

Secretary's Order No.: **2008-W-0040**

RE: Wetlands and Subaqueous Lands Section Permit Application of Robert Tunnell, Jr., to construct a pier extension, dock, and additional improvements at Lot #33, Herring Landing, at the end of Camp Arrowhead Road (CR 279), Angola Neck, Lewes, Delaware

Date of Issuance: September 10, 2008

Effective Date: September 10, 2008

I. Background:

On Wednesday, April 30, 2008, the Department of Natural Resources and Environmental Control held a public hearing at the Beacon Middle School, 19483 John J. Williams Highway (Route 24), Lewes, Delaware, in order to receive comments and solicit the views of various members of the community and the public in general with regard to the proposal of the Applicant, Robert J. Tunnel, Jr.. The Applicant proposes to remove an 8 foot by 19 foot dock, including 2 boat lifts, currently attached to a 5 foot wide by 206 foot long pier, of which 66 linear feet is over State regulated tidal wetlands. The portion of the pier over water (Rehoboth Bay) is 140 feet long, and approximately 136 linear feet of the structure is channel-ward of the mean low water line. To the end of the pier, Mr. Tunnel has applied to construct a 4 foot wide by 80 foot long extension, a 5 foot wide by 30 foot long dock, a 4 foot wide by 30 foot long finger pier, 2 mooring pilings, and to relocate the two boat lifts. The pier extension and docking structures are proposed because of shoaling that is occurring channel-ward of the existing structure, and

the due to the Applicant's desire to provide safe and adequate boating access to the property.

Additionally, Mr. Tunnell has applied to repair and/or replace 190 linear feet of timber bulkhead and place stone reinforcement (rip-rap) in front of the bulkhead; install 350 linear feet of low profile stone revetment in front of tidal wetlands; and construct a series of 4 detached breakwaters to protect approximately 250 linear feet of shoreline. The shoreline protection structures are intended to replace and repair an aging bulkhead and to provide protection from wave erosion for the wetlands along the shore. The proposed work will be done at a residence located at Lot #33, Herring Landings, Angola Neck, Lewes, Sussex County Delaware.

In support of the application for the aforementioned proposed projects, Kelly Wright of Andrews, Miller & Associates, offered a brief presentation on behalf of the Applicant at the public hearing of this matter. Applicant avers that there are two main purposes for this project: (1) shoreline protection of the Applicant's residential property; and (2) to extend/reconfigure Mr. Tunnell's existing pier in order to access deeper water than what he has now. Further discussion of the Applicant's proposals, along with the documentation found in the public hearing record of this matter, is detailed herein.

Public comment regarding the Applicant's proposed project was received by the Department, both in the pre-hearing phase and at the

time of the actual public hearing on April 30, 2008. This hearing was conducted pursuant to 7 Del.C., Ch. 66; DNREC Wetlands Regulations, rev. 11/03/94; DNREC Subaqueous Lands Regulations, rev. 09/02/92; 7 Del.C., Ch. 72; the Subaqueous Lands Act, 7 Del.C., Chapter 72; and 7 Del.C., Chapter 60. Proper notice of the hearing was provided, as required by law.

After the hearing, the Hearing Officer performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated September 3, 2008, and that Report, with its exhibits attached thereto, is expressly incorporated herein by reference.

II. Findings and Conclusions:

1. Proper notice of the hearing was provided as required by law.
2. In lieu of construction of the pier extension as proposed, the Applicant should submit revised plans to construct a dock, 80 feet long, at right angles to the existing pier off of the northeast side of the end of the pier. This will permit the Applicant to achieve the deeper water depth desired, without the necessity of taking the pier extension straight out, closer to the point, thus alleviating the navigability and/or other safety concerns raised at the public hearing of this matter;

3. The Department, through WSLs, should add a condition to the lease granted for this project that ensures the Applicant's structures will not obstruct or otherwise inhibit any neighbor's access to the Creek;
4. The Applicant should submit revised plans which reduce the base width of the proposed stone breakwaters as much as possible, while still maintaining design standards, in order to reduce the total footprint of the structures located in subaqueous lands;
5. The Applicant should submit revised plans which reflect a redesign of the currently bulkheaded portion of the shoreline, in order to eliminate the bulkhead and replace it with a marsh toe sill and low marsh that could tie in to the high marsh behind the bulkhead, or continue the detached stone breakwaters to protect this section of shoreline.

III. Order:

In view of the above findings, it is hereby ordered that the Wetlands and Subaqueous Lands Section Permit Application of Robert J. Tunnel, Jr., to construct a pier extension, dock, and additional

improvements at Lot #33, Herring Landing, at the end of Camp Arrowhead Road (CR 279), Angola Neck, Lewes, Delaware, is hereby ***granted, with certain modifications to the proposed project plans,*** as recommended and set forth in the Department's Response Memorandum of August 7, 2008, and as noted in the preceding Section of this Order.

IV. Reasons:

The record warrants, and the Applicant has reasonably justified to the Department, his requests for the WSLs permit noted above. In an attempt to balance the protection of Delaware's natural resources with the right of a landowner to enjoy and use his own property, the Department has, in its Response Memorandum to the Hearing Officer dated August 7, 2008, suggested several modifications to the Applicant's plans, and stands ready to grant this permit application with the above noted modifications to Mr. Tunnel's proposed plans.

In granting this conditional permit, the Department allows Mr. Tunnel to realize his desires to achieve shoreline stabilization on his property and obtain deeper water depths off his pier than that which he currently enjoys, while simultaneously providing the highest level of protection for Delaware's natural resources and balancing the public policy of this State to protect and preserve its productive wetlands, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes

John A. Hughes
Secretary

Ahear/TUNNELL.Ord.

HEARING OFFICER'S REPORT

REGARDING: Subaqueous Lands Section Permit Application
of Robert Tunnell, Jr., to construct a pier extension, dock, and additional
improvements at Lot #33, Herring Landing, at the end of Camp
Arrowhead Road (CR 279),
Angola Neck, Lewes, Delaware

Lisa A. Vest
Hearing Officer

September 3, 2008

1. Background Findings:

On Wednesday, April 30, 2008, the Department of Natural Resources and Environmental Control held a public hearing at the Beacon Middle School, 19483 John J. Williams Highway (Route 24), Lewes, Delaware, in order to receive comments and solicit the views of

various members of the community and the public in general with regard to the proposal of the Applicant, Robert J. Tunnel, Jr.. The Applicant proposes to remove an 8 foot by 19 foot dock, including 2 boat lifts, currently attached to a 5 foot wide by 206 foot long pier, of which 66 linear feet is over State regulated tidal wetlands. The portion of the pier over water (Rehoboth Bay) is 140 feet long, and approximately 136 linear feet of the structure is channel-ward of the mean low water line. To the end of the pier, Mr. Tunnel has applied to construct a 4 foot wide by 80 foot long extension, a 5 foot wide by 30 foot long dock, a 4 foot wide by 30 foot long finger pier, 2 mooring pilings, and to relocate the two boat lifts. The pier extension and docking structures are proposed because of shoaling that is occurring channel-ward of the existing structure, and due to the Applicant's desire to provide safe and adequate boating access to the property.

Additionally, Mr. Tunnell has applied to repair and/or replace 190 linear feet of timber bulkhead and place stone reinforcement (rip-rap) in front of the bulkhead; install 350 linear feet of low profile stone revetment in front of tidal wetlands; and construct a series of 4 detached breakwaters to protect approximately 250 linear feet of shoreline. The shoreline protection structures are intended to replace and repair an aging bulkhead and to provide protection from wave erosion for the wetlands along the shore. The proposed work will be done at a residence

located at Lot #33, Herring Landing, Angola Neck, Lewes, Sussex County, Delaware.

In support of the application for the aforementioned proposed projects, Kelly Wright of Andrews, Miller & Associates (hereinafter referred to as "AMA"), offered a brief presentation on behalf of the Applicant at the public hearing of this matter. Applicant avers that there are two main purposes for this project: (1) shoreline protection of the Applicant's residential property; and (2) to extend/reconfigure Mr. Tunnell's existing pier in order to access deeper water than what he has now. Further discussion of the Applicant's proposals, along with the documentation found in the public hearing record of this matter, is detailed herein.

Public comment regarding the Applicant's proposed project was received by the Department, both in the pre-hearing phase and at the time of the actual public hearing on April 30, 2008. These public concerns, along with the Department's responses to the same, will all be addressed in greater detail below. Proper notice of the hearing was provided, as required by law.

II. Summary of Record:

In order to ensure an accurate preservation of the record developed in this case, the following is an itemized listing of all materials entered into the record at the time of the hearing:

A. Department's Exhibits:

The Department entered the following exhibits into the record at the public hearing of April 30, 2008:

- Exhibit #1: Copy of the State of Delaware Wetlands Act (Laws and Regulations);
- Exhibit #2: Copy of the State of Delaware Subaqueous Lands Act (Laws and Regulations);
- Exhibit #3: Letter from Jim Chaconas of the Department's Division of Water Resources, WSLs, to the Applicant, c/o Andrews Miller & Associates, Inc., dated March 18, 2008, explaining the scheduling of a public hearing;
- Exhibit #4: Copy of the Public Notice for this hearing;
- Exhibit #5: Applicant's permit application and the plans accompanying same;
- Exhibit #6: Copy of the Public Notice of this application;
- Exhibit #7: Comments received by the Department regarding the public notice of the Tunnel Application, and letters requesting a hearing pursuant to said public notice;
- Exhibit #8: Comments received by the Department from the Natural Heritage Program at DNREC;

- Exhibit #9: Miscellaneous Google Earth maps of the proposed project site;
- Exhibit #10: Copy of the State of Delaware tidal wetlands map depicting said site.

B. Applicant's Presentation/Discussion:

As noted above, Mr. Kelly Wright of AMA made a detailed presentation at the public hearing on behalf of the Applicant with regard to this proposed project. With regard to the aspect of shoreline protection, Mr. Tunnel proposes a low profile stone sill elevation around the perimeter of the property, just above mean high water, in order to reduce erosion of the marsh area present on site. Additionally, the proposed plans call for breakwaters, or offshore rock formations, which are used to provide protection against wave activity. Continuing around the perimeter of the property, the Applicant's plans also call for a revetment, or a stone structure put up against the existing bulkhead, primarily for protection of the property on site near the actual Tunnell residence.

With regard to the second aspect of this project, namely, pier extension and reconfiguration of the Applicant's existing pier, Mr. Tunnell wishes to access deeper water than what he currently enjoys. The proposed extension of the existing pier by 80 feet would extend the total pier length to 216 feet channel-ward of the

mean low water line. At this length, the structure would extend more than twice the length of the other pier and docking facilities located in the near vicinity. In response to safety and/or other navigability concerns raised by the public of boats coming around the point and having to steer around such an elongated pier, the Applicant believes there is no defined channel that will be impacted with such a proposed pier extension. Additionally, Mr. Tunnel proposes to put lights on the pier extension as an additional navigational feature for boaters traveling down to this creek.

C. Public Comments/Concerns/Discussion:

At the conclusion of the Applicant's presentation at this hearing, the Department then began a question and answer session with the Applicant, regarding various concerns that were raised upon reviewing Mr. Tunnel's proposed plans. The following bullet points are a summary of concerns verbalized at the public hearing on April 30, 2008:

- Navigational hazards presented by extending the pier into Rehoboth Bay, in this case, near the mouth of Herring Creek, to the many boaters using this area, particularly during the summer months;
- Concerns from a neighbor that her kayak access from the shore would be jeopardized by the placement of the rock shoreline stabilization structures; and

- Concerns about the replacement of the bulkhead and the amount of rock that will be used for shoreline protection, and questions as to whether a lesser amount of rock and/or vegetative stabilization measures could be effectively substituted for the proposed shoreline stabilization practices.

Additionally, concerns were raised by the Department's Division of Fish & Wildlife, Natural Heritage Program, that the diamondback terrapin nesting habitat could be adversely affected. The diamondback terrapin seeks open upland sandy areas to lay eggs. Field observations of the shoreline at the site indicate that the shoreline is vegetated with marsh-type plants, and that there are no upland sandy areas in the project area that would provide nesting habitat for this creature.

Following the hearing, this Hearing Officer asked WSLS to review this permit application in the light of both the Department's applicable regulations and the public concerns voiced at this hearing, and provide her with a Response Document setting forth the Division's recommendations with regard to each aspect of Mr. Tunnel's proposed project. Jim Chaconas, Environmental Scientist with the Department's Division of Water Resources, Wetlands and Subaqueous Lands Section, conducted this review, and provided

this Hearing Officer with his Response Memorandum dated August 7, 2008.

III. Findings

The Department's aforementioned Response Document of August 7, 2008 encompasses the full range of comment contained in the record, including those from the public and from the Applicant. Each aspect of the Applicant's project, along with the concerns raised by the same, was given a thorough and rational discussion based upon the record formulated in this matter. Based on the comments and concerns expressed for this application, and based upon the Department's regulatory review, WSLS offered its recommendation as to various changes that should be made to this project. For the sake of brevity, and for the Secretary's review and understanding of the record developed in this matter, Mr. Chaconas' Response Document of August 7, 2008 is attached hereto as Attachment "A", and is hereby expressly incorporated into this report for that purpose.

IV. Conclusions and Recommendations:

Based on the public record developed in the course of this hearing, it is my opinion that the record warrants, and the Applicant has reasonably justified, his pending request for a WSLS permit application for the proposed construction of a pier extension, dock, and additional shoreline stabilization/improvements at Lot #33, Herring Landing, at the end of Camp Arrowhead Road (CR 279), Angola Neck, Lewes, Delaware.

For the reasons stated above, I hereby recommend that the permit application of Robert Tunnell, Jr., as listed above be **granted, with certain modifications to the proposed project plans, as recommended and set forth in the Department's Response Memorandum of August 7, 2008.** It should be noted that, throughout this permitting process, the Applicant has always expressed a willingness to be flexible with any changes that the Department believed to be warranted with regard to this project, and so it is the belief of the Department at this time that the Applicant would not feel prejudiced in any way with the aforementioned modifications being placed as conditions to the permit granted him in this matter.

I also recommend that the following findings be made with regard to this matter:

1. Proper notice of the hearing was provided, as required by law.
2. In lieu of construction of the pier extension as proposed, the Applicant should submit revised plans to construct a dock, 80 feet long, at right angles to the existing pier off of the northeast side of the end of the pier. This will permit the Applicant to achieve the deeper water depth desired, without the necessity of taking the pier extension straight out, closer to the point, thus alleviating the navigability and/or other safety concerns raised at the public hearing of this matter;

Public Hearing Officer

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