

Public Hearings - Somerset County - Map Amendment 1991 MSA\_S1930-102

BEFORE THE MARYLAND DEPARTMENT OF NATURAL RESOURCES  
CHESAPEAKE BAY CRITICAL AREAS COMMISSION

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In the matter of: :  
SOMERSET COUNTY : CASE NO.: SO A-4  
MAP AMENDMENT :  
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Thursday, January 31, 1991

Pursuant to notice, the above-entitled hearing  
was held before WILLIAM J. BOSTIAN, CHAIRMAN, at 424  
N. Somerset Road, Princess Anne, Maryland 21853,  
commencing at 6:30 p.m., there being present on behalf  
of the respective parties:

PANEL MEMBERS:

RUSSELL W. BLAKE  
SHEPARD KRECH, JR.

ON BEHALF OF THE COUNTY:

RONALD ADKINS

ON BEHALF OF THE CRITICAL AREAS COMMISSION:

THOMAS VENTRE  
JENNY PLUMMER

REPORTED BY: CHRIS HOFER, NOTARY PUBLIC

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1 17th, in the Salisbury Daily Times. Two weeks ago  
2 today, as a matter of fact. You have copies of that  
3 advertisement in your briefing packets.

4 The briefing packet includes my comments after  
5 site visits and after examining the material that was  
6 submitted by Somerset County Board of Commissioners, as  
7 well as other supplemental data, including photographs  
8 which I thought may be helpful to the members of the  
9 panel. The original prints are available for your use.

10 As my findings indicate, I see no particular  
11 problems or issues with the site itself regarding the  
12 proposed reclassification to LDA from its current RCA.

13 Ron Adkins is here to speak on behalf of the  
14 county tonight, so we could begin as we usually do.  
15 Although, again, I want to add for those of us who --  
16 those of you who may not be familiar, there is a sign-up  
17 sheet we would like to have all of you sign, whether or  
18 not you intend to speak. And of course the chairman  
19 will recognize speakers.

20 CHAIRMAN BOSTIAN: But there is no need to  
21 sign up, if you don't want to.



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1 MR. VENTRE: Okay, Bill. Thank you. I can  
2 answer further questions after, if there are any.

3 CHAIRMAN BOSTIAN: Ron, would it be in order  
4 for you to speak then?

5 MR. ADKINS: Well, yes, I'm here tonight to  
6 represent the Somerset County Government in regard to  
7 its proposal to amend its critical area map to reflect  
8 an error in the original mapping designation of the  
9 parcel that has been indicated in your staff report.

10 Not to make it into a long process, what I  
11 want to do officially first is to put into the record a  
12 copy of the case file so that you would have, for your  
13 own reference, information that the county used in order  
14 to determine its position that it has taken. So, for  
15 that matter, I'll present to you a copy of the case  
16 file.

17 CHAIRMAN BOSTIAN: Okay.

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

21 MR. ADKINS: And what I'd like to do is just



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1 to highlight just a couple of things out of the finding  
2 of facts that you have attached to your staff report,  
3 what I feel are probably the most important issues in  
4 testing whether it met the criteria to change -- in  
5 other words, to meet the LDA designation or not.

6 The county did receive a request back in June  
7 of this past year to amend its map, based on an error.  
8 Now we've pursued it with a hearing with our Planning  
9 Commission and investigated the issue and fielded  
10 testimony and made a finding favorable to the request.  
11 And subsequently the County Commissioners held a public  
12 hearing, fielded testimony, reviewed information,  
13 including aerial photography, and made a similar finding  
14 of fact in favor.

15 And within that finding of fact, I would just  
16 point out a few items that I believe to be important,  
17 and that is the parcel itself is found on County Tax Map  
18 19, Block 23, Parcel 109, and was designated, pursuant  
19 to our critical area program, as a resource conservation  
20 area. It is 7.35 acres in size.

21 After investigating the use of the property,



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1 including investigations of tax records, aerial -- tax  
2 records as of April 28th, 1984, aerial photography as of  
3 March 1982, the county found that there were five  
4 dwelling units present on the 7.35 acres.

5 CHAIRMAN BOSTIAN: On the site?

6 MR. ADKINS: On the site. Which would thereby  
7 qualify it to have a density of 1.46 dwelling units per  
8 acre. Those dwelling units took the form of a three-  
9 unit apartment building and two mobile homes.

10 Apparently the consultants for the county did  
11 not distinguish the number of dwellings when it reviewed  
12 the land use patterns at the time and had designated  
13 this area and an adjoining property as a resource  
14 conservation area, not picking up the density present on  
15 the parcel in question.

16 The property is not a stand-alone LDA, or  
17 would not be. It does touch other property that is  
18 designated limited development.

19 We believe, and in our findings, that it does  
20 meet the qualifications of COMAR 14.15.02.05 and .06, as  
21 well as our mapping rule number two in our Somerset



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1 County Critical Area Plan, to meet the test of being an  
2 LDA based upon its density, and thereby present to you  
3 our position that, in fact, we did make an error in  
4 mapping this particular parcel a resource conservation  
5 area, and it should be a limited development area.

6 As I said, we have a host of information in  
7 the file, including a copy of the map of our  
8 designation, as it exists today, of our critical area,  
9 including the tax records that indicate the parcel  
10 improvements. And I think it also has the findings of  
11 the Planning Commission, as well as the County  
12 Commissioners.

13 So, with that, I'll end the testimony and just  
14 ask if you have any questions, and I'll try to answer  
15 them.

16 DR. KRECH: A question. I went over this  
17 whole property today for about 45 minutes to an hour,  
18 and you say that it is 7.3 acres. I get the feeling  
19 there is considerably more than that. Ten acres, plus  
20 or minus. Being a farmer, and sort of guesstimating the  
21 acreages I've done over the years, I get the feeling



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1 that it's more, Ron, than 7.3 acres, number one.

2 MR. ADKINS: Okay. To answer your first  
3 question, we only used the records that were in the tax  
4 assessment map that gave us that figure.

5 DR. KRECH: Right.

6 MR. ADKINS: There is another parcel adjoining  
7 it, owned by the United States of America. I can't tell  
8 you anymore than that. That might give you the feel  
9 that it's a larger parcel.

10 DR. KRECH: Yes.

11 MR. ADKINS: And like I said, you may have got  
12 that feel simply because there is other land adjacent to  
13 it --

14 DR. KRECH: Well, maybe I got that feeling  
15 because the Phragmites is so high.

16 MR. ADKINS: Yes.

17 DR. KRECH: The other thing that worries me --

18 CHAIRMAN BOSTIAN: May I interrupt for a  
19 second?

20 I just would like to point out that on the --  
21 for the record, there is a plat included in the packet



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1 of documents that we've gotten from Somerset County that  
2 shows a -- what purports to be a plat, anyway, of the  
3 area, and it has 7.315 acres there.

4 DR. KRECH: All right. I stand to be  
5 corrected then.

6 The other thing that bothers me --

7 CHAIRMAN BOSTIAN: I wasn't trying to correct  
8 you.

9 DR. KRECH: -- Ron, is that this -- I consider  
10 this wasteland. It's absolutely wasteland. As you  
11 know, wasteland is one of our definitions of resource  
12 conservation land.

13 There is a high degree of sand. So,  
14 therefore, any disturbance to this land would, by  
15 necessity, because of the amount of sand in this area,  
16 by necessity would be terribly hard to control the  
17 siltation runoff. It's much harder to control siltation  
18 runoff in an area like this than in your average upland  
19 area, say. And this is the one thing that really  
20 worries me, that makes me feel that we should consider  
21 the other side of the spectrum, and that is that it



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1 should remain as a resource conservation area.

2 MR. ADKINS: Well, my response to you would be  
3 that the use itself qualifies it to be an LDA, even  
4 though I agree with you. It's maiden land. It's a  
5 spoil site. That's why it has the texture of soil that  
6 it has. That's why it has the vegetation that you  
7 referred to that it has. It was a tidal wetland at one  
8 point in time, years and years ago.

9 CHAIRMAN BOSTIAN: How long do you think?

10 MR. ADKINS: Well, preceding the tax records  
11 that you have there. It's been several years. I can't  
12 tell you the exact date of the spoils. Maybe the  
13 property owners could.

14 MR. VENTRE: According to -- excuse me a  
15 minute. According to our information, when I looked at  
16 the state wetlands overflights, as well as the Somerset  
17 County Soil Survey, and it was mapped and identified as  
18 a tidal marsh in 1966 at the date of the soil survey.

19 MR. ADKINS: That's correct.

20 MR. VENTRE: And the earliest photography  
21 indicates that -- excuse me. The photography shows, at



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1 least by 1985, as I pointed out in my comments here,  
2 that it by then had already been filled.

3 I have had some difficulty pinpointing the  
4 exact time and circumstances of when. Maybe Ron  
5 could --

6 MR. ADKINS: I guess I can only add that by  
7 1982 our photography indicates that the dwellings were  
8 there. The tax records may indicate the dwellings were  
9 there even prior to that.

10 But the point being is the reason that it is  
11 and the condition that it's in, soilwise, is because it  
12 was a spoils site. And I agree that there may be  
13 extraordinary measures needed to be taken if it is to be  
14 developed to contain --

15 DR. KRECH: Ron, if we can find these  
16 extraordinary measures -- to me there is a tremendous  
17 amount of risk to developing a piece of land like this,  
18 a high amount of risk from the standpoint of  
19 sedimentation flow.

20 CHAIRMAN BOSTIAN: Well, that's the purview of  
21 the Department of the Environment --



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1 DR. KRECH: I know it is. Of course it is.

2 CHAIRMAN BOSTIAN: -- and the water --

3 DR. KRECH: It's the purview -- but I bring  
4 this up to all of you for consideration. I personally  
5 think it should be considered -- continue as resource  
6 conservation is my feeling, because of this potential  
7 danger.

8 MR. ADKINS: Again, my only answer is that the  
9 site, we do believe, qualifies as an LDA, based upon --

10 DR. KRECH: Oh, I agree. I agree it  
11 qualifies.

12 MR. ADKINS: -- the two statutes. And while  
13 you certainly bring up a very real and practical issue,  
14 it would be my opinion, as the representative of  
15 Somerset County here, that that issue would have to be  
16 addressed at the point of the development phase --

17 DR. KRECH: I agree it's not up to me.

18 MR. ADKINS: -- and not at the point of this  
19 hearing.

20 DR. KRECH: Yes.

21 MR. ADKINS: So, I just would leave it at



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1 that.

2 DR. KRECH: Okay.

3 CHAIRMAN BOSTIAN: Tom, would you like to add  
4 anything at this time?

5 MR. VENTRE: No. I have nothing to add to  
6 Ron's remarks. He pretty well covered comment and those  
7 points that were made in the commissioner's findings of  
8 fact, that is, the County Commissioner's findings of  
9 fact, as far as the history, as far as could be  
10 determined of structures on the site. That is the  
11 information that I have as well of the site.

12 CHAIRMAN BOSTIAN: You don't have any further  
13 information as to how the buildings might have been  
14 overlooked at the time when things were mapped?

15 MR. ADKINS: We didn't consult with Rodgers,  
16 Golden, and Halpern, our consultants, to find out how  
17 the error may have been made, other than I can just  
18 gather that it was clustered together with the other  
19 parcel of land. It was a rather large holding by the  
20 U.S. Government. And together, because of the size,  
21 that this was a logical resource conservation area.



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1           Whereby, on the other side of the -- beyond  
2 the highway, there were other buildings and parcels of  
3 land of the size that would have qualified LDA  
4 automatically. The only reason that I can give to you  
5 that it may have been overlooked, but we didn't bother  
6 to call them and ask them why.

7           CHAIRMAN BOSTIAN: Could I bring to your  
8 attention to this plat for a moment?

9           MR. ADKINS: Yes.

10          CHAIRMAN BOSTIAN: The plat appears to be a  
11 boundary survey, and it has some drawings penciled in.  
12 I see at least two main dwellings, and it looks like  
13 maybe a third over here. That might be the third --

14          DR. KRECH: One looks like an apartment  
15 complex. Isn't there an apartment complex on there?

16          MR. WITHERS: There's a three-unit apartment  
17 complex here.

18          DR. KRECH: Yes. Apartment complex here.

19          MR. WITHERS: There's a mobile home here, with  
20 an attached garage, a well --

21          DR. KRECH: And a mobile home over here.



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1 MR. WITHERS: -- house and there's a mobile  
2 home right here.

3 DR. KRECH: There's a mobile home right here,  
4 too.

5 MR. ADKINS: Let me give you this one. It  
6 might be a little bit clearer for you to understand.

7 DR. KRECH: Yes. The mobile home up here  
8 doesn't show, but there's a mobile home --

9 MR. BLAKE: You don't have any pictures of  
10 those --

11 MR. VENTRE: I didn't get that far.

12 MR. BLAKE: -- do you?

13 MR. VENTRE: No. I saw this cluster of  
14 buildings up here. But I didn't get much --

15 CHAIRMAN BOSTIAN: This is the water here?

16 MR. VENTRE: That's correct.

17 MR. ADKINS: That's correct.

18 DR. KRECH: That's correct. And there's a  
19 drainage lead coming down here. The county --

20 MR. BLAKE: Where is the access road to the  
21 dwellings?



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1 MR. VENTRE: Coming off of the -- here, and  
2 then there's -- right up here off the road. It comes  
3 right through here.

4 DR. KRECH: Yes. The road comes through here,  
5 like so. And don't go this far over, because you're up  
6 to your eyeballs in -- over your knees in mud.

7 CHAIRMAN BOSTIAN: Well, I would take judicial  
8 -- or commission notice, that there appears to be reason  
9 to think that that might have been a separate area at  
10 the time. So, I mean, it's not unreasonable to think  
11 that there could have been a mistake made in this  
12 instance, given the large amount of land and the  
13 tightness with which that is over there.

14 DR. KRECH: I walked down to here -- mobile  
15 home. All the way over there.

16 MR. ADKINS: The only other thing I would add  
17 to you tonight is the file that I presented to you does  
18 not have photographs that were presented to the county  
19 by the applicant. That is in the County Commissioners'  
20 file. The original file is there. And they do not  
21 duplicate well, as you can see in your packet, what is



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1 presented to you by the staff.

2 So, we do have a few photographs of the  
3 structures in our original file in the County  
4 Commissioners' Office.

5 CHAIRMAN BOSTIAN: One other question that may  
6 or may not be relevant is whether the ownership has  
7 remained the same since December of 1985?

8 MR. ADKINS: I can tell you very quickly. I  
9 can't tell you that the ownership within the limited  
10 partnership has remained the same.

11 CHAIRMAN BOSTIAN: I'm not asking that.

12 MR. ADKINS: But I can tell you the property  
13 owner -- or I believe I can -- what my beliefs are. It  
14 might have been Payne Logging. I'm not sure. No, I  
15 can't tell you for sure. It's only by parcel -- I  
16 don't know, in 1985, who owned the property.

17 CHAIRMAN BOSTIAN: That's not relevant. It's  
18 your mistake.

19 MR. BLAKE: Are you one of the owners?

20 MR. WITHERS: Yes, I am.

21 MR. BLAKE: Maybe you know that.



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1 MR. WITHERS: No. In 1985, no.

2 MR. BLAKE: No, you don't know? Or, no, it  
3 was --

4 MR. WITHERS: No. I don't know who owned it  
5 in 1985. We bought it from a company called Payne  
6 Logging Company. I'm not sure whether they owned it in  
7 1985 or not.

8 MR. BLAKE: Ron, what was -- you mentioned a  
9 ratio of dwelling units per acre a few minutes ago.  
10 What was that again? 1.4?

11 MR. ADKINS: 1.46 dwelling units per acre.

12 MR. BLAKE: And how did you get that?

13 MR. ADKINS: 1.46 acres per dwelling unit is  
14 what I should say.

15 MR. BLAKE: There you go --

16 DR. KRECH: -- acres per dwelling unit. Yes.

17 MR. BLAKE: It's less than one --

18 MR. ADKINS: Acres per dwelling unit.

19 MR. BLAKE: It's five divided by seven

20 something.

21 MR. ADKINS: So. You need a mathematics



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1 major, I guess. I'm just an engineering major. I  
2 should have known you would have thought that.

3 Again, though, that's within the range of one  
4 unit per five acres, up to 3.99 units per acre, which  
5 would have been the criteria or realm of an LDA.

6 MR. BLAKE: And were those units occupied at  
7 that time?

8 MR. ADKINS: I can't tell you how many people  
9 were living in the apartment versus how many people were  
10 living in the mobile home. I don't know.

11 MR. BLAKE: Were they abandoned or vacant, or  
12 were they actually in use, or don't you know?

13 MR. ADKINS: The tax records show that the  
14 residential use was on the property as of 1985.

15 MR. BLAKE: That means that the buildings were  
16 there.

17 MR. ADKINS: Yes. The buildings were there.  
18 I don't know how many people were living within the  
19 buildings. I don't know that any of us knew -- any time  
20 we mapped -- how many people and how many buildings were  
21 occupied, but the use was there. As an apartment, it



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1 would have fluctuating -- or people living in it.

2 MR. WITHERS: The buildings have always been  
3 in use. They've never been abandoned, you know.

4 CHAIRMAN BOSTIAN: They are in use now?

5 MR. WITHERS: Yes.

6 CHAIRMAN BOSTIAN: Would anyone else like to  
7 ask any questions, or have anything else to say?

8 THE AUDIENCE: (No response.)

9 CHAIRMAN BOSTIAN: Normally what we do is, we  
10 have a written record open for two weeks at the  
11 Commission office and -- which is the Chesapeake Bay  
12 Critical Areas Commission, 275 West Street, Suite 320.  
13 It's in Annapolis, Maryland 21401. If you have any  
14 comments that you'd like to send on, send them to Tom  
15 Ventre at that address. Tom Ventre is the --

16 DR. KRECH: In other words, the Commission is  
17 not going to take action on this next week.

18 MR. VENTRE: It is on the agenda for next  
19 week.

20 DR. KRECH: Is it on the agenda for next week?

21 MR. VENTRE: Because of the --



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1 DR. KRECH: Time frame?

2 MR. VENTRE: -- we won't have it for the full  
3 -- if you wish to make additional comments --

4 DR. KRECH: So, it's between now and next  
5 Wednesday then.

6 CHAIRMAN BOSTIAN: Okay. I'll --

7 MR. VENTRE: If you want to submit anything  
8 for the record.

9 DR. KRECH: I stand corrected. Not two weeks.

10 MR. WITHERS: What? Their meeting in  
11 Annapolis?

12 CHAIRMAN BOSTIAN: Yes.

13 DR. KRECH: The meeting is in Annapolis, next  
14 Wednesday.

15 MR. WITHERS: Does anybody see any problem  
16 with what I'm trying to do? I mean, I came here just  
17 -- I've never been to one of these hearings. I don't  
18 know the county has had one of these, have they?

19 CHAIRMAN BOSTIAN: This is a --

20 MR. ADKINS: Not for an error.

21 DR. KRECH: Not for what?



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MR. ADKINS: Not for a mapping error.

DR. KRECH: No. Not for a mapping error, we haven't --

CHAIRMAN BOSTIAN: Well, we'll stop the hearing at that point then.

(Whereupon, at 6:50 p.m., the hearing was concluded.)

(Exhibits not attached.)



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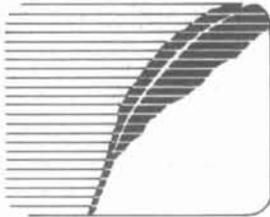
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February 15, 1991

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Critical Area Commission  
ATTN: Thomas Ventre  
275 West Street  
Suite 320  
Annapolis, MD 21401

RE: Hearing in the matter of Somerset County Map Assessment,  
Case No: SO A-4

Dear Mr. Ventre:

Enclosed please find the Certificate of Notary sheet for  
the above-referenced hearing. Please attach it to the original  
transcript.

Thank you.

Very truly yours,

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## CERTIFICATE OF NOTARY

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

16 Chris Hofer  
CHRIS HOFER  
17 Notary Public in and for the  
State of Maryland

18 My Commission Expires:

19 Aug 30 / 94  
20  
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2 I, CHRIS HOFER, the officer before whom  
 3 the foregoing testimony was taken, do hereby certify  
 4 that the testimony which appears in the foregoing  
 5 transcript was taken by me by magnetic tape and  
 6 thereafter reduced to typewriting by me or under my  
 7 direction; that said testimony is a true record of the  
 8 testimony given; that I am neither counsel for, related  
 9 to, nor employed by any of the parties to the action in  
 10 which this testimony is taken; and, further, that I am  
 11 not a relative or employee of any attorney or counsel  
 12 employed by the parties hereto, nor financially or  
 13 otherwise interested in the outcome of the action.

14  
 15  
 16 Chris Hofer  
 CHRIS HOFER  
 17 Notary Public in and for the  
 State of Maryland

18 My Commission Expires:

19 Aug 30 / 94

20  
 21  
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CRITICAL AREA COMMISSION

Public Hearing For: SOMERSET COUNTY MAP AMENDMENT

Date: JAN. 31 '91

Place: PRINCESS ANNE, MD

Time: 6:30 p.m.

SIGN IN SHEET	Do You Wish To Testify?	
NAME & ADDRESS	YES	NO
Ron Schuis 424 N. Somerset Ave Princess Anne, MD 21853	✓	
Dale R Wilhous 11548 Gumpoint Rd. Berlin, Md. 21811		

Notes, local panel hearing, Somerset County, Jan 31, 1991

Panel Members in attendance: Blake, Bortian, Kesch  
(Bortian chaired)

Staff: Jim Venter, Jenny Plummer observing

Somerset staff: Ron Adkins

Others: Mr. and Mrs. (?) Wether (see sign-in sheet), who  
have an interest in the property.

Chris Hoyer, court reporter

Acting chair Bortian called hearing to order, stated its  
purpose, introduced panel members. Asked staff to  
present review comments, which was done.

Next Ron Adkins spoke on behalf of the County. Stated  
why change was justifiable as alleged error was obvious  
from historical data on use of the site. In response to  
panel questioning, he summarized why ~~consultant~~ County's  
program consultant may have erroneously classified the  
site (as RCA)

Panel members expressed their individual opinion that  
a reclass to LDA was justifiable. Skip Kesch also  
expressed his opinion that development of the site would  
cause serious sediment and runoff problems because of  
the inherently unstable character of the spoil retained on

the site. This was Shep's only concern, and emphasized that this must be watched closely if development ever occurs. Despite this concern, however, he noted his concurrence with a rezoning based on a map in original mapping. Shep noted also that he personally went to and walked over the site, to familiarize himself with it.

Tom Adkin submitted additional documentation from the County's review of the rezoning request. Apparently, there are no ~~plans~~ current plans for development; none have been submitted. Tom noted that, due to soil conditions, Health Department requirements might preclude development, or would at least limit the number of houses that could be built there.

Mr. Dale Wither, an owner or co-owner of the property, stated that existing structures -- a mobile home used as a residence, a 3-unit apartment, a garage, etc. -- are to be demolished and removed, and the present septic systems removed. There is currently no time table for any of this work.

There being no other comments, Bill ended the public hearing.

After guests left the meeting room, the Board panel met to discuss the matter and its recommendations to the full Comm. They agreed that the panel would recommend approval. Tom Verbeke agreed to ~~prepare~~ draft the working for a motion for the next CBCAC meeting.