

## ARTICLE VIII. - VOLUNTARY AGRICULTURAL DISTRICT

*Footnotes:*

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**Editor's note**— *An ordinance of January 9, 2017 did not specify manner of inclusion, hence, codification as art. VIII, §§ 1—18 was at the discretion of the editor.*

## Sec. 1. - Title.

An ordinance of the Board of County Commissioners of Rutherford County, North Carolina, entitled, "Rutherford Voluntary Agricultural District Ordinance."

(Ord. of 1-9-17)

## Sec. 2. - Authority.

The articles and sections of this Ordinance are adopted pursuant to authority conferred by the G.S. §§ 106-735—106-744 and Chapter 153A.

(Ord. of 1-9-17)

## Sec. 3. - Purpose.

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, horticulture and forestry; and increase protection from non-farm development and other negative impacts on properly managed farms.

(Ord. of 1-9-17)

## Sec. 4. - Definitions.

The following are defined for purposes of this article:

*Advisory board.* Rutherford County Agricultural Advisory Board.

*Board of commissioners.* Rutherford County Board of Commissioners.

*Chairperson.* Chairperson of the Rutherford County Agricultural Advisory Board.

*District.* Voluntary agricultural district as established by this article.

(Ord. of 1-9-17)

#### Sec. 5. - Agricultural advisory board.

- A. *Creation.* The board of commissioners shall establish an agricultural advisory board to implement the provisions of this program. [Reference to, or inclusion of, all relevant provisions of Rutherford county's policies and procedures for advisory boards should be done wherever necessary in subsections A—H. of this section. Section I. is pursuant to G.S. § 106-739.]
- B. *Membership.* The advisory board shall consist of seven members appointed by the board of commissioners.
- C. *Membership requirements.*
  - 1. Each advisory board member, except those serving in an ex officio capacity, shall be a Rutherford County resident.
  - 2. At least five of the members shall be actively engaged in agriculture as defined in G.S. § 106-581.1 with an effort to have the broadest geographical representation possible.
  - 3. The members actively engaged in agriculture as defined in G.S. § 106-581.1, as well as other members, shall be selected for appointment by the board of commissioners from the names of individuals submitted to the board of commissioners by the soil and water conservation district board of supervisors, the County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency County Committee, nonprofit agricultural organizations, conservation organizations, agribusiness, horticultural businesses, forestry businesses, and the public at large.
  - 4. Additional members may be selected to the board in an ex officio capacity by the agriculture advisory board from the soil and water conservation district board of supervisors, the County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency, or other agencies as deemed appropriate. Members serving in an ex officio capacity shall neither vote nor count toward quorum requirements.
- D. *Tenure.* The initial board is to consist of two appointees for terms of one year; two appointees for terms of two years and three appointees for terms of three years. Thereafter, all

appointments are to be for terms of three years, with reappointment for one consecutive term permitted. After which these members may be re-appointed after a one-year absence from the advisory board.

- E. *Vacancies.* Any vacancy on the advisory board is to be filled by the board of commissioners for the remainder of the unexpired term. Vacancy should be filled based on membership criteria established in subsection 5.C.3.
- F. *Removal.* Any member of the advisory board may be removed by the board of commissioners upon a majority vote of the commissioners. No cause for removal shall be required.
- G. *Funding.* Funds may be appropriated to the advisory board to perform its duties.
- H. *Advisory board procedure.*
  - 1. *Chairperson.* The advisory board shall elect a chairperson and vice-chairperson each year at its first meeting of the calendar 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. *Determination of procedure.* 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 calendar year 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 USDA Service Center bulletin board of the meeting site. 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. A quorum is defined as a majority of the members in attendance. No business may be conducted by the advisory board without a quorum present.
  - 6. *Records.* The advisory board shall keep minutes of the proceedings showing the result of each item discussed. The advisory board shall keep records of those in attendance and 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. All records are public records open to the public.
  - 7. *Administrative.* The advisory board may contract with the Rutherford Soil and Water

Conservation District office to serve the board for record keeping, correspondence, application procedures under this article, and any other services the board needs to complete its duties.

I. *Duties.* The advisory board may:

1. Review applications of landowners for enrollment of qualified farmland, horticultural land, or forestland into a district for compliance with this article;
2. Make recommendations concerning the establishment and modification of 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 districts;
5. Review and make recommendations concerning proposed amendments to this article;
6. Develop and maintain a countywide farmland protection plan as defined in G.S. § 106-744 (e);
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 related tasks or duties assigned by the board of commissioners.

(Ord. of 1-9-17)

Sec. 6. - Creation of regions and districts.

- A. *Implementation.* In order to implement the purposes stated in § 3, this program provides for the creation of voluntary agricultural districts which meet the following standards:
1. The District shall contain a minimum of 50 contiguous acres of qualified farmland; OR shall contain two or more qualified farms which collectively contain a minimum of 50 acres and are located within a mile of each other.
  2. Adding qualifying farms subsequent to its initial formation may enlarge an agricultural district.
- B. *Encourage information.* 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 to further their purposes and objectives, including the implementation of a public information program to reasonably inform landowners of the farmland preservation program.
- C. *Display.* The districts shall be marked on county maps displayed for public view in the following county offices:
1. Register of deeds.

2. Planning department.
3. Tax supervisor.
4. Soil and water conservation district.
5. Cooperative extension service.
6. Any other office deemed necessary by the advisory board.

D. *Withdrawal.* In the event that one or more participants in the district withdraw and the acreage in the district becomes less than the minimum acreage required in the remaining land being non-contiguous, a voluntary agricultural district will continue to exist so long as there is one qualifying farm.

(Ord. of 1-9-17)

## Sec. 7. - Certification and qualification of farmland.

*Requirements.* To secure county certification as qualifying farmland in a voluntary agricultural district, a farm must:

1. Be real property that is engaged in agriculture as defined in G.S. § 106-581.1;
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;
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 years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and
4. Be located in the unincorporated area of Rutherford County, unless there is an agreement with a municipality through which the county is authorized to exercise the authority of the municipality on its behalf.

(Ord. of 1-9-17)

## Sec. 8. - Application, review, and appeal.

### A. *Application procedure.*

1. A landowner, or landowners, may apply to participate in the voluntary agricultural district program by making an application for certification of qualifying farmland to be included in a district to the chairperson of the advisory board or designated administrative staff. The application shall be on forms provided by the advisory board.

2. A conservation agreement, required by G.S. § 106-737 and defined in G.S. § 121-35, to sustain, encourage, and promote agriculture must be executed by the landowner(s) with the advisory board.

B. *Review process.*

1. 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 to review the application:
  - a. The natural resources conservation service;
  - b. Any other such agency or office the advisory board deems appropriate.
2. The advisory board or its administrative designees prior to, or at, the next regularly scheduled board meeting shall review an application for certification of qualifying farmland to determine if the application is compliant with all requirements of this article. The chairperson of the Board shall notify the applicant by first class mail of application compliance or non-compliance, and the reason(s) therefore, within 15 days of the determination.

- C. *Appeal.* If an application is determined to be noncompliant with this article by the advisory board, the landowner may, within 15 days of notification of noncompliance of the application, request in writing that the advisory board reconsider its determination. The request for reconsideration shall state the reason(s) therefore. The advisory board shall meet at the next regularly scheduled board meeting for reconsideration of the application and shall notify the applicant by first class mail of its determination, and the reason(s) therefore, within 15 days of the reconsideration of the application. Upon either an initial negative determination, if no request for reconsideration was made, or a negative determination after reconsideration, the landowner shall have 30 days from the date of notification to appeal the determination to the board of commissioners. Such appeal shall be presented in writing and shall state the reason(s) therefore. The decision of the board of commissioners is final.

(Ord. of 1-9-17)

Sec. 9. - Revocation, transfer, renewal, and enforcement of conservation agreements.

- A. *Revocation.* By providing 30 days advance written notice to the advisory board, a landowner of qualifying farmland within a district may revoke the conservation agreement or the advisory board may revoke the same conservation agreement based on noncompliance by the landowner with the provisions of article vii, subject to the same provisions as contained in § 8.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 § 8.C.

- B. *Transfer.* Transfers of land in a district due to death of the landowner, sale, or gift shall not revoke the conservation agreement, if all new landowner(s) affirm the conservation agreement and affirm, on a supplemental application, updated information demonstrating that the enrolled land still qualifies for enrollment under § 7 of this article.

In the event that there are water or sewer assessments held in abeyance by this article, and where the new owner(s) fail(s) to agree in writing to accept liability for those assessments when land is withdrawn either voluntarily or involuntarily from the district, the conservation agreement shall be revoked. revocation shall be undertaken pursuant to the provisions of subsection A. of this section.

- C. *Renewal.* A conservation agreement for land within a voluntary agricultural district, that continues to qualify under all provisions of § 7, shall be automatically renewed for a period of ten years unless the landowner provides 30 day 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 ordinance or its authorizing legislation has been repealed.
- D. *Enforcement.* Enforcement of the terms of a conservation agreement for land enrolled in a district shall be limited to revocation of the conservation agreement and the benefits derived therefrom. Revocation shall be undertaken pursuant to the provisions of subsection A. of this section.

(Ord. of 1-9-17)

#### Sec. 10. - Waiver of water and sewer assessments.

- A. *No connection required.* A landowner belonging to a district shall not be required to connect to Rutherford County water and/or sewer systems.
- B. *Abeyance.* 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.
- 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 shall be required to sign an acknowledgement, which shall 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 subsection 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. of 1-9-17)

#### Sec. 11. - Public hearings.

- A. *Purpose.* G.S. § 106-740 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 that the advisory board hold a public hearing on the proposed condemnation. This provision ensures that the condemning agency or unit considers the impact of its actions upon agricultural, forestal, or horticultural land prior to taking action that is not reversible. This provision is not intended to, and does not prohibit, the condemning agency or unit from taking action authorized by law.
- B. *Procedure.*
  - 1. Upon receiving a request, the advisory board shall publish notice describing the proposed action in the appropriate newspapers of Rutherford County within five 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 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 cooperative extension service office, the soil and water conservation district office, the natural resources conservation service, 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 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 days allowed for public comment on the report of the advisory board.
6. After the ten 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 within five days.
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 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 condemning agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations.

(Ord. of 1-9-17)

## Sec. 12. - Notification.

### A. *Record notice of proximity to a voluntary agricultural district.*

1. *Procedure.* Pursuant to G.S. § 106-741, when Rutherford County computerizes its county land records system the following requirements outlined in this section shall be implemented and enforced. Upon certification of qualifying farmland and designation of real property as a district, Rutherford County shall provide in its computerized land records system some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of that 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 section.
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 district as defined in this article.

- B. *Geographic information system.* Voluntary agricultural districts and all tracts within one-half mile of a voluntary agricultural district shall be mapped in the county geographic information system.
- C. *Maps.* Maps identifying approved districts shall be provided to the following agencies or offices:
  - 1. Planning department;
  - 2. Tax office;
  - 3. Register of deeds;
  - 4. Natural resources conservation service;
  - 5. North Carolina Cooperative Extension;
  - 6. Soil and water conservation district; and
  - 7. Any other such agency or office the advisory board deems appropriate.
- D. *Signage.* Signs identifying parcels enrolled in an agricultural district may be placed on enrolled parcels at the discretion of the owners. Signs shall not be placed along the right-of-way of any state or county maintained road.

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

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

(Ord. of 1-9-17)

#### Sec. 14. - 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 voluntary agricultural district program and to also coordinate the formation and maintenance of 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:

Rutherford County has established 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 agricultural, horticultural, and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, burning, and other common agricultural, horticultural, and forestry 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 North Carolina Cooperative Extension Service office, the Soil and Water Conservation District office, the office of the register of deeds, the county planning office, or the natural resources conservation service office.

(Ord. of 1-9-17)

#### Sec. 15. - Consultation authority.

The advisory board may consult with North Carolina Cooperative Extension office, the Soil and Water Conservation District office, 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. of 1-9-17)

#### Sec. 16. - North Carolina agency notification.

Annual report to the North Carolina Department of Agriculture and Consumer Services.

A copy of this article shall be sent to the office of the North Carolina Commissioner of Agriculture and Consumer Services, the Rutherford County Board of Commissioners, the Rutherford Cooperative Extension office, and the Rutherford Soil and Water Conservation District office after adoption. At least annually, the county shall submit a written report to the commissioner of agriculture and consumer services on the county's voluntary 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 not certified during the reporting period;
5. Number of acres for which applications are pending;
6. Any other information the advisory board deems useful.

(Ord. of 1-9-17)

#### Sec. 17. - Legal provisions.

A. *Severability.* If any article, section, subsection, clause, phrase, or portion of this article is for

any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

- B. *Conflict with other ordinances and statutes.* Whenever the provisions of this article conflict with other ordinances of Rutherford County, the provisions of those other ordinances shall govern. Whenever the provisions of any federal or state statute conflict with this article, the provisions of such federal or state statute shall govern. The sole remedy for a land use not complying with this article shall be revocation of the conservation agreement and removal of the non-qualifying land from the Rutherford County Voluntary Agricultural District Program. Recreational use of land that does not interfere with agricultural uses as defined in G.S. § 106-581.1 shall not be considered non-compliant with this article.
- C. *Amendments.* This article may be amended from time to time after notification, and in consultation with the agricultural advisory board to the board of commissioners.

Sec. 18. - Enactment.

The Rutherford County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this article.

Adopted this the 9th day of January, 2016.

(Ord. of 1-9-17)