

RECEIVED

Oct 05 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

Docket No.: 21-ALJ-07-0310-CC
Appellate Case No.: 2022-001641

Robert Klomparens and Whitney Klomparens,.....Respondents,

v.

South Carolina Department of Health and Environmental Control,.....Appellant.

RECORD ON APPEAL

Bradley D. Churdar
Associate General Counsel
South Carolina Department of
Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
Attorney for Appellant SCDHEC

Mary D. Shahid Esquire
Maynard Nexsen PC
P.O. Box 486
Charleston, SC 29402
Attorney for the Respondents

INDEX

VOLUME 1

ORDERS

1. DHEC’s Proposed Final Order, August 15, 2022..... 001
2. Klomparens’ Proposed Final Order and Decision, August 15, 2022..... 015
3. Final Order of the ALC, September 6, 2022..... 032
4. Order Denying DHEC’s Motion for Reconsideration, October 25, 2022 043

PLEADINGS

5. Klomparens’ Request for Final Review Conference, June 23, 2021 045
6. Denial of Klomparens’ Request for Final Review Conference, July 16, 2021..... 058
7. Klomparens’ Request for Contested Case, August 12, 2021 060
8. DHEC’s Motion for Reconsideration, September 26, 2022 068
9. Klomparens’ Return to DHEC’s Motion for Reconsideration, October 4, 2022..... 088
10. DHEC’s Reply to Klomparens’ Return to DHEC’s Motion for Reconsideration,
October 10, 2022..... 095
11. DHEC’s Notice of Appeal, November 21, 2022 109

TRANSCRIPTS

12. Transcript of Hearing, April 25, 2022 126

VOLUME 2

13. Admitted Exhibits, April 25, 2022..... 349

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Klomparens and Whitney
Klomparens,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No. 21-ALJ-0-0310-CC

PROPOSED ORDER OF RESPONDENT
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL

Appearances

For Petitioners: Mary D. Shahid, Esq.
Angelica M. Colwell, Esq.
For Respondent DHEC: Bradley D. Churdar, Esq.
Sallie P. Phelan, Esq.
Court Reporter Amanda Creel Godfrey

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “the Court”) pursuant to a Request for Contested Case challenging the decision of Respondent South Carolina Department of Health and Environmental Control (“DHEC” or “the Department”) and its Office of Ocean and Coastal Resource Management (“OCRM”) denying the Petitioners’ critical area permit application to construct a private recreational dock .

Petitioners, who own the property at 706 Creekside Drive, Mt. Pleasant, S.C., applied for a Critical Area Permit to construct a private, recreational dock. The project proposed a 4’ x 198’ walkway with handrails and a 10’ x 12’ pierhead with a dual davit boatlift.

The Department denied their application on June 11, 2021, because it determined the Klomparens' property is not waterfront within the regulatory definition in S.C. Code Regs. 30-1(D)(54).

Petitioners contest the Department's decision not to issue a critical area permit for their property. Specifically, they contend that they are eligible for a dock since their extended upland property lines are generally perpendicular to the shoreline of the creek where their proposed dock would be located and that these extended upland property lines reach a navigable watercourse within a thousand feet of the marsh critical line.

ISSUE FOR DETERMINATION

Whether 706 Creekside Drive is waterfront property per the definition in S.C. Code Regs. 30-1(D)(54)?

FACTUAL BACKGROUND

The Creekside neighborhood in Mt. Pleasant was developed in the late 1960s (several years before the Coastal Tidelands and Wetlands Act was enacted), with its first house constructed in 1969. (Trial Tr. 19:19).

The development's original surveyor (Mr. Lewis Seabrook's father) platted the properties so that each lot had a marsh corridor to build a dock. (Trial Tr. 74:22-25). Mr. Seabrook conceded on cross examination that the purpose for platting the property boundaries this way was "to enhance the value of the property," not to protect the tidelands. (Trial Tr. 133:13-18).

Although the Klomparens' plat shows that their lot includes tidelands, neither they nor their predecessors in title at 706 Creekside Drive ever quieted title to the public trust tidelands depicted on their plat as required by S.C. Code Ann. § 48-39-220 to prove ownership. (Trial Tr. 42:6-15).

No evidence was presented at trial demonstrating that the Klomprens' owned the tidelands as depicted in the plat.

The Klomprens bought their home located at 706 Creekside Drive in 2014 and moved into it in 2016. (Trial Tr. 16:7-14). Because they were experiencing erosion issues, the Klomprens subsequently constructed a bulkhead outside the critical area along the marsh side of their property. (Trial Tr. 31:10-23 and Trial Tr. 34:9 thru 35:16).

On September 9, 2020, the Department received a permit application to construct a private, recreational dock at 706 Creekside Drive, Mt. Pleasant. The Department determined that the application was administratively complete, and the permit was placed on a 15-day public notice. However, after the Department's Technical Review, OCRM concluded the site did not meet the regulatory definition of waterfront property. Specifically, the Department determined that a generally shore-perpendicular straight-line extension of the Klomprens' two property boundary lines did not reach a navigable watercourse within 1,000 feet of the marsh critical area line. (Trial Tr. 157:6-15).

APPLICABLE STATUTORY AND REGULATORY STANDARDS

The sole regulatory standard in this case is the definition of waterfront property per S.C. Code Regs. 30-1(D)(54):

Waterfront property – “For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.”¹

¹ The approved-dock-master-plan basis for determining whether the Klomprens' property is “waterfront” is not an issue before this Court as there was no dock master plan. Mr. Lewis Seabrook conceded this fact during his cross examination. (Trial Tr. 126:12 to 126:15). Likewise, Mr. Blair Williams testified that “there is no approved dock master plan” for Creekside. (Trial Tr. 190:13 to 190:15).

SUMMARY OF TESTIMONY

Petitioner Robert Klomparens

Robert Klomparens is the recorded deed holder for the residential property at 706 Creekside Drive. (Trial Tr. 18:19-22). He and his wife purchased the property in 2014 and did extensive renovations before moving there in 2016. (Trial Tr. 16:9-17).

Before purchasing the property, Mr. Klomparens reviewed the plat and deed and concluded that a dock corridor was attached to the property as a purported deeded marsh plat. (Trial Tr. 18:4-7; Trial Tr. 19:8-11).

Mr. Klomparens also testified that he built a bulkhead at the back of the property to prevent erosion and maintain his yard. (Trial Tr. 31:11-32:6). He stated that the bulkhead was necessary because the high tides would get so far into his yard that it became unusable several times a month. (Trial Tr. 31:17-18). To fully demonstrate how far the water encroached into his yard, Mr. Klomparens presented several pictures² of himself in his boat in the tidelands adjacent to his bulkhead to show “[t]hat there's navigable water behind the house.” (Trial Tr. 25:13-17). The navigable water he testified to was the tidelands that flood daily with each high tide cycle. (Trial Tr. 26:17-24).

Mr. Klomparens acknowledged that at his deposition, he testified that his bulkhead separating the marsh from his yard was the shoreline. (Trial Tr. 45:5-12).

Mr. Klomparens testified that he had never attempted to quiet title to prove ownership of the marsh beyond that shoreline. (Trial Tr. 42:7-10). Nor, according to his knowledge, had any previous owner quieted title. (Trial Tr. 42:12-15).

² Petitioner's Exhibit Number 23 A, B, C, and D.

Regarding the pictures he submitted into evidence (Petitioner's Exhibit Number 23 A, B, C, and D), Mr. Klomprens testified that he launches his boat in the tidelands adjacent to his bulkhead so that he can “head[] to the tributary that's out [t]here at the point of the neighboring dock that shows in 23-B.” (Trial Tr. 26:13-16). He testified that at a “normal” high tide (five to five and a half foot tide), he can launch his boat into the tidelands adjacent to his bulkhead and navigate over to the tributary where he has applied for a dock permit. (Trial Tr. 26:17-24).

Lewis Seabrook

Mr. Seabrook is a licensed professional land surveyor in South Carolina. (Trial Tr. 58:10-11). He has been in the profession for forty-three years and is generally familiar with the process of delineating critical areas. (Trial Tr. 59:2-60:21). Further, he is familiar with the neighborhood because his father designed, surveyed, and platted the original subdivision in the 1960s. (Trial Tr. 62:10-15).

Mr. Seabrook testified that the property, as originally developed by his father, likely did not consider the development’s effect on the critical area. (Trial Tr. 133:18). Instead, the land was platted to maximize the return on investment for development purposes by allowing everyone to have a dock. (Trial Tr. 133:8-17).

Mr. Seabrook testified that he believes the property in question meets the regulatory definition for waterfront property. (Trial Tr. 76:24-77:2). However, he admitted during cross-examination that “from a microscopic view of the subdivision ... if you were to extend [the Klomprens property lines³ as shown on Respondent’s Exhibit 7] in the same bearing going out, then *you could say that that was generally perpendicular to that portion of the property line -- of*

³ Mr. Seabrook contests that “the end of the property line[s]” at the Klomprens’ lot continue in the same direction. (Trial Tr. 130:6-8).

the -- of the shoreline” (the shoreline being the bulkhead Mr. Klomprens built). (Trial Tr. 129:22 to 130:17) (Emphasis added).

Mr. Seabrook conceded during cross-examination that the lines of the Klomprens’ purported dock corridor run parallel to their bulkheaded shoreline. (Trial Tr. 132:4-14; Tr. Tr. 142:7-11).

Mr. Seabrook acknowledged that the Klomprens’ purported claim of marsh ownership as represented by their plat does not extend to the creek where they have applied for a dock. (Trial Tr. 135:8-17). He further conceded that the property owner on the other side of this creek in Cooper Estates (TMS number 5170800098) also has a purported claim of marsh ownership based on his (Mr. Seabrook’s) father’s surveys prepared for Cooper Estates several decades ago. (Trial Tr. 134:12-21). The surveys that Mr. Seabrook’s father prepared for both subdivisions (Cooper Estates and Creekside) and the Charleston County GIS aerial map show the same purported marsh ownership representations that are at issue in this case. The survey for the lot on the opposite side of the creek (TMS number 5170800098) purports to show marsh ownership on both sides of the creek, thus blocking the Klomprens’ purported marsh ownership from reaching the creek. (Trial Tr. 135:8-17). Mr. Seabrook testified that although he was the Klomprens’ agent, he never sought permission for his clients to build their dock across their Cooper Estates neighbors’ purportedly privately-owned marsh. (Trial Tr. 135:18 to 136:7).

Jacqueline Adams

Ms. Jacqueline Adams has been employed by DHEC for about nine years and has worked for OCRM since 2019. (Trial Tr. 144:14-18). Before starting with DHEC, she worked for Florida’s Department of Environmental Health and Department of Environmental Protection. (Trial Tr. 145:12-16). She is an OCRM project manager and works with Mr. Blair Williams (OCRM’s

Critical Area Permitting Section Manager) to make permitting decisions in critical areas. (Trial Tr. 145:23-146:3). In total, Ms. Adams has reviewed and processed roughly 500 permit applications, of which roughly 400 were for private recreational docks. (Trial Tr. 147:12-18). Specifically, Ms. Adams and Mr. Williams worked together when making this permitting decision. (Trial Tr. 146:12-21).

Ms. Adams testified that her application of the regulatory definition of “waterfront property” in this permitting decision is consistent with how she has applied this regulatory definition in the “several hundred” other permit applications she has reviewed. (Trial Tr. 165:22-166:3). She stated, “[t]he [Klomprens’] property lines that are... taking an immediate turn, are... not how the department extends the property lines.” (Trial 166:21-23). In fact, she testified that based on her own permitting experience and training as an OCRM project manager as well as based on her review of old permits and files, she has never seen the definition of “waterfront property” applied in the way suggested by the Petitioners. (Trial Tr. 169:1-14). Instead, she explained, the property lines that run out to the tributary following the turn are “marsh lines... not the straight-line extensions of the property lines.” (Trial Tr. 167:3-4).

Ms. Adams testified that the bulkhead “is the shoreline where the water is coming up” and the other area in the marsh “is not the shoreline for this property.” (Trial Tr. 170:6-15).

Blair Williams

Mr. Williams manages the Critical Area Program in the eight coastal counties for DHEC OCRM. (Trial Tr. 186: 18-19). He has been in this role for the last fourteen years, overseeing “several thousand” permit decisions. (Trial Tr. 186:5-7; 188:18-19). In this role, he consults with the staff on certain projects. (Trial Tr. 187:3-5). Specific to this case, Ms. Adams raised the Klomprens’ permit request to his attention, and he assisted in deciding the property is not

waterfront within the regulatory definition. (Trial Tr. 187:5-14). Mr. Williams testified that the Department has consistently applied the regulatory definition of “waterfront property” the same way (including the Klomprens’ permitting decision) since he became the Section Manager for the Critical Area Program in 2008. (Trial Tr. 188:20-25).

Mr. Williams explained how the Department determines whether or not a permit applicant’s property is waterfront by breaking the regulatory definition into separate parts. First, he testified that the shoreline is “where [the] upland meets the saline marsh.” (Trial Tr. 193:6 to 193:8). Regarding the Klomprens’ permit application, Mr. Williams testified that the shoreline was at the location of the bulkhead, because that is where their upland interfaces with the critical area. (Trial Tr. 191:8 to 193:8).

Next, Mr. Williams testified to what a straight-line extension of generally shore perpendicular, upland property lines means. (Trial Tr. 193:10-195:24). He explained that the *perpendicular* lines are the ones that originate at the street and run the length of the property going toward the shoreline. (Trial Tr. 203:17-204:22). Further, because the Klomprens have never attempted to establish marsh-ownership, the platted lines have “no relevance” when making a permit decision. (Trial Tr. 197:3-17).

Mr. Williams testified about the long-term, cumulative impacts to the critical area that would likely result if the “waterfront property” definition was applied as the Klomprens argue and assert. (Trial Tr. 198:24 to 199:16). Specifically, Mr. Williams testified that such a regulatory interpretation would potentially “lead to overcrowding of tributaries, cordoning off of marsh – marshes and shorelines that are currently -- tributary-type shorelines that are currently accessible by the public. So, it has a potential to affect many things, but probably first top -- a few things I

think off the top of my head is use, access, and navigation by the public.” (Trial Tr. 198:24 to 199:16).

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the parties’ burden of persuasion, I make the following Findings of Fact by a preponderance of the evidence:

General

1. Petitioners filed a Request for Contested Case hearing with the Court on or about September 9, 2020.
2. Notice of the time, date, place, and subject matter of the hearing was given to the Petitioners and Respondent. All parties were present at the scheduled hearing which commenced on April 25, 2022, and were represented by counsel.
3. All parties timely filed Prehearing Statements identifying the issues before the Court.
4. All parties participated in full discovery.
5. At issue in this contested case is Respondent DHEC’s decision to deny Petitioner’s permit application (OCRM HP2-M0K2-7NE9T) to construct a private recreational dock at 706 Creekside Drive, Charleston County, South Carolina.

Straight Line Extension of Upland Property Lines

6. Petitioners’ contention that the property pin marking the back of the property is in the upland so as to justify a straight-line extension from that pin running parallel to the bulkhead is without merit.
7. Lewis Seabrook testified that the property pin on the eastern side of the Klomprens' property boundary that is shared with 710 Creekside is in the upland by about 8 inches, which creates

an upland property line. (Trial Tr. 92:1-4). However, Mr. Williams and Ms. Adams testified that the Department has consistently considered similar lines to be “marsh lines” not upland property markers. (Trial Tr. 166:25 to 167:16)

8. Next, both upland property lines must reach the navigable creek within 1,000 feet. In the present case, the western property line “maybe hits a smaller tributary within a thousand feet.” (Trial Tr. 193:18-21). However, because the eastern property line runs into upland and does not reach a navigable creek, the Klomprens’ lot fails to satisfy the regulatory definition for “waterfront property.” (Trial Tr. 194:8-16).
9. Thus, Petitioner’s argument that the dock should be allowed in a southwest direction running parallel to their bulkheaded shoreline is without merit. (Trial Tr. 194:18).

Shore Perpendicular to the Upland Site

10. For purposes of applying the regulatory definition of “waterfront property,” I find that the Klomprens’ bulkhead is their shoreline because as Mr. Williams testified, this is where their upland interfaces with the critical area. (Trial Tr. 191:8 to 193:8). Mr. Klomprens presented several pictures⁴ of himself in his boat in the tidelands adjacent to his bulkhead to show “[t]hat there's navigable water behind the house.” (Trial Tr. 25:13-17). The navigable water he testified to was the tidelands that flood daily with each high tide cycle up to his bulkhead. (Trial Tr. 26:17-24). Furthermore, I find persuasive Mr. Klomprens’ admission during cross examination that at his deposition, he agreed that his bulkhead separating the marsh from his yard was the shoreline. (Trial Tr. 45:5-12).
11. I find that the marsh lines that Petitioner argues should be considered extended property lines are generally shore parallel (to the bulkhead), not shore perpendicular.

⁴ Petitioner's Exhibit Number 23 A, B, C, and D.

12. I find that the extended property lines Ms. Adams and Mr. Williams testified to are in accord with the regulatory definition of "waterfront property" (S.C. Code Regs. 30-1(D)(54)) and these extended property lines are both generally shore perpendicular. However, since both of these upland property line extensions do not reach a navigable watercourse within 1000' of the marsh critical line, I find that the Klomprens' property is not waterfront.

CONCLUSIONS OF LAW

General

The ALC has jurisdiction over this case pursuant to the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-600(A) (Supp. 2018); 44-1-60 (Supp. 2018); and 48-39-10 et seq. (2008 and Supp. 2018).

The Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. *See* S.C. Code Ann. § 1-23-600(B) (Supp. 2018); *Brown v S.C. Dep't of Health and Env'tl. Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002); *see also Marlboro Park Hosp. v. S.C. Dep't of Health and Env'tl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (Ct. App. 2004). Therefore, as the trier of fact, the Court may give testimony the weight that he or she determines it deserves. *Florence Cnty. Dep't of Soc. Servs. V. Ward*, 310 S.C. 69, 72-73 425 S.E.2d 61, 63 (Ct. App. 1992).

While the ALC acts as the fact finder, the Supreme Court has found the ALC must give the same deference to the Department's interpretation of its statutes and regulations that a court in the judicial branch would. *Kiawah Dev. Partners II v. SCDHEC*, 411 S.C. 16, 766 S.E.2d 707 (2014).

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.

Id. at 34-35, 766 S.E.2d at 718 (internal quotation marks and citation omitted). The Supreme Court further stated that “[t]he construction given to a statute by those charged with the duty of exercising it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons.” *Kiawah*, 766 S.E.2d at 718 (quoting *United States v. Moore*, 95 U.S. 760, 763, 24 L. Ed. 588, 13 Ct. Cl. 542 (1877)). The rationale for the rule is that “[t]he officers concerned are usually able men, and masters of the subject. Not unfrequently they are the draftsmen of the laws they are . . . called upon to interpret.” *Kiawah*, 766 S.E.2d at 718 (quoting *Moore*, 95 U.S. at 763).

The proper standard of proof to be applied by the ALC is a “preponderance of the evidence.” *Anonymous (M-156-90) v. State Bd. Of Med. Exam'rs*, 329 S.C. 371, 375-76, 496 S.E.2d 17, 19 (1998); *Nat'l Health Corp. v. Dep't of Health and Env'tl. Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). Furthermore, the burden of proof is upon the party asserting the affirmative of an issue. *Leventis v. Dep't of Health and Env'tl. Control*, 340 S.C. 118, 530 S.E.2d 643 (Ct. App. 2000). Therefore, Petitioners bear the burden of proving the issuance of the Permit was not proper under the statutory and regulatory framework. *See* SCALC Rule 29(B) (“In matters involving the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders, the agency shall have the burden of proof.”).

Regulatory Requirements

Petitioners contend that the Department failed to appropriately evaluate the project in accordance with Regulation 30-1(D)(54). I disagree. The term “waterfront property” is defined in the regulations as follows:

“For purposes of these regulations, waterfront property will generally be defined as upland sites where **a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000’ of the marsh critical line.** Waterfront property

may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.”

S.C. Code Reg. 30-1(D)(54) (2011) (emphasis added). Thus, in determining whether the Klomprens’ property is “waterfront”, this Court must consider whether the property is an upland site where “a straight-line extension of both, generally, shore perpendicular, upland property lines reaches a navigable watercourse within 1000’ of the marsh critical line.” S.C. Code Reg. 30-1(D)(54).

Other than agreement that 706 Creekside Drive is an upland site, the Petitioners and the Respondent disagree about how to interpret and apply this regulatory definition.

The South Carolina Supreme Court recently recognized in *Charleston County Assessor v. U. Ventures, LLC* that “[w]e have previously ‘held in many cases that where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons.’” *Id.* (quoting *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950)); *see also Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 140, 694 S.E.2d 525, 526 (2010). Thus, to be entitled to deference, the agency’s construction of the statute must have been uniform for many years to lead to the conclusion that the General Assembly has acquiesced to their construction.

In the case before me, Mr. Williams testified that since he became the Section Manager of critical area permitting in 2008, “the Department [has] consistently applied the waterfront property definition when making permitting decisions.” (Trial Tr. 188:20 to 188:25). Thus, I find that the Department has uniformly applied the regulatory definition of waterfront property for many years; that such application is correct and that such application is reasonable and is not arbitrary or capricious.

Even if this Court was convinced, as Petitioners argue, that the shoreline is along the edge of the creek and not along the edge of the bulkhead, the Klomprens' critical area permit was nonetheless properly denied because their neighbors across the creek in Cooper Estates have the same purported claim of marsh ownership as the Klomprens (according to the Charleston County GIS map admitted into evidence). (Trial Tr. 134:12-21). When a permit applicant seeks to build a dock across someone else's property, S.C. Code Regs. 30-2(B)(4) requires the applicant to provide OCRM with an "instrument under which the applicant claims ... permission from the owner of the property to carry out the proposal." Mr. Seabrook admitted that, as the Klomprens' agent, he never sought permission for his clients to build their dock across their Cooper Estates neighbors purportedly privately-owned marsh. (Trial Tr. 134:12-21).

CONCLUSION

Upon hearing all of the testimony and reviewing the evidence, I find that the Department's denial of permit application HP2-M0K2-7NE9T is supported by the evidence and complies with the applicable regulatory and statutory requirements. IT IS, THEREFORE, ORDERED, that the Department's decision to deny the permit is hereby, AFFIRMED.

AND IT IS SO ORDERED.

The Honorable Deborah Brooks Durden
Judge, S.C. Administrative Law Court

August 15, 2022
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert Klomparens and Whitney Klomparens,

Petitioners,

vs.

The South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No.: 21-ALJ-07-0310-CC

Petitioners' Proposed Final Order and
Decision

APPEARANCES: For the Petitioner: Mary D. Shahid, Esq., Angelica Colwell, Esq.
For the Respondent: Bradley D. Churdar, Esq.

This matter is before the South Carolina Administrative Law Court (ALC or Court) following a hearing on April 25, 2022. This contested case arose from Petitioners' application for a dock permit at their residence located at 706 Creekside Drive (706 Creekside), Mt. Pleasant, South Carolina, extending to a tributary of Shem Creek. Petitioners' property is described as "on and adjacent" to the tributary.¹ Respondent South Carolina Department of Health and Environmental Control (Department) denied Petitioners' permit application by letter dated June 11, 2021. Petitioners' invoked the administrative procedures set forth in S. C. Code Ann. Sec. 44-1-60, and the Board of Health and Environmental Control denied Petitioners' request for final review on July 16, 2021. Petitioners initiated this contested case on August 13, 2021.

¹ Petitioners' Exhibit 2, The Department's Technical Summary of Review.

BACKGROUND

Petitioners purchased 706 Creekside in 2014. The legal description of the property, as set forth in Petitioners' deed,² is a two-part description:

All that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying and being in CREEKSIDE PARK SUBDIVISION in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being known and designated as LOT NO. 15 BLOCK C on a plat of said Subdivision by E. M. Seabrook, Jr., Inc., dated July 31, 1968 and duly recorded in the Office of the RMC for Charleston County, SC, in Plat Book X at Page 129. Said lot having such size, shape, metes bounds, and dimensions as are shown on said plat, with reference thereto being craved for a more complete and full description.

AND

All of Grantor's right, title, and interest in and to the Marshland lying between Lot 15, Block C, and Shem Creek between the North, South, and West lines of said lot as projected to said Creek.

A recorded survey and other exhibits depicting 706 Creekside show the lot adjacent to a cul de sac with boundary lines extending from the road to the rear of the parcel and then turning toward a tributary of Shem Creek.³ Charleston County's depictions of lots in Creekside Park Subdivision and across the tributary in the subdivision Cooper Estates indicate similar lot configurations.⁴ The reference in the property description to "Marshland lying between Lot 15, Block C, and Shem Creek" is a reference to the area within the boundary lines of 706 Creekside extending to the tributary of Shem Creek.

Petitioners have a title interest in the area between their boundary lines, described as marshlands above, but such interest is inferior to the interest of the State of South Carolina.

The public trust doctrine provides that lands below the high water mark are presumptively owned by the State and held in trust for the benefit of the public, and it has been a vital part of the jurisprudence of South Carolina and many other states for centuries, even pre-dating the beginning of our republic. The doctrine rightfully

² Petitioners' Exhibit 5.

³ Petitioners' Exhibit 11, 7.

⁴ Petitioners' Exhibits 8, 9, 10, 11, and 12. Transcript p. 80, l. 17-18.

forbids the State from permitting activity substantially impairing the public interest in marine life, water quality or public access.

[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A)⁵ must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed.

Hoyler v. State, 428 S. C. 279, 291, 833 S. E. 2d 845, 852 (2019).

Clear title to or ownership of marshland is not a necessary pre-requisite to obtaining authorization to construct a dock. “Tidelands” are defined as “critical area” in accordance with S.C. Code Reg. 30-1(D)(15). The Department is charged with the responsibility of “providing for the orderly and beneficial use of the critical areas”⁶ which includes reviewing applications for private docks submitted by waterfront property owners. Property below mean high water (MHW) is public trust property. Private property does exist above mean high water (MHW), and Petitioners own those areas above MHW that are within the boundary lines of 706 Creekside.

ISSUES

Both Petitioners and the Department rely on the regulatory definition of waterfront property, S. C. Code Reg. 30-1(D)(54) in asserting their positions.

For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000’ of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

⁵ This statute sets out the requirements for claiming ownership of lands between the mean high water mark and mean low water mark, also described as “tidelands.” Such action must be initiated against the State. Subsequent case law established the need for a sovereign grant from the King of England, the Lord Proprietors, or the State of South Carolina. Such grant must include information supporting a conclusion that the sovereign clearly intended to convey the marsh. See Query v. Burgess, 371 S. C. 407, 639 S. E. 2d 455 (Ct. App. 2006), Hobonny Club, Inc. v. McEachern, 272 S. C. 392, 252 S. E. 2d 133 (1979).

⁶ S. C. Code Ann. Sec. 48-39-80(A).

Petitioners are not claiming that the property lines which extend to the tributary of Shem Creek are approved “designated corridors.” Petitioners are claiming that 706 Creekside is waterfront in accordance with the regulatory definition. The Department denied Petitioners’ permit application based on the conclusion that the 706 Creekside does not satisfy the regulatory definition of waterfront property.⁷

FINDINGS OF FACT

The Department’s witnesses, in rejecting Petitioners’ arguments that 706 Creekside Drive is waterfront, noted that their opinions would be different if Petitioners demonstrated ownership of the marshland located between the boundary lines as these lines extend to the tributary of Shem Creek. When asked what difference it would make, Blair Williams, Critical Area Permitting Manager, testified that “[i]f there was a King’s Grant with an attorney’s opinion, that they actually physically own the marsh, and basically they are proving marsh ownership, then those extended property lines would essentially become a continuation of property that they own, they have rights to.”⁸

Petitioners’ permit drawings, submitted in support of the application, include a “typical profile” plan that demonstrates one section and a portion of the adjoining section of property located between Petitioners’ boundary lines extending to the tributary are located above MHW. The described sections of property are depicted under the first two pilings proposed for the dock walkway. These drawings are consistent with the testimony of Petitioners’ surveyor, Lewis Seabrook.

A: To satisfy my own curiosity, I wanted to see where the mean high water line fell relative to the critical line.

Q: Okay, what did you discover?

⁷ June 11, 2021 letter from Jacqueline Adams, Critical Area Project Manager, to Robert Klomprens. Petitioners’ Exhibit 3.

⁸ Tr. p. 211, l. 25; p. 212 l. 1-6.

- A: I discovered that the mean high water line is well out away from the house from the –from the critical line.
- Q: Okay, is it – is it in proximity to the critical line or is it - or is it not –
- A: Several feet farther out.⁹

In addition to the survey data reflected on the permit drawings, Petitioners provided a survey of 706 Creekside Drive prepared by Mr. Seabrook and recorded with the Town of Mt. Pleasant depicting elevations of 6.9’, 6.8’, and 6.6’ in the marshland located between the extension of the boundary lines.¹⁰ Mr. Seabrook testified that MHW is “closer to 5.4.”¹¹ The survey confirms elevations at the inception point of the boundaries of 706 Creekside Drive oriented toward Shem Creek. This information is relevant to the discussion below of the applicable regulatory standard. But it is also significant given the Department’s statements that their position in this matter would be impacted by evidence of ownership of property between the boundary lines extending to the tributary.

The Court’s consideration of the individual requirements of the regulatory definition in evaluating the parties’ positions is set forth below.

Straight Line Extensions

The definition of waterfront property requires that “straight line extensions” reach navigable water. The Department argues that straight line extensions of 706 Creekside’s property lines result in reaching the existing dock north of 706 Creekside, rather than reaching the tributary to Shem Creek. Petitioners argue that the Department cannot disregard the turn, or bend in the property lines in application of the regulatory definition. This argument is supported by the findings and analysis of Petitioners’ professional land surveyor, Lewis Seabrook.

⁹ Tr. p.107, l. 11-23.

¹⁰ Petitioners’ Exhibits 12 and 13.

¹¹ Tr. p. 101, l. 18-19.

In accordance with the statutory definition of a professional land surveyor, a surveyor “locates, relocates, establishes, reestablishes, lays out, or retraces any **property line** or **boundary** of any tract of land or any road, right-of-way, easement, alignment, or elevation of any fixed works embraced with the practice of land surveying, or makes any survey for the subdivision of land.” S. C. Code Ann. Sec. 40-22-20(26)(a) (emphasis added). “All property lines shall be defined by bearings and horizontal distances and plotted to the scale indicated on the plat.” S. C. Code Reg. 49-460(A)(3)(n). Petitioners’ surveyor Seabrook, who testified as an expert in the identification and location of boundary lines, relied on the initial subdivision plat that his father prepared in the late 1960s to locate the boundary lines of 706 Creekside.¹² He located the position of the boundaries of Petitioners’ property, consisting of two platted lines extending from the cul de sac on either side of 706 Creekside and turning toward the tributary, to tie into the middle line of the tributary - the boundary between the Creekside development and the Cooper Estates development. When asked about the precise location and angle of the “turn” or “extension” of the boundary lines, Seabrook noted reliance on the “bearings on the property lines, plural, from which angles can be calculated to show the change in direction.” These bearings are provided on the original subdivision plat which Seabrook reviewed.¹³ Seabrook’s reliance on the original subdivision plat is also noted as a reference in the survey he created for 706 Creekside that was approved by the Town of Mt. Pleasant and Charleston County and is recorded with the Register of Deeds for Charleston County at Book S20 Page 0147.¹⁴

Seabrook noted there were two property boundary lines and each line consisted of two segments.¹⁵ The location of the lines as they turn to run perpendicular to the creek is based on the

¹² Tr. p. 70, l. 21 – p. 74, l. 3.

¹³ Tr. p. 76, l. 8-14.

¹⁴ Petitioners’ Exhibit 12.

¹⁵ Petitioners’ Exhibit 11.

existence of an iron pipe and iron rebar, discussed more fully below, that are clearly visible on the property.

The regulatory definition refers to “straight line extensions” which, as explained by the Department’s witness Blair Williams, is an exercise of extending property lines into the marsh where such lines do not normally exist. That exercise is unnecessary as relates to 706 Creekside, as the lines extending into the marsh are already platted in the original subdivision plat and are depicted as boundary lines in aerial images that reflect Charleston County real property information.¹⁶ Petitioners have no discretion in creating straight line extensions as those lines extending to the creek were determined with the recording of the original subdivision plat. Seabrook testified that from the cul de sac to the creek, the northern and southern boundary were each one continuous line.¹⁷

Generally Shore Perpendicular

Seabrook noted that the lines are “generally shore perpendicular” based on the segments extending to the creek.¹⁸ The recorded plat prepared by Seabrook indicates straight line extensions that are clearly (not just generally) perpendicular to the center line of the creek.¹⁹ The plat also depicts the critical line at 706 Creekside, certified by the Department on June 25, 2020.

The Department concluded that the alignment of the upland property lines of 706 Creekside is shore parallel, not perpendicular, and concluded that reliance “on specific plotted points landward of the critical line to extend to the tributary does not make the property waterfront, nor does it fall in line with current regulations.”²⁰ The Department’s witness Blair Williams testified

¹⁶ Tr. p. 73, l. 2-19.

¹⁷ Tr. p. 72, l. 24-25; p. 73 l. 1.

¹⁸ Tr. p. 79, l. 3-4.

¹⁹ Petitioners’ Exhibit 12.

²⁰ Petitioners’ Exhibit 2, The Department’s Technical Summary of Review.

“... permitting authority is delineated by the certified critical area line, and that certified critical area line runs along where the property owner’s upland meets the saline marsh vegetation.”²¹ In response to a question from the Court, Williams confirmed that the shoreline and the critical line are “generally the same.” Based on the location of the bulkhead along 706 Creekside, Williams concluded that the property lines were shore parallel and, if extended, would reach the adjoining dock north of 706 Creekside Drive rather than the tributary of Shem Creek. “This is the shoreline, where the gentleman placed the bulkhead.”²² Williams also rejected the platted alignment of the property. “Because of the presumption of State ownership, the point to where those lines turn and go out into the marsh has no relevance to the Department as making a determination of whether its, one, waterfront property or if it’s dock eligible.”²³

Mr. Williams’ testimony does not take into account the higher elevations of the property located within the boundary lines that extend to the tributary. Petitioners provided the Court with elevation data reflected on a detail of the recorded plat – the areas seaward of the iron rebar and iron pipe that were located. The elevations noted range between 6.8’ and 6.9’ and are above mean high water elevation and, as such, constitute private property of the Petitioners.²⁴

The Department’s conclusion that the shoreline, as dictated by the critical line, is parallel to 706 Creekside fails to account for the fact that the shoreline is also the critical area running the length and width of Petitioners’ property out to the tributary. “Shoreline” is an undefined term in the Department’s regulations. “When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.” Strother v. Lexington County Recreation Comm’n, 332 S. C. 54, 505 S. E. 2d 117 (1998). “Dictionaries can be helpful tools

²¹ Tr. p. 191, l. 14 – p. 193, l. 2.

²² Tr. p. 207, l. 8-10.

²³ Tr. p. 197, l. 3-7.

²⁴ Tr. p. 101, 12-21.

during the initial stages of legal research for the purpose of defining statutory terms.” Heilker v. Zoning Bd. Of Appeals for City of Beaufort, 346 S. C. 401, 552 S. E. 2d 42 (Ct. App. 2001).

“Shoreline” is defined as “the line where a body of water and the shore meet” and as “the strip of land along the shoreline.”²⁵ The line depicted on Seabrook’s plat, where water and shore meet, is not limited to the shoreline along the northern section of 706 Creekside but also exists along the western section of the property, where marsh and critical area are depicted between the property lines as they extend toward the center line of the tributary. Images of the surrounding properties and docks confirm that the area where Petitioners propose to locate their dock is considered shoreline by neighboring property owners.

The Department’s conclusions are influenced by the orientation of Petitioners’ property without taking into account that the orientation shifts with the bend in the property lines. The definition of waterfront property does not hinge on the orientation of property. Instead, it is dependent upon whether the property lines are “shore perpendicular.” In rejecting Petitioners’ permit application the Department is, effectively, re-writing the definition to exclude any bend, turn, or angle in property lines. Yet, the bends and turns are part of the property lines. “Metes and bounds are the boundary lines of land, **with their terminal points and angles.**”²⁶

Upland Property Lines

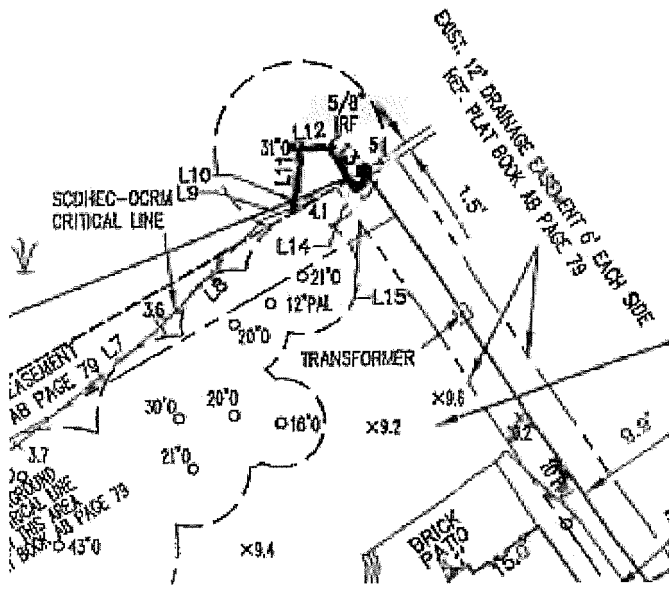
Petitioners’ boundary lines originate at the cul de sac²⁷, in upland. If the focus is on the segment of the boundary line perpendicular to the tributary, Seabrook observed an iron rebar (IRF) which indicated the change of position, or angle of turn, of the northwestern boundary line and the

²⁵ Merriam Webster Dictionary.

²⁶ Black’s Law Dictionary as cited in 29 S. C. Jurisprudence Sec. 8 (emphasis added).

²⁷ Petitioners’ Exhibit 11.

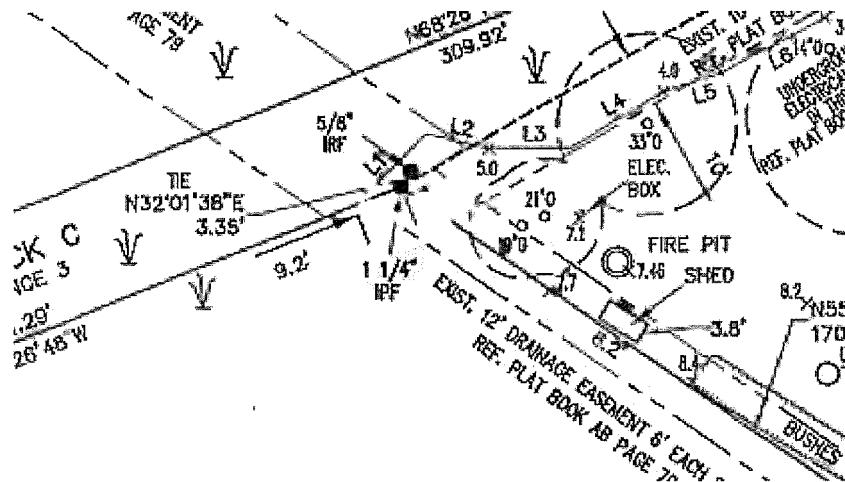
iron pipe (IPF) indicating the inception point for the turn of the southwestern boundary line.²⁸ The recorded plat prepared by Seabrook depicts the northwestern “5/8” IRF” on the critical line, or as described by Seabrook, “in the upland.”²⁹ According to Seabrook, the plat he prepared showed the iron rebar at the edge of highland/critical area, but not in the critical area.³⁰ The iron pipe marking the turn of the southwestern boundary line is shown on the plat as outside, or upland of, the critical line:



²⁸ Rebar and Pipe are artificial monuments as opposed to natural boundaries. “When determining boundaries, resort is generally had first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to courses and distances.” *Bodiford v. Spanish Oak Farms*, 317 S. C. 539, 455 S. E.2d 194 (Ct. App. 1995).

²⁹ Transcript p. 86 l. 8.

³⁰ Transcript p. 85 l. 21-24.



Seabrook sent his survey crew back to 706 Creekside to re-create the critical line by placing flags on the ground to demonstrate the location of the certified line as reflected on the approved and recorded plat.³¹ His re-creation efforts were to locate, on the ground, the certified critical line reflected in the permit applications drawings and the recorded plat. These efforts were in response to questions raised by the Department’s counsel during Seabrook’s deposition related to whether a location on the edge of high ground or the edge of the critical line would be considered upland. Each point of the certified line was established by the placement of a blue flag. Seabrook inspected the flagging of the re-established points and observed that the point described as the “apex between L14 and L15” was “way up into the property and is clearly not critical area.”³² The actual location of the apex between L14 and L15 is significant as it determines the distance between these points on the critical line and the IRF. Seabrook provided a photograph showing the “on the ground” location of the “apex between L14 and L15” and noted the location of the blue flag behind four small boards shown in the photo in the upland.³³ Seabrook noted that the elevation in this area

³¹ Petitioners’ Exhibit 12.

³² Tr. p. 90, l. 1-6.

³³ Petitioner’s Exhibit 15-A. The location of the flag was also described as the “third stake closest to the house” by the Court and the witness. Tr. p. 102, l. 9.

was 7', "almost a foot and a half – well, actually, a little over a foot and a half above and inland from the mean high water line."³⁴

Based on the surveying team's ability to flag all other points of the critical line, and based on visual confirmation that those flagged areas did represent the certified critical line reflected in the approved and recorded plat, Seabrook concluded that the only point of corruption was the data identifying the apex of L14 and L15, which aligned with the 5/8" IRF. That corruption of a single data point occurs infrequently, but could be explained by interference of the "wavelength of the laser light."³⁵ Petitioners are not contesting the validity of the critical line as depicted on the recorded plat, but in response to the Department's scrutiny as to whether the "edge of the critical line" or the "edge of upland" was sufficient, Seabrook believed it important to confirm, in the field, the distance between the 5/8" IRF and the apex of lines 14-15. Having previously observed the location of the 5/8" IRF and IPF on Petitioners' property, the proximity of the IRF to the critical line as shown on the recorded plat was inconsistent with Seabrook's observations.³⁶ Seabrook had inspected the property on at least four occasions. He had located the IRF and IPF. He and his crew had flagged the critical line for approval and certification by OCRM. He testified as to considerable experience in identifying and establishing critical lines, having done so at least "a couple hundred times."³⁷

Seabrook provided photographs reflecting the location of the 5/8" IRF, staked with a pink flag to contrast with the blue flags marking the critical line. Based on his visual observation of the site and as is reflected in the photos, the location of the pink flag is in upland, at an 8 inch offset

³⁴ Tr. p. 101, l. 16-22.

³⁵ Tr. p. 99, l. 16-17.

³⁶ Tr, p. 69, l. 20-25.

³⁷ Tr. p. 60, l. 24.

from the critical line flags.³⁸ Seabrook had inspected the property as recently as a week prior to the hearing and testified that based upon his observations both pins marking the turn or angle of the property line were located in upland.³⁹

ANALYSIS

This Court is persuaded by the testimony of a licensed, professional land surveyor identifying and describing the Petitioners' boundary lines. "As an expert in land surveying, Smith was qualified to review the relevant deeds and plats, and to render his opinion as to the location of the boundary." Bodiford v. Spanish Oak Farms, Inc., 317 S. C. 539, 455 S. E. 2d 194 (Ct. App. 1995). "A surveyor is a competent witness in actions concerning the boundary line and may testify as to lines, corners, or monuments." Richardson v. Register, 227 S. C. 81, 87 S. E. 2d 40 (Ct. App. 1995). Seabrook identified property lines that include an angle, identified by artificial monuments, resulting in boundary lines perpendicular to the tributary. The Department's position fails to take into account a boundary line with a turn in direction, as with the property boundaries of 706 Creekside.

Critical to this analysis is whether the segments of Petitioners' boundary lines that extend to the center line of the tributary are upland lines. Arguably, these lines are upland as they originate on the cul de sac. But, the Petitioners have demonstrated by substantial evidence that the rebar and iron pipe originate in upland. The initial evidence of the location of the rebar (the northwestern boundary line) is the recorded plat which includes the certified critical line. The 5/8" IRF is at the apex of L14 and L15 and is, as described by Seabrook, on the edge of the line. When ground-truthed, the rebar is 8" upland from the critical line. The 5/8" IPF where the southwestern line segment makes its turn is upland from the critical line in the vicinity of L1 and L2.

³⁸ Tr. p. 114, l. 19-24. See Petitioners' Exhibit 15 J.

³⁹ Tr. p. 78, l. 18.

The Department's witnesses discounted that portion of the property lines that extend to and terminate in the tributary, having stopped their analysis before the lines turned toward the creek. The only testimony regarding the location of the IRF and IPF was from Blair Williams who testified that he inspected the property on one occasion and was "not confident that both originate in the upland."⁴⁰

CONCLUSIONS OF LAW

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. § 1-23-600(A) (Supp. 2021), S.C. Code Ann. § 44-1-60 (2018 & Supp. 2021); S.C. Code Ann. § 48-1-10 *et seq.* (2008 & Supp. 2021). In contested case hearings, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. S.C. Code Ann. § 1-23-600(B) (Supp. 2021); Brown v. S.C. Dep't of Health and Env'tl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002). The weight and credibility assigned to evidence presented at the hearing on the merits in a contested case hearing is within the providence of the trier of fact. South Carolina Cable Television Ass'n v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Therefore, as the trier of fact, the Court may give testimony the weight she determines it deserves. Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct App. 1992). Nevertheless, while the ALC acts as the fact finder, due consideration is given to the experience, technical competence, and specialized knowledge of the agency and its staff in evaluating the evidence. S.C. Code Ann. § 1-23-330(4) (2005 & Supp. 2021).

Moreover, as with judicial courts, the ALC must give deference to the Department's interpretation of its statutes and regulations. The "deference doctrine properly stated provides that

⁴⁰ Tr. p. 213, l. 8-9.

where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.” Kiawah Development Partners II v. S.C. Dep’t of Health and Env’tl. Control, 411 S.C. 16, 766 S.E.2d 707, 718 (2014), citing Chevron USA, Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

Finally, the standard of proof in cases before the ALC is the preponderance of the evidence. Sierra Club v. S.C. Dep’t of Health and Env’tl. Control, 426 S.C. 236, 257, 826 S.E.2d 595, 607 (2019) citing S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2019). In contested cases, the party asserting the affirmative of an issue has the burden of proof. *Id.* Therefore, Robert and Whitney Klomprens, as Petitioners, bear the burden of proving, by the preponderance of the evidence, that the Department misapplied its regulatory definition of waterfront property in denying Petitioners’ permit application.

Petitioners’ expert provided uncontested opinions regarding the location and extent of the property lines. The Department gave no consideration to that portion of Petitioners’ boundary lines that turned toward the tributary. The Department determined, incorrectly, that Petitioners’ property lines were shore-parallel rather than shore-perpendicular. The Department’s definition of waterfront property is clear, not confusing. But in applying the definition the Department erred in its lack of recognition of the validity of the angle or turn in the property lines. This does not amount to an interpretation by the Department, which may be entitled to deference. Instead, it is a result of a flawed legal conclusion wherein the Department simply cut each boundary line in half and only considered the upper half of each line in its evaluation without accounting for the lower half – the extension into the tributary.

The preponderance of the evidence provided, in the form of the recorded plat prepared by Petitioners' surveyor, indicates that the angle or point of turn of the southwestern boundary line (the one closest to the house) is clearly depicted landward or upland of the critical line. The angle or turn of the northwestern boundary line, the line closest to the neighboring dock, is as described by Lewis Seabrook initially located on the edge of the critical line. Mr. Seabrook's efforts at ground-truthing the location of the 5/8th inch IRF placed it eight inches landward of the critical line. Importantly, Petitioners and their surveyor were not challenging the platted critical line, as their efforts were simply to re-create it using the points depicted in the recorded plat. The discovery that a single location was corrupted, and well upland of the critical area, does not invalidate the critical line but is only intended to demonstrate the actual location of the 5/8th inch IRF. The Department provided no evidence to refute the efforts of Petitioner's surveyor to establish the location of the boundary markers except for Mr. Williams' testimony that he was not confident as to the whether location of the artificial monuments was upland. This Court concludes that 706 Creekside is waterfront as it satisfies the regulatory definition applied by the Department.

IT IS THEREFORE ORDERED that this matter is remanded to the Department for further evaluation of the permit application submitted by Petitioners for sufficiency with the Department's regulations related to the design, location and size of the proposed dock. Such evaluation is necessary as the Department's initial evaluation ended with its erroneous determination that 706 Creekside Drive does not qualify for a dock.

_____, 2022
Columbia, South Carolina

Deborah Brooks Durden, Judge
S. C. Administrative Law Court

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert Klomparens and Whitney Klomparens,

Docket No. 21-ALJ-07-0310-CC

Petitioners,

v.

FINAL ORDER

South Carolina Department of Health and
Environmental Control,

Respondent.

APPEARANCES: For Petitioners: Mary D. Shahid, Esquire
Angelica Colwell, Esquire

For Respondent: Bradley D. Churdar, Esquire
Sallie P. Phelan, Esquire

This matter is before the South Carolina Administrative Law Court (ALC or Court) following a hearing on April 25, 2022. This contested case arose from the application of Robert and Whitney Klomparens (Petitioners) for a dock permit at their residence located at 706 Creekside Drive (706 Creekside), Mt. Pleasant, South Carolina, extending to a tributary of Shem Creek. Petitioners' property is described as "on and adjacent" to the tributary. Respondent South Carolina Department of Health and Environmental Control (Department) denied Petitioners' permit application by letter dated June 11, 2021. Petitioners invoked the administrative procedures set forth in S.C. Code Ann. section 44-1-60 (2018 & Supp. 2021), and the Board of Health and Environmental Control denied Petitioners' request for final review on July 16, 2021. Petitioners initiated this contested case hearing on August 13, 2021.

BACKGROUND

Petitioners purchased 706 Creekside in 2014. The legal description of the property, as set forth in Petitioners' deed, is a two-part description:

All that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying and being in CREEKSIDE PARK SUBDIVISION in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being known and designated as LOT NO. 15, BLOCK C, on a plat of said Subdivision by E.M. Seabrook, Jr., Inc., dated July 31, 1968 and duly recorded in the Office of the RMC for Charleston County, SC, in Plat Book X at Page 129. Said lot having such size, shape, metes, bounds, and dimensions as are shown on said plat, with reference thereto being craved for a more complete and full description.

AND



ALL of Grantor’s right, title, and interest in and to the Marshland lying between Lot 15, Block C, and Shem Creek between the North, South, and West lines of said lot as projected to said Creek.

A recorded survey and other exhibits depicting 706 Creekside show the lot adjacent to the cul de sac with boundary lines extending from the road to the rear of the parcel and then turning toward a tributary of Shem Creek. Charleston County’s depictions of lots in Creekside Park Subdivision and across the tributary in the subdivision Cooper Estates indicate similar lot configurations. The reference in the property description to “Marshland lying between Lot 15, Block C, and Shem Creek” is a reference to the area within the boundary lines of 706 Creekside extending to the tributary of Shem Creek.

Petitioners have a title interest in the area between their boundary lines, described as marshlands above, but such interest is inferior to the interest of the State of South Carolina.

The public trust doctrine provides that lands below the high water mark are presumptively owned by the State and held in trust for the benefit of the public, and it has been a vital part of the jurisprudence of South Carolina and many other states for centuries, even pre-dating the beginning of our republic. The doctrine rightfully forbids the State from permitting activity substantially impairing the public interest in marine life, water quality, or public access.

Hoyler v. State, 428 S.C. 279, 291, 833 S.E.2d 845, 851-52 (Ct. App. 2019).

[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A)¹ must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed.

Id. at 292-93, 852.

Clear title to or ownership of marshland is not a necessary pre-requisite to obtaining authorization to construct a dock. “Tidelands” are defined as “critical area” in accordance with S.C. Code Reg. 30-1(D)(15) (Supp. 2021). The Department is charged with the responsibility of “providing for the orderly and beneficial use of the critical areas.” S.C. Code Ann. § 48-39-80(A) (2008). This includes reviewing applications for private docks submitted by waterfront property owners. § 48-39-80(B)(11) (Supp. 2021). Property below mean high water (MHW) is public trust

¹ This statute sets out the requirements for claiming ownership of lands between the mean high water mark and mean low water mark, also described as “tidelands.” Such action must be initiated against the State. Subsequent case law established the need for a sovereign grant from the King of England, the Lord Proprietors, or the State of South Carolina. Such grant must include information supporting a conclusion that the sovereign clearly intended to convey the marsh. See Query v. Burgess, 371 S.C. 407, 639 S.E.2d 455 (Ct. App. 2006), Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979).

property. Private property does exist above mean high water (MHW), and Petitioners own those areas above MHW that are within the boundary lines of 706 Creekside.

ISSUES

Both Petitioners and the Department rely on the regulatory definition of waterfront property, S.C. Code Reg. 30-1(D)(54) (2011), in asserting their positions.

For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

Petitioners are not claiming that the property lines which extend to the tributary of Shem Creek are approved "designated corridors." Petitioners are claiming that 706 Creekside is waterfront in accordance with the regulatory definition. The Department denied Petitioners' permit application based on the conclusion that 706 Creekside does not satisfy the regulatory definition of waterfront property.

FINDINGS OF FACT

The Department's witnesses, in rejecting Petitioners' arguments that 706 Creekside is waterfront, noted that their opinions would be different if Petitioners demonstrated ownership of the marshland located between the boundary lines as these lines extend to the tributary of Shem Creek. When asked what difference it would make, Blair Williams, Critical Area Permitting Manager, testified that "[i]f there was a King's grant with an attorney's opinion, that they actually physically own the marsh, and basically they are proving marsh ownership, then those extended property lines would essentially become a continuation of property that they own, they have rights to."

Petitioners' permit drawings, submitted in support of the application, include a "typical profile" plan that demonstrates one section and a portion of the adjoining section of property located between Petitioners' boundary lines extending to the tributary are located above MHW. The described sections of property are depicted under the first two pilings proposed for the dock walkway. These drawings are consistent with the testimony of Petitioners' surveyor, Lewis Seabrook.

A: To satisfy my own curiosity, I wanted to see where the mean high water line fell relative to the critical line.

Q: Okay. And what did you discover?

A: I discovered that the mean high water line is well out away from the house from the – from the critical line.

Q: Okay. Is – is it in proximity to the critical line or is it - or is it not –

A: Several feet farther out.

In addition to the survey data reflected on the permit drawings, Petitioners provided a survey of 706 Creekside prepared by Seabrook and recorded with the Town of Mt. Pleasant depicting elevations of 6.9', 6.8' and 6.6' in the marshland located between the extension of the boundary lines. Seabrook testified that mean highwater is "closer to 5.4'." The survey confirms elevations at the inception point of the boundaries of 706 Creekside oriented toward Shem Creek. This information is relevant to the discussion below of the applicable regulatory standard. But it is also significant given the Department's statements that their position in this matter would be impacted by evidence of ownership of property between the boundary lines extending to the tributary.

The Court's findings concerning the individual requirements of the regulatory definition in evaluating the parties' positions are set forth below.

Straight Line Extensions

The definition of waterfront property requires that "straight line extensions" reach navigable water. The Department argues that straight line extensions of 706 Creekside's property lines result in reaching the existing dock north of 706 Creekside, rather than reaching the tributary to Shem Creek. Petitioners argue that the Department cannot disregard the turn, or bend in the property lines in applying the regulatory definition. This argument is supported by the findings and analysis of Petitioners' professional land surveyor, Lewis Seabrook.

In accordance with the statutory definition of a professional land surveyor, a surveyor "locates, relocates, establishes, reestablishes, lays out, or retraces any property line or boundary of any tract of land or any road, right-of-way, easement, alignment, or elevation of any fixed works embraced within the practice of land surveying, or makes any survey for the subdivision of land." S.C. Code Ann. § 40-22-20(26)(a) (Supp. 2021). "All property lines shall be defined by bearings and horizontal distances and plotted to the scale indicated on the plat." S.C. Code Reg. 49-460(A)(2)(n) (2011). Petitioners' surveyor Seabrook, who testified as an expert in the identification and location of boundary lines, relied on the initial subdivision plat that his father prepared in the late 1960s to locate the boundary lines of 706 Creekside. He located the position of the boundaries of Petitioners' property, consisting of two platted lines extending from the cul

de sac on either side of 706 Creekside and turning toward the tributary, to tie into the middle line of the tributary – the boundary between the Creekside development and the Cooper Estates development. When asked about the precise location and angle of the “turn” or “extension” of the boundary lines, Seabrook noted reliance on the “bearings on the property lines, plural, from which angles can be calculated to show the change in direction.” These bearings are provided on the original subdivision plat which Seabrook reviewed. Seabrook’s reliance on the original subdivision plat is also noted as a reference in the survey he created for 706 Creekside that was approved by the Town of Mt. Pleasant and Charleston County and is recorded with the Register of Deeds for Charleston County at Book S20 Page 0147.

Seabrook noted there were two property boundary lines and each line consisted of two segments. The location of the lines as they turn to run perpendicular to the creek is based on the existence of an iron pipe and iron rebar, discussed more fully below, that are clearly visible on the property.

The regulatory definition refers to “straight line extensions” which, as explained by the Department’s witness Blair Williams, is an exercise of extending property lines into the marsh where such lines do not normally exist. That exercise is unnecessary as relates to 706 Creekside, as the lines extending into the marsh are already platted in the original subdivision plat and are depicted as boundary lines in aerial images that reflect Charleston County real property information. Petitioners have no discretion in creating straight line extensions as those lines extending to the creek were determined with the recording of the original subdivision plat. Seabrook testified that from the cul de sac to the creek, the northern and southern boundary were each one continuous line.

Generally Shore Perpendicular

Seabrook noted that the lines are “generally shore perpendicular” based on the segments extending to the creek. The recorded plat prepared by Seabrook indicates straight line extensions that are clearly perpendicular to the center line of the creek. The plat also depicts the critical line at 706 Creekside, certified by the Department on June 25, 2020.

The Department concluded that the alignment of the upland property lines of 706 Creekside is shore parallel, not perpendicular, and concluded that reliance on “specific plotted points landward of the critical line to extend to the tributary does not make the property waterfront, nor does it fall in line with current regulations.” The Department’s witness, Blair Williams,

testified “. . . permitting authority is delineated by the certified critical area line. And that certified critical area line runs along where the property owner’s upland meets saline marsh vegetation.” In response to a question from the Court, Williams confirmed that the shoreline and the critical line are “generally the same.” Based on the location of the bulkhead along 706 Creekside, Williams concluded that the property lines were shore parallel and, if extended, would reach the adjoining dock north of 706 Creekside rather than the tributary of Shem Creek. This conclusion relies upon Williams’ conclusion that the bulkhead placed by Petitioners reflects the shoreline and also rejects the platted alignment of the property. Williams testified, “Because of the presumption of State ownership, the point to where those lines turn and go out in the marsh has no relevance to the Department as making a determination of whether its, one, waterfront property or if it’s dock eligible.”

Williams’ testimony does not take into account the higher elevations of the property located within the boundary lines that extend to the tributary. Petitioners provided the Court with elevation data reflected on a detail of the recorded plat – the areas seaward of the iron rebar and iron pipe that were located. The elevations noted range between 6.8’ and 6.9’ and are above mean high water elevation and, as such, constitute private property of the Petitioners.

The Department’s conclusion that the shoreline, as dictated by the critical line, is parallel to 706 Creekside fails to account for the fact that the shoreline is also the critical area running the length and width of Petitioners’ property out of the tributary. “Shoreline” is an undefined term in the Department’s regulations. “When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.” Strother v. Lexington Cty. Recreation Com’n, 332 S.C. 54, 62, 505 S.E.2d 117, 122 (1998). “Dictionaries can be helpful tools during the initial stages of legal research.” Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 409, 552 S.E.2d 42, 46 (Ct. App. 2001).

“Shoreline” is defined as “the line where a body of water and the shore meet” and as “the strip of land along the shoreline.” Merriam Webster Dictionary. The line depicted on Seabrook’s plat, where water and shore meet, is not limited to the shoreline along the northern section of 706 Creekside but also exists along the western section of the property, where marsh and critical area are depicted between the property lines as they extend toward the center line of the tributary. Images of the surrounding properties and docks confirm that the area where Petitioners propose to locate their dock is considered shoreline by neighboring property owners.

The Department's conclusions are influenced by the orientation of Petitioner's property without taking into account that the orientation shifts with the bend in the property lines. The definition of waterfront property does not hinge on the orientation of property. Instead, it is dependent upon whether the property lines are "shore perpendicular." In rejecting Petitioners' permit application the Department is, ignoring any bend, turn, or angle in property lines. Yet, the bends and turns are part of the property lines. "Metes and bounds are the boundary lines of land, **with their terminal points and angles.**" Black's Law Dictionary as cited in 29 S.C. Jurisprudence § 8. (emphasis added).

Upland Property Lines

Petitioners' boundary lines originate at the cul de sac, in upland. If the focus is on the segment of the boundary line perpendicular to the tributary, Seabrook observed an iron rebar (IRF) which indicated the change of position, or angle of turn, of the northwestern boundary line and the iron pipe (IPF) indicating the inception point for the turn of the southwestern boundary line.² The recorded plat prepared by Seabrook depicts the northwestern "5/8" IRF" on the critical line, or as described by Seabrook, "in upland area." According to Seabrook, the plat he prepared showed the iron rebar near the edge of highland/critical area, but not in the critical area. The iron pipe marking the turn of the southwestern boundary line is shown on the plat as outside, or upland of, the critical line.

Seabrook sent his survey crew back to 706 Creekside to re-create the critical line by placing flags on the ground to demonstrate the location of the certified line as reflected on the approved and recorded plat. His re-creation efforts were to locate, on the ground, the certified critical line reflected in the permit application drawings and the recorded plat. These efforts were in response to questions raised by the Department's counsel during Seabrook's deposition related to whether a location on the edge of high ground or the edge of the critical line would be considered upland. Each point of the certified line was established by the placement of a blue flag. Seabrook inspected the flagging of the re-established points and observed that the point described as the "apex of the line L14 and L15" was "way up into the property and is clearly not critical area." The actual location of the apex between L14 and L15 is significant as it determines the distance between these

² Rebar and Pipe are artificial monuments as opposed to natural boundaries. "When determining boundaries, resort is generally had first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to course and distances." Bodiford v. Spanish Oak Farms, 317 S.C. 539, 543, 455 S.E.2d 194, 197, n. 1 (Ct. App. 1995).

points on the critical line and the IRF. Seabrook provided a photograph showing the “on the ground” location of the “apex between L14 and L15” and noted the location of the blue flag behind four small boards shown in the photo in the upland. Seabrook noted that the elevation in this area was seven feet, “over a foot and a half above and inland from the mean high water line.”

Based on the surveying team’s ability to flag all other points of the critical line, and based on visual confirmation that those flagged areas did represent the certified critical line reflected in the approved and recorded plat, Seabrook concluded that the only point of corruption was the data identifying the apex of L14 and L15, which aligned with the 5/8” IRF. That corruption of a single data point occurs infrequently, but could be explained by interference of the “wavelength of the laser light.” Petitioners are not contesting the validity of the critical line as depicted on the recorded plat, but in response to the Department’s scrutiny as to whether the “edge of the critical line” or the “edge of the upland” was sufficient. Seabrook confirmed, in the field, the distance between the 5/8” IRF and the apex of lines 14-15. Having previously observed the location of the 5/8” IRF and IPF on Petitioners’ property, the proximity of the IRF to the critical line as shown on the recorded plat was inconsistent with Seabrook’s observations. Seabrook had inspected the property on at least four occasions. He had located the IRF and IPF. He and his crew had flagged the critical line for approval and certification by OCRM. He testified as to considerable experience in identifying and establishing critical lines, having done so at least “a couple hundred times.”

Seabrook provided photographs reflecting the location of the 5/8” IRF, staked with a pink flag to contrast with the blue flags marking the critical line. Based on his visual observations of the site and as is reflected in the photos, the location of the pink flag is in upland, at an 8-inch offset from the critical line flags. Seabrook had inspected the property as recently as a week prior to the hearing and testified that based on his observations both pins marking the turn or angle of the property line were located in upland.

ANALYSIS

This Court is persuaded by the testimony of Seabrook, a licensed professional land surveyor identifying and describing Petitioners’ boundary lines. An expert in land surveying is qualified to review the relevant deeds and plats, and to render his opinion as to the location of the boundary. Bodiford, 317 S.C. at 542, 455 S.E.2d at 196. “A surveyor . . . is a competent witness in actions concerning the boundary line and may testify as to lines, corners, or monuments.” Richardson v. Register, 227 S.C. 81, 89, 87 S.E.2d 40, 44 (1955). Seabrook identified property

lines that include an angle, identified by artificial monuments, resulting in boundary lines perpendicular to the tributary. The Department's position fails to take into account a boundary line with a turn in direction.

Critical to this analysis is whether the segments of Petitioners' boundary lines that extend to the center line of the tributary are upland lines. Petitioners have demonstrated by substantial evidence that the rebar and iron pipe lie in upland. The initial evidence of the location of the rebar (the northwestern boundary line) is the recorded plat which includes the certified critical line. The 5/8" IRF is at the apex of L14 and L15 and is, as described by Seabrook, on the edge of the line. The rebar is 8 inches upland from the critical line. The 5/8" IPF where the southwestern line segment makes its turn is upland from the critical line in the vicinity of L1 and L2.

The Department's witnesses ignored that portion of the property lines that extend to and terminate in the tributary, having stopped their analysis before the lines turned toward the creek. The only testimony presented by the Department regarding the location of the IRF and IPF was from Blair Williams who testified that he inspected the property on one occasion and was "not confident that both originate in the upland."

CONCLUSIONS OF LAW

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. section 1-23-600(A) (Supp. 2021), S.C. Code Ann. section 44-1-60 (2018 & Supp. 2021), and section 48-1-10. In contested case hearings, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. S.C. Code Ann. § 1-23-600(B) (Supp. 2021); Brown v. S.C. Dep't of Health & Env'tl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002). The weight and credibility assigned to evidence presented at the hearing on the merits in a contested case hearing is within the providence of the trier of fact. S.C. Cable Television Ass'n v. Southern Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Therefore, as the trier of fact, the Court may give testimony the weight it determines it deserves. Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). Nevertheless, while the ALC acts as the fact finder, due consideration is given to the experience, technical competence, and specialized knowledge of the agency and its staff in evaluating the evidence. S.C. Code Ann. § 1-23-330(4) (2005 & Supp. 2021).

The ALC must give deference to the Department's interpretation of its statutes and regulations.

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'

Kiawah Development Partners II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014), citing Chevron USA, Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

Finally, the standard of proof in cases before the ALC is the preponderance of the evidence. Sierra Club v. S.C. Dep't of Health and Env'tl. Control, 426 S.C. 236, 257, 826 S.E.2d 595, 606 (2019), citing S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2018). In contested cases, the party asserting the affirmative of an issue has the burden of proof. Id. Therefore, Petitioners bear the burden of proving, by the preponderance of the evidence, that the Department misapplied its regulatory definition of waterfront property in denying Petitioners' permit application.

Petitioners' expert provided uncontested opinions regarding the location of the property lines. The Department gave no consideration to that portion of Petitioners' boundary lines that turned toward the tributary. The Department determined, incorrectly, that Petitioners' property lines were shore-parallel rather than shore-perpendicular. The Department's definition of waterfront property is clear. But in applying the definition the Department erred in its lack of recognition of the validity of the angle or turn in the property lines. This does not amount to an interpretation by the Department, which may be entitled to deference. Instead, it is a result of a flawed legal conclusion wherein the Department cut each boundary line in half and only considered the upper half of each line in its evaluation without accounting for the lower half – the extension into the tributary.

The preponderance of the evidence indicates that the point of turn of the southwestern boundary line (the one closest to the house) is clearly depicted landward or upland of the critical line. The turn of the northwestern boundary line, the line closest to the neighboring dock, is as described by Seabrook initially located on the edge of the critical line. Seabrook demonstrated that the location of the 5/8" IRF is eight inches landward of the critical line. The Department provided no evidence to refute the testimony of Petitioners' surveyor to establish the location of the boundary markers except for Mr. Williams' testimony that he was not confident as to whether the location of the artificial monuments was upland. This Court concludes that 706 Creekside is waterfront as it satisfies the regulatory definition applied by the Department.

ORDER

IT IS THEREFORE ORDERED that 706 Creekside Drive is waterfront property according to the regulatory definition.

IT IS FURTHER ORDERED that this matter is remanded to the Department for further evaluation of the permit application submitted by Petitioner for sufficiency with the Department's regulations related to the design, location, and size of the proposed dock. Such evaluation is necessary as the Department's initial evaluation ended with its erroneous determination that 706 Creekside Drive does not qualify for a dock.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 6, 2022
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert Klomparens and Whitney Klomparens,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No. 21-ALJ-07-0310-CC

**ORDER DENYING
RESPONDENT'S MOTION
FOR RECONSIDERATION**

This matter is before the Administrative Law Court (Court) pursuant to the motion of counsel for Respondent, South Carolina Department of Health and Environmental Control, seeking reconsideration of the Court's Order issued on September 6, 2022. Because the Motion was filed more than ten days after the Final Order was issued, it is not clear that this Court has jurisdiction to entertain the motion. Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. See, Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006). Nevertheless, in light of the fact that the parties consented to an extension for the filing of the Motion for Reconsideration, I will address the substance of the motion.

Much of the motion merely reiterates the arguments made at the hearing, which were carefully considered and ruled upon by this Court. The motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Respondent's argument that the Court failed to consider Mr. Williams' testimony is without merit. The Court was simply persuaded by other, contradictory, evidence and made a finding in keeping with that evidence after carefully weighing all the testimony and documentary evidence presented by both parties.

In other respects, the motion presents new arguments which are inconsistent with the position argued by the Department at the hearing. I disagree that the word "generally" in the regulation renders the regulation ambiguous and subject to interpretation by the Department or this Court. I do not find the language of the regulation to be ambiguous and the Final Order issued September 6, 2022 applied the plain language of the regulation according to the facts as found by the Court. At the hearing, the Department relied upon this same interpretation of the regulation but



presented testimony and evidence advocating for a different finding of fact. I do not find the Department's new-found position that its regulation is inherently ambiguous to be persuasive.

Likewise, the Department's argument that a neighbor's potential claim of ownership of marsh property is an obstacle to the permit is raised in the Motion for Reconsideration for the first time. A party cannot use a motion for reconsideration to raise for the first time an issue the party could have raised prior to judgment but did not, nor bring before the court theories or arguments that were not advanced earlier. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 25, 2022
Columbia, South Carolina

RECEIVED

JUN 24 2021

Clerk, Board of Health and Environmental Control

Mary D. Shahid
Member
Admitted in SC

21-RFR-46

June 23, 2021

VIA FEDEX

Ms. Denise Crawford, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

RECEIVED

JUN 24 2021

DHEC
OFFICE OF GENERAL COUNSEL

Re: Request for Final Review Conference
Permit Applicants – Rob and Whitney Klomprens
Application #: HP2-MOK2-7NE9T

Dear Ms. Crawford:

I represent Rob and Whitney Klomprens (“Requestors”), owners of 706 Creekside Drive, Mt. Pleasant, S.C. and applicants seeking authorization to construct a dock at 706 Creekside Drive. In accordance with the procedures set forth in S. C. Code Ann. Sec. 44-1-60, Requestors request a final review conference to review SCDHEC-OCRM’s decision to deny their application for a dock permit.

I am enclosing my law firm’s check in the amount of \$100.00 as filing fee for this Request. I am also attaching, as Exhibit A, the staff decision that is the subject of this request.

GROUNDS FOR REVIEW

The decision to deny Requestors’ application is a result of the staff’s flawed conclusion that 706 Creekside Drive is not a waterfront property by definition. S. C. Code Reg. 30-1(D) defines waterfront property as “*upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reach a navigable watercourse within 1000’ of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.*”

- Austin
- Charleston**
- Charlotte
- Columbia
- Greensboro
- Greenville
- Bluffton / Hilton Head
- Myrtle Beach
- Raleigh

205 King Street T (843) 720-1788
 Suite 400 (29401) F 843.414.8242
 PO Box 486 E MShahid@nexsenpruet.com
 Charleston, SC 29402 Nexsen Pruet, PLLC
 www.nexsenpruet.com **Attorneys and Counselors at Law**

Ms. Denise Crawford, Clerk
June 23, 2021
Page 2

When the neighborhood known as Creekside Park was initially platted, lots were designed to extend to the water's edge – Shem Creek. The plat reflecting the initial phases of Creekside Park is attached as Exhibit B and 706 Creekside Drive is depicted as Lot 15 on the plat created in 1969 and recorded at Plat Book X Page 129/Book Y 90 Page 9. Lot 15's boundaries are highlighted to illustrate their consistency with Charleston County's current depiction of the property's boundaries, reflected in Exhibit C. In both depictions, the property lines originate in upland and clearly extend to Shem Creek. The most recent plat of the property, a plat prepared and recorded in 2020, is attached as Exhibit D. This plat reflects a critical line established for the property confirmed by OCRM on June 25, 2020. I have highlighted the point of origination of both "generally shore perpendicular" lines and that point is located on the landward side of the newly established critical line conforming to the regulatory definition of waterfront property.

Importantly, the United States Army Corps of Engineers has concluded that 706 Creekside Drive is a waterfront property and has authorized a dock extending to Shem Creek. (Exhibit E.)

CONCLUSION

As reflected in the attached Exhibits, 706 Creekside Drive, with its "flag lot" configuration, possesses two property lines that originate in upland and extend directly to navigable water. These property lines render 706 Creekside Drive a waterfront property under regulations implemented by OCRM and OCRM staff erred in concluding otherwise in their review of the permit application. Requestors ask that the Board review this decision and override the staff's conclusion.

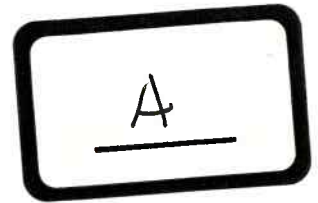
Very truly yours,



Mary D. Shahid

Enclosures

cc: Rob and Whitney Klomparens
Brad Churdar, Esq.



June 11, 2021

91 7199 9991 7030 0138 7568

Robert D. Klomparens
706 Creekside Drive
Mt Pleasant, SC29464

Re: Robert D Klomparens
OCRM Critical Area Permit Application - HP2-M0K2-7NE9T

Dear Mr. Klomparens:

In accordance with the provisions of the 1977 Coastal Zone Management Act, S.C. Code Ann. Sections 48-39-10 *et seq.*, a review of your permit application has been completed. The work, as proposed: Constructing a private recreational dock consisting of 4' x 198' walkway with handrails leading to a 10' x 12' fixed pierhead with dual davit lift. The Office of Ocean and Coastal Resource Management (OCRM), through its Permitting staff, has determined that this permit request should be denied.

The following is a list of specific references from the Coastal Zone Management Act and the Office of Ocean and Coastal Resource Management's Regulations that the staff relied upon in denying your permit:

- Sections 48-39-30 (A), (B)(1) and (B)(2): (Legislature's policies for permitting structures in the critical area);
- Regulation 30-12.A(1)(a) of the Critical Area Permitting Regulations, as amended, states "[d]ocks and piers shall be limited to one structure per parcel or lot and in all instances, parcels or lots must be waterfront as defined by 30.D.(53), shall not restrict the reasonable navigation or public use of State lands and waters.
- Regulation 30-1.D(53) of the Critical Area Permitting Regulations, as amended, states "[for] purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

The Department has determined your property does not meet the regulatory definition of waterfront property and therefore is not eligible for a dock. Any applicant having a permit request denied or any person adversely affected by the granting of a permit has the right to appeal the agency's decision as outlined in the enclosed "Guide to Board Review." Any applicant having a permit denied may challenge the validity of any or all reasons given for denial.

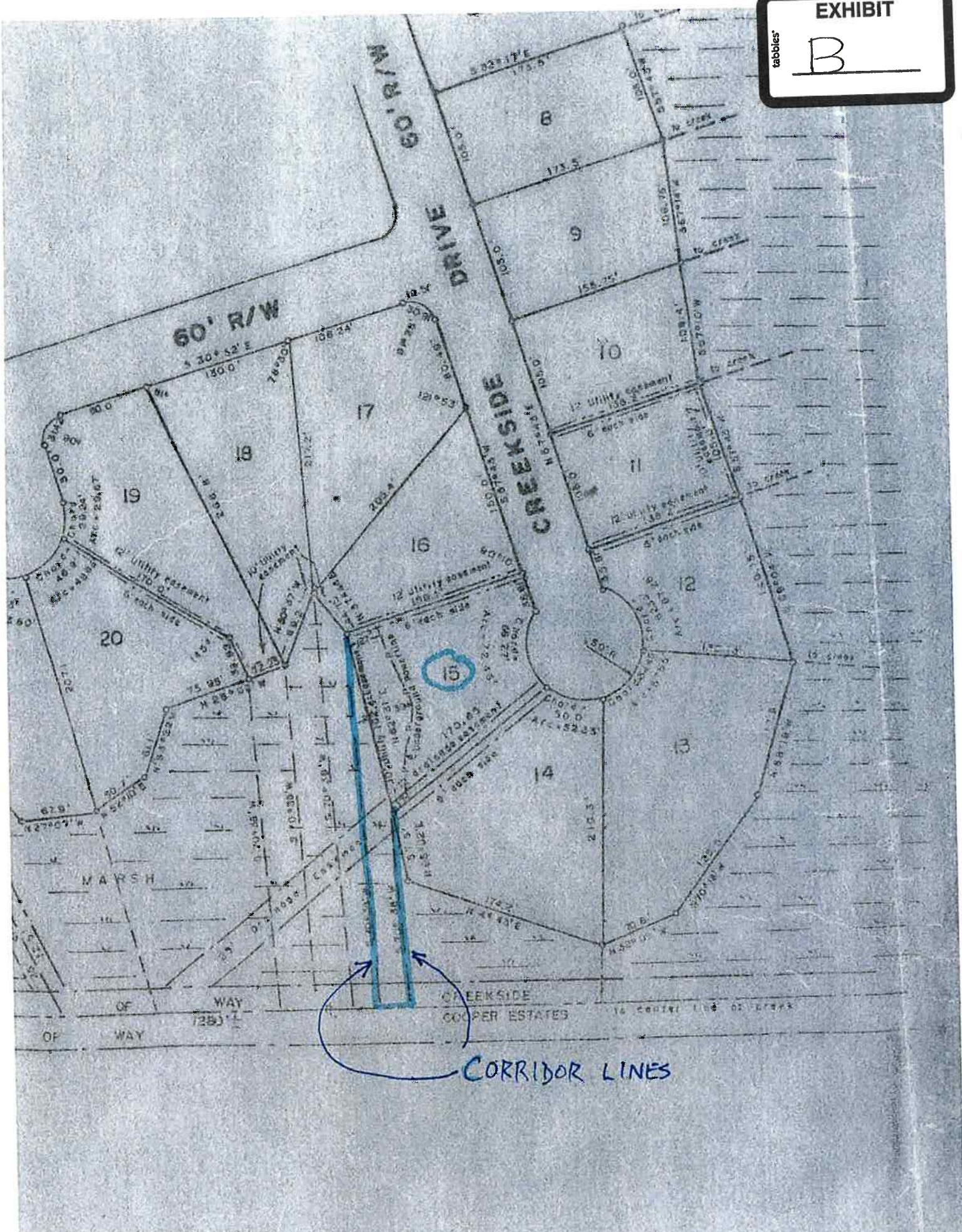
If you would like a copy of the Coastal Zone Management Act or OCRM's Regulations, please contact this office or one of our regional offices (Myrtle Beach at 238-4528 or Beaufort at 846-9400). If I can be of any further assistance, please do not hesitate to call.

Sincerely,

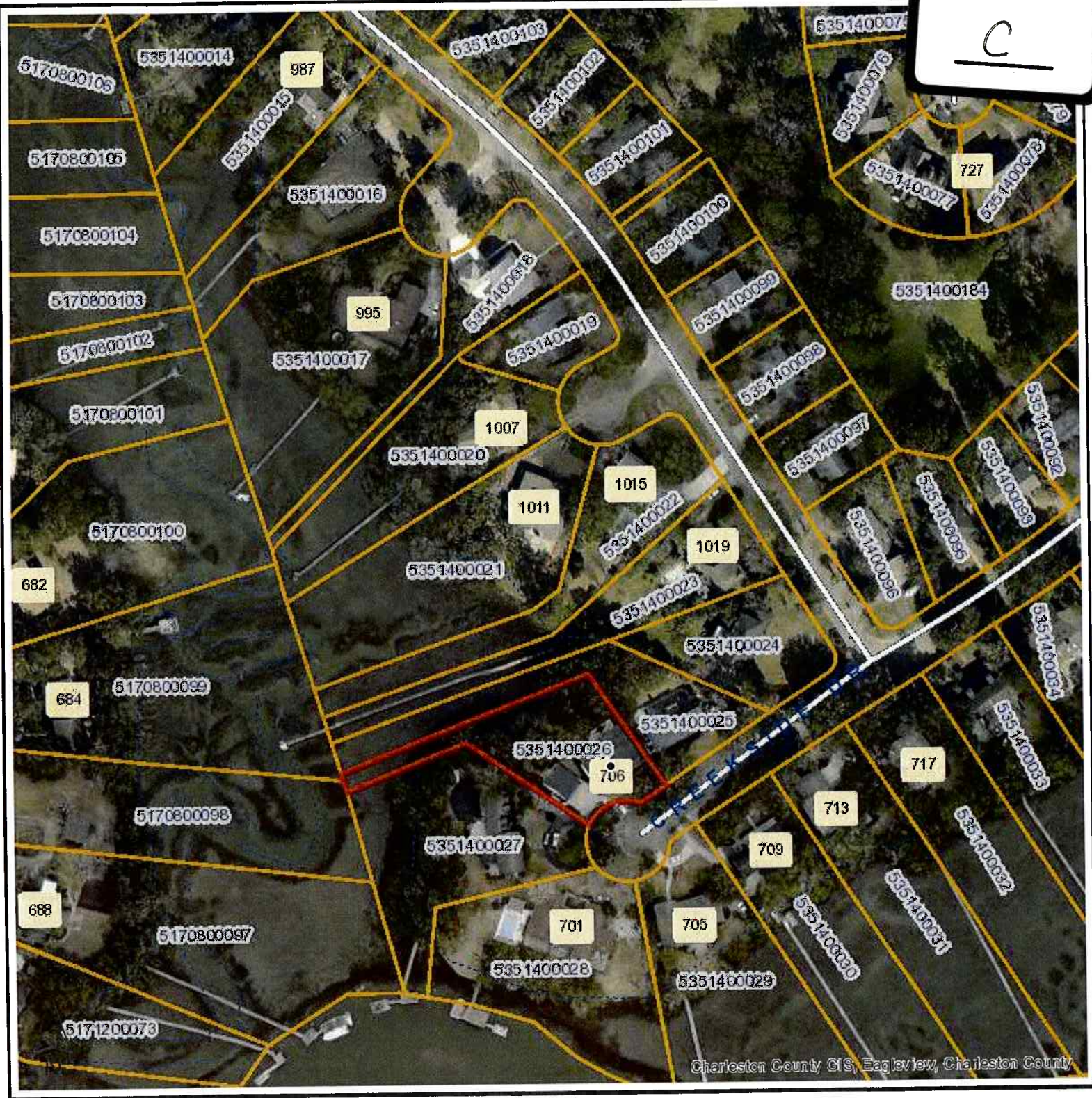


Jacqueline A Adams
Project Manager
Critical Area Permitting Section

Cc: Blair Williams, Critical Area Permitting Section Manager
Lewis Seabrook, E.M. Seabrook Jr., Inc, Authorized Agent



PLAT APPROVED
S.W.A. OF MC PLEASANT, S. C.



Charleston County SC

PID: 5351400026

706Creekside Drive

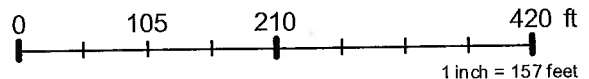
OWNER1: KLOMPARENS ROBERT D

PLAT BOOK PAGE: S20- 0147

DEED BOOK PAGE: 0430-182

Jurisdiction: TOWN OF MT

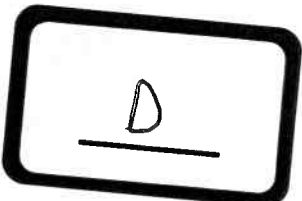
PLEASANT



Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

Author: Charleston County SC

Date: 05/2021



FOR TOWN OF MOUNT PLEASANT AND CHARLESTON COUNTY USE ONLY:

RECORDED

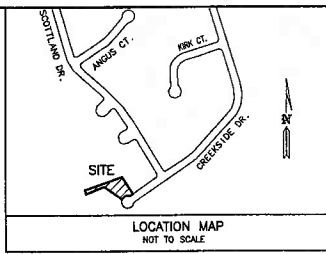
DATE: 7/29/2020 TIME: 2:28:47 PM
 Book-Page: [S20] [0147] DocType: [Small Plat]
 Michael Miller, Registrar, Charleston County, SC

Record Fee: \$25.00
 Package: \$13.00
 TOTAL: \$38.00
 Driver: []
 Clerk: []

Location: CREEKSIDE PARK

The undersigned designee has the authority to represent the owner(s) of this property for the purpose described herein. I understand South Carolina State Law Section 6-29-1145 and by certify compliance therewith by my signature below.

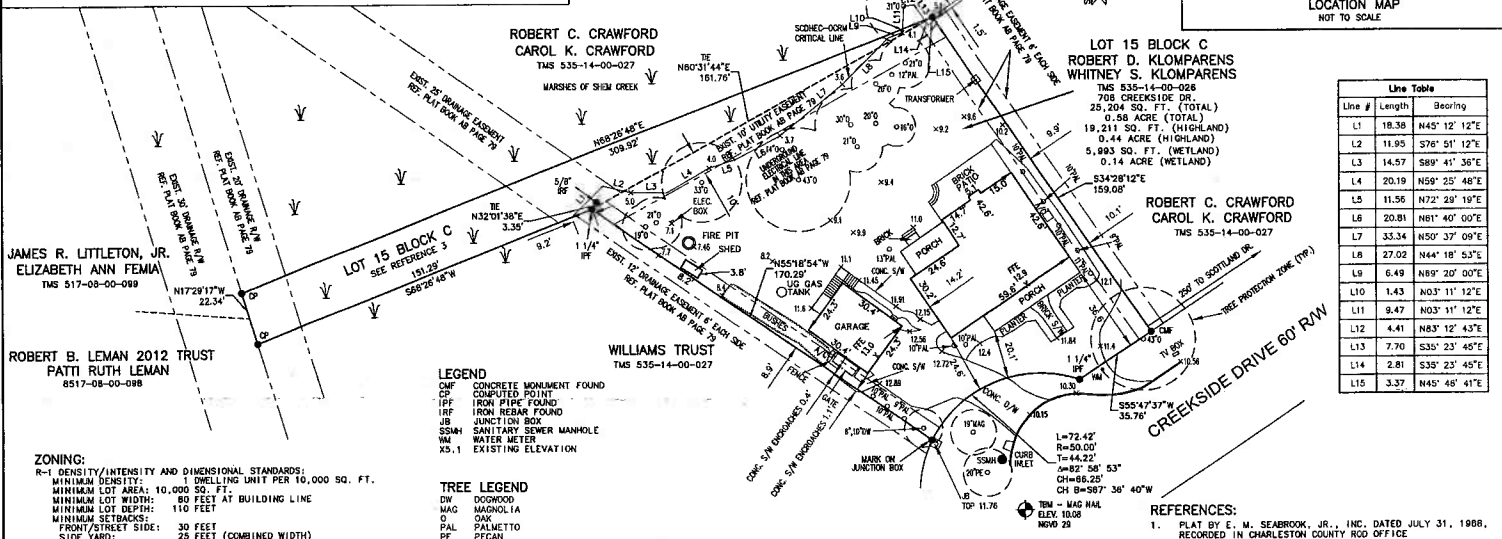
Print Name: Robert D. Klomprens
 Signature: *[Signature]*
 Date of Signature: 7/1/20



PLAT APPROVED
 Town of Mount Pleasant, SC

BY: *[Signature]*
 TOWN ENGINEER

DATE: 7/1/2020



Line Table

Line #	Length	Bearing
L1	18.38	N45° 12' 12"E
L2	11.93	S78° 51' 12"E
L3	14.57	S89° 41' 36"E
L4	20.19	N59° 25' 48"E
L5	11.56	N72° 29' 19"E
L6	20.81	N81° 40' 00"E
L7	33.34	N50° 37' 09"E
L8	27.02	N44° 18' 53"E
L9	6.49	N89° 20' 00"E
L10	1.43	N03° 11' 12"E
L11	9.47	N03° 11' 12"E
L12	4.41	N83° 12' 43"E
L13	7.70	S35° 23' 45"E
L14	2.81	S35° 23' 45"E
L15	3.37	N45° 46' 41"E

ZONING:
 R-1 DENSITY/INTENSITY AND DIMENSIONAL STANDARDS:
 MINIMUM DENSITY: 1 DWELLING UNIT PER 10,000 SQ. FT.
 MINIMUM LOT AREA: 10,000 SQ. FT.
 MINIMUM LOT WIDTH: 80 FEET AT BUILDING LINE
 MINIMUM LOT DEPTH: 110 FEET
 MINIMUM SETBACKS:
 FRONT/STREET SIDE: 30 FEET
 SIDE YARD: 25 FEET (COMBINED WIDTH)
 SIDE YARD: 10 FEET (WIDTH ON ONE SIDE)
 REAR: 30 FEET
 MAXIMUM HEIGHT: 35 FEET
 (AND NO MORE THAN 2.5 STORES), EXCEPT AS OTHERWISE PERMITTED IN § 156.102
 MAXIMUM BLDG. COVER: NO MORE THAN 33% OF LOT MAY BE COVERED BY PRINCIPAL AND ACCESSORY BUILDINGS.
 BUFFER/YARD REQUIREMENTS: MINIMUM BUFFER-YARD REQUIREMENTS FOR, AND BETWEEN, PERMITTED USES IN THIS DISTRICT AND CONTIGUOUS USES ARE SET FORTH IN § 156.201.
 REFERENCE TO ADDITIONAL REGULATIONS: IN ADDITION TO THE ABOVE, ALL APPLICABLE OFF-STREET PARKING, LOADING, SIGN, BUFFER AND SUPPLEMENTAL REGULATIONS SHALL APPLY TO USES WITHIN THIS DISTRICT.

LEGEND
 CONCRETE MONUMENT FOUND
 CMP COMPUTED POINT
 IFF IRON PIPE FOUND
 IRF IRON REBAR FOUND
 JB JUNCTION BOX
 SSMH SANITARY SEWER MANHOLE
 WM WATER METER
 X5.1 EXISTING ELEVATION

TREE LEGEND
 DW DOGWOOD
 MAC MAGNOLIA
 O OAK
 PAL PALMETTO
 PE PECAN

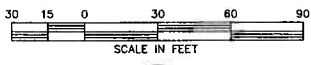
CREEKSIDE PARK

TOWN OF MOUNT PLEASANT

CHARLESTON COUNTY, S. C.

SURVEY OF LOT 15 BLOCK C (TMS 535-14-00-026)
 CONTAINING 0.58 ACRE (TOTAL)
 OWNED BY ROBERT D. KLOMPRENS AND WHITNEY S. KLOMPRENS

SCALE: 1" = 30' JUNE 1, 2020



- REFERENCES:**
- PLAT BY E. M. SEABROOK, JR., INC. DATED JULY 31, 1908, RECORDED IN CHARLESTON COUNTY ROD OFFICE IN PLAT BOOK # PAGE 129
 - PLAT BY E. M. SEABROOK, JR., INC. DATED OCT. 28, 1971, RECORDED IN CHARLESTON COUNTY ROD OFFICE IN PLAT BOOK # PAGE 79
 - DEED DATED SEPT. 16, 2014, RECORDED IN CHARLESTON COUNTY ROD OFFICE IN DEED BOOK 0430 PAGE 182
 - PLAT BY JOHN E. WADE, JR., INC. DATED JULY 20, 2014, NOT RECORDED

- NOTES:**
- AREA DETERMINED BY COORDINATES
 - BASED ON INTERPRETATION OF FEMA FLOOD INSURANCE RATE MAP NUMBER 45019C 0536 J DATED NOVEMBER 17, 2004, THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE AR (ELEV. 12)
 - THE ABSENCE OR PRESENCE OF U. S. ARMY CORPS OF ENGINEERS JURISDICTIONAL WETLANDS HAS NOT BEEN DETERMINED BY THIS SURVEY.
 - THERE IS NO OBSERVABLE EVIDENCE OF THE LOCATION OF CEMETERIES OR BURIAL GROUNDS ON THIS PROPERTY. SUBSURFACE CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS PART OF THIS SURVEY. NO STATEMENT IS MADE CONCERNING ANY SUBSURFACE CONDITIONS THAT MAY AFFECT THE USE OR FURTHER DEVELOPMENT OF THIS PROPERTY.

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

[Signature] 7/1/20
 LEWIS E. SEABROOK
 CIVIL ENGINEER & LAND SURVEYOR
 S. C. REG. NO. 09860
 P. O. BOX 96
 MT. PLEASANT, S. C. 29465
 (843) 884-4498

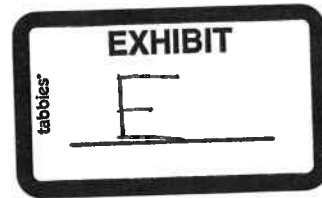


E. M. SEABROOK
 Engineers & Surveyors
 1037 Chuck Dawley Blvd.
 Building F - Suite 200
 Post Office Box 96
 Mount Pleasant, SC 29465
 Phone (843) 884-4498
 www.emseabrook.com

NGVD 29

CERTIFIED BY ODSM STAFF MEREDITH B. WATKINS
 SIGNATURE DATE

The critical line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.



DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
1949 INDUSTRIAL PARK ROAD, ROOM #140
CONWAY, SOUTH CAROLINA 29526

October 22, 2020

Regulatory Division

Mr. Rob Klomparens
706 Creekside Drive
Mount Pleasant, South Carolina 29464
rwkllc@gmail.com

Dear Mr. Klomparens:

This is in response to your Pre-Construction Notification (PCN) (SAC-2020-01300) a private docking structure permit request, which we received on September 18, 2020, and considered complete on October 6, 2020. In submitting the PCN, you requested verification the proposed project is authorized by Department of the Army (DA) General Permit (GP) # 2016-00761.

The work affecting navigable waters of the United States is part of an overall project known as 706 Creekside Drive Dock, a private docking structure project. The activities in navigable waters of the United States include the construction of a 10' x 12' fixed uncovered pierhead connected to the uplands by a 4' x 198' walkway. Additionally, the pierhead will feature an uncovered davit boat lift. The project is located within a tributary of Shem Creek, at 706 Creekside Drive, in the Town of Mount Pleasant, Charleston County, South Carolina (Latitude: 32.8005 °N, Longitude: -79.834° W).

The application also includes the following supplemental information:

- a. Drawing sheets 1-4 of 4 titled "SAC-2020-01300 / 706 Creekside Drive Dock" and dated September 29, 2020.
- c. A delineation of wetlands, other special aquatic sites, and other waters.

Based on a review of the information provided, the Corps concludes the proposed activity will not result in more than minimal individual or cumulative adverse environmental effects, and is not contrary to the public interest. Furthermore, the activity described above meets the terms and conditions of DA GP # SAC-2016-00761.

For this authorization to remain valid, the project must comply with: (1) the terms and conditions listed in the attached copy of the DA GP; and (2) the following special conditions:

- a. **That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (e.g., Coastal Zone Management Act concurrence, State Navigable Waters Permit, etc.).**
- b. **That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee.**

- c. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter.
- d. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work.
- e. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or their authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- f. Use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S.
- g. The permittee must install and maintain, at their expense, any safety lights and signals prescribed by the U.S. Coast Guard (USCG), through regulations or otherwise, on authorized facilities. The USCG may be reached at the following address and telephone number: (as of February 2013) U. S. Coast Guard District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL. 33131, and 305-415-6755 or 305-415-6750.
- h. Floating docks shall be located in areas of adequate depth to ensure that clearance between the float and the bottom is maintained at all times. In areas where the depth is not adequate to maintain clearance, floating docks shall be fitted with structures (i.e. float stops) that prevent the float from contacting the bottom.
- i. If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the district engineer of what has been found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- j. Prior to beginning the authorized work, the permittee must coordinate with the local NFIP flood plain manager and comply with FEMA requirements. A list of NFIP floodplain managers may be found at:
<http://www.dnr.sc.gov/water/flood/index.html>.

- k. In order to ensure protection of any threatened or endangered species, and designated critical habitat that may be present in the project area during construction activities, the permittee will comply with the following:
1. The permittee shall instruct all personnel associated with the project of the potential presence of and the need to avoid collisions with protected species, which may include but is not limited to West Indian manatees, Atlantic sturgeon, shortnose sturgeon, sea turtles, wood stork, blue whale, fin whale, humpback whale, North Atlantic right whale, sei whale and sperm whale.
 2. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing protected species, to include manatee(s), which are protected under the Marine Mammal Protection Act of 1972 and/or the Endangered Species Act of 1973.
 3. Any siltation barriers used during the project shall be made of material in which protected species, to include manatee(s), cannot become entangled and must be properly secured, and regularly monitored to avoid protected species entrapment.
 4. All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
 5. If protected species, to include manatee(s), are seen within 100 yards of the active construction area all appropriate precautions shall be implemented to ensure protection of the protected species, to include manatee(s). These precautions shall include the operation of all moving equipment no closer than 50 feet to a protected species, to include manatee(s). Operation of any equipment closer than 50 feet to a protected species, to include manatee(s), shall necessitate immediate shutdown of that equipment. Activities will not resume until the protected species, to include manatee(s), has departed the project area of its own volition.
 6. Incidents where any individuals of sea turtles, Atlantic sturgeon, shortnose sturgeon, blue whale, fin whale, humpback whale, North Atlantic right whale, sei whale and sperm whale listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this DA permit shall be reported to NOAA Fisheries, Office of Protected Species at (727) 824-5312, the SCDNR Hotline at 1-800-922-5431, and the Regulatory Office of the Charleston District of the U.S. Army Corps of Engineers at (843) 329-8044. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge

exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

7. The permittee understands and agrees that all in-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) must be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line is allowed in the water. Where appropriate, in water wires should be fitted with PVC sleeve from the surface to the bottom to prevent any potential scraping of the passing manatees.

8. The permittee understands and agrees that pilings will be installed using a water jet or vibratory hammer, to the maximum extent practicable. In the event standard pile driving (impact hammer) is utilized, the permittee understands and agrees that a soft-strike procedure (three strikes at 40%-60% energy level once a minute for 3 minutes) must be conducted prior to beginning pile driving activities and after any pile driving interruptions of more than 30 minutes.

9. That the permittee understands and agrees that pile driving activities must be limited to 12 hours per day with a 12-hour rest period between pile driving activities to avoid potential cumulative noise impacts to Federally-listed Threatened and Endangered (T&E) species.

- i. In order to ensure protection and reduce potential construction-related impacts to West Indian manatees that may enter the project area during construction activities performed outside the winter months, to discountable and insignificant levels, the permittee will comply with the following for all projects affecting the coastal waters of South Carolina:

1. The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel MUST monitor water-related activities for the presence of manatee(s) during May 1 - November 15. Construction personnel are requested to monitor outside of that timeframe as manatees may be in the area before or after the above dates.

2. Any collision with and/or injury to a manatee shall be reported immediately to the U.S. Fish and Wildlife Service contacts: Melanie Olds, South Carolina Manatee Lead, Charleston Field Office, at 843-727-4707 ext. 205; or Terri Calleson, Manatee Recovery Coordinator, North Florida Field Office, at 904-731-3286.

This verification is valid until DA GP # SAC-2019-00761 expires on December 14, 2021, unless prior to this date the subject GP is suspended, revoked, or is modified such that the activity no longer complies with the terms and conditions of the GP.

This authorization is verified under DA GP # SAC-2016-00761 based on information you provided. It is your responsibility to read the attached GP before you begin work. If your project fails to meet all of the terms and conditions of the subject GP, at any time (i.e., prior to commencement of the authorized work, during construction, or after project completion), the activity is unauthorized, and you should contact the Corps immediately.

In all future correspondence, please refer to file number SAC-2020-01300. A copy of this letter is forwarded to State and/or Federal agencies for their information. If you have any questions, please contact me at (843) 365-1726, or by email at Austin.R.Dartez@usace.army.mil.

Sincerely,



Digitally signed by
DARTEZ.AUSTIN.ROBERT.12758
60022
Date: 2020.10.22 09:45:38
-04'00'

Austin Dartez
Project Manager

Attachments:

Permit Drawings
General Permit # 2016-00761
Certification of Compliance

Copy Furnished:

Mr. Lewis Seabrook
E.M. Seabrook Jr., Inc
Post Office Box 96
Mount Pleasant, South Carolina 29465
tom@emseabrook.com

SCDHEC – Bureau of Water
2600 Bull Street
Columbia, SC 29201
WQCWetlands@dhec.sc.gov

SCDHEC - OCRM
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
OCRMPermitting@dhec.sc.gov

US Coast Guard
Sector Charleston
Attention: Waterways Management
1050 Register Street
North Charleston, SC 29405
D07-PF-SECTORCHASN-WWM@uscg.mil



Mark R. Elam, Chairman
Jim P. Creel, Jr., Vice-Chairman
Charles M. Joye, II, P.E., Secretary
J.B. (Sonny) Kinney

Board:
Seema Shrivastava-Patel
Richard V. Lee, Jr.
Morris E. Brown, III, MD, FAAFP
Robert R. Morgan, Jr., MD, MBA

July 16, 2021

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1419 9342 35

Mary D. Shahid, Esquire
Email: MShadid@nexsenpruet.com
Nexsen Pruet
Post Office Box 486
Charleston, SC 29402

Via Electronic Mail Delivery

Bradley D. Churdar, Esquire
Email: churdabd@dhec.sc.gov
SCHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: Docket No. 21-RFR-46, Robert D. Klomparens

Denial of a Critical Area Permit for the construction of a private recreational dock located on and adjacent to a tributary of Shem Creek at 706 Creekside Drive, Mount Pleasant, Charleston County, OCRM Critical Area Permit Applicant No. HP2-M0K2-7NE9T

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford
Clerk of the Board
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy, parties before the ALC are responsible for complying with all applicable requirements of the Court.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert and Whitney Klomparens,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No.: 21-ALJ-__-_____-CC

**REQUEST FOR CONTESTED CASE
HEARING**

The undersigned, on behalf of Petitioners Robert and Whitney Klomparens, files this contested case challenging the action of the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (“SCDHEC” and “OCRM”) in denying Petitioners’ permit application seeking authorization to construct a private recreational dock at their property located at 706 Creekside Drive, Mt. Pleasant, Charleston County, S. C., adjacent to a tributary of Shem Creek. For identification purposes, Petitioners’ permit application is identified as HP2-M0K2-7NE9T.

CONTACT INFORMATION FOR PETITIONERS

Petitioners are represented by counsel:

Mary D. Shahid, Esq.
NexsenPruet, LLC
205 King Street
Suite 400
Charleston, SC 29401
P. O. Box 486
Charleston, SC 29401
843.720.1788
mshahid@nexsenpruet.com

Petitioners' Address:

706 Creekside Drive
Mt. Pleasant, SC 29464

ISSUES PRESENTED FOR HEARING

- Whether the property located at 706 Creekside Drive is waterfront in accordance with the regulatory definition implemented by SCDHEC-OCRM and embodied in 30-1(D)(53) – *“Waterfront property - For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000’ of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.”*
- Whether OCRM’s conclusion that the property does not satisfy this definition is in error and, therefore, should be reversed by this Court and a permit issued.
- Whether one example of denial of a permit application in a neighborhood where multiple other docks have been constructed under circumstances similar to the Petitioner’s should be given any weight by the agency or this Court when no review was ever requested of the denial.
- Whether the intent in designing certain lots in the development known as Creekside located in Mt. Pleasant, S. C. was to insure that certain lots qualified for a dock by creating a corridor that is part of the lot’s boundaries that extends to navigable water.
- Whether, the fact that this design occurred prior to regulation by OCRM, and without SCDHEC-OCRM approval, is given any weight if the design of the lot satisfies the regulatory definition of a waterfront lot.
- Whether the Court should assign weight to the existence of a dock constructed between 2004 and 2009, located upstream from Petitioners’ property and authorized by way of the existing platted dock corridor upon which Petitioners’ rely.¹
- Whether the testimony of a licensed, professional surveyor, related to identification of generally shore perpendicular upland property lines and straight-line extensions is given greater weight in applying OCRM’s definition than lay testimony by the agency.²

¹ 1019 Scotland Drive TMS # 53514000023.

² 40-22-20(26)(a) Land surveyor:

(1) locates, relocates, establishes, reestablishes, lays out, or retraces any property

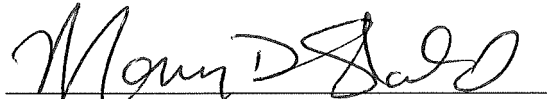
THE DECISION(S) THAT ARE THE UNDERLYING BASIS FOR THE HEARING

Petitioners received a letter from SCDHEC dated June 11, 2021, denying Petitioners' application for a permit to construct a dock at 706 Creekside Drive. This initial denial letter is attached as Exhibit A. Petitioners timely filed a request for review before the Board of Health and Environmental Control, and the Board denied review, notifying Petitioners through the undersigned by letter dated July 16, 2021, attached as Exhibit B.

RELIEF REQUESTED

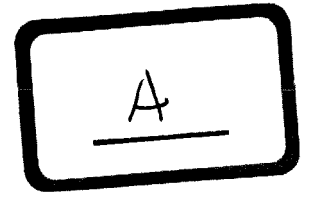
Petitioners seek an order from this Court finding and concluding that 706 Creekside Drive is a waterfront parcel by way of the regulatory definition and the Petitioners' qualify and are entitled to a dock permit extending from 706 Creekside Drive to a tributary of Shem Creek, consisting of a 200 ± linear foot walkway extending to a 10'x12' pierhead.

line or boundary of any tract of land or any road, right-of-way, easement, alignment, or elevation of any fixed works embraced within the practice of land surveying, or makes any survey for the subdivision of land;



Mary D. Shahid
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440
843.41438242
mshahid@nexsenpruet.com

Charleston, South Carolina
August 12, 2021



June 11, 2021

91 7199 9991 7030 0138 7568

Robert D. Klomparens
706 Creekside Drive
Mt Pleasant, SC29464

Re: Robert D Klomparens
OCRM Critical Area Permit Application - HP2-M0K2-7NE9T

Dear Mr. Klomparens:

In accordance with the provisions of the 1977 Coastal Zone Management Act, S.C. Code Ann. Sections 48-39-10 *et seq.*, a review of your permit application has been completed. The work, as proposed: Constructing a private recreational dock consisting of 4' x 198' walkway with handrails leading to a 10' x 12' fixed pierhead with dual davit lift. The Office of Ocean and Coastal Resource Management (OCRM), through its Permitting staff, has determined that this permit request should be denied.

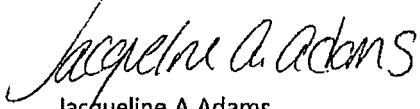
The following is a list of specific references from the Coastal Zone Management Act and the Office of Ocean and Coastal Resource Management's Regulations that the staff relied upon in denying your permit:

- Sections 48-39-30 (A), (B)(1) and (B)(2): (Legislature's policies for permitting structures in the critical area);
- Regulation 30-12.A(1)(a) of the Critical Area Permitting Regulations, as amended, states "[d]ocks and piers shall be limited to one structure per parcel or lot and in all instances, parcels or lots must be waterfront as defined by 30.D.(53), shall not restrict the reasonable navigation or public use of State lands and waters.
- Regulation 30-1.D(53) of the Critical Area Permitting Regulations, as amended, states "[for] purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

The Department has determined your property does not meet the regulatory definition of waterfront property and therefore is not eligible for a dock. Any applicant having a permit request denied or any person adversely affected by the granting of a permit has the right to appeal the agency's decision as outlined in the enclosed "Guide to Board Review." Any applicant having a permit denied may challenge the validity of any or all reasons given for denial.

If you would like a copy of the Coastal Zone Management Act or OCRM's Regulations, please contact this office or one of our regional offices (Myrtle Beach at 238-4528 or Beaufort at 846-9400). If I can be of any further assistance, please do not hesitate to call.

Sincerely,



Jacqueline A Adams
Project Manager
Critical Area Permitting Section

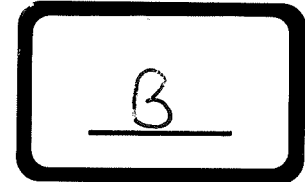
Cc: Blair Williams, Critical Area Permitting Section Manager
Lewis Seabrook, E.M. Seabrook Jr., Inc, Authorized Agent



Mark R. Elam, Chairman
Jim P. Creel, Jr., Vice-Chairman
Charles M. Joye, II, P.E., Secretary
J.B. (Sonny) Kinney

Board:
Seema Shrivastava-Patel
Richard V. Lee, Jr.
Morris E. Brown, III, MD, FAAFP
Robert R. Morgan, Jr., MD, MBA

July 16, 2021



Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1419 9342 35

Mary D. Shahid, Esquire
Email: MShahid@nexsenpruet.com
Nexsen Pruet
Post Office Box 486
Charleston, SC 29402

Via Electronic Mail Delivery

Bradley D. Churdar, Esquire
Email: churdabd@dhec.sc.gov
SCHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: Docket No. 21-RFR-46, Robert D. Klomprens

Denial of a Critical Area Permit for the construction of a private recreational dock located on and adjacent to a tributary of Shem Creek at 706 Creekside Drive, Mount Pleasant, Charleston County, OCRM Critical Area Permit Applicant No. HP2-M0K2-7NE9T

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford
Clerk of the Board
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Klomparens and Whitney
Klomparens,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No. 21-ALJ-0-0310-CC

DHEC'S MOTION TO RECONSIDER

TO: THE COURT AND ALL PARTIES:

PLEASE TAKE NOTICE that the Respondent, South Carolina Department of Health and Environmental Control ("Department" or "DHEC") hereby moves this Court ("ALC"), pursuant to Rules 29 and 68 SCALC, and Rules 52, 59, and 60, SCRCP, to reconsider the *Final Order* as set forth herein. "It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also a vehicle to seek 'reconsideration' of issues and arguments. A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." Elam v. S.C. Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004).

The Final Order should be amended for the following reasons:

- (1) The ALC erred by finding that the Department's interpretation of S.C. Code Regs. 30-1(D)(54) was not entitled to deference, because "[t]he Department's definition of waterfront property is clear." Final Order, p. 10.
- (2) The ALC erred in ignoring Mr. Blair Williams' testimony that he had visited the Klomparens' property a week before the trial and his further testimony that, based on his

visual inspection, he confirmed the property pin on the eastern side of their lot was still in the critical area.

(3) The ALC erred by finding that the Department’s interpretation of S.C. Code Regs. 30-1(D)(54) was not entitled to deference, because the Department’s application of this regulation “does not amount to an interpretation by the Department, which may be entitled to deference. Instead, it is a result of a flawed legal conclusion wherein the Department cut each boundary line in half and only considered the upper half of each line in its evaluation without accounting for the lower half – the extension into the tributary.” Final Order, p. 10.

(4) The ALC erred by finding that the Department’s interpretation of S.C. Code Regs. 30-1(D)(54) was not entitled to deference regarding the shoreline that the Department used for applying the “generally shore perpendicular” requirement.

OVERVIEW

The interpretation of a statute or regulation is a question of law to be determined by the court.¹ *A.O. Smith Corp. v. S.C. Dep’t of Health and Env’tl. Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 445 (Ct. App. 2019) (citations omitted). Whether an agency or a reviewing court, “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.” *A.O. Smith Corp.*, 428 S.C. at 202, 833 S.E.2d at 459. If an agency’s interpretation complies with these requirements “[t]he construction of . . . [the regulation] by the agency charged with its administration will be

¹ “Regulations are interpreted using the same rules of construction as statutes.” *Murphy v. S.C. Dep’t of Health and Env’tl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012) (citations omitted).

accorded the most respectful consideration and will not be overruled absent compelling reasons.” *Id.* 428 S.C. at 203, 833 S.E.2d at 459. *See also Sloan v. S.C. Bd. of Physical Therapy Exam’rs*, 636 S.E.2d 598, 607 (2006) (“The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons.”); *Brown v. S.C. Dep’t of Health & Env’tl. Control*, 560 S.E.2d 410, 414 (2002) (dictum); *Anderson v. Baptist Med. Ctr.*, 541 S.E.2d 526 531 (2001) (deferring to statutory interpretation of S.C. Workers’ Compensation Commission); *Stuckey v. State Budget & Control Bd.*, 529 S.E.2d 706, 708 (2000) (deferring to statutory interpretation of S.C. Retirement Systems); *Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm’n*, 460 S.E.2d 383, 386 (1995) (deferring to Commission’s determination of when Medicaid reimbursement should take into account amendment in Generally Accepted Accounting Principles); *Dunton v. S.C. Bd. of Exam’rs in Optometry*, 353 S.E.2d 132, 133 (1987) (deferring to S.C. Board of Examiners’ statutory interpretation of optometrist licensure statutes); *Bunch v. Cobb*, 257 S.E.2d 225, 228 (1979) (deferring to agency’s consistent interpretation of its power to issue licenses to trucks for oversized loads); *Etiwan Fertilizer Co. v. S.C. Tax Comm’n*, 60 S.E.2d 682, 684 (1950) (deferring to Commission’s interpretation of income tax statute); *Comm’r of Public Works v. S.C. Dep’t of Health & Env’tl. Control*, 641 S.E.2d 763, 768 (Ct. App. 2007) (deferring to agency’s interpretation when statute is ambiguous); *Risinger v. Knight Textiles*, 577 S.E.2d 222, 224 (Ct. App. 2002) (deferring to statutory interpretation of Workers’ Compensation Commission); *Marchant v. Hamilton*, 309 S.E.2d 781, 783-84 (Ct. App. 1983) (deferring to federal comptroller general’s interpretation of statute prescribing civilian pay of government employees while on military duty); *see also Neal v. Brown*, 682 S.E.2d 268, 270 (2009) (stating that an agency, not its staff, is typically entitled to deference).

In order to determine if an agency’s interpretation of a statute or regulation is worthy of deference, the court applies a two-step process. *Id.* 428 S.C. at 205, 833 S.E.2d at 460. “First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. [Second, if] the statute or regulation ‘is silent or ambiguous with respect to the specific issue,’ the court then must give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference.” *A.O. Smith Corp.*, 428 S.C. at 205, 833 S.E.2d at 460 (citing *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env’tl. Control*, 766 S.E.2d 707, 717 (S.C. 2014)). An agency’s interpretation is worthy of deference when it is in harmony with the subject matter of the statute or regulation and accords with its general purpose. *A.O. Smith Corp.*, 833 S.E.2d at 458. As noted by the South Carolina Supreme Court in *Kiawah Development Partners, II. v. S.C. Dep’t of Health and Env’tl. Control*, 411 S.C. 16, 766 S.E.2d 707 (2014), “[w]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.” *Id.* 411 S.C. at 34, 766 S.E.2d 718. Stated another way, “[a]n agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons . . .” *Media Gen. Commc’ns, Inc., and Media Gen. Broad. of S.C. Holdings, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 531 (2010) (citing *Etiwan Fertilizer Co. v. S.C. Tax Comm’n*, 217 S.C. 354, 360, 60 S.E.2d 682, 684 (1950)).² In *Etiwan*, the Court further explained that: “[W]here the

² “That rule of deference respects the legislature’s decision to make an agency initially responsible for applying the law and the agency’s capacity to develop expertise and experience

construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons.” *Etiwan*, 217 S.C. at 359, 60 S.E.2d at 684. As the United States Supreme Court noted, “expert discretion [referring to agency expertise] is the lifeblood of the administrative process.” *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 167 (1962).

In the matter before this Court, the Klomprens bear the burden of proving that the Department’s policy is “arbitrary, discriminatory or unreasonable.” *Colonial Life & Accident Ins. Co. v. S.C. Tax Comm’n*, 248 S.C. 334, 339, 149 S.E.2d 777, 780 (1966) (“The Commission has the power and duty ... to prescribe a method for arriving at a tax base ...and its determination thereabout will not be overthrown by the courts except upon a showing, absent here, that it is arbitrary, discriminatory or unreasonable.”) (internal quotation marks omitted); *see also Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 496, 536 S.E.2d 892, 900 (Ct. App. 2000) (“The construction of a statute by the agency charged with its administration should be accorded great deference and will not be overruled without a compelling reason.”); *Etiwan*, 217 S.C. at 359, 60 S.E.2d at 684.

- I. **The ALC erred in finding that the Department’s interpretation of S.C. Code Regs. 30-1(D)(54) was not entitled to deference, because “[t]he Department’s definition of waterfront property is clear.”**

in making the law work.” *South Carolina Administrative Practice & Procedure*, Third Edition, page 22, Randolph R. Lowell, Editor.

As prescribed by *Kiawah*'s first step in the two-step analysis for deference,³ the language of S.C. Code Regs. 30-1(D)(54)⁴ directly speaks to the issue before the Court; namely, does the Klomparens' lot satisfy the regulatory definition for waterfront property. However, the Court erred in failing to acknowledge the inherent ambiguity in the regulatory language that triggers the second step outlined by *Kiawah Dev. Partners, II* that gives rise to agency deference. *A.O. Smith Corp.*, 428 S.C. at 205. Specifically, the Court erroneously concluded that "[t]he Department's definition of waterfront property is clear." Final Order, p. 10.⁵ The regulatory words "*generally* be defined as" and "*generally* shore perpendicular" in S.C. Code Regs. 30-1(D)(54) are inherently ambiguous because these words are susceptible to multiple reasonable interpretations. *S.C. Dept. of Soc. Services v. Lisa C.*, 669 S.E.2d 647, 652 (S.C. App. 2008) ("If a statute is susceptible to two reasonable interpretations, it is ambiguous").

"*Generally* has three basic meanings: (1) 'disregarding insignificant exceptions' (the level of advocacy in this court is generally very high); (2) 'in many ways' (he was the most generally qualified applicant); (3) 'usually; most of the time' (he generally left the office at five o'clock)."

³ *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Envtl. Control*, 766 S.E.2d 707, 717 (S.C. 2014).

⁴ S.C. Code Regs. 30-1(D)(54) "Waterfront property - For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated."

⁵ Specifically, the Final Order states at page 10 that "[t]he Department's definition of waterfront property is clear. But in applying the definition the Department erred in its lack of recognition of the validity of the angle or turn in the property lines. This does not amount to an interpretation by the Department, which may be entitled to deference. Instead, it is a result of a flawed legal conclusion wherein the Department cut each boundary line in half and only considered the upper half of each line in its evaluation without accounting for the lower half – the extension into the tributary."

Garner, Brian A. *A Dictionary of Modern Legal Usage*, p. 383. New York: Oxford University Press, 1995. Of the three above-referenced meanings of “generally”, which meaning of “generally” did the Legislature intend when the definition of “waterfront property” was promulgated? The answer to this question is not at all obvious. Both times that the word “generally” is used in S.C. Code Regs. 30-1(D)(54), the meaning can be reasonably interpreted in multiple ways. For instance, “*generally* shore perpendicular” could reasonably be applied in the following ways: First, using either the Merriam Webster Dictionary definition of “shoreline” referenced at page 6 in the Final Order⁶ or using Blair Williams’ explanation of where the Klomprens’ shoreline is,⁷ the Klomprens’ shoreline can reasonably be described at the *almost-completely-bulkheaded*⁸ edge of their upland property immediately adjacent to the tidelands as shown in Petitioner’s Exhibit 23C and D. Mr. Klomprens corroborated this by testifying, regarding the pictures of him in his boat adjacent to the 133-foot bulkheaded shoreline in Petitioner’s Exhibit 23A and B that “there's navigable water behind the house” at a “normal” high tide (Transcript Page 25:16 and Transcript Page 26:22-24). Accordingly, since the Klomprens’ bulkhead is *generally* their shoreline, their proposed extended property lines run parallel, *generally* speaking, with the bulkheaded shoreline, not *generally* shore perpendicular.

A second alternative application of “*generally* shore perpendicular” is also reasonable. With the exception of property adjacent to manmade waterways such as the Atlantic Intracoastal

⁶ (i.e., “the line where a body of water and the shoreline meet” and “the strip of land along the shoreline”).

⁷ (i.e., “where saline marshes and uplands interface” (Transcript Page 192:20 to 192:22) and “where that upland meets the saline marsh, that is the shoreline that we're dealing with” (Transcript Page 193:6 to 193:8)).

⁸ Mr. Klomprens testified that his bulkhead stretches 133 feet across his back yard at the location where his upland interfaces with the tidelands critical area. (Transcript Pages 31:10 to 32:12; specifically 32:6; 35:4; and 45:1).

Waterway (“ICW”) along the South Carolina coast or the “canals” in Cherry Grove, most shorelines between tidelands and uplands in the coastal zone are meandering, not straight. The ICW lots and the Cherry Grove “canal” lots are often shaped like horse stalls so that the extended property lines are truly, literally shore perpendicular, not just “generally” shore perpendicular. However, because the Department only occasionally has the “luxury” of applying the “waterfront property” definition to lots where the shoreline is at a right angle with the upland property lines (like the typical ICW lot or Cherry Grove “canal” lot), the Department is most-often tasked with the responsibility of making a “waterfront property” determination by extending the property lines “*generally* shore perpendicular” along a meandering, bending, curving shoreline.

The bottom line is that the regulatory language defining “waterfront property” is ambiguous and the Department’s interpretation is entitled to deference unless it is “arbitrary, capricious or manifestly contrary to the statute.” *Kiawah Development Partners*, 776 S.E.2nd at 718. Specifically, the Legislature’s use of “generally” in the regulatory definition to explain how waterfront property is defined (“*generally* be defined as”) and the Legislature’s use of “generally” in the regulatory definition to explain how to determine if extended property lines are shore perpendicular (“*generally* shore perpendicular”) are ambiguous. Instead of giving deference to the Department’s application of the regulatory definition of “waterfront property”, the Court erroneously declared “[t]he Department’s definition of waterfront property is clear” (Final Order, p. 10) and simply failed to address the ambiguity of the word “generally”.

The Klomprens had the burden of proving that the Department’s decision was flawed and not entitled to deference, but they failed to meet that burden. The Department’s application of the “waterfront property” definition is a reasonable and long-standing interpretation that is subject to

deference. Blair Williams testified that he has been the Wetlands Permitting Section Manager for fourteen years and during that tenure he has overseen “a couple [thousand] to several thousand” critical area permits including dock permits. (Transcript Pages 188:8 to 188:19). He further testified that during his fourteen-year tenure as Section Manager, the Department has “consistently applied the waterfront property definition when making permitting decisions.” (Transcript Page 188:21 to 188:25). In particular, he testified that the Department applied the definition of waterfront property to the Klomparens' lot consistently with how the Department has applied this regulatory definition for his entire fourteen years as Section Manager. (Transcript Page 189:1 to 189:10).

Regarding the “generally shore perpendicular” language, Blair Williams testified that “the shoreline is where the upland meets salt -- saline marshes. So, where -- where saline marshes and uplands interface, that is a shoreline.” (Transcript Page 192:18 to 192:22). In this instance, Mr. Williams testified at trial as to how the Department applied the “waterfront property” definition in this case:

210

6 ... you would say none of this is
7 shoreline before you get out to marsh and
8 water?
9 (Petitioner's Exhibit Number 11 was referenced at
10 this time.)
11 A: No, ma'am. Again, I would go back to what I
12 said between the most eastern and most western
13 property corner points. **Given the fact that**
14 **the critical area line runs generally in**
15 **between those two with a bulkhead, that is**
16 **generally the shoreline and that -- and going**
17 **back to how we applied the regulatory**
18 **definition with that north-northwest exposure,**
19 **straight-line extension of upland property**
20 **lines, that is the shoreline that we are**
21 **utilizing to -- to apply this waterfront**

22 **definition.**

23 Q: And it's not the presence of the bulkhead, but
24 the presences of the critical line that ---

25 A: I think you -- you would look at all factors
211

1 and have a comprehensive look at it. But if
2 you're -- **I mean, he put in a bulkhead to**
3 **protect his shoreline.**

4 Q: Well, to protect his ---

5 A: That hasn't ---

6 Q: --- property.

7 A: Right. His -- the shoreline of property.

8 Q: And if he extended that bulkhead into areas
9 within the two corridor -- two corridor lines,
10 would that change your position today as to
11 whether there should ---

12 A: We'd have to evaluate that under their permit
13 application **because it would be impacting**

14 **critical area.** (Emphasis added).

(Transcript Pages 210:6 to 211:14)

At the very least, the Klomparens introduced no evidence to demonstrate that the Department's position is unreasonable. Accordingly, because the regulation uses "generally" twice in the definition of "waterfront property", it is inherently ambiguous in its application and the Department is entitled to deference, because its application of the regulation is not "arbitrary, capricious or manifestly contrary to the statute." *Kiawah Development Partners*, 776 S.E.2nd at 718.

II. The ALC erred in ignoring Mr. Blair Williams' testimony that he had visited the Klomparens' property a week before the trial and his further testimony that, based on his visual inspection, he confirmed the property pin on the eastern side of their lot was still in the critical area.

The ALC erroneously stated that "[t]he only testimony presented by the Department regarding the location of the IRF [iron rebar] and IPF [iron pipe] was from Blair Williams who testified that he inspected the property on one occasion and was 'not confident that both originate

in the upland.” Final Order, p. 9. This is inaccurate. Blair Williams also testified as follows regarding his inspection of the the property pin’s location on the Klomprens’ eastern property boundary:

213

- 10 Q: Have you been to the property?
11 A: Yes.
12 Q: **When did you go to the property?**
13 A: **Last week.**
14 Q: Okay. After I took your deposition?
15 A: Yes, ma'am.
(Transcript Page 213:10 to 213:15)

214

- 15 So, this is -- I
16 believe this right here is the pin in question.
17 Q: Correct.
18 A: Okay. **Today, from my site visit, that is**
19 **actually in critical area.**
(Transcript Page 214:15 to 214:19)

Blair Williams gave the following further testimony regarding the location of the property pin on the Klomprens’ eastern property boundary:

216

- 10 There's a large oak tree ---
11 THE COURT: Oh, sorry.
12 A: --- that's fallen into the marsh. And the
13 reason it's falling in the marsh because
14 tidewater is exposing the roots. So, it's a
15 combination of tidewater hitting the root
16 system and you got, you know, soils that are
17 coming loose underneath the root system, so the
18 live oak tree is actually collapsing into the
19 marsh. And underneath the root system, you
20 have an escarpment and undermining all the way
21 up through here. **And so, this is all -- where**
22 **this pin is is actually critical area.** But it
23 -- it comes back up around the base of the oak
24 tree. And that's why the oak tree is falling
25 into the marsh.
(Transcript Page 216:10 to 216:25)

The Court erred in ignoring Mr. Blair Williams' above-referenced testimony that he had visited the Klomparens' property a week before the trial and his further testimony that, based on his visual inspection, he confirmed the property pin on the eastern side of the Klomparens' lot was still in the critical area. Instead, the Court concluded that, because Mr. Seabrook testified that the property pin was located above mean high water and landward of 6.8' and 6.9' elevations, this proved the Klomparens' private property extended to the point of the property pin.⁹ Final Order, p. 6. Private property ownership is *not* a dispositive factor in applying the regulatory definition of waterfront property. The relevant portion of the waterfront property definition states that “[f]or purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line.” S.C. Code Regs. 30-1(D)(54). The Department has no quarrel with the concept that individuals own property above the mean high water mark.¹⁰ However, private property ownership above the mean high water mark is not relevant to the application of S.C. Code Regs. 30-1(D)(54). What matters is the straight line extension of the property lines *at the shoreline which Blair*

⁹ Specifically, the Final Order stated that “[t]he elevations noted range between 6.8' and 6.9' and are above mean high water elevation and, as such, constitute private property of the Petitioners.” Final Order, p. 6.

¹⁰ “Under the public trust doctrine, the State holds presumptive title to tidal land *below* the high water mark to be held in trust for the benefit of all people of South Carolina.” *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env'tl. Control*, 766 S.E.2d 707, 715 (S.C. 2014) (Quoting from *Estate of Tenney v. S.C. Dep't of Health & Env'tl. Control*, 393 S.C. 100, 106, 712 S.E.2d 395, 398 (2011) (Emphasis added).

*Williams testified is the point where upland meets critical area.*¹¹ The sharp left (westward) turn of the platted boundary toward the Shem Creek tributary out in the critical area has no impact on the extended property line's direction, because that line's trajectory should be established at the point where the upland and critical area meet. S.C. Code Regs. 30-1(D)(54) requires the Department to start the straight-line extension *where upland meets the tidelands critical area* and keep going out into the tidelands for up to 1,000 feet, if possible. Otherwise, if the straight line extension is starting from a line in the critical area, this would obviously not be a "straight-line extension of ... upland property lines" as S.C. Code Regs. 30-1(D)(54) requires. Blair Williams testified that this property pin on the eastern property boundary is in the critical area. . The Department's straight-line extension on the eastern property boundary started at the cul de sac, and continued straight out into the tidelands at the point where the upland and critical area meet, *regardless of the property pin's location in the critical area.* As both the Project Manager (Jacquie Adams) and Blair Williams testified, this method of extending the Klomprens' property lines out into the tidelands is consistent with how the Department has applied this "waterfront property" definition thousands of times.¹² As such, this regulatory application is

¹¹ Mr. Williams testified that "the shoreline is where the upland meets salt -- saline marshes. So, where -- *where saline marshes and uplands interface, that is a shoreline.*" (Transcript Page 192:18 to 192:22). (Emphasis added).

Again, Mr. Williams testified that "the regulatory definition of waterfront property directs us that it's an upland site. So, *where that upland meets the saline marsh, that is the shoreline that we're dealing with.*" (Transcript Page 193:4 to 193:8). (Emphasis added).

Again, Mr. Williams testified that "[t]he shoreline is -- is that interface between upland -- *a shoreline is -- is an interface between upland and critical area.* (Transcript Pages 206:25 to 207:2). (Emphasis added).

¹² In fact, in 1999 the adjacent property owner at 710 Creekside Drive, who shares the Klomprens' eastern property boundary applied for a dock permit and the Department denied that permit application based on the determination that the extension of this very same eastern

entitled to deference unless it is “arbitrary, capricious or manifestly contrary to the statute.” *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env'tl. Control*, 766 S.E.2d 707, 718 (S.C. 2014) (citing *Chevron*, 467 U.S. at 844, 104 S.Ct. 2778). Mr. Seabrook even acknowledged that *in most cases*, the critical area reaches above the mean high water mark. (Transcript Pages 136:23 to 137:4) (Emphasis added).¹³ Mr. Seabrook’s concession bolsters Mr. Williams’ testimony that the property pin is located in the critical area, so the point where the regulatorily-required straight-line extension begins is not at the property pin, but rather further landward at the point where the upland meets the critical area (a/k/a the shoreline). Specifically, Blair Williams testified that “the shoreline is where the upland meets salt -- saline marshes. So, where -- where saline marshes and uplands interface, that is a shoreline.” (Transcript Page 192:18 to 192:22). From the Department’s perspective, the purpose of making a straight-line extension of the property lines at the point where the upland meets the critical area is a tool the Department uses to manage the public trust tidelands.¹⁴ In contrast, Mr. Seabrook acknowledged

property boundary between 706 Creekside and 710 Creekside did not reach a navigable water course within a thousand feet of the marsh critical area line. (Transcript Pages 155:6 to 157:19).

¹³ 136

23 Q: ... would you agree that the
24 critical area can reach above the mean high
25 water line?

137

1 A: Absolutely. It does.

2 Q: Okay.

3 A: In most cases.

4 Q: Okay. (Transcript Pages 136:23 to 137:4)

¹⁴ 195

16 What's the purpose of an extended
17 property line?

18 A: Extended property lines do not give any real
19 property rights. It's just a management tool

that the purpose for creating a dock corridor associated with the Klomprens' lot had nothing to do with protecting the tidelands, but rather was for development purposes to enhance the property values in the Creekside subdivision.¹⁵ Contrary to the reason Mr. Seabrook's surveying firm originally platted the property lines in the tidelands decades ago (i.e., enhanced property values), the Legislatively-declared state policy is that "[c]ritical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but *not necessarily a combination of uses which will generate measurable maximum dollar benefits.*" S.C. Code Ann. § 48-39-30(D). (Emphasis added).

The ALC erred in concluding that "extending [the Klomprens'] property lines into the marsh where such lines do not normally exist ... is unnecessary as relates to 706 Creekside." Final Order, p. 5.

The Court reasoned that "... the lines extending into the marsh are already platted in the original subdivision plat and are depicted as boundary lines in aerial images that reflect Charleston County real property information. Petitioners have no discretion in creating straight

20 for the Department to be able to manage -- one,
21 to identify which property are truly dock
22 eligible in order to allow for a waterfront
23 property to have a dock. It's helped to manage
24 that public trust property. (Transcript Page 195:16 to 195:24)

15 133

8 Q: Now, you would agree that these lines that were
9 drawn by your father back in the 1960s have
10 nothing to do with protecting the resource, the
11 -- the critical area, correct?

12 A: Had nothing to do with what?

13 Q: Protecting the tidelands? Those lines have
14 nothing to do with protecting the tidelands and
15 -- and -- and rather, they're -- they're for
16 developer -- development purposes, to enhance
17 the value of the property.

18 A: I would assume that that was the case, yes. (Transcript Page 133:8 to 133:18)

line extensions as those lines extending to the creek were determined with the recording of the original subdivision plat.” Final Order, p. 5.

This analysis fails to account for Mr. Williams’ previous testimony that he went out to the Klomparens’ property one week before trial and the eastern property pin was in the critical area. As such, because the upland and critical area interface occurred before this eastern boundary¹⁶ purportedly made a hard left turn at the property pin in the critical area, the property line extension from the upland necessarily began at the point of interface between upland and critical area. Specifically, Blair Williams testified that the Klomparens’ application for a dock to the west, southwest is “not even an option within their upland extended property lines, based off on shore perpendicular extensions to the private property owner's upland.” (Transcript Page 194:16 to 194:21). The Court’s conclusion that extending the Klomparens’ property lines into the marsh is unnecessary fails to account for the Department’s long-held application of the word “shoreline” in the “waterfront property” definition and particularly how the Department applies “*generally* shore perpendicular.”

III. The ALC erred in finding that the Department’s interpretation of S.C. Code Regs. 30-1(D)(54) “is a result of a flawed legal conclusion” and is not entitled to deference. Final Order, p. 10.

The ALC erroneously stated that the Department’s application of S.C. Code Regs. 30-1(D)(54) “does not amount to an interpretation by the Department, which may be entitled to deference” and “is a result of a flawed legal conclusion wherein the Department cut each boundary line in half and only considered the upper half of each line in its evaluation without accounting for the lower half – the extension into the tributary.”

¹⁶ Page 6 of the Final Order refers to this line as “the northern ... boundary ... [as] one continuous line.”

This error also arises from the Court’s failure to recognize Blair Williams’ testimony that he had visited the Klomparens’ property a week before the trial and his further testimony that, based on his visual inspection, he confirmed the property pin on the eastern side of their lot was still in the critical area. Accordingly, the analysis in the second argument above is fully incorporated by reference and does not need to be repeated again.

IV. The ALC erred by finding that the Department’s interpretation of S.C. Code Regs. 30-1(D)(54) was not entitled to deference regarding the shoreline that the Department used for applying the “generally shore perpendicular” requirement.

Ignoring the Department’s conclusion that the shoreline along the Klomparens’ 133 foot bulkhead¹⁷ was the shoreline used to determine whether the extended property lines were “*generally shore perpendicular*”, the ALC erroneously used the shoreline located *outside the Petitioners’ platted property boundaries* at the creek where the Klomparens have applied for their dock permit.¹⁸ The distance between these two lines that terminate on the platted property boundary before reaching the Shem Creek tributary are reflected in Petitioners Exhibit 11 and are about 22 feet across; far less than the 133-foot bulkhead the Department concluded was the shoreline for purposes of applying the “*generally shore perpendicular*” requirement to the Klomparens’ lot. Blair Williams testified that the Department applies the “generally shore

¹⁷ See Mr. Klomparens’ testimony at Transcript Pages 31:10 to 32:12; and specifically, Transcript Pages 32:6; 35:4; 45:1.

¹⁸ Specifically, the ALC determined that “‘Shoreline’ is defined as ‘the line where a body of water and the shore meet’ and as ‘the strip of land along the shoreline.’ Merriam Webster Dictionary. The line depicted on Seabrook’s plat, where water and shore meet, is not limited to the [133 foot] shoreline along the northern section of 706 Creekside *but also exists along the western section of the property*, where marsh and critical area are depicted between the property lines [22 feet apart] as they extend toward the center line of the tributary. Images of the surrounding properties and docks confirm that the area where Petitioners propose to locate their dock is considered shoreline by neighboring property owners.” Final Order, p. 6 (Emphasis added).

perpendicular” language “[b]ased on the shoreline of a specific property.” (Transcript Page 209:5 to 209:16).¹⁹ In this case, the shoreline of this specific property generally ran along the Klomparens’ 133-foot bulkhead. As Blair Williams and Jacquie Adams both testified, this regulatory interpretation has been applied consistently thousands of times. It was neither arbitrary, nor capricious nor manifestly contrary to the statute for the Department to conclude that the 133-foot bulkhead running along the edge of the Klomparens’ upland within the platted property boundary was the shoreline from which to apply the “generally shore perpendicular” requirement, rather than the 22-foot shoreline outside the platted property boundary beside the Shem Creek tributary.

The regulatory requirement that the permit applicant provide the Department with a deed and plat (see S.C. Code Regs. 30-2(B)(3) and (4)) when applying for a dock permit bolsters the Department’s interpretation of S.C. Reg. 30-1(D)(54) that the shoreline used for evaluation is the 133-foot bulkheaded shoreline that runs along the Petitioners’ upland and interfaces with the tidelands critical area. The use of a shoreline not reflected in the deed or plat is not contemplated by S.C. Code Regs. 30-2(B)(3) and (4).

¹⁹ 209

5 Q: But the -- the regulation says generally shore
6 perpendicular upland property lines.

7 A: Straight-line extension of upland property
8 lines generally shore perpendicular.

9 Q: Okay. So, your -- your ---

10 A: The -- the -- the parallel extensions that has
11 been represented here is in no way generally
12 shore perpendicular.

13 Q: By your definition of shore being that area
14 that kind of cross -- cuts across the upland
15 property?

16 A: *Based on the shoreline of a specific property.* (Transcript Page 209:5 to 209:16). (Emphasis added).

Another problem that results from the ALC's erroneous use of the shoreline located *outside the Petitioners' platted property boundaries* at the creek where the Klomprens have applied for their dock permit is that their neighbors across the creek in Cooper Estates have the same purported claim of marsh ownership as the Klomprens and they are blocking the Klomprens' access to the Shem Creek tributary (according to the Charleston County GIS map admitted into evidence). (Trial Tr. 134:12-21). When a permit applicant seeks to build a dock across someone else's property, S.C. Code Regs. 30-2(B)(4) requires the applicant to provide OCRM with an "instrument under which the applicant claims ... permission from the owner of the property to carry out the proposal." Mr. Seabrook admitted that, as the Klomprens' agent, he never sought permission for his clients to build their dock across their Cooper Estates neighbors purportedly privately-owned marsh. (Trial Tr. 134:12-21). Consequently, the Klomprens' permit application cannot be further evaluated until they provide permission to carry out the proposal from their neighbors across the creek in Cooper Estates who have the same purported claim of marsh ownership. S.C. Code Regs. 30-2(B)(4).

CONCLUSION

The Supreme Court said that "[w]hile all citizens may use and enjoy these lands subject to the State's control, no citizen has an inherent right to take possession of or alter these lands. Accordingly, the public's interest must be the lodestar which guides our legal analysis in regards to the State's tidelands." *Kiawah Dev. Partners, II v. S.C. Dept. of Health and Env'tl. Control*, 766 S.E.2d 707, 715 (S.C. 2014). Blair Williams testified that if the Department applied the Klomprens' interpretation of the "waterfront property" definition to dock permits, the cumulative negative impact to the tidelands and coastal waters critical areas would be significant. (Transcript Pages 198:13 to 199:16). Specifically, he testified that "really the public

in a whole because it would lead to -- potentially, would lead to overcrowding of tributaries, cordoning off of marsh -- marshes and shorelines that are currently -- tributary-type shorelines that are currently accessible by the public. So, it has a potential to affect many things, but probably first top -- a few things I think off the top of my head is use, access, and navigation by the public.” (Transcript Pages 199:7 to 199:16).

Using the public's interest as “the lodestar which guides [this Court’s] legal analysis in regards to the State's tidelands,” the Department respectfully requests that the Court reconsider its opinion and issue an Amended Order upholding the Department’s permitting decision. *Id.*

Respectfully submitted,



Bradley D. Churdar
S.C. Bar No. 12829
Associate General Counsel for DHEC/OCRM
South Carolina Department of Health and
Environmental Control
1362 McMillan Ave., Ste 400
North Charleston, SC 29405
Tel.: (843) 953-0213
Fax: (843) 953-0201
churdabd@dhec.sc.gov

Charleston, South Carolina
September 26, 2022

The undersigned hereby certifies that on this day he has served opposing counsel in the above-captioned action with a copy of *Department's Motion for Reconsideration* by mailing and emailing a copy of the same to Mary D. Shahid, Esquire.

By:



Date: September 26, 2022

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

ROBERT KLOMPARENS AND WHITNEY
KLOMPARENS,

Petitioners,

vs.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL,

Respondent.

Docket No.: 21-ALJ-07-0310-CC

**PETITIONERS' RETURN TO
RESPONDENT'S MOTION TO
RECONSIDER**

Petitioners hereby submit this Return in Opposition to the Motion to Reconsider filed by Respondent South Carolina Department of Health and Environmental Control. Respondent has requested reconsideration of this Court's Final Order based on the following allegations of error:

- The ALC erred in not awarding deference to the Department's interpretation of the definition of waterfront property provided in S. C. Code Regs. 30-1(D) (54). The regulatory definition of waterfront property is:

For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

- The ALC erred in ignoring testimony offered by agency witness Blair Williams regarding conditions on Petitioners' property.

Respondent's Interpretation of R. 30-1(D) (54) Is Not Entitled to Deference.

At issue is whether the referenced definition would exclude the Klomprens from qualifying for a dock permit. As noted in this Court's Final Order, "[t]he Department argues that straight line extensions of 706 Creekside's property lines result in reaching the existing dock north

of 706 Creekside, rather than reaching the tributary to Shem Creek.” (Final Order p. 2.) Petitioners assert that the Respondent, incorrectly, disregarded a bend in Petitioners’ property lines which created a corridor to Shem Creek.

The Respondent argues that use of the term “generally” in the regulatory definition renders the definition subject to interpretation and deference. This argument was not advanced at the hearing. In his opening statement, Respondent’s counsel addressed the regulatory definition and argued that Petitioners were applying it incorrectly as there was no proof of ownership by Petitioners of the critical area. (Tr. p. 12.) Respondent’s witness Jacqueline Adams, Project Manager, testified similarly, that the Klomparens could not demonstrate proof of marsh ownership between the property lines that extended to Shem Creek. (Tr. p. 153, l. 8-20.) Adams further testified that she drew straight line extension of the property lines as those lines extended from the street (in disregard of the bend in the lines) and the lines extended to the neighboring property and not to water. (Tr. p. 156, l. 22-25, p. 157, l. 1-15.) Finally, Adams testified that her conclusions related to Klomparens were identical to her conclusions “in the hundreds of other dock permit applications that [she had] processed.” Tr. p. 159, l. 5-13.) This testimony is not consistent with Respondent’s argument in its Motion to Reconsider that the use of the term “generally” in the regulation renders it inherently ambiguous. It is demonstrative of the fact that the Respondent excluded the sections of the property line that extended to Shem Creek based on lack of demonstration of marsh ownership and, upon exclusion of a section of each property line, concluded the property lines were shore parallel and not perpendicular.

Respondent’s witness Blair Williams provided similar testimony. “We make a determination on every permit application that asks for a dock as to whether it’s waterfront property or not.” Williams acknowledged making this decision for “a couple to several thousand”

permit applications. Williams affirmed that Respondent has “consistently applied the waterfront property definition when making permitting decisions.” (Tr. p. 188.)¹ Williams’ and Adams’ testimony supports the Court’s finding and conclusion that the definition was clear and not subject to interpretation. When asked to explain the regulatory definition Williams testified that “It’s got to be an upland site. And then, it’s a straight-line of both the property lines of the upland site. And it has to be shore perpendicular to that upland site.” (Tr. p. 190, l. 15-22.) Again, this testimony does not support any argument that the regulation, and the use of the phrase “generally shore perpendicular,” is ambiguous or subject to interpretation.

In its Pre-Hearing Statement, where the Respondent provided the Court a brief summary of the facts, Respondent cited the following as the basis for denying the permit application: “In particular, the current alignment of the upland property lines (not marsh lines) for 706 Creekside as shown on the submitted plat are generally shore parallel and do not meet the Department’s regulatory definition of waterfront property.” In a footnote the Respondent cited the regulatory definition and emphasized the phrase “shore perpendicular.” That same emphasis is included in the Respondent’s summary of the facts to be presented, where the phrase “shore parallel” is emphasized. Yet, what Respondent had not emphasized or called into question, until now, is the word “generally.”

The Respondent, reacting to the Court’s conclusion that the definition of waterfront property is clear and any interpretation applied by Respondent is not entitled to deference, now claims that the regulation is ambiguous. But this newly-minted claim is not supported by the Respondent’s filings with this Court or by the testimony of the witnesses who, in hundreds if not

¹ This question was repeated - “Did the Department interpret the regulatory definition of waterfront property the same way for the Klomparens’ dock permit application as it has always done in the past at least 14 years since you have been the critical area section manager?” Mr. Williams responded in the affirmative. (Tr. p. 198, l. 4-11.)

thousands of instances, testified to no confusion in applying the regulatory definition to specific permit applications. The word “ambiguous” does not even appear in the transcript – it was never used at the hearing by Respondent’s counsel or by Respondent’s witnesses in describing their decision-making process.

The arguments in Respondent’s Motion conflate “shoreline” with the regulatory definition reference to “shore perpendicular” that refers to the spatial relationship between the property line or property line extension and the shore. The word “shoreline” is not included in the regulatory definition but Respondent does not reject the definition cited by the Court. Respondent continues to claim that the “shoreline” is that area of marsh adjacent to the bulkhead. But Respondent ignores the fact that this designated area is located between two platted boundary lines that extend through the marsh to the creek and a shoreline is located between these two boundary lines before the lines reach the creek. The regulation does not address identification of a “general shoreline.” Respondent’s refusal to acknowledge that the property lines for 706 Creekside extend, perpendicularly, to Shem Creek is the sole factor that influenced Respondent’s determination to deny the Klomprens’ permit application.

Blair Williams’ Testimony Regarding the Character of Petitioners’ Property

Respondent is simply incorrect in asserting that this Court ignored Williams’ testimony regarding identification of one of the property pins on Petitioners’ property lines as being in the critical area. Rather, this Court was persuaded by Seabrook’s testimony, in which he confirmed the multiple visits to the property he made and the measurements taken by his team to ground-truth the location of the rebar and iron-pipe. The Court’s Final Order specifically states the Court’s understanding of Williams’ testimony that “... he inspected the property on one occasion and was

‘not confident that both [property lines] originate in the upland.’” Clearly, there was consideration of Williams’ testimony by the Court. Just not agreement.²

In testifying that the iron pipe and/ or iron rebar may not have been located in upland, Williams is providing observational testimony based solely upon a single site visit. Respondent notes that Williams offered conclusions that a fallen tree was also evidence of the presence of critical area. However, no foundation was provided for such testimony, nor was any information indicating that Williams was present on the property when the tree fell. In short, Williams merely made an unsupported conclusion that the tree fell due to erosion and tidal water.

Petitioner Robert Klomparens testified that “there is a very large grand oak that is laying in the - in the marsh kind of - it’s horizontal, so it a very substantial grand oak that has that fallen at some time in the last probably 30 or 40 years.” (Tr. p. 48, l. 7-17.) Petitioners’ expert Lewis Seabrook identified an oak tree that was entered into evidence as “that portion of the oak tree is growing horizontally.” (Tr. p. 93, l. 16-23.) Respondent’s Exhibit 15 was admitted and the photographs in 15F - 15I clearly reflect the tree in question which, although horizontal, appears to have living branches (leaves) extending from the horizontal trunk.

“Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a mere

² Unfortunately, Klomparens’ Counsel failed to move to strike testimony regarding an investigation of the Klomparens property a week before the hearing without notice to Counsel or to the Klomparens, undertaken in violation of SCRCP Rule 34 (entry upon land for inspection.) At the time of Ms. Adams’ deposition she had not inspected the placement of the iron pipe or iron rebar that marked the bend in the property lines. (Tr. p. 176, l. 11-22, p. 177, l. 1-4) She acknowledged on cross-examination (she wasn’t asked on direct examination) that she made her first visit to the property one week before the hearing and after her deposition. Mr. Williams’ provided similar testimony that he had only looked at the property after his deposition a week prior to the hearing. (Tr. p. 213, l. 6-15) This testimony was not elicited by Respondent’s counsel but was only divulged upon cross examination. The undersigned was taken aback and unprepared for this testimony and failed to take adequate measures to address the impropriety of the agency’s inspection.

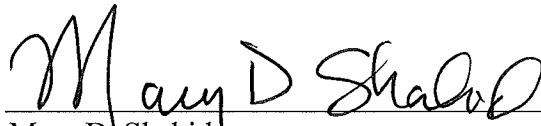
scintilla of evidence. The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” Original Blue Ribbon Taxi Corp. v. S. C. Dept. of Motor Vehicles, 380 S. C. 600, 605, 670 S. E. 2d 674, 677 (Ct. App. 2008). Here, Seabrook, who testified as an expert in land surveying including the location and direction of boundary lines³, provided much more than a scintilla of evidence in support of his analysis of the property and of the property boundary. Specifically, he supervised preparation of a recordable plat for the property, identified the location of the iron rebar and iron pipe, determined that the points for the bend or turn in the property lines originated in upland, flagged the original critical line for OCRM’s approval, asked his crew to install the flags again to insure that his testimony related to the location of the iron rebar and iron pipes was accurate, and identified a discrepancy in the placement of one flag which mistakenly pushed the critical line into upland. That mistake was attributed to corruption of a single data point and correct relocation of the flag allowed Mr. Seabrook to conclude that the rebar was 8” (eight inches) upland of the critical line. Notably, Seabrook testified that he examined Petitioners’ property at least four times.

In conclusion, Respondent’s Motion to Reconsider fails to identify evidence sufficient to justify its position that both property pins were not in the upland, such that turn of the property lines and the property lying between the lines could properly be ignored. Petitioners and their witness presented significant evidence to support Petitioners’ position that 706 Creekside is waterfront, which is consistent with the regulatory definition. Moreover, the Respondent’s claim that the regulatory definition is ambiguous is not supported by the testimony of the Respondent’s witnesses. The basis for denial of the permit was the Respondent’s refusal to recognize the bend in the property line extending into Shem Creek. Petitioners provided substantial evidence to

³ Tr. p. 66, l. 15-18.

support this Court's conclusions that straight line extensions of both generally shore perpendicular, upland property lines reached Shem Creek within 1,000 feet of the critical line.⁴

For the foregoing reasons, Petitioners respectfully request that this Court deny Respondent's Motion for Reconsideration.



Mary D. Shahid
Angelica M. Colwell
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440
mshahid@nexsenpruet.com
acolwell@nexsenpruet.com

Attorneys for Petitioners Robert Klomparens and
Whitney Klomparens

October 4, 2022
Charleston, South Carolina

⁴ This Court found that "Petitioners' boundary lines originate at the cul de sac, in upland." Final Order p. 7. However, that finding does not need to be determinative as Petitioners submitted reliable evidence from their expert witness as to the upland location of both property pins that indicate the bend in the property line.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Klomprens and Whitney
Klomprens,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No. 21-ALJ-0-0310-CC

DHEC'S REPLY TO PETITIONERS'
RETURN TO THE DEPARTMENT'S
MOTION FOR RECONSIDERATION

Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "the Department") submits this Reply to the Return filed by Petitioners Robert and Whitney Klomprens responding to the Department's Motion for Reconsideration.

Before addressing the substance of opposing counsel's Return, it is worth noting that the Petitioners fail to address the Department's argument that the ALC erroneously used the shoreline located *outside the Petitioners' platted property boundaries* at the creek where the Klomprens have applied for their dock permit.¹ (See *DHEC's Motion to Reconsider*, p. 17).

I. DHEC is not precluded from challenging the ALC's legal conclusion that deference to the Department's application of S.C. Code Regs. 30-1(D)(54) is unwarranted because the "definition of waterfront property is clear." Final Order, p. 10.

Petitioners argue that the Department is precluded from arguing that "*generally* shore perpendicular" is ambiguous language because "[t]his argument was not advanced at the

¹ Petitioners' failure to address this issue also includes the resulting obstacle that arises because their neighbors across the creek in Cooper Estates also have the same purported claim of marsh ownership as the Klomprens and are blocking the Klomprens' access to the Shem Creek tributary (according to the Charleston County GIS map admitted into evidence). (Trial Tr. 134:12-21).

hearing” (*Return*, p. 2) or in the Pre-Hearing Statement (*Return*, p. 3). The Petitioners’ put forward this argument despite the Court’s conclusions of law regarding deference.

As referenced in the Department’s *Motion to Reconsider*, the Supreme Court held that if DHEC gives regulatory language “a reasonable and practical construction consistent with the purpose and policy expressed in the [regulation], ... [t]he construction of . . . [the regulation] by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” *A.O. Smith Corp. v. S.C. Dep’t of Health and Envtl. Control*, 428 S.C. 189, 202-203, 833 S.E.2d 451, 459 (Ct. App. 2019).

A court must apply a two-step process to determine if an agency’s interpretation of a statute or regulation is worthy of deference. *Id.* 428 S.C. at 205, 833 S.E.2d at 460. This Court applied the two-step analysis and made the legal conclusion that deference to the Department’s application of the regulatory language was not warranted because “generally shore perpendicular” was “clear” and therefore unambiguous. Final Order, p. 10.

A. Legal argument did not have to be advanced at the hearing.

Regarding the ambiguity of the language “generally shore perpendicular,” opposing counsel asserts that it is significant that “[t]he word ‘ambiguous’ does not even appear in the transcript - it was never used at the hearing by Respondent’s counsel or by Respondent’s witnesses in describing their decision-making process.” (*Return*, p. 4). In particular, Petitioners emphasize that neither Blair Williams nor Jacquie Adams testified regarding the ambiguity of the regulatory language.² (*Return*, p. 2-3). Notwithstanding the absence of the word “ambiguous” from the trial

² In contradistinction, the Court of Appeals recently held that “[t]he common law and the federal rules of evidence forbid opinions on issues of law, except foreign law.” *Carter v. Bryant*, 838 S.E.2d 523, 531 (S.C. App. 2020), reh’g denied (Feb. 20, 2020), cert. denied (Oct. 19, 2020)

transcript, the Supreme Court in *Kiawah* said that an agency such as DHEC is entitled to deference “both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.” *Kiawah Development Partners, II. v. S.C. Dep’t of Health and Env’tl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

Regarding the “*generally* shore perpendicular” language, Blair Williams testified at trial as to how the Department applied the “waterfront property” definition in this case by twice using the word “generally” in applying the regulatory definition:

210

6 ... you would say none of this is
7 shoreline before you get out to marsh and
8 water?
9 (Petitioner's Exhibit Number 11 was referenced at
10 this time.)
11 A: No, ma'am. Again, I would go back to what I
12 said between the most eastern and most western
13 property corner points. **Given the fact that**
14 **the critical area line runs generally in**
15 **between those two with a bulkhead, that is**
16 **generally the shoreline and that -- and going**
17 **back to how we applied the regulatory**
18 **definition with that north-northwest exposure,**
19 **straight-line extension of upland property**
20 **lines, that is the shoreline that we are**
21 **utilizing to -- to apply this waterfront**
22 **definition.**

(Transcript Pages 210:6 to 210:22) (Emphasis added).

Like Mr. Williams’ testimony regarding the “*generally* shore perpendicular” language, Mr. Seabrook’s testimony also reflects the inherent ambiguity of the “waterfront property” definition. First, Mr. Seabrook testified that the Petitioners’ extended property lines were

(citing *McCormick on Evidence* § 12 (7th ed. 2016); *Weinstein's Federal Evidence* § 704.04[1] (2nd ed. 2019)).

“generally shore perpendicular” to “that whole side of the subdivision.”³ (Emphasis added). There is no language in the regulatory definition that allows Mr. Seabrook to conclude that “generally shore perpendicular” applies to the “whole side of the [Creekside] subdivision” instead of only to the Klomparens’ platted property. Additionally, in Mr. Seabrook’s continued focus on the *subdivision* shoreline rather than the Klomparens’ shoreline within their platted property, he further demonstrated the inherent ambiguity and the possibility of more than one construction of the regulatory language by making the following concession during the Department’s cross examination:

129

22 Now,
23 would you agree or concede that the lines as
24 depicted on this deposition Exhibit Number 5
25 depicts the property line extensions as

3

78

21 Q: Okay. When his property boundaries make this
22 turn, and by this turn, I'm pointing to the
23 angle ---
24 A: Uh-huh.
25 Q: --- on Petitioner's 11 as they head out to the

79

1 tributary, do they take a general shore
2 perpendicular course?
3 A: They're generally perpendicular to that whole
4 side of Creekside ---
5 Q: Okay.
6 A: --- subdivision.
7 Q: Is that shoreline?
8 A: Say that again?
9 Q: **Is that shore perpendicular? In other words,**
10 **do they go out over the marsh and into the**
11 **water?**
12 A: **Generally, perpendicular to that whole side of**
13 **the subdivision, yes.**
(Transcript Pages 78:21 to 79:13) (Emphasis added).

1 generally shore perpendicular? See those red
 2 lines that -- that are extending out from the
 3 property lines, one right there and one over
 4 there, do you see those?
 5 A: **If you're looking at a microscopic view of the**
 6 **subdivision**, those -- those lines -- if they
 7 were to extend -- if they were the end of the
 8 property line, which they're not, **if you were**
 9 **to extend those in the same bearing going out,**
 10 **then you could say that that was generally**
 11 **perpendicular to that portion of the property**
 12 **line -- of the -- of the shoreline.**
 (Transcript Pages 129:22 to 130:12) (Emphasis added).

The “microscopic view of the subdivision” Mr. Seabrook was referring to is the Klomprens’ platted property. Mr. Seabrook gave no basis for concluding that the correct application of the “*generally shore perpendicular*” language applies to the entire side of the Creekside subdivision instead of only applying to the Klomprens’ lot. As previously mentioned in the Department’s *Motion to Reconsider*, the typical shoreline meanders, so the Department is most-often tasked with the responsibility of making a “waterfront property” determination by extending the property lines “*generally shore perpendicular*” along a non-linear, bending, curving shoreline. Thus, the ambiguity of the “*generally shore perpendicular*” language allows the Department to implement the regulatory definition in a way that reflects the State’s policies found in S.C. Code Ann. § 48-39-30.⁴

B. Legal argument is not required to be in the Department’s Prehearing Statement

Opposing counsel asserts that the Department’s Prehearing Statement must address the deference and ambiguity issues. (*Return*, p. 3). Otherwise, opposing counsel implies that the

⁴ Petitioners argue that because neither Mr. Williams nor Ms. Adams testified they were “confused” by the “*generally shore perpendicular*” regulatory language, there is no ambiguity. Department Staff can certainly interpret and consistently apply this ambiguous regulatory language consistent with the policies of the Act without being *confused* by the ambiguity.

ALC's conclusions of law as to the inapplicability of the deference doctrine are beyond the scope of appellate review.

In *Sierra Club v. S.C. Dept. of Health and Env'tl. Control*, 693 S.E.2d 13 (S.C. App. 2010), the Court of Appeals addressed the Petitioners' argument that the Prehearing Statement puts a hard limit on the scope of issues subject to appellate review. The bottom line is that the Petitioners' argument is incorrect. In *Sierra Club*, the Court held that

"Specifically, we do not believe *McNeely* holds that, as a general rule, only those claims presented in a prehearing statement will be considered on appeal. *Instead, we find the general preservation rule, that an issue must be raised to and ruled upon in order to be preserved for review, should apply.* See *Brown v. S.C. Dep't. of Health & Env'tl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ('[I]ssues not raised to *433 and ruled on by the AL[C] are not preserved for appellate consideration.'). Therefore, we must determine whether this issue was properly before the ALC." *Sierra Club*, 693 S.E.2d at 17. (Emphasis added).

"Furthermore, we believe the *Sierra Club* overcame the 'ruled upon' requirement for preservation. Here, the *Sierra Club* submitted a post-trial motion requesting the ALC rule on these issues which the ALC generally denied without addressing specific issues." *Sierra Club*, 693 S.E.2d at 17–18.

...

"As additional support for the 'ruled upon' preservation requirement, we look to *Pye v. Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006). In *Pye*, the South Carolina Supreme Court identified a ruling by a trial court or a post-trial motion as the two ways to preserve an issue for appeal. 369 S.C. at 566, 633 S.E.2d at 511. The *Pye* court held an issue was **18 preserved for review when *Pye* raised such issue to the trial court through a Rule 59(e) motion. 369 S.C. at 565, 633 S.E.2d at 510." *Sierra Club*, 693 S.E.2d at 17–18.

In the matter before the ALC, DHEC has preserved its arguments for appellate review by filing a *Motion to Reconsider*.

II. Opposing counsel erroneously asserts that Lewis Seabrook’s testimony was more reliable than Blair Williams’ testimony, because there was no foundation for Mr. Williams’ testimony that the eastern property pin is in the critical area.

Petitioners dismiss Blair Williams’ testimony that the eastern property pin is in the critical area as merely “observational testimony based solely upon a single site visit.” (*Return*, p. 5). Petitioners attempt to further diminish the credibility of Mr. Williams’s testimony regarding the fallen tree in the critical area near the eastern property pin by stating there was “no foundation ... for such testimony, nor was any information indicating that Williams was present on the property when the tree fell. In short, Williams merely made an unsupported conclusion that the tree fell due to erosion and tidal water.”⁵ (*Return*, p. 5). Such a dismissive summary of Mr. Williams’ testimony ignores his foundational testimony that he has been the Wetlands Permitting Section Manager for fourteen years overseeing all of the Wetlands Project Managers and overseeing the issuance of “several thousand” critical area permits during his tenure. (Transcript Pages 188:8 to 188:19). Opposing counsel’s “no foundation” allegation also ignores

⁵ 216
10 There's a large oak tree ---
11 THE COURT: Oh, sorry.
12 A: --- that's fallen into the marsh. And the
13 reason it's falling in the marsh because
14 tidewater is exposing the roots. So, it's a
15 combination of tidewater hitting the root
16 system and you got, you know, soils that are
17 coming loose underneath the root system, so the
18 live oak tree is actually collapsing into the
19 marsh. And underneath the root system, you
20 have an escarpment and undermining all the way
21 up through here. **And so, this is all -- where**
22 **this pin is is actually critical area.** But it
23 -- it comes back up around the base of the oak
24 tree. And that's why the oak tree is falling
25 into the marsh.

(Transcript Page 216:10 to 216:25) (Emphasis added).

Mr. Williams’ testimony that the Department has “consistently applied the waterfront property definition when making permitting decisions.” (Transcript Page 188:21 to 188:25). Such expertise is the very scenario where deference is supposed to be accorded to the Department’s interpretation and application of ambiguous regulatory language, especially when, as here, such interpretation has been long standing. The Supreme Court said that “[w]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.” *Kiawah Development Partners, II. v. S.C. Dep’t of Health and Env’tl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). Stated another way, “[a]n agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons” *Media Gen. Commc’ns, Inc., and Media Gen. Broad. of S.C. Holdings, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 531 (2010) (citing *Etiwan Fertilizer Co. v. S.C. Tax Comm’n*, 217 S.C. 354, 360, 60 S.E.2d 682, 684 (1950)).

In contrast to Mr. Williams’ testimony, opposing counsel points to Mr. Seabrook’s numerous, erroneously admitted speculations⁶ as the basis for bolstering his testimony that the

⁶

1 OBJECTION:

2 **MR. CHURDAR: Your Honor, I -- I would object. He**
3 **is getting into speculation, what he believed**
4 **happened with his equipment.**

5 MS. SHAHID: I ---

6 A: My speculation is based on 43 years of
7 experience and knowing what a critical line
8 looks like.

9 MS. SHAHID: I can ask him some more questions, Your
10 Honor.

11 **THE COURT: Okay. I'm going to overrule the**

eastern property pin was actually eight inches landward of the critical line at the L14 and L15 location identified on the June 25, 2020 certified critical area line (see Petitioners' Exhibit Number 12). (Transcript Page 92:8 to 92:20; and Transcript Page 114:19 to 114:24). Because Mr. Seabrook's crew (Mike Sherman and John Brian) did the survey work at the Klomparens' lot at 706 Creekside, his testimony about that work is not based on his own firsthand knowledge. (Transcript Pages 118:24 to 119:2). For example, Mike Sherman and John Brian flagged the Klomparens' critical area line, not Mr. Seabrook. (Transcript Page 96:20 to 96:22). Mike Sherman and John Brian did the other field work and data collection, and Mr. Seabrook merely approved it. (Transcript Pages 88:18 to 89:5; Transcript Pages 95:12 to 95:14; Transcript Page 96:16 to 96:22; Transcript Page 101:12 to 101:14). Consequently, when Mr. Seabrook testified that the reason the eastern property pin was purportedly eight inches too far into the tidelands (marsh) using the original June 25, 2020 OCRM-certified critical line, he was speculating when he said that "something interfered with the beam, the laser from the total station to the prism." (Transcript Page 98:12 to 98:20). Mr. Seabrook was not on site that day and neither Mike Sherman nor John Brian testified at trial regarding any interference with the total station beam. Mr. Seabrook simply speculated about this matter. Mr. Seabrook further revealed his lack of personal knowledge about his crew's data collection site visit at the Klomparens' property prior to the June 25, 2020 critical area line certification. Specifically, he testified that "the survey crew sets up on a point with known coordinates, gets the instrument level, aligns it on another point of

12 **objection. Go ahead and ask the questions. If**

13 **-- let's see if you can lay a foundation for**

14 **what he's ---**

15 MS. SHAHID: Yeah.

16 **THE COURT: --- going to testify to.**

(Transcript Pages 97:1 to 97:16) (Emphasis added).

known coordinates, and then it gives locations based on -- on that alignment.” (Transcript Page 99:6 to 99:10). How does Mr. Seabrook know if Mike Sherman and John Brian accurately set up on a point with known coordinates, when he was not present at the site that day and they did not testify at trial? How does Mr. Seabrook know if Mike Sherman and John Brian accurately got the instrument level when he was not present at the site that day and they did not testify at trial? How does Mr. Seabrook know if Mike Sherman and John Brian accurately aligned the instrument on another point of known coordinates that day when he was not present at the site, and they did not testify at trial? According to Mr. Seabrook’s testimony, all of these things must be accurately accomplished based on the alignment of the total station to the prism before any given locations can be relied on. Without the testimony of Mike Sherman and John Brian, Mr. Seabrook’s “total station and prism” testimony that was the basis to purportedly move the critical area line eight inches toward the tidelands (thus ensuring the eastern property pin is in the upland) is just speculation that was admitted over the Department’s objections.

While the ALC recognized Mr. Seabrook as an expert in land surveying (including the location and direction of boundary lines), he further undermined his testimony by demonstrating no expertise regarding specific types of saline vegetation in the critical area. Such a knowledge of saline vegetation is crucial to accurately delineating upland from tidelands, because “[c]oastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are *normally characterized by the prevalence of saline water vegetation* capable of growth and reproduction.” S.C. Code Ann. § 48-39-10(G). (Emphasis added). Mr. Seabrook only generically mentioned critical area vegetation twice in all of his testimony at trial (i.e., “[i]n the foreground, you see some green critical area growth”

[Transcript Pages 94:15 to 94:16] and “there's no critical line vegetation on the house side of those four boards” [Transcript Pages 100:23 to 100:25]). What saline vegetation was he referring to? Nobody knows.

III. Petitioner’s reliance on the “substantial-evidence-on-the-whole-record” standard is misplaced, because the ALC failed to consider the “whole record” of Blair Williams’ testimony regarding the location of the eastern property pin in the critical area.

Opposing counsel relies on *Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles* for the proposition that substantial evidence exists to support the ALC’s Final Order. The Court of Appeals stated in that case it “may reverse or modify the decision only if the appellant's substantive rights have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence *on the whole record*, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.”. *Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles*, 670 S.E.2d 674, 676 (S.C. App. 2008) (citing *SGM–Moonglo, Inc. v. S.C. Dep’t of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct.App.2008)). (Emphasis added). While *Blue Taxi* is referring to the Record on Appeal at the Court of Appeals, the “whole record” before this Court certainly includes the entirety of Blair Williams’ testimony where he unequivocally testified that the eastern property pin is in the critical area. (See Transcript Page 214:15 to 214:19 and Transcript Page 216:10 to 216:25). The regulatory definition requires the Department to start the straight-line extension *where upland meets the tidelands critical area* and keep going out into the tidelands for up to 1,000 feet, if possible. Blair Williams testified that this property pin on the eastern property boundary is in the critical area, so the hard left turn of the property line is in the critical area. Consequently, the sliver of property at the eastern property boundary where the property line purports to make a

sharp turn to the left (west) toward the Shem Creek tributary is not dispositive in applying the waterfront property definition, because this leftward/westward turn occurs in the critical area.

IV. The Petitioners and their agent (Mr. Seabrook) gave the Department permission to enter their property “to make periodic inspection at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions prescribed herein.”

Petitioners’ counsel asserts that the Department staff were essentially trespassing on the Klomparens’ property when they made a site visit before trial. (*Return*, p. 5, footnote 2). Putting aside the irrelevance of opposing counsel’s after-the-fact regret about failing to make a motion to strike, such a motion would have been meritless at trial anyway. Both Mr. Klomparens and Mr. Seabrook signed the permit application giving the Department staff permission “to make periodic inspection at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions prescribed herein.” The attached copy of this signature page was admitted into evidence at trial as page 6 of the Department’s Exhibit Number 1.

CONCLUSION

For the foregoing reasons as well as the reasons articulated in the *Motion to Reconsider*, the Department respectfully requests that the Court issue an Amended Order upholding the Department’s permitting decision.

[Signature follows on next page]

Respectfully submitted,

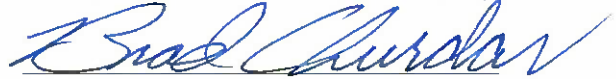


Bradley D. Churdar
S.C. Bar No. 12829
Associate General Counsel for DHEC/OCRM
South Carolina Department of Health and
Environmental Control
1362 McMillan Ave., Ste 400
North Charleston, SC 29405
Tel.: (843) 953-0213
Fax: (843) 953-0201
churdabd@dhec.sc.gov

Charleston, South Carolina
October 10, 2022

The undersigned hereby certifies that on this day he has served opposing counsel in the above-captioned action with a copy of *DHEC's Reply To Petitioners' Return To The Department's Motion For Reconsideration* by mailing and emailing a copy of the same to Mary D. Shahid, Esquire.

By:



Date: October 10, 2022



**SIGNATURE
PAGE**

**Office of Ocean and Coastal
Resource Management**

APPLICATION IS HEREBY MADE FOR A PERMIT OR PERMITS TO AUTHORIZE THE ACTIVITIES DESCRIBED HEREIN. I CERTIFY THAT I AM FAMILIAR WITH THE INFORMATION CONTAINED IN THIS APPLICATION, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF SUCH INFORMATION IS TRUE, COMPLETE, AND ACCURATE. I FURTHER CERTIFY THAT I POSSESS THE AUTHORITY TO UNDERTAKE THE PROPOSED ACTIVITIES OR I AM ACTING AS THE DULY AUTHORIZED AGENT OF THE APPLICANT.

9/8/2020

Signature of Applicant

Date

9/8/2020

Signature of Agent (if agent has been listed)

Date

IMPORTANT!! THE APPLICATION MUST BE SIGNED BY THE APPLICANT AND THE AUTHORIZED AGENT (IF AN AGENT HAS BEEN LISTED ON PAGE ONE OF THIS APPLICATION).

The applicant shall permit SCDHEC's Office of Ocean and Coastal Resource Management, the District Engineer, the State Law Enforcement Division, South Carolina Department of Natural Resources, and other State permit inspection agencies, or their representative(s) to make periodic inspection at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions prescribed herein.

RECEIVED

Nov 21 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

Docket No.: 21-ALJ-07-0310-CC

Robert Klomprens and Whitney Klomprens Respondents,

vs.

South Carolina Department of Health and Environmental Control Appellant.

NOTICE OF APPEAL

The South Carolina Department of Health and Environmental Control (“DHEC” or “the Department”) hereby appeals the following decisions of the Honorable Deborah Brooks Durden: (1) Final Order dated September 6, 2022; and (2) Order Denying Respondent’s Motion for Reconsideration dated October 25, 2022.



Bradley D. Churdar, SC Bar # 12829
Sallie P. Phelan, SC Bar # 14150
South Carolina Department of Health and
Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
Attorney for Appellant SCDHEC
churdbd@dhec.sc.gov
phelansp@dhec.sc.gov
debruhjh@dhec.sc.gov

November 21, 2022
Charleston, South Carolina

Other Counsel of Record:

Mary D. Shahid, Esquire

Nexsen Pruet

P.O. Box 486

Charleston, SC 29402

(843)-720-1788

Attorney for Robert Klomparens and Whitney Klomparens

mshahid@nexsenpruet.com

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Klomparens and Whitney Klomparens,

Docket No. 21-ALJ-07-0310-CC

Petitioners,

v.

**ORDER DENYING
RESPONDENT’S MOTION
FOR RECONSIDERATION**

South Carolina Department of Health and
Environmental Control,

Respondent.

This matter is before the Administrative Law Court (Court) pursuant to the motion of counsel for Respondent, South Carolina Department of Health and Environmental Control, seeking reconsideration of the Court’s Order issued on September 6, 2022. Because the Motion was filed more than ten days after the Final Order was issued, it is not clear that this Court has jurisdiction to entertain the motion. Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. See, Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006). Nevertheless, in light of the fact that the parties consented to an extension for the filing of the Motion for Reconsideration, I will address the substance of the motion.

Much of the motion merely reiterates the arguments made at the hearing, which were carefully considered and ruled upon by this Court. The motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Respondent’s argument that the Court failed to consider Mr. Williams’ testimony is without merit. The Court was simply persuaded by other, contradictory, evidence and made a finding in keeping with that evidence after carefully weighing all the testimony and documentary evidence presented by both parties.

In other respects, the motion presents new arguments which are inconsistent with the position argued by the Department at the hearing. I disagree that the word “generally” in the regulation renders the regulation ambiguous and subject to interpretation by the Department or this Court. I do not find the language of the regulation to be ambiguous and the Final Order issued September 6, 2022 applied the plain language of the regulation according to the facts as found by the Court. At the hearing, the Department relied upon this same interpretation of the regulation but

FILED

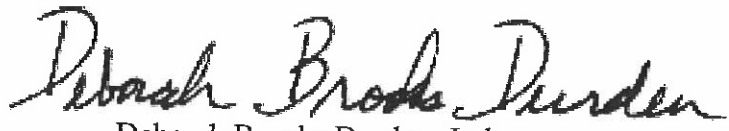
10/25/2022

SC Admin. Law Court

presented testimony and evidence advocating for a different finding of fact. I do not find the Department's new-found position that its regulation is inherently ambiguous to be persuasive.

Likewise, the Department's argument that a neighbor's potential claim of ownership of marsh property is an obstacle to the permit is raised in the Motion for Reconsideration for the first time. A party cannot use a motion for reconsideration to raise for the first time an issue the party could have raised prior to judgment but did not, nor bring before the court theories or arguments that were not advanced earlier. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 25, 2022
Columbia, South Carolina

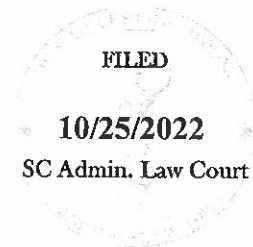
CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

October 25, 2022
Columbia, South Carolina



Nov 21 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Klomparens and Whitney Klomparens,

Docket No. 21-ALJ-07-0310-CC

Petitioners,

v.

FINAL ORDER

South Carolina Department of Health and
Environmental Control,

Respondent.

APPEARANCES: For Petitioners: Mary D. Shahid, Esquire
Angelica Colwell, EsquireFor Respondent: Bradley D. Churdar, Esquire
Sallie P. Phelan, Esquire

This matter is before the South Carolina Administrative Law Court (ALC or Court) following a hearing on April 25, 2022. This contested case arose from the application of Robert and Whitney Klomparens (Petitioners) for a dock permit at their residence located at 706 Creekside Drive (706 Creekside), Mt. Pleasant, South Carolina, extending to a tributary of Shem Creek. Petitioners' property is described as "on and adjacent" to the tributary. Respondent South Carolina Department of Health and Environmental Control (Department) denied Petitioners' permit application by letter dated June 11, 2021. Petitioners invoked the administrative procedures set forth in S.C. Code Ann. section 44-1-60 (2018 & Supp. 2021), and the Board of Health and Environmental Control denied Petitioners' request for final review on July 16, 2021. Petitioners initiated this contested case hearing on August 13, 2021.

BACKGROUND

Petitioners purchased 706 Creekside in 2014. The legal description of the property, as set forth in Petitioners' deed, is a two-part description:

All that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying and being in CREEKSIDE PARK SUBDIVISION in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being known and designated as LOT NO. 15, BLOCK C, on a plat of said Subdivision by E.M. Seabrook, Jr., Inc., dated July 31, 1968 and duly recorded in the Office of the RMC for Charleston County, SC, in Plat Book X at Page 129. Said lot having such size, shape, metes, bounds, and dimensions as are shown on said plat, with reference thereto being craved for a more complete and full description.

AND

FILED

09/06/2022

SC Admin. Law Court

ALL of Grantor's right, title, and interest in and to the Marshland lying between Lot 15, Block C, and Shem Creek between the North, South, and West lines of said lot as projected to said Creek.

A recorded survey and other exhibits depicting 706 Creekside show the lot adjacent to the cul de sac with boundary lines extending from the road to the rear of the parcel and then turning toward a tributary of Shem Creek. Charleston County's depictions of lots in Creekside Park Subdivision and across the tributary in the subdivision Cooper Estates indicate similar lot configurations. The reference in the property description to "Marshland lying between Lot 15, Block C, and Shem Creek" is a reference to the area within the boundary lines of 706 Creekside extending to the tributary of Shem Creek.

Petitioners have a title interest in the area between their boundary lines, described as marshlands above, but such interest is inferior to the interest of the State of South Carolina.

The public trust doctrine provides that lands below the high water mark are presumptively owned by the State and held in trust for the benefit of the public, and it has been a vital part of the jurisprudence of South Carolina and many other states for centuries, even pre-dating the beginning of our republic. The doctrine rightfully forbids the State from permitting activity substantially impairing the public interest in marine life, water quality, or public access.

Hoyler v. State, 428 S.C. 279, 291, 833 S.E.2d 845, 851-52 (Ct. App. 2019).

[O]ne claiming an interest in tidelands pursuant to section 48-39-220(A)¹ must convince the court that the State intended to include the tidelands within the boundaries expressed in the deed.

Id. at 292-93, 852.

Clear title to or ownership of marshland is not a necessary pre-requisite to obtaining authorization to construct a dock. "Tidelands" are defined as "critical area" in accordance with S.C. Code Reg. 30-1(D)(15) (Supp. 2021). The Department is charged with the responsibility of "providing for the orderly and beneficial use of the critical areas." S.C. Code Ann. § 48-39-80(A) (2008). This includes reviewing applications for private docks submitted by waterfront property owners. § 48-39-80(B)(11) (Supp. 2021). Property below mean high water (MHW) is public trust

¹ This statute sets out the requirements for claiming ownership of lands between the mean high water mark and mean low water mark, also described as "tidelands." Such action must be initiated against the State. Subsequent case law established the need for a sovereign grant from the King of England, the Lord Proprietors, or the State of South Carolina. Such grant must include information supporting a conclusion that the sovereign clearly intended to convey the marsh. See Query v. Burgess, 371 S.C. 407, 639 S.E.2d 455 (Ct. App. 2006), Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979).

property. Private property does exist above mean high water (MHW), and Petitioners own those areas above MHW that are within the boundary lines of 706 Creekside.

ISSUES

Both Petitioners and the Department rely on the regulatory definition of waterfront property, S.C. Code Reg. 30-1(D)(54) (2011), in asserting their positions.

For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

Petitioners are not claiming that the property lines which extend to the tributary of Shem Creek are approved "designated corridors." Petitioners are claiming that 706 Creekside is waterfront in accordance with the regulatory definition. The Department denied Petitioners' permit application based on the conclusion that 706 Creekside does not satisfy the regulatory definition of waterfront property.

FINDINGS OF FACT

The Department's witnesses, in rejecting Petitioners' arguments that 706 Creekside is waterfront, noted that their opinions would be different if Petitioners demonstrated ownership of the marshland located between the boundary lines as these lines extend to the tributary of Shem Creek. When asked what difference it would make, Blair Williams, Critical Area Permitting Manager, testified that "[i]f there was a King's grant with an attorney's opinion, that they actually physically own the marsh, and basically they are proving marsh ownership, then those extended property lines would essentially become a continuation of property that they own, they have rights to."

Petitioners' permit drawings, submitted in support of the application, include a "typical profile" plan that demonstrates one section and a portion of the adjoining section of property located between Petitioners' boundary lines extending to the tributary are located above MHW. The described sections of property are depicted under the first two pilings proposed for the dock walkway. These drawings are consistent with the testimony of Petitioners' surveyor, Lewis Seabrook.

A: To satisfy my own curiosity, I wanted to see where the mean high water line fell relative to the critical line.

Q: Okay. And what did you discover?

- A: I discovered that the mean high water line is well out away from the house from the – from the critical line.
Q: Okay. Is – is it in proximity to the critical line or is it - or is it not –
A: Several feet farther out.

In addition to the survey data reflected on the permit drawings, Petitioners provided a survey of 706 Creekside prepared by Seabrook and recorded with the Town of Mt. Pleasant depicting elevations of 6.9', 6.8' and 6.6' in the marshland located between the extension of the boundary lines. Seabrook testified that mean highwater is "closer to 5.4'." The survey confirms elevations at the inception point of the boundaries of 706 Creekside oriented toward Shem Creek. This information is relevant to the discussion below of the applicable regulatory standard. But it is also significant given the Department's statements that their position in this matter would be impacted by evidence of ownership of property between the boundary lines extending to the tributary.

The Court's findings concerning the individual requirements of the regulatory definition in evaluating the parties' positions are set forth below.

Straight Line Extensions

The definition of waterfront property requires that "straight line extensions" reach navigable water. The Department argues that straight line extensions of 706 Creekside's property lines result in reaching the existing dock north of 706 Creekside, rather than reaching the tributary to Shem Creek. Petitioners argue that the Department cannot disregard the turn, or bend in the property lines in applying the regulatory definition. This argument is supported by the findings and analysis of Petitioners' professional land surveyor, Lewis Seabrook.

In accordance with the statutory definition of a professional land surveyor, a surveyor "locates, relocates, establishes, reestablishes, lays out, or retraces any property line or boundary of any tract of land or any road, right-of-way, easement, alignment, or elevation of any fixed works embraced within the practice of land surveying, or makes any survey for the subdivision of land." S.C. Code Ann. § 40-22-20(26)(a) (Supp. 2021). "All property lines shall be defined by bearings and horizontal distances and plotted to the scale indicated on the plat." S.C. Code Reg. 49-460(A)(2)(n) (2011). Petitioners' surveyor Seabrook, who testified as an expert in the identification and location of boundary lines, relied on the initial subdivision plat that his father prepared in the late 1960s to locate the boundary lines of 706 Creekside. He located the position of the boundaries of Petitioners' property, consisting of two platted lines extending from the cul

de sac on either side of 706 Creekside and turning toward the tributary, to tie into the middle line of the tributary – the boundary between the Creekside development and the Cooper Estates development. When asked about the precise location and angle of the “turn” or “extension” of the boundary lines, Seabrook noted reliance on the “bearings on the property lines, plural, from which angles can be calculated to show the change in direction.” These bearings are provided on the original subdivision plat which Seabrook reviewed. Seabrook’s reliance on the original subdivision plat is also noted as a reference in the survey he created for 706 Creekside that was approved by the Town of Mt. Pleasant and Charleston County and is recorded with the Register of Deeds for Charleston County at Book S20 Page 0147.

Seabrook noted there were two property boundary lines and each line consisted of two segments. The location of the lines as they turn to run perpendicular to the creek is based on the existence of an iron pipe and iron rebar, discussed more fully below, that are clearly visible on the property.

The regulatory definition refers to “straight line extensions” which, as explained by the Department’s witness Blair Williams, is an exercise of extending property lines into the marsh where such lines do not normally exist. That exercise is unnecessary as relates to 706 Creekside, as the lines extending into the marsh are already platted in the original subdivision plat and are depicted as boundary lines in aerial images that reflect Charleston County real property information. Petitioners have no discretion in creating straight line extensions as those lines extending to the creek were determined with the recording of the original subdivision plat. Seabrook testified that from the cul de sac to the creek, the northern and southern boundary were each one continuous line.

Generally Shore Perpendicular

Seabrook noted that the lines are “generally shore perpendicular” based on the segments extending to the creek. The recorded plat prepared by Seabrook indicates straight line extensions that are clearly perpendicular to the center line of the creek. The plat also depicts the critical line at 706 Creekside, certified by the Department on June 25, 2020.

The Department concluded that the alignment of the upland property lines of 706 Creekside is shore parallel, not perpendicular, and concluded that reliance on “specific plotted points landward of the critical line to extend to the tributary does not make the property waterfront, nor does it fall in line with current regulations.” The Department’s witness, Blair Williams,

testified “. . . permitting authority is delineated by the certified critical area line. And that certified critical area line runs along where the property owner’s upland meets saline marsh vegetation.” In response to a question from the Court, Williams confirmed that the shoreline and the critical line are “generally the same.” Based on the location of the bulkhead along 706 Creekside, Williams concluded that the property lines were shore parallel and, if extended, would reach the adjoining dock north of 706 Creekside rather than the tributary of Shem Creek. This conclusion relies upon Williams’ conclusion that the bulkhead placed by Petitioners reflects the shoreline and also rejects the platted alignment of the property. Williams testified, “Because of the presumption of State ownership, the point to where those lines turn and go out in the marsh has no relevance to the Department as making a determination of whether its, one, waterfront property or if it’s dock eligible.”

Williams’ testimony does not take into account the higher elevations of the property located within the boundary lines that extend to the tributary. Petitioners provided the Court with elevation data reflected on a detail of the recorded plat – the areas seaward of the iron rebar and iron pipe that were located. The elevations noted range between 6.8’ and 6.9’ and are above mean high water elevation and, as such, constitute private property of the Petitioners.

The Department’s conclusion that the shoreline, as dictated by the critical line, is parallel to 706 Creekside fails to account for the fact that the shoreline is also the critical area running the length and width of Petitioners’ property out of the tributary. “Shoreline” is an undefined term in the Department’s regulations. “When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.” Strother v. Lexington Cty. Recreation Com’n, 332 S.C. 54, 62, 505 S.E.2d 117, 122 (1998). “Dictionaries can be helpful tools during the initial stages of legal research.” Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 409, 552 S.E.2d 42, 46 (Ct. App. 2001).

“Shoreline” is defined as “the line where a body of water and the shore meet” and as “the strip of land along the shoreline.” Merriam Webster Dictionary. The line depicted on Seabrook’s plat, where water and shore meet, is not limited to the shoreline along the northern section of 706 Creekside but also exists along the western section of the property, where marsh and critical area are depicted between the property lines as they extend toward the center line of the tributary. Images of the surrounding properties and docks confirm that the area where Petitioners propose to locate their dock is considered shoreline by neighboring property owners.

The Department's conclusions are influenced by the orientation of Petitioner's property without taking into account that the orientation shifts with the bend in the property lines. The definition of waterfront property does not hinge on the orientation of property. Instead, it is dependent upon whether the property lines are "shore perpendicular." In rejecting Petitioners' permit application the Department is, ignoring any bend, turn, or angle in property lines. Yet, the bends and turns are part of the property lines. "Metes and bounds are the boundary lines of land, **with their terminal points and angles.**" Black's Law Dictionary as cited in 29 S.C. Jurisprudence § 8. (emphasis added).

Upland Property Lines

Petitioners' boundary lines originate at the cul de sac, in upland. If the focus is on the segment of the boundary line perpendicular to the tributary, Seabrook observed an iron rebar (IRF) which indicated the change of position, or angle of turn, of the northwestern boundary line and the iron pipe (IPF) indicating the inception point for the turn of the southwestern boundary line.² The recorded plat prepared by Seabrook depicts the northwestern "5/8" IRF" on the critical line, or as described by Seabrook, "in upland area." According to Seabrook, the plat he prepared showed the iron rebar near the edge of highland/critical area, but not in the critical area. The iron pipe marking the turn of the southwestern boundary line is shown on the plat as outside, or upland of, the critical line.

Seabrook sent his survey crew back to 706 Creekside to re-create the critical line by placing flags on the ground to demonstrate the location of the certified line as reflected on the approved and recorded plat. His re-creation efforts were to locate, on the ground, the certified critical line reflected in the permit application drawings and the recorded plat. These efforts were in response to questions raised by the Department's counsel during Seabrook's deposition related to whether a location on the edge of high ground or the edge of the critical line would be considered upland. Each point of the certified line was established by the placement of a blue flag. Seabrook inspected the flagging of the re-established points and observed that the point described as the "apex of the line L14 and L15" was "way up into the property and is clearly not critical area." The actual location of the apex between L14 and L15 is significant as it determines the distance between these

² Rebar and Pipe are artificial monuments as opposed to natural boundaries. "When determining boundaries, resort is generally had first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to course and distances." Bodiford v. Spanish Oak Farms, 317 S.C. 539, 543, 455 S.E.2d 194, 197, n. 1 (Ct. App. 1995).

points on the critical line and the IRF. Seabrook provided a photograph showing the “on the ground” location of the “apex between L14 and L15” and noted the location of the blue flag behind four small boards shown in the photo in the upland. Seabrook noted that the elevation in this area was seven feet, “over a foot and a half above and inland from the mean high water line.”

Based on the surveying team’s ability to flag all other points of the critical line, and based on visual confirmation that those flagged areas did represent the certified critical line reflected in the approved and recorded plat, Seabrook concluded that the only point of corruption was the data identifying the apex of L14 and L15, which aligned with the 5/8” IRF. That corruption of a single data point occurs infrequently, but could be explained by interference of the “wavelength of the laser light.” Petitioners are not contesting the validity of the critical line as depicted on the recorded plat, but in response to the Department’s scrutiny as to whether the “edge of the critical line” or the “edge of the upland” was sufficient. Seabrook confirmed, in the field, the distance between the 5/8” IRF and the apex of lines 14-15. Having previously observed the location of the 5/8” IRF and IPF on Petitioners’ property, the proximity of the IRF to the critical line as shown on the recorded plat was inconsistent with Seabrook’s observations. Seabrook had inspected the property on at least four occasions. He had located the IRF and IPF. He and his crew had flagged the critical line for approval and certification by OCRM. He testified as to considerable experience in identifying and establishing critical lines, having done so at least “a couple hundred times.”

Seabrook provided photographs reflecting the location of the 5/8” IRF, staked with a pink flag to contrast with the blue flags marking the critical line. Based on his visual observations of the site and as is reflected in the photos, the location of the pink flag is in upland, at an 8-inch offset from the critical line flags. Seabrook had inspected the property as recently as a week prior to the hearing and testified that based on his observations both pins marking the turn or angle of the property line were located in upland.

ANALYSIS

This Court is persuaded by the testimony of Seabrook, a licensed professional land surveyor identifying and describing Petitioners’ boundary lines. An expert in land surveying is qualified to review the relevant deeds and plats, and to render his opinion as to the location of the boundary. Bodiford, 317 S.C. at 542, 455 S.E.2d at 196. “A surveyor . . . is a competent witness in actions concerning the boundary line and may testify as to lines, corners, or monuments.” Richardson v. Register, 227 S.C. 81, 89, 87 S.E.2d 40, 44 (1955). Seabrook identified property

lines that include an angle, identified by artificial monuments, resulting in boundary lines perpendicular to the tributary. The Department's position fails to take into account a boundary line with a turn in direction.

Critical to this analysis is whether the segments of Petitioners' boundary lines that extend to the center line of the tributary are upland lines. Petitioners have demonstrated by substantial evidence that the rebar and iron pipe lie in upland. The initial evidence of the location of the rebar (the northwestern boundary line) is the recorded plat which includes the certified critical line. The 5/8" IRF is at the apex of L14 and L15 and is, as described by Seabrook, on the edge of the line. The rebar is 8 inches upland from the critical line. The 5/8" IPF where the southwestern line segment makes its turn is upland from the critical line in the vicinity of L1 and L2.

The Department's witnesses ignored that portion of the property lines that extend to and terminate in the tributary, having stopped their analysis before the lines turned toward the creek. The only testimony presented by the Department regarding the location of the IRF and IPF was from Blair Williams who testified that he inspected the property on one occasion and was "not confident that both originate in the upland."

CONCLUSIONS OF LAW

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. section 1-23-600(A) (Supp. 2021), S.C. Code Ann. section 44-1-60 (2018 & Supp. 2021), and section 48-1-10. In contested case hearings, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. S.C. Code Ann. § 1-23-600(B) (Supp. 2021); Brown v. S.C. Dep't of Health & Env'tl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002). The weight and credibility assigned to evidence presented at the hearing on the merits in a contested case hearing is within the providence of the trier of fact. S.C. Cable Television Ass'n v. Southern Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Therefore, as the trier of fact, the Court may give testimony the weight it determines it deserves. Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). Nevertheless, while the ALC acts as the fact finder, due consideration is given to the experience, technical competence, and specialized knowledge of the agency and its staff in evaluating the evidence. S.C. Code Ann. § 1-23-330(4) (2005 & Supp. 2021).

The ALC must give deference to the Department's interpretation of its statutes and regulations.

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'

Kiawah Development Partners II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014), citing Chevron USA, Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

Finally, the standard of proof in cases before the ALC is the preponderance of the evidence. Sierra Club v. S.C. Dep't of Health and Env'tl. Control, 426 S.C. 236, 257, 826 S.E.2d 595, 606 (2019), citing S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2018). In contested cases, the party asserting the affirmative of an issue has the burden of proof. Id. Therefore, Petitioners bear the burden of proving, by the preponderance of the evidence, that the Department misapplied its regulatory definition of waterfront property in denying Petitioners' permit application.

Petitioners' expert provided uncontested opinions regarding the location of the property lines. The Department gave no consideration to that portion of Petitioners' boundary lines that turned toward the tributary. The Department determined, incorrectly, that Petitioners' property lines were shore-parallel rather than shore-perpendicular. The Department's definition of waterfront property is clear. But in applying the definition the Department erred in its lack of recognition of the validity of the angle or turn in the property lines. This does not amount to an interpretation by the Department, which may be entitled to deference. Instead, it is a result of a flawed legal conclusion wherein the Department cut each boundary line in half and only considered the upper half of each line in its evaluation without accounting for the lower half – the extension into the tributary.

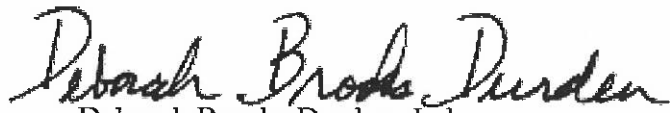
The preponderance of the evidence indicates that the point of turn of the southwestern boundary line (the one closest to the house) is clearly depicted landward or upland of the critical line. The turn of the northwestern boundary line, the line closest to the neighboring dock, is as described by Seabrook initially located on the edge of the critical line. Seabrook demonstrated that the location of the 5/8" IRF is eight inches landward of the critical line. The Department provided no evidence to refute the testimony of Petitioners' surveyor to establish the location of the boundary markers except for Mr. Williams' testimony that he was not confident as to whether the location of the artificial monuments was upland. This Court concludes that 706 Creekside is waterfront as it satisfies the regulatory definition applied by the Department.

ORDER

IT IS THEREFORE ORDERED that 706 Creekside Drive is waterfront property according to the regulatory definition.

IT IS FURTHER ORDERED that this matter is remanded to the Department for further evaluation of the permit application submitted by Petitioner for sufficiency with the Department's regulations related to the design, location, and size of the proposed dock. Such evaluation is necessary as the Department's initial evaluation ended with its erroneous determination that 706 Creekside Drive does not qualify for a dock.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 6, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

September 6, 2022
Columbia, South Carolina

FILED
09/06/2022
SC Admin. Law Court

OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 21-ALJ-0-0310-CC

Robert Klomprens and Whitney)
Klomprens,)
)
Petitioners,)
)
v.)
)
South Carolina Department of)
Health and Environmental Control,)
)
Respondent.)
-----)

ADMINISTRATIVE HEARING

Monday, April 25, 2022
10:04 a.m. - 4:29 p.m.

The hearing before the Honorable Deborah Brooks Durden, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 25th day of April, 2022, before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

APPEARANCES

Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Attorneys for Petitioners

Brad Churdar, Esquire
Sallie P. Phelan, Esquire
Janet DeBruhl, Paralegal
South Carolina Department of
Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405-204
Attorneys for South Carolina Department of
Health and Environmental Control

Also Present:
Robert Agee, Staff Counsel
Erin Dehler, Rule 403 observer

INDEX

	<u>PAGE</u>
<u>CALL TO ORDER:</u>	
THE COURT	5
<u>OPENING STATEMENTS:</u>	
MS. SHAHID	5
Petitioner's Exhibit Number 24.	6
MR. CHURDAR	9
<u>PETITIONER'S CASE IN CHIEF:</u>	
<u>ROBERT KLOMPARENS:</u>	
MS. SHAHID . DIRECT EXAMINATION	14
Objection by Mr. Churdar	17
Petitioner's Exhibit Number 5	18
Petitioner's Exhibit Number 12	20
Petitioner's Exhibit Numbers 17A, 17B.	21
Petitioner's Exhibit Number 24	22
Petitioner's Exhibit Number 23	25
Petitioner's Exhibit Numbers 17A, 17B.	28
Petitioner's Exhibit Number 11	30
Petitioner's Exhibit Number 12	35
Objection by Mr. Churdar	37



Petitioner's Exhibit Number 6 39
 MR. CHURDAR. CROSS-EXAMINATION. 41
 Petitioner's Exhibit Number 24. 42

STIPULATION OF EXHIBITS:

MS. SHAHID. 51

LEWIS SEABROOK:

MS. SHAHID . DIRECT EXAMINATION. 55
 Offer as Expert. 66
 Petitioner's Exhibit Number 12. 67
 Petitioner's Exhibit Number 25. 70
 Petitioner's Exhibit Number 26. 72
 Petitioner's Exhibit Number 5. 74
 Petitioner's Exhibit Number 26. 75
 Petitioner's Exhibit Number 11. 77
 Petitioner's Exhibit Number 24. 80
 Petitioner's Exhibit Number 11. 82
 Petitioner's Exhibit Number 12. 85
 Petitioner's Exhibit Number 13. 89
 Petitioner's Exhibit Number 12. 90
 Petitioner's Exhibit Number 13. 91
 Petitioner's Exhibit Number 12. 95
 Objection by Mr. Churdar. 102
 Petitioner's Exhibit Number 14. 103
 Objection by Mr. Churdar. 105
 Petitioner's Exhibit Number 14. 106
 Petitioner's Exhibit Number 12. 108
 Petitioner's Exhibit Number 15C. 109
 Petitioner's Exhibit Number 15J. 112
 Petitioner's Exhibit Number 11. 113
 MR. CHURDAR. CROSS-EXAMINATION. 118
 Petitioner's Exhibit Number 13. 121
 Respondent's Exhibit Number 7. 132
 MS. SHAHID .RE-DIRECT EXAMINATION. 137
 Respondent's Exhibit Number 7. 137
 Petitioner's Exhibit Number 26. 139
 MR. CHURDAR. RE-CROSS-EXAMINATION. 140
 Respondent's Exhibit Number 24. 140

RESPONDENT'S CASE IN CHIEF:

JACKIE ADAMS:

MR. CHURDAR. DIRECT EXAMINATION. 143
 Respondent's Exhibit Number 1. 147
 Respondent's Exhibit Number 2. 155
 Respondent's Exhibit Number 1. 156
 Objection by Ms. Shahid. 157
 Respondent's Exhibit Number 1. 162
 Objection by Ms. Shahid. 168



MR. SHAHID. . . CROSS-EXAMINATION. 172
 Petitioner's Exhibit Number 11. 174
 Petitioner's Exhibit Number 25. 177
 Petitioner's Exhibit Number 11. 179
 Petitioner's Exhibit Number 13. 180
 Petitioner's Exhibit Number 12. 181
 Respondent's Exhibit Number 1. 182
 MR. CHURDAR.RE-DIRECT EXAMINATION. 183

BLAIR WILLIAMS:

MR. CHURDAR. DIRECT EXAMINATION. 185
 MR. SHAHID. . . CROSS-EXAMINATION. 200
 Petitioner's Exhibit Number 11. 200
 Petitioner's Exhibit Number 24. 204
 Petitioner's Exhibit Number 12. 207
 Petitioner's Exhibit Number 24. 209
 Petitioner's Exhibit Number 11. 210
 Petitioner's Exhibit Number 11. 212
 Petitioner's Exhibit Number 13. 219

CONCLUDING REMARKS:

THE COURT 220
 Certificate 224

EXHIBITS

(The Court's Inventory of Exhibits is incorporated herein by reference and attached hereto.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



1 (Petitioner's Exhibits 1 through 26 were marked prior
2 to the hearing.)

3 (Respondent's Exhibits 1 through 6D were marked prior
4 to the hearing.)

5 **COURT REPORTER:** All rise.

6 **THE COURT:** Good morning. How is everyone? Y'all
7 have a seat.

8 (Off the record.)

9 **CALL TO ORDER:**

10 **THE COURT:** So, we're here this morning for a
11 hearing in the matter of Robert Klomprens and
12 Whitney Klomprens, Petitioners, versus the
13 South Carolina Department of Health and
14 Environmental Control, Respondent. It's Docket
15 Number 21-ALJ-07-0310. Do we have any
16 preliminary matters to take up before we begin
17 the hearing?

18 (No response.)

19 **THE COURT:** All right, then. Would y'all like to
20 give brief opening statements then? You can go
21 ahead.

22 **OPENING STATEMENTS:**

23 **MS. SHAHID:** Thank you, Your Honor. My name is
24 Mary Shahid. I met -- I represent the permit
25 applicant, Robert Klo- -- Klomprens and he's



1 here today with his surveyor, Lewis Seabrook,
2 and we're challenging the denial of a permit
3 for a dock in a neighborhood called Creekside
4 subdivision located in Mount Pleasant, South
5 Carolina. Mr. Klomprens owns what's shown on
6 old plants -- plat -- old plats as Lot 15. The
7 actual address is 706 Creekside Drive. He
8 believes his property is waterfront and was
9 working to obtain a dock using the services of
10 Mr. Seabrook and he was denied a permit
11 application, and we're here in response to that
12 denial. I would offer into evidence Exhibit --
13 Klomprens Exhibit 24, which is a GIS drawing.
14 Mi- -- to -- just to use for my opening
15 statement, Mr. Chu- -- Churdar indicated he
16 didn't have any objection.

17 **(Petitioner's Exhibit Number 24 was introduced into**
18 **the record and offered into evidence.)**

19 **THE COURT:** All right. Petitioner's 24 is admitted
20 then.

21 **(Petitioner's Exhibit Number 24 was admitted into**
22 **evidence.)**

23 **MS. SHAHID:** Do you need to anything with it or just
24 go with my ---

25 **COURT REPORTER:** I'll go with your -- your sticker.



1 **MS. SHAHID:** Okay. And I'm going to show you a
2 little bit about what we're going to be talking
3 about this morning. 706 Creekside Drive is
4 this lot where my pointer finger is.

5 **MR. KLOMPARENS:** It's one over.

6 **MS. SHAHID:** Oh. 706 Creekside ---

7 **MR. KLOMPARENS:** Yeah.

8 **MS. SHAHID:** --- Drive is this lot in kind of a
9 frying pan shape that I'm pointing at. You can
10 see two roads that we're going to be talking
11 about some today, Scotland Drive and Creekside
12 Drive. And then, across -- they're all trying
13 reach this little tributary here of Shem Creek.
14 Well, when I say they're all, the docks that
15 you see on these photos are extended to this
16 tributary of Shem Creek in the middle, and on
17 the other side is another neighborhood over
18 here known as Cooper Estates. And this hard
19 line that you see going down the middle is the
20 boundary that was drawn between Creekside and
21 Cooper Estates, running down through the
22 gutter, like the mud flat and the tributary
23 that's shown there. As I said, this is 706,
24 Mr. Klomprens' lot. If you'll note, you'll
25 see docks running along some of these



1 properties. We're going to be discussing these
2 various properties in some detail as to their
3 similarity or differences between Mr.
4 Klomparens' lot.

5 But if I could, Your Honor, the crux of this
6 case is a definition. Let me see if I can get
7 my hands on it right quick. And it's the
8 definition of waterfront property. I believe
9 it's found in 30-2(b). I'll have to give you
10 the exact cite later, but it's in the
11 definition sections. It's number 54 of the
12 definitions. And I'll just read it to Your
13 Honor. For purposes of these regulations,
14 waterfront property will be generally defined
15 as upland stru- -- sites where a straight-line
16 extension of both generally shore perpendicular
17 upland property lines reaches a navigable
18 watercourse within a thousand feet of marsh
19 critical line. Waterfront property may also be
20 identified as --via an approved dock master
21 plan with designated corridors. We're relying
22 on that definition to demonstrate to you that
23 the property is waterfront by deposi- --
24 definition. You'll be hearing testimony about
25 the platting of this property and the fact that



1 there are two boundary lines, very distinct
2 boundary lines, that begin at the road, take a
3 turn as directed by the location of an iron or
4 rebar pipe, which is still in the ground, and
5 then head to the water. We'll be focusing on
6 the locations of that pipe, where I point on
7 either side where this lot takes -- I'm with
8 the wrong lot again. Here and here, where the
9 lot takes a turn. And we'll be providing
10 testimony as to whether those pipes here are in
11 upland, thus creating an amount of line in
12 upland that can then be extended to reach the
13 tributary. We'll be showing you plats also,
14 Your Honor, that -- of course, this GIS data,
15 the county obtains that from plats. We'll be
16 showing you plats, Your Honor, of the
17 subdivision that incorporates these lines going
18 out into the water. So, we -- the case that
19 we're going to present to you today is
20 hopefully, for your purposes, a demonstration
21 of the water- -- that we satisfy the analysis
22 for waterfront property and we're entitled to
23 a dock at 706 Creekside. Thank you.

24 **THE COURT:** All right.

25 **MR. CHURDAR:** Good morning, Your Honor.



1 **THE COURT:** Mr. Churdar.

2 **MR. CHURDAR:** So, Your Honor, the -- the -- we're
3 having -- we're having a little issue with her
4 being able to -- So, Your Honor, Ms. -- Ms.
5 Shahid was -- was correct that the -- that the
6 issue before the Court is how to apply the
7 regulatory definition of waterfront property.
8 What you're -- excuse me -- what you're going
9 to hear today, first of all, this is -- this is
10 a picture. This is more of a zoomed in picture
11 from the regulatory file that will be -- well,
12 Ms. Shahid has said she has no object- --
13 objections to that coming in. So -- so, I can
14 just -- I will speak to -- to this picture
15 right here. But the -- the issue is how do we
16 apply the regulatory definition and what you --
17 what you will find is -- what you will hear is
18 a couple of things. First of all, the
19 testimony of both Mr. Klomprens, as well as
20 the Department, is that this -- oh, you know
21 what? I can't point to that because it's --
22 because it's on the screen. But the -- the
23 line that is ---

24 **THE COURT:** You can touch the screen and it will
25 make a mark.



1 **MR. CHURDAR:** Okay. Your Honor ---

2 **THE COURT:** Or tap it.

3 **MR. CHURDAR:** --- can you see where -- see where
4 this ---

5 **THE COURT:** Yes. I can see that.

6 **MR. CHURDAR:** Where my hand is? Okay. So, this --
7 this area right here, Mr. Klomprens has -- has
8 put a bulkhead. And he experiences tidal
9 erosion such that he was concerned about losing
10 -- losing upland. And so, in his deposition,
11 he agreed that this is the shoreline. Now, what
12 ---

13 **THE COURT:** So, the blue line represents a bulkhead
14 or ---

15 **MR. CHURDAR:** Well, the ---

16 **THE COURT:** Or -- or your -- or your ---

17 **MR. CHURDAR:** It's in that general -- it's in that
18 general vicinity. You can't see it
19 unfortunately because of the tree canopy. The
20 -- the bulkhead, I don't want to take your --
21 that's not like the -- the big issue. I'm just
22 saying he -- he bulkheaded his lot because he
23 was experiencing erosion. And -- and the
24 reason that is significant is because what you
25 are going to hear from Mr. Seabrook is that



1 this right there, down here, is the shoreline
2 and not that area right there. And so, what we
3 -- what we have with the regulatory definition
4 is a straight line extension of both generally
5 shore perpendicular up- -- upland property
6 lines. And so, these lines right there that --
7 that kind of form a -- a flag pole, if you
8 will, are not lines that are -- these -- these
9 lines are out in the critical area. And what
10 you're going to -- the reason that's
11 significant is because there has been no proof
12 -- you will hear no proof that Mr. Klomprens
13 actually owns critical area. That he has
14 quieted title against the State to -- to claim
15 that critical area and the Department will,
16 particularly, Ms. Jackie Adams, as well as --
17 as Mr. Blair Williams, will testify that the --
18 the lines -- that the lines that generally --
19 the straight line extension of both of these
20 lines should be going straight out from that
21 line and straight out from that line
22 (indicating). And when you calculate the --
23 when you apply the regulatory definition in
24 this way, which they will both testify, this is
25 the way that we have -- the Department has been



1 applying this for years and years and years.
2 The regulatory definition came into effect in
3 2003. This is not waterfront property. And
4 what you'll also hear is this line right there
5 where I have that cursor, the hand, that the
6 property owner just where I put -- put the --
7 that little hand cursor right there is 710
8 Creekside Drive. And in 1999, they applied for
9 a dock permit and one of the extended property
10 lines, would've been the same one that is
11 shared with the Klomprens. And the Department
12 back in 1999 made the same decision that a
13 straight line extension of that line made 710
14 Creekside Drive not waterfront property either.
15 And so, the Department has been consistent with
16 this and the -- it -- it -- at the end, I think
17 that -- that's what the evidence will prove,
18 so. Thank you.

19 **THE COURT:** Okay. All right. Ms. Shahid.

20 **PETITIONERS' CASE IN CHIEF:**

21 **MS. SHAHID:** Thank you. We call Rob Klomprens.
22 Yeah. Right there.

23 **COURT REPORTER:** Raise your right hand, please. Do
24 you solemnly swear that the testimony you're
25 about to give in this matter is the truth, the



1 whole truth, and nothing but the truth, so help
2 you God?

3 **MR. KLOMPARENS:** I do.

4 **COURT REPORTER:** Thank you.

5 **ROBERT KLOMPARENS,** having been duly sworn, testifies
6 as follows:

7 **MR. KLOMPARENS - DIRECT EXAMINATION BY MS. SHAHID:**

8 Q: Can you state your name for the court reporter
9 and your current address?

10 A: Rob Klomprens, 706 Creekside Drive, Mount
11 Pleasant, South Carolina.

12 Q: Okay. And what is your occupation?

13 A: I am a sales consultant.

14 Q: Okay. What is your educational background?

15 A: I have a dual -- dual degree in Psychology and
16 Spanish from Wofford College, and I have a
17 Master's Degree in Education from the
18 University of Georgia.

19 Q: Okay. And what -- what is your history of work
20 experience? When did you graduate -- or when
21 did you obtained your Master's?

22 A: I got my Master's in 2000.

23 Q: Okay. And what's your history of work
24 experience?

25 A: I've had many jobs since I was 14.



1 Q: Yeah. You don't have to go that far back.

2 A: But mainly I've been in pharma sales, pharma
3 med sales for about 20 years. Also, worked in
4 event management and -- and some sports for
5 several years at UGA and -- and then, my wife
6 and I own seven rental homes that we've
7 renovated or repaired or fixed up over -- over
8 the years, so I'm somewhat familiar with the
9 building process and dotting Is and crossing
10 Ts.

11 Q: Okay. And elaborate on that a little bit.
12 What is your role in that business?

13 A: I'm kind of the Mr. Fix It, I -- I guess. We
14 -- we manage everything ourselves and we do all
15 the work ourselves. We do not outsource
16 anything. So, we -- we -- we get our hands
17 dirty and -- and -- and follow the rules.
18 Again, dot Is, cross Ts. I'm very big into
19 process and doing things the right way.

20 Q: Okay. And when you say you do everything
21 yourselves, is -- does that involve some
22 construction tasks?

23 A: Absolutely.

24 Q: What -- what types of construction work can you
25 do?



1 A: You name it. I can fix dishwashers, I can tile
2 bathrooms, hardwood -- put hardwood flooring
3 down, encapsulate crawl spaces. I can do just
4 about anything, if ---

5 Q: Okay.

6 A: --- I'm prepared to do so.

7 Q: Okay. And why did you purchase -- when did you
8 purchase 706 Creekside Drive?

9 A: We purchased in 2014, I believe. And then I
10 did nine months worth of demo work myself and
11 then we got the permit two days before our
12 daughter was born in July of 2015 and then it
13 was 11 months of renovation and we moved in --
14 I believe we moved in June of 2016. So, we'll
15 -- this June will -- we'll have been in the
16 house six -- six years. But it was a pretty
17 extensive project.

18 Q: Okay. What attracted you to 706 Creekside
19 Drive?

20 A: Well, my -- my wife loved the neighborhood,
21 loved the trees, loved the lot being in a quiet
22 cul-de-sac. She -- she fell in love with it
23 initially. I -- I saw it as a lot of work and
24 so did my father, who had built three house in
25 Mount Pleasant. So, it took some convincing on



1 my wife's part to get me to agree to purchase
2 the property, but we eventually did purchase
3 the property. Then began the -- the work, the
4 extensive amount of work.

5 Q: Was there any evidence that there had ever been
6 a dock at the property?

7 A: You know, I found some grey electrical wire on
8 the rear property, as well as concrete, which
9 appeared to be like a -- a leftover remnants of
10 creosote pilings, but -- but other than that,
11 I don't -- I don't -- I don't know. I know Mr.
12 John Leaphart was the first house ever built in
13 Creekside, and he's 87 years old now, but he
14 does believe that at one point there was some
15 type of dock.

16 **OBJECTION:**

17 **MR. CHURDAR:** Your Honor, I -- I object that it's
18 hearsay.

19 **THE COURT:** Objection is -- is sustained.

20 Q: Okay. You probably can't tell me what anybody
21 else told you.

22 A: Yeah. I -- I -- I can't answer that. I -- I
23 wasn't there, so I -- I would say, no. Not --
24 not other than seeing the creosote pilings and
25 the -- the concrete and -- and the electrical



1 wire that -- that's about all that I saw.

2 Q: Did -- did you do any research, review plats or
3 deeds or anything?

4 A: Of course. You know, prior to purchasing the
5 property, dug into the plat, the original deed.
6 Went down to the RMC Office, obtained as much
7 information as I could.

8 Q: I'm going to show you a document that's marked
9 Exhibit 5 and ask you if you rec- -- recognize
10 this document.

11 **(Petitioner's Exhibit Number 5 was introduced into**
12 **the record.)**

13 A: I do.

14 Q: What is that document?

15 A: That is the -- the -- the sale of -- of the
16 property, I believe.

17 Q: 706 Creekside?

18 A: Correct.

19 Q: Is your name in that document?

20 A: It is.

21 Q: As a -- as the person receiving the purchase?

22 A: Correct.

23 **MS. SHAHID:** Your Honor, at this time, I'd offer the
24 deed for the property in as Petitioner's
25 Exhibit 5.



1 (Petitioner's Exhibit Number 5 was offered into
2 evidence.)

3 MR. CHURDAR: No objection.

4 THE COURT: Petitioner's 5 is admitted.

5 (Petitioner's Exhibit Number 5 was admitted into
6 evidence.)

7 Q: What did you learn from review of the deed?

8 A: I -- I -- I learned that there was a dock
9 corridor attached to -- to the -- to the
10 property. There was a deeded marsh plat, as
11 well as a deeded house plat.

12 Q: Okay. And I'm going to show you ---

13 A: And it was also one of the original homes
14 purchased and built in Creekside.

15 Q: All righty. Your house was one of the original
16 homes built in Creekside?

17 A: Yes.

18 Q: Or the ---

19 A: The first home was built in 1969. It was John
20 Leaphart's house, who is across the street and
21 he's -- he's still the present owner of that --
22 of that home.

23 Q: And I'm going to also show you what's been
24 marked Petitioner's Exhibit 12 and ask you if
25 you can identify Petitioner's Exhibit 12?



1 **(Petitioner's Exhibit Number 12 was introduced into**
2 **the record.)**

3 A: Yes.

4 Q: And did you have this plat prepared?

5 A: Yes. I hired Mr. Seabrook, I guess it was a
6 couple of years ago. I'm not sure the exact
7 date, 2020 is when that was done, to re-survey
8 ---

9 Q: Okay.

10 A: --- the property.

11 Q: Okay. At that point, when the plat was done,
12 did they -- had you already done your
13 construction on the house?

14 A: Yeah. Yes. The house and the garage were --
15 were done at that point.

16 Q: Okay.

17 **MS. SHAHID:** Your Honor, at this time, I'd like to
18 offer Petitioner's 12 into evidence.

19 **(Petitioner's Exhibit Number 12 was offered into**
20 **evidence.)**

21 **MR. CHURDAR:** No objection.

22 **THE COURT:** Petitioner's 12 is entered.

23 **(Petitioner's Exhibit Number 12 was admitted into**
24 **evidence.)**

25 Q: Okay. I'm also going to show you -- do you



1 still have Petitioner's 5 in front of you, the
2 deed?

3 A: I do.

4 Q: Okay. You can keep it. I'm also going to show
5 you what's been marked as Petitioner's 17.
6 Have you had the opportunity to examine the
7 property around your properties?

8 **(Petitioner's Exhibit Number 17 was introduced into**
9 **the record.)**

10 A: Absolutely. Yes.

11 Q: Have you reviewed aerial imageries?

12 A: Yes.

13 Q: Okay. And these are marked, I believe,
14 Petitioner's 17 A and B. Let me get you the
15 right copies, so I'm not -- you recognize these
16 two photos?

17 A: Yes.

18 Q: What do they - well, are they aerial images?
19 Do they appear to be aerial images from Google
20 Earth?

21 A: Yes.

22 Q: Okay. And does it -- does it appear to reflect
23 your property and neighboring properties?

24 A: Yes.

25 Q: Okay. And are there neighboring docks located



1 upstream and downstream of your property?

2 A: Yes.

3 Q: Okay.

4 **MS. SHAHID:** Let's see, what'd I do with -- what'd I
5 do with the exhibit? Oh, I gave it back to the
6 court reporter.

7 **COURT REPORTER:** I don't have any exhibits. I just
8 have your list.

9 **MS. SHAHID:** Oop. This is bad. Okay. Looking for
10 my G -- oh, it's Exhibit 26 and I only have one
11 copy of it. Here. Sorry, Your Honor. I don't
12 know -- here we go. I'm sorry. Exhibit 24.

13 Q: I'm now going to show you the document that I
14 showed in our opening statement and do you rec-
15 -- this is already in evidence, it's the stem
16 -- de- -- Defendant's (sic) Exhibit 24. And
17 this is 706.

18 **(Petitioner's Exhibit Number 24 was referenced at
19 this time.)**

20 A: Correct.

21 Q: Okay. And do you see this property,
22 5351400027?

23 A: Yes. That's Dr. Williams and Ms. Martha's
24 house.

25 Q: And that's off the cul-de-sac, Creekside Drive?



- 1 A: Yes.
- 2 Q: Okay. And do you see this dock? Is that Dr.
3 Williams' dock that I'm pointing at?
- 4 A: Yes. It is.
- 5 Q: Does it appear to be located in what looks like
6 a platted dock corridor?
- 7 A: Yes.
- 8 Q: Okay. And that's a few lots away from 706?
- 9 A: It's adjacent. These are ne- -- next to --
- 10 Q: Oh, yes. I see ---
- 11 A: Yeah.
- 12 Q: --- 27 is adjacent to 706. And then, if you'd
13 look up here at the lot labeled 1019, do you
14 know who owns this property?
- 15 A: Yes. That's the Vanteam's home.
- 16 Q: Okay. And do the Vanteam's have a dock?
- 17 A: Yes.
- 18 Q: And does it appear to extend between the two
19 corridors?
- 20 A: Yes.
- 21 Q: Okay. And do you know whose property is 995
22 Scottdale -- well, 995 Scotts -- Scotland
23 Drive?
- 24 A: Yeah. I believe that's -- golly, I -- I'd hate
25 to butcher his name. It's -- it's Greg



1 Dabullion (ph) or -- it's -- it's an
2 interesting spelling name. It ---

3 Q: And Mr. Greg has a dock?

4 A: Yes.

5 Q: Okay. And the dock is in between lines that
6 deviate from the lines coming from the street?
7 When I say lines, I mean property lines.

8 A: Yes.

9 Q: Okay. And again, up here at -- ending in TMS-
10 016, do you know who owns that property?

11 A: I think that's -- they just recently purchased
12 it about a year ago. I want to say that's the
13 Sabbaughs.

14 Q: Okay. Can you spell that?

15 A: S-A-B-B-A-U-G-H. I believe that's their house.

16 Q: And does that dock appear to be placed in a
17 corridor, that at least on one side deviates --
18 results in from a turn in the property line ---

19 A: Yeah.

20 Q: --- coming from the street?

21 A: Yes.

22 Q: Okay. And is that true also in Cooper Estates?
23 Do you see similar docks in Cooper Estates,
24 which appear to be utilizing platted corridors?

25 A: Yes.



1 Q: Would that be 102 -- in TMS ending in 102?

2 A: Yes.

3 Q: And would that be TMS ending in 101?

4 A: Yes.

5 Q: Okay. I'm going to show you a series of photos
6 that are marked Exhibit 23, and ask you if you
7 can identify them. And also, to keep all the
8 exhibits together, I'm going to put 24 with
9 you.

10 **(Petitioner's Exhibit Number 23 was introduced into**
11 **the record.)**

12 A: Yes. I recognize all of these.

13 Q: Okay. Did you take those photographs?

14 A: My wife did.

15 Q: What are they intended to reflect?

16 A: That there's navigable water behind the house.

17 Q: Okay. And I'll show these -- put these on the
18 screen for you.

19 **MS. SHAHID:** Oh, Your Honor, at this time, I'd offer
20 23-A, B, C, and D into evidence.

21 **(Petitioner's Exhibit Number 23 A, B, C, and D were**
22 **offered into evidence.)**

23 **THE COURT:** Is there any objection?

24 **MR. CHURDAR:** No objection, Your Honor.

25 **THE COURT:** It's admitted.



1 **(Petitioner's Exhibit Number 23 A, B, C, and D were**
2 **admitted into evidence.)**

3 Q: Is that you?

4 A: That is. Yes.

5 Q: How'd you get your boat in?

6 A: I -- I usually drop it in one of two ways. I
7 can back it down the -- the property line
8 between Dr. Williams and myself. I can
9 literally just shove it off. Or I can put it
10 in at our neighborhood boat landing.

11 Q: What type of tidal events do you need in order
12 to -- I'm assuming that -- let me put up 23-B.
13 I'm assuming that you're heading to the
14 tributary that's out here at the point of the
15 neighboring dock that shows in 23-B.

16 A: Correct.

17 Q: What kind of tidal event do you need in order
18 to take your boat off your property and get up
19 to the tributary?

20 A: Usually, it's -- it's got to be like around a
21 five - five and a half foot tide.

22 Q: Okay. So, that -- that would be a higher than
23 normal high tide?

24 A: No. High tide would be like probably in the
25 next two weeks we're going to have like a seven



1 foot ---

2 Q: Okay.

3 A: --- high tide and the water will be probably
4 nine-tenths of the way up the seawall.

5 Q: So, is it more -- so, can you do it more
6 frequently than waiting for that two-week tide?

7 A: Oh, yeah. Yeah. Yeah. That's -- right there,
8 that's -- I think that's around six-foot. It
9 was a little less than six-foot high tide right
10 there.

11 Q: Okay. And just to get a perspective, do you
12 recognize Petitioner's -- let's turn it the
13 right way -- Petitioner's 23-D?

14 A: Yes.

15 Q: Okay. And you had photographs of your boat.
16 Am -- am I right that your boat was over here
17 on the right-hand side of the picture?

18 A: A little -- a little further up.

19 Q: Further up ---

20 A: Did I do that? Oh -- I ---

21 Q: Yeah. That's okay. That helps the Judge see
22 what we're talking about. And this is the
23 seawall that runs along your yard?

24 A: Yes.

25 Q: Okay. And how often do you see this amount of



1 water off your seawall?

2 A: I don't -- I don't know. Several times a
3 month, I'd say.

4 Q: Okay.

5 **MS. SHAHID:** Your Honor, I don't remember if I
6 offered 23-A through D into evidence.

7 **THE COURT:** You did.

8 **MS. SHAHID:** I did. Thank you.

9 **MR. CHURDAR:** You did.

10 **THE COURT:** It's admitted.

11 Q: Rob, I'm going to put these with you to keep
12 them separate.

13 A: Okay.

14 **COURT REPORTER:** Just for your information though,
15 you did not offer 17-A and B when you referred
16 to them.

17 **MS. SHAHID:** Here's 17-A and here's 17-B. Is there
18 any objection to 17-A and B?

19 **(Petitioner's Exhibit Numbers 17 A and 17 B were
20 offered into evidence.)**

21 **MR. CHURDAR:** Your Honor, I don't -- I don't have
22 any objection to the -- to the -- that that is
23 a -- a fair and accurate representation as an
24 aerial image, but the -- the -- the dates that
25 were -- I mean, I -- I believe the -- the dates



1 in the legend are hearsay that are on the upper
2 right-hand corner. I -- I have no way of
3 knowing whether or not these pictures were
4 taken in 1994 or in 2021. That's hearsay, so.

5 **THE COURT:** I haven't seen the exhibit, so can you -
6 --

7 **MS. SHAHID:** Yeah.

8 **THE COURT:** --- speak to that please?

9 **MS. SHAHID:** Yes. Do you want to see them?

10 **THE COURT:** Sure. All right.

11 **MS. SHAHID:** Your Honor, they're Google Earth images
12 that I created and utilized the date on the
13 time line, that one was '21 and one was '94 on
14 the Google Earth time line.

15 **THE COURT:** Can you -- well, I'm guessing you can
16 lay a foundation for that.

17 **MS. SHAHID:** I can't because I can't testify.
18 That's all I could say. I mean, it's -- I
19 don't think the ---

20 **THE COURT:** Okay. I will admit Petitioner's 17 with
21 the understanding that the dates shown on the
22 map are hearsay and won't be considered, unless
23 you can present some additional testimony.

24 **(Petitioner's Exhibit Number 17 was admitted into**
25 **evidence.)**



1 **MS. SHAHID:** Yeah. That would be me.

2 **THE COURT:** You can probably come up with somebody
3 who can talk about it.

4 Q: I'm going to show you what's been marked
5 Exhibit 11. Have you ever seen that before?

6 **(Petitioner's Exhibit Number 11 was introduced into
7 the record.)**

8 A: Not this exact image. I -- I may have zoomed
9 in. I've seen it on Zillow and, you know, this
10 image here, but ...

11 Q: Okay. Does that look like your property?

12 A: Yes.

13 Q: Okay.

14 **MS. SHAHID:** And, Your Honor, I would offer Exhibit
15 11 into evidence.

16 **(Petitioner's Exhibit Number 11 was offered into
17 evidence.)**

18 **MR. CHURDAR:** I have no objection, Your Honor.

19 **THE COURT:** It's -- it's admitted.

20 **(Petitioner's Exhibit Number 11 was admitted into
21 evidence.)**

22 Q: And looking exhibit -- at Exhibit 11, can you
23 point to the Court effectively where your
24 seawall is? And you can actually draw it.

25 A: Well, it's non-linear. So, it -- it'd be hard



1 to -- to do it with -- because of the tree
2 canopy, but I ---

3 Q: Okay. I gotcha.

4 A: I can give you -- I can give you a very general
5 ---

6 **THE COURT:** Just a general idea.

7 A: --- because it is non-linear. I mean, it kind
8 of -- it's kind of going like -- like that.
9 But again, it is -- it's not linear, so.

10 Q: Okay. And why did you have to build a seawall?

11 A: Well, the -- there's about a four-foot slope --
12 drop in slope from the midway part of the
13 property to the rear and on some of these
14 higher tides, we were experiencing some
15 erosion. I also simply wanted to do it to --
16 to have as much of a yard for -- for my kids to
17 play around in, and with this -- this drop in
18 slope, it wasn't really usable property because
19 it was just all pinestraw. But by doing the
20 seawall, we were able to kind of control the
21 erosion, but also have that area sodded, and
22 the kids have a -- a significant backyard to --
23 to play around in.

24 Q: It doesn't run the full length of your lot
25 lines, does it?



1 A: No. It stops short on both sides, probably I
2 -- I'd hate to ---

3 Q: That's fine.

4 A: --- throw out a number, but it stops short on
5 both -- both -- both property lines, it stopped
6 short. It's about 133 feet long.

7 Q: Okay. When you say on both sides, are you
8 referring to the side where -- which are kind
9 of shown with the red dots?

10 A: Yes. Yes.

11 Q: Okay. So, it does stop short of those?

12 A: Yes.

13 Q: Yeah. Why did you get Mr. Seabrook involved?

14 A: Well, I -- I was a big believer in -- in -- his
15 father helped develop Creekside and -- and I --
16 I've got significant history. I grew up in
17 Mount Pleasant and was familiar with Mr. Scott.
18 And I grew up in Snee Farm and then Hobcaw and
19 then, you know, Creekside was a -- was --
20 really for us, it was -- it was -- it was
21 either Hobcaw or Creekside. Those are the only
22 two neighborhoods I wanted to live in. So, I
23 -- I sought their help because they're the
24 professionals. They're engineers and
25 surveyors. They -- they can do it all. So, in



1 terms of doing the survey and the engineering
2 work, and -- and preparing a -- a dock permit,
3 they -- they could kind of very professionally
4 handle all of that work.

5 Q: Okay.

6 A: And do it with a substantial amount of
7 knowledge of Creekside.

8 Q: And when you say they, you're referring to the
9 firm or the office of E.M. Seabrook?

10 A: Yes.

11 Q: And who is Lewis Seabrook?

12 A: He is the gentleman over there (indicating).

13 Q: What -- what did E.M. Seabrook or Lewis
14 Seabrook -- what tasks did they do for you?

15 A: They prepared the survey. They marked the
16 critical lines. They acted as my agent of
17 record. Also, submitting the dock proposal to
18 OCRM. So, they were kind of the -- the liaison
19 and the agent of record that coordinated the
20 process.

21 Q: Okay. And has anybody from OCRM inspected your
22 property?

23 A: The only person who has ever set foot on my
24 property is -- is Kathy Kawalchek (ph). She's
25 the only person that bothered to do a site



1 visit and she came out to confirm the critical
2 line and then once the seawall was built, she
3 came out to inspect the seawall work and -- and
4 take some photos, and she complimented the
5 contractor's work and asked who the contractor
6 was that -- that did the work, and took photos
7 and to my knowledge, clo- -- closed out the
8 file.

9 Q: Okay. Why didn't you get a permit for the
10 seawall?

11 A: Because I called the Town of Mount Pleasant,
12 and -- and talked to Christina Springston at
13 the Town, and I asked what the -- the process
14 entailed, do I need to get a permit for a --
15 for a seawall. And she said that we don't
16 issue permits for -- for seawalls. So, I then
17 talked to Lewis and Tom and they -- they -- it
18 was their recommendation to stay inside the
19 critical lines, so we're -- we're anywhere from
20 12 inches to 24 inches inside the critical
21 line. And also, read the Town's permitting
22 process. If the wall is shorter than four
23 feet, which it is, it's -- it's completely
24 level with the closest adjacent dock, which is
25 the Vanteams. We shot lasers across and it was



1 completely level with that dock. So, at -- at
2 its high point, the seawall is, I want to say,
3 36 inches. So, on the course of the -- of the
4 entire 133 feet, at no point does it even come
5 close to approaching 48 inches. So, it is
6 within -- it is within the building guidelines.

7 Q: Is it your understanding that you constructed
8 the seawall outside of the critical line in
9 upland property?

10 A: No.

11 Q: No. Outside the critical line. Not in the
12 critical area.

13 A: Yeah. It's -- it's -- it's on my -- it's --
14 it's an upland, so it's ---

15 Q: Yeah.

16 A: --- it's in my property.

17 Q: Okay. And I'm going to show you again Exhibit
18 12. I don't know how to erase your line.

19 **(Petitioner's Exhibit Number 12 was referenced at**
20 **this time.)**

21 **THE COURT:** I can do it.

22 Q: Exhibit 12 being the plat the Mr. Seabrook
23 prepared for you. Are you familiar with the
24 need to locate certain boundary points
25 associated with these lines, meaning the lines



1 that create the corridor for the dock? Looking
2 for the inception point for those lines.

3 A: Well, that's -- I mean, that's part of the
4 reason why I hired the -- the Seabrooks, I
5 would say. I'm -- I'm not an engineer. I'm
6 not a surveyor. So, I would say that that --
7 they're the folks that have substantial
8 knowledge of those markings.

9 Q: Okay. Okay. Did you actually get in the mud
10 to try to find these -- I'll call them iron
11 pipes?

12 A: Well, they had -- they had already been
13 located. I mean ---

14 Q: Okay.

15 A: --- they're -- they're pretty visible. If you
16 set foot on the property, it doesn't take but
17 a minute to -- to locate them.

18 Q: And do these iron pipes mark the inception
19 point for the extension of these parallel
20 lines?

21 A: Yes.

22 Q: Okay. Based on your reading of the plat?

23 A: Yes. Yes.

24 Q: Okay. And have you observed the location of
25 those -- both iron pipes?



1 A: Yes.

2 Q: And did you observe them to be in water or on
3 high ground?

4 A: High ground.

5 Q: Okay. Can you describe the ground around them?
6 I can show you a picture.

7 A: There's some -- on one side, there's some rock
8 and -- and dirt. And the other side, there's
9 very -- almost right next to my -- the fence
10 that we built, also mud or dirt, whatever.

11 Q: Okay. Was it your understanding those points
12 were in upland?

13 A: Yes.

14 **OBJECTION:**

15 **MR. CHURDAR:** Your Honor, I object. That -- that is
16 -- that is something that he is not -- he is
17 not qualified to testify to. I mean, there --
18 there needs to be a foundation laid as to how
19 the Department determines where the critical
20 line is or if he can testify to it, it's based
21 primarily on vegetation, which he has not said
22 anything about here today. He's not qualified.

23 **THE COURT:** It's his property though and the
24 property owner is given certain amount of
25 leeway to testify about their own property and



1 their understanding of it. I -- I understand
2 that that's a technical question and he's not
3 pretending to -- to be able to give a technical
4 answer, but he can testify as to his
5 understanding of the situation of his -- his
6 own property. I mean, a property owner is even
7 allowed to testify as to the value of their
8 property when, you know, no one else can
9 testify to the value of property if they're not
10 a certified appraiser, so. I think we're going
11 to allow him to talk about his understanding of
12 the situation of his property. But I
13 understand what you're -- I understand your
14 objection and I understand that that's a -- a
15 term of art.

16 A: Can I add? The -- so, in the ---

17 **THE COURT:** No. I need you to only respond to her
18 questions.

19 A: Oh, yes, sir. Yes, ma'am. Or Your Honor.

20 **THE COURT:** Thank you.

21 Q: Okay. Describe the dock that you proposed to
22 build.

23 A: It's a 120-something feet with a -- a davit
24 system for a small -- as you saw in the photo,
25 it's just like a little 16-foot creek boat,



1 essentially.

2 Q: Do you recognize what I'm handing you, which is
3 marked Petitioner's Exhibit 6? 6 is this.

4 **(Petitioner's Exhibit Number 6 was introduced into**
5 **the record.)**

6 A: Yes.

7 **MS. SHAHID:** Your Honor, at this time, I would offer
8 Petitioner's 6 into evidence.

9 **(Petitioner's Exhibit Number 6 was offered into**
10 **evidence.)**

11 **THE COURT:** Was there any objection?

12 **MR. CHURDAR:** No objection.

13 **THE COURT:** Okay. It's admitted.

14 **(Petitioner's Exhibit Number 6 was admitted into**
15 **evidence.)**

16 Q: And just for clarification purposes, there is
17 a description in the second paragraph of --
18 well, tell me what Exhibit 6 is.

19 A: As part of the application process in applying
20 for a dock, it's reviewed, I guess, by the Army
21 Core of Engineers, as well as OCRM, and after
22 about -- oh, I guess it was a month and a half
23 to two months after the application, we
24 received the approval from the Core, from the
25 Army, for the dock permit.



1 Q: And can you read the project description in
2 that second paragraph of Exhibit 6?

3 A: The activities in navigable waters in the
4 United States include the construction of a 10-
5 foot by 12-foot fixed, uncovered pier head
6 connected to the uplands by a 4-foot by 198-
7 foot walkway. Additionally, the pier head will
8 feature an un- -- an uncovered davit boat lift.

9 Q: Okay. So, I think you gave a different number
10 in the length of the walkway. Is 198 correct
11 to your knowledge?

12 A: Yeah. Yes.

13 Q: All right. And to your knowledge, does that
14 description actually describe what you would
15 intend to build, 198-foot walkway with a pier
16 head and ---

17 A: Yes.

18 Q: --- a boat -- a davit? Okay. Is that typical
19 of the docks that are already out there on the
20 tributary?

21 A: Yes. There's two -- there's two others with
22 davit systems. And we -- we most likely will
23 not do a davit system. We just wanted to
24 submit it for the application just so that it
25 was on file.



1 Q: Okay. And describe to the Judge what a davit
2 system is.

3 A: The davit system is just the -- they're
4 vertical, almost like winches. So, like on a
5 low tide, you could have your boat out of the
6 water. You just kind of -- you're just
7 winching it -- it up via this dav- -- davit
8 system.

9 Q: That's all I've got, Mr. Klomprens. You need
10 to answer Mr. -- any questions Mr. Churdar has.

11 A: Okay.

12 **MR. KLOMPARENS - CROSS EXAMINATION BY MR. CHURDAR:**

13 Q: All right. Good morning.

14 A: Good morning.

15 Q: How are you today?

16 A: Good.

17 Q: Good. So, Mr. Klomprens, do you remember the
18 questions I was asking you at your deposition
19 about something called a quiet title action?

20 A: Vaguely.

21 Q: Okay. Let me come over here and put your
22 Exhibit 24 on there and ask you, with regard to
23 this section of your lot -- well, that you --
24 you are paying property taxes on, this section
25 right there?



1 (Petitioner's Exhibit Number 24 was referenced at
2 this time.)

3 A: That's ---

4 Q: Right. Right there.

5 A: There you go.

6 Q: Okay. Have you ever filed a quiet title action
7 against the State of South Carolina ---

8 A: No.

9 Q: --- to prove your marsh ownership claim?

10 A: No.

11 Q: Okay. And it -- it -- it would be fair to say,
12 you have no proof that any of the prior owners
13 of your property have also not quieted title to
14 prove marsh ownership?

15 A: To my knowledge, no.

16 Q: Okay. Now, the basis for your belief that you
17 may own the marsh adjacent to your upland
18 property is un- -- unclear to you, correct?

19 A: I mean, I -- all I can do is read what's on the
20 deed.

21 Q: Right. And -- and I believe you testified at
22 your deposition that you got the idea that you
23 owned the marsh from the listing agent when you
24 bought the property?

25 A: Ei- -- either that or the -- yeah, the -- the



1 deed or -- or from the listing agent, yeah.

2 Q: Okay. And you testified, I believe, that one
3 of the reasons you put a bulkhead along the
4 edge of your property -- and let me get that --
5 right there, that bulkhead (indicating), that's
6 your bulkhead, right?

7 A: Yes.

8 Q: Okay. And the reason that you -- one of the
9 reasons that you wanted to put that there was
10 because you were experiencing erosion at the
11 point where your yard interfaces with the daily
12 tide cycle?

13 A: Correct.

14 Q: Okay. And that was concerning enough that you
15 -- that you installed what I think you
16 described as a 133-foot long bulkhead on the
17 edge of your yard where it abuts the marsh?

18 A: Uh-huh.

19 Q: And another -- kind of following up on that
20 reason for your concern was because you were
21 having water encroach in your -- in your yard
22 at high tide, correct?

23 A: Uh-huh.

24 Q: Okay. Now, you would also agree that the point
25 where your bulkhead separates your yard from



1 the marsh is your shoreline?

2 A: I -- I can't answer that because I'm not -- I
3 -- I know that the -- the property is inside of
4 the critical line. So, I don't -- I don't know
5 what -- I don't know why -- why I would call it
6 shoreline, I mean.

7 Q: Okay. Well, I'll tell you what, I -- let me --
8 let me help you out with that.

9 **MR. CHURDAR:** Your Honor, I've got -- do you want to
10 open -- do you want to do the honors? Do you
11 want me to open it?

12 **THE COURT:** You can open it.

13 **MR. CHURDAR:** Okay.

14 (Deposition transcript of witness was opened at this
15 time.)

16 Q: All right. Let me give you your -- that's your
17 deposition.

18 A: Okay.

19 Q: And if you would, please, turn to page 63.
20 Just let me know when you're there.

21 A: Yep.

22 Q: Okay. And starting on line 22, I'll -- I'll
23 read this and you just track along with me. I
24 -- I asked you, I said, do you believe that the
25 100 foot -- 130-foot, you said, I think



1 bulkhead? Yeah. It's around 133 feet roughly.
2 Okay. That's the line that delineates between
3 tidelands and your upland, correct? And you
4 indicated by nodding your head, I believe. And
5 then my question, okay, would you consider that
6 bulkhead to be the shoreline or the marshline.
7 What would you call that? And your answer,
8 yeah. I guess, yeah. Shoreline. I mean, it's
9 a seawall, so yeah. I don't really know what
10 you'd call exactly. And that -- I read that
11 correctly, right?

12 A: Yeah. That's ---

13 Q: Yeah.

14 A: That's why I'm having -- I'm having trouble
15 answering the question because even back then,
16 I -- I still -- like I think of shoreline, I
17 think of a beach or -- I -- I don't know. It
18 -- it -- it's just a -- terms of semantics and
19 the word choice. I ---

20 Q: Sure.

21 A: That's why ...

22 Q: Okay. But as far as the -- as far as all these
23 lots go where there's upland and then there's
24 a yellow line that goes out to the creek that's
25 out in the marsh, the yellow lines you can see



1 that all up and down this area, and this area,
2 as well, you have no basis to believe that Mr.
3 Scott, who was the original developer, had
4 quieted title against the State for all the
5 marsh, correct?

6 A: Yeah. I don't have knowledge of that.

7 Q: Okay. Now, you had testified that Kathy
8 Kawalchek (ph) was the only person that -- from
9 the OCRM who came out to your property for a
10 site visit, right?

11 A: (Nods head.)

12 Q: Okay. Now, do you know that Meredith Wrye, do
13 you know -- do you remember that name?

14 A: Well, I remember you mentioned it at the
15 deposition.

16 Q: Okay.

17 A: I've never -- I've never received a phone call
18 or an email or -- because I -- I was under the
19 impression in order for them to visit, they had
20 to, you know, contact us.

21 Q: Communicate with you.

22 A: But maybe not. I don't -- I don't know what
23 the ---

24 Q: Okay. So, you -- you -- if -- if Ms. Wrye came
25 out to delineate and certify the critical area



1 line and you weren't there, you wouldn't know
2 that, right?

3 A: Cor- -- correct.

4 Q: Okay. And now, you also talked about the
5 property pin. The -- on the -- the right-hand
6 side.

7 **MR. CHURDAR:** Can you put page 53? Okay.

8 Q: All right. So, Mr. Klomprens, when ---

9 **MR. CHURDAR:** If I touch that screen, how do I get
10 it where it responds to me? Okay.

11 **THE COURT:** I don't think it works on the ones on
12 counsel table.

13 **MR. CHURDAR:** Okay. All right.

14 Q: So, you see where the -- I put that little hand
15 right there (indicating)?

16 A: Yes.

17 Q: Okay. So, that is the eastern edge of your
18 property, correct?

19 A: Yes.

20 Q: Okay. And you had testified in response to Ms.
21 -- Ms. Shahid's question that your property pin
22 was in upland. And so my question for you is do
23 you have a familiarity with -- with -- saline
24 -- saline vegetation?

25 A: A little bit.



1 Q: Okay.

2 A: More -- more so from my neighbor.

3 Q: Okay.

4 A: Dr. Williams, but.

5 Q: Did you -- did you see any Faurecia right
6 there?

7 A: There is green vegetation there of -- of some
8 kind. Not -- not in that exact location
9 because I've planted a cedar tree fairly close
10 to the -- there's a -- there's a very large
11 grand oak that is laying in the -- in the marsh
12 kind of -- it's horizontal, so it's a very
13 substantial grand oak that has -- that has
14 fallen at some time in the last probably 30 or
15 40 years. But then, like on the very close to
16 that live oak is -- I planted a -- a couple of
17 cedar trees inside of our fence.

18 Q: Okay. But -- but -- but my -- my question was
19 with regard to where that pin is, what, if any,
20 saline vegetation did you identify at the point
21 of that pin?

22 A: Well, I said in that area there's the -- I
23 don't know. You -- you named the term. I ---

24 Q: Faurecia is the one that -- that ---

25 A: Well, I thought it was -- what's -- what's the



1 other one? It's -- it's kind of ---

2 Q: Oh, there's ---

3 A: --- tall -- taller.

4 Q: There's black needle rye.

5 A: So, there's ---

6 Q: Spartina grass.

7 A: That's -- that's it. Spart- -- the Spartina.

8 Q: Okay. And ---

9 **THE COURT:** That's where?

10 A: Not at the exact location of the pin. No. No.
11 The Spartina is probably -- it's more on the
12 neighbor's property side. But it's probably,
13 I would say, maybe 24 inches away, somewhere in
14 there.

15 Q: Okay. One other question. You -- you had
16 testified as to receiving a Core permit from
17 the Army Core of Engineers for this project and
18 you would agree that the project standards that
19 the -- a federal permit issues are not the
20 state regulatory standards that DHEC uses,
21 correct?

22 A: I -- I can't answer that. I -- like I said, I
23 hired them, so I ---

24 Q: I gotcha.

25 A: I'm not familiar with that aspect of the scope



1 of work.

2 Q: Okay. All right.

3 **MR. CHURDAR:** Your Honor, just one moment. Your
4 Honor, I don't -- I don't have any further
5 cross.

6 **MS. SHAHID:** Nothing further, Your Honor.

7 **THE COURT:** You can step down.

8 **MS. SHAHID:** Your Honor, I -- I could hand you up a
9 book of the exhibits. I'm always concerned
10 about doing that because they're not all in.
11 But if that would make it easier for you when
12 I refer -- I realize you didn't get to see all
13 that I was talking about before.

14 **THE COURT:** Yeah. It's nice if I get a book of
15 exhibits, but usually I only like to get a book
16 of exhibits that y'all can stipulate to the
17 admissibility of.

18 **MS. SHAHID:** Right.

19 **THE COURT:** So, it's probably about time for us to
20 take a break anyway. So, why don't we take a
21 short break in between witnesses and maybe you
22 and Mr. Churdar on the break --

23 **MS. SHAHID:** Yeah.

24 **THE COURT:** --- could look at the exhibits and
25 determine which ones you can stipulate to and



1 we could go ahead and after the break, and
2 admit all of those in -- in mass, and then I
3 can have a book with all of those. And then --
4 then the only ones you have to piddle around
5 with are the ones that y'all can't stipulate
6 to. Would that ---

7 **MS. SHAHID:** Okay. Yeah. That's fine.

8 **MR. CHURDAR:** Sure.

9 **MS. SHAHID:** Thanks.

10 **THE COURT:** --- be suitable to everybody?

11 **MS. SHAHID:** Yes.

12 **THE COURT:** All right. Let's take a 20-minute break
13 then.

14 (Off the record from 11:04 a.m. until 11:27 a.m.)

15 **COURT REPORTER:** All rise.

16 **THE COURT:** Have a seat. All right.

17 **MS. SHAHID:** Yeah.

18 **THE COURT:** Ms. Shahid, do you have another witness?

19 **MS. SHAHID:** I do. Can we talk about the exhibits
20 for a minute, Your Honor?

21 **THE COURT:** Oh, yes. I'm sorry.

22 **STIPULATION OF EXHIBITS:**

23 **MS. SHAHID:** Yes. We reached an agreement as to the
24 admissibility of 1 through 13. 14 has not been
25 stipulated to and will just be hopefully



1 admitted through a witness. 15 is in. 16
2 through 22 are A and B exhibits -- I'm sorry.
3 23 are -- 16 through 22 are A and B exhibits,
4 and they're similar to one that's already come
5 in, which I think was 17. And they're subject
6 -- I think Mr. Churdar has stipulated to their
7 admissibility, but not to any information that
8 is contained on the image. And that's the one
9 that had like the Google Earth information on
10 it about the years, etcetera. And -- and then
11 23 through 26 is in. So, the only one I'm
12 holding, Your Honor, is 14, not in yet. All
13 the rest are in. I mean, when I say in, they
14 haven't been moved in yet. They were
15 stipulated to.

16 **THE COURT:** Stipulated to.

17 **MS. SHAHID:** Yes. And I'm going to ---

18 **THE COURT:** Okay. So ---

19 **MS. SHAHID:** Yes.

20 **THE COURT:** So, as I understand it, we've stipulated
21 to the admissibility of 1 through 13, 15, 23 to
22 26, and to 16 through 22, but not to the
23 hearsay language written on the image?

24 **MS. SHAHID:** Correct.

25 **MR. CHURDAR:** Yes, ma'am.



1 **THE COURT:** All right. Then those documents are
2 admitted with the caveat about 16 to 22.

3 **(Petitioner's Exhibit Numbers 1 through 4, 7 through**
4 **10, 13, 15, 16, 18 through 22, 25 and 26 were**
5 **admitted into evidence.)**

6 **MS. SHAHID:** And can I hand you a notebook, Your
7 Honor?

8 **THE COURT:** Thank you.

9 **MS. SHAHID:** I think Mr. Churdar had -- well, you
10 want to wait and do yours ---

11 **MR. CHURDAR:** No. I mean, let -- if -- if you don't
12 mind, we can just go ahead and get -- get all
13 of the Department's ---

14 **THE COURT:** Yes.

15 **MR. CHURDAR:** --- admitted, as well. Your Honor, I
16 have the regulatory file is -- well, I'll wait
17 for you.

18 **THE COURT:** No. Go ahead.

19 **MR. CHURDAR:** Okay.

20 **THE COURT:** I'm getting ready to ---

21 **MR. CHURDAR:** The -- the regulatory file is Exhibit
22 Number 1 and then I have a number of other
23 exhibits. Well, I -- I can go through them,
24 but -- but Ms. Shahid is stipulated to their
25 admissibility, so.



1 **THE COURT:** You just give me the numbers and let's
2 go ahead and admit them now and then you can
3 talk about them in your ---

4 **MR. CHURDAR:** Okay.

5 **THE COURT:** --- case in chief.

6 **MR. CHURDAR:** It's 1 through 6.

7 **(Respondent's Exhibit Numbers 1 through 6 were**
8 **offered into evidence.)**

9 **THE COURT:** 1 through 6.

10 **MR. CHURDAR:** Yes, ma'am.

11 **THE COURT:** That's it then?

12 **MR. CHURDAR:** Yes, ma'am.

13 **THE COURT:** All right. Respondent's 1 through 6 are
14 admit- -- admitted. Great. Thank y'all for
15 doing that.

16 **(Respondent's Exhibit Numbers 1 though 6 were**
17 **admitted into evidence.)**

18 **MR. CHURDAR:** Okay.

19 **THE COURT:** All right. Are we ready for the next
20 witness then?

21 **MS. SHAHID:** Yes. I'm ready. We're calling Lewis
22 Seabrook.

23 **MR. SEABROOK:** Cane I take this with me.

24 **MS. SHAHID:** Uh-huh.

25 **MR. SEABROOK:** Okay.



1 **MS. SHAHID:** Do you want your water?

2 **MR. SEABROOK:** No. I don't need it.

3 **COURT REPORTER:** Raise your right, please. Do you
4 so -- do you solemnly swear that the testimony
5 you're about to give in this matter is the
6 truth, the whole truth, and nothing but the
7 truth, so help you God?

8 **MR. SEABROOK:** I do.

9 **COURT REPORTER:** Thank you.

10 **MR. SEABROOK:** Your Honor, before I start, I'm
11 hearing impaired, so I'd ask if all of you
12 would speak up, I would appreciate it.

13 **THE COURT:** All right.

14 **MR. SEABROOK:** Thank you.

15 **MS. SHAHID:** Is it all right if I examine him from
16 here?

17 **THE COURT:** Yes.

18 **LEWIS SEABROOK,** having been duly sworn, testifies as
19 follows:

20 **MR. SEABROOK - DIRECT EXAMINATION BY MS. SHAHID:**

21 Q: All right. State your full name for the
22 record.

23 A: Lewis Seabrook.

24 Q: Okay. And your address?

25 A: My work address is 1037-F Johnny Dodds



1 Boulevard -- excuse me. Chuck Dawley
2 Boulevard. Used to be on Johnny Dodds. In
3 Mount Pleasant. 29464.

4 Q: Okay. And where are you employed?

5 A: I'm employed at E.M. Seabrook, Jr.,
6 Incorporated.

7 Q: What do you do with -- well, what kind of
8 company is E.M. Seabrook?

9 A: We're a civil engineering and land surveying
10 company.

11 Q: How long have you been employed there?

12 A: 43 years.

13 Q: Okay. And is this a family business?

14 A: Yes, it is. Started by my father in 1956.

15 Q: And is your father still alive?

16 A: No. He's deceased.

17 Q: Okay. And who else is employed by E.M.
18 Seabrook? You don't have to name them, just
19 describe.

20 A: Well, I have two brothers that work with us,
21 and then we have a handful of other employees.

22 Q: Okay. What's your educational background?

23 A: Graduated from Clemson in 1978 with a
24 Bachelor's degree in Civil Engineering.

25 Q: Okay. And what tasks are you charged with



1 handling at E.M. Seabrook?

2 A: I'm the Vice President of the company, so,
3 there's some business items that I deal with.
4 But as far as technical aspects of my job, I --
5 I do any kind of civil engineering projects
6 that might come across my desk, and I'm also
7 responsible for the day-to-day activity of the
8 land surveying portion of the business.

9 Q: Okay. And how long have you been working?

10 A: 43 years.

11 Q: 43 years.

12 A: Yes, ma'am.

13 Q: Okay. Have you worked anywhere else other than
14 E.M. Seabrook?

15 A: No.

16 Q: Do you hold any profession- -- professional
17 licensings -- licenses?

18 A: Yes. I'm licensed for both engineering and
19 land surveying in the State of South Carolina.

20 Q: Okay. When was your engineering license
21 issued?

22 A: I was granted that license in 1984.

23 Q: That's a P.E. license?

24 A: Say again.

25 Q: Is that a P.E.?



- 1 A: Yes. A P.E.
- 2 Q: License.
- 3 A: License.
- 4 Q: Professional Engineer?
- 5 A: Right.
- 6 Q: And when was your surveying license issued?
- 7 A: That one was granted in 1988.
- 8 Q: Okay. And is that a P.L.S. license?
- 9 A: Yes, it is.
- 10 Q: Pro- -- Professional Land Surveyor?
- 11 A: Yes.
- 12 Q: What did you need to do to be recognized as a
- 13 Professional Land Surveyor?
- 14 A: I had to -- well, first I had to be -- have a
- 15 degree from a -- from a -- at that time, we
- 16 could either have a degree from technical --
- 17 two-year technical college and six years of
- 18 experience under a licensed professional or a
- 19 four-year degree from a -- from a regular
- 20 college university and four years of experience
- 21 under a licensed professional.
- 22 Q: Okay. And what did you have?
- 23 A: I did four years of college and four years
- 24 under the licensed professional.
- 25 Q: And who was your licensed professional?



1 A: My father.

2 Q: Okay. In the course of your 43-year career,
3 how many land surveys have you done and ---

4 A: Hundreds.

5 Q: Hundreds.

6 A: Many hundreds.

7 Q: Okay. And are most of those in Charleston
8 County?

9 A: Well, we typically limit our -- our work area
10 to the Berkeley, Charleston, Dorchester County
11 areas, although, occasionally, we will venture
12 out from those areas.

13 Q: Okay. And are many of those hundreds in Mount
14 Pleasant?

15 A: Yes.

16 Q: Do you have a lot of work from Mount Pleasant?

17 A: We have over the years, yes.

18 Q: Okay. And in addition to surveying, what type
19 of engineering projects are you engaged in?

20 A: I am able to design water and sewer systems,
21 and drainage systems. We do a lot of site
22 planning for commercial development. We have
23 over the years designed subdivisions and
24 infrastructure type things for subdivisions, as
25 well as lot layouts.



1 Q: Okay. Have you ever participated in flagging
2 a critical line?

3 A: Yes.

4 Q: How does that process typically work? Who
5 typically, in your experience, flags the line?

6 A: Usually, a request to establish critical line
7 is sent to the OCRM staff. They put it on the
8 schedule and come out and -- and mark it.
9 Sometimes, if they're backed up, they allow us
10 to mark the critical line, survey it, submit it
11 to them and then they review it for -- for
12 correctness.

13 Q: Okay. And in -- in -- in that scenario, does
14 OCRM come out and inspect the placement of the
15 flags?

16 A: I believe so.

17 Q: Okay. And have you been involved in a situa-
18 -- in situations where you identify the
19 critical area and so located it by placing a
20 flag for OCRM's review?

21 A: Yes.

22 Q: And how many times have you done that? Just
23 round guess.

24 A: I'm guess, but maybe a couple hundred times.

25 Q: Okay. Have you ever had a situation where the



1 lan- -- line that you flagged was questioned or
2 rejected by OCRM?

3 A: Never been rejected outright. There have been
4 situations where staff has told me that they
5 needed to adjust it in or out, you know, some
6 small dimension.

7 Q: Okay. And what is ---

8 A: And that's not unusual.

9 Q: Okay. What is your understanding of how to
10 locate a critical line?

11 A: There are several things that you need to look
12 at. One is typical salt water vegetation
13 growth, like marsh grass and that sort of
14 thing. The other one is evidence of water
15 inundating the property at certain times during
16 the day. One of the former staff members told
17 me that if you see fiddler holes, then it's
18 probably critical area. So, that's something
19 I look for, as well.

20 Q: Okay. And how many years have you been setting
21 critical lines?

22 A: Well, I believe the Coastal Council was
23 established in 1978, which is when the
24 regulations were promulgated to create the
25 critical area marking. I think that was the



1 date.

2 Q: Okay. Excuse me just a minute. Have you ever
3 testified in court before?

4 A: Yes.

5 Q: Well, let me -- before I get to that, how
6 familiar are you with the Creekside
7 subdivision?

8 A: I'm very familiar with Creekside.

9 Q: And why is that?

10 A: Creekside used to be a chicken farm in Mount
11 Pleasant, and when the owners got out of the
12 chicken farm business, they decided to do a
13 subdivision of the property and hired my father
14 to design the subdivision and plat it and
15 survey the lots.

16 Q: Okay. Have you ever testified before?

17 A: Yes.

18 Q: Where?

19 A: Mostly in Charleston County and mostly before
20 the -- the Master in Equity Court.

21 Q: Okay. And on what kinds of topics?

22 A: I'm sorry. You said what kind of topic?

23 Q: Topics. Yes.

24 A: Various things. Property line disputes.
25 Mostly dealing with property ownership issues.



1 Quiet title actions. That sort of thing.

2 Q: Okay. And how -- have you been qualified as an
3 expert?

4 A: Yes.

5 Q: Do you recall how you were qualified, what the
6 Court de- -- deemed you were an expert in?

7 A: I'm sorry. Say that again.

8 Q: Do you recall what the Court considered you to
9 be expert in?

10 A: I've been qualified before the Master's Court
11 many times as an expert in land surveying.

12 Q: Okay.

13 A: I actually have been requested by the Master
14 when he needs survey information, so I guess
15 that would make me sometimes a consultant to
16 him.

17 Q: Okay. And how -- how has that request been
18 conveyed to you?

19 A: Sometimes we would get a phone call from the
20 Master's office, but on occasion, he's written
21 it in his orders to -- for the parties to
22 contact us and get us to do whatever survey
23 work he needed.

24 Q: Okay. Do you have any knowledge or ability to
25 distinguish lands that are typically considered



1 upland from lands that are typically considered
2 critical area or below mean high water?

3 A: Yes.

4 Q: Okay. And what do you base that on?

5 A: Well, partly on my surveying experience.
6 Partly on information I've gleaned over the
7 years from various wetland consultants. Partly
8 from former OCRM staff members.

9 Q: Okay. And so, you know the characteristics of
10 upland property?

11 A: Yes.

12 Q: And you know the characteristics of property
13 that might be in the critical area or below
14 mean high water?

15 A: Yes.

16 Q: And are some of those characteristics reflected
17 in the items that you mentioned that you look
18 for when you identify critical lines such as
19 vegetation and fiddler crab holes and soils?

20 A: Yes.

21 Q: Okay. Are you able to look at plats and
22 determine the location of boundary lines on the
23 ground?

24 A: Yes.

25 Q: Okay. Is that part of surveying?



1 A: Yes. It is.

2 Q: Are you able to determine the direction of
3 property lines?

4 A: Yes.

5 Q: Is that something you're taught as part of
6 surveying?

7 A: Yes.

8 Q: Okay. So, you're -- you're able -- and do you
9 get all this information from plats?

10 A: Well, from plats and from field experience and
11 field work.

12 Q: Okay. Are you bound by any code of ethics as
13 a surveyor?

14 A: Yes.

15 Q: Is it -- what type of code? Is it -- the
16 governing code?

17 A: Well, the -- part of licensure is here with the
18 State has pages and pages of -- of -- of rules
19 and regulations that we're required to follow
20 in order to keep our license current.

21 Q: Okay. Would that -- would that set of rules
22 prevent you from stretching something or ---

23 A: Oh, yeah.

24 Q: Okay. And by stretching something, I mean,
25 trying to reach a conclusion that an owner



1 wants you to reach about the location of a
2 line.

3 A: That would not be something I would do.

4 Q: Okay.

5 A: Not be something I would be allowed to do nor
6 would it be something I would do.

7 Q: Has it -- would it put your license at threat?

8 A: Yes. It would.

9 Q: Is your license currently active?

10 A: It is.

11 Q: And your P.E. license also?

12 A: Yes.

13 Q: P.L.S. and P.E. license.

14 **OFFER AS EXPERT:**

15 **MS. SHAHID:** Your Honor, at this time, I would offer
16 Mr. Seabrook as an expert in land surveying,
17 which includes the location and direction of
18 boundary lines.

19 **MR. CHURDAR:** I don't object, Your Honor.

20 **THE COURT:** All right. Mr. Seabrook is qualified as
21 an expert -- can you repeat what you asked for
22 him to be qualified as?

23 **MS. SHAHID:** Well, which includes the knowledge of
24 location and direction of boundary lines. And
25 -- oh, I'm sorry. An as an expert -- I didn't



1 say. Expert in professional land surveying.

2 **THE COURT:** Expert in professional land surveying,
3 including ---

4 **MS. SHAHID:** Identification of the location and
5 direction of boundary lines.

6 **THE COURT:** All right. He is so qualified.

7 A: Thank you.

8 **THE COURT:** Thank you.

9 Q: And Mr. Seabrook, I'm going to show you
10 Petitioner's Exhibit 12 and it's been admitted
11 into evidence. Can you see that on your
12 screen?

13 **(Petitioner's Exhibit Number 12 was referenced at
14 this time.)**

15 A: It's a little fuzzy on this screen, but I have
16 my original of that very same plat rolled up
17 here ---

18 Q: Okay.

19 A: --- if I may refer to that ---

20 Q: Okay.

21 A: --- as well.

22 Q: Yeah. If you need to. Do you -- you recognize
23 Petitioner's 12?

24 A: Yes. That's the survey we did at the
25 Klomprens' property.



1 Q: Okay. And what work did you and/or any crew
2 that you supervised do to prepare Exhibit 12?

3 A: This is a site survey of Klomparens' property
4 and on a typical site survey, we gather
5 information on the boundary line locations, we
6 locate hardscapes like the house, driveway,
7 garage, sidewalks; locate the trees because
8 that's a requirement for the Town of Mount
9 Pleasant; locate any easements, which may be of
10 record that we can find and identify. In this
11 instance, we located the -- the bulkhead and --
12 excuse me. We located the critical line
13 because when we did that survey, the bulkhead
14 hadn't been built yet.

15 Q: And can you -- well, let me ask it this way, am
16 I correct that the critical line that you
17 referenced is the line labeled L1, L2, L3, L4
18 ---

19 A: Yes. That's -- that's correct.

20 Q: --- beginning on like the left-hand side of the
21 plat and moving up to the right-hand side of
22 the plat. And -- and is L14 the last -- no
23 L15, the last line?

24 A: L15, I believe is the last one on the plat.

25 Q: Okay.



1 A: Let me -- if you don't mind, I want to check my
2 copy and make sure I'm telling you right. Yes.
3 L1 to L15 were the certified critical line.

4 Q: Okay. And also does this plat reflect iron
5 pipes?

6 A: Yes.

7 Q: And if I pointed, could you tell me if I found
8 the iron pipe that begins the lines that the
9 dock was proposed to go through?

10 A: That's correct.

11 Q: So, here I'm pointing something under L1.
12 That's the iron pipe?

13 A: Yes. That ---

14 Q: And up ---

15 A: --- little dot.

16 Q: Up here, I'm pointing at something under L13.
17 And that's the iron pipe?

18 A: That one is a -- is a five-eighths inch rebar.
19 But yes, it's a property marker, as well.

20 Q: Okay. Okay. And you've observed the location
21 of both of those property markers?

22 A: Yes.

23 Q: How often have you been on the Klomprens'
24 property?

25 A: I believe it's four times.



1 Q: Okay. And was the purpose for that inspection?
2 I mean, were you inspecting the property?

3 A: Yes. I was.

4 Q: Okay. Are you familiar with the definition of
5 waterfront property that OCRM applies in order
6 to evaluate if a piece of property qualifies
7 for a dock?

8 A: I am generally familiar with it, yes.

9 Q: Okay.

10 A: I couldn't quote it to you word-for-word, but
11 I'm reasonably confident that I understand it.

12 Q: Okay. I'm going to now show you what's in
13 evidence as Defendant's Exhibit 25. Do you
14 recog- -- well, when I say Defendant, that's
15 because the sticker says that. I mean,
16 Petitioner.

17 **(Petitioner's Exhibit Number 25 was referenced at**
18 **this time.)**

19 A: Yes. I do recognize that.

20 Q: Okay. And what is this?

21 A: That's a subdivision plat of a portion of
22 Creekside Park that my father prepared back in
23 the late 1960s showing the lots along Scotland
24 Drive and the cul-de-sac portion of Creekside
25 Drive.



1 Q: Okay. And what -- what is -- is this a
2 recorded plat?

3 A: Yes, it is.

4 Q: And how -- how old is this plat?

5 A: Late 1960s. I think 1968. Let me check my
6 copy that I can read.

7 Q: Okay. And we're referring to Petitioner's
8 Exhibit 25.

9 A: July 1968 was when we prepared the plat or when
10 my father prepared the plat.

11 Q: And I see on the right-hand side of 25,
12 Creekside Drive, and it culminates in a cul-de-
13 sac. Do you see that?

14 A: Yes.

15 Q: And I see Lot 15. Do you ---

16 A: Yes.

17 Q: --- see Lot 15? Is Lot 15 what we're here
18 today about, 706 Creekside Drive?

19 A: Yes. That's the lot the Klomprens own.

20 Q: Okay. But as identified on the original
21 survey, it's shown as Lot 15?

22 A: Correct.

23 Q: Okay. And I'm going to show you Petitioner's
24 Exhibit 26, which is in evidence and ask you,
25 do you recognize 26?



1 (Petitioner's Exhibit Number 26 was referenced at
2 this time.)

3 A: Yes. That's an enlargement of a portion of
4 that same plat you just showed me.

5 Q: Okay. And you see Lot 15?

6 A: Yes.

7 Q: Okay. And I'm starting at the road and
8 pointing at what is a property line, I assume,
9 for ---

10 A: Yes.

11 Q: --- Lot 15. And I'm following that line to
12 this point where the blue highlighter is.

13 A: Yes.

14 Q: Okay. And then, taking my hand on down to the
15 culmination of the blue highlighter, is that
16 all one boundary line?

17 A: Yes.

18 Q: Okay. And why do you say that? I mean, why is
19 ---

20 A: Because that's ---

21 Q: --- it one continuous ---

22 A: --- that's how it's platted as -- as part of
23 the lot.

24 Q: Okay. As one continuous line?

25 A: It's got two segments, but it's -- it is a --



1 the property line.

2 Q: Okay. So, it starts at the road and ends
3 where?

4 A: Where you have your finger is the old property
5 line, which separates Creekside subdivision
6 from Cooper Estate subdivision.

7 Q: Okay.

8 A: That's -- that line has been there for all of
9 my life and probably all of my father's life
10 too.

11 Q: And then I'm going to work further down the
12 paper for what I believe is the other property
13 boundary. Is my finger on the other property
14 boundary that ties into the road?

15 A: Yes.

16 Q: And where does it end?

17 A: Same thing. It -- it goes out and then turns
18 towards the old common property line between
19 Creekside and Cooper Estates.

20 Q: And that -- is that the way it was platted?

21 A: Yes.

22 Q: Okay. And how do you as a surveyor know
23 directionally how to turn those lines at those
24 iron bars located on either side of Lot 15?

25 A: There are bearings on the property line from



1 which -- well, there are bearings on -- on the
2 property lines, plural, from which angles can
3 be calculated to show the change in direction.

4 Q: Okay. And I'm going to hand you Exhibit 5,
5 which is a deed into Mr. Klomparens for 706
6 Creekside. Have you ever reviewed Exhibit 5?

7 **(Petitioner's Exhibit Number 5 was referenced at this**
8 **time.)**

9 A: Yes.

10 Q: And what information -- as a surveyor, what
11 information do you, if any, use from deeds?

12 A: This particular deed says see Exhibit A
13 attached hereto for the legal description.

14 Q: Okay.

15 A: And a couple of pages over, there is Exhibit A
16 which describes the lot as Lot 15, Block C on
17 the plat that my father did and recorded in
18 Plat Book X-129 in Charleston County. And it
19 says, reference there is for a more complete
20 and full description.

21 Q: Okay.

22 A: It also conveys the grantor's right, title and
23 interest to marshland between Lot 15 Block C
24 and Shem Creek between the north, south and
25 west property lines shown on the plat.



1 Q: Okay. And I'm going to put Petitioner's
2 Exhibit 25 back on the table.

3 **MS. SHAHID:** And how do I zoom in, if I do? I'm
4 sorry. Oh, wait. I think I'm doing it. I'm
5 doing it on my own. Thank you.

6 Q: Okay. Going back to this old plat and looking
7 at 15, was there any information on this plat
8 to aid you in understanding the direction and
9 location of the lines going out to the water?

10 A: Yes.

11 Q: Okay. And what was that?

12 A: Bearings on property lines.

13 Q: Okay. Was the ---

14 A: From which we could create -- calculate the
15 angles.

16 Q: Okay. Was the actual dock corridor, for lack
17 of a better term, depicted on this plat?

18 A: Yes.

19 Q: Okay. And then holding the blow up -- putting
20 up the blow up, which is Defendant's (sic) 26,
21 is there an actual dashed under this
22 highlighted line?

23 **(Petitioner's Exhibit Number 26 was referenced at
24 this time.)**

25 A: Yes, it is.



1 Q: Okay.

2 A: That dash line actually has a bearing on it.
3 I know it's difficult to read on that drawing
4 because of the quality that we got from the
5 RMC, it's not real great, but it's on there.

6 Q: Do you have a larger size of the plat?

7 A: I do.

8 Q: So, are you able to decipher the bearing from
9 the larger size?

10 A: Yes.

11 Q: And, again, what does the bearing do?

12 A: It gives me an angle to calculate to determine
13 the change in direction of that segment of the
14 property line.

15 Q: Okay. All right. I'm going to read you OCRM's
16 definition of waterfront property.

17 A: Okay.

18 Q: For purposes of these regulations, waterfront
19 property will be generally defined as upland
20 sites where a straight line extension of both
21 generally shore perpendicular upland property
22 line reaches a navigable watercourse within a
23 thousand feet of the marsh critical line.
24 Okay. Do you have an opinion as to whether 706
25 Creekside Drive can satisfy that definition of



1 waterfront property?

2 A: I believe that it does.

3 Q: Okay. Let me show you Exhibit 11. Have you
4 seen this before? Let's turn it around. Have
5 you seen Exhibit ---

6 **(Petitioner's Exhibit Number 11 was referenced at**
7 **this time.)**

8 A: That specific one? I -- I don't know if I've
9 seen that specific one, but it does show the --
10 it's -- it's another blow up of the County's
11 GIS site.

12 Q: Okay. I'm pointing at 706 Creekside, which is
13 reflected by the yellow lines ---

14 A: Right.

15 Q: --- on Exhibit 11. It -- and I'm going point
16 where the lot ties in at the cul-de-sac. I
17 guess it's a cul-de-sac.

18 A: Uh-huh.

19 Q: Okay. And would you -- is it your opinion that
20 the full extension of the line constitutes one
21 line?

22 A: Yes.

23 Q: And that's true for the other tie-in at the
24 cul-de-sac?

25 A: Yes.



1 Q: Okay. And the two extensions extending from
2 the cul-de-sac, are they extending in upland?

3 A: I'm sorry. Say that again.

4 Q: Are they -- do they contain upland between
5 them?

6 A: Yes. They do.

7 Q: The two extensions ---

8 A: Yes.

9 Q: --- coming from the cul-de-sac. And then, at
10 the edge of those two extensions, where they
11 both take the angular turn, have you inspected
12 the location of the pins?

13 A: Yes.

14 Q: Okay. How recently did you do that?

15 A: Last week.

16 Q: Okay. And do the pins appear to be in upland?

17 A: They are in upland.

18 Q: They are up in upland? Okay. Can Mr.
19 Klomprens get to water within a thousand feet?

20 A: Yes.

21 Q: Okay. When his property boundaries make this
22 turn, and by this turn, I'm pointing to the
23 angle ---

24 A: Uh-huh.

25 Q: --- on Petitioner's 11 as they head out to the



1 tributary, do they take a general shore
2 perpendicular course?

3 A: They're generally perpendicular to that whole
4 side of Creekside ---

5 Q: Okay.

6 A: --- subdivision.

7 Q: Is that shoreline?

8 A: Say that again?

9 Q: Is that shore perpendicular? In other words,
10 do they go out over the marsh and into the
11 water?

12 A: Generally, perpendicular to that whole side of
13 the subdivision, yes.

14 Q: Okay.

15 A: It would show up better on the plat or the
16 larger GIS, but.

17 Q: Okay.

18 A: That property -- Klomparens' property -- and
19 one, two, three other ones at the end of the
20 cul-de-sac are on a point of land.

21 Q: Okay.

22 A: But for that whole side of the subdivision,
23 those lines are basically perpendicular to the
24 -- to the shore land, shoreline.

25 Q: And I'm going to show you Exhibit 24. Is this



1 GIS image helpful to you in terms of
2 demonstrating what you mean when you say side?
3 **(Petitioner's Exhibit Number 24 was referenced at**
4 **this time.)**

5 A: Yeah. If you could slide it down a little bit,
6 it would show up better. See all those -- all
7 those lots that front on Scotland Drive and
8 continues all the way up that marsh area, those
9 corridor lines are more or less perpendicular
10 to that shoreline.

11 Q: Okay. And by shoreline, would that be the area
12 -- well, the -- the dock -- the corridor lines
13 extend to this midpoint, is that correct? By
14 midpoint, this line?

15 A: Right.

16 Q: Okay.

17 A: To the old property line between Creekside and
18 -- and Cooper Estates.

19 Q: And that is where the tributary is?

20 A: In that -- yeah.

21 Q: Okay.

22 A: The tributary meanders in and out of that line,
23 but yes, it's in that vicinity.

24 Q: And the area between the tributary and the
25 improved lots, in your opinion, does that



1 constitute shoreline? Is that on the shore?

2 A: Say that again, please.

3 Q: The area between the tributary and the improved
4 lots, does that constitute shoreline to you?
5 If shoreline -- assume for the sake of argument
6 shoreline is the line in front of the water,
7 the -- the property in front of the water.

8 A: Okay.

9 Q: Does this constitute shoreline by this? I've
10 drawn a line from the center point between
11 Cooper Estates and Scotland Drive.

12 A: Well, that's part of -- that's the critical
13 area of the marsh that's in front of the -- the
14 upland portion of that particular lot that
15 you've pointed to.

16 Q: Uh-huh. But is the upland portion in your mind
17 shoreline, meaning it's -- it's the line of
18 shore before you get to the marsh and the
19 water?

20 A: Right.

21 Q: And looking down at 706, would this area to
22 some be shoreline leading into the marsh in the
23 water?

24 A: Yes. And then it continues to wrap around the
25 point.



1 Q: Okay. So, based on that analysis, is this an,
2 first of all, an upland site? Is Mr.
3 Klomparens' property an upland site, which is
4 referenced in the regulatory definition?

5 A: I believe it's an upland site. Yes.

6 Q: Okay. And do the -- do the property boundaries
7 on either side, and you might orient me, are we
8 talking -- let me put this on the screen, being
9 Petitioner's Exhibit 11. Would these be
10 northern and southern boundaries or how would
11 you delineate ---

12 **(Petitioner's Exhibit Number 11 was referenced at**
13 **this time.)**

14 A: No.

15 Q: --- these?

16 A: Those -- those two that you just pointed to are
17 the eastern and western boundaries.

18 Q: Okay. So, the ---

19 A: North in that picture is basically straight up
20 the page.

21 Q: Okay. Okay. So ...

22 A: So, the northern boundary, as described in the
23 deed, is the top yellow line. Not the one with
24 the big red dot on it ---

25 Q: Yeah.



- 1 A: --- but the next one up.
- 2 Q: Yeah. Okay. So, you take the eastern and
3 western boundaries ---
- 4 A: Uh-huh.
- 5 Q: --- and you turn those lines the way you're
6 directed to turn them.
- 7 A: Right.
- 8 Q: And have you -- do you then have a generally
9 straight line extensions of generally shore
10 perpendicular upland property lines?
- 11 A: Well, those points -- those lines -- portions
12 of the lines start on the upland for sure.
- 13 Q: Okay.
- 14 A: And then they go out reasonably perpendicular
15 to the overall shoreline of that side of the
16 subdivision.
- 17 Q: Okay. I'm going to show you some photographs.
18 You do -- you remember when you had your
19 deposition taken by Mr. Churdar?
- 20 A: I'm sorry. Say that again.
- 21 Q: Do you remember when you had ---
- 22 A: Yes.
- 23 Q: --- your deposition taken by Mr. Churdar?
- 24 A: Uh-huh.
- 25 Q: Do you remember how you described the location



1 of the two boundary lines or -- or the -- the
2 -- the point where the corridor begins?

3 A: Well, it seemed that we were concentrating
4 mostly on the northeastern corner and at that
5 time, I described it service area being right
6 at the edge of the highland and right at the
7 edge of the critical area.

8 Q: Okay.

9 A: Subsequent to that, however ---

10 Q: Well, let me show you the plat.

11 A: Okay.

12 **MS. SHAHID:** I'm going to get a quick drink of
13 water.

14 A: If you could slide it down a little bit.

15 Q: This way?

16 A: No, the other way.

17 Q: This way?

18 A: Yeah. I don't know ---

19 Q: Okay.

20 A: --- how that blue spot got there, but I don't
21 know how to get rid of it.

22 **THE COURT:** I can do that.

23 Q: And do you ---

24 A: Thank you.

25 Q: Do you remember a discussion that one of these



1 points was in the critical line -- was in the
2 critical area? I'm sorry. In the critical
3 area.

4 A: That was the position I think OCRM was taking.

5 Q: Okay. And can you show the Court on
6 Petitioner's 12 what you believe they were
7 indicating was in the critical area? And you
8 can -- I think you can point to it and make a
9 mark.

10 **(Petitioner's Exhibit Number 12 was referenced at**
11 **this time.)**

12 A: Okay.

13 **THE COURT:** You -- if you tap or move your finger on
14 your screen, it should make a mark.

15 A: The big black dot that's under the blue dot now
16 ---

17 Q: Uh-huh.

18 A: --- is the five-eighths inch rebar that marks
19 that end of -- end of those two line segments.

20 Q: Okay.

21 A: And that was the one that we were discussing
22 for the most part during my deposition that I
23 described as being on the edge of the highland
24 and the edge of the critical area.

25 Q: How is it as shown on this plat, Petitioner's



1 12?

2 A: I'm sorry. Say that again.

3 Q: How -- where is it located with regard to the
4 critical line on Petitioner's 12? Is it inside
5 the critical area or outside the critical area?

6 A: When you say inside ---

7 Q: Is it in critical area?

8 A: No. It is not. It is in upland area.

9 Q: Okay. But how is that -- what does the plat
10 show you in that regard?

11 A: The plat shows that there is a portion of
12 critical area that cuts up in behind that
13 property marker.

14 Q: Okay. Can you point to where that is?

15 A: It's kind of obliterated by the blue, but if
16 you look just below the blue dot -- thank you.
17 You look just below the blue dot -- now -- get
18 rid of that again. Thank you. It's described
19 as the apex of L14 and L15.

20 Q: Okay. And as a result of reviewing this plat
21 with Mr. Churdar, did you take any action? Did
22 you do anything?

23 A: Not after discussing with him. After
24 discussing with you once the deposition was
25 over, you and I concluded it might be a good



1 idea to go reestablish on the ground the
2 recorded certified critical lines since the
3 flags had all disappeared since the original
4 survey.

5 Q: Now ---

6 A: So, last week ---

7 Q: Okay.

8 A: --- I had my survey crew go back out there and
9 remark the lines and so -- as they are
10 described on that plat.

11 Q: Okay. Now, how would your survey crew know how
12 to remark the line as it's shown on this plat?

13 A: Well, we have the -- our -- our survey data is
14 tied to the boundary and tied to various
15 control points that we have out in the -- in
16 Creekside Drive and elsewhere in the lot
17 itself. We also have north and south
18 coordinates of the various points of basically
19 everything we located out there, including the
20 critical line. So, I gave them the points that
21 I wanted them to remark and using our survey
22 data, we installed new stakes with blue
23 flagging on them to indicate where the
24 certified critical line was located.

25 Q: And the original flagging was done in or around



1 2020, which is when OCRM approved this plat?

2 A: Yes, it was certified in June of 20- -- 2020.

3 Q: And looking at Petitioner's 12, you see Ms.
4 Wrye's signature?

5 A: Yeah. Meredith -- Meredith Wrye ---

6 Q: Meredith Wrye's ---

7 A: --- was the certifier.

8 Q: Okay.

9 A: And just as an aside on that, we used to get
10 signed copies back from OCRM on prints, but
11 lately, we've just been getting scans of signed
12 copies. So, we don't really have a way to put
13 the certification on our office copies any
14 more.

15 Q: Okay. But they're using an electronic
16 signature now?

17 A: Yes.

18 Q: Okay. Now, I'm going to -- what -- what kind
19 of investigation did you do when -- after your
20 deposition?

21 A: Well, as indicated a minute ago, I asked the
22 survey crew to go back out and -- and install
23 markers on the certified critical line, which
24 they did the first of last week. And I asked
25 them to take photographs of those points in the



1 vicinity, that northeastern corner of the
2 property. And then I went out and looked at
3 them myself, so that I would be better prepared
4 for this trial and that's when I saw that
5 something didn't look right.

6 Q: Okay. And first I'm going to show you what's
7 in evidence, as Petitioner's 13. And maybe I
8 need to back out a little bit. And if you
9 could explain to the Court what it -- what 13
10 reflects.

11 **(Petitioner's Exhibit Number 13 was referenced at**
12 **this time.)**

13 A: That's a detailed drawing that I prepared last
14 week of the northeastern corner of the
15 Klomparens' property showing the certified
16 critical line locations starting at L9 and
17 going through L15. Also shows the property
18 line going back towards the street and the --
19 what would be the northern line of the corridor
20 area, as well as a tie from the five-eighths
21 inch rebar with bearing distance over to the
22 opposite property marker, which I believe is an
23 inch and a quarter property marker iron pipe.

24 Q: And -- and you're reviewing -- you're referring
25 to the northern line of the dock corridor.



1 A: Yes.

2 Q: That is part of the same property line that
3 comes from the street, correct?

4 A: Yes. On this drawing, it's called property
5 line to the creek.

6 Q: Okay. But it's part of the labeled property
7 line of ---

8 A: Yes.

9 Q: Okay. And can you -- what -- what did you
10 confirm?

11 A: Well, we confirmed, the majority of the
12 critical line markings with the exception of
13 the apex of the line L14 and L15, that falls
14 way up into the property and is clearly not
15 critical area.

16 Q: Okay.

17 A: We took photographs of that -- that area, as
18 well as a few others in that corner of the
19 property.

20 Q: And showing you again Petitioner's 12, you
21 referred to the apex of 14 and 15.

22 **(Petitioner's Exhibit Number 12 was referenced at**
23 **this time.)**

24 A: Uh-huh.

25 Q: What was cri- -- what was important about that



1 point, the apex of 14 and 15 in Petitioner's
2 12?

3 A: Well, had that point really been critical line,
4 it would have made it more difficult for me to
5 say that that five-eighths rebar was on
6 highland.

7 Q: But what did you learn about that point?

8 A: It's -- it's clearly in upland.

9 Q: Okay. And how did you confirm that the --
10 well, first of all, is it shown on Petitioner's
11 13 as clearly an upland?

12 **(Petitioner's Exhibit Number 13 was referenced at**
13 **this time.)**

14 A: Is it shown what?

15 Q: On 13, on this drawing, did -- what are you
16 saying is clearly an upland?

17 A: The circled area over in the upper right corner
18 of the ---

19 Q: Okay.

20 A: --- of the drawing shows a detail of the
21 property line, the five-eighths inch rebar that
22 has a stake with a pink flag next to it, and
23 two stakes with blue flags, which are the
24 critical line itself.

25 Q: Uh-huh.



1 A: And as you can see, it's got a dimension of
2 point -- 0.66 feet, which is eight inches,
3 which shows that it's landward of the critical
4 line by eight inches.

5 Q: Okay.

6 A: And when that line turns and goes out toward
7 the creek, it crosses more upland area.

8 **THE COURT:** So, I want to make sure I understand
9 your testimony. You're saying the rebar is
10 landward of the critical line by eight inches?

11 A: Yes, ma'am.

12 **THE COURT:** And this is of the critical line that
13 has been established and confirmed by OCRM?

14 A: That's -- that's the problem. The apex of Line
15 14 and 15 was certified by cri- -- by OCRM.
16 However, that was a bad data point. We got a
17 -- for some reason got a bad return on our
18 surveying -- survey signal and located that
19 point on the wrong -- on the -- in the wrong
20 spot on the ground.

21 Q: And maybe if I show you some pictures, that'll
22 ---

23 A: Sorry. Say again.

24 Q: Well, I don't want to ---

25 **THE COURT:** I'm just trying to understand whether --



1 understand his testimony. So, you're saying
2 that the rebar is actually landward of what is
3 critical area, but it is not landward of the
4 critical line as established on the -- that
5 plat that shows the OCRM approved ---

6 A: Yes, ma'am.

7 **THE COURT:** --- critical line?

8 A: That's -- that's what I'm saying.

9 **THE COURT:** I understand. Thank you.

10 A: And we've got some photographs of that that
11 will help everybody see that.

12 Q: All right. Do you recognize these photographs?

13 A: Yes, ma'am.

14 Q: Okay. And would you advise the Court as to
15 what we're looking at?

16 A: Sure. This was a photograph that my field crew
17 took last week after I asked them to remark the
18 certified critical line. As they are standing
19 out in the critical area looking back towards
20 the lot and towards Klomparens' house, in the
21 extreme right edge of the picture, you will see
22 an oak tree, which is -- that portion of the
23 oak tree is -- is growing horizontally.

24 Q: That's ---

25 A: You'll see ---



1 Q: That's over on the right-hand side of the
2 photo?

3 A: Yes. Just above the ---

4 Q: That's the oak tree that lies on its side?

5 A: Yes. Just to the left of the oak tree, you'll
6 see three stakes with blue flags. Just below
7 the second flag, you'll see some boards. Just
8 to the left, you'll see the end of the
9 Klomprens' fence and then another stake with
10 a pink flag, which is the five-eighths inch
11 rebar at the northeastern corner. And then, on
12 the left side of the photograph is another
13 stake with a blue flag, which was the last
14 point that was marked on the critical line
15 itself. In the foreground, you see some green
16 critical area growth. Behind the wooden boards
17 and to the right of the end of the fence,
18 you'll see a cedar tree or a cedar bush. And
19 the dark brown under the cedar bush is the
20 sloping soil coming down off the -- off the
21 lot.

22 Q: Okay. And when we look at Petitioner's 13, you
23 described a point, which was picked up as the
24 critical line, as at the apex of L14 and L15?

25 A: Correct. And if you could put that photograph



1 back, I could show you which point that is in
2 the photograph.

3 Q: Okay.

4 A: On the right-hand side, you see the three blue
5 flags. The blue flag that's closest to the
6 house is where the apex of Line 14 and 15 met
7 based on the plat information.

8 Q: Okay.

9 A: However ---

10 Q: So, would -- let me ---

11 A: --- that isn't critical area.

12 Q: Let me stop you there. So, when your crew went
13 out to replat the critical line ---

14 A: Well, not replat, but remark.

15 Q: Remark the critical line, what is shown here in
16 Petitioner's 12, immediately -- where is L14
17 and L15? Here we go. L14 and L15 ---

18 **(Petitioner's Exhibit Number 12 was referenced at**
19 **this time.)**

20 A: Right.

21 Q: Immediately adjacent to the iron bar was how
22 far up on the upland?

23 A: A little over a foot.

24 Q: Okay.

25 **THE COURT:** So -- okay.



1 Q: Let me -- let me put that back. Talking about
2 in Petitioner's 15A, this blue flag?

3 A: Yeah. See the four small boards that are ---

4 Q: Right.

5 A: --- down just below where ---

6 Q: Yeah.

7 A: --- you had your finger just a second ago.

8 Q: Yeah.

9 A: Those are just on the upland side of the
10 critical area.

11 Q: Okay.

12 A: And the apex of Line 14, 15 is the blue flag
13 that's on the house side of those boards ---

14 Q: Okay.

15 A: --- above the critical area.

16 Q: Okay. Now, when your crew originally platted
17 the critical line, did they plat it where this
18 blue flag is, the blue flag I'm pointing to,
19 behind the four boards on Exhibit 15-A? Did
20 they flag it up there? Would your crew have
21 flagged the critical line up there?

22 A: That's where the location ended up.

23 Q: Okay.

24 A: What I believe happened was that it was
25 returned ---



1 **OBJECTION:**

2 **MR. CHURDAR:** Your Honor, I -- I would object. He
3 is getting into speculation, what he believed
4 happened with his equipment.

5 **MS. SHAHID:** I ---

6 A: My speculation is based on 43 years of
7 experience and knowing what a critical line
8 looks like.

9 **MS. SHAHID:** I can ask him some more questions, Your
10 Honor.

11 **THE COURT:** Okay. I'm going to overrule the
12 objection. Go ahead and ask the questions. If
13 -- let's see if you can lay a foundation for
14 what he's ---

15 **MS. SHAHID:** Yeah.

16 **THE COURT:** --- going to testify to.

17 A: Mr. Churdar, I apologize for that.

18 **MR. CHURDAR:** No problem.

19 A: I'm sorry.

20 Q: Mr. Seabrook, in your 43 years of experience,
21 have you ever seen errors or discrepancies
22 between areas that were flagged and then areas
23 that were platted?

24 A: Occasionally.

25 Q: Okay. And ---



1 A: It doesn't happen often, but it does happen.

2 Q: And what can be the source of those errors?

3 A: The sources can be several things. Back in the
4 era when we would read angles and measure
5 distances, and write things down on a piece of
6 paper, those errors could transposition of
7 number figures. Today, that's pretty gone
8 beside the wayside because just the equipment
9 commonly used and what we use is -- collects
10 the data electronically, which pretty much
11 wipes out any chance of human error of writing
12 down the wrong number. So, in this particular
13 instance, a single data point appears to be
14 wrong. It's not a corruption of the -- of the
15 file data because the whole file would have
16 been cor- -- a significant portion of the file
17 would have been corrupted. So, the only thing
18 that could possibly have happened was that
19 something interfered with the beam, the laser
20 from the total station to the prism. And it
21 probably would be good if I explained how that
22 worked.

23 Q: Yes.

24 A: If the Court would like me to. Our equipment
25 is -- is a total station with a built-in EDM,



1 which is a electronic distance measuring
2 device. Information is connected to a tablet
3 through a bluetooth connection. It's built into
4 the software that runs the total station and
5 the tablet. And the way the measurements are
6 made is the survey crew sets up on a point with
7 known coordinates, gets the instrument level,
8 aligns it on another point of known
9 coordinates, and then it gives locations based
10 on -- on that alignment. The way the data is
11 measured is as the instrument is turned, the
12 software in the tablet follows the angular
13 change, and based on the laser light going from
14 the instrument to a prism, which is over a
15 point being located, and returned back to -- to
16 the total station, and based on the wavelength
17 of the laser light, it's able to calculate the
18 distance that the point being located is
19 located from the point of known coordinates.
20 Now, the only way that the survey crew would
21 know that information that we're gathering was
22 incorrect is if they knew ahead of time the
23 angle and distance to the point they were
24 locating, as if -- for instance, as if they
25 were measuring a property line that they knew



1 was recorded at 100 feet and it only came out
2 to 98 feet, they would know something was wrong
3 and would remeasure. But when you're locating
4 critical line or any other -- any other non-
5 recorded location like a tree or -- or a fence
6 or something like that, where you don't know
7 ahead of time, where it's located in space,
8 left and right, and distance-wise from your
9 known point, there's no way to tell that you're
10 getting incorrect information until you put it
11 on paper and take a look at it and compare it
12 to what it looks like on the ground, which is
13 the exercise we went through last week.

14 Q: Okay.

15 A: Which tells me that that point that you've got
16 the white dot beside is not critical line.

17 Q: Does anything else tell you that it's not
18 critical line? And I'm talking about the third
19 flag going up from the four pieces of wood. I
20 mean the ---

21 A: You're -- you're talking about the ---

22 Q: Vegetation or ---

23 A: Well, there's no upland. I mean, there's no
24 critical line vegetation on the house side of
25 those four boards.



1 Q: Okay.

2 A: There's no fid- -- fiddler crab holes. No
3 indication of any -- any water going up that
4 far. I was there when I went and inspected it
5 the last time, I purposely went at high tide
6 and the water was actually out beyond that
7 first flag, you see by the yellow sticker.

8 Q: So, the water didn't reach up to this ---

9 A: It didn't even get -- didn't even get to that
10 -- that state.

11 Q: Okay. And ---

12 A: Also, when I got -- had the survey crew go back
13 out there, I asked them to gather elevation
14 information at the various points and that --
15 that first blue flag, the one that's closest to
16 the house, is around elevation seven, mean low
17 water. Whereas mean higher water elevation is
18 closer to 5.4. So, that point is almost a foot
19 and a half -- well, actually, a little over a
20 foot and a half above and inland from the mean
21 high water line.

22 Q: Okay. And the point we're talking about is not
23 the property point ---

24 **THE COURT:** Can you repeat that? Now, which -- can
25 you tell me -- I'm sorry. I just want to ---



1 **MS. SHAHID:** That's fine.

2 **THE COURT:** --- make sure I understand ---

3 **MS. SHAHID:** Yes.

4 **THE COURT:** --- his testimony.

5 A: Too many white dots.

6 **THE COURT:** Get rid of the white dots first. So,
7 you're talking about this stake right here?

8 A: That's ---

9 **THE COURT:** The third stake closest to the house?

10 A: Third stake closest to the house has a ground
11 elevation next to it of seven feet. The mean
12 high water line elevation in this portion of
13 the area of Charleston Harbor is around
14 elevation 5.4.

15 **OBJECTION:**

16 **MR. CHURDAR:** Your Honor, I -- I would object to
17 testimony about the mean high water line. The
18 critical area can be found in mean high high
19 water, which is higher than mean high water.
20 And so, whether ---

21 **THE COURT:** Well, you'll have a -- you'll have an
22 opportunity to cross-examine him and to present
23 your own witnesses, Mr. Churdar, but I don't
24 understand the basis of your -- of your
25 objecting to his testimony, other than that you



1 disagree with it.

2 **MR. CHURDAR:** No. No, Your Honor. It's -- it's
3 that to -- to testify about where the mean
4 higher water line is not the point in terms of
5 where the critical area ---

6 **THE COURT:** You can demonstrate that through your
7 own -- through the evidence that you present,
8 but that's not a proper objection to his
9 testimony that you disagree with the point he's
10 making.

11 **MR. CHURDAR:** No. I was objecting that it's not
12 relevant.

13 **THE COURT:** Oh, okay. I'm going to overrule the
14 objection.

15 **MR. CHURDAR:** Okay.

16 Q: Did you finish what you were saying?

17 A: I'm sorry. Say again.

18 Q: Did you finish what you were saying?

19 A: I believe I did.

20 Q: Okay. I'm going to show you what's been marked
21 as Petitioner's 14, but is not yet in evidence
22 and ask if you identify 14.

23 **(Petitioner's Exhibit Number 14 was introduced into
24 the record.)**

25 A: Yes. This is public information that I



1 downloaded off the NOAA website. And what it
2 shows after several pages or what it refers to
3 is a tide station in Charleston Harbor located
4 at Customs House, which is straight across the
5 harbor from Shem Creek.

6 Q: Okay. Before you tell me any details, is that
7 what NOO- -- NOAA is National Oceanic and
8 Atmospheric Agency?

9 A: Administration.

10 Q: Administration.

11 A: Yes.

12 Q: Is this data that you as a surveyor would look
13 at in the normal course of business?

14 A: Yes.

15 Q: Okay.

16 A: Yeah. Depending on the aspect of what I was
17 doing at the time, but -- but for -- for
18 anything related to dock surveys, we typically
19 try to -- well, we're required to show the tide
20 range on the application. So, we would try to
21 find the closest tidal benchmark information,
22 which is what -- what this document is.

23 Q: Uh-huh.

24 A: And utilize the information it contains to show
25 the tide range.



1 Q: Uh-huh. Okay. And why did you refer to ---

2 **MS. SHAHID:** Oh, Your Honor, at this time I would
3 offer 14 into evidence.

4 **(Petitioner's Exhibit Number 14 was offered into**
5 **evidence.)**

6 **THE COURT:** Is there any objection?

7 **OBJECTION:**

8 **MR. CHURDAR:** I -- I do, Your Honor. First of all,
9 this is hearsay; and second of all, for the --
10 for the same reason that I had mentioned
11 before, the critical area line can be above
12 mean high water and that's what his testimony
13 is based on, as I understand it, is that he's
14 looking at mean high water and the critical
15 line can be above mean high water.

16 **THE COURT:** I understand your point. I'm going to
17 overrule you on the relevance. I'll hear you
18 on the hearsay aspect.

19 **MR. CHURDAR:** Well, I mean just that -- that -- I
20 mean, this is -- this is being provided for the
21 truth of the matter asserted and -- and I can't
22 -- there's -- there's nobody here from NOAA to
23 -- to ---

24 **THE COURT:** Okay.

25 **MS. SHAHID:** My general understanding of the Rules



1 of Evidence are that an expert is allowed to
2 testify regarding materials that he typically
3 relies on in forming his opinions. And that's
4 what these materials are.

5 **THE COURT:** Okay. I'm going to overrule the
6 objection. P14 is admitted.

7 **(Petitioner's Exhibit Number 14 was admitted into**
8 **evidence.)**

9 A: May I continue?

10 Q: Yes.

11 A: On the next to last page of these ten pages are
12 listed the various elevations in meters of the
13 various tide levels in Charleston Harbor,
14 starting at the lowest observed water level,
15 back in 1993, of minus 1.245 meters, mean lower
16 lower water at zero, mean lower water at 0.057,
17 mean tide level 0.853, mean sea level 0.891,
18 North American vertical data, which I will say
19 it's the typical data we used to do graphic
20 surveys in South Carolina these days, that's at
21 0.957 meters. Mean high water is at 1.648
22 meters. Mean higher high water is 1.757
23 meters. And the highest observed water level
24 was 9/21/89 during Hurricane Hugo of 3.817
25 meters.



1 Q: And if I could interrupt you for a moment,
2 you're looking at page 9 of 10. If you look to
3 the bottom left-hand corner of ---

4 A: Yes, I am.

5 Q: --- of Exhibit 14? Okay. And ---

6 A: Yes.

7 Q: --- why was this information relevant to what
8 you were reviewing with regard to the location
9 of these various flags depicted in Petitioner's
10 Exhibit 15-A?

11 A: To satisfy my own curiosity, I wanted to see
12 where the mean high water line fell relative to
13 the critical line.

14 Q: Okay. And what did you discover?

15 A: I discovered that the mean high water line is
16 well out away from the house from the -- from
17 the critical line.

18 Q: Okay. Is -- is it in proximity to the critical
19 line or is it -- or is it not ---

20 A: Several feet farther out.

21 Q: Okay. And what is your understanding of
22 property ownership in South Carolina on the
23 water?

24 A: That ownership can be claimed to the mean
25 higher water line.



1 Q: Okay. Did -- did this tidal data assist you in
2 any other analysis that you did?

3 A: We utilized this information to prepare the
4 dock permit application.

5 Q: Okay. All right. Let me ask you about sort of
6 try to wrap up this issue of the corrupted
7 point. If we look at Petitioner's 13 -- I'm
8 sorry. Let me find it. Petitioner's 12. Is
9 it your testimony that the whole plat is
10 corrupted or is there any limitation on the
11 corruption?

12 **(Petitioner's Exhibit Number 12 was referenced at**
13 **this time.)**

14 A: It's limited to that apex point of Line 14 and
15 -- L14 and L15.

16 Q: And is that OCRM's fault or is that ---

17 A: That's just -- that's just a problem that
18 cropped up in collecting the data.

19 Q: Okay. And who ---

20 A: Now, it's -- it -- OCRM had nothing to do with
21 -- with that issue.

22 Q: Okay. And how is it -- how is it relevant to
23 determining whether or not the iron bar or
24 whatever it is, iron ---

25 A: Rebar.



1 Q: --- rebar ---

2 A: Uh-huh.

3 Q: --- is not in the critical area? How is the
4 corruption of that data at the apex of L14 and
5 L15 relative -- rel- -- relevant to that
6 discussion?

7 A: Because based on the plat, it looks like the
8 rebar might be in the critical area.

9 Q: Based on the plat, Petitioner's 12?

10 A: Petitioner's Exhibit 12.

11 Q: Okay. Leading you to ---

12 A: However, based on what's on the ground ---

13 Q: Uh-huh.

14 A: --- it's not.

15 Q: Okay. Now, when you ---

16 A: It's just an inconsistency between the two.

17 Q: Okay. And I'm going to show you what's in
18 evidence as Petitioner's 15-C. Do you
19 recognize that photo?

20 **(Petitioner's Exhibit Number 15-C was referenced at**
21 **this time.)**

22 A: Yes.

23 Q: Okay. And it's hard to see the perspective of
24 the photo, but based on your visual -- and I'll
25 show you another picture if we need to, but



1 based on your visual ob- -- observation, is
2 that pink flag behind or upland of the two blue
3 flags?

4 A: It is definitely upland of the two -- two blue
5 flags.

6 Q: Okay. And you -- let me just see if we can see
7 that any better in any of these other pictures.

8 A: There is one other photograph that shows it
9 better.

10 Q: Let me hand you the photographs and let you
11 pick it. These are Petitioner's 15 and -- yes,
12 15. A number of -- of lettered photographs.
13 If there's one in here that's a better
14 perspective.

15 A: Yes, ma'am. Well, it's not among these.

16 Q: Okay.

17 A: The best one of these would be one of these
18 two.

19 Q: Okay.

20 A: The angle is -- is such that it's skewed. So,
21 it's hard to tell.

22 Q: Okay. So, you ---

23 A: The one -- the photograph I was talking about,
24 I actually have a copy of it here, if I may
25 show it to you, if that's permissible.



1 Q: Yeah. Show it to me and we'll see if we can
2 mark it.

3 A: It's in here.

4 Q: You might have handed it to me in the car and
5 I've already lost it.

6 A: I might have left it over there where I was
7 sitting because I don't see it here in the
8 folder. Might it be in that pile that I gave
9 you a -- a while ago?

10 Q: You know, I'm going to look here. I think we
11 can find it.

12 A: Yeah.

13 Q: Yeah.

14 A: That's -- that's the ---

15 Q: Lewis' photos.

16 A: Yes. I'm sorry. That's not it. This is it.

17 Q: Okay.

18 A: This photograph ---

19 **THE COURT:** Before you start talking about it, let's
20 let the court reporter mark it for
21 identification.

22 **MS. SHAHID:** I -- I think it would be -- as part of
23 these group of pho- -- photographs, 15-J.

24 **COURT REPORTER:** This would be 15-J.

25 **MS. SHAHID:** Yeah. I don't have ---



1 COURT REPORTER: Oh, I'm sorry.

2 MS. SHAHID: --- a sticker with me.

3 COURT REPORTER: Thank you.

4 (Petitioner's Exhibit Number 15-J was marked for
5 identification purposes.)

6 Q: Before you tell me what it shows, let me ask
7 you ---

8 MR. CHURDAR: Can I see a copy of it?

9 THE COURT: First let's -- let's see if ---

10 MR. CHURDAR: I -- I don't have any objections.

11 THE COURT: Okay.

12 MS. SHAHID: Okay.

13 THE COURT: 15-J is admitted.

14 (Petitioner's Exhibit Number 15-J was admitted into
15 evidence.)

16 Q: Okay. Did -- did you or your crew take this
17 photograph?

18 A: This -- this is a photograph that I took last
19 week.

20 Q: Okay. Let me put it on the overhead before you
21 start ---

22 A: Okay.

23 Q: --- talking about it.

24 A: It might be helpful if you could put a copy of
25 the GIS next to it, so they show at the same



1 time, so I can better describe where I took the
2 picture from. From where I took the picture.

3 Q: Okay. I can do that.

4 A: That one would work.

5 Q: This one or this one?

6 A: That one would be better.

7 Q: This one, exhibit -- all right. I'm going to
8 put Petitioner's 11. How you want it?

9 **(Petitioner's Exhibit Number 11 was referenced at**
10 **this time.)**

11 A: Yes. That's more or less aligned. The bottom
12 right red dot on the GIS drawing is the pink
13 flag in the photograph, just to the right of
14 it.

15 Q: Okay.

16 A: And I was standing ---

17 Q: You're talking about ---

18 A: No.

19 Q: This dot?

20 A: That red dot. Yes.

21 Q: Okay. Which is -- it's not the size of the
22 bar, but ---

23 A: No.

24 Q: --- the general location of the bar.

25 A: Correct.



1 Q: Okay.

2 A: I was standing just as -- as you're looking at
3 the photograph in its orientation now, to the
4 -- towards the bottom of the border of the
5 photograph.

6 Q: Uh-huh.

7 A: Looking out towards the tributary and I took
8 the picture that showed the end of the fence,
9 and then that board that's standing there for
10 some reason, which I don't know what it's for,
11 the two blue flags and the pink flag.

12 Q: Uh-huh.

13 A: And it pretty clearly shows that the pink flag
14 is inland from the blue flags.

15 Q: Okay. And does it appear to be more separated
16 from the critical line than as is show in
17 Petitioner's 12?

18 A: Yes.

19 Q: Okay. And did you measure the amount of
20 separation?

21 A: That was the eight inches to which I was
22 referring a ---

23 Q: Okay.

24 A: --- a little while ago.

25 Q: Okay. Is eight inches of upland sufficient for



1 you to extend the line all the way out to the
2 water?

3 A: Well, that's a -- that's a -- that was a
4 distance perpendicular to the critical line.

5 Q: Uh-huh.

6 A: Since the line turns at that point, it
7 traverses more than eight inches of highland
8 and I -- I -- upland, I should say. Upland is
9 upland, you know, whether it's eight inches or
10 eight feet or what have you.

11 Q: I think I might need you to explain that to me.
12 Maybe I'll use Exhibit 11 again. Okay. So,
13 what you're saying is the eight inches that I'm
14 referring to is not the only upland that the
15 line extends through?

16 A: Right.

17 Q: Okay. So, using Exhibit 11, where is
18 additional upland located at this line?

19 A: As you're going from right to left on that
20 photograph along the yellow line, it crosses
21 dirt and tree, and a little more dirt before it
22 starts getting into what is commonly considered
23 critical area.

24 Q: Okay. And that area that -- and -- and is this
25 based on your inspection and observation of the



1 property?

2 A: Yes.

3 Q: Okay.

4 A: Yes.

5 Q: And that area that you described as upland in
6 additional -- in addition to the eight inches
7 of upland, is that area, as you read
8 Petitioner's 12, landward of the critical line?

9 A: Yes, it is.

10 Q: Okay. And on Petitioner's 12 can you indicate
11 ---

12 A: L11, 12 and 13 area all critical line marks,
13 which we ---

14 Q: Okay.

15 A: --- verified as being in the right place.

16 Q: Okay. And the area that you're talking about
17 ---

18 A: Well, it's ---

19 Q: --- is where?

20 A: --- towards the house from those three lines.
21 It's tree and dirt, and other upland.

22 Q: Okay.

23 **MS. SHAHID:** I think that's all I have, Your Honor.
24 I just need to review my notes.

25 Q: Oh, we didn't spend a lot of time talking about



1 the picture that I marked and admitted, 15-J.
2 Is this where we get the eight-inch
3 measurement?

4 A: Yes. For if -- if you start at the pink flag
5 and work out perpendicularly to the two blue
6 flags, it's the eight inches.

7 Q: Okay.

8 **MS. SHAHID:** Your Honor, that's all I have of Mr.
9 Seabrook.

10 **THE COURT:** Okay. It is about 12:45. Do you want
11 to go ahead with your cross-examination or
12 would you like to take a -- would y'all to take
13 a lunch break now?

14 **MR. CHURDAR:** Well, I -- I'm probably going to be a
15 little while, so.

16 **THE COURT:** Okay.

17 **MR. CHURDAR:** I think we could probably -- now seems
18 like a natural break for lunch.

19 **THE COURT:** It does seem like a natural break for
20 lunch. So, is an hour sufficient for everybody
21 to get something to eat?

22 **MS. SHAHID:** Good for us.

23 **THE COURT:** All right. Well, let's see. It's --
24 let's be back here then at 1:45.

25 **(Off the record from 12:47 p.m. until 1:48 p.m.)**



1 **COURT REPORTER:** All rise.

2 **THE COURT:** Hope y'all had a good lunch. Everybody
3 have a seat.

4 **MS. SHAHID:** Are you waiting on me to say
5 something?

6 **THE COURT:** No, I was just waiting for Mr. Churdar
7 to finish what he was doing.

8 **MR. CHURDAR:** Oh.

9 **THE COURT:** Aren't you up next, Mr. Churdar?

10 **MR. CHURDAR:** I am. Yes, ma'am.

11 **THE COURT:** Okay.

12 **MR. SEABROOK - CROSS EXAMINATION BY MR. CHURDAR:**

13 Q: All right. Good afternoon, Mr. Seabrook. So,
14 your company that you've been working for for
15 40-plus years has been doing survey work for
16 Creekside ever since your father originally
17 prepared the subdivision back -- for Creekside
18 back in the late '60s, is that correct?

19 A: That's correct.

20 Q: Okay.

21 A: Could you speak up a little bit, please?

22 Q: Sure.

23 A: Thank you.

24 Q: My apologies. And your two crew members that
25 went out to do the survey work at the



1 Klomparens' lot at 706 Creekside were
2 originally Mike Sherman and John Brian?

3 A: Correct.

4 Q: Okay. And then, from the data that they
5 collected, they provided that survey data to
6 former OCRM staff member, Meredith Wrye,
7 correct?

8 A: Say that again, please.

9 Q: After -- after Mr. Sherman and Brian collected
10 the data, your company provided that survey
11 data to Meredith Wrye, who is a former OCRM
12 staff member.

13 A: Right.

14 Q: Okay. And -- and then, Meredith delineated and
15 certified the Klomparens' critical area line on
16 June 25th, 2020.

17 A: Right.

18 Q: Okay. And you had no reason to question the
19 delineation and certification of the critical
20 area line that Meredith Wrye did, correct?

21 A: Not until last week.

22 Q: Okay. Now, you yourself did not go out to the
23 Klomparens' property prior to Meredith Wrye
24 delineating and certifying that critical area
25 line, correct?



1 A: That's correct.

2 Q: Okay. And on the eastern side of the
3 Klomparens' property boundary that is shared
4 with 710 Creekside, the line that Meredith
5 certified at the eastern boundary, placed the
6 pin marking the property line at about 3.3 feet
7 into the critical area, correct?

8 A: No.

9 Q: Okay.

10 A: I don't think that's the right number.

11 Q: Well, do you remember after you went to the --
12 you and Ms. Shahid talked and then you went up
13 to the property and then Ms. Colwell and you
14 came over to OCRM and talked to me last Friday?

15 A: Thursday. No. Yeah. Thursday.

16 Q: So, Thursday.

17 A: Thursday.

18 Q: Okay. And is it your testimony that -- that
19 you here today, did -- did not say that the pin
20 marking the property boundary is 3.3 feet into
21 the critical area?

22 A: I don't think so.

23 Q: Okay.

24 A: I don't remember that number coming up.

25 Q: Now, when you went out there -- I'm going to



1 show you what has been admitted into evidence
2 as Petitioner's Exhibit 13. And everything's
3 backwards.

4 **(Petitioner's Exhibit Number 13 was referenced at**
5 **this time.)**

6 **COURT REPORTER:** There's a button on -- on it. I
7 think there's a button on it that got hit
8 earlier. I heard the beep and it converted
9 everything.

10 A: I understand what you're asking now. The 3.37
11 is the L15 line.

12 Q: Hang on just a second.

13 A: Dimension from the apex of 14, 15 over to the
14 intersection of this property line.

15 Q: Okay. So, what I -- what I want to show you is
16 this -- this line that is right -- everything's
17 backwards, so it feels very strange. I'm going
18 to draw this -- orange highlighter from the
19 line.

20 **THE COURT:** Hold on just a minute and let's see if we
21 can get it turned around for you, so that it's
22 not confusing.

23 **MR. CHURDAR:** It's like the weatherman when they
24 have to point the wrong direction at the -- the
25 green screen, so. Great. Thank you for that.



1 Q: Okay. So -- so, this -- this is the line that
2 -- what you're saying is that you provided the
3 data to Meredith Wrye to create this line and
4 she certified it back in June 25th, 2020?

5 A: That's correct.

6 Q: Okay. So, then after your deposition, you and
7 Ms. Shahid talked and you went out and -- and
8 took the -- remarked the critical area line?
9 Exc- -- correct? Last -- last -- like a week
10 or so ago?

11 A: Platted the critical line, as it showed on the
12 plat.

13 Q: Okay.

14 A: We reproduced that on the ground.

15 Q: Okay. And that -- that's the data that you
16 provided to Meredith Wrye ---

17 A: Yes.

18 Q: --- from OCRM? Okay.

19 A: That's correct.

20 Q: And this line right here that I'm talking
21 about, that's the line that Meredith certified
22 based on the information she got from your
23 company, correct?

24 A: That's correct.

25 Q: Okay. Okay. My question is the distance



1 between that point right there, that I'm
2 circling, and the critical area line, you had
3 testified, did you not was about 3.3 feet?

4 A: No. That's the -- see the 1.5 feet there?
5 That's what that dimension is.

6 Q: Okay.

7 A: The 3.37 is the L15 -- length of L15. In other
8 words, from the point where four -- L14 and L15
9 come -- meet, along the direction that L15 is
10 drawn to the property line, it's at 3.37 feet.

11 Q: For the point where L15 is drawn to the
12 property line?

13 A: No. May I come over there and show you?

14 Q: Sure.

15 **THE COURT:** You can mark on this.

16 A: Well, would you rather me do that?

17 **THE COURT:** Well, whatever works -- suits y'all
18 best.

19 Q: I don't care.

20 A: All right. 3.37 feet goes from this point
21 along that line to that intersection.

22 Q: I see. Okay. And you're saying it's -- but
23 it's over a foot. What did you say, a foot and
24 a half between there and there?

25 A: Between there and there, that's the 1.5.



- 1 Q: I gotcha.
- 2 A: Got it.
- 3 Q: Okay.
- 4 A: Okay.
- 5 Q: Thank you. Okay.
- 6 A: And that's -- that's the point that I think is
7 -- had the bad data on it.
- 8 Q: And -- but -- but that was -- that was data
9 though that was provided by your company?
- 10 A: Yes.
- 11 Q: Okay. Now regarding the regulatory definition
12 of waterfront property addressing dock master
13 plans, we can agree that there is no dock
14 master plan for Creekside subdivision?
- 15 A: I'm sorry. I can't hear you.
- 16 Q: I said, regarding the portion of the regulatory
17 definition of waterfront property addressing
18 dock master plans, we can agree that there is
19 no dock master plan for Creekside subdivision?
- 20 A: I think I would not 100 percent agree with you
21 on that.
- 22 Q: Okay.
- 23 A: I would agree that the drawing that we have
24 that was done in 1968 indicated proposed dock
25 corridors and that the creation of those



1 corridors pre-dated the creation of critical --
2 of Coastal Council and OCIP, which later became
3 OCRM. But I think it's a defacto corridor
4 plan.

5 Q: Okay. But -- but did -- is it your testimony
6 here today that the Department rec- -- rec- --
7 recognizes defacto plans that have never been
8 filed with the Department?

9 A: I don't know.

10 Q: Okay. Well, I'd like to have you look at your
11 -- your deposition.

12 **MR. CHURDAR:** Your Honor, do you want me to open
13 this again?

14 **THE COURT:** Fine by me.

15 **MR. CHURDAR:** Okay.

16 **THE COURT:** Thank you.

17 Q: So, if I could, please, have you take that and
18 let me get to the right page, page 24. If you
19 could turn to ---

20 A: Which page?

21 Q: --- page 24, please.

22 A: Page 24. Okay. I have it.

23 Q: Okay. And starting in line 15, you say, while
24 there is not a DHEC approved master dock plan
25 and then you go on and you say the subdivision



1 plats that were created clearly show corridors.
2 But you would agree based on what you said that
3 there is no OCRM, as OCRM defines the term,
4 dock master plan in existence in Creekside?

5 (Deposition transcript of witness was referenced at
6 this time.)

7 A: I can't hear you. I'm sorry.

8 Q: Okay. I'm sorry. I'm saying based on what --
9 what you just read from your -- fro- ---

10 A: Okay.

11 Q: --- what you said in your testimony, can we
12 agree -- would you agree that there is no dock
13 master plan as that term is defined and
14 recognized by OCRM?

15 A: Yes.

16 Q: Okay.

17 A: Because it was -- it predated OCRM.

18 Q: Okay. So ---

19 **MR. CHURDAR:** Janet, could you put up the regulatory
20 definition of waterfront property, please?

21 Q: Okay. So, what we have here for purposes --
22 what really matters for purposes of this
23 waterfront property definition is not the
24 second part.

25 **MR. CHURDAR:** Can you -- can you make that a little



1 bit smaller, so that the whole thing shows up?

2 **MS. DeBRUHL:** All right. It's going to take me a
3 second.

4 **MR. CHURDAR:** Okay. All right.

5 Q: So, you see the second half of that definition
6 of waterfront property, it says, waterfront
7 property may also be identified via an approved
8 dock master plan?

9 A: Yes.

10 Q: Okay. We're not dealing with that here,
11 correct?

12 A: Why not?

13 Q: Well, you just said -- testified that this is
14 not a dock master plan as OCRM recognizes it.

15 A: I said it was not a dock master plan that was
16 recognized by OCRM. I think it is a defacto
17 dock master plan that was created prior to the
18 existence of OCRM.

19 Q: Okay. What I'm -- what I'm talking about is
20 what -- what the regulations --

21 A: You're talking about regulation. Yeah.

22 Q: And -- and -- and ---

23 A: But this -- this predates regulation.

24 Q: Right. Right. And so, what we're here about
25 is the regulatory definition of dock master



1 plan. Excuse me. Of -- of ---

2 A: Okay.

3 Q: --- of ---

4 A: All right. I understand that.

5 Q: --- of waterfront property. What I'm trying to

6 do is eliminate that issue. We don't -- we are

7 not dealing with a dock master plan here as

8 OCRM recognizes that term.

9 A: Okay. I understand that.

10 Q: Okay. So, what we have ---

11 A: I think that's ---

12 Q: I'm sorry.

13 A: I think that's incorrect, but I understand

14 that's what you're driving at.

15 Q: Okay. And -- and I'm saying, for purposes of

16 the regulatory definition ---

17 A: Yeah.

18 Q: ---- you agree with that?

19 A: Yes, I do.

20 Q: Okay. Okay. And so, then, what we are dealing

21 with, what really matters for this hearing here

22 is whether or not the waterfront property --

23 the upland sites have straight line extensions

24 of both generally shore perpendicular upland

25 prop- -- upland property lines that reach a



1 navigable water course within a thousand feet
2 of the marsh critical line, correct?

3 A: And I think we demonstrated that with my
4 testimony this morning.

5 Q: But what I'm saying is that's the issue we're
6 dealing with here today, not the dock master
7 plan.

8 A: Okay.

9 Q: Correct?

10 A: Ev- -- even -- even so, I think we demonstrated
11 that -- that the straight line extensions do go
12 generally perpendicular to that side of the
13 subdivision ---

14 Q: Okay.

15 A: --- shoreline. And it's well within the
16 thousand feet.

17 Q: All right.

18 **MR. CHURDAR:** Can I get the deposition transcript,
19 please? Thank you.

20 Q: I'd like to -- for us to look at Exhibit Number
21 5 from your deposition. All right. So, this
22 is Exhibit Number 5 in your deposition. Now,
23 would you agree or concede that the lines as
24 depicted on this deposition Exhibit Number 5
25 depicts the property line extensions as



1 generally shore perpendicular? See those red
2 lines that -- that are extending out from the
3 property lines, one right there and one over
4 there, do you see those?

5 A: If you're looking at a microscopic view of the
6 subdivision, those -- those lines -- if they
7 were to extend -- if they were the end of the
8 property line, which they're not, if you were
9 to extend those in the same bearing going out,
10 then you could say that that was generally
11 perpendicular to that portion of the property
12 line -- of the -- of the shoreline. However,
13 that's on a point, as I indicated this morning
14 and the corridor lines, as they are drawn, are
15 generally perpendicular to the entire side of
16 the subdivision that has frontage on that marsh
17 slough.

18 Q: But Mr. -- Mr. Seabrook, you agree today, as
19 well as in your deposition, that those lines,
20 those red lines extending off from the upland
21 going out beyond the upland are generally shore
22 perpendicular, correct?

23 A: But you're ignoring the two portions of the
24 property line that go out towards the
25 tributary, which are part of the property



1 lines.

2 Q: Can -- can you give me ---

3 A: And they cross ---

4 Q: --- a yes or no before you ---

5 A: --- upland.

6 Q: Can you -- can you either agree or disagree
7 with that before you explain?

8 A: I can't hear you. Please ---

9 Q: Well -- well, what I'd like to get you is your
10 answer yes or no and then explain whatever you
11 want to explain. But I'm saying, I didn't
12 really get the answer to my question. My
13 question is you would agree that that is a
14 straight line extension of your property line,
15 of -- of Mr. Klomparens' property lines that is
16 generally shore perpendicular?

17 A: I would agree to that only if you're looking at
18 the -- the very small portion of the shoreline
19 that runs -- excuse me -- that runs between the
20 five-eighths rebar on the eastern side and the
21 inch and a quarter iron pipe on the western
22 side.

23 Q: Okay.

24 **MR. CHURDAR:** And how do I get rid of those marks
25 that I made?



1 **THE COURT:** I'll do that.

2 **MR. CHURDAR:** Okay. Thank you. Okay.

3 **Q:** And on that same exhibit, Exhibit 5 from your
4 deposition, you would agree that the lines of
5 this so-called dock corridor are running
6 parallel to the Klomprens' lot. I'm talking
7 about these lines here.

8 **A:** They are generally parallel to the line for --
9 for purposes of this discussion, along which he
10 has built his -- his bulkhead. They're --
11 those are generally ---

12 **Q:** They're -- they're -- they're generally --
13 they're generally para- ---

14 **A:** --- generally parallel to that line. Yes.

15 **Q:** Yes. Okay.

16 **MR. CHURDAR:** Your Honor, I'd like to get the
17 deposition Exhibit 5 marked as Trial Exhibit 7
18 for the Department and enter that into
19 evidence, please.

20 **(Respondent's Exhibit Number 7 was offered into**
21 **evidence.)**

22 **THE COURT:** All right. Respondent's 7?

23 **MR. CHURDAR:** Yes, ma'am.

24 **THE COURT:** Is there any objection?

25 **MS. SHAHID:** No objection.



1 **THE COURT:** Respondent's 7 ---

2 **MS. SHAHID:** Oh, 7? You marked it as 7, right?

3 **MR. CHURDAR:** We're getting it marked as 7.

4 **MS. SHAHID:** Gotcha.

5 **THE COURT:** Okay. It's admitted without objection.

6 **(Respondent's Exhibit Number 7 was marked for**
7 **identification purposes and admitted into evidence.)**

8 **Q:** Now, you would agree that these lines that were
9 drawn by your father back in the 1960s have
10 nothing to do with protecting the resource, the
11 -- the critical area, correct?

12 **A:** Had nothing to do with what?

13 **Q:** Protecting the tidelands? Those lines have
14 nothing to do with protecting the tidelands and
15 -- and -- and rather, they're -- they're for
16 developer -- development purposes, to enhance
17 the value of the property.

18 **A:** I would assume that that was the case, yes.

19 **Q:** Okay. All right. So, you are or were the
20 agent for Mr. Klomprens -- Mr. and Mrs.
21 Klomprens for this -- for this dock permit
22 application, correct?

23 **A:** Yes.

24 **Q:** Okay. And under your theory, Mr. Klomprens
25 and Mrs. Klomprens would own this area -- and



1 I'm going to put a -- a orange highlight, which
2 of course, it doesn't show up at all. But ---

3 A: I saw where you were trying to draw it, yes.

4 Q: So -- so -- but ---

5 A: They ha- -- let me say, they have been deeded
6 that portion of the area.

7 Q: Okay. So -- so you -- so it would be your
8 contention that -- that they own this property
9 out here?

10 A: I would say that they have a claim of title to
11 that property, yes.

12 Q: Okay. And as such, you would -- I -- I assume
13 because you told us that your father also
14 platted Cooper Estates, that -- whoops, I'm --
15 I'm trying to draw a circle and I can't do
16 that. That Lot Number 684, that's -- that's
17 right there. And I'm ---

18 A: Uh-huh.

19 Q: And I'm messing that up. Would also have a
20 claim of ownership all the way down to here.

21 A: Yes.

22 Q: Okay. As would this lot have a claim of
23 ownership all the way down to here.

24 A: Yes.

25 Q: Okay. And so, under -- under your theory of a



1 claim of ownership, they would -- the
2 Klomparens ---

3 A: Let me -- let me clarify that. I have not
4 looked at those ---

5 Q: If I could ask -- if I could ask my question
6 first.

7 A: Oh, I'm sorry.

8 Q: That's okay. The Klomparens' lot would end
9 before it hits the water, correct?

10 A: It would end before it hit that property line.

11 Q: Well, here -- here's the creek that they want
12 to build a dock to right there, right?

13 A: Yep.

14 Q: Okay. And this line right -- right there is
15 where their property ends before hitting the
16 creek, right?

17 A: Correct.

18 Q: Okay. So, my question is as the agent for
19 them, did you go to Lot Number 684 in Cooper
20 Estates, and also this lot that ends in TMS
21 Number 098 and ask for their permission to
22 cross over their property to get a dock there?
23 To get the Klomparens' dock to the water?

24 A: Possibly.

25 Q: And what did they say?



1 A: Say again.

2 Q: You said you -- you asked them? You asked
3 them?

4 A: Oh, I'm sorry. I didn't -- I didn't understand
5 that was part of your question. No. I did not
6 talk to them.

7 Q: Okay. Okay.

8 A: I could tell you why if you'd like to know.

9 Q: It -- it's -- that's not really of interest to
10 me.

11 A: I don't think it was relevant either.

12 Q: All right.

13 **THE COURT:** Now, I'm curious.

14 (Laughter)

15 **THE COURT:** I'm just kidding.

16 Q: All right. Now, you have testified to your
17 knowledge of delineating or maybe delineating
18 is not the right word, but understanding how
19 critical area lines are delineated.

20 A: Yes.

21 Q: Okay. And I had objected in your -- Ms.
22 Shahid's direct examination of you, so I will
23 now ask you directly, would you agree that the
24 critical area can reach above the mean high
25 water line?



1 A: Absolutely. It does.

2 Q: Okay.

3 A: In most cases.

4 Q: Okay.

5 **MR. CHURDAR:** Could I have just one moment, Your
6 Honor?

7 **THE COURT:** Yes.

8 **MR. CHURDAR:** All right. Your Honor, that is all my
9 cross.

10 **THE COURT:** Any re-direct?

11 **MS. SHAHID:** Yes.

12 **MR. SEABROOK - RE-DIRECT EXAMINATION BY MS. SHAHID:**

13 Q: Mr. Seabrook, I'm going to show you again what
14 was marked Respondent's 7 by Mr. Churdar and
15 this is the exhibit that shows lines being
16 extended in this direction. I assume from the
17 point where the lines turn to go toward the
18 water. Is that a good description? Is there
19 anything about the property description or the
20 plat that would justify you extending the lines
21 that way, as opposed to the parallel path that
22 they take?

23 **(Respondent's Exhibit Number 7 was referenced at this**
24 **time.)**

25 A: No.



1 Q: And -- and why is that?

2 A: That's not how it was platted.

3 Q: Okay. Is that how it's described in the
4 property description?

5 A: Yes. It's described as turning and going
6 towards its -- the description doesn't
7 specifically say going towards the creek.

8 Q: Uh-huh.

9 A: But it references the recorded subdivision
10 plat, which clearly shows those lines going
11 towards the creek.

12 Q: Okay. And the property description says
13 something to the effect of having the shapes,
14 meets, and bounds of the referenced plat?

15 A: Essentially, yes.

16 Q: It references the plat recorded many years ago
17 that ---

18 A: Right.

19 Q: --- we looked at. So, in addition, if you
20 looked at that plat -- and let me be more
21 specific. But you looked at the original plat
22 of the subdivision, and particularly at Lot 15
23 as shown on the Defendant's Exhibit 26, was
24 there any guidance given to you in terms of
25 bearings, distances, meets, and bounds for the



1 location of these lines?

2 **(Petitioner's Exhibit Number 26 was referenced at**
3 **this time.)**

4 A: It's hard to see on there, but there are
5 bearings along those two blue highlighted
6 lines.

7 Q: Okay. And is there anything pointing to this
8 boundary above the number 15 on the lot heading
9 that way to -- that would allow you to extend
10 the line that way, extend the property line
11 that way?

12 A: No.

13 Q: Okay. And I think you previously testified
14 that real property rights extend to mean high
15 water?

16 A: That's -- yes. That's my understanding.

17 Q: So, for ownership purposes, you can own to mean
18 high water in a riparian environment?

19 A: In what environment?

20 Q: Riparian. Waterfront environment.

21 A: Yes. You could.

22 Q: Okay. For regulated purposes, if the critical
23 area encroaches to or over mean high water, you
24 have regulated property, correct?

25 A: Correct.



1 Q: But you could still own it?

2 A: Yes.

3 **MS. SHAHID:** That's all I've got, Your Honor.

4 **MR. CHURDAR:** Just a couple more re-cross if I
5 could, please.

6 **THE COURT:** All right.

7 **MR. SEABROOK - RE-CROSS EXAMINATION BY MR. CHURDAR:**

8 Q: Now, you and Ms. Shahid were just talking about
9 what -- what the property description is, but
10 -- but you testified earlier that what was --
11 was platted back in the late '60s by your
12 father, has no bearing on OCRM's regulatory
13 decision making, though, correct?

14 A: I suppose that's correct.

15 Q: Okay. Is it -- when it gets down to it, isn't
16 the real problem for Mr. Klomprens is that if
17 you extend this property line, and let's just
18 from -- this is on Defendant's (sic) Exhibit
19 24, from the -- let's say the pin that's
20 closest to Creekside Drive, and you keep it
21 going straight, that this property line is
22 going to run into upland -- and that absolutely
23 did nothing again, so.

24 **(Petitioner's Exhibit Number 24 was referenced at**
25 **this time.)**



1 **COURT REPORTER:** While you're taking a break to fix
2 your pen, you referred to Defendant's Exhibit
3 24. Is this one of the ones that you pre-
4 marked, but it's actually a Petitioner's? I
5 just want to make sure the record is clear.

6 **MR. CHURDAR:** Yeah. I was just reading the sticker.
7 Sorry. It's ---

8 **COURT REPORTER:** Okay. Thank you.

9 **MR. CHURDAR:** It's Petitioner's Exhibit 24.

10 **COURT REPORTER:** Thank you. I just wanted to make
11 sure I was right.

12 **MR. CHURDAR:** Sure.

13 A: Could you repeat the question, please?

14 Q: Sure. I said, isn't the -- isn't really the
15 real problem here for Mr. Klomprens is that if
16 you extend the property line, you start at the
17 pin at the front of the property on the street
18 at Creekside Drive, and you keep going, and
19 then you come to the pin at the water's edge,
20 and you keep going in a straight line from
21 there, that this property line, this extended
22 property line, is going to hit the -- the
23 neighbor's -- one of the neighbor's lots?
24 Isn't that really what the problem is?

25 A: That would be a problem if that were the end of



1 the property, but you're just looking at a
2 single segment of that property line and the
3 property line turns at that iron rebar.

4 Q: Right. And -- and -- well, and -- and what
5 you've described earlier is it's running
6 parallel to the lot.

7 A: It runs ---

8 Q: Right?

9 A: --- roughly parallel to the seawall. Yes.

10 Q: Okay.

11 A: Or to the bulkhead.

12 Q: Okay. Thank you.

13 **MS. SHAHID:** All right. Nothing from Petitioner.

14 **THE COURT:** If there's nothing further, you can step
15 down.

16 A: Okay. Thank you.

17 **MS. SHAHID:** Petitioner rests, Your Honor.

18 **THE COURT:** All right. Mr. Churdar, how many
19 witnesses do you have?

20 **MR. CHURDAR:** Two, Your Honor. If Ms. Shahid will
21 concede everything, we can get out of here
22 fast.

23 **THE COURT:** I somehow think that's unlikely to
24 happen. Do y'all need -- want to take a break
25 before we have the next witness or is everybody



1 good to go for another little while. Anybody
2 need to feed the meter or -- okay. Let's take
3 a ten-minute break.

4 (Off the record from 2:25 p.m. until 2:37 p.m.)

5 **COURT REPORTER:** All rise.

6 **THE COURT:** All right. Y'all have a seat.

7 **RESPONDENT'S CASE IN CHIEF:**

8 **MR. CHURDAR:** Your Honor, the Department would call
9 Jackie Adams as its first witness.

10 **COURT REPORTER:** Raise your right hand. Do you
11 solemnly swear that the testimony you're about
12 to give in this matter is the truth, the whole
13 truth, and nothing but the truth, so help you
14 God?

15 **MS. ADAMS:** I do.

16 **COURT REPORTER:** Thank you.

17 **MR. CHURDAR:** We're ready to get started. Maybe I
18 could just let her have these so she can mark
19 on them, if that's okay.

20 **THE COURT:** Okay.

21 **MR. CHURDAR:** I'll just put those there with you.
22 She's got her reg file already.

23 **JACQUELINE ADAMS**, having been duly sworn, testifies
24 as follows:

25 **MS. ADAMS - DIRECT EXAMINATION BY MR. CHURDAR:**



- 1 Q: Ready.
- 2 A: Uh-huh.
- 3 Q: Okay. You are Jackie -- Jacquelyn Adams?
- 4 A: Correct.
- 5 Q: And can you please tell the Court -- well,
6 first of all, just a little bit of background.
7 Your educational background, please?
- 8 A: I have a Bachelor's in marine biology with the
9 University of New England.
- 10 Q: Okay. And you are currently employed at DHEC?
- 11 A: That is correct.
- 12 Q: Okay. And how long have you been employed at
13 DHEC?
- 14 A: With DHEC, I've been employed for about nine
15 years.
- 16 Q: Okay. And then, specifically with OCRM, how
17 long have you been employed by OCRM?
- 18 A: Since 2019.
- 19 Q: Okay.
- 20 A: Fall of 2019.
- 21 Q: Okay. And what did you do prior to coming to
22 OCRM? What -- what job responsibilities and
23 duties did you have at DHEC?
- 24 A: I had -- I worked in the regulatory division of
25 the Food and -- Food Retail Establishment, and



1 then also the Water Quality Department.

2 **COURT REPORTER:** I'm sorry. I'm -- I'm having a
3 hard time hearing. Can you speak up a little
4 bit for me?

5 A: I'm sorry. I worked in the Food Retail
6 Establishment Regulatory and also the Water
7 Quality Department.

8 **COURT REPORTER:** Thank you.

9 Q: All right. And can you please tell the Court
10 about any additional employment that you've had
11 in the environmental field?

12 A: Yes. I've worked for the State of Florida.
13 State of Florida for approximately ten years in
14 the Florida Department of Environmental Health
15 and the Florida Department of Environmental
16 Protection.

17 Q: Okay. And the two of those combined was for
18 about ten years?

19 A: Yes.

20 Q: Okay. And in the matter that's before this
21 Court today, what was your role in issuing this
22 permit?

23 A: I was the project manager.

24 Q: Okay. And as project manager, who is your
25 supervisor?



1 A: Blair Williams.

2 Q: And I assume that you and Mr. Williams
3 collaborate on permitting decisions?

4 A: Yes.

5 Q: Okay. And did you and Mr. Williams ever talk
6 about this permitting decision?

7 A: Yes, we did.

8 Q: And -- and what issues did you and he discuss?

9 A: Our -- the concerns of whether the -- the
10 property met the Department's waterfront
11 definition.

12 Q: Okay. Now, the permit applicant in this case,
13 we -- we are -- have already heard from, Mr.
14 Robert Klomprens. And -- and Mr. Klomprens'
15 dock permit application, were you the decision
16 maker for this permit app- -- permit
17 application?

18 A: I had reviewed the application and all the
19 documents and drafted the decision. And then
20 reviewed it with Blair Williams, and the result
21 was the Department's decision.

22 Q: Okay. And -- and just -- I think it's probably
23 been -- been spoken at least a couple of times,
24 but the applicant is seeking here in this case
25 a private recreational dock?



1 A: That is correct.

2 Q: Okay. And have you reviewed other similar
3 permit applications for dock permits?

4 A: Yes.

5 Q: And are such permit applications routinely
6 received by the Department?

7 A: Yes.

8 Q: And in all your experience as a project
9 manager, how many critical area permit
10 applications have you considered, both issuing
11 them and denying the permit application?

12 A: I've been involved in reviewing and processing
13 approximately about 500.

14 Q: Okay. And of those five -- 500, about how many
15 have been permit applications like the one
16 that's before the Court today?

17 A: I would say approximately 400 for dock -- for
18 private recreational docks.

19 Q: Okay. Okay. And you have what has been marked
20 as Respondent's Exhibit 1. That's the folder
21 that -- excuse me -- the notebook, which is --
22 rather than me saying what it is, do you
23 recognize this collection of documents?

24 **(Respondent's Exhibit Number 1 was referenced at this**
25 **time.)**



1 A: Yes, I do.

2 Q: Okay. And what is that?

3 A: This is the complete regulatory file for the --
4 the dock application.

5 Q: Okay. Okay. And can you please walk the Court
6 through your decision making process with this
7 permit application just from the time that you
8 got it -- that -- until ---

9 A: Sure.

10 Q: --- until the decision was made?

11 A: Yeah. So, when the -- the application comes
12 in, you do a preliminary review of looking at
13 the survey drawings, the -- all the documents
14 that were provided. Then, doing county GIS
15 reviews, pictometry, ArcGIS reviews. And that
16 is the initial desktop review before anything
17 else is -- is done.

18 Q: Okay. And -- and you did all those things in
19 -- in this case?

20 A: Yes.

21 Q: Okay. And when you looked at those ArcGIS and
22 -- and the other documents, was it -- was it
23 something that came to your mind pretty --
24 pretty early on as your concerns as to whether
25 or not this met the regulatory definition of



1 waterfront property?

2 A: Yes.

3 Q: Okay. And before you go through the step-by-
4 step decision making process, did you report
5 those steps in one of those documents in the
6 regulatory file?

7 A: Yes. It's the technical review.

8 Q: Okay. And that is on four ---

9 **MR. CHURDAR:** Opposing counsel, that's starting on
10 page 72.

11 **MS. SHAHID:** Okay.

12 Q: So, let's go through each one of the
13 considerations in the technical review. And I
14 -- I think that this is -- this has been said
15 many times, but just this property that you are
16 looking at is located in -- in Creekside. And
17 Creekside is a subdivision in Mount Pleasant?

18 A: That is correct.

19 Q: Okay. And when -- so, when you received the
20 permit application, what was the first thing
21 that you did?

22 A: I looked at the drawings that were submitted in
23 the survey, and it was also familiar to me as
24 I'd looked at this one before.

25 Q: Okay.



1 A: Approximately in 2019, this property before.

2 Q: Oh, you looked at this property in 2019?

3 A: I've seen it. Yeah. I'd seen it before.

4 Q: Okay. And was -- was there another permit
5 application in 2019?

6 A: No. An agent had come in just to get some
7 information from the Department, what we
8 thought or what, you know, hurdles we might see
9 at the property.

10 Q: Okay. And was that agent -- was that Mr.
11 Seabrook?

12 A: No.

13 Q: Okay. Okay. Can you please look at Section 3,
14 which is the on first page of the deci- --
15 decision document ---

16 A: Uh-huh.

17 Q: --- and it has a section captioned, Summary of
18 Public and Agency Comments. Can you -- can you
19 go through if there's any -- anything
20 noteworthy that would -- that would help the
21 Court understand your decision making, go
22 through any of those comments that you received
23 during the public comment period and -- and
24 what, if any, impact that had on your
25 permitting decision?



1 A: So, the comments received, you know, we -- we
2 look at them and -- and review them. You know,
3 there was a comment from an adjacent property
4 owner concerned about the -- the distance
5 between extended property lines and their
6 possibility of having a dock in the future and
7 whether it was waterfront. But the Department
8 had its own concerns of whether or not it was
9 waterfront.

10 Q: Okay. And -- and that property owner is --
11 resides at 710 Creekside?

12 A: Yes.

13 Q: Okay. So, that's the property owner that
14 shares a -- a property line with the
15 Klomprens, is that correct?

16 A: Yes.

17 Q: Okay.

18 A: And I believe it's the eastern.

19 Q: Okay. Now, Section 5 of -- of the technical
20 review summary, that's on Bates pages 73
21 through 74, about a policy assessment. There
22 is a subsection A-1 where you address prior
23 authorizations for dock permits in Creekside
24 that are near the Klomprens' property. What
25 I'd like to do is review each of these



1 properties with you, and using the aerial
2 imagery and other documents, ask you to explain
3 to Judge Durden how these lots are different
4 from or similar to the Klomparens' lot. Okay.

5 A: Okay.

6 Q: Okay. And the first -- the first property that
7 you mentioned is 710 Creekside. The permit
8 application for that property was denied. And
9 what I think I'd like to do is just come over
10 here. So, 710 Creekside, is that lot right
11 there?

12 A: That is correct.

13 Q: Okay. And so, this line right there is the
14 shared property line between the Klomparens
15 right there and -- what is it, the Crawfords,
16 at 710? Well, today ---

17 A: Yeah.

18 Q: --- the Crawfords? Okay. In your opinion, is
19 that lot with the purported dock corridor and
20 the Klomparens' lot with the purported dock
21 corridor, a similarly shaped lot or at least
22 the -- the purported similarly shaped lot with
23 the Klomparens' lot. Would you agree with
24 that?

25 A: Yes. They're both odd shaped lots.



1 Q: Okay. Now, with regard to both Lots 76- -- 706
2 and 710, it looks like a flagpole out in the
3 tidelands critical area. I'm talking about
4 that area right there and that area right --
5 right there. Does the fact that GIS shows Lot
6 710 -- 706 and 710 owed -- owned -- owing --
7 owning, excuse me, that narrow portion of
8 tidelands going out into the water? Do -- do
9 these GIS lines prove marsh ownership for you
10 as you evaluate the permit application?

11 A: No, they do not.

12 Q: Okay. What -- and -- and why not?

13 A: There have been no marsh ownership claims in
14 this area or for those lots and there has been
15 no quiet title action to -- for the ownership
16 of those lots.

17 Q: Okay. When you say ---

18 A: For the -- the ma- ---

19 Q: I'm sorry.

20 A: For the marsh. Sorry.

21 Q: Okay. And when you say there's been no claim
22 of marsh ownership, what is -- what is the --
23 who owns -- presumptively owns the tidelands?

24 A: The State. The State.

25 Q: The State of South Carolina?



1 A: Uh-huh.

2 Q: Okay. And that would apply to all of these
3 yellow lines that are going out into the marsh
4 that are purporting to -- to show marsh
5 ownership by all these lots up and down
6 Scotland Drive and Creekside Drive. That
7 without what you described as a quiet title
8 action would not be for permitting purposes
9 needing to be privately owned marsh. Would
10 that be fair to say?

11 A: Yes.

12 Q: Okay. Now, if someone is claiming marsh
13 ownership, do you reach out to them to -- to
14 take any action to -- to prove that?

15 A: Yes.

16 Q: And what -- what is that when you reach out to
17 them?

18 A: Well, if they claim marsh ownership, there are
19 steps that -- for them to take within a certain
20 time frame to be able to file with the court.

21 Q: Okay. Now, with this particular lot, we're
22 still on Lot 710, and you indicate that the
23 dock permit application was denied. When was
24 that denial letter?

25 A: In 1999.



1 Q: Okay. And you have up there with you,
2 Respondent's Exhibit -- or Department's Exhibit
3 Number 2. Do you recognize that?

4 **(Respondent's Exhibit Number 2 was introduced into**
5 **the record at this time.)**

6 **MR. CHURDAR:** And Janet, can you please put the
7 January 22nd, 1999 letter up on the screen,
8 please?

9 Q: Okay. And you see the -- the letter up there
10 is the same letter that you have at your desk
11 marked Exhibit -- Department's Exhibit 2?

12 A: Yes

13 Q: Now, this letter is addressed to Ms. Teresa --
14 and I'm not sure if I'm saying her last name
15 properly -- Hsu. But -- so, she is a -- a
16 prior owner to the -- the current owners are
17 the Crawfords?

18 A: Correct.

19 Q: Okay. And can you please read out loud the
20 second paragraph of that letter stating the
21 reason for denying Mrs. Hsu's dock permit
22 application?

23 A: Uh-huh. The lot for the proposed dock is not
24 waterfront and an extension of the upland
25 property lines does not reach the water.



1 Q: Okay. And that -- one of those ---

2 **MR. CHURDAR:** Janet, can you take that down, please?

3 Q: One of those extended property lines at Mrs.
4 Hsu's lot is the same extended property line
5 that Mr. Klomparens shares for this permitting
6 decision, correct?

7 A: Correct.

8 Q: Okay. Now, if you -- if you could please turn
9 to page number 53 in Exhibit 1 -- DHEC --
10 DHEC's Exhibit 1, the regulatory file.

11 **(Respondent's Exhibit Number 1 was referenced at this**
12 **time.)**

13 **MR. CHURDAR:** Janet, if you want to put that up
14 there, please. Can you enlarge that a little
15 bit please?

16 **MS. DeBRUHL:** A little more?

17 **MR. CHURDAR:** A little bit more. Sure. Thanks.

18 Q: Okay. So -- so, when you -- the yellow lines
19 on this aerial image -- and that's part of the
20 regulatory file, correct?

21 A: Yes.

22 Q: Okay. The yellow lines on this aerial image
23 show you drew a straight line extension of both
24 of the Klomparens' generally shore
25 perpendicular property lines, is that correct?



1 A: Correct.

2 Q: And the Klomparens' right extended property
3 line is shared with the property owners at 710
4 Creekside, correct?

5 A: Yes.

6 Q: So, where does this straight line extension
7 that's shared by Lot 706 and 710 Creekside
8 land? In -- in other words, does this shared
9 straight line extension reach a navigable water
10 course within a thousand feet of the marsh
11 critical area line?

12 A: It does not. It ---

13 Q: Okay.

14 A: --- goes into the upland, the neighboring
15 property.

16 Q: Okay. It looks like it might be hitting upland
17 at -- at -- at the -- either 1019 or 1015
18 Scotland Drive?

19 A: Uh-huh.

20 Q: Okay. Would the Department have drawn the
21 straight line extension shared by Lots 706 and
22 710 Creekside Drive, the same way back in 1999
23 when the Hsu dock permit application was
24 denied?

25 **OBJECTION:**



1 **MS. SHAHID:** Object, Your Honor. I don't think she
2 was around in 1999 to be able to answer that
3 question as how the Department drew a line.
4 Calls for speculation, Your Honor.

5 **MR. CHURDAR:** Okay. I'll -- I'll rephrase the
6 question.

7 **Q:** When you look at the property that is in -- on
8 the screen right here, page whatever -- that's
9 page 50 -- 53, I think, and you see the
10 extended property line on the right-hand side,
11 on the eastern side of the Klomprens' lot that
12 is shared by 710 Creekside, would that property
13 line -- are -- are you familiar with the way
14 that the Department has interpreted a straight
15 line extension of the property line -- let me
16 get the ---

17 **THE COURT:** Mr. Churdar, why don't we just move on.
18 I'm not real interested in the history of the
19 other -- the other permits that were either
20 allowed or disallowed ---

21 **MR. CHURDAR:** Okay.

22 **THE COURT:** --- in the past. Especially in the far
23 distant past.

24 **MR. CHURDAR:** I -- I understand. Just so you under-
25 -- I was -- I was trying to show, we've been --



1 we've been consistent. That's -- that's what
2 the point of this was.

3 **THE COURT:** Okay.

4 **MR. CHURDAR:** So. All right.

5 Q: Now, Ms. Adams, is your application of the
6 regulatory definition of waterfront property
7 requiring the straight-line extension of both
8 generally shore perpendicular upland property -
9 - upland property lines the same for the
10 Klomparens' permit application as it has been
11 for all the hundreds of other dock permit
12 applications that you've processed as a project
13 manager?

14 A: Yes.

15 Q: Okay. So, when you determined that the
16 Klomparens' lot did not meet the regulatory
17 definition of waterfront property, were -- were
18 you treating them any differently than all the
19 other dock permit applications you've reviewed?

20 A: No.

21 **MR. CHURDAR:** Okay. Now, Your -- Your Honor, I -- I
22 know Ms. -- Ms. Shahid got into a lot of these
23 questions in the deposition. I -- I can skip
24 all this if -- if she's not going be asking any
25 -- anything about the other lots on Scotland



1 Drive and Creekside. I mean, I ---

2 **THE COURT:** I'm really not very interested in the
3 other lots. I'm only interested in this lot and
4 whether it meets the definition. So, to me, I
5 would find all of that of very little relevance
6 unless one of you can explain to me why we
7 should go through all of that, other than, as
8 you said, showing consistency, which I think
9 you've already demonstrated.

10 **MR. CHURDAR:** Okay. And, I mean, were you going to
11 be going through all the other lots?

12 **MS. SHAHID:** Well, Your Honor, I don't understand
13 the finding that they've been consistent at
14 this point.

15 **THE COURT:** Well ---

16 **MS. SHAHID:** I know he said that.

17 **THE COURT:** I ---

18 **MS. SHAHID:** Their attorney said that, but I don't
19 know that ---

20 **THE COURT:** You're ---

21 **MS. SHAHID:** Of this ---

22 **THE COURT:** I may have been misleading in the way I
23 worded that.

24 **MS. SHAHID:** Okay.

25 **THE COURT:** I -- I haven't made a finding. But I



1 think he's -- he's already elicited testimony
2 from her that this decision is consistent with
3 all the hundreds of others that she's made and
4 he's shown in -- with particularity, a decision
5 next door and so, I mean, I -- I'm not -- I --
6 I guess I'm not as concerned about whether
7 there's consistency as whether the decision in
8 this case comports with -- with the law and
9 your regulation. And that -- that's where my
10 decision making is ---

11 **MS. SHAHID:** Okay.

12 **THE COURT:** --- going to focus.

13 **MS. SHAHID:** If that's your position, then I don't
14 think we need to talk about the other docks.

15 **THE COURT:** Okay.

16 **MS. SHAHID:** I mean, from my perspective.

17 **MR. CHURDAR:** Okay. Well, that may really shorten
18 this thing up.

19 **THE COURT:** Okay.

20 **MR. CHURDAR:** Which I'm sure that Ms. Adams would be
21 just fine with.

22 **THE COURT:** You're going to have a shorter afternoon
23 on the hot seat.

24 **MR. CHURDAR:** Okay. I'm -- let me -- if I could
25 just scroll through my questions.



1 Q: Okay. I'd like to have you go to page 74 of
2 the -- of your technical review or page 74 of
3 the regulatory file, Bates number 74. And in
4 Section 5, Policy Assessments, there's a
5 subsection B, where you mentioned a number of
6 statutes and regulations, as well as Chapter 3.
7 Section 6-C in the general guidelines and
8 evaluations of all -- of all projects from the
9 program document. And what I'd like for you to
10 do is just go over each statute and regulation.
11 You know, when it's -- when it's talking about
12 the -- a regulation is, you know, talking
13 about, you know, the -- ten general
14 considerations. I'm -- I'm not asking you to
15 just go, you know, so deep, but I want you to
16 hit what was it about these regulations and how
17 you applied these, as well as the program
18 document in issuing your permitting decision.

19 **(Respondent's Exhibit Number 1 was referenced at this**
20 **time.)**

21 A: So, the -- the general guidelines are the
22 guidelines are considerations and guidelines
23 for all critical area projects that we look at.
24 And then the specific project standards under
25 R30-12A is for docks and peers.



1 Q: Okay. Go -- go ahead. You can go to the --
2 well, the -- the next one ---

3 **MR. CHURDAR:** Janet, can you make that screen a
4 little bit smaller please? I mean, make --
5 make the page show up more?

6 A: Yeah. And then -- yeah, number 3. So -- and
7 then the CZ policy for management program
8 docking, those are all -- also general
9 guidelines for evaluations of all projects.

10 Q: Okay. Okay. So, one in particular that is --
11 that has been the focal point of this trial
12 today is the regulatory definition of
13 waterfront property. What I would like for you
14 to do -- and just, I'll put it on the record,
15 it says for purposes of these regulations,
16 waterfront property will generally be defined
17 as upland sites where straight-line extension
18 of both generally shore perpendicular up- --
19 upland property lines reaches a navigable water
20 course within a thousand feet of the marsh
21 critical line. And I won't read the part about
22 the dock master plan because I think -- well,
23 would -- would you -- would you concur that the
24 -- before we get to the first part of the
25 regulatory definition of waterfront property,



1 would you agree that the section addressing an
2 approved dock master plan is inapplicable here?

3 A: I agree.

4 Q: Okay. And why is that?

5 A: Because there is no Department approved dock
6 master plan for this area.

7 Q: Okay. And in this -- as Mr. Seabrook
8 described, he -- what he said, well, I think
9 it's a defacto plan. Does the Department even
10 recognize something called a defacto dock
11 master plan?

12 A: No.

13 Q: Okay.

14 A: The Department does not.

15 Q: Okay. I mean, a -- a dock master plan would be
16 something that has been reviewed is -- and is
17 on file with the Department, would that be
18 fair?

19 A: Yes.

20 Q: Okay. And -- and there is no such dock master
21 planning for Creekside?

22 A: No. there's not.

23 Q: Okay. So, what I would like for you to do is
24 go to page 56 of Exhibit 1.

25 **MR. CHURDAR:** Janet, would you put that up there,



1 please?

2 Q: And -- you there?

3 A: Yeah.

4 Q: Okay. Do you recognize the lot in this aerial
5 image with the red lines being the Klomprens'
6 lot?

7 A: Yes.

8 Q: Okay. And using this image, can you please
9 explain to the Court why you determined that
10 the Klomprens' lot line -- excuse me property
11 is not waterfront and -- and what I'm looking
12 for is a specific regulatory language. And if
13 you can -- you know, you can touch the screen
14 and -- and -- as you testify.

15 A: Okay. So, the straight-line upland extensions
16 would be going this way. Sorry; that's --
17 that's a bit crooked. But the -- those would
18 be the straight-line, upland property line
19 extensions and as you see on the east side,
20 that does not -- that hits -- upland does not
21 hit a navigable tributary.

22 Q: Okay. And when I had asked you before did you
23 -- did you apply the regulation in this
24 instance the same as with the other cup --
25 several hundred, that would be applying it with



1 the straight-line extension as you just did
2 here?

3 A: Yes.

4 Q: Okay. And using your application of the
5 regulatory definition of waterfront property,
6 are the extended property lines that were
7 submitted in the permit application a straight-
8 line extension of both upland property lines as
9 -- as the Department has applied that term?

10 A: I'm sorry. Can you repeat that?

11 Q: Using your application of the regulatory
12 definition, are the extended property lines in
13 the permit application, are they a straight-
14 line extension of both upland property lines as
15 you have applied that term in the definition?

16 A: Yes.

17 Q: Well, the -- the -- the property lines that
18 were represented in the permit application?

19 A: Oh.

20 Q: That are going off ---

21 A: The property lines that are going -- that are
22 taking an immediate turn, are -- are not how
23 the Department extends the property lines.

24 Q: Okay.

25 **THE COURT:** And why is that? What's your rationale



1 for that?

2 A: Oh, okay. So, as shown -- well, so these are
3 marsh lines. They're not the -- the straight-
4 line extensions of the property lines and that
5 was what the submitted plat shows that the --
6 the upland pin was behind the critical area
7 line that was certified by OCRM staff. And as
8 shown today on the other exhibit there, the
9 water is reaching this -- the water comes up to
10 this area here, which would be the shoreline of
11 this property. And so, these straight line
12 extensions would be perpendicular to this
13 shoreline right here? And these would be --
14 the application had -- these extensions are --
15 so these extensions are not perpendicular to
16 the proposed dock locations.

17 Q: You're talking about the -- the extensions of
18 -- in the -- the redlines?

19 A: Yeah. I'm so sorry. Can I clear these?

20 **COURT REPORTER:** I'm sorry. I did not hear you.

21 A: It's all right. Just seeing if I can clear
22 them. Okay. So, these lines -- so, this -- as
23 shown in the photo, this is your shoreline.
24 Those two blue lines that I just drew are the
25 -- are perpendicular to that shoreline. These



1 red lines here run parallel to that shoreline.
2 Q: Okay. Now, has the Department ever applied the
3 -- the definition of waterfront property to
4 apply as you heard -- I cannot remember which
5 witness, if it was Mr. Seabrook or if it was
6 Mr. Klomparens, but talking about generally
7 shore perpendicular to this line right there.
8 Has the Department ever applied the regulatory
9 definition of waterfront property in such a
10 way?

11 A: No.

12 **OBJECTION:**

13 **MS. SHAHID:** Object, Your Honor. I think she is
14 speculating. She's only been employed by the
15 Department for three years.

16 **MR. CHURDAR:** Okay.

17 **MS. SHAHID:** The Department existed since 1977.

18 Q: In the hundreds of dock permit applications
19 that you have applied, have you ever applied it
20 that way?

21 A: No, I have not.

22 Q: Okay. Are you familiar with the Department's
23 application of the regulations and how they're
24 applied?

25 A: Yes.



1 Q: And -- and does that familiarity come through
2 section training and stuff like that?

3 A: Yes. And reviewing old permits and files.

4 Q: Okay. And from -- from that experience that
5 you've talked about just now from your
6 training, as well as from reviewing old permits
7 and files, in addition to the hundreds of dock
8 permits that you said -- that you have made
9 decisions on, have you ever seen the definition
10 of waterfront property applied in a way like
11 it's been discussed this morning by -- and I
12 can't remember if it was Mr. Seabrook or if was
13 Mr. Klomparens, but in that way?

14 A: I have not.

15 Q: Okay. Now, on this image that you have right
16 here, I've drawn -- well, it -- it just went
17 away. Sorry.

18 **THE COURT:** Sorry. I thought you were trying to go
19 to a new ---

20 **MR. CHURDAR:** Oh. Oh. That's okay.

21 **THE COURT:** I apologize.

22 **MR. CHURDAR:** That's okay.

23 Q: You had drawn -- you had drawn a blue line --
24 oh, okay. There you go. The blue line right
25 there. And I had drawn this white line right



1 there and so my question is you have said that
2 -- that the shoreline is right there or
3 somewhere in there and -- and not over here,
4 and my question is why. Why do you say that
5 this is the shoreline right here?

6 A: Because the water comes up to the -- the
7 bulkhead that is there, and typically when
8 someone puts in a bulkhead it's to -- you know,
9 they may have new water intrusion or erosion on
10 their property. So, the water would be coming
11 there. So, that is the shoreline where the
12 water is coming up. This area here where you
13 had in white, that is not the shoreline of this
14 property. This -- I guess it's being presumed
15 that it's a shoreline of this tributary, but
16 it's ---

17 Q: Okay.

18 A: --- but it's different.

19 Q: Okay. In addition to -- to what you said,
20 would -- would that also include as one of your
21 reasons the fact that there has not been a
22 quiet title to the tidelands that goes out
23 there showing Klomprens' ownership of the
24 tidelands?

25 A: Yes.



1 **MR. CHURDAR:** Your Honor, I'm -- I'm just -- we're
2 skipping so much, I'm just trying to get to the
3 end and -- and I'm ---

4 **THE COURT:** Take your time.

5 **MR. CHURDAR:** --- little -- little off here.

6 Q: So, on page 75 of the Bates number 75 of the
7 exhibit, there is a Section 9. And if you can
8 just please look over those notes and explain
9 if there's any other previously unmentioned
10 distinctions between -- well, you know what, I
11 -- that -- that question is -- is inapplicable
12 because we're not talking about all the other
13 lots.

14 **MR. CHURDAR:** So, Your Honor, if I could have just
15 one moment please.

16 **THE COURT:** Certainly.

17 **MR. CHURDAR:** And I may be done.

18 Q: Yeah. Just one -- one final question. And I
19 think we've danced all around this. I'm not
20 sure that we've actually said this, but the --
21 the reason that this dock permit application
22 was denied was because you determined this was
23 not a waterfront lot, is that correct?

24 A: That -- that is correct.

25 Q: Okay. All right. Thank you.



1 **COURT REPORTER:** I just want to clarify. I have
2 your name as Jackie Williams.

3 A: Adams.

4 **COURT REPORTER:** Thank you. That makes a lot more
5 sense.

6 **MR. CHURDAR:** Blair -- Blair Wil- -- Blair Williams
7 is the ---

8 **COURT REPORTER:** Thank you.

9 **MR. CHURDAR:** --- is the other witness.

10 **COURT REPORTER:** Thank you.

11 **MR. CHURDAR:** Sure.

12 **MS. ADAMS - CROSS EXAMINATION BY MS. SHAHID:**

13 Q: Good afternoon, Ms. Adams. I'm Mary Shahid.
14 I'm Mr. Klomprens' attorney. I think you and
15 I met for the first time at your deposition
16 recently.

17 A: Yes.

18 Q: Let me just hit a couple of notes here from
19 before -- before Mr. Churdar and the Judge and
20 I took other docs off the table, there was a
21 little bit of testimony about a 1998 denial of
22 seven -- 710 Creekside. You don't know if the
23 current regulation, 30-1(D)(54) was in
24 existence in 1998, do you?

25 A: No.



1 Q: Okay. And do you know that, in fact, it was
2 promulgated years later?

3 A: Yeah.

4 Q: After '98.

5 A: Uh-huh.

6 Q: Do you know when it was promulgated, the
7 definition of waterfront property?

8 A: 2003.

9 Q: 2003. And you also don't know if that
10 neighboring property owner -- or you may know
11 whether or not they sought review by the
12 Administrative Law Court or any review of that
13 decision.

14 A: No, they did not according to the file.

15 Q: They did not. Okay. Talk -- there's been a
16 lot of discussion here, although not
17 necessarily from me, about ownership of the
18 marsh. And you understand, I assume, that
19 there's a statute that requires somebody to
20 file a case and file it against the Attorney
21 General and get title declared to the marsh,
22 right?

23 A: Yes.

24 Q: Okay. Now, if -- and -- and that hasn't
25 happened, here, correct?



1 A: No.

2 Q: Far as you know.

3 A: Uh-huh.

4 Q: And why would that make it any different?

5 A: Because I wouldn't -- because if -- because I
6 would be extending the upland lines. I'm not
7 extending -- we're not -- the Department's not
8 extending these marsh lines. The marsh lines
9 are in the area where the State is presumed to
10 own.

11 Q: Okay. Let's talk a bit about marsh line
12 extensions. I'll put up Petitioner's Exhibit
13 11. So ---

14 **(Petitioner's Exhibit Number 11 was referenced at**
15 **this time.)**

16 **MR. CHURDAR:** Janet, you can pull that down.

17 **MS. SHAHID:** Oh, I'm sorry.

18 **MR. CHURDAR:** No. She's going to pull that off the
19 screen, so ---

20 **MS. SHAHID:** Yeah.

21 **MR. CHURDAR:** --- you can use that.

22 **MS. SHAHID:** Okay.

23 Q: So, the definition of waterfront property --
24 I've got a copy of it. Do you want a copy of
25 it in front of you?



1 A: No.

2 Q: Okay. It doesn't say anything about marsh
3 ownership, does it?

4 A: No.

5 Q: Okay. And so, you're saying if Mr. Klomparens
6 had filed an action to have the marsh declared
7 to be his ownership, how would that have
8 changed your review?

9 A: I would be reviewing that with the section
10 manager for how to apply that.

11 Q: So, you don't know how that would change your
12 review?

13 A: I mean, it would change -- we would look maybe
14 at those lines.

15 Q: Okay. By those lines, are you talking about
16 the lines at the beginning of these big red
17 dots on Exhibit 11?

18 A: Yes.

19 Q: Okay. Do you understand that those lines are
20 part of the line -- property line that starts
21 at the cul-de-sac?

22 A: No. The prop- -- I understand that they -- the
23 property line goes straight and then takes a
24 turn.

25 Q: Okay. So, those lines -- that turn itself is



1 part of the property line that starts in the
2 cul-de-sac? It's not a separate line?

3 A: Well, it's not an upland line.

4 Q: Okay. But it's not a separate line?

5 A: It's not shown separate here. No.

6 Q: Okay. And if you had title declared to the
7 marsh, it wouldn't be an upland line then,
8 would it? You're not changing the character of
9 the property between those lines?

10 A: I don't know.

11 Q: Okay. And Mr. Klomprens -- well, strike that.
12 And have you been out to Mr. Klomprens'
13 property?

14 A: Recently.

15 Q: When?

16 A: Last week.

17 Q: Okay.

18 A: Some time.

19 Q: So, that was after your deposition?

20 A: Yes.

21 Q: What was the purpose of that?

22 A: To look at that -- the property corner. The
23 eastern property corner.

24 Q: And will you point which one's the eastern one?
25 I'm directionally challenged.



1 A: (Witness indicates.)

2 Q: Okay. Thank you. All right. But prior to
3 that, you had not gone out to his property?

4 A: No.

5 Q: Okay. When you made the permitting decision,
6 you hadn't visited his property?

7 A: No. Because there was two inspections done by
8 prior staff.

9 Q: You say that -- Mr. Churdar asked you about the
10 hundreds of dock permitting cases. Do you
11 understand here -- and I'll pull up the 1968
12 plat of Creekside, which is Petitioner's
13 Exhibit 25, to show you that there are platted
14 lines out into the marsh, lines that a surveyor
15 drew with bearings and distances on them that
16 resulted in Charleston County GIS imposing
17 these yellow lines from Petitioner's 11? If
18 you look ---

19 **(Petitioner's Exhibit Number 25 was referenced at**
20 **this time.)**

21 A: Yes.

22 Q: Okay. So, have you been involved in a bunch of
23 different permits where you can trace the
24 subdivision back to a surveyor actually
25 extending property lines into the marsh where



1 they're platted property lines?

2 A: Yes.

3 Q: You've been involved in several of those?

4 A: Yeah.

5 Q: Can -- can you name some?

6 A: Not off the top of my head, no.

7 Q: Okay. Well, you talked about your hundreds and
8 hundreds of permits. What percentage of your
9 hundreds and hundreds of permits did you have
10 plat -- see, I know the di- -- I -- I
11 understand the difference between property line
12 extensions and platted boundaries. And in --
13 in your agency, you talk a lot about property
14 line extensions, don't you?

15 A: Uh-huh.

16 Q: And that's where the property has an end point,
17 usually at or near the water, and then you
18 allow the owner to do a straight-line extension
19 from that end point to demonstrates the they're
20 waterfront, right?

21 A: Uh-huh.

22 Q: Okay. Do you see the difference here, that
23 this property has a meets and bounds
24 description in -- in a deed and on a
25 subdivision plat that doesn't -- that -- that's



1 part of the platted boundaries?

2 A: Yeah. I see that it's -- yeah -- a subdivision
3 plat made by a developer ---

4 Q: Uh-huh.

5 A: --- that has, you know, lines.

6 Q: And nobody has come to you and tried to draw
7 extended property lines. We're just working
8 with the property lines we have, correct?

9 A: For this application?

10 Q: Yeah.

11 A: No. For this application, we're doing the
12 extended property lines.

13 Q: Okay. So ---

14 A: Upland property lines.

15 Q: So, you don't accept Mr. Seabrook's testimony
16 that this line and this line originating at
17 these two big red dots in Petitioner's 11 is
18 actually a platted boundary line, not a
19 property line extension?

20 **(Petitioner's Exhibit Number 11 was referenced at**
21 **this time.)**

22 A: It's not an upland property line extension.

23 Q: Okay. What makes a property line an upland
24 property line?

25 A: It originates from the upland.



1 Q: Okay. And ---

2 A: It's a straight-line extension.

3 Q: And you would agree with me that this line on
4 Petitioner's 11 being the -- I'm assuming it's
5 the southern most -- the bottom line on
6 Petitioner's 11 is an upland property line?

7 A: Yes.

8 Q: Okay. And -- and it takes a turn and the
9 property iron that directs that turn is in
10 upland, according to Mr. Seabrook's testimony?

11 A: According to Mr. Seabrook's testimony.

12 Q: Right.

13 A: Uh-huh.

14 Q: I mean -- and then -- and, in fact, the
15 critical line that's on the plat would also
16 show this line, the bottom line on Petitioner's
17 13, as being outside of the critical area. Do
18 you need to see the -- the plat?

19 **(Petitioner's Exhibit Number 13 was referenced at**
20 **this time.)**

21 A: Yeah.

22 Q: Let's show you the plat. I'm going to show you
23 Petitioner's 12. And the plat is small, but it
24 appears to me that this property iron is
25 landward of L1 and L2, which is the beginning



1 of the critical line. And the area in this
2 direction, away from the critical line, is the
3 critical area.

4 **(Petitioner's Exhibit Number 12 was referenced at**
5 **this time.)**

6 A: Yes.

7 Q: Okay. So, based on this plat, the property
8 iron, which I call the bottom iron, the red
9 dot, on Petitioner's 11 originates in upland?

10 A: According to that plat, yes.

11 Q: According to this plat. Okay. You mentioned
12 the specific project standards. Are you aware
13 that Mr. Klomprens' dock was at 198 feet long?

14 A: Yes. Proposed.

15 Q: Assuming he was deemed to be a waterfront lot,
16 is that length of walkway in compliance with
17 OCRM's standards?

18 A: Yes.

19 Q: Okay. And that he was seeking a 10 by 12
20 pierhead.

21 A: Uh-huh.

22 Q: Assuming that he was deemed to qualify for a
23 dock, that 10 by 12 pierhead is in keeping with
24 OCRM's specific standards for a creek that
25 size?



1 A: It would have to be reviewed further for the
2 size and location, just based on the creek
3 width and ---

4 Q: Okay. You talked about the shoreline, and I
5 believe you spoke about extending this property
6 line -- let's see. It would probably be
7 helpful if I used your attorney's exhibit. I
8 believe this is what he was referring to. It's
9 page 56 of the Department's regulatory file.
10 And there was a drawing, and maybe he drew on
11 it, extending the east boundaries, being the
12 lines that run aside the -- across the house
13 rooftop and across the garage extending them
14 out that way and saying that that area was the
15 shoreline. Do you remember that?

16 **(Respondent's Exhibit Number 1 was referenced at this**
17 **time.)**

18 A: Uh-huh.

19 Q: Okay. And if you look between the two lines
20 that are here that when our street lines take
21 the turn down to the creek -- so, are you --
22 are you saying that there is nor -- no
23 shoreline -- and I don't know -- I certainly
24 didn't mean to get anybody fixated on the very
25 bottom part of these lines. But are you saying



1 this area, this marsh-like area between these
2 two platted lines is not shoreline or that none
3 of the area between these two platted lines is
4 shoreline?

5 A: No. I'm not saying that.

6 Q: Okay.

7 **MS. SHAHID:** That's all I've got, Your Honor.

8 **MR. CHURDAR:** I just have one brief little question
9 here.

10 **MS. ADAMS - RE-DIRECT EXAMINATION BY MR. CHURDAR:**

11 Q: So, Ms. Shahid has -- she's asked you about --
12 she's -- she -- she mentioned that -- that the
13 -- she had a different drawing, but these --
14 these drawing -- the -- these -- these yellow
15 lines are the result of what she talked about
16 a survey lines that were submitted to the
17 County that turn into these yellow GIS lines.
18 Do GIS lines in the marsh have any bearing on
19 the Department's permitting decision?

20 A: No.

21 Q: And -- and why is that?

22 A: Because they're not the upland lines.

23 Q: Okay. And ---

24 A: And the -- the State presumes ownership of the
25 tidelands critical area.



1 Q: Are these GIS lines in any way connected with
2 stewarding the natural resource that the
3 tidelands area that OCRM has -- has been
4 directed to protect and manage?

5 A: No.

6 Q: Okay.

7 **MS. SHAHID:** Your Honor, if I -- I walked away with
8 one of the Court's exhibits.

9 **THE COURT:** Okay.

10 **MS. SHAHID:** I'll put it back on the table.

11 **THE COURT:** Thank you. All right. You can step
12 down, ma'am.

13 **MS. ADAMS:** Thank you.

14 **MR. CHURDAR:** Okay. I don't want to forget and not
15 let you have all these lovely exhibits.

16 **THE COURT:** Just keep them organized.

17 **MR. CHURDAR:** Okay.

18 **THE COURT:** You've got one more witness?

19 **MR. CHURDAR:** Mr. Williams. Just one more witness.

20 **MR. WILLIAMS:** Can I step out to the restroom real
21 quick?

22 **THE COURT:** Yeah. Why don't we take a five-minute
23 break then.

24 **(Off the record from 3:32 p.m. until 3:39 p.m.)**

25 **COURT REPORTER:** All rise.



1 **THE COURT:** All right. Y'all can have a seat.
2 Except for you, you need to be sworn in first.

3 **MR. WILLIAMS:** Yes, ma'am.

4 **THE COURT:** The rest of you can have a seat.

5 **COURT REPORTER:** Raise your right hand. Do you
6 solemnly swear that the testimony you're about
7 to give in this matter is the truth, the whole
8 truth, and nothing but the truth, so help you
9 God?

10 **MR. WILLIAMS:** Yes, ma'am.

11 **COURT REPORTER:** Thank you.

12 **BLAIR WILLIAMS,** having been duly sworn, testifies as
13 follows:

14 **MR. WILLIAMS - DIRECT EXAMINATION BY MR. CHURDAR:**

15 Q: Good afternoon. You are Blair Williams?

16 A: Yes, sir.

17 Q: Okay. And can you please tell the Court your
18 educational background?

19 A: Yes. I graduated from Clemson University with
20 a Bachelors of Science and a Master's in Forest
21 Resource Management.

22 Q: Okay. And where are you employed?

23 A: South Carolina Department of Health and
24 Environmental Control, Office of Ocean and
25 Coastal Resource Management.



1 Q: Okay. How long have you been with DHEC?

2 A: Approximately 17 years.

3 Q: Okay. And the -- the entire 17 years with OCRM
4 or -- or part of that?

5 A: Part of it. I've been with OCRM for 15 years
6 and in this management position for
7 approximately 14 years.

8 Q: Okay. So, of -- of that other two years where
9 you were not with OCRM, what were you doing for
10 DHEC?

11 A: I was a Resource Officer with the shellfish
12 program.

13 Q: Okay. Okay. So -- so, you -- and -- and I'm
14 sorry if you said this; I didn't catch this.
15 But you -- you said your current position for
16 -- for 14 years. But your current position is
17 what?

18 A: I manage the critical area program for the
19 eight coastal counties for DHEC OCRM.

20 Q: Okay. And in -- in that capacity, are you
21 essentially Ms. Jackie Adams' supervisor?

22 A: Yes, sir.

23 Q: Okay. And were you involved in the Klomprens'
24 dock permit application decision?

25 A: Yes, sir.



1 Q: Okay. And can you please tell the Court what
2 your involvement was?

3 A: Yes, sir. As -- as my management role, I work
4 with staff and projects are elevated to my --
5 my attention. And Jackie Adams elevated this
6 permit request to my attention to discuss
7 specifically, you know, the application of
8 waterfront property.

9 Q: Okay. And what was the end result of your
10 involvement with this dock permit application?

11 A: The end result was that we had determined that
12 the property did not meet the regulatory
13 definition of waterfront property. Therefore,
14 we denied the permit request.

15 Q: Okay. And -- and we have talked about that
16 definition all day and it's been read a couple
17 of times. I -- I'd like to just go through the
18 language of that definition and -- and your
19 application, as the wetland's permitting
20 section manager. But before we do that, when
21 did that -- when did the current regulatory
22 definition of waterfront property go into
23 effect?

24 A: June of 2003.

25 Q: Okay. And is the issue of determining whether



1 or not an applicant's property is waterfront,
2 is that issue something that's come up in the
3 past since the regulation became effective in
4 2003?

5 A: Yes, sir. We -- we make a determination on
6 every permit application that asks for a dock
7 as to whether it's waterfront property or not.

8 Q: Okay. So -- so -- so, you said you've been
9 doing -- you've been the wetlands permitting
10 section manager for 14 years. And -- and
11 during that tenure, during that amount of time,
12 is there even -- could -- could you give the
13 Court some idea of how many -- well, let's just
14 say critical area permits generally and then
15 dock permits specifically you have had a
16 managerial oversight capacity? Is -- is that
17 a ridiculously long -- large ---

18 A: I mean, I -- I don't have an exact number, but
19 I bet it's a couple to several thousand.

20 Q: Okay. Okay. And so, since you became the head
21 of critical area permitting in 2008, has the
22 Department consistently applied the waterfront
23 property definition when making permitting
24 decisions?

25 A: Yes.



1 Q: And had -- is that the application of the
2 definition of waterfront property that was
3 applied for the Klomparens' lot, is that
4 consistent with all of the other times that the
5 -- that definition has to be applied for a
6 critical area permitting decision?

7 A: That regulatory definition has been in place
8 since June of 2003. It has been applied since
9 I've been managing the program the -- the same
10 way.

11 Q: Okay. All right. Well, let's just talk
12 specifically about -- since you, in the last 14
13 years, as the -- as the wetlands permitting
14 section manager, how has the Department
15 interpreted the requirement that a straight-
16 line extension of both generally shore
17 perpendicular upland property lines reaches a
18 navigable water course within a thousand feet
19 of the marsh critical line? And before you
20 answer that, would it be -- would it be helpful
21 for me to put the -- the aerial imagery that we
22 have been putting up on the Elmo all day, so
23 that you could draw lines or do you need that?

24 A: If the Court thinks it's beneficial, I can ---

25 **THE COURT:** Whatever helps you best answer the



1 question.

2 A: Well, will you throw up the regulatory
3 definition first and then maybe we can go to
4 the aerial?

5 Q: Sure.

6 A: So, the current regulatory definition of
7 waterfront property is -- waterfront property
8 will generally be defined as upland sites where
9 a straight-line extension of both generally
10 shore perpendicular upland property lines
11 reaches a navigable water course within a
12 thousand feet of the marsh critical area line.
13 I'm not going to get into the second part
14 because there is no approved dock master plan
15 for this area. So, the first part of this
16 definition applies in this specific case. And
17 I think there's some key things to talk about
18 here, is -- one is the upland site. It's got
19 to be an upland site. And then, it's a
20 straight-line of both of the property lines of
21 that upland site. And it has to be shore
22 perpendicular to that upland site. And so, if
23 you want to throw up the -- the aerial now, I
24 can -- can walk through that. That's it right
25 there. And so, we -- we know that this is the



1 upland site, generally. And then it's a
2 straight-line extension of the extended
3 property lines of the upland site shore
4 perpendicular. Within the property lines, the
5 upland property lines of this particular
6 uplands site, the shoreline is from this, from
7 the upland property lines. And when you ---

8 **THE COURT:** Okay. Let me understand why you drew
9 that line right there.

10 A: That is where the Department's -- first of all,
11 when we come in for bulkheads or things like
12 that, it's important to know where the
13 Department's permitting authority is. And so,
14 that permitting authority is delineated --
15 delineated by the certified critical area line.
16 And that certified critical area line runs
17 along the -- where the property owner's upland
18 meets saline marsh vegetation. So, that is a
19 fine line ---

20 **THE COURT:** So, you -- so, you're saying that the
21 shoreline and the critical area line are one in
22 the same thing?

23 A: Of that -- of that property owner's upland
24 interfa- -- where that upland interfaces with
25 the public -- the -- basically, the -- the



1 critical area line, that fine line is the
2 Department's -- delineates the Department's
3 permitting authority. Channel-ward of that, we
4 have authority. And so ---

5 **THE COURT:** Okay. I -- I understand that's ---

6 A: That would be ---

7 **THE COURT:** --- where your permitting authority is.
8 But I'm asking ---

9 A: It's the upland ---

10 **THE COURT:** --- in particular, you drew the line
11 here saying that's the shoreline.

12 A: Yes, ma'am.

13 **THE COURT:** So, I'm asking is the shoreline and the
14 critical area line always the same thing or is
15 it just the -- or do you view it to be the same
16 thing in this case or -- I'm trying to
17 understand this.

18 A: I would -- I would almost say, yes, because the
19 shoreline is where the upland meets salt --
20 saline marshes. So, where -- where saline
21 marshes and uplands interface, that is a
22 shoreline.

23 **THE COURT:** Okay. So, you -- so, your answer to my
24 question then is that the shoreline and the
25 critical area line area always the same or



1 generally the same?

2 A: It's generally always the same. Yes, ma'am.
3 And it's -- and it's because we're dealing with
4 an individual parcel. And the regulatory
5 definition of waterfront property directs us
6 that it's an upland site. So, where that
7 upland meets the saline marsh, that is the
8 shoreline that we're dealing with.

9 **THE COURT:** Okay.

10 A: And so, those upland -- that upland in between
11 the upland property lines, a straight-line
12 extension would be coming generally
13 perpendicular, shore perpendicular. These lines
14 are being extended shore perpendicular to this
15 shoreline. Therefore, the -- the norther -- or
16 sorry, eastern extended property line runs into
17 an upland. It doesn't reach a navigable water
18 course within a thousand feet. The western
19 extended upland property line, runs out --
20 throughout the marsh and then maybe hits a --
21 a smaller tributary within a thousand feet.
22 But by ---

23 **THE COURT:** Okay. So, it will -- so help me
24 understand then. If this line represents the
25 shoreline -- okay. So ---



1 A: In order to be eligible ---

2 **THE COURT:** Is the shoreline -- so, is the -- the
3 distinction here is between the shoreline and
4 what's navigable?

5 A: Yeah. Well, you must extend to the first
6 navigable creek. And there is no -- there is
7 no navigable creek within these extended
8 property lines. And both lines have to hit
9 that navigable creek. The eastern line runs
10 into upland. It doesn't even reach a navigable
11 creek. Therefore, by just that line alone,
12 it's not waterfront property. The -- the
13 eastern property line may have reached a
14 smaller tributary, but it has to reach a
15 tributary at the proposed location of the dock
16 in order to be dock eligible. They want the
17 dock to the west, south -- well, southwest and
18 that's not even an option within their upland
19 extended property lines, based off on shore
20 perpendicular extensions to the private
21 property owner's upland.

22 **THE COURT:** Sorry. I hijacked your ---

23 **MR. CHURDAR:** That's ---

24 **THE COURT:** --- direct. I just want to be sure I
25 understand his testimony.



1 **MR. CHURDAR:** No. That's okay. That's okay.

2 Q: So, I -- I think actually, you were -- you were
3 -- I -- I don't think you were through, but
4 we're just going through the application of
5 that definition to this property. And I don't
6 want to cut you off. So, is there ---

7 A: I think we -- I think -- I think I covered it
8 with the Judge.

9 Q: Okay.

10 A: But if you've got additional questions on it,
11 I can continue.

12 Q: Okay. Okay. So, we have -- we have talked
13 about this -- this concept of extended property
14 lines. Can you please explain to the Court
15 what that is? Is that -- is that any proof of
16 ownership? What's the purpose of an extended
17 property line?

18 A: Extended property lines do not give any real
19 property rights. It's just a management tool
20 for the Department to be able to manage -- one,
21 to identify which property are truly dock
22 eligible in order to allow for a waterfront
23 property to have a dock. It's helped to manage
24 that public trust property.

25 Q: Okay. So -- so, those blue lines that you drew



1 on -- on the Elmo there are saying absolutely
2 nothing about marsh ownership, would that be
3 fair?

4 A: That's correct.

5 Q: Okay. And the -- we've -- we've also talked
6 about a presumption of ownership of the
7 critical area. Has that presumption of State
8 ownership of the critical area been the same
9 ever since you -- you have become the -- the
10 wetlands sec- -- I mean, the critical area
11 permitting section manager?

12 A: Yes. So, all -- all salt marsh, all tidelands
13 critical areas are presumed State owned unless
14 there's some type of grant that has been
15 presented, with --accompanied by an Attorney
16 General's opinion. That has not been done in
17 this case.

18 Q: Okay. And can you please explain to Judge
19 Durden what significance, if any, the GIS lines
20 in the tidelands have when the Department
21 determines whether or not a lot is waterfront?

22 A: Could you ask that question again?

23 Q: Yeah. Can you please explain to Judge Durden
24 what significance, if any, the GIS lines in the
25 tidelands have when the Department determines



1 whether or not a lot is waterfront?

2 A: Because of the presumption of State ownership,
3 the -- the -- the point to where those lines
4 turn and go out in the marsh has no relevance
5 to the Department as making a determination of
6 whether it's, one, waterfront property or if
7 it's dock eligible. We have to go by the
8 regulatory definition of waterfront property,
9 and then started looking at a specific project
10 standards of a dock, meaning, you know, what
11 size is the creek within XYZ. We're not there
12 yet and that's reason that the first test was
13 failed by waterfront property. But this
14 essentially, from my understanding, was lines
15 that were created by a developer that asserted
16 ownership over State owned property that didn't
17 have a right to do so in the first place. And
18 -- and I guess they were doing it in a effort
19 -- I don't -- I don't know why -- an effort to
20 identify corridors, but those corridors are not
21 rev- - relevant as it relates to the
22 requirement of today's regulatory standards
23 under the critical area permitting regulations.

24 Q: And is -- does the Department have any
25 requirement to accept these GI- -- GIS lines



1 that are depicted in the tidelands as having
2 any proof of marsh ownership?

3 A: No, sir.

4 Q: Okay. And I'm sorry if I've asked you this.
5 I don't think I did. But did the Department
6 interpret the regulatory definition of
7 waterfront property the same way for the Klo-
8 -- Klomparens' dock permit application as it
9 has always done in the past at least 14 years
10 since you have been the critical area section
11 manager?

12 A: Yes. Since my tenure with the permit program.

13 Q: Okay. Now, is the -- is part of the
14 Department's permitting decision, does that
15 take -- as -- as the project manager, is the
16 Department required to take into account the
17 cumulative affects of a particular permitting
18 decision?

19 A: Yeah. Under our general guidelines, we're
20 charged with looking at how one particular
21 project may have a precedent or a long-term
22 cumulative effect with any -- any -- any
23 permitting decision.

24 Q: Okay. And if this Court were to determine that
25 this lot is waterfront, can you please explain



1 to the Court what the cumulative effects of
2 such a decision would be on a resource in the
3 future?

4 A: I guess the way I would -- I would state that
5 or respond to that is that if a decision was
6 made to allow non-waterfront properties to have
7 a dock, that would affect, you know, really the
8 public in a whole because it would lead to --
9 potentially, would lead to overcrowding of
10 tributaries, cordoning off of marsh -- marshes
11 and shorelines that are currently -- tributary-
12 type shorelines that are currently accessible
13 by the public. So, it has a potential to
14 affect many things, but probably first top --
15 a few things I think off the top of my head is
16 use, access, and navigation by the public.

17 **MR. CHURDAR:** Just one moment please, Your Honor.

18 Q: So -- so, Mr. Williams, just a final question,
19 we had -- we had gone over kind of point by
20 point the regulatory definition of waterfront
21 property. And the second part of that talks
22 about an approved dock master plan. And I'm
23 not sure if you addressed that or not, but just
24 my question is would that have any bearing or
25 relevance on the determination of whether or



1 not this lot is a waterfront property in
2 accordance with the regulatory -- regulation?

3 A: I mean, it wouldn't be -- it wouldn't meet the
4 waterfront property definition because there is
5 no approved dock master plan for this area.

6 Q: Okay. All right. That's all I have.

7 **MR. WILLIAMS - CROSS EXAMINATION BY MS. SHAHID:**

8 Q: Good afternoon, Mr. Williams. You mentioned
9 that this decision to deny the permit is
10 consistent with several thousand other
11 decisions that you have been involved in in
12 your managerial role. And I'm going to ask you
13 the same question I asked Ms. Adams. I'm well
14 aware of the exercise of extending property
15 lines. And I'll go back to Exhibit 11. And
16 that's an exercise you do when a platted
17 boundary line terminates, I assume, when the
18 property has some endpoint and then if those
19 lines are perpendicular to the water, you
20 extend them to make sure they're waterfront to
21 meet your regulations?

22 **(Petitioner's Exhibit Number 11 was referenced at**
23 **this time.)**

24 A: You take the upland -- straight-line extension
25 of the upland apply the property boundary



1 lines.

2 Q: Okay. So ---

3 A: Shore perpendicular.

4 Q: And I'm familiar with that exercise and that is
5 an exercise that probably you see frequently in
6 your permitting decisions.

7 A: Yes, ma'am.

8 Q: Determining if the lot is waterfront by
9 configuration by extending property lines to
10 the water.

11 A: Uh-huh.

12 Q: Okay. And in this particular case, we've had
13 -- what we have according to a surveyor is we
14 have property lines that take a turn. Do you
15 understand his -- Mr. Seabrook's testimony?

16 A: I understand his testimony.

17 Q: And through that turn, they get to the water.
18 So, this is a little bit different than
19 evaluating a lot to see if straight-line
20 extensions can get you to the water in a
21 thousand feet, wouldn't you agree?

22 A: No, ma'am.

23 Q: You don't think this is different?

24 A: No, ma'am.

25 Q: How often in these thousands of cases have you



1 had platted boundary lines into the marsh?

2 A: I've seen some -- some areas that -- I don't
3 recall off the top of my head. But we've dealt
4 with areas similar to this.

5 Q: You've dealt with areas where there are plats
6 with lines going into the marsh?

7 A: Yes, ma'am.

8 Q: Okay. Can you recall where those areas are
9 located, which neighborhoods?

10 A: Not off the top of my head.

11 Q: Okay. Isn't that something you see less than
12 you see extensions of property lines that you
13 create through your regulation requiring
14 straight-line extensions within a thousand feet
15 of water?

16 A: If any -- any -- someone represents any plat of
17 boundaries out in the marsh, we continue to do
18 our own due diligence and extend property lines
19 from the upland -- upland straight-line
20 extension, to see if it meets the regulatory
21 definition of waterfront property.

22 Q: You heard Ms. Adams say that an upland line is
23 a line that originates in upland. Do you agree
24 with that?

25 A: A straight-line extension of the upland



1 boundary lines, yes.

2 Q: Okay. And -- but she said an upland line --
3 yeah. That's a different regulation. That's
4 the definition -- that's the general
5 requirements applicable to all docks, I think,
6 that you have to be straight-line extension
7 within -- strike that. When you are drawing
8 straight-line extensions, are you relying on
9 54?

10 A: 53?

11 Q: Definition 53.

12 A: Yes. Waterfront property definition.

13 Q: Okay. Okay. So, you reject the notion that
14 this line has its own platted turn in upland.
15 This line being the bottom line on Petitioner's
16 11, has its own platted turn in direction in
17 upland. You just reject that notion that this
18 area, the yellow area running parallel to each
19 other, are lines -- property lines?

20 A: I would say there are several concerns related
21 to that. They are they're own line segments
22 once they hit those pins. And those lines are
23 shore parallel to the property -- private
24 property owned that's upland. The upland
25 shoreline that they are trying to make dock



1 eligible, those lines are shore parallel to
2 that upland shoreline.

3 Q: Okay. Not sure I understand that. Let's see.
4 This isn't the right drawing. I'm going to
5 show you Defendant's Exhibit 24, which is
6 Petitioner's exhibit; just used a bad sticker.
7 And I'm looking for 706 and is it your belief
8 that these lines are perpendicular to the
9 water? And when I say these lines, I'm talking
10 about the extensions on Exhibit 11 that -- that
11 initiated the red dots.

12 **(Petitioner's Exhibit Number 24 was referenced at**
13 **this time.)**

14 A: The two lines that you're referencing that go
15 out over the marsh are perpendicular to that
16 tributary.

17 Q: Okay.

18 A: They are not perpendicular to the private
19 property owner's upland shoreline.

20 Q: Okay. Even though these lines originate in
21 upland and are called upland property lines?

22 A: They're -- they are still shore parallel.

23 Q: Okay. And are you saying that there is no
24 shoreline existing or -- what's the word in the
25 regulation? Shore -- there's no shore existing



1 between these two line extensions, being the
2 two lines originating from the red dots in
3 Exhibit 11?

4 A: I don't believe so because there is an
5 established critical area line and there was a
6 bulkhead built landward of that established
7 critical area line, which goes between the
8 western property line to the eastern property
9 line.

10 Q: I think mis- ---

11 A: Channel-ward -- channel-ward of that bulkhead
12 is critical area. Landward of that bulkhead is
13 upland.

14 Q: Okay. I think Mr. Seabrook may have testified
15 that it doesn't go the full width of the
16 property.

17 A: It stops shortly, but it's still in line with
18 the extended property lines if you were to
19 continue that line of the bulkhead from the
20 western property line to the eastern property
21 line.

22 Q: And so, if the bulkhead wasn't there, would
23 there be shore within these two extended
24 properties?

25 A: I do not believe so.



1 Q: So, it doesn't matter about the bulkhead?

2 A: It's where that critical area line is located.
3 That salt marsh meeting that upland, that would
4 be a true upland of the private property owner.

5 Q: Okay.

6 **THE COURT:** I'm having a hard time understanding
7 what you're saying. So, I'm sorry. I'm going
8 to interrupt here because I think this is an
9 important point for me to understand.

10 A: Yes, ma'am.

11 **THE COURT:** Is there not -- does there not have to
12 be shoreline somewhere, whether you draw the
13 line -- oops.

14 **MS. SHAHID:** Gosh. I'm sorry. Which one do you
15 want?

16 **THE COURT:** Any one will do.

17 **MS. SHAHID:** Okay. I'll leave that one. If you
18 want the other one, I'll put it back.

19 **THE COURT:** That's fine. Okay. So, whether you
20 draw the shoreline here or here, or here, or
21 here, doesn't there have to be shoreline
22 between those two lines?

23 A: No.

24 **THE COURT:** How is that?

25 A: The shoreline is -- is that interface between



1 upland -- a shoreline is -- is an interface
2 between upland and critical area. The upland
3 and critical area is here. That -- this -- this
4 way is all marsh. This here is upland.

5 **THE COURT:** Okay. I understand ---

6 A: This -- this ---

7 **THE COURT:** I understand.

8 A: This is the shoreline.

9 **THE COURT:** Okay. I understand.

10 A: Where the gentleman placed the bulkhead.

11 Q: I'm going to show you -- I'm sorry. I'm going
12 to show you Petitioner's 12, which is -- which
13 is the critical area plat, which does not
14 include the bu- -- the bulkhead. I think it
15 was -- I don't think the bulkhead is shown on
16 this plat. It's not. Okay. And do you see --
17 let me ---

18 **(Petitioner's Exhibit Number 12 was referenced at
19 this time.)**

20 **MS. SHAHID:** Can we erase that marsh and upland? I
21 think that's -- thank you.

22 Q: Do you see L1, L2, L3, L4 over on this side
23 being the left-hand side, as part of the
24 critical line?

25 A: Yes, ma'am.



1 Q: Okay. And you're saying nothing in between --
2 with these marsh indicators, in between this --
3 the line at the bottom that's 151.29 feet and
4 the line at the top, which is 309.92 feet,
5 constitutes shoreline?

6 A: No, ma'am.

7 Q: Does it have to be dry at low tide or something
8 to become shoreline? Does it have to be un- --
9 does it have to be not inundated to become
10 shoreline?

11 A: Again, a shoreline in this particular place
12 would be where the critical area line meets the
13 upland.

14 Q: Okay.

15 A: And if -- if you look at this, so take -- just
16 benefit of the doubt, you take the furthest
17 property corner here or -- that's at the
18 upland. You take the furthest property corner
19 here at the upland, that space in between those
20 furthest points, giving the benefit of the
21 doubt, has a north to northwest exposure. When
22 you're talking about shorelines and exposure,
23 that is a shoreline. It has a north-northwest
24 exposure, and you take those lines in the same
25 direction. A straight-line extension of upland



1 property lines. That's the -- that's the way
2 it's been applied and that's what determines
3 whether someone is waterfront property or dock
4 eligible.

5 Q: But the -- the regulation says generally shore
6 perpendicular upland property lines.

7 A: Straight-line extension of upland property
8 lines generally shore perpendicular.

9 Q: Okay. So, your -- your ---

10 A: The -- the -- the parallel extensions that has
11 been represented here is in no way generally
12 shore perpendicular.

13 Q: By your definition of shore being that area
14 that kind of cross -- cuts across the upland
15 property?

16 A: Based on the shoreline of a specific property.

17 Q: So, looking at Defendant's (sic) Exhibit 24,
18 none of this area between these various dock
19 corridors where these dock exists constitute
20 shoreline, none of these areas?

21 **(Petitioner's Exhibit Number 24 was referenced at**
22 **this time.)**

23 A: It's hard to tell from this photo talking about
24 these other properties.

25 Q: Uh-huh.



1 A: I mean, it's this -- this gray. It's just very
2 very -- it's not clear. I mean, I could answer
3 the question if I had a better picture.

4 Q: Well, I'll give you back Petitioner's 11. None
5 of this area that's reflective of some kind of
6 tree -- treetop, you would say none of this is
7 shoreline before you get out to marsh and
8 water?

9 **(Petitioner's Exhibit Number 11 was referenced at**
10 **this time.)**

11 A: No, ma'am. Again, I would go back to what I
12 said between the most eastern and most western
13 property corner points. Given the fact that
14 the critical area line runs generally in
15 between those two with a bulkhead, that is
16 generally the shoreline and that -- and going
17 back to how we applied the regulatory
18 definition with that north-northwest exposure,
19 straight-line extension of upland property
20 lines, that is the shoreline that we are
21 utilizing to -- to apply this waterfront
22 definition.

23 Q: And it's not the presence of the bulkhead, but
24 the presences of the critical line that ---

25 A: I think you -- you would look at all factors



1 and have a comprehensive look at it. But if
2 you're -- I mean, he put in a bulkhead to
3 protect his shoreline.

4 Q: Well, to protect his ---

5 A: That hasn't ---

6 Q: --- property.

7 A: Right. His -- the shoreline of property.

8 Q: And if he extended that bulkhead into areas
9 within the two corridor -- two corridor lines,
10 would that change your position today as to
11 whether there should ---

12 A: We'd have to evaluate that under their permit
13 application because it would be impacting
14 critical area.

15 Q: Well, if he extended it -- if he extended in
16 the upland -- his upland construction.

17 A: If he -- if it was still continuation on his
18 upland, we would have to reevaluate that.

19 Q: And he testified I believe that the bulkhead
20 was a foot and a half to two feet behind the
21 critical line.

22 A: I understand that.

23 Q: Okay. And I asked Ms. Adams, how would marsh
24 ownership change anything in this analysis.

25 A: If there was a King's grant with an attorney's



1 opinion, that they actually physically own the
2 marsh, and basically they are proving marsh
3 ownership, then those extended property lines
4 would essentially become a continuation of
5 property that they own, they that have rights
6 to. It's not -- it's within the public trust
7 kind of analysis. It -- it's still there.
8 It's kind of like a building permit, can we get
9 a building permit. But the -- the -- he would
10 -- he would assert that he has or the
11 confirmation that he has ownership of that
12 marsh.

13 Q: Okay. So, these lines emerging from the red
14 dots, for lack of a better description in
15 Petitioner's 11, you're basically not
16 considering them unless and until you think
17 they're only valid if he had a quiet title to
18 the marsh?

19 **(Petitioner's Exhibit Number 11 was referenced at**
20 **this time.)**

21 A: It -- we would add it -- there be a greater
22 weight to our decision if he were to prove by
23 way of a King's grant and attorney's opinion
24 that he owns the marsh. We -- there would be
25 a weight added to our decision.



- 1 Q: Even though ---
- 2 A: But that's not the case here.
- 3 Q: Even though these lines originate in upland.
- 4 A: I don't -- I don't -- I don't -- what lines are
5 you talking about?
- 6 Q: The -- I'm sorry. The red dots. The lines
7 extending through the -- toward the creek.
- 8 A: I'm not confident that both originate in the
9 upland.
- 10 Q: Have you been to the property?
- 11 A: Yes.
- 12 Q: When did you go to the property?
- 13 A: Last week.
- 14 Q: Okay. After I took your deposition?
- 15 A: Yes, ma'am.
- 16 **MS. SHAHID:** I'm sorry, Your Honor. I had a thought
17 and it left me. I'm trying to ---
- 18 **THE COURT:** Take your time.
- 19 **MS. SHAHID:** I'm trying to re- -- re-find it.
- 20 **THE COURT:** Take your time. I know.
- 21 **MS. SHAHID:** I don't want to take too much time.
- 22 Q: Are you aware -- and I believe there was
23 testimony from Mr. Seabrook earlier this
24 morning, that actually these extensions cross
25 other areas of uplands, so it's not just



1 originating in upland. There's other areas of
2 upland located between the extensions?

3 A: Again, I mean, if you want to throw the plat
4 back up, we can -- we can talk about the
5 specific small areas that the extended property
6 line crosses.

7 Q: The extended property line.

8 A: Uh-huh.

9 Q: Have you -- I mean, are you aware of what they
10 are?

11 A: What do you mean?

12 Q: The -- the small areas that the extended ---

13 A: Throw up the plat with the critical area line,
14 and we can walk through it if you want to point
15 out the specific areas. So, this is -- I
16 believe this right here is the pin in question.

17 Q: Correct.

18 A: Okay. Today, from my site visit, that is
19 actually in critical area. So, here is a small
20 -- I'm going to put a block -- piece of upland
21 that they are representing is an extension of
22 their upland. And then here's another small
23 piece of upland that they're trying to extend
24 from here and here. This area here is
25 completely over marsh, all the way out to the



1 river.

2 Q: Uh-huh.

3 A: So, it's only this small area and this small
4 area, and correct me if I'm wrong, Mary, but
5 what you're saying is extending through upland.
6 Beyond those areas, is all critical area marsh,
7 including the pin to the west -- I mean, to the
8 east.

9 Q: Okay.

10 **THE COURT:** Wait a minute. Put that back up.

11 **MS. SHAHID:** Oh, sorry.

12 **THE COURT:** I'm trying to understand this.

13 **MS. SHAHID:** Yeah. Let me try to put you where we
14 were.

15 **THE COURT:** There you go.

16 **MS. SHAHID:** Right there.

17 **THE COURT:** Okay. So, these L4, L- ---

18 A: Do want to clear that or ---

19 **THE COURT:** --- L3 ---

20 A: I'm sorry.

21 **THE COURT:** Okay.

22 A: Made a mess.

23 **THE COURT:** Okay. So, I'm trying to understand
24 where the -- I know there was testimony as to
25 the fact that the -- there's dispute between



1 the parties as to where the actual critical
2 line is, but the platted critical line, it's my
3 understanding that it followed -- I'll just
4 draw along the line, that it followed along
5 where these L ---

6 **MS. SHAHID:** Yep. To ---

7 **THE COURT:** Like that.

8 A: All right. Go up -- go up right there. Nope.
9 Here -- I'll -- I'll -- so, it goes up.
10 There's a large oak tree ---

11 **THE COURT:** Oh, sorry.

12 A: --- that's fallen into the marsh. And the
13 reason it's falling in the marsh because
14 tidewater is exposing the roots. So, it's a
15 combination of tidewater hitting the root
16 system and you got, you know, soils that are
17 coming loose underneath the root system, so the
18 live oak tree is actually collapsing into the
19 marsh. And underneath the root system, you
20 have an escarpment and undermining all the way
21 up through here. And so, this is all -- where
22 this pin is is actually critical area. But it
23 -- it comes back up around the base of the oak
24 tree. And that's why the oak tree is falling
25 into the marsh.



1 **MS. SHAHID:** Your Honor.

2 **THE COURT:** Uh-huh.

3 **MS. SHAHID:** I'm trying to see how you represented
4 the critical line.

5 A: I'm sorry.

6 **THE COURT:** I was trying to follow along the line --
7 -

8 **MS. SHAHID:** Yeah.

9 **THE COURT:** --- between the L1 through L14, and I
10 did not do it correctly.

11 **MS. SHAHID:** Well, I'm just ---

12 **THE COURT:** So, clear that off.

13 **MS. SHAHID:** --- more concerned about where it ended
14 up. That's all.

15 **THE COURT:** So, I was trying to follow this line
16 that goes along -- so, that's the way I now
17 understand that it goes. But am I at the wrong
18 -- that's -- that's -- I'm asking if I
19 understand the plat.

20 **MS. SHAHID:** I think it goes to the apex. I don't
21 know that it goes beyond the apex and the --
22 the property boundary is at the apex.

23 A: In general, yes, you dr- -- you drew it
24 correctly, but Mary is saying right there where
25 that pin, there's the property line, it kind of



1 stops right there. Just doesn't go beyond
2 that.

3 **THE COURT:** Yeah. I just ---

4 **MS. SHAHID:** It goes to the apex ---

5 A: Yes, ma'am. Yes, ma'am.

6 **MS. SHAHID:** --- point and the boundary line is
7 right next to the -- or is -- to the apex
8 point.

9 **THE COURT:** It goes like this. Got it. Okay.

10 **MS. SHAHID:** And actually, what I have learned is
11 the apex from L15 to L14 is the point where
12 they come together. And then the pin is ---

13 **THE COURT:** I don't see L15.

14 **MS. SHAHID:** --- next to the a- ---

15 **THE COURT:** Where is L15?

16 **MS. SHAHID:** L15 is to the right.

17 **THE COURT:** Oh, there it is.

18 **MS. SHAHID:** And the apex ---

19 **THE COURT:** I see it. Got a little arrow to it.

20 **MS. SHAHID:** Yeah. And the pin is next to the apex.

21 **THE COURT:** Got it.

22 **MS. SHAHID:** So, that -- Mr. -- before you went out
23 to investigate Mr. Seabrook said it was the
24 edge of the critical line. I don't have
25 anything else for Mr. Williams. Well, Your



1 Honor, can I take a minute to talk to my
2 witnesses for a minute?

3 **THE COURT:** Sure.

4 **MS. SHAHID:** Okay.

5 (Off the record from 4:22 p.m. until 4:24 p.m.)

6 **MS. SHAHID:** I think I've got one more question,
7 Your Honor.

8 **THE COURT:** Okay.

9 Q: I'm going to show you Petitioner's 13, which
10 was the efforts that -- well, I can hand it to
11 you, if you don't mind. The efforts that Mr.
12 Seabrook went to ---

13 (Petitioner's Exhibit Number 13 was referenced at
14 this time.)

15 A: Uh-huh.

16 Q: Are you aware that the apex of L14 and L15 is
17 the apex -- is actually the ---

18 **MS. SHAHID:** I'm sorry, Your Honor. I need to go.
19 Before I ask this question, I need to ask
20 somebody something.

21 **THE COURT:** Okay. Maybe you -- it might help to put
22 it up on the ---

23 **MS. SHAHID:** Yeah. I think you're right.

24 **THE COURT:** --- screen too, once clarify what your
25 question is, so that everybody can see it. So,



1 we don't -- it's warm in here for us to all ---

2 **MS. SHAHID:** It is warm.

3 A: It is warm.

4 **THE COURT:** --- gather over a piece of paper.

5 **MR. CHURDAR:** I've been thinking that for a while.

6 **THE COURT:** Sorry about the temperature in here
7 today. At least y'all aren't wearing a black
8 robe.

9 **MR. CHURDAR:** That's true.

10 **MS. SHAHID:** No further questions.

11 **THE COURT:** Oh, okay. All right. You got any re-
12 direct?

13 **MR. CHURDAR:** No, ma'am.

14 **THE COURT:** All right. You can step down.

15 **MR. CHURDAR:** Your Honor, that's ---

16 **THE COURT:** Anything further?

17 **MR. CHURDAR:** --- that's my last witness.

18 **CONCLUDING REMARKS:**

19 **THE COURT:** All right. Well, how would y'all like
20 to proceed then? Would you like to make brief
21 closing statements? Would you like to waive
22 closing statements and prepare proposed orders
23 at your leisure? Well, not too much at your
24 leisure. I mean, that's a dangerous thing to
25 tell a lawyer. What would you prefer?



1 **MR. CHURDAR:** I'd be just as fine with doing
2 proposed orders myself.

3 **MS. SHAHID:** I would too, Your Honor.

4 **THE COURT:** Okay. All right. So, I assume you're
5 probably going to want to get the transcript
6 before you do that?

7 **MS. SHAHID:** We probably ---

8 **MR. CHURDAR:** Yes, ma'am.

9 **MS. SHAHID:** We talked to her earlier about that, I
10 think.

11 **THE COURT:** 30 days enough?

12 **COURT REPORTER:** Yes, ma'am.

13 **THE COURT:** Okay. So, transcript in 30 days and 30
14 days beyond that for the proposed orders?

15 **MR. CHURDAR:** We've got -- you think so? I mean,
16 we've got WestEdge coming up. We've got a --
17 we've got a -- well, we'll be lucky to get the
18 trial in in five days. June -- starting June
19 6th. We're on the same side in that one.

20 **THE COURT:** Oh.

21 **MR. CHURDAR:** But ---

22 **THE COURT:** You've set aside your differences for a
23 moment.

24 **MR. CHURDAR:** Right.

25 **MS. SHAHID:** Oh, on a regular basis. We're up and



1 down.

2 **THE COURT:** Okay. So, do -- are you saying you need
3 a little more time?

4 **MR. CHURDAR:** I -- I think so. That was what I was
5 getting at. Yes, ma'am.

6 **THE COURT:** Okay. Okay. Well, I am also taking a
7 vacation in June, so it's no point in holding
8 you to something that then I won't -- might not
9 be here to see the moment it arrives. So, how
10 much time do you think you would like?

11 **MS. SHAHID:** I would think early July would get us
12 there.

13 **MR. CHURDAR:** I would think so. Yes, ma'am.

14 **THE COURT:** So, I don't know what days of the week
15 fall on, but we don't want to make it due July
16 4th week. So, is July 15th -- if that falls on
17 a ---

18 **MS. SHAHID:** That's ---

19 **THE COURT:** --- a weekend, just make it the next
20 Monday.

21 **MR. CHURDAR:** Sure. Yes, ma'am. July 15th is a
22 Friday.

23 **THE COURT:** Okay. Perfect. All right. Well, I
24 will look for some of your best writing on July
25 the 15th. And thank y'all. Anything else we



1 need to take up before we conclude the hearing?

2 All right.

3 **MS. SHAHID:** Thank you.

4 **THE COURT:** I'll look to hear from you then.

5 **(There being nothing further, the hearing concluded**
6 **at 4:29 p.m.)**

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

