

July 1, 2021

Theresa Newman  
DNREC Office of the Secretary  
89 Kings Highway  
Dover, DE 19901

**Subject:** Docket #2021-P-W-0012

Dear Ms. Newman:

In the matter of the Subaqueous Land Permit Application of Mr. Norman Singer to install a gangway, a floating pier and a floating dock on property located at 135 Chesapeake Street, Sussex County, DE. 19971, we request the inclusion of these comments in the public record **in objection** to DNREC's issuance of a permit to the Applicant under the provisions of *7 DE Admin Code §7504, Regulations Governing the Use of Subaqueous Lands* ("Regulation").

As owners of a townhouse located at 38460 Cottage Lane, Units 3 and 4, our property borders on Lake Comegys, and is directly adjacent on the west perimeter of where Mr. Singer is requesting a permit to install the gangway, pier, and dock described in the Public Notice published on May 26, 2021. Our view is that we are the Applicant's neighbors and that the Department's rules provide us with an opportunity to express our views to the Secretary following the standards of Section 7504.

Our previous comments on this matter filed on June 15, 2020, are included as Exhibit 8 of the Exhibits filed by the Department as part of the record on the pending Application. Of continuing, relevance in the Department's consideration of the pending Application is our previous comments advising:

- Any decision to allow the construction of a floating platform in Lake Comegys will be directly in front of our property and thus impact our view of the water as our home is within a 1,000-foot radius of the project.
- Any decision to allow the construction of a floating platform in Lake Comegys may adversely impact our ability and that of our Lake Comegys neighbors to enjoy the quiet and peaceful use of our homes.
- Ownership of Lake Comegys is vested in the State of Delaware for the benefit of the common good, and thus the Applicant does not have a development right to claim the right to build a "floating platform" in Lake Comegys.
- There exists around Lake Comegys a conservation easement to perpetually protect the land and vegetation around the Lake to protect its conservation values for future generations.

According to Exhibits 3 and 4 filed in conjunction with the Public Hearing of June 16, 2021, in which we participated electronically, the Applicant proposes limited changes to his 2020 application. The chart below shows a difference of 7.7% in square footage between the two proposals. The revised 2021 application indicates a smaller dock reduced by forty (40) square

feet; however, it proposes a thirty (30) square foot floating pier. Thus, the net of the 2021 proposal is ten fewer square feet than what was proposed in the 2020 application.

	2020 PROPOSAL			2021 PROPOSAL		
	Length	Width	Sq. Ft	Length	Width	Sq. Ft.
Gangway	10	3	30	10	3	30
Floating Dock	10	10	100	6	10	60
Floating Pier				6	5	30
<b>Total Square Feet</b>			<b>130</b>	<b>Total Square Feet</b>		<b>120</b>

Under Sec. 3.4 of the Regulation, the burden of proof for a subaqueous land permit is on the applicant to "satisfy the Department that the requirements of these Regulations have been met; and if the granting of the permits, lease, or approval will result to the loss to the public of a substantial resource, that the loss has been offset or mitigated."

### Grounds for Objection to Application

1. **INCOMPLETE APPLICATION.** The Application is incomplete regarding relevant information that the applicant can provide, and thus the Hearing Officer lacks information required by the Regulation required for the approval of the Application.

3.1.2 REQUIRED ATTACHMENTS TO THE APPLICATION		
SECTION	PROVISION	COMMENTS
3.1.2.1	A map showing the location and boundaries of the proposed project in relation to the adjoining property and to the nearest existing street or road intersection and the specific location of all proposed activities.	<b>Incomplete</b> , lacks reference to properties on the west side of Lake Comegys, i.e., Cottage Lane, whose sightlines will be impacted by the proposal.
3.1.2.2.1	That the design conforms to generally accepted engineering principles.	<b>Incomplete</b> , there isn't any discussion of design features or composition of parts to determine conformity with engineering principles. The alternative provided under Sec. 3.1.2.3 is for sign-off by a professional engineer registered in the State of Delaware.
3.1.2.2.2	Accurate dimensions of the proposed activity (e.g., square feet of dock, pier, etc.	<b>Incomplete. Also missing is a description of wetlands and aquatic habitats as provided in Sec. 3.1.2.2.4</b>
3.1.2.4	A certified copy of the deed and survey plat plan (to indicate property lines and corners, and written permission from <b>the owner if other than the applicant for the project.</b>	<b>The Applicant is not the owner of 135 Chesapeake Street but the holder of a ground lease.</b>
4.6.7	Given the inability for avoidance or alternatives, the extent to which the applicant can employ mitigation measures to offset any losses incurred by the public.	<b>Not addressed. No discussion at all of any shoreline erosion control measures if structures are approved.</b>

2. **FACTUAL DISPUTE.** Under 7 Del. C. §6006(4), "the Secretary shall make findings of fact based on the record." It is also clear that 7 DE Adm Code 7504 applies to "Private Subaqueous Lands" and "Public Subaqueous Lands." Under the definition "Public Subaqueous Lands," Lake Comegys is in this category and owned by the State of Delaware. In dispute are the following:
  - A. There is no agreement as to where the Applicant's non-subaqueous land ends and the State's subaqueous land begins as no one has produced for the record the point of mean high water in Lake Comegys at 135 Chesapeake Street, which is generally understood as the boundary between the Applicant's non-subaqueous land and the subaqueous land held by the State in the public's interest.
  - B. The Applicant has averred that the width of Lake Comegys at the proposed location of his dock is one hundred thirty (130) feet. Still, the record contains no independent verification and validation of this assertion.
  - C. A peripheral area of dispute is the number of other properties on Lake Comegys that would be affected parties to the Secretary's decision and might construct docks or piers in the Lake based on the precedent established in the pending matter.
  - D. Another peripheral area of dispute is the existence of the Lake Comegys Conservation Easement and whether it provides any guidance to the Hearing Officer in this matter. It is also unclear whether any public subaqueous lands or private subaqueous lands are within the boundaries of this Easement and what criteria the Department must follow in protecting the land and vegetation around the Lake in general, and specifically in the context of the Application of 135 Chesapeake Street.
  - E. Public comments have addressed concerns about the environmental impact of the Applicant's proposed structure on the Lake's birds, fish, and turtle population, as well as the Lake's aquatic fauna and flora.

Given this list of disputed facts, it is within the authority of the Secretary and the Department as part of its formal regulatory review of the Applicant's proposal to conduct its own field study and to use the Department's technical expertise in the biological and physical sciences to augment the hearing record with their technical expertise and independent recommendations.

3. **LEGAL AND PUBLIC POLICY CONSIDERATIONS.** The Applicant asserts as the owner (or lessee) of non-subaqueous land at 135 Chesapeake; he should be granted the right to construct a gangway, a floating pier, and a floating dock on the subaqueous land of Lake Comegys if he meets all the requirements of the Regulation. However, in the public hearing on the matter, he cited no Delaware case authority to support this view.

Commenters concerned with the Application and its impact on the Lake Comegys community and its environment, on the other hand, were able to cite the General Assembly's statutory grant

of authority to the Secretary and the Department of Natural Resources under 7 Del. C §6003 and 6004 and other relevant statutory authority, for DNREC to preserve Delaware's land, air, and water resources. In addition, they pointed out that the General Assembly has also recognized the environmental importance of Rehoboth Beach's three lakes, including Lake Comegys. In recognition of this fact, the State put a Conservation Easement in place to protect Lake Comegys as a natural resource.

The Hearing Officer must decide whether the Application as submitted fully complies with the requirements, which we have previously stated does not. We have also pointed out that our view is that the hearing record is incomplete due to several factual issues in dispute. We suggest that before making a final decision on this matter, the Department should conduct its independent field study of the Lake Comegys environment because whether or not the Hearing Officer approves the pending Application of Mr. Singer, the issue of what kind of structures can be constructed in Lake Comegys is likely to be a continuing policy question.

Unfortunately, there doesn't exist any environmental study of Lake Comegys to provide the Hearing Officer with guidance on the impact of granting the Singer application and how it might impact the immediate and future quality of life in the historical context of Comegys neighborhood fronting on the Lake.

In conclusion, while we welcome Mr. Singer and his family to the Lake Comegys neighborhood, we however continue to oppose his Application. Our opposition is primarily rooted in the dangerous precedent it will set if he is allowed to construct his dock without regard to the concerns of his neighbors and the existence of the Conservation Easement. It is foreseeable that others will use DNREC's decision to construct more docks on the Lake, compromising the environmental quality of the Lake and the right of others in the neighborhood for the enjoyment of peace and serenity.

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