

Public Hearings - Baltimore City Critical Areas Management Program - 1987 MSA-51830-2

1 BEFORE THE CRITICAL AREAS COMMISSION PANEL

2 -----  
3 IN THE MATTER OF: :  
4 TECHNICAL APPENDICES :  
5 TO THE BALTIMORE CITY :  
6 CRITICAL AREAS :  
7 MANAGEMENT PROGRAM. :  
8 -----

6 Wednesday, April 29, 1987

7 Pursuant to Notice, the above-entitled hearing was  
8 held before SOLOMON LISS, CHAIRMAN, Chesapeake Bay  
9 Critical Area Commission, at 222 East Saratoga,  
10 Baltimore, Maryland, commencing at 7:10 p.m.

11 ALSO PRESENT: ALBERT ZAHNISER, Member CBCAC  
12 ARDATH CADE, Member CBCAC  
13 MARY G. DOLAN, Chief of Coastal  
14 Resources Planning, Baltimore City  
15 MELVIN W. BROWN, JR.  
16 FRANCES J. LAVIN, SR.  
17 WALLACE S. LIPPINCOTT, JR.  
18 MIKE MARQUA  
19 STEVE BUNKER  
20 CLAY JONES  
21 JAMES GUTMAN  
WILLIAM BOSTIAN

REPORTED BY: HAROLD H. ADAMS, Notary Public

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P R O C E E D I N G S

MR. LISS: May we have your attention, please.

Our hearing this evening is a joint hearing of the Critical Area Commission of the Chesapeake Bay and of the Planning Commission of the City of Baltimore. We've decided to hold the hearings together, because there already have been individual hearings by each of the agencies, and these hearings are to consider the additional information that has been filed by the City of Baltimore in its appendices, that have been filed with the Critical Areas Commission as further exhibits to support the proposed Critical Area Program that is to be considered this evening.

It is not proposed that any vote will be taken on the proposals this evening. The purpose of this hearing is to give any interested person an opportunity to be heard. We will restrict those who want to testify to five minutes each, except that if those of you feel that there is additional time needed, we're not going to be hard and fast with that rule. Certainly we want to give you an ample opportunity to give us any information

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1 that you think we ought to have.

2 I'm going to ask Ms. Dolan to open the  
3 proceedings, by making a brief statement of the present  
4 status of the Baltimore City program, and then I'm going  
5 to ask whoever has the list of those who have signed up  
6 to testify to please send it up so that we can follow  
7 that list during the course of the evening.

8 Mary.

9 MS. DOLAN: Okay. Good evening, ladies and  
10 gentlemen. I don't see anyone here who has not heard  
11 the presentation of the original draft document that we  
12 have prepared. And if so, and if people have specific  
13 things that they want to hear described about that  
14 program, I would be happy to address the provisions of  
15 the original program. The hearing this evening,  
16 however, is specifically on the additional information  
17 that has been provided in the technical appendices this  
18 evening, which are to be included as a part of the plan.

19 Those technical appendices basically are our  
20 follow-ups to the document itself, providing in most  
21 cases a -- an inventory of the existing resources, and

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1 specific technical specifications for the offset  
2 program, and the rationale for the various approaches  
3 that we have taken through the program.

4 The technical appendices themselves consist of  
5 the habitat protection and enhancement plan, which tells  
6 how much existing habitat remains in the critical area,  
7 and what we would like to do to make that habitat better  
8 than it is now.

9 The second appendix is the water quality  
10 improvement plan, which tells the existing water quality  
11 in the City of Baltimore, the sources of pollution in  
12 the city, and talks about the specific ongoing programs  
13 that are part of the city's water quality improvement  
14 efforts to clean up the waters of the Chesapeake Bay,  
15 not only those areas that are in critical area, but many  
16 areas that are in the city proper, and obviously flow  
17 into the critical area via the tributaries to the Bay.

18 The shore erosion protection plan details the  
19 extent of shore erosion in the city, and the provisions  
20 of the plan to deal with those minor areas of shore  
21 erosion that exist, and talks about when new shore

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1 erosion control is proposed, the preferred alternatives  
2 for that shore erosion control.

3 The next appendix details the extent of public  
4 access in the critical area, and what is planned for the  
5 future. It gives the extent of the promenade, which  
6 will include approximately seven miles of our  
7 waterfront, and shows how other areas of the critical  
8 area, largely in the resource conservation area, will be  
9 available for public access.

10 The water dependent facilities, and other  
11 redevelopment within the buffer appendix, gives the  
12 rationale for city to allow development within the  
13 buffer for certain activities and under what conditions,  
14 and talks about what controls would be put on such water  
15 dependent facilities as marinas and other kinds of  
16 industrial and port uses.

17 The public education appendix gives our  
18 approach to public education, which is basically a  
19 three-fold approach dealing with the general public, the  
20 land owners and developers, and the consultants and  
21 designers that assist in the development process.

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1           Our offset program, the next appendix, shows  
2 how we will approach compensating for, mitigating for  
3 those places where development will be allowed to enter  
4 the buffer. It gives specifications for how those  
5 offsets can be accomplished on the property. It gives  
6 alternatives for locating those offsets on other  
7 properties that are not water dependent, and that are  
8 not planned for redevelopment, things such as tank  
9 farms, or other industrial uses which have waterfront  
10 area, where a new buffer could be planted. And it  
11 also gives specifications for when the city does accept  
12 a fee in lieu of the development offset on the property,  
13 when it can't be done on the property, and the city will  
14 accept the \$2.50 a square foot fee. For areas in the  
15 buffer that cannot be put into vegetation and must be  
16 developed, it gives specific specifications as to how  
17 that money will be used in the kinds of areas, in the  
18 kinds of planting areas that will be prepared with those  
19 funds, and the locations of those areas as well.

20           The last appendix, administration and  
21 implementation, talks about the review process that will

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1 be required through the critical area regulations, and  
2 gives a description and some examples of ordinances that  
3 might be used to implement the program. We are in the  
4 process of preparing actual draft ordinances. We do not  
5 have those available for your review tonight. Those  
6 will be submitted separately to the commission, and will  
7 be available for public review at a later date.

8 That is my description of the technical  
9 appendices. If there is a specific request for a  
10 description of the program, or parts of the program, I  
11 would be happy to give that if it's necessary.

12 MR. LISS: All right. Let the record show that  
13 we have a copy of the names and the particular  
14 organizations that are represented here this afternoon,  
15 and each of those persons have been requested to  
16 register on a list that's been furnished. Some of these  
17 persons have indicated that they wish to testify. Some  
18 of the others have indicated they do not wish to  
19 testify. I will recognize each person who is here, and  
20 those who are registered to testify, I will call on them  
21 to do so. If any of you who have merely indicated your

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1 presence decide that you do wish to testify, of course  
2 you may do so.

3 Now, one thing that I do ask your indulgence on;  
4 unfortunately I had a cataract operation approximately  
5 eight weeks ago, and it has not completely cleared up.  
6 So I may have some problem with reading your name or the  
7 organization that you represent.

8 MS. CADE: Would you like me to do that?

9 MR. LISS: Would you please.

10 MS. CADE: Certainly.

11 MR. LISS: All right.

12 MS. CADE: Do you want to call just the names

13 --

14 MR. LISS: No, let's call everyone who's here.

15 MS. CADE: All right. All right. The first  
16 name is Melvin W. Brown, Jr., Belt's Wharf Warehouses,  
17 Inc., who has not indicated an interest in testifying.  
18 Do you care to testify?

19 MR. BROWN: No, ma'am.

20 MS. CADE: The next is Francis J. Lavin, Sr.  
21 from --

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1 MR. LAVIN: Tnemec.

2 MS. CADE: -- Tnemec Company, Inc., who does  
3 wish to testify.

4 MR. LISS: That's Lavin, isn't it?

5 MR. LAVIN: Lavin.

6 MS. CADE: My apologies, sir.

7 MR. LAVIN: I'm very concerned about the non --  
8 non-water needed industrial areas. We're in the process  
9 of beginning to expand on our property, which is right  
10 on the water, and one-fourth of it is in the critical  
11 buffer zone. And I want to be sure that we're  
12 protected, so that we continue in business in Baltimore  
13 City in the State of Maryland. And as I read some of  
14 these, I am deeply concerned.

15 MR. LISS: What kind of business do you  
16 operate, sir?

17 MR. LAVIN: We manufacture industrial coatings.  
18 We employ approximately 32 people right now. Our  
19 expansion program will double that in five years. And  
20 we're deeply concerned that we're not going to be able  
21 to expand, because we need every square foot of our

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1 property for our five-year program. We have not  
2 predicted past that period of time. We have not made  
3 any allocations for vegetation along that property. We  
4 have already had some architectural work done, and we  
5 put a hold on it to see how this is going. And I would  
6 like to go on record that we are deeply concerned about  
7 this, and we would like to continue in business in the  
8 State of Maryland, particularly in Baltimore City.

9 Thank you.

10 MR. LISS: Thank you very much, sir. Of  
11 course, this testimony will be made available to the  
12 Commission, and also to the Planning Commission, and I'm  
13 sure that they will be discussing the matter with you.

14 All right. Let's move on.

15 MS. CADE: Wallace F. Lippincott, Jr. from the  
16 Baltimore County Office of Planning and Zoning, who does  
17 not care to testify.

18 MR. LIPPINCOTT: No comment, right.

19 MS. CADE: Mike M-A-R-Q-U-A, Marqua?

20 MR. MARQUA: Marqua, right.

21 MS. CADE: From Baltimore Harbor --

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1 MR. MARQUA: Endowment.

2 MS. CADE: -- Endowment, who does wish to  
3 testify.

4 MR. MARQUA: Judge Liss, the members of the  
5 Commission, my name is Mike Marqua. I'm the Executive  
6 Director of the Baltimore Harbor Endowment. The  
7 Baltimore Harbor Endowment, in its efforts to expand  
8 public awareness of the environmental problems  
9 threatening the Chesapeake Bay and the Baltimore Harbor,  
10 and its efforts to promote greater public awareness of  
11 the Bay and its surrounding shorelines, would like to  
12 take this opportunity to support the draft proposal of  
13 the Baltimore City Critical Area Management Program, as  
14 prepared by the Planning Department of Baltimore City.

15 The Endowment feels that through the Critical  
16 Area Management Program the City will take a major step  
17 to improve the 350 acres of shoreline available to the  
18 public, with programs like the addition of public  
19 fishing piers on Hull Street and Locust Point, Boston  
20 Street and the Canton area, and the pier sponsored by  
21 the Endowment in the Middle Branch Park. The public

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1 access to the Bay and the Harbor will be greatly  
2 increased by these programs.

3           Projects like the Water Resource Center in the  
4 Middle Branch Park will provide public education about  
5 the importance of water quality and the environment to  
6 the Chesapeake Bay and Baltimore's Harbor. It is our  
7 hope that through the implementation of the Critical  
8 Area Management Program, the city will continue its  
9 efforts to expand and enhance existing public access  
10 opportunities, and it is our hope the city will continue  
11 to acquire land for expansion of its Middle Branch Park,  
12 and incorporate new public spaces in its plans for the  
13 waterfront revitalization area.

14           Being ever mindful to the need for the -- being  
15 ever mindful of the need for the Critical Area  
16 Management Program to be environmentally sensitive to  
17 new development, new development along Baltimore's  
18 shoreline, the environment -- the Endowment feels that  
19 the -- that equal amount of sensitivity be given to the  
20 need for the economic growth and development that is  
21 critical, that the Critical Area Management Program work

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1 with the -- with private industry to come up with new  
2 and innovative plans for implementing the offset, and  
3 run-off pollution reduction offset programs for the  
4 mutual benefit of the public and environmental concerns.

5 To summarize, the Baltimore Harbor Endowment  
6 would like to assist in voluntary compliance with the  
7 law, to provide access to funds and resources to help  
8 with plannings of these buffer areas, to provide, when  
9 available, matching funds and grants to aid the  
10 implementation of the environmental projects, and to  
11 facilitate the acquisition of easements for the  
12 industrial receiving areas for the buffer -- buffer  
13 offsets.

14 Thank you.

15 MR. LISS: Let me ask what may be a silly  
16 question, and I'm not going to ask you for an answer,  
17 put you on the spot, but I hear this gentleman say that  
18 he wants to stay in Baltimore City, and you say that you  
19 want Baltimore City to be aware of its environmental  
20 needs, and of its needs to continue to do business. Is  
21 there a program that the Baltimore Heritage might be

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1 able to help the gentleman who testified just before you  
2 with? Or is at least the kind of thing that's worth  
3 talking about?

4 MR. MARQUA: Well in -- Right now, we're in the  
5 stages of creating a program that could utilize public  
6 and private dollars and resources to create a equitable  
7 solution to the problem, to buffer offsets and the water  
8 quality offsets. We believe that there is a answer to  
9 the question you have, to both serve the needs of  
10 industry, and of public, and the environmental side of  
11 the question. We feel that the plan is a good plan, and  
12 that there is ample opportunity within the plan to work  
13 around existing programs and situations that industry  
14 has now, and we would like to help in any way possible  
15 in augmenting any of these opportunities to create a mix  
16 of private and public sector dollars to create the  
17 proper offsets to enhance our environment and help the  
18 overall quality of the waters of the Baltimore Harbor.

19 MR. LISS: Well it might be useful for you  
20 gentlemen to meet each other --

21 MR. MARQUA: We'd love to.

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1 MR. LISS: -- after this hearing.

2 MR. MARQUA: Right.

3 MR. LISS: All right.

4 MR. MARQUA: Thank you.

5 MR. LISS: Next.

6 MS. CADE: The next two names are R.K. Gupta  
7 from the Baltimore City Planning Department and Bob  
8 Hewitt from the Planning Department.

9 MR. HEWITT: No comment.

10 MS. CADE: Steve Bunker from the Chesapeake Bay  
11 Foundation.

12 MR. BUNKER: Judge, members of the Commission,  
13 we have basically four comments that we'd like to make.  
14 The first is that we're -- are very pleased that  
15 Baltimore has applied for a buffer exemption for the  
16 critical area plan. We think that is the best approach  
17 to take. It does not send a message to the other  
18 counties. It does allow for the same procedure to be  
19 followed in other intensely developed areas as well, if  
20 they see fit. So we are pleased that Baltimore has  
21 taken that -- that step. We do advise that the request

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1 for exemption be moved into the text of the plan rather  
2 than the appendix, to make it clear.

3           There are two other issues that we'd like to  
4 just bring up under the buffer provisions. We believe  
5 that the hardship provision, in which a site that has  
6 more than 15 percent of its area in the buffer, is  
7 exempt from the buffer requirements, and the waterfront  
8 industrial district is not needed. We feel that 15  
9 percent is not a hardship, and, secondly, that that  
10 particular provision may be best taken care of in the  
11 variance procedures, rather than having it in the text  
12 of the buffer provisions.

13           Secondly, we would question whether the  
14 definition of significant development in the -- in the  
15 section on which projects receive critical area review,  
16 we would question whether significant development is  
17 anything over 5,000 square feet in the buffer. We would  
18 contend that any development in the buffer would be a  
19 significant development, and should be reviewed under  
20 the critical areas plan.

21           The second comment we would like to make is we

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1 have some concerns about the grandfather provisions in  
2 the plan. The grandfather provisions state that if a  
3 project, or a structure, or operations in the buffer are  
4 maintained or improved for existing or similar uses,  
5 without -- if they are maintained or improved for  
6 existing or similar uses, they can be exempt from the  
7 provisions of the criteria. We don't necessarily see  
8 anything wrong with this, but it's a very broad  
9 statement, and the grandfather provisions are only two  
10 paragraphs. We would suggest that Baltimore expand on  
11 this to make it clear what is the maintenance or  
12 improvement of an existing or similar use. I know that  
13 this is a very difficult thing to do. It's a very  
14 subjective decision to be made, whether something is  
15 redeveloping or just maintaining or improving existing  
16 or similar use. It is very difficult to put down in  
17 words and on paper, but we're afraid that Baltimore City  
18 may find itself in some legal problems if this is the  
19 only definition of what is -- can be grandfathered. We  
20 suggest that they expand this section on grandfathering.  
21 We don't have any problem necessarily with the way

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1 they're going about it, but we do urge that they pay  
2 particular attention to how they define the maintenance  
3 or improvement of existing or similar uses.

4 The third major comment is the section on  
5 habitat areas in Baltimore City. We believe that  
6 Baltimore City should do a better job of mapping these  
7 areas. As you're aware right now, there are just stars  
8 indicating where these significant habitat areas are.  
9 In fact, the map in the original plan is different than  
10 the map in the appendices. There are 20 sites in the  
11 appendices and only 16 in the original plan. We would  
12 like to see these areas indicated on a map of a larger  
13 scale, with boundaries -- Well, sorry.

14 MS. DOLAN: That's okay.

15 MR. BUNKER: And also some statement inside the  
16 text of the -- of the plan as to why they are  
17 significant. In addition, the criteria also calls for  
18 a plan for the protection of each one of these habitat  
19 areas, which is not in the appendices or the text.

20 The last comment is basically directed at the  
21 members of the Commission, and that is we urge that you

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1 determine, not only for Baltimore City but for other  
2 plans that may come before you, when a plan is  
3 officially submitted. We notice that Baltimore  
4 submitted their plan, and then they submitted their  
5 appendices, and they're still to submit their draft  
6 ordinances. When we -- I know we have discussed this,  
7 but it's still unclear to us when an official plan is  
8 submitted and when the clock starts ticking on the 90  
9 days for your review. This is mostly for the  
10 Commission's benefit, and not necessarily to Baltimore  
11 City's, but it could become the significant issue in the  
12 future, as more plans come in.

13 Last, we would like to commend Baltimore City  
14 on their plan. We think it's a very good one. We think  
15 that most of the major issues have been resolved, and  
16 we'd like to commend Mary Dolan and the Planning Staff  
17 of Baltimore City.

18 Thank you.

19 MR. LISS: Thank you very much. Anyone else?

20 MS. CADE: The last name on the list is Clay  
21 Jones from the Chesapeake Bay Commission, who has

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1 indicated no interest in testifying.

2 Do you think for the record you should indicate  
3 whose --

4 MR. LISS: Yeah. There are three members of  
5 the Commission who are present at this hearing: Mr.  
6 Skip Zahniser of the Calvert County, Ardath Cade who  
7 represents the -- What's the name of that --

8 MS. CADE: Department of Economic and Community  
9 Development.

10 MR. LISS: -- Department of Economic and  
11 Community Development, and Judge Solomon Liss, the  
12 Chairman of the Commission.

13 The legislature's act requires that at least  
14 three members of the Commission be present at all of  
15 these hearings, and that requirement has been met. The  
16 two additional members of the Review Committee, James  
17 Gutman, of Anne Arundel County, is out of the country.  
18 And we received a call from William Bostian of --

19 MS. DOLAN: Wicomico County.

20 MR. LISS: -- Wicomico County, to the effect  
21 that because of prior commitments, he would not be able

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1 to attend.

2 Is there anyone else who has anything else they  
3 want to tell us?

4 Now, I'd like to make it clear that while we  
5 have this hearing this evening, that if any of you have  
6 written information that you would like to file with the  
7 Commission that we will keep the record open for two  
8 weeks so that anybody who wants to write us, either by  
9 letter or by any other statement, we'll be delighted to  
10 get it at our offices in the Tawes Office Building, 4th  
11 Floor of the Department of Natural Resources, D-Wing,  
12 and that's in Annapolis, Maryland.

13 I might also say that any other person who  
14 wishes to file any information with us, we'll be more  
15 than pleased to consider it.

16 And for those of you who took the time and  
17 trouble to come down here, the information that you've  
18 given us today will be typed up by the Reporter who is  
19 here. It will be available to all of the members of the  
20 Commission. It will be called to the attention of the  
21 members of the Commission, and of course it already is

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1 called to the attention of the Planning Department, and  
2 I'm sure that there will be some effort made to comply  
3 with the suggestions that have been made.

4 Anyone else have anything to say?

5 MS. DOLAN: Do you want to make a statement  
6 about the submission, questions --

7 MR. LISS: Yeah. Now as to the -- Let me make  
8 a statement as to the matter of the submission of this  
9 report. There was originally some discussion as to what  
10 was the original date, on the basis of trial and error  
11 really, because Baltimore City was the first one to  
12 reach the situation that it has. They originally sent  
13 us their overall program, and then sent us their  
14 appendices, and then waited for our comments on the  
15 program and the appendices, and are working now on the  
16 preparation of the ordinances that are required to make  
17 the necessary changes in the zoning laws. We at the  
18 Commission have had several discussions, and we've come  
19 to the conclusion that a program ought not to be  
20 considered as having been submitted until the  
21 ordinances, the appendices, and the program itself have

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1       been furnished to the Commission, so that we have the  
2       entire package before us for our consideration. And 90  
3       days begins to run when that entire package has been  
4       sent to the Commission. We have so advised Baltimore  
5       City. They have no objection to that, and, in effect,  
6       their program has not, at this point, yet been  
7       submitted. They've indicated to us, as a result of a  
8       conference that we had with them today, that the  
9       probabilities are that they will not be ready to submit  
10      the entire package until sometime around the first part  
11      of September, and that they will ask for the 180-day  
12      extension, which most of the other jurisdictions have  
13      asked for and received from the Commission. As Chairman  
14      of the Commission, I have been authorized to grant that  
15      extension if I feel that the local jurisdictions are  
16      acting in good faith, and I don't think there can be any  
17      question that Baltimore City has, in good faith,  
18      attempted to meet the deadline, and so there will be no  
19      problem about the granting of the 180 days. It means,  
20      then, that the 90-day period will probably begin to run  
21      sometime after the first week in September. However, we

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1 have assured the City that in view of the fact that we  
2 have had this information, and have had an opportunity  
3 for the staff to go over it, and for a number of the  
4 other departments to go over it, that it's very unlikely  
5 that we will require the 90-day period that is permitted  
6 by the law, and we feel certain that we will be able to  
7 give the City a reasonably prompt answer as to whether  
8 or not we approve or disapprove of what they have filed.

9 We put that on the record so that it will be  
10 clear to other jurisdictions what it is that we're  
11 looking for. The law is clear, and if you follow what  
12 the statute requires, that the entire program be  
13 prepared and submitted to the Commission at the time  
14 when it is submitted for consideration, then I don't  
15 think there will be any confusion. That at least will  
16 dispose of one of the problems that Mr. Bunker called to  
17 our attention.

18 MS. DOLAN: It will be submitted in August and  
19 reviewed by the Commission in September, because of the  
20 August deadline.

21 MR. LISS: Yeah. The -- Ms. Dolan reminds me

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1 that it actually will be submitted in August, rather  
2 than the first week in September.

3 All right. Any other questions, or any other  
4 comment to be made? If not, I think we'll wait another  
5 15 to 20 minutes in case there are any late comers who  
6 come straggling in. But it appears that we've covered  
7 everybody who wants to be heard. And, as I say, if you  
8 want to file any written information with us, we'll be  
9 delighted to get it.

10 Thank you very much for taking the time and  
11 trouble to come down to give us your viewpoints.

12 (Whereupon, at 8:00 p.m., the hearing was  
13 concluded.)  
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*Hunt Reporting Company*

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CERTIFICATE OF NOTARY

I, Harold H. Adams, the officer before whom the foregoing hearing was held, do hereby certify that the testimony that appears in the foregoing transcript was taken by me by magnetic tape and thereafter reduced to typewriting by me or under my direction; that said transcript is a true record of the testimony given; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



HAROLD H. ADAMS

Notary Public in and for the  
State of Maryland

My Commission Expires:

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