

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2009-CP-22-1045

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John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and  
Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas  
Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W.  
Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert  
Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A.  
DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M.  
Owens, Fount L. Shults and Lynda M. Shults, Dennis Ridgeway and  
Teresa Lynn Ridgeway, ..... Appellants,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay  
Properties, LLC, C.R. Thompson and Sons, LLC, Ronald L. Charlton,  
Bonnie N. Charlton, James R. Charlton and Bayside Property Inc.,  
The City of Georgetown, Hartford Casualty Insurance Company,  
Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a  
Source One Communities, LLC, a/k/a Source One Signature  
Communities, ..... Respondents.

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**REPLY MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL**

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FEB 28 2014

**SC Court of Appeals**

The Respondent City of Georgetown ("City") has moved to dismiss the Appellants' appeal on the basis that all claims alleged by the Appellants against the City are moot, and as a result, this Court lacks jurisdiction.

In their return to the motion, the Appellants agree with the City's recitation of the relief sought by the Appellants in their Complaint. The Appellants have only sought prospective relief against the City. Through their claim for declaratory relief, the Appellants sought an order directing the City to call the Subdivision Performance Bond issued by the Respondent Hartford Fire Insurance Company as the surety so that the required site improvements may be installed. The evidence is undisputed that the City has done just that. The City commenced litigation against Hartford and resolved that action by entering into an Agreement dated August 20, 2013. That Agreement provides for the installation of and payment for the site improvements as required by the City of Georgetown Land Development Regulations and S.C. Code Ann. § 6-29-1180. As a result, the Appellants have received the relief sought, and their claim against the City is rendered moot.

In challenging the City's assertion that their claim is now moot, the Appellants make two arguments. First, they claim that the City's agreement with Hartford does not cover all improvements. Second, they argue that they may amend on remand – if successful on the merits of their appeal – to pursue a money damages claim against the City. Neither argument has merit.

As to the first argument, the Agreement between the City and Hartford does

address all site improvements as *required* by the Land Development Regulations and S.C. Code Ann. § 6-29-1180.<sup>1</sup> Section 500.1 of the Land Development Regulations provides that "[t]he Planning Commission shall not give approval of the Final Plat for recording unless the subdivider has installed *the following improvements as herein specified and required*, or has provided a financial guarantee therefore as specified in Section 502." (Emphasis added). Section 502 states that a developer must provide "Financial Guarantees covering *all improvements required by this Ordinance*" – i.e., the "required improvements." (Emphasis added). The financial guarantees may take the form of a subdivision performance bond. Section 502.3 provides that "[p]rior to completion of any or all *required improvements* by the subdivider, the subdivider may post a performance bond with the governing authority guaranteeing the completion of *said improvements*." (Emphasis added). Clearly, the financial guarantees in the form of a performance bond may cover only "required improvements." In fact, the funds from the bond may only be used to guarantee and pay for "required improvements." *See*, Section 502.5, City of Georgetown Land Development Regulations ("Any funds received from the financial guarantees required by this Ordinance shall be used only for the purpose of making the improvements for which said guarantees were provided"). Those "required improvements" are set

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<sup>1</sup> A copy of Article V of the City of Georgetown Land Development Regulations is attached hereto as an exhibit.

forth in Section 501, which is entitled "Required Improvements," and those required improvements are provided for in the Agreement with Hartford. Hartford, as the surety, has agreed to install and pay for the site infrastructure improvements required under Section 501.

In their second argument, the Appellants claim that they are intended beneficiaries under the Subdivision Performance Bond issued by Hartford. That is not the case. The Subdivision Performance Bond itself clearly and unambiguously provides that "[n]o right of action shall accrue hereunder to or for the use or benefit of anyone other than the obligee."

Nonetheless, the Appellants have not included a money damages claim in their only cause of action against the City. The Appellants now seek to misconstrue their own Complaint to suggest otherwise. Paragraph 131 provides that "the declaratory relief sought by Plaintiffs herein will partially mitigate Plaintiffs' damages to which Plaintiffs otherwise claim entitlement." *See*, Complaint, para. 131. But that language refers to the damages claimed from the other Defendants, most notably the developer. The Appellants have not sought damages against the City as is evident from the assertion that "there is no adequate remedy at law with respect to these issues, except by way of the relief provided by the declaratory judgment statutes aforesaid." *See*, Complaint, para. 132.

Further, the Court is strongly urged to review the prayer at the end of the Complaint. In the prayer as to the Seventh Cause of Action, which is the only

count against the City, the Appellants sought "an Order declaring and requiring that the City of Georgetown ... utilizing [sic] the bond to start or complete the required improvements and site infrastructure." *See*, Complaint, p. 49.

The Appellants have received *that very relief*. As the City argued in its opening memorandum, it is well settled that a party's receipt of the requested relief moots a claim. *See, Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680, 684, n.2 (Ct. App. 2008); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Appellants' claims have thus been rendered moot. There is no longer any case or controversy between the City and the Appellants, and for that reason, this Court lacks subject matter jurisdiction over this appeal as it applies to the City. The Appellants' appeal against the City therefore should be dismissed.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:  \_\_\_\_\_

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

Elise F. Crosby  
CROSBY LAW FIRM, LLC  
405 Dozier Street  
Georgetown, South Carolina 29440  
(843) 546-3103

*Counsel for Respondent  
City of Georgetown*

Columbia, South Carolina

February 25, 2014

ARTICLE V  
IMPROVEMENTS

SECTION 500: GENERAL

500.1 Approval of Final Plat

The Planning Commission shall not give approval of the Final Plat for recording unless the subdivider has installed the following improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502.

500.2 Right of Free Access and Inspection

Any authorized agent of the Planning Commission or the governing authority shall be granted the right of free access to the subdivision at all times for the purpose of inspecting the construction and installation of improvements. Inspection, or lack of inspection, by the governing authority shall not diminish the obligation of the subdivider to install required improvements in accordance with approved plans and specification and the requirements of this Ordinance.

500.3 Changes in the Approved Plans and Specifications

If exigencies of construction necessitate changes in the approved plans and specifications, the subdivider shall request approval of such changes by the Planning Commission, who may delegate the responsibility for reviewing and approving said changes to a qualified agent of the governing authority. The subdivider shall not proceed with construction involving any changes prior to obtaining written approval from such qualified agent.

500.4 Filing of Plans

One set of "as built" plans and specifications shall be filed with the Planning Commission.

500.5 Maintenance of Improvements

Completion of construction of any improvement shall not obligate the governing authority of any public agency to maintain said improvement.

SECTION 501: REQUIRED IMPROVEMENTS

Every subdivision developer shall be required to grade and improve streets and alleys, and to install curbs, monuments, sewers, storm water inlets, and water mains, in accordance with specifications established by the City of Georgetown Planning and Zoning Commission. Where specifications adopted by local authorities conflict with standards as set forth in these subdivision regulations, the higher set of standards as determined by the Planning Commission, shall govern.

501.1           Monuments

Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, shall be set at all street corners, at all points where the street lines intersect the exterior boundaries of the subdivision, and at angle points and points of curve in each street. The top of the monument shall have an indented cross to identify properly the location and shall be set flush with the finished grade. All other corners and points shall be marked with iron pipe or solid steel rod not less than one-half inch in diameter and twenty-four inches long and driven so as to be flush with the finished grade.

501.2           Grading

All streets, roads and alleys shall be graded or filled horizontally to the full width of their rights-of-way by the subdivider or developer. Due to special topographical conditions, deviation from the above will be allowed only with special approval of the Planning Commission.

- (a)   Preparation- Before grading is started; the entire right-of-way area shall be cleared of all trees, stumps, roots, brush, and other objectionable materials.
- (b)   Cuts- All tree stumps, boulders and other obstructions shall be removed to the depth of two feet below the sub grade. Rock, when encountered, shall be scarified to the depth of twelve inches below sub grade.
- (c)   Fill- All suitable material from roadway cuts may be used in the construction of fills, approaches, or at other places as needed. Excess materials including organic materials, soft clays, etc., shall be removed from the development site. The fill shall be spread in layers not to exceed six inches loose and compacted by sheep's foot roller, unless another method of preparation of the sub grade is approved by the Planning Commission or District Highway Engineer.

501.3           Storm Drainage

An adequate drainage system, including storm sewers, necessary open ditches, pipes, culverts, intersectional drains, drop inlets, bridges, etc., shall be provided for the proposed drainage of all surface water. Cross drains shall be provided to accommodate all natural water flow, and shall be sufficient length to permit a full width roadway and the required slopes. The size openings to be provided shall be determined by Talbot's formula, but in no case shall the pipe be less than fifteen inches. Cross drains shall be built on straight line and grade, and shall be laid on a firm base but not on rock. Pipes shall be laid with spigot end pointing in the direction of the flow and with the ends fitted and matched to provide tight joints and a smooth uniform invert.

501.4 Roadway Improvement

All streets designated and shown on the Final Plat shall be graded, constructed and surfaces in accordance with the current requirements of the South Carolina Department of Highways and Public Transportation for paved streets. \* The Planning Commission may require higher standards than those required by the Standard Specifications or governing authority to provide adequately for unusual soil conditions, extraordinary traffic volume or other abnormal conditions.

501.5 Shoulders, Side Slopes and Ditches

All shoulders, side slopes and ditches shall be prepared in compliance with the Standard Specifications. All shoulder, side slopes and ditches shall be protected from erosion by either sodding or seeding as set forth in the Standard Specifications for erosion control and shall be a part of the required improvement plans to be submitted by the subdivide with the Preliminary Plat.

501.6 Curbs

The subdivide shall install curbs of no lower classification than machine formed concrete extruded curb, nine inches wide at her base and seven and one-half inches high. The curb shall be installed after the prime coat is applied to the base. Back fill shall be towards the curb to insure drainage of surface water into the drainage system. In lieu of curbs as the drainage system on cul-de-sacs and loop streets, the Planning Commission may accept one of two alternatives:

501.61 Swales must be used on streets where the finished grade does not exceed two percent; and,

501.62 Streets with an inverted crown may be used provided that the drainage area of the streets does not exceed five acre, One-half inch to three-fourths inch expansion and contraction joints for the curbs shall be placed at intervals not exceeding four feet.

501.7 Minimum Pavement Widths

Minimum pavement widths for surface treatment of streets shall be as follows:

- (a) Arterial Streets (not paved by the subdivider), 12 feet per lane.
- (b) Collector Streets (usually not paved by the subdivider) 36 feet.
- (c) Minor Residential Streets and Marginal Access Streets, 28 feet.
- (d) Cul-de-sacs, Dead-end Streets and Alleys, 20 feet.

501.8 Installation of Utilities

After grading is completed and approved and before any base is applied, all of the underground work, water mains, gas mains, etc., and all service connections shall be installed and approved throughout the length of the road and across the flat section. All driveways for houses to be built by the subdivider shall be cut and drained.

501.9 Water Supply System

Water mains properly connected with the City water supply system or with an alternative supply approved by the appropriate health officer shall be constructed in such a manner as to adequately serve all lots shown on the subdivision plat for both domestic use and fire protection. The size of water mains, the location and type of valves and hydrants, the amount of soil cover and the pipes and other features of the installation shall be approved by the Planning Commission upon the recommendation of the applicable inspection agencies, and shall conform with accepted standards of good practice for public water systems.

501.10 Sanitary Sewers

Sewer lines properly connected with the City sewerage system shall be constructed in such a manner as to serve all lots shown on the Final Plat. Such lines shall be constructed according to the

requirements established by the City of Georgetown and South Carolina Department of Health and Environmental Control. The size of the sewer lines, the amount of soil cover and pipes and other features of the installation shall be approved by the Planning Commission upon the recommendation of the applicable inspection agencies and shall conform with accepted standards of good practice for public sewer systems. Where lots cannot be economically connected to the City sewerage system, they shall contain adequate are for the installation of approved septic tank and disposal fields and shall be approved in writing by the appropriate health officer.

501.11 Street Name Signs

The City of Georgetown Street Department will be responsible for erecting and maintaining standard street name signs for an approved subdivision. The developers will incur the cost of the materials (posts, signs, and letters).

501.12 Off-Site Extensions

When streets or utilities are not available at the boundary of a proposed subdivision, the Planning Commission may require, as precedence to approval of a Preliminary Plat or Final Plat, assurances that such improvement extensions shall be provided onto the property involved and shall be adequate to serve the total development requirements of the service or drainage area. Facilities leaving the property shall be constructed in such a manner as to make their extension practical for servicing the adjacent areas of the service or drainage areas.

501.13 Underground Utilities

The subdivider shall have the option of requesting the placement of electrical lines underground as opposed to above ground. If underground utilities are requested, the subdivider shall indicate the proposed location of all writing on the plat, together with any design, drainage and specifications as may be required by the manager of the Electric and Water Department for his approval. Final construction plans shall show underground utilities as constructed, with permanent reference points shown, as a condition of acceptance by the City of Georgetown of said subdivision. The design and construction of the underground system shall meet all requirements contained in Division 2 (City Service Installation), Section C of the City of Georgetown Terms and Conditions of Utility Services and Charges.

501.14 Sidewalks

The Planning Commission may require sidewalks where pedestrian traffic necessitates, when required, they shall be constructed in accordance with the SCDHPT Standard Specifications and located in a manner so as not to interfere with the maintenance of utility systems.

501.15 Fire Hydrants

The subdivider shall install fire hydrants connected to adequately sized lines in locations required by the Planning Commission upon the recommendations of the manager of the Electric and Water Department.

SECTION 502: FINANCIAL GUARANTEES

502.1 General

Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees to the Commission and the appropriate governing authority in accordance with the requirements of this section.

502.2 Certification of Construction

In subdivisions where the subdivider has completed the construction and installation of all required improvements, the subdivider shall file with the Planning Commission written certification by their governing authority and all applicable governmental units that said improvements have been completed according to the requirements of the Ordinance, and that said improvements have been accepted by the governing authority or the appropriate governmental unit for maintenance.

502.3 Performance Bond

Prior to completion of any or all required improvements by the subdivider, the subdivider may post a performance bond with the governing authority guaranteeing the completion of said improvements in compliance with the requirements herein below:

502.31 The governing authority shall have the right to refuse a performance bond of any and/or all

required improvements and require construction and installation thereof by the subdivider.

502.32

Where accepted by the governing authority, the performance bond shall:

502.321 Run to the governing authority or, if applicable, any other governmental unit having a legal responsibility for the construction and completion of said improvements;

502.322 Be in an amount equal to 125% of the cost as estimated by the governing authority of any improvements which have not been constructed, installed and completed in compliance with the requirements of this Ordinance prior to the posting of said bond and for which sufficient certification has been furnished in compliance with Section 502.2;

502.323 Be with surety as approves by the governing authority;

502.324 Specify that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however, that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or a part of such improvements for such period of time as it deems is in the public interest; and,

502.325 Run until and terminate ninety days after filing certification of completion and acceptance as required in Section 502.2, unless the Planning Commission or governing authority determines that the requirements, standards and specification of this Ordinance applicable to the construction, installation and completion of said improvements have not been met and

notified the applicant of such determination by certified mail, in which event said bond shall continue to run until the filing of acceptance proof that said standards, requirements and specification have been met.

502.33 In the event that any or all of the required improvements are not completed within the time specified in said bond, the governing authority may let or re-let the contract and the subdivider and performance bond shall be severally and jointly liable for the costs thereof to the amount specified for such improvements(s) in said bond.

502.4 Prepayment

In lieu of construction by the subdivider of any or all required improvements, the subdivider may make payment to the governing authority of the full amount of said improvements in compliance with the requirements herein below:

502.41 The governing authority shall have the right to refuse prepayment for any and/or all required improvements and require construction and installation thereof by the subdivider.

502.42 Where accepted by the governing authority, prepayment shall be in an amount equal to 125% of the cost as established by the governing authority for the required improvements which have not been either completed and certified and accepted as provided in Section 502.2 or covered by a performance bond as provided in Section 502.3

502.43 Where the governing authority accepts prepayment. After completion of said improvements, any unexpected amounts shall be refunded to the subdivider by the governing authority.

502.5 Bond Funds

Any funds received from the financial guarantees required by this Ordinance shall be used only for the purpose of making the improvements for which said guarantees were provided.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2009-CP-22-1045

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v.

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Source One Communities, LLC, a/k/a Source One Signature  
Communities, ..... Respondents.

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**SC Court of Appeals**

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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., attorneys for the  
Respondent City of Georgetown, does hereby certify that service of the **Reply  
Memorandum in Support of Motion to Dismiss Appeal** in the above-captioned  
matter was made upon all counsel of record by placing copies in the United States

Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope this the 25th day of February 2014:

Elise F. Crosby, Esquire  
Crosby Law Firm, LLC  
405 Dozier Street  
Georgetown, South Carolina 29440

John M. Leiter, Esquire  
Law Offices of John M. Leiter, P.A.  
1203 48th Avenue North - Suite 109  
Myrtle Beach, South Carolina 29577

K. Douglas Thornton, Esquire  
Thornton Law Firm, LLC  
1025 Third Avenue  
Conway, South Carolina 29526

Charles T. Smith, Esquire  
Charles T. Smith, Attorney at Law  
608 Cypress Street  
Georgetown, South Carolina 29440-3530

James Lynn Werner, Esquire  
Lawrence M. Hershon, Esquire  
Parker Poe Adams & Bernstein LLP  
Post Office Box 1509  
Columbia, South Carolina 29202-1509

Joseph K. Qualey, Esquire  
Qualey Law Firm  
23 Broad Street  
Charleston, South Carolina 29401

Donald G. Hunt, Jr., Esquire  
Kristen G. Atkins, Esquire  
Akens Hunt, P.C.  
Post Office Box 266  
Fuquay-Varina, North Carolina 27526

Ronald L. Richter, Jr., Esquire  
Bland Richter, LLP  
18 Broad Street  
Peoples Building - Mezzanine Level  
Charleston, South Carolina 29401-3010

Eric S. Bland, Esquire  
Bland Richter, LLP  
1500 Calhoun Street  
Post Office Box 72  
Columbia, South Carolina 29202



---

Andrew F. Lindemann

# DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II  
Andrew F. Lindemann\*  
James M. Davis, Jr.†  
Robert D. Garfield  
Michael B. Wren

1611 Devonshire Drive, Second Floor  
Post Office Box 8568  
Columbia, South Carolina 29202-8568  
Telephone: (803) 806-8222  
Facsimile: (803) 806-8855  
www.dml-law.com

Daniel C. Plyler  
Joel S. Hughes  
Justin T. Bagwell  
David A. DeMasters  
Steven R. Spreuwers  
Todd R. Flippin

\*Also Admitted In North Carolina  
†Certified Mediator

February 25, 2014

Of Counsel  
Kenneth P. Woodington

Writer's Email: [alindemann@dml-law.com](mailto:alindemann@dml-law.com)

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: John Steven Goodwin, *et al.* v. Landquest Development, LLC, *et al.*  
SCCA Case Number: 2013-001644  
Civil Action Number: 2009-CP-22-1045  
Our File Number: 79.7959

Dear Ms. Kitchings:

Please find enclosed for filing seven copies of the **Reply Memorandum in Support of Motion to Dismiss Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

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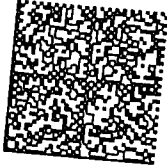
**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
February 25, 2014  
Page Two

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cc: John M. Leiter, Esquire (*w/ Enclosure*)  
K. Douglas Thornton, Esquire (*w/ Enclosure*)  
Charles T. Smith, Esquire (*w/ Enclosure*)  
James Lynn Werner, Esquire (*w/ Enclosure*)  
Lawrence M. Hershon, Esquire (*w/ Enclosure*)  
Joseph K. Qualey, Esquire (*w/ Enclosure*)  
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Kristen G. Atkins, Esquire (*w/ Enclosure*)  
Ronald L. Richter, Jr., Esquire (*w/ Enclosure*)  
Elise F. Crosby, Esquire (*w/ Enclosure*)

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Davidson & Lindemann, P.A.  
Post Office Box 8568  
Columbia, South Carolina 29202-8568



The Honorable Jenny Abbott Kitchings  
Clerk of Court  
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Post Office Box 11629  
Columbia, South Carolina 29211

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