

Agricultural Enterprise Meeting

Regulatory/Legislative Subcommittee

October 31, 2014

Calvin Coolidge Conference Rm, ACCD, Montpelier, Vermont

Participants: Bob Livingstone, East Shore Vineyard; Sharon Murray, VPA; Lou Borie, NRB/Act 250; Chris Sargent, TRORC; Karen Horn, VLCT; Chris Company, WRC.

By Phone: Kathy Davis, Champlain Chamber; Regina Mahoney, CCRPC; Nancy Everhart, VHCB

Hosts: Faith Ingulsrud, Department of Housing and Community Development; Stephanie Smith, AAFM

Everyone introduced themselves, and the group began by discussing the issues outlined as part of the stakeholder meetings. The group identified some new issues, and some possible approaches to address the issues. Stephanie confirmed that this work will result in a report to the Legislature with recommended actions based on the identified goals and desired outcomes including but not limited to:

- supporting diversified on-farm enterprises,
- providing predictability and consistency for agricultural producers with diverse operations,
- encouraging efficient use of agricultural infrastructure while addressing associated impacts,
- defining frequently used terms and developing a common understanding by all entities, and
- providing tools and guidance to encourage effective agricultural planning.

AAP Thresholds –Both farmers and municipal officials are not clear about when the AAFM has jurisdiction. AAPs are used to determine AAFM jurisdiction – and these activities regulated by the AAFM can be only a part of what might occur on a “farm.”

- Those activities that are regulated in the AAPs, can’t be regulated by towns through bylaws enabled under Chapter 117. Producers/Farmers don’t always know which authorities have jurisdiction over what activities.
- There is a perception that producers/farmers are exempt from all regulation.
- Some structures that can be used for multiple purposes -agriculture and personal use, are these still considered “farm structures?” and therefore not regulated?

Thresholds – 51% rule is difficult to enforce because it is hard to track when someone might exceed the threshold. It’s easier to regulate structures (concrete features of a property that might be related to land use) to determine when local regulation kicks in. Money/income and products/inputs are much harder to regulate/track.

- 51% - may change year to year depending on weather or pests. The AAFM could consider changing the threshold or somehow enable continued use of the infrastructure and the land, and allowing for greater certainty for farmers.
- Maybe we don’t change the AAPs, but look at 51% rule as a departure point for regulation different from AAPs. Should we expand this threshold to allow imports from a geographic area

or lower the percentage, 25% of products coming from the farm. (MA uses 25%, but is recognized development pressure might be stronger.)

- Agricultural product processing related enterprises are one thing, but diversification into restaurants and dinner theater shouldn't be considered "farming."
- If 51% is produced on the farm, the sales and processing of that crop on a farm is regulated by the Agency (covered by the AAPs) – AAFM doesn't regulate product tastings, or consuming pizza on the farm. The AAPs contain no standards to regulate these types of activities.
- Does each town define differently? Can we have everyone use the same definition? Multiple jurisdictions define "the farm" Act 250, towns, AAFM, Wastewater, PSB? For digester? Composting? The state needs uniform definitions of "farm" and "the farm".

Thresholds- Addressing impacts associated with diverse enterprises

- What VLCT hears about most is traffic- for instance during the fall- bringing public onto the farm, resulting in traffic jams on narrow town highways.
- VHCB conserves farms and there is standard language in conservation easements to allow for agricultural enterprises.
- Like the idea of focusing on scale of business and impacts to environment. From a land use perspective, it is easier to deal with scale and impacts associated with use.
- Instead of animal units, look at the size of barns.
- AAPs define activities, not land uses as typically thought of in the planning. AAPs define AAFM jurisdiction – not intended to create land use thresholds.
- How about a form based approach, where the focus is on impacts? If the accessory land use keeps the property in farming and doesn't impact neighbors than that use should be allowed.
- Look to other countries – how to manage rural enterprises. The regulatory approach to date looks at agriculture activities occurring on a farm. However, there should be recognition of the diversified activities on farms like blacksmiths, blade sharpening, small engine repair, etc. The issue is beyond the diversification into ag production related enterprises- it includes uses that can be found on farms, support the farm, and use the skills of the farmer.
- A threshold to address impacts of an agricultural enterprise could be vehicle trips. If a town doesn't regulate traffic then how would they address trips. If the activity is seasonal the trips will not capture the intensity of the use during that season.
- AAFM's interpretation is that sampling and tasting is neither "farming" nor an "accepted ag practice." How does this work with maple sugar operations and sugar on snow events at the farm. It may be difficult to address seasonal activities.
- At U-pick facilities is not just traffic and parking, but includes the other uses of farm buildings that are not related to farming.
- Seasonal restrictions target one type of farm activity and wouldn't be equitable.
- If you have a business doing other things like classes, etc; then a local permit should be required. But some towns are not addressing these related uses at the local level. But why?
- Regulatory perspective – farm can sell wine (agricultural product), but not allow tasting – need a permit for the latter. Tasting rooms are outside the AAFM's regulatory jurisdiction.
- Great lakes states and Napa Valley should have good examples of how to include this accessory use to the sales and processing of wine. Finger Lakes have evolved from ag use barns to fancy restaurants . However, NY has different Ag laws. They have two levels/tiers of Ag uses.

Tiered approach to Regulation–

- Scale of building – only so much you can fit in the envelope. Regardless of what happens – if based in ag and agricultural inputs come from a farm – we could say we don't care what happens within the size of facility.
- Intensity of use is the issue. Need to include additional thresholds to the scale of buildings, such as vehicle trip #, parking, lighting, etc.
- Context/location of the property affects the types of impacts experienced by the public/ neighbors.
- Farming is multi-use and each of those activities can begin to expand beyond the point where the community can tolerate. When enterprise gets big enough a farm may build a facility to accommodate the growth.
- By-right you can use existing facility – next step up – can't exceed identified thresholds without permits. Allows for expansion and basic permitting.

Orchard as an example. Assume all on-site or 51%. AAFM regulation applies but then there is concern about traffic, noise, parking. Can accommodate parking on fields. It's an ag use but should have additional level of review. Diversifying into events is when you have more substantial impacts.

Livestock- regulate farming in an urban location vs. rural location. Residents are there first in an urban location before farming. In rural locations, typically the farm is first.

- In urban context is it primarily a livestock issue- and nutrient management.
- Lots are small, municipalities receive complaints, perception is they are not regulated

Town regulation and Act 250– Perception that any use on a farm is pre-empted from regulation.

- Towns can regulate events under their nuisance authority in 24 V.S.A. 2291 (14)
- In all the towns without zoning, more focused on Act 250 level of regulation.
- Local zoning is easy –But Act 250 also has thresholds for regulation.
- Use the same trigger for Act 250 – everyone agrees. Need consistency statewide.
- Reuse of barns to store boats don't trigger Act 250. Act 250 triggers only when development happens and only for the operation that isn't exempt from review.
- Is there a role for RPCs to get the word out on the AAFM triggers.
- Act 250– construction of improvements for a commercial purpose. That triggers jurisdiction.
- Act 250 – wedding facility is a commercial venture – not a farm activity.
- In three different towns, interpretation of ag activity is different. Need to have clarity to get on the same page. AAFM is helping resolve the issue and provide clear and consistent guidance to municipalities and farmers.

Gray Area – if a land use is regulated under a tiered approach (Not under AAPs) - ag tourism, expansion beyond meeting definition of “principally produced,” etc- should appeals of this expanded use go to AAFM?

In the Agency's existing determination process concerning whether an activity is regulated by the AAFM under the AAPs- If the AAFM determines that the activity is not farming nor an AAP, a town may apply its bylaws. If the property owner disagrees with the application of the bylaws, then the local appeals process is used to resolve the issue.

Variance for construction of “farm structures” - If you can’t comply with local setbacks, can appeal to AAFM with notice to the municipality. Only the farmer can appeal the action of the Agency to waive the local setbacks. An appeal is not open to others.

Educational Opportunities

- Should categorical determinations posted on the Agency website. (Act 250 does this)
- The meat slaughter decision tree is a great example of an educational tool.
- Map existing determination process. Map of where regulations take you. Show the thresholds.- May be difficult because of the number of activities AAPs regulate.

Recap of AAPs and other regulatory Issues

- Required or recommended definitions for “farm” and “the farm” that is consistent across jurisdictions. That would make permitting easier for everyone. Town, Wastewater, AAFM and Act 250. Should be in statute.
- Define Ag Tourism and Ag Business, Farm Worker Housing, Farmstead – guidance from AAFM . Sharon can send definitions she’s collected.
- Evaluate definition of Farm Structure.
- Allow for diversified farm activity that is sustainable. Need to allow for innovative ideas both for farming and local regulation.
- All the other regulations: labor, current use, alcohol control, etc. How do they fit in?

Planning for Agriculture

24:4414(b) –Enabling legislation allows for a forestry only district. Ag zoning district includes rural residential. Farms have multiple uses on a farm and sometimes need to have a related business to support the farm.

- Enable Ag only zoning districts in 24:4414 as a tool, but preserve the Ag/Rural Residential district. A decision to pursue a restricted Ag use district in a town would be at the town’s election.
- Ag /Rural Residential district – residential and ag together – inviting the conflicts, hampering expansion. Or does it invite agricultural literacy?
- Complaints coming from residential uses. Why?
- General reaction of farmers that the land’s potential is being taken away with removal of rural residential development zoning. How do you change paradigm?
- To address the opposition for an Ag only district zoning – can there be incentives for higher priority for conservation and working lands grants? Are there other benefits that make a sole ag use district a good option for a town? Couple with tax policy and it could work, but depends on town.
- Conditional use for housing in Ag District – could be tool with guidance.

Successional planning

- Most farmers assume farms are on the way out. Is there a role for state to deal with farmer retirement? AAFM – staff person who educates on successional planning. Relieve retirement concerns. VHCB dealing with succession planning with the Farm and Forest Viability program – lot of work being done.

- Entering into the profession are a younger generation of farmers and those leaving the profession want fair market value for their land. Most new farmers are small farmers.
- It's a personal economic decision to sell farmland, and not a land use issue.

Ag economic development activities statewide – Different for Addison and Windham Counties. Planning for ag businesses now and into future. Look at strategies that work in different parts of the state, and then statewide. Much of what is produced in state is sold out of state. How do we best support the industry?

- VT agriculture survives on exports. That would inform land use and infrastructure discussions. Should there be comprehensive planning for agricultural economy. Look at long term sustainability of agriculture. This could be part of the Economic Development element in regional and local comprehensive plans.
- Farm to Plate gets into it but doesn't translate into the planning process, yet.
- Wine sales very dependent on tourists. Plan for future. A wine trail is in development for VT/NY/QC. This being accomplished by the Lake Champlain Basin Program.
- Planners don't plug into farmer associations as a way of engaging in the planning process.
- Economic Development strategies are important – when VHCB conserves farmland they ensure that the decision makes sense for the community- check local/regional plans– would help a lot to have a focus on regional planning.
- Can it be part of the CEDS. Don't need for every region.
- Identify what towns should address in plans – provide guidance.

Resources

- Lake Champlain Agricultural Network – young farmers working together.
- There is a UVM ED conference focused on Agriculture Economic Development.
- VHCB Farm and Forest Viability Program
- F2P Sustaining Agriculture document

Stephanie reminded everyone of the next meeting on November 14 from 1-3 at the Agency of Agriculture in the second floor conference room. Notes and additional information will be shared in advance.