

AFFIDAVIT OF BRIAN MYRBACK

I, **BRIAN MYRBACK**, being first duly sworn, depose and say,

1. I am greater than eighteen (18) years old, make this Affidavit based upon personal knowledge, am competent to testify to the matters set forth herein, and make this Affidavit in opposition to the Water & Navigation Division's issuance of Permit No. WND-20-00231REV ("2023 Permit").

2. On October 22, 2015, my wife and I purchased the house located at 104 Harbor Drive, Palm Harbor, Pinellas County, Florida 34683, for the purchase price of \$1,100,000.

3. The biggest factors in our purchase of the property were that the house would serve the needs of my wife and I and our two young children, and the waterfront views.

4. The property to the north is 106 Harbor Drive, Palm Harbor, Florida 34683, which is presently owned by James Donovan.

5. I am well versed in the permitting history for the dock and boat lift at 106 Harbor Drive.

6. Although there were permits issued prior to Permit No. P30636-01 ("2001 Permit"), all of them were limited to a dock, and none of them included a boat lift.

7. Mr. Donovan's predecessors-in-title had made *illegal field modifications* to the dock by adding the "PWC Deck Lift" and a separate "PWC Lift" illustrated on the 2001 Permit, which on its face states that, "ALL STRUCTURES EXISTING" and that the "SCOPE OF WORK" was limited to "REPLACE 6 DOCK PILINGS."

8. In issuing the 2001 Permit the County required the removal of the “PWC Lift,” and required the signature of my predecessor-in-title, Eric Feinstein. Specifically, Mr. Feinstein signed *the County’s form* which expressly states that, “The undersigned does not object to the proposed dock and requested variances *as drawn* in the space provided above.” (Italics added)

9. Consequently, Mr. Feinstein only agreed to that specific configuration of the dock and boat lift based on the plain language of the 2001 Permit.

10. We have filed with the County the Affidavit of Linda Feinstein dated and notarized on October 11, 2023, to which she – as the widow of Eric Feinstein – states under oath, *inter alia*, as follows:

My husband believed that his approval and signature of the Private Dock Application was limited to the drawings set forth therein, and that the repair work must be in accordance with scope of work and drawings set forth therein.

My husband would *never* have approved any variances or drawings which could hold a boat larger than a personal watercraft because he loved the waterfront view and did not want it to be further obstructed.

11. At the time we purchased our property in 2015, and prior to Mr. Donovan’s purchase of 106 Harbor Drive, his predecessor-in-title had removed a small portion of the “stub-out” on the dock to accommodate his “skiff” which is a very narrow and low-profile boat approximately 16’ feet in length.

12. Subsequent to Mr. Donovan’s purchase of 106 Harbor Drive, Mr. Donovan applied for Permit No. WND-20-00231 (“2021 Permit”) which sought to extend the length of the dock to 50.5 feet and move the boat lift 6 feet seaward, which required

variances from the Board of Adjustments and Appeals (“Board of Adjustments”) in Case No. VAR-21-15.

13. The hearing before the Board of Adjustments was held on May 5, 2021 and later that same day it issued its written Order on the same date which: (a) Granted Mr. Donovan a variance to extend the length of the dock to 50.5 feet; and (b) Granted Mr. Donovan a variance to reduce the side setbacks for the boat lift located on my boundary line to 4.7 feet.

14. My wife and I promptly challenged that Order with a Petition for Writ of Certiorari, Case No. 21-000014-AP, filed with the Circuit Court, in and for Pinellas County, Florida, as on June 4, 2021 (“the Appeal”).

15. While the Appeal was pending, Mr. Donovan applied for Permit No. WND-22-00524 (“2022 Permit”), which was filed with the Water & Navigation Division on May 5, 2022 and generally appears to replicate the drawing in the 2001 Permit.

16. On August 3, 2022, the Circuit Court in the Appeal unanimously ruled in favor of my wife and I and quashed the Board of Adjustment’s Order as to the portion granting the boat lift variance. No further appeal was filed by Mr. Donovan.

17. On or about August 11, 2022, under the 2021 Permit and contrary to the 2022 Permit, Mr. Donovan began removing the old boat lift, pilings and support structures for the “stub-out.” Myself and my attorney promptly contacted the Water & Navigation Division and County Attorney’s Office, respectively, regarding Mr. Donovan’s deviation from the 2022 Permit.

18. Thereafter, on or about August 30, 2022, Mr. Donovan began reconstruction under the 2022 Permit, and contrary to the 2021 Permit, by installing four (4) pilings for the new boat lift.

19. *Importantly*, during the time period after approval of the 2022 Permit and after the Circuit Court had quashed the boat lift variance, but before the Water & Navigation Division had approved the 2023 Permit, Mr. Donovan *was simultaneously working under two different Permits with two different designs*, being the 2022 Permit, which generally appears to be a rebuild the 2001 Permit, and the 2021 Permit where only the dock survived after the Circuit Court quashed the boat lift variance.

20. Consequently, by installing the four (4) new pilings for the boat lift he was operating under the 2022 Permit, contrary to the 2021 Permit which no longer had a boat lift after the Circuit Court's Order.

21. Likewise, by entirely removing the "stub-out" and related structures he was operating under the 2021 Permit, contrary to the 2022 Permit which included the "stub-out" in the same configuration as the 2001 Permit.

22. On September 8, 2022, Mr. Donovan applied for Permit No. WND-20-231REV which was not approved by the Water & Navigation Division until April 28, 2023.

23. Also, as part of Mr. Donovan's work on the boat lift and contrary to the drawings in the 2022 Permit, he installed a "cantilevered" boat lift system which moved his boat approximately three (3) feet seaward.

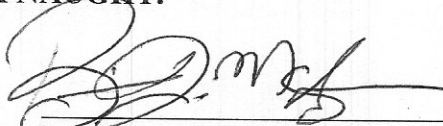
24. I promptly contacted Julee Simms, Water & Navigation Division, to register my objection to this "cantilevered" boat lift system, and she told me it was not

approved by the Water & Navigation Division, would order Mr. Donovan to immediately remove his twenty-seven (27) for boat situated upon it, and to remove the “cantilevered” boat lift system.

25. Although Mr. Donovan has removed his boat from the “cantilevered” boat lift system, to date the “cantilevered” boat lit system has not been removed.

26. As demonstrated by the photographs in the record, our house and rear property lines are angled to the northwest. Although our waterfront view was only mildly obstructed by the prior boat lift with a personal watercraft or the skiff, the removal of the “stub-out” and placement of a substantially larger boat – contrary to Mr. Feinstein’s approval of the variances “as drawn” in the 2001 Permit, and without approval of my wife and I – drastically obstructs our waterfront view.

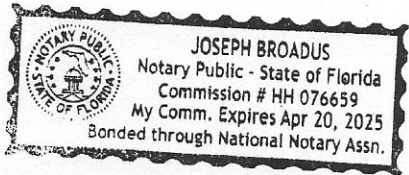
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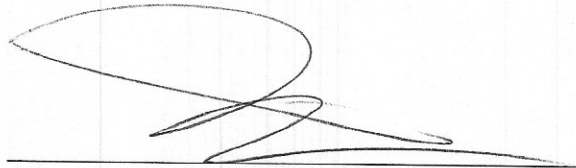
BRIAN MYRBACK, Affiant

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was sworn to and subscribed before me on this 5 day of December, 2023, by BRIAN MYRBACK, who is personally known to me or produced FL DC as identification, and who did take an oath.



(NOTARY)



(Signature)

JOSEPH BROADUS

(Printed Name)

Notary Public, State of Florida
(Commission Expiration Date)
(Serial Number, if any)