

Albemarle County Planning Commission
November 14, 2017

The Albemarle County Planning Commission held a public hearing on Tuesday, November 14, 2017, at 6:00 p.m., at the County Office Building, Room #241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Daphne Spain; Pam Riley; Jennie More, Bruce Dotson and Bill Palmer, UVA representative. Absent was Mac Lafferty and Karen Firehock, Vice-Chair.

Other officials present were Rachel Falkenstein, Senior Planner; Scott Clark, Senior Planner; Trevor Henry, **Director of Facilities Development**; Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Sharon Taylor, Clerk to Planning Commission; and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

Mr. Keller, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

Public Hearing Items.

a. **AFD-2017-00001 Free Union Addition** Notice is hereby given that the Albemarle County Planning Commission will hold a public hearing to receive public comments regarding the addition of the following parcels to the Free Union Agricultural and Forestal District (Albemarle County Code § 3-213) on November 14, 2017, at 6 p.m., in the Auditorium of the Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia. The parcels proposed for addition (Tax map 16, parcels 3 and 3D) are approximately 25.35 acres in size and are located at 3506 Peavine Hollow Road. The Albemarle County Agricultural and Forestal Districts Advisory Committee has recommended approval of this addition. (Scott Clark)

AND

b. **AFD-2017-00002 Hardware District Review** Periodic (10-year) review of the Hardware Agricultural and Forestal District, as required in section 15.2-4311 of the Code of Virginia. The district includes the properties described as Tax map 72, parcel 51C; tax map 73, parcels 38, 39C7, 41A, 41B1, 41B2, 42, 42A, 43, 44; tax map 74, parcels 6H, 6N, 26, 28, 28B; tax map 75, parcels 4A, 5; tax map 86, parcels 14, 16, 16A, 16C, 16D, 16E, 16F, 16H, 27, 27A; tax map 87, parcels 10, 13A, 13E (part consisting of 89.186 acres), 16A; tax map 88, parcels 2A, 3M, 3R, 3T, 3U, 3V, 6A, 20A, 20B, 20C, 20D, 20F, 23, 23E, 23F, 24, 24A, 24B, 26B, 29, 40, 42; tax map 99, parcels 10(part), 29, 52, 52B. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Scott Clark)

AND

c. AFD-2017-00003 Nortonville District Review Local District Review Periodic (10-year) review of the Nortonville Local Agricultural and Forestal District, as required in section 15.2-4406 of the Code of Virginia. The district includes the properties described as Tax map 8, parcels 26, 26B and 28 (part consisting of 2 acres). The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Scott Clark)

AND

d. AFD-2017-00004 Ivy Creek Addition Notice is hereby given that the Albemarle County Planning Commission will hold a public hearing to receive public comments regarding the addition of the following parcels to the Ivy Creek Agricultural and Forestal District (Albemarle County Code § 3-217) on November 14, 2017, at 6 p.m., in the Auditorium of the Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia. The parcels proposed for addition are Tax Map 44 Parcel 18 (7.65 acres, located at 735 Woodlands Road) and Tax Map 44 Parcel 21A3 (4.23 acres, located at 741 Woodlands Road). The Albemarle County Agricultural and Forestal Districts Advisory Committee has recommended approval of these additions. (Scott Clark)

Mr. Clark explained that he would do a quick presentation on all four requests and then he would put up a list of motions to take one by one at the end.

Mr. Keller asked Mr. Clark if he wanted him to list all of the requests now, and Mr. Clark replied yes and he would give a quick summary for all four requests and then have individual motions.

Mr. Keller noted the Commission at this time would hear AFD-2017-00001 Free Union Addition, AFD-2017-00002 Hardware District Review AFD-2017-00003 Nortonville District Review and AFD-2017-00004 Ivy Creek Addition. He asked for the staff reports.

Mr. Clark summarized the staff report for AFD-2017-00001 Free Union Addition.

Mr. Clark said as we noted there are four ag/forest district items tonight, two additions and two districts reviews. He would give a brief presentation on each and then we can do the motions at the end of that.

Mr. Clark said the first item is an addition request for the Free Union District that as seen in the area map the district is located mostly to the northwest of Free Union itself. The first addition is two parcels totaling a little over 25 acres and Mr. Clark said he was asked to note that this property is under the same ownership and was previously one parcel. He said the applicant intends to recombine these back into one parcel in the future and discussed with the County Attorney's Office that there are no restrictions from being in the district that would prevent that or cause any complications with that

but Mr. Blair could confirm that there are no restrictions on recombining parcels in the districts.

Mr. Blair replied yes, in this case, obviously there is a quirk in our ordinance but this combination would lead to acreage of 25.35 acres that would be permissible in an agricultural/forestal district.

Mr. Clark said again this is a little over 25 acres and two parcels with high quality soils and the Advisory Committee voted unanimously to recommend approval of this addition.

Mr. Clark said the second item is the Hardware District Review and like all of our 28 districts these come up every ten years most of them for review by the Board of Supervisors to verify that they are still viable. This district has been around since 1987 and originally was 6,000 acres and has had quite a few changes over the years with some large withdrawals and then a series of large additions. He pointed out the district on the map as it stands now noting this is the one time during the ten-year cycle of a district when the landowners can withdraw by right if they wish to. As you can see in the slide, we had one landowner who has two parcels on the west side of the district who wishes to withdraw. Mr. Clark said staff understands that they do not intend to change the uses of the property or to develop it; they just do not to be in the district anymore so that is their opportunity to withdraw.

Mr. Clark said the Advisory Committee voted 9:0 to recommend renewal of the district for a ten-year period; however, they added to their motion subject to the review of parcels in the district without development rights. This is something that has not happened before with our district reviews and in the past every district review that he is ever aware of has been confirmed and the entire district has been renewed as is. Mr. Clark said last year the County a new policy that the development potential of parcels going into agricultural/forestal districts would be analyzed and that we would tend to not accept parcels that had no development potential largely because those parcels are not giving anything up and not having any effort by joining the district. Mr. Clark said by joining the district they are giving themselves the opportunity to get a reduced tax rate and the open space land use tax rate that gives them a conservation related benefit without them having to actually do the conservation. At that time, the only discussion from staff was to change the parcels we took into the districts; and there was never any discussion from staff about taking parcels out later during reviews; they were just talking about new additions. However, during the most recent Agricultural and Forestal District Advisory Committee (Ag/Forestal Committee) meeting there was some discussion of whether or not some of those parcels that do not have development potential that don't have any rights to give up by being in the districts should be taken back out. Mr. Clark said the Ag/Forestal Committee did not say that they should or should not be; they just asked us on staff to come up with some analysis of the parcels without potential in the districts so that we could report to the Board and let them decide what they want to do. He said that staff has done that to some degree. He said the Commission may have more questions, and if so, we can look into that and pass it on to the Board.

Mr. Clark said however, since it seemed that the main question was not the development potential of all 59 parcels in the districts but the potential of those that were in the open space tax category and we narrowed it down to those 17. Mr. Clark said there are 17 parcels in the district that are in the open space tax category, of those 17 – 11 of them are 21 to 25 acre parcels that have no development potential. Mr. Clark said in other words, there is nothing about being in the Ag/Forestal district that changes their conservation contribution to land conservation in the county. He said they already could not subdivide so the subdivision restrictions of the districts do not make any difference for them. He said these seem to be the parcels some of the members of the Board and Agricultural Forestal Advisory Committee are most interested in thinking about whether or not they should continue in the district, and so this is what we are planning to report on to the Board. He explained we have 11 parcels out of 59 that are in the district but that make no difference to parcel creation or land protection in the rural areas by doing so. Mr. Clark pointed out some are subdivision lots, a couple are residue lots of very large farms that have divided off 21 acre lots in the past, one of them is a family subdivision lot that was already in the district when it was created. Therefore, it is not as simple as saying that all of these are subdivision lots that should not be in there and Mr. Clark noted that is what staff has found so far.

Ms. Riley asked what acreage would be left if you took the 11 parcels out when doing the analysis does it meet the minimum requirements for a district.

Mr. Clark replied the minimum requirement to start a district is only 200 acres and there is no minimum to maintain a district. He explained if you start a district with 200 acres, lose 190 acres and be continued if the Board chooses to do so. He pointed out there is no real standard unfortunately for what constitutes a viable district in terms of acreage. He noted the district has almost 3,400 acres at the moment and so if we took out a couple hundred acres that these would add up to it is not a large different. As shown on the map the green areas are parcels in the district - the red is before the withdrawals - the purple parcels are the ones in the open space tax category and the 17 parcels not listed in the table - and the yellow hatched ones are the 11 parcels that are in open space and have no development potential. Therefore, if the Board decided to remove all of those that is what would come out of the district for that action. Mr. Clark said he hoped that helped.

Mr. Dotson said he had a procedural question if it is important that this review be acted upon tonight and sent to the Board in this calendar year.

Mr. Clark replied that the Code sets an expectation that we will act on district renewals in the period when they are stated to happen although it does give us now, too, if it does not happen in time that the district does not expire through inaction.

Mr. Dotson pointed out the reason he was asking is he is throwing a fair amount of new information that we have not had in a report and it would be nice to have a report and have a chance to reflect on it and assess the significance of it.

Mr. Clark explained that part of the problem is it is new information to the Commission and it is fairly new to us; it is also not something we have ever reported on before because we don't have and never have had a policy on removing parcels during review procedures. Therefore, if the Board decides to go in that direction when they presumably meet on this next month that would will be then setting a new policy. He explained he does not really have a background or a recommendation related to this subset of the parcels and can report that they are there, have no development rights as requested by the Committee; however, he does not have a direction to recommend to the Commission anyway even if he had given more time to consider it.

Mr. Dotson said out of fairness to the particular property owners who are in the district now he would think some notification would probably be a good idea. He suggested just procedurally that the Commission send it to the Board with an invitation to send it back to us if they want to give us some direction and some thoughts and have us consider it.

Mr. Clark pointed out that he did raise that notification concern with a couple of Board members who were interested; however, he had not heard back on how they intend to address that yet.

Mr. Blair said it is worth noting that if the Board wanted to take such an action that they would have to provide notice and advertisement for that particular action. Mr. Blair said Mr. Dotson's comment is well taken that perhaps depending on the deliberations tonight and what the Commission recommends to the Board. He suggested it may be wise to say we would be happy to entertain this subject and this district coming back to us to further discuss and it would be good with Board input as to removing a particular parcel from a district simply because it no longer has development rights.

Mr. Clark said if the Board does not act in December as planned on renewing this district; the district will not expire; and, we can go back and forth until the Commission and the Board have made a final decision and the district remain in place

Mr. Blair said he would add one other component that obviously, he does not know what the Commission will decide, but it is worth considering that being in the Ag/Forestral District that properties automatically qualify for the land use taxation treatment. Mr. Blair said if a parcel were removed from the district and it were not in agricultural, horticultural or forestal production or subject to an open space agreement, then it would be subject to roll back taxes. Mr. Blair pointed out that was just something to keep in mind, obviously, we don't know what the Board of Supervisors would do, but obviously he thinks the Commission needs to know all information and how it can affect property owners within each ag/forestal district.

Mr. Keller said he thinks that is an important point and has been part of these discussions that actually we have shared with you when this idea first came forward at a previous meeting. Mr. Keller pointed out about a year ago there was a discussion about

the smaller size parcels that then worked into the 21 acres and then we even had the hypothetical what if it were 1,000 acres that had no development rights. If it comes back to the Commission Mr. Keller said he thinks it is important that we have Peter Lynch, the County Assessor here because there are tax ramifications. Mr. Keller said Mr. Blair knows there are actual cases of where we have people who have land use that are not in districts and we have cases of districts where there are individuals that are in districts that do not have land use. Mr. Keller said then we have the state encouraging us with agricultural and forestal but giving us the right for open space as well. Mr. Keller said he agreed with Mr. Dotson that the Commission needs more if we are going to consider this.

Ms. Spain asked about the noncontiguous parcels and did it start out as a complete land area, and when the parcels were withdrawn, it created this noncontiguous pattern.

Mr. Clark replied yes, districts do not need to be contiguous in order to qualify to be created or to continue and a lot of them are not. Even before the recent changes in the State Code, a parcel that was within a mile of the core of the district or a parcel touching the core of the district could join. He said so you often had parcels that were outliers. This one is unusual in that you get the impression from looking at the map there is a hole there, well there is. He pointed out a lot of the parcels that joined early on have left, but at the same time other parcels have been added in all of them legally according to the qualification standards. Therefore, this is an unusually scattered looking district.

Ms. Spain noted that three out of the four that we are considering tonight have lost acreage from when the districts were established. She pointed out that even with the additions we are still losing ground in that regard.

Mr. Clark replied that is true for many of the districts in there was a lot of enthusiasm early on and then a gradual tapering off.

Mr. Keller said in those discussions in the agricultural/forestal district where there are a number of people or owners who have a long history in the county that one of the discussions is that as more land has gone under conservation easement there was at one point a movement to take some of the lands out of agricultural and forestal when they have conservation easements on them. In other words, Mr. Keller said it is complex and there is a series of different pieces that are playing not necessarily to the negative "of removing the land" and therefore it not being protected. He pointed out there could be many of these that actually are protected.

Ms. More questioned properties that are giving up a development right and meet the standard to be added if there is something else, they are required to do as far as stewardship of the land so that they are really meeting the intent of an agricultural/forestal district. Ms. More said particularly in this district she had been told that possibly some of these properties that is all they have done is given up a development rights and actually don't participate in any activity that she would consider

agricultural/forestal or doing anything with the land other than getting a tax break it would seem.

Mr. Clark replied there is nothing in the agricultural/forestal requirements that talks about land management, crop production, stream buffer protection or anything like that. He said it all is phrased in terms of not developing to a more intensive use and then there is a bunch of description of what is or is not more intensive use, but there is nothing required in terms of land management or agricultural production. He explained it is much more in depth preventing development than it is at requiring any particular action.

Ms. More asked that for the purpose of qualifying does the property only need to have a development right to give up or does it need to have some sort of features, benefits or value.

Mr. Clark pointed out there is a whole list of factors listed in Chapter 3 of the County Code that staff looks at to consider additions such as the quality of the soils, location relative to other agricultural production areas, but it is rare that we can't find something about a parcel in the rural areas that is worth protecting. Mr. Clark said he could not think of a time where we have recommended against adding a parcel because it was not important enough although he had probably turned away two or three over the last 18 years that there was no point so never got considered. He said usually if somebody has enough acreage to bother adding that there is something about it that is important enough as being in the rural areas to make it worth the addition.

Mr. Keller said technically saying giving up a development right is not accurate since it is deferring.

Mr. Clark said it was while they are in the district, and again it is important to remember this is only affecting small lot rights and not the 21-acre rights. He pointed out it still leaves people the ability to do family divisions with those small lot rights so that people who are farming and do have family can keep that family on the farm or at least that is the theory. Mr. Clark said generally we are talking about eliminating at least for the length of time that the parcel remains in the district those parcels under 21 acres that could be created.

Mr. Keller said he did not know if this was the appropriate time, but he thinks that he knows where he is going with this. He said this is much like the Soil and Water Conservation discussion that we had several meetings ago and the discussions in both of these is are we tracking land in the county that is in the rural area that may at some point be developed. He said agricultural/forestal is one mechanism for deferring that and then we have run in this district now from the forestry when the forestry is moving into agricultural like removing the stumps but do we have any mechanisms for control in that interim piece. Not wanting to get off the topic, Mr. Keller suggested this might be one of those things that in the next year the Commission could ask staff to look at three

or four of the different issues that relate to rural area as we are thinking about the Comprehensive Plan and maintaining our rural areas.

Mr. Clark said he would just mention briefly that he hears frequently from people about their concerns about impacts on the rural areas. He said the agricultural/forestal districts might not be the best tool for looking at additional methods of mandating land management tools because these things are very strictly defined by State Code and what we can do with them. Mr. Clark said he did not think we have a lot of legal room to add additional management requirements on top of what is already restricted by the districts and suggested that Mr. Blair can confirm that.

Mr. Keller pointed out that he did not mean to imply that and where he was going more was the public education. He said when one sits down with a county assessor one very quickly comes to learn that land use valuation is a very complex as is the assessment of the land that is under conservation easement. These are not just straightforward easy figures that one would think this is different from the regular. He said you protect the two acres around the homestead that are taxed at the same value as the growth area but the remainder have different values. Mr. Keller said there are real complexities in how those values are assessed.

Mr. Blair noted that it was worth pointing out for Ms. More's comments and question that when you read the ordinance its purpose and intent it lists a number of factors that the Board considered in adopting this policy of creating agricultural and forestal districts. He said that some of them catch his eye – open spaces for clean air sheds, watershed protection, and wildlife habitat and for aesthetic purposes. Mr. Blair said when he saw aesthetic purposes he went in the State Code and it uses the exact same language as a purpose and intent for agricultural/forestal districts.

Mr. Keller said he thinks Ms. Spain's question about a district that does not really have that tight knit component is an interesting one. However, we have others that we have approved in the past since we have all been a body together here in which it is tight and every parcel is there. Therefore, in talking about removing some parcels from those what are those ramifications, in particular that aesthetic component. Therefore, it is a very good point and Mr. Keller said it all goes back to Mr. Dotson's comment that this is a complex issue and it would be interesting if the Supervisors were willing to let this be discussed a bit more.

Mr. Dotson said he had one other procedural question, two landowners in the Hardware District have requested withdrawals. He asked does that require an action on our part or is that essentially accomplished by them requesting it.

Mr. Clark replied that does not require any action by the Commission since we generally acknowledge that in the motions for recommendations for a district that is under review like this. However, if the landowners say they want out, they are out since the Board does not have a judgement call on that.

Ms. Spain asked if there are any mapping overlay of homestay or transient lodging properties within the agricultural/forestral areas or would those be prohibited. She said in other words is there any way to figure out if transient lodging home stays are in these districts or they prohibited by the guidelines.

Mr. Gast-Bray said that he did not know that they have a good file exactly mapping all the homestay areas, and it is certainly not complete if we do have one. He said we have the best part of the study that we are looking at and he would look into it.

Ms. Spain asked if they would be prohibited in these areas.

Mr. Clark said one of the many exceptions for what constitutes a more intensive use in the district is that the use is by right in the rural area zoning district, which is a lot of things. He said for any lodging type use that is by right in the rural area zoning district, no they would not be prohibited by being in the Agricultural/Forestral District.

Ms. Riley asked as a follow up question if it was possible for an owner at any point to leave a district on their own accord with or without the blessing of the Board, if they are forgoing development rights that is probably the vast majority of these parcels. She asked are they then able to develop it or do they have wait for the expiration of the ten-year period.

Mr. Clark replied that they could only withdraw that easily during that ten-year review not during the rest of the live of the district. There is a process for withdrawing early, but he did not know that anybody has ever successfully done it. Therefore, generally what you see is people withdraw during these review processes. At that point, on the date of the hearing the Board adopts a new version of the Code that lists all the parcels that are in the district, theirs is no longer in it and they can submit a subdivision plat the next day. Mr. Clark said it is extremely difficult to remove yourself from the district early and he does not know of anybody who has ever done it.

Mr. Blair said just to add onto Mr. Clark's point withdrawing at any time except for the review period actually requires the Board of Supervisors approval. Therefore, there has to be a public hearing for Board approval of that withdrawal.

Mr. Clark noted staff would take that to the Advisory Committee, Planning Commission and the Board. Moving to the next item Mr. Clark summarized the staff report for AFD-2017-00003 Nortonville District Review. This is a ten-year review, although that is a slight problem of the Nortonville local district. This is our only district of local significance and the only difference really in these is that they require a smaller acreage to get started. The ordinance allows us to create either districts of state significance, which is 27 of the 28 districts of local significance. He pointed out it is either 25 or 50 acres that you need instead of 200 to create the district of local significance; this is the one we have had and it has been there since 1999 and has not changed. He said staff has received no requests to withdraw from it. He pointed out the one slight change from the previous recommendation; the committee's recommendation was to continue it for

another ten-year period; and in doing some research in the Agricultural/Forestal Code for another matter, he found that in fact we could only renew these for eight-year periods. Therefore, Mr. Clark said the recommendation to the Commission and Board is an eight-year period noting it was renewed for a ten-year period last time, but we should not have done that.

Ms. Spain asked why the Code could not be changed to make it the same.

Mr. Clark replied that he thinks that actually reflects what the State Code says and our Code reflects that for eight-year renewal for local districts. He said for districts of state significance we are allowed anywhere from four- to ten-year renewals. As a matter of practice, Mr. Clark said we have made them all ten-year renewals over the years and that gives us some flexibility whereas we do not have that with these.

Mr. Clark said the last item is the AFD-2017-00004 Ivy Creek Addition, which are two small parcels of 7.5 and 4.25 acres that have development potential. He pointed out that the two parcels as shown in red are part of the farm that is on the southwest side of Woodlands Road and it is all under the same ownership. For whatever reason two parcels that belong to the same people have not been in the district and they just want to add the rest of their farm into the district. Even if that was not the case these properties have good soils and development potential so they would meet the acceptance criteria, but especially since it is a matter of filling out the rest of a farm that is already in the district the Committee voted unanimously to recommend approval of this addition. Mr. Clark said unless there were questions he would move on to the motions for the individual items.

Mr. Blair pointed out that they would need the public hearings.

Mr. Keller opened the public hearing and invited public comment. Hearing none, he closed the public hearing to bring the matter before the Commission for discussion and action. He asked how many of these requests are affected by the staff proposal in response to questions of removal of parcels.

Mr. Clark replied it was only one, the Hardware Review.

Mr. Keller said a simple way to address this might be to pull that one out of the group.

Mr. Blair replied that since they are all separate items it might be better to take them one by one anyway.

Mr. Keller invited discussion of the first item, AFD-2017-00001 Free Union Addition.

Mr. Riley said she thinks it is a reasonable request and thinks adding parcels is a good thing and in this case if the applicant is willing to put both parcels into one in the future it seems to comply with the requirements of the regulations.

Mr. Riley moved and Mr. Dotson seconded to recommend approval of the addition to AFD-2017-00001 Free Union Addition to the Board of Supervisors.

There being no discussion, Mr. Keller asked for a roll call.

The motion was approved by a vote of 5:0:2 (Firehock, Lafferty absent).

Mr. Keller said the next agenda item is AFD-2017-00002 Hardware District Review

Ms. More said that it seems like we can take action on what is before us with two owners for withdrawal of three parcels since it is straightforward. The bigger question Ms. More said is separate from that action that we would take tonight, which might be any recommendation that we would pass onto the Board about thoughts that we have about removing parcels that don't have that development right.. She said maybe we are not prepared to make that recommendation and maybe what we pass on is would they like to hear from us. She suggested the Commission take action on that without adding that into it to make it clearer.

Motion: Ms. More recommended renewal of AFD-2017-00002 Hardware District Review for a ten-period period minus the requested withdrawals to the Board of Supervisors; and the Commission would ask the Board to consider sending it back with more information about the possibility of removing parcels from this district that do not have development rights so the Planning Commission can further discuss and possibly advise before acting.

Mr. Dotson seconded the motion.

The motion passed by a vote of 5:0. (Firehock, Lafferty absent)

The meeting moved to the next agenda item, AFD-2017-00003 Nortonville District Review.

Mr. Clark said in the motion if the Commission choses to recommend renewal of the Nortonville District it needs to be for an eight (8) year period.

Motion: Ms. Spain moved to recommend renewal of AFD-2017-00003 Nortonville Local District Review for an eight (8) year period to the Board of Supervisors.

Ms. More seconded the motion.

There being no discussion, Mr. Keller asked for a roll call.

The motion was approved by a vote of 5:0:2 (Firehock, Lafferty absent).

The meeting moved to the next agenda item, AFD-2017-00004 Ivy Creek Addition.

Mr. Clark said the last request is the Ivy Creek Addition.

Mr. Keller asked for a motion.

Motion: Ms. More moved to recommended approval of AFD-2017-00004 Ivy Creek Addition to the Board of Supervisors.

Mr. Dotson seconded the motion.

There being no discussion, Mr. Keller asked for a roll call.

The motion was approved by a vote of 5:0:2. (Firehock, Lafferty absent).

Mr. Keller asked if there was anything else, they could do to help clarify that one piece for staff.

Mr. Clark replied no, he did not think so because actually it would be very helpful for this to go on to the Board and then come back because as he had said there is no previous direction in what to do about possible removals like this. He said so until we know what they intend to do it is hard to report more fully to the Commission.

Mr. Keller asked in your work from a staff position if we have been able to help you move all of these along if they so choose.

Mr. Clark replied yes, the three other items could move along as they need to and that one can either be acted on or more likely come back to the Commission without any real hindrance.

Mr. Blair requested to ask one question just as we are wrapping this topic up. Obviously, the reason this is timely right now is the renewal of the particular district. He asked would it be safe for staff to communicate to the Board that the Commission, because he did not want there to be sort of this idea that this is all about the Hardware River District, would recommend that the Board in considering this take a comprehensive view of all districts where this issue would relate to rather than just seeming that it is the Hardware River District.

Mr. Keller said that is an excellent point. He said that really is almost every district that is under Agricultural and Forestal would be affected by it.

Mr. Clark noted especially over the last 8 to 10 years since the Land Use Revalidations have been more frequent we have certainly had additions to several of the districts that have involved parcels of 21 to 25 acres with no potential that have joined apparently for the purpose of getting that tax rate. Therefore, Mr. Clark said it certainly was not just about this one district; it is going to affect lots of them over the next several reviews.

Ms. Spain asked how many districts are there.

Mr. Clark replied 28 districts if he remembered correctly including Nortonville.

Mr. Keller said so in light of what Mr. Blair said and what Mr. Dotson and Ms. More have been talking about how you would suggest that we send this information along then since we have already made the motion on the one.

Mr. Blair replied that he did not think it was necessary for a motion just as much as direction if the Commission believes that it should be a more comprehensive review of all districts rather than just the Hardware District for this question. He asked if that is accurate.

Ms. Riley replied yes, she would like to know what the scale of this issue is and what the

implications for individual landowners would be or the county to look at it a little more wholeistically and analyze it and to provide information.

Mr. Clark replied that it is kind of a huge research project to figure out which parcels have how many development rights because there is no simple database of that and he was fortunately able with this one to narrow it down to a particular subset of parcels in one district and kind of take a day and rip through it and get you the answer. He said the if we are going to look it the district reviews are going to be spread out over the next ten years because they don't all happen at the same time so we can certainly answer them one by one as they come up although a few of them are huge and are going to take some time. If we are going to try to answer the question about how many parcels like this there are in all of the districts that is either going to take a significant time commitment or it is going to take some narrowing of the question so that we don't have to do a history of development rights on 900 parcels.

Ms. More asked if she could clarify that there are no new additions that are allowed; this would be looking at what has been added previously.

Mr. Clark replied the addition process and the review process are separate and we do not do additions as part of a review so generally when we are doing a review like that we are not going to be looking at any new ones. Although, you could easily have additions in a review for the same district in the same year.

Ms. More asked if moving forward we are not going to allow additions that are the things we are talking about now and if the Board chose to remove those new parcels are not being added and are not qualifying if they fall in that category of those that might be looked at for potential removal.

Mr. Clark replied that staff would consistently recommend against adding parcels without small lot subdivision potential. He pointed out there may be odd cases for whatever reason it makes sense to the Board, particularly if it is a large parcel that extends to the reach of a district to allow more other people to join; they might feel it is worthwhile to do so. However, in general staff will recommend against any addition of any parcel that does not have those small lot rights to be restricted by the district.

Ms. More said my recommendation to the Board would be to advise given the nature of the time consuming process that you would go through – she understands that and is happy that staff is able to show us just a glimpse of the Hardware District. However, it does seem that if the Board were to take action or to consider something like that it would need to be sort of a comprehensive sweeping action of all the districts. She suggested part of what needs to be considered is how much staff time and power does it take to pull and give them a real look at how many properties you would be talking about.

Mr. Clark noted that it actually might be a good thing because he is not sure we can take a sweeping action across all 28 districts at once; he thinks we can only remove them during the reviews, which for the staff that might be a good thing since it means we do not have to do 900 parcels at once. However, we can look at each district as it comes up. He said assuming the Board does set a new policy of removing parcels without potential, which we do not know yet, but if they do that then we can take them one at a time as those reviews come up. There is usually 0 to 4 a year rather than looking at all 28 districts at one time.

Ms. More said that makes sense but if she was being asked to consider whether she would

recommend removal or not she would want to know in a big picture what will be the impact to all of those districts even though that action might not be able to be taken at the time. She said if they are not up for review she would want have at least some idea of how many parcels are we talking about if the Board were to make a chose like that and then to consistently move through them as review came up. Ms. More said she thinks that would help give us back to like Ms. Spain's question like how would that affect that one particular district if removal was the choice that the Board made how would it in a bigger picture affect all of the districts.

Mr. Clark said that makes total sense to do that. He said it is just that while we are happy to do the research to figure that out that because of the odd way our rural area (RA) zoning works with the individually assigned development rights there is no sort of formula for that and you have to look at the individual history of each parcel. Therefore, it is a time commitment to go back and look at the history of each parcel, and again he thinks there are about 900 parcels in all of the districts.

Mr. Keller asked if staff has to do a deed search on each one.

Mr. Clark replied there are shortcuts and if you look at a parcel on the 1979 tax map and the current tax map and it is clear that it has not changed, you can sort of check that one off as yes it still has its 5 rights and move on. But, for anything that has altered or had a boundary line adjustment or it has reduced in size or there is any complexity to it, then you yes, you pretty much have to find a plat and go figure out where those rights went.

Mr. Keller said again for clarification for everyone we are talking three categories – agriculture, forestry, horticultural and open space. At this point, it is each of those three categories with no development rights that there seems to be the interest in potentially removing at the ten-year or eight-year time.

Mr. Clark said it is only the open space tax category that has been under discussion because that is the only one that you can qualify simply by being in the district. He said the agriculture or forestry category you still have to meet the production requirements or the management requirements and being in the district does not help you with those. Therefore, it is only the open space tax category where simply checking the box that says I am in the district and I have 21 or more acres you can qualify. He said it is not quite automatic, but it is close to it for that open space tax rate, which is why we narrowed down that parcel list from 59 to 17 because those are the ones that were in that particular tax category.

Mr. Keller asked if all three of those categories are optional at County option whether to have them or not. He said the state gives the county the ability to have each of those. He said so we have counties in the Commonwealth that have none and counties that have just agriculture, just forestry and open space.

Mr. Clark said he could not speak for the other counties since he does not know; however, that is theoretically possible.

Mr. Blair replied that is his memory of it; it is possible, again, he does not know their ordinance but it is possible they could demarcate in those ways.

Mr. Keller asked if there was anything else on this topic.

Mr. Dotson commented that it was very helpful to have a staff member with such a long

institutional memory on the issues that are very complicated.

Mr. Keller said the meeting would move to the next agenda item.