

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2012-ALJ-07-0050-CC

James R. Maull,

Appellant/Petitioner,

v.

South Carolina Department of Health and Environmental Control and David Abdo,

Respondents,

and Russell and Laura Schaible,

Respondents.

**VERIFIED PETITION
FOR WRIT OF SUPERSEDEAS**

YOUNG CLEMENT RIVERS, LLP
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*Attorney for the Appellant/Petitioner,
James R. Maull*

RECEIVED

JUN 05 2014

SC Court of Appeals

TO: THE HONORABLE SHIRLEY C. ROBINSON, ADMINISTRATIVE LAW JUDGE

COMES NOW the Appellant/Petitioner, James R. Maull (“Maull”), by and through his undersigned counsel, pursuant to Rule 241, SCACR,¹ and, upon the grounds set forth herein, hereby petitions this Honorable Court for issuance of a writ of supersedeas staying the matter decided in this Court’s Final Order and Decision in this case until Maull’s appeal therefrom is finally resolved.²

1. The Subject Order arose out of Maull’s request for a contested case hearing to challenge the grant of an **amendment** to a dock permit issued to Maull’s neighbor, David Abdo (“Abdo”).

2. Abdo owns (and resides) at property identified as 29 Broughton Road, Charleston County, that is situated between Maull’s property (and residence) on one side (at 27 Broughton Road) and the property (and residence) of Russell and Laura Schaible (the “Schaibles”) on the other (at 31 Broughton Road). All of these properties are bounded by Wappoo Creek, which is part of the Atlantic Intracoastal Waterway (“AIWW”).

3. The **original** permit was issued in 2007 to Abdo’s predecessor in title, authorizing construction of a private recreational dock at 29 Broughton Road at a location of 82.5 linear feet from Maull’s existing dock and 132.1 linear feet from the Schaibles’ dock (both of these measurements being in relation to water’s edge). To be clear, Maull is not generally adverse to dock construction on Abdo’s property; indeed, Maull supported the original permitting effort for 29 Broughton Road, even attempting to assuage the Schaibles’ concern about the initial proposed

¹ To be clear, this petition is being addressed to this Court because Rule 241(d)(1) instructs that “[e]xcept where extraordinary circumstances make it impracticable, an application . . . for supersedeas must first be made to the . . . administrative tribunal which entered the order or decision on appeal.”

dock location by agreeing that the proposed boatlift be moved from the side of the dock closest to the Schaibles' property to the side closest to his.

4. The amended permit, however, allows Abo's dock to be constructed and configured so as to be much closer to Maull's existing dock (and farther away from the Schaibles') than was authorized by the original permit, lessening the above-referenced 82.5 linear feet of separation by more than half.

5. In reliance on the dock location/configuration reflected in the original permit, prior to Abdo's request for the amendment, Maull purchased a large fishing boat (48 feet in length) and, with proper permitting in place, reconfigured his dock to accommodate it.

6. Maull contends that the amended permit allows Abdo's dock to be built too close to Maull's dock and that, if Abo builds a dock as allowed by the amendment, it will create a public navigational hazard—this hazard being attested to by licensed harbor pilot Crayton Walters ("Walters"), the expert only expert to offer opinion in this contested case³—and will also have an unduly adverse impact upon the value and enjoyment of Maull's property, including

² The Court's Final Order and Decision (the "Subject Order") was filed in this case on August 1, 2013. A copy of the Subject Order is attached hereto as **Exhibit 1**.

³ During the proceedings held before this Court on January 15, 2013, Walters testified that commercial traffic along the portion of the AIWW relevant to this case has increased in the past decade, with that increase including, among other things, barge traffic. Notably, these barges, which are some 100 to 150 feet in length and 30 feet in width, are not self-propelled, but are pushed by tug boats, and they are traveling up and down this section of the AIWW—where, Walters explained, they are encountering probably the strongest currents in the Charleston area—along with a mass of other commercial and recreational traffic (some of which is operated by inexperienced boaters), including, among other things, waterway cruise ships, yachts, and jet skis. The location/configuration of Abdo's dock allowed by the amended permit sets the stage for the channel—and the traffic utilizing it, including, of course, large barge traffic not adept at maneuvering around obstacles—to be disrupted by attempts to dock safely.

preventing him from protecting his boat from wave action by mooring it on the landward side of his dock.⁴

7. Maull duly appealed from the Subject Order, which appeal is pending before the South Carolina Court of Appeals. (A copy of Maull's timely Notice of Appeal (omitting the copy of the Subject Order that was attached thereto, which is already an exhibit to this petition) and Proof of Service is attached hereto as **Exhibit 2.**) All parties' initial (i.e., substantive) briefing has been completed, the record on appeal has been finalized, and the parties' final briefs (which, aside from being formally bound, are substantially identical to initial briefs, merely updating those briefs to include citation to the appellate record) are due within a week; June 2, 2014, specifically. After final briefs are filed on June 2, 2014, Maull's appeal will be ready for consideration by the Court of Appeals.

8. Upon information and belief, notwithstanding the pendency of Maull's appeal, Abo is proceeding—or preparing to proceed—with construction of his dock in accordance with the amended permit.

9. Abo has obtained construction authorization for the dock and it appears that he has hired a general contractor. (See Construction Authorization issued May 2, 2014, a copy of which is attached hereto as **Exhibit 3.**)

10. Promptly upon learning of the construction authorization, on May 5, 2014, the undersigned wrote to Ilonka Sonja Taylor, Esquire, making clear that Maull reserves all rights,

⁴ Paragraphs 1-6 above are provided by way of brief background. For record support for these paragraphs, see **Exhibit 1** generally. To be clear, however, this citation to **Exhibit 1** does not reflect Maull's agreement with the Subject Order, which, of course, he has appealed. Rather, Maull believes that, in view of the nature of the instant petition, **Exhibit 1** should suffice to provide support for the factual background necessary for an understanding the petition. To the extent, however, that the Court may require or appreciate additional information or record

which would include his right to a full and meaningful appeal process, and, further, noting Maull's concern, supported by expert testimony, that the location/configuration of the dock allowed by the amendment presents a public navigational hazard. (See Letter from Michael A. Molony to Ilonka Sonja Taylor, Esquire, dated May 5, 2014, a copy of which is attached hereto as Exhibit 4.)⁵

11. This May 5, 2014, letter also expressly advised that, in hopes that Abdo would voluntarily refrain from proceeding with dock construction until after Maull's appeal is resolved, Maull would not, at that time, be seeking a supersedeas of the Subject Order. (See Exhibit 4.)

12. Recently, however, Maull has observed the delivery/arrival of poles and/or other dock-construction-related material, equipment, and/or personnel to/at Abdo's property.

13. In response to these developments, the undersigned reached out to Abdo (via Ms. Taylor) and the Schaibles (via their counsel of record) in an effort to resolve this matter short of involving the Court, but the undersigned did not receive any return communication from these parties. Notably, in this regard, the undersigned's above-referenced May 5, 2014, letter to Ms. Taylor was sent via email and certified mail. (See Exhibit 4.) On May 28, 2014, the certified mailing was returned to the undersigned's office as "unclaimed;" though, there can be no question that it was properly addressed. (See Exhibit 6.)

14. Unfortunately, it appears that Court involvement in this matter is unavoidable.

material relative to the factual background of this petition, Maull will, of course, provide the same as the Court may direct.

⁵ Although not officially appearing for Abdo in administrative or court proceedings, upon information and belief, Ms. Taylor, is Abdo's spouse, and she has acted as Abdo's representative in prior communications with the undersigned. According to publicly-available information on the South Carolina Bar's website, Ms. Taylor's law practice, Ilonka Sonja Taylor, Attorney at Law, LLC, is located at Abdo's 29 Broughton Road address. (See Exhibit 5.)

15. Rule 241(c)(2) instructs that in determining whether a supersedeas should be granted it should be considered “whether such an order is necessary . . . to prevent a contested issue from becoming moot.” That is the very threat that Abdo’s apparent action poses here.

16. There can be no doubt—as Rule 241(c)(2) indeed reflects—that inherent in the right to appellate review is the right to **meaningful** appellate review, without the issue in dispute being unduly rendered moot during the appellate process.

17. If Abdo takes action to accomplish the very thing that Maull contests—and is presently contesting via due exercise of his appellate rights—it will moot the issue contested—or, at the very least, will unduly create a situation where vindication of Maull’s rights following a successful appeal will require further action to compel the deconstruction of Abdo’s dock, which would be both inefficient and unduly burdensome, to say nothing of the impairment to the value and enjoyment of Maull’s property in the meantime.

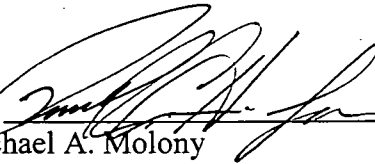
18. Moreover, the circumstances here are such that Abdo’s action would not only adversely impact Maull, but would adversely impact the public by creating a navigational hazard.

WHEREFORE, to protect and preserve Maull’s right to a full and meaningful appellate review process by preventing the contested issue in this case from becoming moot, and to protect the public interest in avoiding the navigational hazard presented by the amended permit until that permit has been subjected to a full appellate review process, Maull asks that this Court issue a writ of supersedeas staying the matter decided in the Subject Order and preventing Abdo from proceeding with construction of his dock in accordance with the amended permit, pending final resolution of Maull’s appeal.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By:  _____

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Attorney for the Appellant, James R. Maul

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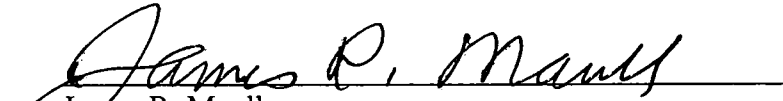
Dated: 6/3/14

VERIFICATION

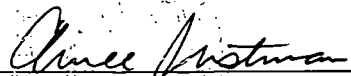
PERSONALLY appeared before me, JAMES R. MAULL, who, being duly sworn, deposes and says that:

1. He is the Appellant/Petitioner in this matter, he has read the foregoing **Verified Petition for Writ of Supersedeas**, and that the facts stated therein are true of his own personal knowledge, save and except those things alleged to be upon information and belief, and, as to them, he believes them to be true.

FURTHER DEPONENT SAYETH NAUGHT.


James R. Maull
Appellant/Petitioner

SWORN to before me this 3rd day of
June, 2014.


Notary Public for South Carolina
My Commission Expires: 7/28/2014

FILED

AUG 01 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

DOCKET NO.: 12-ALJ-07- 0050 -CC

James R. Maull,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and David Abdo,

Respondents,

and

Russell and Laura Schaible,

Intervenors.

FINAL ORDER AND DECISION

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JUN 05 2014

SC Court of Appeals

APPEARANCES:

For the Petitioner:	Michael Molony, Esquire
For Respondent SCDHEC:	Nathan Haber, Esquire
For Respondent David Abdo:	<u>Pro Se</u>
For the Intervenors:	Leslie S. Riley, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Request for Contested Case Hearing filed by James R. Maull ("Petitioner") on February 8, 2012, challenging the decision of the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("DHEC" or "Department") to issue an Amendment to critical area permit number OCRM-07-128-F ("Amendment") to David Abdo ("Respondent") for the construction of a private recreational dock. The Amendment was issued on October 6, 2011. Petitioner, Respondent Abdo and Russell and Laura Schaible ("Intervenors") requested a final review conference before the Board of Health and Environmental Control ("the Board"). A final review conference was

held, and the Board issued the final agency decision in this case on January 9, 2012. Petitioner then filed a Notice of Request for Contested Case Hearing.

On July 24, 2012, DHEC filed a Motion for Partial Summary Judgment and Motion to Dismiss. The Petitioner filed a response to DHEC's Motion on August 2, 2012. A hearing on the Motion was held at the ALC on August 23, 2012. On October 4, 2012, the Court issued an Order granting DHEC's Motion for Partial Summary Judgment as to issues raised by Petitioner regarding alleged procedural defects in the Final Review Conference process. DHEC's Motion to Dismiss was denied.

A contested case hearing was held on January 15, 2013 before the Administrative Law Court in Columbia, South Carolina. Based on the evidence before me, I find the decision to issue the Amendment should be affirmed.

FINDINGS OF FACT

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

1. The Petitioner is the owner of real property located at 27 Broughton Road, Charleston, South Carolina. Respondent, David Abdo, is the owner of property that is adjacent to the 27 Broughton Road property owned by Petitioner-Maull. Mr. Abdo's property is located at 29 Broughton Road. These properties are the permanent residences of both Petitioner and Respondent.

2. The Intervenors, Russell and Laura Schaible, reside at 31 Broughton Road, and their property is also adjacent to Mr. Abdo's property.

3. Petitioner has lived at 27 Broughton Road since the 1980s, and he has a private recreational dock that was originally constructed approximately 23 years ago. According to Petitioner's testimony, he has modified this dock at least twice since it was originally constructed. The Petitioner currently owns a 48-foot sport fishing boat which he prefers to moor on the landward side of his dock for the purpose of protecting it from wave action.

4. The action giving rise to this contested case, the Amendment to critical area permit number OCRM-07-128-F was issued to Mr. Abdo on October 6, 2011 and authorized movement of the dock structure towards the Petitioner's dock and property. The permit was originally issued to Charles R. Palmer, acting on behalf of the Estate of Rebecca Palmer

("Palmer Estate"), on August 2, 2007.¹ Mr. Abdo purchased the 29 Broughton Road property from the Palmer Estate in August 2007. A condition of the purchase was that the Palmer Estate obtain the dock permit. The purchase occurred after the Permit was issued, and Charles R. Palmer assigned and/or transferred the Permit to Mr. Abdo on June 29, 2011.

5. The Petitioner testified as to his recollection of the process resulting in the issuance of the 2007 dock Permit to Charles R. Palmer. According to the Petitioner, the Intervenor in this matter objected to the location of the dock as proposed in the 2007 application submitted to the Department by Charles Palmer. Prior to issuing the Permit, OCRM staff, specifically Amanda Flake, contacted the Petitioner, the Palmers, and the Schaibles for purposes of meeting to discuss the application. The Petitioner suggested that the Palmers move the proposed boatlift from the side of the dock closest to the Schaibles, to the other side, bringing it closer to the Petitioner's property. This configuration resulted in 82.5 feet of separation between the Petitioner and the Palmer (now Abdo) dock. The dock was approved as suggested by the Petitioner. Thereafter, the Schaibles sought review by the Board and such review was denied.² No further challenge was made and the Permit was issued.

6. Following resolution of the configuration of the Palmer dock in August 2007, the Petitioner sought and obtained authorization on May 14, 2008 to change the configuration of the floating docks at 27 Broughton Road. In accordance with this authorization, the Petitioner removed the existing floats which was in a "U" configuration and installed a 10 feet by 44 feet floating dock. The 10 feet by 44 feet floater replaced a 10 feet by 30 feet floater, which reduced the off-set between Mr. Abdo's boatlift as shown on the Permit and the Petitioner's float.³ Specifically, the Petitioner moved his dock to within 19.8 feet from the shared extended property line; slightly less than the 20 feet required by the regulations. The Petitioner submitted the as-built drawings for his dock to DHEC sometime after September 14, 2009. The drawings reflected that Petitioner's dock was built 18 feet from the extended property line shared with Mr. Abdo, rather than the 19.8 feet as set forth in Petitioner's modification application.

¹ Rebecca Palmer was Petitioner's aunt.

² During the course of the Palmer Permit application process, Mr. Abdo was not consulted about the configuration or the location of the dock.

³ The separation between the Abdo dock and Schaible dock increased from 132.1 linear feet as shown in the Permit (Schaible Ex. 7) to 138.6 linear feet as shown in the Amendment (DHEC Ex. 3)

7. After completing renovations and moving into the 29 Broughton Road property in February 2008, Mr. Abdo discussed with Petitioner and the Intervenor his intent to modify the Palmer Permit, and the manner in which he would be seeking to change it. According to Mr. Abdo, upon review of the Permit, he determined that the dock did not suit his or his family's needs. In particular, he found the configuration and location of the dock was different from every other dock in the vicinity and would make the boatlift unusable at times. The Intervenor were amenable to Mr. Abdo's proposed modification; however, the Petitioner was not.

8. In May 2011, Mr. Abdo submitted an amendment application to reconfigure the Palmer Permit. The requested reconfiguration consisted of reconfiguring the pierhead, floater and lift, and that the dock be located 20.5 feet from the extended property line shared with Petitioner.

9. On October 6, 2011, DHEC staff authorized the Amendment to critical area Permit Number OCRM-07-128-F ("Amendment") with a condition that the dock be situated 30.5 feet off the shared extended property line of Mr. Abdo and Petitioner, which resulted in 50 feet of separation between the Abdo and Maull docks.

10. All parties to this matter requested review by the DHEC Board. At the final review conference on December 8, 2011, the Board removed the special condition, and approved the Amendment as applied for in the application. The Board's removal of the special condition was to correct an error made by the DHEC staff in interpreting Petitioner's permit drawings (this error was the staff's basis for the imposition of the 30.5 feet condition). In reviewing the drawings, staff initially believed Petitioner's dock was located 10 feet from the extended property line (the 10-foot measurement initially relied on by DHEC staff was the width of Petitioner's floating dock, not the distance between Petitioner's dock and the extended property line). In fact, Petitioner's dock is located almost 20 feet off the extended property line.⁴

11. Additionally, the edge of Mr. Abdo's dock will be located nearly 85 feet from the edge of the federal navigation channel. The Petitioner's dock is closer at 75.7 feet from the edge of the federal navigation channel.

12. Mr. Abdo testified that when applying for the Amended Permit, he configured his dock and floating dock, and the location of the pierhead in a manner that would preserve space

⁴ A supplement to DHEC staff's response to the request for review provides that "[s]taff's intent is to require that the Abdo dock be 40 feet away from the Maull dock as it is constructed and permitted today." As approved by the Board, there is approximately 40 feet of spacing between the Maull and Abdo docks.

for future additions or alterations to the dock if he or a subsequent property owner so desires, and to maximize its use. Currently, Mr. Abdo's dock is 40 feet from the extended property line shared by Intervenor.

13. The Intervenor, Russell Schaible, testified that he and his wife purchased their property in 2005. According to Mr. Schaible, one of the main reasons they purchased the property was because of the expansive view of the water. Subsequent to the purchase of the property, the Schaibles had a dock drawing made, which would have located the dock in the middle of their property. Because of the importance they placed on the view, they decided to relocate the dock and construct it on the far western side of their property. The Schaibles do not object to Mr. Abdo having a dock, but do object to any location which is closer than what was approved by the Board and which would have a negative impact on their view.

14. Petitioner also does not object to Mr. Abdo building a dock; however Petitioner objects to the location approved by the Amendment. The Petitioner and his expert witness, Crayton Walters, opined that the dock's location will prohibit Petitioner from mooring his 48-foot sport fishing boat on the landward side of his dock. Mr. Walters was qualified as an expert in Maritime matters, including navigation, tidal and water current issues and vessel navigation.

15. According to Mr. Walters, the Petitioner and Mr. Abdo docks are both located on the Wappoo Creek, which is a section of the Intracoastal Waterway ("AIWW"). Mr. Walters testified that he had frequently boated and navigated on the AIWW and Wappoo Creek in several different types of boats, and he noted that the section of the AIWW where the docks are located is one of the most heavily trafficked areas for recreational boating activity in the Charleston Area. According to Mr. Walters, there are especially strong currents near the Petitioner's dock and Mr. Abdo's proposed dock which pose unique navigational hazards to commercial and recreational traffic due to the difficulty of maneuvering and docking in that area.

16. In anticipation of testifying in this case, Mr. Walters took Petitioner's boat out and navigated it in and around the Wappoo Creek. He testified that if Petitioner were to try to get his boat in and out of a 40-foot space it would be unsafe for members of the public who were navigating in the channel. In order to safely navigate in and out of Petitioner's dock, given the length of Petitioner's boat, Mr. Walters testified that he would want 100 feet of space, or approximately two boat lengths. He also testified that because of the siltation and given the lack of water at lower stages, Petitioner has to wait until certain stages of the tide to get his boat out.

17. In terms of the proximity of other docks, the Petitioner's expert agreed that there are many docks existing on the Wappoo Creek and that "they're all very close." He also acknowledged that there were few, if any, boats as large as Petitioner's on that side of the Wappoo Creek, and that it was possible for Petitioner to reconfigure his dock to allow him to continue docking his boat on the landward side.

18. While the Petitioner could dock on the channelward side of the dock (and has done so previously), he prefers docking on the landward side, which he believes reduces wear and tear on his boat and dock. Petitioner also acknowledges that his dock could be reconfigured to enable him to continue to dock on the landward side however Petitioner is unwilling to undertake the expense of another dock modification. Additionally, the Petitioner testified that he would not have undertaken his 2008/2009 dock modifications had he known that Mr. Abdo's dock would be moving closer to him.

19. Jeff Thompson, a senior wetland project manager with DHEC, testified on behalf of the Department. Mr. Thompson testified that amendments to critical area permits are not uncommon occurrences and that property owners who purchase property with an existing dock will often apply for amendments to make changes to the permitted dock. He applies the critical area regulations to every permit application he reviews, and in issuing the Amendment, Mr. Thompson testified that he considered navigational concerns related to the public's ability to navigate in the Wappoo Creek. The Wappoo Creek is approximately 565 feet in width, and due to its width, Mr. Thompson disagreed with Mr. Walters testimony that Petitioner's trying to dock his boat would create a safety hazard in the channel. He also testified that Petitioner's docking would not have much of an impact on public safety.

20. According to Mr. Thompson, the Amendment is consistent with the applicable statute and regulations, and 40 feet between two docks is a standard distance required by the regulations. That distance is based on the requirement each property owner stay 20 feet off extended property lines under most circumstances.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I conclude the following as a matter of law:

1. This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. §1-23-600(A) (Supp. 2012) and S.C. Code Ann. §44-1-60(F)(2) (Supp. 2010). The hearing before this Court is a contested case hearing in which the Administrative Law Judge serves as the

finder of fact and makes a *de novo* determination regarding the matter in controversy. Olson v. South Carolina Dept. of Health and Environmental Control, 663 S.E.2d 497, 379 S.C. 57 (Ct. App. 2008). While the ALC acts as the fact finder and is not restricted to the factual findings of the administrative agency, it is nevertheless required to give consideration to the provisions of S.C. Code Ann. § 1-23-330 (2005) regarding the Department's specialized knowledge in environmental matters. See Risher v. South Carolina Department of Health and Environmental Control, 398 S.C. 198, 712 S.E.2d 428 (2011), and § 44-1-60(F)(2) ("The Court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.")

2. The standard of proof in this proceeding is a preponderance of the evidence. See Anonymous (M-156-90) v. State Bd. of Med. Examiners, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (stating the standard of proof in administrative hearings is generally a preponderance of the evidence); also see National Health Corp. v. Dep't of Health and Env'tl. Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989) (referencing the use of the preponderance of the evidence standard in contested case proceedings involving the Department).

3. Furthermore, the burden of proof is upon the party asserting the affirmative of an issue. See 2 Am.Jr.2d Administrative Law § 360 (1994); Alex Sanders, et al., South Carolina Trial Handbook § 9:3 Party With Burden, Civil Cases (1999) (In civil cases, generally, the burden of proof rests upon the party who asserts the affirmative on an issue). Therefore, the Petitioner bears the burden in this case of proving by a preponderance of the evidence that the Amendment is contrary to the Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. (Act), Regulations and the CMP and that the Amendment should have been denied.

4. "It is generally recognized that the trier of fact, who has the opportunity to observe the witnesses and listen to their testimony in person, is in the best position to determine issues of witness credibility." Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 358 (Ct. App. 1999); see e.g. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992).

5. "As a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged." Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) (citing, City of Rock Hill v. South Carolina Dept. of Health & Env. Control, 302 S.C. 161, 394 S.E.2d 327 (1990)); and City of Columbia v. South Carolina Dept. of Health & Env. Control, 292 S.C. 199, 355 S.E.2d 536 (1987).

6. When the permitted dock is to be located in a critical area as defined in S.C. Code Ann. §48-39-10 (Supp. 2011), S.C. Code Ann. §48-39-130(C) (Supp. 2008) requires a person or entity to obtain a permit for any alteration of the "critical area" of the coastal zone.

7. OCRM must consider "the extent to which the proposed use could affect the value and enjoyment of adjacent owners." S.C. Code Ann. §48-39-150(a)(10), 23A S.C. Code Ann. Regs. 30-11(B)(10).

8. Reg. 30-12.A(1)(p) provides:

No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

9. The language of this regulation specifically provides the Department has the discretion and authority to permit construction of docks closer than 20 feet to a shared extended property line where there is no material harm to the policies of the Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. Here, however, the Amendment was approved by the Board to be 20.5 feet from the shared extended property lines.

10. S.C. Code Ann. §48-39-150(B) provides, "[t]he permit may be conditioned upon the applicant's amending the proposal to take whatever measures the department feels are necessary to protect the public interest."

11. The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Brown v. South Carolina Dept. of Health & Env. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002); citing Dunton v. South Carolina Bd. of Examnrs. in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). Courts will reject an agency's interpretation of its own regulations

where the plain language of the statute is contrary to the interpretation of the agency. Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).

12. In the case before the Court, the Petitioner argues that the core issue in the case is the impact of the proximity of Mr. Abdo's dock on Petitioner's ability to navigate the Intercoastal Waterway and the impact on commercial and private boating on the Intercoastal Waterway. However, the Department takes the position that this is a dispute between property owners as it relates to navigation of Petitioner's large boat in and out of his dock, and does not involve the protection of the public interest.

13. In White v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), the appellant cited the case of Dorman v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247 (2011) in support of its argument that policing disputes between neighboring dock owners is not proper under the OCRM statute and regulations. White, 392 S.C. at 256, 708 S.E.2d at 816. Dorman involved objections to a proposed private recreational dock from neighbors on both sides of the applicant's property. The neighboring property owners objected on the grounds that the proposed dock would be too close to their existing docks and their views would be obstructed. Id. The Court of Appeals adopted the OCRM's interpretation of Regulation 30-12, which was that any issues based solely on private concerns between docks are a private property issue. By contrast, the respondent in White objected to the OCRM's amendment of a dock permit due to a disruption of a commercial business and its customers. In that instance, the Court of Appeals concluded that the dispute was not a private dispute, but also affected members of the general public and the local shrimping industry. Specifically, the Court found the ALC's determination that the dock constituted a significant navigational hazard did not "conflict with OCRM's policy of avoiding the regulation of private navigational disputes. Id., 708 S.E.2d at 816-817.

14. While Petitioner has attempted to characterize this dispute as impacting the public interest, I disagree. These docks are located on a well-travelled water body with numerous docks and a significant amount of traffic, but as the evidence reflects, if Petitioner cannot moor his 48-foot boat on the landward side of his dock, there will be no impact on the public interest. Moreover, there was no evidence that Mr. Abdo's dock itself will negatively impact the public interest. And even if there were a navigational impact, this impact is not unreasonable given the nature of the area and the water body in question. Where these docks are located, the Wappoo

Creek is approximately 565 feet in width; more than 11 times the length of Petitioner's boat. Mr. Abdo's dock will be located no farther channelward than the other adjoining docks on the Wappoo Creek, and in fact, Petitioner's own dock is closer to the channel than Mr. Abdo's will be. Any maneuvering of his vessel that Petitioner asserts he would have to undertake in order to navigate between the two docks, if he can at all, would take place in close proximity to his and Mr. Abdo's docks and would have little or no impact on waterway traffic.

15. Importantly, the Petitioner's expert testified that 100 feet between Petitioner's and Mr. Abdo's docks is necessary to allow for safe navigation by Petitioner to get his large boat between the docks and to moor landside. The evidence clearly establishes that such a clearance is impossible: there is no change to the Amendment nor sufficient movement of Mr. Abdo's dock toward the Intervenor that would provide Petitioner the 100 feet of space required by his expert while still enabling Respondent Abdo to have a dock that complies with the regulations.

16. In conclusion, the Amendment and Mr. Abdo's dock location is consistent with other docks in the area, and construction of the dock as authorized by the Board will not have an unreasonable impact on navigation in the area. South Carolina law is clear that a reasonable and standard space between a pierhead and extended property line is 20 feet. The Amendment places Mr. Abdo's dock 20.5 off the shared extended property line and therefore complies with the law.

17. I further conclude the Amendment falls within and complies with the applicable regulations and statute.

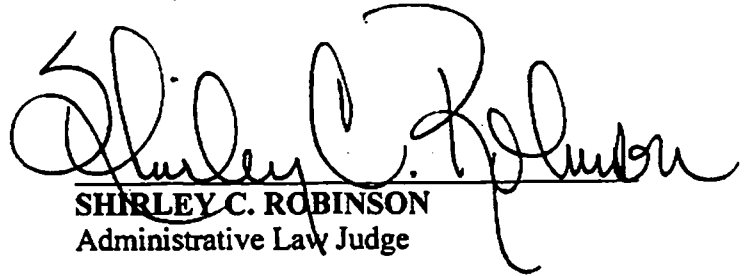
18. This controversy is personal to Petitioner. The evidence establishes Petitioner's dispute would not exist but for the length of Petitioner's boat and his desire to moor it landward rather than channelward.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above and the applicable statutory and regulatory requirements discussed above, I find and conclude that DHEC has fully complied with the requirements of 23A S.C. Code Ann. Regs. 30-2, 30-4, 30-11, and 30-12 and S.C. Code Ann. §48-39-150.

IT IS THEREFORE ORDERED that DHEC's issuance of the October 6, 2011 amendment to critical area permit OCRM-07-128-F, to Respondent David Abdo be, and is hereby, **AFFIRMED**, as authorized.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

August 1st, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 1 day of August 2013
By: Terbith Henderson
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

69633

Appeal from South Carolina Administrative Law Court

Shirley C. Robinson, Administrative Law Court Judge

Case No. 12-ALJ-07-0050-CC

James R Maul,

Appellant,

v.

South Carolina Department of Health and,
Environmental Control and David Abdo,

Respondents/Respondents,

v.

cc

Russell Schaible and Laura Schaible

Intervenors/Respondents

NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP
Michael A. Molony
P.O. Box 993
Charleston, South Carolina 29402
(843) 724-6631
Attorney for the Appellant

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SEP 04 2013

SC Court of Appeals

Exhibit 2

The Appellant, James R. Maull, hereby appeals all appealable orders, judgments, decisions, and/or rulings adverse to him in this matter, to include specifically, all pre-trial and trial rulings adverse to him; and the Final Order and Decision rendered against him on August 1, 2013 by the Honorable Shirley G. Robinson, a copy which is attached hereto. The Appellant received Judge Robinson's Final Order and Decision on August 5, 2013.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Michael A. Molony

P.O. Box 993

Charleston, South Carolina 29402

(843) 724-6631

Attorney for the Appellant

Charleston, South Carolina

Dated: 8/19/13

Other Counsel of Record:

Leslie S. Riley, Esquire
McNair Law Firm, P.A.
100 Calhoun Street
Suite 400
Charleston, SC 29401
(843) 723-7831

Attorney for the Respondent Russell Schaible and Laura Schaible

Nathan M. Haber, Esquire
South Carolina Department of Health and Environmental Control- OCRM
1362 McMillan Ave. - Suite 400
Charleston, SC 29405
(843) 953-0200

Attorney for the Respondent South Carolina Department of Health and Environmental Control

David Abdo
29 Broughton Rd.
Charleston, SC 29407
(843) 813-3466
Pro Se Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from South Carolina Administrative Law Court

Shirley C. Robinson, Administrative Law Court Judge

Case No. 12-ALJ-07-0050-CC

James R Maull,

Appellant,

v.

South Carolina Department of Health and,
Environmental Control and David Abdo,

Respondents/Respondents,

v.

Russell Schaible and Laura Schaible

Intervenors/Repspondents

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Michael A. Molony
P.O. Box 993
Charleston, South Carolina 29402
(843) 724-6631
Attorney for the Appellant

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SEP 04 2013

SC Court of Appeals

Exhibit 2

I, Michael A. Molony, of Young Clement Rivers, LLP, counsel for the Appellant above named, do hereby certify that I have served the Appellant's **Notice of Appeal** on the above-named Respondents by depositing a copy of the same in the United States Mail, postage prepaid, on August 30, 2013, addressed as follows to the Respondent's counsels of record:

Leslie S. Riley, Esquire
McNair Law Firm, P.A.
100 Calhoun Street
Suite 400
Charleston, SC 29401

Nathan M. Haber, Esquire
South Carolina Department of Health and Environmental Control- OCRM
1362 McMillan Ave. - Suite 400
Charleston, SC 29405

David Abdo
Pro Se
29 Broughton Rd.
Charleston, SC 29407

I further certify that I have provided Appellant's **Notice of Appeal** to the Clerk of the South Carolina Administrative Law Court by depositing a copy of the same in the United States Mail, postage prepaid, on August 30, 2013, addressed as follows:

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

YOUNG CLEMENT RIVERS, LLP

By: 
Michael A. Molony

Charleston, South Carolina

Dated: 8/29/13

DHEC- Office of Ocean and Coastal Resource Management

CONSTRUCTION AUTHORIZATION

Permittee/
Property Owner: **David Abdo**

Expiration
Date: **July 30, 2017**

Address of Permittee/
Property Owner: 29 Broughton Road
Charleston, SC 29407

Permit
Number: **OCRM-07-128-F**

Contractor's Name: Blue Tide Marine
(if none provided, then property
owner name) PO Box 702
Johns Island, SC 29455

Date
Issued: **May 02, 2014**

Location: **29 Broughton Rd.
Charleston, SC 29407**

Contractor's License #: **G-112859**

Authorized Work: **Constructing a Private Dock**

Waterway: **Wappoo Creek**

City: **Charleston**

County: **Charleston**

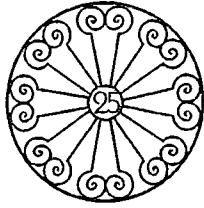
Ocean and Coastal
Resource Management

Project Manager

May 02, 2014

Date

> This Notice Must Be Conspicuously Displayed at the Work Site <



YCR LAW
Young Clement Rivers, LLP

Michael A. Molony

Direct Dial: (843) 724-6631
Direct Fax: (843) 579-1356
E-mail: mmolony@ycrlaw.com

May 5, 2014

Via Electronic Correspondence and Certified Mail

Ilonka Sonja Taylor
29 Broughton Road
Charleston, SC 29407

Re: Dock Permit - P/N #OCRM-07-128-F for David Abdo
YCR: 2880-20110924

Dear Sonja:

I received notice late Friday afternoon that a permit has been issued for construction of a dock at 29 Broughton Road, the location of which is currently under appeal.

Please accept this letter as notice that should this appeal be successful, we will take any and all steps to ensure that the original dock configuration is complied with. This could include removal of any structures or pilings that have been put in place on the dock as well as any damages that may ensue.

Additionally, we have presented expert testimony regarding hazards to the public with the present dock configuration that is under appeal. Please note that this letter is notice of our extreme concern about the location of the dock and the impact that it may cause on the public, should you decide to proceed with construction.

Finally, at this time, we will not be moving for a supersedeas in hopes that you will not proceed with the construction of the dock until the appeal is heard. Should you decide otherwise, we will consider that and all other options at that point.

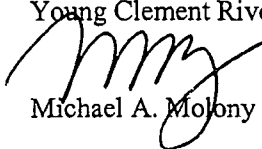
As always, we are happy to discuss a resolution of this matter which I believe is fairly simple; however, we will do all we can to protect our client's interests in this case.

Please govern yourself accordingly.

With kind regards, I am

Sincerely,

Young Clement Rivers, LLP


Michael A. Molony

MAM/cjf

cc: Rick Maul
Leslie Riley
Nathan Haber
Army Corp of Engineers



Advancing Justice, Professionalism and Understanding of the Law

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- Practice Management (PMAP)
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Member Directory

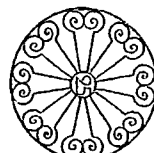
Member Profile

Name: Ms. Iionka Sonja Taylor
Company: Iionka Sonja Taylor, Attorney at Law, LLC
Address: 29 Broughton Road
Address (cont):
City, State Zip: Charleston, SC 29407
Email Address: istaylor99@gmail.com
Phone:
Fax:
County: Charleston
SC Bar Admission: 11/18/1996
Law School: University of South Carolina School of Law
Graduating Year: 1996
Website:
Membership Class: Regular Member
Membership Status: Good Standing

Discipline/Administrative Actions if Any

This person has no disciplinary actions.

- FOR MEMBERS ▶
- FOR THE PUBLIC ▶



YCR LAW
Young Clement Rivers, LLP

25 CALHOUN STREET, SUITE 400
P.O. Box 993
CHARLESTON, SC 29402

MAM/20110924

Ilonka Sonja Taylor
29 Broughton Road
Charleston, SC

294 DE 1009 0005/25/14

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Exhibit 6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ilonka Sonja Taylor
29 Broughton Rd
Charleston SC
29407

2. Article Number:

(Transfer from service label)

7012 1640 0000 8854 4826

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-N-1540

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 Addressee
- B. Received by (Printed Name) Agent
 Addressee
- C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2012-ALJ-07-0050-CC

James R. Maull,

Appellant/Petitioner,

v.

South Carolina Department of Health and Environmental Control and David Abdo,

Respondents,

and Russell and Laura Schaible,

Respondents.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Michael A. Molony
25 Calhoun Street, Suite 400
Charleston, SC 29401
P.O. Box 993 (29402)
(843) 724-6631
*Attorney for the Appellant/Petitioner,
James R. Maull*

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SC Court of Appeals

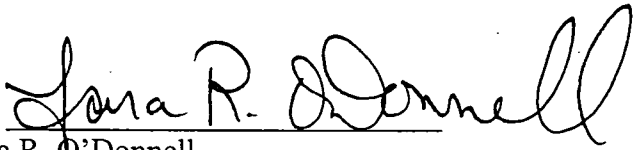
I, Tara R. O'Donnell, of Young Clement Rivers, LLP, do hereby certify that I have served the Appellant/Petitioner's **VERIFIED PETITION FOR WRIT OF SUPERSEDEAS** on all other parties hereto by depositing a copy of the same in the United States Mail, postage prepaid, on June 3, 2014, addressed as follows to the parties or their attorneys of record:

Leslie S. Riley, Esquire
McNair Law Firm, P.A.
100 Calhoun Street
Suite 400
Charleston, SC 29401
Attorney for Russell and Laura Schaible

Nathan M. Haber, Esquire
South Carolina Department of Health and Environmental Control-OCRM
1362 McMillan Ave. - Suite 400
Charleston, SC 29405
Attorney for SCDHEC

David Abdo
Pro Se
29 Broughton Rd.
Charleston, SC 29407

YOUNG CLEMENT RIVERS, LLP

By: 
Tara R. O'Donnell

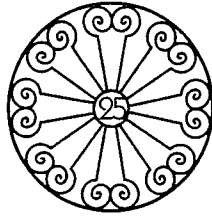
Charleston, South Carolina

Dated: 6/3/2014

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JUN 05 2014

SC Court of Appeals



YCR LAW
Young Clement Rivers, LLP

Michael A. Molony

Direct Dial: (843) 724-6631
Direct Fax: (843) 579-1356
E-mail: mmolony@ycrlaw.com

June 3, 2014

Jana E. Shealy
Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

Re: James R Maull v. SCDHEC and David Abdo
Dock Permit - P/N #OCRM-07-128-F for David Abdo
ALC Case No.: 2012-ALJ-07-0050-CC
SC Appellate Case No. 2013-001878
YCR File: 2880-20110924

Dear Ms. Shealy:

Enclosed please find for filing the original and two copies of the Petitioner's Verified Petition for Writ of Supersedeas, as well as our firms check in the amount of 25.00 I would appreciate your returning the clocked copies in the enclosed self addressed envelope.

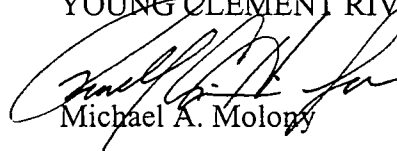
By copy of this letter, I am serving all parties of record as well the South Carolina Court of Appeals.

Thank you for your attention in this matter.

With kind regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Michael A. Molony

MAM/tro

Enclosure(s)

cc: James R. Maull, Sr.
David Abdo
Leslie S. Riley, Esquire
Nathan Haber
The Honorable Jenny Abbott Kitchings (Clerk of Court SC Court of Appeals)

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JUN 05 2014

SC Court of Appeals

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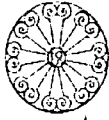
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YCRLAW

25 Calhoun Street, Suite 400
P.O. Box 993
Charleston, SC 29402-0993

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The Honorable Jenny Abbott Kitchings
Clerk of Court-SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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