

**Albemarle County Planning Commission
Final Work Session and Regular Meeting Minutes December 17, 2024**

The Albemarle County Planning Commission held a public hearing on Tuesday, December 17, 2024, at 4:00 p.m.

Members attending were Fred Missel, Chair; Luis Carrazana, Vice-Chair; Corey Clayborne; Julian Bivins (remote participation); Lonnie Murray; and Nathan Moore.

Members absent: Karen Firehock

Other officials present were Michael Barnes, Director of Planning; Scott Clark, Conservation Program Manager; Tonya Swartzendruber, Planning Manager; James Van Vranken, Planner; Kevin McDermott, Deputy Director of Planning; Jodie Filardo, Community Development Director; Frank Pohl, County Engineer; Francis MacCall, Deputy Zoning Administrator; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Ms. Shaffer called the roll.

Mr. Missel established a quorum.

Mr. Bivins requested to participate remotely from his home in Albemarle County due to medical reasons. He said that he was located in the Jack Jouett District.

Mr. Clayborne moved that the Planning Commission allow Mr. Bivins' remote participation in today's meeting. Mr. Carrazana seconded the motion, which passed unanimously (5-0). (Ms. Firehock was absent.)

AFD2024-01 Ivy Creek District Review

Mr. Missel said that there was a total of eight public hearings for the agricultural forestal district reviews, and they would hear one staff report and have one public hearing for all of them. He said that they would then make motions and hold discussions for each one independently. He said that the key here was that not all of the hearings were the same, and if someone wished to speak to a specific district, they should be aware that it would be addressed at the beginning of the only open public hearing. He said that although all the hearings were connected, he wanted to clarify that. He said that with that in mind, he would ask for the staff report on all the AFDs.

James Van Vranken, Conservation Program Planner, said that he was going to hand over to Mr. Clark, who would provide background and context on these agricultural forestal districts, as well as the policy that would be present in these reviews. He said that following that, they would review each of the eight district reviews, which should be brief.

Scott Clark, Conservation Program Manager, said that he would like to review the fundamentals of the Agricultural and Forestry District (AFD) program. He said that after going through several slides on the background and review process, he would like to pause and see if they had any questions. He said that at that point, he would hand it over to Mr. Van Vranken to discuss the

individual districts. He said that the Agricultural Forestal Districts were a voluntary land conservation program enabled by the state code, used by many localities across Virginia.

Mr. Clark said that for general purposes, they related to agricultural and forestry production, open spaces, supporting a strong agricultural and forestry economy, and protecting and preserving important natural resources. He said that he would next explain how the districts worked. He said that they were governed by Chapter 3 of the County Code, which was dedicated to the functioning of this program. He said that each district, one of approximately 28 in the County, ran for a fixed period of time. He said that landowners voluntarily joined through an application process.

Mr. Clark said that when each district reached its 10-year deadline, it came up for review, which they would discuss further. He said that he would next explain how the districts function once land was included in them. He said that generally speaking, the regulations for the districts prohibited development to a more intensive use, with some exceptions. He said that for most landowners, the restrictions that affected them were those related to subdivision. He said that there were also restrictions on how they processed special use permits in or adjacent to the districts.

Mr. Clark said that in the bigger picture, the presence of a district could make it more complicated for the state to take land for road projects on land dedicated to agriculture and conservation. He said that however, the primary impact that would be seen or experienced as a landowner was the limitation on subdivision. He said that as a refresher, they were discussing land in the Rural Area (RA) zoning district in the County, which was distinct from most residential districts with fixed lot sizes or densities.

Mr. Clark said that in the RA district, they had a two-tier pattern of lot sizes, with 21-acre base zoning and larger lots by right, which had been in place since 1980. He said that prior to that, the base lot size in the RA district was two acres, representing a significant downzoning. He said that at the same time, all existing lots in December 1980 were granted development rights for small lots, ranging from two to twenty-one acres. He said that these development rights were not generated when subdividing properties and were tracked on subdivision plats.

Mr. Clark said that any property that received five of these development rights was capped at five, and subsequent divisions did not receive additional rights. He said that the RA district pattern featured 21-acre lots and smaller lots, as small as two acres. He said that when transitioning to the Agricultural Forestal District, the divisions of 21-acre lots were still permitted, but the smaller lots were restricted, except in family divisions, which allowed for the transfer of land within the family for at least four years.

Mr. Clark said that another issue often discussed was the relationship between AFDs and taxation. He said that it was commonly believed that joining an AFD provided a tax break, but this was not the case. He said that AFDs were land conservation programs that restricted development and use, and there was no automatic tax relief or benefit from joining a district. He said that however, there was one exception: parcels in a district, typically 21 acres or larger, were eligible for open-space taxation. He said that landowners could qualify for the open space tax category, one of four use value categories available to landowners in rural areas.

Mr. Clark said that the other categories were for agriculture, forestry, horticulture, and open space. He said that the other three had production requirements, but open space was different. He said that one qualified for the open space rate by being in a conservation program. He said that the Agricultural Forestal District was one of them. He said that over the years, an issue had arisen

regarding parcels joining the districts. He said that many of these parcels had no small lot development rights. He said that as a result, the districts only regulated parcels with potential for development.

Mr. Clark said that if a property did not have development potential, joining the district did not impose any particular harm, but it was not regulated by it. He said that when properties joined the districts and used the district to qualify for the open space tax rate, they received a conservation-related tax benefit without giving up any development potential. He said that there were concerns about this, as it provided a private tax benefit without a significant public benefit in return.

Mr. Clark said that there was also an equity issue, as some landowners did not have the option to sign into a program and receive a reduced tax rate. He said that the Board of Supervisors and others expressed concerns about reduced public support for use value tax programs and rural area conservation programs due to this perceived loophole. He said that as a result, when the Agricultural Forestal District code was reviewed and rewritten in the mid-2010s, the code was generally rewritten, but it was also amended to identify the presence of development rights as a criterion for adding parcels.

Mr. Clark said that this change effectively closed the door to parcels without small lot development potential being added to the districts, thereby preventing an inappropriate tax benefit. He said that following up on that, in 2018, when districts began to come up for review, the Board directed staff to not only stop recommending approval of those parcels for the districts, but also to identify parcels that had been added to the districts in the past, which had no development rights and were utilizing the open space tax benefit.

Mr. Clark said that initially, the direction was to simply remove them. He said that however, the problem with that was that if people were removed immediately without warning, they would be hit with rollback taxation, a penalty for coming out of use value taxation, which served as a disincentive to come out of use value taxation. He said that to avoid a five-year tax hit all at once with no warning, staff began notifying landowners that a district was up for a five-year renewal, and that they would likely be removed at that time. He said that this gave them an opportunity to straighten out their tax qualifications before the rollback tax hit.

Mr. Clark said that in 2024, they had now identified several districts up for review, including some that had already undergone the process, where they had notified landowners about parcels with no development rights. He said that to clarify their policy on removing parcels, they were now recommending the removal of all parcels without development rights, not just those in open space taxation. He said that this change was made after the Assessor's Office pointed out that if they only removed parcels in open space taxation and left other parcels with no development rights, they could potentially move into open space taxation within a 10-year window after the district renewal, and under state code, they could not prevent this.

Mr. Clark said that by removing all parcels with no development rights, they could prevent them from sliding into open space taxation between reviews and avoid giving them lower rates of taxation when they were not actually giving anything up. He said that this was where they were now. He said that for tonight's review, their staff reports to the Agricultural Forestal District Advisory Committee and to the Commission, based on their staff recommendations, which were grounded in the policy he had previously described.

Mr. Clark said that they may have questions about this, and they would address them later in the presentation. He said that one additional point he would like to cover is the role of the Agricultural Forestal Districts Advisory Committee. He said that they consulted with this committee on all applications and matters related to the districts, including new additions, periodic reviews, and special use permits, legislative actions, and other matters that may arise within a district or adjacent to it.

Mr. Clark said that whenever these types of applications came up, they consulted with the committee first before presenting their recommendations to the Commission, and then to the Board for public hearings to seek their advice on administering this program. He said that in the case of the eight districts currently under review, some members of the committee did not support the removal policy directed by the Board, citing several reasons.

Mr. Clark said that as a result, staff's recommendations differed from the committee's recommendations for six of the districts. He said that they would present these differences and provide options for motions at the end of the presentation, after the public hearing, when the Commission was prepared to take action. He said that this provided a brief history and overview of the current policy issue they were addressing. He said that he would be happy to address any questions from the Commission before they discussed the specific districts.

Mr. Clayborne said that his first question was likely straightforward, but he wanted to ensure he understood it correctly, as this concept had been difficult for him to grasp. He said that if a property no longer had development rights, did that mean the 21-acre parcel had already been subdivided five times.

Mr. Clark said that not necessarily. He said that one of their respected attorneys once told him, "Scott, you live in a complicated world." He said that every parcel that existed in December 1980 was granted those five rights, which meant the parcel could have been 10 acres or 1,000 acres. He said that the way those parcels divide out, given the number of those five rights, was different for every property. He said that for example, parcels in the districts may be 21, 50, or 100 acres, but they may not have small lot development rights, or they may have them. He said that similarly, parcels that were 5, 7, 8, or 9 acres may have no further development potential because they had no more development rights, and they were too small to be developed as 21-acre lots. He said that as they examined the maps of individual districts, they would see a range of variations. He said that it was not that simple.

Mr. Clayborne said that he was curious about the composition of the advisory committees. He asked if those were individuals participating in the program. He said that he was trying to understand why the County policy was unsupported. He said that he wondered if there was a vested interest at play, or what was the thought process behind that decision.

Mr. Clark said that the committee composition was eight members, all of whom were County landowners. He said that one Board member was a voting member, not a liaison, and the County assessor was also a voting member, as was standard practice in Virginia, defined by state law. He said that while many of the citizen landowner members of the committee were from specific districts, not all of them were. He said that generally speaking, these members had an established interest in rural area land uses and conservation, and they had been appointed to the committee due to their expressed interest in these topics.

Mr. Moore said that he was wondering what benefits a property owner could expect if their lot was located in an Agricultural Forestal District, despite not having 21 acres of open space. He said that he was curious as to why a property owner would choose to participate in an AFD, even if they did not meet the acreage requirement.

Mr. Clark said that from the landowners he had spoken with over the past couple of decades, he had identified several different interests. He said that one aspect was that they generally supported rural area conservation and wanted to be part of the program. He said that there was also a strong community element, as landowners reassured each other of their intentions to preserve rural areas.

Mr. Clark said that in the early 1990s, when the membership first grew, concerns arose about VDOT bypass routing in rural areas, leading some to disagree with the plan and recognize that being in a district would not stop the bypass, but rather draw additional review for any state land taking procedures affecting rural land.

Mr. Clark said that currently, landowners had diverse interests, including a strong interest in rural land conservation and agricultural production, as well as a general desire to avoid further development in rural areas. He said that some landowners were also motivated by the potential tax benefits, but this was just one of several reasons he had heard from people over the years.

Mr. Moore said that the tax benefits these days were still tied to the use valuation tax program. He said that he was unsure if this was specifically related to agricultural or forestal land, but it appeared that individuals could still participate in this program without being agricultural or forestal.

Mr. Clark said that usually not, and they may revisit a slide later that he intended to mention regarding the diverse taxation in the districts. He said that when mapping out the tax categories of parcels in the districts, they often found that nearly every possible tax category was represented. He said that there were individuals in the districts who were subject to full-rate taxation. He said that there were those who, due to their production activities, qualified for the agricultural or forestry tax categories. He said that some parcels were in the open space rate, which may or may not have development potential and was temporarily offset by being in the district. He said that the variety of tax categories was quite extensive.

Mr. Moore said that in each of the districts, there were various tax categories, as he had mentioned. He said that he observed a wide range of tax categories, including some that seemed to prioritize conservation and preservation of soils and biodiversity. He said that one particular example that caught his attention was a conservation district located adjacent to the Shenandoah National Park. He said that upon closer inspection, he found that one of the districts had undergone significant removals, leaving behind a single, wealthy estate.

Mr. Clark said that that was certainly true for the Ivy Creek District. He said that for example, there was one particular property that was under the same ownership and was also under a conservation easement, which would comprise the remainder of the district at that point. He said that many of these districts had been in existence for 30 years or more. He said that over time, they had undergone a process of change, with old parcels being removed and new ones being added, resulting in a potentially less contiguous area. He said that however, this process also allowed the districts to cover a larger overall area. He said that it had been a complex interplay of addition and removal, with individuals leaving and returning over the years.

Mr. Bivins said that he would like to know how notice would be provided to parcels that may be recommended for removal, particularly as the evening progresses. He said that he was particularly interested in the appeal process for those who disagree with the recommendation, and he asked if there was a process in place for property owners who may disagree with the recommendation and wanted to remain in the district. He said that he would appreciate an explanation of the process involved in this scenario.

Mr. Clark said that according to Chapter 3 of the County Code, the Board had the authority to review these districts and could choose to continue, modify, or terminate them. He said that they had a range of options available to them. He said that while there may not be a specific appeal process for removal by the Board, individuals who disagreed with the decision could attend public hearings, with the Board hearing being the most critical, as it was where the action was taken.

Mr. Clark said that at these hearings, they could express their disagreement. He said that the County had also been notifying landowners of the possibility of removal, in addition to the regular notification that the process was ongoing. He said that the County was updating its notification procedures to ensure that people were aware that removals were a possibility.

Mr. Murray said that, if they were removing properties that did not have any division rights, he assumed that meant a property under a conservation easement, for example, would also be removed from the district.

Mr. Clark said that no, the way they had stated it to the Board and others in the past was that there was no reason to remove the parcels under easement because their development potential had already limited their tax qualification, which was not related to the use value program. He said that they were considering the base number remaining under zoning, not the number remaining in a given deed of easement. He said that if they assumed that 99% of properties under conservation easement may only have one or two rights for dwellings, but the easement itself cancelled out those rights, the purpose of the easement was to preserve more than that. He said that therefore, they were not recommending removal of parcels under easement.

Mr. Murray said that he had a question that may also pertain to the County Attorney. He said that they had had previous discussions with the Natural Heritage Committee regarding the open space qualifications. He said that he had mentioned the possibility of adding more requirements to the existing criteria. He said that currently, there was a letter of intent that the Natural Heritage Committee had filed with the County to meet the requirements. He said that he was wondering if it would be possible to add additional requirements, such as a commitment to implement stream buffers or conservation practices on the property.

Mr. Murray said that he would have less concern about a property with no division rights being designated as an agricultural forestal district if it was conveying a public benefit. He said that the Virginia Code stated that natural resources, conservation, or historic preservation objectives, goals, or standards should be directly supported or generally consistent with the stated land uses in a land use plan. He said that it seemed to him that if they could establish tighter constraints on what open space meant and require conservation on those parcels, he would be more supportive of leaving some of these properties in.

Mr. Clark said that the process was significantly more complex, as he understood it. He said that they would need to request that the General Assembly modify the state code, as the qualification standards were currently set by that code.

Mr. Murray said that he was reviewing the matter, and it appeared that opinions and determining whether property met the general and specific standards for open space were locally assessed. He said that local office may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of 4VACS2040. He asked if they had they ever sought an opinion from the Director of the Department of Conservation regarding whether they could impose those constraints, as he believed that would be the most suitable approach.

Mr. Herrick said that staff had not made that request. He said that the law was clear that there were three avenues for this type of land use taxation: open space use agreements, easements, or being in an Agricultural Forestal District. He said that he believed Mr. Murray's suggestion, if implemented, would essentially require restrictions on stream buffers and other similar measures, which would require the County to no longer accept open space use agreements, as these were automatically allowed open-space taxation. He said that the County would have to require anyone seeking open space taxation to enter into a conservation easement. He said that this was the only way to achieve the outcome that Mr. Murray was proposing.

Mr. Murray asked if they did not have control over the language used in the open space agreement.

Mr. Herrick said that that was correct. He said that the language for open space use agreements was specified in the Virginia Administrative Code.

Mr. Murray said that that was unfortunate. He said that it appeared that one of the other issues they had encountered with land use valuation was that properties with implemented conservation programs, such as the Conservation Reserve Program (CRP), a federal program that allowed for converting agricultural property into wildlife habitat, had not been utilized to the fullest extent. He said that in the past, individuals had been hesitant to apply for these programs due to concerns about losing land use valuation.

Mr. Murray said that since then, the General Assembly had added language to include real estate of agricultural use to include properties participating in state or federal soil and water conservation programs, which continued to meet the program's qualifications but were no longer receiving payments or compensation, and if they adopted that phrase, they could potentially qualify more properties under agriculture that were also under conservation programs. He said that this could help avoid removing some properties from open space that may actually qualify under a conservation program.

Mr. Missel said that he had a quick clarification question regarding the origins of the Agricultural Forestal District. He said that according to his understanding, the primary purpose of establishing the Agricultural Forestal District was to reduce development, control development, and preserve the rural landscape. He said that this was not directly linked to the existence or non-existence of development rights. He said that this was why they had some parcels with development rights and others without them.

Mr. Clark said that the state program had more general purposes, which included agricultural and forestal uses, economies, and open spaces. He said that all those purposes applied. He said that

since every locality had zoning arranged in different ways, and only a few had their unique two-level development rights situation, that was not part of the state program. He said that the state enabled localities to limit development through these means, but did not specify exactly how, as localities varied significantly in their approaches.

Mr. Missel said that in other words, if they rewind back to 2010 or whenever these were established, and if he was a developer and a property owner who wanted to put his property into an AFD, at that time, the County was not filtering his request in terms of whether he had development rights. He said that as of 2016, the County began filtering requests to ensure that applicants had development rights, which is a policy that they are now required to follow.

Mr. Clark said that the policy was initially adopted by the Board as part of the rewrite of the County Code. He said that during this rewrite, the criteria for adding land to a district were also identified, which is the same set of criteria used for reviewing a district. He said that in addition to other factors, such as soils, development patterns, conservation needs, and others, the presence or absence of development rights was also considered. He said that another factor was added to the criteria, which was the second additional item. He said that this was incorporated into the Code during the revision process and the updating of this policy.

Mr. Missel said that if they were making motions and voting on these proposals, he wondered if they had any flexibility in their decision-making process.

Mr. Clark said that the Board had a choice when these revisions were presented. He said that the Board could choose to apply the policy or not, as it was their policy.

Mr. Missel said that if a piece of property had development rights, the Board could choose to keep them in the AFD.

Mr. Clark said that theoretically, it was possible. He said that he had not heard any discussion about implementing this approach. He said that yes, it was possible.

Mr. Missel asked what would happen if the Commission were to recommend that one of the properties in the AFD stay in, going against staff's recommendation to remove it.

Mr. Clark said that he would present this information to the Board, and they would evaluate it. He said that typically, they did not review these applications parcel by parcel. He said that instead, they grouped them based on their development rights and easements, rather than which was good or bad for other reasons.

Mr. Missel said that he was struggling with the idea that they had these options in front of them right now, but typically they had a well-defined plan with many variables. He said that in this case, he was uncertain about the variables to consider. He said that he was not sure what their role was in making a recommendation, or what factors they would use to make a subjective determination.

Mr. Barnes said that their role was prescribed by state code, and they would review this as a recommendation to be presented to the governing body.

Mr. Missel said that for example, if he were to review the Ivy Creek District, he did not know what he would be basing his decision to remove it or keep it in the AFD.

Mr. Herrick said that the County Code clearly outlined the criteria in Section 3-201(F). He said that specifically, subsection F outlined the standards that the Advisory Committee, Planning Commission, and Board of Supervisors shall apply when reviewing an application. He said that section 3-201 addressed creation of a district. He said that subsequent sections of the County Code then referred back, stating that when reviewing the renewal of a district, the same or substantially the same criteria must be applied as when the district was initially created. He said that one of the criteria, subsection (F)(7), which was introduced as of 2016, was new and affected the review process this time around. He said that to answer Mr. Missel's question, the Commission should apply the criteria listed in Section 3-201(F).

Mr. Clark said that if needed at some point, they could attempt to display those details on screen. He said that in brief, they encompassed the agricultural and forestal significance of the land, significant agricultural forestal lands that were not in active production, uses other than active farming and forestry, development patterns, comprehensive plan and zoning regulations, environmental benefits, development rights, and other factors.

Mr. Missel said that they were included in the staff report.

Mr. Herrick said that Section 3-204 was for review of a district, and it specifically mentioned that factors 2 through 7, including (F)(7), development rights, were to be considered upon review of a district.

Mr. Murray said that the only shame here was that the benefits of being an agricultural forestry district extended beyond just the tax break. He said that unfortunately, some properties that qualified under other land use categories, such as agriculture or forestry, but lacked development rights, could not remain in the district. He said that this meant they would not receive the additional benefits, including increased review on nearby development projects. He said that his understanding was that many residents in the Hardware District had joined the agricultural forestry district due to a proposed project in the area, and they had wanted to prevent it from happening. He said that as a result, they had signed up for the district. He said that it seemed that they could not have both.

Mr. Clark said that while staff was recommending the removal of several parcels from some of these districts, in most cases, the majority of the district remained intact. He said that this was not true for all districts. He said that they were not discussing the elimination or decimation of the districts, as the impact varied significantly from one district to another.

Mr. Missel said that they could add to them as well.

Mr. Clark said that yes, and properties that met all the criteria could continue to join the districts in the future.

Mr. Van Vranken said that he would like to provide a brief overview of a couple of the districts, so they would see some of the process Mr. Clark had discussed. He said that the first district was the Ivy Creek District, located north of Charlottesville along Woodlands Road, immediately west of the south fork of the Rivanna Reservoir. He said that it contained 19 parcels for a total of 249 acres. He said that staff had noted the soils which were important for agriculture and important for forestry in the County's comprehensive plan. He said that the review period was the only time when landowners were allowed to withdraw their parcel from a district by right.

Mr. Van Vranken said that the review period went from October through February to let them know if they wished to withdraw from the Ivy Creek District, and they had not yet received any withdrawal requests. He said that staff had identified 12 parcels without small lot development potential, and they were recommending that these 12 parcels be removed from the district. He said that this would leave the district with seven parcels and 126 acres. He said that the Ivy Creek District would be reviewed for another 10-year period.

Mr. Van Vranken said that next was the Hardware District, located southwest of Charlottesville along 29 South and up through Taylor's Gap Road. He said that they had 59 parcels and over 3,200 acres. He said that they had received one withdrawal request, which was for a seven-acre parcel. He said that staff had identified 22 parcels of 433 acres without small lot development potential, and they were recommending that these be removed. He said that this would leave the district with 37 parcels and just under 2,800 acres.

Mr. Van Vranken said that additionally, they had one parcel that had moved into open space since the last review, and they were recommending that it stay in the district for another five years, be notified of its potential removal, and then potentially remove it five years from now to avoid rollback taxes without warning. He said that the recommendation was very similar. He said that staff had recommended the renewal of the district, taking into account the noted withdrawal and removals for the past five-year period. He said that the AFD committee also recommended the same, but without the staff-recommended removals.

Mr. Van Vranken said that next was the Eastham District, located northeast of Charlottesville along Route 20 North, on either side of Stony Point Road. He said that this district comprised 22 parcels, totaling over 1,000 acres. He said that they had received no withdrawal requests and identified eight parcels, covering just over a hundred acres, that had no development potential. He said that this was the district's first review since the 2016 adoption of the new criteria.

Mr. Van Vranken said that as a result, three parcels in open space taxation were recommended to remain in the district, with notification of their potential removal in five years' time. He said that the recommendations were the same as the previous one, with those removals included, and the AFD committee also recommended the same, but without the staff-recommended removals.

Mr. Carrazana asked if Mr. Van Vranken could repeat his last sentence.

Mr. Van Vranken said that the AFD committee recommended a five-year renewal of the district, but with the condition that the eight parcels in question remained in the district.

Mr. Clark said that to clarify, he would like to provide more context regarding the parcels without small lot development rights. He said that according to County policy, there were eight parcels in question. He said that five of these parcels would be removed immediately because they did not qualify for open space taxation and would not face rollback taxes, allowing them to be removed. He said that the remaining three parcels would remain in place for a five-year short review period as open space, to give them time to address their tax qualification or take other necessary steps. He said that at the end of this five-year period, they would be eligible for review and potential removal.

Mr. Van Vranken said that a correction was needed regarding the acreage. He said that there were 11 parcels without development potential; eight parcels could be removed immediately, three were in open space and would have rollback taxes.

Mr. Van Vranken said that next was the Pasture Fence Mountain district, located in the northwest of the County, north of Crozet, and next to the National Park, consisted of six parcels covering over 1,200 acres. He said that there had been no withdrawal requests, and all six parcels retained some development potential. He said that both staff and the AFD Committee recommended that the district be renewed for a 10-year period.

Mr. Van Vranken said that the North Fork Moorman's River District, located north of the previous district and next to the National Park, also retained all development potential. He said that staff and the AFD Committee both recommended a 10-year renewal of this district.

Mr. Van Vranken said that next, the Free Union District, stretching from Free Union to Blackwell's Hollow and Shifflett's Mill Road, contained 35 parcels and over 1,500 acres. He said that no withdrawal requests had been received, but seven parcels with no development rights had been identified. He said that staff recommended removing these seven parcels for a 10-year period, while the AFD Committee recommended renewal without these removals.

Mr. Van Vranken said that next, they had the Carters Bridge District, spanning Route 20 South to Coles' Rolling Road, covering 73 parcels and over 6,000 acres. He said that two withdrawal requests had been received, and 21 parcels without development potential had been identified. He said that one parcel had moved into open space taxation, and staff recommended keeping it in the district for a five-year period. He said that the AFD Committee also recommended a five-year renewal, but without the 21 removals.

Mr. Van Vranken said that finally, the Jacobs Run District, located around Earlysville and to the north, comprised 20 parcels covering approximately 1,100 acres. He said that they had received two withdrawal requests so far, specifically those large parcels in the center, marked in green. He said that seven parcels had been identified as having no development potential. He said that staff again recommended renewing the district for a 10-year period, taking into account the removals. He said that the AFD Committee also recommended a 10-year renewal without the removals.

Mr. Carrazana asked when landowners would be notified of the removals.

Mr. Van Vranken said that all landowners had been notified of the recommended removals as outlined in the staff report. He said that if landowners were removed, they would be notified after the Board's hearing that they had been removed from the district. He said that for parcels that were not being removed, they may face rollback taxes and would receive a letter from the County Assessor's Office explaining the situation.

Mr. Carrazana asked if landowners could petition the Board for recourse.

Mr. Clark said that they had been notified of and were welcome to attend the public hearings, so landowners could attend the Board hearing and express concerns. He said the Board was able to take these concerns into account.

Mr. Missel opened the public hearing. He asked if any members of the public wished to speak on this item.

Mr. Van Roijen said he provided the Commission written comments explaining how the process worked. He said applicants could appeal decisions in civil court. He said that as a former member of the Agricultural-Forestal Committee for many years, and also a member of the Hardware District for over 35 years, he had seen the benefits of the AFDs in protecting the County's rural lands.

Mr. Van Roijen said that the agricultural districts provided an extra level of review and oversight for those areas, and state code provided land use for the districts. He said that the County's need for revenue was real, and that was what this was all about. He said he was concerned about abuse in the land use system. He said that he was unsure without a review by the State Attorney General that the Dillon Rule permitted the County to remove and deny land use to parcels in those districts.

Mr. Van Roijen said he had heard from County staff, Board members, and the Planning Commission, "What are we getting for our money?" He said that first, those lands were taxed based on numbers on a yearly basis. He said the parcels were taxed based on their potential earnings, as taxing them on fair market value would likely cause farmers to sell their land. He said that the NRCS had stated that the soils on these lands, even in open space, were improving, and that was what they were doing. He said they were trying to improve and hold on to this land for future agricultural uses if they were not presently being farmed.

Mr. Van Roijen said that as he had mentioned before, he did not know what the future held for these lands. He said he never thought they would be used for grape cultivation. He said that he recommended that rather than stripping the agricultural districts of a large percentage of their areas, which would be approximately 14%, the district should be renewed as recommended by the Agricultural-Forestal Committee.

Mr. Van Roijen said that this would allow the Board and staff to provide benefits such as riparian buffers, reforestation, apiary development, and native bird habitats. He said that giving staff sufficient time to work out the issues was essential, unless it was a matter of using tax dollars. He said that if that was the case, he thought it was time to reconsider the districts. He said that people had joined the districts not for tax relief, but to protect the area.

Melanie Van Roijen said that as a resident of Albemarle County and Chair of the Agricultural and Forestal Districts Advisory Committee, she was here as a private citizen to address agenda items 5b through 5i, which involved the review of eight out of the County's 28 AFDs. She said that the discussions surrounding the AFDs program encompassed a broad range of complex issues and considerations, including land use regulations, the mechanics of the use value tax deferral program, the County's significant budget shortfall, public perceptions regarding conservation benefits, and misconceptions about perceived tax loopholes and tax inequities.

Ms. Van Roijen said that despite the complexity and the many factors at play, she would like to focus on a simple yet crucial point. She said that according to County code, in accordance with state law, specific procedures must be followed when reviewing AFDs. She said that County Code § 3204 required two key elements: a review within the district's codified review period and timely initiation of the review process. She said that the review of a district must be initiated at least 90 days before the expiration of that district's review period.

Ms. Van Roijen said that an examination of the review timelines for the eight districts under consideration revealed that these procedural requirements were not met. She said that the review of these eight districts was referred to the Agricultural-Forestal Committee on October 1, which was less than 90 days ago. She said that the review periods for seven of these districts had already lapsed, and the eighth expired tomorrow.

Ms. Van Roijen said that to illustrate this point, she will quote the relevant County Code sections establishing the review period and expiration date for each district on the agenda. She said that for example, County Code § 3221 stated that the Ivy Creek Agriculture and Forestal District was reviewed once every 10 years and will next be reviewed prior to December 4, 2023. She said that this was true for the rest of the agenda items.

Ms. Van Roijen said that County Code stipulated that if these procedural requirements were not met, the districts continued as originally constituted with the same conditions and review period previously established. She asked the Commission to carefully consider the relevant code sections and advise the Board accordingly. She said that in her opinion, this would be advising the Board consistently with the Agricultural-Forestal Committee's recommendation to renew these districts for the recommended time period, but not with the staff's recommended removals.

Ms. Van Roijen said she wanted to provide some factual corrections. She said that in terms of the composition of the Agricultural-Forestal Committee, there were supposed to be 10 members, but they currently had three vacancies. She said the 10 members included one Board member, the County Assessor, four citizens who owned properties in an AFD, and four citizens who did not own properties in an AFD.

Ms. Van Roijen said that she was the only community member with property in an AFD among the committee members. She said that County staff had sent out letters as of October 16 notifying landowners. She said that she did not receive that letter, so she had requested it after realizing the oversight in the committee meeting. She said that the mailer was a nine-page document. She said that one thing she was certain of, as the chair of the Agricultural-Forestal Committee, is she would have remembered a nine-page mailer about AFDs.

Ms. Van Roijen said that the second paragraph of the mailer said, "Please note that we will assume you wish to remain in the Hardware Agricultural Forestal District for the next 10 years, unless you request withdrawal before the Board of Supervisors takes action on February 5, 2025. You can request withdrawal by email or by mail to the addresses provided above."

Berend Van Roijen said that he was there to express his concerns regarding the Agricultural-Forestal program. He said that the Agricultural-Forestal program was voluntary, rural conservation, and the Agricultural-Forestal Advisory Committee played an important role in reviewing potentially harmful development of rural areas. He said that the rural areas were crucial in achieving the comprehensive plan's goals, including conservation, ecology, wildlife preservation, and natural beauty.

Mr. Van Roijen said that staff had repeatedly stated that land without unused development rights had no conservation value, conferring a private tax benefit with no corresponding public conservation benefit. He said that this was a baseless supposition, as staff also claimed they had no data on which parcels would be affected and had yet to present any data on the economic or ecological impact of removing these parcels. He said that he defended the value of rural land, particularly contiguous, low-density, limited development lots, for ecological and climate reasons.

He said that preserving natural beauty was core to the character of the County and a top reason why people chose to live in and move to Albemarle County.

Mr. Van Roijen said that he would like to highlight that while they could not change the way open space was codified, there were provisions within County and state code that would allow for soil testing, watershed review, and other relevant factors to be considered when admitting and renewing parcels into the district. He said that there could be a middle ground that would allow parcels to remain in the district which were being removed because they had no development rights. He said that by eliminating the development right requirement and allowing parcels to enter the district, it would avoid the "bad actor" risk that drove the initial concerns.

Mr. Van Roijen said he also questioned the appropriateness and legality of efforts to dismantle the AFDs, given County Code's liberal interpretation, as stated in Chapter 3, and Virginia Code § 15.2-4312(c), which stated, "it shall be the policy of all agencies in the Commonwealth to encourage the maintenance of Agricultural-Forestal districts and all administrative regulations and procedures of such agencies shall be modified to this end."

Mr. Van Roijen said that he believed the County should maintain policies that were consistent with state and County Code, and which aligned with the comprehensive plan and the recently reintroduced Agricultural-Forestal Chapter. He said that changes to County policy should be based on facts and data and reflect the will of current residents and taxpayers. He said that he did not think the policy should be guided by staff perception or gut feeling, nor should it be influenced by the wishes of individuals who resided in other areas and counties, seeking to shape the direction of their County.

Mr. Van Roijen said that he hoped the Agricultural-Forestal Committee, Planning Commission, and the Board of Supervisors carefully considered the potentially harmful and irreversible impact of these changes. He said that he also hoped they seek legal opinions from the County Attorney or the State Attorney General before proceeding, as failure to abide by County Code and state code may expose the Committee and the County to legal action.

Mr. Missel closed the public hearing.

Mr. Missel said that the benefit to being in one of these districts for the property owner was land use taxation.

Mr. Clark said that is not how he would put it. He said that the benefit to landowners in these districts was not solely taxation. He said that in some cases, landowners may benefit from taxation. He said that many landowners were not utilizing their district membership to reduce their taxes, as they were either paying full rate taxes or qualifying for agricultural or forestry taxes through their production activities.

Mr. Missel asked if the only reason they were being removed was because of direction from the Board to remove parcels without development rights.

Mr. Clark said that the reason they were pursuing this policy, as directed by the Board, was that the parcels without small lot development rights were not regulated by the districts. He said that Mr. Murray had mentioned that they would be considered if there was an adjacent special use permit. He said that these parcels were subject to occupancy requirements that applied to AFD

parcels, which meant short-term occupancies were not permitted. He said that the major effect of subdivision did not apply to them.

Mr. Carrazana asked if they did not have the subdivision rights and were not regulated, what options did they have that a parcel with subdivision rights did not.

Mr. Clark said that the code allowed for the same thing. He said that it was a matter of comparison between what they could do if they were not in the district and what they could do within the district, typically in terms of subdivision.

Mr. Carrazana said that the benefit to the County was that the land was being preserved in a certain way, which included soil improvements and other environmental benefits. He said that regardless of whether the land had development rights or not, the County was still reaping the same environmental benefits from preserving those lands.

Mr. Clark said that that was largely true because the districts did not mandate land management activities. He said that they did not regulate specific uses. He said that they did not require vegetation cover or vegetation management. He said that they regulated land uses.

Mr. Carrazana said that he was trying to understand what regulation was lost if the parcels did not have development rights. He asked what was being regulated.

Mr. Clark said that the key difference lay in the parcel that was giving up some development potential and providing a benefit to the County in exchange for the agricultural land use pattern. He said that this parcel was essentially trading development rights for the open space tax rate. He said that in contrast, a parcel with no development rights, even if it was zoned for the district, did not provide the same benefit.

Mr. Clark said that it could still engage in small-scale farming or other activities, but it could not subdivide the land. He said that as a result, it received the open space tax benefit without giving up any development potential, whereas the parcel that was giving up development rights received the conservation-related tax rate in return for that restriction.

Mr. Carrazana said that in terms of conservation, there was still a benefit to the County.

Mr. Clark said that if there was development potential given up, then there was a clear benefit. He said that if there were no development rights, there were some small regulations, such as short-term occupancy and adjacent special use permits, which were under more scrutiny.

Mr. Bivins said that originally, the AFDs were created to group properties together for various purposes, such as agriculture, conservation, or open space. He said that the intention was to provide a collective voice for these properties, allowing the district to negotiate with the government or state. He said that the district increased the level of scrutiny, and it did not have to do with land use.

Mr. Bivins said that this was particularly relevant during the bypass era, when the County or state would need to consider the impact of a project on the district. He said that he wanted to clarify that the district's purpose was separate from individual property owners' decisions about how to use their land. He said that if a property owner did not have development rights, it was arguable why they would be part of the district, as alternative options, such as easements, may offer more

benefits, including tax advantages and long-term protection. He said that he wanted to emphasize that removing a property from the district would not change the individual property owner's ability to use their land as they saw fit.

Mr. Missel said that they were losing the mass benefit. He said that if they removed parcels from the district, the district would lose mass.

Mr. Bivins said that it was a loss to the extent that there was any public value to that mass. He said that if he owned a piece of property with no development rights, he did not see how it benefited the public. He said that the district should provide a public good, and if there was no public good associated with this grouping, he would suggest a different evaluation of the value of that district.

Mr. Bivins said that when he reviewed the staff reports, he noticed that many of the people being pulled out of the district had no development plans. He said that he found it puzzling that they were still included in the district, as they could not develop their land anyway. He said that he wondered why they were being offered the benefits of the district. He said that he also wondered why the County was providing this benefit.

Mr. Moore asked if a property owner could apply for the use-value taxation category if the parcel was removed from an AFD.

Mr. Clark said yes, because they were almost entirely separate. He said that if they wished to apply for the agricultural category by performing the required agricultural activities, as specified by the Assessor's Office, they could certainly do that, regardless of whether they were located within the district.

Mr. Murray said that they could not apply for the open space category, because that required being in a district, unless they had an easement.

Mr. Clark said that the open space tax category had three qualifying options. He said that one was to be located in a district with sufficient acreage, requiring at least 20 acres of open space, excluding the home site. He said that alternatively, one could be under an open space use agreement, a contract between the County and a landowner, which restricted development and could lead to the open space tax rate.

Mr. Clark said that these agreements were quite restrictive and limited further development of the property. He said that parcels were not accepted if they lacked unused development rights. He said that the third option, although not commonly used, was a conservation easement, which was an option under state code, although it was not how easement parcels were taxed in the County.

Mr. Murray asked if the County had to offer the open space use agreement.

Mr. Herrick said that the County was not required to offer land use options, but the County had chosen to provide all three categories and also allowed open space use agreements.

Mr. Murray said that they were not allowed to put constraints on open space use agreements.

Mr. Herrick said that there was a state-mandated form for open space use agreements. He said that this was part of a state program, which also governed the criteria for qualification under

various types of use value taxation. He said that these criteria were dictated by state law, and there was minimal, if any, allowance for local deviations.

Mr. Murray said that he was questioning the benefits of open space use agreements. He said that if the goal was to conserve a particular area, it should be protected through an easement rather than an agreement.

Mr. Clark said that easements were generally more effective overall and were permanent, whereas agreements were short-term but renewable. He said that they were quite restrictive and, as they no longer accepted them on parcels without subdivision potential, people were giving up something when they entered into these agreements.

Mr. Murray asked what additional restrictions were in the agreements.

Mr. Clark said that the agreements were incredibly restrictive. He said that they could not build any new structures unless they were directly related to the open space purpose of that particular agreement. He said that they could not add on to existing structures. He said that they could not remove most vegetation.

Mr. Missel asked if they could build on existing foundations.

Mr. Clark said he was not sure if they could build a second floor on an existing foundation.

Mr. Clark said that they had provided a slide with potential motions for each of the eight districts, along with a map. He said that they had also submitted a motion in line with the policy as they currently understood it, a motion in line with the committee's recommendation, and an alternative motion in case the Commission decided that renewal of a district was not appropriate.

Mr. Bivins moved that the Planning Commission recommend renewal of the Ivy Creek District for a 10-year period, with the staff-recommended removals. Mr. Clayborne seconded the motion, which passed (4-2). (Mr. Missel and Mr. Carrazana opposed; Ms. Firehock was absent.)

AFD2024-02 Hardware District Review

Mr. Murray moved that the Planning Commission recommend renewal of the Hardware District for a 5-year period, with the requested withdrawal and staff-recommended removals. Mr. Clayborne seconded the motion, which passed (4-2). (Mr. Missel and Mr. Carrazana opposed; Ms. Firehock was absent.)

AFD2024-03 Eastham District Review

Mr. Clayborne moved that the Planning Commission recommend renewal of the Eastham District for a 5-year period, with the staff-recommended removals. Mr. Murray seconded the motion, which passed (4-2). (Mr. Missel and Mr. Carrazana opposed; Ms. Firehock was absent.)

AFD2024-04 Pasture Fence Mountain District Review

Mr. Murray moved that the Planning Commission recommend renewal of the Pasture Fence Mountain District for a 10-year period. Mr. Clayborne seconded the motion, which passed unanimously (6-0). (Ms. Firehock was absent.)

AFD2024-05 North Fork Moorman’s River District Review

Mr. Carrazana moved that the Planning Commission recommend renewal of the North Fork Moorman’s River District for a 10-year period. Mr. Murray seconded the motion, which passed unanimously (6-0). (Ms. Firehock was absent.)

AFD2024-06 Free Union District Review

Mr. Murray moved that the Planning Commission recommend renewal of the Free Union District for a 10-year period, with the staff-recommended removals. Mr. Clayborne seconded the motion, which passed (4-2). (Mr. Missel and Mr. Carrazana opposed; Ms. Firehock was absent.)

AFD2024-07 Carter’s Bridge District Review

Mr. Clayborne moved that the Planning Commission recommend renewal of the Carter’s Bridge District for a 5-year period, with the requested withdrawals and staff-recommended removals. Mr. Murray seconded the motion, which passed (4-2). (Mr. Missel and Mr. Carrazana opposed; Ms. Firehock was absent.)

AFD2024-11 Jacobs Run District Review

Mr. Moore moved that the Planning Commission recommend renewal of the Jacobs Run District for a 10-year period, with the requested withdrawals and staff-recommended removals. Mr. Clayborne seconded the motion, which passed (4-2). (Mr. Missel and Mr. Carrazana opposed; Ms. Firehock was absent.)

Adjournment

At 10:55 p.m., the Commission adjourned to January 14, 2025, Albemarle County Planning Commission meeting, 6:00 p.m.



Michael Barnes, Director of Planning

(Recorded by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards; transcribed by Golden Transcription Services)

Approved by Planning Commission
Date: 01/14/2025
Initials: CSS