



Interoffice Memorandum

March 10, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Tim Boldig, Interim Director
Planning, Environmental, and Development
Services Department

**CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1406**

SUBJECT: April 11, 2023 – Public Hearing
After-the-Fact Private Boat Ramp Permit Application for the
Bubba E. Shaffer Family Trust (BR-17-07-001)

The applicant, the Bubba E. Shaffer Family Trust, Bubba E. Shaffer Trustee, is requesting an after-the-fact Private Boat Ramp (BR) Permit to authorize an existing private boat ramp along the shoreline of Lake Whippoorwill. The property is located at 12488 Kirby Smith Road, Orlando, FL 32832 (Parcel ID No. 20-24-31-0000-00-039) in District 4.

On May 8, 2017, during aquatic plant management activities on Lake Whippoorwill, Environmental Protection Division (EPD) staff observed evidence of recent construction activities for a boat ramp at the subject property. Based on aerial photos, the boat ramp appears to have been originally constructed sometime in 2003, and was being resurfaced in 2017 when staff observed the activity. No permits for the structure were found during a records search; therefore, EPD initiated formal enforcement action (Incident No. 17-485309) and issued a Notice of Violation (NOV) on May 11, 2017 to the owner of the property at the time, Carl Shaffer. The NOV required that the property owner submit an after-the-fact BR Permit Application and attempt to obtain authorization for the structure or to remove it entirely. Subsequent to issuance of the NOV, the property was purchased by Bubba Shaffer on August 1, 2017. The property was subsequently transferred to the Bubba E. Shaffer Family Trust on October 15, 2019, for which the applicant is the trustee.

On July 19, 2017, EPD received an after-the-fact BR Permit Application. On August 9, 2017, EPD sent the applicant a Request for Additional Information (RAI). EPD received no response to the original RAI and on April 9, 2018, sent a follow up email requesting a response. The applicant retained the services of a new authorized agent in April of 2018, but did not provide complete responses to the RAI. EPD sent an additional RAI via email to the new agent and applicant on April 2, 2019. EPD received responses to the RAI on April 20, 2019, however EPD was still waiting for several items including a copy of a permit from the U.S. Army Corps of Engineers (USACE), a vegetative buffer, and installation of a no-wake sign. EPD notified the applicant and authorized agent of these outstanding items via email on January 2, 2020. EPD received photo confirmation of the vegetative buffer and the no-wake sign on December 5, 2022 and a site plan with minor revisions on December 21, 2022. On January 10, 2023, EPD received the final site plan

with additional minor revisions. On February 15, 2023, EPD received documentation from the authorized agent confirming that the USACE no longer had dredge and fill permitting jurisdiction over the project area due to the Florida Department of Environmental Protection's (FDEP's) assumption of the State 404 Program. EPD also received documentation from the authorized agent on February 15, 2023, confirming that FDEP had determined that a State 404 Permit would not be needed for the boat ramp.

EPD currently requires a companion Conservation Area Impact (CAI) with a BR Permit Application to address the impact to natural resources; however, at the time EPD received the boat ramp permit application, an associated CAI permit for minor surface water impacts was not required under EPD policy; therefore, no CAI permit is being required for the boat ramp.

The existing boat ramp is constructed of concrete and measures 12.29 feet wide and 59.43 feet in total length. It extends from the Normal High Water Elevation approximately 43.99 feet into the lake. Orange County Code, Chapter 15, Article XV, Section 15-605(b)(11) states, "No portion of any boat ramp or any type of boat ramp facility shall be closer than twenty-five (25) feet from the projected property line of abutting shoreline owners." The existing boat ramp is 5.5 feet from the southern projected property line, adjacent to the property located at 12500 Kirby Smith Road, owned by Mr. Lucas Vasconcelos and Ms. Viviane Ruiz Barreto. The applicant is requesting a variance to allow the existing ramp to remain at 5.5 feet from the southern projected property line. The applicant provided a notarized Letter of No Objection from Mr. Vasconcelos, stating that he has no objection to the reduced setback of 5.5 feet.

An administrative penalty of \$800.00 was paid to the Conservation Trust Fund on May 30, 2018 for the unauthorized construction of the boat ramp. Issuance of the after-the-fact BR Permit will bring the property into compliance. However, if the permit application is not approved, the applicant will be required to remove the boat ramp within 60 days of the decision of the Board.

The public was notified of the April 11, 2023 public hearing by newspaper advertisement, posting on the subject property, and direct mail to the applicant, their agent, and all upland owners within 500 feet of the subject parcel in accordance with the noticing requirements set forth in Orange County Code, Chapter 15, Article XV, Section 15-605(d)(2).

EPD staff has evaluated the after-the-fact BR Permit Application and site plans in accordance with the review criteria and has made a finding that the request is consistent with Orange County Code, Chapter 15, Article XV and recommends approval of the after-the-fact BR Permit and the requested variance, subject to the conditions listed below.

Staff Recommendation

Approval of the BR Permit, subject to the following conditions:

Specific Conditions:

1. This permit shall become final and effective upon expiration of the 30-calendar day period following the date of rendition of the Board's decision approving the permit, unless a petition for writ of certiorari or other legal challenge has been filed within this timeframe. Any timely filed petition or other challenge shall stay the effective date of

this permit until the petition or other challenge is resolved in favor of the Board's decision.

2. The operational phase of this permit continues in perpetuity.
3. This permit authorizes the private boat ramp facility as depicted on the 'Shaffer Boat Ramp Site Plan' provided by Streamline Permitting, Inc., received by EPD on January 10, 2023. No additional construction or modifications to the boat ramp are authorized.
4. The permittee may maintain a clear access corridor below the Normal High Water Elevation of Lake Whippoorwill of 64.64 feet, North American Vertical Datum (NAVD), not to exceed 30 feet in width and perpendicular to the shoreline. The access corridor should be located with the existing dock. No clearing for access is authorized outside of the allowed access corridor, including areas adjacent to the boat ramp.
5. Use of the boat ramp is limited to those persons living in the single-family residence located on the property and their usual and customary guests who are either in the company of the resident or using the resident's watercraft.
6. This permit does not authorize any dredging or filling beyond the minimum fill required for the boat ramp.

General Conditions:

7. A copy of this permit, along with EPD stamped and approved drawings, should be taken to the Orange County Zoning Division (OCZD) at 201 South Rosalind Avenue for review prior to applying for a Building Permit. For further information, please contact the OCZD at (407) 836-5525.
8. After approval by OCZD, the certified site plans will need to be reviewed by the Orange County Building Safety Division (OCBSD) in order to obtain a Building Permit. For further information, please contact the OCBSD at (407) 836-5550.
9. Subject to the terms and conditions herein, the permittee is hereby authorized to perform or cause to be performed, the impacts shown on the application and approved drawings, plans, and other documents attached hereto or on file with EPD. The permittee binds themselves and any successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities are not in accordance with the conditions of the permit, work shall cease and the permit may be revoked immediately by the Environmental Protection Officer. Notice of the revocation shall be provided to the permit holder promptly thereafter.
10. Issuance of this permit does not warrant in any way that the permittee has riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittee. In the event that any part of the structure permitted herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent property owner's riparian or other property rights, the permittee agrees to either obtain written consent or to remove the offending structure or encroachment within 60 days from the date of the adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.

11. This permit does not release the permittee from complying with all other federal, state, and local laws, ordinances, rules and regulations. Specifically, this permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities upon property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 15, Article XV of the Orange County Code. If these permit conditions conflict with those of any other regulatory agency, the permittee shall comply with the most stringent conditions. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
12. The permittee is hereby advised that Section 253.77 Florida Statutes (FS), states that a person may not commence any excavation, construction, or other activity involving the use of sovereignty or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. Should any other regulatory agency require changes to the property or permitted activities, the permittee shall provide written notification to EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
14. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
15. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate. EPD may revoke the permit upon discovery of information that may cause pollution to water bodies, cause an adverse impact on the riparian rights of other waterfront property owners, or impede the traditional use and enjoyment of the waterbody by the public.
16. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to ensure conformity with the plans and specifications approved by the permit.
17. The permittee shall notify EPD, in writing, within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. The permittee shall remain liable for any corrective actions that may be required as a result of any permit violations until the permit is legally transferred.
18. The permittee shall hold and save the County harmless from any and all damages, claims or liabilities, which may arise by reason of the activities authorized by the permit.

19. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit shall be required to be paid by the permittee.
20. The permittee agrees that any dispute arising from matters relating to this permit shall be governed by the laws of Florida and initiated only in Orange County.
21. Turbidity and sediments shall be controlled to prevent violations of water quality pursuant to Rules 62-302.500, 62-302.530(70) and 62-4.242 Florida Administrative Code. Best Management Practices, as specified in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, shall be installed and maintained at all locations where the possibility exists of transferring suspended solids into wetlands and/or surface waters due to the permitted activity. If site-specific conditions require additional measures, then the permittee shall implement them as necessary to prevent adverse impacts to wetlands and surface waters.
22. Pursuant to Section 125.022 FS, issuance of this permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.
23. Pursuant to Section 125.022 FS, the applicant shall obtain all other applicable state or federal permits before commencement of construction.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of after-the-fact Private Boat Ramp Permit BR-17-07-001 with the associated variance to Orange County Code, Chapter 15, Article XV, Section 15-605(b)(11) to allow the existing ramp to remain at 5.5 feet in lieu of 25 feet from the southern projected property line, for the Bubba E. Shaffer Family Trust, subject to the conditions listed in the staff report. District 4

DDJ/TB: jk

Attachments