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**Sep 01 2026**

**SC Court of Appeals**

September 1, 2026

**JASMINE D. SMITH, DEPUTY CLERK  
S. C. COURT OF APPEALS  
POST OFFICE BOX 11629  
COLUMBIA, SC 29211**

**Re: Robert Klomparens v. SCDHEC**

Appellate Case No. 2022--001641

Dear Ms. Smith:

This letter is in response to your correspondence of August 11, 2026, advising that the Court of Appeals has requested a discussion of two issues that were not previously argued in the parties' briefs.

***Issue # 1***

*The impact if any of Act 251 of 2026 and its amendment to S. C. Code Section 1-23-380*

The General Assembly recently amended Section 1-23-380(5) to add subparagraph (b), prohibiting a court from deferring to the agency's interpretations of a statute or regulation and instead requiring de novo interpretation. Prior to the amendment, South Carolina courts applied Section 1-23-380(5) as requiring deference to an agency on both factual matters (under the "substantial evidence" and "clearly erroneous" standards), and, implicitly, on mixed questions of law and fact and questions of statutory interpretation – particularly where the agency was exercising "specialized knowledge." The amendment did not change the blanket prohibition of a court substituting its judgment for the judgment of the agency as to the weight of the evidence on questions of fact or the six grounds for reversal of an agency's decision found in S. C. Code 1-23-380(5) (a-f).

The amendment is described in the legislative record as addressing "judicial interpretation" of agency regulations and enabling statutes. Where courts previously gave significant deference to an agency's construction of its statutes and regulations, particularly in the analysis of ambiguous provisions, the amendment replaces that deference with a requirement for the exercise of independent judgment. Because Act 251 was passed to affect judicial interpretation and not factual review, the standard for purely factual determinations likely remains unchanged. But questions of statutory or regulatory interpretation or validity and mixed questions of law and fact

The contested case underlying this appeal focused upon the conflicting positions of the parties as to whether the property own by the Klomparens was “waterfront property” as defined in S.C. Code Reg. 30-1(D)(54) (2011). As noted in the Final Order, “Petitioners (Respondents in this appeal) claim that 706 Creekside is waterfront in accordance with the regulatory definition. The Department (Appellant in this appeal) denied Petitioners’ permit application based on the conclusion that 706 Creekside does not satisfy the regulatory definition of waterfront property. Order, p. 3.

Appellant alleges two errors by the ALC. Only one of the alleged errors concerns deference and is affected by the amendment to S.C. Code § 1-23-380. Specifically, Appellant claims the ALC erred by failing to defer to the Department’s interpretation of S.C. Code Reg. 30-1(D)(54), which the Department calls “inherently ambiguous” based on the use of “generally” in the regulation. Appellant further claims the ALC’s finding that the Department’s decision to deny Respondents’ permit application was the “result of a flawed legal conclusion” instead of an interpretation of the regulation.

The ALC acknowledged the general rule of deference for the Department’s interpretation of its statutes and regulations. Order p. 9-10. However, after considering the testimony of all the witnesses, the ALC concluded that the Department had erred in failing to recognize the validity of the angle or turn in the property lines identified by the Respondents’ expert surveyor, Lewis Seabrook. Order, p. 8. After specifically finding the Department’s definition of waterfront property was clear, the ALC found that the error by the Department did not amount to an interpretation by the Department, which may be entitled to deference, but a flawed legal conclusion. The ALC further noted that 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 that extended into the tributary. Order p. 10.

As noted by the ALC, the surveyor, found qualified to testify as an expert, had demonstrated the location of the boundary marker eight inches landward of the critical line. *Id.* “The Department provided no evidence to refute the testimony of Petitioner’s 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.” *Id.* The Final Order and Decision makes clear that the ALC exercised independent judgment to reach its decision in this case.

The impact of the amendment to Section 1-23-380 on this case is two-fold. The amendment eliminates Appellant’s argument that the agency was entitled to deference. Moreover, the amendment requires that the Court exercise independent judgment in deciding questions of regulatory construction. As is made clear by the Final Order, the exercise of independent judgment by the Court is precisely what happened in this case. The ALC found the language of the regulation at issue clear and unambiguous, its decision was not made on the weight of the evidence presented at the hearing. In short, the “amended standard” was already applied by the ALC.

*Issue # 2*

*Whether the deadline for filing a motion for rehearing with the Administrative Law Court may be validly extended by order or consent?*

SCALC Rule 29(D) provides the following guidance related to Motions for Reconsideration: “[a] motion for reconsideration is subject to the grounds for relief set forth in Rule 59, SCRCP ...” The South Carolina Supreme Court has consistently held that the time for filing or serving a motion to alter or amend a judgment under South Carolina Rule of Civil Procedure 59(e) cannot be validly enlarged by a court order or by the consent of the parties.

While SCALC Rule 3.B, Enlargement, states that the ALJ may extend or shorten the time to take any action, the rule also includes “except as otherwise provided by rule or law.” Rule 6(b), SCRCP, similarly allows South Carolina courts to enlarge timeframes for many procedural acts. However, it explicitly prohibits extending the time for acting under Rule 59(e).

The South Carolina Supreme Court recently clarified confusion surrounding application of Rule 59(3) in conjunction with Rule 6(b), which grants trial courts limited authority to extend deadlines, as explained above. *Overland, Inc. d/b/a Land Rover of Greenville v. Nance*, 423 S.C. 253 (2018). Here, the South Carolina Supreme Court reaffirmed the absolute limit of the post-trial motion deadline expressly stating that, “[t]he failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party’s only recourse is to file a notice of intent to appeal.” *Overland*, 423 S.C. at 433. Moreover, the Court emphasized its previous holding that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline. *Overland v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432 (S.C. 2018):

We have previously held that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline. In *Leviner v. Sonoco Prods. Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000), the circuit court entered a dispositive order on January 10, 1997. 339 S.C. at 493, 530 S.E.2d at 127. “Neither party filed a Rule 59(e), SCRCP, motion within the ten-day period allowed by that rule.” *Id.* Nevertheless, on February 10, the circuit court issued another dispositive order completely reversing itself from the January 10 order. We held, “The trial judge’s ... order filed February 10, 1997, more than thirty days later, was patently untimely. Under Rule 59(e), SCRCP, the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative .... When no timely Rule 59 motion was made nor timely sua sponte order filed under Rule 59(e), the January ... order “matured” into a final judgment. The order filed on February 10 was a nullity because the trial judge no longer had jurisdiction over the matter. 339 S.C. at 494, 530 S.E.2d at 128; See also *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006) (“Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.”); *Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986) (on appeal from an order entered just before the effective date of the Rules

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of Civil Procedure, holding the trial court lost the power to modify the final order after end of the term of court, and noted that under Rule 59(e) the trial court would have the power to alter or amend such an order for a ten-day period after entry of judgment).

In short, under South Carolina law, rehearing deadlines are treated as fixed jurisdictional time limits that are not subject to enlargements. While Rule 6(b) does allow courts to extend deadlines, given certain conditions, Rule 6(b) does not apply to the strict deadline that must be followed by Rule 59(e). Moreover, Rule 6(b) explicitly excludes Rule 59 from its scope, which lacks the conditions necessary to allow an exception under rule 6(b). Because SCALC Rules 3.B and 29.D are, by each Rule's own terms, subject to South Carolina law, the Rules cannot be applied to extend the deadline for filing Motions for Reconsideration of SCALC decisions.

Very truly yours,

**s/Mary D. Shahid**

Shareholder

Admitted in SC

MDS:

cc: Sallie Page Phelan and Bradley David Churdar



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SC Court of Appeals

Certificate of Service

I hereby certify that on this 1st day of September, 2026, I served a true and correct copy of the foregoing Response Letter upon all parties to this appeal by:

[x ] **Electronic Mail (Email)** to the email addresses listed below as follows:

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/s/ Mary D. Shahid

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