

**TESTIMONY OF TODD S. HEYMAN, HARTLAND, VERMONT**  
**TO TAX STRUCTURE COMMISSION**

Thank you very much for offering me the opportunity to testify before you. Before sharing our family's experience with property taxes here in Vermont, I want to emphasize that I propose six concrete and specific recommendations at the end of this document. I share our personal story as new business owners in Vermont who work our land to help you understand the basis for these recommendations. The version of this story here is long but I have spared you many details, particularly about the endlessly draining process of challenging our property's various tax assessments over three years, which we have since abandoned due to the cost, financial and otherwise, of seeking to get the question addressed in a horribly slow, inefficient, and unresponsive system. I am providing this level of detail here with the hope that we could have a conversation about these problems when testifying in person.

**My Personal Experience**

I am a new Vermonter, having bought a defunct dairy farm in Hartland in March of 2016. Since doing so, my wife and I have brought the farm back to life. We grow vegetables and berries on a couple of acres, we raise dairy sheep and will be selling

cheese this year, and we raise laying hens and a few goats to mow the lawn and enjoy some laughs. We sell our agricultural products to local restaurants and markets, but our primary business is agritourism. We built five small cabins overlooking our growing and grazing fields and rent them out to tourists who come to the area. Our guests can participate in the various enterprises on the farm and enjoy our product on-site, or at our area restaurant partners. You can learn more about our business at: [www.fatsheepfarmvermont.com](http://www.fatsheepfarmvermont.com)

According to Vermont's 2020 Comprehensive Economic Development Strategy, we are the postcard form of economic development that Vermont is trying to foster. We bring out of state money into the state and steer it to support Vermont's working lands businesses – cheese producers, syrup makers, restaurants who buy local, etc. We provide the state with tens of thousands of dollars annually in meals and rooms tax directly as a licensed lodging facility and indirectly through some Airbnb rentals. Consistent with the purpose of Vermont's current use program and Act 250 program, we preserve, promote, and produce on our working landscape and maintain its scenic beauty. By encouraging our guests to support other working lands businesses, we also support other area producers and their working lands enterprises as well.

In essence, we are a brand ambassador for Vermont. We promote Vermont as a place with high quality agriculture products and as an artisan cheese powerhouse. Many of our guests visit repeatedly and think about moving here. All of this furthers the mission of Vermont's chosen development path.

We have one employee now and will likely add another in the next year or two. We have been featured on the front page of the Boston Globe's Sunday travel section, covered in a recent Yankee Magazine edition, and promoted on a number of traveler blogs and smaller media outlets. At the risk of patting ourselves on the back publicly, we are doing good things for Vermont and our particular community, and have done those things in a pretty short period of time—four years. We have moved here and had two kids and the state didn't have to pay us \$10,000 to do it. And given the taxes we generate on rentals and the business we bring to the community, we offer a lot more than a remote worker cashing in on the \$10,000 benefit.

Setting up this business was no easy task. The cost of construction in Vermont is hefty. We knew that we'd be investing money that we would never see upon re-sale. We chose it because we envisioned a lifestyle in a community we wanted. Having since come to know many other members of the Vermont business community, it is clear that many of Vermont's smaller employers could be making more money

elsewhere due to the high cost of doing business here. Keeping those people here should be a priority for the state.

In addition to the sheer cost of construction, we needed an Act 250 permit and a public building permit – something we did even though we are certainly aware of other farms who have renovated their property to do agritourism and have skipped the permits altogether.

I should say that we have received great support from the local agricultural and business community. To date, the Departments of Agriculture and Tourism have also been supportive of our business. We have received a working lands grant to promote our sheep's milk creamery operation starting this year and the Department of Tourism supported our application for that grant.

Unfortunately, our experience with state and local officials entrusted with taxation responsibilities has made our lives exceedingly difficult and has, to put it bluntly, prevented us from promoting Vermont as a place where people should come to start a business -- particularly if the business is land-based and its property taxes will be determined by local officials with no particular background or expertise in business valuation.

First off, the tax rates are high. We have looked at properties similarly assessed to ours in high tourist areas in Massachusetts and they pay a fraction of what we pay in taxes (almost \$20,000 annually).

To put it bluntly, Vermont's taxation officials, locally and state-wide, have not made it easy on us, and we feel the pressure to move on from Vermont, both financially and emotionally after so many disappointing experiences. Our business income is far too modest to recoup anything close to our initial investment, certainly at this early stage, but we have chosen to test the market for second-home, family-compound buyers from out of state. While our town would certainly appreciate the added tax revenue of an absentee land owner who would be able to pay any level of taxes the town listers determined, the community would lose a business that brings hundreds of thousands of dollars to area businesses every year from visitors from all over the world, not to mention a business that could potentially employ more residents or lure more people to live in Vermont.

It's not something that would come easy to us – leaving a growing enterprise that we have poured our hearts and souls into. But the prospect of handing almost \$20,000/year to the state of Vermont for the privilege of living on a poorly

maintained road in a town that offers few municipal services, among other headaches that come with running a business here, is not the enticing lifestyle we had hoped for in coming here. The fact that the state and town often seem at best indifferent, if not outright hostile, to our decision to invest and develop here also presents challenges.

As explained below, we view the problems facing Vermont land-based businesses as two-fold, and not simply limited to tax rates. Officials must understand the policies and objectives of the various tax rules and programs and execute their duties with an eye toward achieving the goals of the rules and programs. If things are not working, Vermont is small enough that it should be able to fix them quickly. That has not been our experience.

At the risk of stating the obvious, if Vermont and its municipalities make it difficult for businesses like ours to prosper and thrive, the working lands economy suffers and we will see even less farms, and even more second homes and part-time residents in Vermont -- further exacerbating the affordability, employment, and population drain challenges the state faces.

**Dealing With PVR On Current Use Issues:**

As discussed previously, we built five cabins on our farm to sell agritourism experiences. In getting our Act 250 permit, we were required to mitigate the loss of farm land from the cabin development by setting aside, permanently in the deed, four acres of land in front of the cabins for farm land. Any subsequent buyer of our property must maintain that land open for farming and an access road to the land. Because we actually graze sheep on that land and grow crops, we had no issue with setting aside the land permanently for agricultural purposes. We believe that the state should set as much farmland aside as it can for the unknown challenges of the future when regional food security may become a much larger issue. Agritourism allows farms to keep farm land in operation unlike other forms of development that might be essentially irreversible.

The land that the cabins were built on was not enrolled in the program. Our home and barns were on a 2 acre housesite and the cabins were built on a 5 acre pull out during the “easy out” period. When we sought to file our current use enrollment plan, we were told that we needed to pull out an additional 5 acres around the cabins because each cabin was considered a dwelling that required a 2 acre pull out. In other words, the roughly 3000 square feet of building required a 10 acre pull out.

The only land around the cabins that was part of the current use program was land that we actively farm, including the acres that Act 250 permanently set aside for agriculture in our deed. As a result, the state was requiring us to leave certain land as farmland in the deed while simultaneously taxing us on that land as if we had built a Dollar General.

The department apparently defines a dwelling as a building with “one contiguous roofline.” So a hotel with 100 units would be considered a single dwelling whereas our five little cabins would be considered 5 dwellings, requiring 5 times the pull-out as a 100 room hotel. The “one contiguous roofline” rule is not in the statute or the regulations or any official publication of PVR. It has not been voted on by elected legislators nor subject to a notice and comment process. In fact, as best as I can tell, it is not written down anywhere in public.

We built a single lodging facility, not five separate dwellings. First off, the cabins are connected in every other way but the roof – power, water, septic, telecommunications, etc. – just like a single building. If we were to remove the cabin that connects directly to the well, power, etc., none of the other cabins would be functional. Second, the state of Vermont has treated our lodging facility as a single



facility in every way. We have one public building permit, one Act 250 permit, one well and wastewater permit, and one public health license to rent the units – and our occupancy limit is not based on each building but is based on an overall number for all units combined.

The land that we have removed from the current use program is indisputably farm land. Not only does Act 250 and our deed now require that the land remain agricultural, but we actively graze our dairy sheep on the land and, below that grazing area, we have about 3 acres fenced in where we have been growing crops since our first year here, 2016. And yet, this farmland, which the current use program was designed to preserve, is taxed at full value as if it were developed land. Here is a picture of our farm where you can see crops growing on land that was forced to be withdrawn from the program:



And here are pictures of the land in front of the cabins where you can see our sheep grazing:



Given we obviously farm this land, not even PVR was willing to call it developed land. PVR acknowledged the land remained in agricultural use when it declined to charge us a “change in use” tax, but still made us withdraw the agricultural land from the current use program.

The purpose of the current use program, according to the statute creating the program is to “encourage and assist in the maintenance of Vermont’s productive agricultural and forest land; to encourage and assist in their conservation and preservation for future productive use and for the protection of natural ecological systems ... to encourage and assist in the preservation and enhancement of Vermont’s scenic natural resources...” 32 V.S.A. §3751. Nothing about PVR’s decision furthers the goal of preserving this land – it forced us to withdraw the land from the program as if it were no longer agricultural land and was developed. Without a tax discount, there’s no incentive to preserve the land.

This seemed a bit ridiculous to us and I figured Vermont was a small enough government that reasonable people would simply fix the issue. I met with various legislators, the Lt. Governor, the Secretary of Agriculture, the tax department officials at the highest levels of the department, and I have testified three times in Montpelier on proposed statutory amendments. After two years, to date, no change

has been made. There is a bill that passed the house which would presumably fix my problem but the Senate declined to vote on it before adjourning this year even in the absence of any opposition and the support of PVR. The notion that PVR would support a bill to fix my problem and yet refuse to amend their unwritten rule to account for its unfair application to my property tells you all you need to know about why business owners find Vermont a challenging place to do business.

The larger point is that I am in this predicament because PVR suffers from bureaucratic rigidity and no focus on the big picture. If PVR had the authority to adopt this unwritten rule, then PVR has the authority to amend the rule as well. While I appreciate PVR's support of legislative efforts to amend parts of the current use regime, there actually is no law that needs amending that mandates a lodging facility comprised of multiple units be treated as multiple dwellings. PVR tied their own hands up without legal obligation and now claims that a new law is needed to untie their hands. And yet when confronted with a situation that clearly shows the limitations of this rule, PVR doubled down on an overly simplistic view of its duties and powers and forced me to spend, years, literally years, trying to get the farmland that everyone agrees is farmland (and Vermont made me permanently protect as farmland in the deed) to be treated as farmland by PVR.

These state officials cannot see the forest through the trees. This is how Vermont tax officials handle their duties. How can Vermont tell me that the land must remain agricultural out of one side of its mouth, and then tell me it must be taxed as if it was commercially developed out of the other?

It even gets more ridiculous when one considers why the “one contiguous roofline” rule is so cherished by PVR. Lacking enforcement resources to investigate how enrolled land is being used, it relies on Google earth pictures to count roofs. Three roofs are three dwellings. One hotel with 200 rooms is a single dwelling. And PVR officials will sit down across the table from you and look you in the eye and claim that this is all reasonable and appropriate with a straight face.

The problem here is that they cannot go out and check on the land. Jim Kenyon, a columnist for the Upper Valley News wrote a piece about someone in my town who had a field enrolled in the program and it was just a sea of poisonous parsnip. This is why the program has such detractors. People abuse it. Vermont cannot do much about it. If Vermont lacks the resources to go out and see what’s happening on the ground, then it is discounting the property taxes for the enrolled land too much. I would propose that the discounted rate be tied to income of the land holder. The biggest tax breaks should go to the people with the least income, as they are

sacrificing the most by enrolling their land instead of selling it for development. If people felt like the enrolled land was really preserving productive farm and forest land, and not just a tax break for the wealthy, the program would certainly be much more popular and be much more likely to accomplish its goals. Out of state, second-home people with large incomes would enroll the land for any modest tax break. They don't need the generous subsidy from the people of Vermont – just enough to give them a reason to hold it undeveloped.

**Dealing With Unlicensed Small Town Officers With Zero Expertise And Attempting To Appeal Their Decisions**

I have gone through the town assessment process in 2018, 2019, and 2020. By 2020, I decided the system was too expensive and draining to bother with, and I might as well just accept whatever the town determines and move on – advice I received from other business owners that I should have heeded in the two years prior.

I should start with the obvious. I am not a licensed appraiser. I don't know what my property would sell for in the market. It is a unique property with five cabins on it that have little use for the average family. It's also not in a prime tourist town and is not in an ideal location for a lodging business. It does not have enough units to generate sufficient income to warrant paying even half what we invested in developing it. Some of this I know because I paid a licensed commercial appraiser

with an expertise in lodging and decades of experience to appraise it. His valuation was based on the income method because he did not believe a second-home, family compound buyer would want so many cabins or desire to live on a dirt road in a town like Hartland -- at least a half hour from any of the major tourist or ski destinations. Better options exist throughout Vermont.

The town listers utilized a cost of construction method to value my property, which assumes a buyer would pay the cost to build the facility – an approach that the licensed appraiser rejected for many reasons over several pages in his 100+ page report. Indeed, the town lister's own handbook, published by PVR, states that the income method is typically the method used to evaluate commercial property, and that reliance on the cost method alone is improper.

Moreover, town listers do not have any specialized training but are merely elected by their community members. While most people in small towns have some experience buying residential property and can make fairly common-sense determinations about whether one property is more valuable than another, the same cannot be said for the array of complex businesses that might also needed to be valued for property tax assessments. Our business involves lodging and farming and

the farming is essentially a loss leader in order to obtain lodging customers in a less desirable tourist town than our competition.

Our location, while potentially attractive for a residential home, is not well suited for lodging—on a poorly maintained dirt road that is up a big hill, which presents significant obstacles for renting in mud and snow seasons. We must compensate for our location by offering farm stay experiences or we would never be able to make it. The way we view our location and the way our town views our location could not be more at odds. Hartland is not a desirable lodging town (like Woodstock, Stowe, Ludlow, Killington) for tourism operations as we have to compete with much more conveniently located lodging facilities in Woodstock and Hanover NH in order to survive. In fact, the only other lodging facility in our town failed and shut down.

If it were not obvious, our town listers do not have any experience running, owning, or selling a lodging business (or any business as far as I can tell). I would be surprised if they could even perform an income valuation or could define a capitalization rate without assistance. Unfortunately for us, these people are the ones who were entrusted in valuing our property for tax assessment purposes.



In 2018, the town started a two-year effort to physically inspect and re-appraise every property in town for the first time in 17 years. Instead of waiting to introduce the new valuations until 2019, the town rushed to visit as many properties that had been improved as possible in 2018 and raised those properties taxes a year before the rest of the town. Coincidentally, it appears that many long-term residents escaped inspection of their improvements until 2019 and enjoyed another year of low tax bills. Even if this outcome was innocent, it was unfair to subject part of the town to major assessment increases while the rest of the town could evade the increase for an additional year.

The town started the 2018 grievances after the legal deadline, and did not get permission from PVR or the Selectboard that was required to obtain to start late, and PVR did nothing. Not only does the statute say that they must get permission but the joint publication of PVR and the Secretary of State also said that the permission was mandatory. I challenged this lack of permission because I wanted to argue that the unfair targeting of new residents was grounds to reject the permission to start late, which would make the town wait to introduce the new assessments for everyone in town in the same year. The case went all the way to the Vermont Supreme Court which essentially allowed the town to bypass the permission requirement of PVR and the Selectboard (it did not even mention the requirement for Selectboard

approval) and ignored a longstanding principle of Vermont jurisprudence called Dillon's rule which says that if there is any doubt about a municipal actor's authority to take action, it must be resolved against the municipal actor. The Court did not even mention the rule and just refused to enforce the language written by the Legislature and publicly endorsed by PVR. If I can't rely on plain English and PVR's own handbook to know the rules, what can I rely on? This epitomizes doing business in Vermont.

In 2019, the listers further increased the value of my property because of the completion of renovations and I challenged it again, using a professional appraiser to determine the correct value of my property. The BCA eventually set the property's value at about \$1.1 million which was about \$200,000 over what the professional appraiser I hired arrived at using the income valuation method. When I tried to appeal this to a PVR hearing officer, my town hired a Burlington lawyer who decided to take advantage of the "de novo" rule and claim that the town did not have a position on the value of the property or what was wrong with the professional appraiser's opinion I submitted. It took this position in April of 2020 – a full year after it accepted the BCA valuation, rejected my appraiser's valuation, and taxed me on the BCA value. Rather than defend the BCA valuation, the town refused to take a position in answering my discovery requests about valuation or the problems with

my position. My choice at that point was to spend time and money filing a motion to compel the town to answer my questions and state what it thought the property was worth and why, and what was wrong with the appraiser's opinion I hired. The town was clearly going to make me spend as much time and money on the process as possible. I had to hope a hearing officer being paid \$120/day would take the time to understand everything and write out an opinion forcing the town to participate in good faith. Instead, I cut my losses and stopped wasting time on my tax bill and decided to focus on keeping my business alive during Covid 19. I dropped the appeal rather than try to force the debate on valuation. I can explain this more in detail when I testify if you want more details.

But the main point I want to make is that the appeal to the hearing officer should not be "de novo" where the town can throw out everything that happened up to that point in time and start all over again, asking for information and materials that it never seemed to need before to arrive at a valuation of the property. What was the point of the grievance and BCA appeal if the valuation derived from those processes was simply tossed aside? How could the town not take a position on the value of the property a year after it had taxed me based on a value that it had accepted from the BCA? And why not make people submit whatever evidence they have before the BCA makes a decision, and then keep the appeal to a narrow question of whether

the evidence submitted supported the BCA's valuation or not? Why is expensive and time-consuming discovery required for this proceeding? Everything we had done prior the hearing officer appeal became irrelevant and it was a complete do-over. Taking advantage of this open-ended and expensive process, the town sought to delay and avoid engaging in an honest debate on competing valuations. Why shouldn't it have had to live with defending the number the BCA chose – a number it accepted and did not appeal from?

In 2020, the town re-assessed me a third straight year. I learned my lesson and did not grieve the assessment and just moved on. Again, I don't pretend to know what the correct value of my property is, but I do think the path to a trained professional should be shorter and if there are going to be proceedings in front of the BCA, the parties should be held to the positions they take at the BCA and the evidence they submit to the BCA. This would ensure that any appeal is focused on narrow issues and does not become a super expensive, wide-ranging inquiry – which is what my 2019 appeal became before I decided I had more important things to do.

To date, the town has never given a single reason why the professional appraiser's opinion was wrong despite ample opportunity. For complex commercial properties, this just seems like the wrong process. It may be that the town is right and I could

sell a huge complex on a dirt road in Hartland for over a million dollars (we are certainly trying to do that now), but it may also be that the professional commercial appraiser is right that the income potential of the property just cannot support such a price, and Hartland is simply an undesirable location for a family compound and people would only spend that amount of money on properties in much more desirable parts of Vermont.

If the property can only be sold as a business, we will be limited to selling it for a price based on our income – which is far too low to support valuations based on construction cost. Whoever is right, and I am no expert, the determination should not be made by elected officials with no expertise, and the appeals process should be streamlined, targeted, and before an expert who is unwilling to work for \$120/day. You get what you pay for. Vermont should hire licensed professionals to make these decisions or handle these valuations in house at PVR for faster and more consistent outcomes. The town should be allowed to participate in the valuation but the process now is cumbersome and unlikely to arrive at a correct value. The taxpayer will just give up because it's not worth it. This is likely by design to discourage appeals, but getting these valuations right is important to Vermont's long-term economic development – even if it would mean a bit more work for the civil servants.

There is no question that our experience trying to get our property taxes under control and fairly set, and getting our current use enrollment fixed, have been the biggest factors causing us to think about leaving Vermont far earlier than we ever planned. It is also why we caution people thinking about coming to Vermont to start a business to think twice before choosing to invest here. So far, when we talk to officials about this causing us to consider leaving, nobody seems to care. And maybe Vermont will do just fine driving people like us away. But it certainly does not appear consistent with the economic development goals Vermont set in its comprehensive economic development plan.

**RECOMMENDATIONS:**

- 1) Lower the tax rate for land in active production as opposed to merely conserved. Set a threshold criteria to qualify for active production that would result in only farmers who are supporting their families from agricultural production (not my family, whose living is earned by lodging revenue). Vermont farmers are performing a vital service to the state. The climate is tough enough for them without Vermont's excessive property tax burdens.
- 2) Adjust the current use discounted tax rate to take into account household income so that the state has more money to actually enforce the rules of the program on the ground. The state already looks to household income when determining the benefits available under the homestead exemption. There is no reason a someone making \$200,000/year needs the same discounted tax rate for enrolling land in the program as a Vermonter making \$30,000/year. By having more resources to physically inspect land and stop taxpayers from abusing the program, the policies of the program could be more nimble and flexible, and the public could have more confidence that those receiving a subsidy on property tax are actually furthering the goals of the program. Right now, there's so much abuse, lack of public trust, and the tax officials largely

rely on arbitrary rules to facilitate simple decisions – even when those decisions make no sense in light of the purpose of the program.

- 3) Replace the town listers and assessors with PVR appraisers for high value commercial properties that are beyond the skill set of the average town lister who is just an elected official with the time and willingness to perform valuations for very low compensation. Obviously, the meaning of “high value” commercial property would vary from community to community but there should be a process where a land-based business can be assessed by experts to reduce the transaction costs for businesses that are at the heart of Vermont’s economic development strategy. The town could have a chance to participate in the process but there should not be a grievance and BCA appeal before the business has the opportunity to be heard by a trained expert – it is inefficient and not likely to lead to a more accurate valuation. This was recommended by Doug Farnham when he served as Director of PVR. See page 109 of the 2017 PVR annual report (recommendation 3 here: <https://tax.vermont.gov/sites/tax/files/documents/2017AnnualReportBasedon2016GrandList-FINAL.pdf> ). Notably, the grievance and BCA appeal become irrelevant on appeal anyway. They should be skipped.
- 4) For other property, require that municipalities use assessors instead of listers. Smaller towns could pool resources to share assessors. This would ensure continuity and greater consistency in valuation and would also provide a more skilled professional to do a job with tremendous importance to both taxpayers and Vermont government. According to PVR, assessors are much more rarely reversed on appeal by PVR hearing officers for making errors than town listers. Also, it is difficult for some towns to even find people willing to be listers. Our town only has two listers right now instead of the three people it had last year because nobody ran for the third position. The real estate market in Vermont is complex and trained experts should set these values, not people who happen to have the time and willingness to do work for almost zero compensation. You get what you pay for.
- 5) Eliminate expensive “de novo” valuations at the appeals stage of the assessment process. Taxpayers can spend significant resources and time, including hiring professional appraisers, in grieving the listers’ decision and then appealing to the BCA. The valuation set by the BCA should be open to challenge by either the town or the taxpayer, but that challenge should be limited to the position on valuation that the party took in the proceedings

before the BCA. Starting over in front of a judge or a hearing officer creates an expensive process rendering the BCA process completely irrelevant. It also makes appealing any decision not worth the cost because broad discovery of new information is allowed. Force the parties to determine what they think the value of the property is and keep the scope of any appeal limited to whether the BCA valuation was correct, or the losing party's position before the BCA was correct – based only on the evidence submitted before the BCA. There's no need for broad reaching discovery to start all over. What's the point of having grievances and BCA appeals in the first place if they are thrown at the window on appeal? The de novo valuation is allowed currently by 32 V.S.A. §4467.

- 6) Increase the compensation of the PVR hearing officers who hear appeals so that you can attract licensed professionals or at least more experienced appraisers to do the tough and important work of coming up with a final valuation. Currently, they are paid \$120 for an eight hour day. And there are less than 200 appeals per year. Even with 200 appeals, an increase of \$400 per day would only be \$80,000. Isn't getting top notch experts doing this work for the entire state worth essentially the cost of one full time employee at a relatively senior level? Alternatively, the appeals could be taken in-house by the department for greater consistency. The \$120 pay is currently set by 32 V.S.A. §4465.

Thank you for listening.

Todd Heyman

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