

Agricultural Districts in Ohio

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Land Use Series

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What is an Agricultural District?

An agricultural district provides protection against nuisance suits over farm operations, deferment of tax assessments on land to build sewer and water lines, and allows for additional review if land is taken by eminent domain for a public purpose.

Why an Agricultural District Law?

Continuing urbanization and increasing numbers of nonfarm residences in rural areas has raised concerns over the loss of farmland in Ohio. More nuisance suits by new residents over such practices as applying manure and pesticides on the farm have hampered commonly accepted farm practices. Some view agricultural districts as a *right to farm* law. This is tempered by the need for land in planned growth areas. Therefore, municipalities have a right to modify terms of an agricultural district on land within their boundaries.

Farmland conversion occurs as a result of both push and pull forces. The push comes from higher costs, increased risk, and lower profit margins in agriculture. The pull is evident by the increased market value of land for alternative purposes. To help farmers mitigate some of the push forces and maintain farmland, legislation was passed in 1982, with subsequent amendments, to allow landowners to create agricultural districts.

What is the Difference Between an Agricultural District and Current Agriculture Use Value?

The Current Agriculture Use Value (CAUV-see OSU Extension Fact Sheet CDFS 1267-99) program allows farmland to be assessed at an agricultural value for real-estate tax purposes rather than a "highest and best use" valuation. Participation in either program is independent, though the criteria to participate in either program is the same. Keeping the same criteria for both programs has advantages but has also caused confusion for some landowners as they may believe they are in both programs when they are in only one.

What Land Qualifies for an Agricultural District?

The land must be in agricultural production. Agricultural production includes commercial agriculture, animal husbandry or poultry husbandry, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental shrubs, ornamental

trees, flowers, sod, or any combination of such husbandry or production. It also includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry or production (Ohio Revised Code-ORC 929.01[A]). This is a rather broad definition of agricultural production and would include such activities as grain drying, even when it is located on a parcel where the grain is not growing, and if it is associated with other parcels managed for grain production.

The land also qualifies if it is enrolled in a federal government land retirement or conservation program during the year of application and for at least three years prior to the year of application.

In addition, the land must be composed of tracts, lots, or parcels that are at least 10 acres in size, or have generated an average gross income of at least \$2,500 during the past three years. Or, the owner can present evidence of an anticipated gross income of \$2,500 (ORC 929.02).

It is possible for a farmer to place all parcels, or a portion of the parcels of the farmland into an agricultural district. The ability to place specific tracts of land in an agricultural district, and not all of the land, is inferred and addressed in the Ohio Revised Code 929.02[A] [I] and also under the agricultural district renewing provisions of 929.02[C].

How Can a Landowner Create an Agricultural District?

Applications for placing land in an agricultural district are available from each county auditor's office. For farms located in unincorporated areas, landowners apply to the county auditor; if the farm meets the eligible criteria, the auditor must certify the application (ORC 929.02[A]).

Landowners with farms located within municipalities or land included in an annexation petition that has been filed with the county commissioners, must file with the county auditor and also with the clerk of the municipality (ORC 929.02[B]). The legislative body of the municipality must then have a public hearing on the application within 30 days. Other procedures for the municipality are set forth in (ORC 929.02[B]). The municipal legislative body may approve, approve with modifications, or reject the application. One example of an approval with modification comes from Butler County where a farm was granted the right to be an agricultural district but did not acquire the deferment of assessments protection (see below for explanation of deferments). If the legislative body modifies or rejects an application they must be able to demonstrate that having the land placed in a district would create a substantial adverse effect on:

1. The provision of municipal services within the municipal corporation;
2. Efficient use of land within the municipal corporation;
3. The orderly growth and development of the municipal corporation;
4. The public health, safety or welfare (ORC 929.02[B]).

If an applicant has been denied a request for being in an agriculture district or has had an application modified, the decision of the legislative body and the county auditor may be appealed to the court of common pleas (ORC 929.02[A][2] and [B]).

What Is the Term of an Agricultural District?

Once an application has been approved, the district is in effect for five years from the date of application. (ORC929.02[A]). At the end of the five year period, the owner can elect to extend the term of the district. Reapplication can be made at any time between the first Monday in January and the first Monday in March of the year in which the agricultural district terminates. The county auditor notifies the landowner of the need for renewal. Landowners can renew enrollment for the entire parcel or for a portion of the land (ORC 929.02[C]).

What Happens in Case Agricultural District Land Becomes Annexed to a Municipality?

If land in an agricultural district is subsequently annexed by a municipality, the owner is not required to apply to the municipality either at the time of annexation or at any subsequent reapplication if the following criteria are met:

- a. The land was not sold to another person (except a lot to a member of the immediate family);
- b. The owner that established the district did not sign the annexation petition;
- c. The owner did not vote in favor of annexation.

If any of these three conditions did occur then the municipality would have review powers at the time of the five year renewal.

What Are the Advantages of Placing Land in an Agricultural District?

There are several advantages realized by landowners when placing land in an agricultural district: deferment of special assessments, protection granted from civil actions for nuisances and from criminal statutes, and an additional review process if the land is taken by appropriation (eminent domain).

Deferment of Special Assessments

The law states that no public entity shall collect an assessment for purposes of sewer, water, or electrical service on property within an agricultural district except for the property that may be in a residential lot of the owner or any other nonagricultural structure which may be located in the district (ORC 929.03). This can be a major benefit for some farmers. Water and sewer lines may pass through farmland on the way to a residential or industrial development. To pay for the improvement, property is typically assessed on a frontage and/or total acreage basis. High assessments can make agricultural production uneconomical.

A prorated assessment may be collected if the owner uses the service on which the special assessment was made. There is a provision for an owner to transfer a lot to his son, daughter, brother, sister, mother, or father for the purpose of constructing a dwelling in which the relative will reside for at least three years. Again, if the service for which the special assessment was deferred is used, then that assessment will become due for that lot.

The deferred assessments will become due when the land is withdrawn from an agricultural district (ORC 929.0[B]). When the deferred assessment is triggered, the landowner must also pay interest. The interest is actually paid on bonds or notes which were taken out for the project up to, but not exceeding a period after 25 years. Upon the request of the landowner, an extended repayment schedule may be established for the owner (ORC 929.03[C]).

Any partial withdrawal or change in use, other than a sale of a residential lot to specified relatives, will trigger the deferred assessment within the total agricultural district. This may become critical even upon the renewal of an agricultural district if some acreage is omitted. The trigger for all deferred assessments should not be confused with the penalty of one-fourth of CAUV savings on only the land converted to nonagricultural use (see section below, Penalties for Removal).

It should also be noted the list of relatives for sale of a lot is very specific. A transfer of a parcel to a daughter-in-law or son-in-law (as tenants in common with the grantor's own child) may trigger the deferred assessment for the total property. A question could arise if the specified relative transfers the lot to a non-relative after the three-year period. The enforcement of these critical points will depend upon the county auditor and subsequent interpretations.

The Water and Sewer Commission (ORC 1525) loans money to public entities granting deferrals under the agricultural district program. The agricultural district deferrals receive priority loans (ORC 1525.13[C] and ORC 292.03[E]). Amounts borrowed are to be repaid when the public entity collects on the deferred assessment.

Projects might not be constructed if it is dependent upon the Water and Sewer Commission fund. The Ohio Environmental Protection Agency Director shall not issue an order to require a public entity to levy an assessment for a water or sewer project unless the State water and sewer fund is sufficient to cover deferred assessments. However, there are alternative funding possibilities. For example, it may be possible for such projects to be funded without relying on the Water and Sewer Commission account by assessing the users of any such water and sewer development rather than assessing land in an agricultural district.

What Are the Criteria for Nuisance Law Protection?

The owners of land in an agricultural district are granted protection from any civil action regarding nuisances involving agricultural activities. The statute provides a complete defense if:

1. 1. The activity is conducted within an agricultural district;
2. 2. Such activity was established within the district prior to the plaintiffs activities or interest on which the action is based;
3. 3. The plaintiff is not involved in agricultural production;
4. 4. The agricultural activities were not in conflict with any federal, state, and local laws and rules relating to the alleged nuisance, or were conducted in accordance with generally accepted agricultural practices (ORC 929.04).

To many landowners this protection is becoming increasingly important, particularly with livestock operations. The dual trends of increased numbers of rural nonfarm neighbors and larger livestock operations have increased the risk of legal action against perceived nuisance.

Are There Penalties for Removal from an Agricultural District?

Withdrawal from an agricultural district is defined to include the explicit removal of the land from an agricultural district, or the conversion of land in an agricultural district to a use for purposes other than agricultural production (ORC 929.01[B]).

If, during any five year period, landowners of the land choose to remove the land from agricultural districts there is a penalty assessed. The county auditor collects one-fourth of the penalty assessed under the Current Agricultural Use Valuation (CAUV) program (ORC 5713.34). The penalty for withdrawal from an agricultural district is computed for land converted to other uses-not for all the land in the agricultural district.

If the land is also enrolled in the CAUV program the landowner may be required to pay two penalties. If land in the CAUV program is developed, the owner must pay back the tax savings realized during the three year period, immediately preceding the year of change from an agricultural use. The penalty for withdrawal from an agricultural district is in addition to any recoupment under CAUV.

If the land is not in the CAUV program for real estate taxation, the penalty for withdrawing from an agricultural district is computed as if the land was in CAUV. If the land is in an agricultural district for less than three years, then the penalty is calculated for the period of time in the district (ORC 929.02[D]).

How Many Acres Are in Agricultural Districts in Ohio?

There is no central agency responsible for monitoring the number of acres in agricultural districts in Ohio. Ohio State University Extension has conducted surveys of county auditors' offices in 1986, 1991, and 1996. The 1996 survey revealed 3.3 million acres enrolled in 88 counties out of a potential 15.2 million acres. This is approximately a 50% increase in acreage enrolled in agricultural districts since the 1991 survey. Although this has been a rather rapid increase in acres in agricultural districts during the five-year period, less than one-quarter of Ohio's farmland was enrolled in the program. Enrollment is most active in counties where organizations or county auditors actively promote the program and where there is active development and infrastructure construction.

How Effective Is the Agricultural District Program in Farmland Protection?

The purpose of the agricultural district program is to mitigate the push to convert farmland to other uses. The amount of protection offered farmland must be balanced by society's need for public easements and development. Creation of agricultural districts does not take into account the productivity of the soil or the amenities that agricultural land contributes to the community (such as scenery, rural character, wildlife habitat, and the protection of watersheds). The

agricultural district legislation attempts to establish agricultural activities as legitimate and somewhat a priority use in rural areas and within municipalities with special review. The districts provide very little effect as to the "pull," i.e. the financial incentive to convert farmland to other uses. Other tools such as exclusive agricultural zoning (OSU Extension Fact Sheet CDFS 1266-99, and purchase of development rights (OSU Extension Fact Sheet CDFS 1263-98), would be needed to protect agricultural land from development. However, the agricultural district program does provide the landowner some risk protection. Often delays in land use conversion afforded by this program can help an owner-operator time land sales to meet retirement plans or other occupational goals.

Further Reading

American Farmland Trust. 1997. *Saving American Farmland: What Works*. Northampton, MA.

Bowers, D. and T. Daniels. 1997. *Holding our Ground: Protecting American Farms and Farmland*, Island Press, Washington, DC.

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