



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

Public Hearing Report

Regarding Tidal Wetlands License Under COMAR 26.24.01.05.H.

<u>Application No.:</u>	17-WL-0450	<u>Date:</u>	February 7, 2018
<u>Applicant:</u>	South Annapolis Yacht Centre	<u>Time:</u>	6:30 PM
<u>MDE Staff</u>	Andrew May April Field Heather Hepburn	<u>Location:</u>	Eastport-Annapolis Community Library, 269 Hillsmere Drive, Annapolis, MD 21403

*Advisory: This report and its attachments reflects only the statements, comments, and questions made during the public hearing and following comment period. **This hearing was recorded and this report is based upon the transcript.** It does not represent any statement of fact by the Department, or a decision to recommend approval or denial of a license to the Board of Public Works.*

1. Hearing Opened: Andrew May, of MDE, serving as Hearing Officer, opens the Hearing at 6:30 PM. Presented overview of hearing purpose, authority and procedures, in accordance with COMAR 26.24.01.05.
2. Elected Officials Present
 - None
3. Presentation by Applicant

Presenter

- Bret Anderson, Applicant and owner of South Annapolis Yacht Centre (SAYC), presented the proposed project.

Main Points

- In 2012, Mr. Anderson acquired Sarles Boatyard and Petrini Shipyard. The Sarles boatyard is the oldest working boatyard in the City of Annapolis, and the Petrini Shipyard is 75 years old.
- In the last 30 years, there has been no reinvestment into these marinas, creating failing and unsafe conditions, including piers, bulkheads and erosion underneath of paved areas. The property is comprised of old piers, with approximately 700 creosote piles, all of which will be removed. To date, they have removed 19 derelict boats that were left in the waters of the marina, multiple storage containers ranging from 55-gallon drums to 500-gallon containers, and 50 tractor trailer loads of rubbish.

- The proposed facility will include a state-of-the-art marina, including maritime buildings and residences. The proposed facility will remove 20,000 square feet of boat house space that is shading the waterway, reduce boat slips from 85 to 73, and install a new boat wash wastewater containment treatment system.
- On land, the proposed facility will include the installation of new stormwater management facilities, a planted buffer adjacent to the waterway, increased canopy coverage, and reduction of paved impervious surfaces.
- The Annapolis Harbor is a congested waterway. The proposed facility will maintain a 20 foot distance from the Harbor Line. The proposed T-head platforms will allow for queuing areas where boaters can wait before entering the channel or wait for passage under the Compromise Street Bridge. An extensive search of public records has revealed no reported accidents in this area of Spa Creek.
- Steven Hyatt of Hyatt & Weber, lawyer for Applicant, presented the proposed project.

Main Points

- The City of Annapolis Code (15.18.010) defines the developable waterway area. According to Mr. Hyatt, the Port Wardens accepted SAYC's lateral lines in accordance with Annapolis Code. The Applicant is waiting for a written decision from the Port Wardens. The lateral lines that were submitted to the City of Annapolis by a neighboring community, Newport Condominiums ("Newport") are straight extensions of property lines and are incorrect. Straight extensions may be correct when the shoreline is straight, but SAYC's shoreline is not straight. All of the shoreline, including all faces of the existing bulkhead, are equally considered frontage.
- Mr. Hyatt stated that Newport is planning to reconfigure its existing marina and take SAYC's developable waterway area. SAYC will not interfere with Newport's riparian rights. The crux of riparian rights is access to water, which Newport has today and they have had for the last 50 years.
- The previous owner, Mr. Petrini received Wetlands License 72-96 (Petrini License) and built the existing bulkhead. This bulkhead has existed for 45 years and exists today as it was originally built. According to Environment Article Title 16, Section 201 (a), after an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. In this case, the bulkhead, piers, and pilings that exist today are lawful property of SAYC. The creek bed underneath remains the property of the State of Maryland. Based on the Environment Article and Maryland riparian case law, the owner of an improvement made into State waters is not required to obtain a deed for such improvements. Maryland's highest court has continuously held that a conveyance of land bordering on navigable water presumptively carries with it the grantor's riparian rights. Absent an express reservation, it is presumed that riparian rights are conveyed by deed. SAYC maintains the same riparian rights that its predecessors in interest possessed, including the bulkhead, piers, and piles that exist today. The omission of the bulkhead from any deed in the chain of title conveying the property does not preclude the transfer of ownership of the attached improvements, without expressed severance or reservation.
- Newport claims that Mr. Petrini failed to compensate the State for the creation of fastland that was created under Wetlands License 72-96. The last correspondence with the State to Mr.

Petrini in December of 1976 asks for remittance of payment to the State and there are no further records indicating payment or failure of payment. It cannot be said with certainty that payment was not made to the State. The lack of further correspondence lends forth the position that Mr. Petrini did eventually make payment to the State. If Mr. Petrini does still owe money to the State, and it can be proved, it has no bearing on the current application to MDE.

- Additionally, in letters dated in June and December 1976, DNR states that "it has been determined that compliance with the physical requirements of the subject license has been achieved". At a minimum, this entitles the applicant to replace the existing improvements in-kind.
- There have also been comments about property values. Most of these comment arise from the potential for the applicant's project to result in usurping or rendering a portion of Newport's marina unusable. The lateral line is not a barrier, and Newport will be able to get to and from their marina. Newport along with residents and visitors will benefit from the environmental enhancements and the restored marina.
- Based on report issued by the U.S. Coast Guard, only 2% of boating accidents nationwide occurred while vessels were either docking, undocking or idling. Based on this percentage, there were only three boating accidents in Maryland while docking, undocking or idling, with the understanding that only accidents of significance are reported. It is unreasonable to think that the SAYC project will contribute to accidents. SAYC will be reducing the number of boat slips from 85 to 73, which will result in less potential for navigational accidents or collisions.
- Kevin Campion, Landscape Architect working on the SAYC project, provided a statement in support of proposal:
 - SAYC's project will have a beneficial impact on water quality. The project will plant vegetation which will enhance habitat value and create a planted buffer. This will result in better controls of sediment entering the water column. The project is proposing a clean marina. The project brings together upland non-point source and point source runoff mitigation with clean marina statutes where particulate matter is contained, pilings are placed and littoral transport currently works. In essence, the project combines an aesthetic marina with a nice upland development.
- Ralph Najanjo, associate of SAYC, provided a statement in support of proposal:
 - Mr. Naranjo discussed the limits of boat sizes in SAYC. The 80-foot T-heads are meant to be used for multiple vessels because most 80-foot boats have beams wider than 20 feet. A 20 foot wide vessel will still fit within the limits of the Harbor Line.
 - Additionally, the marina will solve a lot of problems in regard to the channel and Harbor Line. Vessels will be leaving and coming into the marina bow on. Currently, boats leave stern first. There will be subarea maneuvering basins where vessels can turn around and make their exit.
 - Research into accidents west of the Spa Creek Bridge revealed no records of any accidents. He attributed the lack of accidents to the six-mile per hour zone, decent boat handling, sharing of the waterway and paddle boarders and kayakers staying in the shoal waterway.

4. Questions and Comments: Approximately 28 people attended the public hearing and many attendees spoke. (See Attachment A: Interested Parties List) The majority of the statements given during the hearing were in opposition to the project. The following is a summary of all comments and questions presented at the hearing and during the comment period ending on February 7, 2018. Please see "Attachment C: Public Hearing Transcript for a detailed transcript written by Corbin Reporting & Video.

General Questions Regarding the Project: The Hearing Officer began by soliciting questions directly related to the application. The Applicant and Agent responded to several of these statements. Their responses have been included where appropriate and are in italics.

- Diane Butler: We understood that there was going to be encapsulation when the 700 creosote bulkhead pilings came out. Is there going to be encapsulation in that process or no encapsulation when the bulkheads are replaced?
Response: According to the Applicant, his statement regarding encapsulation only referred to the bulkhead on the east side. Encapsulation does not refer to the 700 piles. That area will be encapsulated with a turbidity curtain as its being replaced.
- Diane Butler: There's been discussion about the toxic nature of the soil, and I'm wondering did MDE sign off on a remediation project that took place on SAYC?
Response: Applicant is not aware of toxic soil.
- Mr. Ed Hartman: Why are the plans presented different from those that he received from MDE, specifically on eastern bulkhead of the project?
Response: Applicant will be replacing per the Port Wardens recent decision that these structures must be replaced in-kind. The presented plans are based on the Port Warden's decision. Based on the Port Warden's decision, the originally proposed, five angled slips have been removed from the proposal and are going to be replaced in-kind.

Public Comments Summary: In general, hearing attendees were for and against the project. The primary concerns of those that were against the application involved the previous Petrini Wetlands License (72-WL-96), Newport's riparian rights, lateral lines, navigational safety, Harbor Line setbacks, the location of eastern mooring piles, loss of property value, and environmental contamination, as described below. Comments in favor of the project were submitted by individuals associated with the Applicant and the proposed project. Although their comments were given at the end of the Hearing, their comments have been included in Section 3 "Presentation by the Applicant". These individuals expressed support for the environmental benefits of the project, and better navigational safety. Any corresponding responses made by the Applicant, Agent or Hearing Officer are summarized below in italics.

Against:

- Petrini's Wetlands License 72-96: In 1972, Mr. Petrini was authorized to construct a bulkhead with fill from dredge spoils along the eastern side of his property ("Petrini License"). Some members of the public stated that this bulkhead and fill were incorrectly and illegally constructed.

They indicated that the bulkhead was constructed 8 feet further channelward than the approved location and attached to Newport's bulkhead. Additionally, Wetlands License 72-96 required Mr. Petrini to buy the resulting fastland and get a deed for that land. In order for that land to be conveyed, it needs to be purchased from the State. Therefore, the State still owns the land. In 1971, the Newport community received a Wetlands License (71-WL-0101) to construct a bulkhead, dredge, and deposit the spoils behind the proposed bulkhead. This License shows two bulkheads approved on Newport's property but today there is only one. It attaches at a right angle to SAYC's bulkhead.

- **Newport's Riparian Rights:** In 1990, Newport received Wetlands License 90-1342 to dredge channelward of their bulkhead and adjacent to SAYC's eastern bulkhead. Members of the public stated that this License revoked and overruled the Petrini License, thus granting riparian rights and responsibility to Newport for the entire area in front of their property. Any new License issued to SAYC would violate and revoke Newport's riparian rights. Additionally, Newport did not dredge this area for the Petrinis. They dredged it because it was their developable waterway.
- **Historic Lateral Lines:** The plan sheets submitted to MDE include a label for historic 1970 lateral lines. The lines depicted on the Petrini License were misrepresented and depicted the limits of the proposed dredging. Therefore, there are no historic lateral lines.
- **Current Lateral Lines:** According to some members of the public, the lateral lines depicted in SAYC's application are incorrect and should be in line with the plat. Additionally, in the Annapolis code for lateral lines, it states that the title is not intended to deprive a riparian owner of any right of privilege associated with riparian ownership of land or ownership or use of any fixed or permanent structure in the waterways that was in use prior to 1980. Some commenters did not agree with the Port Wardens recent lateral line determination.
- **Navigational Safety:** Many members of the public expressed concern about difficulties navigating the area around SAYC and potential safety risks to boaters, paddle boarders, and kayakers. Specifically, commenters had experienced navigation difficulties in the area near the eastern bulkhead adjacent to Newport's community pier. According to two commenters, the Annapolis Harbormaster had concerns about the difficulties in navigating a boat in the area of the eastern bulkhead and also attested to the fact that there is a navigational safety and congestion issue at the pinch point across Spa Creek. The public also expressed concerns about navigation on Spa Creek. This area of Spa Creek is a pinch point that is very congested and relief is needed. The marina reconfiguration appears to have further channelward encroachment and will allow for larger boats to dock at the piers.
- **Harbor Line Setbacks:** A member of the public stated that he and others had requested that the City of Annapolis require a 40-foot setback from the Harbor Line. The existing and proposed structures are 20 feet from the Harbor Line. This set back was requested because the Spa Creek Bridge limits the width of boats in Spa Creek to 40 feet wide. The wider setback will allow for a wider channel at a pinch point on Spa Creek.

- Eastern Mooring Piles: One member of the public thought that the distances between the eastern bulkhead and the adjacent mooring piles were incorrect on the plan sheets. He also expressed concern that if the eastern bulkhead was replaced 18 inches channelward that the mooring piles would be moved, decreasing the space between the eastern bulkhead and Newport's pier.
Response: The existing bulkhead, piles and nine slips will be replaced in-kind, in the exact same location.
- Loss of Property Value: One member of the public expressed concerns about diminution of property value. She expressed concern about that potential loss of her tenant in her Newport rental property due to their inability to use their slip at Newport's pier if the application is approved.

Environmental Contamination: Multiple members of the public expressed concerns that there have been no stormwater controls on the property and runoff has been entering Spa Creek for almost 100 years. One member of the public worked at Mr. Petrini's boatyard as a teenager, and described the site as a "toxic waste site". According to the commenter, there were no controls on site and everything went directly onto the permeable ground. This runoff sank into the ground or went into the river. This runoff has potentially contaminated the bottom substrate and it should be evaluated. Additionally, a member of the public asked if a Phase I and Phase II assessment had been done for the site based upon the comments that have been given at other public meeting regarding ground contamination. Concerns were also expressed regarding the removal of the bulkhead and the potential release of contaminants into Spa Creek as a result. A member of the public also asked that the disposal site be carefully evaluated.

5. Hearing Closed

- a. Comments are due by 5:00 PM on Thursday, February 22, 2018; and must be post marked by that date or via email.
- b. The Department may request additional information from the applicant.
- c. Hearing is adjourned by Hearing Officer at 8:21 PM.

6. Comments Received after Hearing: Additional comments were submitted to the Department after the Public Hearing. Many of these comments were similar to those submitted during the Hearing. Comments received were both for and against the project. Primary comments against the application included the Petrini Wetland License, Newport's riparian rights, navigation, Harbor Line setbacks, inaccurate plan sheets, environmental contamination, reconfiguration of the marina, and recreation. The primary statements in support of the application included the poor conditions of the existing marina, the improvements to the property, and improvements to navigation. Comments received after the Hearing that differ from or expand upon those received at the Hearing are described below. The Agent and Applicant responded to these comments and similar comments that were received at the Hearing. Their responses have been included where appropriate and are in italics.

Against:

- Petrini Wetlands License 72-96: The Application should be denied because SAYC is seeking to develop land that does not exist on any deed and created a property line that does not exist. In

1971, Newport received a Wetlands License that authorized two bulkheads on Newport's property, no right angle is formed between the Newport and Petrini properties. However, there is currently a right angle between the Newport and the former Petrini property today. SAYC must be made to comply with the original License by which it built out into the water and filled in behind the bulkhead, creating new fastland. If SAYC will not do so, that original License must be revoked. SAYC does not own the fastland created under the Petrini Wetlands License. Mrs. Petrini's 1988 deed did not convey the section of fastland, but subsequent grantees have included it in their description of the conveyed land. The plan sheet for the Petrini License authorized a bulkhead that extends directly from the property line created by the joinder of the Newport and Petrini properties. Instead, Petrini built an extra 8 to 10 feet further out eastward into the waters in front of Newport, actually attaching to Newport's property rather than their own. Additionally, SAYC is aware of the violation of the Petrini License and has not proposed a remedy. A License is revocable when the terms are violated. Now is the perfect opportunity for SAYC to comply with the original License requirements.

Response: Upon completion of the work authorized by the Petrini License, the Water Resources Administration of DNR confirmed that the construction of the Petrini License has been done in compliance with the Petrini License. A letter dated June 7, 1976 from DNR to Mr. Petrini stated that "on June 4, 1976, a representative of the Administration [DNR] made an investigation of the above referenced site. Based on the inspection, it has been determined that compliance with the physical requirements of the subject License has been achieved. A second Letter from DNR to BPW dated December 17, 1976 stated that "based upon an inspection by the Enforcement Division the subject licensee has complied with all conditions of the wetlands license except for the compensation to the State for the fastland acreage created. There is no necessity for the enforcement action of revocation of the subject license because the licensee has complied with all physical requirements of the license". It cannot be said with any degree of certainty that Mr. Petrini did or did not remit compensation to the State for the fastland created. The License, therefore, remains valid today. The Petrini License nor Environmental Article Title 16 require a wetlands Licensee to purchase or obtain a deed from the State for such fastland created. Additionally, Environmental Article Title 16, Section 201(a) validates SAYC's ownership of the bulkhead created pursuant to the Petrini License. Title 16, Section 201(a) provides that "after an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached." There is no requirement that such fastland be purchased from the State.

- **Newport's Riparian Rights:** Waterfront property owners have certain rights, including the right to build out in front of ones shoreline towards the channel. Those rights extend straight out to the channel in the same width as the shoreline of that property, unless doing so would cause adjoining property owners to lose their property rights. In this instance, the channel is straight and passes by both SAYC and Newport. Both Newport and SAYC can develop in front of their properties without affecting the other; however, SAYC's proposed structure extends sideways in front of Newport's shoreline, invading its riparian rights, and impeding its future right to build and restricting the ability of the boats currently docked in front of Newport from leaving their slips. The intrusion of the Applicant into the developable waterway area and the usurpation of riparian rights of Newport are significant and will render much of what Newport has rightfully built

unusable, and will prevent Newport from building a new pier in front of its own property. The proposed construction will cause a transfer of developmental rights from Newport to SAYC. Allowing the Applicant's illegal construction to be rebuilt in the same place or even further would constitute a taking of riparian property rights by the State.

Response: Both SAYC and Newport are entitled to reconfigure and renovate their respective marinas within the letter of the law. Newport seeks to expand into the area where SAYC predecessor in interest lawfully built the improvements that exist today. Both the existing improvements at SAYC and the proposed reconfiguration and renovation fall within its developable waterway, therefore it is not accurate to state that SAYC's plans somehow amount to a taking or usurpation of neighboring riparian rights

- **Navigational Safety:** Annapolis Code states that it is necessary to make certain that structures or other barriers in City waters do not render navigation too close and confined. These provisions should be recognized and enforced by the City and MDE. Boats exiting Spa Creek wait at the pinch point adjacent to SAYC to wait for the bridge to open. As a result, the area becomes increasingly congested. In July 2017, the Harbormaster testified before the Port Wardens stating that the opposing shoreline is not a very large distance and coupled with the traffic coming through the drawbridge and the current, it is a particularly difficult space. Additionally, the Harbormaster had concerns that the distance is too small, coupled with the number and variety of users, and that there may be an increased likelihood of minor accidents. In September 2017, the Harbormaster stated that the distance between Dock D and opposing structures/shoreline is minimal and the distance will be diminished even more when large vessels moor at the end of Dock D. Large boats moored at the end of the T-heads will impair the ability of smaller vessels to see approaching craft in the channel. Also, the proposed marina does not offer any relief for congested areas. It further encroaches on the waterway. There are much larger docks that will allow for much larger boats. At the west end, the piers are longer and there are more of them. They are also closer to the Harbor Line.

Response: Comments from the Harbormaster at previous Port Wardens' hearings have since been amended by the Harbormaster to reflect a non-position until lateral lines were determined. It is the Harbormaster's duty to enforce setbacks and that boat's navigating in the waters of the City keep to the no wake/6 mph limit. It is also the general public's social responsibility to boat safely and not endanger other boaters. Nothing SAYC is proposing will be detrimental to boat safety. Additionally, the marina reconfiguration has been well-planned and thought out. It provides boaters with the opportunity to queue and prepare to enter and leave the channel in the safest manner possible. Spa Creek enforces a 6 mph speed limit on Spa Creek. The alleged choke point is 200 feet wide. SAYC does not seek to diminish navigation safety on Spa Creek, which is clearly reflected in its reconfigured marina. Although slip size will increase to accommodate larger vessels, the number of slips is decreasing from 85 to 73, thus decreasing the number of boats navigating Spar Creek that are attributable to SAYC. SAYC's improvements are closer to the harbor line than they will be post-renovation and reconfiguration. SAYC's reconfigured marina will provide wider access to all vessels, including paddle boarders and kayaks.

- **Navigation Near Eastern Bulkhead:** The proposed structure will render navigation more dangerous, and in some instances, impossible, for vessels tied up at Newport. SAYC's new proposed structures are large and imposing, providing for significantly larger boats. Vessels at Newport's pier are already smaller than residents want; even these boats have trouble getting out of their slips as SAYC is currently built. If enlarged, it is likely that the boats on the west side of the Newport's pier will be unable to leave their slips. SAYC's proposed structures along the east side of the property will endanger boat traffic traversing the area and block access to the channel, as well as existing nearby piers. According to a commenter, the Annapolis Harbormaster stated that the proposed slips near Newport's pier would make maneuvering into and out of slips more difficult and increase likelihood of minor accidents.

Response: The Port Wardens have stated that SAYC can only replace in-kind the nine existing slips on the eastern side of the property. The existing structures lawfully belong to SAYC and do not hinder Newport's ability to access its marina. The existing improvements and Newport's marina have existed side-by-side for nearly 50 years. Any reconstruction of the existing bulkhead or pilings on the eastern face of SAYC's marina will have no adverse effect on Newport's ability to access its marina. The vessels docked along the western face of Newport's marina will have the same access to and from the marina as they have had for almost 50 years. SAYC and Newport have existed side-by-side with their respective marina configurations for over 45 years. The fairway between the two marinas will remain exactly how it has been upon SAYC's completion of its project. SAYC's plans will not change Newport's access to and from their western facing slips. The Harbormaster withdrew her position and reserved comment until the Port Warden's made a decision on SAYC's developable waterway.

- **Harbor Line Setback:** Commenters requested a setback of 40 feet from the Harbor Line to prevent encroachment of large vessels into the navigable waters of Spa Creek. This narrow pinch point is dangerous. The new SAYC T-heads are 80 feet long and there are 80 foot long vessels with widths that are 35 feet or more and may cross into the middle of the channel. The City of Annapolis Code requires setbacks from the Harbor Line at an appropriate distance to ensure that moored vessels do not exceed beyond the Harbor Line. MDE should expect and assume that large yachts will routinely dock at the proposed SAYC marina. Many of these boats will have beams approaching or exceeding 20 feet. Large vessels moored at or over the Harbor Line will reduce the navigable waterway.

Response: Annapolis City Code states that "all piers, "I" heads, "L" heads, mooring piles, mooring buoys and anchorages must be set back from the harbor line an appropriate distance to assure that no moored vessel or permanent or temporary obstruction extends channelward of the harbor line". SAYC voluntarily imposed a 20-foot setback from the Harbor Line. There is no justification for an additional 20 feet of setback and a 40-foot setback is not is the City's Code. The commenter claims that because the Spa Creek Bridge allows for a 40-foot wide boat to pass that a boat of this size could dock at SAYC. The only boats navigating Spa Creek that are close to a 40-foot width would be a catamaran, and most catamarans dock in Back Creek or in Annapolis Harbor on City moorings. Several commenters want this setback to mitigate congestion when, in fact, the City has mooring buoys on the opposite side of Spa Creek that are beyond the Harbor Line. Instead, commenters should request for the City to move these mooring buoys.

It is the job of the Harbormaster to enforce the setback requirements of the City Code. SAYC will enforce the City Code for its marina, but the Harbormaster can also have boats removed that encroach in the required setback. The average beam of a 100-foot long vessel is about 20-feet. SAYC has three possible locations that could dock a vessel of this size, the T-heads on Docks B, C, or D. A vessel this size could occupy the entire T-head and it would not encroach on the Harbor Line. Additionally, SAYC will not allow a vessel that size to dock at the marina if it encroaches on the Harbor Line. The choke point/pinch point that is referenced on Spa Creek is approximately 200 feet wide. The only choke point is the 40-foot width of the Spa Creek Bridge.

- **Inaccurate Application/Plans:** During the Port Wardens' January 23, 2018 meeting, the Port Wardens required that the proposed work on the east side of the property be revised to be replaced in-kind. The plans that MDE has now include five slips on the eastern bulkhead. These slips were denied by the Port Warden. The oral ruling by the Port Wardens is that nothing east of the bulkhead could be changed from its present configuration. This conflicts with the proposed slips in this application. The plans presented at the February 7, 2018 hearing are different than the plans received by MDE on January 19, 2018 for the hearing. SAYC's application lacks details, such as a dimensioned site plan of the east side of the SAYC marina's existing area. The plans do not show the exact dimensions of the mooring piles near the eastern bulkhead. Any changes in enlargement of the piles will reduce the amount of waterway and create a navigational hazard. The letter from MDE states that the Applicant will "replace in-kind 135 linear feet of bulkhead within a maximum of 18 inches channelward of a deteriorated bulkhead". Any new bulkhead must be replaced in-kind.

Response: At their December 4, 2017 meeting, the Port Wardens requested SAYC and Newport to submit lateral line drawings. During their January 23, 2018 meeting, the Port Wardens recognized the developable waterway of SAYC as that presented by SAYC's lateral line drawing. The current application at MDE accurately reflects SAYC's developable waterway area, and the Applicant will submit the Port Warden's written decision. Because the City of Annapolis Port Wardens conditioned approval on the in-kind replacement of the nine slips on the eastern face of SAYC's bulkhead, SAYC's plans were inaccurate prior to MDE's Public Hearing. The application does not need to be withdrawn and resubmitted to MDE. Plans have been revised and submitted to MDE.

SAYC's professional engineers have confirmed the piling measurements, which have been provided to MDE. The Port Warden's approval allows for SAYC to replace these pilings in their exact locations today. Piles range from slightly over 24 feet to slightly under 18 feet if measured from the face of the bulkhead to the centerline of the piles. All of the reconfigured or replaced in-kind improvements fall within the approved developable waterway.

MDE Note: The letter mailed with the Public Hearing notice states to "replace in-kind 135 linear feet of bulkhead; construct and back fill 780 linear feet of replacement bulkhead within a maximum of 18 inches channelward of a deteriorated bulkhead".

- **Environmental Contamination:** The effects of sediment within and around marinas in the Chesapeake Bay region is a well-studied and understood issue in Maryland (McGee et al., 1995). There are numerous chemical contaminants that are introduced into a body of water around a marina or boat yard. Some are absorbed into the water and others accumulate in the sediment. Contamination of sediment is a water quality and human health issue. Over the last century, boat building and boat related maintenance have occurred on and around the property with very few, if any, stormwater controls. The site should be assessed before there is any disturbance or dredging. SAYC should develop a comprehensive dredging plan that protects water quality. The applicant has not explained how it will tear out the existing bulkhead and replace it in the exact same location without allowing these chemicals and substances to fall into Spa Creek. The applicant should be directed to do a Phase II Environmental Assessment on the property.

Response: Dredging and sediment will be controlled and monitored as prescribed by law. There is no evidence or reason to suspect that the sediment contains any level of contamination. Any argument to the contrary is Newport's attempt to delay SAYC's approval process. SAYC's work will result in vastly improved ecological conditions to Spa Creek. The McGee report studied a single marina on the Bohemia River in 1990 for 28 days. The only similarities between the subject marina and SAYC are that both are multi-slip marinas and are located on tributaries of the Chesapeake Bay. The subject marina in the report had on a single exit-entrance channel, making it an enclosed marina, several hundred boat slips, and a fuel dock. SAYC is completely open to Spa Creek and the change in daily tides, there are less than 100 slips and there is no fuel dock.

There is no basis for the claim that the Petrini Boatyard is a "toxic waste site". SAYC's plans address any potential runoff with a stormwater management system, boat wastewater containment and treatment system, and plantings in the critical area. There is no evidence of sediment contamination in the area surrounding SAYC. Newport dredged the area immediately in front of SAYC's eastern bulkhead in the early 1990's, so any dredge material in that area will be particularly safe to remove. There is no documented record that Spa Creek contains toxic materials. SAYC will ensure that all construction will be accomplished in the most environmentally conscious way practicable.

- **Reconfiguration of Marina:** MDE should review the SAYC marina as a new marina because the current marina will be completely torn down and a totally new marina will be installed. If the mooring piles that are along SAYC's eastern bulkhead are moved even one inch, then Newport's slips may be unusable. During the hearing, SAYC mentioned that boats would be entering and exiting their slips in forward and the commenter is unsure how that is possible. Additionally, while the marina is reducing the number of slips, the new slips will be wider to accommodate larger boats. On Dock D, the slips at the end of the dock are wider than the existing slips and there will be longer, wider boats that will stretch most of the way across to the Yacht Club Condo's docks on the other side of Burnside Street, effectively blocking Newport's narrow access to their dock.

Response: The existing fairway between SAYC and Newport is nearly 30 feet wide and will remain so after the reconfiguration and reconstruction is complete. The boats docked along Dock D will be limited by physical constraints, and they will not extend out to encroach on the lateral line setback per the City Code.

- **Recreation:** Newport's use of its riparian rights is primarily recreational, allowing its residents access to the State's waters, by boats, kayaks, paddleboards and other small boats launched from the wharf belonging to Newport. The continued encroachment by SAYC into Newport's waterway will serve to diminish this usage and render any remaining usage more dangerous by crowding the narrow waterways around Newport's dock.

Support:

- **Poor Condition of Facility:** The facility is in very poor condition and near the end of its usable lifespan. Photographs of the deteriorating conditions of the existing marina structures were also provided.
- **Improvements to Property:** The Applicant is proposing to remove 20,000 square feet of covered boat slips, 9,393 square feet of impervious surface within the 100-foot critical area buffer which will be replaced by native vegetation, and reduce the number of boat slips from 85 to 73. Additionally, shoreline erosion will be controlled and stormwater will be controlled.
- **Improvements to Navigation:** Navigation will be improved because the proposed project will lessen local congestion, provide safer channel entry and exit, and create a more storm and flood resistant marina.

7. Other Responses Received After Hearing: Additional responses to comments submitted during the Public Hearing were provided by the Applicant. The additional responses are listed below and are in italics.

- ***Lateral Lines:** The City of Annapolis Port Wardens determined SAYC's developable waterway area on January 23, 2018 (written decision still pending as of time of applicant response). Newport would have you believe that a property owners' riparian rights are determined by extending property lines straight into the water to the channel. That is not what is required by the City Code. That only results if the shoreline is a perfectly straight line. SAYC's is not straight and has existed as an imperfect shoreline since at least the early part of the twentieth century. Therefore, SAYC's riparian rights exist in front of their shoreline, which includes the right to wharf out off of the eastern frontage of the existing bulkhead. Newport asserts that their 1990 Wetlands License supersedes the Petrini License and that the area to the eastern bulkhead with its nine slips were "assigned to and made the responsibility of Newport". The 1990 Wetlands License authorized Newport to maintenance dredge and nothing more. The Licenses from the 1970s and 1990 show that different parties routinely dredge on either side of a dredge line. Additionally, any reference to "historic lateral lines" have been removed from plan sheets and SAYC will only use those approved by the Port Wardens. The lateral line will not affect Newport's ingress/egress to their pier. The lateral line is not a physical barrier and its only purpose is to determine the side boundaries of where a waterfront property owner may legally make improvements into the water.*

- *Loss of Property Value: Newport will continue to enjoy the free access to and from its marina just as it has over the last five decades.*

References

McGee, Beth, et al. "Sediment contamination and biological effects in a Chesapeake Bay Marina." *Ecotoxicology*, vol. 4, 1995, pp. 39-59.

Transcript of Hearing

MARYLAND DEPARTMENT OF ENVIRONMENT PUBLIC INFORMATIONAL HEARING

Date: Wednesday, February 07, 2018

Phone: 1-866-337-6778

Fax: 410-268-7006

info@corbinreporting.com

www.corbinreporting.com



CORBIN
REPORTING & VIDEO

- Specializing In Interactive Realtime & Rough ASCII Transcripts -

1 MARYLAND DEPARTMENT OF THE ENVIRONMENT

2 PUBLIC INFORMATIONAL HEARING

3 IN THE MATTER OF

4 SOUTH ANNAPOLIS YACHT CENTRE

5 FEBRUARY 7, 2018, 6:30 P.M.

6

7

8

9

Pursuant to Notice, the proceedings of

10 Maryland Department of the Environment regarding South

11 Annapolis Yacht Centre was taken on Wednesday,

12 February 7, 2018, commencing at 6:30 p.m., at the

13 Eastport-Annapolis Neck Community Library Meeting

14 Room, 269 Hillsmere Drive, Annapolis, Maryland, before

15 Jacqueline Kimball, a Registered Professional Reporter

16 and Notary Public.

17

18

19 Corbin Reporting and Videoconferencing

20 Serving MD, DC, No.VA & DE

21 Reported by JACQUELINE KIMBALL, RPR

<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div>	<div>Page 2</div> <div>APPEARANCES</div> <div>ANDREW MAY, HEARING OFFICER, MDE</div> <div>HEATHER HEPBURN, PROJECT MANAGER, MDE</div> <div>STEVEN HYATT, ESQ., SOUTH ANNAPOLIS YACHT CENTRE</div> <div>BRET ANDERSON, SOUTH ANNAPOLIS YACHT CENTRE</div> <div>C. EDWARD HARTMAN, III, NEWPORT CONDOMINIUMS</div> <div>PROCEEDINGS</div> <div>MR. MAY: Thank you for braving the weather to come out. Hope everyone has seen the restrooms so feel free to avail yourself if you need it. We should have enough seating here for everybody tonight and I thank you for coming. Good evening, my name is Andrew May, I'm the chief of the tidal wetlands division of the Maryland Department of the Environment. I'll be the hearing officer for tonight's public informational hearing. Also in attendance from the department is Heather Hepburn, she is our tidal wetlands division project manager for this application. I would like to welcome everyone here tonight and thank Anne Arundel County Library for the use of their facilities. Again, if there is anyone who has not signed in on the attendance sheets in the back of the room, please do so before you leave tonight. These sheets will be used to</div> <div>Page 4</div>
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div>	<div>Page 3</div> <div>INDEX</div> <div>INTRODUCTION BY MR. MAY 4</div> <div>PRESENTATION BY MR. ANDERSON 13</div> <div>PRESENTATION BY MR. HYATT 28</div> <div>QUESTIONS</div> <div>BY MS. BUTLER 46</div> <div>BY MR. HARTMAN 49</div> <div>COMMENTS:</div> <div>BY MR. KASTENDIKE 51</div> <div>PRESENTATION BY MR. HARTMAN 52</div> <div>SPEAKERS:</div> <div>MS. CORBY 67</div> <div>MR. GILDEA 76</div> <div>MR. KASTENDIKE 84</div> <div>MS. FRESE 91</div> <div>MR. HOLLANDER 95</div> <div>MS. GARROWAY 101</div> <div>MS. BUTLER 106</div> <div>MR. CAMPION 110</div> <div>MR. NARANJO 114</div> <div>CONCLUSION BY MR. MAY 117</div> <div>notify you of our final decision, and provide you with a copy of the hearing report if you so choose. It will also be used to identify those who wish to make a statement at tonight's hearing. This is probably a small enough group we don't need to worry about that. The attendance sheets will also be provided to the Board of Public Works for its use in its review process. And as a courtesy please turn off your cell phones or any other communication devices.</div> <div>We're conducting a public informational hearing pursuant to subsection 5-204 of the environment article, code of Maryland regulation 26.24.01.05. The purpose of this public informational hearing is for the applicant to present the proposed project and tidal wetland impact that may be associated with the proposed activity. In addition, the hearing provides the department with an opportunity to solicit additional information</div> <div>Page 5</div>



<p style="text-align: right;">Page 6</p> <p>1 from interested persons. This hearing is not 2 a contested case hearing under the Maryland 3 Administrative Procedure Act or a public 4 hearing for a water quality certification 5 pursuant to COMAR 26.08. While I want to 6 stress the fact we are here to share 7 information, we will have some structure to 8 the hearing in terms of the order and length 9 of the various presentations. Please be 10 advised it is not necessary to read a 11 statement to make it part of the official 12 record. Written comments will also be 13 accepted and receive the same consideration 14 as any oral statement. In fact, for accuracy 15 if you have written comments to read into the 16 record I strongly recommend you leave us with 17 a copy of those comments before you leave or 18 provide them later via email. This hearing 19 is being recorded tonight. 20 The authority for issuance of a tidal 21 wetland license is under title 16 of the</p>	<p style="text-align: right;">Page 8</p> <p>1 license should be granted, including any 2 recommended terms, conditions and 3 consideration after consultation with 4 applicable federal, state and local entities, 5 issuance of sufficient public notice and 6 conducting any requested hearing, 7 consideration of any public comments received 8 and consideration of any other information 9 secretary thinks advisable. In making its 10 decision the board is guided by the public 11 policy of the state considering applicable 12 ecological, economic, developmental, 13 recreational and esthetic values to preserve 14 tidal wetlands and prevent their despoliation 15 and destruction. 16 I will now briefly read from the 17 regulations so it's clear how we're going to 18 proceed tonight. These may be found in COMAR 19 26.24.01.05 E through G. An applicant and 20 any interested person shall be given an 21 opportunity at an informational hearing to</p>
<p style="text-align: right;">Page 7</p> <p>1 environment article, Annotated Code of 2 Maryland as implemented under COMAR 23.02.04 3 and subtitle 26.24. A state tidal wetlands 4 license is issued by the Board of Public 5 Works or Board, consisting of the governor, 6 state treasurer and comptroller of the state 7 of Maryland based upon a report and 8 recommendation submitted to the board by the 9 department. In accordance with the Maryland 10 Constitution, the board is the sole body with 11 the authority over state property including 12 state tidal wetlands. In its proprietary 13 authority the board has the right to grant a 14 third party a license to construct or conduct 15 an activity in state tidal wetlands. 16 According to section 16-202 of the 17 environment article the secretary of the 18 department shall assist the board in 19 determining whether to issue a license to 20 dredge or fill state wetlands. The secretary 21 shall submit a report indicating whether the</p>	<p style="text-align: right;">Page 9</p> <p>1 present facts and make statements for or 2 against granting the license. Questions may 3 be asked of and directed to the hearing 4 officer. A cross-examination not may be 5 conducted. The hearing is not a contested 6 case hearing under Maryland's Administrative 7 Procedure Act. The order of the presentation 8 is determined by the hearing officer and may 9 be conducted as follows: One, introduction 10 of the activity and participants by the 11 hearing officer. Two, presentation of the 12 proposed project by the applicant. Three, 13 questions about the activity. Four, 14 statements by public officials. Five, 15 statements in opposition. Six, statements in 16 support. And seven, closing the public 17 informational hearing by the hearing officer. 18 The hearing officer has the authority 19 and duty to conduct a full and fair public 20 informational hearing; act to avoid 21 unnecessary delay and to maintain order;</p>

<p style="text-align: right;">Page 10</p> <p>1 regulate the course of the hearing and the 2 conduct of the participants; extend the time 3 period for providing supplemental written 4 comments or information for inclusion in the 5 hearing record; and rule upon request for a 6 continuance of the hearing. At the close of 7 the request of the public comment period the 8 hearing officer shall prepare an official 9 record of the public informational hearing 10 and comments.</p> <p>11 In summary, the Maryland Department of 12 Environment is conducting this public 13 informational hearing for a state tidal 14 wetlands application number 17-WL-0450 15 submitted on April 3, 2017, by South 16 Annapolis Yacht Centre, LLC. The application 17 requests authorization to remove structures 18 at an existing commercial marina, reconfigure 19 the commercial marina to include three piers 20 with T-shaped platform, 19 finger piers with 21 one floating platform, two triangular</p>	<p style="text-align: right;">Page 12</p> <p>1 There may be additional concerns related 2 to issues that are beyond the scope of this 3 particular hearing. I ask that this hearing 4 remain focused on issues associated with the 5 tidal wetlands license application.</p> <p>6 At this time I would ask do we have any 7 elected officials with us tonight? Okay. So 8 with that being said, I would like to go 9 ahead and ask that the applicant present the 10 proposed project. I would ask that any 11 questions please be held until the conclusion 12 of the presentation. And would the first 13 speaker come forward and introduce yourself.</p> <p>14 MR. ANDERSON: Thank you for having me 15 tonight. I'm Bret Anderson, I'm the owner 16 and developer of the South Annapolis Yacht 17 Centre. This journey really started for me 18 just under six years ago with the acquisition 19 of Sarles Boatyard. Sarles Boatyard sits 20 right in this area right here. That was in 21 July of 2012. In August of 2012 we acquired</p>
<p style="text-align: right;">Page 11</p> <p>1 platforms, one L-shaped platform, 12 2 boatlifts with associated piles, six finger 3 piers, a boathouse with two piers and 4 triangular platform, two travel lift 5 platforms, to replace in kind 135 linear feet 6 of bulkhead, construct and backfill 780 7 linear feet of replacement bulkhead within a 8 maximum of 18 inches channel-ward of a 9 deteriorating bulkhead, dredge approximately 10 30,000 square feet to a depth of eight feet 11 at mean low water, and to deposit 5200 cubic 12 yards of dredge material at an approved 13 upland disposal site, and to provide periodic 14 maintenance dredging for a period of six 15 years.</p> <p>16 The purpose of this project is to 17 reconfigure an existing commercial marina. 18 The project is located within the tidal 19 waters of Spa Creek at 1 Walton Lane, 20 Annapolis, Anne Arundel County, Maryland ZIP 21 21403.</p>	<p style="text-align: right;">Page 13</p> <p>1 Petrini Shipyard. From there we've assembled 2 a total of 10 parcels that are all within the 3 red boundary lines that you see there.</p> <p>4 Sarles Boatyard is actually the oldest 5 working boatyard in the City of Annapolis. 6 This is an early picture of Sarles. The next 7 slide, this is also is another picture of 8 Sarles Boatyard. You see the railway, that's 9 still intact today. This is a picture also 10 of Sarles, but it adjoins Petrini Shipyard 11 which is approximately 75 years old. As far 12 as I know they are the two oldest working 13 boatyards in the City of Annapolis. These 14 were opened by two longtime families here in 15 Annapolis. And really for about the last 30 16 years they actually did no reinvesting in 17 these marinas. So basically we have failing 18 conditions that are all over the place. We 19 have erosion, you see here this is the old 20 railway. We have bulkheads that are failing, 21 we have piers that are failing. This</p>



Page 14

1 particular pier is being held up by a strap.
2 We have paved areas that are failing with
3 erosion underneath. We have overhead power
4 lines that are actually servicing probably
5 60 percent of this marina. As far as I know
6 we're the only marina left in the surrounding
7 area that has this condition. It's about as
8 unsafe as you can get. Here is a
9 continuation of our conditions there.

10 They're really -- we are on the last
11 thread of being able to operate this marina.
12 Last year we had so many repairs we had to
13 start to shut down areas of the actual
14 premises. This is another seawall. This
15 site really has no stormwater management. If
16 you can imagine for the last 110 years we had
17 work that was transpiring here. And all the
18 work that transpired every time that it
19 rains, stormwater winds up in Spa Creek.
20 This here is a continuation of the premises
21 that surrounds the area.

Page 15

1 The property is comprised of old piers.
2 We have just under 700 creosote pilings that
3 are with this marina. And as part of our
4 reconstruction we plan to remove all 700
5 piles. To date we've removed 19 derelict
6 boats that were left in the water of this
7 marina. They were removed of and disposed of
8 properly. We've cleaned up 17 storage
9 containers ranging from 55-gallon drums to
10 500-gallon containers. These were filled
11 with years of oil, solvents, paint thinners,
12 leftover paints, you can imagine. It was
13 left behind. All of those elements are
14 really what has happened over the last six
15 years. We've taken every last thing that we
16 could clean up and fix up in this facility.
17 To date we've hauled out just under 50
18 tractor-trailer loads of rubbish that had
19 accumulated over a long period of time.

20 So we have a new vision for this
21 facility and our new vision is to create a

Page 16

1 maritime village. The lynchpin of this
2 project is really about the environment. We
3 plan to make a huge environmental impact to
4 Spa Creek with the reconstruction of this
5 facility. This will be a new state of the
6 art marina. It will be a working boatyard
7 with a new travel well and travel lift.
8 There will be six maritime buildings that
9 will service the maritime industry. There
10 will be reconstruction of 11 new residences.
11 This here is an overview of the project how
12 it lays out on the site. Basically to the
13 east which is the right-hand corner we have
14 the 11 new residences. To the left side
15 which is to the west we have our working
16 boatyard and maritime buildings. This
17 project is going to have a very positive and
18 vital impact on tidal wetlands, marine life,
19 conservation and habitat. Basically you can
20 see here, this is an overlay of the new
21 marina which is in red, our three new T-head

Page 17

1 piers. You can see that to the very edge of
2 this pier we have old piles that are left in
3 place here. These old pilings come down
4 here, this is a boat shed and a pier.
5 There's been some question along the way
6 as to our reconstruction. The new bulkhead
7 and where these new piers would wind up, and
8 this is an aerial overlay showing that all of
9 the new piers will stay within the boundary
10 of the existing elements that have been in
11 place.
12 On the outside edge we have a harbor
13 line. This harbor line is set 20 feet out
14 from our T-heads. I know that local code
15 talks about a five-foot buffer. There's been
16 a number of questions by the community about
17 us mooring boats on these T-heads and our
18 ability to stay within the harbor line. We
19 made sure with 20 feet we are confident we
20 will be able to manage this practice well and
21 stay within the designated harbor line that's



Page 18

Page 20

1 in place. To the left and right side we have
2 lateral lines that are in place so everything
3 with, inside the yellow boundary is our
4 developable waterway.

5 The blue covered area, all of the blue
6 represents the boat sheds that we're going to
7 be removing through this reconstruction.
8 Essentially this is a "face you" of these
9 boat sheds. But we're going to be removing
10 20,000 square feet of boat shed space that is
11 currently shading the waterway. We're also
12 going to be reducing the boat slips. We
13 currently have 85 slips, we'll drop down to
14 73 slips. And we're going to be implementing
15 many stormwater management devices which
16 should greatly impact the water quality.

17 Along with our reconstruction if you see
18 this area here that I mentioned to the east,
19 this is all basically paved area. Through
20 the reconstruction of the new residences we
21 will be constructing a major new planted

1 have, this is what we're required to do by
2 code. And this is actually the amount that
3 we'll be doing through the reconstruction of
4 this project.

5 We will also be replanting a major new
6 tree canopy with this project. You can see
7 basically through the perimeter we'll be
8 planting 125 new native trees, 2,000 native
9 shrubs and roughly about 10,000 native
10 grasses. This project right now is on track
11 to meet the city's objective, they call it
12 the 2030 coverage, 50 percent for the city
13 and this project will actually meet that.

14 Basically I mentioned our stormwater
15 management before and it's an interesting
16 fact that right now with no stormwater
17 management in place we have about 55,000
18 gallons of untreated water flowing into Spa
19 Creek for every one inch of rain. We
20 actually, average rainfall in the City of
21 Annapolis is roughly 44 inches a year, that's

Page 19

Page 21

1 buffer that will adjoin the waterway. This
2 is very rare that can you take a boatyard,
3 you can reconstruct it in such a way that
4 will be decreasing paved impervious area in
5 the buffer with a major planted buffer.

6 Moving forward here you see some of the
7 paved area I've been talking about, you see
8 sort of a side cut of a rain garden, how it
9 might promote water quality. Then the next
10 image, you'll begin to see the new images of
11 planted buffers that we'll be installing in
12 lieu of paved areas.

13 Currently on site now I mention that
14 there is zero stormwater management, not --
15 none. We will be imposing many different
16 devices that will greatly impact water
17 quality. Currently right now critical area
18 requires a 10 percent removal of stormwater
19 pollutants. We will actually be improving
20 that up to 65 percent. So if you look at the
21 little red drop-down here this is what we

1 2.4 million gallons of water that's flowing
2 into Spa Creek off of this particular site.
3 We'll be installing 26 different facilities
4 that will include permeable pavement, micro
5 bioretention, rain gardens, gravel wetlands,
6 structural storm filters and green roofs. I
7 mentioned to you before about the critical
8 area rule of 10 percent, we'll be increasing
9 to 60 percent. One of the interesting
10 statistics is there's a measurement for total
11 suspended solids. Right now there's nothing
12 being removed. We'll average with these new
13 facilities we'll be installing just under a
14 thousand pounds a year of suspended solids.
15 In our, in the existing impervious buffer
16 that's there now we'll be reducing that by
17 17 percent, that's 9,393 square feet that
18 we'll actually be removing and replacing with
19 a planted buffer.

20 I mentioned before we have 85 boat
21 slips, we will go to 73. We will be



<p style="text-align: right;">Page 22</p> <p>1 installing a new marina, both wash wastewater 2 containment treatment system for cleaning 3 boats. It is a requirement of Maryland 4 Department of the Environment, but there's 5 currently none that is there now. I mention 6 to you our 20,000 square feet of covered 7 boathouses that we'll be removing, but to 8 point out that is just under a half an acre 9 of shaded area that we'll be removing.</p> <p>10 Also we have 700 creosote pilings by 11 nature going back with floating piers. We 12 will have many less pilings than is there 13 now, they'll all be pressure treated which is 14 much more beneficial to the environment.</p> <p>15 Navigation assessment is, basically this 16 is an area that we worked really hard on. I 17 know that there's been a lot of comment 18 within the community about this particular 19 issue. The first thing that I would point 20 out is that Annapolis harbor by nature is a 21 congested waterway. There's a lot that is</p>	<p style="text-align: right;">Page 24</p> <p>1 This here is an aerial view. This 2 channel marker here to the west, we've 3 actually lined up one piling over from the 4 center of the bridge's spanned opening. You 5 can see that we have one corner of our harbor 6 line that touches it, but if you look farther 7 to the east you have all of these marinas 8 here that are basically adjoining the channel 9 if you will. We have these mooring balls 10 that are on this side that when a boat is 11 tethered swings into that.</p> <p>12 If you go to the next slide we have this 13 large triangle area that not only can you 14 wait to queue before you come out of this, 15 but you can also have a queuing area not only 16 for the boats of this marina but other boats 17 as they begin to approach the actual bridge 18 waiting for the opening.</p> <p>19 It's also important to mention that this 20 is a six-mile-an-hour zone. And we've done 21 an extensive and exhausted search. We can</p>
<p style="text-align: right;">Page 23</p> <p>1 going on there. And just about every inch of 2 the harbor is congested at different times. 3 But we, these marinas have been there before 4 most any other developed items in the city 5 relative to working boatyards. And in fact 6 Sables Boatyard is the oldest working 7 boatyard in the harbor. So maintaining these 8 boatyards we think is very important. It's 9 very important for our city, it's important 10 for our community and it's important for the 11 industry. So we worked hard to build what we 12 think is a state of the art marina. We've 13 installed three new T-heads. The idea behind 14 these T-heads is the red circles that you see 15 will actually be queuing areas. So you can 16 actually come out of your slip, you'll have 17 an area where you can wait before you enter 18 the channel. We think that's a very positive 19 benefit. We've also made sure that we have 20 stayed back 20 feet from the actual harbor 21 line.</p>	<p style="text-align: right;">Page 25</p> <p>1 find no public record that we've been able to 2 find of any reported accidents in this part 3 of Spa Creek at all. And it's been an 4 exhaustive search. Here again, this is a 5 little better view of boats that are perhaps 6 coming and going out of this queuing area.</p> <p>7 So I'm a life long residence of Anne 8 Arundel County. My profession is a builder. 9 I happened on these marinas and saw the 10 rundown, disrepair state they were in and 11 felt as though I could use my skill set to 12 create a benefit for the community. And I 13 know that there's been a few citizens that 14 have had some concern. I personally think 15 it's about their own bias. I think if you 16 take this project and you measure it as a 17 whole there are huge positive benefits. This 18 project right now will have the single 19 largest environmental impact in a positive 20 nature that Spa Creek has seen to date. Not 21 only that but through what we've done and the</p>

<p style="text-align: right;">Page 26</p> <p>1 benchmark we've set, we've also helped set a 2 new standard for other people that are 3 looking to do projects in the harbor of 4 Annapolis. Beyond that, I think that we have 5 maintained a very strong commitment to 6 maritime, to the boating industry, to 7 preserving the history of Annapolis and 8 promoting great economic benefit for the 9 boating industry and all the marine services 10 that will be provided at this facility. 11 Along with that we think we're providing 12 a very vital economic benefit for the city 13 through increased tax basis as well as the 14 values of surrounding properties. Everything 15 is going to be uplifted with the 16 reconstruction of this project. 17 So I've worked long and hard to put 18 together a, what I think is a very positive 19 project, and I appreciate the opportunity to 20 present it to you tonight. 21 MR. MAY: Thank you. Stephen, did you</p>	<p style="text-align: right;">Page 28</p> <p>1 the next few weeks, but it was granted by the 2 port wardens on January 23rd last month. The 3 decision confirmed SAYC, the applicant's 4 developable waterway area as we presented it, 5 and it did require that the nine existing 6 slips along the eastern frontage of SAYC's 7 existing bulkhead be replaced in kind, which 8 was pursuant to city code section 15.18.120 9 which recognized the legality of the existing 10 structures. 11 The developable waterway area is defined 12 by the City of Annapolis code as 13 section 15.18.010 as, quote, The area bounded 14 by the shoreline, the harbor line and lateral 15 lines of a waterfront lot or tract. That's 16 what we have, a waterfront lot, several 17 waterfront lots on the Spa Creek frontage 18 shoreline. And we've submitted to MDE and 19 we'll share again the lateral line drawings 20 that were submitted to port wardens. It 21 depicts the lateral lines that the port</p>
<p style="text-align: right;">Page 27</p> <p>1 want to add to that? 2 MR. HYATT: You want people to ask him 3 questions first? 4 MR. MAY: Why don't you guys finish up 5 and then if there's some simple questions, 6 we'll field those then. 7 MR. HYATT: Good evening, everybody, I'm 8 Stephen Hyatt, Hyatt & Weber, I represent the 9 applicant. I'm going to address mostly some 10 of the public comments that were submitted by 11 mainly Newport condo owners and some adjacent 12 property owners to MDE over the last several 13 weeks, really address riparian rights, tidal 14 issues, lateral lines, things that have all 15 along been discussed with the port wardens. 16 We've been going through this process for 17 about nine months in front of city of the 18 Annapolis port wardens. And we finally have 19 approval from the port wardens to reconfigure 20 and renovate our marina. We're waiting on 21 the written decision, hopefully comes down</p>	<p style="text-align: right;">Page 29</p> <p>1 wardens approved. On sheet three of the 2 lateral lines drawings it's lateral line D to 3 end of P. And on sheet five on the west side 4 between what's SAYC and the Fitzsimmons 5 property it's points D to N to S. 6 There's been some question raised about 7 the accuracy of the harbor line. The harbor 8 line was amended by an ordinance in 2016, the 9 specific ordinance being 03416. It amended 10 the harbor line in front of SAYC. The 11 amended harbor line and the correct harbor 12 line that exists in the city maps is depicted 13 on every application, on every plan of the 14 applicant's application throughout every step 15 of this process. 16 The port wardens decision to approve 17 SAYC's plan is supported by the 18 recommendation of the City of Annapolis 19 Department of Planning and Zoning. I'll 20 share with MDE the memo, I believe you have 21 that. But Kevin Scott with the city stated</p>

<p>Page 30</p> <p>1 in pertinent part the following, he said, In 2 summary, the staff finds that the high 3 lateral line exhibits on behalf of SAYC do 4 comply with the provisions of the current 5 code under title 15 for determining lateral 6 lines for the subject SAYC application. In 7 contrast, the staff finds that the Hartman 8 lateral lines exhibit on behalf of Newport 9 Condominium does not comply with the 10 provisions of the current code under title 15 11 for determining lateral lines for the subject 12 SAYC application, closed quote. 13 Our lateral lines are unquestionably 14 correct. We followed the code per the port 15 wardens report and per the requirements of 16 title 15. Newport, in submitting their 17 exhibits, and they chose not to follow the 18 code, they assert that lateral lines are 19 simply an extension of property lines 20 straight out to the harbor line. That may be 21 true in instances where the shoreline is</p>	<p>Page 32</p> <p>1 Furthermore, the concave and undulating 2 shoreline of the southern shore of Spa Creek, 3 which a portion of it is now the applicant's 4 shoreline, is more specifically described in 5 the various deeds that Mr. Hartman and 6 Newport submitted to MDE as part of the 7 public comments. 8 In regards to the irregular shoreline of 9 applicant's property, the opposition would 10 have you believe that the applicant is 11 limited to making improvements into Spa Creek 12 straight out from only the north face of the 13 existing bulkhead, which entirely ignores the 14 definition of what it means for a property to 15 be waterfront. Any portion of the 16 applicant's shoreline, which includes all 17 faces of the existing bulkhead are equally 18 considered frontage within the meaning of 19 Maryland law. In other words, the nine 20 existing slips that the applicant would 21 replace in kind are in front of the</p>
<p>Page 31</p> <p>1 relatively straight and out the following 2 title 15 of the code you could get straight 3 lateral lines. For example, the lateral line 4 that splits the applicant's two parcels E to 5 J which is exhibited on every page on the 6 lateral line drawings looks like an extension 7 of the property line, but that was determined 8 only after following the step by step 9 analysis provided by title 15. But again, 10 that's not what the code requires, and that 11 would happen when the shoreline is relatively 12 straight. The shoreline between SAYC and 13 Newport is nowhere near close to being 14 straight. The shoreline of the applicant's 15 property actually happened to be the subject 16 of a 1948 court of appeals lawsuit wherein 17 the court described a portion of what is now 18 the applicant's shoreline as, quote, A total 19 irregular frontage on said creek, said creek 20 being obviously Spa Creek. The case is 21 Feudale V Sarles and the cite is 190 MD 244.</p>	<p>Page 33</p> <p>1 applicant's shoreline, just the same as any 2 other improvements anywhere along the 3 frontage of the applicant's shoreline. 4 Again, most of these comments were 5 really focused on this area, the eastern 6 frontage, these nine slips of SAYC's 7 application, which is further evidenced by 8 the fact that eight out of the 10 commenters 9 are residents of the Newport Condominium. 10 And we learned recently that Newport is 11 really motivated in the fact that they want 12 to desire -- they desire to redevelop and 13 expand their marina. They aren't satisfied 14 with their existing marina, which is somewhat 15 understandable considering its age is similar 16 to that of a portion of SAYC's. It's been in 17 place for over 45 years. So what they're 18 attempting to do as evidenced at the last 19 port wardens, or by their submissions to the 20 port wardens, is to really take what SAYC has 21 had for the last 50 years, all the while</p>



Page 34

1 Newport has continuously asserted that that's
2 exactly what SAYC is doing, attempting to
3 usurp their developable waterway area.
4 Newport certainly has the right to redevelop
5 their marina. But it's just as we are, they
6 are obligated to follow the same rules and to
7 do so entirely within their developable
8 waterway area which the port wardens
9 determined back in January.

10 In regards to these lateral lines and
11 this developable waterway area, Newport
12 suggests that these lateral lines will render
13 their western facing slips unusable, or they
14 will have detrimental effects to their
15 riparian rights. Yet Newport has
16 continuously managed to use all of those
17 slips over the last 45 years. And based on
18 the port wardens approval those conditions
19 are going to remain exactly the same as they
20 have been for nearly five decades. Newport's
21 argument would have you believe that the

Page 35

1 determination of the lateral lines somehow
2 prevents their boats from physically
3 accessing the channel, as if the lateral line
4 is some sort of physical structure or
5 barrier. A lateral line, it's only an
6 illusory demarcation that delineates where
7 riparian owners can construct improvements
8 into public navigable waters.

9 SAYC's plan, whether it's five angled
10 slips or the nine as they exist today, in no
11 way, shape or form come remotely close to
12 interfering with Newport's riparian rights.
13 The crux of riparian rights is access to
14 water, which Newport has today. They've had
15 it for the last 50 years and they will have
16 it well after SAYC completes the
17 reconfiguration and renovation of its marina.

18 There were also some public comments in
19 regards to the applicant's title to the
20 property. SAYC's predecessor in interest,
21 Mr. Petrini, built the existing bulkhead and

Page 36

1 pilings pursuant to a wetlands license
2 number 72-96 -- thank you, Angela -- and
3 they've existed now for 45 years. They've
4 been in place and they exist today as they
5 were when they were originally built.
6 Accordingly, environment article title 16
7 section 201A provides that, quote, After an
8 improvement has been constructed the
9 improvement is the property of the owner of
10 the land to which the improvement is
11 attached, closed quote. In this case the
12 bulkhead, piers, pilings that exist today are
13 the lawful property of SAYC. The creek bed
14 however still remains the property of the
15 state of Maryland. And contrary to Newport's
16 claim nowhere in the environment article or
17 at any time throughout the legal history of
18 Maryland riparian case law, was the owner of
19 an improvement made into the state waters
20 required to obtain a deed to such
21 improvements. In fact, Maryland's highest

Page 37

1 court has continuously held that a conveyance
2 of land bordering on navigable water
3 presumptively carries with it the grantor's
4 riparian rights. That's referenced in the
5 Maryland Court of Appeals case, Williams V.
6 Skyland Development Corp, cite is 265 MD 130.
7 Another Maryland -- special, Court of Special
8 Appeals case is stated, Absent an express
9 reservation it is presumed as a matter of law
10 that riparian rights are conveyed by deed.
11 In other words, riparian rights must be
12 expressly reserved or severed prior to
13 conveyance. There must be some written
14 instrument that does that. That would be the
15 only way to prevent the transfer of riparian
16 rights to successive owners. Case that cites
17 that is Gunn V Old Severna Park Improvement
18 Association 174 MD at 189. That didn't
19 happen here. There's no writing, there's no
20 severance, there's no reservation precluding
21 the transfer of rights to Bret. So SAYC



<p>Page 38</p> <p>1 maintains the same riparian rights that its 2 predecessors in interest possessed, which 3 thus vests title to the improvements, the 4 bulkhead, piers, pilings that exist today 5 with the applicant. So based on the 6 environment article, the Maryland case law, 7 omission of the bulkhead from the 8 description, our meets and bounds from any 9 deed in the chain of title conveying the 10 property, now owned by the applicant does not 11 preclude the transfer ownership from the 12 attached improvements. Those improvements 13 attach to and run with the land now owned by 14 the applicant. Without production of some 15 express severance or reservation, none of 16 which exist, any argument to the contrary is 17 indisputably wrong. 18 Newport also claims that SAYC's 19 predecessor in interest failed to compensate 20 the state for fast land created. Pursuant to 21 wetlands license 7296 there's no evidence</p>	<p>Page 40</p> <p>1 with the physical requirements of the subject 2 license has been achieved, close quote. So 3 if nothing else, for that reason alone the 4 applicant is at a bare minimum entitled to 5 replace the existing improvements in kind. 6 However, as recognized by the port wardens, 7 City of Annapolis, the applicant is well 8 within its rights to reconfigure and renovate 9 the marina as submitted to MDE. 10 There were also some comments about 11 property values. They seem to all arise out 12 of the potential fact or the allegations that 13 the applicant's project will result in 14 usurping or rendering a portion of Newport's 15 marina unusable. I mean that's simply not 16 the case. The lateral line is not a barrier, 17 they can get to and from their marina. They 18 can replace it in kind. Nothing we're doing 19 is going to prevent that from happening. In 20 fact, this project as Mr. Anderson stated is 21 going to improve the quality of Spa Creek</p>
<p>Page 39</p> <p>1 available to prove that Mr. Petrini did not 2 compensate the state. The last 3 correspondence with the state to Mr. Petrini 4 occurred in December of 1976 asks for 5 remittance of payment to the state. And 6 there is no further record indicating payment 7 or failure of payment. Therefore it cannot 8 be said with any degree of certainty that 9 payment to the state was never made. The 10 fact that the state stopped communicating 11 lends forth the position that Mr. Petrini did 12 eventually make payment to the state. But 13 the fact remains we cannot be certain either 14 way. If Mr. Petrini still happens to owe 15 money to the state, and it can be proved, 16 that has no bearing on the applicant or the 17 applicant's current application for MDE. 18 In addition to requesting payment from 19 Mr. Petrini, the June and December 1976 20 correspondences both from DNR stated that, 21 quote, It has been determined that compliance</p>	<p>Page 41</p> <p>1 which inherently will improve the value of 2 access to Spa Creek. 3 The impact of the applicant's project 4 including the marina reconfiguration and 5 renovation is entirely positive for all the 6 reasons Mr. Anderson previously stated. And 7 Newport along with residents and visitors to 8 Spa Creek will directly benefit from the 9 environmental enhancements from SAYC's 10 project. The availability of a completely 11 restored first class marina will also serve 12 to benefit both Newport condo owners. 13 Another option, they can dock their vessels 14 for those that are too large to fit in 15 Newport marina or if the marina, their marina 16 is at capacity, and any other boaters looking 17 to be a part of Annapolis' legendary maritime 18 history. 19 The other benefits of SAYC's project 20 extend throughout the community. The local 21 economy benefits through the additional jobs</p>

<p>Page 42</p> <p>1 created by businesses operating at SAYC. The</p> <p>2 unprecedented stormwater systems being</p> <p>3 installed combined with specific pier design</p> <p>4 and construction will significantly enhance</p> <p>5 the water quality of Spa Creek, thus</p> <p>6 improving the surrounding marine life</p> <p>7 habitat, promoting new growth of submerged</p> <p>8 aquatic vegetation. And it will reduce the</p> <p>9 buildup of sediment and silt in Spa Creek.</p> <p>10 Finally, the public had some concerns</p> <p>11 about navigation and safety. There was a</p> <p>12 report issued by the United States Coast</p> <p>13 Guard in conjunction with the Department of</p> <p>14 Homeland Security in 2016. And this report</p> <p>15 stated that the United States -- there were</p> <p>16 4,463 boating accidents nationwide. Only</p> <p>17 two percent of those accidents nationwide</p> <p>18 occurred while vessels were either docking,</p> <p>19 undocking or idling, which is important</p> <p>20 because as Mr. Anderson stated, SAYC's marina</p> <p>21 is in a six-mile-an-hour no wake zone. The</p>	<p>Page 44</p> <p>1 anything that SAYC is doing is going to</p> <p>2 contribute to that. The fact of the matter</p> <p>3 is we are taking boats off of Spa Creek.</p> <p>4 We're going from 85 moored vessels to 73. So</p> <p>5 there will be less potential for navigational</p> <p>6 accidents or collisions.</p> <p>7 This marina is over a hundred years old</p> <p>8 as Mr. Anderson has stated. And it shows.</p> <p>9 Everything that SAYC has planned fully</p> <p>10 satisfies the department of environment</p> <p>11 criteria for tidal wetlands license and</p> <p>12 permit as more fully set forth in COMAR</p> <p>13 section 26.24.02.03. We've submitted</p> <p>14 statements from some of our experts saying as</p> <p>15 much. Once restored all the previously</p> <p>16 mentioned environmental benefits will be</p> <p>17 lasting for generations to come. And SAYC</p> <p>18 will be positioned to endure no less than 100</p> <p>19 more years serving the historic Annapolis</p> <p>20 maritime community. Thank you.</p> <p>21 MR. MAY: Thank you. Once again I hope</p>
<p>Page 43</p> <p>1 majority of boats should be idling, docking,</p> <p>2 undocking or going six mile per hour or less.</p> <p>3 In Maryland there were only 150 total</p> <p>4 boating accidents in 2016. These are</p> <p>5 reported, obviously there's some dings here</p> <p>6 or there that don't go -- they go unreported.</p> <p>7 These are the ones that were reported of</p> <p>8 significance. So if you apply the</p> <p>9 two percent national figure of accidents</p> <p>10 occurring while vessels are docking or</p> <p>11 undocking or idling, then you end up with</p> <p>12 three boating accidents in Maryland.</p> <p>13 There were several specific comments</p> <p>14 that said, from the Newport residents, that</p> <p>15 said they observed many boating collisions.</p> <p>16 I mean a collision is two boats crashing into</p> <p>17 each other. Those would have been reported</p> <p>18 to state. That's just not the case. Even if</p> <p>19 all three of the accidents of this type had</p> <p>20 occurred on Spa Creek, which they didn't,</p> <p>21 it's still not reasonable to think that</p>	<p>Page 45</p> <p>1 everyone has signed in. I saw a couple</p> <p>2 people come in here. Again, I'll ask one</p> <p>3 more time, any elected officials here</p> <p>4 tonight? Okay.</p> <p>5 With that said now would be an</p> <p>6 opportunity for some simple questions of</p> <p>7 either presenter. I would say that I</p> <p>8 understand folks may be wanting to speak or</p> <p>9 provide comments in opposition. And</p> <p>10 certainly, Mr. Hartman, I'm going to give you</p> <p>11 time to present and speak tonight. But does</p> <p>12 anyone have any just simple points of</p> <p>13 clarification that they want to ask?</p> <p>14 Yes, ma'am, please come forward,</p> <p>15 introduce yourself by name so that the</p> <p>16 reporter can pick you up.</p> <p>17 MS. BUTLER: I have a quick question.</p> <p>18 My name is Diane Butler, I wanted to ask</p> <p>19 Mr. Hyatt, so the city has a tree canopy goal</p> <p>20 of 50 percent by 2036. Can you walk us</p> <p>21 through how this project meets that. Thanks.</p>



<p style="text-align: right;">Page 46</p> <p>1 MR. MAY: I'm going to say right now 2 that's not -- I want to keep stuff related to 3 the tidal wetlands license. If you're able 4 to stick around afterward and answer those 5 questions, anything pertaining to the buffer 6 area, and this is stuff that is not in tidal 7 wetlands jurisdiction. I certainly 8 understand your concern about the overall 9 project. But in the interest of time and 10 keeping focused on the tidal wetlands issues 11 as far as questions, is that something you 12 guys can stick around and answer later? 13 MR. ANDERSON: Sure. 14 MS. BUTLER: My follow-up question has 15 to do with critical area commissions. 16 Critical area commission suggested there 17 would be trees in the buffer area. And I 18 noted on the most recent plan that's been 19 done that there are no trees in the buffer 20 area. And I was wondering -- and our 21 planning and zoning director also wanted</p>	<p style="text-align: right;">Page 48</p> <p>1 135 feet, and that particular area will be 2 encapsulated with a turbidity curtain as it's 3 being replaced. 4 MS. BUTLER: I know there's been 5 discussion about the toxic nature of the 6 soil, and I'm wondering did the MDE sign off 7 on a remediation project that took place on 8 SAYC? We couldn't find anything in our 9 research. 10 MR. ANDERSON: No, I'm not aware of any 11 toxic soil. 12 MS. BUTLER: Those are just a few 13 questions. 14 MR. MAY: Mr. Hartman, do you want to go 15 ahead and make your presentation, I think 16 we're getting into more significant comments 17 here. 18 MR. HARTMAN: I just have a couple 19 questions and then I'll do my presentation to 20 you. I'm a little confused by the slides. I 21 wanted to know if this is a, this appears to</p>
<p style="text-align: right;">Page 47</p> <p>1 trees specifically in that area. I wondered 2 if that is still going to happen. 3 (Overlapping conversation.) 4 MS. BUTLER: There are trees in the 5 critical area because I know they talked 6 about shrubs and buffer shrubs. I wanted to 7 double check. 8 MR. ANDERSON: Yes, there are trees. 9 They're shown right here. 10 SLIDE OPERATOR: One, two, three, four. 11 MS. BUTLER: We understood that there 12 was going to be encapsulation when the 700 13 creosote bulkhead pilings come out. And now 14 I'm a little confused. Is there going to be 15 encapsulation in that process or no 16 encapsulation when the bulkheads are 17 replaced? 18 MR. ANDERSON: We were referring to the 19 bulkhead to the east side. That's not the 20 700 pilings, that's just the bulkhead to the 21 east side, which I think my recollection is</p>	<p style="text-align: right;">Page 49</p> <p>1 be a different plan than the one I received 2 from the MDE. Is it? 3 MR. HYATT: What are you referring to 4 specifically? 5 MR. HARTMAN: Specifically on the 6 eastern bulkhead of the project. That's a 7 different plan than currently pending. 8 MR. HYATT: Talking about in regards to 9 the in kind replacement that the port 10 wardens -- 11 MR. HARTMAN: I'm talking about the 12 drawing you have up there with the red lines 13 superimposing over it. That's a different 14 one, right? 15 MR. HYATT: I mean we're going to be 16 replacing per the port wardens, that's what 17 you're referring to? 18 MR. HARTMAN: That's correct. Down on 19 the bottom by the, where your lateral 20 lines -- 21 MR. HYATT: The original application</p>



<p style="text-align: right;">Page 50</p> <p>1 showed the five angled slips.</p> <p>2 MR. HARTMAN: Right. This is a now a</p> <p>3 different application than the one most</p> <p>4 recently presented to the MDE, is that</p> <p>5 correct?</p> <p>6 MR. HYATT: I would say it varies based</p> <p>7 on the port wardens' decision, yes. But</p> <p>8 these are the existing piers or pilings, so</p> <p>9 all we've essentially done is removed the</p> <p>10 five angled slips and we're going to</p> <p>11 replacing these in kind.</p> <p>12 MR. HARTMAN: It is a different -- we</p> <p>13 don't know what the port wardens have ruled,</p> <p>14 correct?</p> <p>15 MR. HYATT: We don't have the written</p> <p>16 determination but we know what they ruled.</p> <p>17 MR. MAY: Any comments? Please</p> <p>18 introduce yourself.</p> <p>19 MR. KASTENDIKE: I don't represent</p> <p>20 anybody -- I have a petition, I represent 150</p> <p>21 people living on Spa Creek or residing there</p>	<p style="text-align: right;">Page 52</p> <p>1 care of it. That's all I have to say.</p> <p>2 MR. MAY: At this point I think we're</p> <p>3 going to start getting into -- are you</p> <p>4 prepared to make your statement, Mr. Hartman?</p> <p>5 You want to go ahead.</p> <p>6 MR. HARTMAN: Yes.</p> <p>7 MR. MAY: I would say why don't you go</p> <p>8 ahead and speak. I do want to give other</p> <p>9 people here an opportunity to speak if they</p> <p>10 want, is 10 minutes going to be sufficient,</p> <p>11 do you think?</p> <p>12 MR. HARTMAN: I'm prepared to be very</p> <p>13 brief. I was told to be and I'm prepared to</p> <p>14 be. And I'm going to talk to you, not to the</p> <p>15 crowd. I'll come up. This is a written</p> <p>16 opposition that has already been filed. It's</p> <p>17 fairly lengthy. You can take that with you</p> <p>18 and read it whenever you get a chance. This</p> <p>19 right here is my quick, this section of the</p> <p>20 issues that are raised in there. I depicted</p> <p>21 very clearly in these documents. I can go</p>
<p style="text-align: right;">Page 51</p> <p>1 signed a petition in your hands.</p> <p>2 MR. MAY: And your name is?</p> <p>3 MR. KASTENDIKE: Graham Kastendike. I</p> <p>4 just have three comments. The marinas going</p> <p>5 from 83 -- 85 slips to 73. It failed to tell</p> <p>6 you they're 75 much larger slips for larger</p> <p>7 boats, larger beam boats. With regard to</p> <p>8 accidents in Spa Creek, we had one last year</p> <p>9 that took out a stake buoy right in front of</p> <p>10 Petrini's and Sarles. And the harbormaster</p> <p>11 had to replace it with a floating buoy. I am</p> <p>12 in the maritime accident business. The</p> <p>13 hundreds of maritime accidents I've</p> <p>14 witnessed, I deal with, only one percent have</p> <p>15 the DNR and coast guard involved. Only if</p> <p>16 there's extreme property damage or bodily</p> <p>17 injury do the coast guard or DNR get</p> <p>18 involved. Frankly, it takes too long a time</p> <p>19 for them to get on scene unless it's a real</p> <p>20 emergency. If two boats bump it's not a lot</p> <p>21 of bodily injury, insurance companies take</p>	<p style="text-align: right;">Page 53</p> <p>1 through them in less than 10 minutes and</p> <p>2 you'll get the idea.</p> <p>3 AUDIENCE: We can't hear what's going</p> <p>4 on.</p> <p>5 MR. MAY: Are you able to project? This</p> <p>6 really is all for the benefit --</p> <p>7 MR. HARTMAN: As far as I'm concerned</p> <p>8 it's for your benefit. You can come up here</p> <p>9 and listen. I'm just talking to Mr. May.</p> <p>10 So if you flip to the next page.</p> <p>11 MR. ANDERSON: Is this the way it's</p> <p>12 supposed to be done?</p> <p>13 MR. MAY: It is meant to be public.</p> <p>14 It's for the benefit of the public.</p> <p>15 MR. HARTMAN: They can come up and</p> <p>16 listen to me. I want to talk to you. As I</p> <p>17 talked to you before we started this is what</p> <p>18 I asked you if it was appropriate and you</p> <p>19 were fine with it. I'll be done quick. I</p> <p>20 can't put it on the projector.</p> <p>21 MR. MAY: Please speak up, sir.</p>



<p style="text-align: right;">Page 54</p> <p>1 MR. HARTMAN: I don't want to yell at 2 you. 3 MR. MAY: I will not be offended. 4 MR. HARTMAN: The picture you have here 5 before you that we've just gone over is the 6 1972 license. The next picture, if you turn 7 upright is a drawing of the actual property 8 that SAYC is seeking to develop. This is, 9 pointing down here you see the Spa Creek and 10 the compass rose at the top. I want you to 11 understand, what is in yellow in this 12 particular drawing has actually never been 13 conveyed to the applicant. They don't 14 actually have the ability that -- yet that is 15 the part of the property on which they seek 16 to construct. This is what the permit is for 17 they're asking you. That license is to seek 18 that particular thing. In addition to that, 19 let me draw your attention to the little 20 angle right here, this little angle right 21 here, if you go back two pages to the actual</p>	<p style="text-align: right;">Page 56</p> <p>1 interest, Petrini, was authorized to build a 2 bulkhead and fill in behind it. We've heard 3 a little talk about, from Mr. Hyatt, about 4 whether or not they were required to buy that 5 land underneath it and get a deed. Well, 6 their very own permit says they are required 7 to do so. Their own letter that they 8 produced said they never did. There is no 9 deed in the land records. Yet Newport at the 10 very same time did the very same thing, has a 11 deed recorded among the land records. This 12 as well as an actual tidal search, which I 13 can only presume was never done, because 14 there was no bank involved in this 15 transaction, shows two problems with the 16 property. 17 This particular yellow drawing which 18 we've, fairly small for you guys, this is the 19 property in yellow which was created by 20 filling in the creek. They built bulkheads, 21 filled in the land. To be able to convey</p>
<p style="text-align: right;">Page 55</p> <p>1 original license that you granted, you'll see 2 that this line is supposed to be straight. 3 In fact, it is not. So the construction of 4 their 1972 structure came out to that little 5 angle right there. It's a good seven or 6 eight feet out into the waterways in front of 7 Newport's property. That's of course whom I 8 represent. 9 MR. MAY: Can everyone in here hear 10 Mr. Hartman speaking? 11 AUDIENCE: No. 12 MR. MAY: In the interest of making this 13 a full and fair public hearing, would you 14 please project very loud. I want to make 15 sure everyone in the room can hear. I'm 16 happy to look at these exhibits with you. We 17 can keep going through. 18 MR. HARTMAN: We started out with the 19 1972 license which was the actual, that you 20 heard Mr. Hyatt talk about briefly, which is 21 the license by which SAYC's predecessor in</p>	<p style="text-align: right;">Page 57</p> <p>1 that land first you have to buy it from the 2 state. That never happened. 3 Second, some 16 years after this 4 particular deed -- excuse me, after this 5 particular land was created the deed from 6 Mrs. Petrini to a trust specifically excluded 7 that property. There's a meets and bounds 8 description of only the property inside that 9 yellow, none of which touches the water. So 10 actually a very simple title search produces 11 the fact that the Pyramid entity applying for 12 it actually owns no waterfront property, just 13 Petrini and the state still own this 14 property. The applicant has no standing to 15 seek what it is doing. 16 Beyond that, there is no doubt and it's 17 never been contested that the original 1972 18 license which was granted to Mrs. Petrini 19 allows for her to build a bulkhead which was 20 a straight extension of the boundary line 21 between the two properties, that being</p>



Page 58

1 Newport and SAYC, and at that time Petrini.
2 They didn't do that. They built about
3 eight feet out into the water, which is
4 confirmed again by two drawings. One, the
5 drawing simply platting out their deed which
6 shows a little angle down here at the bottom,
7 where instead of attaching the bulkhead they
8 were authorized to build to their own
9 property, which logically anyone is required
10 to do, you want to build a bulkhead, build it
11 on your property. They actually put it out
12 eight feet into the water and attached it to
13 Newport's property. That is shown by a much
14 more recent drawing here which has a
15 crosscheck area which I've used in a port
16 wardens hearing you would have seen. It's an
17 illegal construction beyond the permit that
18 was granted in 1972. It has never been
19 approved in any way, shape or form. It is on
20 top of land still owned by the state which
21 you cannot acquire by adverse possession. It

Page 59

1 is an illegal construction which they are now
2 seeking to ask this particular board to
3 ratify and approve. MDE should not do that.
4 But more importantly, since it seems
5 like the entire case of SAYC is based upon
6 these dredge permits, these licenses from
7 1971 and 1972, they've left out the fact that
8 in 1990 this very body, not me, you, issued
9 another license which gave, granted rights to
10 Newport for the entire area in front of
11 Newport's property and all the way up along
12 the side of the bulkhead. This license is
13 still valid today because it was fully
14 complied with. The right to revoke or modify
15 or alter that license ended. These licenses
16 by nature of definition are revocable under
17 certain circumstances.
18 In 1972 license was revoked because it,
19 apparently, because it was never complied
20 with. But it was overruled by this
21 particular license which grants to Newport

Page 60

1 the entire area in front of its property,
2 consistent with riparian right law and
3 property law. That is when Newport spent a
4 ton of money to have the whole area dredged
5 with the authority of both this particular
6 board as well as the City of Annapolis which
7 approved it at the same time with a building
8 permit in 1992.

9 So what's happened there is that as
10 recently as 25 years ago there was an
11 establishment by this board, by the board of
12 public works and the MDE that the area which
13 the applicant is seeking to build into and
14 build piers into is clearly the property
15 belonging to Newport. And if granted, this
16 board has granted a license to grant this
17 application would violate the terms of this
18 license, would violate the terms of the
19 rights of Newport to their own riparian
20 property. And it would condone and authorize
21 a clearly illegal structure.

Page 61

1 We talk about the property, things that
2 have been in the water for a long time, it's
3 comfortable and easy to say oh, well, that's
4 grandfathered in because it's been there a
5 long time. Not true. That's unlawfully
6 built in the first place, and you can't be
7 usurping property which belongs to the state,
8 which is what that illegal structure does.

9 The last drawing I have for this quick
10 presentation is, you can see it, Mr. Hyatt
11 was correct, Newport would like to build
12 their own pier, just like Mr. Anderson's
13 building his own piers. We like his project.
14 We just don't like it taking away our
15 property rights. We want to be able to do
16 the same thing he's done, build a nice new
17 improved pier in the property in front of our
18 shoreline where we have riparian property
19 rights which cannot be taken away from us
20 without our consent. That does not happen.
21 So slightly bigger drawing, what we're asking



Page 62

1 in this particular application is this
2 illegal construction which goes into the
3 property ways in front of Newport's
4 shoreline, therefore violates its property
5 rights which violates the 1972 permit,
6 continues to this day to violate it, must be
7 taken into effect.
8 The way to deal with that is to do two
9 things. We ask a number of things. We ask
10 first this application be denied, because it
11 is different than the ones being presented.
12 It violates the riparian rights of Newport.
13 It is an illegal construction that they're
14 asking you to sanction which you should not
15 do. It violates the license that Maryland
16 board of public works has already granted to
17 Newport. I need you to, I would like you to
18 send it back. Send it back and make them do
19 it right.
20 This is the first time we've heard an
21 admission they're in fact going to

Page 63

1 encapsulate. They testified under oath
2 before the port wardens it would be the exact
3 same place as the current one. I have the
4 transcript, I have them swearing under oath
5 that they were not going to encapsulate it,
6 they were going to put in the exact same
7 place.
8 MR. ANDERSON: I said we're going to
9 encapsulate the work with the turbidity
10 curtain, not the bulkhead, is what I said,
11 turbidity curtain.
12 MR. HARTMAN: Now, what are they going
13 to do. That is at least a couple of feet
14 incursion into our property rights. That can
15 only be done, you have 18 inches in your
16 letter, who knows how much that will be. So
17 if they're going to be allowed to do
18 anything, the first thing they have to do is
19 comply with the original license of 1972,
20 which means move it back six or eight feet.
21 They have to have a way which they're going

Page 64

1 to show there isn't going to be any further
2 contamination of Spa Creek. We've heard how
3 terrible this is for the environment. But
4 he's owned it for six years. What has
5 happened in the meantime, nothing. We need
6 to know there's going to be some remediation
7 taken when they dig out the illegal bulkhead
8 and back it up to the only place where the
9 Board of Public Works authorized them. And
10 that they stay out of our riparian rights,
11 stay out of our waterway and build an
12 appropriate structure, and do all those
13 wonderful things they're talking about doing.
14 Just don't do them on our backs. I have
15 submitted an eight-page opposition with
16 exhibits which goes into much more detail. I
17 know this is not the time for all that. I
18 appreciate you listening to my quick
19 presentation. I would ask that you send this
20 back and have it prepared the proper way that
21 complies with the law and does not violate

Page 65

1 ours.
2 MR. MAY: Thank you for your words, Mr.
3 Hartman. Please make sure that Heather gets
4 a copy of that. Who else would like to make
5 statements tonight? Just want to make sure
6 everyone understands. Just one quick point,
7 everything you give us, and it is helpful to
8 get written comments, we will consider it and
9 we will evaluate whether it, one, you know,
10 it's something that is relevant or related to
11 our authority under the Tidal Wetlands Act.
12 If there are things that we believe need to
13 be addressed in order to support the issuance
14 of a license, those are things we may ask the
15 applicant's agent and their team to
16 specifically address. So I just want
17 everyone to know we will hear you and we will
18 review and evaluate anything that we get. I
19 did see a couple folks who raised their hand.
20 Again, please introduce yourself.
21 AUDIENCE MEMBER: She's going to go



Page 66

1 first and I'll follow her.
2 MS. CORBY: Okay. Good evening, my
3 name's Laura Corby, I live in Annapolis. I
4 am a close personal friends the Gildea family
5 that owns two townhomes in the Newport
6 Condominium community. And let's see, I have
7 written comments so I'll probably just give
8 you those instead. And addressed a few
9 things that I heard in Mr. Anderson's and
10 Mr. Hyatt's presentations this evening.
11 Mr. Anderson used a term, the word bias, and
12 I just want to comment on that because I've
13 been a regular participant and observer of
14 this whole process. I have been to all the
15 port wardens meetings and I've listened to
16 everything. And to characterize concerns
17 from your neighbor as bias, I think that
18 there's a problem with that. There's a group
19 of people that has some tremendous concerns,
20 that have some deeply vested interest in
21 their property on Spa Creek next door to

Page 67

1 SAYC. And they've tried to talk about them
2 and they've been dismissed. And their
3 concerns have been swept under the rug. And
4 I've sat back and watched this all take
5 place. And, to again call it a bias I think
6 is a big mistake, and I think you need to
7 revisit that.
8 Mr. Hyatt, I was at all the port wardens
9 hearings as well and I listened to everything
10 that was said. At the last hearing on the
11 23rd of January I heard you talk about things
12 that were spoken. First of all, I'd like to
13 make it clear that the port wardens issued a
14 preliminary decision orally. Nothing has
15 been committed to writing. And quite
16 honestly what they said at that particular
17 hearing was a little difficult to interpret.
18 They took some drawings that were submitted
19 by SAYC, they talked about how they may or
20 may not do their own modifications of the
21 lateral lines that were presented. But it

Page 68

1 was just talk, it was just speculation, there
2 was nothing that was actually committed
3 mathematically to paper. And so to say that
4 lateral lines have been decided in that
5 particular case is not necessarily true
6 because there is no written decision.
7 There's no modified anything quite yet.
8 And you know, I heard one of the port
9 wardens say out loud to the audience that his
10 opinion was that the way the application was
11 presented really gave Newport the short end
12 of the stick. He said Newport is getting the
13 short end of the stick. So it wasn't like it
14 was, you know, this great welcome application
15 that the port wardens just completely
16 accepted. They also orally said they were
17 going to condition the permit on modifying
18 things on the east side of the property.
19 There's been nothing given by the port
20 wardens yet, there's no new application
21 submitted. And if the port wardens

Page 69

1 themselves modify the application, then that
2 would certainly affect what MDE has been
3 given and the Army Corps has been given. And
4 I think you deserve a fair representation of
5 what the project will be. To me, I think
6 that that makes the application that is
7 before you right now a little bit deficient.
8 And that needs to be fixed.
9 Secondly or thirdly, I'm sorry,
10 Mr. Hyatt, you brought up the old Feudale
11 case from the '40s. And that was a case that
12 involved Mr. Sarles, Mr. Petrini and a guy
13 that lived in the middle by the name of
14 Mr. Feudale, I believe; is that correct?
15 That was actually, those were actually the
16 lots, the long lots that extend out and
17 actually come along Spa Creek at the north
18 there. Mr. Feudale was uniquely positioned
19 in the center. He saw Mr. Sarles and
20 Mr. Petrini doing lots of works, building
21 piers, going in different directions. He got



<p style="text-align: right;">Page 70</p> <p>1 a little concerned that he was going to be 2 blocked in, so he tried to appeal it and take 3 it to the courts. And it was dismissed, I 4 believe. But that was right there at the 5 front on that north side. But that did not 6 affect that east side of the property. So 7 that's a little bit confusing in terms of 8 what I heard you say there. 9 Another thing is that access to the 10 channel I believe is the goal here. And SAYC 11 has about 900 feet of shoreline as opposed to 12 Newport that has about a hundred feet of 13 shoreline. So they're very limited in what 14 they have to use as waterfront to reach that 15 channel. If you look at it from, you know, 16 in fairness, 100 feet versus 900 feet, you 17 know, Newport is limited in what they can do. 18 SAYC has a lot more opportunity to access 19 that channel which I believe is the goal, one 20 of the goals here anyway. So that's it. 21 I just, I really want to hammer home</p>	<p style="text-align: right;">Page 72</p> <p>1 something that is important to me. I am an 2 environmentalist. I'm -- some people like to 3 call me a tree hugger. I have worked with 4 Chesapeake Bay Foundation for a long time as 5 a volunteer. I also actually worked there as 6 an employee at one point in time, so the 7 environment is really important to me. And 8 my friend over there, Beth McGee, did some 9 work a long time ago on sediment 10 contamination around marinas and boatyards. 11 And she wrote an article which I did take the 12 time to read, and it talks about the sediment 13 around shipyards. And two things that are 14 going on here that Mr. Anderson talked quite 15 a bit about, first of all, the hundred, or 16 110 years of boatyard operation for both 17 Sarles and the Petrini property were 18 boatyards, and no stormwater controls. So I 19 think that when I see his plan I see this 20 wonderful, brilliant plan that deals with 21 stormwater and all kinds of great things</p>
<p style="text-align: right;">Page 71</p> <p>1 some of the errors in the application like I 2 said. The one that's before you says it has 3 a lateral line, the lateral line is noted 4 with the reference to these licenses from the 5 1970s. It's really not a fair thing to 6 present because those licenses do not present 7 lateral lines. Nowhere on those licenses do 8 you see a notation those are lateral lines. 9 I don't even believe the state licenses 10 relied on lateral lines, it's the city thing. 11 The city looks for these lateral lines and 12 they ask for them. It's not really a state 13 issue. But again, it's not even noted on the 14 licenses that they're lateral lines. We 15 don't know what they are. So to say they are 16 that is a little bit misleading. And again, 17 the lateral line that is shown on the 18 application that MDE received has now been 19 invalidated by the port wardens pending their 20 written decision. 21 Lastly, I really want to point out</p>	<p style="text-align: right;">Page 73</p> <p>1 going forward. But it very much neglects the 2 going backwards part, which I don't think you 3 can ignore here. Because you're talking 4 about a hundred years of stormwater runoff 5 that might have been, you know, might have 6 all kinds of chemicals in it, heavy metals, 7 there's a paint that was banned in the '80s 8 that boatyards used. And possibly industrial 9 runoff that is going off those surfaces for a 10 hundred years right into Spa Creek. Who 11 knows what's in the sediment surrounding Spa 12 Creek. I think that someone needs to look at 13 doing some testing that involves some kind of 14 core testers and looking at the historical 15 contamination, how deep does it go down. And 16 then you need to carefully evaluate what 17 you're going to do with the dredge spoils. 18 And upland area is great but maybe it's toxic 19 and maybe it's not, an upland area is not the 20 best thing to use here. Maybe a landfill is 21 better. Instead of a scoop method maybe a</p>



<p style="text-align: right;">Page 74</p> <p>1 vacuum is better for dredging. We don't know 2 this. But certainly depending on the 3 toxicity that could exist you're talking 4 about human health issues, you're talking 5 about water quality and a threat to aquatic 6 life as well. So to overlook this last and 7 very, very important element here I think 8 would be not the right thing to do for the 9 citizens of Maryland. I think we need to 10 know to what extent that sediment is 11 contaminated with a hundred years worth of 12 boatyard chemicals and contaminants. And 13 it's really important that is figured out. 14 So that's it. 15 MR. MAY: Thank you for your comments. 16 Do you have a hard copy you want to give us 17 now or do you want to submit something via 18 email? 19 AUDIENCE MEMBER: Email would be better. 20 MR. MAY: That works for us too. 21 MS. CORBY: Thank you.</p>	<p style="text-align: right;">Page 76</p> <p>1 don't know, 70 or 80 years of Petrini's 2 boatyard being there I think it really does 3 need to be studied, not only the land under 4 the water but the land where Petrini has 5 worked and done all that work. I realize 6 that may be out of your bailiwick, we're 7 getting on to land, but they pull those 8 bulkheads out it's going to be a lot of very 9 old toxic stuff getting into the water and 10 hurting the wildlife there. 11 Insofar as we were taking about lateral 12 lines and all of that, when you look at the 13 permits that have been submitted by SAYC now, 14 they refer to the historic lateral lines, 15 which is a misrepresentation. This is not a 16 historical lateral line. This is a dredging 17 line that was put in by the people at the 18 time who owned, the person who was developing 19 the property. He put in a dredging line 20 because you look at it, he dredged on the 21 right side of it, and then he dredged on the</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. GILDEA: Good evening. My name's 2 Gil Gildea, I live at 306 Burnside Street. 3 I'm here, I've been on the board, I've lived 4 at Newport for 14 years. And I've sailed in 5 and out of Newport docks there for 43 years 6 as my parents own a townhome there as well. 7 Going to follow up what Ms. Corby has brought 8 up. When I was a teenager I worked in 9 Petrini's boatyard, I worked for Edgar. And 10 I can tell you that area is a toxic waste 11 site. I mean I cleaned boats, I sanded them. 12 And in those days there was no control, you 13 know, everything went in the ground and 14 everything. And that area, the Petrini area 15 is a permeable surface. It is not a concrete 16 surface. So not only is it, you know, the 17 runoff coming in and washing that stuff into 18 the river, it is sinking down into the earth. 19 And it's going to go into the earth, it's 20 going to come into the water eventually or 21 end up in the water table. After the, I</p>	<p style="text-align: right;">Page 77</p> <p>1 left side of it. So if it was a lateral line 2 he would not be dredging on both sides of the 3 lateral line as it would not be his 4 developable waterway. So this is one of the 5 issues. 6 And then Ed talked about the 1990 permit 7 which my father actually got. He was the 8 dockmaster there for 32 years and then I took 9 over on the board after he retired. But we 10 have 110 feet going across and 180 feet going 11 out that we dredged that was ours and we took 12 responsibility for it. 13 As far as our relationship with Edgar 14 Petrini and John Petrini, it has been 15 tumultuous to say the least. If you knew the 16 Petrinis at all, I liked them. We fought, 17 but they were decent neighbors. I've said 18 this before, John was cantankerous and loved 19 a good fight. And my father and he would go 20 at it about getting rid of the boats that 21 were sinking there, getting, I would go into</p>



Page 78

1 it with him about the fact the boats were too
2 big. And, you know, one time my father came
3 down, he saw us arguing and he got in the
4 middle of it. He said, you know, John,
5 you've got to get rid of this boat, it's too
6 big. You can't get out of here, it's in the
7 way. And John said he's not going to do
8 anything. My father said, fine, I'll appeal
9 to a higher force. And I was very upset and
10 I said what are you talking about. He said,
11 well, I'm going to call his mother. And he
12 did. He called his mother and you know what,
13 the next day the boat was gone.

14 And Mrs. Petrini was somebody who was a
15 good neighbor and John in his own way was a
16 good neighbor. When you pushed him he
17 usually would move the boat and take care of
18 it and treat us well. And we tried to be a
19 good neighbor to him. We were not stopping
20 him from doing things and getting in his way.
21 Insofar as I've been sailing in and out

Page 79

1 of there for 43 years, and it is difficult
2 now. It's very hard to get a boat in and out
3 of there. It always has been and, you know,
4 SAYC I realize now that they're -- the port
5 wardens were talking about keeping the
6 existing pilings. That's still a problem but
7 we don't know what the port wardens are
8 coming up with. And honestly, I've read the
9 law, I've been involved with this for nine
10 months. Our lateral lines are supposed to go
11 in line with the plat that was when the plat
12 was developed. The lateral lines go out from
13 there to the channel line, which gives us our
14 waterway, developable waterway. It doesn't
15 allow people, it doesn't allow us to develop
16 out to the right or left because then we're
17 developing in front of other people's
18 property. And that's what's happening.
19 That's what happened with the Petrini and
20 we've been arguing this for years.
21 Unfortunately it was not such a litigious

Page 80

1 society and people just argued back and
2 forth. I wish they had taken Mr. Petrini to
3 court and figured that out.

4 And as far as safety is concerned, if
5 you look on the application the harbormaster
6 is a no on this. She was invited down by one
7 of the board members, she tried to park her
8 20-foot pontoon boat. It took her five
9 minutes and bouncing in and off of pilings to
10 be able to get into a slip. This is an
11 experienced person with a small boat trying
12 to get in there. And she's our expert for
13 the area.

14 As we were talking about we've been
15 planning on replacing our dock for some time.
16 It is old. And SAYC, when they came we
17 approached them because we had been talking
18 about this. We want to have a new, modern
19 safe dock for our people to use. And believe
20 me, we have got a ton of people using it. We
21 have 24 boats slips but we must have 30

Page 81

1 kayaks and paddleboards and all of that.
2 It's very concerning, you see somebody on a
3 paddleboard going out, and they have all
4 these boats sticking out and they have about
5 15 feet of fairway to go out. If they fall
6 they're going to hit something, it's very
7 concerning.

8 The other important thing to me is that
9 having lived there for 14 years I have --
10 when I first got there it was kind of a
11 desert for animals, there were no birds, very
12 few birds. There were ducks and things like
13 that. But over 14 years I have seen 10 or 15
14 different types of birds coming back.
15 Buffleheads and coots and ospreys that are
16 kind enough to leave their dead fish on our
17 docks and on our boats. And last year we had
18 two beautiful gray herons. I thought they
19 were trying to kill each other, and I find
20 out they're actually trying to mate. I mean
21 they're swooping around having a great time.



<p style="text-align: right;">Page 82</p> <p>1 I'm not talking about birds out in the river, 2 I'm talking about them, cormorants and all 3 these birds that are five feet off of our 4 bulkhead. They're in our area. We had a 5 muskrat in there three years ago. I thought 6 it was a drowning rat. But I think that if 7 we go through with SAYC, and I said this 8 before, I'm for SAYC, I like a lot of what 9 they're doing, I just don't want them to 10 interfere with us. And I think that is 11 really the key thing. It's great. I think 12 they're doing what they, what I think most 13 builders have to do, you know, to meet code. 14 They're doing what they should do for their 15 customers. Nobody's going to want to buy a 16 multimillion dollar home and find out that 17 it's got runoff going into the river. And I 18 think that that's a good thing. You have to 19 service your customers. But not at our 20 expense. So, and again I think that the 21 application should be rejected because of the</p>	<p style="text-align: right;">Page 84</p> <p>1 questions, and I stuck with those rebuttal 2 questions. 3 MR. MAY: I'll give you about 10 minutes 4 tops. 5 MR. KASTENDIKE: I don't need that, I 6 don't think I do. I submitted both those 7 petitions to city council and port wardens 8 and to you. I would like to show you, one of 9 our concerns, my concern and the people who 10 reside on Spa Creek is a safety issue. And 11 yes, Sarles is -- SAYC is making bigger 12 slips, less of them but a lot bigger boats. 13 Matter of fact these slips are 80 feet long. 14 You could put an 80-foot boat there with a 15 40-foot beam. Now, I ask you what happens 16 when a paddleboarder is coming down here, you 17 can see it. Paddleboard coming down here, 18 the boat's coming up, paddleboard coming out, 19 they can't see each other. There's only 20 20 feet to the harbor line. So when we look 21 at what's going on in Spa Creek today that's</p>
<p style="text-align: right;">Page 83</p> <p>1 many abnormalities in it at this point. The 2 harbormaster's, the way they pull together 3 the lateral lines, if you read their 4 charter -- 5 MR. MAY: I'll give you about 30 more 6 seconds. 7 MR. GILDEA: Okay. If you read the 8 charter of the harbormasters, they're not 9 allowed to determine lateral lines, and 10 that's what they were doing. They're holding 11 it up and kind of going we'll take A to B and 12 C to D, it was like a menu. So I don't 13 believe that their decision is going to be 14 accepted or be a valid one. I appreciate 15 your time tonight and question -- 16 MR. KASTENDIKE: I'm Graham Kastendike. 17 I sent to you all two petitions, one with 140 18 people on it, one with 90 people on it today, 19 both submitted to city council. 20 (Overlapping conversation.) 21 MR. KASTENDIKE: You asked for rebuttal</p>	<p style="text-align: right;">Page 85</p> <p>1 what we're facing. That's a normal Saturday. 2 I took it off my boat. You can see not only 3 the paddleboard, the dog's on it, there's 4 only 148 feet trying to transit that 5 paddleboard with all those people. What 6 we're asking Sarles to do, SAYC to do, is to 7 come back 20 feet from the harbor line, 8 actually 40 feet from the harbor line. If 9 you go to your slide number 2 -- number 1, on 10 my conclusion you will see the Navionics 11 chart that the depicts the bridge, Spa Creek 12 Bridge is 40 feet wide. So that would let a 13 40-foot beam through that bridge. There are 14 boats out there 80 feet long, 40 feet wide, 15 catamarans especially, growing every day. 16 Wider you get, the wider they get. So that's 17 the coast guard specifications from Spa Creek 18 bridge on the chart with, as published. 19 Slide two if you look at your exhibit on 20 mine was taken from my boat. That is the 21 picture, for the audience, of all the</p>



Page 86

1 paddleboarders on a Saturday morning and all
2 the Stand Up Paddleboarders. And our harbor
3 master testified in front of the port wardens
4 that the channel -- the channel at SAYC was,
5 at the choke point is too narrow. We believe
6 the safety of those using the creek demands a
7 wider channel and a minimum of 40-foot
8 setback from the harbor line to the end of
9 SAYC dock.

10 Slide three, I did hold them up, you all
11 have them here, when the wind blows from the
12 north the sailboats off the city moorings
13 protrude into the harbor line, into the
14 working channel. Now you lose another
15 30 feet of navigable waters. These are all
16 included in your brochure, okay.

17 Slide four was obtained from the city
18 records of Annapolis. I think Bret showed
19 it. It showed the navigable channel, you all
20 saw that earlier. Slide was obtained by city
21 records of Annapolis, clearly shows the

Page 87

1 marked channel in green. But look at the red
2 line which is the harbor line and how close
3 it is compared to the existing docks at SAYC.
4 What I'm trying to show you here is if you
5 look at the harbor line as exists today, that
6 boat there today parked is in the harbor line
7 already. So they're exceeding the harbor
8 line already, and they want to go out. The
9 harbor line keeps creeping out. The first
10 time Bret Anderson testified in front of the
11 city council and I submitted that recording
12 to you, Mr. Hyatt, Sr. and Mr. Anderson,
13 quote, he said, Bret knows damn well he can't
14 put a boat more than 18 feet off that pier.
15 Now it's going to 20 feet in the next
16 submission. And now we hear that when they
17 put the bulkheads in they have to go out up
18 to 36 inches because they're going outside
19 the existing bulkheads. What we have here is
20 channel creek. This marina is expanding into
21 public water and hurting the public's safety.

Page 88

1 It's used every day by hundreds and hundreds
2 of people. A lot of them don't have a clue
3 about boating. These Stand Up Paddleboarders
4 on average, people go out there, you see, oh,
5 my God, they're holding hands, they're doing
6 exercises. They have their dogs on there.
7 They come out at night with no lights.

8 MR. MAY: Seen one with a peacock yet?

9 MR. KASTENDIKE: Not yet but I'm looking
10 for it.

11 Slide five is this slide here showing
12 this large boat. My example here is
13 basically the paddleboarders coming out here
14 and the boat's coming down here. What do we
15 have, an accident. You cannot avoid it. He
16 can't see you, the boat can't see him. Six
17 mile an hour in a 50-foot boat takes me a
18 long time to stop. And I really think, I'm
19 only here, I like SAYC's project, all I'm
20 asking you all is we need to move the slips
21 back to give us a wider berth at the choke

Page 89

1 point. We requested the port wardens only
2 approve the expansion of SAYC when the piers
3 were pulled back 40 feet from the harbor
4 line. In my observance of the port wardens
5 they were perfectly overwhelmed. They didn't
6 know what, there was so much with regard to
7 lateral lines, they never debated one word
8 after four days of testimony on safety. The
9 three of them never debated a minute, a
10 second on safety issues. I went up to the
11 chief, the senior port warden, after the
12 thing, why didn't you go into safety. He
13 said it was a lot of topics we couldn't go
14 into. I said but safety is, your code
15 requires you to deal with safety and
16 navigation. He said, we just didn't have
17 time to deal with it. That was his strict
18 answer to me.

19 I'm asking you, who's going to look out
20 for safety on the creek. It's got to be
21 somebody before somebody gets hurt. It's



Page 90

1 minor dollars when you talk about how much
2 money comes in. My conclusion, the port
3 wardens, on all their regulations, what they
4 were supposed to react on, but when you get
5 the transcript you'll see they did not react
6 to anything with regard to the choke point
7 safety and moving the piers back, just didn't
8 get it. They were all concerned about
9 lateral lines and Newport. It really became
10 an argument between SAYC lateral lines and
11 nothing became with safety or a debate of
12 safety in front of the public. I hope you
13 guys in Maryland state will protect us. The
14 waters belong to everybody in this room and
15 everybody who uses them, we want to make it
16 safe. We need your help to do so. Thank
17 you.
18 MR. MAY: We've probably got time for
19 one or two more statements. Please come and
20 introduce yourself.
21 MS. FRESE: My name is Patricia Frese, I

Page 91

1 live on Lockwood Court right on Spa Creek.
2 There are four exhibits. This was all
3 presented at the port warden meeting and
4 basically I just want to point out my concern
5 is the safety issues. And there were four
6 exhibits but I'll go to Exhibit 2 which was
7 prepared by SAYC dated August 28, 2017. It
8 shows the marina as it exists today, and
9 based on -- well, mostly I'm talking about
10 the southwest end. The choke point is a
11 major safety issue, but there are also issues
12 at the end. So in that exhibit based on the
13 scale provided the end pier along the harbor
14 line is approximately 44 feet. There are
15 also three finger piers, two are about
16 13 feet long and the other 38. There's an
17 existing railway track not in use that sits
18 alongside the covered boathouse. Currently
19 this cove is used not only by residents and
20 boat owners of the marina but by kayakers,
21 dragon boat crews, paddleboarders, swimmers.

Page 92

1 It is an area much used and enjoyed by the
2 public. It is however very congested, it is
3 an area -- especially in the evenings and on
4 weekends. And it's very difficult to
5 navigate through here. And as Graham pointed
6 out difficult, there's paddleboarders,
7 kayakers trying to go around the piers. So
8 that was the existing pier area is difficult,
9 it's a small cove.
10 In Exhibit 3 there is the marina that is
11 now proposed by SAYC dated March 2017. The T
12 at the end of dock B will expand from 44 feet
13 to 110. The length of the piers currently in
14 the small cove will increase by as much as
15 14 feet or more. Three new piers are being
16 added, a 35-foot pier and two 30-foot piers.
17 Additionally there will be a floating dock
18 alongside the covered boathouse and next to
19 that a travel lift. Currently the boats
20 docked here range in size from 18 to 45 feet
21 with only boats over 30 feet at the very end

Page 93

1 pier. The new plan would allow boats from 30
2 to possibly 80 feet or more in length to dock
3 here. They're going to be longer, they're
4 going to be taller. It's going to be harder
5 to see around in the small cove. And we have
6 a lot of paddleboarders and kayakers. I
7 think it's going to take away from the
8 public. Also, to point out when they moved
9 the harbor line out on December 12, 2016, at
10 the city council meeting the petition to
11 straighten the harbor line around dock C was
12 approved by straightening the harbor line, an
13 area approximately 18 feet by 125 feet of
14 waterway was taken out of public use and
15 given over to the private sector. Alderman
16 Joe Budge said by voting yes he hoped SAYC
17 would take this into consideration when
18 submitting the application for the new
19 marina. In particular, that SAYC would
20 consider the safety issue surrounding the
21 choke point near the bridge. I do not see



Page 94

1 any considerations for safety that have been
2 taken here. Instead it looks to me like
3 further encroachment into Spa Creek. And
4 that's all over, east, west, north, south. I
5 think that docks B, C and D need to be
6 40 feet from the harbor line. And piers on
7 the southwest side of dock B should be no
8 longer than what currently exists. I can't
9 make it any clearer. Thank you.

10 MR. MAY: Thank you, ma'am.

11 MR. HOLLANDER: I'm going to start with
12 a really basic question, I'm going to ask
13 Stephen Hyatt and Bret's statement, it's
14 really simple --

15 MR. MAY: Please introduce yourself.

16 MR. HOLLANDER: Sure. My name's Jon
17 Hollander, I live 302 Burnside Street in
18 Annapolis. I'm on the board of Newport. In
19 the documents that we received for the
20 meeting today, which I've bound here, it's a
21 very simple question. Where is the existing

Page 95

1 layout and dimensions of the current pilings
2 on the east side of SAYC that you're
3 proposing?

4 MR. HYATT: We can talk after.

5 MR. HOLLANDER: So here's what I'm
6 having a hard time with because in the code
7 section 1520 actually goes into the building
8 permits. It says you actually must provide a
9 concept plan -- the sketch will contain at a
10 minimum the location dimensions of all
11 existing proposed piers, mooring piles,
12 mooring buoys and shear protection
13 structures. I looked in the building permit,
14 I didn't see anything there. Then I went
15 through all the plans that we received, thank
16 you, today, you know, in advance of this
17 meeting, I didn't see it there. But the
18 reason this matters is because Mr. Anderson
19 has testified at least three different
20 occasions that his pilings are at 24 feet.
21 Okay. Now, we all know what a 13-foot Boston

Page 96

1 Whaler looks like. In fact there is one in
2 the slips, we got a picture of it, it happens
3 to be right here. I actually think there are
4 24 feet. I went out with my friend, Ryan is
5 sitting right there, Ryan say hi.

6 RYAN: Hey.

7 MR. HOLLANDER: We went out and kind of
8 measured ourselves and not surprisingly 19
9 and a half feet, 20 feet, 22 feet. What
10 we're trying to understand though, is 24 as
11 Bret testified, if we're going to be
12 replacing the bulkhead, does that mean we're
13 losing another 18 inches. If we're putting
14 boats there does that mean another two feet
15 for the swim platform and another two-foot
16 for the anchor at the end. So now how much
17 area do we have to get through. So I'm
18 asking you a simple question. What's the
19 dimension of the current pilings?

20 MR. ANDERSON: What I said, and I
21 answered that question, and I answered it

Page 97

1 very specifically.

2 MR. HOLLANDER: Show the plan.

3 MR. ANDERSON: I said -- you want an
4 answer?

5 MR. HOLLANDER: Show the plan.

6 MR. MAY: You are not obligated to
7 answer. You can direct questions to me. I
8 want to be clear procedurally here. If it's
9 a simple question and you feel like answering
10 it, you can. If there's a matter of
11 clarification on the plan the best thing to
12 do is give us clear written comments to that
13 effect and --

14 MR. HOLLANDER: We already submitted --

15 MR. MAY: -- we will look at those and
16 we will make sure our record is accurate.
17 But if it's something you're able to answer
18 or you want to defer --

19 MR. ANDERSON: Very clearly I said on
20 numerous occasions as a follow up to that,
21 that we will be replacing the bulkhead in its



Page 98

1 existing condition. It will not be one inch
2 out farther and we will replace pilings
3 exactly the way they are today for the nine
4 slips that we are replacing. Exactly. Where
5 they are today is where they will be
6 replaced. And I've said that as a follow-up
7 to that question earlier.

8 MR. HOLLANDER: Okay. They may say that
9 I'm biased because I don't believe that and
10 because he's said 24 feet and we measured and
11 we measured 19 feet. What's interesting is
12 that SAYC's own website doesn't even show the
13 finger piers. And so that's what kind of
14 made me start asking these questions. That's
15 great, so if we can get a plan that shows on
16 here we'll be marking on our pier exactly
17 where that 19 and a half feet is, so that's
18 fine, so we can make sure that they're in the
19 same place.

20 To move forward really quickly, in
21 the -- when we as Newport in 1990 dredged the

Page 99

1 entire area we didn't dredge it as a gift to
2 the Petrinis. It was dredged because it was
3 developable waterway. And we were the last
4 ones to dredge it, not the Petrinis. If we
5 look actually at that '72 -- I'm sorry, the
6 '71 Newport permit which everyone has, and I
7 can submit, give you a quick copy of it. You
8 have that, Steve. We all see there are two
9 bulkheads. It says bulkhead and there's two
10 arrows. This is in a lot of public
11 documents. But what's interesting is you
12 actually go out there today and in fact look
13 at some of Steve's own pictures, there's only
14 one bulkhead now. Where did the other one
15 go. In fact, it's attached at a right angle.
16 But that would be impossible if the land was
17 actually as it was shown in Petrini's own
18 permit. So we're trying to understand
19 actually what happened. And I think that's
20 exactly what Ed was getting to because we
21 actually all know what was happening. When

Page 100

1 they attached their bulkhead they attached it
2 at a right angle which in fact is what it
3 looks like today, at a right angle. We can
4 look at any of Steve's pictures and we can
5 see that. So where did the other bulkhead
6 go. It was taken. Thank you. I'll be
7 submitting comments again.

8 MR. MAY: Thank you, Mr. Hollander.
9 There was a lady in the back that wanted to
10 say something? I do want to leave a little
11 time on the back end after this. So last
12 call for anyone else who wants to speak in
13 opposition after this.

14 MS. GARROWAY: I'm Beth Garroway, 904
15 Creek Drive right on Spa Creek. I've lived
16 here for 44 years. I came in 1973 as a young
17 child and the years have flown by, I want to
18 tell you. But when I came here, and I
19 appreciate the opportunity to testify before
20 you tonight. We have had a rough go with the
21 port wardens. And I'm here to try to restate

Page 101

1 our case quickly but to also say that the --
2 I'm part of the Kastendike, Frese, Kardash
3 team. David Boyd and Bill Kardash, who can't
4 be here tonight, and I am -- I wanted to say
5 that I completely agree with them. And want
6 to be on the record in support of their
7 comments.

8 When I came to Spa Creek in 1973 it was
9 a different, different scene. Eastport was
10 like a little fishing village. My neighbors
11 were oystermen and crabbers. And they loved
12 to fish and taught me how to hand tong
13 oysters. It was a totally different culture.
14 And I loved it. I was probably the only
15 professional except for Marty Stevens who had
16 the hardware company downtown, probably the
17 only professional person there on the creek.
18 And it was joyous, I loved it. I must tell
19 you that now the creek has become the most
20 popular place in Annapolis really. Eastport
21 has become the new Georgetown of Annapolis.



Page 102

1 And there's some good things about it and
2 there's some regrettable things about it. I
3 happen to have loved the peaceful, serene
4 times when the birds would come in and perch
5 on my dock. And I could take my little
6 put-put out and look at the crevices and
7 crannies on the creek. It was a lovely,
8 lovely time. Now increasingly -- and it may
9 have to do with my age and my patience, I
10 must admit -- paddleboarders come out early
11 in the morning. We have more jet skis, we
12 have more of the little young people from AYC
13 with their sailboats coming in, which are
14 really wonderful. We have a fishing boat
15 where the kids shout and cry and are really
16 attentive to the fish they catch and very
17 pleased to learn how to fish. We have, as
18 Ms. Freze said we have the dragon boat, I
19 mean we have just been inundated, there's no
20 question. And that's good for the public.
21 But it is bad for manmade pollution because

Page 103

1 there are a lot of people who don't care
2 about the, how they treat their boats and
3 there are many in disrepair. There are many
4 paddleboarders who bring stuff on their, you
5 know, aboard their paddleboards and they're
6 just little human debris that comes around
7 every now and then. Let me just say though I
8 think this can't be necessarily mitigated,
9 but we do need some relief on our creek so we
10 won't be so congested and so safety adverse.
11 We really have a problem. And Ms. Freze and
12 Graham Kastendike talked about the choke
13 point. It's just incredible if you want to
14 come over and see this, it will probably
15 start in April, there have even been some
16 people out there now with wetsuits with
17 paddleboards, it's amazing.
18 MR. MAY: I'll give you about 30 more
19 seconds.
20 MS. GARROWAY: I'm saying a little bit
21 more than I intended to say. Let me just say

Page 104

1 that we need some relief and we need more
2 attention to safety and congestion. That's
3 been said. We also need to realize that not
4 everybody can be on Spa Creek. We're worried
5 about the marina's expansion. And that's why
6 I'm here tonight. I really applaud
7 Mr. Anderson for what he's doing. I think
8 he's going to make that area a very promising
9 and exciting place to be. I do worry about
10 the toxic waste that has piled up over all
11 the years. I used to keep my boats at
12 Petrini and Sarles, so I can tell you what
13 was in their warehouses, and what happened to
14 those chemicals. And I do believe --
15 MR. MAY: Ms. Garroway, I have to ask
16 you to wrap up because we have more people
17 who I know want to talk.
18 MS. GARROWAY: I'll just say I think
19 Ms. Robie and Gil Gildea are absolutely right
20 about the toxic buildup. And I hope you will
21 ensure that there's some examination of that

Page 105

1 soil at the creek bed.
2 Last point, Beth Bellis, our
3 harbormaster, at one point in the port
4 wardens' testimony attested to the fact that
5 we have navigational safety and congestion
6 issues at the choke point, and said very
7 directly that there is a problem. So with
8 that let me thank you and I hope that you'll
9 intervene as you can. It's a good cause.
10 Thank you.
11 MR. MAY: Thank you. I know there was
12 at least --
13 MS. BUTLER: Diane Butler again. I just
14 I wanted to talk to the diminution of
15 property value issue. I currently lease out
16 my unit at Newport. And my tenant notified
17 me by mail that he will not be renewing his
18 lease if he cannot use the slip that he had
19 been using. And he fears if the application
20 as at least provided a few months ago or
21 actually a year ago is approved that that



Page 106

1 will negate his ability to get in and out. I
2 also have a concern that the application
3 we're seeing tonight is not the application
4 that was presented to our planning and zoning
5 department. It's also not the application
6 the port wardens saw. Just want to reiterate
7 that does seem different and that's a
8 concern.

9 I also wanted to ask whether there's
10 going to be a phase I and phase II for that
11 site because we've heard in many public
12 meetings that the ground could be
13 contaminated because of boat work that was
14 done years ago before there were really any
15 laws enacted to prevent heavy metals from
16 going into the soil. From some of the
17 conversations that were had at these public
18 meetings for the community it sounded like
19 this could be a superfund site, it's that
20 contaminated. So I'm just a little bit
21 worried that taking down the bulkheads and

Page 107

1 removing the soil -- just taking down the
2 bulkheads will allow a lot of seepage from
3 the toxic chemicals that are in the soil to
4 seep into Spa Creek, which would be a
5 travesty. So do you know if there's been a
6 phase I or phase II done on the site?

7 MR. MAY: I don't off the top of my head
8 and that would have been handled by our land
9 management administration, so that's a
10 question if you want to follow up with an
11 email to Heather you could do that.

12 MS. BUTLER: That would be great. The
13 other thing I just want to reiterate is that
14 lateral line code section talks about one
15 provision, I think it's important. This
16 title is not intended to deprive a riparian
17 owner of any right or privilege associated
18 with riparian ownership of land or ownership
19 of uses of any fixed or permanent structure
20 in the waterways which lawfully was installed
21 and lawfully in use prior to February 11,

Page 108

1 1980. So that grandfather-y language really
2 only applies to structures that were lawfully
3 in use as of 1980. I know that's been said
4 before. I just think it's really important.

5 I don't think the port wardens really
6 understood that when they were deliberating,
7 just when I heard their conversations.

8 Section 15.18.050 deals with lateral lines on
9 a shoreline that is curved. And that's not
10 the case here. You'll see the picture that
11 is associated with that code section right
12 there. I think we're using the lateral line
13 incorrectly if they don't run parallel to the
14 land. And -- diminution of property value --
15 again, I don't think that this is a fair --
16 this is a pretty close depiction --

17 MR. MAY: Got about one minute.

18 MS. BUTLER: Okay. Both the pinch point
19 and the section of the land that's filled in,
20 that's not been transferred by title, we
21 don't think that a license to build a

Page 109

1 bulkhead does transfer title in any way. So
2 I'll leave this with you. I think that's it.
3 Thank for your time.

4 MR. MAY: Thank you. There's one more
5 lady who wishes to speak?

6 AUDIENCE MEMBER: I'll submit my
7 comments.

8 MR. MAY: So with the time we have left,
9 was there anyone who wished to make comments
10 from a member of the public in support of the
11 project? Please introduce yourself and give
12 your affiliation.

13 MR. CAMPION: My name is Kevin Campion,
14 I'm the landscape architect working on the
15 project, but also a citizen. I wanted to say
16 a few things to address a few minor comments
17 and put things on the record. If I could say
18 one thing it would be that development and
19 environmental sustainability can go hand in
20 hand. It happens all over the country, I see
21 it all over the world. I've been a part of



Page 110

1 over 150 projects on the water around
2 Chesapeake Bay in my 18 years of work. I
3 have witnessed, you know, I've worked on
4 broken shorelines, broken piers, I've worked
5 on contaminated sites. I've witnessed the
6 effect of stormwater management on sites.
7 I've seen the impact of large drifts of
8 native plants and how they can improve
9 erosion and stormwater quality and habitat
10 restoration. I can say that there's no
11 project that I've ever worked on in all of my
12 time that will have more of an impact on
13 water quality in a profound way that SAYC
14 will immediately. I think I can't state that
15 enough. Some people have tried to discredit
16 the environment, the environmental impact in
17 a few different ways. I won't go into it,
18 Bret has already gone into it. There are so
19 many things wrong with this site, you know,
20 and he already talked about it so I won't
21 list that.

Page 111

1 We're coming back in with 124 trees,
2 over 2,000 shrubs, over 3,000 -- over 10,000
3 grasses and perennials which is going to
4 greatly enhance the habitat value. It's
5 going to bring back birds that maybe haven't
6 even been there yet. We're going to replant
7 a buffer, create a buffer that's never been
8 there. I don't know if there isn't a marina
9 in Anne Arundel County that has a fully
10 planted buffer. Not for nothing, but most of
11 the site as it exists today is mostly lawn.
12 Any of the green space is lawn. In the end
13 there will be very little lawn left.
14 Lastly, I want to say that there's been
15 a lot of people asking questions about will
16 this happen or will that happen or will there
17 be contaminants into the water. This land
18 will get developed someday. I'm really glad
19 it's being developed by Bret Anderson. I've
20 worked with Bret for over 12 years on dozens
21 of projects. And if there's a few things I

Page 112

1 know about him, is that, one, he's true to
2 his word. He's going to build -- he's going
3 to rebuild the bulkhead in situ as he says
4 he's going to do, he will do it. He never
5 cuts corners. I worked with him on several
6 projects. He won't let sediments go into the
7 water. He builds to the highest standards of
8 any builder I've ever worked with. I can't
9 state that enough as well. The landscape on
10 his projects matter. The environment
11 matters. It's paramount to him. And if you
12 question that or you don't believe me, all
13 you have to do is visit the projects and tour
14 the projects. They speak for themselves.
15 That's all I have to say.
16 MR. MAY: Anyone else want to make
17 statements in support but preferably folks
18 who are members of the general public not
19 affiliated with the project.
20 MR. HYATT: He wants to address the
21 comments, he'll be quick.

Page 113

1 MR. NARANJO: My name's Ralph Naranjo, I
2 live down the street. This is my library. I
3 have been affiliated with the project. I'm a
4 marina consultant. My background is I'm
5 ex-biology teacher, invertebrates zoo,
6 zoology, graduate student and friend of
7 natural habitats. I've heard a lot tonight
8 that is encouraging, people concerned about
9 what's happening to the water quality, the
10 sediments, so on, so forth. I've never seen
11 a marina project this well thought out. Now,
12 what standing do I have. I wrote a book
13 called, Boatyard and Marinas. I've probably
14 spent the last 20 years of my life writing
15 about, running, being directly involved with
16 marina establishments from here to New
17 Zealand. I ran a boatyard for 10 years in
18 Oyster Bay, New York where the SA category I
19 water quality is still shell-fishable.
20 Boatyards and marina operations can dovetail
21 directly with clean habitats. This project



Page 114

1 does it. You just heard about the upland
2 portion of it, which is contributory. The
3 boatyard portion of it, there's great control
4 of material that we all don't want to get in
5 the water column and perhaps years ago were.
6 We're now seeing much better controls. The
7 clean marina project that's being proposed
8 here is certainly going to expand upon that.

9 A few specifics, the 80-foot boat with a
10 40-foot beam is not going to happen.
11 Mr. Anderson has an 80-foot dock and larger,
12 but that's for multiple vessels. Because
13 most 80-footers are going to be wider than
14 20 feet in beam. Twenty feet will still fit
15 within the harbor line, no larger than that.
16 Consequently you're going to see what I call
17 a marina that solves a lot of the problems we
18 have here with regard to the channel, the
19 harbor line. What we're going to see is
20 vessels leaving and coming into the marina
21 bow on. We're not going to see what we have

Page 115

1 now where a stern-first exit of the marina is
2 happening.
3 I'd like to go on to the number 2 slide
4 here. What we are going to see are these
5 subarea maneuvering basins where vessels can
6 turn around and make their exit. I am a
7 paddleboarder, I'm a wind suffer, and I do it
8 in what I call a usually not as confined
9 situation. But it's still doable.

10 What is the accident count on Spa Creek
11 right now west of the bridge, I've done a lot
12 of research about it and nothing comes up.
13 Why, because it's a six-mile-an-hour zone
14 with decent boat handling and what I call
15 sharing the waterway, paddleboarders,
16 kayakers, so on and so forth, staying in the
17 shoal water area. We will see far fewer
18 potentials for mishap.

19 MR. MAY: Got to keep it short.

20 MR. NARANJO: The next issue I would
21 raise is this project brings together the

Page 116

1 combination of upland nonpoint source and
2 point source runoff mitigation with clean
3 marina statutes where particulate matter are
4 contained, where pilings are placed and the
5 littoral transport current works. And in
6 essence you combine an aesthetic marina along
7 with a nice upland development that makes
8 sense in both contexts. Thank you.

9 MR. MAY: So unfortunately -- I think
10 we've heard from the general public here, I
11 appreciate it.

12 AUDIENCE MEMBER: I'll submit my
13 comments.

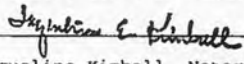

14 MR. MAY: Sure, absolutely, plenty of
15 opportunity for other comments to come in.
16 In the interest of time they're going to kick
17 us out of here. The formal hearing record
18 will remain open until 5:00 p.m. on Thursday
19 February 15. That's two weeks from tomorrow.
20 All correspondence must be postmarked or
21 emailed by that date -- I'm sorry, I meant to

Page 117

1 do two weeks. I'll do a change on the flyer
2 right now, that's going to be the 22nd.
3 Thank you for catching that, Ed. Two weeks
4 from next Thursday should be February 22nd.

5 I have with me a limited number of
6 sheets explaining how to submit additional
7 comments, which include the email address and
8 contact information for us and for Heather.
9 Please forward any additional comments you
10 would like to make for the record to MDE,
11 water and science administration, tidal
12 wetlands divisions, care of Heather Hepburn,
13 1800 Washington Boulevard, Baltimore,
14 Maryland 21230. After the hearing record
15 closes the department will review and
16 consider all the comments received during the
17 comment period. If necessary the department
18 may request information from the applicant to
19 address certain comments. After all relevant
20 issues have been resolved the department will
21 make its decision and final report and



<p style="text-align: right;">Page 118</p> <p>1 recommendation to the wetlands administrator 2 for the board, who shall then present the 3 proposed project for decision at a public 4 meeting of the board in accordance with COMAR 5 chapter 23.02.04. Incidentally, when the 6 board gets it, based on, you know, if folks 7 have been identified as objectors and 8 interested parties they may also notify you 9 again that they have received an R and R for 10 consideration and may solicit additional 11 input. The board's decision once made will 12 be final. There will be no further 13 opportunity for administrative review. Any 14 person with standing may petition for 15 judicial review of the board's decision in 16 the circuit court in Anne Arundel County. 17 The petition for judicial review must be 18 filed within 30 days of the board's final 19 decision. 20 With that I just want to say we 21 appreciate your interest in the project and</p> <p style="text-align: right;">Page 119</p> <p>1 for attending tonight's hearing. The time is 2 now, we'll call it 8:35. This hearing is now 3 adjourned for this portion. As I said the 4 record will remain open for two weeks from 5 tomorrow, so until close of business on the 6 22nd. 7 (The hearing was concluded at 8:33 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p style="text-align: right;">Page 120</p> <p>1 STATE OF MARYLAND 2 ANNE ARUNDEL COUNTY 3 I, Jacqueline Kimball, a Notary Public in 4 and for the State of Maryland, County of Anne 5 Arundel, do hereby certify that the within statement 6 was recorded stenographically by me and then 7 transcribed from my stenographic notes to the within 8 printed matter by means of computer-assisted 9 transcription in a true and accurate manner. 10 I further certify that I am not of counsel 11 to any of the parties, not an employee of counsel, 12 nor related to any of the parties, nor in any way 13 interested in the outcome of this action. 14 AS WITNESS my hand and Notarial Seal this 15 16th day of February, 2018, at Annapolis, Maryland. 16  17 Jacqueline Kimball, Notary Public 18 My commission expires May 1, 2019. 19  20 21</p>
--	--

State of Maryland



Board of Public Works
Annapolis, Maryland

Harwin Amdel
Governor
Ronis F. Goldstein
Comptroller
John A. Farthermeyer
Treasurer
Andrew H. Henshaw, Jr.
Secretary

LICENSE 72-96

Edgar J. Petrini

This refers to application for "Wetlands License," dated the 23rd of December, 1971. Upon the recommendation of the Wetlands Hearing Examiner of the Board of Public Works, and pursuant to the provisions of Article 66C, Section 718-721 (1970), entitled, "Wetlands" enacted to provide a State policy for the preservation of wetlands in the State and to regulate the filling and dredging of wetlands, and for other purposes, you are hereby authorized by the Board of Public Works for the State of Maryland to construct a timber bulkhead, to deposit spoil behind said bulkhead, and to dredge to a depth of 5 feet mean low water in the area channelward of the bulkhead in the waters of the State of Maryland in Spa Creek, west of the Eastport Bridge, City of Annapolis, Anne Arundel County.

in accordance with the plans and drawings attached hereto as part of the application for wetlands license.

This license is issued subject to the conditions listed seriatim below and revocable or subject to modification prior to the completion of the subject project described above when such action is deemed to be in the State's interest.

I, the undersigned Executive Secretary to the Board of Public Works, State of Maryland, hereby certify that this is a true and exact copy of the Board of Public Works Wetlands license No. WL#72-96 (Edgar Petrini) (6pg doc).

Sheila McDonald, Executive Secretary

Subscribed and sworn to before me this 5th day of July, 2017.

Notary Public

My commission expires: 10/7/2020

MELISSA D HODGES
Notary Public-Maryland

RECEIVED

SEP 7 1972

BOARD OF PUBLIC WORKS

A judgment as to whether or not a suspension, modification or revocation is in the best interests of the State involves a consideration of the impact that any such action or the absence of any such action may have on factors affecting the public interest. Such factors include, but are not limited to ecological, developmental, water quality, economic, aesthetic, recreational values.

Conditions

a. That this instrument does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining assent from other State or local agencies required by law for the structure or work authorized.

b. That the structure or work authorized herein shall be in accordance with the plans and drawings attached hereto and construction shall be subject to the supervision and approval of the Water Resources Administration of the Department of Natural Resources.

c. The licensee shall comply promptly with any lawful regulations, conditions, or instructions affecting the structure or work authorized herein if and when issued by the State Water Resources Administration, which has jurisdiction to abate or prevent water pollution. Such regulations, conditions or instruction in effect or hereafter prescribed by the State Water Resources Administration are hereby made a condition of this license.

d. That a copy of this license and the plans and drawings attached hereto shall be available at the construction site.

e. The licensee will maintain the work authorized herein in good condition in accordance with the approved plans.

f. That this license may at any time be modified by the authority of the Board of Public Works, acting on its own or upon the recommendation of the Department of Natural Resources if it is determined that, under existing circumstances, modification is in the best interest of the State. The licensee, upon receipt of a notice of modification, shall comply therewith as directed by the Board of Public Works or its authorized representative.

g. That this license may be suspended or revoked by the authority of the Board of Public Works if the licensee fails to comply with any of its provisions or if the Board of Public Works, upon recommendation of the Department of Natural Resources, determines that, under the existing circumstances, such action is required in the best interest of the State.

h. That any modification, suspension or revocation of this license shall not be the basis for a claim for damages against the State of Maryland or any arm or agency of the State.

i. That the State of Maryland shall in no way be liable for any damage to any structure or work authorized herein which may be caused by or result from future operations undertaken by the State in furthering the interests of its citizens.

j. That no attempt shall be made by the licensee to forbid the full and free use by the public of all navigable waters at or adjacent to the structure or work authorized by this license.

k. That the licensee shall submit written notification to the Watershed Control Section, Water Resources Administration at least ten (10) days in advance of the time the construction or work will be commenced, and shall furnish written notification of the date of its completion.

l. That if the structure or work herein authorized is not completed on or before the 14 day of September, 1973, this license, if not previously revoked or specifically extended, shall cease and be null and void.

m. That the legal requirements of all State, Federal and County agencies be met.

n. That all the provisions of this license shall be binding on any assignee or successor in interest of the licensee.

o. That the licensee agrees to make every reasonable effort to prosecute the construction or work authorized herein a manner so as to minimize any adverse impact of the construction of work on fish, wildlife and natural environmental values.

p. That the licensee agrees that it will prosecute the construction of work authorized herein in a manner so as to minimize any degradation of water quality.

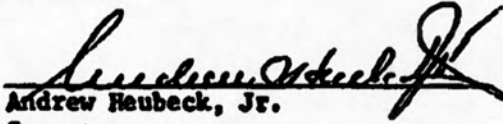
q. That the applicant obtain the approval of his plans from the Anne Arundel County Soil Conservation District.

r. That spoil in excess of that to be deposited behind the proposed bulkhead shall not be placed on any tidal or non-tidal, private or state wetlands.

s. That the applicant pay as compensation to the State of Maryland a sum equivalent to 1/3 of the fair market value of the fastland acreage created. Said fair market value to be ascertained by an appraiser selected by the Board of Public Works. Cost of appraisal is to be borne by the applicant. (The aforesaid appraisal is to be based strictly on the value of the acreage created, and not on the value of any bulkhead, retaining devices and improvements placed upon said acreage.).

By authority of the Board of Public Works:

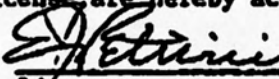
Issued for and in behalf of
the Members of the Board


Andrew Heubeck, Jr.
Secretary

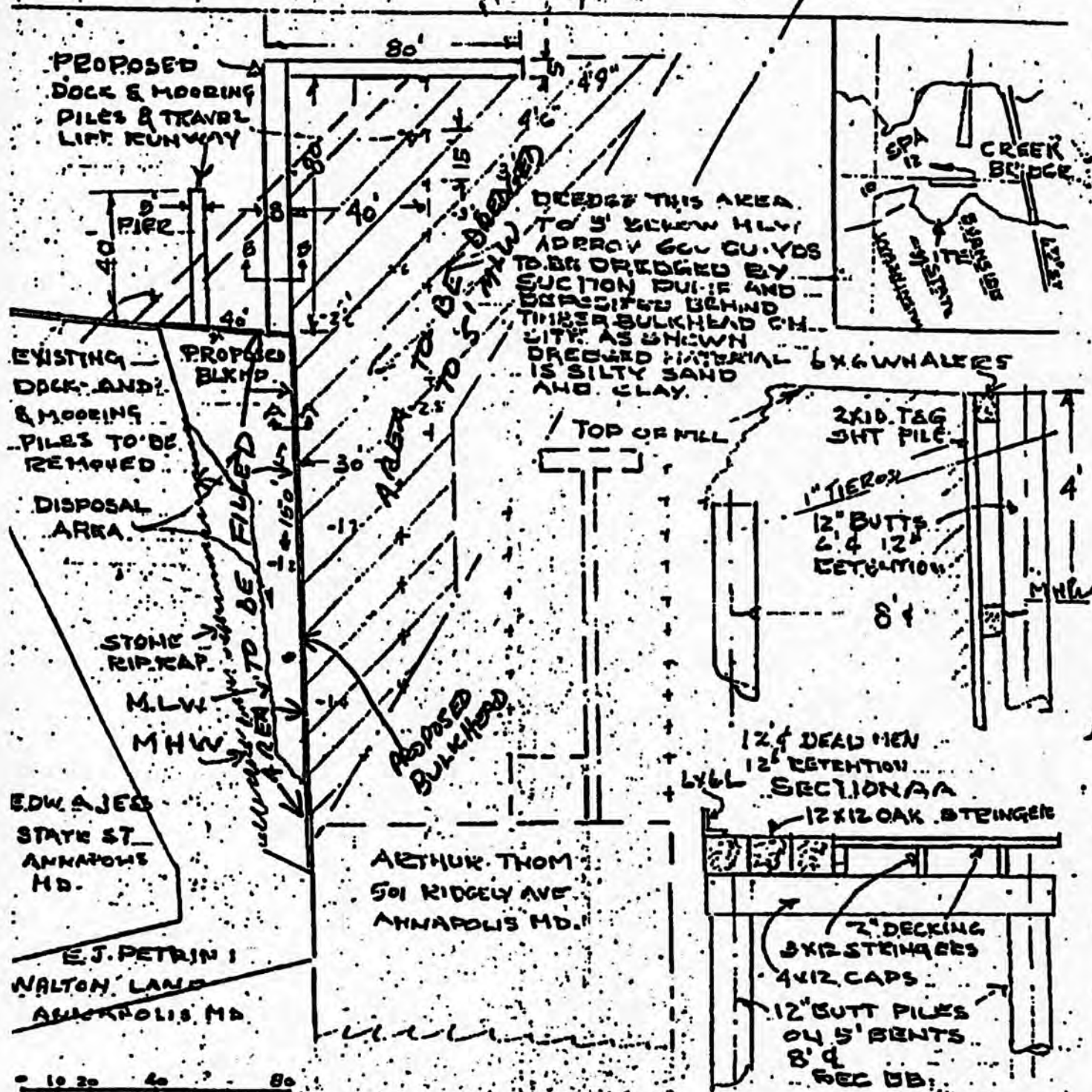
The terms and conditions of this license are hereby accepted.

Date

9/1/72


Licensee

By



PROPOSED BULKHEAD-DREDGE-FILL DOCKS-
FILES IN SPA CREEK AT EASTPORT.
6TH DIST. AA CO MD
APPLICATION BY
E.J. PETRINI.. 8-3-71

SCALE 1"=40' PLAN



HERBERT M. SACHS
DIRECTOR

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
WATER RESOURCES ADMINISTRATION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

CERTIFIED MAIL

June 7, 1976

NOTICE OF COMPLIANCE

Mr. Edgar J. Petrini
Walton Lane
Annapolis, Maryland 21403

Re: Wetlands License 72-96

Dear Mr. Petrini:

On June 4, 1976, a representative of the Administration made an investigation of the above referenced site.

Based on this inspection, it has been determined that compliance with the physical requirements of the subject license has been achieved. However, this does not relieve you from Item "S" of the subject license which requires compensation to the State for fastland acreage created. The Department of Natural Resources will contact you in the near future concerning the specific procedures to comply with the compensation provisions.

Your cooperation in this matter has been greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Raymond J. Schwartz".

Raymond J. Schwartz
Regional Chief
Enforcement Division

RJS:nm

cc: Mr. Ed Herold
Mr. Lawrence Goldstein



HERBERT M. SACHS
DIRECTOR

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
WATER RESOURCES ADMINISTRATION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

December 17, 1976

Mr. Lawrence B. Goldstein
Wetlands Hearing Administrator
Board of Public Works
Annapolis, Maryland 21401

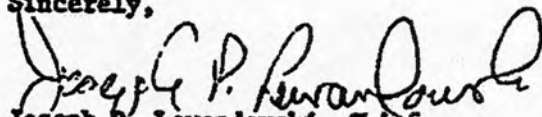
Dear Mr. Goldstein:

Re: Wetlands License 72-96 - Edgar J. Petrini

Based upon an inspection by the Enforcement Division the subject licensee has complied with all conditions of the wetlands license except for the compensation to the State for fast land acreage created. There is no necessity for enforcement action or revocation of the subject license because the licensee has complied with all the physical requirements of the license. The only item that remains is what specific cost is required for the creation of fast land, this, I understand, is to be done by the licensee acquiring the appraisals of the value of the real estate.

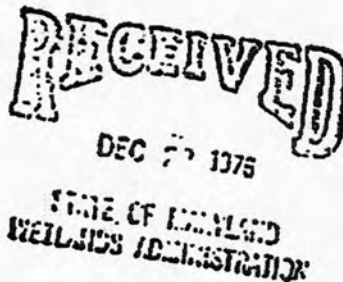
If you have any questions please contact my office.

Sincerely,


Joseph P. Lewandowski, Chief
Enforcement Division

JPL:jmb

cc: Mr. Raymond J. Schwartz



City of



Annapolis

BOARD OF PORT WARDENS

(410)260-2200

145 GORMAN STREET, 3RD FLOOR
ANNAPOLIS, MARYLAND 21401OPINION AND ORDER

(PORT2017-024)

On August 28, 2017, Pyramid Maritime One, LLC, and Pyramid Maritime Two, LLC (collectively "Pyramid") submitted Maritime Construction and Maritime Use Permit applications to the Board of Port Wardens. The purpose of these applications is to obtain approval from the Board for demolishing, dredging, rehabilitating and reconfiguring the existing commercial marina at a site known as South Annapolis Yacht Center (SAYC).

The use application identifies the uses as a commercial marina and commercial yacht/boatyard.

The construction application indicates that construction would occur within the same footprint of SAYC that now exists. The construction proposed is as follows:

1. Demolish the existing marina.
2. Pier A. Construction of 51'-2" x 63'-7" covered boat shed which includes 2 - 4' x 50'-59' finger piers.
3. Pier B. Installation of 8' x 182' pier which includes a 6' x 110' T-head, 3 - 4' x 50' finger piers, 1 - 4' x 52' finger pier, 1 - 4' x 35' finger pier, 2 - 4' x 30' finger piers and a 24.8' x 50' dinghy dock, all floating.
4. Pier C. Installation of 8' x 160' pier which includes a 6' x 128' T-head and 6 - 4' x 60' finger piers, all floating.
5. Pier D. Installation of 8' x 189' pier which includes a 6' x 115' T-head, 5 - 4' x 60' finger piers and 1 - 4' x 80' finger pier, all floating.
6. East Bulkhead Slips. Installation of 2 - 4' x 32' fixed angled finger piers (24' max projection from bulkhead), 10 boat lift piles and 5 boat lifts.

7. Main Bulkhead. Installation of 4 - 4' x 24'-24.8' finger piers, 12 boat lift piles and 7 boat lifts.
8. Installation of 2 - 5' x 60' travel lift piers.
9. Installation of 5 docks of various sizes.
10. Replacement of 915 LF of timber bulkhead.
11. Dredging of 30,387 SF area to a depth of -8.0' at MLW. Total spoils is 5254 cubic yards to be deposited of at an approved uplands spoils site.

The SAYC site currently has 85 commercial slips, but only 69 commercial slips are sought for approval, as are 12 boat lifts, total water frontage of 9,125 square feet, and 145 parking spaces. SAYC also seeks approval to dredge 5,254 cubic yards of material, all to be removed to a different site by barge, and approximately 500 cubic yards of materials deposited on site from the shore.

Notice of the application was given to the adjoining property owners, Terence Fitzsimmons and Newport Condo Council, and also to all riparian property owners within 500 feet of SAYC in accordance with City Code 15.20.050.

The SAYC property is zoned WME, Waterfront Maritime Eastport District. The existing use there is a commercial marina, which is a permitted use for this zoning district pursuant to City Code 21.48.040. The parking requirement for in-water boat storage, pursuant to City Code 21.66.130, is one parking space per two slips. With a proposed 69 boat slips, 35 parking spaces would be required. The land surface part of the marina has already received Site Design Plan Review approval by the City Department of Planning and Zoning ("Planning Department") for a total land redevelopment of the site. As redeveloped, the marina would have 142 parking spaces for various marina uses, which includes 35 spaces for in-water boat slips.

The SAYC property is located in the City's Critical Area Overlay District with a designation of IDA, Intensely Developed Area, and lies within the BEA, Buffer Exemption Area. The proposed marina reconfiguration would not create any disturbance to the Critical Area buffer, except for bulkhead replacement.

Summary of Administrative Proceedings

The Planning Department conducted departmental review of the applications. In accordance with City Code 15.20.050, the Planning Department enforced all City Code notice requirements. After the Planning Department's review and recommendation for approval of the application, the Planning Department made a referral to the Board for a public hearing.

The matter came before the Board on September 26, 2017. Present were Chairman Gene Godley, Board members Willie Sampson, Randy Adams and Eric Pickett, Jr., and Gary Elson, Assistant City Attorney and staff attorney to the Board. Department of Planning and Zoning Staff present were Director Pete Gutwald and Senior Land Use and Development Planner Kevin Scott. The Applicants were represented by Alan Hyatt, Attorney. Bret Anderson, SAYC owner also appeared. C. Edward Hartman, III attorney, represented Newport Condominium Association, owner of property located to the east of and adjacent to the SAYC property, as well as some individual unit owners.

SAYC produced for testimony Mr. Anderson, in addition to Dalton Moore, qualified by the Board as an expert in the field of wetlands ecology and water resources administration, Kevin Campion, qualified by the Board in the field of landscape architecture, Terry Schuman, qualified by the Board in the field of civil engineering, and Ralph Naranjo, qualified by the Board in the field of boat navigation and its impact on riparian ownership. Newport stipulated to each expert in their respective fields. SAYC's 16 exhibits, plus slides produced by Mr. Campion, were admitted into the record.

The public hearing was continued to October 24, 2017. The Board convened, but there was a failure of a quorum, and the public hearing was continued to November 28, 2017.

On November 28, 2017, the Board reconvened with the same persons present as on September 26, 2017. Mr. Naranjo and Mr. Schuman testified again for SAYC. Newport called for testimony: Mr. Hartman, III, Charles Edward Hartman, II, and Gil Gildea, a Newport unit owner. Newport's exhibits were admitted into the record. SAYC presented John Dowling on rebuttal. Public testimony was taken. Exhibits

were submitted by David Boyd, Graham Kastendike, Patricia Frese, Ted Edmunds, and Jonathan Hollander, all members of the public. Written public testimony that had been received by the Planning Department was admitted also. The Chair scheduled a site visit by the Board and deliberations were scheduled for a special meeting to occur December 4, 2017.

On December 4, 2017, all parties, attorneys, staff, and Board members were present. Prior to the start of deliberations, Mr. Hartman moved to strike the staff report of the Department of Planning and Zoning, or to re-open the record in order to allow cross-examination of Mr. Scott, the author of the staff report, which the Chair denied. Diane Butler, a member of the public and a Newport Condominium unit owner, moved that the Board should: 1) direct the Planning Department and the City Office of Law to review and reconsider the determination that the computation of the lateral lines is compliant with City Code 15.18.050; 2) re-open the record to receive any amended report from the Planning Department; and 3) re-open the record to consider any new evidence or argument regarding lateral lines. After discussion, the Chair denied the motion, finding that there is sufficient evidence in the record to deliberate. The Chair, however, moved to open the record to have SAYC and Newport prepare new lateral line drawings for consideration at the next hearing on January 23, 2018. The full Board unanimously approved the motion.

On January 23, 2018, all parties, their attorneys and staff were again present as were Board members except Mr. Sampson. New lateral lines drawings and corresponding memoranda were admitted in the record. Mr. Hyatt objected to the admission of the Newport drawing and memorandum as not being Code compliant. The Chair denied the motion, indicating that the Newport drawing and memorandum were responsive to the order for their submission. Mr. Scott testified regarding plat submissions by SAYC and Newport.

The Chair closed the public hearing and the Board deliberated and approved the application conditionally by a vote of 3-0.

Applicable Law

15.02.010 - Purpose.

- A. The purpose of this title is to provide regulations for the orderly development, control and management of the waterways, structures installed in the waterways, and associated waterfront areas.
- B. This title is not intended to deprive a riparian owner of any right or privilege associated with riparian ownership of land or ownership or use of any fixed and permanent structure in the waterways which lawfully was installed and lawfully in use prior to February 11, 1980. The provisions of this title do not transfer the title or ownership of any waterway or interest in a waterway.

15.02.020 - Applicability.

- A. This title and any rules and regulations adopted pursuant to it apply to, and shall govern the control of all activities in City waters, including the use and storage of all vessels, the safety and security of City waters, and the construction and use of all marinas, piers, moorings and mooring piles within City waters.
- B. The location of shorelines, the location of harbor lines for those areas of the waterways which have been developed, and the provisional location of harbor lines for those areas of the waterways which have not been developed are as shown on the maps entitled "Annapolis Harbor Lines, as adopted by the City Council and amended from time to time." Detailed procedures for determining the location of harbor lines are as set forth in Sections 15.18.020, 15.18.030 and 15.18.040. The maps and all notations, dimensions, references and other data shown on the maps, as well as properly attested amendments to them, are a part of this code.
- C. The provisions of this title are in addition to existing Federal, State and County laws and regulations governing the same matters and are not intended to preempt them. The more restrictive laws and regulations shall take precedence.

15.16.030 - Port Wardens—Development regulation.

- A. The Port Wardens shall not approve any application for a license or permit involving placement, erection, or construction in the waters beyond the harbor lines, either fixed or provisional, as shown on the harbor line maps, but may approve or disapprove an application within the developable waterway areas as defined in this title, in accordance with the criteria set forth in this chapter. The location of the harbor lines in the waterways, as shown on the harbor line maps, shall be utilized by the Port Wardens to define the maximum channelward limits of construction.
- B. The Port Wardens shall approve or disapprove applications for licenses or permits to construct, enlarge, rebuild or modify any and all marinas, community or private piers, wharves, mooring piles, floating wharves, buoys, anchors, bulkheads, including any dredging and modification of the natural shoreline.
- C. The Port Wardens shall consider the effect of the proposed structure alone and in concert with present and other proposed uses on marine life, wildlife, conservation, water pollution, erosion, navigational

hazards, the effect of the proposed use on congestion within the waters, the effect on other riparian property owners and the present and projected needs for any proposed commercial or industrial use.

- D. A person neither may build a wharf or pier or carry out any earth or other material for the purpose of building a wharf or pier, nor place or erect mooring piles, floating wharves or docks with or without motors, buoys or anchors without approval of the Port Wardens.

15.16.040 - Port Wardens hearings, decisions and appeals.

- A. Whenever an application is submitted to the Port Wardens, the Port Wardens shall hold a hearing on the application. The fee for an application for a Port Wardens hearing shall be set by resolution of the City Council.
- B. Upon receipt of a duly and properly filed application the Port Wardens shall cause notice of the hearing of the application to be published once in each week for two consecutive weeks in one newspaper of general circulation published in the City. The second advertisement shall be published at least seven days prior to the hearing. The first advertisement shall be published between eight and fourteen days prior to the hearing.
- C. The notice required by Subsection A. of this section shall specify the names and residency of the applicant, the location of the projected construction and description of the construction proposed and such other information as the Port Wardens shall direct. The notice also shall advise that an appeal from a decision of the Port Wardens to the City Council is on the record of the proceedings made before the Port Wardens and that persons who may desire to appeal a decision of the Port Wardens shall provide for a verbatim account of the Port Wardens' proceedings to be recorded and transcribed. The cost of the publication of notice of hearing shall be borne by the applicant.
- D. Additionally, a sign indicating that a permit is being sought and stating the date and time of the meeting of the Port Wardens shall be posted on the property, both at the street and at the water, by the applicant at least ten days prior to the meeting of the Port Wardens and shall be removed by the applicant within ten days following the completion of the Port Warden's consideration of the application.
- E. The decision of the Port Wardens shall be based upon their judgment of testimony presented to them at the hearing, shall be in writing and shall contain the findings of fact upon which the decision is based. All decisions of the Port Wardens shall be filed with the City Clerk.
- F. The Port Wardens shall cause notice of their decision pertaining to an application to be published within two weeks in one newspaper of general circulation published in the City. The cost of the publication of the notice of decision also shall be borne by the applicant.
- G. A person aggrieved by a decision of the Port Wardens may appeal that decision to the Circuit Court of Anne Arundel County in accordance with Maryland Rules of Procedure, Title 7, Chapter 200.

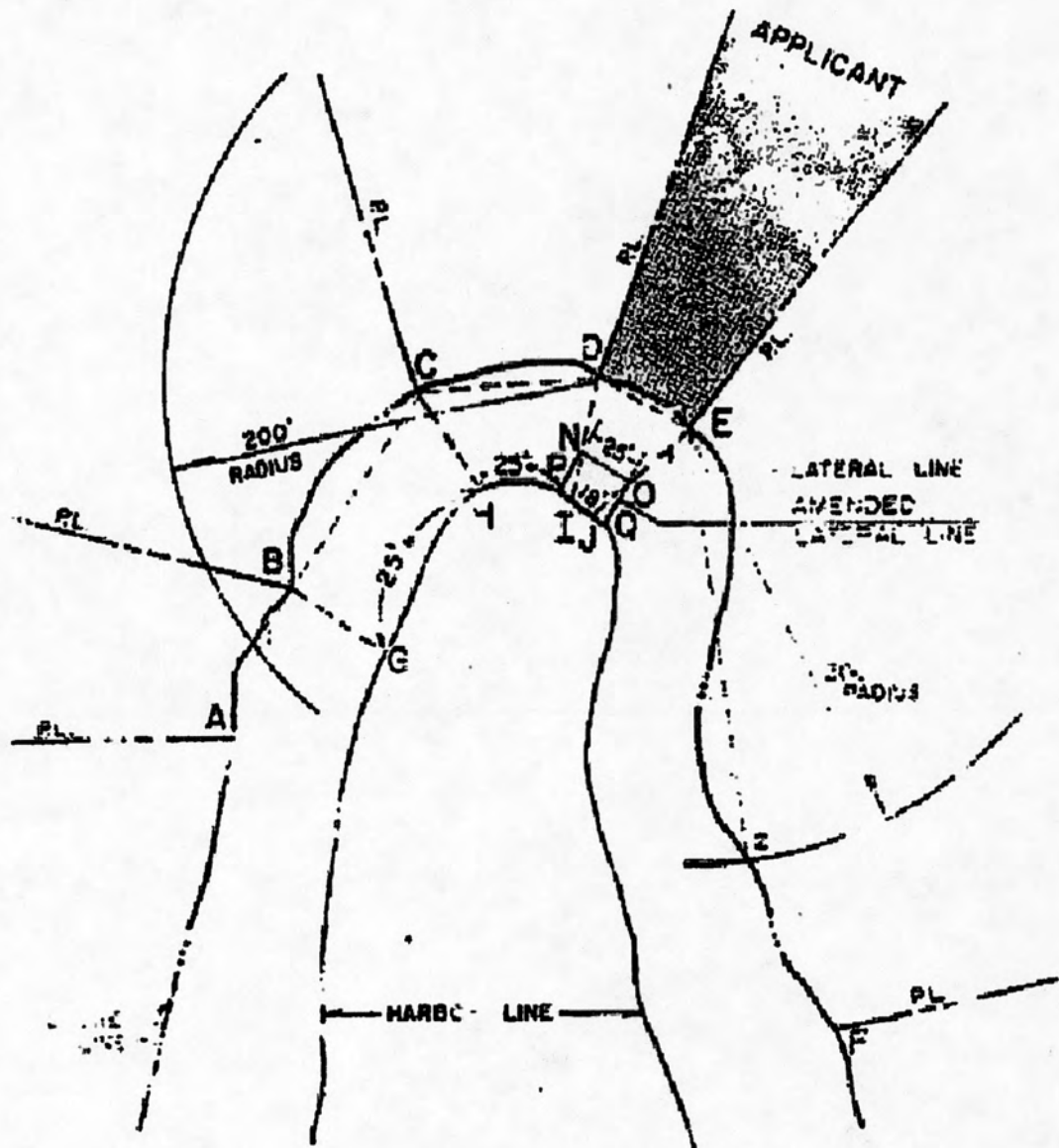
15.18.020 - Harbor lines - Map - Purpose.

- A. The location of the harbor lines in the waterways is shown on the maps entitled "Annapolis Harbor Lines."
- B. The harbor lines in the waterways are located at a distance from the shoreline depending on the location of lawfully installed piers, mooring pilings, wharves and bulkheads, the configuration of the shoreline and the zoning of the land at the shoreline.
- C. The harbor lines in the waterways as shown on the harbor line maps define the maximum channelward limits of construction. The Board of Port Wardens shall use the harbor lines when approving or disapproving applications for licenses or permits in accordance with the provisions of Chapter 15.40.

15.18.050 - Lateral lines.

- A. The lateral lines for any waterfront property are to be determined, from time to time, graphically on a scaled drawing as follows:
 - 1. Prepare a scale drawing showing the applicant's property and all adjacent properties within a two-hundred-foot radius of the boundaries of the applicant's property. (See Figure 15.18.050.)
 - 2. On the scale drawing, add the shoreline and harbor lines, either fixed or provisional, as shown on the harbor line map.
 - 3. Intersect all property lines with the shoreline (points A, B, C, D, E, F on Figure 15.18.050).
 - 4. From the applicant's property line-shoreline intersections (points D and E on Figure 15.18.050) intersect a two-hundred-foot radius with the shoreline (points 1 and 2 on Figure 15.18.050).
 - 5. From the applicant's property, connect all property line-shoreline points, ending at points 1 and 2 with straight lines (D to C, C to B, B to 1, D to E, E to 2 on Figure 15.18.050).
 - 6. Bisect the angle formed by these straight lines and extend the lines bisecting the angle from the shoreline to the harbor line. These lines constitute the lateral lines (B-G, C-H, D-I, E-J on Figure 15.18.050).
- B. Any person desiring to erect a structure in the waterways may have a professional land surveyor prepare, according to the method described in this chapter, a plat showing the owner's lateral lines. The lines shall be developed based on the shoreline as it exists at the time the plat is drawn. The lateral lines will be deemed to remain as shown on the plat regardless of future changes in the shoreline.

Figure 15.18.050
Determination of Lateral Lines



15.18.060 - Determination of developable waterway area—Lateral line acceptability.

The developable waterway area shall be determined for all properties having a pair of lateral lines as shown on the applicant's drawing. For an acceptable developable waterway area, the following conditions (see Figure 15.18.050) must be met:

- A. If a pair of lateral lines extended to the harbor line results in a distance of twenty-five feet or more on the harbor line (lines G-H, H-I, I-J), the lateral lines (D-I, E-J) are satisfactory and these lines and the harbor line and the shoreline define the developable waterway area for the applicant. If the pair of lateral lines extended to the harbor line results in a harbor line segment (G-H, H-I, I-J on Figure 15.18.050) of less than twenty-five feet, the lateral lines are unacceptable and shall be modified as indicated in Section 15.18.070.

15.18.070 - Modification to unacceptable lateral lines.

- A. Whenever the lateral lines are unacceptable as outlined in Section 15.18.060, the lateral lines shall be modified, as shown on Figure 15.18.070, by moving an imaginary line toward the shoreline and parallel to line D-E (Figure 15.18.070) until a twenty-five-foot clearance is obtained (line N-O on Figure 15.18.070).
- B. Two additional lateral lines, N-P and O-Q, shall be drawn perpendicular to line N-O from points N and O to the harbor line. The lines D-N-P, E-O-Q shall be deemed to be the modified lateral lines for the applicant's parcel and the adjoining properties.
- C. For all modified lateral lines, construction shall be limited to the area enclosed by the shoreline, the lateral lines and the harbor line. Any structure proposed within a modified developable waterway area shall conform to the setback requirements of this chapter. The Port Wardens may limit or proscribe, on a case-by-case basis, the placement, erection or construction of such a structure, if the limitation or proscription is demonstrated to serve any of the purposes of this chapter set forth in Section 15.02.010(A) or to reasonably protect the interests of nearby property owners.
- D. These modified lateral lines, the harbor line and the shoreline define the developable waterway area.

The diagram illustrates a proposed canal route (solid line) and an amended lateral line (dashed line). Key features include:

- APPLICANT:** A shaded area at the top right, representing the landowner or entity applying for the canal.
- LATERAL LINE:** A dashed line representing the original lateral boundary.
- AMENDED LATERAL LINE:** A solid line representing the proposed amended lateral boundary.
- HARBOUR LINE:** A solid line at the bottom, likely representing the harbor boundary.
- 200' RADIUS:** A circular arc centered at point A, indicating a 200-foot radius.
- 25' RADIUS:** A circular arc centered at point G, indicating a 25-foot radius.
- Points:** Various points are labeled along the routes, including A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z.
- Angles:** Several angles are marked, such as 25°, 18°, and 10°.

All piers, "T" heads, "L" heads, mooring piles, mooring buoys and anchorages must be set back from the harbor line an appropriate distance to assure that no moored vessel or permanent or temporary obstruction extends channelward beyond the harbor line.

A clear space of one hundred feet by fifty feet shall be provided for parallel berthing at "T" or "L" head fuel docks.

5.18.100 - Lateral line setback.

- A. No portion of the structures of a marina, yacht club, working boatyard, and community or private pier and moorings installed in the waterways after February 11, 1980 shall be located less than five feet away from a lateral line. No vessel shall be moored such that any portion of the vessel is located within five feet of a lateral line.
- B. The lateral line setback may be reduced if a letter of "no objection" is obtained from the adjacent property owners and filed with the Port Wardens. The mutual use of piers and mooring pilings by adjacent property owners is encouraged and recommended whenever possible.

15.18.110 - Nonconforming uses or structures.

Any structure of a marina, yacht club, community or private pier lawfully installed in the waterways and lawfully in use on February 11, 1980, but not in conformance with the dimensional or use regulations as prescribed in this title, may continue as a nonconforming structure or use, subject to the following provisions:

- A. Additions and Enlargements. A nonconforming structure which is nonconforming as to waterway setback shall not be added to or enlarged in any manner unless the additions or enlargements are made so that the resulting structure conforms to the waterway setback provisions of Sections 15.18.080, 15.18.090 and 15.18.100.
- B. Restoration of a Damaged Structure Being Used for a Nonconforming Use or a Nonconforming Structure. A structure which is being used for a nonconforming use or which is a nonconforming structure and which is destroyed by fire, ice, neglect, casualty or act of God may be restored to its original configuration, provided the damage does not exceed fifty percent of cost to replace the existing structure, at current prices.
- C. Discontinuation of a Nonconforming Use. If the nonconforming use of a structure is discontinued for a continuous period of one year it shall not be renewed, and any subsequent use of the structure shall conform to the use regulations of this title.
- D. Expansion or change of a nonconforming use. The nonconforming use of a structure shall not be expanded, extended or changed to another nonconforming use.

15.18.120 - Legality of existing structures.

Any fixed or permanent structure existing in the waterways on February 11, 1980 and lawfully conforming to all of the provisions of this title shall be considered as lawfully installed, unless the Port Wardens decide, after notice to the property owner and a public hearing before the Port Wardens, in accordance with the provisions of this title, not later than February 11, 1982, that the structure or portion of the structure was installed without lawful authority.

Summary of Relevant Testimony

Testimony of Mr. Anderson. Mr. Anderson is the owner and operator of Pyramid and the SAYC marina. The marina dates as far back as 1907. Parts of the marina are in serious failure or serious disrepair. There is an eroding shoreline. Bulkheads are failing. Some piers are held up by straps. Some of the pavement is caving in. From the site each year, about 2.5 million gallons of runoff is deposited into Spa Creek because of lack of storm water management on site. SAYC is the only boatyard in the City with overhead power lines. The marina is a huge safety hazard. The proposed redevelopment would uphold the values of the community by preserving a maritime use and improve the health of Spa Creek. The storm water management plan for the redevelopment is exceptional. The plan is to double the State storm water management treatment requirements with rain gardens and forest canopies across the entire site. The redevelopment meets or exceeds environmental standards. About 600 creosote pilings would be removed. A new travel lift and state of the art floating piers are proposed. The installation of floating piers would reduce the number of pilings that would have to be reinstated. About 20,000 square feet of covered boat shed area shading the creek would be removed. The SAYC redevelopment proposal is consistent with the 2009 City of Annapolis Comprehensive Plan.

There is a historical record that documents the positioning of the lateral lines. The former owner of the SAYC was Edgar J. Petrini. Mr. Petrini received a license (72-96) from the State Board of Public Works in 1972 to improve the property by constructing a timber bulkhead, to deposit soil behind the bulkhead, and to dredge. That license depicts a roughly 45 degree angle line running from the corner of what is now the Newport property adjacent to the SAYC property. A letter dated June 7, 1972 from the State Board of Public Works indicates that the construction was inspected and approved and within the requirements of license 72-96. There is also a Board of Public Works license 71-01 granted to Newport, prior to the Petrini license, for the construction of a bulkhead and for dredging. That license depicts the Newport buildable, or developable, waterway, which lines up with the SAYC developable waterway. These lines conform to the

standards for computing lateral lines set forth in the current City Code and are consistent with his lateral lines computation of Mr. Schuman. City aerial photographs taken in 1977 reflect structures on the SAYC and Newport properties existing prior to February 11, 1980. Respectively to the west of the approximately 45 degree line is the SAYC developable waterway, and to the east is the Newport developable waterway. The line is consistent with the lines referenced in both the Newport and SAYC permits from 1971 and 1972. Newport respected that line when it subsequently applied for a permit for improvements. The structures on each side of the line have been in place for about 45 years continuously and have been respected by both SAYC and Newport for the duration of that time.

Currently, there are nine perpendicular slips on the SAYC east side. That would be reduced to five angled slips for power boats. There would be no turning or rotating until beyond the piers and pilings. With angled slips, a boat will have a straight shot in and out, much easier for navigating and safety. This would address any wind factor and would not cause interference with moored Newport boats. All of the proposed angled boat slips are on SAYC property and within the lateral line.¹ Every navigation expert he consulted agrees that angled slips instead of straight in slips would be safer for access in or egress out. Angled slips provide a "straight shot" in and out, which is particularly important because it appears that Newport boats are encroaching over the SAYC lateral line. Mr. Anderson indicated that the slips and lifts, designed on the diagonal, would allow a maximum 26 feet, except for the slip that would be most channelward, which would be able to handle a boat 28 feet in length. No piling or finger pier would be exceeded in any case. This is the same condition that currently exists. There would be a queuing area for SAYC boats entering the channel from any slip. If the Board were not to allow angled slips, it would prohibit SAYC from improving navigational safety.

Testimony of Dalton Moore. Mr. Moore was the wetlands administrator for the Maryland Board of Public Works from 1999 to 2013. From 1995 to 1999, he was at the Maryland Department of the

¹ As computed by Mr. Schuman, consistent with the Petrini permits.

Environment and reviewed tidal wetlands license applications. He reviewed thousands of applications in those years.

Mr. Moore examined licenses 72-96 and 71-101. The approximately 45 degree angle line shown on the drawings attached to each license are the same. There were less than a dozen title deeds that followed the grant of a wetlands license, such as the two granted to Mr. Petrini and Newport. In those case, the licensee sought a title deed from the State. Title deeds from the State following the grant of a wetlands license are extraordinary.

Mr. Moore is familiar with the SAYC application and visited the site. Almost all of the existing boat sheds would be removed from the site. Removal of shed coverage, about 20,000 square feet, would open up the aphotic zone, which is the depth that sunlight will penetrate.² Removal would increase primary productivity of algae resulting in an increase of oxygen production. That would allow for aerial deposition that collects in the waterway now to dissipate over time. Whenever it rains now, nitrogen and other debris or elements composing the roof of the sheds is released. It is better for the release nitrogen over time since nitrogen is not a favored chemical element. Removal of existing creosote³ pilings would eliminate pollutants that deposit into the waterway. The purpose of creosote is to keep marine life off pilings to protect the pilings. There are over 600 creosote pilings scheduled for removal, which would eliminate any further creosote deposits into the waterway. The proposed decrease in the number of boat slips for redevelopment from 85 to 69 would positively affect water quality since there would be a corresponding reduction in boat bottom paint chippings and petroleum released into the waterway. Additionally, boat cleaning stations, which are required by the Maryland Department of the Environment, would capture and recycle wash water and collect paint chippings coming off boats during washing and be for recycled off site to proper disposal facilities, which otherwise would go right into the waterway.

² The vertical depth of a waterway unreachable by sunlight, just below the photic zone, and not supporting photosynthesis or autotrophic organisms. Dictionary.com.

³ Creosote is an oily liquid used mainly as a preservative for wood. Dictionary.com

Currently, there is no storm water management on site. That means that storm water on site and possibly off site is moving ground sediment and pollutants, such as nitrogen, phosphorus, fertilizers, herbicides and pesticides, at least some of which create dead zones, into the Chesapeake Bay. Storm water management facilities proposed for redevelopment would be a major water quality improvement.

Testimony of Kevin Campion. Mr. Campion is the landscape architect retained by Pyramid to design landscape for the proposed redevelopment. The SAYC marina is aged, was not created to be progressively environmental, and has multiple environmental problems. An arborist determined that about 75% of the trees on site are not non-native and have very little habitat value. About 50% of the trees on site are either dead or decaying. Limbs fall periodically. The site is significantly lawn, which has very little conservation value. Removal of about 17% of impervious surface, about 9,000 square feet of paving, concrete and other impervious material, including impervious surface in the 100 foot Critical Area buffer, is proposed. Habitat value in the 100 foot buffer would be increased tremendously with proposed plantings of over 125 predominantly native trees, 2,000 predominantly native shrubs, and almost 10,000 grasses and perennials. Such plantings would bring insects and small mammals and birds into areas where historically they have not been. In addition, rain gardens would be planted on the site for storm water management purposes, which would help slow the flow of storm water and would reduce the amount of sediment and toxins entering into the waterway.

Testimony of Terry Schuman. Mr. Schuman is SAYC's professional engineer retained to design both the landward and waterward side of the SAYC property. He prepared a plat of the SAYC developable waterway to determine the shore line, lateral lines, and harbor line associated with SAYC. His drawing showed all properties within a 200 foot radius of the SAYC property. The drawing also reflected all of the lines for developable waterways applicable to other properties within the 200 foot radius. The drawing shows the intersection of points of the SAYC east and west shoreline, but it does not show the same with

respect to all properties within the 200 foot radius. Points of intersection of all such properties were not shown, which is required by the City Code. This would not change his SAYC lateral line computation.

Mr. Schuman reviewed the licenses and drawings related to 72-96 and 71-101 and determined that the approximately 45 degree angle line that is shown on both drawings matches the line that he drew using the City Code for computation. Mr. Schuman does not know what, if any, Code requirements there were in 1970 for lateral lines computations. However, even if there was no such term as "lateral line" in 1970, he can conclude that the license drawings for SAYC and Newport approved by the State establish the existence of lateral lines. The City Code requires that the legality of the structures existing by February 11, 1980 be acknowledged if not challenged by February, 1982, in this case, the SAYC pilings on the east side, which are not proposed for any change in the redevelopment.

The current improvements on the SAYC and Newport properties are those seen in the 1977 aerial have been in place continuously since that time. Additionally, all of the proposed SAYC improvements, including five proposed angled boat slips on the east side, are within the SAYC developable waterway and would be within the existing improvements that were permitted by 72-96. There is 20 feet of distance proposed between T-head piers and the harbor line, a distance that would be wide enough for most boats.

Mr. Schuman computed both the east side and west side lateral lines using the City Code and it matched the line reflected in the Petrini and Newport permit drawings attached to the 1970s licenses. The purpose of the scale drawing was to show how the lateral line on the east SAYC side lines up with the Petrini and Newport drawings from the 1970s. Improvements have existed on the SAYC east side since before February 11, 1980 and not challenged before February, 1982. Under the City Code, such improvements would be legal.

Mr. Schuman also prepared the storm water management plan for the site. There is currently no storm water management on site. Without storm water management on site, in a one inch storm, about 55,000 gallons of untreated, unfiltered storm water would flow directly into the waterway. The storm water

management plan exceeds the 50% treatment requirement of runoff in a one inch storm for sites proposed for redevelopment. In this case, in a one inch storm, 86% of runoff would be treated. Storm water management facilities proposed for the SAYC site are 26 rain gardens, a micro bioretention area, permeable pavement, and gravel wetlands, which exceeds the Critical Area requirement⁴ of 10% pollutant removal by 6 times. Additionally, the proposed storm water management facilities would remove annually about 14.9 pounds of pollutant nitrogen, 2.3 pounds of pollutant phosphorous, and 900 pounds of suspended solids, plus sedimentation, from runoff. There would be reduction of 17% of impervious area on site. Plantings in the 100 foot buffer would also provide filtering. Currently, impervious surface runs right to the waterway. The reduction from 85 to 69 slips would reduce gas and other pollutants from boats in the waterway, and the proposed boat wash wastewater containment treatment system would provide additional water quality. All storm water management devices could be installed without building the proposed five angled slips on the east side adjacent to the Newport site. However, these proposed slips are within the SAYC developable waterway.

Testimony of Ralph Naranjo. Mr. Naranjo was retained by SAYC to assess navigational safety. He is a marine consultant and technical editor of a marine oriented magazine. He has been involved with teaching in the sailing program at the US Naval Academy for about 10 years. He also taught Safety at Sea programs for about 20 years. He owns a power boat and sail boat. He has taken vessels up and down Spa Creek. He has seen varied vessels there, including runabouts, small day sailors and larger power cruisers.

The angling of the 5 proposed boat slips on the east side of SAYC for ingress and egress, rather than being perpendicularly positioned, is easier and safer because it provides more maneuvering area and simplifies navigation into a congested channel. Angled slips would allow more security and safety

⁴ The SAYC site is in the Critical Area with an IDA, Intensely Developed Area designation. The 10% requirement applies to the SAYC site, which has an IDA designation.

connecting with a boat lift than currently exists. Angled slips at SAYC would not affect the maneuverability of those seeking access to or egress from Newport. About 24 feet would be the average length for the proposed slips. The stern of a 24 foot boat would create an overhang. The proposed angled slips would be able to handle boats 25 or 26 feet in length. The outer proposed slip would be able to handle boats larger than that. It would have capacity for a length perhaps up to 35 feet. No maneuvering would be required with angled slips because boats are coming in and leaving on a direct angle. Anyone with modest skills would be able to handle challenges. Angling would be provide safety for paddle boarders and those boating for the first time or not necessarily skilled at boating in the area of the marina. The bulkhead is not angled, so some clearance at the bow of a boat would be necessary.

The proposed SAYC marina would have much more storm resistance than it currently has. Overall, there would result an environmentally friendly marina with an improved look, improved safety, and improved navigational efficiency.

Proffer of testimony by Mr. Hartman. A surveyor, Robert Tripodi, and title searcher, Robert Garland, would testify that SAYC does not own the developable waterway it claims. The reasons are that SAYC did not legally acquire title to a certain portion from Petrini or the State. This would establish the absence of standing by SAYC to seek relief from the Board. Mr. Tripodi would testify that the SAYC bulkhead on the east side was not constructed in accordance with the 1970's Petrini license, that it was constructed significantly more eastward and waterward than the license allowed, and that the SAYC deed describes property that is in violation of the 1970s State licenses, and thus any structures on those portions of SAYC property would be illegal as being in excess of that which was authorized. Mr. Garland would testify as to title records regarding the Newport property.

Testimony of Mr. Hartman. SAYC has not met its burden to prove that its proposed construction is within the SAYC developable waterway. The Board has to take into consideration the affect that the proposed construction would have on navigational hazards and congestion in the waterways and the effect

on riparian owners. Petrini was before the Board in 1970 for permission to do something. At that time, the Board would have determined the developable waterway for Newport and Petrini. Lateral lines, although not called by that term then, would have been set at that time. The City Code at that time did not use the term lateral line, but it did define developable waterway. It does not matter what the Code states today about how to calculate lateral lines. Mr. Schuman drew the SAYC lateral line incorrectly. It is drawn right through the Newport property. He made other mistakes. The lateral line as represented by Mr. Schuman is not a historic or respected lateral line. The line represented in the 1970s drawings is meaningless because neither party respected it when Newport did dredge over the line. Neither property had a bulkhead or had filled in on their properties at that time. Because the term lateral line was not in the City Code at that time, the Board would have used riparian rights and applicable law to determine the developable waterway, and the line drawn by Mr. Schuman would have disrespected Newport's riparian rights. The lateral line drawn by Mr. Schuman bisects directly across the front of Newport's property. This would deprive Newport of substantial riparian rights if recognized by the Board. Mr. Schuman's drawing is not a fair division of riparian rights of either party. It would allow SAYC access to the channel over riparian land of Newport.

SAYC's exhibits reflect that SAYC is intending to build a bulkhead that is not an in kind replacement. It will result in a 2 to 3 foot structure causing further invasion into Newport's riparian rights and its developable waterway. This is not shown by Mr. Schuman, it violates the original intent of the parties in the 1970s, does not respect what this Board would have done in 1970, and creates a nuisance, a negative easement, a taking of Newport's property, and a violation of the constitutional property rights of Newport.

The existing SAYC boat slips on the east side of the SAYC property are illegal. Petrini did not comply with his 1972 license. That license was not issued by this Board. Only this Board can authorize the installation of pilings or the creation of slips. There is no evidence that the SAYC slips were ever

authorized. The 1976 Board of Port Wardens letter approving the construction performed pursuant to the 1970s license is not supported by a survey and is mistaken. The construction was done over the Newport straight riparian line. The Port Wardens did not declare the construction illegal between 1980 and 1982, but other permits were not obtained to perform the construction. Mrs. Petrini did not own the filled land because she did not receive a deed from the State. Therefore, SAYC, whose deed is from Ms. Petrini, does not own the filled land.

Testimony of C. Edward Hartman, II: Mr. Hartman indicated Mr. Hartman II is an expert in the practice before the Board in the 1960s, 1970s, and 1980s. Mr. Hartman II first began appearing before the Board in the 1970s regarding applications for development in Spa Creek and other waterways. He also served on the City Maritime Advisory Board and participated in legislative matters before that Board. He has a continuing knowledge of maritime matters in the City starting in 1969.

Mr. Hartman acknowledged there are no records of this Board available from the 1970s, and that is the reason Mr. Hartman II's testimony is helpful in this proceeding - to establish what this Board, to a reasonable degree of certainty, would have done in the 1970s in determining Newport's developable waterway. The Board recognized Mr. Hartman II in the field advanced by Mr. Hartman III.

Mr. Hartman II's opinion is that the side lines in the 1970s, now called lateral lines, determine riparian rights as opposed to a developable waterway. These are different concepts. The exclusive right to build was within the riparian area on each property owner's property, taking setbacks into consideration. The side lines were figured on the shortest distance in a straight line to the channel, the purpose being to give access to the channel. These lines could not be altered by dredging, by natural sources, or by the loss or acquisition of land. Riparian rights could not be transferred except by deed or a lease. There are no cases he can recall where the points corresponding to the property lines were drawn at an angle to intersect the water.

There was dredging by Newport over the line indicated in the 1971 Newport drawing. That line is drawn approximately at 45 degrees. Newport's construction, except for dredging, is shown in the drawing to be on the Newport side of the line. The bulkhead on the SAYC east side was built by Petrini in violation of the 1972 Petrini license because it encroaches over the riparian line, the extension of the Newport property line, that was recognized by the State at that time. The line in these license drawings cannot define riparian rights as they existed then because riparian rights are a property right which can only be conveyed by a written instrument. The current boat slips on the east SAYC property are illegal because they extend further to the east than the 1972 Petrini license allowed. The 1976 letter from the State Board of Public Works, which approved the Petrini license, is incorrect in that it approved illegal construction within Newport's riparian rights. The bulkhead was illegally constructed by Petrini, and the pilings and piers would have been illegal if no building permit was obtained for them, and he hasn't seen a building permit.

Testimony of Charles Gildea: Mr. Gildea owns a Newport unit on the water. He owns a 19 foot power boat and has taken it into the channel for about 40 years. He took a photo of the SAYC piers on the east side. The existing pilings are significantly less than 24 feet from the SAYC bulkhead. It has been extraordinarily difficult to maneuver his boat into the channel, and allowing SAYC anything more than that would make it more difficult. He is assuming that SAYC would encapsulate the bulkhead since replacement-in-kind would be very expensive and difficult to do. That would push the bulkhead out an additional two feet. Anything measured at 29 feet from the bulkhead would cause his slip to be that much more difficult to access and egress, and would cause 12 Newport slips that are within Newport's riparian rights to be eliminated. Mr. Gildea produced videos of current conditions and attempts by him and a Newport neighbor to back out of their slips, which reflect the tight area already there. The SAYC proposal would create more perilous conditions for boaters and paddle boarders using the area. There are almost as many kayakers and paddle boarders in the area as there are boaters. This has become the norm in the past few years.

The slips at Newport average about 8 to 11 feet in width. Boats are limited to 27 feet unless they are grandfathered. There is a grandfathered 30 foot boat. Having fewer slips, reduced from the original plan of nine now to five, is better.

Testimony of John Dowling: The Board accepted Mr. Dowling as an expert surveyor. Mr. Schuman's lateral line determination on the east side of the SAYC property is correct. The line in the 1971 Newport license extends out at an angle at about 45 degrees. It is not drawn as a straight line extending out from the Newport land. That is the most recent line drawn for the west side of the Newport property, and it is hitting the water very much as the same line drawn by Mr. Schuman on the SAYC east side. According to the State Code, Environmental Article, Section 16-201A, fill land becomes property of the owner on whose property the land was filled.

Planning Staff testimony. Mr. Scott testified regarding the Board's request to SAYC and Newport to prepare new lateral line exhibits in accordance with the City Code 15.18.050, 060, and 070. Mr. Schuman prepared a revised plat, and Mr. David Green, a property line surveyor, for Newport prepared an original plat. Mr. Scott gave a step by step City Code analysis of Mr. Schuman's revised plat and testified that it was drawn in conformity with the City Code and correctly depicts SAYC's developable waterway as defined by the shoreline, lateral lines and harbor line. Mr. Scott found that Mr. Green's drawing did not completely conform to City Code requirements. The Board will not here state the details of Mr. Scott's analysis. The analysis is found in his staff report dated January 23, 2018, which was admitted into evidence. In essence, Mr. Scott also testified that City Code 15.18.120 regarding the legality of existing structures establishes that the footprint of the SAYC developable waterway is grandfathered and, therefore, legal today. City Code 15.18.120 allows for the legality of any structures, whether fixed or permanent, existing in the waterways after February 11, 1980, and lawfully conforming to all provisions in Title 15, shall be considered lawfully installed unless the Port Wardens found to the contrary by February 11, 1982. Mr. Scott indicated that the Planning Department knows of no evidence that the Port Wardens ever made such

a finding, either before February 11, 1982 or after, and that there has been no such evidence introduced in this case. While the SAYC project includes a different layout and configuration of structures with the marina, all of the structures would remain within the footprint of the marina. The footprint is defined by the boundaries that encompass the further extent of all piers and pilings around the entire marina, and that would not change. In accordance with City Code 15.18.120, the SAYC footprint, which is unchanged as shown in Mr. Schuman's drawing, is grandfathered. And because of this, according to Mr. Scott, the location of SAYC's east lateral line is moot because the structures within the marina, having been permitted and constructed lawfully before February 11, 1980, and having had lawful status through February 11, 1982, are lawful now.

Summary of Public Testimony

David Boyd: Mr. Boyd presented a petition signed by about 140 residents and property owners in Annapolis opposing the SAYC application. The petition asks that the Board not approve the SAYC application unless SAYC's structures are no closer than 40 feet from the harbor line rather than 20 feet as SAYC has proposed. The City Code requires that all piers, T-heads and other structures in the water be set back an appropriate distance from the harbor line to assure that no moored boat extends channelward beyond the harbor line. The SAYC marina would be built to cater to larger boats. Some will inevitably be greater than 20 feet in width. Sometimes, the height of a boat poses a risk as well as the width. The current configuration of only 20 feet from the harbor line could cause an accident. The Spa Creek bridge opening is 40 feet wide. The area inside the bridge is congested with paddle boarders, kayakers, and small boats. Under these circumstances, the Board cannot assume that a violation would not occur. The Board has to be sure that it will not occur and require that SAYC not deviate from City Code requirements for staying within the developable waterway area.

The City Harbormaster is on record as having not endorsed the SAYC application because of concerns about navigational safety, although she said in a subsequent writing that she could not make a recommendation on the application as to the controversy over lateral lines.

Graham Kastendyke: Mr. Kastendyke presented photos supporting the testimony of Mr. Boyd that there is increasing congestion in the waterways due to paddle boarders and others in small vessels in the channel. There is an accident waiting to happen. The Board should require a 40 foot setback from the harbor line.

William Kardash: Mr. Kardash has served as a safety officer at the U.S. Naval Academy and currently serves as a safety inspector for the Newport to Bermuda and Marblehead to Halifax races. He lives in Acton Cove and he has owned and operated boats for about 40 years, including his current ownership of a 44 foot sailboat and a 29 foot power boat. He has logged more than 50,000 blue water miles, including transatlantic.

The navigable waterway on approach to or from the Spa Creek Bridge is narrow. It is inadequate to accommodate growing congestion, local as well as transient, on Spa Creek. There is a substantial increase in paddle boarding and kayaking in the area. There are also a water taxi, tour boat, City pump out boat, power boaters regularly in the area, and a mooring field and anchored boats just inside the bridge over Spa Creek. There are anchored boats in the area. Additionally, there is normal boat traffic from Truxtun Park to Spa Creek bridge generating congestion in the area. There will be larger boats that are attracted to the new SAYC marina. Visibility and maneuverability of operators of larger boats would be challenged by smaller power boaters, boats that are human powered, and paddle boarders with a "free spirit" who don't necessarily know all "rules of the road" or have no understanding at all. Congestion is "a prime contributing factor to the loss of safety." Under these circumstances, the proposed 20 foot setback from the harbor line should be increased 40 feet.

Maureen Dodd. Ms. Dodd and her husband own property in Newport. They are opposed to the application. She is concerned that congestion would be increased and navigational safety compromised by approval of the application. They are also concerned that approval of the application would infringe upon the riparian rights of property owners in Newport. Approval of the application would allow SAYC to encroach Newport's lateral line, which has been in existence for over 40 years, and would unfairly force Newport to remove a portion of a pier. If the Board is going to recognize SAYC's lateral line which SAYC claims has been in existence since the 1970s, then the Board must recognize Newport's lateral line, which has existed longer. She is concerned that, if the SAYC proposed lateral line is improved, it will adversely affect Newport's ability to make improvements near its lateral line and market values.

Steven Faust. Dr. Faust opposes the application. He supports the 40 foot setback from the harbor line, instead of the 20 foot setback proposed. He has treated many injuries caused in boating accidents. There is already tremendous congestion in Spa Creek. He is sympathetic to Newport's property concerns but primarily about safe navigation, particularly with paddle boarders and kayakers in the area of Spa creek who don't have much of a grasp on boating safety. They are facing increasing danger as boating traffic increases. He has seen paddle boarders jumping into the water to retrieve their dogs with their paddle boards drifting and large boats nearby.

Brian Meyer. Mr. Meyer is the owner of a paddle board operation since 2014. He engages in professional instruction and coaching to paddle boarders before they go out on the waters. In the time he has been an operator, he has seen safe navigation in Spa Creek.

Patricia Frese. Ms. Frese resides adjacent to the SAYC property on the west side. She is concerned about congestion in the waters, especially in the summer and on weekends and evenings, and the difficulty in safely navigating the area. She noted the proposed longer than existing piers in a small cove on the west side where it is already difficult to see around the existing piers and boats docked there. She supports piers no longer than existing on the west side, and a 40 foot setback from the harbor line.

Dave Dunnigan. Mr. Dunnigan is a live aboard owner of a boat docked at SAYC. He supports the proposal for restoration characterized in the application. It would improve the ecology of Spa Creek, replace debilitated facilities at SAYC, and enhance the charm of Annapolis. Mr. Dunnigan believes that the approval of the application would result in significantly improved navigation in the area between SAYC and Newport because of the proposed reduction in slips along the eastern bulkhead with angling in and out. He noted the reduction in slips from 85 to 69 and the corresponding reduction of boat traffic out of SAYC.

Robert Noyce (statement read by Mr. Dunnigan). Mr. Noyce is a neighbor of SAYC and has been in the marine industry for 47 years. He is a former member of the Board in the 1980s during the administration of Mayor Hillman. He supports the application.

Chris Bell. Mr. Bell is an SAYC slip holder. He is an architect and developer. He owns and operates a large boat. He supports the application. The proposed architecture and planning and environmental improvements are notable enhancements to the marina. He acknowledges that the area is very congested, especially with paddle boards, but he knows of no dangerous incidents or injuries that have occurred on the water. He acknowledges that some paddle boarders and kayakers are going to have to be educated about safety. The biggest problem on the SAYC east side has always been backing in and out. The proposed angling of slips would adequately address that.

Ted Edmunds. Mr. Edmunds is a Newport property owner. He is a licensed Coast Guard captain with many years of boating experience. He believes the depiction of SAYC's lateral lines is different than that which exists out there now. He questions that SAYC or the City Harbormaster would monitor safe boating if the SAYC application is approved, and that they would moor boats in their slips which are larger than the length of approved slips. Newport boaters would have to back out of their slips not knowing the experience of the SAYC boaters, and boaters in the process may have to deal with wind conditions. The Harbormaster took an inflatable 22 foot dinghy in the area and acknowledged that she experienced some pushing off of pilings and piers and, therefore, that she had concerns about whether there would be safe

manipulation and docking within the confines of the area between Newport and SAYC. He represented that approval of the application would materially impact increasing boat congestion and Newport's riparian rights.

Chris Ruggieri. Mr. Ruggieri owns and operates a boat docked at SAYC. Because of the debilitated condition of the SAYC docks, he is concerned for the safety of his employees accessing and entering. He sees no problem with the application if SAYC builds in the same footprint.

Diane Butler. Ms. Butler is a Newport condominium owner. She has over 40 years of boating experience. She supports a 40 foot setback from the harbor line. She cited the City Harbormaster's letter of September 8, 2017 to the Director of Planning and Zoning about boat traffic queuing up to the drawbridge over Spa Creek and about the extensive variety and sizes and types of boating traffic in the area.

The thoroughfare between Newport and SAYC is narrow. There is increased boat and paddle board traffic around the main part of the channel into Spa Creek. The proposed SAYC boat slips on the east side would make it even more difficult than it already is for Newport boaters to get out of their slips. The Board should wait to deliberate until the Harbormaster to appear before the Board to elaborate on concerns she expressed about the application. Approval of the application would have negative environmental impacts resulting from tree cutting that would increase runoff into Spa Creek. Demolition and rebuilding of the bulkhead would allow runoff into Spa Creek and would disturb wildlife and marine life in the area and would be at the cost of taxpayers to remediate Spa Creek. Approval of the application would be at the expense of Newport property values and ability to use the Newport marina. SAYC must prove it owns the property which is the subject of the application and has failed to do so.

Laura Corby (appearing for Audrey Gildea). Ms. Gildea is a Newport condominium owner and opposes the application because approval would cause her to lose her riparian rights. She also complained that the east lateral line as presented by SAYC is not correct.

Stan Kos. Mr. Kos is a resident of Newport. He opposes the application, citing that the proposed SAYC slips would have boat lifts and bring motors out of the water creating a hazard. The area between SAYC and Newport is too tight, making boat maneuvering difficult and creating a higher probability of property damage as boats on both sides of the lateral line would have a tendency to collide while leaving or returning to their slips.

Cindy Hartman. Ms. Hartman is a Newport condominium owner. She researched lateral lines and finds that the SAYC proposed lateral lines crosses into Newport and adversely affects the riparian rights of Newport unit owners. All other lateral lines in the area move straight out into the channel from the land.

John Butler. Mr. Butler is a Newport condominium owner. He questioned the accuracy of the SAYC designated proposed lateral line on the east side and is not drawn pursuant to the City Code.

Lee Cotta. Mr. Cotta is a Newport condominium owner. He opposes the application.

Bill Larash. Mr. Larash opposes the application. Approval of the application would make navigating between SAYC and Newport even more difficult and would negatively affect Newport property values. The Board should not approve any slips on the SAYC east side. SAYC would then have 64 slips for 11 residences. Newport has 44 residences. He also asked the Board not to allow SAYC to rebuild the SAYC bulkhead in the same footprint but to require the location of the bulkhead to be as originally proposed by SAYC in a withdrawn application.

Jon Hollander. Mr. Hollander owns a unit in Newport. Newport unit owners have agreed, in the interests of safety, to restrict the size of boats in the slips adjacent to SAYC. He was critical of SAYC for coming up with varying lateral lines during the course of the review of their application.

Gil Gildea. Mr. Gildea expressed concern about the viability of wildlife in the area should the application be approved. Approval of the application would reduce the overall ability of wildlife to swim, hunt and fish, and would reduce their flight area, and would increase shade area which leads to reduction in growth. Newport's riparian rights that would be violated if the application is approved.

Evaluation of City Code Review Criteria.

City Code 15.16.030 states the review criteria the Board must consider in the review of an application for construction in the waterways. Those review criteria require findings of fact as to the effect of a proposed structure alone and in concert with present and other proposed uses on:

1. marine life;
2. wildlife,
3. conservation;
4. water pollution;
5. erosion;
6. navigational hazards;
7. congestion within the waters;
8. effect on other riparian property owners; and
9. present and projected needs for any proposed commercial or industrial use.

The Board finds that, after four separate hearings, at which the owner of SAYC and three expert witnesses testified for SAYC, two expert witness testified for Newport, and multiple members of the public testified, and the admission of multiple documents presented by both SAYC and Newport, there is substantial evidence in the record to render findings of fact regarding all review criteria.

Before analysis of the review criteria, the Board notes Newport's argument that the Board must consider and determine ownership of the land which is subject to an application, and that SAYC does not own the land that is the subject of the application. Newport contends that the Board could require SAYC to produce a deed establishing ownership of the land, and that SAYC cannot produce any such deed.

SAYC maintains that it has ownership of the land, but in any event, it is not within the Board's purview to determine ownership of land, and the ownership of land is not part of the City Code review criteria governing the application. SAYC maintains that, even if it was required to establish ownership, there would be no deed recorded under the circumstances presented in this case. The reason is based on the Maryland Code, Environmental Article, Section 16-201(a), which states that after an improvement in the waters has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. No deed requirement is set forth in this section of the law. Rather, construction

of an improvement in the waters, after governmental approval, is sufficient to automatically create ownership of the land upon which the improvement is constructed.

The Board finds that there is no legal authority permitting the Board to determine ownership of land and that ownership of land is not part of the Board's review criteria set forth in City Code 15.18.030. The Board, therefore, finds that this is an issue which is confined to a civil dispute between neighbors which Newport, if it wants to contest, must seek relief in a judicial proceeding to quiet title or to declare ownership or perhaps some other form of relief. In a judicial proceeding, the effect of Maryland Code, Environmental Article, Section 16-201(a), can be litigated. The effect of licenses 71-101 and 72-96 could be litigated. Evidence about the Board's procedure in 1970 or before or subsequently could be litigated. Newport at any time during or before this proceeding could have sought such relief. Only a Court order determining ownership can govern the Board in this proceeding on the issue of ownership. The Board can only proceed with its jurisdictional authority pursuant to the City Code.

Under these circumstances, the Board finds that SAYC does not have to prove ownership in order to proceed with the application and obtain a decision on its application. Therefore, the Board makes no factual findings on the issue of ownership.

The Board has permitted Newport to fully proffer its testimony on this issue. That proffer is referenced above.

The Board also notes that Newport's opposition to the application is focused on the SAYC east side as construction there would effect Newport, being the adjacent property on the SAYC east side. There is more broad public testimony addressing more specifically the effect of the entire application, above and beyond the issues related to the SAYC east side, on congestion in the waterways and navigational hazards. But essentially, the application, except for the issues related to the SAYC east side, is unchallenged by substantial evidence.

**Review Criteria 1-5 -- Effects on Marine Life, Wildlife,
Conservation, Water Pollution and Erosion**

Early in the proceedings, Newport conceded that it would not present evidence of any adverse effects on marine life, wildlife, conservation, water pollution, and erosion if the application is approved. Newport did allege that removal and replacement of the SAYC bulkhead would deposit dirt and debris into the waterways, but there is no specific testimony from any expert or other witness that SAYC would not comply with the requirements of its bulkhead replacement permit, which the Board notes would require compliance with laws prohibiting such deposits into the waterways. There was negligible public testimony on these matters and the Board finds that this public testimony does not amount to substantial evidence that there would be any adverse effect at all.

There is undisputed testimony that there is currently and has been over the long term an inordinate amount of sediment and pollutant runoff into Spa Creek from the SAYC site due to a complete lack of storm water management on site. SAYC produced witnesses, including expert witnesses, who testified that this constitutes an extreme hazard for the health of Spa Creek and adjacent waterways and the health and safety of residents and tourists.

There is substantial evidence that the proposed treatment of storm water for the proposed redeveloped area is exceptional and goes far beyond State standards for controlling storm water runoff. According to the uncontradicted testimony of these witnesses, the plan includes multiple rain gardens, a micro bioretention area, permeable pavement, and gravel wetlands, which exceeds the Critical Area requirement of 10% pollutant removal by 6 times. Additionally, the proposed storm water management facilities would remove annually substantial pollutant nitrogen, pollutant phosphorous, suspended solids, fertilizers, herbicides, pesticides, and sedimentation from runoff. This would clearly reduce sediment and toxin buildup in the waterways. Additionally, the overall plan calls for removal of extensive creosote pilings on site and the installation of floating piers to reduce the number of pilings, and 20,000 square feet, more or

less, of covered boat shed area shading the creek would be removed. Habitat value in the 100 foot critical area buffer would expect to significantly increase with plantings of predominantly native trees, which would supplant many non-native trees that are diseased, dying or dead, plus predominantly native shrubs, and grasses and perennials. Such plantings would bring insects and small mammals and birds into areas where historically they have been.

The Planning Department assessed these review criteria and recommended to the Board that the application satisfies the review criteria. SAYC's expert witnesses concurred and amplified the Planning Department's assessment. The Board finds that there is no evidence contrary to the assessment of the Planning Department, that SAYC has presented the only evidence regarding these review criteria, and this evidence is substantial and constitutes proof by a preponderance of the evidence that approval of the reconstructed structures throughout the marina, alone and in concert with present and other proposed uses, would have no detrimental effect, and in fact would have a purely positive effect, on marine life, wildlife, conservation, water pollution, and erosion in Spa Creek and nearby waterways.

Review Criterion 6 -- Navigational Hazards

a. Harbor Line Setback

According to City Code 15.18.020, the harbor lines in City waterways are located at a distance from the shoreline depending on the location of lawfully installed piers, mooring pilings, wharves and bulkheads, the configuration of the shoreline, and the zoning of the land at the shoreline. The harbor lines in the waterways as shown on the harbor line maps define the maximum channelward limits of construction. The Board is required to note the harbor lines when approving or disapproving applications for licenses or permits.

City Code 15.18.080 governs the harbor line setback that must be respected when there is construction in the developable waterways. In accordance therewith, all piers, "T" heads, "L" heads,

mooring piles, mooring buoys and anchorages must be set back from the harbor line an appropriate distance to assure that no moored vessel or permanent or temporary obstruction extends channelward beyond the harbor line.

The SAYC application proposes construction in the developable waterway which would be no closer than 20 feet from the harbor line. Newport did not particularly focus on the harbor line setback. However, Mr. Boyd and Mr. Kastendyke and other members of the public did. Their testimony was to the effect that the Board would only be assuming that SAYC boats would be of a length or beam that would not extend beyond SAYC's harbor line and, therefore, the Board should require a 40 foot setback to address this assumption and to ensure there would be no encroachment. Their testimony primarily was that SAYC intends to have large size boats at its marina, and so the consequence of not expanding the setback further than 20 feet would be that the Board would be creating a situation where navigational accidents involving paddle boarders, kayakers and those with smaller boats would be more likely and, in fact, would occur.

The recommendations of the public based speculation of what might happen if there is only a 20 foot setback is not evidence which is substantial and, therefore, on which the Board should make its finding. There are no facts presented to the Board tending to show that the proposed 20 foot setback, as shown in the SAYC plans admitted into evidence, is not an appropriate distance to provide reasonable assurance that no moored vessel or permanent or temporary obstruction would extend channelward beyond the harbor line.

SAYC must strictly comply with its approved plans. The Planning Department has analyzed navigational safety issues and has found and has recommended to the Board that a 20 foot setback from the harbor line suffices for navigational safety. The Board discerns no facts and no reasonable inferences from those facts, based on public testimony or testimony from Newport, to find otherwise.

If any violations of the harbor line are observed by City staff or reported by the public to City staff, then there are actions that City staff can take. The City Harbormaster can issue orders to SAYC and serve

municipal infraction citations on SAYC pursuant to Title 15 of the City Code. Those enforcement actions, which would serve navigational safety, override the arbitrary imposition of a harbor line setback requirement of 40 feet that is not factually supported with substantial evidence. Without substantial evidence to support why 40 feet, or perhaps 35 feet or 30 feet or some distance other than 20 feet, would be more appropriate than 20 feet, any requirement by the Board of more than 20 feet would be arbitrary and based on an assumption of lack of City enforcement. The Board cannot be arbitrary, speculative as to potential violations, or make unsupported assumptions as to enforcement. The Planning Department did a complete review of the application, and other agencies of the City were consulted about the application. No opposition to a 20 foot harbor line setback is noted. Under these circumstances, the Board must find that the proposed 20 foot harbor line setback that applies to the entire SAYC marina is appropriate to meet the navigational safety requirements of the City Code.

b. Angled boat slips

There are nine existing perpendicular slips on the SAYC east side. The application requests approval of a reduction to five slips, but angled instead of perpendicular. Essentially, SAYC maintains that that angled slips are safer for access and egress and, therefore, improve navigational safety into and out of the channel. The angling of the 5 proposed boat slips on the east side of SAYC for ingress and egress, rather than being perpendicularly positioned, would be easier and safer because a direct angle into the marina and out into the channel within the SAYC lateral line and would ease navigation into a congested channel. There would be no need with angling to turn or rotate a vessel within the lateral line until completely beyond the SAYC piers and pilings, and angling would not interfere with moored Newport boats on the other side of the SAYC lateral line. With slips on the diagonal, SAYC asserts that the angled slips could handle boats 26 feet or less, except for the slip that would be most channelward, which would be able to handle a boat 28 feet in length, all without exceeding the length of each pier. As a result, angling would

provide better safety for paddle boarders, kayakers and those boating for the first time or not necessarily skilled at boating in the area of the marina.

Newport and certain members of the public contend that approval of the application would increase navigational hazards, both in the area immediately between SAYC and Newport and channelward. Newport does not focus as much on whether angling or perpendicularity provides increased or decreased navigational safety as it does on the contention that the SAYC computation of the east side lateral line, drawn by Mr. Schuman, is incorrect and disregards riparian rights as defined by case law. According to Newport, because the SAYC east lateral line has not been computed correctly by Mr. Schuman, neither angling nor perpendicularity would eliminate the alleged encroachment into the Newport site or reduce navigational safety, and either would infringe upon riparian rights resulting from the current SAYC computed lateral line. Newport would also disagree with any analysis of City Code 15.18.120 that the location of SAYC's east lateral line is moot or that the structures within the east side of the marina are grandfathered or otherwise lawful.

The Board finds that, while angled slips may make ingress and egress easier, the allowance of longer boats moored at angled slips would not improve but would rather aggravate navigational safety between SAYC and Newport and channelward. The Board, therefore, is not in favor of altering the existing perpendicular direct 90 degree slips in favor of angled slips or accommodating larger boats in this location.

The application does not propose retention of the nine existing slips on the SAYC east side in their current location. However, the Board notes that with retention, then City Code 15.80.120 would apply and those nine slips would be grandfathered under that law. The recognition of grandfathering of the nine current slips over a long period of time would render moot any arguments regarding increased navigational safety or congestion concerns, either in the narrow area between the existing Newport and SAYC slips or into the channel.

Review Criterion 7 -- Congestion Within the Waters

There is much public testimony about current congestion in the waterways caused by boat traffic, which includes an ever growing number of paddle boarders and kayakers. While all members of the public who testified about congestion in the waterways generally agree that congestion exists, and some indicate it is increasing, there is conflicting testimony as to whether the marina as reconstructed would actually increase or reduce congestion to the point where navigational safety must be considered.

The Board does note that the conditions existing between SAYC and Newport have remained essentially as they have been depicted in the drawings attached to the approved licenses 71-01 and 72-96, and the 1977 aerial, so congestion would not be aggravated in that space if the nine perpendicular slips remains status quo. The Board finds, however, considered alone and in concert with present and other proposed uses, there is reason to believe, based primarily upon public testimony but also in part on the testimony of SAYC that longer boats, some 26 feet or more, could moor at the proposed five angled slips, and that congestion would likely be aggravated between Newport and SAYC if longer boats were allowed in either the present nine slips or the proposed five angled slips. The Board further finds that, if the nine existing slips were permitted by the Board unchanged in any respect, then City Code 15.18.120 would apply and require a finding, based on substantial evidence in the form of the license drawings and aerial, that those slips would continue to be grandfathered and, therefore, lawful regardless of considerations of congestion.

Review Criterion 8 -- Effect on Other Riparian Property Owners

There exist historical documents of record before the Board, generated by the State Board of Public Works in 1971 and 1972, which SAYC maintains set the current positioning of both the SAYC and Newport lateral lines. Not only would these documents set the lines which establish the respective developable waterways, and therefore the riparian rights of the parties, but the Board considers them to be binding on the Board. Newport states to the contrary, that the Board should not rely on those documents

because rights of riparian owners are established by State law, and that the law in 1970 or so, which is the law that should govern in this case, and the manner in which the Board proceeded on applications at that time, should control the positioning of current lateral lines. The parties are distinctly at odds with each other as to applicable law the positioning of the east lateral line of SAYC as drawn by Mr. Schuman and supported by Mr. Scott.

a. Licenses 71-01 and 72-96 of the State Board of Public Works

According to the evidence of record, Edgar J. Petrini was a predecessor in title to SAYC. He received license 72-96 from the State Board of Public Works in 1972. This license permitted him to improve his property by constructing a timber bulkhead, to deposit soil behind the bulkhead, and to dredge.

The drawing attached to the license application 72-96 depicts a line at an angle that is drawn roughly at 45 degrees running from the corner of what is now the Newport property adjacent to the SAYC property. The State Board of Public Works, in a letter dated June 7, 1976, confirmed that the construction allowed by license 72-96 had been inspected and approved. The construction is seen in City of Annapolis aerial photographs taken in 1977, as are structures seen of the Newport property. The structures on each side of the line reflected in the license application drawing have been in place since that time. Therefore, the construction performed pursuant to license 72-96 must be considered lawful and compliant with all applicable regulations or laws in existence at that time. There is substantial evidence to this effect reflected in license 72-96 and the corresponding drawing.

License 72-96, although some may consider it evidence of ownership of the land where the construction was performed, is not taken by the Board to constitute ownership. The Board, for reasons stated earlier, will not make findings on ownership. The license application, drawing and subsequent approval is taken to mean that the State Board of Public Works found that the construction authorized by the license was performed correctly and in accordance with the drawing, and was lawful at that time, and there has not been any evidence to the contrary since that time. In addition, the Board does find that there

is no record of which it has been made aware that would establish that the Board since that time ever questioned that the license or construction performed pursuant to that license was anything other than lawful installation.

Prior to the Petrini license, the State Board of Public Works issued license 71-01 to Newport for the construction of a bulkhead and for dredging. That drawing submitted with the license application depicts the Newport lateral line, which lines up with the SAYC lateral line. Additionally, to the west of the approximately 45 degree line drawn from the corner of the SAYC property seen in those aerial photographs is the SAYC developable waterway, and to the east of the Newport developable waterway, and this line is consistent with the lines referenced in both the SAYC and Newport licenses from 1971 and 1972. It appears from the evidence that neither SAYC nor Newport has built a structure that extends from its property across the line established by the 1971-72 licenses.

The Board finds that the licenses issued to Newport in 1971 and SAYC in 1972, based on drawings submitted with those applications, amount to substantial evidence that the construction performed pursuant to these licenses was lawful and indicative of the SAYC and Newport lateral lines at that time. The State issued those licenses. There is no evidence that anyone at the time they were issued appealed the issuance of those licenses. The Board finds that the issuance of those licenses constituted a final administration action. The Board must give deference to the State under these circumstances.

b. Lateral Lines Computations

The Board notes that it is required to take into consideration the effect of the application on other riparian property owners. Newport maintains that Board approval of the application will deny Newport its riparian rights and will result in a transfer of its riparian rights to SAYC, while SAYC maintains that Board denial of the application would fail to give recognition to SAYC's riparian rights.

Maryland Code, Environmental Article, Section 16-103(a), indicates that, except as designated in that Title, a riparian owner may not be deprived of any right, privilege or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970. City Code 15.02.010 states that Title 15 of the City Code is not intended to deprive a riparian owner of any right or privilege associated with riparian ownership of land or ownership or use of any fixed structure in the waterways which was lawfully installed and lawfully in use prior to February 11, 1980 and that the provisions of Title 15 of the City Code do not transfer the title or ownership of any waterway or interest in a waterway. The Board is bound by both laws. The Board ultimately recognizes that it has no power to deprive or grant riparian rights associated with any land and that it must honor this principle as stated in both the State and City Codes.

Newport presented existing case law regarding the rights of riparian owners and the Board has taken it into consideration. The Board does not consider Title 15 of the City Code, and the provisions in Title 15 which specifically apply to the SAYC application, to be in contravention of State law or case law.

In this respect, the Board first notes that the State Board of Public Works license for construction in the waterways approved in 1972 issued to Petrini, and its subsequent approval of the construction authorized by the license as correct, gave State recognition to riparian rights that Petrini had prior to the issuance of the license. Newport contends that the structure permitted by the 1971 license was not lawful, contrary to the subsequent State approval, but there is no substantial evidence that the Board considers sufficiently reliable presented to the Board that Petrini did not have those riparian rights before July 1, 1970 or that the structure approved by the State was nonetheless unlawful. The same is true with respect to Newport - that the riparian rights recognized by State approval of license 71-01 existed before July 1, 1970. The Board finds that these licenses and corresponding drawings are conclusive of the riparian rights of both SAYC and Newport as of the date the licenses were issued, and that these riparian rights and lateral lines have existed since. The Board makes this finding despite the expert testimony of Mr. Hartman II.

City Code 15.18.060 and 15.18.070, which govern the acceptability and modification of lateral lines, must be taken into consideration in reviewing the rights of riparian property owners in connection with an application. The computation of lateral lines by Mr. Schuman and Mr. Green directly relate to the issue of riparian rights. For the reasons stated by Mr. Scott in his analysis of the most recent lateral line plat submitted by Mr. Schuman, strictly in terms of the lines of the SAYC developable waterway, the Board finds that the SAYC developable waterway is accurately depicted by Mr. Schuman, and that Mr. Schuman's plat is drawn in accordance with City Code 15.18.050.⁵ For reasons also stated by Mr. Scott, the Board finds that the plat submitted by Mr. Green on behalf of Newport was not drawn pursuant to the requirements of City Code 15.18.050 and, therefore, cannot be considered by the Board to be reliable or a basis for accepting or modifying lateral lines. The Board, under these circumstances, concludes that Mr. Scott's analysis of each plat and consistency with the requirements for drawing a plat under City Code 15.18.050, is reliable and constitutes substantial evidence regarding the sufficiency and reliability of those plats and the location of the east and west SAYC lateral lines.⁶ His analysis is not restated here but can be found in the transcript of Mr. Scott's testimony on January 23, 2018, which is based on his staff report of January 23, 2018. A copy of the staff report was admitted as an exhibit and is attached to this Opinion and Order.

Newport is a riparian property owner. The decision the Board renders in this proceeding does not affect Newport's riparian rights. At the same time, the Board must determine the SAYC developable waterway, defined by the City Code as the area within the harbor line, the shore line, and the two lateral

⁵ The Board acknowledges Newport's reference to a 1990 dredge permit of this Board issued to Newport which shows a lateral line different than that shown by Mr. Schuman. The Board was not presented with the complete administrative record of that proceeding and no current member of the Board was on the Board in 1990. The Board, therefore, is unable to draw any conclusions about that permit and the facts which caused its issuance. The Board relies on the overall substantive evidence presented in this proceeding to make findings of fact, and it cannot find as fact, as Newport requests, that the Board's issuance of the 1990 dredge permit equates to a substantial evidence determination that Mr. Schuman's plat, which was drawn in present time, is inconsistent with City Code 15.18.050 and should not be considered reliable.

⁶ The Board notes that the SAYC actually consists of two contiguous parcels and that there is a third lateral line which separates the developable water ways of the two parcels. The Board makes no findings on the third lateral line since it is not relevant to any review criteria in deciding the application.

lines of the property which is the subject of the application, before it can permit construction within the developable waterway.

As stated earlier, the Board is not in favor of altering the existing perpendicular slips in favor of angled slips. Regarding how this is material to the application of City Code 15.18.120, if the Board were to approve the application with no change to the existing nine slips, then this would extend SAYC's grandfathering obtained through City Code 15.18.120, by the State license issued in 1972. As a result, congestion and navigational safety would be exactly what it has been over these years. The structure grandfathered can be replaced in kind, but cannot change in order to retain grandfathering.

The Board finds, under these circumstances, that angling the slips, even though reducing the number of slips from nine to five, would cause City Code 15.80.120 to be inapplicable. Approval of the existing nine perpendicular slips allows for applicability of City Code 15.18.120. In the final analysis, the Board has no authority to allow the redesign of the project from perpendicularity to angling and at the same time to apply City Code 15.18.120 and, therefore, approves the nine perpendicular slips on the SAYC east side.

Regarding the positioning of the SAYC lateral lines, the Board finds that the positioning of the SAYC lateral lines, east and west, as shown by Mr. Schuman, while drawn in accordance with City Code 15.18.050, would be unacceptable under City Code 15.18.060 and the law of riparian rights of property owners because it would deprive Newport of at least 25 feet of clearance on the harbor line. Because of this unacceptability, the Board is required to modify the SAYC lateral lines, and therefore the SAYC developable waterway, in accordance with City Code 15.18.070 to the point at which 25 feet of clearance is achieved. The modification is seen on sheets 3 and 5 of 7 on the Schuman plat, copies of which are attached.

**Review Criterion 9 -- Present and Projected Need for any
Proposed Commercial or Industrial Use**

There is substantial evidence that the SAYC project would improve and make safer the existing use of the SAYC property as a marina with residential units. Even with Newport's opposition to the SAYC proposals to the SAYC east side, and the public's concern about harbor line encroachment and resulting navigational hazards in an already congested waterway, all interested parties and persons, either expressly or by inference, recognize that the overall SAYC project would have a positive environmental effect on the waterways within the City and beyond, and a positive public safety effect in terms of a marina acknowledged to be in disarray and hazardous because of long-term neglect prior to its purchase by Pyramid, and a positive commercial effect on a site that is in need of major rehabilitation. Under these circumstances, the Board finds by substantial evidence that the application, if approved, would serve the present and projected need for the commercial and industrial use of the property as a marina with residential units.

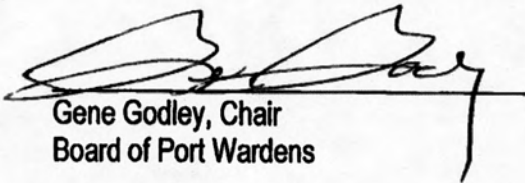
Conclusion

The Board has considered all of the testimony and documentary evidence of record, which the Board finds is substantial evidence. As a result, the Board finds that, with the terms set forth by the Board below, the application satisfies the applicable review criteria by a preponderance of the evidence. The application is hereby approved consistent with the findings set forth above and the terms set forth below. Therefore, with Mr. Sampson being absent for the January 23, 2018 hearing, and with Mr. Pickett having resigned from the Board before the issuance of this Opinion and Order, the Board by a vote of 2 to 0, with Mr. Godley and Mr. Adams voting, adopts this Opinion and Order this 26th day of JUNE, 2018.

subject to the following terms:

1. The lateral lines, as shown on Schuman exhibit sheets 3 and 5 of 7, are modified per City Code 15.18.070;

2. The five proposed angled slips/lifts on the SAYC east side are disapproved;
3. The nine existing perpendicular slips on the SAYC east side are approved for replacement-in-kind in their present location.



Gene Godley, Chair
Board of Port Wardens

Notice

In accordance with City Code 15.16.040G, a person aggrieved of this Opinion and Order may file a Petition for Judicial Review in the Circuit Court for Anne Arundel County, no later than 30 days after the above referenced date, in accordance with Title 7 of the Maryland Rules of Procedure.



Chartered 1708

City of Annapolis

DEPARTMENT OF PLANNING AND ZONING

145 Gorman Street, 3rd Floor, Annapolis, Maryland 21401

Annapolis 410-263-7961 • FAX 410-263-1129 • MD Relay (711)

C. PETE GUTWALD, AICP
DIRECTOR

January 23, 2018

MEMORANDUM

To: Board of Port Wardens

From: Kevin Scott, PLA, ASLA
Senior Land Use & Development Planner

RE: **Lateral Lines – Port Wardens Application: PORT2017-024
Pyramid Maritime One, LLC and Pyramid Maritime Two, LLC
c/o “South Annapolis Yacht Centre”
1 Walton Lane**

At the December 4, 2017 Port Wardens hearing regarding the subject ongoing application, for which the public record was closed on November 28, 2017, prior to the start of deliberations and in response to a motion by Diane Butler, property owner of 316 Burnside Street, Apt 407, the Chair moved to open the record to have the counsel for each party (Mr. Hyatt and Mr. Hartman) to prepare new lateral line exhibits, with up to five pages of written explanation, to be submitted to Planning & Zoning by January 5, 2018, which would then be forwarded by Planning & Zoning to the Port Wardens members prior to the January 23, 2018 meeting. The motion carried. Subsequently, and prior to the January 5, 2018 deadline, Mr. Hartman via Gary Elson, Acting City Attorney, requested of the Chair a two week extension to the deadline for submittal. The Chair agreed to grant both parties a one week extension to until close of business on January 11, 2018 with the stipulation that the submittals be forwarded to the Port Wardens members by January 12, 2018. On January 11, 2018 counsels for each party did submit lateral line exhibits with written explanations to Planning & Zoning, which were hand-delivered by staff to each Port Warden member on January 12, 2018.

Annapolis City Code – Chapter 15.16 gives authority to the Port Wardens to regulate the placement, erection and construction of structures within the developable waterway area as defined by Title 15. Chapter 15.18, Harbor Lines and Setbacks, states that the “developable waterway area” is the area bounded by the shoreline, the harbor line and the lateral lines of a waterfront lot or tract. Section 15.02.030 defines “shoreline” as the mean high water line or the waterward line of an existing bulkhead, riprap or gabion as shown on the harbor line maps. Sections 15.18.020 and 15.18.030 define the purpose and methodology for the establishment of the “harbor lines.” And, on December 12, 2016, the City Council adopted O-34-16 which corrected a portion of the harbor line in front of the SAYC marina that was found to have been drawn in error on the original maps. Sections 15.18.050, 15.18.060, and 15.18.070 outline the methodology that shall be used to determine the lateral lines for any waterfront property. Within the developable waterway area, structures and moored vessels must be setback from the

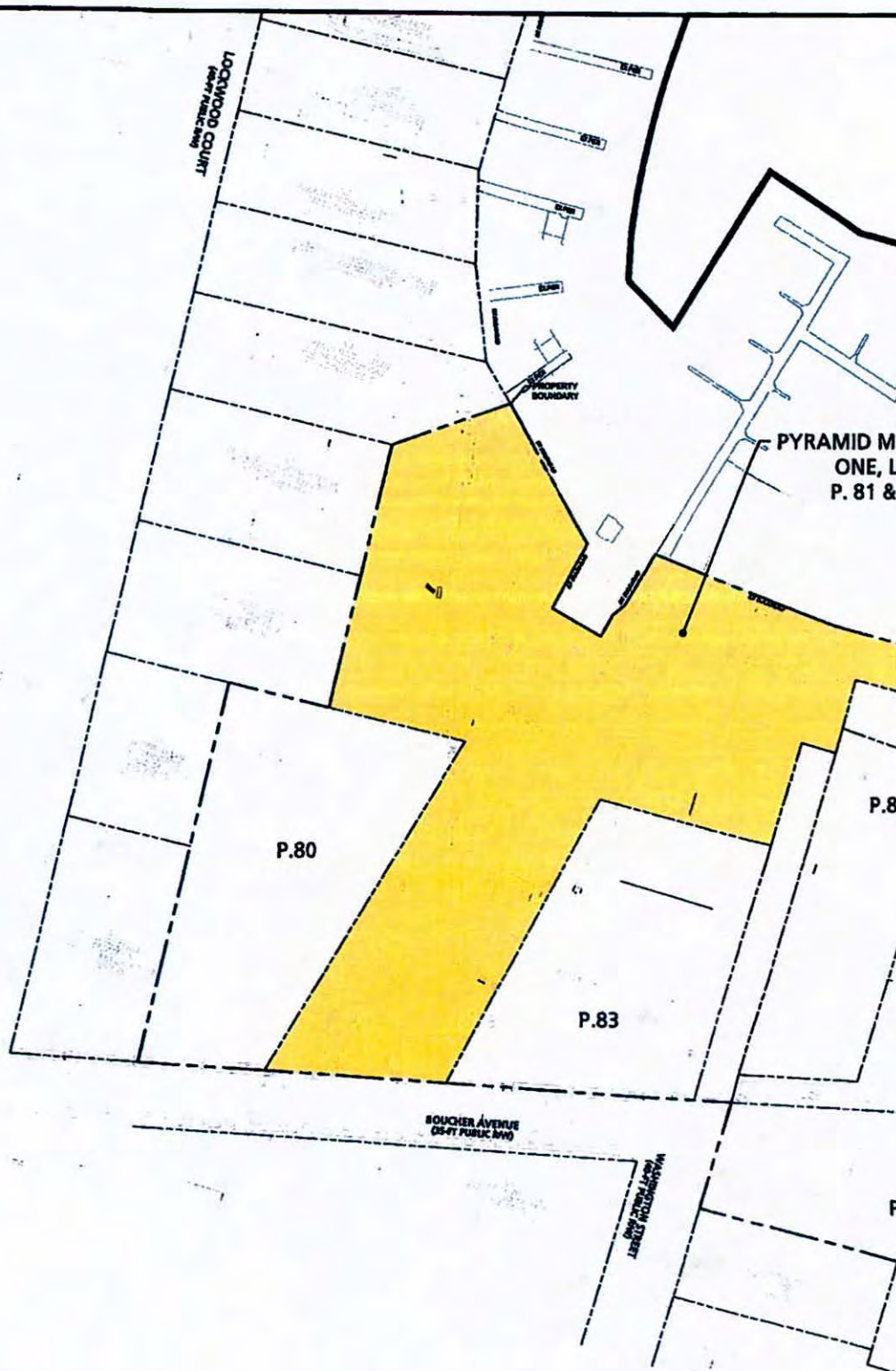
harbor line an appropriate distance to assure no obstruction channelward beyond the harbor line (Section 15.18.080). And, structures and moored vessels must be setback not less than five feet from the lateral line (Section 15.18.100). This chapter also has a provision for the legality of existing structures, which under Section 15.18.120, states that "any fixed or permanent structure existing in the waterways on February 11, 1980 and lawfully conforming to the all of the provisions of this title shall be considered as lawfully installed, unless the Port Wardens decide, after notice to the property owner and a public hearing before the Port Wardens, in accordance with the provisions of this title, not later than February 11, 1982, that the structure or portion of the structure was install without lawful authority." It is undisputed in the record that piers, pilings and bulkheads that currently exist at the SAYC property, as well as, at the Newport property did in fact exist prior to February 11, 1980. It is also undisputed in the record that as of February 11, 1982 the Port Wardens did not find any of these existing structures to be unlawfully installed. Thus, the existing structures at both the SAYC and Newport properties shall be considered as lawfully installed.

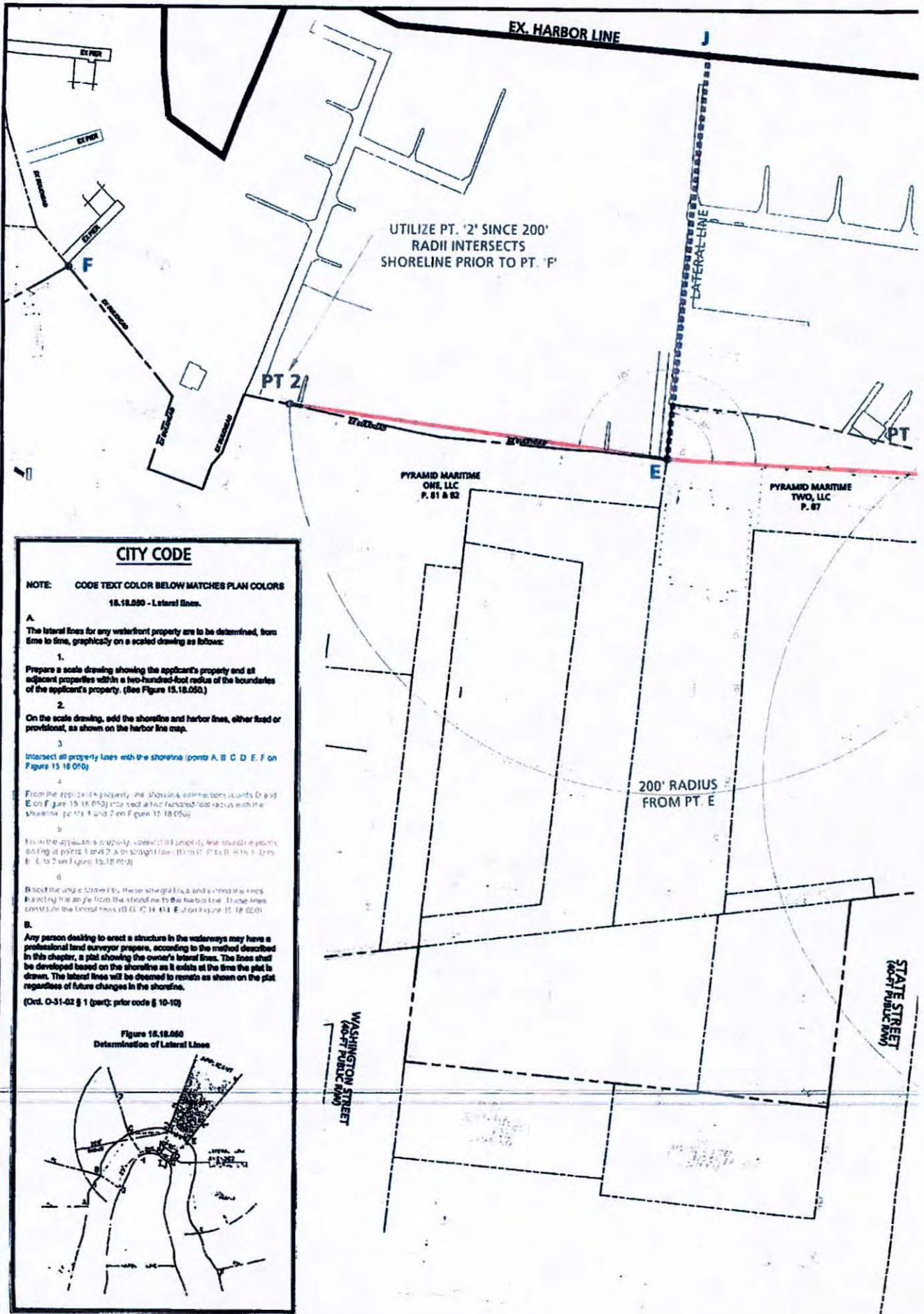
The Port Wardens has asked the counsel for each party to prepare exhibits with explanations that follow the provisions of the current City Code under Title 15 for determining lateral lines for the SAYC application. Mr. Hyatt, for SAYC, has provided drawings by Terry L. Schuman, P.E. of Bay Engineering, Inc. that show the entire shoreline and the existing and proposed development of the SAYC application and which include the shorelines of the adjacent properties within a 200 foot radius from each property line of the SAYC property. The drawings also include labels that indicate the property line intersections with the shoreline for all properties within the 200 foot radius for both sides of the property. They show the line segments between the property line-shoreline points within the 200 foot radius. They show the bisected angles formed by the shoreline segments, and the lateral lines extending to the harbor line. Staff finds that all of this information does conform to the provisions of Section 15.18.050. The Hyatt exhibit drawings also show modified lateral lines, and include labels that show how the modified lateral line were created to obtain a 25' clearance to the harbor line for all properties within the 200 foot radius. Staff finds that all of this information does conform to the provisions of Sections 15.18.060 and 15.18.070 for lateral line acceptability and modification to unacceptable lateral lines. The Hyatt exhibit drawings also include City Code citation references which are color matched to the line drawings and labeling. The Hyatt exhibit also includes a written explanation providing a step-by-step analysis which follows the provisions of Sections 15.18.050, 15.18.060, and 15.18.070 of the City Code. Staff finds that the Hyatt drawing exhibits correctly show the lateral lines and the developable waterway area defined by the existing shoreline, the harbor line and the lateral lines, and that the written explanation does conform to the step-by-step provisions of Title 15 regarding lateral lines.

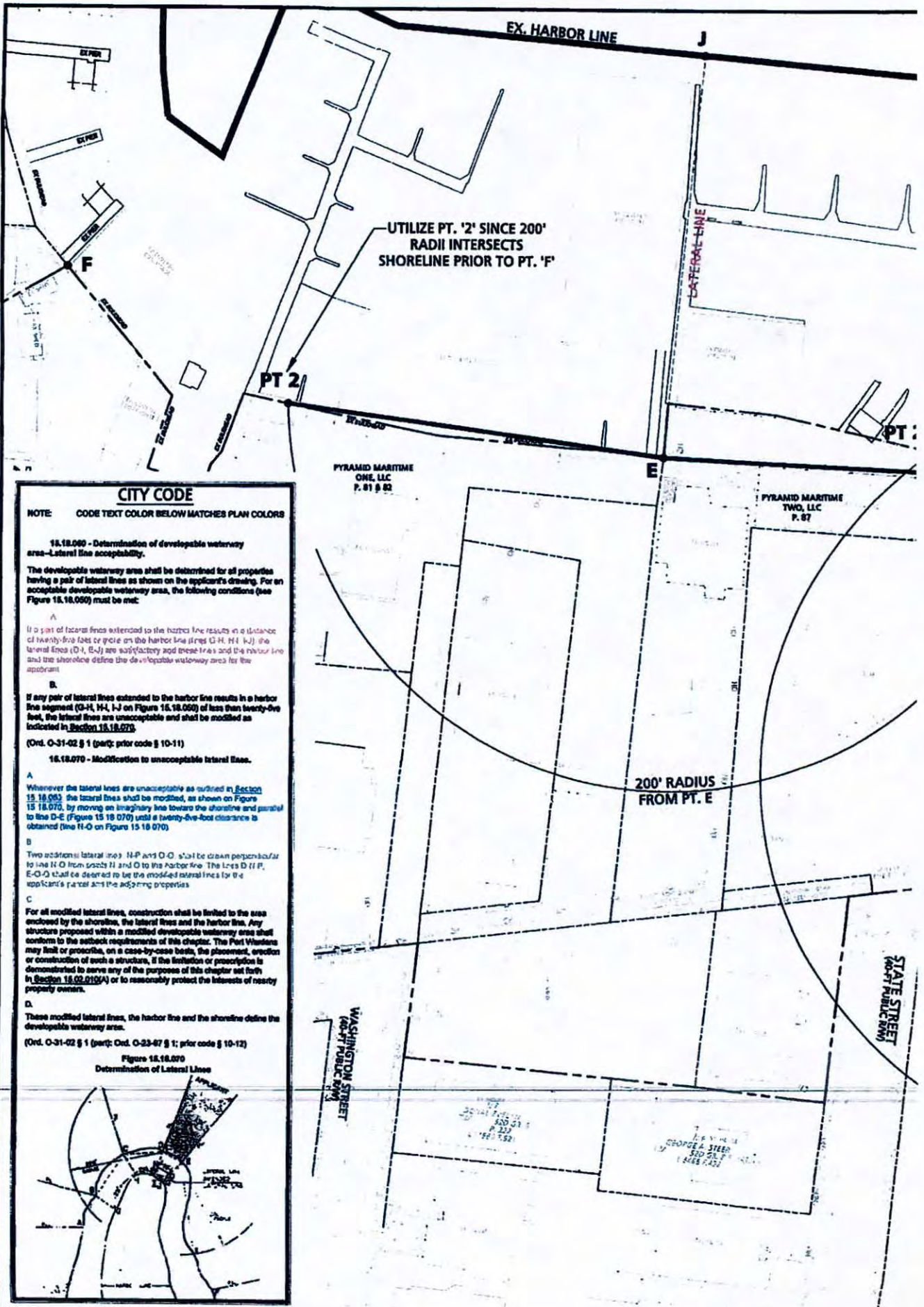
Mr. Hartman, for Newport Condominiums, has provided drawings by David M. Green, PLS, of Survey Associates, that show only a portion of the SAYC property and which show some of the properties to the East, but do not include all properties within a 200 foot radius from both property line of the SAYC property. The Hartman exhibit drawings

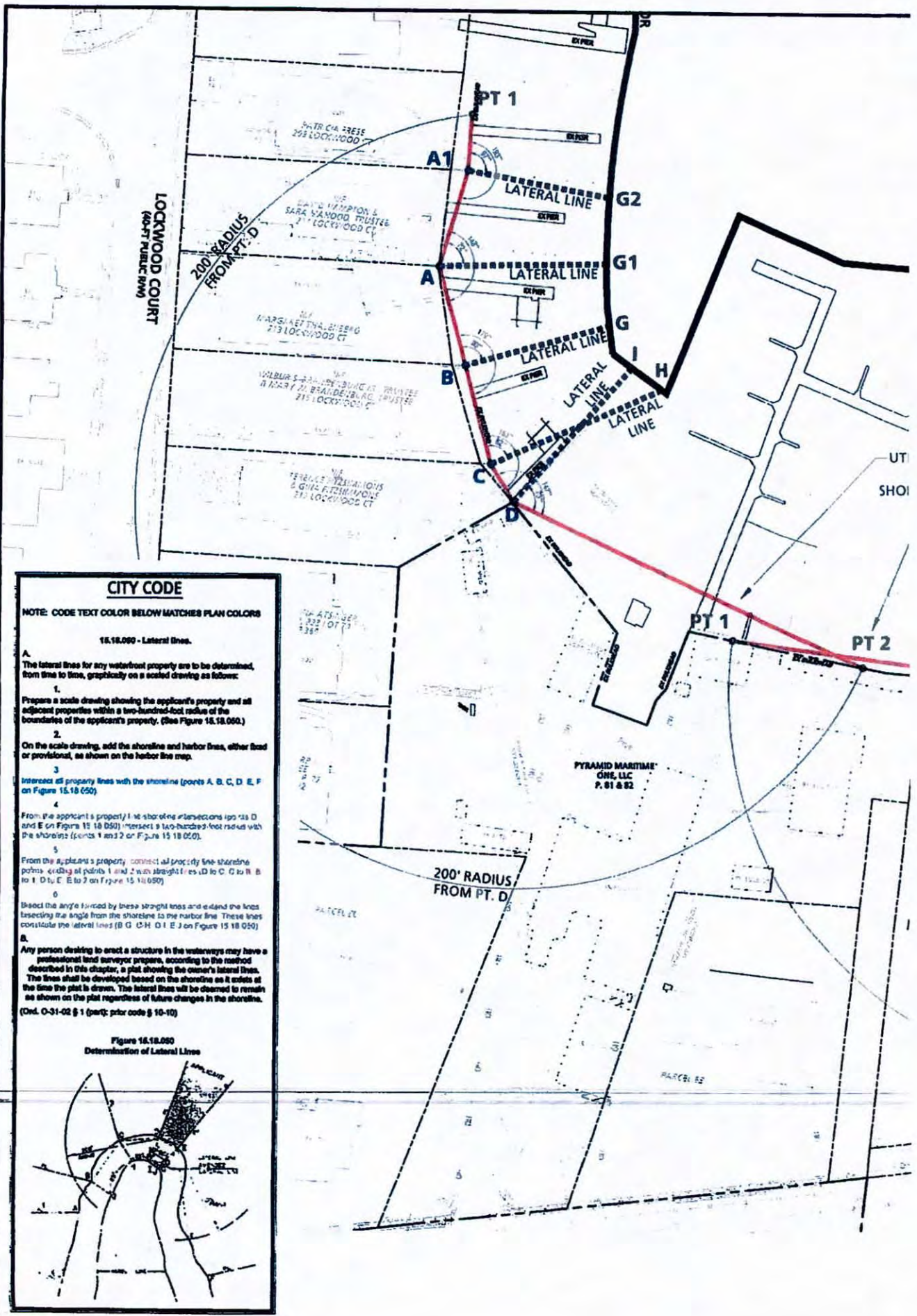
do not show with labels the property line intersections with the existing shoreline for all properties within a 200 foot radius. Thus, the property line-shoreline line segments are not shown. And, consequently the lateral lines bisecting the angles formed by the property line-shoreline segments extending to the harbor line are not shown. The Hartman exhibit drawings do show property line extensions, but these do not follow the outline provided in Section 15.18.050 because the angles form by the property line-shoreline segments have not been bisected. Also, the property line extension drawn between the SAYC and Newport property is shown originating from a point landward of the existing shoreline and runs across the land of the SAYC to the existing SAYC bulkhead. There is no language in Title 15 that would indicate this methodology for determining a lateral line. Staff finds that the Hartman exhibit drawings fail to comply with Section 15.18.050. Because the Hartman exhibits have not complied with Section 15.18.050, they do not comply with Section 15.18.060 and 15.18.070 for modifications to unacceptable lateral lines. The Hartman drawing exhibits also include a proposed development plan for a new pier at the Newport Condominium property, which is not relevant to the lateral line determination for the subject SAYC application. Furthermore, the Hartman written explanation does not follow course with the current provisions of Title 15 for the determination of lateral lines.

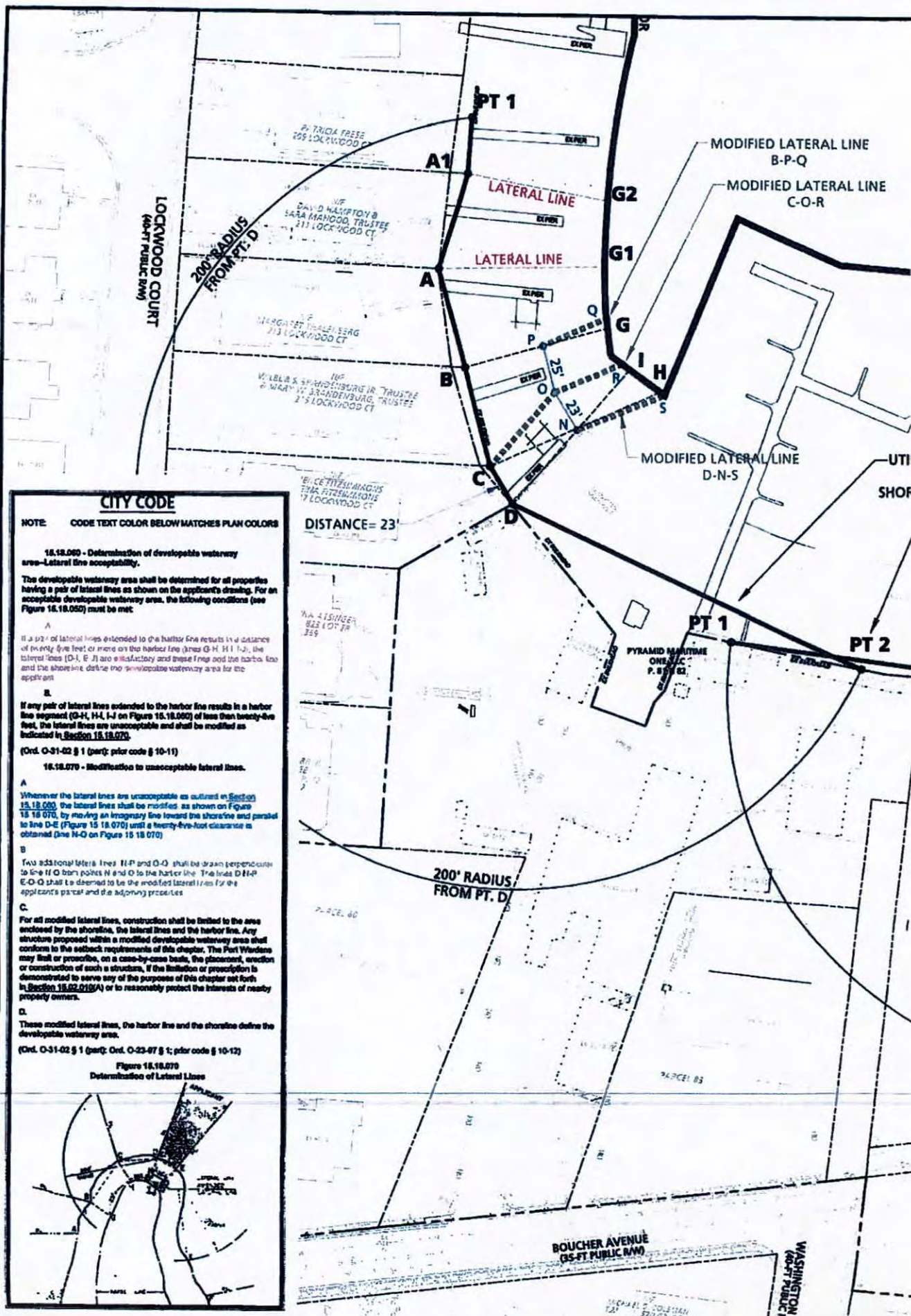
In summary, staff finds that the Hyatt lateral line exhibits, on behalf of SAYC, do comply with the provisions of the current City Code under Title 15 for determining lateral lines for the subject SAYC application. In contrast, staff finds that the Hartman lateral line exhibits, on behalf of Newport Condominium, do not comply with the provisions of the current City Code under Title 15 for determining lateral lines for the subject SAYC application.



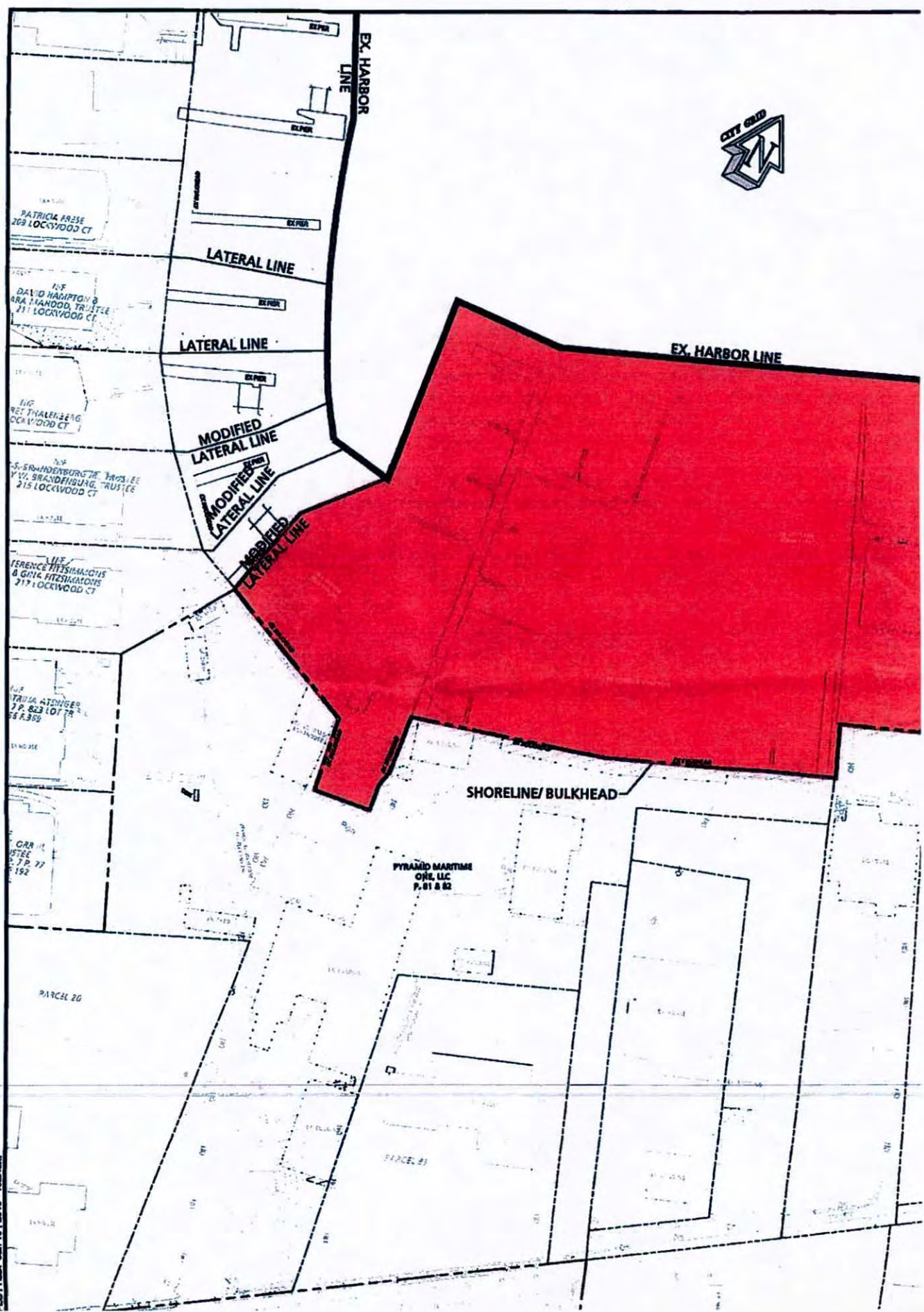








PLOTTED: Jan 10, 2018 - 10:24am





CITY CODE

15.18.090 - Harbor line setbacks. **PROPOSAL COMPLIES**

All piers, "T" heads, "L" heads, mooring piles, mooring bums and anchorages must be set back from the harbor line an appropriate distance to ensure that no moored vessel or permanent or temporary obstruction extends channelward beyond the harbor line.

(Ord. O-31-02 § 1 (part); prior code § 10-120(d))

15.18.090 - Pool dock setbacks. **NOT APPLICABLE TO THIS APPLICATION**

A clear space of one hundred feet by fifty feet shall be provided for parallel berthing at "T" or "L" head dock.

(Ord. O-31-02 § 1 (part); Ord. O-78-04 § 1; prior code § 10-120(d))

15.18.100 - Lateral line setbacks.

A. **COMPLIES EXCEPT WEST LATERAL LINE WHERE 15.18.110 AND 15.18.120 APPLIES**

No portion of the structures of a marina, yacht club, working boatyard, and community or private pier and moorings installed in the waterways after February 11, 1989 shall be located less than five feet away from a lateral line. No vessel shall be moored such that any portion of the vessel is located within five feet of a lateral line.

B. **NOT APPLICABLE**

The lateral line setback may be reduced if a letter of "no objection" is obtained from the adjacent property owners and filed with the Port Warden. The mutual use of piers and mooring pilings by adjacent property owners is encouraged and recommended whenever possible.

(Ord. O-31-02 § 1 (part); prior code § 10-120(d))

15.18.110 - Nonconforming uses or structures. **THIS SECTION APPLIES SINCE THE IMPROVEMENTS HAVE EXISTED FOR OVER 45 YEARS**

Any structure of a marina, yacht club, community or private pier lawfully installed in the waterways and lawfully in use on February 11, 1989, but not in conformance with the dimensional or use regulations as prescribed in this title, may continue as a nonconforming structure or use, subject to the following provisions:

A. **NOT APPLICABLE - NO ADDITION OR ENLARGEMENT PROPOSED**

Additions and Enlargements. A nonconforming structure which is nonconforming as to waterway setback shall not be added to or enlarged in any manner unless the additions or enlargements are made so that the resulting structure conforms to the waterway setback provisions of Sections 15.18.090, 15.18.090 and 15.18.100.

B. **NOT APPLICABLE**

Restoration of a Damaged Structure Being Used for a Nonconforming Use or a Nonconforming Structure. A structure which is being used for a nonconforming use or which is a nonconforming structure and which is destroyed by fire, ice, neglect, casualty or act of God may be restored to its original configuration, provided the damage does not exceed fifty percent of cost to replace the existing structure, at current prices.

C. **NOT APPLICABLE**

Discontinuation of a Nonconforming Use. If the nonconforming use of a structure is discontinued for a continuous period of one year it shall not be renewed, and any subsequent use of the structure shall conform to the use regulations of this title.

D. **PROP NONC**

Expansion or extension of a

(Ord. O-31-02 §

15.18.120 -

Any flood or all of the provisions of this title, not in lawful authority

(Ord. O-31-02 §

CONCLU

Σ Sigma Associates, Inc.

ENGINEERS - SURVEYORS - PLANNERS

DIMITRI SFAKIYANUDIS, P.E.
JUDITH E. SPEAKS
W. WILLIAM SORG
JOHN R. BRADY, JR.

PRESIDENT
VICE PRESIDENT
PROFESSIONAL LAND SURVEYOR
PROPERTY LINE SURVEYOR

October 2, 1990

State of Maryland
Board of Public Works
Wetlands Administration
P.O. Box 1510
Annapolis, Maryland 21404

Attn: Mr. Harold Cassell
Wetlands Administrator

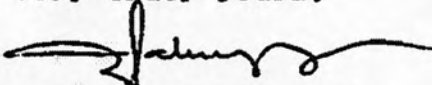
Re: Newport Condominium Association
c/o Charles Gildea
Wetlands License No. 90-1342

Dear Mr. Cassell,

Attached please find the original executed agreement on the referenced project for your files.

Should you have any questions please feel free to contact me at your convenience.

Very truly yours,



Dimitri Sfakiyanudis

RI/89127-1



Harold Cassell
Wetlands Administrator

State of Maryland
Board of Public Works

Wetlands Administration
Post Office Box 1510
Annapolis, Maryland 21404
301-974-2664

William Donald Schaefer
Governor
Louis L. Goldstein
Comptroller
Lucille Maurer
Treasurer
James J. McGinty, Jr.
Secretary

WETLANDS LICENSE NO. 90-1342

NEWPORT CONDOMINIUM ASSOCIATION

This is in reference to an application for "Wetlands License," dated the 14th day of JUNE, 1990. Upon the recommendation of the Wetlands Administrator/Hearing Examiner of the Board of Public Works, and pursuant to the provisions of Title 9, Natural Resources Article, Annotated Code of Maryland (1983 Repl. Vol.), entitled "Wetlands and Riparian Rights," enacted to provide a State policy for the preservation of wetlands in the State, and to regulate the filling and dredging of wetlands, and for other purposes, you are hereby authorized by the Board of Public Works, for the State of Maryland to:

"mechanically maintenance dredge a 180 feet long by 115 feet wide mooring area to 6 feet depth below mean low water; and to deposit 825 cubic yards of dredgate at an approved upland location - Spa Creek in Eastport at Annapolis, Anne Arundel County."

This license is subject to the following special conditions:

- A. All works shall be performed in accordance with the Certification of Water Quality.
- B. All works shall be performed in accordance with the required soil erosion and sediment control plan as approved by the Anne Arundel Soil Conservation District.
- C. That no marsh vegetation is filled, dredged, or otherwise altered or destroyed.
- D. Detailed dredge disposal plans must be submitted to the Tidal Wetlands Division, Water Resources Administration, for review and approval prior to commencement of work.

The authorized work is to be accomplished in accordance with the plans and drawings attached hereto, dated May 1990.

This license is subject to the following general conditions and is revocable or subject to modification prior to the completion of the project as described above when such action is deemed to be in the State's interest.

A judgment as to whether or not a suspension, modification or revocation is in the best interests of the State involves a consideration of the impact that any such action or the absence of any such action may have on factors affecting the public interest. Such factors include, but are not limited to: ecological, developmental, water quality, economic, aesthetic, and recreational values.

General Conditions:

a. That this instrument does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining assent from Federal, other State or local agencies required by law for the structure or work authorized.

b. That the structure or work authorized herein shall be in accordance with the plans and drawings attached hereto and construction shall be subject to the supervision and approval of the Water Resources Administration of the Department of Natural Resources.

c. The licensee shall comply promptly with any lawful regulations, conditions, or instructions affecting the structure or work authorized herein if and when issued by the State Water Resources Administration, which has jurisdiction to enforce this license. Such regulations, conditions, or instructions in effect or hereafter prescribed by the State Water Resources Administration are hereby made a condition of this license.

d. That a copy of this license and the plans and drawings attached hereto shall be available at the construction site.

e. The licensee will maintain the work authorized herein in good condition in accordance with the approved plans.

f. That this license may at any time be modified by the authority of the Board of Public Works, acting on its own or upon the recommendation of the Department of Natural Resources, if it is determined that, under existing circumstances, modification is in the best interest of the State. The licensee, upon the receipt of a notice of modification, shall comply therewith as directed by the Board of Public Works or by its authorized representative.

g. That this license may be suspended or revoked by the authority of the Board of Public Works if the licensee fails to comply with any of its provisions or if the Board of Public Works, upon the recommendation of the Department of Natural Resources, determines that, under existing circumstances, such action is required in the best interest of the State.

h. That any modification, suspension or revocation of this license shall not be the basis for a claim for damages against the State of Maryland, or any arm or agency of the State.

i. That the State of Maryland shall in no way be liable for any damage to any structure or work authorized herein which may be caused by or result from future operations undertaken by the State in furthering the interests of its citizens.

j. That no attempt shall be made by the licensee to forbid the full and free use by the public of all navigable waters at or adjacent to the structure or works authorized by this license.

k. That the licensee shall submit written notification to the Enforcement Division of the Water Resources Administration at least ten (10) days in advance of the time the construction or work will be commenced, and shall furnish written notification of the date of its completion.

l. That if the structure or work herein authorized is not completed on or before the 5th day of SEPTEMBER, 19 93, this license, if not previously revoked or specifically reinstated or extended, shall cease and be null and void.

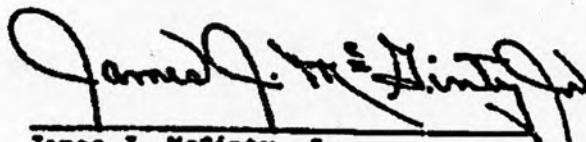
m. That the legal requirements of all State, Federal and County agencies be met.

n. That all provisions of this license shall be binding on any assignee or successor in interest of the licensee.

o. That the licensee agrees to make every reasonable effort to prosecute the construction or work authorized herein in a manner so as to minimize any adverse impact of the construction or work on fish, wildlife and natural environmental values.

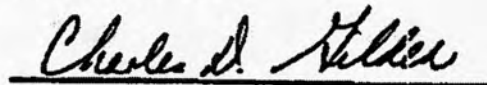
By the authority of the Board of Public Works:

Issued for and in behalf of
the Members of the Board

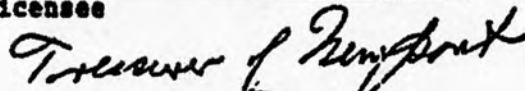

James J. McGinty, Jr.
Secretary, Board of Public Works

The terms and conditions of this license are hereby accepted.

Date: Sept 7, 1990


Licensee

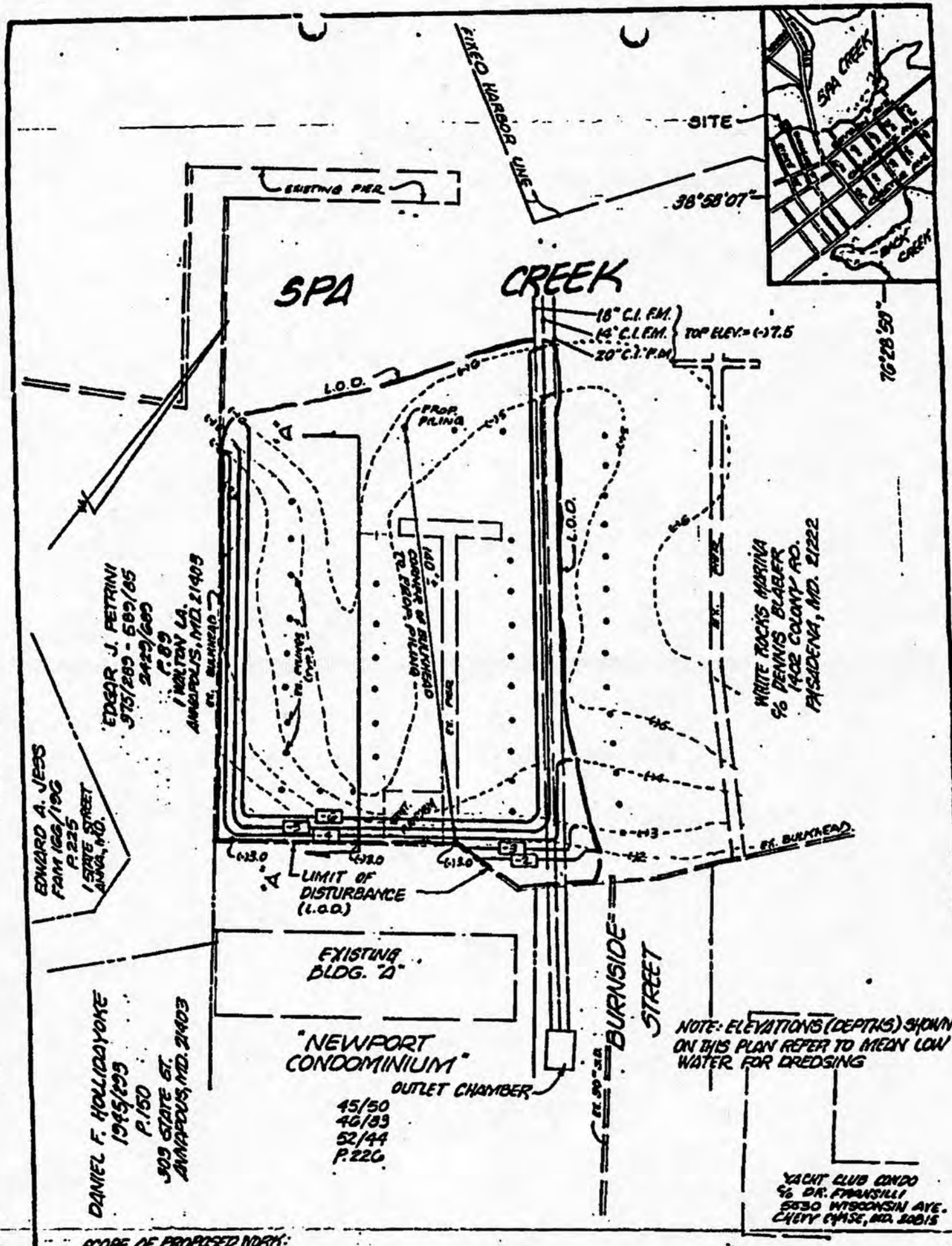
Effective Date: September 5, 1990


Treasurer of Hempstead
Condormerwin

RECEIVED

OCT 5 1990

STATE OF MARYLAND
SUSTAINING ADMINISTRATION



P. 101

WETLAND REPORT AND RECOMMENDATION/DETERMINATION
WATER RESOURCES ADMINISTRATION
WETLANDS DIVISION
301-974-3871

CASE NUMBER: 90-WL-1342 ☒ STATE WETLANDS ☐ PRIVATE WETLANDS
Name of Applicant/Agent: NEWPORT CONDOMINIUM ASSOCIATION c/o CHARLES GILDEA
Address of Applicant/Agent: 308 BURNSIDE STREET
ANNAPOLIS, MD 21403
Date Application Received: 6 / 1 / 14 / 90 COMMENT CLOSE: 7 / 1 / 16 / 90
Hearing Date: 7 / 1 / 16 / 90
No Hearing Required ☐
Location of Proposed Work: SPA Creek in Eastport, Anne Arundel County on Spat Creek

Description of Proposed Work: TO MECHANICALLY MAINTENANCE DREDGE A HOODING AREA
12180 FEET LONG BY 115 FEET WIDE TO 6 FOOT DEPTH AT MEAN LOW
WATER, AND TO DEPOSIT 825 CUBIC YARDS OF DREDGED MATERIAL AT AN
APPROVED UPLAND LOCATION

Purpose of Proposed Work: ☐ Shore Erosion Control ☒ Access to Navigation
☐ Other: _____

Maryland Coordinates: 415000 N x 946000 Basin Code: 02-13-10-02

Book Map Coordinates: AA 21 : A-11

Land Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Marina ☐ New Development
☐ Agricultural ☐ Other: _____

SITE CHARACTERISTICS

1. UPLAND EX.
BANK HEIGHT: BLKND FEET
BANK SLOPE: _____
BANK COMPOSITION: _____

☐ VEGETATED BANK
☐ NON VEGETATED BANK
VEGETATION DENSITY
☐ Sparse ☐ Moderate ☐ Heavy

VEGETATION TYPE
☐ Woody ☐ Herbaceous ☐ Lawn

DEGREE OF EROSION
☐ Slight ☐ Low ☐ Moderate ☐ Severe

EROSION PROCESS
☐ Wave Activity ☐ Boat Wakes
☐ Groundwater Seeps ☐ Runoff

EVIDENCE OF EROSION
☐ Undercutting ☐ Slumping
☐ Sediment Deposits
☐ Falling Trees & Exposed Roots
☐ Falling Structures
☐ Eroding Marsh
☐ Other: _____

2. WETLANDS
A. INTERTIDAL
☒ UNVEGETATED
☐ FRINGE MARSH
☐ Continuous
☐ Intermittent
TYPICAL MARSH VEGETATION
I. _____
II. _____
III. _____

AREA OF MARSH VEGETATION: _____ FEET²

BEACH TYPE: N/A
☐ Sandy ☐ Cobble ☐ Scarped
☐ Stone/Gravel ☐ Irregular
☐ Other: _____

B. SUBTIDAL
☐ Fish Spawning Area
☐ SAV ☐ Observed ☐ Documented
TYPE: _____

AREA: _____ FEET²

☐ Oyster Bar
NOB #: _____

Lease #: _____

Distance to Project: _____ Feet

☐ Clam Bed
Distance to Project: _____ Feet

TYPE OF BOTTOM MATERIAL
☐ Sand ☐ Silt ☐ Clay ☐ Rock
☐ Organic ☐ Other: _____

3. ADJOINING SHORELINE

	SITE A	SITE B
Direction From Project Site:	<u>N</u>	<u>S</u>
Natural State	<input type="checkbox"/>	<input type="checkbox"/>
Fringed With Marsh	<input type="checkbox"/>	<input type="checkbox"/>
Bulkheaded	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Stone/Rubble	<input type="checkbox"/>	<input type="checkbox"/>
Cove Marsh:	<input type="checkbox"/>	<input type="checkbox"/>

RECEIVED

AUG 1 1990

STATE OF MARYLAND
WETLANDS ADMINISTRATION

CASE NUMBER: 90-WL-1342

PROJECT EVALUATION

4. DREDGING PROJECTS

☐ No DredgingA. METHOD OF DREDGING: ☐ Clamshell ☐ Dragline ☐ Hydraulic ☒ Other: MECHANICAL - UNSPECIFIEDB. LOCATION OF DREDGED MATERIAL DISPOSAL: ☐ Adjacent Upland ☐ Beach Nourishment ☒ Landfill
☐ Off-site Upland ☐ Other: _____C. CONTAINMENT METHOD: ☐ Dike ☐ Strawbales ☐ Berm ☐ Grading ☒ Other: CITY LANDFILL OR CUNNINGHAM'S

D. SIZE SPECIFICATIONS:

PROPOSED		APPROVED
<u>0.48</u>	ACRE/FEET	<u>0.48</u>
<u>825</u>	CUBIC YARDS	<u>825</u>
<u>-6 @ MLW</u>	DEPTH	<u>-6 @ MLW</u>
EXISTING DEPTH: <u>-3 TO -6</u>		FEET @ <u>MLW</u>

5. FILL PROJECTS

☒ No Fill

BULKHEADS

☐ Timber ☐ Concrete ☐ Metallic

Average Distance from MHW in Feet _____

Maximum Distance from MHW in Feet _____

Length of Shoreline in Feet _____

REVETMENTS

☐ Gablon ☐ Stone ☐ Rubble

Average Distance from MHW in Feet _____

Maximum Distance from MHW in Feet _____

Length of Shoreline in Feet _____

BREAKWATERS

Type of Material: _____

Distance Offshore in Feet _____

Length of Structure _____

Width of Structure _____

Height in Feet above MHW _____

JETTIES AND GROINS

Type of Material: _____

Length of Structure _____

Number of Structures _____

Maximum Distance from MHW in Feet _____

OTHER STRUCTURES

☐ Boat Ramp ☐ Marine Railway☐ Travel Lift

Type of Material: _____

Maximum Distance from MHW in Feet _____

Maximum Width in Feet _____

6. VEGETATIVE STABILIZATION

☒ No Vegetative Stabilization

SOURCE OF FILL MATERIAL:

☐ From Bank Grading ☐ From Offsite☐ From Dredged Material

TYPES OF VEGETATION TO BE PLANTED

☐ *Spartina alterniflora*☐ *Spartina patens*☐ *Scirpus americanus*☐ Other: _____

SIZE SPECIFICATIONS:

Length of Shoreline in Feet: _____

Average Distance from MHW in Feet: _____

Maximum Distance from MHW in Feet: _____

7. UTILITY PROJECTS

EMPLACEMENT METHOD: ☐ Plow ☐ Jet☐ Dragline/
Clamshell☐ On Bottom

DISTANCE BENEATH BOTTOM IN FEET: _____

COMPENSATION REQUIRED: ☐ Yes ☐ No

8. COMMENTS

CASE NUMBER: 90-WL-1342

PUBLIC COMMENT: ☒ No Public Comment Received ☐ Only Favorable Public Comment Received
Negative and/or Favorable Comment was Received as Follows: _____

☐ Addendum Attached

ENFORCEMENT ACTION: ☐ This Application was Received as the Result of an Enforcement Action (Describe) _____

☐ Addendum Attached

DISCUSSION: _____

☐ Addendum Attached

RECOMMENDATIONS/DETERMINATIONS: In consideration of the site characteristics noted above, and the nature of the proposed work, the Department concludes that this application represents a reasonable exercise of riparian rights and recommends that a Wetland License be issued for the following:

☒ As per the project description on page 1 and in accordance with the attached plan dated: 5 / 1 / 90
Month Day Year

☐ As depicted on the revised plan dated _____ / _____ / _____ and modified as follows: _____
Month Day Year

The revised plan was agreed to by the applicant. ☐ Yes ☐ No ☐ Addendum Attached

☒ Subject to the following Special Conditions:

☒ A. That all works be performed in accordance with the Certification of Water Quality.

☒ B. That all works be performed in accordance with the required Soil Erosion and Sediment Control Plan as approved by the County Soil Conservation District for the County in which the works are proposed.

☐ C. Time of year work restriction: No _____ between _____ / _____ / _____ and _____ / _____ / _____
Month Day Year Month Day Year

☒ D. That no marsh vegetation is filled, dredged, or otherwise altered or destroyed.

☒ E. That no financial compensation be assessed for this project.

☒ F. Other: DETAILED DREDGE DISPOSAL PLANS MUST BE SUBMITTED TO THE WETLANDS DIVISION FOR REVIEW AND APPROVAL PRIOR TO COMMENCEMENT OF WORK

☐ Addendum Attached

ATTACHMENTS: ☒ Plans ☐ Hearing Roster ☐ Other: _____

NATURAL RESOURCES PLANNER: DIANA M. REYNOLDS

DATE: 7 / 24 / 90
Month Day Year

DEPT. OF NATURAL RESOURCES APPROVAL: [Signature]

DATE: 7 / 26 / 90
Month Day Year

COMMENTS OF HEARING OFFICER: _____

Concurrence

☐ Addendum Attached

WETLAND ADMINISTRATOR/HEARING OFFICER CONCURRENCE: Harold M. Caswell

DATE: 8 / 1 / 92
Month Day Year