

**From:** Rita Lysik <[ritaml1211@gmail.com](mailto:ritaml1211@gmail.com)>  
**Sent:** Wednesday, May 13, 2020 2:54 PM  
**To:** Calder, Gayle H. (DNREC) <[Gayle.Calder@delaware.gov](mailto:Gayle.Calder@delaware.gov)>  
**Subject:** Mathew Eisenmann: Subaqueous Land lease application

Dear Ms. Calder,

I am writing to you regarding the notification in the Cape Gazette by Mathew Eisenmann to Maintain a 4 by 70 foot long pier and to construct a 4 by 10 foot long pier extension, a 3 by 10 foot long gangway, and a 6 by 25 foot floating dock in Herring Creek at 34477 Skylar Drive, Lot #48, The Villages at Herring Creek, Lewes, Sussex County, Delaware.

My sister and I are co-owners of Lot #50, 23913 Sunny Cove Court. We have, as part of our deed, an easement allowing us access across lots #48 and 49 and access to the dock. My understanding is that the previous owner of lots #49 and 50 shared the cost of building the dock with the owner of Lot #48. This application to DNREC was made without our knowledge and I am not sure if it is valid without our agreement. Until a determination is made as to the authority of Mr. Eisenmann to submit this application, I request that this application be suspended.

Thank you considering my request.

Contact Information:

Home phone: 302-549-1550

Cell Phone: 774-437-8408

Rebecca and Gayle -

Thank you for all of the information and assistance that you have provided to us on this matter.

We object to Mr. Matthew Eisenmann's Wetlands and Subaqueous Lands Section Basic Permit Application and Appendix A (Boat Docking Facilities, 1-4 Slips) dated April 23, 2020 submitted to Tyler Brown. A copy of the application was provided to us by Rebecca on May 19th.

Attached please find our formal, written comments regarding the application. We are providing our comments in response to the public notice (also attached) that was published on May 13, 2020 at DNREC's request. A copy of the public notice was provided to us by Gayle on May 15th.

We appreciate the opportunity to express our concerns regarding the application, and we thank DNREC for its consideration. If the Secretary determines that a hearing is in the public interest, we will be happy to attend.

We would be most grateful if you would acknowledge receipt of this email and confirm that you are able to open and view our comments. If you have any questions, or if there is anything else that DNREC requires of us at this time, please do not hesitate to let us know.

Best regards,

Carlo & Teresita Businelli  
973-978-0853

Carlo & Teresita Businelli  
17 Trouville Drive  
Parsippany, NJ 07054

May 28, 2020

Ms. Rebecca Bobola  
Environmental Scientist  
Wetlands and Subaqueous Lands Section  
Delaware Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

RE: DNREC Wetlands and Subaqueous Lands Section Basic Permit Application and  
Appendix A (Boat Docking Facilities, 1-4 Slips) Submitted by Matthew Eisenmann

Dear Ms. Bobola –

We are the owners of 23962 Sundance Lane, Lot 47, The Villages at Herring Creek, Lewes, Sussex County, DE. Our property is adjacent to Mr. Eisenmann's. We object to the proposed project detailed in the above referenced permit application submitted by Mr. Eisenmann to the Delaware Department of Natural Resources and Environmental Control (DNREC) on April 23, 2020 (Application). The Application includes a proposal to construct a 4 by 10 foot long pier extension, a 3 by 10 foot long gangway, and a 6 by 25 foot long floating dock in Herring Creek, at 34477 Skyler Drive, Lot 48, The Villages at Herring Creek, Lewes, Sussex County, DE (Proposed Project).

In summary, it is our position that:

1. There are errors and omissions in the Application, including misrepresentation of our property lines;
2. The Proposed Project will violate the required 10-foot setback from our property line and therefore will require a written letter of no objection from us as an adjacent property owner. This letter was not acquired or included in the Application;
3. The Proposed Project will encroach upon our private interests and those of our community; and
4. The Proposed Project could have negative wildlife and aesthetic impact.

The purpose of this letter is to intervene and provide DNREC with our formal, written comments in response to the Application. Our comments are being provided prior to the June 2, 2020 deadline that was specified in the public notice, which was published in both the News Journal and The Delaware State News on May 13, 2020.

We have reviewed a copy of the Application, including Appendix A (Boat Docking Facilities, 1-4 Slips). Please note, however, that we have not been provided with copies of SL-144/07, SU-223/10, or the Agreement of Easement, all three of which were referenced in the Application.

You have informed us that the two regulations below apply to the Proposed Project:

TITLE 7  
Conservation  
Natural Resources  
CHAPTER 72. Subaqueous Lands

TITLE 7  
Natural Resources & Environmental Control Delaware Administrative Code  
7500 Wetlands and Subaqueous Lands  
7504 Regulations Governing the Use of Subaqueous Lands

The code sections referenced in our comments below are from the 7504 Regulations Governing the Use of Subaqueous Lands.

### **1. Errors, Omissions, and Misrepresentation of Our Property Lines**

The Application does not include a certified copy of the deed or a survey plot plan, both of which are required pursuant to section 3.1.2.4. Although Mr. Eisenmann included a Buildable Area Plan in the Application, it is our understanding that a buildable area plan does not provide the same level of accuracy regarding property lines as would a survey plot plan. The Buildable Area Plan that was included also does not reflect the location of his current pier relative to his property lines. Location of the current pier, along with identification of the exact location of property corners and property lines, is relevant to the Application and required pursuant to section 3.1.2.2.4. As such, it is our position that Mr. Eisenmann's Buildable Area Plan is unacceptable for purposes of this Application, and therefore, as an initial matter, we contend that the requirements of 3.1.2.4 are not satisfied due to the Application's omission of the deed and the survey plot plan.

Furthermore, Mr. Eisenmann included a self-prepared Plan View of the Proposed Project (Figure 7) illustrating how his Lot 48 property lines extend into the wetlands and Herring Creek. We disagree with the presentation of our adjacent Lot 47 property lines in Figure 7. According to Figure 7, the property line between Lot 46 and our Lot 47 is drawn as a straight line. Similarly, the property line between Lots 48 and 49 is drawn as a straight line. However, the property line between our Lot 47 and Mr. Eisenmann's Lot 48 is only drawn as a straight line up to a certain point, and from that point, the property line is extended towards our Lot 47 at an unspecified angle. It is our understanding that the property line between Lots 47 and 48 should be represented as a straight line into the wetlands and Herring Creek, in the same way as the other property lines drawn in Figure 7. As such, we do not believe that the property line between Lots 47 and 48 is represented correctly in Figure 7, particularly without further explanation or official documentation providing the necessary verification. Therefore, we contend that the Application does not satisfy the requirements of sections 3.1.2.1 and 3.1.2.4 because Figure 7 does not accurately represent the location and boundaries of the Proposed Project or the exact location of property corners and property lines.

Misrepresentation of our property lines could be considered grounds for denial of a permit or lease pursuant to section 3.1.1.2. Accordingly, unless the property lines represented in the Application can be verified, we believe that the Application should be denied.

## **2. Violation of 10-Foot Setback**

Our understanding that the property line between Lots 47 and 48 should be represented as a straight line in Figure 7 is consistent with information that we received from both Precision Marine Construction, Inc. (Precision Marine) and Mr. Eisenmann himself.

On April 2, 2020 we reached out to Mr. Rob Whitford of Precision Marine, the company that originally designed the location and size of every pier and dock in the Villages at Herring Creek development. We were told that when Mr. Eisenmann's existing pier was constructed, it was extended into the wetlands and Herring Creek as far as possible to avoid crossing neighbor setbacks and requiring neighbor approval, given the DNREC guidance. According to Precision Marine, extending the existing pier any farther would have put the pier into the adjacent property setbacks, requiring property owner approval from both sides (i.e., approval from The Villages at Herring Creek Home Owners Association (HOA) and the then-owner of our Lot 47). If the property lines as indicated in Mr. Eisenmann's Figure 7 of the Application are correct, then extending the original pier further would not have encroached on any setbacks, which is inconsistent with the explanation provided by Precision Marine. We do not see a reason why Precision Marine, a company that is experienced at dock building and familiar with DNREC regulations, would have missed an opportunity to construct a longer pier for Lot 48. Furthermore, we do not believe that the property lines have changed since the time the existing pier on Lot 48 was built. Therefore, it is our position that the setback constraint raised by Precision Marine is still relevant today. Extension of the existing pier as proposed in the Application will encroach upon our property's 10-foot setback, and possibly also on the HOA's setback, and will require a letter(s) of no objection as required by section 4.9.210.

Mr. Eisenmann himself acknowledged his setback constraints to us in two separate emails dated October 9, 2019 and October 30, 2019. Below is an excerpt from the October 30, 2019 email:

*"...We had the pier surveyed along with our lot, and as you can see in the picture below, it gets cut off by the setbacks. Since the lot is a pie shape, as you go out it ultimately comes to a point. We can't put a boatlift at the end, since it'll hit too many property lines, and the water level is just so low anyways. Your dock is also on the survey, since they had the reference points. There is still a little bit of room for us to go out within the setbacks, but ideally we are looking to go out 40ft to reach the typical mean low tide level of 18". If we go out straight, we'll impede on the neighborhood setback and yours about 2ft each way, but the neighborhood is likely to fight it. If we turn very slightly to avoid that, it would put the pier about 5ft into the setback on your side and stay out of the neighborhood setback."*

Below is the picture Mr. Eisenmann provided to us in that email:



Based on this email, it appears that Mr. Eisenmann conducted a survey of his property, including his pier, documentation of which we did not see included in the Application. The setback explanation in his email is consistent with the setback explanation provided to us by Precision Marine. The email also confirms that Mr. Eisenmann himself understood that the property line between Lots 47 and 48 should be drawn as a straight line, and that he was aware that extension of his existing pier will encroach on neighbor setbacks. It is our position that the drawing provided to us by Mr. Eisenmann in his October 30, 2019 email more accurately illustrates our property lines than Figure 7 included in the Application. We were very surprised to see the presentation of our property lines in Figure 7, and it is our position that Mr. Eisenmann's self-prepared Figure 7 is inaccurate and misleading.

Therefore, it is also our position that Mr. Eisenmann's response to #14 in Appendix A (Boat Docking Facilities) is incorrect. He answered "NO" to "Will any portion of the structure or any vessel be placed within 10 feet of your neighbor's property?". We believe the answer to both parts of that question should be "YES" based on the information we received from Precision Marine and from Mr. Eisenmann himself. Accordingly, it is our position that the Application requires letters of no objection from adjacent property owners as required by section 4.9.210, and without such letters, the Application is deficient and should be denied.

Even if Mr. Eisenmann's Figure 7 is correct (and we believe it is not), according to the design of the Proposed Project, Mr. Eisenmann's moored vessel will encroach upon the 10-foot setbacks, regardless of which side of the proposed dock it is moored on. We are not clear on the regulations pertaining to the mooring of a vessel within a 10-foot setback, however, we believe that this setback violation may require a letter of no objection as well.

### **3. Encroachment Upon Our Private Interests and Those of Our Community**

The Proposed Project will permanently block our ability, or that of a future owner, to extend our own property's dock. This is a significant and unacceptable encroachment upon our private interests, negatively impacting our property value. We hope that DNREC will consider this financial impact to us pursuant to section 4.7.5.1.

In addition, the Proposed Project will interfere with access to our existing boatlift, and our property's ability to navigate into it. Figure 7 in the Application implies that our boat travel is limited to one side of our lift. However, depending on the vessel, we currently have the ability to use both sides. We believe this interference violates section 4.8.4.

We are also concerned about the Proposed Project due to the proximity of moored vessels at Mr. Eisenmann's proposed dock to our own existing structures and property. At a minimum, navigation in the space between our properties will be more challenging. For Mr. Eisenmann to navigate his boat out to Herring Creek, he will need to consistently pass only a few feet in front of our existing dock and boatlift. Of greater concern to us, however, since there is no boatlift proposed in the Application, is that Mr. Eisenmann will presumably be mooring his vessel directly in the water. Should his vessel become loose and drift towards our property, which is only a few feet away, it could damage our dock, pier, boatlift, and/or vessel. We hope that DNREC will consider this impact to our existing structures, pursuant to section 4.9.2.

While the purpose of this letter is to provide formal, written comments on our behalf and not on behalf of the HOA, we also note that the Proposed Project will impede access to our HOA's waterfront property. The Proposed Project will encroach upon the HOA's ability to build a community dock using plans it has already prepared. We believe that this outcome will negatively impact our community's enjoyment of its community property and may also negatively impact our community's property values by foreclosing the possibility of community water access. As members of the HOA and residents of the Villages at Herring Creek, we are personally impacted by these encroachments as well.

In addition, although it does not impact us personally, we would like to comment that we noticed that the dock addition described in the Application will be for Mr. Eisenmann's use only. We are aware that there is an easement that permits the owners of Lots 49 and 50 to use the existing pier. These homeowners currently enjoy the ability to fish, crab, and simply sit at the end of the pier relaxing and enjoying the view. The Proposed Project therefore also limits the enjoyment that the owners of Lots 49 and 50 are entitled to under the easement.

### **4. Wildlife and Aesthetic Considerations**

Lastly, we would like to mention that there is an abundance of wildlife in our quiet cove (i.e., Ben Robins Landing), and its beauty is a source of enjoyment to our community. Adding another dock and vessel, and the accompanying noise and activity that will result, could have potential negative impacts to this habitat and detract from our community's aesthetic enjoyment of it, as described in section 4.6.3.

In closing, we object to the Proposed Project, as it will significantly encroach upon our private and financial interests. Further, it is our position that the Application is deficient because it is missing several required components, including a certified copy of the deed, survey plot plan, and written letter of no objection from us as an adjacent property owner. It is also our position that the Application contains inaccurate information, including the property lines delineated in Figure 7 and the response to question #14 in Appendix A, and that these misstatements may be grounds for denial of the Application.

We would like to express our appreciation to DNREC for the opportunity to express our concerns and we thank you for your consideration. We would be happy to provide additional information as needed and answer any questions you may have. Should you feel that a hearing would be beneficial, we would be happy to attend.

Very truly yours,

*Carlo & Teresita Businelli*  
973-978-0853

cc: Ms. Gayle Calder  
Wetlands and Subaqueous Lands Section  
Delaware Department of Natural Resources and Environmental Control

Gayle,

I led the Villages of Herring Creek community study to develop plans for the community pier that Al references below. He asked me to forward you the concept plan that was developed by Ed Launay from Environmental Resources, INC. based on safety of navigation, boundary line, and water depth considerations.

Sincerely,  
Bill Tarry  
M: 410-610-2761

**From:** al ara <opentouring@gmail.com>  
**Sent:** Monday, June 01, 2020 1:17 PM  
**To:** Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>  
**Subject:** 34477 Skyler Dr, Lewes Delaware,19958 dock proposal

Hi Gayle,

It was a pleasure speaking with you Monday morning about this project. I do not know if it is an issue but the notice states the address as Skylar and not Skyler.

I would like to start by saying I neither approve nor disapprove the project, but as the board member that is the liaison to the architectural review committee in the Villages of Herring Creek I have to address what may be issues with above project.

The community has spent significant funds to conduct a study and have plans drawn regarding the feasibility to construct a community pier and dock. This study was completed by N. Launay of Environmental Resources Inc. The property directly bordering this project is the location site and the only option for the community to have water access.

The concerns of the community are the safety and navigation problems and the limitation on the scope of the community project. The waters west of the site are extremely shallow and would present a problem should that become the only path of access. Also, would this negatively impact the ability of the community to go forward with its future plans.

I have enclosed overheads of the site and the impacted lots. Please feel free to contact me should you have any questions.

Sincerely,  
Al Lara

