SUMMARY OF TESTIMONY ON H.128 FOR CONSIDERATION BY HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY: March 15, 2024

1. The original intent of the bill was to prohibit towns from zoning out retail businesses that were "accessory" to the farm such as retail stands that sell products other than those produced on the farm as well as educational, social and recreational events related to the farm. Now it has morphed into an exemption to Act 250. This must be done very carefully.
2. Act 250 is concerned with impacts to neighbors such as noise and traffic. Act 250 is concerned with a myriad of impacts to natural resources such as storm water runoff.
3. **As such any exemption should be narrowly and specifically drawn. I suggest permitting an exemption for retail stands of no more than 1,000 square feet of retail sales space. I suggest there be no restriction on what they sell. That is immaterial. I suggest a farm be limited to a monthly event from May 1- October 31, 6 events in total.**
4. I believe such a specific limited accessory leg up would be compatible in towns without zoning. Neighbors and the environment can withstand such a limited impact.
5. If the Accessory On Farm Business wants to be larger, then get an Act 250 permit.

See below for more information.

TESTIMONY BEFORE HOUSE COMMITTEE ON AGRICULTURE, FOOD RESILIENCY AND FORESTRY

TUESDAY, FEBRUARY 13, 2024

GOOD MORNING, I'M Tim Taylor. Thank You for the opportunity to speak to you about H 128 and its proposed exemption of Accessory On-Farm Businesses (AFOBs) from Act 250.

1. A little bit about myself. I am a retired vegetable farmer, having farmed for 43 years with my wife Janet in the village of Post Mills, in the town of Thetford, Vermont. Our farm, thanks to Act 250 grew to 56 acres of mixed vegetables, berries, and 20 greenhouses. Among other crops we grow, are approximately 30,000 pounds of tomatoes annually. We have two stands, one on the farm which arguably is a AOFB and one in Norwich, Vermont next to King Arthur. The later is subject to an Act 250 permit.

2. In 2022 we sold the farm to our 37-year-old partner who had started working on the farm when he was 14. The farm is conserved by VLT and Phil is doing great new work expanding the farm into the future.

3. I am a past President of the Vermont Vegetable and Berry Growers Association and served on its Board of Directors for many years.

4. I filled in at UVM and taught a course "Sustainable Vegetable Production" a number of years ago.

5. The Orange County Farm Bureau named my wife and me "Farmer of the Year" in 2006.

6. For 12 years I was the Chair of the District 3 Environmental Commission. The district includes towns as large as Hartford, 10,668 and as small as Granville, 301. District 3 includes 13 towns in Windsor County, 14 towns in Orange County and 2 towns in Addison County and one in Rutland County. Of these 29 towns 13 are so called 1-acre towns and have no statutorily approved zoning and subdivision regulations and 16 are 10-acre towns and have municipal bylaws. **TOTALS FOR STATE = 125 1 ACRE TOWNS 47% AND 137 10-ACRE TOWNS**

7. I have served on the Town of Thetford Development Review Board for the past 20 years and am presently its Chair. We have had Zoning and Subdivision bylaws since 1972.

8. And finally, for what is worth, I graduated from Vermont Law School in 1978 and clerked for Jonathan Brownell, one of the authors of Act 250.

9. I get it. Farming is hard work. Not a season has gone by where I haven't had the frost alarm startle me out of a deep sleep in order to charge down to the pond and start the irrigation to protect the strawberries and other frost sensitive vegetables. We have seen frost on the 4th of July. I have seen hail level the peas on Memorial Day and shatter the spinach leaves on more than one occasion. I understand the sentiment behind the bill.

10. And from a regulatory point of view, deciding when jurisdiction attaches to a farm has been complicated and often confusing to say the least. I am here today to support part of the effort to "help" farmers reduce their bureaucratic paperwork by exempting them from jurisdiction Act 250. However, the bill as proposed needs much reworking and its scope narrowed and reduced. What we do as Commissioners in Act 250 is interpret and apply the criteria to a particular, proposed project. This bill is very confusing to me.

11. I want to use an example to illustrate several points.

12. **Let's say the new owner of Crossroad Farm decides to host weddings. Every weekend for 10 weekends there is a wedding held outside in front of our house. There is a big tent. The music rages on till 1 in the morning. The farm raises pigs and one is slaughtered each week and roasted. The tables are decorated with the farm's cut flowers. The wedding guests tour the farm and help harvest the vegetables used in the meal. The local balloonist tethers a balloon in the field lifting guests to view the farm. Not all of these details are relevant to my question. I just wanted to paint a picture.**

13. We are unhappy with these events. Who do we turn to? Do we turn to our Act 250 District Coordinator to determine if these activities constitute an AOFB and therefore are exempt under section 6001 definition of farming as proposed? Or, because the definition of farming in 6001 reads, "Farming

means . . . (G) the operation of an accessory on-farm business as defined in 24 V.S.A. ~4412(11), and in so referring to section 4412(11) is it the Town of Thetford's DRB which decides. For as we know, according to Act 147 it is each of the 262 municipalities which individually decides what constitutes AOFB.

14. Who determines the definition of "substantial component" or "integral component" referred to in (vii) of Section. 6 24 V.S.A. ~4412(11)?

15. There is a circular definition in the bill. In section (v) of 4412(11) it states that "Farming has the same meaning as in 10 V.S.A. ~ 6001. Then in 10 V.S.A. ~6001 Definitions (22) "Farming" means: . . . (G) the operation of an accessory on-farm business as defined in 24 V.S.A. ~4412(11).

16. I believe it would be clearer to move the AOFB exemption out of the definition of farming and put it into the definition of development I.e "The word development does not include an accessory on-farm business as defined in 24 V.S.A ~4412(11)". After all these AOFBs are not farming. They are accessory businesses.

17. Historically, it has been the responsibility of the District Coordinators to determine whether a proposed project meets the definition of "farming" is therefore exempt from Act 250 jurisdiction.

18. Has that now changed? If it has, and town DRBs are responsible, then there might be 137 differently nuanced decisions. 137 is the number of the municipalities with Zoning and Subdivision Bylaws.

19. And alarmingly, at least for me, 125 towns (47%) which have no Zoning or Subdivision Bylaws (the so-called 1-acre towns) will not make any determination. Therefore, in these towns, farms will be able to engage in a commercial project of any scope. There is no regulatory body to determine whether the project meets the AOFB definition. No regulatory body to define what an "integral component" constitutes. The 1-acre rule has always been the backstop to protect natural resources in municipalities without zoning and subdivision bylaws. Is that what you want?

20. Perhaps it is. In the original Act 143 and remaining in H 128 is a provision that permits municipalities to adopt, "a bylaw concerning accessory on-farm businesses that is less restrictive than the requirements of this subdivision (11)". Arguably then the municipal DRBs could decide on little to no regulation.

21. I would like to remind the Committee that under H 128 if your business is subject to the Required Agricultural Practice Rules (RAP), then your business is a farm. And that the RAP rules apply to "farms" which, "earn an annual gross income of more than $2,000 from the sale of agricultural products". My point here is that there could be hundreds of these small "farms" which will be eligible for AOFBs on their property. It's quite conceivable that all of the income from a small farm could be used to satisfy the wedding event criteria of integral component. And therefore, be unregulated in 1-acre towns and perhaps marginally regulated in 10-acre towns.

22. Act 143 has never functioned well in my view. It relies upon the individual municipalities to determine what constitutes an AOFB. I would like to give an example. Peacefield Farm

    a. On May 9,2018 jurisdictional opinion is issued for 20 seat restaurant and apartment. The JO was not appealed, and jurisdiction attached.

b. On October 27, 2020, the Town of Woodstock DRB opens a hearing to determine if the proposed restaurant meets the definition of an AOFB.
c. On May 17, 2021, Peacefield applies for an Act 250 permit to use its newly built barn for an 80-seat restaurant. This came as a result of a visit from the enforcement division of the NRB.
d. On November 17,2021 after 2 hearings and 2 site visits to the already built restaurant, the District 3 Environmental Commission in an unanimous decision held that the project does not comply with criterion 10 of the Woodstock Town Plan. The Commission held that the Town Plan had used mandatory and clear language indicating that "retail" must not be in this district. Further a review of the town's zoning reveals that restaurants are neither a permitted or conditional use in the "Residential 5 Acre" zone. The project was denied.
e. Several weeks after the Act 250 decision the Town of Woodstock DRB announced its decision. In a 3-2 vote the DDRB determined that as proposed the restaurant did not meet the definition of an "AOFB". They concluded that "the proposed restaurant operation is not a secondary use of the property based upon its findings" and therefore the project could be denied. However, they went on to decide that they had the authority to "constrain" the size and scope of the restaurant in order that it would meet the definition of an AOFB.
f. The dissent noted that the applicant had failed to provide sufficient evidence that over 50% of its sales would be principally produced on farm products. They pointed out that extrinsic evidence from the Agency of Agriculture Food and Markets (AAFM) publication explains that an AOFB "includes on farm dinners of qualifying products at a scale smaller than a restaurant".
g. Much furor and controversy has since arisen including the resignation of the Chair of Planning Commission in Woodstock. Finally, October 23, 2022, the Woodstock Selectboard passed an amendment to allow on-farm restaurants of up to 2,800 square feet in rural residential areas.
h. Ironically, an Act 250 hearing was recently held. One of the main issues is that the Peacefield Farm restaurant is larger than 2,800 square feet.

23. Other troubling concerns is the removal of the word "accessory" from the definition of "Accessory on-farm business." It would seem to indicate the intention to remove farming as we heretofore have defined it and make other commercial activities be the main source of income.

24. Why is Act 250 review necessary in 1 Acre towns?

a. We reviewed a farm which hosted weekly weddings. The applicants wanted to offer fireworks as part of its wedding package. The "farm" is located in a rural village setting with a number of neighbors within earshot. We heard testimony and decided that the fireworks would have an undue adverse effect upon the aesthetics of the village. Additionally, the project violated the the town plan. We denied the applicant's request. The applicants accepted our decision and I believe the neighbors were relieved.

25. **SOLUTIONS:**

a. **The law as it now exists and as it is proposed amended, needs an overhaul. Presently, as drafted it creates a large exemption hole in the "rural and working lands area" proposed in H 687. Remove from the municipalities the authority to define an AOFB and place that responsibility in the hands of the the NRB or the new Environmental Review Board. This would assure a more consistent determination by the municipalities. The municipalities would still do site plan review and set conditions. However, they would no longer determine what constitutes an AOFB. Frankly, I am willing to bet that very few towns have actually defined an AOFB and incorporated the definition into their bylaws. I know we haven't in Thetford.**

b. **Some of the language in the bill is vague. For example, terms like "integral component" need to be removed or carefully defined. This language should be eliminated or more precisely defined.**

c. **Act 250 jurisdiction should be retained for 1-acre towns. Perhaps an expedited review could be established for AOFBs in these 1-acre towns. Unless a simple, limited exemption is created.**

d. **The less restrictive clause for municipalities should be removed. The NRB OR ERB will define the definition. The towns still retain the right to site plan and condition.**

e. **The definition should remain "accessory" to the farm. I would suggest specific concrete limitations. Build a "box" and in it place for instance a stand that does not exceed 1,000 square feet of display space and mostly sells its own products. Or place in it social events that are limited in amount such as 5 weddings per summer or farm dinners 2 nights per week through the summer.**

f. **Remember, it doesn't mean a farmer can not expand; simply, they would need an Act 250 permit. And it has been my experience that the District Coordinators offer a tremendous amount of help in the application process to those unfamiliar with it. It also has been my experience that the vast majority of these applications would be treated as minors and permitted expeditiously often within 30 days.**

g. **The present language will not be enforced. Municipalities are not going to check on the 50% or total annual number of products sold.**

26. **I know this bill is to help give farmers a leg up. That goal maybe desirable. However, creating a special class of persons to whom you grant special privileges needs to be very carefully drawn.**