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SC Court of Appeals

MOTION FOR SUMMARY JUDGEMENT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MOTION FOR SUMMARY JUDGEMENT

Milton G. Kimpson, Judge
Docket No. 21-ALJ-07-0144-CC

Appellate Case No. 2023-000441

South Carolina DHEC, Carla Varn DuPre, and Jasper Varn III Respondents

v.

Stephen Mueller, Pro Se

Appellant

ARGUMENT: The Respondents have not produced FACT OR MATTER OF LAW that challenges the precedent set by the ALC, Docket #18-ALJ-0023-CC

If requested I will amend my initial Brief to address all of the Respondent's errors of argument in their initial Brief, but in consideration of the Court's time I offer the following compelling evidence that the Respondents conveniently did not address in their Initial Brief.

On Feb. 1, 2018 a case, Docket #18-ALJ-07-0023-CC, Cami Hiers, et al v. SCDHEC was remanded to SCDHEC for determination of new jurisdictional baselines between 120 and 612 Palmetto Blvd. which obviously included 410 Palmetto Blvd. 410 is the shallowest lot on Edisto Beach. On Nov. 25, 2019, DHEC, after a "preliminary dune analysis" determined, in part, the following:

1. That "neither in Sept. 2016 before Hurricane Matthew or in July 2019, after re-nourishment, was there a primary dune seaward of the existing jurisdictional baseline."
2. "Regardless of the source and location of the baseline proposed on October 6, 2017, it is not in effect. The baseline established in 2012 is currently in effect. THE DEPARTMENT DID NOT LOCATE A PRIMARY DUNE SEAWARD OF THE 2012 BASELINE."

3. "The Petitioners stated that visual evidence confirms superior dune formation from 2016 compared to 2009 but OCRM "CAME TO QUITE THE OPPOSITE CONCLUSION." There was no evidence of dune formation.

The determination was signed by Elizabeth von Kolnitz, OCRM Chief and copied to Matthew Slagel, Beachfront Permitting Manager, DHEC-OCRM.

In July, 2020, 8 months later, Mr. Slagel identified a primary oceanfront sand dune approximately **40'** seaward of the baseline at 410 Palmetto Blvd., knowing full well that his own department did not find one ANYWHERE seaward of the baseline and further climate related erosion had occurred.

This is disturbing enough but he made the identification in the company of Mr. Bill Eiser of Eiser Consulting. Mr. Eiser is his ex-boss and was hired by, and advocating for, the permit applicant. Mr. Eiser also had argued in the Hiers case that there was a dune seaward of the baseline but his argument was summarily dismissed by OCRM, which came to "QUITE THE OPPOSITE CONCLUSION".

Also disturbing is that Ms. Von Kolnitz, or Mr. Slagel's supervisor, Blair Williams have not to my knowledge, confirmed Mr. Slagel's decision. Mr. Slagel, with limited experience, therefor effectively becomes the official autonomous, authority as to where SC's sand dunes are located. I believe Mr. Slagel has committed malfeasance under pressure from Mr. Eiser and that Ms. Von Kolnitz and Mr. Williams have not properly supervised their departments.

As a result of Mr. Slagel's decision to identify a primary oceanfront sand dune **40'!** seaward of the actual dune as determined by OCRM's dune analysis, DHEC has issued building and septic permits which will impact the dune. Construction on a primary oceanfront sand dune is strictly prohibited by SC Code 48-39-290.

In summary I argue that there is no fact or matter of law to be argued at trial as there is by DHEC's own existing testimony "no primary oceanfront dune seaward of the baseline" at 410 Palmetto Blvd. By SC Law, there is no construction permitted on a primary dune. The area permitted by Mr. Slagel is all on a primary dune and is not allowed. I argue that the precedent set by the decision of ALC Docket 18-ALJ-07-0023-CC is enough to issue a summary judgement.

I am therefor petitioning the Court to order DHEC to revoke OCRM Building Permit No.02808.

Respectfully submitted,

Stephen Mueller

Stephen Mueller

November 1, 2023

CC: Bradley Churdar, Mary Shahid