

H.128 Testimony – Todd Heyman – Fat Sheep Farm & Cabins

Background

Testimony of Todd Heyman

Accessory On-Farm Business Amendment, H.128

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Background

- Since 2016, developed 5 cabin farm-stay business just outside Woodstock
- Milk sheep and make cheese; Support Jersey cow dairy down the road with blended cheese
- Grow vegetables, berries, grain corn, wine grapes coming soon; Mill polenta/corn meal
- Sell product in farmstand and to local restaurants; Used to sell at farmers markets/groceries

- 12 years working on farms (8 on my own) and a UVM Farmer Training Program Graduate
- 10 years working as a lawyer handling complex commercial litigation throughout the country
- Masters in Food and Agricultural Law, University of Arkansas (LLM); JD, Stanford Law School
- Board Member, Vermont Lodging Association, Legislative Committee
- Farm to Plate, Member on Policy Committee
- Member of Rural Vermont and NOFA-VT

- Selected as Vermont's best farm stay by Yankee Magazine
- Featured in Boston Globe, Travel & Leisure, Edible Vermont, Food & Wine, USA Today (soon)

- Obtained Act 250 permit and two jurisdictional opinions (at great cost)
- Successfully litigated an appeal against the NRB in Environmental Court
- Serve as a local resource to other farms regarding state permitting questions

- testified in **March of 2018** before Senate Ag Committee on the original AOFB bill and encouraged a modification of the relationship between Act 250 and AOFB's because it makes no sense to treat innovative accessory farm businesses that could help Act 250 preserve farmland like a Dollar General:

“H.663 fails to take into account state laws that make starting an accessory on-farm business challenging, particularly if it involves the development of part of the land on the property. Specifically, ... Act 250 ... can pose big challenges to developing these businesses, and **someone farming their land goes through the same process and is treated the same way as any other commercial development, even though accessory on-farm businesses further the goals of ... Act 250 ...**”

The nature of my business causes me to have a unique perspective on the relationship between Vermont's agricultural producers, agricultural processors, and Vermont's hospitality and tourism industries – both restaurants and hotels. Cheese producers worry about milk supply. Restaurants want to brand as farm to table. Lodging seeks ways to put heads in beds. Vermont wants more and longer tourist visits. All of this is related and Vermont has yet to recognize its potential!!!!

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Opening Considerations

- 1) There is no law this body can pass that will make traditional farming at a Vermont scale broadly competitive with out of state producers.
- 2) Active farmland and farmers are disappearing in Vermont and once farmland is lost to residential development, it is permanently irretrievable. Houses that don't get built can be built the following year. Farmland that becomes a series of residences is never available for farming again.
- 3) While current market conditions require innovative approaches to maintain farm viability with strong local branding and markets, diversification into accessory businesses and niche products, climate change may one day make Vermont farmland more economically viable as other farmland becomes unworkable.
- 4) Act 250's farmland mitigation has failed to slow the disappearance of active farming, no matter how many acres are set aside for mitigation purposes.
- 5) While I certainly commend the goals of Act 250, in the agricultural context, it is getting in its own way of achieving its goal of preserving farmland by driving up costs to diversify, and deterring innovation before it gets off the ground. The NRB's apparent support for H.128 shows it too sees a H.128 as support, not a sacrifice.

H.128 Supports Act 250's Misson of Farmland Preservation—It Does Not Sacrifice It

H.128 proposes to both provide more regulatory clarity, on the ground consistency in application, and more flexibility to farms seeking to stay viable in today's competitive national and international marketplace. Losing Vermont's knowledgeable agricultural workforce and viable productive farmland is short-sighted and must be stopped. As our climate changes, we will need not just the farmland but the knowledgeable workforce that will develop innovative ways to keep it in production.

There would be many ways to facilitate accessory on-farm businesses but this bill represents a broad consensus on the "possible" after many stakeholder meetings held by the AAFM with input from the NRB. I could envision bolder proposals or other ways to ease the regulatory process. But I support this bill because we do not have time to waste. Economic pressures are driving farmers and farmland out of existence. I see more work being necessary down the line but this is a good first step.

A farmer's own assessment of the most viable business model to keep land in production is likely the most informed opinion one can get on that particular land's productive capacity. In today's world, that might involve more processing and retailing from the farm and its neighboring farms; selling merchandise to promote the farm's niche product, brand, and presence in the community; or hosting educational events that connect people with Vermont agriculture and the particular land that sustains the farm.

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These kinds of enterprises not only help keep a knowledgeable workforce and sustain active farming (as opposed to just open farmland), but they also further solidify the Vermont agricultural brand. In my business, we welcome many guests from all over the world, but we receive most of our guests from our neighboring states where wealthier populations reside. They not only can get exposure to a sheep dairy, cheese making, crop production and processing on our own farm, but we also steer them to support other farms directly as well as restaurants that we know support our local farms. They also help support the general stores and other local treasures that could not stay open without Vermont's tourism economy.

But most importantly, our small operation is a brand ambassador for Vermont agriculture and cheese. Our guests return to New York, Massachusetts, and the rest of New England convinced that Vermont does agriculture right and its products are worthy of a price premium.

Academics studies, Vermont's own Farm to Plate report, and common sense tells you that when people get more exposure to farming, they are more willing to pay price premiums for what they see (correctly) as a lot of hard work for a high-quality product and an activity worth supporting.

Our business is living proof of what could (and should) exist more readily here. Italy is proof of what happens when the government commits to a strategy that supports accessory farm businesses. Not only do more people work in agriculture, and more small family farms survive, but these operations create a brand for Italian exports to its wealthier neighbors. Italian "agriturismo" is a proven method to keep land in active production (not just open) and keep the people knowledgeable and innovating for our farming futures.

Agritourism is popular not just with visitors but also Vermonters. It creates community activities and offers economic and entertainment opportunities in rural towns. There is great demand for it. We get lots of visits from Chittenden County, and our locals enjoy similar accessory businesses such as Fable Farm's Thursday night dinners and lots of events and activities at Billings Farm.

More Specific Issues We Could Talk Further About:

- 1) **H.128 would eliminate the Act 250 deterrent:** I am in a no-zoning town so I did not benefit from the original AOFB law. The state currently treats my business virtually identically to a Dollar General in terms of permitting. I estimate I spent about 20k on Act 250 permitting and I did much of the work myself. More importantly, we almost did not buy this old defunct dairy farm because of the uncertainty surrounding Act 250—the deal actually died for several months because of it. I am also familiar with several farmers who abandoned ideas simply at the prospect of going through Act 250—something which doesn't show up in the NRB stat sheets when they talk about how few projects are denied a permit. H. 128 would have spared me these costs and delays, and there might be more farm businesses in my community now.
- 2) **Why there is a need for more consistency and clarity:** There is significant uncertainty and inconsistency in Act 250 enforcement. Its decentralized structure without statewide oversight leads to radically different outcomes which cannot be justified by the facts on the ground. Moreover, the Districts themselves are often unorganized and past decisions and

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proceedings are often lost or hard to retrieve in order to ensure consistent application of the law. These larger issues obviously affect all commercial development and there are encouraging signs that fixes are in the works but this hits hard on farmers trying to navigate the process and there are several instances of radically unfair differential treatment.

- 3) **What would help Vermont agriculture even more?** This bill definitely will help farmers willing to diversify and innovate, and allow them to purchase product from neighboring farms so long as they produce the majority of the farm products sold on the farm. If the goal is to help all Vermont agriculture, I would recommend modifying the definition of “principally produced” to require that the majority of product come from local farms within a certain mile radius (whether in Vermont, NH, or NY so the law is constitutional) and simply require that the farm with the accessory business produce a product featured in the offering. The current requirement limits collaboration between farms and forecloses possible new markets. The truth is that many multigenerational Vermont farmers have no interest in developing any sort of accessory business but they would be willing to sell product to them. Look at how many farms sold product to Philo Ridge Farm’s restaurant even though those farms would never open a restaurant. Why do we care whether the majority of the product came from the farm where the accessory business is at or came from the farm down the road so long as both farms are substantial agricultural producers? I like to use the example of maple ice cream made with 20% maple syrup and 80% milk. The dairy farm can open an ice cream stand but the syrup producer across the street cannot. What’s the point? The NRB itself has allowed farms to create a formal organization to work cooperatively in isolated instances, like the Fable Farm Collective which pools product from several area farms, to meet the “principally produced” definition of 50% from the farm, but this model could be codified into law easily and it would allow farmers who will never start an accessory business to sell more product to the accessory businesses.
- 4) **Working with market forces saves more farmland:** One of the benefits of H.128 is that it enables farmland preservation at no cost to the taxpayer and helps promote long term viability of agricultural businesses. The market forces are real and powerful. Mitigation is currently done on project sites where nobody farms. I would suggest permit fees going to funds to buy development rights of productive farmland already in existence. The farms that are surviving right now are surviving for a reason. It would be great to “mitigate” by preserving what already works in addition to just setting aside land that is unlikely to ever be farmed even if left open.
- 5) **The Italian Model of Agritourism is Based on Lodging and Restaurants**—the foundation of this model is hospitality: lodging and dining. But it also creates opportunities for farms that cannot or do not want to do either. Those farms can simply offer tours, tastings, workshops, etc. But visitors to these farms can sleep and/or eat at the farms and then enjoy what other area farms have to offer. Vermont has so far shown resistance to the idea of restaurants on farms, at least based on the committee hearings I have attended. Much of the misgivings about this concept are misplaced. It is difficult to imagine how better to convince people of the value of local agriculture than letting them see the farm while they enjoy its bounty. That idea would help Vermont tourism and agriculture—both priorities in Vermont’s comprehensive economic development plan.