



REQUEST FOR BOARD ACTION

ITEM NO. 12.

DATE OF MEETING: December 6, 2010

REQUESTED BY: Mr. Don Rawls, Chairman, Pender Soil and Water Conservation District

SHORT TITLE: Resolution Adopting Pender County Voluntary Farmland Preservation Program Ordinance

BACKGROUND: NCGS 106-735 authorizes the Board of County Commissioners to adopt and implement a voluntary farmland preservation ordinance. The purpose of such an ordinance is to promote agricultural values and general welfare of the county, to increase identity and pride in the agricultural community and its way of life, to encourage the economic and financial health of agriculture, and to increase protection from non-farm development and other negative impacts on properly managed farms.

The Pender County Soil and Water Conservation District has drafted an ordinance for Board consideration, a copy of which is attached. The ordinance establishes a Pender County Agricultural Advisory Board to administer the ordinance, and provides appointment of members by the Board of Commissioners.

SPECIFIC ACTION REQUESTED: To consider a resolution adopting the attached Voluntary Farmland Preservation Program Ordinance, with an effective date of December 7, 2010. A unanimous vote is required to enact an ordinance on its first reading.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

RB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby adopts the attached Voluntary Farmland Preservation Program Ordinance with an effective date of December 7, 2010. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ Rivenbark ___ Tate ___ Ward ___ Williams ___

Chairman 12/6/10
Date

ATTEST 12/6/10
Date

**PENDER COUNTY
VOLUNTARY FARMLAND PRESERVATION PROGRAM
ORDINANCE**

**ARTICLE I
TITLE**

An ordinance of the Board of County Commissioners of Pender County, North Carolina, entitled, "**PENDER COUNTY VOLUNTARY FARMLAND PRESERVATION PROGRAM ORDINANCE.**"

**ARTICLE II
AUTHORITY**

The articles and sections of this program are adopted pursuant to authority conferred by the N.C.G.S. Section 106-735 through Section 106-743.

**ARTICLE III
PURPOSE**

The purpose of this ordinance is to promote agricultural values and 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 non-farm development and other negative impacts on properly managed farms.

**ARTICLE IV
DEFINITIONS**

The following are defined for purposes of this ordinance:

- Advisory Board:** Pender County Agricultural Advisory Board.
- Chairman:** Chairman of the Pender County Agricultural Advisory Board.
- District:** Voluntary Agricultural District as established by this ordinance.
- Board of Commissioners:** Pender County Board of Commissioners.

ARTICLE V
AGRICULTURAL ADVISORY BOARD

A. Creation

The Board of Commissioners establishes an Agricultural Advisory Board to implement the provisions of this program.

B. Membership

The Advisory Board shall consist of 5 members appointed by the Board of Commissioners.

C. Membership Requirements

- i. Each Advisory Board member shall be a Pender County resident or landowner.
- ii. At least 3 of the 5 members shall be actively engaged in farming.
- iii. One of the members shall be the President of the Pender County Farm Bureau or his designee.
- iv. The members actively engaged in farming 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, the Cooperative Extension Service, the Agricultural Stabilization Conservation Service Committee, and the Pender County Farm Bureau with an effort to have the broadest geographical representation possible.

D. Tenure

The initial board is to consist of 1 appointee for terms of one year; 2 appointees for terms of two years; and 2 appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointments permitted.

E. Vacancies

Any vacancy on the Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.

F. Removal for Cause

Any member of the Advisory Board may be removed for cause by the Board of Commissioners subsequent to written charges being presented to the member and after a public hearing on the matter.

G. **Funding**

The per diem compensation of the members of the Advisory Board shall be fixed by the Board of Commissioners and funds shall be appropriated to the Advisory Board to perform its duties.

H. **Advisory Board Procedure**

1. **Chairman**

The Advisory Board shall elect a chairman and vice-chairman each year at its first meeting of the fiscal year. The chairman shall preside over all regular or special meetings of the Advisory Board. In the absence or disability of the chairman, the vice-chairman shall preside and shall exercise all the powers of the chairman. Additional officers may be elected as needed.

2. **Jurisdiction**

The Advisory Board may adopt rules of procedure not inconsistent with this ordinance or with other provisions of State law.

3. **Advisory Board Year**

The Advisory Board shall use the Pender County fiscal year as its meeting year.

4. **Meetings**

Meetings of the Advisory Board shall be held at the call of the chairman and at such other times as the Advisory Board may specify in its rules of procedure. A meeting shall be held at least every two months and notice of any meetings to the members shall be in writing, unless otherwise agreed to by all Advisory Board members.

5. **Majority Vote**

The concurring vote of a majority of the members of the Advisory Board shall be necessary to: reverse any order, requirement, decision, or determination of any administrative official or agency; to decide in favor of an applicant; or to pass upon any other matter on which it is required to act under this ordinance.

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 and shall be a public record.

I. **Duties**

The Advisory Board shall:

1. Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;
2. Conduct public hearings;
3. Advise the Board of Commissioners on projects, programs or issues affecting the agricultural economy or activities within the county that will affect agricultural districts;
4. Review and make recommendations concerning proposed amendments to this ordinance;
5. Study additional methods of farmland preservation and make recommendations to the Board of Commissioners; and,
6. Perform other agricultural related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI
CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS**

A. **Implementation**

In order to implement the purposes stated in Article III, this program provides for the creation of voluntary agricultural districts which meet the following standards:

1. The District shall contain a minimum of 20 contiguous acres of qualified farmland;
OR
2. The District shall contain two or more qualified farms which contain a minimum of 20 acres and are located within a mile of each other.

B. **Encourage Reformation**

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
6. County Land Records
7. 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 or results in the remaining land being non-contiguous, a voluntary agricultural district will continue to exist so long as there is one qualifying farm.

**ARTICLE VII
CERTIFICATION AND QUALIFICATION OF FARMLAND**

A. **Requirements**

1. To secure county certification as qualifying farmland, a farm must:
 - a. Be participating in the farm present-use-value taxation program established by N.C.G.S. Section 105-277.2 through Section 105-277.7;
 - b. Be certified by the Soil Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that:
 - i. are best suited for providing food, seed, fiber, forage, timber, forestry products, horticultural crops and oil seed crops;

- ii. have good soil qualities;
- iii. are favorable for all major crops common to the county where the land is located;
- iv. have a favorable growing season and,
- v. receive the available moisture needed to produce high yields for an average of eight out of ten years;

OR

have been actively used in agricultural, horticultural or forestry operations as defined by N.C.G.S. Sections 105-277.2 (1),(2) and (3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies;

- c. be managed, if highly erodible land exists on the farm, in accordance with the Soil Conservation Service defined erosion-control practices that are addressed to said highly-erodible land;
- d. be the subject of a conservation agreement, as defined in N.C.G.S. Section 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.

**ARTICLE VIII
APPLICATION, APPROVAL AND APPEAL PROCEDURE**

A. Application Procedure

1. A landowner may apply to participate in the program by making application to the chairman of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the certification for qualifying farmland.

2. An agreement to sustain, encourage and promote agriculture must be executed by the landowner and recorded with the Advisory Board.

B. **Approval Process**

1. Upon submission of the application to the Advisory Board, the Advisory Board shall meet within 30 days to approve or disapprove the application. The chairman shall notify the applicant by first class mail of approval or disapproval of participation in the district.
2. Upon receipt of an application, the chairman will forward copies immediately to:
 - a. The Pender County tax assessor's office; and
 - b. The Pender County Soil and Water Conservation District and the Soil Conservation Service office. The offices shall evaluate, complete and return their copies to the chairman within 30 days of receipt.

C. **Appeal**

If an application is denied by the Advisory Board, the petitioner has 30 days 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.

**ARTICLE IX
REVOCATION OF PRESERVATION AGREEMENT**

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke the Preservation Agreement or the Advisory Board may revoke the same Preservation Agreement based on non-compliance by the landowner, subject to the same provisions as contained in Article IX for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a District.

In the event that one or more parcels are removed from the conservation agreement the landowner must submit a written notice to the Board. Any remaining parcels in the conservation agreement must meet eligibility requirements to stay in the program.

**ARTICLE X
PUBLIC HEARINGS**

A. **Purpose**

Pursuant to N.C.G.S. Section 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, this ordinance provides for such hearing.

B. Procedure

1. Upon receiving a request, the Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of Pender 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 30 days of receipt of the request.
2. The Advisory Board shall meet to review:
 - a. if 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;
 - b. alternatives to the proposed action that have less impact on and disruption 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 Cooperative Extension Agent, the U.S.D.A. Soil Conservation Service District Conservationist, the Pender County Farm Bureau and may consult with any other individuals, agencies or organizations deemed by the Advisory Board to be necessary for its review of the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed action.
4. Within 10 days after the public hearings, 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 for comment prior to its being conveyed to the decision-making body of the agency proposing acquisition.
5. Pursuant to N.C.G.S. Section 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 within these time limitations.

**ARTICLE XI
PUBLIC NOTICE**

A. Procedure

Upon certification of qualifying farmland and designation of real property as a District, the Pender 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 aerial mile of a voluntary agricultural district.

B. **Limit of Liability**

In no event shall the County or any of its officers, employees, 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 ordinance.

C. **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 agricultural district as defined in this ordinance.

**ARTICLE XII
SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW**

Developers of major subdivisions or master development plans shall designate on preliminary development plans, the existence of the Districts within one-half aerial mile of the proposed development.

**ARTICLE XIII
WAIVER OF WATER AND SEWER ASSESSMENTS**

A. **No Assessment**

A landowner belonging to the District shall not be assessed for or required to connect to Pender County water and/or sewer systems.

B. **Abeyance**

Water and sewer assessments will be held in abeyance, without interest, for farms, whether inside or outside of 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.

E. **Other Statutory Abeyance Procedures**

Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under N.C.G.S. Section 153A-201.

**ARTICLE XIV
COUNTY LAND-USE PLANNING**

A. **Signed Registration**

Pender County may require persons applying for a building permit, or persons registering a deed sign the following statement, which shall be maintained at the office of the Advisory Board: "I certify that I have reviewed the most current Pender County Voluntary Agricultural Districts Map found in the Register of Deeds Office. I have noted the proximity of Agricultural District Boundaries to my property. I understand that activities such as pesticide spraying, manure spreading, machinery operation, livestock operations and other common farming activities may occur at any time in these areas."

B. **Condemnation Proceedings**

Prior to initiating condemnation proceedings which would convert land in a District to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board a statement that the governmental unit has considered alternatives to condemning farmland in the District.

C. **Growth Corridors**

At such time as the county might establish designated growth corridors, Districts may be permitted in the designated growth corridors, as delineated on the official county planning map, but the approval of the Board of Commissioners will be required. 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.

**ARTICLE XV
CONSULTATION AUTHORITY**

The Advisory Board may consult with the Cooperative Extension Office, the Pender County Soil Conservation Service office, the North Carolina Department of Agriculture, the Pender County Farm Bureau, the North Carolina Farm Bureau, and any other such agency the Advisory Board deems necessary to properly conduct its business.

**ARTICLE XVI
NORTH CAROLINA AGENCY NOTIFICATION**

A. Record Annually with the Department of Agriculture

A record of this ordinance shall be recorded with the North Carolina Commissioner of Agriculture's office after adoption. At least once a year the county shall submit a written report to the Commissioner of Agriculture concerning the status, progress and activities of the county's Farmland Preservation Program, including District information regarding:

1. Number of landowners enrolled;
2. Number of acres applied;
3. Number of acres certified;
4. Number of acres denied;
5. Date certified.

**ARTICLE XVII
LEGAL PROVISIONS**

A. Severability

If any article, section, subsection, clause, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined 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 ordinance conflict with other ordinances of Pender County, this ordinance shall govern. Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this ordinance, the provisions of such statute shall govern.

C. Amendments

This ordinance may be amended from time to time by the Board of Commissioners.

**ARTICLE XVIII
ENACTMENT**

The Pender County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this ordinance.

Adopted this the ____ day of _____, 2009.

Motion for adoption by _____ and seconded by
_____.

PENDER COUNTY BOARD OF COMMISSIONERS

Chairman

ATTEST:

Clerk to Board of Commissioners

Approved as to form:

County Attorney