

STAFFORD COUNTY
PURCHASE OF DEVELOPMENT RIGHTS
COMMITTEE MINUTES
September 22, 2009

The meeting of the Stafford County Purchase of Development Rights Committee for Tuesday, September 22, 2009, was called to order at 7:05 p.m. by Chairman Tom Coen in the County Administration Conference Room of the County Administration Building.

Members Present: Coen, Kurpiel, McClevey and Ritterbusch

Members Absent: Apicella and Clark

Staff Present: Baker, Neuhard, Lott and Stinnette

1. Approval of Minutes

- *June 23, 2009*

Mr. Coen: Alright, since we have a quorum, item number 2, approval of minutes for June. Any changes, additions, deletions? The June meeting was, if my memory serves, there were some items that, Patricia, you were going to help with that you felt were missing. So, did you get a chance to look at those?

Ms. Kurpiel: I didn't but I am assuming that they are in there.

Mr. Coen: Okay. Did you all deal with that aspect of it? I think when I was reading it looked like it was more.

Mrs. Baker: She went back through the tape and she did add where Ms. Kurpiel had indicated before the three pages that she inserted. There is some additional language, I believe, on page 12, 13, in that area.

Mr. Coen: Is there a motion to accept the minutes as submitted?

Mr. Ritterbusch: I make a motion.

Mr. Coen: Okay, is there a second?

Mr. McClevey: I second.

Mr. Coen: Okay, any discussion? Good, all those in favor of accepting the June 23rd minutes say aye.

Ms. Kurpiel: Aye.

Mr. McClevey: Aye.

Mr. Ritterbusch: Aye.

Mr. Coen: Aye. Opposed? Alright, they are accepted so we move to the August 25th minutes.

- *August 25, 2009*

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Mr. Coen: Is there a motion to accept them and then we can discuss them?

Mr. Ritterbusch: I make a motion.

Mr. Coen: Okay, second?

Mr. McClevey: Second.

Mr. Coen: Any discussion on the August 25th minutes? Seeing none, I will put it to a vote. All those in favor of the August 25th minutes being adopted say aye.

Ms. Kurpiel: Aye.

Mr. McClevey: Aye.

Mr. Ritterbusch: Aye.

Mr. Coen: Aye. All opposed? Alright, so we move to item number 3 on the agenda, staff update.

3. Staff Update

- Progress of easement negotiations

Mrs. Baker: We just wanted to let you know that we have met with the property owners for the easement and have gone over what we are going to do throughout the process and went over just the basics of the easement and discussed your comments that were submitted at the last PDR meeting. We are expecting them to come back in and present a draft to us. We will take a look at that. They have indicated that they are trying to beat the end of the year to try and go to closing because of the increase in capital gains effective January. So, they are going to try real hard to get it to that point. We will work with them as best we can to see if that can happen. That will work out best for us as well because we can ensure the reimbursement deadline of February. So, we will see when they come back with the draft deed on how they are progressing and how they are meeting our requests or comments that we have made.

Ms. Kurpiel: Also, they need to know that if they are going to try to use the tax credits, that legislation expires December 31st, and as far as I know it has not been renewed yet. There is a big movement taking place to renew it permanently but it has not happened and the budget being what it might, I would say get it done before the end of the year if they intend to use the credits. Excuse me, the Federal deduction.

Mr. Neuhard: I think it is interesting that he has retained professional help, accountants and others.

Ms. Kurpiel: Good.

Mr. Coen: Exactly what we were saying way back when people should do is get professional help when we are doing all this.

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Mr. Neuhard: I should mention to you, if you don't know, Alan has had his baby girl and he will be out for some time. The County Attorney himself has taken over and is sitting in and will be sitting in the meetings with us on this. Our next meeting is tomorrow. So we are moving along.

Mr. Coen: Oh, wow, that's good.

Mrs. Baker: And additional than what we had on the agenda, as far as a staff update, if you don't mind, there is a PDR Manager's meeting tomorrow that Mike Lott and I are both attending. They have announced, and I will be talking about it in more detail tomorrow, that there still is money. Instead of the \$500,000 approved in the FY10, there is \$400,000, but they do have \$235,000 that is being returned from the FY08 and FY09 pot. So any localities that are looking to apply for that 2010 funding have to have information in by October 23rd if they are requesting any additional funding. And, of course, we don't have any money in our budget right now to be able to submit a matching request unless anyone has any ideas.

Ms. Kurpiel: Not even for that free money?

Mr. Neuhard: Not right now. I can mention it to the County Administrator but not right now.

Ms. Kurpiel: This is free money. How much do you think we would need to get a piece of this? I mean, just based on the pieces that were doled out last year.

Mrs. Baker: Well, they had ten or eleven localities last year so ten or eleven ways.

Ms. Kurpiel: But it wasn't split evenly, was it?

Mrs. Baker: Split evenly if everybody has that much to offer.

Ms. Kurpiel: It is split evenly?

Mrs. Baker: Otherwise, somebody doesn't have...

Ms. Kurpiel: So, if ten localities came in then that would be like \$63,000.

Mrs. Baker: Four hundred thousand is the total.

Ms. Kurpiel: Okay, \$635,000 and ten percent of that is sixty-three grand for a bogey, Mike.

Mr. Neuhard: Yep.

Mr. Coen: So, we have until October 23rd?

Mrs. Baker: Basically all we have to do is resubmit a fiscal certification form. They have a special form that we would have to fill out.

Mr. Neuhard: I will pursue it again.

Mr. Coen: Okay. Ideally we are not talking a lot of money.

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Ms. Kurpiel: And it is free money. I mean, it is one for one, Kathy. So, in other words, if we came up with seventy grand, the chances are we could probably get a match of seventy grand. That is really hard to not find seventy grand for.

Mr. Coen: Yeah.

Ms. Kurpiel: Do you want us to talk to some Board members?

Mr. Coen: Do you think that would be advantageous?

Mr. Neuhard: I think that is the right thing to do, seriously.

Mr. Coen: Okay.

Ms. Kurpiel: It is free money.

Mr. Coen: Yep, that can't hurt. And then we would have a whole other 'X' number of years?

Mrs. Baker: Yes.

Ms. Kurpiel: Should we say \$70,000, folks, so we are all talking about the same number?

Mr. Coen: So, with \$140,000, would that cover the next one on the list? How much is needed for the SE?

Mr. Neuhard: We would just have to seek other money.

Ms. Kurpiel: Yeah, we would look for more money, fatten the kitty while we are waiting. And we might find something else worthy to do with it.

Mr. Coen: Okay, thank you. Next up, new business.

4. New Business

- Review of Pilot Program
 - Establish process for recommended changes
 - Establish timetable for recommended changes

Mr. Ritterbusch: Well, before you get to the other comments, I put together a few comments. I didn't get them to Kathy because I was out of town. These are copies of them.

Ms. Kurpiel: My comments didn't get included? I spent all day working on them and sent them on Friday.

Mrs. Baker: Yes, they went out.

Ms. Kurpiel: They were all in red and they were behind yours to keep it in one pile.

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Mrs. Baker: They were sent out. I printed them out but I printed the wrong set.

Mr. Coen: I guess the first order to do this is to figure out what process we want to do to go through all this. I will ask Kathy, do you want to sort of go through what staff sort of worked through, not necessarily bit by bit but just a general process and then we can decide as a group of how we want to proceed from there?

Mrs. Baker: Our comments focus mainly on the ranking criteria. We certainly do have other issues as far as the process itself. Do we want to be a little more proactive when it comes to working with the applicant, looking at certain things like eligibility? Do we need to write stricter eligibility guidelines into that? And there are certain things that we need to be considering too if we are going to be getting matching money because we do have certain things that we have to meet as far as their guidelines such as public information. Do we want targeted areas for our PDR Program? And then, of course, the potential funding. We started out just with our ranking criteria because I think it's important that we kind of set what our qualifiers are going to be before we get into how we are going to change the ordinance. Are there portions of the ordinance that we are going to need to rewrite such as what is the definition, changing definition, adding or deleting? There are some things in there that do not apply right now so it is our thought that with starting with the ranking criteria and getting that nailed down first that is going to give us better direction on how to proceed with the process itself. Because with the ranking criteria there have been comments throughout the year, of course, are we going to focus on agricultural lands, the timber lands, are we going to make them equal and that may drive some changes to the program itself on what we are focusing on depending upon what direction the committee wants to go. And looking at some of the other localities there are some that put equal weighting on environmental and agricultural or natural resources and open space. And there are some that actually have, Spotsylvania for instance has a two-track where they get two pools of applications and you know if they had money then they would take applicants from each pool. But I think that's going to really drive the changes that we're going to need to make. What I believe is that we set our ranking criteria in what we're shooting for in the ordinance itself. So that's kind of our perspective.

Mr. Coen: Okay, I think everybody who submitted items and issues... I think the one that is going to be the biggest amount of time and the most need is going to be the ranking. I think that's fair to say to go through and treat that fairly and accurately and go through each item. There is some broad sweeping process, that it's ok to be proactive and how to handle that so... I'm not certain how, I've got to get the feel from people to see how we should proceed. If we should just like plan one whole evening where we just go through the ranking bit by bit or do, you know ...

Ms. Kurpiel: Well, I recommend we start tonight, no time like the present.

Mr. Coen: Okay.

Ms. Kurpiel: While we got everything on the table, that was my understanding of the purpose of getting it all out there, if you wanted to have it acted on you needed to have it on the table so I would like to see us start through working through it and I think that Mike is maybe the person who would be the good lead on this since he's the one that had to do all the work, shall we say, or he's the one that ran into all the problems first off. I don't know what you all think of that. Certainly Kathy could do it too, but that was just an idea of how we could proceed.

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Mr. McClevey: Before we start into that, is there anything we could finish up with the current business, like a deed of easement for the Silver tract or finalize the process? You had a question about the communication with the applicant and so forth. Is there anything that's current on our table now that...

Ms. Kurpiel: Not until staff comes back and tells us what a... where the negotiation is going or where it's leading or what they want to do.

Mrs. Baker: I know one thing that Steven brought up last meeting was if we wanted to talk with the current applicants to find out... get their feedback. We sent our latest letter to them letting them know what the Board's action was. We indicated that we're welcoming any feedback at this point that they have so whether you all want to make it a more formal process as to whether we want to invite them into a meeting. Do we just, you know... what kind of communication do you want to have with the current applicant to get feedback from them on the process and the program in general? That was the only thing that I could think of.

Mr. McClevey: And again, I'm not sure whether that's true but that can be done at the very end. But also, for example, if there were any additions or amendments that we as a committee maybe wanted in the deed of easement.

Ms. Kurpiel: Beyond what we already discussed?

Mr. McClevey: Beyond what we already discussed.

Ms. Kurpiel: Do you have anything?

Mr. Ritterbusch: Did you get any response from those letters?

Mrs. Baker: No.

Ms. Kurpiel: I mean I do have something else I could add, more information on that, but it will come out tonight if we start going through the rankings, because it's one of those ranking issues.

Mr. McClevey: I had a couple comments on the deed of easement if it would be alright to, I don't want to break stride here.

Mrs. Baker: I would certainly say let us know tonight and have them, because we have our meeting tomorrow.

Mr. Coen: Yeah, and I think that's fair, why don't we deal with those first ...

Mr. McClevey: It might not be relevant; it may not be anything of issue at all.

Mr. Coen: It's yours, it's always relevant.

Mr. Coen: And then one of the things, I know we can kind of get into the process and the nuts and bolts of how we want to handle going through the rankings and maybe any changes or recommendations. So Marty, you have the floor.

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Mr. McClevey: Again, these are just thoughts or provisions for the easement and they probably, in fact I was looking through the current deed of easement, they probably are touched on but more specific. For example, perpetuating the scenic agrarian value and view shed as currently found, in other words someone goes out to the site, photographs it, we suggest to Silvers that they maintain that view shed because it's an agrarian landscape and so forth; confirm that they'll maintain a nutrient management program and other standing NRCS buffers; continue the primary emphasis on property as farm crop production; locate new dwelling site outside of view shed; if logging takes place, logging roads located at sites that would be approved by County; control devices will be in place prior to operation; BMPs would be adhered to.

Mrs. Baker: I'm sorry, could you repeat that last one.

Mr. McClevey: If logging takes place, logging roads, log deck sites will be approved by County erosion control devices, will be in place prior to operation, BMPs Best management Practices will be adhered to with additional restrictions to prohibit all logging equipment from within 100 feet of stream, insure the establishment and maintenance of filter strips and/or other NCRS approved methods to maintain or improve erosion control. That was it, just telling my thoughts.

Mr. Coen: Just out of curiosity, are there any other so far than what we would normally be after anyways?

Ms. Kurpiel: Those are all in the forestry but my recommendations went further than what is in forestry.

Mr. Coen: Okay.

Mr. McClevey: Again, I read through the database as we had it and I thought that I picked up on all this stuff but if we were going to have the discussion tonight, that's why I wrote these things down just to make sure everybody reviewed.

Mr. Ritterbusch: I'm not sure about the review deal. This guy is over 57, so, I don't know what his age is but at some point he's going to discontinue being a farmer and whether or not he has an heir who wants to continue being a farmer, they may let the land go back into total forest. So I don't know how we can tell them it has to be farmed or something like that. I'm not sure about...

Mr. McClevey: I hear what you're saying.

Mr. Ritterbusch: I don't follow that at all.

Mr. McClevey: And I was thinking that since it's through the VDACS program that there was going to be some provision for maintenance at this particular area site as a farm so it wouldn't be converted back if he were to sell or to make changes.

Mr. Coen: I didn't know if that was an issue or not. In other words if he said "Well, I'm going to abandon farming would you consider it to be..."

Mr. Coen: Well, knowing the family, I don't think it's either in his or his son's interest to abandon farming. Not that it would just be for .. just to go to forestry.

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Mr. Ritterbusch: So they might just quit farming. Farmers are a dying breed. And this will carry over into my comments for a future matrix.

Mr. McClevey: That's all I had, I just wanted to share that.

Mr. Coen: Okay, I guess then to me the next question would be process. We can start on some of the writing tonight. Having been in the process when they did the first ranking, I think one of the deficits of the way they did it the first time was it was done piece meal. I don't think there was a real big picture look at everything as it was in total. At least that's how I felt during the process – like we would get into one area and get into the weeds of that one area – come up with a view – go from there – and then as we've been going through the process there have been things that I don't think at all meshed because I don't know that we actually took a step back so as far as processes go. I think it would be beneficial if we get in the weeds of say one section of it - that eventually we look at it - once we've gone through each section - as the thing in total and see how it all fits together - look at one element at a time.

Mrs. Baker: But I do think that even before you get into the specifics of the criteria though I think you do need to kind of set out what is your vision of the ranking criteria what is it going to do. Do you want it all to be equal? Do you want the natural resources, the environmental resources, even cultural resources... do you want them to play a big a part as you do in agricultural? I think the first thing that you need to decide so that when you're going through the criteria that things going to be weighted equally. You may want to ask about another category. I mean the categories here are not set in stone. There may be another one that you want to put into this. And I don't know how many of you have looked at all the other localities and programs. There are about 10 or 11 ordinances out there that are available. Most of them are pretty similar but there are some with different ideas and some of them you know. If you all want to take a look at those at some point and see. If you go to the VDACS's web site and go to the Office of Farmland Preservation, everybody that has a program right now would have it all right there. Or I'd be happy to send copies out just for you all to take a look at if you want to get some additional ideas.

Ms. Kurpiel: Well I would have a suggestion to make along those lines. And it is just sort of preliminary and it would be something that I would...we could come back to after we do the ranking. I would like to see forest and ag have the ability to get the same number of points and then I think the environmental and the cultural could apply to either the ag or the forest, so those are like extra points that either one of them could get. That would be my idea. Then in addition to that, and I wrote you this in the note, I think it's really important that we frame these criteria around the federal and the state law. And the reason for that is, I mean, do you see a lot more money coming into our lives here through this program? I really don't. We try to make valuation fee about 50% of fair market value, that's pretty generous in my view. And I think that or a lower amount could lead land owners to want to take advantage of the federal deductions and the tax credit and in order to do that I would like the ranking criteria to reflect those elements that are actually in the law. And so the suggestions for the most part that I made in red to Kathy's write-up was around that idea. In other words let's have the property rise to the top that has the greatest probability of having a successful conclusion with the feds and the state. You might have been wondering why I sent you that federal and state hand-out, that was why, that was where I got them. I actually think any program... I mean this is how people get the deductions and the credits through the feds and the state. And I think it really has to be integral through our program since we're not paying full boat. What do you all think about that idea as an idea?

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Mr. Ritterbusch: Well, my only concern I guess as one of the jurors, the federal ones may go by the wayside by the end of the year anyways. We're hoping they continue them, but, so I'm a little questioning if we gear it towards either existing laws or existing programs, they either die or they change on us. They keep changing to meet the needs of what's going on.

Ms. Kurpiel: Well, we might have to.

Mr. Ritterbusch: Then I'm not sure how receptive we would be to continually changing it to that. And I guess the other thing is this, I can see... I agree with you that having the tax from the federal and the state acts one as an incentive as well for the program but I'm not sure... I think it needs to be... that we need to write the ordinance to fit the thing exactly because I think that sort of goes to...the applicant would want to go forward with that.

Ms. Kurpiel: I know but we would want to be able to... we would want our program to be an assist to that.

Mr. Ritterbusch: Right. But I think so far it is. What do you think? I don't know.

Mr. Coen: Well, yeah, after I get the money the feds are not coming in here telling us how to do this program, they're going to pump the money into a easement process that the localities... will be up to the localities how they want to make it so you can key it to how the feds want it to go but I don't think that's a driving requirement.

Ms. Kurpiel: Well the feds aren't getting any money now.

Mr. Coen: But I'm saying if they ever can that, they still would not be coming down here to Stafford and saying fairly you'll do it this way.

Ms. Kurpiel: No, but they might say to one of our applicants "you're application is not strong enough for the federal deductions and we may have another applicant in the pile that would be strong enough that if we didn't use the criteria then you know have we really done the best we can for ourselves and the applicants?"

Mr. McClevey: Well, I just had a comment. I think that Patricia's initial comments are correct that it's how to do the criteria that we should address forest and farmland so that we meet the criteria for both realms. Environmental and VDACS so that if there's any restrictions on VDACS money, or whatever, that we do have an act in our ordinance to perpetuate agriculture and viable landscaping, so my thoughts on the base criteria is to have, let's say, ownership and then at some point we would have a break, agriculture, forest lands and they go down a different track based on what we've used for agriculture lands and new criteria for forestry or conservation plans, you know, overlays – you can't compare forestry and agricultural lands – it's just not going to work.

Ms. Kurpiel: Well, but you can have the same point values, that's what I'm saying. The same point values should be available for both of those and then another way you can do it, Marty, if for example, if VDACS ever came out and said "hey, look, we're only taking farms this year", then we could somehow manipulate our criteria so that farms would come out ahead if they were equal you know going in if we knew where we were this set of criteria I don't think we know where we are on what is farm and what is forest criteria.

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Mr. McClevey: I think the current criteria is kind of geared toward agriculture and whatever, so I think that there needs to be two tracks, two distinct tracks, begin together, separate by agriculture and forestry and then merge back with, like, the proximity to cultural resources or presence of cultural resources and then come back together.

Ms. Kurpiel: And environmental, but environmental could also apply to the ag property.

Mr. McClevey: But not as strongly, and I think that there's less chance of all the issues, you know, if you have current agriculture going on you're not going to be able to ... I mean it's apples and oranges comparing that with a forested... an outward forest with x amount of acreage, equal acreage that has other values.

Ms. Kurpiel: There's only one property that was all ag, all the other properties were partial, they were ag and they were forest.

Mr. McClevey: But the issue that came up with us was, do we consider it to be current active agriculture?

Ms. Kurpiel: Well, we said no, but in my proposed criteria I gave an equal number of points to a forest as we gave to a farm, for example, and that was the reason why, to try to equalize those two uses. But I saw the environmental and the cultural as overlapping, both of them as the ownership was overlapped, both of them also.

Mr. Coen: Does staff have any input in all of this?

Mr. Lott: Certainly there is that one question in the bottom line of the section about forest. We were just now talking about lifting that one up so that it would equal the number of points in that ag question in the first part. I guess that's what we're trying to say, rather than add silvaculture to that ag question, just boost that report. I don't know how you would do that, if you would add silvaculture to ag without knowing if it had a forest master plan or what portion of the forest, you know, they were actively planning to log. So rather than treat it like that, just bump up that forestry question, what percentage of their land would be forest, in response to the ag question earlier on.

Ms. Kurpiel: And if there are any other questions like that we could have a balancing, a down vote. So I don't know, it depends on what you all think. I mean from my perspective it's important to me is that forest and ag be considered as a, I mean, you know it doesn't make any sense to be able to eat if you can't breath.

Mr. Neuhard: Two thoughts on the discussion you're having now. What becomes distinguishing characteristics, if theoretically you could have an even show, where is it that you want differentiation would be my question. If I agree that you need... this is your opportunity, considering where we are and if we want to look at them equally, you still have to make sure that there is something that says in that evaluation criteria, differentiates in some set of values where you want to be at the end because you theoretically come to the end and you have the same point value and they don't look at it as just because the funding we have. Or what's the break up? What's the most important thing that we're after here, you know. You saw the lean in this last deliberation we did and there's some concern about that, that we hear. So that would just be the only questions as we even these potential values out that we make sure that there's some place that there is differentiation.

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Ms. Kurpiel: Well the differentiation would be to the environmental and the cultural criteria to the extent that farm or forest had any of those, and then their rate would be higher. That's where the differentiation comes in.

Mr. Neuhard: And we need to clarify something like that, then, in the current writing because we had also some difficulty with some clarity in that, and this means we need to strengthen that. The other piece I would say, and I do agree with Patricia in this case, in regards to looking at this criteria around the tax not for the purpose of the tax credits necessarily, but looking at it from a qualitative standpoint. Those things that they have come up with may support what we're trying to do if you take your comments. And I think that, I'm not saying which ones, you know, whether all of them are right for us or not, but the thought has been put into that and the reason that they're using and allowing that criteria for tax is because on a larger basis they believe those are qualitative things in my view. So I think it's an opportunity for us to look at that if it helps someone with a tax and it helps people decide, well, you know, it gives a property a boost, then that's fine, but more important is that maybe some of those are to be considered as a part of our qualitative evaluation so it's an opportunity we need to look at it whether you accept it or not you need to look at it because I think there's a couple of good things in there from her initial comments or what she's extracted from that. So, I think we would...we don't want to lose out... I think we need to say OK look does this need to be there and how would that help?

Ms. Kurpiel: It helps the applicant.

Mr. Neuhard: Well, it does but I think some of it helps us in our goals in terms of where we're going and so you put that in there and you write as part of some writing or it's a part of a new criteria base you can put in and in affect you're making a judgment to that property with these characteristics. Even though it's good for taxes it's also good for what we're trying to do whether it's protecting the environment, creating open spaces or whatever and then it's good if they get tax credit and it's no doubt that this is in there but I think some of these things tend to be things that we might can agree on... hey that's important to us.

Ms. Kurpiel: Of the 11 criteria in the federal law, when I actually went through and thought about each of the 11 items that they listed, many of them are actually covered in our criteria so I did not recover those. There was really only one major one that was not in the feds and I did include something for that but the state was, really, I thought very beneficial because when I went through the state they actually said "hey, this is a safe harbor" and so that means that if our person has that characteristic that is a safe harbor for him to claim the tax credits and a couple of those criteria we do not have, I don't think that we have it strong enough so I actually didn't make any judgments. I just went in and put in what was missing and what I thought was already there I left alone.

Mr. Coen: Well, how do you think the standpoint of a two-track thing would work? How would you divide the work for this? I mean, I guess, sort of what I'm asking is more systemic before you get into the weeds is to say looking at this system the way it was set up, how would doing it different be better to facilitate what you have to do and we take that into consideration?

Mr. Ritterbusch: I would think that a two tier system... the potential for the same amount of points that exist on both sides.

Mr. Coen: Right.

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Mr. Ritterbusch: Number one. Otherwise you're always going to have one being overwhelmed by the other guy.

Mr. Coen: Right, otherwise what does staff think?

Ms. Kurpiel: Well, the way it could work is the money could be divided. I mean we could say at the beginning of every program "hey, let's have a 60% ag 40% forest program this year" and then that's how you decide how you're going to divide your money and then you take the top ranked ag and you take the top ranked forest and that's how you decide who gets to the bus. But here's a problem that we haven't thought about and that is the property that has both characteristics. Like SE for example had both characteristics so did the Silver farm, it also had other characteristics.

Mr. Lott: Any A-1 property that has some portion of forest can get some money.

Ms. Kurpiel: But I don't think that's bad because of the way we wrote the criteria. We said, you know, like the most points in ag is given for the percentage that is in crop land and the most points in forest would be for the acres that are in forest so I mean it would still be weighted toward whichever the majority land use was.

Mrs. Baker: But I'm not sure what the benefit would be to have two tracks on that as opposed to just getting equal points. I mean you may get more points if you have both options... you've got more of a viable property if you do have both.

Mr. Coen: Yeah, I guess from a visual standpoint that's what I was trying to get because if I have a piece of property and it fits under the ag category then it would go through this process here and then to me you would say ok if it's ag go through this column and if it's forest go through this column eventually come down to the bottom and they merge in the environment, whatever, and I don't see where you could do both at the same time because then you're really just doing the same thing we're doing now. I mean if you say you're going to take my piece of property and we're going to put it through both of these at the same time then there's no point having two tracks. Does that make sense?

Ms. Kurpiel: I suggest that we do not have two tracks. I mean unless somebody else sees it as a rip-snortin' advantage.

Mr. McClevey: I think two tracks is a better way to go.

Ms. Kurpiel: You do?

Mr. McClevey: Yes.

Mr. Ritterbusch: You said that Spotsylvania has a two-track system.

Mrs. Baker: But their two track is more environmental, cultural resources and there's your plan which includes ag and forest so it's a little bit different. I did just want to make sure, not everybody has seen, you may have... I'm not sure if I sent out the intergovernmental agreement that we initially signed with VDACS. They're right in the intergovernmental agreement for purposes of the term agricultural conservation easement. It's a negotiated easement that has a primary conservation purpose of preserving working farm and/or forest land. Of course they treat them equally, farm and forest, but I

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just want to make sure that if we continue to use the VDACS money that you have to weight it towards the agricultural and forest. They don't really make a distinction between ag or forest - it's all kind of clumped together.

Ms. Kurpiel: That's fine with me. I don't think it should either.

Mrs. Baker: Yeah, I don't have a problem with them being equal.

Mr. Neuhard: I guess the question is "how do we get there?" Whether we do it in a single tiered process like we're doing by changing some values, adding in, or whether you have this bifurcated middle. I think we have to look at exactly what that means. I mean we're going to have to sit there and say what would you change in an existing system to get this equalization and then what would it look like if we went to bifurcated?

Mr. Lott: I think we need to look at which of the questions we currently have of promoting agriculture, right now the only question I can think of that is promoting forestry, how many acres of forest do you have? I think we need to look at how many points currently are we promoting towards agriculture and think about how to merge that. Add a category about forestry and forestry management. For those who have forestry, do they have an active forestry management plan? Do they have something that would give them points?

Ms. Kurpiel: But I wouldn't want to go through that existing criteria because I think they really need some work so I would prefer to look at it question by question then divvy them up see where we are and see if it satisfies our goal and talk about how it could work.

Mr. McClevey: I was looking at the ranking and I thought through agriculture and forestry and, for example, under four, environmental quality, you could keep the 4A which is Virginia Division of Conservation and ranking, ok, this is for forest and then B would be forest management plan is in place with the Department of Forestry. C would be proximity to areas identified as having environmental value, a vagary there, but retain that and then D would be contains a certain percentage of perennial streams watershed because what our goal is we want to perpetuate agricultural lands farming and agriculture but we also want to... we're not just shooting at protecting forest also we're shooting at protecting water quality.

Ms. Kurpiel: But that's true on a farm too, Marty. All of those resources also apply to protecting farms.

Mr. McClevey: Well, I understand that, I'm just saying that it could work, if you got a farm out on Route 3, that's soy beans and it's been perpetually farmed and it's A-1 and a person puts in for this program you may not have any up-flowing force? They may not meet any...

Ms. Kurpiel: They might not have any streams.

Mr. McClevey: There's a lot of things that they might lose out on and not even be right so we would miss the boat on having the opportunity to protect an agricultural system.

Ms. Kurpiel: Well, I already expressed my view on that, in my view, that is a less desirable property because it doesn't have all the attributes and we had one this time, for example, that just was a field.

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That's all there was and I feel like if we're going to spend our money, my money, I want to protect the most I can.

Mr. McClevey: I understand that and the issue came up with us at the last meeting about accepting a farm to begin with.

Ms. Kurpiel: I think we chose the wrong property to begin with, not because it was a farm, but I just thought the SE property was by and large a better property. But primarily because of its location, its contiguousness through all of those other permanent conservation easements and the fact that it could be brought into the state of a farm. It wasn't because it was a farm.

Mr. McClevey: But it ranked out and became the highest, right, by the saving grace of the cultural resource. But again, we had a pot of money that was leaning toward....

Ms. Kurpiel: Well but let's go back to the part that Kathy read because I want to understand what that agreement says. Now was your opinion that SE fully meets the criteria in the VDACS agreement?

Mrs. Baker: I mean, it meets the criteria because it is.. as they said there is a... Farmland Preservation says there is some gray area because it does not say it has to be a working, active farm. It says it has to preserve, the preservation of working farms and forest lands. Now, can this land be farmed is a different question than is it being farmed. Right now they're not making that distinction. They may be looking at that in their future regulations.

Ms. Kurpiel: But is it a working forest?

Mrs. Baker: No, they have not timbered that property in the what, last five years or whatever. I mean also when you're looking at a forest and you're looking at silviculture, they are two totally different things. You may have forest out there that has nothing but, you know, bad trees that aren't going to make any kind of good lumber or anything that you're going to want to go out there and timber. You've got your forest land that's good for the environmental part of it but Department of Forestry, they've got, you know, as far as I'm concerned, they don't have the best water quality protection devices and any of those properties that have forest land, they can go and cut down, they have certain things, but that's not necessarily good environmental quality because it's going to take, what, then 15 years for these trees to come back up and have that vegetation again so you've got to separate the two - just forest land and working forest or silviculture land.

Mr. McClevey: So my concern is that we as a committee need to decide what direction we want to go with what lands we want to preserve and, for example, that SE property would have been great if we had established a corridor that we want to preserve like the Rappahannock.

Ms. Kurpiel: There already is a corridor.

Mr. McClevey: It's not in our PDR plan.

Ms. Kurpiel: It's in our comp plan.

Mr. McClevey: Yeah, but what I'm saying is that we as a PDR, we didn't look at the tracts of the land and say well we desire to...

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Ms. Kurpiel: Well, I don't think we're ever going to ever get to that point, Marty.

Mr. McClevey: Well, I understand.

Ms. Kurpiel: I mean we don't even have a green infrastructure plan. I understand what you're saying - it hasn't been designated.

Mr. McClevey: Correct.

Mr. Lott: Albemarle County started something like that...for being in certain portions of your county.

Mr. McClevey: So right now we are kind of a patchwork program. All over the place, accepting what ever comes across our plate at the time. Because of that, I am suggesting that we...I think we are all in agreement that the ranking criteria needs to be revamped from page 1 to the back and maybe that is the best way to go. We just start there...

Ms. Kurpiel: Let's just start there, sort it out and add or subtract. That is the way I think we should do it. And after we get through looking at each and every one of these criteria, I think we will have a better idea of where we want to be in the end. And then we can divvy them up to what ever group we think is important and let's please number them from one to twenty.

Mr. Coen: So would it be beneficial...we have the staff's comments and we have Patricia's comments and Marty's comments and my comments. Would it be beneficial at the next meeting to make a blanket ranking criteria chart and start with section one. Staff will make this sort of thing that says okay, part A this is what it looks like now, these are the various people's comments and then we start going through it bit by bit like that? Is that what you are suggesting?

Ms. Kurpiel: Tom, you said we were going to do that tonight. If I thought we were not going to do that tonight, I would not have taken a whole day of my time to do what I did. So I expected that process that you just described to start tonight. Why are we going to wait until the next meeting?

Mr. Coen: Number one is I did not...my focus about getting comments ahead of time was so people could read them and think about them. For example if I came out tonight and said I want to change the ranking criteria from the forestland, one hundred acres or more, change this to this, this, this and this, some people like to have it ahead of time so they can think about it and know. That was my point. It was not necessarily that we were going to do every single one of these this evening and what I was asking was how was the format that you would like to do it. What I was getting to was, that we want to have...I was asking do we want to go through these parts bit by bit, with everything clearly or do we just want to go through the staff comments and go through it that way. I am trying to get a flavor for how do we want to do it, I was not saying do everything next week or next month.

Ms. Kurpiel: I want to start with the first question, go to the staff comments, we read the comments. We add your comments, you know what your comments were, I know which ones you comment on, Marty's, I know which ones he commented on, we talk about it and then we decide where we are going to be for tonight in a preliminary way. Then we go on to question two and we do the same thing. Nothing is resolved in concrete on any question until we get to the very end.

Mr. Coen: Okay.

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Mr. Neuhard: I would propose also that there are some questions that there are no comments on. I think we need to reaffirm whether or not that question stays there or goes or...

Ms. Kurpiel: Why it is there.

Mr. Neuhard. Yes, and when you get through the whole thing question by question...we might spend no more than two seconds on a question. Yes that is valid, we don't want to change it or we all agree get it out of there, so we do. And then we move on to the next one. Some are going to take a lot of time and deliberations. I personally believe that we need to go through each question and decide if it stays in and we do have the comments to do it.

Mr. Coen: Okay.

Mr. Neuhard: I would ask that you may consider is that because of...in some places we will be talking about adding something. We then have to figure out how we put the points in under that. We are going to be correcting some. We are going to be deleting some. We need to establish a time period in this meeting to do this so we don't end up going along until ten o'clock or eleven o'clock. So at least from staff we can plan how...are we going to spend two hours a night on this, that is great. If we get done that is fine. You can either do it by section or if we do it, just start and say we are going to spend an hour, however far we get in an hour and go through it. That is the only thing I would ask is that we do establish some kind of time limit around how long we are going to work on it on any given night. I know when we get to some of them...maybe not. Maybe it is going to be so clear to us that we can go on. But I suspect that on some of them we are going to spend some time.

Mrs. Baker: I do just want to note, the comments that we raised here were ones that we may have had issues throughout the ranking process. We probably want to talk about every question, which we did not write a comment on every question.

Mr. Neuhard: We definitely want to talk about every question.

Mrs. Baker: Right. For size, that was not our only concern; that was an issue at the time. But do we want to discuss how we are going to reassign points based on the size of those properties. We did not comment on every little thing like that.

Mr. Coen: Okay, one other thing before we get into the first section. And this is for staff, did you feel that in general the way about how to do the points was workable or not workable. The reason why I am asking that is, way back when we first were doing this, the question was "do you make a total out of this number of points or do you use this other mechanism?" There were all these different things we debated and so we ultimately came up with the idea of each section being ten points. Did you that find helpful or not? I am asking you because I have not done this one time, I thought we should ask people who actually worked through this.

Ms. Kurpiel: I don't think we even need to deal with the points at this time. I think we need to deal with the questions and we need to look and see what categories each of the questions fall into, add the points up and then we go back and work on the points. Don't try to work on the points as you are working through it or you will never get there.

Mr. McClevey: That is true.

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Ms. Kurpiel: You work on the question itself and leave the points to the end. Because when we get through with the whole thing and we put the ag in one column, the forest in one, the environmental in one, the cultural in one, it that is the way we decide we are going to divvy them up.

Mr. Neuhard: Well, right now you kind of have it like that.

Ms. Kurpiel: Yes that is how they are.

Mr. Neuhard: It is a matter of strengthening the ones you need to strengthen and loosen the ones you need to loosen.

Ms. Kurpiel: And not worrying about what category they are in or how many points there are at this point. We will never get there if we do that.

Mr. Coen: Alright, so we will start. Do we want to go until...do we have a specific time tonight we want to go to?

Mr. Ritterbusch: Nine.

Mr. Coen: Sure, it has always been eight or eight thirty, but I will go to nine.

MR. Ritterbusch: No later than nine.

Mr. Coen: No later than nine o'clock.

Mrs. Baker: I just want to throw out, I want Patricia to hear this too, but two things to keep in mind as we are going through this. One is one of the ordinances that is going through right now dealing with agricultural clustering. That may be something that is going to affect the developmentability of the property. Right now if you have fifty percent of the property that is in wetlands and can not be developed now anyway, if they cluster they will be able to go to smaller lots and it is going to be more of an average with them clustering and they are not going to be building. I think that is one thing that we need to keep in mind when we are going through that. Not necessarily at this point, but maybe in the back of your head. That was stemming from the question on, let's say the Wilson property, where out of fifty acres they were only getting eight development lots, that the rest of that property was not developable and we were not retiring development rights if we were to purchase the property like that. So that is just another thing to keep in mind when you are going through this, is that the kind of property you want or, if it is we need to work that into the criteria.

Mr. Lott: Come up with the number of developments units.

Mrs. Baker: But if the agricultural clustering does go through, then that is going to...it is not going to be anymore "one hundred acres you can get thirty three lots", it is going to be you may get more lots than that.

Mr. Smith: Can I make a suggestion?

Mr. McClevey: Could we begin with add-on questions rather than if there were any questions that we wanted to add in, new questions?

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Ms. Kurpiel: I think we should start at the beginning and go through.

Mr. Neuhard: Do we have, let's make sure that we have what we need to track this administratively.

Mr. Lott: I don't have the ordinance in front of me.

Mrs. Baker: I have a couple.

Mr. Neuhard: Everybody needs a copy of the ordinance and we can track the comments beside the ordinance and also not miss any of the questions.

Mr. Coen: What was the outcome of the tracking? I know when I left Marty was saying he liked the idea of having two tracks and a couple of you were saying they did not like two tracks. What was the up start?

Ms. Kurpiel: We will make that decision when we get down there.

Mr. Lott: Question 1A, quality of the parcel, productivity capability. The first question was the size of the property. I think the only thing that we had discussed in the beginning was whether to round up. That was the only issue we had as we were doing it and that was because the Lewis Wilson property happened to be 49.48 or whatever it was. Actually it was 49.78 so if you round it up to 50 you would give them more points.

Ms. Kurpiel: I say round it up.

Mr. Ritterbusch: We had agreed on not rounding up.

Mr. Lott: This is open to discussion again.

Ms. Kurpiel: I say round it up. And Tom wants more points given to this category.

Mr. Ritterbusch: You could break it down into ten different ten acre increments instead of this big group.

Mr. Coen: That is a point. There are not many parcels left in the county that are a hundred or more.

Ms. Kurpiel: Yes, but if they are and we get one, we want to give it more points.

Mr. Coen: Right, but I guess the question is...what you were getting at is instead of going ten, seven, four do we want to go ten and then break it down even more.

Mrs. Baker: Or do we go twenty.

Ms. Kurpiel: We can't do the points at the beginning, we will not get anywhere.

Mr. Coen: We do not necessarily have to say the points now, but do we want to theoretically...basically you go from fifty to seventy, is a big chunk.

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Mr. Lott: The basic question is about the size of the property. Do you all agree about that?

Mr. Ritterbusch: First, we need to grasp the quality of the parcel. Do we want to retain further...

Ms. Kurpiel: Let's not worry about those words now. We will divvy them all up when we get to that again, because all of those are wrong anyway. Let's not discuss it at this point, we are just wasting time.

Mr. Lott: I did not know what quality. Quality for agricultural activity? I did not understand what that meant, since I was not involved in the earlier conversations.

Mrs. Baker: The whole section is regarding productivity, the agricultural or timbering capability of these properties. These four categories were geared towards that.

Mr. Coen: That is why I wanted to point out that if we are going to lean towards the two-track thing, which one was chosen. Alright, "b".

Mr. Lott: This one is the soils percentage in the USDA of land capability classification system.

Ms. Kurpiel: What does that mean?

Mr. Lott: Actually I printed out a fifteen page article on the history of that system and what it is about.

Ms. Kurpiel: I know what it is about, but it is not relevant. It is basically what NRCS uses and what NRCS uses is the recommendation put down here.

Mr. Lott: Of course I don't work for NRCS but they do use it in how they look at land. The first four categories are considered arable land which you could use for farming. Then they go up through the rankings from 1 to 7, my understanding is they become more erodible soils as you go up through that and they obviously have sub category "E" that they put really erodible soils.

Ms. Kurpiel: It does not mean anything to us.

Mr. Lott: I don't know why it was chosen. Patricia recommended switching to the prime farm land soils category instead as an alternative to this one.

Ms. Kurpiel: The percentage of prime is more important for farm land.

Mr. Lott: Prime farm land by definition is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, etcetera, basically those combinations in soil qualities that allow for better agriculture.

Mrs. Baker: But are they tangible soils that you could look at a property and when you are ranking a property, can you say it has the soils for certain.

Mr. Lott: We would do it the exact same way we did the others. They have a list of soils that are considered prime farm land or farm land of statewide importance. So, you would essentially do it exactly the way we did the others. Where I would just go in, or somebody would go in, GIS gave me a

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list of the soils by percentages, acreages of the soils we have on that property and you would compare them to this table is essentially how it was done for the existing category.

Mr. Ritterbusch: If your piece of property was primarily forest land, it may not be soil that is really suitable for crops but still allowable for forestry. It would be detrimental to someone who owns a forestry.

Ms. Kurpiel: It is not because...the soil that is underlying is the soil that is underlying and sometimes it is under a farm and sometimes it is under a forest.

Mr. Ritterbusch: Yes, but if we are going to give credit to a farm because they have good soils and your property is forested, then you have got to give some sort of criteria of credit for the forested also.

Ms. Kurpiel: This is the criteria. This is the criteria that NRCS is using for both farms and forest and for their grass programs that you get money for. This is the only criteria they use.

Mr. Lott: I can not say for certain that if you looked at a heavily forested property, they may still have some of these soils on there. Obviously this whole county was forested at one time and these soils are here.

Ms. Kurpiel: I looked at SE Associates, and it had more of the soils than any farm we looked at.

Mr. Lott: Just looking, most of these are listed as fifteen percent. The really good ones are flat, six percent or less.

Ms. Kurpiel: Well, that is the way it should be actually.

Mr. Lott: Then when you get into farmland statewide it does include some at fifteen percent. But the best prime farm land is six percent or less.

Mrs. Baker: But if somebody came in and asked us what is my percentage of prime or important farm land soils on this parcel... will they know that by coming in? Will they have a list that you can look at that says this is it, do I have any of these soils and I can look it up and they will know right then and there.

Mr. Lott: I can look them up. It is just a table. It would be the exact same way. I can look at the soils map for any given parcel and tell them yes you have some of these soils or no you don't.

Ms. Kurpiel: I am willing to ask NRCS if this does not discriminate against forest. If it does, we need another question for forest. I will ask overall.

Mr. Coen: I made a note, if we end up doing the two-track thing, there would be a separate question for the forest person. Alright, "c", parcel contains active farmland with a majority zone of A-1.

Mr. Lott: I think the biggest issue we had with this goes back to the Lewis Wilson property. I think we need to add A-2 to this unless we discriminate against agriculturally zoned properties.

Ms. Kurpiel: I agree.

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Mr. Lott: I think that was the big issue we had in this past round. Whether you just want to add A-1 and A-2 to it, the way it is currently written.

Mrs. Baker: Or do you want to weigh more heavily and break it out and have A-1 in a category and A-2 in a category as a step down. You would get more points for A-1.

Ms. Kurpiel: What would be the basis for discriminating? I can not think of any basis why you would want to discriminate against A-2.

Mrs. Baker: Other than just the lot sizes.

Mr. Lott: A-2 lots are sometimes closer in to more heavily developed areas, not always.

Mr. McClevey: Are we looking at striking out the part that contains active farm land, striking out with a majority zoned A-1?

Mr. Coen: Or A-2?

Mr. McClevey: Why do we have to ask A-1 or A-2?

Ms. Kurpiel: I say A-1 and A-2 should both be considered the same.

Mr. Coen: If I come in with an A-2 property of X number of acres and he has got an A-1, how would you delineate the points?

Ms. Kurpiel: If the lots were the same size, the A-2 would give more development units.

Mr. Coen: That is what I am saying. It is okay point-wise you can work that through? If I had ten acres and he had twenty acres and mine is A-1 versus A-2, right now it is going to be equal. I just wanted to make that you can do what you need to do if we just strike that out.

Mr. Lott: What Patricia is saying, the development units would be greater, that is really the issue. Like Lewis Wilson's property, if it had not been zoned A-2 they would have had less development rights.

Mr. Coen: The micro is active agricultural land is cropland or pastureland that has been harvested within the last three to five years da, da, da, da, da per acres. The rest of 'c' ...

Mr. Lott: That would not change.

Mr. Coen: Okay, I just wanted to think this all the way through.

Mrs. Baker: But that is the second part of the question. Does that need to change? Do you want to limit this particular question to cropland or pastureland or is this where you want to make a separate category for timberland as well or do you want timberland to be included in the definition of active agriculture.

Ms. Kurpiel: I say we have a separate question for forest which is equal to twenty points, exactly like this question except it is about forest and that would go into our forest category. So no, we do not put forest in here, we do it just like we did it this time.

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Mrs. Baker: But if you are doing it on two points per ten acres or fraction thereof, it is going to come out the same either way. If you have got a property that has fifty acres of forest land and fifty acres of agriculture land and you are calling it active agricultural. One hundred acres you are going to get two points for each ten acres.

Ms. Kurpiel: That is right, but to the extent that we want to discriminate against what are forest questions and what are farm questions, I think it is better to have the questions separate.

Mrs. Baker: Okay.

Ms. Kurpiel: Otherwise, we have some questions that are forest, some that are farm, some that are both. And we will never be able to decide which section is going to be favored or not favored.

Mr. Neuhard: So we are saying additional questions in this same section.

Ms. Kurpiel: No, I put it down in 4 D or D 2.

Mrs. Baker: But we are getting into different issues there. When you are getting into the environmental quality, it is just forest.

Ms. Kurpiel: We are always going to be under different categories. The categories that they are under do not...they are nonsensical in some cases. I think they will all be sorted out differently when we are done, won't they?

Mrs. Baker: I am just thinking that if your focus is on different sub-sets and how you are going to eventually weigh those different sub-sets, to me that is like throwing a cultural resource question in this particular section. All I am saying is that...

Mr. Neuhard: Maybe we should set additional questions off to the side as we think of them and then move them under a category later.

Ms. Kurpiel: Fine.

Mr. Neuhard: Just for organizational purposes.

Mr. Coen: I am still stuck on two tracks on the same property, going through two tracks at the same time. I am having problems going through that.

Mr. Ritterbusch: In my mind, an equal property of timber is more valuable than cropland. Because with cropland you are getting fertilizer put on it with runoff and with timberland you are not. And it is protecting the species.

Ms. Kurpiel: Thank you.

Mr. Neuhard: "D".

Mr. Coen: Do you want to go back up to "d"?

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Ms. Kurpiel: If we are going to leave this to the side, then Mike, the extra question that is going to be put aside we will take it when we come through.

Mr. Neuhard: Yes, I made a note here.

Mr. Coen: Okay, let's go to 'd'.

Mr. Lott: The owner has implemented or agrees to implement any of the following to Tri-County, the nutrient management plan, conservation tillage, grazing land protection, cover crops or stream bank protection. I think my thinking, or at least as I was thinking about it was not necessarily that they would agree to implement, but to give them points if they have these things in place now, is how I would prefer to do that. Because they should be doing these things legally anyway.

Ms. Kurpiel: It is the law. But we are giving them points just for following the law. Do we really want to do that?

Mrs. Baker: But these are voluntary programs that you are applying for to go through, even though they might be things that are under the law, they are going out to Tri-County and they are saying I want to do this management plan on my property. They are writing out a plan on how it is going to work and Tri-County is supposed to monitor that. So if they don't, who is going to monitor that if it is a written plan that has been placed with Tri-County?

Mr. Ritterbusch: If PDR continues down the pike, the people that are really interested in doing this are going to look at the criteria and will go, "oh, I can get some extra points if I go the Tri-County". So the next time it goes around they can apply for it.

Mr. Coen: And they went ahead and have done it, which means they are helping the environment by doing it.

Ms. Kurpiel: There is a five thousand dollar a day penalty for failure to have a conservation plan.

Mr. Coen: So we are in agreement to strike out or agree to implement.

Ms. Kurpiel: I want to look at those plans. Those are specific plans and the overall Ches Bay requirement is for a conservation plan. A conservation plan is different from these which come after a conservation plan.

Mr. Lott: These come out of the conservation plan and not all of these would be relevant to every parcel.

Ms. Kurpiel: So I think the actual correct terminology is a conservation plan because that is the first document that is needed. And they do need a nutrient and they do need a pest. Those three are written in the law. These others are not written in the law. Do you want to follow the law specifically? I recommend we follow the law specifically, it says a conservation plan, it say a nutrient management and it say a pest. I think that is what should be written down.

Mr. Coen: So I guess my question would be, so the tillage, the grazing land, the cover crops and stream bank are not necessarily part of the conservation plan.

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Ms. Kurpiel: They are part of it, for example the conservation map plan might recommend cover crops and it might recommend a stream bank protection. It depends what is on the ground at the farm. What you really want first of all is the conservation plan, because that covers the erodibility of your soils and then from that the agent determines which of these others are needed. But the law specifically calls out a nutrient management plan and a pest management. Those are two others that could be shown here and probably should be shown here. But what to you all think?

Mr. Neuhard: Are you suggesting the other ones go away?

Ms. Kurpiel: Yes, they are part of the conservation plan, Mike.

Mrs. Baker: Maybe we should do a little more research on this one.

Mr. Coen: Yes.

Mr. Ritterbusch: When you say pest, are you including herbicides?

Ms. Kurpiel: Yes, it would be all those things that you spray.

Mr. Ritterbusch: You are talking about spray?

Ms. Kurpiel: Yes, look at the code, Kathy, it is very clear.

Mrs. Baker: I am just saying, I myself would like to look at it some more so I have a better understanding, but if you want to make a decision that is up to you.

Mr. Lott: It is logical to put the conservation plan.

Mr. Neuhard: Let's go back and look and make sure we understand how they are included. Because it might be in the conservation plan they may recommend a grazing land protection and a stream bank protection.

Ms. Kurpiel: Yes.

Mr. Neuhard: And we want to make sure if they have got it...

Ms. Kurpiel: They would recommend cover crops and conservation tillage. Those four would be in your conservation plan.

Mr. Neuhard: May or may not be in the conservation plan. So if it recommended in there, you would have to do it and it have to be incorporated if recommended.

Ms. Kurpiel: Yes, if you wanted to be in compliance with the Ches Bay law.

Mr. Neuhard: How do we find that really working?

Ms. Kurpiel: I am working on that right now with Tri-County. That is how I happen to know about these plans, I spent half a day working on them today. The way it is going to work, I think that is

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beyond the conversation here. But I think there needs to be an agreement between the county and Tri-County about who is going to be responsible for what. They are going to be responsible for writing the plans and somebody needs to back them up with enforcement if applicants decline to cooperate.

Mr. Lott: This is an ongoing thing.

Mr. Neuhard: I am trying to understand it in context of how it may be relative to the program, in that if it were a possibility that we would get a property that has a conservation plan that did not have one of these sub-plans or sub-components...

Ms. Kurpiel: Then it would not be needed, you would assume that is would not be needed or it would be written in.

Mr. Coen: Is it possible that somebody would not need to do a conservation plan...

Mrs. Kurpiel: We have to have confidence in the water quality technician that is writing the plan and that is the responsibility of Tri-County.

Mr. Coen: If somebody came in and they did not need a conservation plan, could they put one of these others in on their own?

Ms. Kurpiel: The law is that everyone who is farming in the State of Virginia will have a conservation plan. That is the Ches Bay law.

Mr. Ritterbusch: Does that include forested land?

Ms. Kurpiel: Forested lands have to have an agreement with the Department of Forestry if they begin to log.

Mr. Ritterbusch: It is just sitting there, they have not logged it yet and they want to come in here...

Ms. Kurpiel: Then they don't need anything.

Mr. Ritterbusch: No.

Ms. Kurpiel: That is right, they do not need anything.

Mr. Coen: If they did a stream bank protection, that would be above and beyond what they are required to do.

Ms. Kurpiel: Who?

Mr. Coen: If I have a forestland and I am doing a stream bank protection, if I really wanted to do it...

Mr. Ritterbusch: You don't need to.

Mr. Coen: I don't need to, okay.

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Ms. Kurpiel: Because your forest is around your stream. It is protected.

Mr. McClevey: On this particular issue, when it goes to deed of easement, we would want this in place. Are we saying to ourselves, this is going from intent to actually...

Ms. Kurpiel: I think it is possible that an applicant might not have these, in my view.

Mr. McClevey: In our Deed of Easement for the Silver tract or any other are we going to have that statement in it?

Ms. Kurpiel: It is absolutely going to require what the law says, right Mike? We are not going to execute a deed easement that does not follow the law.

Mr. Neuhard: No, we will have to be in compliance with all State and local laws. I guess the question is whether or not there is ever going to be a property that does not have to comply with the law, that they might want to go the additional mile and we don't want to give them any credit. I don't know what that might be, that is what I am asking.

Ms. Kurpiel: I don't know what it could possibly be either unless it was some sort of a forest, Mike, that...

Mr. Lott: Or maybe like SE Estates where they weren't actively farming it.

Ms. Kurpiel: That's another issue.

Mr. Lott: They had something still in place that they were doing.

Ms. Kurpiel: SE Estates and those absentee owner properties do not have to comply with the Ches Bay law. So those properties will not get any points here because they are not actively being farmed. Anything that is actively being farmed must comply with the Ches Bay law.

Mr. Neuhard: Well, you are going to have to put points to them. What we are doing is we are changing two of them and we are taking out four. This was one we had a problem with this time.

Mr. Coen: Yep, so you handle it.

Mr. McClevey: A side note question then. Tracking forestry is going to be owner has implemented an agreement with the Department of Forestry for forest management plan.

Ms. Kurpiel: Only if he's logging. But that probably should be a criteria in here in case he has been logging.

Mrs. Baker: And that is kind of what I was getting at, are we being all inclusive to have that as well as these that are listed. I am not saying combining it here, what I am saying is...

Mr. Neuhard: Add another question.

Mrs. Baker: That is what I am saying. Thank you.

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Mr. Lott: Finished with this one? Want to move on?

Mr. Coen: We were having so much fun on that one.

Ms. Kurpiel: Well, that was a very problematic one when we went through.

Mrs. Baker: What was problematic though was the fact that we had “that has or agrees to implement” that was very subjective.

Ms. Kurpiel: It wasn't subjective.

Mrs. Baker: It was subjective because somebody could say they were going to do it but it wasn't anything binding. We said right in the application that any of this is not binding and so just by saying that could they have gotten extra points. I think by eliminating that it is eliminating what one of the big issues was.

Ms. Kurpiel: It says right in here, it says implemented or agrees to implement. Your law says implemented or agrees.

Mr. Coen: Yeah, but there is nothing you can do afterwards.

Mrs. Baker: I am just saying they are getting points for something that they are saying...

Ms. Kurpiel: But you never even asked them whether they did agree so they could lie to you. Or agrees is out. We got that out did we?

Mr. Coen: Or agrees to implement goes out, yes. So now it just says the owner has implemented any...

Mr. McClevey: Owner of active farm.

Mr. Coen: Okay, number 2.

Mr. Lott: Likelihood of parcel being threatened. Question (a) was the urgency of circumstances favoring conversion. I know in Patricia's comments she would like to boost up some of these points. I did find just in my going through this I guess we are not somehow covering those or any other ones that may be in the process or in the middle of the subdivision process where I don't think somehow...

Ms. Kurpiel: I put that in my recommendation.

Mr. Lott: You know what I mean? They already have a plan in to subdivide this parcel where obviously it's likely the likelihood of being threatened is very high.

Ms. Kurpiel: I put that in as a recommendation, as an addition, that preliminary plan approved or in approval process, that's another category.

Mr. McClevey: I changed the whole heading to ownership and conversion and I eliminated that particular question altogether because I disagree with it being relevant. And I added, inserted, practice fee simple, 10 points, mortgage, 5 points, restrictions, 0, or something like that. I added an ownership.

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Ms. Kurpiel: I think this is absolutely the most important criteria because this tells you how to prioritize your offerings. I mean, it basically says if you have got a threatened property today, you need to protect it today, where as if you have got a farm that is a century farm, maybe we can wait a couple years to protect that.

Mr. Coen: And I understand that, and I am on the mindset that I want to do... I like the way it works that it is possible that where the money is coming from is the way we can twist the program. I agree with you. One of my big problems with this was that all I would have to do to get some type of points on this is to call a realtor and say I am putting this property on the market therefore I can get points and I never really intended to sell it, but I can be in the system. So, what you are saying that people can do once they get...

Mr. Neuhard: One of the applicants told us they would do that.

Mr. Coen: Yeah, I know. I didn't want to say that but yeah. So, that's what I am leery of it being straightforward but I understand where you are coming from and I agree with you that that is one of the criteria. And I also know Gail feels strongly on it so I think ultimately we are going to end up coming back to this to argue it again, but go ahead Marty.

Mr. McClevey: And I think that this question would be relevant if we had borders that we were trying to save, if we had particular parcels that we were after, but we are not.

Ms. Kurpiel: I think that this is just so completely relevant and we did not even discuss this in our meetings. This should have been a point that was really discussed and discussed thoroughly.

Mr. Neuhard: How do we change this so that we keep the intent of this rating and we get some of the potential to manipulate out of it? In other words, is there a way where we... Patricia, when you were going down the road of the preliminary plan, can we tighten up what we have got here with additions or language. If someone has an approved preliminary plan, it's different than whether they have an application in for a preliminary plan. There are development actions you have got to take and it seems like maybe you can take... somehow switch this to development actions that we might be able to score. And if they are going to spend money to go get their approved preliminary plan, then running out and putting your property on the market for thirty days in the middle of an evaluation...

Ms. Kurpiel: Maybe we can just X out this parcel is actively marketed for voluntary sale. But, in X'ing that out, then we take the risk that it might actually be being marketed.

Mr. Neuhard: Maybe we need to qualify that in so many days prior, or weeks or months, prior to the opening of the program date or something like that, and has been on the market and will continue on the market.

Mr. Coen: It will continue, but I agree with you.

Ms. Kurpiel: If you are suspicious you can always call the broker. And then you've got two people lying to you; trust me, that is not going to happen.

Mrs. Baker: There are agreements, I guess, between owners and brokers that we can ask for...

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Ms. Kurpiel: To see the listing?

Mrs. Baker: Yes.

Mr. Coen: But you are not going to put on a listing agreement that you are putting it on the market to get points.

Ms. Kurpiel: That's true.

Mr. Neuhard: What you would do, though, is you would have it on the market at a market price...

Ms. Kurpiel: Which we could make a judgment about.

Mr. Neuhard: And you would have... well, we could think about this a little more but there could be some checks that would reduce the availability of trying to scam the system but you would not be able to get it completely out. There are some things you could look at that would be some assurances that it is less likely that is what they are trying to do.

Mr. McClevey: I still do not see the relevancy of this question. And the point is, if we were pursuing tracts of land, if this was not a voluntary program and we were pursuing corridors or whatever, I could see us wanting to grab a piece of property before it sold. This is a voluntary program. I don't know where it has a property and he has got it potentially for sale, he is going to sell the property. They aren't going to put in an application.

Ms. Kurpiel: Think about it. This really helps you prioritize the properties...

Mr. McClevey: How can we prioritize the properties?

Ms. Kurpiel: Well, look at the two we just looked at for example.

Mr. McClevey: Yes, but it was irrelevant if there was a for-sale on there. If there was a for-sale, we could not change that. We could not give them points or take away. We could not pursue those properties. We could only rank them based on what we saw.

Ms. Kurpiel: But if it was a for-sale, they would get 10 points to the extent that we wrapped up our program before the lender foreclosed. This is leverage that the... well, the lender would be foreclosing, right?

Mr. McClevey: Yes, but we are not into mortgaging properties. I will support you guys and go along with it but I just don't see the relevance to the question.

Mr. Coen: I think ultimately this is one that will end up being hashed out when all six of us are here anyways. I would ask that the people look at, I don't care about points, but the subcategories that are under this. I agree with Mike that if it is going to remain in that they be tightened up as to how far in the process they are. I think that if we are going to keep it in, I think that needs a lot more done.

Ms. Kurpiel: Well, that works for an investor and absentee owner but that doesn't work for a farmer. I mean, he might be putting his on for... if you take that out you are going to be discriminating against

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someone who really doesn't deserve to be discriminated against just because one guy said that he might cheat. And I don't think we should change all the questions because one guy said he might cheat.

Mr. Coen: I wasn't even addressing that one. I am addressing "they are older than the average farmer age". I wasn't looking at the one you were looking at. I was going farther below. I think all the subcategories should be looked at. I am not saying one way or the other which one I think right now, but I am thinking if the point of the question is the threat of being developed, and that is what Patricia is saying, and again in my mind I am looking at our past that we did in the pilot program on a bigger level. I am not looking at how did this whole ranking criteria affect one property or the other, I am just looking at it as a big thing in the future and what it is going to do. And I am looking at, for example, the person being older than the other. I don't think that is as relevant to the question. The point is it is it's going to be threatened. I know where the idea that if the person is really old they are going to pass on and sell their property. I know where that is going

Mr. Ritterbusch: But the problem with that last one is, what is the average age?

Mrs. Baker: But that is something that came directly from the agency and they have statistics based on that and they come out with different ages with every ag census which talks about the percentage probability that if someone is a certain age, then their property is going to be sold or their children are going to divvy it up and take the money and run.

Ms. Kurpiel: Then that is a risk. All of these are a risk in the scheme that I think we want to give points for because there are some properties that can be put on the back burner and some that can't.

Mr. Coen: So, I just think that one we are going to have to think about it and get back to it. And ultimately I think that also calls back to what Kathy was sort of getting at. I mean, you said agriculture versus forest and you said they were two broad categories. The other category is, is this to protect the family farm or is this to take land away from the developers and that the money is going to go to the developers.

Ms. Kurpiel: If we want to discriminate against developers, let's just write it in.

Mrs. Baker: We can't.

Ms. Kurpiel: We can't?

Mrs. Baker: No, we can't do that.

Mr. Coen: No, but if the point is that if we are re-gearing the entire program to help the family farmer, then you would take this question out and that is the big picture question I think we all need to get to and deal with. And I would probably say we could do that at the next meeting. Because I think that also permeates most of the other questions quite honestly.

Mr. Neuhard: Do we need to take Marty's question? Marty has a different category question and we may want to look at it. You were going to substitute a category; that may be something we need to add somewhere. Did you capture that?

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Mr. McClevey: It was an ownership question and whether the tract was in fee simple mortgaged or under restrictions.

Ms. Kurpiel: Well, the restrictions need to be dealt with when the properties come in, in my view. Not here in the rankings. If there is some restriction that should not even be considered, then they should not even be considered.

Mr. McClevey: Well, that's why I gave that 0 and if they practiced fee simple then it was the highest points or something.

Mr. Neuhard: You are saying that we look at the restrictions in the application phase and decide whether to accept or reject it based on the type of restriction that might be on it and it would not even get to ranking?

Ms. Kurpiel: That's right.

Mr. Neuhard: What restrictions are we talking about?

Ms. Kurpiel: We are talking about the two we saw in this case. The first restriction was a deed restriction that did not allow development at this point in time.

Mr. Neuhard: If we were to do that, we would need to come up with a set of criteria restrictions that could be up front as a part of the screening as we look for all the i's and t's being dotted, we can do that. We can capture that and we will move that into the front. We will have to work on that separately. Now, if you take that out, does there need to be a differentiation in fee simple and mortgage?

Ms. Kurpiel: Well, Marty is saying subordination might give you some points. If you did not have a mortgage, you would get some points because you would be easier to deal with, if you float it to the top. Is that sort of a form of discrimination?

Mr. Neuhard: It could be I guess.

Mr. Coen: Preference is a better word than discrimination.

Mr. Neuhard: Is it relevant to choosing a piece of property that meets the goals of the program.

Ms. Kurpiel: No. I think you want the best property that you can get and if it happens to be subordinated, if you need subordination, you tell the guy to get it. If he can't get it, you move to the second one. I mean, that is how you deal with subordination.

Mr. Neuhard: This whole concept is important because if you talk to other programs, and we may learn this yet, I don't know, if you talk to other programs, I remember our conversation for example with James City County. They had a lot of them that they were going after but at some point, whether it is a subordination problem, whether it is a tax problem, whether it is a "oh, never mind, my kids are going to do something different with this", they indicated that they had numbers of properties that they chose and never got through the process with because of other problems. So that is why, get the best piece of property because there are so many problems that you can run into and preferences that you may have the best property and never get there, not because of anything you can control.

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Mrs. Baker: We might want to set some parameters like you have to show us that you are going to subordinate within thirty days, those types of things that are going to ensure that it doesn't hold up the process.

Ms. Kurpiel: Well, what we could say is you have to have contacted your lender about subordination at the time you bring in your application.

Mr. Coen: Or have a response.

Mrs. Baker: Or they can have a letter of intent or agreement or something like that.

Mr. Coen: That's what I mean.

Ms. Kurpiel: I think up front with all of our applications we need a list.

Mr. Neuhard: We will put that on a checklist for the application and then put a place for that in there and we will have to decide on the mechanism, a letter or they have to provide an affidavit or whatever.

Ms. Kurpiel: But there are a whole lot of things that I think need to go in that category when we get there besides the subordination.

Mr. Neuhard: We can look into that separately but I don't want to miss some of this.

Mr. Coen: Yes, put it on the list.

Mr. Neuhard: Put it on the list.

Ms. Kurpiel: What is the next one?

Mr. Lott: Question 2(b) is acreage suitability for residential conversion, the percentage of well or moderately well-drained soils on the parcel. We did not really have issues with this as we were going toward... this is really about how easy it is to find a drainfield. I know with alternate drainfield systems you could potentially put drainfields anywhere if you are willing to spend the money. But from a developers' perspective, if the developer is looking at land it is going to be cheaper and easier to develop if they have these kinds of soils. I didn't have any problem with the question.

Ms. Kurpiel: I think it should stay, actually. You convinced me.

Mr. Coen: Okay.

Mr. Lott: C. Purchase price is leveraged or below market value using other funding sources including but not limited to what is listed in the ordinance there. This is not one we really discussed much during the process. And it is not one that anyone got any points for during the process.

Mr. McClevey: We are not doing the appraisal method.

Ms. Kurpiel: There is a way to deal with this and that is in the questionnaire that you send out you give the applicant the opportunity to tell you that he is going to make an offer below what you come up with.

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And it is written two different ways. It says the owner agrees to offer this property at a percent below the calculated price or for blank development units less than has been calculated. That is how someone can get points here.

Mr. Neuhard: What was that last thing? That last thing confused me.

Ms. Kurpiel: Use a statement in the application owner agrees to offer the property at ten percent below the calculated price or for one development unit less than have been calculated. And that is how he offers you an even more of a bargain sale. And then he can get some points for that.

Mr. Coen: Right. So in theory, either of the top two, technically I could get so many points for so many development rights but I will give you 2, 4, 6, 8, 10 more, then they could get points for that.

Ms. Kurpiel: Right. For example, when Silver came in he knew that he had twenty-two development rights when he applied, didn't he? Alright, so he knew that.

Mr. Neuhard: He could have calculated it.

Ms. Kurpiel: So he would have filled in this form I am going to give it to you at two development rights below and then we don't have all this what's he giving us. We know what he is giving us. Twenty at a bargain for two. So that I think should really stay and I like this one point for each... well, we need to work on this guys. The language is not correct; one point for each five percent of the purchase price leveraged or below market. We are going to need to work on those words if you agree with the concept.

Mrs. Baker: There are some other ordinances that do word it different to make if more understandable.

Mr. McClevey: Does Fauquier use anything in their ordinance similar to that?

Mr. Neuhard: We can look.

Ms. Kurpiel: Make it consistent with the statement that you put in the write up.

Mr. Coen: So if they give up one development right you get two points. Is there anything for 2D? That would probably wrap it up for tonight I would think.

Mr. Lott: D is the amount of public road contiguous to parcel.

Ms. Kurpiel: It's a good thing we stopped with that one.

Mr. Coen: I saw something about the public road thing but I can't remember.

Mrs. Baker: That was the issue with the one being on the private road and that is something that perhaps an eligibility criteria... that one did not rank any points because it wasn't located on it but it had other issues.

Mr. Lott: I think this was basically stating that the more linear feet of road you have the easier it would be to develop.

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Ms. Kurpiel: I think this is a good indicator of development potential.

Mr. Neuhard: We need to deal with that other issue like you said.

Mr. Coen: Okay.

Mr. Lott: You want to finish this subsection?

Mr. Coen: Sure.

Mr. Lott: E is landowners have agreed to any of the following restrictions. Again, subdividing, no new houses, timber harvesting. One of the questions I have had about this going through this process was if the applicant was willing to do more than one, should these points be cumulative rather than you just get the points for the highest one that you choose. So if you are willing to add timber restrictions and you are not going to subdivide, would you get thirteen points or just ten? That was one of the things that I was thinking about.

Ms. Kurpiel: I think those are important issues, and yes, I agree that they should be cumulative because those are some of the most important issues that we are dealing with here, if not THE most important.

Mr. Neuhard: Well, if you are going to do them in cumulative fashion, and again we might talk about this later, then maybe you would want to change the point values so that they stack on each other and then you change your total category of the points later.

Ms. Kurpiel: But I have some issues with the words. These words are not going to cut it.

Mrs. Baker: That is why that is going to be a whole other discussion on how many units are we going to have and that may be the next meeting.

Mr. Coen: Just one quick thing. Say for example I apply and I check off all three of them, so I can get my cumulative and I get my nineteen points which I am not too keen on cumulative. And then you get to sit down and I am the one that is picked and then I sit there and say "oh, by the way", ...

Ms. Kurpiel: We say "thank you Tom but right now we are going to have to move to the next applicant because this is what you put in your application and while we would like to talk to you about those terms we are obligated to move to the next applicant".

Mr. Coen: Is that necessarily the case for every single one of these or what?

Ms. Kurpiel: I am recommending it should be the procedure.

Mr. Neuhard: What I would say is that if someone committed to this and we are going to hold them to it, I think you add, and we need to talk to Joe or Alan about this, we add here somewhere you will be held... we say no obligation but I think we... if that is what we want to do we put it in here.

Ms. Kurpiel: You say the County will not be obligated to continue negotiations with you if you change your mind on these parts.

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Mr. Neuhard: Exactly.

Ms. Kurpiel: But if these are important, if these are really important then we should give points for these. But, guys, we need to look at the Deed of Easement and see if there are any other items like these that should be included. I am thinking that I will go make a list of everything, all the blanks and the Deed of Easement, for next time. These three should be binding. Now maybe you should get some points for some of the others.

Mr. Neuhard: Yeah, or maybe not. We need to make a value judgment.

Ms. Kurpiel: Let's cover all the blanks in the Deed of Easement up front so it's like we are not... it makes for a much better informed applicant.

Mr. Coen: I am okay with that.

Ms. Kurpiel: Much more confidence that you are actually going to go to deed with the person who comes up high if you do all this.

Mr. Neuhard: From an expectation standpoint, when we get to the end it will be easier for us.

Ms. Kurpiel: Absolutely. It's a done deal.

Mr. Neuhard: Well, it will be a done deal when we check whatever we check. We still may want to negotiate with them on other things, but we are not going to negotiate on things that they have checked. It's there; you have obligated yourself, see you later. Let's talk about what we need to talk about.

Mr. Coen: Especially if you have a list of even four more.

Ms. Kurpiel: Well, let's see how big the list is and let's see how important the items are on the list and let's talk about it next time.

Mr. Coen: Alright. Okay, motion to adjourn?

Mr. Ritterbusch: Motion.

5. Next Meeting

- October 27, 2009 Regular Meeting

Mr. Coen: Alright, so we meet on October 27 and we end at 9 o'clock.

Mr. Neuhard: And please, bring your papers back with you. Hold onto your papers and bring them back so we don't have to reproduce them, and we have sets here for our missing members.

6. Adjournment

The meeting was adjourned at 9:00 p.m.