

In the Matter Of:

Department of Natural Resources & Environmental Control

Hearing

Subaqueous Lands Lease

November 05, 2020

Wilcox & Fetzer

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Wilmington, DE 19801

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THE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Subaqueous Lands Lease)
Permit Application submitted)
by James and Meredith Bruner)
Docket #2020-P-W-0021)

.

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Access Code: 129 842 4064

Thursday, November 5, 2020
6:00 p.m.

.

BEFORE: Theresa Newman, Hearing Officer
FOR THE DIVISION: Sascha Mohammed
Matthew Jones

-- Transcript of Proceedings --

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1 MS. NEWMAN: Good evening. I
2 believe that everyone is now connected, and
3 we are going to begin the virtual public
4 hearing.

5 I want to thank everyone for taking
6 the time out of their busy schedules to
7 connect with us today. Today is Thursday,
8 November 5, 2020, and the time is now
9 6:00 p.m.

10 We are here this evening to provide
11 a virtual platform for the State of
12 Delaware's Department of Natural Resources
13 and Environmental Control to conduct its
14 virtual public hearing on the permit
15 application submitted by James and Meredith
16 Bruner for a lease to construct and use a
17 pier, dock, and two boatlifts in Little
18 Assawoman Bay.

19 My name is Theresa Newman, and
20 Secretary Garvin has appointed me to serve as
21 the hearing officer for tonight's formal
22 proceeding.

23 There have been changes made to
24 DNREC's standard hearing protocols,



1 necessitated by Delaware's ongoing state of
2 emergency due to COVID-19 pandemic.

3 First and foremost, this hearing is
4 being conducted virtually. No one is
5 together in the same room. Everyone is
6 participating independently at their own
7 respective locations.

8 While we are not physically
9 gathered together tonight, WebEx does
10 generate a list of those that are virtually
11 present for this proceeding so that the
12 Department will have the same record of those
13 who have electronically joined this event.

14 And, again, I want to thank
15 everyone for joining and for their interest
16 in this matter.

17 At the conclusion of the
18 introductory remarks, I will be turning the
19 hearing over to Department staff and the
20 applicant to provide their presentations for
21 the record being generated in this matter.

22 Once the presentations conclude,
23 those persons who preregistered in advance of
24 the hearing will be acknowledged and provided



1 an opportunity to offer comment on the
2 proposed application in alignment with
3 DNREC's standard comment protocols.

4 There is a court reporter virtually
5 present who will prepare a verbatim
6 transcript of this hearing pursuant to the
7 statutory requirement for DNREC to have the
8 same prepared. And, as always, that
9 transcript will be posted on the hearing
10 webpage dedicated to this matter as soon as
11 it is received.

12 In addition, I would encourage
13 those who are attending tonight's hearing to
14 also visit the hearing webpage dedicated to
15 this matter for additional details concerning
16 the proposed application submitted by Mr. and
17 Mrs. Bruner.

18 The hearing webpage can be found
19 online under the Administrative Law Section
20 of DNREC's website that will be listed at the
21 conclusion of tonight's hearing.

22 Before we begin the presentations
23 tonight, please be advised that the following
24 protocols remain in place for all DNREC



1 public hearings:

2 All comments received must be
3 solely limited to the subject matter of
4 tonight's hearing. All comments pertinent to
5 the subject matter of the virtual hearing
6 will be incorporated into the record being
7 generated in this matter.

8 In order to ensure that everyone
9 who wishes to offer comment for the
10 Secretary's consideration is accommodated,
11 the record in this matter shall remain open
12 following tonight's proceeding through
13 November 20, 2020.

14 There is one authentic record of
15 this formal proceeding tonight, and it is the
16 official court reporter's verbatim
17 transcript.

18 The statutory purpose of tonight's
19 hearing is to build the record with regard to
20 the Department's proposed actions. A record
21 consisting of the transcript of the hearing
22 tonight, all written comments, all exhibits,
23 and eventually the Hearing Officer's Report
24 will be reviewed by Secretary Garvin.



1 The Secretary will ultimately issue
2 an order, following that review process,
3 containing his decision on this matter and
4 the reasons therefor.

5 Per DNREC's standard hearing
6 protocols, there will be no Q and A or chat
7 sessions permitted during the hearing.

8 Those who preregistered to offer
9 verbal comment will be acknowledged to speak
10 at the conclusion of the presentation portion
11 of the hearing tonight.

12 Additional instructions with regard
13 to offering a verbal comment tonight will be
14 provided at that time.

15 Lastly, it is important to note
16 that no decision has already been made by the
17 Department, nor will any decision be made
18 tonight with regard to the proposed
19 application.

20 As previously stated, DNREC wishes
21 to ensure that everyone is enabled to offer
22 their public comment for inclusion into the
23 record being generated in this matter.
24 Therefore, the record will remain open



1 through Friday, November 20, 2020, so that
2 the public may offer written comment, should
3 they wish to do so.

4 Comments may be submitted through a
5 comment form link on the hearing webpage, via
6 e-mail to DNRECHearingComments@delaware.gov,
7 or via the U.S. Postal Services at the
8 physical address for DNREC indicated on the
9 hearing webpage and/or the public notices
10 previously issued in this matter.

11 Written comments to DNREC may not
12 be submitted using social media platforms
13 such as Twitter, Facebook, YouTube or text
14 messaging.

15 Please remember that all comment
16 received either through USPS or via the
17 electronic mechanisms noted just now, as long
18 as it is received by the Department on or
19 before November 20th, will bear the exact
20 same weight and would be considered equally
21 by the Secretary prior to making his final
22 decision in this matter.

23 Lastly, the ultimate decision
24 regarding this matter is made by DNREC



1 Secretary Garvin. This formal proceeding
2 tonight acts as a mechanism to enable the
3 Department to thoroughly vet the application
4 matter to the public and to let the public
5 know the various ways in which they may
6 provide a comment to be submitted for
7 Secretary Garvin's consideration, if so
8 desired.

9 With that being said, I am now
10 going to hand it over to the Division of
11 Water's Wetlands and Subaqueous Lands
12 Section, Mr. Jones, to provide the
13 Department's presentation. You may proceed,
14 Mr. Jones.

15 MR. JONES: Hi, everyone. My name
16 is Matthew Jones. I'm an environmental
17 scientist in the Wetlands and Subaqueous
18 Lands Section.

19 Before I give my presentation
20 tonight, I would like to introduce the
21 following exhibits:

22 Exhibit 1 would be the Governor's
23 State of Emergency proclamation and news
24 release authorizing public bodies to meet



1 electronically.

2 Exhibit 2 would be the State Law,
3 which is Title 7, Chapter 72, Subaqueous
4 Lands, as well as Regulations Governing
5 Subaqueous Lands.

6 Exhibit 3: The original
7 application which was received on March 30th,
8 2020.

9 Exhibit 4: The revised application
10 received on June 9, 2020.

11 Exhibit 5: Public notices of the
12 project as published in the Delaware State
13 News and in the News Journal. The original
14 notice was April 29, 2020, and the revised
15 notice was June 24, 2020.

16 Exhibit 6: Public notice of the
17 hearing this evening as published in the
18 Delaware State News and in the News Journal
19 and as posted on the DNREC website.

20 Exhibit 7: The DNREC public
21 hearing presentation.

22 Exhibit 8 were comments received
23 prior to the hearing.

24 And Exhibit 9: State Public



1 Meeting Calendar notes.

2 That concludes my exhibits.

3 MS. NEWMAN: Thank you, Mr. Jones.

4 I did receive the exhibits that were just
5 mentioned, and I do hereby mark those into
6 the record as Department's Exhibits 1 through
7 9. You may proceed with the Department's
8 presentation. Thank you.

9 MR. JONES: As stated before, we
10 are here for a public hearing for an
11 application received, a Subaqueous Lands
12 application received from James and Meredith
13 Bruner on -- originally on March 30, 2020.

14 The first slide is the state of
15 emergency. On March 13, 2020, Governor
16 Carney declared a state of emergency due to
17 the public health threat of COVID-19. This
18 is more or less showing that.

19 The purpose of this hearing is to
20 provide the public an opportunity to comment
21 on James and Meredith Bruner's application to
22 construct and utilize a residential pier,
23 dock, and boatlifts. This would fall under a
24 Subaqueous Lands lease, which are lands owned



1 by the State of Delaware.

2 The project location, it's at the
3 terminus of North Schulz Road, Fenwick
4 Island, Delaware. It sits on the Little
5 Assawoman Bay.

6 This is another shot of it showing
7 the parcel data located on Tax Parcel
8 #1-34-23.12-16.00 at 1306 N. Schulz Road,
9 Fenwick Island, in Sussex County, Delaware.

10 In this slide you can actually see
11 the water frontage that's available for the
12 lot, as well as the surrounding lots to the
13 east and west, and surrounding areas also
14 have water frontage and docking facilities.

15 The initial project was received on
16 March 20, 2020. It was basically to
17 construct a 4-by-28-foot pier, a 6-by-30-foot
18 long -- a 6-by-35-foot-long dock, and one
19 single piling, or one boatlift, a four-piling
20 boatlift.

21 The application was deemed to be
22 administratively complete and was put on
23 notice.

24 The pier where it meets land is



1 located 15 feet off the adjacent property
2 line to the east.

3 The dock position parallel to the
4 (inaudible), it runs from an east to west
5 direction. This is like a section view
6 profile of what it would look like. Here you
7 can see the toe of the riprap, the pier
8 extending out well beyond that in the
9 original application, and the lift all the
10 way on the end.

11 The total channelward encroachment
12 from the mean high water line for the
13 original application was 45 feet. From the
14 mean high water line, it ended 45 feet out.

15 The project was placed on public
16 notice. It was placed on a 20-day public
17 notice period, again in both the Delaware
18 State News and the News Journal, from
19 April 29 of 2020 to May 19, 2020.

20 Multiple comments were received in
21 objection.

22 The revised application was placed
23 on a 20-day notice period, published in the
24 Delaware State News and News Journal from

1 June 24th to July 14th. Again, multiple
2 comments were received in objection.

3 The hearing for the proposed
4 project was placed on a 20-day notice period
5 published in the Delaware State News and the
6 News Journal from September 30, 2020 to
7 October 20, 2020. Again, multiple comments
8 were received during that period.

9 Here is the site layout of where
10 the dock would essentially be proposed. This
11 is the area of concern.

12 So DNREC conducted multiple site
13 meetings. We had one on May 27th, which was
14 with town officials and council members,
15 as well as the contractor and myself, kind of
16 to explain our regulatory process and kind of
17 go over the project, because it had received
18 some objection.

19 Following that, I actually went out
20 with other Wetlands' staff on June 1st and
21 June 30th. And during that time, we
22 basically laid out what was the original
23 configuration for this. So we laid out
24 markers at 30, 37, and 50 feet. It was,



1 again, the original proposed design was, you
2 know, channelward encroachment of 45 feet.

3 While we were out there, we also
4 took a bathymetric survey rod while we were
5 out there and took measurements.

6 On this, you can see those depicted
7 on the bathyr with survey grade GPS. And
8 each was recorded. Each measurement we
9 recorded with the depths.

10 This kind of depicts water depths
11 out in front. You know, it also depicts --
12 there is a red and green channel marker.
13 Just for the record, that is not technically
14 a state navigational channel, but it was
15 taken into consideration for navigational
16 purposes.

17 The site basically, the site needs,
18 they are pretty -- you know, they are pretty
19 structured. It's something we always do.
20 It's part of our compliance part of things
21 prior to issuance of a permit.

22 So the reason for this was, you
23 know, to kind of go out and say hey, you
24 know, does the structure actually extend



1 farther than it needs to?

2 What we found in this case was that
3 there was adequate water depths closer to
4 shore. So, from feedback provided by the
5 public, as well as the Department, um, I'm
6 getting kind of ahead of myself, but the
7 applicant actually redesigned it and
8 resubmitted his application.

9 So project modifications included
10 reducing the pier's length from 28 feet to
11 13 feet, which is only a 4-foot-long portion
12 of the pier, would be channelward of the mean
13 high water line.

14 This pretty much stops at the
15 adjacent -- the pier pretty much stops at the
16 adjacent bulkhead next door. The boatlift
17 from there would extend channelward from that
18 point.

19 It added 10 feet to the dock to
20 accommodate the vessel lengths, which are
21 25 feet and 18 feet. It installed two
22 boatlifts, which one is a four-piling lift
23 that extends 13 feet, and the other is a
24 single piling, single or double-piling lift



1 which extends about 8 feet.

2 This also moved the pier's junction
3 with land east 5 feet, but it still complies
4 with the setbacks per our regulation for each
5 property boundary, so it's still 10 feet off
6 the property line and originally was proposed
7 at 15.

8 So this is an overview of what the
9 final project looks like. It was brought in.
10 There is an existing wall that has been there
11 over time.

12 There is an old bulkhead that runs
13 in the water. And then there is some riprap.
14 And like I said, in this case the pier stops
15 at the riprap and the old wall, and the dock
16 runs parallel to the shoreline.

17 So they brought -- it minimized to
18 every possible extent and actually brought
19 the structure in as close to land as they
20 could with running along parallel with the
21 shoreline.

22 So the new configuration, as
23 discussed, reduced the pier length from 28 to
24 13 feet. The back begins at the toe of the



1 riprap and wall and is oriented extending
2 west in the shape of an L.

3 Two boat lifts. One four-piling,
4 one single/double piling lift. Total
5 encroachment decreased from 45 feet to
6 28 feet channelward mean high.

7 It meets compliant property
8 setbacks. It's compliant setback from the
9 state navigational channel, which is 10 feet.
10 Again, I want to reiterate this actually
11 isn't a State navigational marked channel,
12 but we treated it, you know, as if it were,
13 just for the sake of navigational purposes
14 for vessels traveling to and from.

15 And it does not exceed the
16 20 percent width of the water body from -- as
17 measured from mean low to mean high.

18 And that concludes my presentation.

19 MS. NEWMAN: Thank you, Mr. Jones.
20 I am going to mute you, Mr. Jones, and we are
21 going to move on to the applicant. Mr.
22 Bruner?

23 MR. BRUNER: Can you hear me?

24 MS. NEWMAN: Yes, I can hear you.



1 Mr. Bruner, as the applicant, you may proceed
2 with the introduction. And when we conclude
3 your introduction, we will then go on to the
4 consultant that is going to conduct a
5 presentation on your behalf; is that correct?

6 MR. BRUNER: Correct. Thank you.

7 MS. NEWMAN: Yeah, no problem. You
8 may proceed, Mr. Bruner.

9 MR. BRUNER: Thanks for the
10 opportunity to comment this evening. My name
11 is James Russell Bruner. My wife, Meredith
12 Kay Bruner and I, are the owners of the
13 property at 1306 North Schulz Road.

14 We are the applicants for the
15 proposed dock and appear. We appreciate the
16 time DNREC has spent reviewing our
17 application and the numerous site visits by
18 Matthew Jones of the Wetlands and Subaqueous
19 Lands Section.

20 The previous owner of this property
21 let the bulkhead deteriorate. And, as a
22 result, part of lot six was lost to erosion.

23 As I understand it, DNREC issued a
24 permit to construct a riprap embankment on



1 the interior of the property and landward of
2 the old bulkhead to secure the remaining
3 upland part of the lot. I believe that work
4 was completed in 2011.

5 My wife and I were looking for a
6 waterfront home with both access to Little
7 Assawoman Bay. Knowing that western Fenwick
8 was a lagoon-based community where lots had
9 access to navigable waters, we thought
10 Fenwick Island would be an ideal location.

11 When we found lot six, we thought
12 spending time and money to own lot six was a
13 worthwhile investment.

14 During 2019, we did a feasibility
15 study, working with our builder, marine
16 contractor, environmental consultant to
17 determine if we could build a house and
18 boat-docking facility that would meet our
19 requirements.

20 We also contacted the Town of
21 Fenwick and DNREC to review our plans. After
22 getting positive feedback from all parties,
23 we purchased the lot in 2019.

24 After the purchase, we began



1 working on a plan for a dock and a pier with
2 our marine contractor. Our initial
3 application filed in March of 2020 proposed a
4 much larger structure. This summer, we began
5 the construction of our home.

6 During the DNREC review process,
7 Mr. Jones helped us better understand the
8 regulations. He made recommendations which
9 resulted in a dramatic downsizing of the
10 proposed dock and pier so that the
11 environmental and navigational impacts are
12 minimized.

13 The currently proposed dock and
14 appear now virtually abut the old bulkhead
15 that surrounds the property.

16 As I understand it, the currently
17 proposed dock and pier meet all the design
18 criteria set forth in DNREC's regulations. I
19 very much appreciate the help and the
20 guidance the Wetlands and Subaqueous Section
21 gave me.

22 We also retained Mr. Ed Launay of
23 Environmental Resources Inc. to assist us in
24 evaluating our application and preparing for



1 this hearing.

2 My wife and I have made substantial
3 investment on this waterfront property with
4 the goal of boat docking and recreational
5 access to Little Assawoman Bay.

6 Understanding that most of the
7 waterfront and lagoon lots in Fenwick Island
8 have similar facilities for docking boats, I
9 feel that our current request asks for
10 nothing more than the rights to waterfront
11 access that many of the landowners in Fenwick
12 Island community commonly enjoy.

13 Thank you for your time.

14 MS. NEWMAN: (Speaking but is
15 muted -- inaudible)

16 MR. LAUNAY: Hello?

17 MS. MOHAMMED: Hey, Theresa, this
18 is Sascha. If you are speaking, we can't
19 hear you.

20 MS. NEWMAN: Thank you, Sascha.
21 Mr. Launay?

22 MR. LAUNAY: Yes.

23 MS. NEWMAN: Sorry about that.

24 MR. LAUNAY: That's all right.



1 MS. NEWMAN: You may go ahead and
2 proceed with the presentation.

3 MR. LAUNAY: Okay. My name is
4 Edward Launay. I'm one of the principals of
5 Environmental Resource Incorporated.

6 I'm an environmental consultant
7 with 35 years of experience on dock, pier,
8 marina, and other wetlands and subaqueous
9 land applications in the State of Delaware.
10 I'm also a Professional Wetland Scientist.

11 I have submitted three applicant's
12 exhibits that the Department has and that
13 were shown on the website for the public
14 hearing, the first of which is a one-inch
15 equals 20-scaled site plan of the proposed
16 dock and pier structure. Actually, that's
17 the second exhibit.

18 The first exhibit is a scaled site
19 plan by Simpler Surveying, signed and sealed
20 by a Registered Delaware Land Surveyor.

21 Again, the second one is a 20-scale
22 site plan of the proposed dock and pier
23 structure.

24 And the third exhibit is a one-inch



1 equals 20-scale bathymetric survey showing
2 water depths, channel markers, and the
3 surrounding conditions of the Bruner property
4 performed by a Delaware -- performed and
5 prepared by a Delaware-licensed Professional
6 Engineer, Mr. Robert Plitko.

7 All the depths shown on that
8 bathymetric survey are at mean low water.

9 I appreciate DNREC's description
10 about the permit history and the recognition
11 that we are here to discuss an application,
12 the application as currently proposed. And
13 that's what I want to focus on, the
14 application that's currently proposed.

15 There has been significant
16 modifications of the structure that have
17 taken place in accordance with the Wetlands
18 and Subaqueous Lands Section's
19 recommendations as described by Mr. Jones.

20 My statement will focus upon
21 exactly, again, what is being proposed. So
22 I'm going to share a screen. Hopefully, it
23 works.

24 And so here is the Simpler Survey



1 of Mr. Bruner's property. And that basically
2 shows the current riprap shoreline. And it
3 also shows a property line.

4 And what that property line
5 represents is you have heard discussion about
6 the history of the property, that at one
7 point it was all -- it was all secured with a
8 timber bulkhead. That timber bulkhead
9 deteriorated. Land was lost. And, you know,
10 then it was replaced by the riprap bulkhead,
11 or the riprap revetment.

12 The current bulkhead still exists.
13 It's under water. It's visible sometimes at
14 low tide. It's still sort of a filled area.
15 And really, it's again, that's part of his
16 private subaqueous lands within his property.
17 But that represents the original bulkhead
18 line of the lot.

19 And I guess what I wanted to point
20 out is that, you know, because of the
21 presence of the old bulkhead, there is really
22 the extent of water that's shown in between
23 the property line and in between the riprap
24 line is really not navigable water for depth



1 reasons and safety reasons.

2 So the second screen we are showing
3 is a two-scale drawing of the dock and the
4 pier as proposed, you know, with the actual
5 four-pile boatlift, you know, probably more
6 accurately illustrated, and the second, you
7 know, two-pile or single-pile boatlift
8 showing the position of exactly where that
9 would be.

10 And, again, there is a note on
11 there noting that the existing property line
12 follows the remains of the deteriorated
13 bulkhead line.

14 So just moving on to -- so, as part
15 of investigating and looking into the
16 proposal and providing DNREC additional
17 information, we conducted a -- Mr. Plitko,
18 who, again, is a Registered Delaware
19 Professional Engineer, conducted a sounding
20 survey, and the results of that survey are
21 shown on this plan.

22 And also the same scaled size of
23 the proposed boatlifts and the dock and pier
24 are also shown.



1 And the various water depths,
2 again, everything is at mean low water, are
3 highlighted in different colors.

4 So one thing I wanted to mention
5 is, you know, looking at, you know, the
6 surrounding areas and on Google Earth and
7 really focusing on the areas that would be to
8 the north of Dagsboro Street, I looked at a
9 number of existing dock and pier structures.

10 And those dock and pier structures
11 ranged anywheres, you know, from just a dock
12 that was pretty much just juttet out and
13 parallel with existing bulkheads to which a
14 boat would be tied, or sometimes to which
15 there would be a boatlift at where the boat
16 would occupy. And I looked at a number of
17 links with respect to the channel.

18 And, you know, what I found was
19 that pretty much the smallest encroachment
20 channelward of the bulkhead line, and in this
21 case I would translate that to Mr. Bruner's
22 property line, was about 21 feet. And the
23 maximum was about 34 feet.

24 Now, and roughly, basically for the



1 entire point that Mr. Bruner's properties
2 occupy north of Dagsboro Street in Fenwick
3 Island, there is roughly 16 other structures
4 that, you know, meet this description of
5 either a pier, a short pier going up to a
6 dock with a boatlift or a boat, or a dock
7 that is pretty much, as his does, parallel a
8 bulkhead line.

9 So when we look at this plan, it
10 really gives us a very good idea of what
11 water depths are and what -- and how people
12 navigate.

13 With respect to his property, there
14 is not tremendous environmental issues. We
15 don't have any wetlands involved.

16 And insofar as environmental
17 habitat concerns, the DNREC Fish and Wildlife
18 Department recommended that a time-of-year
19 restriction for pile driving be included in
20 permit special conditions.

21 And I would want to say to the
22 Department that Mr. Bruner would have no
23 problem in working within the special
24 condition time-of-year restrictions that will



1 be contained in DNREC's permit.

2 As you can see from this diagram,
3 kind of boating either east to west or west
4 to east in front of Mr. Bruner's property,
5 there are water depths -- all the water
6 depths are well in excess of 4 feet.

7 The thing that I wanted to point
8 out in terms of the colors -- and you see the
9 two day markers are shown -- that's the
10 channel that goes to the northeast that
11 Mr. Jones mentioned.

12 If you look at the very pink color
13 that's on either side of that, that shows a
14 water depth of 3 feet and less.

15 So the inside of the channel that
16 people would be navigating to from the
17 proximity and the surroundings of Mr.
18 Bruner's lot, the controlling depth through
19 there is really 4 feet. Where the day
20 markers are, the depth is 4 feet.

21 The circumstance surrounding
22 Fenwick Island is that deeper, you know,
23 deeper water exists around the perimeter of
24 the point that Mr. Bruner's lot occupies.



1 And, you know, we can see water depths, if
2 you look at the purple color, as much as 7,
3 8, and even 9 feet.

4 The point to be made is that the
5 controlling depth between the two day markers
6 is a depth of 4 feet. So when we look at the
7 surrounding area, the depth of 4 feet is
8 really what we look at in terms of there may
9 be deeper spots, but if anybody is really
10 boating anywhere, it's really a depth of
11 4 feet is really a controlling depth.

12 So as someone being navigating up
13 to the north possibly to go to this channel,
14 as you can see, the deeper water is pretty
15 well far off the existing bulkhead and where
16 the docks and piers are boded along existing
17 bode lines. You know, the 5-foot depth is
18 further off.

19 That's a similar situation over on
20 the east side, somewhere somebody would be
21 navigating the north, either go around the
22 point, around by Mr. Bruner's property, or to
23 get into the marked navigational channel.

24 So looking at this plan carefully,



1 again, Mr. Bruner's dock is pretty much being
2 driven where the channelward end of the dock
3 is almost abutting against the existing
4 timber bulkhead that formerly secured the
5 property.

6 He is, at most, only 2 feet off of
7 that old structure. So he has essentially
8 minimized the amount as much as possible that
9 he would be extending channelward.

10 Also what's shown is that the
11 deeper part, the deeper water area that's in
12 front of his property and will be -- and that
13 will be in front of the future dock and the
14 future boatlift, is in front of those.

15 And essentially, if we look at what
16 I was discussing about the, you know, water
17 even deeper than 4 feet, he has probably 35,
18 at least 35 feet where the water is deeper
19 than minus four at mean low water.

20 And, again, I would stress that
21 minus four is the controlling depth as you go
22 around this entire area in terms of water
23 depths that are available for navigation.

24 After reviewing Mr. Bruner's



1 application, based on my extensive knowledge
2 and work with the DNREC Subaqueous Lands
3 regulations, the proposed dock and pier meet
4 all of the design standards for adequate
5 buffers from official channels.

6 As shown on this survey, there is
7 no restriction that is really going to occur
8 where people reasonably navigate inshore and
9 around, because, again, there is plenty of
10 room to get around the property with respect
11 to what the controlling depths are.

12 This structure, as I mentioned, is
13 little different than the many docks and
14 piers that parallel existing bulkheads all
15 along both sides of both the east and west
16 sides of Fenwick Island.

17 He, as shown on -- I'm going back
18 to the 20-scale plan. We show the dimension
19 here. I mentioned looking at other similar
20 structures where a boat would be docked
21 against a dock parallel to existing
22 bulkheads.

23 Those, the lower, on the lower end,
24 those were roughly 20 feet, and his proposed



1 structure will be only 20 feet off of his
2 former old bulkhead line.

3 You know, as Mr. Bruner mentioned,
4 you know, the Subaqueous Lands regulations
5 recognize the right to wharf out in a
6 responsible manner and the right to enjoy
7 access to waters for the purposes of
8 recreation.

9 So, you know, I would agree with
10 his closing comment, that he is requesting
11 from the Department approval for a very
12 reasonable application that would allow him
13 to enjoy the rights that many of the other
14 citizens in Fenwick Island already enjoy.

15 And I thank you for the opportunity
16 to make his presentation.

17 MS. NEWMAN: Thank you, Mr. Launay.
18 As you said in the beginning of the
19 presentation, we did receive the Applicant's
20 Exhibits 1 through 3 that are posted online.
21 And I do hereby mark the exhibits one through
22 three as Applicant's exhibits.

23 Now that we have concluded, we will
24 turn our attention over to those who have



1 preregistered for the opportunity to provide
2 a comment for tonight's hearing.

3 Sorry. One minute. Sascha, could
4 you please mute Mr. Launay, please? I
5 apologize.

6 Per the protocols set forth on
7 DNREC's public hearing webpage, those wishing
8 to offer verbal comments during the virtual
9 public hearing must have preregistered with
10 DNREC no later than noon on the day of the
11 hearing.

12 The order of those commenting
13 tonight was established as a result of the
14 Department's preregistration process.

15 All commenters must adhere to the
16 Department's protocols with regard to
17 offering verbal comment, including making
18 their comments as concise as possible,
19 respecting the three-minute time limit, and
20 limiting the comments to the subject matter
21 of this hearing.

22 There are six preregistered
23 commenters that will be called upon in the
24 follow order to offer a verbal comment



1 tonight: The first speaker will be Vicki
2 Carmean. Second will be Steve Ross. Third
3 is Taylor McCracken. Fourth is Janice
4 Bortner. Fifth is D. Shepard Cook. And
5 lastly we will have Melvin and Jackie Wright.

6 You will also see your names
7 listed, if you are joining online and as we
8 go, you will see that you will be next in
9 that order.

10 To assist the commenters with the
11 amount of time that they have, there is a
12 visual amount of time that will appear on the
13 screen that will count down your three
14 minutes.

15 When it is the speaker's turn to
16 comment, that speaker's audio will be
17 unmuted, their identity will be confirmed,
18 and the timer will begin.

19 At the end of the three minutes,
20 the speaker's audio will automatically be
21 placed back on mute, and we will move on to
22 the next person to be acknowledged to offer
23 comment.

24 Please note that there is no live



1 video feed of the commenter, and they will
2 only provide an audio comment.

3 All comments will be transcribed by
4 the court reporter and thereby incorporated
5 into the hearing record.

6 If the speaker is not able to
7 finish their comment within the three-minute
8 time period, the Department encourages them
9 to submit their completed comment in writing
10 no later than November 20th.

11 No commenter will be granted more
12 than three minutes of time to speak for any
13 reason.

14 That being said, we will have Vicki
15 Carmean. Please provide your first and last
16 name, and you may proceed with your comment.

17 MS. CARMEAN: Hi.

18 MS. NEWMAN: Ms. Carmean?

19 MS. CARMEAN: What's that? Can you
20 hear me?

21 MS. NEWMAN: Yes, I can hear you.

22 Is this Ms. Carmean?

23 MS. CARMEAN: Yes, it is. This is
24 Vicki Carmean. My husband, Wayne, and I are



1 here to respond to this proposed boat dock.

2 First of all, I would like to thank
3 Mr. Brown and Mr. Jones for all their
4 wonderful efforts to communicate with the
5 community. I am on the council, but I am not
6 representing the council. I am representing
7 my community.

8 I would like to express my concerns
9 regarding the plans to construct docks and
10 multiple boatlifts at the above-referenced
11 property.

12 These plans would create a large
13 dock that will project into a very busy
14 section of the Assawoman Bay.

15 With all due respect to the studies
16 that have been made, I think we have to go
17 beyond technology and actually see how this
18 will impact the property owners and their use
19 of boats in the area.

20 My first question is why two
21 boatlifts? This is an area populated by
22 family homes, and it's not a marina type of
23 environment.

24 And I also question why waterway



1 concessions are being asked of the homeowners
2 already at risk trying to access the bay
3 around this dangerous point.

4 Why is DNREC even considering
5 subaqueous leasing of a water area needed by
6 the existing property owners to access the
7 bay around this point?

8 And, you know, over the years DNREC
9 has not taken any responsibility for dredging
10 this area, so the channel is very limited.
11 And some of the limitations are due to the
12 silting, the eroding of the existing property
13 we are talking about.

14 So it's a very dangerous area to
15 navigate. And I think the existing property
16 owners have a right to ask for a little bit
17 more consideration.

18 If you will look at the property
19 just to the east of the Bruner property, you
20 will notice their boat dock is not on the
21 north side; it's over on the east side. And
22 I would suggest that the Bruners consider
23 putting their dock on the west side away from
24 the water traffic.



1 And that's pretty much it. I
2 understand this is a difficult decision, but
3 I think the access to the bay for the current
4 property owners is at risk here. Thank you
5 very much.

6 MS. NEWMAN: Thank you
7 Mrs. Carmean. We will next have Steve Ross
8 provide your comment. Please state your
9 first and last name for the record.

10 MR. ROSS: Can you hear me?

11 MS. NEWMAN: Yep.

12 MR. ROSS: So I own the house next
13 door. I have been here since 1973 when my
14 family built the house.

15 Um, as Vicki mentioned, my dock is
16 on the east side and not on the north side.
17 And I am also very concerned about the safety
18 with kayak and sail in the area.

19 And, actually, as the diagrams
20 show, the deepest water is directly to the
21 north across, and there is a lot of east/west
22 traffic across.

23 So I would strongly recommend that
24 the dock be redesigned and put on the west



1 side and not on the north side.

2 I have no problem, I completely
3 understand the desire to have a dock. But
4 everybody else on the north end has docks on
5 the east and west.

6 And I also want to highlight the
7 fact that it does look like much of the
8 existing property has washed into the bay on
9 the west side.

10 That, unfortunately, was due to the
11 property, itself, not being properly
12 maintained. And the fact that the water is
13 shallower over there shouldn't cause the --
14 shouldn't give reason for the Bruners to
15 actually put a dock on the north side where
16 all of the boat traffic is.

17 So I have also provided written
18 comments and put much of the same
19 information, but I wanted to just highlight.

20 I think that the diagrams
21 that you are showing here make it very clear
22 why every day when I am down here many times
23 an hour, I see boats going very quickly
24 through that particular area.



1 Boaters are not particularly aware
2 of where it's deep and where it's shallow.
3 And we know that there are many shallow areas
4 that boats gets up on a plane, and they do so
5 starting from the deep water right in front
6 of my property, and then zip right across
7 that particular area where this dock would
8 be.

9 So if it was on the west side, it
10 would avoid that concern and greatly increase
11 the safety of those of us who are not in
12 motorized boats, me included.

13 As you can see in that picture that
14 was presented, I have a small sailboat on my
15 dock.

16 Those are my comments. I can yield
17 the rest of my time.

18 MS. NEWMAN: Thank you, Mr. Ross.
19 We will now move on to Taylor McCracken.

20 MR. MCCRACKEN: Hi. This is Taylor
21 McCracken.

22 MS. NEWMAN: Thank you. You may
23 proceed with your comment.

24 MR. MCCRACKEN: Yeah. Hi. So I



1 don't have a ton of technical comments. I
2 think, just speaking similar to the first two
3 people that provided comment, I think the
4 dock is much better served to the surrounding
5 community to be on the west side.

6 You know, myself boating in the
7 area for 28 years, that area is extremely
8 tight with regard to water depth. And adding
9 the dock, plus pier, plus boat ramp, it's
10 going to be extremely difficult to navigate.

11 I know, you know, personally we're
12 talking about upsizing our current boat, but
13 we have some severe hesitations with the
14 current plan of the dock for the Bruners.

15 So, yes, that's basically the gist
16 of what I have to say tonight. I think it's
17 much better served on the west side. And I
18 will yield the rest of my time to the next
19 person.

20 MS. NEWMAN: Thank you,
21 Mr. McCracken. We will now have Janice
22 Bortner. Please provide your comment.

23 MS. BORTNER: Hi. Can you hear me?

24 MS. NEWMAN: Yes. Hi,



1 Mrs. Bortner. Can you please give your first
2 and last name for the record, and then you
3 may proceed with your comment.

4 MS. BORTNER: Sure. Good evening.
5 My name is Janice Bortner. I have resided
6 with my family at 1303 North Schulz Road for
7 25 years.

8 I want to say that I respect the
9 fact that the Bruners want to enjoy boating
10 on the bay and wish them many happy years in
11 their new home.

12 I feel they also need to understand
13 that many other families also want to enjoy
14 the bay for boating.

15 And I agree with all the other
16 comments that were made regarding the dock
17 being out in a very busy waterway. And I
18 know that in order for those boats to go by,
19 they have to plane in order not to hit the
20 bottom of the bay.

21 Um, I think it's just an accident,
22 a dangerous situation that could also -- that
23 could be taken care of, and it would be a
24 compromise to put the dock on the west side.



1 So I do agree with that.

2 And I also agree that, as a
3 single-family home, I think, you know, the
4 dock on the west side would be a great
5 compromise.

6 I think it would be really
7 negligent on the part of DNREC to approve
8 plans for the north-facing dock and lift as
9 they are presented today.

10 As a concerned wife, mother, and
11 grandmother of boaters who use this waterway
12 all the time, I would like to know who will
13 be accountable when someone is injured.

14 You know, I just, DNREC, the
15 Bruners? I don't know. The governor?
16 Because I feel that it would be very
17 negligent to approve this.

18 Um, I thank you, Mr. Jones, for
19 hearing our concerns. And please consider
20 the consequences of this decision.

21 Thank you.

22 MS. NEWMAN: Thank you,
23 Mrs. Bortner. We will now move on to Mr --
24 I'm sorry -- I'm not sure if it's a Mr. or



1 Mrs., D. Shepard Cook.

2 MR. COOK: Can you hear me?

3 MS. NEWMAN: Yes. I can hear you.

4 Please state your first and last name for the
5 record, and then you may give your comment.

6 MR. COOK: Good evening. I'm
7 Shepard Cook, and I'm commodore of the
8 Fenwick Island Yacht Club.

9 As commodore of the yacht club, I'm
10 speaking on behalf of our 80 members and our
11 concerns with possible hazardous navigation
12 and boater safety regarding the proposed pier
13 on Old Inlet Point.

14 The club has used these waters just
15 north of Old Inlet Point and south of Seal
16 Island, the location of the subject of the
17 Subaqueous Lands lease application, since
18 1959.

19 These plans place the pier and the
20 dock where two channels converge, and boats
21 frequently travel at high speeds in this
22 area.

23 We are extremely concerned about
24 the safety hazards to our members created by



1 this pier and dock. Our members are on
2 slow-moving sailboats, catamarans, kayaks,
3 and stand-up boards near the proposed
4 location of the dock.

5 The risk of small boats being
6 unseen and unheard by fast-moving watercraft,
7 due to the blind spot created by this pier
8 and adjacent house, is large.

9 This dock also unnecessarily
10 intrudes into the public waters we use
11 frequently. For the six-plus decades that
12 the club has existed, there have been docks
13 and piers along the Old Inlet Point to the
14 east and west, not to the north.

15 During that time, the club safely
16 used these public waters, which were easily
17 navigable without physical or visual
18 obstructions.

19 The Fenwick Island Yacht Club
20 strongly recommends that the current dock be
21 moved to the west side of the Old Inlet Point
22 out of the high-traffic corridor.

23 We recommend the dock and pier to
24 be further minimized to reduce its intrusion



1 into the bay. The bay-ward side of the dock
2 should extend no further than the original
3 boat pilings and boat lifts, and should not
4 use additional pilings that extend 12 feet
5 out into the bay.

6 Thank you for allowing me and our
7 club to express our safety and hazards to
8 navigation concerns regarding the proposed
9 pier and dock at 1306 Schulz.

10 MS. NEWMAN: Does that conclude
11 your comment, Mr. Cook?

12 Does that conclude your comment
13 Mr. Cook?

14 MR. COOK: Yes, it does.

15 MS. NEWMAN: Okay. Thank you. I
16 just wanted to make sure before we move on.

17 Lastly, we have Melvin and Jackie
18 Wright that will provide their three-minute
19 comments.

20 If you can please state your first
21 and last name for the record of whom will be
22 speaking?

23 MR. WRIGHT: Yes. My name is
24 Melvin Wright. And I'm at 1213 North Schulz



1 Road.

2 MS. NEWMAN: Thank you.

3 MR. WRIGHT: The comment I want to
4 make, please, is just looking at the diagrams
5 that Mr. Launay put up, they were very small
6 on my computer. I'm sorry I don't have a
7 bigger screen.

8 But I'm trying to figure out how
9 far out the intrusion is going to be into the
10 bay. I see that the dock goes out, I think,
11 13 feet. And then you got 4 feet as a width
12 of the pier there. But I couldn't tell how
13 many feet the boatlift had.

14 It looked like to me it might have
15 been 15 feet. I'm not sure of that number.
16 I don't know if it was 10 or 15.

17 But if I were to use the number 15,
18 so 13, 4 and 15 is 32 feet coming off of that
19 area.

20 To me -- and I also have a sailboat
21 and go around this corner pretty frequently.
22 And on a pretty nice, windy day, it drives
23 you right into that point, so you got to be
24 really careful of where you are going. This



1 would be pretty much a large obstacle for me
2 to try to have to navigate.

3 Also, my other question is -- and I
4 guess no one can really answer this, but
5 maybe somebody will along the line. But I
6 understand when Ed Joy owned that property
7 and he was given an opportunity to fix his
8 bulkhead, and he never did, that area washed
9 away.

10 And, as has already been stated,
11 that the old pilings are there. I understood
12 that that property reverted back to the State
13 of Delaware.

14 And I just wondered, did Delaware
15 lease this property back to Mr. Bruner, or
16 did Mr. Bruner be able to work some kind of
17 deal out where he could actually buy the
18 property that's under water?

19 I'm not sure about that. That's a
20 big question I have about it.

21 Also, this is a vacation area. And
22 in the summertime, the boats out there are
23 tremendous as far as the number of boats
24 going and coming and back and forth.



1 And they are using the channels.

2 All of the little bay that I'm on, that my
3 house backs up to, there are a number of
4 houseboats that come and go in that area, so
5 that's a very, very busy corner.

6 It's not what you see in the month
7 of May, when it seems like a lot of these
8 studies were taken.

9 You really need to look at this in
10 June, July, and August and see how many boats
11 are coming through.

12 So on those points, I really object
13 to this being built in this location. I
14 think also I agree with the other people that
15 it would be better on the north side or the
16 west side of the property.

17 So those are my comments. And
18 thank you very much.

19 MS. NEWMAN: Thank you, Mr. Wright,
20 for providing your comment.

21 This now concludes the public
22 comment portion of tonight's hearing. I want
23 to thank you all for providing your public
24 comment.



1 And, again, for those who were not
2 able to provide a -- or I'm sorry -- who were
3 not able to register, preregister prior to
4 12:00 p.m. today, I do encourage you to
5 please provide your written comment by
6 November 20th, to which the hearing record
7 will remain open.

8 Again, I want to thank everyone for
9 attending the virtual hearing tonight. The
10 hearing is now concluded at 6:53 p.m.

11 (Concluded at 6:53 p.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 10th day of November 2020.



Lorena J. Hartnett
Registered Professional Reporter

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