

Powhatan County Agricultural and Forestal District (AFD) Review

September - October 2020

Prepared by the Agricultural and Forestal District Advisory Committee

1. Recommendation

The law requires that the 10-year review of AFDs consider, as one question, whether to (a) continue, (b) terminate, or (c) review, which may lead to changes. This is the most important question each renewal (and we) must answer: What is the AFD Advisory Committee's bottom-line recommendation to the Planning Commission and Board of Supervisors?

Answer: THE AFDAC RECOMMENDS UNANIMOUSLY AND UNEQUIVOCALLY THE CONTINUATION OF AFDs.

The remainder of this white paper provides context and rationale.

2. What is the AFD program and how is it meant to be used?

Answer: The General Assembly created this land-use tool to help localities manage growth and protect critical pieces of land by creating guidelines by which a locality can protect farms, timber tracts, and open spaces in alignment with the locality's Comprehensive Plan, Vision for its future, and the wishes of its citizens. AFDs ALLOW A LOCALITY TO, ESSENTIALLY, "PURCHASE" DEVELOPMENT RIGHTS OF PIECES OF LAND, FOR A SPECIFIED PERIOD OF TIME, IN EXCHANGE FOR A LAND-USE TAX RATE LEVIED ON THOSE SELECTED PIECES OF LAND.

3. Why did Powhatan County choose to adopt an AFD program?

Answer:

- a. Heavy and continued pressure to develop farming/forest/open space into residential uses, with all the services and problems such usages bring;
- b. Our aging farmers/timbermen and fewer residents willing to do this hard work;
- c. The soaring cost of land, the difficulty paying taxes on large pieces of land, and the temptation (and sometimes, intense pressure) to "sell out";
- d. The clamor of our citizens to ameliorate these pressures and "keep us a rural, farming community."
- e. The desire to use available tools to help the County tie land-use decisions (such as rezonings) to the County's CP and long-term vision.

4. How many AFDs do we presently have? What is the total acreage in AFDs in Powhatan?

Answer: Nine Districts, about 5640 acres.

5. Why is this program so infrequently used?

Answer: This is a “buried” program, not much touted by the County, despite the fact that it has been in the Comprehensive Plan for decades as a “prime land-use tool” to help local government recognize its intent to manage growth. Additionally, given the long-time chopping up of land into smaller and smaller tracts, it is difficult sometimes to cobble together the minimum acreage required.

6. What is the process by which AFDs are created?

Answer: Request by the landowner with review and paperwork by the Planning Department; review and recommendation by the AFD Committee; review, including public hearing, by Planning Commission, with recommendation; review, including public hearing, and final decision by the Board of Supervisors.

7. Why has the AFD Committee undertaken this review?

Answer:

- a. Code of Virginia
- b. direction of the Board of Supervisors
- c. review by AFDAC, Planning Commission, and Board of Supervisors of process and status of AFDs
- d. As a result of this review, misinformation and rumors about AFDs in Powhatan and the program’s future have come to light
- e. (and see #3)

8. Why have both land-use taxation and AFDs?

Answer:

- a. Most important: even in, and specifically because of the redundancy, AFDs are part of the strong intent of the Board to do everything legally permissible to abide by our citizens' overwhelming message, "Protect the rural nature of our community!" Embracing the redundancy by the County is part of a strong, symbolic message that the Board hears and concurs with the public's desire. We are saying by the redundancy, as strongly as we can, that we intend to provide every tool possible to our farmers, foresters, open-space advocates, and citizens-at-large to protect Powhatan, its CP, and its vision for our future.
- b. AFDs are in our Comprehensive Plan and land-use taxation is not.
- c. AFDs must be taken into account when land adjacent is up for a rezoning. This does not mean that AFD designation automatically stops a proposed rezoning. AFD designation is a tool that helps the Board of Supervisors in its intent to maintain rural character.
- d. Rescinding Land-use Valuation: we do not see a time in our immediate, or even intermediate, future where Powhatan would rescind Land-use Valuation. But if such an event occurred for political or financial or philosophical reasons, AFDs would provide at least a partial fallback position.
- e. Length of time "in" the program: AFDs reviewed every ten years by AFDC; land-use taxation yearly by COR

Note: Most acreage in AFDs would be eligible for the Land-use Taxation rate even if they were not in an AFD. Thus, AFDs do not of themselves create a significant real estate tax loss to the County. The belief that they do fails to consider that most AFD acreage would be taxed at the land-use rate even if that land were not in an AFD. FURTHERMORE—AND THIS IS IMPORTANT—IT IS IMPERATIVE THAT WE RECOGNIZE THAT LU TAXATION IS NOT A "COST" PER SE TO THE COUNTY SINCE STUDY AFTER STUDY HAS SHOWN THAT A COMPARISON OF "COST OF SERVICES" OF LAND IN AN AFD (AND LU-TAXATION) IS SIGNIFICANTLY LESS PER ACRE THAN LAND NOT IN THE SYSTEM.

9. What administrative questions have arisen about AFDs? Or what misunderstandings or non-clear issues have come to light in this review (and previously)?

Answer: The issues this review has “uncovered” mostly fall into one of three categories¹. We are calling these AFD Operational Principles. They are in the Code of Virginia.

Category 1: Authority

For any change to an AFD District (or member of the same), the BOS has sole authority to authorize the change. The pathway for changes, additions, deletions, et al: AFD Advisory Committee, Planning Commission, BOS, with an appeal to the Circuit Court if the owner is dissatisfied by the BOS’s action.

Category 2: Roll-back Taxes

If a property is rezoned or changes use, it may be subject to removal from the district and subject to roll-back taxes pursuant to §58.1-3237². If a property is withdrawn or removed from the district, it would be subject to roll-back taxes pursuant to §15.2-4314.

Category 3: Membership in an AFD

- a. Voluntary for a 10-year period and there is no requirement to renew. The BOS may decide to “Review” any or all districts between year 4 and 10.
- b. During the “Review Period” land within the district may be withdrawn at the owner’s discretion by filing a written notice with the local governing body at any time before the governing body acts to continue, modify or terminate the district.

¹ While most of the issues brought to the table were brought by AFDC members, we also acknowledge Planning staff, COR, County Attorney, and, importantly to us, the public during our public hearings.

² The County Attorney has opined that termination of a district triggers roll-back taxes. That opinion has been sent to the Attorney General for review and the County is awaiting a determination from the Attorney General’s office.

- c. A member may request to withdraw from an AFD at any time. Permission to withdraw is at the discretion of the BOS subject to the requirements listed in Category 1, above.

It is important to note that all the issues we have identified are clearly (with one exception) delineated in the Code. Most of our problems, including the public's ignorance of the operational principles of AFDs, are dealt with fairly clearly by the Code section on AFDs. THEREFORE, A MAJOR RECOMMENATION OF THIS COMMITTEE IS THAT WE SIMPLY FOLLOW THE CODE IN ALL THE PARTICULARS.

10. The AFDAC's recommendation to the Planning Commission and Board of Supervisors (repeat):

Answer:

- a. That the Board of Supervisors continues the AFD program as is.
- b. That the Board of Supervisors directs Planning and AFDAC to operate per the Code, specifically on those issues listed under #9, above. If the Committee "uncovers" any policy issues, in the opinion of the Committee, Planning Department, Planning Commission, or County Attorney, these will be brought to the Board of Supervisors.
- c. That the AFDAC review, in the last quarter of 2021, the specific operational questions and issues listed in (i) Mr. Pompei's Oct. 5 memo, "Future of AFDAC", p. 2, and (ii) Mr. Max Timberlake's questions in his email of Sep. 4, if not already dealt with otherwise in this white paper. These are primarily procedural, administrative, or operational questions and do not affect the recommendations of this white paper.
- d. That the AFDAC review existing AFDs in the first quarter of 2021.

11. Questions?

Your AFD Advisory Committee is made up of subject-matter experts you have appointed, plus the availability of staff and other expertise the Committee called upon for advice. The AFDAC consists of farmers, timbermen, business people, the President of the Powhatan Farm Bureau, the Commissioner of the Revenue, one former and one current member of the Board of Supervisors, two former members of the Planning Commission, a former Extension agent, and two former members of Monacan Soil and Water. Ex officio, on-call personnel include the Director of Planning, the County Attorney, and a staff representative from the Virginia Farm Bureau. Most important, multiple members of the community participated in public meetings. With all this expertise, we will entertain any questions you might have before you consider a vote to accept the AFDAC's recommendations, captured in the white paper in front of you and summarized in this presentation.

Respectfully submitted by your AFD Advisory Committee:

- Bill Cox
- Robert Harper
- David Moyer
- Pam Pleasants
- Bill Sifers
- Jamie Timberlake
- Max Timberlake, Vice-Chair
- Carson Tucker, Chair