TESTIMONY OF TODD HEYMAN, FAT SHEEP FARM & CABINS

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At the outset, let me thank the Committee for giving me the time to explain what has been an especially expensive and unfair problem I have been facing for years now. On my small, diversified farm with dairy sheep, hens, berries, and vegetables, I rent five small cabins that are a single lodging facility in the eyes of the Vermont government and in functional operation. They have one public health license, one Act 250 permit, one public building permit, one well and wastewater permit, one connection to the grid, one well, one septic system, and one parking area. What they don't have is one roof, even though they are close enough that I could connect the roofs if I wanted to make them uglier in order to solve my current use problem. Current use defines dwellings by roofs. They do this not because there is anything special about a roof as compared to a connection to the grid or a septic system, and not because the word roof appears anywhere in the statute or the regulations or even the handbook. They do this because it is what they can see on google earth when trying to enforce the rules of the program because they lack the resources or interest in actually examining development on a case by case basis—at least for dwellings.

As a result, my five cabins require a 10 acre pull out. This is five times as much as my house even though the residential square footage is roughly the same. This also requires me to pull out land where my sheep graze and my crops grow because that is the only land around the cabins. 4 of those 10 acres have been permanently set aside for agriculture in the deed because Act 250 required it to mitigate for using some of the land to develop the cabins. And the buildings are being treated the same as single family dwellings even though Act 250 prohibits me from using the buildings as long term rentals. White's Dairy, a retail store in my town, has

two giant warehouses and a store and they only pull out an extra half an acre from the program. I have 20 times the land removed as White's Dairy even though my development is much smaller.

Even more ridiculous, I could have put a 100 room Hilton Hotel on my land and PVR would only make me pull out 2 acres. Why? It's just one roof. There are many inns in Vermont with greater occupancy potential than we have and they also have only two acres removed. We are not only farming our land and preserving it (in perpetuity in part because of Act 250) but we are active promoters of Vermont agriculture to thousands of visitors to Vermont every year. We steer our customers to support farmers and restaurants that support farmers, helping keep Vermont's struggling agriculture afloat. And despite our ambassador-like role to the agricultural economy, our crop land and grazing land is taxed at full value as if we put a Dollar General on the growing fields.

The current use statute divides the world into development of dwellings, broadly defined to include any building with a bed, and everything else. Other development, presumably commercial development, is supposed to be looked at by the Director to determine how much land was developed, or, in the words of the statute, how much of the land underwent a change "in use." In practice, every type of commercial development in Vermont gets to unenroll the land right up to its buildings because there are no rules regarding commercial development and PVR lacks the resources to go and examine each development in person. This leads lodging businesses like mine to be treated differently than every other form of commercial development in the state. This makes no sense and can be fixed easily.

Housesite is currently defined in 32 V.S.A. §2752(8): **"Housesite" means the two acres of land surrounding any house, mobile home or dwelling**. If you were to simply add the

words, **“except those licensed by the Department of Health as lodging facilities,”** the problem would go away and only those legitimate commercial lodging facilities (not every AirBnb) would be subject to the Director of PVR’s discretion on “change in use.” I understand and support the bill before you, allowing “on farm accessory” buildings to be exempt, but I worry that this type of change is too dramatic to be passed. I have listened to other legislators who do not think agritourism is worthy of promotion even though it helps preserve farmland and farms.

My proposed alternative merely treats commercial development the same for everyone, including lodging businesses, which, I think, is pretty clearly what the Legislature meant to do when enacting these provisions. Personal residences, even mobile homes, were supposed to require a 2 acre pull out and everything else was subject to PVR Director discretion.

I want to re-iterate that I am in favor of any change to the law that recognizes that my cabins sit right next to farm land that is actively in use; the five cabins themselves do not even take up 2 acres of land. That said, I have thought a lot about how to change the definition of housesite over the past few years. I think the simplest and easiest solution is to exclude dwellings "licensed by the Department of Health as lodging facilities."

As you wrestle with proposed changes, I want to remind you of this option because I keep coming back to it once I see the various problems with the other options. I don't have a lobby or an executive branch out there working to support my view of the problem so I want you to have a written record of why I think this is the simplest solution, consistent with the original purpose of the statute.

First, the legislature already made the decision to leave commercial development to the PVR Director. The 2 acre rule applies to dwellings and there is no other rule applying to any other type of development --- meaning everything from a retail store to shopping center, etc., is

simply left to the discretion of the Director. Discretion doesn't mean absolute freedom. It means the Director can allow as much or as little of the land to be enrolled, depending on the circumstances.

Second, while I appreciate PVR's concern that the use of the building could change and that might be difficult to enforce, such provisions already exist, for example, with farm buildings. If the use changes, the tax must be imposed for change in use. Enforcement is as simple as requiring the owner to submit a copy of the license every year. While this may seem like an administrative burden, it is no different than what happens already. When my farmland was farmland, I had to submit my receipts showing I sold more than $2,000 annually to PVR to prove my land was being farmed. I literally sent them copies of my invoice book. Certainly, the sending of a copy of the public health license is a no bigger burden on the taxpayer or PVR than copies of hundreds of invoices from restaurant sales.

Third, PVR has expressed concern about giving commercial dwellings favorable treatment over residential dwellings given there is a housing shortage. This just doesn't recognize reality. I would not have built these cabins to become a landlord. I built an agritourism business. And my business employs someone and provides her housing. Without my business here, my land would not be farmland, the job would not exist, the meals and rooms tax I generate for Vermont would not be there for you to spend, and there would be one less job in Vermont. And all the contractors I have hired and paid would not have been paid. The hostility to lodging businesses, over other types of businesses, is just inappropriate. The statute already gives commercial development different treatment and there is no reason to single out lodging for different treatment than every other kind of commercial development. If the Director

thinks the lodging constitutes an enormous change in use, she can require a much larger pull out, and if she thinks it barely changes the use at all, she can require a smaller pull out.

No person in the real world is deciding between setting up a lodging facility and developing affordable housing--there is no relationship between the two businesses. The fact is that the Legislature already entrusted every type of commercial development to the PVR Director. There's no reason hotels or farm stay cabins should be treated differently than the rest of commercial development. In fact, the Director's discretion could be used more appropriately to remedy issues such as a large inn or resort with 50 rooms only having to withdraw 2 acres while a farm with five small cabins has to withdraw 10 acres--which is what is happening right now. There are inns in Vermont enrolled in the program with far greater occupancy than my five cabins that have 20% of the land withdrawn that I have. These anomalies come from applying a rule that was meant to make sure everyone pulled out two acres around their home to a situation it was never meant to apply -- a commercial development of a lodging property. Commercial development is more complicated and was supposed to be looked at on a case by case basis by the PVR Director.

I think you will find that this small change to the definition is actually the easiest to enforce and is the most consistent with the original purpose behind the statute, which is to give PVR Director discretion to determine what happens with commercial development. I also suspect it would be the easiest to move to the Governor’s desk.

Thank you for your time and attention to this matter.