

**In The Matter Of:**

*DNREC*

*Subaqueous Lands Lease Permit 204 Salisbury Exchange*

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*Docket #2020-P-W-0010*

*April 30, 2020*

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**WILCOX & FETZER LTD.**

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

RE: Application for Subaqueous Lands )  
Lease Permit by 204 Salisbury )  
Exchange, LLC )  
Docket #2020-P-W-0010

.. . . . .

Virtual Public Hearing  
Dial-In Number: 1-408-418-9388  
Access Code: 712 168 834

Thursday, April 30, 2020  
6:17 p.m.

.. . . . .

BEFORE: Theresa Newman, Hearing Officer  
FOR THE DIVISION: Jennifer Bobola, DNREC

-- Transcript of Proceedings --

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1 MS. NEWMAN: Okay. So I believe  
2 everyone is finally with us, and I appreciate  
3 your time of doing so.

4 The time is now 6:17 on Thursday,  
5 April 2020. Again, thank you guys for taking  
6 the time out of your busy schedules to join  
7 us today.

8 We are going to begin the hearing  
9 at this time. We are here this evening to  
10 provide a virtual platform for the State of  
11 Delaware's Department of Natural Resources  
12 and Environmental Control to conduct a public  
13 hearing on the subaqueous lands permit  
14 application submitted by 204 Salisbury  
15 Exchange LLC.

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

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

24 First and foremost, this hearing is



1 being conducted virtually. Staff is not all  
2 together in one 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 who are  
8 virtually present for this proceeding so the  
9 Department can still have a record of those  
10 who have joined the hearing this evening.

11 At the conclusion of these  
12 introductory remarks, I will be turning the  
13 hearing over to the Department staff and the  
14 applicant, who will be offering a formal  
15 presentation regarding the permit application  
16 matter before us tonight for the benefit of  
17 the formal hearing record being generated.

18 There is a court reporter virtually  
19 present who will prepare a verbatim  
20 transcript of the hearing tonight, pursuant  
21 to the statutory requirement for DNREC to  
22 have the same prepared. And, as always, the  
23 transcript will be posted on the hearing web  
24 page dedicated to this hearing matter as soon



1 as it is received.

2 Please note that the Department  
3 will not be accepting any comments in  
4 real-time during the hearing tonight.

5 DNREC wishes to ensure, however,  
6 that everyone is enabled to offer their  
7 comments for the inclusion of the record.  
8 Therefore, in all DNREC virtual hearings and  
9 until further notice, the record will remain  
10 open for a minimum of 15 days following the  
11 hearing record -- or hearing event.

12 In more complex cases and in the  
13 event a request for a longer comment period  
14 is received, an extension of the time for  
15 public comment may be granted.

16 I would encourage those who have  
17 joined the hearing this evening to review the  
18 web page dedicated to this public hearing  
19 matter by going to DNREC's website, clicking  
20 on the tab for Administrative Law section,  
21 and reviewing all related details to this  
22 hearing.

23 All mechanisms previously available  
24 by which to offer comment remain, the



1 electronic comment form, via e-mail, and via  
2 USPS.

3 Also, the following protocols  
4 remain in place for the DNREC public hearing:  
5 All comment received must be limited solely  
6 to the subject matter of tonight's hearing.  
7 All comments pertinent to the subject matter  
8 of this virtual hearing will be incorporated  
9 into the record being generated in this  
10 matter.

11 In order to ensure that everyone  
12 who wishes to offer comment for the  
13 Secretary's consideration is accommodated,  
14 the record in this matter shall remain open  
15 for a full 15 days following tonight's  
16 proceeding, more specifically through Friday,  
17 May 15, 2020.

18 There is only one authentic record  
19 of this formal proceeding tonight, and it is  
20 the official court reporter's verbatim  
21 transcript.

22 The statutory purpose of tonight's  
23 hearing is to build the record with regard to  
24 the application submitted by 204 Salisbury



1 Exchange LLC for a subaqueous land lease  
2 permit.

3 A record consisting of the  
4 transcript of tonight's hearing, all written  
5 comments, all exhibits, and my report will be  
6 reviewed by the Secretary. The Secretary  
7 will ultimately issue an order following that  
8 review process, containing his decision on  
9 this matter and the reasons therefor.

10 There will be no Q and A session  
11 permitted during the hearing, nor will any  
12 real-time comments be accepted via the  
13 virtual platform during the course of  
14 tonight's proceeding.

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 application  
19 submitted by 204 Salisbury Exchange LLC for a  
20 subaqueous land lease permit.

21 Again, the record being generated  
22 in this matter shall remain open for 15 days  
23 from today's date so that members of the  
24 public have ample opportunity to offer





1 written comment for the Secretary's  
2 consideration, should they wish to do so.  
3 Written comment may be received by the  
4 Department through May 15, 2020.

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

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

16 It is important to note that all  
17 comment received either through USPS or via  
18 electronic mechanisms noted just now, as long  
19 as received by the Department on or before  
20 May 15, 2020 will bear the exact same weight  
21 and will be considered equally by the  
22 Secretary prior to making a final decision in  
23 this matter.

24 The ultimate decision regarding



1           this matter is made by DNREC Secretary  
2           Garvin.

3                       This formal hearing tonight acts as  
4           a mechanism to enable the Department to  
5           thoroughly vet this proposed action to the  
6           public and to let the public know the various  
7           ways in which comment may be submitted for  
8           Secretary Garvin's consideration if so  
9           desired.

10                      With that being said, I'm going to  
11           hand it over to Rebecca Bobola with the  
12           Division of Water to conduct the Department's  
13           part of the presentation.

14                      MS. BOBOLA: Good evening. I'm  
15           Rebecca Bobola with Wetlands and Subaqueous  
16           Lands Section of DNREC. Tonight we're  
17           discussing 204 Salisbury Exchange LLC's  
18           subaqueous land lease application.

19                      On March 13, 2020, Governor Carney  
20           declared a state of emergency due to the  
21           public health threat of COVID-19 and issued a  
22           proclamation ordering public meetings to be  
23           held electronically to prevent unnecessary  
24           public gatherings.



1           The purpose of the public hearing  
2           tonight is to provide the public an  
3           opportunity to comment on 204 Salisbury  
4           Exchange LLC's application to construct and  
5           utilize a residential pier, docks, and  
6           mooring pilings in the form of subaqueous  
7           lands lease.

8           Visible here indicated by the  
9           yellow star is the property, the tax parcel  
10          in question located in Rehoboth Bay.

11          More specifically, the waterfront  
12          parcel here is visible, located at 204  
13          Salisbury Street, Rehoboth Beach. The tax  
14          parcel highlighted has the water frontage  
15          available for construction.

16          The adjacent parcel to the east  
17          does not have water frontage on the triangle  
18          parcel owned by the Delaware Department of  
19          Transportation that lies by Mr. Humphrey's  
20          property at the water.

21          Here are the illustrations of plans  
22          from the initial application that was  
23          received.

24          Highlighted you can see the -- in



1 its entirety, there is a pier, two docks, and  
2 mooring pilings. The original plan proposes  
3 to construct a 4-foot wide by 128-foot-long  
4 pier, two 5-foot wide by 26-foot long docks,  
5 and to install 11 freestanding mooring  
6 pilings.

7 The original plan, the pier meets  
8 land essentially between the two parcels that  
9 comprise 204 Salisbury Exchange LLC and the  
10 dock positioned east of the pier.

11 This project originally was placed  
12 on public notice for a 20-day public notice  
13 period published in both the Delaware State  
14 News and the News Journal for statewide  
15 distribution from September 18, 2019 to  
16 October 8, 2019.

17 The Department received six written  
18 comments in objection to this project.

19 As part of the review, the  
20 regulatory review of this project, a site  
21 visit was conducted in which the applicant,  
22 the applicant's consultant, as well as our  
23 section were present to go over the proposed  
24 project and meet on the site.



1           A part of this meeting was to  
2 collect bathymetry. The points were  
3 conducted at 10-foot increments beginning  
4 30 feet from the mean high water line.

5           The (inaudible) were adjusted to  
6 reflect the mean low tide. (inaudible)  
7 reflecting the pier length reduction was  
8 recommended for this project.

9           Following consultation, the  
10 application was put on hold temporarily while  
11 the applicant pursued ownership of the  
12 state-owned parcel that separates the second  
13 part of the LLC parcel from the waterline.

14           After several months, the applicant  
15 abandoned pursuit of the state-owned parcel  
16 and submitted a revised application and plan  
17 to move forward.

18           To note on this slide before we  
19 move forward, the recommendation for the  
20 reduction comes from the last three points  
21 that reflected no gain in water depth is  
22 noted beyond the 110-foot mark, so the  
23 recommendation to minimize was made.

24           The detail of the project



1 modification, based on agency consultation,  
2 the changes included reducing the length of  
3 the pier from 128 feet to 114 feet in total  
4 length, reducing the number of freestanding  
5 mooring pilings from 11 to 3, subsequently  
6 reducing the number of slips to three, moving  
7 the 5-foot-wide by 26-foot-long docks from  
8 the east side of the pier to the west side of  
9 the pier, and moving the pier's junction with  
10 land west to comply with the setback for the  
11 east property boundary.

12           Visible here are the revised plans  
13 submitted with the revised application.  
14 Highlighted at the top is the property  
15 setback where the pier's junction with land  
16 was moved west. Also highlighted is the  
17 reduction of the pier length to 114 feet to  
18 comply with the bathymetry points that were  
19 collected; the reduced number of mooring  
20 pilings were visible at three; and the docks  
21 oriented extending to the west instead of to  
22 the east per the original plan.

23           That concludes my presentation.  
24 Theresa, would you like me to introduce the



1 exhibits at this time?

2 MS. NEWMAN: Yes.

3 MS. BOBOLA: Exhibit Number 1 is  
4 the State of Emergency Proclamation and news  
5 release authorizing public meetings.

6 Exhibit 2, the State law and  
7 regulations regarding subaqueous lands.

8 Exhibit 3 is the initial  
9 application.

10 Exhibit 4 is the revised  
11 application.

12 Exhibit 5 is the public notice as  
13 sent to stakeholders and as posted to the  
14 DNREC website.

15 Exhibit 6 is the DNREC public  
16 hearing presentation.

17 And Exhibit 7 are the comments  
18 received prior to the hearing.

19 MS. NEWMAN: Great. Thank you. I  
20 have received electronically the Department's  
21 exhibits and hereby mark the documents into  
22 the formal record as Department Exhibits 1  
23 through 7.

24 Is there anything else that you



1 would like to add before I turn it over to  
2 Mrs. Maurmeyer?

3 MS. BOBOLA: No, thank you. That  
4 concludes my presentation.

5 MS. NEWMAN: Okay. Great. Thank  
6 you so much, Ms. Bobola.

7 Mrs. Maurmeyer, I have unmuted you.  
8 Would you like to begin your presentation?

9 MS. MAURMEYER: Yes. Thank you  
10 very much. This is Evelyn Maurmeyer of  
11 Coastal and Estuarine Research.

12 My firm is based in Lewes,  
13 Delaware. I established the business in  
14 1981, focusing primarily on permit  
15 applications for structures such as this one,  
16 docks, piers; also working on other projects  
17 such is as unique marinas, maintenance  
18 dredging, shoreline stabilization, and so  
19 forth.

20 So I have quite a number of years  
21 of experience in preparing and submitting  
22 applications to DNREC for projects much like  
23 these ones that the applicant has submitted.

24 My educational background includes





1 a master's degree and a Ph.D. in geology,  
2 specializing in coastal geology from the  
3 University of Delaware.

4 So I submitted the application to  
5 DNREC on August 1, 2019 for the dimensions  
6 that Rebecca had already summarized.

7 The original application was for a  
8 4-foot by-128-foot long pier, two  
9 5-by-26-foot docks, and 11 freestanding  
10 pilings at the applicant's property adjacent  
11 to Rehoboth Bay at 204 Salisbury Street,  
12 Dewey Beach area of Rehoboth, Sussex County.

13 Prior to submitting the  
14 application, the applicant actually did a lot  
15 of research and background work looking at  
16 the requirement, the guidelines and  
17 regulations that DNREC has for structures  
18 such as docks and piers, and he will explain  
19 that in his presentation.

20 So all these considerations were  
21 taken into account prior to even submitting  
22 the original application, the dimensions of  
23 the structure, the water depth of the types  
24 of vessels that are appropriate for that



1 waterway, which is quite shallow.

2 The application was submitted  
3 August 1, 2019.

4 On September 11th, a site visit was  
5 conducted by representatives of the Wetlands  
6 and Subaqueous Lands Section, of which  
7 Rebecca Bobola is one. I attended, and Scott  
8 Humphrey, the applicant, also attended.

9 The water depths were measured at  
10 that site visit, as presented by Rebecca in  
11 her presentation, one of the exhibits. And  
12 as a result it was recommended to reduce the  
13 length of the pier from 128 feet to 114 feet,  
14 and also to reduce the number of pilings from  
15 11 to 3.

16 It was also noted that there is a  
17 small triangular parcel that is owned by  
18 DelDOT adjacent to the 204 Salisbury Exchange  
19 property, and that a 10-foot setback from  
20 that property line and from all other  
21 property lines is required by DNREC. That  
22 10-foot setback can be waived upon written  
23 approval by the property owner.

24 On September 12, the day after the,



1           um, the day after the site visit,  
2           Mr. Humphrey agreed to the recommendations  
3           put forward by DNREC at the site visit on  
4           September 11, reducing the pier from 128 to  
5           114 feet in length and eliminating 8 of the  
6           11 freestanding mooring pilings.

7                        So we submitted the revised plan  
8           that was also depicted as one of the exhibits  
9           on that date.

10                      The original project was placed on  
11           public notice September 18th for a 20-day  
12           period. Because of the timing and the lead  
13           time involved, the revised plan was submitted  
14           after the public notice went to press, or at  
15           least had to be submitted to DNREC. So, for  
16           that reason, the original application  
17           dimensions were presented in the public  
18           notice.

19                      On October 8th, the applicants  
20           contacted DelDOT to try to resolve the issue  
21           about the property line setback. They sought  
22           to either purchase the parcel or to obtain a  
23           variance for the 10-foot property line  
24           setback.



1           Four months passed. By  
2           February 7th of 2020, there was no positive  
3           response from DelDOT, so we did decide to  
4           submit another revised plan showing a  
5           relocation of the structure to comply with  
6           all of the setback requirements, ten feet of  
7           minimum, ten feet from the DelDOT parcel, and  
8           a minimum of 10 feet from the other parcel  
9           adjacent to the applicant's property.

10           The public hearing then was set on  
11           March 18th and scheduled for today's date,  
12           April 30th.

13           And because of the Governor's  
14           restrictions on meetings, we have the public  
15           hearing that is taking place electronically.

16           So I would like to stress several  
17           things in my presentation. Number one, the  
18           proposed project now meets with all  
19           regulations and guidelines with regard to  
20           dimensions: 4-foot wide pier, length  
21           necessary to achieve navigable water depth,  
22           which were confirmed by the DNREC  
23           measurements taken on site, minimization of  
24           the project by reducing eight of the eleven



1 originally proposed mooring pilings.

2 And I would also like to note that  
3 over the past 20 years, many of the newer  
4 piers that have been approved in the Rehoboth  
5 Bay area exceed the dimensions of that  
6 proposed by the applicant.

7 Specifically, as was even visible  
8 on the aerial photograph that Rebecca  
9 presented as one of her exhibits, there is  
10 one structure that exceeds 240 feet to the  
11 south of the applicant. That is about  
12 400 feet from the applicant's proposed  
13 project.

14 And there is a 120-foot pier with a  
15 5-foot wide dock and a 170-foot pier with a  
16 6-foot by 30-foot dock located in the  
17 Seabreeze Development to the east -- excuse  
18 me -- to the west of the applicant's  
19 property.

20 So, in summary, I would like to  
21 emphasize that the applicant agreed to every  
22 single one of the changes that was  
23 recommended by DNREC. The project as  
24 proposed now, the revised project, meets



1 every requirement with regard to dimension,  
2 with regard to length, with regard to setback  
3 requirements that DNREC has implemented.

4 So we are in compliance with all  
5 the regulations. Other structures similar or  
6 larger in size have been permitted.

7 And as a waterfront property owner,  
8 I would like to request that the application  
9 be approved as proposed.

10 Thank you very much. That  
11 concludes my presentation.

12 MS. NEWMAN: Thank you,  
13 Mrs. Maurmeyer. You did say that the  
14 applicant had a presentation that they would  
15 like to conduct; correct?

16 MS. MAURMEYER: Yes. Scott, did  
17 you want to say some words about the work  
18 that you had done while you were researching  
19 the site conditions and with regard to the  
20 types of vessels that you have and so forth?

21 MS. NEWMAN: I am going to try to  
22 unmute him. Because he is a caller, I can't  
23 see his name, but I believe he was the last  
24 one to log in.



1           So give me one moment and let me  
2           unmute the correct person.

3           Ms. Maurmeyer, thank you for your  
4           presentation. Is there anything that you  
5           would like to submit into the record before I  
6           turn it over to Mr. Humphrey?

7           MS. MAURMEYER: Yes. There was  
8           just one exhibit, and that was an outline of  
9           my presentation. That was essentially a  
10          timeline of the proposed project commencing  
11          on April 1, 20 -- excuse me -- August 1, 2019  
12          when we submitted the original application  
13          and concluding with actually, well, April 4th  
14          when it was determined that we would have  
15          this virtual public hearing on April 30th.  
16          Thank you.

17          MS. NEWMAN: Thank you. I did  
18          receive the document electronically, and I  
19          will enter this into the record as Applicant  
20          Exhibit Number 1.

21          MS. MAURMEYER: Thank you very  
22          much.

23          MS. NEWMAN: No problem,  
24          Ms. Maurmeyer. And I thank you for your



1 presentation. I am going to mute you now.

2 Mr. Humphrey?

3 MR. HUMPHREY: Hello.

4 MS. NEWMAN: Great. Yes, we have  
5 you. You are unmuted.

6 MR. HUMPHREY: Okay.

7 MS. NEWMAN: Mrs. Maurmeyer said  
8 there was something that you wanted to  
9 present on your own behalf.

10 So you can begin your presentation.  
11 And please give the court reporter your full  
12 name for the record before you begin.

13 MR. HUMPHREY: Okay. My name is  
14 Scott Humphrey.

15 MS. NEWMAN: Thank you.

16 MR. HUMPHREY: Okay. Yes. Roughly  
17 about two years ago, I started looking into  
18 purchasing a property on the bay here in  
19 Rehoboth. And eventually, two years later, I  
20 finally was able to find a property that I  
21 was able to bid on and actually get.

22 So and in doing that, during that  
23 time I was researching what sort of  
24 restrictions and what I could and could not





1 do with the property on the bay throughout  
2 the Rehoboth, Dewey, and actually all the way  
3 up to Indian River Beach there.

4 And in my research I found out  
5 about the depth of the bay in those areas.  
6 And I, you know, presently have, you know,  
7 two Hobie Cat sailboats. And I have -- now I  
8 have a Chaparral 21-foot powerboat.

9 And before purchasing the Chaparral  
10 boat, I owned another boat that had a -- it  
11 sat deeper in the water than say the  
12 Chaparral, but before I purchased the  
13 Chaparral boat, I was looking for a boat that  
14 met this 18-inch requirement at low tide,  
15 because that was what we had to work with.

16 And that's kind of like the  
17 research I did before purchasing that  
18 particular boat, knowing that the, at low  
19 tide, the depth that -- the restrictions  
20 were, in that part of the bay, were  
21 18 inches. And that's based on just the  
22 information I got from DNREC and various  
23 homeowners that have built piers in the past.

24 So that's kind of my background as



1 far as I did a lot of research. I obviously  
2 went out and purchased a boat that falls in  
3 line with being able to be docked in that  
4 bay.

5 After talking to some other people,  
6 they had made the mistake of having a boat  
7 that was, in fact, deeper than that and, of  
8 course, they had to get rid of it because  
9 they couldn't, you know, bring it into that  
10 part of the bay because of the depth.

11 And that's really, I mean, I just  
12 spent a lot of time researching it. And then  
13 like, you know, I hired, you know, Anderson  
14 Civil Engineering to do all my -- do all my  
15 site work there before I did anything.

16 So I kind of went to the extreme to  
17 make sure that I was, you know, dotting the  
18 Is and crossing the Ts and, you know,  
19 location and like what Evelyn already said,  
20 that we were trying to figure out where to  
21 put this pier on the property based on  
22 DNREC's setbacks with the bay.

23 And that's, you know, really all I  
24 wanted to say is that I spent a lot of time



1 researching this before, you know, moving  
2 ahead with doing what we did.

3 MS. NEWMAN: Okay. Great. Thank  
4 you, Mr. Humphrey. Was there anything that  
5 you would like to mark in as an exhibit that  
6 you can send me electronically, or did you  
7 want to just have the document submitted by  
8 Mrs. Maurmeyer on your behalf as the exhibit?

9 MR. HUMPHREY: Yes. The document  
10 that Ms. Maurmeyer is submitting will be  
11 fine. Yes.

12 MS. NEWMAN: Okay. Great. Thank  
13 you. Mr. Humphrey, does that conclude your  
14 presentation?

15 MR. HUMPHREY: Yes, it does.

16 MS. NEWMAN: Okay. Great. I  
17 appreciate you taking the time to come in  
18 and, you know, give your verbal presentation.

19 So what we will do now, I'm going  
20 to go ahead and mute you, and then we will  
21 wrap up this hearing. One moment.

22 So that concludes the hearing for  
23 tonight. Again, there is no comment period  
24 during the virtual hearing tonight.



1                   However, the record will remain  
2                   open through May 15, 2020, and you can submit  
3                   comments.

4                   There are different ways listed.  
5                   If you are looking at the actual  
6                   presentation, there is links here and the  
7                   information on how you can submit those  
8                   comments.

9                   If you are joining via phone, you  
10                  can go to the DNREC web page under the admin  
11                  law section. And, again, the public hearing  
12                  page for this hearing is titled 204 Salisbury  
13                  Exchange LLC. By clicking on that link, it  
14                  will open up a page, a designated web page  
15                  for this hearing that will have all  
16                  information virtually tonight as well as ways  
17                  that you can submit comments if you wish to  
18                  do so.

19                  With that being said, we will go  
20                  ahead and adjourn the hearing tonight. It is  
21                  6:44, and this hearing is now adjourned.  
22                  Thank you all for attending.

23                               (Concluded at 6:44 p.m.)  
24



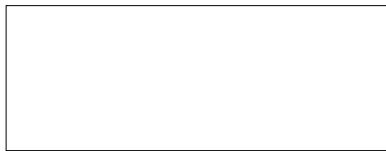
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CERTIFICATE

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 8th day of May 2020.



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Lorena J. Hartnett  
Registered Professional Reporter

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