

COLE LAW FIRM, P.A.

Edward B. Cole, Esquire
844 Wisconsin Avenue
Palm Harbor, Florida 34683

Telephone (727) 564-9690
Facsimile (888) 705-0910
E-Mail colelaw@tampabay.rr.com

August 16, 2024

Board of County Commissioners
c/o Jewel White, County Attorney, and
Brendan Mackesey, Senior Assistant County Attorney
315 Court Street
Clearwater, FL 33756-5165
Via Email Only To: jwhite@pinellas.gov and bmackesey@pinellas.gov

**Re: Notice of Appeal and Request for Hearing as to
Issuance of Pinellas County Water & Navigation Division
Permit No. WND-24-00077 (Issued July 19, 2024)
Issued to James P. Donovan
106 Harbor View Drive
Palm Harbor, FL 34683
My Clients: Brian Myrback & Lori Myrback, as Trustees of the
Myrback Family Revocable Trust dated October 15, 2015**

Dear Board of County Commissioners, Ms. White & Mr. Mackesey,

This law firm represents Brian Myrback & Lori Myrback, as Trustees of the Myrback Family Revocable Trust dated October 15, 2015 (“the Myrback’s”), who reside at 104 Harbor View Drive, Palm Harbor, FL 34683.

Pursuant to Section 58-536, Pinellas County Land Development Code (“LDC”), please consider this correspondence my clients *formal and timely* Notice of Appeal and Request for Hearing of the Pinellas County Water & Navigation Permit No. WND-24-00077 issued on July 19, 2024 (“2024 Dredge Permit”), to James P. Donovan (“Mr. Donovan”), who resides at 106 Harbor Drive, Palm Harbor, FL 34683, and is the Myrback’s adjoining neighbor to the north.

The 2024 Dredge Permit would allow Mr. Donovan to dredge forty-two (42) cubic yards of earth from the south side of Mr. Donovan’s dock. Based on an email from the Water & Navigation Division dated March 11, 2024, the County has “no responsive records” to Mr. Myrback’s request for any dredge permits issued on the west side of Harbor Drive in

the St. Joseph Sound Aquatic Preserve. This appears unprecedented in the County's history.

Grounds for Appeal

The grounds for appeal are that the 2024 Dredge Permit was issued in violation of Section 58-530(b)(5-6), LDC, which requires a dredge permit to be "denied or modified" where the project would:

- (5) [H]ave a material adverse effect upon the natural beauty and recreational advantages of the county; *or*
- (6) [H]ave a material adverse effect upon the conservation of wildlife, marine life, and other natural resources, including beaches and shores, so as to be contrary to the public interest. (Italics added)

Section 58-533, LDC, elaborates on these environmental concerns and states as follows:

In order to provide protection for those habitats having a *high degree of ecological value*, proposed projects shall be specifically reviewed for adverse impacts *to vegetated wetland areas; vegetative, terrestrial, or aquatic habitats* critical to the support of listed species in providing one or more of the requirements to sustain their existence, such as range, nesting or feeding grounds; habitats which display biological or physical attributes which would serve to make them rare within the confines of the county, such as natural marine habitats, *grass flats suitable as nursery feeding grounds for marine life, or established marine soil suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life...* (Italics added)

With respect to these provisions, the 2024 Dredge Permit would have a materially adverse effect on the *water quality and clarity* in this area of the St. Joseph Sound Aquatic Preserve, and in turn, the recreational advantages of the County. Further, the 2024 Dredge Permit would have a materially adverse effect upon the *conservation of seagrass* in and around the dredged area.

The Myrback's are investigating these environmental concerns and would highlight County staff's "Field Report" dated March 1, 2024 which found "*dense seagrass on the left side*" of Mr. Donovan's dock in the *identical area* approved for dredging under the 2024 Dredge Permit. (Italics added) The Myrback's understand that Mr. Donovan's contractor provided conflicting information as to seagrass density from their field inspections performed on January 16, 2024 and February 20, 2022, but it is *unknown* how these conflicting conclusions satisfied the environmental criteria for the issuance of the 2024 Dredge Permit.

The Myrback's would note that Mr. Donovan, through his retained expert Terry Skapic, has previously and emphatically testified that the County should *not* consider any seagrass reports or studies which are performed outside the growing season which runs from June 1st to September 30th, pursuant to the "Guidance on Surveys for Potential Impacts to Submerged Aquatic Vegetation," prepared by the Office of Resilience and Coastal Protection Florida Department of Environmental Protection and dated December 8, 2020. Obviously, this would *exclude* consideration of both seagrass reports from Mr. Donovan's contractors who performed their field inspections on January 16, 2024 and February 20, 2022.

Another issue involves the application for the 2024 Dredge Permit which asserts that the "Affected Water Body" is "Lungrun Cove," when in fact it is located in the St. Joseph Sound Aquatic Preserve.

Further grounds for appeal are that the 2024 Dredge Permit was issued in violation of Section 58-572(3), LDC, *where the dredging is not, "necessary to improve ingress and egress with respect to the upland riparian property."* As set forth above, the County has *never* issued a dredge permit on the west side of Harbor Drive despite there being approximately fifteen (15) residences with docks and boat lifts dating back approximately sixty (60) years to the 1960's when development began.

With respect to Mr. Donovan's property, its first dock permit was issued to David Richards on November 12, 1971 (Permit No. P2049), and a second dock permit was issued to Kenneth Gibbs on October 11, 1989 (Permit No. RP16910589).

Between 1989 and 2001, Mr. Gibbs made several unlawful and unpermitted improvements to the dock by increasing its length and adding a boat lift outside the Center 1/3 of his rear property line in violation of Section 58-555, LDC.

The third dock permit was issued to Mr. Gibbs on September 27, 2001 (Permit No. P30636-01), *which made lawful* Mr. Gibbs prior unpermitted dock extension and boat lift construction. This permit was issued based solely on his written agreement with Eric Feinstein, his neighbor to the south and the Myrback's predecessor-in-title, who agreed to the variance from the side setback requirements for the specific boat lift and dock design "as drawn" in the permit, which limited the capacity of the boat lift to a personal watercraft or similarly sized vessel about twelve (12) feet long.

Consequently, since before 2001, the subject property has had ingress and egress to the upland property *without* the issuance of any dredge permits, as have the other approximately fourteen (14) property owners also *without* the issuance of any dredge permits.

The Myrback's would further note that the Water & Navigation Division's issuance of the 2024 Dredge Permit involves the assertion that this area had been "previously dredged" as part of the development of the Harbor Drive peninsula in the 1950's or 1960's, and that the work to be performed is therefore considered "maintenance."

However, the Myrback's have not seen competent substantial evidence of the asserted dredging during that time period, *but even if that is correct*, any asserted "dredged channel" along the west side of Harbor Drive and around the tip of the peninsula to Lungrun Cove has been long since abandoned. *To be clear, any asserted dredged channel could not be reconstituted because it has at least 15 docks and boat lifts entirely obstructing its previous path.*

Pending Lawsuit Regarding Mr. Donovan's Boat Lift Location

In addition, Section 58-533(a-b), LDC, specifically authorizes the Board of County Commissioners, Board of Adjustments and Appeals, and County staff to consider any, "*information supplied during the administrative and public hearings in the issuance or denial of permits under this article,*" under their "right to modify, amend, or alter any application" brought before them. (Italics added)

Consequently, it is appropriate to consider the *pending lawsuit* in that certain action styled *Brian Myrback and Lori Myrback, as Trustees of The Myrback Family Revocable Trust dated October 15, 2015 v. James P. Donovan and Pinellas County, a political subdivision of the State of Florida*, Case No. 24-0000001-AP-88B, Circuit Court, Pinellas County, State of Florida ("the Second Appeal"), involving the County's issuance and approval to Mr. Donovan for Permit No. WND-20-00231-REV ("2023 Boat Lift and Dock Permit").

In the Second Appeal the Myrback's seek to *quash* the 2023 Boat Lift and Dock Permit issued to Mr. Donovan on the grounds that it "interferes" with the 2001 agreement between Mr. Gibbs and Mr. Feinstein under Section 58-505, LDC, and that the County failed to follow the plain language of Section 58-544(a)(2) in the issuance of the permit which limits analysis to only one "previously issued permit."

Accordingly, if the Circuit Court rules in favor of the Myrbacks in the Second Appeal, the 2023 Boat Lift and Dock Permit will be quashed, and Mr. Donovan would be required to seek a variance from the side setback requirements for the boat lift from the Board of Adjustments & Appeals under the rigorous requirements of Section 138-231, LDC.¹

¹ The County may recall that Mr. Donovan's 2021 Boat Lift and Dock Permit was *partially quashed* in a unanimous opinion from the Circuit Court in the original lawsuit between the parties styled *Brian Myrback and Lori Myrback, as Trustees of The Myrback Family Revocable Trust dated October 15, 2015 v. James P. Donovan and Pinellas County, a political subdivision of the State of Florida*, Case No. 21-000014-AP-88B, Circuit Court, Pinellas County, State of Florida ("the First Appeal"). This involved the County's issuance and approval of Permit No. WND-20-00231 ("2021 Boat Lift and Dock Permit"). In the First Appeal, the Circuit Court quashed the variance from the side setback requirements for the boat lift set forth in the 2021 Boat Lift and Dock Permit.

Therefore, at this time, Mr. Donovan is seeking to dredge the earth in and around the location of the boat lift at great environmental costs, while the location of that same boat lift is being challenged in the Circuit Court and may be quashed.

If the Circuit Court rules in the Myrback's favor, and if Mr. Donovan is unable to obtain a variance from the side setback requirements from the Board and Adjustments & Appeals, or is granted the variance which is then quashed as in the First Appeal, the boat lift would be required to be removed from the south side of Mr. Donovan's dock, and likely relocated to the north side of the dock as originally recommended by the Water & Navigation Division, and not opposed by the Myrbacks.

Although it may be Mr. Donovan's strategy to complete the dredging so the "*damage is done*" in an effort to retain the boat lift on the south side of his dock, under Section 58-533, LDC, the Board of County Commissioners, Board of Adjustments & Appeals, and County staff have, "the right to modify, amend, or alter" the 2024 Dredge Permit to prevent any dredging and protect the environment *pending final adjudication of all legal proceedings* directed at the location of Mr. Donovan's boat lift.

Amendment to Notice of Appeal and Request for Hearing

Given that the 2024 Dredge Permit was only approved on July 19, 2024, neither the Myrbacks nor the undersigned attorney have had a full opportunity to investigate this dispute, and although this Notice of Appeal and Request for Hearing is intended to be comprehensive, the Myrback's reserve the right to amend same with additional facts, legal issues, and supporting documentation.

Thank you for your assistance in this important matter, please confirm your receipt of this Notice of Appeal and Request for Hearing, and advise of the next steps in these proceedings.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. B. Cole".

EDWARD B. COLE, ESQUIRE
For the Firm

cc: Clients