

**Town of Cornish, New Hampshire  
Zoning Board of Adjustment  
Case 22-01  
January 11, 2022**

The Cornish Zoning Board of Adjustment met on Tuesday, January 11, 2022, at 6:30 pm at the Cornish Town Hall. Present were Caroline Storrs, Chair, Bill Balch, and Jason Bourne. Karim Chichakly, Kate Freeland, and Stuart Hodgeman attended remotely due to the Covid-19 situation and in accordance with the provisions RSA 91-A:2.III.

Also in attendance were Al Rossow and Sandra Carpentier, petitioners, Tom Hildreth, attorney for the petitioners; Gwyn Gallagher and Heather Gallagher, Laura Hartz and Jeremy Eggleton (via zoom), attorneys for the Gallaghers; Everett Cass, Marie DeRusha, Bill Gallagher, Dillon Gallagher, Don LeClair, Lea LeClair, Kathi Patterson, Anita Porter, Jan Ranney, Troy Simino; and Heidi Jaarsma, recording secretary.

Caroline Storrs called the meeting to order at 6:42 PM. Ms. Storrs introduced the members of the Zoning Board and notified Mr. Hildreth of a correction to the fees.

**Case 22-01**

Caroline Storrs opened continuance of the appeal of administrative decision by Al Rossow and Sandra Carpentier. Petitioners appealed the administrative decision of the Selectboard to grant a certificate of zoning compliance to Many Summers Farm and Gallagher Tree Service for Map 10, Lots 55 and 55A.<sup>1</sup> Case 22-01 is a rehearing of Case 23-01, granted on December 14, 2021. The Case 22-01 was opened on January 10, 2022, and continued to January 11, 2022.

Karim Chichakly asked Gwyn Gallagher to clarify the record from October 4, 2021, by asking him to confirm that the number of vehicles per day could increase by three. Mr. Gallagher confirmed the statement and added that the vehicle trips would occur between 7:00 and 7:30AM and 3:00 and 4:00 PM. Karim Chichakly asked, on average, in the summer how many pieces of tree equipment would be travelling to locations other than Many Summers Farm. Mr. Gallagher said that equipment is often left on the job site or on Paget Road. The Jewell site would be used for storage of the more expensive equipment. Mr. Gallagher added that there were currently some tractors stored in the barn. He continued that there could be an increase of zero vehicles on many days and three on some days. Mr. Gallagher said that a long period of time would be required to average the zero to three trips and suggested 1.25 as an average. Mr. Chichakly asked if it was true that he would be adding one-two employees. Mr. Gallagher said that future employees would be used by both Gallagher Tree Service and Many Summers Farm, but that there were no immediate hiring plans.

Jason Bourne told the Gallaghers that he had heard testimony that the labor force and equipment were shared. He asked whether Gallagher Tree Service, Many Summers Farm, or both were the

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<sup>1</sup> Map 10, Lots 55 and 55A are described throughout the proceedings as the "Jewell property" or "Jewell lot". This nomenclature does not necessarily reflect current ownership of the property.

employers of the labor force. Mr., Gallagher responded the currently Gallagher Tree Service is the employer. Mr. Bourne asked if the equipment was shared in utilization or ownership. Mr. Gallagher replied that the farm owns the baler, tedder, and rake. Gallagher tree service owns the tractors, which made sense vis a vis depreciation. Jason Bourne asked if Gallagher Tree Service employees are paid by Gallagher Tree Service when they are working on the farm. Gwyn Gallagher answered in the affirmative.

Jason Bourne asked Mr. Gallagher if Gallagher Tree Service planted trees. Jason Bourne said that he had looking into how tree work might fit into agriculture and asked if there were a department of agriculture licensing component to planting live trees. Mr. Gallagher said there was not, and Mr. Bourne thanked him for the clarification.

Caroline Storrs asked how much of the time the employees are working on the farm and how much time they are working offsite. Mr. Gallagher replied that the answer varied seasonally. During hay season, employees were working in the fields. In the winter, employees would be working on the farm's and in other woodlots. Mr. Gallagher said the Gallagher Tree Service works on a number of farms other than Many Summers Farm. Ms. Storrs asked how much time the workers spent on Mr. Gallagher's farm. Gwyn Gallagher replied a number of weeks per year: a solid week in the sugarbush and a significant amount of timing fencing leased fields and home property. Mr. Gallagher predicted an increase of on farm work in the coming year given the new farm. He said he did not have an exact number regarding how many days employees were on the farm. Caroline Storrs stated that the predominance of employee work was for other clients. Gwyn Gallagher replied in the affirmative, but stated that many of those other clients are other farms.

Ms. Storrs opened the hearing to the applicant and those in favor of the appeal. Tom Hildreth reviewed the most recent filing by Ms. Hartz. Exhibit A, he stated, was an unsigned June 14, 2021, letter which was not marked received by the BOS. Mr. Hildreth stated that this letter had not been included in 91-A filing and that it was revelatory. He quoted the statement by Mr. Gallagher that the use was not a straightforward analysis. Secondly, through the letter Mr. Hildreth said he had gained some insight into Gallagher Tree Service customers: Saint Gaudens National Historic Site, Kendall, and local municipalities. He said that he did not think that a cemetery qualified as a farm. The third thing Mr. Hildreth said that he had from the letter was the statement, "it's not an active truck shop and nothing has changed inside since we attempted to purchase the property over ten years ago." Mr. Hildreth underscored that the Gallaghers had stated there was no active business operation on the property in ten years. Mr. Hildreth asserted that the use was legacy family asset and added that the petitioners had testified that the property was essentially vacant.

Mr. Hildreth suggested a hypothetical paradigm where the Gallaghers own a farm and instead of hiring a contractor, they purchase a stump grinder. They store it in the garage, which the neighbor asks to borrow. The Gallaghers grind the stump and return it to their home. Over time, Gallaghers accumulate equipment and offer their landscaping and tree services to residential commercial and municipal clients in every corner of the Upper Valley. Mr. Hildreth noted that the Gallagher Tree Service website does not include the word farm.

Mr. Hildreth stated that Al Rossow and Sandra Carpentier wanted to make clear that they love farms and agriculture; they garden, raise vegetables and have no opposition to farms. Mr. Hildreth reported that he himself is grateful to live next to a 200-acre apple orchard. He added that the people who signed the petition and spoke at the hearings love agriculture and the Gallaghers, which is all well and good but not germane to the issue. Mr. Hildreth described a typical contractor's storage yard. He added that Mr. Gallagher had stated that he was currently using Jewell property for auxiliary storage and has not relocated all of the Gallagher Tree Service Equipment to the location. Mr. Hildreth said that he did not know if that was an interim or an indefinite decision. Previous testimony shows that the Gallaghers intend to bring all of the Gallagher Tree Service equipment to the site, and they have a licensed right to do so under the Board of Selectmen's decision.

Mr. Hildreth discussed Exhibit B of Ms. Hartz' filing, a letter to the Board Selectmen stating that Gallagher tree service prunes and services trees and provides landscaping services. He noted that during the hearing process, the Gallaghers have not mentioned landscaping and have solely focused on the tree aspect of the business.

Mr. Hildreth showed a picture of the barn on taken from the Rossow/Carpentier property which showed the tree equipment and barn completely visible through the trees. He stated that it did not matter what was being done with the equipment offsite; the impact was the frequency of moving the equipment on and off the property. He stated that if the use was permitted, the Gallaghers would have no need to show that the barn was not visible from abutters' property. Mr. Hildreth suggested that nothing in the certificate of zoning compliance regulated that number of employees or expansion of Gallagher Tree Service.

Mr. Hildreth applauded Laura Hartz' January 10, 2022, presentation and described it as outstanding. He added that Ms. Hartz had made a good argument with the materials she has to work with, but that he does not agree with the conclusion. Mr. Hildreth stated that he read in Mr. Hartz' filing that the Board of Selectmen had met six times over the summer to discuss the certificate of zoning compliance, but the petitioners had not known about those meetings. Al Rossow and Sandra Carpentier had only attended one meeting, and at the meeting Selectman Lyly Parry had been dismissive, discourteous and did not give time of day. Tom Hildreth reported that he had written four communications to the Board of Selectmen requesting notification of agenda. The Selectboard did not notice any of the interested parties in spite of being asked to do so. Per Mr. Hildreth, although the Selectboard considered the decision over six meetings, they never considered the decision with the voice of a party that has a keen interest and oppositional point of view. Mr. Hildreth reported that his clients wanted to participate, but the Board had refused to let them or had chosen not to include them.

Mr. Hildreth stated that with regard to the legacy use of the Jewell property as a place for storing equipment, the testimony of Mrs. Porter was not germane to the analysis. The barn was used as a passive storage facility. Mr. Hildreth said that if all the Gallaghers wanted to do was access and store equipment, it would not be an issue because that would not be a continuation of any kind of active commercial use.

Mr. Hildreth concurred with Ms. Hartz that it is immaterial that the Gallaghers do not live on the property; however, he expressed a concern about the absence of someone to oversee the property on a regular basis.

Mr. Hildreth also noted that the paragraph on the petition submitted did not include taking equipment offsite for residential, commercial, and municipal uses.

Mr. Hildreth concluded with Steve Taylor's recent letter, Exhibit F in the January 10, 2022, filing. He asserted that all of Mr. Taylor's examples of agriculture involve a singular farmer, not a contractor. Mr. Hildreth closed by stating that the Gallaghers are using property as a contractor's storage yard to conduct a commercial operation that is not permitted in the rural zone in the absence of a variance and that the Selectmen's decision to the contrary should be reversed.

Al Rossow stated that based on the comments of a number of people at the meeting who were in attendance that night prior there is an idea that he and Sandy are anti-farm. He reported that during his teenage years, he spent several summers working on a farm, which was a great experience. There had been no running water, oil lighting, and a one-holer. When he had bought this farm, he was hard pressed to accept the concept that they are anti-farm. During the recession of the 1980s, he supplemented his income by giving lectures on Pepsi and the cola wars. He had worked for Pepsi and consulted for Coke. Doing so, he learned each story is worth a thousand years. He had grown up around the corner from the Chevy plant in Buffalo, where was no concept of zoning. There were three saloons across the street from the Chevy plant, and you shouldn't be standing in front of one of those saloons at closing time. Mr. Rossow suggested that maybe that was where developed a feeling for zoning, because there was not any. This discussion, Mr. Rossow stated, was all about zoning, not about being anti-farming: it is about continuing appropriate zoning, which means no cavalier situations in which abutters find out at a meeting like this from a paper written by the young lady to his left, that there were six meetings which they never heard about. He had heard through the grapevine, which is good in this town, that there was a meeting about the certificate of zoning compliance. He and his wife had invited themselves to regular meeting, and only Selectman was one available, with one recused. Mr. Baker not there. Not able to listen to their concerns about zoning. Situation in which they find themselves, it is all attributed to the one Selectman present because he and his wife never got to tell their story to the entire Board of Selectman. Mr. Rossow reiterated that he was not anti-farming, but very much pro-zoning.

Ms. Storrs gave an opportunity for those in opposition to the appeal to speak. Ms. Hartz stated she was glad to hear that the petitioners were not anti-farming and were pro-zoning. She said that the Gallaghers were pro-zoning too. Ms. Hartz said that she would like to make several clarifications. First, she heard Mr. Hildreth say that there had not been much talk about landscaping equipment, and that had been for good reason. She reported that Mr. Gallagher plans to reduce the scale of the landscaping and that no equipment typical of a landscaping operation, such as excavators, bulldozers, masonry equipment, or compactors, will be stored on the property, no. Not at property. Second, Ms. Hartz stated that the photograph that Mr. Hildreth had shown was a worst case scenario since it had been taken in winter. She also added that at least one of the vehicles shown in the photograph was a plumbing truck on-site to do

repairs to the barn. She noted that the other vehicles would be stored in the garage, but the building needs a lot of work.

Ms. Hartz referenced Steve Taylor's letter. Mr. Taylor, who had been Commissioner of Agriculture in the State of New Hampshire for twenty-five years, had been in attendance at the January 10, 2022, hearing. Ms. Hartz drew attention to the paragraph of Mr. Taylor's letter that discussed how farms in New Hampshire necessarily involve more than one piece of property. Mr. Taylor's most important point is due to the geography and topography and economics of land in our state, and the statute acknowledges that paradigm. She made reference to the section of the RSA 21:34-a.II(b), and stated that the list of terms, incident to, ancillary to, or in conjunction with, is a list of three items connected by 'or' a disjunctive conjunction. She asserted that the Gallaghers have produced evidence that the storage of the equipment is in conjunction with that piece of property.

Gwyn Gallagher spoke to the long, expensive process. He and Ms. Gallagher had a longstanding interest in property due to proximity to the Paget Road farm and the ability to store equipment. He stated that Mr. Hildreth had gone back to the June letter. Mr. Gallagher explained that at that point, he was starting from scratch, and when he had described the situation as tricky, he was just beginning the process. Mr. Gallagher stated that he had graduated from a college of agriculture and that the USDA considers horticulture, agriculture, and arboriculture as agriculture. The further he had researched, it became apparent that Gallagher Tree Service worked in conjunction with a farm, and that the forestry component of Gallagher Tree Service fit into agriculture. He said that Mr. Hildreth had gone on about landscaping and websites, but that the record showed that Mr. Gallagher was clear that he had done no large landscaping in over a decade. The business is focused on farm and trees. Mr. Gallagher acknowledged that many small outfits need a side hustle to keep farm going, such as working as a farrier, tree climbing, caring for a sugarbush, making hay. Mr. Gallagher made the distinction that a tractor does not stop being part of the farm equipment when it leaves the farm. Mr. Gallagher reported that he had researched places that he had worked over the past year, anticipating questions about onsite and offsite work: Paget Farm on Paget Road, managed timberland owned by the Coles; First Light Farm owned by David and Susan Haseman; Apple Barn, LLC, one of Gallagher Tree Service's largest clients. Mr. Gallagher continued that he has done a lot of work at Ms. Storrs' former home, helping the Andrews with permaculture, orchards. A lot of work a Langwood Farm in Cornish, which holds weddings as part of agriculture. His largest farm client is the Marsh Billings Rockefeller Farm. Gallagher Tree Service manages 3,000 acres of woodlot and 60 acres of hayfields and pastureland. It is a significant portion of income. The tree services spends a lot of time working on the Gap Road Farm owned by the Deweys, the Lukash Family Farm in Cornish, multiple locations of the McNamara, Rice's Dairy Farm performing tree work, Oxbow Farm in Brownsville, Stone Fence Farm, Austin Farm owned by the Burlings, the Bulkeley Estate, Taylor Farm, the Surenor Farm, the Freeman Farm, the St. Pierre Family Farm, the Philip Burling Farm, Many Summers Farm, Bascom Farm in Acworth, field management at Blow-Me-Down-Farm, the Save your Ass rescue farm in Acworth, and Luther Farm in Acworth. The tree services also works with the Sullivan County Farm in Unity to manage trees, consult and do tree work. In terms of offsite work, you can leave the farm, go to another farm, and you are performing agriculture. Mr. Gallagher reported that the vast majority of the tree service income, 40%, comes from Marsh Billings and Blow-Me-Down-Farm. Mr. Gallagher said that he

calculated the farm work offsite, without counting the work at many Summers Farm, to account for 70% of the offsite work and time. The remaining work includes municipal work, including work in Cornish cemeteries at a discounted rate. Mr. Gallagher stated that it does not make it non-farming when over 70% of the off-site work is on farms. Although the petitioners called their homestead a farm, Mr. Gallagher did not count any of the hobby farms where the tree service has worked. He stated that it was important for the Board to understand that the use is a combination of Many Summers Farm and Gallagher Tree Service. He added that Gallagher Tree Service may not be the best name, and that the businesses may be combined in the future. He also reiterated that his website was not current, the 2020 update had been done by a contracted company to streamline the web experience, but the information was outdated. Mr. Gallagher read aloud from a letter Peter and Jean Burling, on file. Mr. Gallagher stated that he could not find anything wrong with Burlings' letter. Ms. Burling, Mr. Gallagher stated, was a longstanding judge and Mr. Burling had been the town moderator who had appointed three of the members present to the Board. Mr. Gallagher asked the Board to listen to Steve Taylor, Jean Burling, and Peter Burling; and Gwyn Gallagher, Heather Gallagher, and Laura Hartz.

Ms. Storrs said that she would like to leave the meeting open in the case that the Board needed to ask questions or clarifications. Jason Bourne asked for clarification on the storage of equipment. He asked Mr. Gallagher if all the equipment would be contained in the garage building and if the building itself would impose some limit on amount of equipment. Gwyn Gallagher responded that if a company grew or bought more equipment would need to get building permit, which would trigger site plan review, which would give an avenue for the neighbors to give input.

Caroline Storrs stated that she was in favor of agriculture, but that is not the issue. Gwyn Gallagher said that no one had made that accusation. Ms. Storrs continued by saying that the Board takes the spirit and letter of the law very seriously. She asked Mr. Gallagher if Chippers or Asplundh wanted to establish a tree service in Cornish, she believed that the Board of Selectmen would struggle to find a place in the ordinance. Storrs said that if you take the impartial view of a tree service wanting all of their equipment, how would that not make it a contractor's storage yard. Gwyn Gallagher said that he did not want to know what a contractor's storage yard was because it was not in the ordinance and suggested leaving the whole concept out. Mr. Gallagher said that if a tree service comes to town, they would go to the Selectmen and propose the use. Gwyn Gallagher said that he had a farm and a tree service, and would like to purchase and farm this property. He stated that there happens to be a good sized dilapidated falling down building where he would like to store farm equipment and tree equipment. Mr. Gallagher stated that this summary described how the Selectboard came to their decision. If a tree service showed up to take an empty lot, pave a field, the Selectboard would not allow them to do it. Caroline Storrs told Mr. Gallagher that he had been asserting that a tree service was agriculture. Mr. Gallagher disagreed and said that what has been proposed to the Board of Selectmen is that the Gallaghers have a farm which is clearly established and a tree service that works in coordination with the farm. Mr. Gallagher said that Laura Hartz had made a clear distinction that one does not have to be ancillary; to the other they can work in conjunction. That is the distinction between Asplundh and Gwyn and Heather is that they have a farm. The difference between the Gallaghers and any other company coming in, the difference is how the property is used in total. Ms. Storrs said that she was struggling with the fact that the tree service is a service industry. She added that it was great to get a handle on how much working on other

farms was a part of business. She said that trucks were going in and out for off-site work. Gwyn Gallagher said that every farm has trucks going in and out. Ms. Storrs said that it was also a service. Mr. Gallagher responded that every farmer does that to cut hay: the equipment can leave, perform work at another agricultural location. Heather Gallagher described a local farm that performs a service to chop corn for another farm. The work is done offsite, the farmer gets paid. Caroline Storrs said that the farmer may have a contract to farm other property. Mr. Gallagher said that the farm provides a service by getting paid to chop corn for other farms because not every farm owns a million dollar chopper. Mr. Gallagher said that it is a service that is still within agriculture.

Caroline Storrs asked for findings of fact. Karim Chichakly suggested moving into summary. Ms. Storrs asked if there were any other comments from the public before the hearing was closed.

Jan Ranney said that the point is that Mr. Gallagher is an arborist. Ms. Ranney stated that Mr. Gallagher has an agricultural degree, and arborist qualifies him under agriculture.

Tom Hildreth addressed the dialogue between Mr. Gallagher and Caroline Storrs. He said that if Asplundh kept the existing sugarbush and or an apiary, they could qualify as agriculture per Mr. Gallagher's argument. Mr. Hildreth said that it gets back to the question of the tail and the dog where Asplundh would be the dog and the small amount of traditional agriculture would be the tail. Not sure if there is a basis for that.

### **Closed Discussion**

Jason Bourne summarized that although the Board had become tangled up about the amount of work done offsite and the percentage of time used offsite, the Board was in agreement that all of the work that both Gallagher Tree Service and Many Summers farm do on the property is agricultural work. He added that the Board seemed conflicted about the amount of time spent offsite and that members were struggling with the finding a consensus around whether a certain amount of offsite work disqualified the activity onsite. Stuart Hodgeman agreed with Mr. Bourne's statement and added that the issue was clearer given Mr. Gallagher's statements regarding the farm. Mr. Hodgeman said that the activity was farming and agriculture wherever Many Summers Farm and Gallagher Tree Service do it. Mr. Hodgeman reiterated that a percentage is not germane to decision. He concluded that both Many Summers Farm and Gallagher Tree Service are integral to the operation of the farm and are agriculture wherever they are. Bill Balch said one of the biggest questions is how the operation will affect abutters. He gave the examples of headlights in the window and work performed outside. Mr. Balch said that he was satisfied that if work was done in the building, it would not affect abutters.

Given that the impact described by Mr. Gallagher seemed fairly low, Mr. Chichakly said that he agreed completely with Mr. Balch. Mr. Chichakly was, however, concerned that there had been no requirement for site plan review: the use proposed by Many Summers Farm and Gallagher Tree Service was a change of use, and the abutters should have had the opportunity to participate in the site plan review process. He added that while all the work offsite is not strictly agricultural use, the Master Plan is explicit about supporting and developing the agrarian

economy. Gallagher Tree Service working in conjunction with and in support of the Many Summers Farm is fairly important in that regard, concluded Mr. Chichakly.

The Board discussed the level of traffic that would be expected at a five-acre farm. Mr. Bourne said that a farm could also have equipment going in and out during the day. Chichakly said that the level of impact of the traffic made him consider the use a tree service, and he compared the parcel to a sixty-acre farm he had owned. Mr. Chichakly reiterated that the tree service would be a change of use. Stuart Hodgeman asked what the use would be changing from. Mr. Chichakly said that the level of impact had changed: even though it is supporting the farm, it is a tree service. Mr. Hodgeman asked Mr. Chichakly if the property would not be considered a farm when the trucks were parked on the property. Karim Chichakly stated that the tree service would be off the farm seventy percent of the time, and that was a high number. Karim Chichakly added that he believed the impact due to offsite work was not outside the realm of what could be acceptable, given that it the activity is in support the farm. Mr. Chichakly said that he was weighing the goal of the town, though not stated in the ordinance, to support the agrarian economy against the impact of what is happening on and off the lot and the impact of the traffic on the residence around the farm. Mr. Chichakly said that the level of traffic, at zero to three vehicles per day, in the summer is not what one would expect from a five acre farm. Stuart Hodgeman said that the statement was Mr. Chichakly's opinion and added that it was not based in fact. Mr. Chichakly said that it was a fact that he had a sixty acre farm and did not have that much traffic, and that was a fact. Caroline Storrs agreed. She said that she had tried to calculate how many maples were on the property, and she came up with 100-150 trees. She added that the little two acre hay lot could almost be mowed. Ms. Storrs stated that there is a huge discrepancy between what is proposed compared to what has been going on for the past years. She stated that the Rossows would be very much affected by the activity and that somehow a compromise would have to be worked out so that both sides could work together in harmony. Bill Balch said that one of addressing it could be redirecting the driveway. Karim Chichakly said that addressing the driveway could be done through site plan review. Karim Chichakly made a motion to uphold the Selectmen's decision about the zoning part, but to amend the decision to require site plan review. Caroline Storrs seconded the motion.

Jason Bourne asked the Board about the appeal of administrative decision. Karim Chichakly said that the Board could uphold it, reverse it, or modify it. Mr. Chichakly said that his motion would deny the appeal except for the development side of the decision and require site plan review. Jason Bourne asked Mr. Chichakly for clarification. Mr. Chichakly amended his motion to deny the appeal and modify the certificate of zoning compliance to require site plan review.

There was no further discussion on the motion. Caroline Storrs called for a vote, and the vote of the Board was 5-0 in the affirmative.



Tom Hildreth thanked the board members for their time dedication and thoroughness and added that the Board had come to a very considered decision. Laura Hartz also thanked members for the time.

Jason Bourne made a motion to adjourn. Bill Balch seconded the motion, and the vote of the Board was in the affirmative, 5-0.

Respectfully submitted,  
Heidi M. Jaarsma