

MEMORANDUM

TO: Board of Supervisors

FROM: Greg Kamptner, County Attorney
Scott Clark, Senior Planner
Peter Lynch, County Assessor

RE: Chapter 3, Agricultural and Forestal Districts; staff analysis of work session issues

DATE: April 2, 2018

This memorandum analyzes the three issues for which staff has requested the Board to provide direction.

Issue 1. Whether the uses and activities allowed on a parcel in an AFD should be further restricted.

One of the fundamental limitations on land within an AFD is that it may not be developed to a more intensive use. The term “more intensive use” has been interpreted by the Virginia Attorney General to mean a use involving greater population density or an increased level of activity.” Virginia Code § 15.2-4309(B) states in part that the Board of Supervisors may require, as a condition to creating a district, that:

[A]ny parcel in the district shall not, without the prior approval of the [Board of Supervisors], be developed to any more intensive use or to certain more intensive uses, other than uses resulting in more intensive agricultural or forestal production, during the period which the parcel remains in the district.

Virginia Code § 15.2-4309(B) establishes some exceptions to this rule by allowing certain residential uses for the owner, members of the owner’s family, and farmworkers.

The County has implemented Virginia Code § 15.2-4309(B) in current County Code § 3-202 by allowing any use allowed by right in the Rural Areas zoning district, any special use in the Rural Areas zoning district if the Board approves a special use permit, subdivisions where the resulting parcel size is at least 21 acres, and the residential uses required to be allowed by State law noted above.

There are a number of by-right uses allowed in the Rural Areas zoning district that are also allowed on parcels within an AFD, even though those uses are not directly related to agricultural or forestal production, and even though those uses remove land from an agricultural or forestal use. These uses include veterinary services where the treatment is off-site; agricultural service occupations, which could include things like farm equipment repair; bed and breakfasts; and commercial stables, as well as public uses and public utilities.

There are several options:

- A. Retain the current restrictions.** This option would continue to allow any parcel in an AFD to put the land to any use allowed by right in the Rural Areas zoning district, even if that use removes land from agricultural or forestal production.
- B. Amend the current restrictions to allow the by-right uses, but prohibit land being removed from production.** This option would continue to allow any parcel in an AFD to put the land to any use allowed by right in the Rural Areas zoning district, provided that no land is removed from agricultural or forestal production. This option is also relevant to the next issue pertaining to parcels in AFD’s with no development rights. This option would require staff to make a determination that each proposed by-right use in an AFD,

including the construction of dwellings and accessory structures, did not remove land from agricultural or forestal production before it could be permitted.

- C. Amend the current restrictions to allow the by-right uses, but require Board approval under an AFD analysis.** This option would continue to allow any parcel in an AFD to put the land to any use allowed by right in the Rural Areas zoning district, but would require the Board's approval of those uses that are not agricultural or forestal production or are not otherwise required to be allowed by right under State law (*i.e.*, the residential uses described above). This option would require the Board to make a determination that each proposed by-right use in an AFD, including the construction of dwellings and accessory structures, did not remove land from agricultural or forestal production before it could be permitted. This review and approval process would be under the County's AFD regulations, not under the Zoning Ordinance. This option is also relevant to the next issue pertaining to parcels in AFD's with no development rights.
- D. Amend the current restrictions to limit the range of special uses a landowner of a parcel in an AFD may ask the Board to allow.** This option would revise the current regulations that allow a landowner in an AFD to request the Board to approve any use allowed by special use permit in the Rural Areas zoning district. Special uses allowed in the Rural Areas zoning district include community centers, private schools, golf courses, public garages, and outdoor theaters. Approximately 30 special uses have no relationship to agricultural and forestal production. Although few, if any, landowners have applied for special use permits for parcels in an AFD, amending the current restrictions to limit the range of special uses that may be approved in an AFD is consistent with the purposes of the AFD program.

If the Board decides to amend the restrictions, they could become effective only as a condition of renewal during the County's periodic review of an AFD.

Issue 2. How parcels in an AFD with no development rights should be evaluated during district review.

In 2016, the Board added the following criterion to be applied when evaluating the creation of a district, and the addition of land to a district:

Whether any parcel has one or more development rights that would allow the creation of one or more parcels less than twenty-one (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 twenty-one (21) acres in size;

County Code § 3-201(F)(7).

The issue is whether this criterion should also apply when a district is reviewed. In other words, should the Board modify a district under review by removing those parcels with no development rights? One of the concerns with these parcels remaining in an AFD is that their remaining in the AFD provides limited value to the community because they have no further development rights.

There are several considerations:

- A. The parcels joined an AFD under the rules then in effect.** These parcels were included in or added to an AFD under the County rules then in effect.
- B. Some 21-acre (or more) and family subdivision parcels with no development rights were likely created under current AFD rules.** AFD rules allow parcels of 21 acres or more, and family subdivision parcels, to be created, regardless of whether any remaining development rights exist on the parcel. Staff recommends that, if the Board decides to change the broader policy being considered, it grandfather these parcels and allow them to remain in their AFD.

- C. The parcels that might be removed from an AFD would be subject to roll-back taxes.** If these parcels are removed from the AFD, they are subject to roll-back taxes equal to the sum of the deferred tax for each of the five most recent complete tax years, including simple interest. There is no State enabling authority to relieve an owner from roll-back taxes who withdraws or is removed from an AFD.
- D. The parcels do not harm the AFD.** These parcels do not harm the AFD. Other than adding insignificantly to staff processing time, they make little difference to the program.
- E. Some of the parcels may help more parcels to join the AFD.** Some members of the Planning Commission have previously suggested that small parcels help stitch an AFD into a more cohesive whole. (Many current AFDs are rather fragmented by previous withdrawals.) Because of the State laws that define the required AFD “core” at the time a district is created, parcels adjacent to the original core allow parcels farther out to also join. However, as recent changes to State law allow non-contiguous parcels to join if they are “agriculturally significant,” this potential benefit of keeping parcels in an AFD may not be significant.
- F. The parcels being eligible for open-space use valuation even though they have no development rights is problematic.** These parcels are problematic for the integrity of the County’s open-space use valuation program because the landowner receives a tax benefit with little value to the community in return as a result of being in the AFD because the parcel has no development rights. This issue is further examined in the next two paragraphs.
- G. Even though parcels have no development rights, their being in an AFD brings some value to the community if uses are further restricted.** “Development rights” affect the ability to further divide a parcel and the number of dwelling units that may be established. Even though a parcel may not be further divided or have more than one dwelling unit, the absence of development rights does not restrict the non-residential uses to which a parcel may be put. Being in an AFD imposes some restrictions on the uses allowed on a parcel, including those with no development rights. Currently, the only AFD-related restriction on uses on the parcels is the requirement that the Board find that a proposed special use permit is in accord with the purposes of the AFD’s. Any by-right use is permitted, and any use allowed by special use permit can be permitted by the Board. Amending the current restrictions as discussed in Section 1, above, would enhance the value of allowing parcels with no development rights to remain in an AFD. As noted in Section 1, any new restrictions would apply as a condition of renewing the AFD.
- H. Parcels without development rights could apply for Open-Space Use Agreements instead.** It has been suggested that parcels without development rights should be removed from AFDs, and that the owners of those parcels could apply to put their land under Open-Space Use Agreements instead. However, as Open-Space Use Agreements also mainly restrict subdivision, this alternative creates additional work for the landowner and for the County without creating any significant improvement in conservation outcomes. For properties that are already subdivided, the other restrictions included in Open-Space Use Agreements (prohibitions on additional uses, new structures, new fences and barriers, and removal of vegetation) are not significant conservation gains. At present, Open-Space Use Agreements are not subject to the development-rights analysis that is applied to AFD additions. If the County only approved Open-Space Use Agreements on properties that have unused subdivision potential, those Agreements would become an effective conservation tool in a way that they are not now. However, allowing these parcels to enter into Open-Space Use Agreements to preserve open-space use valuation status would be inconsistent with the Board’s policy to not allow these parcels to join an AFD. Staff recommends instead that, if the Board adopts a new policy, these parcels be allowed time to qualify under agricultural, horticultural, or forestal use valuation if their owners want their parcels to remain in an AFD.

As with Section 1, if the Board decides to amend the regulations to separately evaluate parcels in an AFD with no development rights, this would happen during the AFD’s periodic review.

If the Board decides that parcels without development rights should be removed from the AFDs during district reviews, staff requests that the Board provide guidance on the following matters:

- Should staff analyze the development rights of all parcels in the AFD being reviewed, or only those in the open space category of use-value taxation? The parcels without development rights that are qualifying for the open space category through AFD membership are the only ones getting the inappropriate tax benefit discussed above. However, parcels that happen to be in other tax categories during the review could change into the open space category in later years.
- Should parcels above any certain size (*e.g.*, 100 acres) **not** be considered for removal? Please note that even a very large parcel with no development rights is not protected from development by membership in an AFD – it can be divided into an unlimited number of 21-acre parcels. On the other hand, large parcels provide contiguity with other parcels that might be able to join the District in question.

Please note that analyzing the development rights of parcels in an AFD under review will add significantly to the staff time required for the review process, especially for the larger districts. The largest AFD, Moorman's River, includes 225 parcels.

Issue 3. Whether appointees to the Advisory Committee should be subject to term limits.

Current County Code § 3-103(B)(2) prohibits a person appointed to the Advisory Committee from serving more than two consecutive four year terms. The term limitation continues in the proposed ordinance. Of the eight citizen-appointees, four are required to be engaged in agricultural or forestal production, and the other four must be landowners in the County.

Current County Code § 3-103(B)(3) and the proposed ordinance allow Committee members whose terms have expired to continue to serve until a successor is appointed. Nonetheless, Community Development staff is concerned that filling vacancies on the Committee has been difficult and “holdover” periods have sometimes been lengthy. Furthermore, Committee members with extensive experience in local agriculture and with AFDs have been removed due to the term limits. Also, the current phrasing of the term limits does not make it clear how long these members who wish to continue to serve have to wait before they can re-apply to join the Committee. Therefore, staff asks the Board to provide direction on whether the term limits for this Committee be eliminated.