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South Carolina Coastal Conservation League

SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Docket No. 24-ALJ-07-0088-CC to  
24-ALJ-07-131-CC

Petitioner,

v.

South Carolina Department of Health and  
Environmental Control and Pulte Homes,  
LLC,

Respondents.

**ORDER DENYING  
PETITIONER'S MOTION  
FOR RECONSIDERATION  
AND FOR STAY**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Petitioner, South Carolina Coastal Conservation League (Petitioner), seeking reconsideration of and stay for this Court's Order issued on December 18, 2024. On January 13, 2025, counsel for Respondent Pulte Homes, LLC (Respondent) filed a response to the Motion. In its response, Respondent states that the Motion for Reconsideration was filed twelve days after the December 18, 2024 Order, and thus this Court has no authority to rule on the motion. However, Petitioner filed its Motion on December 30, 2024, ten days after this Court's December 18, 2024 Order. Therefore the Motion is timely.

In its Motion, Petitioner merely reiterates the arguments made at the hearing, which were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore, the Motion for Reconsideration is denied.

Petitioner next moves for a stay of this Court's order pending its planned appeal of the order. Petitioner argues that its due process rights would be violated if it cannot conclude the judicial review of this court's order prior to construction activities occurring under the terms of the challenged permits. This argument misapprehends the requirements of due process. The Fourteenth Amendment to the United States Constitution provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law ...". "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484,



494 (1972). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733–34 (2002). That hearing occurred in the contested case before this court. Petitioner cites no authority for its argument that due process requires that appeals of a lower court decision must be concluded before the status quo is altered. The appropriate framework to decide the motion for stay is provided in the rules and caselaw that directly address motions for supersedeas or a stay of an order.

SCALC Rule 29(E) provides:

An administrative law judge who issues a final order subject to judicial review may in the order stay its effect. At any time prior to the filing of a petition for judicial review, and upon the motion of any party, with notice to all parties, the administrative law judge may stay the final order upon appropriate terms.

The authority to stay the order is derived from S.C. Code Ann. § 1-23-380(2) (Supp. 2024), which states, “The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.”

SCRCP Rule 65 provides for the procedures, notice and security required for a court to issue a restraining order or temporary injunction. Therefore, the Court looks to the law concerning preliminary injunctions to determine the elements that must be established to qualify for such relief.

A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.

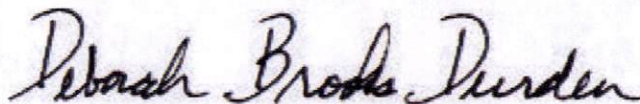
Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

Here, the Court has carefully considered all of Petitioner’s legal arguments and positions in this case and carefully ruled upon each of them. In doing so, the Court has not found enough merit in Petitioner’s positions or argument to conclude that there is any likelihood of success of the merits in an appeal of this matter. Therefore, Petitioner cannot establish an essential element required for this Court to grant a stay of the December 18, 2024 Order pending appeal.

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Motion for Reconsideration is **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner's Motion for Stay is **DENIED**.

**AND IT IS SO ORDERED.**



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

January 21, 2025  
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

January 21, 2025  
Columbia, South Carolina

