

Public Hearings - Chesapeake Beach - Map Amendments & Corrections 1990 USA - 51830-74

BEFORE THE CHESAPEAKE BAY CRITICAL AREAS COMMISSION

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: IN THE MATTER OF: :  
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: CHESAPEAKE BEACH MAP :  
: AMENDMENTS AND CORRECTION :  
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Thursday, February 22, 1990

Pursuant to Notice, the above-entitled hearing was held before SAM BOWLING, CHAIRMAN for the Chesapeake Bay Critical Areas Commission, at the Chesapeake Beach Town Hall, Chesapeake Beach, Maryland 20732, commencing at 7:12 p.m., there being present:

- JOE ELBRICH, Panel Member, Anne Arundel County
- LOUISE LAWRENCE, Panel Member, Dept. of Agriculture
- JIM GUTMAN, Panel Member, Western Shores at Large
- SKIP ZAHNISER, Panel Member, Calvert County
- SUSAN LAWRENCE, Regional Planner, Staff
- KAREN BROWN, Town Clerk
- JIM GRAY, Councilman
- MAYOR DONOVAN, Town of Chesapeake Beach
- JOHN A. HOFMANN, Town Engineer
- CYNTHIA K. HITT, Town Attorney
- RICHARD HOLLER
- MIKE RONOVIK
- TRAVIS PRICE
- RUTH LANDSMAN

REPORTED BY: D. TURNER, NOTARY PUBLIC

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P R O C E E D I N G S

1  
2 CHAIRMAN BOWLING: I'd like to open this  
3 meeting, if I can. This will be a panel hearing of the  
4 Chesapeake Bay Critical Areas Commission as required by  
5 Section 8.18.09 of the Critical Area Law. The meeting  
6 is for public comment on three requests for buffer  
7 exemptions. I'd like to introduce our panel members.

8 On my far right is Skip Zahniser from Calvert  
9 County. Next to him Joe Elbrich from Anne Arundel  
10 County. Louise Lawrence here from Department of  
11 Agriculture. I am Sam Bowling from Charles County. To  
12 my immediate left is Susan Lawrence of our staff. To  
13 the far left, Jim Gutman, who is the Western Shore  
14 Representative at Large. Our court reporter is Mrs.  
15 Turner. And I'd like to welcome the Mayor.

16 And Mr. Hofmann, I understand you will make  
17 the presentations tonight?

18 MR. HOFMANN: Yes, sir.

19 CHAIRMAN BOWLING: Would you like to go ahead?

20 MR. HOFMANN: Thank you very much. My role  
21 tonight is as Town Engineer, and I'm here with -- we do



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1 have the town attorney, Cynthia Hitt, here also that  
2 will speak on behalf of the town.

3 Can we just recognize everyone so everyone  
4 knows who is here?

5 CHAIRMAN BOWLING: Certainly.

6 MR. HOFMANN: This is Mr. Richard Holler and  
7 Mr. Mike Ronovich. They represent one of the  
8 properties. This is Travis Price and Ruth Landsman.  
9 They represent another property. That's Mayor Donovan.  
10 He's sitting next to Cindy. And this is Karen Brown,  
11 the town clerk.

12 CHAIRMAN BOWLING: I apologize to Karen and  
13 Cindy for not recognizing them.

14 MR. HOFMANN: And coming in is Mr. Jim Gray, a  
15 councilman.

16 Item one of our request is the mapping  
17 correction for Fishing Creek. On page 9, program 9,  
18 page 12 of the town program, it mentions the intensity  
19 of the development along the shore line, both along the  
20 open waters of the Bay and Fishing Creek, and it makes a  
21 case for a buffer exemption in both instances.



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1           When the maps were drawn -- and this is the  
2 buffer map -- this legend with a hash mark here is what  
3 was used to designate the buffer exemption. And as you  
4 can see, no such buffer exemption was proposed or shown  
5 or mapped for Fishing Creek. I don't have on this map,  
6 but you do have a map in front of you that -- have you  
7 all seen? That shows the additional areas that we think  
8 comply with the program texts as far as buffer  
9 exemption. That's it right there.

10           MS. S. LAWRENCE: This is it.

11           CHAIRMAN BOWLING: Basically that's through  
12 the heavily developed area.

13           MR. HOFMANN: Most the area is all bulkheaded.  
14 And there are parking lots and marinas and things of  
15 that nature behind there. There are no functioning or  
16 active buffers in the area that we're proposing to add  
17 to the map.

18           CHAIRMAN BOWLING: Any questions?

19           MR. ELBRICH: What portion of it is not  
20 bulkheaded in this map here, so we can have a better  
21 idea?



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1                   CHAIRMAN BOWLING: This area up here is not  
2 bulkheaded.

3                   MS. S. LAWRENCE: It's not included.

4                   MR. HOFMANN: The bulkheading, there's -- as I  
5 go around it, this is bulkhead, bulkhead, not  
6 bulkheaded. What we come across here, I believe, all  
7 this is bulkheaded. Down around here, this is all  
8 bulkheaded up to here. Then that becomes the tidal  
9 wetlands. For the most part, all the way down here.

10                   MS. S. LAWRENCE: Are all these areas in  
11 yellow here?

12                   MR. HOFMANN: Yes.

13                   MS. S. LAWRENCE: Here you go. If you can  
14 indicate the areas in yellow are all bulkheaded, that's  
15 fine.

16                   MR. HOFMANN: The only area that's not  
17 bulkheaded is the little bit of area in this channel  
18 across the street where the Navy has their docking  
19 facilities. That's the only area, and that area is this  
20 area right in here.

21                   MS. S. LAWRENCE: And that is not?



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MR. HOFMANN: That is not.

2

MS. S. LAWRENCE: Okay.

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MR. HOFMANN: I would say -- on that map, I would say something less than 10 percent is not bulkheaded.

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MAYOR DONOVAN: They have a permit to bulkhead that land.

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MS. S. LAWRENCE: They do have a permit to bulkhead that? It's in constant use?

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MR. HOFMANN: Yes. Okay? The second item. We're requesting a buffer exemption for a parcel in the Baycrest Subdivision. That parcel is located right in this area here.

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There is about a two and a half acre parcel there that sits behind what we call the flood gate. It's where a tributary runs, 400-acre tributary runs into the Bay. Because of flood problems that the town has had to put a flood gate, with natural resources fundings and assistance, at the tributary to keep the Bay waters from flooding the area. But there are still -- we are still required to maintain the gate open. So,



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1 there is a tidal flushing action in what we call a tidal  
2 basin adjoining this property on the south side.

3 The two and a half acre parcel presently is  
4 used for a gasoline station and auto repair. There are  
5 no buffer vegetation of any sorts on the property. The  
6 request is to include the area on the south side to be  
7 buffer exempt. That would be for approximately two to  
8 300 feet from the area of the buffer along the Bay to  
9 Route 261.

10 The proposed use of the property is for  
11 residential development. The filling station and the  
12 auto repair will go. The developers have studied the  
13 property and have prepared environmental and engineering  
14 reports, and under the town's critical area program will  
15 provide a stormwater management system that will achieve  
16 the 10 percent removal requirement.

17 MR. GUTMAN: Do I understand you to say that  
18 this area will be cleared of the current structures?

19 MR. HOFMANN: Yes, it will.

20 MR. GUTMAN: And why would you not have a  
21 buffer once it was cleared?



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1 MR. HOFMANN: We would have to create a  
2 buffer. There is no buffer there now.

3 MR. GUTMAN: Yes.

4 MR. HOFMANN: And we would propose, or what  
5 the land owner is proposing, is to rather than try to  
6 establish a buffer -- but establish a stormwater  
7 management system to treat the stormwater.

8 MR. GUTMAN: There are two different purposes,  
9 are there not? Stormwater management and a buffer are  
10 not synonymous in their objectives.

11 MR. HOFMANN: Well, what the town has also  
12 been told -- and I'll be very candid with you -- if we  
13 have to maintain a buffer, and we cannot exempt the  
14 buffer in the south side, the development will probably  
15 not occur, and it will remain in its present use.

16 MR. GUTMAN: Well, that's up to the -- that's  
17 a choice up to the town or the developer. But I don't  
18 quite understand why, if it's being cleared, there can't  
19 become a buffer.

20 CHAIRMAN BOWLING: What I think he's saying is  
21 a reason for clearing it is for the development, is that



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1 correct?

2 MR. HOFMANN: That's correct.

3 CHAIRMAN BOWLING: Okay. Other than that,  
4 they won't clear.

5 MS. S. LAWRENCE: Clear away the gas station  
6 and the old cars.

7 MR. HOFMANN: Yes, there's no incentive to do  
8 anything if we can't do the development.

9 MR. GUTMAN: Well, maybe I'm not following  
10 you. Once cleared, what is the objection to having a  
11 buffer?

12 MS. S. LAWRENCE: What is the bulkhead?

13 CHAIRMAN BOWLING: Is the property owner here?

14 MR. HOFMANN: The property owner? Yes.

15 MAYOR DONOVAN: I'm the property owner.

16 MR. HOFMANN: The mayor is the property owner.

17 (Laughter.)

18 MR. HOFMANN: The problem is if you strike a  
19 100-foot buffer on the property, there is no -- it  
20 consumes most of the balance of the property. So, there  
21 won't be any room for development. I think if we get a



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1 site plan -- do we have a site plan?

2 MR. GUTMAN: There is nothing, apparently,  
3 to prevent them from putting a --

4 MR. HOFMANN: How should I best present this  
5 so we can all see this?

6 MR. ELBRICH: That's okay where you are.  
7 You're talking about that?

8 MR. HOFMANN: Yes, we're talking about that  
9 one there.

10 MR. ELBRICH: We know where you are.

11 MR. HOFMANN: This is the open Bay here, and  
12 this is the property here. This is the tidal gate.  
13 This is the tidal basin in this area. Now, under the  
14 present town program, if we were to maintain a 100-foot  
15 buffer, we would have a line that would strike across  
16 the property like this. So, we would basically be left  
17 with a little sliver here and a little piece over here  
18 for development. The town is told that if that's the  
19 only area that remains for development, then this  
20 removes any incentive to develop the property.

21 MR. PRICE: What we've -- if I could



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1 interject?

2 MR. HOFMANN: Sure.

3 MR. PRICE: What we've tried to do by doing  
4 this is to come in and restore this area. In fact, we  
5 turned in a blue report where we were essentially  
6 putting everything on piles. Doing every mitigating,  
7 design, technique we could to -- including having a  
8 gravel fill and a filtration system on the site, and  
9 not impervious soil. We're actually going from two-  
10 point-something acres of impervious down to one.

11 Given all the constraints of developing  
12 townhouses, including roads, we've actually tried to  
13 restore as much of the site as we can. But we really  
14 have to bring this kind of housing up to a point where  
15 view and access to a site view are critical to  
16 developing houses. If you stuck them all back behind  
17 here, essentially there not going to -- there just not  
18 going to be developed.

19 MR. GUTMAN: Well, if I understand, you're  
20 enumerating a number of economic reasons.

21 MR. PRICE: Some, but I think we're also



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1 trying to do the best in spirit, that if -- in other  
2 words, if you took away this much of the site, it's  
3 essentially economic. You're right. But if you re-  
4 include it, and you do as much good design technique  
5 that you can within the spirit of a buffer, that you've  
6 at least gotten rid of the existing bad condition.  
7 You've allowed development to have the incentive it  
8 needs as a base to start with, and then at least the  
9 development is trying to take a -- as positive  
10 environmental stance as it can in terms of mitigating  
11 and design techniques.

12 MS. S. LAWRENCE: Is this referencing the  
13 report?

14 MR. PRICE: Right. Right.

15 MS. S. LAWRENCE: The proposed development on  
16 the site involves removal of the part of the bulkhead  
17 along the tidal basin shore line, and re-grading  
18 stabilization and planning with wetland vegetation to  
19 enhance habitat.

20 MR. PRICE: Right.

21 MS. S. LAWRENCE: Which portion would that be?



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1 MR. PRICE: That's along here. As you can see  
2 in this photo, this is -- there was a boat ramp, which  
3 is right up in here. Right now there is some bulkhead  
4 that's falling down; some that's still there. We'd be  
5 removing it per this section, and allowing the natural  
6 vegetation. And we'd also exclude all these -- these  
7 piers walking around are like six, seven feet off the  
8 ground. People will not go down there. It's left  
9 natural all the way up under the pier itself.

10 We've done this technique in other places, and  
11 it seems to allow the natural vegetation to re-  
12 establish.

13 MR. GUTMAN: The width here which you're  
14 allowing for --

15 MR. PRICE: To the structures is -- if you  
16 actually went to the houses, which are on posts as well  
17 -- the entire development is on posts. But if you went  
18 up to here where the cars would, say, park underneath --

19 MR. GUTMAN: No, I'm talking about this  
20 structure. What is the distance that you're leaving for  
21 some kind of habitat?



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1 MR. PRICE: It varies from -- at the worst  
2 condition, maybe eight or nine feet, to a much broader  
3 condition at the point.

4 MR. GUTMAN: So, what you're suggesting is  
5 that we except eight or nine feet as opposed to the  
6 100 feet which really is what appears in the criteria?

7 MR. PRICE: As 100 feet, you mean?

8 MR. GUTMAN: Yes.

9 MR. PRICE: Yes, but we're saying if you take  
10 the 100, you throw out some much that it becomes  
11 economically unfeasible.

12 CHAIRMAN BOWLING: So, we're left with a gas  
13 station and old cars and stuff.

14 MR. HOFMANN: Auto repair.

15 MR. GUTMAN: Well, now, in the case of  
16 Baltimore City -- and I hope there's someone who can  
17 correct me if I'm stating this wrong. In the case of  
18 Baltimore City where there are some areas where they're  
19 doing redevelopment, abandoned warehouses, dilapidated  
20 piers, and putting up very expensive residential  
21 structures, they've adopted a fee in lieu of. And I



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1 don't recall the numbers at all, but there is a payment  
2 that, I believe, is being made. And that sum of money  
3 can be used somewhere else to create a condition of  
4 habitat.

5 CHAIRMAN BOWLING: That's true.

6 MR. GUTMAN: Do I have any of this right?

7 CHAIRMAN BOWLING: I believe that's correct.

8 MR. ZAHNISER: I think it's \$2.50 a foot.

9 CHAIRMAN BOWLING: Square foot, I believe it  
10 is, yes.

11 MR. GUTMAN: But in any event --

12 CHAIRMAN BOWLING: It's used elsewhere in  
13 Baltimore City.

14 MR. GUTMAN: Yes.

15 CHAIRMAN BOWLING: To mitigate in other areas.

16 MR. GUTMAN: Has there been any discussion  
17 that there might be some arrangement of that nature?

18 CHAIRMAN BOWLING: I don't believe there's any  
19 provision for that in your plan, is there?

20 MR. HOFMANN: There's no provision.

21 MS. S. LAWRENCE: Here's a -- yes. Here's a



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1 "natural vegetation of an area, twice the extent of the  
2 impervious surface created in the buffer exemption area,  
3 shall be planted in a buffer exemption offset area or  
4 other location as may be determined by the town."

5 That's on page --

6 MR. PRICE: One of the things that we  
7 discussed was --

8 CHAIRMAN BOWLING: It was strictly impervious  
9 impervious surface, Louise, unless he's going to leave  
10 that surface pervious --

11 MS. S. LAWRENCE: Right. That's going to  
12 be --

13 MR. PRICE: Yes. In fact, our report says  
14 we're coming down from 2.2 acres, I believe, to 1  
15 point --

16 MS. S. LAWRENCE: Seven.

17 MR. PRICE: -- seven. And we're also trying  
18 to establish as much buffer vegetation as we can at the  
19 -- within the site. But not necessarily buffered to  
20 this particular site.

21 We feel that we're putting a lot of money and



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1 effort into mitigating design --

2 MR. ZAHNISER: Is there going to be any  
3 deepening or dredging of the present basin now?

4 MR. PRICE: No, we won't touch that.

5 MR. ZAHNISER: And you are going to be  
6 planting marsh grass back along the border and all the  
7 way around?

8 MR. PRICE: Yes, in fact, I think we submitted  
9 an indigenous planting schedule of a mixture of  
10 appropriate material.

11 MAYOR DONOVAN: Well, from a layman's point of  
12 view, looking at that property all my life, it would  
13 appear that what the planning calls for would enhance  
14 the quality of the water going into the basin and  
15 ultimately into the Bay. And on the face of it, if you  
16 have 100-foot exemption from the Bay that covers part of  
17 the property without the 100-foot exemption from the  
18 little -- I don't know what you call that body of water  
19 -- but it just rendered the property where we couldn't  
20 do anything with it really.

21 And if we can do something with it, we can



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1 improve what's actually been taking place over the  
2 years. And it is in the IDA.

3 MR. PRICE: I think our report said we were  
4 actually reducing the current pollutant loading from  
5 almost 47 percent by the techniques we plan to do.

6 MAYOR DONOVAN: You mean, isn't this a case  
7 where the development would actually make it better?

8 MR. PRICE: That's what we're -- our  
9 environmental consultants are showing us, and that's  
10 what we're -- as planners and architects, that's the way  
11 we've designed to do it.

12 MR. GUTMAN: I believe the legislature found  
13 that the concentration of people adjacent to waters of  
14 the Bay has been largely responsible for the pollution  
15 that we are now faced with. So, having an increase in  
16 density is, I would say, a negative versus the benefits  
17 that one can provide with a buffer.

18 CHAIRMAN BOWLING: Well, as I hear him say,  
19 we're not going to get a working buffer either way.

20 MR. HOFMANN: Well, I think that --

21 CHAIRMAN BOWLING: I think that's what you



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1 plainly said. In other words, that we're not going to  
2 get a working buffer either way, isn't that correct?

3 MAYOR DONOVAN: Yes.

4 MR. PRICE: But quoting from the very program,  
5 I think we went off on another understanding, which is  
6 that if where it can be sufficiently demonstrated that  
7 the existing pattern of residential, industrial,  
8 commercial, or recreational development in the critical  
9 area prevents the buffer from fulfilling the functions,  
10 that we're essentially trying to improve that. But it's  
11 not a remote site. It's within an area where economics  
12 and people already are. And I think within that  
13 context, we're trying to --

14 MS. S. LAWRENCE: These are all important site  
15 considerations probably. They are going to be more  
16 fully reviewed and considered and voted on at a later  
17 date when a site plan is submitted. So, these are very  
18 relevant; however, the buffer exemption is the main  
19 consideration at this point.

20 CHAIRMAN BOWLING: Louise, do you have any  
21 questions? Joe, you have any questions? Skip, any



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1 questions?

2 MR. ZAHNISER: No questions.

3 CHAIRMAN BOWLING: Jim, any more?

4 MR. GUTMAN: I think I've done enough time.

5 MS. S. LAWRENCE: Thank you, Jim.

6 MR. HOFMANN: A final thought here. There was  
7 a public hearing on this proposed change conducted by  
8 town counsel on December 21st, and there were no  
9 comments for or against this proposal.

10 The item number three of our request is  
11 another buffer exemption request in what we call the  
12 North Chesapeake Beach Subdivision. It is the area that  
13 I'm circling with my fingers. This is a tidal and non-  
14 tidal marsh in this area. These are platted lots and  
15 have been platted for many, many years. And in the  
16 case of the request, which is to buffer exempt along  
17 these existing platted lots, I believe all the lots are  
18 developed with a single-family structure. The  
19 structures protrude into the buffers. For the most  
20 part, the buffer consists of a few trees and maintain  
21 yards, lawns.



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1           And the purpose of the request is to request a  
2 buffer exemption in the area to be -- I think that the  
3 benefit to the town is that we'd have no pending  
4 development activities here. But if anyone wants to  
5 build a porch or make any modifications to the  
6 structure, it means quite a rigorous application  
7 procedure and a variance before the board of appeals.  
8 And we would request that that area be also buffer  
9 exempt.

10           CHAIRMAN BOWLING: That currently has 100  
11 foot of buffer there, is that correct, or more?

12           MR. HOFMANN: No. I would say it doesn't have  
13 100. There are structures within the buffer.

14           CHAIRMAN BOWLING: Structures within the  
15 buffer?

16           MR. HOFMANN: Yes. There are structures  
17 within 100 feet of the tidal portion of water.

18           CHAIRMAN BOWLING: That's tidal wetland -- is  
19 it grown-up marsh?

20           MR. ELBRICH: I've got pictures of some of the  
21 sites here, and the lots are no different than thousands



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1 and thousands of lots on the Chesapeake Bay in which  
2 small lots on the Chesapeake Bay and its tributaries  
3 have lawn and forest and shrubs down to the water. And  
4 so you know where I stand, I would not be in favor of  
5 those because we'd be setting a precedence where we were  
6 exempting any lot, or small lots, on the water. And if  
7 they desire to build, in my estimation, they have to go  
8 through an appeals or variance.

9 MR. HOFMANN: The feelings aren't very strong  
10 from this end either on whether we give this buffer  
11 exemption. We were requested when we made these  
12 requests to look at all areas where buffer exemptions  
13 could be applied for and present all our cases to the  
14 commission. And that's what we're doing.

15 Like I say, there are no pending development  
16 activities. There's no reason presently to do the  
17 buffer exemption other than to make it a little bit  
18 easier to do some -- somebody want to put a porch, or  
19 add a room to a structure, which probably they would be  
20 permitted to do even if they went through the full  
21 appeal process with the town's board of appeals.



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1 CHAIRMAN BOWLING: But in any case, anything  
2 that they did would reduce the working area of the  
3 buffer that was there?

4 MR. HOFMANN: Yes, it would. There was a  
5 public hearing in this matter also on December 21st, and  
6 there were no comments for or against.

7 The last request is to reduce the buffer on  
8 what we call the Howlin Property off of Harbor Road that  
9 is in this area here. I believe you all have maps in  
10 front of you. Originally, the town was --

11 MS. S. LAWRENCE: What is this?

12 MR. HOFMANN: The Howlin Property.

13 MS. S. LAWRENCE: Oh, yes. That's it.

14 MR. GUTMAN: Just one moment, please.

15 CHAIRMAN BOWLING: Is that the correction?

16 MS. S. LAWRENCE: Okay. This is, yes.

17 CHAIRMAN BOWLING: It's not a buffer  
18 exemption, but a correction --

19 MS. S. LAWRENCE: Oh, no. The correction was  
20 this one. This one was the correction, and this is  
21 directly across from that.



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1 MR. HOFMANN: This is a buffer exemption  
2 request.

3 MR. GUTMAN: Which drawing is this one?

4 MS. S. LAWRENCE: It would be the first one.

5 CHAIRMAN BOWLING: Harbor Road/The Captain's  
6 Quarters.

7 MR. HOFMANN: Captain's Quarters.

8 MS. S. LAWRENCE: Down in this area here.

9 MR. GUTMAN: Down at the bottom.

10 MS. S. LAWRENCE: This is the small location,  
11 and this is enlarged up here. This is -- the area is  
12 right here.

13 MR. GUTMAN: What's going on with the rest of  
14 the area?

15 MS. S. LAWRENCE: All of this is proposed.  
16 This is a smaller scale, and this is the large-scale  
17 drawing.

18 MR. GUTMAN: I'm not sure I follow it. Is  
19 this the line of existing buildings?

20 MS. S. LAWRENCE: This is a line of the area  
21 they want to exempt.



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1 MR. GUTMAN: Are there buildings there now?

2 MS. S. LAWRENCE: No. This is the proposed  
3 building, and this area is the same.

4 MR. HOFMANN: This is the tidal, main high  
5 waters --

6 MR. GUTMAN: Do you have a larger --

7 MS. S. LAWRENCE: Yes, here we go.

8 CHAIRMAN BOWLING: Okay. This is the one  
9 we were talking about.

10 MS. S. LAWRENCE: Right along here. This  
11 little area here. This is just a bigger map of the  
12 whole site. These are parts of the area of Fishing  
13 Creek that are going to the --

14 MR. GUTMAN: There's no development in here  
15 now?

16 MS. S. LAWRENCE: No.

17 CHAIRMAN BOWLING: No.

18 MS. S. LAWRENCE: Here you go.

19 MR. GUTMAN: So, what you're asking is what?

20 MS. S. LAWRENCE: This is what's here now. A  
21 parking lot.



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1 MR. GUTMAN: What is proposed?

2 MS. S. LAWRENCE: This is the proposed  
3 development which is up out of here. Development is not  
4 proposed within the buffer exemption area. What's  
5 proposed in the buffer exemption area, or going to be  
6 proposed, is a --

7 MR. ELBRICH: Stormwater management pond with  
8 a wetland creation in it.

9 MS. S. LAWRENCE: Stormwater management, yes.

10 MR. ELBRICH: So, you are, in fact, creating  
11 more of the wetland area as a result of the pond.

12 MR. GUTMAN: But there are no structures  
13 planned for that --

14 MS. S. LAWRENCE: No.

15 MR. ELBRICH: No. No. No.

16 MR. GUTMAN: No residence or --

17 MR. ELBRICH: No. No.

18 MS. S. LAWRENCE: No. Here's the 100-foot  
19 buffer. No structures are proposed outside of what  
20 would be the full 100-foot buffer.

21 MR. ZAHNISER: Is the 100-foot buffer from a



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1 tidal marsh, or is it from actual water?

2 MR. HOFMANN: It's a tidal marsh. It's behind  
3 the old railroad right-of-way. It does not flush  
4 particularly well, but there is tidal flushing action in  
5 the area. And you identified it as a main high water  
6 line.

7 MR. ZAHNISER: And you're planning to leave a  
8 25-foot buffer?

9 MS. S. LAWRENCE: Yes, right here.

10 MR. HOFMANN: Yes. There are certain parts of  
11 the 100-foot buffer -- there will be a 25-foot buffer  
12 which will remain. But we're going to do some planning  
13 also in the 25-foot buffer, and in other parts of the  
14 100-foot buffer because parts of the 100-foot buffer  
15 that aren't involved in the detention pond are presently  
16 gravel parking lots, gravel areas.

17 MS. S. LAWRENCE: It shows where the parking  
18 lot is.

19 MR. ZAHNISER: Will you commit yourself to  
20 planting natural forest vegetation type along those  
21 areas?



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MR. HOFMANN: Yes, sir.

MR. GUTMAN: Do you have any problem with this?

MR. HOFMANN: The applicant has turned in a -- Mr. Zahniser, the applicant proposes to plant indigenous woody plants and trees such as red maples, sweet gums, bayberries, red -- dogwoods and silky dogwoods.

MR. ZAHNISER: Throughout the buffer --

MR. HOFMANN: Yes.

MR. ZAHNISER: And along the banks of your stormwater management ponds?

MR. HOFMANN: Yes.

MR. GUTMAN: Is there anything that is legally recorded that would prevent, at some future time, the addition of some residential structures in this area?

MAYOR DONOVAN: Well, when they went directly to plat them --

MR. HOFMANN: When they go to record plat, we'll put a conservation easement on that area so it cannot be developed.



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CHAIRMAN BOWLING: Any other questions? Skip?

MR. ZAHNISER: No.

CHAIRMAN BOWLING: Joe?

MR. ELBRICH: No.

CHAIRMAN BOWLING: Louise?

MS. L. LAWRENCE: No.

CHAIRMAN BOWLING: Jim?

MR. GUTMAN: No.

MR. HOFMANN: There was a public hearing held on this request also on December 21st. No comment for or against. That ends our presentation and requests.

CHAIRMAN BOWLING: Does any member, anyone else here, want to make a comment about them?

MS. HITT: I was just going to add a couple of things to John's comments. I think the basic reason that these requests have come up is because due to -- our program originally had the full outline of the buffer exemption. And I think due to an oversight that the areas were not mapped as exemptions. All of the waterfront down to 10th Street, where we have a buffer exemption, is all IDA.



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1           And with respect to these areas that have the  
2 small backyards and things along where we're asking for  
3 a buffer exemption, the difference between this and  
4 maybe -- Mr. Zahniser I'm addressing one of your  
5 comments about the small lots -- that other small lots  
6 along the Bay is that this is in a town center. And it  
7 it intensely developed.

8           And, Mr. Gutman, I would also address that we  
9 already have people here, and this is an area where it  
10 is intensely developed. We think that with respect to  
11 the properties, even with the exemptions that we're  
12 asking for, there are other mitigating factors.

13           Certainly the development at this piece down  
14 here would be better than the impervious surface that it  
15 has now where there are no trees, no naturally vegetated  
16 buffer at all. The areas up here, there can be planting  
17 programs. We're asking for an exemption in areas where  
18 we would have asked for an exemption before in our  
19 original program. And I think in light of the way that  
20 the commission has handled the exemptions along the  
21 front, we would have also been granted -- I wouldn't



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1 want to second guess the commission, but I think that we  
2 would have --

3 MR. GUTMAN: A very dangerous activity.

4 (Laughter.)

5 MS. HITT: No, sir. I wouldn't dare. I would  
6 not.

7 (Laughter.)

8 MS. HITT: For the same reasons that we were  
9 granted the exemption, though, for the buffer along the  
10 front of the Bay, we would have been granted an  
11 exemption along these very little bodies of water that  
12 are also in the IDA or are bulkheaded, developed  
13 otherwise.

14 So, what I'm really trying to say is that  
15 other than the oversight, we're asking for something  
16 that we would have asked for originally. And for the  
17 same reasons that it was granted along the front, we  
18 think it would have been in the two, sort of finger  
19 piers, of water that stick up.

20 And we think that the proposals that are on  
21 the table to develop these properties do do the



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1 mitigation, and do the things that the critical areas  
2 was intended to do by providing landscaping and trees  
3 and that type of thing. And, therefore, we think that  
4 the buffer -- it is not a naturally vegetated area. We  
5 would be contributing to more vegetation in these areas.

6 CHAIRMAN BOWLING: Cindy, identify yourself  
7 for the court reporter, please.

8 MS. HITT: I'm Cindy Hitt. I'm town counsel  
9 for Chesapeake Beach.

10 CHAIRMAN BOWLING: Does anyone else want to  
11 make any comments?

12 (No response.)

13 CHAIRMAN BOWLING: Hearing no further  
14 comments, and having no further items to consider, I'll  
15 note that the record for this meeting will remain open  
16 for two weeks. If anybody wishes to submit written  
17 comments, they should be submitted directly to the  
18 commission, West Garrett Street in Annapolis. That's  
19 it. Thank you.

20 (Whereupon, at 7:45 p.m., the above-  
21 entitled hearing was adjourned.)



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

*Deborah J. Turner*  
DEBORAH J. TURNER  
Notary Public in and for  
the State of Maryland

My Commission Expires:  
July 1, 1990



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