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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable H.W. Funderburk, Jr.

Appellate Case No. 2016-002136

GENE B. SCHWIERS Respondent,

vs

SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL and STEWART W. HEATH.....Respondents below,

OF WHOM SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL IS THE RESPONDENT,

AND

STEWART W. HEATH IS THE APPELLANT.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gene B. Schwiers,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control and Stewart W.
Heath,

Respondents.

Docket No. 15-ALJ-07-0580-CC

FINAL ORDER

FILED

AUG 18 2016

SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Request for a Contested Case filed by Gene B. Schwiers ("Petitioner") on December 29, 2015, challenging the decision of the South Carolina Department of Health and Environmental Control ("DHEC"), Office of Ocean and Coastal Resource Management ("ORCM") to amend critical area permit number OCRM-12-112-S.¹ The amended permit would authorize the modification of a private use dock by installing a 12' X 12' four-pile boat lift on the ebb-side of the existing fixed pierhead and by shifting the existing floating dock four (4) feet to the flood-side (north). DHEC approved the Permit on October 14, 2015. Petitioner filed a Request for Final Review Conference before the Board of Health and Environmental Control ("Board") on October 28, 2015. The Board issued its decision declining review on November 23, 2015. Petitioner then filed a Request for Contested Case Hearing on December 29, 2015. A hearing was held in this matter at the ALC in Columbia, South Carolina on July 26, 2016.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, and taking into consideration the burden of proof upon the parties, the Court makes the following findings of fact by a preponderance of the evidence:

Sparkling Waters, L.P., is the owner of real property at 1674 Dolphin Street, Garden City, South

¹ Schwiers is a general partner of Sparkling Waters, L.P., which is the legal owner of property adjacent to the property involved in the permit granted by DHEC.

Carolina. Stewart W. Heath ("Heath") owns adjacent property at 1666 Dolphin Street, Garden City, South Carolina. On June 27, 2012, DHEC issued critical area permit OCRM-12-112-S to Heath, which allowed the modification of an existing "grandfathered" dock. Among other things these modifications allowed Heath to replace an existing boatlift, expand the existing pierhead, and install a roof over the pierhead and boatlift. It also allowed the existing floating dock to be relocated four (4) feet "channel-ward."²

On May 18, 2015, Heath filed an application asking to add a four-pile 12'x12' boatlift and to relocate the floating dock four (4) feet northwards. In June 2015, DHEC received opposition letters or emails from Petitioner as well as from neighboring property owners south of Petitioner, and north of Heath. These challengers raised several grounds in opposition to the application for permit amendment: encroachment, impediments to navigation, and diminished value and enjoyment of their properties.

DHEC reviewed the objections and notified Heath's agent of the concerns raised. At least one alternative was considered and rejected because it would extend the floating dock further into the creek than surrounding docks and would make it more of an impediment to public navigation. Navigation between docks (as argued by Petitioner) is considered a private matter.

DHEC's project manager, Christopher Stout, considered the impact of encroachment on adjacent properties, the impact on the visual corridor, and the impact of the permitted addition on the value and enjoyment of the properties. He denied that there would be any negative impact on public navigation on the creek. He conceded that most of Heath's existing dock and all of the proposed construction are outside of Heath's extended property lines but pointed out that the entirety of three other docks and a portion of a fourth are inside of Heath's extended property lines. Stout also pointed out that there is a maximum of two boatlifts to a property. 2 S.C. Code Ann. Regs. 30-12(A)(2)(e)(i) (2011). He stated that several docks nearby already have two boatlifts.

Currently, twenty-eight (28) feet separate Petitioner's dock and Heath's existing dock. Permit plans for the 2012 expansion, show a pierhead of sixteen and six-tenths (16.6) feet in width on Petitioner's side of the joint extended property line. The roof and existing boatlift on the northern

² Apparently a davit lift located on the walkway was removed although the original permit notes that it was to be retained.

side of the pierhead are almost all on Petitioner's side except for the landward corner which is intersected by the extended property line.

In addition to the proposed location of Heath's second boatlift being wholly inside Petitioner's extended property line, Petitioner objected to the permit because the boatlift would limit Petitioner's ability to crab and fish from the pier. Petitioner also objected because the boatlift would restrict her nephew's ability to fish from his kayak around the docks.

After review of the testimony and the evidence presented at the hearing, the Court finds that the addition will not harmfully obstruct the natural flow of navigable water. The addition will also not affect the production of wildlife. Important in this finding is that none of the local commercial crabbers or fishers objected to the issuance of the permit. Petitioner's objection concerning the inability to fish or crab deals exclusively with preference of location on her pier, and the boatlift would not significantly hamper Petitioner's ability to engage in that activity.

The boatlift will not cause erosion or creation of stagnant water. Nothing before this Court suggests the boatlift will affect existing public access to tidal and submerged lands, navigable waters and beaches, or other recreational coastal resources. As noted above, Petitioner's objection regarding navigability between the docks for her nephew is considered a private property matter by DHEC. Further, there is nothing to suggest that the boatlift will affect the habitats of endangered species or historic sites along the South Carolina coastal zone.

Petitioner also argues that the permit should be denied under the terms of 2 S.C. Code Ann. Regs. 30-12 (A)(1)(p) (2011), because the intrusion allowed by the amended permit would leave only sixteen (16) feet between Petitioner's pierhead and Heath's proposed boatlift. Petitioner testified that this proximity limits navigation and the value and enjoyment of the property.

The extent to which a proposed use affects the use and enjoyment of adjacent property is one of many factors for the ALC to consider. *See Jones v. S.C. Dep't of Health and Envtl. Control*, 384 S.C. 295, 315, 682 S.E.2d 282, 294 (Ct.App.2009).

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court concludes the following as a matter of law.

The ALC has subject matter jurisdiction in this action pursuant to S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 and Supp. 2015) and 44-1-60 (Supp. 2015). In reviewing this matter, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. See S.C. Code Ann. § 1-23-600(A); *Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). The standard of proof to be used by the Court in weighing the evidence and making a decision on the merits during a contested case proceeding is a preponderance of the evidence. S.C. Code Ann. §§ 1-23-330(1) and 1-23-600(A)(5); *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 496 S.E.2d 17 (1998).

In addition, Petitioner has the burden of proving by a preponderance of the evidence that DHEC's decision was in error under the governing statutory and regulatory standards. *Leventis v. S.C. Dep't of Health and Envtl. Control*, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct.App.2000) ("Generally, the burden of proof is on the party asserting the affirmative issue in an adjudicatory administrative hearing." (quoting 2 Am.Jur.2d *Administrative Law* § 360 (1994))); *Nat'l Health Corp. v. S.C. Dep't of Health and Envtl. Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct.App.1989). Furthermore, as the trier of fact, the Court may give an expert's testimony the weight and credibility it deserves. *Florence Cty. Dep't of Soc. Servs. v. Ward*, 310 S.C. 69, 425 S.E.2d 61 (Ct.App.1992). It is also proper to consider the Department staff's utilization of its specialized knowledge and expertise in making a determination. See S.C. Code Ann. § 1-23-330(4).

Permits for the alteration of critical areas in the coastal zone are governed by the South Carolina Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-10 *et seq.* (2008 and Supp. 2015), and the regulations promulgated pursuant to these provisions, found at 2 S.C. Code Ann. Regs. 30-1 *et seq.* (2011). These regulations govern the management, development, and protection of the critical areas and coastal zone of South Carolina.

When a dock is to be located in the critical area as defined in S.C. Code Ann. § 48-39-10, S.C. Code Ann. § 48-39-130(C) requires a person or entity to obtain a permit for any alteration of the "critical area" of the coastal zone. "Critical area" includes coastal waters. S.C. Code Ann. § 48-39-10(J)(1). "'Coastal waters' means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark." S.C. Code Ann. § 48-39-10(F).

In evaluating a critical area permit such as the dock modification in this case, DHEC must consider *inter alia* “[t]he extent to which the proposed use could affect the value and enjoyment of adjacent owners.” S.C. Code Ann. § 48-39-150(A)(10); 2 S.C. Code Reg. 30-11(B)(10).

2 S.C. Code Ann. Regs. 30-12(A)(1)(e) provides:

All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the extension of these boundaries will be an extension of the high ground property line. The Department may consider an alternative alignment if site specific characteristics warrant or in the case of dock master plans, when appropriate.

2 S.C. Code Ann. Regs. 30-12(A)(1)(p) provides:

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

Twenty (20) feet from extended property lines means that “40 feet between two docks is a standard distance based on the requirement that each property owner’s dock be twenty feet from the extended property line under DHEC regulations.” *Maull v. S.C. Dep’t of Health and Env’tl. Control*, 411 S.C. 349, 357, 768 S.E.2d 402, 407 (Ct.App.2015).

In this case, the evidence shows that DHEC evaluated Heath’s application in light of Petitioner’s objections. Petitioner claimed that the modifications would affect navigation between the docks and in the area between the marsh and the end of the floating dock. DHEC takes the position that this issue is a private dispute between neighbors and does not affect public navigation in the main channel of the creek. While it does not affect public navigation, it does impact the adjacent owner’s value and enjoyment. *Olson v. S.C. Dep’t of Health and Env’tl. Control*, 379 S.C. 57, 67, 663 S.E.2d 497, 503 (Ct.App.2008) (finding evidence to support the effect on an adjacent owner’s value and enjoyment from the impossibility to navigate, swim, kayak and fish from the property owner’s dock). Moreover, the whole of the proposed construction will take place on Petitioner’s side of the joint extended property line, thereby causing material harm to the policies of the Act as referenced in S.C. Code Ann. 48-39-150 (A)(10); 2 S.C. Code Ann. Regs. 30-11(B)(10) and 30-12(A)(1)(p).

The encroachment of which Petitioner complains reflects the crowded condition of the area which

dates back to circumstances extant prior to the enactment of the original Coastal Zone Management Act. Finally, the contention that the value and enjoyment of Petitioner's property would be diminished by Heath's additions would be enough to deny the permit application. Although the ALC was affirmed on most issues supporting DHEC's granting an amended permit to expand a dock, the Court of Appeals remanded the case to consider the impact on the value and enjoyment of adjacent owners. *Maull*, at 364, 768 S.E.2d 402, 411.

DHEC's regulations make repeated reference to extended property lines as a means of determining the impact and the scope of proposed private projects on neighboring properties. *See* 2 S.C. Code Ann. Regs. 30-12 (A)(1)(e), (n), (o)(i)(b), (o)(ii)(b), and (p). Although DHEC has the authority to "allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the act," it does not have the authority to ignore completely the extended property lines. 2 S.C. Code Ann. Regs. 30-12 (A)(1)(p); *see also Triska v. S.C. Dep't of Health and Envtl. Control*, 292 S.C. 190, 355 S.E.2d 531 (1987) (no state agency can disregard its own regulations).

The Court concludes that the proposed location of Heath's new boatlift violates S.C. Code Ann. § 48-39-150(A)(10) and 2 S.C. Code Ann. Regs. 30-11(B)(10), and the proposed location, by ignoring the restrictions implicit in the concept of extended property lines, would cause a material harm to the policies of the Act as referenced in 2 S.C. Code Ann. Regs. 30-12(A)(1)(p).

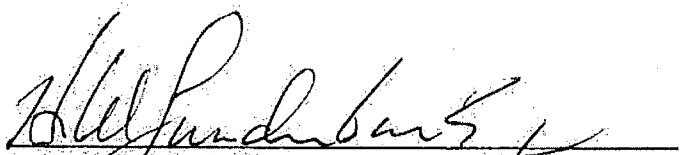
ORDER

Therefore, based on the Findings of Fact and Conclusion of Law set forth above, it is

ORDERED that the amendment to Permit OCRM-12-112-S is **DENIED**.

AND IT IS SO ORDERED

August 18, 2016
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

FILED

AUG 18 2016

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gene B. Schwiers,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control and
Stewart W. Heath,

Respondents.

Docket No. 15-ALJ-07-0580-CC

AMENDED FINAL ORDER

FILED

SEP 23 2016

SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Request for a Contested Case filed by Gene B. Schwiers ("Petitioner") on December 29, 2015, challenging the decision of the South Carolina Department of Health and Environmental Control ("DHEC"), Office of Ocean and Coastal Resource Management ("ORCM") to amend critical area permit number OCRM-12-112-S ("amended permit").¹ The amended permit would authorize the modification of a private use dock by installing a 12'x12' four-pile boatlift on the ebb-side of the existing fixed pierhead and by shifting the existing floating dock four (4) feet to the flood-side (north). DHEC approved the amended permit on October 14, 2015. Petitioner filed a Request for Final Review Conference before the Board of Health and Environmental Control ("Board") on October 28, 2015. The Board issued its decision declining review on November 23, 2015. Petitioner then filed a Request for Contested Case Hearing on December 29, 2015. A hearing was held in this matter at the ALC in Columbia, South Carolina on July 26, 2016. The Court issued its Final Order on August 18, 2016, denying the amended permit.

On September 1, 2016, Respondent Stewart W. Heath ("Heath") filed his Motion to Reconsider, Alter or Amend, which raised three grounds for the Court to reconsider its decision denying the amended permit.

¹ Schwiers is a general partner of Sparkling Waters, L.P., which is the legal owner of property adjacent to the property involved in the permit granted by DHEC.

First, Heath claims that the Court based its decision on an undue emphasis on extended property lines. Next, Heath claims that Petitioner did not meet her burden to show that OCRM did not give adequate attention to her issues during the permitting process. Finally, Heath argues that the denial of the amended permit would be inconsistent with DHEC's requirement to ensure uniform permit evaluations.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, and taking into consideration the burden of proof upon the parties, the Court makes the following findings of fact by a preponderance of the evidence.

Sparkling Waters, L.P., is the owner of real property at 1674 Dolphin Street, Garden City, South Carolina. Heath owns adjacent property at 1666 Dolphin Street. On June 27, 2012, DHEC issued critical area permit OCRM-12-112-S to Heath, which allowed the modification of an existing "grandfathered" dock. Among other things these modifications allowed Heath to replace an existing boatlift, expand the existing pierhead, and install a roof over the pierhead and boatlift. It also allowed the existing floating dock to be relocated four (4) feet "channel-ward."²

On May 18, 2015, Heath filed an application asking to add a second boatlift (a four-pile 12'x12' boatlift) and to relocate the floating dock four (4) feet northwards. In June 2015, DHEC received opposition letters and emails from Petitioner and neighboring property owners. These challengers raised several grounds in opposition to the application for the amended permit: encroachment, impediments to navigation, and diminished value and enjoyment of their properties.

After review of the testimony and the evidence presented at the hearing, the Court finds that the addition will not harmfully obstruct the natural flow of navigable water. The addition will also not affect the production of wildlife. None of the local commercial crabbers or fishers objected to the issuance of the permit. Further, there is nothing to suggest that the boatlift would affect the habitats of endangered species or historic sites along the South Carolina coastal zone. The boatlift will not cause erosion or creation of stagnant water. Nothing before this Court suggests the boatlift will affect existing public access to tidal and submerged lands, navigable waters and beaches, or other

² Apparently a davit lift located on the walkway was removed although the original permit notes that it was to be retained.

recreational coastal resources.

DHEC's project manager, Christopher Stout, testified that he reviewed the objections and notified Heath's agent of the concerns raised. At least one alternative was considered and rejected because it would extend the floating dock further into the creek than surrounding docks and would make it more of an impediment to public navigation. No evidence was presented to show that changes to the proposed second boatlift were considered by Stout or suggested to Heath's agent.

Stout also testified that he considered the impact of encroachment on adjacent properties, the impact on the visual corridor, and the impact of the permitted addition on the value and enjoyment of the properties. He denied that there would be any negative impact on public navigation on the creek. He conceded that most of Heath's existing dock and all of the proposed construction are outside of Heath's extended property lines but pointed out that the entirety of three other docks and a portion of a fourth are inside of Heath's extended property lines. Stout also pointed out that there is a maximum of two boatlifts to a property. 2 S.C. Code Ann. Regs. 30-12(A)(2)(e)(i) (2011). He stated that several docks nearby already have two boatlifts.

However, Stout admitted that he did not communicate with Petitioner about her specific objections. To solicit objections to a permit application and then only consider the general factors of S.C. Code Ann. § 48-39-150(A), without further communication suggests lack of adequate attention to the concerns raised. S.C. Code Ann. § 48-39-150(A)(10) requires DHEC to consider how the proposed use would affect the value and enjoyment of adjacent owners, guidance that includes subjective elements. Therefore, this Court cannot find that DHEC gave adequate attention to the issues raised by Petitioner.

Currently, twenty-eight (28) feet separate Petitioner's dock and Heath's existing dock. Permit plans for the 2012 expansion, show a pierhead of sixteen and six-tenths (16.6) feet in width on Petitioner's side of the joint extended property line. The roof and existing boatlift on the northern side of the pierhead are almost all on Petitioner's side except for the landward corner which is intersected by the extended property line.

Petitioner argues that the permit should be denied under the terms of 2 S.C. Code Ann. Regs. 30-12(A)(1)(p) (2011), because the intrusion allowed by the amended permit would leave only sixteen

(16) feet between Petitioner's pierhead and Heath's proposed boatlift. Petitioner testified that this proximity limits navigation and diminishes the value and enjoyment of the property. DHEC declined to consider this argument because it regards navigability between the docks to be a private property matter.

Petitioner objected to the permit because the second boatlift, wholly inside Petitioner's extended property lines, would limit the ability to crab and fish from Petitioner's pier. Petitioner also objected because the boatlift would restrict her nephew's ability to fish from his kayak around the docks.

The physical proximity of the proposed second boatlift and Petitioner's dock is a concern, especially considering that the boatlift will impair the ability to swim, kayak, and fish from Petitioner's dock. The extent to which a proposed use affects the use and enjoyment of adjacent property is one of many factors for the ALC to consider. *See Jones v. S.C. Dep't of Health and Env'tl. Control*, 384 S.C. 295, 315, 682 S.E.2d 282, 294 (Ct. App. 2009).

DHEC "may allow construction closer than 20 feet or over extended property lines..." as stated in 2 S.C. Code Ann. Regs 30-12(A)(1)(p) when there is no material harm to the policies of the Act. This Court finds that the proposed second boatlift, located entirely on Petitioner's side of the extended property line, affects Petitioner's value and enjoyment by impairing the ability to swim, kayak, and fish from the dock, thereby producing material harm to the policies of the Act.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court concludes the following as a matter of law.

The ALC has subject matter jurisdiction in this action pursuant to S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 and Supp. 2015) and 44-1-60 (Supp. 2015). In reviewing this matter, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. *See* S.C. Code Ann. § 1-23-600(A); *Brown v. S.C. Dep't of Health and Env'tl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). The standard of proof to be used by the Court in weighing the evidence and making a decision on the merits during a contested case proceeding is a preponderance of the evidence. S.C. Code Ann. §§ 1-23-330(1) and 1-23-600(A)(5); *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 496 S.E.2d 17 (1998).

In addition, Petitioner has the burden of proving by a preponderance of the evidence that DHEC's decision was in error under the governing statutory and regulatory standards. *Leventis v. S.C. Dep't of Health and Envtl. Control*, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct. App. 2000) ("Generally, the burden of proof is on the party asserting the affirmative issue in an adjudicatory administrative hearing." (quoting 2 Am.Jur.2d *Administrative Law* § 360 (1994))); *Nat'l Health Corp. v. S.C. Dep't of Health and Envtl. Control*, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989).

This Court should consider the Department staff's utilization of its specialized knowledge and expertise in making a determination. See S.C. Code Ann. § 1-23-330(4). However, as the trier of fact, the Court may give an expert's testimony the weight and credibility it deserves. *Florence Cty. Dep't of Soc. Servs. v. Ward*, 310 S.C. 69, 425 S.E.2d 61 (Ct. App. 1992).

Permits for the alteration of critical areas in the coastal zone are governed by the South Carolina Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-10 *et seq.* (2008 and Supp. 2015), and the regulations promulgated pursuant to these provisions, found at 2 S.C. Code Ann. Regs. 30-1 *et seq.* (2011). These regulations govern the management, development, and protection of the critical areas and coastal zone of South Carolina.

When a dock is to be located in the critical area as defined in S.C. Code Ann. § 48-39-10, S.C. Code Ann. § 48-39-130(C) requires a person or entity to obtain a permit for any alteration of the "critical area" of the coastal zone. "Critical area" includes coastal waters. S.C. Code Ann. § 48-39-10(J)(1). "'Coastal waters' means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark." S.C. Code Ann. § 48-39-10(F).

In evaluating a critical area permit such as the dock modification in this case, DHEC must consider *inter alia* "[t]he extent to which the proposed use could affect the value and enjoyment of adjacent owners." S.C. Code Ann. § 48-39-150(A)(10); 2 S.C. Code Reg. 30-11(B)(10).

2 S.C. Code Ann. Regs. 30-12(A)(1)(e) provides:

All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the

extension of these boundaries will be an extension of the high ground property line. The Department may consider an alternative alignment if site specific characteristics warrant or in the case of dock master plans, when appropriate.

2 S.C. Code Ann. Regs. 30-12(A)(1)(p) provides:

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

Twenty (20) feet from extended property lines means that “40 feet between two docks is a standard distance based on the requirement that each property owner’s dock be twenty feet from the extended property line under DHEC regulations.” *Maull v. S.C. Dep’t of Health and Envtl. Control*, 411 S.C. 349, 357, 768 S.E.2d 402, 407 (Ct. App. 2015).

In this case, the evidence shows that DHEC did not adequately evaluate Heath’s application in light of Petitioner’s objections. Petitioner claimed that the modifications would affect navigation between the docks and in the area between the marsh and the end of the floating dock. DHEC takes the position that this issue is a private dispute between neighbors and does not affect public navigation in the main channel of the creek. However, it does impact the adjacent owner’s value and enjoyment. *Olson v. S.C. Dep’t of Health and Envtl. Control*, 379 S.C. 57, 67, 663 S.E.2d 497, 503 (Ct. App. 2008) (finding evidence to support the effect on an adjacent owner’s value and enjoyment by making it impossible to navigate and impeding the ability to swim, kayak and fish from the property owner’s dock).

The amended permit is denied because the proposed boatlift will affect the value and enjoyment of adjacent owners to the extent of producing material harm to the policies of the Act. The fact that the proposed boatlift would be built on Petitioner’s side of the extended property line is part of the Court’s consideration of the specific impact on the value and enjoyment of adjacent property owners. S.C. Code Ann. § 48-39-150. In determining that the amended permit constitutes a material harm to the policies of the Act, the Court is mindful that “the extent to which the proposed use could affect the value and enjoyment of the adjacent landowners is but one of many factors to consider.” *Jones*, 384 S.C. at 315, 682 S.E.2d at 293.

As stated in 2 S.C. Code Ann. Regs. 30-1(A)(2)(b), DHEC must comply with the rules and regulations to ensure consistency. DHEC must consider many factors when evaluating a permit, and each factor, in and of itself, has differing considerations. S.C. Code Ann. § 48-39-150 demands a “determination on the individual merits of each application.” Each individual application is different, and to suggest that this resolution would conflict with a DHEC consistency requirement is incorrect. While the location near the amended permit has many docks that are close to each other, although none as close as Petitioner’s and Heath’s, there may be varying reasons for DHEC to approve some permits and deny others.³

As argued in his Motion to Reconsider, Alter or Amend, Heath claims that Petitioner did not meet her burden to show OCRM disregarded the extent to which the proposed boatlift could affect the adjacent owners’ value and enjoyment. For support, Heath cites to *Young v. S.C. Dep’t of Health and Env’tl. Control*, 383 S.C. 452, 461, 680 S.E.2d 784, 789 (Ct. App. 2009) (“In the present case, however, the issue [is] not whether aesthetic concerns and recreational activities are appropriate factors to consider in evaluating the propriety of the proposed boat storage dock but whether the issues Young raised were in fact given adequate attention during the permitting process.”).

However, that does not end the inquiry of this Court. In *Maull*, the Court of Appeals affirmed a portion of the ALC’s decision, but also remanded the case to the ALC with the instruction, “to make a finding as to whether DHEC considered the effect of the amended permit on the value and enjoyment of adjacent property owners as required by subsection 48-39-150(A)(10), and to **determine whether that finding was justified.**” *Maull*, 411 S.C. at 366, 768 S.E.2d at 412 (emphasis added); *See also White v. S.C. Dep’t of Health and Env’tl. Control*, 392 S.C. 247, 257, 708 S.E.2d 812, 817 (Ct. App. 2011) (The Court of Appeals disagreed with the argument advanced by appellant “that the evidence does not support the ALJ’s conclusion that the location of its dock

³ With regard to potential equal protection claims, the Court notes that “[t]he *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995) (citing *Weaver v. S.C. Coastal Council*, 309 S.C. 368, 423 S.E.2d 340 (1992)).

One reason for disparate treatment could be the date the structure was originally constructed. *See* S.C. Code Ann. § 48-39-130(C) (2008). These grandfathered docks have numerous benefits not afforded similarly situated docks. *See generally* 2 S.C. Code Ann. Regs. 30-5 (2011) (allowing normal maintenance and repair of a grandfathered structure to its original dimensions even though those dimensions would not currently be permitted); 2 S.C. Code Ann. Regs. 30-12(A)(1)(q) (allowing a dock to be rebuilt to its previous configuration so long as the reconstruction is completed within five years of the destruction); and 2 S.C. Code Ann. Regs. 30-12(A)(2)(c)(vii) (allowing grandfathered docks to be larger than those currently permitted).

constitutes a material harm to the policies of the Act.”). Therefore, not only must the Court determine whether DHEC considered the effect on the value and enjoyment of adjacent owners, but also must determine whether the finding by DHEC was justified.

DHEC’s regulations make repeated reference to extended property lines as a means of determining the impact and the scope of proposed private projects on neighboring properties. *See* 2 S.C. Code Ann. Regs. 30-12 (A)(1)(e), (n), (o)(i)(b), (o)(ii)(b), and (p). Although DHEC has the authority to “allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the act,” it does not have the authority to ignore completely the extended property lines. 2 S.C. Code Ann. Regs. 30-12 (A)(1)(p); *see also Triska v. S.C. Dep’t of Health and Envtl. Control*, 292 S.C. 190, 355 S.E.2d 531 (1987) (no state agency can disregard its own regulations).

Here, as mandated by S.C. Code Ann. § 48-39-150, an individual analysis of the amended permit was conducted, and the Court concludes that the proposed boatlift will affect the value and enjoyment of adjacent owners to the extent that it would cause material harm to the policies of the Act. Making “consistent permit evaluations” requires DHEC to consider specified factors, not that it reach identical decisions in every case. *Cf. Olson*, 379 S.C. at 67, 663 S.E.2d at 502-03 (the granting of a dock permit on one lot effectively prohibited the permitting of a dock on an adjacent lot). Although proximity to Petitioner’s dock is a consideration, it is not the sole factor in the Court’s decision. The ability to swim, kayak, and fish from Petitioner’s dock is sufficiently impeded by the close proximity of the proposed second boatlift to constitute material harm to the policies of the Act. Additionally, there is nothing before this Court to suggest that similarly situated persons are receiving disparate treatment.

The Court concludes that the proposed location of Heath’s new boatlift violates S.C. Code Ann. § 48-39-150(A)(10) and 2 S.C. Code Ann. Regs. 30-11(B)(10) by causing a material harm to the policies of the Act as referenced in 2 S.C. Code Ann. Regs. 30-12(A)(1)(p).

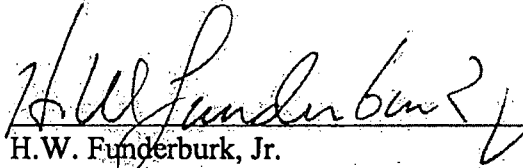
ORDER

Therefore, based on the Findings of Fact and Conclusion of Law set forth above, it is

ORDERED that the amendment to Permit OCRM-12-112-S is **DENIED**.

AND IT IS SO ORDERED

September 23, 2016
Columbia, South Carolina



H.W. Funderburk, Jr.
Administrative Law Judge

FILED

SEP 23 2016

SC ADMIN. LAW COURT

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: SCHWIERS		First: GENE	Middle: BAXLEY	☐ Mr. ☐ Mrs.	☒ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 4 EAST CLEVELAND BAY CT.			City: GREENVILLE		State and Zip: SC 29615	
Home Number: 864-297-7417		Work Number: N/A		Cell Number: 678-770-4323		*E-Mail Address: gene.baxley@schwiers94phoo.com
*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission						
REPRESENTATION						
Are you representing yourself? ☒ Yes ☐ No						
Are you represented by an Attorney? ☐ Yes ☒ No				Name of Attorney: N/A		
Attorney Mailing Address: N/A				City, State and Zip: N/A		
Attorney Work Number and Cell Number: N/A				Attorney E-Mail Address: N/A		
CASE INFORMATION						
Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) SOUTH CAROLINA DEPARTMENT OF HEALTH + ENVIRONMENTAL CONTROL						
In order to have your case processed, you must attach the agency decision. Is it attached?: ☒ Yes ☐ No				If no, please explain: ALSO SENT VIA E-MAIL		
Date the decision was issued: NOVEMBER 23, 2014				Date the decision was received: DECEMBER 4, 2015		
Please provide a brief statement regarding why the hearing is being requested and the relief sought: SC BOARD OF HEALTH'S ENVIRONMENTAL CONTROL DECLINED A FINAL REVIEW REGARDING DOCKET NO. 15-RFR-71, STEWART W. HEATH - AMENDMENT OF D/N # OCRM-12-112'S AND THIS IS CONTESTED BY SIX NEIGHBORS INCLUDING MYSELF						
Payment via ☒ Check ☐ Money Order ☐ Cash for \$				(applicable filing fee pursuant to ALC Rule 71) is being		
submitted today to the Administrative Law Court via				☒ U.S. Postal Service ☐ Hand-delivery		
G. B. Sch				12.22.15		
X Your Signature or Signature of Attorney				Date		

PROOF OF SERVICE (MUST BE COMPLETED)			
Your Name: GENE B. SCHWIERS		Date: 12.22.15	City: GREENVILLE State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
③ STEWART W. HEATH		1666 DOLPHIN STREET GARDEN CITY, SC 29576	
Name and/or Agency Name	Address	City, State and Zip	
② BRAD CHURDAR	SC DHEC - OFFICE OF GENERAL COUNSEL	CHARLESTON, SC 29405	
Name and/or Agency Name	Address	City, State and Zip	
G. B. Sch		12.22.15	
X Your Signature or Signature of Attorney		Date	

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

The Honorable H. W. Funderburk, Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Order for Prehearing Statements
Gene B. Schwiers v. SCDHEC and Stewart W. Heath
Docket No. 15-ALJ-07-0580-CC

Dear Judge Funderburk:

Please find enclosed my response to the Order for Prehearing Statements regarding *Gene B. Schwiers v. SCDHEC and Stewart W. Heath*, Docket No. 15-ALJ-07-0580-CC as filed by the court on February 02, 2015.

1. Nature of this proceeding.

This proceeding has been requested by me, Gene Baxley Schwiers, in reference to a permit (Stewart W Heath III, P/N#: OCRM-12-112-S) that has been amended to authorize modifying the existing private use dock. Specifically, the permit authorizes the installation of a 12' x 12' four pile boatlift on the ebb side of the fixed pier-head and to shift the existing floating dock 4' to the flood-side. It is my desire to have the approval of the South Carolina Department of Health and Environmental Control reversed due to the grave encroachment to my dock, the serious safety concerns and the "material harm" that would result in this unnecessary structure.

2. Statutory provision(s) conferring subject matter jurisdiction on the Court and other applicable statutes and regulations;

The S.C. Department of Health and Environmental Control sent a notice to all parties impacted by the requested permit on June 2, 2015 titled Permit Application Notice (Stewart W. Heath, III, OCRM-12-112-S). According to the notice the application was submitted pursuant to the Coastal Zone Management Act (Act 123) of 1977 South Carolina General Assembly. All comments concerning the matter were to be sent to Chris Stout on or before June 12, 2015.

The S.C. Department of Health and Environmental Control sent a revised notice to all parties impacted by the requested permit on June 12, 2015 titled Permit Application Notice (Stewart W. Heath, III, OCRM-12-112-S). According to the notice the application was submitted pursuant to the Coastal Zone Management Act (Act 123) of 1977 South Carolina General Assembly. All comments concerning the matter were to be sent to Chris Stout on or before June 22, 2015.

As outlined in the notice and according to all requirements and regulations opposition was sent within the timeframe noted by the S.C. Department of Health and Environmental Control (letters attached for reference). On October 13, 2015 a memorandum was sent from Christopher Stout, Wetland Section Project Manager, notifying the parties that the above referenced permit has been amended to authorize modifying the existing private use dock.

Pursuant to S.C. Code Ann. 44-1-60 I was provided the Guide to Board Review as an individual adversely affected by the decision and provided the right to appeal as outlined in the guide. According to the guide and pursuant to S.C. Code 44-1-60 should the Board decline in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected

person may request a contested case hearing before the Administrative Law Court within thirty (30) days after notice is mailed that the Board declined to hold a final review conference.

On November 23, 2015 a letter was sent to all parties from the South Carolina Board of Health and Environmental Control stating that the S.C. Board of Health and Environmental Control will not conduct a Final Review Conference regarding the matter at hand.

Per the contested case guidance a request must be made to the Administrative Law Court within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee. This was completed and notice was given that a request for a contested case hearing was filed on December 29, 2015. In accordance with S.C. Code Ann. 1-23-507 (Supp. 2014), an Administrative Law Judge was assigned to the case.

The S.C. Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (OCRM) implements the requirements. Various federal legal requirements may apply as well. According to S.C. Code Regs 30-12(A), a dock or pier is a structure built over and/or floating on water and is used to provide access to water and for the mooring of boats. Because of their location, docks and piers sometimes pose navigational problems, restrict public use of the water and, under certain circumstances, possess potential for creating environmental problems.

The following standards are applicable for construction of all docks and pier according to S.C. Code Regs 30-12(A):

1. Docks and piers shall be limited to one structure per parcel and shall not restrict the reasonable navigation or public use of State lands and waters.
2. Docks and piers shall be constructed in a manner that does not restrict water flow.
3. The size and extension of a dock or pier must be limited to that which is reasonable for the intended use. [See the section on dock size for more information.]
4. Docks and piers should use the least environmentally damaging alignment.
5. All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the extension of these boundaries will be an extension of the high ground property line. The Department may consider an alternative alignment if site specific characteristics warrant or in the case of dock master plans, when appropriate.
6. Walkways leading to the dock or pier should be elevated at least three feet above mean high water.
7. Dry storage in uplands will be encouraged in preference to moorage in crowded areas.
8. Developers of subdivisions and multiple family dwellings are encouraged to develop plans which include joint-use docks and/or community docks at the time of required dock master plans. Dock corridors on the approved Dock Master Plan (DMP) must be shown with bearings or State Plane Coordinates on a recordable subdivision plat for the development, and recorded in the appropriate County Office of Deeds. Subsequent re-surveys or modifications to lots shall reference the dock corridors on the recorded subdivision plat and be submitted to the Department. Reference to this DMP must be given in all contracts for lot sales.
9. Project proposals shall include facilities for the proper handling of litter, waste, refuse and petroleum products, where applicable.
10. Where docks and piers are to be constructed over tidelands utilized for shellfish culture or other mariculture activity, the Department will consider rights of the lessee and the public prior to approval or denial.
11. Docks cannot be enclosed by walls or screens.
12. Docks longer than 1,000 feet over critical area are prohibited. This is inclusive of pierheads, floats, boatlifts, ramps, mooring pilings and other associated structures.

13. Handrails, if proposed, shall be limited to a maximum height of 36" above the walkway or pierhead decking.
14. Docks must extend to the first navigable creek, within extensions of upland property lines or corridor lines, that has a defined channel as evidenced by a significant change in grade with the surrounding marsh; or having an established history of navigational access or use. Rare geographic circumstances, such as very close proximity of a significantly larger creek within extensions of property or corridor lines, may warrant dock extension to a creek other than the first navigable creek. A creek with an established history of navigational use may also be considered as navigable. Such creeks cannot be bridged in order to obtain access to deeper water. However, pierheads must be located over open water and floating docks that rest upon the bottom at mean low tide will not normally be permitted. In exceptional cases, the Department may allow an open water channel to be bridged if current access is prohibited by other man-made or natural restrictions or if site-specific conditions warrant such a crossing.
15. This section applies to lots subdivided or resubdivided after May 23, 1993. Additionally, lots subdivided or resubdivided after June 27, 1997 must meet the minimum, local requirements to construct a habitable structure in order to qualify for a dock:
 - a. To be eligible for a private, community or commercial dock, a lot must have
 1. 75 feet of frontage at the marsh edge, and
 2. 75 feet between its extended property lines at the location in the waterbody of the proposed dock.
 - b. Joint use docks will be considered for adjacent waterfront properties each of which must have:
 1. 50 feet of frontage at the marsh edge, and
 2. 50 feet between its extended property lines at the location in the waterbody of the proposed dock.
 3. Lots less than 50 feet wide are not eligible for a dock.
16. No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.
17. If a dock is destroyed, the dock may be rebuilt to its previous configuration so long as reconstruction is completed within five years of the date of the event unless there are extenuating circumstances justifying more time.
18. In the event that a dock owner intends to change the use of a dock from the permitted use or non-permitted grandfathered use, a new permit must be obtained prior to the change in use. The change in use is based on the types of docks distinguished by these regulations.

The Administrative Law Court was created by the South Carolina General Assembly by Act No. 181 of 1993, to provide an independent forum for hearing the contested cases of state agencies. Previously, citizens desiring an evidentiary hearing to challenge the action of a State agency were heard by hearing officers employed by that particular agency.

The boatlift at the proposed location would have a negative impact on my family's enjoyment of our property, because it would be an impediment to our visual corridor. The proposed location for Stewart W. Heath, III's new boatlift would cause an impediment to the adjoining property owners', as noted in the opposition letters from all adjacent property owners, use and enjoyment of their property, and thus it would violate Section 48-39-150(A)(10) and Reg. 30-11(B)(10). In this regard, the proposed location would also cause a material harm to the policies of the Act pursuant to Reg. 30-12(A)(1)(p).

3. The issues to be presented for determination, including any claims or defenses to be raised:

When the initial request was received my, Gene Baxley Schwiars, letter of opposition (contained below for reference) was sent outlining the grave concerns over the severe encroachment of the proposed structure on my dock and the immediate concerns over the safety to my family and in particular my 84 year old mother who is disabled and my 12 year old nephew both who have enjoyed the inlet their entire life. Due to the unnecessary encroachment and safety concerns the structure will severely limit any navigation of boats and water structures between or around the docks impacted. Any navigation between the docks should this structure be allowed now have the potential to cause bodily and/or property harm.

It should be noted that Stewart W. Heath, III has already amended his dock prior and increased the size of his dock and currently has one boat lift attached to his dock. Should this amendment approval stand it would be the exception not the norm as stated by the South Carolina Department of Health and Environmental Control as this would be the only structure along the shore line with two (2) boatlifts. This is simply not necessary as the property owned by Stewart W. Heath, III is located less than a mile from a full service and recently renovated marina, Marlin Quay Marina.

In addition, 6 other neighbors sent in their concerns regarding this proposed amendment to include two attorneys, two permanent residents, and with my opposition totaling over 100 years of residency in the area. Each party expressed their concerns regarding both the encroachment on the north and south side of existing docks and the safety of those who enjoy the inlet. In addition, the concerns over the environment and maintaining the natural beauty of the inlet were expressed by all parties. It is our responsibility and duty to respect our wildlife and preserve our natural resources for generations to come.

It was also expressed in an opposition letter to the South Carolina Department of Health and Environmental Control that this continued approval of encroachment is discriminatory to the other residents of the area and in fact, potentially results in the loss of value in the property owned by those impacted.

The S.C. Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (OCRM) implements the requirements set forth and it clearly states that "dry storage in uplands will be encouraged in preference to moorage in crowded areas," and "no docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners." Alternative storage was not encouraged or discussed in this matter. In addition, this structure would result in only 16 feet between our docks.

As defined the act of mooring is to secure (a ship, boat, dirigible, etc.) in a particular place, as by cables and anchors or by lines; thus the approval of this completely unnecessary structure is in direct conflict to the requirements outlined by S.C. Department of Health and Environmental Control. Again, the property in question is located less than a mile from a marina and provides a reasonable solution to the request without impact to multiple parties. When finding the definition of material harm the phrase is broken up by two parts – what is considered material and the definition of harm. Harm means any injury, loss or damage. It can also be any material or tangible detriment. According to the Law Dictionary material is defined as important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form. An allegation is said to be material when it forms a substantive part of the case presented by the pleading. Evidence offered in a cause, or a question propounded, is material when it is relevant and goes to the substantial matters in dispute, or has a legitimate and effective influence or bearing on the decision of the case. The overwhelming evidence, opposition, severe encroachment, extreme safety concerns, and discriminatory nature of this structure certainly results in material harm to the policies of the Act pursuant to Reg. 30-12(A)(1)(p).

4. The action requested of the Court and a detailed statement of the law, including statutory and/or case citations, that support the action requested;

The Court is requested to overturn the decision of the South Carolina Department of Health and Environmental Control regarding 1666 Dolphin Street (Stewart W. Heath, III, OCRM-12-112-S) and prohibit the above referenced permit that authorizes the installation of a 12' x 12' four pile boatlift on the ebb-side of the fixed pierhead and to shift the existing floating dock 4' to the flood side.

As stated previously the S.C. Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (OCRM) implements the requirements set forth and it clearly states that "dry storage in uplands will be encouraged in preference to moorage in crowded areas," and "no docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners." Alternative storage was not encouraged or discussed in this matter. In addition, this structure would result in only 16 feet between our docks. Thus the action completed by the South Carolina Department of Health and Environmental Control is in violation S.C. Code Regs 30-12(A).

I ask the Court to consider when is enough enough. To state that this violation is not enough of a violation of the law to stop the proposed amendment due to the fact that other violations had been permitted in the past is simply unacceptable to any reasonable human being. I have not in my 50 plus years as a professional or law abiding citizen ever heard such a ludicrous rationalization to permit a violation of the law simply because mistakes have been made prior. To me, and I would state any rational individual, it is simply unacceptable to state that the laws set forth are null and void due to the fact that in the past they have been broken - so we will keep on allowing individuals to "bend" the law on technicalities, wealth, influence, or simply because we can until there is no such thing as accountability for ones actions. I could not live with the fact that I made decisions based on the faults of others before me instead of taking the opportunity to correct a wrong that had been committed previously by others.

The rules, regulations, and requirements were put in place to ensure that all individuals had the right to enjoy our coastal area and to maintain the natural beauty. The continued lack of accountability by the South Carolina Department of Health and Environmental Control personnel is disturbing at best. To state that this was approved due to the fact it seemed to be in line with the current state of the area is inaccurate at best. I dispute this fact and the evidence will show that indeed this is a complete falsehood.

5. A brief summary of the facts to be presented at the hearing;

Below is a brief summary of the facts to be presented as requested:

- The proposed and approved permit for the alteration of 1666 Dolphin Street, Garden City, SC TMS:41-0129-019-00-00 will result in severe encroachment to both the parties on the north side and south side of 1666 Dolphin Street, Garden City, SC.
- The proposed and approved permit for the alteration of 1666 Dolphin Street, Garden City, SC TMS:41-0129-019-00-00 will result in severe safety concerns for all individuals that currently and in the future enjoy the use of the inlet.
- The action completed by the South Carolina Department of Health and Environmental Control in its approval of the application for a permit for the alteration of the private dock is in violation S.C. Code Regs 30-12(A).
 - The proposed structure would result in only 16' feet between the docks and results in material harm to the policies of the act.
 - Dry storage in uplands was not encouraged in preference to moorage in this crowded area.

- The proposed amendment is not only in violation of the requirements and regulations set forth it is setting a precedent that cannot be maintained in the area and harmful to the environment.
 - Opposition to the proposed amendment was strong and overwhelming proved that this would result in discriminatory action towards the well-being of others.
 - There are no other docks in the area with two (2) boatlifts and the fact remains that this structure is not in line with the current state of affairs in the area as stated by the S.C. Department of Health and Environmental Control.
 - The proposed structure drastically limits any future construction by the adjoining parties to the north and the south.
 - The proposed structure is not necessary as there is a full service marina less than a mile from the property.
 - The proposed structure would significantly limit the ability of the adjoining parties to fully enjoy their docks.
6. **A summary of any motions expected to be raised at the hearing and the appropriate authority for the motion;**

Based on my, Gene Baxley Schwiers, understanding a motion is a written request to the court; when a party asks the court to take some kind of action in the course of litigation, other than resolving the entire case in a trial, the request is made in the form of a motion. Therefore, at this time I am requesting a complete hearing of the facts as outlined with resolution based on the hearing. Based on the facts outlined in the order of prehearing statements I will be asking the Court to deny the requested amendment that was previously approved by the S.C. Department of Health and Environmental Control.

7. **A list of proposed witnesses and exhibits;**

I, Gene Baxley Schwiers, will be presenting the Court with the following documents and/or exhibits at this time:

- Letter of Opposition by Gene Baxley Schwiers
- Letter of Opposition by S. Morris Hadden, Esquire and Anne Hadden
- Letter of Opposition by Robert M. Hadden, Esquire
- Letter of Opposition by Nancee and Ben Paget
- Letter to the S.C. Board of Health and Environmental Control by Gene Baxley Schwiers
- Photographs of the Area and Area Docks to demonstrate the current state of affairs
- Photographs of the Area and Area Docks prior to the S.C. Department of Health and Environmental decisions on amendments

At this time I do not have any witnesses; however, I will update the Court as ordered should this change during the course of the proceedings.

8. **Whether discovery is necessary and, if so, a proposed schedule;**

At this time I, Gene Baxley Schwiers, am not aware of any discovery that is necessary; however, I will update the Court as ordered should this change during the course of the proceedings.

9. **Estimated length of the hearing;**

As this is my first and only time appearing before a Judge in the Administrative Law Court I would estimate the hearing not to exceed one (1) business day; however, I will update the Court as ordered should this change during the course of the proceedings.

10. Any dates in the next 120 days when you will not be available for a hearing; and

At this time I, Gene Baxley Schwiers, will not be available for a hearing on the below dates:

- Week of March 13th 2016
- Week of March 27th 2016
- Week of May 1st 2016
- Week of June 26th 2016

11. An e-mail address where you can be reached;

My e-mail address is genebaxleyschwiers@yahoo.com

I, Gene Baxley Schwiers, hereby certify that I have this date of February 17, 2016 served the Ordered Prehearing Statement upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid to the address provided by the parties and/or their attorney(s).

The Honorable H. W. Funderburk, Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Bradley D. Churdar, Esquire
Nathan M. Haber, Esquire
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P.O. Box 699
Lake City, South Carolina 29560

Respectfully,



Gene Baxley Schwiers
4 East Cleveland Bay Court
Greenville, South Carolina 29615

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gene B. Schwieters,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control and
Stewart W. Heath,

Respondents.

DOCKET NO. 15-ALJ-07-00580-CC

**DEPARTMENT'S
PREHEARING STATEMENT**

1. Nature of the proceeding:

This is a contested case requested by the Petitioner challenging the Department's decision to issue an amendment to permit OCRM-12-112-S for the modification of an existing private use dock consisting of the installation of a 12' x 12' four pile boatlift on the ebb-side (south) of the existing fixed pierhead and shifting the existing floating dock 4' to the flood-side (north) located on and adjacent to Main Creek at 1666 Dolphin Street, Murrells Inlet, Georgetown County, South Carolina.

2. The statutory provision(s) conferring subject matter jurisdiction and other applicable statutes and regulations:

The Court's subject matter jurisdiction arises from S.C. Code Ann. §§ 1-23-310, *et seq.*, and S.C. Code Ann. § 44-1-60.

Other applicable statutory and regulatory provisions include:

S.C. Code Ann. § 48-39-10, *et seq.*, (Supp. 2008) and 23A S.C. Code Ann. Regs. R. 30-1 through R. 30-18, (Supp. 2007)

Specifically, Specifically, S.C. Code Ann. 48-39-150 and S.C. Code Regs. 30-11 and 30-12.

3. Issues to be presented for determination, including any claims or defenses expected to be raised:

Whether the Department properly applied the Coastal Zone Management Act and Critical Area Regulations in issuing the amendment to permit OCRM-12-112-S.

4. **Action requested of the Court and a detailed statement of the law, including statutory and/or case citations, that support the action requested:**

The Department requests that the Court affirm the Department's issuance of an amendment to permit OCRM-12-112-S in accordance with the applicable statutory provisions in S. C. Code Ann. §48-39-10, et seq. and the Department's Critical Area Regulations, S.C. Code Reg. 30-1, et. seq. After following the required procedures set forth in §48-39-150 and Reg. 30-4, the Department issued the permit, as requested. The Department reviewed this permit application under Regulations 30-11 and 30-12. The Department determined the application was consistent with the regulations and placed special conditions on the permit to ensure the project was done in accordance with these regulations.

Regulation 30-11(B)(10) requires the Department to take into consideration the impact of a project on the value and enjoyment of adjacent owners. The permitted modifications would not further restrict access between the docks, nor further impact navigation along Main Creek. Those individuals that currently fish, crab, swim, and kayak around these docks would be able to continue to do so. Additionally, Regulations 30-11 (B)(3) and 30-11 (B)(6) take into consideration the projects potential impact on the natural resources in the vicinity. This area of Murrells inlet has a proliferation of private use docks and has several commercial marinas. The project site is located within a commercial shellfish lease area. Further, there are no state or federally listed threatened or endangered species listed for this area and SCDNR did not provide any comments on the request.

Regulation 30-12(A)(1)(p) states that docks should not be constructed closer than 20' from the extended property line, but can be permitted closer than 20' or even across the extended property line provided there is no material harm to the policies of the Act. Further, Regulation 30-12(A)(1)(e) requires that the submitted plans accurately illustrate the property boundaries and show the distance between the proposed dock and the extension of the high ground property boundaries. This regulation provides the Department the discretion to "consider an alternative alignment if site specific characteristics warrant[...]" Department staff determined there is no material harm to the policies of the Act because the proposed modifications is consistent with other docks along Dolphin Street. The proposed spacing between the proposed boatlift and relocated floating dock would be consistent with the spacing of docks in the vicinity.

5 **A brief summary of the facts to be presented at the hearing:**

On October 14, 2015, the Department issued an amendment to permit number OCRM-12-112-S for the modification of an existing private use dock consisting of the installation of a 12' x 12' four pile boatlift on the ebb-side (south) of the existing fixed pierhead and shifting the existing floating dock 4' to the flood-side (north) located on and adjacent to Main Creek at 1666 Dolphin Street, Murrells Inlet, Georgetown County, South Carolina.

Petitioner challenges the Department's issuance of the amendment.

6. **Summary of motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

The Department does not anticipate filing any motions in this matter. However, the Department reserves the right to amend this Prehearing Statement to reflect the filing of motions prior to the hearing in this matter.

7. **A list of proposed witnesses and exhibits is as follows:**

- Witnesses:** Christopher Stout, DHEC-OCRM
Blair Williams, DHEC-OCRM
Any witness named by any other party to this litigation.
Exhibits: The exhibits will consist of the Department's regulatory file.

The Department reserves the right to supplement this list of witnesses and exhibits as discovery progresses and the issues in this case are more fully developed.

8. **Discovery is necessary and the parties are in the process of conducting discovery.**

9. **The estimated time required for the hearing:**

The hearing in this matter should last approximately one day.

10. **Dates in the next 120 days when you are not available for a hearing:**

February 15-29, 2016, March 7, 2016, March 9-14, 2016, March 21, 2016, March 25-31, 2016, April 1-20, 2016, April 25-26, 2016, May 2, 2016, May 4, 2016, May 9, 2016, May 12, 2016, June 1, 2016, June 9, 2016, June 14, 2016, June 17, 2016, June 29, 2016, July 14, 2016, July 27, 2016, August 11, 2016, August 24, 2016, September 8, 2016, and September 21, 2016.

12. **Email address:**

churdbd@dhec.sc.gov
crawfomd@dhec.sc.gov

The Department respectfully reserves the right to amend this Prehearing Statement

Respectfully Submitted,



Bradley D. Churdar, SC Bar # 12829
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South Carolina Department of Health and
Environmental Control
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February 19, 2016
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gene B. Schwiers,	)	DOCKET NO. 15-ALJ-07-00580-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
South Carolina Department of Health	)	
and Environmental Control and	)	
Stewart W. Heath,	)	
Respondents.	)	
_____	)	

PREHEARING STATEMENT OF RESPONDENT STEWART W. HEATH

COMES NOW Respondent Stewart W. Heath by and through undersigned counsel and hereby makes the following Prehearing Statement:

1. The nature of this proceeding:

This is a dock permit appeal. Specifically, Petitioner Gene B. Schwiers appeals DHEC's issuance of an amendment to permit number OCRM-12-112-S. The amendment authorized Respondent Stewart W. Heath to modify his existing private use dock located on the Main Creek of Murrells Inlet by installing a twelve (12) foot x twelve (12) foot four (4) pile boatlift. Petitioner Gene B. Schwiers now challenges the Department's issuance of the amendment.

2. Statutory provisions conferring subject matter jurisdiction on the Court and other applicable statutes and regulations:

S.C. Code Ann. § 48-39-10, et seq., 44-1-60; 1-23-10, et seq. and S.C. Code Ann. Regs. 30-1 through 30-18, (Supp. 2007). Specifically, S.C. Code Ann. § 48-39-150, 44-1-60 and S.C. Code Ann. Regs. 30-11 and 30-12.

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3. The issues to be presented for determination, including any claims or defenses expected to be raised:

Respondent Heath expects the primary issue to be whether the policies specified in S.C. Code Ann. § 48-39-150, 44-1-60 and S.C. Code Ann. Regs. 30-11 and 30-12 were properly considered by the Agency. Respondent Heath further expects an issue to arise as to the timeliness of the appeal pursuant to S.C. Code Ann. § 44-1-60.

4. The action requested of the Court and a detailed statement of the law, including statutory and/or case citations, that support the action requested:

Respondent Heath requests that the Agency's issuance of the amendment be upheld. Under Section 48-39-150 of the South Carolina Code, OCRM must consider certain criteria in deciding whether to approve or deny a permit. After considering the views of interested agencies, local governments and persons, and after evaluation of biological and economic considerations, if the department finds that the application is not contrary to the policies specified in this chapter, it shall issue to the applicant a permit. S.C. Code Ann. § 48-39-150. In this case it is clear that the Department properly considered the policies and guidelines of S.C. Code Ann. § 48-39-150, weighed all of the competing interests, and made a proper determination.

5. A brief summary of the facts to be presented at the hearing:

Respondent Heath submitted a request to modify his existing dock on the Main Creek of Murrells Inlet by installing a twelve (12) foot by twelve (12) foot four (4) pile boatlift on the south side of his existing fixed pierhead. In addition, the

requested amendment would shift the existing floating dock four (4) feet to the north side of the existing dock. The Department subsequently issued a revised public notice on June 12, 2015. The Department received letters from five citizens, including one from Petitioner Schwiers. The Department issued the amended permit on October 13, 2015. Petitioner Schwiers requested a final review to the Board of Health and Environmental Control (The Board) on October 28, 2015. On November 23, 2015 the Board notified all interested parties that a Final Review Conference would not be conducted. On December 29, 2015 Petitioner Schwiers filed a request for contested case hearing.

6. A summary of any motions to be expected to be raised at the hearing and appropriate authority for the motion:

Respondent Heath expects to file a motion to dismiss pursuant to S.C. Code Ann. § 44-1-60(G) and ALC Rule 23.

7. A list of proposed witnesses and exhibits:

Respondent Heath expects the below listed witnesses may be called to testify, reserving the right to amend prior to the hearing:

- 1) Stewart W. Heath, III
c/o E. LeRoy Nettles, III
PO Box 699
Lake City SC 29560
- 2) DHEC/OCRM Representative
*TBD

Respondent Heath expects to offer the following exhibits, reserving the right to amend prior to the hearing:

- 1) Stewart W. Heath III Permit application and related documents

- 2) Correspondence from DHEC/OCRM relative to the above permit application and issuance
- 3) Correspondence from DHEC/OCRM relative to the denial of Final Review Conference.

8. Whether discovery is necessary and, if so, a proposed schedule:

Respondent Heath does not expect discovery will be necessary but reserves the right to amend should the necessity for discovery arise.

9. Estimated length of the hearing:

Respondent expects the hearing to last approximately half of a day.

10. Any dates in the next 120 days when you will not be available for a hearing:

March 10, 2016

March 31-1, 2016

April 21-22, 2016

May 23-27, 2016

11. An email address where you can be reached: LEE@NTRLaw.com

Lake City, South Carolina
February 22, 2016

Respectfully Submitted,



E. LeRoy Nettles, III
SC Bar No. 100805
NETTLES, TURBEVILLE and REDDECK
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Lake City, SC 29560
843-374-8511
LEE@NTRLaw.com
Attorneys for Respondent Stewart W. Heath

1 MR. CHURDAR: No, sir.

2 THE COURT: All right. Ms. Schwiers?

3 MS. SCHWIERS: Yes?

4 THE COURT: You start.

5 MS. SCHWIERS: And I assume I stand.

6 THE COURT: And please remember that this is not
7 your opportunity to testify. It's just your
8 opportunity to tell the court what you think
9 this is about. Okay?

10 OPENING STATEMENT BY MS. SCHWIERS: First, I'd like
11 to take the time to thank this Honorable Court
12 and Honorable Judge Funderburk for providing me
13 the opportunity to be heard for the first time
14 since this ordeal began in June 2015. I stand
15 before you today not as an associate general
16 counsel for a major corporation or a state
17 organization. I am not a private attorney with
18 a long line of attorneys and judges in my
19 family. I am not an individual of wealth. I'm
20 not a person of influence. And as Mr. Churdar
21 took great pleasure in driving home during my
22 deposition, I am not an individual with any
23 special certifications or advanced degrees.
24 However, I'm a proud lifelong South Carolina
25 citizen. I am a proud granddaughter of a man



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1 who taught me you do not have to have deep
2 pockets and influence when you have the truth
3 and the law on your side. How I am most proud
4 to be the daughter of an 85-year-old woman
5 sitting in this courtroom today that instilled
6 in me the value of character, integrity,
7 perseverance and the courage to stand up for
8 your rights. My family has been the sole
9 owners of 1674 Dolphin Street in Garden City,
10 South Carolina since the middle to late 1970's.
11 My mother was younger than me, as I stand here
12 today, when she took her inheritance from her
13 beloved father and purchased this property.
14 Over the past 40 years, my family has enjoyed
15 our small and humble cottage and the beautiful
16 bounties of the inlet. We have fished,
17 crabbed, swam, dug clams, sanded and played in
18 the pluff mud all these years and now are
19 fortunate enough to teach these things to my
20 13-year-old nephew. We are here today as we
21 would like to preserve this area in order that
22 he may have the opportunity to teach his
23 children in the future one day. We have shared
24 these gifts with the wildlife and the
25 inhabitants of the area with respect and deep

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1 admiration. We have also had the great fortune
2 to have neighbors in the community to share the
3 love of the natural resources and also remain
4 constant in their respect of everyone's rights.
5 In the 40-plus years of ownership, we have only
6 had two docks to this property. One, when the
7 home was built in the 70's and one to replace
8 the original when Hugo, in 1989, destroyed our
9 beautiful South Carolina coastline. At no time
10 have I asked or even thought of amending my
11 dock in any way to infringe on the rights of my
12 neighbors. There are regulations in place and
13 they are clear. The moorage of boats is to be
14 encouraged in the upland and the structure
15 should remain at a minimum of 20 feet from one
16 another. There is a reason that this was done
17 by our General Assembly in 1977; to protect the
18 rights of all individuals who are fortunate
19 enough to share in this wonder place. However,
20 over the course of the years, the South
21 Carolina Department of Health and Environmental
22 Control has failed in its duty to remain true
23 to the intent of these regulations. They have
24 repeatedly allowed individuals to bend the
25 rules or stretch the boundaries because they

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1 have abused their discretionary power provided.
2 Today you will hear from their associate
3 general counsel that there is a plethora of
4 docks and boat lifts in this, and I quote him,
5 "crowded area". He will be correct. This area
6 has become overcrowded and this is not due to
7 me. It is because the South Carolina
8 Department of Health and Environmental Control
9 has become the South Carolina Department of
10 Health and Environmental Out of Control. I
11 have always been taught my entire life that
12 multiple wrongs do not make a right.
13 Therefore, I stand before you stating enough is
14 enough. They will state that there are others
15 in the area that have been provided permission
16 to cross over the 20 feet due to their, in my
17 opinion, mismanagement of the area. And since
18 there is a precedent of doing so, why not allow
19 one more? I know that I could not sleep at
20 night if my argument before you was bending the
21 rules based simply on the fact it has been done
22 so in the past. That to me would be like
23 justifying any violation of a law or regulation
24 just because someone else has done so prior.
25 This case is not personal and there is no

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1 malice being demonstrated by me in exercising
2 my rights as outlined by the State of South
3 Carolina. I do not begrudge my neighbor or
4 anyone else of having or possessing any
5 material belongings they want or desire. I do
6 not want anything that belongs to my neighbor
7 or anyone else. I simply do not want someone
8 trampling on my rights and severely encroaching
9 on me, resulting in my inability to have the
10 full enjoyment of my property as I have had
11 over the 40-plus years of ownership. As I will
12 communicate to the court in my testimony, this
13 proposed structure will severely encroach on my
14 property, resulting in limiting my full
15 enjoyment of my dock, result in eliminating my
16 family's ability to navigate through the docks
17 as we do today in our water vessel, result in
18 potential safety concerns and obstruct my
19 family's visual corridor. It should be noted
20 that I will also present to the court the
21 opposition of this proposed structure by six
22 other residents in the area and our total
23 opposition equals over 100 years of residency
24 in this area. I do not take this court's time
25 lightly. And did I not firmly believe in the



1 merits of my case, I would not be standing
2 before you today. To me, this case is very
3 simple; much like me. The South Carolina
4 Department of Health and Environmental Control
5 has failed in its duties to protect the rights
6 of all individuals, failed in their due
7 diligence in determining this structure would
8 not cause material harm to the act and harm to
9 my family and failed to listen to seven
10 citizens of the State of South Carolina that
11 strongly oppose this structure. I thank the
12 court for this opportunity.

13 **THE COURT:** Mr. Churdar?

14 **OPENING STATEMENT BY MR. CHURDAR:** Thank you, Your
15 Honor. May it please the court. Your Honor,
16 I think it will be helpful at the beginning of
17 my opening statement to provide the court with
18 some imagery to orient the court to what we are
19 talking about with this piece of property here.
20 The piece of property with the blue box and the
21 pin right there is Mr. Heath's property. The
22 property adjacent to that is the Sparkling
23 Waters owned property right there. What we are
24 talking about is moving that floating dock
25 right there four feet northward and putting a



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1 docks that today is used to navigate, to clam,
2 to fish, and with the structure where it is
3 proposed to be built, that is impossible.
4 Again, this is about protecting my rights. My
5 rights that I have enjoyed with my family for
6 40-plus years. That's the complete enjoyment
7 of my dock. But the South Carolina Department
8 of Health and Environmental Control has
9 continually allowed individuals to encroach on
10 others and continued to allow these structures
11 to be built and it will be noted in one of the
12 opposition letters to the Department that this
13 is the second time the Department has done so
14 on that individual.

15 **THE COURT:** Is that all you have to say?

16 **MS. SCHWIERS:** Yes, sir.

17 **THE COURT:** All right. Now, we'll have
18 opportunities for them to cross-examine you so
19 you get the chance to talk some more a bit.

20 **MR. CHURDAR:** Your Honor ---

21 **THE COURT:** Mr. Churdar?

22 **MR. CHURDAR:** Yes, sir. Just for clarification, my
23 understanding of the admission of the letters
24 was not for the truth of the matters asserted.
25 Is that correct?



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1 THE COURT: They were examples of documents that
2 were submitted to DHEC and were part of the
3 process and that's what they've been admitted
4 for.

5 MR. CHURDAR: Okay.

6 THE COURT: That's correct.

7 MR. CHURDAR: Okay. Thank you.

8 MS. SCHWIERS - CROSS EXAMINATION BY MR. CHURDAR:

9 Q: Now, Ms. Schwiers, you do not have the training
10 or background in marine science?

11 A: No, sir.

12 Q: Okay. And likewise, you have no training in
13 anything that is related to navigation on the
14 water?

15 A: No, sir.

16 Q: Okay. No Coastguard captain's license or
17 anything like that?

18 A: No, sir, as we covered in my deposition.

19 MR. CHURDAR: Well, Your Honor ---

20 A: No, sir.

21 MR. CHURDAR: --- the court was not at your
22 deposition.

23 A: And as I told the court earlier in my opening
24 statement.

25 Q: I understand. I understand.



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1 **THE COURT:** But you weren't under oath then and you
2 are now. There's a difference. He's making --
3 properly making that point.

4 A: He is correct. I have no special
5 certifications.

6 Q: And no formal credentials or anything related
7 to navigation?

8 A: No, sir.

9 Q: Okay. So, the opinion that you are offering
10 regarding navigation dangers with Mr. Heath's
11 boat lift, these are more or less in the form
12 of a laymen's opinion?

13 A: It is a fact that a 12 foot kayak with three
14 fishing rods and a line cannot navigate in a 16
15 foot space. It would like -- it would be like
16 moving -- turning a battleship around in a
17 pond. That is the point that I was making.

18 Q: I understand. Again, my question is you're
19 offering these opinions as a layman, correct?

20 A: Yes. I have no certifications.

21 Q: Okay. And you are certain that there are no
22 other properties in the vicinity that have two
23 boat storage structures?

24 A: What I said was in that area where we are, this
25 would be the only structure with two boat



1 lifts. That includes Mr. Harrington, Ms.
2 Paget, myself, Mr. Heath, the Breazeale's and
3 the Beaty's. That's -- I am not -- I am going
4 Starfish down, not Starfish up.

5 Q: Okay. I don't -- that has no context to me.

6 A: Starfish -- Starfish is the road that crosses
7 with Dolphin.

8 Q: Okay.

9 A: So, when you turn right on Starfish, that is
10 Gulf Stream Estates and that's the community in
11 which I live and Mr. Heath has a home there, as
12 well.

13 Q: Okay. Well, since we don't have a Google earth
14 image of where Starfish is, I'm not really sure
15 what that means but again I'll ask you the
16 question. You are certain that there are no
17 other properties in the vicinity that have two
18 boat storage structures? Is that your
19 testimony?

20 A: My testimony is that Mr. Harrington, Mr. Paget,
21 myself, Mr. Heath, the Breazeale's, the
22 Beaty's, which are in the line of the
23 community, do not have two boat lifts. And the
24 majority of all of the docks down there do not
25 have two boat lifts.



1 Q: Okay. So, there are docks that have two boat
2 storage structures?

3 A: That's correct.

4 Q: Okay.

5 A: I never said there weren't some.

6 Q: Okay. How many along your street that you live
7 on, Dolphin Point, how many of those that have
8 docks, can you offer an opinion on how many of
9 those have two boat storage structures?

10 A: Less than half. So, the -- it is a minority.

11 Q: Okay. Can you narrow down your opinion any
12 more than that?

13 A: No, I cannot.

14 Q: Okay. Ms. Schwiers, I'm about to hand you
15 three photographs and let you take a look at
16 them. I suspect they probably look familiar.

17 A: Yes.

18 Q: Do you recognize those photos?

19 A: Yes.

20 Q: Okay. Are those the photos that you had
21 provided me in discovery earlier?

22 A: Yes.

23 Q: And we talked about those at your deposition?

24 A: Yes.

25 Q: Okay. Now, what are those red circles that are



1 then.

2 **MR. CHURDAR:** Okay. Your Honor, I'd like to call
3 Mr. Chris Stout, the Department's witness.

4 **MADAM COURT REPORTER:** Please raise your right hand.
5 Do you solemnly swear that the testimony you're
6 about to give in this matter is the truth, the
7 whole truth and nothing but the truth, so help
8 you God?

9 **MR. STOUT:** Yes, I do.

10 **MADAM COURT REPORTER:** Please state and spell your
11 name for the record.

12 **MR. STOUT:** Christopher Stout. C-H-R-I-S-T-O-P-H-E-R
13 S-T-O-U-T.

14 **CHRISTOPHER STOUT,** having been duly sworn, testifies
15 as follows:

16 **MR. STOUT - DIRECT EXAMINATION BY MR. CHURDAR:**

17 Q: Mr. Stout, can you please tell the court your
18 educational background?

19 A: Sure. I have a Bachelor's in Science degree in
20 Marine Science from Coastal Carolina
21 University.

22 Q: Okay. And where are you employed?

23 A: I'm employed with SCDHEC OCRM in the Myrtle
24 Beach office.

25 Q: And how long have you been employed by DHEC



1 OCRM?

2 A: Eight years.

3 Q: Okay. And what is your position or your title
4 at OCRM?

5 A: Wetlands Section Project Manager.

6 Q: Okay. And can you explain what the scope of
7 your responsibilities and duties are as a
8 Wetlands Section Project Manager?

9 A: Sure. I'm responsible for reviewing all
10 applications for impacts to any type tidal
11 saltwater bodies, private docks, davit docks,
12 marinas, dredging, as well as on the
13 beachfront, beachfront renourishment,
14 construction of oceanfront homes within an area
15 from Highway 544 South to Georgetown
16 County/Charleston County line.

17 Q: Okay. And I mean, geographically, that's about
18 how big or wide is that?

19 A: I'm not certain.

20 Q: Okay.

21 A: It's a large area.

22 Q: Okay. So, in your eight years with the
23 Department, how many critical area permit
24 applications would you say that you've
25 considered during that time?



1 A: Somewhere between three and four hundred.

2 Q: Okay. And when I say considered, I mean, that
3 -- so, that would include that result in a
4 permitting decision being made?

5 A: Yes.

6 Q: Okay. Now, were you, Mr. Stout, were you the
7 project manager for the Heath permit
8 application?

9 A: The original? Yes.

10 Q: Well, thank you for that clarification. Could
11 you tell the court sort of the history of this
12 dock and what's been there?

13 A: Sure. In June 2012, we received an application
14 submitted by Mr. Heath to do some additions to
15 the existing dock that had been there prior to
16 the 1977, so it was grandfathered by the agency
17 standards. That application was to replace the
18 existing boat lift, expand the existing pier
19 head, cover it all under one roof and relocate
20 the floating dock four feet channel-ward and
21 remove an existing davit boat storage for
22 construction.

23 Q: Okay. An existing one. Now, did the
24 grandfathered structure that was the subject of
25 the 2012 permit application have more than one



1 well, I believe that what she had said is he is
2 going underneath the dock walkways in a kayak
3 going north and south of the creek. Do you
4 understand what I'm saying?

5 A: Yes, sir.

6 Q: My question for you is you're looking at a dock
7 walkway like here's the Schwiers's dock
8 walkway, here's Mr. Heath's dock walkway, what
9 is the spacing between piers on a dock walkway?

10 A: Between the pilings?

11 Q: Yes, I'm sorry, between the pilings.

12 A: Typically, between 10 and 14 feet.

13 Q: Okay. So, just to make it clear. What you're
14 saying is Mr. -- I mean, not Mr., but Ms.
15 Schwiers's nephew in his kayak would be
16 typically dealing with the space and kayaking
17 underneath these walkways, a space that's
18 between 10 and 15 feet wide?

19 A: Yes.

20 Q: Okay. Now, what is the space -- what is the
21 amount of space that is between the permitted
22 dock, excuse me, the permitted boat lift and
23 Ms. Schwiers's dock?

24 A: At the closest point, the boat lift to her
25 fixed pier head is 16 feet.



1 Q: Okay. You say at the closest point because it
2 -- because of the angle of her dock, it widens,
3 the distance widens?

4 A: As you get closer to the land, yeah, the docks
5 become a little further apart.

6 Q: Okay. And at the other end of the boat lift
7 closest to the upland, how far away would you
8 say that the boat lift is from Ms. Schwiers's
9 dock walkway?

10 A: I'm not certain that we took a measurement
11 there. I would say it's probably 20 to 25
12 feet.

13 Q: Okay. So, would it be your testimony that the
14 area between Ms. Schwiers's dock walkway or her
15 fixed pier head and the proposed location of
16 the boat lift would be more or less of a
17 navigational impediment than when her nephew
18 goes underneath the dock walkway?

19 A: Less.

20 Q: Okay. Okay. Again, I apologize. I
21 interrupted your flow of just giving a time
22 line of your -- of your processing of this
23 permit application.

24 A: Okay. So, we responded to the agent that the
25 moving of the floating dock perpendicular to



1 A: That's correct.

2 Q: Okay. And, in fact, parts of how many docks
3 are in that dock corridor, Mr. Heath's dock
4 corridor between his two extended property
5 lines?

6 A: Five.

7 Q: And when you are making a permitting decision
8 for something like this -- I guess maybe before
9 I ask you that question -- can you tell Judge
10 Funderburk what's the history in terms of -- in
11 terms of the docks that are shown on Main
12 Creek? I mean, are there a significant number
13 of grandfathered structures on ---

14 A: There are.

15 Q: --- on Main Creek? And grandfathered structure
16 means what?

17 A: That it predates South Carolina DHEC OCRM.

18 Q: Okay.

19 A: What was originally the Coastal Council.

20 Q: Okay. So, when the Coastal Zone Management Act
21 went into effect, the General Assembly did not
22 say all docks non-conforming have to be torn
23 out?

24 A: Correct.

25 Q: Okay. So, what we've got is docks that were in



1 place when the Act went into effect?

2 A: Yes.

3 Q: Okay. So, what do you do in a situation like
4 this with portions of five docks in Mr. Heath's
5 -- between his extended property lines?

6 A: We try and make sure any changes to the docks
7 keep within the general character of the area,
8 looking at dock spacing, obviously we can't
9 keep them within the extended property line,
10 but also fit the other regulations, square
11 footage requirements, boat storage structure
12 limitations, making sure that it fits those.
13 But as far as spacing, we can't award
14 extensions that it keeps within that character
15 of the area.

16 Q: Okay. And before I go on, can you just put
17 numbers two, three, four and five of those
18 docks that you said are part of the, excuse me,
19 within Mr. Heath's extended property lines?

20 A: (Witness does as instructed).

21 Q: And with number five, just draw an arrow to the
22 portion that's in the extended property lines.

23 A: (Witness does as instructed).

24 Q: Great. Thank you. Okay. So, when you made
25 your permitting decision, you considered what



1 you said was the general character of the area?

2 A: That's correct.

3 Q: And how would you describe the general
4 character of the area?

5 A: This is a very crowded section of Main Creek.
6 There are grandfathered docks that don't adhere
7 to, you know, the current standards for within
8 their extended property lines. There are also
9 some of these properties that are not
10 waterfront property by today's standards but
11 have a dock.

12 Q: Mr. Stout, I think you can go back and have a
13 seat.

14 MR. CHURDAR: And, Your Honor, I don't know that I
15 got 12A offered or admitted into evidence at
16 this point.

17 THE COURT: We've all agreed to it but you're right.

18 MR. CHURDAR: Okay. So, I would offer 12A into
19 evidence ---

20 THE COURT: All right.

21 MR. CHURDAR: --- at this point.

22 THE COURT: Ms. Schwiers, any ---

23 MS. SCHWIERS: No objection.

24 THE COURT: Mr. Nettles?

25 MR. NETTLES: No objection, Your Honor.



1 continue to do that?

2 A: Yes.

3 Q: Okay. Now, you had mentioned that at its
4 closest point, the boat lift, the closest point
5 between either Mrs. Schwiers's dock walkway or
6 her fixed pier head and the proposed location
7 of the boat lift would be about 16 feet?

8 A: Yes.

9 Q: Okay. How about the distance between the
10 relocated floating dock on the north side and
11 the adjoining property owner's dock to the
12 north, what would be the distance as approved
13 in your permit amendment?

14 A: Twenty-two feet.

15 Q: Okay. Now, did you take into account the docks
16 along this section of Main Creek on Dolphin
17 Street that have stairs to access the sandbar
18 within that tidelands critical area?

19 A: Yes.

20 Q: And how did you take that into account?

21 A: In past project reviews, we've had applicants
22 ask to keep their stairs. And as for their
23 purpose, the purpose of the stairs is to
24 provide access to the water. The stairs on Ms.
25 Schwiers's dock lead to the south off the



1 walkway, away from Mr. Heath's dock.

2 Q: And why do you mention that? Why is that
3 significant?

4 A: That would be the point of access for someone
5 getting in the water not from the fixed or
6 floating dock. But someone swimming or
7 kayaking, that would be their point of entry
8 into the water. It wouldn't be on the side of
9 Mr. Heath where the encroachment is, it would
10 be on the opposite side, the Padgett's.

11 Q: And let me -- let me -- so, when you were
12 talking, you're talking about entry into the
13 water, from where my pen is pointing, this side
14 of the Schwiers's dock?

15 A: Yeah. I can see your pen when it moves.

16 Q: Oh. I'm saying this ---

17 A: Yes.

18 Q: --- area right in here? Okay. Now, Mr. Stout,
19 we had talked some about the requirements of
20 30-12(A)(1)(p). Can you just turn to that in
21 the set of the regs you've got right there?
22 Are you there?

23 A: Yeah.

24 Q: Okay. And I don't want to beat a dead horse so
25 I'm going to sort of summarize. But we had --



1 there had been previous testimony about, you
2 know, docks should not be constructed closer
3 than 20 feet from the extended property line
4 but can be closer or even cross the extended
5 property lines if there's no material harm to
6 the policies of the Act. And when the
7 subsection E of that 30-12(A)(1), if you could
8 just read that, please.

9 A: "All applications for docks and piers should
10 accurately illustrate the alignment of property
11 boundaries with adjacent owners and show the
12 distance of the proposed dock from such
13 extended property boundaries. For the purpose
14 of this section, the extension of these
15 boundaries will be an extension of the high
16 ground property line. The Department may
17 consider an alternative alignment if site
18 specific characteristics warrant or in the case
19 of dock master plans when appropriate."

20 Q: Okay. And in this -- in this instance, when
21 you are making a permitting decision, do the
22 site specific characteristics of this part of
23 Main Creek warrant an alternative alignment?

24 A: Yes.

25 Q: Okay. And just briefly, why is that?



1 A: Mr. Heath can't keep -- I mean, the existing
2 dock is outside of the extended property lines.

3 Q: Okay. Now, Mr. Stout, if the Act had gone into
4 effect, let's say 50 years ago, would a portion
5 or a significant portion of the property
6 owners, if they had to apply for docks back
7 then with the regulations, you know, if they
8 were in effect, would you say that a large
9 portion or a number of them would not qualify
10 for a dock permit?

11 A: Yes.

12 Q: Okay. And why is that?

13 A: There are several properties just north of Mr.
14 Heath's property that are pie-shaped lots and
15 so they wouldn't meet our waterfront property
16 definition and wouldn't be eligible for a dock.

17 Q: Okay. Can you please turn to the section of
18 the regulation and read the definition of
19 waterfront property for Judge Funderburk,
20 please? And just to put it in the record,
21 please cite the -- provide the regulatory
22 citation.

23 A: Sure. It's 30-1(D)(53). "Waterfront property.
24 For the purposes of these regulations,
25 waterfront property will be generally defined



1 as upland sites where a straight line extension
2 of both generally shore perpendicular upland
3 property lines reaches a navigable water course
4 within a thousand feet of the marsh critical
5 line. Waterfront property may also be
6 identified by an approved dock master plan
7 where a designated corridor is different from
8 upland property line extensions aren't
9 delineated."

10 Q: Okay. Mr. Stout, I'm handing you Respondent's
11 Exhibit 13 and would ask you when did the
12 regulatory definition of waterfront property go
13 into effect?

14 A: June 27, 2003.

15 Q: Okay. Now, the document that I've just handed
16 you, Respondent's Exhibit 13, what is that?

17 A: This is from the South Carolina State Register.

18 Q: Okay. And that is the document that shows when
19 that definition went into effect?

20 A: That's correct.

21 Q: Okay.

22 MR. CHURDAR: Your Honor, I'd like to offer
23 Respondent's Exhibit 13 into evidence at this
24 time.

25 THE COURT: And that's the ---



1 MR. CHURDAR: Just take the segment from the State
2 Register.

3 THE COURT: --- second entry? Okay.

4 MS. SCHWIERS: No objection.

5 THE COURT: Any objections? Mr. Nettles?

6 MR. NETTLES: No objection, Your Honor.

7 THE COURT: All right. Respondent's Number 13,
8 entry from the State Register -- I assume
9 that's 2003 --

10 MR. CHURDAR: Yes, sir, June 27, 2003.

11 THE COURT: --- okay. ---

12 MR. CHURDAR: Yes, sir.

13 THE COURT: --- admitted without objection.

14 (Respondent's Exhibit Number 13 was admitted into
15 evidence.)

16 Q: And what is the significance of the waterfront
17 property definition and what's the significance
18 of the date?

19 A: So, the significance of the definition begins
20 to limit which properties would be eligible for
21 a dock and then as far as the date, those
22 applications that were submitted prior to docks
23 constructed based on those permits wouldn't
24 have to comply with that particular
25 requirement.



1 Q: Okay. So, those docks that were in the water
2 prior to 2003 don't have to comply with the
3 waterfront property definition in terms of
4 eligibility for a dock?

5 A: That's correct.

6 Q: Okay. So, in trying to determine the character
7 of the area, would the permitting decision that
8 you made with the boat lift, would the proposed
9 spacing between the proposed boat lift and the
10 relocated floating dock, would that be
11 consistent with the spacing of docks in the
12 vicinity?

13 A: Yes.

14 Q: Okay. Now, you hear Ms. Schwiers also testify
15 about the section of the regulation that says
16 that dry storage in uplands will be encouraged
17 in preference to moorage in crowded areas?

18 A: Yes.

19 Q: Do you see that in the regulation?

20 A: Yes.

21 Q: Okay. Now, that -- what is your response to
22 the applicability of that section to this
23 permitting decision?

24 A: Mr. Heath has an existing dock and what he has
25 asked for fits within the purview of square



1 footage and the actual number of boat storage
2 structures that are allowed by the regulation.

3 Q: Okay. Okay. So, would the dry -- so, the
4 section that says dry storage in uplands will
5 be encouraged in preference to moorage in
6 crowded areas, first of all, cite that
7 regulatory language.

8 A: 30-12(A)(1)(g).

9 Q: Okay. And so it is your testimony today that
10 that would not apply to Mr. Heath's boat,
11 excuse me, his dock amendment permit
12 application?

13 A: That's correct.

14 Q: Okay. I'm sorry, his boat lift application to
15 amend his dock to get a boat lift?

16 A: That's correct.

17 Q: Okay. And the reason for that is because he
18 already satisfied the project standards under
19 30-12 to get the boat lift?

20 A: That's correct.

21 Q: Okay. Is there anything else that, just trying
22 to capsulize that, that went into your decision
23 to not use the language about the dry storage
24 in uplands will be encouraged?

25 A: I mean, additionally, I mean, asking either Mr.



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1 Heath to move his boat to a marina, which would
2 incur a recurring expense that seems
3 unreasonable given he's already got an existing
4 dock, but also this seems more applicable in
5 areas for a property that does not have a dock
6 that's already crowded and trying to work with
7 them for an alternative to then limit those
8 impacts to the environment.

9 Q: Okay. So, the cat's already out of the bag, so
10 to speak, here?

11 A: Right.

12 Q: Okay. Now, Ms. Schwiers also mentioned that
13 the Heath dock is the only one with two boat
14 lifts and she may have modified that testimony
15 a little bit, I don't want to mischaracterize
16 her testimony. But are there other docks in
17 this vicinity that have two boat storage
18 structures?

19 A: Yes.

20 Q: And do you have any idea how many other docks
21 in this vicinity also have two boat storage
22 structures permitted?

23 A: In this area of Murrells Inlet, there's
24 several. Dolphin Street, which Ms. Schwiers
25 and Mr. Heath live on, as you go south, it runs



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1 into Pompano and as you go down Pompano, there
2 are many docks down that way that have multiple
3 boat lifts or multiple boat storage structures.

4 Q: Okay. But also on ---

5 A: On ---

6 Q: --- the street where Ms. Schwiers's property
7 is, as well?

8 A: All on the same creek.

9 Q: Okay. Okay. I see. Okay.

10 **MR. CHURDAR:** Your Honor, just one moment. That is
11 all my questions.

12 **THE COURT:** All right. Mr. Stout, remain there.
13 We'll see if anybody wants to cross-examine
14 you.

15 A: Okay.

16 **THE COURT:** Ms. Schwiers, do you have any questions?

17 **MS. SCHWIERS:** I do have some clarifying questions.

18 **THE COURT:** All right.

19 **MR. STOUT - CROSS EXAMINATION BY MS. SCHWIERS:**

20 Q: So, as Mr. Churdar pointed out, Mr. Heath
21 applied for a permit in 2012, correct?

22 A: That's correct.

23 Q: And I did not oppose that, correct?

24 A: To the best of my knowledge.

25 Q: Okay. You did not receive any correspondence



1 from me in regards to that permit, correct?

2 A: Not that I recall.

3 Q: Okay. You also stated, Mr. Churdar asked about
4 how many people sent in opposition, correct?

5 A: Correct.

6 Q: Okay. And he asked you'd had conversations
7 with those individuals or had spoken to those
8 individuals about their objections, correct?

9 A: Correct.

10 Q: Okay. Did you, at any time, reach out to Mr.
11 S. Morris Hadden or Ms. Ann Breazeale Hadden?

12 A: I -- I don't know.

13 Q: Okay. You don't know?

14 A: No. I spoke with one of the Mr. Hadden's. Off
15 the top of my head, I can't recall which one.

16 Q: Do you recall that it was Mr. Robbie Hadden?

17 A: Possibly.

18 Q: Which is -- I mean, it's in his letter, which
19 has been admitted into court. And when you
20 spoke with him and clarified to him that the
21 boat lift was actually going to be on the south
22 side, did that change his opposition to the
23 request for this permit?

24 A: No.

25 Q: He remained firm in his opposition to the



1 request for this permit, correct?

2 A: Correct.

3 Q: Okay. At any time, did you call me?

4 A: No.

5 Q: At any time, did you address with me any of my
6 concerns or seek any clarification with me
7 regarding what my concerns were?

8 A: No.

9 Q: Okay. At any time, have you been on my dock
10 with me for me to explain to you what it is
11 that I feel will be limited based on the
12 structure that you have approved?

13 A: No.

14 Q: You mentioned a company named Earthworks. So,
15 when you received -- and I want to make sure
16 I'm getting clarification here -- so, when you
17 received the concerns from seven citizens
18 within this area, you went back and consulted
19 with Mr. Heath regarding those concerns that
20 were brought forth?

21 A: Yes.

22 Q: But you never once went back to the individuals
23 who originally brought the concerns forward to
24 ask them for any clarification?

25 A: No.



1 Q: Okay. And you stated that you went, I believe,
2 and I'm sure the court can correct me if I'm
3 wrong, that you went to a company called
4 Earthworks so that they could go and then make
5 modifications to the request that would address
6 the concerns that had been brought forth by the
7 seven citizens?

8 A: I guess to clarify, Earthworks, the Earthworks
9 Group ---

10 Q: Uh-huh (affirmative response).

11 A: --- was hired Mr. Heath ---

12 Q: Right.

13 A: --- to submit the application, do his plan,
14 submit the amendment. The concerns were all
15 put in a request for additional information to
16 be responded to by Mr. Heath and to the
17 Earthworks Group.

18 Q: Okay. And so then they responded because that
19 was based on the concerns that had been brought
20 forth by others, correct?

21 A: Correct.

22 Q: Okay. And so then they responded, you did not
23 like their response or felt their response
24 would hinder navigation in the Main Creek?

25 A: Correct.



1 Q: And so then they came back with the original
2 request that they had?

3 A: Correct.

4 Q: And you approved it?

5 A: Correct.

6 Q: So, the concerns of the seven citizens that
7 were brought forth, that you did not speak to,
8 were not addressed?

9 A: I feel that they were addressed through our
10 review and how we handle the regulations in
11 these kind of scenarios.

12 Q: But so I'm clear, you sent it back to Mr.
13 Heath, he hired Earthworks because you felt
14 there were concerns and so you sent it back,
15 but yet they changed nothing in the original
16 permit?

17 A: Part of our process is to provide those
18 comments to the applicant and their agent after
19 a public notice to make them aware of those
20 concerns.

21 Q: Right.

22 A: And ask them to address them, if possible.

23 Q: Right. And so they did not address them but
24 you approved the permit, correct?

25 A: Well, what we received in response was that the



1 first grounds was the alternative that laid out
2 how they looked at three different alternatives
3 and gave explanations for why they settled on
4 one, turning the floating dock perpendicular,
5 to which we responded that would be an impact
6 on Main Creek and then they responded back with
7 another round. I mean, it was more than just,
8 well, we'll go with this plan. They gave a,
9 you know, reason why, an explanation for, in
10 order to meet Mr. Heath's request and what he
11 wants to do at his dock and we feel that that
12 was -- their response stated that it seems
13 appropriate within the regulations to go back
14 to the original plan.

15 Q: Okay. So, just so I'm clear on what you said.
16 So, to meet Mr. Heath's needs, we went back to
17 the original but we never contacted the seven
18 citizens, speaking of you and the Department,
19 that had concerns regarding this matter? You
20 never came back and contacted any of us?

21 A: No.

22 Q: Okay. So, I want to clarify. So, when you
23 said Mr. Heath's dock had two boat lifts,
24 indeed, that's inaccurate. It had two lifts
25 for boats but they were not the exact same,



1 correct?

2 A: No, that's correct. That's what I said.

3 Q: Okay. Well, I want to make sure. And these
4 lifts, for clarification for the court, were
5 not on the pier head where the floating dock
6 was. Both lifts were not there, correct?

7 A: No, one -- the existing boat lift is where it
8 was. It was just replaced.

9 Q: Correct.

10 A: And it's on the north side ---

11 Q: Oh, you're talking about the mechanical one on
12 the north side of Mr. Heath's dock?

13 A: That's correct.

14 Q: Which is ---

15 A: The other ---

16 Q: --- how many pilings?

17 A: Four.

18 Q: Four. Okay.

19 A: The other was a davit connected to the walkway
20 on the north side.

21 Q: So, it was two poles and manual?

22 A: Yes.

23 Q: And in no way did it -- and it was -- no way
24 did it encroach anywhere where the pier head is
25 today or where the floating docks were because



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1 it was on the walkway, correct?

2 A: Correct.

3 Q: Okay. So, indeed, this dock never had two boat
4 lifts like the structure that Mr. Heath is
5 asking for today?

6 A: That's correct.

7 Q: Okay. So, the dock has never had two, four-
8 piling, 12 foot by 12 foot boat lifts on the
9 pier head?

10 A: That's correct.

11 Q: Okay. I just wanted to make sure. And then
12 you also -- there was a -- there's been a lot
13 of conversation about navigation and you made
14 the statement that the public navigation in the
15 Main Creek, which I refer to as Oak Creek, you
16 made the decision between that versus the
17 decision between the navigation between the
18 docks, correct?

19 A: Correct.

20 Q: Okay. And Mr. Churdar went in length about
21 going under the docks and the width under those
22 docks, correct?

23 A: Correct.

24 Q: Okay. And you gave the answer that's 10 to 14
25 feet versus the 16 feet that will now exist



1 between my pier head and this boat lift?

2 A: Correct.

3 Q: Okay. And would you say that navigation is
4 only considered when you're going straight to
5 get to somewhere or is navigation being able to
6 move and enjoy an activity within an area?

7 A: I think it encompasses the maneuvering of the
8 vessel.

9 Q: Okay. So, would you say that this -- that it
10 would be correct in stating that a boat could
11 navigate straight to get to a location,
12 correct?

13 A: Correct.

14 Q: In a more narrow space than when a boat, and as
15 you testified, you're aware kayaks would have
16 two fishing rods in the back, two in the front
17 and be able to turn in an area. Would you say
18 there's a difference between those two things?

19 A: Sure.

20 Q: Okay. And you talked about, Mr. Churdar asked
21 you a question about the width of kayaks, and
22 you said approximately 30 inches?

23 A: Uh-huh (affirmative response).

24 Q: Okay. Have you ever seen my kayak?

25 A: No.



1 Q: So, can you testify to the width of my kayak?

2 A: No.

3 Q: Okay. You also talked about the character of
4 the area. Okay. And I'm assuming you're
5 talking about the landscape of the docks.
6 Okay. And I'm going to ask you, are you very
7 familiar with this area?

8 A: I've been doing the permit dock review --
9 permit reviews for this particular area for the
10 eight years.

11 Q: Okay. So, do you know where Starfish is?

12 A: Yes.

13 Q: Okay. And so you know, at Starfish, going
14 north is considered Gulf Stream Estates ---

15 A: Yeah.

16 Q: --- Community, correct?

17 A: Uh-huh (affirmative response).

18 Q: And this is where both Mr. Heath and I reside,
19 correct?

20 A: Correct.

21 Q: Okay. And when you look at the landscape of
22 the area, from Mr. Harrington, do you know his
23 dock?

24 A: No.

25 Q: Okay.



1 MS. SCHWIERS: May I use the exhibit of the docks?

2 THE COURT: Just tell us which one you're using.

3 That looks like Twelve.

4 MS. SCHWIERS: Respondent's Exhibit 4.

5 THE COURT: Okay.

6 Q: Okay. Mr. Stout, whose dock is this right
7 here?

8 A: That's the Padgett's.

9 Q: Okay. And next to the Padgett's, is there also
10 a dock?

11 A: Yes.

12 Q: That would be Mr. Harrington's dock.

13 A: Okay.

14 Q: Okay. And then this is my dock, correct?

15 A: Correct.

16 Q: This is Mr. Heath's dock. This is the
17 Breazeale Family Limited Partnership dock,
18 correct?

19 A: Uh-huh (affirmative response).

20 Q: And is this the Beaty dock?

21 A: Yes.

22 Q: Correct? And would you say to me, when you're
23 looking at this, when you state the character
24 of the area, the overall character of the area,
25 that from the Padgett's to the Breazeale's there



1 is a greater space among these docks than there
2 is in three, four and five?

3 A: Yeah.

4 Q: Okay. And has the Sparkling Waters Limited
5 Partnership ever sent you a request for
6 amendment to our dock?

7 A: No.

8 Q: Have the Padget's ever sent you a request for
9 amendment to their dock?

10 A: Not that I reviewed.

11 Q: Okay. And so when you talk about the character
12 of the area and when you talk about making
13 decisions based on that character, you really
14 are not talking about the entire Gulf Streams
15 Estate Community but only a portion of the
16 community in which the area is very crowded?

17 A: Given normal project standards, this area is
18 crowded and it would take into account all of
19 Gulf Stream Estates.

20 Q: And how much space would you say is between
21 Sparkling Waters Limited Partnership and the
22 Padget's dock?

23 A: I don't know.

24 Q: If you were to look at that exhibit, in your
25 best estimate?



1 A: It is probably over 20 feet between those two
2 docks.

3 Q: All right. In excess of 20 feet. And prior to
4 the request of this permit, would you say there
5 was an excess of 20 feet between Mr. Heath and
6 myself?

7 A: Yeah.

8 Q: Okay. And prior to your approval of the
9 Beaty's boat lift next to the Breazeale's, was
10 there an excess of 20 feet between those docks?

11 A: I don't recall.

12 Q: So, the decisions to approve permits and to
13 allow structures is what has caused this area
14 to become very crowded, correct?

15 A: No.

16 Q: And what has caused the area to become crowded?

17 A: The construction of the grandfathered docks
18 that don't stay within what would be the dock
19 corridor has caused the area to be crowded.

20 Q: So, are you saying that from the Harrington's
21 to the Paget's to me to Mr. Heath is a crowded
22 area or is the crowded area from the Beaty's
23 beyond the curve in Gulf Stream Estates?

24 A: All of it.

25 Q: So, you're saying that even though my dock and



1 the Paget's dock has 20 plus feet, I guess,
2 that it's crowded?

3 A: Yeah.

4 Q: Okay. So, when you then add a boat lift to Mr.
5 Heath's dock in a crowded area, which you say
6 is already crowded, then there's a smaller
7 amount of room between those two docks, is it
8 now overcrowded?

9 A: I wouldn't say so, no.

10 Q: So, is it more crowded?

11 A: The addition of four pilings?

12 Q: Four pilings coming over how many feet?

13 A: Twelve feet.

14 Q: Twelve feet. Is it more crowded than it was
15 prior to that boat lift?

16 A: There's less open space between your two docks.

17 Q: So, then that would result in narrowing the two
18 -- the open space or bringing the structures
19 closer together, meaning crowding the
20 structures?

21 A: Sure.

22 Q: Okay. You also talked about that you taken
23 into consideration the use and enjoyment of
24 adjacent docks in your decision making?

25 A: Yes.



1 Q: And how did you make the decision if you have
2 never once spoken with me nor been on my dock
3 nor asked me for any clarification, make the
4 decision that my full enjoyment of my dock was
5 not being impacted?

6 A: What we review is our site visit photographs,
7 aerial photographs that can be produced either
8 through the county's website, Google Earth or
9 our GIS data reviews. We look at the features
10 of your dock and where they sit in reference to
11 the dock that's being modified.

12 Q: So, you look at photographs and you look at
13 aerials and you look at Google Earth?

14 A: Yes.

15 Q: But you do not talk to the residents that live
16 there?

17 A: It's not a requirement, no.

18 Q: But you do not do that?

19 A: Right.

20 Q: As a part of the South Carolina Department of
21 Health and Environmental Control, who is
22 promoting the well-being of all of the
23 individuals, you do not talk to those
24 individuals, you look at Google Earth maps and
25 overhead maps and use regulations. And in your



1 own terms, some of them make it difficult to
2 apply to what you're doing due to the
3 grandfathering and multiple issues. So, you
4 don't go to the individuals who live and reside
5 there to ask them clarification on their
6 concerns? That's all I'm asking, you don't
7 speak to them?

8 A: No. You get the public notice mailing that
9 goes out as the adjoining property owner.

10 Q: Right. But you don't, as the South Carolina
11 Department of Health and Environmental Control,
12 you make no effort to reach out to the citizens
13 of the state of South Carolina who voice their
14 concerns regarding a permit?

15 A: If there's a need for clarification on the
16 comments, yes.

17 Q: Okay. And did you do that in this case?

18 A: For yours? No. Your comments and concerns
19 were very clear.

20 Q: Okay. Let me ask you a question. When you say
21 that this does -- that the guideline states
22 storage should be in the uplands as a
23 preference, you said that didn't apply to this
24 case because Mr. Heaths already had a boat
25 dock?



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1 A: Right.

2 Q: And I believe Mr. Churdar's words were the cat
3 was already out of the bag. So, I mean, we had
4 already done one boat lift so why not do
5 another one? I mean, correct me if I'm wrong
6 ---

7 MR. CHURDAR: I'm going to ---

8 Q: --- that is a direct quote from the counselor?

9 MR. CHURDAR: I mean, I'm going to object to the
10 context and the characterization of what I
11 said.

12 THE COURT: All right. I'm going to sustain that.
13 Ms. Schwiers, try to ask your question without
14 loading it with ---

15 MS. SCHWIERS: Oh, okay.

16 THE COURT: Okay.

17 Q: So, when you made the statement that that did
18 not apply, that did not apply because Mr. Heath
19 already had a boat lift?

20 A: It did not apply because Mr. Heath already had
21 a dock ---

22 Q: Okay.

23 A: --- and what he had requested fit within the
24 requirements and the project standards for a
25 private use dock.



1 Q: Okay. So, it doesn't apply even though it
2 states that it's a preference in crowded areas?
3 Then where in there -- I didn't read it so it
4 doesn't apply, even though it states that?

5 A: That's part of where we take in the general
6 character of the area and look at the spacing
7 and the crowding of those docks; does it fit
8 with what exists out there.

9 Q: And so, okay, and so you, yourself, said this
10 is a crowded area, correct?

11 A: Uh-huh (affirmative response).

12 Q: Okay. And it specifically says that dry
13 storage in the upland is the preference in a
14 crowded area but you're telling me that's
15 irrelevant because he already has a boat lift?

16 A: No, because he has a dock.

17 Q: So, because he has a dock, that would not be
18 the preference?

19 A: Correct.

20 MS. SCHWIERS: Okay. That's all I have for him.

21 THE COURT: Mr. Nettles?

22 MR. NETTLES: Thank you, Your Honor.

23 MR. STOUT - CROSS EXAMINATION BY MR. NETTLES:

24 Q: Mr. Stout, I'm going to show you what's been
25 marked as Respondent's Exhibit 5. As it sits



1 then turns back towards the marsh water and
2 runs up.

3 Q: Okay. And this boat lift will get the bottom
4 of the boat off the floor at low tide, right?

5 A: Correct.

6 Q: Okay. And isn't there a preference in the
7 policy to keep boats and floating docks off of
8 the bottom of the floor?

9 A: Boats, yes. That's part of why we have some
10 allowances for additional square footage for a
11 boat storage structure.

12 Q: So, the policies actually encourage boat lifts?
13 Boat lifts are a good thing for the
14 environment?

15 A: Correct.

16 **MR. NETTLES:** No further questions, Your Honor.

17 **THE COURT:** Mr. Churdar, do you have any questions?

18 **MR. CHURDAR:** I have just a few followup, Your
19 Honor.

20 **MR. STOUT - RE-DIRECT EXAMINATION BY MR. CHURDAR:**

21 Q: Mr. Stout, Ms. Schwiers has talked to you about
22 the navigation between the two docks, between
23 her dock and Mr. Heath's dock. When you are
24 considering navigation as a permitting
25 standard, does the navigability between two



1 think that would make this -- speed this up
2 just a little bit.

3 **MR. STOUT - RE-CROSS EXAMINATION BY MR. NETTLES:**

4 Q: Mr. Stout, there's been discussion about the
5 amount of spacing between docks. There will be
6 16.5 feet in between these two when and if the
7 boat permit is approved and the lift's put in,
8 right? Are you aware of other docks down there
9 that have much less than 16.5 feet in between
10 them?

11 A: Yes.

12 Q: Are there docks that have 10 feet in between
13 them?

14 A: Yes.

15 Q: Are there docks that have less than 10 feet in
16 between them?

17 A: Yes.

18 Q: In this immediate area?

19 A: Yes, in Gulf Stream Estates.

20 Q: And, matter of fact, there is docks that are
21 almost touching?

22 A: Yes.

23 **MR. NETTLES:** No further questions, Your Honor.

24 **THE COURT:** Mr. Stout, I have a question.

25 **MR. STOUT - EXAMINATION BY THE COURT:**



1 care of that.

2 **CLOSING ARGUMENTS BY MS. SCHWIERS:** Again, I want to
3 thank -- take this time to thank the court and
4 the Honorable Judge presiding over this case
5 for allowing me the first opportunity to
6 present my case. As stated earlier, I do not
7 take the court's time lightly as I am aware of
8 the huge responsibility our court's have. Over
9 the past 27-plus years, I have worked in the
10 human resources profession and spent my entire
11 professional career protecting the rights of
12 corporations and employees and specifically
13 those individuals that did not feel they had a
14 voice. This is, however, the first time I have
15 ever entered a courtroom to protect my own
16 rights as a South Carolina citizen. As
17 presented to the court, the proposed structure
18 has been opposed by seven members of the
19 community. However, at no time has any member
20 of the South Carolina Department of Health and
21 Environmental Control consulted with us
22 regarding our concerns. At no time did
23 Christopher Stout ask me to provide any
24 clarification on my opposition nor had the
25 common courtesy to call me to discuss the



1 reasons why my concerns were not addressed.
2 They took upon themselves to determine that my
3 family and our complete enjoyment of our dock
4 were secondary to this unnecessary structure.
5 They simply sat in their office and let the
6 concerns of seven individuals and their rights
7 fall by the wayside. I can truly understand
8 now why individuals give up all too often and
9 have no faith in our state-ran organizations.
10 The state regulations set forth by the General
11 Assembly in 1977 clearly state "Dry storage in
12 the uplands will be encouraged in preference to
13 moorage in crowded areas." The South Carolina
14 Department of Health and Environmental Control
15 admitted this is a crowded area. However,
16 their own organization ignored the regulations
17 and permitted the structure when, indeed, the
18 dock already contains one boat lift. As their
19 associate general counsel stated, "The cat was
20 out of the bag, why not add another?" As I
21 have been told repeatedly during this ordeal,
22 it is not about the principle of the matter,
23 it's not about what's right or wrong, it's not
24 about protecting individual's rights, it's not
25 what we're doing to the environment, it's about



1 having more, more and more. To those
2 individuals, I say it is about the principle
3 and it's about having the courage to stand up
4 for what you know to be true. It's important
5 to step out of your comfort zone, no matter how
6 painful or frightening, to ensure your voice is
7 heard and that you can go home with a clear
8 conscience knowing that you have done all you
9 can possibly do to protect your rights and the
10 rights of your family. I have repeated stated
11 and demonstrated that this structure would
12 drastically limit the full enjoyment of our
13 dock, severely encroach on my property, result
14 in potential safety concerns, impair our
15 ability to enjoy the water activities as we do
16 today. We cannot continue to allow the
17 complete overcrowding of the area and these
18 unnecessary structures to be built. If we do,
19 there will be nothing left to leave our
20 children or grandchildren except memories of a
21 time gone by when you could enjoy the natural
22 beauty. It's time someone stand up and say
23 it's enough and enough. I am truly saddened to
24 think that these large structures will continue
25 to be built to house enormous water crafts at



1 the cost of the safety of our citizens. My
2 hope is that it will not take a tragedy for us
3 to wake up and do what's right. It is time to
4 say the mistakes of the past do not dictate our
5 future decisions we make. It's time to hold
6 the state agencies accountable for doing the
7 right thing because it is the right thing to
8 do. Again, I want to emphasize, this case is
9 not personal and there is no malice in me or
10 being demonstrated by me in exercising my
11 rights as a South Carolina citizen. To quote
12 Robert Frost, "Good fences make good
13 neighbors." This proverb has been around for
14 centuries, beginning with Benjamin Franklin.
15 There are many meanings to this proverb but the
16 ultimate meaning is one of respect. I am
17 simply asking that my neighbor not encroach on
18 me and my rights. I am asking this court to
19 overturn the decision of the South Carolina
20 Department of Health and Environmental Control
21 and the decision of the South Carolina Board of
22 Health and Environmental Control based on the
23 facts presented by me in this court. Thank
24 you.

25 **THE COURT:** Unless you want Mr. Nettles to go first.



CREEL COURT REPORTING, INC.
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(803) 252-3445 / (800) 822-0896

June 8, 2015

Chris Stout
South Carolina Department of Health and Environmental Control
Division of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, South Carolina 29577

Dear Mr. Stout:

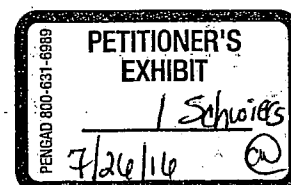
I am in receipt of the notice dated June 2, 2015 regarding Stewart W. Heath, III, OCRM-12-112-S. This e-mail is my official opposition to the requested amendment to the current permit for Stewart W. Heath, III at 1666 Dolphin Street, Garden City, Georgetown County, South Carolina TMS:41-0129-019-00-00.

Our home is adjacent to Mr. Heath's and located at 1674 Dolphin Street, Garden City, South Carolina 29576. Our dock is directly next to Mr. Heath's dock and a proposed 12' x 12' boatlift on the flood side of the pier head will encroach on my dock drastically. Should Mr. Heath be allowed to amend his permit it would leave little to no room between our docks and completely block my ability to fish, crab, catch minnows, and all other water activities to the north side. This encroachment is simply unacceptable and not necessary. The plans presented by Mr. Heath are not accurate and I dispute the facts as presented.

My family has been a part of this community since the late 70's and not once requested any amendment that would be detrimental to the environment or our neighbor's ability to enjoy the South Carolina coastal region. This neighborhood consists mainly of homes that are occupied by permanent residents or residents that do not rent their property. We reside in this area due to the beauty of the inlet and the many natural resources that thrive in this area. My mother is 84 years of age and my family has been the sole owners of our home. My mother utilizes our dock to fish, crab, spend time with her grandson, and enjoy the view. This proposed structure would completely obstruct her ability to conduct any of these activities that have been cherished for over 40 years. All four of her children were born and raised in South Carolina and spent every summer at this home. We have for 40 plus years swam, fished, crabbed, dug clams, seined, and respected these gifts without the need of a large cumbersome structure, and we, too, have boats. My family is committed to preserving our natural resources today and for the future.

In addition, the proposed amendment would cause a safety concern as there would be no room to pass through the docks without incurring risk due to the boatlift. My 12 year old nephew would not be able to navigate through the docks in his kayak nor would he be able to swim in the inlet as he does today on this side of the dock. Therefore, the proposed amendment would not only obstruct the many activities we currently enjoy it would also prohibit my family from the full enjoyment of our dock.

While I can appreciate the fact Mr. Heath has purchased an additional boat he would like to lift, it should be noted that Mr. Heath currently has a boat lift on his dock and has already amended his permit prior to increase the size of his dock. Mr. Heath is new to this well-established community and has been welcomed by the neighbors; however, at this time he has failed to recognize that we all share the inlet and it is not designed to be dominated by one individual. At no time has Mr. Heath



engaged me or any of his adjacent neighbors regarding his request even though he has had ample opportunity to discuss this matter face to face.

In speaking with my neighbors we are in agreement that this requested amendment be denied. This requested amendment not only encroaches on my dock it also encroaches on Mr. Heath's neighbors to the north. The inlet should be shared with the inhabitants given to us by nature. We are privileged to have such a place rich in natural beauty and we should all respect the privilege that has been given to us and not attempt to destroy it simply because we can. Should Mr. Heath need additional space for his boat his property is located less than a mile from Marlin Quay Marina with ample space for all types of boats and it has been recently renovated.

A quote from Archibald Rutledge a South Carolina poet laureate on nature - "The closer one lives to nature, the less he is affected by the chances and changes of life." This is why we love the South Carolina coast and will be robust in our fight to preserve our environment for all individuals to enjoy not just the few. The South Carolina coast is more about the simple elegant beauty we are able to admire, respect, and enjoy in this brief time on earth and not about who is able to build the biggest dock, have the most boats, or dominate based on wealth and influence. It has come time to state that enough is enough. All individuals from all walks of life have the right to share in this extraordinary experience.

In closing, it is with the utmost sense of urgency that I request the South Carolina Department of Health and Environmental Control deny this request based on the severe encroachment, safety concerns, and preservation of our natural resources. Should additional opposition be needed I am prepared to supply multiple objections to this request by members of the community.

Respectfully,

Gene Baxley Schwiers
General Partner
Sparkling Water, LP
1674 Dolphin Street
Garden City, SC 29576

RE: OCRM-12-112-S

Subject: FW: Opposition Letter - The amendment issued by Stewart W. Heath, III (OCRM-12-112 S)

From: Nancee Paget (bpaget@sc.rr.com)

To: genebaxleyschwiers@yahoo.com;

Date: Saturday, June 20, 2015 4:45 PM

Gene,

We have a printed copy of this but sending to you electronically too.

Nancee

From: Nancee Paget [mailto:bpaget@sc.rr.com]

Sent: Saturday, June 20, 2015 9:47 AM

To: 'stoutcm@dhec.sc.gov'

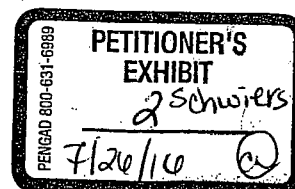
Subject: Opposition Letter - The amendment issued by Stewart W. Heath, III (OCRM-12-112 S)

Dear Mr. Stout,

I'm so sorry, but it looks like you didn't get my below e-mail from June 16, 2015. I was apparently using an incorrect e-mail address, so I hope you will be able to add my **Opposition** to the Requested Amendment to the Current Permit (OCRM-12-112 S) for Stewart H. Heath, III at 1666 Dolphin Street, Garden City, SC TMS: 41-0129-019-00-00.

I am a 20 year permanent resident at 1682 Dolphin Street, Garden City, SC – two homes south (flood side) of the property in question. My husband, family and I enjoy our home and dock on beautiful Murrells Inlet and are deeply troubled with the prospect of another addition to this same dock in question. We are worried from both a concern over potential harm to this wonderful natural resource but also from a safety perspective.

Please feel free to call me to discuss at any time: 843-651-5549.



Sincerely,

 Nancee Paget

Nancee Paget

1682 Dolphin Street

Garden City, SC 29576

P.S. Please also see the June 8, 2015 Opposition letter to you from Gene Baxley Schwiers as she lives directly adjacent to subject property.

From: Nancee Paget [<mailto:bpaget@sc.rr.com>]

Sent: Tuesday, June 16, 2015 6:57 PM

To: 'stoutcm@dehec.sc.gov'

Subject: Gene Schwiers waterfront property. The amendment issued by Stewart W. Heath, 111

Att: Chris Stout

This amendment will be detrimental to this very congested area. This will interfere with crabbing, clamming, gathering oysters, catching minnows under the walkways, fishing from the docks and the environment in general.

We oppose this amendment.

Nancee & Ben Paget

1682 Dolphin Street

Garden City Beach, 29576

 Tel. 843 651 5549

Attachments

- Gene Baxley Schwiers 6-8-15 Letter to DHEC.docx (14.07KB)



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Michael W. Eisenrauch

Phone (843) 388-6883
Fax (843) 388-6893
◇Also admitted in TN
rhadden@haddenlawfirm.com

June 11, 2015

-UPDATED LETTER-

VIA E-MAIL (stoutcm@dhec.sc.gov)

Mr. Chris Stout
South Carolina Department of Health and Environmental Control
Division of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

*Re: Opposition Letter - 1666 Dolphin Street
(Stewart W. Heath, III, OCRM-12-112-S)*

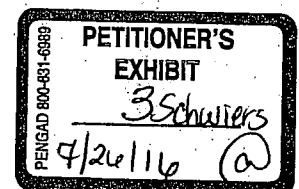
Dear Mr. Stout:

Thank you for your email today clarifying the error in the public notice regarding the above-referenced matter. As I now understand, the proposed boatlift, if approved, would be added to the ebbside of Mr. Heath's fixed pierhead (which would place it on the opposite side of his dock from our family's dock). You asked if this clarification changed any opinions in my original letter this morning. Answering that question, I still object to the proposed boatlift, and I have updated the language/reasoning below.

My parents and I are co-owners of the residence located at 1658 Dolphin Street, Garden City, Georgetown County, South Carolina ("our property"), which is next door to the property at issue. We own our property as the Breazeale Family Limited Partnership, LLC.

As to the above-referenced matter regarding 1666 Dolphin Street (Stewart W. Heath, III, OCRM-12-112-S), this letter serves as my official opposition to the requested amendment to the current permit for Stewart W. Heath, III at 1666 Dolphin Street, Garden City, Georgetown County, South Carolina, TMS:41-0129-019-00-00 ("the amendment").

Our property's dock is located right beside Mr. Heath's dock (our dock is north of Mr. Heath's dock). Mr. Heath's proposed 12' x 12' boatlift on the ebbside side of the pier head would significantly encroach upon the area surrounding our property's dock.



If Mr. Heath were allowed to amend his permit, it would leave little to no room between the docks in that area and substantially impair one's ability to boat, fish, crab and use docks surrounding this area. This encroachment is unnecessary and unacceptable.

My family (starting with Mr. and Mrs. Thomas C. Breazeale, my grandparents, who originally purchased the property in the early 1980's) has been enjoying the property, the dock and the water in this location for over 30 years.

This proposed structure would significantly reduce our ability to enjoy our dock. Specifically, by adding this boatlift, it creates a very crowded area around the docks in that vicinity. Also, the proposed amendment creates a safety issue in that there would be little to no room to pass through the docks without substantially increasing the risk of bodily injury and/or property damage.

Mr. Heath already has a boat lift on his dock, and he has already amended his permit previously to increase the size of his dock. The inlet and its resources should be shared by everyone. Less than a mile from our house is the Marlin Quay Marina, so if Mr. Heath needs more space, he can certainly contact them.

Lastly, I am concerned that this amendment, if allowed, would decrease the value of our property and those properties around it (which is certainly an unnecessary and unfair result).

I respectfully request that your office deny Mr. Heath's proposed amendment.

Thank you for your prompt attention to this matter.

Very truly yours,



Robert M. Hadden

Hunter Smith & Davis

LLP

A Registered Limited Liability Partnership

Attorneys At Law

Established 1916

www.hsdllaw.com

WRITER'S DIRECT DIAL NUMBER:

(423) 378-8820

WRITER'S E-MAIL ADDRESS:

mhadden@hsdllaw.com

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William C. Bovender
William C. Argabrite
Jimmie Carpenter Miller
Mark S. Dessauer
Gregory K. Haden
Michael L. Forrester
Stephen M. Darden
Edward J. Webb, Jr.
James N.L. Humphreys
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Leslie Tentler Ridings
Christopher D. Owens
Chad W. Whitfield
Jason A. Creech
Meredith Bates Humbert

Joseph B. Harvey
Rachel Ralston Manc
Caroline Ross Williams

COUNSEL

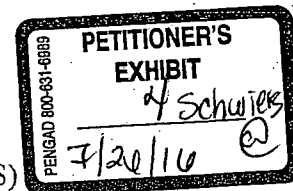
Teresa Mahan Lesnak
Michael A. Eastridge
Thomas R. Wilson
Jeannette Smith Tysinger

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Phone (423) 283-6300
Fax (423) 283-6301

PLEASE RESPOND TO:
KINGSPORT OFFICE

June 12, 2015



RE: Opposition Letter – 1666 Dolphin Street (Stewart W. Heath, III, OCRM-12-112-S)

Mr. Chris Stout
South Carolina Department of Health and Environmental Control
Division of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, SC 29577

VIA EMAIL: stoutcm@dhec.sc.gov

Dear Mr. Stout:

My wife, Anne Breazeale Hadden, and I along with our son, Robert Hadden of Mt. Pleasant, South Carolina, are owners of the resident at 1658 Dolphin Street, Garden City, South Carolina, which is better known as the Breazeale Family Limited Partnership, LLC.

This letter is to register strong opposition to the requested amendment from Stewart W. Heath, III, at 1666 Dolphin Street, who is our next door neighbor to the South.

As you are aware from earlier communications between you and me, and also, from correspondence from my son, Rob, this house has been in the Breazeale family at least 30 years. Anne's parents, Tom and Anne Breazeale, purchased the house, and we have maintained it throughout the years as a haven for our family and others making full use of all the area has to offer including all water sports, fishing, swimming in the inlet, water skiing, crabbing, etc., as was mentioned in Rob's correspondence.

Within the last five years, we first were confronted with requests from the next door neighbor to the North, Beaty, requesting a modification of his dock in order that he could also encroach on our space with a large boatlift. Even though we opposed, you granted his amendment. Now, we are faced with a new dilemma! Mr. Heath apparently wants to move his existing boatlift and floating dock several feet closer to our dock, essentially squeezing our available space so he can have a second boatlift!

His request is unfair, unreasonable, and discriminatory to us because we do not have a big boat to display on our dock. These continued encroachments on our space affect the overall enjoyment of our land and inlet. Eye appeal is comprised. We are very aggrieved and upset at his request. He currently

June 12, 2015

has one boatlift, and if this request is allowed, he will be the only entity along the shore line with two boatlifts! We think a carnival of big boats in this basically residential neighborhood, is outlandish.

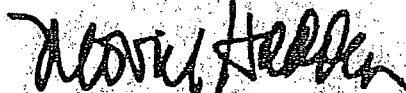
At some point and time, we may want to erect a boatlift on our dock, and if such a choice were made, the docks would be so surrounded with the lifts side by side, an extreme and unsightly hazard would be presented, not to mention a restricted bottleneck between the multiple boat docks/boatlifts. Such would hamper the ability to use the area in a way which is fair to all. When we earlier had a boatlift, things were very tight! And, that was before all the requested encroachments.

When the area was initially laid out with the homes, docks, etc., water rights were planned so that all would be equal. Fairness and equity dictate they remain that way.

Finally, we think that the market value would be depreciated by this unreasonable request. If someone were comparing our property with similar property for sale, in the event we were to place it on the market, certainly the buyer would choose the less restricted, more aesthetically pleasing and less restricted rather than the one which has a nearby cavalcade of boatlifts, large boats, and expanded docks!

In summary and conclusion, we respectfully oppose the request.

Most sincerely,


S. Morris Hadden

SMH/acc



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

MEMORANDUM

TO: Ms. Gene Baxley Scwiers, Sparking Water Limited Partnership
Mr. Rob Hadden & Mr. S. Morris Hadden, Breazeale Family Limited Partnership
Ms. Nancee Paget

FROM: Mr. Christopher Stout, Wetland Section Project Manager *CMS*

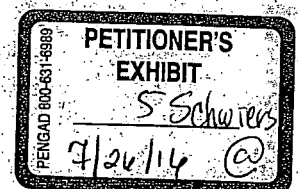
CC: Mr. Blair Williams, Wetland Section Manager

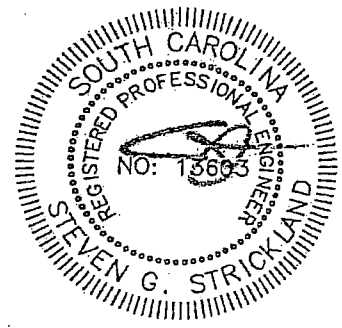
RE: Stewart W Heath III
P/N# OCRM-12-112-S

DATE: October 13, 2015

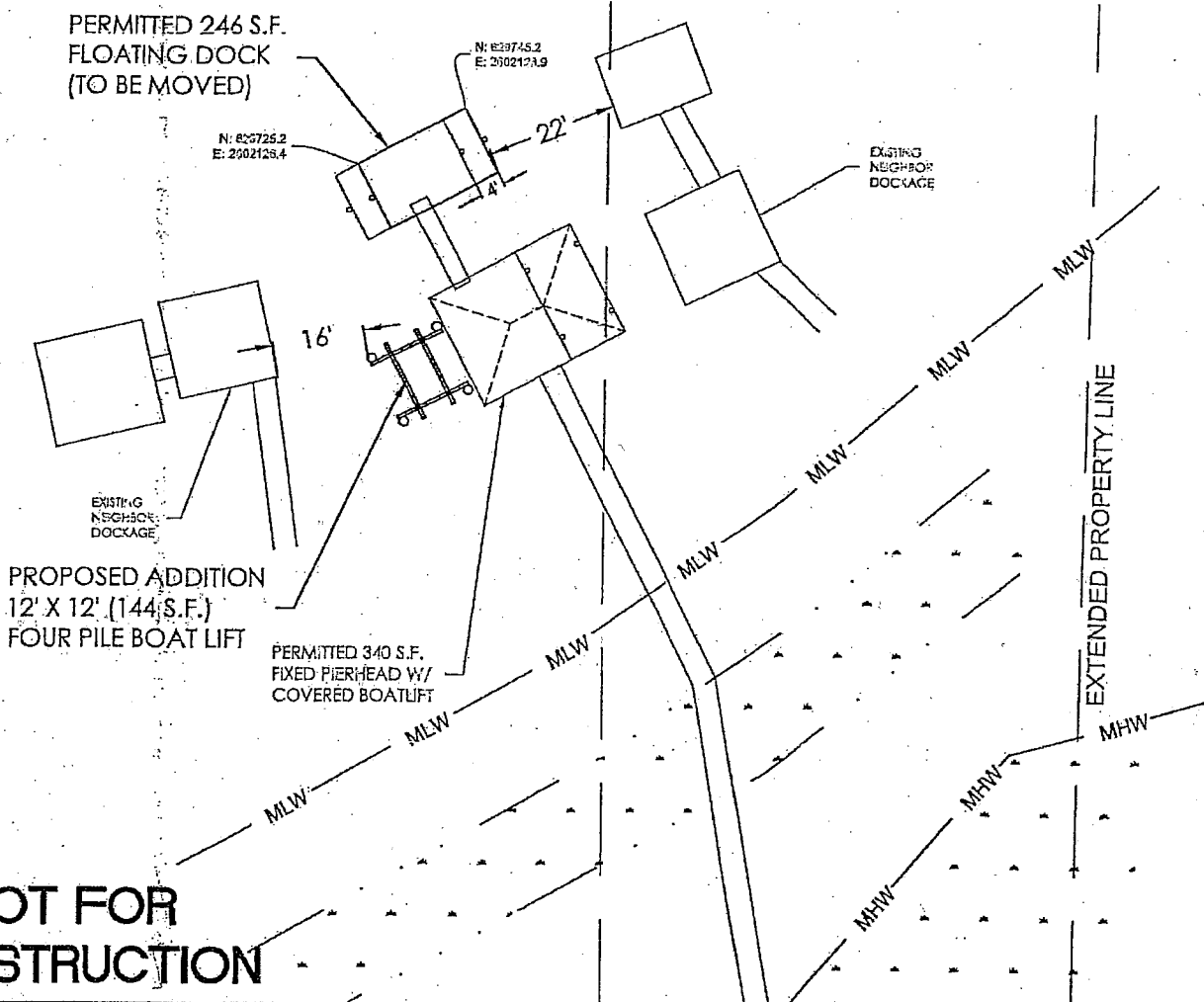
This memo is to notify you that the above referenced permit has been amended to authorize modifying the existing private use dock. Specifically, the permit authorizes the installation of a 12' x 12' four pile boatlift on the ebb-side of the fixed pierhead and to shift the existing floating dock 4' to the flood-side. The permit amendment is conditioned such that the relocated floating dock cannot extend any farther into the creek than the adjacent, existing docks.

Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Guide to Board Review."





FLOW
→
MAIN CREEK
WIDTH = 800'±



**NOT FOR
CONSTRUCTION**

SHEET TITLE:
**PROPOSED
MODIFICATION/ADDITION**

APPLICANT:
STEWART W. HEATH, III
1666 DOLPHIN STREET
GARDEN CITY, SC 29576
TMS#: 41-0129-019-00-00

PROJECT NAME:
HEATH DOCK
CRITICAL AREA PERMIT AMENDMENT REQUEST

PROJECT LOCATION:
1666 DOLPHIN STREET
GARDEN CITY, HORRY COUNTY

DOCUMENT #:

DATE: 5/4/15
TEG P/N: 151059
AUTHOR: AWOOD



11655 HIGHWAY 707
MURRELLS INLET, SC 29576
phone: 843.651.7900
fax: 843.651.7903
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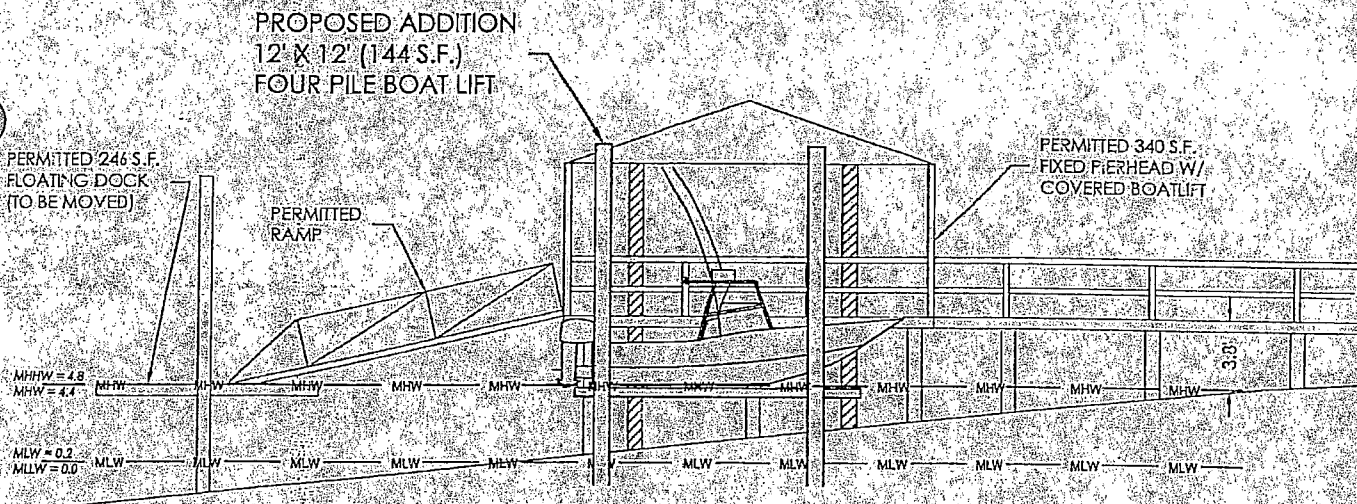
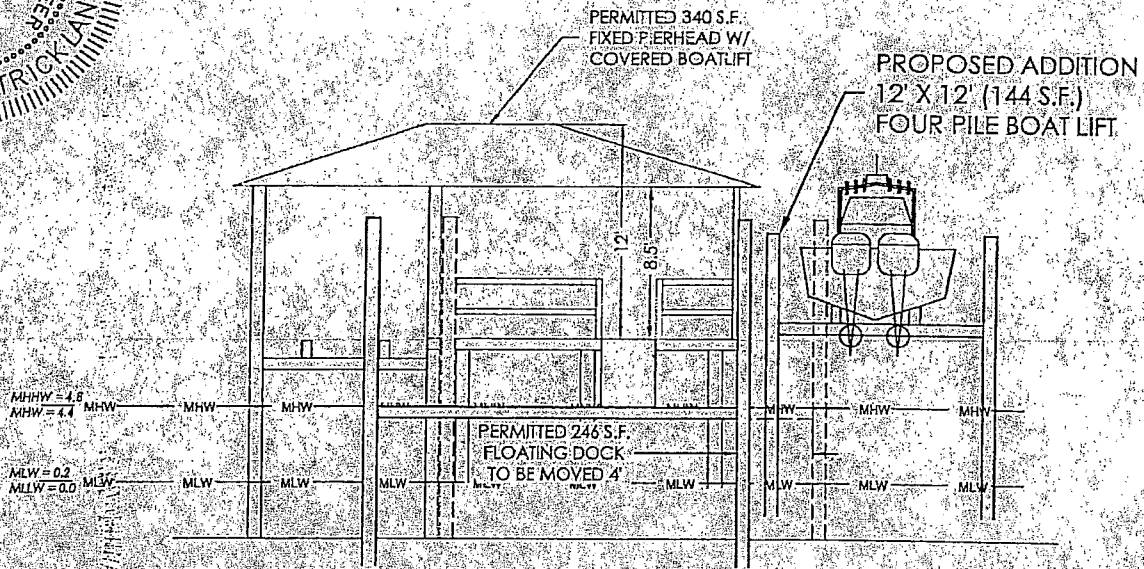
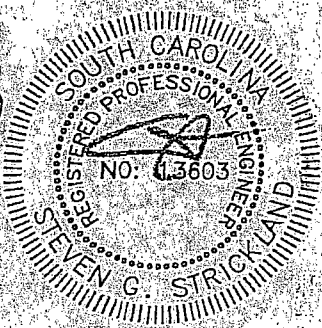
SCALE:
1" = 30'



LAT/LONG: 33.548138
By -79.022084
USGS QUAD NAME:
BROOKGREEN
SHEET: 3

REVISION SCHEDULE:		
NO	DATE	BY

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- NOTE:**
1. DOCK AND WALKWAY TO BE A MINIMUM OF 3 FT ABOVE MHW.
 2. MAXIMUM ROOF HEIGHT SHALL BE 12' AS MEASURED FROM THE FLOOR DECKING OF THE DOCK TO THE HIGHEST POINT OF THE ROOF INCLUDING ORNAMENTAL STRUCTURES.
 3. FLOATING DOCKS SHOULD NOT REST UPON THE BOTTOM AT NORMAL LOW TIDE.

**NOT FOR
CONSTRUCTION**

SHEET TITLE:
**PROPOSED - FRONT &
PROFILE VIEW**

APPLICANT:
STEWART W. HEATH, III
1666 DOLPHIN STREET
GARDEN CITY, SC 29576
TMB# : 61-0129-019-00-00

PROJECT NAME:
HEATH DOCK
CRITICAL AREA PERMIT AMENDMENT REQUEST

PROJECT LOCATION:
1666 DOLPHIN STREET
GARDEN CITY, Horry County

DOCUMENT #:

DATE: 8/4/15
TEG P/N: 151059
AUTHOR: AWOOD

DESIGNER:
EARTHWORKS
11655 HIGHWAY 707
MURRELLS BELT, SC 29576
phone: 843.651.7900
fax: 843.651.7903
www.earthworksgroup.com



SCALE:
1" = 10'



LAT/LONG: 33.548138
by -79.022084
USGS QUAD NAME:
BROOKGREEN
SHEET: 4

REVISION SCHEDULE:

NO.	DATE	BY

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South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Re: Stewart W Heath III
P/N#: OCRM-12-112-S

Brad Cherguard
Chief Counsel
843.953.0213
SCALC \$500.00

SDICKERSON

SCALC.NET

South Carolina Board of Health and Environmental Control:

I am in receipt of a memorandum from the South Carolina Department of Health and Environmental Control dated October 13, 2015 and mailed from the Department on October 14, 2015. Per the guidelines sent to me I am sending in my request for final review to the South Carolina Board of Health and Environmental Control within the outlined timeline.

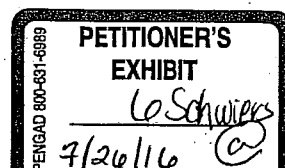
I am sending this request by electronic mail and will follow-up this electronic mail with an overnight package that will include the grounds for my request as outlined in this electronic mail, the letters of opposition that were sent to the South Carolina Department of Health and Environmental Control regarding this matter (my letter is below for reference), a copy of the decision that was sent to my attention, and a check in the amount of \$100 as outlined in the guidelines sent to my attention.

The memo sent to my attention from Mr. Christopher Stout, Wetland Section Project Manager, stated that the memo is to notify me that the above referenced permit has been amended to authorize modifying the existing private use dock. Specifically, the permit authorizes the installation of a 12' x 12' four pile boatlift on the ebb side of the fixed pier-head and to shift the existing floating dock 4' to the flood-side.

It is truly a sad day in South Carolina when the voices of six citizens of the state directly impacted by the request were not heard, the laws that regulate the distance to be maintained between the docks was not upheld, and the safety of all those that enjoy the inlet were not seen as a priority to the Department of Health and Environmental Control even though on the Department of Health and Environmental Control letterhead their mission statement is quoted as "Promoting and protecting the health of the public and the environment."

When the initial request was received I sent in my letter of opposition (contained below for reference) outlining the grave concerns over the severe encroachment of the proposed structure on my dock and the immediate concerns over the safety to my family and in particular my 84 year old mother who is disabled and my 12 year old nephew both who has enjoyed the inlet their entire life. In addition, 5 other neighbors sent in their concerns regarding this proposed amendment to include two attorneys, two permanent residents, and with my opposition totaling over 100 years of residency in the area. Each party expressed their concerns regarding both the encroachment on the north and south side of existing docks and the safety of those who enjoy the inlet.

When I sought additional advice from professionals I was also alarmed to be informed that not only did our voices not matter but the fact that the proposed amendment was in violation of the law (a requirement of a minimum of 20 feet is to be maintained between the existing docks) also was not enough of a violation to stop the proposed amendment due to the fact that other violations had



been permitted in the past. I have not in my 50 plus years ever heard a rationalization to permit a violation of the law simply because mistakes have been made prior. To me, and I would state any rational individual, it is simply unacceptable to state that the laws set forth are null and void due to the fact that in the past they have been broken - so we will keep on allowing individuals to "bend" the law on technicalities until there is no such thing as accountability for ones actions. I am not sure that I would be able to place my head on my pillow at night and sleep soundly knowing that I made decisions based on the faults of others before me instead of taking the opportunity to correct a wrong that had been committed previously by others.

In addition, I ask the Board to carefully consider the safety of all those that enjoy the inlet. With this encroachment and the construction of a lift to house a very large boat there will be little to no room to navigate through the docks, swim in the area without risk of harm, or enjoy any activities on the north side of my dock without potential ramifications that result in the harm of a human life. Is a second boat lift truly worth risking the safety of others simply because someone wants one? The home is located less than a mile from a full service marina that could safely and easily house the boat in question. When are we going to take a stand and say enough is enough - the lives of our families, our children, and the citizens of the state of South Carolina are more important than the desires of those that have wealth and influence?

Lastly, I have been informed that the natural resources and wildlife have no legal rights in this matter and certainly have no voice. Since they are unable to speak for themselves I want to take this opportunity to speak on their behalf. The great blue herons, the egrets, the Carolina blue crabs, the multitude of shell fish, the marsh hens, and all wildlife that inhabit this beautiful inlet were here before mankind and have graciously shared this magical place with us. It is our responsibility and duty to respect their home and preserve our natural resources for generations to come. When will it be time to take a step back and ask ourselves what are we doing to the environment? Are we willing to let our legacy be an inlet where pollution, trash, over use, and greed destroy our ability to enjoy the fruits of this wonderful gift? While I am able to appreciate the fact that individuals looked at the current state of the inlet to make their decision I do not have tolerance for an inability to see where we are headed and what we will leave for our children, grandchildren, and the natural resources. Once gone and destroyed by over indulgence of those with wealth is far too late. Do we really want to become what so many coastlines have become today and ignore the damage we are inflicting on our environment - why is it we are no longer able to catch yellow fin tuna off our shores, why is it that the inlet is filled with trash left behind by those that have no regard for our state, why is it that the once plentiful natural resources are rapidly declining - because we are failing to stand up and make the right decisions.

In conclusion, I respectfully request that the South Carolina Board of Health and Environmental Control review the hasty decision to allow the proposed amendment and reverse the decision. As one of my favorite authors, Pearl S. Buck stated "it is never too late to become the person you should have been."

Respectfully,

Gene Baxley Schwieters
General Partner
Sparkling Waters Limited Partnership

1674 Dolphin Street
Garden City, South Carolina 29576
678-770-4323

Original Opposition Letter Sent June 8, 2015 at 2:33pm EST via electronic mail:

Chris Stout
South Carolina Department of Health and Environmental Control
Division of Ocean and Coastal Resource Management
927 Shine Avenue
Myrtle Beach, South Carolina 29577

Dear Mr. Stout:

I am in receipt of the notice dated June 2, 2015 regarding Stewart W. Heath, III, OCRM-12-112-S. This e-mail is my official opposition to the requested amendment to the current permit for Stewart W. Heath, III at 1666 Dolphin Street, Garden City, Georgetown County, South Carolina TMS:41-0129-019-00-00.

Our home is adjacent to Mr. Heath's and located at 1674 Dolphin Street, Garden City, South Carolina 29576. Our dock is directly next to Mr. Heath's dock and a proposed 12' x 12' boatlift on the flood side of the pier head will encroach on my dock drastically. Should Mr. Heath be allowed to amend his permit it would leave little to no room between our docks and completely block my ability to fish, crab, catch minnows, and all other water activities to the north side. This encroachment is simply unacceptable and not necessary. The plans presented by Mr. Heath are not accurate and I dispute the facts as presented.

My family has been a part of this community since the late 70's and not once requested any amendment that would be detrimental to the environment or our neighbor's ability to enjoy the South Carolina coastal region. This neighborhood consists mainly of homes that are occupied by permanent residents or residents that do not rent their property. We reside in this area due to the beauty of the inlet and the many natural resources that thrive in this area. My mother is 84 years of age and my family has been the sole owners of our home. My mother utilizes our dock to fish, crab, spend time with her grandson, and enjoy the view. This proposed structure would completely obstruct her ability to conduct any of these activities that have been cherished for over 40 years. All four of her children were born and raised in South Carolina and spent every summer at this home. We have for 40 plus years swam, fished, crabbed, dug clams, seined, and respected these gifts without the need of a large cumbersome structure, and we, too, have boats. My family is committed to preserving our natural resources today and for the future.

In addition, the proposed amendment would cause a safety concern as there would be no room to pass through the docks without incurring risk due to the boatlift. My 12 year old nephew would not be able to navigate through the docks in his kayak nor would he be able to swim in the inlet as he does today on this side of the dock. Therefore, the proposed amendment would not only obstruct the many activities we currently enjoy it would also prohibit my family from the full enjoyment of our dock.

While I can appreciate the fact Mr. Heath has purchased an additional boat he would like to lift, it should be noted that Mr. Heath currently has a boat lift on his dock and has already amended his permit prior to increase the size of his dock. Mr. Heath is new to this well-established community and has been welcomed by the neighbors; however, at this time he has failed to recognize that we all share the inlet and it is not designed to be dominated by one individual. At no time has Mr. Heath engaged me or any of his adjacent neighbors regarding his request even though he has had ample opportunity to discuss this matter face to face.

In speaking with my neighbors we are in agreement that this requested amendment be denied. This requested amendment not only encroaches on my dock it also encroaches on Mr. Heath's neighbors to the north. The inlet should be shared with the inhabitants given to us by nature. We are privileged to have such a place rich in natural beauty and we should all respect the privilege that has been given to us and not attempt to destroy it simply because we can. Should Mr. Heath need additional space for his boat his property is located less than a mile from Marlin Quay Marina with ample space for all types of boats and it has been recently renovated.

A quote from Archibald Rutledge a South Carolina poet laureate on nature - "The closer one lives to nature, the less he is affected by the chances and changes of life." This is why we love the South Carolina coast and will be robust in our fight to preserve our environment for all individuals to enjoy not just the few. The South Carolina coast is more about the simple elegant beauty we are able to admire, respect, and enjoy in this brief time on earth and not about who is able to build the biggest dock, have the most boats, or dominate based on wealth and influence. It has come time to state that enough is enough. All individuals from all walks of life have the right to share in this extraordinary experience.

In closing, it is with the utmost sense of urgency that I request the South Carolina Department of Health and Environmental Control deny this request based on the severe encroachment, safety concerns, and preservation of our natural resources. Should additional opposition be needed I am prepared to supply multiple objections to this request by members of the community.

Respectfully,

Gene Baxley Schwiers
General Partner
Sparkling Water, LP
1674 Dolphin Street
Garden City, SC 29576

RE: OCRM-12-112-S

BOARD:
Allen Anisler
Chairman

Mark S. Lutz
Vice Chairman

Ann B. Kirol, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

BOARD:

R. Kenyon Wells

Charles M. Joye II, P.E.

L. Clarence Batts, Jr.

John O. Hurto, Sr., MD

William Lee Hewitt, III

2600 Bull Street, Columbia, South Carolina 29201 · Telephone: (803) 898-3309 · Facsimile: (803) 898-3393 · lisa.longshore@dhec.sc.gov

November 23, 2015

U.S. Mail – Certified – Return Receipt

9214 8969 0099 9790 1402 9712 78

Gene Baxley Schwiars
General Partner
Sparkling Water, LP
1674 Dolphin Street
Garden City, SC 29576

Via U.S. Mail

Stewart W. Heath, III
1666 Dolphin Street
Garden City, SC 29576

Via Electronic Mail Delivery

Brad Churdar, Esquire
SCDHEC – Office of General Counsel
1362 McMillan Avenue
Charleston, SC 29405

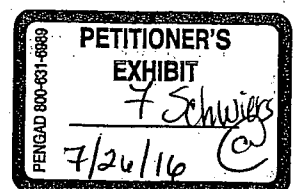
RE: *Docket No. 15-RFR-71, Stewart W. Heath - Amendment of P/N# OCRM-12-112-S*
authorizing the modification of an existing private dock.

Dear Ms. Schwiars, Mr. Heath and Mr. Churdar:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant,



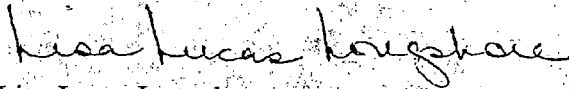
permittee, licensee, and affected person that the Board declined to hold a final review conference. A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

5-10-16 EXHIBIT *CH*

#8 Schwiers

RESPONDENT'S EXHIBIT

3/20/15 (7)

9/26/16



MAIN CREEK
WIDTH = 100 ft

PERMITTED 246'S
FLOATING DOCK
(TO BE MOVED)

PROPOSED ADDITION
12 X 12 (144 SF)
FOUR PLE BOAT LIFT

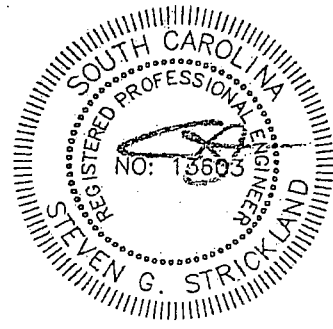
NOT FOR CONSTRUCTION

PROPOSED
MODIFICATION/ADDITION

EXTENDED PROPERTY LINE

RESPONDENT'S
EXHIBIT
5
7/20/16

340/16 EXHIBIT C-1
#22 Schwiers



FLOW
E80
MAIN CREEK
WIDTH = 800'±

PERMITTED 246 S.F.
FLOATING DOCK
(TO BE MOVED)

N: 815725.2
E: 2502126.4

N: 813745.2
E: 2502121.9

EXISTING
NEIGHBOR
DOCKAGE

EXISTING
NEIGHBOR
DOCKAGE

PROPOSED ADDITION
12' X 12' (144 S.F.)
FOUR PILE BOAT LIFT

PERMITTED 340 S.F.
FIXED PIERHEAD W/
COVERED BOATLIFT

NOT FOR
CONSTRUCTION

SHEET TITLE: PROPOSED MODIFICATION/ADDITION		APPLICANT: STEWART W. HEATH, III 1666 DOLPHIN STREET GARDEN CITY, SC 29576 TMS# : 41-0129-019-00-00							
PROJECT NAME: HEATH DOCK CRITICAL AREA PERMIT AMENDMENT REQUEST		PROJECT LOCATION: 1666 DOLPHIN STREET GARDEN CITY, HORRY COUNTY							
AGENT:  11655 HIGHWAY 707 MURRELLS INLET, SC 29576 phone - 843.651.7903 fax - 843.651.7903 www.earthworksgroup.com		DOCUMENT #: DATE: 5/4/15 TEG P/N: 151059 AUTHOR: AWOOD							
SCALE: 1" = 30' 		LAT/LONG: 33.548138 by -79.022084 USGS QUAD NAME: BROOKGREEN SHEET: 3							
REVISION SCHEDULE: <table border="1"> <thead> <tr> <th>NO</th> <th>DATE</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO	DATE	BY					
NO	DATE	BY							

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Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

June 27, 2012

Mr. Stewart W. Heath III
1666 Dolphin Street
Garden City, SC 29576

Re: OCRM-12-112-S
Stewart W Heath III

Dear Mr. Heath:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to construct modifications to an existing private dock and bulkhead at 1666 Dolphin St, Garden City, Georgetown County, South Carolina and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, OR appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Christopher Stout
Wetland Section Project Manager

Enclosure

cc: Mr. Wendell Powers, Powers Land Surveying

RECEIVED

JUL 10 2012

DHEC-CORM
MYRTLE BEACH OFFICE

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Myrtle Beach Office • 927 Shine Avenue • Myrtle Beach, SC 29577

Phone: 843-238-4528 • Fax: 843-238-4526 • www.scdhec.gov



SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s): Stewart W Heath III

Permit Number(s): OCRM-12-112-S

Date of Issuance: June 27, 2012

Expiration Date: June 27, 2017

Location: On and adjacent to Main Creek at 1666 Dolphin St, Garden City,
Georgetown County, South Carolina

**SEE SPECIAL
CONDITION(S)**

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work, as authorized and shown on the attached plans, consists of making modifications to an existing dock and replacing an erosion control structure. Specifically, the applicant seeks to replace the existing boatlift and expand the existing fixed pierhead to 20.6' x 16.8'. A new roof, 21' x 27', will cover the expanded fixed pierhead and boat lift. Additionally, the existing floating dock will be relocated 4' channelward. The applicant also seeks to replace the existing retaining wall with a new bulkhead in the same location. The work as described is for private, recreational use and erosion control.

SPECIAL CONDITIONS

1. Provided the bulkhead is located landward of the critical area line as it exists at the time of construction.
2. Provided the maximum allowable roof height shall be 12' as measured from the floor decking of the dock to the highest point of the roof including any ornamental structures.
3. Provided the proposed dock extends no farther into the creek than the existing downstream dock.

1/6

4. Provided that the fixed pierhead and boat lift are open sided structures only with no walls or screening and no portion of the pierhead is to be enclosed, even partially.
5. Provided that an as-built survey of the dock must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the dock, and must list the starting and ending coordinates of the dock walkway in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.
6. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

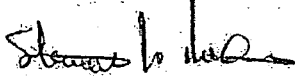
PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

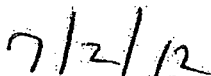
THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

**SEE SPECIAL
CONDITION(S)**

Permit Number: OCRM-12-112-S

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

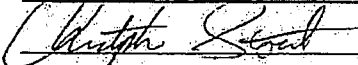


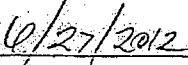


(PERMITTEE(S))
Stewart W Heath III

(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.





(WETLAND SECTION PROJECT MANAGER) (DATE)
Christopher Stout
Or his Designee
Other Authorized State Official

2/6

GENERAL CONDITIONS:

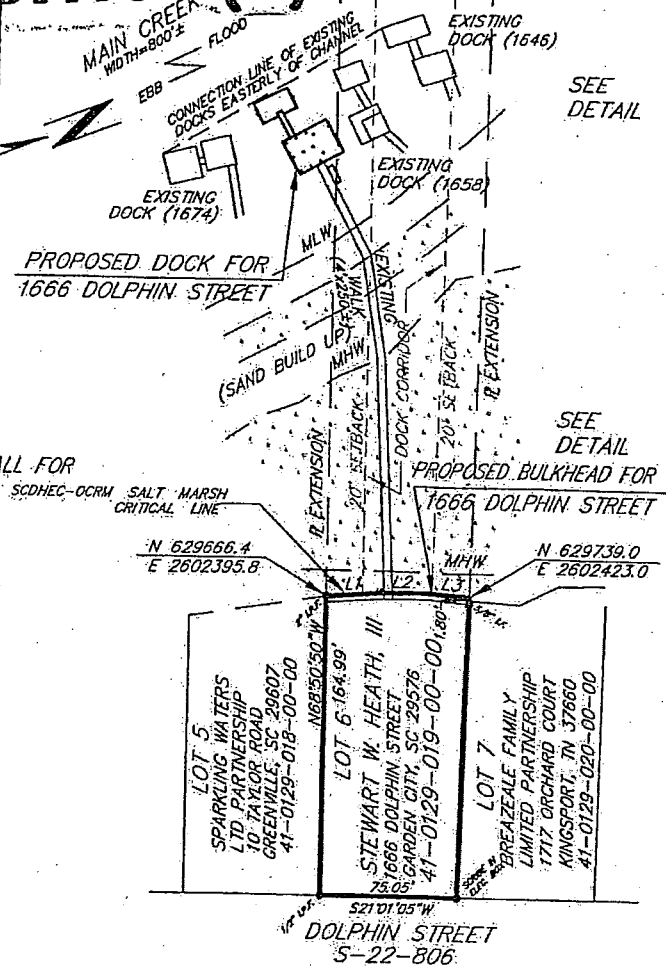
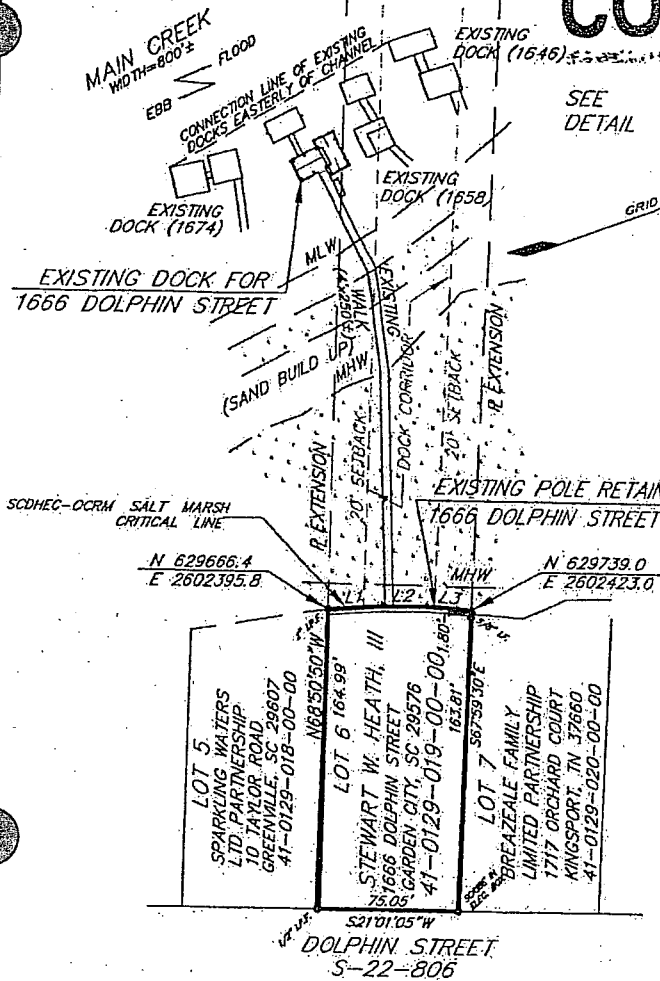
SEE SPECIAL
CONDITION(S)

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee.

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than thirty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

3/6

SEE SPECIAL CONDITION(S)



NOTE: EXISTING DOCKS (1646, 1658, & 1674) TAKEN FROM AERIAL PHOTO (GEORGETOWN COUNTY GIS). NO FIELD SURVEY THIS DATE.

REVISED 5/29/12 AT THE REQUEST OF BRIAN HARDEE (USACE) TO DELETE ADDITION TO FLOAT DOCK.
REVISED 6/19/12 TO SHOW EXISTING DAVIT THAT WILL REMAIN AT THE REQUEST OF CHRIS STOUT (SCDHEC).

APPLICATION FOR PROPOSED
DOCK ADDITIONS AND RETAINING WALL
LOT 6
GULF STREAM ESTATES
GARDEN CITY BEACH
GEORGETOWN COUNTY
APPLICANT: STEWART W. HEATH, III

SCDHEC-OCRM SALT MARSH CRITICAL LINE

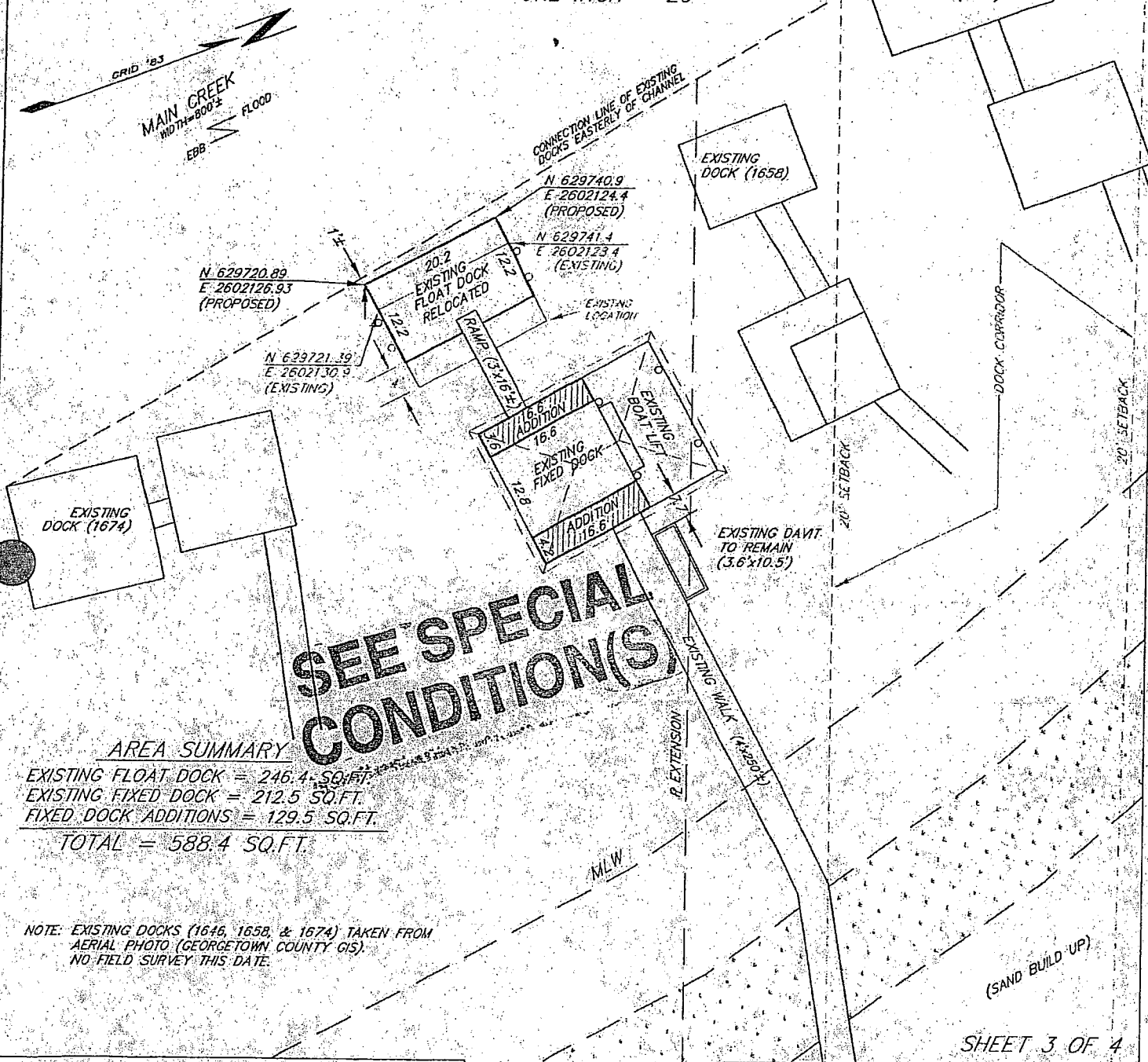
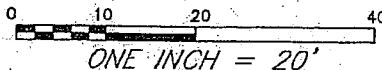
LINE TABLE		
LINE	LENGTH	BEARING
L1	30.24	N16°56'20"E
L2	23.14	N20°12'00"E
L3	24.30	N25°28'45"E

SHEET 2 OF 4

POWERS LAND SURVEYING
626 FRONT STREET
GEORGETOWN S.C. 29440
(843) 546-4000
Wendell C. Powers
WENDELL C. POWERS
SCPLS #5303

REVISED 5/29/12 AT THE REQUEST OF BRIAN HARDEE (USACE) TO DELETE ADDITION TO FLOAT DOCK.
 REVISED 6/19/12 TO SHOW EXISTING DAVIT THAT WILL REMAIN AT THE REQUEST OF CHRIS STOUT (SCDHEC).

PLAN VIEW DETAIL



SEE SPECIAL CONDITIONS

AREA SUMMARY

EXISTING FLOAT DOCK = 246.4 SQ.FT.
 EXISTING FIXED DOCK = 212.5 SQ.FT.
 FIXED DOCK ADDITIONS = 129.5 SQ.FT.
 TOTAL = 588.4 SQ.FT.

NOTE: EXISTING DOCKS (1646, 1658, & 1674) TAKEN FROM AERIAL PHOTO (GEORGETOWN COUNTY GIS). NO FIELD SURVEY THIS DATE.

APPLICATION FOR PROPOSED DOCK ADDITIONS AND RETAINING WALL
 LOT 6
 GULF STREAM ESTATES
 GARDEN CITY BEACH
 GEORGETOWN COUNTY
 APPLICANT: STEWART W. HEATH, III

POWERS LAND SURVEYING
 626 FRONT STREET
 GEORGETOWN S.C. 29440
 (843) 546-4000
W. C. Powers
 WENDELL C. POWERS
 SCPLS #5303

SHEET 3 OF 4

5/6



Request to Amend a Minor OCRM Critical Area Permit

Name & Address: Stewart W Heath III
1666 Dolphin Street
Garden City, SC, 29576

Phone Number: 843-373-8133

Permit Number: OCRM-12-112-S

Please write a detailed description of the changes that you would like to make:
The applicant wishes to amend existing permit to allow the
addition of a 12' X 12' (144 SF.) boat lift. In order to add
the boat lift. the existing float will be moved north as well.

Current Adjacent Property Owners (Must include current addresses):
Sparkling Waters L.P. 10 Taylor Road. Greenville, SC 29607
TMS: 41-0129-018-00-00
Breazeale Family L.P. 1717 Orchard Ct. Kingsport, TN 37660
TMS: 41-0129-020-00-00

Please attach professional drawings** depicting your changes, the affidavit of publication and the \$100.00 amendment fee. (**Note: As of July 22, 2006, all permit and amendment requests must be accompanied by drawings produced by Registered Land Surveyors, Professional Engineers or Landscaped Architects, all of which must be licensed with the State of South Carolina. Each drawing must be stamped and signed by the licensed professional and must include their license or registration number as well as all required measurements and dimensions. Hand drawings will not be accepted; all drawings must be computer generated. Drawings prepared by marine contractors will no longer be accepted.)

Please submit this request to:

Charleston Office: SCDHEC-OCRM
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Beaufort Office: SCDHEC-OCRM
104 Parker Drive
Beaufort, SC 29906

Myrtle Beach Office: SCDHEC-OCRM
927 Shine Ave
Myrtle Beach, SC 29577

DHEC 3897 (3/2007)

RECEIVED

MAY 18 2015

DHEC-OCRM
CHARLESTON OFFICE



Catherine E. Helgel, Director

Promoting and protecting the health of the public and the environment

RECEIVED

NOV 05 2015

HEC-OCRM

October 14, 2015

Mr. Stewart Heath III
1666 Dolphin Street
Murrells Inlet, SC 29576

SEE SPECIAL
CONDITION(S)

Re: P/N# OCRM-12-112-S

Dear Mr. Heath:

The above referenced permit has been amended to authorize modifying the existing private use dock. Specifically, you are authorized to install a 12' x 12' four pile boatlift on the ebb-side of the fixed pierhead and to shift the existing floating dock 4' to the flood-side.

This amendment is made a part of your permit and is subject to the full terms of the permit as issued. Additionally, the following Special Conditions are applied to the authorized work.

Special Conditions

1. The relocated floating dock extends no farther into the creek than existing, adjacent docks.
2. An as-built survey of the authorized structure(s) must be submitted to the Department within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the structure(s), and must list the starting and ending coordinates of the structure(s) in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

This letter does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right to appeal as outlined in the enclosed "Guide to Board Review."

The construction placard must be posted conspicuously on site during authorized activities. If you do not possess a current placard, a new one must be obtained prior to start of construction.

1/4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

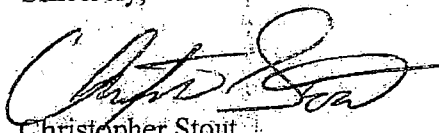


Please sign the attached copy of this letter indicating your acceptance of these terms and return the signed copy to:

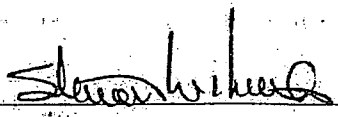
DHEC-OCRM
927 Shine Avenue
Myrtle Beach, SC 29576

If this amendment letter is not signed and returned within thirty (30) days of issuance, OR appealed as described on the enclosed "Guide to Board Review", the Department reserves the right to cancel this permit amendment. Please carefully review the enclosed "Guide to Board Review" for information and deadlines for appealing this permit amendment.

Sincerely,


Christopher Stout
Wetland Section Project Manager

Enclosure


Permittee
11/3/15
Date

cc: Mr. Blair Williams, Wetland Section Manager
Mr. G. Alan Wood, The Earthworks Group

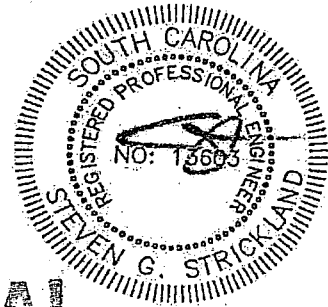
SEE SPECIAL
CONDITION(S)

RECEIVED

NOV 05 2015

DHEC-OCRM

2/4



MAIN CREEK
WIDTH = 800'±

**SEE SPECIAL
CONDITION(S)**

PERMITTED 246 S.F.
FLOATING DOCK
(TO BE MOVED)

N: 83°57'26.2"
E: 25021.354

N: 62°57'53.2"
E: 25021.119

EXISTING
NEIGHBOR
DOCKAGE

EXISTING
NEIGHBOR
DOCKAGE

PROPOSED ADDITION
12' X 12' (144 S.F.)
FOUR PILE BOAT LIFT

PERMITTED 340 S.F.
FIXED PIERHEAD W/
COVERED BOATLIFT

**NOT FOR
CONSTRUCTION**

**SHEET TITLE:
PROPOSED
MODIFICATION/ADDITION**

APPLICANT:
STEWART W. HEATH, III
1666 DOLPHIN STREET
GARDEN CITY, SC 29576
TMS# 141-01129-019-00-00

PROJECT NAME:
HEATH DOCK
CRITICAL AREA PERMIT AMENDMENT REQUEST

PROJECT LOCATION:
1666 DOLPHIN STREET
GARDEN CITY, HORRY COUNTY

DOCUMENT #:

DATE: 5/4/15

TEG P/N: 151059

AUTHOR: AWOOD

AGENT:

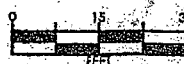
EARTHWORKS
Planning and design consultants

11655 HIGHWAY 707
MURRELLS NILE, SC 29576
phone: 843.651.7900
fax: 843.651.7903
www.eartworksgroup.com



SCALE:

1" = 30'



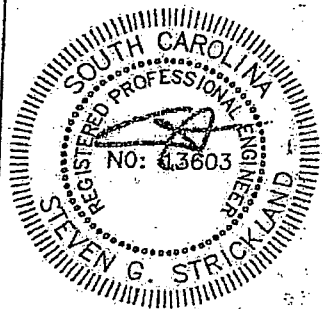
LAT/LONG: 33.548138
by -79.022084

USGS QUAD NAME:
BROOKGREEN
SHEET: 3

REVISION SCHEDULE:

NO DATE BY

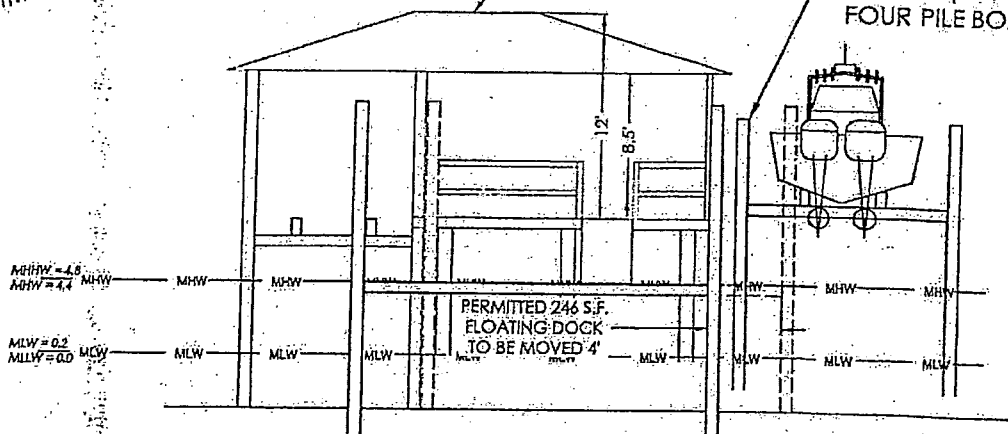
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SEE SPECIAL CONDITION(S)

PERMITTED 340 S.F.
FIXED PIERHEAD W/
COVERED BOATLIFT

PROPOSED ADDITION
12' X 12' (144 S.F.)
FOUR PILE BOAT LIFT

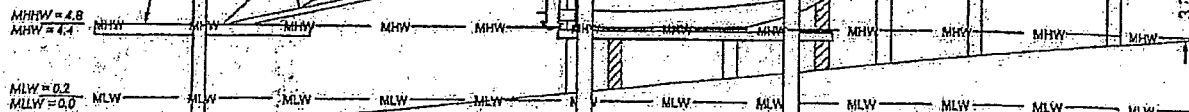


PROPOSED ADDITION
12' X 12' (144 S.F.)
FOUR PILE BOAT LIFT

PERMITTED 246 S.F.
FLOATING DOCK
(TO BE MOVED)

PERMITTED
RAMP

PERMITTED 340 S.F.
FIXED PIERHEAD W/
COVERED BOATLIFT



- NOTE:**
1. DOCK AND WALKWAY TO BE A MINIMUM OF 3 FT ABOVE MHW
 2. MAXIMUM ROOF HEIGHT SHALL BE 12' AS MEASURED FROM THE FLOOR DECKING OF THE DOCK TO THE HIGHEST POINT OF THE ROOF INCLUDING ORNAMENTAL STRUCTURES
 3. FLOATING DOCKS SHOULD NOT REST UPON THE BOTTOM AT NORMAL LOW TIDE

NOT FOR CONSTRUCTION

SHEET TITLE:
**PROPOSED - FRONT &
PROFILE VIEW**

APPLICANT:
STEWART W. HEATH, III
1666 DOLPHIN STREET
GARDEN CITY, SC 29576
TMS# : 41-0129-019-00-00

PROJECT NAME:
HEATH DOCK
CRITICAL AREA PERMIT AMENDMENT REQUEST

PROJECT LOCATION:
1666 DOLPHIN STREET
GARDEN CITY, Horry County

DOCUMENT #:

DATE: 9/4/15

TEG.P/N: 151059

AUTHOR: AWOOD

AGENT:



SCALE:

1" = 10'



LAT/LONG: 33.548138

by 79.022084

USGS QUAD NAME:
BROOKGREEN

SHEET: 4

REVISION SCHEDULE:

NO. **DATE** **BY**

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South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

MEMORANDUM

TO: Ms. Gene Baxley Scwiers, Sparking Water Limited Partnership
Mr. Rob Hadden & Mr. S. Morris Hadden, Breazeale Family Limited Partnership
Ms. Nancee Paget

FROM: Mr. Christopher Stout, Wetland Section Project Manager *CMS*

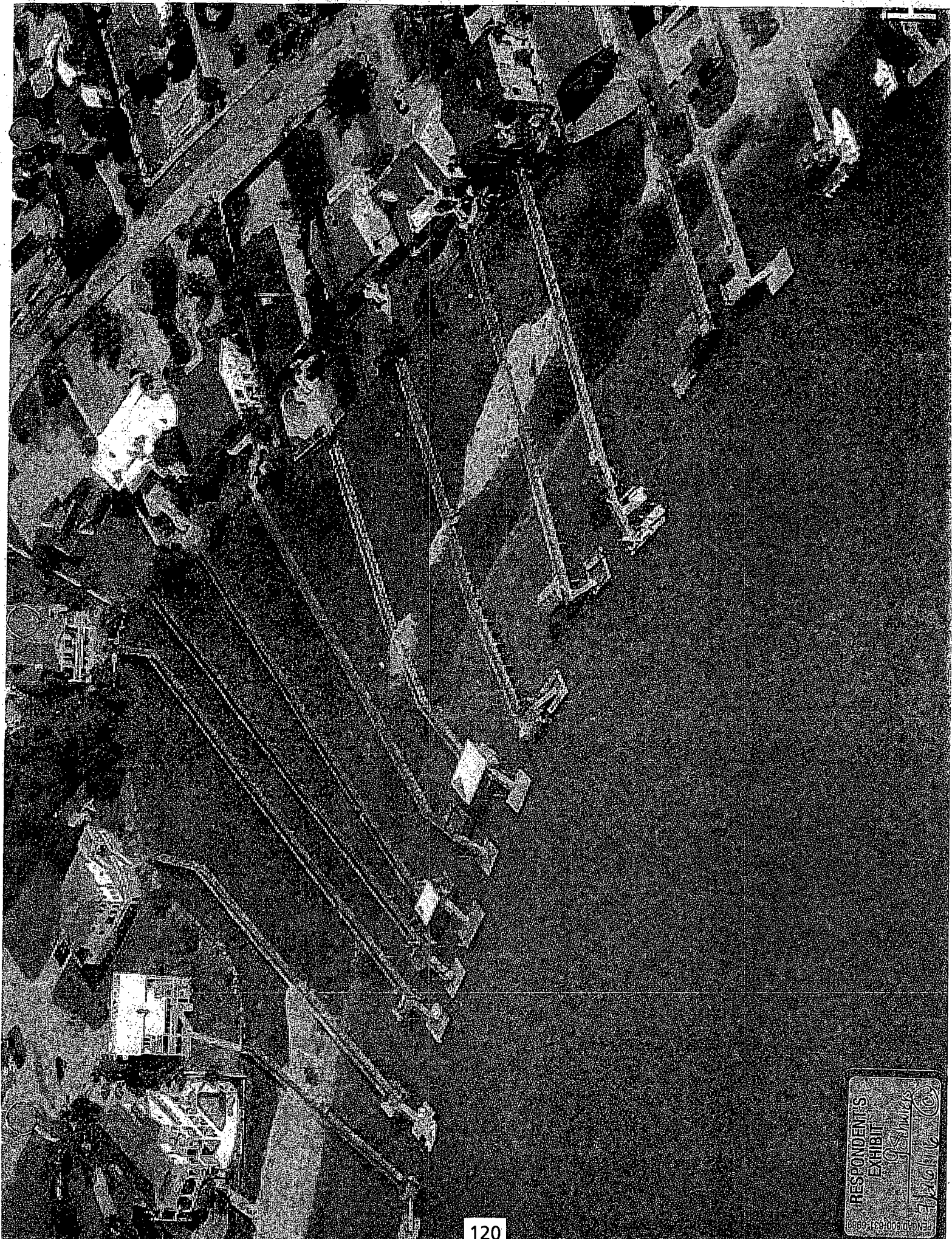
CC: Mr. Blair Williams, Wetland Section Manager

RE: Stewart W Heath III
P/N# OCRM-12-112-S

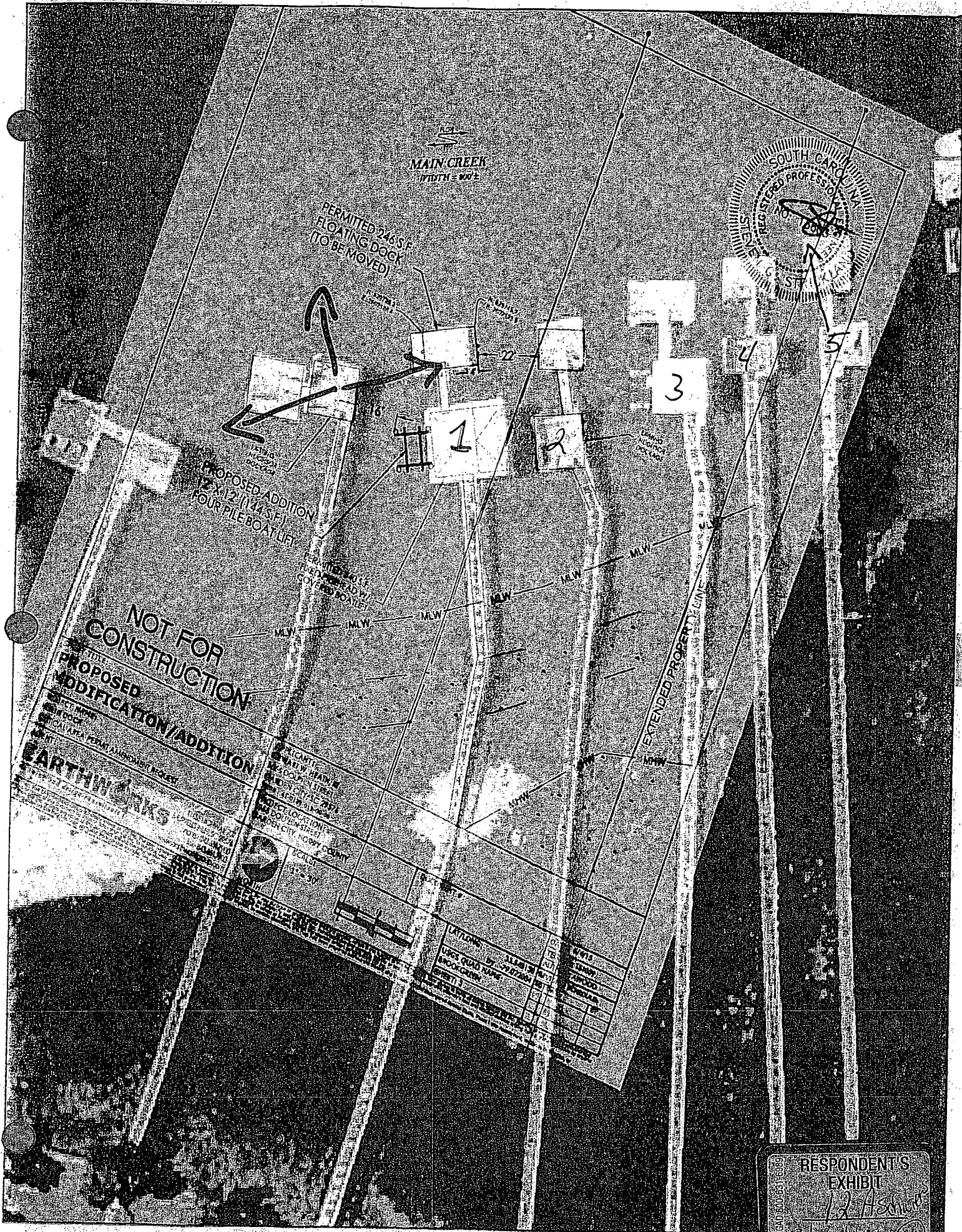
DATE: October 13, 2015

This memo is to notify you that the above referenced permit has been amended to authorize modifying the existing private use dock. Specifically, the permit authorizes the installation of a 12' x 12' four pile boatlift on the ebb-side of the fixed pierhead and to shift the existing floating dock 4' to the flood-side. The permit amendment is conditioned such that the relocated floating dock cannot extend any farther into the creek than the adjacent, existing docks.

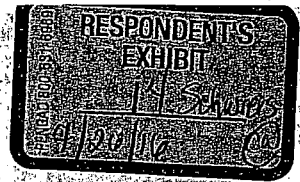
Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Guide to Board Review."



RESPONDENT'S
EXHIBIT
J. S. Smith
PENGAD 600-631-6988
Eagle Eye



RESPONDENT'S
EXHIBIT
12/12/16
7/26/16



Regulatory Programs Division Decision Document
Impact Assessment for **PRIVATE DOCK (AMENDMENT)**
Office of Ocean and Coastal Resource Management - SCDHEC

ADMINISTRATIVE SUMMARY OF REVIEW

Commenting Agencies

SCDNR: _____
SPA: _____
SCDAH: _____
SCDAA: _____
Others: _____

Adjoining Property Owners

SEE 1 of 1

Agent or Contact
EARTHWORKS GROUP

Business Ph: 843-651-7900
Fax Number: 843-651-7903
Email: awood@earthworksgroup.com

*NOTE: See list of Interested Persons on Reverse
APO's Notified... Initial & Date: 06/02/2015 ~ LDT
Local Government Notified... Initial & Date: 06/02/2015 ~ LDT

APPLICATION REQUIREMENTS

Please Circle When Complete **YES**

Letters to Applicant

Clock Stop/Start Dates (PM)

Administrative Fee received 05/18/2015
Aff. Of Ownership received 05/18/2015
Certified Deed, plat or lease 05/18/2015
State Newspaper ad received
Date Published _____
Which Paper _____
County News ad received 05/18/2015
Date Published 05/06/2015
Which Paper GTWN Times
Newspaper(s) Reminder: N/A
Emailed to Local/County Gov 06/02/2015

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

LETTER OF OBJECTIONS SUMMARY

Objector(s) name and address that must be notified by certified mail and copy of the decision.
(has to specifically request a copy of the decision in the letter)

Objector(s) name and addresses that must be notified by issue memo with no copy of the decision
(does not specifically request a copy of the decision in the letter)

careful
5/17
Sparkling Water Limited Partnership, Attn: Ms. Gene Bayley Schwiers, 10 Taylor Road, Greenville, SC 29607
Mr. Rob Hadden, 497 Brownson Ct, Ste 103, Mount Pleasant, SC 29564
Mr. S. Morris Hadden, 1212 N. Eastman Rd, Kingsport, TN 37664
Ms. Maurice Paget, 1687 Dolphin St., Norrells Inlet, SC 29576

RECEIVED

JUN 04 2015

HEC-OCRM

TECHNICAL SUMMARY OF REVIEW

Permit Name: Heath III, Stewart W.

Decision:

Permit:
Permit with Conditions:

X

Deny:

I. Background Information:

Database ID# 75948

Permit Number: OCRM-12-112-S

P/N Date: June 2, 2015

Date Received: May 18, 2015

Permit Type: Direct Critical Area Minor
Amendment

Other
Agency Permits: None

County: Georgetown (22)

Location Description: On and adjacent to Main Creek at 1666 Dolphin Street, Garden City, Georgetown County,
South Carolina
TMS# 41-0129-019-00-00

II. Project Description and Stated Purpose:

Description: seeking an amendment to modify the dock to add a 12' x 12' four-pile boatlift ebb-side of the fixed pierhead and shift the floating dock 4' to the north.

Purpose: private recreational use

III. Summary of Public and Agency Comments (List by name, date & comment summary; if none, so indicate):

Federal or other State Agencies: There were no comments received from any federal or state agency.

Local Agencies: There were no comments received from any local agency.

Public Comment (Include all names from Public Hearing):

Nancee Paget: 6/20/2015, submitted objections to the project by e-mail. Ms. Paget originally submitted her comments on 6/16/2015 but they were not received due to an incorrect e-mail address. Ms. Paget objected to the project based on the projects potential impact on "crabbing, clamming, gathering oysters, catching minnows under the walkways, fishing from the docks, and the environment in general" through increased congestion in the area. Ms. Paget also included a copy of the comment letter from Ms. Gene Baxley Schwiers.

Adjoining Property Owners (Include all names of those who commented):

Ms. Gene Baxley Schwiers: 6/8/2015, submitted objections to the proposed project by e-mail. Specifically, Ms. Schwiers stated that the proposed project would impact their ability to fish, crab, and catch minnows from the northern side of their dock. Additionally, Ms. Schwiers stated that it would impact their ability to kayak between the docks to the north.

Mr. Rob Hadden: 6/11/2015, submitted an objection letter to the proposed project by e-mail. Mr. Hadden stated that the addition of the boatlift would encroach upon adjacent docks. Specifically, Mr. Hadden stated that the dock addition "would leave little to no room between the docks in the area and substantially impair one's ability to boat, fish, crab and use docks surrounding this area."

Mr. S. Morris Hadden: 6/12/2015, submitted an objection letter to the proposed project by e-mail. Mr. Hadden

stated that the "encroachments on our space affect the overall enjoyment of our land and inlet." Mr. Hadden further stated that the project would impact their ability in the future to add a boatlift due to the bottleneck created by all of the encroachments.

IV. Environmental Assessment:

- A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted: The property is adjacent to a wide stand of marsh vegetation, comprised mostly of *Spartina alterniflora* and *Borreria frutescens*. The dock is located over open water on Main Creek.
- B. Watershed and vicinity information (include watershed name & size, classification; any impaired waters listed within impaired parameter; and shellfish status):
1. Vicinity information (include information on developments within watershed within 3 mile radius):
The area is developed primarily for residential purposes, with a few commercial marinas within the 3 mile radius.
 2. Existing system conditions (i.e. shellfish closures, 303d, and shellfish lease name and #):
The watershed has a TMDL developed for fecal bacteria in shellfish harvesting waters. The shellfish harvesting classification is listed as approved, and the project site is located in commercial shellfish lease C371, held by Daniel Morgan.
 3. Name and width of waterbody: Main Creek 800'
 4. Any small tributary issue, width, change in grade:
There are no issues with small tributaries or changes in grade.
 5. List total square footage requested and allowed:
Previously authorized: 813 sq ft + 36 sq ft boat storage = 849 sq ft total
Requested: 813 sq ft + 144 sq ft boat storage = 957 sq ft total
Allowed: 600 sq ft + 300 sq ft special geographic circumstances + 160 sq ft boat storage structure = 1060 sq ft total
 6. Any geographic circumstances to consider or boat storage sq. ft considerations:
There are considerations being made for special geographic circumstances and boat storage structure square footage. Additional square footage is being considered because of the lack of ability to construct a dock on the opposite side of the creek. Also, the proposed boat storage structure is less than 160 square feet and therefore will not count towards the total allowable dock square footage.
 7. Any corridor or extended property line issues; is there a harm allowing a crossing of lines:
The existing dock replaced a grandfathered dock within the same footprint, and crosses the southern extended property lines. The dock's alignment is consistent with other docks and fits the general character of the area. Specifically, starting four properties north of the site, docks extend to the south outside of the extended property lines and this trend continues to the southern adjoining property. The anticipated spacing between the proposed addition of the boatlift and relocated floating dock would be consistent with the spacing of docks within the vicinity. There would be a minimum of 16' between the proposed boatlift and the adjoining property's dock to the south and 22' between the relocated floating dock and the adjoining property's dock to the north.
 8. If roof requested, any roofs in the area:
There is no roof being considered under the current amendment request.
 9. Property width and width of spacing at edge of creek/river:
The property is 75' wide with 75' between the extended property lines at the edge of the creek.
- C. GAPC Review (List any GAPC's present on or adjacent to project site; include agency comments; attach GIS printout; and outline treatment methods):
None, see GIS review.

V. Policy Assessment:

A. Regulatory History:

- 1) Previous OCRM authorizations (Critical Area Permits, land disturbance, Federal cert.):
OCRM-12-112-S authorized an expansion to the fixed pierhead, a roof over the fixed pierhead and boatlift and shifting the floating dock.
- 2) Previous Enforcements (is project in compliance w/all previous permits, etc.):

None

3) Dock Master Plan and was it required to be recorded:

N/A

4) Shellfish lease area number:

C371, leased by Daniel Morgan

5) Marsh ownership claim:

None

B. Applicable Regulations and Policies (list those that apply only):

1) CZMA: 48-39-150

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

a) General Guidelines: R.30-11(B)

b) Further Guidelines: R.30-11(C)

c) Specific Project Standards: R.30-12(A)(1)&(2)

3) CZ Policies (Management Program Document): Chapter III, Section VI, C

C. Does the project contravene any coastal zone regulations?

☐ YES

☒ NO

(If No, skip to section VII; if Yes, complete Section VI.)

VI. Modifications for bringing the project into compliance with regulations:

A. Modifications required to minimize impacts (list avoidance & minimization measures; buffers; size and/or use restrictions; additional treatment measures; deed restrictions; and agency agreements):

B. If Permit is denied, explain contraventions of regulations and/or Coastal Zone Management Program.

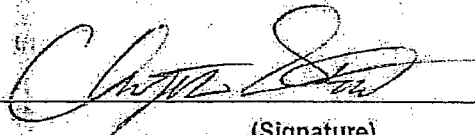
VII. Field assessment by: Christopher Stout 6/12/2015

(Name)

(Date)

VIII: Reviewed By:

1. Project Manager:



(Signature)

10/13/2015

(Date)

IX. Notes:

During the public notice period, objections were received expressing concerns over the proposed modification's potential impact of view and navigation on the adjoining properties. The concerns were given to the agent for response. A response was initially received on July 17, 2015, expressing that the site design was reviewed to minimize impacts on the adjoining properties and illustrated alternative layouts for the proposed modifications that met the applicant's needs. The submittal offered to revise the floating dock to turn it perpendicular to the creek as an effort to reduce the encroachment upon the northern adjoining property's dock. This revision was considered, by staff, to further impact navigation, by extending further into the creek than the adjoining docks. This concern was forwarded to the agent, to which a response was received on September 11, 2015. This response further illustrated that the original design took into account the potential impacts on the adjoining properties and sought to minimize those impacts.

Special Conditions

1. The relocated floating dock extends no farther into the creek than existing, adjacent docks.

X. Attachments Required:

GIS Review (See Section IV.C. above)
Site Photographs

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gene B. Schwiers,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control and
Stewart W. Heath,

Respondents.

DOCKET NO. 15-ALJ-07-00580-CC

**NOTICE OF MOTION, MOTION
AND MEMORANDUM TO
RECONSIDER, ALTER OR AMEND
PURSUANT TO RULE 59, SCRCP,
AND SCALC RULE 29(D)**

TO: Gene B. Schwiers, Petitioner and Bradley D. Churdar, Esquire:

YOU WILL PLEASE TAKE NOTICE: that on the tenth (10th) day following service of this Motion, or at such other time as may be appointed by the Court, the undersigned attorney for the Respondent Stewart W. Heath will move the Court to Reconsider its Denial of the amendment to Permit OCRM-12-112-S. This Motion is based upon the record in the case, South Carolina state statutory law, regulations, case law, and any memorandum as may be submitted to the Court. Respondent requests the Court to reconsider its decision on the grounds set forth below:

1. **The Order places undue emphasis on the concept of "extended property lines," a concept of regulation which has no implication in the case at bar because of the site specific characteristics of the area.**

2 S.C. Code Ann. Regs. 30-12(A)(1)(e) provides :

All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the extension of these boundaries will be an extension of the high ground property line. **The Department may consider an alternative alignment if site specific characteristics warrant** or in the case of dock master plans, when appropriate. (emphasis added).

This regulation specifically authorizes the Department to consider an alternative alignment outside of the normal “extended property lines” concept when site specific characteristics warrant.

2 S.C. Code Ann. Regs. 30-12(A)(1)(p) provides :

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

These two regulations acknowledge and allow that there will be scenarios where the concept of “extended property lines” will not apply and permits will be approved regardless of their relation to “extended property lines.” Otherwise, there would be no need for the last sentence of either regulation. “When interpreting a statute, courts must presume the legislature did not intend to do a futile act.” Proctor v. South Carolina Dep’t of Health and Env’tl. Control, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct. App. 2006). A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...State v. Sweat, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008). “Regulations are interpreted using the same rules of construction as statutes.” Murphy v. South Carolina Dep’t of Health and Env’tl. Control, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). The above regulations are intended to give the Department discretion in the permitting process rather than a rigid, inequitable hard and fast rule that a dock must always be directly in front of the applicant’s property. Any other interpretation leads to the result that a dock would never be permitted outside of the extended property lines of the applicant. Such an interpretation would render the last sentence of each regulation superfluous, a direct violation of the above-cited rules of statutory construction. As was testified by the Department’s project manager, a prime example of a site specific characteristic that warrants an alternative alignment is when all of the docks in the area sit across

extended property lines, or when portions of four other docks reside within the Applicant's extended property lines.

Furthermore, the court must give deference to the interpretation of a regulation by the agency charged with its enforcement. Murphy v. S. Carolina Dep't of Health & Env'tl. Control, 396 S.C. 633, 640, 723 S.E.2d 191, 195 (2012). "We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute." Kiawah Dev. Partners, II v. S. Carolina Dep't of Health & Env'tl. Control, 411 S.C. 16, 35, 766 S.E.2d 707, 718 (2014). During his testimony, the Department's project manager testified that because this area was developed prior to the enactment of the original Coastal Zone Management Act, permits cannot be evaluated simply by using an "extended property lines" analysis. He explained that this area is a prime example of a scenario where it would be proper to permit a structure across an extended property line because the entire area had docks scattered across and through extended property lines. In fact, the Applicant couldn't add the boatlift on the North side of his existing structure because portions of four other docks lie in what would normally be considered his extended property lines. The project manager testified that these are exactly the scenarios envisioned by the Regulation when extended property lines would not apply. The Department's interpretation of Regulations 30-12(A)(1)(e) and 30-12(A)(1)(p) allowing permits to be approved in these scenarios is reasonable and consistent with the plain language of the regulation, and therefore there is no reason to deviate from DHEC's construction and application. *Id.*

The Public Trust Doctrine in South Carolina makes clear that the State holds title to all land below the high water mark, and must be held in trust for the benefit of all the citizens of the state. McQueen v. South Carolina Coastal Council II, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003). Therefore, the regulatory concept of extended property lines does not imply or grant the

landowner any additional rights in the tidal property directly in front of their property. The permitting of a structure across an extended property line does not infringe upon any property rights of the adjacent owner, because the adjacent owner does not own the land upon which the structure sits. The concept of “extended property lines” is merely a guideline created by regulation that the Department is to use in aligning docks unless site specific characteristics warrant an alternative alignment. As explained by the Department’s project manager, when all of the docks in the area cross extended property lines, the concept has no application and this is precisely the scenario in which site specific characteristics warrant alternative alignments. The concept of “extended property lines” does not have any bearing on the issuance of this permit and cannot be grounds for denial of the permit.

2. Petitioner did not meet her burden to show OCRM disregarded the extent to which the proposed use could affect the value and enjoyment of adjacent owners and other relevant statutory prerequisites when it considered the Permit.

The question before the court is whether Petitioner met her burden to show OCRM disregarded the relevant statutory prerequisites when it considered the application. Young v. South Carolina Dep’t of Health & Envtl. Control, 383 S.C. 452, 459, 680 S.E.2d 784, 788 (Ct. App. 2009). Specifically, whether the Department considered the extent to which the proposed boatlift could affect the value and enjoyment of adjacent owners. The court stated in *Young* “the issue is not whether aesthetic concerns and recreational activities are appropriate factors to consider in evaluating the propriety of the proposed boat storage dock, but whether the issues [Petitioner] raised were in fact given adequate attention during the permitting process. (emphasis added). *Id.*

In the case at bar, the Department’s project manager testified that he received letters from

Petitioner, considered them, and looked at alternative designs that would appease the Petitioner. This undisputed testimony shows that the issues raised were given adequate attention during the permitting process. It is also clear from the testimony that the Department considered all of these factors, and after balancing the factors for and against the permit, determined that the factors weighed in favor of approving the permit. The Department's experience and knowledge in this regard should be given deference.

Furthermore, there was no evidence presented during the permit process or during the hearing that the dock modification would negatively affect the value of Petitioner's property. Petitioner's complaints in this regard centered on her ability to enjoy her property- specifically her inability to fish, crab, and kayak on the North side of the dock. However, Petitioner conceded that her ability to engage in those activities on three other sides of her dock would be unaffected. Therefore, there will be a very minimal negative effect as to only one of the ten policy considerations the Department is tasked with balancing. The nine remaining factors weigh in favor of approving the permit. The extent to which the proposed use could affect the value and enjoyment of the adjacent landowners is **but one of many factors to consider**. Jones v. SC Dep't of Health & Envtl. Control, 384 S.C. 295, 315, 682 S.E.2d 282, 293 (Ct. App. 2009) (emphasis added). The Department properly determined that when nine factors weigh in favor of granting the permit, and the only negative is the inconvenience of not being able to fish, crab, and kayak from one of the four sides of the adjoining dock, the permit should be approved.

Petitioner's complaints are akin to those already addressed by the court in Jones where the court held that limitations on recreational pursuits are more reflective of a lack of convenience than an inability to use the property. Id. In the case at bar, nothing in the record suggests that the approval of this permit will render the Petitioner's property unusable, or even

substantially affect her enjoyment of the property (Petitioner will still be able to pursue recreational activities from her dock and the amended permit will not impact her deep water access from her dock). *Id.*

Further, pursuant to the Public Trust Doctrine, Petitioner does not have any ownership interest in the area where her dock sits. Petitioner does not have any additional right to use this area for fishing, crabbing, or kayaking than does any other member of the public. Therefore, the effect on the enjoyment of her property is de minimis and cannot be a ground for denial of the permit.

3. Denial of this permit would be in direct conflict with the Department's requirement to insure consistent permit evaluations.

2 S.C. Code Ann. Regs. 30-1(A)(2) provides that "through the efforts of an overall coastal zone management program and permitting process, the Department seeks to guide the wise preservation and utilization of coastal resources. These rules and regulations are intended to...(b) insure consistent permit evaluations by the Department.(emphasis added). In the case at bar, the Department's project manager testified that the majority of docks in the area lie across extended property lines and many docks sit only a few feet apart. The project manager testified that the location of the proposed boatlift and distance between docks would be very similar to other docks in the area and fitted within the general character of the area. Because of these considerations, the Department continues to approve similar permits. In doing so, the Department remains consistent as required by 2 S.C. Code Ann. Regs. 30-1(A)(2)(b) without ignoring the requirements of S.C. Code Ann. Regs. 30-12 (2011).

To begin now denying permits that cross extended property lines would be fundamentally inconsistent and in direct violation of its own regulations. Furthermore, such conduct would subject the Department to equal protection claims upon a showing that similarly situated persons received disparate treatment. Weaver v. South Carolina Coastal Council, 309 S.C. 368, 375, 423 S.E.2d 340, 344 (1992) ("The existence of respondent's dock would create no effect distinguishable from that occasioned by the other three existing docks....We conclude that Council violated the equal protection and due process provisions of the state and federal constitutions in treating the respondent in a manner different from Beckmann, Cope and Crowley, thereby denying her a benefit granted to others similarly situated.")

CONCLUSION

For the foregoing reasons Respondent Heath respectfully requests the Court grant Respondent's Motion to Alter or Amend pursuant to Rule 59, SCRPC and SCALC Rule 29(D) based on the ground that the Regulations allow for the issuance of permits that cross extended property lines, the unique site specific circumstances of the area warrant an alternative alignment, and such alignment does not unduly restrict the Petitioner's ability to enjoy her property. Therefore, Respondent respectfully request the permit be granted as requested.

Lake City, South Carolina
September 1, 2016

NETTLES, TURBEVILLE & REDDECK


E. LeRoy Nettles, III
SC Bar No. 100805
NETTLES, TURBEVILLE and REDDECK
Post Office Box 699
Lake City, SC 29560
843-374-8511
LEE@NTRLaw.com
Attorneys for Respondent Stewart W. Heath

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gene B. Schwiers,	)	DOCKET NO. 15-ALJ-07-00580-CC
	)	
Petitioner,	)	
	)	
vs.	)	RESPONSE TO NOTICE OF MOTION
	)	AND MEMORANDUM TO
	)	RECONSIDER, ALTER OR AMEND
South Carolina Department of Health	)	PURSUANT TO RULE 59, SCRP,
And Environmental Control and	)	AND SCALC RULE 29 (D)
Stewart W. Heath	)	
Respondents.	)	

TO: E. Leroy Nettles, III and Bradley D. Churdar, Esquire:

Please find below the response for Petitioner Gene B. Schwiers to the motion presented to the court by the attorney of record for the Respondent Stewart W. Heath. The response is being presented in regards to the items presented in the motion and in order to provide accurate information that was presented during the hearing before the SC Administrative Law Court on July 26, 2016. Petitioner requests the Court to reject the motion presented by the Respondent and uphold the findings that the permit be denied as was the FINAL ORDER by the court.

1. "The Order places undue emphasis on the concept of "extended property lines," a concept of regulation which has no implication in the case at bar because of the site specific characteristics of the area."

Response: This is an inaccurate statement. The court placed the correct emphasis on the concept of "extended property lines," a concept of regulation which indeed does have implication in the case at bar. It was indeed the Respondents that outlined the concept of extended property lines and stated during the hearing that the characteristics of the area were indeed a product of the South Carolina Department of Health and Environmental Control's decisions to completely disregard their own regulations. It was made clear during the hearing that the South Carolina Department of Health and Environmental Control has abused their discretionary rights by using the regulation both as a sword and a shield.

It was also presented during the hearing before the court that indeed the Department's project manager had not observed the area in person and could not speak to the fact that the immediate area to the south side of Respondent Stewart W. Heath is indeed not crowded due to the fact that the docks have not been amended and have respected the extended property lines. The fact that portions of docks reside within others property lines is a result of the Respondent South Carolina Department of Health and Environmental

Control and they have continued to make exceptions to the regulations set forth to the point that they have indeed caused material harm to the policies of the act as found by the court. As presented to the court and in the motion the position of the Respondent South Carolina Department of Health and Environmental Control is that simply because mistakes and violations have taken place in the past it should continue and that no regard should be given to their own regulations regardless of the impacts to others. It is the Petitioner's stance that two wrongs will never make a right. The total disregard for the law is simply unacceptable.

Stated in the motion by Respondent Stewart W. Heath's attorney, "In fact, the Applicant couldn't add the boatlift on the North side of his existing structure because portions of four other docks lie in what would normally be considered his extended property lines." This indeed is not a fact. The Applicant couldn't add the boat lift to the North side of his existing dock due to the fact that he currently has a boat lift on the North side of his dock. It has absolutely nothing to do with other docks within his extended property lines. In addition, this does not justify building the entire structure within the Petitioner's extended property lines as the Petitioner is not within his property lines. In addition, as stated in the court the structure would severely encroach on the Petitioner's existing dock, be constructed totally within the Petitioner's extended property lines, impact the value of other's property, and produce safety concerns.

The motion also states that "all" docks on the area cross over the "extended property lines" and this is indeed not accurate. There are several existing docks that do not cross over and there are individuals in the area that have respected the rights of others.

The motion also states that the "concept of 'extended property lines' does not have any bearing on the issuance of this permit and cannot be grounds for denial of the permit." If indeed the Respondents believe that the concept has no bearing then I am confused as to why a great deal of the time of the court was spent on this concept by the Respondents. It appears to the Petitioner based on this statement that due to the fact that the court denied the permit based on the law the Respondents now want to disregard the law all together. Based on what is stated in the motion the Respondents have made an about face due to the fact that the initial argument presented by them to the court did not provide them with the decision they sought while the Petitioner has remained consistent that all regulations, processes, procedures, and laws should be regarded with the highest integrity and protect the rights of all parties.

2. "Petitioner did not meet her burden to show OCRM disregarded the extent to which the proposed use could affect the value and enjoyment of adjacent owners and other relevant statutory prerequisites when it considered the Permit."

Response: This statement and argument is inaccurate at best. The Petitioner did indeed meet her burden by the facts presented and her testimony and it was also met in the cross examination of the Department's project manager. The Respondent South Carolina Department of Health and Environmental Control did not give adequate attention to the concerns raised by the Petitioner and six other citizens in the area directly impacted by the requested permit. In the motion the Respondent Stewart W. Heath's attorney states that the "Department's project manager testified that he received letters from Petitioner, considered them, and looked at alternate designs that would appease the Petitioner." That is inaccurate.

The Department's project manager testified that he did receive a letter from the Petitioner and additional letters from concerned members of the community that also opposed the permit request totaling six additional residents. However, he testified that he did not contact any of the individuals opposing the request or even remember who he spoke with regarding the confusion of the notice. He also testified that he had never been on the Petitioner's dock, never cast a fishing line from the dock to the North side, and never once contacted the Petitioner personally to discuss her concerns or any other individual to discuss their concerns. He testified that the way he made his decision was sitting in his office and doing a goggle search to print off a map of the area. By his own testimony in the court he made his decision to allow the permit because as his attorney stated "the cat was already out of the bag." His own testimony was enough evidence for the Petitioner to not only meet her burden but to exceed the requirements set forth. The Department's project manager did not testify that he "looked at alternate design that would appease the Petitioner." The Department's project manager testified that he sent the letters to the Respondent Stewart W. Heath and requested he and his agent look at any possible alternate design. He testified that the only alteration that was sent back was to change the direction of the floating dock and had nothing to do with the construction of the boat lift on the South side of the Respondent Stewart W. Heath's dock. This had nothing to do with "appeasing" the Petitioner.

The motion before the court states "issues raised were given adequate attention during the permitting process." This is completely false. Sitting in an office and doing a goggle search for maps is not giving the serious concerns raised adequate attention. At no time did the Department's project manager even go to any of the property owned by the individuals opposing the request to see the area, to assess the impact of the requested permit, or see the potential impact personally in order to properly address all the factors. When asked by the Petitioner during the hearing if the Department's project manager simply made his decision from his office he replied yes. This to any reasonable person would show clearly that the concerns raised by the individuals impacted were simply ignored. However, the Department's project manager did testify that he felt it was not fair to ask the Respondent Stewart W. Heath to house his boat at the marina. This in itself demonstrates that more consideration was provided to the Respondent Stewart W. Heath than the Petitioner or six other individuals opposing the request.

To state that the Department's experience and knowledge in this regard should be given deference is completely without merit. The Department's own project manager had limited knowledge of the actual area and no specific knowledge of the area as he did not at any time go to the docks being impacted to make an educated assessment of the impact. When questioned on the area to the South of the Respondent Stewart W. Heath's dock the Department's project manager did not have any specific knowledge on the space currently between the docks and when questioned on the crowded area North of the Respondent Stewart W. Heath's dock the Department's project manager stated that indeed it was crowded due to the decisions made by the South Carolina Department of Health and Environmental Control. In fact it was their complete disregard for the regulations set forth that has resulted in complete over-crowding of the area.

The negative impact to the value of the property of those individuals impacted is clear. The continued over-crowding of the area and disregard of the regulations set forth to protect all individuals rights has a direct impact on the value of the property. This was clearly stated by five individuals opposing the request for the permit. By allowing certain individuals to encroach on others the negative impact is felt by those that will have severe limitations in the future.

The motion states that the Petitioner "conceded that her ability to engage in those (fish, crab, and kayak) activities on three other sides of her dock would be unaffected. Therefore, there will be very minimal negative effect." This statement is offensive. The full enjoyment of the Petitioner's dock does not mean $\frac{3}{4}$ enjoyment while the Respondent Stewart W. Heath retains full enjoyment of his dock. To state that limiting the full enjoyment of the Petitioner's dock is not in violation of the regulations set forth and will only have a "minimal negative effect" is both false and discriminatory. There is also no mention of the potential safety concerns or the fact that the Respondent Stewart W. Heath already has one boat lift and has already amended his dock once to increase the size of his dock. It is clear that the full enjoyment of others to include, but not limited to the Petitioner is seen as secondary by the Respondents or of no concern. In addition, it should be noted that no time did the Respondents take into consideration that for a person that is disabled such as the Petitioner's mother this would result in limiting her full enjoyment drastically as she is confined to the pier head. When considering an individual's full enjoyment it is the obligation of the party weighing all factors to not only consider them from their perspective but also from the perspectives of all individuals that will be impacted. This is not simply a "lack of convenience" this is clearly an inability to use the property as we have done so for over 40 years and as have our neighbors for over 35 years. This portion of the Petitioner's dock will become void of all activities currently in use. The Department's project manager testified that indeed a kayak with fishing rods and lines would not have enough room to navigate in this area. Should this permit be allowed the Respondent Stewart W. Heath would completely limit any individual to navigate on either side of his dock and eliminate the enjoyment of the area.

The motion states that the "Petitioner does not have any ownership interest in the area where dock sits." The Respondent Stewart W. Heath does not either and furthermore, the full enjoyment of his dock should not encroach on the Petitioner's rights. Nor should one individual be allowed to minimize the enjoyment of others for any reason. The motion states that "the Petitioner does not have any additional right to use this area..." The motion fails to mention that the Respondent does not have any additional right to use the area to encroach on the rights of others or limit the full enjoyment of the dock of others. The motion before the court clearly dismisses the rights of all individuals with the exception of the Respondent Stewart W. Heath. It is clear by the statements made in the motion before the court that the Respondents have little to no regard for the Petitioner's concerns or right to have full not partial enjoyment of her dock. As stated to the court this is not a personal matter this is simply about standing up for what is right, what is legal, and holding those accountable for making decisions to do so with the utmost integrity and within the regulations set forth.

3. "Denial of this permit would be in direct conflict with the Department's requirement to insure consistent permit evaluations."

Response: The Department's project manager testified that indeed he did not know the specifics of the distance between all the docks. He only testified that the area was "crowded." An issue created by the South Carolina Department of Health and Environmental Control due to their complete disregard for the regulations set forth. The court found this to be evident and factual.

The majority of the docks in the area do not have two boat lifts and the additional boat lift being requested would not be the general character of the area. Many of the docks in the area do not even have one boat

lift. The Department has been consistent, but only in the complete lack of controlling the area from overcrowding and violations of the regulations set forth. While it may be easy to make generalizations of the character of the area from a distance had the Department's project manager actually been to the area he would see that the request is not the normal character of the area, but would be in the minority for the area.

The argument that the Department should be allowed to continue to ignore the regulations set forth simply because they have made poor decisions in the past is outrageous. One cannot simply justify violations of the law based on the fact that violations have taken place in the past. The Petitioner agrees with the Final Order provided by the court based on the facts of the case and the evidence that was produced.

CONCLUSION

For the foregoing reasons the Petitioner respectfully requests the Court to uphold the Final Order that denied the permit. The Petitioner respects the court decision based on the facts presented. The Petitioner remains consistent that the Respondents did not take into consideration the concerns as outlined by those parties opposing the permit, did not take into consideration the full enjoyment of her dock, did not provide adequate assessment of the concerns brought forth, did not adhere to the regulations set forth, and did violate the rights of others as well as completely disregarded the laws set forth in this matter. Therefore, the Petitioner respectfully request the permit be denied as was the Final Order by the Honorable H. W. Funderburk, Jr.

Greenville, South Carolina
September 8, 2016



Gene B. Schwiars
General Partner
Sparkling Waters Limited Partnership

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MAR 13 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable H.W. Funderburk, Jr.

Appellate Case No. 2016-002136

GENE B. SCHWIERS Respondent,

vs

SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL and STEWART W. HEATH.....Respondents below,

OF WHOM SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL IS THE RESPONDENT,

AND

STEWART W. HEATH IS THE APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be
included by any of the parties and not any other material.

March 13, 2017
Lake City SC, 29560


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