



# WIND ON AGRICULTURAL LANDS LOCAL REGULATION



Massachusetts Farm Bureau  
Federation

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# HOME RULE

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- ***Home rule in Massachusetts is more than a strictly legal concept,***
- ***an understanding of it requires some familiarity with certain foundational legal provisions.***



# HOME RULE...continued

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- Two provisions in particular are key:
  - **Article 89 of the State Constitution—better known as the Home Rule Amendment and**
  - **a state statute known as the Home Rule Procedures Act**



# HOME RULE...continued

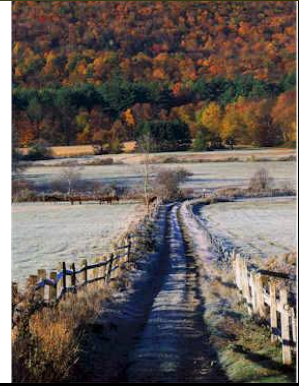
- The purpose of the Home Rule Amendment is, by its own terms is to..."grant and confirm to the people of every city and town the right of self-governance in local matters."



# HOME RULE...continued

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- Home Rule Limitation
  - Home Rule regulation may not be inconsistent with the [state] constitution or [the] laws” enacted by the state legislature.



# HOME RULE...continued

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Municipalities have broad powers to regulate for:

- protection of public health**
- morals**
- safety**
- general welfare**



# ZONING BYLAW REGULATION

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- Zoning Bylaw may regulate:
  - Use
  - Height
  - Set back distance



# BOARD OF HEALTH REGULATION

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- Board of Health may regulate for:
  - General safety
  - Noise



# CONSERVATION COMMISSION REGULATION

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**Conservation Commission has jurisdiction  
for activities:**

- Within wetland areas**
- Within 100 feet of wetland areas**
- Within 200 feet of rivers**

*Such distances may be increased by local regulation*



# **AGRICULTURAL EXEMPTION:ZONING**

## **GL c 40A sec 3**

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- **No zoning ordinance or by-law shall ...prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture; nor prohibit, or unreasonably regulate, or require a special permit for the use, expansion, or reconstruction of existing structures thereon for the primary purpose of agriculture, horticulture, floriculture, or viticulture... except that all such activities may be limited to parcels of more than five acres in area not zoned for agriculture, horticulture, floriculture, or viticulture.**



# BOARD OF HEALTH EXEMPTION

## GL c 111 sec125A

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...the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.



# WETLAND PROTECTION EXEMPTION

## GL c 131 sec 40

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The provisions of this section shall not apply to ... to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use...



# COURTS HAVE RULED

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Reasonable regulations may be imposed on new agricultural structures

- The regulations may not prohibit the agricultural activity
- Height and setback regulation may be reasonable





# COURTS HAVE RULED

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- Municipalities may not regulate the agricultural exemption of the Wetlands Protection Act





# OTHER CONCERNS

- MEPA**
- FAA**
- Regional Planning Commissions**



# Problem

## Wind Easement

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- Wind Easement Agreements have long term effects on land
- Effects COURTS HAVE RULED
  - Land use
  - Development
  - Value



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# Disclaimer

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