

**FILED**

MAY 28 2015

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

James R. Maull, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 South Carolina Department of Health and )  
 Environmental Control and David Abdo, )  
 )  
 Respondents, )  
 and )  
 )  
 Russel and Laura Shaible, )  
 )  
 Intervenor. )  
 )  
 \_\_\_\_\_ )

Docket No. 12-ALJ-07-0050-A-CC

**ORDER DENYING  
MOTION TO RECONSIDER  
RECEIVED**

JUN 30 2015

**SC Court of Appeals**

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) on remand from the South Carolina Court of Appeals. This matter was originally before this 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 Environment Control, Office of Ocean and Coastal Resource Management (“the Department” or “OCRM”) to issue an Amendment to critical area permit number OCRM-07-128-F (“the Amendment”) to David Abdo (“Respondent”) for the construction of a private recreational dock. Russel and Laura Shaible (“the Intervenor”) intervened in the action as neighboring property owners.

A contested case hearing was held before this Court on January 15, 2013. Three issues were before the Court: (1) whether the Department properly considered “the extent to which the proposed use could affect the value and enjoyment of adjacent owners;”<sup>1</sup> (2) whether the Amendment complied with Regulation 30-12.A(1)(p)’s general requirement that docks be constructed no less than twenty feet from adjoining property lines; and (3) whether the Department considered the Amendment negatively affected the public interest pursuant to section 48-39-150

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<sup>1</sup> S.C. Code Ann. § 48-39-150(a)(10); see also S.C Code Ann. Regs 30-11(B)(10).

of the South Carolina Code. On August 1, 2013, this Court issued a final decision and order affirming the Department's decision to issue the Amendment.

Subsequently, Petitioner appealed to the South Carolina Court of Appeals. On January 28, 2015, the Court of Appeals issued an opinion affirming in part and remanding in part. Specifically, the Court of Appeals affirmed this Court's findings that the Amendment was in compliance with section 48-39-150 and that the Amendment concerned a private dispute that did not implicate the public interest or affect public navigation. However, the Court of Appeals found this Court did not make adequate findings of fact in its order to allow it to review this Court's determination that the Department considered the extent to which the proposed use could affect the value and enjoyment of adjacent owners. Therefore, the Court of Appeals has instructed this Court to "make a finding as to whether [the Department] considered the effect of the Amendment on the value and enjoyment of adjacent property owners as required by subsection 48-39-150(A)(10), and to determine whether that finding was justified."

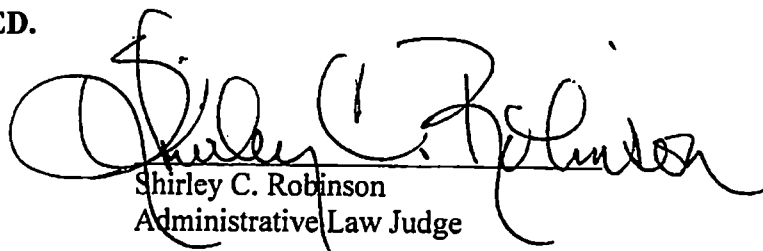
In an order issued May 6, 2015, this Court addressed the issues on remand to find the Department considered the effect of the Amendment on the value and enjoyment of adjacent property owners as required by subsection 48-39-150(A)(10), and its decision to grant the Amendment as related to its review of this subsection was justified. Petitioner now moves this Court to reconsider its decision on remand.

Petitioner makes three arguments in his motion to reconsider. First, Petitioner asks this Court to review its decision "in light of the entirety of the argument/analysis presented in [Petitioner's] briefing on remand . . . all of which [Petitioner] incorporates herein by reference." Next, Petitioner argues there is no evidence the Department considered the effect of the Amendment on the value and enjoyment of adjacent owners pursuant to § 48-39-150(a)(10) and Regulation 30-11. Specifically, Petitioner argues the testimony of Jeff Thompson, the Department's senior wetland project manager, was insufficient to support this Court's decision on remand because he, as a single staff member, could not testify on behalf of the Department as a whole. Finally, Petitioner argues this Court erred in finding the Department was justified in finding the Amendment did not negatively affect the value and enjoyment of adjacent owners.

Having considered the facts of this case and Petitioner's Motion to Reconsider, the Court finds its May 6, 2015 Order must stand.

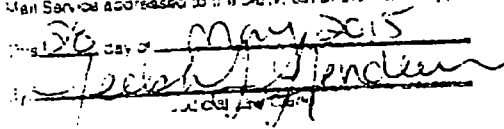
**ORDER**

**IT IS HEREBY ORDERED** that Petitioner's Motion to Reconsider is **DENIED**.  
**AND IT IS SO ORDERED.**

  
Shirley C. Robinson  
Administrative Law Judge

*Plh*  
May 20 2015  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**  
I hereby certify that the undersigned has to a date served in accordance with the provisions of the act on all parties to this cause by depositing a copy hereof, in the United States mail postage paid, or in the Intergovernmental Mail Service addressed to the party, or their attorney(s).

This 20 day of May, 2015  
  
Administrative Law Judge