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S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Honorable Benjamin H. Culbertson
Circuit Court Judge

Appellate Case No. 2011-192812

Supreme Court's Opinion No. 27237, Filed March 27, 2013

Tommy W. Berry, Sr. and Jo S. Berry, ... *Petitioners*,

v.

South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, ... *Respondent.*

PETITIONERS TOMMY W. BERRY, SR. AND JO S. BERRYS' [AMENDED] PETITION FOR REHEARING

Howell V. Bellamy, Jr., SCB # 00642
Howell V. Bellamy, III, SCB # 66575
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorneys for Petitioners

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STATEMENT OF THE FACTS

On **February 2, 2007**, Respondent received a permit application from Dr. H. Wayne Beam, the former Deputy Commissioner of DHEC–OCRM, as their agent for the purpose of obtaining permit for the alteration of the critical area. (R. pp.115-121). Petitioners' critical area permit application, in relevant part, provided:

APPLICANT: T. W. Berry
c/o Dr. H. Wayne Beam
P. O. Box 11863
Columbia, SC 29211-1863

WORK: The work, as proposed and shown on the attached plans, consists of constructing a replacement bulkhead. A 155' long wooden bulkhead will be removed and replaced with a vinyl bulkhead to be built in the same location. The purpose of the proposed activity is for erosion control.(R. p.115)

Prior to **February 2, 2007**, Dr. Wayne Beam hired David R. Simms, P.E.("Simms"), a licensed engineer in South Carolina, to prepare a Plat (survey) regarding the removal of an existing bulkhead, concurrently with a new vinyl bulkhead on the Petitioners' property. (R. p. 112; R. p. 113;R. p. 324). In preparing the bulkhead removal Plat, Simms, specifically, relied upon a site plan survey of Lot 17("Plat") prepared by Pyramid Engineering & surveying ("Pyramid") prior to September 25, 2006 for the Petitioners' predecessors in title, Walter and Linda Knox ("Knox"). (R. p. 324). A. Copy of the Pyramid Plat is attached hereto as (Exhibit1) to Petitioners' Petition for Rehearing. The Pyramid Plat shows an existing sea wall extending along the northern property line and is twenty (20) feet Channelward from foundation wall underneath the cantilevered portion of the Petitioners' house. (R. p. 324) Pyramid survey (Exhibit 1) was stamped received by Respondent's Myrtle

Beach Office on September 27, 2006. (R. p. 324) Heavily relying upon the Pyramid survey (Exhibit 1), Simms prepared the following drawings:

1. a site plan survey ("plat") depicts Lot 17 measuring fifty (50) feet wide and one hundred twenty-five (125) feet deep. This plat, clearly, and unambiguously shows the replacement bulkhead being built along the easternmost one hundred and five (105) feet of the northern property line where a seawall is supposed to exist prior to September 25, 2006 pursuant to the Pyramid survey. (R. p. 112; R. p. 324).

2. a new bulkhead section drawing shows weep holes two (2) inches above the mean high water mark at forty-eight (48) inches on center. The mean high water mark extends at least ten (10) feet channelward beyond the Petitioners' northern property line based on the pyramid survey. (R. p. 113).

On **October 20, 2006**, department's staff conducted a field assessment of the Petitioners' property located at 317, 49th Avenue North, Cherry Grove Section, North Myrtle Beach prior to the issuance of their critical area permit. (R. pp. 36-37).

On **March 7, 2007**, critical area permit OCRM-07-509 was issued to Petitioners authorizing the work as shown on the Simms' plat/survey and new bulkhead section drawings previously approved by the Respondents' department staff. (R. pp. 108-113).

On **June 22, 2007**, the Respondent issued a construction authorization placard (R. p. 106; R. p. 274), and mailed it to the Petitioners on June 25, 2007, thus authorizing "Appellants to begin replacing their 155-foot bulkhead as permitted." (Respondent's Initial Brief, p. 3).

On **July 22, 2007**, Respondent's agent Sean M. Briggs("Briggs") inspected the Petitioners' property and observed "that the [replacement] bulkhead, consisting of vinyl sheets, was being built approximately twenty (20) feet channelward ... along the northern property line ..." but incorrectly concluded this constituted a violation of the permit drawings. (R. p. 16, ¶ 6; R. p. 66, ¶ 6). It is undisputed that the department's initial decision-makers

never notified the Petitioners by mail or otherwise, after March 7, 2007, or before July 19, 2007, that the previously approved plans were inadequate, incorrect, or needed additional work. Importantly, the department's initial decision-makers never suspended and revoked the Petitioners' critical area permit on the grounds that fraudulent information had been submitted by them on the approved plans as prescribed by S.C. Code Ann. § 48-39-50(H) (2008 and Supp. 2010). (R. p. 133; R. p. 263).

On **July 25, 2007**, Respondent DHEC–OCRM issued a Notice of Violation and Admission Letter by certified mail to the Petitioners for the alleged unauthorized activity of placing approximately ***"Three Thousand Five Hundred (3,500) square feet of fill in the tidelands critical area"*** which was observed by Briggs on July 19, 2007. (R. pp. 279–82). Respondent's Admission letter provided in pertinent part:

> **Re: Unauthorized fill and bulkhead in the tidelands critical area.**
>
> Dear Mr. Berry,
>
> > As you have previously been informed by the Notice of Violation Letter, the construction of bulkhead in tidelands critical area adjacent to Williams Creek at 317 49th Avenue N, North Myrtle Beach, Horry County, South Carolina (TMS #145-02-24-019) has not been permitted or otherwise legally authorized by OCRM. The South Carolina Coastal Zone Management Act, S.C. Code §§ 48-39-10et seq. (Supp. 2006) requires that any construction or other activity in the coastal zone be permitted or other wise legally authorized by OCRM.
> >
> > OCRM is mandated by law to enforce the provisions of the Act. Pursuant to Reg. 30-8(F)(1), this Admissions letter is being issued, along with findings of fact, which have been drafted after an investigation by OCRM staff. **Please find a copy of these findings of fact enclosed Reg. 30-8(F)(2) provides that the responsible party must either admit these facts or send OCRM their version of the facts, along with any other information you might wish us to consider, By August 14, 2007. A failure to respond will result in a conclusion by the Department that you admit the truth of these facts.**

Signed by Sean M. Briggs (R. pp. 280–282)

On **August 2, 2007**, Respondent mailed a Notice of Intent to Revoke letter to Petitioners alleging non-compliance with their critical area permit (OCRM–07–509). Respondent's suspension/revocation letter provided in pertinent:

Dear Mr. Berry

...

OCRM's grounds for the revocation of this permit are as follows. On July 23, 2007, this office issued a Cease and Desist Directive to stop the building of the bulkhead and the alteration of the critical area. After a site area and complete the construction of the bulkhead.

Your actions constitute a clear violation of the terms and conditions of the permit.

You have the right to respond, in writing, to the grounds set forth in this letter. Your response is due within 20 days of your receipt of this Notice of Intent to Revoke. Failure to timely respond shall result in a Default Order being issued by the Department.

PLEASE BE ADVISED THAT YOUR PERMIT HAS BEEN SUSPENDED PENDING THE RESOLUTION OF THE REVOCATION ACTION.

Signed by Tanitra S. Marshall (R. pp. 283-284).

On **August 14, 2007,** Briggs received a letter from Howell V. Bellamy, Jr. ("Bellamy") who is Petitioners' legal counsel. Petitioners' counsel indicated in his cover letter that this communication served as the Petitioners' answer to the various inquiries preponderated to them by department regarding its Admission Letter dated July 25, 2007 and Notice of Intent to Revoke letter dated August 2, 2007. Petitioners' answer to these letters contained a chronology of events from as they perceived them to have happened. Petitioners stated that, ***"to the best of their knowledge and with assistance of surveys in our possession we replaced the Bulkhead"*** in compliance with permit drawings. (R. pp. 47-48; R. pp. 17-18). Thus, the Petitioners had timely responded to the department's basis for revoking their

permit as contained in the Admission and Notice of Intent to Revoke letters. No Default Order was issued pursuant to 23 S.C. Code Ann. 30-8(A)(4) (Supp. 2010) (failure to timely respond in writing to the written allegations of the department's grounds for revocation of permit within 20 days of receipt of the Notice of Intent to Revoke letter shall result in a default Order being issued). (R. pp. 67-68).

On **February 25, 2009**, an enforcement conference was held at the Myrtle Beach Office of the Respondent DHEC–OCRM. (R. pp. 17–18, ¶ 14). During the meeting, Briggs argued the Petitioners were only authorized to replace the alleged bulkhead located underneath the length of their home. (R. p. 15, ¶ 3; R. p. 65, ¶ 3). However, no permits, surveys, plats, or other documents were produced by Briggs that authorized the removal and replacement of the alleged bulkhead located underneath the length of the Petitioners' home to them nor their attorney Bellamy at the meeting. (R. p. 48, ¶ 16; p. 51, ¶ 21).

On **April 28, 2010**, Petitioners' counsel received by certified mail a cover Letter to the Petitioners dated April 27, 2010 signed by Sean M. Briggs as Enforcement Project Manager, with two (2) enclosures: the Administrative Order of Revocation, P/N OCRM-07-509, and Administrative Order 07M-012S(with Attachments). The first enclosure was a one page letter dated April 20, 2010, entitled: Administrative Order of Revocation, P/N OCRM-07-509 ("Order of Revocation") signed by Blair N. Williams, Wetland Section Manager. The Order of Revocation, finally, notified the Petitioners that their critical area permit had been revoked. (R. p. 12). Their permit had already been suspended for two years, eight months, and twenty-five days beginning on **July 25, 2007**. Further, Respondent's Order of Revocation contained no specific findings of fact or detailed conclusions of law establishing the basis for the department's revocation of Petitioners' permit, but the Order only stated in

pertinent part, ***"revoked on the grounds that [Appellants] failed to construct the bulkhead according to the plans attached to the Permit and pursuant General Condition # 11 of the Permit"***. (R. p. 12).

The second enclosure was an Administrative Order 07M-012S("Administrative Order") dated **April 27, 2010** consisting of eight (8) pages divided into three major sections. First, the "findings of fact section" includes seventeen (17) separate paragraphs of specific findings of fact made by the department and used as basis for revoking the Petitioners' critical area permit. Second, the "conclusion of law section" sets forth and discusses the Petitioners' specific violations of: (1) the South Carolina Coastal Zone Management Act ("CZMA"), S. C. Code Ann. § 48-39-130(A), as amended (1976), (2) the general and special conditions of Critical Area Permit and Coastal Zone Consistency Certifications OCRM-07-509, and (3) the Critical Area Permitting Regulations, 23A S.C. Code Ann. Reg. 30, as amended. Third, the "relief ordered section" ordered the Petitioners to pay: (1) a civil penalty in the amount of Fifty-Four Thousand and No/100 ($54,000.00) Dollars to DHEC–OCRM; and, (2) to submit to DHEC–OCRM for review and approval, a restoration plan, including corrective action to return the alleged impacted critical area at the site to pre-existing conditions including the removal of the new bulkhead and associated fill, as well as a planting schedule to replace marsh vegetation. (R. pp. 13–14; R. pp. 20–21).

On **May 11, 2010**, Petitioners' counsel filed a written request for a final review conference with South Carolina Board of Health and Environmental Control (the DHEC "Board") challenging DHEC–OCRM's authority and decision to revoke the Petitioners' critical area permit. Also, on May 11, 2010, Petitioners' counsel, specifically, faxed a copy of the department's decision or action under review," which included: the Administrative

Order of Revocation, P/N OCRM-07-509, and Administrative Order 07M-012S in response to a conversation with the clerk for the DHEC Board and upon review of Paragraph (3)(c) of the Notice of Appeal Procedure of the 2006 Act No. 387. As such, the Petitioners wanted to make it clear to the DHEC Board that they were challenging both the Order of Revocation, and Administrative Order. (R. p. 12-41; Affidavit of Howell V. Bellamy, III, including (Exhibit B)).

On **June 14, 2010**, the Petitioners were notified by letter that the DHEC Board declined to conduct a final review conference on June 10, 2010 regarding: "Docket No. 10-RFR-49-Decision dated April 27, 2010, to issue Administrative Order 07M-012S/Administrative Order of Revocation regarding the unauthorized fill and bulkhead installed the tidelands critical area[,]" and, thereby, affirmed the department's initial staff decision and Orders as the "final agency decision" pursuant to S.C. Code Ann. § 44-1-60(F) (2002). (R. pp. 338-339).

Next, on **July 8, 2010**, the Petitioners brought an action in circuit court under S.C. Code Ann. § 48-39-180 (2008) for the sole purpose of challenging the Respondent's decision and findings used as a basis to revoke their critical area permit. Specifically, the Petitioners attached both the Administrative Order of Revocation, P/N OCRM-07-509 and Administrative Order 07M-012S as exhibits to the Complaint for their incorporation for this very reason. Also, the Respondent's Administrative Record (consisting of permit application and supporting exhibits, all public comments and submissions, and other supporting documents used to gain approval for the Petitioners' critical area permit) is attached as (Exhibit B) to the Complaint for incorporation purposes to challenge the Respondent's revocation action. See Rule 10(c), SCRCP. (R. pp. 44–60).

In response to Petitioners' Complaint for judicial relief under S.C. Code Ann. § 48-39-180 (2008), Respondent DHEC–OCRM filed a Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP, based on the circuit court's lack of subject matter jurisdiction based on the following reasons:

1. Plaintiffs are not seeking redress of a permit application denial, but rather they are asking this Court to overturn the above-referenced Administrative Order. S.C. Code Ann. § 48-39-180 (1976) applies to permit applications, not Administrative Orders.

2. Even if judicial review of Administrative Orders was permissible under S.C. Code Ann. § 48-39-180 (1976), the Plaintiff's Order has not been "finally denied" as required by S.C. Code Ann. § 48-39-180 (1976).

(R. p. 296, and 297 ¶ 1 and 2).

On **March 7, 2011**, Respondent's counsel primarily argued the following grounds for dismissal of the Petitioners' action for judicial review at the motion hearing: (1) that Act 387 revoked the authority of S.C. Code Ann. § 48-39-180 (2008); and (2) that Petitioners failed to exhaust all administrative remedies because no appealable final administrative decision exists. (R. p. 226, lines 11-15; R. p. 255, lines 16-25;R. p. 256, lines 1-25 R. p. 257, lines 1-22.). However, during the motion hearing, Petitioners' counsel, specifically, challenged and objected to the improper issuance of the Administrative Order of Revocation. For example, Petitioners' counsel discussed theories for legal claims, identified possible affirmative defenses against the Respondent's alleged unauthorized conduct, argued compliance with terms/conditions of permit, and, lastly, sought monetary relief if by chance the new bulkhead had to be removed. As such, the Petitioners' action for judicial review under S.C. Code Ann. § 48-39-180 (2008) concerns a far greater scope of facts, legal issues, and relief than those only associated with just an administrative enforcement order. (R. p.

239, lines 19-25; R. p. 240, lines 1-25; R. p. 241, lines 1-25; R. p. 242, lines 1-25; R. p. 243, lines 1-22; R. p. 249, lines 21-25; R. p. 250, lines 1-25; R. p. 251, lines 1-25 R. p. 252, lines 1-25; R. p. 253, lines 1-16).

On **March 28, 2011**, the lower court granted the Respondent's Motion to Dismiss under Rule 12(b)(1), SCRCP, on the ground that Petitioners failed to exhaust all administrative remedies. (R. p. 7, ¶2). Petitioners argue their alleged failure to challenge the Administrative Order of Revocation in its appeal to the board and circuit court was never raised and ruled on by the circuit court. (R. pp. 4-7).

ARGUMENT[1]

A. The Court, respectfully, overlooked, misapprehended, and erred in finding in its Opinion that the Petitioners' plat (survey) depicts "the replacement bulkhead being built ... just underneath the cantilevered portion of the house" which is contrary to what David R. Simms, P.E.'s plat and new bulkhead section drawing clearly show. Specifically, the Petitioners argue that the Simm's plat depicts their replacement bulkhead being built along a portion of their northern property line.

In the instant case, Dr. Wayne Beam hired David R. Simms, P.E. ("Simms"), a licensed engineer in South Carolina, to prepare a Plat (survey) regarding the removal of an existing bulkhead, concurrently with a new vinyl bulkhead on the Petitioners' property. (R. p. 112; R. p. 113; R. p. 324). In preparing the bulkhead removal Plat, Simms, specifically, relied upon a site plan survey of Lot 17 ("Plat")[2] prepared by Pyramid Engineering & surveying ("Pyramid") prior to September 25, 2006 for the Petitioners' predecessors in title, Walter and Linda Knox ("Knox"). (R. p. 324). The Pyramid survey shows an existing sea

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[1] The Petitioners' incorporate by reference all arguments, previously, made in their Final Brief, and Reply Brief.

[2] A copy of the Pyramid survey is attached hereto as (Exhibit 1) to Petitioners' Petition for Rehearing.

wall extending along the Petitioners' northern property line, a distance of 19.9 feet from the stepped-up foundation wall. (R. p. 324). Pyramid survey (Exhibit 1) was stamped received by Respondent's DHEC-OCRM Myrtle Beach Office on September 27, 2006. (R. p. 324). Based on the Pyramid survey, Simms prepared a site plan survey ("Simms' plat") of Petitioners' Lot 17 which clearly and unambiguously shows the replacement bulkhead being constructed along the easternmost one hundred and five (105) feet of the northern property line where the seawall allegedly existed prior September 27, 2006. (R. p. 112; R. p. 324).

The Record on Appeal is crystal clear the Petitioners were not issued a permit to construct a replacement bulkhead underneath the cantilevered portion of their house based on the department's approval of the Simms' plat[3]. (R. p. 112; R. p. 324). **So the real issue at the trial level is going to be what type of structure previously existed along the northern property line, and that will be the Petitioners' burden to establish.**

Further, as additional supporting evidence, Simms' new bulkhead section drawing ("new bulkhead section")[4] shows weep holes two (2) inches above the mean high water mark elevation. The weep holes are forty-eight (48) on center based on the new bulkhead section drawing. (R. p. 113). And, interestingly, the pyramid survey (Exhibit 1) is the only survey included in the record on appeal that depicts, and conclusively establishes as a matter of public record the CZM certified mean high water mark in relation to Petitioners' property. For example, the pyramid survey shows the critical area depicted on the survey, which was used to obtain the Knox permit for a fixed pier, is another thirty (30) feet north of the

[3] A copy of the Simms' plat is attached hereto as (Exhibit 2) to Petitioners' Petition for Rehearing.

[4] A copy of Simms' new bulkhead section drawing is attached hereto as (Exhibit 3) to Petitioners' Petition for Rehearing.

Knox/Berry northern property. (R. p. 112; R. p. 324). Therefore, based on Simms' new bulkhead section drawing depicting the replacement bulkhead's weep holes are required to be two inches above the mean high water mark, and taken together with the pyramid survey which depicts the mean high water mark being another thirty (30) feet north of the Knox/Berry northern property line, the Court incorrectly found[5] the replacement bulkhead should have been built underneath the cantilevered portion of the house based on the plans attached to the Permit. (R. p. 112; R. p. 324).

As such, the Petitioners contend based foregoing reasons, analysis, and the record on Appeal, the Court, respectfully, overlooked, misapprehended, and erred in finding in its Opinion that the Petitioners' plat (survey) depicts "*the replacement bulkhead being built ... just underneath the cantilevered portion of the house.*" See, e.g., Tommy W. Berry, Sr. and Jo S. Berry v. South Carolina Department of Health and and Environmental Control, Office of Ocean and Coastal Resource Management, Op. No. 27237(S. C. Sup. Ct. filed March 27, 2013)(Davis Adv. Sh. No. 14 at 71). The Court's findings of fact are contrary to what both David R. Simms, P.E.'s plat and new bulkhead section drawing clearly show which is the Petitioners' replacement bulkhead being built along a portion of their northern property line. (R.. p. 112; R. P.113; R. p. 324). Accordingly, the Petitioners respectfully request this Court to modify or amend its opinion to simply show this as a factual allegation made by the Respondent. (R. p. 112; R. p. 324).

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[5] Tommy W. Berry, Sr. and Jo S. Berry v. South Carolina Department of Health and and Environmental Control, Office of Ocean and Coastal Resource Management, Op. No. 27237(S. C. Sup. Ct. filed March 27, 2013)(Davis Adv. Sh. No. 14 at 71)

Additionally, the Petitioners take exception to the Court affirming any findings of fact and conclusions of law made by Briggs in its Opinion. Petitioners contend that his findings of fact and conclusions of law set forth below are based on erroneous information for the following reasons:

1. The Admission letter dated July 25, 2007 prepared by Briggs incorrectly determined that unauthorized fill amount approximately Three Thousand Five Hundred (3,500) square feet was placed in the tidelands critical area. This letter is based on erroneous information. A survey dated December 4, 1997 prepared by Bryan Huntley, R LS, included in the record on Appeal, depicts Lot 17 measuring Fifty (50) feet wide by One Hundred Twenty-Five (125) feet deep. The rear 16.5 feet of Lot 17 (828 square feet) forms a part of the canal, and remains unfilled. The house is closest to the south side lot line, and the house and fill under the home and driveway are shown on the left side, extending no less than Thirty (30) feet from the left side, comprising another Three Thousand Five Hundred (3,500) square feet (108.5' x 30'). The remaining area on Lot 17 is, at most Two Thousand One Hundred Seventy (2,170) square feet so the Admission letter incorrectly states the unauthorized fill amount is Three Thousand Five Hundred (3,500) square feet. (R. p. 165; R. pp. 280-281;R. p. 324;R. p. 112).

2. Administrative order dated April 26, 2010, prepared by Briggs incorrectly determined that the western-facing boundary of the existing One Hundred Fifty Five (155) foot vinyl bulkhead was to be built "approximately ten feet channelward on the western property line[,]" because the western property line is in the canal. Thus, western-facing bulkhead would be in the canal. His findings of fact and conclusions of law in the Administrative order are based on erroneous information, and are contrary to Bryan Huntley survey dated December 4, 1997 and the approved Simms' plat/survey dated January 25, 2007(exhibit 1) which both show the remaining 16.5 or 20.1 feet of the Lot 17 and northern property line (825 square feet) forms a part of the canal. (R. p. 165; R. pp. 280-281;R. p. 324;R. p. 112).

3. At the motion hearing before the lower Court on March 7, 2010, Respondents' attorney incorrectly stated that the Petitioners had constructed a replacement bulkhead approximately One Hundred Seventy Five (175) linear feet in length. Again, this statement is based on erroneous information, and is contrary to both Bryan Huntley survey dated December 4, 1997 and the Simms' plat/survey dated January 25, 2007(exhibit 1) which both show the remaining 16.5 to 20.1 feet of Lot 17 and its northern property line (825 square feet) forms a part of the canal. (R. p. 165; R. pp. 280-281;R. p. 324;R. p. 112).

4. Administrative order dated April 26, 2010, prepared by Briggs incorrectly determined that the Petitioners had improperly impacted approximately Two Thousand Six Hundred and Thirty-Nine (2,639) square feet of unauthenticated critical area based on the following reasons. First, the rear 16.5 feet of Lot 17 (828 square feet) forms a part of the canal, and remains unfilled. Second, the remaining area on Lot 17 is, at most Two Thousand One Hundred Seventy (2,170) square feet so the Administrative order incorrectly states the alleged unauthorized fill amount is approximately Two Thousand Six Hundred and Thirty-Nine (2,639) square feet. (R. p. 165; R. pp. 20-281;R. p. 324;R. p. 112; R. pp. 65-72).

Accordingly, the Petitioners respectfully request this Court to modify or amend its Opinion by not affirming any findings of fact and conclusions of law made by Sean M. Briggs which are based on erroneous information, and not supported by the approved surveys and other drawings included in the Record on Appeal. Finally, if the Petitioners are presented with an opportunity to litigate the revocation of their critical area permit in either the circuit court or before the ALJ, they would like to tell their side of the story without being bound by erroneous findings of fact made by Briggs which are contrary to the clear Record on Appeal. (R. p. 281; R. pp. 64-91;R. p. 112; R. p. 113;R. p. 324). For example, any erroneous findings of fact made by Briggs and affirmed by this Court can not be relitigated in the trial court which will unduly prejudice the Petitioners. See Prince v. Beaufort Memorial Hosp., 392 S.C. 599, 606, 709 S.E.2d 122, 126 (Ct .App. 2011)("Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form.")(quoting Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App.1996)).

B. The Court, respectfully, overlooked, misapprehended, and erred in finding in its opinion that the Petitioners' complaint filed on July 8, 2010 in circuit court only challenged the Administrative Order and not the Administrative Revocation Order.

"The purpose of a pleading is to put the adversary on notice as to what the issues are." Langston v. Niles, 265 S.C. 445, 455, 219 S.E.2d 829, 833 (1975). To ensure substantial justice to the parties, pleadings must be liberally construed. Doe ex rel. Legal Guardian v. Barnwell School Dist., *45,* 369 S.C. 659, 663, 633 S.E.2d 518, 520 (Ct. App.2006); see Smith v. Nelson, 83 S.C. 294, 300, 65 S. E. 261, 263 (1909) (construing the "complaint upon the whole"); Blassingame v. Greenville County, 132 S. E. 616 (1926)(Complaint, which contains any allegation entitling plaintiff to relief either on law or equity side of court, is not subject to demurrer); Mortgage Loan Co. v. Townsend, 156 S.C. 203, 152 S. E. 878 (1930)(The Court reaffirmed the well-recognized rule that the plaintiff need not characterize the facts stated in his pleading, or give his cause of action a name). Pleadings are to be liberally construed "to do substantial justice to all parties." Rule 8(f), SCRCP; Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 442 S. E. 2d 584 (1994).

Here, the Petitioners contend their "complaint upon the whole" filed in circuit court directly challenged the Respondent's Order of Revocation based on the following reasons.

First, it is undisputed that Petitioners' Complaint incorporated by reference the Respondent's Administrative Order of Revocation which is attached to their Complaint as part of (Exhibit A)(Emphasis added). (R. pp. 61-64). See, HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 630, 699 S.E.2d 699, 702 (Ct. App. 2010)("We presume that when Petitioners attached a copy of the easement document as an exhibit to the complaint, they intended for it to be incorporated into the Complaint even though they did not specifically indicate that they were incorporating the document by reference to it. See Rule 10(c), SCRCP ("A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."); see also,

Brazell v. Windor, supra., Id at 516, 682 S. E. 2d at 826 (2009)(A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading.

Second, the Petitioners contend that the Administrative Order 07M-012S incorporates by reference the Order of Revocation based on its expressed language in paragraph 10 which provides in pertinent part, "*[t]he Permit was suspended on August 2, 2007, and has been revoked* ***in accordance with the attached order of revocation.***" (R. p. 17, ¶ 10). In support of Petitioners' contention, Briggs's cover letter dated April 27, 2010 evidences this intent by stating, "please comply with the requirements of this Order as outlined on page six and seven. Should you choose to appeal **this Order**, you must do so within 15 days of receipt by the following the enclosed instructions. **This Order shall become final as written if a proper request is not filed within (15) days of the mailing of this order.**" (R. p. 13) (emphasis Added). This explains why the Order of Revocation dated April 20, 2010 was mailed together with the Administrative Order 07M-012S dated April 26, 2010. (R. p. 13).

Third, the Petitioners' Complaint directly challenged the factual and legal basis for the issuance of the Respondent's Order of Revocation based on, including, but not limited to, the following particulars:

- "The reasons and grounds for this judicial review are that the [Respondent's] decision and findings set forth in its order [s]sic, attached hereto and marked as Exhibit A are not authorized by law and are not supported by the competent, material, and substantial evidence on the whole record." (emphasis added). (R. p. 44).

- The Petitioners directly challenged the issuance of the Administrative Order of Revocation by seeking judicial review under S. C. Code Ann. § 48-39-180 (1976) in paragraph 7 of complaint. This section provides: *"[a]ny applicant*

whose permit application has been finally denied, revoked, suspended or approved subject to conditions of the department ... may file a petition in the circuit court having jurisdiction over the affected land for a final review of the department's action "de novo." (emphasis added). (R. p. 45).

- The [Petitioners], also, asserted "that their new vinyl bulkhead as constructed according to the approved plans, drawings, and specifications attached to their critical area permit." (emphasis added). (R. p. 48).

- Further, "the [Petitioners] asserted the following affirmative Defenses, including, but not limited to, that no valid claim exists against them under Rule 12(b)(6), SCRCP, that [Respondent] failed to meet its burden of Proof, ... and that Governmental Estoppel applies against [Respondent] in prosecuting this case based on the acts omissions of it agents, employees, and representative in permitting the [Petitioners'] new vinyl bulkhead[.]" (R. p. 58).

- "carefully review the *record in this case*, conduct a final review of the department's action "de novo," and issue a Final Order overturning the [Respondents'] Administrative Order 07M-012S and Decision [Order of Revocation] dated April 2[0], sic, 2010." (R. p. 59).

- "grant the [Petitioners] such other and further relief as the Court may deem equitable, just and proper."(emphasis added). (R. p.60).

Appellants cite the case of Quality Towing, Inc. V. City of Myrtle Beach, 340 S.C. 29, 33-34, 530 S. E.2d 369, 371 (2000) as authority for their position. In Quality Towing, Inc., the appellant's complaint, while focusing primarily on the rate schedule, gave notice that appellant wished to challenge 'the maximum amount that can be charged for the towing of vehicles form private property *and the manner in which vehicles may be towed from private property.*' Id. at 33, 530 S. E.2d at 371 (emphasis added). Moreover, appellant argued the invalidity of other portions of the ordinance in its memorandum in opposition to the city's motion for summary judgment and at the motion hearing. Id. This Court concluded that the appellant properly challenged the validity of the ordinance as a whole, and not just the rate schedule in subsection (d) Id.

In the instant case, like Quality Towing, Inc., the Petitioners' Complaint, while focusing primarily on the Administrative Order, gave notice that the Petitioners wished to specifically challenge the revocation of their critical area permit by bringing their action under S.C. Code Ann. § 48-39-180 (as amended by Act No. 387, § 49 (2008)). During the dismissal hearing before the circuit court, the Petitioners specifically challenged and objected to Order of Revocation action by discussing in detail the permitted drawings and other Administrative Records of the department, attached as (Exhibit B) to the Complaint. Furthermore, both Orders were attached and incorporated by reference as (Exhibit B) to the Petitioners' Complaint. See, Brazell v. Windor, supra., Id at 516, 682 S. E. 2d at 826 (A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c), SCRCP).

Third, the Petitioners' mainly rely on the decision of McMaster v. Strickland, 322 S.C. 451, 472 S. E. 2d 623 (1996) as authority for their argument that their complaint, also, challenged and objected to the Respondent's Administrative Order of Revocation. In McMaster v. Strickland, supra., the plaintiff asked only for specific performance and "such other or further relief as the Court deems just and proper." 322 S.C. 451, 454, 472 S.E.2d 623, 625 (1996). Nonetheless, the special referee awarded plaintiff monetary damages. Id. at 452,472 S.E.2d at 624. On appeal, the defendant argued the special referee erred in awarding plaintiff relief not requested in his pleadings. Id. at 454, 472 S.E.2d at 625. This Court upheld the special referee's award of monetary damages because the factual allegations of the complaint supported such an award and because the complaint contained a prayer for general relief. Id at 455,472 S.E.2d at 626 (emphasis added). In reaching its conclusion in McMaster v. Strickland, supra., this Court relied heavily on the case of Mortgage Loan Co.

v. Townsend, supra. In Townsend, the Plaintiff alleged that the assignment of certain bonds was fraudulent and sought rescission or cancellation of the assignment. The circuit court simply awarded the plaintiff money damages. On appeal, the Petitioners argued (1) that a plaintiff "in an action in equity, as well as one in law, has no right usually to recover upon a theory not supported in anywise by the allegations of his complaint" and (2) that the plaintiff was not entitled to money damages because "plaintiff's complaint sought only the rescission of the assignments, and ... contained no allegation looking to the recovery of money damages." Id. at 225, 152 S. E. at 885-86. This Court affirmed the circuit court in Townsend, and held "[i]f the facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be *if the bill contains a prayer for general relief.*" Id. at 225, 152 S. E. at 886 (emphasis added). Petitioners, also, cite the case of Smith v. Smith, 386 S.C. 251, 687 S.E.2d 720 (Ct. App. 2009) as additional authority which is similar to McMaster, and Townsend. In Smith, the family court refused to consider whether deviation from the child support guidelines was appropriate since mother's complaint failed to specifically ask the family court to deviate from the child support guidelines. Id. at 263-264, 687 S.E.2d at 726-727. Contrary to the decision of the family court, the Court of Appeals held that Mother's pleadings were sufficient to place the issue before the court, and found that the family court erred in refusing to consider this issue. Id.

In the instant case, like Townsend, McMaster, and Smith, the factual allegations in Appellant's Complaint are broad enough as a whole to evidence a direct challenge to the Respondent's Administrative Order of Revocation based on the following evidence. First, the Administrative Order of Revocation is incorporated by reference as part of Petitioners' Complaint (Exhibit B). Second, the Petitioners contend that the Administrative Order 07M-

012S incorporates by reference the Order of Revocation based on its expressed language in Paragraph 10 which provides in pertinent part, "*[t]he Permit was suspended on August 2, 2007, and has been revoked* ***in accordance with the attached order of revocation.***" (R. p. 17, ¶ 10). Third, the Petitioners seek judicial review of the revocation of their critical area permit under S. C. Code Ann. § 48-39-180 (2008), and, thus, are directly challenging Respondent's decision and findings set forth in both Orders attached as an exhibit to their Complaint. Fourth, the Petitioners specifically denied[6] the allegations of Respondent's Administrative Order of Revocation attached to their Complaint based on their following responses:

> in incorrectly finding and concluding in Paragraph [one (1)] of the Order [of Revocation]'s conclusions of law that the Petitioners' construction of their new vinyl bulkhead violates DHEC-OCRM Regulations R.30-1 through 30-11 and, also, Regulation R.30-12(c).
>
> in incorrectly finding and concluding in Paragraph [one (1)] of the Order [of Revocation]'s conclusions of law that the Petitioners failed to construct their new vinyl bulkhead in accordance with their approved drawings under General Condition No. 11 of their critical area Permit."

(R. p. 64;R. p. 55, ¶ n; R. p.56, ¶ o).

Fourth, the Appellant's prayer requests general relief As such, the Petitioners' prayer for general relief would, also, include relief from Respondent's Administrative Order of Revocation based on the reasoning of Townsend, McMaster, and Smith. (emphasis added). (R. p. 60). Accordingly, the Court, respectfully, overlooked, misapprehended, and erred in finding in its opinion that the *"Appellants' appeal to ... circuit court encompassed only*

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[6] These were specific denials to allegations asserted in Respondent's Administrative Order of Revocation instead of Administrative Order. These specific denials were included in both the appeal to the DHEC Board and the Complaint filed in circuit court. (R. p. 12; R. p. 288, ¶ 14 and 15; R. p. 55, ¶ n; R. p.55, ¶ o)

the enforcement Order, and no specific ... objection to the Administrative Order of Revocation was made." See, e.g., Tommy W. Berry, Sr. and Jo S. Berry v. South Carolina Department of Health and and Environmental Control, Office of Ocean and Coastal Resource Management, Op. No. 27237(S.C. Sup. Ct. filed March 27, 2013)(Davis Adv. Sh. No. 14 at 74). See also, Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) ("[P]leadings in a case should be construed liberally so that substantial justice is done between the parties. Further, a judgment on the pleadings is considered to be a drastic procedure by our courts.") The complaint should not be dismissed merely because the Court doubts the plaintiff will prevail in the action. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

Additionally, the Petitioners, respectfully, contend the Court's reliance on the case of Davis v. Monteith, 289 S.C. 176, 182, 345 S.E.2d 724, 727 (1986) is misplaced, and is factually distinguishable from the instant case based on the following reasons. First, in construing the Petitioners' Complaint there are many allegations or inferences challenging the revocation of their critical area permit resulting from the issuance of Respondent's Order of Revocation while in Monteith this Court found "no allegations or inferences" were raised by Davis as the former purchaser in his pleadings that the three (3) acres of land (known as the old Monteith School Property) was fraudulently sold to a third party. Id. at 182, 345 S.E.2d at 727. Second, Petitioners' Complaint incorporates the Order of Revocation as part of the "whole complaint" where the Davis' Complaint failed to incorporate any documents evidencing that the old Monteith School Property was fraudulently sold to a third party. Id. See, Rule 8(f), SCRCP.

C. **The Court, respectfully, overlooked, misapprehended, and erred in finding in its Opinion that the Petitioners' appeal to the DHEC Board on May11-12, 2010 only encompassed the Administrative Order without challenging the Administrative Order of Revocation.**

On **May 11, 2010**, the Petitioners filed a request for a final review conference with the DHEC Board regarding the department's decision to revoke their critical area permit. Specifically, the Petitioners request for a final review, included: a nine (9) page general statement of grounds challenging the department's revocation of their permit, and relief. Additionally, on **May 12, 2010** a "copy of the [d]epartment's decision and action under review" which included: the cover Letter to the Petitioners dated April 27, 2010, signed by Sean M. Briggs as Enforcement Project Manager, the Administrative Order of Revocation, P/N OCRM-07-509, and Administrative Order 07M-012S(with Attachments) was forwarded to Lisa Lucas Longshore, Clerk of the Board pursuant to Paragraph (3) of the Notice of Appeal Procedure of 2006 Act No. 387, as the complete challenge to basis of Respondents' decision. (R. p. 62-91; Affidavit of Howell V. Bellamy, III, including (Exhibit B). The Respondent acknowledged receipt of its challenged decision by stamping on the top right corner of the cover letter to Petitioners as follows: "RECEIVED S.C. DEPT OF HEALTH & ENVIRONMENTAL CONTROL 2010 MAY 12 AM 9:58 OFFICE OF THE COMMISSIONER CHIEF OF STAFF CLERK OF SCDHEC BOARD. (R. p. 62-91; Affidavit of Howell V. Bellamy, III, including (Exhibit B)).

> The filing of a request for final review with the DHEC Board begins the administrative review process of a Department decision. The typical request is in a letter format. It need only provide notice to the agency (and the permittee, in third party challenges) of the decision which is being challenged (a copy of which is commonly attached to the request), a general statement of grounds to challenge the decision, and the relief requested. The filing of a request for a final review conference need not contain every allegation that could be asserted. ***While the more information that can be included the better, the request is designed to put parties***

on notice of the challenge, the claim of error, and what remedy the challenger seeks. The information contained in the request may be supplemented by letter or other submissions to the Board prior to and, should a final review conference be held, during the final review conference.

Randolf R. Lowell, South Carolina Administrative Practice and Procedure, 383 (2d ed. 2008).

In the instant case, it is undisputed that Petitioners' appeal to the DHEC Board *not only* encompassed the Administrative Order, but also, included and specifically challenged the legal findings of the Administrative Order of Revocation based on the following evidence in the record and reasons set forth below. First, the Board's decision on June 10, 2010 to affirm the department's initial staff decision referenced as: "Docket No. 10-RFR-49-Decision dated April 27, 2010, to issue Administrative Order 07M-012S/Administrative Order of Revocation regarding the unauthorized fill and bulkhead installed the tidelands critical area" was an acknowledgment by the Board that the Petitioners had properly challenged both the Administrative Order and Administrative Order of Revocation. (R. pp. 338-339). For example, the Board's letter to the Appellant dated June 14, 2010, provides in pertinent part as follows:

Dear Tom Berry,

> **RE: Docket No. 10-RFR-49-Decision dated April 27, 2010, to issue Administrative Order 07M-012S/Administrative Order of Revocation regarding the unauthorized fill and bulkhead installed the tidelands critical area.** (emphasis added).

The S. C. Board of Health and Environmental Control decided on June 10, 2010, not to conduct a Final Review Conference **on the above referenced matter**.

S.C. Code Ann. Section 44-1-60(F), provides, "If a final review conference is not conducted within sixty calendar days, ***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, in accordance with the

Administrative Procedure Act within thirty days after the deadline for the final review conference." (R. pp. 338-339).

Second, assuming the Petitioners' counsel had misidentified or mislabeled both of the administrative orders as only one Order, which is expressly denied, no prejudice occurred to the Respondent due to this alleged clerical error because copies of both Orders were forwarded to the DHEC Board as part of their request for a final review conference on May 12, 2010.

"Clerical errors in a notice of appeal do not destroy the appeal. Charleston Lumber Co., Inc. v. Miller Housing Corp. 318 S.C. 471, 478, 458 S.E.2d 431, 435-436 (Ct. App. 1995)(where five suits, identified except for differing property descriptions, sought balance due on a single note, Supreme Court overlooked the clerical error of the omission of one of the cases in the notice of appeal.) Weatherford v. Price, 340 S.C. 572,577-578, 532 S.E.2d 310, 313 (Ct. App. 2000) (Though the Client did not "technically" appeal from the trial court's original order by referring to it in the Notice of Appeal, the Client did attach a copy of the order to the Notice. Under these circumstances, thus, the party's omission is of a clerical nature only and this Court has jurisdiction to hear the appeal)." Jean Hoefer Toal, *et al.*, Appellate Practice in South Carolina, pp. 116-117 (2d ed. 2002).

In the instant case, the Petitioners rely upon the decision of Weatherford v. Price, supra., as authority that the Petitioners' counsel alleged failure to challenge the Order of Revocation in their notice for a final review conference with the DHEC Board does not deprive this Court of jurisdiction over Petitioners' appeal. For example, Petitioners' counsel attached a copy of both Orders to their notice like the Petitioners in Weatherford v. Price, supra. Thus, the Petitioners' counsel alleged omission, like the Appellant in Weatherford

v. Price is of a clerical nature since counsel attached a copy of both Orders to the Notice, and further, the Respondent can claim no prejudice. Id. at 577-578; 532 S.E.2d at 313. (R. p. 62-91; Affidavit of Howell V. Bellamy, III, including (Exhibit B)).

Additionally, the Petitioners cite and rely upon the decision of C.A. May Marine Supply Co. v. Brunswick Corp., 649 F.2d 1049, 1056 (5th Cir.), *cert. denied,* 454 U.S. 1125, 102 S. Ct. 974, 71 L .Ed.2d 112 (1981) as persuasive authority that this Court is not deprived of jurisdiction to hear Petitioners' appeal on the Order of Revocation. In C.A. May Marine Supply Co., supra.,(Under Fed. R. App. P. 3(c), a notice of appeal ***"shall designate the judgment, order, or part thereof appealed from."*** However, notices of appeal are liberally construed where "the intent to appeal an *unmentioned* or mislabeled ruling is apparent and there is no prejudice to the adverse party." 649 F.2d at 1056. In addition, where ***"claims or issues are inextricably entwined, each may be reviewed even though not referred to in the notice of appeal."*** C.A. May Marine Supply Co., 649 F.2d at 1056.

Third, the Petitioners argue that the Administrative Order 07M-012S is the department's final agency order regarding the revocation of their critical area permit, and its Order of Revocation is only an intermediate order.

"Generally, only final judgments are appealable." Culbertson v. Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996). When there is a final judgment, and a party timely files its notice of intent to appeal from that judgment, this court may review any intermediate order necessarily affecting the judgment not earlier appealed. Lancaster v. Fielder, 305 S.C. 418, 409 S.E.2d 375 (1991).

In the instant case, the Petitioners contend that the Order of Revocation is just an intermediate order because it contains no findings of facts, and cites no regulations or

statutory authority explaining the basis for the department's revocation of the Petitioners' critical area permit. The Petitioners contend that the Administrative Order 07M-012S incorporates by reference the Order of Revocation based on its expressed language in Paragraph 10 which provides, "*[t]he Permit was suspended on August 2, 2007, and has been revoked* ***in accordance with the attached order of revocation***." (R. p. 17, ¶ 10). Based on the Record on Appeal, the Petitioners argue the Administrative Order 07M-012S is the department's final agency order. (R. p. 12-41). Accordingly, pursuant to the reasoning of Lancaster v. Fielder, supra., this Court can review the Order of Revocation as an intermediate order even though (allegedly) not earlier appealed.

D. The Court, respectfully, overlooked or misapprehended that neither Respondent's counsel, nor the trial judge had ever raised and ruled on the issue that Petitioners had failed to perfect their appeal to the board and the circuit court by not challenging the Administrative Order of Revocation.

The issue that Petitioners had failed to perfect their appeal to the DHEC Board and the circuit court by not specifically challenging the Administrative Order of Revocation was never raised by Respondent's Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP, or even argued by Respondents' counsel at the hearing on March 7, 2010, or ruled on by the circuit court judge at the hearing. (R. p. 239, lines 19-25; R. p. 240, lines 1-25; R. p. 241, lines 1-25; R. p. 242, lines 1-25; R. p. 243, lines 1-22; R. p. 249, lines 21-25; R. p. 250, lines 1-25; R. p. 251, lines 1-25 R. p. 252, lines 1-25; R. p. 253, lines 1-16). For example, at the hearing on March 7, 2010, Respondent's counsel only argued the specific grounds asserted in its motion: (1) "[Petitioners] are not seeking redress of a permit application denial, but rather they are asking this Court to overturn the above-referenced Administrative Order. S.C. Code Ann. § 48-39-180 (1976) applies to permit applications, not Administrative Orders[,]" and

(2) "[e]ven if judicial review of Administrative Orders was permissible under S.C. Code Ann. § 48-39-180 (1976), the Plaintiff's Order has not been 'finally denied' as required by S.C. Code Ann. § 48-39-180 (1976)." (R. p. 4-7). Furthermore, the circuit court judge granted the Respondent's motion to dismiss solely on the basis that the Petitioners had failed to exhaust all of their administrative remedies. The record is clear on this issue.

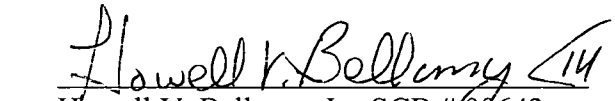
However, during oral argument Petitioners' counsel was specifically questioned by the Court for the first time about the alleged failure to properly challenge the Administrative Order of Revocation in their complaint filed in circuit court. Petitioners' counsel responded to the Court's questions by saying, "I do not have a copy of the complaint right in front of me, but based on our liberal rules of construing the pleadings, and, further based on all of the attachments incorporated by reference as part of the complaint, I believe our complaint adequately addresses the Respondent's Administrative Order of Revocation." Petitioners' counsel thought the Court was receptive to our explanation on this issue, but we were clearly wrong. Furthermore, Petitioners' counsel was never questioned by the Court about the alleged failure to challenge the Order of Revocation in the appeal to the DHEC Board. Accordingly, Petitioners' counsel, respectfully, request an opportunity to fully respond in oral argument to Court's contention that Respondent's Order of Revocation was not properly challenged in their appeal to the DHEC Board and circuit court.

CONCLUSION

This Honorable Court should reconsider its Opinion via either a rehearing, or by modifying or amending its Opinion to show: (1) that Simm's plat depicts the replacement bulkhead being built along a portion of the Petitioners' northern property line, (2) that the Petitioners' Complaint filed in the circuit court specifically challenges the basis for the

issuance of the Administrative Order of Revocation, (3) that the Petitioners' appeal to the DHEC Board specifically challenges the basis for the issuance of the Administrative Order of Revocation, (4) that no findings of fact and conclusions of law made by Sean M. Briggs were affirmed which were based on erroneous information, and not supported by the approved surveys and other relevant survey and drawings included in the Record on Appeal, and (5) by reversing the Order of the lower court granting the dismissal of the Petitioners' Complaint for the above stated reasons.

Respectfully submitted,



Howell V. Bellamy, Jr., SCB #00642
Howell V. Bellamy, III, SCB # 66575
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorneys for Petitioners Berry

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Honorable Benjamin H. Culbertson
Circuit Court Judge

Appellate Case No. 2011-192812

Supreme Court's Opinion No. 27237, Filed March 27, 2013

Tommy W. Berry, Sr. and Jo S. Berry, ... *Petitioners,*

v.

South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, ... *Respondent.*

PROOF OF SERVICE

I certify that I have served copies of the Petitioners' Amended Petition for Rehearing and Petitioner's Amended Reply to Respondent's Return in the above captioned appeal on the following individual by U. S. Mail, Certified Return Receipt Requested with sufficient postage affixed, addressed as follows:

Bradley Churdar, Esquire
S.C. Department of Health and Environmental Control
1362 McMillan Ave., Suite 500
Charleston, SC 29405

Howell V. Bellamy, Jr., SCB # 00642
Howell V. Bellamy, III, SCB # 66575
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

April 29, 2013