

WORKSHOP SUMMARY

Making the Best Use of Agricultural and Forestal Districts, Land Use Taxation, and Related Options

a Shenandoah Land Use Network workshop hosted by Valley Conservation Council

October 7, 2009, Rockingham County Office Building

This workshop brought together participants from Augusta, Albemarle, Frederick, Page, Rockingham, Shenandoah, Loudoun, and Montgomery counties. Perspectives represented were planner, planning commissioner, zoning administrator, extension agent, farmers association, land use assessor, agricultural and forestal district coordinator, and state and regional organizations. Most attention was paid to the basic tools of Land Use Taxation and Agricultural and Forestal Districts, but emerging tools also were touched on. After learning about trends and issues, the group shared experiences and brainstormed on what might be helpful in overcoming challenges.

To see the presentations, handouts, and Agricultural and Forestal District Survey Report go to the VCC website (www.valleyconservation.org)

- **Benefits Of Land Conservation for Localities** (Sara Hollberg, Planner, Valley Conservation Council)
- **Land Use Taxation** (Lindsay Reames, Assistant Director of Governmental Relations, Virginia Farm Bureau)
- **Agricultural and Forestal Districts Survey** (Jill Templeton, VCC Program Manager)
- **Lease of Development Rights** (Kevin Schmidt, Coordinator, Office of Farmland Preservation, VDACS)
- **Transfer of Development Rights, Urban Development Areas** (Ted McCormack, Director of Governmental Affairs, VA Association of Counties)

DISCUSSION: SELECTED COMMENTS AND POINTS

Land Use Taxation

- **Positives:** generally discourages development; widespread participation (buy in)
- **Problems:** limited conservation value (short term and not targeted); not effective enough on its own; significant loss in revenue for locality; open to abuse
- A total of 94 localities have land use taxation programs: 74 counties and 20 cities. Some Southside counties are considering it whereas Northern Virginia counties are struggling to hold onto it.
- Rates for Land Value are provided by the State Land Evaluation and Assessment Commission (SLEAC), using Virginia Tech research, for each locality by category and type of soil and also rental rates. Rates vary widely, from \$0 to about \$1200/acre. Problems with rates: SLEAC has a lag and sometimes the values are very low.
- The Commissioner of Revenue chooses the value to be used for land use. Localities must reference the SLEAC rates, but do not have to use them.
- Frederick is working on a localized model that would use more inputs and be more current than SLEAC rates

- Pastureland has just been added as a new category to provide a more realistic rate.
- Sliding Scale Option for Land Use Tax - State Code allows a locality to defer additional taxes in return for a recorded commitment to keep the property in a qualifying use for a term of years (up to 99% reduction for 10 to 20 year term and up to 50% deferral for 5 to 10 year term). Rollback can be as long as the remaining term. Loudoun has the best-known program using this option.
- Question: Is it possible to combine the sliding scale option with the agricultural and forestal district program, to get a lower (sliding scale) tax rate within AFDs?
- Abuses. There can be many abuses and also debate over what kind of parcels and uses should qualify. Many counties are tightening their validation procedures. It was noted that agriculture is so diverse that definition is tricky and is changing. You can make a living off of 2 acres in some cases and not on 500 acres in others.
- Pressure to reform LUT to reduce abuses and minimize revenue losses
- Reform unlikely: Not even farm community would support it (risk of losing program)
- Education needed on why farmers need tax relief (to maintain local support for LUT)

Agricultural and Forestal Districts

- Positives: Strong conservation value; longer term
- Problems: Need incentives for landowners, including monetary (difficult)
- Incentive of AFDs is that it can stop growth; insurance policy for farmers
- Another incentive is protection against eminent domain (But does it stop projects? Examples on both sides: in one county doesn't seem to stop VDOT or power lines. In another, VDOT does go out of the way to avoid AFDs.)
- Conservation value is not just farming production; can also be environmental services and protection. This becomes a greater issue in high growth localities. Albemarle and Fairfax use environmental reasons to support AFDs.
- AFDs are so public, there's not the room for abuse there is in LUT.
- Farmers do need monetary incentive. Farmland preservation should be about farmer preservation. Don't want a lot of profit, but goal should be to increase profitability.
- Should Localities Require Participation in AFDs to Get Land Use Tax Rates?
 - Pros: longer term; better conservation value; reduces local tax loss (maybe: might be less than widespread LUT, but requires locality to offer tax relief even if don't have a LUT program); less chance for abuse
 - Cons: Might kill the LUT program because a county could not afford to lose that much revenue. Too rigid for farmers. Also, a surge in interest in AFDs will require time and resources for the locality to handle the process.

Lease of Development Rights (LDR)

- Not many examples. There are no LDRs in Virginia. CREP agreements through USDA may be similar but are not local governments. Lancaster County PA used 25 year easements in the beginning of their PDR program decades ago in order to get people to take the step, they offered \$250/ acre for a 25 year term. Concept has not held up over time; 18 of the 19 term easements have been converted to perpetual easements.

TDRs

- Problem that the Virginia regulation still only allows 1:1 transfer (not enough incentive). Other notes: it's mandatory that if a project meets the requirements, the locality must approve the transfer; the Receiving Area must allow density increases by right (removing the option

for proffers). (Other successful programs in the country couple TDRs with impact fees which are a way to deal with by right uses.)

- Comment raised two problems: 1) could flood the marketplace and ask for a density that the community doesn't want, and 2) distance between the receiving and sending areas means that the place that has the negative impact (density gain) is far from the place that has the positive (payment).
- VACO and Virginia Association of Realtors are drafting a model TDR ordinance

SHARING LOCAL EXPERIENCE

Participants were asked to share what kind of programs they have, what they do well, and what they would like to see improved.

Montgomery County - AFDs are used as base for defining Rural Areas. The challenge is there's no incentive to be in an AFD. They allow farm enterprises by right in ag zoning. They use rollback taxes to promote conservation easements (bonus goes to a fund to pay legal, other costs). Wish: incentives for AFDs, especially financial.

Albemarle - Their AFDs contain many 21-acre estate lots that don't have much to do with agriculture and forestry (but they do have an environmental benefit). The county has not adopted the Open Space category so they can qualify only by being in an AFD. Revalidation has resulted in hundreds of citizens calling, desperate. The AFD process is out of date, cumbersome. It's very costly and time consuming. Takes two staffers almost full time for two months; advertising is \$9,000. Wish: clean up of the AFD process.

Loudoun - They have 23 districts covering 43,000 acres. AFDs are housed in the Economic Development Department. The face of agriculture there is changing. It's getting more intensive. Ten-acre farms are making a go of it. He likes the concept of having to be in an AFD to qualify for land use taxation (close loopholes).

Shenandoah - People are familiar with AFDs, but not conservation easements. That's why they are strong (they have 41,000 acres in AFDs), because they've been around so long. The critical factors have been key landowners and the familiarity with the program. Renewal process: postcards 6 months in advance with follow up calls. Landowners have to respond either way, whether staying in or not renewing. It's time consuming and expensive. Issues: 1) Future planning, especially around six towns; 2) Lack of incentives.

Frederick - Frederick lost 5,000 acres out of its AFDs. It was a double whammy as land prices rose. Some parcels may come back in. Wish: greater protection from eminent domain; assurance locality will honor landowners' commitment and never force out (not renew) a district.

Rockingham - Their AFDs were started mostly by key individuals. Not much perceived need since the agricultural controls are strong enough and areas are so rural. Oak Grove, however, is near Harrisonburg and Dayton and it does matter in that location. The Comprehensive Plan acknowledged the district and didn't propose it for growth.