

Rural Enterprise Stakeholder Meeting

September 25, 2014

Woodstock Town Offices, Woodstock, Vermont

Participants:; Rep. Carolyn Partridge; Rep. John Bartholomew; Rep. Alison Clarkson; Patricia Richardson; Nancy Everhart, VHCB; Ed Bove, RRPC; Peg Elmer, C.R.O.; Lorelee Morrow, TRORC; Chris Callahan, UVM Ext.; Stephanie Gile, Act 250 District Coordinator; Jane Clifford, Green Mtn. Dairy Assoc; Steve Justis, VT Tree Fruit Growers; Taylor Foster, LCPC; and Regina Mahoney, CCRPC.

Hosts: Diane Bothfeld and Stephanie Smith, Agency of Agriculture, Food and Markets (AAFM); Noelle Mackay and Faith Ingulsrud, Department of Housing and Community Development (DHCD).

Stephanie Smith welcomed participants and explained that this meeting is a follow-up to the recommendations developed through the [Act 59 working group meetings](#) last year. Those recommendations called for the Agency of Agriculture, Food and Markets (AAFM) to continue discussions on how farm-based enterprises fit into the definition of “farming” used in land use permitting.

This is the second of two meetings with stakeholders. The first took place in Richmond on September 3rd. Prior to that meeting, the Agency conducted a survey and produced the [Agricultural Enterprises Report](#). Stephanie gave a quick summary of the survey findings:

- There were 332 respondents and 110 of those were self-identified farmers.
- Responses demonstrated recognition of the importance of agriculture to Vermont’s culture and economy.
- There was a high level of support for goals listed in survey, but skepticism about whether state or local policies and programs support those goals.
- There is a high level of interest in diversification among farmers including agritourism, value-added products, renewable energy, etc.
- Everyone is aware of complaints about farming, but it appeared smaller farms were more aware of complaints. This might be because people expect larger farms to have impacts, but neighbors do not expect impacts from smaller farm operations.

At the September 3rd stakeholder meeting the following key issues were identified:

- Need more outreach to farmers (questions about whether the survey results reflect the farming community), and general concerns that all interested stakeholders are actively engaged in this process.
- Clarify regulatory thresholds for jurisdiction
- Recognize farming as critical to rural economic development in local and regional plans
- Improve technical assistance and education for farmers and the public
- Consider improvements to right to farm statutes, updating the enabling legislation for zoning to provide better guidance for agricultural district planning

- Plan comprehensively for protection of agricultural soils – for instance, land set aside for agriculture in development projects

Noelle Mackay, Commissioner of the Department of Housing and Community Development (DHCD) gave a big picture overview of the issues as follows:

- DHCD works on land use planning and focuses more developed centers through the designation programs. But the department is working with AAFM towards a common statewide planning goal of compact centers surrounded by open countryside. Support for this approach was clearly evident in the surveys and focus groups conducted prior to and as a result of Act 59.
- The educational component is key, given the rapidly evolving farm operations. DHCD is helping AAFM with this outreach because the issues are of inter-agency concern.
- The top issues identified through the Act 59 outreach were:
 - Education – both for farmers and the general public
 - Data and Information – need better data on where agricultural is taking place and what kinds of enterprises are being established
 - Best approach to permitting – clarify what is considered farming and determine how to regulate accessory, ancillary or related business activities.

She asked the group to think about identifying the top issues and to dig deeper for group consensus.

Stephanie then asked participants what issues they have experienced or are hearing about. They responded as follows:

Land Use Regulations

- Inconsistent interpretations from municipalities or other regulatory entities on requiring permits for some structures is a concern – e.g. whether a greenhouse is a farm structure and requiring a refrigerated room to have a sprinkler.
- Incremental growth of a farm’s “burger night” from a small occasional event to offering regular public food service, and rarely has clear transitions.
- Same with weddings in farm structures or on a farm property – it’s not clear when the activity requires a permit or a regulatory entity has jurisdiction.
- Manufacturing biodiesel for your own operation often leads to processing other people’s crops, as well. In this case “principally produced” comes into play – but is “51% produced on-farm” the right threshold? Other considerations include:
 - Cost of investing in the renewable energy (biodiesel) goes down if farms can sell the product
 - Producing and selling biodiesel may affect both property taxes and fuel taxes
 - ANR permitting may be required
- The capacity to produce value added products beyond your farm’s capacity to grow the inputs is always an issue with the “principally produced.” And what happens when you lease production facilities to others? (expanding access infrastructure for use by others).
- We can’t come up with a list to cover every possible enterprise mutation.
- There is confusion about who regulates what for farmers. Conservation easements need some flexibility to support farm enterprises so farms can continue to thrive. For example, VHCB is working on a renewable energy policy for land that is conserved.

- AAFM needs to provide clear guidance on its interpretation of what is “farming” and what is “beyond.” The definition of farming in the AAPs addresses water quality and associated activities, and includes a “principally produced” threshold that addresses value-added products produced on the farm. The AAP regulations don’t capture the on-farm activities that go beyond what is covered by the AAPs.
- A municipality is pre-empted from regulating growing grapes and processing to make wine, but not the tasting room. Likewise, if the processing takes place someplace else other than the farm where the grapes are grown, that processing facility is regulated and the tasting room.
- Shouldn’t tasting centers and burger nights be regulated anyway since they involve public safety obligations?
- Town planners are on-board with the existing required permitting thresholds, but how do you deal with the whole property once the regulations come into effect? How do you avoid penalizing the farmer for infrastructure associated with “farming” and covered by the AAPs that might not be in compliance with the local regulations, and how do you deal with activity that goes “beyond”?
- Setting certain thresholds for appropriate level of development is very hard and highly dependent on the location of the operation. Transportation/traffic are location based issues.
- How does a municipality review agricultural enterprises (not uses pre-empted from review under AAPs) under zoning regulations that don’t specify a list of permitted agricultural related uses? Do municipalities not regulate and just look the other way? Yes, some do because they want to support the agricultural land use and not restrict the use of the property.
- Why is anyone exempt from anything? Currently, no farmers are exempt from every regulation.
- AAFM wants to keep the existing definition of farming, but there should be a tiered approach to land use regulation, which indicates to farmers that incremental expansion will eventually result in local or state permitting. Farmers also need to know that if one no longer farms but still operates a processing facility (stop milking cows but still process milk into cheese) – permitting definitely kicks in.
- Need to have a group that can focus on establishing those tipping points.
- As for enforcement of principally produced, how would anyone in local zoning know if 75% of milk comes from someplace else. There aren’t normally any land use implications for importing a portion of product. We shouldn’t set up thresholds that we can’t enforce.
- Most permitting programs rely on complaint-driven enforcement.
- In Act 250 – an increase in production won’t trigger permits, it is only the construction of improvements that trigger Act 250.
- Act 250 only takes jurisdiction over the particular part of the property that needs a permit – the rest of the farm isn’t reviewed/affected.
- It’s not clear whether towns have to take jurisdiction over the entire property when a “non-farm” use is permitted on a farm.
- Farmers know nothing of land use permitting, especially Act 250.
- We need creative ideas for getting people to attend meetings/training.
- Zoning Administrators do not always rely on the AAFM to determine whether an activity is considered farming. The Agency, however, offers its opinions and encourages towns to contact the AAFM to ensure greater consistency statewide.

- Are towns regulating value-added enterprises? Are those determinations accurate? How are towns dealing with the grey areas where an agricultural enterprise doesn't meet the definition of "farming" but also isn't regulated by the town?
- These issues aren't a concern in towns without zoning.
- In Chittenden County, towns generally don't want to regulate the Burger Nights so will delay making a decision until they have to.
- Zoning for dedicated agricultural districts are rare in Vermont where the focus isn't land preservation but protection for farming. The agricultural district as defined in statute doesn't focus on farm business activity. This is something to think about and discuss.
- Low density residential is currently allowed by statute in agricultural districts. We should be clear to farmers about what a change in the agricultural district might mean – conservation vs. income from land. Bankers and others also need to know. Any effort to reduce residential density is perceived as taking away potential income from individuals owning land in that district, including farmers. A package of options could make a district change more acceptable.
- In the Marshfield conservation/forest district – because it is so strict you can't put a garage on an existing house. This is surely not the intent of the regulations.
- Agricultural enterprise districts – VHCB could prioritize acquisition of properties in those districts in order to fund retirement in a different way through taxes. Should that be allowed in other types of districts?
- Think about impacts of agriculture on a community – when a farm gets to a certain size or intensity, there needs to be oversight. What is that level?

Other Regulations – Tax, Labor, Current Use

- Even if we provide land use clarity, issues may arise in other arenas – e.g. taxes.
- For tax purposes, the legislature already recognized the need to be flexible for vineyards in the start-up stage, and having to get off farm product before the on-farm grape can be harvested. *[Note: this is in 32 V.S.A. §3752 (1) (C) (iii)].*
- One example is the sales tax exemption for agricultural purposes. A farm's purchase of a skid steer was denied because the farmer said it was for "cleaning the barn." Once it was clarified that purpose was for "manure management" the equipment was eligible for the exemption. This is currently being worked on by the Agency and the Tax Department.
- We need to define "rural enterprise" for a variety of purposes. Does a farm that makes split rail fences and that now imports wood from off the farm qualify as a farm enterprise? Labor laws may be an even larger issue than land use.
- For an apple processing facility – if you bring-in just one apple from another farm, it triggers a new level of labor laws.
- VT Department of Labor is in process of doing outreach, and creating a web page for farmers that is understandable – to help avoid labor issues on farms.
- There also needs to be consistency in oversight of Current Use. Compared to forestland, agricultural practices have no process of oversight. Does anyone check on the \$2,000 gross income?
- Can you use the Ag permitting for large/medium farms as oversight for current use to avoid new requirements? That doesn't address all the small farms that are currently not required to file a nutrient management plan. What kind of plan is suitable for current use?

Education

- Who needs the education? Planning and zoning officials, lister or municipal appraisers, farmers, vendors, service providers, etc. Who is getting the word out about educational opportunities?
- There are lots of organizations doing good work in outreach to farmers. The information being shared could be collected and repackaged. A single portal of access to reliable information that is summarized and understandable would be welcome.
- How can we work with existing programs to repackage, to coordinate and to do a better job of delivery? (All agreed this is a key question for the education group.)
- Education on Current Use is badly needed.
- Volunteer boards also have so much trouble understanding the land use regulations for farming.
- Towns are starting to address agriculture meaningfully in town plans. Previously it tended to be a side issue in the natural resource, economic development or land use sections of a town plan. Does it deserve its own section in the town planning document?
- Interagency coordination is needed with everyone working hard to break down silos between labor, tax and agriculture. We need coordination on portals and webpages that help farmers navigate the requirements.

Next Steps

Stephanie and Noelle thanked participants and invited them to continue in this process.

Subcommittees/Working Groups

Please sign up for one or more of the subcommittees addressing:

- Education and Tech Assistance
- Regulations and Potential Legislation

Identify key players who should be involved in each of those committees. Groups may meet in person or by phone, with 2-3 meetings each.

Proposed Timeline

- Report to the legislature in January or February 2015
- Until then, AAFM will propose some changes to attract feedback from interests that might be affected.
- If needed, there could be a task force to complete proposals next summer.

Communications

- All people who attend any of these meetings will be notified of events and policy proposals.
- AAFM will create a webpage so people can follow the process online
- Association representatives-please communicate with members to keep them apprised of the process
- Read meetings notes
- Involve a wide range of people so issues can be identified early in the process
- There needs to be a focus on breaking down silos between agencies. If legislators have concerns they should call commissioners directly.
- Related up-coming events:

- [VLCT Planning & Zoning Forum](#) - Oct 29, 2014 in Montpelier - Stephanie will discuss the limitation of municipal regulation of “farming” and “farm structures” as defined in the Accepted Agricultural Practices Regulations.
- [VT Economic Recovery Initiative](#) (VERI) – first public meeting in Woodstock on October 2 and Oct 16 in Brandon.