

**BEFORE THE ENVIRONMENTAL PROTECTION COMMISSION OF
HILLSBOROUGH COUNTY**

In re: STEVEN SCOTT STEPHENS,

Petition for Waiver

Case No. 11-EPC-010

**FINAL ORDER ON APPLICATION FOR SECTION 1-2.50 RULE OF THE
ENVIRONMENTAL PROTECTION COMMISSION WAIVER**

BACKGROUND

On November 2, 2011, Steven Scott Stephens (hereinafter "applicant") submitted a waiver request to the Environmental Protection Commission of Hillsborough County (EPC) under section 1-2.50, Rules of the EPC. The applicant requested a waiver of Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority with respect to construction of a boatlift over sovereign submerged lands. This rule requires a setback of ten feet for marine construction activities from the neighbor's riparian lines. Specifically, the applicant requests a reduction of the required ten foot setback to seven feet from the riparian lines on the north side of his property.

The applicant requests a waiver of the above rule section for the dock construction based on a hardship and asserts the underlying purpose of the rule is still achieved by the three foot reduction.

FINDINGS OF FACT

1. The applicant owns property at [protected address] in Hillsborough County which was purchased in April of 2009. The property includes a seawall waterfront measuring 45 feet on a waterway known as Coquimba Channel.

2. In seeking to avail himself of the riparian rights to use the waterfront, the applicant began planning a dock and boatlift shortly after buying the property. He originally sought to erect a single boat lift adjacent to the dock that existed at the seawall. The lift would have extended to a point within eight feet of the riparian line on the north and the neighbors to the north declined to consent to that setback encroachment.

3. The applicant accordingly formulated a plan, at expense in excess of \$20,000, to build a new dock and boatlift combination that would not require the consent of the neighbors to the north, but would instead comply with all building requirements and limits, including the setback to the north. The design did encroach into the setback to the south, but the neighbors to the south provided consent.

4. The EPC Executive Director granted a permit based on the plans, as did the City of Tampa.

5. The approved plans called for the dock to be built 23 feet from the property line with a boat lift 13 feet in width, thus complying with the setback requirement. For unknown reasons, the dock construction extended within approximately 9.7 feet of the riparian line on the north side of the applicant's property.

6. In addition, the concave shape of the seawall results in a narrowing of riparian lines for all properties, such that the applicant believes the outermost piling of the boat lift as built could be as close as 8.5 feet to the riparian line.

7. The neighbor to the north has declined to consent to an amendment to the permit to allow the as-built dock and boat lift to remain in place, but rather has indicated that he desires the contractor to physically move the boatlift.

8. The EPC received the waiver application on November 2, 2011 from the applicant. The applicant requested a waiver of Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority. This rule requires a ten foot setback from the neighbor's riparian lines for marine construction activities.

9. Pursuant to section 1-2.50(3), Rules of the EPC, the applicant published notice of the waiver application and the November 17, 2011 public hearing in the Tampa Tribune on November 7, 2011.

10. Pursuant to section 1-2.50(4), the Commissioners considered the application, the Executive Director's recommendation, and the comments of the public at a regular meeting of the EPC on November 17, 2011.

11. The applicant stated that he qualifies for the waiver request because the relocation of the pilings will otherwise cause a economic and legal hardship. A reduced setback to seven feet will also meet the underlying purpose of the rule. The economic and legal hardship of either relocating the dock pilings 0.3 feet or re-establishing the riparian lines is substantial. The underlying purpose of the rule is met because the distance is minor, a setback reduced to seven feet, and the dock will not interfere with the neighbors' use and enjoyment of their riparian rights.

12. The area in question is sovereign submerged lands owned by the Tampa Port Authority.

CONCLUSIONS OF LAW

13. This variance is requested pursuant to section 1-2.50, Rules of the EPC, which states as follows:

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to Chapter 84-446, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation summarizing the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

14. The applicant has demonstrated that re-location of the boat lift would result in an economic and legal hardship if he were not granted a waiver in this specific situation.

15. The applicant has demonstrated the underlying purpose of the rule will be achieved.

16. The applicant has demonstrated that the provision from which the waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. and that the waiver does not need to be considered by the DEP or the SWFWMD pursuant to Chapter 120, F.S.

17. This waiver applies only to the applicant's subject dock and reduces the setback to seven feet on the north side of the property.

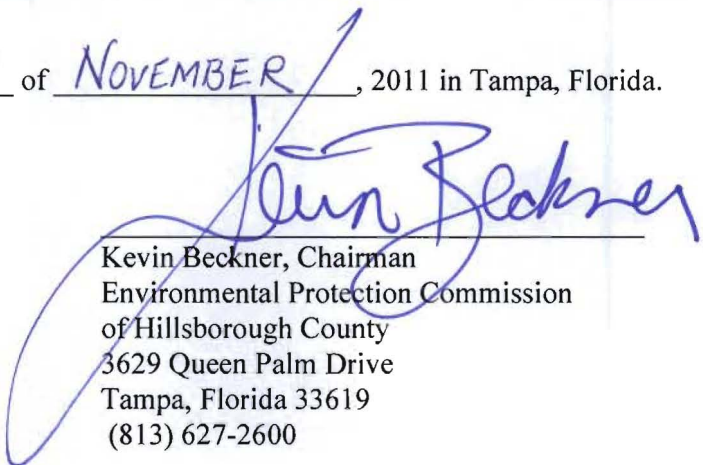
ORDER

18. For the foregoing reasons, the requested waiver from Subsection V.A.3.a.(2), Submerged Lands Management Rules of the Tampa Port Authority requiring a setback of ten feet is granted and the setback be reduced to seven feet on the north side of the applicant's property.

NOTICE OF RIGHTS

The EPC's proposed action on this waiver shall become final unless a timely appeal via writ of *certiorari* to the 13th Judicial Circuit is filed with any appropriate fee. A copy of the appeal must be provided to the EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619.

DONE AND ORDERED this 17th of NOVEMBER, 2011 in Tampa, Florida.



Kevin Beckner, Chairman
Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Drive
Tampa, Florida 33619
(813) 627-2600