

ARTICLE III. - VOLUNTARY AGRICULTURAL DISTRICTS AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS

*Footnotes:**--- (3) ---*

Editor's note— *Ord. No. 2007-116, adopted March 22, 2007, replaced the former Art. III, §§ 13-51—13-65, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and was derived from Ord. No. 2004-288, arts. II—XV, and art. XVII, adopted July 22, 2004.*

Sec. 13-51. - Authority for article.

The sections of this article are adopted pursuant to authority conferred by the G.S. 106-735 through 106-744 and G.S. Ch. 153A.

(Ord. No. 2007-116, Art. II, 3-22-2007)

Sec. 13-52. - Purpose of article.

- (a) The purpose of this article is to promote agricultural values and the general welfare of the county and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of agriculture; and increase protection from nonfarm development and other negative impacts on properly managed farms.
- (b) This article provides for the establishment of both voluntary agricultural districts and enhanced voluntary agricultural districts. This article replaces the Gaston County "Voluntary Agricultural District Ordinance" that was adopted on July 22, 2004. This new article was adopted to include the requirements for the Enhanced Voluntary Agricultural District. The Enhanced Voluntary Agricultural District was created in the General Assembly of North Carolina's Session Law 2005-390 approved on September 13, 2005.
- (c) The requirements for qualifying as a voluntary agricultural district under this article are the same as in the previous ordinance [Ordinance No. 2004-288]. Property owners with land currently classified as a voluntary agricultural district do not have to meet any additional requirements or take any action to maintain their classification. However, these property owners can elect to upgrade their property to an enhanced voluntary agricultural district, if they choose to do so, and if they meet the requirements for the enhanced district.

(Ord. No. 2007-116, Art. III, 3-22-2007)

Sec. 13-53. - Definitions.

The following are defined for purposes of this article:

Advisory board: Gaston County Agricultural Advisory Board.

Board of commissioners: Gaston County Board of Commissioners.

Chairperson: Chairperson of the Gaston County Agricultural Advisory Board.

Conservation agreement: Means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all:

- (1) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground,
- (2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials,
- (3) Removal or destruction of trees, shrubs or other vegetation,
- (4) Excavation, dredging or removal of lam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface,
- (5) Surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition,
- (6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or other acts or uses detrimental to such retention of land or water areas.

District: Voluntary agricultural district as established by this article.

Enhanced district: Enhanced voluntary agricultural district as established by this article.

S&WCDB: Gaston County Soil and Water Conservation District Board of Supervisors.

(Ord. No. 2007-116, Art. IV, 3-22-2007)

Sec. 13-54. - Agricultural advisory board.

- (a) *Creation.* The board of commissioners shall establish an agricultural advisory board to implement the provisions of this program.
- (b) *Membership.* The Gaston County Soil and Water Conservation District Board of Supervisors and the Chairman or his designee from the Gaston County Quality of Natural Resources

Commission (QNRC) will serve as the advisory board.

- (c) *Funding.* The per diem compensation, if any, of the members of the advisory board may be fixed by the board of commissioners and funds may be appropriated to the advisory board through the QNRC budget to perform its duties.
- (d) *Advisory board procedure.*
 - (1) *Chairperson.* The advisory board shall elect a chairperson and vice-chairperson each year at its first meeting of the fiscal year. The chairperson shall preside over all regular or special meetings of the advisory board. In the absence or disability of the chairperson, the vice-chairperson shall preside and shall exercise all the powers of the chairperson. Additional officers may be elected as needed.
 - (2) *Jurisdiction.* The advisory board may adopt rules of procedure not inconsistent with this article or with other provisions of state law.
 - (3) *Advisory board year.* The advisory board shall use the Gaston County fiscal year (July 1 through June 30) as its meeting year.
 - (4) *Meetings.* Meetings of the advisory board shall be held at the call of the chairperson and at such other times as the advisory board may specify in its rules of procedure or upon the request of at least a majority of the advisory board membership. A meeting shall be held at least annually and notice of any meetings to the members shall be in writing, unless otherwise agreed to by all advisory board members. Meeting dates and times shall be posted as far in advance as possible on the door of the meeting site and by advertisement in local newspapers or by other means of public dissemination of the meeting dates as may be agreed upon by at least a majority of the advisory board membership. All meetings shall be open to the public.
 - (5) *Majority vote and quorum requirements.* All issues shall be decided by a majority vote of the members of the advisory board present, except as otherwise stated herein.
 - (6) *Records.* The advisory board shall keep minutes of the proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the advisory board, or its designee, and shall be a public record.
 - (7) *Administrative.* The Gaston County Natural Resources Department will serve the board for record keeping, correspondence, application procedures under this article, and whatever services the board needs to complete its duties.
- (e) *Duties.* The advisory board shall:
 - (1) Review and approve or disapprove applications of landowners for enrollment qualified farmland, horticultural land, or forestland in either voluntary agricultural districts or

enhanced voluntary agricultural districts;

- (2) Make recommendations concerning the establishment and modification of agricultural districts;
- (3) Conduct public hearings;
- (4) Advise the board of commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the county that will affect agricultural districts;
- (5) Review and make recommendations concerning proposed amendments to this article;
- (6) Develop a draft countywide farmland protection plan as defined in G.S. 106-744(e) for presentation to the board of commissioners;
- (7) Study additional methods of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the board of commissioners; and
- (8) Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the board of commissioners.

(Ord. No. 2007-116, Art. V, 3-22-2007)

Sec. 13-55. - Creation of voluntary agricultural districts and enhanced voluntary agricultural districts.

(a) *Regions.* Gaston County is hereby divided into six (6) regions as defined below:

- (1) Cherryville District.
- (2) Dallas District.
- (3) River Bend District.
- (4) South Point District.
- (5) Gastonia District.
- (6) Crowder's Mountain District.

(b) *Implementation.* In order to implement the purposes stated in section 13-52, this program provides for the creation of voluntary agricultural districts which meet the following standards:

- (1) The district or enhanced district shall contain a minimum of twenty (20) contiguous acres of qualified farmland; or
- (2) The district or enhanced district shall contain two (2) or more qualified farms within areas designated by the advisory board.

All land enrolled in a region, defined in subsection (a) above, shall be part of a single district, whether enrolled in the district or the enhanced district. If a single farm has acreage in two (2) or more regions, the farm shall participate in the district where the largest acreage is found. All

land in a region as defined in subsection (a), above, shall be treated as a single district whether enrolled in the district or the enhanced district.

- (c) *Education.* The county may take such action as it deems appropriate through the advisory board or other entities or individuals to encourage the formation of the districts and enhanced districts and to further their purposes and objectives, including the implementation of a public information program to reasonably inform landowners of the agricultural district program.
- (d) *Addition and withdrawal.*
 - (1) Qualifying farmland in a region with an existing district shall be added to the district as herein provided.
 - (2) In the event that one or more participants in the District or Enhanced district withdraw and the acreage in the district or enhanced district becomes less than the minimum acreage required or results in the remaining land being noncontiguous, a voluntary agricultural district will continue to exist so long as there is one qualifying farm.

(Ord. No. 2007-116, Art. VI, 3-22-2007)

Sec. 13-56. - Requirements for certification and qualification of farmland.

To secure county certification as qualifying farmland in either a voluntary agricultural district or enhanced voluntary agricultural district, a farm must:

- (1) Be participating in the farm present-use-value taxation program established by G.S. 105-277.2 through 105-277.7, or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3 (minimum acreage requirements listed in G.S. 105.277.3 are ten (10) acres for agricultural lands, five (5) acres for horticultural lands and twenty (20) acres for forestland);
- (2) Be managed, if highly erodible land exists on the farm, in accordance with the natural resources conservation service defined erosion-control practices that are addressed to said highly-erodible land; and
- (3) Be the subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten (10) years;
- (4) Be located in the unincorporated area of Gaston County.

The advisory board may grant variances with reduced benefits.

(Ord. No. 2007-116, Art. VII, 3-22-2007)

Sec. 13-57. - Application, approval, appeal procedure.

(a) *Application procedure.*

- (1) A landowner may apply to participate in either the agricultural district or the enhanced agricultural district program by making application to the chairperson of the advisory board or a designated staff person, and must designate the application as for either voluntary agricultural district status or enhanced district status. The application shall be on forms provided by the advisory board. The application to participate in a district may be filed with the application for certification of qualifying farmland.
- (2) A conservation agreement (required by G.S. 106-737 and defined in G.S. 121-35) suited to district type (voluntary agricultural district or enhanced voluntary agricultural district) designated by the landowner to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the advisory board, which shall record a certified copy of such with the Gaston County Registrar of Deeds. Permitted uses include agriculture, horticulture, forestry, and outdoor recreation. Conservation agreements for the enhanced agricultural district program may, at the election of the parties, include provisions requiring that any disputes between the county and the landowner be resolved through arbitration or mediation, and, in the event of litigation, that the prevailing party be awarded costs, including reasonable attorney fees. The conservation agreement for the enhanced voluntary agricultural district shall be binding upon all successors in interest to the landowner, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the conservation agreement.

(b) *Approval process.*

- (1) Upon submission of the application to the advisory board, the advisory board shall meet within thirty (30) days to approve or disapprove the application. The chairperson shall notify the applicant by first class mail of approval or disapproval of participation in the district.
- (2) Upon receipt of an application, the chairperson will forward copies immediately to the following offices which shall be asked to provide comments, if any, to the advisory board prior to the date set for the advisory board vote on the application:
 - a. The Gaston County tax assessor;
 - b. The Gaston Soil and Water Conservation District office;
 - c. The Gaston County Office of N.C. Cooperative Extension; and
 - d. The Natural Resources Conservation Service.

(c)

Appeal. If an application is denied by the advisory board, the landowner shall have thirty (30) days from the date of notification to appeal the decision to the board of commissioners. Such appeal shall be presented in writing. The decision of the board of commissioners is final.

(Ord. No. 2007-116, Art. VIII, 3-22-2007)

Sec. 13-58. - Revocation, enforcement, renewal of conservation agreements.

(a) *Revocation and enforcement.*

- (1) *District.* By providing 30 days advance written notice to the advisory board, a landowner of qualifying farmland within a voluntary agricultural district may revoke the conservation agreement or the advisory board may revoke the same conservation agreement based on noncompliance by the landowner, subject to the same provisions as contained in subsection 13-57(c) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a district. Absent noncompliance by the landowner, neither the advisory board nor the board of commissioners shall revoke any conservation agreement prior to its expiration. If the advisory board shall revoke this conservation agreement for cause, the landowner shall have the appeal rights set forth in subsection 13-57(c). Transfers of land in a voluntary agricultural district due to death of the landowner, sale or gift shall not revoke the conservation agreement unless the land no longer qualifies for the present-use-value taxation program or, in the event that there are water or sewer assessments held in abeyance, the new owner(s) fails to agree in writing to accept liability for those assessments in the event that the land is withdrawn either voluntarily or involuntarily from the district. Enforcement of the terms of a conservation agreement for land enrolled in a voluntary agricultural district shall be limited to revocation of the conservation agreement and the benefits derived therefrom.
- (2) *Enhanced district.* Conservation agreements for land within enhanced districts are irrevocable for a period of ten (10) years. Enforcement of the terms of the conservation agreement may be through an action for injunctive relief and/or damages in any court of competent jurisdiction. The county may also terminate any benefits to the owner under this program either permanently or during the period of violation, as appropriate. If the advisory board shall revoke this conservation agreement for cause, the landowner shall have the appeal rights set forth in subsection 13-57(c). The right to terminate program benefits is in addition to any legal rights that the county may have under either this article or the terms of the applicable conservation agreement. The county may seek costs of the action including reasonable attorney fees if such a provision is incorporated into the conservation agreement.

(b)

Renewal.

- (1) *District.* A conservation agreement for land within a voluntary agricultural district shall be automatically renewed unless the landowner provides thirty (30) days' written notice to the advisory board of intent not to renew. Absent noncompliance by the landowner, neither the advisory board nor the board of commissioners shall fail to renew any conservation agreement unless this article or its authorizing legislation has been repealed.
- (2) *Enhanced district.* A conservation agreement for the enhanced voluntary agricultural district shall be deemed automatically renewed for an additional term of three (3) years, unless either the advisory board or the landowner gives written notice to the contrary prior to the termination date of the conservation agreement. At the end of each three-year term the conservation agreement shall automatically renew for an additional three-year term unless notice of termination is given.

(Ord. No. 2007-116, Art. IX, 3-22-2007)

Sec. 13-59. - Waiver of water and sewer or all utility assessments.

(a) *No connection required.*

- (1) A landowner belonging to the district shall not be required to connect to Gaston County water and/or sewer systems.
- (2) A landowner belonging to an enhanced district shall not be required to connect to Gaston County utility systems.

(b) *Abeyance.*

- (1) Water and sewer assessments shall be held in abeyance, without interest, for farms in a district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
- (2) Utility assessments shall be held in abeyance, without interest, for farms in an enhanced district, until improvements on such property are connected to the utility system for which the assessment was made.

(c) *Termination of abeyance.* When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(d) *Suspension of statute of limitations.* Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. The landowner may be required to sign an acknowledgement (that may be incorporated into the conservation agreement) of the abeyance of the statute of limitations upon collecting water and sewer assessments, or other utility assessments.

(e) *Other statutory abeyance procedures.* Nothing in this section is intended to diminish the

authority of the county to hold assessments in abeyance under G.S. 153A-201, or other applicable law.

- (f) *Conflict with water and/or sewer system construction and improvements grants.* To the extent that this section conflicts with the terms of federal, state, or other grants under which county utility systems are constructed this section shall not apply. This section shall not apply to utilities that are not owned by the County unless the County has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this Article shall apply.

(Ord. No. 2007-116, Art. X, 3-22-2007)

Sec. 13-60. - Additional enhanced agricultural district benefits.

Land enrolled in the enhanced voluntary agricultural district program is entitled to all of the benefits available under the voluntary agricultural district program, and to the following additional benefits:

- (1) *Sale of nonfarm products.* Landowners participating in enhanced districts may receive up to twenty-five (25) percent of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from county zoning regulations under G.S. 153A-340(b). A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed twenty-five (25) percent of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.
- (2) *Agricultural cost share program.* Landowners participating in enhanced districts are eligible under G.S. 143-215.74(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the agriculture cost share program established pursuant to Part 9 of Article 21 of G.S. Ch. 143 for funds to benefit that farmland.
- (3) *Priority consideration.* State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in enhanced districts.
- (4) *Utility assessment waiver.* As provided in section 13-59 above, waiver of all county utility assessments in addition to waiver of water and sewer assessments is available to all participants in enhanced districts.

(Ord. No. 2007-116, Art. XI, 3-22-2007)

Sec. 13-61. - Public hearings.

- (a) *Purpose.* Pursuant to G.S. 106-740, which provides that no state or local public agency or

governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a district until such agency or unit has requested the advisory board to hold a public hearing on the proposed condemnation.

(b) *Procedure.*

- (1) Upon receiving a request, the advisory board shall publish notice describing the proposed action in the appropriate newspapers of Gaston County within five (5) business days of the request, and will in the same notice notify the public of a public hearing on the proposed condemnation, to be held within ten (10) days of receipt of the request.
- (2) The advisory board shall meet to review:
 - a. Whether the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved; and
 - b. Whether there are alternatives to the proposed action that have less impact and are less disruptive to the agricultural activities of the district within which the proposed action is to take place.
- (3) The advisory board shall consult with the county agricultural extension agent, the natural resources conservation service district conservationist, and any other individuals, agencies, or organizations deemed by the advisory board to be necessary for its review of the proposed action.
- (4) Within five (5) days after the hearing, the advisory board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the public prior to its being conveyed to the decision-making body of the agency proposing the acquisition.
- (5) There will be a period of ten (10) days allowed for public comment on the report of the advisory board.
- (6) After the ten (10) day period for public comment has expired, the advisory board shall submit a final report containing all of its findings and recommendations regarding the proposed action to the decision making body of the agency proposing the acquisition.
- (7) The total time period, from the day that a request for a hearing has been received to the day that a final report is issued to the decision making body of the agency proposing the acquisition, shall not exceed thirty (30) days. If the agency agrees to an extension, the agency and the advisory board shall mutually agree upon a schedule to be set forth in writing and made available to the public.
- (8) Pursuant to G.S. 106-740, the board of commissioners shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly

before the advisory board.

(Ord. No. 2007-116, Art. XII, 3-22-2007)

Sec. 13-62. - Notification.

(a) *Record notice of proximity to voluntary agricultural district.*

- (1) *Procedure.* Upon certification of qualifying farmland and designation of real property as a district, the title to that qualifying farmland and real property, which is contained in the Gaston County Land Records System shall be changed to include a notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half (½) aerial mile of a voluntary agricultural district.
- (2) *Limit of liability.* In no event shall the county or any of its officers, employees, members of the advisory board, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this.
- (3) *No cause of action.* In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary/enhanced voluntary agricultural district as defined in this article.

(b) *Signage.* Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads that pass through or next to those districts as may be deemed appropriate by the advisory board, or its administrative agent for the county's agricultural district program. Placement of signage shall be coordinated with the N.C. Department of Transportation and local zoning departments.

(c) *Maps.* Maps identifying approved agricultural districts shall be provided to the following agencies or offices:

- (1) Register of deeds;
- (2) Natural resources conservation service;
- (3) North Carolina Cooperative Extension Service;
- (4) Gaston County Natural Resources Department;
- (5) Gaston County Land Records;
- (6) Gaston County Planning and Code Enforcement; and
- (7) Any other such agency or office the advisory board deems appropriate.

(Ord. No. 2007-116, Art. XIII, 3-22-2007)

Sec. 13-63. - Subdivision ordinance and zoning ordinance review.

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans, the existence of the districts within one-half (½) aerial mile(s) of the proposed development.

(Ord. No. 2007-116, Art. XIV, 3-22-2007)

Sec. 13-64. - County land-use planning.

- (a) *Duty of the advisory board.* It shall be the duty of the advisory board to advise the board of commissioners or the agency or office to which the board of commissioners delegate authority to oversee county land use planning, on the status, progress, and activities of the county's agricultural district program and to also coordinate the formation and maintenance of agricultural districts with the county's land use planning activities and the county's land use plan.
- (b) *Posting of notice.* The following notice, of a size and form suitable for posting, shall be posted in the office of the register of deeds, and any other office or agency the advisory board deems necessary:

Gaston County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, and other common farming activities may occur in these districts any time during the day or night. Maps and information on the location and establishment of these districts can be obtained from the Gaston County Natural Resources Department, North Carolina Cooperative Extension Service office, the office of the Register of Deeds, the County Planning office, or the Natural Resources Conservation Service office.

- (c) *Growth corridors.* At such time as the county might establish designated growth corridors, agricultural districts shall not be permitted in the designated growth corridors, as delineated on the official county planning map without the approval of the board of commissioners. Districts located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area without the approval of the board of commissioners.

(Ord. No. 2007-116, Art. XV, 3-22-2007)

Sec. 13-65. - Consultation authority.

The advisory board may consult with North Carolina Cooperative Extension, the Natural Resources Conservation Service, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the advisory board deems necessary to properly conduct its business.

(Ord. No. 2007-116, Art. XVI, 3-22-2007)

Sec. 13-66. - North Carolina agency notification.

Annual report to the North Carolina Department of Agriculture and Consumer Services required. A copy of this article shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the board of commissioners, the County Office of the North Carolina Cooperative Extension Service, and the Gaston County Natural Resources Department after adoption. At least annually the county shall submit a written report to the commissioner of agriculture and consumer services on the county's agricultural district program, including the following information:

- (1) Number of landowners enrolled;
- (2) Number of acres enrolled;
- (3) Number of acres certified during the reporting period;
- (4) Number of acres denied during the reporting period;
- (5) Number of acres for which applications are pending;
- (6) Copies of any amendments to the this article; and
- (7) Any other information the advisory board deems useful.

(Ord. No. 2007-116, Art. XVII, 3-22-2007)