

The Supreme Court of South Carolina

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of
Health and Environmental
Control and Mayo Read, Jr.,

Respondents.

The Honorable Roger M. Young
Cherokee County
Trial Court Case No. 2007-CP-10-01520

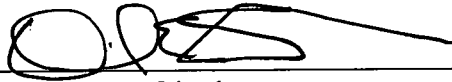
ORDER

For good cause having been shown, the time for serving and filing the Reply Brief of Petitioner in the above entitled matter is hereby extended until April 30, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 12, 2012

cc: John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Carlisle Roberts, Jr., Esquire
Davis Arjun Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

Allen, Linda

From: Jason Scott Luck <jluck@seibelsfirm.com>
Sent: Thursday, April 12, 2012 11:27 AM
To: Allen, Linda
Cc: Groves, Stephen P.; churdabd@dhec.sc.gov
Subject: Too Tacky v. Read and SCDHEC, 2009-149126 (1/2)

Linda,

My assistant tells me you need written confirmation of the Respondents' consent. Please see below for Respondent Mayo Read, Jr.

Jason Scott Luck
Seibels Law Firm, P.A.
127 King Street, Suite 100
Charleston, SC 29401
Office: 843.722.6777
Fax: 843.722.6781
<http://www.seibelsfirm.com>

----- Forwarded message -----

From: Groves, Stephen P. <SGroves@nexsenpruet.com>
Date: Mon, Apr 9, 2012 at 10:48 AM
Subject: RE: Too Tacky v. Read and SCDHEC
To: Jason Scott Luck <jluck@seibelsfirm.com>, "Churdar, Bradley" <churdabd@dhec.sc.gov>

No problem from me. Please signify my consent.

Stephen P. Groves, Sr.

APPELLATE, BUSINESS, & INSURANCE COVERAGE LITIGATION

NEXSEN PRUET, LLC

205 King Street, Suite 400 (Post Office Box 486)

Charleston, South Carolina 29401 (Charleston, South Carolina 29402-0486)

Telephone: +1.843.720.1725 (Direct)

+1.843.693.8973 (Cell)

+1.843.577.9440 (Main)

+1.800.926.6757 (Toll Free)

Telecopier: +1.843.414.8206 (Direct)

+1.843.720.1777 (Main)

sgroves@nexsenpruet.com

www.nexsenpruet.com

MEMBER - Admitted in South Carolina

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From: Jason Scott Luck [<mailto:jluck@seibelsfirm.com>]

Sent: Monday, April 09, 2012 10:48 AM

To: Groves, Stephen P.; 'Churdar, Bradley'

Subject: RE: Too Tacky v. Read and SCDHEC

Gentlemen:

Because the 10 day period for responding to the Respondents' Brief fell during Holy Week, we would like to request some extra time to respond. Would you consent to us serving and filing our Reply Brief by April 30?

Jason Scott Luck
Seibels Law Firm, P.A.
127 King Street, Suite 100
Charleston, SC 29401
Office: 843.722.6777
Fax: 843.722.6781
<http://www.seibelsfirm.com/>

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Allen, Linda

From: Groves, Stephen P. <SGroves@nexsenpruet.com>
Sent: Thursday, April 12, 2012 11:31 AM
To: 'Jason Scott Luck'; Allen, Linda
Cc: churdabd@dhec.sc.gov
Subject: RE: Too Tacky v. Read and SCDHEC, 2009-149126 (2/2)

Jason:

Please consider this as my written consent. Interestingly, I have never had to provide written consent from the opposition. Simply my representation as an attorney that consent was provided. Must be a new procedure/requirement.

Best regards,

Stephen P. Groves, Sr.

APPELLATE, BUSINESS, & INSURANCE COVERAGE LITIGATION

NEXSEN PRUET, LLC

205 King Street, Suite 400 (Post Office Box 486)
Charleston, South Carolina 29401 (Charleston, South Carolina 29402-0486)

Telephone: +1.843.720.1725 (Direct)
+1.843.693.8973 (Cell)
+1.843.577.9440 (Main)
+1.800.926.6757 (Toll Free)

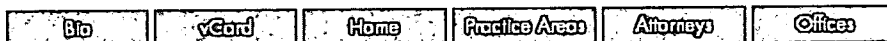
Telecopier: +1.843.414.8206 (Direct)
+1.843.720.1777 (Main)

sgroves@nexsenpruet.com

www.nexsenpruet.com

MEMBER - Admitted in South Carolina

NEXSEN|PRUET



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From: Jason Scott Luck [mailto:jluck@seibelsfirm.com]
Sent: Thursday, April 12, 2012 11:27 AM
To: lallen@sccourts.org
Cc: Groves, Stephen P.; churdabd@dhec.sc.gov
Subject: Too Tacky v. Read and SCDHEC, 2009-149126 (2/2)

Linda,

My assistant tells me you need written confirmation of the Respondents' consent. Please see below for Respondent DHEC.

Jason Scott Luck
Seibels Law Firm, P.A.
127 King Street, Suite 100
Charleston, SC 29401
Office: 843.722.6777
Fax: 843.722.6781
<http://www.seibelsfirm.com>

----- Forwarded message -----

From: **nathan.haber** <habernm@dhec.sc.gov>
Date: Thu, Apr 12, 2012 at 10:51 AM
Subject: Too Tacky v. Read and SCDHEC
To: jluck@seibelsfirm.com

Jason,

After conferring with Bradley Churdar, the Department consents to your Motion for Extension to file a Reply Brief in this matter. Bradley also informed me that he left a voicemail with you on April 9th communicating such information. Please allow this email to signify the Department's consent to your Motion for Extension. If you need any further confirmation please feel free to contact me.

All my best,

Nathan Haber
Staff Attorney
SCDHEC - Ocean & Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(office) [843.953.0229](tel:843.953.0229)

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

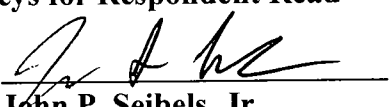
Too Tacky Partnership,.....Petitioner,
v.
South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents.

AMENDED CERTIFICATE OF SERVICE

I certify that I have served the Motion for Extension to File Reply Brief on
the Clerk of the Supreme Court and counsel for the Respondents by serving copies
of the same via U.S. Mail on 9 April 2012 to the following:

Jackie Dickman, Esquire
Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Ave, Suite 400
Charleston, SC 29405
Attorneys for Respondent DHEC

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401
Attorneys for Respondent Read


John P. Seibels, Jr.
Jason Scott Luck
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
Attorneys for Petitioner

RECEIVED

APR 10 2012
13

S.C. SUPREME COURT

THE
SEIBELS
—LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

April 12, 2012

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Too Tacky Partnership, Petitioner v. South Carolina Department of Health and
Environmental Control and Mayo Read, Jr., Respondents
Supreme Court Case Tracking No.: 2009-149126
Case No.: 2007-CP-10-1520
Our File No.: 6058-19

Dear Mr. Shearouse:

Enclosed please find for filing an original and seven copies of the Amended Certificate of Service on the Respondents to the Motion for Extension to File Reply Brief.

The enclosed Amended Certificate of Service, was served on all parties on April 12, 2012.

Please do not hesitate to call if you have any questions.

With kind personal regards, I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.

Sharon D. Harris

Sharon D. Harris
Legal Assistant

RECEIVED

APR 18 2012

S.C. SUPREME COURT

pm 4-12-12

/sdh

Enclosures

cc: Bradley D. Chudar, Esquire & Jackie Dickman, Esquire (via US Mail) (w/encl.)
Richard L. Tapp, Jr., Esquire & Stephen P. Groves, Sr., Esquire (via US Mail) (w/encl.)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Petitioner,

v.

South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr., ...Respondents.

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APR 11 2012

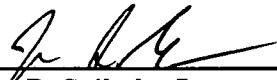
MOTION FOR EXTENSION TO FILE REPLY BRIEF

S.C. SUPREME COURT

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned attorney, counsel for the Petitioner, files this motion for an extension of the deadline for serving and filing its Reply Brief. The current deadline is April 10, 2012; the requested deadline is April 30, 2012.

The grounds for this motion are: (1) the ten-day period for reply to the Respondents' Joint Brief fell during Holy Week, (2) the Respondents' Joint Brief raises new issues that must be the subject of further research, (3) no party would be prejudiced by the grant of this extension, and (4) all parties consent to this relief.

Petitioner respectfully requests that this Court hold any briefing time in abeyance pending the consideration of this motion.



John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Appellant Too Tacky
Partnership

9 April 2012

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge**

**On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)**

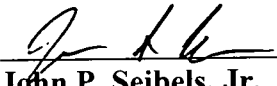
Too Tacky Partnership,.....Petitioner,
v.
**South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents.**

CERTIFICATE OF SERVICE

**I certify that I have served the Motion for Extension to File Reply Brief on
the Clerk of the Supreme Court and counsel for the Respondents by serving copies
of the same via U.S. Mail on 9 March 2012 to the following:**

**Jackie Dickman, Esquire
Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Ave, Suite 400
Charleston, SC 29405
Attorneys for Respondent DHEC**

**Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401
Attorneys for Respondent Read**


**John P. Seibels, Jr.
Jason Scott Luck
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
Attorneys for Petitioner**

THE
SEIBELS
LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

April 9, 2012

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APR 11 2012

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT
pm 4-9-12

RE: Too Tacky Partnership, Petitioner v. South Carolina Department of Health and
Environmental Control and Mayo Read, Jr., Respondents
Supreme Court Case Tracking No.: 2009-149126
Case No.: 2007-CP-10-1520
Our File No.: 6058-19

Dear Mr. Shearouse:

Enclosed please find for filing an original and seven copies of the Motion for Extension,
along with a Certificate of Service on the Respondents.

Also enclosed is our firm's check for \$25.00 representing the required filing fee. We would
appreciate your filing the original and copies and returning one filed-stamped copy to us in the
enclosed envelope.

As per the enclosed Certificate of Service, the above documents were served on all parties on
April 9, 2012.

Please do not hesitate to call if you have any questions.

With kind personal regards, I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.



Sharon D. Harris
Legal Assistant

Check # 8675
\$25.00

/sdh

Enclosures

cc: Bradley D. Chudar, Esquire & Jackie Dickman, Esquire (via US Mail) (w/encl.)
Richard L. Tapp, Jr., Esquire & Stephen P. Groves, Sr., Esquire (via US Mail) (w/encl.)

30 March 2012

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

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APR 02 2012

S.C. SUPREME COURT

Re: **Too Tacky Partnership v. South Carolina Department of Health and Environmental Control and Mayo Read, Jr.**

Civil Action No.: 2007-CP-10-1520

Appeal from the Charleston County Court
of Common Pleas and the South Carolina
Court of Appeals (Opinion No. 4616)

Supreme Court Tracking No.: 2009-149126

NP File No.: 035563-00001

Dear Mr. Shearouse:

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Enclosed please find the following documents related to the above-referenced appellate matter:

- a. Original and 15 copies of the **Joint Respondents' Brief** (the original has been left unbound and is contained in a separate white marked envelope); and
- b. Original and one copy of a **Proof of Service** for the **Joint Respondents' Brief**.

These documents are being submitted on behalf of the Respondent, Mayo Read, Jr., as well as, the Respondent, South Carolina Department of Health and Environmental Control. I would appreciate you kindly filing the **Joint Respondents' Brief** and the **Proof of Service** with the Supreme Court and returning one stamped copy of each to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or if I otherwise may be of any assistance to you, your office, or to the Supreme Court regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725, the direct telecopier number is 843.414.8206, and the e-mail address is sgroves@nexsenpruet.com.

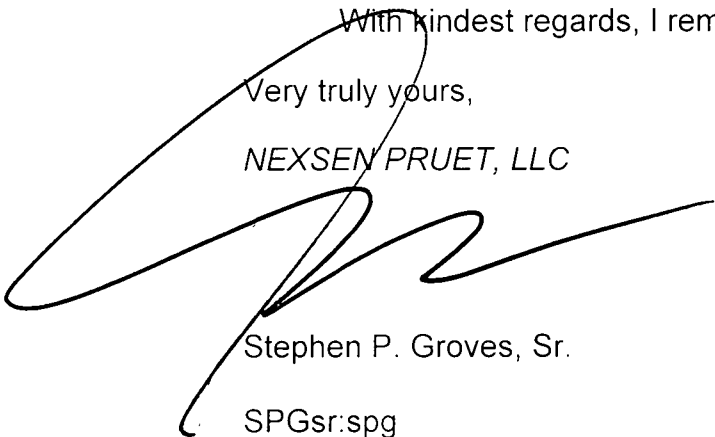
NEXSEN | PRUET

Hon. Daniel Shearouse
Clerk of Court
30 March 2012
Page 2

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Stephen P. Groves, Sr.

SPGsr:spg
Enclosures
CCE

Bradley D. Churdar, Esquire
John P. Siebels, Jr., Esquire/Jason Scott Luck, Esquire

NPCHAR1:854224.1-LT-(SPG) 035563-00001

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S.C. SUPREME COURT

The Supreme Court of South Carolina

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of
Health and Environmental
Control and Mayo Read, Jr.,

Respondents.

The Honorable Roger M. Young
Cherokee County
Trial Court Case No. 2007-CP-10-01520

ORDER

For good cause having been shown, the time for serving and filing the Joint Brief of Respondent's in the above entitled matter is hereby extended until April 2, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Shirley A. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

March 2, 2012

cc: John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Carlisle Roberts, Jr, Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

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FEB 28 2012

S.C. Supreme Court

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

JOINT MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE RESPONDENTS' JOINT BRIEF

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

Carlisle Roberts, Jr., Esquire
Chief Counsel, DHEC
Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0213
Telecopier: 843.953.0201

*Attorneys for Respondent,
SCDHEC*

TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

COMES NOW the Respondent, Mayo Read, Jr., ("Mr. Read") together with the Respondent, South Carolina Department of Health and Environmental Control ("SCDHEC"), pursuant to Rule 240 of the South Carolina Appellate Court Rules, and jointly respectfully requests this Supreme Court to grant them a thirty-day (30) extension of time in which to file their Joint Respondents' Brief in this appellate matter.

The basis for this motion is the record involves several tiers of determinations and requires additional time for consideration. Moreover, both appellate counsel for Mr. Read and SCDHEC are involved in other appellate and trial matters at this time.

Based upon the current briefing schedule, the Joint Respondents' Brief is currently due on or before 1 March 2012. Consequently, anticipating a favorable reception and subsequent grant of this motion, the Joint Respondents' Brief would then be due on Monday, 2 April 2012 (the 30th day falls on Saturday, 31 March 2012). Counsel for the Petitioner, Too Tacky Partnership, has consented to this request and will not file any objection.

Finally, both Mr. Read and SCDHEC respectfully request that this Supreme Court hold the briefing time in abeyance until such time as this motion may be considered and ruled upon.

Respectfully submitted:

NEXSEN PRUET, LLC

By: _____

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.*

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL

By: _____

Carlisle Roberts, Jr., Esquire
Chief Counsel
Bradley D. Churdar, Esquire
1362 McMillan Avenue
Suite 400
North Charleston, South Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*Attorneys for the Respondent,
SCDHEC*

Charleston, South Carolina

27 February 2012

NPCHAR1:836645.1-TBF-(SPG) 035563-00001

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FEB 28 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

PROOF OF SERVICE for
JOINT MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE RESPONDENTS' JOINT BRIEF

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

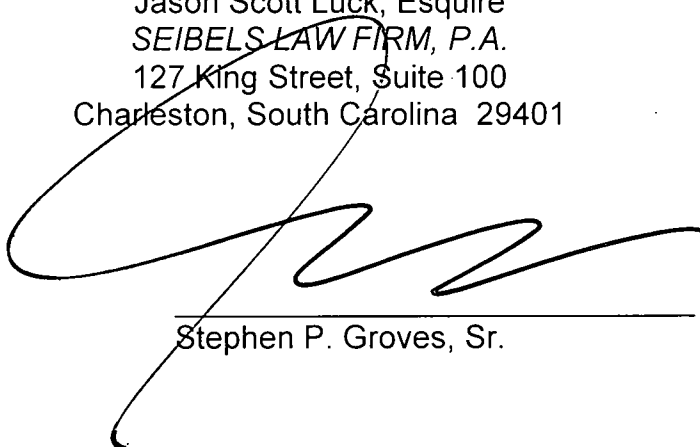
Carlisle Roberts, Jr., Esquire
Chief Counsel, DHEC
Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0213
Telecopier: 843.953.0201

Attorneys for Respondent, SCDHEC

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 27 February 2012, I served a copy of the **Respondents' Joint Motion for Extension of Time In Which to File Joint Respondents' Brief** submitted by the Respondent, Mayo Read, Jr., and the Respondent, South Carolina Department of Health and Environmental Control, on all counsel appearing in this appeal, via the United States Mail, postage pre-paid, and addressed as follows:

Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

John P. Siebels, Jr., Esquire
Jason Scott Luck, Esquire
~~SEIBELS LAW FIRM, P.A.~~
127 King Street, Suite 100
Charleston, South Carolina 29401



Stephen P. Groves, Sr.

Charleston, South Carolina

27 February 2012

NPCHAR1:836645.1-TBF-(SPG) 035563-00001

27 February 2012

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

FEB 28 2012

S.C. SUPREME COURT

pm 2-27-12

**Too Tacky Partnership v. South Carolina Department of
Health and Environmental Control and Mayo Read, Jr.**

Civil Action No.: 2007-CP-10-1520

Appeal from the Charleston County Court
of Common Pleas and the South Carolina
Court of Appeals (Opinion No. 4616)

Supreme Court Tracking No.: 2009-149126

NP File No.: 035563-00001

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the **Respondents' Joint Motion for Extension of Time in which to File Joint Respondents' Brief** filed on behalf of the Respondent, Mayo Read, Jr., as well as, the Respondent, South Carolina Department of Health and Environmental Control, in the above-referenced matter. I also enclose the original and one copy of the Respondents' joint **Proof of Service** indicating service of the **Respondents' Joint Motion for Extension of Time in which to File Joint Respondents' Brief** upon counsel for the Petitioner, Too Tacky Partnership. Finally, I further enclose our firm check in the amount of \$25.00 to cover the applicable motion filing fee. Counsel for the Petitioner has graciously consented to this extension request and will not be filing any response in objection.

I would appreciate you kindly filing these documents with the Supreme Court and returning one stamped copy to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or if I otherwise may be of any assistance to you, your office, or to the Supreme Court regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725, the direct telecopier number is 843.414.8206, and the e-mail address is sgroves@nexsenpruet.com.

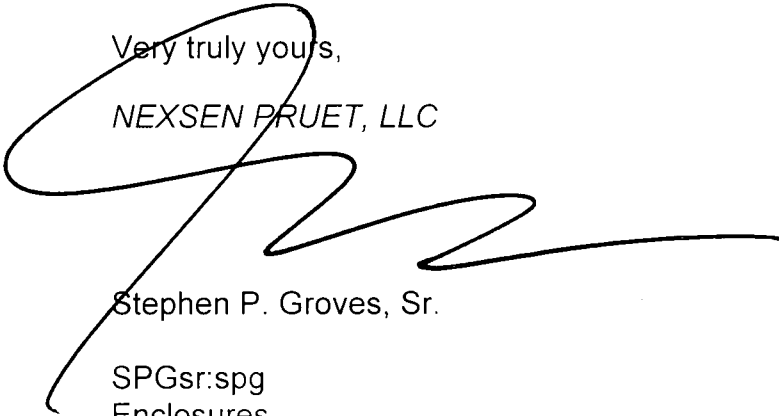
NEXSEN | PRUET

Hon. Daniel Shearouse
Clerk of Court
27 February 2012
Page 2

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC

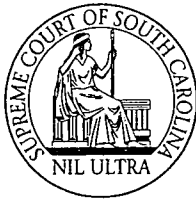
A large, stylized handwritten signature in black ink, appearing to read 'Stephen P. Groves, Sr.', is written over the typed name and extends across the middle of the page.

Stephen P. Groves, Sr.

SPGsr:spg
Enclosures
CCE

Bradley D. Churdar, Esquire
John P. Siebels, Jr., Esquire/Jason Scott Luck, Esquire

NPCHAR1:836669.1-LT-(SPG) 035563-00001



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 3, 2012

John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Seibels Law Firm
127 King Street, Suite 100
Charleston, SC 29401

Re: Too Tacky v. SCDHEC

Dear Counsel:

We are in receipt of your Brief of Petitioner and additional copies of the Appendix along with a Motion for Late Submission of Appendix.

This is to advise you that your appendix was timely filed in December, therefore no action will be taken on your motion. We are returning your check no. 8579 in the amount of \$25.00 for the motion.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/lda

Enclosure

cc: Carlisle Roberts, Jr, Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

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FEB - 1 2012

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court
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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

FEB 01 2012

S.C. SUPREME COURT

On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents,

of whom Too Tacky Partnership is Petitioner.

MOTION FOR LATE SUBMISSION OF APPENDIX

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned attorney, counsel for the Petitioner, moves that this Court accept its Appendix as filed on January 31, 2012. The grounds for this motion are: (1) upon a review of the Petitioner's file, it appears no Appendix was filed with the original Petition for a Writ of *Certiorari*; (2) this Court issued a Writ of *certiorari* on December 1, 2011, and the Petitioner has prepared and filed an opening brief in accordance with the Court's briefing schedule, as amended by this Court's December 29, 2011 order; (3) the requisite number of copies of the Appendix,

as required by the South Carolina Rules of Appellate Procedure, are now filed with this Court; (4) the current briefing schedule, as amended by this Court's December 29, 2011 order, shall remain unaffected by the relief requested in this motion; and (5) no party has been prejudiced by a late submission of the Appendix.

Petitioner has conferred with counsel for the Respondents, who consent to the requested relief.



John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Appellant Too Tacky
Partnership

31 January 2012

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

RECEIVED

FEB - 1 2012

S.C. Supreme Court

On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

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South Carolina Department of Health
and Environmental Control and

Mayo Read, Jr., ...Respondents,

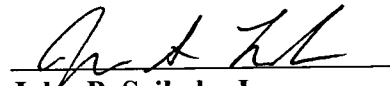
of whom Too Tacky Partnership is Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served the Motion for Late Submission of Appendix on
the Clerk of the Supreme Court and counsel for the Respondents by serving copies
of the same via U.S. Mail on 31 January 2012 to the following:

Bradley D. Churdar, Esquire
Counsel, OCRM
1362 McMillan Ave, Suite 400
Charleston, SC 29405
Attorneys for Respondent DHEC

Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401
Attorneys for Respondent Read


John P. Seibels, Jr.
Jason Scott Luck
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Petitioner

THE
SEIBELS
LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

January 31, 2012

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Too Tacky Partnership v. SCDHEC and Mayo Read, Jr.
Supreme Court Case Tracking No.: 2009-149126
Case No.: 2007-CP-10-1520
Our File No.: 6058-19

RECEIVED
FEB 01 2012

Dear Mr. Shearouse:

S.C. SUPREME COURT
pm 1-31-12

Enclosed please find for filing:

1. An original and 14 copies of the Petitioner's Brief (with Certificate of Service),
2. An original and 14 copies of the Appendix,
3. An original and 14 copies of the Certificate of Service for Appendix,
4. An original and 14 copies of the Motion for Late Submission of Appendix (with Certificate of Service), and
5. A check for \$25.00, representing the required motion fee for the above motion.

#8579

Pursuant to Rule 262(a)(2), an electronic copy of these documents is also being sent to Linda Allen of the Supreme Court at llallen@sccourts.org.

With kind personal regards, I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.


Jason Scott Luck
Attorney for Petitioner

JSL/sdh

Enclosures

cc: Bradley D. Chudar, Esquire (via US Mail & email) (w/encl.)
Richard L. Tapp, Jr., Esquire (via US Mail & email) (w/encl.)
Linda Allen, SC Supreme Court (via email) (w/ encl.)

The Supreme Court of South Carolina

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of
Health and Environmental
Control and Mayo Read, Jr.,

Respondents.

The Honorable Roger M. Young
Cherokee County
Trial Court Case No. 2007-CP-10-01520

ORDER

For good cause having been shown, the time for serving and filing the Brief of Petitioner and additional copies of Appendices in the above entitled matter is hereby extended until January 31, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Dorenda J. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

December 29, 2011

cc: John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Carlisle Roberts, Jr, Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

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DEC 28 2011

S.C. Supreme Court

On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr., ...Respondents,

of whom Too Tacky Partnership is Petitioner.

MOTION FOR EXTENSION

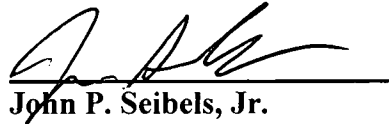
Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned attorney, counsel for the Petitioner, files this motion for an extension of the deadline for serving and filing its Brief and Appendix. These submissions are currently due January 3, 2012 and January 1, 2012, respectively, and if the requested extension is granted, both would be due on January 31, 2012.

The grounds for this motion are: (1) the holiday season and long-standing vacation plans have interrupted the time to prepare these filings, (2) additional time is needed to

research changes in the relevant law since the 2009 Petition for *Certiorari*, and (3) no party would be prejudiced by the grant of this extension.

Petitioner respectfully requests that this Court hold any briefing time in abeyance pending the consideration of this motion.

Petitioner has conferred with counsel for the respondents, who consent to the requested relief.



John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Appellant Too Tacky
Partnership

22 December 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

S.C. Supreme Court

On Certiorari to the Court of Appeals of South Carolina
Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
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v.

South Carolina Department of Health
and Environmental Control and

Mayo Read, Jr., ...Respondents,

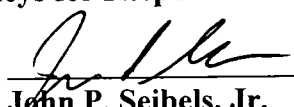
of whom Too Tacky Partnership is Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served the Motion for Extension on counsel for the
Respondents by serving copies of the same via U.S. Mail on 22 December 2011 to the
following:

Bradley D. Churdar, Esquire
Counsel, OCRM
1362 McMillan Ave, Suite 400
Charleston, SC 29405
Attorneys for Respondent DHEC

Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401
Attorneys for Respondent Read


John P. Seibels, Jr.
Jason Scott Luck
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Petitioner

THE
SEIBELS
LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

December 22, 2011

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Too Tacky Partnership, Appellant v. South Carolina Department of Health and
Environmental Control and Mayo Read, Jr., Respondents
Supreme Court Case Tracking No.: 2009-149126
Case No.: 2007-CP-10-1520
Our File No.: 6058-19

Dear Mr. Shearouse:

Enclosed please find for filing an original and seven copies of the Motion for Extension,
along with a Certificate of Service on the Respondents.

Also enclosed is our firm's check for \$25.00 representing the required filing fee. We would
appreciate your filing the original and copies and returning one filed-stamped copy to us in the
enclosed envelope.

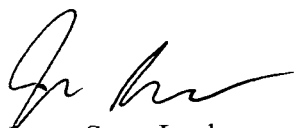
As per the enclosed Certificate of Service, the above documents were served on all parties on
December 22, 2011.

Please do not hesitate to call if you have any questions.

With kind personal regards, I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.


Jason Scott Luck
Attorney for Appellant

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DEC 28 2011

S.C. SUPREME COURT

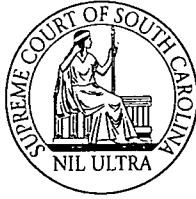
P 12-22-11

Check # 4523
\$25.00

JSL/sdh

Enclosures

cc: Bradley D. Chudar, Esquire (via US Mail) (w/encl.)
Richard L. Tapp, Jr., Esquire (via US Mail) (w/encl.)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 1, 2011

John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Seibels Law Firm
127 King Street, Suite 100
Charleston, SC 29401

Re: Too Tacky v. SCDHEC

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before January 3, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

Too Tacky v. SCDHEC

Page Two

December 1, 2011

DES/lda

Enclosure

cc: Carlisle Roberts, Jr, Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

Too Tacky Partnership,

Petitioner,

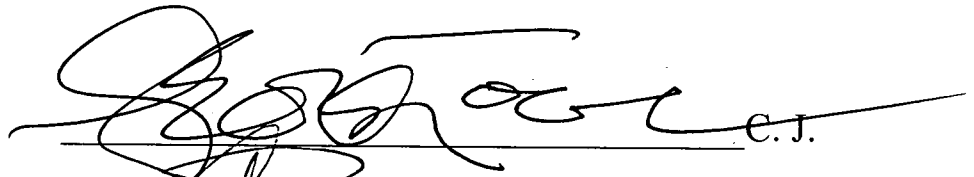
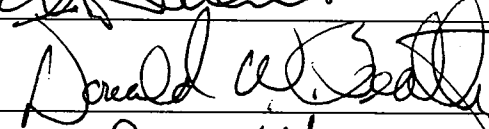
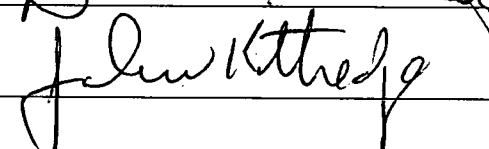
v.

South Carolina Department of
Health and Environmental
Control and Mayo Read, Jr.,

Respondents.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in Too Tacky Partnership v. S.C. Dep't of Health and Envtl. Control, 386 S.C. 32, 686 S.E.2d 194 (Ct. App. 2009). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

 c.j.
 J.
 J.
 J.

Justice Kaye G. Hearn, not participating.

Columbia, South Carolina

December 1, 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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DEC 29 2009

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....

Respondents,

of whom Too Tacky Partnership is Petitioner.

PETITION FOR WRIT OF *CERTIORARI*

John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Appellant Too Tacky
Partnership

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 24, 2009.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err when it affirmed the grant of a permit from an application that did not include the submissions required by statute and regulation, included uncertified documents, and was further supported by an affidavit that was false upon its face?
- II. Did the Court of Appeals err when it affirmed the grant of a permit from an application that failed to make a *prima facie* showing of ownership or permission when the record clearly fails to provide the necessary threshold proof of ownership or permission?
- III. Did the Court of Appeals err when it affirmed the grant of a permit from an application that did not contain the documents required by law?
- IV. Did the Court of Appeals err in affirming the grant of a permit from an application that contains no showing of "abnormal" circumstances to warrant a second dock?
- V. Did the Court of Appeals err in affirming the grant of a permit from an application that contains no evidence that the agency below considered the proposed dock's effect on the value and enjoyment of the owners of the property upon which it would be built?

STATEMENT OF THE CASE

Petitioner/Appellant Too Tacky Partnership ("Too Tacky") challenges Respondent DHEC Office of Ocean and Coastal Resource Management's ("OCRM") March 30, 2005 decision granting Respondent Mayo Read, Jr. ("Read") a critical area permit ("Permit") to construct a second dock on Petitioner's property for the benefit of the three adjoining landowners.¹

The properties at issue in this appeal are located on Wadmalaw Island, bordered by the Leadenwah River, and are identified in a plat (hereinafter "the Plat") recorded on October 28, 1986 in the Charleston County RMC Office at Book BK, Page 145. (R. p. 316). At the time of the application (August 28, 2004), I. Mayo Read, Sr. was the owner of Lot 1.² (R. pp. 279-282). Ellen Read was the record owner of Lot 2. (R. pp. 283-285). Respondent Mayo Read, Jr. was the record owner of Lot 3. (R. pp. 317-321). Petitioner Too Tacky was the owner of Lot 4. (R. p. 316). By the time of the contested case hearing before the ALC, Respondent Mayo Read, Jr. had conveyed Lot 3 to his father, Mayo Read, Sr.³ (R. p. 187).

Read applied for the permit on August 28, 2004. OCRM issued the permit to Read, over Too Tacky's objection, on March 30, 2005. Too Tacky challenged OCRM's decision in the Administrative Law Court pursuant to S.C. Code §§ 48-39-150 (Supp.

¹ In the early 1990's, Too Tacky obtained a critical area permit and constructed a dock extending from its parcel to the Leadenwah River. (R. p. 202).

² At the time of the hearing before the ALC, Lot 1 had a critical area permit and a dock extending to the Leadenwah River. (R. p. 189).

³ The senior Read has not been substituted for the junior Read in any proceeding below. Curiously, Respondent Mayo Read, Jr. never provided oral testimony at the hearing before the ALC, and provided no testimony other than that found in the affidavit included with this application.

2004), 1-23-600(B) (Supp. 2004), and 1-23-310 *et seq.* (Supp. 2005). Following a contested case hearing, Administrative Law Judge McLeod issued an Order affirming OCRM's permitting decision on August 17, 2006.

Too Tacky exercised its right to *quasi-judicial* review by the Coastal Zone Management Appellate Panel ("CZMAP") pursuant to S.C. Code §§ 48-39-150(D) (Supp. 2005) and 1-23-610(A) (Supp. 2005). Following a hearing, the CZMAP voted to affirm the decision of Judge McLeod and issued its Order on April 27, 2007. The CZMAP adopted Judge McLeod's findings of fact and conclusions of law as its own.

Too Tacky then exercised its right to judicial review by the Charleston County Court of Common Pleas pursuant to S.C. Code § 48-39-180. Circuit Court Judge Roger Young affirmed the CZMAP opinion by written Order dated December 18, 2007. Too Tacky timely filed a Motion to Alter or Amend the Circuit Court's Order pursuant to Rules 52 and 59, SCRCR, on January 14, 2008. That Motion was denied by Order dated January 29, 2008. Too Tacky's Notice of Appeal was served on February 28, 2008.

The Court of Appeals affirmed the judgment of the Circuit Court. Too Tacky v. SCDHEC, Op. No. 4616, (S.C. Ct. App. filed September 9, 2009, withdrawn, substituted and refiled November 24, 2009).⁴ Petitioner's petition for rehearing was denied on November 24, 2009. Petitioner now seeks a writ of *certiorari* for this Court to review the Court of Appeals' opinion.

⁴ The November 24, 2009 opinion will be hereinafter the "Refiled Opinion".

ARGUMENT

Read seeks the extraordinary power to subvert the private property rights of another landowner without that owner's consent. An extraordinary claim demands extraordinary proof, and the evidence provided by Read to the agency and tribunals below is insufficient. Read seeks to build a dock on land he does not own, both for his benefit and that of two other nearby property owners. In support of his claim for a Critical Area Permit, Read provided OCRM with an incomplete, deficient application, supported by sworn testimony that was incorrect and never corrected. Ultimately, Read was granted the Permit based on his claim to an easement, but Read never met his threshold burden concerning his property right claim.

While OCRM is vested with some discretion in permitting matters, it is not allowed unlimited discretion. Affirmation of its decision herein stretches the limits of OCRM's authority to a level where "abuse of discretion" becomes meaningless. When OCRM fails to follow its own policies, violates South Carolina law and regulation, and fails to base its decision on the reliable, probative, and substantial evidence from the record, its decision must not stand. Petitioner asks this Court to issue a writ of *certiorari* so that it may review and ultimately correct the errors of the Court of Appeals. Petitioner asks this Court to consider the following in support of its petition:

I. The Court of Appeals erred by affirming OCRM's grant of Respondent Read's permit, which was based on an incomplete application containing a false affidavit.

The Court of Appeals held that the affidavit of Respondent Read and an uncertified copy of a plat were sufficient to meet the requirement of South Carolina

statute. This holding is incorrect. Pursuant to statute, applications for permits from OCRM shall include the following:

- (1) Name and address of the applicant.
- (2) A plan or drawing showing the applicant's proposal and the manner or method by which the proposal shall be accomplished.
- (3) A plat of the area in which the proposed work will take place.
- (4) A copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property, to carry out the proposal.
- (5) A list of all adjoining landowners and their addresses or a sworn affidavit that with due diligence such information is not ascertainable.

S.C. Code Ann. § 48-39-140(B) (2008). The companion DHEC regulation states that a certified copy of the deed, lease, or other instrument under which the applicant claims title, possession, or permission shall ordinarily be required to complete the application. 23A S.C. Code Ann. Regs. 30-2(B)(4) (Supp. 2004). Additionally, the checklist used by OCRM to ensure a file is complete requires the submission, *inter alia*, of an “Aff[idavit] of Ownership” and a “Certified Deed, plat or lease”. (R. p. 258).

The Court of Appeals cites Ear v. HTH Assocs., Inc./Ace Usa Ins. Co. of N. Am., 368 S.C. 76, 81, 627 S.E.2d 760, 762 (Ct. App. 2006) for the proposition that the interpretation of an agency of its own regulation is given great deference. While this proposition of law is sound, Petitioner believes that there are limits to the deference a court may provide, and concomitantly, the discretion of the agency. The multiple failures of Read’s Permit application to meet the plain requirements of OCRM and South

Carolina statutes and regulations left OCRM with an application that only the most tortured interpretation of South Carolina law and regulation would find adequate.

The plat that was allegedly used by OCRM in its decision to grant the permit was not part of OCRM's dock application file. (R. pp. 108-109). Even though OCRM contends that it did consider this plat, which was not part of the file, the plat is *not* a certified copy. (R. p. 110, 112, 120); (Refiled Opinion, Pt. I).

OCRM ultimately granted a permit relying upon the Owner's Affidavit (the "Affidavit"). (R. pp. 104, 111, 133-134). This is also highly improper, as the affidavit contains false information and there is no case law supporting the Court of Appeals' position that it is an "instrument" as contemplated by regulation and statute. The Court of Appeals downplays the significance of Respondent Read checking a pre-printed box that certifies he is a "Record Owner". Whether checking a box, filling in a form, or writing an affidavit longhand, incorrect information is still exactly that – incorrect information. Read, who eventually contended through his counsel that he was a record easement holder, had the option of representing under oath on his application that he was a "Record Easement Holder". He instead represented, under oath, he was a "Record Owner," an assertion that was 100% false at the time of application, and now.

By checking the "Record Owner" box, Read represented in the Affidavit to be the owner of "all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted." (R. p. 288). When Too Tacky informed OCRM that it, not Read, owned the property where the dock was to be built, Read through his counsel claimed a creek access easement instead. (R. pp. 271-273). The Affidavit also states that Read was the owner of Lots 1, 2, and 3, a state of

affairs that was not true at the time the affidavit was signed. (R. p. 187). Nevertheless, OCRM did not require him to submit a corrected Affidavit and instead proceeded to consider his application knowing Read's sworn affidavit was false.⁵

Additionally, Read's application, without a certified plat, was incomplete according to Judge McLeod (R. pp. 2-3, 7-8). Read's application with an *uncertified* plat does not meet the requirements set forth by OCRM in its application process (R. p. 258); 23A S.C. Code Ann. Regs. 30-2(B)(4) (Supp. 2004). An application containing only an Owner's Affidavit is incomplete, as there is no case law supporting the proposition that an affidavit is an "instrument" for the purposes of a Critical Area Permit application.

OCRМ cannot be allowed to ignore its own internal requirements and the law of South Carolina under the guise of an exercise of discretion. No agency is above its own rules and the law, and any decision made in violation of the law must be reversed.

II. The Court of Appeals erred by Failing to Require Respondent Read to Make a *prima facie* showing of Easement, a showing that Read could not make.

The Court of Appeals held that "the applicant must make a prima facie showing of ownership or permission". (Refiled Opinion, Pt. II). Petitioner agrees with this holding, but disagrees that Read ever made a sufficient *prima facie* showing of an easement. Petitioner furthermore believes that Read would be unable to make such a showing had he been required to do so.

⁵Too Tacky contends that Read has no easement over its property. The ultimate legal determination of Read's property rights, if any, must be reached in another forum.

A. The Court of Appeals erred by Misapprehending the Nature of a *prima facie* showing of a legal principle

A *prima facie* showing is not an “ultimate” or “final” legal finding (as the Court of Appeals contends in Part II of the Refiled Opinion), but instead a relatively simple threshold requirement that the elements of the legal principle are present. See Black’s Law Dictionary 1228 (8th Ed. 2001) (“Sufficient to establish a fact or raise a presumption unless disproved or rebutted”). The Petitioner does not ask this Court, or any reviewing court or tribunal, to *ultimately* or *finally* decide the existence of an easement on its property. It does, however, ask this Court to find that OCRM must collect, analyze and ultimately determine when an applicant has submitted the necessary threshold evidence of the claimed property right.

The applicant’s burden cannot be met by simply claiming an “easement” no more than a *prima facie* case of negligence can be made by claiming “negligence”. A *prima facie* showing requires a showing of all the elements of the principle. Cf. Johnson v. Atlantic Coast Line R., 116 S.C. 135, 107 S.E. 31 (1921) (dicta).

It was Read’s burden to make a *prima facie* showing of easement in his application. Thus, he must make a showing to OCRM of the elements of an easement appurtenant, an easement in gross, or an easement in gross for commercial purposes. See State v. Comm’rs of Public Works, 312 S.C. 460, 465, 441 S.E.2d 331 (Ct. App. 1994) (setting forth the elements of these easements). The Court of Appeals erred in not requiring a showing of the elements of the claimed easement (a *prima facie* showing).

OCRM’s failure to require a proper *prima facie* showing violated applicable statutory provisions, was made in excess of what statutory authority it possessed, was affected by numerous errors of law and fact, and ultimately was an abuse of OCRM’s

discretion. Petitioner asks this Court to review and reverse the Court of Appeals' affirmation of the courts, tribunals, and agencies below.

B. If the Court of Appeals had Required Respondent Read to make a *prima facie* showing of easement, the Application would have Failed as a Matter of Law

Whether OCRM had required a proper *prima facie* showing of easement or not, the evidence found in the record cannot sustain a cognizable claim to easement. The case law relied up on by the agency and tribunals below is inapposite, and any examination of the record shows, as a matter of law, that no easement for the benefit of Read could exist.

1. South Carolina law does not provide a basis for Read's claim to an implied easement.

Easements exist by express creation or by implication. Inlet Harbour v. S.C. Department of Parks, Recreation and Tourism, __ S.C. __, 659 S.E.2d 151 (2008). The letter from Read's counsel asserted an implied easement. No express easement is claimed. Implied easements are not favored because they conflict with the general rule that a written instrument speaks for itself. Id., citing 28A C.J.S. *Easements* § 61 (1996).

In its Conclusions of Law, the ALC mistakenly relied on Davis v. Epting, 317 S.C. 315, 318, 454 S.E.2d 325, 327 (Ct. App. 1994) to find that Read submitted sufficient evidence that he was entitled to use Too Tacky's property. (R. p. 10). This is error for several reasons.

First, Davis is a case determining the implied rights among two homeowners to use a subdivision road that abuts each party's lot. Id. at 316. The road, Virginia Lane, was reserved in fee simple by the original developer and was identified as a right of way access road on the development plat referenced in each party's deed. Epting obtained a

deed to a portion of Virginia Lane, built an improvement that encroached into the road and otherwise blocked or impeded its use by others. Relying upon Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965), this Court stated “Where land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a special property rights in the roads shown on the plat.” Id. at 318 (emphasis added). The Court held that both parties received implied easements over Virginia Lane at the time of their purchases from the original developer. Epting’s subsequent acquisition of a portion of Virginia Lane did not alter the easement, since the grantor could not convey greater property rights than it had. Id.

The ALJ’s emphasis on platted roadways is misplaced. If these parties were arguing over each’s right to use the 50’ right of way shown on the Plat to the north of Lots 2 and 3, then the Blue Ridge Realty line of cases would apply to assure each owner the implied right to use that road to reach their lots. But, the easement claimed by Read is not a roadway. The area is wooded and had been blocked by Too Tacky with a chain since 1992. (R. pp. 200-201). In fact, when Mayo Read, Sr., owner of Lot 1, entered Lot 4 to see where the proposed dock would be constructed, he had to walk around or step over the chain. (R. pp. 192-193).

The Blue Ridge Realty line of cases should not be extended to create implied easements on property other than road ways shown on this or any other plat. The policy and justification for the Blue Ridge Realty rule was restated by the Supreme Court in Inlet Harbour: “When a grantor conveys land abutting a street, he is estopped from denying the street’s existence and the right of the grantee to its use.” citing Cason v.

Gibson, 217 S.C. 500, 61 S.E. 2d 58 (1950)⁶. Because the creek access claimed by Read is not a road, the line of case law suggested by Read's counsel and relied upon by the ALJ to sustain the permit is inapplicable.

Second, it is undisputed that the subject deeds were never submitted as part of the permit application. (R. pp. 108-109, 112). OCRM did not have the deeds, so it was unable to perform any analysis, correct or not.

In the absence of an implied easement under Blue Ridge Realty, OCRM and the ALC should have looked for an express grant. Again, Read's argument was supported by a letter from his attorney instead of reliable, probative, and substantial evidence (in the form of the statutorily required deeds or other such instruments) to support his burden. The deeds, had they been submitted, would have revealed to OCRM and its legal staff that the grants into the owners of Lots 1, 2 and 3 do not include a conveyance of an easement, and the deed into Too Tacky is in fee simple absolute. The Plat, had it been carefully reviewed and relied upon by OCRM, would have revealed that the area claimed by Read is not a roadway. Therefore, Read could not meet his burden even if he had submitted the materials required by law.

2. OCRM and the ALC failed to recognize that any easement over Lot 4 was extinguished by the doctrine of merger.

Neither the ALC nor OCRM recognized the legal significance that, at the time the Plat was filed, all parcels shown thereon were owned by the same party. (R. p. 1A). An easement cannot exist where both the purported servient and dominant estates are owned

⁶ Even implied easements to use roadways shown on plats referenced in deeds can be abandoned or extinguished. See Hodge v. Manning, 241 S.C. 142, 127 S.E. 2d 341 (1962).

by the exact same person. Haselden vs. Schein 167 S.C. 534, 539, 166 S.E.2d 634, 635 (1932). “The essential ingredient of a right-of-way would be wanting; it would not be a right-of-way over another’s land, but over his own land.” Id., citing Pearce v. McClenaghan, 39 S.C.L. (5 Rich.) 178 (Ct. App. L. 1851). Thus, the alleged easement either never existed as a matter of law, or was extinguished by the doctrine of merger.

3. OCRM and the ALJ failed to recognize that the easement claimed by Read was in gross, not appurtenant.

An easement is characterized as either appurtenant, in gross or in gross for commercial purposes. State v. Commissioners of Public Works, 312 S.C. 460, 465, 441 S.E.2d 331 (Ct. App. 1994). The distinction is critical to whether Read met his burden because the easement claimed by Read must be appurtenant. OCRM apparently never examined the issue. (R. pp. 128-129).

An appurtenant easement inheres in the land, “concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross.” Tupper v. Dorchester County, 326 S.C. 318, 325-26, 487 S.E.2d 187, 191 (1997) (citations omitted). In Steele v. Williams, 204 S.C. 124, 28 S.E.2d 644 (1944), the South Carolina Supreme Court was faced with an appellant that claimed an easement appurtenant for use of an alleyway/driveway. However, neither terminus was upon the property of the appellant – one terminus was on a public street, while the other terminated on a lot adjoining the Respondent’s property. Id. at 131, 28 S.E.2d at ___. Despite express language in the deeds stating “[the easement]

being reserved for the joint use of the grantor and grantee, their heirs and assigns forever”, the court held:

If the elements of an easement appurtenant are wanting, as we have indicated was the case, then it follows that the easement created was one in gross, and could not be assigned or inherited. It, therefore, follows that use of the words above quoted could not and did not affect the easement created, and could not enlarge it from one in gross to one appurtenant to land.

Id. Assuming, *arguendo*, the creation of an implied easement by some means, any such easement would necessarily have been one in gross and, therefore, not capable of conveyance to subsequent owners such as Respondent. An easement in gross is a mere personal privilege to use the land of another. An easement in gross cannot be transferred. Id. at 131, 28 S.E.2d at 645.

A cursory examination of the Plat reveals that the easement claimed by Read does not terminate on property owned by Read, or on property owned by the other landowners for whose benefit the dock would be constructed; therefore, one of the required elements of an easement appurtenant is not met. In the absence of even just one element characterizing an appurtenant easement, the easement must be deemed in gross. Id. Any creek access easement that might have been created in 1986 did not survive subsequent transfers of Lots 1, 2 and 3. As a matter of law, Read cannot make a *prima facie* showing of an easement appurtenant in 2004.

OCRM’s permit decision and those of the reviewing courts must be reversed because they are clearly erroneous and affected by an error of law with regard to easements in South Carolina.

III. The Court of Appeals Erred in Affirming a Grant of Permit that Relied on Inadequate Evidence of Title, Possession, or Permission

The Court of Appeals correctly states that a permit applicant must “present a cognizable ‘claim [to] title, possession or permission from the owner of the property to carry out the proposal’” Refiled Opinion, Pt. II (citing S.C. Code § 48-39-140(B)(4)) (emphasis removed) However, a review of the permit application shows a lack of any objective, reliable, probative, and substantial evidence of Read’s claim of ownership or permission.

OCRM’s application file contains one document where Read claimed a creek access easement: A letter from his attorney. (R. pp. 271-273). Significantly, the letter contradicts Read’s Affidavit, where he testified that he was “record owner” of the parcels in question. (R. p. 288). OCRM used this letter from counsel in its decision to grant Read’s permit. (R. pp. 105, 113-118).

OCRM’s application file contains several documents refuting the existence of a creek access easement: a statement by Too Tacky’s counsel denying the existence of an easement, and more importantly denying the requisite permission to build (R. pp. 267-270); and a printout from the Charleston County geographic information system (“GIS”) showing no right-of-way. (R. p. 264).

While the Plat was not a part of the application file, OCRM claims that it was considered during the application process. (R. pp. 103-109, 112). The ALC made a detailed examination of the Plat (R. p. 316) and four deeds (R. pp. 276-278, 283-285, 317-325) – none of which were in OCRM’s file when it granted the permit.⁷ Reliance by

⁷Although OCRM staff testified that they reviewed the plat at some point during the process, OCRM’s decision to grant the permit was based upon the Owner’s Affidavit.

anyone on the Plat for an indication of property rights is doubly improper, as the Plat (R. p. 316) bears a prominent stamp stating:

WARNING! APPROVAL OF THIS PLAT BY THE
PLANNING BOARD AND/OR COUNTY COUNCIL
DOES NOT INDICATE APPROVAL NOR
ADJUDICATE TITLE OF THE ACCESS OR RIGHT-OF-
WAY SHOWN HEREON.

(Ibid). Thus, had Read submitted the Plat for inclusion in the application file, the WARNING! on the Plat renders it unreliable for the purpose for which it would have been submitted: to prove title or a right to use the right-of-way shown thereon or otherwise serve as evidence of ownership.

The law is clear on this issue. The permit regulation and statute specifically identify deeds and leases as acceptable forms of indicia of ownership, possession and permission. Each is a written binding agreement of conveyance between parties concerning their respective rights in specified real property. Like deeds and leases, written and recorded easements are characterized by the conveyance of some property right. Plats on the other hand are merely maps drawn to scale which alone neither grant nor limit property rights. A plat is not an index to encumbrances.⁸ Lancaster v. Smith Co., Inc., 246 S.C. 464, 144 S.E.2d 209 (1965). If, by contrast, Read had presented an express written and recorded easement executed by the parties or their predecessors in title, burdening Lot 4 in favor of Lots 1, 2, and 3 for purposes of dock construction, this Court would be compelled to find that Respondent had submitted the required evidence

(R. pp. 103-107). In any event, the plat is not included in OCRM's permit file. (R. pp. 108-109, 112).

⁸The subject plat is not even an accurate indicator of ownership. According to the plat, an adjoining property owner is Boyd. Relying on county records, OCRM quickly determined that the correct adjoining property owner is Lawson. (R. pp. 122-125).

and thus met his prima facie burden. Plainly, the Plat is not an accurate indicator of property rights.

The Plat at best could be deemed to describe a possible state of affairs as they may have existed in October 1986, 18 years before the dock application. Even so, the Plat is contradicted by the County's 2004 GIS records in the application file. Other than examining the GIS records, OCRM took no steps to determine whether a creek access easement which may have existed in 1986 still existed in 2004, or to determine its scope. OCRM actually disregarded Too Tacky's statements that it would not allow a second dock on its property. OCRM ultimately granted Read a permit to build a second dock extending from Too Tacky's property. (R. p. 134). In the absence of reliable, probative, and substantial evidence to support a conclusion that Read had ownership or permission, the grant of the Permit must be reversed.

IV. The Court of Appeals erred in Failing to consider Petitioner's Arguments that Respondent's Plat did not meet the Requirements of S.C. Code §§ 48-39-140(B)(3) & (4)

Court of Appeals asserted that Appellant "contended the plat at issue could not satisfy the requirements of subsections (3) and (4) of section 48-39-140(B)" for the first time at oral argument. (Refiled Opinion at n.2). The referenced sections of the South Carolina Code are:

(B) Each application for a permit shall be filed with the department [OCRM] and shall include:

* * *

- (3) A plat of the area in which the proposed work will take place.
- (4) A copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property, to carry out the proposal.

S.C. Code § 48-39-140(B). Appellant specifically argues that Respondent Read did not provide a copy of the plat, deed, lease, or other instrument (thus implicating these sections) in its Brief (Part II) and Reply Brief (Parts III & IV).⁹ For example:

- “OCRM’s file contains only one document where [Respondent] Read claimed a creek access easement: A letter from his attorney.” (Final Brief p. 10) (emphasis in original).
- “...OCRM’s decision to grant the permit was based upon the Owner’s Affidavit. In any event, the plat is not included in OCRM’s permit file.” (Final Brief p. 11, n. 5) (citations removed).
- “...the four deeds were never submitted by [Respondent Read] when the permit was issued.” (Final Brief p. 12).
- “First, OCRM did not rely upon the Plat to satisfy the requirements of S.C. Code § 48-39-140(B)(4) (Supp. 2005) and 23A S.C. Code Regs. 30-2(B)(4) (Supp. 2004). OCRM relied upon the owner’s affidavit. Second, the deeds were never seen by OCRM.” (Final Reply Brief pp. 6-7) (citations omitted).¹⁰
- “OCRM did not require [Respondent] Read to submit the Plat...the Plat was not even a part of the permit file.” (Final Reply Brief pp. 7-8) (citations omitted).
- “Again, it is undisputed that (1) OCRM never required the Plat and (2) Read never submitted the deeds...[t]he deeds are not part of the permit file.” (Final Reply Brief p. 7) (citations omitted).
- “The ALC committed error at his conclusions of law 13, 14, 15 and 16 wherein he determined that 1) ...the Plat and deeds were somehow submitted by [Respondent] Read and therefore constitute satisfaction of Read’s *prima facie* burden...” (Final Reply Brief p. 9)
- “The [Court of Appeals’] Opinion goes to great lengths to conclude that a plat is an ‘instrument’ which might satisfy the requirements of S.C. Code Ann. § 48-39-140(B)(4)(2008). That analysis would have been relevant only if OCRM staff had considered the plat as an instrument in the application review process.” (Petition for Rehearing p. ____).

⁹ Petitioner/Appellant specifically cites S.C. Code § 48-39-140(B)(4) on page 7 of its Final Brief.

¹⁰ Petitioner/Appellant specifically cites S.C. Code § 48-39-140(B)(4) twice on page 7 of its Final Reply Brief.

Because the Court of Appeals overlooked the Appellant's briefed arguments that Respondent Read's application lacked a plat, deed, lease, or other instrument, the Supreme Court must grant a writ of *certiorari* to consider these arguments.

IV. The Court of Appeals erred by affirming OCRM's grant of Respondent Read's permit for multiple docks per parcel in the absence of "abnormal" circumstances.

Critical area permitting regulations prohibit two structures per parcel except under abnormal circumstances. See 23A S.C. Code Ann. Regs. 30-12.A(2)(a) (Supp. 2004). This particular provision should be given the same weight as any other Specific Project Standard in the regulations. Here, Read seeks to construct a second dock extending from Too Tacky's property, Too Tacky having obtained a critical area permit and constructed a dock extending from its lock in the early 1990s (R. p. 202). Likewise, one of the three parcels for whose benefit the proposed joint use dock is proposed by Read already has a critical area permit and dock. (R. p. 189).

OCRМ staff is well aware of the general prohibition against two structures per parcel, a prohibition that has since been codified. See S.C. Code § 23A S.C. Code Ann. Regs. 30-12(A)(1)(a) (Supp. 2008) ("Docks and piers shall be limited to one structure per parcel or lot"). OCRM utilizes a Project Assignment Sheet for all new permit applications. (R. p. 265). The coordinator of incoming permits will review an application to see if it meets submittal requirements and to identify other items of concern which may stand out to her, and she will write those matters directly onto the sheet before assigning it to a project manager. (R. pp. 135-137). On Read's Project Assignment Sheet, the coordinator wrote, "Make sure lots 1, 2 and 3 don't have docks." (R. pp. 136-

137, 265). It does not appear that anyone at OCRM followed the coordinator's instructions; the permit was issued even though one parcel (Lot 1) already had a dock.

According to the Court of Appeals, the only "abnormal" circumstance cited by OCRM was the easement providing for creek access. Refiled Opinion, Pt. III; (R. p. 179). Petitioner believes that this is simply too little, and too normal, of a circumstance to warrant two docks on a parcel, especially when there is little to no evidence that Read actually possessed the easement in question. This Court must not allow such a holding to remain law.

V. The Court of Appeals erred by holding OCRM considered the proposed dock's effect of the enjoyment and value of the Petitioner's land where the dock will be constructed.

The Code and applicable regulations require OCRM to consider various factors during the application review process. See S.C. Code § 48-39-150(A) (Supp. 2005); 23A S.C. Code Ann. Regs. 30-11(B) (Supp. 2004). During OCRM's review, it gave no consideration to the question of whether Too Tacky's lot may be diminished in value if a third party built a dock on it. (R. p. 143). OCRM did, however take into account the effect a dock would have on the value and enjoyment an *adjacent* property owner. (R. p. 150). Too Tacky is not an adjacent property owner, but the owner of the lot upon which the proposed dock will be built. While this is a fine distinction, it is still significant and was not reflected in the deliberations of OCRM.

The Court of Appeals erred in describing Frederick Mallet's testimony as "conflicting". Mallet's testimony clearly states that OCRM did not take into account any effect on Petitioner's property values, and that OCRM analyzed the effect on the proposed dock on *adjoining* property owners. Even the Court of Appeals agrees that

OCRM considered the “impact to the *adjoining* landowner”. (Refiled Opinion, Sec. IV) (emphasis added).

Because the Court of Appeals affirmed OCRM’s grant of permit, a decision that did not take into account the effect on the value and enjoyment of the Petitioner, *the landowner who would be burdened with the dock*, this court should exercise its discretion to review the Court of Appeals’ decision.

CONCLUSION

For the reasons stated, Petitioner asks the Court to grant its petition for a writ of certiorari.



John P. Seibels, Jr.

jseibels@seibelsfirm.com

Jason Scott Luck

jluck@seibelsfirm.com

SEIBELS LAW FIRM, P.A.

127 King Street, Suite 100

Charleston, SC 29401

843.722.6777 (phone)

843.722.6781 (telefax)

Attorneys for Petitioner Too

Tacky Partnership

28 December 2009

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and

Mayo Read, Jr.,.....Respondents,

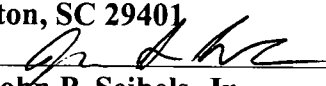
of whom Too Tacky Partnership is Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of *Certiorari* on counsel for the Respondents by serving copies of the same via U.S. Mail on 28 December 2009 to the following:

Elizabeth Dieck, Esquire
Chief Counsel, OCRM
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401


John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Petitioner Too
Tacky Partnership

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

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S.C. SUPREME COURT

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

RESPONDENTS' JOINT RETURN TO
PETITION FOR WRIT OF CERTIORARI

Stephen P. Groves, Sr., Esq.
Richard L. Tapp, Jr., Esq.
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

Davis Whitfield-Cargile, Esq.
S. C. DEPT. OF HEALTH
AND ENVIRONMENTAL
CONTROL - OCRM
1632 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*Attorneys for Respondent,
SCDHEC*

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I. STATEMENT OF THE ISSUES ON CERTIORARI

- A. Did The Administrative Law Judge, The Coastal Zone Management Appellate Panel, The Circuit Court, And The South Carolina Court Of Appeals All Correctly Determine DHEC-OCRM Had Properly Issued The Dock Permit To Mr. Read?
- B. Was There Substantial Evidence In The Record Supporting DHEC-OCRM's Decision To Issue The Dock Permit To Mr. Read?

II. STATEMENT OF THE CASE

On 30 March 2005, the Respondent, South Carolina Department of Health and Environmental Control ("DHEC"), through its Office of Ocean and Coastal Resource Management ("OCRM"), issued a *Critical Area Permit & Coastal Zone Consistency Certification* (the "Dock Permit") to the Respondent, Mayo Read, Jr. ("Mr. Read"). (R.p.1; R.p.16; R.pp.302-308). This authorized Mr. Read to construct a private dock accessing Leadenwah Creek on and across property owned by the Petitioner, Too Tacky Partnership ("Too Tacky"). (R.p.1; R.p.16; R.p.22; R.pp.302-308).

Too Tacky challenged the Dock Permit's validity in a contested case proceeding before the South Carolina Administrative Law Court.¹ (R.p.16; R.p.22). The ALC affirmed DHEC's decision to grant the Dock Permit. (R.pp.1-13; R.pp.15-16; R.p.18; R.p.71). Too Tacky appealed the ALC's decision to the Coastal Zone Management Appellate Panel (the "CZMAP") (R.p.14; R.pp.24-28) which unanimously affirmed the ALC. (R.pp.14-15).

Too Tacky then filed its Petition for Judicial Review with the Circuit Court (R.p.16; R.p.30)². (R.p.30). Mr. Read denied the material allegations (R.p.36, paras. 4-5; R.p.37, paras. 9-10, 12, 14; R.pp.38, paras. 19-22) and asserted various affirmative defenses. (R.pp.38-39, paras. 24-28). DHEC-OCRM similarly denied the material allegations (R.p.41, paras. 1, 5; R.p.42, paras. 8-9) and asserted several affirmative defenses. (R.pp.42-43, paras. 10-11). The

¹ See generally S.C. Code Ann. §§ 1-23-310, *et seq.* (Thomson West 2005); 1-23-600(B)) (Thomson West 2005); and 48-39-150 (Thomson West Supp. 2005).

Circuit Court affirmed the CZMAP's decision (R.pp.16-19) and denied Too Tacky's subsequent motion to alter or amend the decision. (R.pp.21, 63-70).

Too Tacky then appealed to the South Carolina Court of Appeals which affirmed the Circuit Court. Too Tacky has now filed its Petition for Writ of Certiorari to this Supreme Court.³

III. STATEMENT OF THE FACTS

A. History Of The Parties' Property

Too Tacky and Mr. Read are adjacent property owners on Wadmalaw Island in Charleston County. (R.pp.1A-2; R.p.316). On October 28, 1986, their common predecessor-in-title, subdivided some 17.71 acres into four essentially equal sized lots designated as Lots Nos. 1 through 4, via a plat entitled "*Plat of Division of Lands of Alma E. Wagner*" located at the end of Tacky Point Road near Leadenwah Creek (the "Plat"). (R.p.1A, para. 1; R.p.316). The Plat depicts a 50' wide pathway labeled "50' [D]rainage – [E]asement & Creek Access for Lots [Nos.] 1, 2 & 3" across the rear or landward edge of Lot 4. (R.p.1A, para. 1; R.p.316).⁴ Neither Lot No. 2 nor Lot No. 3⁵ have direct access to deep water

² See S.C. Code Ann. § 48-39-180 (Thomson West 2005).

³ See Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 686 S.E.2d 194 (Ct.App. 2009).

⁴ Lot No. 4 is bordered by marshlands and the Leadenwah River *nee* creek. (R.p.16). Ms. Alma E. Wagner – the then owner of all four lots signed the Plat. (R.p.16). The Plat was also stamped as approved by the Clerk for Charleston County Council and subsequently recorded in the RMC Office in Charleston County at Plat Book BK, Page 145. (R.p.16). Too Tacky purchased Lot No. 4 from Robert L. McFarland on April 7, 1992. (R.pp.322-325). The deed was recorded in the Charleston County RMC Office in April 7, 1992, in Book L212 at p.207. (R.pp.322-325).

due to the large expanse of marsh directly in front of both of those properties. (R.p.1A, para. 2; R.p.202, line 16 – R.p.203, line 17; R.p.204, lines 11-20; R.p.316).⁶ The deed to Lot No. 3 specifically stated the “conveyance of the Grantor’s interest in the 50’ right-of-way [wa]s subject to the private use by the owner of Lots [Nos.] 1, 2, and 4, as set out in the dedication which appears on the Plat.” (R.p.317).

Six years after Mrs. Wagner’s 1986 subdivision of the 17.71 acres into four lots, Too Tacky purchased Lot No. 4 (R.pp.1A-2, para. 3, R.pp.322-325)⁷ and six years thereafter Mr. Read purchased Lot 3. (R.p.1A-2, para. 3; R.pp.317-321). Mr. Read’s parents, I. Mayo Read, Sr., and Ellen P. Read, purchased Lots Nos. 1 and 2. (R.pp.1A-2, para. 3).⁸ The deeds for all four lots, including Mr. Read’s and Too Tacky’s deeds, specifically incorporated the Plat by reference.⁹ (R.pp.1A-2, para. 3; R.pp.276-285; R.pp.316-325).

⁵ Mr. Read purchased Lot No. 3 from Daniel R. McFarland on April 24, 1998. (R.pp.317-321). The deed was recorded in the Charleston County RMC Office in April 28, 1992, in Book R301 at p.161. (R.pp.317-321).

⁶ Lot No. 1 has direct deep-water access to the west into a branch of the Leadenwah River.

⁷ Too Tacky was represented by one of its partners, Lawton Grimball (:Mr. Grimball”). (R.p.198, lines 12-20). Mr. Grimball explained that he and his wife owned Lot No. 4 via the Too Tacky partnership. (R.p.198, lines 12-15).

⁸ At the time of the ALC hearing, Mr. Read’s parents had purchased Lot No. 3 from him. (R.pp.1A-2, para. 3 n.1; R.p.187, lines 1 – R.p.189, lines 1-4). Mayo Read, Sr., serving as Mr. Read’s agent, was issued the Dock Permit and signed the Dock Permit. (R.pp.1A-2, para. 3 n.1; R.pp.302-308). Mayo Read, Sr. attended and actively participated in the ALC hearing. (R.pp.1A-2, para. 3 n.1; R.p.186, line 18 – R.p.187, line 25). See Rule 25(c), SCRCP, in conjunction with Rule 68, SCALDI.

B. Creek Access Easement Language

Too Tacky, prior to purchasing Lot No. 4, knew about the recorded Plat and the specific language regarding "Creek Access for Lots [Nos.] 1, 2 & 3" set forth on the Plat. (R.p.2, para. 4; R.p.198, line 19 – R.p.199, line 8; R.p.211, line 20 – R.p.212, line 16). Mr. Grimball explained his interpretation of the Plat's language regarding "Creek Access for Lots [Nos.] 1, 2 & 3" as simply allowing the easement holders to walk down to the creek (R.p.2, para. 4; R.p.216, line 3 – R.p.217, line 13) or, as he said, the easement allowed "that someone could come down to the creek." (R.p.2, para. 4; R.p.217, lines 14-20). Mr. Grimball, however, did not believe it was a valid easement (R.p.198, line 21 – R.p.199, line 15; R.p.211, line 20 – R.p.212, line 19) and placed a chain across the easement to prevent trespassers. (R.p.191, line 4 – R.p.192, line 20; R.p.199, line 1 – R.p.203, line 8).¹⁰ Nevertheless, Mr. Grimball conceded once the easement holders had traveled down the easement and arrived at Leadenwah Creek they could then do "[w]hatever they wanted." (R.p.2, para. 4; R.p.217, lines 14-22).

C. Creek Access Easement "Usage"

Too Tacky admittedly never pursued any legal action against Mr. Read, or against Mr. Read's parents, or against others to contest the Plat's language authorizing "Creek Access for Lots [Nos.] 1, 2 & 3". (R.p.2, para. 5; R.p.212, lines 13-16). Furthermore, Too Tacky never directly communicated to either Mr.

⁹ The Too Tacky deed, in describing the property provides that "[s]aid lot of land containing such size, shape, dimensions, buttings and boundings as shown on said plat, *which plat is incorporated herein by reference.*" (R.pp.1A-2, para. 3 n.2; R.p.322) (Emphasis added).

¹⁰ Mayo Read, Sr. stated the chain "has not been [in place] that long." (R.p.193, lines 18-21).

Read or his parents that Too Tacky disputed the creek access easement language in the Plat. (R.p.2, para. 5; R.p.197, lines 19-25; R.p.218, lines 8-16). Mayo Read, Sr. testified he and other owners of Lots Nos. 1-3 periodically used the path shown on the Plat for recreational walking purposes (R.p.2, para. 5; R.p.192, line 21 – R.p.193, line 21) and to “go look were the dock [wa]s going to go.” (R.p.192, lines 21-25).

D. Mr. Read’s Permit Application

In late August 2004, Mr. Read filed his Permit Application (the “Permit Application”) with DHEC-OCRM seeking permission to construct a private, joint-use dock serving Lots Nos. 1-3. (R.p.2, para. 6; R.p.197, lines 12-18; R.pp.286-291).¹¹ DHEC-OCRM notified Too Tacky of the Permit Application. (R.pp.3-4, para. 8; R.p.92, lines 8-17; R.p.292; R.p.298). In response, Too Tacky submitted a letter, through legal counsel, opposing the issuance of the Dock Permit. (R.pp.3-4, para. 8; R.pp.257-270). Mr. Read, also through legal counsel, responded to Too Tacky’s opposition. (R.pp.3-4, para. 8; R.pp.271-275).

The Permit Application was supported by, among other things, an *Affidavit of Ownership or Control* which stated the dock was at the “[e]nd of right of way Tacky Point R[oa]d – For Lots [Nos.] 1-2-3.” (R.p.3, para. 6; R.p.288). Even though there was some dispute regarding whether a copy of the Plat was actually attached to the Permit Application, DHEC-OCRM’s representative, Frederick Mallett (“Mr. Mallett”), explained DHEC-OCRM certainly had a copy of the Plat prior to issuing the Dock Permit. (R.pp.2-3, para. 6; R.p.107, lines 3-13; R.p.109,

lines 8-11; R.p.146, line 8 – R.p.147, line 13; R.p.162, line 5 – R.p.163, line 15). DHEC-OCRM's copy of the Plat was, in actuality, an oversized copy which Mr. Read had submitted as an accompanying document with the Permit Application. (R.pp.2-4, para. 6; R.p.152, line 15 – R.p.153, line 7).

In any case, Too Tacky conceded Mr. Read's submission of the Plat and the existence of creek access easement language. By letter dated 11 January 2005, Too Tacky's legal counsel, Bob J. Conley, Esquire, wrote to DHEC-OCRM objecting to the Permit Application. (R.pp.2-3, para. 6; R.pp.267-270). Attorney Conley stated Mr. Read "has not presented evidence of [real property] title or possession, *other than a [P]lat which shows a '50' Drainage Easement & Creek Access for Lots [Nos.] 1, 2, & 3'.*" (R.p.268, para. 1) (Emphasis added). Mr. Mallett confirmed DHEC-OCRM's receipt/review of Attorney Conley's letter. (R.p.146, line 11 – R.p.147, line 6).¹²

The Dock Permit authorized Mr. Read to construct a private, joint-use dock entirely below the mean high water mark and, therefore, not actually situated on Too Tacky's property. (R.p.288).¹³ Consistent with Too Tacky's (*i.e.*; Mr. Grimball's) interpretation of the Plat's easement-granting language (R.p.216, line 3 – R.p.217, line 20), the pathway specifically labeled "Creek Access for Lots 1, 2 & 3" could be used exclusively by the holders of the easement to walk to and

¹¹ Mr. Read's parents, owners of Lots Nos. 1-2, gave him express permission to include them in the Permit Application. (R.pp.2-3, para. 6; R.p.197, lines 12-18; R.p.286; R.p.288).

¹² Mr. Mallett also noted no party to the proceedings had ever claimed the Plat was either altered, forged, or inaccurate. (R.p.153).

¹³ McQueen v. South Carolina Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003) ("State holds presumptive title to land below the high water mark.").

from the dock site. (R.p.216, line 3 – R.p.217, line 20). In turn, the actual dock would be physically located below the mean high-water mark (R.p.288) and, therefore, on property owned by the State of South Carolina in both jus privatum and jus publicum. (R.pp.286-291; R.p.316).¹⁴

E. DHEC-OCRM's Evaluation of the Permit Application

After receiving the Permit Application and prior to issuing Mr. Read the Dock Permit (R.p.142, lines 17-20),¹⁵ DHEC-OCRM, through Mr. Mallett and Curtis Joyner, DHEC-OCRM's Manager of Critical Area Permitting, reviewed and evaluated the required ten factors/general considerations. (R.pp.2-3, para. 6; R.p.92, line 18 – R.p.93, line 20; R.p.94, line 2 – R.p.95, line 23; R.p.96, lines 4-12; R.p.97, lines 5–21; R.p.98, line 2 – R.p.102, line 7; R.p.102, line 23 – R.p.127, line 21; R.p.128, line 17 – R.p.145, line 16; R.p.145, line 22 – R.p.152, line 8; R.p.152, line 15 – R.p.154, line 2; R.p.159, line 4 – R.p.175, line 17; R.p.176, line 1 – R.p.186, line 6).¹⁶ DHEC-OCRM determined Mr. Read had submitted a credible claim to a property right, namely the designated creek ingress and egress easement, authorizing access to the dock site sufficient to satisfy the statutory and regulatory requirements. (R.p.161, line 7 - R.p.163, line 15).

¹⁴ See Sanders v. Coastal Capital Ventures, 296 S.C. 132, 126, 370 S.E.2d 903, 906 (Ct.App. 1988) (citing Rice Hope Plantation v. South Carolina Public Service Authority, 216 S.C. 500, 59 S.E.2d 132 (1950)).

¹⁵ See S.C. Code Ann. § 48-39-150(A) (Thomson West 2005); 23A S.C. Code Ann. Reg. § 30-11(B) (Thomson West 2005).

¹⁶ See S.C. Code Ann. §§ 48-39-150(A)(1)-(10) (Thomson West 2005). See generally South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control, 363 S.C. 67, 73, 610 S.E.2d 482, 485 (2005) (noting S.C. Code Ann. § 48-39-150 “lists general considerations for OCRM to consider when deciding whether to grant a [critical area] permit.”).

DHEC-OCRM, thereafter, issued Mr. Read the Dock Permit subject to certain special conditions imposed to address some of Too Tacky's concerns.¹⁷ (R.p.150, lines 12-24; R.pp.302-308).¹⁸

IV. ARGUMENT AND CITATION OF AUTHORITY

DHEC-OCRM correctly and properly issued Mr. Read the Dock Permit. Mr. Read had appropriately and fully demonstrated his requisite legitimate claim to a "property interest" in the affected property so as to allow DHEC to process the permit. Moreover, DHEC-OCRM, using the balancing test, correctly concluded Too Tacky's objections were insufficient to deny Mr. Read the Dock Permit. In turn, the CZMAP, the Circuit Court, and the Court of Appeals, all finding substantial supporting evidence, appropriately affirmed DHEC-OCRM's grant of the Dock Permit. Finally, none of a consideration of the factors in Rule 242(b), SCACR, do not warrant a writ of certiorari.

A. The Court Of Appeals, The Circuit Court, The CZMAP, And The ALJ All Correctly Determined DHEC-OCRM Properly Issued The Dock Permit To Mr. Read.

Too Tacky asserts Mr. Read should not have been given the Dock Permit since the Permit Application was effectively incomplete and/or contained false information. (*Petition*, pp.4-9). Too Tacky's argument has heretofore failed at each level of these proceedings and fails again now.

¹⁷ These concerns included eliminating the requested roof over the pierhead and reducing the size of both the pierhead and the float. (R.p.150, lines 12-24; R.pp.302-308).

¹⁸ DHEC-OCRM was concerned the proposed dock could impact nearby shellfish beds, otherwise considered to be a "geographic area of particular concern" ("GAPC"). (R.p.139, line 2 - R.p.14, line 1). DHEC-OCRM notified South Carolina Department of Natural Resources ("SCDNR") of the Permit Application since SCDNR has jurisdiction over shellfish beds. (R.p.147, line 23 - R.p.148, line 9). SCDNR voiced no objection. (R.p.147, line 17 - R.p.149, line 7; R.p.315).

The record demonstrates the ALJ, the CZMAP, the Circuit Court, and the Court of Appeals all correctly concluded the Permit Application complied with the applicable regulations governing DHEC-OCRM's issuance of dock permits. Too Tacky simply failed to meet its burden of proof.¹⁹ There is substantial evidence in the record supporting DHEC-OCRM's decision to grant Mr. Read the Dock Permit. The Court of Appeals' decision must be affirmed in all respects.

1. Mr. Read's Dock Permit Application

Too Tacky asserts the Court of Appeals failed to require Mr. Read to make a prima facie showing of his claim to an ownership interest. (*Petition*, pp.7-13). Too Tacky arguments again miss the point as Mr. Read clearly submitted documentation supporting his claim to his ownership interests via the property easement.

Mr. Read requested DHEC-OCRM to grant him a permit to construct a joint-use recreational dock on the Leadenwah River *nee* creek. (R.p.197, lines 12-18; R.pp.286-291).²⁰ Axiomatically, DHEC-OCRM is required to uphold the intentions and policies of the Coastal Zone Management Act when considering

¹⁹ Too Tacky, as the party affirmatively asserting DHEC-OCRM erred in granting the Dock Permit, had the burden of proof. See Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 37, 686 S.E.2d 194, 197 (*citing Leventis v. South Carolina Department of Health and Environmental Control*, 340 S.C. 118, 132-133, 530 S.E.2d 643, 651 (Ct.App. 2000)). Too Tacky was required to show, by a preponderance of the evidence, DHEC-OCRM erred in issuing the Dock Permit under the applicable statutory and regulatory criteria. See Anonymous (M-156-90) v. State Board of Medical Examiners, 329 S.C. 371, 375-376, 496 S.E.2d 17, 19 (1998).

²⁰ The South Carolina Coastal Zone Management Act, codified in S.C. Code Ann. §§ 48-39-10, et seq. (Thomson/West Supp. 2005), and the regulations found at 23A S.C. Code Ann. Reg. 30-1, et seq. (Thomson/West Supp. 2005) govern this type of permit. More importantly, the referenced regulations govern the management, development, and protection of South Carolina's critical areas and coastal zone.

permits for docks within the critical area. Nevertheless, even though DHEC-OCRM does not have the authority or legal ability to “quiet title” to real property and its permits convey no property rights, **21** Mr. Read satisfied the statutory and regulatory requirements to apply for a Dock Permit, including the requirement Mr. Read include with his permit application a “copy of the deed, lease[,] or other instrument under which [Mr. Read] claims title, possession[,] or permission from the owner of the property, to carry out the proposal.”**22**

(a) Mr. Read’s Submitted Plat

The critical document herein was the 1986 Plat which showed the division of Mrs. Wagner’s larger piece of property into four smaller, albeit somewhat equal parcels, which ultimately became known as Lots Nos. 1, 2, 3, and 4. (R.p.1A, para. 1; R.p.316). The Plat**23** depicts a 50’ wide pathway labeled “50’ [D]rainage – [E]asement & Creek Access for Lots [Nos.] 1, 2 & 3” across the rear

21 See Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 40-41, 686 S.E.2d 194, 198; 23A S.C. Code Ann. Reg. 30-4(E) (Thomson West Supp. 2004); 23A S.C. Code Ann. Reg. 30-2(I) (Thomson West Supp. 2004)).

22 See S.C. Code Ann. § 48-39-140(B)(4) (Thomson West Supp. 2004). The requirements of DHEC-OCRM’s permitting regulation are almost identical. See 23A S.C. Code Ann. Reg. § 30-2(B)(Thomson/Reuters West 2008); Moberly v. South Carolina Department of Health and Environmental Control, 2005 WL 2089815, *4 (S.C. Admin. Law. Judge Div., filed August 5, 2005). (DHEC-OCRM “is required to find that [Mr. Read] for a critical area permit has, based upon the submission of credible documentation, made a *prima facie* showing that [he] owns or has permission to use the property on which the permitted activity is to be located. Once such a showing is made, [DHEC-OCRM] may grant a critical area permit to [Mr. Read], even if certain underlying property disputes remain unresolved.”).

23 A “plat” is a map of a piece of property or an area of land subdivided into lots. Neal v. Brown, 374 S.C. 641, 651, 649 S.E.2d 164, 169 (Ct.App. 2007) (citing State v. Bilbao, 130 Idaho 500, 943 P.2d 926, 928 (1997)). See also Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 40-41, 686 S.E.2d 194, 198 (citing Sutcliff v. Laney Brothers, 247 S.C. 417, 422, 147 S.E.2d 689, 691 (1966); Hamilton v. CCM, Inc., 247 S.C. 152, 154, 263 S.E.2d 378, 379 (1980)).

or landward edge of Lot 4. (R.p.1A, para. 1; R.p.316).²⁴ The deed to Mr. Read's lot (*i.e.*; Lot No. 3)²⁵ noted the "conveyance of the Grantor's interest in the 50' right-of-way [wa]s subject to the private use by the owner of Lots [Nos.] 1, 2, and 4, as set out in the dedication which appears on the Plat." (R.p.317).

Mr. Mallett, the DHEC-OCRM project manager who reviewed and approved the Dock Permit, noted a copy of the Plat dividing Mrs. Wagner's property into Lots Nos. 1, 2, 3, and 4 either initially accompanied Mr. Read's Permit Application or was subsequently submitted. (R.p.2-3, para. 6; R.p.107, lines 3-13; R.p.109, lines 8-11; R.p.146, line 8 – R.p.147, line 13; R.p.162, line 5 – R.p.163, line 15). In any case, Mr. Mallett stated DHEC-OCRM had a copy of the Plat prior to issuing the Dock Permit. (R.p.2-3, para. 6; R.p.107, lines 3-13; R.p.109, lines 8-11; R.p.146, line 8 – R.p.147, line 13; R.p.162, line 5 – R.p.163, line 15).

Contrary to Too Tacky's position, the Plat constituted an "instrument"²⁶ satisfying the statutory/regulatory provisions requiring Mr. Read submit a "certified copy of the deed, lease[,] or other instrument under which [Mr. Read] claim[ed] title, possession[,] or permission from the owner of the property to carry

²⁴ Ms. Wagner actually signed the Plat. (R.p.316). The Plat was also stamped as approved by the Clerk for Charleston County Council and subsequently recorded in the RMC Office in Charleston County. (R.p.316).

²⁵ At the time of the ALC hearing, Mr. Read's parents had purchased Lot No. 3 from him. (R.p.1A-2, para. 3 n.1; R.p.187, lines 1 – R.p.189, lines 1-4). Mayo Read, Sr., serving as Mr. Read's agent, was issued the Dock Permit and signed the Dock Permit. (R.p.1A-2, para. 3 n.1; R.p.304).

²⁶ See Murrells Inlet Corporation v. Ward, 378 S.C. 225, 231, 662 S.E.2d 452, 455-456 (Ct.App. 2008); Hamilton v. CCM, Inc., 274 S.C. 152, 154, 263 S.E.2d 378, 379.

out the [dock construction] proposal. . . .”²⁷ Moreover, DHEC-OCRM’s Summary of Review sheet indicates DHEC-OCRM has historically interpreted either a “[c]ertified [d]eed, plat, or lease” (R.p.258) (Emphasis added) as an “instrument” in terms of the statutory/regulatory requirements of ownership demonstration.

Mr. Mallett noted DHEC-OCRM relied on the Plat in deciding to issue Mr. Read the Dock Permit. (R.p.107, lines 3-13; R.p.135, lines 19-22; R.p.146, line 8 – R.p.147, line 13; R.p.152, lines 15-25; R.p.316). Mr. Mallett remembered reviewing the Plat before issuing the Dock Permit. (R.p.109, lines 8-11; R.p.110, line 24 – R.p.111, line 3; R.p.146, line 8 – R.p.147, line 13; R.p.152, lines 15-25).²⁸

Moreover, as here, “[w]here a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses[,] and distances of the property conveyed.”²⁹ The deed conveying Lot No. 4 to Too Tacky referenced and incorporated the Plat. (R.p.322). Mr. Read’s deed to Lot No. 3 did the same (R.p.317), as did Mrs. Read’s deeds to Lot Nos. 1 and 2. (R.p.276; R.p.279; R.p.283). Both Too Tacky’s and Mr. Read’s deeds referenced and described the 50’ right-of-way

²⁷ S. C. Code Ann. § 48-39-140(B)(4) (Thomson/Reuters West 2008); 23A S.C. Code Ann. Reg. § 30-2(B)(4) (Thomson/Reuters West 2008).

²⁸ Too Tacky conceded Mr. Read’s submission of the Plat and the existence of the creek access easement language. (R.p.2-3, para. 6; R.pp.267-270).

²⁹ Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979) (citing Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975); Lynch v. Lynch, 236 S.C. 612, 115 S.E.2d 301 (1960)) (Emphasis added).

ingress and egress easement. (R.p.317; R.p.322).³⁰ Mrs. Read's deeds simply referenced the Plat. (R.p.276; R.p.279; R.p.283).

The ALJ, the CZMAP, the Circuit Court, and the Court of Appeals all correctly found DHEC-OCRM properly concluded the Plat satisfied Mr. Read's statutory/regulatory requirement to submit documentation supporting his claim to ownership of or permission to use the affected real property. There is substantial evidence in the record supporting DHEC-OCRM's decision and the Court of Appeals should be affirmed.

(b) Certified Vs. Uncertified Plat

DHEC-OCRM's copy of the Plat was not a certified copy. Too Tacky asserts DHEC-OCRM violated its own regulations by issuing the Dock Permit without first having a certified copy of the Plat. (*Petition*, p.7). Too Tacky's arguments are meritless as there is no absolute certification requirement.

Mr. Read had to submit to DHEC-OCRM, *inter alia*, a "copy of the deed, lease[,] or other instrument under which [Mr. Read] claim[ed] title, possession[,] or permission from the owner of the property, to carry out the proposal."³¹ Based upon the plain language of S. C. Code Ann. § 48-39-140(B)(4), there is no statutory requirement Mr. Read provide DHEC-OCRM with a certified copy of the Plat.³²

³⁰ Frierson v. Watson, 371 S.C. 60, 67-68, 636 S.E.2d 872, 876 (Ct.App. 2006) (*citing McDonald v. Welborn*, 220 S.C. 10, 16, 66 S.E.2d 327, 330 (1951); LoPresti v. Burry, 364 S.C. 271, 276, 612 S.E.2d 730, 732-733 (Ct.App. 2005)).

³¹ S.C. Code Ann. § 48-39-140(B)(4).

³² DHEC-OCRM's allows an applicant's Affidavit of Ownership or Control to satisfy the "certification" requirement or serve as a substitute for the certified deed, lease, or

Additionally, 23A S.C. Code Ann. Reg. § 30-2(B) provides, in pertinent part, that the “following minimum information shall **ordinarily** be required [from a permit applicant] before a permit application is considered complete: . . . a **certified** copy of the deed, lease[,] or other instrument under which the applicant claims title, possession[,] or permission from the owner of the property, to carry out the proposal.”³³ The term “ordinarily” is commonly known to mean “usually”, “generally”, “commonly”, “customarily”, and/or “typically”. Conversely, ordinarily does not mean always or on each and every occasion.³⁴

In any case, DHEC-OCRM reviewed and analyzed a copy of the Plat, albeit “uncertified” (R.p.107, lines 3-13; R.p.135, lines 19-22; R.p.146, line 8 – R.p.147, line 13; R.p.152, lines 15-25; R.p.316), prior to issuing the Dock Permit. Additionally, Too Tacky never suggested DHEC-OCRM’s copy of the Plat had been altered and/or forged or was otherwise different from the one on file at the Charleston County RMC Office. (R.p.153, lines 1-11).³⁵

other instrument. (Tr.35, lines 16-19; Tr.41, lines 12-15). While 23A S.C. Code Ann. Reg. § 30-2(B)(4) appears to call for a certified plat, there is no such actual requirement, merely a preference by DHEC-OCRM. Additionally, S. C. Code Ann. § 48-39-140(B)(4) has no such requirement.

³³ 23A S.C. Code Ann. Reg. § 30-2(B)(4) (Emphasis added).

³⁴ Hudson v. City of Chicago, 228 Ill.2d 462, 889 N.E.2d 210 (2008) (Kilbride, J., dissenting); Merrill v. West Virginia Department of Health and Human Resources, 219 W.Va. 151, 164, 632 S.E.2d 307, 320 (2006); State v. Jenkins, 252 Wis.2d 228, 257, 647 N.W.2d 142, 156 (2002) (Abrahamson, C. J., dissenting).

³⁵ Mr. Read, without objection (R.p.75, line 16 – R.p.77, line 3), introduced a certified copy of the Plat into the ALC hearing and no party offered evidence or suggested that the Plat deviated, in any way, from the one DHEC-OCRM reviewed with the Permit Application. (R.p.316). See McNeil v. South Carolina Department of Corrections, 2005 WL 2147192 *1 (S. C. Admin. Law. Judge Div., filed August 11, 2005) (acknowledging the doctrine of harmless error in administrative proceedings). See also Ross v. Medical University of South Carolina, 328 S.C. 51, 70, 492 S.E.2d 62, 72 (1997) (harmless error analysis used).

DHEC-OCRM correctly concluded Mr. Read had met the alleged “certification” requirement and that decision has been and should be appropriately affirmed. As is the normal case, “the decision of an administrative agency interpreting its own regulations [should be and] is given great deference.”³⁶ Such deference creates a superior evaluation threshold or presumption of correctness since “[c]ourts defer to the relevant administrative agency’s decisions with respect to its own regulations unless there is a compelling reason to differ.”³⁷

There has not been and certainly is no reason to question DHEC-OCRM’s interpretation in this case. DHEC-OCRM clearly had discretion to accept Mr. Read’s uncertified Plat given that 23A S.C. Code Ann. Reg. § 30-2(B)(4) uses the phrase “shall ordinarily be required” and S. C. Code Ann. § 48-39-140(B)(4) does not mandate certification.³⁸

The ALJ, the CZMAP, the Circuit Court and the Court of appeals all correctly found DHEC-OCRM properly concluded the Plat, while uncertified, satisfied Mr. Read’s statutory/regulatory requirement to provide documentation of

³⁶ Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 39, 686 S.E.2d 194, 197 (citing Earl v. HTH Associates, Inc./Ace USA Insurance Co. of North America, 368 S.C. 76, 81, 627 S.E.2d 760, 762 (Ct.App. 2006)).

³⁷ South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) (citing Brown v. Department of Health and Environmental Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002); Byerly Hospital v. Health and Human Services Finance Commission, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995)).

³⁸ See Lee v. Thermal Engineering Corp., 352 S.C. 81, 94, 572 S.E.2d 298, 305 (Ct.App. 2002). See also TNS Mills, Inc. v. South Carolina Department of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998); Burns v. Gower, 34 S.C. 160, 162, 13 S.E. 331, 332 (1891)).

his claim to ownership of or permission to use the affected real property. There is substantial evidence in the record supporting DHEC-OCRM's decision and, in turn, the Court of Appeals should be affirmed in all respects.

(c) **Mr. Read's Prima Facie Showing Of The Creek Access Easement**

The Court of Appeals properly held that DHEC lacks any authority to adjudicate property interests, and that DHEC's review is limited to whether the applicant provided credible documentation of a prima facie claim to ownership, possession, or permission to use the affected property.³⁹ Moreover, there is substantial evidence in the record to support the lower courts' conclusion that the documentation provided by Mr. Read provided credible support for his prima facie claim to an easement. Too Tacky concedes that "the ultimate legal determination of Read's property rights, if any, must be reached in another forum" and that the existence of and the scope of Read's property interest in the claimed easement is not before this Court. Pet. for Cert. at 7, Fn 5. Nonetheless, Too Tacky devotes a majority of its argument asking this Court to determine the existence and scope of Mr. Reads' easement.

Mrs. Wagner, Mr. Read's and Too Tacky's predecessor-in-title, subdivided her land into four lots via the Plat and specifically included the language, "50' drainage – [E]asement & Creek Access for Lots [Nos.] 1, 2 & 3."⁴⁰ As previously

³⁹ Moreover, Too Tacky concedes that this is not the appropriate forum for a determination of Mr. Read's property interests. Pet. for Cert. p. 7 n. 5, and p. 8.

⁴⁰ Mrs. Wagner's creation of the 50' easement appears to indicate here intent to preserve the right to later seek to have Charleston County maintain the easement. *See generally* Marlow v. Marlow, 284 S.C. 155, 158, 325 S.E.2d 703, 705 (Ct.App. 1985) (50' road is the width

noted, all of the deeds to Lots Nos. 1-4, including Mr. Read's and Too Tacky's, each specifically incorporate the Plat by reference. (R.pp.276-285; R.pp.316-325). Mr. Read and his parents, by virtue of their ownership of Lots Nos. 1-3, acquired a special property right in the 50' creek access easement.⁴¹ Stated otherwise, ". . . where a deed describes land as is shown on a certain plat, such plat becomes part of the deed."⁴²

Moreover, as noted in Newington Plantation Estates Association v. Newington Plantation Estates,⁴³ when a deed references a plat showing an easement, such an easement is created as a matter of law.⁴⁴ Therefore, the Court of Appeals' conclusion that, by submission of the Plat, Mr. Read had suitably presented *prima facie* evidence of an easement was warranted and justified. Additionally, this conclusion is consistent with legal interpretations involving easements providing for water "access" similar to the one created by the Plat and the deeds in this case.⁴⁵

required for county maintenance), *disapproved by on other grounds*, Jowers v., Hornsby, 292 S.C. 549, 357 S.E.2d 710 (1987).

⁴¹ Davis v. Epting, 317 S.C. 315, 318, 454 S.E.2d 325, 327 (Ct.App. 1994) ("Where land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a special property right in the roads shown on the plat. . . . If the deed references the plat, the grantee acquires a private easement for the use of all streets on the map.").

⁴² Blue Ridge Realty Company, Inc. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924 (1965). *See also* S.C. Code Ann. § 30-5-250 (Thomson West 2005).

⁴³ Newington Plantation Estates Association v. Newington Plantation Estates, 318 S.C. 362, 458 S.E.2d 36 (1995).

⁴⁴ Newington Plantation Estates Association v. Newington Plantation Estates, 318 S.C. 362, 365, 458 S.E.2d 36, 38 (*citing* McAllister v. Smiley, 301 S.C. 10, 389 S.E.2d 857 (1990); Cason v. Gibson, 217 S.C. 500, 61 S.E.2d 58 (1950)). *See also* Murrells Inlet Corporation v. Ward, 378 S.C. 225, 233, 662 S.E.2d 452, 456 (Ct.App. 2008)

⁴⁵ Abbs v. Town of Syracuse, 686 N.E.2d 928, 931 (Ind.App. 1997) (*citing* Abbs v. Town of Syracuse, 655 N.E.2d 114, 115 (Ind.App. 1995) (*citing* Metcalf v. Houk, 644 N.E.2d 597

The ALJ, the CZMAP, the Circuit Court, and the Court of Appeals correctly found DHEC-OCRM properly concluded Mr. Read satisfied his statutory/regulatory requirement to demonstrate evidence of the easement and, in turn, warranted DHEC-OCRM's issuance of the Dock Permit. There is substantial evidence in the record supporting DHEC-OCRM's decision and the Court of Appeals should be affirmed in all respects.

(d) **DHEC-OCRM's Evaluation Of Mr. Read's Permit Application Pursuant To S.C. Code Ann. § 48-39-150**

DHEC-OCRM was required to evaluate Mr. Read's Permit Application in light of the widely known ten (10) required statutory/regulatory factors and/or "general considerations".⁴⁶ The undisputed evidence demonstrated DHEC-OCRM considered all of the ten enumerated factors and/or general considerations prior to issuing Mr. Read the Dock Permit. (R.p.142, line 17-20).

Too Tacky focused its attack on one factor - the impact of the proposed use on adjacent landowners. (*Petition*, pp.91-20). Unfortunately, Too Tacky plainly ignored the reasonable and well-settled proposition that DHEC-OCRM must balance the interests of adjacent property owners (*i.e.*; Too Tacky) against the interests of the applicant (*i.e.*; Mr. Read) and, to some degree, the public in general.

(Ind.App. 1994); Monahan v. Hampton Point Association, Inc., 264 A.D.2d 764, 695 N.Y.S.2d 385 (1999); Higgins v. Douglas, 304 A.D.2d 1051, 1055, 758 N.Y.S.2d 702, 706 (3rd. Dept. 2003; Winkler v. Petersilie, 124 Fed.Appx. 925, 932 (6th Cir. 2005) (2005 WL 450595); Shore Village Property Owners' Association, Inc. v. Department of Environmental Protection, 824 So.2d 208, 209 (Fla. 4th DCA 2002); In the Matter of Tideland's License, 326 N.J.Super. 209, 740 A.2d 1125 (N.J. 1999); Cartish v. Soper, 157 So.2d 150, 153-154 (Fla. 2nd DCA 1963).

Mr. Mallett stated he duly considered how Mr. Read's proposed use would affect the value of Too Tacky's property as well as Too Tacky's enjoyment of the property. (R.p.142, line 17 – R.p.145, line 16). Too Tacky's aesthetic objection to the Dock Permit was Mr. Grimball's unsupported fear Mr. Read would subdivide Lot No. 3 into several lots and, in turn, multiple families would be using the dock. (R.p.209, line 15 – R.p.210, line 14).⁴⁷ Furthermore, albeit without any quantification and/or substantiation, Mr. Grimball opined Mr. Read's permitted joint-use private dock might devalue [Too Tacky's] property." (R.p.211, lines 9-11).⁴⁸

Too Tacky failed to present any substantiated evidence showing the Dock Permit had a detrimental impact on its property. Mr. Grimball noted the proposed dock was relatively near his house (R.p.205, line 22 – R.p.208, line 11; R.p.316)⁴⁹ and he presumed some, very speculative at best, "noisy" use of the dock, as extrapolated from his and his family's own behavior on Too Tacky's dock. (R.p.211, lines 4-11).

⁴⁶ See S.C. Code Ann. § 48-39-150(A) (Thomson/Reuters West 2007); 23A S.C. Code Ann. Reg. § 30-11(B) (Thomson/Reuters West 2007). See also Olson v. South Carolina Department of Health and Environmental Control, 379 S.C. 57, 66, 663 S.E.2d 497, 502 (Ct.App. 2008).

⁴⁷ Mr. Grimball stated the subdivision of Lot No. 3 "to [him] [wa]s the worst case scenario" (R.p.210, lines 11-14).

⁴⁸ Mr. Grimball based the "devaluation" on the noise, traffic, traipsing coolers, boats, kids, dogs, *etc.* on the new dock. (R.p.211, lines 4-8). Mr. Grimball was concerned about those factors since he used his dock in that manner. (R.p.211, lines 4-8).

⁴⁹ When Too Tacky purchased Lot No. 4 Mr. Grimball admittedly knew about the recorded Plat and the specific language regarding "Creek Access for Lots [Nos.] 1, 2 & 3" set forth on the Plat. (R.p.1A-2, para. 4; R.p.198, line 19 – R.p.199, line 8; R.p.211, line 20 – R.p.212, line 16). Mr. Grimball explained his believed the "easement" simply permitted the easement holders to walk down to the creek (R.p.1A-2, para. 4; R.p.216, line 3 – R.p.217, line 13) or, stated otherwise,

The ALJ, the CZMAP, the Circuit Court, and the Court of Appeals correctly found DHEC-OCRM properly considered the ten enumerated factors and concluded Mr. Read's proposed dock did not negatively affect Too Tacky's property and/or the general public's land/interests thus warranting DHEC-OCRM's issuance of the Dock Permit. There is substantial evidence in the record supporting DHEC-OCRM's decision and the Court of Appeals should be affirmed in all respects.

(e) **DHEC-OCRM's Approval Of Multiple Docks On A Single Property Parcel**

Too Tacky argues DHEC-OCRM improperly awarded the Dock Permit to Mr. Read when to do so necessarily imposed another dock on Too Tacky's property which already had one dock. (*Petition*, pp.18-19). Furthermore, Too Tacky argues DHEC-OCRM's own regulations prohibit the two dock scenario.⁵⁰ (*Petition*, pp.18-19). Too Tacky's position is without merit and must be dismissed.

Mr. Read was awarded the Dock Permit based on the creek access easement shown on the Plat, his ownership of Lot No. 3, and his entitlement to use the creek access easement. The deeds for all four lots, including Mr. Read's and Too Tacky's deeds, specifically incorporated the Plat by reference. (R.pp.1A-2, para. 3; R.pp.276-285; R.pp.316-325).

the easement allowed "that someone could come down to the creek." (R.pp.1A-2, para. 4; R.p.217. lines 14-20).

50 See 23A S.C. Code Ann. Reg. § 30-12.A(1)(a) (Thomson West Supp. 2004).

The administrative regulation governing Mr. Read's Permit Application did not contain an absolute limitation requiring only one dock structure per parcel.⁵¹ The Court of Appeals correctly concluded the regulation's use of the word "normally" "necessarily vest[ed] [DHEC-OCRM] with some discretion to allow more than one dock per parcel" when, like this matter, unusual circumstances were present.⁵² Further, there is substantial evidence in the record supporting DHEC-OCRM's determination that the creek access easement across Too Tacky's property presented an unusual circumstance which warranted DHEC-OCRM's discretionary deviation from the "normal" one structure per parcel limitation.

The ALJ, the CZM Appellate Panel, the Circuit Court, and the Court of Appeals all correctly found DHEC-OCRM properly considered the "one dock per parcel rule" and concluded the creek access easement presented an unusual circumstance warranting DHEC-OCRM's issuance of the Dock Permit. There is substantial evidence in the record supporting DHEC-OCRM's decision and the Court of Appeals should be affirmed in all respects.

⁵¹ 23A S.C. Code Ann. Reg. 30-12(A)(2)(a) (Thomson Reuters West Supp. 2004) ("docks and piers shall normally be limited to one structure per parcel") (Emphasis added). The administrative regulation has since been revised and renumbered. The current version of the regulation eliminates the flexibility of the rule by removing the "normally" language. Compare 23A S.C. Code Ann. Reg. 30-12(A)(1)(a) (Thomson Reuters West Supp. 2008).

⁵² Too Tacky Partnership v. South Carolina Department of Health and Environmental Control, 386 S.C. 32, 41, 686 S.E.2d 194, 199.

B. A Writ Of Certiorari Is Not Warranted

Too Tacky's Petition does not provide any special or important reasons for this Supreme Court to review the Court of Appeals' decision. The South Carolina Appellate Court Rules provide, in pertinent part, the following five considerations as guidance on whether to grant a Writ of Certiorari:

- (b) **Considerations Governing Review:** A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons that will be considered:
- (1) Where there are novel questions of law.
 - (2) Where there is a dissent in the decision of the Court of Appeals.
 - (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
 - (4) Where substantial constitutional issues are directly involved.
 - (5) Where a federal question is included **53**

Factors two, four, and five, clearly do not apply, as there was no dissent, and no constitutional issues or federal questions are present. Further, Too Tacky does not allege the Court of Appeals' decision conflicts with any decision of the Supreme Court. Moreover, there are no novel questions of law presented.

Despite conceding the scope and existence of Mr. Read's property rights are not before this Supreme Court, Too Tacky has effectively asked this Supreme Court to adjudicate Mr. Read's property rights by asking for an adjudication that Mr. Read has not established the *prima facie* elements of an

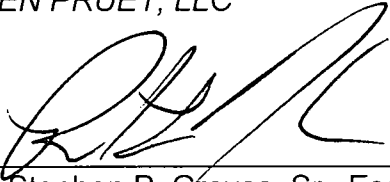
easement. If Too Tacky had a credible argument on the merits of Mr. Reads' claim to a property interest, Too Tacky likely would have filed an action in the proper forum long ago. Rather than litigate the property rights in the proper forum, Too Tacky has chosen instead to attack this permit by challenging the sufficiency of the documentation included in the permit application of Mr. Read's to establish a *prima facie* easement appurtenant. Because DHEC-OCRM lacks the authority to make that type of adjudication, it flows that the ALC, the CZMAP, the Circuit Court, the Court of Appeals, and this Supreme Court, in reviewing DHEC-OCRM's permitting decision, also lack jurisdiction to make such an adjudication. The ALC, CZMAP, Circuit Court, and Court of Appeals have all entertained, fully considered, and rejected Too Tacky's arguments in well reasoned opinions. There being no novel questions of law presented, this Supreme Court should deny the Petition.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Respondents, Mayo Read, Jr., and South Carolina Department of Health and Environmental Control, respectfully request this Supreme Court to deny the Petition for Writ of Certiorari and, in turn, affirm the opinion of the Court of Appeals in all respects.

Respectfully submitted:

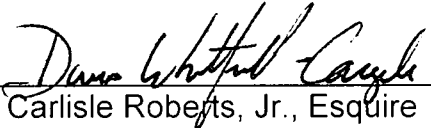
NEXSEN PRUET, LLC

By: 

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.*

S.C. DEPT. HEALTH & ENVIR. CONTROL

By:  per RET

Carlisle Roberts, Jr., Esquire
General Counsel
2600 Bull Street
Columbia, South Carolina 29201
Telephone: 803.898.3350
Telecopier: 803.898.3367

Davis Whitfield-Cargile, Esquire
1632 McMillan Avenue, Suite 400
North Charleston, South Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*Attorneys for the Respondent,
South Carolina Dept. of Health &
Environmental Control*

Charleston, South Carolina

26 February 2010

**STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT**

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

**PROOF OF SERVICE for
RESPONDENTS' JOINT RETURN TO
PETITION FOR WRIT OF CERTIORARI**

Stephen P. Groves, Sr., Esq.
Richard L. Tapp, Jr., Esq.
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

Davis Whitfield-Cargile, Esq.
*S. C. DEPT. OF HEALTH
AND ENVIRONMENTAL
CONTROL - OCRM*
1632 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*Attorneys for Respondent,
SCDHEC*

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 26 February 2010, I served one copy of the **Joint Return to Petition for Writ of Certiorari** submitted by the Respondents, Mayo Read, Jr., and South Carolina Department of Health and Environmental Control, on counsel for the Petitioner via United States Mail, postage pre-paid, and addressed as follows:

John P. Siebels, Jr., Esquire
Jason Scott Luck, Esquire
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, South Carolina 29401

*Attorneys for the Appellant,
Too Tacky Partnership*



Stephen P. Groves, Sr.

Charleston, South Carolina
26 February 2010

NPCHAR1:551341.1-TBF-(SPG) 035563-00001

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

MAR 23 2010

S.C. SUPREME COURT

Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents,

of whom Too Tacky Partnership is Petitioner.

PETITIONER'S REPLY TO RESPONDENTS' JOINT RETURN TO
PETITIONER'S PETITION FOR WRIT OF *CERTIORARI*

John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Appellant Too Tacky
Partnership

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REPLY

While the Petitioner believes that its arguments contained within its Petition have not been countered by the Respondents' Joint Return, it submits the following in Reply to certain arguments made by Respondents:

A. The Court of Appeals' Decision has an Effect on the Property Rights of the Petitioner and is thus Appropriate for Review by this Court

The State of South Carolina, through DHEC's Office of Coastal Resource Management ("OCRM"), seeks to subvert the property rights of the Petitioner in favor of Respondent Read, and ostensibly for the public good. Specifically, OCRM has permitted a dock to be built on another landowner's property without his consent and over his objection to the construction.

The five considerations provided by the Respondents in their Return (p. 23) are neither "...controlling nor fully measuring the Supreme Court's discretion or power to grant review..." Rule 242(b), SCACR; accord JEAN HOEFER TOAL, ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 276 (2nd Ed. 2002) ("The Supreme Court is, of course, not bound by the above factors [of Rule 242(b)]"). Because affirmation of the Court of Appeals' decision (the "Decision") will have a powerful and permanent effect on the property rights of the Petitioner, it is appropriate that this Court examine this Decision.

"Property rights have long been regarded as fundamental in Western civilization." Keane/Sherratt Partnership v. Hodge, 292 S.C. 459, n. 3, 357 S.E.2d 193, n. 3 (Ct. App. 1987) (Sanders, C.J.). The state must be circumspect when it chooses to exercise its power to undermine a citizen's property rights in favor of another. See generally Kelo v. City of New London, 545 U.S. 469 (2005); U.S. CONST. amend. V; U.S. CONST. amend.

XIV; S.C. Code § 14-1-50 (common law of England continues with full force and effect); MAGNA CARTA LIBERTATUM¹ art. 28; MAGNA CARTA LIBERTATUM art. 30; MAGNA CARTA LIBERTATUM art. 31.

Petitioner argues in its Petition that while OCRM is invested with some discretion by the state to perform its work, it does not have expansive discretion allowed by the Decision. The discretionary power afforded to OCRM under the Decision lacks even basic safeguards to a landowner's rights found in takings jurisprudence. While the Respondents may argue that all of the exercises/abuses of discretion that led to OCRM's grant of permit were relatively minor, "death by a thousand cuts" is death nonetheless. The Decision's dangerous precedent must be reviewed and examined by this Court for its compliance with the Constitutions of the United States and the law of South Carolina.

B. Respondent Read Must Be Held to the *Prima facie* Standard Set by the Court of Appeals

The Petitioner does not ask this Court to "adjudicate" Respondent Read's property rights. OCRM is not vested with the authority to adjudicate property rights. It is, however, required to verify that an applicant for a permit must meet certain threshold requirements; one of these requirements is that the applicant make a *prima facie* showing of ownership or easement (See Decision, Part II). Respondent Read did not make a *prima facie* showing of an easement appurtenant, easement in gross, or easement in gross for commercial purposes, and Respondent OCRM did not require such a showing. This is a significant oversight and must be addressed by this Court.

¹ Available at <http://www.usconstitution.net/magna.html> (last visited 22 March 2010).

C. Lawton Grimball's Testimony on the Value of His Property was Proper

To the extent that the Respondents argue that Lawton Grimball, testifying on behalf of the Petitioner, cannot testify about the reduction of value to his property as a result of Respondent Read's proposed dock, they are incorrect. Generally, a landowner, who is familiar with his property and its value, is allowed to give his estimate as to its value or damage thereto, even though the owner is not an expert. E.g. S.C. State Hwy. Dept. v. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970). To the extent that the Respondents, on page 20 of their Return, are arguing that Grimball's opinions were based on "very speculative", and thus inadmissible, evidence, the record reflects no objection on the record to its introduction. Thus, this objection is waived.

CONCLUSION

For the reasons stated above and those in its original petition, Petitioner asks the Court to grant its petition for a writ of *certiorari*.



John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Petitioner Too
Tacky Partnership
22 March 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

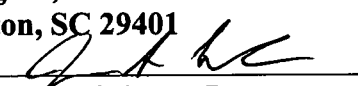
Too Tacky Partnership,.....Appellant,
v.
South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents,
of whom Too Tacky Partnership is Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served the Petitioner's Reply To Respondents' Joint Return To Petitioner's Petition For Writ Of *Certiorari* on counsel for the Respondents by serving copies of the same via U.S. Mail on 22 March 2010 to the following:

Davis Whitfield-Cargile, Esquire
DHEC - OCRM
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401


John P. Seibels, Jr.
Jason Scott Luck
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Petitioner Too
Tacky Partnership

THE
SEIBELS
LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

March 22, 2010

VIA FEDERAL EXPRESS

The Honorable Daniel E. Shearouse
S. C. Supreme Court Clerk
1231 Gervais Street
Columbia, SC 29211

RECEIVED

MAR 23 2010

S.C. SUPREME COURT

RE: Too Tacky, A Partnership v. S. C. DHEC and Mayo Read, Jr.
Case Tracking No.: 2009-149126
Our File No.: 6058-19

Dear Mr. Shearouse:

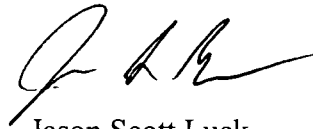
Enclosed please find an original and six copies of Petitioner's Reply to Respondent's Joint Return to Petitioner's Petition for Writ of Certiorari in the above-referenced matter.

Please do not hesitate to contact us if you have any questions.

With kind personal regards I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.



Jason Scott Luck

JSL/krb

Enclosures

cc: Davis Whitfield-Cargile, Esquire (w/enc)
Richard L. Tapp, Jr., Esquire (w/enc)

The Supreme Court of South Carolina

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of
Health and Environmental
Control and Mayo Read, Jr.,

Respondents.

The Honorable Roger M. Young
Cherokee County
Trial Court Case No. 2007-CP-10-01520

ORDER

For good cause having been shown, the time for serving and filing the Reply to the Joint Return to the Petition for a Writ of Certiorari in the above entitled matter is hereby extended until March 23, 2010.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

March 9, 2010

cc: John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Carlisle Roberts, Jr, Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

THE
SEIBELS
LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

6 March 2010

The Honorable Daniel E. Shearouse
S. C. Supreme Court Clerk
1231 Gervais Street
Columbia, SC 29211

RE: Too Tacky, A Partnership v. S. C. DHEC and Mayo Read, Jr.
Case Tracking No.: 2009-149126
Our File No.: 6058-19

Dear Mr. Shearouse:

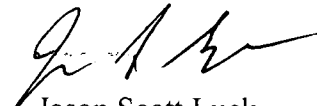
Enclosed please find an original and six copies of Petitioner's Motion for Extension in the above-referenced matter. Also enclosed is a money order for \$25.00 representing the required filing fee.

Please do not hesitate to contact us if you have any questions.

With kind personal regards I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.



Jason Scott Luck

JSL/krb

Enclosures

cc: Davis Whitfield-Cargile, Esquire (w/enc)
Richard L. Tapp, Jr., Esquire (w/enc)

RECEIVED

MAR 09 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

Too Tacky Partnership,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents,

of whom Too Tacky Partnership is Petitioner.

MOTION FOR EXTENSION

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned attorney, counsel for the Petitioner, files this motion for an extension of the deadline for serving and filing its Reply to the Respondents' Joint Return to Petition for Writ of Certiorari. This submission is currently due March 8, 2010, and if a fifteen day extension is granted, it would be due on March 23, 2010.

The grounds for this motion are: (1) the factual and legal responses found in the Joint Return require additional time to formulate an adequate Reply; (2) counsel for the

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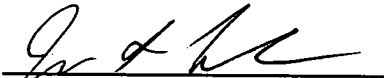
MAR 09 2010

S.C. SUPREME COURT

Petitioner have been involved in other trial matters; and (3) no party would be prejudiced by the grant of this extension.

Petitioner respectfully requests that this Court hold any briefing time in abeyance pending the consideration of this motion.

Petitioner has conferred with counsel for the respondents, who consent to the requested relief.


John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Appellant Too Tacky
Partnership

6 March 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger Young
Circuit Court Judge

Opinion No. 4616 (S.C. Ct. App. filed September 9, 2009,
withdrawn, substituted and refiled November 24, 2009)

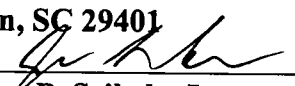
Too Tacky Partnership,.....Appellant,
v.
South Carolina Department of Health
and Environmental Control and
Mayo Read, Jr.,.....Respondents,
of whom Too Tacky Partnership is Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of *Certiorari* on counsel for the Respondents by serving copies of the same via U.S. Mail on 6 March 2010 to the following:

Davis Whitfield-Cargile, Esquire
Counsel, OCRM
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Richard L. Tapp, Jr., Esquire
NEXSEN PRUET, LLC
205 King St., Suite 400
Charleston, SC 29401


John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)
Attorneys for Petitioner Too
Tacky Partnership

26 February 2010

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED
MAR 01 2010
S.C. SUPREME COURT

Re: **Too Tacky Partnership v. South Carolina
Department of Health and Environmental Control
and Mayo Read, Jr.**

Civil Action No.: 2007-CP-10-1520
Appeal from the Charleston County Court
of Common Pleas and the South Carolina
Court of Appeals (Opinion No. 4616)
Supreme Court Tracking No.: 2009-149126
NP File No.: 035563-00001

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the **Respondents' Joint Return to Petition for Writ of Certiorari** filed on behalf of the Respondent, Mayo Read, Jr., as well as, the Respondent, South Carolina Department of Health and Environmental Control, in the above-referenced matter. I also enclose the original and one copy of the Respondents' joint **Proof of Service** indicating service of the **Respondents' Joint Return to Petition for Writ of Certiorari** upon counsel for the Petitioner, Too Tacky Partnership.

I would appreciate you kindly filing these documents with the Supreme Court and returning one stamped copy to my attention in the enclosed self-addressed stamped envelope.

NEXSEN | PRUET

Hon. Daniel Shearouse
Clerk of Court
26 February 2010
Page 2

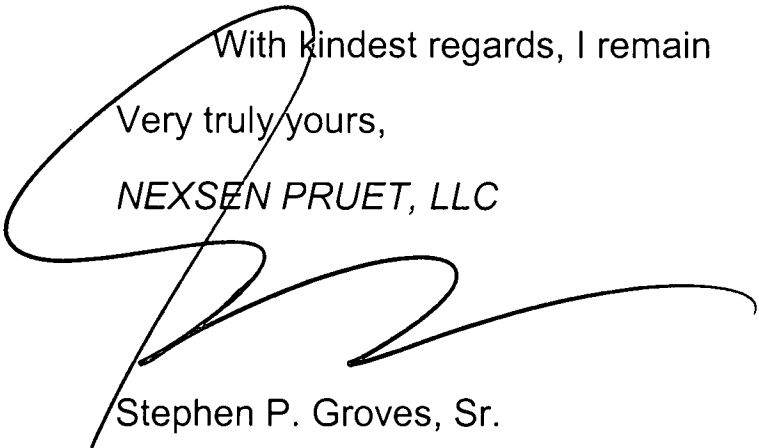
RECEIVED
MAR 01 2010
S.C. SUPREME COURT

If you need anything else or if I otherwise may be of any assistance to you, your office, or to the Supreme Court regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725, the direct telecopier number is 843.414.8206, and the e-mail address is sgroves@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Stephen P. Groves, Sr.

SPGsr:spg

Enclosures

CCE

Davis Whitfield-Cargile, Esquire

John P. Siebels, Jr., Esquire/Jason Scott Luck, Esquire

The Supreme Court of South Carolina

Too Tacky Partnership, Petitioner,

v.

South Carolina Department of
Health and Environmental
Control and Mayo Read, Jr., Respondents.

The Honorable Roger M. Young
Cherokee County
Trial Court Case No. 2007-CP-10-01520

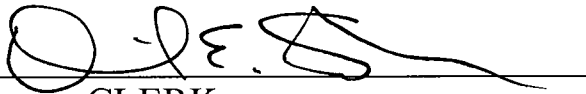
ORDER

For good cause having been shown, the time for serving and filing a Joint Return to Petition for a Writ of Certiorari in the above entitled matter is hereby extended until February 26, 2010.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 13, 2010

cc: John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Carlisle Roberts, Jr, Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

11 January 2010

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

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JAN 12 2010

S.C. SUPREME COURT

Re: Too Tacky Partnership v. South Carolina
Department of Health and Environmental Control
and Mayo Read, Jr.

Civil Action No.: 2007-CP-10-1520

Appeal from the Charleston County Court
of Common Pleas and the South Carolina
Court of Appeals (Opinion No. 4616)

Supreme Court Tracking No.: 2009-149126

NP File No.: 035563-00001

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Respondents' Joint Motion for Extension of Time in which to File Return to Petition for Writ of Certiorari filed on behalf of the Respondent, Mayo Read, Jr., as well as, the Respondent, South Carolina Department of Health and Environmental Control, in the above-referenced matter. I also enclose the original and one copy of the Respondents' joint Proof of Service indicating service of the Respondents' Joint Motion for Extension of Time in which to File Return to Petition for Writ of Certiorari upon counsel for the Petitioner, Too Tacky Partnership. Finally, I further enclose our firm check in the amount of \$25.00 to cover the applicable motion filing fee.

NEXSEN | PRUET

Hon. Daniel Shearouse
Clerk of Court
11 January 2010
Page 2

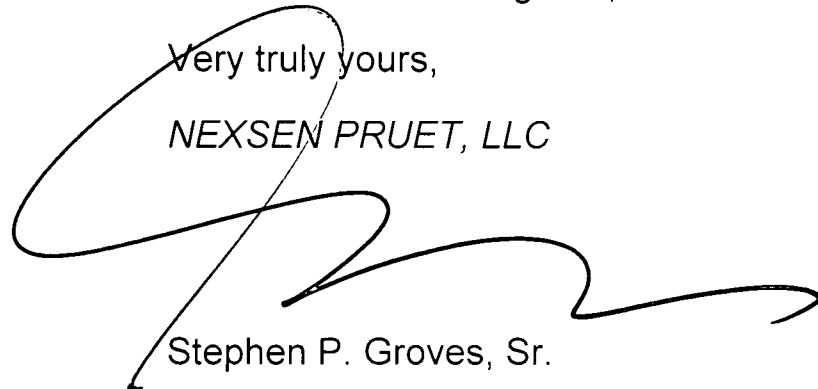
I would appreciate you kindly filing these documents with the Supreme Court and returning one stamped copy to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or if I otherwise may be of any assistance to you, your office, or to the Supreme Court regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725, the direct telecopier number is 843.414.8206, and the e-mail address is sgroves@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Stephen P. Groves, Sr.

SPGsr:spg

Enclosures

CCE

Davis Whitfield-Cargile, Esquire

John P. Siebels, Jr., Esquire/Jason Scott Luck, Esquire

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

RECEIVED

JAN 12 2010

S.C. SUPREME COURT

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

South Carolina Court of Appeals
Opinion No. 4616 (2009 WL 4282641)
(Filed 24 November 2009)

Too Tacky Partnership,

Petitioner,

v.

South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

JOINT MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE RETURN TO
PETITION FOR WRIT OF CERTIORARI

Stephen P. Groves, Sr., Esq.
Richard L. Tapp, Jr., Esq.
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

Elizabeth Applegate Dieck, Esq.
Chief Counsel, DHEC
Davis Whitfield-Cargile, Esq.
SCDHEC
1632 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*Attorneys for Respondent,
SCDHEC*

TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

COMES NOW the Respondent, Mayo Read, Jr., ("Mr. Read") together with the Respondent, South Carolina Department of Health and Environmental Control ("SCDHEC"), pursuant to Rule 240 of the South Carolina Appellate Court Rules, and jointly respectfully requests this Supreme Court to grant them a thirty-day (30) extension of time in which to file their Joint Return to the Petitioner's Petition for Writ of Certiorari in this appellate matter.

The basis for this motion is the record involves several tiers of determinations and requires additional time for consideration. Moreover, both appellate counsel for Mr. read and SCDHEC are involved in other appellate and trial matters at this time.

Based upon the current briefing schedule, the Joint Return to the Petition for Writ of Certiorari is currently due on or before 27 January 2010. Consequently, anticipating a favorable reception and subsequent grant of this motion, the Joint Return to the Petition for Writ of Certiorari would then be due on Friday, 26 February 2010.

Finally, both Mr. Read and SCDHEC respectfully request that this Supreme Court hold the briefing time in abeyance until such time as this motion may be considered and ruled upon.

Respectfully submitted:

NEXSEN PRUET, LLC

By: _____

Stephen P. Groves, Sr., Esquire
Richard L. Tapp, Jr., Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.*

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL

By: _____

Elizabeth Applegate Dieck, Esquire
Chief Counsel
Davis Whitfield-Cargile, Esquire
1632 McMillan Avenue
Suite 400
North Charleston, South Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*with
pleading*

*Attorneys for the Respondent,
SCDHEC*

Charleston, South Carolina

11 January 2010

**STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT**

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young
Case No.: 2007-CP-10-1520

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South Carolina Department of Health
and Environmental Control and Mayo
Read, Jr.,

Respondents.

**PROOF OF SERVICE for
JOINT MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE RETURN TO
PETITION FOR WRIT OF CERTIORARI**

Stephen P. Groves, Sr., Esq.
Richard L. Tapp, Jr., Esq.
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondent,
Mayo Read, Jr.,*

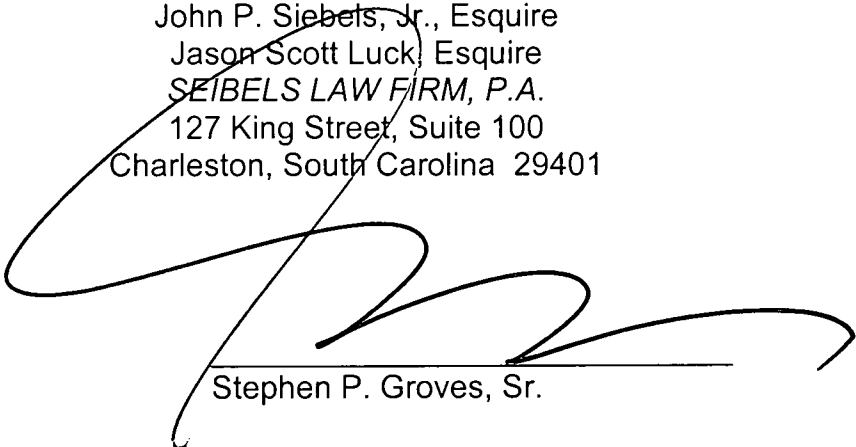
Elizabeth Applegate Dieck, Esq.
Chief Counsel, DHEC
Davis Whitfield-Cargile, Esq.
SCDHEC
1632 McMillan Avenue, Ste. 400
N. Charleston, S. Carolina 29405
Telephone: 843.953.0200
Telecopier: 843.953.0201

*Attorneys for Respondent,
SCDHEC*

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 11 January 2010, I served a copy of the **Respondents' Joint Motion for Extension of Time In Which to File Return to Petition for Writ of Certiorari** submitted by the Respondent, Mayo Read, Jr., and the Respondent, South Carolina Department of Health and Environmental Control, on all counsel appearing in this appeal, via the United States Mail, postage pre-paid, and addressed as follows:

Davis Whitfield-Cargile, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

John P. Siebels, Jr., Esquire
Jason Scott Luck, Esquire
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, South Carolina 29401

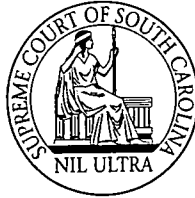


Stephen P. Groves, Sr.

Charleston, South Carolina

11 January 2010

NPCHAR1:534721.1-TBF-(SPG) 035563-00001



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 4, 2010

John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Seibels Law Firm
127 King Street, Suite 100
Charleston, SC 29401

Re: Too Tacky v. SCDHEC
Case Tracking No. 2009-149126

Dear Counsel:

This office has received your Petition for a Writ of Certiorari in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

John Page Seibels, Jr., Esquire
Jason Scott Luck, Esquire
Page Two
January 4, 2010

Very truly yours,

A handwritten signature in black ink, appearing to be "D. Luck", with a long horizontal flourish extending to the right.

CLERK

DES/dmh

Enclosures

cc: Carlisle Roberts, Jr., Esquire
Davis Arjuna Whitfield-Cargile, Esquire
Elizabeth Applegate Dieck, Esquire
Richard L. Tapp, Jr., Esquire
Stephen P. Groves, Jr., Esquire

THE
SEIBELS
LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

December 28, 2009

VIA FED EX

The Honorable Daniel E. Shearouse
S. C. Supreme Court Clerk
1231 Gervais Street
Columbia, SC 29211

RECEIVED
DEC 29 2009
S.C. SUPREME COURT

RE: Too Tacky, A Partnership v. S. C. DHEC and Mayo Read, Jr.
Opinion No. 4616
Our File No.: 6058-19

Dear Mr. Shearouse:

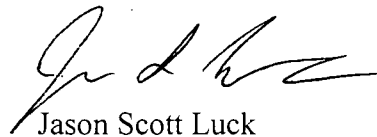
Enclosed please find an original and six copies of Petitioner Too Tacky Partnership's Petition for Writ of *Certiorari* in the above-referenced matter. Also enclosed is our firm's check for \$100.00 representing the required filing fee.

Please do not hesitate to contact us if you have any questions.

With kind personal regards I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.


Jason Scott Luck

JSL/krb

Enclosures

cc: Elizabeth Dieck, Esquire (w/enc – excluding appendix)
Richard L. Tapp, Jr., Esquire (w/enc – excluding appendix)
Clerk, Court of Appeals (w/enc – excluding appendix) (via Fed Ex)