

Commission Meetings & Corresp.

Mar 1991

MSA-51832-80

The Chesapeake Bay Critical Area Commission
World Trade Center, Constellation Room
Baltimore, Maryland
March 6, 1991

9:30 - 10:15 Subcommittee Meetings
○ MOU - MDOT Claudia Jones
○ Project Evaluation Ren Serey
○ Program Amendment and Pat Pudelkewicz
Implementation
○ Snow Hill Pat Pudelkewicz
○ Millington Pat Pudelkewicz

10:15 - 10:20 Susan Lawrence Barr Judge John C. North, II
Chairman

Approval of the Minutes
of February 6, 1991

10:20 - 10:40 Refinements:
○ Caroline County Pat Pudelkewicz
○ Rock Hall Pat Pudelkewicz
○ Cecil County Anne Hairston

10:40 - 11:00 Amendment:
○ Leonardtown Anne Hairston
Sam Bowling, Ch.

11:00 - 11:20 Memorandum of Understanding Claudia Jones
Maryland Department
of Transportation - Approval

11:20 - 11:45 Update Dawnn McCleary
Maryland Stadium Authority

11:45 - 12:15 Old Business Judge John C. North, II
Chairman

New Business
○ Hugh Smith (description for the afternoon events)
○ Solomon Liss - April 28 - park dedication

12:30 Lunch - National Aquarium John C. North, II
at Baltimore and Awards Chairman &
David Carroll, Governor's
Coordinator for the
Chesapeake Bay

AWARDS:

1. The local government(s) that has "gone the extra mile" to enhance forested and agricultural lands in the Critical Area: Prince George's County.
2. The local government(s) that has expanded the Critical Area philosophy beyond the 1000':

Kent County

Baltimore County

Agenda
March 6, 1991

3. The local government(s) that has increased public access to the Bay while at the same time balancing this with habitat protection and the improvement of water quality.

Baltimore City

City of Salisbury

4. Developers who have gone the extra mile to incorporate Critical Area criteria into the design of their projects

Port America - Prince George's County

Heron Point - Chestertown

6. Exemplary Education and Public Awareness Efforts by the Public and Private Sector: National Aquarium in Baltimore City, Anne Arundel County, Town of Easton

1:30	Speaker	Tom Horton
2:30	Habitat Theater	
3:00	Whale Performance - Large Mammal Pavilion	

CHESAPEAKE BAY CRITICAL AREA COMMISSION

Minutes of Meeting Held
February 6, 1991

The Chesapeake Bay Critical Area Commission met at the Chesapeake Bay Critical Area Commission Office, 275 West Street, Annapolis, Maryland. The meeting was called to order by Chairman North with the following Members in attendance:

William J. Bostian
Samuel Y. Bowling
James E. Gutman
Joseph J. Elbrich, Jr.
Kathryn D. Langner
Robert R. Price, Jr.
Albert W. Zahniser
Carolyn Watson
for Parris Glendening
James Peck
of the Department
of Natural Resources
Deputy Secretary Cade
DCHD

Ronald Adkins
Victor K. Butanis
William H. Corkran, Jr.
Shepard Krech, Jr.
Roger W. Williams
Michael J. Whitson
Ronald Hickernell
Louise Lawrence
of Dept. of Agriculture
Robert Schoeplein
of DEED
James L. Hearn of
Dept. of Environment

The Minutes of the Meeting of January 6, 1991 were approved as written.

Chairman North welcomed Mr. Jim Peck, the newly designated representative for the Department of Natural Resources; Mr. David Shirey, an intern from the University of Maryland.

Chairman North asked Ms. Patricia Pudelkewicz to report on the requests of the towns of Elkton, Perryville, Havre de Grace, Denton for impervious surface refinements.

Ms. Pudelkewicz stated that these towns are requesting a refinement to their local programs to incorporate the new impervious surface language according to HB 1060. She stated that Chestertown has also incorporated the new language into their Critical Area ordinance.

The Commission was in support of the refinements.

Chairman North asked Ms. Anne Hairston to report on Cecil County's proposed map amendment to change the designation of 20 acres from RCA to LDA.

Ms. Hairston reported that the proposed map amendment changes the designation of 20 acres of the Lewis property at 370 W. Lewis Shore Road from Resource Conservation Area (RCA) to Limited Development Area (LDA) and Buffer Exemption Area on the basis of mistake in mapping. The property is on the north shore of Perch Creek and lies south of Elkton. The parcel has 25 dwelling units, of which at least 15 are seasonal residences. The houses are individually owned, although the land beneath them is not. The development predates the County's subdivision ordinance, and the landowner wishes to subdivide so that he can sell individual lots and the house owners can own the land under their houses. No new development is planned although an LDA designation would allow that potential. The landowner

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

believes that a mistake in mapping was made; that in treating the area as one parcel, the existence of 25 dwelling units on a portion of the property was not reflected in the mapping and had it been, it would have been designated LDA. She said that not all of the property is being requested for LDA but only the sections along the shoreline where the development exists. She said that there were six individual lots not in the current request. The Cecil County Commissioners have approved this amendment. The Critical Area Commission held a public hearing on this amendment on Tuesday, January 29, 1991. She stated that there was no comment opposing the change.

Ms. Hairston said that if the area is treated as subdivided property, it meets the requirements for LDA under Cecil County's mapping rules, because of the density of dwelling units, size of the area, and proximity to Elkton. The dwelling units existed before December 1, 1985. There is LDA nearby, across the mouth of Perch Creek at Locust Point. The LDA is not immediately adjacent by land because the upper reaches of the tidal area of Perch Creek are RCA. The houses are currently served by wells and septic systems. If the area is subdivided, improvements in the septic systems are likely to be required, perhaps by using a community sewage treatment facility.

Ms. Hairston stated that the area meets the terms for creating a Buffer Exemption Area because the existing development pattern does not allow the buffer to carry out its intended functions for water quality and habitat. The houses, walkways, patios, and road are currently located within the 110-foot buffer, and are claimed to occupy at least 50% of the area of the buffer.

Ms. Hairston reported that the panel believes that a mistake in mapping was made in this area and recommends approval of this amendment. However, it was strongly suggested that when lots are created, they be of sufficient depth to allow all the requirements of the Cecil County Buffer Exemption Program to be met, including the requirement that structures that are removed or destroyed be replaced behind the 110-foot buffer.

Mr. Bowling asked why a request for LDA was not made for the six lots.

Ms. Hairston stated that originally the six lots were not large enough to qualify for LDA, but with the correction in mapping they could qualify as LDA.

Mr. Robert Price made a motion to approve the Cecil County proposed amendment to reclassify 20 acres of property on Lewis Shore Road from RCA to LDA on the basis that a mistake was made and that the panel recommends that the land be designated as a buffer exemption area. The motion was seconded.

Ms. Hairston said that just previous to the full commission meeting on February 6th, the panel met and there were other points of discussion. One was that a condition of the buffer exemption program, as one of the requirements of that program, is that when structures are removed or destroyed from the existing buffer exemption area they can be replaced behind the 110' buffer. The panel believed that the lots should be of sufficient depth to allow that to occur, but that it not be placed as a condition but as a reminder to the County to allow their buffer exemption program to be carried out. The other suggestions were that plat notes be implemented on subdivided lots that would result from the LDA designation of the property and that the adjacent parcels also be included in the Commission's approval if the County wishes to take action.

Mr. Bowling stated that he wanted to see the motion changed to incorporate the recommendations of the panel.

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

Mr. Price reiterated the motion: "the panel recommends the Commission advise Cecil County Planning Commission of its concern at any future subdivision of Lewis land and should provide adequate lot depth to allow for future redevelopment outside the buffer".

Mr. Price said that the reason was that it would address the program request from the County Commissioners and the second recommendation was that if and when there would ever be a subdivision of the property that the Commission wanted the Cecil County Planning Commission to know that the Critical Area Commission hoped they would consider the depth of the lot so redevelopment could come out of the Buffer. He said that the second motion was treated more as a comment than a recommendation whereas the first one was actually an official response to the County proposal.

Mrs. Kathryn Langner added that it would be a good idea to add "where possible" because there are some areas that may be too narrow.

Chairman North called the question. The vote was unanimously in favor.

Mr. Price stated the second motion: "a panel recommendation to the Commission advising the Cecil County Planning Commission of its concern at any future subdivision of the Lewis land should consider adequate lot depth to allow for future redevelopment outside the Buffer and to consider reclassification of the six adjacent lots on Perch Creek as LDA." The motion was seconded and the vote was unanimously carried.

Ms. Hairston asked that if Cecil County does submit a map amendment request for the six lots could it be treated as a refinement considering the Commission's motion today.

Mr. George Gay responded that there because there is no proposed amendment from the County with respect to the six lots on Perch Creek, the Commission's comments are gratuitous with respect to them.

Ms. Hairston stated that she was only expressing the Commission's sentiments that looking at that area, it should logically be included and would be eligible to the same treatment as the area being changed to LDA.

Mr. Gay asked if the Commission's comments are in addition to what the Commission is required to do under the existing requested amendment.

Ms. Hairston replied that it was a suggestion.

Mr. Gay stated that it would be appropriate to treat any future request as a request for an amendment rather than a refinement and that perhaps it would be appropriate not to commit the Critical Area Commission to a particular response with respect to a future request for an amendment.

Chairman North called the question. The vote was unanimously in favor.

Chairman North asked Mr. Tom Ventre to report on the Somerset County Map Amendment request.

Mr. Ventre stated that the Somerset County Commissioners were acting on a request from the property owner for map amendment and reclassification from RCA to LDA because of an error in the original classification and mapping during the County's program development process. He stated that the Somerset County Commissioners held an advertised local public hearing and found unanimously that an error had been made, approved the request and forwarded it to the Critical Area Commission with the request that the local Somerset County action be upheld. He described the site as a triangular parcel at the very northern end of Deal Island. In the documentation submitted by the County Commissioners, the size of the parcel was stated as 7.35 acres. (It was noted, however, that tax assessment data for the parcel state 10 acres as the area.) The parcel is bound by the

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

Upper Thorofare/Laws Cove on the northeast side, by the right-of-way of Maryland Route 363 on the northwest side, and by vacant land to the south. The Route 363 bridge over the Upper Thorofare is nearby. The site has been used as a dredge-spoil disposal area since at least 1985, according to Department of Natural Resources (DNR) aerial photography taken in that year. The site has several features common to spoil areas: fine, silty soils; dominance of Phragmites, a tall reed characteristic of disturbed wetland areas; several large, barren patches; trees and/or shrubs at the shoreline edge; interior elevations noticeably higher than those of adjacent undisturbed lands. There appear to be no significant natural features on the site. The site can be described as "barren". There are houses along the northwestern side, separated from the fill area by a single-lane dirt drive providing ingress/egress for the houses. On the parcel itself, near the northern tip, is a mobile-home residence with accessory structures. As of the date of this briefing material (January 21, 1991), it had not been learned definitively when filling of this site began and under what circumstances. These agencies were contacted for information regarding the history of this site as a dredge-spoil disposal area: US Army Corps of Engineers/Baltimore District; MD DNR/Waterway Improvement Division; MD Department of Transportation/State Highway Administration-District Engineer (Salisbury); Somerset Soil Conservation District; Somerset County Roads Commission.

Mr. Ventre said that according to the 1966 Somerset County Soil Survey, this site was identified and mapped as "tidal marsh". (The 1966 Survey is the most recent available for Somerset County.) As noted earlier in this description, 1985 aerial photography shows that filling had occurred by then. He said that the Somerset Board of Commissioners' findings regarding this case contains additional descriptive information. However, the items referenced in the statements of findings were not among the documentation submitted for the Critical Area Commission's review. The original Critical Area mapping and classification of this site by the County comply with the criteria at COMAR 14.15.02.05.A, and with local program mapping requirements. Mr. Ventre said that a site visit was made on Friday, December 14, 1990 by vehicle and on foot to the interior of the site but the shoreline buffer was not visited and no approach from seaward was made.

Mr. Bowling asked if it was appropriate to zone a spoil site as RCA.

Mr. Ventre stated, yes, the criteria requires it as barren land.

Mr. Ventre stated that there were no HPA's identified on the site but at some time the Forest, Park and Wildlife Service should certify the presence or absence of HPA's; and as far as is known no development has been proposed for this site.

A motion was made to approve the map amendment for reclassification from RCA to LDA. The motion was seconded and the vote was carried unanimously.

Chairman North asked Ms. Elizabeth Zucker to report on the Department of Natural Resource's Boating Administration - Somers Cove Marina.

Ms. Zucker stated that the Maryland Department of Natural Resources, Boating Administration (BOA), is proposing to add an additional 2400 sq. ft. building to its Somers Cove Marina facility in Crisfield. She said that the building will be used for sandblasting and painting of buoys. She stated that it would be located adjacent to an existing building that is currently used for the same activities. Ms. Zucker stated that the Somers Cove Marina is managed by the Department of Natural Resources. The

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

City of Crisfield Program has given the marina a land use designation of IDA with buffer exemption. Approximately 3000 sq. ft. of asphalt paving will be established around the building to accommodate a crane and other equipment needed to transport materials. Notable elements of the project include: 1) The building and paving will be located in an open grassed area. No forest vegetation will be removed to establish structures; 2) the building will be located a minimum 200 feet from Somers Cove; 3) stormwater will be managed to meet a 10% reduction in pollutant loadings. Plans will be reviewed by the Maryland Department of the Environment; 3) sandblasting will occur entirely within the contained area of the building. The debris will be transported by truck to a landfill. According to information provided by MDE, the sandblasted debris is considered non-hazardous waste and can be disposed of by incineration or hauling to a rubble landfill; 4) the Forest, Park and Wildlife Service (FPWS) has been contacted about Habitat Protection Areas (HPA's). A response from FPWS is pending. She stated that the Commission does have a general approval process outlined between the Boating Administration and the Critical Area Commission but this project does not fall under a general approval because it is a boat maintenance activity and because of water quality issues, boat maintenance activities were not included in the general approval. She said that the BOA is asking for approval of the conceptual plan before committing funds to detailed engineering work. She said that final plans would be brought before the Commission.

Mr. Gutman asked the status of the site where the boat would be placed, whether it was impervious at this point.

Ms. Zucker stated that it was an open grassed area, pervious, no trees.

Mr. Gutman asked if in the Critical Area there would be a loss of pervious area.

Ms. Zucker reminded Mr. Gutman that this is an intensely developed area and the reason for the location is that the sandblasting activities would be located out of the 100' buffer.

Chairman North asked whether the sandblasting is currently being done indoors or out.

Ms. Zucker stated, indoors.

Mr. Elbrich asked if the existing building would be moved.

Ms. Zucker replied that it would be used as storage mainly.

Mr. Zahniser asked if runoff would be improved.

Ms. Zucker replied, yes.

Mr. Gutman asked if there were long-range plans for construction on Somers Cove by the BOA.

Ms. Zucker stated that currently the Critical Area Commission staff is reviewing another proposal for access to one of the piers but that was all she was aware of.

Mr. Jim Peck responded that the reason the projects come up individually is that they are not all developed at once, arriving at different times and in different funding years. He stated that he believed that the only other major development project remaining was a waterman's facility and a possible widening of the channel with the three new recent property acquisitions.

A motion was made to approve the conceptual plans for the maintenance building at Somers Cove marine with the conditions, 1) that final plans be submitted to the Commission for review and approval; 2) that final stormwater management plans be reviewed by the Maryland Department of Environment; 3) any comments from DNR on habitat protection areas be fully

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

addressed; 4) that the Commission receive timely documentation from all reviewing agencies.

The motion was seconded and the vote was unanimously in favor.

Chairman North asked Ms. Claudia Jones to report on the MOU with the Department of Transportation.

Ms. Jones stated that after four years the MOU with the Department of Transportation is ready for the vote by the Commission. She said that the MOU sets out the procedure for the Critical Area Commission to review projects proposed by each agency, (the State Highway Administration, the Maryland Transportation Authority, the State Aviation Administration, the State Railroad Administration, Mass Transit Administration, Maryland Port Administration and the Motor Vehicle Administration). She stated that it also sets out a process where the Commission, the Department of Environment and the Governor's office will meet on a quarterly basis to assess problems and concerns and that within this framework, the subcommittee had decided to continue to exist as a subcommittee to look at projects within the Critical Area. She outlined the MOU for the Commission members.

Mr. George Gay, Commission Counsel, stated that he has not had an opportunity to review the document, and as Counsel should do so. Mr. Lee Epstein, former Counsel did review it from time to time.

Chairman North asked Mr. Gay to review the document and report on it at the next Commission meeting.

Mr. Gutman asked that the Department of Transportation have their Attorney General review the document so that if there were changes, they would be available for the Commission's consideration prior to its vote at the next Commission meeting.

Mr. Mangels, Maryland Department of Transportation, stated that the request was reasonable.

Mr. Gay stated that he could review it for legal form and sufficiency that would exclude the policy considerations addressed by the subcommittee and that would be addressed by the Commission. He said that he would contact the Attorney General with the State Highway Administration and discuss any required changes.

Mr. Bill Bostian stated that the term "sensitive area" is a very broad term and that perhaps the "critical area" should not be referred to as a sensitive area.

Ms. Jones replied that SHA produced an action plan, an internal document regarding the monitoring of contractors and in that document even "trout streams" were referred to as "sensitive areas". She said that sensitive areas was used to refer to any area that would be looked at for additional erosion and sediment controls based on biological resources.

Mr. Bowling said that perhaps a definition of "sensitive areas" should be provided to prevent any confusion.

Chairman North asked Ms. Anne Hairston to give an update on General Approvals for Timber Harvest and Resource Conservation Plans.

Ms. Hairston reported that the Commission Counsel, Mr. George Gay has completed a review of the documents in terms of its consistency with the criteria and made several points in which he believes need clarification of the language. Ms. Hairston said that the identified deficiencies would be sent to the Forestry Task Force to ask that they be corrected.

Mr. Gay stated that he reviewed, after being requested to do so by Chairman North and the Commission, the general approvals as proposed by the Forest, Park and Wildlife Service for legality, and has recently completed

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

that review and evaluation. He outlined for the Commission members his comments in his Memorandum to Chairman North regarding his evaluation. He said that the Commission must receive and consider comment, if any, from the local jurisdictions and that it also must make sure that the general approvals conform with the criteria.

Ms. Hairston reported that comments were solicited from the local jurisdictions through the Task Force. She stated that comments from Kent County were received expressing concern about the interaction of variances from the General Approval and variances from the local program. She said that if the proposed activity would conflict with both the requirements in the General Approval and separate requirements in the local programs, they would have to get variances from both those regulations because they are not the same authority. What they wanted was clarification that the General Approval does not constitute a variance from the local program. Kent County does not have that clarification yet.

A motion was made to return the General Approval to the Task Force with the deficiencies listed out by Commission Counsel, George Gay, with a copy of his Memorandum to Chairman North regarding same, for remedy.

Mr. Gay asked that the motion include a request that the Task Force respond to the concerns of Kent County with respect to a variance.

The motion amendment was accepted and the motion seconded. The vote was unanimously in favor.

Chairman North asked Mr. Gay for legal updates.

Mr. Gay reported that the Wharf at Handy Point matter had been in Court, the second Petition on Appeal, and argued before Judge Wise. He stated that an opinion with respect to the legality of the Kent County Planning Commission's issuance of site plan approval, would be rendered in perhaps a month or two.

Mr. Gay stated that the Bellanca case which was argued before the Court of Special Appeals in December had still not been decided. One of the issues in that case was the thoroughness and legal sufficiency of the Commission's decision, whether it had to fully explain its findings of fact, conclusions, etc.

Mr. Gay reported on the matter in Dorchester County concerning the Davis' variance to build a pool in the Buffer. The pool was built before the Commission noted its Appeal, but during the time an appeal could be noted. The record has been filed and continues to move along through the Court system. He said that the next step for the Commission would be to provide a Memorandum of Law as to why the variance should not have been granted and what is illegal and after that the opposition has the opportunity to file a Memorandum in support of the decision.

He also reported on an existing marine storage facility located in the Buffer on the property of Mr. Pethel in Anne Arundel County. He stated that in order to bring that structure into compliance, Mr. Pethel sought a variance from Anne Arundel County and over the objections of the local planning staff and Commission staff, that variance was granted. Mr. Gay said that the Critical Area Commission noted an Appeal from that decision and it will be heard sometime in March.

Chairman North gave legislative updates to the Commission members. He said that he and Dr. Sarah Taylor, Executive Director for the Commission had been engaged in many lobbying activities in recent weeks. He said that he and Dr. Taylor had appeared before the Environmental Matters Committee to introduce themselves and to summarize principally, for the benefit of the new legislators, what the Critical Area is all about. He said that

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

Delegate Guns, Cecil County, is the new Chairman this year. Also seen by appointment were the President of the Senate, Mike Miller, with Chairman Blount of Environmental Matters and Delegate Weir and Senator Fowler who co-chair the Judicial Legislative Oversight Committee on Critical Areas. He said that the principal thrust of the meeting with those gentlemen was to encourage them to look with favor upon legislation which has already been introduced through Chairman Guns with respect to the procedure whereby the Commission can amend the Critical Area regulations.

Dr. Taylor added that Bill #315 would be heard in the House on February 12th at approximately 1:00 p.m.

OLD BUSINESS

There being no old business the meeting proceeded.

NEW BUSINESS

Mr. Jim Gutman said that the EPA has long addressed point source pollution; however, nonpoint source pollution is one of the largest areas of pollution. He said that in some cases it may be funneled through a stormwater management device or simply a piping device of a storm drain. EPA has developed regulations that would deal with this type of nonpoint source pollution through storm drains. He stated that a regulation that came out in November would deal with some of the urban jurisdictions in the State, principally the larger metropolitan counties, Anne Arundel, Baltimore County and City. The new regulations, are similar to the NPDES or the current permit that is currently in vogue for dischargers. He said that the Department of the Environment will have to deal with these regulations. He said that the Critical Area will be impacted by whatever MDE decides to do. He suggested that the Commission make known to the Department that the Commission has an interest in what they will be doing to comply with the regulations and would like to be kept informed with issuance of permits that would impact the Critical Area.

Chairman North introduced Mr. Hugh Smith, volunteer Public Affairs Officer for the Critical Area Commission.

Mr. Smith said that as a result of his analysis, he has developed a strategic communicative plan for the Critical Area Commission to overcome two opportunities. One being the local jurisdictions - who are somewhat concerned about a usurpation of traditional zoning authority, etc.; also, because of the volume of work the Commission and staff has pushed out over the past seven years there has been very little time to think about the message being put out to the ultimate beneficiaries - the general public. He said that principally those two constituent groups would be addressed as a result of his analysis. He said that the objectives of the communications plan are to inform both groups of the success being achieved by the Critical Area Commission and staff, and to provide technical information in a more open way to the individual local jurisdictions and to promote a sense of community amongst the Commission, staff and all the local jurisdictions and the public.

Mr. Smith said that on March 6th, the Commission meeting will be held beginning at 9:30 a.m. in Baltimore's World Trade Center, in the Constellation Room. The Commission will reconvene at the Aquarium for lunch, to hear a speaker and at that time several groups and organizations would be recognized that have been making significant contributions to the

Chesapeake Bay Critical Area Commission
Minutes - February 6th, 1991

Critical Area Program. He said that a co-sponsor of this event will be Baltimore Planning and Zoning.

Mr. Smith stated that the second strategic plan is to produce some sort of regular communication from the Commission outlining what it is doing. He said that the easiest way to address that would be a periodical newsletter.

Dr. Sarah Taylor announced that on January 14, Anne Arundel, Prince George's, and Harford County hosted a meeting for the Commission staff and planners for A.A. County, Baltimore County, Queen Anne's County, St. Mary's County, Calvert County, Prince George's and Charles County. It was the first of a series of workshops planned not only with those jurisdictions but hopefully similar meetings would be held with the Eastern Shore jurisdictions to take a look at some of the problems that planners are having with implementing parts of the criteria. She said that these meetings would be on a quarterly basis involving the counties, and that separate meetings involving the municipalities would be held as well.

There being no further business, the meeting was adjourned.

JUDGE JOHN C. NORTH, II
CHAIRMAN
301-822-9047 OR 301-974-2418
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SARAH J. TAYLOR, Ph.D.
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**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

January 24, 1991

MEMORANDUM

TO: Commission Members

FROM: Sarah Taylor, Ph.D.

RE: Legislation - Governor's Commission on Growth

Enclosed you will find a copy of Senate Bill 227, the Maryland Growth and Chesapeake Bay protection Act.

Please note that the Bill, as introduced, is substantially different from the proposal that was previously given to you. The earlier proposal has been dropped from consideration. Senate Bill 227 is the so-called "phased in approach." We will discuss the Bill at our February meeting.

SJT/pgm

cc: Judge John C. North, II
Mr. George Gay, Assist. Attorney General
Mr. Ren Serey
Ms. Patricia Pudelkewize

Chesapeake Bay Critical Area Commission
275 West Street
Annapolis, Md. 21401
974-2426

Subcommittee Meetings for 2/6/91

10:30 - 11:00 MOU-MDOT Subcommittee Meeting

11:00 - 12:00 Program Amendments & Implementation Subcommittee
Meeting

No other Subcommittee Meetings that day

JUDGE JOHN C. NORTH, II
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STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

January 24, 1991

MEMORANDUM

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FROM: Sarah Taylor, Ph.D.
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cc: Judge John C. North, II
Mr. George Gay, Assist. Attorney General
Mr. Ren Serey
Ms. Patricia Pudelkewize

Staff Report for the Leonardtown Amendment

SUBJECT: Critical Area delineation and designation on 12 acres of annexed property in Leonardtown.

COMMISSION ACTION NEEDED: Vote by 3-21-91

ISSUES: Leonardtown annexed the parcel in question after the Critical Area Program had been adopted (11-14-88), but before St. Mary's County program had been completed (3-27-90). During the annexation process, the Town did not delineate the Critical Area line or place a designation on it, so they have come in now to rectify the situation.

The attached map shows the proposed Critical Area line and designation (4 ac. LDA, 8 ac. IDA). The delineation of the line exceeds 1000 feet from the head of tide, but conforms to the delineation on the adjacent parcel, an area that had been extended at the time of original program approval. The area beyond the 1000-foot line has steep slopes, highly erodible soils, and forest-interior-dwelling-bird habitat, all adjacent to Town Run, the stream which runs through the parcel in question and into Breton Bay. Because of the sensitivity to the area beyond the 1000-foot line and the likelihood of degradation in the Critical Area if it were developed without strict environmental controls, the Town extended the Critical Area line, although not to the full extent of the area of forested, erodible, steep slopes.

The current delineation conforms with the previous extension. However, the designation of part of the parcel as IDA does not seem supportable according to the Criteria. The entire area is served by sewer and water, and is adjacent to existing LDA and IDA, so it qualifies for LDA designation under the Town's mapping criteria. The existing development consists of a cemetery in the proposed LDA, and one structure previously used as a combination doctor's office and residence in the proposed IDA. Although the use as a doctor's office is commercial, it does not meet the condition that IDAs be predominantly commercial or industrial uses, because the site is predominantly wooded, and developed only with a single, residential-type structure. The area does not meet the residential density necessary for IDA designation.

The proposed IDA has been zoned for a Planned Unit Development (PUD) since 1982. None of the PUD has been developed, and the plans are still in conceptual stages. The Route 5 Bypass is being constructed north of the proposed Critical Area, and some delays in planning the PUD evidently occurred because of uncertainty over the final alignment of the Bypass. The development company is planning garden apartments and condominiums in the proposed Critical Area. IDA designation would avoid the need to protect steep slopes, although the nontidal wetlands near Town Run would be protected from direct disturbance.

STAFF: Susan Barr/ Anne Hairston

Route 5

LEONARDTOWN
St. Mary's County, Maryland
Critical Areas

LIMIT OF PARCEL

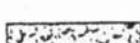
Proposed CA line

Bypass

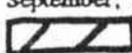
Fenwick

Street

Approx. 1000-ft.

-  Intensely Developed Area
-  Limited Developed Area
-  Resource Conservation Area
-  1000' Critical Area Line
-  100' Buffer Line

Prepared by: Rodman/Johnston Associates, Ltd.
September, 1990

 Annexed Area

BAY

Page Two
Leonardtown Staff Report
March 6, 1991

STAFF RECOMMENDATION: Denial of the Amendment, based on the determination that the 8 acres does not qualify for IDA designation.

Note: Habitat Protection Areas must be identified within the Critical Area on the annexed parcel and appropriate protection measures must be adopted.

REPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 472

SEPTEMBER TERM, 1990

AUGUST BELLANCA, ET UX.

V.

COUNTY COMMISSIONERS OF KENT COUNTY,
MARYLAND, ET AL.

Wilner, C.J.
Bishop
Bell, Robert M.

JJ.

OPINION BY Bell, Robert M., J.

FILED: February 28, 1991

This appeal by August and Elettra Bellanca, appellants, from the judgment of the Circuit Court for Kent County affirming the Board of County Commissioner's denial of their application for a zoning map amendment presents two questions:

1. The Chesapeake Bay Critical Area Protection program provides for action by both the local jurisdiction and the State Critical Area Commission on all local program amendments. In the event of disagreement between those two bodies, which one enjoys the presumption of correction upon review?

2. Was the decision of the Kent County Commissioners to include the Bellanca property in the adjacent Limited Development Area consistent with the law, supported by the facts, not arbitrary or capricious, and therefore not susceptible of disapproval by the Critical Areas [sic] Commission?

We will affirm the judgment of the circuit court, albeit on a ground different from that relied upon by that court.

Before setting out the facts pertinent to the resolution of this case, it is necessary to review briefly the statutory scheme out of which this controversy has arisen. In 1984, the Maryland General Assembly enacted Chapter 794, Laws of 1984, entitled the "Chesapeake Bay Critical Area Protection Program" and which is codified in Maryland Natural Resources Code Ann., §§ 8-1801-1816.¹ Its purposes, as enunciated by the General Assembly, are twofold:

(1) To establish a Resource Protection Program for the Chesapeake Bay and

¹All citations that follow will be to the Natural Resources Article, unless otherwise indicated.

its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and

(2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

§ 8-1801(b).

To achieve these purposes, the Chesapeake Bay Critical Area Commission (the "Commission") was created. Although the legislative intent in enacting the legislation was "that each local jurisdiction shall have primary responsibility for developing and implementing a program"^[2] § 8-1808(a), it was to do so subject to review and approval by the Commission," id., and the responsibility for the "adopt[ion] by regulation on or before December 1, 1985 [of the] criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b)³ of this section", was given to the Commission. § 8-1808(d).

²"Program" is defined in § 8-1802(a)(9)(i) & (ii), as "the critical area protection program of a local jurisdiction," including any amendments to it.

³Subsection (b) enumerates the goals of the program, namely:

"A program shall consist of those elements which are necessary or

(Footnote Continued)

Section 8-1809 addresses the approval and adoption of local critical area protection programs. Subsection (a) requires each local jurisdiction to advise the Commission in writing whether it intends to develop a critical area protection program. Should a local jurisdiction decide not to adopt a program, subsection (b) permits the Commission both to prepare and to adopt one for that local jurisdiction. In the event that the local jurisdiction decides to develop a program, it is required, by subsection (c), to submit to the Commission, on a time schedule and following procedures not at issue on this appeal, the program it has developed.

In addition to the minimum elements prescribed in § 8-1808(c), a local jurisdiction's Critical Area Protection Program must contain "a designation of those portions of the Chesapeake Bay Critical Area proposed for exclusion under

(Footnote Continued)
appropriate:

- (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- (2) To conserve fish, wildlife, and plant habitat; and
- (3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

paragraph (1) of this subsection, together with all factual information and expert opinion supporting its findings under this subsection." § 8-1807(b)(2).⁴

Within 30 days of receipt of a program submitted by a local jurisdiction for approval, the Commission must appoint a panel of five of its members to conduct a public hearing in the affected jurisdiction. § 8-1809(d)(1). Within 90 days of receipt, it must either approve the proposed program or notify the local jurisdiction of specific changes it will require before approving it, otherwise the program shall be deemed approved. § 8-1809(d)(2).⁵ When a local jurisdiction has designated portions of the initial planning area to be excluded from the critical area, that designation shall be approved:

unless the Commission finds, based on stated reasons, that the decision of the local jurisdiction was:

- (i) Not supported by competent and material evidence; or
- (ii) Arbitrary or capricious.

⁴Under § 8-1807(a), the Legislature set forth the "initial planning area for determination of the Chesapeake Bay Critical Area." Each local jurisdiction, pursuant to subsection (b), is permitted to exclude, based upon certain findings required to be made by it, portions of that initial planning area.

⁵Subsection (d)(3) sets out the procedure to be followed should it be necessary to make changes in the initial program proposal, an issue that is not before us on this appeal.

§ 8-1807(3). The Commission must approve a local jurisdiction's program, including any amendments, if it is in compliance with:

(1) The standards set forth in § 8-1808(b)(1) through (3) of this subtitle; and

(2) The criteria adopted by the Commission under § 8-1808 of this subtitle.

Section 8-1809(i). A local jurisdiction has 90 days from the date the Commission approves its program to adopt it in accordance with the "legislative procedures for enacting ordinances" in that jurisdiction. § 8-1809(e)

Following the Commission's approval of the Kent County, Critical Area Protection program, the Board of County Commissioners enacted the Kent County Critical Area Ordinance. To assist it in classifying the land in the Critical Area, the Board developed, and adopted, "mapping rules," which it utilized in the comprehensive rezoning process. One of those rules, specifically, "lots of 20 acres or more are always RCA [Resource Conservation Area]" was applied to appellants' property. Thus, the subject 57 ± acres owned by appellants were placed in the Resource Conservation Area. The contiguous and adjacent subdivision, Shorewood Estates, originally developed by appellant August Bellanca, and of

which the subject property was initially a part was included in the Limited Development Area.⁶

Before the Kent County program was submitted to it for approval, the Commission had promulgated regulations, pursuant to § 8-1808(d), in which it proposed criteria "for directing, managing, and controlling development (e.g., residential, commercial, industrial and related facilities) so that the adverse impacts of growth in the Critical Area are minimized." Code of Maryland Regulations (COMAR) 14.15.02.01. To recognize existing land uses and development in the critical area and to control future uses and development in that area, the regulations recognized three types of development areas: (1) Intensely Developed Areas; (2) Limited Development Areas; and (3) Resource Conservation Areas. 14.15.02.02A. As to each, criteria designed to guide the local jurisdictions in classifying the land in the critical area and policies to be followed by the local jurisdictions when addressing one of the areas were developed and codified. Relevant to our inquiry is the Commission's definition of the Resource Conservation and Limited Development Areas and the policies made applicable to them.

The Commission defined Resource Conservation Areas as

⁶The parties inform us that the actual terms used in the Kent County Ordinance are "Resource Conservation District and Critical Area Residential District." They concede that these terms are the equivalent of the terms used by the Commission in the regulations it promulgated. We will use the terms used in the regulations.

those areas characterized by nature-dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features:

- (1) Density is less than one dwelling unit per 5 acres; or
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

COMAR 14.15.02.05A. The policies to be advanced by Resource Conservation Areas, and required to be followed by local jurisdictions, are to:

- (1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;
- (2) Provide adequate breeding, feeding, and wintering habitats for those wild-life populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

COMAR 14.15.02.05B.

COMAR 14.15.02.04A, pertaining to Limited Development Areas, provides:

A. Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats, and the quality of runoff

from these areas has not been substantially altered or impaired. These areas shall have at least one of the following features:

- (1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
- (2) Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;
- (3) Areas meeting the conditions of Regulation .03A, but not .03B, above;
- (4) Areas having public sewer or public water, or both.

The local jurisdiction, when addressing a Limited Development Area, is required to apply policies designed to:

- (1) Maintain, or if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;
- (2) Maintain, to the extent practicable, existing areas of natural habitat; and
- (3) Accomodate additional low or moderate intensity development if:

- (a) This development conforms to the water quality and habitat protection criteria in § C, below, and
- (b) The overall intensity of development within the Limited Development Area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.

COMAR 14.15.02.04B.

After the Kent County Critical Area Ordinance had been enacted, appellants filed an application for a zoning map

amendment,⁷ which would remove their property from the Resource Conservation Area and place it in the Limited Development Area. The rationale for the application was that the subject property comprised the remnants of the Shorewood Estates, which appellants developed, and that, as appellants desire to develop it in a consistent manner, the two properties should be considered together. Following a public hearing, at which appellants' position, and that of its opposition,⁸ were presented, the Board approved their application.

The Board forwarded its approval of appellants' application, along with that of other applicants, to the Commission for its approval. In support of its action, the Board stated that the original RCA designation "is an error due to the character of the general area." In the attached "summary of reasoning for their approval", it advised the Commission:

The Bellanca's own property on the Sassafras River outside of Galena. Since the early sixties, small parcels have been divided from the original farm. Approximately 150 acres remain in the farm. A forty-four acre

⁷ Appellants maintain that their application was filed after enactment of the Critical Area Ordinance at the request of the Board of County Commissioners. The minutes of the hearing at which the ordinance was adopted reflects that appellants had earlier filed, with the planning office, a request for amendment of the Critical Area program. They also reflect that "Mr. Bellanca agreed to withdraw his application and to resubmit it within sixty days for the first consideration of amendments."

⁸ Several other applications for amendments were considered at the same public hearing.

field and two small acres are located in the Critical Area. Mr. Bellanca's subdivision, Shorewood Estates, and a large lot subdivision Pleasant Cove adjoin the remaining farmland. Outside the Critical Area, the remaining land adjoins a large farm slated for subdivision.

On appeal, appellants argue, first, that "[t]he question which the Court must decide is not what standard of review to apply to the action of the decision maker, but which entity in the process is the decision maker to whom the standard of review applies." (Emphasis in original).

Then, assuming that the appropriate decision maker is the Board of County Commissioners, they argue that its initial decision to amend the Critical Area ordinance by removing their property from the Resource Conservation Area and placing it in the Limited Development Area was supported by the facts and was not arbitrary or capricious. Therefore, they assert that the Commission was without authority to overrule that decision. Both arguments miss the point.

As we have seen, the Kent County program was submitted to the Commission for approval and that Commission did, indeed, approve it. It was only then that the Critical Area Ordinance adopting the program approved by the Commission, was enacted. Therefore, because it was so designated in the program, the Commission approved the classification of appellants' property in the Resource Conservation Area. There was, thus no disagreement between the Board and the Commission concerning the appropriateness of that designation. And no argument is made on this appeal that that initial

classification or the Commission's adoption of it was erroneous or inappropriate. In other words, there is no contention that placement of the subject property in the Resource Conservation Area was inconsistent with the criteria and policies developed by the Legislature and implemented by the Commission. Moreover, the Commission, far from overruling or disapproving the decision of the County Commissioners on the issue critical to this appeal, actually joined with them in making that determination. That appellants sought an amendment of the program prior to its adoption which it withdrew before it was acted upon, even if at the request of the Board, does not change that fact. Nor, for that matter, does the fact that, subsequently, the Board was persuaded by the position advanced by appellants in their application for amendment necessarily render the Board's initial decision, which was approved by the Commission, either erroneous or a mistake.

The critical question, then, is whether there was a mistake in the existing zoning. When the County Commissioners proposed to adopt appellants' amendment application, § 8-1809(h) provided:⁹

⁹That section now provides:

(h) Proposed program amendments and refinements. - (1) As often as necessary but not more than 4 times per calendar year, each local jurisdiction may propose

(Footnote Continued)

(h) Program not to be amended without approval of Commission. - A program may not be amended except with the approval of the Commission. Except for amendments developed during program review under subsection (g) of this section, an amendment to a zoning map may be granted by a local approving authority only on proof of a mistake in the existing zoning.

Thus, only if the initial determination that appellants' property was properly designated RCA was a mistake, and not simply a plausible interpretation of the existing circumstances, would the County Commissioners have been justified

(Footnote Continued)

program amendments and program refinements to its adopted program.

(2) (i) Except for program amendments or program refinements developed during program review under subsection (g) of this section, a zoning map amendment may be granted by a local approving authority only on proof of a mistake in the existing zoning.

(ii) The requirement in paragraph 2) (i) of this subsection that a zoning map amendment may be granted only on proof of a mistake does not apply to proposed changes to a zoning map that:

1. Are wholly consistent with the land classifications in the adopted program; or
2. Propose the use of a part of the remaining growth allocation in accordance with the adopted program. (Emphasis added)

See Chapter 649, Laws of 1990, effective July 1, 1990.

in granting the amendment sought by appellants.¹⁰ Put another way, the County Commissioners could approve appellants' application only if the evidence produced by appellants in support of their original amendment application was not only compelling, but was "strong evidence" that the classification was a mistake, Trainer v. Lipchin, 269 Md. 667, 672-73 (1973), quoting Stratakis v. Beauchamp, 268 Md. 643, 652-53 (1973), which was both "basic and actual" and made "at the time the property was zoned." Hoy v. Boyd, 42 Md. App. 527, 537 (1979), quoting Pattey v. Board of County Comm'rs, 271 Md. 352, 361 (1974).

The Court of Appeals, in Howard County v. Dorsey, 292 Md. 351 (1982) and this Court, in Boyce v. Sembly, 25 Md. App. 43 (1975), reached identical conclusions after considering the inherent nature of the terms "mistake" or "error":

¹⁰There is a question whether the Commission's disapproval of the County Commissioners' proposal to amend the Critical Area Ordinance is properly before us. The ruling that was appealed was the County Commissioners' determination, after advice from the Commission, that the requested amendment should be denied. And it was this determination which the circuit court upheld. Because the standard of review is whether there is any substantial evidence in the record to support the decision of the County Commissioners, our focus is on whether that decision is supported by the record. That is an entirely different question than whether the Commission improperly usurped the County Commissioners' function. But, whether we approach it from the perspective of what the County Commissioners ultimately did or from the perspective that they acted as they were required to do by the Commission, the result may really be the same. In either case, only in the event that there is compelling evidence of mistake in the existing zoning may we reverse the judgment of the circuit court.

...[T]he presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension.... Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect.

* * *

"It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show [1] the facts that existed at the time of the comprehensive zoning but also [2] which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning...; by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account...; or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning.... (Emphasis in original, citations omitted)

Dorsey, 292 Md. at 356-58, quoting Boyce v. Sembly, 25 Md. App. at 50-53.¹¹

We believe the lower court was correct in affirming the County Commissioners' decision denying amendment of the Critical Area Ordinance as it relates to appellants' property. We are satisfied that there was no mistake in the existing zoning. As the record reflects, the County Commissioners adopted and applied the mapping rules, and more particularly as relates to this case, mapping rule no. 1. That Rule was also adopted by the Commission when it reviewed the Kent County program. Moreover, the conditions existing prior to the filing of the application for amendment were identical to those existing after its filing. And the argument made by appellants in support of amending the ordinance was available before the ordinance was enacted. Analyzing the classification given appellants' property in light of the applicable standards, criteria and policies developed by the Commission, but applied by the Board, reveals that it was appropriately classified. It fits very neatly within the criteria and policies applicable to Resource Conservation

¹¹Inasmuch as the amendment application was filed very shortly after the enactment of the Critical Area Ordinance, no issue was presented in this case of consequently occurring facts which demonstrate a mistake in the rezoning. See Rockville v. Stone, 271 Md. 655, 662 (1974). It is with these principles in mind that we address the issue of mistake on this record.

Areas. That a case could have been made for placing it in the Limited Development Area simply begs the question.

Moreover, it is not so clear that the County Commissioners determined that there had been a mistake in the classification of appellants' property in the sense that the term is used in subsection (h). It appears that the County Commissioners simply applied a different change of criteria to the classification of appellants' property than it employed in classifying other properties in the Critical Area.

Rather than argue the existence of mistake, appellants maintain that the Commission never explicitly determined that they failed to meet their burden in that regard and, perhaps, more important, they assert that, in any event, they need not have shown mistake because the ordinance was amended pursuant to a program review pursuant to §

8-1809(g).¹² In support of the latter position, they point out that, in the amendment process the County Commissioners

¹²When the amendment was proposed, subsection (g) provided:

Each local jurisdiction shall review and propose any necessary, amendments to the local jurisdictions program, including local zoning maps, at least every 4 years. Amendments shall be submitted to and acted on by the Commission in the same manner as the original program.

Effective July 1, 1990, it was amended to provide:

(g) Review and proposed amendment of entire program. - Each local jurisdiction shall review its entire program and propose any necessary amendments to its entire program, including local zoning maps, at least every 4 years beginning with the 4-year anniversary of the date that the program became effective and every 4 years after that date. Each local jurisdiction shall send in writing to the Commission, within 60 days after each 4-year anniversary, the following information:

- (1) A statement certifying that the required review has been accomplished;
- (2) Any necessary requests for program amendments, program refinements, or other matters that the local jurisdiction wishes the Commission to consider;
- (3) An updated resource inventory; and
- (4) A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.

See Chapter 649, Laws of 1990.

considered seven map amendments and one text amendment.

We are not persuaded on either ground. As to the latter point, we think appellees' response is particularly appropriate:

Nothing in the record supports this contention. The 7 proposed rezonings were for single parcels of property and were characterized by the County and based on "error" or "mistake". The submission came just months after program enactment, and addressed no changes in conditions or general intent of the Kent County program. Clearly, this is not a "program review" within the meaning of § 8-1809 (g), for if program review is read to mean any grouping of several rezonings of individual properties, then the exception swallows the rule intended in § 8-1809(h).

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

37

PRESS RELEASE
CHESAPEAKE BAY CRITICAL AREA COMMISSION

ReleaseDate: March 06, 1991
Contact: Hugh M. Smith
(301) 974-2426

CRITICAL AREA COMMISSION RECOGNIZES PROGRAM EXCELLENCE

The Chesapeake Bay Critical Area Commission (C.B.C.A.C.) today awarded Governor's Citations to several private and public organizations for outstanding contributions to the Critical Area Program in the fields of environmental education and public awareness, water quality management and habitat protection, development site design, reforestation, and Critical Area program implementation. Baltimore, Kent, Anne Arundel, and Prince George's Counties, the cities of Baltimore and Salisbury, the Towns of Chestertown and Easton, The National Aquarium in Baltimore, JTL Port America LTD, and Peninsula United Methodist Homes were awarded their citations at a lunch hosted at the National Aquarium by the C.B.C.A.C in conjunction with their regular monthly meeting held earlier in the day at the World Trade Center. Noted environmental writer and former Baltimore Sun environmental reporter Tom Horton delivered a luncheon address to the Commission and its guests.

The Chesapeake Bay Critical Area Commission was established in 1984 to create and implement a unique and innovative land and resource management program designed to accommodate growth while mitigating the damaging impact of man's activities in close proximity to the fragile habitat and waters of the Bay. The Critical Area is defined as all land within 1000 feet of the Chesapeake Bay and its tidal tributaries. " In a very short time frame" according to Commission Chairman Judge John C. North II, "the Critical Area Law has made major strides towards redefining man's spatial relationship with the Bay - to everyone's benefit. Our honorees today are tangible evidence that the Critical Area Program is succeeding."

The National Aquarium in Baltimore was awarded a Governor's Citation for increasing public awareness of the Chesapeake Bay through its comprehensive teacher training and curriculum development program. Specifically cited was the Aquarium's development and implementation, in cooperation with the University of Maryland Center for Estuarine and Environmental Studies, of an environmental education course for secondary school teachers; a revision and re-drafting of the Baltimore City Public Schools Kindergarten through sixth grade Chesapeake Bay science curriculum; the development and publication of a Chesapeake Bay geologic, cultural, and natural history reader for upper elementary and middle school students; a summer teacher training program designed to acquaint local educators with the Bay and its watersheds; and the development of a curriculum, entitled Living in Water which has been distributed nationwide.

Prince George's County was recognized for their reforestation program, which includes the first use of public monies for planting trees on private property, and their advocacy of agriculture as a protective land use. The Prince George's County Soil Conservation District was the first in Maryland to develop Soil Conservation and Water Quality Management Plans for all farms in the Critical Area. Plans were developed for 82 farms, totalling 6008 acres, two years before the legislated deadline of May 13, 1991.

Baltimore and Kent County Maryland have adopted aspects of the Critical Area Criteria throughout their jurisdictions. This watershed based approach enhances habitat protection and water quality improvement.

The Cities of Baltimore and Salisbury were cited for increasing and balancing public access to waterfront areas with habitat protection and water quality improvement. Specifically recognized were Baltimore's Middle Branch Park and its Water Resources Center, the planned 7 mile public promenade along the city's waterfront and Salisbury's waterfront development project currently in progress. Salisbury is achieving Critical Area objectives by decreasing impervious surfaces, stabilizing eroding river banks, and improving habitat, while providing public access to the Wicomico River.

Public awareness is essential to achieving the goals of the Critical Area Law. Anne Arundel County and the Town of Easton were awarded recognition for their public awareness initiatives including publications and educational workshops.

Finally, the Commission recognized private sector contributions through environmental excellence in development design. JTL Port America, LTD and Peninsula United Methodist Homes exceeded Critical Area Criteria in the design and construction of waterfront residential projects. In both cases, the developers voluntarily designed and performed extensive reforestation, habitat enhancement, and stormwater control. JTL's Port America provided a fish ladder and long term maintenance for the facility at Little Falls on the Potomac opening large stretches of the river for anadromous fish spawning. Peninsula United Methodist Home's design for their continuing care community, Heron Point in Chestertown, incorporates 300 new trees, over 8000 plants, and nesting boxes at an anticipated cost of \$120,000. Prince George's County and the Town of Chestertown, respectively, were commended by the Commission for their foresightedness and helpfulness in assisting the developers realize both projects.

"The recipients of these citations are just a few of the many splendid examples of the success the Critical Area Act is achieving" said Dr. Sarah Taylor, Executive Director of the Commission. "The main function of the Commission and its staff is to assist local jurisdictions achieve desired growth while protecting equally desirable forest and agricultural land uses, wildlife habitat, and the water quality of the Chesapeake Bay and its tributaries."