

Agricultural and Forestal Districts Advisory Committee
June 27, 2024 Meeting
DRAFT Minutes

The Agricultural and Forestal Districts Advisory Committee met on Thursday, June 27, 2024.

Those members attending were:

| Members | Present | Absent |
|--------------------|----------------|---------------|
| Jim Andrews | | X |
| Benjamin Baer | | X |
| Mike Haas | X | |
| Peter Lynch | X | |
| David Powell, Jr. | X | |
| Melanie van Roijen | X | |
| Bruce Vlk | X | |

Staff present were:

- Scott Clark, Conservation Program Manager
- James Van Vranken, Planner

Applicants present were:

- Alan Vanclief, Landowner
- Cyndra Vanclief, Landowner
- Quentin Wood, New Leaf Energy

Agency staff present were:

- Kory Kirkland, USDA Natural Resources Conservation Service

Agenda

1. Call to Order
2. Approval of Minutes (April 29, 2024)
3. SP202400013 Secretary's Sand Solar
4. AFD Removal Policy
5. New Business
6. Old Business
7. Adjournment

1. Call to Order

Ms. van Roijen called the meeting to order at 5:31 p.m.

2. Approval of Minutes (April 29, 2024)

Ms. van Roijen and Mr. Vlk expressed concerns that the summary minutes of the April 29 meeting did not convey the complexity of the issues discussed at that meeting.

Mr. Lynch moved and Mr. Powell seconded to approve the draft minutes of the April 29, 2024 meeting. The motion passed by a vote of 4:1.

3. SP202400013 Secretary's Sand Solar

Mr. Clark presented a staff report on this special use permit request for a utility-scale solar energy facility, which would be sited within the Green Mountain District.

Mr. Wood presented the applicants' presentation on the project. The Chair invited public comment on this item. The meeting then proceeded to Committee discussion of the proposal.

Mr. Haas moved and Mr. Powell seconded to advise the Planning Commission and the Board of Supervisors that the proposed use is not consistent with the purposes of the Districts. The motion passed by a vote of 4:1.

4. AFD Removal Policy

Mr. Clark provided a brief presentation on the removal policy. Please note that Ms. Van Roijen and Mr. Lynch provided written statements on this item. Those statements are attached to these minutes, as is a statement provided by Mr. David van Roijen, an attendee at the meeting.

The Chair invited public comment. Afterwards, the committee discussed the removal policy and options for approaching removals discussed at the previous meeting. The committee discussion addressed several topics, including:

- Fairness and consistency: Some members expressed discomfort with the inconsistency of the County removing parcels from the Districts that it had previously acted to include after a review of their soils and other resources.
- Necessity of removals: Some members felt that the issue identified by staff as motivating the removal policy -- declining support for conservation programs and the use-value taxation program based on public concerns over already-developed parcels not "paying their fair share" while getting conservation-related tax benefits -- was not valid or accurate.
- Relevance: Some members felt that there was no relevant connection between the purposes of the Districts and the presence or absence of development rights on a District property, and that decisions about inclusion or removal of parcels should be based on conservation values (soils, etc.) and the presence or absence of rural land uses.
- Legal questions: Some members questioned whether the County is authorized to remove parcels from Districts except by landowner request.
- Complexity: Some members expressed concern that AFD and use-value issues are very complex, and that the Committee has not had sufficient information to support decision-making. Also, limited attendance (minimal meeting quorums for a committee that already has a few vacancies) has been a challenge for having full discussions.

Following this discussion, Mr. Powell moved and Mr. Vlk seconded that the Committee recommend that the Board of Supervisors not establish a blanket policy on parcel removals solely based on development rights. The motion passed by a vote of 4:1.

5. New Business

The Chair invited new business.

Mr. Vlk recommended that the Committee work to recruit more members to the Committee.

6. Old Business

The Chair invited old business. There being none, the meeting moved on to the next item.

7. Adjournment

With no further business, the meeting adjourned at 8:35 p.m.

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Statement by Melanie van Roijen, Chair

It is my understanding that the Albemarle County, VA Code of Ordinances, specifically Chapter 3, Section 3-201(F) criteria applied when reviewing Ag-For District applications for creating a district was revised in November 2018 to include Item 7 Development Rights.

For anyone unfamiliar Section 3-201(F)(7), it reads: "Development rights. Whether any parcel has one or more development rights that would allow the creation of one or more parcels less than 21 acres in size; in considering whether to include any parcel in a district, the policy of the County is to not include any parcel determined to have no development rights and cannot be further divided to create one or more parcels less than 21 acres in size..."

I believe that the current language of Section 3-201(F)(7) is at odds with the spirit and intent of Virginia state law related to Agricultural and Forestal Districts. The Code of Virginia, Chapter 43 (Agricultural and Forestal Districts Act), Section 15.2-4306 (Criteria for evaluating application) does not appear to mention development rights as relevant criteria. State Code goes on to say in Section 15.2-4312(B), "No local government shall exercise any of its powers to enact local laws or ordinances within a district in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the purposes of this chapter unless such restrictions or regulations bear a direct relationship to public health and safety."

Similarly, I believe the consideration of development rights as additional criteria is at odds with Albemarle County Code. Chapter 3 (Agricultural and Forestal Districts) Section 3-101 (State and County policies to be promoted) states "This chapter protects paramount public interests and shall be liberally construed to effectuate its purpose stated in County Code § 3-100 and the following policies:" The Code goes on to state four policies that I will slightly abbreviate but encourage you to reference in full.

- A. "It is the policy of the State and the County to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestall products."
- B. "It is also the policy of the State and the County to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces... as well as for aesthetic purposes."
- C. "It is the policy of the County to support a strong agricultural and forestal economy."
- D. "It is the policy of the County to protect and preserve natural resources... and retain continuous and unfragmented land for agriculture, forestry, biodiversity, and natural resource protection."

Note the strong and clear language in all of these County policies that are "to be promoted" and "liberally construed".

Finally, I question whether the Board of Supervisors has the authority to unilaterally remove an already admitted parcel from an Ag-For District. In my reading of applicable State and County Codes, I found no reference to such a power or any inference to any mechanism by which anyone but the landowner can initiate removal from an Ag-For District. The closest reference was Albemarle County Code Section 3-102, which authorized the Board of Supervisors to withdraw lands from Ag-For Districts “as provided in this chapter and in Virginia Code §§ 15.2-4300 et seq. and 15.2-4400 et seq.” So, in other words, it not only needs to align with County Code, it also needs to adhere to State Code.

Additionally, Virginia Code § 15.2-4311 (Review of Districts) says the local governing body shall hold a public hearing as provided by law and what we were told last meeting and what we have just confirmed again in this meeting, is that the Board of Supervisors will be approaching this in a work session, which is not a public hearing.

Given these questions and concerns, I think it's possible or even likely that Board-initiated action to remove any parcels may result in legal action by affected landowners - either individually or as a class action. I believe that the County would then need to answer and defend these actions in court using taxpayer money. Without any obvious need to change the administration of Ag-For Districts, I am averse to any recommendation that may expose the County, the Board or this Committee to even the potential of legal action.

I would instead recommend the Board of Supervisors and the County's attorney, seek a legal opinion from the State's attorney general regarding (1) the legality of language in county ordinance Section 3-201(F) about development rights, (2) the authority of the Board to remove individual parcels previously admitted to a district, (3) the authority of the Board to discuss and decide in a private work session over a public hearing, and (4) the related authority to collect retroactive taxes if the County vs the landowner removes a parcel from a district.

I ask that the minutes of this meeting, being a matter of public record, reflect these concerns in full and with specific detail.

Ag Forest District Meeting - AFD Removal Topic (Peter Lynch)

I want to make it clear that I am a member of the AFD committee as the County Assessor as required by state law (§15.2-4304). I, therefore, represent the Assessor's perspective of Ag Forest districts specifically as it relates to the administration of the land use program, which I believe is the intention of the requirement for me to be here. While I generally understand the benefits of the districts to the County and to the property owners, my focus is on the effect of the districts on land use qualification.

Ag Forest districts are administered by Community Development (CDD) and while I am a staff member of Albemarle County, staff recommendations from CDD may not generally and do not in this case currently match my recommendation.

When administering the land use program, I have a responsibility not only to owners of properties under the ag forest program or the land use program, but all properties in the county. Proper administration of land use program ensures the proper distribution of assessment across the population of the county. I cannot ignore the owners of more than 93% of properties that are not in land use or the more than 98% of properties that are not in ag forest districts when providing guidance that will allow parcels to inappropriately receive a tax deferral.

Because of this I intend to again make the following motion:

Because inclusion of parcels with no small lot development rights in Ag-Forest districts provides minimal conservation value and has no effect on the County's ability to shape the direction of land uses in the rural areas under the County's Development Plan but allows access to the open space land use tax deferral program, the Ag-Forest Committee recommends that the Board of Supervisors adopt Option 2. This will provide direction to county staff to remove any parcels with no small lot development rights, that are not under a perpetual conservation easement, from districts as they come up for renewal.

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Letter prepared by Mr. David van Roijen

The State Code that enables Agricultural and Forestal districts outlines that these should include:

“Agriculturally and forestally significant land” meaning land that has recently or historically produced agricultural and forestall products, is suitable for agricultural or forestal production or is considered appropriate to be retained for agricultural and forestall production as determined by such factors as soil quality, topography, climate, markets, farm structures and other relevant factors.”

All parcels admitted to the Albemarle districts were reviewed for these factors during my many years on the committee. Soil types favorable to either agricultural production or forestry and topography were duly noted. As the State Code makes no mention of development rights, these were not a consideration of the committee or previous Boards of Supervisors and as such were admitted parcels.

In my opinion, the Board of Supervisors by code has the ability to limit additional non-agricultural building and development in the districts, but cannot force the withdrawal of parcels based on the lack of development rights. To do so would require review by the State Attorney and a legislative vote.

However, I believe that this and each future Boards of Supervisors has the right not to admit parcels to districts despite meeting the criterion set forth by the State, but there may be legal challenges to this.

To remove parcels that contain significant soils and land from districts based on development rights and force a roll-back of five years taxes simply on the basis of tax revenue and ignores the benefits of the strength of a defined district and any present and potential agricultural and forestal production. I believe that the primary purpose of preserving lands in a district for present and or potential agricultural and forest production and preventing other than by right development are and have been met and should be upheld.

Scott Clark in his memorandum of April 22, 2024 states that "State law does not allow counties to deny tax qualification based on the lack of development potential or other concerns."

So why are we entertaining this concept? Further he notes that there is no corresponding public conservation benefit from these parcels. Clearly, the county has not read the statement from Farm Bureau (11/1/2017). It states: " An agricultural/forestal district provides much stronger protection from development and zoning changes that may occur as a result of elections;"districts discourage land uses not in keeping with agricultural, forestal or open space land uses. Parcels with no development rights in a district are beneficial in creating an area of like minded people that are able to help maintain the lands for present or future production (as per code). Our supervisors over many years have failed to meet with their ag/for districts. Their excuse is that they know their constituents, though not as district.

As such, any farmer will tell you that it is essential to have these areas in order to be successful. Neighbors share information, equipment, and help. These districts were formed to maintain the model and parcels were added to fill in the "donut hole.". Each parcel in a district is restricted from further non-agricultural development, but also may ensure that non-agricultural development does not occur on adjoining parcels. This is very important to protect rural areas. This is a significant benefit. If we tear apart the work that has gone into creating these districts we are undermining the county's stated policy of protecting the rural areas.

Please consider the significant impact of any changes to our ag/for districts versus the unknown revenue that the county staff and assessor's office have failed define despite it having been seven (7) years since this issue was first raised during a review of the Hardware District.

Most Sincerely,

David van Roijen