

Public Hearing - Poconoco City, - Hearing for Poconoco City, Exclusion 1987 MSA-D1830-21

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BEFORE THE CHESAPEAKE BAY
CRITICAL AREAS COMMISSION

PUBLIC HEARING FOR
POCOMOKE CITY
EXCLUSION

Tuesday, November 10, 1987

Pursuant to Notice, the above-entitled hearing was held before WELLAND KARASIK, CHAIRMAN, Curtis Bay Critical Areas Commission, at Pocomoke City Town Hall, Pocomoke, Maryland, commencing at 7:10 p.m., there being present:

COMMISSIONERS:

DR. SHEPARD KRECH
PARRIS GLENDENING
RONALD ADKINS

ALSO PRESENT: TONY REDMOND, Redmond, Johnston

REPORTED BY: GEOFFREY L. HUNT, NOTARY PUBLIC

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P R O C E E D I N G S

CHAIRMAN KARASIK: If I may, I'd like to call the hearing to order. My name is Welland Karasik. I'm a representative of Baltimore City on the Critical Areas Commission. We wish to welcome everyone from Pocomoke City to the hearing, and allowing us the opportunity to entertain and hear public comment on the local criteria.

I'd like to introduce the members of the panel this evening. To my right is Dr. Shepard Krech. Dr. Krech represents Talbot County. To my left is Parris Glendening, representative of Prince George's County, and to my far left is Ronald Adkins, representative of Somerset County.

I'd also like to recognize the individuals who play a major part in your local government, and have played a major part in bringing the criteria this far. We recognize Mayor Kirk Leopold, and Russell Blake, City Manager. Also with us this evening is Tony Redmond, of Redmond, Johnston Associates Limited, who will be giving the presentation. And we also have a number of the members of the City Counsel, and also members of the

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1 Planning Commission: Lee Wilkinson, Vice President of
2 the City Counsel, Honiss Cane, a member of the City
3 Counsel, Frank White, also a member of the City Counsel.
4 From the Planning Commission we have the Chairman, Bob
5 Hawkins, Phillip Ardis, member of the Commission, and
6 Paul Cutler, also a member of the Planning Commission.

7 The purpose of this hearing is a very specific
8 one, and it's outlined by law. And if I may, I'll quote
9 the specific legislation. The purpose is to hear public
10 comment on such and such local jurisdictions program, as
11 required under Section 8-1809 of the Critical Area law.

12 I would inform this body that the decision of
13 the Critical Areas Commission will be rendered in
14 approximately 60 days from the date of this hearing.

15 I'd also like to recognize the Court Reporter,
16 and indicate to everyone here that a record is being
17 made of the proceedings, that a transcript will be
18 prepared, and that the record of this proceeding will be
19 kept open for one week following the hearing.

20 Additional comments can be made by sending them
21 to the Critical Areas Commission Chairman, Solomon Liss,

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1 and the address is Chesapeake Bay Critical Areas
2 Commission, 580 Taylor Avenue, D-4, Annapolis, Maryland.

3 Once the record is completed of this public
4 proceeding, the record will be kept as a public record
5 at the Commission Office.

6 Now we would ask, in the interest of economy,
7 that all comments, all speakers, be kept to a maximum of
8 five minutes. And we also request that comment focus on
9 the local program and not specific individual problems.

10 We also request that individuals who are
11 testifying proceed to the microphone, identify
12 themselves, and also state their address.

13 I believe we're ready now for the local
14 Government presentation.

15 Mr. Redmond?

16 MR. REDMOND: Thank you, Mr. Chairman.

17 For the record, my name is Tony Redmond. I'm
18 with the firm of Redmond, Johnston Associates, Limited,
19 Easton, Maryland. I've had the good fortune to work
20 with Pocamoke City officials during the past year to
21 prepare a submittal to the Critical Area Commission

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1 which is somewhat unique. Our firm has been involved
2 with a number of jurisdictions, both in Southern
3 Maryland and on Eastern Shore, in working with the
4 Critical Area Program. To my knowledge, Pocomoke
5 City's request for exclusion under the terms of the
6 original 1984 law, as opposed to the terms of any of the
7 criteria which were later promulgated is a unique one,
8 and I think the only one that has been submitted to the
9 Critical Area Commission thus far.

10 For that reason, I think it's somewhat
11 important, given the kinds of findings that the Critical
12 Area Commission will need to make to determine whether
13 or not the request should be approved, to spend a few
14 minutes talking a little bit about Pocomoke City to
15 amplify some of the information that you could obviously
16 gather earlier this evening with a visual inspection of
17 the City -- or the Pocomoke City shorefront.

18 Very briefly, I will talk about the exclusion
19 provisions in the law, both for town officials that are
20 here tonight as well as for the Critical Area Commission
21 Panel, because I know it's not a topic that you are very

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1 commonly dealing with. And since it is a twist, I think
2 -- I think we ought to spend a little time on that.

3 For us to make an exclusion request, as a
4 Consultant we felt there needed to be a great deal of
5 supporting information, some rational basis for that
6 request. Among other things, we have found that we
7 think Pocomoke City's shorefront, the manner in which
8 it's developed, the fact that a substantial percentage
9 of it is in public ownership, provides unique
10 characteristics that are not shared by certainly other
11 towns that we have worked with in preparing local
12 programs on their behalf.

13 The report, which I am holding, which is
14 entitled "Chesapeake Bay Critical Area Program
15 Submittal, Pocomoke City, Maryland," initially
16 discusses the fact that the City is requesting
17 exclusion, and part one of the report provides a summary
18 rationale for the area which is proposed for exclusion.
19 That includes the entire corporate limits of Pocomoke
20 City as it stands today.

21 Part two of the report provides a substantial

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1 amount of background information. This part includes
2 factual information that we think supports the request
3 for exclusion, and includes a number of subsections.
4 One of them is an inventory of resources, the kinds of
5 land covered that are present in Pocomoke City, how
6 land is used, as well as land cover, and then what
7 public facilities exist in the City. In fact,
8 summarily, the entire City is served by sewer and water
9 facilities.

10 There is also in this report an evaluation of
11 the current City's plans, ordinances and regulations.
12 And the reason for that evaluation of those existing
13 plans, ordinances and regulations is to determine
14 whether or not through their application, as they
15 currently stand, they would serve to effectively improve
16 water quality, or conserve fish, wildlife and plant
17 habitats in and of themselves, absent instituting a
18 local program. We felt that was a reasonable test, a
19 reasonable burden to be assumed by the local Government
20 in making the request for exclusion. And certainly
21 those ordinances that are in place are those key

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1 regulations that are going to assure whether or not the
2 water quality in Pocomoke River is maintained or
3 improved, and whether or not surrounding plant, wildlife
4 communities are -- are maintained or prosper, notably a
5 cypress swamp.

6 The map on the wall is one of four maps that
7 was prepared as part of this submission. All of the
8 maps are in the hands of the Critical Area Commission,
9 or at least the staff at this point. The map on the
10 wall is one that suggests what the City would be mapped,
11 if it were to prepare, and submit and have approved a
12 local program, what the classes, if you're familiar with
13 them, intensely developed area, limited development
14 area, resource conservation area, what they would look
15 like; essentially, the Maryland Route 13 being a major
16 edge, everything to one side, intensely developed area,
17 everything along Winter Quarters Road, the golf course
18 area, and the cypress swamp, mapped for the most part
19 resource conservation area, with some development of the
20 golf course, and some of the residential development
21 along that road, mapped limited development area. The

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1 majority of the land, 62 percent of the land, I think,
2 in the critical area was -- was mapped intensely
3 developed area. It is characterized by industrial
4 development in this area, residential development, and
5 within the buffer City-owned property, essentially a
6 part of a fairly major waterfront development program,
7 something that I will talk about, something that I think
8 supports the City's request for exclusion, and is
9 unique. And then other uses include park facilities, an
10 access to the natural park, which is the cypress swamp.
11 There is a fairly active park facility next to the
12 cypress swamp, and then there is a provision for walking
13 trails within the swamp, to permit public interaction,
14 with a fairly unique ecosystem, or natural environment.

15 The report provides also a discussion of how
16 existing applicable ordinances, laws, and existing
17 public facilities in place in the town will in and of
18 themselves substantially maintain protection of tidal
19 water quality and fish, wildlife, plant habitats. And
20 then there is also a discussion of how existing
21 development conditions and conservation areas,

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1 that are set aside in this City, are such that the
2 implementation of new, extensive development standards
3 and guidelines would not substantially improve water
4 quality and plant and wildlife habitat. I will come
5 back to that. That, to me, is essentially the yardstick
6 against which this submittal will need to be judged by
7 this Commission.

8 Finally, there are a series of maps in the
9 report which walk through a process very similar to
10 development of a local program. Each map identifies the
11 resources just as it would if this was to be a more
12 conventional, if you will, program submittal.

13 And then, finally, there is, in part three of
14 this report, a reference to future growth in the
15 critical area. This part includes a method for managing
16 areas that may be annexed in the future. The City is
17 proposing exclusion for that area that is within the
18 corporate boundaries presently. The issue then becomes
19 what happens if and when future annexation occurs. And
20 the City has proposed, essentially, through this
21 submission, that if and when that happens they would

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1 apply development standards that would be consistent
2 with the criteria in effect. As the City grows, they
3 would grow into a local program. But at the present
4 time, they're requesting exclusion for the current
5 corporate boundary.

6 That's a very brief overview of the report, the
7 kind of mapping work that was done. I'd like to briefly
8 go through a few overheads, which do not focus on
9 criteria so much as they do the original '84 law.
10 Certainly those members of the panel that are here for
11 the Commission are more than familiar with the
12 criteria, and I'm sure at one time they've been familiar
13 with the exclusion provisions of the original critical
14 area act, but I think it's something that can get away
15 from you in the midst of reviewing programs that meet
16 the criteria.

17 The original law said that areas that are part
18 of the developed urban area, where there are available
19 public facilities, where there are applicable laws and
20 restrictions, where the imposition of a program would
21 not substantially improve protection of tidal water

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1 quality, or conservation of fish, wildlife or plant
2 habitats, are areas which may reflect that exclusion.
3 Very specifically, it's a kind of threshold condition.
4 The criteria further say that such an area must be at
5 least 50 percent developed, not less than 2,640,000
6 square feet, or 1,000 feet, which is the depth of the
7 critical area, times a half a mile of shorefront, or it
8 may be the entire area within a municipality. In this
9 case, the latter prevails, in that the City is
10 requesting exclusion for the entire area within the
11 municipal boundaries. It also happens to be over 50
12 percent developed, and have a half a mile of shorefront,
13 so it really needs both tests.

14 That's what the law said initially. As we have
15 proposed the program, we think there are kind of three
16 things that relate to that. All of the -- all
17 of Pocomoke City is incorporated. As I indicated,
18 clearly more than 50 percent of it has been developed,
19 and therefore it meets that rule as the basis for
20 requesting exclusion. Uses that do exist in Pocomoke
21 City are either a commercial/industrial nature, or as

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1 sufficient residential densities, that the entire upland
2 portion of the town can be characterized as urban.
3 You'll note that the term is urban exclusion area, thus
4 this reference.

5 Finally, all the City's lands are served
6 by sewer and water within the initial planning area, or
7 the critical areas delineated by the Maryland Department
8 of Natural Resource wetland boundary maps. While the
9 City meets the definition of a developed urban area, it
10 also must demonstrate that in view of available public
11 facilities, and applicable laws and restrictions, the
12 imposition of a local program would not substantially
13 improve protection of title water quality or improve
14 fish, wildlife or plant habitats.

15 What I'd like to do is very quickly talk about
16 what kinds of policies, programs and ordinances tend to
17 achieve a lot of the objectives in a manner that would
18 be consistent with the adoption of a local program. In
19 this case, Pocomoke City zoning ordinance has clear
20 provisions for landscaping, it has setback requirements
21 that in most cases, particularly for the industrial

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1 areas that have already developed, are more restrictive
2 then the setback of current structures. Many portions
3 of the City are not able to achieve a one hundred foot
4 buffer by virtue of past or historic development
5 pattern. Absent a program and a one hundred foot buffer
6 requirement, the current ordinance would assure that any
7 redevelopment of industrial areas, if it were to occur,
8 and structures were removed, it would not be able to be
9 located as close to the shorefront as they currently
10 are.

11 A substantial reach -- and I'm probably jumping
12 ahead of myself, but I will do it, at some risk.
13 I mentioned earlier the City had a waterfront
14 development program. This is one of a -- really a four-
15 part document. The program is one that provides for
16 public ownership of a substantial reach of shorefront,
17 extending for roughly 25 percent of the entire
18 shorefront of the critical area. It does provide for
19 some townhouse development, but for the most part
20 focuses on public improvements, in terms of structural
21 erosion control, wherever it was needed, provides

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1 walkways, provides for a boulevard which is removed from
2 the water a distance of some 30 feet, with an
3 intervening established grass area, intermixed with a
4 variety of trees, shrub cover. Many of you had an
5 opportunity to see it earlier. That in and of itself is
6 something of a rare occurrence for Eastern Shore towns.
7 Few of them have been able over the years to acquire
8 publically, and hold in public use, such a substantial
9 percentage of their shorefronts. We think that's a
10 unique characteristic of Pocomoke City, not one that
11 we've encountered in a number of other towns. Most
12 shorefronts in those towns are privately owned and have
13 been developed over time.

14 In addition to the general development
15 guidelines that are in that program, the program has
16 pretty specific design standards for shore
17 erosion control and landscape planning. This same
18 waterfront development program extends all the way up to
19 include the area that is for park, for the tennis courts
20 adjacent to the cypress swamp. So it really places a
21 great deal of land in public ownership. While in some

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1 places, or some locations along that reach of
2 shorefront, the distance from the road system, or
3 boulevard, to the water may only be 25 feet, in other
4 areas, it flares out and changes in width, and in some
5 cases is a hundred feet or more, particularly in the
6 area of the park. So, in a sense, by virtue of the
7 public ownership, the City's achieving many of the
8 functions for which the buffer was designed to fulfill
9 under the criteria.

10 The City has a flood plain management ordinance,
11 which provides controls over the types of structures
12 that can be built, and essentially within the hundred
13 foot buffer I would not envision any structures, with
14 the exception of the townhouses, phase one of which you
15 may have seen constructed, I guess five units, six, that
16 have been built. That is part of the waterfront
17 redevelopment plan; there are additional units that
18 would be built there. I believe, for the most part,
19 that are just about a hundred feet from the shore,
20 because the road intervenes, if you can recall, between
21 the units and the actual shorefront, and in and of

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1 itself that's probably about -- you're talking about 40
2 foot right of way, plus the grass swale area that
3 intervenes the water.

4 The City has, in addition to a zoning ordinance
5 in place, sediment control standards that certainly meet
6 State requirements. They have storm water management
7 ordinance requirements, which assure that any
8 development must retain water on site, can't result in a
9 substantial net increase in runoff volumes.

10 Finally, the City -- the entire critical area
11 in Pocomoke City is served by a public sewer system,
12 treated through a treatment system that meets
13 State water quality standards. There are plants in some
14 towns on the Eastern Shore that cannot claim to meet
15 those standards. Many of them, as a result of the
16 initiatives to improve water quality in the Bay, are
17 working to upgrade systems. Pocomoke City is ahead of
18 that.

19 And finally, the river itself is afforded some
20 protection through the Scenic Rivers Act. The Pocomoke
21 is one of the rivers in Maryland that is considered a

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1 scenic river. I think that's due in great part to not
2 only the City but the efforts of Worcester County in the
3 past. Give Ed Phillips a little credit; I know he was
4 involved in that effort through probably a long and
5 arduous process. Those are things that the City has in
6 place, which if applied, and which if you look at the
7 existing development pattern in the critical area,
8 certainly has suggested to us that not having a critical
9 area program is probably not going to result in adverse
10 impact to water quality or to plant/wildlife habitats.
11 The area is developed. The ordinances in place assure
12 that the processes of redevelopment or additional
13 development are managed.

14 I will close my introductory comments with what
15 we worked as a summary of findings. Ultimately the test
16 is one that Ed had discussed earlier tonight, which is
17 essentially that the Commission needs to ascertain
18 whether or not enough information has been submitted to
19 support the request for exclusion. It's a real
20 interesting process in that as I, with some limited
21 exposure to the legal world, know that when a local

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1 Government submits a local program, it is the burden of
2 proof of that -- on that local Government to demonstrate
3 to the Commission that it meets the criteria. Under the
4 exclusion provisions of the law, I think the burden of
5 proof shifts. As long as the information is factual
6 that's submitted to you, and as long as you feel it is
7 reasonably expert, then it appears to me in the way the
8 exclusion provisions of the law are structured that the
9 Commission is essentially compelled to approve the local
10 Government request for exclusion, unless you can
11 demonstrate that the information doesn't support the
12 request adequately, or if you do feel that the
13 information doesn't make the case, that absent a program
14 the existing measures of the City will still -- will
15 maintain water quality and wildlife habitat.

16 After I close, Ed, you may want to make a few
17 comments. I know you've been researching that, because
18 it's a unique feature of this program, and one that may
19 or may not prove troublesome from the Commission's
20 standpoint.

21 The findings we've made is that the entire area

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1 to be excluded is served by public sewer and water
2 facilities. Sixty-three percent of the City's critical
3 area is already developed, with the exception of a 28-
4 acre area west of Winter Quarters Drive. We think
5 adequate protection exists for the City's remaining 142
6 acres that are characterized as resource conservation on
7 the map we submitted. This area is the City's only real
8 forested natural area. It is the Ball Cypress Swamp.
9 It enjoys protection from both public ownership and
10 stewardship, as well as the Scenic Rivers Program, and
11 the protection afforded it through the City's
12 comprehensive plan.

13 More than half the City's shoreline zone, and
14 use for industry, redevelopment of any land in this
15 area, if and when it occurs, would result in probably
16 expanded vegetated buffer yards, because the existing in
17 place zoning requirements, and thus, if it redevelops,
18 would enhance the functions of the buffer. The planting
19 schemes, certainly phase one of which you had an
20 opportunity to see this evening, that were adopted as
21 part of the City's waterfront development program, have

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1 been continued to be aggressively implemented. Remember
2 that all of the redevelopment area that you see,
3 that conceptually, at a planning stage, was thought
4 through probably back in 1981. So in only a six-year
5 period, a great deal of investment, in terms of
6 launching ramps, park improvements throughout that
7 shorefront has occurred. That, to us, is why we say the
8 word aggressive; for a town this size, that's pretty
9 aggressive action to implement a plan.

10 Finally, a natural park plan is essentially
11 adopted already. Even though there may not be a local
12 program, by virtue of it being a component of the
13 overall waterfront development plan the City
14 administration offers, approved the means for managing
15 the park area through its existing parks program. You
16 had an opportunity to see it today. It is a well
17 maintained area.

18 Conclusion, we trust the Commission will find
19 substantial supporting documentation for request for
20 exclusion. Our firm certainly will be available in the
21 interest of answering any questions of the Commission

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1 panel or the whole Critical Area Commission may have at
2 some later time as you evaluate this program.

3 Thank you.

4 CHAIRMAN KARASIK: Thank you, Mr. Redmond.

5 The Commission will now accept public comment.
6 Will anyone wishing to make public comment please step
7 up to the microphone.

8 AUDIENCE MEMBER: Well I'd like to -- Can I
9 make a comment?

10 CHAIRMAN KARASIK: Absolutely.

11 AUDIENCE MEMBER: I just really came up here to
12 thank you for all coming down. We appreciate what
13 you're doing. And we're totally in support of all that
14 the City Counsel, myself, City Manager, and all the
15 citizens are totally in support of what your objectives
16 are on saving the Bay and saving the river. And we
17 realize that if any of it is destroyed it affects a way
18 of life in Pocomoke. It's not only economically but
19 quality of life, and the area that we have here in
20 Pocomoke, and all Worcester County, the whole lower
21 Eastern Shore, we want to save it, we want to conserve

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1 it. So our objectives are exactly the same.

2 The thing about Pocomoke, though, and I
3 suppose the whole Eastern Shore, is that we're
4 way ahead on this thing. We've got people that are so
5 aggressive on this conservation effort and environmental
6 effort that even if the City Mayor, and City Counsel,
7 and all the rest of us weren't aggressive in putting in
8 and implementing plans to save our river, which is our
9 greatest asset, the citizens would demand it. So it's
10 for that reason that we developed programs of our own,
11 and very successfully and aggressively follow programs
12 of the State and counties have put in place for us. So
13 we're way ahead, and I think that when you tour the
14 City, you'll have found that we're just not talking, we
15 actually have done it.

16 Now where we need new ideas, and where we find
17 ourselves lacking in this area or that, we'll go
18 elsewhere and see what they've done to solve the same
19 problem. We have no reason to want to in any way bypass
20 what you have as your objectives.

21 The thing, and this is a personal thing, I

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1 can't really speak for the City Council, and the
2 personal thing is, for me is that we run a very, very
3 aggressive program to develop Pocomoke into a center, a
4 model town, an ideal town for the whole Eastern Shore.
5 And our citizens are backing us 100 percent. And I
6 personally do not want to be encumbered with a lot of
7 additional red tape if that's going to take time away
8 from our main objective of accomplishing these
9 environmental solutions and controls, and putting it on
10 -- doing paperwork, for paperwork being as self
11 involvement paperwork for its own self type of approach.
12 If there is any way that we can be excluded from this
13 approach, I would do anything to say this for you or go
14 before a panel in Annapolis, or whatever it is, because
15 of the time it takes away from -- We're a very small
16 town, very limited in our ability to spend hours on
17 paperwork. If you can be convinced that what we are
18 already doing is accomplishing what you want to have
19 accomplished, then we'd be very pleased that you would
20 exclude us from this program.

21 And if you find, in your discussions later on,

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1 that if there is a question, we'll be very glad to come
2 forward and help you resolve it; if you think of a
3 question after you're done.

4 I do want to end up by saying that as far as
5 you all are concerned, I realize you're doing a -- we
6 all realize that you're doing this on a voluntary basis.
7 You're doing it for the protection of the environment,
8 because that's what your goals are, and your personal
9 ideals. And we appreciate very much the time that
10 you're putting in on that.

11 Well thank you very much, and I appreciate --
12 and on behalf of all of us, we appreciate you coming
13 down.

14 CHAIRMAN KARASIK: Thank you.

15 Is there additional public comment?

16 There being no additional public comment, we
17 will close this hearing, and remind you again that the
18 record will be kept open for an additional week, and
19 that the record will be maintained at the Commission
20 Office in Annapolis.

21 Thank you very much.

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(Whereupon, at 7:40 p.m., the hearing was
concluded.)

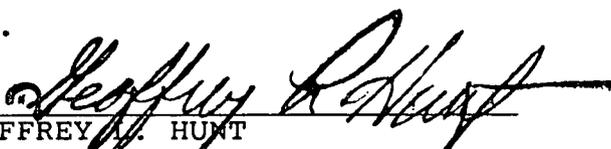
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1 CERTIFICATE OF NOTARY

2 I, Geoffrey L. Hunt, the officer before whom the
 3 foregoing hearing was taken, do hereby certify that the
 4 testimony that appears in the foregoing hearing was
 5 taken by me by magnetic tape and thereafter reduced to
 6 typewriting by me or under my direction; that said
 7 hearing is a true record of the testimony given; that I
 8 am neither counsel for, related to, nor employed by any
 9 of the parties to the action in which this hearing was
 10 taken; and, further, that I am not a relative or
 11 employee of any attorney or counsel employed by the
 12 parties hereto, nor financially or otherwise interested
 13 in the outcome of the action.

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 16 GEOFFREY L. HUNT
 17 Notary Public in and for the
 18 State of Maryland

16 My Commission Expires:
 17 July 1, 1990

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