Board of County Commissioners

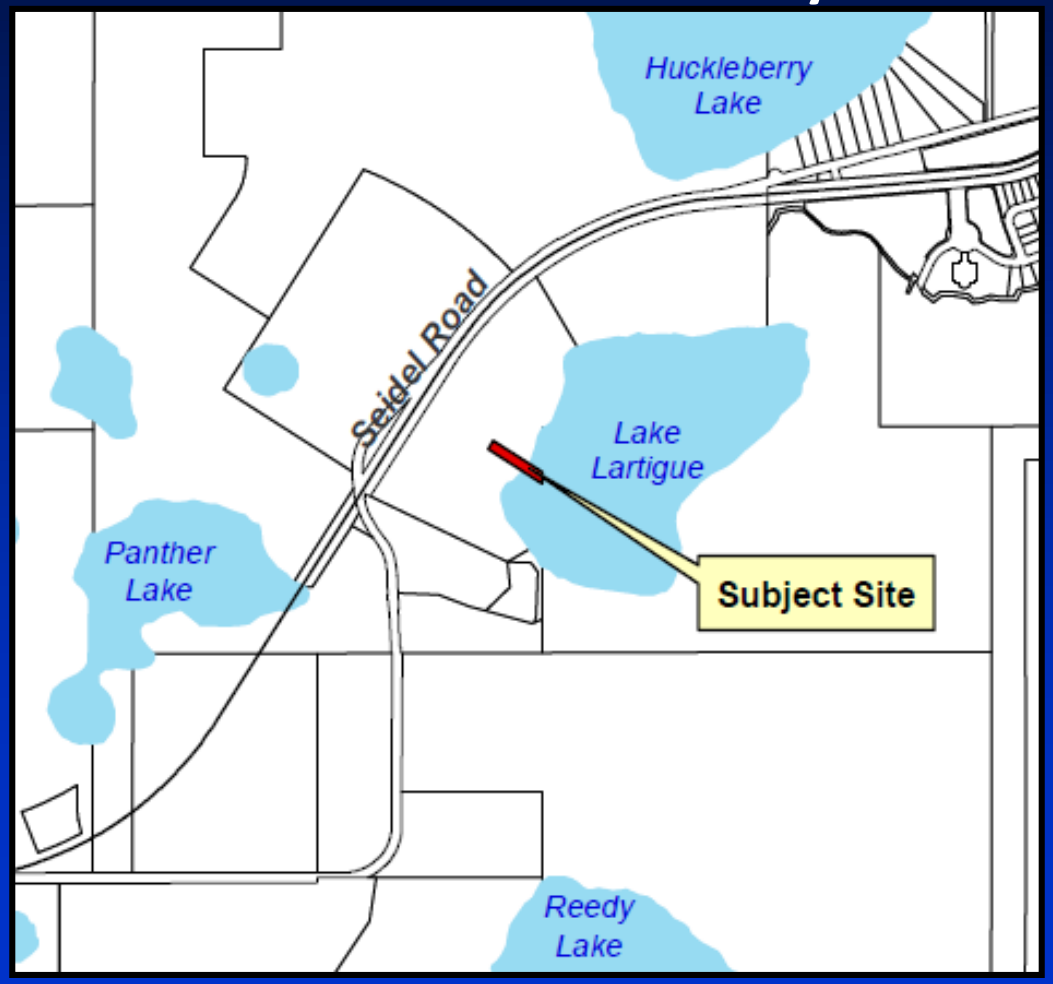
Appeal of the Recommendation of the Environmental Protection Commission Regarding a Variance Request for the Scott Mathemeier Boat Dock (BD-18-05-056)

Appellant: Scott Mathemeier

February 26, 2019

Location Map

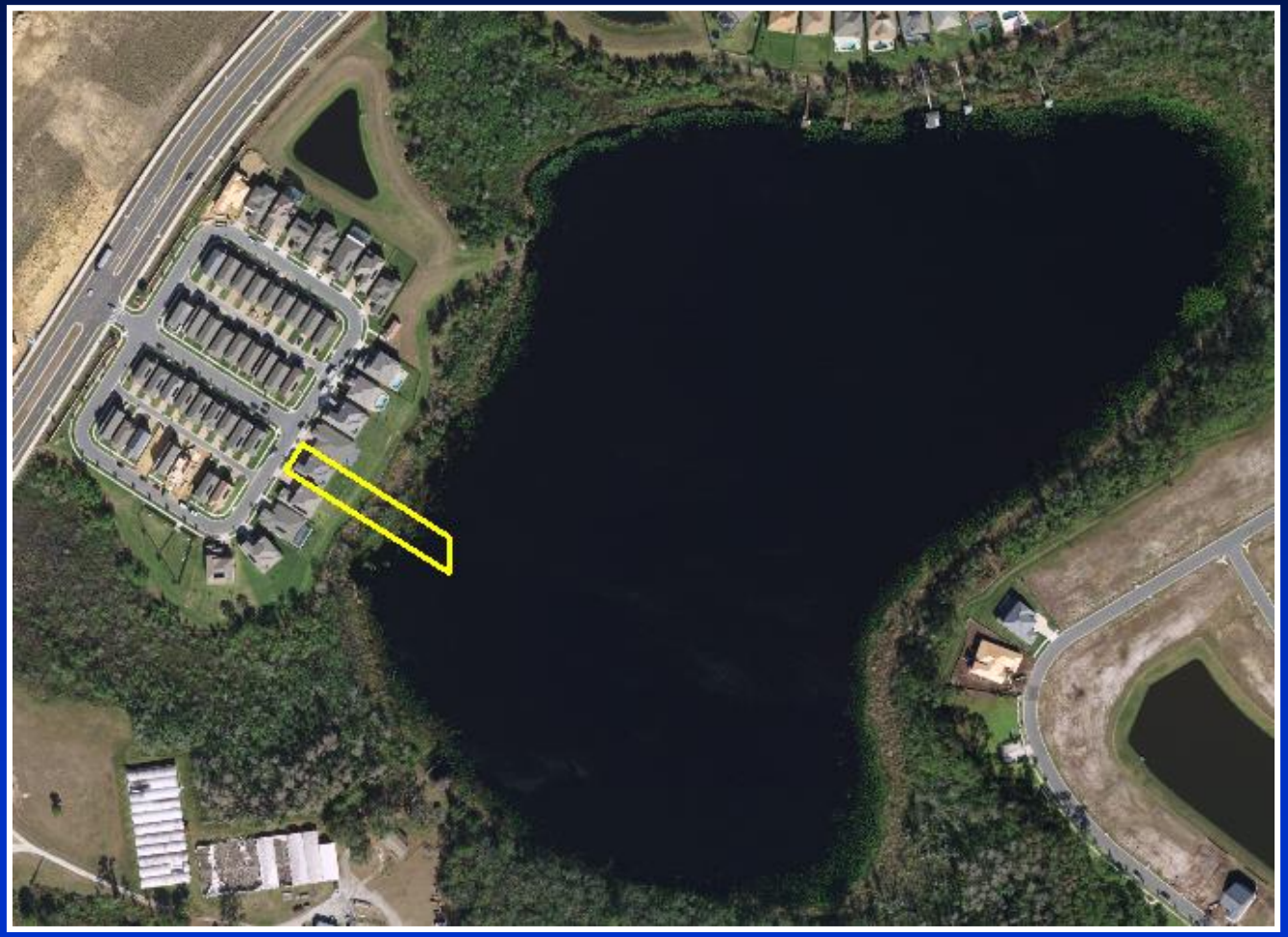
9184 Grand Island Way



Parcel ID No.: 04-24-27-7555-05-100

Aerial Photo

9184 Grand Island Way



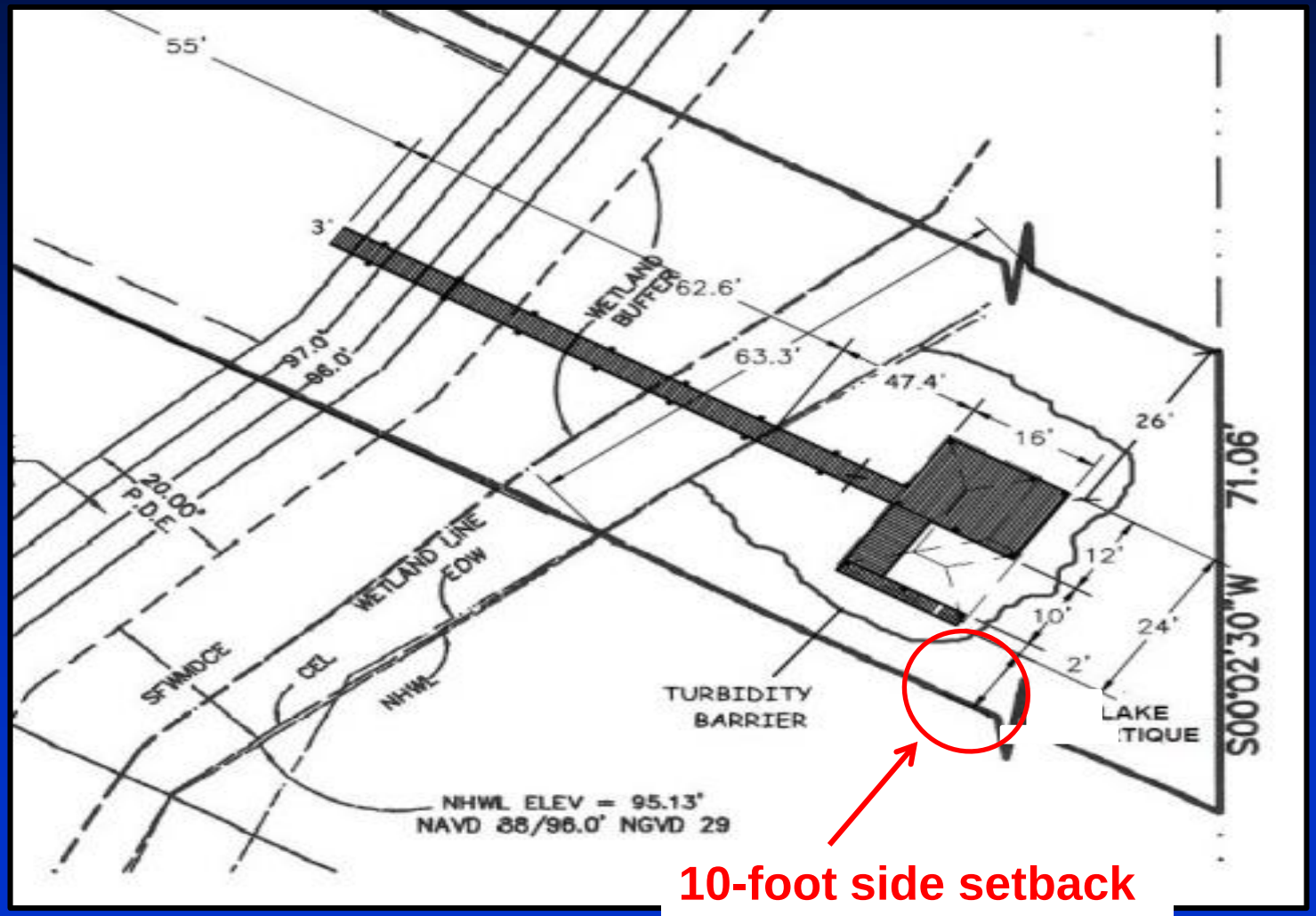
Parcel ID No.: 04-24-27-7555-05-100

Current Conditions

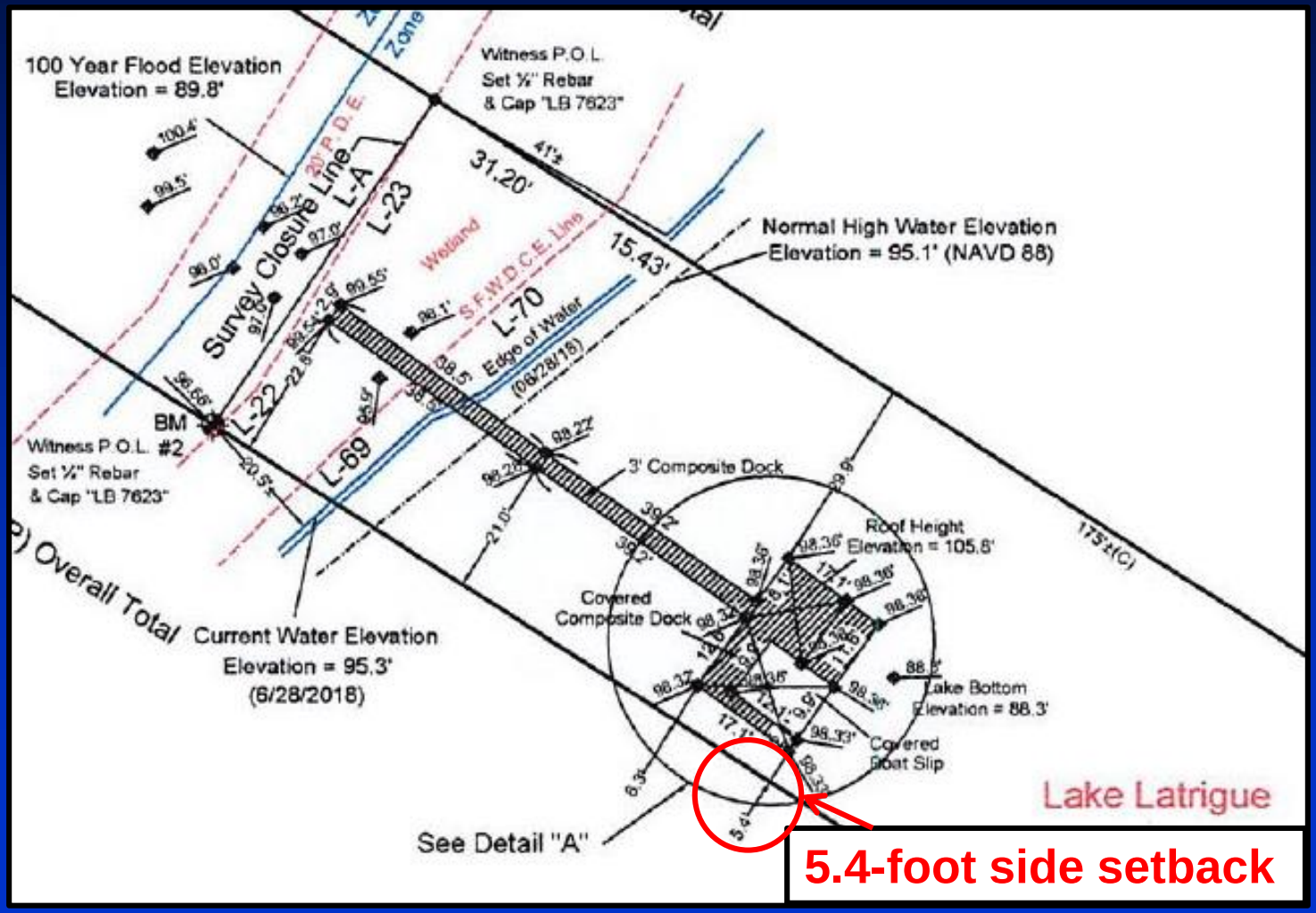
Project Review

- On May 7, 2018, the Environmental Protection Division (EPD) received an Application to Construct a Dock from Scott Mathemeier.
- On June 5, 2018, Dock Construction Permit No. BD-18-05-056 was issued.
- On July 16, 2018, EPD received an as-built survey of the constructed dock. The as-built showed that the side setback distance from the dock to the southwestern projected property line was only 5.4 feet, instead of 10 feet, as required by the permit and Orange County Code, Chapter 15, Article IX, Section15-343(a).
- On July 23, 2018, the applicant elected to apply for an after-the-fact variance to Section 15-343(a) (side setback) to allow the dock to remain as constructed.

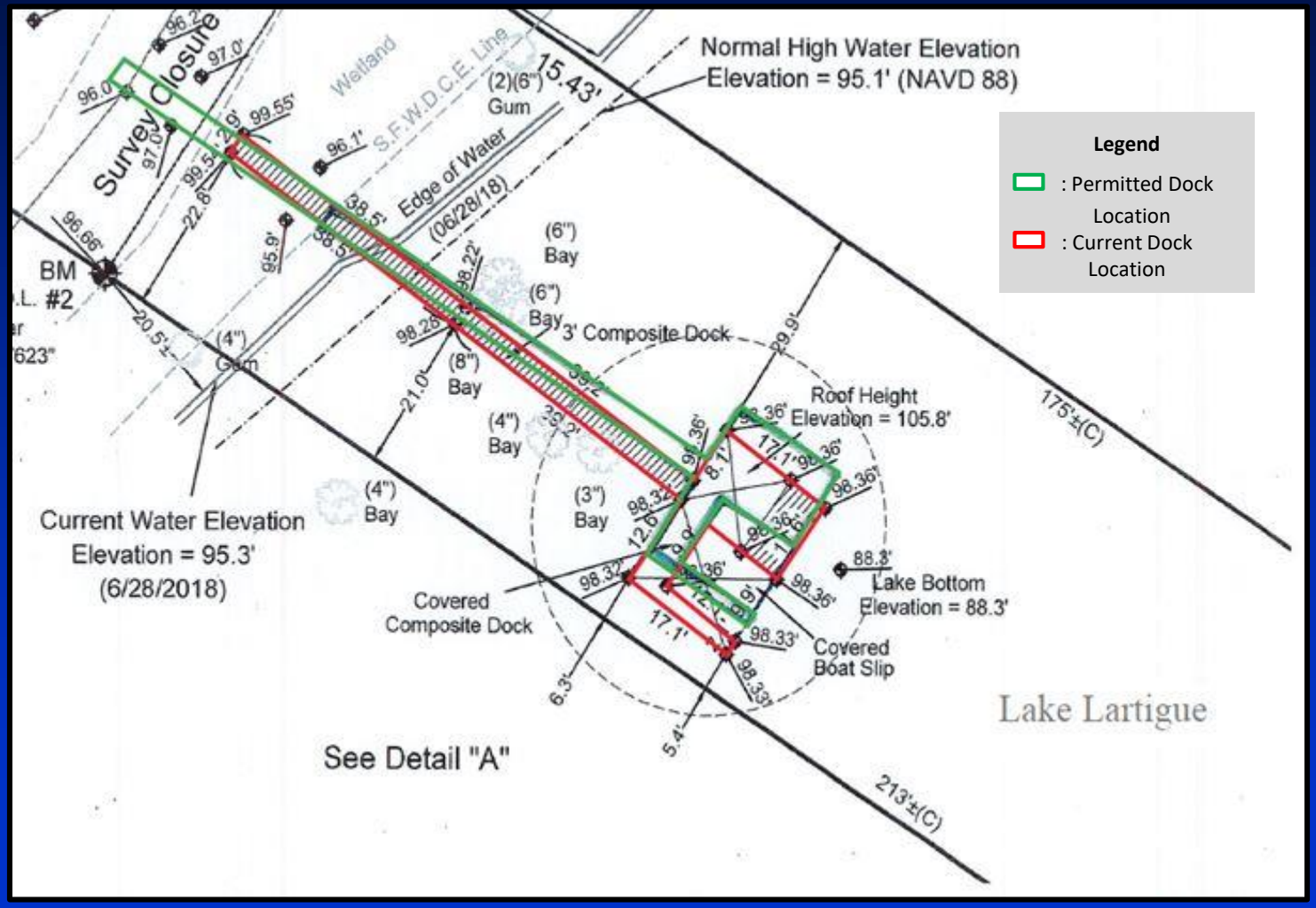
Approved Site Plan



As Built-Survey



Permitted Dock vs. As Built-Survey



Variance Criteria

- Pursuant to Section 15-350(a)(1), "…the applicant shall also 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."

Variance Criteria

- Pursuant to Section 15-350(a)(1), “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.”

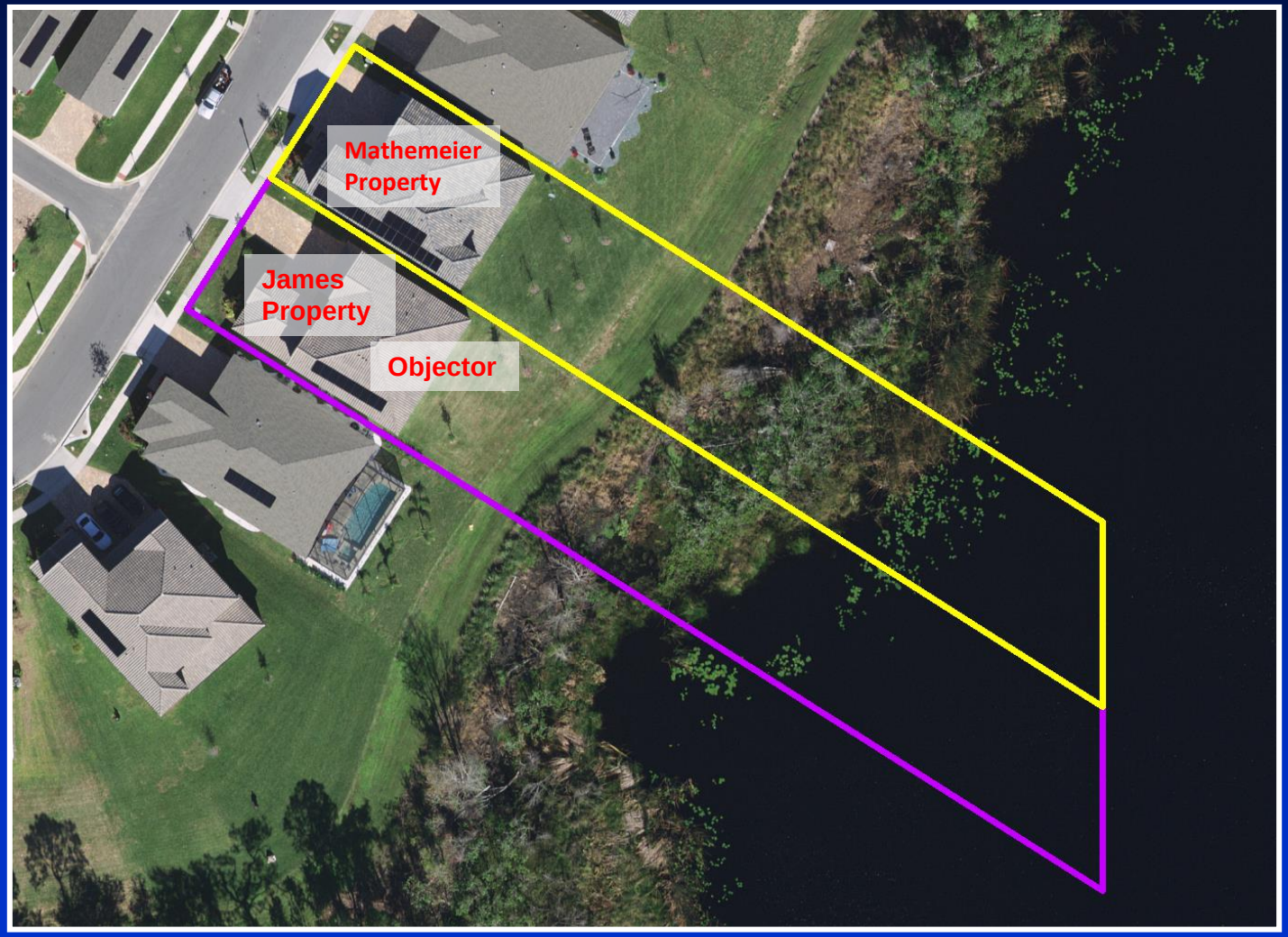
Variance Criteria

- **To address these criteria, the agent for the owner states:**
  - **(1) "*The location of the Bay trees made it impossible to construct the boat dock as permitted*."**
  - **(2) "*The proposed boat dock does not negatively impact the view or navigation for either adjacent property owner. However, the affected adjacent property owner is concerned about possible deed restrictions and was unwilling to sign a Letter of No Objection*."**

Neighbor Notifications

- On August 17, 2018, a Notice of Application for the variance request was sent to all shoreline property owners within 300 feet of the property. Any objections to the request must be received, in writing, by EPD within 35 days of receipt.
- On September 17, 2018, EPD received a letter of objection to the request for variance from Timothy James, the affected property owner to the southwest stating: "*…this variance request is nonessential and strongly opposed. It is injurious to my property and property value, potentially poses a threat to the safety of my future structure, while the scale of the applicant's project restricts my Lake views. Aesthetically, the proportions of the structure are an unsightly encroachment….*"

Objector



EPC Hearing – October 2018

- On October 31, 2018, the request was heard by the Environmental Protection Commission (EPC).
- The recommendation of the Environmental Protection Officer (EPO) was to deny the after-the-fact variance based on the fact that the applicant could not demonstrate that the affected property owner, Mr. James, was not adversely affected and that the hardship of complying with Orange County Code was not self-imposed.
- After hearing testimony from the applicant, the agent, and the objector, the EPC voted to uphold the EPO recommendation and unanimously deny the after-the-fact request for variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a) (side-setback).

EPC Appeal

- On November 5, 2018, EPD received an appeal from Scott Mathemeier of the EPC recommendation of denial.

Enforcement Case

- There is an open enforcement case on the subject property.
- The owner has completed one of the corrective actions by removing construction debris from the wetland.
- However, the owner is still required to do the following:
  - Move the dock to the required 10-foot setback; or
  - Obtain an after-the-fact variance for the 5.4-foot side setback; and
  - Pay an administrative penalty of $4,000.

Action Requested

- To affirm, reverse, or modify the decision of the Environmental Protection Commission to recommend denial of the variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a) (side-setback) for the Scott Mathemeier Dock Construction Permit BD-18-05-056. District 1

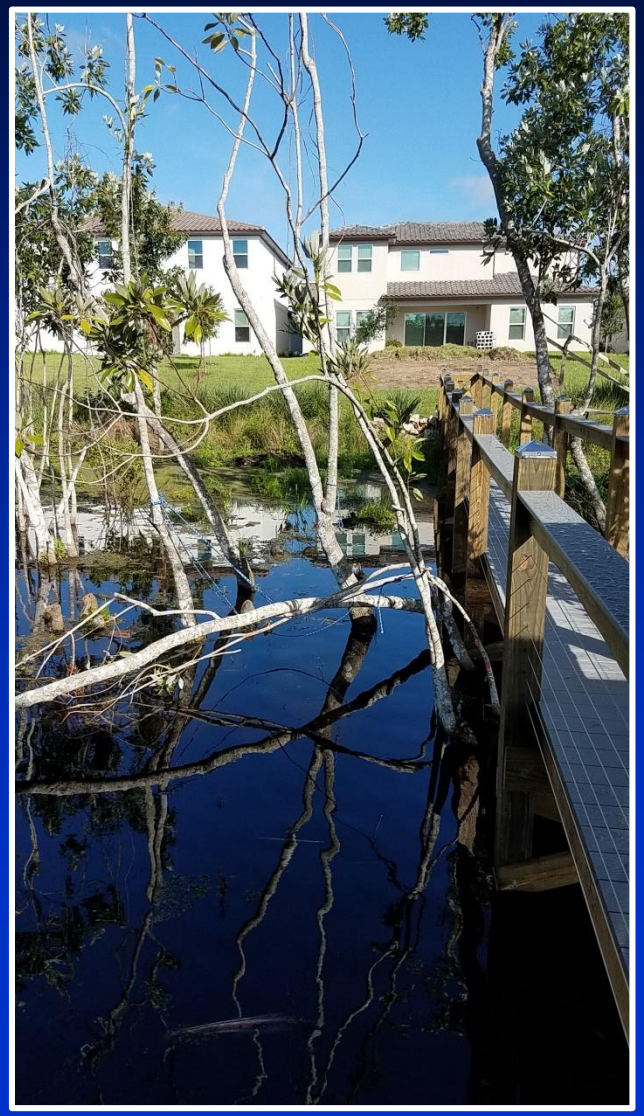
Previous Conditions

Before Dock Construction

Current Conditions

Tree Stumps (11/15/18)

Current Conditions



After Dock Construction

Current Conditions

Permitted Dock vs. As Built-Survey