

Testimony before House Committee on Natural Resources, Fish and Wildlife concerning H704-
An act relating to the regulation of accessory on-farm business

My name is Tim Taylor. Thank you for the opportunity to speak with you today. I am some what uniquely qualified to comment on this proposed exemption.

First, my wife and I own Crossroad Farm, a 50 acre vegetable farm, located in the village of Post Mills, in the Town of Thetford. We have grown vegetables for 42 years. We have 16 greenhouses and grow approximately 30,000 lbs of tomatoes. We have a stand at our farm where we sell our vegetables and fruit along with other local Vermont grown products.

Second, I am Chair of the Thetford Development Review Board. I have served on the board for over 20 years.

Third, I have chaired the District 3 Environmental Commission for the past 11 years. I chaired and wrote the decision denying the already built 88 seat restaurant a permit because it was not in conformance with the Woodstock Town Plan.

NOTHING THAT ABBEY SAID IS A REASON TO EXEMPT AN AOFB FROM ACT 250 REVIEW.

3 legs BILL LOOKS SO SIMPLE BUT IT IS MESSY AND CONFUSING I THINK IF PASSED WILL HAVE QUITE A FEW UNINTENDED CONSEQUENCES. The bill OPENS A DOOR A HUGE FARM BARN DOOR. MR. COLLIER MENTIONED "REASONED DEVELOPMENT" BUT THAT IS NOT NECESSARILY HAPPENING. 50% AS A MEASURING STICK IS RIDICULOUS AS THE WOODSTOCK DRB FIGURED OUT BECAUSE THEY IGNORED IT. The committee should read the DRB decision.

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D) The word "development" does not include:

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(ix) The construction of improvements for an accessory on-farm business located on a tract of land primarily devoted to farming, provided that:

(I) the proposed improvements are for an accessory on-farm business as defined by 24 V.S.A. § 4412(11);

(II) the farming operation is subject to the Required Agricultural Practices; and

(III) the improvements constructed for the accessory on-farm business do not physically alter more than one acre of land.

3 LEGs of the proposed exemption

Lets examine the 3 legs of this bill.

But before we examine the 3 legs of the bill I am curious about the motivation, the legislative purpose behind the bill.

- **BUT** before adding one more exemption to the growing list of Act 250 exemptions, I would ask the committee to pause and consider for a moment, what makes a farmer better able to develop a commercial property than any other person in the state. What is about a farmer that can determine for themselves wetland impacts, noise impacts, storm water impacts, traffic impacts, sprawl, all the various criteria that are examined in an Act 250 review.
- What is the legislative purpose behind the exemption? Why are farmers being accorded special treatment? Is it because farmers need a leg up, a little boost say competing with other bed & breakfasts, wedding venues or restaurants if those are their AOFBs of choice? Is it because they are busy folks and shouldn't be bothered with one more regulation? Is a reward for keeping our lands open and beautiful? Or is it to reward a developer from Boston, who in violation of a 2018 jurisdictional opinion built an 88 seat restaurant in a zone which prohibits restaurants?

Let's look at 2nd leg first: (II) the farming operation is subject to the Required

Agricultural Practices; what does that mean. It means the Vermont Agency of Agriculture Food and Markets (VAAFAM) will determine if operation meets the definition of farming. “

“When asked, the Vermont Agency of Agriculture, Food and Markets (VAAFAM) can determine if your operation meets the basic definition of a farm under the RAPs and will provide its opinion on whether the the activities on the parcel are farming/agricultural practices. This will determine whether your operation is regulated under the RAPs. Note that [Section 4413\(d\) of Title 24 \(Municipal and County Government\) of Vermont Statutes Annotated \(V.S.A.\)](#) limits the application of municipal land use regulations on farm operations regulated under the RAP rules, including the construction of farm structures. If you are building a farm structure or applying for an accessory on-farm business, you may wish to apply for a farm determination from VAAFAM. For more information, click the following link.”

What is a farm then??

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Small Farm Operation (SFO) Definition:

Farms are defined as persons engaged in farming who meet **one** of the threshold criteria for applicability of the Required Agricultural Practices below;

- has produced an annual gross income from the sale of agricultural products of \$2,000.00 or more in an average year; or
- is preparing, tilling, fertilizing, planting, protecting, irrigating, and harvesting crops for sale on a farm that is no less than 4.0 contiguous acres in size; or
- is raising, feeding, or managing at least the following number of adult livestock on a farm that is no less than 4.0 contiguous acres in size:
 - four equines;
 - five cattle, cows, or American bison;
 - 15 swine;
 - 15 goats;
 - 15 sheep; OR
 - (See RAPS Section 3.1 for complete listing of animal number thresholds)
- is raising, feeding, or managing other livestock types, combinations, and numbers, or managing crops or engaging in other agricultural practices on less than 4.0 contiguous acres in size that the Secretary has determined, after the opportunity for a hearing, to be causing adverse water quality impacts and in a municipality where no ordinances are in place to manage the activities causing the water quality impacts; or
- is managed by a farmer filing with the Internal Revenue Service a 1040(F) income tax statement in at least one of the past two years; or
- has a prospective business or farm management plan, approved by the Secretary, describing how the farm will meet the threshold requirements of this section.
- So, if you sell \$2,000 worth of zucchini then you are a farm, subject to RAPS and meet the 2nd leg of the test for exemption. IMAGINE HOW MANY SMALL FARMS

MEET THIS REQUIREMENT, UP CLASS 3 ROADS, TUCKED AWAY ON STEEP SLOPES.

2ND LEG. YOU ARE FARM

- I) the proposed improvements are for an accessory on-farm
- business as defined by 24 V.S.A. § 4412(11);
- I don't believe one can understand the impact of exempting farm's accessory farm business from Act 250 review without understanding Act 143.
- Sec. 1. PURPOSE of Act 143
The General Assembly adopts Sec. 2 of this act to:
 - (1) promote and facilitate the economic viability of Vermont's farms; and
 - (2) increase the consistency across the State of municipal regulation and permitting of accessory activity that supports those farms.
- When does the EXEMPTION COME INTO PLAY? **Only in towns with land use regulations or in all towns? NOT CLEAR I**
- 45% of Vermont towns are 1 acre towns. ACCORDING TO VVAFM municipalities make the AOFB determination. If there is no DRB to determine whether the proposed business is an AOFB, then does the exemption apply to them? And if so why? Does the Selectboard decide? How will the determination be made?
- Approximately 135 towns will each decides what constitutes an Accessory Farm Business
- When 135 towns can each decide for themselves whether an on farm business qualifies as an AFOB, how will that lead to "consistency across the State of municipal regulation . . ."
- Under Act 143, there will be town site plan review and the town's DRB will be able to exact performance standards. There will be regulation and review. But will there be?? Trying to determine whether products grown on the farm constitutes over half the sales of the farm is a difficult job. Are all social events permissible as long as they feature farm products?
- ++ E) **Less restrictive. A municipality may adopt a bylaw concerning accessory on-farm businesses that is less restrictive than the requirement of this subdivision (11)**
- An excellent example of an incorrectly decided determination as to what constitutes a AFOB is the Town of Woodstock's DRB decision regarding the already built 88 seat restaurant and bar located at the farm in a district of town which does not permit restaurants either as a permitted or conditional use. The decision was 3-2 in favor. The majority admits that as proposed by the applicant the 88 seat restaurant is not accessory to the farm. They go on to permit it by conditioning it.

- The dissent points out that it is not reasonable to assume that over 50 % of sales of the ingredients and alcohol involved in producing between 10,000-30,000 meals proposed by the farmer/applicant could be derived from the farm. The dissent points out the Vermont Department of Agriculture Q & A publication states: “An example of an accessory business could include tastings of qualifying products, on-farm dinners featuring qualifying products at a smaller scale than a restaurant.”
- This decision is presently under appeal. There will be many appeals of municipal decisions unless better standards are provided the towns or the AOFB determination is removed to the state level.
- Act 250 jurisdiction should be retained as a further check on the impact of a proposed AOFB. My point here is that the town review process alone, is not adequate.
- **3rd leg ONE ACRE**
- The final leg of the proposed legislation concerns itself with the amount of land which is altered. One acre appears to be the magic number. I am not sure where this number comes from but let me tell you a little story.

At the hearing for the already built 88 seat restaurant at the farm, the applicant had requested that we limit jurisdiction to the restaurant grounds. This request is their right under 10 V.S.A. § 6001(3)(E).
- At the site visit we learned that the restaurant fire sprinkler system will utilize pond water from a pond which lies at a considerable distance uphill. We never would have learned about this without the aid of a site visit and hearing. I do not think a District Coordinator would know about it either when asked to determine whether the project “physically alters” more than one acre.
- To sum up: the AOFB as originally conceived was to be an “ancillary” business to help sustain existing farms. And that is good. But many of these commercial businesses have, or may have significant impacts on our natural and cultural resources. Most will be treated as minors and move through the process rapidly. But a few need a more thorough review. The Act 250 process expedites this more thorough review in a way that a town DRB can not. It is the venue where state agencies, RPCs, town boards and neighbors have a venue to air their concerns. Farmers engaged in commercial activities that are beyond the scope of the statutory definition of farming should not be exempt from Act 250 review simply because they are farmers.

To Answer the question on what happens to these 1 acre towns as it relates to the AOFB. Arguably, Act 250 is the only oversight and if exempted, then the farmers in a one acre

town will be able to do pretty much what they want. They might have to be careful about the 1 acre disturbance part of the law but the rest isn't applicable.