

In The Matter Of:

DNREC

Andrew and Maureen Bolduc

Hearing - Docket 2020--W-0009

April 15, 2020

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

RE: Andrew and Maureen Bolduc)
Application to Conduct)
Maintenance Dredging and)
After-The-Fact Authorization)
of a Dock Extension)
Docket #2020-P-W-0009)

..

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Access Code: 717 295 425

Wednesday, April 15, 2020
6:00 p.m.

..

BEFORE: Theresa Newman, Hearing Officer
FOR THE DIVISION: Julie Molina, DNREC

-- Transcript of Proceedings --

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1 MS. NEWMAN: All right. So good
2 evening. I believe everyone is present now
3 that is supposed to be, so we're going to go
4 ahead and begin the virtual public hearing.

5 Thank you all for taking the time
6 out of your busy schedules to connect with us
7 today.

8 The date is April 15, 2020, and we
9 are here this evening to provide a formal
10 platform for the State of Delaware Department
11 of Natural Resources and Environmental
12 Control to conduct this public hearing on the
13 permit application submitted by Andrew and
14 Maureen Bolduc for a dock and dredging
15 permit.

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

20 There have been changes made to the
21 DNREC's standard hearing protocols,
22 necessitated by Delaware's ongoing state of
23 emergency due to the COVID-19 pandemic.

24 First and foremost, this hearing is



1 being conducted virtually. Staff is not all
2 together in the same room. Everyone is
3 participating independently at their own
4 respective locations.

5 While there is no sign-in sheet to
6 document physical attendance tonight, WebEx
7 does generate a list of those that are
8 virtually present for this proceeding so that
9 the Department can still have a record of
10 those who have electronically joined this
11 evening.

12 And, again, I thank everyone for
13 their interest in this matter.

14 At the conclusion of these
15 introductory remarks, I will be turning it
16 over to Department staff, who will be making
17 a formal presentation regarding the permit
18 application before us tonight, for the
19 benefit of the formal hearing record being
20 generated.

21 There is a court reporter virtually
22 present, who will prepare a verbatim
23 transcript of the hearing tonight pursuant to
24 the statutory requirement for DNREC to have



1 the same prepared.

2 And, as always, that transcript
3 will be posted on the hearing web page
4 dedicated to this matter as soon as it is
5 received.

6 Please note that the Department
7 will not be accepting any comments in
8 real-time during the hearing this evening.

9 DNREC wishes to ensure, however,
10 that everyone is enabled to offer their
11 comments for inclusion into the record being
12 generated in this matter.

13 Therefore, in all DNREC virtual
14 hearings, and until further notice, the
15 record will remain open for a minimum of 15
16 days following tonight's hearing.

17 In more complex cases, and in the
18 event a request is received for a longer
19 period of time, an extension of that time for
20 the public comment may be granted. However,
21 I would encourage those who have joined the
22 hearing this evening to check the web page
23 dedicated to this public hearing matter by
24 going to DNREC's web page by clicking on the



1 tab for Administrative Law Section and
2 viewing all related details to this hearing.

3 All mechanisms previously available
4 by which to offer comment remains, the
5 electronic comment form, via e-mail, and via
6 USPS.

7 Also, the following protocols
8 remain in place for the DNREC public hearing.

9 All comment received must be solely
10 limited to the subject matter of tonight's
11 hearing.

12 All comments pertinent to the
13 subject matter of this virtual hearing will
14 be incorporated into the record being
15 generated in this matter.

16 In order to ensure that everyone
17 who wishes to offer comment for the
18 Secretary's consideration is accommodated,
19 the record in this matter shall remain open
20 for a full 15 days following tonight's
21 proceedings, or through Thursday, April 30,
22 2020.

23 There is only one authentic record
24 of the formal proceeding tonight, and it is



1 the official court reporter's verbatim
2 transcript.

3 The statutory purpose of tonight's
4 hearing is to build a record with regard to
5 the application submitted by Andrew and
6 Maureen Bolduc for a dock and dredging
7 permit.

8 A record consisting of the
9 transcript for tonight's hearing, all written
10 comments, all exhibits, and my report will be
11 reviewed by the Secretary.

12 The Secretary will ultimately issue
13 an order following that review process,
14 containing his decision on this matter and
15 the reasons therefor.

16 There will be no Q and A session
17 permitted during this hearing, nor will any
18 real-time comments be accepted via this
19 virtual platform during the course of
20 tonight's proceeding.

21 Lastly, it is important to note
22 that no decision has already been made by the
23 Department, nor will any decision be made
24 tonight, with regard to the application



1 submitted by Andrew and Maureen Bolduc for a
2 dock and dredging permit.

3 Again, the record being generated
4 in this matter shall remain open for 15 days
5 from today's date so that the members of the
6 public have ample opportunity to offer
7 written comment for the Secretary's
8 consideration, should they wish to do so.

9 Written comment may be received by
10 the Department up through Thursday, April 30,
11 2020.

12 Comments may be submitted through a
13 comment form link on the hearing page or via
14 e-mail at DNRECHearingComments@delaware.gov,
15 or via the U.S. Postal Service at the
16 physical address for DNREC indicated on the
17 hearing page and/or the public notices
18 previously issued in this matter.

19 Written comments to DNREC may not
20 be submitted using social media platforms
21 such as Twitter, Facebook, YouTube or text
22 messaging.

23 It is important to note that all
24 comment received either through the USPS or



1 via the electronic mechanisms noted just now,
2 as long as it is received by the Department
3 on or before April 30th, will bear the same,
4 exact weight and will be considered equally
5 by the Secretary prior to making his final
6 decision in this matter.

7 The ultimate decision regarding the
8 matter is made by DNREC Secretary Garvin.

9 This formal hearing tonight acts as
10 a mechanism to enable the Department to both
11 thoroughly vet this proposed action to the
12 public and to let the public know the various
13 ways which comment may be submitted for
14 Secretary Garvin's consideration if so
15 desired.

16 With that being said, I am going to
17 hand it over to you, Julie. Are you ready?
18 Do you have your presentation available?

19 MS. MOLINA: Yes, I can add it.

20 MS. NEWMAN: Okay. So if you would
21 like to begin when you are ready.

22 MS. MAURMEYER: This is Evelyn, and
23 I cannot hear Julie. Um, I can't hear the
24 audio from her. I heard you perfectly,



1 Theresa, but I don't hear Julie.

2 MS. NEWMAN: Julie hasn't begun. I
3 think she will give her introduction when she
4 is ready.

5 MS. MAURMEYER: Oh, okay. I'm
6 sorry. I thought she was --

7 MS. NEWMAN: No problem.

8 MS. MOLINA: I'm not able to add
9 the slide show.

10 MS. NEWMAN: You are unable to add
11 the slide show?

12 MS. MOLINA: No.

13 MS. NEWMAN: Give me one moment.
14 You are a panelist. I'm not sure why it's
15 not allowing you -- it's not allowing you to
16 share your screen?

17 MS. MOLINA: No, it's not.

18 MS. NEWMAN: All right. Let's see
19 if it does it now. Try it now.

20 MS. MOLINA: There we go. Perfect.
21 Are you able to view it?

22 MS. NEWMAN: Yes.

23 MS. MAURMEYER: Yes, I see it
24 as well. This is Evelyn. Thank you.



1 MR. BOLDUC: Yes.

2 MS. MOLINA: Okay. So, again, I
3 just want to thank you for being here
4 tonight. My name is Julie Molina, and I'm an
5 environmental scientist. And I work with the
6 Wetlands and Subaqueous Lands Section for
7 DNREC.

8 I just wanted to reiterate that we
9 are here today in a virtual capacity due to
10 the state of emergency that was authorized on
11 March 13, 2020.

12 Part of that state of emergency
13 included the fact that public hearings had to
14 be moved to a virtual setting in order to
15 prevent the community transmission of
16 COVID-19.

17 So, again, the purpose of today's
18 hearing is to provide the public a comment
19 period on Andrew and Maureen Bolduc's
20 application to conduct maintenance dredging
21 and for the after-the-fact authorization of a
22 dock extension.

23 They have applied for a subaqueous
24 lands permit. And that permit would



1 authorize, if approved, the construction
2 activity.

3 The project is located off of
4 White's Creek. You see here this is a zoomed
5 out extent, and then where the yellow star is
6 is where the project is located at the dead
7 end of an unnamed lagoon.

8 There is a zoomed in extent of the
9 project. It is highlighted in yellow here,
10 and it's located at 32408 Holly Terrace Road
11 in Ocean View.

12 So I did want to speak to the
13 initial project overview. You can see that
14 the area is highlighted in red.

15 The project was initially proposed
16 to mechanically maintenance dredge 110 cubic
17 yards of material to a depth of negative
18 4 feet mean low water.

19 And you can see off on the original
20 project plan that it was originally proposed
21 for a dredging activity to take place up to
22 the lagoon centerline.

23 And it was also proposed to dispose
24 into a previously approved borrow pit in the



1 location of Dagsboro, Delaware.

2 The project was placed on a 20-day
3 public notice period from April 4, 2018 to
4 April 24, 2018.

5 We have received one written
6 comment in objection from the public.

7 Also, during the notice period, the
8 Division of Fish and Wildlife gets sent a
9 copy of the project review for any species of
10 concern. They did not find species of
11 concern documented in the dredge location,
12 but there were recommendations made for
13 time-of-year restriction to protect eastern
14 tiger salamander located at the disposal
15 site, so that would be incorporated as a
16 special condition of the permit.

17 Also during the review, the project
18 is sent to the Groundwater Protection Branch,
19 and they evaluate for any concerns between
20 the dredged material at the disposal site and
21 then potential to impact groundwater. And
22 they determined that there was no groundwater
23 contamination.

24 As part of the regulatory review



1 for the Wetlands and Subaqueous Lands
2 Section, we were looking at the controlling
3 water depth for the area, because, you know,
4 regulations speak to not dredging deeper than
5 controlling water depth.

6 You can see here in this image that
7 this is bathymetry that was taken at an
8 average mean low tide. And you can see it in
9 this particular area adjacent to where the
10 project is located, on the dead end of the
11 lagoon it's a low as negative point eight at
12 mean low water, and then gradually it moves
13 to 2 feet.

14 This is the same data map showing
15 the bathymetry for the entire looking where
16 the project is located and then extending
17 further.

18 You can see here that the depths do
19 not reach negative four feet mean low water.
20 It stays consistent with readings for an
21 average of 2 feet.

22 So as part of the permitting
23 process, there were changes made to the
24 project. As part of the regulatory review,



1 the compliance on the property to see if
2 there is any structures that need to brought
3 into compliance.

4 We did find that there was a
5 previously authorized 4-by-25-foot-long dock
6 authorized by SA-199/09. However, on site
7 there was a 4-by-26-foot-long dock with an
8 additional five feet long steps.

9 We requested that the applicant
10 proceeded within this application to follow
11 the process of the after-the-fact permit
12 approval.

13 Another modification that was made
14 during the permitting process is that the
15 dredge location was changed from the lagoon
16 centerline to ten feet away from the adjacent
17 property lines.

18 The property owner to the north
19 submitted a letter of no objection, so their
20 shared property line is the northern limit of
21 the project.

22 And then, as I mentioned to you
23 about before, the dredge depth minimized from
24 the initial request of negative four feet



1 mean low water to negative three feet mean
2 low water.

3 This is the final project overview.
4 This shows the dock extension. It shows the
5 access steps as well as the one foot
6 overbuilt on the dock.

7 And then this shows the area
8 proposed to be dredged. You can see that the
9 cubic yards material changed due to the
10 footprint changing, and now the applicant is
11 requesting to mechanically maintenance dredge
12 153 cubic yards of material; and, again, as I
13 mentioned before, to a depth of negative
14 three feet mean low water.

15 And then, as you can see with the
16 areas outlined in red, they are not dredged.
17 They are not proposing to dredge within 10
18 feet of any property lines that did not
19 submit letters of no objection.

20 The disposal location has remained
21 the same from the initial application, and
22 this shows the location on the aerial view.

23 It is a previously approved borrow
24 pit disposal area located northeast of the



1 intersection of Irons Lane and Old Mill Road.

2 I would like to introduce the
3 exhibits for DNREC.

4 Exhibit 1 is the state of
5 emergency.

6 Exhibit 2 is the state law and
7 regulation regarding subaqueous lands.

8 Exhibit 3 is the draft application.

9 Exhibit 4 is the final application.

10 Exhibit 5 is the letter of no
11 objection, but because the property owner has
12 changed that letter more recently, rather.

13 Exhibit 6, SA-199/09.

14 Exhibit 7, public notice document.

15 Exhibit 8, DNREC public hearing
16 presentation.

17 And Exhibit 9, comments received
18 prior to the hearing.

19 MS. NEWMAN: Okay. Great. We have
20 nine exhibits that you would like to mark for
21 the record that you previously provided to me
22 electronically.

23 So I do have the exhibits that you
24 provided, and I hereby mark those exhibits as



1 Department Exhibits 1 through 9 into the
2 record.

3 Is that all you have for tonight,
4 Ms. Molina?

5 MS. MOLINA: Yes.

6 MS. NEWMAN: Okay. Great. I will
7 add, at the end of the hearing, if we can
8 pull that page back up, or if you just want
9 to leave it here for now, if Ms. Maurmeyer
10 does have a slide show, that's fine. We can
11 do so also.

12 But at this time I am going to now
13 hand this over to Evelyn and ask you to begin
14 your presentation.

15 MS. MAURMEYER: Yes. Thank you
16 very much, Theresa. And, Julie, thank you
17 very much for the very complete history of
18 the project.

19 So my comments will be brief.
20 First of all, let me start out by introducing
21 myself. My name is Evelyn Maurmeyer. I am
22 with the consulting firm Coastal and
23 Estuarine Research Incorporated based in
24 Delaware.



1 I established the firm in 1981, so
2 it's been nearly 40 years that I have been
3 working on projects similar to this, docks,
4 piers, maintenance dredging projects,
5 wetlands work, and so forth.

6 And by way of educational
7 background, I have a master's and Ph.D.
8 degree from the University of Delaware
9 specializing in coastal geology.

10 And as I mentioned, my professional
11 background, I have been doing environmental
12 consulting in Sussex County, Delaware, since
13 1981.

14 Julie already summarized the
15 original application that was submitted on
16 February 27, 2018. And the project went out
17 on public notice from April 4th to 24th,
18 2018.

19 On April 16th, the adjacent
20 deep-end adjacent property owner, Mr. Kevin
21 Laws, submitted a letter of support to DNREC
22 supporting the proposed project.

23 However, on April 18th, there was a
24 letter of concern and objection from a



1 property owner across the lagoon, and that
2 gentleman noted that Mr. Bolduc did not own
3 to the centerline of the lagoon.

4 The early documentation that we had
5 going decades back, Mr. Bolduc's father
6 actually had owned the property, the plaque
7 of the Holly Ridge Terrace did show that the
8 properties went to the centerline of the
9 lagoon.

10 Nonetheless, we proposed only to
11 dredge to the centerline so that the work
12 would be on Mr. Bolduc's property.

13 So the adjacent property, opposite
14 shore property owner, pointed out he did not
15 believe that Mr. Bolduc owned to the center
16 of the lagoon.

17 Subsequently, Mr. Bolduc did have a
18 survey prepared that was submitted to DNREC
19 on September 17, 2018, which showed that the
20 property line ends at the bulkhead, not at
21 the centerline of the lagoon.

22 The second concern voiced was that
23 dredging would cause collapse of the bulkhead
24 by the gentleman who was objecting.



1 Mr. Bolduc -- he maintained that
2 the removal of the mud would cause the
3 collapse of his bulkheads. But Mr. Bolduc,
4 whose profession was lining with OSHA
5 training -- and, Mr. Bolduc, I will let you
6 comment with greater detail -- maintained
7 that the mud in the lagoon is a class C-80
8 material with no structural ability.
9 Therefore, it's unlikely that the mud is
10 holding up the bulkhead, and its removal
11 would not cause the bulkhead failure.

12 And I want to point out that the
13 dredging is going to be at a minimum of
14 10 feet from the bulkhead and in some areas
15 even more.

16 Secondly, in regard to this,
17 Mr. Bolduc did agree to pay half the cost of
18 a proposal by Drawing Marine Construction to
19 install pilings to stabilize Mr. Bolduc -- to
20 stabilize the bulkhead.

21 So even though we are not -- we
22 have no expectation that dredging ten to more
23 feet away will cause failure of the bulkhead,
24 Mr. Bolduc was willing to spend \$2,000 to



1 have pilings put in to further stabilize that
2 bulkhead.

3 The third area of concern was that
4 the dump trucks hauling away the dredged
5 material would stretch the roadway.

6 And even though the objector
7 noted -- and I quote -- "there is no doubt
8 that the canal needs to be dredged," as long
9 as his concerns were met, he would sign off
10 on the project.

11 And we noted that the contractor,
12 Droney Marina Construction, is licensed,
13 bonded, and insured. And any damage to the
14 roadway would be repaired.

15 But I also want to note that this
16 particular contract, who is based in
17 Millville, Delaware, the adjacent town,
18 routinely drives his dump trucks on roadways
19 such as this and has never had an issue with
20 roadway damage.

21 So we feel that objector's concerns
22 were addressed. Mr. Bolduc held subsequent
23 discussions and meetings with Julie in my
24 absence, and it was ultimately modified to



1 dredge only to a depth of minus three feet
2 mean low water, so there was additional
3 minimization that Mr. Bolduc agreed to.

4 On November 7th in an e-mail,
5 November 7, 2019, the objector formally
6 withdrew his approval of the dredging
7 project.

8 We thought that the agreement was
9 reached, that the placement of the -- the
10 placement of pilings would help stabilize the
11 bulkhead, there was going to be no damage to
12 the roadway, and the ownership issue was
13 resolved.

14 Nevertheless, the gentleman, after
15 saying he would sign off on the project,
16 withdrew his approval.

17 So the public notice of the public
18 hearing was then published in March 18th of
19 2020.

20 So in summary, I would like to
21 stress that the project is definitely
22 necessary. Julie provided depths data
23 showing that that part of the lagoon is
24 clearly not navigable at low tide. And as a



1 waterfront property owner, I do believe that
2 it is Mr. Bolduc's right to have ingress and
3 egress to his docking facility.

4 Mr. Bolduc agreed to reduce the
5 dredging from 4 feet to 3 feet at mean low
6 tide. That would still serve his boating
7 needs. And most significantly, he worked for
8 a good half year, if not longer, with the
9 gentleman who objected to the project to
10 reach a resolution, willing to add \$2,000 to
11 come to some agreement.

12 And then, for reasons unknown to
13 us, that was suddenly withdrawn, and here we
14 are at the hearing.

15 So, once again, I believe
16 Mr. Bolduc has met all of the requirements
17 and the recommendations by the Wetlands and
18 Subaqueous Lands Section, so I sincerely hope
19 that his project will be approved as
20 modified. Thank you very much.

21 MS. NEWMAN: Thank you, Mrs.
22 Maurmeyer. Does that conclude your
23 presentation?

24 MS. MAURMEYER: Yes, it does. That



1 concludes my presentation. I did submit by
2 e-mail just an outline of the points that I
3 was making. If that makes it into the
4 exhibits, it would be Exhibit Number 10. If
5 it doesn't make it into the exhibits, my
6 verbal testimony which will appear in the
7 transcript will serve as my exhibit.

8 MS. NEWMAN: Okay. Would you like
9 to mark this in, rather, as the applicant's
10 Exhibit Number 1?

11 MS. MAURMEYER: Yeah, we can do
12 that. Certainly, that will be fine. I'm
13 sorry. I thought we were just going
14 sequentially. But if one through nine were
15 the wetlands, then we could have -- I just
16 have the one exhibit, which is my testimony.
17 Thank you.

18 MS. NEWMAN: Right. Perfect. That
19 was actually the Department's exhibits. So,
20 as the applicant, I will accept the document
21 that was submitted electronically as
22 Applicant Exhibit Number 1.

23 MS. MAURMEYER: Thank you. And
24 that does conclude my presentation.



1 MS. NEWMAN: Thank you. Okay.
2 Well, I don't believe that we had any others.
3 Mr. Bolduc, is there anything that you would
4 he like to add?

5 MR. BOLDUC: I think Evelyn covered
6 everything very thoroughly, and that
7 basically just, you know, the classification
8 of the spoils is self evident when you stand
9 in the lagoon at low tide, it's 3 feet to the
10 bottom, which I feel is a safety issue for
11 anybody maneuvering in a boat or something.

12 Other than that, you know, I think
13 Evelyn handled everything.

14 MS. NEWMAN: Okay. All right.
15 Thank you. Julie, before we sign off, is
16 there anything you would like to add?

17 MS. MOLINA: No, I think the
18 presentation was submitted.

19 MS. NEWMAN: Okay. Great.
20 Wonderful. I thank you all for attending.

21 This now concludes the hearing for
22 tonight. And, again, the record will remain
23 open through April 30, 2020 for comments to
24 be received pertaining to tonight's hearing.



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The hearing is now adjourned at 6:28 p.m.
(Adjourned at 6:28 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 29th day of April 2020.



Lorena J. Hartnett
Registered Professional Reporter

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