

Agribusiness - Agritourism
Thomas H. Miller Jr.
Rockingham County Attorney

What does 15.2-2288.6
mean to local government?

Agribusiness - Agritourism

What 15.2-2288.6
does **not** mean.

Agribusiness - Agritourism

It does not mean
you may as well
repeal your zoning ordinance

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§ 15.2-2288.6. Agricultural operations; local regulation of certain activities

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:

1. Agritourism activities as defined in § 3.2-6400;
2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;
3. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or
4. Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.

§ 15.2-2288.6. Agricultural operations; local regulation of certain activities

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1. **Agritourism activities** as defined in § 3.2-6400;
2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items **incidental** to the agricultural operation;
3. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or
4. Other activities or events that are **usual and customary** at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a **substantial impact** on the **health, safety, or general welfare of the public**.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the **sound generated by any activity** listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

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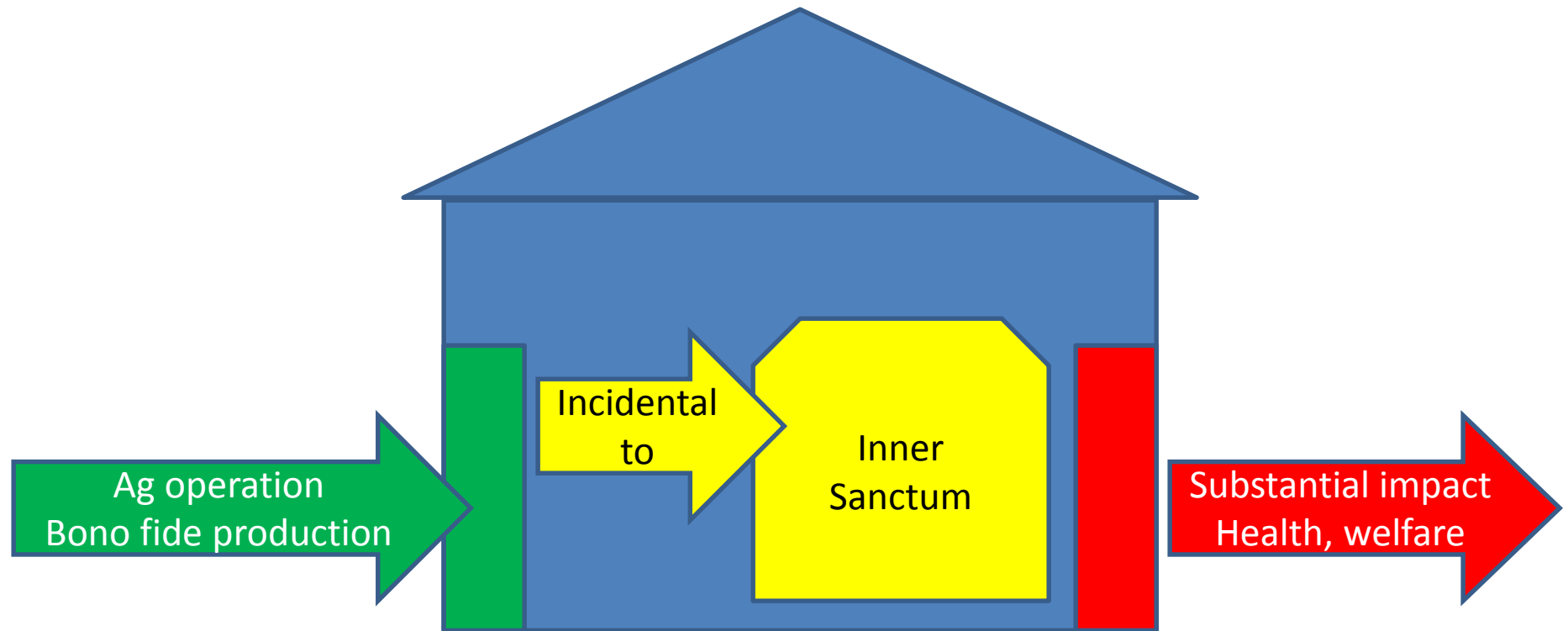
If a property owner is conducting an **agricultural operation** on her property,

then she **may conduct** certain **specified activities** of right,

so long as those activities **do not** have a **substantial impact**

on the **health, safety or general welfare** of other people and property owners.

The 2288.6 House



Terms to Define

- **agricultural operation** (and bona fide production)
- **substantial impact** on the health, safety, or general welfare of the public
- **Agritourism activities** as defined in § 3.2-6400
- **incidental to** the agricultural operation
- **usual and customary**
- **sound generated by any activity**

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4. Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

Agricultural operation

The term ***agricultural operation*** is understood by the Board of Supervisors to mean

**any operation devoted to the *bona fide production* of
crops, or animals, or fowl,**

including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products, and the production or harvest of products from silviculture activity.

Agricultural operations can only occur on a parcel located in one of the designated agricultural districts, or a parcel with a legal continuing pre-existing non-conforming agricultural use. Though often used in the singular, the phrase *agricultural operation* shall include an operation that has more than one qualifying activity. For example, land that is used in part for the production of crops, in part as pasture and in part for hay production, shall be considered an *agricultural operation*, including for the consideration of whether the operation satisfies the definition of *bona fide production*. This understanding of *agricultural operation* is **principally derived from Section 3.2-300 of the Code of Virginia** (1950).

§ 3.2-300. Definitions

"Agricultural operation" means

**any operation devoted to the *bona fide* production of
crops, or animals, or fowl**

including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

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The term *agricultural operation* is understood by the Board of Supervisors to mean any operation devoted to the *bona fide production* of crops, or animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products, and the production or harvest of products from

silviculture activity. ***Agricultural operations can only***

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continuing pre-existing non-conforming agricultural use. Though often used in the singular, the phrase *agricultural operation* shall include an operation that has more than one qualifying activity. For example, land that is used in part for the production of crops, in part as pasture and in part for hay production, shall be considered an *agricultural operation*, including for the consideration of whether the operation satisfies the definition of *bona fide production*. This understanding of *agricultural operation* is principally derived from Section 3.2-300 of the Code of Virginia (1950).

Terms to Define

- agricultural operation (and **bona fide production**)
- substantial impact on the health, safety, or general welfare of the public
- Agritourism activities as defined in § 3.2-6400
- incidental to the agricultural operation
- usual and customary
- sound generated by any activity

§ 3.2-300. Definitions

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means

any operation devoted to the ***bona fide production*** of

crops, or animals, or fowl

including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

Bona fide production

The term ***bona fide production*** is understood by the Board of Supervisors to mean:

- A. the *agricultural operation* **is the primary use on the land**. Factors such as the proportion of capital investment, operating expenses, labor, acreage, and similar considerations, allocated to agricultural activities, shall be taken into account when determining whether the *agricultural operation* is the primary land use, or to the contrary, is a secondary or incidental use. No specific proportion shall be considered conclusively dispositive of whether the *agricultural operation* is the primary land use. Rather, the analysis shall be a total facts and circumstances analysis. However, an *agricultural operation* may never be deemed the primary use on the land if a reasonable person could conclude that the *agricultural operation* exists for the purpose of establishing eligibility for exemption from local regulation under the Statute, and;
- B. the *agricultural operation* is managed in **good faith as a business activity**, and;
- C. the *agricultural operation* **qualifies for land use taxation** treatment, whether or not land use taxation treatment is applied for in any given calendar year.

Terms to Define

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or
4. Other activities or events that are usual and customary at Virginia agricultural operations.

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B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a **substantial impact** on the **health, safety, or general welfare of the public**.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

Substantial impact

The term ***substantial impact*** is understood by the Board of Supervisors to mean that **a land use** begun or proposed after July 1, 2014, in an agricultural district, or on land that is in agricultural use because of legal pre-existing non-conforming use rights, is **of such a nature as to change the character of the area** in the vicinity of the new land use **from** that of a **rural and agricultural area, to one that more resembles a business, commercial or industrial area**, as those terms are generally understood. Factors to be considered when determining whether a substantial impact will, or has, occurred include, but are not limited to, sight distance and traffic loading on publicly maintained roads, or privately maintained roads that are shared by others; adequate sewage disposal and drinking water ; artificial light emanating from the property in a manner not typical in agricultural or rural areas; volume and nature of sounds emanating from the property not typical in agricultural or rural areas; impact on the view of traditionally rural and agricultural landscapes seen by the public, including but not limited to, the type of structures utilized or to be utilized by the new land use. For example, a use or proposed use that would generate a need for a large parking area often filled with non-farm vehicles could constitute a *substantial impact* on an existing or future agritourism activity located on a nearby parcel, which agritourism activity is or will be partially dependent upon a view of traditionally rural and agricultural landscapes. Similarly, a new or proposed use that would cause sounds to emanate off property which are not *usual and customary* in *bona fide agricultural operations* are likely to be construed as having a *substantial impact* on the public at large. Sounds caused by farm equipment, farm machinery, animals, or other *usual and customary* activity on a *bona fide production, agricultural operation* shall never be construed as having a *substantial impact*.

Substantial impact

heart and soul

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Agritourism activities

The term *agritourism activity* is understood by the Board of Supervisors to mean 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, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an *agritourism activity* whether or not the participant paid to participate in the activity. The words “farm” and “ranch” shall be construed in a manner wholly consistent with the definition of *agricultural operation*. Both are understood to mean one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products. This understanding of *agritourism activity* and the words “farm” and “ranch” is principally derived from Section 3.2-6400 of the Code of Virginia (1950).

3.2-6400 Agritourism defined

"Agritourism activity" means 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, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

"Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.

Terms to Define

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Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

Incidental to

The term ***incidental*** is understood by the Board of Supervisors to mean an

event or activity

that happens or **occurs** as a

**minor part of, or subordinate to, or as a result of,
a primary event or activity;**

or as subordinate to, in conjunction with, or in addition to, the primary or regular activity, but is not the main activity; or is of secondary importance to, a minor accompaniment to, or naturally appertaining to, the main activity. For example, when the Statute provides that the sale of agricultural or agriculture-related products *incidental* to the *agricultural operation* may occur, it shall be interpreted to mean that the agricultural or agriculture-related products sold on a particular *agricultural operation* shall be a minor part of, or subordinate to, or a result of, that *agricultural operation*, or shall be subordinate to, or in conjunction with, the *agricultural operation*, but not the main activity on that property; or it shall be in addition to, naturally appertaining to, or a minor accompaniment to that particular *agricultural operation*. The sale of agricultural or agriculture-related products *incidental* to an *agricultural operation* shall not be construed to mean that products which might be considered agricultural in nature, but were produced somewhere other than as a part of the *agricultural operation* in question, may be sold from the property used for that *agricultural operation*.

Incidental to

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C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

Usual and customary

The term *usual and customary* is understood by the Board of Supervisors to mean those activities or events permitted of right in the A-1 or the A-2 zoning district, as applicable.

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Sounds generated

(from the substantial impact paragraph)

The term *substantial impact* is understood by the Board of Supervisors to mean that a land use begun or proposed after July 1, 2014, in an agricultural district, or on land that is in agricultural use because of legal pre-existing non-conforming use rights, is of such a nature as to change the character of the area in the vicinity of the new land use from that of a rural and agricultural area, to one that more resembles a business, commercial or industrial area, as those terms are generally understood. Factors to be considered when determining whether a substantial impact will, or has, occurred include, but are not limited to, sight distance and traffic loading on publicly maintained roads, or privately maintained roads that are shared by others; adequate sewage disposal and drinking water; artificial light emanating from the property in a manner not typical in agricultural or rural areas; volume and nature of sounds emanating from the property not typical in agricultural or rural areas; impact on the view of traditionally rural and agricultural landscapes seen by the public, including but not limited to, the type of structures utilized or to be utilized by the new land use. For example, a use or proposed use that would generate a need for a large parking area often filled with non-farm vehicles could constitute a *substantial impact* on an existing or future agritourism activity located on a nearby parcel, which agritourism activity is or will be partially dependent upon a view of traditionally rural and agricultural landscapes. **Similarly, a new or proposed use that would cause sounds to emanate off property which are not usual and customary in bona fide agricultural operations are likely to be construed as having a substantial impact on the public at large. Sounds caused by farm equipment, farm machinery, animals, or other usual and customary activity on a bona fide production, agricultural operation shall never be construed as having a substantial impact.**

The Board's Intro

1. The Board of Supervisors is wholeheartedly in favor of the **mutually supportive** and compatible **objectives** of **maintaining the rural** and agricultural **nature of agriculturally** zoned districts, **and facilitating** the efforts of owners of *bona fide agricultural operations* in striving to **make their farms successful and prosperous**. **Successful and prosperous farms are essential to maintaining rural lands.**
2. The Board of Supervisors recognizes that the owners of *bona fide agricultural operations* need to explore creative **alternative income** generators that are *incidental to*, **arise out of**, and enhance, their **traditional farming** operations.
3. The Board of Supervisors also recognizes that the creative alternative income generators on *agricultural operations* **must not** be permitted to **significantly impact** the agricultural and **rural character** of the area, other agricultural operations, **or creative alternatives** for supplemental income generation on other agricultural operations.
4. The Board of Supervisors further recognizes its **duty to protect** County **taxpayers** from being **inequitably burdened** in the provision of **infrastructure and services**.