




Interoffice Memorandum

**AGENDA ITEM**

October 15, 2021

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

FROM: Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development  
Services Department 

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

SUBJECT: November 16, 2021 — Consent Item  
Environmental Protection Commission Recommendation for  
Request for After-the-Fact Waiver for Michael and Sally  
McMahan Dock Construction Permit BD-19-10-121-MOD

The applicants, Michael and Sally McMahan, are requesting a modification to a previously issued Dock Construction Permit (BD-19-10-121) with an after-the-fact waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-343(b) (side setback). The project site is located at 2906 Midsummer Drive, Windermere, FL 34786 (Parcel ID number 04-23-28-4406-00-070). The subject property is on Lake Down in District 1.

On November 7, 2019, the Environmental Protection Division (EPD) received an Application to Construct a Dock to replace an old, grandfathered dock at the subject property. The applicants proposed to build a new dock with a slightly larger terminal platform. Subsequently, Dock Construction Permit #BD-19-10-121 was issued on March 10, 2020 and included an administrative waiver to Section 15-343(b) to authorize a side setback distance of 10 feet (in lieu of the required 25 foot minimum) from the southern projected property line in order to construct the replacement dock in the same location as the old dock. A Letter of No Objection was obtained from the affected neighbor to the south (Robert Wooldridge at 2916 Midsummer Drive).

On December 9, 2020, EPD received an as-built survey of the completed dock and determined that the side setback from the southern projected property line is 8.6 feet (not 10 feet as originally permitted). The applicants' agent was informed they would need to apply for an after-the-fact waiver to Section to 15-343(b) to authorize the setback. On May 11, 2021, EPD received an Application for a Dock Construction Permit with an after-the-fact Application for Waiver to authorize the reduced side setback. Additionally, as penalty for failure to construct the dock as permitted, EPD has required the applicants to remit an administrative penalty in the amount of \$639.

**After-the-Fact Waiver Request – Side Setback**

Pursuant to Section 15-350(a)(2), "the applicant shall describe (1) how this waiver would not negatively impact the environment, and (2) the effect of the proposed waiver on abutting shoreline owners."

To address Section 15-350(a)(2)(1), the applicants' agent, Mr. Peter Fleck, stated, "Dock is already [sic] in this location, and is not moving closer to the property line."

To address Section 15-350(a)(2)(2), Mr. Fleck stated, "None."

### **Public Noticing**

On July 14, 2021, a Notice of Application for After-the-Fact Waiver (Notice) was sent to the affected adjacent shoreline owner's mailing address in California. Additionally, EPD emailed the Notice to Mrs. Clarita Wooldridge (affected neighbor) on July 23, 2021 and the applicants' agent posted the Notice onsite at the affected address on August 19, 2021. No objection was received.

### **EPD Staff Evaluation/Recommendation**

Staff evaluated the after-the-fact waiver request for compliance with the criteria for approval. The recommendation of the Environmental Protection Officer (EPO) is to approve the request for after-the-fact waiver to Section 15-343(b) (side setback) based on a finding that the applicants have demonstrated there will be no negative effect on the abutting shoreline owner pursuant to Section 15-350(a)(2)(2), as no objection was received. Additionally, maintaining the new dock in the same location as the previous dock will limit any environmental impacts to the existing affected area.

### **Environmental Protection Commission Public Hearing**

EPD presented the after-the-fact waiver request to the Environmental Protection Commission (EPC) at their September 29, 2021 public meeting. Commission member Ms. Flormari Blackburn requested clarification on the southern setback prior to the current improvements. Mr. Fleck stated that the southern setback has not changed (the new improvements were made on the northern side), and that their original 10-foot setback request was based on an old dock survey that turned out to be incorrect. He also expressed difficulty in attempting to contact the affected neighbor to obtain a new/revised LONO.

Based upon evidence and testimony presented at the hearing, the EPC voted unanimously to accept the findings and recommendation of the EPO, and recommended approval of the request for after-the-fact waiver to Section 15-343(b) (side setback) with a payment of an administrative penalty of \$639 to the Conservation Trust Fund.

**ACTION REQUESTED:**      **Acceptance of the findings and recommendation of the Environmental Protection Commission and approval of the request for after-the-fact waiver to Section 15-343(b) to reduce the side setback from 25 feet to 8.6 feet from the southern projected property line with the payment of a \$639 penalty to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners for the Michael and Sally McMahan Dock Construction Permit BD-19-10-121-MOD. District 1**

# Dock Construction Application for After-the-Fact Waiver



**Dock Construction Application  
for After-the-Fact Waiver  
BD-19-10-121 MOD  
District #1**

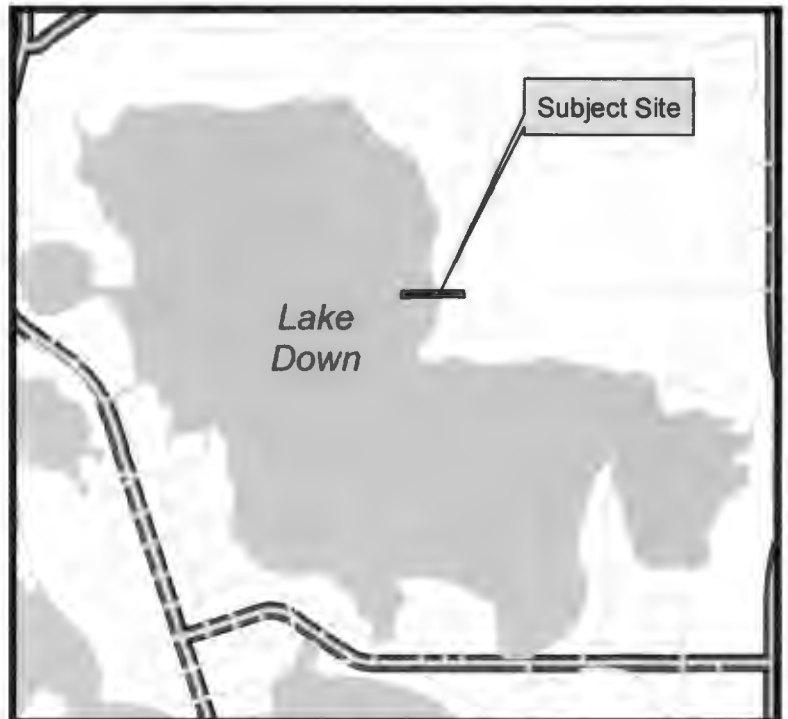
**Applicant:** Michael and Sally McMahan

**Address:** 2906 Midsummer Drive

**Parcel ID:** 04-23-28-4406-00-070

**Project Site** 

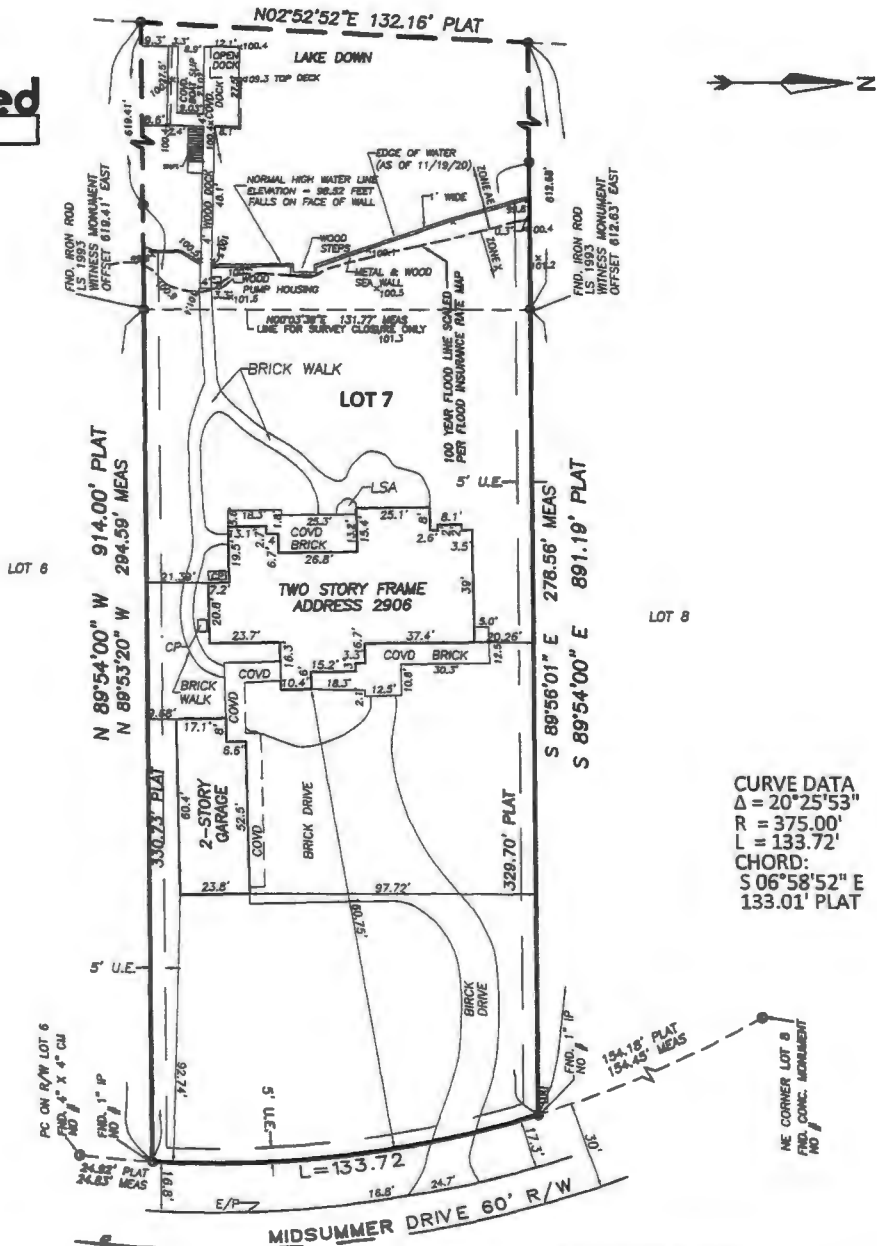
**Property Location** 



# MAP OF SURVEY DESCRIPTION

LOT 7, LAKE DOWN SHORES REPLAT, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 31 AND 32, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

**received**  
7/8/2021



**CURVE DATA**  
 $\Delta = 20^\circ 25' 53''$   
 $R = 375.00'$   
 $L = 133.72'$   
**CHORD:**  
 $S 06^\circ 58' 52'' E$   
 $133.01'$  PLAT

### BOUNDARY SURVEY

JOB # 53537	REVISIONS	DOCK AS BUILT CERTIFIED TO: THE REAL ESTATE COLLECTION LLC.
CF# OC4-31 LOT 7 DOCK		
SURVEY DATE: 11/19/20		
SCALE: 1" = 50'		
DRAWN BY: KAS		

**ACCURIGHT**

ACCURIGHT SURVEYS OF ORLANDO INC., LB 4475  
 2012 E. Robinson Street Orlando, Florida 32803  
 www.AccurightSurveys.net | ACCU@AccurightSurveys.net  
 PHONE: (407) 894-6314

*Ronald K. Smith*  
**RONALD K. SMITH, PSM 5797**  
 "THE DATE OF SIGNATURE DOES NOT REVISION OR SUPERSEDE  
 THE SURVEY DATE OR REVISION DATE."

\*NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL  
 OF THIS FLORIDA LICENSED SURVEYOR AND MAPPER, OR  
 THE DIGITAL SEAL APPEARING ON THIS DOCUMENT WAS  
 AUTHORIZED BY RONALD K. SMITH, PSM 5797.

- NOTES:**
- BEARING STRUCTURE IS ASSUMED AND BASED ON THE WEST RIGHT-OF-WAY LINE OF MID SUMMER DRIVE.
  - THIS BUILDING/LOT LIES IN ZONE (S) "X" & "AE", BASED ON FLOOD INSURANCE RATE MAP NO. 12095C0220F, COMMUNITY NO. 120179, ORANGE COUNTY, FLORIDA, EFFECTIVE SEPTEMBER 25, 2009.
  - THIS SURVEY REFLECTS ONLY MATTERS OF RECORD AS PROVIDED BY CLIENT.
  - UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED.
  - BUILDING TIES SHOWN ON THIS SURVEY SHOULD NOT BE USED TO RECONSTRUCT PROPERTY LINES.
  - THIS SURVEY IS VALID ONLY FOR THE PARTIES TO WHOM IT IS CERTIFIED.
  - THIS SURVEY EXCEEDS THE ACCURACY REQUIREMENTS SET FORTH IN FLORIDA STATUTES.
  - ELEVATIONS BASED ON ORANGE COUNTY BENCHMARK #UB-6 HAVING AN ELEVATION OF 107.31 FEET, (NAVD 88).

**LEGEND**

<ul style="list-style-type: none"> <li>CBW - CONCRETE BLOCK WALL</li> <li>CC - COVERED CONCRETE</li> <li>CM - CONCRETE MONUMENT</li> <li>CONC - CONCRETE</li> <li>COVD - COVERED</li> <li>CONC PAD - CONCRETE PAD</li> <li>CW - CONCRETE WALKWAY</li> <li>CA - CENTRAL ANGLE</li> <li>DEAM - DESCRIBED &amp; MEASURED</li> <li>DE - DRAINAGE EASEMENT</li> <li>DESC - DESCRIPTION</li> <li>DOT - DOT MARKHOLE</li> <li>DOC# - DOCUMENT #</li> <li>DW - DRIVEWAY</li> <li>EP - EDGE OF PAVEMENT</li> <li>EB - ELECTRIC BOX</li> <li>EM - ELECTRIC METER</li> <li>EL - ELEVATION</li> <li>EASEMENT - EASEMENT</li> <li>FF - FINISHED FLOOR ELEVATION</li> <li>FH - FIRE HYDRANT</li> <li>FIRM - FLOOD INSURANCE RATE MAP</li> <li>FRD - FOUND</li> <li>FW - GUY WIRE ANCHOR</li> <li>IP - IRON PIPE</li> <li>IR - IRON ROD</li> <li>L - ARC LENGTH</li> </ul>	<ul style="list-style-type: none"> <li>LB - LICENSED BUSINESS</li> <li>LS - LIGHT POLE</li> <li>LSA - LICENSED SURVEYOR</li> <li>LSA - LANDSCAPE AREA</li> <li>MEAS - MEASURED</li> <li>MF - METAL FENCE</li> <li>NAVD - NORTH AMERICAN VERTICAL DATUM</li> <li>NGVD - NATIONAL GEODETIC VERTICAL DATUM</li> <li>N&amp;D - NAIL &amp; DISK</li> <li>OW - OVERHEAD WIRE</li> <li>ORB - OFFICIAL RECORDS BOOK</li> <li>P&amp;M - PLAT &amp; MEASURED</li> <li>PL - PLAT BOOK</li> <li>PC - POINT OF CURVATURE</li> <li>PG - PAGE</li> <li>PF - PLASTIC FENCE</li> <li>POB - POINT OF BEGINNING</li> <li>POC - POINT OF COMMENCEMENT</li> <li>R - RADIUS</li> <li>R/W - RIGHT OF WAY</li> <li>TR - TELEPHONE RISER</li> <li>TRF - TRANSFORMER</li> <li>TY - TYPICAL</li> <li>UE - UTILITY EASEMENT</li> <li>UP - UTILITY POLE</li> <li>WM - WATER METER</li> <li>WV - WATER VALVE</li> <li>WF - WOOD FENCE</li> <li>WS - WOOD SHED</li> </ul>
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**ENVIRONMENTAL PROTECTION DIVISION**  
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**ENVIRONMENTAL PROTECTION COMMISSION**

**Mark Ausley**  
*Chairman*

**Oscar Anderson**  
*Vice Chairman*

Florman Blackburn

Billy Butterfield

Mark Corbett

Mauro Imbruglia

Vacancy - Regular  
Business or Municipal

**ORANGE COUNTY ENVIRONMENTAL PROTECTION COMMISSION**  
**September 29, 2021**

Applicants: Michael and Sally McMahan

Permit Application Number: BD-19-10-121-MOD

Location/Address: 2906 Midsummer Drive, Windermere

**RECOMMENDATION:** **Accept the findings and recommendations of the Environmental Protection Officer, and make a finding that the request for after-the-fact waiver is consistent with Section 15-350(a)(2) and recommend approval of the request for after-the-fact waiver to 15-343(b) to reduce the side setback from 25 feet to 8.6 feet from the southern projected property line with the payment of \$639 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners for the Michael and Sally McMahan Dock Construction Permit BD-19-10-121-MOD. District 1**

EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

EPC DISAGREES WITH THE ACTION REQUESTED, AS PRESENTED AND HAS MADE THE FOLLOWING RECOMMENDATION:

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Signature of EPC Chairman: Mark Ausley

DATE EPC RECOMMENDATION RENDERED: 9-29-21