Town of Miami Lakes
Memorandum

To: **Honorable Mayor and Councilmembers**

From: **Honorable Councilmember Steven Herzberg**

Subject: **Authorization to Initiate Legal Action Challenging the Constitutionality of Florida Statute §552.36**

Date: **June 17, 2025**

Recommendation:

"*The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay" [except when it involves mine rock blasting]*. Art. I, § 21, Florida Constitution.

Since the creation of the Miami Lakes Blasting Advisory Board (BAB) in 2018, the Town has led the most sustained and comprehensive efforts in the state to address the impacts of lime rock mining. We have done everything the system tells you to do — we have lobbied in Tallahassee, engaged with regional partners, educated the public, and attempted dialogue with the mining industry. Those efforts have been met with delay, denial, and deflection.

Even after a rare public legislative workshop in 2024 forced the industry to speak on record, their response was clear: they acknowledge damage occurs but refuse to alter their practices. Their position remains that such damage is merely "cosmetic" despite visible impacts to homes, schools, and our Town's own public infrastructure. The right to be free from physical intrusion and property damage is a core tenet of tort law, rooted in *centuries* of common law principles.[1]

Blasting reform has been our local State Representative Tom Fabricio's number one issue, and he has filed bills for five consecutive sessions. Despite his persistent efforts and mounting public support, not a single bill has received a full hearing. While no single current legislator is responsible for the existence of this law—in fact, the majority of lawmakers we've met with over the years have supported some form of reform—the collective failure of the Legislature to correct it over time has left communities like ours without recourse. Therefore, Miami Lakes is left without a path forward under current law.

The current statutory regime did not emerge by accident—it evolved through a deliberate series of steps designed to insulate the rock mine industry from accountability. Years ago, residents pursued relief through the courts, including

[1] *See* "Sic utere tuo ut alienum non laedas" — a foundational maxim of common law, meaning 'use your own property so as not to harm another's.' This principle underpins tort liability doctrines including nuisance and strict liability. "[E]very person should so use his own property as not to injure that of another…" *Jones v. Trawick*, 75 So. 2d 785, 787 (Fla. 1954); *See also Thorpe v. Rutland & B.R. Co.*, 27 Vt. 140, 149–50 (1854) (affirming the state's duty to prevent one party from unreasonably injuring another under the maxim *sic utere tuo ut alienum non laedas*; noting that inherently dangerous industries may be required to bear the cost of ensuring safety to others).

class action litigation that resulted in settlement. In response, the State first stripped local control of rock mining activities. But even that wasn't enough. The Legislature then enacted § 552.36, a statute that deceptively frames itself as a remedy for property owners—while creating a procedural gauntlet with compressed limitations periods, evidentiary burdens, and forum restrictions that functionally bar access to justice. It is not reform. It is retreat from the fundamental rights of Florida's citizens.

Florida Statute §552.36 blocks our Town from taking action in court. The statute requires that all claims relating to property damage due to blasting[2] be handled solely through the Division of Administrative Hearings, thereby blocking access to traditional courts and jury trials, even for governmental entities seeking redress for their own infrastructure and financial harm. It forces all property-related blasting claims into an administrative system that offers no jury, no real discovery, and an unreasonably restrictive statute of limitations. All of this creates no accountability, even when our own public infrastructure is being damaged.

Fla. Stat. §552.36 provides unprecedented protection for the mining industry that no other industry in Florida enjoys,— not utilities, not telecom, not aviation, not maritime, and not agriculture. This is not regulation — it is a shield which I do not believe is permissible under Florida or Federal law. (*See e.g. Kluger v. White*, 281 So. 2d 1 (Fla. 1973); *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016)).

At this point, the Town must evaluate whether Florida Statute §552.36 itself is constitutionally valid. As a former member of the BAB, a member of this Council, and a member of the Florida Bar it is my position that it is not. This legal review and subsequent litigation would be carried out by the Town, for the Town, to assert its own constitutional rights and damages. It would not be filed on behalf of individual residents or third parties. However, should the statute be struck down, the outcome could restore broader judicial access statewide.

This direction would reflect Miami Lakes' longstanding leadership on this issue. The proposed legal review and subsequent claims should focus on whether Florida Statutes § 552.36 unconstitutionally deprives the Town of access to judicial redress and trial by jury in violation of both Article I, Section 21 (Access to Courts) and Article I, Section 22 (Right to Jury Trial) of the Florida Constitution. The Town should also examine whether the statute impermissibly infringes upon its procedural due process rights under the Fourteenth Amendment to the United States Constitution by mandating that traditional common law tort claims be adjudicated exclusively in an executive agency rather than in a constitutionally constituted court of law.[3]

Additionally, this review should also consider whether § 552.36 violates the structural separation of powers principles inherent in both the Florida and United States Constitutions. Specifically, Article V, Section 1 of the Florida Constitution vests the judicial power solely in Florida's courts—not in executive agencies like DOAH. While certain disputes may appropriately be resolved through administrative proceedings, the adjudication of common-law tort claims for property damage has always been a core judicial function for *hundreds* of years. By displacing the courts from that role and assigning it exclusively to an executive agency, § 552.36 represents legislative overreach into the domain of the judiciary and raises serious structural concerns under both the Florida and United States Constitutions.

The scheme created by Florida Statutes § 552.36 undermines the constitutional framework that protects both the independence of the judiciary and the integrity of civil justice[4]. It sets a dangerous precedent: if left unchallenged, it sends a clear message that any politically connected industry can seek insulation from judicial oversight by legislating its way out of accountability. This is not regulation, it is an *exclusion*.

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[2] Mine blasting is a strict liability common law tort claim. *See Poole v. Lowell Dunn Co.,* 573 So. 2d 51, 52 (Fla. 3d DCA 1990); *Morse v. Hendry Corp.*, 200 So. 2d 816, 817 (Fla. 2d DCA 1967)

[3] DOAH is part of the executive branch, with judges who lack constitutional independence and operate under executive oversight. While limited discovery is permitted, it is subject to broad discretionary control and lacks the robust procedural safeguards and adversarial protections of Article V courts.

[4] "Under the express separation of powers provision in our state constitution, 'the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power,' and 'the legislature cannot, short of constitutional amendment, reallocate the balance of power expressly delineated in the constitution among the three coequal branches.'" *Bush v. Schiavo*, 885 So. 2d 321, 330 (Fla. 2004)(citing *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 262 (Fla. 1991)).

The statute strips an entire class of claims from the courts, denies the right to a jury[5], and substitutes a limited administrative process controlled by the executive branch. That is not merely the Legislature writing policy. It is the Legislature dismantling the judiciary's role in our system of government for a matter that affects the town directly and is financially harming our town.

The *separation of powers* is not a formality—it is the *foundation* of our country, instilled by our Founding Fathers to ensure liberty through institutional checks. As Alexander Hamilton warned in *Federalist No. 78*, "there is no liberty if the power of judging be not separated from the legislative and executive powers." It is this very structure—the independence of the judiciary—that has allowed the American experiment to endure war, corruption, gridlock, and demagoguery.

Lastly, the Town may also consider whether Fla. Stat. § 552.36 unconstitutionally interferes with its ability to assert tort claims in federal court under diversity jurisdiction. By assigning exclusive jurisdiction over blasting claims to a state administrative agency, the statute effectively precludes access to federal forums guaranteed by Article III of the U.S. Constitution and 28 U.S.C. § 1332. Such a restriction implicates the Supremacy Clause and raises serious structural concerns about a state's ability to override the federal judiciary's authority, particularly where blasting operations are owned by out-of-state entities.

This is not just about cosmetic cracks. Blasting impacts, our sidewalks, buildings, canal banks, underground infrastructure and much more. The Town bears direct costs for repairs, inspection, and mitigation, all without the ability to seek proper judicial redress. That financial burden is shifted to taxpayers while the responsible parties are shielded. As a property owner with property damage caused by nearby blasting, the Town is not asserting the rights of third parties but instead seeks to vindicate its own constitutional protections and institutional interests. As a municipal corporation and direct property owner, the Town's damages are neither speculative nor derivative.

It is important to be clear that this is not an attempt to shut down the mining industry. The Town has always recognized the essential role lime rock mining plays in Florida's economy and infrastructure. We are not calling for operations to stop. We are calling for equal protection under the law for the accountability of actions of the industry.

This means the ability to protect our public infrastructure, maintain the integrity of our tax base, and access the courts when damage occurs, just as any other property owner would against any other industry. It means a system that is fair, not one that places communities like ours at a structural disadvantage by depriving us of fundamental rights under the two Constitutions that this council took an oath to protect.

After years of failed reforms, the Town must now consider the only remaining path available under law, one grounded in its own rights, guided by legal advice, and pursued responsibly. The Town should pursue declaratory and injunctive relief to restore judicial access to seek its own property damage remedies. This action is not symbolic. This is not another resolution. This is a directive. If the Town has legal standing — and I believe we do — then we must act. The Town Council has previously voted unanimously to support potential litigation addressing the impacts of blasting. This NBI reaffirms and formalizes that direction, marking the Town's official initiation of this rightful constitutional challenge.

No more waiting for others to fix it.

Fiscal Impact:
Funding Source for Implementation:
Timeline for Implementation: 60-days
Guiding Principles: 1, 2, 3, 4, 6, 12, 13, 14,
Goals: G2, G3, G4, G5, G6, G8, G9,
Objectives: O1, O2, O3, O4,

[5] "Questions as to the right to a jury trial should be resolved, if at all possible, in favor of the party seeking the jury trial, for that right is fundamentally guaranteed by the U.S. and Florida Constitutions." *Hollywood, Inc. v. City of Hollywood*, 321 So. 2d 65, 71 (Fla. 1975).