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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION

FILED  
FEB 11 AM 9:20  
DIVISION  
ADMINISTRATIVE  
HEARINGS

DEBORAH GROEN SOBOLESKI,

Petitioner

*TL Sobol*

Vs.

Case No. \_\_\_\_\_

CITY OF CLEARWATER, FLORIDA

And

Lower Tribunal Case No.  
DOAH Case # 02-3637

CHRISTOPHER C. MARIANI

Respondents

**PETITION FOR CERTIORARI**  
**PURSUANT TO RULES 9.030(c)(3) AND 9.100(a), FLORIDA RULES OF**  
**APPELLATE PROCEDURE AND SECTION 4-505.D, CITY OF**  
**CLEARWATER COMMUNITY DEVELOPMENT CODE**

COMES NOW the Petitioner, DEBORAH GROEN SOBOLESKI  
(hereinafter referred to as "Petitioner"), and files this PETITION FOR  
CERTIORARI and says:

**BASIS OF THIS COURT'S JURISDICTION**

- 1) This is a Petition for Certiorari pursuant to Rules 9.030(c)(3) and 9.100(a),  
Florida Rules of Appellate Procedure.

- 2) This Court has jurisdiction pursuant to Rule 9.030(c)(3), Florida Rules of Appellate Procedure and Section 4-505.D, City of Clearwater Community Development Code.

**FACTUAL BASIS FOR THIS PETITION**

- 3) Petitioner is a natural person, is *sui juris*, and was a party to the proceeding below. Her substantial protected property interest arises from the ownership of real property immediately adjacent to and contiguous to the property of Respondent CHRISTOPHER C. MARIANI.
- 4) Respondent City of Clearwater, Florida (hereinafter referred to as “City”) is a Municipal Corporation which has enacted land use regulations entitled City of Clearwater Community Development Code (hereinafter referred to as “Code”) and was a party to the proceeding below.
- 5) Respondent CHRISTOPHER C. MARIANI (hereinafter referred to as “Mariani”) is a natural person, is *sui juris*, and was a party to the proceeding below. Mariani owns real property immediately adjacent and contiguous to that of Respondent. Mariani’s real property is the subject of the Development Order that initiated the appellate proceedings below.
- 6) The proceeding below was an administrative appeal from an adverse decision of the City’s Community Development Board. The appeal was

heard by an Administrative Law Judge appointed by the State of Florida, Division of Administrative Hearings pursuant to Section 4-505 of the Code.

- 7) The Administrative Law Judge issued a Final Order denying Petitioner's Appeal. The Final Order was rendered on January 13, 2003. [App. #1].
- 8) Section 4-505.D of the Code provides for appeal of the Administrative Law Judge's Final Order to this Court by Common Law Certiorari.
- 9) As set forth herein below, the Lower Tribunals failed to provide Procedural Due Process of Law and departed from the essential requirements of law to such an extent that a substantial miscarriage of justice has occurred. In addition, the decision below is not supported by substantial competent evidence.
- 10) As set forth below, the Petitioner was denied both fair notice and a meaningful opportunity to be heard in at a meaningful time and in a meaningful manner.
- 11) This cause resulted from the filing of an Application for Flexible Standard Development Approval (hereinafter referred to as "Application") relating to a proposed Dock with Covered Lifts [Boathouses] for a waterfront lot on Clearwater Beach and the proceedings that ensued thereafter. [App. #5].
- 12) The Application was filed by CHRISTOPHER C. MARIANI on or about January 18, 2002. [App. #5].

- 13) The Code provides that an applicant may ask for approval of deviations from strict requirements of the Code under certain circumstances. It allows, but does not require, the Community Development Coordinator to approve certain deviations from the strict requirements without Public Hearing and without any involvement of the Community Development Board if certain conditions are met. An application handled in this manner is referred to in the Code as a Level One Approval. The Application was handled as a Level One Approval. Accordingly, the Petitioner was denied any type of hearing prior to issuance of the Development Order. [App. #5, 6, 7 & 8].
- 14) In dealing with the Application, the Community Development Coordinator ostensibly forwarded the Application to various City Departments for comments and the Applicant was allowed to meet with representatives of those Departments before they provided their comments to the Community Development Coordinator. The Petitioner was not afforded the same opportunity.
- 15) Both the Application and the Staff Report that grew out of the comments received by the various Departments were seriously flawed and did not conform to the requirements of the Code as set forth below. [App. #5, Exh. F, pages 14 – 18/27].

- 16) It appears that the City Staff from the various Departments were never provided with a copy of the Petitioner's comments and submissions, and were never requested to comment upon them.
- 17) The Application was seriously flawed. See Exhibit A to Appeal Application [App. #5]. The flaws in the Application included:
- a) A detailed set of plans and specifications signed and prepared by a Florida professional engineer [bearing his/her seal and signature] was not submitted with the application, [as required by Section 4-202.A.24 of the Code].
  - b) During the process of review of the Application, the Application was amended, but a detailed set of plans and specifications signed and prepared by a Florida professional engineer [bearing his/her seal and signature] was never submitted, [as required by Section 4-202.A.24 of the Code].
  - c) The application included a request for covered boatlifts [boat houses] which have vertical sidewalls prohibited by the Code, Section 3-601.C.1.d.
  - d) Amendments were made after the staff review and recommendations.

17) The Staff Report issued after the staff review and recommendations was seriously flawed and inaccurate. [App. #5, Exhibit F, pages 16 & 17/27]. Errors in City Staff Report for 02/14/02 DRC Meeting listed by Page Number as follows:

a) PAGE 2

The third paragraph incorrectly states the distance to East property line and the square footage of the covered boatlifts. The distance to East property line is 72 feet, not 24 feet. The square footage of the covered boatlifts is 544 square feet each, not 144 square feet.

The fourth paragraph fails to note that the code requires that all permits be applied for simultaneously.

The proposed width in the table incorrectly lists 36 feet. The true width from the application is 39.75 feet.

b) PAGE 3

The Table incorrectly lists the distance to East property line as 24 feet. The true dimension is 72 feet.

Paragraph C.2 contains a false statement. The County report does not say that the proposal is more environmentally sensitive than the “EXISTING DOCK”. There is no existing dock.

Paragraph C.3 fails to analyze the criteria on the basis that it is not applicable. It is applicable to the overall decision making process. Meeting one of the three criteria is required to request relief, BUT DOES NOT ENTITLE THE APPLICANT TO RELIEF.

c) PAGE 4

Paragraph D.1 is in error. There is no existing house. Therefore, the dock will not be an accessory use, but a primary use.

The applicant is not replacing an existing dock with a more environmentally sensitive dock. There is no EXISTING DOCK, and the massive proportions of the dock proposed is hardly environmentally sensitive.

The development is not in harmony with the scale and character of adjacent properties. (Look at the aerial photographs and the graphic representations.)

Paragraph D.2 fails to address impairment of value at all. (On waterfront property in particular, VIEW IS VALUE.)

Paragraph D.4 fails to address the increased traffic of visitors coming to use two thirty foot plus boats. Similarly it fails to address marine traffic congestion which will no doubt be an issue when

you put two more large boats in such close proximity to the existing dock.

Paragraph D.5 states without support that the proposed development is consistent with community character and will improve it. There are no docks of similar magnitude and Mr. Mariani's proposed dock changes the somewhat uniform spacing of docks throughout the area. (See aerial photographs.)

Paragraph D.6 incorrectly states that there are no adverse impacts. It does not address visual, olfactory and acoustic impacts on adjoining property. The proposed positioning of the Mariani dock will impact use of the water space around the existing Soboleski dock, the boats operating will put additional fumes and noise in the Soboleskis' faces, the massive size of the covered boatlifts and vessels will adversely affect the visual aspects of

adjoining property.

- 18) On July 22, 2002, the Community Development Coordinator issued a Development Order granting CHRISTOPHER C. MARIANI's application. See App. #5, Exhibit E, pages 1,2.
- 19) The Development Order approved a non-existent plan and directed that a new plan be submitted for review and approval without notice to, or input from, the Appellant or the public. [App. #5, Exhibit E, page 2].
- 20) The Development Order is vague and ambiguous because it refers to a plan which contains two separate configurations without specifying which configuration is approved. [App. #5, Exhibit E, page 2].
- 21) The Development Order allows the construction of a dock with two covered lifts [boathouses] which are larger than anything else in the neighborhood and unprecedented in size. [App. #5, Exhibit F, App. #4].
- 22) The Development Order allows the construction of a dock with two covered lifts [boathouses] which will obstruct the view from Appellant's home of the channel in Clearwater Harbor and St. Joseph's Sound. [App. #4, Exhibits 1 - 8].
- 23) Appellant filed a timely appeal of the decision of the Community Development Coordinator's Development Order to the Community Development Board. [App. #5].

- 24) The Community Development Coordinator did not forward the entire file before her at the time she rendered her decision to the Community Development Board, but sent only a portion of the file to the Community Development Board, [App. #3, Exhibit B]. In other words the Community Development Coordinator CENSORED the file to delete portions that were adverse to her decision. [App. #3, Exhibit B, page 2].
- 25) When Petitioner discovered this, Petitioner promptly objected and demanded that the entire file be delivered to the Community Development Board. The Community Development Coordinator refused. [App. #3, Exhibit B].
- 26) On August 20, 2002 the Community Development Board held an abbreviated hearing upon the Appellant's Appeal as part of the Board's consent agenda.
- 27) At the August 20, 2002 Hearing, the Community Development Board acknowledged not having received the entire file and acknowledged not having received the entire March 27, 2002 submission by the Appellant's Attorney Mr. Battle which was attached to the Appellant's Application for Appeal. [App. #3, Exhibit B, App. #9, page 9].
- 28) The Community Development Board refused to allow the Appellant or the Appellant's Attorney to address the merits of the Appellant's Appeal and did not allow them to present testimony or evidence, [App. #1, page 10].

- 29) The Community Development Board refused to obtain and review the entire record before the Community Development Coordinator at the time she rendered her decision and issued the Development Order appealed from, [tape of Board meeting].
- 30) The Community Development Board allowed both of the Respondents and their Attorneys to address the merits of the Petitioner's Appeal. The Board allowed the Community Development Coordinator to give testimony on the basis for her decision, [tape of Board meeting].
- 31) The Respondent City of Clearwater's Attorney advised the Community Development Board that the Petitioner was required to establish the ability to prevail if the Appeal was allowed and a quasi-judicial hearing granted. She also advised that she was sure that the Petitioner would like to have a quasi-judicial hearing so that a better record would exist for subsequent appellate proceedings, [App. #1 and tape of Board meeting].
- 32) At the Hearing before this tribunal on November 18, 2002 the City Attorney said that the Appellant is required to "...show some colorable evidence that would lead the Board to set the matter for hearing." [App. #1 and tape of board meeting].

- 33) The City of Clearwater Code of Ordinances contains no standards of any kind to guide the Community Development Board in determining whether a quasi-judicial hearing should be granted [Section 4-504 of the Code].
- 34) The City Attorney and the Community Development Coordinator argued to the Community Development Board that they should not “lightly overturn” the decision of the Community Development Coordinator in arguing that no quasi-judicial hearing should be granted [tape of Board meeting].
- 35) The Community Development Board denied the Application for Appeal, denied the Appellant a quasi-judicial hearing, and affirmed the decision of the Community Development Coordinator [tape of Board Meeting].
- 36) It is apparent that the Community Development Board in reaching its decision relied upon the arguments on the merits allowed from the Respondents and their attorneys, relied upon testimony from the Community Development Coordinator, and further, from comments made by the Board and the Respondents, the Community Development Board must have believed that a full and meaningful appeal would be afforded the Petitioner before the Division of Administrative Hearings [tape of Board meeting].
- 37) The Community Development Board’s decision to deny a quasi-judicial hearing denied the Petitioner the ability to put the entire record before the Community Development Board and introduce evidence in support of her

appeal. Accordingly, Petitioner was denied procedural due process as she was denied an opportunity to be heard in a meaningful manner and at a meaningful time.

38) The Appellant's Application for Appeal raised a number of issues which if proven in a quasi-judicial hearing may have supported a reversal of the Community Development Coordinator's Development Order that is the subject of this Appeal, [App. #5, Exhibit F]. These included:

a) The Development Order appealed from fails to comply with the requirements of the Community Development Code, departs from the essential requirements of law and should be reversed because:

(1) It is based upon and concurs with the findings of the Development Review Committee. However, except for Mark Parry's February 15, 2002 "FAX MESSAGE" to Tim Johnson, there are no written findings in the file [or were not on, and prior to, July 18, 2002]. If the "comments" reported by Mr. Parry in his February 15, 2002 FAX MESSAGE are the findings the Development Order refers to, then they are based upon a flawed and

inaccurate Staff Report. See Maxwell G. Battle, Jr's letter to Cyndi Tarapani dated April 26, 2002; and

- (2) It approves a proposal based upon a non-existent plan; and
- (3) It grants relief that is inconsistent with the Flexible Standard Development criteria under 3-601.C.1.g; and
- (4) It grants relief that is inconsistent with other provisions of the Community Development Code including without limitation 1-103.A, 1-103.B.2, 1-103.E.3, 3-601.C.1.d, 3-601.C.1.e, 3-601.C.1.g and 3-913; and
- (5) It grants relief upon an application that does not comply with the requirements of 4-202.A.24; and
- (6) It approves a proposal which is incompatible with the surrounding area; and
- (7) The Application was amended after the Development Review Committee concluded its review; and
- (8) It refers to a Site Plan dated April 15, 2002 which was not in the city's file on the dates of four (4) reviews of the City File [3/15/02, 4/23/02, 6/06/02 and 7/18/02], the last of which was on July 18, 2002, the Thursday before the

Order was signed. There was however a single Architectural Drawing by Plisko Architecture, P.A. AIA dated, unsigned and unsealed with revisions of 4/10/02 and 4/11/02 entitled DOCK PLANS. This document depicts two dock configurations. If this is the “site plan” referred to by the Development Order, then the Development Order is vague and ambiguous in that it does not clearly identify which configuration on the “site plan” is required to be adopted by the Condition #4.

- (9) Although the Development Order requires concurrent issuance of a building permit for a residence and dock, it allows the dock to be permitted and built without first requiring the construction of a single family residence. If the residence was permitted but not built, this would result in the dock being allowed as a primary, rather than accessory use.
- (10) The Community Development Coordinator apparently misconstrued the effect of Section 3-601.C.1.g to require rather than allow deviations to the dock criteria.

39) The Petitioner's submissions constituted at least "colorable evidence" that would support reversal of the Community Development Coordinator's Development Order based upon findings that:

A) The Community Development Coordinator's decision misconstrued or incorrectly construed the provisions of the Community Development Code; and

B) That the Community Development Coordinator's decision was not in harmony with the intent and purpose of the Community Development Code; and

C) That the Community Development Coordinator's decision was detrimental to the public health, safety and general welfare.

40) At the time Mariani's Application was filed, Section 4-505 of the Code provided for an opportunity to an Appellant appealing from an adverse decision of the Community Development Board to present evidence to a Hearing Officer appointed by the Division of Administrative Hearings.

41) Effective May 2, 2002 Section 4-505 of the Code was amended to allow only the reception of the Record before the Community Development Board by a Hearing Officer appointed by the Division of Administrative Hearings and oral argument.

- 42) The effect of this amendment is to allow the Community Development Coordinator to unilaterally control the record which is reviewed by the Community Development Board unless the Community Development Board grants a quasi-judicial hearing.
- 43) In cases such as the instant case, a person whose substantial interests are affected by a development order and wishes to appeal the order [such as the Petitioner] is completely at the mercy of the whims of the Community Development Coordinator and the Community Development Board. The Community Development Coordinator is free to determine what the Community Development Board sees and the Community Development Board is free to arbitrarily and capriciously deny a quasi-judicial hearing in which the Appellant has its only opportunity to create a record to establish a right to relief from the Development Order. The appeal to a Hearing Officer provided by the amended code does not provide a meaningful appeal in such circumstances because it merely allows the Appellant an opportunity to argue legal issues to the Hearing Officer based upon a record that was solely controlled, created and edited by the very official whose decision is being appealed.

- 44) Petitioner argued to the Hearing Officer that the pre-May 2, 2002 should apply thereby allowing the Petitioner an opportunity to create an appropriate record.
- 45) The Hearing Officer held that the amendment was procedural and not substantive. Therefore, he concluded that the May 2, 2002 amendment applied and that Petitioner was not entitled to a quasi-judicial hearing in front of the Division of Administrative Hearings [App. #1].
- 46) The City Attorney also censored the Petitioner's appellate filings to once again attempt to craft the record in a manner that prevented any meaningful review.
- 47) This left the Petitioner without the ability to create an appropriate record to support her position and relegated her to a record carefully crafted by the very public officials whose decision was being appealed.
- 48) The Hearing Officer denied the Petitioner's Appeal and sustained the Community Development Board's approval of the Development Order [App #1].
- 49) A separately bound Appendix is being submitted along with this Petition as required by Rule 9.220, Florida Rules of Appellate Procedure. It is incorporated herein by reference. Appendix tab numbers are designated as "App. #\_\_\_.

**LEGAL ARGUMENT IN SUPPORT OF**  
**PETITION FOR CERTIORARI**

**Summary of Argument**

The decision below is not supported by competent substantial evidence. The Hearing Officer below as well as both the Community Development Coordinator and Community Development Board departed from the essential requirement of law, and the Petitioner was denied procedural due process. There were no findings of fact made by the Community Development Coordinator or the Community Development Board. The Code as applied in this case precluded the making of any findings of fact by the Hearing Officer because he was limited to receiving the “Record” [albeit one concocted by the Community Development Coordinator and the City Attorney] and receiving oral argument. However, the Hearing Officer erroneously made findings of fact without allowing the Petitioner to present any evidence. This procedure resulted in such a gross departure from the essential requirements of law as to result in a miscarriage of justice.

Further, the Petitioner has been denied procedural due process at every stage of the proceedings below. First, Petitioner was not provided an opportunity to meet with the City Staff who were supplying comments to the Community Development Coordinator, yet the Respondent Mariani and his counsel were. Second, the Petitioner was not allowed to be heard on the merits of her Appeal before the

Community Development Board, yet the Respondent Mariani and his counsel were. Third, the Community Development Board refused to obtain and review the entire record before the Community Development Coordinator at the time she entered the Development Order appealed from. Fourth, the Community Development Board refused to grant a quasi-judicial hearing to Petitioner to allow her to present evidence to the Board and argue the merits of her position. Fifth, the City Attorney censored portions of the Petitioner's appellate filings, refusing to send them to the Hearing Officer. Sixth, pursuant to the Development Order, Respondent Mariani will now be allowed to again modify his plans for the dock in question and submit them to the City for approval without any opportunity for Petitioner to review and object to the "Final Plans". Finally, the Hearing Officer denied a quasi-judicial hearing to Petitioner and then made findings of fact from the censored record upon which he based his decision.

As a result of the complete denial of procedural due process to Petitioner in the tribunals below, as well as the gross departures from the essential requirements of law, the Final Order entered by the Hearing Officer must be quashed and this cause remanded to the Hearing Officer with instructions to quash the decision of the Community Development Board and order the Community Development Board to conduct a quasi-judicial hearing on Petitioner's Appeal.

### **Standard of Review**

The standard of review on a Petition for Certiorari is well settled by Florida Law. The Court is required to examine the record below to determine:

- 1) Whether procedural due process was accorded; and
- 2) Whether the essential requirements of law were observed; and
- 3) Whether the administrative findings and judgment are supported by competent substantial evidence.

See, Haines City Community Development v. Leila Heggs, 658 So.2d 523 (Fla. 1995).

### **The Petitioner was Denied Procedural Due Process at every Stage of the Proceedings Below**

The legal doctrine of procedural due process restricts the means by which agencies of our government may reach decisions that adversely affect both the liberty of and the property rights of our people. County of Pasco v. Riehl, 620 So.2d 229 (Fla. 2d DCA 1993). It is the means by which our legal system insures that basic fairness is afforded all whose substantive rights are at issue. Key's Citizens for Responsible Government, Inc., 795 So.2d 940 (Fla. 2001). The Florida Supreme Court has clearly stated that:

Procedural due \*\*\* process requires both fair notice and a real opportunity to be heard “at a meaningful time and in a meaningful manner.” Key's Citizens,

*supra*, @ 948 [citing Mathews v. Eldridge, 424 U.S. 319, 333, 47 L.Ed. 2d 18, 96 S.Ct. 893 (1976)].

In the instant case, it is clear that Petitioner has never been granted either “...fair notice or a real opportunity to be heard at a meaningful time and in a meaningful manner.”

The Petitioner was never provided an opportunity to meet with the representatives of the City Departments and provide them with information that may have changed their comments and recommendations to the Community Development Coordinator prior to issuance of the Staff report. From the record available, it is clear that none of the Petitioner’s submissions to the Community Development Coordinator were distributed to the various Departments because, *inter alia*, the ultimate “Staff Report” was so incredibly flawed that the Staff did not even know that there was not an existing dock at the property. Mariani on the other hand was allowed to meet with the Staff at a staff review and provide information. The City’s Notice stated that the Development Review Committee would meet to review the project. [App. #6], but did not advise the Petitioner that Mariani would be allowed to attend or that Petitioner could attend [App. #8]. It also appears that another meeting was held on February 15, 2002 without Notice to the Petitioner. [App. #4, Exhibit 12].

Further, the Development Order appealed from allows another amended application and dock plan to be submitted without notice to Petitioner and without allowing her an opportunity to be heard with respect to the amended application and plan [App. #5, Exhibit D, pages 9 & 10/27]. Accordingly, it is clear that no “fair notice” has been provided or Petitioner.

Of even greater import than the lack of fair notice, the Petitioner has been denied a meaningful opportunity to be heard at a meaningful time and in a meaningful way. Petitioner suggests that there are several “meaningful times” for her to have been heard. The first would have been prior to the Development Review Committee Meeting, at the time the Staff was reviewing the Mariani Application. The second would have been before the “Professional Staff” rendered its report to the Community Development Coordinator. The third was before the Community Development Board. The next is at such time as Mariani submits an amended plan. Unfortunately, Petitioner has been denied the opportunity to be heard at any of these “meaningful times” as required by Key’s Citizens, *supra*.

Although Petitioner was able to submit some material to the Community Development Coordinator [and her counsel was able to meet with the Community Development Coordinator on one occasion], this material was apparently never shown to the City Staff [and was clearly not shown to them prior to rendering their staff report]. Further, the Petitioner was not allowed to attend the February 14,

2002 Development Review Committee meeting to present her position [App. #6] and was not even given Notice of the February 15, 2002 Meeting [See App. #4, Exhibit 12]. In addition, it is impossible to determine whether the City's Professional Staff may have rendered different thoughts and comments to the Community Development Coordinator if they had heard the Petitioner's position and considered the Petitioner's submissions prior to submitting [or declining to submit] their comments. But, these meetings and review periods were clearly "meaningful times" for the Petitioner to be allowed to be heard in a meaningful way.

The most egregious of the denials of the opportunity to be heard in a meaningful way occurred after the Petitioner's First Application for Administrative Appeal was filed and at the hearing scheduled before the Community Development Board. The Community Development Board hearing was tainted at the outset by the Community Development Coordinator who refused to submit the entire record before her to the Community Development Board and even refused to submit the entire Application for Administrative Appeal to the Community Development Board [App. #3, Exhibit B]. Then, the Community Development Board allowed the Respondent City and the Respondent Mariani to argue the merits of the Appeal while denying the Petitioner the right to argue the merits of her appeal [App. #1]. Of even greater import is the fact that the Community Development Board took

testimony from the Community Development Coordinator [tape of Board meeting]. Thus, not only did the Community Development Board sanction the Community Development Coordinator's submission of only those portions of the record and Application for Administrative Appeal that she wished to submit, but it simultaneously denied the Petitioner the right to be heard in any meaningful way. A clearer violation of the concept of procedural due process as mandated by Key's Citizens, supra, can hardly be imagined.

The Court in Key's Citizens, supra, also pointed out quite clearly that:

...The specific parameters of the notice and opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding. Key's Citizens, supra @ 948.

Applying the Key's Citizens tests, it becomes clear that the denial of procedural due process to Petitioner below was truly outrageous, flaunting all concepts of basic fairness and legal process for the following reasons:

- (1) The Community Development Coordinator issues a development order; and
- (2) The Petitioner files an Application for Administrative Appeal as provided by Section 4-502 of the Code; and

- (3) The Community Development Coordinator is then allowed by Section 4-503 of the Code to prepare a report recommending whether the appeal Petitioner has asserted from the order that the same Community Development Coordinator has issued should be granted; and
- (4) Not surprisingly, the Community Development Coordinator recommends that her decision be upheld; and
- (5) The Community Development Coordinator censors not only the record before her when she issued the order appealed from, but also censors the Petitioner's Application for Administrative Appeal. Interestingly, she does forward to the Community Development Board a drawing prepared for Respondent Mariani by the Community Development Board Member Alex Plisko purporting to show what Respondent Mariani is allowed to build in support of her position [App. #5, Exhibit C]; and
- (6) When a hearing is scheduled before the Community Development Board, despite there being a complete absence of standards to govern the Community Development Board's decision making process in determining whether to grant a

quasi-judicial hearing as provided in Section 4-504 of the Code, the Respondent City and the Respondent Mariani assert that some showing must be made that if a hearing is held, that the Petitioner will prevail; and

- (7) The Community Development Board refuses to allow the Petitioner the opportunity to argue the merits to demonstrate the manner in which Petitioner can potentially prevail, while allowing both Respondents to argue the merits and even taking testimony from the Community Development Coordinator; and
- (8) The Community Development Board then sustains the decision of the Community Development Coordinator without allowing the Petitioner to argue the merits or present evidence; and
- (9) And then when the Petitioner appeals to a Hearing Officer appointed by the Division of Administrative Hearings, THE CITY ATTORNEY CENSORS THE PETITIONER'S APPELLATE FILINGS TO THAT TRIBUNAL!; and
- (10) In the Appeal process before the Hearing Officer, the appeal procedure prescribed by the May 2, 2002 amendments to Section 4-505 of the Code are applied, which again precludes the Petitioner from being heard in a meaningful way because

she still has not been allowed to present evidence in her behalf as to why the Community Development Coordinator's Development Order should be reversed, modified, or altered.

In other words, the Respondent City acting through its Community Development Coordinator, its own City Attorney and its Community Development Board has made a mockery of the Constitutional guarantees of procedural due process. They allowed a City Official to make a decision that adversely affected the Petitioner's substantial property rights and then acted in concert as set forth above to insure that the Petitioner was not allowed a meaningful appeal of that decision.

It is impossible to imagine a more egregious denial of due process to a citizen whose substantial property rights are being adversely affected. The Respondent City's actions constitute the very sort of tyranny that our Constitutional guarantees of procedural due process are intended to preclude.

**The Respondent City Departed  
from the Essential Requirements of Law**

In assessing whether a local tribunal has departed from the essential requirements of law, the Appellate Court is to examine whether the correct rule of law was applied, and if not, whether the departure was sufficiently serious to constitute more than mere legal error, and to rise to the level of the sort of inherent

illegality or irregularity, abuse of judicial power or act of judicial tyranny that results in a miscarriage of justice. See Haines City, supra @ 527. Actions and errors that effectively deny an Appellate effective appellate review, or result in a miscarriage of justice meet this standard Haines City, supra @ 528.

The Second District Court of Appeal held in City of St. Petersburg v. Schweitzer, 297 So.2d 74, (Fla. 2<sup>nd</sup> DCA 1974) that an ordinance which delegates to a city council arbitrary and unfettered authority to decide zoning issues without imposing reasonable standards applicable to all property owners is not valid. The same principal is applicable to the case at bar. Section 4-505.B of the Code gives the Community Development Board the unfettered authority to determine whether to grant an administrative appeal and quasi-judicial hearing to an Appellant contesting a Level One Approval of a Request for Flexible Standard Development Approval. There are no standards of any kind set forth in the ordinance to guide the decision making process. Accordingly, the Community Development Board is free to act inconsistently from appeal to appeal and arbitrarily grant or deny a quasi-judicial hearing at the whim of four members of the Community Development Board. See Section 4-505.B of the Code. Further, there are no standards set forth in the ordinance which guide the process by which an Appellant [or Appellee] is allowed to address the Community Development Board before it reaches its decision. This clearly violates the precepts of City of St. Petersburg, supra.

Further, in the instant case, the Community Development Board capriciously traveled even further down the arbitrary lines of tyranny, by arbitrarily allowing the Respondent City and Respondent Mariani to offer legal argument on the merits and allowing the very official whose decision was being appealed to offer testimony, while denying the Petitioner the same rights. By virtue of this action, the Petitioner was denied any effective appeal because she was prohibited from developing a record that would show that the Community Development Coordinator's Development Order could not be sustained pursuant to Section 4-504.C of the Code.

This lack of standards and egregious action combined with the censoring of both the record and the Petitioner's Appellate filings at both the Community Development Board and Hearing Officer levels is exactly the sort of illegality, irregularity and tyranny resulting in a gross miscarriage of justice that constitutes an impermissible departure from the essential requirements of law. Essentially the City orchestrated a proceeding where its Community Development Board said the record before the Board was insufficient to support the Petitioner's Appeal when the Respondent City and Board had prohibited the Petitioner from putting into the record the very evidence that would have supported her entitlement to relief.

**The Decision Below is not Supported  
by Competent Substantial Evidence**

The decision of the Community Development Board and the Hearing Officer's Final Order must be supported by competent substantial evidence. Haines City, supra. Clearly neither decision is so supported. As set forth above, there were no written findings of fact made by either the Community Development Coordinator or the Community Development Board. The Hearing Officer recognized this fact and struggled to find some facts to support his decision [App. #1]. With no written findings of fact, there can be no substantial, competent evidence. Further, as set forth herein above, the Staff Report is severely flawed and was created without any input from the Petitioner. In addition, although the Hearing Officer was limited by his decision as to applicable rules of procedure to a legal review of the record that the City Attorney forwarded to him, he ostensibly made findings of fact without receiving evidence. Accordingly, there is no substantial competent evidence to support either of the decisions below.

**Conclusion**

As set forth herein above, the lower tribunals failed at every stage of the proceedings below to provide procedural due process of law to the Petitioner. The Respondent City made a mockery of the Constitutional guarantees of procedural due process by refusing to provide the Petitioner with a meaningful opportunity to

be heard at a meaningful time, while at the same time carefully censoring and concocting a record to support the decision of the Community Development Coordinator.

The appellate procedures provided by the Community Development Code as applied in this case fail to pass constitutional muster as well. There are no standards contained in the Code to guide the decision making process. The Community Development Board arbitrarily and capriciously imposed different standards upon the Petitioner and the Respondents.

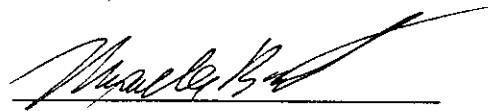
Finally, the decisions below are not supported by competent substantial evidence. In fact there are no findings of fact at all to support the decisions below which are based upon competent substantial evidence. Even the Hearing Officer acknowledged that the Community Development Board made no findings of fact [written or otherwise] and that no written findings were made by either the Development Review Committee or the Community Development Coordinator.

Accordingly, the Final Order of the Hearing Officer must be quashed and this cause remanded with instructions to enter a Final Order reversing the decision of the Community Development Board and ordering that Board to conduct a quasi-judicial hearing pursuant to Section 4-504 of the Code.

### **RELIEF REQUESTED**

The Petitioner requests that her Petition for Certiorari be granted, that the Final Order of the Hearing Officer be quashed, that this cause be remanded to the Hearing Officer with instructions to enter a Final Order reversing the decision of the Community Development Board and ordering the Community Development Board to grant Petitioner a quasi-judicial hearing pursuant to Section 4-504 of the Community Development Code, and that Petitioner be granted such other and further relief as may be appropriate and just.

Respectfully Submitted,



Maxwell G. Battle, Jr., Esq.  
Battle & Edenfield, P.A.  
206 Mason Street  
Brandon, FL 33511  
Fla. Bar No. 306630  
(813) 685-3014  
Attorneys for Petitioner

### **Certificate of Service**

The undersigned counsel certifies that a true and correct copy of this PETITION FOR CERTIORARI PURSUANT TO RULES 9.030(c)(3) AND 9.100(a), FLORIDA RULES OF APPELLATE PROCEDURE AND SECTION 4-505.D, CITY OF CLEARWATER COMMUNITY DEVELOPMENT CODE has been forwarded to Leslie K. Douglas Sides, Esq., P.O. Box 4748, Clearwater, FL 33758-4748 and Timothy A. Johnson, Jr., Esq., P.O. Box 1368, Clearwater, FL 33757 via U.S. Mail, First Class Postage prepaid, and to J. Lawrence Johnson, Administrative Law Judge, Division of Administrative Hearings, The DeSoto

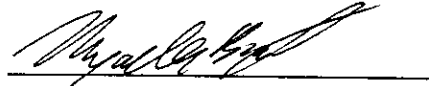
Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 via Overnight Courier Service this 10<sup>th</sup> day of February, 2003.



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**Certificate of Compliance with Rule 9.100(l)**

The undersigned counsel hereby certifies that the foregoing Petition complies with the font requirements of Rule 9.100(l), Florida Rules of Appellate Procedure.



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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION

FILED  
03 FEB 11 AM 9:20  
DIVISION  
ADMINISTRATIVE  
HEARINGS

DEBORAH GROEN SOBOLESKI,

Petitioner

Vs.

Case No. \_\_\_\_\_

CITY OF CLEARWATER, FLORIDA

Lower Tribunal Case No.

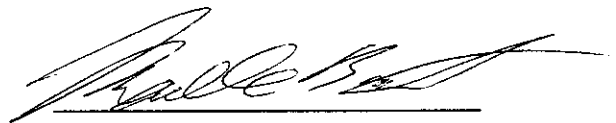
And

DOAH Case # 02-3637

CHRISTOPHER C. MARIANI

Respondents

**APPENDIX**



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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEBORAH GROEN SOBELESKI,

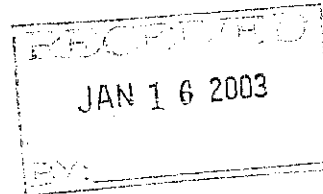
Appellant,

vs.

CITY OF CLEARWATER and  
CHRISTOPHER C. MARIANI,

Appellees.

Case No. 02-3637



FINAL ORDER

On November 12, 2002, an appeal hearing was held in this case in Clearwater, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Appellant: Maxwell G. Battle, Jr., Esquire  
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Johnson, Blakely, Pope, Bokor,  
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STATEMENT OF THE ISSUE

This hearing officer appeal under Section 4-505 of the City of Clearwater Community Development Code (Code) is the second of two administrative appeals available to and taken by Appellant, Deborah Groen Sobeleski (Sobeleski) under the Code. The issue in this second appeal is whether to sustain the decision of the City of Clearwater Community Development Board (CDB). The CDB's decision, made under Section 4-504 of the Code, was to allow Sobeleski's earlier Application for Administrative Appeal to the CDB from a Development Order (DO) issued by the City of Clearwater Community Development Coordinator (CDC) to remain on the CDB's consent agenda, which had the effect of denying the Application for Administrative Appeal and confirming the CDC's DO without a quasi-judicial hearing for receipt of additional evidence. The CDC's DO granted, with conditions, the Flexible Standard Development Application filed by Appellee, Christopher C. Mariani (Mariani, or Applicant), and subsequently amended, for a deviation to allow construction of a dock exceeding the 60-foot maximum length otherwise allowed by the Code.

### PRELIMINARY STATEMENT

The CDB's decision was made on August 20, 2002. Sobeleski (Appellant) filed her Appeal Application from the CDB's decision on August 26, 2002. On September 20, 2002, Appellee, the City of Clearwater (City) referred Sobeleski's Appeal Application to DOAH under Section 4-505 of Code. However, the referral letter from counsel for the City explained that the Appeal Application was not being forwarded in its entirety. See Finding 11, infra.

The parties waived the 60-day deadline for the appeal hearing under Section 4-505 of the Code, and the appeal hearing was scheduled for November 12, 2002, in the City of Clearwater.

At the appeal hearing, Appellant argued that, notwithstanding the language in Section 4-505 of the Code, that the sole purpose of the appeal hearing was to receive the record-on-appeal and hear oral argument, additional evidence should be received and considered during this appeal under rules of procedure in effect at the time of filing of the original application by Appellee, Christopher C. Mariani, on January 18, 2002.<sup>1</sup> Appellant also moved ore tenus for a continuance to allow time to prepare to introduce additional evidence. Appellees opposed these requests. Appellant's motion for continuance of the scheduled appeal hearing was denied, but ruling was reserved for a determination as to which rules of procedure applied to

this appeal and the need for an additional hearing for purposes of receiving additional evidence.

Appellant raised three issues in oral argument concerning the record-on-appeal previously forwarded by the City. First, Appellant contended the record-on-appeal was deficient in that it did not contain original documents but only authentic copies. On that issue, it was ruled that authentic copies were sufficient if not ideal. Second, Appellant contended that black-and-white copies of original color photographs presented to the City's Community Development Board (CDB) in the proceeding below were inadequate; and it was agreed that Appellant would substitute color photographs. Third, Appellant sought to add items to the record-on-appeal on the ground that they should have been received and considered by the CDB in the proceeding below. However, Appellant did not make it clear exactly what items she thought the CDB improperly failed to receive and consider (although this could have been ascertained if the City had forwarded the entire Appeal Application with the referral to DOAH. See Finding 11, infra.).

It was ruled that the City should have included the complete Appeal Application in its entirety, as filed, with all exhibits, in the referral to DOAH; that documents not received and considered by the CDB were not properly part of the "record-on-appeal" before to the CDB below; and that whether additional

items should have been received and considered by the CDB could be considered as one of Appellant's points on appeal to the hearing officer. After these rulings, the record-on-appeal was received over Appellant's objections.

On December 2, 2002, Appellant substituted color photographs for inclusion in the record-on-appeal, as agreed, and the parties submitted proposed final orders, which have been considered in the preparation of this final order.

On December 19, 2002, Appellant filed a complete copy of the Appeal Application. This filing made it possible for the first time to ascertain exactly what documents the City had failed to refer as part of the record-on-appeal in this case and what documents the CDC had failed to present to the CDB as part of the earlier Application for Administrative Appeal from the CDC's DO.

#### FINDINGS OF FACT

1. On January 18, 2002, Appellee, Christopher C. Mariani (Mariani, or Applicant), filed a Flexible Standard Development Application for a deviation from Section 3-601.C.1.b.<sup>2</sup> of the City of Clearwater Community Development Code (the Code) to allow construction of a 101-foot long dock (98 feet in length with a 3-foot step-down) where 60 feet would be the maximum otherwise allowed by the Code.

2. The deviation from Code apparently was requested because a Pinellas County Department of Environmental Management Water and Navigation Report dated November 26, 2001, stated:

Seagrass beds are located along this entire property, and extend out to a maximum of 65 ft. from the seawall in the area of the proposed dock although it becomes sparse at approximately 60 ft. It is the policy of this Department to limit structures over seagrasses to 4 ft. in width and to place the terminal platforms and boat slips beyond the limits of the seagrasses wherever possible.

3. At the time the application was filed, Section 4-505 of the Code provided that, in an appeal to a hearing officer from a decision of the City of Clearwater Community Development Board (CDB), the record before the CDB could be "supplemented by such additional evidence as may be brought forward during the hearing"; and the appellant's burden was to show that the CDB's decision could not be "sustained by the evidence before the board and before the hearing officer."

4. The "City of Clearwater Planning Department Staff Report for 2/14/02 DRC Meeting" recommended flexible standard development approval for a 92-foot long dock.<sup>3</sup> The stated "Bases for approval" were: compliance with the flexible standard development criteria under Section 3-601.C.1.g.<sup>4</sup> of the Code; compliance with the general applicability criteria under Section 3-913 of the Code; and compatibility with the surrounding area.

The Staff Report noted: (1) "there are no navigational concerns with the proposed development"; and (2) "the proposal is more environmentally sensitive than the existing<sup>5</sup> dock and constitute an improvement over existing conditions." The Report also stated that, since only one of the three criteria in Section 3-601.C.1.g. need be met, similarity to surrounding dock patterns was not applicable but that "the proposed dock, as amended, will be similar to surrounding dock patterns."

5. By letter dated March 5, 2002, Mariani amended his application to: decrease the length of the proposed dock to 95 feet; reduce the roof length over the larger capacity boat lift from 48 feet to 38 feet (to match the roof length over the smaller capacity lift); and reduce the total dock square footage to 476.25 square feet versus the 498 feet previously requested.

6. On or about April 14, 2002, Mariani submitted to the City a set of "Dock Plans" for a 92-foot long dock.<sup>6</sup> The document included "Diagram A Permittable Construction" and "Diagram B Proposed Construction." The apparent purpose was to contrast the dock Mariani would have been permitted to build in the absence of seagrasses with his proposed dock.<sup>7</sup>

7. On May 2, 2002, Section 4-505 of the Code was amended to provide that the appeal hearing before a hearing officer consists solely of reception of the record before the CDB and oral argument and that the burden on appeal to the hearing

officer is for "the appellant to show that the decision of the [CDB] cannot be sustained by the evidence before the [CDB], or that the decision of the [CDB] departs from the essential requirements of law." Under the amendment, no other evidence is to be considered.<sup>8</sup>

8. By letter dated July 22, 2002, the CDC<sup>9</sup> issued a DO stating concurrence with the DRC's "findings." Except for this reference, the record-on-appeal does not contain any evidence of the DRC's recommendation or any written findings by the DRC.<sup>10</sup> But the CDC approved Mariani's application, as amended, upon the same "Bases for approval" contained in the "City of Clearwater Planning Department Staff Report for 2/14/02 DRC Meeting," with the following conditions:

1. That a building permit for the proposed dock only be issued concurrently with, or subsequent to, building permit issuance for a principal, residential structure on the site;
2. That the proposed dock be relocated farther east (with the dock head centered on the midpoint of the waterfront property line, as measured at the seawall) and constructed perpendicular to the waterfront property line;
3. That the relocation of the dock meet all criteria under Section 3-601.C.1; and
4. That revised plans reflecting conformance with condition #2 be submitted with the building permit application, to the satisfaction of staff.

The DO then stated: "The approval is based on and must adhere to the site plan dated received April 15, 2002, or as modified by condition #2."<sup>11</sup>

9. On July 26, 2002, Sobeleski filed an Application for Administrative Appeal to the CDB from the CDC's decision. It included numerous exhibits. It appears that not all of the Application for Administrative Appeal and attachments were presented to the CDB for its consideration on August 20, 2002. One attachment was a letter dated March 27, 2002, from Sobeleski's attorney to the CDC and the City's Land Planner. This letter had 15 exhibits attached, but the CDC removed Exhibits 9-15 from the version of the letter presented to the CDB for its consideration. However, the letter stated that Exhibits 10-15 were attached for "ease of review," and the CDC separately presented copies of the documents contained in Exhibits 12-15 for the CDB's consideration. As for the other exhibits removed from the letter, Exhibit 9 was a computer diskette containing the photographs that were presented to the CDB for its consideration as Exhibits 1-8. Exhibit 10 was a letter dated March 6, 2002, from individuals named Blum to the City Planner stating no objection to the proposed dock. Exhibit 11 was a letter dated March 7, 2002, from Mariani to the CDC responding to opposition from Sobeleski and another individual to the proposed dock. While Exhibit 11 apparently was not

presented to the CDB for its consideration, it clearly was adverse to Sobeleski's position and was addressed at length in the letter from Sobeleski's attorney dated March 27, 2002. In

10. On August 20, 2002, the CDB considered the documents described in the immediately preceding Finding, together with a "City of Clearwater Planning Department Summary of Events," dated August 20, 2002, as well as oral presentations by the CDC, counsel for Sobeleski, and counsel for Mariani. The audiotape-recording of the oral presentations reveals that, upon the advice of the CDC and the Assistant City Attorney, the CDB attempted to limit the oral presentations to the question whether the CDB should remove Sobeleski's Application for Administrative Appeal from the CDB's consent agenda so as to cause a quasi-judicial hearing to be conducted, or should leave it on the consent agenda, which would result in upholding the CDC's decision. After being restricted by the CDB from addressing the merits, counsel for Sobeleski argued for a quasi-judicial hearing for reasons of "public policy." The CDB then allowed counsel for Mariani to address the merits in arguing that Sobeleski had made no showing as to why the CDC decision was incorrect so as to justify a quasi-judicial hearing.<sup>12</sup> The Assistant City Attorney concurred that some such showing should be necessary to justify removal from the consent agenda. After the oral presentations, the CDB voted to leave Sobeleski's

Application for Administrative Appeal on the CDB's consent agenda, thereby upholding the CDC's decision to issue the DO.

11. On August 26, 2002, Sobeleski filed an Appeal Application from the CDB's decision. On September 20, 2002, the City referred the Appeal Application to DOAH under Section 4-505 of the Code. However, the referral letter from counsel for the City stated:

Please note that I am not forwarding Exhibits 1-15 to the Appeal Application. Items 1-9 and 12-15 are already of record before the Board and are thus otherwise included. Items 10 and 11 were not of record below and are not being included, on that basis.

Although the manner in which the record-on-appeal was prepared made it exceedingly difficult to ascertain, it appears that the referral actually failed to forward the entirety of Exhibit B to the Appeal Application, which consisted of letters from Appellant's counsel dated August 16 and March 27, 2002.<sup>13</sup> The documents called "Exhibits" or "Items" in the referral letter actually were Exhibits 1-15 attached to the letter from Appellant's counsel dated March 27, 2002. As previously found, the CDC decided not to present to the CDB all attachments to the letter dated March 27, 2002. See Finding 9, supra. For that reason, the Assistant City Attorney "redacted" the Appeal Application by deleting the items not in fact presented (Exhibits 9, 10, and 11), as well as the items identical to

documents separately presented (Exhibits 12-15), to the CDB for its consideration. See Finding 11, supra.<sup>14</sup>

#### CONCLUSIONS OF LAW

##### Applicable Procedure and Burden on Appeal

12. Under Section 4-501 of the Code, the hearing officer has jurisdiction to hear appeals from decisions of the CDB regarding Level One approvals, such as the CDC's DO in this case.

13. Section 4-505 of the Code, governing hearing officer appeals, was amended on May 2, 2002, and again on July 18, 2002. See Finding 7, supra. It is concluded that those amendments are procedural in nature and apply to cases pending at the time of their adoption. See Life Care Centers of America, Inc. v. Sawgrass Care Center, Inc., 683 So. 2d 609, 613 (Fla. 1st DCA 1996). As a result, they would apply to this case even if it were considered to have been commenced upon the filing of Mariani's original application on January 18, 2002, instead of upon the filing of either Sobeleski's Application for Administrative Appeal to the CDB from the CDC's decision and her Appeal Application from the CDB's decision, both of which were after adoption of the amendments. See Findings 9 and 11, supra.

14. In its current form as a result of those amendments, the appeal hearing before the hearing officer consists solely of reception of the record before the CDB and oral argument. No

other evidence is to be considered. In addition, the burden on appeal to the hearing officer is for "the appellant to show that the decision of the [CDB] cannot be sustained by the evidence before the [CDB], or that the decision of the [CDB] departs from the essential requirements of law." Section 4-505.C. of the Code.

15. While Section 4-505.C. of the Code requires the CDB's decision to be sustained by "the evidence," not by "competent, substantial evidence," the Court's discussion of the meaning of that concept in DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957), is instructive:

We have used the term "competent substantial evidence" advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. . . . In employing the adjective "competent" to modify the word "substantial" we are aware of the familiar rule that in administrative proceedings the formalities and the introduction of testimony common to the courts of justice are not strictly employed. . . . We are of the view, however, that the evidence relied upon to sustain the ultimate findings should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent, the "substantial" evidence should also be "competent."

Id. at 916 (citations omitted.) It also has been held that whether a decision "departs from the essential requirements of law" amounts to an inquiry into whether the decision-maker "applied the correct law." Haines City Community Development, 658 So. 2d 523, 530 (Fla. 1995). In this case, Appellant was unable to demonstrate either that the CDB's decision could "not be sustained by the evidence before the [CDB]," or that it "departs from the essential requirements of law."

#### Findings of Fact Requirement

16. Notwithstanding the clear appellate review nature of the hearing officer appeal process under current Section 4-505, part D of Section 4-505 still requires the decision of the hearing officer to include findings of fact. This requirement is problematic. Review under Section 4-505 of the Code is the second of two appellate reviews available for what the Code calls Level One development approval decisions. See Section 4-501 of the Code. A hearing officer (Administrative Law Judge) acting in an appellate review capacity is without authority to reweigh conflicting evidence presented below or to substitute his or her judgment for that of the fact finder below on the issue of the credibility of witnesses. See Haines City Community Development v. Heggs, supra, at 530. As such, the only true "findings of fact" that properly could be made at this level of review would be findings reporting what occurred below

and what occurred procedurally in this case (i.e., in this case, findings as to the preparation of the record-on-appeal.) Such "findings of fact" could report findings below, but such findings are minimal. No findings were made by the CDB during its appellate review below. The DO stated that the CDC "concurred with the findings of the Development Review Committee," but it does not appear from the record-on-appeal in this case that any written "findings" were made by the DRC other than the ultimate findings of fact that can be gleaned from the DRC's Bases for Approval, which were adopted in the DO. In the absence of any other "findings of fact" below, the problematic requirement in Section 4-505 of the Code that the Final Order include findings of fact has been met by reciting parts of the proceedings below, including the Bases for Approval.

#### Legal Context of CDB Decision

17. The decision of the CDB on the first administrative appeal from the CDC's DO was made pursuant Section 4-504 of the Code, which provides in pertinent part:

B. Upon receipt of an application/notice of appeal from a Level One approval (flexible standard) from an abutting property owner, the [CDB] shall place the appeal on the consent agenda of the next scheduled meeting of the board. . . . The appeal may be removed from the consent agenda only by a vote of at least four members of the [CDB]. If the appeal is not removed from the consent agenda, the decision of the [CDC] is confirmed as part of the consent agenda by a

vote of the majority of the members of the board. If the appeal is removed from the consent agenda, the [CDB] shall review the application, the recommendation of the [CDC], conduct a quasi-judicial public hearing on the application in accordance with the requirements of Section 4-206 and render a decision in accordance with the provisions of Section 4-206(D)(5) granting the appeal, granting the appeal subject to specified conditions or denying the appeal.

C. In order to grant an appeal, overturning or modifying the decision appealed from, the [CDB] shall find that based on substantial competent evidence presented by the applicant or other party:

1. The decision appealed from misconstrued or incorrectly interpreted the provisions of this development code;
2. That the decision will be in harmony with the general intent and purpose of this development code; and
3. Will not be detrimental to the public health, safety and general welfare.

While the word construction in Section 4-504.C. of the Code is awkward and results in facial ambiguity, it is concluded that, for it to make any sense in context, the "decision" mentioned in paragraph 2 must refer to the decision of the CDB granting, overturning or modifying the decision appealed from, not the decision appealed from, and that paragraph 3 also must refer to the decision of the CDB for the same reason. For that reason, to prevail in the first-tier appeal to the CDB, an appellant would have to persuade the CDB (after a quasi-judicial hearing) that the CDC's decision misconstrued or incorrectly interpreted

the provisions of the Code. The questions on this second-tier, hearing officer appeal are whether the CDB's decision, made without the benefit of a quasi-judicial hearing, is "sustained by the evidence before the [CDB]" and whether it "departs from the essential requirements of law." Section 4-505.C. of the Code.

#### Review of CDB's Decision

18. Addressing Mariani's position first, the law generally does not require a useless act. See DeWitt v. School Bd. of Sarasota County, 799 So. 2d 322, 325 (Fla. 2d DCA 2001).

Mariani argued that the CDC clearly did not misconstrue or incorrectly interpret any Code provision and that a quasi-judicial hearing would have served no purpose. For that reason, Mariani contended, the CDB's decision was sustained by the evidence and did not depart from essential requirements of law.

19. Under Section 4-206.D.4. of the Code, the "burden of proof is upon the applicant to show by substantial competent evidence that he is entitled to the approval requested." Dock requirements are set out in Section 3-601 of the Code, which provides in subsection C.1.g. in pertinent part as follows:

The [CDC] may grant deviations from the requirements of this section as a Level One (minimum standard) approval provided that signed and notarized statements of no objection are submitted from adjacent waterfront property owners, as well as signed and notarized statements on the

Pinellas County Water and Navigation Control Authority permit application. In the event that such statements cannot be obtained, applications for deviations may be approved by the [CDC] through a Level One (flexible standard) approval process based on one of the following:

i) The proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed 25 percent of the width of the waterway; or

ii) The proposed dock location needs to be adjusted to protect environmentally sensitive areas; or

iii) The property configurations precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns.

Only one of these conditions for approval are required to be met, and there was no question but that Mariani met both of the first two conditions.

20. Appellant contends that, notwithstanding compliance with Section 3-601.C.1.g. of the Code, the CDB erred by not requiring a quasi-judicial hearing on the issue whether Mariani met the "General Standards for Level One and Level Two approval conditions" under Section 3-913 of the Code, which provides:

A. Conditions which are imposed by the [CDC] and the [CDB] pursuant to a Level One or a Level Two approval shall ensure that:

1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.

2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.

3. The proposed development will not adversely affect the health or safety or persons residing or working in the neighborhood of the proposed use.

4. The proposed development is designed to minimize traffic congestion.

5. The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.

6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.  
B. In the event of an express conflict between a particular flexibility criterion and a provision of Article 3, the flexibility criterion shall govern unless the context clearly implies that the Article 3 provision should control.

21. Mariani argues that, under Section 3-913.B., Section 3-601.C.1.g. supercedes the requirements of Section 3-913.A. But there is no express conflict between Section 3-601.C.1.g. and Section 3-913.A. As a result, it is concluded that Section 3-913.A. did apply. (The CDC's DO seemed to imply as much by making compliance with Section 3-913 one of the "Bases for approval." See Findings 4 and 8, supra. In addition, the City argues in its Proposed Final Order that Appellant "failed to show that the General Standards for Level One approval . . . contained in Section 3-913 of the Code were not met.") For that reason, it cannot be said that a quasi-judicial hearing would be

a "useless act," as argued by Mariani. On the other hand, it also cannot be said, based on the record-on-appeal in this case, that the CDC misconstrued or misinterpreted Section 3-913 of the Code.

22. As previously concluded, no standards are provided in Section 4-504.B. of the Code to guide the CDB's decision on the question of whether to remove an appeal from its consent agenda for purposes of conducting a quasi-judicial public hearing. As a result, it cannot be said that the CDB applied the incorrect law.

23. The City suggested that the CBD's decision was sustained by the evidence under either of two possible standards: a requirement that the CDB exercise sound discretion; or a requirement that the appellant make a showing of a colorable basis for overturning the CDC's DO. It is concluded that the former standard applied and that the CDB's decision should only be overturned if the CDB abused its discretion. Cf. e.g. Smith v. Coalition to Reduce Class Size, 827 So. 2d 959, 961 (Fla. 2002) ("order imposing a permanent injunction lies within the sound discretion of the trial court and will be affirmed absent a showing of abuse of discretion"); Aerolineas Argentinas, S.A. v. Gimenez, 807 So. 2d 111, 116 (Fla. 3d DCA 2002) (trial court's exercise of discretion to determine forum non conveniens to be upheld if reasonable);

State v. Batterton, 784 So. 2d 1259 (Fla. 5th DCA 2001) (motion for new trial addressed to court's sound discretion, which is upheld unless abuse of discretion).

24. Appellant argued in her Proposed Order that the City's proposed "showing of colorable basis" standard was met. But it is concluded that the CDB's decision would also be sustained by the evidence under that standard.

25. Appellant also argued that the CDB erroneously believed that a second-tier appeal to a hearing officer under Section 4-505 of the Code would afford Appellant a "full and meaningful appeal"--essentially, a de novo hearing. But the record-on-appeal does not support this argument.<sup>15</sup>

#### Record-on-Appeal

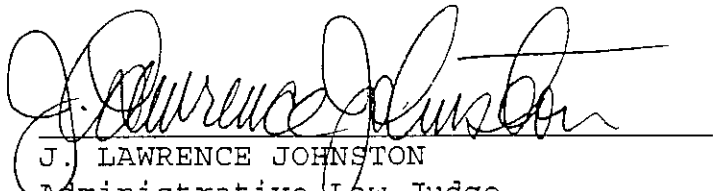
26. A troublesome aspect of this case was the City's handling of the records in the two appeals. In the first-tier appeal, Section 4-504.B. of the Code required that the CDB make its decision whether to remove Sobeleski's appeal from the CDB's consent agenda based on the Application for Administrative Appeal. But the CDC failed to present to the CDB the entire Application for Administrative Appeal for its consideration. See Finding 9, supra. In the second-tier appeal, the City "censored" the Appeal Application and did not forward items not presented to the CDB for its consideration. See Finding 11, supra. It is concluded that the Appeal Application should have

been forwarded to DOAH in its entirety and that, while Section 4-505 of the Code does not specify the contents of the record-on-appeal, it should have included items requested to be presented but, for whatever reason, not presented to the CDB for its consideration. Cf. Rules 9.190(c) and 9.200(a), Florida Rules of Appellate Procedure<sup>16</sup>. While it ultimately was determined that the shortcomings in the handling of the record-on-appeal both below and in this appeal did not require reversal, they added to the time and effort required to fully comprehend and decide some of the issues presented.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, the Appeal Application is denied, the decision of the CDB is sustained, and the CDC's DO is upheld.

DONE AND ORDERED this 13<sup>th</sup> day of January, 2003, in Tallahassee, Leon County, Florida.

  
J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13<sup>th</sup> day of January, 2003.

#### ENDNOTES

<sup>1</sup>/ The Planning Department's Staff Summary of Events, dated August 20, 2002, indicates that the original application was re-filed ten days later. The record-on-appeal includes the re-filed application, not the originally-filed application.

<sup>2</sup>/ Either by mistake or in an apparent attempt to make them clearer, some Code citations in the record-on-appeal and in the parties' filings include hyphens or parentheses to separate subsections and paragraphs. But the Code itself uses periods for this purpose.

<sup>3</sup>/ The DRC cited to Section 2-203 of the Code for "Flexibility Criteria for Docks." Actually, the criteria are found in Section 3-601.C.1.g. Also, it is not clear why the DRC considered Mariani's application to be for a 92-foot long dock at that point in time.

<sup>4</sup>/ The Report incorrectly cited the provision as "Section 3-601.C.g."

<sup>5</sup>/ One of Appellant's issues on appeal and below before the CDB was that this basis for approval was incorrect in that there is no "existing" dock. It appears that the intended reference was to the dock that could have been built without any deviation to meet environmental concerns.

<sup>6</sup>/ For reasons not made clear from the record-on-appeal, there are two filed-stamp dates on the document--one for April 14, 2002, indicating receipt by "Development Services Department," and another for April 15, 2002, indicating receipt by "Planning and Development Services." Also for reasons not made clear from the record-on-appeal, the document also bears the notation, "Exhibit C (Site Plan)."

<sup>7</sup>/ Another issue raised by Appellant on this appeal and below before the CDB was that it was not clear from these "Dock Plans" which alternative was being proposed.

<sup>8</sup>/ There was another amendment to Section 4-505 on July 18, 2002, relating to the timing of the appeal hearings.

<sup>9</sup>/ Another issue raised on this appeal and below before the CDB was that the DO was signed by someone other than the CDC for the CDC. However, there was no indication that the person signing was not properly authorized to sign for the CDC. To the contrary, the Planning Department Staff Summary of Events, dated August 20, 2002, indicates that the DO was "approved by the [CDC] (Planning Director) through its designee (Assistant Planning Director) . . . ."

<sup>10</sup>/ This was another issue raised by Appellant on this appeal and below before the CDB.

<sup>11</sup>/ Appellant contended on this appeal and below before the CDB not only that the "Dock Plans" were ambiguous, as already addressed in Endnote 7, supra, but also that the use of the disjunctive "or" made this condition ambiguous. But it was clarified in proceedings before the CDB that the DO made condition #2 mandatory.

<sup>12</sup>/ On this appeal and below before the CDB, Appellant argued not only that it was error to limit her oral presentation but also that the CDB's disparate treatment of the parties was a violation of due process.

<sup>13</sup>/ Because the referral letter "censored" the Appeal Application, it was not clear until much later (when Appellant filed a complete copy of the Appeal Application on December 19, 2002) what was omitted from the referral. See last paragraph of Preliminary Statement and Finding 11, supra. Until then, it could not even be ascertained that there was a letter dated August 16, 2002, attached to the Appeal Application. (That letter essentially transmitted a copy of the letter dated March 27, 2002, for presentation to the CDB when it considered Sobeleski's Application for Administrative Appeal to the CDB.)

<sup>14</sup>/ See also Conclusion 26, infra, for additional discussion of the manner in which the record-on-appeal was prepared in this case.

<sup>15</sup>/ Among the other points-on-appeal not meeting the this standard are those reflected in Endnotes 5, 7, 9, 10, 11, and 12, supra.

<sup>16</sup>/ It may be advisable for the City to amend Section 4-505 of the Code to specify the method of preparation of the record-on-appeal, as is done in the court Rules of Appellate Procedure.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

According to Section 4-505.D. of the Code, this Final Order is subject to judicial review by common law certiorari to the circuit court.



1     A P P E A R A N C E S:

2     For the Appellant:     MAXWELL G. BATTLE, JR., ESQ.

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6     For the City:     LESLIE K. DOUGALL-SIDES, ESQ.

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10    For Mr. Mariani:     TIMOTHY A. JOHNSON, JR., ESQ.

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15                             \*                     \*                     \*                     \*

16

17                             I N D E X

18

19     MR. BATTLE                     MS. DOUGALL-SIDES                     MR. JOHNSON

20                     26                                     39                                     49

21                     59                                     --                                     69

22

23                             \*                             \*                             \*                             \*

24

25

ADMINISTRATIVE LAW JUDGE J. LAWRENCE

JOHNSTON: As I understand, we are here for the final hearing, which as I understand it is essentially receipt of the record below and oral argument in this appeal. And this is the case that's entitled Deborah Groen Sobeleski, Appellant, versus City of Clearwater and Christopher C. Mariani, Appellees.

Our Division of Administrative Hearings Case No. 02-3637, and my name is J. Lawrence Johnston, the Administrative Law Judge, from the Division of Administrative Hearings who is serving as the Hearing Officer in this proceeding.

I guess I'll ask counsel to make their appearances for the record, and then you may proceed with your arguments.

MR. BATTLE: Thank you, Your Honor. Maxwell G. Battle, Jr., Battle & Edenfield, 206 Mason Street, Brandon, Florida, 33511, (813) 685-3014, for the Appellant Deborah Groen Sobeleski.

MS. DOUGALL-SIDES: Leslie Dougall-Sides, Assistant City Attorney for the City of Clearwater.

MR. JOHNSON: Tim Johnson, 911 Chestnut Street, Clearwater, Florida; telephone number is (727) 461-1818. I represent the Applicant Mr. Mariani.

JUDGE JOHNSTON: Before we proceed, as I

1 understand, the record is the record that was  
2 transmitted to me, or rather to the Division of the  
3 Administrative Hearings included with the letter dated  
4 September 19, 2002, is that correct?

5 MS. DOUGALL-SIDES: Judge, I have -- I was  
6 the author of that letter, and as I understood my  
7 administrative function in regard to transferring the  
8 record to DOAH under Section 4-505, hearing officer  
9 appeals, I took what I thought was the record before  
10 the Community Development Board and transmitted it to  
11 DOAH.

12 There were some items that Mr. Battle had  
13 submitted with his appeal application that didn't, to  
14 my mind, did not appear before the Community  
15 Development Board, and as noted in the correspondence  
16 I did not send those to you feeling that Mr. Battle if  
17 he wished to file a motion to supplement the record  
18 could do so.

19 So the items that are listed in the  
20 correspondence of September 19th are the City's view  
21 of what would be, properly be, the record in this  
22 case.

23 JUDGE JOHNSTON: I know we discussed this  
24 somewhat on the telephone. Is there any dispute as to  
25 the contents of the record below?

1 MR. BATTLE: Well, Your Honor, there is a  
2 dispute as to what should have been constituted the  
3 record below, and there are may be a dispute, I'm not  
4 sure what the intentions of the City are today  
5 regarding the record, as to whether the City believes  
6 that what they sent to you is sufficient for you to  
7 have received the record or whether you're to receive  
8 the original record.

9 The reason that I believe the -- and I think  
10 the original record, just looking at that that was  
11 before the Community Development Board, is necessary  
12 to be submitted to you is there were color photographs  
13 and color renderings that were before the Community  
14 Development Board.

15 And the copy of what I got from the City  
16 Attorney's Office as to what they sent you includes  
17 black and white copies of those photos, and it leaves  
18 out detail, substantial detail, and so I think you  
19 need to have the color versions that were submitted.

20 Now, that's as to the record that I  
21 understand had been before the Community Development  
22 Board. And I guess we ought to let the City attorney  
23 respond to that, and then I intend to address the rest  
24 of it in my argument.

25 JUDGE JOHNSTON: Okay.

1 MS. DOUGALL-SIDES: The original before the  
2 Community Development Board would have been in the  
3 custody of the Planning Department. We did not  
4 forward, which probably is the color photographs, I  
5 forwarded a copy of those documents feeling that since  
6 it is public record it can't be leaving the City  
7 custody.

8 But the City would have no objection to  
9 substitution of color photographs for the black and  
10 white copies that were forwarded to you.

11 JUDGE JOHNSTON: All right.

12 MR. BATTLE: May I address that briefly?

13 JUDGE JOHNSTON: Yes.

14 MR. BATTLE: Your Honor, as we all know that  
15 do any litigation and appeals, when a case is filed  
16 with an appeal, for instance, for instance for one of  
17 the District Courts of Appeal, the clerk prepares the  
18 original record and transmits it on.

19 And when I read the code, the code says for  
20 you to receive the record. It's our position that  
21 means the original record. And so that the original  
22 record that was before the Community Development  
23 Board, that entire record should be transmitted to  
24 you.

25 And then, of course, as such time as you

1 issue your order, it would follow in the normal course  
2 of appellant proceedings that that record would then  
3 be sent back from the tribunal from which you received  
4 the appeal.

5 And we would certainly ask that that be  
6 done. I don't think it's a public records problem any  
7 more than if the Clerk of the Circuit Court in  
8 Pinellas County sends the whole record and all of the  
9 exhibits over to Lakeland to the Second District on an  
10 appeal from the judgment and the Circuit Court.

11 MS. DOUGALL-SIDES: Well, Your Honor, the  
12 practice has never been to do that. The practice for  
13 the last 20 years or so that DOAH has acted as the  
14 City hearing officers, the hearing officer has been  
15 sent copies of the Planning Department file.

16 JUDGE JOHNSTON: Of course, this is the  
17 first time I've ever been in a proceeding where it's  
18 been really strictly an appellant proceeding. In all  
19 of the other proceedings I was receiving evidence  
20 during the course of the hearing.

21 MS. DOUGALL-SIDES: Yes, but I believe under  
22 the prior code there was still a reception of the  
23 record component to that. And again, we would  
24 interpret the Public Records Acts that we should not,  
25 I mean since it is not a judicial appellant proceeding

1     which has some specific rules applicable to  
2     transmittal of the original documents, I think we  
3     would interpret the Public Records Act that we would  
4     not -- we would be required to retain the originals of  
5     public records.

6             But as I said, I have no problem with  
7     substitution or supplementation of color copies of the  
8     photographs if that's the issue.

9             MR. JOHNSON: Are these big pictures? Small  
10    pictures?

11            MR. BATTLE: You can look at that if you  
12    like.

13            MR. JOHNSON: I'm perfectly happy for you to  
14    look at it all. I have no objection, just try to get  
15    to some point here.

16            JUDGE JOHNSTON: Yeah. If really the only  
17    significant -- maybe as a technical matter, you might  
18    be correct, although the City has a different view in  
19    these proceedings as to what the record should consist  
20    of.

21            I'm inclined to say if the only difference  
22    between the copy and the original is the fact that one  
23    is an accurate copy and the other is the original,  
24    other than the color photographs, I am satisfied that  
25    I can rule on a record that consists of copies of the

1 record with color photographs. So if those are  
2 substituted, I will view myself as having received the  
3 record for this appeal.

4 MR. BATTLE: Your Honor, I have another  
5 preliminary issue for you to rule on since it's  
6 important for us to keep the record straight here.

7 The City has taken the position that the  
8 ordinance is amended in May and then again in July was  
9 the second reading that provides for you to receive  
10 the record in oral argument only as opposed to any  
11 evidence and witnesses.

12 It is, in fact, the applicable rule for this  
13 proceeding. The Appellant argues and submits to you  
14 that, in fact, the appropriate rule for the Appellant  
15 proceeding is that which exists at the time the  
16 application was filed in January.

17 And in January of this year when the  
18 application was filed, the Appellant proceeding  
19 provided for you to take evidence in both tangible  
20 evidence and testimony.

21 And so we would ask for two things with  
22 regard to that. First, we would ask for you to rule  
23 that the appropriate rule on appeal is the one that  
24 allows for you to conduct a classical administrative  
25 hearing taking evidence and hearing testimony from

1 witnesses because that was the rule that was in effect  
2 when this whole process started.

3 Secondly, if you are to rule that way, then  
4 we move for a continuance of this proceeding to allow  
5 us to present those witnesses and that tangible  
6 evidence before you in a classic contested hearing.

7 JUDGE JOHNSTON: All right. Give me again  
8 the dates of when the new rule went into effect.

9 MS. DOUGALL-SIDES: The --

10 MR. BATTLE: The City attorney may have it  
11 right on the tip of her tongue, but it's --

12 MS. DOUGALL-SIDES: It's ordinance No.  
13 6928-02, which was effective May 2nd, 2002.

14 MR. BATTLE: That's my recollection from the  
15 documents provided me, Your Honor.

16 JUDGE JOHNSTON: And when was the hearing  
17 before the -- when were the hearings that took place  
18 as a result of this application? The application you  
19 say was filed in January?

20 MR. BATTLE: It was filed in January. There  
21 was information submitted including evidence and  
22 argument submitted to the Community Development  
23 Coordinator Ms. Tarapani by both Mr. Johnson and  
24 myself on a somewhat continuous basis through the end  
25 of -- almost through the end of April of this year.

1           And then numerous follow-up letters from me  
2       saying, you know, when do we expect a decision, when  
3       do we expect a decision. The hearing in front of the  
4       Community Development Board --

5           JUDGE JOHNSTON: That was your appeal?

6           MR. BATTLE: That was the first appeal from  
7       Ms. Tarapani's decision. The argument in front of the  
8       Community Development Board was in August, and I think  
9       it may have been August 20th, August 19.

10          JUDGE JOHNSTON: August 20th, I think.

11          MR. BATTLE: I think it was August 20th.  
12       And then this appeal was filed on August 26th.

13          JUDGE JOHNSTON: Okay. All right, any  
14       response at this time to that argument?

15          MS. DOUGALL-SIDES: Well, yes, Your Honor.  
16       It would be the City's position that the ordinance has  
17       been effective since May and is effective as of the  
18       date of this hearing and that the procedure that's in  
19       place as of at least the time that the hearing was  
20       filed for would be that that it should be proceeded  
21       under.

22                 There has been no prejudice demonstrated by  
23       the Appellant to undergo this procedure, and normally  
24       in effect an ordinance, absent any special provisions  
25       such as a delayed effective date or a retroactivity

1 provision, is effective on the date it's passed on  
2 second reading and adopted, and the procedures change  
3 as of that date.

4 MR. BATTLE: If I may reply briefly, Your  
5 Honor.

6 JUDGE JOHNSTON: Well, let me hear --

7 MR. BATTLE: Oh, I'm sorry, I forgot Mr.  
8 Johnson.

9 JUDGE JOHNSTON: -- from Mr. Johnson.

10 MR. JOHNSON: The Applicant would adopt the  
11 City's argument and further point out that this issue  
12 should have been raised earlier in these proceedings  
13 as opposed to being brought at this late date and that  
14 if there were such an argument, it was waived by not  
15 having raised this issue earlier in the proceedings  
16 where it could have been briefed and argued and Your  
17 Honor could have made a determination and then we  
18 could have proceeded accordingly.

19 MS. DOUGALL-SIDES: Further, if this is a  
20 motion for continuance, it should have been filed  
21 prior to the hearing.

22 MR. BATTLE: Well, the motion for  
23 continuance, Your Honor, is joined with the motion to  
24 determine the rule. And if you recall during the  
25 telephone hearing we had, the City attorney had not

1 provided me with a copy of the ordinance and argued to  
2 you, and incorrectly, that they had amended the  
3 ordinance and provided for oral argument only and  
4 reception of the record.

5 In fact, there was even a discussion among  
6 all three attorneys and yourself about the issue of  
7 whether you received the record at the time of the  
8 hearing or it was appropriate for the copies of the  
9 record to be sent to you ahead of time.

10 So I think the only requirement, and there  
11 is no requirement in their ordinances in terms of  
12 timing for anything, so the only requirement -- I  
13 mean, other than at the time of the hearing.

14 As a matter of fact, there's no provision  
15 for motion practice -- and her comment about  
16 supplementing the record is something I'll address  
17 after we resolve this issue.

18 So there is nothing in their ordinance about  
19 that whatsoever. And if you rule that the rule that  
20 they passed, the amendment to the rule passed in May  
21 is the one that applies, the effect of that is that  
22 the City can have an application that is controversial  
23 and decide during the course of the handling of that  
24 application to change all of their rules downstream to  
25 benefit their position and sustain their position.

1           And you're going to hear some more argument  
2   about some of those issues in a few minutes. And  
3   that's why we feel that it's appropriate, as is  
4   generally the case with most statutes, they'll apply  
5   to things that are filed after a certain date and that  
6   filing date is not an appeal, it's the initial  
7   application.

8           So for instance, if you look at the statutes  
9   that change the law or change the rules with respect  
10   to litigation, it will say it applies to cases in  
11   which the cause of action accrues after a certain date  
12   or in which the cause of action is filed after a  
13   certain date.

14           This amendment to the rule is silent. And,  
15   in fact, what occurred here is a level one application  
16   was made in January of this year. It relatively  
17   quickly became clear to the City that this was a very  
18   controversial application.

19           It's not a common event to have this much  
20   controversy over something as simple as a residential  
21   dock permit. And so then they held off making their  
22   decision until after they had amended these rules.

23           Now, we did, at the early stages in early  
24   March ask them to give us some additional time to  
25   submit some written information, and we did that about

1 March 27th. And then subsequent to that we were  
2 invited to come over and make an oral presentation to  
3 Ms. Tarapani, community development coordinator, and  
4 that wasn't until April 23rd.

5 And then as a result of that meeting we  
6 submitted some additional documents and case law to  
7 her a few days later. And then she waited until July,  
8 I think July or early August, I guess July 20th rings  
9 a bell, but I don't -- I can look at it, it's in the  
10 file, to render her decision after not only one  
11 amendment had been made, but two amendments had been  
12 made by the City to the ordinance.

13 And we think there is a substantive due  
14 process issue there that applies that is just  
15 inappropriate to let the City say, okay, we've got a  
16 bad situation here so we are going to make sure that  
17 we can determine how the Appellant process works on  
18 our application now in light of seeing this problem  
19 that's coming up on this application.

20 JUDGE JOHNSTON: Well --

21 MR. JOHNSON: Your Honor, if I may, one  
22 other point. That same ordinance that was passed in  
23 May 2 of this year that changed the Appellant review  
24 standard also changed in a minor way the procedure  
25 followed by the Community Development Board in hearing

1 the appeal in the first instance. The Appellant  
2 went through that appeal with that change and  
3 procedure without objection.

4 MS. DOUGALL-SIDES: Furthermore, Your Honor,  
5 we had the discussion of setting the hearing and the  
6 substance of the hearing at the telephone hearing, and  
7 any objection was not raised by Mr. Battle at that  
8 time so the hearing was then set.

9 JUDGE JOHNSTON: I'm going to deny the  
10 request this morning, and let's proceed with the oral  
11 argument under the current rule. And if I am  
12 persuaded that that ruling is incorrect, I can address  
13 that in the final order, in my final order.

14 MR. BATTLE: Your Honor, I'd like to address  
15 her suggestion of a motion to supplement the record at  
16 this time. There is --

17 JUDGE JOHNSTON: Meaning for the color  
18 copies of the pictures?

19 MR. BATTLE: Yes, and the deletion of  
20 certain items from the record.

21 JUDGE JOHNSTON: Oh, okay.

22 MR. BATTLE: The City attorney's said  
23 somewhat glibly today that she determined to remove  
24 certain items attached to my Notice of Appeal assuming  
25 that we could then move to supplement the record if we

1 felt she was incorrect.

2 I think that is wholly inappropriate.

3 Anytime a pleading is filed, it should be transmitted  
4 on to the tribunal in its complete form and none of  
5 the lawyers involved should be in a position to take  
6 it upon themselves to remove items from the pleadings  
7 that are filed. There is no provision for moving to  
8 supplement the record in this case, none, none  
9 anywhere in the City's rules.

10 JUDGE JOHNSTON: As I recall, when we talked  
11 about that at the telephone hearing, the deletions  
12 turned out to be ordinances, weren't they, citations  
13 to ordinances?

14 MR. BATTLE: No, Your Honor.

15 JUDGE JOHNSTON: Were there any others?

16 MR. BATTLE: No, Your Honor, there were some  
17 letters, as I understand it, that she removed.

18 JUDGE JOHNSTON: What were the deleted  
19 items?

20 MS. DOUGALL-SIDES: Judging from my  
21 correspondence, the item -- well, there were -- Mr.  
22 Battle filed an appellant packet which included items  
23 which had not been addressed previously.

24 As simply an administrative function, our  
25 office forwards the record below to DOAH. In my

1 correspondence I state that I am not forwarding  
2 Exhibits 1 through 15 to the appeal application and  
3 then state that Items 1 through 9 and 12, 15 are  
4 already of the record before the Board and they're,  
5 thus, otherwise included.

6 It was only Items 10 and 11, or Exhibits 10  
7 and 11, to Mr. Battle's appeal application that were  
8 not included because, you know, my task was to forward  
9 the record below to DOAH.

10 Those items consist of, as I'm looking at a  
11 copy of Mr. Battle's packet that he submitted to  
12 Planning, a letter from a Mark Blume dated March 6th,  
13 2002, to Mark Perry, City Planner, and a letter from  
14 the Mariani Asphalt Company dated March 7, 2002, to  
15 Cyndi Tarapani, Community Development Coordinator. So  
16 those are the only two items, as I understand it, that  
17 were not forwarded to you.

18 JUDGE JOHNSTON: Well, why should they be  
19 part of the record, Mr. Battle?

20 MR. BATTLE: Well, Your Honor, that goes  
21 back to the part of the argument about what happened  
22 in front of the Community Development Board, and those  
23 issues are of record, should be on the tape that you  
24 received, because they were raised before the Board.

25 It was our position that for the Community

1 Development Board to properly have a record before it  
2 upon which to make a decision as to whether to grant a  
3 quasi-judicial hearing or not, that they should be  
4 given the entire record below.

5 Among those things was when we filed the  
6 Notice of Appeal to the Community Development Board,  
7 we attached a complete copy of this document here,  
8 which was my letter of March 27th, 2002, with  
9 attachments and it was stapled to that package.

10 When Ms. Tarapani's office forwarded the  
11 appeal over to the Community Development Board, they  
12 did not forward the whole package, the entire file.  
13 In fact, initially they did not forward any of the  
14 items in this document at all, which was what was  
15 before her when she made her decision.

16 And I brought that up before the Board, and  
17 I had objected to it rather strenuously. And so I had  
18 been told by Ms. Tarapani to make 12 copies or 13  
19 copies and get them to her the next day, and she'd get  
20 them there before the hearing. And so I did that.

21 And then she sent my letter and I think the  
22 photos is what went to them, not the entire record.  
23 And so I asked for that again. So when we filed the  
24 appeal before this tribunal, or the one that came to  
25 this tribunal, we filed for an administrative appeal

1 with the clerk, we again attached all of the  
2 information to it.

3 So we have two situations where not only has  
4 the Notice of Appeal itself been tampered with, but  
5 the entire record has not been submitted to the  
6 Community Development Board of what Ms. Tarapani had  
7 before she made her decision.

8 One of the key arguments that we make, and  
9 the basis for our appeal that's before you, is that to  
10 allow this to take place allows Ms. Tarapani to, in  
11 effect, clip the books because what she does is --

12 JUDGE JOHNSTON: If you persuade me to add  
13 it to the record what was below, doesn't that  
14 eliminate those Appellant points of yours?

15 MR. BATTLE: If you --

16 JUDGE JOHNSTON: It seems to me what I  
17 should be looking at is the record that was before the  
18 lower tribunal. Now, if they made an error in  
19 allowing you not to present a certain document, which  
20 as I understand that's one of your points on appeal --

21 MR. BATTLE: Correct.

22 JUDGE JOHNSTON: -- if that's such a  
23 departure from the essential requirements of law, then  
24 that might be a point for reversal. But I don't think  
25 it is a reason for me to recreate what was actually

1 before the tribunal below me.

2 So I think I should receive your entire  
3 appeal petition document, even if it includes things  
4 that are beyond what was in the record below, but the  
5 record should not be supplemented at this point to add  
6 things that was not in front of the lower tribunal.  
7 So that's my --

8 MR. BATTLE: I understand your ruling, Your  
9 Honor.

10 JUDGE JOHNSTON: That's my ruling.

11 MS. DOUGALL-SIDES: If I could comment on  
12 that. I do object to the characterization my actions  
13 is tampering with the record, and I would note that  
14 there is disagreement between Mr. Battle and the City  
15 Planner Ms. Tarapani as to --

16 JUDGE JOHNSTON: I think you said -- I  
17 recalled that he said tampered with his application.

18 MS. DOUGALL-SIDES: Well, I think he's  
19 referring to my actions in forwarding portions on to  
20 you.

21 JUDGE JOHNSTON: Right.

22 MS. DOUGALL-SIDES: Part of the discussion  
23 appears on the tape during the meeting that there were  
24 several submissions made by Mr. Battle prior to the  
25 CDB meeting.

1           And one of the submissions, the first one,  
2           according to the City Planner made its way into the  
3           packet and was included in the regular agenda packet.

4           Following the deadline for the agenda going  
5           out to the Board members, according to Ms. Tarapani,  
6           Mr. Battle made two further submissions to her, the  
7           first of which she kindly sent around in a separate  
8           mailing to the Board members, but the second of which  
9           she declined to because it was simply untimely and she  
10          felt that she had --

11           MR. BATTLE: Well, Your Honor, since we're--

12           MS. DOUGALL-SIDES: -- gone far enough in  
13          submitting two different packets from Mr. Battle to  
14          the Board.

15           MR. BATTLE: Since we are going back beyond  
16          the record before the CDB, let me address that because  
17          that is factually totally incorrect. What occurred  
18          was I received a call from the Planning office that  
19          the package was ready that had gone to -- that was  
20          going to the Community Development Board and did I  
21          want it mailed or did I want to pick it up, just a  
22          telephone call.

23           And I happened to be relatively close to the  
24          office, I said, "I'll come pick it up." And so I went  
25          by and picked it up. And when I picked it up, I had

1 the package and I could see there were things in there  
2 like a drawing done by a Community Development Board  
3 member Plisko that favored Mr. Johnson's client's  
4 position and Ms. Tarapani's decision, a number of  
5 other things that favored her decision and nothing  
6 from this. That was not there at all.

7 And so I objected strenuously both in  
8 writing and by telephone, and that was one issue, one  
9 submission. And I was told once by, I'll probably  
10 mispronounce, but Ms. Fearce, Fear, Ms. Tarapani's  
11 assistant, that she wanted 12 copies or 13 copies.

12 And then I was told by Ms. Tarapani in a  
13 subsequent telephone conversation who called me back  
14 that she wanted three copies. And I said, "Well,  
15 which do you want?" She goes, Well, Lisa said you  
16 need 12 or 8, or whatever.

17 So I didn't have time, and you can see that  
18 in the package, I didn't have time to recreate the  
19 disk that had the photos on the disk so it was easy to  
20 look at it on a DVD or CD player.

21 And so I put a note in there that you could  
22 find them on a web site, and I didn't have time to  
23 copy those. I, in fact, got color copies, more than  
24 sufficient color copies of all of the photos, and the  
25 entire package, which is what I was told to do, and I

1 took that down and dropped it off.

2 That was one subsequent submission other  
3 than a letter of objection for not turning everything  
4 over. And what I was told by Ms. Tarapani, she called  
5 me back irate, and she said, you know, "In an effort  
6 to be fair, I'm going to send your photos and your  
7 letter, but that's all I'm sending, and if you don't  
8 like it, bring your actions in a tribunal."

9 I mean, and so what can I do? I mean, I  
10 can't force her when we're talking on a Friday and the  
11 hearing is on Monday or Tuesday to, in effect, give  
12 the rest of it to the panel.

13 So what should be completely on the tape is  
14 one of the first things I asked when I got up before  
15 the CDB was, "Did you receive additional information  
16 from her?" And they said, "We received the these  
17 photos and this letter". "Did you receive anything  
18 else?" "No, this is what we got."

19 And I said, "Okay, because I had an argument  
20 with Ms. Tarapani," those were my words, "about this  
21 and I just want to know what you have." And then I  
22 went on later and made the argument that I thought  
23 they should look at the entire view.

24 So it wasn't a question of her saying, "I'm  
25 not going to submit something because it was late.

1 That's not what she said at all. She said, "The file  
2 is so voluminous, I have to determine what to send  
3 them." So that's not true about her saying that to  
4 me.

5 Now, I have no idea what she said to her  
6 counsel, and I'm not suggesting that Leslie is  
7 misstating what may have been said to her, but I was  
8 the one that was in the middle of that conversation.

9 And just as a housekeeping matter, I do not  
10 -- I am not suggesting at all that Leslie has tampered  
11 with the record below. My objection was to removing  
12 things from the appeal package.

13 MR. JOHNSON: Your Honor, my understanding  
14 is we're here for an appellant hearing where you're  
15 going to review the record of what the CDB did. We're  
16 hearing a lot of discussion here today, none of it  
17 under oath, a lot of hearsay, lot of -- I mean, I just  
18 don't know where all of this going.

19 JUDGE JOHNSTON: I think it's time to  
20 proceed with the argument of your appellant points.

21 MR. BATTLE: Okay. Your Honor, since you  
22 have a lot of it in writing, in an interest to cut  
23 down on the amount of time, I'm not going to repeat  
24 all of the arguments that form the basis of the appeal  
25 in the Notice of Appeal.

1 I adopt them, and the fact that I don't  
2 mention them out loud or not unless you ask a question  
3 about it doesn't mean I'm abandoning them, but I'm  
4 sure you can read them as clearly as I can restate  
5 them. So I'm going to hit several issues that I  
6 believe to be key.

7 First of all, Your Honor, our position is  
8 with respect to the hearing before the Community  
9 Development Board that the Community Development Board  
10 was required to give us a quasi-judicial hearing  
11 because we put before them sufficient information to  
12 give us that right.

13 And that information, among other things,  
14 included the fact that Ms. Tarapani had not sent them  
15 the entire record below, number one, that Ms. Tarapani  
16 had not sent them our entire application for appeal,  
17 which included nothing that was not already in the  
18 record below.

19 And that she made a decision to provide to  
20 them only what she wanted to give to them, which  
21 pretty much supported her position, not that some of  
22 my materials didn't contradict the position she made,  
23 but that it was loaded in favor of her decision.

24 And we think based upon that point, not that  
25 point all by itself, but that point alone was

1 sufficient to require them to grant us a  
2 quasi-judicial hearing.

3 Secondly, the problem, the initial problem  
4 we have, and Mr. Johnson was not at the hearing, one  
5 of his partners, I think it was Mr. Armstrong was  
6 there, when we stood up to present our position at the  
7 hearing on the consent issue, we were denied an  
8 opportunity to not only to argue the merits, but if  
9 you listen to the tape, also to explain some key  
10 issues about the information that was before them upon  
11 which to make their decision.

12 For instance, one of the issues that's been  
13 a bone of contention between Mr. Johnson and myself  
14 was the validity of the way the renderings were made  
15 and the photos that were taken that were part of the  
16 package that went to Ms. Tarapani and were part of the  
17 Notice of Appeal to the Community Development Board.

18 We feel we were entitled to an opportunity  
19 to explain, you know, that much even if no one was  
20 entitled to address, quote, "the merits" of the appeal  
21 at that time.

22 When we started doing that, we were told we  
23 were addressing the merits and we weren't allowed to  
24 address anything like that and why were we there and  
25 why should they grant us a hearing.

1           And you'll hear on the tape me say, well,  
2           you know, you need to understand how this was done in  
3           order to make a decision, but, you know, the basis for  
4           our appeal is in the Notice of Appeal. And we were  
5           basically shut down and prevented from making any  
6           further argument about that on the basis that we  
7           weren't allowed to address the merits and if we  
8           addressed anything, you know, about that we were  
9           addressing the merits.

10           Then, immediately thereafter Mr. Armstrong,  
11           and he did a good job, I mean, he's a great lawyer, he  
12           got up and he was allowed to address the merits for  
13           however many minutes appear on the tape. I mean, it  
14           seemed like forever, but, you know, they usually do  
15           when you're sitting there listening to an opposing  
16           position. And he addressed the merits and asked them  
17           not to go forward with it.

18           Then the City attorney suggested to them a  
19           standard for their determination for whether an appeal  
20           be granted or not, meaning a quasi-judicial hearing be  
21           granted, that was akin to a preliminary injunction  
22           standard, which appears nowhere in the City  
23           ordinances, nowhere in the City code.

24           She said we had to show that we were more  
25           likely to prevail than not, and I'm not sure those

1 were the exact words, I'll rely on what's, you know,  
2 in the record on the tape, but basically an injunction  
3 standard.

4 And I argued about that, and she conceded  
5 that it wasn't in the code. But she said, "That's  
6 still our advice about that, that you have to show  
7 that you would win.

8 Well, I can't very well show that I have an  
9 ability to win at a quasi-judicial hearing if I can't  
10 address what I'm going to be able to present at the  
11 quasi-judicial hearing.

12 So we're denied the ability to talk about  
13 the merits. Then we're told we have to present merits  
14 to meet the standard. Mr. Armstrong is allowed to  
15 address the standards.

16 And then amazingly enough, the very person  
17 whose decision's being appealed is allowed to present  
18 argument in support of her position on the merits and,  
19 among other things, says don't set this aside lightly,  
20 you know, we're professionals.

21 I mean, I don't want to misstate the actual  
22 words, it's better that you hear them for yourself,  
23 and she's allowed to go on and address all of those  
24 issues.

25 JUDGE JOHNSTON: Who is she?

1 MR. BATTLE: Cyndi Tarapani. And there was  
2 no doubt one of the issues that we raised was that the  
3 order wasn't -- the Development Order wasn't properly  
4 entered on the basis that it wasn't signed by her.

5 And her statement and the City attorney's  
6 statement was, well, her assistant can sign it and  
7 it's her decision. That may well be the law. I'm not  
8 sure at this point that that makes a whole lot of  
9 difference, but that is an issue that we preserved for  
10 appellant purposes.

11 And so there we are. We're told -- the  
12 Board is told by the City Attorney's Office they've  
13 got to find that we could win, you know, akin to a  
14 preliminary injunction code, even though it's not in  
15 the code. We're not allowed to do those things that  
16 are necessary to convince the Board that we can do  
17 that.

18 The -- and it is in the record that all of  
19 the record below isn't before them, and I asked that  
20 it be. So I'm not allowed to address the merits.  
21 Lots of evidence that would have come in had it been a  
22 quasi-judicial hearing instead of just an argument  
23 that had give us a quasi-judicial hearing, is all in  
24 the City's file so it was before Ms. Tarapani when she  
25 made the decision.

1           And we think that clearly departs from the  
2           essential requirements of law and is both a  
3           substantive and a procedural due process violation.

4           Now, moving on from that, the other issue --  
5           another issue that came up before that Board is the  
6           Board then has a discussion led primarily by Mr.  
7           Hooper in which they talk about, well, our Staff is  
8           professional and we don't want to reverse them and we  
9           need to let their decision stand.

10           Well, that wasn't the issue before that  
11           Board. The issue before the Board was not whether or  
12           not to let the decision stand. The issue was whether  
13           or not to grant a quasi-judicial hearing so we could  
14           present evidence to them from which they could make a  
15           determination.

16           And they knew from the presentations that  
17           were made that they did not have the entire file that  
18           was before Ms. Tarapani below.

19           In addition to that, the application that  
20           Ms. Tarapani ruled on was amended, I believe, at least  
21           twice during the course of this proceeding after the  
22           initial review, of course, at which we were not  
23           present.

24           When the Community Development Board  
25           director gets in one of these applications for a level

1 one flexible standard approval, it's my understanding,  
2 and it's in the code before you, so I'm relying on  
3 what the code says, but it basically goes out to a  
4 committee and they take comments from all of the  
5 different departments.

6 Well, those departments came in on an  
7 application that was entirely different in terms of  
8 the length of the dock, the size of the dock, even an  
9 adjustment to the location of the dock, and there were  
10 many misstatements in the Staff report that came out  
11 of that.

12 And I won't go through each one of them,  
13 they're all outlined in the materials that should be  
14 before you as part of our Notice of Appeal. But to  
15 show you how egregious some of those errors are, they  
16 talk about a single-family residence on the lot on  
17 which the dock is going to be built and the lot's  
18 vacant. It's a vacant lot. There is nothing on it.

19 And I just throw that one out as one  
20 highlight. When you read through the materials you'll  
21 see it. When we present our rendering orders we  
22 materially submit an explanation for why we think our  
23 recommended order to you -- or proposed order to you  
24 is correct, and you'll have all of that in front of  
25 you.

1           But that highlights it. I mean, it can't be  
2   any clearer than that when they say it's an  
3   application for a dock for an existing single-family  
4   residence and there is no existing single-family  
5   residence there.

6           So that changes throughout the course. So  
7   when we get to the Board, Community Development Board,  
8   we're not allowed to argue about the merits anyway by  
9   them, but what they have before them is not what the  
10   reviewing departments and Staff had before them at the  
11   time that the initial Staff meeting took place, and I  
12   think that was February 14th, and that should be part  
13   of the record, those Staff notes.

14           The City code, and I've cited that in the  
15   basis for appeal and in the submission of March 27th,  
16   provides that when you have more than one permit  
17   required for a facility, they all are submitted  
18   together at the same time.

19           That wasn't done. There's no house plans  
20   yet to my knowledge, unless it's occurred since the  
21   Community Development Board hearing, submitted to the  
22   City of Clearwater, certainly no evidence of it in the  
23   record.

24           Now, Ms. Tarapani sought to address that in  
25   some fashion in her order by saying that the permit

1 had to be pulled for the house, either before or at  
2 the same time the dock permit was pulled.

3 The problem with that part of that order is  
4 this. Pulling the permit is not the same as building  
5 the house. The building code has provisions in it for  
6 completing structures within such a period of time,  
7 commencing them and completing them within certain  
8 periods of time, which if they are not the building  
9 permit is deemed abandoned.

10 If there's not any specific requirement that  
11 the house be built first before the dock is permitted  
12 to be built, then it leaves open the ability of the  
13 Applicant, Mr. Johnson's client, to go and submit his  
14 house plans, any house plans, doesn't even have to be  
15 a house he ever really intends to build, just a set of  
16 house plans that meet code requirements otherwise, and  
17 get a permit for that and then get a permit for his  
18 dock and then build the dock and not build the house.

19 And you may ask at this point why does that  
20 matter, because the dock isn't a pertinent use. It's  
21 only allowed in a residential zone as a pertinent use  
22 to a single family.

23 And so if you don't build a house and have a  
24 house there and you build a dock, now the dock becomes  
25 primary use. And the dock is not allowed as a primary

1 use under City's zoning ordinances in a single family  
2 home.

3 So that's another departure from the  
4 essential requirements of law. There are numerous of  
5 them listed in my Appellant materials.

6 So we have a decision that's made on the set  
7 of plans that was not before the Staff at the time  
8 they reviewed it and reported back. We have a set of  
9 plans that are not even approved by Ms. Tarapani if  
10 you see in my initial Notice of Appeal to the  
11 Community Development Board.

12 Her order approves the ability to build the  
13 dock without a final set of plans, that they're to  
14 redo the plans and resubmit them. So we don't know to  
15 this day what their ultimate set of plans are going to  
16 be.

17 And the effect of that is they go back in  
18 and do a new set of plans, ostensibly to meet the  
19 requirements of her order, which itself is vague and  
20 ambiguous as set forth in my written appellant  
21 materials because it refers to a plan and it refers to  
22 other things that are in conflict, the plan being done  
23 by Community Development Board member Plisko, who, by  
24 the way, did abstain.

25 He did step down during the hearing; but, of

1 course, everybody on the Board knows that -- you know,  
2 who he is, and it's his plan. And the plan was not a  
3 plan in the sense of construction plans for the dock,  
4 which is another problem.

5 It was something to controvert or contradict  
6 the submission that we made on the 27th. The City  
7 code requires a set of plans for a dock to be signed  
8 and sealed by a registered professional engineer.

9 Now, early on in this proceeding we took the  
10 position it also had to show overhangs, verticals,  
11 vertical limits and some other things under another  
12 code section, which Mr. Johnson, I think, properly  
13 pointed out applies to developments of over an acre.

14 So I am not rearguing that, but the  
15 provision for the dock to be submitted with a set of  
16 signed and sealed plans by a Florida registered  
17 professional engineer still stands, that's still  
18 there.

19 The importance of that is that without those  
20 it is impossible for anyone to do better than guess at  
21 what the ultimate parameters of the dock are going to  
22 be, what its ultimate dimensions are going to be, not  
23 necessarily in length and width, but in elevation and  
24 in pitch of the roof.

25 And when you see the photos, and I'm

1     assuming for the moment, someone correct me if wrong,  
2     that we are going to substitute color photos for the  
3     copies, when you see those and you see those  
4     renderings and then you read the materials as to how  
5     that was done, we had to take the dock plan as it had  
6     been submitted by Mr. Johnson's client, Mr. Mariani,  
7     at that time and then go find the dock that they took  
8     a photo of.

9             They took a photo of the -- I call it boat  
10    house, they call it covered lift, but the structure  
11    they were going to build at the end of the walkway,  
12    shall we say, they submitted a photograph of a single  
13    slip structure from another location on the beach.

14            We had to go find that structure, take a --  
15    get a photo of it ourself and take measurements and  
16    then go back with a surveyor. That's all in the  
17    record. That's all described as to what we did.

18            They had to go out and then do a rendering,  
19    a digital rendering from that, to show what the effect  
20    would be on a view. And I'm not going to go back  
21    through all of the reasons that it's inconsistent with  
22    what's there in the community already. I've done that  
23    in the written material and I'll leave that for your  
24    reading enjoyment, unless you want me to spend time  
25    going through it today.

1           So on top of everything else, they haven't  
2       complied with the application process itself, which  
3       says to submit signed, certified, sealed drawings by a  
4       Florida registered professional engineer.

5           Which I don't know if Your Honor here has  
6       any disciplinary cases from the engineering Board, but  
7       if you do you're probably familiar with all of the  
8       administrative regulations regarding the practice of  
9       engineering and what you have to do with your plans  
10      and specifications and that sort of thing.

11          And in the event, you might not be, I don't  
12      have a problem when I submit my proposal pointing out  
13      those specific provisions so it's easy for you to  
14      review them.

15          So along with the arguments I made at the  
16      beginning about what is the proper procedure to use  
17      here today, those are the key points that I wish to  
18      address orally at this time subject to some additional  
19      comments after other counsel have been heard on  
20      rebuttal.

21          And again, I do not abandon -- I adopt  
22      wholeheartedly all of the positions that have been  
23      placed before you in writing, and I would be happy at  
24      any time to answer any questions that you may have  
25      about my argument. Thank you.

1 JUDGE JOHNSTON: The City's response.

2 MS. DOUGALL-SIDES: You want the City next?

3 JUDGE JOHNSTON: Yes.

4 MS. DOUGALL-SIDES: Judge, under Section  
5 4-505 C, the Hearing Officer Appeal section of our  
6 code, it is the Appellant's burden of proof to show,  
7 and really the only issue in the proceeding would be  
8 whether the decision of the Community Development  
9 Board cannot be sustained by the evidence before the  
10 Board or that its decision somehow departs from the  
11 essential requirements of law, and the Appellant, the  
12 City would submit, has shown neither of those items.

13 The Appellant filed an appeal from a Staff  
14 level decision, a level one decision, under Section  
15 4-504 B, which allows an abutting property owner to  
16 contest those decisions.

17 Under the code, that appeal is placed on the  
18 next agenda of the Community Development Board as the  
19 Appellant body at that stage, and it's put on their  
20 consent agenda. Only by a vote of four members of the  
21 Board can it be removed from that consent agenda for a  
22 full quasi-judicial hearing to be held.

23 And if not, I would contend that essentially  
24 the decision stands. So the Board actually by not  
25 removing it from the consent agenda and determining to

1 have a full hearing is essentially allowing the  
2 decision to stand.

3 And this is the first administrative law  
4 judge appeal that we've had construing the sections of  
5 the code. The code does not really set forth what the  
6 standard shall be for removing the item from the  
7 consent agenda. Mr. Battle is correct in that  
8 respect.

9 I guess there are really two alternatives.  
10 If the matter is considered within the discretion of  
11 the Board, then the City would argue it acted properly  
12 in taking the action that it did. If there is some  
13 other standard, then we would submit it also acted  
14 properly.

15 Now, there's been discussion, and you'll  
16 hear on the tape, and I would urge you to review that  
17 discussion between Mr. Armstrong, Mr. Battle and  
18 myself as to what the standard was going to be.

19 I would differ somewhat with Mr. Battle's  
20 characterization of my comments. I think we did  
21 discuss whether there would be an injunction-like  
22 standard, and it's my understanding that Mr.  
23 Armstrong, the Applicant's attorney, argued for that,  
24 and I ended up saying that I agreed more with Mr.  
25 Battle, that that would not rise to that level, but

1     that the Appellant should show some sort of colorable  
2     evidence that would lead the Board to set the matter  
3     for a full hearing.

4             We then, I believe discussed Section 4-504  
5     C, which is the ultimate decision of the Board if it  
6     goes to a full hearing as whether -- in order to  
7     overturn Ms. Tarapani, the Community Development  
8     coordinator, and she is designated as such under the  
9     code, the Board would have to find that she  
10    misconstrued or incorrectly interpreted the code.

11            And so I recall my comments as being that  
12    the Appellant would have to show some sort of evidence  
13    or make a pretty good argument that she had  
14    misconstrued or incorrectly interpreted the code for  
15    the Board to set the matter for a full quasi-judicial  
16    hearing.

17            The Appellant has not submitted, for  
18    instance, any expert witness testimony or affidavits  
19    in this whole process. The Planning opinions  
20    expressed by Ms. Tarapani and her Staff in three  
21    different Staff reports, and that would be the  
22    Development Review Committee Staff report, the Appeal  
23    Staff report and the -- or excuse me, the Development  
24    Order Staff record and the Appeal Staff report are  
25    really unrebutted by the Appellant.

1           There has been no planner testimony  
2     contradicting that of the City planners that this was  
3     inappropriate granting of the dock application.

4           Likewise, you will find in the record the  
5     environmental report of the Pinellas County  
6     Navigational Control Staff, and they do review in our  
7     county all dock permit applications.

8           And they found after some discussion of the  
9     placement of the dock that the application would be  
10    approved by them, and they get into the placement of  
11    some sea grasses in the area. And it's my  
12    construction of their opinion that they actually find  
13    that the dock has to be more -- or longer and placed  
14    in a certain area in order to protect those sea  
15    grasses.

16           And again, the Appellant has not provided  
17    any environmental or scientific opinion that would  
18    contradict that county Staff opinion.

19           Although the Appellant claims said the view  
20    of the property owners are impaired by the dock, again  
21    the Appellant has not submitted any MAI or other  
22    certified or any kind of appraisal which would counter  
23    the Staff analysis on the general standards regarding  
24    the view.

25           And if you look at the general standards for

1 approval of all development applications, they're  
2 contained in Section 3-913, which you should have a  
3 copy of, and 3-913 A2 provides that the proposed  
4 development will not significantly impair the value of  
5 adjacent land or buildings.

6 And, apparently, that's what the Appellant  
7 is getting at with the copy photographs and the  
8 discussion of the alleged impairment of view, but  
9 again has not provided any expert opinion that that  
10 would occur or what the alleged diminution of value of  
11 the Appellant's property would be.

12 Also in 3-913 Sub 3, the Applicant for a  
13 dock permit should minimize the visual impact of the  
14 deviation that's being granted. And it does say  
15 minimize, not totally eliminate or delete any visual  
16 impact.

17 Our position would be the Applicant has  
18 tried to do that in this case by the placement of the  
19 dock, and it's my understanding it's more toward the  
20 middle of the property than toward either of the  
21 abutting property owners.

22 The record does reflect that the Appellant,  
23 the objectors in this case, have two docks from their  
24 property of 90 foot and 98-foot lengths, if I'm  
25 correct there, but they do object to this new dock by

1 their neighbors.

2 On the record at the CDB meeting there is  
3 some discussion of placement of the dock, and the  
4 Board members actually asked Mr. Battle if his client  
5 would be happy if the dock were to be in the center or  
6 is there any kind of placement that would satisfy the  
7 objectors here, the Appellants.

8 And it's my recollection that the answer  
9 coming back from Mr. Battle's client is that they  
10 would agree if it were moved all the way to the other  
11 side adjacent to the other property owner's property,  
12 and that was not a concept that was agreeable to the  
13 Board or to the Applicant.

14 The appeal documents indicate that, we  
15 haven't really heard this today, but the application  
16 should have been a level two review. And the City's  
17 position was it was properly reviewed as a level one  
18 or Staff level review.

19 Adjacent to Section 4-202 of the code there  
20 is a chart which appears which explains our Land  
21 Development Code, which is somewhat unusual, and we  
22 have level one, two and three reviews.

23 Level one is Staff making the determination  
24 with Appellant possibilities. Level two would be the  
25 Community Development Board, which is our Planning

1 Board, making the determination with appeal then to  
2 Your Honor and on to circuit court.

3 And level three is for land use  
4 determinations that are made by the City Commission,  
5 which would be such things as a rezoning ordinance or  
6 a comprehensive plan amendment or development  
7 agreement.

8 In the dock section, which deals with docks  
9 and marinas, Section 3-601 C, 1G, it discusses  
10 deviations from the dock standards. And as in this  
11 case, if the Applicant cannot obtain statements of no  
12 objection from all adjacent property owners, that  
13 subsection states that the Community Development  
14 coordinator, which would be Ms. Tarapani, can approve  
15 through, and it says a level one approval process.

16 So the City's position is it's quite clear  
17 that this was properly at the Staff level. Again,  
18 that would Section 3-601 C, Sub 1G.

19 And that section further has some criteria  
20 for the coordinator to make that determination, and it  
21 says -- I do agree with Mr. Battle that it does not  
22 state it shall be approved, it says it may be approved  
23 and then it goes on to say, "based on one of the  
24 following.

25 And then there are three criteria set forth,

1 which are phrased in the alternative, one or two or  
2 three, and Ms. Tarapani did her analysis under those  
3 criteria.

4 The Appellant raises some points which he's  
5 touched on in oral argument that, and again in the  
6 written materials, that the plans have changed during  
7 the application process and that the Development Order  
8 requires yet another set of plans to be submitted  
9 before building permits will be issued and indicates  
10 that that's somehow improper.

11 I would submit it's typical that plans  
12 change during the development application process due  
13 to negotiation between the Applicant, the City, in  
14 this case, the county agency, perhaps DEP or other  
15 agencies are involved, and it's not atypical for  
16 several sets of plans to be submitted, and again they  
17 would be need to be signed and sealed plans, prior to  
18 the final approval.

19 JUDGE JOHNSTON: You said they would or they  
20 wouldn't be signed and sealed.

21 MS. DOUGALL-SIDES: Well, the Development  
22 Order that was issued in this case actually requires a  
23 final set of plans be submitted prior to, I believe it  
24 was building permit issuance. And we have our process  
25 and the application process is detailed in some of the

1 code sections that you should have.

2 There is a Development Order issue that is  
3 the actual stamp of approval for the project. And  
4 then following that, the Applicant will need to get  
5 various building permits, build the project, get  
6 inspected and obtain a certificate of occupancy in  
7 some cases.

8 So the fact the Development Order has been  
9 issued, that isn't the end of the process. And the  
10 Development Order does contain a condition that a  
11 final set of plans reflecting the final configuration  
12 of the dock will be submitted prior to the building  
13 permit issuance. And this is in accordance with our  
14 code, there's really nothing unusual about that.

15 Again, our code is unique, and it has  
16 dispensed with the old variance special exception and  
17 conditional use criteria and we're now on more of a  
18 almost performance standard basis with these level  
19 one, two and three approvals.

20 I believe there's some reference to a  
21 variance in some of the Appellant materials. It's not  
22 quite a variance, it is phrased as a deviation that  
23 can be granted at a Staff level in these cases.

24 Even if it were looked at under the rather  
25 harsh criteria for a variance grant, I think it would

1 meet that standard and that there is an apparent  
2 hardship, not of the Applicant's own making in that  
3 the sea grasses are, apparently, located in this case  
4 such that the dock had to be moved and had to be,  
5 indeed, longer than it otherwise would be according to  
6 the county report.

7 If the Appellant has some issues with the  
8 building code regarding whether you can build a dock  
9 without building a house under the code, I don't  
10 believe that's correct, but I don't think this is the  
11 correct forum to debate whether a building code is  
12 valid or not. There's some other possibilities if he  
13 wishes to challenge that.

14 Again, the real basis for the objector's  
15 position here is, apparently, that the property owner  
16 feels that it would impair the view from their  
17 property. This is their opinion, apparently, their  
18 personal opinion.

19 It does not seem to be substantiated by any  
20 professional or expert testimony of record. The  
21 opinion of the property owner is of some weight in the  
22 land use process, but under the code, the City's  
23 position is that that was weighed by the Community  
24 Development coordinator and was outweighed by the  
25 Applicant's evidence and, thus, the permit was

1 granted.

2 Therefore, under Section 4-505 C, we feel  
3 there was sufficient evidence before the Community  
4 Development Board to sustain their decision not to  
5 hold a full hearing on this and that the Board's  
6 determination and the Staff determination did not  
7 depart from the essential requirements of law.

8 JUDGE JOHNSTON: Okay. Mr. Johnson.

9 MR. JOHNSON: Judge, I think this is  
10 actually, notwithstanding everything we've heard thus  
11 far, a very simple case. There are three independent  
12 standards under which the Community Development  
13 director may grant a deviation from the normal dock  
14 requirements.

15 One is that the proposed dock will result in  
16 no navigational conflicts and the length of proposed  
17 dock will not exceed 25 percent of the width of the  
18 waterway.

19 All of these are in Section 3-601 C 1G. The  
20 second one relates to the dock -- the proposed  
21 location for the dock needs to be adjusted to protect  
22 environmentally sensitive areas.

23 And the third one relates to needing to move  
24 the dock because of unusual property configurations.

25 Any one of these three is a grounds upon

1     which the Community Development director may grant a  
2     deviation. In this case -- and so the Applicant needs  
3     to meet only one of these, just one.

4             In this case, the City's Development Order  
5     found that Applicant's proposal met all three. Now,  
6     the Appellant appeals and we go before the Community  
7     Development Board, and there are standards for appeal  
8     which are set forth in Section 4-504 C.

9             Here the Applicant -- or the Appellant,  
10    rather, Mr. Battle's client, must meet all three  
11    standards. One of them is they must show that the  
12    decision that was appealed from misconstrued or  
13    incorrectly interpreted the provisions of the  
14    Development Code.

15            The second is that the decision will be in  
16    harmony with the general intent and purpose of the  
17    Development Code. And the third is that the decision  
18    will not be detrimental to the public health, safety  
19    and welfare.

20            I'm focusing on number one. You must show,  
21    in order to have a decision of the Community  
22    Development Board overturned, you must show that the  
23    decision misconstrued or incorrectly interpreted the  
24    provisions of the Development Code.

25            If you don't do that, the Board does not

1 have the legal authority to modify or overturn the  
2 Order. I think it's instructive to review the  
3 Appellant's responses before the Community Development  
4 Board when directly asked, "Why should this appeal be  
5 removed from the consent agenda."

6 Mr. Battle said, quote, "Well, then I'll  
7 address very briefly why I think just on public policy  
8 grounds you-all should hear this appeal," end quote.

9 Mr. Battle later, quote, "The issue from a  
10 public policy standpoint is whether or not you think  
11 that something like this should be approved in light  
12 of all of the issues we've raised without you-all  
13 going through it and looking at it," closed quote.

14 And the Appellant Sobeleski herself who  
15 addressed the Board and asked said, quote, "I think it  
16 should be taken off the agenda so you can hear what I  
17 have to say," closed quote.

18 Now, the fact is that the code doesn't  
19 authorize an appeal on either public policy grounds or  
20 a simple desire to be heard. It spells out what are  
21 the grounds for appeal, and they have not been met  
22 here.

23 Now we come to this Board. This under the  
24 City's code, the decision can be reversed, the  
25 decision of the Community Development Board, not to

1     hear the appeal, and then by passing the concept  
2     agenda they, in fact, confirmed the decision of the  
3     Community Development director.

4             That can be set aside by you only if that  
5     cannot be sustained by the evidence that was before  
6     the Board or the decision of the Board departs  
7     from the essential requirements of law.

8             Now, let's put this in perspective. We're  
9     here on a second appeal from the granting of a  
10    Development Order, not even a building permit yet,  
11    just a Development Order, approving one residential  
12    dock on Clearwater Bay where there are hundreds upon  
13    hundreds of docks.

14            As a matter of the City's legislative  
15    policy, the City has granted considerable discretion  
16    to the Community Development director to grant  
17    deviations. She has a lot of discretion by -- on  
18    purpose, as a matter of express legislative policy of  
19    the City Commission.

20            Further, as a matter of express City  
21    legislative policy, the ability to appeal that kind of  
22    decision is very narrowly granted. Now, why is this.  
23    Well, the reason is that the City Commission has  
24    decided that the public's need for expeditious,  
25    affordable decision making in land development matters

1 that the City Commission has determined to be  
2 relatively minor in importance, outweighs an  
3 individual Appellant's desire for a lengthy, expensive  
4 broad-ranging, de novo Appellant review process.

5 So the City Commission has made a  
6 legislative value choice here that it's more important  
7 that people be able to get decisions that they can  
8 rely on and have finality in a relatively reasonable  
9 period of time outweighs in these minor matters the  
10 desire on the part of people who are offended by the  
11 decision to have lengthy de novo appeal processes. So  
12 that's why the City set the code up the way they set  
13 it up.

14 Now, with that as the background, let's see  
15 whether the Appellant has met the standards for  
16 reversal that are established in the code for your  
17 review of what the CDB did because, if not, then  
18 there's no sense in requiring the Community  
19 Development Board to have an appeal because the law  
20 doesn't require people to do useless things.

21 All right, first, the decision of the  
22 Community Development Board to confirm the decision is  
23 sustained by the evidence before it. Why? Mr.  
24 Mariani's requested deviation could be granted and was  
25 granted, among other reasons, because the dock would

1 result in no navigational conflict, and the length of  
2 the proposed dock would not exceed 25 percent of the  
3 width of the waterway.

4 That's one of the grounds relied upon by the  
5 Community Development director in granting the  
6 deviation. The Appellant does not contend that this  
7 ground was misconstrued or incorrectly interpreted by  
8 the Community Development director, no contention.

9 He can't. This is mathematics, simple fact.  
10 It doesn't exceed the width, and there's an  
11 uncontroverted finding in all of the materials that  
12 there's no navigational conflict caused by the dock.  
13 So on that one ground alone, uncontroverted, this  
14 deviation could be granted and was granted.

15 Therefore, since this is an uncontested and  
16 controlling factual basis upon which the Community  
17 Development director relied in granting the  
18 application, there's no sense in having an appeal, or  
19 having a full hearing, rather.

20 Why have a full hearing when a controlling  
21 uncontroverted fact is in existence. Again, the law  
22 doesn't require useless acts. To have a hearing will  
23 not controvert that fact. It has not been  
24 controverted, and that is the grounds upon which the  
25 application can be granted.

1           Secondly, the decision of the Board to  
2     confirm the decision complies with the essential  
3     requirements of law. The dock deviation appeal  
4     procedure, as I've explained is an expression of valid  
5     City legislative policy to deal with minor land  
6     development regulations, and this is one of those.

7           By definition, it's a level one approval of  
8     the lowest level approvals in the City's approval  
9     scheme for land development. We've met one of the  
10    grounds without dispute, that having to do with the  
11    not interfering with navigation and not being wider  
12    than 25 percent of the waterway.

13          The City again has afforded an Appellant  
14    right, but has purposely made it very narrow in these  
15    minor kinds of cases. Again, the essential  
16    requirements of law have been established here no  
17    matter how broad the appeal right.

18          Even if this were an entirely de novo  
19    appeal, it will be uncontroverted that the one ground  
20    for deviation has been met. Once that's met, she has  
21    the discretion to grant it. It was met, she granted  
22    the deviation.

23          Getting into the possible standards for  
24    review of what's the issue here, about what standard  
25    for review did the Community Development Board have,

1 it seems to me there are only two possible standards.

2 One is either the reasonable exercise of  
3 discretion because reasonableness is an implied  
4 element of the code. And if it's a reasonable  
5 exercise of discretion, certainly their discretion was  
6 reasonably exercised in not removing it from the  
7 consent agenda because they had an uncontroverted fact  
8 before them upon which the deviation could be granted.

9 If there is some other standard, it's  
10 probably the one that Ms. Dougall-Sides has suggested,  
11 which is that there has to be some colorable showing  
12 that you have some possibility of success, and here  
13 there is none. You can't get around that one fact.

14 Now, Mr. Battle, who is a very creative  
15 fellow, has raised an awful lot of points, and I don't  
16 intend to address all of them. I just want to give  
17 you a couple of examples, though, of how if they were  
18 addressed they could be disposed of.

19 One Ms. Dougall-Sides also addressed having  
20 to do with the question of whether Mr. Mariani would  
21 build this dock and then not build his house, and that  
22 would be an illegal main use or something to that  
23 effect.

24 Well, first of all, the code would not  
25 permit this because a dock is an accessory structure,

1     that's the technical term. And if Mariani were to  
2     build the dock without building the house, I can  
3     guarantee you that with a neighbor like the Appellant,  
4     the City will be all over Mr. Mariani because the  
5     Appellant neighbor will call up and just complain  
6     until the cows come home.

7             We can assure ourselves that  
8     there's a public watchdog right next door to Mr.  
9     Mariani who's going to oversee every little piece of  
10    work that he does on this house until he gets a  
11    certificate of occupancy. So we can be assured that  
12    the laws will be followed.

13            Secondly, for example, another argument Mr.  
14    Battle makes, is that there was not a signed and  
15    sealed engineer's drawing for this application. I  
16    think if Your Honor has the opportunity to and in our  
17    findings of fact and conclusions of law we'll cite you  
18    to all of this, Mr. Battle's argument misapprehends  
19    the way the ordinance works.

20            You file an application for development  
21    approval, as was done in this case, and you receive a  
22    Development Order. A Development Order by definition  
23    is not a building permit, as Ms. Dougall-Sides has  
24    said.

25            In order to get a building permit, we will

1     need to submit the drawings requested by Mr. Battle.  
2     The code doesn't contemplate that those drawings be  
3     done at the application for development approval  
4     stage.

5             So in conclusion, the Community Development  
6     director confirmed unanimously by the CDB, granted Mr.  
7     Mariani's application based upon three grounds, any  
8     one of which, any one of which, would have supported  
9     the decision.

10            The Appellant has failed to assert that at  
11     least one of these grounds was misconstrued or  
12     misinterpreted by the Community Development director.  
13     So that stands uncontroverted.

14            Given that failure, the decision under the  
15     code could not be overturned or modified by the  
16     Community Development Board. And so if it couldn't be  
17     overturned or modified, there was no sense in having a  
18     full hearing. Again, the law doesn't require useless  
19     acts.

20            And so I would submit to you that the  
21     Appellant's quarrel with the ease of granting dock  
22     deviations is with the City Commission in its  
23     legislative role, not with either the Appellant -- or  
24     the Applicant, rather, or the Community Development  
25     director or the CDB. Thank you.

1 MR. BATTLE: Few minutes of rebuttal, Your  
2 Honor. I'll try to be brief.

3 JUDGE JOHNSTON: All right.

4 MR. BATTLE: First of all, Mr. Johnson  
5 concedes that the code doesn't allow the dock without  
6 the house, ergo, I submit to you I win hands down on  
7 that issue alone because they haven't applied for the  
8 permit for the house and the order that Ms. Tarapani's  
9 office issued doesn't require the house to be built  
10 before the dock.

11 If Mr. Johnson concedes the code requires  
12 that, the Order departs from the essential  
13 requirements of law if it doesn't require it.

14 Now, Mr. Johnson makes much out of the three  
15 issues involving moving for environmental reasons,  
16 navigation and length, but what he doesn't address is  
17 the fact that those three -- one of those three has to  
18 be met, but that's not the only thing that has to be  
19 met.

20 It also has to meet the general  
21 applicability criteria, and that's addressed in the  
22 Order. Now, she's saying it meets it, we're saying it  
23 doesn't, but it has to meet that.

24 Now, how does the Community Development  
25 Board decide whether to reverse her. They decide

1 based upon force-fed information from her office. She  
2 decided how much of the file to give them.

3 If you read the code provision, this is the  
4 material sent to you by Leslie from the City  
5 Attorney's Office and you read the section Mr. Johnson  
6 was addressing 4-504 C, saying in order to grant -- it  
7 says, "In order to grant an appeal, overturning or  
8 modifying a decision appealed from the Community  
9 Development Board shall find that based on substantial  
10 competent evidence presented by the Applicant or the  
11 other party shall find based on substantial competent  
12 evidence presented by the Applicant or other party."

13 We were prohibited from doing that. See,  
14 there exactly is a catch 22 that they so deafly want  
15 to put my client in and trample on her constitutional  
16 rights to due process is they say, okay, we tell you  
17 it meets it, and you're not allowed to even tell the  
18 Board the merits of why it doesn't.

19 Mr. Johnson takes some statements by me and  
20 the Appellant out of context from the tape. I'll rely  
21 upon what was actually said, and hopefully the tape  
22 has captured it all.

23 My comments when I address public policy  
24 came after I had been told I wasn't allowed to talk  
25 about the merits because I'm already told you can't

1 address the merits, you can't tell us why you'll win.  
2 Tell us why we should hear the appeal.

3 And now they say, well, you didn't tell them  
4 how you could win the appeal so you didn't tell them  
5 why you were entitled to a hearing. Well, they  
6 wouldn't let us, and that's clear as a bell in the  
7 proceeding.

8 So this provision only applies once the CDB  
9 grants a hearing. There is nothing in the City code  
10 in the level one standard approval, nothing in there  
11 anywhere in that code that provides for an objector to  
12 put forth evidence.

13 They complain about a lack of expert  
14 testimony. There is no expert testimony, nothing  
15 under oath, affidavits and all of that, to support  
16 what the Planning Department did. None of that is in  
17 there.

18 If there had been a quasi-judicial hearing  
19 it would have been there because we would have put it  
20 on. And if you look at our Notice of Appeal to the  
21 Community Development Board, we're not required to  
22 give them evidence.

23 In fact, we were prohibited from even  
24 arguing about evidence. We tell them what the basis  
25 of the appeal is. And we went further than that and

1 told them that we would call a registered professional  
2 engineer, a land surveyor, real estate appraisers, all  
3 at that quasi-judicial hearing. That's the point for  
4 them to hear it.

5 Nobody supplied anything like that below.  
6 Why? Because that's kind of the nature of the level  
7 one because it's not an evidentiary proceeding  
8 throughout.

9 In fact, if you had the whole record before  
10 you below, if the CDB had had all before them below,  
11 they would have seen the difficulty we had even being  
12 allowed to address the situation below, but we never  
13 got there because the City decided how much to give  
14 the CDB to make sure her decision was upheld.

15 There is the problem, a major problem in the  
16 situation right there. The interesting thing is on  
17 the, as well, on the environmental decision,  
18 obviously, the City attorney and Mr. Johnson and I  
19 wholly disagree on that and I invite you to read it  
20 for yourself.

21 One of the things you'll see in the  
22 materials, the written materials, is me criticizing  
23 what the Staff says about that. The Staff says the  
24 report says something that clearly is not in the Staff  
25 report.

1           In fact, what the county Staff report says  
2   is if you move the dock to the east, you'll meet the  
3   environmental criteria. I mean, that's right in the  
4   very end of it. It's noted the Applicant was advised,  
5   blah, blah. I mean, you can read the words yourself.  
6   Don't take my statement as being a verbatim rendition.

7           Now, why did I talk about public policy.  
8   Mr. Johnson would have you believe this is a simple  
9   little dock like everyone on Clearwater Bay. There  
10   isn't another one on Clearwater Bay like it. This is  
11   about 1200 square feet of dock.

12           MR. JOHNSON: You're testifying.

13           MR. BATTLE: It's bigger -- it's in the  
14   record. The actual communication --

15           MR. JOHNSON: You said that it's not like  
16   anything else in Clearwater.

17           MR. BATTLE: -- is in the record. I'll rely  
18   upon your recollection of what Mr. Johnson said, and  
19   I'll rely upon you reviewing the materials. That was  
20   the issue that we argued.

21           This is 1200 square feet of dock. The issue  
22   I raised with respect, and remember I said I don't  
23   abandon any positions, I wasn't addressing certain of  
24   them in the interest of brevity, but the issue of  
25   whether it's a level two or level one, it's our

1 position where it's more than 500 square feet of dock,  
2 it should be a level two.

3 Mr. Johnson's reply to that in letters that  
4 I believe are in the record if they made it, we asked  
5 that they be in there.

6 MR. JOHNSON: They're not.

7 MR. BATTLE: Is not that it's not 1200  
8 square feet. In fact, the City agrees that it's well  
9 in excess of 500 square feet. Mr. Johnson's reply is,  
10 well, historically you don't use the boat house or  
11 covered lift, depending on what you want to call it,  
12 they call it covered lift, we've referred to it as a  
13 boat house, you don't use that coverage area as part  
14 of the square foot of the dock.

15 He makes that blatant statement unsupported,  
16 historically you don't do that. There's no evidence  
17 of that in the record. And if you run the actual  
18 calculations from the documents that are in the  
19 record, and I don't think you have to have expert  
20 testimony to calculate rectangles, it's well over 500  
21 feet.

22 So we do think that the wrong standard was  
23 used, and we do think it doesn't meet the development  
24 criteria standards, and those issues aren't addressed.

25 So Mr. Johnson would have you believe I've

1 got these three on this laundry list, if I meet one of  
2 them, bam, I'm entitled to it and, therefore, no  
3 Community Development Board hearing. That isn't what  
4 the code says.

5 Now, maybe you'll disagree with me, I hope  
6 not, I don't think so. When you read it, that's only  
7 one position. And in fact, the City, obviously,  
8 didn't agree with it because they went further and  
9 addressed the general criteria, general acceptability  
10 criteria of 3-9.

11 I've already addressed the fact they've  
12 denied us the ability to show how she misconstrued it  
13 because I wasn't allowed to talk about the merits. So  
14 we were denied the opportunity to put on any evidence.

15 We were denied the opportunity to address  
16 the information that was already in front of them.  
17 And we were denied the ability to talk about the  
18 merits, which is how she had misconstrued it, which is  
19 one of the bases upon which they could reverse if they  
20 granted a hearing.

21 Now, both the City attorney and Mr. Johnson  
22 talk about minimizing visual impact, and that comes  
23 under the general criteria from 3-913, 3-9 -- yeah, I  
24 think 3-913, 3-9 anyway.

25 That visual impact, they're correct, we did

1 put on evidence of that, that's in these photos and  
2 that's in the renderings. And it shows -- and it does  
3 show that we didn't say we don't know where we want  
4 it. We said we want it moved over to the east, or as  
5 you're facing the water from Mr. Mariani's lot, to the  
6 left.

7 And what they didn't tell you, and it's in  
8 the materials, is Mr. Blume or Bloom, however you  
9 pronounce his name, who lives next door on that side  
10 said he doesn't object, and there's a letter in the  
11 record saying he doesn't object to it being moved over  
12 there.

13 That does minimize the visual impact.  
14 Nothing eliminates the visual impact, but that  
15 minimizes it, and it could be moved over there. And  
16 the record shows how it could be moved over there and  
17 how that impact would be minimized by moving it in  
18 that direction.

19 Coincidentally, it also minimizes the  
20 environmental aspect because the grass bed is not as  
21 deep over there. And, remember, we're not here just  
22 because he wants to build a dock.

23 We're here because he wants to build a dock  
24 with covered lifts in an area where there are sea  
25 grasses, and the requirement that he runs into when he

1 does that is to move the dock out further so he gets  
2 into water deep enough that he's either beyond the  
3 grass beds or the dock is such that it doesn't impact  
4 the grass beds.

5 And that's one of the things that was  
6 addressed at the county in the report that's in the  
7 record. That's one of the things that they addressed  
8 during the argument.

9 So he's the one that wanted to deviate. If  
10 he was willing to build a dock straight within the  
11 standards, it never would have went to a level one.  
12 And I degree with the City attorney that if you look  
13 at all of the traditional variances cases, using that  
14 as a term of art, there is some difference in analysis  
15 under the City code in the merits and analysis.

16 I disagree that it's wholly inapplicable,  
17 but the key is he's asking for something that's not  
18 allowed straight up under the code, and that's why we  
19 got here today.

20 And when you look at the evidence that's  
21 before you, there clearly is nothing by the photos  
22 themselves of the neighborhood where this dock is  
23 going to go, there's nothing else in that neighborhood  
24 like what he proposes for certain, nothing, on the  
25 aerial photos. They speak for themselves, and you'll

1 see them in color.

2 Now, that pretty much addresses his dock.

3 Now, in an effort, obviously, to try to prejudice Your  
4 Honor against my client, they bring up an issue that  
5 is wholly irrelevant to this decision, but I'll  
6 address it, and that's my client's dock.

7 They tell you my clients have two docks.  
8 They are correct. But what they don't tell you is my  
9 clients have more than one lot and that they didn't  
10 build those docks. Those docks were there when they  
11 bought the lots.

12 They bought two lots with structures on  
13 them, did extensive remodeling to the structures, and  
14 now it's one large structure on more than one lot, and  
15 they've used two docks that were already there.

16 And they made some improvements to the dock,  
17 I'll address that. They did make some improvements,  
18 and the improvements they made to the dock did not  
19 include putting any kind of covered structure or  
20 elevated boats that impacted visually any of their  
21 neighbors.

22 In fact, they reversed some of the lifts  
23 on the dock for a smaller boat and jet skis to put  
24 them in a position that they didn't impact their  
25 neighbors to the west in their view.

1           So I don't really think it's material or  
2 relevant to your determination in this case, but since  
3 it's raised, I feel obligated to tell you that they  
4 try to mislead you when they say my clients have two  
5 docks, but they don't want anybody else to have docks  
6 without telling you that my clients inherited those  
7 docks when they bought the property, and they, in  
8 fact, made improvements to them in an effort to, among  
9 other things, minimize visual impact to everybody  
10 else.

11           Something Mr. Mariani appears -- well, one  
12 reading of the evidence is, apparently, he wants to  
13 obstruct other people's view and not his own. That's  
14 why we're here on those issues.

15           Now, to the extent that any of that's  
16 relevant or material, you have as Mr. Harvey says, the  
17 other side of the story.

18           MR. JOHNSON: Your Honor, I would request an  
19 opportunity to respond briefly to two points that were  
20 argued that were not argued by him in his case, in his  
21 primary argument.

22           JUDGE JOHNSTON: How long is this going to  
23 go on?

24           MR. JOHNSON: Briefly. Mr. Battle has not  
25 contested my assertion that he did not dispute the one

1 criteria on which a dock could be granted, the one  
2 relating to width, he didn't dispute that. Instead he  
3 says, but you have to meet the general standards  
4 contained in 3-913. This is not something he argued  
5 in his first case.

6 I will invite you to look at 3-913 B, which  
7 specifically says that if there's a conflict between  
8 the general conditions of 3-913 B and the flexibility  
9 criterion, and that's what we're operating under is  
10 the flexibility criteria, then the flexibility  
11 criterion governs unless the context clearly implies  
12 that the Article 3 provision will control.

13 When Your Honor looks at that, you're going  
14 to see that there's a very specific flexibility  
15 criterion that has been met. That governs over the  
16 general provisions.

17 Secondly, Mr. Battle has said that the  
18 reason we're here is because Mr. Mariani is asking for  
19 something that the code doesn't allow. The record  
20 will show you that the reason Mr. Mariani has to  
21 extend his dock is because of the existence of sea  
22 grasses.

23 I invite Your Honor to look at Code Section  
24 3-601 C, docks, and simply calculate on your own what  
25 kind of dock Mr. Mariani could build as a matter of

1 right were it not for this sea grass situation.

2 Mr. Mariani under that circumstance could  
3 build a dock that was within 20 feet of the  
4 Appellant's property. He could build a sea -- a boat  
5 lift within 10 feet, much closer than what the City  
6 has required here, which is to build it in the middle  
7 of the property.

8 He could do that as a matter of right with  
9 respect to which there isn't an appeal. The only  
10 reason he has to move it is because of the sea  
11 grasses. It's the end. Thank you for your patience.

12 JUDGE JOHNSTON: All right. Thank you for  
13 your arguments.

14 MR. BATTLE: Your Honor, I don't want to  
15 argue any further, but I do want to point to a  
16 complete falsehood in his statement. He said in the  
17 initial appeal we didn't address 319. It appears on  
18 Page 2.

19 MR. JOHNSON: In your original argument.

20 MR. BATTLE: It appears on Page 2.

21 JUDGE JOHNSTON: He was referring to your  
22 argument today. All right, thank you for your  
23 arguments. One loose end is the color pictures that  
24 need to be provided to me to supplement the record,  
25 so.

1 MR. BATTLE: Is there any objection to me  
2 having additional -- I mean, there are 13 sets of them  
3 given to the City, but I don't mind having one, two,  
4 three, four, four more sets made and submitting them  
5 to everybody simultaneously.

6 Does anyone have an objection to that?  
7 They'll be the exact -- I can tell you what we will do  
8 -- we'll probably take the CD and print them from  
9 that, but they will be the exact set of photos that  
10 was in the March 27th submission, which is what was  
11 sent to the Board.

12 MR. JOHNSON: I can't remember, those  
13 pictures show where the proposed dock is as they're  
14 required by the Development Order?

15 MR. BATTLE: No, because we did not have  
16 where the Development Order was going to require those  
17 at the time we submitted this. That was one of the  
18 points I made before the Board.

19 MR. JOHNSON: Okay. So those pictures show  
20 some other proposals, not what the Development Order  
21 is requiring.

22 MR. BATTLE: They show --

23 JUDGE JOHNSTON: The issue is only whether  
24 they were part of the record below.

25 MR. BATTLE: And they were, you just don't

1 have color.

2 JUDGE JOHNSTON: Right, so we're just  
3 substituting color.

4 MR. JOHNSON: That's fine. You're right.

5 MS. DOUGALL-SIDES: Are these what I have on  
6 your appeal submission Exhibits 1 through 7 color  
7 photos?

8 MR. BATTLE: I think they're 1 through 8.

9 MS. DOUGALL-SIDES: Oh, I'm sorry, 1 through  
10 8.

11 MR. BATTLE: Yes, ma'am.

12 MS. DOUGALL-SIDES: And you're proposing to  
13 distribute copies to --

14 MR. BATTLE: Yeah, I'm proposing to make,  
15 you know, three sets of copies or four sets of copies  
16 and send one to you, one to Mr. Johnson and one to the  
17 Hearing Officer all at the same time with a, you know,  
18 notice to everybody that I -- I'll just do it as a  
19 notice of filing.

20 MR. JOHNSON: Fine.

21 MR. BATTLE: Is that acceptable?

22 MS. DOUGALL-SIDES: That's fine.

23 JUDGE JOHNSTON: That's acceptable. And if  
24 there are proposed orders, they should be filed within  
25 20 days from today, I believe, under the code. And if

1 that's not a working day, carry over to the next  
2 working day. And I believe that concludes today's  
3 proceedings.

4 MR. BATTLE: If we submit those by fax, do  
5 you want them by hard copy as well, or do you want  
6 only hard copy?

7 JUDGE JOHNSTON: If you submit them by --

8 MR. JOHNSON: Is there a way to submit them  
9 electronically? Boy, if I were in your position, I  
10 sure would like that.

11 JUDGE JOHNSTON: No, I don't think we do  
12 that. You could call and check with the clerk's  
13 office. You can submit a diskette along with it if  
14 you want to.

15 MR. JOHNSON: Okay.

16 MR. BATTLE: Perhaps, with your permission  
17 we may not submit them by fax, but we'll send them to  
18 meet the filing deadline, they may go by fax, if they  
19 do they'll go with hard copy and a diskette following.

20 JUDGE JOHNSTON: That's fine.

21 MR. BATTLE: So that you get that within a  
22 day or two thereafter.

23 JUDGE JOHNSTON: That's fine. Thank you.

24 MS. DOUGALL-SIDES: Thank you.

25 MR. BATTLE: Thank you.

(At this time the deposition  
in the above-captioned matter  
was concluded.)

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1  
2 CERTIFICATE OF OATH

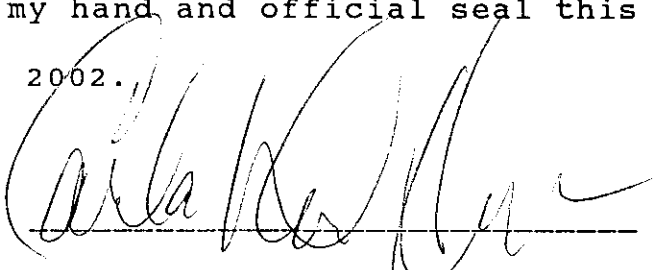
3 STATE OF FLORIDA )

4 COUNTY OF PINELLAS )

5 I, CARLA DEE HERBISON, Court Reporter,  
6 certify that I was authorized to and did  
7 stenographically report the foregoing hearing and that  
8 the transcript is a true record of the hearing.

9 I further certify that I am not a  
10 relative, employee, attorney, or counsel of any of the  
11 parties, nor am I a relative or employee of any of the  
12 parties' attorney or counsel connected with the  
13 action, nor am I financially interested in the action.

14 WITNESS my hand and official seal this  
15 18TH day of NOVEMBER, 2002.

16  
17   
18 CARLA DEE HERBISON

19 NOTARY PUBLIC - STATE OF FLORIDA

20 COURT REPORTER



# Clearwater

Planning Department  
100 South Myrtle Avenue  
Clearwater, Florida 33756  
Telephone: 727-562-4567  
Fax: 727-562-4576

CASE #: APP2002-07002/FLS 02-01-03

DATE RECEIVED: \_\_\_\_\_

RECEIVED BY (staff initials): \_\_\_\_\_

**RECEIVED**

AUG 26 2002

CITY CLERK DEPT.

**RECEIVED**

AUG 26 2002

CITY CLERK DEPT.

## APPEAL APPLICATION

Level One and Level Two Reviews (Revised 07/31/02)

~PLEASE TYPE OR PRINT~

### APPLICATION/NOTICE OF APPEAL (Code Section 4-502.A & B)

Section 4-502.A: An appeal of a Level One approval (Flexible Standard Development) may be initiated by a property owner abutting the property which is the subject of the approval within seven days of the date the Development Order is issued. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case. The hearing before the Community Development Board shall be scheduled at the first available meeting of the Board (sufficient to provide notice under Section 4-206) and may be continued at that meeting of the Board so that the Board may receive more information, clarification, or research. The Community Development Board shall render a decision at the meeting but not later than 70 days from the receipt of the notice of appeal, unless the parties by mutual consent extend the time frame for the Board's decision until a subsequent meeting.

Section 4-502.B: An application/notice of appeal of any decision of the City, as provided in Section 4-501, may be initiated by the applicant or any person granted party status within 14 days of the decision. Such application shall be filed with the City Clerk in a form specified by the Community Development Coordinator identifying with specificity the basis for the appeal and accompanied by a fee as required by Section 4-202.E. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case.

#### A. APPELLANT AND AGENT INFORMATION:

APPELLANT NAME: Deborah Groen Sobeleski

MAILING ADDRESS: 191 Devon Drive, Clearwater Beach, Florida 33767

PHONE NUMBER: (727) 461-0264 FAX NUMBER: (727) 466-6465

AGENT NAME: Maxwell G. Battle, Jr., Esq., Battle & Edenfield, P.A.

MAILING ADDRESS: 206 Mason Street, Brandon, Florida 33511

PHONE NUMBER: (813) 685-3014 FAX NUMBER: (813) 684-5922

#### B. APPEAL INFORMATION

(This is an Appeal to a hearing officer of a decision of Community Development Board regarding a Level One approval, please see page two.)

CHECK THE SPECIFIC APPEAL:

##### Appeals to the Community Development Board

- ☐ Orders, requirements, decisions or determinations made by an administrative official in the administration of the Community Development Code, except for enforcement actions
- ☐ Administrative interpretations of the Community Development Code
- ☐ Level One (Flexible Standard Development and Minimum Standard) approval decisions

- ☐ Denials of any permit or license issued under the provisions of the Community Development Code
- ☐ Any denials deemed to have occurred as result of the failure of the Community Development Coordinator to act within the time limits provided in this Community Development Code

CITY OF CLEARWATER, FLORIDA  
MISCELLANEOUS RECEIPTS

M 287933

Received of James Soboleski & Deborah Soboleski 8/26 PO2  
Five hundred

In payment of ~~471~~ CR #9863 Dollars

Fund Appeal to hearing Code 010-00000-341230-000-000  
Re. 8/20/02 offer CITY OF CLEARWATER

Jana York  
Received By

\$ 500.00 \*received appeal  
with 12 copies attached APP0002-PLS  
02-01-03



Planning Department  
100 South Myrtle Avenue  
Clearwater, Florida 33756  
Telephone: 727-562-4567  
Fax: 727-562-4576

CASE #: APP2002-07002/FLS 02-01-03  
DATE RECEIVED: \_\_\_\_\_  
RECEIVED BY (staff initials): \_\_\_\_\_

- ☒ SUBMIT ORIGINAL SIGNED AND NOTARIZED APPLICATION
- ☒ SUBMIT 12 COPIES OF THE ORIGINAL APPLICATION
- ☒ SUBMIT APPLICATION FEE \$ 500.00

## APPEAL APPLICATION

Level One and Level Two Reviews (Revised 07/31/02)

~PLEASE TYPE OR PRINT~

### APPLICATION/NOTICE OF APPEAL (Code Section 4-502.A & B)

Section 4-502.A: An appeal of a Level One approval (Flexible Standard Development) may be initiated by a property owner abutting the property which is the subject of the approval within seven days of the date the Development Order is issued. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case. The hearing before the Community Development Board shall be scheduled at the first available meeting of the Board (sufficient to provide notice under Section 4-206) and may be continued at that meeting of the Board so that the Board may receive more information, clarification, or research. The Community Development Board shall render a decision at the meeting but not later than 70 days from the receipt of the notice of appeal, unless the parties by mutual consent extend the time frame for the Board's decision until a subsequent meeting.

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PHONE NUMBER: (727) 461-0264 FAX NUMBER: (727) 466-6465

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- ☐ Administrative interpretations of the Community Development Code
- ☐ Level One (Flexible Standard Development and Minimum Standard) approval decisions

- ☐ Denials of any permit or license issued under the provisions of the Community Development Code
- ☐ Any denials deemed to have occurred as result of the failure of the Community Development Coordinator to act within the time limits provided in this Community Development Code

Appeals to a hearing officer

- ☐ Decisions of the Community Development Board regarding Level Two approvals  
☒ Decisions of the Community Development Board regarding Level One approvals  
☐ OTHER (as allowed by Code) \_\_\_\_\_

ADDRESS OF SUBJECT APPEAL (if applicable): 193 Devon Dr.

SPECIFIC CASE NUMBER TO BE APPEALED (if applicable): APP2002-07002, 193 Devon Dr./FLS 02-01-03

DATE OF DECISION: August 20, 2002

**C. BASIS OF APPEAL:**

Explain in detail the basis for the appeal. Use additional sheets if necessary.

- The development order does not comply with the Community Development Code.
  - The application, amended application and proposal do not comply with the Community Development Code
  - The Community Development Code on its face and in practice denies appellant of her right to substantive and procedural due process of law.
  - The decision of the Community Development Board was arbitrary and capricious, is not supported by the record, and otherwise does not meet the requirements of law.
  - The Community Development Board was not furnished with a complete copy of the entire application file and/or was deprived of a reasonable opportunity to review the entire application file prior to its decision.
  - The Community Development Board denied Appellant an administrative hearing.
- Please see Exhibit "A", and Exhibit "B" (August 16, 2002 correspondence from Maxwell G. Battle to Cyndi Tarapani including attachment thereto) for additional basis of appeal.

**D. SIGNATURE:**

I, the undersigned, acknowledge that all representations made in this application are true and accurate to the best of my knowledge.

STATE OF FLORIDA, COUNTY OF PINELLAS

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_ to me and/or by \_\_\_\_\_, who is personally known has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of property owner or representative

\_\_\_\_\_  
Notary public,  
My commission expires:

## **EXHIBIT A**

### **CONTINUATION OF SPECIFICATION OF BASIS FOR APPEAL**

The decision of the Community Development Board was arbitrary, capricious, and must be reversed because:

1. The Community Development Code on its face and as applied deprives Appellant of her right to due process under law both substantively and procedurally. Specifically, but without limitation, the Community Development Code is flawed on its face because it does not provide for any meaningful appeal. The Code gives the Board unbridled discretion to approve the decision of the Community Development, but provides to standard of review. Further, the Code doe provide any meaningful right to appeal. Appellant of her procedural right to due process of law in that the Board's decision was based upon a selective subset of the records and facts upon which the Community Development Coordinators' decision was based and because Appellant was denied any opportunity to argue the merits of the case while at the same time the applicant and the City were afforded such an opportunity. The Community Development Board failed to grant Appellant an administrative/quasi-judicial hearing to consider evidence which was part of the application file but which was not properly provided to the Board for its consideration at the Board's August 20, 2002 meeting.
2. In spite of the requests and objections of counsel for Appellant, the Community Development Coordinator failed and/or refused to provide the Community Development Board with the entire application file which formed the basis for the original decision to issue the development order, or provided parts of the file to the Board so late as to deprive the Board with the reasonable opportunity to review the file. The Community Development Coordinator failed and/or refused to provide the Board with certain exhibits including but limited to a letter from an adjoining property owner expressing no objection to the positioning of the dock on the East side of applicants property as well as a letter from Pinellas County addressing environmental aspects of the application. The applicant's counsel was then allowed to argue the merits of one or more of these exhibits without the exhibit being in the record and without Appellant being granted a similar right.
3. The Community Development Coordinator skewed the record and the evidence to support her own decision. The Community Development Coordinator included exhibits supplied by the applicant and/or his counsel, but selectively excluded exhibits furnished by Appellant.
4. The board misconstrued graphic exhibits furnished by Appellant, and refused to allow Appellant's counsel to address the Board's erroneous conclusions thereabout.

5. Appellant has been denied procedural due process of law in this case because the Board did not allow Appellant to argue the merits of the case. At its August 20, 2002 meeting, the Board allowed both the Community Development Coordinator to argue the merits of the case, but refused to allow Appellant or her counsel to do so.
6. At the August 20, 2002 meeting, a member of the Board moved to uphold the decision based upon the fact that the Board Member's opinion that the City's staff were professionals and therefore should be supported by the Board. In effect the Board abdicated its responsibility to review the decisions of staff members.
7. The decision of the Community Development Board is tainted by the fact that the applicant submitted an exhibit prepared by a member of the Board. While the particular board member abstained from the Board's consideration of this case, the Board did consider the exhibit in its review of the case.
8. The Development Order appealed from fails to comply with the requirements of the Community Development Code, departs from the essential requirements of law because:
  - A. It is based upon and concurs with the findings of the Development Review Committee. However, except for Mark Parry's February 15, 2002 "FAX MESSAGE" to Tim Johnson, there are no written findings in the file [or were not on, and prior to, July 18, 2002]. If the "comments" reported by Mr. Parry in his February 15, 2002 FAX MESSAGE are the findings the Development Order refers to, then they are based upon a flawed and inaccurate Staff Report. See Maxwell G. Battle, Jr's letter to Cyndi Tarapani dated April 26, 2002; and
  - B. It approves a proposal based upon a non-existent plan; and
  - C. It was not signed by the Community Development Coordinator; and
  - D. It grants relief that is inconsistent with the Flexible Standard Development criteria under 3-601.C.1.g; and
  - E. It grants relief that is inconsistent with other provisions of the Community Development Code including without limitation 1-103.A, 1-103.B.2, 1-103.E.3, 3-601.C.1.d, 3-601.C.1.e, 3-601.C.1.g and 3-913; and
  - F. It grants relief upon an application that does not comply with the requirements of 4-202.A.24; and
  - G. It approves a proposal which is incompatible with the surrounding area; and

- H. The Application was amended after the Development Review Committee concluded its review; and
- I. It refers to a Site Plan dated April 15, 2002 which was not in the city's file on the dates of four (4) reviews of the City File [3/15/02, 4/23/02, 6/06/02 and 7/18/02], the last of which was on July 18, 2002, the Thursday before the Order was signed. There was however a single Architectural Drawing by Plisko Architecture, P.A. AIA dated, unsigned and unsealed with revisions of 4/10/02 and 4/11/02 entitled DOCK PLANS. This document depicts two dock configurations. If this is the "site plan" referred to by the Development Order, then the Development Order is vague and ambiguous in that it does not clearly identify which configuration on the "site plan" is required to be adopted by the Condition #4.
- J. Although the Development Order requires concurrent issuance of a building permit for a residence and dock, it allows the dock to be permitted and built without first requiring the construction of a single family residence. If the residence was permitted but not built, this would result in the dock being allowed as a primary, rather than accessory use.
- K. The Community Development Coordinator apparently misconstrued the effect of Section 3-601.C.1.g to require rather than allow deviations to the dock criteria.

### **INITIAL BRIEF**

#### **Standing of Appellant**

Deborah L. Groen Soboleski, formerly known as Deborah L. Groen is the record title holder of 191 Devon Drive, Clearwater, FL 33763, which property is adjacent to, and contiguous to, the Mariani property to which the Development Order is addressed. Appellant's East property line adjoins Mr. Mariani's West property line.

#### **Flawed Staff Report**

The Development Order concurs with the findings of the Development Review Committee. With exception of Mark Parry's reported comments to Tim Johnson [Fax Message of 02-15-02], there were no written "findings" of the Committee in the file on, or prior to, July 18, 2002. Further, the Development Review Committee had before it at the time of its review a seriously flawed and inaccurate Staff Report. See Maxwell G. Battle, Jr.'s letter to Cyndi Tarapani dated April 26, 2002. The flaws are so pervasive and egregious as to call into question the entire review process on the Application in

question. At a minimum, allowing the Development Review Committee to act upon such clearly erroneous and incomplete information departs from the essential requirements of law.

### **Non-Existent Plan**

The Development Order appealed from approves a proposal that does not yet exist in final form. It directs submission of a new plan for review by City Staff. It is inappropriate to issue a Development Order that allows the "approved proposal" to be created after the Development Order is issued. Such an approval subverts the entire review, approval and appeal process, departs from the essential requirements of law and violates both substantive and procedural due process rights of the Appellant under the Florida and United States Constitutions.

### **Development Order Not Properly Entered**

The Community Development Code provides that the Community Development Coordinator may issue a Development Order approving a Level One Review item. The Development Order is signed by another City Employee. There is no indication in the file that this City Employee is a duly authorized representative of the Community Development Coordinator. Accordingly, the Development Order should be declared void.

### **Inconsistent with Section 3-601.C.1.g of the Community Development Code**

The proposed dock does not need to be adjusted in length to protect environmentally sensitive areas if the covered boatlifts are omitted and it is moved to the East. The property configuration does not preclude placement of the proposed dock in compliance with the required dimensional standards and the proposed dock is not similar in dimensional characteristics to surrounding dock patterns. Moving the dock to the East side of the Mariani lot as suggested by Appellant would serve to protect existing grass beds. Further, under the foregoing circumstances and until proper final plans are submitted, it can not be said unequivocally that no navigational conflicts would be created.

### **Inconsistent with other Provisions of The Community Development Code**

Section 1-103.A envisions that development will be conducted in a manner that enhances the character of the City, the preservation of neighborhoods and enhances the quality of life. The Mariani proposal violates each of these principals.

Section 1-103.B states that the CDC's purpose is, inter alia, to ensure that development and redevelopment will not have a negative impact on the value of

surrounding properties and wherever practicable promotes the enhancement of surrounding property values. The Mariani proposal will have a drastic negative impact upon the value of the Appellant's property. On the waterfront, view is value.

Section 1-103.E.3 requires the protection and conservation of land values throughout the City. The Mariani proposal contravenes this goal. It destroys the Soboleski view and devalues their property.

Section 1-103.E.5 requires preservation of the aesthetic character of the Community. The Mariani proposal contravenes this goal. It sets a precedent of allowing covered boat lifts that rival many residences in size.

Section 1-1-3.E.6 indicates that open spaces should be provided through efficient project design and layout that addresses appropriate relationships between buildings on the project site and adjoining properties. The Mariani proposal attempts to crowd the site at the waterfront when open space could be fostered by moving the dock to the East side of the property and/or deleting the covered portion of the lifts.

Section 3-601.C.1.d prohibits vertical sidewalls on any dock or boatlift. The Mariani proposal contains vertical sidewalls as a portion of the roof in controvention of this section. The vertical sidewalls add to the perception of mass of the structure.

Section 3-601.C.1.e provides that no more than two slips can be created. The Mariani proposal includes tie piles along with boatlifts, which effectively creates more than two slips in contravention of this section.

#### **Failure to Provide Complete Plans in Compliance with Section 4-202.A.24**

Section 4-202.A.24 requires that complete plans be submitted with the application which are signed and sealed by a Florida Registered Professional Engineer. It clearly says "shall" be accompanied by such plans. Under Section 8-101.E, "shall" means mandatory in nature. This was not done by Mariani. Given the clear mandate of Section 8-101.E, the requirement can not be waived. The result is that neither the Staff, the Community Development Board or the Community Development Director had before them a complete application. Nor did they have an accurate and specific plan of the actual proposed size (height, width and depth) of the proposed dock, covered boatlifts, and slips from which to properly evaluate the proposal. Similarly, affected property owners have been denied the same information. Accordingly, the proposal can not have been properly evaluated and approved because the application did not comply with the Community Development Code. By proceeding to process the application the Community Development Coordinator departed from the essential requirements of law.

### **Incompatibility with Surrounding Area**

The proposal is not compatible with the surrounding area. A review of the materials submitted by James and Deborah Soboleski clearly show that there are no private docks with dual covered lifts of the size proposed by Mariani. The Mariani proposal constitutes a substantial departure from the character of docks in the neighborhood.

### **Amendment after Review**

The Mariani proposal was repeatedly amended after the Development Review Committee completed its review. Accordingly, the Development Review Committee reviewed and commented upon a different proposal than the Planning Director ostensibly approved. None of the surrounding property owners appear to have been notified of the amendments, and certainly none of them could possibly have any idea of what the end result might be because the final plan still has not been submitted. Accordingly, the City Planning Department has not acted in accordance with its own Codes and has departed from the essential requirements of law.

### **April 15, 2002 Site Plan**

The Development Order requires compliance with an April 15, 2002 Site Plan. No such site plan was in the file on July 18, 2002 [nor on 3/15/02, 4/23/02 or 6/06/02]. If such a site plan exists [and was submitted], it has been shielded from Public view. Further, it clearly was not evaluated by Staff prior to the Development Review Committee Meeting, or by the Development Review Committee because no such plan could have existed at that time by simple examination of the dates of each. If the "Site Plan" referred to is the Plisko Architecture, P.A. "DOCK PLANS" revision dates 4-10-02 and 4-11-02, the order is too vague and ambiguous. It does not clearly identify what portion of the Plisko "DOCK PLANS" is to be incorporated into the revised plans to be submitted in accordance with Condition #4.

### **Accessory Use**

The Development Order requires only that a residence permit be issued at or before the dock permit is issued. It does not requires that the residence be constructed first. The issuance of a permit to build a residence does not require that the residence be built. Unless the residence is built, the dock would be an impermissible primary use rather than an accessory use. Accordingly, the Development Order departs from the essential requirements of law by not requiring that the residence be constructed before the dock.

**Community Development Coordinator**  
**Misconstrued Section 3-601.C.1.g**

It appears that the Community Development Coordinator misconstrued Section 3-601.C.1.g to require rather than allow the granting of a deviation from the dock criteria if any of the 3 criteria for deviation was met. Section 3-601.C.1.g uses the term "may" which under Section 8-101.F means "permissive", not mandatory. Accordingly, the Community Development Coordinator was not required to grant the relief sought by Mr. Mariani.

**ADOPTION OF PRIOR POSITIONS**

In addition to the foregoing issues, Appellant adopts the positions set forth in Maxwell G. Battle, Jr.'s letters dated March 14, 2002, March 27, 2002 and April 26, 2002, copies of which are attached to this Application for Administrative Appeal.

**WITNESSES AND PROOF**

At hearing the appellant intends to offer additional argument, testimony from live witnesses and tangible evidence. Witnesses may include a Florida Registered Professional Engineer, a Florida Registered Land Surveyor, one or more Florida Licensed Real Estate Brokers, one or more Florida Licensed Real Estate Appraisers, a duly licensed Florida Contractor and lay witnesses. These witnesses will be designated more fully at a later date.

**CONCLUSION AND REQUESTED RELIEF**

For the reasons set forth herein above, the Development Order, and the decision of the Community Development Board in Case No. APP2002-07002 must be reversed and the application in Case No. FLSO2-01-03 denied. In the alternative, the Development Order should be modified to require moving the proposed Mariani dock to the Eastern most side of his Lot and deleting the covered lift portions of the dock.

# BATTLE & EDENFIELD, P.A.

ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR. \*  
MICHAEL S. EDENFIELD

206 MASON STREET  
BRANDON, FL 33511-5277  
(813) 685-3014  
FAX (813) 684-5827

ALSO ADMITTED

\* COLORADO

\* NEW MEXICO

\* MONTANA

August 16, 2002

Cyndi Tarapani, Community Development Coordinator  
City of Clearwater Planning Department  
100 South Myrtle Avenue  
Clearwater, FL 33756

**HAND DELIVERY**

RE: Application for Flexible Development Standard  
Approval submitted by Chris Mariani; FLS 02-01-03;  
APPLICATION FOR ADMINISTRATIVE APPEAL;

Dear Ms. Tarapani:

Thank you for returning my call yesterday regarding the packets forwarded by Mark Parry to the Community Development Board for their consideration with respect to this Appeal at the August 20, 2002 Board Meeting. As I advised you during that call yesterday, I am very dismayed that Mr. Parry would choose to omit my submission of March 27, 2002 from the packets provided to the Community Development Board for the August 20, 2002 meeting, while at the same time he chose to include Mr. Johnson's submissions. The voice mail I received from your office staff prior to your call advised that this was due to the fact that the March 27, 2002 submission was not part of the APPLICATION FOR ADMINISTRATIVE APPEAL. **This is incorrect**

My Client's APPLICATION FOR ADMINISTRATIVE APPEAL with respect to the Development Order entered in this matter was Hand Delivered to your Office along with payment of the Administrative Filing Fee in the amount of \$100.00 on July 26, 2002. Physically attached to the APPLICATION FOR ADMINISTRATIVE APPEAL was a complete copy of my letter of March 27, 2002 including all 15 Exhibits to the letter in a bound booklet. In addition, Page 5 of Exhibit B to the APPLICATION FOR ADMINISTRATIVE APPEAL expressly incorporates the March 27, 2002 submission by reference **and states that a copy is attached.** It is simply very difficult to discern any basis for omitting this submission with its telling renderings and photographs, other than a desire to deprive the Community Development Board of information which would support the granting of

1

Exhibit "B"

a public quasi-judicial hearing and reversal of your Development Order.

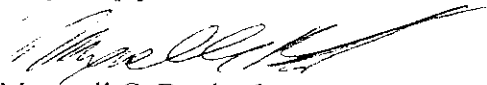
Further, the statement from "Lisa" on your staff that my March 27, 2002 submission was not included because it was not part of the APPLICATION FOR ADMINISTRATIVE APPEAL is also suspect because while my March 27, 2002 submission was clearly part of the APPLICATION FOR ADMINISTRATIVE APPEAL, Mr. Johnson's submissions which you did send to the Community Development Board were certainly not attached to the APPLICATION FOR ADMINISTRATIVE APPEAL.

For the Appeal Process contained in the Community Development Code to have any validity at all, it is necessary for the Community Development Board to be provided with the complete record upon which you made your decision, rather than a biased rendition by the staff of the very Official whose decision is being appealed. Failure to provide a complete record to the Community Development Board deprives the Community Development Board of the ability to conduct a meaningful review of your decision and reach an informed decision. I doubt that the drafters of the Community Development Code intended for the Community Development Board to merely "rubber stamp" your decisions.

Accordingly, I respectfully demand that you immediately courier a complete copy of the entire record on this matter to each member of the Community Development Board by 12:00 Noon today so that they may review the entire file prior to the August 20, 2002 Board Meeting. Even though there is no requirement in the Code or your form to provide multiple copies of any Appeal materials, I have enclosed thirteen (13) copies of my March 27, 2002 submission. Unfortunately, due to the late timing of your advice that you would not incur the expense of copying the submission with its color photographs, I was unable to obtain copies of Exhibit 9 [which is the CD containing Exhibits 1 through 8 in electronic form] or bind the copies with tabbed dividers. However, the balance of the Exhibits are attached and labeled **and Exhibit 9 may be viewed on the Internet at the following address:**

**<http://www.visualasbuilt.com/dock.html>**

Very truly yours,



Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

BATTLE & EDENFIELD, P.A.  
ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR.\*  
MICHAEL S. EDENFIELD

ALSO ADMITTED  
• COLORADO  
• NEW MEXICO  
• MONTANA

206 MASON STREET  
BRANDON, FL 33511  
(813) 685-3014  
FAX (813) 684-5922

March 27, 2002

Mark Parry, Lead Planner  
Cyndi Tarapani, Community Development Coordinator  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

RE: 193 Devon Drive; Lot 31;  
Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

 **COPY**

Dear Mr. Parry and Ms. Tarapani:

As you know, I represent James and Deborah Soboleski who own the residence to the immediate West of Mr. Chris Mariani's lot for which the above application was submitted. My clients remain vehemently opposed to Mr. Mariani's request as it is now constituted. This letter and accompanying documentation are submitted to supplement my letter to you of March 14, 2002. I have broken this letter into sections for ease of review.

**Opening Discussion and Description of Materials**

The booklet submitted with this letter includes eight (8) pages photographs of my Clients' home and the neighborhood and a CD containing all of the photographs as individual images. On several of the photographs an artist's rendering of the proposed dock has been overlaid on the photograph to reflect the actual view with the proposed dock added. To achieve the proper scale and provide a realistic portrayal of the dock's effect upon the views from my Clients' residence, a surveyor was commissioned to place control markers in the water prior to the photographs being taken. The size of the dock footprint was taken from the sketches submitted by Mr. Mariani. The size of the boat houses was taken from the plan dimensions of the sketches submitted by Mr. Mariani and actual field measurements of the boat house submitted as the model by Mr. Mariani. It was necessary to combine this data because Mr. Mariani did not submit detailed plans and specifications prepared, signed and sealed by a Florida Registered Professional Engineer as required by Section 4-202, Subsection A, 24, Community Development Code.

Clearly the most devastating effect of granting Mr. Mariani's request is the destruction of the view from the back of the Soboleski residence. Exhibit 1 is a photograph taken from the Soboleski residence deck. As you can clearly see, it is presently a multi-million dollar view. Exhibit 2 is the same photograph with the proposed Mariani dock overlayed. The effect is self evident and graphic.

Exhibit 3 is an aerial view of the Soboleski residence and Mariani lot. Exhibit 4 is the same aerial view with the proposed Mariani dock overlayed. Please note the devastation to the Soboleski's view is mirrored by the devastation to the view of the Soboleski residence from the water.

Exhibit 5 is the same aerial view of the Soboleski residence and Mariani lot as shown in Exhibit 3 with the Mariani dock overlayed in the alternate location to the East that has been suggested by the Pinellas County Department of Environmental Management. This alternate location would accomplish a number of goals. First, it would not adversely impact the view from the Soboleski residence to anywhere near the extent as the location proposed by Mr. Mariani. Second, it would disrupt considerably less of the sea grass beds, as can clearly be seen in the Exhibit. Third, it would place boats at the dock at an oblique angle to waves [and wakes] approaching from the channel to the East. Fourth, it would be in keeping with the general uniformity of spacing between dock installations along the fingers in the neighborhood [See also Exhibits 7 and 8].

Exhibit 6 consists of reduced scale versions of Exhibits 3 and 5 with a "line of sight" depicted as a single broken blue line. The "line of sight" is extended from the camera location for Exhibits 1 and 2 across the intersection of the Soboleski/Mariani property line and the seawall cap. It sets the left most [Northern most] portion of the view from my Clients' lot without looking over the Mariani lot. The differing effect of the two proposed locations for the Mariani dock is clear. Placing the Mariani dock in the location proposed by Mr. Mariani [top photograph, Exhibit 6] destroys the view from the Soboleski residence, destroys the view from their dock, and seriously devalues their property. If the dock is placed in the alternative location to the East [bottom photograph Exhibit 6], it moves out of the Soboleskis' line of sight.

Exhibits 7 and 8 are a compilation of aerial views of the neighborhood. The somewhat symmetrical spacing of docks and the minimal number of boathouses in the neighborhood is evident in the photographs. It should also be noted that most of the boathouses are at the seawall behind the residences that they serve. The two exceptions at the end of the Devon finger are situated in a fashion that does not adversely effect the views from the residences adjacent to them.

Exhibit 9 is a CD that contains copies of each photograph in Exhibits 1 through 8. If you insert it in a desktop or laptop computer you will be able to view the photographs with ease by either selecting the number of the photograph or by clicking "Next" and "Previous". This CD should make it very easy for you to evaluate the visual impact of the

two alternative locations for the dock. The CD version of the photographs also allows easy viewing of the grass beds and the character of the existing neighborhood.

Exhibit 10 is a copy of the Mark Blum's March 6, 2002 letter to Mr. Pary.

Exhibit 11 is a copy of Mr. Mariani's March 7, 2002 letter.

Exhibit 12 is a copy of Mr. Johnson's March 5, 2002 letter.

Exhibit 13 is a copy of the City of Clearwater's Staff Report.

Exhibit 14 is a copy of my March 14, 2002 [corrected] letter to Mr. Pary.

Exhibit 15 is a copy of the Pinellas County Department of Environmental Management's Water and Navigation Report.

Exhibits 10 through 15 are included for your ease of review.

#### **Mr. Mariani's March 7, 2002 Letter**

Now I address Mr. Mariani's letter of March 7, 2002 to Ms. Cyndi Tarapani. Mr. Mariani starts his diatribe with the sobriquet that the "...Soboleski's...completely misconstrue... or are totally erroneous...". This is an interesting approach by Mr. Mariani because this is actually what his letter does. I note as an aside that Mr. Mariani, who has the burden of establishing his entitlement to the relief requested, has completely failed to provide any pictorial evidence of the visual effect of his proposal. In any event, I address his letter by corresponding numbered paragraph.

- 1) The issue is not whether Mr. Mariani should be allowed to build a dock, but where and how large. When a variance is granted, it should always be the minimum variance necessary. Further, despite what Mr. Mariani opines, the aerial photographs [Exhibits 3 through 7] clearly show that construction to the East would affect a smaller area of sea grass. With respect to the alleged encroachment to the East, that property Owner, the Mark Blum, does not object. [See Exhibit 10].
- 2) Mr. Mariani is incorrect. His application seeks to affect more sea grass than necessary, build a larger dock than necessary, obtain a larger deviation from the standards than necessary, and destroy my Clients' view and property values.
- 3) Please see response to Mariani paragraphs 1 and 2. The question is not whether to allow some variance, it is the magnitude of the variance and the conditions under which it may be granted. The Soboleskis do not have a boathouse.

- 4) Mr. Mariani's obfuscation of the true import of his proposal in this paragraph is incredible. He says that his proposed dock does not set a new precedent. His incredible statement ignores the fact that he is proposing to build an unprecedented double boathouse consisting of 532 square feet of coverage each, plus dock walking deck area of 476.5 square feet [accepting for the purposes of this paragraph Mr. Johnson's calculations as accurate], for a total of **1540.5 square feet of coverage**. The approval of this application would allow Mr. Mariani to construct what amounts visually and environmentally to a second home over the water. This is clearly unprecedented in Clearwater's modern history.

It should also be noted that the metal roof will have a substantially larger surface area than the plan view indicates due to the pitch involved. This surface area and pitch has a substantial propensity for reflecting a obnoxious glare onto the Soboleskis' property during substantial periods of the day.

Mr. Mariani also implies that the Soboleskis are seeking to deprive him of a benefit that they enjoy. Nothing could be further from the truth. The Soboleskis do not have **1064 square feet of boathouse**. The Soboleskis did not block their neighbors view. They do not have even one boathouse. In fact the Soboleskis spent substantial monies to improve their neighbor's view by moving lifts.

- 5) The Soboleskis do not advocate that Mr. Mariani should not be allowed to construct a dock or residence upon his lot. They contend that his development should be reasonable and not impair their view and property values. As shown in Exhibits 1 through 6, it is possible for Mr. Mariani to do so and improve his own situation at the same time. Why he is so adamant about destroying the Soboleskis' view and property value is a mystery.

It should be noted that Mr. Mariani makes an interesting statement about the failure of Ress Marine to ever experience the lifting or destruction of a dock that they built. I would be interested to know the basis for this statement and what Mr. Mariani defines as "lifted" or "destroyed". While Ress Marine is a marine contractor of excellent reputation and qualification, no one can beat Mother Nature at every turn. At least one dock on St. Joseph's Sound built by Ress Marine that suffered substantial damage including loss of timbers during the "No Name Storm".

Moving on to the balance of Mr. Mariani's letter, I find it interesting that Mr. Mariani suggests that the Neimanns have no right to object. If this were true, the City would not require notice to the Neimanns. Further, Mr. Mariani suggests that there is no loss of value to Neimanns' residence as a result of the Soboleskis' docks [located on two lots, not one small one like Mariani's], ergo there can be no loss of value to Soboleskis' residence due to his proposed dock. This incredible assertion is dispelled by one look at Exhibits 1 and 2. In addition, you must consider two other salient facts. First, the

Soboleskis purchased their property with the docks in place and then made expensive modifications which benefited the Neimanns. Second, the Soboleski docks do not block the Neimanns' view and there are no house sized boat houses on the Soboleski docks.

Next, Mr. Mariani suggests that the Soboleskis want his dock in its present proposed location. This is obviously incorrect. If Mr. Mariani's assertion were true, you would never have heard an objection from my Clients and you certainly never would have heard from me. In addition, Mr. Mariani's comments about the view are completely dispelled by Exhibits 1, 2 and 6.

Finally, Mr. Mariani suggests that he bought his lot specifically due to its Southern exposure. A more probable reason is that it was on the market. One look at Exhibits 7, 8 and 9 shows a dearth of vacant lots in the area. In any event, the placement of the dock to the East in the alternate location still places it in a protected position from the North/Northwest winds.

**NO MATTER WHAT MR. MARIANI SAYS, GRANTING HIS REQUEST SETS AN UNCOMFORTABLE PRECEDENT FOR ALLOWING THE CONSTRUCTION OF MASSIVE VIEW, DESTROYING STRUCTURES OVER THE WATERS OF CLEARWATER HARBOR.**

**Timothy Johnson's March 5, 2002 Letter**

To avoid unnecessarily lengthening this letter, I will confine my comments to Mr. Johnson's letter to Page 3, paragraph 5 (c)(3). The closing sentence of this paragraph of Mr. Johnson's letter states that "The logic of the Soboleskis is elusive."

The Soboleskis' logic is elusive only to Mr. Johnson who fails to seek it [or who perhaps chooses consciously to ignore it]. Mr. Johnson is a real estate and land use attorney of some repute. His prowess at presentations before land regulatory authorities is legendary. Yet he failed to produce for your office the very type of pictorial evidence that the Soboleskis have presented with this letter. Given his experience and professional competence, there seems to be only one reason that he would fail to present such valuable evidence. He knew that it would have a devastating impact on the position he advocates. Therefore, he omitted this pictorial evidence and resorted to criticizing the Soboleskis for striving to protect the substantial investment that they have in their property and the community.

Finally, his comments about the location of docks close to property lines ignores the clear fact that the Soboleskis not only worked to protect their neighbors view with respect to docks in place when they purchased their property, **but more importantly that the Soboleski docks are not in the prevailing view of the Mariani lot.**

### Concluding Comments

I reiterate the positions espoused in my March 14, 2002 letter that: 1) Mr. Mariani's application fails to comply with the requirements of the Community Development Code; 2) due to the size of the proposed dock a Level 2 Review is required; and 3) without the prior construction of a residence on the Mariani lot, the proposed dock would constitute an impermissible primary use rather than an accessory use [the lot is now vacant]. My corrected March 14, 2002 letter is incorporated in this letter by reference [See Exhibit 14]. Each of those positions constitute independent grounds for denial of Mr. Mariani's request.

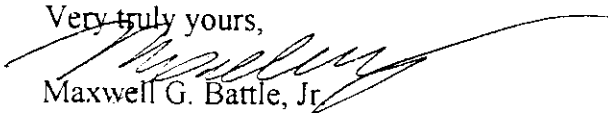
However, if you continue to review Mr. Mariani's application as a Level 1 Review, I suggest to you that Mr. Mariani's application as it is presently constituted must be denied. Granting it would constitute an unconscionable abuse of the flexible development standards that were implemented to balance the protection of individual property owners and the character of the community with the right of a property owner to reasonably develop his property. Exhibits 1 through 9 clearly support this denial.

Mr. Mariani says that he wants to meet with the Soboleskis to work out an acceptable location for his dock. If this is true, then abate the review process and direct Mr. Mariani and Mr. Johnson to meet with the Soboleskis and myself to discuss the project further. This letter and the Exhibits thereto clearly outline potentially acceptable proposals.

Finally, I request that the Soboleskis and I be granted an opportunity to meet with you and your staff to discuss Mr. Mariani's application and make a presentation to you. I believe that due process and basic fairness dictates that the Soboleskis be given the same opportunity that Messrs. Mariani and Johnson were provided.

I look forward to hearing from you at your earliest convenience.

Very truly yours,

  
Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

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EXHIBIT 1



EXHIBIT 2



EXHIBIT 3

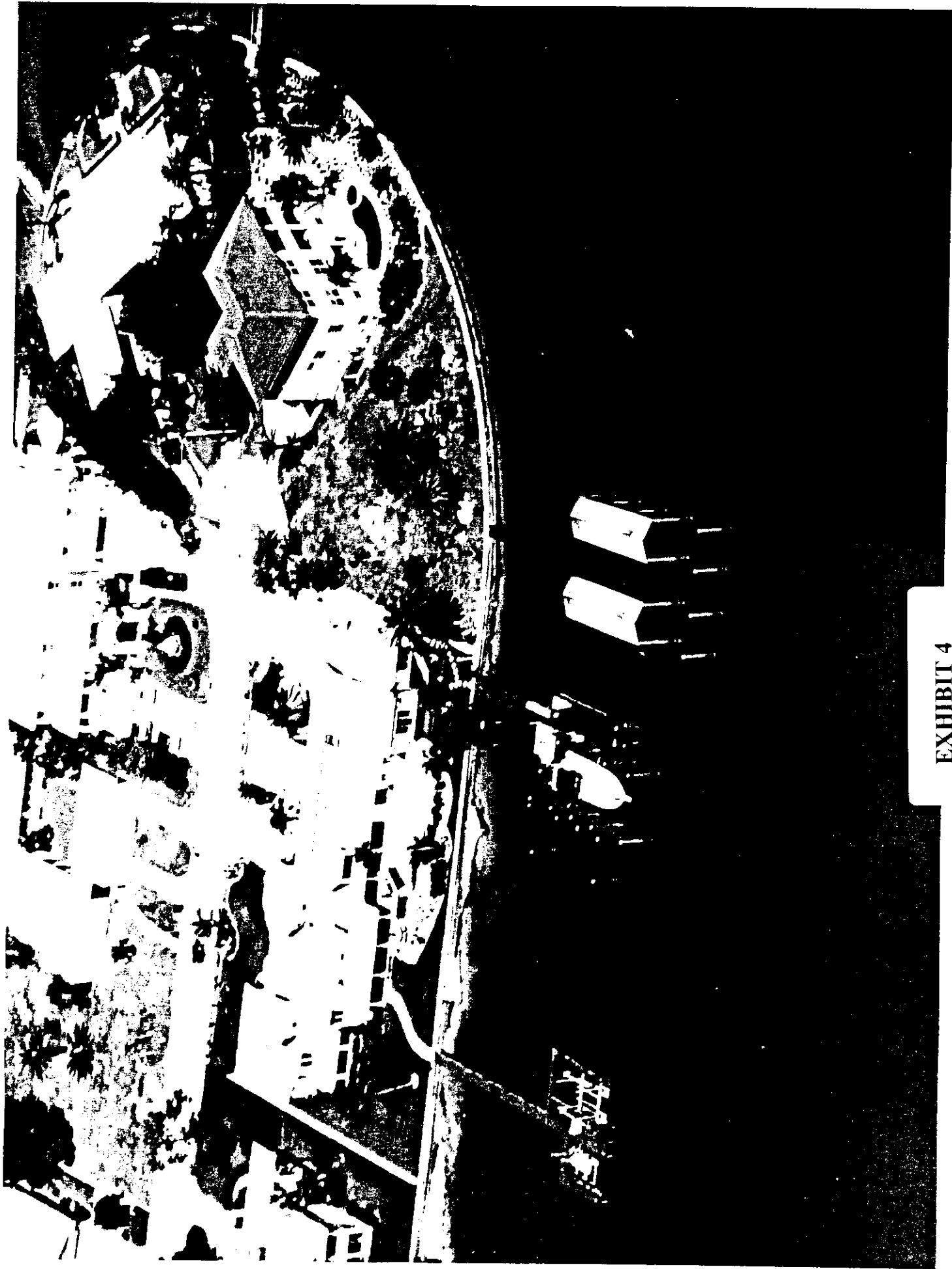


EXHIBIT 4



EXHIBIT 5



EXHIBIT 6

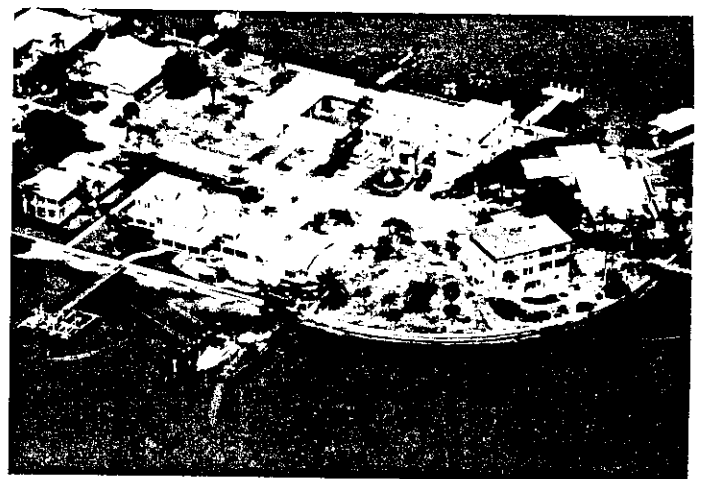
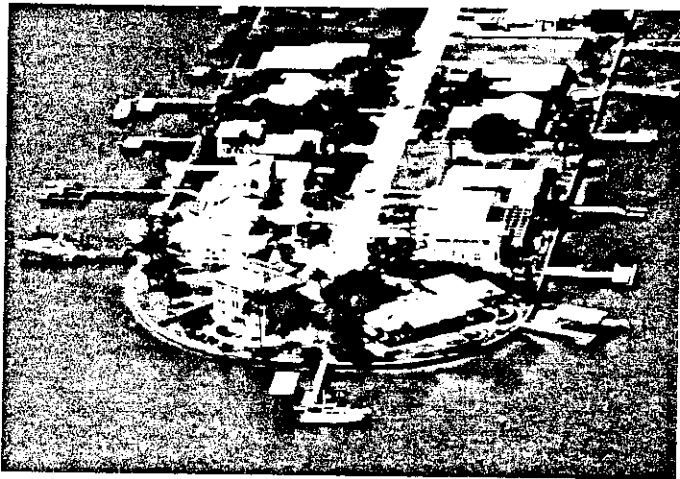
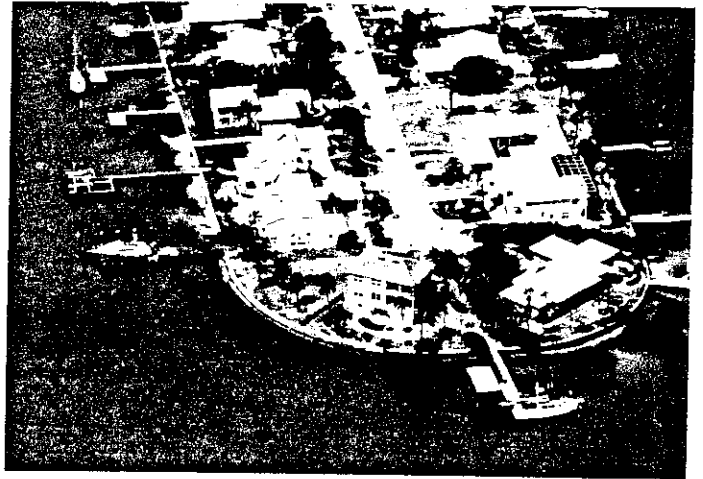
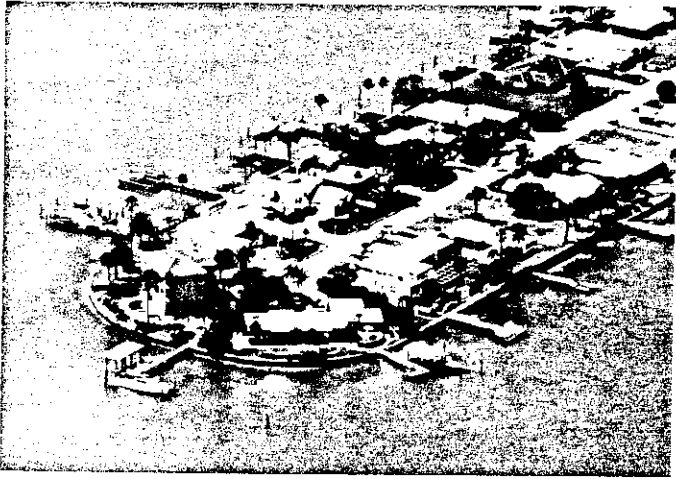


EXHIBIT 7



EXHIBIT 8

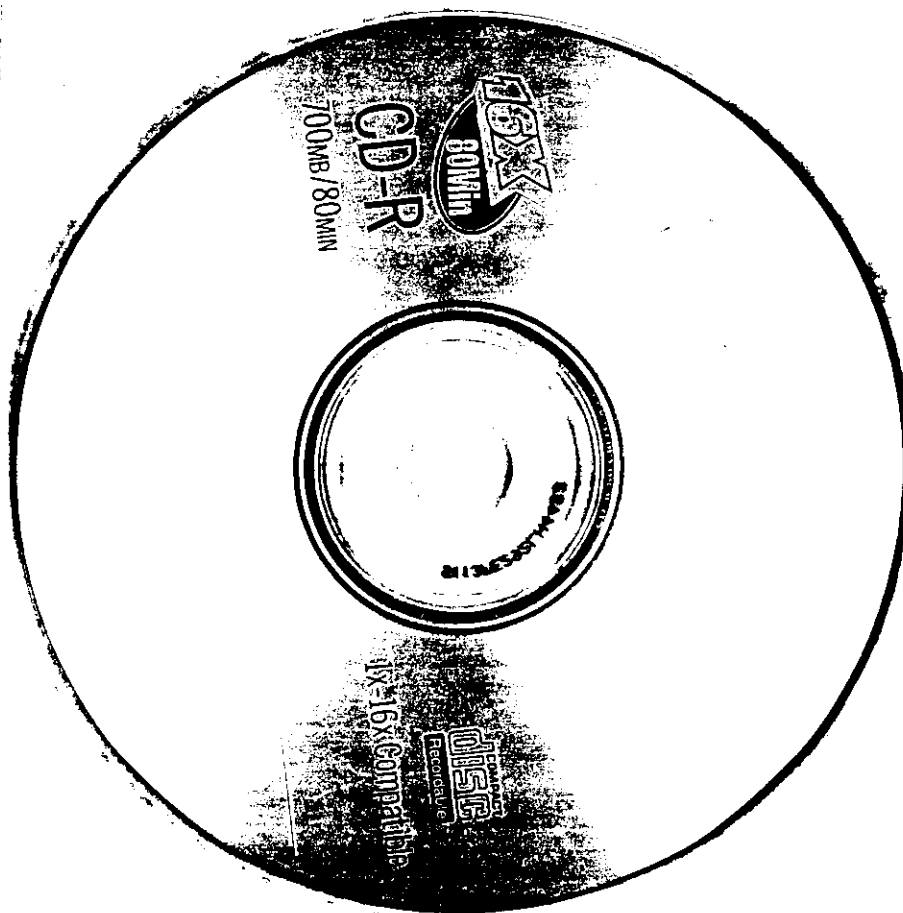


EXHIBIT 9

**Mark Blum**  
**195 Devon Drive**  
**Clearwater Beach, FL 33767-2439**

March 6, 2002

Mark Parry, City Planner  
City of Clearwater  
Planning Department  
Development Review Division  
PO Box 4748  
Clearwater, FL 33758-4748

Dear Mr. Parry:

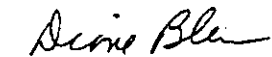
We have been asked by our neighbors to clarify our position regarding the proposed construction of a boat dock on the vacant lot at the end of Devon Drive, between our property at 195 Devon Drive, to the North and 191 Devon Drive, to the Southwest (approximately).

We have no objection to the construction of a dock on the vacant lot, at any location along the sea wall.

Respectfully,



Mark Blum



Diane Blum

**EXHIBIT 10**

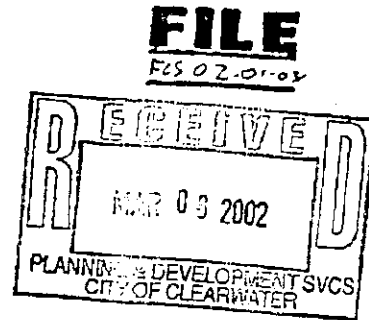
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**e.a. mariani asphalt company**

5201 Causeway Blvd. • P.O. Box 75437 • Tampa, FL 33675 • Phone (813) 623-3941 • Fax (813) 626-4103

March 7, 2002

Ms. Cyndi Tarapani  
Community Development Coordinator  
City of Clearwater  
Planning and Development  
Services Administration  
100 S. Myrtle Avenue, 2<sup>nd</sup> Floor  
Clearwater, FL 33756



Re: Application for Flexible Standard, 193 Devon Drive.

Dear Ms. Tarapani:

I would like to respond to the letters of opposition regarding my proposed dock written by James and Deborah Soboleski and Dale Neimann. The letters were written in response to the Notice of Filing of an Application for Flexible Standard Development Approval at 193 Devon Drive (FLS 02-01-03).

The Soboleski's reason their opposition through five points which either completely misconstrue the facts submitted in the application or are totally erroneous altogether. I will to respond to each point in order of their letter (Soboleski letter attached):

- 1) The County will not permit a dock anywhere on the property limited to 50' as the Soboleski's suggest. Therefore, the dock can not be built without a variance regardless of its location on the property. The Pinellas County Water and Navigation Report (PCWN) notes that some moderate sea grass exist at 50' on the left (east) property line. At 60' on the left (east) property line, no sea grass is observed. Therefore, somewhere between 50' and 60' the sea grass ends. If the dock was built in this location, a variance for a minimum of 34' would be necessary just to build the proposed structure on the east property line. My application does not seek to encroach on any side set-back. If the proposed dock was built off the east property line set back, the variance for length would be the same as is now proposed. Building the dock in this position places the western most edge of the structure 60' from the east property line. The county documents in the PCWN report under "Depths at left side of proposed dock" that the sea grass ends somewhere between 62' and 70'. The county's report is addressing a proposed dock built such that the eastern most edge of the structure would be 56' from the east property line. In each case, the structure overlaps the same area of sea grass. In this position, the dock would require a length of at least 94 feet. The dock would be no shorter in length unless it encroaches the eastern side set-back.

- 2) My application for Flexible Standard seeks only to lengthen the dock beyond the "Environmentally Sensitive Zone," as designated by Pinellas County. If I do not extend beyond the sea grass, the County will not permit. Clearly, according to the PCWN report, a variance is required, regardless of location, to protect the sea grasses and to allow adequate depth in which to float a boat.
  - 3) The location of my property and the Soboleski's has the widest region of environmentally sensitive area. It is obviously from the two aerial photos I submitted to the Development Review Committee on February 14<sup>th</sup> that the sea grasses extend furthest from land along my property and the Soboleski's. The Soboleski's second dock was permitted at 98 feet for the same reason, to preserve the environmentally sensitive area around our property. Again, I further defer to rebuttal point #1 and #2.
  - 4) My proposed dock does not set new precedent. The dock, which the Soboleski's claim is "extraordinarily large", is smaller in total square footage than either one of their two docks. *Furthermore, their second dock extends to a length of at least 98 feet, 3 feet longer than my proposed dock, as revised. Their primary dock extends 90 feet and has over twice the square footage as my proposed dock.* Furthermore, any obstruction to the Soboleski's navigational exercise of the water assumes that my proposed dock:
    - a. **Encroaches the set-back.** In fact, it exceeds the minimum setback by 50%. The Soboleski's primary dock, however, encroaches the set back almost to our common property line. A photo, showing their dock in relation to a wall that rests completely inside my property and runs parallel to our mutual property line graphically illustrates this. If a navigational obstruction truly exists, it is because their dock clearly violates the side set back.
    - b. **Extends well beyond any other dock structure typical to its surroundings.** Again, the revised dock is 95', 5 feet longer than their primary dock, 3 feet shorter than their second dock.
    - c. **Is extraordinarily larger in square footage than their own.** In fact, it is considerably smaller than their primary dock by at least half the square footage.
- I respectfully ask that you speak with Harbormaster Morris regarding navigational matters as they relate to this application. Also, please accept my permission to visit with me at my property to view the site.
- 5) The Soboleski's last point assumes that no structure should be permitted on or attached to the property. Any structure built on the beach or coastal inland

risks damage from hurricane forces. I certainly agree that the Soboleski's home or any one of their two docks could cause damage to my future home or dock should hurricane winds drive debris from their property on to mine. As you know, my future home will be required to conform to standards more rigid than their home or any other home on the street because of the new building codes took effect March 1<sup>st</sup>. I intend for the dock to be built to the same high standard. In fact, there has never been a dock built by Ress Marine Construction that has ever been lifted or destroyed by a heavy storm in the Tampa Bay area.

The following comments address the points in the opposition letter from Mr. Dale Neimann. In Mr. Neimann's letter, he claims that his property value will be negatively impacted because my proposed dock, located 210 feet from his eastern property line, will block his view.

The impact of my dock is negligible at best simply because the western edge of my dock would be located 210 feet from his eastern property line. Furthermore, in between Mr. Neimann's property and my proposed dock are the Soboleski's two docks located approximately 30 feet and 152' to the east of Mr. Neimann's property line. Nevertheless, the Soboleski's 98' dock, closest to Mr. Neimann, was still permitted. Likewise, as stated previously, the Soboleski's primary dock sits on my property line and extends to 90 feet in length. In spite of this, the assessed value of my property increased 60% from January 1, 2000 to January 1, 2001 according to the Pinellas County Property Appraisers Office. Mr. Neimann offers no evidence that his property suffered any loss of marketable value due existence of the Soboleski's two docks. I can offer no evidence that my property value suffered loss from the Soboleski's docks either.

Mr. Neimann goes on to state in point #2 that if the dock is built to the east, it would not negatively impact the environment. The dock as proposed in the Flexible Standard Application does not negatively impact the environment either.

In point #3, Mr. Neimann claims that a dock can be built limited to 60 feet in length on the eastern side. Again, the PCNW Report does not indicate this to be so. The County will only permit a walkway to a maximum of 4 feet wide when crossing over sea grass. A 60' foot dock 4 feet wide could not accommodate two lifts, which are permissible under both City and County Codes, or be reasonably functional. Please note, Mr. Neimann's dock also exceeds the current codes on length (57' dock on a 75' wide lot).

I purchased the property specifically because of its southerly exposure which protects me from the prevailing storm winds and because of the abundant sea grass. I am seeking, through this application nothing more than that which the objectors already have; a variance on length. While Mr. Neimann acknowledges respect for my right to build a dock, it seems contrary as he and the Soboleski's are trying to influence their control over my property rights.

I have altered the design of the dock three times in an effort to find common ground with the Soboleski's. Upon our first meeting, we all agreed that if the dock was built as close to our property line as legally permissible, it would impact their eastward view the least. I still believe this to be the case. It became evident, however, that their only motive was to purchase or trade for my property. It is not for sale. Likewise, I have offered twice to meet with the Neimann's in an effort to find common ground. They refused to meet with me entirely.

My purpose for the application is to build a dock that is permissible under the County and City Codes. Unfortunately, the County will not allow me to build a dock as short as the City will permit due to the reasons mentioned in this letter. I have chosen the location because:

- 1) It protects the dock and the boats from storm weather that predominantly originates from the north and moves south.
- 2) It mitigates exposure from ever increasing boat traffic that runs across the tip of Devon Drive as boaters seek to avoid existing and future "no wake" zones when traveling from the marinas to Clearwater Pass.

My proposed dock:

- 1) **Seeks variance on length only, as required by the County.** It conforms to County and City codes in all other aspects including, but not limited to, permissible square footage, side set-back and permissible boat lifts. The majority of docks on Devon Drive, especially those on the north side of the street, exceed the permissible length according to the current City codes. This is true of both objectors. The two neighbors located east of my property, each have covers over their lifts. There are other docks which have covers on Devon and Bayside Drives.
- 2) **Does not set precedent.** It does not exceed the longest dock on Devon Drive or the largest dock according to square footage. The precedent has been established by the Soboleski's.

I respectfully ask that the requested approval be granted based on the facts stated above and in the original application. As long as the dock does not violate any side set-back, the position of the dock should be left to the discretion of the property owner, not the neighbors.

Sincerely,

Christopher Mariani

2-15-02; 9:18AM; PLANNING

: 0024751

# 7/ 7

Page 2

February 11, 2002

4) The substantial variances from Code requirement are being requested to allow an extraordinarily large dock structure, with covered boat lift for two (2) vessels. The proposed structure will cause adverse impact upon my property, including without limitation:

1) The proposed structure will cause a substantial obstruction of view of the water. Please accept our permission to come on to our property to view the site.

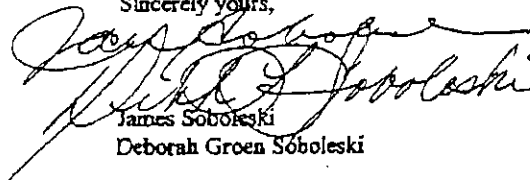
2) The proposed structure will obstruct navigation and exercise of water use rights by me and by other property owners.

5) The increased structure will increase the risks of hazard resulting from damage debris which may be caused by hurricanes or other strong storm forces.

It is respectfully suggested that the Applicant can design a dock of reasonable length, size and dimensions which will not require such extent of variances to requirements and conditions imposed by Code and which will not cause the extent of adverse impact upon our property as the proposed structure would cause.

Thanking you for your courtesy and attention to our concerns and objections, we are

Sincerely yours,



James Soboleski  
Deborah Groen Soboleski

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
March 5, 2002  
Page 2

5 a) The County Staff Report does not indicate "that the dock may be moved to the east side of the property and would only be required to be 50' in length...." The County Staff Report does contain the following comment "...the proposed length would be consistent with the environmental criteria of the Pinellas County Code if the dock were moved to the east side of the property where sea grasses end about 50' from the seawall." The sea grasses end about 60' from the seawall at the proposed dock location. Thus, a dock at the eastern side of the applicant's property would be 84' in length, not 50' as suggested in the Report.<sup>1</sup> To move the dock to the east side of the property would shift the obstruction complained of by the objectors from their view to the view of the neighbor to the east. The self interest of the objectors is manifest. The proposed location of the dock was selected because it best shelters the dock from northerly winds and prevailing boat traffic patterns off the tip of the Devon Drive finger.

c) The Report states "it's not clear how three criteria of the General Applicability (Section 3-913) are met (and must be addressed prior to the issuance of a DO)". Section 3.913 lists conditions which are to be imposed by the Community Development Coordinator pursuant to a level one or level two approval, which conditions shall insure that the listed issues are adequately addressed. These are not criteria that the applicant is required to establish. Nonetheless, I will address the three issues listed in the Report:

1. "The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located." We distributed at the hearing information showing the many docks on Devon that exceed the "standard" dock length provided in the Code. Most tellingly, the dock of the objectors Soboleski sits on Mr. Mariani's west property line and is 90' in length. (The Soboleskis have another dock on the west side of their property that is 98 feet in length.) Further, Harbormaster Morris stated at the hearing that Mr. Mariani's proposal, even at its then proposed 101 foot length, was not a navigational hazard or obtrusive and was in keeping with the character of the neighborhood.

<sup>1</sup> The dock extends 34' beyond the grass line. The grass line is at 61' on the west side of the property and 50' on the east side of the property.

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
March 5, 2002  
Page 3

2. "The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development." See the answer to the preceding issue.

3. "The design of the proposed development minimizes adverse effects including visual, acoustic and olfactory and hours of operation impacts, on adjacent property." The only issue here is visual impact. This has been minimized, given the existing sea grass situation at this location. This is especially true, in light of the nearby location of objectors Soboleskis' dock, which is of substantially equal length. Apparently, it is acceptable for the objectors Soboleskis to build their dock on Mr. Mariani's property line, but it is not acceptable for Mr. Mariani to build his dock 30 feet from the Soboleskis' property line. The logic of the Soboleskis is elusive.

11 a) The Report states that "the dock can be shortened to approximately 75' and miss the sea grass area." Clearly, this statement misapprehends the facts. A dock of 75' would allow only 14' of dock seaward of the sea grass area, which is plainly inadequate to accommodate the two boatlifts allowed by Code. In fact, a lift constructed in this manner would not allow a boat to float at low tide. The bow of the boat would damage the sea grass and the roof overhang would shade the sea grass.

(b) The Report states "application is inconsistent with the information contained in the County Report (specifically, the length of the dock)." The dock initially reviewed by the County was 86' feet in length, 9' shorter than this proposed dock. That proposal also consisted of two boatlifts side by side, which the County found to be acceptable. Now the boatlifts flank the dock as suggested by the County.

I request that you speak personally with Harbormaster Morris regarding Mr. Mariani's application. He is very familiar with all of the facts and circumstances surrounding the request and the objections of the neighbors.<sup>2</sup>

---

<sup>2</sup> It is noted that the objectors Niemann are separated from Mr. Mariani's property by the objectors Soboleski. Their east property line is 220 feet from the location of the proposed dock. The impact of Mr. Mariani's proposed dock on the Niemanns is negligible at best.

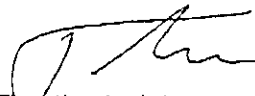
JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
March 5, 2002  
Page 4

If you have any questions, please call me.

Very truly yours,

JOHNSON, BLAKELY, POPE, BOKOR,  
RUPPEL & BURNS, P.A.



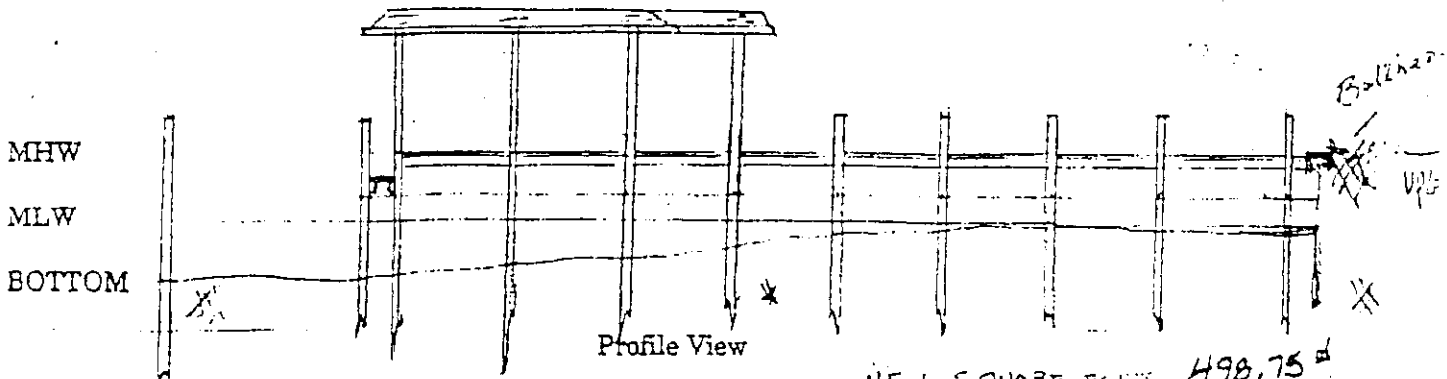
Timothy A. Johnson, Jr.

TAJ/lrc  
261632

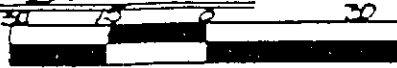
# PRIVATE DOCK

Applica

(OFFICIAL USE ONLY)



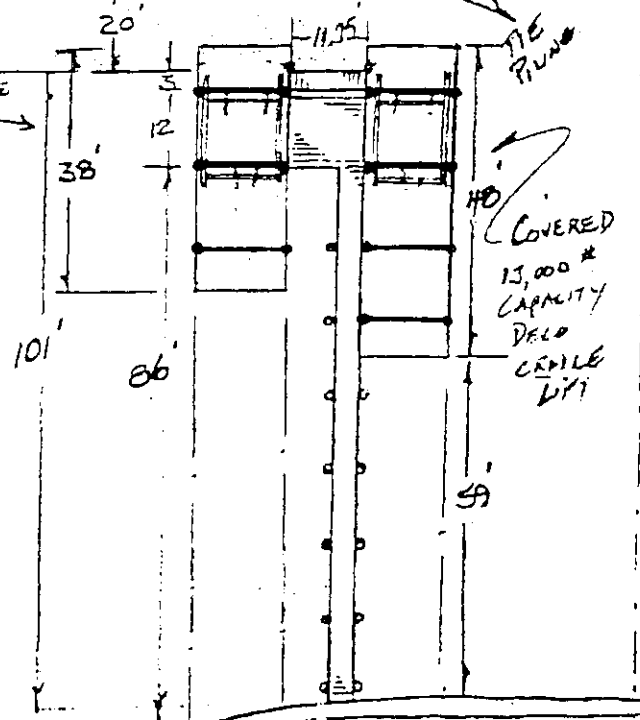
ENG. SCALE: 1" = 30'



NEW SQUARE FEET 498.75  
TOTAL SQUARE FEET 498.75  
WATERWAY WIDTH 570'  
WATERFRONT WIDTH 120'

LOT 31  
DEVON DR  
CLEAR WATER BEACH

COVERED  
13,000 #  
DECK CRANE  
LIFT



## SHORELINE

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner

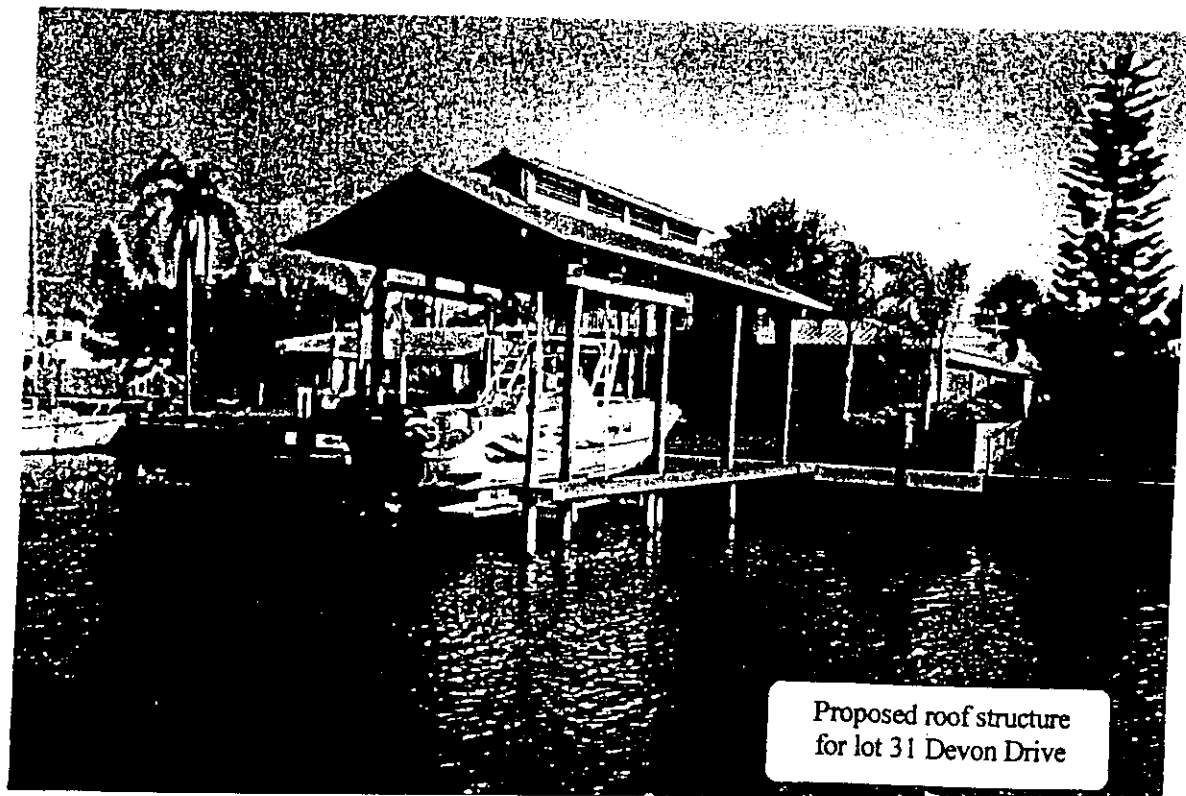
Right Owner

Signature

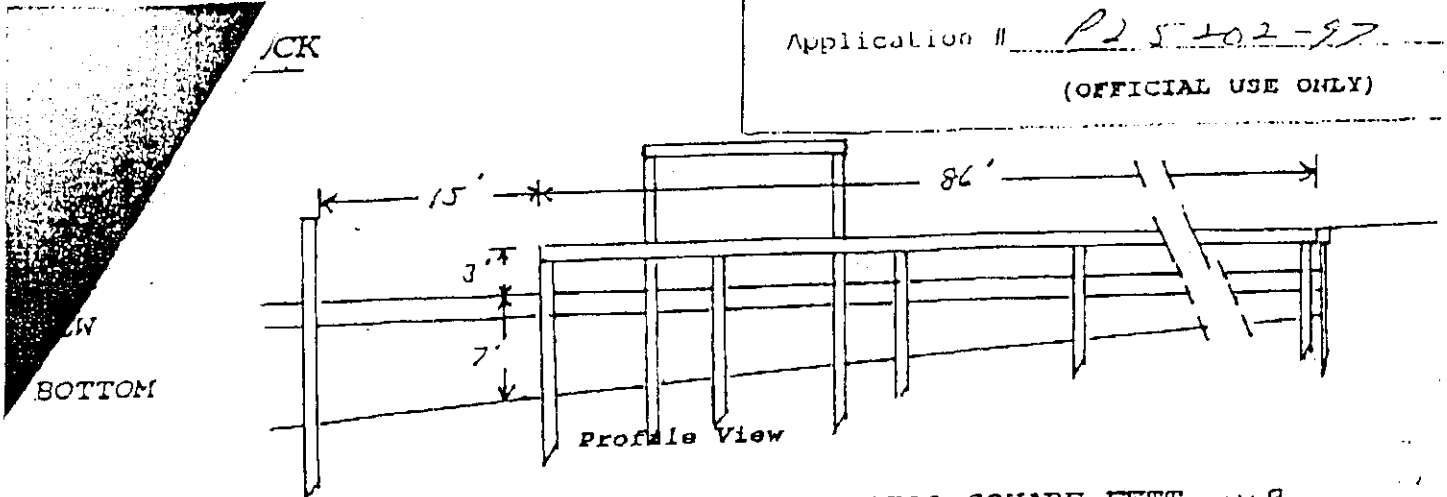
Signature

Municipality Approval

Water and Navigation Approval



Application # P25-102-97  
(OFFICIAL USE ONLY)



ENG. SCALE: 1" = 12'



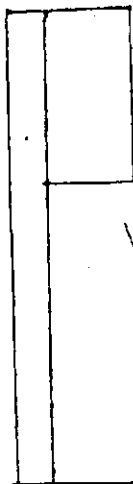
TOTAL SQUARE FEET 1118  
NEW SQUARE FEET 219  
WATERWAY WIDTH OPEN  
WATERFRONT WIDTH 72'

CITY OF CLEARWATER  
HARBORMASTER'S OFFICE

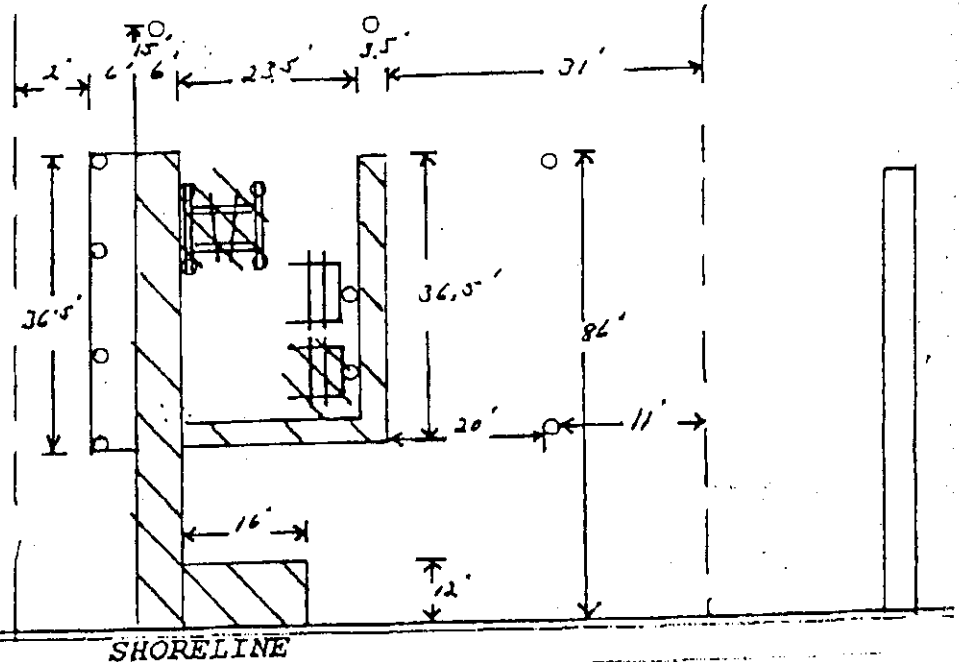
Plan View  
(applicant and adjacent docks)

NOV 27 1997

APPROVAL BY MA [Signature]  
NAVIGATION



466-6465  
8/9/97



The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner  
Signature B. V. [Signature] Date \_\_\_\_\_  
MUNICIPALITY APPROVAL

Right Owner  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
WRITER AND NAVIGATION APPROVAL

Reviewed for Code Compliance  
CITY OF CLEARWATER  
BLDG. INSPECTION DEPT.  
BY [Signature]  
DATE 10-22-97

**APPROVED**  
PINELLAS COUNTY  
ENVIRONMENTAL MANAGEMENT  
[Signature] 10-28-97  
FOR WILLIAM M. DAVIS, DIRECTOR

**CITY OF CLEARWATER  
PLANNING DEPARTMENT  
STAFF REPORT FOR 2/14/02 DRC MEETING**

**BACKGROUND INFORMATION:**

**APPLICANT:** Mr. Christopher Mariani

**PROPERTY LOCATION:** 193 Devon Drive

**REQUEST:** Flexible Standard Development approval to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 101 feet (84 percent of the width of the property) under the provisions of Section 3-601.

**APPLICATION NUMBER:** **FILE**  
FLS 02-01-03

**ZONING:** LMDR, Low Medium Density Residential District

**EXISTING USE:** Single-family residential

**ADJACENT LAND USES:**

|        |                           |
|--------|---------------------------|
| North: | Single-family residential |
| South: | Clearwater Bay            |
| East:  | Single-family residential |
| West:  | Single-family residential |

## STAFF ANALYSIS

The 0.33-acre site is located on the south side of Devon Drive approximately 1,350 feet east of Hamden Drive. The site is vacant.

The neighborhood consists entirely of well-maintained, single-family dwellings.

The proposal includes a 498 square foot dock and two 144 square foot covered boatlifts. The proposed dock will be located 24 feet from the east property line and 30 feet from the west property line. The proposed boatlift will be located 14 feet from the west property line. All other Code requirements regarding docks will be met.

All required building permits would need to be obtained prior to construction.

The site is located in a stable, residential neighborhood that is undergoing redevelopment. The request to increase the permitted length of the dock is in keeping with the established character of the area and will provide a more environmentally sensitive situation over existing conditions.

### **B. FLEXIBILITY STANDARDS FOR DOCKS IN ASSOCIATION WITH SINGLE-FAMILY DWELLINGS IN THE LMDR, LOW MEDIUM DENSITY RESIDENTIAL DISTRICT (Section 3-601):**

| STANDARD          | REQUIRED/<br>PERMITTED                                                                                | EXISTING | PROPOSED             | IN<br>COMPLIANCE? |
|-------------------|-------------------------------------------------------------------------------------------------------|----------|----------------------|-------------------|
| LENGTH<br>maximum | 50 percent of the width of the property (60 feet)                                                     | Vacant   | 86 feet (71 percent) | No                |
| WIDTH<br>Maximum  | Thirty-five (35) percent of the width of the property (42 feet) or fifty (50) feet, whichever is less | Vacant   | 36 feet              | Yes               |

| STANDARD                | REQUIRED/<br>PERMITTED                                                                                                                                                                        | EXISTING | PROPOSED                                                            | IN<br>COMPLIANCE? |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------|-------------------|
| <b>SIDE<br/>SETBACK</b> | Docks: the center one-third of the lot (40 feet) or twenty (20) feet from any property line, whichever is less<br>Boatlifts/service catwalks: minimum of ten (10) feet from any property line | Vacant   | Dock<br>East: 24 feet<br>West: 30 feet<br>Boatlift<br>West: 14 feet | Yes               |

**C. FLEXIBILITY CRITERIA FOR DOCKS IN THE LMDR, LOW MEDIUM DENSITY RESIDENTIAL (Section 2-203):**

1. The proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed twenty-five (25) percent of the width of the waterway; or

The Pinellas County Department of Environmental Management has issued a report which states that there are no navigational concerns with the proposed development.

2. The proposed dock location needs to be adjusted to protect environmentally sensitive areas; or

The Pinellas County Department of Environmental Management has issued a report which states that the proposal is more environmentally sensitive than the existing dock and constitute an improvement over existing conditions.

3. The property configuration precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns.

Not applicable as the only one of the above three criteria must be met. The first two criteria have been satisfied.

**D. GENERAL APPLICABILITY (Section 3-913): Conditions which are imposed by the Community Development Coordinator and the Community Development Board pursuant to a Level One or a Level Two Approval shall ensure that:**

- 1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.**

The proposal includes a dock as accessory to an existing single-family residence. It will have no impact on density or impervious surface ratio limitations. The immediate area consists of single-family homes. The development will be in harmony with the scale and character of adjacent properties. Adjacent properties are residential. The applicant will replace an existing dock with a more, environmentally sensitive one. The development will be in harmony with the scale and character of adjacent properties.

- 2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.**

The site is zoned LMDR District and the proposed use will be in compliance with that zoning. The proposed development should not discourage appropriate development and use of adjacent land buildings.

- 3. The proposed development will not adversely affect the health or safety or persons residing or working in the neighborhood of the proposed use.**

The use will not change with this proposal. The development will not negatively affect the health or safety or persons residing or working in the neighborhood.

- 4. The proposed development is designed to minimize traffic congestion.**

The use does not change with this proposal and will have no increased effect on traffic.

- 5. The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.**

The proposed development is consistent with and will improve the community character of the immediate vicinity.

- 6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.**

There will be no adverse effects generated by the proposed development.

### **STAFF RECOMMENDATION:**

Based on the on the application, the proposal is in compliance with the standards and criteria for Flexible Standard Development approval, with the maximum development potential and with all applicable standards of the Community Development Code.

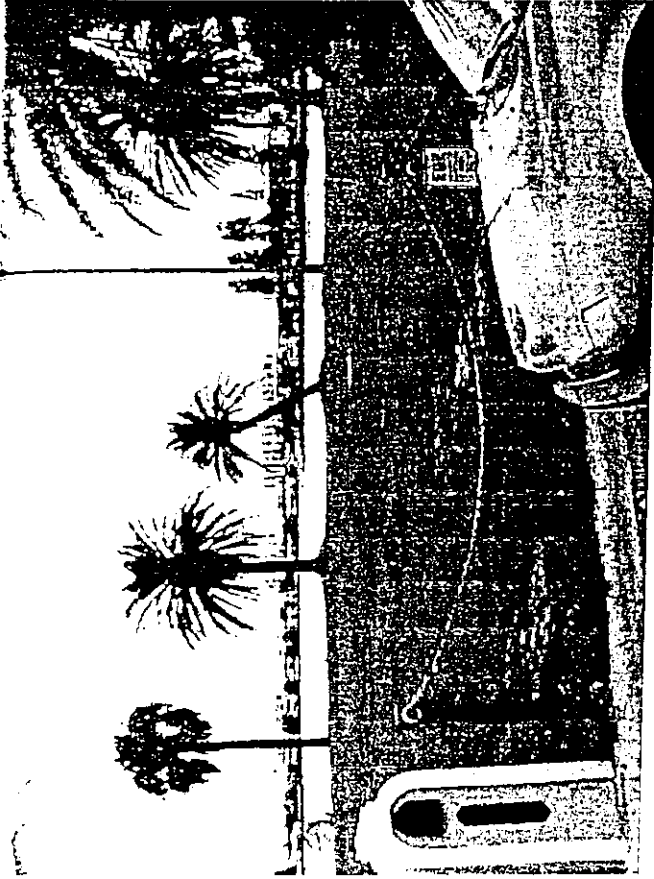
Therefore, staff recommends **APPROVAL** of the application for Flexible Standard Development approval to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 101 feet (84 percent of the width of the property) under the provisions of Section 3-601 at 193 Devon Drive.

#### **Basis for Approval:**

1. The proposal complies with Flexible Development and Residential Infill Project criteria under the provisions of Section 3-601;
2. The plan complies with General Applicability Criteria under the provisions of Section 3-913; and
3. The proposed development is compatible with the surrounding area.

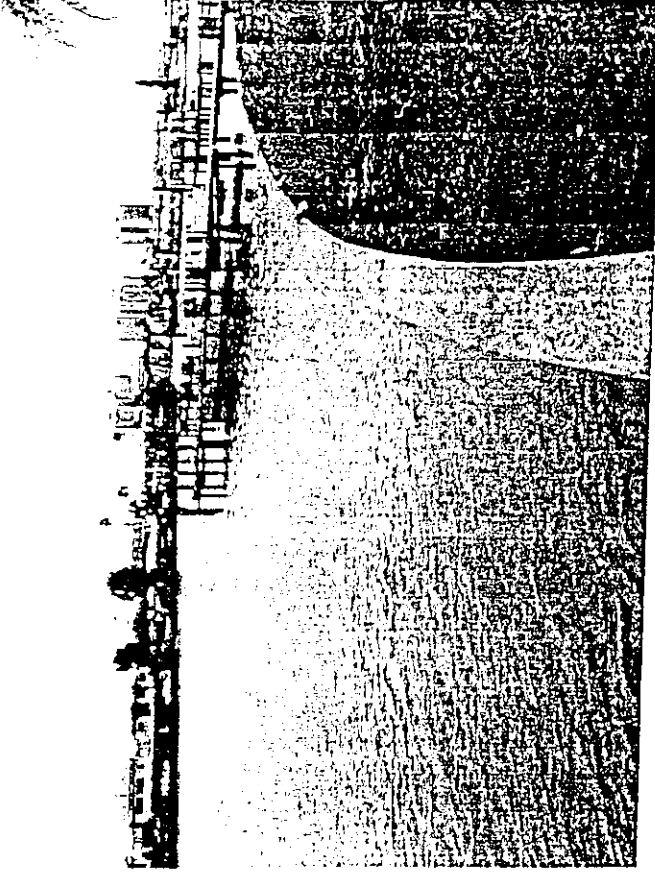
#### **Condition:**

1. That the final design of the dock and boatlift be consistent with the conceptual elevations submitted or as modified by the DRC;

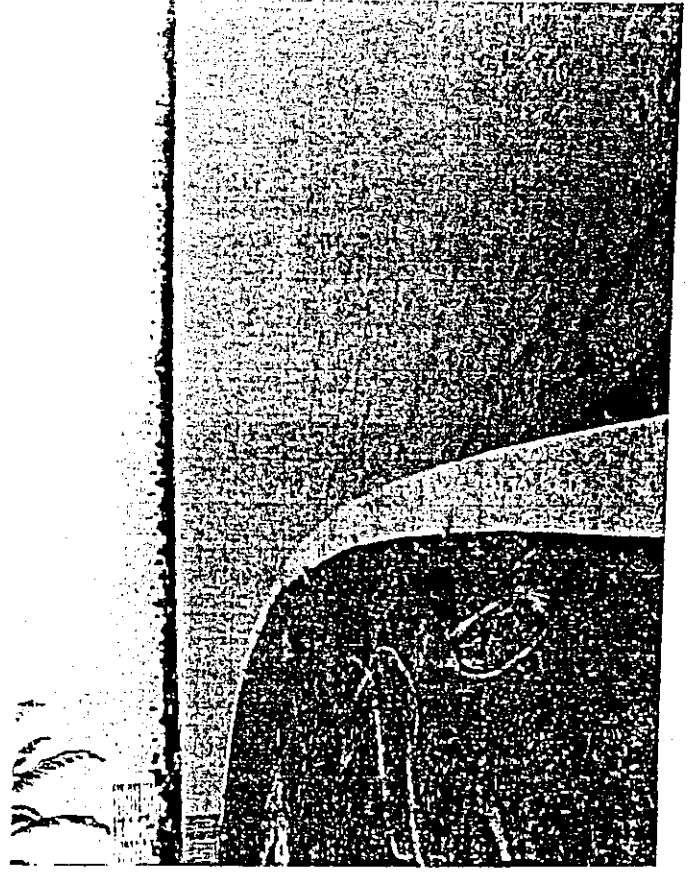


View looking south

143 Devon  
Drive  
FLS 02-00-03



View looking west



View looking east

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

E. D. ARMSTRONG III  
JOHN T. BLAKELY  
BRUCE H. BOKOR  
GUY M. BURNS  
JONATHAN S. COLEMAN  
MICHAEL T. CRONIN  
ELIZABETH J. DANIELS  
BECKY FERRELL-ANTON  
MARION HALE

SCOTT C. ILGENFRITZ  
FRANK R. JAKES  
TIMOTHY A. JOHNSON, JR.  
SHARON E. KRICK  
ROGER A. LARSON  
JOHN R. LAWSON, JR.\*  
MICHAEL G. LITTLE  
MICHAEL C. MARKHAM  
STEPHANIE T. MARQUARDT

ZACHARY D. MESSA  
A.R. "CHARLIE" NEAL  
F. WALLACE POPE, JR.  
ROBERT V. POTTER, JR.  
AUDREY B. RAUCHWAY  
DARRYL R. RICHARDS  
PETER A. RIVELLINI  
DENNIS G. RUPPEL\*  
CHARLES A. SAMARKOS

PHILIP M. SHASTEEN  
JOAN M. VECCHIOLI  
STEVEN H. WEINBERGER  
JULIUS J. ZSCHIAU

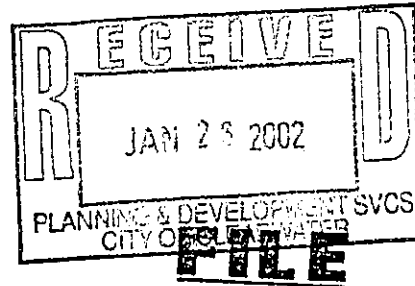
\*OF COUNSEL  
PLEASE REPLY TO CLEARWATER

FILE NO. 42809.104550

January 25, 2002

Via Hand Delivery

Mr. Mark Parry  
Planning Dept.  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756



Re: Application for Flexible Standard Approval (FLS-02-01-03) submitted by  
Chris Mariani

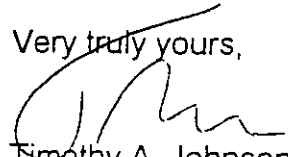
Dear Mark:

On behalf of the applicant, Christopher C. Mariani, we enclose an original and 12 copies of an amended application in connection with the referenced case. The applicant requests an increase in the permitted dock length from 60 feet to 101 feet as described in detail in the enclosed application.

Also enclosed is a consent from the adjoining property owner to the left, Mark and Diane Blum of 195 Devon Drive.

If you have any questions in connection with this application, please do not hesitate to contact my legal assistant, Jayne Sears, or me.

Very truly yours,

  
Timothy A. Johnson, Jr.

TAJ/js

encls.

cc: Mr. Christopher C. Mariani

#258983 v1

CLEARWATER OFFICE  
911 CHESTNUT STREET  
POST OFFICE BOX 1368  
CLEARWATER, FLORIDA 33757-1368  
TELEPHONE: (727) 461-1818  
TELECOPIER: (727) 462-0365

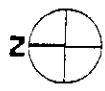
TAMPA OFFICE  
100 NORTH TAMPA STREET  
SUITE 1800  
POST OFFICE BOX 1100  
TAMPA, FLORIDA 33601-1100  
TELEPHONE: (813) 225-2500  
TELECOPIER: (813) 223-7118

**CITY OF CLEARWATER**  
**AND COUNTY**  
**PIRELLA COUNTY, FLORIDA**  
 PREPARED BY  
**PUBLIC WORKS ADMINISTRATION**  
 100 S. Myrtle Ave., Clearwater, FL 33754  
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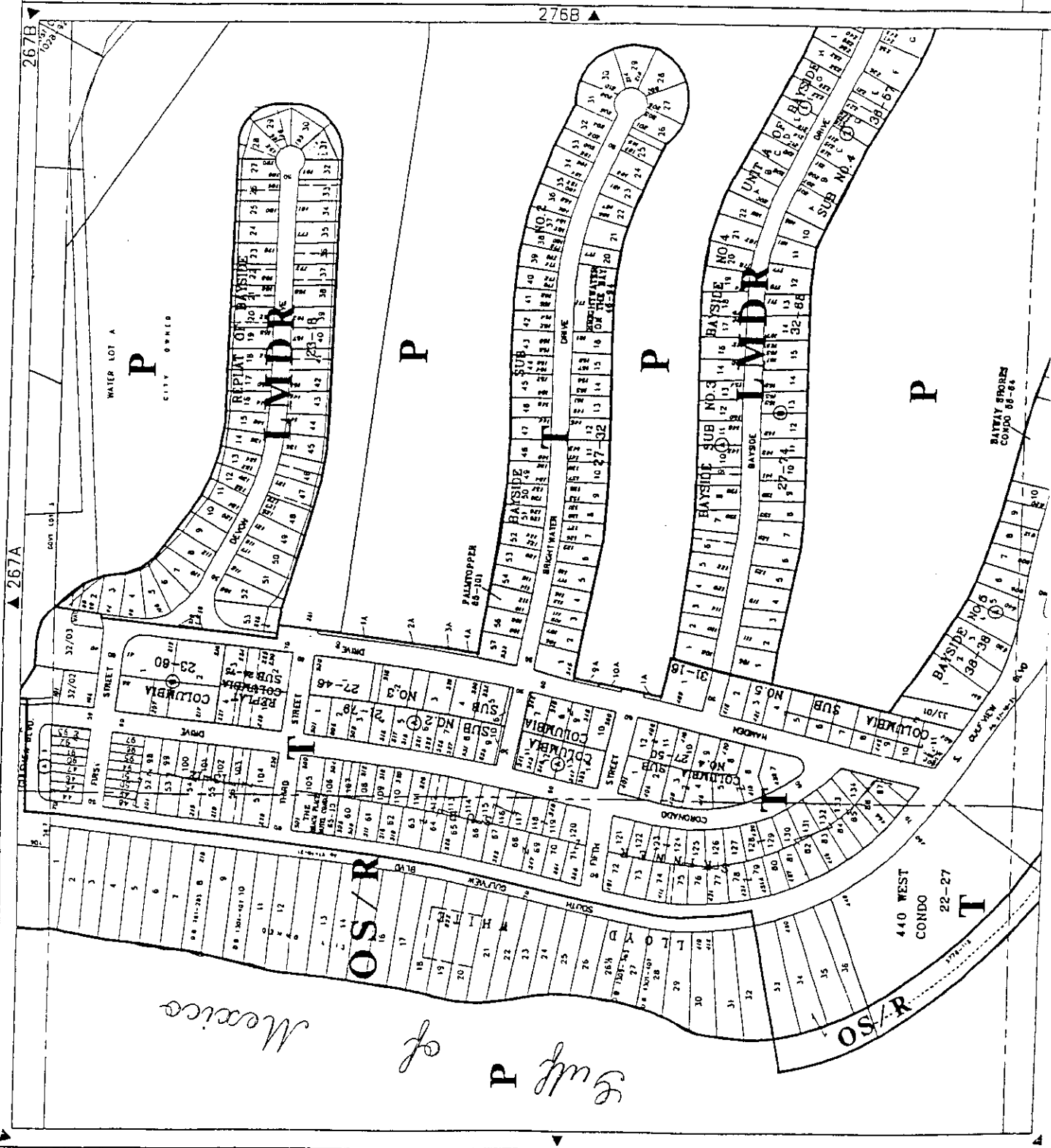


**LEGEND:**

- ⊙ BLOCK NUMBER
- 1234 LOT ADDRESS
- CITY LIMITS LINE
- [ ] STAGED AREA - FUTURE CITY LIMITS
- ▲ AGREEMENT TO ANNEX
- ◆ CITY OWNED PROPERTY
- MDR ZONING DESIGNATION
- ZONE LINE

REVISED:  
03/08/99

**ZONING ATLAS**



BATTLE & EDENFIELD, P.A.  
ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR.\*  
MICHAEL S. EDENFIELD

ALSO ADMITTED  
\*COLORADO  
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March 14, 2002

(date and typos corrected from prior fax  
of 03/14/02 which was incorrectly dated 03/15/02)

Mark Parry  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

RE: Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

Dear Mr. Parry:

I represent James and Deborah Soboleski who own the residence to the immediate West of Mr. Chris Mariani's lot (Lot 31, 193 Devon Drive) for which the above application was submitted. As you already know, my clients are vehemently opposed to Mr. Mariani's request as it is now constituted. I write to ask that you refrain from issuing a decision on Mr. Mariani's request until at least March 28, 2002 to allow us time to provide you with additional information which we believe will be helpful to you in reaching a fully informed decision.

The reasons that we need this additional time are:

- 1) I was just retained by the Soboleskis and I was unavailable to review the City's file until today. Obviously I need some time to fully digest the file and respond to the contents thereof; and
- 2) We wish to provide you with a graphic pictorial representation of how Mr. Mariani's proposed dock will affect the view from the Soboleskis property. This requires actual field surveying and photography as well as a substantial amount of computer work to generate the visual models; and
- 3) We need time to assemble pictorial evidence of how the proposed project will affect the character of the neighborhood.

I hope that given the depth of opposition to Mr. Mariani's application that you can grant us the additional time. I would not ask for the additional time if I did not truly believe that it was necessary to provide the additional information and visual tools to you and that this information would have an effect upon your decision.

While we are working diligently to prepare and submit the above information to you, I felt that it would be appropriate to address several issues initially. First, I am

concerned that you do not yet have a complete application. It appears to me that the Section 4-202 . Community Development Code requires:

- 1) Subsection A, 12(e) requires that structural overhangs and building heights be depicted; and
- 2) Subsection A, 24 requires detailed plans and specifications prepared, signed and sealed by a Florida Registered Professional Engineer.

In my review of the application file today, I was unable to locate either a plan depicting the structural overhangs or detailed plans and specifications signed and sealed by a Florida Registered Professional Engineer.

Second, we believe that the staff may have overlooked several key facts in their review. Page 4, Paragraph D2 states, *inter alia*, that "... the proposal includes a dock as an accessory use to an existing single family residence." This is incorrect. The lot is vacant. Accordingly, the proposed dock would at this time constitute a primary use not an accessory use. Docks are not permitted as primary uses in a residential zone.

Further, the staff report suggests that "... the development will be in harmony with the scale and character of adjacent properties." This is also incorrect. While other properties have docks, they do not have docks of the size and magnitude of the proposed dock and boathouses. While no detailed plans were submitted with the application, a "guesstimate" from the sketch and photo submitted suggests that the roof line of the boathouses at the end of the dock will approach, if not be in excess of, the height of adjacent homes. When you consider that the boathouse roof over the larger capacity lift will be 38 feet in length [as amended] and presumably have a boat out of the water on the lift much of the time, it becomes clear that the visual effect will be to have a small house in the view of my clients.

Third, we suggest to you that the roof decks should be included in the dock deck for determining the applicable standard of review. If you include the total area covered by the dock and roofs, excluding the tie piles, the dock area exceeds 500 square feet. This would require a Level Two Review.

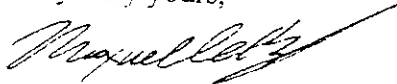
Fourth, while I have not had time to fully review and consider Mr. Mariani's assertions, including Tim Johnson's letter of March 5, 2002, I did note several curious comments in Mr. Johnson's March 5, 2002 letter. I address these as follows:

- 1) How is it that Harbormaster Morris is supposed to be so knowledgeable of "... the facts and circumstances surrounding the request and objections of the neighbors." ? The file certainly does not reflect that he spoke to either of my Clients. In fact they report that he has not. In addition, it seems clear that he also did not know that the Blums contiguous on the East do not mind having Mr.

- Mariani's dock located closer to their property line [see their letter dated 03/06/2002 in your file].
- 2) Mr. Johnson complains about the logic of the Soboleskis having docks and opposing Mr. Mariani's project. The Soboleskis oppose the location, size and character of the Mariani proposal, not the concept of his building a dock once he has a residence on Lot 31. If the Mariani project is moved to the East adjacent to the Blums lot line, they are not blocked in their view [so long as the size of the boathouses does not get out of scale]. Both Mr. Mariani and Mr. Johnson undoubtedly know this, but ignore it.
  - 3) Mr. Johnson complains that shifting to the East will impinge upon the Blum's view. But Mr. Johnson fails to mention that the Blums don't object.
  - 4) Mr. Johnson and Harbormaster Morris both appear to be ignorant of the fact that my Clients did not build the docks on their property [they were existing] and that they spent approximately \$20,000 to move boat lifts and address fence and landscaping issues in a manner that benefited their neighbors.

As you can see from the foregoing brief comments, there are many disputed issues that I need to address for the Soboleskis. I hope that you will agree to grant the additional time for my Clients and I to respond further prior to reaching a decision.

Very truly yours,



Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

PINELLAS COUNTY  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER AND NAVIGATION REPORT

**SUBJECT:** Dock Preapp.  
Christopher Mariani  
Lot 31 Devon Drive, Clearwater

**FROM:** Susan Pirolo *SP*  
Environmental Specialist II  
Department of Environmental Management

**THRU:** David L. Walker, Jr., Env. Program Manager, *DW*  
Water and Navigation Section  
Department of Environmental Management

**DATE:** November 26, 2001

The subject site was inspected by this Department on November 8, 2001.

**PROJECT AND SITE DESCRIPTION:**

The applicant proposes construct a private dock in the waters of Clearwater Harbor.

The proposed dock will consist of a 4 ft. x 86 ft. walkout with a 26 ft. x 2.5 ft. carwalk, a 2.5 ft x 36 ft. carwalk, two boat lifts, and a roof. The total area of the dock will be 499 sf. The waterfront width of the property is 120 ft. The proposed structure will be located 56 ft. from the east property line and 31.5 ft. from the west property line. The total length of the structure will be 86 ft. and the width of the structure will be 32.5 ft. The water depth will be greater than 5 ft. (MLW) at the end of the proposed structure. The width of the navigable portion of the waterway at this location is approximately 570 ft. The structure extends a total of 86 ft., 15.1% into the navigable waterway.

The shoreline is seawalled at this location. Oysters (*Crassostrea virginica*) are attached to the seawall. Dense seagrass beds consisting of cuban shoal grass and manatee grass (*Halodule wrightii* and *Syringodium filiforme*, respectively) are located offshore along the entire property. The seagrass is located from 1 ft. to 65 ft. from the seawall in the area of the proposed dock. No emergent vegetation is present on this property.

Wildlife observed during the field review included a brown pelican (*Pelecanus occidentalis*), cormorant (*Phalacrocorax auritus*), and great egret (*Casmerodius albus*).

Field conditions at this site were as follows:

Depths at left side of proposed dock:

| Distance<br>from seawall | Depth           | Notes                                |
|--------------------------|-----------------|--------------------------------------|
| 0'                       | 0.3' (0.1' MLW) |                                      |
| 1'                       |                 |                                      |
| 4'                       |                 | start of mod. sparse <i>Halodule</i> |
| 10'                      | 0.9' (0.7' MLW) | start of dense <i>Hal.</i>           |
| 20'                      | 1.3' (1.1' MLW) | very dense <i>Halodule</i>           |
| 30'                      | 1.8' (1.2' MLW) | " "                                  |
| 40'                      | 2.6' (2.4' MLW) | " "                                  |
| 50'                      | 3.5' (3.3' MLW) | " "                                  |
| 60'                      | 4.3' (4.1' MLW) |                                      |
| 62'                      |                 | moderately sparse seagrass           |
| 70'                      | 5.8' (5.6' MLW) | very sparse seagrass                 |
| 80'                      | 6.1' (5.9' MLW) | no seagrass                          |
| 86'                      | 6.3' (6.1' MLW) |                                      |

Depths at right side of proposed lifts:

| Distance<br>from seawall | Depth           | Notes                                                                      |
|--------------------------|-----------------|----------------------------------------------------------------------------|
| 0'                       | 0.2' (0.0' MLW) | a few pieces horizontal concrete riprap                                    |
| 2'                       |                 | start of sparse <i>Halodule</i>                                            |
| 3'                       |                 | moderate <i>Hal.</i>                                                       |
| 4'                       |                 | dense <i>Hal.</i>                                                          |
| 10'                      | 0.5' (0.3' MLW) | very dense <i>Hal.</i>                                                     |
| 20'                      | 0.8' (0.6' MLW) | " "                                                                        |
| 30'                      | 1.2' (1.0' MLW) | " "                                                                        |
| 40'                      | 1.9' (1.7' MLW) | " "                                                                        |
| 50'                      | 2.4' (2.2' MLW) | " "                                                                        |
| 60'                      | 3.8' (3.6' MLW) | " "                                                                        |
| 62'                      |                 | end of dense seagrass                                                      |
| 65'                      |                 | end of all seagrass                                                        |
| 70'                      | 4.6' (4.4' MLW) |                                                                            |
| 80'                      | 5.4' (5.2' MLW) |                                                                            |
| 86'                      | 5.7' (5.5' MLW) |                                                                            |
| 90'                      |                 | end of adj. dock to right (poles extend further), property curves to right |

Note: Inner 10' (east side) to 20' (west side) of roof and structure will be over dense seagrass.

Depths at right (west) property line:

| Distance<br>from seawall | Depth           | Notes                |
|--------------------------|-----------------|----------------------|
| 0'                       | 0.2' (0.0' MLW) |                      |
| 6'                       |                 | start of seagrass    |
| 10'                      | 0.3' (0.1' MLW) | dense seagrass       |
| 20'                      | 0.7' (0.5' MLW) | " "                  |
| 30'                      | 0.9' (0.7' MLW) | " "                  |
| 40'                      | 1.5' (1.3' MLW) | " "                  |
| 50'                      | 2.1' (1.9' MLW) | " "                  |
| 60'                      | 3.3' (3.1' MLW) | " "                  |
| 70'                      | 4.2' (4.0' MLW) | end of most seagrass |
| 80'                      | 4.9' (4.7' MLW) |                      |
| 90'                      | 5.5' (5.3' MLW) |                      |

Depths at left (east) property line:

| Distance<br>from seawall | Depth           | Notes                                        |
|--------------------------|-----------------|----------------------------------------------|
| 0'                       | 0.3' (0.1' MLW) |                                              |
| 1'                       |                 | start of <i>Halodule</i> (mod. sparse)       |
| 3'                       |                 | dense <i>Halodule</i>                        |
| 8'                       |                 | very dense <i>Halodule</i>                   |
| 10'                      | 1.0' (0.8' MLW) | " "                                          |
| 20'                      | 1.6' (1.4' MLW) | " "                                          |
| 24'                      |                 | <i>Syringodium</i> mixed in with <i>Hal.</i> |
| 30'                      | 2.3' (2.1' MLW) | mostly very dense <i>Syringodium</i>         |
| 40'                      | 3.1' (2.9' MLW) |                                              |
| 50'                      | 5.5' (5.3' MLW) | still some moderate seagrass                 |
| 60'                      | 5.8' (5.6' MLW) | no seagrass                                  |
| 70'                      | 6.5' (6.3' MLW) |                                              |
| 80'                      | 6.9' (6.7' MLW) |                                              |
| 86'                      | 7.3' (7.1' MLW) |                                              |

**COMMENTS:**

1. Seagrass beds are located along this entire property, and extend out to a maximum of 65 ft. from the seawall in the area of the proposed dock although it becomes sparse at approximately 60 ft. It is the policy of this Department to limit structures over seagrasses to 4 ft. in width and to place the terminal platforms and boat slips beyond the limits of the seagrasses wherever possible. In the proposed location, the walkout would need to be lengthened by 10 feet to meet this criteria. The applicant is advised, however, that the proposed length would be consistent with the environmental criteria of the Pinellas County Code if the dock were moved to the eastern side of the property where seagrasses end about 50 ft. from the seawall.
- 2 The applicant is also advised that it is the policy of this Department that all boat slips be located adjacent to the main dock, and therefore one boat lift will need to be located on each side of the main dock.

**FINDINGS:**

No findings are being issued at this time pending receipt of a formal application.

The applicant is advised that approvals for this project may also be required from the Florida Department of Environmental Protection and the U. S. Army Corps of Engineers. Any modifications required by these agencies must be reflected in revised plans submitted to the County.

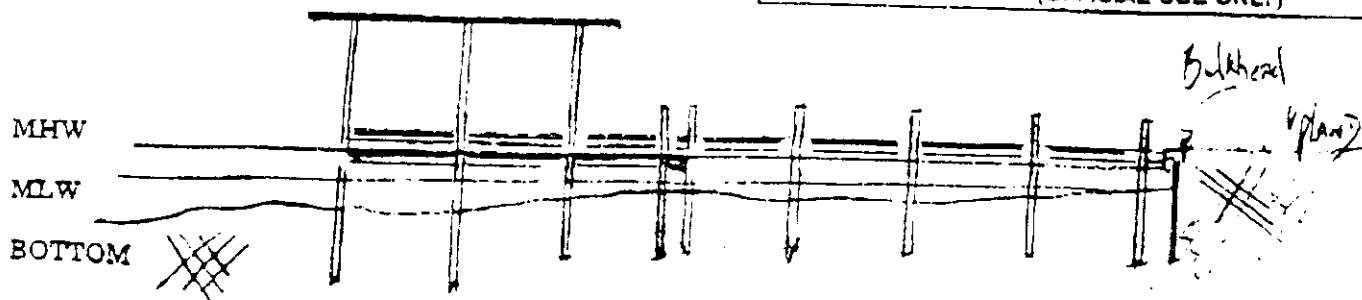
STR: S 1/2 8-29-15

marianie2.doc

# PRIVATE DOCK

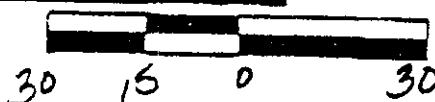
Application # \_\_\_\_\_

(OFFICIAL USE ONLY)



Profile View

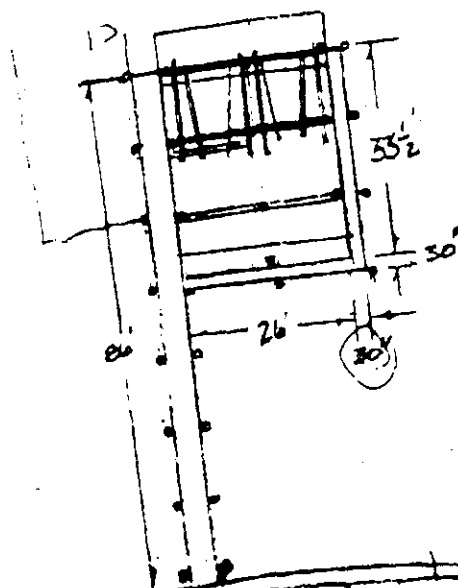
ENG. SCALE: 1" = 30'



Plan View

(applicant and adjacent docks)

|                   |      |
|-------------------|------|
| TOTAL SQUARE FEET | 499' |
| NEW SQUARE FEET   | 499' |
| WATERWAY WIDTH    | 675' |
| WATERFRONT WIDTH  | 120' |



## SHORELINE

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner

Right Owner

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Municipality Approval

Water and Navigation Approval

BATTLE & EDENFIELD, P.A.  
ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR.\*  
MICHAEL S. EDENFIELD

206 MASON STREET  
BRANDON, FL 33511  
(813) 685-3014  
FAX (813) 684-5922

ALSO ADMITTED  
• COLORADO  
• NEW MEXICO  
• MONTANA

March 27, 2002

Mark Parry, Lead Planner  
Cyndi Tarapani, Community Development Coordinator  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

 COPY

RE: 193 Devon Drive; Lot 31;  
Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

Dear Mr. Parry and Ms. Tarapani:

As you know, I represent James and Deborah Soboleski who own the residence to the immediate West of Mr. Chris Mariani's lot for which the above application was submitted. My clients remain vehemently opposed to Mr. Mariani's request as it is now constituted. This letter and accompanying documentation are submitted to supplement my letter to you of March 14, 2002. I have broken this letter into sections for ease of review.

**Opening Discussion and Description of Materials**

The booklet submitted with this letter includes eight (8) pages photographs of my Clients' home and the neighborhood and a CD containing all of the photographs as individual images. On several of the photographs an artist's rendering of the proposed dock has been overlaid on the photograph to reflect the actual view with the proposed dock added. To achieve the proper scale and provide a realistic portrayal of the dock's effect upon the views from my Clients' residence, a surveyor was commissioned to place control markers in the water prior to the photographs being taken. The size of the dock footprint was taken from the sketches submitted by Mr. Mariani. The size of the boat houses was taken from the plan dimensions of the sketches submitted by Mr. Mariani and actual field measurements of the boat house submitted as the model by Mr. Mariani. It was necessary to combine this data because Mr. Mariani did not submit detailed plans and specifications prepared, signed and sealed by a Florida Registered Professional Engineer as required by Section 4-202, Subsection A, 24, Community Development Code.

Clearly the most devastating effect of granting Mr. Mariani's request is the destruction of the view from the back of the Soboleski residence. Exhibit 1 is a photograph taken from the Soboleski residence deck. As you can clearly see, it is presently a multi-million dollar view. Exhibit 2 is the same photograph with the proposed Mariani dock overlayed. The effect is self evident and graphic.

Exhibit 3 is an aerial view of the Soboleski residence and Mariani lot. Exhibit 4 is the same aerial view with the proposed Mariani dock overlayed. Please note the devastation to the Soboleski's view is mirrored by the devastation to the view of the Soboleski residence from the water.

Exhibit 5 is the same aerial view of the Soboleski residence and Mariani lot as shown in Exhibit 3 with the Mariani dock overlayed in the alternate location to the East that has been suggested by the Pinellas County Department of Environmental Management. This alternate location would accomplish a number of goals. First, it would not adversely impact the view from the Soboleski residence to anywhere near the extent as the location proposed by Mr. Mariani. Second, it would disrupt considerably less of the sea grass beds, as can clearly be seen in the Exhibit. Third, it would place boats at the dock at an oblique angle to waves [and wakes] approaching from the channel to the East. Fourth, it would be in keeping with the general uniformity of spacing between dock installations along the fingers in the neighborhood [See also Exhibits 7 and 8].

Exhibit 6 consists of reduced scale versions of Exhibits 3 and 5 with a "line of sight" depicted as a single broken blue line. The "line of sight" is extended from the camera location for Exhibits 1 and 2 across the intersection of the Soboleski/Mariani property line and the seawall cap. It sets the left most [Northern most] portion of the view from my Clients' lot without looking over the Mariani lot. The differing effect of the two proposed locations for the Mariani dock is clear. Placing the Mariani dock in the location proposed by Mr. Mariani [top photograph, Exhibit 6] destroys the view from the Soboleski residence, destroys the view from their dock, and seriously devalues their property. If the dock is placed in the alternative location to the East [bottom photograph Exhibit 6], it moves out of the Soboleskis' line of sight.

Exhibits 7 and 8 are a compilation of aerial views of the neighborhood. The somewhat symmetrical spacing of docks and the minimal number of boathouses in the neighborhood is evident in the photographs. It should also be noted that most of the boathouses are at the seawall behind the residences that they serve. The two exceptions at the end of the Devon finger are situated in a fashion that does not adversely effect the views from the residences adjacent to them.

Exhibit 9 is a CD that contains copies of each photograph in Exhibits 1 through 8. If you insert it in a desktop or laptop computer you will be able to view the photographs with ease by either selecting the number of the photograph or by clicking "Next" and "Previous". This CD should make it very easy for you to evaluate the visual impact of the

two alternative locations for the dock. The CD version of the photographs also allows easy viewing of the grass beds and the character of the existing neighborhood.

Exhibit 10 is a copy of the Mark Blum's March 6, 2002 letter to Mr. Pary.

Exhibit 11 is a copy of Mr. Mariani's March 7, 2002 letter.

Exhibit 12 is a copy of Mr. Johnson's March 5, 2002 letter.

Exhibit 13 is a copy of the City of Clearwater's Staff Report.

Exhibit 14 is a copy of my March 14, 2002 [corrected] letter to Mr. Pary.

Exhibit 15 is a copy of the Pinellas County Department of Environmental Management's Water and Navigation Report.

Exhibits 10 through 15 are included for your ease of review.

#### **Mr. Mariani's March 7, 2002 Letter**

Now I address Mr. Mariani's letter of March 7, 2002 to Ms. Cyndi Tarapani. Mr. Mariani starts his diatribe with the sobriquet that the "...Soboleski's...completely misconstrue... or are totally erroneous...". This is an interesting approach by Mr. Mariani because this is actually what his letter does. I note as an aside that Mr. Mariani, who has the burden of establishing his entitlement to the relief requested, has completely failed to provide any pictorial evidence of the visual effect of his proposal. In any event, I address his letter by corresponding numbered paragraph.

- 1) The issue is not whether Mr. Mariani should be allowed to build a dock, but where and how large. When a variance is granted, it should always be the minimum variance necessary. Further, despite what Mr. Mariani opines, the aerial photographs [Exhibits 3 through 7] clearly show that construction to the East would affect a smaller area of sea grass. With respect to the alleged encroachment to the East, that property Owner, the Mark Blum, does not object. [See Exhibit 10].
- 2) Mr. Mariani is incorrect. His application seeks to affect more sea grass than necessary, build a larger dock than necessary, obtain a larger deviation from the standards than necessary, and destroy my Clients' view and property values.
- 3) Please see response to Mariani paragraphs 1 and 2. The question is not whether to allow some variance, it is the magnitude of the variance and the conditions under which it may be granted. The Soboleskis do not have a boathouse.

- 4) Mr. Mariani's obfuscation of the true import of his proposal in this paragraph is incredible. He says that his proposed dock does not set a new precedent. His incredible statement ignores the fact that he is proposing to build an unprecedented double boathouse consisting of 532 square feet of coverage each, plus dock walking deck area of 476.5 square feet [accepting for the purposes of this paragraph Mr. Johnson's calculations as accurate], for a total of 1540.5 square feet of coverage. The approval of this application would allow Mr. Mariani to construct what amounts visually and environmentally to a second home over the water. This is clearly unprecedented in Clearwater's modern history.

It should also be noted that the metal roof will have a substantially larger surface area than the plan view indicates due to the pitch involved. This surface area and pitch has a substantial propensity for reflecting a obnoxious glare onto the Soboleskis' property during substantial periods of the day.

Mr. Mariani also implies that the Soboleskis are seeking to deprive him of a benefit that they enjoy. Nothing could be further from the truth. The Soboleskis do not have 1064 square feet of boathouse. The Soboleskis did not block their neighbors view. They do not have even one boathouse. In fact the Soboleskis spent substantial monies to improve their neighbor's view by moving lifts.

- 5) The Soboleskis do not advocate that Mr. Mariani should not be allowed to construct a dock or residence upon his lot. They contend that his development should be reasonable and not impair their view and property values. As shown in Exhibits 1 through 6, it is possible for Mr. Mariani to do so and improve his own situation at the same time. Why he is so adamant about destroying the Soboleskis' view and property value is a mystery.

It should be noted that Mr. Mariani makes an interesting statement about the failure of Ress Marine to ever experience the lifting or destruction of a dock that they built. I would be interested to know the basis for this statement and what Mr. Mariani defines as "lifted" or "destroyed". While Ress Marine is a marine contractor of excellent reputation and qualification, no one can beat Mother Nature at every turn. At least one dock on St. Joseph's Sound built by Ress Marine that suffered substantial damage including loss of timbers during the "No Name Storm".

Moving on to the balance of Mr. Mariani's letter, I find it interesting that Mr. Mariani suggests that the Neimanns have no right to object. If this were true, the City would not require notice to the Neimanns. Further, Mr. Mariani suggests that there is no loss of value to Neimanns' residence as a result of the Soboleskis' docks [located on two lots, not one small one like Mariani's], ergo there can be no loss of value to Soboleskis' residence due to his proposed dock. This incredible assertion is dispelled by one look at Exhibits 1 and 2. In addition, you must consider two other salient facts. First, the

Soboleskis purchased their property with the docks in place and then made expensive modifications which benefited the Neimanns. Second, the Soboleski docks do not block the Neimanns' view and there are no house sized boat houses on the Soboleski docks.

Next, Mr. Mariani suggests that the Soboleskis want his dock in its present proposed location. This is obviously incorrect. If Mr. Mariani's assertion were true, you would never have heard an objection from my Clients and you certainly never would have heard from me. In addition, Mr. Mariani's comments about the view are completely dispelled by Exhibits 1, 2 and 6.

Finally, Mr. Mariani suggests that he bought his lot specifically due to its Southern exposure. A more probable reason is that it was on the market. One look at Exhibits 7, 8 and 9 shows a dearth of vacant lots in the area. In any event, the placement of the dock to the East in the alternate location still places it in a protected position from the North/Northwest winds.

**NO MATTER WHAT MR. MARIANI SAYS, GRANTING HIS REQUEST SETS AN UNCOMFORTABLE PRECEDENT FOR ALLOWING THE CONSTRUCTION OF MASSIVE VIEW, DESTROYING STRUCTURES OVER THE WATERS OF CLEARWATER HARBOR.**

**Timothy Johnson's March 5, 2002 Letter**

To avoid unnecessarily lengthening this letter, I will confine my comments to Mr. Johnson's letter to Page 3, paragraph 5 (c)(3). The closing sentence of this paragraph of Mr. Johnson's letter states that "The logic of the Soboleskis is elusive."

The Soboleskis' logic is elusive only to Mr. Johnson who fails to seek it [or who perhaps chooses consciously to ignore it]. Mr. Johnson is a real estate and land use attorney of some repute. His prowess at presentations before land regulatory authorities is legendary. Yet he failed to produce for your office the very type of pictorial evidence that the Soboleskis have presented with this letter. Given his experience and professional competence, there seems to be only one reason that he would fail to present such valuable evidence. He knew that it would have a devastating impact on the position he advocates. Therefore, he omitted this pictorial evidence and resorted to criticizing the Soboleskis for striving to protect the substantial investment that they have in their property and the community.

Finally, his comments about the location of docks close to property lines ignores the clear fact that the Soboleskis not only worked to protect their neighbors view with respect to docks in place when they purchased their property, **but more importantly that the Soboleski docks are not in the prevailing view of the Mariani lot.**

### Concluding Comments

I reiterate the positions espoused in my March 14, 2002 letter that: 1) Mr. Mariani's application fails to comply with the requirements of the Community Development Code; 2) due to the size of the proposed dock a Level 2 Review is required; and 3) without the prior construction of a residence on the Mariani lot, the proposed dock would constitute an impermissible primary use rather than an accessory use [the lot is now vacant]. My corrected March 14, 2002 letter is incorporated in this letter by reference [See Exhibit 14]. Each of those positions constitute independent grounds for denial of Mr. Mariani's request.

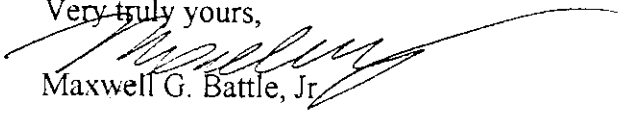
However, if you continue to review Mr. Mariani's application as a Level 1 Review, I suggest to you that Mr. Mariani's application as it is presently constituted must be denied. Granting it would constitute an unconscionable abuse of the flexible development standards that were implemented to balance the protection of individual property owners and the character of the community with the right of a property owner to reasonably develop his property. Exhibits 1 through 9 clearly support this denial.

Mr. Mariani says that he wants to meet with the Soboleskis to work out an acceptable location for his dock. If this is true, then abate the review process and direct Mr. Mariani and Mr. Johnson to meet with the Soboleskis and myself to discuss the project further. This letter and the Exhibits thereto clearly outline potentially acceptable proposals.

Finally, I request that the Soboleskis and I be granted an opportunity to meet with you and your staff to discuss Mr. Mariani's application and make a presentation to you. I believe that due process and basic fairness dictates that the Soboleskis be given the same opportunity that Messrs. Mariani and Johnson were provided.

I look forward to hearing from you at your earliest convenience.

Very truly yours,

  
Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

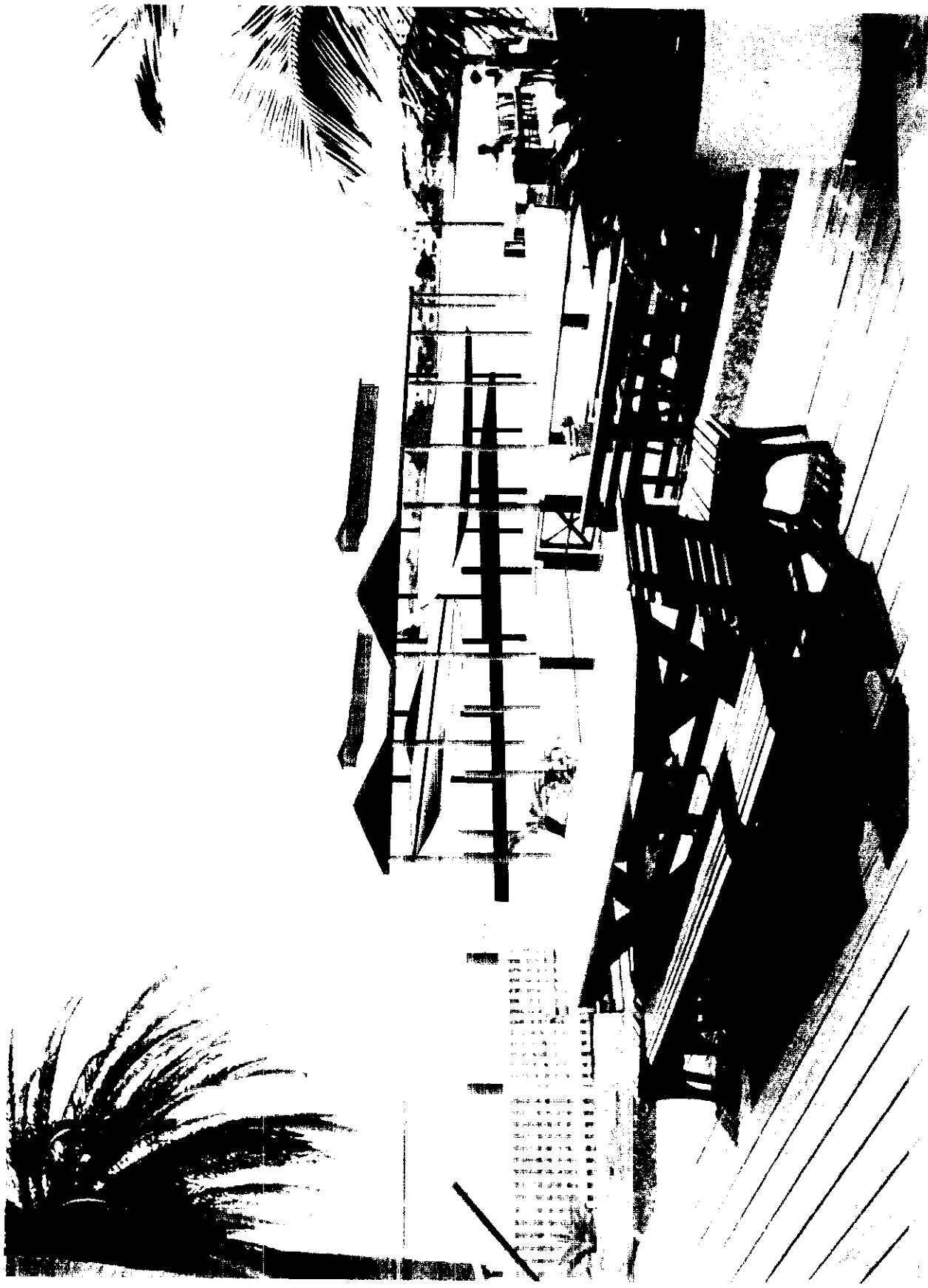


EXHIBIT 2



EXHIBIT 3



EXHIBIT 1

EXHIBIT 4





EXHIBIT 5

EXHIBIT 6

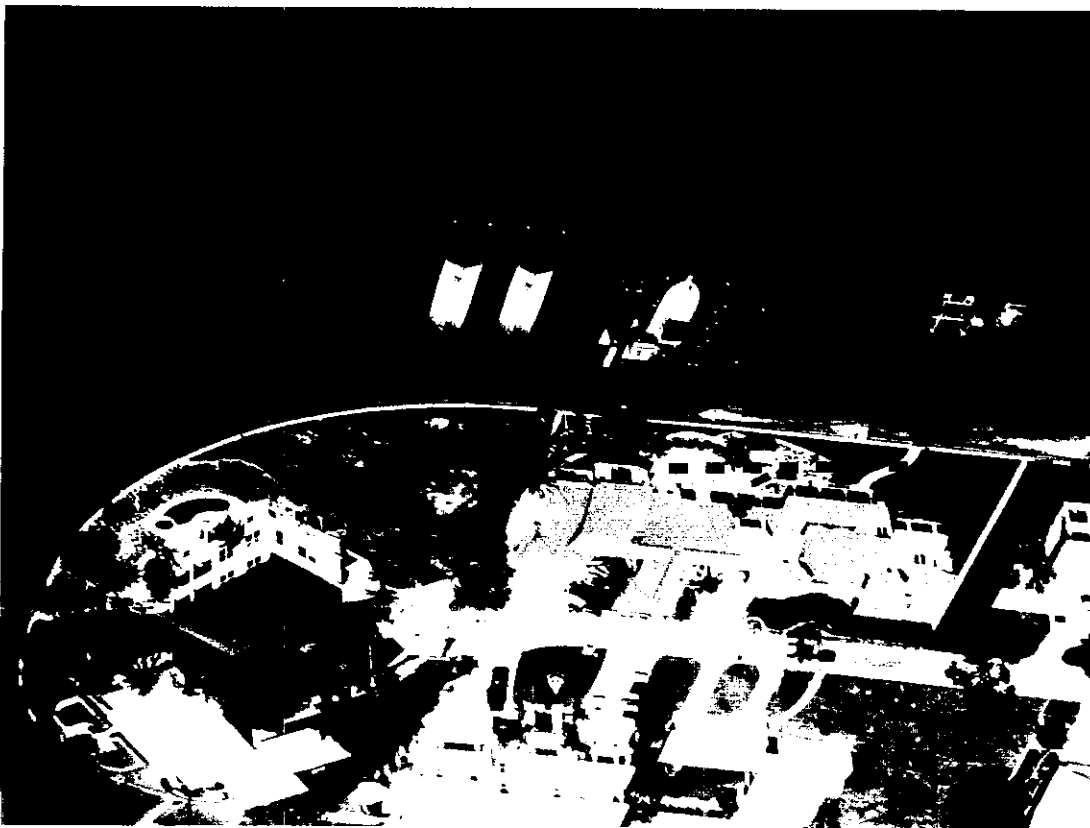
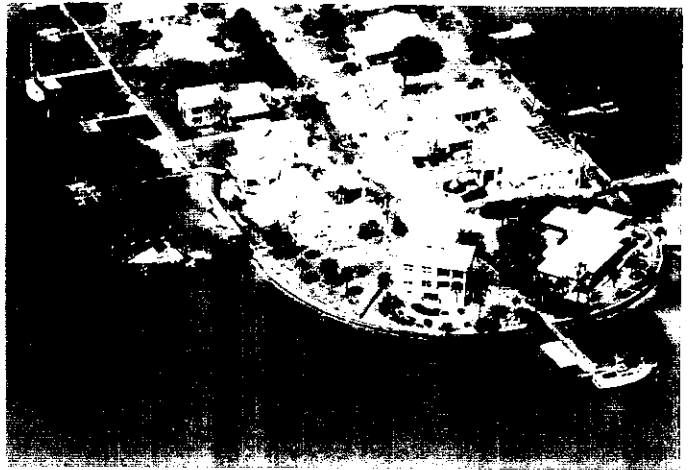
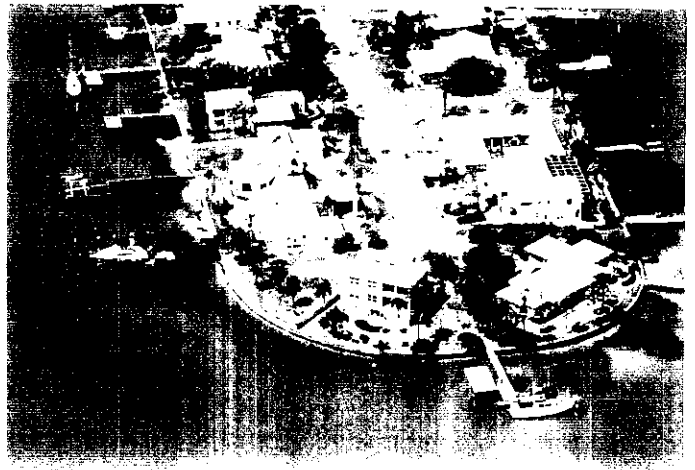
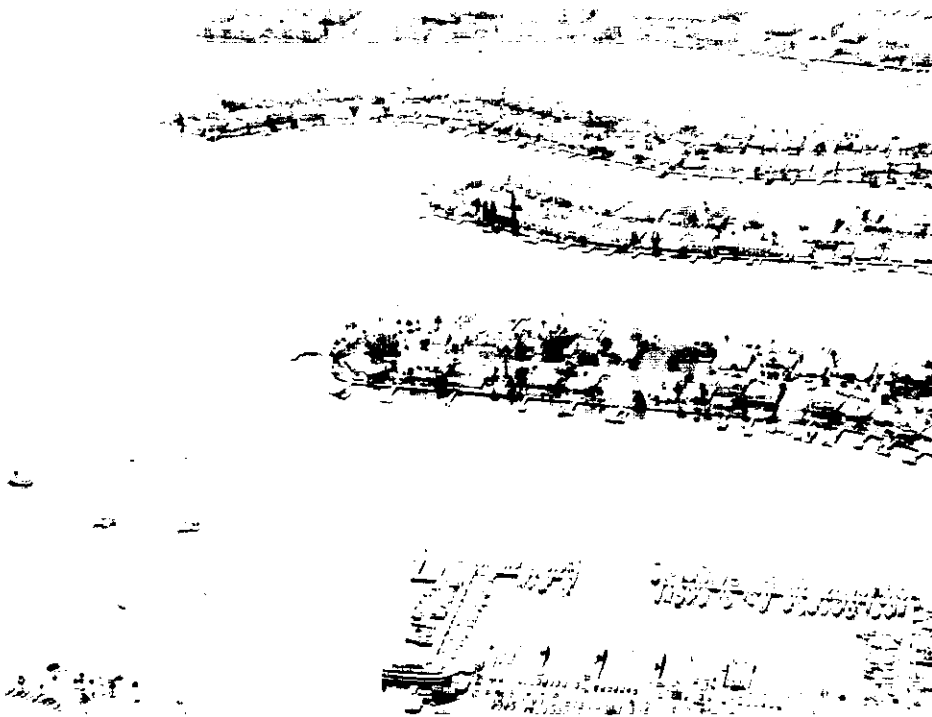


EXHIBIT 6



**EXHIBIT 7**



**EXHIBIT 8**

**Mark Blum  
195 Devon Drive  
Clearwater Beach, FL 33767-2439**

March 6, 2002

Mark Parry, City Planner  
City of Clearwater  
Planning Department  
Development Review Division  
PO Box 4748  
Clearwater, FL 33758-4748

Dear Mr. Parry:

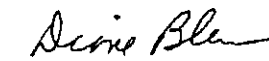
We have been asked by our neighbors to clarify our position regarding the proposed construction of a boat dock on the vacant lot at the end of Devon Drive, between our property at 195 Devon Drive, to the North and 191 Devon Drive, to the Southwest (approximately).

We have no objection to the construction of a dock on the vacant lot, at any location along the sea wall.

Respectfully,



Mark Blum



Diane Blum

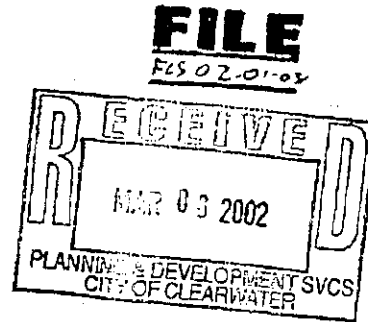
**EXHIBIT 10**

e.a. **m**ariani asphalt company

5201 Causeway Blvd. • P.O. Box 75437 • Tampa, FL 33675 • Phone (813) 623-3941 • Fax (813) 626-4103

March 7, 2002

Ms. Cyndi Tarapani  
Community Development Coordinator  
City of Clearwater  
Planning and Development  
Services Administration  
100 S. Myrtle Avenue, 2<sup>nd</sup> Floor  
Clearwater, FL 33756



Re: Application for Flexible Standard, 193 Devon Drive.

Dear Ms. Tarapani:

I would like to respond to the letters of opposition regarding my proposed dock written by James and Deborah Soboleski and Dale Neimann. The letters were written in response to the Notice of Filing of an Application for Flexible Standard Development Approval at 193 Devon Drive (FLS 02-01-03).

The Soboleski's reason their opposition through five points which either completely misconstrue the facts submitted in the application or are totally erroneous altogether. I will to respond to each point in order of their letter (Soboleski letter attached):

- 1) The County will not permit a dock anywhere on the property limited to 50' as the Soboleski's suggest. Therefore, the dock can not be built without a variance regardless of its location on the property. The Pinellas County Water and Navigation Report (PCWN) notes that some moderate sea grass exist at 50' on the left (east) property line. At 60' on the left (east) property line, no sea grass is observed. Therefore, somewhere between 50' and 60' the sea grass ends. If the dock was built in this location, a variance for a minimum of 34' would be necessary just to build the proposed structure on the east property line. My application does not seek to encroach on any side set-back. If the proposed dock was built off the east property line set back, the variance for length would be the same as is now proposed. Building the dock in this position places the western most edge of the structure 60' from the east property line. The county documents in the PCWN report under "Depths at left side of proposed dock" that the sea grass ends somewhere between 62' and 70'. The county's report is addressing a proposed dock built such that the eastern most edge of the structure would be 56' from the east property line. In each case, the structure overlaps the same area of sea grass. In this position, the dock would require a length of at least 94 feet. The dock would be no shorter in length unless it encroaches the eastern side set-back.

- 2) My application for Flexible Standard seeks only to lengthen the dock beyond the "Environmentally Sensitive Zone," as designated by Pinellas County. If I do not extend beyond the sea grass, the County will not permit. Clearly, according to the PCWN report, a variance is required, regardless of location, to protect the sea grasses and to allow adequate depth in which to float a boat.
- 3) The location of my property and the Soboleski's has the widest region of environmentally sensitive area. It is obviously from the two aerial photos I submitted to the Development Review Committee on February 14<sup>th</sup> that the sea grasses extend furthest from land along my property and the Soboleski's. The Soboleski's second dock was permitted at 98 feet for the same reason, to preserve the environmentally sensitive area around our property. Again, I further defer to rebuttal point #1 and #2.
- 4) My proposed dock does not set new precedent. The dock, which the Soboleski's claim is "extraordinarily large", is smaller in total square footage than either one of their two docks. *Furthermore, their second dock extends to a length of at least 98 feet, 3 feet longer than my proposed dock, as revised. Their primary dock extends 90 feet and has over twice the square footage as my proposed dock.* Furthermore, any obstruction to the Soboleski's navigational exercise of the water assumes that my proposed dock:
- Encroaches the set-back.** In fact, it exceeds the minimum setback by 50%. The Soboleski's primary dock, however, encroaches the set back almost to our common property line. A photo, showing their dock in relation to a wall that rests completely inside my property and runs parallel to our mutual property line graphically illustrates this. If a navigational obstruction truly exists, it is because their dock clearly violates the side set back.
  - Extends well beyond any other dock structure typical to its surroundings.** Again, the revised dock is 95', 5 feet longer than their primary dock, 3 feet shorter than their second dock.
  - Is extraordinarily larger in square footage than their own.** In fact, it is considerably smaller than their primary dock by at least half the square footage.
- I respectfully ask that you speak with Harbormaster Morris regarding navigational matters as they relate to this application. Also, please accept my permission to visit with me at my property to view the site.
- 5) The Soboleski's last point assumes that no structure should be permitted on or attached to the property. Any structure built on the beach or coastal inland

risks damage from hurricane forces. I certainly agree that the Soboleski's home or any one of their two docks could cause damage to my future home or dock should hurricane winds drive debris from their property on to mine. As you know, my future home will be required to conform to standards more rigid than their home or any other home on the street because of the new building codes took effect March 1<sup>st</sup>. I intend for the dock to be built to the same high standard. In fact, there has never been a dock built by Ress Marine Construction that has ever been lifted or destroyed by a heavy storm in the Tampa Bay area.

The following comments address the points in the opposition letter from Mr. Dale Neimann. In Mr. Neimann's letter, he claims that his property value will be negatively impacted because my proposed dock, located 210 feet from his eastern property line, will block his view.

The impact of my dock is negligible at best simply because the western edge of my dock would be located 210 feet from his eastern property line. Furthermore, in between Mr. Neimann's property and my proposed dock are the Soboleski's two docks located approximately 30 feet and 152' to the east of Mr. Neimann's property line. Nevertheless, the Soboleski's 98' dock, closest to Mr. Neimann, was still permitted. Likewise, as stated previously, the Soboleski's primary dock sits on my property line and extends to 90 feet in length. In spite of this, the assessed value of my property increased 60% from January 1, 2000 to January 1, 2001 according to the Pinellas County Property Appraisers Office. Mr. Neimann offers no evidence that his property suffered any loss of marketable value due existence of the Soboleski's two docks. I can offer no evidence that my property value suffered loss from the Soboleski's docks either.

Mr. Neimann goes on to state in point #2 that if the dock is built to the east, it would not negatively impact the environment. The dock as proposed in the Flexible Standard Application does not negatively impact the environment either.

In point #3, Mr. Neimann claims that a dock can be built limited to 60 feet in length on the eastern side. Again, the PCNW Report does not indicate this to be so. The County will only permit a walkway to a maximum of 4 feet wide when crossing over sea grass. A 60' foot dock 4 feet wide could not accommodate two lifts, which are permissible under both City and County Codes, or be reasonably functional. Please note, Mr. Neimann's dock also exceeds the current codes on length (57' dock on a 75' wide lot).

I purchased the property specifically because of its southerly exposure which protects me from the prevailing storm winds and because of the abundant sea grass. I am seeking, through this application nothing more than that which the objectors already have; a variance on length. While Mr. Neimann acknowledges respect for my right to build a dock, it seems contrary as he and the Soboleski's are trying to influence their control over my property rights.

Christopher Mariani

2-15-02; 9:10AM; plann-

15624751

# 7 / 7

Page 2

February 11, 2002

4) The substantial variances from Code requirement are being requested to allow an extraordinarily large dock structure, with covered boat lift for two (2) vessels. The proposed structure will cause adverse impact upon my property, including without limitation:

1) The purposed structure will cause a substantial obstruction of view of the water. Please accept our permission to come on to our property to view the site.

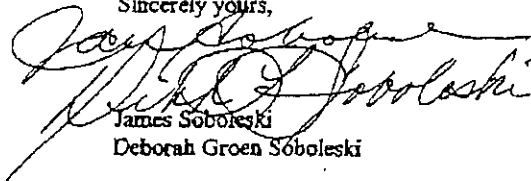
2) The proposed structure will obstruct navigation and exercise of water use rights by me and by other property owners.

5) The increased structure will increase the risks of hazard resulting from damage debris which may be caused by hurricanes or other strong storm forces.

It is respectfully suggested that the Applicant can design a dock of reasonable length, size and dimensions which will not require such extent of variances to requirements and conditions imposed by Code and which will not cause the extent of adverse impact upon our property as the proposed structure would cause.

Thanking you for your courtesy and attention to our concerns and objections, we are

Sincerely yours,



James Soboleski  
Deborah Groen Soboleski

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

B. D. ARMSTRONG III  
JOHN T. BLAKELY  
BRUCE H. BOKOR  
GUY M. BURNS  
JONATHAN S. COLEMAN  
MICHAEL T. CRONIN  
ELIZABETH J. DANIELS  
DECKY FERRELL-ANTON  
MARION HALE

SCOTT C. GEFENFRTZ  
FRANK R. JAKES  
TIMOTHY A. JOHNSON, JR.  
SHARON L. KLUCK  
ROGER A. LARSON  
JOHN R. LAWSON, JR.\*  
MICHAEL G. LITTLE  
MICHAEL C. MARKHAM  
STEPHANIE T. MARQUARDT

ZACHARY D. MESSA  
A.R. "CHARLIE" NBAL  
F. WALLACE POPE, JR.  
ROBERT V. POTTER, JR.  
AUDREY B. RAUCHWAY  
DARRYL R. RICHARDS  
PETER A. RIVELLINI  
DENNIS G. RUTPBL\*  
CHARLES A. SAMARKOS

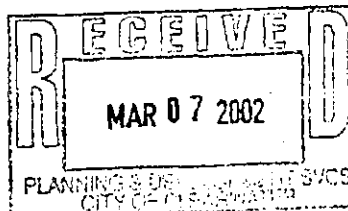
PHILIP M. SHASTEN  
JOAN M. VECCHIOLI  
STEVEN H. WENBERGER  
JULIUS J. ZSCHAU

\*OF COUNSEL  
PLEASE REPLY TO CLEARWATER

FILE NO. 42809.104550

March 5, 2002

Ms. Cyndi Tarapani  
Community Development Coordinator  
City of Clearwater  
Planning and Development  
Services Administration  
100 South Myrtle Avenue, 2<sup>nd</sup> Floor  
Clearwater, FL 33756



Re: FLS02-01-03-193 Devon Drive – Mariani Dock Flexible Standard  
Development Approval

Dear Ms. Tarapani:

This letter is written in response to the report of the DRC meeting of February 15, 2002, in connection with the referenced matter (the "Report"). While this letter will address the issues raised in the Report, it also serves as an amendment to Mr. Mariani's application for flexible standard development approval. Specifically, enclosed is a drawing of Mr. Mariani's revised proposed dock. The overall length of the newly designed dock is 95 feet, which is 6.5 feet shorter than the design originally submitted. In addition, the roof length over the larger capacity lift has been reduced from 48 feet to 38 feet and now equals in dimension the roof over the smaller capacity lift. The total dock square footage is now 476.25 square feet, versus the 498 feet previously requested. Each of the two boatlifts has a coverage area of five hundred and thirty two 532 feet, although it does not appear that this is a factor to be considered in whether to approve the application.

Turning to the Report, I will respond to the staff comments where corrections are appropriate or additional information is requested. The paragraph numbers listed below correspond with the paragraph numbers in the Report:

CLEARWATER OFFICE  
911 CHESTNUT STREET  
POST OFFICE BOX 1368  
CLEARWATER, FLORIDA 33757-1368  
TELEPHONE (727) 461-1811  
TELECOPIER (727) 462-0183

TAMPA OFFICE  
100 NORTH TAMPA STREET  
SUITE 1100  
POST OFFICE BOX 1100  
TAMPA, FLORIDA 33601-1100  
TELEPHONE (813) 225-2500  
TELECOPIER (813) 223-7118

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani

March 5, 2002

Page 2

5 a) The County Staff Report does not indicate "that the dock may be moved to the east side of the property and would only be required to be 50' in length...." The County Staff Report does contain the following comment "...the proposed length would be consistent with the environmental criteria of the Pinellas County Code if the dock were moved to the east side of the property where sea grasses end about 50' from the seawall." The sea grasses end about 60' from the seawall at the proposed dock location. Thus, a dock at the eastern side of the applicant's property would be 84' in length, not 50' as suggested in the Report.<sup>1</sup> To move the dock to the east side of the property would shift the obstruction complained of by the objectors from their view to the view of the neighbor to the east. The self interest of the objectors is manifest. The proposed location of the dock was selected because it best shelters the dock from northerly winds and prevailing boat traffic patterns off the tip of the Devon Drive finger.

c) The Report states "it's not clear how three criteria of the General Applicability (Section 3-913) are met (and must be addressed prior to the issuance of a DO)". Section 3.913 lists conditions which are to be imposed by the Community Development Coordinator pursuant to a level one or level two approval, which conditions shall insure that the listed issues are adequately addressed. These are not criteria that the applicant is required to establish. Nonetheless, I will address the three issues listed in the Report:

1. "The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located." We distributed at the hearing information showing the many docks on Devon that exceed the "standard" dock length provided in the Code. Most tellingly, the dock of the objectors Soboleski sits on Mr. Mariani's west property line and is 90' in length. (The Soboleskis have another dock on the west side of their property that is 98 feet in length.) Further, Harbormaster Morris stated at the hearing that Mr. Mariani's proposal, even at its then proposed 101 foot length, was not a navigational hazard or obtrusive and was in keeping with the character of the neighborhood.

<sup>1</sup> The dock extends 34' beyond the grass line. The grass line is at 61' on the west side of the property and 50' on the east side of the property.

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
March 5, 2002  
Page 3

2. "The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development." See the answer to the preceding issue.

3. "The design of the proposed development minimizes adverse effects including visual, acoustic and olfactory and hours of operation impacts, on adjacent property." The only issue here is visual impact. This has been minimized, given the existing sea grass situation at this location. This is especially true, in light of the nearby location of objectors Soboleskis' dock, which is of substantially equal length. Apparently, it is acceptable for the objectors Soboleskis to build their dock on Mr. Mariani's property line, but it is not acceptable for Mr. Mariani to build his dock 30 feet from the Soboleskis' property line. The logic of the Soboleskis is elusive.

11 a) The Report states that "the dock can be shortened to approximately 75' and miss the sea grass area." Clearly, this statement misapprehends the facts. A dock of 75' would allow only 14' of dock seaward of the sea grass area, which is plainly inadequate to accommodate the two boatlifts allowed by Code. In fact, a lift constructed in this manner would not allow a boat to float at low tide. The bow of the boat would damage the sea grass and the roof overhang would shade the sea grass.

(b) The Report states "application is inconsistent with the information contained in the County Report (specifically, the length of the dock)." The dock initially reviewed by the County was 86' feet in length, 9' shorter than this proposed dock. That proposal also consisted of two boatlifts side by side, which the County found to be acceptable. Now the boatlifts flank the dock as suggested by the County.

I request that you speak personally with Harbormaster Morris regarding Mr. Mariani's application. He is very familiar with all of the facts and circumstances surrounding the request and the objections of the neighbors.<sup>2</sup>

<sup>2</sup> It is noted that the objectors Niemann are separated from Mr. Mariani's property by the objectors Soboleski. Their east property line is 220 feet from the location of the proposed dock. The impact of Mr. Mariani's proposed dock on the Niemanns is negligible at best.

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
March 5, 2002  
Page 4

If you have any questions, please call me.

Very truly yours,

JOHNSON, BLAKELY, POPE, BOKOR,  
RUPPEL & BURNS, P.A.



Timothy A. Johnson, Jr.

TAJ/lrc  
261632

13

14

15

# PRIVATE DOCK

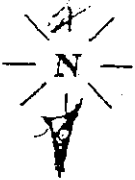
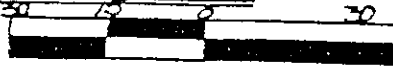
Application # \_\_\_\_\_

(OFFICIAL USE ONLY)

MHW  
MLW  
BOTTOM

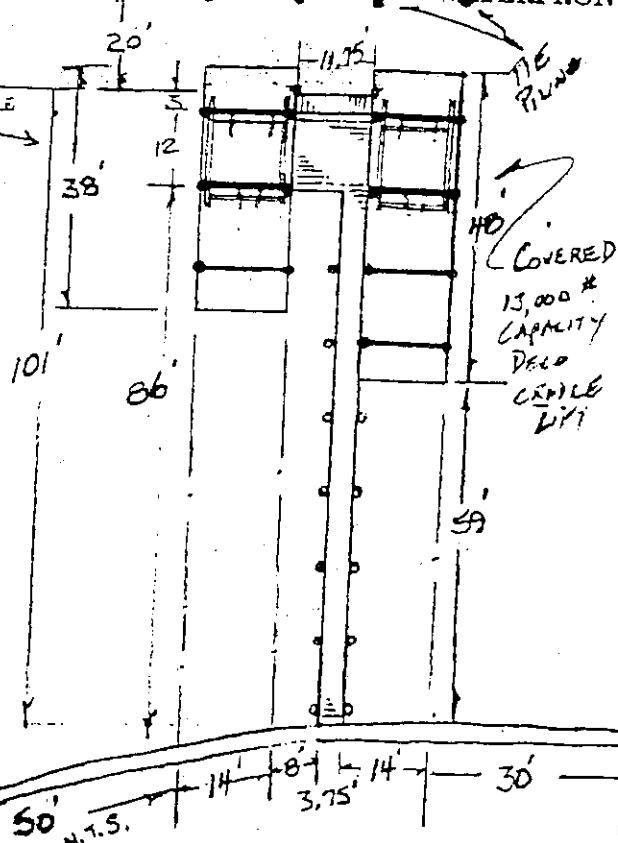
Profile View

ENG. SCALE: 1" = 30'



LOT 31  
DEVON DR  
CLEARWATER BEACH

COVERED  
13,000 #  
DECK CRADLE  
LIFT



NEW SQUARE FEET 498.75  
TOTAL SQUARE FEET 498.75  
WATERWAY WIDTH 570'  
WATERFRONT WIDTH 120'

SHORELINE

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner

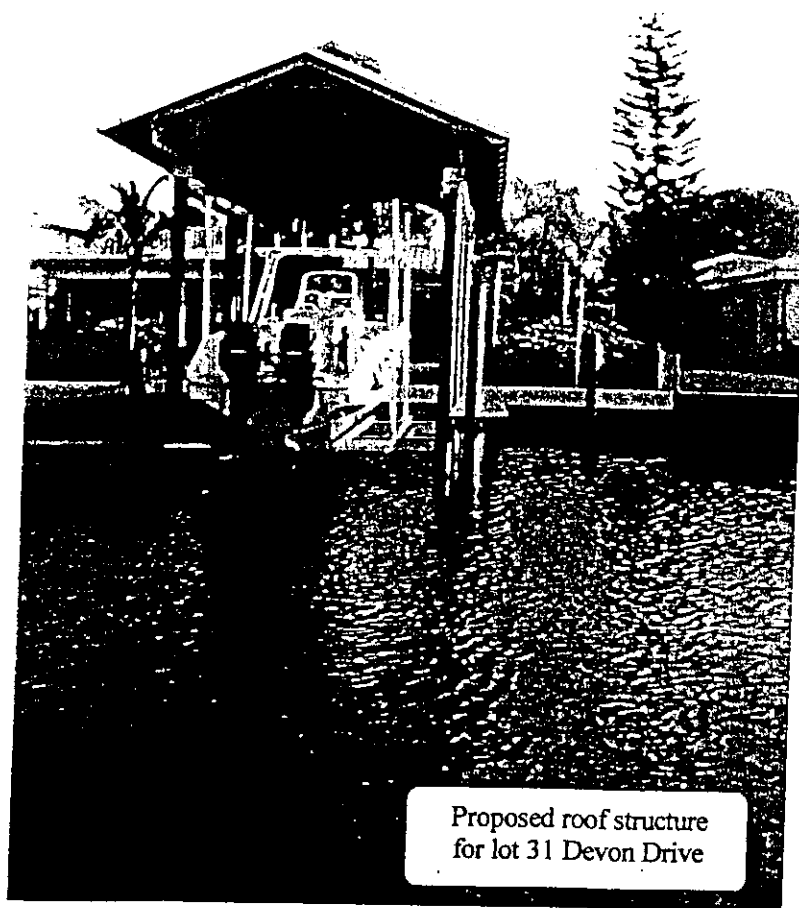
Right Owner

Signature

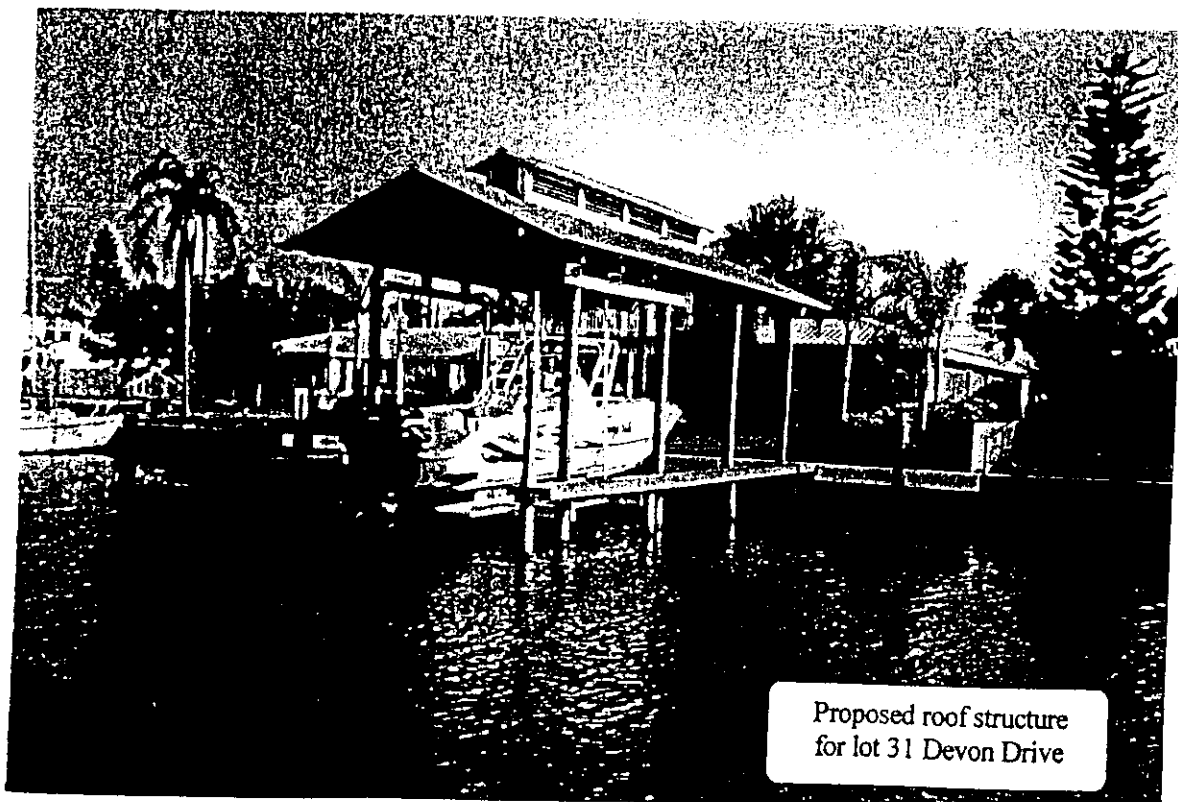
Signature

Municipality Approval

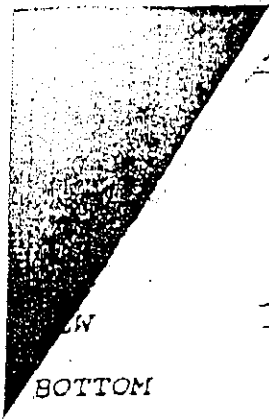
Water and Navigation Approval



Proposed roof structure  
for lot 31 Devon Drive



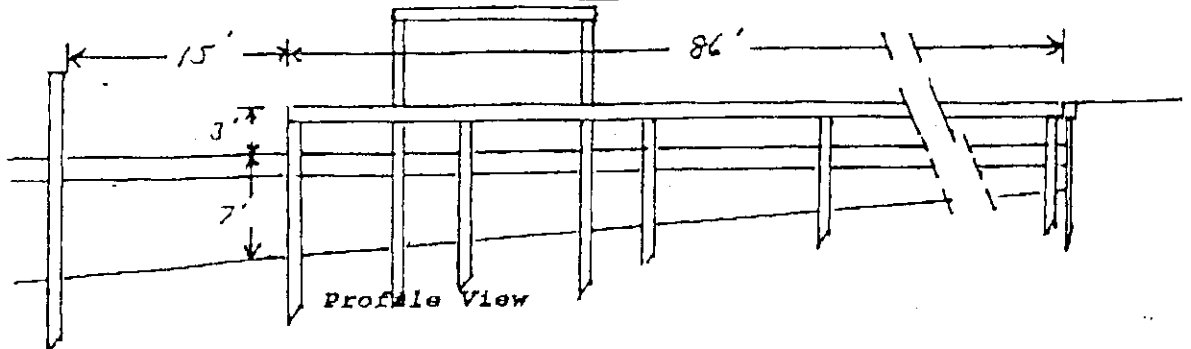
Proposed roof structure  
for lot 31 Devon Drive



DOCK

Application # P25-202-97

(OFFICIAL USE ONLY)



ENG. SCALE: 1" = 12'



TOTAL SQUARE FEET 1118

NEW SQUARE FEET 219

WATERWAY WIDTH OPEN

WATERFRONT WIDTH 72'

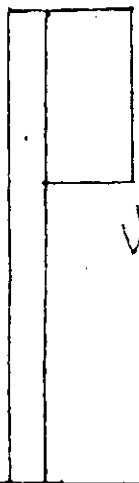
CITY OF CLEARWATER  
HARBORMASTER'S OFFICE

N

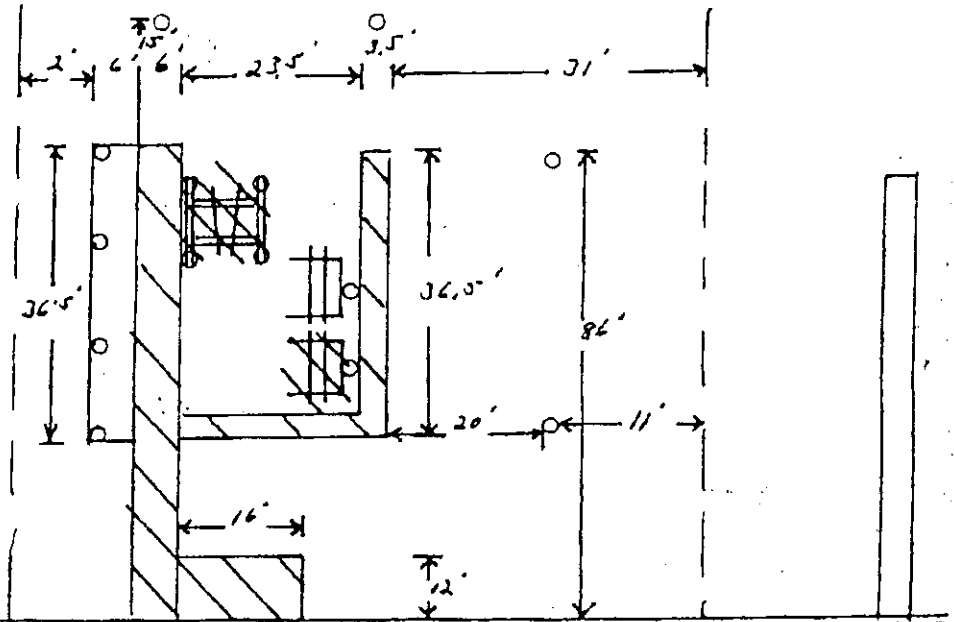
SEP 23 1997

APPROVED BY [Signature] NAVIGATION

Plan View  
(applicant and adjacent docks)



466-6465  
FAX



SHORELINE

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner  
Signature [Signature] Date \_\_\_\_\_  
MUNICIPALITY APPROVAL

Right Owner  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
WATER AND NAVIGATION APPROVAL

Reviewed for Code Compliance  
CITY OF CLEARWATER  
BLDG. INSPECTION DEPT.  
BY [Signature]  
DATE 10-22-97

**APPROVED**  
PINELLAS COUNTY  
ENVIRONMENTAL MANAGEMENT

[Signature] 10-23-97  
PINELLAS COUNTY ENVIRONMENTAL MANAGEMENT

CITY OF CLEARWATER  
PLANNING DEPARTMENT  
STAFF REPORT FOR 2/14/02 DRC MEETING

**BACKGROUND INFORMATION:**

**APPLICANT:** Mr. Christopher Mariani

**PROPERTY LOCATION:** 193 Devon Drive

**REQUEST:** Flexible Standard Development approval to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 101 feet (84 percent of the width of the property) under the provisions of Section 3-601.

**APPLICATION NUMBER:** **FILE**  
FLS 02-01-03

**ZONING:** LMDR, Low Medium Density Residential District

**EXISTING USE:** Single-family residential

**ADJACENT LAND USES:**

|        |                           |
|--------|---------------------------|
| North: | Single-family residential |
| South: | Clearwater Bay            |
| East:  | Single-family residential |
| West:  | Single-family residential |

## STAFF ANALYSIS

The 0.33-acre site is located on the south side of Devon Drive approximately 1,350 feet east of Hamden Drive. The site is vacant.

The neighborhood consists entirely of well-maintained, single-family dwellings.

The proposal includes a 498 square foot dock and two 144 square foot covered boatlifts. The proposed dock will be located 24 feet from the east property line and 30 feet from the west property line. The proposed boatlift will be located 14 feet from the west property line. All other Code requirements regarding docks will be met.

All required building permits would need to be obtained prior to construction.

The site is located in a stable, residential neighborhood that is undergoing redevelopment. The request to increase the permitted length of the dock is in keeping with the established character of the area and will provide a more environmentally sensitive situation over existing conditions.

### **B. FLEXIBILITY STANDARDS FOR DOCKS IN ASSOCIATION WITH SINGLE-FAMILY DWELLINGS IN THE LMDR, LOW MEDIUM DENSITY RESIDENTIAL DISTRICT (Section 3-601):**

| STANDARD          | REQUIRED/<br>PERMITTED                                                                                | EXISTING | PROPOSED             | IN<br>COMPLIANCE? |
|-------------------|-------------------------------------------------------------------------------------------------------|----------|----------------------|-------------------|
| LENGTH<br>maximum | 50 percent of the width of the property (60 feet)                                                     | Vacant   | 86 feet (71 percent) | No                |
| WIDTH<br>Maximum  | Thirty-five (35) percent of the width of the property (42 feet) or fifty (50) feet, whichever is less | Vacant   | 36 feet              | Yes               |

| STANDARD                | REQUIRED/<br>PERMITTED                                                                                                                                                                        | EXISTING | PROPOSED                                                            | IN<br>COMPLIANCE? |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------|-------------------|
| <b>SIDE<br/>SETBACK</b> | Docks: the center one-third of the lot (40 feet) or twenty (20) feet from any property line, whichever is less<br>Boatlifts/service catwalks: minimum of ten (10) feet from any property line | Vacant   | Dock<br>East: 24 feet<br>West: 30 feet<br>Boatlift<br>West: 14 feet | Yes               |

**C. FLEXIBILITY CRITERIA FOR DOCKS IN THE LMDR, LOW MEDIUM DENSITY RESIDENTIAL (Section 2-203):**

1. The proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed twenty-five (25) percent of the width of the waterway; or

The Pinellas County Department of Environmental Management has issued a report which states that there are no navigational concerns with the proposed development.

2. The proposed dock location needs to be adjusted to protect environmentally sensitive areas; or

The Pinellas County Department of Environmental Management has issued a report which states that the proposal is more environmentally sensitive than the existing dock and constitute an improvement over existing conditions.

3. The property configuration precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns.

Not applicable as the only one of the above three criteria must be met. The first two criteria have been satisfied.

**D. GENERAL APPLICABILITY (Section 3-913):** Conditions which are imposed by the Community Development Coordinator and the Community Development Board pursuant to a Level One or a Level Two Approval shall ensure that:

- 1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.**

The proposal includes a dock as accessory to an existing single-family residence. It will have no impact on density or impervious surface ratio limitations. The immediate area consists of single-family homes. The development will be in harmony with the scale and character of adjacent properties. Adjacent properties are residential. The applicant will replace an existing dock with a more, environmentally sensitive one. The development will be in harmony with the scale and character of adjacent properties.

- 2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.**

The site is zoned LMDR District and the proposed use will be in compliance with that zoning. The proposed development should not discourage appropriate development and use of adjacent land buildings.

- 3. The proposed development will not adversely affect the health or safety or persons residing or working in the neighborhood of the proposed use.**

The use will not change with this proposal. The development will not negatively affect the health or safety or persons residing or working in the neighborhood.

- 4. The proposed development is designed to minimize traffic congestion.**

The use does not change with this proposal and will have no increased effect on traffic.

- 5. The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.**

The proposed development is consistent with and will improve the community character of the immediate vicinity.

- 6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.**

There will be no adverse effects generated by the proposed development.

### STAFF RECOMMENDATION:

Based on the on the application, the proposal is in compliance with the standards and criteria for Flexible Standard Development approval, with the maximum development potential and with all applicable standards of the Community Development Code.

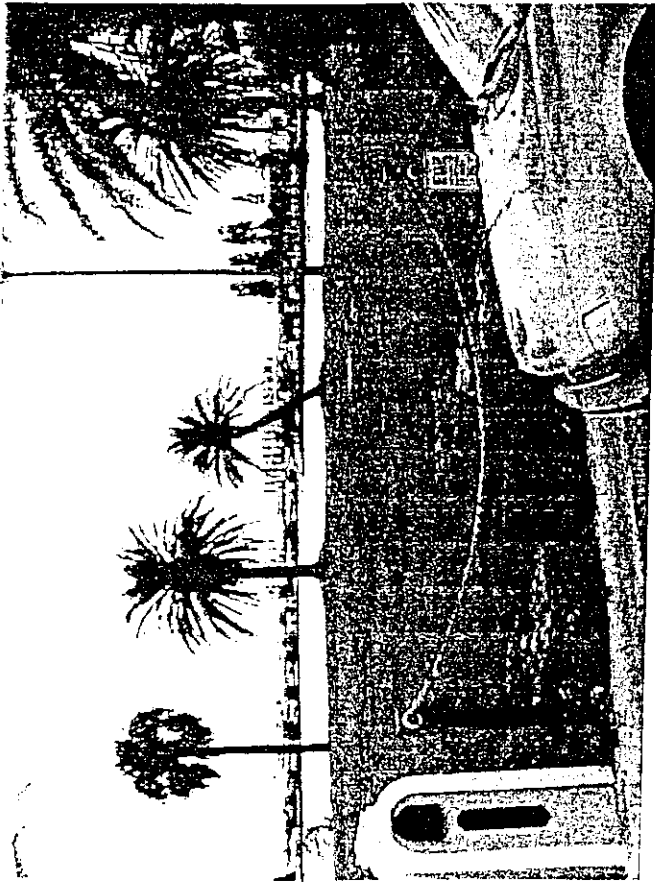
Therefore, staff recommends **APPROVAL** of the application for Flexible Standard Development approval to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 101 feet (84 percent of the width of the property) under the provisions of Section 3-601 at 193 Devon Drive.

#### Basis for Approval:

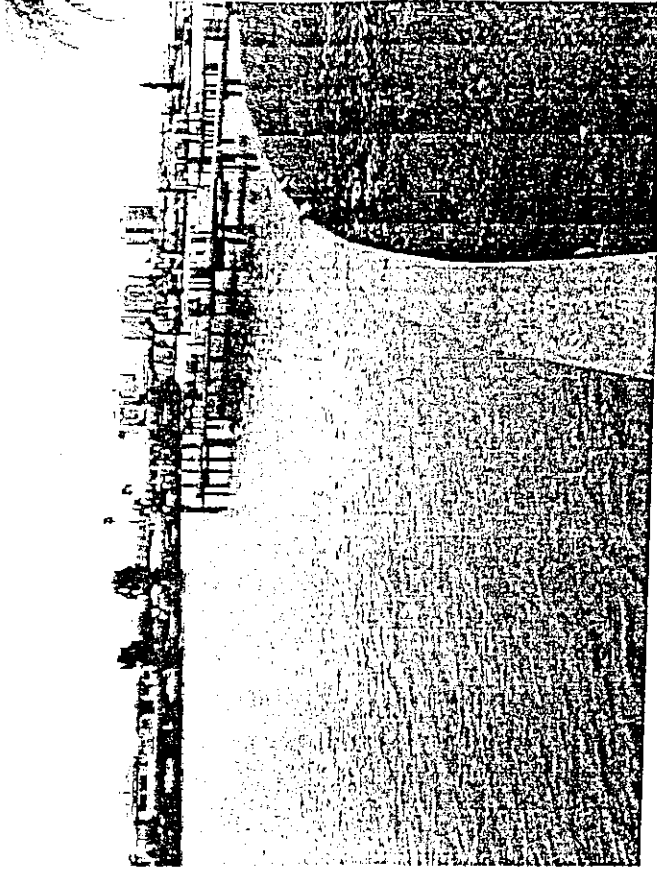
1. The proposal complies with Flexible Development and Residential Infill Project criteria under the provisions of Section 3-601;
2. The plan complies with General Applicability Criteria under the provisions of Section 3-913; and
3. The proposed development is compatible with the surrounding area.

#### Condition:

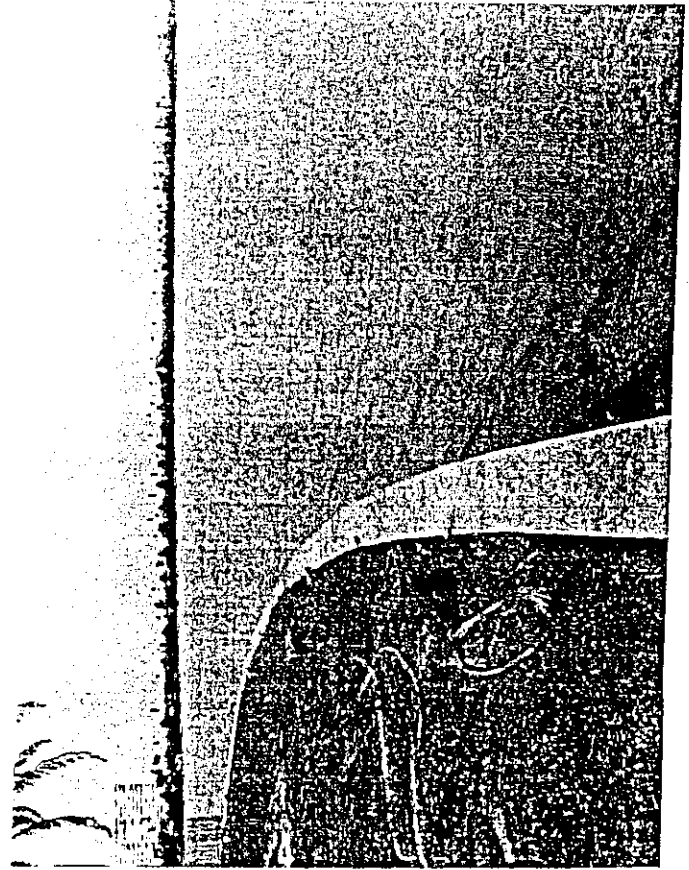
1. That the final design of the dock and boatlift be consistent with the conceptual elevations submitted or as modified by the DRC;



View looking south



View looking west



View looking east

143 Devon  
Drive  
FLS 01-00-03

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

E. D. ARMSTRONG III  
JOHN T. BLAKELY  
BRUCE H. BOKOR  
GUY M. BURNS  
JONATHAN S. COLEMAN  
MICHAEL T. CRONIN  
ELIZABETH J. DANIELS  
BECKY FERRELL-ANTON  
MARION HALE

SCOTT C. ILGENFRITZ  
FRANK R. JAKES  
TIMOTHY A. JOHNSON, JR.  
SHARON E. KRICK  
ROGER A. LARSON  
JOHN R. LAWSON, JR.\*  
MICHAEL G. LITTLE  
MICHAEL C. MARKHAM  
STEPHANIE T. MARQUARDT

ZACHARY D. MESSA  
A.R. "CHARLIE" NEAL  
F. WALLACE POPE, JR.  
ROBERT V. POTTER, JR.  
AUDREY B. RAUCHWAY  
DARRYL R. RICHARDS  
PETER A. RIVELLINI  
DENNIS G. RUPPEL\*  
CHARLES A. SAMARKOS

PHILIP M. SHASTEEN  
JOAN M. VECCHIOLI  
STEVEN H. WEINBERGER  
JULIUS J. ZSCHAU

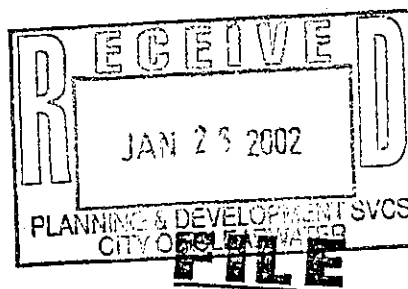
\*OF COUNSEL  
PLEASE REPLY TO CLEARWATER

FILE NO. 42809.104550

January 25, 2002

Via Hand Delivery

Mr. Mark Parry  
Planning Dept.  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756



Re: Application for Flexible Standard Approval (FLS-02-01-03) submitted by  
Chris Mariani

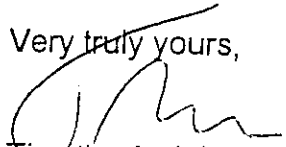
Dear Mark:

On behalf of the applicant, Christopher C. Mariani, we enclose an original and 12 copies of an amended application in connection with the referenced case. The applicant requests an increase in the permitted dock length from 60 feet to 101 feet as described in detail in the enclosed application.

Also enclosed is a consent from the adjoining property owner to the left, Mark and Diane Blum of 195 Devon Drive.

If you have any questions in connection with this application, please do not hesitate to contact my legal assistant, Jayne Sears, or me.

Very truly yours,

  
Timothy A. Johnson, Jr.

TAJ/js  
encls.

cc: Mr. Christopher C. Mariani

#258983 v1

CLEARWATER OFFICE  
911 CHESTNUT STREET  
POST OFFICE BOX 1368  
CLEARWATER, FLORIDA 33757-1368  
TELEPHONE (727) 461-1818  
TELECOPIER (727) 462-0365

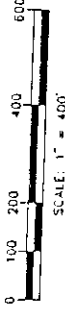
TAMPA OFFICE  
100 NORTH TAMPA STREET  
SUITE 1800  
POST OFFICE BOX 1100  
TAMPA, FLORIDA 33601-1100  
TELEPHONE (813) 225-2500  
TELECOPIER (813) 223-7118

**CITY OF CLEARWATER**  
AND VICINITY  
PINELLAS COUNTY, FLORIDA  
PREPARED BY  
**PUBLIC WORKS ADMINISTRATION**  
100 S. Main Ave., Clearwater, FL 33754  
Ph: (813)582-4750 Fax: (813)582-1255  
http://www.clearwater-fl.com/capex/



Public information data is provided by the City of Clearwater Public Works Administration/Engineering and not intended to be used by the recipient with the understanding that the City of Clearwater does not warrant the accuracy, completeness, reliability, or suitability of the information for any particular use. Further, the City of Clearwater does not assume any liability whatsoever associated with the use or misuse of such data.

This page is to be used to provide a general overview of the information about the city limits and is not intended to be used for any other purpose.



**LEGEND:**

⊖ BLOCK NUMBER

1234 LOT ADDRESS

--- CITY LIMITS L14-2

▭ SHADED AREA - PROPERTY OUTSIDE CLEARWATER CITY LIMITS

▲ AGREEMENT TO ANNEX

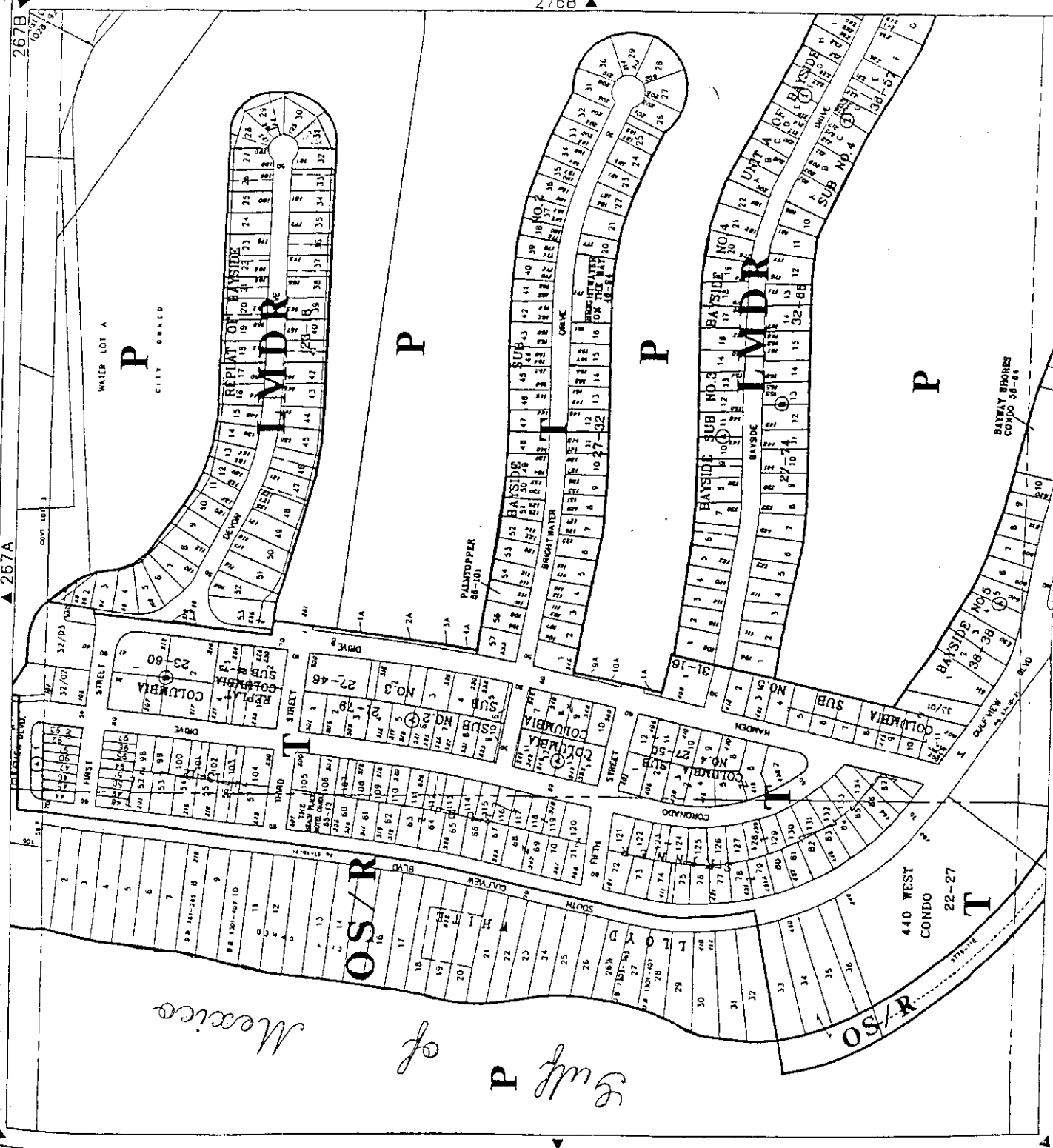
◆ CITY OWNED PROPERTY

MDR ZONING DESIGNATION

— ZONE LINE

REVISED:  
03/08/99

**ZONING ATLAS**



BATTLE & EDENFIELD, P.A.  
ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR.\*  
MICHAEL S. EDENFIELD

206 MASON STREET  
BRANDON, FL 33511  
(813) 685-3014  
FAX (813) 684-5922

ALSO ADMITTED  
\* COLORADO  
\* NEW MEXICO  
\* MONTANA

March 14, 2002

(date and typos corrected from prior fax  
of 03/14/02 which was incorrectly dated 03/15/02)

Mark Parry  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

RE: Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

Dear Mr. Parry:

I represent James and Deborah Soboleski who own the residence to the immediate West of Mr. Chris Mariani's lot (Lot 31, 193 Devon Drive) for which the above application was submitted. As you already know, my clients are vehemently opposed to Mr. Mariani's request as it is now constituted. I write to ask that you refrain from issuing a decision on Mr. Mariani's request until at least March 28, 2002 to allow us time to provide you with additional information which we believe will be helpful to you in reaching a fully informed decision.

The reasons that we need this additional time are:

- 1) I was just retained by the Soboleskis and I was unavailable to review the City's file until today. Obviously I need some time to fully digest the file and respond to the contents thereof; and
- 2) We wish to provide you with a graphic pictorial representation of how Mr. Mariani's proposed dock will affect the view from the Soboleskis property. This requires actual field surveying and photography as well as a substantial amount of computer work to generate the visual models; and
- 3) We need time to assemble pictorial evidence of how the proposed project will affect the character of the neighborhood.

I hope that given the depth of opposition to Mr. Mariani's application that you can grant us the additional time. I would not ask for the additional time if I did not truly believe that it was necessary to provide the additional information and visual tools to you and that this information would have an effect upon your decision.

While we are working diligently to prepare and submit the above information to you, I felt that it would be appropriate to address several issues initially. First, I am

concerned that you do not yet have a complete application. It appears to me that the Section 4-202, Community Development Code requires:

- 1) Subsection A, 12(e) requires that structural overhangs and building heights be depicted; and
- 2) Subsection A, 24 requires detailed plans and specifications prepared, signed and sealed by a Florida Registered Professional Engineer.

In my review of the application file today, I was unable to locate either a plan depicting the structural overhangs or detailed plans and specifications signed and sealed by a Florida Registered Professional Engineer.

Second, we believe that the staff may have overlooked several key facts in their review. Page 4, Paragraph D2 states, *inter alia*, that "... the proposal includes a dock as an accessory use to an existing single family residence." This is incorrect. The lot is vacant. Accordingly, the proposed dock would at this time constitute a primary use not an accessory use. Docks are not permitted as primary uses in a residential zone.

Further, the staff report suggests that "... the development will be in harmony with the scale and character of adjacent properties." This is also incorrect. While other properties have docks, they do not have docks of the size and magnitude of the proposed dock and boathouses. While no detailed plans were submitted with the application, a "guesstimate" from the sketch and photo submitted suggests that the roof line of the boathouses at the end of the dock will approach, if not be in excess of, the height of adjacent homes. When you consider that the boathouse roof over the larger capacity lift will be 38 feet in length [as amended] and presumably have a boat out of the water on the lift much of the time, it becomes clear that the visual effect will be to have a small house in the view of my clients.

Third, we suggest to you that the roof decks should be included in the dock deck for determining the applicable standard of review. If you include the total area covered by the dock and roofs, excluding the tie piles, the dock area exceeds 500 square feet. This would require a Level Two Review.

Fourth, while I have not had time to fully review and consider Mr. Mariani's assertions, including Tim Johnson's letter of March 5, 2002, I did note several curious comments in Mr. Johnson's March 5, 2002 letter. I address these as follows:

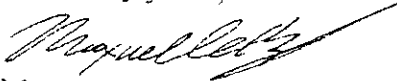
- 1) How is it that Harbormaster Morris is supposed to be so knowledgeable of "... the facts and circumstances surrounding the request and objections of the neighbors." ? The file certainly does not reflect that he spoke to either of my Clients. In fact they report that he has not. In addition, it seems clear that he also did not know that the Blums contiguous on the East do not mind having Mr.

Mariani's dock located closer to their property line [see their letter dated 03/06/2002 in your file].

- 2) Mr. Johnson complains about the logic of the Soboleskis having docks and opposing Mr. Mariani's project. The Soboleskis oppose the location, size and character of the Mariani proposal, not the concept of his building a dock once he has a residence on Lot 31. If the Mariani project is moved to the East adjacent to the Blums lot line, they are not blocked in their view [so long as the size of the boathouses does not get out of scale]. Both Mr. Mariani and Mr. Johnson undoubtedly know this, but ignore it.
- 3) Mr. Johnson complains that shifting to the East will impinge upon the Blum's view. But Mr. Johnson fails to mention that the Blums don't object.
- 4) Mr. Johnson and Harbormaster Morris both appear to be ignorant of the fact that my Clients did not build the docks on their property [they were existing] and that they spent approximately \$20,000 to move boat lifts and address fence and landscaping issues in a manner that benefited their neighbors.

As you can see from the foregoing brief comments, there are many disputed issues that I need to address for the Soboleskis. I hope that you will agree to grant the additional time for my Clients and I to respond further prior to reaching a decision.

Very truly yours,



Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

PINELLAS COUNTY  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER AND NAVIGATION REPORT

**SUBJECT:** Dock Preapp.  
Christopher Mariani  
Lot 31 Devon Drive, Clearwater

**FROM:** Susan Pirolo *SP*  
Environmental Specialist II  
Department of Environmental Management

**THRU:** David L. Walker, Jr., Env. Program Manager *DW*  
Water and Navigation Section  
Department of Environmental Management

**DATE:** November 26, 2001

The subject site was inspected by this Department on November 8, 2001.

**PROJECT AND SITE DESCRIPTION:**

The applicant proposes construct a private dock in the waters of Clearwater Harbor.

The proposed dock will consist of a 4 ft. x 86 ft. walkout with a 26 ft. x 2.5 ft. catwalk, a 2.5 ft x 36 ft. catwalk, two boat lifts, and a roof. The total area of the dock will be 499 sf. The waterfront width of the property is 120 ft. The proposed structure will be located 56 ft. from the east property line and 31.5 ft. from the west property line. The total length of the structure will be 86 ft. and the width of the structure will be 32.5 ft. The water depth will be greater than 5 ft. (MLW) at the end of the proposed structure. The width of the navigable portion of the waterway at this location is approximately 570 ft. The structure extends a total of 86 ft., 15.1% into the navigable waterway.

The shoreline is seawalled at this location. Oysters (*Crassostrea virginica*) are attached to the seawall. Dense seagrass beds consisting of cuban shoal grass and manatee grass (*Halodule wrightii* and *Syringodium filiforme*, respectively) are located offshore along the entire property. The seagrass is located from 1 ft. to 65 ft. from the seawall in the area of the proposed dock. No emergent vegetation is present on this property.

Wildlife observed during the field review included a brown pelican (*Pelecanus occidentalis*), cormorant (*Phalacrocorax auritus*), and great egret (*Casmerodius albus*).

Field conditions at this site were as follows:

Depths at left side of proposed dock:

| Distance<br>from seawall | Depth           | Notes                                |
|--------------------------|-----------------|--------------------------------------|
| 0'                       | 0.3' (0.1' MLW) |                                      |
| 1'                       |                 |                                      |
| 4'                       |                 | start of mod. sparse <i>Halodule</i> |
| 10'                      | 0.9' (0.7' MLW) | start of dense <i>Hal.</i>           |
| 20'                      | 1.3' (1.1' MLW) | very dense <i>Halodule</i>           |
| 30'                      | 1.8' (1.2' MLW) | " "                                  |
| 40'                      | 2.6' (2.4' MLW) | " "                                  |
| 50'                      | 3.5' (3.3' MLW) | " "                                  |
| 60'                      | 4.3' (4.1' MLW) |                                      |
| 62'                      |                 | moderately sparse seagrass           |
| 70'                      | 5.8' (5.6' MLW) | very sparse seagrass                 |
| 80'                      | 6.1' (5.9' MLW) | no seagrass                          |
| 86'                      | 6.3' (6.1' MLW) |                                      |

Depths at right side of proposed lifts:

| Distance<br>from seawall | Depth           | Notes                                                                      |
|--------------------------|-----------------|----------------------------------------------------------------------------|
| 0'                       | 0.2' (0.0' MLW) | a few pieces horizontal concrete riprap                                    |
| 2'                       |                 | start of sparse <i>Halodule</i>                                            |
| 3'                       |                 | moderate <i>Hal.</i>                                                       |
| 4'                       |                 | dense <i>Hal.</i>                                                          |
| 10'                      | 0.5' (0.3' MLW) | very dense <i>Hal.</i>                                                     |
| 20'                      | 0.8' (0.6' MLW) | " "                                                                        |
| 30'                      | 1.2' (1.0' MLW) | " "                                                                        |
| 40'                      | 1.9' (1.7' MLW) | " "                                                                        |
| 50'                      | 2.4' (2.2' MLW) | " "                                                                        |
| 60'                      | 3.8' (3.6' MLW) | " "                                                                        |
| 62'                      |                 | end of dense seagrass                                                      |
| 65'                      |                 | end of all seagrass                                                        |
| 70'                      | 4.6' (4.4' MLW) |                                                                            |
| 80'                      | 5.4' (5.2' MLW) |                                                                            |
| 86'                      | 5.7' (5.5' MLW) |                                                                            |
| 90'                      |                 | end of adj. dock to right (poles extend further), property curves to right |

Note: Inner 10' (east side) to 20' (west side) of roof and structure will be over dense seagrass.

Depths at right (west) property line:

| Distance<br>from seawall | Depth           | Notes                |
|--------------------------|-----------------|----------------------|
| 0'                       | 0.2' (0.0' MLW) |                      |
| 6'                       |                 | start of seagrass    |
| 10'                      | 0.3' (0.1' MLW) | dense seagrass       |
| 20'                      | 0.7' (0.5' MLW) | " "                  |
| 30'                      | 0.9' (0.7' MLW) | " "                  |
| 40'                      | 1.5' (1.3' MLW) | " "                  |
| 50'                      | 2.1' (1.9' MLW) | " "                  |
| 60'                      | 3.3' (3.1' MLW) | " "                  |
| 70'                      | 4.2' (4.0' MLW) | end of most seagrass |
| 80'                      | 4.9' (4.7' MLW) |                      |
| 90'                      | 5.5' (5.3' MLW) |                      |

Depths at left (east) property line:

| Distance<br>from seawall | Depth           | Notes                                        |
|--------------------------|-----------------|----------------------------------------------|
| 0'                       | 0.3' (0.1' MLW) |                                              |
| 1'                       |                 | start of <i>Halodule</i> (mod. sparse)       |
| 3'                       |                 | dense <i>Halodule</i>                        |
| 8'                       |                 | very dense <i>Halodule</i>                   |
| 10'                      | 1.0' (0.8' MLW) | " "                                          |
| 20'                      | 1.6' (1.4' MLW) | " "                                          |
| 24'                      |                 | <i>Syringodium</i> mixed in with <i>Hal.</i> |
| 30'                      | 2.3' (2.1' MLW) | mostly very dense <i>Syringodium</i>         |
| 40'                      | 3.1' (2.9' MLW) |                                              |
| 50'                      | 5.5' (5.3' MLW) | still some moderate seagrass                 |
| 60'                      | 5.8' (5.6' MLW) | no seagrass                                  |
| 70'                      | 6.5' (6.3' MLW) |                                              |
| 80'                      | 6.9' (6.7' MLW) |                                              |
| 86'                      | 7.3' (7.1' MLW) |                                              |

**COMMENTS:**

1. Seagrass beds are located along this entire property, and extend out to a maximum of 65 ft. from the seawall in the area of the proposed dock although it becomes sparse at approximately 60 ft. It is the policy of this Department to limit structures over seagrasses to 4 ft. in width and to place the terminal platforms and boat slips beyond the limits of the seagrasses wherever possible. In the proposed location, the walkout would need to be lengthened by 10 feet to meet this criteria. The applicant is advised, however, that the proposed length would be consistent with the environmental criteria of the Pinellas County Code if the dock were moved to the eastern side of the property where seagrasses end about 50 ft. from the seawall.
- 2 The applicant is also advised that it is the policy of this Department that all boat slips be located adjacent to the main dock, and therefore one boat lift will need to be located on each side of the main dock.

**FINDINGS:**

No findings are being issued at this time pending receipt of a formal application.

The applicant is advised that approvals for this project may also be required from the Florida Department of Environmental Protection and the U. S. Army Corps of Engineers. Any modifications required by these agencies must be reflected in revised plans submitted to the County.

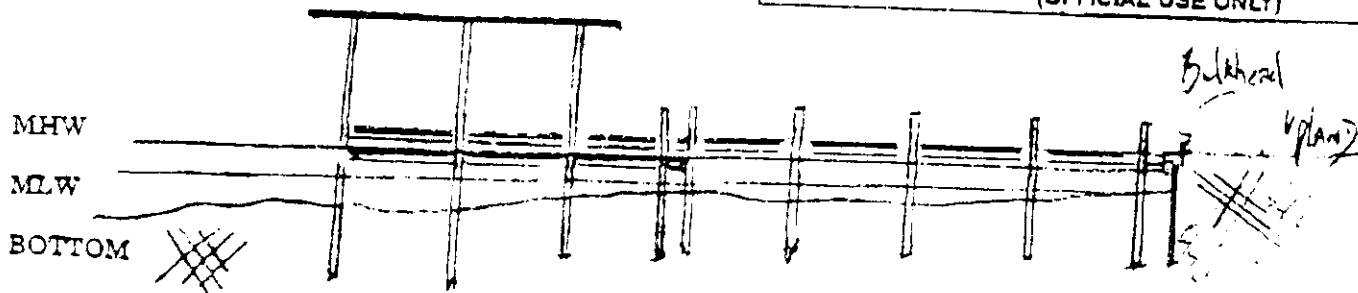
STR: S 1/2 8-29-15

marianie2.doc

# PRIVATE DOCK

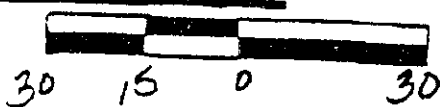
Application # \_\_\_\_\_

(OFFICIAL USE ONLY)



Profile View

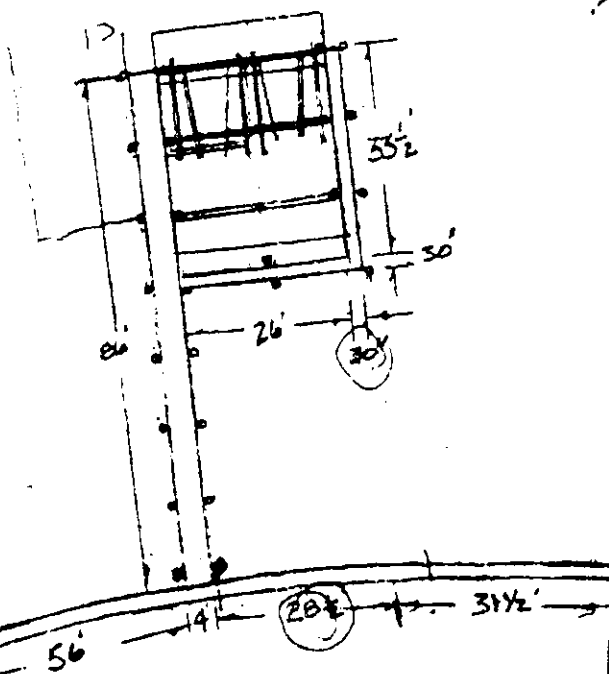
ENG. SCALE: 1" = 30'



Plan View

(applicant and adjacent docks)

|                   |      |
|-------------------|------|
| TOTAL SQUARE FEET | 499  |
| NEW SQUARE FEET   | 499  |
| WATERWAY WIDTH    | 675' |
| WATERFRONT WIDTH  | 120' |



## SHORELINE

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

|                       |      |                               |      |
|-----------------------|------|-------------------------------|------|
| Left Owner            |      | Right Owner                   |      |
| Signature             | Date | Signature                     | Date |
| Municipality Approval |      | Water and Navigation Approval |      |

191  
DEVON

191  
DEVON



# CITY OF CLEARWATER

POST OFFICE BOX 4748, CLEARWATER, FLORIDA 33758-4748  
CITY HALL, 112 SOUTH OSCEOLA AVENUE, CLEARWATER, FLORIDA 33756  
TELEPHONE (727) 562-4010 FAX (727) 562-4021

CITY ATTORNEY'S OFFICE

October 14, 2002

Maxwell G. Battle, Jr, Esquire  
Battle & Edenfield, P.A.  
206 Mason Street  
Brandon, Florida 33511-5277

Re: Deborah Groen Sobelski v. City of Clearwater and Christopher C. Mariani  
DOAH Case No. 02-3637

Dear Mr. Battle:

As requested by you, enclosed is a duplicate copy of all of the items sent to the Deputy Chief Judge of the Division of Administrative Hearing regarding the above-referenced case. Also enclosed is our invoice for our costs.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leslie K. Dougall-Sides".

Leslie K. Dougall-Sides  
Assistant City Attorney

LDS:grh

Enclosures

OCT 16 2002

BRIAN J. AUNGST, MAYOR-COMMISSIONER  
WHITNEY GRAY, VICE MAYOR-COMMISSIONER  
FRANK HIBBARD, COMMISSIONER

HOYT HAMILTON, COMMISSIONER  
BILL JONSON, COMMISSIONER



"EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EMPLOYER"

CITY OF CLEARWATER  
P. O. BOX 4748  
Clearwater, Florida 33758-4748

**INVOICE**

DATE: October 14, 2002

TO: Maxwell G Battle, Jr., Esquire  
Battle & Edenfield, P.A.  
206 Mason Street  
Brandon, FL 33511

---

RE: Deborah Groen Sobelski v. City of Clearwater and Christopher C. Mariani  
DOAH Case No. 02-3637

|                                            |                |
|--------------------------------------------|----------------|
| 48 copies at \$.15 per copy (single-sided) | \$ 2.40        |
| 41 copies at \$.20 per copy (double-sided) | \$ 4.20        |
| Audio Tape of CDB August 20, 2002 Meeting  | \$ 5.00        |
| Postage                                    | <u>\$ 2.90</u> |
| TOTAL                                      | \$14.50        |

Note:  
Please make check payable to  
**City of Clearwater** and forward to:

City Attorney's Office  
P. O. Box 4748  
Clearwater, FL 33758-4748



Planning Department  
100 South Myrtle Avenue  
Clearwater Florida 33756  
Telephone: 727-562-4567  
Fax: 727-562-4576

CASE #: APP2002-07002/FLS 02-01-03

DATE RECEIVED: \_\_\_\_\_

RECEIVED BY (staff initials): \_\_\_\_\_

☒ SUBMIT ORIGINAL SIGNED AND NOTARIZED APPLICATION

☒ SUBMIT 12 COPIES OF THE ORIGINAL APPLICATION

☒ SUBMIT APPLICATION FEE \$ 500.<sup>00</sup>

## APPEAL APPLICATION

Level One and Level Two Reviews (Revised 07/31/02)

~PLEASE TYPE OR PRINT~

### APPLICATION/NOTICE OF APPEAL (Code Section 4-502.A & B)

Section 4-502.A: An appeal of a Level One approval (Flexible Standard Development) may be initiated by a property owner abutting the property which is the subject of the approval within seven days of the date the Development Order is issued. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case. The hearing before the Community Development Board shall be scheduled at the first available meeting of the Board (sufficient to provide notice under Section 4-206) and may be continued at that meeting of the Board so that the Board may receive more information, clarification, or research. The Community Development Board shall render a decision at the meeting but not later than 70 days from the receipt of the notice of appeal, unless the parties by mutual consent extend the time frame for the Board's decision until a subsequent meeting.

Section 4-502.B: An application/notice of appeal of any decision of the City, as provided in Section 4-501, may be initiated by the applicant or any person granted party status within 14 days of the decision. Such application shall be filed with the City Clerk in a form specified by the Community Development Coordinator identifying with specificity the basis for the appeal and accompanied by a fee as required by Section 4-202.E. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case.

### A. APPELLANT AND AGENT INFORMATION:

APPELLANT NAME: Deborah Groen Sobeleski

MAILING ADDRESS: 191 Devon Drive, Clearwater Beach, Florida 33767

PHONE NUMBER: (727) 461-0264 FAX NUMBER: (727) 466-6465

AGENT NAME: Maxwell G. Battle, Jr., Esq., Battle & Edenfield, P.A.

MAILING ADDRESS: 206 Mason Street, Brandon, Florida 33511

PHONE NUMBER: (813) 685-3014 FAX NUMBER: (813) 684-5922

### B. APPEAL INFORMATION (This is an Appeal to a hearing officer of a decision of Community Development Board regarding a Level One approval, please see page two.)

CHECK THE SPECIFIC APPEAL

#### Appeals to the Community Development Board

- ☐ Orders, requirements, decisions or determinations made by an administrative official in the administration of the Community Development Code, except for enforcement actions
- ☐ Administrative interpretations of the Community Development Code
- ☐ Level One (Flexible Standard Development and Minimum Standard) approval decisions

- ☐ Denials of any permit or license issued under the provisions of the Community Development Code
- ☐ Any denials deemed to have occurred as result of the failure of the Community Development Coordinator to act within the time limits provided in this Community Development Code

Appeals to a hearing officer

- ☐ Decisions of the Community Development Board regarding Level Two approvals  
☒ Decisions of the Community Development Board regarding Level One approvals  
☐ OTHER (as allowed by Code) \_\_\_\_\_

ADDRESS OF SUBJECT APPEAL (if applicable): 193 Devon Dr.

SPECIFIC CASE NUMBER TO BE APPEALED (if applicable): APP2002-07002, 193 Devon Dr./FLS 02-01-03

DATE OF DECISION: August 20, 2002

**C. BASIS OF APPEAL:**

Explain in detail the basis for the appeal. Use additional sheets if necessary.

- The development order does not comply with the Community Development Code.
  - The application, amended application and proposal do not comply with the Community Development Code.
  - The Community Development Code on its face and in practice denies appellant of her right to substantive and procedural due process of law.
  - The decision of the Community Development Board was arbitrary and capricious, is not supported by the record, and otherwise does not meet the requirements of law.
  - The Community Development Board was not furnished with a complete copy of the entire application file and/or was deprived of a reasonable opportunity to review the entire application file prior to its decision.
  - The Community Development Board denied Appellant an administrative hearing.
- Please see Exhibit "A", and Exhibit "B" (August 16, 2002 correspondence from Maxwell G. Battle to Cyndi Tarapani including attachment thereto) for additional basis of appeal.

**D. SIGNATURE:**

I, the undersigned, acknowledge that all representations made in this application are true and accurate to the best of my knowledge

  
Signature of property owner or representative

STATE OF FLORIDA, COUNTY OF PINELLAS

Sworn to and subscribed before me this 26 day of August A.D. 2002 to me and/or by \_\_\_\_\_ who is personally known has produced \_\_\_\_\_ as identification.

  
Notary public,  
My commission expires 12/1/04

\\MS21PDS\Planning Department\Application Forms\development review\Appeal Application.doc



Leslie E. Novak  
Commission #CS091071  
Expires Dec. 11, 2003  
Bonded Through  
Atlantic Bonding Co., Inc.

## EXHIBIT A

### CONTINUATION OF SPECIFICATION OF BASIS FOR APPEAL

The decision of the Community Development Board was arbitrary, capricious, and must be reversed because:

1. The Community Development Code on its face and as applied deprives Appellant of her right to due process under law both substantively and procedurally. Specifically, but without limitation, the Community Development Code is flawed on its face because it does not provide for any meaningful appeal. The Code gives the Board unbridled discretion to approve the decision of the Community Development, but provides to standard of review. Further, the Code doe provide any meaningful right to appeal. Appellant of her procedural right to due process of law in that the Board's decision was based upon a selective subset of the records and facts upon which the Community Development Coordinators' decision was based and because Appellant was denied any opportunity to argue the merits of the case while at the same time the applicant and the City were afforded such an opportunity. The Community Development Board failed to grant Appellant an administrative/quasi-judicial hearing to consider evidence which was part of the application file but which was not properly provided to the Board for its consideration at the Board's August 20, 2002 meeting.
2. In spite of the requests and objections of counsel for Appellant, the Community Development Coordinator failed and/or refused to provide the Community Development Board with the entire application file which formed the basis for the original decision to issue the development order, or provided parts of the file to the Board so late as to deprive the Board with the reasonable opportunity to review the file. The Community Development Coordinator failed and/or refused to provide the Board with certain exhibits including but limited to a letter from an adjoining property owner expressing no objection to the positioning of the dock on the East side of applicants property as well as a letter from Pinellas County addressing environmental aspects of the application. The applicant's counsel was then allowed to argue the merits of one or more of these exhibits without the exhibit being in the record and without Appellant being granted a similar right.
3. The Community Development Coordinator skewed the record and the evidence to support her own decision. The Community Development Coordinator included exhibits supplied by the applicant and/or his counsel, but selectively excluded exhibits furnished by Appellant.
4. The board misconstrued graphic exhibits furnished by Appellant, and refused to allow Appellant's counsel to address the Board's erroneous conclusions thereabout.

5. Appellant has been denied procedural due process of law in this case because the Board did not allow Appellant to argue the merits of the case. At its August 20, 2002 meeting, the Board allowed both the Community Development Coordinator to argue the merits of the case, but refused to allow Appellant or her counsel to do so.
6. At the August 20, 2002 meeting, a member of the Board moved to uphold the decision based upon the fact that the Board Member's opinion that the City's staff were professionals and therefore should be supported by the Board. In effect the Board abdicated its responsibility to review the decisions of staff members.
7. The decision of the Community Development Board is tainted by the fact that the applicant submitted an exhibit prepared by a member of the Board. While the particular board member abstained from the Board's consideration of this case, the Board did consider the exhibit in its review of the case.
8. The Development Order appealed from fails to comply with the requirements of the Community Development Code, departs from the essential requirements of law because:
  - A. It is based upon and concurs with the findings of the Development Review Committee. However, except for Mark Parry's February 15, 2002 "FAX MESSAGE" to Tim Johnson, there are no written findings in the file [or were not on, and prior to, July 18, 2002]. If the "comments" reported by Mr. Parry in his February 15, 2002 FAX MESSAGE are the findings the Development Order refers to, then they are based upon a flawed and inaccurate Staff Report. See Maxwell G. Battle, Jr's letter to Cyndi Tarapani dated April 26, 2002; and
  - B. It approves a proposal based upon a non-existent plan; and
  - C. It was not signed by the Community Development Coordinator; and
  - D. It grants relief that is inconsistent with the Flexible Standard Development criteria under 3-601.C.1.g; and
  - E. It grants relief that is inconsistent with other provisions of the Community Development Code including without limitation 1-103.A, 1-103.B.2, 1-103.E.3, 3-601.C.1.d, 3-601.C.1.e, 3-601.C.1.g and 3-913; and
  - F. It grants relief upon an application that does not comply with the requirements of 4-202.A.24; and
  - G. It approves a proposal which is incompatible with the surrounding area; and

- H. The Application was amended after the Development Review Committee concluded its review; and
- I. It refers to a Site Plan dated April 15, 2002 which was not in the city's file on the dates of four (4) reviews of the City File [3/15/02, 4/23/02, 6/06/02 and 7/18/02], the last of which was on July 18, 2002, the Thursday before the Order was signed. There was however a single Architectural Drawing by Plisko Architecture, P.A. AIA dated, unsigned and unsealed with revisions of 4/10/02 and 4/11/02 entitled DOCK PLANS. This document depicts two dock configurations. If this is the "site plan" referred to by the Development Order, then the Development Order is vague and ambiguous in that it does not clearly identify which configuration on the "site plan" is required to be adopted by the Condition #4.
- J. Although the Development Order requires concurrent issuance of a building permit for a residence and dock, it allows the dock to be permitted and built without first requiring the construction of a single family residence. If the residence was permitted but not built, this would result in the dock being allowed as a primary, rather than accessory use.
- K. The Community Development Coordinator apparently misconstrued the effect of Section 3-601.C.1.g to require rather than allow deviations to the dock criteria.

## **INITIAL BRIEF**

### **Standing of Appellant**

Deborah L. Groen Soboleski, formerly known as Deborah L. Groen is the record title holder of 191 Devon Drive, Clearwater, FL 33763, which property is adjacent to, and contiguous to, the Mariani property to which the Development Order is addressed. Appellant's East property line adjoins Mr. Mariani's West property line.

### **Flawed Staff Report**

The Development Order concurs with the findings of the Development Review Committee. With exception of Mark Parry's reported comments to Tim Johnson [Fax Message of 02-15-02], there were no written "findings" of the Committee in the file on, or prior to, July 18, 2002. Further, the Development Review Committee had before it at the time of its review a seriously flawed and inaccurate Staff Report. See Maxwell G. Battle, Jr.'s letter to Cyndi Tarapani dated April 26, 2002. The flaws are so pervasive and egregious as to call into question the entire review process on the Application in

question. At a minimum, allowing the Development Review Committee to act upon such clearly erroneous and incomplete information departs from the essential requirements of law.

### **Non-Existent Plan**

The Development Order appealed from approves a proposal that does not yet exist in final form. It directs submission of a new plan for review by City Staff. It is inappropriate to issue a Development Order that allows the “approved proposal” to be created after the Development Order is issued. Such an approval subverts the entire review, approval and appeal process, departs from the essential requirements of law and violates both substantive and procedural due process rights of the Appellant under the Florida and United States Constitutions.

### **Development Order Not Properly Entered**

The Community Development Code provides that the Community Development Coordinator may issue a Development Order approving a Level One Review item. The Development Order is signed by another City Employee. There is no indication in the file that this City Employee is a duly authorized representative of the Community Development Coordinator. Accordingly, the Development Order should be declared void.

### **Inconsistent with Section 3-601.C.1.g of the Community Development Code**

The proposed dock does not need to be adjusted in length to protect environmentally sensitive areas if the covered boatlifts are omitted and it is moved to the East. The property configuration does not preclude placement of the proposed dock in compliance with the required dimensional standards and the proposed dock is not similar in dimensional characteristics to surrounding dock patterns. Moving the dock to the East side of the Mariani lot as suggested by Appellant would serve to protect existing grass beds. Further, under the foregoing circumstances and until proper final plans are submitted, it can not be said unequivocally that no navigational conflicts would be created.

### **Inconsistent with other Provisions of The Community Development Code**

Section 1-103.A envisions that development will be conducted in a manner that enhances the character of the City, the preservation of neighborhoods and enhances the quality of life. The Mariani proposal violates each of these principals.

Section 1-103.B states that the CDC’s purpose is, inter alia, to ensure that development and redevelopment will not have a negative impact on the value of

surrounding properties and wherever practicable promotes the enhancement of surrounding property values. The Mariani proposal will have a drastic negative impact upon the value of the Appellant's property. On the waterfront, view is value.

Section 1-103.E.3 requires the protection and conservation of land values throughout the City. The Mariani proposal contravenes this goal. It destroys the Soboleski view and devalues their property.

Section 1-103.E.5 requires preservation of the aesthetic character of the Community. The Mariani proposal contravenes this goal. It sets a precedent of allowing covered boat lifts that rival many residences in size.

Section 1-1-3.E.6 indicates that open spaces should be provided through efficient project design and layout that addresses appropriate relationships between buildings on the project site and adjoining properties. The Mariani proposal attempts to crowd the site at the waterfront when open space could be fostered by moving the dock to the East side of the property and/or deleting the covered portion of the lifts.

Section 3-601.C.1.d prohibits vertical sidewalls on any dock or boatlift. The Mariani proposal contains vertical sidewalls as a portion of the roof in contravention of this section. The vertical sidewalls add to the perception of mass of the structure.

Section 3-601.C.1.e provides that no more than two slips can be created. The Mariani proposal includes tie piles along with boatlifts, which effectively creates more than two slips in contravention of this section.

#### **Failure to Provide Complete Plans in Compliance with Section 4-202.A.24**

Section 4-202.A.24 requires that complete plans be submitted with the application which are signed and sealed by a Florida Registered Professional Engineer. It clearly says "shall" be accompanied by such plans. Under Section 8-101.E, "shall" means mandatory in nature. This was not done by Mariani. Given the clear mandate of Section 8-101.E, the requirement can not be waived. The result is that neither the Staff, the Community Development Board or the Community Development Director had before them a complete application. Nor did they have an accurate and specific plan of the actual proposed size (height, width and depth) of the proposed dock, covered boatlifts, and slips from which to properly evaluate the proposal. Similarly, affected property owners have been denied the same information. Accordingly, the proposal can not have been properly evaluated and approved because the application did not comply with the Community Development Code. By proceeding to process the application the Community Development Coordinator departed from the essential requirements of law.

### **Incompatibility with Surrounding Area**

The proposal is not compatible with the surrounding area. A review of the materials submitted by James and Deborah Soboleski clearly show that there are no private docks with dual covered lifts of the size proposed by Mariani. The Mariani proposal constitutes a substantial departure from the character of docks in the neighborhood.

### **Amendment after Review**

The Mariani proposal was repeatedly amended after the Development Review Committee completed its review. Accordingly, the Development Review Committee reviewed and commented upon a different proposal than the Planning Director ostensibly approved. None of the surrounding property owners appear to have been notified of the amendments, and certainly none of them could possibly have any idea of what the end result might be because the final plan still has not been submitted. Accordingly, the City Planning Department has not acted in accordance with its own Codes and has departed from the essential requirements of law.

### **April 15, 2002 Site Plan**

The Development Order requires compliance with an April 15, 2002 Site Plan. No such site plan was in the file on July 18, 2002 [nor on 3/15/02, 4/23/02 or 6/06/02]. If such a site plan exists [and was submitted], it has been shielded from Public view. Further, it clearly was not evaluated by Staff prior to the Development Review Committee Meeting, or by the Development Review Committee because no such plan could have existed at that time by simple examination of the dates of each. If the "Site Plan" referred to is the Plisko Architecture, P.A. "DOCK PLANS" revision dates 4-10-02 and 4-11-02, the order is too vague and ambiguous. It does not clearly identify what portion of the Plisko "DOCK PLANS" is to be incorporated into the revised plans to be submitted in accordance with Condition #4.

### **Accessory Use**

The Development Order requires only that a residence permit be issued at or before the dock permit is issued. It does not requires that the residence be constructed first. The issuance of a permit to build a residence does not require that the residence be built. Unless the residence is built, the dock would be an impermissible primary use rather than an accessory use. Accordingly, the Development Order departs from the essential requirements of law by not requiring that the residence be constructed before the dock.

**Community Development Coordinator**  
**Misconstrued Section 3-601.C.1.g**

It appears that the Community Development Coordinator misconstrued Section 3-601.C.1.g to require rather than allow the granting of a deviation from the dock criteria if any of the 3 criteria for deviation was met. Section 3-601.C.1.g uses the term "may" which under Section 8-101.F means "permissive", not mandatory. Accordingly, the Community Development Coordinator was not required to grant the relief sought by Mr. Mariani.

**ADOPTION OF PRIOR POSITIONS**

In addition to the foregoing issues, Appellant adopts the positions set forth in Maxwell G. Battle, Jr.'s letters dated March 14, 2002, March 27, 2002 and April 26, 2002, copies of which are attached to this Application for Administrative Appeal.

**WITNESSES AND PROOF**

At hearing the appellant intends to offer additional argument, testimony from live witnesses and tangible evidence. Witnesses may include a Florida Registered Professional Engineer, a Florida Registered Land Surveyor, one or more Florida Licensed Real Estate Brokers, one or more Florida Licensed Real Estate Appraisers, a duly licensed Florida Contractor and lay witnesses. These witnesses will be designated more fully at a later date.

**CONCLUSION AND REQUESTED RELIEF**

For the reasons set forth herein above, the Development Order, and the decision of the Community Development Board in Case No. APP2002-07002 must be reversed and the application in Case No. FLSO2-01-03 denied. In the alternative, the Development Order should be modified to require moving the proposed Mariani dock to the Eastern most side of his Lot and deleting the covered lift portions of the dock.

CDB Meeting Date: August 20, 2002  
Case Number: APP2002-07002  
Agenda Item: E1

**CITY OF CLEARWATER  
PLANNING DEPARTMENT  
STAFF SUMMARY OF EVENTS**

**FILE**

**GENERAL INFORMATION:**

**OWNER:** Christopher C. Mariani

**APPLICANT/  
APPELLANT:** Deborah L. Groen Soboleski (191 Devon Drive)

**APPLICANT'S  
REPRESENTATIVE:** Maxwell G. Battle, Jr., Attorney

**LOCATION:** 193 Devon Drive

**REQUEST:** Appeal of a Level One (Flexible Standard Development) decision by the Community Development Coordinator who approved certain deviations to the dock requirements for the property located at 193 Devon Drive, under the appeal provisions of Section 4-501 of the Community Development Code.

**BASIS OF STAFF'S DECISION:**

This 0.32-acre site is located on the south side and terminus of Devon Drive, approximately 1,350 feet east of Hamden Drive. The site fronts on a channel off of Clearwater Harbor and is currently vacant.

On January 18, 2002, Mr. Timothy Johnson, Jr., Esquire, filed an application for Flexible Standard Development approval on behalf of Mr. Christopher C. Mariani (property owner) for a dock. It was later amended and refiled on January 28, 2002. (Refer to Exhibit A.) This application requested an increase in the permitted length of a dock from 60 feet to 101 feet, due to the proximity of sea grasses. Following the DRC meeting of February 14, 2002, the applicant submitted a second amendment to the application. The March 5, 2002 submittal included a letter stating the overall length of dock would be 95 feet (refer to Exhibit B.) An April 14, 2002 letter and accompanying site plan included a 92-foot long dock (refer to Exhibit C).

Section 3-601.C.1.b of the Code provides that the length of docks and boatlifts that serve a single-family dwelling shall not exceed 25 percent of the waterway or half of the width of the property measured at the waterfront property line, whichever is less. In this case, the lot is 120 feet wide at the east, waterfront property line and the waterway is approximately 700 feet wide. In this case, half of the lot width is used to determine permitted length of the dock and is 60 feet.

The proposed dock was shown 128 feet from the extended east property line and 44 feet from the extended west property line. The boatlift location was shown 30 feet from the west property line.

Section 3-601.C.1.g of the Code provides for deviations from dock requirements for single-family (and two-family) dwellings. The Community Development Coordinator may grant deviations as part of a Level One, Minimum Standard review, provided signed and notarized statements of no objection are secured from both adjacent waterfront property owners. In the event such statements cannot be obtained, deviations are reviewed under Flexible Standard Development applications, based on one of the following criteria:

- 1) That the proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed 25 percent of the width of the waterway; or
- 2) The proposed dock location needs to be adjusted to protect environmentally sensitive areas; or
- 3) The property configuration precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns.

The applicant was not able to provide statement of no objection from both adjacent waterfront property owners and applied as part of a Level One, Flexible Standard Development review. Consent was provided from the adjacent property owner to the east ("left"), at 195 Devon Drive, within the application submittal (Exhibit A). As part of his submission, the applicant provided documentation from the Pinellas County Department of Environmental Management stating that there are no navigational concerns associated with the proposed dock. It was also stated that the proposed structure is more environmentally sensitive than the existing structure, reducing negative environmental impacts to existing sea grasses. The Development Review Committee (DRC) reviewed the application on February 14, 2002. There were no objections raised by the DRC whose members include the Environmental Manager of the Public Works Administration and Harbormaster.

The application was approved by the Community Development Coordinator (Planning Director) through its designee (Assistant Planning Director) on July 22, 2002 (refer to attached Staff Report and Development Order for case FLS 02-01-03, Exhibits D and E). It should be noted that the Community Development Coordinator supervised the review of this application and the decision made, as is done with all cases. During the Coordinator's absence from the office, the Assistant Planning Director was designated to act on behalf of the Planning Director on all matters, including the issuance of the Development Order. The application was approved with the following bases and conditions:

Bases for approval:

1. The proposal complies with the Flexible Standard Development criteria under the provisions of Section 3-601.C.g;
2. The proposal, as amended, is in compliance with other standards in the Code including the General Applicability Criteria per Section 3-913; and
3. The development, as amended, is compatible with the surrounding area.

Conditions of approval:

1. That a building permit for the proposed dock only be issued concurrently with, or subsequent to, building permit issuance for a principal, residential structure on the site;
2. That the proposed dock be relocated farther east (with the dock head centered on the midpoint of the waterfront property line, as measured at the seawall) and constructed perpendicular to the waterfront property line;
3. That the relocation of the dock meet all criteria under Section 3-601.C.1; and
4. That revised plans reflecting conformance with condition #2 be submitted with the building permit application, to the satisfaction of staff.

APPEAL:

Section 4-504 of the Code, Community Development Board Appeals, states that appeals may be filed from a Level One (Flexible Standard Development) approval from an abutting property owner. This appeal was filed on July 26, 2002 by the abutting property owners to the west (Deborah L. Groen Soboleski. – 191 Devon Drive). Refer to Exhibit F. The appeal was properly filed.

**AUTHORITY OF THE COMMUNITY DEVELOPMENT BOARD TO HEAR APPEALS:**

The Community Development Board has the authority to hear appeals from Level One approval decisions, including Flexible Standard Development applications, in accordance with Section 4-501.A.2 of Community Development Code. In this case, the decision by the Community Development Coordinator was the July 22, 2002 Development Order to the applicant's representative, Timothy Johnson, approving the application for Flexible Standard Development.

Upon receipt of a notice of appeal/application from an abutting property owner, it shall be placed on consent agenda of the next scheduled meeting of the Community Development Board. The appeal may be removed from the consent agenda by a vote of at least four members of the Board. If the appeal is not removed from the consent agenda by the Community Development Board, the decision of the Community Development Coordinator (Planning Director), is confirmed as part of the consent agenda by a vote of a majority of the members of the Board. If the appeal is removed from the consent agenda, the Community Development Board shall review the application, the recommendation of the Community Development Coordinator, conduct a quasi-judicial public hearing on the application (per Section 4-206) and render a decision in accord with Section 4-206.D.5. Due to notice requirements, should the appeal be removed from the consent agenda, the full review of the CDB will be scheduled for the September 17, 2002 public hearing.

Pursuant to Section 4-504.C of the Community Development Code, in order to grant an appeal, overturning or modifying the decision appealed from, the Community Development Board shall find that based on substantial competent evidence presented by the applicant or other party:

- 1) The decision appealed from misconstrued or incorrectly interpreted the provisions of the Community Development Code;
- 2) That the decision will be in harmony with the general intent and purpose of the Community Development Code; and
- 3) Will not be detrimental to the public health, safety and general welfare.

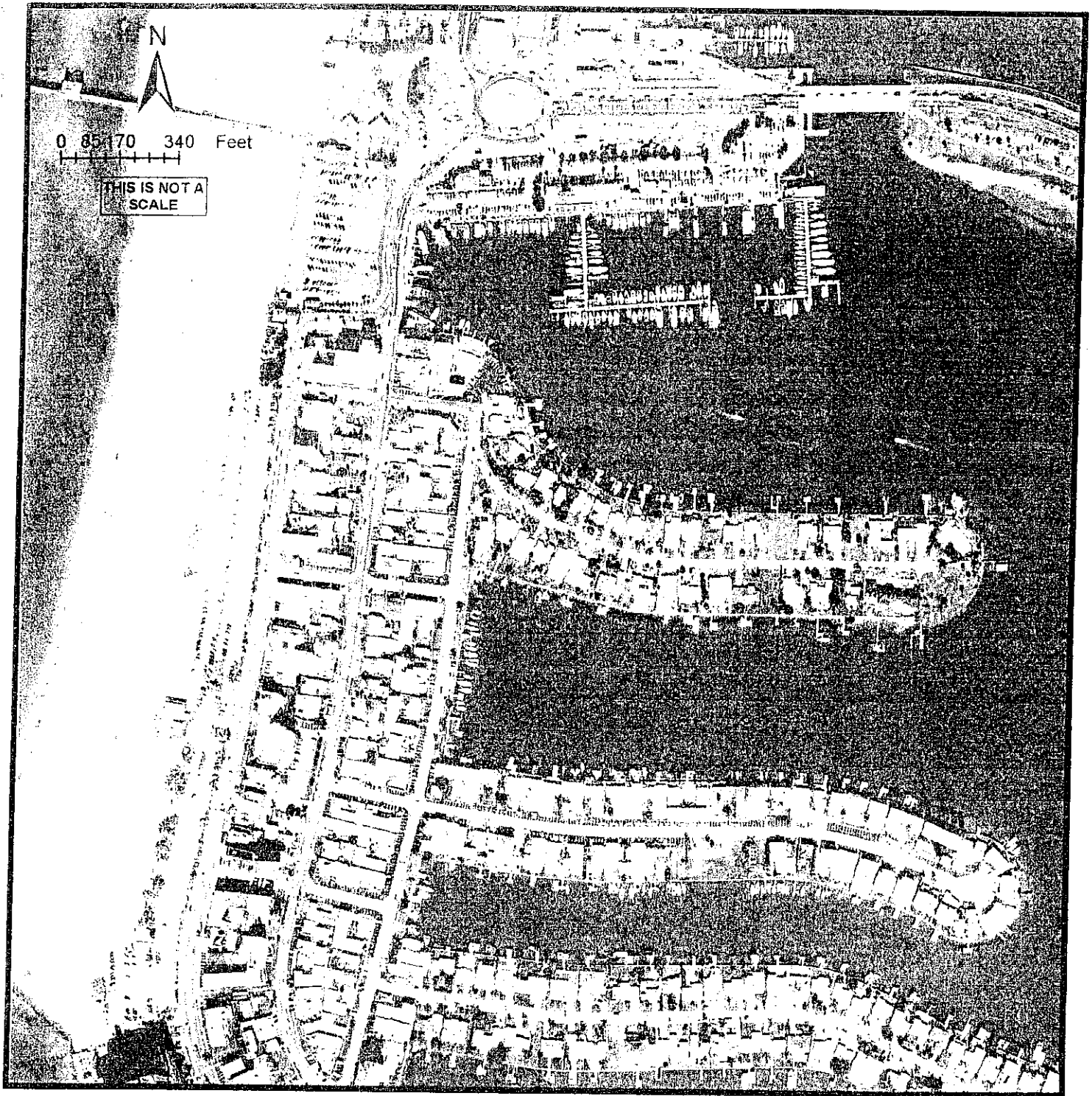
Prepared by Planning Department staff:

  
Mark Parry, Planner

**ATTACHMENTS:**

Aerial Photograph of Site and Vicinity  
Zoning Atlas Map  
Exhibits A-F

*S:\Planning Department\C D B\APPEALS\Devon 193 Mariani dock\Devon 193 STAFF REPORT appeal.doc*



## APPEAL REQUEST

OWNER: Christopher C. Mariani

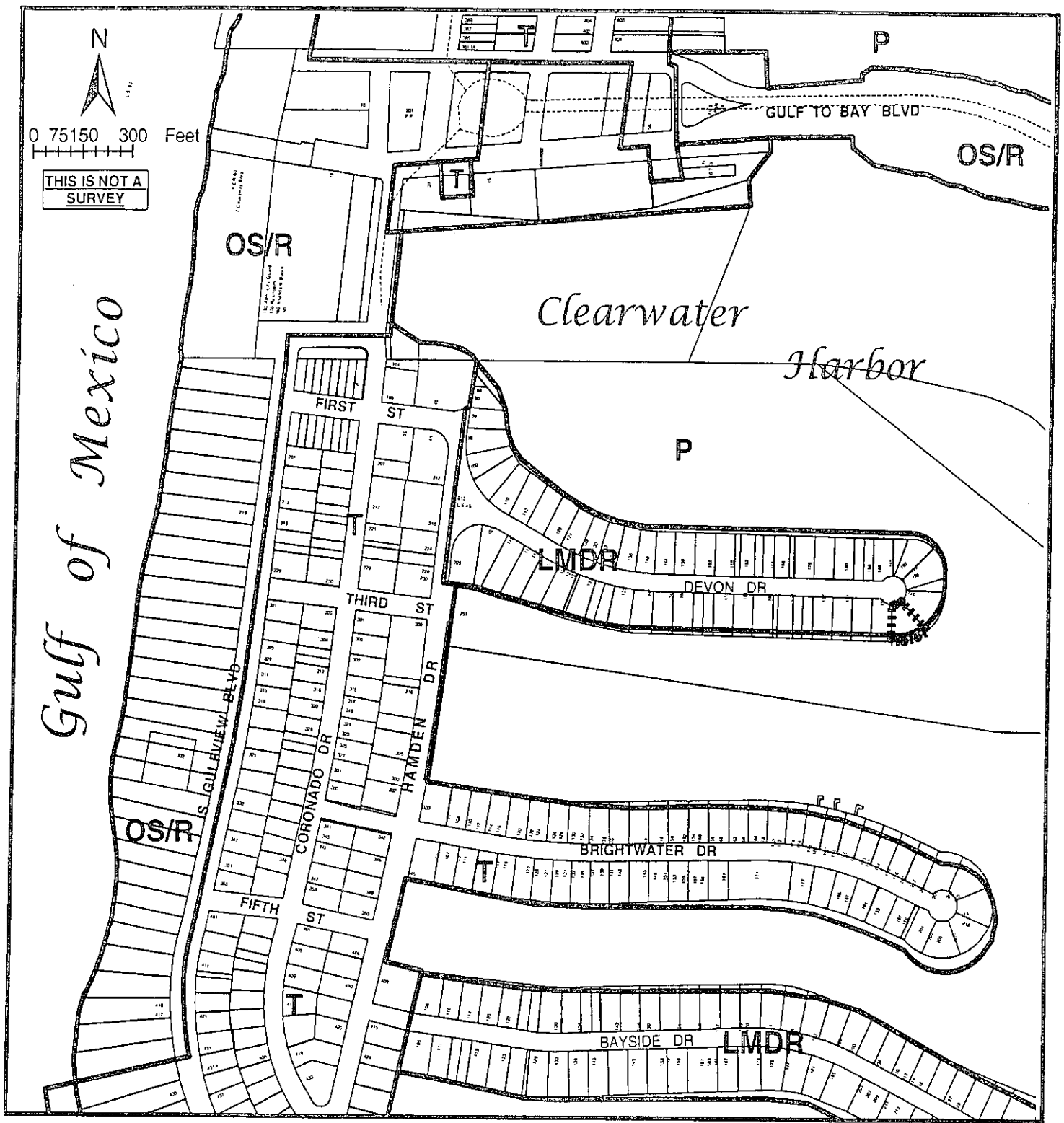
CASE: APP2002-07002

SITE: 193 Devon Drive

PROPERTY SIZE (ACRES): 0.19

PIN: 08/29/15/04914/000/0310

ATLAS PAGE: 276 A



## APPEAL REQUEST

OWNER: Christopher C. Mariani

CASE: APP2002-07002

SITE: 193 Devon Drive

PROPERTY SIZE (ACRES): 0.19

PIN: 08/29/15/04914/000/0310

ATLAS PAGE: 276 A



Planning Department  
100 South Myrtle Avenue  
Clearwater, Florida 33756  
Telephone: 727-562-4567  
Fax: 727-562-4576

**FILE**  
CASE #: PL 08-0107  
DATE RECEIVED: 1-16-02  
RECEIVED BY (staff initials): my  
ATLAS PAGE #: 276A  
ZONING DISTRICT: LMDR  
LAND USE CLASSIFICATION: RU  
ZONING & LAND USE CLASSIFICATION OF  
ADJACENT PROPERTIES:  
NORTH: LMDR RU  
SOUTH: J J  
WEST: J J  
EAST: J J

- ☐ SUBMIT ORIGINAL SIGNED AND NOTARIZED APPLICATION  
☐ SUBMIT 12 COPIES OF THE ORIGINAL APPLICATION including folded site plans  
☐ SUBMIT APPLICATION FEE \$ \_\_\_\_\_

## FLEXIBLE STANDARD DEVELOPMENT APPLICATION

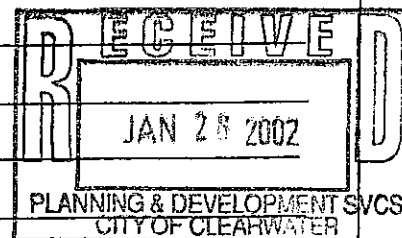
(Revised 8/10/01)

~PLEASE TYPE OR PRINT~ use additional sheets as necessary

### A. APPLICANT, PROPERTY OWNER AND AGENT INFORMATION: (Section 4-202.A)

APPLICANT NAME: CHRISTOPHER C. MARIANI  
MAILING ADDRESS: 310 Live Oak Lane, Largo, FL 33770  
E-MAIL ADDRESS: \_\_\_\_\_ PHONE NUMBER: 727-421-8021  
CELL NUMBER: 638-2932 FAX NUMBER: \_\_\_\_\_  
PROPERTY OWNER(S): Same as applicant  
(Must include ALL owners)

AGENT NAME(S): TIMOTHY A. JOHNSON, JR., ESQUIRE  
Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.  
MAILING ADDRESS: 911 Chestnut Street, Clearwater, FL 33756  
E-MAIL ADDRESS: timj@jbpfirm.com PHONE NUMBER: 727-461-1818  
CELL NUMBER: \_\_\_\_\_ FAX NUMBER: 727-462-0365



### B. PROPOSED DEVELOPMENT INFORMATION:

STREET ADDRESS of subject site: None (vacant lot) - Will become 193 Devon Drive  
LEGAL DESCRIPTION: Lot 31, Bayside Sub., together with lands southerly - See Exhibit "A"  
(if not listed here, please note the location of this document in the submittal)  
PARCEL NUMBER: 08/29/15/04914/000/0310  
PARCEL SIZE: Approx. 118' x 120'  
(acres, square feet)  
PROPOSED USE AND SIZE: Single-family residential  
(number of dwelling units, hotel rooms or square footage of nonresidential use)

DESCRIPTION OF REQUEST(S): Private dock 101' in length where 60' is the maximum allowed  
(include all requested code deviations; e.g. reduction in required number of parking spaces, specific use, etc.)  
by Code. The dock is 98' in length with a step-down of 3' for a total length of 101'.

DOES THIS APPLICATION INVOLVE THE TRANSFER OF DEVELOPMENT RIGHTS (TDR), A PREVIOUSLY APPROVED PLANNED UNIT DEVELOPMENT, OR A PREVIOUSLY APPROVED (CERTIFIED) SITE PLAN? YES ☐ NO ☒ (if yes, attach a copy of the applicable documents)

EXHIBIT A 1 of 17

**E. SUPPLEMENTAL SUBMITTAL REQUIREMENTS: (Section 4-202.A)**

- ☐ SIGNED AND SEALED SURVEY (including dimensions of property) – One original and 12 copies;
- ☐ COPY OF RECORDED PLAT, as applicable;
- ☐ PRELIMINARY PLAT, as required;
- ☐ LOCATION MAP OF THE PROPERTY;
- ☐ TREE SURVEY (including existing trees on site and within 25' of the adjacent site, by species, size (DBH 4" or greater), and location, including drip lines and indicating trees to be removed);
- ☐ GRADING PLAN, as applicable

**F. SITE PLAN SUBMITTAL REQUIREMENTS: (Section 4-202.A)**

- ☐ SITE PLAN with the following information (not to exceed 24" x 36"):
  - \_\_\_\_\_ All dimensions;
  - \_\_\_\_\_ North arrow;
  - \_\_\_\_\_ Engineering bar scale (minimum scale one inch equals 50 feet), and date prepared;
  - \_\_\_\_\_ Location map;
  - \_\_\_\_\_ Index sheet referencing individual sheets included in package;
  - \_\_\_\_\_ Footprint and size of all EXISTING buildings and structures;
  - \_\_\_\_\_ Footprint and size of all PROPOSED buildings and structures;
  - \_\_\_\_\_ All required setbacks;
  - \_\_\_\_\_ All existing and proposed points of access;
  - \_\_\_\_\_ All required sight triangles;
  - \_\_\_\_\_ Identification of environmentally unique areas, such as watercourses, wetlands, tree masses, and specimen trees, including description and location of understory, ground cover vegetation and wildlife habitats, etc;
  - \_\_\_\_\_ Location of all public and private easements;
  - \_\_\_\_\_ Location of all street rights-of-way within and adjacent to the site;
  - \_\_\_\_\_ Location of existing public and private utilities, including fire hydrants, storm and sanitary sewer lines, manholes and lift stations, gas and water lines;
  - \_\_\_\_\_ All parking spaces, driveways, loading areas and vehicular use areas, including handicapped spaces;
  - \_\_\_\_\_ Depiction by shading or crosshatching of all required parking lot interior landscaped areas;
  - \_\_\_\_\_ Location of all refuse collection facilities and enclosures (minimum 12'x10' clear space);
  - \_\_\_\_\_ Location of all landscape material;
  - \_\_\_\_\_ Location of all jurisdictional lines adjacent to wetlands;
  - \_\_\_\_\_ Location of all onsite and offsite storm-water management facilities;
  - \_\_\_\_\_ Location of all outdoor lighting fixtures; and
  - \_\_\_\_\_ Location of all existing and proposed sidewalks
- ☐ SITE DATA TABLE for existing, required, and proposed development, in written/tabular form:
  - \_\_\_\_\_ Land area in square feet and acres;
  - \_\_\_\_\_ Number of EXISTING dwelling units and PROPOSED dwelling units;
  - \_\_\_\_\_ Gross floor area devoted to each use;
  - \_\_\_\_\_ Parking spaces: total number, presented in tabular form with the number of required spaces;
  - \_\_\_\_\_ Total paved area, including all paved parking spaces and driveways, expressed in square feet and percentage of the paved vehicular area;
  - \_\_\_\_\_ Size and species of all landscape material;
  - \_\_\_\_\_ Official records book and page numbers of all existing utility easement;
  - \_\_\_\_\_ Building and structure heights;
  - \_\_\_\_\_ Impermeable surface ratio (I.S.R.); and
  - \_\_\_\_\_ Floor area ratio (F.A.R.) for all nonresidential uses
- ☐ REDUCED SITE PLAN to scale (8 1/2 X 11) and color rendering if possible
- ☐ FOR DEVELOPMENTS OVER ONE ACRE, provide the following additional information on site plan:
  - \_\_\_\_\_ One-foot contours or spot elevations on site;
  - \_\_\_\_\_ Offsite elevations if required to evaluate the proposed stormwater management for the parcel;
  - \_\_\_\_\_ All open space areas;
  - \_\_\_\_\_ Location of all earth or water retaining walls and earth berms;
  - \_\_\_\_\_ Lot lines and building lines (dimensioned);
  - \_\_\_\_\_ Streets and drives (dimensioned);
  - \_\_\_\_\_ Building and structural setbacks (dimensioned);
  - \_\_\_\_\_ Structural overhangs;
  - \_\_\_\_\_ Tree inventory, prepared by a "certified arborist", of all trees 8" DBH or greater, reflecting size, canopy (drip lines) and condition of such trees

3/17

**L. SIGNATURE:**

I, the undersigned, acknowledge that all representations made in this application are true and accurate to the best of my knowledge and authorize City representatives to visit and photograph the property described in this application.

STATE OF FLORIDA, COUNTY OF PINELLAS  
Sworn to and subscribed before me this 25<sup>th</sup> day of  
January, A.D. 2002 to me and/or by  
Christopher C. Mariani, who is personally known to me  
as  
produced  
identification.

Christopher C. Mariani  
Signature of property owner or representative  
Christopher C. Mariani

Linda R. S.  
Notary public,  
My commission expires:



**M. AFFIDAVIT TO AUTHORIZE AGENT:**  
**CHRISTOPHER C. MARIANI**

(Names of all property owners)

1. That (I am/we are) the owner(s) and record title holder(s) of the following described property (address or general location):  
Lot 31, Bayside Subdivision, together with lands Southerly - See Exhibit "A"  
(Parcel No. 08/29/15/04914/000/0310)
2. That this property constitutes the property for which a request for a: (describe request)  
Deviation from Section 3-601(C) (b) of the Clearwater Community Development Code  
to allow dock 101' in length.
3. That the undersigned (has/have) appointed and (does/do) appoint: Timothy A. Johnson, Jr., of Johnson,  
Blakely, Pope, Bokor, Ruppel & Burns, P.A.  
as (his/their) agent(s) to execute any petitions or other documents necessary to affect such petition;
3. That this affidavit has been executed to induce the City of Clearwater, Florida to consider and act on the above described property;
4. That the applicant acknowledges that all impact fees (parks and recreation, traffic, etc.) will be paid PRIOR to the issuance of a building permit, certificate of occupancy, or other mechanism, whichever occurs first;
5. That site visits to the property are necessary by City representatives in order to process this application and the owner authorizes City representatives to visit and photograph the property described in this application;
6. That (I/we), the undersigned authority, hereby certify that the foregoing is true and correct.

Christopher C. Mariani  
Property Owner Christopher C. Mariani

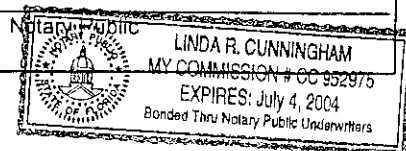
Property Owner

**STATE OF FLORIDA,**

**COUNTY OF PINELLAS**

Before me the undersigned, an officer duly commissioned by the laws of the State of Florida, on this 25<sup>th</sup> day of January, 2002 personally appeared Christopher C. Mariani who having been first duly sworn  
Deposes and says that he/she fully understands the contents of the affidavit that he/she signed.

My Commission Expires:



5/17

JUL-15-88 01:22 PM BELLCAL-000030

P27 461 3433

P.02

PINELLAS COUNTY FLA.  
OFF REC BK 10985 PG 2242

## Exhibit A

Lot 31, REPLAT OF BAYSIDE SUBDIVISION, according to the plat thereon recorded in Plat Book 21, Pages 18 and 19, Public Records of Pinellas County, Florida; TOGETHER WITH those lands lying Southerly of said Lot 31, as shown on said Plat of REPLAT OF BAYSIDE SUBDIVISION, to the line designated "Bulkhead Line" on said Plat more particularly described as follows:

Begin at the Northeast corner of said Lot 31, REPLAT OF BAYSIDE SUBDIVISION, thence South  $45^{\circ}16'30''$  East along the Easterly line of said Lot 31, 118.19 feet to a point along said "Bulkhead Line", as shown on said Plat, thence along said "Bulkhead Line" 105.60 feet along the arc of a curve to the right having a radius of 143.00 feet chord of 103.38 feet, chord bearing South  $89^{\circ}05'23''$  West thence South  $85^{\circ}37'16''$  West 15.00 feet along said "Bulkhead Line", thence North  $80^{\circ}22'24''$  West 108.39 feet along the Easterly line of said Lot 31, thence 11.16 feet along the arc of a curve to the left, having a radius of 40.00 feet, chord of 30.56 feet, chord bearing North  $67^{\circ}16'36''$  East to the Point of Beginning.

File No: 00-6085

7/17

- 5) **The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.**

Bayside Subdivision is a Clearwater Beach subdivision of waterfront lots, many of which have docks and boat slips. As previously described, the proposed project is consistent with existing docks and lifts on this finger of the subdivision.

- 6) **The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts on adjacent properties.**

The proposed dock and lift are of an attractive design and will not adversely affect adjacent properties. The dock has been designed to eliminate adverse environmental effects.

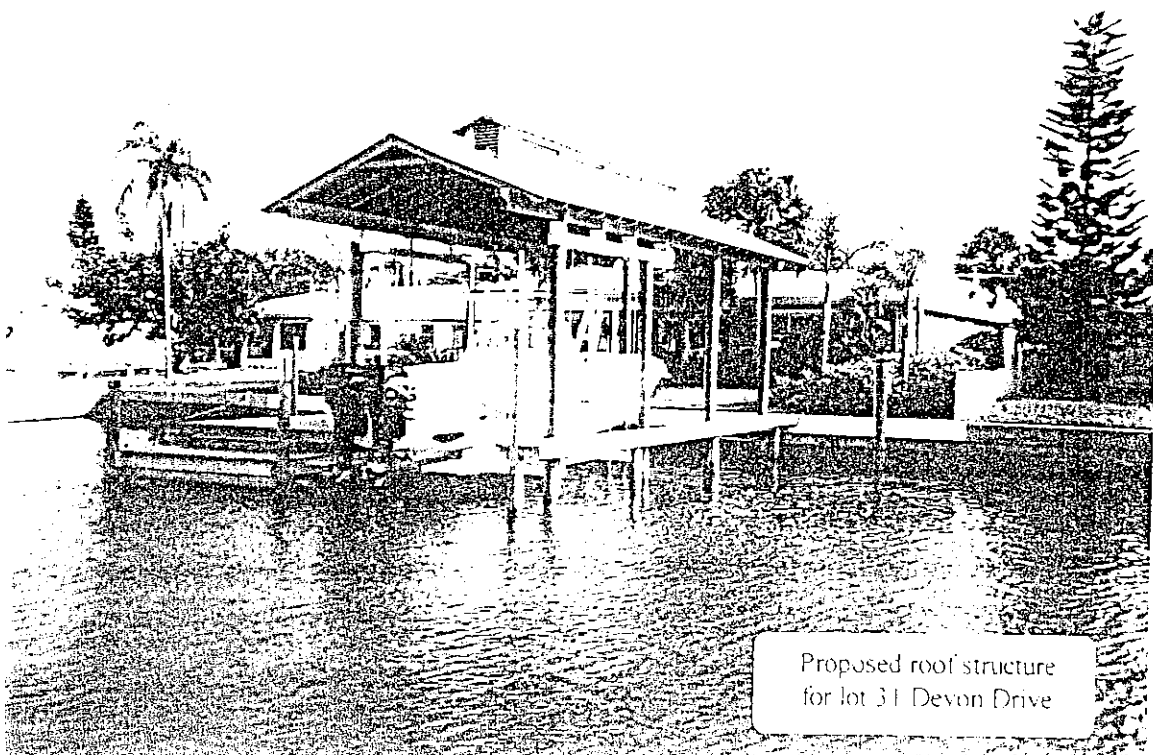
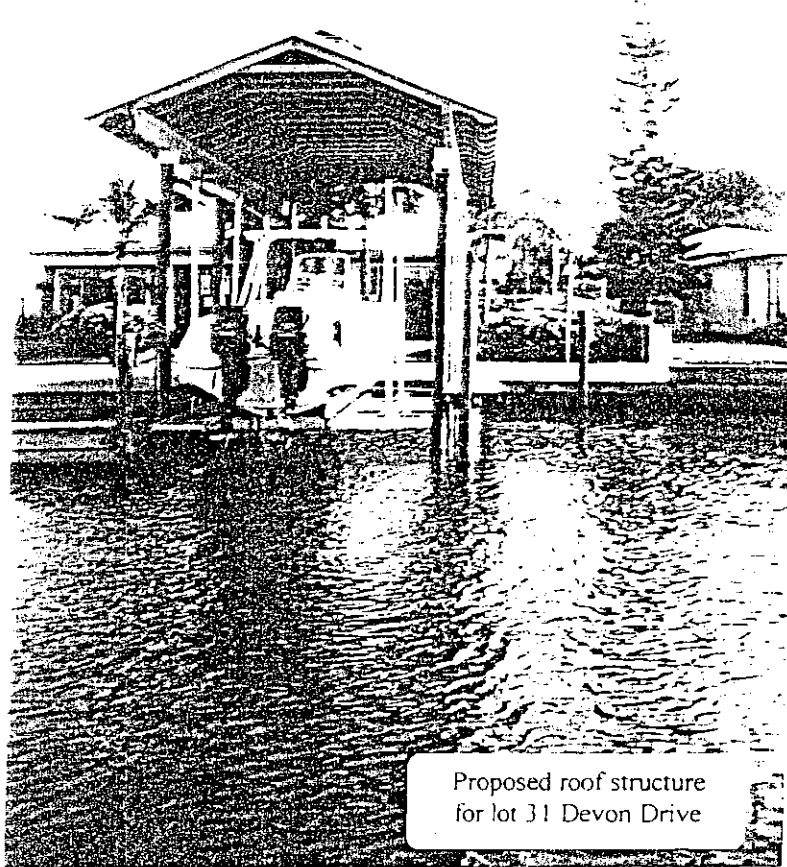
#### **Flexibility Criteria:**

**In accordance with Section 3-601, Dock/Marina Standards of the Clearwater Community Development Code, "...applications may be approved by the Community Development Coordinator through a Level One (flexible standard) approval process based on one of the following:**

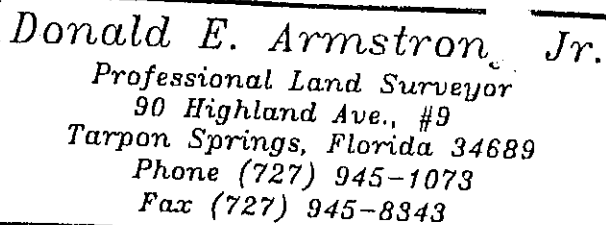
- i. **The proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed twenty-five (25) percent of the width of the waterway; or**
- ii. **The proposed dock location needs to be adjusted to protect environmentally sensitive areas; or**
- iii. **The property configuration precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns."**

Although only one of the above criteria is required by Code, the proposed dock and boat lift meet all three criteria, as follows:

- i. The proposed dock length of 101 feet is 17.57% of the width of the waterway. Based on this percentage and the nearby 98' and 90' docks, the proposed dock will not affect navigation.
- ii. The Applicant has designed the dock and boat slip in a manner to protect existing sea grass beds.
- iii. The proposed dock is similar to other docks in the surrounding neighborhood as stated in the foregoing General Applicability Criteria No. 1.



11/17



CERTIFIED TO: CHRISTOPHER C. MARIANI  
DAVID E. PLATTE, ESQUIRE  
COMMONWEALTH LAND TITLE INSURANCE COMPANY, INC.

Sec. 8, Twp. 29 S., Rng. 15  
Pinellas County, Florida  
Field Book 25, Page 10  
Job #20139

DEVON DRIVE

R/W Size Varies - Asph. Pvrmt.

On Site Bench  
Mark N. Rim Of  
Sanitary Sewer  
Man Hole Elev. =  
4.89'

### Overhead Utility Wires

Lot 31, REPLAT OF BAYSIDE SUBDIVISION, as recorded in Plat Book 23, Pages 18 and 19, of the Public Records of Pinellas County, Florida, together with those lands lying Southerly of said Lot 31, as shown on said Plat of REPLAT OF BAYSIDE SUBDIVISION, to the line designated "Bulkhead Line" on said Plat. More particularly described as follows:

Begin at the Northeast corner of said Lot 31, REPLAT  
OF BAYSIDE SUBDIVISION; thence S45°16'30"E, along  
the Easterly line of said Lot 31, 118.19 feet to a point  
along said "Bulkhead Line" as shown on said Plat;  
thence along said "Bulkhead Line", 105.60 feet along  
the arc of a curve to the right having a radius of 145.00  
feet, chord of 103.28 feet, chord bearing S69°06'09"W,  
thence S89°37'36"W, 15.00 feet along said "Bulkhead  
Line"; thence N00°22'24"W, 108.39 feet along the Westerly  
line of said Lot 31; thence 31.36 feet along the arc of a  
curve to the left, having a radius of 40.00 feet, chord of  
30.56 feet, chord bearing N67°26'35"E, to the Point of  
Beginning.

LOT 30  
VACANT

Note:

00

Denotes Elevation Spot Shot

Elevations shown are based upon  
NGVD-1929 Datum, Pinellas County  
Bench Mark #DE-2, Map # 154.  
Elevation = 5.714'

Zone Line As  
Scaled From  
1:100,000 Map

Scale : 1" = 20'

# EXHIBIT C

## PINELLAS COUNTY DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

### WATER AND NAVIGATION REPORT

**SUBJECT:** Dock Preapp.  
Christopher Mariani  
Lot 31 Devon Drive, Clearwater

**FROM:** Susan Pirolo *SP*  
Environmental Specialist II  
Department of Environmental Management

**THRU:** David L. Walker, Jr., Env. Program Manager *DW*  
Water and Navigation Section  
Department of Environmental Management

**DATE:** November 26, 2001

The subject site was inspected by this Department on November 8, 2001.

#### PROJECT AND SITE DESCRIPTION:

The applicant proposes construct a private dock in the waters of Clearwater Harbor.

The proposed dock will consist of a 4 ft. x 86 ft. walkout with a 26 ft. x 2.5 ft. catwalk, a 2.5 ft x 36 ft. catwalk, two boat lifts, and a roof. The total area of the dock will be 499 sf. The waterfront width of the property is 120 ft. The proposed structure will be located 56 ft. from the east property line and 31.5 ft. from the west property line. The total length of the structure will be 86 ft. and the width of the structure will be 32.5 ft. The water depth will be greater than 5 ft. (MLW) at the end of the proposed structure. The width of the navigable portion of the waterway at this location is approximately 570 ft. The structure extends a total of 86 ft., 15.1% into the navigable waterway.

The shoreline is seawalled at this location. Oysters (*Crassostrea virginica*) are attached to the seawall. Dense seagrass beds consisting of cuban shoal grass and manatee grass (*Halodule wrightii* and *Syringodium filiforme*, respectively) are located offshore along the entire property. The seagrass is located from 1 ft. to 65 ft. from the seawall in the area of the proposed dock. No emergent vegetation is present on this property.

Wildlife observed during the field review included a brown pelican (*Pelecanus occidentalis*), cormorant (*Phalacrocorax auritus*), and great egret (*Casmerodius albus*).

14/17

Field conditions at this site were as follows:

Depths at left side of proposed dock:

| Distance<br>from seawall | Depth           | Notes                                |
|--------------------------|-----------------|--------------------------------------|
| 0'                       | 0.3' (0.1' MLW) |                                      |
| 1'                       |                 | start of mod. sparse <i>Halodule</i> |
| 4'                       |                 | start of dense <i>Hal.</i>           |
| 10'                      | 0.9' (0.7' MLW) | very dense <i>Halodule</i>           |
| 20'                      | 1.3' (1.1' MLW) | " "                                  |
| 30'                      | 1.8' (1.2' MLW) | " "                                  |
| 40'                      | 2.6' (2.4' MLW) | " "                                  |
| 50'                      | 3.5' (3.3' MLW) | " "                                  |
| 60'                      | 4.3' (4.1' MLW) | moderately sparse seagrass           |
| 62'                      |                 | very sparse seagrass                 |
| 70'                      | 5.8' (5.6' MLW) | no seagrass                          |
| 80'                      | 6.1' (5.9' MLW) |                                      |
| 86'                      | 6.3' (6.1' MLW) |                                      |

Depths at right side of proposed lifts:

| Distance<br>from seawall | Depth                                                                      | Notes                                   |
|--------------------------|----------------------------------------------------------------------------|-----------------------------------------|
| 0'                       | 0.2' (0.0' MLW)                                                            | a few pieces horizontal concrete riprap |
| 2'                       |                                                                            | start of sparse <i>Halodule</i>         |
| 3'                       |                                                                            | moderate <i>Hal.</i>                    |
| 4'                       |                                                                            | dense <i>Hal.</i>                       |
| 10'                      | 0.5' (0.3' MLW)                                                            | very dense <i>Hal.</i>                  |
| 20'                      | 0.8' (0.6' MLW)                                                            | " "                                     |
| 30'                      | 1.2' (1.0' MLW)                                                            | " "                                     |
| 40'                      | 1.9' (1.7' MLW)                                                            | " "                                     |
| 50'                      | 2.4' (2.2' MLW)                                                            | " "                                     |
| 60'                      | 3.8' (3.6' MLW)                                                            | " "                                     |
| 62'                      |                                                                            | end of dense seagrass                   |
| 65'                      |                                                                            | end of all seagrass                     |
| 70'                      | 4.6' (4.4' MLW)                                                            |                                         |
| 80'                      | 5.4' (5.2' MLW)                                                            |                                         |
| 86'                      | 5.7' (5.5' MLW)                                                            |                                         |
| 90'                      | end of adj. dock to right (poles extend further), property curves to right |                                         |

15/17

### COMMENTS:

1. Seagrass beds are located along this entire property, and extend out to a maximum of 65 ft. from the seawall in the area of the proposed dock although it becomes sparse at approximately 60 ft. It is the policy of this Department to limit structures over seagrasses to 4 ft. in width and to place the terminal platforms and boat slips beyond the limits of the seagrasses wherever possible. In the proposed location, the walkout would need to be lengthened by 10 feet to meet this criteria. The applicant is advised, however, that the proposed length would be consistent with the environmental criteria of the Pinellas County Code if the dock were moved to the eastern side of the property where seagrasses end about 50 ft. from the seawall.
2. The applicant is also advised that it is the policy of this Department that all boat slips be located adjacent to the main dock, and therefore one boat lift will need to be located on each side of the main dock.

### FINDINGS:

No findings are being issued at this time pending receipt of a formal application.

The applicant is advised that approvals for this project may also be required from the Florida Department of Environmental Protection and the U. S. Army Corps of Engineers. Any modifications required by these agencies must be reflected in revised plans submitted to the County.

STR: S 1/2 8-29-15

marianie2.doc

17/17

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

E. D. ARMSTRONG III  
JOHN T. BLAKELY  
BRUCE H. BOKOR  
GUY M. BURNS  
JONATHAN S. COLEMAN  
MICHAEL T. CRONIN  
ELIZABETH J. DANIELS  
BECKY FERRELL-ANTON  
MARION HALE

SCOTT C. ILGENFRITZ  
FRANK R. JAKBS  
TIMOTHY A. JOHNSON, JR.  
SHARON E. KRICK  
ROGER A. LARSON  
JOHN R. LAWSON, JR.\*  
MICHAEL G. LITTLE  
MICHAEL C. MARKHAM  
STEPHANIE T. MARQUARDT

ZACHARY D. MESSA  
A.R. "CHARLIE" NEAL  
F. WALLACE POPE, JR.  
ROBERT V. POTTER, JR.  
AUDREY B. RAUCHWAY  
DARRYL R. RICHARDS  
PETER A. RIVELLINI  
DENNIS G. RUPPEL\*  
CHARLES A. SAMARKOS

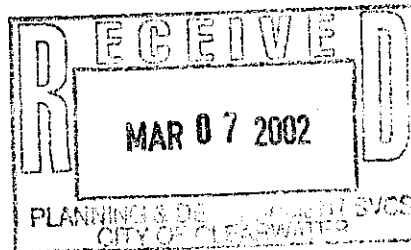
PHILIP M. SHASTEEN  
JOAN M. VECCHIOLI  
STEVEN H. WEINBERGER  
JULIUS J. ZSCHAU

\*OF COUNSEL  
PLEASE REPLY TO CLEARWATER

FILE NO. 42809.104550

March 5, 2002

Ms. Cyndi Tarapani  
Community Development Coordinator  
City of Clearwater  
Planning and Development  
Services Administration  
100 South Myrtle Avenue, 2<sup>nd</sup> Floor  
Clearwater, FL 33756



**FILE**  
Re: FLS02-01-03-193 Devon Drive – Mariani Dock Flexible Standard  
Development Approval

Dear Ms. Tarapani:

This letter is written in response to the report of the DRC meeting of February 15, 2002, in connection with the referenced matter (the "Report"). While this letter will address the issues raised in the Report, it also serves as an amendment to Mr. Mariani's application for flexible standard development approval. Specifically, enclosed is a drawing of Mr. Mariani's revised proposed dock. The overall length of the newly designed dock is 95 feet, which is 6.5 feet shorter than the design originally submitted. In addition, the roof length over the larger capacity lift has been reduced from 48 feet to 38 feet and now equals in dimension the roof over the smaller capacity lift. The total dock square footage is now 476.25 square feet, versus the 498 feet previously requested. Each of the two boatlifts has a coverage area of five hundred and thirty two 532 feet, although it does not appear that this is a factor to be considered in whether to approve the application.

Turning to the Report, I will respond to the staff comments where corrections are appropriate or additional information is requested. The paragraph numbers listed below correspond with the paragraph numbers in the Report:

CLEARWATER OFFICE  
911 CHESTNUT STREET  
POST OFFICE BOX 1368  
CLEARWATER, FLORIDA 33757-1368  
TELEPHONE (727) 461-1818  
TELECOPIER (727) 462-0365

TAMPA OFFICE  
100 NORTH TAMPA STREET  
SUITE 1800  
POST OFFICE BOX 1100  
TAMPA, FLORIDA 33601-1100  
TELEPHONE (813) 225-2500  
TELECOPIER (813) 223-7118

EXHIBIT B 1/5

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
March 5, 2002  
Page 3

2. "The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development." See the answer to the preceding issue.

3. "The design of the proposed development minimizes adverse effects including visual, acoustic and olfactory and hours of operation impacts, on adjacent property." The only issue here is visual impact. This has been minimized, given the existing sea grass situation at this location. This is especially true, in light of the nearby location of objectors Soboleskis' dock, which is of substantially equal length. Apparently, it is acceptable for the objectors Soboleskis to build their dock on Mr. Mariani's property line, but it is not acceptable for Mr. Mariani to build his dock 30 feet from the Soboleskis' property line. The logic of the Solboleskis is elusive.

11 a) The Report states that "the dock can be shortened to approximately 75' and miss the sea grass area." Clearly, this statement misapprehends the facts. A dock of 75' would allow only 14' of dock seaward of the sea grass area, which is plainly inadequate to accommodate the two boatlifts allowed by Code. In fact, a lift constructed in this manner would not allow a boat to float at low tide. The bow of the boat would damage the sea grass and the roof overhang would shade the sea grass.

(b) The Report states "application is inconsistent with the information contained in the County Report (specifically, the length of the dock)." The dock initially reviewed by the County was 86' feet in length, 9' shorter than this proposed dock. That proposal also consisted of two boatlifts side by side, which the County found to be acceptable. Now the boatlifts flank the dock as suggested by the County.

I request that you speak personally with Harbormaster Morris regarding Mr. Mariani's application. He is very familiar with all of the facts and circumstances surrounding the request and the objections of the neighbors.<sup>2</sup>

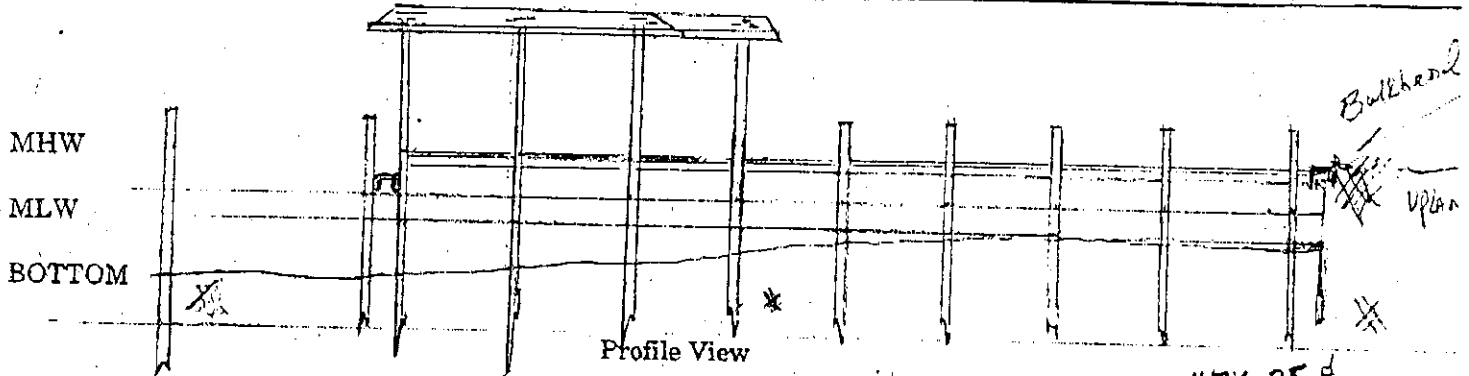
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<sup>2</sup> It is noted that the objectors Niemann are separated from Mr. Mariani's property by the objectors Soboleski. Their east property line is 220 feet from the location of the proposed dock. The impact of Mr. Mariani's proposed dock on the Niemanns is negligible at best.

**PRIVATE DOCK**

Application # \_\_\_\_\_

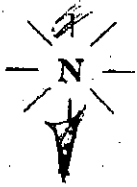
(OFFICIAL USE ONLY)



ENG. SCALE: 1" = 30'

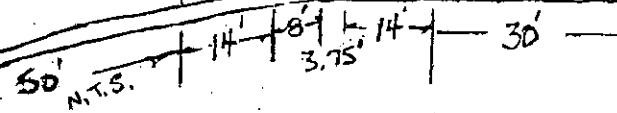
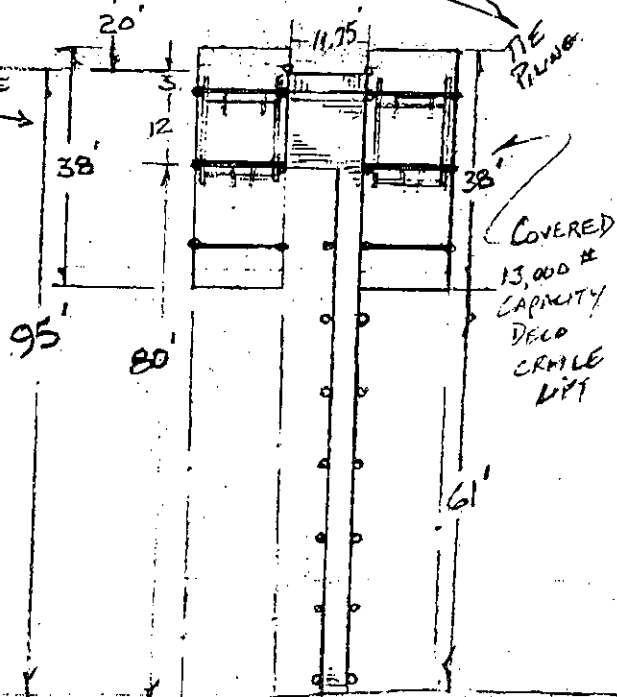


NEW SQUARE FEET 476.25'  
TOTAL SQUARE FEET 476.25'  
WATERWAY WIDTH 570'  
WATERFRONT WIDTH 120'



LOT 31  
DEVON DR  
CLEARWATER BEACH

COVERED  
7,000#  
DECK CRANE  
LIFT



**SHORELINE**

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner

Right Owner

Signature

Signature

Municipality Approval

Water and Navigation Approval

5/5

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

E. D. ARMSTRONG III  
JOHN T. BLAKELY  
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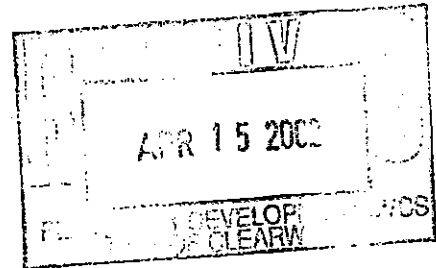
\*OF COUNSEL  
PLEASE REPLY TO CLEARWATER

FILE NO. 42809.104550

April 14, 2002

Via Hand Delivery

Ms. Cyndi Tarapani  
Community Development Coordinator  
City of Clearwater  
Planning and Development Department  
100 S. Myrtle Avenue  
Clearwater, FL 33756



Re: FLS-02-01-03  
193 Devon Drive – Mariani Dock  
Flexible Standard Development Approval

**FILE**  
FLS 02-01-03

Dear Ms. Tarapani:

This letter responds to letters under dates March 14, and March 27, 2002, from Maxwell G. Battle, Jr., the attorney for James and Debra Soboleski. Mr. Battle's letters and exhibits are lengthy but boil down to the following objections concerning the Mariani application:

1. Section 4-202A.12.e. requires that structural overhangs and building heights be depicted.
2. Section 4-202A.24. requires that the application be accompanied by detailed plans and specifications prepared by a Florida professional engineer.
3. The roof deck area should be included with the dock deck area in determining the applicable standard of review.
4. A dock may be constructed only as an accessory use to a single family residence.

CLEARWATER OFFICE  
911 CHESTNUT STREET  
POST OFFICE BOX 1368  
CLEARWATER, FLORIDA 33757-1368  
TELEPHONE (727) 461-1818  
TELECOPIER (727) 462-0365

TAMPA OFFICE  
100 NORTH TAMPA STREET  
SUITE 1800  
POST OFFICE BOX 1100  
TAMPA, FLORIDA 33601-1100  
TELEPHONE (813) 225-2500  
TELECOPIER (813) 223-7118

EXHIBIT C w/site plan 1/4

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
April 14, 2002  
Page 2

5. The application requires a level two review, rather than a level one review.
6. The proposed dock infringes on the Soboleskis's view.

I respond to each of these issues, item by item, as follows:

1. Section 4-202A.12.e. applies only to proposed developments that exceed one acre. Mr. Mariani's proposed development does not exceed one acre.

2. Section 4-202A.24. relating to plans and specifications being prepared, signed and sealed by a Florida registered professional engineer has uniformly been disregarded by the City with respect to dock applications. In any event, in this case, the City has waived enforcement of this requirement, if applicable, by having determined that the application was complete in accordance with the provisions of 4-204C.

3. Section 3-601C.1.d. makes clear that covered boat lifts are permitted. Historically, covered boat lifts have not been included within the calculation of deck area. This is because a covered boat lift does not carry with it the same environmental shading concerns as does a dock.<sup>1</sup>

4. City Staff has suggested a condition requiring that the building permit for the principal residence be issued before or simultaneously with the building permit for the dock. This condition is acceptable to Mr. Mariani.

5. Mr. Battle offers no support for his contention that this application should be reviewed as a level two flexible development approval. These applications are a level one flexible standard approval, as specifically provided in Section 3-601C.1.g. That provision allows for a level one flexible standard approval of a deviation from siting requirements for three separate reasons, the following two of which are indisputably met in this case:

"i. The proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed twenty-five (25%) percent of the width of the water way; or

---

<sup>1</sup> I note in passing that I find nothing in the City's dock ordinance that limits to 500 square feet the size of a dock serving a single family dwelling.

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani  
April 14, 2002  
Page 3

ii. The proposed dock location needs to be adjusted to protect environmentally sensitive areas...."

6. The real gist of the Soboleskis's complaint is, of course, the location of the proposed dock and its affect on their view. The graphics submitted on their behalf attempt to depict the effect of Mr. Mariani's proposal on their view.<sup>2</sup> They then suggest that moving the dock further to the east would ameliorate that effect. Several comments are in order.

First, as harsh as it may sound, view is not a factor listed in the dock ordinance to be taken into consideration by the Community Development Coordinator in connection with reviewing an application for a deviation. This is for good reason. When one purchases waterfront property, one can expect that docks and covered boat lifts will be part of their view. One cannot expect an unencumbered view of the waterfront. Enclosed are photographs numbered 1 thru 23 depicting typical waterfront covered boat lifts and dock configurations located within Clearwater's municipal limits. These photographs amply demonstrate that views of waterfront property owners are routinely obstructed to varying degrees by docks and covered boat lifts.

Second, even were a view analysis appropriate, the real issue is not whether the Soboleskis's view will be affected, but, rather, how much, if any, the Soboleskis's view will be adversely affected by the proposed construction as contrasted with what Mr. Mariani could construct without deviation from code. Stated differently, absent the environmental considerations that require the dock to be lengthened, Mr. Mariani could build a dock as a matter of right. How would the Soboleskis's view be affected by that dock and as compared with the dock Mr. Mariani proposes?

Enclosed with this letter is a drawing prepared by Mr. Mariani's architect, Alex Plisko, and dated April 11, 2002. That drawing depicts as Diagram A, a boat dock that Mr. Mariani, absent environmental concerns, could construct as a *matter of right without any deviation from code*. This construction obscures sixty-one (61%) percent of the view corridor available to the Soboleskis looking from the rear of their property in an easterly direction to a southerly direction.<sup>3</sup> The proposed construction, depicted as

<sup>2</sup> Regrettably, the graphics submitted are not truly representative of Mr. Mariani's proposal or the effect of moving the dock in an easterly direction.

<sup>3</sup> This view corridor is a total of 76°. Diagram A shows 46° obstructed.  $46^\circ \div 76^\circ = 61\%$

3/4

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.  
ATTORNEYS AND COUNSELLORS AT LAW

Ms. Cyndi Tarapani

April 14, 2002

Page 4

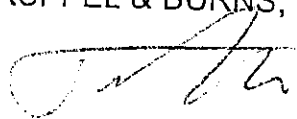
Diagram B, obscures only thirty-two (32%) percent of that same view corridor.<sup>4</sup> Thus, the proposed construction obstructs about one-half (1/2) of the view that would be obstructed by the structure that could be constructed by Mr. Mariani as a matter of right, absent the environmental condition at his seawall. **Mr. Mariani's proposal substantially improves the Soboleskis's view over what Mr. Mariani could construct as a matter of right, without environmental concerns.**

In conclusion, the points raised by Mr. Battle are without merit. Mr. Mariani has a right to locate his dock where he pleases, so long as he complies with City code. In this case, he is forced to extend the length of his dock because of an existing environmental condition not of his making.<sup>5</sup> His proposed dock obstructs substantially less of the Soboleskis's view than could be obstructed as a matter of right if this environmental condition did not exist. The Soboleskis, or their predecessor in title, located their docks at the extremes of their property so as to preserve the view in the center of their property. Mr. Mariani should be given the same consideration. The fact that the Soboleskis have not yet chosen to cover their boat slip is immaterial. They, or their successor, could do so as a matter of right at any time.

Please grant Mr. Mariani's application.

Very truly yours,

JOHNSON, BLAKEY, POPE, BOKOR,  
RUPPEL & BURNS, P.A.



Timothy A. Johnson, Jr.

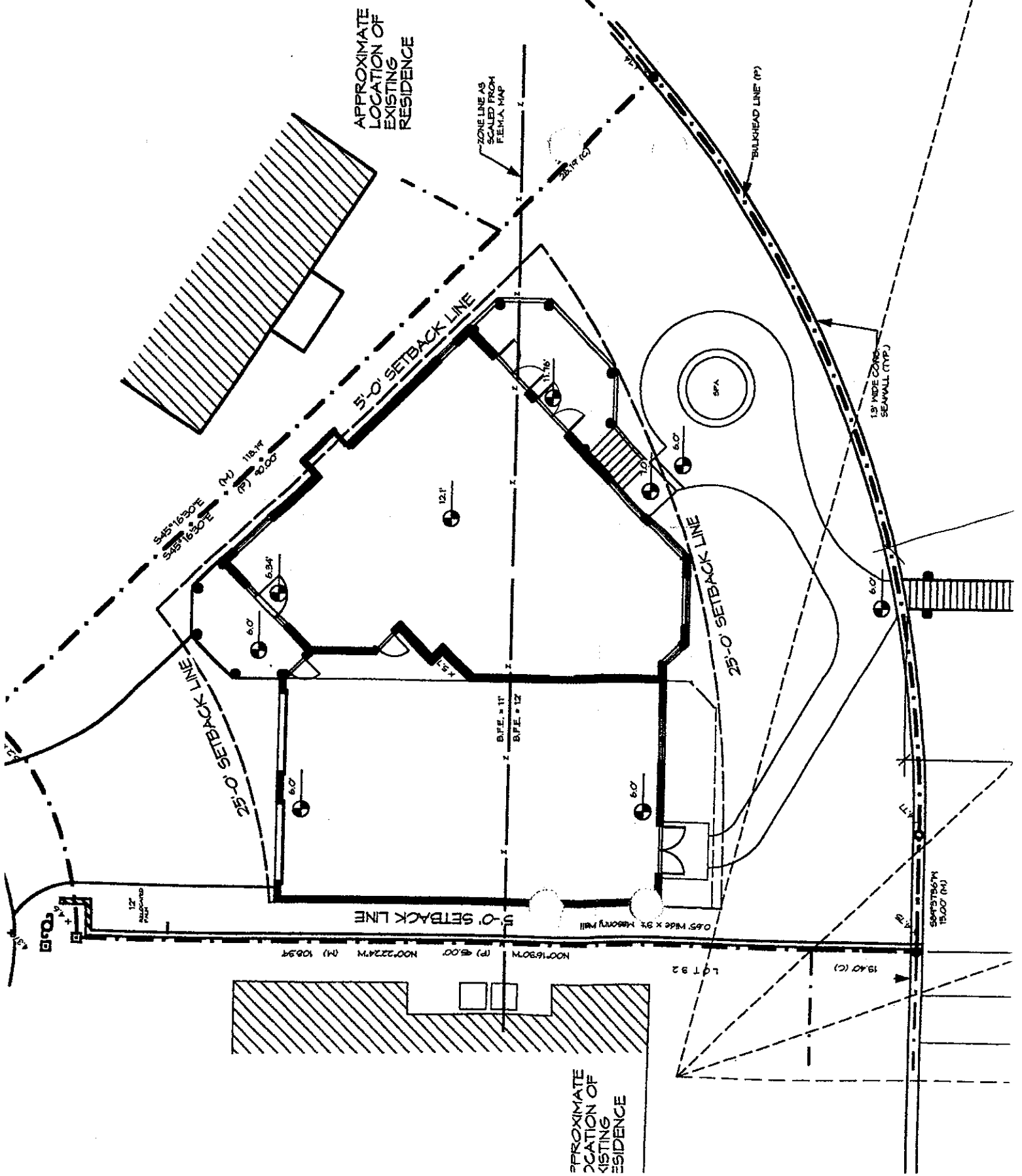
CC: Mr. Chris Mariani

264678

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<sup>4</sup>  $24^\circ \div 76^\circ = 32\%$

<sup>5</sup> Mr. Mariani has already once reduced the size of his dock and boat lift cover in response to the concerns expressed by the Soboleskis.



**CITY OF CLEARWATER  
PLANNING DEPARTMENT  
STAFF REPORT FOR 2/14/02 DRC MEETING**

**BACKGROUND INFORMATION:**

**APPLICANT:** Mr. Christopher Mariani

**PROPERTY LOCATION:** 193 Devon Drive

**REQUEST:** Flexible Standard Development approval to increase the length of a dock from 60 feet (50 percent of the width of the property) to 92 feet (76.6 percent of the width of the property) under the provisions of Section 3-601.

**APPLICATION NUMBER:** FLS 02-01-03

**ZONING:** LMDR, Low Medium Density Residential District

**EXISTING USE:** Single-family residential

**ADJACENT LAND USES:**

|        |                           |
|--------|---------------------------|
| North: | Single-family residential |
| South: | Clearwater Bay            |
| East:  | Single-family residential |
| West:  | Single-family residential |

## **STAFF ANALYSIS**

The 0.33-acre site is located on the south side of Devon Drive approximately 1,350 feet east of Hamden Drive. The site is vacant.

The neighborhood consists entirely of well-maintained, single-family dwellings.

The application includes a 440 square foot dock and two 532 square foot covered boatlifts. The proposed dock and boatlifts are proposed to be located minimum of 30 feet from the side (east and west) property lines. All other Code requirements regarding docks will be met.

All required building permits would need to be obtained prior to construction. This would need to be done concurrent with or subsequent to a building permit for a single-family dwelling.

The site is located in a stable, residential neighborhood that is undergoing redevelopment. The request to increase the permitted length of the dock is in keeping with the established character of the area and will provide a more environmentally sensitive situation over existing conditions.

The location of the dock should be in the center one-third of the site to reduce or eliminate any negative impacts on adjacent properties. The revised dock will need to be submitted as part of a building permit application. The Harbor Master has determined that the proposal is not a navigational hazard or obtrusive and is in keeping with the character of the neighborhood.

### **B. FLEXIBILITY STANDARDS FOR DOCKS IN ASSOCIATION WITH SINGLE-FAMILY DWELLINGS IN THE LMDR, LOW MEDIUM DENSITY RESIDENTIAL DISTRICT (Section 3-601):**

| <b>STANDARD</b>           | <b>REQUIRED/<br/>PERMITTED</b>                                                                        | <b>EXISTING</b> | <b>PROPOSED</b>      | <b>IN<br/>COMPLIANCE?</b> |
|---------------------------|-------------------------------------------------------------------------------------------------------|-----------------|----------------------|---------------------------|
| <b>LENGTH<br/>maximum</b> | 50 percent of the width of the property (60 feet)                                                     | Vacant          | 86 feet (71 percent) | No                        |
| <b>WIDTH<br/>Maximum</b>  | Thirty-five (35) percent of the width of the property (42 feet) or fifty (50) feet, whichever is less | Vacant          | 36 feet              | Yes                       |

| STANDARD                | REQUIRED/<br>PERMITTED                                                                                                                                                                        | EXISTING | PROPOSED                                                                                            | IN<br>COMPLIANCE? |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------|-------------------|
| <b>SIDE<br/>SETBACK</b> | Docks: the center one-third of the lot (40 feet) or twenty (20) feet from any property line, whichever is less<br>Boatlifts/service catwalks: minimum of ten (10) feet from any property line | Vacant   | Dock:<br>East: 30 feet (minimum)<br>West: 30 feet (minimum)<br>Boatlift:<br>West: 30 feet (minimum) | Yes               |

**C. FLEXIBILITY CRITERIA FOR DOCKS IN THE LMDR, LOW MEDIUM DENSITY RESIDENTIAL (Section 2-203):**

1. The proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed twenty-five (25) percent of the width of the waterway; or

The Pinellas County Department of Environmental Management has issued a report which states that there are no navigational concerns with the proposed development. The length of the proposed dock will be 14 percent of the width of the waterway.

2. The proposed dock location needs to be adjusted to protect environmentally sensitive areas; or

The Pinellas County Department of Environmental Management has issued a report which states that the proposal is more environmentally sensitive than the existing dock and constitute an improvement over existing conditions.

3. The property configuration precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns.

Not applicable as the only one of the above three criteria must be met. The first two criteria have been satisfied, however, the proposed dock, as amended, will be similar to surrounding dock patterns.

**D. GENERAL APPLICABILITY (Section 3-913):** Conditions which are imposed by the Community Development Coordinator and the Community Development Board pursuant to a Level One or a Level Two Approval shall ensure that:

1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.

Most of the properties in the neighborhood have docks approximately 35 to 90 feet in length. The proposed dock of 92 feet in length appears to be consistent with the character of the area.

2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.

The site is zoned LMDR District and the proposed use will be in compliance with that zoning. The proposed development should not discourage appropriate development and use of adjacent land buildings.

3. The proposed development will not adversely affect the health or safety or persons residing or working in the neighborhood of the proposed use.

The use will not change with this proposal. The development will not negatively affect the health or safety or persons residing or working in the neighborhood.

4. The proposed development is designed to minimize traffic congestion.

The use does not change with this proposal and will have no increased effect on traffic.

5. The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.

Most of the properties in the neighborhood have docks approximately 35 to 90 feet in length. The proposed dock of 92 feet in length appears to be consistent with the character of the area.

6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.

The location of the dock, as suggested by Staff, will reduce or eliminate visual impacts on surrounding properties to the west.

### **STAFF RECOMMENDATION:**

Based on the on the application, the proposal is in compliance with the standards and criteria for Flexible Standard Development approval, with the maximum development potential and with all applicable standards of the Community Development Code.

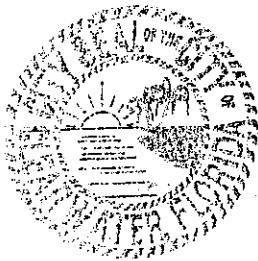
Therefore, staff recommends **APPROVAL** of the application for Flexible Standard Development approval to increase the length of a dock from 60 feet (50 percent of the width of the property) to 92 feet (76.6 percent of the width of the property) under the provisions of Section 3-601 at 193 Devon Drive.

#### **Bases for approval:**

1. The proposal complies with the Flexible Standard Development criteria under the provisions of Section 3-601.C.g;
2. The proposal, as amended, is in compliance with other standards in the Code including the General Applicability Criteria per Section 3-913; and
3. The development, as amended, is compatible with the surrounding area.

#### **Conditions of approval:**

1. That a building permit for the proposed dock only be issued concurrently with, or subsequent to, building permit issuance for a principal, residential structure on the site;
2. That the proposed dock be relocated farther east (with the dock head centered on the midpoint of the waterfront property line, as measured at the seawall) and constructed perpendicular to the waterfront property line;
3. That the relocation of the dock meet all criteria under Section 3-601.C.1; and
4. That revised plans reflecting conformance with condition #2 be submitted with the building permit application, to the satisfaction of staff.



# CITY OF CLEARWATER

## PLANNING DEPARTMENT

POST OFFICE BOX 4748, CLEARWATER, FLORIDA 33758-4748

MUNICIPAL SERVICES BUILDING, 100 SOUTH MYRTLE AVENUE, CLEARWATER, FLORIDA 33756

TELEPHONE (727) 562-4567 FAX (727) 562-4576

LONG RANGE PLANNING  
DEVELOPMENT REVIEW  
HOUSING DIVISION  
NEIGHBORHOOD SERVICES

July 22, 2002

FILE

Mr. Timothy Johnson  
Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.  
911 Chestnut Street  
Clearwater, FL 33756

RE: Development Order regarding case FLS 02-01-03 at 193 Devon Drive

Dear Mr. Johnson:

This letter constitutes a Development Order pursuant to Section 4-202.E of the Community Development Code. On February 14, 2002, the Development Review Committee (DRC) reviewed your application for Flexible Standard Development approval to increase the length of a dock from 60 feet (50 percent of the width of the property) to 92 feet (76.6 percent of the width of the property) under the provisions of Section 3-601. The application includes a 440 square foot dock and two 532 square foot covered boatlifts to be located a minimum of 30 feet from the side (east and west) property lines. The DRC recommended approval of the application with conditions. I concur with the findings of the Development Review Committee and, through this letter, approve your application for Flexible Standard Development with the following bases and conditions:

Bases for approval:

1. The proposal complies with the Flexible Standard Development criteria under the provisions of Section 3-601.C.g;
2. The proposal, as amended, is in compliance with other standards in the Code including the General Applicability Criteria per Section 3-913; and
3. The development, as amended, is compatible with the surrounding area.

EXHIBIT E

1/2

BRIAN J. ALINGST, MAYOR-COMMISSIONER

ED HART, VICE MAYOR-COMMISSIONER  
HOYT HAMILTON, COMMISSIONER

WHITNEY GRAY, COMMISSIONER  
BILL JOHNSON, COMMISSIONER



July 22, 2002

Johnson - Page Two

Conditions of approval:

1. That a building permit for the proposed dock only be issued concurrently with, or subsequent to, building permit issuance for a principal, residential structure on the site;
2. That the proposed dock be relocated farther east (with the dock head centered on the midpoint of the waterfront property line, as measured at the seawall) and constructed perpendicular to the waterfront property line;
3. That the relocation of the dock meet all criteria under Section 3-601.C.1; and
4. That revised plans reflecting conformance with condition #2 be submitted with the building permit application, to the satisfaction of staff.

I concur with the findings of the Development Review Committee and, through this letter, approve your application for Flexible Standard Development with the four above conditions. The approval is based on and must adhere to the site plan dated received April 15, 2002 or as modified by condition #2.

Pursuant to Section 4-303, an application for a building permit shall be made within one year of Flexible Standard Development approval (July 22, 2003). All required certificates of occupancy shall be obtained within one year of the date of issuance of the building permit. Time frames do not change with successive owners.

Please be aware that the issuance of this Development Order does not relieve you of the necessity to obtain any building permits or pay any impact fees that may be required. In order to facilitate the issuance of any permit or license affected by this approval, please bring a copy of this letter with you when applying for any permits or licenses that require this prior development approval.

In addition, please be aware that an appeal of a Level One approval (Flexible Standard Development) may be initiated by a property owner abutting the property, which is the subject of the approval, within seven days of the date the Development Order is issued. A copy of the Development Order is being sent to the surrounding property owners. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case. The appeal period for your case will expire on July 29, 2002.

If you have any questions, please do not hesitate to call Mark Parry, Planner at 727.562.4558.

Sincerely,

  
Cynthia H. Tarapani, AICP  
Planning Director

CC: Christopher Mariani, Property Owner  
Surrounding Property Owners

2/2

**BATTLE & EDENFIELD, P.A.**

ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR. \*  
MICHAEL S. EDENFIELD

206 MASON STREET  
BRANDON, FL 33511-5277  
(813) 685-3014  
FAX (813) 684-5922

ALSO ADMITTED

\* COLORADO

\* NEW MEXICO

\* MONTANA

July 26, 2002

Cyndi Tarapani, Community Development Coordinator  
City of Clearwater Planning Department  
100 South Myrtle Avenue  
Clearwater, FL 33756

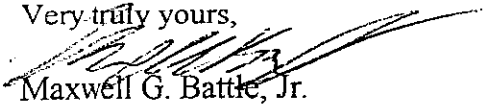
**HAND DELIVERY**

RE: Application for Flexible Development Standard  
Approval submitted by Chris Mariani; FLS 02-01-03;  
APPLICATION FOR ADMINISTRATIVE APPEAL;

Dear Ms. Tarapani:

Enclosed is my Client's APPLICATION FOR ADMINISTRATIVE APPEAL with respect to the Development Order entered in this matter along with payment of the Administrative Filing Fee in the amount of \$100.00. Please let me know immediately if you need anything else to process the Appeal.

Very truly yours,



Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

THIS IS A DUPLICATE ORIGINAL PRINTED ON PINK PAPER

EXHIBIT F

1/27



**CITY OF CLEARWATER**  
**APPLICATION FOR ADMINISTRATIVE APPEAL**  
**PLANNING & DEVELOPMENT SERVICES ADMINISTRATION**  
 MUNICIPAL SERVICES BUILDING, 100 SOUTH MYRTLE AVENUE, 2<sup>ND</sup> FLOOR  
 PHONE (727) 562-4567 FAX (727) 562-4576

ALL APPLICATIONS FOR APPEAL OF LEVEL 1 FLEXIBLE STANDARD APPROVALS MUST BE RECEIVED BY THE PLANNING DEPARTMENT WITHIN FIVE DAYS OF THE DATE OF THE DECISION BEING APPEALED. ALL OTHER APPLICATIONS FOR APPEAL MUST BE RECEIVED BY THE PLANNING DEPARTMENT WITHIN 14 DAYS OF THE DATE OF THE DECISION BEING APPEALED.

**APPELLANT AND AGENT INFORMATION:**

APPELLANT NAME : DEBORAH L. GROEN SOBULESKI f/k/a DEBORAH L. GROEN  
 MAILING ADDRESS : 191 DEVON DRIVE, CLEARWATER, FL 33767  
 PHONE NUMBER : 727-461-0264 FAX NUMBER : 727-466-6465  
 AGENT NAME : MAXWELL G. BATTLE, JR., ESQ.  
 MAILING ADDRESS : 206 MASON STREET, BRANDON, FL 33511  
 PHONE NUMBER : (813) 685-3014 FAX NUMBER : (813) 684-3014  
(727) 432-1977

**APPEAL INFORMATION:**

DECISION BEING APPEALED: DEVELOPMENT ORDER REGARDING CASE #FLS 02-01-03

AT 193 DEVON DRIVE. SEE EXHIBIT A ATTACHED

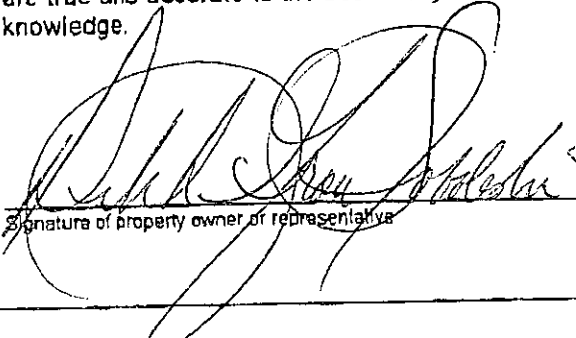
DATE OF DECISION : JULY 22, 2002

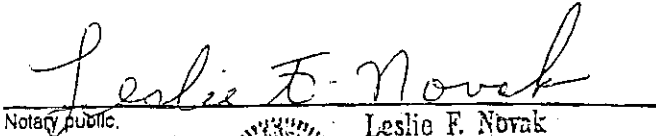
BASIS FOR APPEAL : The Development Order and Application upon which it was  
 (Use additional sheets rendered, fail to comply with The Community Development Code and departs from the essential requirements of law. See Exhibit B  
 if necessary) ATTACHED.

WITH YOUR APPLICATION PLEASE SUBMIT:  
 A COPY OF THE DECISION BEING APPEALED;  
 NAMES, ADDRESSES AND CURRICULUM VITAE OF ALL EXPERT WITNESSES THAT WILL PRESENT INFORMATION AT THE MEETING;  
 COPY OF THE BASIS FOR THE APPEAL IN THE NATURE OF AN INITIAL BRIEF AND ANY EVIDENCE, INCLUDING TESTIMONY, AND  
 AFFIDAVITS. THE BRIEF MUST AT A MINIMUM STATE ALL GROUNDS FOR THE APPEAL, INCLUDING, BUT NOT LIMITED TO, THE LAW  
 BEING APPEALED AND ANY FACTS NECESSARY FOR THE INTERPRETATION OF THOSE LAWS.

I, the undersigned, acknowledge that all representations made in this application are true and accurate to the best of my knowledge.

STATE OF FLORIDA, COUNTY OF PINELLAS  
 Sworn to and subscribed before me this 23 day of  
JULY, A.D., 2002 to me and/or  
 by DEBORAH GROEN SOBULESKI, who is personally  
 known has produced 1L DRIVER LICENSE as

  
 Signature of property owner or representative

  
 Notary public,  
 my commission expires:



Leslie F. Novak  
 Commission # CC 978071  
 Expires Dec. 11, 2004  
 Boarded Through  
 Atlantic Bonding Co., Inc.

2/27

## **EXHIBIT B**

### **CONTINUATION OF SPECIFICATION OF BASIS FOR APPEAL**

The Development Order appealed from fails to comply with the requirements of the Community Development Code, departs from the essential requirements of law and should be reversed because:

- 1) It is based upon and concurs with the findings of the Development Review Committee. However, except for Mark Parry's February 15, 2002 "FAX MESSAGE" to Tim Johnson, there are no written findings in the file [or were not on, and prior to, July 18, 2002]. If the "comments" reported by Mr. Parry in his February 15, 2002 FAX MESSAGE are the findings the Development Order refers to, then they are based upon a flawed and inaccurate Staff Report. See Maxwell G. Battle, Jr's letter to Cyndi Tarapani dated April 26, 2002; and
- 2) It approves a proposal based upon a non-existent plan; and
- 3) It was not signed by the Community Development Coordinator; and
- 4) It grants relief that is inconsistent with the Flexible Standard Development criteria under 3-601.C.1.g; and
- 5) It grants relief that is inconsistent with other provisions of the Community Development Code including without limitation 1-103.A, 1-103.B.2, 1-103.E.3, 3-601.C.1.d, 3-601.C.1.e, 3-601.C.1.g and 3-913; and
- 6) It grants relief upon an application that does not comply with the requirements of 4-202.A.24; and
- 7) It approves a proposal which is incompatible with the surrounding area; and
- 8) The Application was amended after the Development Review Committee concluded its review; and
- 9) It refers to a Site Plan dated April 15, 2002 which was not in the city's file on the dates of four (4) reviews of the City File [3/15/02, 4/23/02, 6/06/02 and 7/18/02], the last of which was on July 18, 2002, the Thursday before the Order was signed. There was however a single Architectural Drawing by Plisko Architecture, P.A. AIA dated, unsigned and unsealed with revisions of 4/10/02 and 4/11/02 entitled DOCK PLANS. This document depicts two dock configurations. If this is the "site plan" referred to by the Development Order, then the Development Order is vague and ambiguous in that it does not clearly identify which configuration on the "site plan" is required to be adopted by the Condition #4.
- 10) Although the Development Order requires concurrent issuance of a building permit for a residence and dock, it allows the dock to be permitted and built without first requiring the construction of a single family residence. If the residence was permitted but not built, this would result in the dock being allowed as a primary, rather than accessory use.

- 11) The Community Development Coordinator apparently misconstrued the effect of Section 3-601.C.1.g to require rather than allow deviations to the dock criteria.

## **INITIAL BRIEF**

### **Standing of Appellant**

Deborah L. Groen Soboleski, formerly known as Deborah L. Groen is the record title holder of 191 Devon Drive, Clearwater, FL 33763, which property is adjacent to, and contiguous to, the Mariani property to which the Development Order is addressed. Appellant's East property line adjoins Mr. Mariani's West property line.

### **Flawed Staff Report**

The Development Order concurs with the findings of the Development Review Committee. With exception of Mark Parry's reported comments to Tim Johnson [Fax Message of 02-15-02], there were no written "findings" of the Committee in the file on, or prior to, July 18, 2002. Further, the Development Review Committee had before it at the time of its review a seriously flawed and inaccurate Staff Report. See Maxwell G. Battle, Jr.'s letter to Cyndi Tarapani dated April 26, 2002. The flaws are so pervasive and egregious as to call into question the entire review process on the Application in question. At a minimum, allowing the Development Review Committee to act upon such clearly erroneous and incomplete information departs from the essential requirements of law.

### **Non-Existent Plan**

The Development Order appealed from approves a proposal that does not yet exist in final form. It directs submission of a new plan for review by City Staff. It is inappropriate to issue a Development Order that allows the "approved proposal" to be created after the Development Order is issued. Such an approval subverts the entire review, approval and appeal process, departs from the essential requirements of law and violates both substantive and procedural due process rights of the Appellant under the Florida and United States Constitutions.

### **Development Order Not Properly Entered**

The Community Development Code provides that the Community Development Coordinator may issue a Development Order approving a Level One Review item. The Development Order is signed by another City Employee. There is no indication in the

file that this City Employee is a duly authorized representative of the Community Development Coordinator. Accordingly, the Development Order should be declared void.

**Inconsistent with Section 3-601.C.1.g  
of the Community Development Code**

The proposed dock does not need to be adjusted in length to protect environmentally sensitive areas if the covered boatlifts are omitted and it is moved to the East. The property configuration does not preclude placement of the proposed dock in compliance with the required dimensional standards and the proposed dock is not similar in dimensional characteristics to surrounding dock patterns. Moving the dock to the East side of the Mariani lot as suggested by Appellant would serve to protect existing grass beds. Further, under the foregoing circumstances and until proper final plans are submitted, it can not be said unequivocally that no navigational conflicts would be created.

**Inconsistent with other Provisions of  
The Community Development Code**

Section 1-103.A envisions that development will be conducted in a manner that enhances the character of the City, the preservation of neighborhoods and enhances the quality of life. The Mariani proposal violates each of these principals.

Section 1-103.B states that the CDC's purpose is, inter alia, to ensure that development and redevelopment will not have a negative impact on the value of surrounding properties and wherever practicable promotes the enhancement of surrounding property values. The Mariani proposal will have a drastic negative impact upon the value of the Appellant's property. On the waterfront, view is value.

Section 1-103.E.3 requires the protection and conservation of land values throughout the City. The Mariani proposal contravenes this goal. It destroys the Soboleski view and devalues their property.

Section 1-103.E.5 requires preservation of the aesthetic character of the Community. The Mariani proposal contravenes this goal. It sets a precedent of allowing covered boat lifts that rival many residences in size.

Section 1-1-3.E.6 indicates that open spaces should be provided through efficient project design and layout that addresses appropriate relationships between buildings on the project site and adjoining properties. The Mariani proposal attempts to crowd the site at the waterfront when open space could be fostered by moving the dock to the East side of the property and/or deleting the covered portion of the lifts.

Section 3-601.C.1.d prohibits vertical sidewalls on any dock or boatlift. The Mariani proposal contains vertical sidewalls as a portion of the roof in contravention of this section. The vertical sidewalls add to the perception of mass of the structure.

Section 3-601.C.1.e provides that no more than two slips can be created. The Mariani proposal includes tie piles along with boatlifts, which effectively creates more than two slips in contravention of this section.

#### **Failure to Provide Complete Plans in Compliance with Section 4-202.A.24**

Section 4-202.A.24 requires that complete plans be submitted with the application which are signed and sealed by a Florida Registered Professional Engineer. It clearly says "shall" be accompanied by such plans. Under Section 8-101.E, "shall" means mandatory in nature. This was not done by Mariani. Given the clear mandate of Section 8-101.E, the requirement can not be waived. The result is that neither the Staff, the Community Development Board or the Community Development Director had before them a complete application. Nor did they have an accurate and specific plan of the actual proposed size (height, width and depth) of the proposed dock, covered boatlifts, and slips from which to properly evaluate the proposal. Similarly, affected property owners have been denied the same information. Accordingly, the proposal can not have been properly evaluated and approved because the application did not comply with the Community Development Code. By proceeding to process the application the Community Development Coordinator departed from the essential requirements of law.

#### **Incompatibility with Surrounding Area**

The proposal is not compatible with the surrounding area. A review of the materials submitted by James and Deborah Soboleski clearly show that there are no private docks with dual covered lifts of the size proposed by Mariani. The Mariani proposal constitutes a substantial departure from the character of docks in the neighborhood.

#### **Amendment after Review**

The Mariani proposal was repeatedly amended after the Development Review Committee completed its review. Accordingly, the Development Review Committee reviewed and commented upon a different proposal than the Planning Director ostensibly approved. None of the surrounding property owners appear to have been notified of the amendments, and certainly none of them could possibly have any idea of what the end result might be because the final plan still has not been submitted. Accordingly, the City Planning Department has not acted in accordance with its own Codes and has departed from the essential requirements of law.

### April 15, 2002 Site Plan

The Development Order requires compliance with an April 15, 2002 Site Plan. No such site plan was in the file on July 18, 2002 [nor on 3/15/02, 4/23/02 or 6/06/02]. If such a site plan exists [and was submitted], it has been shielded from Public view. Further, it clearly was not evaluated by Staff prior to the Development Review Committee Meeting, or by the Development Review Committee because no such plan could have existed at that time by simple examination of the dates of each. If the "Site Plan" referred to is the Plisko Architecture, P.A. "DOCK PLANS" revision dates 4-10-02 and 4-11-02, the order is too vague and ambiguous. It does not clearly identify what portion of the Plisko "DOCK PLANS" is to be incorporated into the revised plans to be submitted in accordance with Condition #4.

### Accessory Use

The Development Order requires only that a residence permit be issued at or before the dock permit is issued. It does not require that the residence be constructed first. The issuance of a permit to build a residence does not require that the residence be built. Unless the residence is built, the dock would be an impermissible primary use rather than an accessory use. Accordingly, the Development Order departs from the essential requirements of law by not requiring that the residence be constructed before the dock.

### Community Development Coordinator Misconstrued Section 3-601.C.1.g

It appears that the Community Development Coordinator misconstrued Section 3-601.C.1.g to require rather than allow the granting of a deviation from the dock criteria if any of the 3 criteria for deviation was met. Section 3-601.C.1.g uses the term "may" which under Section 8-101.F means "permissive", not mandatory. Accordingly, the Community Development Coordinator was not required to grant the relief sought by Mr. Mariani.

### ADOPTION OF PRIOR POSITIONS

In addition to the foregoing issues, Appellant adopts the positions set forth in Maxwell G. Battle, Jr.'s letters dated March 14, 2002, March 27, 2002 and April 26, 2002, copies of which are attached to this Application for Administrative Appeal.

### **WITNESSES AND PROOF**

At hearing the appellant intends to offer additional argument, testimony from live witnesses and tangible evidence. Witnesses may include a Florida Registered Professional Engineer, a Florida Registered Land Surveyor, one or more Florida Licensed Real Estate Brokers, one or more Florida Licensed Real Estate Appraisers, a duly licensed Florida Contractor and lay witnesses. These witnesses will be designated more fully at a later date.

### **CONCLUSION AND REQUESTED RELIEF**

For the reasons set forth herein above, the Development Order must be reversed and the application in Case No. FLSO2-01-03 denied. In the alternative, the Development Order should be modified to require moving the proposed Mariani dock to the Eastern most side of his Lot and deleting the covered lift portions of the dock.



# CITY OF CLEARWATER

## PLANNING DEPARTMENT

POST OFFICE BOX 4748, CLEARWATER, FLORIDA 33758-4748  
MUNICIPAL SERVICES BUILDING, 100 SOUTH MYRTLE AVENUE, CLEARWATER, FLORIDA 33756  
TELEPHONE (727) 562-4567 FAX (727) 562-4576

LONG RANGE PLANNING  
DEVELOPMENT REVIEW  
HOUSING DIVISION  
NEIGHBORHOOD SERVICES

July 22, 2002

Mr. Timothy Johnson  
Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.  
911 Chestnut Street  
Clearwater, FL 33756

RE: Development Order regarding case FLS 02-01-03 at 193 Devon Drive

Dear Mr. Johnson:

This letter constitutes a Development Order pursuant to Section 4-202.E of the Community Development Code. On February 14, 2002, the Development Review Committee (DRC) reviewed your application for Flexible Standard Development approval to increase the length of a dock from 60 feet (50 percent of the width of the property) to 92 feet (76.6 percent of the width of the property) under the provisions of Section 3-601. The application includes a 440 square foot dock and two 532 square foot covered boatlifts to be located a minimum of 30 feet from the side (east and west) property lines. The DRC recommended approval of the application with conditions. I concur with the findings of the Development Review Committee and, through this letter, approve your application for Flexible Standard Development with the following bases and conditions:

Bases for approval:

1. The proposal complies with the Flexible Standard Development criteria under the provisions of Section 3-601.C.g;
2. The proposal, as amended, is in compliance with other standards in the Code including the General Applicability Criteria per Section 3-913; and
3. The development, as amended, is compatible with the surrounding area.

EXHIBIT A

BRIAN J. AUNGST, MAYOR-COMMISSIONER  
ED HART, VICE MAYOR-COMMISSIONER  
HOYT HAMILTON, COMMISSIONER

WHITNEY GRAY, COMMISSIONER  
BILL JONSON, COMMISSIONER



"EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EMPLOYER"

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July 22, 2002  
Johnson - Page Two

Conditions of approval:

1. That a building permit for the proposed dock only be issued concurrently with, or subsequent to, building permit issuance for a principal, residential structure on the site;
2. That the proposed dock be relocated farther east (with the dock head centered on the midpoint of the waterfront property line, as measured at the seawall) and constructed perpendicular to the waterfront property line;
3. That the relocation of the dock meet all criteria under Section 3-601.C.1; and
4. That revised plans reflecting conformance with condition #2 be submitted with the building permit application, to the satisfaction of staff.

I concur with the findings of the Development Review Committee and, through this letter, approve your application for Flexible Standard Development with the four above conditions. The approval is based on and must adhere to the site plan dated received April 15, 2002 or as modified by condition #2.

Pursuant to Section 4-303, an application for a building permit shall be made within one year of Flexible Standard Development approval (July 22, 2003). All required certificates of occupancy shall be obtained within one year of the date of issuance of the building permit. Time frames do not change with successive owners.

Please be aware that the issuance of this Development Order does not relieve you of the necessity to obtain any building permits or pay any impact fees that may be required. In order to facilitate the issuance of any permit or license affected by this approval, please bring a copy of this letter with you when applying for any permits or licenses that require this prior development approval.

In addition, please be aware that an appeal of a Level One approval (Flexible Standard Development) may be initiated by a property owner abutting the property, which is the subject of the approval, within seven days of the date the Development Order is issued. A copy of the Development Order is being sent to the surrounding property owners. The filing of an application/notice of appeal shall stay the effect of the decision pending the final determination of the case. The appeal period for your case will expire on July 29, 2002.

If you have any questions, please do not hesitate to call Mark Parry, Planner at 727.562.4558.

Sincerely,

  
Cynthia H. Tarapani, AICP  
Planning Director

CC: Christopher Mariani, Property Owner  
Surrounding Property Owners

10/27

BATTLE & EDENFIELD, P.A.  
ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR.\*  
MICHAEL S. EDENFIELD

ALSO ADMITTED  
• COLORADO  
• NEW MEXICO  
• MONTANA

206 MASON STREET  
BRANDON, FL 33511  
(813) 685-3014  
FAX (813) 684-5927

March 14, 2002

(date and typos corrected from prior fax  
of 03/14/02 which was incorrectly dated 03/15/02)

Mark Parry  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

RE: Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

Dear Mr. Parry:

I represent James and Deborah Soboleski who own the residence to the immediate West of Mr. Chris Mariani's lot (Lot 31, 193 Devon Drive) for which the above application was submitted. As you already know, my clients are vehemently opposed to Mr. Mariani's request as it is now constituted. I write to ask that you refrain from issuing a decision on Mr. Mariani's request until at least March 28, 2002 to allow us time to provide you with additional information which we believe will be helpful to you in reaching a fully informed decision.

The reasons that we need this additional time are:

- 1) I was just retained by the Soboleskis and I was unavailable to review the City's file until today. Obviously I need some time to fully digest the file and respond to the contents thereof; and
- 2) We wish to provide you with a graphic pictorial representation of how Mr. Mariani's proposed dock will affect the view from the Soboleskis property. This requires actual field surveying and photography as well as a substantial amount of computer work to generate the visual models; and
- 3) We need time to assemble pictorial evidence of how the proposed project will affect the character of the neighborhood.

I hope that given the depth of opposition to Mr. Mariani's application that you can grant us the additional time. I would not ask for the additional time if I did not truly believe that it was necessary to provide the additional information and visual tools to you and that this information would have an effect upon your decision.

While we are working diligently to prepare and submit the above information to you, I felt that it would be appropriate to address several issues initially. First, I am

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concerned that you do not yet have a complete application. It appears to me that the Section 4-202, Community Development Code requires:

- 1) Subsection A, 12(e) requires that structural overhangs and building heights be depicted; and
- 2) Subsection A, 24 requires detailed plans and specifications prepared, signed and sealed by a Florida Registered Professional Engineer.

In my review of the application file today, I was unable to locate either a plan depicting the structural overhangs or detailed plans and specifications signed and sealed by a Florida Registered Professional Engineer.

Second, we believe that the staff may have overlooked several key facts in their review. Page 4, Paragraph D2 states, *inter alia*, that "...the proposal includes a dock as an accessory use to an existing single family residence." This is incorrect. The lot is vacant. Accordingly, the proposed dock would at this time constitute a primary use not an accessory use. Docks are not permitted as primary uses in a residential zone.

Further, the staff report suggests that "...the development will be in harmony with the scale and character of adjacent properties." This is also incorrect. While other properties have docks, they do not have docks of the size and magnitude of the proposed dock and boathouses. While no detailed plans were submitted with the application, a "guesstimate" from the sketch and photo submitted suggests that the roof line of the boathouses at the end of the dock will approach, if not be in excess of, the height of adjacent homes. When you consider that the boathouse roof over the larger capacity lift will be 38 feet in length [as amended] and presumably have a boat out of the water on the lift much of the time, it becomes clear that the visual effect will be to have a small house in the view of my clients.

Third, we suggest to you that the roof decks should be included in the dock deck for determining the applicable standard of review. If you include the total area covered by the dock and roofs, excluding the tie piles, the dock area exceeds 500 square feet. This would require a Level Two Review.

Fourth, while I have not had time to fully review and consider Mr. Mariani's assertions, including Tim Johnson's letter of March 5, 2002, I did note several curious comments in Mr. Johnson's March 5, 2002 letter. I address these as follows:

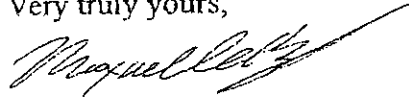
- 1) How is it that Harbormaster Morris is supposed to be so knowledgeable of "...the facts and circumstances surrounding the request and objections of the neighbors." ? The file certainly does not reflect that he spoke to either of my Clients. In fact they report that he has not. In addition, it seems clear that he also did not know that the Blums contiguous on the East do not mind having Mr.

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- Mariani's dock located closer to their property line [see their letter dated 03/06/2002 in your file].
- 2) Mr. Johnson complains about the logic of the Soboleskis having docks and opposing Mr. Mariani's project. The Soboleskis oppose the location, size and character of the Mariani proposal, not the concept of his building a dock once he has a residence on Lot 31. If the Mariani project is moved to the East adjacent to the Blums lot line, they are not blocked in their view [so long as the size of the boathouses does not get out of scale]. Both Mr. Mariani and Mr. Johnson undoubtedly know this, but ignore it.
  - 3) Mr. Johnson complains that shifting to the East will impinge upon the Blum's view. But Mr. Johnson fails to mention that the Blums don't object.
  - 4) Mr. Johnson and Harbormaster Morris both appear to be ignorant of the fact that my Clients did not build the docks on their property [they were existing] and that they spent approximately \$20,000 to move boat lifts and address fence and landscaping issues in a manner that benefited their neighbors.

As you can see from the foregoing brief comments, there are many disputed issues that I need to address for the Soboleskis. I hope that you will agree to grant the additional time for my Clients and I to respond further prior to reaching a decision.

Very truly yours,



Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

12/27

**BATTLE & EDENFIELD, P.A.**  
ATTORNEYS AT LAW

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ALSO ADMITTED

\* COLORADO

\* NEW MEXICO

\* MONTANA

April 26, 2002

Cyndi Tarapani, Community Development Coordinator  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

**Via Hand Delivery**

RE: Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

Dear Ms. Tarapani:

Thank you for meeting with my brother and I on April 23, 2002. I write as a follow-up to that meeting and after I had an opportunity to review your file once again including recent submissions by the applicant. I will address your inquiry concerning the Soboleskis legal rights to maintain their present view, Mr. Johnson's letter of April 14, 2002, errors in the City Staff Report, and your inquiry about the wind issue raised by Mr. Mariani in separate sections.

**The Soboleskis have a right to an Unobstructed View**

You inquired upon April 23, 2002 whether there was any law supporting the Soboleskis' right to a view. As you will recall, I deferred answering your inquiry until I could research the issue. I can now answer your question unequivocally. **YES. THE SOBOLESKIS HAVE A RIGHT TO AN UNOBSTRUCTED VIEW.**

First, the City of Clearwater's Municipal Development Code provides that you are to protect the property values and to minimize **VISUAL IMPACTS** [See eg., Section 3-913]. Thus, the City Code itself gives a right to Soboleskis to have their property value protected and to have development proceed in a fashion that minimizes visual impacts, ie. Destroys their view.

Second, both the Florida Second District Court of Appeal and the Florida Supreme Court have recognized a waterfront landowner's right to an unobstructed view, even where it may cross the extended property lines of the waterfront landowner's upland land. See Lee County v. Kiesel, 705

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So.2d 1013 (Fla. 2<sup>nd</sup> DCA 1998) and Belvedere Development v. Department of Transportation , 476 So.2d 649 (Fla. 1985). In fact, the policy is so strong that each of these cases allowed the complaining property owner to collect damages from a government agency for interference with the view across the water. I have attached copies of these two cases for your ready review.

Further, given the clear legal principal of law that the view is a property right, we believe that the Soboleskis' civil rights would be infringed if the Mariani proposal were approved.

#### Tim Johnson's April 14, 2002 Letter

After reviewing Timothy Johnson's letter dated April 14, 2002, I find just one more attempt to obfuscate the issues and justify the unjustifiable. If you read all of Mr. Johnson's and all of Mr. Mariani's correspondence together the true theme becomes apparent, to wit – Mr. Mariani wants other persons property values affected so that he can have what he asks for. **In other words, he is unwilling to have his dock in his own view.....HE WANTS IT IN HIS NEIGHBORS' VIEW.**

To further his argument, Mr. Mariani is willing to go so far as to suggest that the City has previously failed to enforce its Code by failing to require plans prepared, signed and sealed by a Florida Professional Engineer, so it should fail to enforce the code one more time. If that is a meritorious position, then why have the code at all ? You have stated that you have been in your current position since the code was enacted. Do you really believe that the Code should not be enforced. Mr. Mariani clearly does not want to submit the required plans and specifications at this point because they will require him to fully reveal and document the travesty that he wants to impose upon his neighbors.

The photographs that Mr. Johnson submitted fail to identify where they were taken, how the point from which they were taken was selected, how it relates to the orientation of the homes affected, or what the position of the neighboring property owners was at the time the projects were permitted. Accordingly, they are of little value. **The photographs and graphical renderings submitted by Soboleskis are real, relate to the exact project at issue, and are submitted by a neighboring property owner who does object BEFORE THE PROJECT IS PERMITTED.**

This is made most clear in Mr. Johnson's statement on page 2 of his April 14, 2002 letter where he opines "... First, as harsh as it may sound, view is not a factor listed in...". The applicant clearly admits that the Soboleskis' view will be destroyed, but says "SO WHAT!", I want what I want. What Mr. Johnson and Mr. Mariani so disingenuously refuse to acknowledge is that **protecting value is part of the Development Code, and VIEW IS VALUE on waterfront property. In addition, Mr. Johnson ignores Code Section 3-913 which requires consideration of VISUAL IMPACTS.**

Mr. Johnson goes on to speak about what his client can build "...as a matter of right." But Mr. Johnson fails to address the environmental issues, or the fact that there is no right to a covered dock. Mr. Mariani can not build a covered area with a shorter dock due the sea grass presence, but he could still build a dock [albeit perhaps not the dock that he would like to build]. Further, the shorter dock would not allow for the use of large vessels due to water depth. This alone would ameliorate the obstruction of Soboleskis' view that the construction of a dock in Mr. Mariani's proposed location will cause.

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Mr. Plisko's drawing is of little value in analyzing the issues because it fails to use the same point of reference used in the Soboleski rendering photographs which depict the before and after views and it does not address the vertical component at all. This is obviously a result of Mr. Johnson's recognition that addressing the effect of the vertical components would be devastating to his position. While he blythely suggests in a footnote [footnote 2, page 3] that "Regrettably, the graphics submitted are not truly representative of Mr. Mariani's proposal or the effect of moving the dock in an easterly direction.", he fails to state any basis for this obviously false statement, nor does he offer any graphic analysis of his own. As skilled a land use lawyer as he is, Mr. Johnson would have offered his own graphics if there was any way that they would have helped.

### Errors in City Staff Report for 02/14/02 DRC Meeting

Unfortunately the City's Staff Report contains numerous errors which if not corrected may lead you to an incorrect decision. Of further concern is the alteration of the Staff Report by interlineating the word "Draft" in blue ink since I reviewed the file in March. It is my understanding that Public Records should not be altered after they are filed. But of greater importance is that City Staff reviewing the application presumably had an unaltered document in front of them which was full of errors and would give them a false impression of the project. In any event, I now briefly list errors in the report as follows:

#### **PAGE 2**

**The third paragraph** incorrectly states the distance to East property line and the square footage of the covered boatlifts. The distance to East property line is 72 feet, not 24 feet. The square footage of the covered boatlifts is 544 square feet each, not 144 square feet.

**The fourth paragraph** fails to note that the code requires that all permits be applied for simultaneously.

The proposed width in the table incorrectly lists 36 feet. The true width from the application is 39.75 feet.

#### **PAGE 3**

The Table incorrectly lists the distance to East property line as 24 feet. The true dimension is 72 feet.

**Paragraph C.2** contains a false statement. The County report does not say that the proposal is more environmentally sensitive than the "EXISTING DOCK". **There is no existing dock.**

**Paragraph C.3** fails to analyze the criteria on the basis that it is not applicable. It is applicable to the overall decision making process. Meeting one of the three criteria is required to request relief, **BUT DOES NOT ENTITLE THE APPLICANT TO RELIEF.**

#### **PAGE 4**

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**Paragraph D.1** is in error. There is no existing house. Therefore, the dock will not be an accessory use.

The applicant is not replacing an existing dock with a more environmentally sensitive dock. **There is no EXISTING DOCK**, and the massive proportions of the dock proposed is hardly environmentally sensitive.

**The development is not in harmony with the scale and character of adjacent properties.** Look at the aerial photographs and the graphic representations.

**Paragraph D.2** fails to address impairment of value at all. On waterfront property in particular, **VIEW IS VALUE**.

**Paragraph D.4** fails to address the increased traffic of visitors coming to use two Thirty foot plus boats. Similarly it fails to address marine traffic congestion which will no doubt be an issue when you put two more large boats in such close proximity to the existing dock.

**Paragraph D.5** states without support that the proposed development is consistent with community character and will improve it. HOW? There are no docks of similar magnitude and it changes the somewhat uniform spacing of docks throughout the area. See aerial photographs.

**Paragraph D.6** incorrectly states that there are no adverse impacts. It does not address visual, olfactory and acoustic impacts on adjoining property. The proposed positioning of the Mariani dock will impact use of the water space around the existing Soboleski dock, the boats operating will put additional fumes and noise in the Soboleskis' faces, the massive size of the covered boatlifts and vessels will adversely affect the visual aspects of adjoining property.

## **PAGE 5**

Given the vast number of material errors in the Staff Report and considering the failure to even address in any meaningful analysis several key factors, the Staff Recommendation should be completely discarded. This was apparently recognized by someone in your office after I became involved because someone was concerned enough to alter the Original Staff Report in the file by writing draft on it AFTER I OBTAINED A COPY AND STARTED POINTING OUT FLAWS IN IT.

### **The Wind Issue**

You inquired as to our position on the prevailing winds concern that Mr. Mariani raised as a justification for not moving the dock to the East. First, we are not convinced that the winds are prevailing from the North. However, assuming that the prevailing winds are from the North, moving the dock to the East does not significantly change the protection afforded by the peninsula upon which the dock will be located; See Exhibit 5 to my March 27, 2002 Letter. The land mass will still protect the dock from Northerly winds. Further, as the winds shift to the East, moving the dock to the East decreases the angle of impact of wind driven waves. It should also be noted that waves from

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the channel will come in from the Easterly direction and tend to "wrap the seawall". Thus, moving the dock to the East will enhance protection from wind and waves, not decrease it.

### Concluding Comments

The simple truth is Mr. Mariani wants to destroy the rights of the Soboleskis so that he will not have to look at his own dock. He should not be allowed to do so under the guise of environmental protection. At this time, Mr. Mariani can move his dock to the East side of his lot without objection from the adjoining property owner on that side, choose the orientation of his proposed house to enhance its visual properties, and simultaneously protect the property rights of his neighbors. I implore you to require this action before Mr. Mariani and the City are both plunged into otherwise unnecessary litigation as a result of what can fairly be construed as an obstinate, "to heck with my neighbors" attitude by the applicant.

Very truly yours,

  
Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

10/27

**Lee County v. Kiesel, 705 So.2d 1013 (Fla.App. Dist.2 02/06/1998)**

[1] Florida Court of Appeals

[2] Case No. 96-05137

[3] 705 So.2d 1013, 1998.FL.446 <<http://www.versuslaw.com>>

[4] February 06, 1998

[5] LEE COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,  
APPELLANT,

v.

EDWARD C. KIESEL AND LORRAINE T. KIESEL, HUSBAND AND WIFE, APPELLEES.

[6] Appeal from the Circuit Court for Lee County; R. Wallace Pack, Judge.

[7] James G. Yaeger, Lee County Attorney, and John J. Renner, Assistant County Attorney, Fort Myers, for Appellant. Kenneth A. Jones of Peper, Martin, Jensen, Maichel and Hetlage, Fort Myers, for Appellee.

[8] Campbell, A.c.j., and Frank, J., Concur.

[9] The opinion of the court was delivered by: Northcutt, Judge.

[10] NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED,  
DETERMINED

[11] We affirm a partial final Judgement in this inverse condemnation action brought by Edward and Lorraine Kiesel against Lee County. The trial court found that the Kiesel's were entitled to compensation because a bridge the county built over the Caloosahatchee River obstructed the Kiesel's riparian right of view. The court gave the county the option either to proceed with a "quick take" procedure pursuant to Chapter 74, Florida Statutes (1995), or to pay the Kiesel's after the entry of a final Judgement assessing full compensation for the taking and any damages to the remainder. The county appealed. \*fn1

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[12] Evidence at the bench trial reflected that the Kiesel family purchased their riverfront property in 1987 for \$160,000 and constructed a home at a cost of \$265,000. After the home was built, the county proceeded with the alignment and construction of the bridge. The completed bridge makes landfall on property adjacent to the Kiesel home; none of the Kiesel family's property was condemned for the construction. The bridge is not aligned perpendicularly to the shoreline, but extends over the river at an angle, reaching across the view from the Kiesel family's property. The Kiesel family's experts testified that the property previously had a value of \$650,000 to \$659,000. The experts opined that after the bridge construction the market value of the property was \$300,000. One expert directly attributed the loss in value to the bridge.

[13] The trial court found that "as a result of the angle at which the bridge is constructed across the front (river side) of the Kiesel property, it substantially and materially interferes with and disturbs the view across the waters of the Caloosahatchee River from the said property." The court concluded that "as a direct and proximate result of such substantial and material interference, the market value of the Kiesel property has substantially decreased, having been estimated by Plaintiffs' expert real estate appraisal witness as being in the range of \$194,250 to \$227,200."

[14] We reject the county's argument that there was no physical taking here; that, since the bridge did not physically rest upon any of the Kiesel property itself, the Kiesel family was entitled to compensation only if the bridge construction substantially ousted them from or deprived them of substantially all beneficial use of their property. That test would apply if this case involved a "regulatory taking", in which a land owner's use of his property had been restricted by government regulation. See, e.g., *Florida Game and Fresh Water Fish Com'n v. Flotilla, Inc.*, 636 So. 2d 761 (Fla. 2d DCA 1994). But this was not a regulatory taking. Rather, this case involved an actual physical intrusion to an appurtenant right of the Kiesel family's property ownership. Cf. *Palm Beach County v. Tessler*, 538 So.2d 846, 849 (Fla. 1989) (although none of property owner's land was physically taken, owner was entitled to compensation when retaining wall built by county caused a substantial loss of owner's appurtenant right of access to property.).

[15] Owners of uplands along navigable waters enjoy common law riparian rights, one of which is the right to an unobstructed view over the water to the channel. These rights constitute property, which the government may not take or destroy without paying just compensation to the owners. See *Thiesen v. Gulf, F.& A. Ry. Co.*, 75 Fla. 28, 78 So. 491 (1917); *Padgett v. Central and Southern Florida Flood Control Dist.*, 178 So. 2d 900 (Fla. 2d DCA 1965).

[16] Shorelines do not often neatly parallel channels, and property lines are not always perpendicular to shorelines or channels. Consequently, it is impossible to devise a rule for every case that would define the physical parameters of the riparian right of view or establish what degree of intrusion would constitute an obstruction. In this regard, both parties rely on *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957). The county cites *Hayes* because it affirmed the denial of an upland owner's action for an injunction against a private party's construction of a landfill that would interfere with the land owner's riparian right of view to the channel. The Kiesel family cites *Hayes* because it recognized this particular property right, and described its breadth in general terms as a case by case factual determination.

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[17] We . . . hold that the common law riparian rights to an unobstructed view and access to the Channel over the foreshore across the waters toward the Channel must be recognized over an area as near 'as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. This rule means that each case necessarily must turn on the factual circumstances there presented and no geometric theorem can be formulated to govern all cases. An upland owner must in all cases be permitted a direct, unobstructed view of the Channel and as well a direct, unobstructed means of ingress and egress over the foreshore and tidal waters to the Channel. If the exercise of these rights is prevented, the upland owner is entitled to relief.

[18] In making such 'equitable distribution' the Court necessarily must give due consideration to the lay of the upland shore line, the direction of the Channel and the co-relative rights of adjoining upland owners.

[19] 91 So. 2d at 801-02.

[20] When affirming the denial of relief to the property owner, the Hayes court limited its ruling to the effect of the landfill specifically as proposed. The court observed that "if the fill should be extended in a southerly direction so as to interrupt appellants' remaining view of or approach to the Channel, appellants might then have substantial grounds for complaint." 91 So. 2d at 802. It thus appears that in Hayes the court applied to the riparian right of view a test that was similar to the one it later articulated with respect to a land owner's appurtenant right of access: to constitute a compensable obstruction of the riparian right of view, the interference must be more than a mere annoyance. It must substantially and materially obstruct the land owner's view to the channel. Cf. Tessler, 538 So. 2d at 849 (loss of the most convenient access to property is not compensable where other suitable access continues to exist; loss of access is compensable when, considered in light of the remaining access, property owner's right of access has been substantially diminished).

[21] In this case the trial court found that the bridge substantially and materially interfered with the Kiesel's riparian right of view. Our examination of the record confirms that this finding was amply supported by the evidence at trial. The Kiesel's expert testified that eighty per cent of their view to the channel was obstructed by the bridge. We agree with the trial court's Conclusion that this was substantial and material.

[22] Finding no merit in the county's other issues, we affirm the order under review.

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[23] \*fn1 We have jurisdiction because the non-final order determined the issue of liability in favor of the party seeking affirmative relief. Fla.R.App.P. 9.130(3)(C)(iv).

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**07/11/85 BELVEDERE DEVELOPMENT v. DEPARTMENT OF**

[Editor's note: footnotes (if any) trail the opinion]

[1] SUPREME COURT OF FLORIDA

[2] BELVEDERE DEVELOPMENT CORPORATION, et al., Petitioners,  
v.

[3] DEPARTMENT OF TRANSPORTATION, DIVISION OF ADMINISTRATION,

[4] Respondent

[5] No. 62,172

[6] 476 So. 2d 649, 10 Fla. Law W. 375

[7] July 11, 1985

[8] Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. Fourth District - Case No. 79-2306.

[9] Rehearing Denied November 4, 1985

BLUE BOOK CITATION FORM: 1985.FL.1672 (<http://www.versuslaw.com>)

[10] APPELLATE PANEL:

[11] Adkins, J., and Alderman, Ehrlich and Shaw, JJ., concur. Boyd, C.J., concurs in part and dissents in part with an opinion. Overton and McDonald, JJ., dissent.

[12] DECISION OF THE COURT DELIVERED BY THE HONORABLE JUDGE ADKINS

[13] This cause is before us on petition to review the decision of the Fourth District Court of Appeal in Belvedere Development Corp. v. Department of Transportation, Division of Administration and Palm Beach County, 413 So.2d 847 (Fla. 4th DCA 1982), in which that court certified the following question to be a question of great public importance:

[14] DOES FLORIDA LAW PERMIT RIPARIAN RIGHTS TO BE SEPARATED FROM RIPARIAN LANDS?

[15] 413 So.2d at 851. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

[16] This case commenced with the filing of a complaint in eminent domain by the Department of Transportation to condemn certain lands adjoining the contiguous to Lake Worth in Palm Beach County, Florida. The Department sought to acquire the property in fee simple absolute, with an express reservation to the landowners which provided:

[17] Reserving unto the Defendant the rights to use and enjoy the riparian rights of and pertaining to said lands, including the rights to bulkhead and fill, said lands as provided by law, which are not in conflict with the interests of the Florida Department of Transportation in the construction and maintenance of said public highway.

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[18] The petitioners, Belvedere Development Corporation and Colonnades, Inc., answered the complaint in eminent domain alleging that the lands sought to be acquired by the state were only a portion of petitioners' lands and the taking thereof and the use to which they would be put would cause severance damages to the remaining adjoining lands of the petitioners.

[19] The case went to trial and the jury returned verdicts finding (1) that the compensation awarded to petitioner Colonnades was \$15,800 for the value of the land taken and \$0 for severance damages, for a total award of \$15,800; and (2) the compensation awarded to petitioner Belvedere was \$2,385 for the value of the land taken and \$0 for severance damages, for a total award of \$2,385. The trial court entered final judgments pursuant to the verdicts and an appeal followed.

[20] On appeal, the petitioners raised seven points. However, the district court found that only one issue warranted any extended discussion -- whether riparian rights could be enjoyed by an owner of non-riparian land? The court's decision to uphold the jury's award was based on its conclusion that the only Florida Supreme Court decisions relevant to the issue supported the Department's position. 413 So.2d at 850 (citing Burkart (sic) v. City of Fort Lauderdale, 168 So.2d 65 (Fla. 1964) and Caples v. Taliaferro, 144 Fla. 1, 197 So. 861 (1940). The court also discussed a decision of our First District Court of Appeal, Peebles v. Canal Authority, 254 So.2d 232 (Fla. 1st DCA 1971), in which the condemnor acquired the fee simple title to the property taken without limiting the estate or use involved. The Peebles court held that it was improper for the condemnor's appraiser to take into consideration the condemnor's allowance of access to the river based on the condemnor's usual policy of allowing such access. The court stated:

[21] It is established law that privileged in the property taken, (in this case, access to a body of water) the enjoyment of which is not compatible with the exercise of the title taken (here, a fee simple absolute) by the condemning authority, cannot be considered in awarding compensation unless they are formally established by the condemnation proceeding. Privileges . . . which are merely permissive and subject to revocation by the condemning party at any time cannot be availed of in reduction of damages.

[22] Id. at 233 (citations omitted).

[23] The district court in the instant case found that the condemnor had made it clear in its petition that the riparian use of the property was reserved to the petitioners except insofar as it might conflict with the limited interests of the Department. The court also found that the order of taking followed Peebles and specified that the riparian rights were reserved to the petitioners. Accordingly, the court found that the express reservation of rights, coupled with the evidence adduced at trial, was a sufficient basis upon which the jury could determine its award. 413 So.2d at 850.

[24] The petitioners argue that the attempted reservations of riparian rights by the Department in the legal descriptions attached to the order of taking are ineffective. They contend that a person or entity must own the lands bordering on navigable waters for there to be riparian rights; in other words, riparian rights are appurtenant to and are inseparable from the riparian land. Petitioners quote the following authority:

[25] The source of riparian rights is ownership of dry land bordering or abutting on a navigable waterbody . . . riparian rights are an inherent aspect of upland ownership, and not severable from it. §§ 21.6 and 34.3, Maloney, Plager and Baldwin, Water Law and Administration, The Florida Experience, University of Florida Press, 1968.

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[26] In addition, they rely on the following language from Florida Jurisprudence to support their contention that the respondents have become the owners of the riparian rights appurtenant to these lands:

[27] The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitled the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland. 34 Fla. Jur., Waters, 126, et seq.

[28] Because the petitioners' property was taken in fee simple absolute without an award for severance damages, petitioners argue in conclusion, a taking has occurred in violation of article X, section 6 of the Florida Constitution.

[29] The respondent, the Department of Transportation, contends that Florida is among those jurisdictions that follow the majority rule that riparian rights may be devised separate from the lands to which such rights attach. In 1916 this Court stated:

[30] A conveyance of land to which riparian rights to submerged lands are attached . . . may carry the riparian rights, unless such rights are reserved or a contrary intent appears from the conveyance.

[31] *Panama Ice and Fish Co. v. Atlanta and St. Andrews Bay Railway*, 71 Fla. 419, 423, 71 So. 608, 610 (1916). See also *Burkhart (sic) v. City of Fort Lauderdale*; *City of Tarpon Springs v. Smith*, 81 Fla. 479, 502, 88 So. 613, 621 (1921).

[32] Implicit in the foregoing cases is the principle that riparian rights may sometimes be severed from the ownership of the land to which they attach. If this were not so, decisions which resolve how and to whom to allocate riparian rights would not even arise. There is nothing novel about the notion of finding a legal separateness of an incorporeal interest such as a riparian right. The law has long recognized the separateness of non-possessory property interests, including incorporeal hereditaments and future interests.

[33] However, we are persuaded by the concerns voiced by Judge Hersey in his special concurring opinion and agree that following this general rule in all situations often leads to rather absurd results. Judge Hersey stated:

[34] (Riparian) rights basically include (1) general use of the water adjacent to the property, (2) to wharf out to navigability, (3) to have access to navigable waters and (4) the right to accretions.

[35] How could it seriously be contended that appellants in this case retain any of those rights despite the language in the Order of Taking (the functional equivalent of a deed)? They have no easement or other retained rights to enter upon appellee's land. If a dock is built by appellants it will have to be free-standing, without contact with appellee's land. And how are they to "use" the water, say for swimming, when they have no access to it other than by boat? And consider the horrendous problem of accretions!

[36] 413 So.2d at 851.

[37] In 1917 this Court defined riparian rights in *Thiesen v. Gulf, Florida and Alabama Railway*, 75 Fla. 3, 78 So. 491, 507 (1917):

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[38] Riparian rights we think are property, and being so the right to take it for public use without compensation does not exist. The fronting of a lot upon a navigable stream or bay often constitutes its chief value and desirability whether for residence or business purpose. The right of access to the property over the water, the unobstructed view of the bay and the enjoyment of the privileges of the waters incident to ownership of the bordering land would not in many cases be exchanged for the price of an inland lot in the same vicinity. In many cases doubtless the riparian rights incident to the ownership of the land were the principal if not sole inducement leading to its purchase by one and the reason for the price charged by the seller.

[39] Although riparian rights are property, they are unique in character. The source of those rights is not found within the interest itself, but rather they are found in, and are defined in terms of the riparian upland. In most cases, therefore, it is not difficult to find that riparian rights are an inherent aspect of upland ownership and are not severable from it.

[40] Thus, in the context of condemnation of property, we think the condemnor should be unable to reserve the riparian rights to the condemnee in the absence of an express bilateral agreement to do so with the condemnee. The actions of the Department in this case have, in effect, deprived petitioners of the basic rights which are included in the term "riparian rights." The condemnation context is distinguishable from the situation where two parties to a real estate transaction might choose to sever the riparian rights from the riparian lands and also provide those necessary additional rights which would enable the riparian right holder to actually benefit from those rights -- i.e., an easement or right to enter the riparian lands. For this reason, we will not hold that riparian rights are never severable from the riparian lands. However, we must conclude that the act of condemning petitioners' lands without compensating them for their riparian property rights under these facts was an unconstitutional taking.

[41] In reaching our conclusion, we have considered the applicability of section 197.228, Florida Statutes (1983), to the instant case. Section 197.228 provides in part:

[42] (1) Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.

[43] The question of whether this statute applies to the case at bar turns on the threshold issue of whether it is a tax law or property law. The statute contains language which seemingly prevents the separation of any riparian rights from the ownership of riparian upland. Such language, if applied to this case, would be inconsistent with generally accepted property doctrines and contrary to established case law in the state of Florida. See *Burkhart (sic) v. City of Fort Lauderdale*.

[44] The Court, in *Webb v. Giddens*, 82 So.2d 743 (Fla. 1955), observed that this statute "is included in the chapter on taxation and finance" and expressed no opinion as to its applicability in a suit brought by a riparian owner seeking a declaration as to the right of State Road Department to obstruct navigable waters.

[45] In *McDowell v. Trustees of Internal Improvement Fund*, 90 So.2d 715, 717 (Fla. 1956), we said this subsection of the statute "was appropriately included in the chapter on taxation, and it was

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[57] I agree with the Court's conclusion that in the context of this case and condemnation proceedings generally, there can be no separation of riparian rights from the riparian lands being taken. Therefore the purported "reservation" of riparian rights to the owners having their riparian lands taken by the state was void and the owners must be compensated for that portion of the value of the lands taken attributable to their riparian character.

[58] The majority wisely finds the words of Judge Hersey, written in special concurrence to the opinion below, persuasive on the issue of separation. There are compelling reasons for simply answering the certified question unequivocally in the negative. However, I am content with confining our answer to the context in which the question arose. I see the majority's "holding" regarding separation by agreement as mere dicta.

[59] In view of the Court's conclusion that there can be no reservation of riparian rights to the condemnees, we must also conclude that the testimony of the state's valuation experts at trial, having been based on an erroneous legal theory, was improper. As is briefly described in the opinion of the district court, the state's expert testified that there was to be no compensation for the loss of riparian rights, because riparian rights were not being taken. This erroneous testimony was clearly prejudicial and mandates a new trial.

[60] The majority correctly concludes that it was also error to allow the state to present to the jury certain features of its future plans of a promissory or speculative nature, which served to diminish the character of the damages in the eyes of the jury. This error mandates a new trial.

[61] I dissent to that portion of the Court's opinion approving the affirmance of the judgment for damages. Because of errors at the trial, the damages must be determined anew by means of a jury trial affording full protection to the petitioners' constitutional right to full compensation.

[Editor's note: Illustrations from the original opinion, if any, are available in the print version]

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**CDB Members:**

**This is a letter from the appellant Mr. Soboleski's representative Max Battle, for the Mariani Dock Appeal case# APP2002-07002. This is part of section E. Consideration of Level 1 Appeals (Item 1), the final item on the Agenda. Please collate into your packets. Thank you.**

**Planning Department**

EXHIBIT F (continued)

10

BATTLE & EDENFIELD, P.A.  
ATTORNEYS AT LAW

MAXWELL G. BATTLE, JR.\*  
MICHAEL S. EDENFIELD

ALSO ADMITTED  
\* COLORADO  
\* NEW MEXICO  
\* MONTANA

March 27, 2002

206 MASON STREET  
BRANDON, FL 33511  
(813) 685-3014  
FAX (813) 684-5922

Mark Parry, Lead Planner  
Cyndi Tarapani, Community Development Coordinator  
Planning Department  
City of Clearwater  
100 South Myrtle Avenue  
Clearwater, FL 33756

RE: 193 Devon Drive; Lot 31;  
Application for Flexible Development  
Standard Approval submitted by  
Chris Mariani; FLS 02-01-03

 **COPY**

Dear Mr. Parry and Ms. Tarapani:

As you know, I represent James and Deborah Soboleski who own the residence to the immediate West of Mr. Chris Mariani's lot for which the above application was submitted. My clients remain vehemently opposed to Mr. Mariani's request as it is now constituted. This letter and accompanying documentation are submitted to supplement my letter to you of March 14, 2002. I have broken this letter into sections for ease of review.

**Opening Discussion and Description of Materials**

The booklet submitted with this letter includes eight (8) pages photographs of my Clients' home and the neighborhood and a CD containing all of the photographs as individual images. On several of the photographs an artist's rendering of the proposed dock has been overlaid on the photograph to reflect the actual view with the proposed dock added. To achieve the proper scale and provide a realistic portrayal of the dock's effect upon the views from my Clients' residence, a surveyor was commissioned to place control markers in the water prior to the photographs being taken. The size of the dock footprint was taken from the sketches submitted by Mr. Mariani. The size of the boat houses was taken from the plan dimensions of the sketches submitted by Mr. Mariani and actual field measurements of the boat house submitted as the model by Mr. Mariani. It was necessary to combine this data because Mr. Mariani did not submit detailed plans and specifications prepared, signed and sealed by a Florida Registered Professional Engineer as required by Section 4-202, Subsection A, 24, Community Development Code.

Clearly the most devastating effect of granting Mr. Mariani's request is the destruction of the view from the back of the Soboleski residence. Exhibit 1 is a photograph taken from the Soboleski residence deck. As you can clearly see, it is presently a multi-million dollar view. Exhibit 2 is the same photograph with the proposed Mariani dock overlayed. The effect is self evident and graphic.

Exhibit 3 is an aerial view of the Soboleski residence and Mariani lot. Exhibit 4 is the same aerial view with the proposed Mariani dock overlayed. Please note the devastation to the Soboleski's view is mirrored by the devastation to the view of the Soboleski residence from the water.

Exhibit 5 is the same aerial view of the Soboleski residence and Mariani lot as shown in Exhibit 3 with the Mariani dock overlayed in the alternate location to the East that has been suggested by the Pinellas County Department of Environmental Management. This alternate location would accomplish a number of goals. First, it would not adversely impact the view from the Soboleski residence to anywhere near the extent as the location proposed by Mr. Mariani. Second, it would disrupt considerably less of the sea grass beds, as can clearly be seen in the Exhibit. Third, it would place boats at the dock at an oblique angle to waves [and wakes] approaching from the channel to the East. Fourth, it would be in keeping with the general uniformity of spacing between dock installations along the fingers in the neighborhood [See also Exhibits 7 and 8].

Exhibit 6 consists of reduced scale versions of Exhibits 3 and 5 with a "line of sight" depicted as a single broken blue line. The "line of sight" is extended from the camera location for Exhibits 1 and 2 across the intersection of the Soboleski/Mariani property line and the seawall cap. It sets the left most [Northern most] portion of the view from my Clients' lot without looking over the Mariani lot. The differing effect of the two proposed locations for the Mariani dock is clear. Placing the Mariani dock in the location proposed by Mr. Mariani [top photograph, Exhibit 6] destroys the view from the Soboleski residence, destroys the view from their dock, and seriously devalues their property. If the dock is placed in the alternative location to the East [bottom photograph Exhibit 6], it moves out of the Soboleskis' line of sight.

Exhibits 7 and 8 are a compilation of aerial views of the neighborhood. The somewhat symmetrical spacing of docks and the minimal number of boathouses in the neighborhood is evident in the photographs. It should also be noted that most of the boathouses are at the seawall behind the residences that they serve. The two exceptions at the end of the Devon finger are situated in a fashion that does not adversely effect the views from the residences adjacent to them.

Exhibit 9 is a CD that contains copies of each photograph in Exhibits 1 through 8. If you insert it in a desktop or laptop computer you will be able to view the photographs with ease by either selecting the number of the photograph or by clicking "Next" and "Previous". This CD should make it very easy for you to evaluate the visual impact of the

two alternative locations for the dock. The CD version of the photographs also allows easy viewing of the grass beds and the character of the existing neighborhood.

Exhibit 10 is a copy of the Mark Blum's March 6, 2002 letter to Mr. Pary.

Exhibit 11 is a copy of Mr. Mariani's March 7, 2002 letter.

Exhibit 12 is a copy of Mr. Johnson's March 5, 2002 letter.

Exhibit 13 is a copy of the City of Clearwater's Staff Report.

Exhibit 14 is a copy of my March 14, 2002 [corrected] letter to Mr. Pary.

Exhibit 15 is a copy of the Pinellas County Department of Environmental Management's Water and Navigation Report.

Exhibits 10 through 15 are included for your ease of review.

#### **Mr. Mariani's March 7, 2002 Letter**

Now I address Mr. Mariani's letter of March 7, 2002 to Ms. Cyndi Tarapani. Mr. Mariani starts his diatribe with the sobriquet that the "...Soboleski's... completely misconstrue... or are totally erroneous...". This is an interesting approach by Mr. Mariani because this is actually what his letter does. I note as an aside that Mr. Mariani, who has the burden of establishing his entitlement to the relief requested, has completely failed to provide any pictorial evidence of the visual effect of his proposal. In any event, I address his letter by corresponding numbered paragraph.

- 1) The issue is not whether Mr. Mariani should be allowed to build a dock, but where and how large. When a variance is granted, it should always be the minimum variance necessary. Further, despite what Mr. Mariani opines, the aerial photographs [Exhibits 3 through 7] clearly show that construction to the East would affect a smaller area of sea grass. With respect to the alleged encroachment to the East, that property Owner, the Mark Blum, does not object. [See Exhibit 10].
- 2) Mr. Mariani is incorrect. His application seeks to affect more sea grass than necessary, build a larger dock than necessary, obtain a larger deviation from the standards than necessary, and destroy my Clients' view and property values.
- 3) Please see response to Mariani paragraphs 1 and 2. The question is not whether to allow some variance, it is the magnitude of the variance and the conditions under which it may be granted. The Soboleskis do not have a boathouse.

- 4) Mr. Mariani's obfuscation of the true import of his proposal in this paragraph is incredible. He says that his proposed dock does not set a new precedent. His incredible statement ignores the fact that he is proposing to build an unprecedented double boathouse consisting of 532 square feet of coverage each, plus dock walking deck area of 476.5 square feet [accepting for the purposes of this paragraph Mr. Johnson's calculations as accurate], for a total of 1540.5 square feet of coverage. The approval of this application would allow Mr. Mariani to construct what amounts visually and environmentally to a second home over the water. This is clearly unprecedented in Clearwater's modern history.

It should also be noted that the metal roof will have a substantially larger surface area than the plan view indicates due to the pitch involved. This surface area and pitch has a substantial propensity for reflecting a obnoxious glare onto the Soboleskis' property during substantial periods of the day.

Mr. Mariani also implies that the Soboleskis are seeking to deprive him of a benefit that they enjoy. Nothing could be further from the truth. The Soboleskis do not have 1064 square feet of boathouse. The Soboleskis did not block their neighbors view. They do not have even one boathouse. In fact the Soboleskis spent substantial monies to improve their neighbor's view by moving lifts.

- 5) The Soboleskis do not advocate that Mr. Mariani should not be allowed to construct a dock or residence upon his lot. They contend that his development should be reasonable and not impair their view and property values. As shown in Exhibits 1 through 6, it is possible for Mr. Mariani to do so and improve his own situation at the same time. Why he is so adamant about destroying the Soboleskis' view and property value is a mystery.

It should be noted that Mr. Mariani makes an interesting statement about the failure of Ress Marine to ever experience the lifting or destruction of a dock that they built. I would be interested to know the basis for this statement and what Mr. Mariani defines as "lifted" or "destroyed". While Ress Marine is a marine contractor of excellent reputation and qualification, no one can beat Mother Nature at every turn. At least one dock on St. Joseph's Sound built by Ress Marine that suffered substantial damage including loss of timbers during the "No Name Storm".

Moving on to the balance of Mr. Mariani's letter, I find it interesting that Mr. Mariani suggests that the Neimanns have no right to object. If this were true, the City would not require notice to the Neimanns. Further, Mr. Mariani suggests that there is no loss of value to Neimanns' residence as a result of the Soboleskis' docks [located on two lots, not one small one like Mariani's], ergo there can be no loss of value to Soboleskis' residence due to his proposed dock. This incredible assertion is dispelled by one look at Exhibits 1 and 2. In addition, you must consider two other salient facts. First, the

Soboleskis purchased their property with the docks in place and then made expensive modifications which benefited the Neimanns. Second, the Soboleski docks do not block the Neimanns' view and there are no house sized boat houses on the Soboleski docks.

Next, Mr. Mariani suggests that the Soboleskis want his dock in its present proposed location. This is obviously incorrect. If Mr. Mariani's assertion were true, you would never have heard an objection from my Clients and you certainly never would have heard from me. In addition, Mr. Mariani's comments about the view are completely dispelled by Exhibits 1, 2 and 6.

Finally, Mr. Mariani suggests that he bought his lot specifically due to its Southern exposure. A more probable reason is that it was on the market. One look at Exhibits 7, 8 and 9 shows a dearth of vacant lots in the area. In any event, the placement of the dock to the East in the alternate location still places it in a protected position from the North/Northwest winds.

**NO MATTER WHAT MR. MARIANI SAYS, GRANTING HIS REQUEST SETS AN UNCOMFORTABLE PRECEDENT FOR ALLOWING THE CONSTRUCTION OF MASSIVE VIEW, DESTROYING STRUCTURES OVER THE WATERS OF CLEARWATER HARBOR.**

**Timothy Johnson's March 5, 2002 Letter**

To avoid unnecessarily lengthening this letter, I will confine my comments to Mr. Johnson's letter to Page 3, paragraph 5 (c)(3). The closing sentence of this paragraph of Mr. Johnson's letter states that "The logic of the Soboleskis is elusive."

The Soboleskis' logic is elusive only to Mr. Johnson who fails to seek it [or who perhaps chooses consciously to ignore it]. Mr. Johnson is a real estate and land use attorney of some repute. His prowess at presentations before land regulatory authorities is legendary. Yet he failed to produce for your office the very type of pictorial evidence that the Soboleskis have presented with this letter. Given his experience and professional competence, there seems to be only one reason that he would fail to present such valuable evidence. He knew that it would have a devastating impact on the position he advocates. Therefore, he omitted this pictorial evidence and resorted to criticizing the Soboleskis for striving to protect the substantial investment that they have in their property and the community.

Finally, his comments about the location of docks close to property lines ignores the clear fact that the Soboleskis not only worked to protect their neighbors view with respect to docks in place when they purchased their property, but more importantly that the Soboleski docks are not in the prevailing view of the Mariani lot.

### Concluding Comments

I reiterate the positions espoused in my March 14, 2002 letter that: 1) Mr. Mariani's application fails to comply with the requirements of the Community Development Code; 2) due to the size of the proposed dock a Level 2 Review is required; and 3) without the prior construction of a residence on the Mariani lot, the proposed dock would constitute an impermissible primary use rather than an accessory use [the lot is now vacant]. My corrected March 14, 2002 letter is incorporated in this letter by reference [See Exhibit 14]. Each of those positions constitute independent grounds for denial of Mr. Mariani's request.

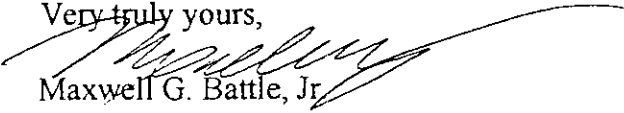
However, if you continue to review Mr. Mariani's application as a Level 1 Review, I suggest to you that Mr. Mariani's application as it is presently constituted must be denied. Granting it would constitute an unconscionable abuse of the flexible development standards that were implemented to balance the protection of individual property owners and the character of the community with the right of a property owner to reasonably develop his property. Exhibits 1 through 9 clearly support this denial.

Mr. Mariani says that he wants to meet with the Soboleskis to work out an acceptable location for his dock. If this is true, then abate the review process and direct Mr. Mariani and Mr. Johnson to meet with the Soboleskis and myself to discuss the project further. This letter and the Exhibits thereto clearly outline potentially acceptable proposals.

Finally, I request that the Soboleskis and I be granted an opportunity to meet with you and your staff to discuss Mr. Mariani's application and make a presentation to you. I believe that due process and basic fairness dictates that the Soboleskis be given the same opportunity that Messrs. Mariani and Johnson were provided.

I look forward to hearing from you at your earliest convenience.

Very truly yours,

  
Maxwell G. Battle, Jr.

Cc: James and Deborah Soboleski

PHOTO - w/o Dock

PHOTO - W/DOCK

PHOTO - Aerial  
w/o Dock



PHOTO - Aerial  
w/ Dock #1



PHOTO - Aerial  
w/ Dock #2



PHOTO - Aerial  
Line of Sight



PHOTO - Aerials



PHOTO - Aerials

PHOTOS - CD

The Original Exhibit 9 was a CD. Insufficient time was  
available to copy it.  
Exhibit 9 may be viewed on the Internet at the following  
address:  
<http://www.visualasbuilts.com/dock.html>



Johnso...  
03/05/02



CITY  
STAFF REPORT



Battle Lett 03-14-02

CITY OF ALBUQUERQUE  
NAVIGATIONAL REPORT

at



EXHIBIT 1

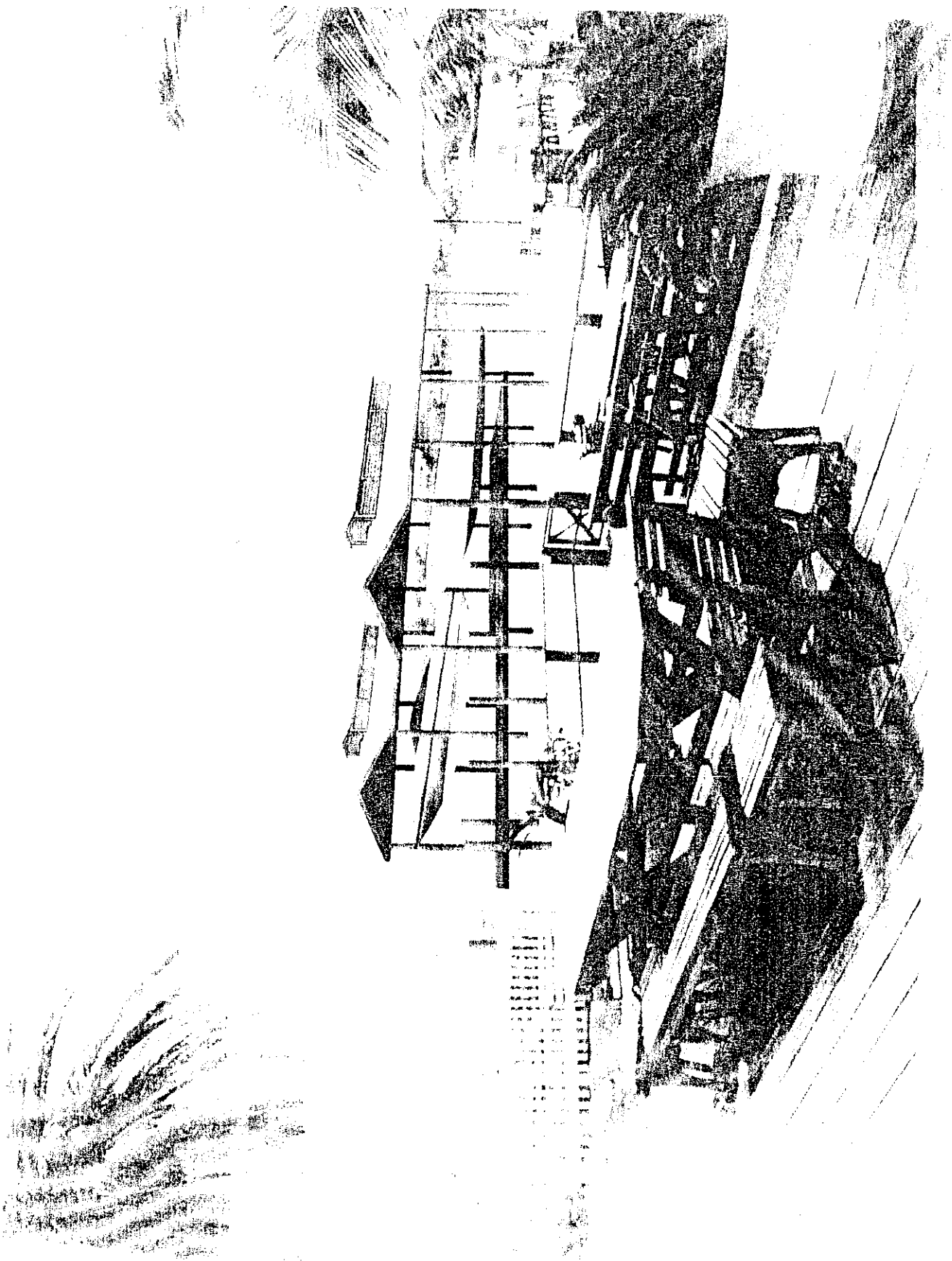


EXHIBIT 2



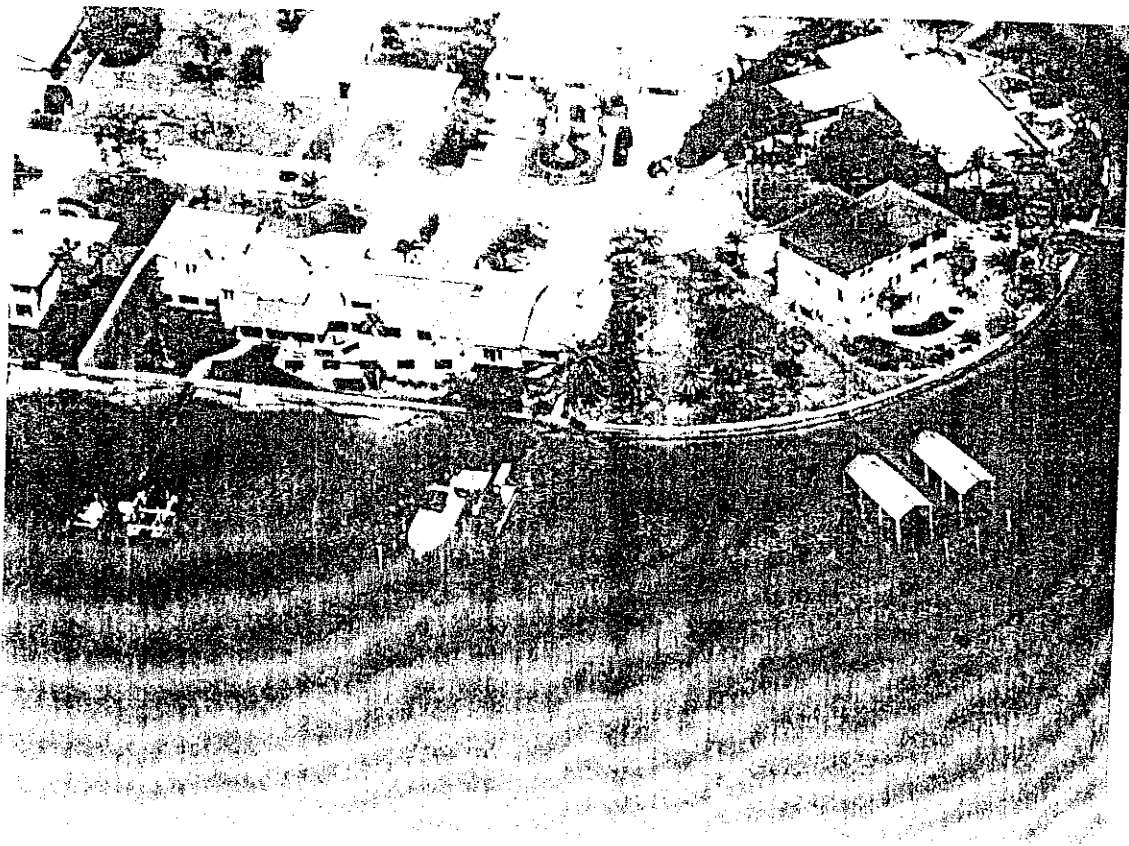
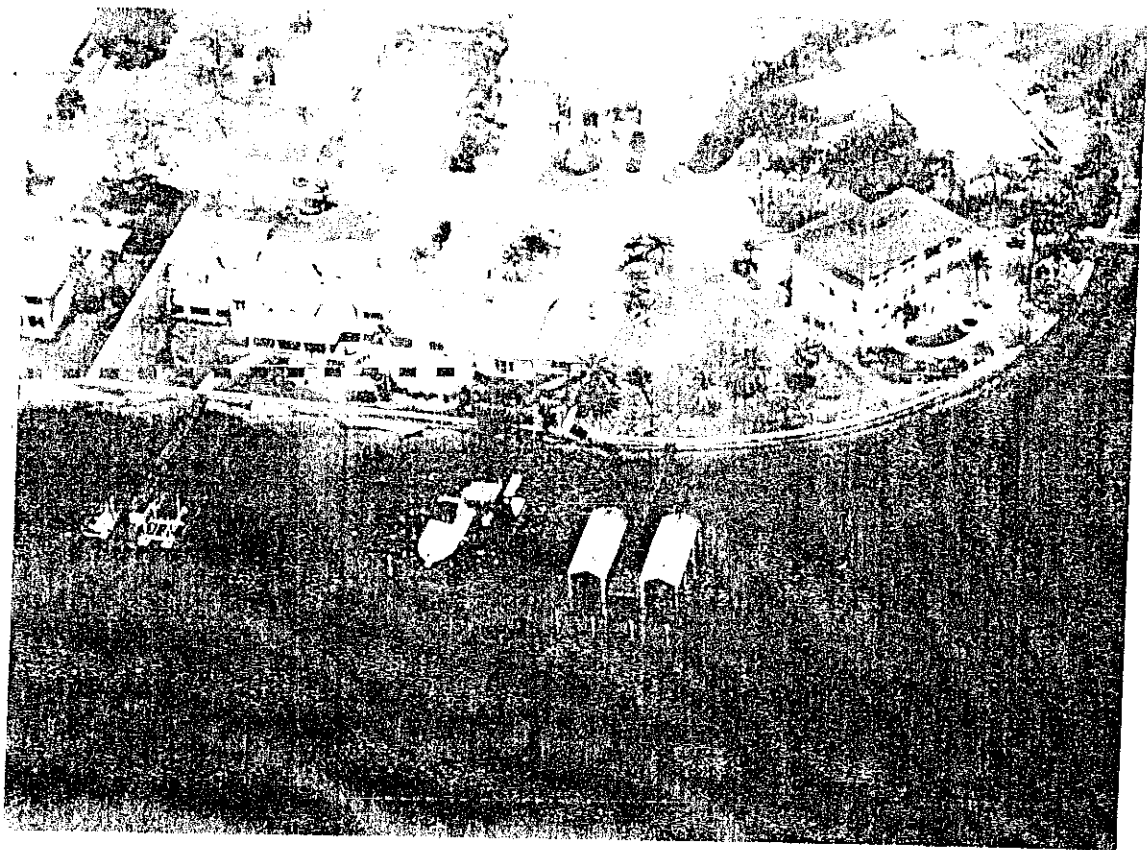
EXHIBIT 3

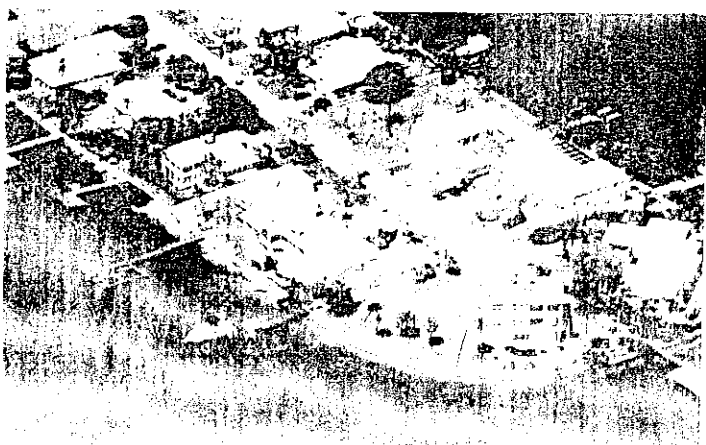
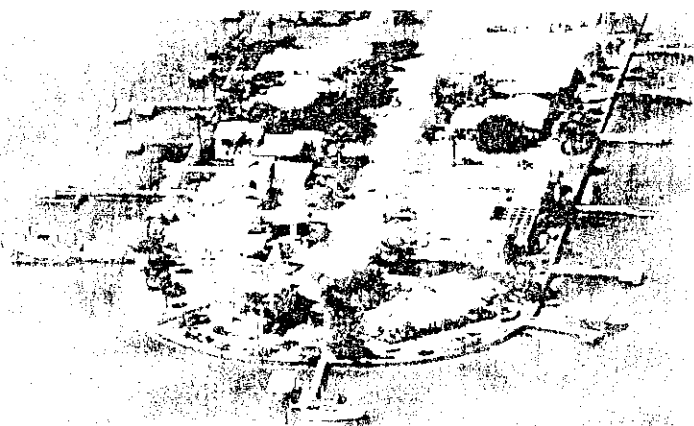
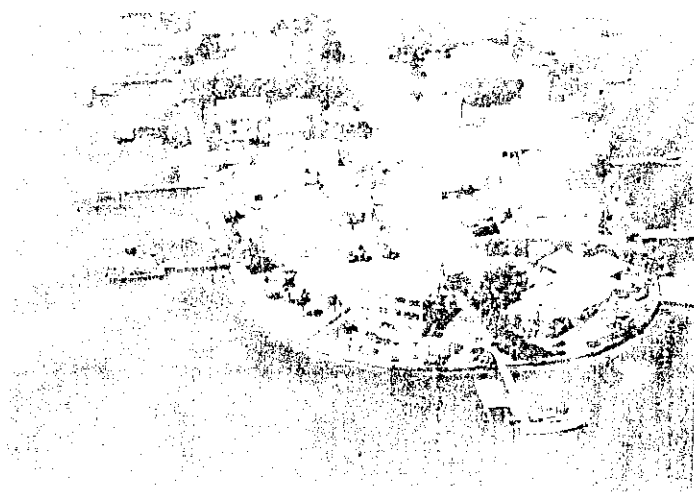


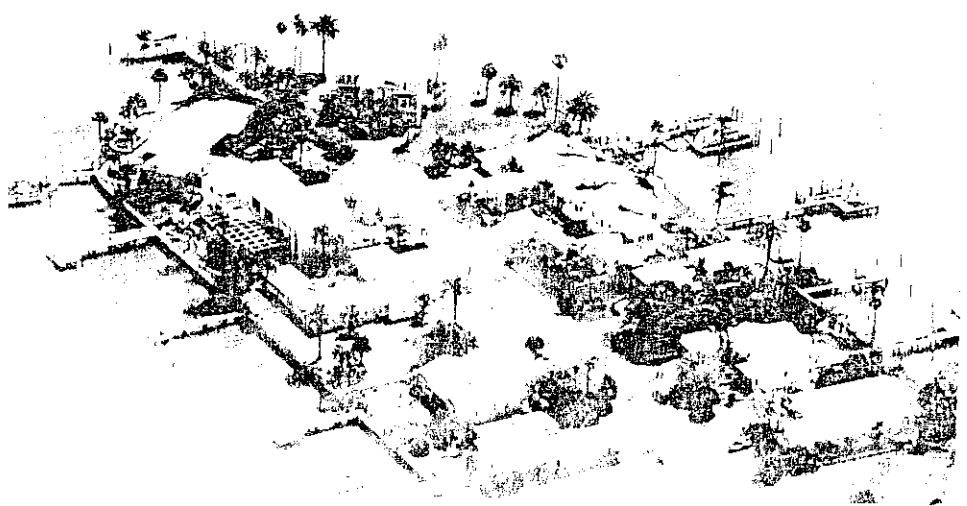
EXHIBIT 4

EXHIBIT 5









Member Mazur moved to approve Item C1, with the listed condition, Case FLD 02-04-11. The motion was duly seconded. Members Gildersleeve, Mazur, Moran, Hooper, Doran, and Chair Petersen voted "Aye"; Member Plisko voted "Nay." Motion carried.

4. Case: APP2002-07002 – 193 Devon Drive

Owner: Christopher C. Mariani.

Applicant/Appellant: Deborah L. Groen Soboleski. (191 Devon Drive).

Location: 0.19 acres located on the south side of Devon Drive, approximately 600 feet east of Hamden Drive

Atlas Page: 276A.

Proposed Use: A 440 square foot dock with two boat lifts.

Request:

Appeal of a Level One (Flexible Standard Development) decision by the Community Development Coordinator who approved certain deviations to dock requirements for the property located at 193 Devon Drive, under the appeal provisions of Section 4-501 of the Community Development Code. Presenter: Mark Parry, Planner.

This 0.32-acre site is located on the south side and terminus of Devon Drive, approximately 1,350 feet east of Hamden Drive. The site fronts on a channel off of Clearwater Harbor and is currently vacant.

On January 18, 2002, Timothy Johnson, Jr., Esquire, filed an application for Flexible Standard Development approval on behalf of Mr. Christopher C. Mariani (property owner) for a dock. It was later amended and refiled on January 28, 2002. (Refer to Exhibit A.) This application requested an increase in the permitted length of a dock from 60 feet to 101 feet, due to the proximity of sea grasses. Following the DRC meeting of February 14, 2002, the applicant submitted a second amendment to the application. The March 5, 2002 submittal included a letter stating the overall length of dock would be 95 feet (refer to Exhibit B.) An April 14, 2002 letter and accompanying site plan included a 92-foot long dock (refer to Exhibit C).

Section 3-601.C.1.b of the Code provides that the length of docks and boatlifts that serve a single-family dwelling shall not exceed 25 percent of the waterway or half of the width of the property measured at the waterfront property line, whichever is less. In this case, the lot is 120 feet wide at the east, waterfront property line and the waterway is approximately 700 feet wide. In this case, half of the lot width is used to determine permitted length of the dock and is 60 feet.

The proposed dock was shown 128 feet from the extended east property line and 44 feet from the extended west property line. The boatlift location was shown 30 feet from the west property line.

Section 3-601.C.1.g of the Code provides for deviations from dock requirements for single-family (and two-family) dwellings. The Community Development Coordinator may grant deviations as part of a Level One, Minimum Standard review, provided signed and notarized statements of no objection are secured from both adjacent waterfront property owners. In the event such statements cannot be obtained, deviations are reviewed under Flexible Standard Development applications, based on one of the following criteria: 1) That the proposed dock will result in no navigational conflicts and the length of the proposed dock will not exceed 25 percent of the width of the waterway; or 2) The proposed dock location needs to be adjusted to protect

environmentally sensitive areas; or 3) The property configuration precludes the placement of a dock in compliance with the required dimensional standards; however, the proposed dock will be similar in dimensional characteristics as surrounding dock patterns.

The applicant was not able to provide statement of no objection from both adjacent waterfront property owners and applied as part of a Level One, Flexible Standard Development review. Consent was provided from the adjacent property owner to the east ("left"), at 195 Devon Drive, within the application submittal (Exhibit A). As part of his submission, the applicant provided documentation from the Pinellas County Department of Environmental Management stating that there are no navigational concerns associated with the proposed dock. It was also stated that the proposed structure is more environmentally sensitive than the existing structure, reducing negative environmental impacts to existing sea grasses. The Development Review Committee (DRC) reviewed the application on February 14, 2002. There were no objections raised by the DRC whose members include the Environmental Manager of the Public Works Administration and Harbormaster.

The application was approved by the Community Development Coordinator (Planning Director) through its designee (Assistant Planning Director) on July 22, 2002 (refer to attached Staff Report and Development Order for case FLS 02-01-03, Exhibits D and E). It should be noted that the Community Development Coordinator supervised the review of this application and the decision made, as is done with all cases. During the Coordinator's absence from the office, the Assistant Planning Director was designated to act on behalf of the Planning Director on all matters, including the issuance of the Development Order.

The application was approved with the following Bases for approval: 1) The proposal complies with the Flexible Standard Development criteria under the provisions of Section 3-601.C.g; 2) The proposal, as amended, is in compliance with other standards in the Code including the General Applicability Criteria per Section 3-913; and 3) The development, as amended, is compatible with the surrounding area; and Conditions of approval: 1) That a building permit for the proposed dock only be issued concurrently with, or subsequent to, building permit issuance for a principal, residential structure on the site; 2) That the proposed dock be relocated farther east (with the dock head centered on the midpoint of the waterfront property line, as measured at the seawall) and constructed perpendicular to the waterfront property line; 3) That the relocation of the dock meet all criteria under Section 3-601.C.1; and 4) That revised plans reflecting conformance with condition #2 be submitted with the building permit application, to the satisfaction of staff.

Member Plisko declared a conflict of interest.

Assistant City Attorney Leslie Dougall-Sides said the appellant has requested this item be removed from the Consent Agenda and scheduled for a quasi-judicial hearing.

Maxwell Battle Jr., representative for the appellant, said the entire packet presented to the Planning Department for distribution to the Community Development Board is part of the appeal. He said based on public policy, the CDB should hear the appeal. He said the Assistant Planning Director had erred when approving the dock. Discussion ensued regarding staff's decision and the requirement to center the dock on the applicant's property.

Ed Armstrong, representative for the applicant, said approval of the applicant's request required it to meet one of three grounds of approval. He said the request meets at least two

issues. He said no evidence was presented that staff had misinterpreted the Code or that the decision was detrimental to health and safety issues. He said the length of the proposed dock is justified by Pinellas County sea grass requirements.

Mr. Battle requested the decision to pull the item not be based on the likelihood of an outcome. In response to a question, Ms. Dougall-Sides said the Code does not establish a standard for pulling items from the Consent Agenda. She said the board would need a reason to pull it off the Consent Agenda. She said the appellant had not addressed how staff had misconstrued the Code. If the CDB does not hear the case, the appellant can appeal to a Hearing Officer.

Ms. Tarapani said staff performed a complete review of the issue and considered all submissions. She said staff had acted appropriately and had provided an opportunity for all to participate. She said the issue is a balance between the applicant's property rights with rights of nearby residents. Photographs submitted by the appellant are based on a different location for the dock. The applicant has not submitted a revised plan yet, to show conformance with one of the conditions of approval. Mr. Armstrong said the applicant accepts all conditions recommended by staff.

In response to a question, Ms. Tarapani said the site plan is complete as submitted at this point in the process. The applicant will need to submit engineering drawings before construction can begin.

Mr. Battle said the appellant is disadvantaged when the dock plans are changed and cannot determine how the change will affect vistas. Ms. Tarapani said Mr. Battle had been asked to make an alternate recommendation. The applicant did not accept the suggestion to locate the dock on the east end of the property. Mr. Battle said his entire submission should be distributed to each CDB member. In response to a question, Mr. Battle said the dock should be located as far east on the property as possible to protect his client's vista. It was noted if residents adhered to Mr. Battle's recommendation related to site lines, no docks would be permitted on Devon Drive. Deborah L. Groen Soboleski, appellant, requested the item be pulled from the Consent Agenda so the board could hear what she has to say.

Ms. Tarapani said the proposed dock complies with the code. It will not shade grass beds. It is shorter than adjacent docks, and almost equal to the second of the appellant's two docks. The requested dock is not out of character with the neighborhood. In response to a question, Ms. Tarapani said one of the conditions of approval she imposed as part of the approval clearly indicates the dock must be constructed at the center of the property.

There was no motion to remove Item C4 from the Consent Agenda.

Member Hooper moved to approve the Consent Agenda related to Item C4, Case APP2002-07002. The **motion** was duly seconded and **carried** unanimously. Member Plisko abstained. Alternate Board Member Milam voted. The Board confirmed the decision of the Community Development Coordinator.

The CDB recessed from 3:45 to 3:56 p.m.



# CITY OF CLEARWATER

## PLANNING DEPARTMENT

POST OFFICE BOX 4748, CLEARWATER, FLORIDA 33758-4748  
MUNICIPAL SERVICES BUILDING, 100 SOUTH MYRTLE AVENUE, CLEARWATER, FLORIDA 33756  
TELEPHONE (727) 562-4567 FAX (727) 562-4576

LONG RANGE PLANNING  
DEVELOPMENT REVIEW  
HOUSING DIVISION  
NEIGHBORHOOD SERVICES

January 30, 2001

### RE: NOTICE OF FILING OF AN APPLICATION FOR FLEXIBLE STANDARD DEVELOPMENT APPROVAL AT 193 DEVON DRIVE (FLS 02-01-03)

#### To Surrounding Property Owners:

The purpose of this letter is to notify you that the Clearwater Planning Department has received an application for Flexible Standard Development from Mr. Christopher Mariani represented by Mr. Timothy Johnson of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. for the property at 193 Devon Drive. You are being sent this letter because you are a property owner within 200 feet of the site. The request is to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 101 feet (84 percent of the width of the property) under the provisions of Section 3-601. The proposal includes a 498 square foot dock and two 144 square foot covered boatlifts.

The City encourages you to participate in the review of this case. You may participate by calling me to discuss the case, visit our office to review the application and/or send written comments to be considered in the City's review of the project. The earliest possible date that the City will make a decision on the project is March 7, 2002. Therefore, please contact me or send your written comments no later than that date.

On February 14, 2002, the Development Review Committee (composed of the City's professional staff) will review the project for compliance with the City's Community Development Code. Following that review, the Planning Director will make a decision to either approve or deny the application. As a nearby property owner, you will receive a copy of the Development Order that describes the Planning Director's decision on the project. Should you be dissatisfied with the City's decision, you have the right to appeal the decision to the Community Development Board. Please be aware that the appeal must be filed with the City within seven days of the date of the Development Order.

Thank you for your interest in the City of Clearwater's development review process. Please do not hesitate to contact me at 727-562-4558 should you have any questions.

Sincerely,

  
Mark T. Parry  
Lead Planner

S:\Planning Department\CD B\Standard Flex\Pending Cases\3 - Up for the Next DRC\Devon 193 Mariani\Devon 193 Notification Letter.doc

BRIAN J. AUNGST, MAYOR-COMMISSIONER  
ED HART, VICE MAYOR-COMMISSIONER  
HOYT HAMILTON, COMMISSIONER

WHITNEY GRAY, COMMISSIONER  
BILL JOHNSON, COMMISSIONER



"EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EMPLOYER"

# PRIVATE DOCK

Application # \_\_\_\_\_

(OFFICIAL USE ONLY)

MHW  
MLW  
BOTTOM

Profile View

ENG. SCALE: 1" = 30'

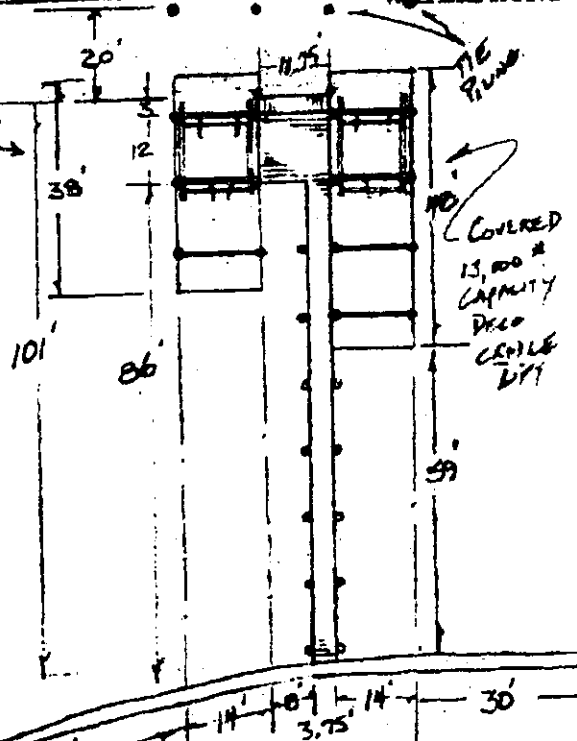
NEW SQUARE FEET 498.75  
TOTAL SQUARE FEET 498.75  
WATERWAY WIDTH 570'  
WATERFRONT WIDTH 120'

*Bulkhead*  
*UPLOD*



LOT 31  
DEVON DR  
CLEARWATER BEACH

COVERED  
1,000 #  
DECK CRANE  
LIFT



SHORELINE

The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner

Right Owner

Signature

*[Signature]* *Alvin Blum*  
Municipality Approval

Signature

Water and Navigation Approval



# CITY OF CLEARWATER

## PLANNING DEPARTMENT

POST OFFICE BOX 4748, CLEARWATER, FLORIDA 33758-4748

MUNICIPAL SERVICES BUILDING, 100 SOUTH MYRTLE AVENUE, CLEARWATER, FLORIDA 33756

TELEPHONE (727) 562-4567 FAX (727) 562-4576

LONG RANGE PLANNING  
DEVELOPMENT REVIEW  
HOUSING DIVISION  
NEIGHBORHOOD SERVICES

January 22, 2002

Mr. Timothy Johnson  
Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.  
911 Chestnut Street  
Clearwater, FL 33756

**FILE**

RE: Application for Flexible Standard approval (~~FLS 02-01-03~~) to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 86 feet (71 percent of the width of the property) under the provisions of Section 3-601.

Dear Mr. Johnson:

The Planning staff has reviewed your Flexible Standard application to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 86 feet (71 percent of the width of the property) at 193 Devon Drive. After a preliminary review of the submitted documents, staff has determined that the application is complete. The application includes a 498 square foot dock and two 144 square foot covered boatlifts. Please indicate the distance from each side property line the proposed dock and boatlifts will be prior to the DRC review.

The application has been entered into the Department's filing system and assigned the case number: FLS 02-01-03.

The Development Review Committee will review the application for sufficiency on February 14, 2002 in the Planning Department conference room - Room 216 - on the second floor of the municipal service building, 100 South Myrtle Avenue in Clearwater. Please call Amy Ruscher at 562.4579 no earlier than one week prior to the meeting date for the approximate time that your case will be reviewed.

You or your client must be present to answer any questions that the committee may have regarding your application.

If you have any questions, please do not hesitate to call me at 727-562-4558.

Sincerely yours,

  
Mark Parry

*S:\Planning Department\CD B\Standard Flex\Pending Cases\3 - Up for the Next DRC\Devon 193 Marian\Devon 193 complete letter.doc*

BRIAN J. AUNGST, MAYOR-COMMISSIONER

ED HART, VICE MAYOR-COMMISSIONER

HOYT HAMILTON, COMMISSIONER

WHITNEY GRAY, COMMISSIONER

BILL JONSON, COMMISSIONER



"EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EMPLOYER"

**FAX MESSAGE  
CITY OF CLEARWATER  
PLANNING DEPARTMENT  
MUNICIPAL SERVICES BUILDING  
100 S MYRTLE AVE.  
P O BOX 4748  
CLEARWATER, FL 33758-4748  
OFFICE PHONE - (727) 562-4567  
FAX PHONE - (727) 562-4576**

TO: Tim Johnson

FAX #: 462.0365

FROM: Mark T. Parry, Planning and Development Services, City of Clearwater

DATE: Friday, February 15, 2002

MESSAGE:

Re: Comment from the February 14<sup>th</sup>, 2002 DRC

**FILE**

**Case:** ~~FLS 02-01-03~~ 193 Devon Drive

**Owner/Applicant:** Mr. Christopher Mariani.

**Representative:** Mr. Timothy Johnson (Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A.).

**Location:** 0.33-acre site is located on the south side of Devon Drive approximately 1,350 feet east of Hamden Drive.

**Atlas Page:** 276A.

**Zoning:** LMDR, Low Medium Density Residential District.

**Request:** Flexible Standard Development approval to increase the length of a permitted dock from 60 feet (50 percent of the width of the property) to 101 feet (84 percent of the width of the property) under the provisions of Section 3-601.

Proposed Use: A 498 square foot dock and one 672 square foot 532 square foot covered boatlifts.

**Presenter:** Mark T. Parry, Planner.

Attendees included:

City Staff: Terry Finch, Mark Parry, Mike Gust, Tom Glenn, Rick Albee, Don Melone, Bob Maran and Bill Morris

Applicant: Tim Johnson, Chris Marian and Skip Ress.

The DRC reviewed these applications with the following comments:

1. Parks and Recreation
  - a) No P&R comment to dock and boat lifts.
2. Stormwater:
  - a) No Comments

3. Traffic engineering:
  - a) No comments.
4. General engineering:
  - a) No comments.
5. Planning:
  - a) The County Staff report indicates that the dock may moved to the east side of the property and would only be required to be 50 in length (dock would have to be 20 feet from the side property line. Clarify prior to the issuance of a DO. The county told the applicant to come to the City first.
  - b) A permit for a house would have to applied and obtained prior to the issuance of a permit for the dock.
  - c) It's not clear how three criteria of the General Applicability (Section 3-913) are met (and must be addressed prior to the issuance of a DO): (b)
  - The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.
  - The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.
  - The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.
6. Solid waste:
  - a) No comments
7. Harbor Master:
  - a) No comments.
8. Land resource:
  - a) No comments
9. Fire:
  - a) No Comments
10. Landscaping:
  - a) No comments
11. Environmental:
  - a) The dock can be shortened to approximately 75 feet and miss the sea grass area. This needs to be addressed prior to the issuance of a DO.
  - b) Application is inconsistent with the information contained in the county report (specifically the length of the dock). This needs to be corrected prior to the issuance of a DO. The county told the applicant to come to the City first.

**NOTES:**

- Revised site plans and applicable criteria to be resubmitted to Staff by July 14, 2002.
- Fax comments and letters of objection to Tim Johnson at 462.0365.
- Applicant submitted a sheet showing surrounding docks and their lengths.
- Applicant submitted photographs showing the proposed style of the lift roofs.
- Bill Morris believes that the proposal is not a navigational hazard, obtrusive and is in keeping with the character of the neighborhood.

**DRAFT CONDITIONS OF DEVELOPMENT ORDER**

- None
-

Should you have any questions, please do not hesitate in contacting me directly at 727.562.4558.

**NUMBER OF PAGES (INCLUDING THIS PAGE): Three (3)**

**C. PROOF OF OWNERSHIP: (Code Section 4-202.A.5)**

- ☐ SUBMIT A COPY OF THE TITLE INSURANCE POLICY, DEED OR AFFIDAVIT ATTESTING TO THE OWNERSHIP OF THE PROPERTY

**D. WRITTEN SUBMITTAL REQUIREMENTS: (Code Section 3-813.A)**

- ☐ Provide complete responses to the six (6) GENERAL APPLICABILITY CRITERIA:

1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density and character of adjacent properties in which it is located  
\_\_\_\_\_  
\_\_\_\_\_
2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof  
\_\_\_\_\_  
\_\_\_\_\_
3. The proposed development will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use  
\_\_\_\_\_  
\_\_\_\_\_
4. The proposed development is designed to minimize traffic congestion  
\_\_\_\_\_  
\_\_\_\_\_
5. The proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.  
\_\_\_\_\_  
\_\_\_\_\_
6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ Address the applicable flexibility criteria for the specific land use as listed in each Zoning District to which the waiver is requested (use separate sheets as necessary):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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