



Interoffice Memorandum

AGENDA ITEM

September 21, 2017

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

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

**CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1405**

SUBJECT: October 3, 2017 – Consent Item Environmental Protection
Commission Recommendation for a Variance Request for the
Emerson Pointe Community Association Inc. Semi-Private Dock
Construction Permit BD-17-03-025

The project site is located at 5709 Emerson Pointe Way on Lake Chase in unincorporated Orange County. The Parcel ID for the site is 21-23-28-2463-00-001. The subject property is located in District 1.

On March 15, 2017, the Environmental Protection Division (EPD) received an Application to Construct a Dock for property owned by the Emerson Pointe Community Association Inc. Subsequently on March 22, 2017, EPD received an application for variance to Section 15-341(a) (principal use). Notifications for the variance to principal use were sent to all shoreline property owners within 300 feet of the subject property and no objections were received.

The subject property is a community recreation tract that is currently vacant except for two electrical towers that are part of a Duke Energy utility easement. The electrical towers do not meet the definition of principal use or principal structure as defined by Orange County code. Due to the size and shape of the parcel and location of the utility and conservation easements, the applicants are unable to construct a principal structure in order to establish principal use.

Page Two

October 3, 2017 – Consent Item Environmental Protection Commission
Recommendation for a Variance Request for the Emerson Pointe Community
Association Inc. Semi-Private Dock Construction Permit BD-17-03-025

The Environmental Protection Commission voted to uphold the recommendation of the Environmental Protection Officer and approved the request for variance to Section 15-341(a) (principal use).

ACTION REQUESTED: Acceptance of the recommendation of the Environmental Protection Commission to approve the request for Variance to Orange County Code, Chapter 15, Article IX, Section 15-341(a), for the Emerson Pointe Community Association Inc. semi-private Dock Construction Permit BD-17-03-025. District 1

JVW/DJ:mg

Attachments



ENVIRONMENTAL
PROTECTION
COMMISSION

Jonathan Huels
Chairman

Mark Ausley
Vice Chairman

David Ward

Norman Blackburn

Mark N. Corbett

Oscar Anderson

Sally Atwell

ENVIRONMENTAL PROTECTION DIVISION

David D. Jones, P.E., CEP, Manager

Community, Environmental and Development Services Department

3165 McCrory Place, Suite 200

Orlando, FL 32803-3727

407-836-1400 • Fax 407-836-1499

www.ocfl.net

ORANGE COUNTY
ENVIRONMENTAL PROTECTION COMMISSION
August 30, 2017

PROJECT NAME: Emerson Pointe Community Association Inc Semi-Private Boat Dock

PERMIT APPLICATION NUMBER: BD-17-03-025

LOCATION/ADDRESS: 5709 Emerson Pointe Way, Orlando, Florida 32819

RECOMMENDATION:

Pursuant To Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve the request for variance to Orange County Code, Chapter 15, Article IX, Section 15-341(a) (principal use), for the Emerson Pointe Community Association Inc. semi-private boat dock construction permit BD-17-03-025.

☒ EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

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

Signature of EPC Chairman: _____

EPC RECOMMENDATION DATE: 8/30/17



August 7, 2017

To: Environmental Protection Commission

From: David D. Jones, P.E., CEP, Manager
Environmental Protection Division

A handwritten signature in black ink, appearing to read "David D. Jones".

Subject: Emerson Pointe Community Association Inc. Semi-private Dock Variance Request

Reason for Public Hearing

The applicant, Emerson Pointe Community Association Inc. (Emerson Pointe), is requesting a variance to Section 15-341(a) (principal use) for a semi-private dock (Permit BD-17-03-025).

Location of Property/Legal Description

The project site is located at 5709 Emerson Pointe Way in unincorporated Orange County on Lake Chase. The Parcel ID for the site is 21-23-28-2463-00-001. The subject property is located in Orange County Commission District 1.

Public Hearing Notifications

The applicant and agent were notified of the hearing on August 1, 2017.

Staff Findings

On March 15, 2017, the Environmental Protection Division (EPD) received an Application to Construct a Dock (semi-private) for the subject property. Pursuant to Orange County Code, Chapter 15, Article IX, EPD staff evaluated the proposed application and required documents.

Subsequently, on March 22, 2017, EPD received an Application for Variance to Section 15-341(a) (principal use); and on July 18, 2017, a second Application for Variance was received for Section 15-342(c) (floor height through the conservation easement/wetland area).

Additionally, because the property is a community recreation tract for a platted residential subdivision, it is subject to the zoning requirements of Article IV, Chapter 38, Section 38-74(b)(4) (land uses on properties zoned P-D; planned development) and Section 38-79(132) (conditions for permitted uses and special exceptions) which states that: *"A park and recreation area owned or operated by a nonprofit organization, may be permitted only by special exception, except for parks and recreations areas (i) approved in conjunction with a preliminary subdivision plan (Chapter 34, Orange County Code), or (ii) located inside a platted residential subdivision and notarized letters of no objection are submitted by the president of the homeowner's association (if applicable) and all abutting property owners."*

Therefore, notarized Letters of No Objection (LONOs) were obtained from the owner(s) of the abutting property located at 5631 Emerson Pointe Way and the president of the homeowner's association regarding the change in use (construction of the dock) for the subject property. The western adjacent tract located at 5715 Emerington Crescent (Tract D) is also owned by the applicant.

Principal Use Variance

Section 15-341(a) states in part that *"No permit application shall be submitted unless there is a principal use established on the property."* Principal use is defined by Section 15-323 as *"a use of the upland parcel for residential, commercial or governmental purposes. At a minimum, a principal use shall be established by the issuance of a building permit for a principal structure."* Principal structure is defined as *"the building or structure in which the principal use of the parcel or lot is conducted."*

The subject property is currently vacant with the exception of two electrical towers that are part of a utility easement originally granted to Florida Power Corporation on May 16, 1966 (recorded June 3, 1966), and currently in favor of Duke Energy. The electrical towers do not meet the definition of principal use or principal structure as defined by Orange County Code. In addition, the utility easement prohibits the placement or construction of structures within its boundaries. Due to the size and shape of the subject parcel and location of the utility easement, this prevents the applicant from constructing a principal use structure. The applicants are therefore requesting to construct a semi-private community dock without establishing principal use for the property.

Notifications for the variance were sent to all shoreline property owners within 300 feet of the subject property on March 24, 2017. EPD has not received any objections to the proposed variance.

Pursuant to Section 15-350(a)(1), "the applicant shall describe (1) how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant (the hardship cannot be self-imposed); and (2) the effect of the proposed variance on abutting shoreline owners."

To address 15-350(a)(1)(i) The applicant has stated that *"The principle structure rule should really only apply to residential parcels. Community parcels often have just a dock or gazebo. Due to the existence of the electrical tower, they couldn't have a clubhouse (principal) on this parcel."*

To address Section 15-350(a)(1)(ii), the applicants have stated *"The existence of a community dock will not negatively impact the adjacent property owners. This community wants a place where they can meet and enjoy the lake."*

Floor Height Variance

Section 15-342(c) states in part that, "*Access walkways traversing any wetland shall be elevated a minimum of three (3) feet above the ground surface.*" In order to be compliant with the Americans with Disabilities Act (ADA), the applicant is requesting to construct an access walkway ramp commencing within the conservation easement/wetland area four (4) feet landward of the Normal High Water Elevation (NHWE) and zero (0) feet above ground level, increasing in elevation until it reaches two (2) feet above the NHWE. The upland buffer area of the conservation easement overlaps with the Duke Energy utility easement, therefore preventing the applicant from strict compliance to Section 15-342(c).

Section 15-350(a)(1)(i) states that "*The environmental protection officer may approve variances to the provisions of this ordinance to accommodate persons with disabilities or to comply with the Americans with Disabilities Act.*" Therefore, no action is required by the Environmental Protection Commission (EPC) for this issue because the variance to floor height through the conservation easement/wetland area can be approved by the Environmental Protection Officer (EPO) in order to comply with the ADA.

Enforcement Action

There has been no enforcement action on this property.

Staff Recommendation

The recommendation of the Environmental Protection Officer (EPO) is to approve the request for variance to Section 15-341(a) (principal use) to allow for the construction of a semi-private community dock.

<u>ACTION REQUESTED</u>	<u>PURSUANT TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-350(b), APPROVE THE REQUEST FOR VARIANCE TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-341(a) (PRINCIPAL USE), FOR THE EMERSON POINTE COMMUNITY ASSOCIATION INC. SEMI-PRIVATE BOAT DOCK CONSTRUCTION PERMIT BD-17-03-025.</u>
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SG/NT/ERJ/LC: mg

Attachments

Application for Boat Dock Variance



Application for Variance

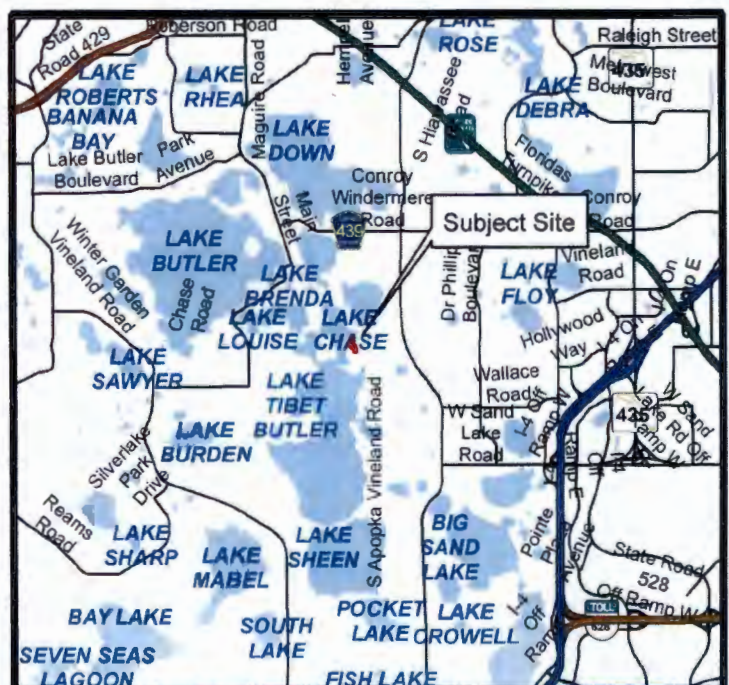
District # 1

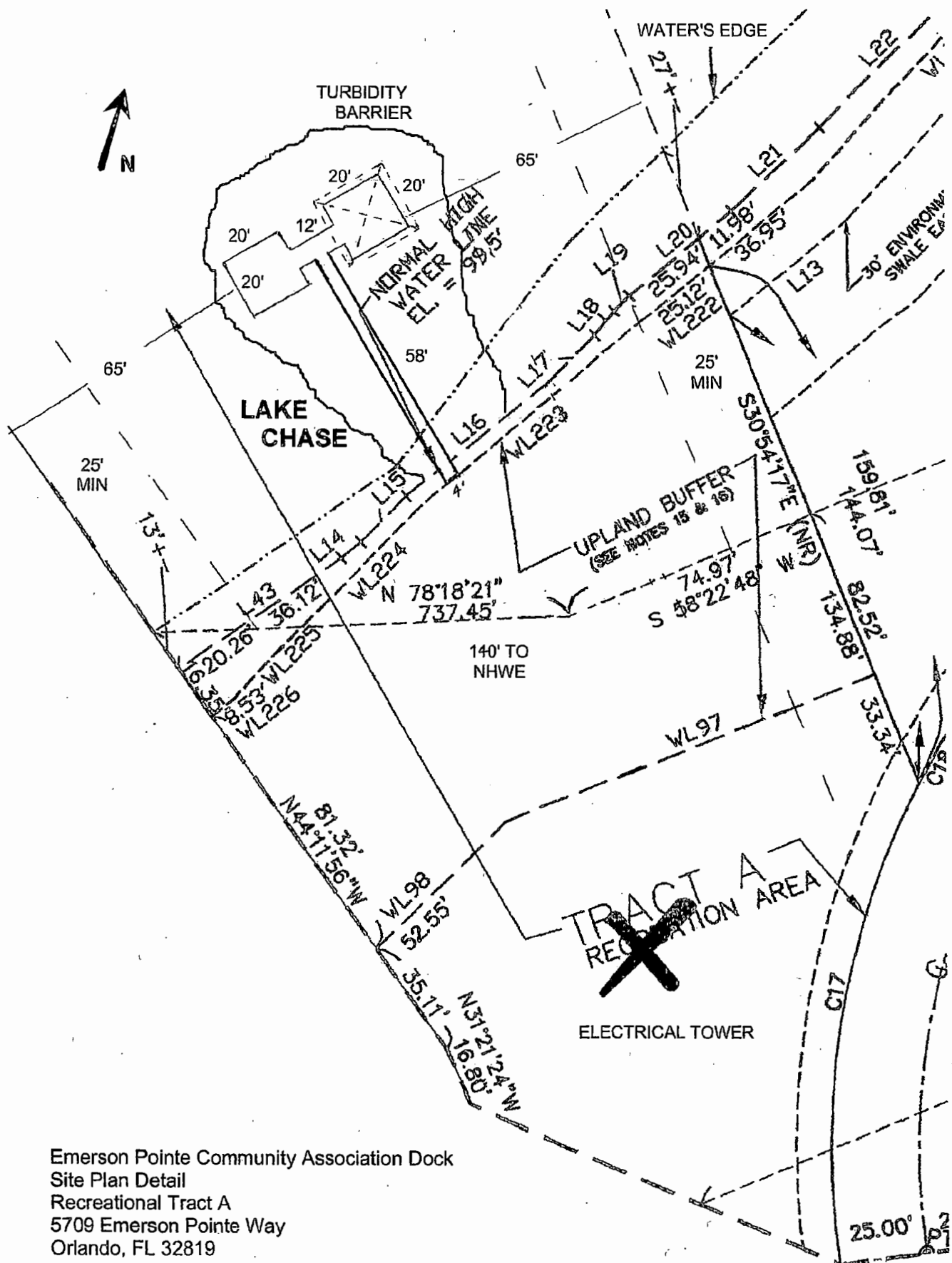
Applicant: Emerson Pointe
Community Association

Parcel ID: 21-23-28-2463-00-001

Project Site

Property Location







IN PART BEING A REPLAT OF A PORTION OF LOT 486 AND LOTS 487, 488 AND 489
BAY HILL SECTION 13, PLAT BOOK 10, PAGES 18 AND 19
PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.
Section 21, Township 23 South, Range 28 East
Orange County, Florida

DETAIL B

NOT TO SCALE

The State of Florida may have claims in title to those lands lying in the waters of Lake Okechobee, lands of the United States Government and/or the State of Florida, and/or the United States Government's control over navigable waters of similar character as to any part of the premises herein described which are submerged beneath navigable waters or may be artificially filled in lands in which there formerly navigable waters and of a submerged character.

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This Plot Prepared By:
HOLLIS ENGINEERING, INC.
605 East Robinson Street, Suite 210
Orlando, Florida 32801-7037
(407) 422-1118

**IN PART BEING A REPLAT OF A PORTION OF LOT 486 AND LOTS 487, 488 AND 489
BAY HILL SECTION 13, PLAT BOOK 10, PAGES 18 AND 19
PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.
Section 21, Township 23 South, Range 28 East
Orange County, Florida**

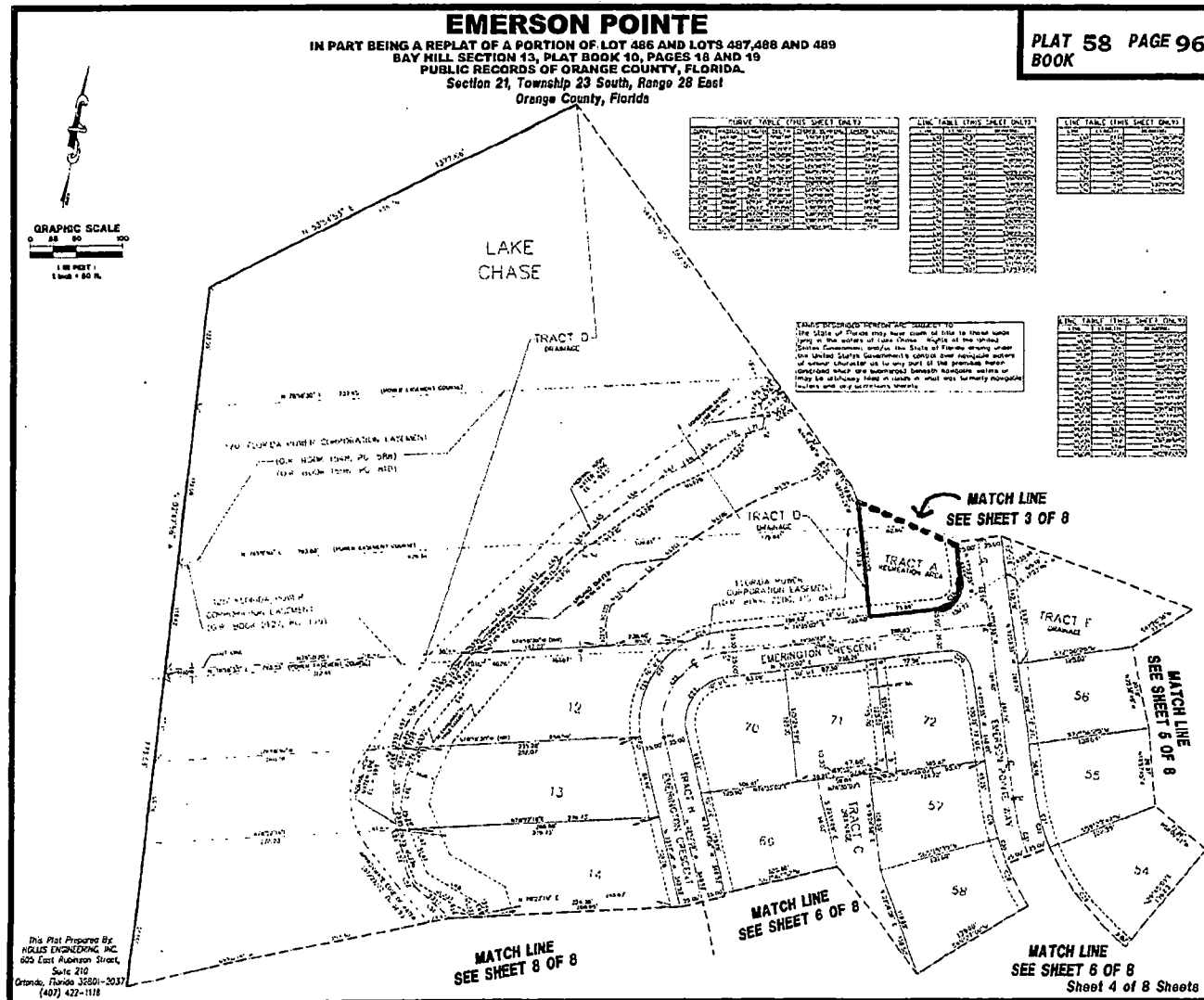
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THESE DESCRIBED PERSON ARE SUBJECT TO
The State of Florida may have claim of title to these lands
lying in the waters of Lake Okechobee. Rights of the United
States Government; and in the State of Florida during under
the United States Government's control over navigable waters
of water character is in part of the premises herein
described which are submerged beneath navigable waters or
may be ultimately held in title in what are formerly navigable
waters and are situated therein.





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MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
10/06/2004 08:18:48 AM
REC FEE 146.00

Prepared by and return to after
recording to:

Matthew S. Smith, Esq.
Akerman Senterfitt
255 S. Orange Avenue
Suite 1700
Orlando, FL 32801

-----[SPACE ABOVE FOR RECORDING PURPOSES]-----

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 14th day of September, 2004, by **BAY HILL DEVELOPMENTS (NORTH BAY), INC.** a Florida corporation, having an address at 370 Centerpointe, Suite 1136, Altamonte Springs, Florida 32701 ("Grantor") to the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT** ("Grantee"). As used herein, the term Grantor shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term Grantee shall include any successor or assignee of Grantee.

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in Orange County, Florida, and more specifically described in Exhibit A attached hereto and incorporated herein ("Property"); and

WHEREAS, the Grantor desires to construct Emerson Pointe Subdivision ("Project") at a site in Orange County, which is subject to the regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Permit No. 48-01326-P ("Permit") authorizes certain activities which affect waters in or of the State of Florida; and

WHEREAS, this Permit requires that the Grantor preserve, enhance, restore and/or mitigate wetlands and/or uplands under the District's jurisdiction; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual conservation easement as defined in Section 704.06, Florida Statutes (2000), over the Property.

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants, creates, and establishes a perpetual conservation easement for and in favor of the Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

{OR785595;1}

The scope, nature, and character of this conservation easement shall be as follows:

1. It is the purpose of this conservation easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland and/or upland areas included in the conservation easement which are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this conservation easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, which are permitted or required by the Permit, the following activities are prohibited in or on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic or nuisance vegetation in accordance with a District approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of any features or aspects of the Property having historical or archaeological significance.

3. Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any District rule, criteria, permit and the intent and purposes of this Conservation Easement.

4. Reservation of Riparian Rights. The following rights are specifically reserved to the Grantor, its heirs, successor and assigns:

a. To the extent provided by law, Grantor reserves all riparian rights which are consistent with the purpose of this statutory conservation easement. Notwithstanding, the Grantor specifically reserves the right to conduct limiting vegetation removal and clearing for the purpose of constructing boat docks and adjoining boardwalks. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or buffer areas within the Conservation Easement Area. This reservation does not release the Grantor from the duty of obtaining any necessary federal, state or local government permit authorizations or sovereign land approvals for construction of the docks or boardwalks.

b. Plans for the construction of boardwalks to a boat dock shall be reviewed and approved by the Grantee prior to any construction.

c. Since there are navigable waters immediately adjacent to the conservation area, boats and other similar surface uses are permissible within the navigable areas of the conservation area.

5. No right of access by the general public to any portion of the Property is conveyed by this conservation easement.

6. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Grantor shall pay any and all real property taxes and assessments levied by competent authority on the Property.

8. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions and restrictions of this conservation easement shall be borne by and recoverable against the nonprevailing party in such proceedings.

9. Enforcement of the terms, provisions and restrictions of this conservation easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

10. Grantee will hold this conservation easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state laws.

11. If any provision of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this conservation easement shall not be affected thereby, as long as the purpose of the conservation easement is preserved.

12. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

13. This conservation easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Orange County.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purpose imposed with this conservation easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this conservation easement; that Grantor has good right and lawful authority to convey this conservation easement; and that it hereby fully warrants and defends the title to the conservation easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has hereunto set its authorized hand this 14th day of September, 2004.

Signed, sealed and delivered
in our presence as witnesses:

Signature: Sean Westcott

Printed Name: Sean Westcott

Signature: Theresa Key

Printed Name: Theresa Key

GRANTOR:

**BAY HILL DEVELOPMENTS
(NORTH BAY), INC.,** a Florida
corporation

By: [Signature]

Name: Joseph P. Pasqualetti

Title: President

(corporate seal)

STATE OF FLORIDA

COUNTY OF Orange) ss:

On this 14 day of September, 2004 before me, the undersigned notary public, personally appeared Joseph P. Pasqualetti, personally known to me to be the person who subscribed to the foregoing instrument and did not take an oath, as President of Bay Hill Developments (North Bay), Inc., on behalf of said corporation, and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Brandy Daugherty
NOTARY PUBLIC, STATE OF FLORIDA
 My Commission DD173415
Print Name: Brandy Daugherty
My Commission Expires: 12.22.06

South Florida Water Management District
Legal Form Approved
Date: July, 2001



APPLICATION TO CONSTRUCT A DOCK APPLICATION FOR VARIANCE

(Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a)(1))

Mail or Deliver To: Orange County Environmental Protection Division
800 Mercy Drive, Suite 4
Orlando, Florida 32808
(407) 836-1400, Fax (407) 836-1499

****Enclose a check for \$409.00 payable to The Board of County Commissioners****

I Sheila Cichra on behalf of Jorge Perez (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-341(a) of the Orange County Dock Construction Ordinance.

1. Describe how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant (the hardship cannot be self-imposed):

The Principle Structure rule should really only apply to residential parcels. Community parcels often have just a dock or gazebo. Due to the existence of the electrical tower, they couldn't have a clubhouse (principle) on this parcel.

2. Describe the effect of the proposed variance on abutting shoreline owners:

The existence of a Community Dock will not negatively impact the adjacent property owners. This Community wants a place where they can meet and enjoy the lake.

Notice to the Applicant:

The environmental protection officer, environmental protection commission and the Board of County Commissioners may require additional information necessary to carry out the purposes of this article.

A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article.

By signing and submitting this application form, I am applying for a variance to the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, and represent that such information is true, complete, and accurate. I understand this is an application and not a permit, and that work conducted prior to approval is a violation. I understand that this application and any permit issued pursuant thereto, does not relieve me of any obligation for obtaining any other required federal, state, or local permits prior to commencement of construction. I understand that knowingly making any false statements or representation in this application is a violation of Sections 15-341 & 15-342, Orange County Code.

Name of Applicant: Sheila Cichra

Signature of Applicant/Agent Sheila Cichra

Date: 03/22/2017

Corporate Title (if applicable): President, Streamline Permitting, Inc.



APPLICATION TO CONSTRUCT A DOCK APPLICATION FOR VARIANCE

(Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a)(1))

Mail or
Deliver To: Orange County Environmental Protection Division
800 Mercy Drive, Suite 4
Orlando, Florida 32808
(407) 836-1400, Fax (407) 836-1499

****Enclose a check for \$409.00 payable to The Board of County Commissioners****

I Sheila Cichra on behalf of Jorge Perez (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-342 (c) of the Orange County Dock Construction Ordinance.

1. Describe how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant (the hardship cannot be self-imposed):

If we cannot build a small ramp leading up to the finished elevation of the dock, we would have to build a couple steps and then the dock would not be wheelchair accessible. Strict adherence to the code would render the dock non-ADA compliant.

2. Describe the effect of the proposed variance on abutting shoreline owners:

The existence of a small ramp in the fringe wetland will not impact the adjacent property owners in any way. Unless they have a family member in a wheelchair. Then it grants them access to the Community dock.

Notice to the Applicant:

The environmental protection officer, environmental protection commission and the Board of County Commissioners may require additional information necessary to carry out the purposes of this article.

A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article.

By signing and submitting this application form, I am applying for a variance to the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, and represent that such information is true, complete, and accurate. I understand this is an application and not a permit, and that work conducted prior to approval is a violation. I understand that this application and any permit issued pursuant thereto, does not relieve me of any obligation for obtaining any other required federal, state, or local permits prior to commencement of construction. I understand that knowingly making any false statements or representation in this application is a violation of Sections 15-341 & 15-342, Orange County Code.

Name of Applicant: Sheila Cichra

Signature of Applicant/Agent [Signature]

Date: 07/18/2017

Corporate Title (if applicable): President, Streamline Permitting, Inc.