

Public Hearings - Kent County - Bills No. 4-91 & 5-91 1991 MSA - S1830-98

BEFORE THE CHESAPEAKE BAY CRITICAL AREA COMMISSION

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IN THE MATTER OF: :  
BILLS NOS. 4-91 AND 5-91 :  
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Wednesday, August 28, 1991

Pursuant to Notice, the above-entitled hearing was held before WILLIAM H. CORKRAN, CHAIRMAN, at Kent County Courthouse, Chestertown, Maryland 21620, commencing at 7:00 p.m., there being present on behalf of the respective parties:

ON BEHALF OF THE CHESAPEAKE BAY  
CRITICAL AREA COMMISSION:

PATRICIA J. PUDELKEWICZ  
Chief, Program Implementation  
275 West Street  
Suite 320  
Annapolis, Maryland 21401

ON BEHALF OF KENT COUNTY PLANNING COMMISSION:

ELINOR D. GAWEL  
Critical Area Planner  
Kent County Planning Commission  
Courthouse  
Chestertown, Maryland 21620

ALSO PRESENT:

TOM JARVIS  
ROGER WILLIAMS

REPORTED BY: ELAINE J. REICHENBERG, NOTARY PUBLIC

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CRITICAL AREA COMMISSION



1 MR. CORKRAN: Elinor, may I interrupt just a  
2 second, because Pat suggests to me that I should also  
3 recognize our court reporter who is here, so that  
4 everything that you say will be held either for or  
5 against you.

6 MS. GAWEL: Right.

7 MR. CORKRAN: Excuse me.

8 MS. GAWEL: That's all right. It's no  
9 problem.

10 The wetland runs along here.

11 MR. CORKRAN: Can you see this, Tom?

12 MR. JARVIS: Yes, I can see it.

13 MS. GAWEL: Here, I can even hold it up.

14 MR. JARVIS: That's all right.

15 MS. GAWEL: This red line is the 1,000 feet.  
16 Now, this property here has opted to include its whole  
17 property. So when we have the critical area maps which  
18 are underneath here, it includes this line that ends at  
19 the road here.

20 I'll show you how it was drawn and you can see  
21 for yourself how weird it is. This is how our maps are



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1 drawn now. It shows the critical area line going like  
2 that. You can see that that's an error. It goes on to  
3 the map above it, which is this one, like that.

4 The correction on map 36 moves it like that.  
5 This one is moved like that. So it's a little bit  
6 shorter this way, and it goes a little bit higher up  
7 that way.

8 MR. JARVIS: This is correct, then, the one  
9 under here?

10 MS. GAWEL: Right. Right.

11 MR. JARVIS: So it goes across.

12 MS. GAWEL: That one corrects that one.

13 MR. JARVIS: I see.

14 MS. GAWEL: So you've got this going to that.

15 MR. CORKRAN: They were not even confused by  
16 the lake there, were they?

17 MS. GAWEL: No. I think this is a classic  
18 slip of the pen.

19 MR. CORKRAN: Yes, yes.

20 MS. GAWEL: You know, as if somebody came  
21 along and knocked somebody's elbow, almost. I can't



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1 figure out how you would get a line like that.

2 MR. CORKRAN: Yes.

3 MR. WILLIAMS: So now, practically none of  
4 this lake is in the critical areas?

5 MS. GAWEL: No. It's just a small area,  
6 essentially from here to here.

7 MR. WILLIAMS: That's a natural, man-made lake  
8 with no tides or anything?

9 MR. CORKRAN: Yes.

10 MS. GAWEL: Right. Actually, it was a fish  
11 hatchery at one point. It's one of Kent County's most  
12 beautiful spots, as a matter of fact.

13 MR. JARVIS: Where's that farm that decided to  
14 be included in the critical area?

15 MS. GAWEL: The farm that's entirely included  
16 is here. It's this one. It's actually two farms.  
17 Fairdale, which is proposed for subdivision right now.

18 MR. JARVIS: So that's why you found out about  
19 it? They brought in their subdivision plans?

20 MS. GAWEL: No, actually Mr. -- because it  
21 doesn't affect their property. It was Mr. Hoagland that



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1 came in and he said, "How can it be like that?" I told  
2 him I didn't know, because I wasn't a cartographer. But  
3 as I've gotten more experience on the computer, I  
4 realize that it can't be like that.

5 MR. JARVIS: And Mr. Hoagland owns property  
6 somewhere close to the area?

7 MS. GAWEL: He owns this property here.

8 MR. JARVIS: Is that the extra area that's  
9 going to be included?

10 MS. GAWEL: What?

11 MR. JARVIS: That extra area that's going to  
12 be included in the -- in other words, they're extending  
13 the critical area line in that case, is that right?

14 MS. GAWEL: Well, actually, they're extending  
15 it a little bit up that way --

16 MR. WILLIAMS: Reducing it.

17 MR. CORKRAN: They're reducing it, yes.

18 MR. JARVIS: Reducing it.

19 MS. GAWEL: -- and reducing it more this way.

20 MR. JARVIS: Okay.

21 MS. GAWEL: So he's got a number of acres that



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1 are not going to be in the Resource Conservation  
2 District. They'll be agricultural zoning district,  
3 which in some cases is stricter in Kent County than the  
4 Resource Conservation District.

5 MR. WILLIAMS: Does he have any plans, or is  
6 he just going to --

7 MS. GAWEL: No. I don't think Mr. Hoagland  
8 has any plans. He had mentioned at one point he might  
9 want to build a house down along here, I think. But  
10 he'd be able to do it either way. He just wants to  
11 protect his property values, I guess. If he develops, I  
12 imagine he'll develop in here where he can get water and  
13 sewer, because he owns this here as well.

14 I think he actually lives up here, though, but  
15 I'm not sure.

16 MR. CORKRAN: Are there any other questions?  
17 Tom, do you have any?

18 MR. JARVIS: No.

19 MR. CORKRAN: Do you have any?

20 MR. WILLIAMS: (Shakes head negatively.)

21 MR. CORKRAN: Pat, do you have any questions



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1 or are you completely familiar with it?

2 MS. PUDELKEWICZ: No, I'm fine. Thank you.

3 Well, I've talked with Elinor about it, and  
4 looked over the maps. We pulled out our tidal wetland  
5 map at work and checked it out also. It all corresponds  
6 with what Elinor said.

7 Is there a dam at the head of that lake,  
8 Elinor?

9 MS. GAWEL: Yes. There's a dam right at the  
10 road.

11 MR. CORKRAN: It's right at the road.

12 MS. GAWEL: It's pretty obvious, too.

13 MR. CORKRAN: Okay. Thank you.

14 We'll move on to the next one.

15 MS. GAWEL: This has sort of happened because  
16 of wanting to change something in the agricultural  
17 zoning district, and wanting them to be consistent with  
18 each other. The agricultural zoning district does not  
19 allow private schools or churches at all to exist. So  
20 any private schools or churches in the agricultural  
21 zoning district were considered nonconforming uses. It



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1 was decided that they should at least be allowed to  
2 expand. They do not want any new churches or private  
3 schools in the agricultural zoning district, but ones  
4 that are there should be allowed to expand.

5 The attorney felt that rather than have it in  
6 the conditional use section, since we really did want  
7 them to expand, and so that they wouldn't have to jump  
8 too many hurdles to put it in the nonconforming use, or  
9 in that section that defines nonconforming uses. So  
10 it's in Article Eight; it's added at the end of that  
11 section that defines the nonconforming uses, and --  
12 section 11, the language is.

13 MR. WILLIAMS: It sounds very familiar, like  
14 that Kent School bill. Is that what this is?

15 MS. GAWEL: No. This is the Harmony Church  
16 bill. Kent School is in the Resource Conservation  
17 District. They had already been taken care of. That's  
18 why we put them in the conditional use section.

19 MR. WILLIAMS: For a conditional use.

20 MS. GAWEL: Yes. But there's a private school  
21 and church in the agricultural zoning district. We felt



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1 that there were similar goals in the agricultural zoning  
2 district, as the Resource Conservation District. We  
3 didn't want anything new there that wasn't either  
4 strictly agricultural or resource conservation or  
5 residential.

6 I think it makes it clearer, and there's  
7 really no need for them to jump the hurdle of a  
8 conditional use when there's all the other regulations  
9 that regard their expansion, the 15 percent impervious.  
10 That pretty much covers anything harmful that would  
11 happen.

12 MR. JARVIS: Yes, but they've still got to go  
13 along with all the other regulations.

14 MS. GAWEL: Right. They still have to meet  
15 all the regulations. They just don't have to go through  
16 another 90-day hearing process.

17 MR. CORKRAN: I have a question, here, about -  
18 - I don't understand, I guess, the wording. It said --  
19 I have a copy here -- in Article Eight: "Private schools  
20 and churches which existed prior to April 12, 1988 may  
21 be enlarged or expanded notwithstanding the provisions



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1 of section one hereof."

2 Now, would you explain to me what that means?

3 MS. GAWEL: Okay. It's legal jargon. I have  
4 trouble with it, too.

5 Section one says that no such use shall be  
6 enlarged or increased or extended to occupy a greater  
7 area. So they're essentially saying that private  
8 schools and churches don't have to follow section one.  
9 Section one is about the continuance of a nonconforming  
10 use. That is, as long as it remains the same, it can  
11 continue. This takes them out of that realm so that  
12 they can expand.

13 MR. CORKRAN: Okay. Now, this is a different  
14 section one that I'm reading.

15 MR. JARVIS: Well, I read this section one  
16 here, and there's no connection on it whatsoever.

17 MR. CORKRAN: No.

18 MS. GAWEL: No. That's not --

19 MR. CORKRAN: That's not the section one  
20 that's referred to, then?

21 MS. GAWEL: Yes, it is. It's this section one



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1 that's referred to.

2 MR. JARVIS: I couldn't make any sense out of  
3 that.

4 MS. GAWEL: Yes, that's what it is. That's  
5 why it's confusing. Because it says section one, and  
6 then of course, you have a section one up here.

7 MR. CORKRAN: Yes.

8 MS. GAWEL: It's not referring to this section  
9 one. It's referring to this section one.

10 MR. JARVIS: To this section one.

11 MR. CORKRAN: It seems to me your attorney  
12 should be more explicit.

13 MS. GAWEL: Well, that's true. I'll mention  
14 it to him.

15 MR. JARVIS: It really confused me.

16 MR. WILLIAMS: And why are you going back to  
17 the April of '88 date? Is that some magical date?

18 MS. GAWEL: Because that's the date of the  
19 adoption of our Critical Area Plan. We chose that date  
20 because we couldn't think of anything that had happened  
21 since then.



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1 MR. JARVIS: There probably hadn't been any  
2 churches or schools built since.

3 MS. GAWEL: Not that we can think of, no. We  
4 actually have a number -- we have one church that's in  
5 both. I mean, the line couldn't very well go right  
6 through the middle of the church. It might be AZD and  
7 RCD; we're not sure. I've never bothered to go that  
8 close to it. I looked at it once, and I thought, "Oh,  
9 no!"

10 MR. CORKRAN: Well, Pat and I were talking  
11 earlier, and I'll let Pat express her thinking, because  
12 I was of somewhat the same thinking.

13 Would you like to comment on this?

14 MS. PUDELKEWICZ: There's just one comment on  
15 the expansion.

16 MS. GAWEL: Yes?

17 MS. PUDELKEWICZ: A lot of times for  
18 nonconforming uses, there's a limit to the amount of  
19 expansion.

20 MS. GAWEL: Yes.

21 MS. PUDELKEWICZ: So it can expand 25 percent



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1 or 15 percent.

2 MS. GAWEL: Right.

3 MS. PUDELKEWICZ: There's usually some  
4 controlling factor there. If you say they may expand  
5 without any limitation, then it's almost like the doors  
6 are wide open, that they could expand, but as far as I  
7 know --

8 MS. GAWEL: We saw the 15 percent impervious  
9 surface as being a limitation on that.

10 MS. PUDELKEWICZ: But if there was a very  
11 large lot, then I think they could practically double  
12 their size or whatever, without there being any type of  
13 a limitation. I would think, maybe, a private school or  
14 a church might have a bit of grounds around it where 15  
15 percent might not be a controlling factor.

16 MS. GAWEL: Well, it is for Kent School.  
17 They are right now up against a brick wall. They have  
18 25 percent impervious surface.

19 MS. PUDELKEWICZ: But as far as other cases  
20 that may arise --

21 MS. GAWEL: Yes.



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1 MR. CORKRAN: Yes, because this could apply to  
2 anyone, really.

3 MS. GAWEL: Yes. I'm trying to think if there  
4 are any that have any significant area.

5 MR. CORKRAN: As Pat was reading it, and I was  
6 reading it the same way, that it could be. Not that it  
7 would be, but it could expand to a rather sizable  
8 degree. I think in practice, at least the one that I've  
9 been familiar with, in ordinances, there is usually a  
10 limitation on the amount.

11 MS. GAWEL: Well, I think that it would  
12 probably be the choice of the planning commission to put  
13 it back into conditional use, rather than do that.  
14 Because what they wanted to do is not to consider this  
15 as a nonconforming use, to say that essentially these  
16 are not nonconforming uses. New ones are, but old ones  
17 aren't.

18 MR. CORKRAN: I understand.

19 MS. GAWEL: So I think that they would  
20 probably choose --

21 MR. CORKRAN: Do you see a problem with that?



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1 MS. GAWEL: I think the 15 percent probably  
2 does a good enough job. I can't think of anybody who  
3 has probably more than five acres. With parking for a  
4 church, I guess you could cover 15 percent. I can't  
5 imagine.

6 MR. WILLIAMS: In the case of Kent School, the  
7 Johnsons could always just sell more of the property  
8 down there.

9 MS. GAWEL: Yes. They're talking about  
10 selling more of the AZD than -- they're talking about  
11 going the other way. They're in about, from 700 to  
12 1,000 feet. They sit right on the edge. They don't  
13 have waterfront.

14 Let's see. Lakeview Christian Fellowship --  
15 they only have three acres.

16 MR. WILLIAMS: They're not with the --

17 MS. GAWEL: Yes, they are.

18 MR. WILLIAMS: Oh, they are? That's right --  
19 a little stream --

20 MS. GAWEL: They're the ones, I think, that  
21 might go through their building.



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1 MS. PUDELKEWICZ: As far as, like adding in  
2 there something like 25 percent -- say the 15 percent  
3 impervious surface was a controlling factor. That's one  
4 controlling factor, but to safeguard the purposes of the  
5 RCD for larger lots, adding in a cap, I don't see where  
6 it would be a problem.

7 MS. GAWEL: Personally, I don't see where it  
8 would be a problem either, but putting myself into the  
9 heads of the planning commission --

10 MS. PUDELKEWICZ: Of the planning commission,  
11 yes.

12 MR. CORKRAN: I have no -- in private, writing  
13 whether it's 25 or 50 percent or 100 percent, but if  
14 this is just an open -- you can go like all over.

15 MR. WILLIAMS: This particular location, if  
16 it's the one I'm thinking about, it's very, very, very  
17 small to begin with.

18 MS. GAWEL: Mt. Harmony. The one that caused  
19 it isn't even in the critical area.

20 MR. WILLIAMS: If you talk about limiting it  
21 to 25 percent, you're talking about limiting it to half



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1 of this room. I'm about right, aren't I?

2 MS. GAWEL: Yes. That one would be about --

3 MR. WILLIAMS: I don't know exactly where the  
4 boundary lines are, but that particular one I'm thinking  
5 about, if you put a limit of 25 percent on them, they  
6 couldn't even put a shed up that would be of any size.

7 MS. GAWEL: And that's about what they're  
8 doing.

9 MR. WILLIAMS: It's like a school and then a  
10 playground and that's it.

11 MS. GAWEL: Yes.

12 MR. WILLIAMS: And the school is very, very,  
13 very small.

14 MS. GAWEL: Smaller than my house.

15 MR. WILLIAMS: I don't say that we shouldn't  
16 restrict them, but let's not restrict them to the point  
17 to where, you know --

18 MR. CORKRAN: Where they can't do anything.

19 MR. WILLIAMS: -- a small school can't do  
20 anything at all.

21 MS. GAWEL: Yes. Well, it would get difficult



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1 in the case of the -- the reason this amendment came up,  
2 it was a ball field. They wanted to add a ball field,  
3 and the ball field is larger than anything that they  
4 have there.

5 MR. WILLIAMS: A school without a ball field  
6 is not a school. I don't care what anybody says.

7 MS. PUDELKEWICZ: So in a case like this,  
8 you're not really expanding a structure, you're  
9 expanding a use.

10 MS. GAWEL: Yes.

11 MR. WILLIAMS: Right. It would have to come  
12 before us anyway. I can't see our full commission  
13 turning it down.

14 MS. GAWEL: Well, it wouldn't come before you.

15 MR. WILLIAMS: Oh, it wouldn't?

16 MS. GAWEL: I don't think so; not a ball  
17 field.

18 MS. PUDELKEWICZ: I don't think so.

19 MS. GAWEL: It's essentially a grading and  
20 sediment control problem.

21 MR. CORKRAN: I would hope not.



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1 MS. GAWEL: Really. Please, I don't want to  
2 have to look at those things.

3 We have a ball field in Millington right now  
4 that has taken up about a week's worth of staff time.

5 MR. JARVIS: That's too complicated.

6 MR. CORKRAN: Well, that was my thinking, and  
7 then I had a problem with section one.

8 MS. GAWEL: Yes. I see that problem. That  
9 probably never even occurred to him when he was writing  
10 it.

11 MR. JARVIS: I've read it about four or five  
12 times myself.

13 MS. GAWEL: Really, notwithstanding that  
14 they're passing this -- I have trouble with the word,  
15 "notwithstanding."

16 MR. CORKRAN: Generally, I have a problem with  
17 it.

18 MS. GAWEL: Yes. It has an entirely different  
19 legal meaning from real life.

20 MR. CORKRAN: Notwithstanding what it says.

21 MS. GAWEL: Right.



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1 MR. JARVIS: I wish people would just quit  
2 using it, because it confuses me every time I see it.

3 MS. GAWEL: It's in 20-20 and it's in the  
4 forestry bill, and it really has created quite a free-  
5 for-all.

6 MR. CORKRAN: All right. Are there any other  
7 questions, or comments?

8 MR. JARVIS: No. No, I don't.

9 MR. WILLIAMS: Do you feel strongly enough  
10 about that restriction that you want to pursue it  
11 further?

12 MR. JARVIS: I don't see how you can  
13 successfully and effectively do it without, well, a book  
14 that thick, you know. Because like you said, if you put  
15 a percentage on it, a tiny little building, a percentage  
16 of that, then you can't do anything with it.

17 MS. GAWEL: Yes. I hadn't thought about it  
18 when Roger brought it up, but it is such a tiny school.  
19 It wouldn't be any problem for something like Kent  
20 School. An expansion of theirs, a hundred percent would  
21 be enormous.



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1 MR. JARVIS: Well, are there any other  
2 mechanisms in your Kent County system that would  
3 prohibit a massive exaggeration?

4 MS. GAWEL: Well, like the 15 impervious  
5 probably would in most cases. There may be a church  
6 that I'm not aware of that has a large amount of  
7 acreage.

8 MR. JARVIS: Well, like the ball field.  
9 That's not an impervious surface.

10 MS. GAWEL: No.

11 MS. PUDELKEWICZ: Would it be a tremendous  
12 task to find out what we're looking at here, as far as a  
13 school or a church that was in place as of April of '89,  
14 so that we would actually see what we're looking at? I  
15 mean, do you think there are a lot of them, or not that  
16 many? I mean, it might give us a little bit --

17 MS. GAWEL: There's probably four or five.  
18 Shrewsbury probably is, and St. Paul's. All the  
19 Episcopal churches. They all have close to waterfront  
20 property. I can say that because I'm Episcopalian.

21 MS. PUDELKEWICZ: If we had a listing of the



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1 schools and churches that were in the critical area and  
2 we saw the acreages that were associated, and could see  
3 what the 15 percent limit would be.

4 MS. GAWEL: We would probably miss some.

5 MS. PUDELKEWICZ: The ones that would be  
6 missed could be critical.

7 MS. GAWEL: Shrewsberry, I think, is the only  
8 one that has a large acreage.

9 MR. JARVIS: Well, even the ones that don't  
10 have a large acreage, they can buy some more.

11 MS. GAWEL: That's true. And that's exactly  
12 what Harmony Church did. They bought a ball field, or  
13 were given a ball field.

14 MR. JARVIS: Or somebody donates it. But as  
15 long as they get it -- you never know how they get it.

16 MR. CORKRAN: Yes, yes.

17 MR. JARVIS: And then -- percentages of the  
18 total area, why then, now all the percentages would grow  
19 far quicker.

20 MS. PUDELKEWICZ: I guess when I originally  
21 read this, I was looking at expansion of a structure,



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1 not really expansion of a use such as ball fields.

2 MR. CORKRAN: Yes, I was, too.

3 MR. WILLIAMS: Right.

4 MS. PUDELKEWICZ: That becomes a little bit  
5 more questionable as far as -- recreation areas.

6 MR. CORKRAN: Yes. I read it as a structure,  
7 and basically going back to my experience about -- in a  
8 fire district, you can't expand a building more than 25  
9 percent, you know, unless it conforms to -- does a lot  
10 of other things. That's the reason that I questioned  
11 that.

12 Okay. What we'll do is, this will stay open  
13 until the 3rd. We have a meeting on the 4th. There's a  
14 meeting of the Commission on the 4th. I think that's  
15 correct, isn't it, the 4th?

16 MS. PUDELKEWICZ: Yes. And the record will  
17 stay open.

18 MR. CORKRAN: The record will stay open until  
19 that time.

20 MS. GAWEL: If anybody should show any  
21 interest.



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MR. JARVIS: Yes. And have them sign up  
before they leave.

MR. CORKRAN: All right. Then we declare this  
hearing adjourned.

(Whereupon, at 7:30 p.m., the above-  
entitled hearing was adjourned.)

(Exhibits - none.)



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C O N T E N T S

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2	Bill No. 4-91	4
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4		
5	<u>DESCRIPTION</u>	<u>PAGE</u>
6	(None.)	

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CERTIFICATE OF NOTARY

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

15   
 16 ELAINE J. REICHENBERG  
 17 Notary Public in and for  
 18 the District of Columbia

19 My Commission expires:

20 7/1/94  
21



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