

Public Hearings - Cecil County - Growth Allocation - Elkton Map Amendment 1992 MSA - DC 830-110

1 BEFORE THE CHESAPEAKE BAY CRITICAL AREAS COMMISSION

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3 IN RE: :  
4 CECIL COUNTY, SPECIAL :  
5 GROWTH ALLOCATION :  
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AND

ELKTON MAP AMENDMENT  
BY REASON OF MISTAKE

Monday, June 1, 1992

Pursuant to Notice, the above-entitled hearing was held before RONALD HICKERNELL, CHAIRPERSON, at the County Office Building, Main Street, Elkton, Maryland commencing at 7:09 p.m., there being present on behalf of the respective parties:

CRITICAL AREAS COMMISSION PANEL:

RONALD HICKERNELL, Chairperson  
JAMES GUTMAN  
SHEPARD KRECH  
ROBERT SCHOEPLEIN

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DNR  
CRITICAL AREA COMMISSION



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ALSO PRESENT:

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VERONICA NICHOLLS  
ANNE HAIRSTON, Critical Areas Commission Staff  
ROBERT R. JONES, F.W.A. Environmental Science  
ELMER JUSTICE, Property Owner  
JOHN LITZENBERG, Property Owner  
STEVEN W. LAMBERT  
JOHN TURNBULL  
DOUG KOOP, Cecil County Planning and Zoning

REPORTED BY: JOYCE M. DANIELS, NOTARY PUBLIC

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1 proceeding can be accurately held.

2           There is a time limitation for speakers, and  
3 that this evening will be five minutes. The record will  
4 be kept open for 10 days beyond today's date for any  
5 further comment that you might have. The Commission  
6 will meet next Wednesday -- that's the 3rd of June -- in  
7 Indian Head; and during that meeting, this panel will  
8 assemble to give a preliminary discussion on these two  
9 topics.

10           I'd like to call upon Ann Hairston, of the  
11 Critical Areas Commission staff, to make a presentation  
12 of each of the two topics up for public hearing this  
13 evening. Ann.

14           MS. HAIRSTON: As Mr. Hickernell stated, I am  
15 Anne Hairston, with the Critical Area Commission staff.  
16 The first topic that I wanted to cover tonight is a map  
17 amendment to Cecil County. It's the award of 1.15 acres  
18 of growth allocation to the Earl White estate located  
19 near Chesapeake City. It's delineated on this site  
20 plan.

21           The request for growth allocation results from



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1 the recorded will of Earl White in leaving five lots to  
2 each of his grandchildren. Three of the requested lots  
3 were created through interfamily transfer provisions, as  
4 is allowed under the critical area criteria. The two  
5 remaining lots are being requested through special  
6 growth allocations. They are outlined in yellow on this  
7 site plan.

8 The property boundaries are basically Long  
9 Creek over here, Knights Corner Road, and some  
10 agricultural fields. The critical area boundary runs  
11 through the corner of the property. The Cecil County  
12 Planning Commission has recommended approval of 1.15  
13 acres, only that lot area, and the two additional lots  
14 as forwarded to the Cecil County Commissioners, and they  
15 have recommended forwarding it to the Critical Area  
16 Commission. And we are, at this time, opening it to any  
17 additional comment.

18 There is a 110-foot buffer on the property,  
19 which is protected. There are nontidal wetlands, and  
20 the 25-foot buffer are also protected. Are there any  
21 other questions about the property in general from the



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1 panel or the general public?

2 (No response.)

3 CHAIRPERSON HICKERNELL: If you'll continue  
4 with the second presentation.

5 MS. HAIRSTON: The second topic tonight is that  
6 of a mapping mistake for the town of Elkton. The  
7 planning commission and the town commissioners have  
8 recommended the approval of a mapping mistake for 35.4  
9 acres of property near Route 213 and Whitehall Road.  
10 And it's the property of Chesapeake Haven Land  
11 Corporation.

12 It's within the municipal boundaries of  
13 Elkton, and the request is to change it from its current  
14 designation of resource conservation area to that of  
15 limited development area. There are about 10 and a half  
16 acres of nontidal wetlands located on a portion of the  
17 property. That area is not requested for change from  
18 the resource conservation area to the limited  
19 development area.

20 The property in general is located to an old  
21 Elkton sewage treatment plant. It's no longer in



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1 operation, but the sewer lines run through that area.  
2 There is sewer and water on the property. Its land-use  
3 history was being mined for sand and gravel in the '50s  
4 and '60s. There were approvals given to a final  
5 subdivision in the mid-'70s, but that was never  
6 recorded, which did not grant it status under the  
7 grandfathering provisions that were delineated in the  
8 critical area criteria.

9 I believe, based on the presence of sewer and  
10 water on the property, and evidence of prior approvals,  
11 the town recommended that this be a mapping mistake.  
12 And it has been submitted to the Commission, and we're  
13 holding the required public hearing.

14 At the time of the Elkton town critical area  
15 program approval, the Critical Area Commission panel, at  
16 the time, did evaluate this parcel, as well as several  
17 others, for mapping issues. And their determination,  
18 based on the evidence at that time, was that it should  
19 be a resource conservation area because the land use was  
20 dominated by woodlands, wetlands, abandoned field, or  
21 barren land.



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1           These questions come from the descriptions of  
2 resource conservation area and limited development area  
3 that are in the critical area criteria. And I want to  
4 review those real briefly so everybody knows what the  
5 Commission panel has considered in its final decision.

6           Limited development area is described as those  
7 areas which are currently developed in low or moderate  
8 intensity uses. They also contain areas of natural  
9 plant and wildlife habitat, and the quality of runoff  
10 from these areas has not been substantially altered or  
11 impaired -- it then follows several characteristics that  
12 it was felt that these areas should have. That housing  
13 density, the existing housing density in 1985, would've  
14 been between one unit per five acres, up to four units  
15 per acre, if the area is not dominated by agricultural  
16 wetlands, forest, barren land, surface water, or open  
17 space. It could also include areas that were a more  
18 intense development category, the intensely developed  
19 area, but did not have a minimum 20 acres of that  
20 intense land use to qualify for the intensive land area.  
21 And it would also be areas generally having public



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1 sewer or water, or both.

2 The resource conservation areas, the  
3 designation which this is currently mapped, is described  
4 as those areas characterized by nature-dominated  
5 environments -- that is, wetlands, forest, abandoned  
6 fields -- and resource utilization activities, and that  
7 is agriculture, forestry, fishery activities for  
8 agriculture.

9 It was felt that these areas should have at  
10 least one of the following features. Density is less  
11 than one dwelling unit per five acres, or dominant land  
12 use is in agriculture, wetlands, barren land, surface  
13 water, or open space. The basis that both the town and  
14 the Critical Area Panel had to use for purposes of  
15 mapping was land use as of December 1st, 1985. So they  
16 had to look at the condition of the property in late  
17 1985 to categorize properties into one designation or  
18 another.

19 Do we have questions at this point?

20 CHAIRPERSON HICKERNELL: Are you asking my  
21 colleagues and panel? I don't believe we do. We'll



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1 recognize the first speaker. Thank you, Ann.

2 Does anyone care to testify tonight? Yes,  
3 sir.

4 MR. JONES: Thank you. My name is Robert R.  
5 Jones, and I'm with F.W.A. Environmental Science. I'm  
6 here tonight representing the property owners, Mr. John  
7 Litzenberg and Mr. Elmer Justice.

8 THE REPORTER: I'm sorry, sir. I cannot hear  
9 you.

10 MR. JONES: I'm representing the property  
11 owners, Mr. John Litzenberg and Mr. Elmer Justice. And  
12 I've prepared some documentation for the Commission to  
13 review, and my apologies for not submitting this in time  
14 for the review of it prior to this evening. I'm sure  
15 you'll have a chance to take a quick look at it before  
16 the final resolutions.

17 Basically, I will present just a very brief  
18 overview of our opinions on this project and the  
19 request, the details of which are outlined more  
20 sufficiently in the report that I've just submitted. We  
21 would also like to provide each member with a copy of



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1 the development flow chart, which, in essence, just  
2 graphically summarizes exactly what Ann was just  
3 stating, which you all well know, the process flow chart  
4 of designating properties under one of the three land-  
5 use categories. I'll also refer your attention to a  
6 plan of the property that we have provided you, and more  
7 copies of this will also be forthcoming.

8 The property, as Ann stated, is located in the  
9 town of Elkton adjacent to Maryland Route 213 and  
10 Whitehall Road. The site is accessed by the property  
11 along both of those routes as well as sub-streets,  
12 interior streets of Elkwood Estates, which actually come  
13 up to the edge of our property and stop at the property  
14 lines. In fact, Ann alluded to prior development  
15 approvals that were given to the property. Additional  
16 roads -- one of these roads was roughed in at some point  
17 in time back, I believe, in the mid-'70s; however, for  
18 economic reasons, the developers didn't follow through  
19 with the project. And so that's where the property --  
20 the development halted.

21 The current owners have held this property for



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1 some time and have, for several years now, been actively  
2 involved in trying to develop the site. They,  
3 themselves, in the early '80s, early to mid-'80s, were  
4 developing concept plans and preliminary subdivision  
5 plans; and there is some documentation in the report  
6 that I submitted as to their process and the progress  
7 that they made through the county and through the town  
8 of Elkton in the development projects.

9 The property was designated R.C.A., in our  
10 opinion, without sufficient evaluation of all of the  
11 factors that are involved. And I'll go into those just  
12 real quickly.

13 Primarily, looking at the critical area  
14 program's own flow charts that they have developed for  
15 designations -- I've highlighted in yellow there one of  
16 the copies -- our site very easily falls into an L.D.A.  
17 category. Starting with the first column of a housing  
18 density of greater or equal to four dwelling units per  
19 acre, we did not have that as of December 1st, 1985.  
20 So we proceed to the second column; and that is, is the  
21 property served by water or sewer? We have a very much



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1 complete "yes" in this category.

2 As Ann eluded to, we have an existing sewer  
3 line that runs right across the property with numerous  
4 manholes, which can be served by lateral extension very  
5 easily. We also have water lines coming up into the  
6 property. And these, of course, were all in place as of  
7 December 1st, 1985. Also the property is zoned for  
8 moderate to high-density residential development. And I  
9 think it's R1 and R2, which would primarily be moderate-  
10 density residential development.

11 Adjacent to the site currently, there are  
12 numerous townhouse projects and things under way at the  
13 current time. Elkwood Estates, which has been in  
14 existence for many years now, is a single-family  
15 dwelling on approximately quarter-acre lots in most  
16 cases. So our site was served by water and sewer as of  
17 December 1st, 1985.

18 Now we would proceed down to the next column,  
19 which, again, deals with dwelling units per acre. We  
20 did not have, on our property itself, a density of  
21 greater than three dwellings per acre; so, therefore,



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1 received a no, and dropped down to the L.D.A. column.

2           Yeses to any of those prior questions  
3 could have also rendered an I.D.A. classification, if we  
4 had a greater density or there were other conditions.  
5 But, clearly, we fell within an L.D.A. classification.

6           As to the arguments of site, land use, and  
7 appearance, the property is currently forested in  
8 various stages of mature and pioneering-type species. I  
9 think most of the members were able to walk the property  
10 today. So you're obviously aware of how the site looks.  
11 There are mature forested areas bordering along the  
12 nontidal wetlands and the stream, as well as along the  
13 back of the property there are -- slopes where it drops  
14 off to the water.

15           Our site doesn't actually front on any  
16 navigable waterways or any actually water bodies  
17 themselves. It drops down into this large marsh areas  
18 that separate our property from the sewage plant  
19 treatment area and things of that nature that the town  
20 also owns.

21           So the property itself is partially wooded.



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1 It was previously used as a sand and gravel operation.  
2 There was also construction activities that took place  
3 with the roughing in of the roads. It's definitely not  
4 used as farmland and hasn't been. And the property is  
5 adjacent to numerous other developments, and has always  
6 experienced the relative disturbances and impacts  
7 associated with near development.

8 We've also provided, as part of the report, in  
9 the appendices, a statement of the -- a copy of the  
10 Commission minutes from the hearing when our property  
11 was designated as an R.C.A. I think, if you'll look at  
12 those minutes, you'll see that there were numerous other  
13 factors that had to do with the designations that were  
14 applied to this property, as well as other properties in  
15 the area.

16 At the time our site was designated as an  
17 R.C.A., an adjacent subdivision, Kensington Courts, I  
18 believe it's referred to, was also being considered by  
19 the Critical Area Commission. And it's basically our  
20 assumption -- we weren't present during those  
21 deliberations, but it's basically our assumption that



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1 more considerations were given to this portion of the  
2 property, the Kensington Courts, the adjacent property  
3 -- that they were given an L.D.A. classification at the  
4 time, even though that site was entirely wooded, did not  
5 have sewer, did not have water available.

6 Part of the justification that was used for  
7 the L.D.A. classification of Kensington Courts was that  
8 water and sewer was in the vicinity. Well, the water  
9 and sewer they were referring to is the water and sewer  
10 on our property. That was used as the cause for  
11 Kensington getting L.D.A. classification. Yet, for some  
12 reason, it wasn't a justification for our property.

13 Secondly, the Kensington Courts property, also  
14 known as Arundel, to our knowledge, had no prior  
15 development commitments, did not have the same level of  
16 infrastructure available, did not have the road access,  
17 did not have the adjacent development, and exhibited  
18 none of the conditions that our property did as of  
19 December 1st, 1985.

20 We feel that, primarily, I assume because of  
21 just a lack of our commitment at the time, to be there



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1 and to make all of these factors known, our property  
2 wasn't given due consideration of the factors. And we  
3 feel a mistake has been made. So we'll -- that  
4 basically closes our -- my comments. I'll take any  
5 questions.

6 MR. GUTMAN: My name is James E. Gutman. Will  
7 you give us a brief review of the history of your  
8 observation that -- or your -- the developer's  
9 observation that a mistake occurred? When was that  
10 first arrived at?

11 MR. JONES: Well, that's a very good question,  
12 Mr. Gutman. At the time, McCrone was responsible for  
13 developing the critical area program for the Town of  
14 Elkton. And they were working forward on that.  
15 Elizabeth Zucker being the planner for McCrone at the  
16 time, of course, now with the Critical Area staff,  
17 developed the critical area program. It went through  
18 the Town of Elkton planning commission review and county  
19 -- I'm sorry -- town council review, as was customary  
20 with public hearings. And that original program had our  
21 property designated as L.D.A., as a limited development



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1 area.

2           Obviously, the owners at the time, Mr.  
3 Litzenberg and Mr. Justice, felt assured that based on  
4 the site's conditions and the fact that McCrone was  
5 recommending L.D.A. -- both the planning commission and  
6 town council were recommending L.D.A. Then, when it  
7 proceeded to the Critical Area Commission, you know,  
8 there basically, would not be any problem or reversal to  
9 that.

10           I obviously cannot tell you what happened in  
11 that process because I wasn't there at the hearing, but  
12 based on our review of the Commission minutes and  
13 interviews with other folks who were, we feel that the  
14 Kensington Courts project reflected in a negative way on  
15 our site, and that we were given an R.C.A.  
16 classification, again, without a due consideration. But  
17 originally McCrone and the Town of Elkton did agree that  
18 our property should be designated as L.D.A.

19           At the time that we received the R.C.A.  
20 classification, critical areas program deadlines were  
21 quickly approaching and passing, and it had been a long



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1 arduous process for everybody. And the Town of Elkton,  
2 at the time when it came back for final resolution and  
3 signatures, they, at the time, stated to the owners that  
4 they did not feel it was appropriate as an R.C.A., they  
5 would've liked to have seen an L.D.A., and that they  
6 would support us in the future if we wanted to come back  
7 for a mapping mistake argument. But, at the time, they  
8 wanted to go ahead and get on with their program, and so  
9 it was passed as was.

10 Does that answer your question?

11 MR. GUTMAN: Well, not entirely, and I might,  
12 just for the record, mention that I have been involved  
13 with this particular area, as a member of the earlier  
14 panel that developed the map, in conjunction with  
15 members of the local town and the current owners at that  
16 time. And I'm still not clear in my mind. From what  
17 you've reported, when it first came to your attention,  
18 and when a level of protest was initially mounting, that  
19 this mistake existed --

20 MR. JONES: I understand.

21 MR. GUTMAN: -- can you give me a date --



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1 MR. JONES: Sure. Certainly.

2 MR. GUTMAN: And the nature of the -- I use  
3 the word "complaint" or "objection" -- to the action of  
4 the Critical Area Commission?

5 MR. JONES: The actual Town of Elkton,  
6 Critical Area Commission -- and I'm going to give you  
7 dates off the top of my head here, so don't hold me to  
8 the exact day -- was adopted, I believe, in January of  
9 1989 by the Critical Area Commission. It came, I  
10 believe, in February, in either February or March, to  
11 the Town of Elkton for final adoption as their program.

12 It was at that time that the owners first  
13 realized the implications, ramifications, of having an  
14 R.C.A. classification versus L.D.A. And it was at that  
15 time that they originally lodged their protest, albeit,  
16 at the Town of Elkton, that they didn't feel the mapping  
17 program was justified and so forth. And it's at that  
18 time, I believe, in February or March of 1989, that the  
19 Town of Elkton promised to support them in a future case  
20 for mistake.

21 Now, as to the time lapse in between, I'm sure



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1 various other features and factors affected their  
2 decisions to hold off, and maybe they can speak to that  
3 in more detail. It's been a couple of years since this  
4 issue first occurred; however, they approached me  
5 probably seven or eight months ago to look into this  
6 matter for them on their behalf, back in 1991. And  
7 looking into it, our original idea was to -- instead of  
8 arguing that a mistake was made, and having to go  
9 through the finger pointing and finding a fault, so to  
10 speak, with another body at a previous point in time, we  
11 decided to go for a growth allocation.

12 Growth allocation was soon to be there, it was  
13 for this type of an opportunity, and we approached the  
14 Town of Elkton with an application for growth  
15 allocation, I believe, back in around November, October  
16 -- November of 1991. It was at that time that we were  
17 informed, for the first time, that the Town of Elkton  
18 had absolutely zero growth allocation to be allocated.

19 So, therefore, our only option at that point  
20 was to start working on exactly building a case for what  
21 had happened and finding if mistakes had been made, and



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1 trying to identify them to when and where, and going in  
2 for a mistake argument. I might add, too, that the  
3 growth allocation actually disappeared at the same time  
4 as the Town of Elkton's program was adopted, as you  
5 probably remember being on the Commission.

6 The famous Kensington Courts subdivision that  
7 I keep referring back to was partially designated as --  
8 was entirely designated as L.D.A. Where that L.D.A.  
9 classification came from was using all of the growth  
10 allocation that the Town of Elkton had, plus all of the  
11 growth allocation that Cecil County gave to the Town of  
12 Elkton as part of their original program.

13 So all of the growth allocation was used at  
14 one point in time for Kensington Courts, which is  
15 recorded, I believe, in 1987 or 1988, as a recorded  
16 subdivision under the interim findings. All the growth  
17 allocation being used, there was still more platted  
18 lots that included the one-in-20 density. Therefore,  
19 they couldn't record it as a one-to-20 or as a resource  
20 conservation area. So they gave the balance of it, just  
21 as a matter of the original mapping, an L.D.A.



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1 classification.

2 So, in summary, the answer to your question  
3 is, when the program adopted, they were affected, and  
4 they were against the decision and were not in favor of  
5 what had happened; but between the time that it was  
6 adopted and the opportunity to make a formal complaint,  
7 a couple of years have elapsed.

8 MR. GUTMAN: I guess my other question is, is  
9 there a possibility of additional growth allocation  
10 available through the county that might be passed on to  
11 the Town of Elkton?

12 MR. JONES: That's another good question. And  
13 in anticipation of that, I contacted, myself, the  
14 director of planning and zoning for Cecil County, Mr. Al  
15 Wien, a couple of days ago and asked him that very same  
16 question. because I think in reality, as far as the  
17 property owners are concerned, they would like to see an  
18 L.D.A. classification on this property. They feel they  
19 have a right, by a matter of the regulations, to have  
20 it. But, if it comes to a growth allocation versus a  
21 mistake, I think it's probably a minor point as long as



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1 the allocation or the mapping change is made.

2           So I asked Al Wien, the director of planning  
3 and zoning, if that is a possibility, if the Cecil  
4 County critical area program could allocate more growth  
5 allocation to the Town of Elkton for this project. And  
6 his answer to that was in the negative, that they could  
7 not at this point in time. Cecil County is beginning  
8 the process of their four-year review, and at the end of  
9 that process, they anticipate on maybe allocating more  
10 critical area -- or more growth allocation to the towns.  
11 But it's going to be a process for all of the towns,  
12 including Elkton, to have an opportunity to put in a  
13 request. Those requests will have to be sifted, and  
14 there's absolutely no guarantee that the Town of Elkton  
15 will receive growth allocation, or how much, and what  
16 will happen to it at that point in time.

17           So I don't see that as a direct remedy for our  
18 situation. And I think, in follow-up, Doug Koop is here  
19 from Cecil County planning and zoning, and he can  
20 probably answer that question more from the county's  
21 perspective.



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1 MR. GUTMAN: Well, I'd appreciate further  
2 information on this score, because if it's simply a  
3 matter of time -- let's just simply say before the year  
4 is out -- there might be that sort of an option. I  
5 think it would be important for us to be aware of it.

6 MR. JONES: Well, I agree. It is an important  
7 option, though, at best, it's only an option at this  
8 point in time. And, again, we don't see that as a  
9 direct or an immediate answer to our circumstances. And  
10 by "immediate," I mean within the next three to four  
11 months, within a reasonable time frame to expect.

12 MR. GUTMAN: Thank you.

13 CHAIRPERSON HICKERNELL: Thank you, Mr. Jones.

14 MR. JONES: Thank you.

15 CHAIRPERSON HICKERNELL: I'd like to recognize  
16 Mr. Elmer Justice as the next speaker this evening.

17 MR. JUSTICE: Elmer Justice. I'm one of the  
18 owners of the property. Let's see. Sir, you had a  
19 question about why there was a time delay. One of the  
20 primary reasons we didn't proceed with the project was  
21 during that period the economy fell into a recession,



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1 and we just put everything on hold until the economy  
2 started speeding up again. And so now we're back here  
3 trying to rectify what we feel is a mistake.

4 CHAIRPERSON HICKERNELL: Thank you, Mr.  
5 Justice.

6 I'd like to now recognize Mr. John Litzenberg.

7 MR. LITZENBERG: I don't have anything to add  
8 to what's already been said.

9 CHAIRPERSON HICKERNELL: Thank you, sir.  
10 Would you mind spelling your name, sir, for the record.

11 MR. LITZENBERG: John Litzenberg, L-I-T-Z-E-N-  
12 B-E-R-G.

13 CHAIRPERSON HICKERNELL: Let's recognize  
14 Steven Lambert. Mr. Lambert.

15 MR. LAMBERT: Steven W. Lambert, S-T-E-V-E-N,  
16 W., L-A-M-B-E-R-T, 6 Carrot Road, Elkwood Estates,  
17 Elkwood, Maryland.

18 Gentleman, ladies, I've lived in this area 35  
19 years. I know this place very well. I was involved  
20 when the critical area mapping was originally done. I  
21 don't believe that there is a mistake here. I believe



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1 that the property is designated properly. As far as  
2 some of the things that were said, they were talking  
3 about some gravel-pit type things, I don't recall of  
4 anything like that being done, except right here in this  
5 one area, they took some gravel, down through here,  
6 1939, when they built Route 40, until about -- to build  
7 Route 40.

8 The rest of this property is basically like  
9 it's always been. It was originally a farm. They used  
10 to plow it up, plant corn, or whatever down there. Ever  
11 since the late '40s, early '50s, there hasn't been  
12 anything done there. It's been left alone to grow up  
13 and do as nature would do. There is a diverse amount of  
14 wildlife in there. You have deer, turkey, possums,  
15 raccoons. You know, all the different types of animals,  
16 snakes, whatever.

17 It's a nice natural area. It has the mature  
18 forest. It's has repairing of forest. It has nontidal  
19 wetlands. It has tidal wetlands, which is back on the  
20 other side of that property, but I mean, it's all  
21 connected. And it's a nice flow of the way nature has



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1 intended this whole area to be. It has a nice little  
2 creek that runs down through the property there. I can  
3 remember when I was a kid going down there and going  
4 swimming and stuff and fishing, things like that, and  
5 the creek is still there.

6 Every place where this little creek has been  
7 developed around has turned it into a drainage ditch. I  
8 mean, they just ruined it, because this creek is  
9 basically fed by a lot of, like, runoffs and natural  
10 springs, and things like that. And any place where they  
11 disturb the ground, they hurt the hydraulics of the  
12 ground, and it just ruins the water. And the creek just  
13 rides up. It's affected a little bit here now because  
14 of the development of the townhouses up on this side  
15 here, but it's still a nice, little creek. But, if they  
16 keep encroaching on it, and if they build on the other  
17 side, the whole thing is going to be nothing but a  
18 drainage ditch.

19 This drains right out into nontidal wetlands,  
20 into tidal wetlands, and right into the Elk River. This  
21 is one of the last natural areas left at the head of the



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1 Elk River, and I just think it would be a shame to take  
2 this and disturb it and just to ruin it. It's just a  
3 nice, natural sponge there. It catches a lot of bad  
4 things that can get into the Bay, and I just don't  
5 believe that it should be encroached on there. It's  
6 just really a nice area. And I just hate to see it be  
7 developed.

8 CHAIRPERSON HICKERNELL: Mr. Lambert, there's  
9 a question from Mr. Gutman.

10 MR. LAMBERT: Yes, sir.

11 MR. GUTMAN: Since you've lived in this area  
12 for some time, maybe you could clarify for me the  
13 utilization of the sewer line that runs through this  
14 property. When was that actually conveying any waste  
15 material? At some point, did it cease being a utilized  
16 sewer line?

17 MR. LAMBERT: I don't believe so. What  
18 happened, when this, Elkwood Estates, and across 213  
19 there's another development named Holly Hall -- when  
20 these two places were developed back in the early '50s,  
21 they had their own sewer and water. They had three



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1 artesian wells that run up through Route 40, and they  
2 had their own sewer plant. They used it just for those  
3 two sites for years and years.

4 Back in the early '70s, the Town of Elkton  
5 bought them out. They utilized the artesian wells,  
6 whipped them into their system, took the sewer plant,  
7 and used it for several years, and then eventually  
8 demolished the sewer plant, and run a main line around  
9 -- here's the sewer plant here. The main -- the sewer  
10 line comes down through here, crosses through Route 213,  
11 and comes up into Holly Hall.

12 They eliminated this. They run another trunk  
13 line that comes -- it runs over through here some place  
14 now. They've put a new line in here, but it come around  
15 like this, a big loop around through the marsh. It  
16 followed, kind of like, with the Elk River, and come up  
17 here, and went across the river, and went into the main  
18 Elkton's sewer facility off of Route 40.

19 This has always been an active line, as far as  
20 I know, but it was built back in the '50s. I think it's  
21 maybe a 14-inch trunk line, and it has several manholes



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1 up out of the ground. They're about, probably that high  
2 off of the ground now, probably because of water. I  
3 guess they don't want the water to get into them. And  
4 then I guess there's also probably water -- they had to  
5 have water come down here to run the sewer plant.

6 But that is what was existing there. There's  
7 a little road runs down there here, but -- here's the  
8 creek. It's all wet through here. And that's what the  
9 sewer line -- I mean, as far as I know, it was always  
10 active. They never shut it down.

11 MR. GUTMAN: So it's been in continuous use --

12 MR. LAMBERT: Yeah.

13 MR. GUTMAN: Certainly as active as the '60s  
14 or maybe the '50s?

15 MR. LAMBERT: What?

16 MR. GUTMAN: It's been in active use certainly  
17 back to either the '60s and maybe even the '50s?

18 MR. LAMBERT: Yeah. This development was  
19 built in 19 -- from '53 to '55. So that's when they  
20 started using this line. Now they talked about some  
21 roads being cut in for some developing. Originally,



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1 when Elkwood Estates was built, they had these two  
2 streets here, Leedom Road and Kent Road. They had  
3 designs for another street to come up through here.  
4 They had a ditch cut out for, like, a little road, had  
5 it graded, I guess, back in the '50s. And the people  
6 that built this place, Dover Builders, they run out of  
7 money. They went bankrupt. And about the last six  
8 houses were finished by somebody else.

9 And this has stayed like this for years. But  
10 that's the road that was going to be, like, for two more  
11 rows of houses here. And I believe that's what they  
12 were talking about. That was actually cut back in the  
13 early '50s, and it's just a big, sandy ditch now.

14 That's the only road I ever know of being cut  
15 in here, except for this one that went back to the sewer  
16 plant, which was town accessed. And I guess they  
17 probably own -- I don't know if the town owns so much on  
18 each side or not for, like, for a utility access or  
19 whatever.

20 But the line runs -- the sewer line and stuff,  
21 runs right to the right right of the road. And that's



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1 the only thing I know of that's ever been done. The  
2 rest is all just grown up. It's big woods back here;  
3 then it gets smaller. This used to be a nice field,  
4 pheasants and stuff in there, but now it's all grown up,  
5 and the trees are probably -- average that big around in  
6 there. And it comes all the way up to -- backs to  
7 Elkwood Estates. So that's pretty much how it is.

8 MR. GUTMAN: Thank you.

9 CHAIRPERSON HICKERNELL: Thank you. I'd like  
10 to recognize the last speaker this evening, Mr. John  
11 Turnbull.

12 MR. TURNBULL: My name is John Turnbull,  
13 Junior, and it's spelled T-U-R-N-B-U-L-L. I and my  
14 family have lived at 10 Minor Road, Elkwood States,  
15 probably one of the first families to move in there,  
16 since 1953.

17 Steve has said most of what I wanted to say,  
18 other than the fact that some of the development that is  
19 going on now, like Steve said, is drying up the upper  
20 portion of the creek, because they're cutting off the  
21 natural underground springs. And the Town of Elkton --



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1 George, I don't want to pick on you -- but where Steve's  
2 talking about the manholes going down through there,  
3 have recently put in pipes. So, when their manholes  
4 overflow, they are going to dump directly into those  
5 streams, which go into the Elk River, which feeds the  
6 Bay.

7 And I have, more than once, saw raw sewage  
8 come from those manholes into that ditch. Not since  
9 you've been there, but since the other guy -- but you're  
10 set up for it at this point. And my concern primarily  
11 is the fact that the sewage line -- Steve said 14; they  
12 are not 14-inch sewer lines going down through --  
13 they're 12-inch and won't handle what's there now. And  
14 with further development, unless you increase the line  
15 size that's over, you're going to have an awful lot of  
16 overflow and contamination of the Elk River, which is a  
17 tributary to the Bay.

18 That's primarily all I have to say.

19 CHAIRPERSON HICKERNELL: Thank you. Does  
20 anyone else care to testify this evening?

21 MR. JONES: Can I have an opportunity to rebut



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1 or make any further comments?

2 CHAIRPERSON HICKERNELL: Yeah. You can do so.  
3 No more than five minutes, please.

4 MR. JONES: Sure.

5 MS. HAIRSTON: Could I ask for a clarification  
6 of Mr. Jones?

7 CHAIRPERSON HICKERNELL: Please. Sure.

8 MS. HAIRSTON: I was wondering whether the flow  
9 chart that you gave to the Commission members was from  
10 the Elkton program or the Cecil County program?

11 MR. JONES: That was from the Cecil County  
12 program.

13 MS. HAIRSTON: I just wanted to make that a  
14 clarification.

15 MR. JONES: The Town of Elkton program I don't  
16 think has a flow chart in their program.

17 MS. HAIRSTON: Right.

18 MR. JONES: But it basically complies with the  
19 state criteria for designation.

20 MS. HAIRSTON: For looking at mapping mistakes,  
21 we generally go back to the local program, in this



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1 case, the town program, for any additional mapping rules  
2 that were routinely used. And I'm aware that those were  
3 used for Cecil County, and I haven't been aware that  
4 those were used within the Town of Elkton.

5 MR. JONES: Which additional map are you  
6 referring to?

7 MS. HAIRSTON: Basically the flow chart does  
8 set up some interpretations, how to apply the resource  
9 conservation area, limited development area, intensely  
10 developed area. Descriptions for more specific land  
11 uses, and I guess that --

12 MR. JONES: The campgrounds and things like  
13 that?

14 MS. HAIRSTON: Uh-huh.

15 MR. JONES: Right.

16 MS. HAIRSTON: Yeah. So I don't know that  
17 it's --

18 MR. JONES: It doesn't really apply to the  
19 Town of Elkton.

20 MS. HAIRSTON: -- inapplicable, but I do want  
21 to clarify that it's in the county program, and not one



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1 of the town mapping --

2 MR. JONES: Sure. No. It's not specifically  
3 from the town's program, per se.

4 MS. HAIRSTON: I may have something to add  
5 later.

6 MR. JONES: I just wanted just to make one  
7 final, brief comment -- much, really, to some of the  
8 citizens who live in this area. As most of the  
9 Commission members know, that assuming we were to be  
10 granted an L.D.A. classification on this property,  
11 that's not at all, by any stretch, the end of the line  
12 for the developers or for the development itself. And I  
13 think they probably share many of the concerns about the  
14 stream and the development; and certainly the  
15 development across the street here and some of the  
16 other places have really made a mess of that stream.

17 Of course, most of that development being much  
18 prior to a nontidal wetlands protection regulations and  
19 -- regulations, and things of that nature, which are  
20 obviously in place today. We have taken a fairly close  
21 look at the nontidal wetlands on the property, which is



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1 still subject to revision as the regs change, and of  
2 course know all of those areas would have to be  
3 protected with the appropriate 25-foot buffers and so  
4 forth, as part of the critical area program.

5 Secondly, as probably most of you know, but  
6 some of the neighbors might not know, the critical area  
7 program limits the amount of clearing and grading and  
8 disturbance that can occur. So, even though we would be  
9 granted an L.D.A. classification on 34 and a half acres,  
10 they can only actually clear 20 percent of that, without  
11 having to go into a great expense for replanting trees  
12 on a three-to-one basis. So, primarily, you're looking  
13 at about 20 percent of that 30 acres as being cleared,  
14 around six, seven acres of that area, of that entire 35-  
15 acre chunk of ground there, not counting the 10 acres  
16 that are off to the right.

17 Also, they're limited on impervious surfaces  
18 to 15 percent. So that's even less. For roads,  
19 rooftops, driveways, and all of those type of areas. So  
20 what you would probably be looking at is really a bubble  
21 effect of development that would only include some of



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1 the less mature, high-and-dry land up here in the middle  
2 of the site versus a wide-scale, wholesale destruction  
3 of the property.

4 CHAIRPERSON HICKERNELL: Mr. Jones, I'll ask  
5 you to limit your comments to testimony before the  
6 Commission panel.

7 MR. JONES: Okay. Well, that's basically all  
8 I wanted to say. Thank you.

9 CHAIRPERSON HICKERNELL: Does anyone else care  
10 to testify before we conclude this hearing?

11 MS. HAIRSTON: I just wanted to make one  
12 clarification, perhaps. Mr. Jones mentioned a couple of  
13 related things. He was, I believe, comparing the  
14 Kensington Court subdivision to this property here, but  
15 he also mentioned that there was growth allocation used  
16 for the Kensington Court subdivision. And he mentioned  
17 them at different times in his presentation.

18 I wanted to make sure that everyone was aware  
19 of the connection between those. That the difference in  
20 the two properties that I think that the Commission  
21 panel took into consideration during their initial



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1 decision was due to two facts, two differences between  
2 these parcels. That the Kensington Courts subdivision  
3 had received final approvals through their interim  
4 findings process. And the grandfathering provisions in  
5 the criteria, that situation required the use of growth  
6 allocation in those circumstances where the subdivision  
7 did not meet the resource conservation area criteria.

8 That was the case, and so they used all of the  
9 growth allocation that was available to Elkton at the  
10 time. And this property, at that time, did not have any  
11 recorded subdivision or final approval that would've  
12 granted it a grandfathering status. I just wanted to  
13 make that connection.

14 CHAIRPERSON HICKERNELL: Does any other member  
15 of the Commission have any questions for any of those  
16 who testified this evening or the staff?

17 (No response.)

18 CHAIRPERSON HICKERNELL: If there are none,  
19 then this hearing is adjourned. Thank you.

20 (Whereupon, at 7:56 p.m., the above-  
21 entitled hearing was adjourned.)



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E X H I B I T S

(None)

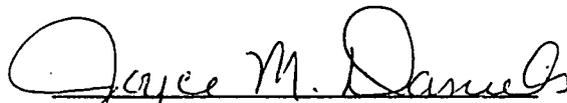
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## CERTIFICATE OF NOTARY

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

12  
13   
14 JOYCE M. DANIELS  
15 Notary Public in and for  
16 the State of Maryland

17 My Commission Expires:  
18 May, 1993  
19  
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