

August 16, 2019

TO: All Voluntary Agricultural District program administrators

FROM: North Carolina Statewide VAD Workgroup

RE: Recent questioning of VAD Board authority to enroll farmland in VAD

Recently – in response to an eminent domain proceeding by the NC Department of Transportation against land enrolled in a Voluntary Agricultural District which resulted in a public hearing – a county attorney (Halifax) adopted a position questioning the validity of the county’s designated VADs and the parcels enrolled therein under the current ordinance and practice of the program. The county attorney was of the legal opinion that the Voluntary Agricultural District enabling statute (N.C.G.S. §106-735 *et seq.*) does not authorize the county Agricultural Advisory Board (“AAB”) to designate geographic Voluntary Agricultural Districts or enroll acreage into Voluntary Agricultural Districts (“VADs”) **without County Board of Commissioner approval of such parcels.** This may be an issue in your county depending on the language of the ordinance.

The county attorney’s issue was that the VAD enabling statute does not specifically empower the AAB to legally authorize districts. To paraphrase, in a state like North Carolina, no local agency can exercise authority such as that which impacts rights in land without specific language in an enabling statute passed by the General Assembly. The state statute, in listing the authority of the AAB, only states that the AAB can “[r]eview and make recommendations concerning the establishment and modification of agricultural districts.” The county attorney felt that the term “make recommendations” indicates an intent that another body – Commissioners – must approve the actual districts (and presumably parcels enrolled therein).

The language of the Halifax VAD ordinance in question appears to confer on the AAB the following authority:

“Review and approve or disapprove applications from landowners for enrollment of qualified farmland, horticultural land, or forest land in either voluntary agricultural districts or enhanced voluntary agricultural districts.”

The county attorney felt this language fell short. The ordinance does not specifically provide for a procedure by which “approved” parcels are submitted to the County Board of Commissioners. It appears that practice has been for the AAB to approve parcels without getting formal approval from the Commissioners under normal business.

Below is the response the VAD Workgroup conveyed to the Halifax County attorney, acknowledging his position and offering. The response outlines our reasoning that the attorney “may have a point” under North Carolina law, but also offering a workaround.

After reviewing the Halifax VAD Ordinance and further reviewing its enabling legislation (N.C.G.S. §106-735 et seq.), and conferring with my colleagues Steve Woodson and Jon Lanier, Assistant General Counsels at NC Farm Bureau and NC Department of Agriculture and Consumer Services respectively, we appreciate your interpretation of the AAB’s lack of authority to create voluntary agricultural districts or enroll acreage into a designated VAD without approval of the County Board of Commissioners.

*Considering the effort on behalf of Halifax County to establish and implement this VAD program, we propose the following solution to your concerns while the Ordinance and Conservation Agreements across the state are reviewed for compliance with the enabling legislation. **First**, we propose that the AAB prepare a map of the VADs that have been designated by the AAB (e.g. a GIS map), and present that map with a resolution to the County Board of Commissioners for approval of the map - and thus VAD establishment – during the consent agenda at the next Commissioners’ meeting. **Second**, we propose that the Conservation Agreements accepted to date be batched for approval by like resolution of the Commissioners. Going forward, the Conservation Agreements - the critical document for qualifying land for inclusion in a VAD – will include a signature line for the Chair of the County Board of Commissioners, and a list of AAB-approved applications can be recommended to the entire Board of Commissioners by the AAB for consideration at a full Board meeting, then executed by the Chair.*

We do note that §106-739(5) grants authority to the County to “Perform other related tasks or duties assigned by the governing board of the county or city that adopted the ordinance.” It is therefore arguable that if your county ordinance specifically delegates authority to the AAB to *create* VADs with enrolled parcels – as opposed to simply “recommending” their creation and enrollment – then the AAB would legally possess that authority. Of course, as with Halifax, your county attorney may opine otherwise. **It is recommended that confer with your county attorney on any issues he or she may see in the language of your VAD ordinance on this or other issues.**

To address this issue and others and provide updated materials, the State Voluntary Agricultural District Working Group - which includes representatives from NC Farm Bureau, NCDA&CS, Cooperative Extension, Soil & Water Conservation, Department of Transportation, and others - are beginning a process of a systematic statewide review of county ordinances to bring them in line with the statute, including the drafting of a new model ordinance to comply with historic changes to the VAD enabling statute. In addition, documents including a guide for program administration (e.g. FAQ, etc) is in draft stages.

In the meantime, for questions coming from Soil & Water Conservation staff administering the program, please refer questions to: Jon Lanier, Assistant General Counsel, North Carolina Department of Agriculture and Consumer Services, jonathan.lanier@ncagr.gov.

For questions coming from Cooperative Extension staff, please refer questions to: Robert “Andrew” Branan, Extension Assistant Professor, Department of Agricultural and Resource Economics, North Carolina State University, rabrana@ncsu.edu