

**In the Matter Of:**

*Department of Natural Resources & Environmental Control*

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***SUBAQUEOUS LANDS LEASE APPLICATION HEARING***

*May 19, 2021*

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

RE: Subaqueous Lands Lease Application )  
submitted by Matthew Eisenmann )  
to maintain a pier and build a )  
pier extension, a floating platform,)  
and a boat lift in Herring Creek )  
Docket #2021-P-W-0006 )

.. . . .

Virtual Public Hearing  
Dial-In Number: 1-408-418-9388  
Event Number: 129 109 6845

Wednesday, May 19, 2021  
6:00 p.m.

.. . . .

BEFORE: Theresa Newman, Hearing Officer  
FOR THE DIVISION: Rebecca Bobola, DNREC  
Division of Water

-- Transcript of Proceedings --

WILCOX & FETZER  
Registered Professional Reporters  
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1 MS. NEWMAN: I believe that  
2 everyone is now connected and we are ready,  
3 so we are going to begin the virtual public  
4 hearing.

5 Thank you for taking your time out  
6 of your busy schedule. Today is Wednesday,  
7 May 19, 2021.

8 We are here this evening to provide  
9 a virtual hearing platform for the State of  
10 Delaware's Department of Natural Resources  
11 and Environmental Control to conduct its  
12 public hearing on the subaqueous lands lease  
13 application submitted by Mr. Matthew  
14 Eisenmann to maintain a pier and build a pier  
15 extension, a floating platform, and a  
16 boatlift in Herring Creek.

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

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

1           First and foremost, this hearing is  
2           being conducted virtually. Staff is not all  
3           together in the same room. Everyone is  
4           participating independently at their own  
5           respective locations.

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

12          At the conclusion of the  
13          introductory remarks, I will be turning the  
14          hearing over to the Department staff and then  
15          to the applicant to provide formal  
16          preparations for the benefit of the hearing  
17          record being generated for the matter before  
18          us tonight.

19          Ones the presentations conclude,  
20          those persons who have preregistered prior to  
21          12:00 p.m. today will be acknowledged and  
22          provided the opportunity to offer a comment  
23          on the proposed application in alignment with  
24          DNREC's standard comment protocols.

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

9                   In addition, I would encourage  
10 those who are attending tonight's hearing to  
11 also visit the hearing webpage dedicated to  
12 this matter for additional details concerning  
13 the proposed application submitted by  
14 Mr. Eisenmann.

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

19                   Before we begin the presentations,  
20 please be advised of the following protocols  
21 that remain in place for all DNREC public  
22 hearings:

23                   One, all comment received must be  
24 limited solely to the subject matter of

1           tonight's hearing.

2                   All comments pertinent to the  
3           subject matter of this virtual hearing will  
4           be incorporated into the record being  
5           generated in this matter.

6                   In order to ensure that everyone  
7           who wishes to offer comment on the  
8           Secretary's consideration is accommodated,  
9           the record in this matter shall remain open  
10          following tonight's proceeding through  
11          Thursday, June 3, 2021.

12                   I apologize. That was number two.

13                   So number three, there is only one  
14          authentic record of the formal proceeding  
15          tonight, and it is the official court  
16          reporter's verbatim transcript.

17                   Four, the statutory purpose of  
18          tonight's hearing is to build a record with  
19          regard to the proposed application before us  
20          tonight.

21                   A record consisting of tonight's  
22          hearing transcript, all written comments, all  
23          exhibits, and eventually the Hearing  
24          Officer's Report will be reviewed by

1 Secretary Garvin. The secretary will  
2 ultimately issue an order, following that  
3 review process, containing his decision on  
4 this matter and 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 Six: Those who have preregistered  
9 to offer verbal comments will be acknowledged  
10 to speak at the conclusion of the  
11 presentation portion of tonight's proceeding.  
12 Additional instructions with regard to  
13 offering verbal comment tonight will be  
14 provided at that time.

15 Seven: It is important to note  
16 that no decision has already been made by the  
17 Department, nor will a decision be made  
18 tonight with regard to this proposed  
19 application.

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



1 June 3, 2021, so that the public may offer  
2 written comment, should they wish to do so.

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

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

14 Please remember all comment  
15 received either through USPS or via the  
16 electronic mechanisms noted just now, as long  
17 as received by the Department on or before  
18 June 3rd, will bear the exact same weight and  
19 will be considered equally by the secretary  
20 prior to making his final decision in this  
21 matter.

22 Lastly, the ultimate decision  
23 regarding the matter is made by DNREC's  
24 Secretary Garvin. This role and proceeding

1 acts as a mechanism to enable the Department  
2 to thoroughly vet the application matter to  
3 the public and to let the public know the  
4 various ways by which comment may be  
5 submitted for Secretary's Garvin's  
6 consideration if so desired.

7 With that being said, I will now  
8 hand it over to Mrs. Bobola with the Division  
9 of Water to provide the Department's  
10 presentation.

11 MS. BOBOLA: Thank you, Theresa.  
12 My name is Rebecca Bobola, and I'm an  
13 environmental scientist with the Wetlands and  
14 Subaqueous Lands Section of DNREC.

15 And tonight's hearing is for  
16 Mr. Matthew Eisenmann's subaqueous lands  
17 lease application.

18 Here you will see the state of  
19 emergency proclamation authorizing us to hold  
20 electronic and virtual public hearings to  
21 prevent unnecessary gatherings at this time  
22 with the current restrictions.

23 The purpose of this hearing  
24 tonight, as Theresa mentioned, is to provide

1 the public an opportunity to comment on  
2 Matthew Eisenmann's application to construct  
3 and utilize a residential pier extension,  
4 floating dock, and boatlift at his residence.  
5 And this application falls under subaqueous  
6 lands lease.

7 Visible here is an area of the  
8 proposed project location and the existing  
9 structures as they exist today.

10 Here is another visual of the  
11 proposed project location. The parcel  
12 boundaries are highlighted in yellow. It's  
13 located at 34477 Skyler Drive, Lewes,  
14 Delaware.

15 The initially proposed project  
16 consisted of maintaining the existing  
17 structure and constructing a 4-foot wide by  
18 10-foot long fixed pier extension, installing  
19 a 3-foot wide by 10-foot long gangway,  
20 installing a 6-foot wide by 25-foot long  
21 floating platform.

22 The visuals here include an  
23 overhead aerial view of the proposed work  
24 as well as a section view.

1           The proposed project was on public  
2 notice for 20 days, for a period of 20 days,  
3 published in two statewide circulations, the  
4 Delaware State News and the News Journal,  
5 from May 13, 2020, to June 2, 2020.

6           Four written comments were received  
7 in objection. Comments beyond the scope of  
8 Chapter 72 subaqueous jurisdiction were  
9 resolved externally.

10           As a component of the regulatory  
11 review, our section evaluated the proposed  
12 work in regard to property lines extended and  
13 how it relates to equitable apportionment of  
14 water access for riparian landowners, as  
15 shown in this visual with the existing  
16 structures, including Mr. Eisenmann's current  
17 structure within the cove on Herring Creek.

18           The revised project overview is  
19 visible here. It's an illustration of the --  
20 sorry. The proposed project as revised is  
21 visible here, which consists of constructing  
22 a 4-foot wide by 45-foot long fixed pier,  
23 installing a 6-foot wide by 12-foot long  
24 floating platform on the west side of the

1 pier, and installing a boatlift at the end of  
2 the fixed pier on the northwest side. The  
3 visuals include an overhead plan view  
4 as well as a section view.

5 This concludes my presentation.  
6 Comments will be accepted through June 3,  
7 2021.

8 Theresa, would you like me to  
9 introduce my exhibits at this time?

10 MS. NEWMAN: Yes, you may.

11 MS. BOBOLA: The following are  
12 proposed exhibits for the Department.

13 Exhibit 1 is state of emergency  
14 proclamation and news release authorizing  
15 electronic public meetings.

16 Exhibit 2 are the state law and  
17 regulations regarding subaqueous lands.

18 Exhibit 3 is the original  
19 application.

20 Exhibit 4 is the revised  
21 application.

22 Exhibit 5 -- I'm sorry -- Exhibit 5  
23 is the original public notice.

24 Exhibit 6 is the notice of public

1 hearing as it appeared in the News Journal,  
2 the State News, on the State Public Meeting  
3 Calendar, and on the DNREC Calendar of  
4 Events.

5 Exhibit 7 is the DNREC  
6 presentation.

7 Exhibit 8 are the comments received  
8 during the original public notice period.

9 And Exhibit 9 are the responses to  
10 the revised plans.

11 MS. NEWMAN: Thank you,  
12 Mrs. Bobola. Does this now conclude the  
13 Department's presentation?

14 MS. BOBOLA: It does.

15 MS. NEWMAN: Thank you. So I have  
16 received the exhibits that you just went  
17 through. And I do hereby mark these exhibits  
18 as Department's Exhibits 1 through 9.

19 We will now move on to  
20 Mr. Eisenmann to provide his presentation.  
21 One moment, Mr. Eisenmann, while I give you  
22 the presenter role to share your  
23 presentation. Mr. Eisenmann?

24 MR. EISENMANN: Yes, please.

1 MS. NEWMAN: Okay. You should be  
2 able to share your screen or upload your  
3 presentation. And once you do so, you may  
4 begin with your presentation.

5 MR. EISENMANN: Sure. Okay. Can  
6 you see it now?

7 MS. NEWMAN: Yes.

8 MR. EISENMANN: Okay. Great.  
9 Hello. My name is Matt Eisenmann. I'm the  
10 applicant for the subaqueous lands lease  
11 application we are talking about tonight.

12 I do want to thank everyone on the  
13 DNREC side for your time tonight and your  
14 evening, taking your time out, as well as the  
15 participants that are either listening or  
16 will be talking tonight.

17 I have just a few slides to go  
18 through, mainly why we are asking for what  
19 we're asking for, maybe a little bit more  
20 detail, and some -- probably some historical  
21 background to make everybody aware of that.

22 So this is a picture of the  
23 application area for the extension that we  
24 are asking for. I'm trying to go to the next

1 page. Hold on.

2 MS. NEWMAN: I think if you hit the  
3 space bar, it will go forward.

4 MR. EISENMANN: No. It popped it  
5 up to a shared content screen.

6 MS. NEWMAN: Oh, okay.

7 MR. EISENMANN: Page down doesn't  
8 work either. There it is.

9 So there are two reasons we're  
10 asking for this application: One is fair and  
11 equitable access to navigable water depths.

12 You can see in the picture here --  
13 and this is just the typical low tide in this  
14 part of the creek -- the water drains out  
15 pretty well, leaving only a few inches at the  
16 end for us to moor a boat.

17 So we are looking for additional  
18 length to the existing pier to be able to  
19 reach better water depths for that. You  
20 know, mooring a boat in low water areas like  
21 this is bad for the substrate underneath and  
22 also causes hazards and is less ideal, you  
23 know, from the boat standpoint. So that's  
24 reason number one.



1                   Number two is with the large  
2                   fluctuation in tides, we are looking for safe  
3                   access for kayaking and paddle boarding.

4                   We are all avid kayakers and paddle  
5                   board users. We were actually out there  
6                   yesterday. With the tides fluctuating, it  
7                   can be difficult to get on and off.

8                   So we are asking for a floating  
9                   pier section to allow us to be able to do  
10                  that, which is very consistent with the  
11                  neighborhood docks in this part of the cove,  
12                  so we are not asking for anything new or  
13                  unique.

14                  Just a quick shot on the project  
15                  location. Rebecca already showed that, but I  
16                  wanted to show where the approximate channel  
17                  is. It's on the south side of this part of  
18                  Herring Creek.

19                  So we are not impeding any traffic  
20                  with our extension. You know, from this it's  
21                  approximately 700 feet from the location to  
22                  the channel.

23                  The area above the channel is used  
24                  for tubing and mooring of boats and jet-skis,

1 but at the very tip where our location is,  
2 those activities don't occur.

3 We have lived here for a year and a  
4 half and have yet to see, you know, that  
5 activity this far up in the creek, so we  
6 don't believe we are creating, you know,  
7 additional blockage or hazard as far as the  
8 activities in the creek are concerned.

9 This photo is a historical photo  
10 from 2009. This is actually a photo from our  
11 neighbor's application for their dock. So  
12 since 2009 this location for our property has  
13 been used for the mooring of a boat. It can  
14 be seen there in the picture.

15 This is a picture of our pier  
16 that's on the bottom of the picture. It  
17 shows the mooring area that we have. It's on  
18 this side because of the water depths are  
19 marginally higher on this side versus the  
20 other side.

21 It is within 20 feet of the  
22 neighbor's dock. The neighbor's dock was  
23 built after ours was built and run, you know,  
24 within the 20 feet, and then less short here;

1 so, you know, the 20-foot clearance is known  
2 and understood from that land property  
3 owner's original build as acceptable to them,  
4 so in our application we have tried to  
5 maintain 20 or more feet from their structure  
6 to keep compliant with their original  
7 intention of the build of their dock.

8 And, again, just from the shallow  
9 depths it is difficult in this area to moor a  
10 boat.

11 This is the same slide that Rebecca  
12 showed, which was the proportional property  
13 lines extended that was shared with  
14 landowners last year sometime.

15 I have highlighted the appropriated  
16 area for our lot in the yellow lines. As you  
17 can see, the neighbor's dock is quite  
18 significantly within that appropriated area.  
19 That construction that occurred did not  
20 consider in the cove that all owners have  
21 riparian water rights to navigable water. So  
22 that is located there.

23 You can see that ours is a little  
24 in over and now which would be in the

1 property to the west, which is owned by the  
2 HOA for visitors of Herring Creek.

3 So it is very much a logjam area  
4 where consideration for owners wasn't really  
5 considered. So in our design we have tried  
6 very hard to thread the needle, maintain  
7 distance from the neighbor's dock at the same  
8 or more, as well as leaving as much possible  
9 room for the HOA to do what the HOA might  
10 want to do in the future in terms of building  
11 a dock or whatnot, so ...

12 Just a closeup of the project  
13 design: Rebecca covered it's a 45-foot  
14 extension. We kept the length the same as  
15 the original. We do have a floating, you  
16 know, 6 by 12 shown.

17 And I want to point out the  
18 location of the mooring. We would move from  
19 the east side of our existing pier to the  
20 west side of the extension with a lift. The  
21 water in this area, even with this extension,  
22 is still fairly shallow, so it's best to lift  
23 the boat out of the water to get it off of  
24 the substrate below.

1 I'm showing a few red circles.

2 Those are 20-foot distance circles. So the  
3 one on the top, you can see where near  
4 exactly 20 feet from the neighbor's dock.

5 And then, as the extension goes  
6 out, we have kept that distance or more. But  
7 we have also moved the mooring location of  
8 the boat to the other side. So all in all we  
9 feel like it's a fair and balanced approach.

10 This is just a view to consider the  
11 west side. So the bottom left there is an  
12 existing dock from a neighbor property. We  
13 are approximately 180 feet from that, so we  
14 are not in any approach for a boat or  
15 navigable issues there. It's quite some  
16 distance.

17 And then from an HOA standpoint  
18 between shore and our fixed, or the extent of  
19 our structure, which would be the pilings for  
20 the lift, is 70 feet approximately; so that  
21 does leave, you know, a portion, a good  
22 portion which is equitable to their  
23 appropriated lines for the HOA to build.

24 These lines are actually more

1 aggressive towards the mouth of the creek  
2 than the property lines extended originally  
3 were. So, for that reason, we feel it's fair  
4 and equitable for the HOA.

5 So we have tried to put a lot of  
6 thought into balancing it. You know,  
7 waterfront is everybody wants what everybody  
8 wants. We get that and understand that.  
9 But, you know, we do have land ownership on  
10 this cove. We do have riparian water rights  
11 which allow us to seek navigable water. And  
12 that's all we are doing.

13 With the distance that we were  
14 appropriated, you know, we could have  
15 proposed a T-shaped dock or an L-shaped dock  
16 with enough distance, but we chose to leave  
17 it as a -- excuse me -- a straight pull-in to  
18 reduce the space, so we are trying to keep it  
19 as narrow as we can to leave everyone as much  
20 room as possible because of the logjam  
21 scenario that exists.

22 So we have 70 feet of existing pier  
23 over the water, and we are proposing another  
24 45 feet, which gives us a total over water

1 distance for pier structure of 115 feet.

2 That does sound like a lot, but, you know, to  
3 put it in comparison, the recent build just a  
4 few doors down on Sundance Lane that was just  
5 constructed last year, 120-foot pier, a  
6 similar size, 6-by-12 floating with a 6-by-30  
7 dock, and that area is in deeper water than  
8 we are here.

9 So, again, we have tried to limit  
10 the size of our structure to less than what  
11 other properties have. From a total square  
12 footage standpoint of what's over the creek,  
13 it's far smaller than other structures due to  
14 the lack of a 6-by-30 or 6-by-20 foot L or  
15 T-shaped dock that the rest of the owners  
16 have; so we are keeping it smaller from an  
17 environmental footprint standpoint, from a  
18 view standpoint, and all of that, just  
19 seeking to get to what we feel is the minimal  
20 distance needed to reach navigable water.

21 So that concludes my presentation.  
22 A lot of thought went into it. I'm hopeful  
23 that a fair and equitable apportionment of  
24 the rights of the landowners will occur and

1 try to balance, you know, everybody's desires  
2 as best as possible.

3 I guess I turn it back over to you,  
4 Theresa.

5 MS. NEWMAN: -- that what you just  
6 went through?

7 MR. EISENMANN: I'm sorry?

8 MS. NEWMAN: I'm sorry. I  
9 apologize. I have electronically received  
10 the Power Point presentation that you just  
11 went through. And you would like to mark  
12 that as an exhibit; is that correct?

13 MR. EISENMANN: Correct.

14 MS. NEWMAN: Okay. I hereby mark  
15 the Power Point presentation as was presented  
16 as Applicant's Exhibit Number 1.

17 Are there any other documents that  
18 you would like to enter into the record at  
19 this time?

20 MR. EISENMANN: No, not at this  
21 time.

22 MS. NEWMAN: Okay. Thank you. And  
23 then we have the presentation -- now that the  
24 presentations have concluded, we will now



1 turn our attention to those who have  
2 preregistered for the opportunity to offer  
3 verbal comment at tonight's hearing.

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

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

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

20 There are five registered  
21 commenters that will be called upon in the  
22 following order to offer verbal comment: The  
23 first to speak will be Al Laura. Second,  
24 Carlos Lasanelli. Sorry about that if I said

1           that wrong. Third is Jean McCullough.  
2           Fourth, John Eklund. And, lastly, Rita  
3           Lipick.

4                       And to assist the commenters with  
5           regard to the amount of time they have, there  
6           is a visual timer that has appeared on the  
7           screen that will count down to three minutes.

8                       When it is the speaker's turn to  
9           comment, that speaker's audio will be  
10          unmuted, their identity will be confirmed,  
11          and the timer will begin.

12                      At the end of the three minutes,  
13          the speaker's audio will be automatically  
14          placed back on mute, and we will move on to  
15          the next person to be acknowledged to offer  
16          public comment.

17                      Please note there is no live video  
18          feed of the commenters, as they will provide  
19          a comment by audio only.

20                      All comments will be transcribed by  
21          the court reporter and thereby incorporated  
22          into the hearing record.

23                      If a speaker is not able to finish  
24          their comments within the three-minute time

1 period, the Department encourages you to  
2 submit the completed comment in writing no  
3 later than June 3rd.

4 No commenter will be granted more  
5 than three minutes at a time to speak for any  
6 reason.

7 With that being said, may I have Al  
8 Laura unmuted, and please state your first  
9 and last name and who you are representing  
10 for the record, and you may begin your  
11 comment.

12 MR. LARA: My name is Alfred Lara.  
13 I am representing the Board for the Villages  
14 at Herring Creek. What else would you like?

15 MS. NEWMAN: That was all. You may  
16 begin your comment. Thank you.

17 MR. LARA: Okay. Prior to  
18 purchasing my home in 2017, I contacted DNREC  
19 because the property had empty waterfront  
20 lots on both sides of it.

21 I asked what the rules and  
22 regulations were for dock and pier  
23 construction on the lots. It was explained  
24 to me that they could have piers and docks in

1 line with the property line.

2 I gave the address and asked if  
3 they could specifically explain what that  
4 meant. I was told the lines continued  
5 straight out into the water, and a pier or  
6 dock could not be any closer than 10 feet to  
7 that line.

8 I also had interest in the  
9 Eisenmann property before he purchased it and  
10 spoke with Rob Whitford, whose company,  
11 Precision Marine, installed the docks on the  
12 cove.

13 I asked specifically about the dock  
14 in question and was told it was at its limits  
15 due to waterfront footage and location. He  
16 informed me it was given permission to be  
17 built with several restrictions and was at  
18 the extreme limit as to its length. It was  
19 to be used as a crabbing pier for social  
20 gathering and to have access for one vessel,  
21 not a lift.

22 All of the piers were installed  
23 according to rules and regulations at the  
24 time and in a uniform manner. All are

1 approximately the same length so as not to  
2 interfere with each other's boating  
3 abilities.

4 Homeowners make their purchases  
5 doing due diligence, investing millions of  
6 dollars in homes in expectations of the  
7 projection of their decisions on existing  
8 rules. To now tell a homeowner who bought a  
9 waterfront lot with no pier or dock, and who  
10 wants to see only a natural setting, that  
11 their neighbor can build a pier or a dock in  
12 front of their property is an absurdity and,  
13 without a doubt, diminishes property values  
14 unfairly.

15 The presentation of this project  
16 has been unique from the onset. This had  
17 projection lines going straight into the  
18 water. Then it has had projection lines  
19 going at severe angles into the water. And  
20 it has also had projection lines going  
21 straight and then bending at an angle over  
22 70 feet into the water.

23 The use of projection lines seem to  
24 alter according to what was beneficial at the

1 time. The last presentation shows an even  
2 more expanded project with only one  
3 projection line, not clearly defining whose  
4 water rights it lies in.

5 When investigating it, it shows  
6 Mr. Eisenmann's pier is already in violation  
7 of his water rights, the location, and  
8 proceeds to even expand the project to  
9 intrude even more into the community water  
10 area.

11 This also creates a hazard to  
12 navigation by forcing community members'  
13 vessels into a prolonged area of extremely  
14 shallow water.

15 The community has over 100  
16 households that are not willing to give up  
17 this right and endanger the safety of their  
18 family and children by placing them in an  
19 unsafe area.

20 In conclusion, the Board of the  
21 Villages at Herring Creek still objects to  
22 this project.

23 In response to the request of Mr.  
24 Eisenmann's children, I was concerned about

1 their safety and enjoyment for water access.  
2 I made the suggestion that I would approach  
3 the community about him putting a jet-ski  
4 lift and a kayak launch on the west side of  
5 his already existing pier, but I received no  
6 response to the offer of assistance.

7 And in order for Mr. Eisenmann to  
8 have a pier that's going to be functional, it  
9 would have to be 500 foot long to get to  
10 water he could use. We all have the same  
11 issue in here, and it's virtually impossible  
12 to get through.

13 And I will rest with that.

14 MS. NEWMAN: Thank you, Mr. Lara,  
15 for your comment. If there is any additional  
16 comment that you would like to provide, again  
17 you may provide that in a written format  
18 before June 3rd.

19 We will now move on to the next  
20 commenter, Carlo Businelli.

21 MR. BUSINELLI: Can you hear me?

22 MS. NEWMAN: Yes, Carlo, I can hear  
23 you. You may please first state your first  
24 and last name for the record, and you may

1 begin your comment.

2 MR. BUSINELLI: Okay. My name is  
3 Carlo Businelli. My wife, Kathy, and I are  
4 the Eisenmann neighbors to the east on Lot  
5 47. And we object to the Eisenmann dock  
6 extension as it's currently proposed.

7 We have submitted two objection  
8 letters, the first in 2020 after the original  
9 extension plans were submitted, and a second  
10 in 2021 when those plans were revised.

11 Both of our letters describe in  
12 great detail the significant concerns that we  
13 have with the Eisenmanns' proposed extension.

14 And due to my limited speaking  
15 time, I will just touch upon a few.

16 First, the Eisenmanns' revised  
17 application drawing omits the location of  
18 their dock extension relative to the adjacent  
19 neighbors' property line. The proportional  
20 property line extended slide presented does  
21 not represent all the current property lines.

22 DNREC regulations governing the use  
23 of subaqueous lands, specifically Item  
24 4.9.210, states that all structures shall be



1 set back a minimum of 10 feet from adjacent  
2 property lines. Exceptions may be allowed  
3 only if a written letter of no objection is  
4 obtained from the adjacent property owner.

5 It is our contention and that of  
6 our legal counsel that any extension of the  
7 current Eisenmann dock will come within  
8 10 feet of our extended property line, as  
9 defined by DNREC when all the docks within  
10 the cove were approved and constructed.

11 The Eisenmann dock extension would  
12 violate this required 10-foot property line  
13 setback, and by DNREC's regulations would  
14 require a written letter of no objection from  
15 us as well as from the Villages at Herring  
16 Creek HOA, owner of the other adjacent  
17 property.

18 The Eisenmann dock extension  
19 application is incomplete without these  
20 letters and, therefore, should be denied.

21 Matt Eisenmann was fully aware of  
22 his property line and the expansion  
23 limitation of his dock prior to purchasing  
24 his property. He told me so in conversations

1 as well as via e-mail. He purchased his  
2 property knowing full well what his dock  
3 expansion limitations are.

4 Second is our concern for safety.  
5 The close proximity of the proposed extension  
6 to our dock creates a navigational safety  
7 hazard and raises the possibility of an  
8 accident occurring.

9 Even more concerning is that the  
10 proposed extension completely blocks access  
11 to our boatlift on the one side and prevents  
12 us from utilizing both entrances to our lift,  
13 which is important to have for docking of  
14 vessel, especially during windy conditions.

15 And, finally, since the proposed  
16 extension wraps tightly around our dock, it  
17 sits directly behind our dock and would  
18 completely block our ability, or that of a  
19 future owner, to extend our own dock to reach  
20 deeper water as the Eisenmanns wish to do.

21 It would be unfair to allow the  
22 Eisenmanns to gain a benefit that would  
23 effectively shut down our ability to gain the  
24 same benefit. Losing the ability to extend

1           our own dock would, in essence, decrease the  
2           value of our property.

3                       That's all I have to say. Thank  
4           you for your consideration.

5                       MS. NEWMAN: Thank you. Next, can  
6           I have Jean McCullough unmuted?

7                       MS. MCCULLOUGH: Hi. This is Jean  
8           McCullough.

9                       MS. NEWMAN: Hi, Jean.

10                      MS. MCCULLOUGH: Can you hear me?

11                      MS. NEWMAN: You may begin with  
12           your comment. Yes, I can hear you. You may  
13           begin with your comment.

14                      MS. MCCULLOUGH: Okay. I object on  
15           two fronts, though not as technically as had  
16           been done before, but I will object, first of  
17           all, as part of the HOA, and then  
18           specifically my property which is involved,  
19           which is Lot 53.

20                      I was never notified originally.  
21           And thank heavens I happened to speak to Ann  
22           Lara.

23                      So our property lines were never  
24           shown on any of the drawings that I have

1           seen, anyhow. I would love -- I will look to  
2           see, and did this afternoon to see if the  
3           documents were up there for the Eisenmann  
4           presentation, and there was nothing there  
5           that I could see.

6                       As far as I can tell, it will come  
7           directly, the way the dock extension is, it  
8           will come directly and will reside in my side  
9           and back yard.

10                      I am not sure how close to the  
11           wetlands, but the wetlands, at least from  
12           what I can see, would have to be perilously  
13           close and would more than get the wash-back  
14           from it.

15                      I also would argue that they do  
16           have riparian rights. They are on the water.  
17           It was outlined as a crabbing dock. So the  
18           riparian rights are there. It's just not to  
19           the deeper depth or length. To do that would  
20           create not only a problem to the east side,  
21           but also to the west side, because I will now  
22           be restricted as to which way I can come in  
23           and out with my boat.

24                      Right now, I come in one way, but

1 sometimes, again for the wind, I will come in  
2 the other direction. And as far as I know,  
3 everything that we have done, we have honored  
4 and complied with the DNREC regulations in  
5 terms of all of the applications, everything  
6 that was done for the dock.

7 And I guess the biggest thing is  
8 that my concern was we were never seen as a  
9 property owner whose property lines extended  
10 would be impacted. And my front yard, my  
11 side yard, and my back yard will directly be  
12 impacted by this extension.

13 And those are my objections.

14 MS. NEWMAN: Thank you,  
15 Ms. McCullough. Next, may I have John Eklund  
16 unmuted, please?

17 MR. EKLUND: Yes. Can you hear me  
18 okay?

19 MS. NEWMAN: Yes. You may begin.  
20 Please state your first and last name, and  
21 you may begin your comment.

22 MR. EKLUND: John Eklund. I'm  
23 representing Linda and myself. We reside at  
24 23917 Sunny Cove Court, which is in the next

1 street over.

2 We appreciate the opportunity to  
3 share our input and concerns related to the  
4 Eisenmann request.

5 Our back yard has direct water and  
6 wetlands view of the Herring Creek, including  
7 a water surface in which the Eisenmanns  
8 request to extend the pier.

9 We are opposed to the pier  
10 modifications presented by Mr. Eisenmann.  
11 Other neighbors in the HOA have already or  
12 will provide at this hearing or in writing  
13 concerns as to the legality of the request,  
14 data and information missing from the  
15 request, and concerns related to the risk of  
16 future enjoyability by the entire Herring  
17 Creek community should the request be  
18 approved.

19 Our reasons supporting rejection of  
20 the pier are outlined in our letter dated  
21 May 13, 2021, which have been submitted as  
22 part of this process.

23 These reasons include: A  
24 three-story beach house was built in 2014

1           which was specifically designed to maximize  
2           the beauty, beautiful view of Herring Creek,  
3           and the wetlands. We spent literally years  
4           searching for a property which would match  
5           our criteria.

6                        The most important criteria to us  
7           is that the property have as much water view  
8           as we could afford.

9                        Any extension of the current  
10          Eisenmann pier structure would be in direct  
11          line of sight of our property, interfering  
12          with our water view, reduce the enjoyment of  
13          our property, and therefore depreciate our  
14          property value.

15                      It's important to note the  
16          Eisenmanns already have access to the water  
17          through their existing pier. In fact, they  
18          have already been able to launch kayaks off  
19          that existing dock. Therefore, the proposed  
20          extension that they are requesting is both  
21          unnecessary and unreasonable.

22                      While they may be seeking deeper  
23          water, they knew or should have known the  
24          benefits or limitations of the existing pier

1 structure when they purchased the property.

2 My wife and I made a major life and  
3 investment decision based on the character of  
4 the wetlands and water views. It is  
5 inequitable to permit another party to make a  
6 change for their benefit which is a real and  
7 negative affect on neighbors.

8 The actions of one neighbor for  
9 their enjoyment should and must not  
10 unreasonably interfere and disturb the rights  
11 of others.

12 We request that the Eisenmann  
13 request being denied. Thank you again for  
14 the opportunity to participate and express  
15 our concerns.

16 MS. NEWMAN: Thank you, Mr. Eklund.  
17 Next is Rita Lipick. May I have Rita Lipick  
18 unmuted, please.

19 MS. LIPICK: Yes, this is Rita  
20 Lipick. I live at 23913 Sunny Hill Court,  
21 Lot 50. I just wanted to make sure that if I  
22 had some concerns after the presentation, I  
23 could be able to speak publicly.

24 MS. NEWMAN: I'm sorry. You wanted



1 to make sure you can speak?

2 MS. LIPICK: Publicly. And at this  
3 point I do not have any comments that I wish  
4 to share.

5 MS. NEWMAN: Okay. Mrs. Lipick,  
6 what you are able to do is submit a written  
7 comment between now and June 3rd for the  
8 consideration of the secretary, and those  
9 ways will be posted at the end of the  
10 hearing.

11 MS. LIPICK: Okay. I also was not  
12 able to access the documents using the  
13 website information.

14 And the other thing I want to know  
15 is are the exhibits presented during this  
16 presentation going to be available online,  
17 and what is the URL?

18 MS. NEWMAN: Sure. We can send you  
19 a link, if you want to send an e-mail through  
20 the DNREC comment e-mail box. Again, that  
21 will be posted at the end of this hearing.  
22 We can most certainly send you a link. And  
23 they are currently posted. All the exhibits  
24 that we have entered into the record tonight

1 are available online.

2 MS. LIPICK: Okay. Because I don't  
3 think they were earlier, unless I'm doing  
4 something wrong.

5 MS. NEWMAN: Um, it is possible.  
6 They have been available for at least the  
7 past two days. And, more recently, the  
8 applicant's presentation was just uploaded, I  
9 believe, yesterday.

10 So they are available. But we can  
11 send you that link, if you want to send us an  
12 e-mail through the DNREC comments mailbox,  
13 and we will provide you the correct link.

14 MS. LIPICK: All right. Thank you.

15 MS. NEWMAN: No problem.

16 That will now conclude the public  
17 comment portion of tonight's hearing. I want  
18 to thank you all for your comments.

19 And, again, for those who may not  
20 have been able to provide their comment at  
21 tonight's hearing, you are able to provide a  
22 written comment no later than Thursday,  
23 June 3, 2021, to which the hearing record  
24 will remain open through.

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I want to thank you all for  
attending the virtual hearing. The hearing  
is now concluded at 6:43 p.m.

(Concluded at 6:43 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 25th day of May 2021.



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Lorena J. Hartnett  
Registered Professional Reporter

# Subaqueous Lands Lease Application Hearing - May 19, 2021

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# Subaqueous Lands Lease Application Hearing - May 19, 2021

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