

Public Hearings - Queen Anne's County - Two Amendments 1990 MSA - J 1830 - 23

BEFORE THE CHESAPEAKE BAY CRITICAL AREA COMMISSION

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IN THE MATTER OF :
TWO AMENDMENTS TO QUEEN ANNE'S :
COUNTY CRITICAL AREA PROGRAM :

Thursday, March 29, 1990

Pursuant to Notice, the above-entitled hearing was held before JAMES E. GUTTMAN, CHAIRMAN, at the County Office Building, 208 North Commerce Road, Centreville, Maryland 21617, commencing at 7:00 p.m., there being present on behalf of the respective parties:

ON BEHALF OF THE CHESAPEAKE BAY CRITICAL AREA COMMISSION:

JAMES E. GUTTMAN, Chairman
SHEPARD KRECH, Board Member
ROBERT PRICE, Board Member
JOE ELBRIGHT, Board Member
PAT PUDELKEWICZ, Staff
MR. REN SEREY, Staff

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CRITICAL AREA COMMISSION



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ALSO PRESENT:

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FRANCIS ASHLEY, Queen Anne's County Commission
WHEELER BAKER, Queen Anne's County Commission
MARGARET C. KAIH, Department of Planning and
Zoning, Queen Anne's County
MR. RICHARD E. RICE
MR. BUTTERWORTH
MR. MIKE WHITEHILL

REPORTED BY: MARVIN W. GATZ, NOTARY PUBLIC

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1 Pudelkewicz, over here to my left, to your right.

2 The proceedings tonight will be recorded, and
3 the record for the proceedings for these issues will
4 remain open for written comment to the Commission
5 through next Tuesday, for any further elaborations, if
6 anybody wishes to send anything in writing beyond what
7 might be said tonight. As I mentioned, we do have a
8 court reporter taking down everything that will be said
9 this evening.

10 Are there any local officials with us this
11 evening for the county? Would you please introduce
12 yourselves?

13 MS. ASHLEY: I'm Francis Ashley, County
14 Commission.

15 CHAIRMAN GUTTMAN: All right.

16 MR. BAKER: Wheeler Baker, County Commission.

17 CHAIRMAN GUTTMAN: Do either one of you care
18 to make a statement at this time? Please do.

19 MR. BAKER: Well, sir, I was going to make a
20 statement after Mr. Butterworth makes his statement, if
21 it's all right with you.



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1 CHAIRMAN GUTTMAN: As you see fit.

2 All right. Additionally, from the staff of
3 the Critical Area Commission, we have Mr. Ren Serey,
4 who has just joined us.

5 I think we'll be very lenient with the normal
6 ground rules of saying only a three to five minute
7 presentation. There are not that many here this
8 evening, so I don't think we'll be all that stern about
9 sounding the gavel.

10 I would like to mention, however, that the
11 purpose of this hearing is for members of this
12 Commission to hear the perspective of those in the
13 county, and we really will not be entering into any
14 dialogue or trying to respond to any of the issues this
15 evening. We're principally here to gather some facts.

16 So, I think at this point I would ask if
17 there's a representative of the county who wishes to
18 introduce the amendments under consideration?

19 MS. KAI: Do you want to look at them one at
20 a time, or --

21 CHAIRMAN GUTTMAN: Why don't you go through



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1 them in sequence? Yes.

2 MS. KAI: I guess we should probably start
3 off with Mr. Butterworth's, if that's all right with
4 you. The petition is for a critical areas change from
5 LDA to IDA. If you wouldn't mind, I'd like to just let
6 Mr. Rice explain his situation --

7 CHAIRMAN GUTTMAN: That'd be fine.

8 MS. KAI: -- and present his case.

9 CHAIRMAN GUTTMAN: Surely. Please do.

10 MR. RICE: Chairman Guttman and panel members,
11 I would like to say at the outset that there's certain
12 justice in the world. Mr. Elbright, tonight, gets a
13 chance to cross-examine me, rather than vice versa.

14 MR. ELBRIGHT: Don't hold that against me. I
15 won't hold it against you.

16 MR. RICE: I'm sure he'll enjoy this to no
17 end. I just warned him. I have not been sworn.

18 MR. ELBRIGHT: That doesn't help you.

19 MR. RICE: I was afraid of that. I'm happy to
20 say for my client that I believe this evening's petition
21 on behalf of Thompson Creek Townhomes and the Joint



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1 Venture and the corporation is very straightforward. In
2 December of 1985, this entire section of land, which
3 comprises in excess of 20 acres, was developed
4 residentially to the extent of the developments that are
5 shown here marked in brown.

6 And there were over 100 units already in
7 existence, 100 drawn units already in existence, as
8 indicated on the map. This entire residentially zoned
9 area in excess of 20 acres is approximately 30 acres.
10 If you take the 100 and some dwelling units that were in
11 existence as of December 1, 1985, and divide by the area
12 in question, you come up with a density of 3.5 units per
13 acre, which meets one of the primary considerations for
14 intense development area.

15 If you also consider this 7.5 acre block to
16 the north of the property, it was part of the commercial
17 development along Route 50, and it assists in the
18 analysis of the criteria applicable to this site because
19 of one of the criteria, which you know better than me,
20 is that commercial land use is predominant in the area.
21 And they do. Here, we have commercial uses. We have



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1 residential uses; and in fact, there were industrial
2 uses in this area, which is now zoned suburban
3 industrial.

4 So the other criteria that are mentioned in
5 the Natural Resources Article with respect to intense
6 development are, "Is there a lack of vegetation in this
7 area?" And there certainly is a lack of vegetation in
8 the area, not only because of the residential
9 development that existed down here, but also because of
10 the clearing that had already taken place years and
11 years ago in this area.

12 In fact, this one site, this 5.3 acre site of
13 Thompson Creek Townhomes, Inc., was a spoil basin first
14 for the county's dredging project, which enabled the
15 public landing that is located just a little further in
16 that direction, and then secondly, as the spoil area for
17 the dredging that was performed by Mr. Butterworth, who
18 is the principal for the townhomes project.

19 There is a stormwater management facility
20 located approximately here, where it says, "Existing
21 pond." That pond was sized and approved, both by Anne



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1 Arundel County and the State of Maryland, and was an
2 integral requirement for the wetlands permit that was
3 obtained for the dredging -- I should say State weapons
4 license that was obtained for the dredging.

5 MR. ELBRIGHT: Not Anne Arundel County.

6 MR. RICE: Queen Anne's County.

7 I'm sorry. I'm sorry. The tongue does funny
8 things -- don't learn from me.

9 Really, that leaves us with the only issue
10 that's not graphically shown on just this simple plat,
11 and that deals with the existence of water and sewer to
12 the area, in general, as of December 1, 1985. We have a
13 second plat, which is Applicant's Exhibit 1-B that
14 addresses that remaining issue.

15 Ignoring, initially, all of the modern water
16 and sewer lines that run through this area today, in
17 1985, there existed a public utility known as Stevens
18 Village Utility Corporation, that had been formed by a
19 developer in this area well before Mr. Butterworth came
20 on the scene. As of that date, it was providing water
21 to these projects that were located in this area. It



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1 was also providing water to the several industrial
2 establishments here, and to the part of the shopping
3 center that was located adjacent to these areas just to
4 the north.

5 When the two petitioners here this evening
6 acquired their properties in this area, they also
7 obtained the stock to the Stevens Village Utility
8 Company, with the idea, of course, of extending water
9 and sewer service to those specific projects to be built
10 by them. But I wish to emphasize that at that point in
11 time that utility was already providing sewage service
12 and water service to these areas -- this entire area.

13 Right about at the time the petitioners here
14 acquired their land, the county was extending a vacuum
15 sewer. You can see the vacuum sewer lines coming down
16 Thompson Creek Road. And in fact, just about at this
17 time, the vacuum sewer replaced the old sewage treatment
18 plant, which has been shown here in red. It was the old
19 sewage treatment plant which, as of -- prior to 1985,
20 was operated by the Stevens Village Utility Company, and
21 subsequent to that date, was taken over and replaced by



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1 the vacuum sewer service.

2 The petitioners here contributed to the
3 construction of a new water plant, which replaced the
4 old facility that was in approximately the same
5 location. But that new water plant, which was
6 constructed subsequent to 1985, only replaced the
7 facility that was there ahead of time and was already in
8 place in 1985.

9 In fact, the existing water plant operated by
10 Stevens Village Utility initially provided water
11 service, not only to these projects that existed as of
12 December 1, 1985, but continued to provide water service
13 both to Thompson Creek Colony and to the Thompson Creek
14 townhomes development, which was already well under way
15 subsequent to December 1, 1985, before the new water
16 plant was built.

17 So, I believe that all the criteria necessary
18 for classification of this area in 1985 as intense
19 development existed as of December 1, 1985, and it was,
20 indeed, a mistake for the county to designate this
21 land's limited development area.



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1 That brings us, I think, just to a simple
2 explanation of how that happened. The property was
3 classified suburban residential. Under the county's
4 mapping policy, all suburban residential properties were
5 categorized as limited development area. So the
6 critical area classification was automatic because of
7 the mistake in the zoning.

8 Last July, I believe it was -- it was last
9 year in 1989, the same petitioners went before the
10 county commissioners here in Queen Anne's County and
11 obtained rezoning of these two parcels, on the basis of
12 mistake, from suburban residential to urban residential.
13 If, under the county's mapping policy, these properties
14 had been zoned correctly urban residential at the time
15 that the critical area maps were developed, then these
16 properties would have been routinely designated as
17 intense development.

18 So we're asking, tonight, that you grant this
19 request. It was definitely a mistake. And it will
20 assist us greatly as of this time. This is not part of
21 your concern, I don't believe. But I just wish to



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1 mention affecting the two petitioners in this case is a
2 unique financing problem.

3 You may be aware that Liberty Federal Savings
4 Bank was taken over by the Office of Thrift Supervision
5 right around Christmastime of last year. And Liberty
6 was a joint venture. In fact, the Thompson Creek
7 Townhomes Joint Venture is, in part, Randallstown
8 Service Corporation, which is a solely owned, wholly
9 owned subsidiary of Liberty Savings Bank. When Liberty
10 was taken over, the federal regulators -- and even just
11 before it was taken over, the federal regulators
12 prohibited Liberty from assisting or providing
13 additional financing to this development. So there has
14 been no construction here for some time.

15 All the facilities are in. All the impervious
16 area has already been constructed except for actual
17 dwelling units in certain locations. This chart will
18 tell you specifically what has been built and what will
19 be built. I don't think I need to get into that. If it
20 becomes relevant, you can see it.

21 But my point simply is that it's been a



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1 terrible hardship having to hold up construction here
2 after the infrastructure was already in place, because
3 obviously, the loan had to be carried for the
4 infrastructure, but no additional units could be built.
5 And there's no ability to finance out of this situation
6 to get a different lender in place until this error,
7 which I believe occurred in the critical area map, has
8 been corrected.

9 So I thank you for your patience. If you have
10 any questions, Mr. Whitehill from McCrone Engineering is
11 here to answer technical questions, and Mr. Butterworth,
12 who is the principal in both of the petitioner entities,
13 is here to answer questions about development.

14 CHAIRMAN GUTTMAN: Before you sit down, I
15 wonder if I just inquire. You say there was a rezoning
16 last summer?

17 MR. RICE: Yes, sir.

18 CHAIRMAN GUTTMAN: What was the position of
19 the planning commission on that?

20 MR. RICE: It was in support of it, and that
21 the opinion of the -- I could let Ms. Kail speak to that



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1 if you'd like to.

2 MS. KAIL: The county commissioners approved
3 the rezoning on the basis of the mistake of the zoning
4 because of the site plan that was submitted in -- to the
5 Department of Planning and Zoning for the potential
6 build-out which is shown here on the plan. Had this
7 property been zoned as -- as Mr. Rice said, had it been
8 zoned urban residential at the time, it would have been
9 designated IDA at the time of the critical area zoning.

10 CHAIRMAN GUTTMAN: Was there any opposition to
11 that rezoning?

12 MS. KAIL: Not at the hearing.

13 MR. RICE: There were some questions, but
14 there was no opposition.

15 CHAIRMAN GUTTMAN: What was the nature of
16 those questions?

17 MR. RICE: The question was basically what
18 type of construction would be taking place if this
19 petition were granted, and the representation was made
20 that it's identical to the type of structures that
21 already exist in this area which the same developer is



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1 -- the same principal. It's not the same developmental
2 entities, but the same developer has already
3 constructed.

4 The same developer -- the same principal, Mr.
5 Butterworth, built Thompson Creek Colony and Thompson
6 Creek Condominiums, as well as the existing units in
7 Thompson Creek Townhomes. I believe there were people
8 representing the Kent Cove condominium adjacent to these
9 developments who were concerned with the type of
10 construction that might take place, particularly on this
11 5.3 acre site. Again, representation was made that it's
12 the same type of physical construction that's already
13 taken place in this area.

14 CHAIRMAN GUTTMAN: All right.

15 MR. ELBRIGHT: What kind of approvals had been
16 secured, either as of '85 or prior to the critical area
17 plans and maps being adopted by the county?

18 MR. RICE: Permits had already issued for the
19 construction of Marion Quimby Drive, for the
20 construction of water and sewer facilities within Marion
21 Quimby Drive. The wetlands permit to build the docking



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1 facilities and to dredge this area had already been
2 issued. Stormwater management approval had been issued
3 for the stormwater management pond. Let's see.

4 MR. ELBRIGHT: Had any of the layout as far as
5 the units or the parking areas or anything like that for
6 the site been approved at that time?

7 MR. RICE: I -- I'll have to defer to Mr.
8 Whitehill. Honestly, I have to defer to him.

9 MR. WHITEHILL: Yes. As -- well, we presented
10 a comprehensive plan that would show the total build-out
11 to the zoning office at that time. However, when we got
12 started in 1983 and 1984, the definition of "site plan
13 approval" was later to become fairly controversial.
14 These did not receive a formal -- what we would
15 understand today as a site plan approval, mainly because
16 it wasn't a requirement. It wasn't a technical site
17 plan the way we have it today.

18 So what essentially we had done was to meet
19 the local jurisdiction requirement for stormwater
20 management and sediment and erosion control, the normal
21 survey standards. Condominium, incidentally, wasn't



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1 even written in the 1964 ordinance. So it was totally
2 unheard of -- well, not unheard of, but unregulated
3 concept at the time.

4 And the plans that we had prepared, and which
5 still basically we would hope to pick up with, were done
6 without regulation. It wasn't part of the ordinancing
7 as we would now know it today.

8 MR. KRECH: Is this entire area within the
9 critical area itself?

10 MR. RICE: Yes, sir.

11 MR. KRECH: The entire area is?

12 MR. RICE: Yes, sir. This area up here -- you
13 can see the IDA line. This dash line. All this is
14 zoned IDA, and the limited development area that we're
15 talking about -- I'm just going to run my finger -- this
16 is along the mean high water line. Then it --

17 MR. KRECH: Yes. But, the lower right-hand
18 part is still in the critical area, is it?

19 MR. RICE: Yes, sir.

20 MR. KRECH: Yes. Okay.

21 CHAIRMAN GUTTMAN: Any further questions? Any



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1 further questions? All right.

2 MR. RICE: Thank you very much.

3 CHAIRMAN GUTTMAN: I think you've now
4 suggested Mr. Butterworth's would --

5 MR. RICE: If he needs to correct anything
6 else I said incorrectly.

7 CHAIRMAN GUTTMAN: Well, no. But I would just
8 give him the option if you have anything further you'd
9 care to clarify.

10 MR. RICE: One thing I would like to make part
11 of the record is the critical area assessment that was
12 made as of January 29, 1985. That's not part of the
13 record that was before the County Planning Commission,
14 and I think that might make our record a bit more
15 complete. I'd like to submit it to you at this time.

16 CHAIRMAN GUTTMAN: Sure. All right. We will
17 certainly add this to the record, and I guess mark it
18 Exhibit 1 for the Applicant at this time.

19 (Whereupon, the document was marked for
20 identification as Applicant's Exhibit No. 1 and received
21 in evidence.)



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1 CHAIRMAN GUTTMAN: All right. Anyone care to
2 pose any questions of Mr. Rice or Mr. Butterworth at
3 this time, or shall we move along to the next?

4 MR. PRICE: I believe Commissioner Baker was
5 going to speak on it.

6 CHAIRMAN GUTTMAN: Yes. Commissioner Baker.
7 Certainly. Whatever you -- whatever you wish.

8 MR. BAKER: I guess just a general overview
9 from our point of view. You have to understand sir, we
10 came into office in '86. We started working on -- we
11 were working on a comprehensive plan. We picked it up
12 from a previous administration. And this plan, when it
13 was adopted April of 1987 -- and we went over hundreds
14 of pieces of property -- it's obvious that we made a
15 mistake in zoning this suburban residential rather than
16 -- or, yes, urban rather than urban residential.

17 When you look at -- you've got the shopping
18 center out in the front part towards Route 50, and back
19 towards Thompson Creek you have high density dwellings
20 there. This is way in between. With infrastructure
21 pretty much in place, it was obvious that that should



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1 have been zoned urban residential. If it hadn't been,
2 sir, this would have been classified IDA now.

3 So the planning commission heard this last
4 year and gave it their blessing and brought it to us.
5 And we concurred that we'd, in fact, made a mistake.
6 And we just want to come here and let you know that it's
7 our fault.

8 CHAIRMAN GUTTMAN: You're pleading guilty?

9 MR. BAKER: Pleading guilty. Yes, sir.

10 That's about all I have to say, sir.

11 CHAIRMAN GUTTMAN: All right. Very fine. I
12 thank you. All right. If there's no further questions,
13 let's move along to the -- you've got some text
14 amendments, also.

15 MS. KAIL: The text amendment is an amendment
16 to the critical area -- the Queen Anne's County Critical
17 Area Ordinance, Section 6007, which is the development
18 standards and the resource conservation area.
19 Subsection (B)(1)(F).

20 Currently, this section prohibits certain uses
21 in the RCA. Currently, it prohibits commercial



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1 industrial uses as defined by the Queen Anne's County
2 Zoning Ordinance. The amendment proposes to change the
3 prohibition of specifically light industrial -- let's
4 see -- effluent disposal and extraction and disposal
5 uses within the RCA, since this amendment, in effect,
6 would allow new communication towers and minor
7 extraction and dredge disposal uses to be developed in
8 the RCA.

9 CHAIRMAN GUTTMAN: Any questions? Panel
10 members? Any further statement anyone wishes to make,
11 or questions to add at this point?

12 MR. BAKER: Sir?

13 CHAIRMAN GUTTMAN: All right. Please.

14 MR. BAKER: I'm not prompted for this. But I
15 just -- I'm familiar with one part about the dredge
16 disposals and RCA. We have a marina that we're trying
17 to develop for -- we're trying to help a man develop for
18 commercial watermen down at the tip of Kent Point
19 because the watermen have such a tough time to moor
20 their boats, and it's not practical to go out of the
21 RCA. You've got a field right next to it. The man is



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1 offering the use of that field for this dredge disposal,
2 and if I'm not mistaken, that's the reason for that
3 change. Right, Margaret?

4 MS. KAI: That's right. That's right. The
5 property where the marina exists is IDA, with the
6 property adjoining it which is zoned agriculture is RCA.
7 The man who owns the agriculture land has offered to let
8 the person who owns the marina deposit the dredge
9 despoil on his farm. And we don't see any adverse
10 effect in allowing that as a minor extraction disposal
11 use. We have a limit of disturbance of five acres under
12 minor extraction and disposal.

13 MR. ELBRIGHT: They would be still subject to
14 complying with the other critical area standards, such
15 as the limit of clearing and stuff like that, so they
16 would meet the RCA standards for that development?

17 MS. KAI: Yes. Yes.

18 CHAIRMAN GUTTMAN: Any further questions on
19 that provision?

20 All right. Anything further? Let's see. Do
21 we have another -- is there any other text amendment



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1 that you wanted to bring up at this time?

2 MS. KAI: That is it. Just the text
3 amendment and the two map and zonings.

4 CHAIRMAN GUTTMAN: All right. Anyone else
5 have anything further to add at this time? Any
6 statement that you want to make on the record or
7 questions?

8 All right. Well, if there be no further
9 testimony, questions, or statements, I think we'll stand
10 adjourned.

11 And just a reminder. We will accept written
12 comments at the offices of the Critical Area on West
13 Street -- 275 West Street -- until the close of business
14 next Tuesday. And with that, I'll now declare that this
15 hearing is adjourned.

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

18 (Exhibit not attached.)

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PRESENTATIONPAGE

MR. RICE	6
MS. KAI I	15
MR. WHITEHILL	17
MR. BAKER	20
MS. KAI I	21
MR. BAKER	22
MS. KAI I	23

E X H I B I T SAPPLICANT'SDESCRIPTIONMARKEDREC'D

No. 1	Critical Area Assessment	19	19
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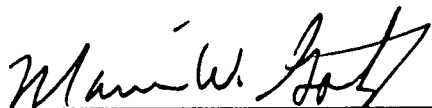


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CERTIFICATE OF NOTARY

1
2 I, MARVIN W. GATZ, the officer before whom the
3 foregoing testimony was taken, do hereby certify that
4 the witness whose testimony appears in the foregoing
5 transcript was duly sworn by me; that the testimony of
6 said witness was taken by me by magnetic tape and
7 thereafter reduced to typewriting by me or under my
8 direction; that said testimony is a true record of the
9 testimony given by said witness; that I am neither
10 counsel for, related to, nor employed by any of the
11 parties to the action in which this testimony is taken;
12 and, further, that I am not a relative or employee of
13 any attorney or counsel employed by the parties hereto,
14 nor financially or otherwise interested in the outcome
15 of the action.

16
17 
18 MARVIN W. GATZ
19 Notary Public in and for
20 the State of Maryland

21 My Commission Expires:

July 1, 1998



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