

Public Hearings - Town of Charleston - 5/11/87 - 1987 - MSA-51030-8

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PUBLIC HEARING

TOWN OF CHARLESTON
CRITICAL AREA COMMISSION
DEPARTMENT OF NATURAL RESOURCES

Wednesday, November 4, 1987

7:35 p.m.

Town Hall

241 Market Street

Charleston, Maryland

PRESIDING: Victor Butanis, Chairman, Critical Area
Commission

Russell Farrell, President of Town Board

Reported by: Sara A. Cissin, CSR

P R O C E E D I N G S

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MR. FARRELL: I'd like to welcome everybody here for the town's portion of the critical area program hearing. This is going to be a joint hearing. The State Commission is going to have their hearing and we are going to have our public hearing simultaneously, and they are both required by law.

The one thing these gentlemen have asked me to do is to introduce some of the town officials that are here.

I am Russell Farrell. I'm president of the town board. Standing over here is vice-president of the town board, Rosalyn Bott. Back in the back corner with the brown sweater on is Edgar McMullen, treasurer. The white shirt and blue tie, that's Charles Biehl, one of the commissioners, and Mr. Stanley is one of the other commissioners.

Standing over here with the red tie is Mr. Bob Fisher; he's our top administrator and he was our local representative on the county's Critical Area Program Committee. In the brown vest is John McMullen. He was chairman of the Planning and Zoning Commission, and next to him on this side is Mr. Williams. He's chairman of our

1 Charleston Board of Appeals.

2 At this time I'm going to turn it over to Mr.
3 Butanis.

4 MR. BUTANIS: My name is Victor Butanis. I'm the
5 Harford County representative to the State Critical Area
6 Commission. To my far right is Wally Miller. He's the
7 representative from Kent County. To my immediate right is
8 Kay Langner. She is Cecil County's representative. And to
9 my left is Ron Adkins, Somerset County's representative. And
10 as was previously indicated, we will be holding a joint
11 hearing tonight.

12 The purpose of the hearing insofar as the Critical
13 Area Commission is concerned is to hear and receive public
14 comment on the proposed program for Charleston, and that's
15 required under Section 8-1809 of the Critical Area Law, which
16 is found in the Natural Resources Article of the Annotated
17 Code.

18 The Commission has to make a decision on this
19 program within 90 days of its submission. Anyone wishing to
20 make any statements or comments, we will take note that
21 everything being said here tonight is being recorded by the

1 court reporter. A transcript will be typed up and will be
2 made available at the offices of the Critical Area Commission
3 in Annapolis. The record will be kept open for approximately
4 a week or ten days. Anyone wishing to supplement the record
5 has a right to do so by mailing a written statement to the
6 Critical Area Office within that time frame.

7 I see a number of people have registered tonight
8 but nobody has expressly indicated a desire to make any
9 statements. But if there is -- before we get into that, I
10 think it might be a better thing if the consultant who put
11 the program together would make a short presentation, just
12 give a brief overview, and then we will open the floor to
13 comment.

14 MR. PIERSON: My name is Bob Pierson. I'm with
15 Rogers, Golden & Halpren up in Philadelphia, and we were
16 consultants to the town and to the county on the Critical
17 Area project. I think you're all aware, as Mr. Butanis has
18 indicated, the state law, Critical Area Law was passed in
19 order to protect the water quality and wildlife habitat
20 around the edges of the bay. The Critical Area is defined as
21 the one thousand feet of fast land above the mean high tide,

1 tidal wetlands of the Chesapeake. And the law says that the
2 Critical Area Commission has to come up with some criteria
3 which would govern land development in the Critical Area.
4 And one of the main things that it did was to divide the
5 Critical Area into three management areas, land
6 classifications, called the intense development area, limited
7 development area and resource conservation area. And that's
8 given in order of from intense to less intense use. Resource
9 conservation areas are the ones that are -- are the areas
10 that are dominated by agriculture, by wetlands, by forests,
11 by barren lands and open space.

12 Now, what the criteria says is that each local
13 jurisdiction, counties and towns that are in the Critical
14 Area have to to develop programs that will be implemented
15 through their land use regulatory instruments -- zoning,
16 subdivision, their master plan, and smaller ordinances on
17 storm water management, soil and erosion control ordinances
18 that would protect water quality, and planned wildlife
19 habitat in the Chesapeake Bay.

20 The program elements that are part of the town's
21 plan that are required are ones that are directed toward

1 development in those three land use classifications and how
2 that development will unfold in the future, and special land
3 use regulations for forest, ag, and mineral resources, sand
4 and gravel operations. The special land use regulations are
5 in general implemented for the town by state agencies that
6 control it. The town doesn't have authority to do that
7 except to recommend to the state agencies already regulating
8 these things that they include certain things in their
9 reviews.

10 Then there are resource protection elements, and
11 these have to do with the buffer, which is defined as the
12 first one hundred feet of the shoreline in from the mean high
13 tide and also tributary streams that cut through the Critical
14 Area from the uplands, nontidal wetlands, threatened and
15 endangered species, plant and wildlife habitat, anadromous
16 fish, and natural parks which are intended to be an
17 educational device identifying areas where people from
18 Maryland and people from the East Coast can go and see good
19 examples of the ecosystems in the Chesapeake Bay.

20 I'd like to turn it over to Peter Johnston from
21 Redmann & Johnston Associates to talk to us a little bit

1 about some of the details in the development part of it, and
2 particularly the growth allocation aspects of the frame.

3 MR. JOHNSTON: As Bob mentioned, besides
4 developing the program, each of the program elements contains
5 goals, objectives and general recommendations for the town on
6 how to manage a particular aspect of the criteria, whether it
7 be development or whether it be some sort of resource
8 protection or some sort of resource utilization in case they
9 have sand and gravel. The criteria also required that the
10 local program be implementable, i.e., that it must be put
11 into effect; that it cannot just be policy. It cannot be
12 statements of things we would like to do, but it must show up
13 in the land use regulations of the community.

14 It's been our responsibility as consultants on
15 this project to develop the implementation aspects of the
16 program, and we have done this for the town of Charleston.
17 The implementation takes the form of what is known as an
18 overlay zone, and the overlay zone fits right over top of
19 this thousand-foot Critical Area along the shoreline that Bob
20 mentioned earlier.

21 In effect, it does not change the zoning. If

1 you're currently zoned residential, you're still going to be
2 residential. If you're zoned commercial, you're still going
3 to be commercial. But it does impose a series, another layer
4 or standards for development and criteria for development
5 that are mandated by the criteria. And each of those land
6 management areas, the IDA, intensely developed area, the
7 limited development area and the resource conservation area,
8 have separate and distinct development standards that go with
9 each one of them, so that they vary somewhat.

10 Within the implementation, we have also provided
11 for the community regulations to deal with some of the kind
12 of practical problems that the criteria impose. Particularly
13 in a community that's also developed, a lot of land is
14 already subdivided, buildings have already been built, a
15 number of them closer than a hundred feet to the water, some
16 lots haven't been built but they have been platted and they
17 are not deep enough for someone to have a hundred-foot
18 setback. So we have included provisions that you all would
19 probably recognize as grandfather provisions. And these are
20 special provisions for lots that were created prior to the
21 Critical Area Law. And in the context of those lots we

1 provided some guidelines for how to deal with the fact that
2 the lot is created prior to the criteria; but also how we can
3 attempt to do some of the better site management techniques
4 that come out of the criteria.

5 In addition, we have included provisions in the
6 implementation to deal with the variances. There are
7 situations where the land form or some circumstance beyond
8 the control of the property owner would create a hardship and
9 they are not able to comply with the criteria. So we have
10 given you recommendations for including in your zoning
11 ordinance under the Board of Appeals authority for dealing
12 with variances within the Critical Area.

13 In addition to development standards under your
14 zoning codes we provided additional development standards
15 under the subdivision regulations where land is actually
16 being subdivided. These standards or these requirements are
17 designed to elicit the information from the developer so that
18 he addresses the issues within the site development plan or
19 the subdivision plat that are required from the criteria. He
20 does the computations about how much woodland is on this
21 site, how much is going to be removed, how much is going to

1 be replaced. He does the kind of computations on how much
2 additional impervious surface is going to be added to the
3 site -- all of the things that are required in the criteria.

4 In the process of developing the implementation
5 and the programs, one of the things we recognize is that,
6 particularly with a small community, it puts another layer of
7 technical review, another layer of responsibility on the town
8 officials to be able to review a plat, to review a proposal,
9 to be able to review an application for some sort of
10 development, and determine whether or not it in fact complies
11 with your local program.

12 One of the things that we have been able to
13 collectively with the county develop is a cooperative
14 relationship with the county so that the staff of the county
15 planning office will provide the kind of technical reviews
16 that are necessary when development comes in to ensure that
17 it's in fact consistent with your local program.

18 I think that pretty much covers all this. Drafts
19 of all this material have been available here in the
20 community for some time now. Maps that show which areas are
21 in this intensely developed and limited development and

1 resource conservation have also been available in the town
2 hall for some time now, and they are going to continue to be
3 available so that anyone who wants to take a look at those --
4 if you're going to make written comments and want to look at
5 some of the specificity, this stuff will be here for you to
6 take a look at.

7 Thank you.

8 I'm sorry. May I say one other thing? One of the
9 things that the law specifies is that there are certain
10 situations where areas that were currently designated -- this
11 resource conservation -- or even limited areas, where the
12 development that's going to occur on them may be more intense
13 than is currently permitted under the criteria. You may or
14 may not know that in the areas that are currently designated
15 resource conservation, there is a density limitation of one
16 dwelling unit per 20 acres. In the areas that are designated
17 as limited development areas, there is a cap on density at
18 something slightly less than four dwelling units per acre.
19 There are provisions in the criteria for changing the land
20 use management classification of an area, and this is what is
21 known as growth allocation.

1 The growth allocation is based on a computation of
2 five percent of the total resource conservation area mapped
3 countywide. Cecil County has mapped that and in total we're
4 talking about approximately 941 acres in Cecil County. Cecil
5 County in developing their program has taken a portion of
6 this growth allocation and put it into what they call a
7 set-aside for the municipalities. And they have taken that
8 set-aside and further disaggregated it down to the
9 communities that are located in the Critical Area and said
10 we're going to set aside so much for Charleston, so much for
11 North East, and so on.

12 In your implementation package we have made
13 recommendations on how to deal with growth allocation and
14 when you want to change the land management classification of
15 a particular site. And the way we have done this is with
16 what is called a floating zone. So that if the town
17 officials decided they wanted to change the classification of
18 an area to allow a more intense development form, they will
19 just float this growth allocation floating zoning down
20 through procedure and place it on the site and thereby move
21 it into another category.

1 Thank you now.

2 MR. BUTANIS: I believe there is no resource
3 conservation in Charleston.

4 MR. JOHNSTON: That's correct.

5 MR. FARRELL: Could you give the approximate
6 amount of the other two?

7 MR. BUTANIS: 79.8 acres of intense development
8 and 95.6 acres of limited development.

9 MR. PIERSON: And there is 8.2 acres of growth
10 allocation derived from the county's five percent.

11 MR. BUTANIS: The time has come, anyone wishing to
12 make any comments, now is the time to do it. If there is
13 anyone, I would request that you stand and identify yourself
14 for the record and proceed to tell us what you want.

15 MR. WILLIAMS: The brief overlays were helpful.
16 Specifically how does the law apply to Charleston as
17 proposed? For example, if we were to start at the Charleston
18 Manor area and proceed down the waterfront, how would this
19 law affect the undergoing development of the land adjacent to
20 Jackson's Hill?

21 MS. LANGNER: Smith's Landing.

1 MR. WILLIAMS: I guess it's Smith's Landing.

2 MR. FARRELL: That was grandfathered in. The next
3 lot up is not --

4 MS. LANGNER: It's the fire company's lot.

5 MR. WILLIAMS: Okay. We've got the hundred-foot
6 buffer zone and I assume that covers to the first street,
7 right? The one-thousand foot, where does that go to? Just
8 tell me.

9 MR. FARRELL: It's not a straight line. It's a
10 problem. It's circular. It leapfrogs across the town.

11 MR. WILLIAMS: It leapfrogs across town because of
12 the waterfront contour.

13 MR. FARRELL: They took a compass and made a bunch
14 of circles.

15 MR. WILLIAMS: Who did that?

16 MR. FARRELL: The state did all this from aerial
17 photographs. We didn't have any input in that at all.

18 MR. WILLIAMS: One thousand foot goes to this
19 house; who is this, Gus Clayton? This is from the mean high
20 tide to Gus Clayton's place.

21 MR. FARRELL: Right.

1 MR. WILLIAMS: That you can build one house for 20
2 acres?

3 MR. FARRELL: No. There is no resource
4 conservation in Charleston. The orange area is -- what is
5 inside the orange, this is intensely developed. You can have --
6 he's stuck with everything. He's the president of the Board
7 of Appeals. The people asking for variances are going to see
8 this man. So he has to understand what's going on here.
9 This is the intensely developed areas, the orange.

10 MR. BUTANIS: Pretend you're addressing the court
11 reporter so everybody can hear.

12 MR. FARRELL: The yellow areas are limited
13 development. Inside the yellow areas here you're restricted
14 to somewhat less than four houses per acre. Here slightly
15 more than four houses per acre would be allowed. There are
16 no resource conservation areas in Charleston proper. The
17 growth allocation they are talking about would be applied
18 within the yellow areas. It would change the yellow to
19 orange. Here's Smith's Landing. And as you can see it was
20 grandfathered in. This is the fire company.

21 MR. WILLIAMS: There are going to be many copies

1 of this available?

2 MR. FARRELL: Yes. Many, many, many of them.

3 MR. WILLIAMS: The biggest problem is, as I
4 mentioned before, at the meeting in North East is that all
5 the experts, all the representatives from the county and
6 consultants and so forth, they become experts in the area,
7 and when you're going to talk about knowledge in any given
8 area you have to understand the definitions. And I hope that
9 the town has made provisions for booklets, pamphlets, et
10 cetera, for definitions and defining what the law is and what
11 the terminology is and so forth. Once you understand the
12 language you're speaking of, then you can begin to request
13 it. I doubt -- this is the second one I have been to and I
14 understand it roughly.

15 Over a lifetime of having been in the community to
16 me I'm always suspicious of more governmental entities, if
17 you will, and it truly, truly concerns me. And you have
18 alluded to it by saying that the county was going to furnish
19 all the support service and all the expertise. And that
20 again, I'm just always suspicious of another layer of
21 government, another layer of regulation, all of which leads

1 to costs and so forth and so on. I'm sure this concerns a
2 lot of people here. Many people are retired and how does it
3 affect them personally? And I just took a wild shot and
4 looked at the map, and I'm probably the last house in town
5 heading south across from the school at the top of the hill,
6 and it misses me by two houses, that thousand foot. So it's
7 quite encompassing.

8 In the real world if somebody could give an
9 English version or analogy of what the overall impact
10 generally would be to this community.

11 MR. MILLER: Mr. Williams, let me back you up a
12 moment. Don't ever get the idea that we individually or
13 collectively are experts. I sure don't profess to be one and
14 if we know --

15 MR. WILLIAMS: You almost have to be in
16 self-defense, right?

17 MR. MILLER: Not really. Not really. There are
18 times we're just as confused as you are. Hopefully out of
19 confusion can come some common sense.

20 MR. WILLIAMS: Okay. I'll accept that. Again,
21 somebody, English version of the direct real world impact on

1 this community and its people. Anybody care to -- I know
2 that's broad, very general, and I like more specifics, but as
3 a start or --

4 MR. JOHNSTON: Let me say a couple things in
5 response to what he said. First of all, there are
6 definitions in here.

7 MR. BUTANIS: Would you identify yourself?

8 MR. JOHNSTON: Peter Johnston. There are a number
9 of definitions in here. As far as the LDA goes, as nearly as
10 we can tell there is no impact on density that you can put
11 under your current zoning. It's not going to affect the
12 number of units per acre that you can put on a site primarily
13 because you don't have a resource conservation area. There
14 are no density caps. So it's not going to affect that at
15 all.

16 Remember that the goal of the program is water
17 quality and habitat protection. And generally what you're
18 going to see in the development process is more emphasis on
19 controlling the runoff from sites and the quality of that
20 runoff. You're going to see in the limited development area
21 more emphasis on maintaining a balance between areas of the

1 site that are disturbed and areas of the site that are left
2 in some sort of natural vegetation. So there is going to be
3 some limitations on total impervious surface that's going to
4 be permitted in the limited development areas on a given
5 site, and that's going to range between 15 and 25 percent
6 depending on when the lot was platted and depending on the
7 size of the lot.

8 In general you're going to find that there is
9 going to be a lot of emphasis in the program on retaining the
10 forested or developed woodlands that currently exist in the
11 community, and a lot of encouragement to, when trees are
12 removed, to have them replaced either on the site or
13 somewhere else so that the amount of tree cover that
14 currently exists in the community is maintained at the level
15 it is now or increased over time, because tree cover has a
16 beneficial effect both for water quality and for plant and
17 wildlife habitat.

18 In kind of real world terms, it's going to mean
19 that more information is going to have to be submitted at the
20 time of the application, but as far as the impact on the
21 development process in the town, it's going to be pretty much

1 limited to what I have just talked about.

2 MR. WILLIAMS: So that they will have no fear from
3 the programs as such, if they care to put a garage addition
4 to their house or what have you?

5 MR. JOHNSTON: There is going to be some issues
6 with the buffer. The hundred-foot buffer runs across all
7 zones --

8 MR. WILLIAMS: Except the hundred-foot buffer.

9 MR. JOHNSTON: Except. And even in the case of
10 the buffer, as I said earlier, in those areas where it's a
11 practical difficulty, there is going to be some flexibility
12 in the way the town handles locating of new structures on
13 those lots.

14 MR. WILLIAMS: The one other thing that bothered
15 me -- and I fall back to where you said county expertise -- I
16 think most municipalities are a little touchy about the
17 county and their business; but in this case, this is the good
18 part you want to accept. I'm going to take it one step
19 further. What about the enforcement factor? Does that rely --
20 the assignment of such, is that strictly on the town?

21 MR. JOHNSTON: Enforcement will continue to remain

1 with the town. The county is not going to get into the
2 enforcement business in your community. That's going to be
3 your responsibility; that's correct.

4 MR. BUTANIS: Anyone else? Would you please stand
5 and identify yourself?

6 MR. BIEHL: I'm Charles Biehl, a commissioner.
7 The term insofar as possible seems to come up in this
8 document on a rather frequent basis, and my question is in
9 the form of a request. Would someone from the panel please
10 specifically address some instances under which the town is
11 going to be called upon to make a decision where compliance
12 can be met, quote, insofar as possible, unquote?

13 MS. LANGNER: If something were already in the
14 buffer or say you had a small lot right on the water and you
15 could not possibly build behind the buffer because there
16 wouldn't be enough room to build, you'd be in the street,
17 then as far as possible, you would try to build that house
18 and keep as much as of the buffer as you can, but still be
19 able to build a house on it.

20 MR. BIEHL: Who would be watchdogging the town
21 officials? Who would be in charge of making such a decision?

1 My real question is to what degree is the town going to be
2 empowered to declare the limits of "insofar as possible?"

3 MR. JOHNSTON: Absolutely, that's going to be
4 strictly a local responsibility. As far as I know, no one is
5 going to be watchdogging you in those areas. When your
6 program is adopted, you're permitted to use judgment, and the
7 insofar as possible provisions, you know, you're on your own.

8 MR. MILLER: If the county is wise at all, and I
9 happen to be a county commissioner in Kent County and have
10 been on and off, one of the great things that we look at
11 constantly is prerogatives. I don't mess with our
12 incorporated towns, and they don't mess with us. We try to
13 work things out amicably. It's your responsibility, hoss.
14 We have got enough responsibility in Kent County and I'm sure
15 that county commissioners up here have the same problem. So
16 I don't think you will find intrusion, not at least in Kent
17 County, upon municipalities. We want you to take your ace
18 and run with it.

19 MR. BIEHL: There is reference in the document of
20 a forester to whom application will be made or approval
21 requested in developing certain areas.

1 MR. PIERSON: The town, the way the program is
2 written is the town can request of the county's Technical
3 Advisory Committee to review any applications we send up
4 there. The technical advisory committee has on it the bay
5 watershed forester as a state employee assigned to your
6 county. And he's one of -- I don't know how big your
7 committee is -- 16 individuals. A requirement of that, of
8 setting it up for county review is that the town sends up a
9 member to sit on that technical advisory committee and
10 represent the findings or the recommendations back to the
11 town when it comes back down. But they are findings, they
12 are recommendations.

13 The county Technical Advisory Committe will not
14 say do it this way or do it that bay. They simply will make
15 determinations of fact about the parcel and maybe some
16 guidance of what does insofar as possible mean on lots which
17 are -- that cannot meet, because of the shape of them or the
18 location of the grandfathered lots, they can't meet the
19 provisions of the program.

20 MR. BIEHL: Obviously this relates back to
21 enforcement. The document also mentions that in such time as

1 the legislation becomes law, Charleston will be able to hire
2 the additional staff required to enforce and oversee this
3 legislation. Where is that person or are those people going
4 to come from and on what basis will the town be able to
5 provide the salaries for those people? Indirectly the
6 document alludes to financial assistance. I would prefer to
7 know it's much more specific, and who's going to assist the
8 town in providing the services needed?

9 MS. GLEISNER: Each of the towns were requested to
10 submit a proposed budget to the state Critical Area
11 Commission on how much they thought it could cost for them to
12 enforce the Critical Area plan. These budgets will be
13 reviewed by the General Assembly and the amount that each
14 municipality and town, county will receive will be based on
15 what happens in the General Assembly in the coming session.

16 MR. BUTANIS: Getting back to one of your earlier
17 comments, I just want to make note that there may be an
18 occasion where a project or development would come under the
19 scrutiny of the Commission, and I would ask Kevin Sullivan,
20 who's the staff planner for the -- one of the staff members
21 for the Commission, if he could comment on when such an

1 occasion might arise.

2 MR. SULLIVAN: Those regulations are still being
3 worked on, but generally speaking the Commission would want
4 notice of projects like major subdivisions or major
5 waterfront or water-dependent facility construction -- would
6 want notice of the application of those projects on some kind
7 of periodic basis, either quarterly or semi-annually. And
8 that would give the Commission an opportunity to be aware of
9 the kinds of major projects that are going on in the Critical
10 Area and how a given county or jurisdiction has dealt with
11 them. But my guess would be for the vast majority of
12 projects here in town, that it would be done via a building
13 permit, and where you would not be involved in the major
14 subdivision, that the Commission would not wish to receive
15 notice of each and every one of those.

16 MR. BIEHL: Speaking of building permits, is there
17 a model building permit available? Since there are obviously
18 in some cases much more restrictions and qualifications that
19 have to be met by the potential developer or builder or
20 whatever, has any thought been given to that? Given
21 circumstances may require a major revision in some of our

1 bureaucratic paperwork.

2 MR. BUTANIS: It's a good point. As far as I know
3 the commission hasn't given any thought to that. I don't
4 know if the town has or not.

5 MR. FARRELL: None.

6 MR. BIEHL: As the person responsible for making
7 those forms work, it's complicated enough just to make sure
8 all the bases are covered, and any assistance that can be
9 provided by those people who aren't experts but who are
10 called upon to be anyway, we would appreciate it.

11 GREG NEWSWINGER: Going along with the same line
12 of questioning, I was at the Elkton Critical Area meeting and
13 I was led to believe there would be a particular person or
14 persons or whatever from the Commission assigned to the small
15 areas as the subdivisions, a town or whatever. With this I'm
16 led to believe there isn't such a person that is, not
17 responsible, but to give assistance and what have you, like
18 one particular person for this area and other areas. That's
19 basically my question, whether there is one particular person
20 that would be responsible for this area.

21 MR. SULLIVAN: There is a staff person assigned to

1 each county or municipality, and I'm the one assigned for
2 this particular program in terms of getting it through the
3 hearing process and getting comments made. But there was
4 also a suggestion as to when you implement a program,
5 starting next year, whether there would be resources or
6 monies made available to help with the staff. That's not me
7 and that depends on the legislature in allocating those funds
8 to do that.

9 MR. NEWSWINGER: It's just that nobody really
10 totally understands the situation, whether somebody was a
11 little more knowledgeable, somebody that knows a little more
12 what was going on enough to help with the applications and
13 that type of thing.

14 Going along with the same thing -- just another
15 real quick question and I'll be quiet. They also led me to
16 believe that the intensely populated areas would be kind of
17 dealt with in a matter of importance. They will take each
18 application -- and maybe I misunderstood what he was saying
19 or what have you -- but they would take each application and
20 decide whether or not it was going along with the program as
21 a matter of importance to the community, to the resource and

1 that type of thing. Is that true or am I misunderstanding?
2 Who would be kind of deciding this?

3 MR. JOHNSTON: If it's an area that's designated
4 as an intensely developed area on the maps beginning --

5 MR. NEWSWINGER: Charleston apparently --

6 MR. JOHNSTON: If it's designated that way, then
7 you're still going to have your rights and be able to
8 exercise your right under the zoning ordinance and under your
9 current zoning classification to do whatever is permitted
10 there. There is no calling in, is this one more important
11 than another? You're still going to be able to exercise your
12 right under the zoning.

13 There are going to be some standards for
14 development, as I mentioned earlier, particularly in the
15 intensively developed area, relates more to storm water
16 runoff than to anything. Now, those areas that get growth
17 allocation, those areas that are not currently designated
18 intensively developed but that there is a desire to designate
19 those, some of the communities may establish a kind of
20 screening process for those because they only have so much
21 growth allocation. That's limited, and they could say -- and

1 Elkton may have done this, I don't know, I'm just speculating --
2 that we're going to review the projects and we're going to
3 decide which projects should get growth allocation and make a
4 decision of importance in that respect.

5 That's kind of what the county is doing with
6 growth allocation, they're saying we only have so many acres;
7 only the best projects based on our review are going to get
8 growth allocation. Those projects that don't cut the mustard
9 aren't going to get it.

10 MR. NEWSWINGER: I also would ask how they would
11 come to the decision of what is an intensely populated area
12 by limited development area, because is it done by the
13 population per square --

14 MR. JOHNSTON: It's done by density of dwelling
15 units or concentration in an intensely developed area. It
16 may be a concentration of commercial and/or industrial
17 activities or institutional activities, or a density of
18 dwelling units in excess of five dwelling units per acre is
19 the cut for -- in the Critical Area criteria there are
20 standards for measuring whether or not an area is intensely
21 or limited developed area.

1 MR. NEWSWINGER: Then it has nothing to do with
2 the active development of any particular area?

3 MR. JOHNSTON: No. It's what is on the ground as
4 of December 1985. It doesn't take into account any plats
5 that haven't been built out or plans that have been approved
6 but not built. Just what is right there on the ground as of
7 December 1985.

8 MR. BUTANIS: Anyone else?

9 MR. FARRELL: Can I make a statement? I want to
10 make sure the Commission understands and relays to the powers
11 that be in the legislature that this is a very small
12 community. We're very resource poor. We don't have any
13 money. We're going to play Chinese laundry. No tickee, no
14 washee. Period. If you guys don't pay for it, we will have
15 no plan. We have no resources to apply to this program under
16 any circumstances. And if in the future -- if you resource
17 us now -- if in three or five or ten years, the state cuts
18 off the funds, we cut off managing the program. It's that
19 simple. It's not that we want to be hardnosed. We just
20 don't have the choice.

21 MR. MILLER: The same thing applies, I think, with

1 most all subdivisions and municipalities. The county is in
2 the same bind. I think we all get frustrated from time to
3 time when the state says you'll do things, and I say that's
4 fine but you're going to pay for it. So from my perspective,
5 I sympathize with you a hundred percent.

6 MR. FARRELL: Some of the larger areas may not
7 have that problem. They may have their resources to hire
8 additional staff. We don't. We have one full-time employee
9 and she has to stay here to answer the phones.

10 MR. WILLIAMS: Essentially that's the position of
11 the entire Eastern Shore.

12 MR. FARRELL: Right.

13 MR. BIEHL: Excuse me. So who will answer the
14 comment? Where is the money coming from?

15 MR. MILLER: I believe Janet has already said you
16 better talk to Ron Gunns (phonetic) and Walt Baker if you
17 want some money.

18 MR. WILLIAMS: That's to be determined at the next
19 legislature.

20 MR. MILLER: All we do is sit with some kind of
21 authority. I'm not sure what it is. I guess we're victims

1 like you folks are victims. There are those that probably
2 would agree with that connotation, but the whole thing is the
3 legislature passed the document. They passed the law. Then
4 if you need assistance and you can't afford to have
5 assistance, then it's my personal opinion -- I'm speaking as
6 an individual now -- the legislature has a right then and a
7 responsibility to fund it. I take the same exact tactic at a
8 county level that you folks are taking here. I see nothing
9 wrong with that. Kevin, do you want to shut me up?

10 MR. SULLIVAN: You're doing fine.

11 MR. BIEHL: If I can ask you to transcend just
12 your personal evaluation as the county official, what do you
13 see as your recourse should the funding not come?

14 MR. MILLER: We don't have the funds and we're not
15 able to do it. I'd have to presume that it won't get done.

16 MR. WILLIAMS: I'd like to add an analogy if I
17 could. Regardless of what level of government you're sitting
18 in, whether or not it be federal, state, county or town, the
19 government gives you absolutely nothing. To give you
20 anything, they have to first take it away from you. That's
21 the best analogy I can make about any program or any funding.

1 MR. FARRELL: We had considered one of the
2 recommendations would be a statewide levy on all building
3 permits, statewide. Everybody pays an extra \$2.50 or
4 whatever for their building permit. And have that money
5 funneled back in to us poor people that happen to have the
6 misfortune of living within a thousand feet of the bay. Let
7 the rest of the State fund this program.

8 It's hurting us. Let them pay for it. Whether
9 the legislature would go along with that, I don't know.

10 MR. BUTANIS: I would imagine you might get some
11 resistance from citizens in Garrett County.

12 MR. FARRELL: They are the ones who forced it.

13 MR. WILLIAMS: Did you ever hear us holler about
14 the subway system in Baltimore?

15 MR. BUTANIS: Anybody else have any comments
16 specifically with the local program? Try to get back on
17 track.

18 MR. BIEHL: A couple of statistical questions.
19 What percent of the pollution is being -- what percentage of
20 the pollution that this entire program is dealing with is
21 being produced in Cecil County?

1 MR. FARRELL: One, two, a half?

2 MR. BUTANIS: Anybody want to field that one? I
3 don't know if that's --

4 MR. WILLIAMS: Nobody has the answer to that.

5 MR. FARRELL: I don't think anybody has that
6 answer.

7 MR. JOHNSTON: I would venture a very rough guess.
8 It's in proportion to the area that you have, the Critical
9 Area, compared to the rest of the state.

10 MR. WILLIAMS: And you want me to buy that?

11 MR. JOHNSTON: I would ask you to buy it and I
12 would also suggest that this is -- this program is directed
13 by and large at nonpoint sources which by their nature don't
14 appear very intense anywhere but collectively they are
15 damaging the bay.

16 MR. WILLIAMS: I don't want to get into a match
17 here.

18 MR. JOHNSTON: I don't either.

19 MR. WILLIAMS: I'm truly not being facetious, but
20 if you'd take Baltimore City or Baltimore County and take the
21 Susquehanna River and if you take the North East sewage plant

1 or at least the old plant, literally, with the state's help
2 of chemicals, literally destroyed this upper end of the bay.
3 In 1946 you could see a dime on the bottom of the channel.
4 Am I right, Bull?

5 MEMBER OF AUDIENCE: Damn right. I have been
6 there. Have you?

7 MR. JOHNSTON: Yeah. The North East sewage plant
8 literally destroyed it. We have a new sewage plant -- what
9 is the point? -- Seneca Point, that I'm not convinced is the
10 entire answer. I'm never convinced that it's the answer to
11 return sewage to the bay when I think it should be returned
12 to the soil. But I'd have to say the sewage plants and the
13 state and the Susquehanna River are the major contributors.
14 We have seen the satellite pictures of the runoff from the
15 land from agriculture and development and so forth.

16 MR. BUTANIS: Yes, sir.

17 MR. STANLEY: Doug Stanley from the town
18 commission. Can you tell me, if at all, of any towns or
19 counties that are excluded from this type of program, and if
20 so why?

21 MR. FARRELL: Other than Baltimore, nobody else.

1 MR. BUTANIS: None of the jurisdictions which lie
2 within the Critical Area are excluded.

3 MR. NEWSWINGER: The Elkton Critical Area man
4 provided an outline of the area which is a pretty good
5 analogy of it. Maybe it would -- maybe the town
6 commissioners can understand it and see if they have a map on
7 there exactly what is intensely developed and limited
8 development areas. It would be helpful. It seems to explain
9 it pretty well.

10 MR. FARRELL: It's been here, laying here for a
11 couple months, at least a month.

12 MR. BIEHL: While the map is on the table, the
13 meeting we had last month in North East, we were going over
14 this map with the representatives from the county and state
15 who were in attendance and there was some real concern about
16 some areas which have been designated as limited development
17 areas, that they should be considered to be intensely
18 developed areas. And they were very agreeable and receptive
19 to that and I don't see any change --

20 MR. FARRELL: The map changed considerably. You
21 have the wrong map. It's dated the 29th of September and --

1 those changes have been made.

2 MR. BIEHL: As per our discussion at that last
3 meeting?

4 MR. FARRELL: Uh-huh.

5 MR. JOHNSTON: Yes. Your discussions were very
6 helpful in pointing out that the number of those units were
7 multi-family units as opposed to being single family units.
8 So the commission understands, this wasn't just an
9 accommodation. We just missed the fact there were more units
10 per acre there in the mapping, and the local officials
11 pointed that out to us.

12 MR. FARRELL: There was some commercial
13 development also you were unaware of.

14 MR. PIERSON: A large part was commercial
15 development.

16 MR. FARRELL: We probably should have notified you
17 of that. It was probably our fault.

18 MR. BUTANIS: Anybody else? Now is the time.
19 Does anybody from the Commission want to add anything,
20 clarify anything?

21 MR. MILLER: It's been a joy to see so many people

1 agree with me.

2 MR. BUTANIS: Believe me, your previous comments
3 about governmental regulation have not fallen on deaf ears.

4 There being no additional comments, we will close
5 the hearing. I'd like to thank the town officials for
6 allowing us to come up tonight, making arrangements, and
7 again the record will be kept open for, I think it's one
8 week, from today. Anybody who thinks of anything else that
9 you wanted to bring out, you're encouraged to send a written
10 statement to the commissioner -- the chairman of the
11 commission, who is Solomon Liss, at the state Critical Area
12 Commission office.

13 MR. MCMULLEN: One last comment. I was just
14 wondering, does this address shoreline erosion at all? Like
15 for perhaps grandfather or whatever.

16 MR. PIERSON: There is a program element in there
17 on shoreline erosion, and what this program element does, it
18 relies on information that's collected by the county and a
19 report that the county has that recommends certain solutions
20 in certain situations. I don't recall what there is in your
21 town plan on mechanisms that the people can employ to fix the

1 areas that are eroding. There are general remedies that are
2 available to create special tax districts where you and your
3 neighbors would petition the town to set up a special tax
4 district agreed to be taxed over a certain period of years --
5 where you and your neighbors would agree to be taxed over a
6 certain period of years and with that money be able to put in
7 the shoreline erosion control devices.

8 MR. MCMULLEN: But as far as an individual --

9 MR. PIERSON: There is nothing in the program for
10 individuals.

11 MR. BUTANIS: The state law, there is another
12 provision in the state law which governs shoreline erosion
13 that doesn't come under the ambit of the Critical Area law.

14 MR. FARRELL: Can I say one other things? Again
15 back to money. This is a slightly different tack. I have
16 talked to three different realtors about the effect of this
17 program on the property owners in town. I have got one who
18 says it's going to lower your property value significantly.
19 I've got another one that says it's going to raise your
20 property values so much you're not going to be able to live
21 there. I've got one that says nobody knows. I think that's

1 the only honest person. If there is significant decrease in
2 property value, the state had better be prepared to provide
3 remuneration to those people who lost money.

4 MR. BUTANIS: Under the recent Supreme Court case
5 I think the state is very familiar with that possibility.
6 Certainly is aware of it.

7 MR. FARRELL: On the record I want the state to be
8 aware of that fact.

9 MR. BUTANIS: There is a consultant for the
10 Commission who is looking at that issue, I believe, and
11 should have something available I think in January.

12 MR. FARRELL: It may turn out to be a wash. I
13 don't know.

14 MR. SULLIVAN: Correct.

15 MS. LANGNER: There are realtors all over the
16 state who are keeping records of people interested in
17 property in the Critical Area and whether they're finding
18 what they want and what the prices are and how --

19 MR. WILLIAMS: This is the time to say this with
20 tongue in cheek, but have you ever known an assessor's office
21 to allow the assessment of the value to go down in your

1 lifetime?

2 MR. FARRELL: No.

3 MR. WILLIAMS: I would like to thank you
4 personally on behalf of the town for the business-like and
5 professional manner in which you held the hearing and we kind
6 of like to play it low key in this town. We're not used to
7 shouting matches and certainly you didn't allow that to
8 happen. Again, thank you for a job well done.

9 MR. BUTANIS: Thank you, sir. Did I see a hand
10 raised over here?

11 MS. BOTT: Rosalyn Bott, town commissioner. I was
12 wondering what happens if the Commission would vote this
13 down?

14 MR. FARRELL: Us? We by law were given two
15 choices. We will develop our own plan and submit it to the
16 state or they will give us one. There was no third
17 alternative. They haven't given us an out yet or we'd have
18 taken it.

19 MR. BUTANIS: Anybody else? One last parting
20 shot?

21 MR. WILLIAMS: Thank you.

1 MR. BUTANIS: Thank you. That will conclude the
2 hearing for the night.

3 (Proceedings concluded.)

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11 STATE OF MARYLAND

12 BALTIMORE CITY

13 I, SARA A. CISSIN, a Notary Public in and for the
14 State of Maryland, City of Baltimore, do hereby certify
15 that the foregoing is a true and accurate transcript of
16 the proceedings indicated.

17

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Sara A. Cissin

19

Sara A. Cissin, Notary Public

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