

Public Hearings - Chesapeake Beach - Critical Area Protection Plan 1987 MSA 51830 - 9

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CHESAPEAKE BAY CRITICAL AREA COMMISSION

HEARING ON CHESAPEAKE BEACH CHESAPEAKE
BAY CRITICAL AREA PROTECTION PLAN

This matter came before the public on November 24, 1987,
at 7:00 p.m.

APPEARANCESPanel Members

PARRIS GLENDENING

ALBERT ZAHNISER

SHEPPARD KRECK

SAM BOWLING

DONALD KARASIC

CAROLYN WATSON

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PROCEEDINGS

MR. GLENDENING: My name is Parris Glendening. I am a member of the Chesapeake Bay Critical Area Commission and also Chairman of the Critical Area Panel that has been design....been assigned to have the Public Hearing for Chesapeake Beach local critical area program. I also serve as County Executive for Prince George's County.

I would like to introduce first our panel members. Shep Kreck, who is here on the end. Albert 'Skip 'Zahniser, who is right here and well known to Calvert; and Sam Bowling, this side, and Don Karasic, on this side over here. Also, introduce Carolyn Watson who is on the staff of the Commission.

I might make just a few very general comments. The Chesapeake Bay Critical Area Protection Program became law in 1984. The Critical Area Criteria were prepared by the local Criteria Area Commission to guide the preparation of local programs. They were approved by the Maryland General Assembly in 1986. The Critical Area Program is a local program that is mandated by the State but meant to reflect local interests and

1 institutions in special situations. Critical area law
2 establishes a resource protection program for the
3 Chesapeake Bay and its tidal tributaries.

4 Some specific remarks before we move into the
5 actual testimony. The purpose of the Hearing is to
6 receive public comments from the local jurisdiction on
7 the local jurisdiction's program as required under
8 Section 8-1809 of the Critical Area Law.

9 The Commission must make a decision on the local
10 program of Chesapeake Beach; in this case, by February
11 14. Also recognize that we do have a Court Reporter
12 here. The record is being kept to help the
13 Commissioner's deliberation and I'd ask when you speak if
14 you could write on this end here. The microphone will be
15 picked up by the Court Reporter. The Record will be kept
16 open for one week to receive additional written
17 testimony. Statements can be mailed to the Commission's
18 Chairman, Solomon Liss, Chesapeake Bay Critical Area
19 Commission, 580 Taylor Avenue, Room D4, Annapolis,
20 Maryland, 21401. The complete public record will be kept
21 at the Commission office for public review.

22 Let me at this time if I might recognize Mayor

1 Donovan, who has joined us here this evening. Mayor,
2 would you also like to add any comments, or....

3 MAYOR DONOVAN: Well, I guess I'm here to hear
4 the comments. I do have my opinion on the Critical Area,
5 but maybe, I don't know that right now is the appropriate
6 time to give.....maybe later on, after I hear. Or would
7 you rather have them now?

8 MR. GLENDENING: Either way is fine. It's
9 entirely up to you.

10 MAYOR DONOVAN: Just for your benefit. I think
11 all of us in Town are behind the Critical Area concept in
12 that over the years there has been no secret of the
13 decline in the Bay.

14 The business that I happen to be in, I happen to
15 know first hand the impact that the decline of the Bay
16 has had on our natural resources from the fish to the
17 clams, crabs, oysters, you name it. I think that all the
18 County municipalities, the different subdivisions had a
19 chance to do something, but it took the State legislature
20 to do something across the State. And in that spirit we
21 have tried to expend what monies the State gave us and
22 get our plan in on time and to meet what we interpreted

1 to be the guidelines of the plan.

2 That interpretation is a little bit difficult in
3 that the primary area of concern being resource
4 conservation. We're a very, very small town. We're just
5 a little bit, when we look at the overall area of the
6 town, a very small part left to develop.

7 In order for the Town to have growth, most of
8 what is going to be controversial has both water and
9 sewer available. I found it very difficult in my
10 conscience to throw that into RCA, because I am sure you
11 are well aware, Resource Conversation does a lot more
12 than get the property into the -- zone , it stops the
13 Town from having any real growth.

14 Coupled with that I feel very strongly that a
15 property owner has certain rights that he ought to, if
16 somebody is going to take away the right to develop that
17 land, normal fashion that makes sense, I feel like,
18 personally, that he's being deprived of something of
19 value and I have a real hard problem with that.

20 There are areas that are in Resource
21 Conversation that I particularly did not want in Resource
22 Conversation, but I didn't write this law. In talking

1 with the Consultants, I tried to comply with what, you
2 know, we were paying those people to tell us what to do,
3 and I tried to comply with the law even though it gives
4 me great, great concern as to the future of the Town.

5 Now, in this community and in this County there
6 are people that want absolutely no growth; there's people
7 that understand that we're going to have some reasonable
8 growth; and then there's people who think I'm absolutely
9 crazy because of the growth we've had. And then there's
10 another school of thought, that we had used up the County
11 5% allocations, which I'm not an expert on critical
12 areas, but if you accept our plan and the development
13 that has occurred is either intensely developed zones or
14 in the limited development zone, I don't see how we could
15 have used up any of Calvert County's allocation. I want
16 to cooperate and work with Calvert County, and I'd like
17 to be able to make all of the no growth or slow growth or
18 developers happy,.....you know, but I don't think that
19 critical areas was designed to stop people from enjoying
20 the benefit of their property, the use of that property.
21 But that Resource Conversation is definitely crippling
22 when you consider the debt that the Town has for both the

1 water system, the sewer system, and the fact we need
2 growth.

3 So, that's basically my feeling. It causes me
4 great problems. On the one hand I want to do our share
5 for the Bay; on the other hand, I don't want to see
6 somebody's property go down the tubes, that will in
7 essence become unusable with the exception of one home
8 maybe per 20 acres; that causes me great concern. Thank
9 you

10 MR. GLENDENING: Thank you very much, Mayor
11 Donovan.

12 Let me just....couple of generalized rules.
13 Normally, we try to follow a time limit of approximately
14 three to five minutes. We actually have very few people
15 signed up, so that I don't know that it is necessary for
16 us to rigidly to enforce that unless panel members would
17 object. But I would ask you to use some discretion in
18 terms of the length of time.

19 Are there any other elected officials here who
20 wish to testify before I turn to the general sign-up
21 list?

22 The, uh, first person who is signed up is

1 Virginia Crawley, but has indicated not wish to testify,
2 is that correct?

3 And then James Burch, who does wish to testify.
4 If we could the side microphone right there.

5 MR. BURCH: My name is James Burch. My office
6 is in Indian Head Maryland, and I have property in the
7 panhandle section of the Town at the end. We have
8 submitted a concept plan and a development plan to the
9 Town and to the County for review, which you will see
10 here in a moment, so that you can see where this land is.
11 I might add that we have been told, since this was done,
12 that our critical area line must be enlarged and we can
13 do that.

14 I have some comments that have been....we have
15 studied very carefully the Town's critical area plan, and
16 I have some specifics to ask you to consider, and also
17 some generalities regarding implementation of the plan
18 throughout. And I have written testimony that I will
19 leave with you and I have another piece of exact
20 suggestions that I would recommend that you consider,
21 which I will not leave at this time, but just leave it
22 for you to look at.

1 I appreciate the opportunity to testify before
2 the Commission on this area, the Critical Area Program
3 for Chesapeake Beach. I am a landowner in the Town; and
4 I'm told by staff that I am an expert in land
5 development. It has something legal to do....Parris can
6 tell you whether that's true or no.

7 Regarding the Town's designation first of IDA,
8 LDA, and RCA, I disagree strongly with the current
9 mapping of the entire panhandle section. That is....this
10 is the Town of Chesapeake Beach, in this area; and this
11 panhandle section down in here is part of our property,
12 and the other part of our property is outside of the
13 County, so that this is the line that shows the Town of
14 Chesapeake Beach, and this portion of the property is in
15 Calvert County.....

16 There's quite a significant amount of Chesapeake
17 Bay frontage. This area was originally designated
18 entirely LDA on the draft map submitted to the
19 Commission, and now they are shown partially LDA and
20 partially RCA. Clearly, the criteria in Chapter 14.15.02
21 of the Critical Area Law calls for this area to be
22 designated LDA. That's a concept plan, and over here is

1 another plan that shows -- piece to develop. It has
2 a lot of rough ground, so.....unlike it, you'll probably
3 notice, most of the Chesapeake Bay, where you go up, and
4 cliff, there's a plateau at the top, this is a mountain
5 piece. It is located within an area where housing
6 densities are in the range of two to four dwelling units
7 per acre. Housing development in the Town of Chesapeake
8 and Randall Cliff Beach surround the sight. This infill
9 parcel has public water and sewer facilities directly
10 available to it.

11 The panhandle is clearly located in an area
12 which meets criteria 1, 2, and 4 of Section 14.15.02.04
13 of the Critical Area Law, only one of which must be met
14 when area is to be designated LDA. Much of the panhandle
15 land has been highly disturbed by activities of
16 trespassers over the years. Probably 20% of the cliff
17 base is being eroded right now by kids using it as a
18 sliding board.

19 Development of the sight would stabilize eroding
20 hillsides and discourage the destruction of the cliffs by
21 vagrants. There is some plants that should have been
22 maintained and have been trampled in recent years by a

1 hobo living in the area, and I didn't hire him.

2 The current land use designation map for town
3 apparently recognizes that the LDA is an appropriate
4 designation for portions of the site. Discussions with
5 the consultants for the Town which prepared the map
6 indicate that this was done in an effort to protect some
7 endangered and threatened species identified by the State
8 Natural Heritage Program. However, not all the areas
9 mapped RCA contain these species; for example, the
10 Natural Heritage Program designated the entire cliff as
11 the area where lives the....some form of beetle; in
12 actuality, only about 75% of the cliff contains this
13 beetle, and the northern section, which we proposed as a
14 beach, the beetle does not live there. Also, large
15 portions of the territory are shown to have ferns that
16 are rare and endangered; in actuality, they only reside
17 on the sides of steep ravines or in the flood plain areas
18 at the bottom, they do not reside in the top where we
19 propose to build and only there do we propose to build.

20 Clearly, this designation as partially RCA is
21 an overreaction to the issue. Clustering of development
22 outside of the plant and animals sites, preservation of

1 required critical area buffers, and the implementation of
2 state of the art sedimentation and erosion and storm
3 water management technique will protect these important
4 species.

5 In fact, in a meeting that we had with Frank --
6 and with members of the Natural Heritage, Mr. --
7 assured the Natural Heritage people that the species
8 could be protected by good erosion control measures which
9 are in place and required in the County today.

10 The critical area law has been written to assure
11 this, and RCA designation is overkill and amounts to a
12 removal of all feasible use and a taking of land without
13 just compensation. While the critical....while the Land
14 Use Designation Map is an important part of the Town's
15 critical area program, report text is crucial to the
16 implementation of the program.

17 I do not believe the Town realizes how much this
18 program as written goes beyond what is required in the
19 the Critic Area Law and how much of the Town's own land
20 use control authority is given to State Agencies.

21 For example, on page 2-73, the text states:
22 'when new IDA's and LDA's are located within an RCA, they

1 must be sited at least 300 feet beyond the landward edge
2 of the tidal wet lands or critical waters. Section
3 14.15.02.06.B6, I'm sure you're taking notes, the
4 Critical Area Law does not require this. The word should
5 is used. Not must. The Town is giving up a great deal
6 of flexibility here; in some cases, a 300 foot set back
7 might be inappropriate, environmentally unsound or
8 prohibitive. The Town Program Text must use the word
9 should in this provision to allow the flexibility to
10 handle these situations.

11 Of even more concern that this provision of the
12 text, is on e found on page 2-40 and 2-47. Here
13 additional buffers are added to the already very
14 stringent ones included in the Critical Area Law. While
15 Section .14.15.09.C7 indicates that the 100 foot buffers
16 shall be expanded to included contiguous steep slopes and
17 hydric and highly erodible soils, it does not require or
18 even suggest an additional 25 ft. buffer on top of these
19 or an additional 10 to 15 ft. building setback; however,
20 the Town program does. It requires an additional 35 to
21 40 ft. of buffer on top of the steep slope and soil
22 restriction on top of the 100 ft. buffers. This is

1 punitively restrictive. The Town Critical Area Plan also
2 designates more streams as tributary streams, which
3 require extensive buffering, than are required under the
4 Critical Area Law.

5 This greatly increases the land which cannot be
6 developed beyond what the Critical Area Law contemplated.
7 This is also punitively restrictive.

8 I have worked in land development in many
9 jurisdictions and States, and I can say that the Maryland
10 Critical Area Law, you've heard this before, contains the
11 most restrictive environmental regulations I've ever
12 encountered. To add more restriction to these
13 regulations will surely discourage all new development in
14 the Town Critical Area and make it possibly impossible.

15 The purpose of the Critical Area Law is not to
16 stop development; and the Town program comes dangerously
17 close to this.

18 Finally, I would like to point out another
19 important provision of the Town Critical Area program
20 which may be surprising. On page 9-31, and 9-41, the
21 Town gives up all of its local land use control in the
22 areas where endangered species occur; and where a Natural

1 Heritage Area is located. In both cases the following
2 language is used: 'project approval will be granted by
3 the Town only after project plans are deemed acceptable
4 by written correspondence from the Heritage Program'.
5 Referred to here is the State Natural Heritage Program.
6 The Critical Area Law does not require this, nor does it
7 give the State Natural Heritage Program any legal
8 enforcement authority. Localities are required to
9 consult the State NHP but nothing requires the locality
10 to give up its land use control authority to this State
11 Agency.

12 I cannot understand why the Town would want to
13 do this; to transfer authority to an Agency which
14 considers only one narrow goal, and that's not a bad
15 goal, but it is only considering one narrow goal, rather
16 than the multiple goals the Town will want to consider.

17 I might also mention that these provisions are
18 in fact the whole section on the Town's program on
19 habitat protection areas. It has been not received any
20 public hearings on that section before tonight. And if
21 they were to be incorporated, another hearing should be
22 held before this section is finalized.

1 In sum, I urge the Town to designate the entire
2 panhandle LDA, and to include no provisions in its
3 Critical Area Program which are more restrictive than
4 what the Maryland Chesapeake Bay Critical Area Law
5 requires. I am submitting some suggested word changes
6 for the program text to accomplish this, and I urge the
7 Town, and you, ladies and gentlemen, to scrutinize the
8 text as well as to rectify any language problems that I
9 might have missed. Please do not strangle the positive
10 growth that Chesapeake Beach is now enjoying. Protect
11 the Bay, but support the economic development and well
12 being of the community.

13 Thank you.

14 MR. GLENDENING: Thank you Mr. Burch. You have
15 copies of your testimony to leave as well as additional
16 materials? And these are two copies of the exhibits that
17 we may retain for the records?

18 MR. BURCH: No, these are not, but we going to
19 get you.....in the -- period that you have. We'll send
20 these to you.

21 MR. GLENDENING: Thank you. And you will give
22 the copy additionally, to the Mayor, as well?

1 MR. BURCH: To the Mayor?

2 MR. GLENDENING: Yes.

3 MR. BURCH: Yes, I've given the Mayor a copy,
4 and I'll send these plats along for the record. I think
5 I probably made it clear. I've got two pieces of paper
6 that are -- . I don't like to speak from a paper,
7 but this is so technical I was afraid.....and then the
8 other is what I did not discuss but I'd like that in the
9 record also so

10 MR. GLENDENING: OK.

11 MR. BURCH: Thank you very much.

12 MR. GLENDENING: Let me also recognize at this
13 time, that Delegate Tom Reimer has joined us for a piece.
14 Were you like to add any testimony or comments at this
15 time?

16 MR. REIMER: No, I came to listen. Thank you
17 very much.

18 MR. GLENDENING: Next is Shawn Cauvinaugh, who
19 does not wish to speak, is that correct?

20 MR. CAUVINAUGH: Yes.

21 MR. GLENDENING: Hugh Ward, Jr.

22 MR. WARD: The chart.....

1 MR. GLENDENING: MR. Ward, may I ask you if.....

2 MR. WARD: I'm not going to testify.

3 MR. GLENDENING: OK, Sir.

4 MR. WARD: The charts as submitted to the State
5 have never been available here to the Town for review.
6 We had a preliminary once, but I understand changes were
7 made afterwards, so I would like those charts as
8 submitted to the state left here so I can review them and
9 submit a written statement. I don't know what went in
10 them so I don't know what I'm talking about, but we do
11 own substantial property here.

12 MR. KARASIC Can we get copies of them?

13 MS. WATSON: The Town should have copies. You
14 can come to Annapolis, but these are all working copies
15 right now. We only have the one set and they're for our
16 purposes and review.

17 MR. GLENDENING: The Town has copies of the
18 revised ones here, to this map?

19 MR. WARD: They didn't the last I inquired.

20 MS. WATSON: They should have it.

21 MR. WARD: The Town is supposed to comment on
22 it.

1 MR. GLENDENING: The representative from the
2 consultant is here?

3 MR. WARD: No, she is out of Town.

4 MAYOR DONOVAN: See, we tried to get the meeting
5 changed, so that they girls that run the program could be
6 here, and somewhere along the along we couldn't get that
7 accomplished. I mean, from what Mr. Burch said, I wished
8 they had been here. I don't want to believe everything
9 he said because I, my opinion of the Heritage Committee
10 or what authority they have, and in my opinion, they
11 don't have any authority, and now, based on what he said,
12 I don't know who has the final say, and if what he says
13 is true, I might see some changes, because it raises all
14 kinds of problems for us.

15 MR. WARD: I may not have an objection. I just
16 simply have not seen them.

17 (Brief Recess)

18 MR. GLENDENING: Mr. Mayor, we're just trying
19 to clarify to make sure that obviously everyone's
20 interest are protected. You definitely do not have the
21 revised maps available for public review at this time?
22 Is that correct?

1 MR. WARD: I inquired as late as late last week,
2 and

3 MS. CRAWLEY: We have the draft maps. -- said
4 that there were some changes that were requested.

5 MR. HAWKIN: We have....in August we
6 prepared.....

7 MR. GLENDENING: Will you please also identify
8 yourself, for the Court's Record, please?

9 MR. HAWKIN: My name is John Hawkin. I work for
10 the -- . I am not directly involved in the
11 preparation of the Town Critical Area Program. I am here
12 representing the -- tonight's, people that need to be
13 here to represent could not be here because of scheduling
14 conflicts. We tried to alert the Commission to this
15 potential problem, you folks chose to continue with the
16 hearing tonight, so we don't have our experts here.

17 As to the -- map prepared and were available
18 for public display in August, as a result of a hearing
19 that was held in July, certain requests by various
20 property owners were made for changes. All those
21 requests were addressed by written communication from the
22 consultant to the persons making the requests. I think in

1 all cases changes were made to accommodate the property
2 owner's requests.

3 MAYOR DONOVAN: No, not all of them. Panhandle,
4 as we had originally proposed, was limited, and I think
5 that the day the plan went in a large percentage of it
6 became Resource Conservation.

7 MR. HAWKIN: In any case, there were a number of
8 requests that were addressed on the revised map and also
9 written communication was sent back to the persons
10 requesting the revisions indicating what changes were
11 being made. I was unaware until this evening that the
12 revised map had not been sent to the Town Hall, and I was
13 also unaware that people had requested -- . If we
14 had known about it we would have made sure that
15 additional copies were placed on file here.

16 MR. GLENDENING: When will the

17 MS. CRAWLEY: We don't have the large map. In
18 the program itself we have in a review size, and you saw
19 those....

20 MR. WARD: They're so small you can't....

21 MS. CRAWLEY: Those are in progress.

22 MR. GLENDENING: The revised maps so that, ----

1 can be made available when?

2 MR. HAWKIN: By the end of the week.

3 MR. WARD: Can we extend the time for comments?

4 MR. GLENDENING: That's what I was just checking
5 with the panel?

6 (OFF THE RECORD DISCUSSION)

7 MR. GLENDENING: Ladies and gentlemen, we're
8 consulting up here to make sure that we do this properly.
9 This is the first time where we've run in where the maps
10 have not been available. I think your comment is very
11 well taken and it clearly is difficult to talk about
12 specific properties if you do not have the map.

13 We believe it is in our legal authority to
14 extend the time period for comments, and we'll extend one
15 additional week, which clearly should mean then that the
16 maps will be available here in Town Hall, and so we'll
17 extend it a week from this coming Monday, which is two
18 weeks from today.

19 That's for written comment only. The final
20 decisions date will still have to be the same.

21 MR. Burch.

22 MR. BURCH: Mr. Chairman, one point that I was

1 making here, is that if this section, that the Natural
2 Heritage Program is to have veto authority over local
3 land use control, is adopted, part of this, I think the
4 requirement is, there must be a public hearing on that
5 section it is so pervasive. And there has not been a
6 public hearing. I hope.....

7 MR. GLENDENING: We understand that point and we
8 have already discussed that point and we will be getting
9 back to you and to Sam in writing on that issue.

10 MR. BURCH: Thank you.

11 MR. GLENDENING: Tim Stasz.

12 MR. STASZ. Good morning, Mr. Chairman and
13 members of the Commission. Some of you know me as a
14 professional planner, and some of you know me as an
15 ecologist. I am a resident of the adjoining town and
16 spent a great deal of my free time looking around through
17 the Chesapeake Beach area as a user of the Chesapeake
18 Bay. I quite often come on and enjoy the marsh back
19 behind Fishing Creek, walk along the shore line of the
20 cliffs looking at fossils and looking at the exposures.
21 At one time I was a paleontologist, and had some of my
22 early training along these very cliffs, so I am familiar

1 with the area.

2 As you know I am somewhat familiar with the
3 criteria and the critical areas regulation.

4 Tonight I would like to simply give some
5 generalizations of my reading of the plan and I hope to
6 submit since we have a week some further comments later
7 in writing.

8 I read the plan and it sounded to be extremely
9 well written, in that it took the criteria, which most of
10 you have seen, a fairly unreadable document, and turned
11 it into plain language.

12 The plan, in some cases, as it's been pointed
13 out, is more restrictive than some of the guidelines that
14 are in the criteria, but that is certainly within the
15 Town's jurisdiction to have more restrictions when it
16 feels it's in it's own interest. There's no specific
17 necessity to follow precisely the guidelines as in the
18 criteria.

19 I respectfully would mention in the section of
20 tributary streams, in which there is a great deal of
21 freedom as to the amount of detail.

22 The basic problems that I had in trying to

1 evaluate this program, even though it does cover within
2 its text all of the details required by the criteria, is
3 it's implementation. There is a constant repetition
4 throughout that the zoning ordinance or the subdivisions
5 regulation will be chanced to accommodate this, to hear
6 these things, but as a planner, and understanding how
7 legislation ties in with stated policy, I think it's very
8 important to not look at this plan and read these nice
9 words and be able to fairly evaluate the entire package
10 without seeing how it will work. Implementation is
11 perhaps the most important facet of making the critical
12 areas plan work. And that should be one of the primary
13 focuses of this Committee tonight and perhaps when you
14 meet in other areas.

15 It's not precisely the exact words that are used
16 in the program; perhaps not the full restrictions within
17 the program, but the implementation and how they fit, the
18 essence of the program, it's primary goal.

19 I think that's basically all I have to say
20 tonight, because I don't want to spend too much of your
21 time, I will follow up, though, in writing, within a
22 week, to point out a few of the little details which may

1 help you before you make your final deliberation.

2 MR. GLENDENING: Thank you, Mr. Stasz. John
3 Hollin is here and does not wish to testify....

4 MR. HOLLIN: That is correct.

5 MR. GLENDENING: Peggy Higgins also present, but
6 does not wish to testify? Dave Galley also does not
7 wish to testify?

8 MR. GALLEY: Not right now.

9 MR. GLENDENING: Also present, without
10 testifying?

11 MR. JAMESON: --

12 MR. GLENDENING: Fred Rammage?

13 MR. RAMMAGE: Present.

14 MR. GLENDENING: Does not wish to testify?

15 MR. RAMMAGE: No.

16 MR. GLENDENING: And Gail Montplaisil?

17 MS. MONTPLAISIL: I'm Gail Montplaisil. I am
18 the managing general partner of Fisher and Creek
19 Associates, and we own the -- Marina property. The
20 property, most of the property has been put in the, has
21 been developed area, which is what we've understood all
22 along.

1 I think that basically the Town did a very good
2 job in putting together their Critical Areas plan. We do
3 feel that there have been a few errors that have been
4 made on the map, and we have documented that in writing
5 both the McCrone experts who have been working on the
6 plan, and we have letters saying that how the property
7 was going to be designated as well as to the Department
8 of Natural Resources, County Corps of Engineers and the
9 other agencies that we had to deal with. I just wanted
10 to put on record this evening that we still believe there
11 are some changes that do need to be made on the map.

12 MR. GLENDENING: Thank you. Steve Magom?
13 Arthur Pallicelli? Barry Carpenter?

14 MR. CARPENTER: -- I would just
15 like....

16 MR. GLENDENING: Could I ask you, if you
17 wouldn't mind terribly, coming over?

18 MR. CARPENTER: We're from Environment Planning
19 and ----- Development. Mr. Burch..... we just
20 want to clarify.....you said that we had two weeks of
21 extension on written comments, that would be two weeks
22 from today, and that you would get back to Mr. Burch or

1 the Town or everyone on whether or not there would be an
2 additional public hearing on the text, which has not
3 received public hearing....

4 MR. GLENDENING: I don't believe the question
5 was as much on the text as on the habitat and --
6 provision?

7 MR. CARPENTER: The text as regards additional
8 approval by State Agencies otherwise giving the Town's
9 approval to a State Agency. Those are the kinds of text
10 areas that didn't receive public hearing -- before.

11 MR. GLENDENING: The Commission staff will
12 prepare a direct response on that issue.

13 MR. CARPENTER: Thanks, very much.

14 MR. GLENDENING: Bob Rodgers.

15 MR. RODGERS: Yes, I don't want to testify, but
16 I do have one question and I think it might shed some
17 light for everybody, if we could have some idea on what
18 the process will be like from here on. I think all of us
19 are pretty much -- about that.

20 MR. GLENDENING: As a very general rule, and if
21 I can respond in most general terms, and we're not really
22 supposed to respond to specific questions, but obviously,

1 as a general rule; we'll have the testimony here; we'll
2 have the two week period now; there'll be discussion
3 between the staff and the Town and the Consultant on some
4 problems areas that we may perceive in language and a
5 variety of different things of that type, and there may
6 be a need for an additional public hearing on some
7 elements to be worked out between the Commission and the
8 Town, and then subsequently it will come before the full
9 Commission for a question of review and adoption. That's
10 very general....and that by the date I mentioned. That's
11 a very generalized schedule as to where we are. The
12 specifics on any part of that, the best part is to
13 contact the Commission directly for specific information,
14 and Carolyn Watson is the staff person who is working
15 specifically with this on this plan.

16 Rod Hills? That concludes the sign up list.
17 Is there anyone else here who wishes to testify or offer
18 comment?

19 MAYOR DONOVAN: I still have a question along
20 Bob Rodgers line and it goes back to what this fellow
21 says about implementation. Aren't we supposed to be
22 submitting something from the Town attorney that

1 parallels the plan to, say to the Town Council, the
2 following ordnances have to be amended in order to be in
3 compliance with the Critical Area Plan?

4 MR. GLENDENING: That's right. That is correct,
5 and I did not get into all the details on this. I
6 understand that there are already discussions going
7 between the Commission....

8 MR. DONOVAN: Don't we have a cutoff date of
9 January 22 that....what does that date mean? I mean, the
10 Town Council can't pass something that quick.

11 CAROLYN WATSON: Ok, what that means is we have
12 received this program. From the date that we deem this
13 program complete, within in 90 days, the Commission by
14 law, has to render a decision as to whether they approve
15 this program as submitted, or perceive changes or
16 conditional approval, or whatever. The January 22 date,
17 what that does, is allows the Commission panel, the full
18 Commission, myself, Attorney General enough time to
19 review the draft legislation as submitted to give
20 specific comments, to see if what you proposing is
21 actually backing up what is in the document, and actually
22 pending implementing. So the magic of the 22nd of the

1 January 22nd date is giving us some extra time to review
2 it before the Commission needs to render a decision.
3 Because they cannot render a decision without having a
4 draft legislation before them.

5 MR. DONOVAN: What we give you on the 22nd, does
6 it have to be something that we have introduced, or
7 approved? I mean, we might give it to you, but it's not
8 the law of the land unless we run it through our normal
9 process, and even if we approved it, someone has the
10 right to petition it, the referendum for the next 20
11 days, I think.

12 I mean we're not at that final stage come January
13 22nd, and based on what Mr. Burch has presented here, I
14 feel like the Town has some homework to do with the
15 Consultant and to iron out some of these problems,
16 because I didn't believe it's our intention, it may have
17 been the consultant's intention, to give authority that
18 we generally had to the Natural Heritage, or whoever it
19 was he mentioned; and I also further that we don't
20 believe that we meant to take Critical Area Law and make
21 it stricter. I mean we want to do what's right for the
22 environment, but we want to be fair about it.

1 Now, we're going to need some time to get some
2 of these kinks straightened out, because what Mr. Burch
3 is saying, our Consultants might have something totally
4 opposite to say.

5 MR. GLENDENING: Mr. Mayor, the process is being
6 used in a number of jurisdictions is that by that date,
7 the January date, you will submit, and this is after a
8 lot of consultation with staff and consultants and
9 attorneys and some, you will submit basically what you
10 believe to be the final approved plan.

11 The Commission then gives approval to that exact
12 plan and then you subsequently have time to adopt it in a
13 legislative fashion; that is, going through the ordinance
14 making process and everything that you're talking about
15 there. Numerous jurisdictions have done that. My home
16 county, Prince George's County, did it exactly that way,
17 was well.

18 The only thing that's important to keep in mind,
19 is that under the State law, that once the Commission
20 adopts the plan, in final form, you submitted it and you
21 said this is your final plan, and we concur to this plan
22 and it's been adopted, the ordinance adoption itself

1 cannot be subsequently amended.

2 That is basically the ordinance that is there.
3 So there's an end to the process. But we understand that
4 you will not be able to do all that and go through the
5 ordinance adoption process by that date, and so it should
6 work, and it has already now in about a half a dozen
7 jurisdictions. Submit the final plan by the January
8 deadline; by the February deadline, Commission will have
9 given either notice of adoption or notice of
10 unacceptable. If the notice is acceptable, then through
11 your normal ordinance adopting process, you would adopt
12 the local ordinances here that are necessary for that.

13 MR. DONOVAN: OK. Todate, have we been on time
14 with all of our--

15 MS. WATSON: Yes, in fact we got the first set
16 of those ---- and received them yesterday. We got
17 some specifics whether your attorney anticipates putting
18 in requirements....

19 MR. DONOVAN: Because I picked up the newspapers
20 and read where nobody in Calvert County has complied with
21 the actual dates. I want to know if the Town has been on
22 time in every thing we're to give to --

1 MR. WATSON: Well, once we have received the
2 submitted program. The submitted program --

3 MR. DONOVAN: Well, we weren't late by much were
4 we? I wasn't aware we were late at all.

5 MR. WATSON: The statutory deadline was August
6 2nd.

7 MR. DONOVAN: Well, alright, before you get out
8 of here I have one more question. So far, as least in my
9 mind, we have a great working relationship with --
10 and also Commissioner of Calvert County. I pick up the
11 newspaper again and read about all this concern about
12 this 5% growth allocation. And then Judge Liss comes
13 down and publicly says things where nobody has explained
14 that to myself and to the Town Council that's in
15 authority of just how that works, because I don't want
16 the growth up here to be affecting, inadvertently,
17 Calvert County, where Calvert County gets upset with us
18 because we've done something that takes away from the
19 whole County.

20 Now, I don't see how we could do that, but
21 that's a fear in some people's minds; another fear I
22 have is that if that a development is occurring today,

1 either in the intensely area, or in the less developed
2 area, how does that affect the 5% growth allocation?
3 'cause I don't understand that?

4 MR. GLENDENING: Mr. Mayor, I understand both
5 of those questions, and they both involve careful legal
6 points, and I'm not an attorney, and our panel is really
7 not empowered to address them. We have already asked
8 the Attorney General assigned to the Commission to
9 prepare a specific response to the Town on those
10 particular issues. It is my understanding that that
11 opinion has come into the Commission. I have not read
12 it. It has come in, and we will get that to you as
13 quickly as possible. It addresses the very specific
14 questions that you have raised here, because obviously
15 they have been raised in a number of forms. We will get
16 that response to you very, very quickly, in a matter of a
17 couple of days.

18 MAYOR DONOVAN: I want to cooperate with the
19 County and I know that Northeast does, and we both want
20 to, but to me that limbo, it causes us real problems,
21 because the last thing we want to do is find out that
22 we've taken away something that Calvert County gets upset

1 about, or vice versa, we gave up something vital to us,
2 and so now we can't grow in this Town, because Calvert
3 County used up all of our growth allocation.

4 MR. GLENDENING: Let me again emphasize this.
5 It's a legal interpretation in terms of what has occurred
6 in the intermin, whether or not it has consumed some of
7 the growth allocation, and I do not have, and the Panel
8 really does not have the expertise on that. That opinion
9 will be coming to you, and we'll try to get that through
10 Judge Liss in a matter of a couple of days. We
11 understand how important it is.

12 The other question, thought, in terms of the
13 allocation between the County and the municipalities, is
14 up to the local decision makers to try to reach agreement
15 on that, and that will be for the Town and the
16 municipalities then to sit down and work that out. But
17 whether or not any growth allocation is being consumed,
18 is a legal question, and that's why we have the opinion,
19 and we'll get that right to you.

20 MAYOR DONOVAN: But what you're saying is that
21 it's up to the incorporated Town to go through the
22 Commissioner to decide how the 5% grownt allocation is

1 going to apply between property in this Town and between
2 property in the County?

3 MR. GLENDENING: That's correct. That's
4 correct.

5 MR. RODGERS: That should be very interesting.
6 I was wondering if there....

7 MR. GLENDENING: Would you also identify
8 yourself one more time for the....

9 MR. RODGERS: Bob Rodgers. Whether those
10 opinion are available to the public.

11 MR. GLENDENING: Certainly. And when we get
12 them, I'll send them back to the Town as well, if you
13 request an additional copy for your own review, if you
14 contact Ms. Watson, she'll be sure to get that you as
15 well. It'll basically be the copy of the letter that we
16 send to the Town on their inquiry.

17 MAYOR DONOVAN: My last question. When do we
18 get to see the staff comments on the plan that we
19 propose, in that our consultants have never gotten
20 anything in writing back from your staff people, that I'm
21 aware of? When does that take place?

22 MR. GLENDENING: Let me turn to Ms. Watson, who

1 has been handling this, although in most of the
2 jurisdictions, it is a series of on-going discussions and
3 dialogues between the Town staff and the consultants on
4 this. It's not literally, if you will, one specific
5 letter to list all the points that cover the documents
6 piece by piece on that, and I understand communications
7 have already been taking place, because there are already
8 some revisions going on right now relative to signing of
9 the specific ordinances that are going to be amended and
10 so on? Carolyn.

11 MS. WATSON: I've met with -- and Liss on
12 two separate occasions, looking at the mapping, and
13 actually have just completed my in depth review of the
14 program. We have 90 day to review the program, and when
15 your consultants get back from vacation, I will be
16 meeting with them, and it's an on-going process.

17 MAYOR DONOVAN: I'd like to be at that meeting,
18 would you let me know....

19 MS. WATSON: I will carbon copy to you any
20 written comments that I give to the consultants.

21 MR. GLENDENING: Mr. Rodgers?

22 MR. RODGERS: I believe have the -- about

1 the growth allocation. Several jurisdictions within a
2 jurisdiction must come to their own terms on how that
3 item is decided.

4 MR. GLENDENING: Relative to the distribution
5 that is within the jurisdiction, that is correct.

6 MR. RODGERS: So, whether one jurisdiction has
7 to power plan and zone and is a part of a larger
8 jurisdiction, is irrelevant or immaterial, at this stage?

9 MR. GLENDENING: We have confidence that the
10 local officials will work that out.

11 MR. RODGERS: No, I really am somewhat confused,
12 because as I read the document, those jurisdictions with
13 the power to plan and zone, of which I believe there are
14 some 50, 56, or something like that, each of which is
15 treated the same under those rules. Now hearing that
16 that is not right, and that there is some -- on what I
17 believe to be a very important issue, and I'm just
18 confused.

19 MR. GLENDENING: I understand that it is an
20 extremely important issue. The Commission debated that
21 for quite some time at the time the program was being put
22 together and because the procedures are so different in

1 each of th counties, the decision was made to leave the
2 allocation of the growth potential within a County to the
3 agreements between the County and municipalities itself.

4 MR. RODGERS: OK. Maybe just one little
5 follow-up...

6 MR. GLENDENING: Let me add one quick....and
7 that is an on-going process. That is not something that
8 must be decided today or at the approval of the plan, but
9 as events unfold in the course of the next decade. Those
10 agreements could be reached and allocations made.

11 MR. ZAHNISER: If the Town of Chesapeake Beach
12 has RCA or Resource Conservation land, it has a growth
13 quotion. If it wants to consume more of that growth
14 quotion, then it has to turn to someone for that, and the
15 someone happens to be the County.

16 MR. RODGERS: But within each jurisdiction,
17 like this states, the Town is not mandated to designate
18 any of the planned RCA's. Is that correct? I mean,
19 there isn't any specific place in the criteria that says
20 you must have some of this, and some of this this. If
21 they all qualify as IDA's, they can all be IDA's?

22 MR. ZAHNISER: There are guidelines as to what

1 RCA is, what IDA is, and what LDA is, and we will be
2 interpreting the Town's plan based on what those
3 guidelines say.

4 MR. RODGERS: Well, we definitely have RCA. I
5 mean....

6 MR. GLENDENING: Let me just....we don't want
7 to go too much into local discussion. Are there other
8 questions generally on the plan as submitted to this
9 point?

10 Let me then thank everyone for their time and
11 their cooperation here, and we will try to work with the
12 various parties to get the information back and requests
13 as well.

14 Thank you very much.

15 (Whereupon, at 8:03 p.m., on Tuesday, November
16 24, 1987, the Hearing adjourned.)

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CERTIFICATE1
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This is to certify that the foregoing transcript
In the matter of: Public Hearing, Chesapeake Beach Chesapeake
Bay Critical Area Protection Plan

BEFORE: Chesapeake Bay Critical Area Commission Panel

DATE: November 24, 1987

PLACE: 8200 Bayside Road, Chesapeake Beach 20732

represents the full and complete proceedings of the afore-
mentioned matter, as reported and reduced to typewriting.


Kevin Richard Reppenbagen
FREE STATE REPORTING, INC.

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*file with
record of
proceedings*

Mr. William Fortier
Chesapeake Beach, MD 20732
December 7, 1987

The Honorable Soloman Liss
Chairman
Chesapeake Bay Critical Area Commissioner
Department of Natural Resources
Tawes State Office Building, D-4
Annapolis, Maryland 21401

RE: Comments To Proposed Critical Areas Plan of
the Town of Chesapeake Beach

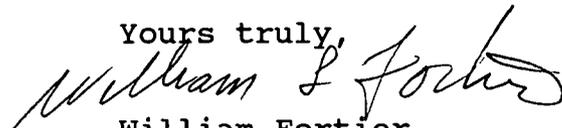
Dear Judge Liss:

I have had an opportunity to review the plan prepared for the Town of Chesapeake Beach for the Critical Area Program. I believe the plan has correctly designated the town properties as to their land use based on my understanding of the Critical Areas Legislation. I believe that the Town and Commission have done a good job in writing a program that meets the spirit and intent of the legislation.

As you know, the town of Chesapeake Beach has anticipated growth in the area for many years. The zoning regulations, the sewer treatment plant and upgrade of the roads and school systems have been underway for a long time. I believe the plan submitted will help the town meet its need for controlled growth and expansion of the infrastructure and improvement of services.

I strongly support the plan as written and would request that you do the same.

Yours truly,



William Fortier
Mayor (Retired)

Silver Coast Properties, Inc.

4100 2nd & Chesapeake Avenues
North Beach, Maryland 20714

855-5400 257-3060

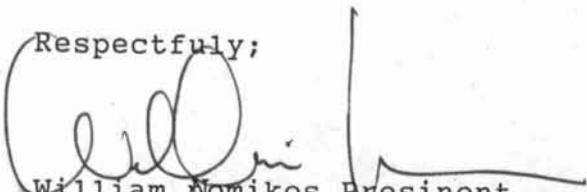
*File with
record of
proceedings*

The Honorable Soloman Liss
Chairman
Chesapeake Bay Critical Area Commissioner
Department of Natural Resources
Tawes State Office Building, d-4
Annapolis, Maryland 21401

RE: Comments To Proposed Critical Areas Plan of
the Town of Chesapeake Beach

I have had an opportunity to review the plan prepared by the Town of Chesapeake Beach for the critical area program. I believe the plan has recognized the criteria set forth in the critical area legislation and regulations, insuring protection for the natural habitat use, water quality and recognizing present and future use. I believe that the Town and Commission have done an excellent job in performing these respective responsibilities under the act and commend you both for your efforts. I would strongly urge your approval of this well thought out plan.

Respectfully;


William Nomikos, President
Silver Coast Properties, Inc.