. Scarbrough asked Mr. Porter if he lived on that parcel.

Mr. Porter said no sir.

Mr. Scarbrough said what kind of activities take place on that parcel?

Mr. Porter said that parcel is a beef cattle farm. We raise hay on it, we raise beef cattle and we market our cattle through partially tractor trailer truck load lots. We are set up to finish out our cattle and actually do further processing and offer it to people at a reception or sell freezer beef. That is not primarily what we do, most of it is sold in tractor trailer truck load lots; they go to feed lots.

Mr. Scarbrough said okay. What do you call this? When you grow things on your farm but you offer it to people for food for wedding receptions?

Mr. Porter said that is what we call further processing or added value; you kind of cut out the middle person. So then you are going, marketing directly to the consumer.

Mr. Scarbrough said okay. He asked Mr. Porter who works on this farm.

Mr. Porter said he and his wife. His wife is full time on the farm. We have three children, his daughter who is here and is full time on the farm. His two sons, one is full time on the farm and the other one he would say is full time on the farm, he is also a Concord firefighter and they work 24 hours on and 48 hours off. He is 2/3's on the farm if you want to count working hours. If you want to count true farm hours he is way more than that.

Mr. Scarbrough asked who works at the wedding facility.

Mr. Porter said his daughter and his two daughter in-laws who are here tonight, his wife and his two sons and his son-in-law and myself. It is a family farm and when we have a wedding on the farm that is family run also.

Mr. Scarbrough said okay. He asked how long Mr. Porter had been doing this; the weddings.

Mr. Porter said the wedding started 2012. In July 2012, his daughter was going to get married on the farm and so we actually took this barn that had been and still is somewhat a farm storage, equipment storage and workshop and we cleaned it up and she got married on the farm and had her reception there.

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He said the following day, he and his wife were cleaning up and somebody came pulling up on the farm and said that they had seen Erin's picture on Facebook and that they would like to get married here.

He said that kind of started their agritourism venture on the farm and has allowed his daughter and daughter-in-laws to come back full time to the farm. The financial income has allowed them to come back and be full-time on the farm.

Mr. Scarbrough said okay. He said they left other jobs is that right?

Mr. Porter said that is correct.

Mr. Scarborough said he has given this hand out to the Board members. He asked Mr. Porter if he had investigated the agritourism definition and whether it includes reception facilities.

Mr. Porter said yes sir, he has. He has gone through the North Carolina Department of Agriculture, he has gone through the North Carolina Farm Bureau Federation. He has contacted our State Legislators in Raleigh, even the North Carolina Attorney General's office.

Mr. Scarbrough said if it is agritourism, does that mean it is a farm activity?

Mr. Porter said yes sir.

Mr. Scarbrough said okay. He handed Mr. Porter a copy of the document he gave to the Board. He asked Mr. Porter to turn to Tab 1 and asked him what it was.

Mr. Porter said that is an aerial view of the farm that we call the Brushharbor Farm.

Mr. Scarbrough said do you have some ponds there?

Mr. Porter said yes sir. There are numerous ponds on that farm. He thinks there are seven or more.

Mr. Scarbrough asked if he had a lot of pastures.

Mr. Porter said yes sir. All of the light green area that you see in there is pasture and hay ground for cattle.

Mr. Scarbrough asked who lived on the property.

Mr. Porter said no one lives on this property except he does have one farm manager that lives in a house as you go into the property. He said his son built a home on this property and moved into it. His son and his daughter-in-law and they have a two year old and they moved into a house about a year ago that they constructed off to the side of this property.

Mr. Scarbrough asked if it was part of this tax parcel.

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Mr. Porter said they have one acre that has been cut out.

Mr. Scarbrough said do you see that line where a piece has been cut out?

Mr., Porter said yes sir that is their house.

Mr. Scarbrough said so it is not part of this property.

Mr. Porter said no it is not a part of this property not now.

Mr. Scarbrough asked Mr. Porter to flip over to the next page and asked if it was the tax card records for that parcel

Mr. Porter said yes, they seem to be.

Mr. Scarbrough said you have deferred value, is that agriculture?

Mr. Porter said yes sir.

Mr. Scarbrough said flip on over. He asked Mr. Porter what else he had as evidence of bona fide farm. Not that there is any dispute but just so we have it on record.

Mr. Porter said there are five things and you can have one of the five. One is a FSA number from the Federal Government; we have that. One is a sales tax exemption for sales tax for farm use; we have that. Present use value and it has already been discussed. Tax returns, we have that in a forestry plan and we have that. He said those are the five things that are listed.

Mr. Scarbrough said okay. He said skip over Tab #2 and Tab #3. He said what is Tab #4?

Mr. Porter said Tab # 4, he is assuming, Mr. Scarbrough is referring to the email from Representative Linda Johnson?

Mr. Scarbrough said correct.

Mr. Porter contacted our North Carolina House of Representatives member Linda Johnson and asked her opinion. You can see in the email that she looked into the law. She actually was one of the sponsors that had a lot of input into this law and she came back and told him that he would definitely fall under agritourism on a bona fide farm, you are exempt from County zoning.

Ms. Johnson actually sent this email to Mr. Mike Downs, County Manager. She said to let her know if she could be of any further help to us.

Mr. Scarbrough said what about the next email there.

Mr. Porter said are you referring to the one sent to Mr. Larry Pittman?

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Mr. Scarbrough said correct.

Mr. Porter said basically the same story. He contacted North Carolina House of Representative Mr. Larry Pittman and he went through the same procedures and talked with some other House members and checked in with the attorneys at the Legislature. He came back and said that Mr. Porter is correct that he is exempt from County zoning under the agritourism law. Mr. Pittman also sent an email to Mr. Mike Downs, our County Manager.

Mr. Scarbrough said Tab #6, briefly tell us what that is?

Mr. Porter said Tab #6, he believes is where our Cooperative Extension Director, for Cabarrus County, Robbie Furr, did some research also. He came back and you can see where he lists some Agritourism activity and the definition. In Mr. Furr's opinion, the definition is left intentionally broad to allow farmers option to increase on farm income through non-farming practices that expose patrons to farming.

Mr. Scarbrough said what is Tab #7?

Mr. Porter said Tab #7 is from the North Carolina Attorney General, Roy Cooper's office. The North Carolina Department of Agriculture, General Counsel, Tina Lipesee went to the Attorney General's office and asked them for an opinion and this is the opinion that they came back with. He said if you read the second paragraph it briefly explains that.

Mr. Scarbrough said and Tab #8?

Mr. Porter said Tab #8 is an article which you can look up on line, but it came from the School of Government and it specifically says in there that weddings are a part of agritourism and would be exempt from County zoning authority on a bona fide farm.

Mr. Scarbrough said okay, how about Tab #9?

Mr. Porter said Tab #9, actually came out of a magazine put out by the North Carolina Department of Agriculture, which as you can see here Agriculture is More than a Maze. Typically, when agritourism first came out, it was the further processing; pick your own, corn mazes, hayrides, pumpkins. This says, and you can see the whole article was saying where agricultural settings are becoming popular wedding venues. And all this was put forth by our General Assembly with the idea for farms to generate further income to keep farmland within farm families; to keep it from being developed and to keep future generations on the farm. Which he once told Mr. Steve Troxler, North Carolina Commissioner of Agriculture, that our family could be the poster child for Agritourism

Mr. Scarbrough said Tab #10?

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Mr. Porter said Tab#10 is a news release from the North Carolina Department of Agriculture. If you look on the second page of that, you will see where it is highlighted, where grants were actually given out to farms. It says operations vary from pick your own strawberries, choose and cut Christmas trees to weekend wedding venues and month long farm stays. For more information on Agritourism farms in the state it refers you to a website.

Mr. Scarbrough said skip over to Tab#13.

Mr. Porter said Tab #13 is a letter from one of our previous brides who got married on the farm and then some pictures of our family and the other just some scenery. If you flip through that you will see the bride standing with cattle in the background. The farm is the drawing point for them to choose to have their weddings there.

He said it is not a commercial venue. In fact if we were a commercial venue and followed the restrictions probably put forth by the County, it would be a recipe for failure because people would not want to come out there. They come because of the farm atmosphere, the livestock and the rural beauty of the farm.

Mr. Scarbrough said alright and asked if Mr. Porter had anything else he would like to address to the Board?

Mr. Porter would like for the Board to know that this a true family farm. My children and their spouses are here tonight and we have friends here tonight. We feel like we bring a lot of revenue into the County having weddings. Most of them stay up near Concord Mills and you know what they do in their spare time, they are going shopping and to restaurants. The caterers that they use are local caterers. We have someone here who actually comes out and does decorating on the farm. So, it brings a lot of local revenue into the County and as a small business, we feel like it provides a lot of opportunity for other small businesses to survive.

The Chair asked if the Board had any questions for the Applicant. There were no questions for the Applicant.

Mr. Scarbrough said there are some people here that would like to say a word.

The Chair said we will get to that. The Chair asked Mr. Scarbrough if his presentation is done.

Mr. Scarbrough said he just has that thumb drive that is 10 minutes but he would rather hear from the people who went to the trouble of coming here.

The Chair said that is fine, that is fair to them.

The Chair opened the Public Hearing.

Mr. Craig Leonard, 4440 Hamby Branch Road, Concord, NC addressed the Board stating that his wife grew up in the County and we live out near Green Oaks Golf Course. Our youngest son is



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getting married out there in December. We chose this location because of the farm aspect and the small kids that will be coming out there in the wedding will enjoy it. There is farm equipment sitting out there and some old stuff to look at. He said short and sweet.

Mr. Eddie Stroup, 11416 Timber Ridge Road, Charlotte NC addressed the Board stating he is from Mecklenburg County. His wife has a business called Seems Right and they are on the vendor list for the Farm at Brushharbor.

He has actually been involved in agriculture all of his life. He is privileged to call the Porter family friends, for many many years. They do a great job in all aspects of the farming operation and have won numerous awards for all of their efforts. They have been innovative in trying to provide opportunities for their children and grandchildren to live and work on this farm. They provide great public relations for Cabarrus County in general and for agriculture specifically; what better way for agritourism?

The current situation seems to him, just him, to be caused by government overreach. He probably should not have said that in this meeting, but he has never been known for tact either. Agritourism is a smart and innovative way for agriculture to be promoted in a positive way. Being at the Farm at Brushharbor for wedding events and other events, non-wedding, have allowed him to see firsthand the interest people have in the farm and how it operates. All this being said, he just cannot understand this being a zoning concern.

Mr. Darrell Furr, 3850 Cold Springs Road South, Concord, NC, addressed the Board stating that he also raises cows.

When his niece got married out there she enjoyed it because her husband was able to use his tractor as the way they left the wedding. He said it is out in the middle of nowhere. He said in a way you are trying to make it where if people want to have a party style at their homes and stuff, it is getting to the point where you cannot have them without a permit. Or maybe if somebody is running a vegetable type stand and wants to have hayrides: it becomes do they have to have zoning for that too? He said you keep being zoned and zoned to where there is no more agriculture and it becomes just a big hassle to have any type of deal.

Reverend Gary Morris addressed the Board, stating that he is Pastor of St. Stevens Wesleyan Church, 7601 Brushharbor Drive, Concord, NC and is probably their closest neighbor. He has an unobstructed view of the main drive in and out.

He said every single morning there are farm trucks, farm trailers, and farm equipment going up and down that road. When he got in the car to leave tonight, calves were complaining. He is guessing, they must have separated some calves from their moms. That has been regularly happening ever since they have owned the farm.

He knows your concern perhaps, is that is this actually a real farm; it is a real farm as it can be. Also because he is on the same drive and because he is an extrovert he gets to talk to a lot of people that go there. He has officiated a few weddings there also.

He said they are sort of breaking the two types. There are the ones like him, that had maybe grandparents that were farmers and therefore, they have what would be a heritage or he guesses under the Statute a culture connection. And there are others that are more he guess you would say city slicker types. People who come in from Charlotte and we have seen some wild trucks and buses that come up there and for them it would fall, he would say, under educational type. The people that learn about where their food comes from and what it takes to do that and seem really just thrilled and blessed by it.

Finally, you have heard a lot of things and he would direct this to the Commissioners, about a precedent that sounds might scary close to this case, an Attorney General's opinion. As a citizen of the County, personally a tax payer, although the church does of course have some exemptions. He asks that the Board consider ending the prosecution of this matter this evening if you could.

Ms. Heather Blair, 2024 Fairmead Drive, Concord, NC addressed the Board stating that she is a current resident of Cabarrus County. She and her husband AJ got married at the Farm at Brushharbor in 2013.

In 2012, we were newly engaged and wanted to find an outdoor venue that fit them as a couple but also welcomed all our friends and family; both having grown up in rural Mt. Pleasant. We heard from a family that the Porter family was opening their working farm to the public by allowing couples to come get married at their farm.

As soon as we drove up on the property we knew this was the place we wanted to say "I do". The farm scenery embodies the iconic beautiful world landscape of North Carolina that we envisioned for our outdoor wedding; scenery that we cannot get anywhere else.

She brought her wedding album with her today to remind her of all the memories that we created that day. Almost every picture in this book has a back drop of pastures and farmland that created truly unique photographs that she can now share with her daughter that most of you met earlier.

What is great is that now, she can take her daughter back to the place where her father and I got married and let her experience the farm for herself. Her daughter Hannah actually just celebrated her first birthday at the farm last month with family and friends and just this weekend we were at the farm watching the cattle and practicing our cow sounds.

The Porter family operates a working farm that has become one of her family's favorite places to visit and enjoy; far past, beyond exchanging our vows years ago and she knows that they will continue to visit the farm for many years to come.

Ms. Vickie Porter, 4155 Mt. Pleasant Road, South, Concord, NC addressed the Board stating she is the other half of Tommy Porter. She wants to speak about agritourism and what it has done for their family and what it is doing for the residents of our County and our state.

She serves on an agritourism committee in Raleigh with Farm Bureau. It is a new committee because agritourism is growing wildly across the state. Agritourism was designed and put into Statute, into law so that families like hers, which represent two percent of the population of America, two percent of the population of farmers. She said the rest of the folks rely on farmers for their food and need an opportunity to be able to first of all generate extra income and second of all, most importantly, educate the community that does not have a relationship with a farmer.

She said most of us are two generations away from a farm. That means you have to go back two generations to have had a relationship with a farmer, be on a farm or have spent time with grandparents or aunts and uncles or a farm.

She said that is a problem. She does not know how we are going to teach our children where food and fiber comes from if they cannot stand on a farm and see that. We can go to a grocery store certainly, but that is not where the food is produced.

Our farm, whether it be the entire 1,000 acres or what we are doing in Agritourism, has hosted the Volunteer Ag celebration since its inception and she served as Chair-person for that initial group. Every summer we have about 500 people to come out and celebrate agriculture, celebrate farm life, celebrate being outdoors; take ourselves away from the sadness that we face in our homes, on the television and in the news about our reality of life; to get away from it.

We have hosted Soil and Water events, we have hosted agricultural events; free of charge. We do not take money for this because it is our part of giving back to the community.

On wedding weekends, without fail, every weekend she will have someone, whether it is the bride, the family or a guest come up to speak to her, Tommy or her children about the farm. They say tell me about the farm, tell me about GMO, tell me about grass fed verses corn raised beef, and tell me about processing.

She had an in-depth conversation with a young man, probably about two months ago that is an oil buyer with a major oil company in Alabama. He and I got into a deep discussion about booking cattle and that we have input costs that we cannot pass on to the consumer and he was discussing about oil booking. She was able to educate him about what a farmer has to do and how our input costs are set. We do not have someone else to pass it on to.

She had a conversation six months ago with a couple standing outside the barn and she came up to me and said my parents are trying to sell property, their farm in rural North Carolina and we can do this with the farm and save their farm. She said I can do this; I can go home and save our family farm.

Ms. Porter said she absolutely could. The problem is, until we support and recognize that agritourism is a viable part of agriculture in North Carolina, this is not going to happen and our farms are going to go away. She cannot raise poultry and hogs on that farm because of logistics. I cannot

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raise hogs because of Statutes. I cannot raise poultry because of logistics of neighbors'. How am I supposed to pay the taxes on my farm? I have to have money to pay for the land. This is a way that we can generate income that is easy on the environment and it is easy on the land and on Saturday night the barn door closes.

This is where she wants our County, because this is a precedent moment, because if you rule against her family you are saying that you are not interested in agritourism, agribusiness or agriculture in Cabarrus County.

Mr. Tommy Porter 4155 Mt. Pleasant Road, South, Concord, NC addressed the Board stating that he did not know he would get another chance up here. He will not keep the Board long and knows they want to get home to their families.

Our argument here tonight is the agritourism aspect that is North Carolina law, which trumps County Statutes and County Ordinances. We have gone to the General Assembly, we have gone to the Attorney General's Office, we have gone to the Department of Agriculture, we have gone to the North Carolina Farm Bureau and they all say yes you are exempt from County zoning authority through your agritourism activities on a bona fide working farm.

He said the question was asked about the barn, yes, the barn is used for agricultural purposes too; the whole farm is. He said nothing changed about the farming aspect. The cattle was not moved off of anything, they were not moved away from anything, they go on their rotation.

When there is a wedding, the cattle can actually come within 50 feet of the barn. The guests really like that. So nothing changed when we started doing weddings. This is weddings on a farm this is not a commercial reception facility in any shape or form. This is a working farm that we have weddings on, which is allowed under North Carolina state law under agritourism. He thanked the Board for their time tonight.

Mr. Koch just had a discussion with Mr. Scarbrough about what additional evidence he may have. He thinks that Mr. Scarbrough has put on all of his evidence and he wants to tender all of his exhibits as part of the record, which is part of our standard procedure. But also, there is the video which is under Tab 11. He thinks at this point, it is apparently an Out an About interview with one of our Commissioners, Diane Honeycutt, with the Porter's on their farm. He thinks it is really in the discretion of the Board, if you want to view the whole video at this time, he thinks would be in the Board's discretion and he thinks that is all that remains with reference to any evidence to come before the Commission this evening.

Mr. Scarbrough said that is right.

The Chair will leave it up to the Board. It was the consensus of the Board to view the video after a two minute break.

The Chair would like to break this thing out if possible; going line by line, general provisions, definition of agritourism. He said let's start with Chapter 3, 03-08. He is going to read some of

the stuff. Listed in Chapter 3, Section 3.7 is conditional use in AO zoning and also shown on permitted use table as a C and located in the retail and office use section of the Table.

He said no conditional use permit has been issued for this; so you have to consider that when making your judgment. He would also like to have some conversation amongst the Board to get some feedback about what everybody is thinking. He asked if there were any comments or questions for either staff or the petitioner when it comes to that.

Mr. Scarbrough said what we are arguing is that we are exempt from the Ordinances. The reason why we are exempt is because we are agritourism. Agritourism is agriculture, farm is exempt under State Statutes. You just saw the video there, as to why they think it is important to bring people on the farm, that is why it is agritourism; the weddings. The permits have nothing to do with it, we are exempt from all of that. So, what the Board has to ask is, is this agritourism or not. The whole case turns on that definition.

The Chair read Chapter 2, Rules of Construction, and Definitions as to what agritourism is in our Ordinance. An enterprise or activity operated on a bona fide farm and offered to the public or to invited groups for the purpose of recreation, education, active involvement or the sale of value-added products and services. These activities must be related to agriculture or natural resources and be incidental to the primary operation of the site.

The Chair said the question he would have is, is the primary operation of the site a farm or a wedding facility?

Mr. Richard Price does not know if what he is about to say is a question, a statement or an opinion. Where does it stop? Agritourism? Who gets to decide whether, me as a farmer, decides to endeavor into some venture and call it agritourism? What if it is a good idea to go down there in the pasture and on non-wedding weekends, let's have a motor cross. Why don't we have air shows down there? You get the same people, you get to talk to them about agriculture.

He knows Mr. Porter and we served on this Board together and he is in no way saying that what they are doing out there is not good. But, in his opinion, what this Board is charged with doing, is deciding whether the County Ordinance is being applied correctly. He does not think we are qualified to determine State Statute verses County Ordinance. To him that is what the Court is for. What we are here for is to apply the Ordinance.

Mr. Scarbrough said what about the definition of reception facility in the Ordinance?

Mr. Koch thinks that at this point this is just Board consideration. He thinks the hearing is over and we are now at the point where the Board gets to discuss this among themselves. Unless they have any questions for anybody.

Mr. Price wants to reiterate that he wishes the Porters well with what they have going on out there. Tommy and his family are fine people, they work hard; there is no doubt about that. But, that aside, we are here as interpreters, if you will, of the Ordinance and to apply it to what was brought before



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us which is Notice of Appeal tonight . He thinks the Board needs to keep its focus on what we are here to do.

Mr. Aaron Ritchie said the Ordinance says solely for wedding receptions and this is not solely for receptions, it is a bona fide farm. They have cows there, they make hay. He has been there and he knows; this is not solely for wedding receptions.

Mr. Price said that word solely has gotten under his skin ever since.

Mr. Ritchie said but it is there.

Mr. Price said it really does aggravate him that it is there.

Mr. Ritchie said they were going to take it out a couple of months ago and he told them to hold on.

Mr. Price said nevertheless.

The Chair said we are going to have to close the Public Hearing. He forgot to do that

Mr. Koch thinks it is understood at this point.

The Chair just wants to clarify. The Chair asked if there was any more discussion.

Mr. Ritchie said he said it before in the County Commissioners meeting. Most of you all live in a subdivision and you live on a quarter acre or whatever. You have no fathom of a piece of property this size. You cannot see this piece of property from the road, any road, and this is just an extension of the farm. They did not start out as a wedding venue; they started out as a farm. This is a way to get there, get home.

He said the video you saw, he was there. Because his place is in the Ag District, so it can be set aside. In that part of the County, there is no water and sewer. We want land set aside so people who live in subdivisions can come out and see the farms and see the different aspects of it. It is totally different if you live in town. It is like he has said before, if a man owns a piece of property and the man pays taxes on a piece of property, he ought to be able to do with that piece of property what he wants, unless he is hurting his neighbors. But if you work for the government you do not see it that way. That is just his opinion and it is not the first time he has said that.

He does not see any problem with it whatsoever; because this piece of property is not solely; it is a farm. With that being in there, he does not see how we can say, keep the violation and not over turn it. That is Mr. Ritchie's opinion.

Ms. Mary Blakeney said in her opinion it is a business on the farm and it needs to be regulated according to the Ordinance.



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Mr. Adam Dagenhart said based upon what we just saw on that video, he would say there was three or four hundred people at least at that event.

Mr. Ritchie said farmers.

Mr. Dagenhart said it does not matter where they are from. The concern he has is, that is several hundred cars that are going in and out; that is a lot of traffic. He said NCDOT may say that you may need a driveway permit that is a commercial use. He does not think that anybody here says that what they are doing is bad they just are not permitted per our Ordinance. It is not our job to hash out what Attorneys, Judges and State Legislature says.

In fact, if you read the letter from the AG's Office, in our packet on Page 140, it states that the Courts have not made a ruling in the argument that Mr. Scarbrough has as it relates to agritourism. We have had cases before, for a farm, where we have made variances, as far as buffering, based upon the size of the property, how it relates to the existing vegetation, topo, is it visible from the neighbors, is it visible from the road. He does not think that 300 plus acres for this farm that we could not come to some agreement if they presented something before us. He has huge concerns, over just turning it over, because their interpretation of agritourism does not meet the County's Ordinance, as far as definition.

Mr. Price said by the way it is on Page 145 and 146.

Mr. Dagenhart said tends to agree with Ms. Blakeney and Mr. Pinto.

Mr. Ritchie said the State says it is agritourism.

Mr. Dagenhart said but we do not report to the State; we report to the County Commissioners.

Mr. Litaker said one thing he wondered, we apply a lot of our rulings to complaints. He has not heard of any complaints coming for what they were doing yet. He did not grow up on a farm but his grandparents had one and he can see a lot of the points here. He would like to see a way that we can make this thing work. Because they are providing a good service and he has not heard of any complaints that they are creating issues, problems or with 300 or 400 people. Typically, we respond when people complain. He wants to see what complaints we have had so that we can respond to complaints; to say okay this is what you have to do to function. What complaints have we had? He does not know, he has not heard of any complaints.

He knows there is some tip toeing around words and certain definitions, but you know farmers need a break. He saw how his great grandfather was, they had a hard time making it and that was in Mt. Pleasant too; Foxes Cross Road and a farm is still there. What do we need to do to make it work to make it legal, to make it right and govern it, control it or give guidelines for it or something?

Mr. Koch would like to clarify something. This is not in response to what Mr. Litaker had to say but more in terms of interpretation decision that this Board needs to make. You are a quasi-judicial

board, so you can interpret statutes and ordinances and apply the facts as you have heard them in a hearing to those statute and ordinances. He said not just strictly the County Ordinances, but certainly the State Statutes that control those ordinances. So you need to be mindful of those as well. Part of the reason that we have gotten to this point with this particular matter is because there were a number of different opinions from a number of different sources as to what the definition of some of these terms may be; most notably agritourism. You have seen some of the documents that are in the packet and you have also seen some of the documents presented by the Porters through Mr. Scarbrough that there are different people in different positions that have weighed in on the subject. Part of the reason that we are here, a large part of the reason that we are here is because there has been no definitive decision by anybody who is in the position to make a definitive decision on that very subject.

So you had the advisory opinion from the Ag's office. You have seen some documentation from the School of Government, both that is in the packet and what Mr. Scarbrough has presented. You also have a couple of our State Legislators that have weighed in on the subject and many of them have had involvement with all of this in one form or another. So you have a lot of different opinions on it and it has kind of come down to where you all, as quasi-judicial board, need to make an interpretation so that we know what to do in this situation. That is why we are here and that will be where the outcome needs to be, one way or another.

Mr. Rick Price goes back to what is agritourism? Everybody has their own opinion of what it is and he thinks some of that is because agritourism, as most of us envision, is still a fairly new thing. He thinks most of us envision it as the pumpkin patch or hay rides; that sort of thing where the public goes out and actually becomes part of that agricultural environment for a brief period of time. But because there are so many opinions, where does that leave us? He is not sure that we can define it any better than all of these opinions. He knows that he can't, he does not know.

Like he was saying before, in your down time and you host a motocross race out there, get a lot of people in there and make a few bucks. Is that agritourism, simply because it takes place on a bona fide farm? He does not know, maybe it is, maybe it is not; he does not know. He cannot define agritourism any better. He can define it much worse than the legal experts that we have.

Mr. Ritchie said that is because they do not have enough backbone to say yes or no. They are trying to beat around the bush instead of mowing the bush down.

Mr. Litaker said if you ever grew up around farmers and saw their heart and soul poured out and then you have no rain for 60 or 90 days and they have no other source of income. Some way they need to be able to produce some income and if it is a good clean source of revenue like holding weddings, maybe we can restrict and say you can have X amount of people or have a noise ordinance and time limits and frames. But there is nobody around complaining to say that three or four hundred people are too many. There is nobody around there to say that you need to shut it down at six o'clock because I need to get ready to go to bed. That is why he is going back to who is complaining?

Mr. Price said we in the past, this very Board in the past has at the very least we imposed restrictions on this type of thing.

Mr. Litaker said not until we have complaints.

Mr. Ritchie said because we had complaints.

Mr. Litaker said they were governed by complaints, but here there is none. You have 1000 acres plus that they are farming around there and there are no complaints.

Mr. Ritchie said we want our fingers in the dough just to have our fingers in the dough but they do not need to be.

Mr. Koch said the interpretation of the Ordinance has been for a reception facility in AO zoning, is that you need to have a Conditional Use Permit. That has been what has been applied to a number of other situations. They have not all been complaint situations. Some of them have been people who have come in and wanted to do a facility of this type and then they ask the staff how does the Ordinance apply to me and the interpretation that has been given consistently has been that you need to apply for a Conditional Use Permit. So, what you have heard in majority of the cases, Diefenbach aside, has been basically a Conditional Use Permit application and a number of them have been coupled with applications for variances to deal with some of the buffering and setbacks and some of the other issues that have come up. In those situations, he can name them by name if the Board needs, but you probably remember a lot of them. Those have not been complaint situations, they have been ones in which it's been an interpretation of staff that that was the procedure that needed to be followed.

In this particular case, the Porters have contended that by virtue of it being agritourism on a bona fide farm that they are completely exempt from the zoning regulations for this type of activity. He said that is where we are with it. The majority of those that have dealt with these reception facilities, Diefenbach aside, have been through the Conditional Use process with variances in a number of cases.

Mr. Ritchie said those situations were totally different. He does not think there have been any that were a bona fide farm.

Mr. Dagenhart said yes we have, Newton was one and the very first one when he came on the Board last year down in Mr. Pleasant.

Mr. Ritchie said yeah you all knocked that one out too.

Mr. Dagenhart said no we did not.

Mr. Ritchie said it is just like the Newton's, you said look I can see it on Google or whatever. We do not need to have our fingers in everything that everybody does. That is what he does not understand.

Mr. Dagenhart said it is not about putting your fingers in something. It is about the document that the County Commissioner adopted and we are charged with making sure it is followed. That is what we are charged with.

Mr. Ritchie said they are saying that the State, we do not answer to the state, but they have rules too. If you fly down the road you get a ticket.

Mr. Corley said his personal struggle here, and he will qualify this by saying he thinks what the Porters are doing is absolutely fantastic. The pictures are beautiful and he hopes everything works out, like a few others have already stated.

He thinks it is the question of the definition agritourism. For him personally, at what level, when do you connect those dots between the farm activity and the event? If there is a cow in the back of the wedding photo, is that enough? Is people asking questions and providing information to people that ask those questions, is that enough? He is trying to separate this, trying to figure out where it fits. Somebody mentioned pumpkin patch. His brain has a real firm way to connect those dots between picking a pumpkin in the field to farming that pumpkin. The motocross event, that is probably even further, he thinks we are even closer still. So in his mind that is what he is battling with.

With all the competing information that we have been provided, he personally does not feel there is any one piece of information that leads him any other direction than what staff has already laid out for us.

He wishes we had it so we did not have to make this decision. It would be great to be able to change some wording in the Ordinance and have this perfectly clear. But sometimes this new stuff, this is where you sit, before you have definitions in case law to be able to decide.

Ms. Blakeney said we are trying very hard not to make an exception with one particular situation that would cause problems in the future. We want to be sure that what we are doing is going to serve others who come along later with the same idea.

Mr. Litaker just went through a daughter getting married and it was a long drawn out conversation about theme of the wedding. One thing about a theme was a farm wedding, so if you look at it as a theme at a wedding, they have all kinds of themes and backgrounds and stuff. That would definitely be educational on a farm because you could not have a farm theme without a farm of any venue. Whether it is a wedding reception or wedding verses kids going to a cabbage patch or an educational evening there or just having a banquet reception for a sporting event; an awards banquet. If they look at the theme being an agricultural farm, you got to have a farm to put it on. That is why they would put it there; it is not because of cost because all of them are expensive. There is no such thing as a cheap wedding.

A lot of these young couples want that theme of being on a farm. Riding the tractor in and having their photos done like that. You sure could not do it and photo ops in some portrait studio. So, he

thinks it is educational on that side because that is a theme of a lot of these weddings and a theme of a lot of these gatherings.

Mr. Dagenhart said another concern that he has, obviously, we do not have an actual plan submitted to us, so it was not sent out for our normal review from staff, NCDOT, Soil and Water, Fire and all of that. One concern he has is yes, according to the definition, bona fide farm is exempt from building inspections, but does that mean they are exempt from fire? You can just have a general assembly of several hundred people and there is no fire plan? Are we sure there is a means for an egress an ingress for the fire to get there, emergency services? There are occupancy loads on buildings that fire dictates based upon the use and the size. Are we allowing a situation where that is being exceeded; are we allowing an unsafe situation?

Mr. Litaker agrees with Mr. Dagenhart 100 percent. He said is it out of line for us to table it and ask for a Conditional Use Permit to be brought in before we make a decision, so we can help the safety and welfare?

Mr. Koch thinks that is what the crux of the matter is, because of the arguments that the Porters are making, they do not want to bring in a condition use application. So you would never have the opportunity to consider that unless your decision tonight is that it is required in this situation. That is why none of that is before you, is because their contingent is they are not required to under their interpretation of State Statutes and the County Ordinances; that basically they are exempt.

The Chair said moving on to the Appeal of the Notice of Violation and Cabarrus County Zoning Ordinance Chapter 7, 01; operation of a use based on standards without a zoning compliance permit. Home Occupations are listed in Chapter 7, #27 Home Occupation General #28 Home Occupation – Rural Reception Facilities are not permitted as Home Occupation, it is specifically listed as a commercial use in Chapter 3.

The Chair said is it or is not?

Mr. Ritchie would not consider it a home occupation.

Mr. Dagenhart said why? Somebody, other than the ones he listed that work on the farm, lives there. At no time did Mr. Porter, with his time up there, did he mention anything/anybody other than family. Whether it is direct kids or in-laws that work there, but he indicated that somebody else lives there and works for the farm.

Mr. Ritchie said that works for the farm, yes.

Mr. Dagenhart said but he indicated that they were a worker previously.

Mr. Ritchie said the house is a part of the farm.



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Mr. Litaker said the farmers he has been around are there 24/7. When you have cattle being born and stuff like that there is no way you can live somewhere else, go back and supervise and go back and look and see.

Mr. Dagenhart certainly understands how a farm works. He did not grow up on a farm but his father did and his whole family. In fact, he has family that farmed up until their late 90's. He can certainly understand their point of view and their lifestyle and he does not disagree with what they are doing. But what we are charged with is following that Ordinance, and based upon that Ordinance, they are in violation.

Mr. Corley believes Mr. Porter mentioned a farm manager, he believes was his language. If a manager of the farm is living in a dwelling, he is hearing that we take that as if anybody other than the owner is that still considered a home occupation? He said that is what he struggles with on this one.

Ms. Morris said there are multiple single family residences located on that same particular property. The reception facility is intended to be a standalone commercial use. Therefore that is how staff came to the conclusion that there were residences on the property.

Mr. Scarbrough said the hearing is closed and this witness was allowed to give you advice after the hearing was closed. You are like judges and now you are listening to somebody in the hallway. Due process has been violated.

Mr. Koch would take issue with that. There is a question from a Board member directed to a member of staff and he thinks that is the prerogative of the Board to that if they decide to. This witness was previously sworn and in the Board's discretion or a Board member's discretion if they have a question for anybody, they certainly can pose that question.

Mr. Scarbrough said can Mr. Aaron Ritchie ask him a question now about the definition of reception facilities.

Mr. Koch thinks that would be up to Mr. Ritchie.

Mr. Ritchie asked Mr. Scarbrough what he would call a wedding facility.

Mr. Scarbrough said the definition of wedding facility is in your Ordinance and it is just like the Superior Court Judge said, solely used as a reception facility, the subject property. This subject property is not solely used as a reception facility. That is the simplest reason why you cannot call this a reception facility.

The Chair asked if there was any more discussion on the home occupation, the second violation. There being no further discussion the Chair moved to the next item, Cabarrus County Zoning Ordinance 8-01, operation of a conditional use without a conditional use permit.



The purpose of this Chapter is to set forth those land uses termed "conditional" which are generally land uses with the potential for more far reaching effects than uses based on administrative standards (PBS). They require special regulations to ensure their compatibility with other permitted development and often, require large land areas. These uses are such that their effects on the surrounding environment cannot be fully determined in advance of their being proposed for a specific area.

The reception facility is listed as a conditional use in the AO district and no conditional use permit has been secured for the site.

Mr. Litaker asked Mr. Scarbrough why you are having a problem with going through a conditional use permit.

Mr. Scarbrough said your County Ordinance was first passed in the late 80's, for those of you who were here then. It was only about like 15 or 20 pages long, it is hundreds of pages long now. But in the early 1980's, there was one group that opposed countywide ordinances, the Farmers. They have a state exemption, they always have. The Institute of Government says they are exempt, the farm cannot be regulated by your ordinances. They fought hard for that and they are very independent and this is agritourism and that is why they are going to fight this.

The Chair said, going back to the agritourism, an enterprise or activity operated on a bona fide farm and offered to the public or to invited groups for the purpose of recreation, education, active involvement or the sale of value-added products and services. These activities must be related to agriculture or natural resources and be incidental to the primary operation on the site.

The Chair said that is what we are judging it on.

He said Chapter 8 -21 Reception Facilities AO/Countryside Residential Districts. No Conditional Use Permit has been secured for the site. It is unclear at this time if the site accommodates the standards of review required for a Conditional Use Permit to be issued

The Chair said this is in the Ordinance, another violation.

Mr. Steve Wise said what type of facilities are out there now? Is there adequate parking and sanitary facilities for crowds like three or four hundred people? Is there handicap parking? He has not been to the property and is curious.

Mr. Porter said on a typical wedding he would say the average is probably 120 to 150 guests. Had a few with more than that, most of them would fall within that range. Parking is in a pasture and if there are handicap we let them park up at the front and we have golf carts to take them closer. We do take care of any handicap people.

He said to go back and answer a question that was asked earlier, about the fire code. The Fire Marshal inspects us annually. Building Standards has been out there and inspected us and we are fine with all of that.

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Mr. Dagenhart asked how many actual residences are on this property; not counting the one you pointed out early that was your house.

Mr. Porter said there two homes on this property. One as you drive into the property is right next door to the church, the farm manager lives there and the other residence is vacant.

Mr. Wise said you mentioned Building Standards being there, you have had permitted buildings built?

Mr. Porter said these were farm buildings.

Mr. Wise said you are not required to have them permitted?

Mr. Porter said no these building were existing.

Mr. Wise asked why Building Standards came out there.

Mr. Porter said Ms. Morris sent them out there.

Mr. Dagenhart asked why the Fire Marshal was out there.

Mr. Porter said Ms. Morris sent them out there.

Mr. Dagenhart asked if the Fire Marshal was out there Monday through Friday as opposed to during an event.

Mr. Porter said yes.

Mr. Price asked if Mr. Porter had any documentation from where they had been out there.

Mr. Porter said the inspection report from the Fire Marshal; he comes annually.

Mr. Price asked if he was permitted for a certain occupancy.

Mr. Porter said yes.

Mr. Price asked if it was posted in the building.

Mr. Porter said yes. We followed everything that he required us to do. In the initial inspection he asked us to get some more fire extinguishers and to change one door and put up emergency exits signs and lighting and we have complied with all of that.

Mr. Dagenhart asked if Mr. Porter has had any conversations with NCDOT about the access and the volume of traffic it generates.

Mr. Porter said no. He thinks you could refer that to the Pastor that uses the driveway. When people come in for a wedding, they trickle in for the first hour before hand and they trickle out. There has never been any issue or anything with that and it has never been brought up.

Ms. Morris said to clarify, she did not send Building or Fire to the site. This site was on County Management's radar, as well as the Department Director's radar. Building Construction Standards and Fire were sent to the site to do an assessment at that time. Whether or not permits are required, she cannot answer that question, because if it was submitted as a conditional use, that very well may change classification. But as far as why they went to the site, it was more about life safety issues, because the use was there and it had not been through any type of permitting process.

Mr. Dagenhart said what he is struggling with is based on what Mr. Porter just said. They are trying to contend it is a bona fide farm and not a commercial use, but yet, you just stated that the Fire Marshal came out there and did an inspection, they gave you an occupancy load and they gave you requirements for fire extinguishers. They do not do that for residential, they only do that for commercial. He is struggling with how you are not going to be considered commercial, but yet you are having to meet the commercial standards by the fire department.

Mr. Porter said the way the Fire Marshal explained it to him is that they just want to be sure with public safety and they asked us to comply with that and we did. The reason we are not commercial, is the North Carolina State Law says that we are not commercial.

The Chair said the next violation to the Cabarrus County Zoning Ordinance chapter 12, Zoning Compliance Permit required.

A Zoning Compliance Permit must be obtained from the Zoning Administrator prior to the use or occupancy of any building or premises, or both, hereinafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure.

Additionally, no nonconforming structure or use can similarly be changed or extended without a Zoning Compliance Permit or Certificate of Adjustment. A Zoning Compliance Permit must be obtained before a building permit can be issued. The building permit application may be made at the same time as the application for the Zoning Compliance Permit or after its issuance. No permits or certificates shall be issued except in compliance with the provisions of this Ordinance.

No permits have been issued by Cabarrus County Zoning for a reception facility to be located at the subject site. It is unknown at this time as to whether or not a permit could be secured for the site since the use is permitted based on standards.

The Chair said the next one is Section 12-8. The developer of industrial, commercial, residential, office or institutional property including mobile home parks, with the exception of single-family detached units, must file a site development plan with the Zoning Administrator. This plan must be approved prior to the issuance of a Zoning Compliance Permit. Submissions for all new development shall follow the procedure of Section 12-9.

Reception facilities are considered a commercial use. Therefore, site development plans must be submitted, reviewed and approved by Staff prior to a zoning compliance permit being issued. The Farm at Brushharbor has not submitted for commercial zoning site plan review or zoning permitting.

The Chair said if that was put in place then everybody would be out there he guesses. That is another violation. He asked the Board to discuss it some more.

Mr. Aaron Ritchie said it is a violation under County not the State.

The Chair said right, which is what we are trying to judge is for the County no the State.

The Chair asked if there were any comments or questions from the Board.

Mr. Dane Laney said it is hard for him not to be for these guys. It is like Mr. Litaker said, seems like farmers have been put under. It looks like they did everything in good faith for what they thought agritourism would be and is.

However, there has to be some kind of regulation and there is the rub. Something has to be regulated. Is there not a way that we could be for these guys right now tonight and if they have 200 or 300 cars coming in like they did for the Statesville Balloon Rally, revisit the thing? Because he sees in the future what it could be. The population increasing as much as it is right and the cars and the traffic. He said it is hard to judge that.

Some of these people depend on these things for their livelihood. He knows, his grandfather was a farmer, and he spent weeks in the summertime with him and he was at the mercy of the weather.

Are we charged with that? What are we to do? If the County Commissioners gave us the right to decide on this thing, then we have to do what we have to do. He said it is still a hard decision.

Mr. Dagenhart said based on the information that we have and sitting here looking at an aerial photo of the property, if they were to come in with a conditional permit, he would be in support of allowing some variances with our requirements. As far as the buffering, most of the property is already buffered. He knows Mr. Porter mentioned he has a forestry plan, some of that could change but we could certainly put a stipulation on it. We certainly allowed in the past for there to be parking in a field as long as there is some paved parking provided for handicap.

We have discussed back and forth about tents. He does not know if they use tents, but we have certainly worked with people. We have also already, at least three cases, come in without any complaints, that they were just doing what staff directed them per the Ordinance, that they needed a conditional use permit. We have already set a precedent.

He does not see how we can say well, no, it is not our job to determine whether or not what the State says, the Institute of Government, any court; that is not our job. We have to go by what that book says.

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Mr. Ritchie thinks it is our job to say. We have the state law that says what this is and nobody wants to make a decision.

Mr. Dagenhart said go back to Page 146 of the AG's letter that says the North Carolina Court system has not adhered to any of these above mentioned things. They have not made a determination. So, therefore, he does not see how the State necessarily has made a determination. He is not an attorney, but that is the way it reads to him.

Mr. Ritchie asked if Mr. Dagenhart has read Number 6. Mr. Furr is extension agent; he is in favor of this.

Mr. Dagenhart did not say he wasn't in favor of the project.

Mr. Ritchie said everybody is scared to make a decision. We are scared to make a decision because we may go against somebody.

Mr. Dagenhart thinks there are a few here that are not scared. It is whether or not we agree.

Mr. Litaker said we have to look at was there an intent to defraud what they were doing. It is not, they were straight up, straight forward. When somebody is really putting their heart and soul into something and because of some legality of words, we need to make that work somehow, changing the verbiage and stuff. There are no complaints, they are doing a good job, and they are making the County look good. Instead of trying to dig a place to say no; we need to say let's change that verbiage to allow them to be able to do that.

Mr. Koch said that is probably a decision for another day, but with reference to this particular matter before you this evening, he would suggest something that may help you to get on with making a decision one way or the other.

You have gone through all the different violations, but typically you leave it to him to actually prepare the findings and based on the Board's overall decision. He thinks you can boil this down to three issues that you need vote on one way or the other.

The first would be whether it is a reception facility as defined in the Ordinance; that is one of the issues. He would suggest that the Board make a motion one way or another on that and vote on it.

The second would be whether the use that is being made on that farm is agritourism as defined under the County Ordinance and State Law; one way or the other, either it is or it is not.

The third would be whether the use that is being made as you heard it tonight constitutes a home occupation as defined in the Ordinance; yes or no. How you decide each of those, and there are really three separate issues, but how you decide those would determine whether in fact there are any violations of the Ordinance whatsoever.

He said if that would help your decision making process he would suggest that the Board consider it as three separate matters. The rest of it will follow from there depending on how you decide.

Mr. Koch reminded the Board that because of the change in the Statute, this is a simple majority, rather than a high vote decision such as you have for variances.

Mr. Litaker said if we would say no, do they have the right to come back and ask for a Conditional Use to make this work?

Mr. Koch said of course.

The Chair read the following definition of a reception facility.

RECEPTION FACILITIES - Establishments located in rural Cabarrus County, meant solely for banquets, wedding receptions, private events, etc. Events are by reservation only, with food and beverage brought on site or prepared in an approved kitchen located on the site. A reception facility shall not be operated as a restaurant with entertainment or as a bed and breakfast.

The Chair said we need to have a motion to decide if that is the way it is in this case

Mr. Aaron Ritchie said do you mean that it is located in rural Cabarrus County and meant solely for?

The Chair said banquets, wedding receptions, private events etc. He is not sure how to word the motion.

Mr. Ritchie said it is not solely then it is a farm, they raise cows and other stuff. It is not solely for banquets.

Mr. Dagenhart said but if he were to take that structure that he uses for the events and took it off the property, would he still be able to use the property in such a matter for weddings? Probably not.

Mr. Ritchie asked Mr. Dagenhart if he had seen it.

Mr. Dagenhart said no.

Mr. Ritchie said so you assume.

Mr. Dagenhart said based upon the pictures that he has seen, there may be a small shop in that barn or a work room or something. But the majority of that building is used for a wedding facility. He is not storing hay.

Mr. Ritchie said it's a pole barn to store stuff in.



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Mr. Dagenhart said if you look at the pictures from the web, there are multiple barns that he is using. He is not just using a pole barn.

Mr. Ritchie said you can use it for other things. It is not solely for that.

Mr. Corley said you have to look at the semantics of the wording and not what you want it to say. He thinks that some of us agree that it is worded very poorly, but he would argue, that seeing a handful of pictures that do not show a farm use is far from evidence that is not ever.

Mr. Ritchie said it says solely.

Mr. Corley said he agrees. Seeing pictures of just weddings does not prove that it is not used for anything else.

Mr. Koch said as he mentioned to Mr. Scarbrough a little while ago, this first issue, as he has defined it, is the one that is most nearly like the Diefenbach case that you all recall. Because the case turned on the word solely, as it is defined in the provision about reception facilities. So, based on what you have heard in this hearing tonight, if you feel that applying the Ordinance as written, as it is presently written, is the same as the Diefenbach situation, to the extent that there are other uses being made other than strictly using those facilities for wedding receptions or receptions generally, then you may find that it may well does not meet the requirements of the Ordinance as it is defined.

He thinks the Board needs to decide that, one way or the other, and then move on to the other issues.

The Chair asked if anyone wanted to make a motion one way or the other.

Mr. Price said concerning?

The Chair said the reception facility as it is defined in the County Ordinance.

Mr. Ritchie is trying to figure out how to word it, he is kind of blunt.

Mr. Dagenhart said the issue is whichever way you propose it, not everyone has seen or evidence provided, one way or the other if it is a full use.

Mr. Ritchie understands, but he has seen it.

Mr. Dagenhart said there are eight of us sitting up here.

Mr. Corley would argue our really poor definition and wording there presents itself; if your family sat in that room and talked about farming that was a use. That is what we have opened ourselves up too. If you have ever pulled the tractor into the front door, that was a farming use. That does not satisfy solely. Solely is a very distinct word.

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Mr. Dagenhart said not to put it off on Mr. Koch but we can make a determination one way or the other and let legal take its course.

Mr. Ritchie MOTIONED, SECONDED by Mr. Jeff Corley, that this facility is not solely used as a wedding facility. The vote was 7 to 2, Mr. Jeff Corley, Mr. Aaron Ritchie, Mr. Chris Pinto, Mr. Rick Price, Mr. Dane Laney, Mr. James Litaker and Mr. Steve Wise, voting in favor and Ms. Mary Blakeney and Mr. Adam Dagenhart, voting against.

The Chair said we have to decide on agritourism - An enterprise or activity operated on a bona fide farm and offered to the public or to invited groups for the purpose of recreation, education, active involvement or the sale of value-added products and services. These activities must be related to agriculture or natural resources and be incidental to the primary operation on the site.

The Chair said is a wedding facility incidental to or primary operation of that site or is it the farm?

Mr. Ritchie said primary in his opinion it is the farm and secondary it is the wedding facility. To him it is agritourism. You get people out to the farm. A steak does not come from Food Lion, it starts way before, and that is just an end product. It is showing people where the food comes from.

The Chair read the definition of agritourism again.

An enterprise or activity operated on a bona fide farm and offered to the public or to invited groups for the purpose of recreation, education, active involvement or the sale of value-added products and services. These activities must be related to agriculture or natural resources and be incidental to the primary operation on the site

He said we are trying to decide if the wedding facility is that. He asked the Board to discuss.

Mr. Price said in his opinion the wedding facility, the wedding itself or weddings themselves, could be covered by the word recreation in there, because people come for a good time. Yeah, two people are getting married, but essentially, people are coming to have fun and using it as recreation.

Where he has a problem is there is not one thing about a wedding to him that has anything to do with farming. You can get married anywhere. His daughter hauled us all down to Wrightsville Beach. She is just as married as anybody that was married out on a farm.

Mr. Dagenhart said you can get married across the street.

Mr. Litaker said magistrate's offices an educational experience of the legal authority. He said it is the theme of what they want. They wanted a theme of the beach and a theme of a farm. It is just sort of decorations and themes. So, it can be educational, a lot of kids have never seen a farm.

Mr. Price does not think they are seeing much of it at that wedding; just to be honest. You can see some cows but you can ride by any cow pasture and see some cows as you go by.

Mr. Ritchie said you cannot ask questions when you are driving by.

Mr. Price does not think there is a lot of farm talk going on at the wedding. But, he can see it being interpreted as a recreational activity; he can see that.

Mr. Corley said as he has said before this is the one that he struggles with. He really wishes he could see a really strong connection between the wedding and the venue and the farm operation. Other than it just taking place in the same space, he guesses that is his concern. He is going to have to default, with lack of any more guidance, to take the conservative approach and maintain that it is not.

The Chair is of that opinion too. He does not think agritourism is a wedding facility. He thinks you can get married anywhere; you can get married in a mill.

Mr. Ritchie said this is another way a farmer can have income on the farm.

The Chair understands that, he just separated his four weights yesterday. He understands what Mr. Ritchie is saying. But he does not see it; that is his opinion.

There being no further discussion, Mr. Aaron Ritchie, MOTIONED, SECONDED by Mr. James Litaker, that agritourism is a recreational activity which is part of our Ordinance.

Mr. Koch does not know if that motion really addresses the ultimate question. He understands that your opinion is that a wedding reception facility, as is being utilized by the Porters on their farm, fits within the definition of agritourism. He asked Mr. Ritchie if that was correct.

Mr. Ritchie said yes.

Mr. Koch said make your motion that way. The wedding reception facility being operated by the Porters on their farm fits within the definition of Agritourism.

Mr. Aaron Ritchie, MOTIONED, SECONDED by Mr. James Litaker, that the wedding facility operated by the Porters fits into our Ordinance within the definition of Agritourism. The vote was 5 to 4 in favor of the motion. Mr. Aaron Ritchie, Mr. James Litaker, Mr. Dane Laney Mr. Steve Wise and Mr. Rick Price voting in favor and Ms. Mary Blakeney, Mr. Chris Pinto, Mr. Adam Dagenhart and Mr. Jeff Corley voting against.

The Chair introduced Chapter 7, Performance Based Standards Pursuant to Chapter 7, Performance Based Standards, #27 Home Occupation General and #28 Home Occupation Rural:

Reception Facilities are not listed as a permitted Home Occupation for the General or Rural Home Occupation categories. The permitted use table in Chapter 3 lists a Reception Facility as a commercial use and permitted only upon issuance of a Conditional Use Permit by the Board of Adjustment.

Mr. Corley said remind him, didn't we already say that was not a reception facility?

Mr. Koch said now we are talking about whether that use that is being made of it, as you have heard in this hearing, constitutes a home occupation at that location.

Mr. Corley said even though already ruled it was not a reception facility?

Mr. Koch said that is irrelevant to this question. Now you are looking strictly at the use that is being made, as you have heard it in this hearing; determining whether that is a home occupation.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker that it is NOT a Home Occupation.

Mr. Dagenhart would like to get a definitions of Home Occupation.

Mr. Koch deferred to Ms. Susie Morris.

Ms. Morris said there are two definitions in the Ordinance.

Home Occupation, General, which states a business, profession, occupation or trade which is conducted within a residential building for economic gain or support of a resident of the dwelling and which is incidental and secondary to the residential use of a lot and which does not adversely affect the character of the lot or the surrounding area. See Chapter 7 for a list of permitted general home occupations.

Home Occupation, Rural, is defined as an accessory use subordinate to the primary residential use of the property operated by persons residing in the principle building on the same parcel of land upon which the home occupation is located. Additionally, such use maybe carried out in no more than one building, separate from the principle lot on that same parcel of land. See Chapter 7 for list of permitted rural home occupations.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker this is not a home occupation business.

Mr. Dagenhart said did we not just hear Ms. Morris state in the rural home occupation that if more than one dwelling or one structure is used it is considered; did he misunderstand you?

Ms. Morris will defer to the list of the uses in a home occupations. Again it gets back to reception facilities being a commercial use and that is not a listed type of home occupation.

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker this is not a home occupation business. The vote was 7 to 2 in favor. Mr. Aaron Ritchie, Mr. James Litaker, Mr. Steve Wise, Mr. Dane Laney, Mr. Jeff Corley, Mr. Rick Price and Ms. Mary Blakeney in favor. Mr. Chris Pinto and Mr. Adam Dagenhart opposed.

The Chair said we have to decide on the Appeal of the Zoning Notice of Violation; after what we just talked about. That is why we are here. We have reviewed all of them Chapter 3 and Chapter 7 where there is no conditional use permit because it is in AO, Home Occupations which is in Chapter 7 as well. Reception facilities in a conditional use in AO district, there is no conditional use permit for this. No zoning compliance permit, out of compliance on that.

We need a motion to vote against the violation or for it.

Mr. Price said the appeal.

The Chair said right.

There being no further discussion, Mr. Aaron Ritchie MOTIONED, to take away the violation that the County has put upon them.

Mr. Koch thinks the motion would be in a general way, at least with reference to this interpretation, that you either sustain or do not sustain the interpretation of Ordinance by the Zoning Administrator and Staff. He said you can say you uphold it or do not uphold it. Whatever term you would like to use Mr. Ritchie.

Mr. Ritchie would not use either one of them but he will stick with Mr. Koch's words.

Mr. Koch said Mr. Ritchie's motion, as he understands it, would be to not uphold the interpretation of the Ordinance as made by the Zoning Administrator.

Mr. Ritchie said that would be correct.

Mr. James Litaker Seconded the Motion.

The vote was 5 to 4 to **Not Uphold** the interpretation of the Ordinance as made by the Zoning Administrator. Mr. Rick Price, Mr. Aaron Ritchie, Mr. Dane Laney, Mr. Steve Wise and Mr. James Litaker voting to **Not Uphold** and Mr. Adman Dagenhart, Mr. Jeff Corley, Mr. Chris Pinto and Ms. Mary Blakeney to **Uphold** the Interpretation.

It was the consensus of the Board to have Mr. Koch prepare the appropriate Findings of Fact to support their decision.

The Chair introduced Petition CUSE2016-00001 – Request for Conditional Use Permit for Public Service Facility. This has been requested to be tabled.

Ms. Morris said this applicant is trying to move forward with a gas regulator facility. The information that they turned in to us, when we provide comments back to them they did not have time to address the comments. They need some more time to do that, we anticipate that it will be back probably in November. So they are requesting to table it until the November meeting.

Planning and Zoning Commission

Minutes

October 11 2016

she will send it out and you can respond if you have any comment. We will do the formal presentation at the meeting.

The subdivision training with the School of Government is still on. We have not had time to look at that really. She thinks it is in Mt Holly, not Holly Springs. We will let the Board know as soon as we have that information, if you are interested in going. She believes it is in mid-November and it will be a half day workshop like it was before.

**Legal Update**

Mr. Koch would suggest that in view of the late hour, that there is not anything of a legal nature that really bares updating; so there really is no report. He said unless anyone has any specific questions about anything.

There being no further discussion, Ms. Mary Blakeney, **MOTIONED, SECONDED** by Mr. Aaron Ritchie to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 10:20 p.m.

APPROVED BY:

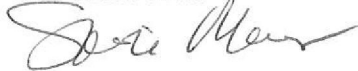


Mr. Chris Pinto, Vice-Vice Chair

SUBMITTED BY:

  
Arlena B. Roberts

ATTEST BY:



Susie Morris, Planning and Zoning Manager



**CABARRUS COUNTY BOARD OF ADJUSTMENT  
ADMINISTRATOR INTERPRETATION APPEAL**

**THE FARM AT BRUSHARBOR, LLC  
7700 Brusharbor Road  
Mount Pleasant, North Carolina  
PIN 5567-84-6569  
Case No. APPL 2016-00001**

On October 11, 2016, the Cabarrus County Planning and Zoning Commission, sitting as the Board of Adjustment, conducted a hearing on the appeal of The Farm at Brusharbor, LLC regarding the Zoning Administrator's interpretation of the Cabarrus County Zoning Ordinance relative to the structures on and use of the above-referenced parcel.

All persons present who desired to testify were permitted to do so and were sworn. The Farm at Brusharbor, LLC was represented by counsel, James E. Scarbrough, who was allowed to fully participate in the hearing by examining and cross-examining the witnesses, offering evidence and making statements to the Board.

After hearing and receiving the report of County staff and hearing and receiving the evidence and the arguments of counsel, the Board of Adjustment reached decisions regarding the interpretation issues before it, as more fully described below.

**FINDINGS**

1. Thomas E. Porter, Jr. and wife, Victoria P. Porter are the owners of The Farm at Brusharbor, LLC. They are also the owners of the above-listed parcel of real property, which parcel consists of approximately 360 acres.
2. This parcel is zoned Agricultural Open ("AO") pursuant to the Cabarrus County Zoning Ordinance (the "Ordinance") and shall be referred to as the "Property".
3. For purposes of this appeal, the Porters and The Farm at Brusharbor, LLC shall be collectively referred to as the "Appellant."
4. On December 13, 2012, Mr. Porter emailed Cabarrus County Zoning Administrator Susie Morris regarding the requirements for a reception facility scheduled to open in the spring of 2013 on the Property. This contact was made after verbal notice to Mr. Porter by the County Planning and Development Director, Kelly Sifford, that a conditional use permit would be required for this type of use. In his email, Mr. Porter stated that he believed that a wedding reception facility was within the State of North Carolina's definition of agritourism and that he was not required to obtain local permits.
5. On December 17, 2012, Ms. Morris emailed Mr. Porter to request more information regarding the proposed activities for the site, number of guests and buildings to be used. She also informed him that it appeared that the requirements of the Ordinance for a reception facility on the Property could

not be met, which included frontage and access requirements.

6. On June 12, 2013, Ms. Morris emailed Mr. Porter to inform him that text amendments had been made that appeared to accommodate a reception facility on the Property. The revised requirements were provided in the email. During the email exchange, Mr. Porter was asked to provide staff with availability for a pre-application meeting which is required to move forward with a conditional use application.

7. On July 3, 2013, Ms. Morris had a phone conversation with Mr. Porter about the reception facility use and that a conditional use permit was needed. At that time, Mr. Porter stated that he was going to look into hiring someone to draw the site plan that is needed for the conditional use permitting process.

8. On September 9, 2013, Mr. Porter provided Ms. Morris with a statutory reference from the North Carolina Farm Act – Senate Bill S638. He stated that the provision of such information should suffice for the Property to be considered exempt from the Ordinance. It was staff's understanding that the S638 exemption was related to North Carolina Building Code standards and that it did not exempt the Property from the Ordinance.

9. On September 17, 2013, Ms. Morris contacted the UNC School of Government to clarify the interpretation of S638. Two faculty members from the School of Government confirmed that Ms. Morris was correct in her understanding that the Farm Act referred to the North Carolina Building Code, not local zoning requirements. It was opined by the members of the School of Government that a reception facility is a commercial use, not a farm-related use.

10. In the meantime, on several occasions, County Attorney Richard Koch spoke with Julian Philpott, general counsel for the North Carolina Farm Bureau, regarding the Appellant's reception facility and discussed various statutes and local ordinances pertaining to the project. Mr Koch informed Mr. Philpott that the County disagreed with the interpretation that this project was exempt from zoning. Mr. Koch informed Mr. Philpott that the County had consulted with the UNC School of Government and the School of Government supported the view that a reception facility was a commercial use. Mr. Koch advised Mr. Philpott at that time that the other facilities in the County conducting the same type of use had applied for conditional use permits as outlined in the Ordinance.

11. There have been multiple verbal communications between the Appellant and/or representatives of their family that the County's position was that the reception facility was not considered agritourism, but in fact was a commercial venture and that a conditional use permit was required.

12. The Appellant offered testimony that they believed that their wedding reception facility constituted "agritourism" within the meaning of that term under State law and the Ordinance. Members of the Porter family work the farm, which produces beef cattle. They also operate the wedding reception facility.

13. The Appellant offered evidence that certain other persons have rendered opinions that the wedding reception facility of Appellant is considered "agritourism". None of these opinions were qualified as expert opinions under the North Carolina Rules of Evidence. The opinions came from some members of the Cabarrus County delegation to the North Carolina General Assembly, an advisory

opinion from the office of the North Carolina Attorney General and an opinion from the local State cooperative extension director.

14. The Appellant has a website that advertises this Property as a venue for weddings and other events.

15. A non-family farm manager lives on this Property. One of Mr. Porter's sons lives in a house he constructed "off to the side" of the Property.

16. The County staff also offered as evidence a copy of the North Carolina State University website indicating that a wedding reception facility is not "agritourism" as defined under State law.

17. The County had delayed enforcement of the Ordinance as to the Appellant due to the difference of opinions throughout the State as to whether a wedding reception facility such as that operated by the Appellant is within any definition of "agritourism".

18. On June 23, 2016, the County issued a warning notice of violation against the Appellant for "operation of a reception facility without proper review and permits; reception facility not allowed as a home occupation."

19. On July 21, 2016, the Appellant filed a timely appeal of this notice of violation and the underlying interpretation of the Ordinance.

20. During the time when the Appellant's wedding reception facility was in operation but before any enforcement action was taken against Appellant, another Ordinance interpretation appeal was filed with the Board of Adjustment regarding another wedding reception facility located in a subdivision in the County.

21. In that appeal, denominated The Lodge Concord, LLC (APPL 2015-00001), the Board of Adjustment determined that that appellant's wedding reception facility in AO zoning was subject to the Ordinance and required a conditional use permit, which the appellant did not obtain.

22. The Lodge Concord, LLC appealed the decision of the Board of Adjustment to the Cabarrus County Superior Court, which reversed the decision of the Board of Adjustment and determined that the Ordinance language did not apply to a real estate parcel on which the owner had other lawful uses but also operated a wedding reception facility.

23. That decision, which was not appealed by the County, did not determine any issues regarding agritourism or home occupation.

24. That decision is not determinative in this case as it dealt with only one of the three issues in this matter and the underlying facts on The Lodge Concord, LLC case were different.

25. Three issues were presented by this appeal to the Board:

- a) Whether the Appellant's wedding reception facility is a "reception facility" as defined in the Ordinance;

- b) Whether the Appellant's wedding reception facility falls within the definition of "agritourism" as defined by the North Carolina General Statutes and the Ordinance; and
- c) Whether the Appellant's wedding reception facility constitutes a home occupation as defined in the Ordinance.

### **LEGAL CONCLUSIONS**

After hearing and receiving the evidence and the arguments of Counsel, the Board answered the issues as follows:

1. By a vote of 7 to 2, the Board determined that the Appellant's reception facility is not a "reception facility" as defined in the Ordinance because the Property is not solely used for that purpose.
2. By a vote of 5 to 4, the Board determined that the Appellant's reception facility is included within the definition of "agritourism" as defined by the North Carolina General Statutes and the Ordinance.
3. By a vote of 7 to 2, the Board determined that the Appellant's reception facility use is not a home occupation as defined in the Ordinance.

### **DECISION**

For the above reasons, the Board determined that the decision of the Zoning Administrator that the Appellant is operating a reception facility without proper review and permits and as an illegal home occupation is not affirmed and the notice of violation is dismissed.

This 8<sup>th</sup> day of November, 2016 nunc pro tunc to October 11, 2016.



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CHRIS PINTO  
VICE-CHAIR PRESIDING  
CABARRUS PLANNING AND ZONING  
COMMISSION, sitting as the  
BOARD OF ADJUSTMENT

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled: \_\_\_\_\_

**Petition: APPL2016-00001**  
**Appeal of Interpretation of Cabarrus County Zoning and Subdivision Ordinances**

Appellant Information: James E. Scarbrough, Attorney  
Agent for The Farm At Brushharbor  
James E. Scarbrough  
137 Union Street, South  
Concord, NC 28025

Zoning: Agriculture Open (AO)

Property Location: 7700 Brushharbor Road, Mount Pleasant NC

PIN#: 5567-84-6569

Purpose:

Appeal of Zoning Notice of Violation ZNC2016-0068 issued on 6/14/2016 for operation of a Reception Facility without proper review and permits and for operating a reception facility as a Home Occupation:

- A. Cabarrus County Zoning Ordinance Chapter 03-08 Table of permitted uses
- B. Cabarrus County Zoning Ordinance Chapter 07-01, 02 Operation of a use based on standards without a zoning compliance permit
- C. Cabarrus County Zoning Ordinance Chapter 08-01 Operation of a Conditional Use without a Conditional Use Permit
- D. Cabarrus County Zoning Ordinance Chapter 08-03 Uses listed in Chapter 8 Require a Conditional Use Permit
- E. Cabarrus County Zoning Ordinance Chapter 12-03 Zoning Compliance Permit Required
- F. Cabarrus County Zoning Ordinance Chapter 12-08 Site Development Plan Required

**History**

December 13, 2012 – Tommy Porter emailed Cabarrus County Zoning Administrator, Susie Morris, regarding the requirements for a reception facility, scheduled to open in the Spring of 2013 on the Porter property located off Barrier Georgeville Road. This contact was made after verbal notice by the Planning and Development Director, Kelly Sifford, that a conditional use permit would be required for this type of use. In his email, Mr. Porter stated that he felt that this activity fell under the state's agritourism requirements and that he was not required to obtain local permits.

December 17, 2012 – Susie Morris emailed Mr. Porter to request more information regarding



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the proposed activities for the site, number of guests and buildings to be used. She also informed him that it appeared that the requirements of the ordinance could not be met, which included frontage and access requirements.

June 12, 2013- Susie Morris emailed Tommy Porter to inform him that text amendments had been made that appeared to accommodate a reception facility on his property. The revised requirements were provided in the email. During the email exchange, Mr. Porter was asked to provide staff with availability for a pre-application meeting which is required to move forward with a Conditional Use Application.

July 3, 2013- Susie Morris had a phone conversation with Tommy Porter about the use and that a Conditional Use Permit was needed. At that time, Mr. Porter stated that he was going to look into hiring someone to draw the site plan that is needed for the Conditional Use permitting process.

September 9, 2013 – Mr. Porter provided Susie Morris with a citation from the NC Farm Act – S638. He stated that the provision of such information should suffice for The Farm at Brushharbor to be considered exempt from the Cabarrus County Zoning Ordinance. It was staff's understanding that the S638 exemption was related to North Carolina Building Code Standards and that it did not exempt The Farm at Brushharbor from the Cabarrus County Zoning Ordinance.

September 17, 2013- Ms. Morris contacted the UNC School of Government to clarify the citation from S638. Two staff members from the School of Government confirmed that Ms. Morris was correct in her understanding that the Farm Act referred to North Carolina Building Code, not local zoning requirements. It was stated by the School of Government staff that a reception facility is a commercial use, not a farm related use. A Coates' Cannons NC Local Government Law Blog entry related to the same is included for reference.

Multiple Unknown dates- Rich Koch, County Attorney, spoke with Julian Philpott, general counsel for the NC Farm Bureau, regarding the Porter's wedding facility and discussed various statutes and local ordinances pertaining to the project. Mr. Koch informed Mr. Philpott that the county disagreed with the interpretation that this project was exempt from zoning. Mr. Koch informed Mr. Philpott that the county had consulted the UNC School of Government and the school of government supported the view that this was a commercial enterprise. Mr. Koch advised at that time that the other facilities conducting the same type of use had applied for Conditional Use Permits as outlined in the Ordinance.

Unknown dates- There were multiple verbal communications between the Porter Family and or representatives of the family that Cabarrus County's position was that the reception facility was not considered agritourism, but in fact a commercial venture and that a Conditional Use Permit was required.



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**Findings**

Mr. Scarbrough is appealing the Notice of Violation as it relates to the following:

1. Chapter 1, General Provisions
2. Chapter 2, Rules of Construction and Definitions
3. Chapter 3, Table of Permitted Uses, Reception Facilities
4. Chapter 7, Performance Based Standards, Home Occupations
5. Chapter 8, Conditional Uses, Reception Facility
6. Chapter 12, Administration and Enforcement

Mr. Scarbrough argues that the ordinance defines a wedding reception facility as one which is used solely for weddings and receptions. He further states that this property is part of a 1,000 acre working farm, that it is not used solely for weddings and receptions and that this property is used for "bona fide farm purposes".

Mr. Scarbrough contends that pursuant to G.S. 153A-340, property used for bona fide farm purposes is not subject to county zoning ordinances and regulations do not apply to this property.

He states that farming includes agritourism. G.S. 106-581.1 and that weddings and receptions are part of "agritourism" as that term is used in the General Statutes of North Carolina.

Mr. Scarbrough asserts that this property is not subject to the county zoning ordinances and regulations described in the Notice of Violation. (See Application)

**Chapter 1, General Provisions**

Pursuant to Chapter 1, Section 1-4, Bona fide farms exempt, of the Cabarrus County Zoning Ordinance:

The provisions of this Ordinance shall not affect bona fide farms, owner-operated or leased, but any farm property used for non-farm purposes shall be subject to the provisions of this Ordinance. For purposes of this Ordinance, see Chapter 2, Rules of Construction and Definitions, for the definition of a Bona Fide Farm.

Reception Facilities are classified as a commercial use. Therefore, these uses are not considered bona fide farm activities, are considered non-farm purposes, and are not exempt from zoning. Buildings or structures that are used for non-farm purposes are not exempt from zoning permitting.

A web presence for The Farm at Brushharbor was established to promote a facility "to hold wedding ceremonies and receptions, family reunions, corporate events, spiritual events, social gatherings or any other reasons to get together with your friends and family" as stated in the

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“About Our Farm” section of the primary web site. The Facebook page provides the following description “Rustic Wedding and Event Venue in Mount Pleasant, North Carolina” in the “About Us” section of the page. (See Attached Documents Related to Various Web Sites and Advertising)

**Chapter 2, Rules of Construction and Definitions**

Pursuant to Chapter 2 of the Cabarrus County Zoning Ordinance, the following definitions are applicable to this appeal:

RECEPTION FACILITIES - Establishments located in rural Cabarrus County, meant solely for banquets, wedding receptions, private events, etc. Events are by reservation only, with food and beverage brought on site or prepared in an approved kitchen located on the site. A reception facility shall not be operated as a restaurant with entertainment or as a bed and breakfast.

AGRITOURISM - An enterprise or activity operated on a bona fide farm and offered to the public or to invited groups for the purpose of recreation, education, active involvement or the sale of value-added products and services. These activities must be related to agriculture or natural resources and be incidental to the primary operation on the site.

AGRICULTURE – Agriculture is defined as:

- a. The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- b. The planting and production of trees and timber.
- c. Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- d. Aquaculture as defined in NCGS 106-758.
- e. The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- f. When performed on the farm, agriculture also includes the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm. When performed on the farm shall include the farm within the jurisdiction of the county and any other farm owned, or leased to or from others, by the bona fide farm operator, no matter where located.



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- g. A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry and store grain.

FARM, BONA FIDE - The production and activities relating to or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture as defined in North Carolina General Statute § 106-581.1. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to North Carolina General Statute § 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.
- e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

### **Chapter 3, Establishment of Zoning Districts**

According to Chapter 3, a Reception Facility is allowed in the Agriculture Open (AO) zoning district contingent upon the issuance of a Conditional Use Permit by the Board of Adjustment. (See attached Permitted Use Table.) Additional standards also must be met for a Conditional Use Permit to be issued. (See Standards from Chapter 8 for Reception Facilities later in Chapter 8 discussion)

No Conditional Use Permit has been secured for the site. It is unclear at this time if the site accommodates the standards of review required for a Conditional Use Permit to be issued.

### **Chapter 7, Performance Based Standards**

Pursuant to Chapter 7, Performance Based Standards, #27 Home Occupation General and #28 Home Occupation Rural:

Reception Facilities are not listed as a permitted Home Occupation for the General or Rural Home Occupation categories. The permitted use table in Chapter 3 lists a Reception Facility as a commercial use and permitted only upon issuance of a Conditional Use Permit by the Board of Adjustment.

### **Chapter 8, Conditional Uses**

#### **Section 8-1 Introduction**

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The purpose of this Chapter is to set forth those land uses termed "conditional" which are generally land uses with the potential for more far reaching effects than uses based on administrative standards (PBS). They require special regulations to insure their compatibility with other permitted development and often, require large land areas. These uses are such that their effects on the surrounding environment cannot be fully determined in advance of their being proposed for a specific area.

### **Section 8-2 How to use this chapter**

Conditional uses are set forth below. At the beginning of each section is a statement showing which zoning districts allow the conditional use. Specific standards that must be met to permit the use are then listed. While all conditional uses require submittal of a site plan meeting the established general standards of the ordinance (described in Chapter Twelve), some require additional information to be shown on the site plan or to be submitted as part of the application.

### **Section 8-3 Petitioning for a Conditional Use**

Because of their potential for affecting neighboring landowners, conditional uses warrant review in a public forum. The Planning and Zoning Commission, acting as Board of Adjustment, hears the request for a conditional use permit. Eighty percent of the Commission must vote in favor of the use and the issuance of a conditional use permit. If a conditional use permit request is denied by the Board of Adjustment, the applicant may appeal the decision to the Superior Court of Cabarrus County, North Carolina.

In general, the process for seeking a conditional use is as follows (Please see Chapter 12 for more details regarding the conditional use permit process):

**Step 1** Prior to filing a Conditional Use Permit Application, the Applicant is required to attend a pre-application meeting with Planning and Development Staff. At that time, the proposed project will be discussed and required submittal materials will be determined. Examples of items that may be required, in addition to a complete application and site plan, include but are not limited to:

- Traffic Impact Analysis Documents (See Appendix A)
- Intent to Serve Letters
- NCDOT Driveway Permits
- Post-Construction Stormwater Permits

**Step 2** The Applicant files a complete application with Cabarrus County Planning and Development. This includes filing the required number of copies of the proposed site plan and any other materials required for the application to be considered complete, as determined during the pre-application meeting (See Step 1).



PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled: \_\_\_\_\_

**Step 3** The project is distributed to review agents and comments are returned by Staff to the Applicant regarding changes or revisions needed to the proposed plan and/or application materials.

**Step 4** When revisions are submitted, approved, and the plan and application materials conform to the applicable ordinances, the revised complete application is presented to the Planning and Zoning Commission, acting as Board of Adjustment, for consideration.

Applications for a Conditional Use must demonstrate compliance with the general standards of review. Additionally, Conditional Uses must:

- a. Maintain or enhance the public health, safety and general welfare if located where proposed, developed and operated according to the plan as submitted;
- b. Maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not do so);
- c. Assure the adequacy of:
  - Sewage disposal facilities
  - Solid waste and water facilities
  - Police, fire and rescue squad protection
  - Schools
  - Transportation systems (within and around the site) and
  - other public facilities
- d. Comply with the general plans for the physical development of the County as embodied in these regulations or in the Land Use Plans adopted by the Cabarrus County Board of Commissioners.

**Special conditions arrived at by the Planning and Zoning Commission**

When the Commission finds that circumstances relating to a particular use warrant more requirements, in addition to those listed in connection with the use, the Commission may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated or permits obtained and/or conditions of a continuing nature. These may include other requirements such as screening, landscaping, lighting, size and location of signs, etc.

To summarize, conditional uses are subject to both general and specific requirements, rather than being automatically permitted. The review process of a conditional use assures that County government is meeting its responsibility of providing for the general health, safety and welfare of the residents of Cabarrus County.

**Section 8-4 Conditional Uses**

**21. Reception Facilities**

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled: \_\_\_\_\_

Agricultural Open and Countryside Residential districts

- a. A complete description of the facility including but not limited to:
  1. Types of events, days and hours of operation
  2. Projected number of users per weekday and weekend days, with the maximum number expected at any one event
  3. Total number of seats
  4. Types of accessory uses, if any, envisioned on the site (includes any accessory structures)
  5. Total number of employees, both full-time and part-time.
  6. Any and all other relevant information that will help describe the facility
  7. Building elevations
- b. The site shall contain at least five acres.
- c. A residential structure that is used for a reception facility shall not be altered in any way that changes its general residential appearance. Building height and other dimensional requirements for new construction shall be governed by the zoning district in which the property is located. New construction must meet commercial design standards.
- d. All structures, viewing areas, and seating areas shall be set back at least one hundred (100) feet from any street or property line. Where waterbodies exist on or near the property, additional setbacks may be required. See Chapter 4, Waterbody Buffer Zone.
- e. Outdoor lights must be shielded to direct light and glare only onto the facilities' premises but may be of sufficient intensity to discourage vandalism and theft. Lighting and glare must be deflected, shaded and focused away from any adjoining properties.
- f. Maximum permitted noise levels may be established in order to protect adjacent properties. Any such requirement will be made a part of the conditional use permit which may also specify the measures to be taken to control noise, including but not limited to muting, special landscape treatment and berms.
- g. In the event the facility abuts residentially used or zoned property, Level Two buffering must be implemented. See Chapter 9, Landscaping and Buffer Requirements.
- h. The parcel must have frontage on, or have direct access to, a NCDOT maintained road or a privately maintained paved street. Proposed access points on NCDOT roads must be approved by NCDOT. In the event that a privately maintained street is used to gain entry to the site, the applicant shall provide documentation from the private road owner(s) that access to the site for events is permitted.
- i. The facility must provide two parking spaces for the owner/operator, plus one for every four persons in attendance at events. Service providers (staff, caterers, etc.) should be included in this calculation at a rate of one for each employee or contracted staff



PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
Approved: \_\_\_\_\_  
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member. The parking area shall remain grassed (no impervious coverage). However, handicap accessible parking is required to be an improved/hard, stable surface and to meet requirements of the North Carolina State Accessibility Code and Section 10-5.3 of this Ordinance. No on-street parking is permitted.

- j. Other than as part of the reception events, no meals shall be served to the general public on the site.
- k. The following accessory uses may be permitted as incidental to the facility and limited to the patrons of the principal use:
  - o Playground
  - o Bathroom facilities
  - o Aesthetic (gazebo, barn, etc.) features
  - o Amenity areas, gardens
- l. Signs for Reception Facilities shall meet the requirements of Chapter 11 (Standards for Permanent Signage in Residential Districts) of the Cabarrus County Zoning Ordinance:

No Conditional Use Permit has been secured for the site. It is unclear at this time if the site accommodates the standards of review required for a Conditional Use Permit to be issued.

**Chapter 12, Administration and Enforcement**

According to Section 12-3, Certificates of Zoning Compliance Permit required:

A Zoning Compliance Permit must be obtained from the Zoning Administrator prior to the use or occupancy of any building or premises, or both, hereinafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure.

Additionally, no nonconforming structure or use can similarly be changed or extended without a Zoning Compliance Permit or Certificate of Adjustment. A Zoning Compliance Permit must be obtained before a building permit can be issued. The building permit application may be made at the same time as the application for the Zoning Compliance Permit or after its issuance. No permits or certificates shall be issued except in compliance with the provisions of this Ordinance.

No permits have been issued by Cabarrus County Zoning for a reception facility to be located at the subject site. It is unknown at this time as to whether or not a permit could be secured for the site since the use is permitted based on standards.

According to Section 12-8 Site development plans:

The developer of industrial, commercial, residential, office or institutional property including mobile home parks, with the exception of single-family detached units, must file a site

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
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development plan with the Zoning Administrator. This plan must be approved prior to the issuance of a Zoning Compliance Permit. Submissions for all new development shall follow the procedure of Section 12-9.

Reception facilities are considered a commercial use. Therefore, site development plans must be submitted, reviewed and approved by Staff prior to a zoning compliance permit being issued. The Farm at Brushharbor has not submitted for commercial zoning site plan review or zoning permitting. At this time, it is unclear as to whether or not the applicant would be able to meet the additional standards required for a Reception Facility to be located at this particular location.

**Exhibits**

1. Staff Report
2. Appeal application submitted by Jim Scarbrough
3. Notice of Violation dated 6/14/2016 and mail receipts
4. Officer Edwards's case history and notes
5. Email correspondence between Morris and Porter, including SL2013-265 as referenced
6. Documentation from Facebook and web site promoting business and showing site address
7. Copy of Permitted Use Table from Chapter 3 of the Zoning Ordinance
8. Chapter 7 text related to General and Rural Home Occupations
9. Adjacent property owner list
10. Copy of letter sent to adjacent property owners
11. Maps
12. Pictometry images from Cabarrus County GIS for PIN 5567-84-6569
13. Appraisal card
14. NCGS §153A-340. Grant of power.
15. NCGS §106-581-1. Agriculture defined.
16. Coates' Cannons NC Local Government Law Blog titled *What Does the Farm Exemption from Zoning Regulation Include?* by Mr. David Owens, Gladys Hall Coates Professor of Public Law and Government
17. Letter from North Carolina AGs office
18. Agritourism presentation to North Carolina General Assembly Committee on Cultural and Natural Resources extraction and email from Carla Barbieri, Ph.D.
19. Email correspondence between Morris and School of Government Staff





Staff Use Only:  
 Application/Accela#:             
 Reviewed by:             
 Date: 7/24/16  
 Amount Paid: \$257.50

## APPEAL OF ADMINISTRATIVE DECISION OR INTERPRETATION OF THE ZONING ORDINANCE

In order to request an appeal from an interpretation or administrative decision made by the Zoning Administrator, the applicant must submit the following:

1. Complete application
2. Fee of \$250.00 + 3% technology fee
3. Copies of any documentation to be submitted to the Board of Adjustment as evidence.  
(If large format copies are included in the documentation, applicant must submit 18 copies.)

If there are additional questions concerning this process, please call the Commerce Department at (704) 920-2141, Monday through Friday, 8AM to 5PM.

*Incomplete applications will be returned to the applicant and will not be processed.*

To the Cabarrus County Board of Adjustment:

Thomas E. Porter Jr. and Victoria P. Porter and The Farm at Brushharbor, LLC, hereby appeal the following decision of the Zoning Administrator to the Board of Adjustment:

The decision set out in the attached Notice of Violation dated June 23, 2016 in your file ZNC2016-00068 in which the nature of violation is described as "operation of a reception facility without

proper review and permits; reception facility not allowed as a home occupation"

I request an interpretation of:

☐ The Zoning Atlas (Zoning classification of subject property)

☒ The following section(s) of the Zoning Ordinance:

03-08; ~~06-01~~<sup>08-</sup>; 07-04; 08-03; 12-03; 12-08; Section 8-4 conditional uses (21) Reception

Facilities and Section 3-08 Table of Permitted Uses and whether we operate a reception facility as defined in county ordinances; Zoning Compliance Permit requirements in Section 12-03 and whether a compliance permit is required; Chapter 7 Performance Based Standards and whether this violates the home occupation ordinance; Section 12-08 and whether a site development plan is required.

*You may attach additional sheet(s) if needed.*

As it relates to the use of the property located at:  
Address: 7700 Brushharbor Rd

Parcel Identification Number (PIN): Property 5567846569000

Owner: Thomas E. Porter Jr and wife Victoria P. Porter

In the space provided below, present your interpretation of the Zoning Atlas or Zoning Ordinance provision(s) in question and state what reasons you have for believing that your interpretation is the correct one. In addition, state the facts you are prepared to present to the Board of Adjustment to show that the decision was erroneous.

The ordinance defines a wedding reception facility as one which is used solely for weddings and receptions. This property is part of a 1,000 acre working farm. It is not used solely for weddings and receptions.

The property is part of a 1,000 acre working farm. This property is used for "bona fide farm purposes". Pursuant to G.S. 153A-340, property used for bona fide farm purposes is not subject to county zoning ordinances and regulations may not affect this property.

Farming includes agritourism. G.S. 106-581.1

Weddings and receptions are part of "agritourism" as that term is used in the General Statutes of North Carolina.

This property is not subject to the county zoning ordinances and regulations described in the Notice of Violation.

**Required Vote:** The vote requirement for an appeal of the Administrator's decision or interpretation to be upheld or overturned is a simple majority.

### APPLICATION CERTIFICATION

I certify that all of the information presented by me in this application is, to the best of my knowledge, true and correct.

X Thomas E Porter Jr, Individually and as  
Signature of Applicant Manager of The Farm at Brushy Fork, LLC

X Victor P Porter

Signature of Applicant

4455 Mt. Pleasant Rd. South  
Address

Concord, NC 28025  
City, State, Zip Code

704-796-5993  
Phone Number

Fax Number N/A

teporter02@aol.com  
E-mail Address

X JES

Represented By James E. Scarbrough  
Attorney at Law  
Address 137 Union St. South

City, State, Zip Code Concord NC  
28025

Phone Number 704-782-3112

Fax Number N/A

E-mail Address JES@SandSlegd.net





Amanda Edwards  
Senior Zoning Inspector

6/23/2016

File # : ZNC2016-00068

Thomas E Porter Jr The Farm At Brushharbor, Llc  
4455 Mount Pleasant Rd S  
Concord, NC 28025

Inspection Date: 06/14/2016

**NOTICE OF VIOLATION**

RE: 7700 BRUSHARBOR RD

Zoning: AO

Parcel(s): 55678465690000

**Nature of Violation:** operation of a reception facility without proper review and permits; reception facility not allowed as a home occupation.

**The following provision(s) of the CABARRUS COUNTY Zoning Ordinance has been violated:**

03-08 TABLE OF PERMITTED USES  
08-01 OPERATION OF A CONDITIONAL USE WITHOUT A CONDITIONAL USE PERMIT  
07-04 OPERATION OF A USE BASED ON STANDARDS WITHOUT A ZONING COMPLIANCE PERMIT  
08-03 USES LISTED IN CHAPTER 8 REQUIRE A CONDITIONAL USE PERMIT  
12-03 ZONING COMPLIANCE PERMIT REQUIRED  
12-08 SITE DEVELOPMENT PLAN REQUIRED

Dear Thomas E Porter Jr,

An on-site inspection of your property has found you to be in violation of the Cabarrus County Zoning Ordinance.

A reception facility is being operated on the property without the required Conditional Use Permit, as required per SECTION 8-4 CONDITIONAL USES (21) RECEPTION FACILITIES and Section 3-08 TABLE OF PERMITTED USES.

No Zoning Compliance Permit has been obtained for a reception facility, as required by SECTION 12-03 ZONING COMPLIANCE PERMIT REQUIRED.

A reception facility is not allowed to be operated as a Home Occupation per CHAPTER 7, PERFORMANCE BASED STANDARDS

No site development plan has been submitted for review as required per SECTION 12-08 SITE DEVELOPMENT PLAN REQUIRED

**This notice is to serve as a Warning Citation**

***In order to correct this violation you must:***

Cease operation of reception facility until all required approvals and permits are obtained.

**You have days from the receipt of this letter to comply with this ordinance.**

You may appeal this decision to the Board of Adjustment within thirty (30) days. This department reserves the right to exercise the following remedies per NC G.S.153A-123:

- Issue a civil starting at \$100.00 and if unpaid a judgment could become a lien on the property.
- File lawsuit against a property owner in North Carolina Superior Court for violation of the Zoning Ordinance.

In order to avoid any monetary citations please correct this matter within the aforementioned time frame.

If you have any questions concerning this matter or if you are in the process of clearing this matter, please call our office at (704) 920-2159 so we can make appropriate arrangements.

Thank you in advance for your cooperation.



Sincerely,

A handwritten signature in cursive script that reads "Amanda L. Edwards".

Amanda Edwards, Senior Zoning Inspector

(704) 920-2148

## ***Cabarrus County Zoning Ordinance Reference***

### **Section 12-27. Violations**

In addition to any other remedies cited in this section for the enforcement of the provisions of this Ordinance, the regulations and standards herein may be enforced through the issuance of citations by the Zoning Office in accordance with G.S. 153A-123. These citations are in the form of a civil penalty. The County may recover this penalty in a civil action in the nature of a debt if the offender does not pay the penalty within 72 hours after being cited for a violation. In addition, failure to pay the civil penalty within 72 hours may subject the violator to criminal charges.

The following civil penalties are established for violations under this Ordinance:

<b>Warning Citation</b>	<b>Correct the violation within ten days</b>
First Citations	\$ 100.00
Second Citation for the same offense	\$ 200.00
Third and subsequent citations for the same offense	\$ 400.00
Disturbed Acre in Required Open Space	\$ 500.00 plus Replacement Planting Equal to 20 Large Maturing Trees and 40 Large Shrubs per Acre (tree and shrub sizes shall be in accordance with the buffer standards)
Disturbed Acre in Required Buffer	\$ 500.00 plus Replacement Planting to Meet Buffer Standard

These civil penalties are in addition to any other penalties which may be imposed by a court for violation of the provisions of the zoning ordinance.

### **Section 12-28. Penalties**

Any person adjudged in violation of this ordinance shall be guilty of a misdemeanor and shall be punished as provided in General Statute 14-4.

### **Section 12-29. Remedies**

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of this Ordinance, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.

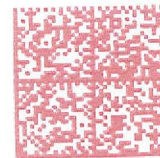


MANDY EDWARDS

Cabarrus County  
Planning and Development Department  
Post Office Box 707  
Concord, NC 28026-0707

www.cabarruscounty.us

PRESORTED  
FIRST CLASS



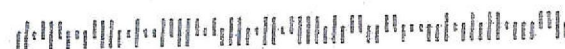
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ZIP 28601 \$ 000.39<sup>9</sup>  
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Thomas E & Victoria P. Porter  
4455 Mount Pleasant Rd S  
Concord, NC 28025

47 DRCRN3B 28025

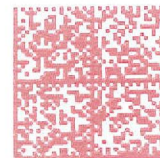


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U.S. POSTAGE PITNEY BOWES



ZIP 28601 \$ 000.39<sup>9</sup>  
02 1W  
0001391513 JUN 24 2016

The Farm at Brushharbor, LLC  
Thomas Porter, Jr.  
4455 Mount Pleasant Rd S.  
Concord, NC 28025

47 DRCRN3B 28025







Amanda Edwards  
Senior Zoning Inspector

6/23/2016

File # : ZNC2016-00068

Thomas E Porter Jr The Farm At Brushharbor, Llc  
4455 Mount Pleasant Rd S  
Concord, NC 28025

Inspection Date: 06/14/2016

**NOTICE OF VIOLATION**

RE: 7700 BRUSHARBOR RD

Zoning: AO

Parcel(s): 55678465690000

**Nature of Violation:** operation of a reception facility without proper review and permits; reception facility not allowed as a home occupation.

**The following provision(s) of the CABARRUS COUNTY Zoning Ordinance has been violated:**

03-08 TABLE OF PERMITTED USES

08-01 OPERATION OF A CONDITIONAL USE WITHOUT A CONDITIONAL USE PERMIT

07-04 OPERATION OF A USE BASED ON STANDARDS WITHOUT A ZONING COMPLIANCE PERMIT

08-03 USES LISTED IN CHAPTER 8 REQUIRE A CONDITIONAL USE PERMIT

12-03 ZONING COMPLIANCE PERMIT REQUIRED

12-08 SITE DEVELOPMENT PLAN REQUIRED

Dear Thomas E Porter Jr,

An on-site inspection of your property has found you to be in violation of the Cabarrus County Zoning Ordinance.

A reception facility is being operated on the property without the required Conditional Use Permit, as required per SECTION 8-4 CONDITIONAL USES (21) RECEPTION FACILITIES and Section 3-08 TABLE OF PERMITTED USES.

No Zoning Compliance Permit has been obtained for a reception facility, as required by SECTION 12-03 ZONING COMPLIANCE PERMIT REQUIRED.

A reception facility is not allowed to be operated as a Home Occupation per CHAPTER 7, PERFORMANCE BASED STANDARDS

No site development plan has been submitted for review as required per SECTION 12-08 SITE DEVELOPMENT PLAN REQUIRED

**This notice is to serve as a Warning Citation**

***In order to correct this violation you must:***

Cease operation of reception facility until all required approvals and permits are obtained.

**You have days from the receipt of this letter to comply with this ordinance.**

You may appeal this decision to the Board of Adjustment within thirty (30) days. This department reserves the right to exercise the following remedies per NC G.S.153A-123:

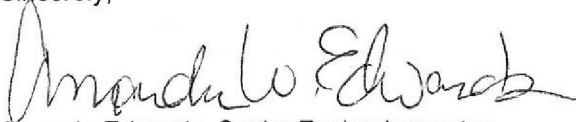
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- File lawsuit against a property owner in North Carolina Superior Court for violation of the Zoning Ordinance.

In order to avoid any monetary citations please correct this matter within the aforementioned time frame.

If you have any questions concerning this matter or if you are in the process of clearing this matter, please call our office at (704) 920-2159 so we can make appropriate arrangements.

Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Edwards".

Amanda Edwards, Senior Zoning Inspector

(704) 920-2148



## ***Cabarrus County Zoning Ordinance Reference***

### **Section 12-27. Violations**

In addition to any other remedies cited in this section for the enforcement of the provisions of this Ordinance, the regulations and standards herein may be enforced through the issuance of citations by the Zoning Office in accordance with G.S. 153A-123. These citations are in the form of a civil penalty. The County may recover this penalty in a civil action in the nature of a debt if the offender does not pay the penalty within 72 hours after being cited for a violation. In addition, failure to pay the civil penalty within 72 hours may subject the violator to criminal charges.

The following civil penalties are established for violations under this Ordinance:

<b>Warning Citation</b>	<b>Correct the violation within ten days</b>
First Citations	\$ 100.00
Second Citation for the same offense	\$ 200.00
Third and subsequent citations for the same offense	\$ 400.00
Disturbed Acre in Required Open Space	\$ 500.00 plus Replacement Planting Equal to 20 Large Maturing Trees and 40 Large Shrubs per Acre (tree and shrub sizes shall be in accordance with the buffer standards)
Disturbed Acre in Required Buffer	\$ 500.00 plus Replacement Planting to Meet Buffer Standard

These civil penalties are in addition to any other penalties which may be imposed by a court for violation of the provisions of the zoning ordinance.

### **Section 12-28. Penalties**

Any person adjudged in violation of this ordinance shall be guilty of a misdemeanor and shall be punished as provided in General Statute 14-4.

### **Section 12-29. Remedies**

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of this Ordinance, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.

7004 1160 0002 6994 9969

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

Sent To  
The Farm at Brushharbor, NC / Thomas Porter  
Street, Apt. No.,  
or PO Box No. 4455 Mount Pleasant Rd S  
City, State, ZIP+4 Concord, NC 28025  
PS Form 3800, June 2002 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
The Farm at Brushharbor, NC  
Thomas Porter, Jr.  
4455 Mount Pleasant Rd S  
Concord, NC 28025

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name) *V.P.* C. Date of Delivery *6/28*

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☒ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number  
(Transfer from service label)

7004 1160 0002 6994 9969





Amanda Edwards  
Senior Zoning Inspector

6/23/2016

File # : ZNC2016-00068

Thomas E Porter Jr And Victoria P Porter  
4455 Mount Pleasant Rd S  
Concord, NC 28025

Inspection Date: 06/14/2016

**NOTICE OF VIOLATION**

RE: 7700 BRUSHARBOR RD

Zoning: AO

Parcel(s): 55678465690000

**Nature of Violation:** operation of a reception facility without proper review and permits; reception facility not allowed as a home occupation.

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12-08 SITE DEVELOPMENT PLAN REQUIRED

Dear Thomas E Porter Jr And Victoria P Porter,

An on-site inspection of your property has found you to be in violation of the Cabarrus County Zoning Ordinance.

A reception facility is being operated on the property without the required Conditional Use Permit, as required per SECTION 8-4 CONDITIONAL USES (21) RECEPTION FACILITIES and Section 3-08 TABLE OF PERMITTED USES.

No Zoning Compliance Permit has been obtained for a reception facility, as required by SECTION 12-03 ZONING COMPLIANCE PERMIT REQUIRED.

A reception facility is not allowed to be operated as a Home Occupation per CHAPTER 7, PERFORMANCE BASED STANDARDS

No site development plan has been submitted for review as required per SECTION 12-08 SITE DEVELOPMENT PLAN REQUIRED

**This notice is to serve as a Warning Citation**

***In order to correct this violation you must:***

Cease operation of reception facility until all required approvals and permits are obtained.

**You have days from the receipt of this letter to comply with this ordinance.**

You may appeal this decision to the Board of Adjustment within thirty (30) days. This department reserves the right to exercise the following remedies per NC G.S.153A-123:

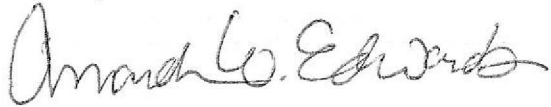
- Issue a civil starting at \$100.00 and if unpaid a judgment could become a lien on the property.
- File lawsuit against a property owner in North Carolina Superior Court for violation of the Zoning Ordinance.

In order to avoid any monetary citations please correct this matter within the aforementioned time frame.

If you have any questions concerning this matter or if you are in the process of clearing this matter, please call our office at (704) 920-2159 so we can make appropriate arrangements.

Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Amanda L. Edwards". The signature is fluid and cursive, with the first name "Amanda" being more prominent.

Amanda Edwards, Senior Zoning Inspector

(704) 920-2148

## ***Cabarrus County Zoning Ordinance Reference***

### **Section 12-27. Violations**

In addition to any other remedies cited in this section for the enforcement of the provisions of this Ordinance, the regulations and standards herein may be enforced through the issuance of citations by the Zoning Office in accordance with G.S. 153A-123. These citations are in the form of a civil penalty. The County may recover this penalty in a civil action in the nature of a debt if the offender does not pay the penalty within 72 hours after being cited for a violation. In addition, failure to pay the civil penalty within 72 hours may subject the violator to criminal charges.

The following civil penalties are established for violations under this Ordinance:

<b>Warning Citation</b>	<b>Correct the violation within ten days</b>
First Citations	\$ 100.00
Second Citation for the same offense	\$ 200.00
Third and subsequent citations for the same offense	\$ 400.00
Disturbed Acre in Required Open Space	\$ 500.00 plus Replacement Planting Equal to 20 Large Maturing Trees and 40 Large Shrubs per Acre (tree and shrub sizes shall be in accordance with the buffer standards)
Disturbed Acre in Required Buffer	\$ 500.00 plus Replacement Planting to Meet Buffer Standard

These civil penalties are in addition to any other penalties which may be imposed by a court for violation of the provisions of the zoning ordinance.

### **Section 12-28. Penalties**

Any person adjudged in violation of this ordinance shall be guilty of a misdemeanor and shall be punished as provided in General Statute 14-4.

### **Section 12-29. Remedies**

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of this Ordinance, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.



7004 1160 0002 6994 9983

**U.S. Postal Service™** **CERTIFIED MAIL™ RECEIPT** **ZONING**  
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

Sent To Thomas & Victoria Porter  
 Street, Apt. No.,  
 or PO Box No. 4455 Mount Pleasant Rd S  
 City, State, ZIP+4 Concord, NC 28025

PS Form 3800, June 2002

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas & Victoria Porter  
4455 Mount Pleasant Rd S  
Concord, NC 28025

2. Article Number  
 (Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature [Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7004 1160 0002 6994 9983

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**Zoning Complaint: ZNC2016-00068**

Tuesday, June 14, 2016

**Inspector:** Amanda Edwards  
**Jurisdiction:** Cabarrus County  
**Complaint:** operation of a reception facility without proper review and permits; reception facility not allowed as a home occupation.  
**Violator** THOMAS E PORTER JR  
**Zoning:** AO  
**Parcel:** 55678465690000  
**Location:**  
**Address:** 7700 BRUSHARBOR RD

**Complaint History**

**06/14/2016**      **Type: Initial**  
no activities at time of inspection, however there are website advertisements and pictures indicating ongoing commercial activity and history of commercial operation based on previous conversations with county staff.

**06/14/2016**      **Type: History**  
ongoing operation of an unpermitted reception facility without proper review and permitting

**08/29/2016**      **Type: Follow Up**  
verified signs for hearing in place. mwe

**Susie Morris**

---

**From:** Susie Morris  
**Sent:** Monday, December 17, 2012 5:36 PM  
**To:** Thomas Porter  
**Subject:** Conditional use permit

Hey Tommy-

How are you? Hope that all is well!

Could you please send me a general idea of the types of events that you are envisioning/planning on holding and the expected number of guests? I understand that the number of guests would be rough estimates. Do you know what your maximum capacity will be for an indoor event? Outdoor?

Also, which types of structures you will be using for the events? (IE just the barn?) Do you have a separate restroom facility?

I think that we may need to revisit at least one of the standards in the ordinance related to frontage and access. If you could provide this information, it would help us.

Happy Holidays!

Susie

**From:** Thomas Porter [mailto:teporter02@aol.com]  
**Sent:** Thursday, December 13, 2012 9:16 PM  
**To:** Susie Morris  
**Subject:** [bayer] Conditional use permit

Hi Susie,

Kelly Sifford talked to Vicky and said we may need a conditional use permit for the farm off Brushharbor Rd.

We plan to have weddings and other agriculture events there starting in the spring of 2013. We are registered with the NC Dept of Ag as an agritourism farm and were under the impression we would not need any other zoning. I am not against applying for a special use permit if that is what we need to do. Please let us know how we need to proceed.

Thank You,

Tommy

Tommy Porter  
[teporter02@aol.com](mailto:teporter02@aol.com)

## Susie Morris

---

**From:** Thomas Porter <teporter02@aol.com>  
**Sent:** Monday, December 17, 2012 8:57 PM  
**To:** Susie Morris  
**Subject:** Re: Conditional use permit

Hi Susie,  
Type of events would be agritourism, Soil & Water, cattleman's, Farm Bureau, weddings  
Maximum number of guest would be 200 - 250 combination indoor and outdoor  
In addition to the barn there is a covered shed that could be used for a reception  
Access to the property is off of Brushharbor Rd not far from Barrier-Georgeville Rd

Thanks,  
Tommy

-----Original Message-----

**From:** Susie Morris <SAMorris@cabarruscounty.us>  
**To:** Thomas Porter <teporter02@aol.com>  
**Sent:** Mon, Dec 17, 2012 5:35 pm  
**Subject:** Conditional use permit

Hey Tommy-  
How are you? Hope that all is well!  
Could you please send me a general idea of the types of events that you are envisioning/planning on holding and the expected number of guests? I understand that the number of guests would be rough estimates. Do you know what your maximum capacity will be for an indoor event? Outdoor?  
Also, which types of structures you will be using for the events? (IE just the barn?) Do you have a separate restroom facility?  
I think that we may need to revisit at least one of the standards in the ordinance related to frontage and access. If you could provide this information, it would help us.  
Happy Holidays!  
Susie

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**To:** Susie Morris  
**Subject:** [bayer] Conditional use permit

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Thank You,  
Tommy

Tommy Porter  
[teporter02@aol.com](mailto:teporter02@aol.com)



## Susie Morris

---

**From:** Susie Morris  
**Sent:** Wednesday, June 12, 2013 4:21 PM  
**To:** Thomas Porter  
**Subject:** RE: Conditional use permit

Hey Tommy-

Hope that all is well! I need to circle back around with you on this. We recently made some changes to the ordinance, including the section related to reception facilities. I have listed the new standards below for you. Looking at the GIS maps, it looks like your project should be able to meet the zoning standards now. Give me a call when you can so that we can discuss or set up a time to meet.

Have a good evening!

Susie

### 21. Reception Facilities

Agricultural Open (this is your zoning) and Countryside Residential districts

- a. A complete description of the facility including but not limited to:
  1. Types of events, days and hours of operation
  2. Projected number of users per weekday and weekend days, with the maximum number expected at any one event
  3. Total number of seats
  4. Types of accessory uses, if any, envisioned on the site (includes any accessory structures)
  5. Total number of employees, both full-time and part-time.
  6. Any and all other relevant information that will help describe the facility
  7. Building elevations
- b. The site shall contain at least five acres.
- c. A residential structure that is used for a reception facility shall not be altered in any way that changes its general residential appearance. Building height and other dimensional requirements for new construction shall be governed by the zoning district in which the property is located. New construction must meet commercial design standards.
- d. All structures, viewing areas, and seating areas shall be set back at least one hundred (100) feet from any street or property line. Where waterbodies exist on or near the property, additional setbacks may be required. See Chapter 4, Waterbody Buffer Zone.
- e. Outdoor lights must be shielded to direct light and glare only onto the facilities' premises but may be of sufficient intensity to discourage vandalism and theft. Lighting and glare must be deflected, shaded and focused away from any adjoining properties.
- f. Maximum permitted noise levels may be established in order to protect adjacent properties. Any such requirement will be made a part of the conditional use permit which may also specify the measures to be taken to control noise, including but not limited to muting, special landscape treatment and berms.
- g. In the event the facility abuts residentially used or zoned property, Level Two buffering must be implemented. See Chapter 9, Landscaping and Buffer Requirements.
- h. The parcel must have frontage on, or have direct access to, a NCDOT maintained road or a privately maintained paved street. Proposed access points on NCDOT roads must be approved by NCDOT. In the event that a privately maintained street is used to gain entry to the site, the applicant shall provide documentation from the private road owner(s) that access to the site for events is permitted.
- i. The facility must provide two parking spaces for the owner/operator, plus one for every four persons in attendance at events. Service providers (staff, caterers, etc.) should be included in this calculation at a rate of one for each employee or contracted staff member. The parking area shall remain grassed (no impervious coverage). However,



handicap accessible parking is required to be an improved/hard, stable surface and to meet requirements of the North Carolina State Accessibility Code and Section 10-5.3 of this Ordinance. No on-street parking is permitted.

j. Other than as part of the reception events, no meals shall be served to the general public on the site.

k. The following accessory uses may be permitted as incidental to the facility and limited to the patrons of the principal use:

- o Playground
- o Bathroom facilities
- o Aesthetic (gazebo, barn, etc.) features
- o Amenity areas, gardens

l. Signs for Reception Facilities shall meet the requirements of Chapter 11 (Standards for Permanent Signage in Residential Districts) of the Cabarrus County Zoning Ordinance:

**From:** Thomas Porter [mailto:teporter02@aol.com]

**Sent:** Monday, December 17, 2012 8:57 PM

**To:** Susie Morris

**Subject:** Re: Conditional use permit

Hi Susie,

Type of events would be agritourism, Soil & Water, cattleman's, Farm Bureau, weddings

Maximum number of guest would be 200 - 250 combination indoor and outdoor

In addition to the barn there is a covered shed that could be used for a reception

Access to the property is off of Brushharbor Rd not far from Barrier-Georgeville Rd

Thanks,

Tommy

-----Original Message-----

From: Susie Morris <SAMorris@cabarruscounty.us>

To: Thomas Porter <teporter02@aol.com>

Sent: Mon, Dec 17, 2012 5:35 pm

Subject: Conditional use permit

Hey Tommy-

How are you? Hope that all is well!

Could you please send me a general idea of the types of events that you are envisioning/planning on holding and the expected number of guests? I understand that the number of guests would be rough estimates. Do you know what your maximum capacity will be for an indoor event? Outdoor?

Also, which types of structures you will be using for the events? (IE just the barn?) Do you have a separate restroom facility?

I think that we may need to revisit at least one of the standards in the ordinance related to frontage and access. If you could provide this information, it would help us.

Happy Holidays!

Susie

**From:** Thomas Porter [mailto:teporter02@aol.com]

**Sent:** Thursday, December 13, 2012 9:16 PM

**To:** Susie Morris

**Subject:** [bayes] Conditional use permit

Hi Susie,

Kelly Sifford talked to Vicky and said we may need a conditional use permit for the farm off Brushharbor Rd.

We plan to have weddings and other agriculture events there starting in the spring of 2013. We are registered with the NC Dept of Ag as an agritourism farm and were under the impression we would not need any other zoning. I am not against applying for a special use permit if that is what we need to do. Please let us know how we need to proceed.

Thank You,

Tommy

## Susie Morris

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**From:** Susie Morris  
**Sent:** Wednesday, September 25, 2013 12:31 PM  
**To:** Thomas Porter  
**Subject:** RE: NC Farm Act - S638

Tommy,  
This language speaks to the building code only. Not zoning. Zoning still applies for the reception facility commercial use. Please call me if you have any questions on how to proceed with the CUP.  
Susie

**From:** Thomas Porter [mailto:teporter02@aol.com]  
**Sent:** Monday, September 09, 2013 1:00 PM  
**To:** Susie Morris  
**Subject:** Fwd: NC Farm Act - S638

Hi Susie,  
Sorry it took me so long to get back to you  
I had some research done and just got the language back last week  
This should give you what you need to confirm us exempt  
Thank You,  
Tommy

Tommy,

Attached the entire document we spoke of Friday, this is the statement referenced.

Page 13

6) A "farm building" shall not lose its status as a farm building because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2013-265  
SENATE BILL 638**

AN ACT TO ENACT THE NORTH CAROLINA FARM ACT OF 2013 TO (1) LIMIT THE LIABILITY OF NORTH CAROLINA COMMODITY PRODUCERS ARISING FROM FOOD SAFETY ISSUES RELATED TO THEIR PRODUCTS; (2) LIMIT THE LIABILITY OF FARM ANIMAL ACTIVITY SPONSORS, FARM ANIMAL PROFESSIONALS, AND AGRITOURISM OPERATORS AND CLARIFY THAT EQUINE RECREATION WHERE THE LANDOWNER RECEIVES NO COMPENSATION IS SUBJECT TO THE RECREATIONAL USE STATUTE AND NOT THE EQUINE ACTIVITY LIABILITY STATUTE; (3) ALLOW THE COMMISSIONER OF AGRICULTURE TO ASSESS NONMONETARY PENALTIES TO ADDRESS VIOLATIONS WHEN APPROPRIATE; (4) DECREASE THE FREQUENCY OF THE AGRICULTURAL WATER USE SURVEY; (5) LIMIT THE PERSONALLY IDENTIFYING INFORMATION THAT THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES MAY DISCLOSE ABOUT ITS ANIMAL HEALTH PROGRAMS; (6) MAKE CONFORMING CHANGES TO THE NAME OF THE STRUCTURAL PEST CONTROL AND PESTICIDES DIVISION AND CLARIFY THE RESPONSIBILITIES OF THE DIVISION; (7) AMEND CERTAIN EGG LABELING REQUIREMENTS; (8) REPEAL THE INTERSTATE PEST CONTROL COMPACT; (9) REPEAL CERTAIN CLEANLINESS STANDARDS FOR CREAMERIES AND DAIRY FACILITIES THAT ARE ADDRESSED BY THE NC FOOD, DRUG, AND COSMETIC ACT; (10) CHANGE SETBACK DISTANCES AND BURN TIMES FOR FLAMMABLE MATERIALS RESULTING FROM GROUND CLEARING ACTIVITIES; (11) REPEAL THE STATE SULFUR CONTENT STANDARDS FOR GASOLINE; (12) EXEMPT FORESTRY AND SILVICULTURE OPERATIONS FROM TEMPORARY DRIVEWAY PERMITTING; (13) ALLOW A FARM BUILDING THAT IS USED FOR PUBLIC OR PRIVATE EVENTS TO MAINTAIN ITS FARM BUILDING STATUS FOR PURPOSES OF THE STATE BUILDING CODE; (14) EXEMPT CERTAIN STRUCTURES FROM THE SPRINKLER SYSTEM REQUIREMENTS OF THE NORTH CAROLINA BUILDING CODE; (15) ALLOW RETAILERS TO DISPLAY MORE THAN FOUR HUNDRED SQUARE FEET OF NURSERY STOCK FOR SALE IN THEIR PARKING LOTS; (16) EXPAND THE AGRICULTURAL DAM EXEMPTION TO THE DAM SAFETY ACT; (17) ALLOW A LANDOWNER TO WITHDRAW WATER FOR AGRICULTURAL USE DURING WATER SHORTAGE EMERGENCIES UNDER CERTAIN CONDITIONS; (18) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY TO PERFORM STREAM AND WETLANDS MITIGATION BEYOND THE IMMEDIATE WATERSHED WHERE DEVELOPMENT WILL OCCUR; AND (19) ACCELERATE THE SUNSET DATE OF THE PETROLEUM DISPLACEMENT PLAN AS A RESULT OF THE STATE HAVING SUBSTANTIALLY ACHIEVED ITS TWENTY PERCENT REDUCTION GOAL OF THE USE OF PETROLEUM PRODUCTS.

The General Assembly of North Carolina enacts:

**PART I. TITLE**

**SECTION 1.** This act shall be known and may be cited as the "North Carolina Farm Act of 2013."



## **PART II. LIMIT THE LIABILITY OF NORTH CAROLINA COMMODITY PRODUCERS ARISING FROM FOOD SAFETY ISSUES RELATED TO THEIR PRODUCTS**

**SECTION 2.** Chapter 99B of the General Statutes is amended by adding a new section to read:

### **"§ 99B-12. Burden of proof in certain cases.**

(a) A commodity producer shall be entitled to a rebuttable presumption that the commodity producer was not negligent when death or injury is proximately caused by the consumption of the producer's raw agricultural commodity if the producer (i) is certified by the United States Department of Agriculture Agricultural Marketing Service Good Agricultural Practices and Good Handling Practices Audit Verification Program or other third-party certification program designated by the Commissioner for purposes of this section; (ii) has a written food safety policy that complies with the certification program's standard and can provide evidence that the producer trains employees on the policy on an annual basis; (iii) has had no formal administrative findings or sanctions or legal judgments entered against the producer during the previous three years based on a claim that the commodity producer's negligence was the proximate cause of a plaintiff's death or injury; and (iv) has had no settlement agreements concluding litigation where the settlement exceeded twenty-five thousand dollars (\$25,000), or in which the producer admitted liability, during the previous three years based on a claim that the commodity producer's negligence was the proximate cause of a plaintiff's death or injury. This presumption may be overcome only by clear and convincing evidence that the commodity producer's negligence was the proximate cause of the death or injury.

(b) As used in this section:

- (1) Commodity producer means a producer of raw agricultural commodities.
- (2) Raw agricultural commodity means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing, and which is covered by the United States Department of Agriculture Agricultural Marketing Service Good Agricultural Practices and Good Handling Practices Audit Verification Program."

## **PART III. LIMIT THE LIABILITY OF FARM ANIMAL ACTIVITY SPONSORS, FARM ANIMAL PROFESSIONALS, AND AGRITOURISM OPERATORS AND CLARIFY THAT EQUINE RECREATION WHERE THE LANDOWNER RECEIVES NO COMPENSATION IS SUBJECT TO THE RECREATIONAL USE STATUTE AND NOT THE EQUINE ACTIVITY LIABILITY STATUTE**

**SECTION 3.1.** G.S. 38A-2(5) reads as rewritten:

### **"§ 38A-2. Definitions.**

The following definitions shall apply throughout this Chapter, unless otherwise specified:

- (5) "Recreational purpose" means any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion, or ~~pleasure~~ pleasure or sport, including equestrian recreation as defined in G.S. 99E-1."

**SECTION 3.2.** Article 1 of Chapter 99E of the General Statutes reads as rewritten:

"Article 1.

"Equine and Farm Animal Activity Liability.

"Part 1. Equine Activity Liability.

### **"§ 99E-1. Definitions.**

As used in this ~~Article~~ Part, the term:

- (1) "Engage in an equine activity" means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term "engage in an equine activity" does not include being a spectator at an equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.
- (2) "Equine" means a horse, pony, mule, donkey, or hinny.



- (3) "Equine activity" means any activity involving an equine. Actions to preserve, maintain, or regulate the use of land for equestrian recreation shall not be considered an equine activity.
- (4) "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity. The term includes operators and promoters of equine facilities. A landowner who allows equine recreation on the landowner's property shall not be considered an equine activity sponsor.
- (5) "Equine professional" means a person engaged for compensation in any one or more of the following:
  - a. Instructing a participant.
  - b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine.
  - c. Renting equipment or tack to a participant.
  - d. Examining or administering medical treatment to an equine.
  - e. Hooftrimming or placing or replacing horseshoes on an equine.
- (5a) "Equine recreation" means use of a landowner's property for an equine activity (i) where the landowner is neither the equine activity sponsor nor the equine professional and (ii) when the landowner permits use of the property without charge. For purposes of this subdivision, "charge" has the meaning set forth in G.S. 38A-2 and G.S. 38A-3.
- (6) "Inherent risks of equine activities" means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:
  - a. The possibility of an equine behaving in ways that may result in injury, harm, or death to persons on or around them.
  - b. The unpredictability of an equine's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.
- (7) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

**"§ 99E-2. Liability.**

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from an equine activity sponsor, an equine professional, or any other person engaged in an equine activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities. In any action for damages against an equine activity sponsor or an equine professional for an equine activity, the equine activity sponsor or equine professional must plead the affirmative defense of assumption of the risk of the equine activity by the participant.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

- (1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.
- (2) Provides the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine.
- (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.

(4) ~~Commits any other act of negligence or omission that proximately caused the injury, damage, or death.~~

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity under liability provisions as set forth in the products liability laws.

(d) Nothing in this section shall be construed to conflict with or render ineffectual a liability release, indemnification, assumption, or acknowledgment of risk agreement between a participant and an equine activity sponsor or an equine professional.

**"§ 99E-3. Warning required.**

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which contain the warning notice specified in subsection (b) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional or the equine activity sponsor conducts equine activities. The warning notice specified in subsection (b) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

**"WARNING**

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

(c) Failure to comply with the requirements concerning warning signs and notices provided in this ~~Article~~Part shall prevent an equine activity sponsor or equine professional from invoking the privileges of immunity provided by this ~~Article~~Part."

**SECTION 3.3.** Article 1 of Chapter 99E of the General Statutes is amended by adding a new section to read:

**"§ 99E-4. Exception.**

The liability of a landowner for injury or death associated with participation in equine recreation shall be subject to the limitation set forth in G.S. 38A-4 and shall not be subject to this Part.

"Part 2. Farm Animal Activity Liability.

**"§ 99E-5. Definitions.**

As used in this Part, the term:

- (1) "Engage in a farm animal activity" means participate in a farm animal activity, assist a participant in a farm animal activity, or assist a farm animal activity sponsor or farm animal activity professional. The term "engage in a farm animal activity" does not include being a spectator at a farm animal activity, except in cases in which the spectator voluntarily places himself or herself in an unauthorized area and in immediate proximity to the farm animal activity.
- (2) "Equine" means a horse, pony, mule, donkey, or hinny.
- (3) "Equine activity" means a farm animal activity involving only equines.
- (4) "Farm animal" means one or more of the following domesticated animals: cattle, oxen, bison, sheep, swine, goats, horses, ponies, mules, donkeys, hinnies, llamas, alpacas, lagomorphs, ratites, and poultry.
- (5) "Farm animal activity" means an activity in which participants engage with one or more farm animals, including, but not limited to, all of the following:
  - a. Shows, fairs, exhibits, competitions, performances, or parades that involve farm animals.
  - b. Training or teaching activities, or both, involving farm animals.
  - c. Boarding farm animals, including normal daily care.

- d. Rides, trips, shows, clinics, hunts, parades, games, exhibitions, or other activities of any kind that are sponsored by a farm animal activity sponsor.
  - e. Testing, riding, inspecting, or evaluating a farm animal belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the farm animal or is permitting a prospective purchaser of the farm animal to ride, inspect, or evaluate the farm animal.
  - f. Placing or repairing horseshoes, trimming the hooves on a farm animal, or otherwise providing farrier services.
  - g. Examining or administering medical treatment to a farm animal by a veterinarian.
- (6) "Farm animal activity sponsor" means an individual, group, club, partnership, corporation, educational organization, or other legally constituted entity, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, allows, or provides the facilities for a farm animal activity, including, but not limited to, pony clubs; 4-H clubs; Future Farmers of America organizations; hunt clubs; riding clubs; polo clubs; school-and college-sponsored classes, programs, and activities; therapeutic riding programs; and operators, instructors, and promoters of farm animal facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, exhibitions, and arenas at which the activity is held.
- (7) "Farm animal facility" means any area used for any farm animal activity, including, but not limited to, farms, ranches, riding arenas, training stables or barns, pastures, riding trails, show rings, polo fields, petting zoos, and other areas or facilities used or provided by farm animal activity sponsors or where participants engage in farm animal activities.
- (8) "Farm animal professional" means a person engaged for compensation in any of the following:
- a. Instructing a participant.
  - b. Renting a farm animal to a participant for the purpose of riding, driving, or being a passenger upon the farm animal.
  - c. Providing daily care of farm animals boarded at a farm animal facility.
  - d. Renting equipment or tack to a participant.
  - e. Training a farm animal.
  - f. Examining or administering medical treatment to a farm animal.
  - g. Providing farrier services to a farm animal.
  - h. Hooftrimming or placing or replacing horseshoes on a farm animal.
- (9) "Inherent risks of farm animal activities" means those dangers or conditions that are an integral part of engaging in a farm animal activity, including any of the following:
- a. The possibility of a farm animal behaving in ways that may result in injury, harm, or death to persons on or around them.
  - b. The unpredictability of a farm animal's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.
  - c. The risk of contracting an illness due to coming into physical contact with animals, animal feed, animal waste, or surfaces that have been in contact with animal waste.
- Inherent risks of farm animal activities does not include a collision or accident involving a motor vehicle.
- (10) "Participant" means any person, whether amateur or professional, who engages in a farm animal activity, whether or not a fee is paid to participate in the farm animal activity.

**"§ 99E-6. Liability.**

(a) Except as provided in subsection (b) of this section, a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant



resulting from the inherent risks of farm animal activities, and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from a farm animal sponsor, a farm animal professional, or any other person engaged in a farm animal activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of farm animal activities. In any action for damages against a farm animal activity sponsor or a farm animal professional for a farm animal activity, the farm animal activity sponsor or farm animal professional must plead the affirmative defense of assumption of the risk of the farm animal activity by the participant.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity if the farm animal activity sponsor, professional, or person engaged in a farm animal activity does any one or more of the following:

- (1) Provides the equipment or tack and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.
- (2) Provides the farm animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the farm animal activity or to safely manage the particular farm animal.
- (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity under liability provisions as set forth in the products liability laws.

**"§ 99E-7. Warning required.**

(a) Every farm animal activity sponsor and every farm animal professional shall post and maintain signs which contain the warning notices specified in subsection (b) or (c) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, arenas, or other farm animal facilities where the farm animal professional or the farm animal activity sponsor conducts animal activities. The warning notices specified in subsections (b) and (c) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a farm animal professional or by a farm animal activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or a farm animal to a participant, whether or not the contract involves farm animal activities on or off the location or site of the farm animal professional's or farm animal activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) or (c) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

**"WARNING**

Under North Carolina law, a farm animal activity sponsor or farm animal professional is not liable for an injury to or the death of a participant in farm animal activities resulting exclusively from the inherent risks of farm animal activities. Chapter 99E of the North Carolina General Statutes."

(c) If a farm animal activity sponsor or farm animal professional sponsors or engages in farm animal activities only involving equines, the signs and contracts described in subsection (a) of this section may contain the following warning notice:

**"WARNING**

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

(d) Failure to comply with the requirements concerning warning signs and notices provided in this Part shall prevent a farm animal activity sponsor or farm animal professional from invoking the privileges of immunity provided by this Part."

**SECTION 3.4.** G.S. 38A-3 reads as rewritten:

**"§ 38A-3. Exclusions.**



For purposes of this Chapter, the term "charge" does not include:

- (1) Any contribution in kind, services or cash contributed by a person, legal entity, nonprofit organization, or governmental entity other than the owner, whether or not sanctioned or solicited by the owner, the purpose of which is to (i) remedy damage to land caused by educational or recreational use; ~~or~~ (ii) provide warning of hazards on, or remove hazards from, land used for educational or recreational ~~purposes~~; or (iii) pay expenses related to the use of land for a recreational or educational purpose.
- (2) Unless otherwise agreed in writing or otherwise provided by the State or federal tax codes, any property tax abatement or relief received by the owner from the State or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes.
- (3) Dues or fees charged by an individual, group, club, partnership, corporation, or governmental entity sponsoring the educational or recreational use when (i) the sponsor is operating as a nonprofit or in a nonprofit capacity and (ii) the dues or fees are used to pay expenses relating to the educational or recreational use or to raise funds to support the sponsor's mission."

**SECTION 3.5.** G.S. 38A-4 reads as rewritten:

**"§ 38A-4. Limitation of liability.**

(a) Except as specifically recognized by or provided for in this Chapter, an owner of land who either directly or indirectly invites or permits without charge any person to use such land for educational or recreational purposes owes the person the same duty of care that he owes a trespasser, except nothing in this Chapter shall be construed to limit or nullify the doctrine of attractive nuisance and the owner shall inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge. This section does not apply to an owner who invites or permits any person to use land for a purpose for which the land is regularly used and for which a price or fee is usually charged even if it is not charged in that instance, or to an owner whose purpose in extending an invitation or granting permission is to promote a commercial enterprise.

(b) Nothing in this section shall be construed to conflict with or render ineffectual a liability release, indemnification, assumption, or acknowledgment of risk agreement between the landowner and a person who uses the land for educational or recreational purposes."

**SECTION 4.** G.S. 99E-31 reads as rewritten:

**"§ 99E-31. Liability.**

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

- (1) Commits an act or omission that constitutes ~~negligence or~~ willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.
- (2) Has actual knowledge or reasonably should have known of ~~an~~ existing dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law."

**PART IV. ALLOW THE COMMISSIONER OF AGRICULTURE TO ASSESS NONMONETARY PENALTIES TO ADDRESS VIOLATIONS WHEN APPROPRIATE**

**SECTION 5.** Chapter 106 of the General Statutes is amended by adding a new section to read:

**"§ 106-22.6. Exercise of enforcement powers.**

When any board, commission, or official within the North Carolina Department of Agriculture and Consumer Services has the authority to assess civil penalties, such authority shall not be construed to require the issuance of a monetary penalty when the board, commission, or official determines that nonmonetary sanctions, education, or training are sufficient to address the underlying violation."

**PART V. DECREASE THE FREQUENCY OF THE AGRICULTURAL WATER USE SURVEY**

**SECTION 6.** G.S. 106-24 reads as rewritten:

**"§ 106-24. Collection and publication of information relating to agriculture; cooperation.**

(a) The Department of Agriculture and Consumer Services shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of this Part.

(b) The Department of Agriculture and Consumer Services shall ~~annually~~biennially collect information on water use by persons who withdraw 10,000 gallons per day or more of water from the surface or groundwater sources of the State for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. The information shall be collected by survey conducted pursuant to subsection (a) of this section and in accordance with Title 7 United States Code Section 2276 (Confidential Information Protection and Statistical Efficiency Act). The Department shall develop the survey form in consultation with the Department of Environment and Natural Resources. The Department shall report the results of the water use survey to the Environmental Review Commission no later than July 1 of each year in which the survey was collected and shall provide a copy of the report to the Department of Environment and Natural Resources. The report shall include recommendations about modifications to the survey, including changes in the gallons per day threshold for water use data collection. The report shall provide agricultural water use data by county. If the county is located in more than one river basin, the report shall separate the county data to show agricultural water use by river basin within the county. If publication of county or watershed data would result in disclosure of an individual operation's water use, the data will be combined with data from another county or watershed."

**PART VI. LIMIT THE PERSONALLY IDENTIFYING INFORMATION THAT THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES MAY DISCLOSE ABOUT ITS ANIMAL HEALTH PROGRAMS**

**SECTION 7.** G.S. 106-24.1 reads as rewritten:

**"§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. ~~Information~~All information collected by the Department from individual farm operators for the purposes of its animal health programs ~~may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal programs, including, but not limited to, certificates of veterinary inspection, animal medical records, laboratory reports, or other records that may be used to identify a person or private business entity subject to regulation by the Department shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health.~~health, or the disclosure is necessary in the implementation of these animal health programs."

**PART VII. MAKE CONFORMING CHANGES TO THE NAME OF THE STRUCTURAL PEST CONTROL AND PESTICIDES DIVISION AND CLARIFY THE RESPONSIBILITIES OF THE DIVISION**

**SECTION 8.** G.S. 106-65.23 reads as rewritten:

**"§ 106-65.23. Structural Pest Control and Pesticides Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.**

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control and Pesticides Division. The Commissioner of Agriculture may appoint a Director of the Division, chosen from a list of nominees submitted to him or her by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control and Pesticides Division. The Director shall act as secretary to the Structural Pest Control Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

- (1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest Control and Pesticides Division the powers and duties assigned to him or her under this Article.
- (2) To assign the administrative and enforcement duties assigned to him or her in this Article.
- (3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.
- (4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.
- (5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.
- (6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.
- (7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.
- (8) To perform such other duties as may be assigned to him or her by the Structural Pest Control Committee.

...  
(d) The Structural Pest Control Committee shall have the following powers and duties:

- (1) To adopt rules and make policies as provided in this Article.
- (2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.
- (3) ~~To report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.~~

...."

**SECTION 9.** G.S. 106-65.24 reads as rewritten:

**"§ 106-65.24. Definitions.**

As used in this Article:

...



(8a) "Director" means the Director of the Structural Pest Control and Pesticides Division of the Department of Agriculture and Consumer Services.

...  
(9a) "Enforcement agency" means the Structural Pest Control and Pesticides Division of the Department of Agriculture and Consumer Services.

...  
(19a) "Registered technician" means any individual who is required to be registered with the Structural Pest Control and Pesticides Division under G.S. 106-65.31.

...."

**SECTION 10.** G.S. 106-65.30 reads as rewritten:

**"§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.**

...  
(c) The Commissioner shall have authority to appoint personnel of the Structural Pest Control and Pesticides Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively."

## **PART VIII. AMEND CERTAIN EGG LABELING REQUIREMENTS**

**SECTION 11.** G.S. 106-245.20 reads as rewritten:

**"§ 106-245.20. Advertisements.**

No person shall advertise eggs for sale at a given price unless the unabbreviated grade or quality and size-weight are conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger. The provisions of this section shall not apply to retailers who (i) display egg prices in the same manner as other products sold by the retailer at the retail establishment, excluding any items on sale or subject to a promotion, and (ii) comply with G.S. 106-245.15."

## **PART IX. REPEAL THE INTERSTATE PEST CONTROL COMPACT AND CERTAIN CLEANLINESS STANDARDS FOR CREAMERIES, AND DAIRY FACILITIES THAT ARE ADDRESSED BY THE NC FOOD, DRUG, AND COSMETIC ACT**

**SECTION 12.** Article 4E of Chapter 106 of the General Statutes is repealed.

**SECTION 13.** G.S. 106-246 is repealed.

**SECTION 14.** G.S. 106-248 is repealed.

## **PART X. CHANGE SETBACK DISTANCES AND BURN TIMES FOR FLAMMABLE MATERIALS RESULTING FROM GROUND CLEARING ACTIVITIES**

**SECTION 15.** G.S. 106-942 reads as rewritten:

**"§ 106-942. High hazard counties; permits required; standards.**

...  
(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with G.S. 106-942(b).

...  
(2) The location of the burning must be at least ~~4,000~~500 feet from any dwelling or structure located in a predominately residential area other than a dwelling



or structure located on the property on which the burning is conducted unless permission is granted by the occupants.

- ...
- (6) Initial burning may be commenced only between the hours of ~~9:00~~8:00 A.M. and ~~3:00~~4:00 P.M. and no combustible material may be added to the fire between ~~3:00~~4:00 P.M. on one day and 9:008:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions."

**PART XI. REPEAL THE STATE SULFUR CONTENT STANDARDS FOR GASOLINE**  
**SECTION 16.** G.S. 119-26.2 is repealed.

**PART XII. EXEMPT FORESTRY AND SILVICULTURE OPERATIONS FROM TEMPORARY DRIVEWAY PERMITTING**

**SECTION 17.** Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-92.1. Exemption from temporary driveway permitting for forestry operations.**

Forestry operations and silviculture operations, including the harvesting of timber, and other related management activities that require temporary ingress from a property to State roads shall be exempt from the temporary driveway permit process of the Department for State roads, except for controlled access facilities, if the operator of the temporary driveway has attended an educational course on timbering access and obtained a safety certification. Driveway access points covered by this section shall be temporary and shall be removed upon the earlier of six months or the end of forestry or silviculture operations on the property."

**PART XIII. EXEMPT CERTAIN STRUCTURES FROM THE SPRINKLER SYSTEM REQUIREMENTS OF THE NORTH CAROLINA BUILDING CODE AND ALLOW FARM BUILDINGS THAT ARE USED FOR PUBLIC OR PRIVATE EVENTS TO MAINTAIN THEIR FARM BUILDING STATUS FOR PURPOSES OF THE STATE BUILDING CODE**

**SECTION 18.** G.S. 143-138, as amended by S.L. 2013-75, reads as rewritten:

**"§ 143-138. North Carolina State Building Code.**

...

(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

(b1) Fire Protection; Smoke Detectors. – The Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated

in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

(b2) Carbon Monoxide Detectors. – The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

(b3) Applicability of the Code. – Except as provided by subsections (b4) and (c1) of this section, the Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

(b4) Exclusion for Certain Farm Buildings. – Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses, (iii) a primitive camp, or (iv) a primitive farm building. For the purposes of this subsection:

- (1) A "farm building" shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. A farm building that might otherwise qualify for exemption from building rules shall remain subject only to an annual safety inspection by the applicable city or county building inspection department of any grandstand, bleachers, or other spectator-seating structures in the farm building. An annual safety inspection shall include an evaluation of the overall safety of spectator-seating structures as well as ensuring the spectator-seating structure's compliance with any building codes related to the construction of spectator-seating structures in effect at the time of the construction of the spectator-seating.
- (2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.
- (3) A "farm building" shall include any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market.
- (4) A "primitive camp" shall include any structure primarily used or associated with outdoor camping activities, including structures used for educational, instructional, or recreational purposes for campers and for management training, that are (i) not greater than 4,000 square feet in size and (ii) are not intended to be occupied for more than 24 hours consecutively. "Structures primarily used or associated with outdoor camping activities" include, but are not limited to, shelters, tree stands, outhouses, sheds, rustic cabins,

campfire shelters, picnic shelters, tents, tepees or other indigenous huts, support buildings used only for administrative functions and not for activities involving campers or program participants, and any other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with outdoor camping activities such as hiking, fishing, hunting, or nature appreciation, regardless of material used for construction. The specific types of primitive camping activities, structures, and uses set forth in this subdivision are for illustrative purposes and should not be construed to limit, in any manner, the types of activities, structures, or uses that are exempted from building rules.

- (5) A "primitive farm building" shall include any structure used for activities, instruction, training, or reenactment of traditional or heritage farming practices. "Primitive farm buildings" include, but are not limited to, sheds, barns, outhouses, doghouses, or other structures that are utilized to store any equipment, tools, commodities, livestock, or other items supporting farm management. These specific types of farming activities, structures, and uses set forth by this subdivision are for illustrative purposes and should not be construed to limit in any manner the types of activities, structures, or uses that are exempted from building rules.

- (6) A "farm building" shall not lose its status as a farm building because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

(b5) Exclusion for Certain Minor Activities in Residential and Farm Structures. – No building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, fixtures (excluding repair or replacement of electrical lighting devices and fixtures of the same type), appliances (excluding replacement of water heaters, provided that the energy use rate or thermal input is not greater than that of the water heater which is being replaced, and there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping), or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. The exclusions from building permit requirements set forth in this paragraph for electrical lighting devices and fixtures and water heaters shall apply only to work performed on a one- or two-family dwelling. In addition, exclusions for electrical lighting devices and fixtures and electric water heaters shall apply only to work performed by a person licensed under G.S. 87-43 and exclusions for water heaters, generally, to work performed by a person licensed under G.S. 87-21.

(b6) No State Agency Permit. – No building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

(b7) Appendices. – For the information of users thereof, the Code shall include as appendices the following:

- (1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,
- (2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
- (3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

~~(b7)~~ The Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.



(b8) Exclusion for Certain Utilities. – Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(b9) Exclusion for Industrial Machinery. – Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product or acquired by a State-supported center providing testing, research, and development services to manufacturing clients. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

(b10) Replacement Water Heaters. – The Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

(b11) School Seclusion Rooms. – No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

(b12) Cisterns. – The Code may include rules pertaining to the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. No State, county, or local building code or regulation shall prohibit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. As used in this subsection, "cistern" means a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands.

(b13) Migrant Housing. – The Council shall provide for an exemption from any requirements in the fire prevention code for installation of an automatic sprinkler system applicable to buildings meeting all of the following:

- (1) Has one floor.
- (2) Meets all requirements of 29 C.F.R. § 1910.142, as amended.
- (3) Meets all requirements of Article 19 of Chapter 95 of the General Statutes and rules implementing that Article.

For purposes of this subsection, "migrant housing" and "migrant" shall be defined as in G.S. 95-223.

...."

#### **PART XIV. ALLOW RETAILERS TO DISPLAY MORE THAN 400 SQUARE FEET OF NURSERY STOCK FOR SALE IN THEIR PARKING LOTS**

**SECTION 19. G.S. 143-214.7(d1) is repealed.**



**PART XV. EXPAND THE AGRICULTURAL DAM EXEMPTION TO THE DAM SAFETY ACT**

**SECTION 20.** G.S. 143-215.25A reads as rewritten:

**"§ 143-215.25A. Exempt dams.**

- (a) Except as otherwise provided in this Part, this Part does not apply to any dam:
- (1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.
  - (2) Constructed with financial assistance from the United States ~~Soil~~Natural Resources Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.
  - (3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.
  - (4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.
  - (5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.
  - (6) That is less than 25 feet in height or that has an impoundment capacity of less than 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.
  - (7) Constructed for and maintains the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer or is employed by the Natural Resources Conservation Service, county, or local Soil and Water Conservation District, and has federal engineering job approval authority under Chapter 89C of the General Statutes designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Energy, Mineral, and Land Resources of the ~~Department.~~Department prior to construction of the dam. This exemption shall not apply to dams that are determined to be high-hazard by the Department.

...."

**PART XVI. ALLOW A LANDOWNER TO WITHDRAW WATER FOR AGRICULTURAL USE DURING WATER SHORTAGE EMERGENCIES UNDER CERTAIN CONDITIONS**

**SECTION 21.** G.S. 143-355.3 reads as rewritten:

**"§ 143-355.3. Water shortage emergency powers.**

(a) Declaration of Water Shortage Emergency. – If, after consultation with the affected water system and the unit of local government with jurisdiction over the area served by the water system, the Secretary determines that the needs of human consumption, necessary sanitation, and public safety require emergency action, the Secretary shall provide the Governor with written findings setting out the basis for declaration of a water shortage emergency. The Governor shall have the authority to declare a water shortage emergency in the area affected by the water shortage emergency, which may include both the water system experiencing a water shortage emergency and the area served by a water system required under subdivision (1) of subsection (b) of this section to provide water in response to the water shortage emergency. No emergency period shall exceed 30 days, but the Governor may declare successive emergencies based upon the written findings of the Secretary.

...  
(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, as described in G.S. 106-581.1, when the water is withdrawn from any of the following:

- (1) Surface water sources located wholly on the landowner's property, including, but not limited to, impoundments constructed by or owned by the landowner and captured stormwater.
- (2) Groundwater sources, including, but not limited to, wells constructed on the landowner's property, springs, and artesian wells. This subsection shall not apply if the Governor determines that withdrawal of water from a groundwater source is causing negative impacts to groundwater sources not located on the landowner's property, including the diminution of water available from neighboring groundwater sources or saltwater intrusion into neighboring groundwater sources."

**PART XVII. DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY TO PERFORM STREAM AND WETLANDS MITIGATION BEYOND THE IMMEDIATE WATERSHED WHERE DEVELOPMENT WILL OCCUR**

**SECTION 22.1.** No later than October 1, 2013, the Department of Environment and Natural Resources and the Department of Transportation shall jointly petition the Wilmington District of the United States Army Corps of Engineers (Wilmington District) to allow for greater flexibility and opportunity to perform stream and wetlands mitigation outside of the eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments shall seek this greater flexibility and opportunity for mitigation for both public and private development. The Departments shall request that the Wilmington District review the flexibility and opportunities for mitigation allowed by other Districts of the United States Army Corps of Engineers.

**SECTION 22.2.** The Departments shall jointly report on their progress in petitioning the Wilmington District as required by Section 22.1 of this act to the Environmental Review Commission no later than January 1, 2014.

**PART XVIII. ACCELERATE SUNSET DATE OF PETROLEUM DISPLACEMENT PLAN AS A RESULT OF THE STATE HAVING SUBSTANTIALLY ACHIEVED ITS TWENTY PERCENT REDUCTION GOAL OF THE USE OF PETROLEUM PRODUCTS**

**SECTION 23.** Section 19.5(a) of S.L. 2005-276, as amended by Section 14.14(a) of S.L. 2009-451 and Section 14.2B(a) of S.L. 2011-145, reads as rewritten:

**"SECTION 19.5.(a)** All State agencies, universities, and community colleges that have State-owned vehicle fleets shall continue to develop and implement petroleum displacement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by July 1, 2016. Before implementation of any plan, all affected agencies shall report their plan to the State Energy Office within the Department of Commerce. The State Energy Office shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through. Such efforts shall include the use of biodiesel, ethanol, synthetic oils or lubricants, and other alternative fuels, fuels; the use of hybrid electric vehicles, vehicles or other fuel-efficient or low-emission vehicles, or additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long term cost benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies.vehicles; and the use of advanced technology to manage and reduce the consumption of petroleum products. No State agency, university, or community college shall alter its petroleum displacement plan in a way that increases the amount of petroleum products consumed."

**PART XIX. EFFECTIVE DATE**

**SECTION 24.** Sections 2, 3, and 4 of this act become effective August 1, 2013, and apply to claims arising on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9<sup>th</sup> day of July, 2013.

s/ Daniel J. Forest  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 4:11 p.m. this 17<sup>th</sup> day of July, 2013

Appeal of Notice of Violation  
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The Farm at Brusharbor is just 30 miles from Charlotte, and rests on 300 acres providing an idyllic backdrop for your joyful wedding. Let us contribute to your ...

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Wedding Venue

**Address:** 7700 Brusharbor Rd, Concord, NC 28025

**Phone:** (704) 795-3896

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## About Our Farm

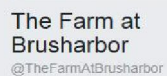
Nestled on the main road in Mount Pleasant, North Carolina, the Farm at Brushharbor is the perfect place to hold wedding ceremonies and receptions, family reunions, corporate events, spiritual events, social gatherings or any other reasons to get together with your friends and family.

The Farm at Brushharbor is a family owned and operated and provides a quintessential outdoor venue with a rustic chic appeal.

Our Farm is home to a perfect red barn with oversized swinging barn doors that open to beautifully lit chandlers and burlap wrapped twinkle lit décor to provide the perfect outdoor wedding with modern conveniences of an indoor barn reception. The breathtaking ceremony site overlooks one of the many ponds on the property and is a picturesque backdrop of pastures and farmland for a unforgettable setting to exchange your vows . Our Farm offers almost everything you would need from a venue and more, through our wedding & event package that you can customize to fit your needs. Please contact us for details about our amazing amenities that are included as part of our wedding and event package. We welcome you and your family to come out and tour the Farm to experience for yourself the Farm's rustic elegance in its peaceful rural surrounding.



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## PAGE INFO

Short Description

Rustic Wedding and Event Venue in Mount Pleasant, North Carolina.

Please visit our website and message us for more information regarding rates, available dates and our current amenities.

<http://www.thefarmatbrushharbor.com/>

Long Description

<http://www.thefarmatbrushharbor.com/>  
By Appointment Only

Email

thefarmatbrusharbor@gmail.com

Website

<http://www.thefarmatbrushharbor.com/>

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@TheFarmAtBrushharbor

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Jeff Mega Yippee Kia yea

Like · Reply · July 8 at 10:17pm



The Farm at Brushharbor added 7 new photos — at The Farm at Brushharbor.

June 16 · Concord ·

Interested in a beautiful winter wedding at our Farm? Now offering a \$2,000 discount off any remaining dates in December 2016 or January or February 2017. Message us for details and available dates! {Katie & Ian married February 2016 photo credit Casey Hendrickson Photography}



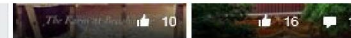
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July 10 at 6:26pm

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Laurie Holland Morris

June 29 at 9:31pm

where is closest hotel to your venue?

1 Comment

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The Farm at Brushharbor added 19 new photos to the album: Farm at Brushharbor Decor — at [The Farm at Brushharbor](#)

June 14 · 🌐

This is an album of decor we have collected for you to use for your wedding at no additional cost. We also provide white or ivory floor length linens for the round tables and sweetheart table, burlap, sheer or decorative gold or purple overlays. Black and white rectangular linens are also provided for the handful of rectangular tables we can provide for gift table, favor table, drink station ect. Floor length black table cloths are provided for cocktail tables on the patio. Since our decor is used often, feel free to check back in with us closer to your wedding date to ensure we still have these items for you to use.



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July 10 at 6:26pm · 🌐

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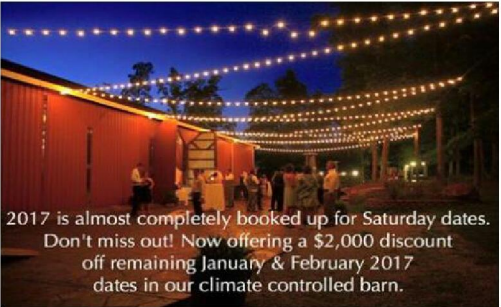
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August 7 at 8:00am · 🌐

🔥 Discounted pricing off any remaining dates in January or February of 2017! 📅



2017 is almost completely booked up for Saturday dates. Don't miss out! Now offering a \$2,000 discount off remaining January & February 2017 dates in our climate controlled barn.


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**The Farm at Brushharbor** at 📍 The Farm at Brushharbor.


August 27 at 6:35pm · 🌐

Ceremony is underway for the Talent & Griffin wedding!



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**Laurie Holland Morris**

June 29 at 9:31pm · 🌐

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December 22, 2012

Conser Wedding (July 14, 2012)



Event Venue · Concord, North Carolina

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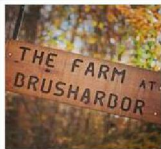
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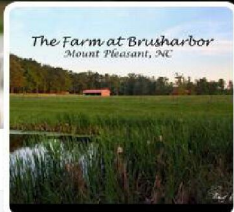
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Happy 1st Anniversary to Erin & Christopher! Our very first wedding out here at the Farm... <http://t.co/yvMycpTGt>
- TheFarmatBrushharbor** @FarmBrushharbor RETWEET FAVORITE 11 Jul  
Beautiful shot of Jenny & Garrett tying the knot here at the Farm on June 8th! #thefarmatbrushharbor <http://t.co/LkyKctstdq>
- TheFarmatBrushharbor** @FarmBrushharbor RETWEET FAVORITE 10 Jul  
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- TheFarmatBrushharbor** @FarmBrushharbor · 11 Jul 2013  
 Beautiful shot of Jenny & Garrett tying the knot here at the Farm on June 8th! [#thefarmatbrushharbor instagram.com/p/bptKsBDCQB/](https://www.instagram.com/p/bptKsBDCQB/)
- TheFarmatBrushharbor** @FarmBrushharbor · 10 Jul 2013  
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**TheFarmatBrushharbor** @FarmBrushharbor · 25 Jul 2012  
A great way our newlyweds incorporated their engagement and bridal portraits into their wedding decor here at the... [fb.me/1a88qZgWV](#)

**TheFarmatBrushharbor** @FarmBrushharbor · 19 Jul 2012  
Booked their first wedding of the Fall for October 6th!

**TheFarmatBrushharbor** @FarmBrushharbor · 17 Jul 2012  
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#rusticchic #charlotteweddings #carolinabride



**TheFarmatBrushharbor** @FarmBrushharbor · 17 Jul 2012  
Looking for a wedding venue in the Charlotte, NC area that is Rustic chic? Check out [facebook.com/TheFarmAtBrush...](#) #Rusticwedding

**TheFarmatBrushharbor** @FarmBrushharbor · 30 Jun 2012

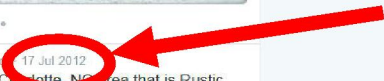
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The Farm at Brusharbor Weddings - Price out and compare wedding costs for wedding ceremony and reception venues in Concord, NC.

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The Farm At Brusharbor provides Wedding Ceremony & Reception Venue in North Carolina - Charlotte, Asheville, and surrounding areas. We allow you to ...

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### The Farm at Brusharbor - Concord (Mount Pleasant) North Carolina ...

[guide.rusticweddingchic.com/](http://guide.rusticweddingchic.com/)

About. Nestled off the main road in Mount Pleasant, North Carolina, the Farm at Brusharbor is the perfect place to hold wedding ceremonies and receptions. ...

### Jenny & Garrett's Wedding at The Farm at Brusharbor - YouTube



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**Saratoga Springs**  
4.2 ★★★★★ (7) · Wedding Venue  
5550 Cauble Rd · (704) 436-2249

[WEBSITE](#) [DIRECTIONS](#)

**The Coach House Wedding & Event Venue**  
No reviews · Wedding Venue  
2855 Lambert Rd · (704) 436-9555

[WEBSITE](#) [DIRECTIONS](#)

**The Farm at Brushharbor**  
1 review · Wedding Venue  
7700 Brushharbor Rd · (704) 795-3896

[WEBSITE](#) [DIRECTIONS](#)

[More places](#)

### The Saratoga Springs- Outdoor Wedding and Reception Venue ...

[www.thesaratogasprings.com/](http://www.thesaratogasprings.com/)

Are you newly engaged? The Saratoga Springs is a beautiful Outdoor Wedding and Reception Venue, located in Mount Pleasant, North Carolina...just 30 ...  
[Southern Fairytale Package](#) · [Contact Us](#)

### Wedding Reception Venues in Mount Pleasant, NC - The Knot

<https://www.theknot.com/.../wedding-reception-venues-mount-pleasant-nc> · The Knot  
Find, research and contact wedding reception venues in Mount Pleasant on The Knot, featuring reviews and info on the best wedding vendors.

### Mount Pleasant Wedding Venues & Wedding Reception Locations ...

[www.mywedding.com](http://www.mywedding.com) · vendors · united states · north carolina · mount pleasant  
Find local wedding venues and wedding reception locations in Mount Pleasant, North Carolina. Urban or rustic, formal or casual, large or small, we can help you ...

Thefarmatbrushharbor.com



# *The Farm at Brushharbor*

Wedding & Event Venue



*Natural beauty meets rustic elegance*

Our Farm offers several different ceremony options and a climate controlled reception

# Other websites:

Wedding Spot

Wedding Wire

YouTube

The Knot

## The Farm at Brushharbor CHARLOTTE



Photo by: Amy La Fontaine Photography

SHOW ALL 16 PHOTOS

### You May Also Like These Similar Venues



**Raffaldini Vineyards...**  
Winston-Salem  
from \$9,849 for 100 guests



**Renaissance Raleigh ...**  
Raleigh/Triangle  
from \$11,673 for 100 guests



**Devils Ridge**  
Raleigh/Triangle  
from \$6,466 for 100 guests

### VENUE DETAILS

700 Brushharbor Road  
Concord, NC 28025

Website Contact Info Favorite

Style: Barn/Farm/Ranch, Vintage/Rustic, Outdoor  
Max Capacity: 230 guests  
Ceremony: Indoor/Outdoor  
Reception: Indoor only  
Catering Options: BYO  
Alcohol Options: BYO  
Time Restrictions: 09:00AM to 11:00PM

PRICE THIS VENUE

CONTACT VENUE

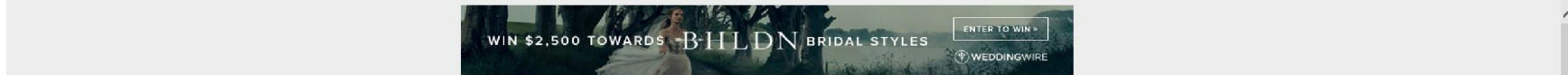
Share: Facebook Share Pin it Tweet



Map data ©2016 Google Terms of Use

VIEW LARGER

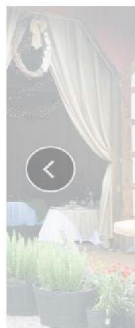
### The Farm at Brushharbor Details



Wedding Venues in Charlotte, NC >



The Farm At Brushharbor Favorite Mark as Booked  
★★★★★ 82 Reviews [Write a Review](#)  
Mount Pleasant, NC  
[Visit Website](#) [Message Vendor](#)



[Profile](#) [Reviews 82](#) [Photos 4](#) [Pricing & FAQ](#) [Map](#)

Wedding Reviews (82) Endorsements (7)

Trustworthy reviews are our priority. Businesses can't pay to change or remove reviews.

Contact this Vendor

Your First Name

Your Last Name

Your Email

Wedding Date

Send me info via email

Write your message...

Request Pricing

Write a Review



Did you find this review helpful?



0

★★★★★ 5.0

Heather B

The Farm is a one-of-a-kind type venue that I cannot say enough great things about. The farm itself is beautiful and the reception area inside the Barn is breathtaking. It's the perfect combination of rustic elegance and you can incorporate any theme into the existing decor. Our experience working with the ladies with the Farm was wonderful. Very friendly, organized, and flexible to meet all our needs. From beginning to end, they went above and beyond to create the perfect wedding day for us.

Wedding: 05/11/2013

Services Used: Ceremony & Reception Venue

Did you find this review helpful?

0

★★★★★ 5.0

Kasey F

Our wedding was Nov 1st of this year. The plan was to be outside but it rained. Then the farm staff moved everything to the covered pavilion, but it was way too windy and cold. They moved everything again to inside the heated barn where we ended up having the ceremony. They did a great job making the plan C look like plan A. They were so nice and so flexible. Our wedding was a great success- they made everything go smoothly. Everyone that came raved about our wedding and how beautiful everything including the venue was. We loved it! Thank you so much.

Wedding: 04/30/2013

Services Used: Ceremony & Reception Venue

Did you find this review helpful?

0

★★★★★ 5.0

Cassie M

I highly recommend them as a venue for anyone looking for the rustic type setting. It is absolutely gorgeous and the service provided is top of the line!!

Wedding: 03/30/2013

Services Used: Ceremony & Reception Venue

Did you find this review helpful?

0

★★★★★ 5.0

Anna R

We absolutely love this gorgeous venue and the family that owns it! We primarily worked with Amy and I can't brag on her enough. I emailed her many questions before our wedding and she always got back with me promptly. She also allowed me to text her, which was very kind! I loved that they have so many beautiful center piece items that they let us borrow for no additional cost. They made our special day a dream come true and I would choose to use them again!!

Wedding: 05/26/2012

Services Used: Ceremony & Reception Venue

Did you find this review helpful?

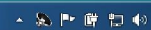
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Favorite



Write Review



4:32 PM  
10/3/2016

## Jenny & Garrett's Wedding The Farm at Brushharbor - YouTube



Jul 8, 2013 - Uploaded by Giovanni Films

Jenny & Garrett, a beautiful couple were married on a beautiful sunny day at the Farm at Brushharbor in ...

**The Farm at Brushharbor - Concord (Mount Pleasant) North Carolina ...**  
guide.rusticweddingchic.com > ... > North Carolina Wedding Venues ▾

About. Nestled off the main road in Mount Pleasant, North Carolina, the Farm at Brushharbor is the perfect place to hold wedding ceremonies and receptions, ...

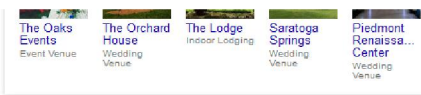
**Kara & Keith's Wedding The Farm at Brushharbor ... - Old South Studios**

oldsouthstudios.com/kara-keiths-weddingthe-farm-at-brushharbor-concord-nc/ ▾

May 22, 2014 - We first worked with Kara and Keith last July during their engagement session. Our studio grows thousands of gorgeous sunflowers for portraits ...

Searches related to the farm at brushharbor

the farm at brushharbor pricing 7700 brushharbor road concord, nc 28025



Feedback



[LOCAL VENDORS](#)[IDEAS + ETIQUETTE](#)[REAL WEDDINGS](#)[DRESSES + JEWELRY](#)[REGISTRY](#)[SHOP](#)[TOOLS](#)[SIGN UP](#)[LOG IN](#)[Reception Venues](#)[Videographers](#)[Wedding Planners](#)[Wedding Bands](#)[Bridal Salons](#)[Rentals](#)[DJs](#)[Wedding Photographers](#)

Kaci K., The Knot  
Venue Expert

## Looking for the perfect venue?

Introducing Venue Concierge, a new complimentary service from The Knot. Our experts will work with you one-on-one to find your ideal wedding location.

We'll handpick your Venue shortlist based on your needs.

[TAKE OUR VENUE QUIZ](#)

[Home](#) > [Wedding Reception Venues](#) > [The Farm At Brushharbor](#)

## Amenities + Details

### Amenities

✓ Indoor

✓ Reception Area

For more details about amenities, please message the Venue.

### Settings

Farm + Ranch, Barn

### Wedding Categories

Rentals + Equipment, Service Staff

## The Farm at Brushharbor



Concord, NC

[WEBSITE](#) | [PHONE](#)

[REQUEST A QUOTE](#)[FAVORITE](#)[SHARE THIS VENDOR](#)

## Contact Info

7700 Brushharbor Rd, Concord, NC (704) 796-3896

[WEBSITE](#)



## Section 3-8 TABLE OF PERMITTED USES

PERMITTED USE TABLE										
"P" - Permitted, "C" - Conditional, "PBS" - Permitted Based on Standards										
	AO	CR	LDR	MDR	HDR	OI	LC	GC	LI	GI
<b>COMMERCIAL, RETAIL AND OFFICE USES (Continued)</b>										
Office professional, 30,000 Square Feet or Less						P	P	P	P	P
Office professional, 30,000 Square Feet or More								P	P	P
Parking Lot, Parking Garage, Commercial or Private						P	P	P	P	P
Pawn Shop (NCGS Chapter 91A)							P	P		
Pet Shop, Grooming, Enclosed Facility					P		P	P		
Photographic Studio							P	P		
Printing and Reprographic Facility						P	P	P	P	P
Race Shop, Race Team Complex (8-4, 19)	C									
Race Shop, Race Team Complex								P	P	P
Radio and Television Studio								P	P	P
Reception Facilities (8-4, 21)	C	C								
Recreational Facility, Indoor (7-3, 38)					PBS	PBS	PBS	P	P	
Recreational Facility, Outdoor (8-4, 22)	C	C	C	C	C	C	C	C	C	C
Recreational Therapy Facility, Rural Setting (8-4, 23)	C	C								
Recreational Vehicle Sales, With Outdoor Storage or Sales Lot								P	P	P
Recyclable Materials Drop Off (7-3, 40)	PBS					PBS	PBS	PBS	PBS	PBS
Repair Garage, Automobile (7-3, 42)	PBS						PBS	P	P	
Repair Shop, Farm Machinery (7-3, 43)	PBS								P	P
Repair Shop, Small Engine (7-3, 44)	PBS						PBS	P	P	
Restaurant, Excluding Drive-thru (7-3, 46)	PBS	PBS	PBS	PBS	PBS		P	P	P	P
Restaurant with Drive-Thru Facility (7-3, 47)							PBS	PBS	PBS	PBS
Restaurant with Drive-Thru Facility (8-4, 27)				C	C					
Retail Sales, Neighborhood Market 5,000 Square Feet or Less (7-3, 48)	PBS									
Retail Sales, Shopping Centers, 10,000 Square Feet and Less					P		P	P		
Retail Sales, Shopping Centers, 10,000 - 50,000 Square Feet							P	P		
Retail Sales, Shopping Centers, 50,000 - 100,000 Square Feet								P		
Retail Sales, Shopping Centers, 100,000 Square Feet or More (8-4, 28)								C		
Sawmill (7-3, 50)	PBS	PBS							P	P
Scientific Research and Development (7-3, 52)						PBS	PBS	PBS	PBS	
Self-Service Storage Facilities (7-3, 53)							PBS	PBS	PBS	
Shooting Range, Indoor (7-3, 54)							PBS	PBS	PBS	
Shooting Range, with Outdoor Target Practice (8-4, 30)	C	C							C	C
Signs, Off-Premise	See Chapter Eleven, Table Six for Regulations									
Signs, On-Premise										
Sports and Recreation Instruction or Camp (8-4, 31)	C	C								
Sports and Recreation Instruction or Camp (7-3, 55)							PBS	PBS	PBS	PBS
Stables, Commercial (7-3, 57)	P	PBS	PBS							
Storage Building Sales, with Display Area (7-3, 55)							PBS	PBS	PBS	
Swim Club, Tennis Club, Country Club (7-3, 58)	PBS	PBS	PBS	PBS	PBS	PBS	PBS	PBS		
Tattoo Studio							P	P		
Taxidermy Studio, No Outdoor Processing							P	P	P	
Towing Service, with Towed Vehicle Storage Yard, No Salvage or Part Sales (7-3, 60)	PBS							PBS	P	P
Towing Service, with Salvage (7-3, 59)										PBS



- e. All outside storage areas including dumpsters must be:
  - o sited to the rear of the building,
  - o within the setbacks required of the building's underlying zone, and,
  - o made unnoticeable from both residential adjacent properties and public rights-of-way through installation of either fencing or vegetative screening.

24. Golf Course, Public or Private

Agriculture/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density Residential/Mixed Use, Office/Institutional, Office/Limited Commercial, General Commercial districts

- a. Clubhouses shall meet the primary setbacks for the zoning district.
- b. There shall be a 100 foot minimum setback between any accessory buildings or parking areas and adjacent residentially zoned or used property.
- c. Lighting for amenity areas shall be designed such that it does not spill over onto adjacent properties.

25. Government Buildings, Storage Only

Office/Limited Commercial, General Commercial, Light Industrial, General Industrial districts

- a. Parking areas shall be located a minimum of 25 feet from any residentially zoned or used property.
- b. Lighting for outdoor storage areas shall be designed such that it does not spill over onto adjacent properties.

26. Government Buildings, Storage Only, with Outdoor Storage Area

General Commercial, Light Industrial, General Industrial districts

- a. Outside storage areas shall be located a minimum of 50 feet from any residentially zoned or used property.
- b. Parking areas shall be located a minimum of 25 feet from any residentially zoned or used property.
- c. Lighting for outdoor storage areas shall be designed such that it does not spill over onto adjacent properties.

27. Home Occupation, General

Agricultural/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density Residential/Mixed Use, Office/ Limited Commercial districts

The following lists those occupations, which may be conducted at home in the AO, CR, LDR, MDR, HDR and LC districts or in townhomes in the MDR, HDR or LC districts. The purpose of the list is to function both as a guide and also to illustrate the spirit and intent of what is a legitimate home occupation. Essentially, the home occupation is conceived of as being

reasonably permitted in a residential setting because it does not compromise the residential character of the area. A reasonable home occupation would not generate conspicuous traffic, would not visually call unusual attention to the home nor would it ever generate nonresidential level noise.

Accounting, Bookkeeping	Dressmaking, Alteration Services, Tailoring	Musical Instruction, Voice or Instrument
Appraisal	Engineering	Pet Grooming (Enclosed)
Architecture	Financial Planning and Investment Services	Photo Laboratory (no studio work)
Computer Repair/Programming	Fine Arts Studio (creation of individual works only, no mass production)	Planning
Legal Services	Interior Decoration (no studio permitted)	Tutoring
Real Estate Sales	Mail Order Business (order taking only, no stock in trade)	One Chair Beauty or Barber Shop
Insurance Sales		Office Work
Daycare with Eight Children or Less (See NCGS §110-86)		Similar, Low Impact Endeavor
Drafting Services		

- a. The use must be conducted entirely within the interior of the residence, must be clearly incidental and secondary to residential occupancy, and may not change the residential character of the dwelling.
- b. The use of the dwelling for a Home Occupation may not exceed up to 25% of one floor of the principal building.
- c. Residents of the dwelling may be engaged in the home occupation with no more than one nonresident assistant employed.
- d. No activity can take place as a home occupation which involves any outdoor storage.
- e. All parking needs brought about by the operation of the home occupation must be met through an off street parking arrangement, including customer parking.
- f. Home Occupations which allow clients or customers to visit the business may be subject to Accessibility Standards. Applicants should contact Building Standards for requirements prior to applying for the Home Occupation Permit.

## 28. Home Occupation, Rural

Agricultural/Open, Countryside Residential, Low Density Residential, Medium Density Residential districts

The following lists those occupations, which may be conducted as a rural home occupation (RHO). The Rural Home Occupation differs from the home occupation in that it is not



required to be conducted within the residence proper, but may be conducted in another building accessory to the residence. Slightly more intense uses may occur within the RHO since it is sited within less densely settled areas.

Accounting, Bookkeeping	Real Estate Sales	Mail Order Business
Appraisal	Insurance Sales	Musical Instruction, Voice or Instrument
Architecture	Daycare with Eight Children or Less (See NCGS §110-86)	Photo Laboratory or Studio
Auto Repair Work - Permitted as PBS in Agriculture/Open only.	Drafting Services	Planning
Building Contractor's Storage Yard Including Electrical, Plumbing, & Mechanical	Dressmaking, Alteration Services, Tailoring	Tutoring
Computer Repair/Programming	Engineering	One Chair Beauty or Barber Shop
Landscape Contractor	Financial Planning and Investment Services	Office Work
Legal Services	Fine Arts Studio	Similar, Low Impact Endeavor
	Interior Decoration	

- a. The Rural Home Occupation may be carried out in no more than one building separate from the primary residence.
- b. All outside storage areas including dumpsters must be:
  - o sited to the rear of the building,
  - o within the setbacks required of the building's underlying zone, and,
  - o made unnoticeable from both residential adjacent properties and public rights-of-way through installation of either fencing or vegetative screening.

NOTE: No outside storage shall be permitted in the MDR zoning district.

- c. All storage must be screened either by fencing or vegetative hedge from any abutting residential use or public rights of way.
- d. The accessory building in which the RHO is conducted may not exceed the square footage of the footprint of the residence but in no event exceed 2,000 square feet.
- e. Nonresident employees may work in the RHO as follows:
  - o Up to 1,000 square feet of floor space - One nonresident employee
  - o 1,000 and over square feet of floor space - Two nonresident employees
- f. The rural home occupation will not create any smoke, odors, dust, or noise at a level discernable at any of its lot lines.
- g. In the Agricultural/Open, Countryside Residential, and Low Density Residential zoning districts, lots must meet the standard minimum size requirements for minor

subdivisions in those districts. In the Medium Density Residential zoning district, the minimum lot size shall be two (2) acres.

- h. Rural Home Occupations which allow clients or customers to visit the business may be subject to Accessibility Standards. Applicants should contact the Building Standards Department for requirements prior to applying for the Home Occupation Permit.

29. Ice Production, Dispensing, Accessory to Gas Station

Agriculture/Open, Countryside Residential, Low Density Residential, General Commercial, Light Industrial, General Industrial districts

- a. Manufacturing/dispensing structure shall be located in the primary setbacks for the district.
- b. Structure shall be located on the site so as to not interfere with site circulation or gas pump stacking lanes.
- c. Where installation is part of new construction, structure shall be compatible with color scheme and building materials so as to blend in with other structures, canopies, etc.

30. Ice Production, Dispensing, Accessory to Convenience Store

Agriculture/Open, Countryside Residential, Low Density Residential, Medium Density Residential, High Density Residential/Mixed Use, Office/Limited Commercial, General Commercial, Light Industrial, General Industrial districts

- a. Manufacturing/dispensing structure shall be located in the primary setbacks for the district.
- b. Structure shall be located on the site so as to not interfere with site circulation or gas pump stacking lanes.
- c. Where installation is part of new construction, structure shall be compatible with color scheme and building materials so as to blend in with other structures, canopies, etc.

31. Kennel, Private

Agricultural/Open, Countryside Residential districts

- a. The minimum distance between the outer edge of any buildings, animal enclosures or fenced areas must be at least 300 feet from the parcel boundary of any residentially zoned or used properties. This includes adjacent parcels and parcels located across street right-of-ways.
- b. The number of animals boarded outside or partially outside of the facility shall not exceed 25 animals. Animals boarded entirely inside shall not be counted as part of this limitation.



ADJACENT PARCELS LIST						
NAME	MAILING ADDRESS			PIN#	PHYSICAL ADDRESS	
BOOTSTRAP 1 LLC NC LLC	110	S STRATFORD RD STE 303	WINSTON-SALEM NC	27104	5567-71-7583	7421 NC HWY 200
MCKENZIE JASON CURTIS	7311	NC 200 HWY	MIDLAND NC	28107	5567-61-9431	7311 NC HWY 200
PORTER THOMAS EDWARDS JR	4455	MT PLEASANT RD S	CONCORD NC	28025	5567-61-5959	7251 NC HWY 200
BARBEE DORIS LYNN	7073	BARRIER GEORGEVILLE RD	CONCORD NC	28025	5567-54-6305	7250 BARRIER-GEORGEVILLE RD
BARBEE DORIS LYNN	7073	BARRIER GEORGEVILLE RD	CONCORD NC	28025	5567-64-2021	7073 BARRIER-GEORGEVILLE RD
MULLIS WILLIAM JOSEPH	170	DEBUSK RD	GREENEVILLE TN	37743	5567-64-2268	7055 BARRIER-GEORGEVILLE RD
PORTER THOMAS EDWARDS JR	4455	MT PLEASANT RD S	CONCORD NC	28025	5567-64-3570	7027 BARRIER-GEORGEVILLE RD
BARBEE TERRY KEITH	6999	BARRIER GEORGEVILLE RD	CONCORD NC	28025	5567-64-5609	6999 BARRIER-GEORGEVILLE RD
BARBEE CHERILYN T	6997	BARRIER GEORGEVILLE RD	CONCORD NC	28025	5567-65-8009	6997 BARRIER-GEORGEVILLE RD
BARBEE CHRISTOPHER K	6939	BARRIER GEORGEVILLE RD	CONCORD NC	28025	5567-75-0450	6939 BARRIER-GEORGEVILLE RD
ST STEPHENS WESLEYAN CH					5567-75-9016	7607 BRUSHARBOR RD
BARRIER JOHN HENRY	6810	BARRIER GEORGEVILLE RD	CONCORD NC	28025	5567-75-7763	6731 BARRIER-GEORGEVILLE RD
MOODY CARRIE SUE	1607	LENTZ HARNESS SHOP RD S	MT PLEASANT NC	28124	5567-86-3198	6651 BARRIER-GEORGEVILLE RD
TALLEY JERRY	6541	SANCTUARY RIDGE DR	CONCORD NC	28025	5567-96-1354	6541 SANCTUARY RIDGE DR
STEVENSON ROBERT EDWARD	4525	MOTORSPORTS DR SW	CONCORD NC	28027	5567-96-3569	6529 SANCTUARY RIDGE DR
HILL BRANDON R	6517	SANCTUARY RIDGE DR	CONCORD NC	28025	5567-96-4899	6517 SANCTUARY RIDGE DR
PHILLIPS NANCY R	18714	KESWICK ST	RESEDA CA	71335	5577-07-4202	6371 BARRIER-GEORGEVILLE RD
6780 HOLDINGS LLC	6780	COUNTY LINE RD	MT PLEASANT NC	28124	5577-25-1549	6780 COUNTY LINE RD
PORTER DEREK T	7755	BRUSHARBOR RD	CONCORD NC	28025	5577-04-3907	7755 BRUSHARBOR RD
PORTER THOMAS EDWARDS JR	4455	MT PLEASANT RD S	CONCORD NC	28025	5577-04-6000	
LOVE JAMES D	8075	MAUNEY RD	MT PLEASANT NC	28124	5567-93-8762	8069 MAUNEY RD
PORTER THOMAS E TRUSTEE	4455	MT PLEASANT RD S	CONCORD NC	28025	5567-82-8342	8075 MAUNEY RD



**Cabarrus County Government – Planning and Development Department**

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08/24/2016

Dear Property Owner:

An Appeal Application has been filed in our office for property **adjacent** to yours. The specifics of the request are listed below. The Cabarrus County Board of Adjustment will consider this appeal on Tuesday September 13, 2016 at 7:00 PM in the Commissioner's Chambers on the 2<sup>nd</sup> floor of the Cabarrus County Governmental Center, located at 65 Church Street SE, Concord, NC 28026. A Public Hearing will be conducted and public input will be allowed during that time. If you have any comments about the appeal, I encourage you to attend this meeting.

- Petitioner: Jim Scarborough as agent for Thomas E. Porter Jr. and Victoria P. Porter and the Farm at Brushharbor, LLC
- Petitioner Number: APPL2016-00001
- Property Location: 7700 Brushharbor
- Parcel ID Number: 55678465690000
- Existing Zoning: AO (Agricultural/Open District)
- Reason for Appeal: Appeal of Notice of Violation related to operation of an illegal reception facility without proper review and permits.

If you have any questions regarding this petition, or the hearing process, please contact me at Cabarrus County Planning and Development at 704-920-2148.

A handwritten signature in black ink that reads "Amanda Edwards".

Amanda W. Edwards, CZO  
Senior Zoning Enforcement Officer  
Cabarrus County Planning and Development  
704-920-2148

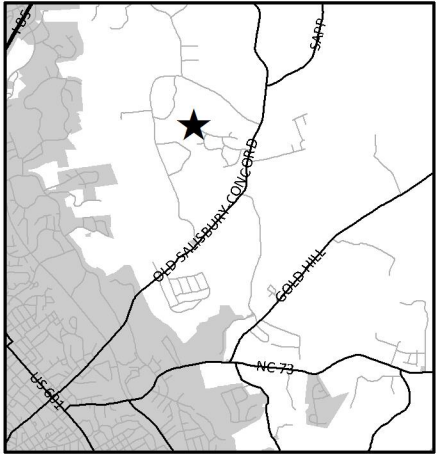


Zoning Map



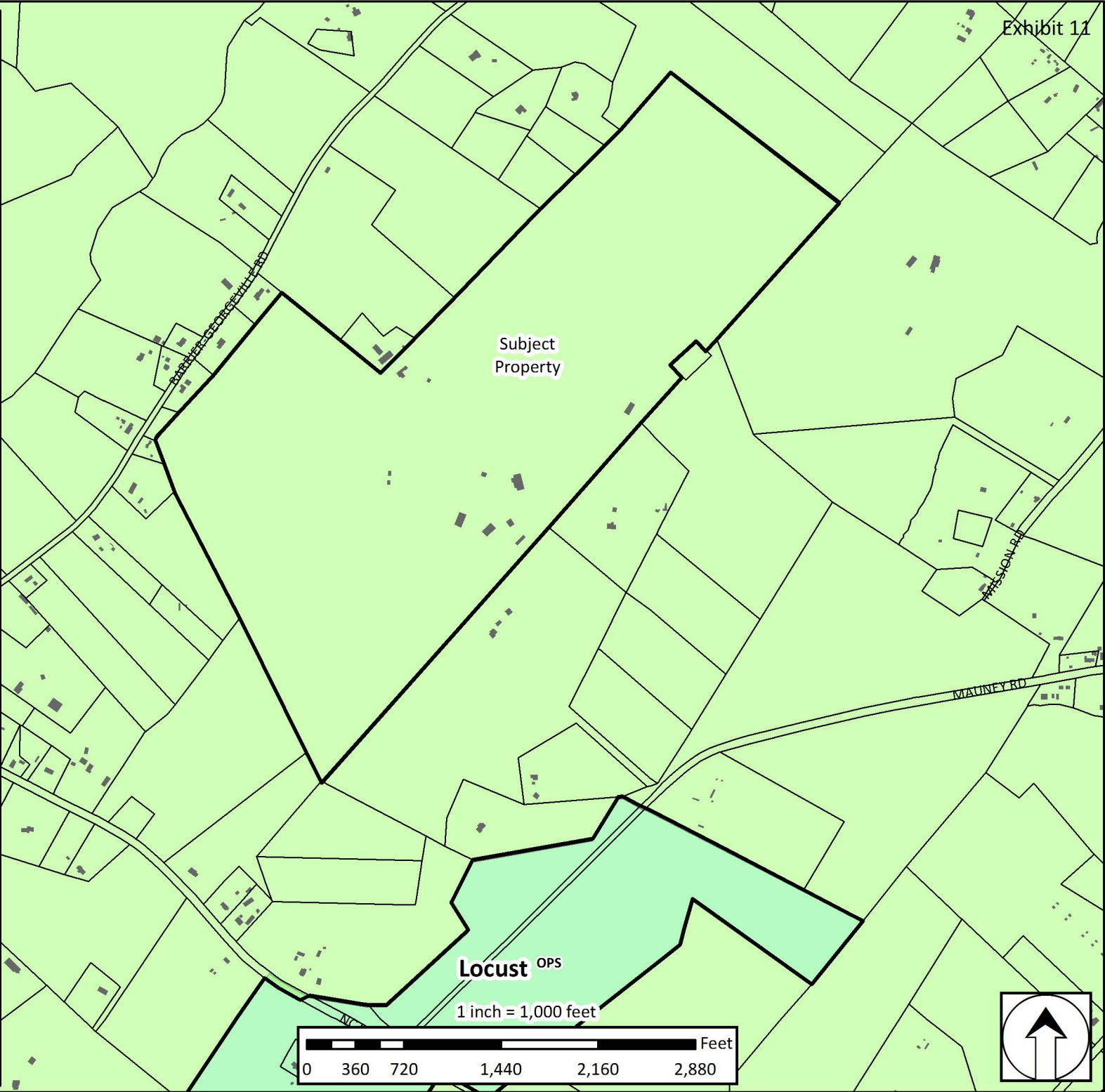
Applicant/Owner: Thomas E. Porter Jr. &  
Victoria P. Porter  
Case: APPL2016-00001  
Address: 7700 Brushharbor Road  
Purpose: Appeal of Notice of Violation  
PIN: 5567-84-6569

- Parcels
- Structures



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning & Development: October 2016



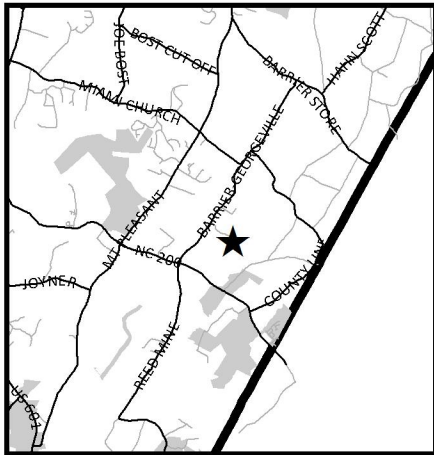


## Aerial Map



Applicant/Owner: Thomas E. Porter Jr.  
& Victoria Porter  
Case: APPL2016-00001  
Address: 7700 Brushharbor Road  
Purpose: Appeal of Notice of Violation  
PIN: 5567-84-6569

-  Cabarrus County
-  City Limits
-  Parcels



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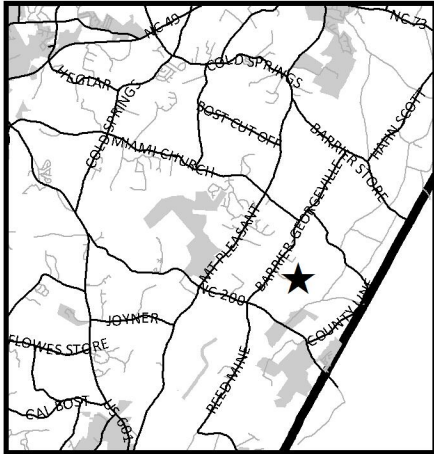




# Eastern Plan Area Future Land Use

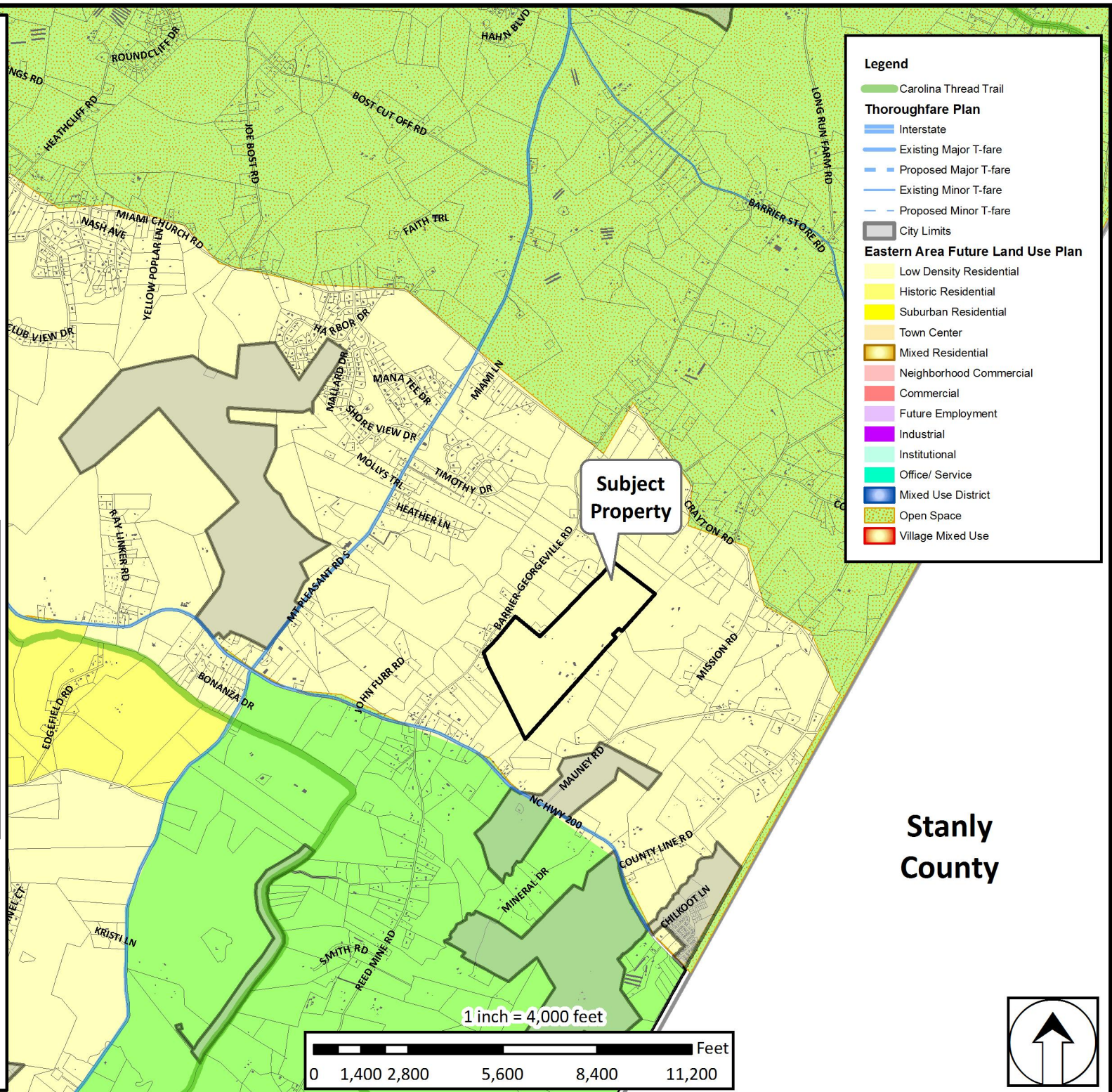


Applicant/Owner: Thomas E. Porter, Jr  
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Address: 7700 Brushharbor Road  
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Map Prepared by Cabarrus County Planning & Development: October 2016





APPL2016-00001





APPL2016-00001





APPL2016-00001





APPL2016-00001





APPL2016-00001



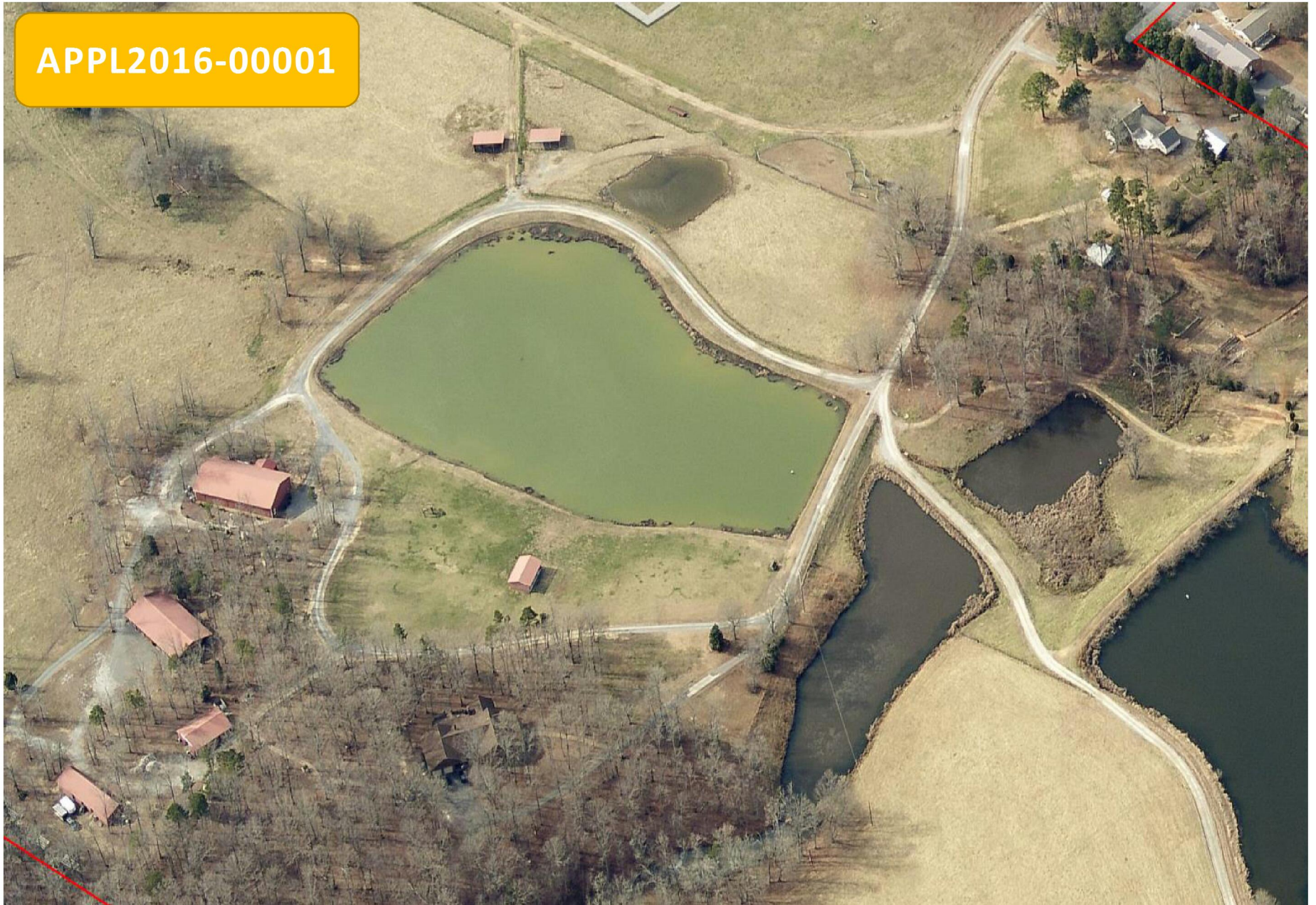


APPL2016-00001





APPL2016-00001





APPL2016-00001





PORTER THOMAS EDWARDS JR		PORTER VICTORIA PRICE WF		Return/Appeal Notes:		Parcel: 5567 84 6569 0000													
7700 BRUSHARBOR RD						PLAT: / UNIQ ID 4641													
5634090						ID NO: 09 010 0022.00 0000													
		COUNTY TAX (100), GEORGEVILLE FIRE TAX (100)		CARD NO. 1 of 3		SRC= Estimated													
Reval Year: 2016 Tax Year: 2016		S/E BARRIER-GEORGEVILLE RD		245.470 AC		EX-													
Appraised by TS on 01/01/2016 16001		MIAMI CHURCH RD		TW-09		AT- LAST ACTION 20160215													
CONSTRUCTION DETAIL		MARKET VALUE				DEPRECIATION		CORRELATION OF VALUE											
Foundation - 3		USE	MOD	Eff. Area	QUAL	BASE RATE	RCN	EYB	AYB	Standard	0.36000	CREDENCE TO		MARKET					
Continuous Footing 5.00		01R	01	2,295	110	81.95	190825	1980	1948	% GOOD 64.0		DEPR. BUILDING VALUE - CARD		122,130					
Sub Floor System - 5		TYPE: SINGLE FAMILY RURAL										SINGLE FAMILY HOME		DEPR. OB/XF VALUE - CARD		28,710			
Wood 9.00		STYLE: 1 - 1.0 Story												MARKET LAND VALUE - CARD		1,197,890			
Exterior Walls - 10														TOTAL MARKET VALUE - CARD		1,348,730			
Aluminum/Vinyl Siding 28.00														TOTAL APPRAISED VALUE - CARD		1,348,730			
Roofing Structure - 03														TOTAL APPRAISED VALUE - PARCEL		1,890,820			
Gable 7.00														TOTAL PRESENT USE VALUE - PARCEL		821,140			
Roofing Cover - 03														TOTAL VALUE DEFERRED - PARCEL		1,069,680			
Asphalt or Composition														TOTAL TAXABLE VALUE - PARCEL \$		821,140			
Shingle 3.00														PRIOR					
Interior Wall Construction - 5														BUILDING VALUE		616,490			
Drywall/Sheetrock 20.00														OBXF VALUE		37,280			
Interior Floor Cover - 09														LAND VALUE		1,422,500			
Pine or Soft Woods 8.00														PRESENT USE VALUE		140,710			
Interior Floor Cover - 14														DEFERRED VALUE		1,281,790			
Carpet 0.00														TOTAL VALUE		2,076,270			
Heating Fuel - 04														PERMIT					
Electric 1.00														CODE		DATE	NOTE	NUMBER	AMOUNT
Heating Type - 10														ROUT: WTRSHD:					
Heat Pump 4.00														SALES DATA					
Air Conditioning Type - 03														OFF. RECORD		DATE	DEED	INDICATE	
Central 4.00														BOOK		PAGE	MO/YR	Q/U/V/I	SALES PRICE
Bedrooms/Bathrooms/Half-Bathrooms																			
3/2/0 12.000																			
Bedrooms																			
BAS - 3 FUS - 0 LL - 0																			
Bathrooms																			
BAS - 2 FUS - 0 LL - 0																			
Half-Bathrooms																			
BAS - 0 FUS - 0 LL - 0																			
Office																			
BAS - 0 FUS - 0 LL - 0 0																			
TOTAL POINT VALUE		101.000																	
BUILDING ADJUSTMENTS																			
Quality		4	Above Average		1.1000														
Shape/Design		3	MF3		1.0000														
Size		Size	Size		0.9900														
TOTAL ADJUSTMENT FACTOR		1.090																	
TOTAL QUALITY INDEX		110																	

Appraisal Card

8075 MAUNEY RD  
5634090

PLAT: / UNIQ ID 4641  
ID NO: 09 010 0022.00 0000

COUNTY TAX (100), GEORGEVILLE FIRE TAX (100)  
CARD NO. 2 of 3  
Reval Year: 2016 Tax Year: 2016 S/E BARRIER-GEORGEVILLE RD  
245.470 AC  
Appraised by TS on 01/01/2016 16001 MIAMI CHURCH RD  
TW-09 CI-00 FR-13 EX- AT- LAST ACTION 20160215

SRC= Estimated

CONSTRUCTION DETAIL				MARKET VALUE						DEPRECIATION				CORRELATION OF VALUE					
Foundation - 3 Continuous Footing 5.00				USE	MOD	Eff. Area	QUAL	BASE RATE	RCN	EYB	AYB	Standard 0.13000		CREDENCE TO MARKET					
Sub Floor System - 4 Plywood 8.00				01R	01	2,001	110	81.95	166482	2003	1992	% GOOD 87.0		DEPR. BUILDING VALUE - CARD 144,840					
Exterior Walls - 21 Face Brick 35.00				TYPE: SINGLE FAMILY RURAL SINGLE FAMILY HOME										DEPR. OB/XF VALUE - CARD 6,250					
Roofing Structure - 03 Gable 7.00				STYLE: 1 - 1.0 Story										MARKET LAND VALUE - CARD 0					
Roofing Cover - 03 Asphalt or Composition Shingle 3.00														TOTAL MARKET VALUE - CARD 151,090					
Interior Wall Construction - 5 Drywall/Sheetrock 26.00														TOTAL APPRAISED VALUE - CARD 151,090					
Interior Wall Construction - 6 Custom Interior 0.00														TOTAL APPRAISED VALUE - PARCEL 1,890,820					
Interior Floor Cover - 08 Sheet Vinyl 6.00														TOTAL PRESENT USE VALUE - PARCEL 821,140					
Interior Floor Cover - 14 Carpet 0.00														TOTAL VALUE DEFERRED - PARCEL 1,069,680					
Heating Fuel - 03 Gas 1.00														TOTAL TAXABLE VALUE - PARCEL \$ 821,140					
Heating Type - 04 Forced Air - Ducted 4.00														PRIOR					
Air Conditioning Type - 03 Central 4.00														BUILDING VALUE 616,490					
Bedrooms/Bathrooms/Half-Bathrooms 4/3/0 16.000														OBXF VALUE 37,280					
Bedrooms BAS - 4 FUS - 0 LL - 0														LAND VALUE 1,422,500					
Bathrooms BAS - 3 FUS - 0 LL - 0														PRESENT USE VALUE 140,710					
Half-Bathrooms BAS - 0 FUS - 0 LL - 0														DEFERRED VALUE 1,281,790					
Office BAS - 0 FUS - 0 LL - 0 0														TOTAL VALUE 2,076,270					
TOTAL POINT VALUE 115.000														PERMIT					
BUILDING ADJUSTMENTS														CODE DATE NOTE NUMBER AMOUNT					
Quality 3 Average 1.0000														ROUT: WTRSHD:					
Shape/Design 2 MF2 0.9600														SALES DATA					
Size Size 1.0000														OFF. RECORD DATE DEED TYPE Q/UV/I INDICATE					
TOTAL ADJUSTMENT FACTOR 0.960														BOOKPAGEMOYR TYPE Q/UV/I SALES PRICE					
TOTAL QUALITY INDEX 110														HEATED AREA 1,777					
														NOTES					
														PMT 6528 7/92 HSE					
														PMT 6993 9/93 FGD.					

SUBAREA										TOTAL OB/XF VALUE									
TYPE	GS AREA	%	RPL CS	CODE	DESCRIPTION	COUNT	LTH	WTH	UNITS	UNIT PRICE	ORIG % COND	BLDG#	SIZE FACT	AYB	EYB	ANN DEP RATE	OVR	% COND	OB/XF DEPR. VALUE
BAS	1,777	100	145625	02	GARAGE FR		32	28	896	24.20	100	2	0.93	1993	1993	S3		31	6251
FGD	273	045	10080	TOTAL OB/XF VALUE 6,251															
FOP	147	035	4179																
FUT	90	055	4098																
FIREPLACE 3 - 1 Story Single 2,500																			
SUBAREA TOTALS 2,287 166,482																			

BUILDING DIMENSIONS BAS=W12N11FOP=N7W17S7E17\$W17S11W25S33E14N2E12FOP=N4E7S4W7\$N4E7S4E17FGD=N21E13FUT=W9N10E9S10\$S21W13\$N21E4N10\$.

LAND INFORMATION

HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRONT TAGE	DEPTH	DEPTH / SIZE	LND MOD	COND FACT	OTHER ADJUSTMENTS AND NOTES RF AC LC TO OT	ROAD TYPE	LAND UNIT PRICE	TOTAL LAND UNITS	UNT TYP	TOTAL ADJUST	ADJUSTED UNIT PRICE	LAND VALUE	OVERRIDE VALUE	LAND NOTES
TOTAL MARKET LAND DATA																	
TOTAL PRESENT USE DATA																	

CABARRUS COUNTY, NC

10/4/2016 12:40:50 PM

PORTER THOMAS EDWARDS JR  
7700 BRUSHARBOR RD  
5634090

PORTER VICTORIA PRICE WF

Return/Appeal Notes: Parcel: 5567 84 6569 0000  
PLAT: / UNIQ ID 4641  
ID NO: 09 010 0022.00 0000

COUNTY TAX (100), GEORGEVILLE FIRE TAX (100)  
CARD NO. 3 of 3  
Reval Year: 2016 Tax Year: 2016 S/E BARRIER-GEORGEVILLE RD  
245.470 AC  
Appraised by TS on 01/01/2016 16001 MIAMI CHURCH RD  
TW-09 CI-00 FR-13 EX- AT- LAST ACTION 20160215

SRC= Estimated

CONSTRUCTION DETAIL				MARKET VALUE						DEPRECIATION				CORRELATION OF VALUE					
Foundation - 3 Continuous Footing 5.00				USE	MOD	Eff. Area	QUAL	BASE RATE	RCN	EYB	AYB	Standard 0.20000		CREDENCE TO MARKET					
Sub Floor System - 4 Plywood 8.00				01	01	5,223	124	92.38	488751	1996	1991	% GOOD 80.0		DEPR. BUILDING VALUE - CARD 391,000					
Exterior Walls - 21 Face Brick 35.00				TYPE: SINGLE FAMILY RESIDENTIAL SINGLE FAMILY HOME										DEPR. OB/XF VALUE - CARD 0					
Roofing Structure - 03 Gable 7.00				STYLE: 1 - 1.0 Story										MARKET LAND VALUE - CARD 0					
Roofing Cover - 03 Asphalt or Composition 3.00														TOTAL MARKET VALUE - CARD 391,000					
														TOTAL APPRAISED VALUE - CARD 391,000					
														TOTAL APPRAISED VALUE - PARCEL 1,890,820					
														TOTAL PRESENT USE VALUE - PARCEL 821,140					
														TOTAL VALUE DEFERRED - PARCEL 1,069,680					



Appraisal Card

Shingle																				<b>TOTAL TAXABLE VALUE - PARCEL \$</b>		821,140	
Interior Wall Construction - 5																				<b>PRIOR</b>			
Drywall/Sheetrock		26.00																		BUILDING VALUE		616,490	
Interior Wall Construction - 6																				OBXF VALUE		37,280	
Custom Interior		0.00																		LAND VALUE		1,422,500	
Interior Floor Cover - 08																				PRESENT USE VALUE		140,710	
Sheet Vinyl		0.00																		DEFERRED VALUE		1,281,790	
Interior Floor Cover - 14																				TOTAL VALUE		2,076,270	
Carpet		6.00																					
Heating Fuel - 04																							
Electric		1.00																					
Heating Type - 10																							
Heat Pump		4.00																					
Air Conditioning Type - 03																							
Central		4.00																					
Bedrooms/Bathrooms/Half-																							
Bathrooms																							
2/2/0		11.000																					
Bedrooms																							
BAS - 2 FUS - 0 LL - 0																							
Bathrooms																							
BAS - 2 FUS - 0 LL - 0																							
Half-Bathrooms																							
BAS - 0 FUS - 0 LL - 0																							
Office																							
BAS - 0 FUS - 0 LL - 0		0																					
<b>TOTAL POINT VALUE</b>		110.000																					
<b>BUILDING ADJUSTMENTS</b>																							
<b>Quality</b>		5 Custom 1.2500																					
<b>Shape/Design</b>		3 MF3 1.0000																					
<b>Size</b>		Size Size 0.9000																					
TOTAL ADJUSTMENT FACTOR		1.130																					
TOTAL QUALITY INDEX		124																					



## Part 3. Zoning.

**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) (1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. For purposes of this subdivision, "when performed on the farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.
- e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.



(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the county does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the county. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 160A-388.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

(f) Repealed by Session Laws 2005-426, s. 5(b), effective January 1, 2006.

(g) A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) As provided in this subsection, counties may adopt temporary moratoria on any county development approval required by law. county development approval required by law, except for the purpose of developing and adopting new or amended plans or ordinances as to residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the board of commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.



Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the county and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the county during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the county in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the county shall have the burden of showing compliance with the procedural requirements of this subsection.

(i) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a county may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

- (1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.
- (2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.
- (3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection.

(j) An ordinance adopted pursuant to this section shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than 10 acres in size in zoning districts where more than fifty percent (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction shall not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. An ordinance adopted pursuant to this section shall not require that a lot greater than 10 acres in size have frontage on a public road or county-approved private road, or be served by public water or sewer lines, in order to be developed for single-family residential purposes.



(k) A zoning or unified development ordinance may not differentiate in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not.

(l) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

- (1) The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.
- (2) The structures are located in an area designated as a historic district on the National Register of Historic Places.
- (3) The structures are individually designated as local, State, or national historic landmarks.
- (4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.
- (5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 153A-341.1 and federal law.
- (6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 153A-341 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

(m) Nothing in subsection (l) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements.

(n) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the county may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441; 1985, c. 442, s. 2; 1987, c. 747, s. 12; 1991, c. 69, s. 1; 1997-458, s.

2.1; 2005-390, s. 6; 2005-426, s. 5(b); 2006-259, s. 26(a); 2007-381, s. 1; 2011-286, s. 1; 2011-363, s. 1; 2011-384, s. 5; 2013-126, ss. 5, 8; 2013-347, s. 1; 2013-413, s. 6(a); 2015-86, s. 2; 2015-246, ss. 3.1(b), 4(a); 2015-286, s. 1.8(b).)



**§ 106-581.1. Agriculture defined.**

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.
- (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6; 2013-347, s. 2.)



## Coates' Canons Blog: What Does the Farm Exemption from Zoning Regulation Include?

By David Owens

Article: <http://canons.sog.unc.edu/what-does-the-farm-exemption-from-zoning-regulation-include/>

This entry was posted on February 17, 2016 and is filed under Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

When the legislature in 1959 extended zoning powers to counties, it was determined that farming should not be subject to county zoning regulation. Cities had been using zoning since 1923 to address “urban” issues such as the compatibility of adjacent land uses. Given the rural nature of unincorporated areas of counties in 1959, along with the considerable political influence of the agricultural community, exempting farming from county zoning regulation was a relatively noncontroversial policy choice.



That policy choice still applies and is still relatively noncontroversial. Counties can elect to use their zoning powers to regulate residential, commercial, and industrial land uses, but not farming.

A question that is increasingly arising around the state, however, is just what is “farming” that is exempt from county zoning regulation? It clearly includes growing crops and farm animals, but does it also include shooting ranges? Garden shops? Rodeos? Wedding and special event facilities? Are these land uses “farming” when it comes to zoning regulation?

The scope of the farming exemption from zoning has become contentious of late. In some instances this has involved a proposed land use that has more intense or different land use impacts than is the case with traditional farming, raising neighborhood concerns about traffic, noise, storm water runoff, and similar land use concerns. In other instances the surrounding farm community has expressed concern about activity that is “not really farming” using the exemption to avoid regulation and disrupt farm areas. These concerns are often pitted against the interests of the landowner — sometimes a farmer and sometimes not — seeking a more profitable use of the land.

### ***The Farm Exemption***

The original county zoning exemption for farming was simple and straightforward: “No such [zoning] regulation shall affect bona fide farms, but any use of such property for nonfarm purposes shall be subject to such regulations.” That basic proposition is still included within the county zoning statutes at G.S. 153A-340(b).

As Rich Ducker details in this [blog post](#), legislative and judicial refinements have been made to the basic policy over the decades. A definition was added for “farm purposes.” What qualifies property to be considered a “farm” was specified. Some limited sale of non-farm products was allowed. Large-scale hog farms were allowed to be subject to county zoning. A half-dozen cases have litigated various aspects of the zoning exemption for farming.

The bona fide farm exemption has also been extended beyond county zoning. In 2011 G.S. 160A-360 was amended to exclude land being used for farm purposes from municipal extraterritorial jurisdiction (ETJ). Farming in the ETJ is not





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subject to city zoning, subdivision, or other municipal development regulations.

### ***Two Dimensions of the Zoning Exemption***

There are two critical qualifications an activity must have to be exempt from zoning regulation in county or municipal ETJ areas. First, the property involved must be on a “farm.” Second, the activity must be a “farming purpose.”

The first of these questions is usually easy to resolve. In the early decades of the farm exemption, some counties wrestled with what constituted a “bona fide” farm as opposed to a hobby farm or some clever developer’s scheme to avoid regulation. Did the farm have to generate a minimum amount of farm income? Was it enrolled in the present use value property tax program? These questions are now rarely raised because in 2011 G.S. 153A-340(b)(2) was amended to simplify resolution of this first question. The statute now provides that production of any one of five items is sufficient to establish that a property is being used for bona fide farm purposes: a farm sales tax certificate; eligibility for present use value property taxation; a Schedule F for federal income taxes; a forest management plan; or a USDA farm identification number. While not the exclusive means to establish that property is being used as a farm, these qualifiers are sufficiently easy and inexpensive to obtain that they resolve most disputes as to whether the property qualifies as a “farm.”

The second question is more difficult to resolve. While production of one of the five items noted above is sufficient to establish that the property is being used for farm purposes, it is very important to remember that just as was the case in 1959, G.S. 153A-340(b)(1) provides that county zoning regulation still applies “to the use of farm property for nonfarm purposes.” Nonfarm land uses have never been exempt from county zoning. For example, the court in Ball v. Randolph County, 129 N.C. App. 300, *appeal dismissed*, 349 N.C. 348 (1998), held that use of farm equipment to till petroleum contaminated soil into farm land may look like farming, but it is pollution remediation, not farming, and is subject to county zoning. Any land use claimed to be exempt must itself be a farm purpose. The facts that the use is conducted on a farm or that it produces useful income for a farmer do not make the use exempt from zoning if it is a nonfarm purpose.

So what activities on a farm qualify as a bona fide farm purpose? The zoning statute provides that the exempt activities are the production of agricultural products. The statute incorporates the broad definition of agriculture from G.S. 106-581.1, which includes:

1. Production and harvesting of crops, including fruits, vegetables, sod, flowers and ornamental plants;
2. Planting and production of trees and timber;
3. Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals;
4. Aquaculture;
5. Operation and maintenance of farm land, structures and buildings;
6. Marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities that add value to agricultural items produced on the farm and on any other farm owned or leased by the bona fide farm operator; and
7. Public or private grain warehouses. There is also a limited additional exemption for production of a modest amount of nonfarm products identified under the “Goodness Grows in North Carolina” program if it is done on a farm subject to a conservation easement.

Activities “relating or incidental to” the production of these seven listed activities are also exempt. Merriam-Webster defines “incidental” to be “happening as a minor part or result of something else.” In the context of this statute then, the activity claimed to be exempt as incidental to farming must be a minor part of or directly related to the exempt farm purposes listed above. Unless the activity falls within one of these categories, it is a nonfarm purpose that is subject to county zoning even if conducted on bona fide farm property.

Two cases in North Carolina have addressed the scope of what can reasonably be considered incidental to exempt farm purposes. In County of Durham v. Roberts, 145 N.C. App. 655 (2001), the court held sale of excavated soil was incidental to the exempt activity of improving pasture land and expanding ponds for horses. In North Iredell Neighbors for Rural Life v. Iredell County, 196 N.C. App. 68, *review denied*, 363 N.C. 582 (2009), the court held a biodiesel production operation was an industrial use rather than a farm use. The fact that the facility would use some agricultural products grown elsewhere and would produce more fuel than could be used on-site were key factors in this determination.



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### ***Questions at the Margins***

If you consider a continuum with “farm purposes” on one end and “nonfarm purposes” on the other, activities on either end of the scale are easy to identify. A horse stable, a commercial greenhouse, and a pond growing fish for sale are farm purposes exempt from county zoning. An asphalt plant, a convenience store/gas station, or a residential subdivision are nonfarm purposes subject to county zoning even if conducted on a qualifying farm. A roadside farm stand is incidental to the farm. A Super Walmart that has a produce section is not. Clearing out the barn for a monthly square dance is likely incidental to farming or agritourism, but an outdoor amphitheater with regular large concerts is a nonfarm commercial activity subject to zoning.

It is the activities in the center of this spectrum, at the border between “farm” and “nonfarm” that are most difficult to characterize. A wine making operation located on a vineyard is exempt. An adjacent tasting room is likely incidental to that winery and would also be exempt. But at some point as the tasting room expands to a restaurant or bed and breakfast facility, it is no longer a minor part of the winery but a commercial use that is subject to county zoning. The difficult question, which must be resolved on a case by case basis, is determining just when this line is passed.

So, when a farm exemption from county zoning or municipal land use regulation in the ETJ is claimed, the zoning administrator must make a determination on whether the property qualifies as a bona fide farm AND, if so, whether the activity is a farm purpose. Land uses meeting both criteria qualify for the zoning exemption but if the activity is an industrial, commercial, or residential activity that is not closely tied to legitimate farming, it is subject to zoning.





ROY COOPER  
ATTORNEY GENERAL

## State of North Carolina

Department of Justice  
PO Box 629  
Raleigh, North Carolina  
27602

Reply To:  
ANNE J. BROWN  
SERVICES TO  
STATE AGENCIES  
TEL: (919) 716-6800  
FAX: (919) 716-6755

September 13, 2016

Tina L. Hlabse, Esquire  
General Counsel  
North Carolina Department of  
Agriculture & Consumer Services  
1001 Mail Service Center  
Raleigh, North Carolina 27699

Dear Ms. Hlabse,

You have requested our opinion as to whether the use of farm buildings for the purpose of hosting weddings is considered agritourism and is therefore exempt from county zoning authority.

For the reasons set forth below, it is our opinion that hosting weddings on farm property that is being used for bona fide farm purposes should be considered agritourism activity, and is therefore exempt from county zoning authority.

County zoning powers and limitations thereon are set out in G.S. § 153A-340 *et seq.* When farm property is used for bona fide farm purposes, counties' authority to adopt zoning and development regulations is limited to properties used as large swine farms. G.S. § 153A-340 (b)(1). Therefore, a farm used for bona fide farm purposes is generally exempt from county zoning. Bona fide farm purposes include "the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture[.]" G.S. § 153A-340 (b) (2). In North Carolina, the term "agriculture" specifically includes agritourism and activities related to the operation of a farm. G.S. § 106-581.1 (6). Statutory examples of what constitutes proof of a bona fide farm for zoning purposes are enlightening as to what constitutes a bona fide farm. Farm sales tax exemption certificates, a farm identification number issued by the U.S. Dept. of Agriculture, and a forest management plan, are some examples of proof that a property is being used as a bona fide farm. See G. S. § 153A-340 (b)2.

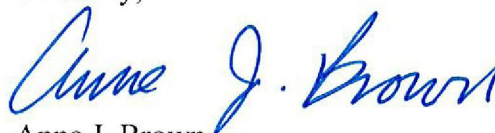
While agritourism is not defined in the definition of farm set out in G.S. § 106-581.1 (6), statutes dealing with the same subject matter must be construed *in pari materia* and harmonized with each other if reasonably possible in ascertaining intention. See, *Williams v. Williams*, 299 N.C. 174 (1980). G. S. § 99E-30(1) sets out special liability provisions for agritourism and defines that activity as, "[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, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions.” Further, the General Assembly has excluded from building rules those structures “used for public or private events, including, but not limited to, weddings, receptions, ... and other events that are taking place on the farm because of its farm or rural setting.” G.S. § 143-138(b)(4)(1a).

North Carolina courts are yet to apply the above statutes to factual scenarios involving the use of farms to host weddings. The Court of Appeals, however, interpreted legislative intent regarding bona fide farm purpose as related to biodiesel production, concluding that production and hauling of biodiesel from surrounding farms was industrial rather than agricultural in nature. *N. Iredell Neighbors for Rural Life v. Iredell County*, 196 N.C. App. 68, 674 S.E.2d 436 (2009). (production of 500,000 gallons of biodiesel per year exceeded the limits of bona fide farm purposes, when the farming operation itself required only 100,000 gallons of biodiesel per year). It appears that a wedding on a bona fide farm allows the public to view and enjoy rural activities, partake in farm activities and attractions, and enhances agritourism. Therefore, a bona fide farm hosting weddings as an activity incidental to its main function as a farm, and where a farm setting is an integral part of the wedding draw, should be exempt from county zoning authority. However, if hosting weddings is intended as a primary commercial activity that takes place at the farm location, the courts may reach an opposite conclusion as the case above suggests.

Please let me know if you need any additional information. This is an advisory letter. This letter has not been reviewed or approved in accordance with the procedures for issuing an Attorney General’s opinion.

Sincerely,



Anne J. Brown  
Special Deputy Attorney General

**Susie Morris**

---

**From:** Carla Barbieri <Carla\_Barbieri@ncsu.edu>  
**Sent:** Monday, August 29, 2016 3:26 PM  
**To:** Susie Morris  
**Cc:** duarte\_morais@ncsu.edu; Carla Barbieri; Baggett, Annie; Erin Seekamp  
**Subject:** Re: Presentation on Agritourism for NCGA Committee 2014

Dear Susie,

Thanks for your email. Indeed that handouts you are just an outline of what we presented related to agritourism. It is usually understood that agritourism is a value-added enterprise of agriculture, thus associated with working agricultural operations that are actively engaged in agricultural production.

I also acknowledge that there are some questions, like yours, that escape from our general understanding as they relate to zoning; these have deeper and more extensive ramifications into county/city regulations and policy. Therefore, I would strongly suggest that you contact Annie Baggett, Agritourism office, NC Department of Agriculture and Consumer (cc'd by this email), for more details on this matter.

Thanks again for your email!

Carla

=====

Carla Barbieri, PhD  
 Associate Professor  
 Agritourism & Societal Well-being Lab  
 Lab: <http://www4.ncsu.edu/~cebarbie/>  
 Parks, Recreation & Tourism Management  
 North Carolina State University  
 3028D Biltmore Hall  
 Raleigh, NC 27695  
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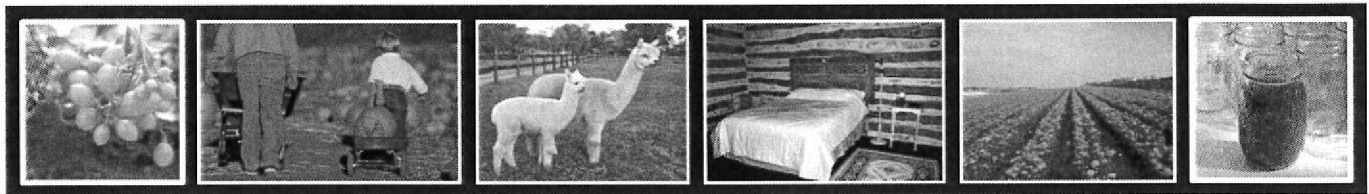
On Sat, Aug 27, 2016 at 11:23 AM, Susie Morris <SAMorris@cabarruscounty.us> wrote:

> Hi,  
 >  
 > My name is Susie Morris and I am the Planning and Zoning Manager for  
 > Cabarrus County. I have been conducting research on agritourism,  
 > specifically as it relates to "reception facilities" (mainly weddings)  
 > located on working farms.  
 >  
 >  
 >  
 > While conducting the research, I found your presentation to the NCGA  
 > Committee on Cultural and Natural Resources dated March 20, 2014. On  
 > page three of the slides, it defines agritourism (USDA Census) as



> income from recreational services such as hunting, fishing, farm or  
 > wine tours, hay rides, etc. The next slide further defines the  
 > meaning and provides examples and has the “no” symbol under the heading of contact and “passive”  
 > and lists weddings as an example. At the end of that same slide, it  
 > says “visiting a working farm or other agricultural setting for  
 > recreation or education purposes” at the bottom.  
 > [http://www.ncleg.net/documentsites/committees/BCCI-6615/March%2020,%20](http://www.ncleg.net/documentsites/committees/BCCI-6615/March%2020,%202014/2.%20NCSU_Agritourism_2014.pdf)  
 > [2014/2.%20NCSU\\_Agritourism\\_2014.pdf](http://www.ncleg.net/documentsites/committees/BCCI-6615/March%2020,%202014/2.%20NCSU_Agritourism_2014.pdf)  
 >  
 >  
 >  
 > Based on discussions that I have had with the School of Government  
 > related to agritourism, agritourism would only be exempt from zoning  
 > if it was a value added product and if it is directly related to the  
 > workings of the farm. For example, if you could pick the use up and  
 > it could be conducted on another property, it is not directly tied to  
 > the farm and it would not qualify as agritourism.  
 >  
 >  
 >  
 > Based on your presentation, I would like to ask your opinion. Would  
 > you tend to agree with the interpretation that if an activity is not  
 > directly related to the workings of the farm, that it would not be  
 > considered agritourism? I understand that the presentation more than  
 > likely was only an outline for a much bigger discussion, but it leads  
 > me to believe that the passive component/wedding facilities may have  
 > been addressed as part of the discussion and that it would not be considered agritourism.  
 >  
 >  
 >  
 > Thanking you in advance for any thoughts you may offer,  
 >  
 > Susie  
 >  
 >  
 >  
 > Susie Morris, AICP, CFM, CZO  
 >  
 > Planning and Zoning Manager  
 >  
 > 704.920.2858  
 >  
 >  
 >  
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 > North Carolina Public Records Law and may be disclosed to third parties.

# Agritourism: What does it mean for Rural NC?



Carla Barbieri, Ph.D.

Agritourism & Societal Wellbeing



Duarte Morais, Ph.D.

People-First Tourism

Parks, Recreation & Tourism Management  
North Carolina State University

**NC STATE UNIVERSITY**

North Carolina General Assembly  
Committee on Cultural and Natural Resources  
March 20<sup>th</sup>, 2014



## The Meaning of Agritourism

Agritourism (USDA Census)

Income from recreational services such as hunting, fishing, farm or wine tours, hay rides, etc.



Myron Smith  
Benson (NC)

Agritourism in NC (2002-2007)

- Slight decrease in the number of agritourism farms (from 622 to 602 farms)
- Significant increase in agritourism-related income (from \$1.9 to \$12.7 M)

USDA: NASS (2013)



## The Meaning of Agritourism

1. Setting —
  - ✓ Working farm
  - ✗ Non-working farm (e.g., abandoned mill)
2. Contact —
  - ✓ Direct (e.g., learning to grow mushrooms)
  - ✓ Indirect (e.g., eating farm products)
  - ✗ Passive (e.g., wedding)
3. Experience —
  - ✓ Authentic (e.g., U-pick)
  - ✓ Staged (e.g., winery tours)
4. Activity —
  - ✓ Recreation (e.g., rides)
  - ✓ Education (e.g., workshops)

Visiting a working farm or other agricultural setting for recreation or education purposes.

**Susie Morris**

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**From:** Susie Morris  
**Sent:** Thursday, February 18, 2016 12:37 PM  
**To:** Susie Morris  
**Subject:** FW: NC Farm Act - S638

---

**From:** Owens, David W. [mailto:owens@sog.unc.edu]  
**Sent:** Tuesday, September 17, 2013 11:26 AM  
**To:** Susie Morris  
**Cc:** Lovelady, Adam  
**Subject:** RE: NC Farm Act - S638

I agree. The exact bounds of what can legitimately be included within "agritourism" is nebulous at best. Many (probably most) counties contend the activity must have some farm-related connection, such as corn mazes, hay rides, wine tasting rooms at a vineyard, and the like. The fact that commercial activity unrelated to a farm is conducted on a farm property does not exempt it from zoning absent that agricultural dimension (after all, it is agritourism, not tourism, that is included in the zoning exemption).

**David W. Owens**

Gladys H. Coates Professor of Public Law and Government  
 School of Government  
 The University of North Carolina at Chapel Hill  
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 Chapel Hill, N.C. 27599-3330

Phone: 919-966-4208  
 Fax: 919-962-0654  
 Email: [owens@sog.unc.edu](mailto:owens@sog.unc.edu)



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**From:** Lovelady, Adam  
**Sent:** Tuesday, September 17, 2013 11:16 AM  
**To:** Susie Morris  
**Cc:** Owens, David W.  
**Subject:** RE: NC Farm Act - S638

Susie,

You are correct. GS 143-138(b4) exempts certain farm buildings from compliance with the NC State Building Code, not from local zoning regulation. The newly added subsection (6) clarifies that farm buildings that are used for certain public or private events are still exempt from the building code.

As you are well aware, bona fide farm activities (including agri-tourism) are exempt from county zoning. It sounds like you and the owner have established that the wedding/reception facility is a commercial activity, not a bona fide farm activity.

Hope you are well also.

-Adam

Adam Lovelady

Assistant Professor of Public Law and Government  
School of Government

University of North Carolina at Chapel Hill

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@adamlovelady

[www.sog.unc.edu](http://www.sog.unc.edu)

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---

**From:** Susie Morris [<mailto:SAMorris@cabarruscounty.us>]

**Sent:** Tuesday, September 17, 2013 9:16 AM

**To:** Lovelady, Adam; Owens, David W.

**Subject:** FW: NC Farm Act - S638

Good morning,

Hope that all is well!

I have a situation in unincorporated Cabarrus where a working farm owner decided to open a wedding/reception facility that has been operating for about the last year and half. Here is the web site: <http://www.thefarmatbrushharbor.com/> They have no zoning permits for the use or building permits for the use of the barn as assembly now.

I have talked with the property owner multiple times at length about this and the fact that this is not considered a value added activity. It is a commercial activity. Since he is listed on the Agritourism page for the state, he initially thought he was exempt. He agreed that he was not and our ordinance requires a CUP for this type of business to occur in the zoning district that he is in. He said that he would pursue the CUP, but has not and sent me the email below instead.

I just want to make sure that I understand this section of the SL and that I am not missing something. As I read it, this language is for a building code exemption for the building. Is that correct?

Thanking you in advance for your help!

Susie

**From:** Thomas Porter [<mailto:teporter02@aol.com>]

**Sent:** Monday, September 09, 2013 1:00 PM

**To:** Susie Morris

**Subject:** Fwd: NC Farm Act - S638

Hi Susie,

Sorry it took me so long to get back to you



I had some research done and just got the language back last week  
This should give you what you need to confirm us exempt  
Thank You,  
Tommy

Tommy,

Attached the entire document we spoke of Friday, this is the statement referenced.

Page 13

6) A "farm building" shall not lose its status as a farm building because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

---

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# Memo

**To:** Cabarrus County Planning and Zoning Commission  
**From:** Jason Earliwine, Senior Planner  
**CC:** File  
**Date:** 10/5/2016  
**Re:** CUSE2016-00001 PSNC Natural Gas Regulating Station

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The Public Service Company of North Carolina, Inc. (PSNC) submitted a Conditional Use Permit Application for a Public Service Facility. The applicant is requesting additional time to react to comments provided by staff. The request is that the case be tabled until the November Planning and Zoning Commission meeting.

The Planning and Zoning Commission will need to vote to table the request at the meeting since it has already been noticed.