

STATE OF NORTH CAROLINA  
COUNTY OF CARTERET

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2020 APR 21 P 1:11

Hollis L. Batson and Carol D. Batson,

CARTERET COUNTY, C.S.C.  


Petitioners

v.

Coastal Resources Commission and North  
Carolina Department of Transportation,

Respondents.

19 CVS 797

Lawrence F. Baldwin and Elizabeth C.  
Baldwin,

Petitioners,

v.

Coastal Resources Commission and North  
Carolina Department of Transportation,

Respondents.

19 CVS 798

Baldwin-Batson Owners' Association, Inc.,

Petitioners,

v.

Coastal Resources Commission and North  
Carolina Department of Transportation,

Respondents.

19 CVS 799

ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW

THIS MATTER came on for hearing on the 12<sup>th</sup> day of March 2020 during civil session, Carteret County, North Carolina, before the Honorable Charles H. Henry, Superior Court Judge Presiding. I. Clark Wright, Jr. Esq. appeared for Petitioners. Special Deputy Attorney General Scott T. Slusser appeared for Respondent North Carolina Department of Transportation (NCDOT). Special Deputy Attorney General Mary L. Lucasse appeared for Respondent Coastal Resources Commission (CRC). Also present were Petitioners Lawrence F. Baldwin, Elizabeth C. Baldwin, and Hollis L. Batson.

All parties consented to the authority of the Court to address and resolve the matters addressed in the Court's order. Specifically, all parties consented to hearing and resolution of Petitioners' Motion for Preliminary Injunction and the merits of Petitioners' three consolidated Petitions for Judicial Review (PJR's). By Order filed March 24, 2020, the Court granted Petitioners' Motion for Preliminary Injunction enjoining certain actions of Respondent NCDOT and its agents or contractors, which actions were authorized by Major Development CAMA Permit Number 27-19, issued to Respondent NCDOT on May 1, 2019 (The Permit), the terms of which are challenged by Petitioners. Today the Court addresses and resolves the merits of Petitioners' three consolidated PJRs pursuant to and in accordance with, among other governing law, the permit appeal and judicial review provisions contained in N.C.G.S. §113A-121.1(b) and N.C.G.S. §113A-123(a) of the Coastal Area Management Act of 1974 (CAMA), the similar permit appeal provisions contained in the companion North Carolina Dredge and Fill Statute [N.C.G.S. §113-229], and the standards for judicial review as set forth in N.C.G.S. §150B-51 of the North Carolina Administrative Procedures Act (NCAPA).

After careful and thorough consideration, the Court GRANTS Petitioners Petitions for Judicial Review by REVERSING Respondent CRC's Final Agency Decisions (FADs), issued on

May 31, 2019, and REMANDING these matters for contested case proceedings under applicable provisions of Article 3 of the NCAPA, including N.C.G.S. §150B-23. In the three essentially identical FADs, consolidated for purposes of these judicial review proceedings, the Chair of Respondent CRC, acting pursuant to delegated authority, determined that Petitioners had satisfied and complied with the third-party permit appeal requirements specified in N.C.G.S. §113A-121.1(b)(1) and §113A-121(b)(2). The Court agrees and so finds. With regard to the third factor, the CRC Chair concluded that Petitioners' allegations of CAMA statutory and rule violations were frivolous. The Court finds that these conclusions are not supported by the record, or the plain meaning of the words "not frivolous" as used in N.C.G.S. §113A-121.1(b)(3). In granting the PJRs, the Court has reviewed and given careful consideration to all prior filings contained in these consolidated judicial review proceedings, including: (i) Petitioners' Motion for Preliminary Injunction; (ii) Petitioners' previously filed Verifications of Petitions For Judicial Review; (iii) Petitioners' supporting Affidavits of Lawrence F. Baldwin, dated July 3, 2019, November 22, 2019, February 28, 2020, and March 12, 2020; (iv) Respondent NCDOT's Affidavits of Hon Yeung, P.E., dated March 2, 2020 and March 10, 2020; (v) Respondent NCDOT's Memorandum of Law in Opposition, dated March 11, 2020; (vi) Respondent CRC's Brief in Opposition, dated March 11, 2020; (vii) Affidavit of CRC Chair M. Renee Cahoon, dated March 10, 2020; (viii) supplemental briefing and memoranda submitted electronically at the Court's request on/before March 18, 2020; and (ix) the oral arguments presented by counsel for all Parties on March 12, 2020.

The Court has given due consideration and weight to assertions and arguments of counsel for Respondents CRC and NCDOT regarding potential deference to agency interpretations of governing laws and rules. The Court also has considered the whole record in its deliberations to

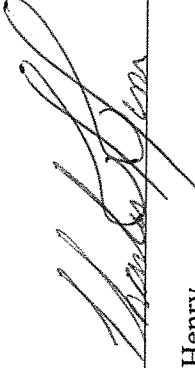
address and resolve the issues before it. As noted above, the sole disputed issue before the Court is interpretation and application of the phrase “not frivolous” as set forth in N.C.G.S. §113A-121.1(b)(3). The Court considers resolution of this issue to be a mixed question of law and fact, but primarily a question of law. Neither the third party CAMA permit appeal statute nor any other relevant provisions of law or rule authorize either this Court or Respondent CRC to assess the ultimate weight or conclusions that may in the future be rendered as to Petitioners’ alleged CAMA permit violations. The governing CAMA statute asks nothing more of Petitioners at this stage than that Petitioners identify and allege one or more non frivolous CAMA permitting violations and then demonstrate that such allegations are not frivolous. As noted, neither the CAMA statute nor implementing rules further define the phrase “not frivolous.” No party has identified, and the Court is not aware of any published or unpublished decisions from our appellate courts defining or interpreting this phrase in the relevant CAMA statute. The Court has considered the definition of frivolous in Black’s Law Dictionary and reported case law defining, interpreting and applying the term “frivolous” in other statutory schemes.

With regard to the CAMA permit challenge claims and allegations made by Petitioners, the Court finds and concludes that same are not frivolous. The claims and allegations of CAMA permitting violations identified by Petitioners are not groundless or of little weight or importance. Petitioners’ allegations and legal arguments meet the threshold requirements set forth in N.C.G.S. §113A-121.1(b) in that the petitioners (1) have alleged that the decision is contrary to a statute or rule; (2) are directly affected by the decision; and (3) have alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

NOW, THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that Petitioners’ Petitions for Judicial Review be GRANTED; that Respondent CRC’s three consolidated May 31, 2019 FADs are REVERSED; and that these consolidated permit appeal matters immediately be

REMANDED to the Office of Administrative Hearings, where Petitioners shall have the right to file contested case petitions within 20 days of the filing of this ORDER.

SO ORDERED, this the 24th day of April, 2020.

A handwritten signature in black ink, appearing to read "Charles H. Henry", written over a horizontal line.

Charles H. Henry  
Superior Court Judge Presiding