



## Panel Discussion on the Transfer of Development Rights in Albemarle County, VA January 18, 2007

On January 18, 2007, **Advocates for a Sustainable Albemarle Population** (ASAP), held their monthly meeting at the Westminster Presbyterian Church in Charlottesville, VA. The topic was Albemarle County's consideration of a Transfer of Development Rights (TDR) program as a growth management tool. The panel members included Albemarle County Supervisor **David Slutzky** of the Rio District, Albemarle County Supervisor **Dennis Rooker** of the Jack Jouett District, **Rich Collins**, Professor Emeritus in environment planning at the University of Virginia, and **Jeff Werner**, field officer with the Piedmont Environmental Council. About 35 members of the public were in attendance for the forum which was moderated by ASAP President, Jack Marshall.

*The audio of this forum is available on the Charlottesville Tomorrow Weblog*  
[http://cvilletomorrow.typepad.com/charlottesville\\_tomorrow\\_/2007/01/tdr\\_asap\\_panel.html](http://cvilletomorrow.typepad.com/charlottesville_tomorrow_/2007/01/tdr_asap_panel.html)

*Complete coverage of Albemarle's consideration of a TDR program is available on the Charlottesville Tomorrow Weblog*  
[http://cvilletomorrow.typepad.com/charlottesville\\_tomorrow\\_/transfer\\_of\\_development\\_rights/index.html](http://cvilletomorrow.typepad.com/charlottesville_tomorrow_/transfer_of_development_rights/index.html)

*NOTE: This transcript is intended to accurately reflect the panel's verbatim conversation. Each participant has been provided an advance copy to review and a number of corrections have been made to improve accuracy. Grammatical improvements and punctuation are given less priority over capturing the actual spoken words. Charlottesville Tomorrow has an outside professional prepare our transcripts, however, we take full responsibility for any errors or omissions.*

### INTRODUCTION

**Jack Marshall:** I'm Jack Marshall. I'm the President of ASAP, Advocates for a Sustainable Albemarle Population and I'm delighted that you're all here and delighted that the four of you [the panel] are here to discuss one of the most interesting issues that confronts those of us interested in growth management.

[ASAP announcements]

Tonight's discussion is about Transferable Development Rights, TDRs. The question we are asking is can Albemarle County use TDRs as a growth management tool, and whether or not we can, should we? And if we should, in what form might we use TDRs?

I want to start by asking Jeff Sobel, ASAP's Executive Director, for a very brief explanation of the TDR enabling legislation that came out of the last legislative session

[of the Virginia General Assembly] and went into effect in July [2006]. It is hot of the press and does allow communities to do things they couldn't prior to this enabling legislation. Before I do, let me, all I really have to do is point out our panel, you know them well. **David Slutzky** is a member of the [Albemarle County] Board of Supervisors, as is **Dennis Rooker** who just stepped down as Chair of the Board. **Rich Collins** is a Professor Emeritus of Environmental Planning at [the University of Virginia] and one of the founders of ASAP and on our board. And Jeff Werner at the far end is Field Officer at [the Piedmont Environmental Council (PEC)] and knows more about growth than any of us in ASAP. It's a high-powered group and there are no four people in the county or city better equipped to talk with us about TDRs from a range of perspectives.

**Jeff Sobel [ASAP, Executive Director]:** I'm going to keep this very simple. As you will see, things get very complicated when we start talking about the details, but the good news is that the state has provided localities with the ability to have another tool to or a tool to control growth in their area, so basically, the principle is that there'll be designated send areas where there would be development rights that can then be transferred to other areas which will be designated as receiving areas.

It's I guess a concept that's been used in other locations. It's simple but, of course, it gets complicated as you'll see with proposals when we get into the details of the different areas and the different ways you can transfer the development rights, but as a concept, it's interesting because it separates the value of the land from the land at some point and it gives it to some other land.

Albemarle's in a unique position in some ways because it already has a designated rural area, a designated growth area, so hopefully that'll at least help get the process going a little bit more quickly.

There's a handout here on the enabling legislation. That again, as Jack said, was passed last Session. It went into effect July. Several amendments have been offered to it this Session. One, I guess David asked for from [Delegate Toscano](#) to help with his proposal with some of the nuance with his proposal to make sure that it meets the criteria established and I saw there was also amendments submitted by [Delegate Bell](#) and [Delegate Abbitt](#). I don't know— Watkins Abbitt. Is that who it was?

**Dennis Rooker:** One of those amendments would actually allow the TDRs to be banked which would make it probably more practical to have a TDR plan.

**Jeff Sobel:** Anyway, you'll see how it goes from here, but that's the basic idea of the enabling legislation to trade development rights from one parcel to development rights in a parcel in a growth area.

**Jack Marshall:** Our first speaker will be Rich Collins.

**Rich Collins:** Good evening. I talked to a number of the panelists before this evening including David Slutzky. We had a very good talk this afternoon over the phone, maybe 30 minutes, maybe a little longer. I would like to start with a statement that I made, largely encouraged by Kay Slaughter who's here this evening, who was a prominent member of the Virginia Bar and particularly, the Natural Resources Environmental section of the Bar. She was asked to put together a group of speakers that travel around the state to meet with the Virginia Association of Counties and others and she invited me to talk about some ideas that I thought might have a future possibility in Virginia politics and government related to land use and I have before me one version of the talk that I gave. I think it was at the Greenbrier, Kay, I can't recall, but we did it elsewhere as well. I'd like to repeat that because my views have not changed. Kay, please, what year was that? Do you remember? 2000?

**Kay Slaughter:** I think it was 2000. I think it was right at the time of the— Yes, it was, because it was around the time of the elections.

**Rich Collins:** The reason I wanted to get that dateline is because at the time I was giving this talk I would sometimes feel like am I just blowing smoke here. This is so complicated, is it so impossible, so politically unfeasible that I'm just another professor that they're going to laugh out of the room and what I advocated was a TDR system and I'm going to quote what I said, among other things, that evening.

I said one of the most important things we had to do in Virginia if we were going to get a stable accommodation between the issues of private property rights and protecting conservation and also returning some of the public value that was created by our communities, it was going to have to be through some medium like TDR and even though TDRs are not a simple thing to understand initially, that we needed to think about it and we could do it and I wrote and said: "I believe based on my experience as a planner mediator that TDRs used in conjunction with comprehensive planning hold real promise for dealing with perceived inequities in the distribution of benefits and burdens in land use."

And I go on at some length. I have four pages here, but I'm going to spare you. But basically I made my case as to why unless we do something like this, something that has been described as a severance between the site value and the land value and that which we might call the commodity and floating value that has to settle somewhere, we were going to continue to batter each other until we would come to a stalemate and we would lose, all of us, in some way through the growth and political polarization that would be resulting.

So I think even more than the severance issue, although that's key as a part of the tool, the issue is can we in this community at this time with our situation, can we make TDRs work and my feeling is absolutely. Absolutely.

Now, I want to tell you why. I don't think it's easy, though, and I told David this afternoon, I'm opposed to the particulars of the plan that he had put forward and I feel it's unfortunate that the way it was presented even though I recognize entrepreneurship and the fact that he was trying to put things together that he could see how this could work, because my experience in Maryland as a planner mediator tells me this: I worked in Baltimore County, was hired to try to help them develop a TDR system that would protect their rural areas, much as we're talking about here in Albemarle. They had Calvert County and Montgomery County which between them have 60%, at that time, of all of the land that are protected by TDRs in the United States are in those two counties in that one state.

Baltimore County where I was working was the neighboring county and so I was working with the people who had the most experience with it. One of those is Grant Dehart that I'll mention in a moment because I think if we proceed as I think we should proceed, we will put together under the auspices of Albemarle County and hopefully with Charlottesville joining in, a process— We call it a roundtable, call it a symposium followed by expert help. You can't do these things without getting off the horse. You can't do it on horseback. You've got to do it carefully. It's got to be nuanced. You've got to listen to everybody's point of view and you've got to know a lot more about land values and development process than I know.

So, my point being simply that Maryland has been able to do this. We can do it legally and I think we can do it within a timeframe that can make a huge difference for the future of all us, so I still hold to that view.

And I believe the second part I think I've already made is that it's not easy. We did not succeed in Baltimore County in doing— Creating a TDR system that would work, although we did get many of the benefits that they were hoping to achieve. There was no increase either in the urban area nor was there any increase in the rural development because the agricultural community up there and the development community were able to make a link that is not yet possible politically in our county or in our state, so that it's politics. Who's going to pay? Who's going to bear the burdens? Who's going to get the benefits? These things are not easy and they're much more difficult to bring about when you have a transferable development scheme than when you don't, but the benefit is, of TDRs, is that you have opportunities that are not available to you unless you have planning with those tools as part of the arsenal that might adjust the burdens and benefits of changing society and changing priorities that include both protecting rural lands in the broadest sense but also special lands, like mountaintops and riparian areas and bio— Areas of great biodiversity that have to be protected.

On the other hand, we know that we're going to have to concentrate some growth into designated growth areas and thanks to people like Dennis who's been a leader in this, we have designated growth areas. The concept is not new to us. We know that we'd like to have some— more development here, less there for both— for good reasons,

but we don't have any easy way of bringing that about without some further capacity to adjust these burdens and benefits.

I'd like to do two other things very quickly. How much time do I have, Jack? Four minutes? Three? I'd like you to think about the concept. Think- The question is not who shot John kind of things about particulars of David's plan, in my view. The issue is do we have now available to us something that was not available to us two years ago that we who have been arguing that we need more local government authority to use our ingenuity, our good will and our politics on behalf of worthwhile goals, why would we not seriously entertain and work hard to show that when you give us local authority which at one point was considered politically inconceivable, now available to us in a permissive way that we don't give it a full bore treatment, that is to say use our ingenuity to put together what needs to be done to give this the serious serious treatment and we have not done that and I believe, as Jack knows, that ASAP should take a lead in saying that we think we should.

By the way, I'm only speaking for myself here. ASAP has not taken a position on this because we're looking at the link between that and the optimum sustainable population priority which remains a priority for ASAP.

A couple of metaphors, a couple of examples: the fellow— Probably the American who's most knowledgeable about TDRs as a concept is a lawyer named John Costonis who I encountered at a couple of different places, in California, among others, and John Costonis came up with the idea of what are called air rights. Basically the idea is the same as TDRs but with a kind of a more manageable intellectual and physical understanding. You had a historic building. If the building was destroyed, the zoning would allow you to go so much higher, but because you kind of didn't want this building to be destroyed because it was historic and you had the legal power to limit that, not to have it destroyed and have a high building above it, they were working some way— How can we make this work? And they said, well, why don't we just move the air right, which is to say the potential floor area that could be put above it and just move it next door or down the street a little bit. That way we'll protect the historic structure, right? Take the economic value, the floating commodity value that has to go somewhere and we'll shift it to some place where we're willing to take greater height in Chicago and we'll do that by taking a payment from those who are getting height that they would not otherwise have a right to under the law and transfer through a market certificate and put the value over here for the person who is going to have the historic building. Air rights. Move it.

Now, just take that simple idea of severance and push it out. Just see how far you can go with it and you can see why you're literally thinking outside the box, literally. The box— Thinking that only one site and the floating value on the site is the only way to look at property is a constraint that we should no longer accept. We cannot. We have to— So, that's a basic idea: Air rights, historic preservation. You can do that for protecting almost any kind of value you want. And I remind you, it's not easy to do.

The second thing I'd ask you to think about—you're familiar, all of you, with the concern about global warming and climate change and you've heard of the concept of cap and trade, meaning we understand or maybe that's not true. Many people believe that if we do not limit the amount of carbon dioxide and other so-called greenhouse gases, we're going to change the climate in a way that's going to be irreversible and dramatically harmful to our people and to our planet.

The idea of capping something and saying we can't have any more than this, but we're willing to trade and how we can efficiently and fairly distribute that burden is essentially the same kind of idea that we're talking here. Let's use markets. Let's use capitalism, model 3 capitalism or version 3, not 1 or 2, to try and use the ingenuity of markets, the capacity of markets to make efficient judgments on behalf of worthwhile goals.

Now, you understand the same idea of, again, there're people and I apologize if I'm going over the obvious, but you have a stream and your historical understanding is that if everybody just uses the best technology and fills in only so much pollutant, everybody is fine except that the number of people on the stream, all using the best technology, are still, after that, throwing more into the stream than the stream itself can carry and maintain its quality and its basically vitality, so we shift away from the, you know, everybody having the best site plan or the best technology on their effluent or whatever and we say, no, we've got to look at the stream and we can't have that stream burdened, so now what we do if we have a cap. We have to then think about how we can limit the effluent for an important value and do it in a way, again, just like with the air rights and which I say, look, I'm a sewer treatment plant. It's going to cost me \$50.00 per unit of pollution but you can do it for \$20.00. If you want to sell it to me under this cap. We'll work it because from the standpoint of the stream, we don't care where the protection comes from, right, as long as the stream itself maintains its quality.

Now, you take these concepts. The concept, you understand, is where the action should be. That's what we should do. The legislature has given an unusual opportunity and we are in an unusually beneficial situation. There's nobody in this country or in this state that has a better chance of making TDRs work than we do. It's as simple as that. We don't want to blow it. Thank you.

**Jack Marshall:** Thanks, Rich. First, let me thank you for pointing out that ASAP does not have a policy regarding TDRs. In fact, this evening's discussion may help us make one, if we indeed come to that conclusion. David Slutzky is going to be given 15 minutes to talk about an idea for which he could talk for hours and because of many of the other panelists and all the other panelists will be speaking to David's specific ideas about TDRs, I promised David an additional few minutes after all the other panelists have spoken to respond to their specific points, but at this point, you only get 15 minutes.

**David Slutzky:** Do I get to cross-examine? First of all, I'm lazy. I'm going to sit down. I hope you guys can hear me all right, if that's okay. I'm more comfortable doing that. I

appreciate very much the fact that ASAP is hosting this event today. It's an opportunity for all of us to noodle on how do we solve our rural area challenges and the TDR topic is obviously timely. We have new legislation, as Professor Collins says. We ought to make use of it.

What I did a few months ago was the result of eight months of analysis, dialogue, scratching of my head and so forth. I threw down a straw man proposal. I want to make it very clear to everyone in the room that I'd be amazed if the proposal were to remain even remotely intact and be implemented, but what I'm trying to do by putting this proposal in front of the public is stimulate the conversation that is continuing tonight. I want to make sure that people realize that TDRs are a vital tool that could be used very effectively, particularly here in Albemarle County and I tried to propose a way through which I think that it could not only work, but a means by which I think we could get a consensus of support.

There're a number of things about my proposal that I'm not thrilled about, but I put it together the way that I did with the expectation that it would be something of a centrist version of using TDRs to manage rural area growth and then let's see where we go through there. When I originally announced this thing on the steps of the County Building, I had people from the environment community and I had the Farm Bureau and the Free Enterprise Forum each saying this an interesting idea. Nobody said, and I love it and at the time, nobody said I hate it, but it showed that there was at least a broad spectrum of interest in pursuing this idea.

So, let me briefly describe it to you today and it is by its nature a very complex proposal. There are many discrete components to this proposal that people will take appropriate issue with. I put them all together in a box and said here it is so that we could dismember it and chew on the pieces and do what we're going to be doing over the next months and years. I accept that, but I want at least lay out for you the fundamental framework of what this proposal includes to invigorate the discussion today.

We start with— We know we've got 5% of the County allocated to growth and 95% of the County is designated rural area and it's not supposed to be having growth happen in it. I don't know if you've noticed driving out Garth Road, but growth's happening in it. It's a serious problem, one that concerns me greatly.

I think, at the end of the day, the only way that we're going to stop having the rural areas of Albemarle County destroyed by extensive development is by taking the opportunity to develop those areas away. That means down zoning. Now, down zoning is a word that when I started running for office I was told you don't use that word, David. You don't have a chance of winning if you utter the word down zoning in Albemarle County. Well, I don't think that that's true. I certainly don't believe it's true anymore. I've said publicly that I'm enthusiastic about the idea of down zoning the rural areas. I'd be happy to do it today. We'd forget the rest of the proposal. Let's just down zone the rural areas and move forward. That's fine with me.

Dennis, I mean—

**Dennis Rooker:** Hear, hear.

**David Slutzky:** Dennis is in agreement with me and has said so publicly as well. I wish we heard more support for it coming from the Board, but, over time, you know, we may, I think as people become more comfortable with it. But there are members of the Board, this particular Board, that are not going to support just down zoning the rural area and going home at all. No chance. They couldn't even support phasing and clustering and phasing was, you know, a very limited form of down zoning, if you will, and it was only down zoning in a temporal sense and three members of our Board just could not see their way to support it.

So, given the existing Board, the question I struggled with over the summer was, all right, how do we get the accomplished result of a down zoning, so I went to the folks in the Farm Bureau and to the Free Enterprise Forum and I said, what have we got to do here? I want to protect the rural area. You say you do. You don't embrace down zoning and why and they said, well, because they feel that you're taking value away from rural area lands and I said, well, I actually disagree with that. I think that if we were to take the development rights away from rural area land, it will go up in value, at the very worst, stay the same.

In 1980, Albemarle County significantly down zoned and land values still held the same for awhile and then went up. There are a number of other places in this country where down zoning on a large scale has occurred and the bottom didn't fall out of the market. There's two reasons for that: one is there's fewer opportunities for new entrants to come into the market so there're a scarcity and that should put a little pressure on land values, but the main reason is people buy rural area land because they want to live in the rural area. They don't want to live on their hundred acres surrounded by a bunch of subdivisions, so if you take away the possibility that the surrounding lands will become subdivisions, presumably people will be willing to pay more for that 100-acre parcel, so I argued to the other guys that, look, the down zoning's actually in your economic interest but if you don't buy that purely, what if we created a mechanism—TDRs—whereby the development rights that we render useless through the down zoning could be sold in a free market mechanism.

What if we created a small boundary area, small, you know, it's a 7.26 square miles, but that's 1% of Albemarle County in my proposal. If we take 1% of the County close up against the 5% of the County that's already designated growth areas and declared that as the receiving area for the TDR program, we down zone the 94% of the County that remains in the rural area and we took most of the development rights and extinguished them with the down zoning, but some of those development rights that would be extinguished could be sold to owners of land inside this new boundary area and used as a the basis for increased density.

We would still cap the density of this boundary area so that it doesn't get out of control. I'm suggesting roughly two houses per acre. That's a density not unlike Redfields or Forest Lakes, sort of kind of. It's a suburban kind of density. Arguably, there's a market niche for that in Albemarle County that needs to be satisfied in the rural area because there aren't very many opportunities for that kind of density in the growth areas, but anyway, the boundary area would be the receiving area for those development rights.

The boundary area would not be more than 1% the way I'm proposing it. I am proposing that the boundary area not be subject to neighborhood model for the following reason: to sell this to the other side, to get this thing through, I've been— I've become convinced that you need to retain the current character of those rural area development rights. They're not subject to neighborhood model out in the rural areas. If you have them relocated to this boundary area, my hope and expectation is that the market will demand that those lots be developed in a manner not unlike the neighbor model. I could be wrong on this point. It could be a mistake in my proposal. A number of people in this room have expressed strong disapproval of that aspect of my proposal.

Then let's change it, but my suggestion is we need to do that in order to get the votes necessary to be able to down zone the 94% of the County that I'm desperate to do and I applaud Rich's suggestions, Professor Collin's suggestion, that we analyze and study this over the next few years and I suspect that that's what we'll do, but I'm very nervous about waiting too long to do something. Every single year we lose a few hundred, 250 to 300 new single family homes are built in the rural area a year. I don't like to see that happen. I don't want to wait five years. I'd like to do the down zoning next Thursday and if this TDR proposal would ultimately be effective enough to get a consensus of support, then I think we should do it.

Now, having said that, just to go over a couple of the more particulars. How much time do I have?

**Timekeeper:** You've still got about 6½ minutes.

**David Slutzky:** Okay. Can you tell me when I got about two? I'm a chatty guy, so for me to squeeze something into 15 minutes is a miracle. A couple of things: first of all, I told you it's got the 50-acre down zoning and I think that's the main reason for doing this. What will be the results of the proposal if implemented in whatever form it's ultimately implemented? The point is the dramatic reduction in the opportunity for development in the rural area.

There are today about 7,800 development opportunities in the rural area that would not be impacted by a down zoning. They're already platted 2-acre lots that don't have a house on them or they're a 30-acre farm that hasn't got a house on it, so they each have a development right and as the County stands, there's about 7,800 such lots in the rural area that wouldn't be affected by the down zoning. I would like those guys to be

able to participate in the TDR program so I would suggest that we would tell them if you put your land, even your 2-acre parcel, in conservation easement, rendering it no longer developable, you should be allowed to have a development right that you could sell in this TDR program.

A couple of other thoughts: I told you that I think the value of the rural area land goes up which is why, interestingly enough, the Farm Bureau isn't fussing about this proposal like I might've thought they would originally, because they get that. They understand that the rural area land will be benefit from the down zoning, but for those that are uncomfortable, we do create what is arguably a free market mechanism—the TDR program—whereby those development rights that were extinguished could be sold for whatever they're worth and whatever they're worth would be a windfall to the rural area land owner and that seems to have some appeal to the property rights community who's very concerned that they be, in their minds, compensated for what we take away. I don't want to compensate anybody, but I'm not at all uncomfortable using TDRs to create a market where the private sector can purchase those development rights and let the private sector compensate them. I'm comfortable doing that.

What are the other effects that this would have on the County? One thing is we would get an efficiency in providing services to those development rights that currently exist in the rural area if they are relocated closer in to the growth areas. Fewer vehicle miles traveled for police and fire and school buses and so forth. It's a nominal, but a meaningful benefit.

Second, there is a revenue stream that would inure to the County. Right now, those development rights that some people think have value actually yield zero tax revenue dollars to Albemarle County. You go to the assessor and you say, what's the difference in the tax assessment between two identical parcels, same house, same view, same aesthetics, same acres. One has 10 development rights and the other has none and his answer is there is no difference. They're taxed the same. The assessed valuation is the same. I said why? He said because the development rights, I don't know if they're real or if they're just theoretical development rights. I don't know if they could actually be used or not. I don't know what they're worth because nobody's ever sold one in Virginia before without land attached to it. And, third, most of them are in the rural area. They're in land use tax and I'm not going to get much revenue anyway.

If you do this program, those development rights that currently yield no revenue to the County that would be moved into the boundary area— We know how many there are, we know what they've paid for them and we should hopefully not have them in land use tax. We can get some tax revenues out of doing this. I don't know how much but it's some revenue to the County.

The bottom line here is that I want to make sure everyone understands, like I said at the beginning— Thank you, that's three minutes. I want to make sure everybody understands that this proposal was intended to be a straw man but it was the result of

months of dialogue between me and a whole lot of folks in the environmental community, in the property rights zealot community, in the rural land community, in the building community and the developer community and in the real estate community. I talked to lawyers. I've talked to an awful lot of people. I've talked to colleagues on the faculty in the Planning Department at UVA and that doesn't mean that this is the definitive answer, but it is the result of a lot of input from a lot of different perspectives and it's my gesture to the community to say, look, we absolutely have to shut down development in the rural areas and we've got to do it yesterday and if we can't with this existing Board of Supervisors, I mean, other than Dennis and I, nobody that I'm aware of has said I'm ready to down zone next Thursday and if we do not shut down the rural area development soon, I think that it's going to be a disaster.

I think that the TDR tool that we were given by the legislature last year has some promise. This is a proposal for the community to chew on. Where we take this proposal— I'm fine with how it changes, but let's take it somewhere. Let's discuss this. Let's pursue every permutation of TDR that we can come up with but lets down zone the rural area and lets protect the rural area of the County. That's what this is all about.

One last comment and I think I'm about done, is this is a very complicated proposal. I've given you a very skinny slice of it today. I was invited by a group called the 5Cs [Leigh Middleditch's Citizens Committee for City-County Cooperation] to speak and I think I took 45 minutes and had some slides and I probably got half of it out there. Anybody who has questions about some of the particulars or concerns about what they believe to be some of the particulars of the proposal, you'll have some iterative discourse later today, but please, send me an email. Call me up on the phone. I want to bring the answers to you so that you can say, well, here, David, change your proposal this way. I want this to be a discourse between and among stakeholders in the community. This isn't the Slutzky proposal. This is a straw man for everybody to take ownership of and to refine it for its purpose and I'm going to assume that most if not everyone in this room at least agrees with its purpose and I think I'll get off my soapbox for a moment.

**Jack Marshall:** David, one conspicuous absence in your forced summary of this, if I understand the original proposal, there was a two-fer involved. You haven't mentioned that.

**David Slutzky:** Yeah. The number of development rights that we extinguish would be thousands of them. I would estimate somewhere between 25,000 and 30,000 if we did this 50-acre down zoning of the rural area. The density of 2.1 dwellings per acre in that 1% of the County would yield roughly the potential for 10,000 homes. If we assume that there's no development rights there now and there are some, that means that we would— If we gave— If you bought a development right from a rural area landowner and we gave you the right to build two dwellings in the boundary area, that's the two-fer that Jack has referred to, that would make a market that's able to retire 5,000 rural area development rights out of the 25,000 to 30,000 that we retired.

It may make more sense to have the ratio be different. It might even make sense to have the ratio go the other way, in which case you end up having to buy more development rights to be able to get your density. I'm fine with that kind of a tweak. The reason I started with the 2 to 1 is as simple as this: I asked a number of developers what is a development right worth.

**Rich Collins:** What'd they say?

**David Slutzky:** Yeah, and the consensus was pretty close to I'd be willing to pay about \$20,000 for a development right. That's what I heard.

**Rich Collins:** For a single-family dwelling?

**David Slutzky:** For a— Right, for a single-family residential dwelling—

**Rich Collins:** Detached—

**David Slutzky:** Detached. The kind that we're talking about here. I talked to rural area landowners and they said, oh, I think my development rights are worth close to \$40,000. I'm getting \$31,000 or \$32,000 with the ACE program and I think they're worth \$40,000, so I just started with the 2 to 1 to sort of appease that [consumer].

**Jack Marshall:** We can get into that later.

**David Slutzky:** And it's a flexible proposal.

**Jack Marshall:** I'm glad to hear that. The only person in the room I imagine whose full-time job is to protect Albemarle County's rural areas is Jeff Werner at PEC. Jeff, you've got 15 minutes.

**Jeff Werner:** And I'm a City resident.

**Rich Collins:** By the way, so am I. I'm a—

**Jeff Werner:** Very quickly. I'm going to refer a lot to the report we put together [\[link to document\]](#). There're 50 copies over there, probably enough for each of you to take two home. Please take them. I ran them today.

Relative to what people will pay for— I just made some notes. Four or five years ago, Fred Scott before he sold Bundoran to a developer, offered to the PEC that we could purchase his development rights. He'd keep the land, but to sell us his development rights and he believed that the price was \$150,000 per development right, so just something to think about.

It's a difficult discussion tonight because I think what's going to come out is sounding very critical, but I think Mr. Slutzky's been forced into a situation with—let's be honest—three Supervisors who refuse to take seriously the community's Vision Statement. You all know the saying—"Nero fiddled while Rome burned" and actually that's not an historically accurate statement but still it's stood the test of time and we use it when people hesitate when they have a decision to make, so in present context, I think the way it should be said is the "Board of Supervisors continued to discuss while the rural area became more and more fragmented."

Rich said the concept is where the action should be. I really am here tonight to say the action should be with what the community has already adopted and that is in 2005, in a unanimous vote, this community, the County Supervisors, adopted a rural areas plan and they've done nothing with it. We had some creative thinking that went into it for years. I was part of an ad hoc committee that had Farm Bureau members, Chamber of Commerce people, League of Women Voters, a vast assortment of people and we put forward what we thought was a really outstanding proposal that we all agreed on.

We also have the local authority to take action. What we lack is the political will, so let's just really be honest about this is all about. We have a mountain protection plan in this document. This is the County's Comp Plan. That was adopted over a decade ago. We still don't have a mountain protection plan. As I said, the rural area plan was unanimously adopted in 2005. We've done nothing with it.

The only positive thing that's really come out of the Board of Supervisors discussions has been that groups like the PEC and the Nature Conservancy should continue to get conservation easements, so lacking the political will to take the steps in their adopted plan, essentially what the Board of Supervisors has done is said, "our rural area plan will be let's hope PEC and Nature Conservancy do their jobs," and that's rather disappointing for the County's elected officials.

But putting it into numbers: for the past three decades, on average, about 3,400 acres a year in the rural area is lost to subdivision. On average, though, about 2,300 acres is protected in easement, so in total, over those 30 years, it's about 95,000 areas of the rural area have been subdivided and I tried to show it in the red. It doesn't show well. The green is conservation easements which is somewhat over 60,000 acres, so if Albemarle County is serious about rural area protection, it's got to do a lot more than just cross its fingers and cheer on PEC and Nature Conservancy.

But I want to say tonight, you know, it's a great opportunity to finally take the gloves off. Ms. [Wren] Olivier wrote a [wonderful letter](#). The *[Daily] Progress* didn't want to print it, but the *C-Ville [Weekly]* did and I think it says flat out what's going on. The reason Albemarle County can't move forward with its rural area plan that it adopted, you know, for years, we— Oh, we want to protect family farms. We want to protect natural resources. We hear about stewardship and people who've owned the land for centuries and care about the land. Yeah, let's throw it out the window because what's really

going on here and it came through in [an article](#) and Mr. Slutzky was meeting with Mr. Shackelford who inherited his land. He was an English professor at Woodberry Forest but now he's a cattle farmer. "He says the most important thing on my mind," David said, "is protecting the rural area," and Corky said, "funny you say should that. It's the second most important thing on my mind." David asked, "what's the first?" and he says, "protecting my wealth."

And that's what it's all about. The whole drive that's going on in the rural area of Albemarle County is how do we protect the speculators and how do we not just protect them but how do we make sure they get maximum profit and that's what this is all about.

And so we had a rural area plan come forward. Three of six Supervisors refused to adopt it, but David, in seeking some solution, they said, "Hey, that's great, we don't have to support this because we're going to cling to this new idea and discuss it for the next few years and all the while the status quo remains."

Now, and I think, you know, the Farm Bureau and others, they continue to mask their concern about the rural area behind, well, you know, I need to be able to sell a lot so my kid can go to college or my grandmother might go into a nursing home. You know, they can do that right now. With the prices of parcels in the rural area, some of these guys could create two or three or four lots and be millionaires tomorrow, so why don't they do it? Because you could bank that, save it and have some income. Because what they're doing, they all want to be the next Fred Scott and when you wave \$33 million in someone's face, let's be honest, that's hard to turn down, so it's capitalism at its purest, but that's what's really going on and I think that our elected officials should stop conning County residents about the rural area and say, look, I won't support this because I've got farmers out there ready to cash out. We owe them gratitude because their grandfathers and their fathers and their great-great-grandfathers were wonderful stewards of the land, but they're not interested in being stewards anymore. They're now land speculators. Let's call it for what it is.

Now, one of the things, too, I'm concerned about with this proposal is in my report there's 18,000 dwelling units right now in the City and the County's growth area pipeline. 18,000 units. That's more homes than were built in the entire County over the past 20-some years. Yet, in the past six years, we've had to approve everything that's come to the County and I suspect that they'll approve Biscuit Run and the argument is because it'll protect the rural area.

Protect the rural area? Nothing's changed in the rural area, and now we're going to say— We're going to take one lot out of the rural area and make it two or three lots in this expanded growth area in addition to these 18,000 units in the growth area where we say we want people to go. That's just— It's just not the way to go. And I guess I'm just— I really say we've got a rural area plan. Let's take the steps on that and let's see if these elected officials are serious about protecting the rural area, then they will

implement the rural area plan that they adopted. If they refuse to do that, then they should go on record now saying, no, I will not accept this. I will not adopt it. I never intended to and I wanted to show you guys something.

There's one single section in the rural areas plan, one section, that the font is bold and it has underline and in that, it talks about what the key things to do and it's implementation mechanisms that include phasing of development and changing the formula for calculating the number and size of lots in rural preservation developments which is clustering, so this is the one section that the Board of Supervisors, you know, in a plan they adopted unanimously. Then we get to the vote last September—"I didn't know we were going to do phasing and clustering. When did that sneak in there?"

So, let's call a spade and spade. If they won't support it, say it. If they want to support Mr. Slutzky's proposal, I suggest we go to the Board of Supervisors, propose to them a resolution that says that they will make a commitment in any TDR program to a significant down zoning of the rural area. I wonder if they'll sign off on that, the other three? They should adopt a resolution that the proposed receiving area for the TDR program acknowledge that it may not provide a market for all of the lots that are going to be extinguished in the rural area.

And, remember, Fred Scott, a couple of years ago thought he was going to get \$150,000 a development right. If these guys suddenly realize there's only a couple of us are going to win and we're only going to get \$30,000-\$40,000 per development right, they're going to flip out, so let's get the three Supervisors that are going and agreeing to this, go on record and say you acknowledge that. I say that they should also—

We need good planning in this receiving area. It can't just be a dumping ground. If you're going to do it, you know, if we want growth in the growth area, put growth in the growth area, but don't just say we're going to have this de facto growth area expansion but not really worry about the planning in it.

I'm concerned about the unmet, you know, the speculative interests, like I said. When they don't have a market for these TDRs, they're not going to be too happy and I think that should be in this resolution. I think that there should be a resolution that with this TDR program and with this down zoning, some of the other provisions in the adopted rural areas plan, like promotion of agriculture, adopt hiring of a rural area planner to work with the agricultural interests. I think that we should have a—

Well, I'm not going to go into all of that. I only have 15 minutes.

But one of the things we're concerned about with this program is that the only way to protect land in the rural area— Babette Thorpe beat this into my head, is through a conservation easement. Zoning is not protection. You can down zone. You can up zone. If you want to protect land permanently, you place it in a conservation easement.

I can tell you that PEC, Virginia Outdoors Foundation, and the Nature Conservancy with just the small amount of conservation easements we have, our budget gets run ragged monitoring those easements. Holding an easement is just not a deed restriction. It's a legal document which is sophisticated and complicated, so who's going to hold all of these little conservative easements all over the County? And if these parcels are not placed in conservation easement and therefore permanently protected, we will not support this. That must be the result.

And I think also we've got some issues with legislative changes right now. I think a lot of people paid attention to what happened out on the west coast where they came in and said, "well, I got down zoned and so I need compensation." This is the nose of the camel, so if we start to establish legislation which says any changes in zoning require some sort of compensation to that landowner, I mean you might as well take the powers that are afforded to elected bodies in the state of Virginia and throw it out the window.

Now, you know, it's interesting and I know David knows this because he and I've talked about this, but it's amazing to me how folks in the rural area think that the laws of supply and demand do not apply to rural area parcels in Albemarle County. When they down zoned in 1980, land values actually went up. Jesse Richardson who is a property rights fanatic at Virginia Tech, writes some very annoying emails. He writes, "the phenomenon of down zoning increasing the value of property usually occurs with widespread down zoning." The increase in value, and second, "the open space provided by large lots increases the value of the remaining development rights," so a down zoning would actually benefit rural area landowners, but they'll only support it if they get compensated for it. Well, if their property values go up, actually will they compensate you as County residents?

But I just think that we've got a rural area plan. The community was part of it. If the Supervisors aren't going to support it, they should say so. They should go through the proper revision of the Comp Plan just like they did with the previous Plan, hold the public hearings. Then when that is revised accordingly for a new idea, we can move forward, but otherwise what we're really getting out of the three Supervisors who are driving the train right now is, you know, they're just simply maintaining status quo and I think that's the other thing we need to realize.

Everybody thinks the developers want to change things and that the property rights folks want to change things. What they want to maintain is the status quo and you maintain status quo by discussing it and appointing another committee and having another meeting on it and all the while, nothing changes and all the while the red subdivision on this map continues to change.

I tell you—in the last year, do you know how much land was subdivided in Albemarle County? 8,600 acres. It's the most in like a decade, so— And all this time we've been ramping up all these approvals—North Point, Belvedere, Old Trail, and rural area subdivision and the number of lots and acreage actually increased, so you all that are

County residents, it's time to hold your elected officials, hold their feet to fire on this. Do they support it or not and it's time for them to go on the record and if they support Mr. Slutzky's proposal, which they have every right to do, then have them go on the record with what they do not support and will refuse to implement in the current plan and then you all can make some decisions about where they stand. Otherwise, they're just going to discuss this away and nothing's going to happen.

Remember, Nero fiddled, Rome burned. Thanks.

**Jack Marshall:** Thank you, Jeff. No one's been more outspoken about growth management on the Board of Supervisors than Dennis Rooker.

**Jack Marshall:** Thank you, Jeff. No one's been more outspoken about growth management on the Board of Supervisors than Dennis Rooker. In ASAP's candidates' forum three years ago, Dennis was the only candidate for Supervisor who expressed a willingness to support a limit to County growth, a cap on the population size of Albemarle County. Dennis, what do you think about TDRs?

**Dennis Rooker:** Jack, first I'd like to— I've got a handout [[link to Mr. Rooker's handout](#)] that I'd like to— because I'm going to be talking a little bit from these numbers, if we could send that around. While that's going around, I'll tell you a little story about— I was at the VACO Annual Meeting, the Virginia Association of Counties Annual Meeting and they had a seminar on TDR plans because the current legislation is making it very timely and after the meeting, they took questions and there were a couple of guys who had a lot of expertise in charge of the seminar and one of the fellows, one of the supervisors from a county stood up and said, "well, we've been doing that for years." I won't tell you what county and the guy leading the seminar said, "well, the legislation's only been in place since July of this year." He said, "we've been doing that for years. If somebody wants to move their development rights from one parcel to another one, we just let them do it," and he said, "well, what county are you from?" And he gave them the name of the county and he said, "well, you don't have zoning in that county. You can do anything you want to...in the county."

**Rich Collins:** I thought he was going to say it was Fauquier County which has been—

**Dennis Rooker:** No, actually, another interesting piece of information is that in the 1950s, the biggest dairy county in the state was Fairfax County and if you'd gone around and talked to the farmers in 1950 who owned most of the land in Fairfax County and said, "Do you plan on selling your land for development?" They would've said no, but when the price got right, they all fell. It's something we need to keep in mind.

I want to talk a little bit, first, about the fact that there are a number of TDR plans around the country, in a various number of states around the country. Blacksburg, Virginia actually has a TDR plan that they established, for example, back in 1996 and they did it with kind of a innovative approach to zoning, but it amounted to almost achieving the

same thing and since they've put that in place in 1996, they've had one transfer of development rights occur. Boulder, Colorado, in 26 years, had 338 lots, TDRs, transferred for a total of 5,000 acres. Hillsborough County, Florida, as of— And this is from a web site that keeps track of these things, and they're not all exactly up to date. Some of them are back in the 2005. Some of them are 2006. Some of them are 2007, but most of these have had TDRs in place, the plans in place, for a long time and what you see is that in most cases, there's very little TDR activity. Hillsborough, Florida has had none in 22 years.

Montgomery County, which Rich mentioned, is probably considered the most successful, one of the most successful TDR plans in the country. It was adopted in 1980 so it's been in place 27 years and they have preserved about 43,000 acres. It has been a successful plan. The TDR prices today are around \$18,000 per development right. They have provided for significant density in the receiving area and the sending areas have something that we don't have and that is that they had an extremely simple allocation formula for development rights. Every five acres had a development right.

One of the things about our situation here is our development rights situation is very difficult to figure out in a lot of cases. That's why when David mentioned earlier that the development rights are not taxed it's because they're theoretical. Theoretically, if you have 100-acre parcel in Albemarle County, you have nine potential development rights, five small ones and four large ones, but you may or may not be able— You may have too much critical slope to exercise that. You may not have an adequate entrance onto a state road in order to have nine lots on that 100-acre parcel. You may have stream setback problems, so our situation in terms of figuring it out what the development rights are that can be transferred is a whole lot more complex...

**Rich Collins:** Absolutely.

**Dennis Rooker:** ...than Montgomery County, Maryland. Scottsdale, Arizona has had a plan in place since 1991. They've not had any transfers occur. Summit County, Colorado has had a plan in place for six years and they've had a total of four transactions. Ft. Lauderdale, Florida, I'm not certain how long their's has been in place, but they haven't had a transfer. Charles County, Maryland has had a plan in place for 15 years, and they've preserved a total of 1,900 acres.

Calvert County, Maryland, again, one of the ones Rich mentioned, one of the two I think in the country out of I think there're 87 total that I would say is somewhat successful. Their plan was adopted in 1978, so it's been in place 29 years. It's a very complex program. Much of the land is both sending and receiving. Think about that. So you can— They're not really necessarily protecting particular areas. They consider it a success if they pull development rights off of one parcel that is in an area that they might think is a rural area and they move it to another area that they might think is a rural area.

In 1999, they actually doubled the density of the sending areas because they weren't getting enough activity, so they felt like if they increased the development rights out there, it might increase the use of the plan. The price per TDR there today is about \$2,500 and it was about half of that six or seven years ago. One of the things they've done to try to, again, make their plan work better is they basically will not rezone land without a TDR acquisition. They did that in 2003. Over the 29 years, they've preserved about 13,000 acres and they're not clear as to how— They also have an acquisition of development rights programs much like our ACE Program and it's not clear how much of that has been saved by their acquisition program versus the transfer program.

But the conclusion is that— at least my conclusion from looking at, spot looking at these 87 plans around the country is that they're not immensely successful. The TDR prices are generally low. The only one that's been over \$10,000 that I saw is Montgomery County, Maryland; Calvert County, for example, again was \$2,500. The simpler the plans are, the better they seem to work and in none of those plans am I aware that they actually created new growth areas. They took existing zoning, existing designations and they provided for a sending and receiving area.

I've passed out this handout which I don't know if you've had a minute to take a look at it, but in my view, the practicality of doing a TDR plan, whatever it is, comes down to how it works in specifics. We can use broad language in talking about the TDR plan, but when it comes down to whether or not it works or doesn't work, we need to look at the specifics and this is really addressed to some of the points that were included in David's plan.

I think that the suggested density that David raised has changed a couple of times. I think originally he talked about one lot per two acres and then went down to one lot an acre and now he's talking about two lots per acre, but what I've done— One of the things that's clear is that in these TDR— In the receiving area of a TDR plan, the County would not exercise control over the density, so the owner of the land would put in whatever density he wanted to put in.

Then you say, well, what kind of density would likely go in. And what I've given here in the no. 2 on this page is an example of the comparable neighborhood densities that exist in the growth area today and for Mill Creek, Redfields, Dunlora, Forest Lakes North, if you take those and you determine the average density, you have basically .77 acres per dwelling unit and then I go through a computation and if you look at the chart in the middle of the page, based on the 2 to 1 proposal that is in the plan that David floated, the 7.2 square miles which is on the first line would use up about 3,000 development rights out of the 40,000 to 50,000 that exist in the rural area today and that would create a growth area of 7.2 square miles.

Part of this proposal was that if affordable housing went it, it would be 3 to 1, so if you took that across [the chart] and you assumed affordable housing, you'd actually need a growth area of 10.8 square miles. If you start going down that on the left hand side, the

number of development rights and you look across at the amount of acreage and square miles that are needed to accommodate the development rights, if you used up half of the development rights—20,000—you'd have to have a 48-square-mile growth area on the 2 to 1 basis.

Now, at the bottom, I have our existing growth areas and the size of those growth areas. The largest growth area in the County today is Hollymead Growth Area which is 6.99 square miles, so the proposal would create the County's largest growth area and it would only accommodate, based on the densities that we're seeing in other area of the growth area, about 3,000 development rights. We would have no control over the form of development. The neighborhood model which we've worked very hard to put in place to try to create attractive centers in the growth areas would not apply to this area.

I think part of what would happen would be that we would create an area where we basically designate that area for the kind of sprawl that we're trying to avoid with the neighborhood model. That's a concern of mine and if you want to talk about a political fight, wait until you start talking about where the 7.2 square mile growth area is going to be and start looking at the conservation easements that are out there and say, yeah, and you start including some areas that have conservation easements in them or not. I think that would be perhaps the biggest political fight that ever occurred in the County.

It's real easy to talk about theoretically 7.2 square miles. When you start trying to put that on a map and tell the people that live beside it that you're going to have now a growth area which is basically going to be a place where developers control exactly what happens in that area and not the County, I think it's a big concern.

It would accommodate I think less than 15% of the total development rights that would be lost, assuming the down zoning occurred first.

What would the reaction be? I think the reaction would be the County might well be sued by people who lost development rights because we would be putting forward a plan that said you're going to get compensated for your lost development rights and then we would be providing a market for maybe 10 to 15% of those development rights. I think that's a big problem.

I don't think it will actually slow development in the rural areas. Why? Because today, as David mentioned, there're 7,800 exempt lots. People I think would respond by immediately running out, when they see this coming and it will take about— If we decided to do it, I think it'd take about a year and a half to two years. A typical— It has a lot of components to it including designating that growth area and changing the Comprehensive Plan and changing the zoning ordinances and I think by the time the plan was put in place, you'd probably have 15,000 parcels.

The development in the rural area has been between 250 and 300 lots a year in terms of building permits. Year after year after year it's been constant. There's very little that

has been done that has changed that. Eight thousand exempt lots is 27 years of rural area development; 15,000 exempt lots is 52 years of rural area development. I think that the lots that you would see come forward would not be the lots you imagined and that is the development rights and that is that today, if you have a four-acre— four or five-acre lot in the rural area, it probably sells from somewhere between \$200,000 and \$400,000. I don't know how happy people are going to be to tell them they're going to be compensated by getting somewhere between \$2,500 and \$18,000 for that development right that they previously had valued at \$200,000 to \$400,000.

There are all kinds of development rights out there that are not— That nobody plans to exercise like people have a house in the center of a piece of property and it's got three development rights around it and I think that those would be the ones that go to market, so I don't think we would be extinguishing the ones that we might imagine.

I don't think the plan would ever be approved by the Board. I don't think you'd have four votes for the down zoning component and I don't think you'd have four votes to create the County's biggest new growth area.

Part of my concern, at least for this plan, part of my concern is that we would end up in a situation where thousands of hours of staff time would be burned up on a plan that would not ultimately be adopted by the Board and we have some things that are on the— That we're looking at right now that I think we need to do. Some of these things came out of the Mountain Overlay District Proposal. We're looking at a plan on critical slope restrictions to private driveways and roads throughout the rural areas. We're looking at requiring 100-foot buffers from intermittent streams. We're looking at requiring erosion and sediment control plans and eliminating what are called agreements in lieu of plans throughout the rural areas and we're looking at expanding the ACE program.

The ACE program this past year, we indexed basically for inflation, by saying we were, as a policy matter, designating a penny of the tax dollar to the ACE program which this year about \$1.4 million so that should go up year after year.

I applaud David for putting this plan out for community discussion. I think it started a good dialogue. I will point out that the legislation that authorizes TDRs today is not very helpful. I don't think it's practical. It requires a seller and a buyer to connect in some way and then go down to the County together and make an application and in order for any TDR plan to be successful I think you'd have to be able to bank the development rights and hopefully if there's some amendments this year, that would be one of them.

I support a lot of what Jeff said in terms of holding people accountable for putting in place the existing rural area plan. We have a plan that is supposed to be a guideline for what we do in the County and there are many components to that rural area plan that have not been adopted that need to be. Phasing, in my mind, was probably the best shot we had at really limiting development in the rural areas consistently over a period

of years. It would've prevented the large-scale developers from coming in and buying a few hundred acres, a thousand acres that they have 45, 50 development rights and putting in a subdivision because they can't afford to make that kind of investment and then spin off lots one or two a year.

**Jack Marshall:** Just to be fair, I'm going to ask you wind it up.

**Dennis Rooker:** Sure. When the phasing proposal went before the Board, it was 1 lot per 10 years and in order to try to see if we could get some support for phasing of some kind, a couple of us threw out, well, what about one per year. We couldn't get four votes for one per year. From a political standpoint, I hope that the people in this room do hold Supervisors accountable for putting in place things like phasing which are in the plan that was unanimously adopted.

**Jack Marshall:** Thank you. I'm now going to give David Slutzky a few minutes to respond to the comments that were specifically directed to your proposal. Then I'm going to allow the four of you to talk among yourselves and, finally, open it up for comments and questions from the audience.

First, though, let me thank Brian Wheeler and Charlottesville Tomorrow for recording this panel for Podcasting. Brian, you always— I'm amazed how quickly you get this up and available. How soon might our colleagues who aren't here be able to hear this?

**Brian Wheeler:** I'll put this up tonight. It'll be on [cvillemorrow.org](http://cvillemorrow.org) on our blog.

**Jack Marshall:** Thanks very much. David—

**Audience question:** What time?

**Jack Marshall:** What time? Tomorrow morning.

**Rich Collins:** No, but it streams continuously, doesn't it?

**Jack Marshall:** Oh, yes. This bit will be the whole shooting match, including your question about what time.

**Dennis Rooker:** You can just click on it and listen to it anytime you want tomorrow morning.

**Jack Marshall:** Thanks for doing this. David—

**David Slutzky:** Thanks and I'm just going to touch on a couple of things because what I really want to do is to get you guys engaged as much as possible. Just a couple of clarifications. Dennis has had the disadvantage, like a lot of people, in that we haven't sat down and spent lots of time going over all the particular details and so Dennis has a

disadvantage that I've created in that he's trying to react to pieces that have gotten out there and that's one of the unfortunate things of rushing forward with a proposal sometimes. It would've been better if I'd have laid it all out in writing so that people could absorb it all, but that didn't happen. The *Daily Progress* was going to run an article when I was in bed in pneumonia and so I scrambled out of my bed and made my public announcement, but that's as far as I've gotten since then.

A couple of things: first of all, the proposal has always been, out of my mouth, two dwelling units per acre for the density inside there and I've seen other people report otherwise, but for what it's worth, I've always, in my straw man proposal, argued that it actually should be I think of 2.16 dwelling units per acre would be by my calculation, ignoring the fact that some of that 1% of the County is wetlands or is critical slopes and otherwise undevelopable, the maximum amount of development that could occur in such an area would be 10,000 dwelling units. It would probably be less than that in reality because of those limitations and at a 2 to 1 ratio, that would be somewhere between the 3,000 or so that Dennis referred to and maybe as many as five but probably not as close to the five as to Dennis's number.

I wouldn't consider, as a voting member of the Board, supporting anything larger than that, either in terms of the density or the acreage which means, therefore, that there wouldn't be anywhere near— Well, there'd be maybe 15, 20% at the most of the retired development rights would have a market, but as the folks in the Farm Bureau pointed out to me, much to my pleasure, they said, well, that's about a 20-year supply. That was the calculation they came up with. That's a generation. We could live with that. The main reason that they're willing to live with it, at least from the way they explained it to me, is because they see that the down zoning itself will actually increase their land value, so what they do get for the sale of the transferable development rights is a windfall. They also get a little bit of increased liquidity because they could sell off a development right anytime to raise a little cash for granny's goiter operation which is what they say now is the reason why they wouldn't want to have their development rights taken away.

The second thing, Dennis had indicated that we wouldn't control the density, but I want to make sure you understand it. I would not support this proposal if we didn't have a limit on the density in the boundary area. It would have to be no more than X units per acre, either that or no more than some total amount but I would not support it myself if there wasn't a limit on the density.

The third point Dennis made that I want to sort of push back on a little bit was the characterization of this as the County's largest growth area. That's true, but we have a series of growth areas including the two that make up the Places 29 effort and in the aggregate, we have 5% of the County right now as growth area. The fact that we've further subdivided it for purposes of master planning doesn't change the fact that we have already set aside 5% of the County's acreage for growth area and I'm proposing we add one more percent of the County to that number. Arguably, that's expanding the

growth area by 20%. That's the part of this that a lot of people don't like. Fair enough, but I just want to make it clear that instead of characterizing it as our largest growth area, I would rather it be thought of as a 20% expansion of the existing growth area that we have, even though it's fragmented for master planning purposes.

The last thing that I was trying— I wasn't a hundred percent sure of what you were saying, not because you weren't clear because I was distracted by my own notetaking, but I think I heard you say that there's an argument that the rural area development rights might be worth a couple hundred thousand dollars each. Is that something I just misunderstood?

**Dennis Rooker:** No. I think that a rural area lot today of four acres or so is probably somewhere between \$300,000 and \$500,000.

**David Slutzky:** Okay. Thank you. What I was going to get at is you've got to keep in mind that there's the development rights and then there's the land and if somebody's willing to pay that amount, how much of that is being paid for the land and how much of that is being paid for the right to develop it and I don't think we've got any basis for separating those two numbers yet because nobody's ever sold just a development right in Albemarle County, so I don't know what a development right is worth.

Dennis referred to some jurisdictions where the market values may be \$2,500. I wouldn't be shocked if it ends up being \$2,500 to \$5,000 for a development right in Albemarle County, when push came to shove because I think that—

**Jack Marshall:** One minute.

**David Slutzky:** Because I think that the real value is in the land and when the rural area landowners come to recognize that this vast down zoning is going to make their land go up in value because the development rights were removed, they may figure out, you know, those development rights weren't really worth anything. They actually had negative value on my land and so any amount they get will be perceived as a convenience or a windfall.

**Rich Collins:** May I just have— Just a question—

**David Slutzky:** Please.

**Rich Collins:** If they believe as apparently you think they do that their land values will go up if they're down zoned, then why do we have such vehement opposition to it?

**David Slutzky:** Some of the folks— That's a great question, and that's why I think that the idea of down zoning is now possible in Albemarle County. I've been surprised at how receptive some of the folks in the Farm Bureau, the Enterprise Forum and some of

the much more conservative property rights-oriented special interest groups have been to the idea of the down zoning once we've talked it through, so they may have—

**Rich Collins:** In public? Have you heard this in public?

**Dennis Rooker:** I mean— I'll have to say, David. I've talked to several of those people and what they like about this is the creation of a new growth area. They were not all very excited about the down zoning component and the Farm Bureau has not spoken in favor of this. Corky Shackelford appeared and said we have a lot of reservations about this plan. We like the idea that you're looking at a potential— at the idea of being able to sell development rights, but we're not— You know, there's a lot about this we don't support. The density issue that I raised is the fact that I don't think— It's not there's be too much density in this growth area. It's it would be too little, that basically what you're going to see is, at best, I think, a Forest Lakes-Dunlora type development. It's going to be at somewhere around three-quarters of an acre per lot gross and we're talking about gross acreage and then you'll only end up retiring through that process somewhere around 3,000 development rights at this 2 to 1 basis, so I think it'd be very difficult to get people to accept the down zoning based upon the trade-off that some small percentage of them are going to be able to sell their development rights.

**David Slutzky:** Well, again, you've interacted with some of those folks and I've done it as well extensively over the last few months and I'm a little more optimistic than you are about their open-mindedness about the down zoning but I would agree that they're not there yet and that's why this Board, at the moment, is quite challenged in its ability to move forward with any kind of a serious rural area protection.

Just to sort of conclude my comments: I'm proposing this, as I said, because I want the County to get much more aggressive in talking about how to protect the rural area. Dennis has led the charge on the Board for the last few years, in my opinion, with respect to doing rural area protection things and he's right that we have a number of items on our agenda that we're currently working on that will potentially be valuable and there seems to be enough support on the Board for doing a number of them and that's a good thing, but I don't want to stop there and I'm going to guess Dennis doesn't either.

If we could down zone the rural area, it is the most effective thing that we could do other than motivate all those rural area landowners to put their land in conservation easements and we may have ways of doing that through some other activity.

**Dennis Rooker:** The only fear— One fear I have about a down zoning is that you have the rush to subdivide and—

**Rich Collins:** Wouldn't you have to precede it with some type of moratorium?

**Dennis Rooker:** Well, you can't legally put a moratorium—

**Rich Collins:** Well, just not use the word, but that's what Prince William and Loudoun have done.

**Dennis Rooker:** No. What they've done, Rich, is development in rural areas is by right. There's no— You cannot legally stop somebody from filing a plat for a rural area piece of property or any piece of property if it's properly zoned. What they have done is said we're not going to entertain rezonings for a year.

**Rich Collins:** I understand.

**Dennis Rooker:** We're not talking about rezonings here. We're talking about people just—

**David Slutzky:** By right—

**Dennis Rooker:** By right, and you, Virginia has never allowed anybody to not allow somebody to file their plat to subdivide when they're doing it as a matter of right.

**David Slutzky:** There is something, excuse me, we could do that may be a place for the TDR conversation to go to eventually is if we did the down zoning and we leave behind the 7,800 existing development rights that wouldn't be affected by this—

**Rich Collins:** That's right. I think that—

**David Slutzky:** Plus the ones that Dennis correctly points out will result from the rush to the courthouse. Whatever that number is, we could say, fine. For you guys, if you put your land in conservation easement, you will create in your land a right that you can then sell in a TDR program. There may be ways we could still offset that damage through TDR program.

**Rich Collins:** I'm sorry. I would like to defer action. I want to compliment my fellow panelists, especially your job I thought was outstanding. I think that the research he's done is supported by everything I know, but there is a question about what a success means. For example, however, if we down zoned or in any context and then said, well, the TDR market doesn't work, that doesn't mean that you haven't been successful if your major goal is to protect a biodiverse area or an historic property or whatever. I think you're correct absolutely correct in that the number of transactions that have actually been conducted have been very small and that's largely because they haven't done the sort of thing that I suggest that we might need to do to get some understanding about what those values would be on both ends. And so, first of all, and part of my compliment— I'd really be interested. I like your idea of a bank. I think a bank would make it much more—

**Dennis Rooker:** You'd have to have that to make it work I think.

**Rich Collins:** Well, I don't know if you have to, but I think it would be a much easier thing to do.

**David Slutzky:** And we can't currently do that.

**Rich Collins:** Well, I think- I don't think that the legislature would—

**Dennis Rooker:** There's a proposal— There are proposed amendments that might allow that.

**Rich Collins:** I don't think that's going to be a big— I think what he's suggesting is something that people on all sides of this—

**David Slutzky:** Should agree to.

**Rich Collins:** As long as they don't rescind the legislation altogether—

**Dennis Rooker:** Right.

**Rich Collins:** And I think there's a fear that a lot of people are just figuring out that there's a lot in here for those of us who believe that we ought to down zone, right, which I do and limit growth, which I do. That's what I've been trying to convince my colleagues in ASAP is that there could be bad TDR schemes and there could be good ones, but the only way you're going to find out is not to make it Slutzky's proposal or even a stalking horse, but to start with the County saying, look, we've got to find out whether this idea will work and how.

**Dennis Rooker:** Let me ask you this, this legislation— Can I say one thing?

**Rich Collins:** Well, you can say all things.

**Dennis Rooker:** The existing legislation— One of the things I think is important to get out is the existing legislation basically requires the jurisdiction in the County to put the infrastructure in place.

**Rich Collins:** You mean the TDRs infrastructure?

**Dennis Rooker:** No, the utilities, the enabling legislation.

**Rich Collins:** Oh, I didn't see that.

**Dennis Rooker:** Yes, it requires the County to put in place— So you'd have to—

**Rich Collins:** I didn't—

**Dennis Rooker:** It does.

**Rich Collins:** Well, okay, that's the sort of—

**Dennis Rooker:** And you can't— And it's a huge item. You'd be saying we're going to create this seven square mile growth area and the County is going to undertake to put all the infrastructure in place. You can't get— It's not a rezoning so you can't get proffers.

**Rich Collins:** Well, see, but I'm not assuming that. See, I'm not assuming. I don't like the idea of adding growth areas. My bottom line is we've got plenty of growth areas.

**Dennis Rooker:** That's mine also.

**Rich Collins:** And I'm in favor of the down zoning. I just don't want to get—

**Dennis Rooker:** If you're going to do a TDR plan, I think it ought to be in the other— I think it ought to be in the existing growth areas.

**Rich Collins:** Absolutely.

**Dennis Rooker:** I think the only way you could do that is to say we're going to put a moratorium on rezonings like Calvert County did and say that if you want density here, you're going to have to buy it.

**Rich Collins:** That's right.

**Dennis Rooker:** The tradeoff there that— Just one follow through about the tradeoff there is that when you do that, you can't get proffers so there's the tradeoff. You can't— Legally, they're acquiring the density and then the County still has to put in place all of the infrastructure to handle that.

**Jack Marshall:** David, I'm interested in why we need this boundary area, where we can't use the existing growth areas?

**David Slutzky:** Right. A couple of things. First of all, I'd rather keep it at the 5% that we're at, too. My reason for proposing the proposal, the expansion of the growth area, is because I became convinced that using the existing growth area—and I'll explain why in a minute—as a receiving area wouldn't work and the people that I spoke with on the other side, if you will, came to that same conclusion and—

**Rich Collins:** Wouldn't work? You mean, wouldn't work politically?

**David Slutzky:** No. That they— I'll tell you why in a second. And therefore I said, well, what if we created this other area where there actually would be a possibility for a real market and that's when they said, well, then it would make sense. The reason why I don't think it works easily using the existing growth area as a receiving area is because right now we're not getting anywhere near enough proffer dollars when somebody comes and asks for more density from the Board.

If we said to them not only do you have to give us the proffer dollars you give us now but you also have to go out into the rural area and acquire development rights at an additional cost, we've made it yet more expensive for them to develop in the growth area and—

**Rich Collins:** Right.

**David Slutzky:** That's fine if you down zone—

**Rich Collins:** Exactly.

**David Slutzky:** Rich, that's fine if we have also down zoned the rural area.

**Rich Collins:** Yeah, I think both of them have to go in tandem.

**Dennis Rooker:** That's what we're talking about.

**Rich Collins:** That's what we want.

**Dennis Rooker:** A plan that might—

**Rich Collins:** You've got to marry these two.

**Dennis Rooker:** You've got to have down zoning and if you put a moratorium on zoning— They'd have to require the down zoning.

**David Slutzky:** In order to get the down zoning of the rural area which, to me, is the point of the entire discussion—for me—

**Rich Collins:** Yeah, that's what I'm saying.

**David Slutzky:** They're not going to agree to it without this market and so you can say, well, okay, well, then that's where we are right now. We don't have a rural area protection. We have 50,000 theoretical development rights arguably in the rural area and they're getting expressed and they're being developed and I want to stop that and I'm saying in order to get enough support on this Board to be able to achieve that down zoning, we're going to need to come up with a TDR proposal that not only appeals to us but also appeals to them and that's where this came from.

It would be a better mousetrap if we down zoned the rural area and then we started to control growth in the growth area and if we started to do some of the things that our Board is at least poking around in, which is to think about limiting the growth in the growth area and the rural area to be tied to the ASAP proposal which is to have a total sustainable population based arguably on ecological considerations. We're flirting with [some of these things].

**Rich Collins:** It's not purely ecological in any case, but I won't get into—

**Jack Marshall:** Hold on a minute. Let's just ask Jeff is he has any comments in this panel discussion before we then—

**Jeff Werner:** Yeah, I do, and I, first off, you know, Biscuit Run, started at 5,000. I think they're now down to 3,100 and who knows what it'll be by the time they're all done, so I guess what we could do is expect from the Board of Supervisors a message to this developer—if you want a rezoning, then you're going to propose density, but I doubt this Board will do this and with all due respect to the Board, what we're really talking about here is how do we get Ken Boyd, Dave Wyant and Lindsay Dorrier to buy into this. This is what this is all about—how can we negotiate with the three folks who eviscerated the rural area plan that we spent years working on.

**Rich Collins:** Or replace them with somebody who's favorably inclined.

**Jeff Werner:** I'm not saying replace them. I'm saying I don't care, but they are the ones who refuse to move forward the plan. They should go on record with where they stand on the plan that they adopted. Do they support it or not? And then let the community decide, but we're just letting them off the hook.

Now, talking about density in the growth area, there's a project called the Meadows that was rezoned a couple of years ago for 58 units. The developer came in with the proposed— The final— The site plan. It's only got 38 units\*, so I'm so sick and tired of hearing the developers boo hoo that the County won't let them build more. You know, these guys have all us snowed that if only we would let them, they'd build more housing so they could build affordable housing and it's crap. So let's call them on that. They don't built density even when they, you know, screamed and yelled for it, so if we think they're suddenly going to go into this expansion area and build density, we're getting snowed.

The other thing is that put something into context here: 18,000 dwelling units are currently in the pipeline. In 2000, the year 2000, in the County's growth area, there were 17,000 homes and about 40,000 people, okay? So, as many homes as ended up in the growth area since 1744 we have approved or are on the verge of approving in the

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\* After the meeting, Mr. Werner corrected this statement as the 38 units were in addition to the previous 58. If approved, the Meadows would have a total capacity of 96 residential units.

past seven years and maybe, like I said, Biscuit Run will probably fall this year. Eighteen thousand dwellings units. That's enough for 40,000 to 50,000 people. There're a whole series of growth populations and the biggest ones they use is to protect our water supply so that we can build a big enough reservoir and using even the most conservative of estimates per persons per household and the highest estimate of people that they project, if every single person for the next almost 25 years moved into the growth area of the city, that inventory would last.

If our rural area development continues at its current rate which I think we all can expect it will, those 18,000 units are enough for almost the next 35 or 40 years of development, so I'm just— Why are we talking about the need for an additional growth area that we're going to take one lot out of the rural area and make two or three in this expansion area?

Then the last thing this time I need to explain [[link to PEC map displayed for audience](#)]. This is the County blown up a little bit. Here's Crozet, here's the City of Charlottesville which is 7,000 acres. Here's the growth area around it. Red is these— Some of these proposals are in the pipeline that I've been talking about. For instance, here's Biscuit Run. Pink is land that's owned by developers, at least that we can identify. These guys are great at burying who they are, but usually you can match up, believe it or not, the P.O. boxes and you can figure out that the 10 different LLCs are Charlie Hurt.

Wendell Wood which is the guy that just fooled the County into giving him a growth area so that he could sell land for \$7 million instead of \$9 million and land that was assessed by the County at \$1 million and God knows what he— It was probably a gift. When you go and look, all these guys get land by gift. This red parcel in here is a major chunk of the North Pointe rezoning. Chuck Rotgin bought that in 1975 for \$210,000. He created a eight-acre parcel right here, sold it to a church for \$40,000, so his investment on the bulk of North Pointe was around \$170,000, so, again, you know, boo hoo, these guys just can't afford to buy land in the growth area. They can't afford to build density. They can't afford to build affordable housing and it's time to call on it because it's driving our land use policy—

**Rich Collins:** But what I want to know— I'm willing to call them on it, but what are we going to get? Can you give— I understand your view is that if we would just follow the rural plan and they get the vote, then the story's over. We're okay?

**Jeff Werner:** I'm saying if they will not adopt this rural area plan, if they will not support this rural area plan, then go on the record and say, "this document that I adopted unanimously in 2005, gee, I somehow I failed to read it and, really, here of the 107 things in it I will not support this, this, this, this, this, this and this" and tear it up. And at least tell the community here's where I stand. I like Mr. Slutzky's proposal and David can then turn around and say, good, then here are the things I want you to commit to in reviewing this. Otherwise, they're just going to discuss and discuss and discuss.

**Dennis Rooker:** Part of my problem with going too far with this plan—

**Rich Collins:** Which plan, though?

**Dennis Rooker:** The TDR plan that's been thrown out is staff has said it would take thousands of staff hours and at the end of the day, the question is do you like what you get at the end of day if you spend all that time.

**Rich Collins:** Right.

**Dennis Rooker:** And, second, do you even have the votes to do it if you got there? And at this point, I don't feel good about the answers to either of those questions and what I don't want to do is create a situation— And we've got some things on the table I think that will do a significant amount to protect the resources and actually it's going to slow development.

Let's put it this way: eliminate a number of the lots in the rural area, especially with the intermittent stream setback requirement, if we put them in place, and I think we need to get those in place. I think we'd at least have, I think, four votes to get some of those things done and I'm very skeptical about giving— Providing an out, providing a situation where members of the Board can say, well, I don't want to vote for this right now because we've got this plan out here, this TDR plan, and I may support that.

Well, that TDR plan will not— Assuming you started tomorrow and you said we support this plan, let's put it in place. First of all, the legislation's got to be passed to even to make it possible and, second, I think it would take about, according to staff, about two years to go through this and, again, you think about creating a big new growth area and where you're going to put that, it could take— The Planning Commission could debate the issue of where that growth area was going to be located for years.

**Rich Collins:** Can I ask just a question?

**Jack Marshall:** Rich, I'm sorry. I'm going to ask David to have just a minute or two to respond and then I really do want to open it up to the audience. David—

**David Slutzky:** Well, for what it's worth, and I'm not sure a minute or two would be even close to an even distribution of time, but I'm actually more interested in getting feedback from the public anyway, but I wanted to address a couple of comments that were made. The spirit that everybody on this panel is showing towards the urgency about protecting the rural areas is a consistent theme that we all share and I think that every one of us would absolutely like to do whatever we could possibly do with this current Board to get that done.

I'm not, myself, comfortable saying that if we hold these guys accountable— I mean, I'd love it if they'd sign up and commit to doing things, but I'm not comfortable saying that I

don't want to give them political cover which I think is sort of implied here. I want to put down a proposal. I want us to work through that proposal or any other proposal and get to an end point as quickly as possible that protects the rural area with whatever Board we have at the time and if the Board that we have right now were to get reelected in November, then we're going to have those three people for four more years and I'm not willing to sit back and say, well, let's throw all of our eggs in the basket of trying to influence the election outcome in the hopes that we would replace one of those three that aren't currently supporting the Comp Plan.

I'd rather work towards getting an agreement that they can actually sign onto that does protect the rural areas, that is consistent with the Comprehensive Plan because if we end up with the election being the three incumbents return and they did into their current positions, we're not going to be able to protect the rural areas for four more years after that and that to me would be a devastating loss to the County, so, we can dig in and say we want to rub their noses in their mistakes over phasing and clustering and there's days that I feel that way, too, but I'm more focused right now on what can we get them to agree to do that will actually protect the rural areas and then let's get that and this TDR proposal, for all of its bump and deficiencies, was at least the result of an active discourse between me and people on the other side of the debate and so I'm not at all convinced that it has no hope of getting done.

It may need to be modified and it may take a lot of staff time to get there, but I'd rather go down that path than sort of dig in on our 3-3 Board that we've been stuck on for a long time and have that 3-3 Board not change and therefore we lose four or five more years in the rural area. To me, that would be the worst disaster.

**Dennis Rooker:** I do want to say one other thing and that's that we need to keep in mind that by the time this got put in place, you would probably have 15,000 exempt lots which is about 50 years of development at the current pace in the rural area. Well, I'm not really convinced that— What I'm convinced of is that— I know we would have a new growth area that would be huge that would be— For which we would have to provide the infrastructure. I'm not convinced that we would necessarily slow down that 250 to 300 a year lots in the rural area by doing a plan like this.

**David Slutzky:** Let me just point out one other piece of the TDR proposal, that it provides for an opportunity to get rid of those existing lots by having them put their land in conservation easement and be able to sell the TDRs so there is a way in this proposal to actually get rid of the entire supply if we made it enticing enough for the market.

**Dennis Rooker:** But you're not providing a market large enough to do that David.

**Rich Collins:** You cut me off at three minutes when I was trying to speak to the Board—

**Dennis Rooker:** I can't, I'm not the Chair anymore

**Jack Marshall:** Next time I'm going to speak... Our policy here is to identify yourself and to make your point succinct. Carlton Ray, who are you?

**Carlton Ray:** I'm Carlton Ray. I've got a sense of reality is coming out of this from all the discussion and that belongs I think not exclusively but pretty much with Jeff Werner. We've got to recognize what really we've been doing. If you look at those maps over there, they look very much like somebody's trying to swallow spaghetti and then sneeze it on this plate. It just looks nuts and it is nuts. The word written in the middle here is the word resource. Dennis, you just used it. It's been used a little bit.

There's another committee in this County. It's called the Natural Heritage Committee. It was appointed a couple of years ago and it's working now to try to identify areas in the County worth preserving. That doesn't look anything like what is worth preserving and I don't think the discussion we've heard tonight is on the mark exactly. We seem to be talking all about money and that's not the same as value of land. We've got to turn our attention to value of land and in that sense, the Mountain Ordinance Committee is a very good example of what needs to be an ordinance that doesn't tell people how to— whether they can own land or not, but how they should behave on their land, to a certain extent.

**Dennis Rooker:** We are trying to extend a lot of those mountain protection suggestions throughout the rural area and that's something that both David and I strongly support.

**Carlton Ray:** I recognize that.

**David Slutzky:** We may have some support— We have support to actually get it done this year which is pretty exciting.

**Carlton Ray:** And that's a minimal thing. To carry that farther, let's get our Natural Heritage Committee recommendations out there. I haven't heard that committee mentioned once tonight, not once.

**David Slutzky:** Well, we were talking about TDRs but note that our Board—

**Carlton Ray:** TDRs are not the same thing.

**David Slutzky:** Our Board— Right, but that was the topic for tonight. Our Board with regard to your—

**Carlton Ray:** Why didn't you mention it?

**David Slutzky:** With regard to the need to have the Board address protecting the ecological systems in the rural area which is a fundamental objective of the Natural

Heritage Committee, this Board has had an active dialogue in part in response to the ASAP proposal coming out where we have directed our staff to look at ways through which we could reconfigure, if you will, our methodologies for land use planning in a way that is significantly more deferential to sensitive and ecological systems and what we might consider having an upper bounds of density that is tied to the carrying capacity of the ecological systems, so the Board has had actually some forward progress in that regard and I think that that's a significant thing. It just wasn't part of the TDR discussion and that's why we didn't go there.

**Jeff Werner:** Wait, I want to stop— I mean, Carlton brings up a good point and I've been charged with this a couple of times, that I'm trying to manipulate the elections. You know, folks, we're in this room because we're advocates and if we can't get the elected officials to state to the community where they stand on the issues that the community has said are important to them, if pressing them to do that is manipulating the elections, I'm for it. I mean, that's my job and, you know, I think that we— Carlton's right. We've just, you know, we dabble in a lot of things. I was on the Mountain Protection Committee with him. He was on the first Mountain Protection Committee and we still don't have a mountain protection plan, so if we can't tell the community the folks you have on the Board of Supervisors, here's where they stand and not be called for somehow manipulating the political process, I don't understand.

**Jack Marshall:** Deborah, identify yourself, please.

**Deborah Murray:** Deborah Murray and I have a question for Jeff. I understand your position on the rural plan, but I'm unclear whether you support or would support the concept of TDRs without the creation of a new growth area.

**Jeff Werner:** I think it would be interesting to— What we've seen a lot of places that do it is that— In Montgomery County is they established their growth areas and that's where they wanted to get these TDRs to go to. I think the numbers are what's alarm, but the scale of what's been approved. Then the— What my experience has been on the expectations of the marketplace that these people are reportedly willing to embrace TDRs. That's where I have questions.

The second thing is, and when I pointed to the map, I wish I had a whole map of the County to show how much developer land is in the entire rural area. My bet would be the first tier of winners in this transfers of TDRs would simply be those developers transferring the lots that were vacated on land they own into areas that—and let's face it—who's going to get the boundary area? You can look on the map and see. I mean, it's a Charlie Hurt, Wendell Wood, you know, free for all, so they will simply transfer to their boundary area lots development rights that were exchanged—

**Rich Collins:** She was asking no boundary area, no boundary area.

**Jeff Werner:** Well, I understand that, but— And so that's— And the TDR concept, that's why I have a problem with this. Then, in the growth area itself, what's left to rezone? I mean, you know, I feel like there's very little left once, like I say, we're not going to go save Biscuit Run. You guys go— That would've been the opportunity. North Pointe—you want to approve North Pointe. You've got 893 lots. Go find them in the rural area.

**Jack Marshall:** We're going to have about 15 minutes more of questions.

**Rich Collins:** I want to say that I do think that we ought to leave, before we leave this meeting, both Dennis and we've already heard I think a little what Jeff feels, is I think that what every issue they raised about TDR, every possibility that could go wrong, everything that could make this a failure, is plausible. I agree with that. I guess the question, though, is the same that I would— That you asked, Deborah, to him, are you— I'm not trying to get in the way of anything at all. Is the concept of TDRs, under scratch conditions, with a bank, is it something you think may have some political viability and make our planning perhaps a little better or not?

**Dennis Rooker:** I think, first of all, you've got to look at how they've done elsewhere

**Rich Collins:** I agree.

**Dennis Rooker:** And it's been very mixed.

**Rich Collins:** Yes.

**Dennis Rooker:** As a success and those are situations where— that are pretty much like you described where they're putting them in the existing growth areas, the acquired development rights.

**Rich Collins:** Right, right.

**Dennis Rooker:** So, I would view this, at best, as something that would be an arrow in the quiver of tools and I think that the communities that have adopted these have said that that's basically what it is. They have not been rousing successes any place.

**Rich Collins:** And I agree, and—

**Dennis Rooker:** And so I think to put our eggs in that basket would be—

**David Slutzky:** Well, let me—

**Rich Collins:** I understand the answer and I think it's equivocal on both sides. All I'm trying to do is, you understand, is that I think that we are situated in this time in this location not— I am— As you already know, I don't want an expansion of the growth

area. I think you should down zone the rural areas right now for the particular areas of biodiversity and try these experimentally

**David Slutzky:** We got two votes.

**Dennis Rooker:** The other thing is the question of whether— If it comes down to a tradeoff between the cost of retiring development rights and giving up proffers, that's something that needs to be looked at.

**Rich Collins:** I agree.

**Dennis Rooker:** And the question is if you'd approved a North Pointe, for example, and you said you've got to acquire those development rights, would the community have been better off for them having acquired 900 lots in the rural area and spent whatever they had to spend versus putting in what maybe, I don't know, \$12 to \$15 million of improvements around that area? I don't know. I mean, that's something that would have to be discussed.

**Jack Marshall:** And that's why I'm going to give David the last shot at this and then we're going to go to the next question.

**David Slutzky:** I would like to go back to where Jeff was but we've gone so many steps beyond I'll get it go. The measure of the success of a TDR program isn't just how many development rights were transferred. As Rich has started to point out, if you get something else in the bargain like a down zoning and that down zoning is extraordinarily valuable and important and if the only way you can get it with the current Board is to accommodate one of their requests which is to allow for this boundary area to exist, then I think it's a very successful outcome.

The reason that I proposed this boundary area and the reason that it's a part of the fabric of this proposal is because it seems to me from my discussions with the others three that that is the best chance we had of getting this Board to support a down zoning and that—

**Rich Collins:** You've made that point over and over again.

**Dennis Rooker:** Well, I don't think you'll get— I don't even think you'd get four votes for the down zoning.

**Rich Collins:** You don't need any up zoning. No up zoning.

**Jack Marshall:** Close to closure as we're going to get on that point. Liz, will you tell us who you are, please?

**Liz Palmer:** Liz Palmer. My biggest concern with this and, you know, I understand your practical approach to this. We have to do something, but we have an overworked staff in the Planning Department that really doesn't have enough time to do what they're doing now and I'm with Dennis on the fact that we've got to get the rest of the Board to agree to the down zoning part of this and get a lot more information and get a lot more ironed out before we would ever ask staff to do this. I think this would be a terrible mistake to use those hours to do this unless we have a commitment from the Board.

**David Slutzky:** I can't think of a more important thing to have staff spend its time on than something that results in a down zoning of 94% of the rural area. We might just disagree on this.

**Liz Palmer:** Well, the point is that you have to have the rest of the Board members on record saying that they would support—

**David Slutzky:** We spent a lot of staff time looking at phasing and clustering and we didn't have the votes for that, too.

**Liz Palmer:** That's right.

**David Slutzky:** And one might argue that that was mistake.

**Liz Palmer:** Yeah.

**David Slutzky:** That's why what I'm trying to do instead this time is work with the other side to try and come up with a consensus—

**Liz Palmer:** But we've talked. We've talked and had the votes for phasing and clustering before we went into because it was in the Comprehensive Plan, so before we spent staff time, we need to make sure that the rest of the Board members are on record saying that they will support \_\_\_\_\_.

**David Slutzky:** Then, why don't we put in front of our Board that would this Board support this TDR proposal with the down zoning, if that's— That's different from asking the Board if it would support just the down zoning.

**Dennis Rooker:** I started out I think at the end of my initial statement [saying] that I don't think there are four votes for the down zoning and I don't think there are four votes for an increased— for this plan with this huge increase in the growth area and all of the things that go with that that I said early on, so I don't think— I don't think there's four votes for either side of this proposal.

**Rich Collins:** But I was just want to re-emphasize my point. We're talking about his version of an unstudied damn plan. I'm trying to get—is there something in this new

legislation with the kind of carefully probing questions. I'm not talking about hours of staff time.

**David Slutzky:** I'd support any TDR proposal that had the effect of reducing growth in the rural areas.

**Rich Collins:** I'm not saying who shot John and who's going to vote and who isn't.

**David Slutzky:** Well, you're asking if there's support for the TDR generally.

**Rich Collins:** And I tell you—

**Jack Marshall:** Then I'm not going to—

**Jeff Werner:** And TDRs is an intriguing concept. David and I talked about this for months. It is an intriguing concept. However, three Supervisors said that they would support this rural area plan. Three Supervisors, those three Supervisors said they would support the 107 recommendations in this and I want to read— There's a recommendation in here. It's on the very last page and it's the one—

**Jack Marshall:** Jeff, make it quick if you could.

**Jeff Werner:** I [can't] make this question because it's important. It says "conduct an analysis of the fiscal impacts of rural and residential development including transportation, [revised] housing regulation to address those impacts." This to me is one of the most important statements in this document among the other 106 but, again, it's one of them that has not yet been implemented, so I really— As I said, I don't— I'm tired of hearing what the other three say they will support the discussion of when they already said they would support this document and by everything I've heard, they refuse to discuss it further.

I know that one Supervisor is not the slightest bit interested in biodiversity and we ought to get that on record so that people know.

**David Slutzky:** Then why don't we put a proposal in front of this Board—

**Jeff Werner:** Let's please do that, but we have a proposal and—

**Jack Marshall:** Before I give Brian Wheeler the floor, let me mention that the Sierra Club is passing along a petition that ASAP supports, urging the Albemarle County Board of Supervisors to conduct a full analysis of the impact of the proposed Biscuit Run development on surrounding rural areas before making a decision on rezoning the property. I'm going to pass this around if you're interested in signing it.

**Dennis Rooker:** Jack, can I say one thing and that is that we are fortunate in this County that in 1980 there was a significant down zoning in the rural area. In most of the surrounding counties you've got two acres per lots in the rural areas and so you go out to Nelson County, a 100 acres, you can have 50 lots in the rural area. Here, if you have a 100-acre parcel, you've got nine lots and that's because you had a Board in 1980 that had the courage to significantly down zone our rural area and they were sued. Three or four developer suits. One case went up to the Virginia Supreme Court. One of them went to the 4<sup>th</sup> Circuit Court of Appeals. They won based upon the Health Safety & Welfare Act that primarily protected our water supply, but we're not in as bad a shape as most of the state is in terms of our starting point.

**Rich Collins:** Right.

**Dennis Rooker:** We need to— So I don't want us to think that the sky is falling because we are in a lot better shape than a lot of the counties.

**Brian Wheeler:** A couple of you have said that the TDR legislation will have to change in Richmond and among the proposals working their way through the General Assembly right now, it sounds like one of the items of discussion is can a receiving area be an adjoining city and I wonder if— You've been talking about this boundary area in the County—Could you maybe give us some thoughts about what it might look like if the receiving area was the City of Charlottesville?

**Rich Collins:** Or include the City of Charlottesville?

**Jeff Werner:** Or the City of Richmond, like New York City purchased land or an easement upstream and showed a demonstrated reduction in their water treatment costs, so what if Richmond and Fredericksburg and Washington, DC, paid to protect their watershed in the Shenandoah, the Potomac and the James River. That would be an intriguing concept.

**Dennis Rooker:** I think it's a good idea that they provide more flexibility—

**Rich Collins:** Contiguous.

**Dennis Rooker:** For multi-jurisdictional but the question would be whether you're going to find a city that is willing to accept development rights rather than rezoning where they can get proffers. Again, that's a question.

**Rich Collins:** I think you're— Again, I assume you're correct because you've studied this more perhaps than I have although I saw some things in it that other people didn't see, but I am not convinced based on what I've seen to this point that you are correct that you could not ask for proffers if you had a TDR system. I don't know where you get that.

**David Slutzky:** You could ask but the price of buildings \_\_\_\_\_

**Rich Collins:** All right. You've got two different transactions here.

**Dennis Rooker:** Actually, I talked to Larry Davis.

**Rich Collins:** Well, Larry Davis is a good lawyer, but I still don't think that's correct.

**Dennis Rooker:** I've talked to Larry and when I look at the plan, when I look at the plan—

**Rich Collins:** Well, no, but just this sort of thing—

**Dennis Rooker:** Rich, when I look at the stat sheet, it looks to me like you cannot put conditions on the use of these development rights in the receiving area.

**Rich Collins:** I don't think it says that.

**Dennis Rooker:** And so, at least— I've gone over that. Larry—

**Rich Collins:** Well, I talked to Larry and I called him up, too—

**Dennis Rooker:** And he said you can't do both. You can't say you've got to acquire the development rights and also impose—

**Rich Collins:** Well, Larry's probably right.

**Dennis Rooker:** Because the person isn't rezoning. You have to have— The receiving area has to be zoned to accept the TDRs and so if it's zoned to accept it, it's a development as a matter of right when they transfer them in.

**Rich Collins:** No, no. I don't think that's the correct interpretation. I could be wrong. I think this is exactly what we should not be doing. These cannot be— These kind of things can't be worked out with people that don't— We don't have it in front of us. We need some place where we know exactly what we can do and what we can't do and what we're willing to accept if we can get it.

**Jeff Werner:** And what we have is—

**Dennis Rooker:** And I don't think— For the people I've talked to, I haven't talked to anybody who believes you can also put— You can also require— If you require proffers because the receiving area has to be pre-zoned to accept the density.

**Rich Collins:** That's correct. Oh, I see what your point. That is because you're designating it as a receiving area, you're interpreting that to mean that therefore you couldn't ask for a proffer because it would be a rezoning.

**Dennis Rooker:** Right. But by designating it to receive the density, you've created the zoning.

**Rich Collins:** But you also—

**Dennis Rooker:** You have to have it pre-designated to put the plan in place.

**Rich Collins:** I agree with that.

**Dennis Rooker:** So once the plan's in place, they don't need to ask for a rezoning so there's no proffer.

**Rich Collins:** Okay. I won't carry— Okay, I think this is exactly, again, I believe makes the point that there's a lot of confusion both about the concept, the options and the particulars and both of the dog gone lawyers have spent all their time trying to figure out the sellers and buyers are going to do it rather than looking at the public consequences.

**Dennis Rooker:** Well, there's the infrastructure issue that's in \_\_\_\_\_.

**Rich Collins:** Well, the infrastructure issue—

**Jack Marshall:** A very succinct—

**Jeff Werner:** I just think that Rich hit the nail on the head and Brian asked a good question, well, what about this. This enabling legislation to begin with is murky. The two complementarily or contradictory amendments that have been submitted are murky. I went through and even read the thing the other day and got more confused and so I think there's an awful lot of interpretation that's going on right now relative for a murky piece of legislation and that's why I say we have time to talk about it and in the interim, let's move forward with the plan we've adopted.

**Jack Marshall:** We have time for one last question. Can you tell us who you are, please?

**Kathy Welch:** I'm Kathy Welch and I am, at bottom, concerned that you all need an attitude adjustment. I think the reason that the Comprehensive Plan and clustering and phasing had such difficulty was because it wasn't sold at all well to the public. There were people there complaining about things—

**Jeff Werner:** Things that didn't have anything to do with the proposal, exactly.

**Kathy Welch:** They didn't understand family divisions. They didn't understand that we already have critical slope things in place and they just didn't understand and, in addition, I don't think that because all of you gentlemen own your homes and somebody else owns a home in a rural area that that person becomes a private property zealot. I mean, I just think you're running roughshod over the people who need to be persuaded that this is a good idea.

**Rich Collins:** Well, it would help with— I think persuade the Board and I think the political impact between the property—

**Kathy Welch:** They are going to hear from their constituents and if their constituents are being characterized as private property zealots just because they own a home in the rural area—

**Rich Collins:** Oh, I see your point.

**Kathy Welch:** I don't think you are going to get very far.

**Rich Collins:** Well, I think the rhetorical issues are considerable and I think one of the things that would happen in any serious discussion with the experts in the room over a period of time and I'm not talking about \_\_\_\_\_. You would get a lot of this stuff clarified and we might— I might end up agreeing with you, just saying it's not worth the candle, but I don't think that we can show that yet. I think— I am so impressed with the fact that they gave us this authority that I think we ought to seriously investigate it and not have it identified with any guy on a horseback trying to solve the world's problems.

**Dennis Rooker:** Well, again, you know, it's interesting, they gave northern Virginia counties impact fee enablement about 10 years ago or so, 12 years ago. None of them have used it. You know why? Because it's written in such a way that it's completely impractical.

**Rich Collins:** It could be so. It could be so. I don't think that's in this case. I think ingenuity and some— I think there's flexibility as well murkiness in the statute and I think that's exactly where opportunity for those like myself who believe that most of the failures of public planning have not taken into consideration the issues of ownership and how to overcome some of those objections by some mitigation, if that's what will get us the next revolt and will get us four people who won't get up and say that we're going to communist Russia or to Cuba or some place.

**Dennis Rooker:** I want to address the question that was asked at the back and the statement about vilifying people in the rural area, etc. I certainly hope I haven't done that. I have a lot friends that live in the rural area. I live in the rural— I actually live in the rural area. I live right across the street from the Hydraulic Road growth area and it happens to not have water, but I'm 200 yards from the growth area, but what happens

at these public hearings is the people who view themselves as having an economic interest are the ones who primarily come out.

**Rich Collins:** Absolutely.

**Dennis Rooker:** And ASAP and PEC, people that follow PEC, send a lot of emails. The mountain protection came around and phasing and clustering and we had a lot of public opportunity to comment, but very— But not that many of the people that sent emails came out and so what the Board heard from a lot of people who when you said they really weren't educated about the plan, the problem that— We had sessions where people— We had sessions on each of the components—phasing, clustering, mountain protection. There were sheets done that explained the plans in detail. We had public information sessions where people came in. They could look at their property on the map. They could ask questions about how their property would be affected, etc. That was all in advance of the public comment, but there—

I was on the Planning Commission when the mountain protection came around about seven years ago and we passed it unanimously. It went to the Board. They never voted. We had—

There was a huge campaign of misinformation. There were mailings that went out, thousands of pieces of mailings that went out, ads that were run that contained misinformation about the plan and so you had people coming in that were basically saying we've had this property in our family for 80 years and you're going to take it away from us. They were convinced that they were just— Their property was basically going to be taken.

**Rich Collins:** Sure, no, I'm—

**Dennis Rooker:** And so I know Liz showed up at the mountain protection hearing and she was very frustrated by the mis— You know, the comments that were just not factual about the plan itself. Staff got up and staff explained the plan and explained it the correct way, but when these things come up, we need help. We need organizations like this organization and PEC, etc., and I know you try, but we obviously need help in getting people out, getting people educated and then getting those people out to comment publicly on what they want to see done in the County because if it's only the people that view themselves as perhaps having an economic dog in the fight that might— they might lose something, then we're going to lose on these things every time. We need to get help.

**Jack Marshall:** Do you need to say one more thing?

**David Slutzky:** Yeah, I want to address the comment about property rights zealots because I believe I was the Board member who used that phrase so I want to make it very clear what I mean by the phrase. What I had in my mind were not those members

of the public who bothered to come out on their own time to speak their mind honestly before this Board in opposition to what I happen to think were good proposals. That's not what I'm talking about when I say property rights zealots.

I'm talking about ideologues who have said that they don't believe in things like phasing, clustering, and, for example, down zoning, because and solely because it's in their minds a usurpation of a private property right that somehow is their's to hold forever. It's a right that was given to the rural landowners in 1980 by the Board of Supervisors, actually. It's not a God-given right. It's an instrument of government and the parties who come before the Board or in public discourse characterize efforts to protect the rural area such as phasing, clustering, or down zoning as being a usurpation of some sort of special right. Those are the people that I'm trying to characterize pejoratively as private— as property right zealots. I'm not trying to pick on humble, innocent rural landowners.

**Kathy Welch:** Yeah, but you have to take people the way they are and if you have your home and you look at it a certain way and you would consider people coming around fooling with it \_\_\_\_\_ to be a usurpation of your rights and that's the way \_\_\_\_\_—

**David Slutzky:** Zoning accomplishes that same outcome but it's been generally accepted because it's considered to be for the public good, as are these other proposals.

**Kathy Welch:** I'm telling you, David, you've got to think about who you're talking to and how you talk to them. That's all.

**David Slutzky:** Well, I'm sorry if I've offended anyone who's a rural area landowner.

**Jack Marshall:** One of ASAP's main objectives is to provide an opportunity for community dialogue, about growth issues and enrich the discussion. We haven't solved the problem and I hope we would tonight, but we have— I think we have enriched the dialogue. Thanks to the four gentlemen here who— And I'm very grateful to all of you for coming.