

**Town of Cornish, New Hampshire  
Zoning Board of Adjustment  
Case 21-03  
October 4, 2021**

The Cornish Zoning Board of Adjustment met on Monday, October 4, 2021, at 6:30 pm in the Cornish Town Hall. Present were Caroline Storrs, Chair, Bill Balch, Jason Bourne, Michael Fuerst, and Stuart Hodgeman. Karim Chichakly and Kate Freeland attended remotely due the Covid-19 situation and in accordance with the provisions RSA 91-A:2.III.

Also in attendance were Sandy Carpentier and Al Rossow, petitioners; Tom Hildreth, attorney for the petitioners; Gwyn Gallagher and Heather Gallagher; and Laura Hartz, attorney for the Gallaghers; Heidi Jaarsma, recording secretary; Peter Burling, Mark Charles, Marie DeRusha, John Drye, Larry Duval, George Edson, Jill Edson, Bill Gallagher, Josephine Jewell, Don LeClair, Leah Jewell LeClair, Bill Lipfert, Brian Meyette, Colleen O'Neill, Wayne Parry, Kathryn Patterson, Anita Jewell Porter, Thomas Porter, Jan Ranney, Robert Rice, Tim Schad, Troy Simino, Fred Sullivan, Shirley Sullivan, and Ginny Wood.

Caroline Storrs called the meeting to order at 6:31 PM.

Caroline Storrs designated Bill Balch, Jason Bourne, Karim Chichakly, and Stuart Hodgeman as voting members for Case 21-03. Kate Freeland and Michael Fuerst recused themselves. Ms. Storrs reviewed the appeal process. She stated that when an appeal is made to the Board of Adjustment under the appeal provision, the Board must apply the strict letter of the law in exactly the same way that a building inspector must. It cannot alter the Ordinance and map or waive any restrictions under the guise of interpreting the law. The Board of Adjustment must act within the limits of the ordinance and the map. Legislative acts are beyond the scope of the Board's authority. Ms. Storrs then reviewed the appeal process for tonight's meeting. First, fees from the applicant will be collected and the case will be announced by the clerk. The petitioner will then present their case, and testimony will be heard by those in favor of the appeal. Then there will be a rebuttal by the opposition. The Board may ask questions at any time and all questions from the public must be directed at the chairperson. Ms. Storrs announced that sometimes a decision can be made the evening of the hearing, or a future date may be set to meet if advice from counsel is required.

**Case 21-03**

Bill Balch collected the fees and announced the case concerning a request by Al Rossow and Sandy Carpentier for an Appeal from an Administrative Decision concerning Article IV, Section 4.1 of the Zoning Ordinance. The applicants appeal the August 23, 2021, Selectboard decision to grant a certificate of zoning compliance to Many Summers Farm and Gallagher Tree Service for property located on Clark Camp Road, Map 10, Lots 55 & 55A, in the Rural Zone.

Peter Burling raised a point of order and asked when interested parties may speak. Caroline Storrs stated that interested parties would be able to speak after testimony had been heard.

Tom Hildreth of McLane Middleton, representing Sandy Carpentier and Al Rossow of 111 Clark Camp Road, stated that the issue before the Board was very narrow: the applicants are appealing the 8/23/2021 certificate of zoning compliance granted by the Cornish Board of Selectmen to allow Gallagher Tree Service to operate at Clark Camp Road property located across from the petitioner's property. Mr. Hildreth told the Board that the documentation accompanying the application for the certificate of zoning compliance characterized the proposed use as an ancillary agricultural one. Mr. Hildreth maintained that the proposed use by Gallagher Tree Service would be a commercial one. Mr. Hildreth described the proposed use by Gallagher Tree Service on Clark Camp Road as a contractor's storage yard, which he stated would not be allowed in the Rural Zone without a variance. The petitioners are requesting that the Board reverse the decision to grant the certificate of zoning compliance at least insofar as it relates to Gallagher Tree Service. Mr. Hildreth continued that he had process concerns about the Selectboard decision. He stated the importance of putting these concerns on the record in case of any future appeal. The meeting tonight, according to Mr. Hildreth, was the first time that the petitioners had the chance to raise their concerns with a tribunal fully impaneled to hear them. Ms. Carpentier and Mr. Rossow had been able to meet with the Selectboard only once. At the meeting, only two Selectmen had been present, and Dillon Gallagher, a relative of Gwyn Gallagher, had recused himself. Ms. Carpentier and Mr. Rossow reported that the other selectman present had been dismissive, insulting, and, in their opinion, had already made up his mind. Mr. Hildreth sent at least four written communications to the Selectboard asking for an audience regarding this subject. Neither Mr. Hildreth nor the petitioners received a response to the requests to meet with the Selectboard. Mr. Hildreth stated that the matter before the Zoning Board today was the first time that the petitioner's concerns had been publicly heard. Mr. Hildreth added that he did not know the Gallaghers well, but spoke to their outstanding reputation in the community as stewards of the land and as farmers. The petitioners, Mr. Hildreth stated, have no dispute with that assessment. The issue was not a popularity contest, he continued, but a matter of whether the zoning ordinance permits the Gallagher's proposed use of the property.

Mr. Hildreth informed to the Board that Ms. Carpentier and Mr. Rossow bought their home at 111 Clark Camp Road, a 19<sup>th</sup> century residence with eight acres in 2016. Initially, the home had been used as a summer residence but in recent years has been used as a full-time residence. The main house of the property is roughly parallel to Clark Camp Road and sits directly across from the driveway to the Clark Camp Road property, Mr. Hildreth submitted an aerial map of the property and surrounding area to the Board. Ms. Carpentier and Mr. Rossow, Mr. Hildreth stated, were before the Board because of the real concerns of how the proposed operation in the rural residential district could adversely affect their property. Mr. Hildreth reported that a realtor had told the petitioners that a contractor's storage yard with a clearly commercial use could decrease the value of their property by \$100,000.

Mr. Hildreth read eleven uses allowed in the rural residential district given in the Cornish Zoning Ordinance. The Gallaghers, he stated, have maintained that Gallagher Tree Service is an agricultural use and that a number of pieces of equipment owned by the tree service are also used by Many Summers Farm. The Gallagher's proposal for the Clark Camp Road property is that Gallagher Tree Service will move all, or at least some, of its equipment to the building located

across the street from the Carpentier/Rossow residence. Mr. Hildreth maintained that every morning and every evening, employees would collect the equipment from the property across the street and added that there could be repeated trips during the day to retrieve necessary equipment. At the end of the day, Mr. Hildreth continued, all of the equipment used by Many Summers Farm and Gallagher Tree Service would be returned to the site and left there for the night. The use, Mr. Hildreth continued, was the quintessential description of a contractor's storage yard. Mr. Hildreth read a definition of a contractor's storage yard. The Gallaghers had persuaded the Selectboard that Gallagher Tree Service was an agricultural use, but Mr. Hildreth posited that the proposed use was a commercial one. Mr. Hildreth surmised that there were many questions that the Selectboard should have asked the Gallaghers, but had not. Mr. Hildreth noted from the Gallagher Tree Service website that the business coordinates and contracts carpenters, masons, irrigation installers, and maintenance providers. He hypothesized that at some point those contractors could become employees of Gallagher Tree Service. Mr. Hildreth said that the Selectboard had not asked if any training would occur at the Clark Camp Road property. He noted that the Gallagher Tree Service website states that no trace is left behind on jobs, and suggested that resultant material could be stockpiled at the Clark Camp Road site.

Mr. Hildreth noted that the structure located on the Clark Camp Road property is a former vehicle repair garage and stated that the Selectboard had not asked whether equipment maintenance would occur in the garage. Mr. Hildreth stated that maintenance of equipment related to Many Summers Farm would not be a problem; the petitioners were concerned about offsite third-party use. Mr. Hildreth maintained that use as a home occupation where there is a residence on the property would provide a natural governor to the use since a property owner would ensure that the use did not have an adverse effect, but, he added, there is no residence associated with this property. Mr. Hildreth stated that since the Selectboard had not asked the questions, there was no way to be sure what other uses the Gallaghers would propose for the property.

Mr. Hildreth read further from the Gallagher Tree Service website and questioned which activities listed on the site would occur on Clark Camp Road. He stated that the stump grinder was not included in the list of equipment provided to the Selectboard by the Gallagher's attorney. He questioned where material, such as chips, logs, and loam, might be stored on the site. He noted that pest management is listed on the website and added that there is a domestic water well on the property that serves the Carpentier/Rossow property. Mr. Hildreth questioned where material for fertilization and pesticide services would be stored. He continued that the hours of operation for Gallagher Tree Service were not known, nor was it known whether customers would be on site or what the number of vehicles would be. Mr. Hildreth suggested that the Selectboard should have asked what would be involved in the composting operation. Mr. Hildreth stated that it was unknown if measures would be taken for dust control. He posited that Clark Camp Road is currently overburdened by commercial activity, and asked further whether equipment would be idling on the Clark Camp Road property or if wood chippers would be operated on the property. Ms. Carpentier and Mr. Rossow, Mr. Hildreth reported, were concerned that the location of the house relative to the driveway would cause headlights to shine through their windows. Mr. Hildreth told the Board that he was providing this long list of speculative, rhetorical questions that were not asked because the Selectboard did not see it fit to invite the Ms. Carpentier and Mr. Rossow to gather their input. Regardless of the answers to all

of the questions, above, Mr. Hildreth maintained that the proposed use is a commercial one that is not permitted in the Rural Zone. He stated that Gallagher Tree Service cannot be an agricultural use simply because one of their customers is a farm. Mr. Hildreth presumed that Gallagher Tree Service currently operates out of the Gallagher's home.

In closing Mr. Hildreth noted that the lots were deficient in size, totaling less than the 5-acre minimum. Ms. Storrs stated that there had been a 2-acre lot provision in the Zoning Ordinance which has since been repealed. Al Rossow said that there remained an unanswered question about whether the snow plows would be leaving or entering the yard during nighttime hours. Mr. Rossow stated that no boundaries or limits on the operation were considered by the Selectboard and added that this was not a zone where that use is allowed.

Caroline Storrs asked if there were any questions from the Board for Mr. Hildreth. Stuart Hodgeman asked Mr. Hildreth to review the petitioners' interactions with the Selectboard. Mr. Hildreth reported that when the property went up for sale, Ms. Carpentier and Mr. Rossow had heard that a commercial use may have been proposed for the property and had asked for an audience with the Selectboard. Dillon Gallagher had recused himself from that meeting, so Ms. Carpentier and Mr. Rossow met with a single Selectboard member, who, in their words, did not even give them the time of day. Stuart Hodgeman asked if any decision had been made at that meeting. Mr. Hildreth reported that no decision had come of the meeting and added that despite multiple requests, Ms. Carpentier and Mr. Rossow had not been able to meet with the Selectboard. Caroline Storrs asked Mr. Hildreth if he considered Gallagher Tree Service agricultural. Mr. Hildreth replied that Gallagher Tree Service would not be an agricultural use by itself unless it operated a woodlot or tree farm. The fact that the business handled plant material and trees did not make them agricultural use when that work is performed for other customers in other locations; Gallagher Tree Service is just a service provider. If the Gallaghers, he continued, were mining oil, it would not be agricultural. The proposed hemlock grove would be an agricultural use, Mr. Hildreth stated, but added that the storage of equipment for off-site use is not an agricultural use.

Jason Bourne said that the definition of agriculture in NH state statute includes references to forestry and trees and tree products. He asked Mr. Hildreth how forestry fit into the state's definition of agriculture. Mr. Hildreth stated that the statute is a land use definition: it is how the property is used. The stock for sale would be consistent with agriculture, in Mr. Hildreth's opinion. The contractor's storage yard component, the coming and going of employees and equipment, would not be not agriculture. Mr. Hildreth stated that landscaping, stonework, and snow plowing, are way beyond agriculture and that even though some small components may fit the definition of agriculture, the vast majority do not.

Caroline Storrs asked if anyone from the audience would like to speak in favor of the appeal by Ms. Carpentier and Mr. Rossow. There was no comment from the audience.

Ms. Storrs asked to hear testimony from the Gallaghers. Laura Hartz of Orr and Reno, attorney for the Gallaghers, stated that she would like to make some factual clarifications. The first concern was that of process. Ms. Hartz relayed that Gwyn and Heather Gallagher submitted a letter dated June 12, 2021, to the Selectboard requesting a certificate of zoning compliance. Ms.

Hartz added that Ms. Carpentier and Mr. Rossow had hired Gallagher Tree Service to remove several large trees that faced the garage building. The topic of the proposed use was discussed at six subsequent selectboard meetings (June 12, 18, 2; July 9, 30; August 13,16), and there had been ample opportunity for the Ms. Carpentier and Mr. Rossow to participate in the public process. Caroline Storrs asked if the meeting minutes had been made available to the public. Ms. Hartz says that she did not know when the minutes were distributed, but that the petitioners had attended the June 28 meeting and there had been meetings every Monday and Friday thereafter until the certificate had been issued. Ms. Hartz directed the board to previous submissions and asserted that the fundamental misunderstanding was whether the property would be used by Gallagher Tree Service or Many Summers Farm. Ms. Hartz stated that the purchase and sales agreement was for Many Summers Farm and Gwyn and Heather Gallagher, personally. The USDA is providing financing for the acquisition of the property, which is a demonstration of how the property use is classified under USDA's thinking. Ms. Hartz presented a PowerPoint presentation that described the Many Summers Farm and Gallagher Tree Service with information about the Gallaghers. The presentation outlined the proposed uses of the Clark Camp Road property. The presentation included photographs of the Clark Camp Road property and a layout of the use of the property as proposed by the Gallaghers. Ms. Hartz included a list of uses proposed by the Gallagher, hay, sugarbush, hemlock nursery, compost, storage of farm and arborist equipment, and aligned each one with the Cornish Ordinance and RSA 21:34-a. Ms. Hartz showed a picture of what she described as a typical contractor's yard with offices and outside storage of equipment and reiterated that the proposal of Many Summers Farm was not a contractors storage yard. Ms. Hartz pointed out that the principal use for property is hay and maple, with 2.5 and 2 acres dedicated to each, respectively. The remaining .3 acres of the property contains the garage structure. The garage structure will provide covered hay storage on the second floor. The first floor will provide storage of some arborist equipment and farming equipment such as dump trucks, tractors, plows. The barn structure will provide covered storage. Ms. Hartz asserted that the petitioners were asking the Selectboard to regulate what goes on in a private barn.

Ms. Hartz stated that the principal permitted use of the property is agriculture. Gwyn and Heather Gallagher had reached out to Ms. Carpentier and Mr. Rossow through a letter explaining the proposed use. After further communication, the Gallaghers offered to move the driveway and install a vegetative screen as a visual buffer. After that offer, Ms. Carpentier and Mr. Rossow provided the Gallaghers with seventeen further conditions. Ms. Hartz stated that this represented an overreach. Any expansion or change of use or a building permit would require site plan review, and Ms. Hartz maintained that nothing in the proposal had triggered that level of control and regulation. A lingering question, Ms. Hartz continued, was what will property look like if Selectboard's decision is upheld. Ms. Hartz asserted that the property would look the same or better. The land would be improved, the dilapidated existing building would be repaired. Caroline Storrs reminded Ms. Hartz that the Board cannot legislate new uses. Ms. Hartz read aloud and submitted a letter from the former New Hampshire Commissioner of Agriculture, Steve Taylor, in support of the Gallaghers. Mr. Taylor stated that the proposed uses clearly fall within the definition of RSA 24:34-a. Ms. Hartz offered NH RSA 672:1, which states that "agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers";

and NH RSA 674:32-a which states that if agriculture is not explicitly addressed with regard to any zoning district, “such operations shall be deemed to be permitted”.

Karim Chichakly thanked Ms. Hartz for the presentation. He stated that there was no question that the farm equipment was agricultural and asked what proportion of the equipment on the premises would belong to the tree service. Mr. Gallagher stated that Gallagher Tree Service planned to store two bucket trucks, a chip truck, a backyard lift, two dump trucks, a small stump grinder, and two chippers. Karim Chichakly asked if all the equipment would fit inside the building. Gwyn Gallagher replied that the equipment would be stored inside the building and added that if the company ever grew, a building permit would trigger site plan review. Mr. Gallagher also stated that some of the tree equipment will be used in the sugarbush on the property. Wood chips will be used for compost. Caroline Storrs read a section of the August 12, 2021, letter from the Gallaghers to the Board of Selectmen which listed a skid steer, utility trailer, and several snow plows. Mr. Gallagher affirmed that those pieces of equipment belonged to Gallagher Tree Service and would be stored in the existing building.

Caroline Storrs asked Ms. Hartz if, hypothetically, the Gallaghers had approached the Selectboard for a Zoning Permit for Gallagher Tree Service, what advice would she have given the Selectboard. Ms. Hartz said that she would have looked very carefully at 21:34-a.II.11. Without the compost, cultivation of hemlocks, or the sugarbush, she would want to know more about what is stored onsite. Karim Chichakly asked what portion of the business comprised those activities. Ms. Hartz suggested reframing the question as what portion of the property will be dedicated to those activities. Parts of Gallagher Tree Services will be located there. Gallagher Tree Service will lease a portion of the land from Many Summers Farm for the hemlock nursery. Mr. Chichakly objected Ms. Hartz’s rewording the question. Mr. Chichakly stated that the equipment in the barn that is part of the tree service is definitely not agriculture and asserted that the point was the degree to which Gallagher Tree Service will be operating equipment out of the barn. Mr. Chichakly asked for a description of the activity of Many Summers Farm on the property. Gwyn Gallagher stated that Many Summers Farm will use the property for composting, tree farming, hay, and maple. He informed the Board that both businesses, Many Summers Farm and Gallagher Tree Service had started in 1999 with very little equipment and time was spent mostly on the farm. Now that the tree service had been built up to a small sustainable level, the Gallaghers have more time to put into the farm. Composting is a joint venture between the farm and the tree service for both materials and equipment. Neither party has sufficient equipment to operate on their own, so they work together. The tree service, Mr. Gallagher continued, has a significant focus on horticulture and perhaps would have been better named as a horticultural service. Mr. Gallagher stated that the tree service name was more focused on marketing. Gallagher Tree Service proposes to use the property for the hemlock nursery, joint compost, and maple sugaring. Mr. Gallagher stated his aim to get away from snowplowing, and informed the Board that he currently has three clients. He envisions maple increasing which will reduce plowing. Tree service labor is currently used for hay production and will be used for maple production. Many Summers Farm and Gallagher Tree Service share land, equipment, and labor.

Karim Chichakly asked about traffic in and out of the property for offsite work. Gwyn Gallagher stated that currently the building is in need of repair. The Gallagher’s initial plan is to use the

structure on the property initially to store the bucket trucks, the lift, and the chip truck. Mr. Gallagher underscored the importance of having the lift undercover for safety concerns regarding ice and snow buildup on the boom. Mr. Gallagher stated that the frequency of equipment retrieval would be dependent on work of the day. In the wintertime, Gallagher Tree Service does a lot of small-scale woodlot improvement where all work and disposal happen onsite. Winter pruning of orchards likewise leaves material onsite. Mr. Gallagher asserted that the traffic impact would be minimal under either scenario. During the summer months, Mr. Gallagher explained the equipment with undercover requirements would be at Clark Camp Road. The Gallagher Tree Service office would remain at its current location on Paget Road. Mr. Gallagher added that Gallagher Tree Service employees also perform agricultural labor at the Paget Road farm location. At a busy time in the summer, Mr. Gallagher suggested that the Clark Camp property could see a morning pickup and afternoon drop off of equipment and that individual vehicle trips could increase by three. Mr. Gallagher added that there are well over one hundred vehicles travelling Clark Camp Road every day.

Bill Balch said that he understood that the equipment would not be stored outside. Gwyn Gallagher said that was the intention. Mr. Balch asked if equipment would be stored outside during the day. Mr. Gallagher said that equipment might be pulled out and put in the parking area, but that no equipment would be stored outside overnight.

Caroline Storrs asked if any abutters would like to speak in favor of the Gallaghers.

Anita Jewell Porter asked to make one clarification to Mr. Hildreth's presentation. She stated that the Carpentier/Rossow property no longer received water service from the shared well. Their residence is served by a well that was installed two owners prior. Her father, who had owned the Clark Camp Road property in question, had tested the water, had voluntarily cleaned it, and had ensured that any contamination has been resolved. Ms. Porter stated that there is currently no contamination. Her father, Milt Jewell died six years ago, and her mother had wanted to sell the property five years ago. Ms. Porter had approached Mr. Rossow, who had asked what could happen on the property. Ms. Porter relayed to Mr. Rossow that any prospective buyer would have to go to the selectboard to see what could be done. She informed the Mr. Rossow that since the property was being used as a repair garage, her understanding was that that commercial use of the property could be continued. Ms. Porter reported that Mr. Rossow had responded that he would see her in court. Ms. Porter's mother had decided not to sell at that time because her son, Max Jewell, needed the property for storage of tractor trailers, a use which continued until two months ago. The structure had been used to store all the equipment that her father, Milt Jewell, had owned.

George Edson stated that he was an abutter to Al Rossow and Sandi Carpentier and spoke highly of them as neighbors. Looking at the application, Mr. Edson said he felt that the Town should support it since it is consistent with the master plan. He stated his support for the proposal by the Gallaghers.

Colleen O'Neill Salinger said that she owns land abutting the property. Sixteen years ago, she purchased twenty acres from Milt Jewell, and the property is currently in use for hay, maple, and also by snow mobilers for recreational use. She stated that she bought the land after it had been

subdivided into four building lots. Ms. O'Neill underscored the importance of agricultural land in a rural community in these times and appreciated that Gwyn and Heather Gallagher wanted to use the land for agricultural purposes. She believed that the proposed uses fell under the definition of agriculture and supported the decision made by the Selectboard and the Gallaghers' plan for the property.

Ms. Storrs opened the hearing to non-abutters.

Peter Burling stated that he lives on a farm in Cornish. The land in question has been a farm for two hundred years. Nothing he has heard described or ascribed to the proposed use was behavior that he would find surprising on a farm in New Hampshire: storing equipment, keeping animals, growing crops. Mr. Burling asserted that the activities which could possibly be described as commercial, were not. They were part of a New Hampshire farm and were consistent with Cornish values. Mr. Burling continued that despite the joy of fighting over definitions and pondering hypothetical land uses, the proposed use is exactly consistent with an agricultural use of the property. He asked that the minute not become the frustration of the reality.

Troy Simino said that he completely agreed with Peter Burling. The question was not dissecting the pedantic facts. He asked, rhetorically, if the proposed use was agricultural and answered that the USDA says it is agriculture. Steve Taylor says it is agriculture. All activities proposed were agricultural per the State and the USDA and the Cornish Zoning Regulations.

Fred Sullivan said that he was a farmer and not a public speaker. He is eighty-three years old and has lived in Cornish for eighty of those years. He loves this town and thinks it loves him too. Had a dairy farm on East Road and their business on the farm was agriculture. They started with five cows and two horses. At the peak, they were milking one hundred fifty cows and had one hundred fifty replacement animals. Mr. Sullivan reiterated that he loves this town and is headed into his retirement years. He said that there was a lot of traffic and business on East Road when they were milking cows. Everyone in Cornish is a neighbor. There is almost no land in Cornish that the Sullivans have not used, and when they stopped using it, they left it better than they found it. Mr. Sullivan said that the land in question was some of the prime agricultural land in Cornish and that he was in favor of keeping the way it is now. All Cornish ordinances highlight agriculture and the proposed use keeps the land in agriculture. He implored Cornish to keep the land in agriculture. Mr. Sullivan said that he loved the land, loved Cornish and its people. He asked that the proposed agricultural use continue.

John Drye said that he owns some of what was Mr. Sullivan's land on East Road with only four cows and several horses. He said he would be proud to have the Gallaghers as a neighbors. He added that the Clark Camp property is currently run down and that he would like to see someone own it who would keep it up in agriculture and improve it. Mr. Drye also noted that Mr. Gallagher had offered to relocate the driveway for Ms. Carpentier and Mr. Rossow.

Kathi Patterson stated there is not anyone who is not for the Gallaghers and what they want to do. She continued that the semantics separating the trucks from the farm is wrong and encouraged the Board to let the farmer be the farmer.



Brian Meyette pointed out that per the initial presentation, Gallagher Tree Service goes elsewhere to do work. No one would question that a local farm like McNamara Farm was agriculture, and they take their equipment all over Cornish and Plainfield to do agriculture. Gallagher Tree Service is taking tree equipment out to do forestry work, which is part of agriculture.

Tim Schad stated that if the Gallaghers are allowed to have their business while not living offsite, the board will be setting a bad precedent for all businesses.

Marie DeRusha read an email, from Jim Fitch in support of Gwyn and Heather Gallagher. Mr. Fitch stated that the land had been used by a trucking company for several decades and did not understand why it was a surprise that it will be used for a commercial business. Mr. Fitch said that it would be a threat to the community if neighbors had the powers to control what other people are doing on their property as long as it is within the zoning laws. Mr. Fitch strongly felt what the Gallaghers propose will not have a significant impact on their neighbors. Jim and Sue Fitch strongly supported the Gallagher's proposal.

Jan Ranney spoke in support of the Gallaghers. She stated that she was the listing agent for the Jewells, who own the Clark Camp Road property. She has lived in Cornish for forty-nine years and loves Cornish. She asserted that she was not at the hearing about this sale. She maintained that the property would be sold, but if it were not sold it to the Gallaghers, it could be sold as two separate house lots. She also wanted to clear up that the shared well has been severed and closed off. The Carpentier/Rossow property does possess well rights; however, there is a drilled well on the Rossow property. Ms. Ranney continued that soil tests were clean and there has been a clean water test on the Jewell property. The garage was a commercial site for many years for truck repair and sales. Through the years the Jewells have continued to use the garage for equipment storage. There is a large commercial trailer parked in the field. Commercial use has been continuous. Caroline Storrs cited case law about continuous uses which required evidence of income from the property.

Leah Jewell Leclair stated that in addition to the trucking, there had been a farm on the property for many years.

Josephine Jewell said that when she lived in the house, the noise across the road was greater than anything the Gallaghers were proposing. She added that the Ms. Carpentier and Mr. Rossow had the chance to buy the property.

Caroline Storrs asked Mr. Hildreth if he would like to make a rebuttal.

Tom Hildreth stated that ownership is certainly one way to protect property rights. However, property rights can also be protected through the zoning ordinance. He stated that Jim Fitch's letter had made his case by recognizing the business as a commercial one. Mr. Burling, Mr. Hildreth noted, does not go through the community offering commercial services to others. The petitioners, Mr. Hildreth stated, have no problem with the proposed agricultural uses such as hay, maple, composting, and tree nursery. Mr. Hildreth asserted that the essence of the use by

Gallagher Tree Service was a contractor's storage yard. He added that the Board never received an answer about how much Gallagher Tree Service Equipment is used by Many Summers Farm.

Mr. Hildreth reported that Ms. Hartz had stated, with a lot of hand waiving, that she did not think any of Mr. Hildreth's hypothetical problems would take place on Many Summers Farm. He added that the proposal to move the driveway was part of confidential settlement discussion. Both parties had signed an agreement that the proposed settlement would not be discussed if the talks were unsuccessful. Mr. Hildreth maintained that the Gallaghers' breach of the confidential settlement discussions opened the door to further discussion. He stated that petitioners had wanted the Gallaghers to put their commitments in writing as part of those discussions. Mr. Hildreth implored the Board to address the incorrect decision which allowed an unpermitted use in the rural zone. He said that Laura Hartz had mentioned six meetings with the Selectboard, but the Ms. Carpentier and Mr. Rossow were never informed of the meetings. Mr. Hildreth added that he had submitted a 91-A request to the town of Cornish in July and was not provided any information about the meetings with the Selectboard in June.

Mr. Hildreth asserted that with regard to Steve Taylor's letter, the Board has no idea what Gallaghers told him, and Mr. Taylor had not had the opportunity to hear the petitioners' rebuttal or concerns. Mr. Hildreth reviewed his questions surrounding the proposed use. He still did not know whether equipment would be repaired and maintained on site, whether there would be storage of fuel, pesticides, or chemicals. He reiterated that there is a deeded easement to the well on the Jewell property. In reference to farms in New Hampshire, Mr. Hildreth posited that it was simply not the case that everything a farmer did off their property was agriculture. Mr. Hildreth stated that his clients were present today because there is a zoning ordinance that protects their and everyone else's rights. He addressed the nighttime hours of snowplowing. In closing, Mr. Hildreth reiterated that Mr. Gallagher had not been able to give a clear answer about the activity in and out of the site. Mr. Gallagher objected to the characterization. Mr. Hildreth asked Mr. Rossow if he had anything to offer.

Al Rossow stated that he was eighty-eight old and would not get the chance to live forty years in Cornish, which he regrets. He did hope and has confidence that his wife, Sandi, and her grandchildren would have the opportunity to live in Cornish for some time. Mr. Rossow stated that he would like to correct a couple of things. He maintained that the sketch submitted by the Gallaghers left out the fact that the road exiting the lot directly faces his house. With respect to the process, Mr. Rossow said that there may have been six meetings in June, but Mr. Rossow had heard about them through the grapevine. When Mr. Rossow had attended, there was one selectman at the meeting who gave him and his wife no information, answers, or even the time of day. Mr. Rossow reported that the Selectboard member was rude. The Rossows were given no opportunity to ask questions. Mr. Rossow addressed Ms. Hartz and told her that the trees that were cut down has nothing to do with lights from the garage building, but were cut for the septic system. He wanted to know if there would be trucks parked across the street and was shocked to find that there were five or six pieces of equipment proposed. Mr. Rossow stated that he found it hard to believe that the one or two trucks used in the course of the day would not require other equipment to be taken out of the building. Also of importance, Mr. Rossow continued, the pictures that counsel for the Gallaghers had showed of land and buildings did not show how the existing exit faced his house. According to Mr. Rossow, the presentation gave the impression of

what is to be, but not of what is. He added that he and his wife had tried to negotiate with the Gallaghers, but those negotiations had fallen apart. In conclusion, Mr. Rossow stated that no one would want to experience lights from the driveway in their residence.

Ms. Storrs offered Ms. Hartz the chance to respond.

Ms. Hartz began that obviously, there were differences between the parties and added that they did try to work those differences out. Ms. Hartz appreciated that Mr. Hildreth had called the appeal a narrow issue and asked the Board to look to the language of the ordinance and the law.

Ms. Hartz reviewed the definition of a farm under RSA 21:34-a. She highlighted section I: “‘farm’ means any land, building or structures on or in which agriculture and farming activities are conducted...and shall include the residence.” Ms. Hartz stated that the farm does not necessarily have to include a residence.

Ms. Hartz highlighted RSA 21:34.II.a-b and stated that the words agriculture and farming mean “all operations or activities of the farm, including any practice” and “activity incident to, ancillary to, or in conjunction with such farming operations, including but not restricted to” is considered agriculture. She stated that her reading of that statute was if you have the principal use of agriculture, any another use which is in conjunction with or ancillary to that use is also considered agriculture.

Ms. Hartz also read RSA 672:1.III.b: “Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the state... Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers” Ms. Hartz stated that her reading of the statute was that it would be unreasonable for the Board to say that the proposed use by the Gallaghers was not agriculture; to do so would be against the statute and State law.

Karim Chichakly stated that no one was against agriculture and added that the Board was only discussing what is allowed and what is not allowed by the zoning ordinance. He said that two things, the farm and the tree service, make it a little confusing. The definition of agriculture, Mr. Chichakly asserted, very specifically excludes tree service. However, he continued, the activities that make the case more in favor of the tree service is that they are doing maple, growing trees, and making compost. The use of the equipment on the property is for agriculture. Mr. Chichakly asked if the use of the equipment off the property was ancillary or not.

Jason Bourne asked Mr. Chichakly if the concern with RSA 21:34-a was because the activity did not take place on the site of the farm. Karim Chichakly said incidental or in conjunction with did not apply to activity off the farm. Jason Bourne suggested that references in the statute to forestry or lumbering did not pertain to activity on the farm. Karim Chichakly said that tree service was not related to the activity on the farm and that landscaping someone else’s land was not a farming activity. Mr. Chichakly said that clearing woodlots was interesting because it was a forestry activity.

Ms. Hartz asked to speak. Ms. Storrs informed her that now was not the time to speak. Ms. Hartz said that it was the public hearing. Ms. Storrs informed Ms. Hartz that the Board was having a discussion among members first. Ms. Hartz said that she had wanted to offer a definition of horticulture that she felt would be helpful. Karim Chichakly stated that the discussion was closed, and Ms. Storrs agreed. Gwyn Gallagher asked if he would be able to speak again. Ms. Storrs explained to Mr. Gallagher that the Board follows the process of closing the discussion and does not take public comment after that closing. Mr. Gallagher said he never heard Ms. Storrs close the discussion. Ms. Storrs announced that the meeting was closed and that the Board would go into fact finding, a summary, and would decide how to proceed. Ms. Storrs added that the Board may ask questions and that those in attendance were welcome to stay. Mr. Gallagher asked if Ms. Storrs normally announced when she was closing the public discussion. Ms. Storrs stated that she did omit the announcement and apologized. Mr. Chichakly added that at the beginning of the meeting Ms. Storrs had announced that after rebuttal, the public discussion would be closed.

Mr. Chichakly said that he did not find the offsite work incidental to the farm although it was fair to store the equipment used for the onsite work on the site. Jason Bourne asked Mr. Chichakly if the confusion came from the fact that the equipment was used for both the tree service and the farm. Mr. Chichakly stated that the two were intertwined, which complicated the matter. Caroline Storrs said the issue was how much was related to the tree service and how much was related to the farming and made a suggestion that the Board seek legal counsel. Karim Chichakly agreed. Stuart Hodgeman and Bill Balch also agreed. Bill Balch asked if gasoline would be stored on the property. Gwyn Gallagher asked if he could answer the question. Ms. Storrs indicated that he could, and Mr. Gallagher stated that any farm has fuel for tractors, etc. Mr. Balch asked if there would be a skid tank. Mr. Gallagher said that there would not be. Ms. Storrs said that there was some vagueness in the ordinance. Mr. Balch said that they should make a list of questions for counsel. Ms. Storrs asked if the Selectboard had consulted town counsel. If so, the Board will engage separate counsel.

Karim Chichakly made a motion to continue the meeting to November 1, 2021, after the board had met with counsel. Stuart Hodgeman seconded the motion, and the motion carried 5-0.

#### Approval of Minutes

Stuart Hodgeman made a motion to approve the minutes June 7, 2021, minutes as presented. Bill Balch seconded the motion, and the vote of the Board was in the affirmative.

Caroline Storrs circulated proposed rules of procedure with application forms. The Board will review the draft rules of procedure on October 13, 2021, at 6:30 PM at the Cornish Town Offices.

Jason Bourne made a motion to adjourn. Stuart Hodgeman seconded the motion, and the vote of the Board was in the affirmative. The meeting was adjourned at 9:40 PM.

Respectfully submitted,  
Heidi M. Jaarsma

