

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Mar 29 2023

SC Court of Appeals

Appeal from the Administrative Law Court
Honorable Milton G. Kimpson, Administrative Law Judge

Appellate Case No.: 2023-000441

Stephen Mueller, Appellant,

v.

South Carolina Department of Health and Environmental Control, and
Carla Varn DuPre and Jasper B. Varn, III, Respondents.

**RESPONDENTS' CARLA VARN DUPRE AND
JASPER v. VARN, III, APPENDIX TO MOTION TO DISMISS PETITION FOR APPEAL**

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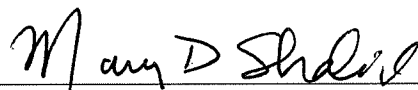
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Carla Varn DuPre and Jasper B.
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Carla V. DuPre and Jasper B. Varn, III

March 29, 2023
Charleston, South Carolina

Mary D. Shahid

From: steve mueller <stevem44442002@yahoo.com>
Sent: Monday, March 6, 2023 11:13 AM
To: Anthony Goldman; Bradley Churdar; Shahid, Mary D.; Matt Slagel; Clara McIlhenny
Subject: Re: Docket No.21-ALJ-070-144-CC
Attachments: motion denied.pdf

{EXTERNAL EMAIL}

Folks, See attached.

Matt, As stated on the Special Permit #13 you have the right to revoke the permit if it is now in violation of the Codes. Do you officially refuse to reconsider your decision?

Regards, Steve

On Wednesday, February 22, 2023, 10:29:46 AM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Anthony, Please submit to judge Kimpson as part of my motion, these current images of the berm exhibiting NO characteristics of a "primary dune". I believe if the case is re-opened at this time the decision will be different. Thanks, Steve

CC Brad and Mary

On Tuesday, December 13, 2022, 11:10:18 AM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Folks, My Response to Response. steve

Mary D. Shahid

From: steve mueller <stevem44442002@yahoo.com>
Sent: Friday, March 10, 2023 7:19 PM
To: Matt Slagel; Blair Williams; Bradley Churdar; Shahid, Mary D.; Clara McIlhenny; Anthony Goldman
Subject: 410 Palmetto Blvd.
Attachments: qPublic.net - Colleton County, SC - Pictometry Imagery 356-16-00-054.pdf; IMG_3537.pdf; IMG_3531.jpeg

{EXTERNAL EMAIL}

Matt,

You examined the emergency berm at 410 Palmetto Blvd. and, with the advice (allegedly) of Bill Eiser, and apparently just by eyeballing it, said it had become a primary dune. Of course Bill would not admit to identifying the dune under oath because he knew it was not a dune. He just needed it to be a dune for his client. He testified "I've got....you know, basically...you can't say that forever an emergency berm can never become a sand dune. It's just that...yes a transition can occur." And "Ah if you look at it you might say...“yeah that looks like a primary dune”. He furthermore testified that the berm was placed at the historical position of a primary dune which, if you actually researched it, you would know is not true, and you did not produce any such evidence. It is very concerning that you and two ex-DHEC officials, Bill Eiser and Mary Shahid came to such an erroneous decision. I include here:

1. A picture from 2007, the last one the County has on-line, showing no dune at the location of the berm
2. A picture of the beach 500' from 410. where the dune was to be continuous. You testified that you did not check for 500'and there is zero evidence of a dune at the depicted location.
3. Current picture of 410 showing half of the berm, the fence, and the vegetation gone.

You did at least take a picture of the berm in 2020 and I presume your boss saw it and agreed from one picture that it was a dune without visiting the site. I don't understand why an important organization like DHEC, who's mission is to protect the coastline has no oversight procedure other than bringing in a hired advocate for the applicant. As a result we have a bad decision and a big mess because it never was a dune by definition, has eroded considerably, and will soon be gone completely. The permitted area is clearly on a primary dune (the baseline) and an active beach, ("that seaward of the first line of stable vegetation"). The permit at this time is illegal, but you refuse to fix your mistake. If someone buys that lot and starts excavating the real primary dune, they will end up very unhappy.

Maybe, if you refuse to identify the dune from my pictures or return to the site, Mr. Williams would look at them and let me know what he thinks.

Regards, Steve Mueller

Mary D. Shahid

From: steve mueller <stevem44442002@yahoo.com>
Sent: Monday, March 13, 2023 8:25 PM
To: Matt Slagel; Blair Williams; Bradley Churdar; Shahid, Mary D.; Clara McIlhenny; Anthony Goldman
Subject: Re: 410 Palmetto Blvd.
Attachments: IMG_3548.jpeg; IMG_3546.jpeg

{EXTERNAL EMAIL}

Matt, I also must remind you that on Nov. 20, 2020, in response to your Technical Summary of Review, your associate Bill Eiser stated "The existing vegetated dune on this lot will not be impacted, much less destroyed by the requested work." At this time the entire lot consists of vegetated dune that will be excavated and the septic system is on active beach.

Eiser testified in court that sand was building up at the fence line but as you see the fence has completely fallen seaward, there is no vegetation on the berm and you can see the normal tide line eroding the berm. I continue to request that you review the permit as is your responsibility. Any inaction I will consider as malfeasance. Pictures attached. Best, Steve

On Friday, March 10, 2023, 07:19:34 PM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Matt,

You examined the emergency berm at 410 Palmetto Blvd. and, with the advice (allegedly) of Bill Eiser, and apparently just by eyeballing it, said it had become a primary dune. Of course Bill would not admit to identifying the dune under oath because he knew it was not a dune. He just needed it to be a dune for his client. He testified "I've got...you know, basically...you can't say that forever an emergency berm can never become a sand dune. It's just that...yes a transition can occur." And "Ah if you look at it you might say...“yeah that looks like a primary dune”. He furthermore testified that the berm was placed at the historical position of a primary dune which, if you actually researched it, you would know is not true, and you did not produce any such evidence. It is very concerning that you and two ex-DHEC officials, Bill Eiser and Mary Shahid came to such an erroneous decision. I include here:

1. A picture from 2007, the last one the County has on-line, showing no dune at the location of the berm
2. A picture of the beach 500' from 410. where the dune was to be continuous. You testified that you did not check for 500' and there is zero evidence of a dune at the depicted location.
3. Current picture of 410 showing half of the berm, the fence, and the vegetation gone.

You did at least take a picture of the berm in 2020 and I presume your boss saw it and agreed from one picture that it was a dune without visiting the site. I don't understand why an important organization like DHEC, who's mission is to protect the coastline has no oversight procedure other than bringing in a hired advocate for the applicant. As a result we have a bad decision and a big mess because it never was a dune by definition, has eroded considerably, and will soon be gone completely. The permitted area is clearly on a primary dune (the baseline) and an active beach, ("that seaward of the first line of stable vegetation"). The permit at this time is illegal, but you refuse to fix your mistake. If someone buys that lot and starts excavating the real primary dune, they will end up very unhappy.

Maybe, if you refuse to identify the dune from my pictures or return to the site, Mr. Williams would look at them and let me know what he thinks.

Regards, Steve Mueller

Mary D. Shahid

From: steve mueller <stevem44442002@yahoo.com>
Sent: Tuesday, February 21, 2023 1:29 PM
To: Matt Slagel; Shahid, Mary D.; Bradley Churdar; Blair Williams
Subject: 410 Palmetto Blvd.
Attachments: 22023-1.HEIC; 22023-3.HEIC; 22023-4.HEIC; 22023.HEIC

{EXTERNAL EMAIL}

Matt, I know you regret letting Bill Eiser talk you into flagging this as a primary dune (pictures attached). Bill was your mentor, a paid advocate for the owners, had an agenda, and used his influence on you. You unfortunately listened to him against your better judgement. As depicted on the pictures, in consideration of the definition of a primary dune and as an expert in coastal management, you know this was never a primary dune. Do you and DHEC have any responsibility to correct your error? Steve

Mary D. Shahid

From: steve mueller <stevem44442002@yahoo.com>
Sent: Wednesday, February 22, 2023 10:30 AM
To: Anthony Goldman; Bradley Churdar; Shahid, Mary D.
Subject: Re: Docket No.21-ALJ-070-144-CC
Attachments: 22023-1.HEIC; 22023-3.HEIC; 22023-4.HEIC; 22023.HEIC

{EXTERNAL EMAIL}

Anthony, Please submit to judge Kimpson as part of my motion, these current images of the berm exhibiting NO characteristics of a "primary dune". I believe if the case is re-opened at this time the decision will be different. Thanks, Steve

CC Brad and Mary

On Tuesday, December 13, 2022, 11:10:18 AM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Folks, My Response to Response. steve

Mary D. Shahid

From: steve mueller <stevem44442002@yahoo.com>
Sent: Sunday, February 26, 2023 10:48 AM
To: Churdar, Bradley; Matt Slagel; Shahid, Mary D.; Anthony Goldman; Clara McIlhenny
Subject: Re: 410 Palmetto Blvd.
Attachments: berm 22023.pdf; 22023-3.HEIC; 410 Exhibit Photos.pdf

{EXTERNAL EMAIL}

Matt, Would please, for my records, reply in writing, by letter or e-mail if you summarily refuse to, at my request, re-evaluate the berm at 410 Plametto Blvd. to determine if it is now or ever was a primary dune? As the flags are gone, I would assume that no construction can procede without knowing where the toe of a primary dune is. Would you replace the flags to indicate the current location of the toe of a primary dune in an historic location that is not eroded or escarped? You may want to review when a primary dune was historically at the location you flag. If you do revisit the site, I would like to observe and also suggest that you have other representatives of DHEC/OCRM present instead of Bill Eiser, an advocate for the owners.

As the permit includes the condition that DHEC/OCRM may revoke a permit under certain conditions such as those in 48-39-150 I will be seeking the revocation of the permit by my Motion to reopen the case and if unsuccessful to appeal to a higher Court.

To remind you where the berm is, I attach some current pictures and also a picture from 2007 for historical reference.

Thanks, Steve

On Thursday, February 23, 2023, 08:56:40 AM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Save everyone involved alot of trouble and legal fees. Send Matt back out here with supervision from DHEC, not Bill Eiser and reflag a primary dune.

On Wednesday, February 22, 2023, 08:23:37 PM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Ya OK....Just coincidence that Bill was there advocating for his client instead of anyone else from DHEC and an obviously bad decision was made....Is that your position? There is going to be more than disparaging remarks coming if you guys don't revisit this.
On Wednesday, February 22, 2023, 04:52:32 PM EST, Churdar, Bradley <churdabd@dhec.sc.gov> wrote:

Mr. Mueller, I understand that you plainly disagree with Matt Slagel's conclusion regarding the "primary oceanfront sand dune" issue, but in your two emails below as well as your February 6, 2023 email, you imply that Mr. Slagel's professional judgment was improperly influenced by Bill Eiser, because they are "buddies". Such disparaging remarks about Matt's professionalism are inappropriate and unhelpful.

Bradley D. Churdar

Associate General Counsel

SC Department of Health and Environmental Control

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From: steve mueller <stevem44442002@yahoo.com>
Sent: Wednesday, February 22, 2023 10:20 AM
To: Slagel, Matt <slagelmj@dhec.sc.gov>; mshahid@nexsenpruet.com <mshahid@nexsenpruet.com>; Churdar, Bradley <churdabd@dhec.sc.gov>; Williams, Blair <WILLIABN@dhec.sc.gov>
Subject: Re: 410 Palmetto Blvd.

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Matt, Here's a picture you submitted in Court last year of the berm, already not exhibiting characteristics of a primary dune. Your buddy testified that sand was building up on the dune and around the fence. I objected, and Bill said sarcastically "you should know, you put up the fence" Well the berm up to and including the fence is gone at this time, despite no significant storms, just normal erosion. It is now obvious that this emergency berm was just that and was never a primary dune. I regret to need to keep talking about this, but If you give me a reasonable explanation for why you, as THE beachfront expert, with no oversight except Bill Eiser's, mis-identified this feature I will drop it. Otherwise I will continue to hold DHEC accountable. I continue to await your response. Steve
On Tuesday, February 21, 2023, 01:28:55 PM EST, steve mueller <stevem44442002@yahoo.com> wrote:

Matt, I know you regret letting Bill Eiser talk you into flagging this as a primary dune (pictures attached). Bill was your mentor, a paid advocate for the owners, had an agenda, and used his influence on you. You unfortunately listened to him against your better judgement. As depicted on the pictures, in consideration of the definition of a primary dune and as an expert in coastal management, you know this was never a primary dune. Do you and DHEC have any responsibility to correct your error? Steve