

Public Hearings - Easton - Bachelor's Point 1991 MSA-51830-95

BEFORE THE CRITICAL AREAS COMMISSION

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IN THE MATTER OF:  
BACHELOR'S POINT  
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5 Thursday, January 16, 1991

6 Pursuant to Notice, the above-entitled hearing  
7 was held before the CRITICAL AREAS COMMISSION, at the  
8 Easton Courthouse, County Council Chambers, Easton,  
9 Maryland 21601, commencing at 7:00 p.m., there being  
10 present:

11 COMMITTEE MEMBERS:

12 JOE ELBRICH, CHAIRMAN  
13 BILL CORKRAN  
14 G. STEELE PHILLIPS  
15 THOMAS JARVIS

16 ALSO PRESENT:

17 PAT PUDELKEWICZ  
18 THERESA CORLESS  
19 GEORGE GAY  
20 DAN COWEE  
21 ALLISON OSGOOD  
HENRY NEFF  
GINA ZAWITOSKI, ESQUIRE  
DEBBIE RENSHAW

REPORTED BY: SUSAN DILLEY, NOTARY PUBLIC



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1           Since there are no officials here other than  
2 Dan Cowee, the planning director, we do not have any  
3 introductions. With that -- I would ask that anyone who  
4 is going to submit any evidence, please submit that to  
5 me so that we can identify it and mark it as an exhibit  
6 for this particular hearing.

7           With that, I would open the hearing for  
8 comments. Dan, if you would, please, present the  
9 matter.

10           MR. COWEE: I think you have heard this  
11 somewhat already at past meetings and I'm going to keep  
12 my presentation quite short and let Gina Zawitoski and  
13 Henry Neff go through the record in more detail.

14           As you will recall, I came before this group  
15 and the full commission in July with a number of mapping  
16 mistakes. This being one of them. At that time, we did  
17 not have adequate justification in your minds for a  
18 change so we went away and by going away, we did some  
19 more research.

20           I talked with Mr. Henry Neff concerning this  
21 situation and he said, "Dan, you know, there's some



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1 information that wasn't brought forth during that  
2 hearing." We went back and researched it and sure  
3 enough there was. That's one of the key points that's  
4 going to come out tonight is the fact that an LDA was  
5 granted in 1986 by the planning commission.

6 I think you all have my letter, I hope you do  
7 anyway, that I sent to Pat. I'm just going to go  
8 through it quickly and it'll give us a good  
9 introduction.

10 CHAIRMAN ELBRICH: Would you like to submit a  
11 copy of that as evidence?

12 MR. COWEE: Yes.

13 CHAIRMAN ELBRICH: Is that the one dated  
14 August 16th?

15 MR. COWEE: Right. It has a couple of  
16 attachments to it.

17 CHAIRMAN ELBRICH: Identify it.

18 MR. COWEE: That's the one and there are  
19 attachments with it that go along with it.

20 CHAIRMAN ELBRICH: We'll have this as Exhibit  
21 1.



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1 (Whereupon, the document was marked for  
2 identification Committee Exhibit No. 1.)

3 MR. COWEE: The letter is the result of the  
4 first hearing that we had and further digging for more  
5 information which brought us to the point of I think the  
6 policy being created by the Commission to allow us to  
7 come back for a rehearing.

8 Anyway, application by the owners of  
9 Bachelor's Point to develop 19 lots and increase the  
10 size of the marina -- the marina is what we're talking  
11 about tonight -- was discussed by the Talbot County  
12 Planning Commission in April of 1986. At that time, the  
13 planning commission was operating on the interim rules  
14 of the critical areas criteria.

15 Approximately 20 LDA requests, and that number  
16 could be a little high or it could be a little bit low,  
17 were reviewed during this period, and were later  
18 included in the overall county map excepting this one.

19 The interim period ended with the adoption of  
20 the critical area ordinance, and ours was adopted in  
21 1989. So, this was three plus years prior to that day.



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1           The minutes of April 9th, 1986, indicate that  
2 Bachelor's Point was considered a LDA, and there are  
3 minutes of that meeting to justify that point. During  
4 the mapping phase of the county's program, a portion of  
5 the Bachelor's Point was mapped LDA, and the remainder  
6 was left RC.

7           The portion that was mapped LDA I have on the  
8 map here is this section which resulted in a 19-lot  
9 subdivision. The piece that we're talking about this  
10 evening is this piece right here and the boat basin sit  
11 here. I think you can all see it. You all have a map  
12 with that.

13           MR. GAY: What's that map that you're  
14 referring to?

15           MR. COWEE: This one? This is our zoning map.

16           MR. GAY: Talbot County --

17           MR. COWEE: Talbot County zoning. A mistake  
18 was made in the mapping by failure to map the remaining  
19 property under the ownership of Bachelor's Point Marina  
20 based upon the previous LDA classification granted in  
21 April of 1986.



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1                   Criteria for delineation of limited  
2 development areas found in the Talbot County Critical  
3 Area Plan lists the specific criteria used in  
4 determining the LDA classifications, and under item  
5 three, it states, "Areas were designated as LDA by  
6 planning commission hearing." Those were grandfathered  
7 in, and were allowed. I think there's a copy of that  
8 attached to that letter which you have there, Joe, I  
9 think, I believe. Not that one. There you go. That  
10 one, I think.

11                   CHAIRMAN ELBRICH: You tell me which ones and  
12 we'll mark them as exhibits.

13                   MR. COWEE: Okay. This first one -- these are  
14 the minutes that were taken at the meeting for the LDA  
15 Planning Commission in '86. This is a page out of the  
16 plan that gives you the delineation criteria that is  
17 used in our mapping. The item I'm referring to is  
18 number three under LDA. Areas were designated as LDA by  
19 planning commission hearing. They were given LDA status  
20 in the mapping, and then we'll get into this in a  
21 minute.



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1 CHAIRMAN ELBRICH: Those will be Exhibits 2  
2 and 3.

3 (Whereupon, the documents were marked for  
4 identification Committee Exhibit Nos. 2 and 3.)

5 MR. COWEE: Since the planning commission had  
6 taken action on Bachelor's Point property prior to the  
7 critical area comprehensive mapping, it was mistakenly  
8 mapped. Building permits were issued allowing certain  
9 marina buildings to encroach into the 100-foot buffer  
10 setbacks in compliance with 14.503.03 and 06 of the State  
11 Critical Areas Criteria. This action provides further  
12 evidence that the property was classified an LDA during  
13 the interim period.

14 The permits that were granted for this were a  
15 result of an action taken by the board of appeals. The  
16 board of appeals gave the Bachelor's Point developers an  
17 approval through special exception for an expansion of  
18 this marine basin. At the time, the LDA was required to  
19 do that. If they didn't have that, they wouldn't have  
20 been able to get it. That's another piece of  
21 information that came forth because all this happened



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1 prior to my arriving here. I just had no knowledge of  
2 it.

3 Table one of the 1989 Critical Area Zoning  
4 Ordinance lists C-1, commercially zoned properties of  
5 less than 20 acres in size, as LDAs. That again is an  
6 enclosure right here. That just points out that citing  
7 under the critical area criteria.

8 CHAIRMAN ELBRICH: Exhibit 4.

9 (Whereupon, the document was marked for  
10 identification Committee Exhibit No. 4.)

11 MR. COWEE: This confirms again that a mapping  
12 mistake was made. We allowed for less than 20-acre  
13 parcels a limited commercial development or a limited  
14 commercial zoning I should say to be included as LDAs.

15 So, in summary, the Bachelor's Point property  
16 was classified an LDA by the planning commission during  
17 the interim period, was mapped in error based upon the  
18 criteria for delineation of limited development areas in  
19 the Talbot County Critical Area Plan, which granted  
20 building permits encroaching the 100-foot buffer setback  
21 in compliance with 14.15.03.03 and 06 of the state law, and



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1 was allowed to be less than 20 acres in size based upon  
2 the rules that were used in delineating LC commercial  
3 areas.

4 That's basically an introduction of the  
5 materials that I've found after initially discussing  
6 this with the Commission in July of this year, of last  
7 year. Excuse me. Time flies!

8 I believe that the rest of the people in the  
9 room tonight, or at least a couple of them, will go  
10 through this maybe in a little bit more detail since  
11 they were here and actually were involved in these  
12 decisions during that period.

13 MR. GAY: Dan, before you step down, would you  
14 give us your full name and your job title.

15 MR. COWEE: Daniel Cowee, Talbot County  
16 Planner.

17 CHAIRMAN ELBRICH: Do any of the commission  
18 members have any questions? No? Thank you. Mr. Neff  
19 or --

20 MS. ZAWITOSKI: If you don't mind, may I?

21 CHAIRMAN ELBRICH: Sure. Ms. Zawitoski, if



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1 you would, please, identify yourself for the record.

2 MS. ZAWITOSKI: My name is Gina Zawitoski.  
3 I'm an attorney practicing environmental law at Piper &  
4 Marbury, and I represent Tred Avon Limited Partnership  
5 which owns the Bachelor's Point property that's the  
6 subject of this evening's meeting. I have brought with  
7 me this evening documents which I would like to provide  
8 to each of the members of the panel that I will refer to  
9 as I go through the discussion.

10 CHAIRMAN ELBRICH: Individually or as a group?

11 MS. ZAWITOSKI: As a group.

12 CHAIRMAN ELBRICH: That would be Exhibit 5.

13 (Whereupon, the document was marked for  
14 identification Committee Exhibit No. 5.)

15 MS. ZAWITOSKI: What I have just distributed  
16 to the panel members is a copy of correspondence from my  
17 office to the Chesapeake Bay Critical Area Commission  
18 dated August 28th, 1991, in which the property owner  
19 requests the Commission to reconsider its decision  
20 resulting from its July hearing in which it denied the  
21 county's proposal to correct the mapping mistake for the



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1 Bachelor's Point property.

2           What I'd like to do this evening is to lay out  
3 in somewhat more detail than Dan Cowee did the course of  
4 events as relates to the designation of this property as  
5 an LDA, the error in mapping and subsequent events, and  
6 I would do that in part by reference to the materials  
7 that I've just given to you.

8           The parcel in question was formerly zoned C-1,  
9 a commercial property. It was the site of the John Todd  
10 Boatworks and a small marina. In 1986, the partnership  
11 sought to expand the marina and to develop part of the  
12 property as residential development, and also sought in  
13 that context to have the property designated as an LDA.  
14 We've asked Deborah Renshaw to join us this evening, and  
15 she will explain in some detail why the county planning  
16 board in 1986 believed that the property was properly  
17 designated an LDA so I will not go into that in any  
18 particular detail.

19           I would note though at the outset that the  
20 Critical Area Plan for Talbot County which the  
21 Commission approved indicated that properties would be



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1 considered LDA if they were so designated by the  
2 planning commission by hearing, and what we will show to  
3 you this evening and as is evidenced in the papers that  
4 you have is that that occurred in 1986 and that the  
5 property was treated as an LDA since that time.

6 The mapping error that's the subject of this  
7 meeting is truly that. It is simply the result of a  
8 failure to pick up what was done in 1986 by the persons  
9 involved in mapping the property on a piece of paper.  
10 It's no more complicated than that.

11 In 1986, in April, Henry Neff proposed to the  
12 planning commission at a hearing that the property be  
13 designated as an LDA and Mr. Neff will give testimony  
14 about that in a few minutes.

15 As a result of that meeting, the critical area  
16 -- excuse me -- the planning commission designated the  
17 property as an LDA. If you look at -- excuse me --  
18 Exhibit D to the correspondence that you've been given  
19 you will see minutes of that meeting, and the minutes  
20 specifically recite that the proposal was considered to  
21 be a limited development area.



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1                   Following that April 1986 meeting, the  
2 partnership determined to build two marina buildings  
3 within the 100-foot buffer and in order to accomplish  
4 that went before the board of appeals in order to obtain  
5 a special exception. The critical area regulations in  
6 effect at that point and thereafter prohibited the  
7 construction of buildings within the 100-foot buffer in  
8 properties that were designated resource conservation  
9 areas which is the designation that was mistakenly  
10 mapped for this property.

11                   In August of 1986, the partnership went before  
12 the board of appeals, sought a special exception, and  
13 obtained that special exception, and we have included as  
14 Exhibit F to this correspondence a copy of the minutes  
15 from that public hearing of the board of appeals on that  
16 matter.

17                   When you get an opportunity to read through  
18 these minutes what you will see is a couple of things.  
19 First, there is an explicit recognition that the  
20 property was in a limited development area. There's a  
21 recitation in these minutes to that effect.



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1                   CHAIRMAN ELBRICH: Do you know what page that  
2 appears on?

3                   MS. ZAWITOSKI: I can't find it readily, but I  
4 will identify it and note it to you before the  
5 conclusion of the meeting. In addition, what you will  
6 see as you go through these minutes is that the board of  
7 appeals consider the regulatory criteria that it was  
8 required to consider in order to allow construction  
9 within that 100-foot buffer in an LDA according to the  
10 regulations.

11                   So, again, we have official confirmation that  
12 the property was designated as an LDA by prior planning  
13 commission hearing and consistent treatment of it in  
14 that context in the board of appeals.

15                   In 1987, the partnership went back to the  
16 planning commission to obtain explicit sketch plan  
17 approval for the residential development of part of  
18 Bachelor's Point, and minutes of that meeting are  
19 included as Exhibit D to this correspondence, and those  
20 minutes also explicitly acknowledge the LDA designation  
21 of this property. Specifically, the minutes read,



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1 "Bachelor Point subdivision was presented to the  
2 Commission for sketch plan approval with an LDA  
3 justification received at a prior date." I.e., the  
4 April 1986 planning commission meeting.

5 The proper zoning for this parcel under the  
6 1989 zoning ordinance for the county is commercial. The  
7 chart which is a part of the zoning ordinance is  
8 appended as Exhibit H to this correspondence, and if you  
9 will look at that chart, what you see about two-thirds  
10 of the way down, the far left column, is former zoning  
11 district, commercial C-1 less than 20 acres. That is  
12 what this property was formerly C-1 less than 20 acres  
13 in, if you will refer to the center column, a limited  
14 development area. The new zoning, limited commercial,  
15 is the proper designation.

16 This is where the error occurred in the  
17 mapping of the property. The mappers were apparently  
18 not aware of the 1986 designation of the property as LDA  
19 and failed to record the proper zoning for the property  
20 when it was mapped.

21 The evidence that we presented this evening



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1 and in this correspondence overwhelmingly indicates that  
2 the property received an LDA designation in 1986. The  
3 1989 Talbot County Critical Area Plan that received  
4 commission approval acknowledged that properties which  
5 were designated as LDA by planning commission hearing  
6 would be treated as LDAs.

7 Based on that, the partnership would ask the  
8 panel to recommend to the commission as a whole that  
9 Talbot County's error in mapping this property be  
10 allowed to be corrected to reflect the limited  
11 commercial zoning as appropriately identified for this  
12 property, and I will identify that reference in the  
13 board of appeals minutes.

14 CHAIRMAN ELBRICH: Please. Does anyone have  
15 any other -- any questions of Ms. Zawitoski?

16 MR. CORKRAN: I have none.

17 MR. JARVIS: No.

18 MR. PHILLIPS: No.

19 CHAIRMAN ELBRICH: The alphabetical references  
20 that were referred to as exhibits will be Exhibits 5A  
21 through I. Mr. Neff.



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1           MR. NEFF: My name is Henry Neff. I'm a real  
2 estate broker with Walsh & Benson. I have been in the  
3 real estate business since -- I've had my license since  
4 1987. I've been affiliated with Walsh & Benson since  
5 1981 and I was the project manager and the agent for the  
6 partnership who took the development through the  
7 approval process.

8           I believe that I'm fairly knowledgeable in the  
9 critical area law. I was on the technical advisory  
10 committee for the county for the implementation of the  
11 law and I think I understand it pretty well. During  
12 1987 and 1988, I did a number of LDA justifications in  
13 the county. I was involved not only in Bachelor's Point  
14 but I was in North Bend and Aveley I and Aveley II. So,  
15 I think I understand the law pretty well and am  
16 qualified to talk about it.

17           The first thing I want to say is that Gina's  
18 written description or appeal is absolutely accurate.  
19 I experienced what she wrote about and I hope that  
20 everybody takes the time to read it because it's well  
21 done. I think my testimony is going to end up being



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1 redundant and the reason that it is redundant is because  
2 the facts are the facts and we have to -- and giving my  
3 side of it, I have to keep going through the same thing  
4 that she went through, but what I would like to do is  
5 just give my experience as the agent for the Tred Avon  
6 Limited Partnership through the entire approval process.

7 The first hearing was for sketch plan and LDA  
8 justification which was on April 9th, 1986. At that  
9 time, I went into planning and zoning and I explained  
10 what was there being John Todd Boatworks and what our  
11 proposal was, which was to develop the A-1 section of  
12 the property and sell the lots to fund the expansion of  
13 the basin, and to move John Todd Boatworks to the east  
14 totally under the C-1 section, and expand the marina at  
15 that time by 81 slips and two boat yard buildings.

16 That was the plan, and as I understood it at  
17 the time we approved sketch plan approval for that.  
18 Also, at that time, I gave an LDA justification for all  
19 of Bachelor's Point and it was based on the proposed  
20 density and it met the definition of an LDA for the  
21 interim criteria here in the county.



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1           At the time we were also discussing with the  
2 town of Oxford water and sewer extension and they seemed  
3 -- they very much wanted to extend it to us because they  
4 felt that their system was under utilized and wasn't  
5 working properly. So, we had a pretty good idea that we  
6 were going to get water and sewer at that April meeting  
7 and I explained that to the planning commission at the  
8 time.

9           Bachelor's Point was purchased some time  
10 either in the late '60s or late '70s by a 20-member  
11 partnership. At that time, it consisted of about 170  
12 acres. The way the development worked was that the  
13 partnership developed Bachelor's Point South first and  
14 then they developed Bachelor's Point East. Those two  
15 sections of land with George Henry's property in between  
16 comprised about 100 acres. If you added up the lots  
17 that were already approved, there were 20 lots on those  
18 100 acres which meant one lot per five acres which met  
19 the definition of the LDA.

20           Bachelor's Point proper is the project that I  
21 was involved in. We were recommending -- we were



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1 seeking approval for a 20-lot subdivision at that time  
2 and it consisted of 70 acres. So, we fell within the  
3 LDA justification of one home-site, one dwelling unit,  
4 per five acres also. Based on that, we received the LDA  
5 justification. At that time, it was called an in fill  
6 allocation.

7 Also, at that time, it was -- commercial  
8 property based on being commercial property was  
9 considered an LDA too, but nevertheless, the whole --  
10 all of Bachelor's Point, all 170 acres, was declared an  
11 LDA. So, the results of that meeting -- and I walked --  
12 as I left the meeting, the results I felt were that we  
13 had an LDA approval and we had sketch plan approval.

14 If you look at the minutes of the meeting,  
15 they neglected to have a vote, and why that is, I'm not  
16 sure, but based on that approval, we went ahead and our  
17 next step was to go before the board of appeals with the  
18 approval of the planning and zoning commission, with a  
19 positive recommendation of the planning and zoning  
20 commission already in hand. This occurred on August  
21 25th, 1986.



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1           On page six of the special exception minutes  
2 which I believe Gina has already submitted to you, right  
3 at the top, it's stated in the minutes that under the  
4 critical area criteria, this is a limited development  
5 area. Based on the LDA designation, buildings were  
6 built in the buffer in compliance with 14.503.06 which  
7 states, "Newer expanded marinas and related facilities  
8 may be permitted in the buffer within IDAs and LDAs  
9 subject to the requirements of regulation .03A above,"  
10 which if you go back to and read that, it says you can't  
11 do it in a resource conservation area.

12           Therefore, at this juncture, I believe that  
13 it's on record that both planning and zoning and the  
14 board of appeals have accepted the LDA status of  
15 Bachelor's Point.

16           The next hearing was held on January the 14th,  
17 1987, whereby the residential side of the property  
18 unilaterally received sketch plan approval again. The  
19 reason for this is -- I think that we went through the  
20 sketch plan again is because there wasn't a vote for the  
21 sketch plan. They neglected to have the vote.



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1           Also, there were some local neighbors who had  
2 written some letters against the development of the  
3 property. So, in order to -- they felt it necessary  
4 that they had to take that step again for the  
5 residential side of the property, and the commercial  
6 side was not an issue because we had already had the  
7 approval to go ahead from the board of appeals.

8           Also, those minutes which are in Gina's  
9 written appeal reflect that the LDA justification was  
10 "received" at a prior date. So, preliminary and final  
11 approval followed for the residential side during 1987.  
12 With all approvals in hand, construction for the project  
13 began in the late summer of 1987 with the occupancy  
14 certificates for the commercial C-1 section being issued  
15 on March 15th, 1989.

16           During the implementation of the county  
17 critical area program, table one entitled, "New zoning  
18 designations within critical area position," which  
19 stated that a C-1 zoning district of less than 20 acres  
20 located in an LDA would become an LC zone, and we had  
21 13.1 acres of land, seven of which are fast land that



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1 was zoned C-1. So, all seemed in order and I felt that  
2 automatically this C-1 would convert to LC. I made a  
3 terrible mistake of not following the mapping procedure.

4 Later in 1989 when Dan showed me the new  
5 zoning map, it showed the C-1 side as being RC, and I  
6 remember being up in his office, and I said, "This must  
7 be a mistake. It must be a mapping error." So, on  
8 December the 6th, 1989, I appeared before the planning  
9 and zoning commission to point out the mistake, and  
10 everyone agreed, and that also is shown in the minutes  
11 that Gina has earlier presented to you. Dan, at that  
12 time, indicated that he would take care of it.

13 Both he and I thought that it would be easily  
14 rectified. I was so secure in that belief because it  
15 was obvious that I was really not even aware of the July  
16 10th hearing before the Critical Area Commission. He  
17 might have mentioned it to me, but it didn't dawn on me  
18 that I should be there because at the time it didn't  
19 seem like it was going to be a big issue.

20 So, when he told me that it had been struck  
21 down, it became apparent that further proof was required



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1 plus we had better get legal representation. This is  
2 also when I went back to the planning and zoning appeals  
3 board's minutes to verify that we are in fact an LDA.  
4 So, that is why he came before you all in July without  
5 that information. I don't even know if he knew it  
6 existed at that time. I mean, it was there, but he  
7 obviously didn't pick it up.

8 I guess all I can say is that I knew we were  
9 an LDA, the planning and zoning board knows that we're  
10 an LDA, and all the records show that we are an LDA, and  
11 I just would like to respectfully request that you  
12 accept the fact that we are an LDA and allow the mapping  
13 mistake to be corrected. That's pretty much it.

14 CHAIRMAN ELBRICH: Do any of the commission  
15 members have questions?

16 MR. CORKRAN: I have none.

17 MR. JARVIS: I don't have any.

18 MS. PUDELKEWICZ: I just -- there were a few  
19 things for clarification maybe for the commission  
20 members. When you were giving the history --

21 CHAIRMAN ELBRICH: Pat, do me a favor and



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1 identify yourself for the record since we do have a  
2 record. Pat is staff.

3 MS. PUDELKEWICZ: When you were giving the  
4 history of everything, you said that the first  
5 development which occurred was development south and  
6 east. Can you point that out for everyone so they can  
7 just see where it is?

8 MR. NEFF: Yeah. Sure. All of this property  
9 was purchased by the 20 members of the original  
10 partnership not the Tred Avon River Limited Partnership.  
11 Tred Avon River bought it from the original 20 members.  
12 Bachelor's Point South is this section which was  
13 developed first. Then Bachelor's Point East was  
14 developed.

15 MS. PUDELKEWICZ: Do you know when those areas  
16 were developed?

17 MR. NEFF: I believe in the late '60s, early  
18 '70s. It was before my time. Then I have always  
19 considered this to be Bachelor's Point proper. This was  
20 the third and final phase of the development of the  
21 property.



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1 MR. CORKRAN: Which one is that, Henry?

2 MR. NEFF: This one. The property.

3 MS. PUDELKEWICZ: Was that the property in  
4 orange or is it --

5 MR. NEFF: It actually includes the  
6 residential side because that was the third phase.

7 MR. COWEE: This is the area that was C-1.

8 MS. PUDELKEWICZ: Right. Okay.

9 MR. COWEE: And then this is the area that  
10 fell into the LDA as an RR zone.

11 MR. NEFF: This became an RR also, but that  
12 was the residential side. The commercial side is this.  
13 It was just -- what it -- it was in keeping with the  
14 comprehensive plan because it was a natural outgrowth of  
15 Oxford and the comprehensive plan says to keep  
16 development close to town. The only -- we had -- the  
17 United States Marine Fisheries is between us and town,  
18 but actually, the partnership owns this little strip of  
19 land here on this side of the road and that side of the  
20 road which is right next to town.

21 VOICE: The town boundary is down here.



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1 MR. NEFF: Yeah. It's moved down. When I did  
2 the justification, I actually -- I came away and  
3 believed and understood that all of Bachelor's Point got  
4 an LDA. So, even George Henry shouldn't be a RC, but  
5 that's his problem. I've never met the man. I've  
6 written him letters, but I've never met him.

7 MS. PUDELKEWICZ: It was development south and  
8 east that was developed first back in the '60s and '70s  
9 --

10 MR. NEFF: Yeah. Early '70s.

11 MS. PUDELKEWICZ: That was the 100 acres.

12 MR. NEFF: This area here --

13 MS. PUDELKEWICZ: About 100 acres. And then  
14 you said Bachelor's Point proper was 70 acres?

15 MR. NEFF: 70 acres. 67 is really what it is.

16 MS. PUDELKEWICZ: And that was when you came  
17 before the planning commission in 1986 seeking approval  
18 for the development of the residential portion?

19 MR. NEFF: The residential and commercial.

20 MS. PUDELKEWICZ: And commercial. Okay.

21 MR. NEFF: Because what we had to do here. We



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1 had to go before the planning board for a special  
2 exception and get their recommendations before we go  
3 before the board of appeals, and that's what we did, and  
4 I believe there is on record the recommendation. I saw  
5 it in the file.

6 MR. COWEE: I've got the file. Not here  
7 tonight. I mean it's a recommendation from the planning  
8 commission for the board of appeals.

9 MR. NEFF: Right. That the expansion be  
10 allowed.

11 MS. PUDELKEWICZ: And back in 1986 when you  
12 came before the planning commission, the residential  
13 portion of the actual point proper, was that developed  
14 at all at that time?

15 MR. NEFF: No. No. See, that was part of --  
16 this was the 70 acres.

17 MS. PUDELKEWICZ: Okay.

18 MR. NEFF: Right here. That the new  
19 partnership had purchased from the original 20-member  
20 partnership.

21 MS. PUDELKEWICZ: That was just for



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1 clarification. I thought we --

2 MR. COWEE: Henry brought up one item that  
3 needs to be clarified. He kept referring to A-1 zoning.  
4 That was a one-acre zone classification that we had  
5 prior to critical areas, and that property was at that  
6 time zoned A-1. The majority of lands around existing  
7 incorporated towns had an A-1 designation for future  
8 growth. It was our highest density classification in  
9 the county zoning ordinance at that time for  
10 residential. I saw quizzical looks on your faces when  
11 he said A-1. Where does that fall in?

12 CHAIRMAN ELBRICH: Thank you, Dan.

13 MR. PHILLIPS: I have a question just for my  
14 own clarification, but is this whole development  
15 considered a marina?

16 MR. NEFF: No. Really the C-1 section is a  
17 marina.

18 MR. PHILLIPS: Well, you know, you've got here  
19 Bachelor's Point Marina mapping mistake.

20 MR. NEFF: When we did the development, we  
21 took the A-1 portion of the residual land which is --



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1 let's see -- let me go back to this.

2 CHAIRMAN ELBRICH: You can just hold it up  
3 there.

4 MR. NEFF: This is all A-1.

5 MR. COWEE: Was.

6 MR. NEFF: Was. We took this section of it  
7 and made a wildlife refuge out of it which is mostly  
8 marsh. Can you repeat the question?

9 MR. CORKRAN: What was the question?

10 MR. PHILLIPS: Was the whole thing a marina?

11 MR. NEFF: No. The marina section -- well,  
12 there's an entrance road which goes in here which goes  
13 across part of the fast lane of the A-1, and then this  
14 is the marina section right here, the LC. That's  
15 really, you know -- the old C-1, which is now RC.

16 MR. COWEE: It's LC. The old C-1 is LC and  
17 this is an outline of what the old C-1 was on the  
18 original.

19 MS. ZAWITOSKI: Henry, it might be helpful to  
20 show these photographs.

21 MR. NEFF: Yeah.



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1 MS. ZAWITOSKI: It would be perhaps easier to  
2 visualize it than from a flat.

3 MR. NEFF: Have the members been to the  
4 property?

5 MR. PHILLIPS: I'm familiar with the property.  
6 I've been there.

7 MR. NEFF: Because what -- what I just wanted  
8 to point out was that the road -- here's the yacht  
9 basin, and the A-1 line comes across here and picks up  
10 here and goes out into the marsh and then comes out here  
11 and picks up the old spoil site. That was originally C-  
12 1 which we're hoping to get back to LC which is what we  
13 think it should be based on the criteria, the critical  
14 area criteria.

15 MS. PUDELKEWICZ: What is the date of the  
16 photograph?

17 MR. NEFF: The past couple of months because  
18 this house was just built this summer. This is all the  
19 residential area all the way down to here.

20 MS. PUDELKEWICZ: Do you know when the marina  
21 basin was dredged out? Was that in 1986 also?



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1 MR. NEFF: The marina basin started out --  
2 if you're talking about the original --

3 MS. PUDELKEWICZ: When it was enlarged.

4 MR. NEFF: That began in the late summer of  
5 '87. That's when we started. After we got through the  
6 appeals board hearing, we started construction.

7 MR. COWEE: And that encompassed 1.2 or --  
8 actually it might be 1.3 acres.

9 MR. NEFF: You can see that on the C-1  
10 section, there are -- the marina dominates the C-1  
11 section in my opinion.

12 CHAIRMAN ELBRICH: Are you through, Pat?

13 MS. PUDELKEWICZ: (Nods head affirmatively.)

14 CHAIRMAN ELBRICH: I don't want to make you go  
15 through the whole testimony again, but can you give me  
16 the procedure of and the times of the various approvals  
17 starting with sketch approval and when you thought you  
18 had the approvals from whoever at the various stages.

19 MR. NEFF: Sure. The original approval for  
20 sketch plan and LDA justification was April the 9th,  
21 1986.



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1 CHAIRMAN ELBRICH: That was for --

2 MR. NEFF: That was --

3 CHAIRMAN ELBRICH: -- the whole 70 acres?

4 MR. NEFF: The whole 70 acres. That was on  
5 the planning board level. Sketch plan approval for the  
6 residential subdivision, the LDA justification, and  
7 their positive recommendation for the marina expansion.

8 CHAIRMAN ELBRICH: Is that one of these  
9 exhibits and if so, which one by Exhibit 5A, B, C --

10 MS. ZAWITOSKI: It's Exhibit D. Page six of  
11 the correspondence there's a list of the exhibits.

12 CHAIRMAN ELBRICH: So, Exhibit D is the one  
13 that you've billed that gave you the sketch plan  
14 approval and the LDA approval for the entire 70 acres?

15 MR. NEFF: Right. With that in hand, we went  
16 to the board of appeals for the special exception and  
17 got that on August 25th, 1986. That was the final  
18 approval that we needed for the [C-1 section of the  
19 property which is the subject of this hearing.

20 CHAIRMAN ELBRICH: Which exhibit is that?

21 MR. NEFF: It would be F.

*Is there a C-1  
section + an A-1  
section of one  
parcel?*



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1 CHAIRMAN ELBRICH: Thank you.

2 MR. PHILLIPS: Joe, let me see that picture  
3 again, please.

4 MR. NEFF: Then, on January 14th of 1987,  
5 which was almost a year later, we went back and because  
6 -- I guess because the county didn't have the vote, they  
7 felt that we ought to -- I went in for a preliminary  
8 approval and when I got there, they said, "No, we have  
9 to sketch plan again." It didn't dawn on me at that  
10 time as to how important that would be. That's when we  
11 went back and we got sketch plan again just for the  
12 residential side.

13 MS. ZAWITOSKI: If I could interject, that  
14 meeting specifically reflects a prior LDA designation.

15 CHAIRMAN ELBRICH: That is Exhibit what?

16 MS. ZAWITOSKI: That is Exhibit G.

17 MR. GAY: When you went back and got back the  
18 second sketch plan approval, did you also go back and  
19 get a second LDA approval along with that sketch plan?

20 MR. NEFF: It wasn't necessary. The minutes  
21 reflect that. I really think the mistake was made on



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1 the county level just because of the immensity of the  
2 job. I really do. And that's -- it was a big job for  
3 to map all those again.

4 MR. CORKRAN: Henry, you referred to January  
5 the 14th in '87 in your affidavit. You have under  
6 section eight, page three of your affidavit, January  
7 1987. Would it be correct to say January the 14th of  
8 '87?

9 MR. NEFF: Yes.

10 MR. CORKRAN: Okay.

11 MR. JARVIS: If this thing is all  
12 reclassified, part of it's going to be buildings on it  
13 and part of it's going to be an expansion of the marina.  
14 Is that correct?

15 MR. NEFF: We have no problem with the  
16 building lot side, the residential side of it. That's  
17 already an RR which is an LDA.

18 MR. JARVIS: This whole expansion is going to  
19 be part of the marina?

20 MR. NEFF: The expansion has occurred.

21 MR. JARVIS: But I mean this new development -



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VOICE: Are you seeking this classification for additional expansion of the marina?

MR. NEFF: Well, we would hope to expand it, yes. I don't think that the economic times dictate an expansion at the moment, but obviously losing the commercial designation has an impact on the property.

MR. JARVIS: Without question, but I mean, it'll be a water dependent facility that the expansion would involve. Is that what we're saying?

MR. NEFF: Right. Well, for instance, we have -- right now we have a few office spaces on the property, and under RC we're not allowed to have office spaces. Under C-1, we were allowed to have it. At some point, a restaurant might be a good thing to build and under the RC we can't put in a restaurant.

MR. JARVIS: Well, my point is see -- this is kind of touchy as to what is water dependent and what is not. I think I'm really getting off the subject here, but like, you know, you can do buildings or you can do a development, a water development, that you could not do



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1 if it was not water development in the buffer zone.

2 MR. NEFF: They've made it very clear to us  
3 that there will be no more building in the buffers. The  
4 county has.

5 MR. JARVIS: I'm wondering how close that  
6 house there is to the river.

7 MR. NEFF: It's 100 feet away. That was  
8 another thing. When we did the residential side, prior  
9 to the critical area law, these guys made it very clear  
10 to me that they weren't going to approve this unless we  
11 put in 100-foot setbacks. We had originally asked for  
12 50-foot setbacks, but, okay, so, we'll go the 100 feet.

13 MR. JARVIS: There's no scale on there. I  
14 can't really tell.

15 MR. NEFF: Everything is at least 100 feet  
16 except for the commercial buildings.

17 MS. ZAWITOSKI: I would like to emphasize that  
18 Mr. Neff isn't asking for a new designation of his  
19 property. It's his position that it's been an LDA all  
20 along and was just mistakenly mapped as an RCA in 1989,  
21 and we're just here to correct that error.



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1           CHAIRMAN ELBRICH: You had indicated I think,  
2 Mr. Neff, that you were not involved in the approval  
3 process of the property through the Critical Area  
4 Commission or any of that at the initial level when the  
5 maps were approved.

6           MR. NEFF: No. No.

7           CHAIRMAN ELBRICH: Was Mr. Cowee at that time?

8           MR. NEFF: Yes. He thought and I thought that  
9 it wasn't going to be a big issue, and we weren't going  
10 to get to this stage.

11          CHAIRMAN ELBRICH: No. I'm talking about back  
12 in 19 -- the initial set of maps.

13          MS. ZAWITOSKI: 1986?

14          CHAIRMAN ELBRICH: '86. When the maps were  
15 originally approved for the county.

16          MS. ZAWITOSKI: Mr. Cowee was not employed by  
17 Talbot County at that time.

18          MR. COWEE: The maps were created in '87.

19          CHAIRMAN ELBRICH: '87, '88?

20          MR. COWEE: Yeah. And then finalized in '89.  
21 The maps were done before the ordinance was completed,



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1 and we had -- well, to give you just a little brief  
2 history, we had between three and four night meetings a  
3 week with the planning commission, with a consultant  
4 that we had on board and with planning staff members.  
5 We went through a very tedious process of identifying  
6 each and every area we thought could be an LDA based  
7 upon the criteria that we had selected and is spelled  
8 out in the Critical Area Plan. You have that page.

9 We went by it religiously, and we went through  
10 these things, and there were times when we'd say, "Well,  
11 let's not make the decision on that area tonight. Let's  
12 wait until later." And a couple of those things fell  
13 through the cracks and never were -- we never went back.  
14 We were glad as hell to be done! This was one of those  
15 situations where we didn't go back. Another one was an  
16 advisor fuller which we were talking about before where  
17 we didn't go back, and it was oversights on our part and  
18 honest mistakes is the only way I can call them because  
19 of the amount of work we had to do.

20 MR. NEFF: To answer your question, I think,  
21 about the water dependency. I don't think there will be



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1 anything else that is water dependent that would have to  
2 be in the buffer on that property. I can't foresee  
3 anything. We intend to put in a swimming pool this year  
4 and Dan's made it quite clear that it's not going to be  
5 in the buffer even though I've got a great place for it  
6 just inside the buffer!

7 MR. JARVIS: I know the place you're talking  
8 about!

9 CHAIRMAN ELBRICH: Dan, were you involved with  
10 the approval of the maps at the commission level?

11 MR. COWEE: Yes.

12 CHAIRMAN ELBRICH: You were on the staff then.  
13 Did they approve all of your designations and  
14 classifications as they were submitted or did they deny  
15 some of those?

16 MR. COWEE: They approved them all. There was  
17 never a question because our mapping process, as I said  
18 before, was very specific and very thorough, I think,  
19 compared to other counties. We made a special  
20 presentation to the Commission as we were doing them and  
21 were commended by many of the members for the process we



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1 were using and the procedures we were using.

2 One day, if you all have a little time, I'll  
3 show you the work maps. You can't believe the --  
4 they're just -- I mean, it identifies every single piece  
5 of property, what the size -- almost down to the size of  
6 the dwelling on each parcel. That was the type of  
7 specifics we used all the way through.

8 CHAIRMAN ELBRICH: Thank you. If there are no  
9 more questions, thank you, Mr. Neff. Mrs. Renshaw. Do  
10 you want this entered as an exhibit or do you want this  
11 back?

12 MR. NEFF: Would you like to have it?

13 MS. ZAWITOSKI: I think it would --

14 CHAIRMAN ELBRICH: It would probably be good.  
15 The current photograph we'll enter as Exhibit No. 6.

16 (Whereupon, the document was marked for  
17 identification Committee Exhibit No. 6.)

18 CHAIRMAN ELBRICH: Ms. Renshaw, if you would  
19 identify yourself for the record, please.

20 MS. RENSHAW: Yes. I'm Debbie Renshaw. I  
21 was the planning director at the time the LDA was



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1 granted to Bachelor's Point. Basically, I've been asked  
2 to come and speak to you about a little -- or a small  
3 perspective on how the county reviewed these requests  
4 for LDA at that time.

5 When the legislation first came out, as you're  
6 all aware, the guidelines were vague at best. The  
7 counties -- I think everybody was dealing on their own  
8 on how to interpret them. At that point in time -- this  
9 was probably one of the very first applications that the  
10 county looked at. We looked at a couple of things.  
11 One, we looked at what the base zoning was on the  
12 property.

13 At that point in time, as has been explained  
14 earlier, it carried an A-1 classification which was a  
15 growth area in the county and a C-1 classification which  
16 was a commercial classification. We took a look at our  
17 comprehensive plan in the county and saw exactly where  
18 the county wanted growth to occur. The growth areas  
19 were near the towns and in those areas that were  
20 classified in this particular case as A-1 and C-1.

21 So, looking at that and then taking a look at



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1 what the criteria were for establishing LDAs, we found  
2 that there were certain criteria that clearly this  
3 project meant. Those four -- we took a look at the  
4 surrounding development. Again, as explained, they were  
5 -- the other two portions of Bachelor's Point. We  
6 looked at the land area itself. We looked at the  
7 residential build-out or the lot sizes. We also took a  
8 look at the proposed development. We added together all  
9 the acreages including the proposed and found that it  
10 did fall within the one home per five criteria.

11 Now, the way the legislation is written, it  
12 says that you have to meet one of the criteria; however,  
13 we looked a little further, and we found that a  
14 commitment had been made by the town of Oxford, and this  
15 was confirmed with the town, that they were in a  
16 position to extend public water and sewer to the  
17 project.

18 As you'll remember, later on, clarification  
19 came out on that point saying that those utilities  
20 actually had to be on the property. That came about  
21 much later. Again, we were very early in the program



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1 when this came out and there was no condition at that  
2 point in time that they had to be on place. What we had  
3 was a commitment.

4 Again, the county was looking in an area where  
5 it wanted to see growth occur. It didn't want it out in  
6 the middle of rural areas. That was very consistent  
7 with your plan at that point again. We thought that  
8 between the existing housing densities, the existing  
9 commercial activity which was already on the property,  
10 and the fact that water and sewer was going to be  
11 available to the site and the fact that it met the  
12 county's comprehensive plan, it was clearly suited for  
13 an LDA justification.

14 The other thing, in taking a look at the site,  
15 the consideration was really dealing with only the  
16 residential section. The C-1, which is what you're all  
17 discussing tonight, was already commercial. There were  
18 commercial activities on it. It carried a commercial  
19 classification. It already fell within your LDA  
20 justification. It really did not require the county to  
21 take any action establishing a new LDA for that piece of



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1 property. So, most of the discussion centered on the  
2 housing densities, the availability of water and sewer  
3 and the comprehensive plan.

4 Based on those criteria again, the planning  
5 commission granted it an LDA classification. Mr. Neff  
6 was advised of that at the meeting and told that he  
7 could go ahead and proceed with his projects. One of  
8 those was to go in front of the appeals board for the  
9 expansion of the marina and the other was to go ahead  
10 and proceed with the subdivision as laid out and  
11 presented to the planning commission.

12 Also, he was assured that based on the  
13 legislation that that would carry forward and he would  
14 be grandfathered in underneath of the local program.  
15 So, he went ahead with an assurance that he could  
16 develop this property. Again, in 1987, I left the  
17 county, but I followed the legislation very closely  
18 'cause I'm now working as a consultant in the private  
19 sector, and again, in reading the county plan, it  
20 clearly stated that properties that carried an LDA  
21 justification would carry an LDA justification under the



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1 new program, and he had gone through that process.

2 So, I agree, while -- the firm I work with, we  
3 monitor a lot of projects. We were like Henry. We did  
4 not pay any attention to the mapping of this particular  
5 piece of property because we knew the history on it so  
6 none of us were really watching it that closely. We  
7 were all pretty assured that it was going to carry an  
8 LDA classification.

9 MR. GAY: Ms. Renshaw, at the time that the  
10 property -- or as of December 1st, 1985, that's one of  
11 the critical dates with respect to this property?

12 MS. RENSHAW: '85?

13 MR. GAY: The nature of the property as of  
14 1985?

15 MS. RENSHAW: Yes. What we looked at again  
16 was --

17 MR. GAY: Would the property at that time have  
18 qualified for an RCA designation?

19 MS. RENSHAW: For an RCA? No. We were  
20 looking at it as an in fill and we were looking at it  
21 strictly as an LDA. We did not feel that it was an



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1 isolated parcel that was surrounded by other  
2 agricultural uses. We looked at it as an in fill for  
3 existing residential uses. Again, we thought -- the  
4 county's feelings were that that was where we wanted to  
5 see it and where the Critical Areas Commission wanted to  
6 see growth occur instead of creating new pockets of  
7 residential out in scattered sites. So, no, we did not  
8 feel that it qualified for an RCA classification.

9 CHAIRMAN ELBRICH: Do any of the commission  
10 members have questions?

11 MR. PHILLIPS: No, I don't.

12 MR. CORKRAN: No

13 CHAIRMAN ELBRICH: I do have one, Mrs.  
14 Renshaw, and it may be that you and Dan both need to  
15 address it or are capable of addressing it. In  
16 instances where there were commercial classifications on  
17 properties such as this, when you transferred them to  
18 the LDA classifications in other instances, did you  
19 always transfer the entire portion that was commercially  
20 classified or did you split it into an LDA for a portion  
21 and an RCA for a portion? Do you know?



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1 MS. RENSHAW: I'm afraid Dan's going to have  
2 to answer that one.

3 MR. COWEE: In all cases, if it was a  
4 commercially zoned property because there's not much in  
5 this county that's commercial zoned, it went in the  
6 whole piece.

7 CHAIRMAN ELBRICH: Whether it was all entirely  
8 in use or partially in use?

9 MR. COWEE: Well, like I say, the majority, if  
10 not all, of what we did was already in use, already had  
11 a use on it of some sort, and like I say, the one  
12 exception would be the area that we had as another  
13 mistake before you and that's the area along the St.  
14 Michael's road. There we had some in and some out, but  
15 the ones that were out were developed pieces. They  
16 weren't parts of pieces. It was just a situation where  
17 we applied our rule, but the rule didn't really fit what  
18 was there, and the way we work it now where we can use  
19 adjacency for those parcels that are outside, but  
20 adjacent to, it worked fine.

21 CHAIRMAN ELBRICH: Thank you very much.



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1 MS. PUDELKEWICZ: Can I just ask one question?  
2 When you say that back as of 1985, you would have looked  
3 upon this as in fill --

4 MS. RENSCHAW: That's correct.

5 MS. PUDELKEWICZ: -- would you have considered  
6 this a 70-acre in fill, both the marina property and the  
7 residential property which had not yet been approved?

8 MS. RENSCHAW: No. Only the residential.  
9 Again, the marina was clearly within the guidelines of  
10 an LDA. It was an existing commercial use. So, we only  
11 looked at the residential as far as in fill.

12 MS. PUDELKEWICZ: That would have been  
13 approximately between 50 and 60 acres I guess based on  
14 the marina property being about 13?

15 MS. RENSCHAW: Yes. That would be correct.

16 (Whereupon, there was a discussion off  
17 the record.)

18 CHAIRMAN ELBRICH: That's everyone who had  
19 signed up to testify. If there is anyone else who would  
20 like to testify or if there's any additional comments  
21 that anybody would like to make? If not, the record



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CERTIFICATE OF NOTARY

I, SUSAN L. DILLEY, the officer before whom the foregoing testimony was taken, do hereby certify that the testimony which appears in the foregoing transcript 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; 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, not financially or otherwise interested in the outcome of the action.

*Susan L. Dilley*  
SUSAN L. DILLEY  
Notary in and for the  
State of Maryland

My Commission Expires:

*September 14, 1993*



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