

Present Use Value and Silvopasture Development

PRESENT-USE VALUE PROGRAM GUIDE



**NORTH CAROLINA
DEPARTMENT OF REVENUE**

**LOCAL GOVERNMENT DIVISION
PROPERTY TAX SECTION
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JANUARY 1, 2019

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My Take

- Can be significant financial stakes (particularly in “collar” counties) if land loses PUV status
- While the PUV Manual provides guidance, it is not an administrative rule book and is therefore not binding
 - Assessor can still make a decision you might have to appeal
 - **Probably worth a meeting with NCDOR PUV committee to discuss silvopasture examples**
- Always talk to tax assessor before a conversion of use
 - (But make sure your land qualifies in its current use before you make appointment)
 - Otherwise have someone else ask
- Forest Management Plan is critical (at least for 4 years)
 - Should focus on commercial viability
 - For silvopasture, **should state this purpose (?)**

Take Aways

Change in use requires a change in classification with the county

Change from forestry to agriculture brings an immediate (within calendar year) income requirement

Statute is silent on percentage of tree coverage allowed in an agricultural classification

Statute is silent on density of trees in forest classification

May best be accomplished on tracts that exceed the minimum classification size (two uses adjacent probably the easiest)

Present Use Value

- Differential valuation **property tax** assessment ([NCGS §105-277.3](#))
 - Standard tax rate applied to lower land appraisal
 - Agricultural and horticultural present-use values are based on cash rents for agricultural and horticultural land respectively.
 - A capitalization rate ranging from 6% to 7% is applied to the cash rents to determine the present-use value.
 - The specific rate is established by the Use-Value Advisory Board (UVAB) and is currently set at 6.5%
 - Forestland present-use values are determined by applying a capitalization rate of 9% to the expected net income of forestland.
- [PUV Manual 2019](#)
- Required of all 100 counties

Tax *Deferment* Program

- "Abated" after 3 years (tax difference disappears, rolling)
- Tax rate applied to lower rate so long as the land qualifies
- Upon disqualification, landowner is assessed a three (3) year "roll back"
 - $(\text{High assessment tax} - \text{lower assessment tax}) \times 3 \times \%$ interest
 - Amount due becomes automatic lien on the land
 - Must be paid, grounds for tax foreclosure after X years (per county practice)
 - Paid upon transfer

Size/Income Qualifications

- 20 acres for forestry
 - must include forest management plan)
 - No income requirement
- 10 acres of farmland
 - row crops, pasture
 - “fence to fence” (no residential structures included)
 - Must earn \$1000 *gross* farm receipts (not farm rent, but product sales)
- 5 acres for horticulture land*
 - Horticulture crops
 - *Must earn \$1000 *gross* farm receipts (not farm rent, but product sales)
- Multiple tracts within 50 miles of qualifying tract *in same use category* can be enrolled in program

Ownership Qualification

- **Individuals**
 - Multiple tracts must be owned by same individual(s)
 - H & W entireties different than H & W single owners of multiple tracts [*Duplin County v. Jones*, 267 N.C. 68, 147 S.E.2d 603 (1966)]
- **Certain Business Entities**
 - Principle business of entity is farming or forestry (*must* put in operating agreement)
 - Ownership of entity traced to individuals actively engaged in farming or related to one so engaged
- **Certain Trusts and Testamentary Trusts**
 - Created by individual engaged in farming
- **Certain Tenants in Common**
 - Co-tenancies must match for multiple parcels

New and Continued Qualification

- **New:** Must own land for 4 previous years before January 1 year of application for enrollment
 - Person or relative or person
 - Land generates \$1000 gross receipts for each of 3 years prior to application
 - Counties are becoming more strict on proof of farm income
 - Farm sales, not rent
 - Records include Schedule F, other evidence
- **Continued:** purchase or other transfer of land
 - File application within 60 days of recording, certifying continued use
 - Land must have qualified at the time it was transferred
 - Sometimes, the county discovers the land did not qualify at time of transfer and triggers rollback

Income Failure

- \$1000 is three (3) year average
 - Year one \$1000
 - Year two \$500
 - Year three \$1500
- Demonstration of income (must show \$1000 in first year of application)
 - Farmer/Owner
 - Schedule F, Invoices, checks, etc.
 - Owner Landlord
 - Tenant's schedule F, invoices, checks, etc.
 - **Farm Rent is NOT considered income**

Change of Use Notification

- Must notify county when changing use classification
 - E.g. agriculture to forestry, or forestry to agriculture
 - Cannot elect a change of class without notifying county
 - County finds out in audit or transfer, will trigger rollback
- Conversion scenario
 - Discontinue farming, allow field to grow up in volunteer tree growth
 - County discovers upon a sale or audit, cannot prove income, rollback assessed

Silvopasture Use

- Is it agriculture or forestry?
- Conversion from forestry to agriculture?
 - Forest Use has no income requirement
 - If clear cut trees for agriculture (row crop or pasture), still cannot show \$1000 annual gross income for *previous three years*
 - If earn \$3000 in first year, will assessor allow this?
- **Is this a conversion?**
 - Argument: trees have been thinned, no particular density requirement in statute
 - So long as forestry plan is in place, livestock income is superfluous

Mixed Uses

- Land in agriculture use
 - Must have 10 calculated acres in agriculture production (incidental trees probably not an issue)
 - Can have excess acres in trees and still qualify as agriculture (must produce \$1000 gross/year)
 - If trees serve function as soil erosion protection or CAFO buffer
 - **Silvopasture example not mentioned**
 - E.g. 15 acre tract = 11 acres in pasture, 4 acres in trees **should qualify for agriculture use**
 - E.g. 15 ac tract = 9 acres in pasture, 6 acres in trees would probably not qualify
- Land in forest use
 - Must have 20 acres minimum in trees (**must be grown for commercial use**)
 - Incidental pasture probably OK

Closest Scenario from PUV Manual

- **4-19:** A 23-acre tract is 100% planted in trees and is in forestry PUV. The owner clears all 23 acres and immediately plants an annual horticultural crop. Owner files a new application for horticultural PUV during the next listing period.
- ❖ This change in use is not addressed in the statutes, and it is unclear whether the property should be disqualified from PUV. Horticultural size requirement is met and the property will immediately begin producing income. However, at the time of conversion to horticulture, the property cannot show that it has produced an average gross income of \$1,000 for the three preceding years. The tract was previously in trees and no income was produced, nor was it required. The tract probably does not meet the income requirements but may or may not come close to meeting the overall intention of the present-use value statutes. Whatever the decision of the assessor is, the policy should be consistently applied to other similar requests.

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Solar Facility PUV

- Most utility-scale facilities developed on a leasehold (landowner leases to developer for possible 40 years)
- Despite common usage, *not* a “farm” for PUV
- Solar facility is considered an industrial facility (must be rezoned as such)
- Land is removed from PUV when lease is signed:
 - landowner voluntarily removes land from PUV (form AV-3)
 - in lease, landowner should negotiate developer payment of roll-back
 - any qualifying farm income for PUV is earned after grass established, then for four years earn \$1000

Can Land Under Utility-Scale Solar Get PUV?

- Answer: **Yes, it is technically possible**... however
- It is not common practice for landowner to have access to the solar facility (always fenced)
- Most common configurations do not allow for crop production
 - animal production limited to sheep: goats jump, and cows can destabilize panel supports
- There are instances of “grazing agreements” between a sheep farmer and solar developer (owner of facility)
 - fees are paid by grazer to developer, not to landowner
- Grazing fees or land rent must be paid to *Landowner*
 - must have permission from developer, whose lease grants sole occupation (landowner has no right of entry or right to rent the ground)
- PUV manual has example, but not realistic (landowner is solar developer, unheard of)

THANKS FOR INVITING ME!

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