

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2014-000156
Case No. 2012-CP-22-00558

David M. Repko Appellant,

v.

County of Georgetown Respondent.

Record on Appeal

Ryan P. Compton

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RECEIVED

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SC Court of Appeals

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I certify that the Record on Appeal contains no matter which is irrelevant to the appeal.



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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

David M. Repko,)

Plaintiff,)

vs.)

County of Georgetown,)
a body politic,)

Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2012-CP-22-558
(Previous Case No. 2012-CP-22-385)

**ORDER GRANTING DEFENDANT'S
MOTION FOR DIRECTED VERDICT**

Date of Trial:
Presiding Judge:
Attorney for Plaintiff:

Attorney for Defendant:
Court Reporter:

September 16 – 17, 2013
Honorable Benjamin H. Culbertson
William T. Moody, Esquire
Robert W. Maring, Esquire
David J. Mills, Esquire
Grace Hurley

FILED
2013 SEP 30 AM 11:54
CLERK OF COURT

INTRODUCTION

This matter came before the Court on September 17, 2013 on a Motion for Directed Verdict by the Defendant County of Georgetown ("County") at the close of Plaintiff's case. Based on the Findings of Fact and Conclusions of Law set forth below, County's Motion for Directed Verdict should be, and the same hereby is, **GRANTED**.

BACKGROUND/FINDINGS OF FACT

Plaintiff's Complaint filed on April 20, 2012, alleges that he purchased two (2) lots in a subdivision in Georgetown County known as "Harmony Township." Plaintiff's Complaint was premised on Article V, Section 3 of Georgetown County's Development Regulations, which provide for the acceptance and reduction of financial guarantees. Under the Development Regulations, financial guarantees may be posted in lieu of

completing improvements, including infrastructure such as roads, water, and sewer in a subdivision. Plaintiff alleged that County negligently reduced the Letter of Credit which served as a financial guarantee for the completion of infrastructure in the phase of development in Harmony Township in which he purchased lots. Plaintiff contended his lots cannot be used and are therefore worthless because there are no roads, water or sewer to those lots. Plaintiff claimed that County owed him a "special duty" pursuant to Article V, Section 3 of the Georgetown County Development Regulations and sued County on three (3) causes of action: (1) Gross Negligence; (2) Intentional Interference with Rights of the Plaintiff as an Intended Beneficiary of the Letter of Credit; and (3) Violation of Due Process.

A jury was qualified, impaneled, and seated for the trial of the case. Plaintiff's presentation of his case to the jury included the trial testimony of Holly Richardson, the Chief Planner in the Georgetown County Planning Department; Boyd Johnson, the Director of Planning and Code Enforcement for Georgetown County; Georgetown County Attorney Wesley Bryant; and the Plaintiff. Plaintiff admitted into evidence, without objection, a number of exhibits relating to his purchase of the property, the Letter of Credit at issue, and the County Planning Department's authorization of reductions to the Letter of Credit.

At the close of Plaintiff's case, County moved for a directed verdict pursuant to Rule 50, South Carolina Rules of Civil Procedure, on a number of distinct grounds including:

1. there existed no duty to the Plaintiff;
2. the Public Duty Rule;

3. the Statute of Limitations; and
4. various exceptions to the waiver of immunity under the South Carolina Tort Claims Act which were affirmatively pleaded as defenses in the County's Answer.

After considering the arguments of counsel and relevant case law and statutory authority, the Court granted the County's Motion for Directed Verdict as set forth below.

CONCLUSIONS OF LAW

County's responsive pleadings, the testimony it elicited at trial, and its directed verdict motion all alleged the lack of a duty to Plaintiff. Specifically, Article V, Section 3 ("Financial Guarantees") of the County's Development Regulations provides in pertinent part as follows:

"Acceptance of a financial guarantee by Georgetown County shall not be construed as an obligation to any other agency, utility or property owner within affected developments."

The Court concludes that the Development Regulation provision relating to financial guarantees expressly disclaims any "private duty" to Plaintiff who is a "property owner within the affected development" (i.e. Harmony Township). The Court concludes that the quoted language is clear and unambiguous and cannot be ignored or "written out" of the Development Regulations.

Where there is no duty there can be no tort.¹ "The Court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict." Steinke v. S.C. Department of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (S.C. 1999).

¹ The County also moved for directed verdict on Plaintiff's second and third causes of action for "Intentional Interference" and "Violation of Due Process", but those claims were voluntarily abandoned by Plaintiff, who elected to go forward only on his negligence claim.

South Carolina case law also compels the conclusion that the County owed no private duty to Plaintiff on the facts presented here. In Brady Development Co., Inc. v. Town of Hilton Head, 312 S.C. 73, 439 S.E.2d 266 (S.C. 1993), the Supreme Court was confronted with similar facts. In Brady Development, the lot owner's contractor was required to stop work on a house because water and sewer infrastructure had not been approved. The constructed house was vandalized and eventually burned. The owner sued, claiming that the Town had negligently administered its own Development Standards Ordinance. The Town moved for a directed verdict on the grounds that the Development Standards Ordinance did not create a special duty owed to the individual lot owner. The trial judge denied the Town's motion, the jury returned a verdict for the owner, and the Town appealed.

In reversing the trial court, the Supreme Court discussed, and relied upon, the Public Duty Rule in holding that the trial judge had erred in ruling that the subject ordinance had created a special duty. This Court quotes at length below from Brady Development because the analysis of the Public Duty Rule is particularly applicable here:

The Town contends that the trial judge erred in ruling as a matter of law that it owed Brady a special duty of care in issuing a development permit under the Development Standards Ordinance. We agree.

Public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually. Jensen v. Anderson County Dept. of Social Services, 304 S.C. 195, 199, 403 S.E.2d 65, 617 (1991). However, an exception to this general rule exists when a special duty is owed to an individual rather than the public only. Id. at 200, 403 S.E.2d at 617. To determine if a special duty arises from a statute, a court must find:

1. an essential purpose of the statute is to protect against a particular kind of harm;
2. the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;
3. the class of persons the statute intends to protect is identifiable before the fact;
4. the plaintiff is a person within the protected class;
5. the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and
6. the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Id.; Bellamy v. Brown, 305 S.C. 291, 408 S.E.2d 219 (1991). The trial judge ruled that each of these elements had been proved as a matter of law.

[312 S.C. 77] Section 16-7-10, the preamble of the Development Standards Ordinance states:

The town council finds that the health, safety and welfare of the public is in actual danger . . . if development is allowed to continue without limitation.

Additionally, Development Standards Ordinance section 16-7-113 provides:

The purpose of this chapter is to promote the public health, safety and general welfare; to preserve the environmental, historical and social heritage and character of the town; to protect public, private and institutional investment; and to facilitate the timely and adequate provision of transportation, water, sewage disposal, schools, parks and other requirements.

The purpose of this chapter is to promote the public health, safety and general welfare; to preserve the environmental, historical and social heritage and character of the town; to protect public, private and institutional investment; and to facilitate the timely and adequate provision of transportation, water, sewage disposal, schools, parks and other requirements.

We hold that the Development Standards Ordinance does not create a special duty to Brady. The essential purpose of the ordinance is to protect the public from the dangers of overdevelopment on the Island of Hilton Head. Brady argues that the essential purpose of the ordinance is to protect those who buy lots, building sites and buildings because the ordinance requires improvements and services agreements to be in existence or a surety guaranteeing these services for a development permit to be granted. To recognize such a duty would make the Town substantially an insurer of all developments it undertook to inspect and control through its Development Standards Ordinance and would likely discourage all efforts at such control. See Hannon v. Counihan, 54 Ill.App.3d 509, 12 Ill.Dec. 210, 369 N.E.2d 917 (1977) (to recognize a special duty for the city in the administration of its building codes would make a municipality substantially an insurer of all construction it undertook to inspect and control through its building codes and would discourage all such efforts at such control); See also Summers v. Harrison Constr., 398 S.C. 451, 381 S.E.2d 493 (Ct.App. 1989) (the duty to issue a building permit to only qualified applicants does not impose upon public officials the responsibility to guard against poor performance in construction). Accordingly, we hold that the trial judge erred in ruling that the Development Standards Ordinance created a special duty. [Footnote omitted].

Consistent with the Supreme Court's holding and rationale in Brady Development, this Court concludes that the Development Regulations at issue in this case do not create a special duty to the Plaintiff. To paraphrase Brady Development, "To recognize such a duty would make the [County] substantially an insurer of all developments it undertook to inspect and control through its Development [Regulations] and would likely discourage all efforts at such control."

Subsequent South Carolina case law confirms the "six-factor" test described above in Brady Development. The Court of Appeals reiterated the test in Steinke v. South Carolina Department of Labor Licensing and Regulation, *Supra*.

The County argued in support of its directed verdict motion here that Plaintiff also fails the "special duty" test at factors 2 and 3 as enunciated in Brady Development and Steinke. Specifically, the Georgetown County Development Regulations at issue here

neither directly nor indirectly imposed on any specific public officer of Georgetown County a duty to guard against or not cause a specified harm. Moreover, the class of persons the statute intends to protect was not "identifiable before the fact" here. This is so because, as stated earlier, the Georgetown County Development Regulation at issue neither imposes a duty on Georgetown County's public officials nor identifies a "protected class"; on the contrary, the Development Regulations specifically disclaim any obligation on the part of the County as a result of its acceptance of a financial guarantee. Because no duty arises under the Development Regulations, County cannot have breached any duty to Plaintiff and County is entitled a directed verdict on Plaintiff's negligence claim.

The County also raised in its pleadings, and asserted as an additional basis in support of its directed verdict motion, a number of defenses available under the Tort Claims Act. For the reasons set forth below, the Court concludes that the County is immune from Plaintiff's claims as a matter of law based on the Tort Claims Act exemptions specified below.

In reviewing County's directed verdict motion premised on the South Carolina Tort Claims Act, S. C. Code Ann. §15-78-10, *et seq.*, the Court is mindful of two (2) explicit instances in the Act wherein the General Assembly provided for liberal construction of the Act to limit liability of the State.

First, in its "Legislative findings; declarations of public policy; extent of, and construction of, waiver of immunity" subsection, the legislature declared that "the provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official

duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. §15-78-20(f). Second, this liberal construction mandate is reaffirmed in §15-78-200 of the Act:

Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act" is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting in the scope of the employee's official duty. The provisions of this chapter provide limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.

§15-78-60 ("Exceptions to Waiver of Immunity") provides that "the governmental entity is not liable for a loss resulting from" forty (40) enumerated exceptions. As additional grounds for its Motion for Directed Verdict, the County contended that it could not be liable for any loss resulting from damages purportedly suffered by Plaintiff pursuant to subsection (4):

"Adoption, enforcement or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation or written policies."

It is undisputed here that Georgetown County promulgated a "regulation" with regard to acceptance of financial guarantees in lieu of the completion of infrastructure within developments. The gravamen of Plaintiff's Complaint and his trial evidence was that Georgetown County failed to comply with or enforce its own regulation regarding the acceptance and reduction of a financial guarantee. Simply put, Plaintiff contended that the County adopted the Development Regulation relating to financial guarantees and then failed to enforce it against itself, committing violations of the regulation ranging from excessive reductions in the Letter of Credit to tying reductions to the developer's contractor Pay Applications to failing to procure revised construction cost estimates or

forwarding same to the Georgetown County Department of Public Works for approval. The Court concludes that Plaintiff's allegations of failure to enforce the Development Regulation fall squarely within exception §15-78-60(4), and the County is not liable for any loss allegedly resulting from that conduct.

§15-78-60(5) provides that a governmental entity is not liable for loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." The face of Section 3.1 of the Development Regulations explicitly provides, and the testimony of the County's employees at trial confirmed, that County's acceptance of the financial guarantee was discretionary. Moreover, the County employees testified that the decision to authorize reductions in the Letter of Credit was itself a discretionary act. Chief Planner Richardson testified that she could have denied the developer's requested reductions to the Letter of Credit, but she had no reason to do so after considering the submissions of engineering certifications and confirmation of completed infrastructure from the Georgetown County Water & Sewer District. Accordingly, the Court concludes that the questioned conduct of the County employees here constituted the exercise of their discretion or judgment and the County cannot be liable for any loss resulting from that conduct pursuant to §15-78-60(5).

Finally, §15-78-60(13) exempts a governmental entity from liability for loss resulting from "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or

ordinance or contains a hazard to health or safety." Testimony elicited from County employees Richardson, Johnson and Bryant confirmed that decisions to authorize reductions in the Letter of Credit were based not upon inspections by Georgetown County personnel, but rather reliance upon submissions of the owner/developer of Harmony Township, the certifications of the developer's engineers, and written confirmations from a separate entity (the Georgetown County Water & Sewer District). Director Johnson testified that it was not the County's practice – nor was it incumbent upon the County under Development Regulation Article V, Section 3.1 – to inspect conditions on the ground in Harmony Township. Planner Richardson and County Attorney Bryant were also examined concerning inspection of the infrastructure placement. The testimony Plaintiff elicited from the County's employees during Plaintiff's case underscored Plaintiff's theory that the County's failure to make inspections of actual infrastructure conditions prior to authorizing reductions in the Letter of Credit constituted a breach of duty by the County and proximately caused Plaintiff's loss. The Court finds and concludes that §15-78-60(13) exempts the County from any loss allegedly resulting from failures to make inspections.

The Court also considered, but rejected, as grounds for the grant of directed verdict the County's arguments that: (i) the 2-year statute of limitations under the Tort Claims Act expired before Plaintiff filed suit; and (ii) §15-78-60(12) exempted the County from liability on Plaintiff's claims.

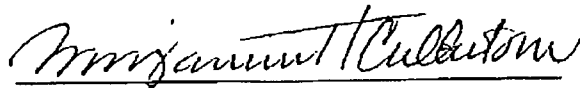
NOW, THEREFORE, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the plaintiff's causes of action for "Intentional Interference with Rights of the Plaintiff as an Intended Beneficiary of the Letter of Credit" and "Violation of Due Process" are **VOLUNTARILY DISMISSED** by the plaintiff, with prejudice; it is further

ORDERED, that the Motion for Directed Verdict by the Defendant at the close of the Plaintiff's case is **GRANTED**; it is further

ORDERED, that this case is **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina
September 25, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

David M. Repko,)

Plaintiff,)

vs.)

County of Georgetown, a body)
politic,)

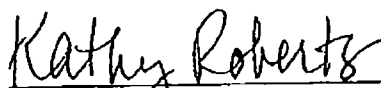
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-22-00558
(Previously Case No.: 2012-CP-22-00385)

CERTIFICATE OF SERVICE

I, Kathy Roberts, hereby certify that on the 1st day of October 2013, I caused a true and correct copy of the **Order Granting Defendant's Motion for Directed Verdict** in the above captioned matter to be served via United States Mail, postage prepaid, addressed as follows:

William T. Moody, Esquire
Maring & Moody, LLC
Post Office Box 478
Georgetown, SC 29442



Kathy Roberts

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-22-00558
(Previously Case No.: 2012-CP-22-00385)

David M. Repko,)
Plaintiff,)

CERTIFICATE OF SERVICE

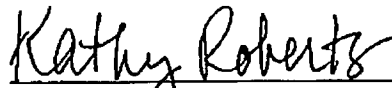
vs.)

County of Georgetown, a body)
politic,)

Defendant.)
_____)

I, Kathy Roberts, hereby certify that on the 1st day of October 2013, I caused a true and correct copy of the **Order Granting Defendant's Motion for Directed Verdict** in the above captioned matter to be served via United States Mail, postage prepaid, addressed as follows:

William T. Moody, Esquire
Maring & Moody, LLC
Post Office Box 478
Georgetown, SC 29442


Kathy Roberts

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-22-558

David M. Repko, et al.
PLAINTIFF(S)

County of Georgetown
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs' Motion to Reconsider and for New Trial is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Dec. 19, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on December 10th 2013, and a copy mailed first class or placed in the appropriate attorney's box on December 20th 2013, to attorneys of record or to parties (when appearing pro se) as follows:

William Thomas Moody 11019 Tournament Blvd Suite 203
Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

David J. Mills PO Box 1469 Pawleys Island, SC 29585
Danny Villacarlos Butler PO Box 336 Myrtle Beach, SC
29578

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Kay H. Richardson

Joy Bailey, Deputy for
Alma Y. White - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

DAVID M. REPKO

Plaintiff(s)

vs.

COUNTY OF GEORGETOWN, a body politic

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 22-00385

(Please Print)

Submitted By: William T. Moody

Address: Post Office Box 478

Georgetown, SC 29442

SC Bar #:

Telephone #: (843) 545-9544

Fax #: (843) 545-9735

Other:

E-mail: wtmoody1@yahoo.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

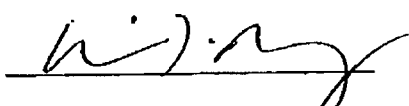
DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☒ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -CP- -	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☒ Other (499) Negligence etc.
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstato Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
-
Special/Complex /Other	Pharmaceuticals (630)	
☐ Environmental (600)	☐ Unfair Trade Practices (640)	
☐ Automobile Arb. (610)	☐ Out-of State Depositions (650)	
☐ Medical (620)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)	
☐ Other (699)	☐ Sexual Predator (510)	

Submitting Party Signature: 

Date: April 19, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

DAVID M. REPKO,)

Plaintiff,)

v.)

COUNTY OF GEORGETOWN,
a body politic,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-22- 00385

SUMMONS

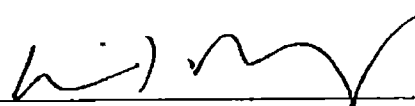
JURY TRIAL DEMANDED

FILED
GEORGETOWN COUNTY, S.C.
2012 APR 20 PM 2:04
ALMA Y. WHITE
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint on the subscribers at their offices at P.O. Box 478, 1130 Highmarket Street, Georgetown, South Carolina 29442 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOODY, LLC



William T. Moody
P.O. Box 478
1130 Highmarket Street
Georgetown, SC 29442
Telephone: (843) 545-9544
Facsimile: (843) 545-9735
Attorney for the Plaintiff

Georgetown, SC
April 19, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

DAVID M. REPKO,

Plaintiff,

v.

COUNTY OF GEORGETOWN,
a body politic,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-22- 003 85

COMPLAINT

JURY TRIAL DEMAND

FILED
GEORGETOWN COURT S.C.
2012 APR 20 PM 2:04
ALMA Y. WHITE
CLERK OF COURT

The Plaintiff, complaining of the above-named Defendant, by and through his attorney, would respectfully show unto this Court the following:

1. David M. Repko is a citizen and resident of Baltimore, Maryland.
2. The County of Georgetown, a body politic, is a governmental entity organized and existing under the laws of South Carolina.
3. The property which is the subject matter of this lawsuit, Lot 1076 (TMS # 01-0122E-076-00-00) and 1077 (TMS # 01-0122E-077-00-00), Phase D-1, Harmony Township — West Stewart Subdivision, is located in Georgetown County.
4. This Court has jurisdiction and venue is proper.
5. On October 9, 2006, Plaintiff purchased Lots 1076 and 1077 in Phase D-1 located in the West Stewart Subdivision of Harmony Township in Georgetown County for \$77,000.00 and \$78,000.00, respectively.
6. At that time, the Plaintiff was assured by the developer that the basic infrastructure, including water, sewage, roads and electricity, would be constructed in the development. Financial guarantees were in place with the County to guarantee the implementation and construction of the infrastructure, which were intended to directly benefit the Plaintiff and other purchasers and to provide them with assurances that should the developer become insolvent after the Plaintiff purchased the lots, the financial guarantee would be used by the County to complete the infrastructure.

7. Article V, Section 3 of the Georgetown County Development Regulations provides for the Acceptance and Release of Financial Guarantees for land development in Georgetown County. Section 3-6 of the Regulations requires that a release of a financial guarantee shall not occur unless all site improvements, including infrastructure, have been installed, received final inspection and a warranty financial guarantee (when applicable) has been submitted and approved. Pursuant to the Regulations, Georgetown County required that the developers obtain a surety bond/letter of credit, and a surety bond/letter of credit was obtained by the developer for the West Stewart Subdivision of Harmony Township in Georgetown County.

8. The provisions of the Georgetown County Development Regulations, including Article V, Section 3, create a special duty owing from Georgetown County to the Plaintiff since the essential purpose of the financial guarantee provisions of the Regulations is to protect against the developer's failure to complete improvements and infrastructure. The Regulations, either directly or indirectly, impose a duty on Georgetown County to guard against, or not cause the harm of infrastructure not being completed in the subdivision, therefore causing property values to drop and making the land unusable and unmarketable. Plaintiff, as a land owner in West Stewart Subdivision of Harmony Township in Georgetown County, is in a class of persons the ordinance is intended to protect. Georgetown County either knew, or should have known, that the likelihood of harm to Plaintiff was possible if the surety bond/letter of credit was released or reduced prior to the infrastructure being completed, as Plaintiff is a land owner in the subdivision. Finally, Georgetown County had sufficient authority to either release or not release the surety bond/letter of credit.

9. The developer of the West Stewart Subdivision declared bankruptcy and the basic infrastructure, including basic utilities and roads, was never completed. Georgetown County knowingly and recklessly released and/or reduced the surety bond/letter of credit without the infrastructure within the subdivision being completed. The release was done without the Plaintiff's knowledge or consent.

10. As a result, the value of the property decreased from in excess of \$75,000.00 per lot in 2008 to less than \$15,000.00 per lot in 2010. The Plaintiff's property cannot be used because there is no water, sewer, or roads to it.

11. The Plaintiff intended to build houses on the property, but have been denied by Georgetown County any right to build on that property due to the lack of basic utilities and

infrastructure available to the land. Georgetown County's actions directly resulted in Plaintiff's loss of a marketable or buildable lot.

FIRST CAUSE OF ACTION
(Gross Negligence)

12. Plaintiff incorporates by reference Paragraphs 1 through 11 as if set forth fully herein verbatim.

13. Georgetown County had a special duty pursuant to Article V Section 3 of the Georgetown County Development Regulations to require and maintain a surety bond/letter of credit to ensure that basic infrastructure was completed in the West Stewart development if the developer defaulted.

14. Georgetown County released and/or reduced the surety/letter of credit, and as a result, the construction for basic services was never completed to the lot owned by the Plaintiff. As a direct and proximate result of the release and/or reduction of the surety bond/letter of credit by Georgetown County for the West Stewart Subdivision, the Plaintiff has suffered a severe diminishment and extinguishment of the value of his lot, and the lot has become unusable. Plaintiff has not been able to construct a house on the property, as he intended to do when purchasing the property.

15. The Defendant was negligent, grossly negligent, willful, wanton and reckless in one or more of the following particulars:

a. In failing to properly document and verify, and follow standards and procedures for the same, the cost to complete the infrastructure so as to require the appropriate financial guarantee amount;

b. Improperly reducing or releasing the financial guarantee required without proper documentation and/or verification in violation of ordinances and applicable standards;

c. In releasing the financial guarantee and/or reducing the guarantee amounts without just cause and without any basis when the Defendant knew that the infrastructure was not in place; and

d. In failing to complete the infrastructure when the financial guarantee monies were taken by the County as the County has willfully disregarded ordinances and standards with respect to completion of subdivision infrastructure under financial guarantees.

16. Defendant's action in improperly releasing or reducing the financial guarantee constitutes gross negligence and negligence, and Plaintiffs are entitled to judgment against the Defendant for past and future actual damages as well as any other damages as determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Intentional Interference with Rights of the Plaintiff as an Intended Beneficiary of the Letter of Credit)

17. Plaintiff incorporates by reference Paragraphs 1 through 16 as if set forth fully herein verbatim.

18. The Defendant improperly released and/or reduced the surety bond/letter of credit that was required pursuant to Article V, Section 3 of the Georgetown County Development Regulations.

19. Plaintiff, as a land owner in the West Stewart development, was an intended beneficiary of any surety bond/letter of credit which would ensure that, in the event of default by a developer, the funds would be used to install the required infrastructure, including basic utilities and roads, at the expense of the developer.

20. Due to the Defendant's intentional release and/or reduction of the letter of credit, the Defendant interfered with the Plaintiff's rights as intended beneficiaries of the surety bond/letter of credit.

21. Due to this interference, the value of the lot has decreased substantially or been extinguished, and the Plaintiff has been denied the right to build on the lot. Plaintiff is entitled to judgment against the Defendant for past and future actual damages as well as any other damages as determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Violation of Due Process)

22. Plaintiff incorporates by reference Paragraphs 1 through 21 as if set forth fully herein verbatim.

23. The Defendant wrongfully, and without legal authority, reduced and/or released the surety bond/letter of credit that was required pursuant to Article V. Section 3 of the Georgetown County Development Regulations.

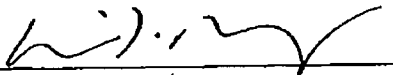
24. The Defendant did not provide notice or an opportunity to be heard to the Plaintiff concerning Georgetown County's decision to release the surety bond/letter of credit. In releasing the

surety bond/letter of credit and in failing to notify the Plaintiff of its intent to do so, the Defendant acted wrongfully in abuse of the appropriate exercise of discretion, and without legal authority.

25. As a result, the Plaintiff's rights, including due process, were violated by the Defendant, and as a direct and proximate cause of this violation, the Plaintiff has been damaged. Plaintiff is entitled to damages, attorney's fees as allowed by law, plus costs.

WHEREFORE, the Plaintiff prays for past and future actual damages, including but not limited to diminution in the value of the land, loss of use, inability to build a house on the land, attorney's fees as allowed by law, as well as actual and future damages as well as any other damages determined by a jury.

MARING & MOODY, LLC



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Facsimile: (843) 545-9735
Attorney for Plaintiff

Georgetown, SC
April 19, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2012-CP-22-00385
David M. Repko,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER OF DEFENDANT
	)	COUNTY OF GEORGETOWN, A
	)	BODY POLITIC
County of Georgetown,	)	
a body politic,	)	
	)	
Defendant,	)	
_____	)	

The Defendant Georgetown County, a body politic, hereby answering the Complaint of Plaintiff, denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted and for its Answer alleges and would show as follows:

FOR A FIRST DEFENSE

1. Defendant is without knowledge or information sufficient to admit or deny the allegations of Paragraph 1; therefore, the allegations are denied and strict proof is demanded thereof.

2. The allegations of Paragraphs 2, 3 and 4 are admitted.

3. In response to the allegations of Paragraph 5, Defendant craves reference to the public records of Georgetown County and denies all allegations of Paragraph 5 inconsistent therewith.

4. The allegations of Paragraph 6 are admitted only to the extent that Irrevocable Letters of Credit were issued relating to the construction of the infrastructure at the subject Project, including the phase upon which Plaintiff's lots are located; the remaining allegations are denied and strict proof demanded thereof.

5. In response to the allegations of Paragraph 7, Defendant craves reference to the regulations of Georgetown County and denies all allegations of Paragraph 7 inconsistent therewith.

6. The allegations of Paragraph 8 seek legal conclusions and, thus, are improper allegations; to the extent the allegations of Paragraph 8 are allegations of fact, Defendant craves reference to the regulations of Georgetown County and denies all allegations of Paragraph 8 inconsistent therewith. By way of further response, Section 3-1 of the referenced Development Regulations provide that "[a]cceptance of a financial guarantee by Georgetown County shall not be construed as an obligation to any other agency, utility or property owner within affected developments."

7. The allegations of Paragraph 9 are admitted only to the extent that the developer of West Stewart Subdivision declared bankruptcy prior to completing all infrastructure work at the said Subdivision; the remaining allegations are denied and strict proof demanded thereof.

8. The allegations of Paragraphs 10 and 11 are denied and strict proof is demanded thereof.

9. In response to Paragraph 12, Defendant re-alleges its responses to the previous paragraphs as if set forth verbatim herein.

10. The allegations of Paragraph 13 are denied and strict proof is demanded thereof. By way of further response, Section 3-1 of the referenced Development Regulations provide that "[a]cceptance of a financial guarantee by Georgetown County shall not be construed as an obligation to any other agency, utility or property owner within affected developments."

11. The allegations of Paragraph 14 are admitted only to the extent that Defendant authorized the reduction of the Irrevocable Letter of Credit applicable to the Phase upon which the properties that are the subject of this lawsuit are located; the remaining allegations are denied and strict proof demanded thereof.

12. The allegations of Paragraphs 15 and 16 are denied and strict proof is demanded thereof.

13. In response to Paragraph 17, Defendant re-alleges its responses to the previous paragraphs as if set forth verbatim herein.

14. The allegations of Paragraphs 18, 19, 20 and 21 are denied and strict proof is demanded thereof.

15. In response to Paragraph 22, Defendant re-alleges its responses to the previous paragraphs as if set forth verbatim herein.

16. The allegations of Paragraphs 23, 24 and 25 are denied and strict proof is demanded thereof.

17. The allegations contained after the WHEREFORE clause are denied and strict proof is demanded thereof.

FOR A FIRST AFFIRMATIVE DEFENSE
(Rule 12(b)(6), SCRCP)

18. The allegations of the Complaint fail to state facts sufficient to constitute a cause or causes of action against Defendant and any claim against Defendant should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND AFFIRMATIVE DEFENSE
(S.C. Tort Claims Act)

19. Plaintiff's claims are barred, or otherwise limited, by the provisions of the South Carolina Tort Claims Act, including, but not limited to, §15-78-60(1), (2), (4), (5), (12) and (13).

FOR A THIRD AFFIRMATIVE DEFENSE
(S.C. Tort Claims Act)

20. Recovery by Plaintiffs, if any, is limited to that allowed under the South Carolina Tort Claims Act, including, but not limited to, S.C. Code Ann. §15-78-120.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Intervening Negligence)

21. The injuries and damages alleged to have been suffered by Plaintiff, if any, which Defendant expressly denies, were due solely to, and caused by, the intervening and superseding negligence, willfulness, wantonness and recklessness of a third party over whom the Defendant had no control so as to bar the claims of the Plaintiff against Defendant.

FOR A FIFTH AFFIRMATIVE DEFENSE
(No Duty)

22. Plaintiff's claims are barred, in whole or in part, because Defendant owed no duty to the Plaintiff's for which Plaintiff's are seeking relief.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Economic Loss)

23. Plaintiff's claims are barred, in whole or in part, because of the economic loss rule.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

24. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Compliance with Law)

25. Plaintiff's claims are barred, in whole or in part, because any and all acts of Defendant relating to the development at issue were conducted in good faith and in conformance with all applicable local, state and/or federal laws and regulations.

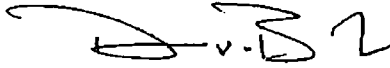
FOR A NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

26. Plaintiff's claims are barred, in whole or in part, because of Plaintiff's failure to mitigate his damages.

Defendant reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint, the Defendant Georgetown County, a body politic, prays that the Plaintiff has and recover nothing of it in this action; that Plaintiff's claims be dismissed with prejudice; that the costs of this action be taxed against Plaintiff; and that the Court grant unto it such other and further relief as the Court may deem just and proper.

MCNAIR LAW FIRM, P.A.



David J. Mills, SC Bar No. 10194
Dan V. Butler, SC Bar No. 72791
11019 Ocean Highway
Post Office Box 1469
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(843) 235-4100 – Telephone
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Attorneys for Defendant

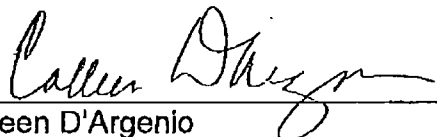
Pawleys Island, South Carolina
May 18, 2012

CERTIFICATE OF SERVICE

I, Colleen D'Argenio, an employee of McNair Law Firm, P.A., certify the foregoing document was served via E-mail and United States Mail, postage prepaid, to Plaintiff's Counsel, on this the 18 day of May, 2012, as follows:

Addressee:

William T. Moody, Esq.
P.O. Box 478
Georgetown, SC 29442
Email: wtmoody1@yahoo.com


Colleen D'Argenio

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2012-CP-22-00385

David M. Repko,)
)
 Plaintiff,) Transcript of Record
)
 vs.) September 16-17, 2013
)
 County of Georgetown, a)
 Body Politic,)
)
 Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

William T. Moody, Esquire
Robert W. Maring, Esquire
Attorneys for Plaintiff

David J. Mills, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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1 Culbertson told you earlier, my name is Bill Moody and I
2 represent David Repko who's seated here at the Plaintiff's
3 table, and David is a resident of Baltimore, Maryland, but
4 he's also a property owner here in Georgetown County, and so
5 this case is not going to be the type of case that you may see
6 on television. It's not the type of case that garners a bunch
7 of headlines. This case is about a property development known
8 as Harmony Township which is out towards the Sampit River, if
9 you're familiar with that area, and David was a purchaser of
10 property out at Harmony Township, and the evidence is going to
11 show that Harmony is a very large development that was platted
12 by the - and with the County and it shows a mix use of
13 residential property, it has commercial property, it has a
14 marina. It was a large development for Georgetown County, and
15 it was started back in the year - in the 2000s, the early
16 2000s, and what this case is about has to do with my client
17 purchasing property out there and the County's requirements
18 that certain bond or letters of credit be posted by the
19 developer to make sure that the roads and the sewer and
20 everything were put in there. So what you're going to hear a
21 lot about are Georgetown County ordinances, Georgetown County
22 requirements, Georgetown County rules and processes that go
23 along with developments.

24 Now, what, what the evidence will show is that Georgetown
25 County back in the mid 2000s had in place an ordinance which

1 specifically required that a developer could put up financial
2 guaranties to make sure that infrastructure was put in, and
3 when we talk about infrastructure we're talking about roads,
4 we're talking about sewer lines, water lines. We're talking
5 about the way you get to and from your property. All of us
6 have that to our homes. So the evidence will show that when
7 Harmony was being developed before they could sell lots out
8 there they would have to show a plat and post letters of
9 credit or bonds or cash, whatever it may be, for an amount of
10 125 percent of the amount of the infrastructure that needed to
11 be put in at the development and you'll hear testimony as to
12 why that is. That is to make sure that if a developer goes
13 under or a developer goes bankrupt that the money's there, the
14 money's there to make sure that the infrastructure is going to
15 be completed because we're going to start selling these lots
16 to people before we even have roads and we're going to start
17 selling lots to people before you have water and sewer to the
18 properties, we're going to start selling lots on a plat that
19 shows infrastructure that's not in place. So you have buyers
20 like Mr. Repko who are going out there and buying property
21 with the idea that they're going to have a lot they can build
22 a house on and they can enjoy their property at some time in
23 the future because the developer has posted this letter of
24 credit or bond.

25 Essentially it's kind of like a savings account or an

1 insurance policy to make sure that what's supposed to be done
2 is done, and what the evidence will show and we intend to
3 introduce is that Mr. Repko bought two lots out there in
4 October of 2006 and he paid \$155,000 total, 77,000 for one and
5 \$78,000 for another, substantial investment for purposes of
6 future development, put, put a lot of money into this
7 property, and then we'll see as the time progression goes
8 along through the County's documents and the County's
9 witnesses that these letters of credit that were posted to
10 make sure that these different phases had their infrastructure
11 were completed were slowly drawn down by the County at the
12 request of the developer and the contractor out there and this
13 progression goes on until the letter of credits or actually
14 before they expire the County decides to call them from the
15 bank and take control of the funds, and thereafter, the
16 developer goes into bankruptcy where he stays mired in
17 bankruptcy for several years. Everything stops except for the
18 County has some money that should have been sufficient to
19 complete the infrastructure out at Harmony. The evidence will
20 show that the County employees that allowed the letter of
21 credit to be drawn down did not even follow their own
22 ordinance. They violated their ordinance in several
23 particulars which we'll get into and I'll show you through the
24 ordinance where they violate that. They allowed the monies to
25 be reduced without getting additional cost estimates to

1 complete. As the project was going on after they took it - in
2 the money from the letters of credit, they continued to pay
3 out bills to try to help move the project along and now we're
4 at a point where there's insufficient money there to complete
5 the roads, to complete the infrastructure, to complete any of
6 the infrastructure, all of the infrastructure out in this
7 phase of Harmony Township. Right now my client has two lots
8 that he can't build on and there's no prospect of that
9 happening any time in the near future that we know of. So the
10 evidence is going to show that despite the County's intention
11 and best intention with requiring that these letters of credit
12 be posted the County didn't even follow its own rules and
13 allow the money to, to basically be paid out and now we're
14 stuck with property that's virtually worthless.

15 So we're here today because we have brought an action for
16 negligence, which just means that someone has done - they have
17 done something wrong. They owe a duty to us. They violated
18 that duty and we've been damaged and negligence, most people
19 think of it as a car accident, someone runs a red light and
20 they hit you, you know, someone because they swerve into your
21 lane run you off the road they're negligent, they had a duty
22 to drive in a safe manner within the law, they failed to do so
23 and they caused you damage. Just like a person, a county, a
24 municipality, a government can be held responsible for their
25 negligence.

1 Now negligence is purely just what most people would
2 think, somebody made a mistake and what we plan to show you
3 throughout the documentation and the witnesses, the evidence
4 in this case, that there were numerous mistakes made with
5 regards to the funds that were to be there to protect
6 taxpayers and property owners out at Harmony. We're not here
7 to bash the County. We're not here to beat up on the County
8 employees. We're not here to embarrass anybody. We're here
9 to make a wrong a right. The County had good intentions by
10 requiring that this money be posted. The ordinances required
11 it and for good reason, but the unfortunate part is the County
12 didn't follow its own ordinance. The County violated its own
13 ordinance in several particulars and as a result my client has
14 been damaged. He's paid \$155,000 for property that's worth
15 virtually nothing today and we'll get into all that as we go
16 through.

17 In a civil case like this we talk about the burden of
18 proof and the Judge will talk about that more towards the end
19 of the case, but the burden of proof in a civil case is if you
20 think of the scales of justice tipping one way or another all
21 - it's by a preponderance of the evidence, just tipping it one
22 side or the other. So if we are able to show by a
23 preponderance of the evidence that the County was negligent
24 and caused damage to my client then the Court will instruct
25 you to find for my client, but right now what we need to do is

1 go through the evidence, go through the testimony. It won't
2 be as exciting as NCIS. It won't be as exciting as some of
3 these other programs on TV but I think it, once we go through
4 it it'll be interesting enough that you'll understand the
5 purpose behind the ordinance, the purpose behind why we have
6 these protections in place and you'll understand that
7 unfortunately the County made several mistakes and caused
8 damage to my client.

9 So, appreciate your attention, appreciate you paying
10 attention to all the witnesses and the evidence in this case
11 and at the end of the day I think you'll come back with a
12 correct verdict for us. Thank you.

13 THE COURT: All right, Mr. Mills, any opening
14 statement?

15 MR. MILLS: May it please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 MR. MILLS: It's not the County's fault. It's not the
18 County's fault. Why am I talking to you like you're second
19 graders? Because I want it to be that clear because guess
20 what I got to do a couple of years ago, sit on a jury. I sat
21 right back there and I was fascinated, lawyers aren't exempt.
22 We have to do it, too, and I was fascinated by the fact that
23 the lawyers did a good job, but just tell me what's going on
24 and I'll take it from there. That was the frustration. So I
25 promised myself when I stand in front of a jury that I'm going

1 to tell them what's going on and here's what's going on.

2 You heard my friend, Mr. Moody, give his version of the
3 events and I ask simply that you listen carefully to the
4 evidence because we will have evidence, too, on behalf of the
5 County that will put a whole, put everything in a different
6 light for you, and under our rules of court the Plaintiff gets
7 to go first. I ask you not to make up your mind, just listen
8 to the whole story before you figure out for yourselves what's
9 going on, and we believe the evidence will show what's going
10 on at Harmony and what's going on with Mr. Repko is not the
11 County's fault and here's why.

12 What you didn't hear is that Mr. Repko is - made a bet on
13 real estate. He speculated on undeveloped dirt in Georgetown
14 County and it turned out to be a bad bet. He stroked a check
15 for about \$150,000 to buy a couple of these lots out in
16 Harmony. He's a resident of Baltimore, Maryland, and these
17 were the third - the second and third lots he bought. He
18 already had some property out there. He was introduced to the
19 property by his best friend who was a real estate agent for
20 the developer. He made his investment and the developer went
21 bankrupt and that has nothing to do with Georgetown County.

22 Now, it has nothing to do with the economy. It has
23 nothing to do, what the County did has nothing to do with the
24 real estate market melting down. Those are all factors you
25 will hear about.

1 Now, who is the County? We've heard about the County, a
2 municipality. Let me show you who the County is. The County
3 is my clients Holly Richardson. Holly, stand up just a
4 moment, please, ma'am. Thank you, and Boyd Johnson. Thank
5 you, Boyd. That's the County. These are human beings who
6 make decisions in real time based on the information that's
7 presented to them and the evidence will show you that Ms.
8 Richardson is the chief planner for Georgetown County. She
9 works in the planning department, which is just what you would
10 think it would be. It has to do with subdivisions and
11 regulations and property. Mr. Johnson is her boss. He is the
12 director of planning and code enforcement in Georgetown
13 County. That's the County. That's who made the decisions,
14 and we will show you, we'll have extensive evidence to show
15 you that the decisions they made were based on information
16 that was presented to them, and the information that was
17 presented to them came from the people out in Harmony, the
18 developers who said, "County, this work has been done." The
19 contractors who were moving dirt, putting in sewer and water
20 systems and catch basins and stub outs and pipes, "County, the
21 work has been done." More importantly we had certifications
22 that came into the County from licensed professional engineers
23 that said, "County, the work has been done," and we had,
24 perhaps most importantly of all, another government agency,
25 the Water and Sewer District, and what do you know, the

1 evidence will show you that the Water and Sewer District said,
2 "Boyd, Holly, we've been out there and looked. Ninety percent
3 of the water and sewer is in." That's the evidence you will
4 hear and that's what Boyd and Holly were presented with and
5 that's why they made decisions that they made based on the
6 information they had about this private development. The
7 County denies gross negligence, negligence or any of the other
8 claims by the Plaintiff. The County stands by its decisions,
9 and the County's information is only as good as what's
10 presented to it. These are - this is a private development.
11 This isn't a - this isn't something that Georgetown County,
12 it's not parks and recreation. This is a private subdivision
13 for people to buy property in and build homes if they want,
14 okay? The County is not - you heard about the statute, the
15 County doesn't have the responsibility under the statute to go
16 out and look, not when they're receiving this information. So
17 that's the irony here, and that's why I tell you it's not the
18 County's fault. The people who made the decisions and
19 presented the information to the County are not in the
20 courtroom. They're not here and that's what we contend is
21 going on. That's what's happening, that the Plaintiff is
22 attempting to place responsibility at the feet of the people
23 who only acted upon the information they had. So bear with
24 us, please. We've got some paper. I do agree with, with the
25 Plaintiff's attorney on that. We've got some paper to show

1 you to make your way through so you'll understand and you will
2 see what the County was seeing and when that evidence is in we
3 will ask you to return a verdict in favor of the County, and I
4 thank you very much for your attention and look forward to
5 working with you.

6 THE COURT: All right, ladies and gentlemen, we'll now
7 begin the evidentiary portion of the trial with the testimony
8 and other exhibits that may be introduced into evidence. Is
9 Plaintiff ready to call their first witness?

10 MR. MOODY: We are, Your Honor. We'd call Wesley
11 Bryant to the stand.

12 THE COURT: All right.

13 Whereupon, Wesley Bryant was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Please be seated and state and spell your
16 name for the court reporter.

17 MR. BRYANT: It's Wesley Bryant, W-E-S-L-E-Y, B-R-Y-A-
18 N-T.

19 DIRECT EXAMINATION

20 BY MR. MOODY:

21 Q Good afternoon, Mr. Bryant.

22 A Good afternoon.

23 Q Can you tell the jury what you do for a living?

24 A I am the county attorney for Georgetown County which
25 means I am the in-house legal counsel for the County as an

1 entity.

2 Q And Mr. Bryant, how long have you been in that position?

3 A About six and a half years.

4 Q Okay, so you started basically in 2006; would that be
5 fair?

6 A It was early 2007.

7 Q Okay, prior to that you were a practicing attorney?

8 A Yes, sir.

9 Q How long had you practiced before joining Georgetown
10 County?

11 A About a little over a year.

12 Q Okay, and were you in private practice or working ---

13 A Yes, sir.

14 Q Okay, and prior to your joining Georgetown County did you
15 have any involvement with real estate development in
16 Georgetown County?

17 A No, sir, not development itself.

18 Q At the time that you became the in-house County attorney
19 did Georgetown County have development regulations in place
20 for large developments like Harmony Township?

21 A Yes, sir, they - there are development regulations, there
22 were, yes, sir.

23 Q Okay, well, let's, let's talk about Harmony for a minute
24 because you've ---

25 A Okay.

1 Q --- you've been intimately involved since you've been
2 with the County. Tell the jury exactly what, what type of
3 development Harmony Township is.

4 A Harmony Development is a - what the State of South
5 Carolina calls a planned unit development and essentially it's
6 a, it's a subdivision that has unique uses and characters
7 involved that the County through state law can allow some
8 leniency, so to speak, with the way it's developed, so.

9 Q And how many phases are out at Harmony Township?

10 A There are a number of phases and honestly I really, I
11 really don't know the total number. I'd say, you know, more
12 than two or three. Currently I don't, I don't know exactly
13 the number.

14 Q And each phase has dozens of lots per phase; is that
15 correct?

16 A Typically, yes, sir.

17 Q Do you know how many total residential lots are out at
18 Harmony?

19 A Total residential lots, no, sir, I don't want to
20 speculate but there's a good, a good many.

21 Q It's in the hundreds; is it not?

22 A I would say if not right below a hundred certainly, right
23 above a hundred, yes, sir, something like that.

24 Q And there's also some commercial use out there; is that
25 correct?

1 A I believe there was at one time some planned commercial
2 use but I don't believe it's, it's actually in existence out
3 there.

4 Q And this would have been a very large development for
5 Georgetown County?

6 A It would seem so. There have been some larger
7 developments but for that time that was, I would say, one of
8 the largest ones.

9 Q Now, at the time that you became county attorney did you
10 become aware of certain development regulations with regards
11 to developments like Harmony Township?

12 A Just generally speaking?

13 Q Yes.

14 A Yes, sir.

15 Q How about tell the jury is a developer allowed to sell
16 lots before the infrastructure is put in?

17 A No, sir, in South Carolina a developer is not allowed to
18 sell lots that do not have the requisite infrastructure which
19 is basically roads, water and sewer prior to their
20 development.

21 Q Okay, but there is an exception to that; is there not?

22 A There is an exception, yes, sir.

23 Q Okay, and has Georgetown County adopted in their
24 ordinances an exception to that general rule?

25 A Yes, sir.

1 Q Okay, I'm going to hand you what I will represent to you
2 is the, the improvement standards for Georgetown County that
3 existed at - back in 2006 and ask you if you are familiar with
4 those standards.

5 A Yes, sir, I don't have it memorized, but I am familiar
6 with them, yes, sir.

7 Q If you will turn with me to section three of this
8 development standards, improvement standards there's a section
9 there called financial guaranties; is that correct?

10 A Yes, sir.

11 Q And if I can get over my technology challenge here I can
12 get this on the screen for everyone to see. Am I going the
13 wrong way? Let's try this. Yeah, all right, now, starting at
14 section three there, Mr. Bryant, tell, tell the jury what that
15 is.

16 A This is the, the section that's been adopted by county
17 council regarding financial guaranties when someone wants to
18 sell a lot in a subdivision prior to the infrastructure being
19 actually put in the ground.

20 Q And that would, that would be the exception to the state
21 law that requires that infrastructure be placed, put in before
22 lots could be sold; is that correct?

23 A Yes, sir.

24 Q All right, so, looking at the financial guaranty section,
25 what, what type of guaranty would the county require before

1 they would allow a lot to be sold in Harmony or any other
2 development similar to Harmony?

3 A Typically they are - they're, they're the term is a
4 letter of credit.

5 Q Okay, at some point there'd been other types of ---

6 A There have been, yes, sir.

7 Q --- financial guaranties allowed?

8 A Yes, sir.

9 Q The County would allow a developer to come in and post
10 cash for, for a certain amount to cover infrastructure; is
11 that correct?

12 A Yes, sir.

13 Q And the county at one point may have allowed a developer
14 to post a bond?

15 A Yes, sir.

16 Q Okay, but the preferred method by the County is a letter
17 of credit?

18 A Letter of credit or cash, either one, typically a letter
19 of credit is what we get.

20 Q And tell the jury exactly what a letter of credit is.

21 A A letter of credit is a - is simply a - it's a document
22 that from a financial institution to the County as the
23 beneficiary that simply states that the development has a
24 financial guaranty of 125 percent of the proposed total cost
25 of the infrastructure to be placed in the ground in that

1 development.

2 Q Okay, so, at for round numbers if it cost \$100,000 to put
3 in some roads in, in the development the County would require
4 a letter of credit for \$125,000; is that correct?

5 A Yes, sir.

6 Q Okay, now, look in that Section 3.1 that talks about the
7 general requirements for financial guaranty and it says that a
8 financial guaranty may be posted to allow for the - for lots
9 to be sold; is that correct?

10 A Correct.

11 Q And in fact, the developer couldn't sell a thing until
12 either the financial guaranty was in place or the
13 infrastructure itself.

14 A Well, I'm not necessary about what the developer can sell
15 but I can tell you before we would approve the final plat,
16 yes, sir.

17 Q Right, if he wanted to sell a lot for someone to build a
18 home on couldn't do it unless there was a - all the
19 infrastructure in or this financial guaranty.

20 A Falling under the subdivision, yes, sir.

21 Q And Harmony posted letters of credit for the various
22 phases out there at Harmony Township; is that correct?

23 A Yes, sir.

24 Q Okay, and so it seems like their intention would have
25 been to sell lots prior to the development being put in place

1 and the infrastructure being put in place; is that fair to
2 say?

3 A I think that's fair to say, yes, sir.

4 Q Okay, so, with section 3.1 the developer comes in, they
5 want to post a financial guaranty, is the County required to
6 accept a financial guaranty from a developer?

7 A That's a good question. I, I guess - I suppose we
8 wouldn't have to.

9 Q In fact if you look at the second paragraph there Section
10 3-1 second paragraph, "Acceptance of financial guaranties is
11 discretionary and Georgetown County reserves the right to
12 refuse a financial guaranty for any remaining improvements and
13 require that such improvements be completed before the
14 recording of a final plat or issuing, issuance of building
15 permits." Isn't that what it says?

16 A Yes, sir.

17 Q Okay, so the County can say, "Developer, we don't care if
18 you want to sell lots. We don't have to accept your financial
19 guaranty, put the roads, put the water, put the sewer in
20 before you start selling them; is that fair to say?

21 A Yes, sir.

22 Q In fact your own ordinance says that; does it not?

23 A Yes.

24 Q Okay, and then it also talks about acceptance of a
25 financial guaranty by Georgetown County shall not be construed

1 as an obligation to any other agency, utility or property
2 owner within the affected developments. What does that mean
3 to you?

4 A That means, that means that the acceptance of a financial
5 guaranty does not obligate Georgetown County to any other
6 entity or property owner or agency.

7 Q I got you. Okay, so, I'm the developer. I want to start
8 selling lots. Section 3-2 tells me what I've got to do;
9 right, what I have to submit to Georgetown County before
10 they'll accept the financial guaranty; is that correct?

11 A Yes, sir.

12 Q Okay, and what's required there, of course, is I have to
13 show a cost estimate that bears the original signature of a
14 licensed engineer?

15 A Yes, sir.

16 Q And based upon what's happened out at Harmony as far as
17 you know that was done prior to your becoming County attorney?

18 A I, I really don't know the answer.

19 Q Okay, Mr. Johnson or Ms. Richardson could answer that?

20 A Yes, sir, probably.

21 Q Okay, so, developer comes in and they submit these
22 documents for you and then itemized cost of the estimate to be
23 included in there with the financial guaranty and it talks
24 about everything that needs to be shown, the estimates, cost
25 estimates to complete all of the following but not limited to

1 water and sewer systems, storm drainage systems and erosion
2 control, street improvements, curbs, gutters, cul-de-sacs,
3 state road right-of-way improvements, assuming this was a
4 state road which these are private roads out there; are they
5 not?

6 A Yes, sir, they're private roads.

7 Q Okay, and then they would also require that the cost
8 estimate show any street, monuments, intersections and then
9 all that's forwarded to the planning department?

10 A I believe so. It's either - I think it's submitted
11 directly to the, to the planning department, yes, sir, I think
12 so.

13 Q And then the planning department who would be Mr.
14 Johnson, Ms. Richardson or whoever was in that position at the
15 time would take a look at all these estimates; is that
16 correct?

17 A I believe so, yes, sir.

18 Q And they would also compare it to the financial guaranty
19 to make sure that the financial guaranty was 125 percent of
20 the cost, is that how the process should work?

21 A I think that's fair to say, yes, sir.

22 Q Okay, so, after they've gotten that the County at Section
23 3.3 if I can get my technology straight here, there we go,
24 cheer me on, Section 3.3 that talks about how the planning
25 department is going to accept the letters of credit, right, or

1 the bonds or whatever surety it was taking at the time; is
2 that right?

3 A Yes, sir.

4 Q Okay, and so when you go through there it shows the one,
5 the one paragraph I'm really interested in, Mr. Bryant, is the
6 second paragraph under 3.3. It talks about approved
7 guaranties shall be independent of the development project's
8 construction loan. Why is that?

9 A I think typically because a development project's
10 construction loan, the developer may default some, in some
11 way, shape or form and that would ensure that the, the
12 financial guaranty is not affected by the developer's default.

13 Q So we're trying to make sure we have the funds segregated
14 to complete the infrastructure assuming contractor doesn't or
15 defaults on the construction loan or fails to finish; is that
16 a fair statement?

17 A Yes, sir, trying to keep the money independent for - yes,
18 sir.

19 Q In fact, the monies not supposed to be used to pay
20 regular construction costs going through the project; is it,
21 for a letter of credit?

22 A No. Say - ask me the question again. I'm sorry.

23 Q The money that's segregated in the letter of credit?

24 A It's not, no, sir, it's not to be used for regular
25 construction pay down, so to speak.

1 Q It's, it's the rainy day fund just in case of an
2 emergency; right?

3 A I would say that's fair to say, too.

4 Q That's probably a - just a small way of putting it but
5 this is segregated out and supposed to be used separate and
6 apart from the developer's money to pay contractors and
7 ongoing construction; is that correct?

8 A Right, right.

9 Q Okay, and so it goes on to talk about what standards are
10 required of a bond or a letter of credit. This was back in
11 around 2006 when you had something that dealt with bonds, be
12 equal to 125 percent of the approved cost estimates; right?

13 A Yes, sir.

14 Q Be for a period of not less than 12 months from the date
15 the final plat is submitted to recording; right?

16 A Yes, sir.

17 Q And then it also requires that it be irrevocable or
18 unconditional and payable to Georgetown County.

19 A Correct.

20 Q Meaning the contractor can't or the developer can't go
21 back to the bank later and say, "Wait, I want my money back
22 for this letter of credit. I don't want you to pay it to
23 Georgetown County." It's got to be irrevocable. They can't
24 take it; right?

25 A Right.

1 Q Okay, and again, all of that is to make sure that we have
2 funds there available if the developer goes belly up; right?

3 A Yes, sir.

4 Q Okay, so we go on to the next page, if you'll look at it,
5 there's some additional requirements and that sort of thing
6 with regards to the, to the bond or letter of credit and it
7 talks about, you know, there's at least a minimum amount. It
8 talks about extensions of letters of credit which aren't
9 applicable in the Harmony Township; were they? There weren't
10 any extensions granted?

11 A I, I ---

12 Q Or had anything to do with it?

13 A I don't know the answer to that.

14 Q Okay.

15 A Sorry.

16 Q And then we go to the Section 3.5 and that's where we
17 talk about reductions in the letters of credit by the County;
18 is that right?

19 A Yes, sir.

20 Q And it talks - it says the very first sentence, "A
21 developer may reduce a financial guaranty during the initial
22 coverage period"; right?

23 A Correct.

24 Q It's not an obligation of the County to reduce the letter
25 of credit, is it, from that section in the ordinance?

1 A No, sir, it does not say that.

2 Q In fact it was discretionary as to whether the County
3 should reduce a letter of credit or not.

4 A Is that a question?

5 Q Yes.

6 A Well, it doesn't say that specifically.

7 Q Okay, and the way that it would go about trying to reduce
8 the letter of credit is that a request to reduce the financial
9 guaranty shall be submitted to the planning department and
10 that would have been Mr. Johnson and Ms. Richardson and
11 whoever else was in the planning department at that time;
12 correct?

13 A Yes, sir.

14 Q Okay, and what is required to have that letter of credit
15 reduced by the County if it decides to do so?

16 A Are you referencing a specific section or you just want
17 me to answer from my general knowledge?

18 Q Don't you - in that second sentence it should include a
19 revised construction cost estimate.

20 A Oh, I'm sorry. Yes, sir, a revised cost estimate to the
21 Georgetown County Department of Public Works for approval.

22 Q Okay, so the County initially requires a cost estimate to
23 be signed off by an engineer showing how much the cost
24 estimates are before you can post a letter of credit of ---

25 A Correct.

1 Q --- 125 percent of the value of those costs; correct?

2 A Correct.

3 Q In this section would the County also need to have an
4 engineer's signature on the revised cost estimates to ensure
5 that it's maintaining 125 percent of the costs?

6 A Would it - would there need to be an engineer's
7 signature?

8 Q Yes.

9 A It doesn't say that, no, sir.

10 Q Okay, would it be a good idea to have that?

11 MR. MILLS: Objection. It requires the witness to
12 speculate, Your Honor.

13 THE COURT: Sustained.

14 Q Would the County know that it was - without a, a cost
15 estimate like that would the County know that it was
16 maintaining 125 percent financial guaranty to complete the
17 construction costs?

18 A Without a cost estimate?

19 Q Yes.

20 A Just in general?

21 Q Yes.

22 A No, sir.

23 Q Okay, now, it goes on to talk about the second paragraph
24 under Section 3-5, "Reductions of financial guaranties will
25 not be allowed within six months of any previous request and

1 shall not" - "and shall be no less than 125 percent of the
2 revised construction cost estimates." You see that; don't
3 you?

4 A Yes, sir.

5 Q Now, with reference to Harmony Township and you have been
6 intimately involved for some time now, were, in fact, letters
7 of credit reduced more than once in a six month period of
8 time?

9 A Frankly I was not involved, that was before my time. I
10 know they were reduced. I can't tell you how many number of
11 times there were.

12 Q And who could tell me that?

13 A Probably a member of the planning staff over there.

14 Q Okay, but you've been involved with this since 2007; is
15 that correct?

16 A Correct, correct.

17 Q And it's your, and it's your statement that you don't
18 know that the letters of credit have been reduced, some
19 letters of credit out there have been reduced more than once
20 in a six month period of time?

21 A I don't know specifically how many times they were
22 reduced within a six month period of time, no, sir.

23 Q Okay, but you know that they have been reduced more than
24 once in a six month period of time; don't you?

25 A I think so, yes, sir.

1 Q All right, and in fact, there have been times where
2 they've been reduced three or four times in one year; isn't
3 that true?

4 A I honestly don't know the answer to that either.

5 Q Okay, now, going forward at some point you all ---

6 MR. MOODY: Oh, by the way we'd offer that as
7 Plaintiff's Exhibit Number One, Your Honor, the improvement
8 standards for Georgetown County that were applicable in 2006.

9 THE COURT: Any objection?

10 MR. MILLS: And that's without objection, Your Honor.

11 THE COURT: All right, Plaintiff's Exhibit One
12 admitted into evidence without objection.

13 (Plaintiff's Exhibit Number One [Improvement Standards]
14 admitted into evidence and appropriately marked.)

15 BY MR. MOODY:

16 Q Now, Mr. Bryant, at some point the County was required to
17 call the letters of credit out there at Harmony Township; were
18 they not?

19 A Yes, sir.

20 Q Okay, do you recall what events led up to that, to the
21 County calling the letters of credit?

22 A Yes, sir, the developer/owner for Harmony called and
23 requested a meeting with the Georgetown County Planning Staff,
24 which I attended, and this was some time in - maybe it was
25 August of 2007, if I recall correctly, and he showed up and

1 with, with a couple of his staff and basically told Georgetown
2 County that he no longer had the financial means to put any
3 infrastructure within any phase of Harmony that was ongoing at
4 the time.

5 Q And at that point it was the County's decision to call
6 all of the letters of credit that the developer had posted
7 with the County?

8 A The developer at that time advised us that there were
9 some expirations coming up for the letters of credit and that
10 there was a - there might be an issue with one of the banks;
11 and so, he advised us to call all the letters of credit that
12 were still in good standing I guess so to speak or were still
13 available.

14 Q And all of these letters of credit were - had a one year
15 - you need some water?

16 A Excuse me, no, sir, I'm good.

17 Q You okay? All these letters of credit they were good for
18 a year; is that correct?

19 A Typically letters of credit are for a 12-month period and
20 they can be, you know, a financial institution will - will
21 extend it sometimes for 12 more months, so.

22 Q Okay, and in, in '07 most of those letters of credit were
23 getting ready to run up on their one year term; were they not?

24 A I'm not sure which term but yes, sir, I think, I think
25 so. I think most of them were.

1 Q Okay, well, let's talk about ---

2 A That's generally speaking.

3 Q --- let's talk about the letter of credit for the
4 particular development which my, phase in which my client had
5 an interest. Let me show you this document and ask you if you
6 can identify that for the record.

7 A All right, this is a clean irrevocable stand by letter of
8 credit number SM220037W issued by Wachovia Bank, the
9 beneficiary being Georgetown County.

10 Q Okay, and does it have an expiration date on that letter
11 of credit?

12 A Expiring date 5-23-2007.

13 Q And would that be the letter of credit that was posted
14 for the developer to actually sell lots in this phase of
15 Harmony Development?

16 A It doesn't say which - which phase are we talking about?

17 Q 2-D-1.

18 A I actually don't know the answer to that specifically.

19 Q Okay, I'll leave that for ---

20 A Okay.

21 Q --- for either Mr. Johnson or Ms. Richardson, Ms.
22 Richardson, but that, that letter of credit was typical of
23 what you would get for whatever phase development was going
24 on; is that correct?

25 A It seems typical, yes, sir.

1 Q Okay, and most of them had a year's anniversary so to
2 speak before they would - you'd have to call them; is that
3 correct?

4 A That's been my experience, yes, sir.

5 Q Okay, and so, in '07 the County's having to call letters
6 of credit because the developer is getting, saying they don't
7 have any more money; is that fair to say?

8 A Yes, sir.

9 Q Okay, what happened after the County started calling
10 these letters of credit?

11 A With regard to the procedure?

12 Q Well, how, how were the - where are the funds now?

13 A The funds are being held in trust in a - what we call a
14 suspense liability account and simply it's an account within
15 the Georgetown County coffers so to speak that designates
16 money that's not actually Georgetown County money. It's just
17 being held there.

18 Q Would the County actually segregate out the monies for
19 the different phases in Harmony Township?

20 A Within different accounts?

21 Q Yes.

22 A There was one account set up for all the money that was
23 received.

24 Q But it's accounted for separately for each phase; is that
25 correct?

1 A It should, it should be not specifically in that budget
2 but within like my file or the planning file, yes, sir.

3 Q Okay, when the letters of credit were called were there
4 any costs, updated cost estimates done once they were received
5 to determine if there were, in fact, enough monies to complete
6 the infrastructure?

7 A I believe there, I believe there were and I'm not, I'm
8 not so - I'm not actually absolutely sure, you know, how much
9 or when or who did those, but I'm - I, I think it was after
10 the fact, yes, sir.

11 Q Okay, and after the County called the letters of credit
12 at some point the County started expending funds to try to
13 keep the development moving forward; is that correct?

14 A I wouldn't, I wouldn't necessarily couch it in those
15 terms. The County - the contractor/owner, the owner hired its
16 own contractor and then the, the owner would request the
17 County to release funds for payment for, payments for that
18 contractor.

19 Q And that was done ---

20 A After work was completed, yes, sir.

21 Q I'm sorry. I didn't mean to speak over you.

22 A Yes, sir, sorry, no, yes, sir.

23 Q And that was done numerous times by the County for a long
24 period of time; is that correct?

25 A I would say that was done quite a few times and maybe for

1 a year after that.

2 Q Okay, and what caused the County to stop paying out?

3 A It became clear and this is, you know, coming from me
4 actually, not Plaintiff's, but it became clear to me that the
5 new owner of Harmony was, for lack of a better term, he simply
6 just wasn't trustworthy at that point and it seemed like that
7 the best interest of the development itself were not his
8 priority and simply I informed him that we were not going to
9 expend any more funds under his current scheme unless he could
10 procure the or prove that he had the remaining funds at that
11 time and that's very general. I don't remember specifically
12 what.

13 Q With regards to the County's role in managing these funds
14 would you say that the County is a trustee over these funds?

15 A I would say the County holds the funds in trust, yes,
16 sir.

17 Q Okay, and a trustee owes a fiduciary duty; wouldn't you
18 say?

19 A Yes, sir.

20 Q In fact, you reference that in some of your e-mails to
21 the various property owners and/or the developer over time; do
22 you not?

23 A I don't recall specifically but that sounds familiar,
24 yes, sir.

25 Q Okay, let me see if I can find some of them for you and

1 let's go through those. For example, let's, let's look at an
2 e-mail that you sent to a Mr. Underwood who apparently was a
3 property owner out at Harmony and this is dated March 2nd,
4 2009.

5 A Okay.

6 Q See if you recognize that.

7 A All right, bear with me real quick.

8 Q Okay, and read through it. I know you probably haven't
9 seen it for a while. If you're like me you probably have
10 dozens of, thousands of e-mails.

11 A All right, I think I, I was a little long-winded in that.
12 Sorry.

13 Q Mr. Bryant, is that your e-mail that you sent to a Mr.
14 Underwood in - on March 2nd, of 2009?

15 A Yes, sir, to a ---

16 Q And that is regarding at least some happenings going on
17 at Harmony Township; is that correct?

18 A Yes, sir.

19 MR. MOODY: We'd offer that as Plaintiff's Exhibit
20 Number Two.

21 MR. MILLS: And that's without objection, Judge.

22 THE COURT: All right, Plaintiff's Exhibit Two
23 admitted into evidence without objection.

24 BY MR. MOODY:

25 Q All right, let's see if I can ---

1 REPORTER: I need to mark it.
2 THE COURT: Yeah, let's ---
3 MR. MOODY: I'm sorry.
4 THE COURT: I'm sorry. I thought it had already been
5 marked.
6 MR. MOODY: He's got the original.
7 (Plaintiff's Exhibit Number Two [3-2-09 e-mail from
8 Bryant to Underwood] admitted into evidence and appropriately
9 marked.)
10 THE COURT: Is Exhibit One already marked?
11 REPORTER: Yes, sir.
12 MR. MOODY: Yes, sir.
13 THE COURT: Okay.
14 BY MR. MOODY:
15 Q I want you to take a look at that e-mail if we can, if I
16 can get my, myself straight here. Now let's just start with
17 that. Now, Mr. Underwood, he's one of the purchasers out
18 there at Harmony; was he not?
19 A Yes, sir, I assume so.
20 Q And he like other - some others were contacting the
21 County trying to get information with regards to where -
22 what's happening with the development; is that fair to say?
23 A Correct, yes, sir.
24 Q In fact, Planning Department and other departments
25 throughout the County were getting calls and messages from

1 property owners out there on a semi-regular basis; were they
2 not?

3 A At least the Planning Department, yes, sir.

4 Q Okay, and this is in March of 2009 and you're talking to
5 Mr. Underwood about letters of credit that were in place and
6 that sort of thing; is that correct?

7 A Correct, yes, sir.

8 Q In fact, this, this, this e-mail would it not have been
9 sort of your history of how things got to that point with the
10 County? Is that fair to say?

11 A It's fair to say that's a synopsis of the history, yes,
12 sir.

13 Q Okay, now, Mr. Underwood's not in the same phase as, as
14 my client, but at that point you tell Mr. Underwood that
15 there's \$165,000 left in a letter of credit account that the
16 County's holding for Harmony and that when the letter of
17 credit was cashed it was only around \$565,000 and that would
18 have been in a separate phase; is that correct?

19 A I'm not sure which phase, but yes, sir.

20 Q Okay, so when the letter of credit was cashed by the
21 County there was \$565,000 but by March of 2009 it had been
22 spent down to \$165,000; is that fair to say?

23 A Correct, yes, sir.

24 Q Okay, and then you go on to talk about the developer only
25 delivered \$140,000 after you refused to give them any more of

1 the money; correct?

2 A Correct, yes, sir.

3 Q Okay, and you talk about how it's unfortunate that the
4 development's fallen on hard times financially and that, you
5 know, you kind of give a history of what the County has had to
6 do since the developer filed bankruptcy; is that fair to say?

7 A Yes, sir.

8 Q Okay, and in fact, midway down there you talk about
9 having to use the funds to help pay contractors going forward
10 and at some point the County decides that it wasn't going to
11 do it anymore until a financial plan was in place; is that
12 correct?

13 A Yes, sir, till they had financial plans for the rest of
14 the infrastructure for West Stewart, yes, sir.

15 Q Okay, and so, all along the County after it took in the
16 letters of credit money were kind of paying bills for
17 contractors and engineering and whatever work was going on at
18 Harmony and at some point said, "Enough's enough, we don't
19 have enough money to finish it." Is that fair to say?

20 A I think, I think that's fair to say, yes, sir, but there
21 was a - I mean, from a ---

22 Q Also you had an issue with the subsequent developer?

23 A Right, right.

24 Q And then the language in this e-mail which really I want
25 to focus on it's down about two-thirds of the way down you

1 talk about, let me get the right language there, it says, "We
2 felt we had a good monitoring system in place and also had a
3 fiduciary duty to the citizens who purchased property in
4 Harmony to effectively manage this LOC money," being the
5 letter of credit money, "and not let Harmony throw it into the
6 wind." Is that right?

7 A Correct.

8 Q So tell me what type of monitoring system the County had
9 in place with regards to expenditures from these, these funds.

10 A Typically what would happen is that up front after the
11 money was received, and this is generally speaking, the
12 Harmony Development, as the owner hired a, an engineering
13 firm, Earthworks Engineering, and they submitted a cost
14 estimate to finish whatever section this, you know, were
15 there, and the County then compared that with the money
16 available and that sort of thing and went from there.

17 Q But the engineer was hired by the developer, was it not?

18 A By the owner, yes, sir, the same thing.

19 Q The owner, developer, wasn't hired by the County?

20 A No, sir.

21 Q Okay, and if you'll tell the jury what you mean by the
22 County having a fiduciary duty with regards to these funds.

23 A Well, I think that at that point in time the County had
24 an obligation to make sure that Harmony Development, it was,
25 it was clear that somehow there was some for lack of a better

1 term there were some lies made or things like that. There was
2 some fraudulent activity or what have you with regard to
3 Harmony, the owner of Harmony and what he had presented to the
4 County in the years prior. So at that point in time we were
5 basically very cautious with releasing any of the money
6 without the contractor's payment application along with the
7 engineer's approval, excuse me, that the work had been done
8 and that sort of thing, so.

9 Q But up to that point there wasn't any monitoring system
10 in place when the letters of credit were called; is that
11 correct?

12 A With regard to before the letters of credit were called?

13 Q Yes.

14 A I don't know the answer, that was before.

15 Q Okay.

16 A Before me.

17 Q And in fact, the County didn't send its own people out
18 there to inspect the work being done as it was going along to
19 make sure that what they were paying for they were getting.

20 A During, after we started expending funds?

21 Q Yes, sir. The County - we did send at that point in time
22 I think our roads guy went out there to inspect some roads and
23 stuff like that just to make sure - there was an issue with
24 one of the contractors who apparently had worked for Harmony
25 before and at that point, you know, we, we wanted to make sure

1 that, that they weren't, you know, for lack of a better term
2 being dishonest again because we had thought that maybe had
3 been dishonest before.

4 Q Okay.

5 A So.

6 Q And so but the County did not separately hire its own
7 independent engineer to make sure that this work was being
8 done properly?

9 A No, sir, the County and at that time the County didn't
10 have any - the County had one storm water engineer on staff I
11 think back then. We have a few now, a few more now.

12 Q Okay, but the County took it upon itself to call these
13 letters of credit and took it upon itself to expend the funds
14 when it had a fiduciary obligation to manage them properly but
15 didn't take any steps to have its own independent engineer
16 verify what they were getting?

17 A Well, I think ---

18 MR. MILLS: Objection, that misstates the witness's
19 prior testimony. He just testified that, in fact, we had
20 engineers look.

21 THE COURT: Overruled. I'll allow the question. Go
22 ahead.

23 A I think if I understand your question correctly the, the
24 thought process there is that a - an engineer in the State of
25 South Carolina is licensed to practice, is licensed, receives

1 a seal, has a license number and it's incumbent upon an
 2 engineer to be honest, to do the right thing, just like you
 3 and I as lawyers are supposed to do the right thing and be
 4 honest and as officers of the Court. So the theory there is
 5 that we have no reason not to necessarily distrust an
 6 engineer, especially at this stage. So that's why the County
 7 didn't take it upon itself. It was really unprecedented, too.
 8 The County had never taken, hired an outside engineer for a
 9 private development like this to spend public monies for that.

10 Q Well, I'm confused because before you said that there was
 11 some sort of fraudulent activity going on or some dishonesty
 12 going on out there.

13 A Right.

14 Q But the County's holding money for the infrastructure but
 15 they don't - after experiencing what they had they don't see
 16 fit to have its own private engineer take a look at the cost
 17 estimates?

18 A Well, after experiencing what it did, you know, it was
 19 pure speculation and nothing, that stuff hasn't been proven to
 20 this day, unfortunately, but the expenditure of public monies,
 21 public taxpayer monies for a private development simply
 22 there's a prohibition on spending public money for private
 23 development in the first place but it wasn't incumbent upon
 24 the County at the time to go hire with, you know, separate
 25 taxpayer funds. The money that's held in trust is, is the

1 contractor's money. It's not the County's money. So we
2 wouldn't spend that money unless the contractor, I mean,
3 excuse me, unless the owner, I said contractor a minute ago, I
4 meant to say owner, unless the owner actually, you know, asked
5 us to if that makes any sense.

6 Q The County up to that point had been relying on
7 information that it received from the contractor's engineer up
8 to that point; were they not?

9 A There was - like, again, it was before my time but I
10 believe there were various engineers, yes, sir, or maybe,
11 maybe not, various contractors maybe, yes, sir.

12 Q And Earthworks was out there most of the time as the
13 engineer; were they not?

14 A They were out there most of the time that I was involved,
15 yes, sir.

16 Q Okay, all right, so, going on to Mr. Underwood's e-mail
17 you talk about the County's fiduciary duty and, and what
18 they're supposed to do, what the County needs to do with the
19 funds and then you talk about what happened with regards to
20 the subsequent developer and he finally disappears or walks
21 off the job; is that fair to say?

22 A Yes, sir, Chuck Thompson, yes, sir.

23 Q Okay, and at the bottom of the first page it says, "So,
24 that's just a quick synopsis of where it is today involving
25 the County. We have that money is not ours. Must be utilized

1 by the owner of Harmony for infrastructure at Harmony," right?

2 A Correct.

3 Q Okay, and then you go on to say on the second page that
4 there potentially are some other folks out there who, who
5 might want to buy this or might step in as a subsequent
6 developer but overall at that point there's not enough funds
7 to complete the infrastructure at Harmony; is there?

8 A No, sir.

9 Q Okay, and all of that was because the County was relying
10 on the engineer out there who's giving cost estimates; is that
11 fair to say?

12 A Well, I'm not sure why there's not exactly enough money
13 left but the County did rely on the engineer out there to give
14 cost estimates, yes, sir, Earthworks who had, who had worked
15 for the County on County projects numerous times as well, yes,
16 sir.

17 Q All right, let me find another document for you to take a
18 look at.

19 A Okay.

20 Q Bear with me one second. I'm going to, I'm going to pull
21 off another e-mail because that person's not here to testify,
22 so.

23 A Okay.

24 Q I don't want to run into a hearsay problem but I want to
25 show you a document dated January of '08. It's an e-mail that

1 looks like from you to Kim Pavao. You know who Kim Pavao is;
2 don't you?

3 A Yes, sir.

4 Q Okay, take a look at that e-mail for me and tell me if
5 that is your e-mail and take a minute to go through it and
6 read it.

7 A Okay.

8 Q Okay, that is your e-mail to Kim Pavao?

9 A Yes, sir.

10 Q Okay, and that - what's the date on your e-mail; I'm
11 sorry?

12 A January 15th, 2008.

13 Q Okay, I wanted to make sure I had the same one. Now, I'm
14 not - there's, there's discussion about an issue with regards
15 to letter of credit but what I'm interested in, Mr. Bryant, is
16 beginning on about the third sentence of that e-mail I wonder
17 if you could take a look at that.

18 A Yes, sir.

19 Q These are your, your words; right, beginning in the third
20 sentence where it talks about, "Remember that the whole
21 point."

22 A Yes, sir.

23 Q Okay, "Remember that the whole point behind the letter of
24 credit," go ahead and finish reading that for me.

25 A Oh, I'm sorry, "Is to protect the owners who purchase

1 property and are made promises that are not kept."

2 Q Okay.

3 A "It is not" - you want me to keep going?

4 Q Yeah, it's not for the, technically for the benefit of
5 the contractor; is it?

6 A That's right, "although some including myself think it
7 does protect the contractor as well it is for the property
8 owners."

9 Q Okay, and so, the whole point is to make sure that the
10 property owners are protected with this money so that the
11 guaranties are in place; is that right?

12 A That is what I wrote in 2008, yes, sir.

13 Q In fact, the LOC is a guaranty of protection just as bond
14 is and technically is not supposed to be used to pay
15 contractors unless a default occurs; is that correct?

16 A That's what I wrote, yes, sir.

17 Q So, if the County were paying before, before the letters
18 of credit were called, if the County were allowing monies to
19 be disbursed to pay the contractors that would not be
20 consistent with what Georgetown County was supposed to do; is
21 that correct?

22 A Hold on, let me read it again. I'm sorry. Could you ask
23 your question again? I'm sorry.

24 Q I'll try to remember it.

25 A I'm, I'm sorry. I was just rereading. I'm sorry.

1 Q If the - before the letters of credit were called and
2 before a default if the County had been disbursing funds to
3 the contractors that would not be consistent with the
4 ordinance the County had in place at the time; would it be?

5 A No, sir, but the County doesn't disburse money to
6 contractors.

7 Q Okay, we'll get into that a little later. All right, so,
8 it goes on to talk about and you'll have to bear with me, I
9 didn't bring my glasses, the fact that a developer puts money
10 in a letter of credit with the expectation that the same money
11 will be used to pay a contractor is fine if he wants to take
12 that chance; is that right?

13 A Yes, sir, go that route so long as he understands the law
14 as set by the County.

15 Q The law is that financial guaranty is not supposed to be
16 used to pay contractors on a monthly basis.

17 A Yes, sir, and I was, I was sort of being a smarty pants
18 there with that line. That's ---

19 Q That's all right.

20 A --- if you take it that way, sorry.

21 Q That's what we lawyers do. All right, last part, last
22 part I wanted you to look at is that talks about, "In Harmony
23 is the first time that we've had to act as trustee for funds
24 for default"; is that right?

25 A Which, which sentence are ---

1 Q Midway down ---

2 A Okay.

3 Q --- the page talks about County does not deal with ---

4 A Okay, okay.

5 Q --- private developers and it goes on to say, "In fact,
6 Harmony is the first time we've had to act as trustee for
7 funds for default"; right?

8 A Yes, sir.

9 Q And that's why you want the emphasis on, "Our LOC
10 procedures, that, that doesn't apply but the theory is money
11 in a LOC should not be used to pay a contractor every 30 days,
12 every two months, what have you." That's what you wrote?

13 A Correct.

14 Q So isn't it true, Mr. Bryant, that at some point before
15 the letters of credit were being called that the County was
16 getting pay applications from the developer to reduce these
17 letters of credit?

18 A That should have been what was received, yes, sir.

19 Q Okay, and these pay applications would come into
20 planning, the planning department; is that right?

21 A Correct.

22 Q And the procedure would be that the planning department
23 was supposed to have a cost estimate to complete before they
24 would reduce the letter of credit; is that right?

25 A Yes, sir, that seems to be.

1 Q And once again under the ordinance they didn't have an
2 obligation to reduce the letter of credit. It was purely
3 discretionary; is that correct?

4 A Yes, sir, reading the language that way, yes, sir.

5 Q Okay, so if a contractor's sending in pay applications
6 and they're entitled pay applications to the County ---

7 A Correct.

8 Q --- asking that the County reduce the letter of credit so
9 that this pay application can be made isn't the County just
10 directly paying the contractor?

11 A No, sir, I don't believe so.

12 Q Okay, it's just form over substance really; isn't it?

13 A Well, I'm not sure how they're, you know, how they're
14 couched to pay application. I'm not sure how - I don't think
15 that a pay application was submitted by a contractor directly
16 to planning staff prior to, to the expenditures being made if
17 that makes any sense.

18 Q Okay, would the ---

19 A I guess, I guess I need to - you need to tell me which
20 period you're talking about and I can be more specific.

21 Q Okay, prior, prior to the letter of credit being called.

22 A Being called, okay.

23 Q '06, '07.

24 A Okay.

25 Q The County would receive pay applications from the owner,

1 from the contractors; correct?

2 A I think it - I'm not sure of the exact terminology but
3 it, it, it's something like a pay reduction request from an
4 owner after so much work has been done, yes, sir.

5 Q And they're supposed to get a cost to finish project cost
6 from the engineer; right, the planning department?

7 A They - from - yes, sir ---

8 Q From, from the ---

9 A --- from the project engineer, yes, sir.

10 Q Did the County require that the owner show that the bill
11 had been paid?

12 A That the bill had been paid?

13 Q Before they would reduce the letter of credit?

14 A I don't know the - I don't know the answer to that, no,
15 sir.

16 Q Okay, in fact there's no obligation in the, in the
17 ordinance to require that; is there?

18 A I haven't read that that I recall, yes, sir.

19 Q Okay, now, and the ordinance talks about it's not - the
20 letter of credit is not supposed to be there to make month to
21 month payments or ongoing payments for a contractor; is that
22 correct?

23 A It talks about being independent from the general
24 construction loan; yes, sir.

25 Q So it - so being independent from a construction loan you

1 would think that the County would have looked to see if the
2 contractor had been paid; would that be fair?

3 A I'm not so certain.

4 Q Okay.

5 A I mean, I don't, I don't do that internally. So I, I
6 don't - I'm not the appropriate person to answer that
7 question.

8 Q Understood, understood. So it's pretty clear ---

9 MR. MOODY: First of all, Your Honor, we'd offer e-
10 mail from Wesley Bryant to Kim Pavao, January 15th, 2008, as
11 Plaintiff's Exhibit Number Three.

12 REPORTER: I need to mark it.

13 THE COURT: Let's mark it.

14 MR. MILLS: May I see it, Your Honor?

15 THE COURT: Yeah.

16 MR. MILLS: That's without objection, Your Honor.

17 THE COURT: All right, Plaintiff's Exhibit Number
18 Three is admitted into evidence without objection.

19 (Plaintiff's Exhibit Number Three [1-15-08 e-mail from
20 Bryant to Pavao] admitted into evidence and appropriately
21 marked.)

22 BY MR. MOODY:

23 Q Mr. Bryant, while I'm looking for this other e-mail can
24 you tell me who is the owner of Harmony Township now?

25 A My understanding is the current owner of Harmony, it's an

1 LLC, I think it's maybe Harmony Holdings or Harmony
2 Development LLC, but the - I think it's a single member LLC,
3 which means it's, it's one owner and his name is Charles
4 Thompson. I believe he resides in Summerville, South
5 Carolina.

6 Q Is there any development going on out there now?

7 A I honestly don't know the answer to that question.

8 Q Okay, have you received any pay requests for the funds
9 that the County is holding for any work being done at Harmony?

10 A No, sir, within a, within a - not within the last year or
11 beyond, yes, sir.

12 Q Okay, and have you gotten any updated costs to complete
13 from any engineer with regards to what it would take to
14 complete the infrastructure in the various phases of Harmony?

15 A Not since the early, late maybe 2008, early 2009, no,
16 sir, that I'm aware of.

17 Q How long is the County going to sit on this money?

18 A I'm not the appropriate person to answer but I can tell
19 you in my opinion the County is going to sit on it until the
20 owner shows up with an adequate financial plan to finish the
21 remaining phases.

22 Q So that may happen next year, it may happen 20 years from
23 now.

24 A I can't tell you when. He's, he's approached, I mean,
25 I've met with him personally within the last year and a half.

1 He's called me a couple of times, various voicemails, things
2 like that and with, with aspirations and promises and then he
3 disappears.

4 Q Okay, all right, I'm going to show you another e-mail
5 that you had, you had sent to Boyd Johnson and to Josh
6 Acevedo. This was in December of '07.

7 A Okay.

8 Q Ask you to take a look at that and see if that's
9 something that you're familiar with.

10 A Josh was an employee, okay. Okay.

11 Q Okay, and this is an e-mail that you sent to Mr. Acevedo
12 who was associated with the developer at the time; was he not?

13 A I believe, yes, sir, he was the developer, the owner's
14 assistant or something like that.

15 Q Okay, and apparently ---

16 A He ---

17 Q --- you're getting frustrated with the developer at that
18 point?

19 A --- he upset me prior to this e-mail, apparently, with
20 his language, so.

21 Q I understand, and, and I'm not concerned about the tenor
22 of the e-mail so much as I'm concerned about what you have to
23 say in the e-mail. So we'll get past the aggravation,
24 aggravated part and go on straight to what it says and let me
25 see if I can get a better focus on this, and beginning second

1 sentence it says, you talk about, "If you would research the
2 letter of credit you'll find that they are held by
3 governmental entities to ensure against the developer's
4 default and/or foreclosure and/or the failure to finish the
5 development in which has begun or has been sold to citizens
6 and taxpayers of Georgetown County"; right?

7 A Correct.

8 Q We've talked about that, "and now has failed to come
9 through his promises on the infrastructure," and then you go
10 on to talk about - your next sentence says, "Not only that,
11 letters of credit are solely for the benefit of the property
12 owners out there"; right?

13 A Which - okay, I see it now, "Not only that," yes, sir.

14 Q And then it goes on to say that because Georgetown County
15 has funds, "It's to ensure the proceeds are spent wisely and
16 correctly so to complete the phases you have failed to
17 complete."

18 A Yes, sir.

19 Q Is that what it says?

20 A Yes, sir.

21 Q And you go on to talk about that the County acts as a
22 trustee or keeper of the purse for the funds; is that right?

23 A Correct, yes, sir.

24 Q Okay, and again, as a trustee the County would have a
25 fiduciary duty to those property owners to make sure that the

1 funds were spent correctly; isn't that fair to say?

2 A According to my words in this e-mail, yes, sir.

3 Q Okay, and, and you, you are the County attorney, you work
4 for the County?

5 A Correct, yes, sir.

6 Q So that would be your position with regards to the
7 County?

8 A In 2007, yes, sir.

9 Q Okay, all right.

10 MR. MOODY: We'd offer that as Plaintiff's Exhibit
11 Number Four.

12 THE COURT: Any objection?

13 MR. MILLS: It's without objection.

14 THE COURT: All right, let's mark it. Plaintiff's
15 Exhibit Four is admitted into evidence without objection.

16 (Plaintiff's Exhibit Number Four [12-5-07 e-mail from
17 Bryant to Josh Acevedo] admitted into evidence and
18 appropriately marked.)

19 BY MR. MOODY:

20 Q So, we've established pretty much what your position is
21 with regards to the County's obligation, these funds is that
22 the County is a trustee or the fiduciary of it; right?

23 A Yes, sir.

24 Q Okay, now, let me ask you specifically about the phase in
25 which my client has an interest in and I want to show you a

1 map that, it's a very small version of a plat that was
2 submitted to the County.

3 A Okay.

4 Q Does that look like a plat that the County would have
5 received in this phase of Harmony Township?

6 A Yes, sir, it says phase D-1.

7 Q Okay, and I'll represent to you if you don't know that my
8 client's lots are in Phase 2-D-1.

9 A Okay.

10 Q Now, on that map would it show a designation or a
11 certification for the amount of the bond or letter of credit
12 that was posted on this section or phase of Harmony?

13 A Yes, sir, it should have some language in there that's
14 required about financial guaranties.

15 Q And I've taken the liberty of blowing that up on a
16 separate piece of paper for you.

17 A Okay.

18 Q So if I could let you look at that, it's the same plat,
19 it's just a little bit larger.

20 A Okay, all right, okay.

21 Q And that would be the language at the top of the plat; is
22 that correct

23 A Correct, yes, sir.

24 Q And that plat submitted to the County for approval prior
25 to any lots being sold; is that fair to say?

- 1 A Yes, sir; yes, sir.
- 2 Q Okay, what was the amount of the letter of credit for
3 phase 2-D-1?
- 4 A Written in here which I assume is by Denise Sherman she
5 wrote one million - \$1,301,705.63.
- 6 Q About \$1.3 million?
- 7 A Correct.
- 8 Q Okay, and Denise Sherman she worked for planning
9 department at that time?
- 10 A I believe she was an employee of Georgetown County at
11 some point in time, yes, sir, before my time.
- 12 Q Okay, and \$1.3 million would've been 125 percent of some
13 cost estimate submitted to the County; is that fair to say?
- 14 A It should have been, yes, sir.
- 15 Q Okay, and we've talked about the requirements of what the
16 County would require for the financial guaranties. So there
17 was that 1. - \$1.3 million of a letter of credit on file for
18 2-D-1.
- 19 A According to this plat, yes, sir.
- 20 Q Okay, can you tell the jury today how much money is left
21 over from that letter of credit?
- 22 A I honestly don't know how much is left over from that
23 particular letter of credit.
- 24 Q Can you tell this jury how much was taken in when the
25 county cashed the letter of credit?

1 A I'm not sure if this letter of credit was the one that
2 was actually cashed. So I honestly - I don't, I don't know
3 specifically, sorry.

4 Q Okay, do you know if there's sufficient funds to complete
5 the infrastructure in 2-D-1?

6 A My, my presumption would be, no, there's not, based on my
7 knowledge of the development, yes, sir.

8 Q In fact that's true of all the other phases of the
9 development that are incomplete; is that correct?

10 A That's a fair assumption to make, yes, sir.

11 Q Okay, I'm not going to ask to put that in right now.

12 A Okay.

13 Q So you can just set it to the side.

14 A All right.

15 MR. MOODY: Beg the Court's indulgence one minute,
16 please.

17 THE COURT: All right.

18 MR. MOODY: I don't have any further questions of this
19 witness at this time, Your Honor.

20 THE COURT: All right, let's take a break.

21 All right, ladies and gentlemen, we're going to take a
22 short break, give you an opportunity to stretch your legs, use
23 the restroom, whatever the case may be. We'll take about a 10
24 minute break. I caution you do not discuss the case even
25 among yourselves at this point in time. It's too early for

1 deliberations. You can check your cell phones. If you need
2 to return calls you can return phone calls but do not discuss
3 this case with anyone, don't conduct any independent
4 investigations and we'll bring you back in in about 10 or 15
5 minutes, all right, thank you very much. Everyone else please
6 remain seated while the jury's excused.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, Mr. Bryant, we're still in your
10 testimony so please do not discuss your testimony with anyone.
11 Anything from the Plaintiff before we break?

12 MR. MOODY: Not at this time, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. MILLS: No, sir.

15 THE COURT: All right, let's take about a 10-minute
16 break.

17 OFF THE RECORD

18 (On the record. The following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, anything from the Plaintiff
21 before we bring the jury back?

22 MR. MOODY: Not at this time, Your Honor.

23 THE COURT: Anything from the Defense?

24 MR. MILLS: No, sir.

25 THE COURT: All right, let's go ahead and bring the

1 jury in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: All right, ladies and gentlemen, welcome
5 back. We're ready to continue with this witness. All right,
6 Mr. Mills, cross examination.

7 MR. MILLS: Just briefly, Your Honor.

8 THE COURT: All right.

9 CROSS EXAMINATION

10 BY MR. MILLS:

11 Q Mr. Bryant, I will be brief I assure you, but I want to
12 clarify a couple of things. We've heard the term letter of
13 credit used a great deal during your testimony; do you recall
14 that?

15 A Yes, sir, correct.

16 Q Heard the figure of \$1.3 million; right?

17 A Yes, sir.

18 Q Can you tell the jury is there a box at the County with
19 \$1.3 million in it; is that how a letter of credit works?

20 A No, sir, that's not how that works.

21 Q Okay, who is the issuer and who is the beneficiary on the
22 letter of credit for phase 2-D-1?

23 A The issuer is a financial institution that has a branch
24 in the State of South Carolina and I believe it was Wachovia
25 for that particular letter of credit and the beneficiary is

1 Georgetown County as an entity.

2 Q Okay, is the contractor a beneficiary?

3 A No, sir.

4 Q Are the owners beneficiary?

5 A No, sir.

6 Q Is Mr. Repko a beneficiary of that letter of credit?

7 A No, sir.

8 Q Shift gears with me if you will, Mr. Bryant, to a term
9 that was used I think in one of your e-mails, it was the
10 keeper of the purse; do you remember that?

11 A Yes, sir.

12 Q Okay, now, those were your words. When you talk about a
13 keeper of the purse are you talking about the letter of
14 credit, are you talking about the monies that came in after
15 the County said to the developer, "Pay it over"?

16 A I was referencing the actual cash that came in after the
17 developers had paid over.

18 Q Okay, and that's money that actually came into the
19 County?

20 A Yes, sir.

21 Q Did you view yourself as responsible to be a good steward
22 of those monies?

23 A Yes, sir, absolutely.

24 Q Okay, where do you live?

25 A I live in Andrews, South Carolina.

1 Q Okay, and the monies that came into the County any of
2 that money spent in Andrews?

3 A No, sir, not at all.

4 Q Do you know where DeBordieu is?

5 A Yes, sir.

6 Q Any monies spent in DeBordieu?

7 A No, sir.

8 Q Pawleys Plantation?

9 A No, sir.

10 Q The Reserve?

11 A No, sir.

12 Q Where was the money spent?

13 A In Harmony Development.

14 Q To do what, Mr. Bryant?

15 A To attempt to put the infrastructure and the dirt that
16 was supposed to go there.

17 Q And were you overseeing and making them prove to you what
18 had been done before you disbursed any monies?

19 A Yes, sir.

20 Q Okay, one other question, Mr., Mr. Moody showed you a
21 plat. Do you remember that, the picture with the lots on it?

22 A Yes, sir.

23 Q But I don't think he asked you, have you been out, have
24 you taken a plat and ridden out to Harmony?

25 A Yes, sir.

1 Q Have you actually ridden out to Phase 2-D-1 where Mr.
2 Repko's lots are?

3 A Yes, sir, a couple of times.

4 Q Okay, I want you to tell the jury when you stood out
5 there what did you see?

6 A There's been some upkeep. There's a - the road that was
7 roughed out years ago is being maintained by some entity. The
8 grass is cut and that sort of thing. There are catch basins
9 installed in the ground. The - you could tell where the earth
10 and the earthwork had occurred to put in the storm water
11 system. There are sewer stub outs. There are lot numbers
12 marked by stubs and that sort of thing. So there's, there's
13 been a good deal of infrastructure placed in the ground out
14 there already.

15 Q Did you say catch basins?

16 A Yes, sir.

17 Q Did you say sewer stub outs?

18 A Yes, sir.

19 Q Are those part of the water and sewer system?

20 A Yes, sir.

21 Q Okay, tell the jury who has responsibility for water and
22 sewer systems in Georgetown County.

23 A I would say about 60 percent of the County is, is
24 governed, so to speak, by the Georgetown County Water and
25 Sewer District. It's a separate political entity. It's a

1 special political subdivision that was created in the
2 seventies by the state legislature. They are a governmental
3 entity but they are separate and distinct from Georgetown
4 County. They have their own director, their own special set
5 of rules and state law and that sort of thing and they don't
6 answer to Georgetown County Council. They don't ask me for my
7 advice or anything like that. So they're completely separate
8 from us.

9 Q Okay.

10 A Us to mean Georgetown County, sorry.

11 Q And in a development such as Harmony who has
12 responsibility for the inspection of water and sewer that's
13 put into a phase?

14 A The Water and Sewer District if it's within their
15 jurisdiction has the inspection and jurisdiction. That is
16 granted to them through South Carolina DHEC. So they come in
17 and do those inspections and certify all that stuff. We
18 require that before, before certain plats are filed and
19 certain other actions occur with respect to Georgetown County,
20 so.

21 Q Now, does Georgetown - he asked you about roads and you
22 said these were private roads. The water and sewer system,
23 was Georgetown County, the body that you work for, the
24 Defendant in this lawsuit, were they ever going to take over
25 the water and sewer out there?

1 A Absolutely not. We don't - they, they would, they would
2 object to that wholeheartedly and we absolutely have no
3 authority whatsoever to run any water and sewer utility in the
4 County, in Georgetown County.

5 Q Okay, thank you, Mr. Bryant.

6 THE COURT: Redirect?

7 MR. MOODY: A couple, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. MOODY:

10 Q Mr. Bryant, Mr. Mills asked you about this letter of
11 credit. In all of your e-mails you talk about the purpose of
12 the letter of credit; do you not?

13 A The purpose.

14 Q Of the letter of credit.

15 A I talked about it once or twice in e-mails, yes, sir.

16 Q Extensive in the ones that we saw today; right?

17 A Yes, sir.

18 Q In all of those e-mails you reference that the letter of
19 credit is there for the benefit of the property owners.

20 A Yes, sir.

21 Q Okay, but now you're saying that letter of credit is for
22 the benefit of the County.

23 A No, sir.

24 Q Which is it?

25 A I'm saying the beneficiary of the letter of credit is

1 Georgetown County.

2 Q Okay, but the monies were supposed to be used for whom?

3 A For the owner to finish the infrastructure.

4 Q Okay, and to protect the property owners who purchase
5 property out at Harmony; are they not?

6 A Well, I think logically speaking it's ultimately the
7 owners of Harmony, owners within Harmony are the ones that
8 benefit from the letter of credit, yes, sir.

9 Q I mean, the County's designated as the beneficiary on the
10 letter of credit; correct?

11 A Correct.

12 Q The County's not just going to take the money and use it
13 for whatever it wants to; right?

14 A Oh, absolutely not, it's not our money.

15 Q Okay, and Mr. Mills asked you about did any of this money
16 gets used in Andrews or DeBordieu. Didn't he ask you that?

17 A Yes, sir.

18 Q Okay, and that didn't happen?

19 A No, sir.

20 Q But monies were used from certain letters of credit in
21 different phases out there at Harmony; were they not?

22 A I think one, in one particular instance I recall it being
23 necessary from what the engineer was telling the County, yes,
24 sir.

25 Q In fact, money was taken by the County from one letter of

1 credit in one phase and spent in Shackleford for something
2 else; right?

3 A I don't recall exactly which phase but I know that
4 happened. It was - it wasn't a large amount, but yes, sir,
5 that I don't recall.

6 Q It was about 55 to \$60,000; was it not?

7 A I honestly don't remember. That sounds about right, yes,
8 sir.

9 Q Okay, no further questions.

10 THE COURT: All right, you may step down.

11 MR. MILLS: One follow-up, may I, please?

12 THE COURT: On what issue?

13 MR. MILLS: On his - directly related to Mr. Moody's
14 question.

15 THE COURT: Which one?

16 MR. MILLS: The one about Shackleford.

17 THE COURT: Okay, all right.

18 MR. MILLS: That's it.

19 THE COURT: I'll allow that.

20 RE CROSS EXAMINATION

21 BY MR. MILLS:

22 Q And it's simply this, where's Shackleford?

23 A Where is Shackleford?

24 Q Sure, where is it?

25 A Oh, it's within the Harmony Development.

1 Q Okay, thank you, Mr. Bryant.

2 MR. MILLS: Thank you, Your Honor.

3 THE COURT: All right, you can step down.

4 Let me see the attorneys for a second.

5 (Whereupon, a bench conference is held in the presence
6 but out of the hearing of the jury.)

7 THE COURT: All right, ladies and gentlemen, in
8 speaking with the attorneys the next witness has some length
9 to it. So we're going to go ahead and break for the day. I'm
10 going to excuse you for the remainder of the evening. Please
11 be back in the jury room tomorrow morning at 9:15 and we'll
12 try to get started right as soon after 9:15 as we can, but
13 that'll give you an opportunity to get back, maybe get some
14 coffee or whatever the case may be. Do not discuss the case
15 with anyone. Do not discuss it among yourselves. Don't
16 conduct any independent investigations into the case. Hope
17 everybody has a good evening and we'll see you back at 9:15
18 tomorrow morning. Thank very much.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right, anything from the Plaintiff
22 before we break?

23 MR. MOODY: Nothing from the Plaintiff, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. MILLS: No, Your Honor.

1 THE COURT: All right, I have them coming back at
2 9:15. I'll try to take the bench right at about 9:30, okay?

3 MR. MOODY: Okay.

4 MR. MILLS: Very good.

5 THE COURT: All right, we'll stand in recess until
6 then.

7 MR. MOODY: Thank you

8 THE COURT: Thank you.

9 OFF THE RECORD.

10 (On the record, September 17, 2013. The following takes
11 place outside the presence of the jury.)

12 THE COURT: All right, anything from the Plaintiff
13 before we bring the jury in?

14 MR. MOODY: Nothing from the Plaintiff at this point,
15 Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. MILLS: Nor the Defendant, Your Honor.

18 THE COURT: All right, let's go ahead and bring the
19 jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right, ladies and gentlemen, welcome
23 back. I hope everybody had a restful evening. We're now
24 ready to resume the trial of this case. Before we do so, I
25 want to remind you if you have any cell phones or pager

1 devices if you would turn those off at this point in time.

2 All right, Mr. Moody, you can call your next witness.

3 MR. MOODY: May it please the Court, Your Honor, we'd
4 call Holly Richardson to the stand.

5 THE COURT: All right.

6 Whereupon, Holly Richardson was called to the stand, duly
7 sworn by the clerk and testified as follows:

8 THE CLERK: Please be seated and state and spell your
9 name for the record.

10 MS. RICHARDSON: My name is Holly Richardson, H-O-L-L-Y,
11 R-I-C-H-A-R-D-S-O-N.

12 DIRECT EXAMINATION

13 BY MR. MOODY:

14 Q Good morning, Ms. Richardson.

15 A Good morning.

16 Q Ms. Richardson, where are you employed?

17 A With the Georgetown County Planning Department.

18 Q And what is your position there?

19 A Chief planner.

20 Q Okay, and how long have you been in that position with
21 Georgetown County?

22 A About seven and a half years.

23 Q Okay, so that would put you back to roughly the beginning
24 of '06?

25 A December '05.

1 Q December of '05, so you were there during the term that
2 we're talking about '06 and '07 with regard to Harmony
3 Township; is that correct?

4 A Yes, sir.

5 Q Give me a little bit of your background for the jury's
6 benefit. Where, where'd you - you have a degree I take it?

7 A Yes, sir.

8 Q Okay, where you'd get your degree?

9 A I have a Bachelors from Wofford College and a Masters in
10 Public Administration from the University of South Carolina.

11 Q Okay, and after you finished school where did you go to
12 work?

13 A I went to work for the City of Georgetown in their
14 planning department.

15 Q How long were you there?

16 A From '99 until December of '05.

17 Q Okay, six years roughly?

18 A Yes, sir.

19 Q And at your - during your tenure with the City of
20 Georgetown did you have an occasion to deal with financial
21 guaranties, letters of credit and developments in Georgetown,
22 in the City of Georgetown?

23 A Very little. We may have had maybe two projects that
24 involved financial guaranties while I was there.

25 Q In either of those projects were, were - did the City

1 have to call those letters of credit or cash or whatever it
2 may be?

3 A Not that I recall.

4 Q Okay, so you didn't have to, didn't have that experience
5 before you came to the County?

6 A No, sir.

7 Q Okay, and then when you came to the County in December of
8 '05 were there any ongoing projects at that point where
9 letters of credit had been called?

10 A Not that I was aware of at the time.

11 Q Okay, and you understand why a letter of credit is in
12 place for a development?

13 A Yes, sir.

14 Q Okay, we went through that painstakingly yesterday but
15 it's there to make sure that the infrastructure is eventually
16 put in if the developer does not put it in; is that fair to
17 say?

18 A Yes, sir, we require the letter of credit when a plat is
19 recorded and the infrastructure isn't in place.

20 Q Okay, and let me - I'm going to go back to Plaintiff's
21 Exhibit Number One and this is the financial guaranty section
22 of the ordinance and are you familiar with that section ---

23 A Yes, sir.

24 Q --- Ms. Richardson? Okay, now, and I went through this
25 with Mr. Bryant and I'll go through this a little quickly

1 today with you but in Section 3.1 you understand that the
2 County is not required to accept a financial guaranty from a
3 developer; is that correct?

4 A Correct, it says discretionary.

5 Q Okay, in fact, the County could say, "Developer, you've
6 got to put in all the roads and infrastructure before you can
7 sell a single lot out there"; is that your understanding?

8 A I think based on the fact that that says discretionary it
9 would mean it's not required.

10 Q Okay, and so in this situation with Harmony the County
11 actually did allow the developer to post letters of credit for
12 the development; is that correct?

13 A Yes, sir.

14 Q Now, how many phases were out there at Harmony Township?

15 A There were multiple. I couldn't tell you exactly how
16 many but certainly multiple, more than two or three.

17 Q Okay, and did each phase have its own letter of credit or
18 letters of credit?

19 A I believe so.

20 Q Okay, and with regards to the phase that Mr. Repko owns
21 property which is referred to as 2-D-1 there was a letter of
22 credit for 2-D-1; was there not?

23 A Yes, sir.

24 Q Okay, now, before we get to that let's talk a little bit
25 about the ordinance again. First of all, as chief planner do

1 you maintain the files and the records in the planning
2 department office on this project?

3 A Well, as, the department as a whole maintains the file
4 but I'm certainly involved with them.

5 Q And you're certainly involved with the file in looking at
6 what's in the file and what's there?

7 A Yes, sir.

8 Q Okay, and so with regards - outside of the ordinance that
9 was in place in '06, '07 were there any sort of written
10 guidelines that the County issued with regards to letters of
11 credit?

12 A In '06 and '07 I'm not aware of any.

13 Q Okay, was there any sort of written protocol that was put
14 together by the planning department when - as the events
15 occurred, you know, "Well, this is what you do when you draw
16 down a letter of credit," that sort of thing?

17 A No, sir, not at that time.

18 Q And so the only written guidelines that you can think of
19 are the ordinance that Georgetown County Council passed; is
20 that fair to say?

21 A Yes, sir.

22 Q Okay, so we've got a discretionary section in the
23 financial guaranty ordinance and it goes on down, if you would
24 look with me, it talks about the acceptance of the financial
25 guaranty by the planning department and the things that need

1 to be done to accept a financial guaranty; is that right?

2 A Uh-huh.

3 Q And in fact, it's very extensive documentation that's
4 required before the County would even accept a financial
5 guaranty based upon the ordinance; is that correct?

6 A We require estimates from an engineer and approvals for
7 those.

8 Q Okay, and eventually a plat for a phase like Mr. Repko's
9 phase would be recorded in the County courthouse showing the
10 development; is that correct?

11 A Yes, sir.

12 Q Okay.

13 MR. MOODY: Let me get this marked as Plaintiff's
14 Exhibit Number Five.

15 BY MS. MOODY:

16 Q And ask you, Ms. Richardson, if you could identify that.
17 I know it's kind of small but if you could take a look at that
18 and tell me if you're familiar with that.

19 A I'm familiar with it, yes, sir.

20 Q Okay, and what is that?

21 A This is the plat that was approved for phase D-1 of
22 Harmony.

23 Q Okay, and I'm going to just take it and put it on this
24 projector for everybody to see.

25 A Okay.

1 Q Might be easier for you to see as well if I can. All
2 right, and so, Ms. Richardson, you testified this is actually
3 phase 2-D-1 in which Mr. Repko purchased property; is that
4 right?

5 A This is phase 2-D-1, yes, sir.

6 Q Okay, and before this plat was ever recorded the - all of
7 the documentation was submitted by the developer as well as
8 the financial guaranty; is that correct?

9 A I'm not - don't recall the specifics but I would assume
10 so based on the fact that the plat was approved and signed
11 off.

12 Q Okay, and in fact, at the top of the plat there is a
13 certification of financial guaranties; is there not?

14 A Yes.

15 Q And I've taken the liberty of blowing that section up for
16 you a little bit more and I'll see if I can get that marked as
17 Plaintiff's Exhibit Six. Okay, and let me show you that and I
18 will represent to you it's the top portion of that same plat.
19 It's just blown up a little bit more so you can see, hopefully
20 see the wording and the letters on there. Can you see that
21 okay?

22 A Yes, sir.

23 Q And that is the certification of financial guaranty on 2-
24 D-1?

25 A Yes, sir; yes, sir.

1 Q And can you tell the jury how much the financial
2 certification was for on that plat?

3 A The dollar amount?

4 Q Yes, ma'am.

5 A \$1,301,705.63.

6 Q Okay, and what I'll do is I'll stick that on the
7 projector so that the jury can see it as well. So prior to
8 this plat being approved and lots being sold the developer had
9 submitted to the County sufficient documentation showing that
10 there was a financial guarantee in place of \$1.3 million.

11 A Yes, sir, it appears that's the case.

12 Q Okay.

13 A Sorry.

14 Q And again, that is all to make sure that the
15 infrastructure is placed, put in place; is that correct?

16 A Yes, that's because there was no infrastructure when the
17 plat was approved.

18 Q Okay, and that number should be 125 percent of the
19 estimated cost to complete; right?

20 A Yes, sir.

21 Q Okay, and if I do the math and I'll let you do it if you
22 want to with my calculator I come up with \$1,040,000 and some,
23 some change, so to speak; does that sound about right?

24 A That sounds correct.

25 Q Okay, let me, let me do this. I'm a, I'm a low-tech kind

1 of guy. So I'm going to put it on an easel so we can look at
2 it together because numbers are kind of hard to follow. If I
3 hit my partner in the head, I'm going to put this where
4 hopefully the jury and you can see it, okay, and so the
5 financial guaranty, I'm just going to put LOC on this side,
6 letter of credit, okay, and I'm going to round it up for my
7 own personal benefit because I'm not good with numbers, but
8 that is \$1.3 million; right?

9 A Yes.

10 Q And then on this side I'm going to put cost to complete.
11 I'm going to CTC, I'm going to abbreviate it, and based upon
12 our calculation before anything even starts we believe that
13 the cost to complete is \$1,040,000; right ---

14 A Yes, sir.

15 Q --- if my calculator's correct. All right, because
16 that's what the, the ordinance would have required is that it
17 be 125 percent of the cost to complete?

18 A Yes, sir.

19 Q From the initial - from the beginning of the project,
20 correct?

21 A Yes.

22 Q Okay, now, in fact, let me show you - I'm going to get
23 this document marked as Plaintiff's Exhibit Number Seven and
24 ask you if you are familiar with that document.

25 A I'm familiar with it, yes, sir.

1 Q Okay, and what is that for the jury's benefit?

2 A This is the letter of credit for Phase 2-D-1 of Harmony.

3 Q All right, let me put that on the board, and this is the
4 type of letter of credit that you would or not you personally
5 but the County would have required to be on file and in place
6 before anything was sold out there; correct, in that phase?

7 A Yes, sir.

8 Q Okay.

9 MR. MOODY: We'd offer that as Plaintiff's Exhibit
10 Number Seven. I don't believe, Your Honor, we've offered Five
11 and Six either but we'd offer those.

12 MR. MILLS: Five, Six and Seven are without objection,
13 Your Honor.

14 THE COURT: All right, Plaintiff's Exhibit Five,
15 Plaintiff's Exhibit Six and Plaintiff's Exhibit Seven are
16 admitted into evidence without objection.

17 (Plaintiff's Exhibit Number Five [Plat Phase D-1],
18 Plaintiff's Exhibit Number Six [Plat Phase D-1, Top Portion]
19 and Plaintiff's Exhibit Number Seven [Wachovia Letter of
20 Credit] admitted into evidence and appropriately marked.)

21 BY MR. MOODY:

22 Q Okay, and Ms. Richardson, looking on the, the financial
23 guarantee which is Plaintiff's Exhibit Seven the issue date on
24 that is that May 23rd of '06?

25 A Yes, sir.

- 1 Q Okay, so put 5-26-06, right?
- 2 A Yes.
- 3 Q So, this, this letter of credit is issued basically
- 4 around the end of May of 2006 and work begins shortly
- 5 thereafter; is that fair to say?
- 6 A I don't know when work began but I would - it could begin
- 7 ---
- 8 Q Okay.
- 9 A --- after that.
- 10 Q Now, let's, let's go back to the ordinance one more time
- 11 and I won't belabor this too long but then at some point,
- 12 this is Plaintiff's Exhibit Number One, we're looking at
- 13 Section 3.5, pull it up a little bit more, and it talks about
- 14 the developer may have the letter of credit reduced; correct?
- 15 A Yes, sir.
- 16 Q And that - the language in there, may, it seems to sound
- 17 discretionary not mandatory; is that fair to say?
- 18 A Yes, sir.
- 19 Q So, the County could or could not have reduced the letter
- 20 of credit if it wanted to; is that right?
- 21 A Based on the ordinance, yes, sir.
- 22 Q Okay, and it also talks about what needs to be done to
- 23 reduce the letter of credit; does it not, in the second
- 24 paragraph there, talks about a financial guaranty will not be
- 25 allowed within six months of any previous reduction; is that

1 correct?

2 A Yes, sir.

3 Q Okay, and then it also talks about that and it also must
4 not be done so that - let me get the exact language for you,
5 it says shall be no less than 125 percent of the revised
6 construction cost; is that correct?

7 A Yes.

8 Q Okay, now, in general with the letters of credit for the
9 various phases at Harmony Township was the developer making
10 requests to have the letters of credit reduced fairly often?

11 A I couldn't tell you how often or how frequently but
12 certainly multiple times we received requests from the
13 developer for reductions.

14 Q And it would have been not just this phase but all the
15 other phases where letters of credit were in place; is that
16 correct?

17 A Yes, more than just this phase.

18 Q Okay, and there were times, were there not, where
19 requests were made several times within a six-month period of
20 time; is that fair to say?

21 A It's - that's probably likely, yes, sir.

22 Q Okay.

23 A Like I said, I don't recall the dates from years ago.

24 Q Okay, well, let me show you this document. I'm going to
25 get it marked, probably should staple it, too. We're going to

1 have this one marked as Plaintiff's Exhibit Number Eight and
2 let me ask you being in the planning department would you have
3 the opportunity to have seen this document?

4 A I have seen it, yes, sir.

5 Q Okay, and what is that?

6 A This appears to be a fax from Kim Pavao to Denise
7 Sherman. It says the subject is pay requests three and four.

8 Q Okay, and Denise Sherman was employed in the Georgetown
9 County Planning Department previously; was she not?

10 A Yes, sir.

11 Q Okay, in a similar capacity as you are, maybe not your
12 same position but a similar class?

13 A That's right. We had some of the same duties.

14 Q Okay, and Ms. Pavao worked for Harmony developer; did she
15 not?

16 A Yes, sir.

17 Q And so this fax is coming into the County for what
18 reason?

19 A I would assume this is Kim letting Denise know that they
20 are looking for a reduction in the amount that's on this pay
21 request.

22 Q Okay, and what is the date on that?

23 A The date on the fax is July 20th, 2006.

24 Q Okay.

25 MR. MOODY: Would offer that as Plaintiff's Exhibit

1 Number Eight.

2 MR. MILLS: No objection, Judge.

3 MR. MOODY: Okay.

4 THE COURT: Have we marked it? All right, Plaintiff's
5 Exhibit Number Eight admitted into evidence without objection.

6 (Plaintiff's Exhibit Number Eight [July 20th, 2006, fax
7 from Pavao to Sherman] admitted into evidence and
8 appropriately marked.)

9 BY MR. MOODY:

10 Q And I'm going to hand you what I'm going to mark as
11 Plaintiff's Exhibit Number Nine. Tell me if you recognize
12 that document as well and if I could hold on to Eight for a
13 second, please. Thank you.

14 A I have seen this before, yes, sir.

15 Q Okay, and what is that?

16 A This is a letter from Denise Sherman to Wachovia Bank and
17 she is saying that we have received a request to amend the
18 letter of credit in the amount of \$331,311.00.

19 Q Okay, and what's the date on that letter?

20 A July 26, 2006.

21 Q Okay, so, two months later we're going to reduce the
22 letter of credit by how much?

23 A \$331,311.00.

24 Q Okay, and how much would that leave remaining on the
25 letter of credit at that point?

1 A 970,394.63.

2 Q 970,394 and 60 cents.

3 A Yes, sir, 63 cents.

4 Q Sixty-three cents, okay, all right, so within two months
5 of that letter of credit being posted we're already asking -
6 getting a fax pay application from the developer; are we not?
7 Are those numbers exact amounts of the reduction between
8 Plaintiff's Exhibit Eight and Plaintiff's Exhibit Nine?

9 A Yes, sir.

10 Q Okay, so it stands to reason that this pay application
11 coming from the developer was the reason why the letter of
12 credit was reduced to 970; is that correct?

13 A I could make that assumption based on the fact that
14 they're the same numbers. I didn't write this letter, but ---

15 Q Okay, at the time what was the County's practice with
16 regards to verifying any sort of work or infrastructure being
17 put in?

18 A At the time in July of '06?

19 Q Yes, ma'am.

20 A I was not involved at this process yet. At that time Ms.
21 Sherman handled those but I can speak to when I was involved
22 and your question was about the County's inspection of the
23 things that were put in?

24 Q What did the County do to verify that the work had even
25 been done?

1 A The County typically required a letter from the engineer
2 certifying that the work had been complete and certifying the
3 number, the dollar amounts that were left to be done.

4 Q And there should be a letter in the County's file
5 somewhere with that information?

6 A I would expect that Ms. Sherman would have required such
7 a thing before she wrote a letter to the bank.

8 Q Well, the reason why I ask I haven't seen it. So maybe,
9 maybe counsel for, for the County can show it to us but ---

10 MR. MILLS: Objection, Your Honor. If he has an
11 exhibit to show the witness.

12 THE COURT: Sustained.

13 MR. MILLS: Thank you.

14 Q Now, that was done two months after the, the bond was in
15 place. Let me - let's go back to the, let's go back to the
16 reduction language, second paragraph of 3-5 and it talks about
17 the reduction shall be no less than 125 percent of the revised
18 construction cost estimate. So that's what you're talking
19 about the engineer should have given the County a revised
20 construction cost estimate? Is that what you're referring to?

21 A Typically that's what we would ask for and get.

22 Q And you would have calculated that based upon the
23 construction cost estimate and not merely based upon the
24 reduction request by the developer; is that fair?

25 A Correct, we would have wanted a new number from the

1 engineer.

2 Q Okay, now, and the engineer is not employed by Georgetown
3 County ---

4 A No, sir.

5 Q --- is he or she?

6 A No, sir.

7 Q Okay, now, one other thing I need to ask you about with
8 regards to the ordinance and I'll - let me come back to that
9 in just a minute; okay, but I'm going to show you another
10 document which is - we're going to get marked as Plaintiff's
11 Exhibit Ten and ask you if you have seen this document as
12 well.

13 A Yes, sir, I've seen it.

14 Q Okay, and tell the jury what that is.

15 A This is a letter from Ms. Sherman to Wachovia Bank saying
16 that we've received a request to amend the letter of credit.

17 Q Okay, and so the County is directing Wachovia to reduce
18 it by how much?

19 A \$117,024.42.

20 Q 117,024 and how many cents?

21 A Forty-two.

22 Q Okay, and that was on October what?

23 A October the 9th, 2006.

24 Q Okay, and what amount was remaining on the letter of
25 credit after that reduction?

1 A 853,370.21.

2 Q Okay, you would agree, would you not, Ms. Richardson,
3 that the second reduction letter of credit happened well
4 within six months of the first reduction of the letter of
5 credit?

6 A Yes, sir.

7 Q And that was not consistent with what the ordinance says;
8 is it?

9 A The ordinance does refer to within six months.

10 Q Okay, in fact, what's the specific language there?

11 A I'm sorry, what's the specific language you said?

12 Q Yes, ma'am.

13 A "Reductions of financial guaranties will not be allowed
14 within six months of any previous reduction request."

15 Q So, we're reducing the letter of - the County is reducing
16 the letter of credit basically within about two and a half
17 months of the previous reduction; is that correct?

18 A Yes, sir.

19 Q And that was based upon - let me show you this document,
20 see if, see if that's - let me get this marked as Plaintiff's
21 Exhibit Number 11, see if you've seen this document in your
22 file with the, with the County.

23 A I believe I've seen this before.

24 Q Okay, and what is that?

25 A This is an application and certificate for payment.

1 Q Okay, and who is it from?

2 A It says from contractor.

3 Q Okay, and what's the date on that?

4 A September 25th, 2006.

5 Q Okay, and what is the number on that pay request?

6 A The number, the dollar amount?

7 Q Yes, ma'am.

8 A \$117,024.42.

9 Q So that would seem to be consistent with the reduction in
10 the letter of credit on October 9th, 2006; is that correct?

11 A It does match the number on Ms. Sherman's letter, yes,
12 sir.

13 Q Okay, and these pay requests were coming from the
14 developer to the County; were they not?

15 A Again, I can't speak to this specific one but that did
16 happen.

17 Q Okay, show me on there where they're asking the County to
18 reduce the letter of credit.

19 A On Exhibit 11?

20 Q Yes, ma'am. Is there any language about reducing the
21 letter of credit anywhere on that document?

22 A No, sir.

23 Q Okay, in fact, let me put it on ---

24 MR. MOODY: Your Honor, to the extent we have not
25 offered Plaintiff's Exhibits 10 and 11 we'd offer those as

1 exhibits.

2 THE COURT: Any objection?

3 MR. MILLS: No objection to Exhibit 10 but I haven't
4 seen Exhibit 11. I'd like to look at that please, Your Honor.

5 THE COURT: All right.

6 MR. MILLS: Thank you, Your Honor. No objection.

7 THE COURT: All right, Plaintiff's Exhibit Number 10,
8 Plaintiff's Exhibit Number 11 admitted into evidence without
9 objection.

10 (Plaintiff's Exhibit Number 10 [October 9, 2006, letter
11 from Sherman] and Plaintiff's Exhibit Number 11 [September 25,
12 2006, application and certification for payment] admitted into
13 evidence and appropriately marked.)

14 BY MR. MOODY:

15 Q And again, my question, Ms. Richardson, and I apologize
16 for asking it again but this says application for - and
17 certificate for payment; correct?

18 A Yes, sir.

19 Q Do you, do you see anywhere on that document a request
20 for a reduction in a letter of credit directed to the County?

21 A I do not see it on this document, no, sir.

22 Q Did the County verify that the developer was using his
23 own construction funds to pay these contractors before they
24 reduce the letter of credit?

25 A I can't speak to what happened in this case of October of

1 '06.

2 Q Okay, did the County ever before these letters of credit
3 were called, did the County ever require the developer to show
4 that he was paying his contractors before they would reduce
5 the letters of credit?

6 A No, sir, I'm not aware that we ever had such a
7 requirement or a requirement to do so.

8 Q Okay, now, this is another document I want to show you
9 and we're going to get this one marked as Plaintiff's Exhibit
10 11.

11 REPORTER: Twelve.

12 Q I'm sorry, 12. Okay, ask you if you have seen this
13 document before, Ms. Richardson?

14 A I have seen it, yes, sir.

15 Q Okay, and that would have been maintained in the County's
16 files at the planning department?

17 A Yes, sir.

18 Q Okay, let me put that on the projector and let's talk
19 about that for a minute so that the jury can see that as well.

20 MR. MILLS: May I see the exhibit, Your Honor?

21 MR. MOODY: Sure.

22 MR. MILLS: No objection to Exhibit 12.

23 THE COURT: So, we're putting that in now?

24 MR. MOODY: Yes, sir.

25 THE COURT: All right, Plaintiff's Exhibit 12 admitted

1 into evidence without objection.

2 (Plaintiff's Exhibit Number 12 [11-7-06 letter from
3 Strickland] admitted into evidence and appropriately marked.)

4 BY MR. MOODY:

5 Q All right, Ms. Richardson, you said you've seen this
6 letter. It looks like it's a letter to Boyd Johnson dated
7 November 7th of 2006; is that correct?

8 A Yes, sir.

9 Q And Mr. Johnson works in the County Planning Department;
10 is that correct?

11 A Yes, sir.

12 Q What was his position at that time?

13 A He was the director of planning and code enforcement.

14 Q Okay, and this letter is from whom?

15 A This letter is from Steve Strickland with the Earthworks
16 Group.

17 Q Okay, and he is the engineer that the County was looking
18 to to report to them as part of this development?

19 A For this portion, yes, sir.

20 Q Okay, and in that letter Mr. Strickland says that they
21 have approved a pay application number three for phase 2-D
22 which is attached dated October 25th of 2000 - 2006 and I'm
23 going to flip over to that; okay?

24 A Okay.

25 Q And this is the attached pay application that Mr.

1 Strickland has approved, I guess, as the engineer. Does that,
2 does that look to be correct, same date on it, October 25,
3 2006?

4 A Yes, sir.

5 Q And how much is that pay application request?

6 A Under current payment due it says \$300,000.

7 Q Would this be the type of letter that you would or the
8 County would have received from the engineer with regards to a
9 payment request or a reduction in the letter of credit?

10 A It seems typical, yes, sir.

11 Q Okay, but there's no cost to complete the infrastructure
12 included in this letter; is it?

13 A No, it just refers to the approval for the 300,000.

14 Q Okay, and the amount on there is how much?

15 A 300,000.

16 Q Okay, and this was in the end of October of 2006. So let
17 me show you what I'm going to have marked as Plaintiff's
18 Exhibit Number 13, I believe and this is actually signed by
19 you. I'll let you take a look at that and see if you're
20 familiar with that document.

21 A Yes, sir.

22 Q Okay, and what is that letter?

23 A This is a letter from me to Wachovia Bank to reduce the
24 letter of credit for 300,000.

25 Q And that would have been the letter of credit for this

1 phase of Harmony; correct?

2 A Yes.

3 Q Okay, and it's for \$300,000?

4 A Yes.

5 Q Okay, if we take a look at the pay application request
6 that's submitted to the County at the end of October of '06,
7 how much is that?

8 A 300,000.

9 Q Okay, so, it would seem to reason that the letter of
10 credit is being reduced based upon the pay application that
11 was approved by Mr. Strickland; is that correct?

12 A Yes, and based upon Mr. Strickland's letter and approval
13 of the 300,000.

14 Q Okay, and again that letter does include a cost to
15 complete at that point?

16 A It doesn't give any other numbers, no, sir, but it does
17 say his approval for that amount of work being done at that
18 dollar amount.

19 Q And what was the date of your letter to Wachovia?

20 A November 8th, 2006.

21 Q Okay, and that was \$300,000; correct?

22 A Yes, sir.

23 Q So at that point the bond and I could do this math is
24 reduced to \$553,370.21; is that fair to say?

25 A Yes, sir.

1 Q Okay, in fact does your letter say, make that calculation
2 as well?

3 A Yes, sir.

4 Q Did I do the number right?

5 A Yes.

6 Q Okay, all right, let me get this document marked as
7 Plaintiff's Exhibit Number 14. Before I do that let me ask
8 you a question which is, I guess, fairly obvious, the November
9 reduction in the letter of credit that was well within six
10 months of the first request?

11 A Yes, sir.

12 Q Certainly within about a month of the second request?

13 A Yes, sir.

14 Q So we have three reductions of the letter of credit for
15 2-D-1 in the, in the course of about - less than six months;
16 is that correct?

17 A That's correct.

18 Q Okay, and again, we're supposed to ensure that we have
19 125 percent of the cost to complete this project all the way
20 through as we reduce the letter of credit; is that fair to
21 say?

22 A Yes, sir.

23 Q Let me show you what's been marked as Plaintiff's Exhibit
24 14 and ask you if you have seen this document in your file
25 with Georgetown County.

1 A I think I have. I don't recall this one specifically,
2 but ---

3 Q What is that document?

4 A Can I have just one second?

5 Q Sure.

6 A This is a letter from Steve Strickland to Kevin Chestnut
7 involving changes in price for 2-D-1 and 2-D-2.

8 Q Okay, and what's the date on that letter?

9 A December 6, 2006.

10 Q So it would have been after the third draw down or the
11 third reduction of the letter of credit; is that correct?

12 A Yes.

13 Q Now, looking at the attachment to that letter does it
14 give a cost to complete for 2-D-1?

15 A Yes.

16 Q Okay, and what, what page is that just for reference?

17 A What page of this packet?

18 Q Yes, ma'am.

19 A Sorry.

20 Q I'm sorry.

21 A It's on the fifth page.

22 Q Okay, and does it give a total number or do you have to
23 add those numbers up to give a total cost to complete?

24 A It lists a total for water, sewer, roads and drainage.

25 Q Okay, and how much is that?

1 A \$1,153,205.45.

2 Q Say that again.

3 A \$1,153,205.45.

4 Q 205 and how many cents?

5 A I can't remember, 45 cents.

6 Q Okay, and this is in December?

7 A Yes, sir.

8 Q December the 6th of '06; right?

9 A Yes, sir.

10 Q So the cost to complete 2-D-1 infrastructure in December
11 of '06 is \$1,053,000?

12 A That is the number that's shown on this spreadsheet.

13 Q And that is a spreadsheet produced by the engineer that
14 the County was relying on when it was reducing the letter of
15 credit; is that correct?

16 A I'm - like I said I'm not very familiar with this
17 document but it appears to have come from Earthworks.

18 Q Okay, but you've already - you're already half that
19 amount, a little over half that amount by November of '06; is
20 that correct?

21 A Yes, that's the number that the letter of credit was at
22 at '06, at November of '06.

23 Q And in fact the number hasn't - cost to complete hasn't
24 hardly changed from the beginning of the project.

25 A I, I can't explain for you that, that difference. I'm

1 just not that familiar with this document.

2 Q Let me see if I can kind of sort through it and I might
3 be able to speed it up a little bit and I'm sorry about that
4 and I might be reading it wrong, but you tell me, but if I
5 read this correctly and it says 1,153,000 and my number was
6 off by 100,000 unfortunately, but it's 1,153,000 but and this
7 goes without saying, but 553,000 is not 125 percent of
8 1,153,000?

9 A No, sir.

10 Q It's substantial - almost less than half of what is
11 needed to complete the infrastructure; is it not?

12 A It's half of that one million one number, yes, sir.

13 Q Okay.

14 MR. MOODY: We'd offer Plaintiff's Exhibit 14.

15 THE COURT: Any objection?

16 MR. MILLS: No objection, Judge.

17 THE COURT: Plaintiff's Exhibit 14 admitted into
18 evidence without objection.

19 (Plaintiff's Exhibit Number 14 [12-6-06 letter from
20 Strickland to Chestnut] admitted into evidence and
21 appropriately marked.)

22 BY MR. MOODY:

23 Q Why wasn't the County getting costs to complete every
24 time it went to get a letter of credit reduction?

25 A I certainly can't speak to those specific instances back

1 in 2006, but I know that at the time we certainly wouldn't
2 have reduced without something from the engineer in regards to
3 the cost estimate for what needed to be done out there.

4 Q Okay, so, so, now, we've established in December we've
5 got a cost estimate to finish, to complete; right, is that
6 correct?

7 A That was what was sent to Mr. Chestnut, yes.

8 Q Okay, and then let me show you an e-mail March 9th of
9 2007. I guess I better get it marked first, Plaintiff's
10 Exhibit 15, ask you if you're familiar with this document.

11 A Yes, sir.

12 Q Okay, and what is that?

13 A This is an e-mail from Kim Pavao to me and several other
14 people.

15 Q Okay, and what's the date on that?

16 A March 9th, 2007.

17 Q And what is that e-mail for?

18 A It says that she is faxing to me a revised pay request
19 and asking me to disregard a previous pay request.

20 Q Okay, so she's asking that the County lower the letter of
21 credit again?

22 A She doesn't say that here but she is referring to a pay
23 request. Well, and she does refer to a payment to be drawn on
24 a specific letter of credit.

25 Q Okay, and which letter of credit was that?

1 A The Wachovia letter of credit.

2 Q The one for 2-D-1; correct?

3 A Yes.

4 Q Okay, and that was in March of '07 she's asking that the
5 County pay that or not pay that directly but to reduce the
6 letter of credit?

7 A It seems that's what she's asking, yes.

8 Q I'm going to show you what we're going to mark as
9 Plaintiff's Exhibit 16. Ask you if you are familiar with this
10 document at all.

11 A I have seen it, yes, sir.

12 Q Okay, and what is that document for the benefit of the
13 jury?

14 A This is a letter to me from Mark Donevant of the
15 Earthworks Group in reference to pay application number four.

16 Q And that's in what date, I'm sorry?

17 A The date on the letter?

18 Q Yes.

19 A April 3rd, 2007.

20 Q Okay, and what is Mr. Donevant approving a pay request
21 that has been submitted by the developer?

22 A Yes, he says the one that he has attached reflects the
23 work completed as of February 2006.

24 Q And what is the amount on the pay request?

25 A \$396,666.18.

1 Q Okay, and do you know, is that the same amount that Ms.
2 Pavao was looking for a reduction in the letter of credit in
3 her previous e-mail?

4 A No, not in her typed e-mail.

5 Q Okay, okay, was there a change made on that e-mail?

6 A Yes, this looks like my handwriting.

7 Q That's your handwriting?

8 A Looks like it.

9 Q And what is the number on it in your handwriting on that
10 e-mail?

11 A 396,666.18.

12 Q Is it the same number that was sent to you by Mr.
13 Strickland?

14 A Yes.

15 Q Okay.

16 A Mr. Donevant.

17 Q I'm sorry, Mr. Donevant, sorry about that.

18 MR. MOODY: I offer both of those, Your Honor. It's
19 Plaintiff's Exhibits I believe they're 15 and 16.

20 THE COURT: Any objection?

21 MR. MILLS: No, sir, I'm just confused on which is
22 which if the Court will excuse me a minute and I can confirm
23 it.

24 THE COURT: All right.

25 MR. MILLS: Without objection, Judge.

1 THE COURT: All right, Plaintiff's Exhibit 15 and
2 Plaintiff's Exhibit 16 admitted into evidence without
3 objection.

4 (Plaintiff's Exhibit Number 15 [3-9-07 letter from Pavao
5 to Richardson] and Plaintiff's Exhibit Number 16 [4-3-07
6 letter from Richardson to Wachovia] admitted into evidence and
7 appropriately marked.)

8 BY MR. MOODY:

9 Q I've got a number of other documents here associated with
10 that but I'll skip those for purposes of brevity but let me
11 show you what we're going to have marked as Plaintiff's
12 Exhibit 17 and ask you if you're familiar with this document
13 as well, Ms. Richardson.

14 A Yes, sir.

15 Q And what is that for the benefit of the jury?

16 A This is a letter from me to Wachovia Bank.

17 Q Okay, and what's the date on it?

18 A April 5th, 2007.

19 Q And what are you - what - why are you writing to Wachovia
20 Bank?

21 A I'm, I'm writing to reduce the letter of credit in the
22 amount of 396,666.18.

23 Q Okay, and that was done on what date, I'm sorry?

24 A April 5th, 2007.

25 Q Okay, and as a result that left what remaining on the

1 letter of credit?

2 A \$156,704.03.

3 Q Show you Plaintiff's Exhibit 18. I'm going to let you
4 take a look at that. Are you familiar with that document as
5 well?

6 A Yes, sir.

7 Q And what is that for the benefit of the jury?

8 A This is an amended letter of credit from ---

9 Q And what's the final amount left on that letter of
10 credit?

11 A \$156,704.03.

12 Q The same amount on the board; right?

13 A Yes, sir.

14 Q And that is the letter of credit for 2-D-1, Mr. Repko's
15 ---

16 A Yes, sir.

17 Q Okay.

18 MR. MOODY: Offer that as Plaintiff's Exhibit 18.

19 THE COURT: Any objection?

20 MR. MILLS: No, sir.

21 THE COURT: All right, Plaintiff's Exhibit 18 admitted
22 into evidence without objection.

23 (Plaintiff's Exhibit Number 18 [Amended Letter of Credit]
24 admitted into evidence and appropriately marked.)

25 BY MR. MOODY:

1 Q And Ms. Richardson, this last request for reduction in
2 letter of credit was obviously made within six months of the
3 previous request; was it not?

4 A Yes, sir.

5 Q Okay, and it was also made after we had a cost to
6 complete in December of '06 for \$1.1 million plus; isn't that
7 correct?

8 A Yes, it was after that letter to Kevin Chestnut.

9 Q And the County was not obligated to reduce the letter of
10 credit at all at any point during the term of the letter of
11 credit being in place; were they?

12 A I don't think there's a requirement to reduce the letter
13 of credit, no, sir.

14 Q Okay, and in fact, the documents you're receiving from
15 the developer aren't asking you to reduce the letter of
16 credit; are they?

17 A I think that was certainly the intent of those requests
18 from the developer.

19 Q Every document you got from the developer during this
20 period of time was submitting their pay applications; was it,
21 was it not?

22 A I can't say that every document we received was.
23 Certainly the ones we've looked at here have pay requests.

24 Q This bond was or, excuse me, letter of credit was set to
25 expire in May of '07; is that correct?

1 A I think so.

2 Q Was this letter of credit cashed in by the County?

3 A No, sir.

4 Q It was not?

5 A No, sir, we did not cash in this letter of credit.

6 Q Okay, is there any reason why the County wouldn't - would
7 leave \$156,000 and just let it go away?

8 A In this case the developer actually brought us a check
9 for the letter of credit after it was realized that the
10 project was not going to move forward.

11 Q Okay, so, the developer went to the bank and got a check
12 and brought it to the County?

13 A That's my understanding.

14 Q How much was that check for?

15 A I don't think I can give you the exact amount.

16 Q Mr., Mr. Johnson could probably tell us that; can't he?

17 A Maybe so, yes, sir.

18 Q Okay, but you would agree with me that had the County not
19 reduced this letter of credit during the term of the document
20 that we would still have enough money to finish the
21 infrastructure at 2-D-2 back in December of '06 or June of
22 '07?

23 A I can't speak to how much it would cost to finish. I
24 mean, all I can do is relate it back to that estimate that
25 you're talking about but I certainly couldn't say what it

1 would cost to complete a section. We just have to rely on the
2 information from the engineer.

3 Q Has the County done anything to try to determine what
4 it's going to cost to complete this phase or any phase out at
5 the Harmony since they called these letters of credit?

6 A I don't think I could speak to that specifically. I
7 mean, I certainly know some conversations were had with
8 engineers after the fact and there may have been some
9 estimates submitted but I can't recall specifically.

10 Q If you add up all the reductions, and I did it just for
11 my own purpose, if you add up all the reductions in a 11-month
12 period of time it looks like the total amount that was
13 reduced, the letter of credit was reduced by it was \$1.44
14 million. Does that sound about right or would you like my
15 calculator?

16 A It, it seems right.

17 Q Okay, that was more than the cost to complete from the
18 very beginning.

19 A That's more than that initial number, yes, sir.

20 Q So, if, if that money was released by the letter of
21 credit and the contractor was using it for the phase you would
22 expect that all of the infrastructure would be put in in phase
23 2-D-1; wouldn't you?

24 A Can you ask me that once more?

25 Q If the cost to complete in the very beginning was just

1 over \$1 million and the letter of credit was reduced by \$1.14
2 million that money ostensibly flowing back to the developer
3 wouldn't you expect that the infrastructure would have been
4 completed in 2-D-1?

5 A If you compare those two numbers, yes, sir. I'm not
6 aware of what circumstances would have caused those
7 differences.

8 Q Isn't it the County's position that the letter of credit
9 is not there for the contractor or developer just to pay his
10 contractors?

11 A The County isn't aware of what the developer does once
12 the letter of credit is drawn down. We just are responsible
13 for what amount is held in the letter of credit in that 125
14 percent.

15 Q And the County did nothing to verify what the - whether
16 the developer was even paying the contractors?

17 A No, sir, we didn't know - we're not involved with the
18 developer's payment of contractors.

19 Q Isn't that the reality though, Ms. Richardson, every time
20 they came to you with a pay application they were looking to
21 get that money to pay their contractors?

22 A I can't speak to that.

23 Q Fair enough.

24 MR. MOODY: No further questions right now, Your
25 Honor.

1 THE COURT: All right, cross examination.

2 CROSS EXAMINATION

3 BY MR. MILLS:

4 Q Ms. Richardson, did you pay any contractors?

5 A Did I pay any contractors?

6 Q Yes.

7 A No, sir.

8 Q Does the County have a role in paying contractors in a
9 private development?

10 A No, sir.

11 Q Who handles that?

12 A Who pays the contractors for a private development?

13 Q Sure.

14 A Whoever the developer is or the owner is at the time.

15 Q And as chief planner of Georgetown County do you play any
16 role in that process?

17 A No, sir.

18 Q Does the County handle money in these letter of credit
19 scenarios?

20 A No, sir, not unless we need to call one.

21 Q Okay, and as the letter of credit is being - we talk
22 about reductions. If a letter of credit is reduced, pick a
23 number, \$300,000, does that mean the County gets \$300,000?

24 A No, sir.

25 Q Okay.

1 MR. MILLS: Excuse me, Your Honor.

2 THE COURT: All right.

3 MR. MILLS: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 BY MR. MILLS:

6 Q Ms. Richardson, I'm going to hand you what's been marked
7 as Defendant's Exhibit One. You weren't asked about that
8 document; were you?

9 A No, sir.

10 Q Take a moment to look at that, please, and I'm going to
11 ask you very basically do you recognize it?

12 A I do recognize it.

13 Q And is that letter directed to you?

14 A Yes, sir.

15 Q I'll give you this copy. I'm going to put that one on
16 the overhead where everybody can see it.

17 A Okay.

18 Q Swap with you.

19 MR. MOODY: I'm sorry.

20 MR. MILLS: That's okay.

21 BY MR. MILLS:

22 Q Can we see this okay? Do you have the letter there in
23 front of you, Ms. Richardson?

24 A Yes, sir.

25 Q Now, that's in April of 2007; correct?

1 A Yes, sir.

2 Q Now, let me ask you about that, who is that letter from?

3 A It is from Dwight Mehaffy of the Water and Sewer
4 District.

5 Q We talked about that briefly. I'm going to move this so
6 I can see you. We talked about that briefly yesterday with
7 Mr. Bryant. The Water and Sewer District you don't work for
8 them; right?

9 A No, sir.

10 Q It's a different entity?

11 A Yes.

12 Q Okay, and at the risk of stating the obvious what does
13 the Water and Sewer District do?

14 A They provide water and sewer to their service area within
15 Georgetown County.

16 Q Well, here we are in April of 2007 and you're getting a
17 letter from a professional engineer at the Water and Sewer
18 District; aren't you?

19 A Yes, sir.

20 Q What does that letter tell you?

21 A They're sending me the letter at the request of the
22 Earthworks Group.

23 Q Stop right there, the Earthworks Group, who is that?

24 A That's the engineer for this phase of Harmony.

25 Q Not the County's engineer, the contractor's engineer?

1 A Correct.

2 Q Okay, go ahead, please.

3 A He says, "Based on the enclosed letter addressed to me
4 regarding Phase 2-D-1 of Harmony pay application number four
5 they have conducted a site inspection of the water and sewer
6 that's been installed to date."

7 Q They have conducted an inspection; correct?

8 A Yes, sir.

9 Q When he says they he doesn't mean Earthworks; does he?

10 A No, sir, they conducted these inspections because
11 eventually those lines would be turned over to them.

12 Q To the Water and Sewer District?

13 A Yes, sir.

14 Q And read with me if you would, please, second paragraph,
15 "Based upon this inspection it appears that construction of
16 the sewer mainlines, manholes and sewer service laterals as
17 permitted for the project have been completed as indicated in
18 the above letter." Did I read that correctly, Ms. Richardson?

19 A Yes, sir.

20 Q Okay, "Likewise all water mainlines, valves and hydrants
21 have been installed"; correct?

22 A Correct.

23 Q When you receive a letter like this from the Georgetown
24 County Water and Sewer District that tells you the water and
25 sewer is in the ground do you believe them?

1 A Certainly.

2 Q Do you have any reason to distrust them?

3 A No, sir.

4 Q So, by this time you've been told by the project
5 engineer, licensed professional engineers that work has been
6 done; right?

7 A Yes.

8 Q And then you get a letter from another licensed
9 professional engineer that tells you work has been done and
10 completed on the water and sewer; is that right?

11 A Yes.

12 Q Did you have any reason to question that?

13 A No, sir.

14 Q Mr. Moody asked you about the statute we've heard so much
15 about, the ordinance, the land development regulations, that
16 first exhibit, can you show me in there where it imposes a
17 duty on Georgetown County, the entity you work for in the
18 planning department, imposes a duty to send its engineers out
19 to a private development to check on work that's been done?

20 MR. MOODY: Objection, calls for a legal conclusion.

21 THE COURT: I don't think so. Overruled. Go ahead.

22 A No, sir, I - there's no such language in that ordinance.

23 Q Irrespective of the ordinance would it be the practice of
24 Georgetown County to send its taxpayer funded engineers out to
25 a private development to check on the progress of work?

1 A No, sir, we have to rely on the project's engineers and
2 their seal and certification to give us that information.

3 Q As confirmed by the Georgetown County Water and Sewer
4 District; correct?

5 A Yes.

6 Q Thank you, Ms. Richardson.

7 THE COURT: Redirect?

8 MR. MOODY: Quick redirect.

9 MR. MILLS: I'm sorry. Did I move Defendant's Exhibit
10 One into evidence?

11 THE COURT: No.

12 MR. MOODY: Without objection, Your Honor.

13 THE COURT: All right, Defendant's Exhibit One
14 admitted into evidence without objection.

15 (Defendant's Exhibit Number One [4-3-07 Letter from
16 Mehaffy to Richardson] admitted into evidence and
17 appropriately marked.)

18 REDIRECT EXAMINATION

19 BY MR. MOODY:

20 Q All right, Ms. Richardson, let's talk about this letter
21 of April 3, 2007. That references that pay request that Kim
22 Pavao sent back in March of 2007; does it not?

23 A That would make sense. I don't know which one is number
24 four, but since this was April.

25 Q And this letter just says that they're verifying that the

1 work on the pay request had been done; is that fair to say?

2 A Well, it says they've done a site inspection of the water
3 and sewer, utility infrastructure installed to date.

4 Q Okay, and they're basically verifying that the pay
5 application is valid; right?

6 A Well, I think beyond that he goes here to specifically
7 state what work has been done on the site.

8 Q There's no cost to complete at that point either with
9 that letter; is there?

10 A There's nothing attached to this that gives that number.

11 Q And there's nothing to show that that number has
12 substantially changed from December when the County had a cost
13 to complete of over \$1 million; is that correct?

14 A That's not addressed in this letter. I think this letter
15 is describing the water and sewer activity that's taken place
16 on the site.

17 Q Okay, doesn't refer to any of the roads or the curbing or
18 the guttering or anything like that; does it?

19 A No, sir.

20 Q Okay, and that still has to be done; right?

21 A That has to be done. I don't know how much of it had
22 been done at this point, but yes, that has to be done as part
23 of the project.

24 Q Have you been out to Harmony lately?

25 A Lately? Not in the recent past.

1 Q Have you - do you know where 2-D-1 is in the Harmony
2 Township?

3 A Yes, sir, I believe I do.

4 Q There's not a bit of asphalt on the ground in 2-D-1 is
5 there?

6 A I couldn't speak to what's out there right now.

7 Q Okay, thank you.

8 THE COURT: All right, you may step down.

9 Let me see the attorneys for a second.

10 (Whereupon, a bench conference is held in the presence
11 but out of the hearing of the jury.)

12 THE COURT: All right, all right, ladies and
13 gentlemen, it's a good time for us to go ahead and take our
14 morning break. We're going to take about a 10 or 15 minute
15 break. You're allowed to check your cell phones. You can
16 return calls, but please do not discuss the case even among
17 yourselves at this point in time. Don't conduct any
18 independent research into the case. We'll take about a 10 or
19 15 minute break to give you an opportunity to get something to
20 drink, stretch your legs, whatever the case may be. Hope you
21 have a nice break and we'll bring you back in about 10 or 15
22 minutes.

23 (The following takes place outside the presence of the jury.)

24 THE COURT: All right, anything from the Plaintiff
25 before we break?

1 MR. MOODY: Nothing from the Plaintiff at this point,
2 Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. MILLS: No, Your Honor.

5 THE COURT: All right, let's take about a 15 minute
6 break; okay?

7 OFF THE RECORD

8 (On the record. The following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, anything from the Plaintiff
11 before we bring the jury in?

12 MR. MOODY: Not right now, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. MILLS: No, sir.

15 THE COURT: All right, let's go ahead and bring the
16 jury in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, ladies and gentlemen, welcome
20 back. We're ready to resume the trial of the case. Mr.
21 Moody, you can call your next witness.

22 MR. MOODY: May it please the Court, Your Honor, we'd
23 call Boyd Johnson to the stand.

24 THE COURT: All right.

25 Whereupon, Boyd Johnson was called to the stand, duly

1 sworn by the clerk and testified as follows:

2 THE CLERK: Please be seated, state and spell your
3 name for the record.

4 MR. JOHNSON: My name is Boyd Johnson, B-O-Y-D, J-O-H-N-
5 S-O-N.

6 DIRECT EXAMINATION

7 BY MR. MOODY:

8 Q Mr. Johnson, are you employed by Georgetown County?

9 A I am.

10 Q What is your position with Georgetown County?

11 A Director of planning and code enforcement.

12 Q How long have you been in that position with Georgetown?

13 A Since 2006.

14 Q Okay, when in 2006 did you come to the County; do you
15 remember?

16 A Not exactly. I started work with Georgetown County in
17 2005 as a senior planner and then my boss left and I was
18 promoted to this position early.

19 Q So in '05 you were in the same office?

20 A I was in the same office, just had a different title.

21 Q I got you and who was your, your boss at the time?

22 A Carol Coleman.

23 Q And she was the one who left and you ---

24 A She left and went to work with Horry County.

25 Q Okay, and you are now the director of planning for

1 Georgetown County?

2 A Yes, yes, sir.

3 Q And that is you're basically the - oversee the entire
4 Planning Department; is that fair to say?

5 A Yes, sir.

6 Q Okay, so Ms. Richardson works with you or works under
7 you, I guess, would be fair to say?

8 A That's correct.

9 Q Give the jury the benefit of your educational background,
10 please, sir.

11 A I have a degree from USC in political science and a
12 master's degree in public administration from the College of
13 Charleston and USC.

14 Q Okay, prior to coming on as the - in the planning
15 department of Georgetown County did you work in a similar
16 position for some other municipality or county?

17 A In the early eighties I was hired by the City of
18 Georgetown in the planning department, worked there for 25
19 years, but the last 12 years as the city administrator in
20 Georgetown.

21 Q Okay, and then you came on with Georgetown County in '05
22 from the city; is that correct?

23 A That's correct.

24 Q Okay, during your time with the City of Georgetown did
25 you have the opportunity to deal with developments such as -

1 similar to Harmony; not necessarily Harmony but similar to
2 Harmony?

3 A Certainly nothing that large and not any that dealt with
4 financial guaranties.

5 Q Okay, so you'd never had any experience with letters of
6 credit or ---

7 A Not at the city, no, sir.

8 Q Okay, and wouldn't you say Harmony is a large
9 development? Do you have any idea how big, how many lots are
10 out there?

11 A I believe it was approved for about 1700.

12 Q Residential?

13 A That's residential, not, that doesn't include the
14 commercial. There's square footage in, I have no idea how
15 much that was but ---

16 Q It's a large mixed-use planned development?

17 A It is, yes, sir.

18 Q And there are different phases throughout Harmony; is
19 that correct?

20 A Yes, sir.

21 Q Are you familiar with 2-D-1 that we've been talking about
22 today?

23 A Yes, sir.

24 Q Do you have any idea how many lots are in 2-D-1 right
25 now?

1 A I would - I'm estimating about 50 but that's just an
2 estimate.

3 Q Okay, fair enough. Now, when you came on with Georgetown
4 County in the planning department did you start dealing with
5 financial guaranties and letters of credit immediately?

6 A At that time, no, sir. Denise Sherman was still employed
7 there and she was more in that role than I was. I mean, I was
8 aware of what was going on but I didn't - I wasn't really in
9 the loop at that time.

10 Q Can you give the jury an idea of what a letter of credit
11 is, how it works?

12 A Generally, it's just an obligation that the bank has made
13 to the County to provide coverage for a project in an amount
14 of 125 percent of the estimated cost of the work to complete
15 that project and this would be a project owned by a private
16 sector developer and if something goes bad with the project
17 that money would be there to, to - for the County to receive
18 to go toward that, normally it would be an infrastructure
19 installation.

20 Q What would be the consideration for a bank to post or to
21 write a letter of credit on a development, the financial
22 consideration?

23 A I'm not sure from - for the developer you mean or ---

24 Q Yes, sir.

25 A I don't know exactly how that works, how the developer

1 goes to the bank and obtains it I don't know exactly how that
2 works.

3 Q It would require some sort of money or some sort of
4 security from the developer?

5 A Some collateral, some cash, yes, they would have to
6 provide - they would have to obtain it from the bank, it's
7 certainly at a cost.

8 Q It certainly would require assets from the developer
9 before a bank ---

10 A Yes.

11 Q --- would ever write a letter of credit?

12 A Yes, from but ---

13 Q So you would assume that the developer has posted money
14 with the bank?

15 A I would assume money or, again, some type of guarantee
16 that the - I'm sure - like I said, I suppose it possibly could
17 be land. I've never been involved with that aspect of it.

18 Q All right, but and you understand the purpose of a letter
19 of credit; do you not?

20 A Yes, sir; yes, sir.

21 Q Okay, and what is the - why would the County want to
22 require a letter of credit from a developer?

23 A It ensures - it allows the developer as earlier stated to
24 go ahead and sell the lots before the infrastructure is in and
25 Georgetown County, of course, looks at that as a good thing

1 for economic development and also it provides or the intention
2 is to provide a means so that the infrastructure would be
3 installed again if something went bad on the project.

4 Q Okay.

5 A The infrastructure that would be used by the homeowners
6 as they purchased their lots.

7 Q Certainly there just to ensure that the infrastructure is
8 completed if the developer ---

9 A Yes.

10 Q --- something were to happen?

11 A Yes, sir.

12 Q So, basically it's an insurance policy what it boils down
13 to?

14 A I don't - maybe not technically but certainly the end
15 result, yes, sir.

16 Q Okay, and that letter of credit or insurance would be for
17 the benefit of whom?

18 A The County is the beneficiary as far as the ordinance, as
19 the ordinance states.

20 Q Okay, but the ultimate beneficiaries of that are who?

21 A Ultimately the people living on the road who purchased
22 the property obviously would be protected and receive that
23 benefit ---

24 Q And ---

25 A --- to be able to use their property.

1 Q Okay, and let me - let's go to this ordinance again and I
2 certainly don't want to belabor this too much but let's go
3 back over it one more time. Now, you as the planning director
4 for Georgetown County are familiar with the financial guaranty
5 ordinance which is Plaintiff's Exhibit Number One?

6 A Yes, sir.

7 Q And it's actually Section 3 of the improvement standards
8 at that time in 2006 and 2007; is that correct?

9 A That's correct.

10 Q And of course we talked about the general need for a
11 financial guaranty and why it's being posted, but again, the
12 County's not going to require a developer to post a financial
13 guaranty just to develop their property; would they?

14 A No, sir, they would have the option of installing
15 infrastructure which many do.

16 Q Okay, and in fact, the County doesn't have to ever accept
17 a letter of guaranty or some sort of cash to allow a developer
18 to start selling lots before the infrastructure is in?

19 A That's correct.

20 Q Okay, and the County in this situation though agreed to
21 accept letters of credit from this owner at Harmony Township;
22 is that correct?

23 A Yes.

24 Q Okay, and there were several letters of credit for
25 different phases of Harmony; were there not?

1 A There were.

2 Q Now, as a result - well, strike that. Let's go back to
3 the ordinance for a minute. Now, let's talk about - we talked
4 all about what needed to be submitted to be approved. We
5 talked about what the County would have required to see before
6 they would approve any financial guaranties and actually plat
7 the property and you heard all that earlier; didn't you?

8 A Yes, sir.

9 Q Okay, I don't want to go back over that, but you would
10 agree with me that the County would require that the letter of
11 credit would be at least 125 percent of the cost to complete
12 the project; is that correct?

13 A That's correct.

14 Q And you would also agree with me that that should be the
15 case throughout the term of the letter of credit; is that fair
16 to say?

17 A Yes, sir.

18 Q So as things are being - as the letter of credit's being
19 reduced it is the County's purpose to maintain at least 125
20 percent of the cost to complete at any point; is that correct?

21 A Yes, sir, that's correct.

22 Q Okay, now, let's go back to your office for a minute and
23 let's talk about you came in December of '05, I think you - or
24 sometime in '05?

25 A Yes, sir.

1 Q Other than this ordinance which we have shown today were
2 there any sort of written protocols or guidelines or internal
3 policies that are in writing that Georgetown County had with
4 regards to letters of credit or financial guaranties?

5 A I'm not aware of any that existed at that time.

6 Q Okay, and in fact, during the term before these letters
7 of credit were called by the County in this situation there
8 weren't any written guidelines or protocols?

9 A I do not believe so, no, sir.

10 Q And at that point you say - Carol left in '06, Carol
11 Coleman?

12 A I think it's actually she left in late '05.

13 Q Okay, and then Denise Sherman left when?

14 A I can't remember exactly when she left, maybe a year
15 after I took over, something like that.

16 Q Sometime late '06 or ---

17 A Yes, sir.

18 Q Okay, and Ms. Sherman and Ms. Coleman to that point were
19 primarily the ones who handled the letter of credit issues and
20 financial guaranties with the County?

21 A I believe that'd be the case, yes, sir.

22 Q Okay, so after those two left were there any - was there
23 anybody else other than you and Ms. Richardson who had had any
24 experience with letters of credit or financial guaranties in
25 the County?

1 A In the planning department?

2 Q Yes, sir.

3 A No, sir.

4 Q Okay, so basically you were just left to try to determine
5 what you were supposed to do when a financial guaranty came
6 in; is that correct?

7 A That's correct, we had to do some studying.

8 Q Okay, and - but the main thing you would study was this
9 ordinance; is that right?

10 A Yes, sir.

11 Q Because that's the only thing you had to figure out what
12 you were supposed to do; is that fair to say?

13 A That's correct except for past, the past precedent that
14 we were aware of, you know, knowing how they handled it.

15 Q Okay, so there was some sort of precedent that ---

16 A Yes, sir.

17 Q --- the previous employees had handled these type of
18 things ---

19 A Yes, sir.

20 Q --- before? Do you recall ever having another
21 development around the time that you came in where the
22 financial guaranties were called by the County?

23 A I do not believe there - I'm not aware of any other
24 development where, where it was actually called by the County.

25 Q Okay, okay, so do you know whether Denise or Carol ever

1 had any experience with that at all?

2 A To my knowledge they did not.

3 Q Okay, so is it fair to say no one in the Planning
4 Department had ever gotten to the point where they had to deal
5 with a letter of credit and calling it like we did at Harmony?

6 A I, I believe that's correct.

7 Q Okay, now, looking back at the financial guaranty
8 ordinance let me, let me find the correct section for you so
9 you can take a look at it. You would agree, would you not,
10 Mr. Boyd, or Mr. Johnson, I'm sorry, that the letter of credit
11 is supposed to be separate and apart from a construction loan
12 or the developer's money to ensure that the property is
13 completely constructed.

14 A Yes, sir.

15 Q Is that a fair question?

16 A It is. That's correct.

17 Q And so it would not be proper, would it, that a
18 contractor or the developer would come to the County on a
19 month-to-month basis just to pay the contractors to draw down
20 these letters of credit; would it be?

21 A That certainly was not the intention or the way the
22 County meant for it to work; that's correct.

23 Q And in fact it says that in the ordinance; does it not?

24 A Yes, sir, it does.

25 Q Okay, and I think the language in the ordinance is it's

1 not there to pay the month-to-month obligations of the
2 contractor, something to that effect.

3 A Yes, sir, we're not the accountants for the developer.

4 Q Right, the bookkeeper, the ones that write the check,
5 okay. Now, with regards to the reductions in the letters of
6 credit out there, first of all there were numerous letters of
7 credit from various financial institutions; were there not?

8 A In other phases?

9 Q Yes, sir.

10 A Yes, sir.

11 Q And it was up to you and Ms. Richardson to keep up with
12 those letters of credit and deal with the developer as they
13 made requests; was it not?

14 A Yes, sir.

15 Q Now, with regards to 2-D-1, which is the phase in which
16 Mr. Repko owns property were you familiar with those, the
17 letter of credit that was on file?

18 A Yes, sir, generally.

19 Q Okay, and you, you would agree with me - well, I tell you
20 what let me just show it to you and let's see if you are
21 familiar with it. Plaintiff's Exhibit Number Seven, I'll just
22 ask you if you've seen that before.

23 A Yes, sir.

24 Q Okay, and that is, in fact, the letter of credit with
25 Wachovia Bank for this phase of Harmony Township?

1 A That's correct.

2 Q Okay, and let's just put that back on there. Put that
3 back in the stack here, and that amount was \$1,301,000 and
4 some change?

5 A Yes, sir.

6 Q I put it up on the board as 1.3 because it's just easier
7 for me. Now, that was done in May of - May 23rd of 2006; is
8 that correct?

9 A That sounds correct.

10 Q Okay, and I can hand you this back if you need to see.

11 A No.

12 Q Okay, now, and that would have been based on an
13 engineer's assessment of costs to complete the infrastructure
14 ---

15 A That's ---

16 Q --- at D - 2-D-1?

17 A Yes, sir, that's correct.

18 Q Okay, and that, that number should be 125 percent of the
19 cost to complete.

20 A Yes, sir.

21 Q Is that fair to say?

22 A That's correct.

23 Q Because that's what the ordinance would require.

24 A Uh-huh, yes, sir.

25 Q And we did have - so if I did the math right the cost to

1 complete was going to be just over a million dollars, million
2 40,000; is that correct?

3 A Yes, sir.

4 Q Okay, now, let's talk about these guaranties or the
5 reductions of these letters of credit and let's go through it,
6 beginning at 3.5 and you've seen this. It says a developer
7 may reduce their letters of credit or financial guaranties;
8 right?

9 A That's correct.

10 Q Not shall, the County shall, it's a developer may.

11 A Yes, sir, that's what - that's correct.

12 Q So there's no obligation for the County to reduce these
13 letters of credit at all; were they?

14 A That's correct. We could have said, "No, we're not going
15 to reduce it."

16 Q Could have held the whole \$1.3 million all the way
17 through to the end to ensure that the infrastructure was put
18 in; is that fair to say?

19 A I believe we could have legally done that, yes, sir.

20 Q Okay, and despite that the developer actually came to the
21 County on numerous occasions to reduce this letter of credit;
22 did they not?

23 A They did.

24 Q And these were either directed to Denise Sherman or to
25 Holly Richardson in your office; is that usually how it

1 happened?

2 A Yes, sir.

3 Q Would you have had any involvement in discussions of
4 whether the letter of credit should have been reduced?

5 A Oh, yes, sir, every time they would have come to, to me
6 and we would have looked at it, looked at the documentation.

7 Q Okay, now, the first reduction was in July, July 26 of
8 2006 for \$331,000 plus, and I have those documents here if
9 you'd like to take a look at them, which are Plaintiff's
10 Exhibit Eight and Ten, as well as - yeah, just Eight and Ten,
11 if you'll take a look at those and see if you're familiar with
12 those documents.

13 A Yes, sir.

14 Q Okay, and the Plaintiff's Eight is, is the actual pay
15 request that was sent in by Kim Pavao on behalf of the
16 developer; is that right?

17 A Yes, sir.

18 Q And it's called pay application; is that correct?

19 A Yes, contractor's application for payment.

20 Q And it was for \$331,111?

21 A Yes, sir.

22 Q Okay, and then the second document attached to or
23 thereafter Exhibit Ten is a letter from the Planning
24 Department to Wachovia requesting that the letter of credit be
25 reduced?

1 A Yes, sir.

2 Q Okay, now, I've asked these questions of Ms. Richardson
3 and I have to ask them of you as well since you were involved
4 in the process, did you receive certification from an engineer
5 that the work had been done?

6 A I should have. I believe that I would have looked at it.
7 Apparently we don't - must not have a copy of it, but that
8 would have been something we would have looked at when we
9 reduce the letter of credit.

10 Q Would you have required that the engineer give you a cost
11 to complete along with every reduction request?

12 A We - I believe we did.

13 Q Okay, I haven't seen them. So that's why I want to know.

14 MR. MILLS: Objection, counsel's testifying, Your
15 Honor. If there's a question for the witness he needs to ask
16 it.

17 THE COURT: Sustained..

18 Q Do you have with you any documentation showing that you
19 had a cost to complete in July of '06 from an engineer?

20 A I do not.

21 Q Okay, and going forward there were additional reductions,
22 in October of 2006 there was a reduction as well; was there
23 not?

24 A Yes, sir, I believe so.

25 Q Okay, and let me show you the documents that are 11, 12,

1 I must have them out of order, okay, 11, 12 and 13. Take a
2 look at those for me, please, sir.

3 A Yes, sir.

4 Q Okay, and do those relate to the pay requests or
5 reduction in October of 2006?

6 A Yes, sir, I believe they do.

7 Q And there was \$117,000 and some change there as well is
8 requested; right?

9 A Yes, sir.

10 Q And the County did, in fact, reduce the letter of credit
11 that time?

12 A Yes, sir.

13 Q Okay, and you would, you would agree with me that that
14 reduction was done within two and a half months of the first
15 reduction; correct?

16 A Yes, sir, I believe that sounds correct.

17 Q Okay, if you'll look at Section 3-5 of the ordinance,
18 second paragraph it says, "Reductions of financial guaranties
19 will not be allowed within six months of any previous
20 reduction request"; does it not?

21 A Yes, sir, it does say that.

22 Q And you would agree with me that the second request to
23 reduce the letter of credit was well within six months of the
24 first?

25 A Yes, sir, it was. We - it was. We do feel we met the

1 intent of the, of that provision but it was within two months.

2 Q Okay, well, how - what intent do you get out of
3 reductions of financial guaranties will not be allowed within
4 six months of any previous reduction request?

5 A The intent of that provision was to really keep the
6 workload on the County staff at a manageable level. In other
7 words, we didn't want developers from throughout Georgetown
8 County coming to us every two weeks wanting money and us
9 managing their project. At that time the economy was starting
10 to slow down. So we had the time to do it, and it was being
11 done, again, when we got there. So, again, the intent of that
12 provision was to reduce the workload on the County staff and
13 make it manageable and we obviously had time to do it. So we
14 did it.

15 Q Well, wouldn't the intent of a letter of credit be that
16 the money remain in place for an infrastructure to be
17 completed?

18 A The intent, the work that was yet to be done but it would
19 certainly, you know, we don't want to hold somebody's money
20 just to hold it and then if we have been told by a certified
21 or professional engineer and inspectors that the work was done
22 we would release the money because, you know, we don't like to
23 hold people's money.

24 Q But you need to hold it at least to the extent that it's
25 125 percent of the cost to complete ---

1 A Yes, sir.

2 Q --- regardless?

3 A Yes, sir.

4 Q Okay, and so we go forward with this bond as well and
5 then there's another reduction request made in November of '06
6 and I won't - unless you want me to show you the documents.
7 You heard Ms. Richardson.

8 A Yes, sir.

9 Q That was done November the 8th of 2006; is that correct?

10 A Yes, sir.

11 Q So we have reduced the letter of credit three times
12 within a matter of three and a half months; is that fair to
13 say?

14 A I believe that's correct.

15 Q Okay, let me show you this document, Plaintiff's Exhibit
16 14, Mr. Johnson, and ask you if you have seen this in your
17 records as the director of planning.

18 A I don't recall it specifically but I'm sure I did.

19 Q Okay, and what is that document?

20 A It's a letter from the Earthworks Group who was the
21 engineer for the developer to Kevin Chestnut who generally
22 works with the roads in the County's Public Works Department
23 providing him a new or changes in price to the Harmony 2-D-1
24 and 2-D-2 phases.

25 Q And 2-D-1 is the one we're talking about today?

1 A Yes, sir.

2 Q Do you have cost to complete - well, first of all what's
3 the date on that letter again?

4 A December 6th, 2006.

5 Q So shortly after the third reduction letter of credit; is
6 that correct?

7 A Yes, sir. I do - I think what this letter is though this
8 is a - it says this changes the result of reduction in the
9 scope of work to redesign, due to redesigns by the owner. I
10 believe he was essentially establishing a new budget.

11 Q Okay.

12 A At this time.

13 Q And going to the back of that document there is a, a - an
14 amount of a cost to complete for 2-D-1; correct?

15 A Yes, sir.

16 Q And what is that amount?

17 A I believe it is \$1,153,205.45.

18 Q Okay, now, going forward after - even after we have this
19 documentation with the County the letter of credit is reduced
20 again; was it not?

21 A I believe it was.

22 Q Okay, let me show you the documents then.

23 A Yeah, I can't remember the exact dates, but.

24 Q Plaintiff's 16 and 18, take a look at those, see if
25 you're familiar with those.

1 A Okay. Yes, sir.

2 Q Okay, and that would coincide with what I have on the
3 board here, the reduction in April of '07 for 396,666; is that
4 correct?

5 A Yes, sir, that's correct.

6 Q Okay, and so at the end of these reductions there's only
7 \$156,000 left with this letter of credit and by the end of
8 April of 2007; correct?

9 A Yes, sir.

10 Q Now, what happened with that money, that letter of
11 credit?

12 A The 156,000?

13 Q Yes, sir.

14 A The developer at that time was still Tim Casey and he
15 approached the County, we had a meeting and he basically
16 brought the County a check. I assume that letter of credit
17 must have expired in order for him to have the cash, have
18 cash, but he brought the County a check for a hundred and - I
19 believe it was \$140,000, which we, of course, put in the
20 segregated account to be used at Harmony. There's a
21 difference obviously of 156 and 140 and I don't know the
22 reason for that, but we ended up getting a check from the
23 developer for \$140,000.

24 Q So the County as a beneficiary never cashed in this
25 letter of credit?

1 A Not this letter of credit, no, sir. The only letter of
2 credit we actually cashed in was for 2-D-2.

3 Q Right.

4 A That we called, yes, sir.

5 Q Had the developer not brought the \$140,000 to you the
6 County would have been without that entire amount; would they
7 not?

8 MR. MILLS: Objection, Your Honor, that calls for the
9 witness to speculate. He's told what happened. He doesn't
10 have to speculate on what might have happened.

11 THE COURT: Okay, I'm sorry. Ask your question again.

12 MR. MOODY: I'll withdraw it, Your Honor.

13 THE COURT: Okay.

14 BY MR. MOODY:

15 Q Mr. Johnson, you were copied in on various e-mails that
16 Mr. Bryant had sent out. A couple of them I want to talk to
17 you about if you don't mind and let me, let me find the exact
18 ones, but the first one was the e-mail to Mr. Underwood and
19 I'm going to just put it on this board so everybody can see
20 it, hopefully I can see it. Do you remember Mr. Underwood or
21 talking to Mr. Underwood or having to deal with Mr. Underwood?

22 A Actually I thought that was a Mrs. Underwood, but anyway.

23 Q Is it? I'm, I'm sorry.

24 A I can't say that I specifically remember, but there were
25 several people at that time who were in the Harmony

1 Development that would call either myself or Ms. Richardson or
2 Mr. Bryant and ask, "Well, you know, what's going on with the
3 project," but yeah, I think I do remember this, this person.

4 Q Okay, and this would have been one of the homeowners out
5 there who was asking about what's going on; correct?

6 A Yes, sir.

7 Q And you don't specially recall talking to Mr. or Mrs.
8 Underwood at any time I guess?

9 A I don't recall specifically talking to them. I may, but
10 I don't, and I don't - well, I guess I could read this in
11 detail and deduce it. I don't know where their, where their
12 lot is either.

13 Q About two-thirds of the way down that e-mail and let me,
14 let me, well - yeah, about 60 percent of the way down that e-
15 mail Mr. - and that you were copied on this e-mail; correct?

16 A I'm not - if it says so at the bottom, but I'm not sure.
17 I think I was.

18 Q Okay, and about two-thirds of the way down there Mr.
19 Bryant is saying, "We felt we had a good monitoring system in
20 place and also had a fiduciary duty to the citizens who
21 purchased property in Harmony to effectively manage this LOC
22 money and not let Harmony throw it into the wind," you see
23 that?

24 A Yes, sir; yes, sir.

25 Q Did you - do you believe today that the County actually

1 had an effective monitoring system in place?

2 A Well, Mr. Bryant here is talking about after we received
3 the money and actually were disbursing the money, you know, to
4 different contractors, and at that time, yes, I believe we
5 did.

6 Q What you'd do different than what you did before?

7 A Well, we didn't disburse anything before. Before we,
8 before, you know, we - when we reduced the letter of credit
9 all we ever had was a letter, you know, we didn't ever see
10 money or handle money. In this case we actually had money we
11 had received that was in the bank and the developer would go
12 out and solicit bids or get quotes and bring to the County and
13 the County would authorize the work to be done like storm
14 water, for example, and then we would actually after we got a
15 certification from the engineer that the work was done we
16 would release the, the funds and it would have to be a payment
17 process that I think normally Mr. Bryant completed and would
18 send to the finance department and then the check would be cut
19 like any other check, but none of that was ever done till
20 after we received the money.

21 Q Mr. Johnson, before the letter of credit was called or
22 cashed in ---

23 A Right.

24 Q --- the County would get a pay application from the
25 developer; right, to reduce the letter of credit?

1 A We didn't get all of them but we would - there would be
2 obviously we have seen them attached to the requests to reduce
3 the letter of credit, yes, sir.

4 Q The County would rely on the developer's engineer to give
5 them a letter saying that the work had been done?

6 A Yes, sir.

7 Q The County would run it by a couple of departments within
8 as well as Georgetown County Water and Sewer?

9 A Yes, sir.

10 Q And then they would reduce the letter of credit?

11 A Yes, sir.

12 Q Didn't the County rely on the same engineers after they
13 called the letter of credit to make disbursements?

14 A Yes, sir, that's correct.

15 Q Okay, so, tell me how your monitoring system changed
16 after you realized that you didn't have enough money to
17 complete the infrastructure when you called the letters of
18 credit ---

19 A Because we never ---

20 Q --- tell me how the monitoring system changed.

21 A Because we never wrote a check before we got the money,
22 we never disbursed any money.

23 Q That's, that's effectively what you were doing before you
24 got the letter of credit cashed in.

25 MR. MILLS: Objection, argumentative.

1 THE COURT: Sustained.

2 Q Mr. Johnson, do you agree with Mr. Bryant that the County
3 had a fiduciary obligation to the property owners?

4 MR. MILLS: Objection, that calls for a legal
5 conclusion, Your Honor.

6 THE COURT: Sustained.

7 Q Do you agree with Mr. Bryant that the County was a
8 trustee over these funds?

9 A Yes, sir.

10 Q Do you understand what a trustee is supposed to do before
11 they disburse funds?

12 A By the term trustee I can't say that I understand the
13 legal definition of trustee, but I assume that means this
14 money was to be cared for and obligated to a specific purpose
15 and we were to be good stewards of that, of those funds.

16 Q Right now the County is sitting on \$140,000 to complete
17 2-D-1; is that correct?

18 A I believe - I'm not sure how much the account is. I was
19 thinking it was somewhere actually a little more than that.
20 Now, well, and I take that back. Let me not - take that back
21 because I don't - for - I'm not sure - when I said it was more
22 than that that may be included D-2 as well, but yes, sir, we
23 do have - we do have a balance as Mr. Bryant earlier said that
24 said at some point we said, "No, we're not going more -
25 forward anymore." That was when the bankruptcies and all that

1 started going, so ---

2 Q . You never had more than \$140,000 left over for 2-D-1; is
3 that correct?

4 A Not for 2-D-1, I do not believe so.

5 Q Okay, and you can't use money from one letter of credit
6 to cover costs in another phase; can you?

7 A We did do that.

8 Q You did do that but you're not supposed to; are you?

9 A I don't know.

10 Q Okay.

11 A The, you know, from a legal perspective. Again, it was
12 all Harmony, but it was certainly in a different phase than
13 the letter of credit had, you know, was issued for.

14 Q What's the cost to complete 2-D-1 today?

15 A I do not know.

16 Q Has the County ever gotten a cost to complete 2-D-1?

17 A I'm sure it was discussed. I don't know if there was a
18 document that, you know, had a number on it.

19 Q The County have any intention of going out there and
20 completing the infrastructure itself?

21 A No, sir.

22 Q Who owns the property now?

23 A I believe once it went through the bankruptcy process,
24 which took a long time, I understand it's a Mr. Chuck Thompson
25 owns the part that we're talking about today. There's a whole

1 'nother half of Harmony up front that's never been touched
2 except for a road, one road going through it and a Mr. Randy
3 Bates I think from Mt. Pleasant owns that portion.

4 Q Has anybody submitted any plans to the County to complete
5 the infrastructure going forward?

6 A No, sir, we've had calls from Mr. Thompson suggesting
7 that he was trying to find a way to do that. I know he also
8 called the Water and Sewer District talking to them about ways
9 to move forward in the future, but I've never seen a written
10 map, plan or budget to do so.

11 Q Would it require another financial guaranty from a
12 subsequent developer to continue forward?

13 A Yes, sir.

14 Q And that, no one has come forward with additional
15 financial guaranties?

16 A No, sir.

17 Q Have you been out to 2-D-2 recently?

18 A It's been several months but I've ridden, you know, just
19 ridden out there.

20 Q And there is some sewer, water work in; is that correct?

21 A Yes, sir, there's - you can see storm water ponds, catch
22 basins, water and sewer stub outs. You can see where the road
23 beds were cleared, but certainly no asphalt.

24 Q No asphalt, no curbing, no guttering?

25 A That's correct. Storm, storm drains, but I don't

1 remember any guttering. That would be done usually later, so.

2 Q The County would not allow anybody to build a home out
3 there as it sits now?

4 A We would only allow a home if it had utilities and access
5 to it. You know, there may be a lot for instance that's on a
6 corner of the main road going in. We would not issue a
7 building permit to a house that we could not get a fire truck
8 or an ambulance to.

9 Q Okay.

10 MR. MOODY: Beg the Court's indulgence one minute.

11 THE COURT: All right.

12 BY MR. MOODY:

13 Q Real quick and I promise I'll be fast, Mr. Johnson, but
14 you were just referencing, this is the map that's in evidence.
15 That is a map of 2-D-1; is it not? Are you familiar with
16 that?

17 A Yes, sir, I'm familiar with it.

18 Q Okay, and so what you were referencing is if for some
19 reason someone owned a lot on - this, this is the main road
20 going in; is it not of the development?

21 A Yes, sir, that's, that's correct.

22 Q And that is asphalted; correct?

23 A Yes, sir.

24 Q But the roads going back into here those are not
25 asphalted; are they?

1 A That's correct.

2 Q So when you were referencing, "We might issue a building
3 permit out there," you're talking about up here on the
4 asphalted road; right?

5 A Yes, sir, just above where your pin is, that - I'm just
6 using that as an example.

7 Q So if Mr. Repko's lots are way back in here where they
8 are he couldn't build on them today; could he?

9 A No, sir.

10 Q Okay.

11 MR. MOODY: Nothing further, Your Honor.

12 THE COURT: All right, cross examination.

13 MR. MILLS: Just briefly, Your Honor.

14 CROSS EXAMINATION

15 BY MR. MILLS:

16 Q Mr. Johnson, do you have on your screen there Plaintiff's
17 Exhibit One?

18 A Section 3, financial guaranties, yes, sir.

19 Q There you go, that's what I'm looking at. This horse has
20 been flogged to death. So I promise you this won't be long.

21 All I'm interested in is having you look at Section 3.1. You
22 see it?

23 A Yes, sir.

24 Q You see where my finger's pointing?

25 A Yes, sir.

1 Q Would you publish that last sentence? Publish, I mean
2 just read it.

3 A The last sentence in that paragraph?

4 Q Yes, sir.

5 A "Acceptance of a financial guaranty by Georgetown County
6 shall not be construed as an obligation to any other agency,
7 utility or property owner within affected developments."

8 Q Okay, and what other utility might you not have an
9 obligation to pursuant to that section of the statute?

10 A Water and Sewer District.

11 Q And in terms of affected property owners, in this section
12 regarding obligations, is Mr. Repko an affected property
13 owner?

14 A Yes, sir.

15 Q Thank you, Mr. Johnson.

16 THE COURT: Redirect?

17 MR. MOODY: Real, real briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MOODY:

20 Q Mr. Johnson.

21 A Yes, sir.

22 Q But you agree that the County would have to comply with
23 its own ordinance with regards to these matters; wouldn't you?

24 A Yes, sir.

25 Q Okay, and if the County had - never mind, I'll leave

1 that. That's all I have.

2 THE COURT: All right, you may step down.

3 All right, you want to call your next witness?

4 MR. MOODY: Your Honor, my next witness is my client,
5 is going to be ---

6 THE COURT: Okay.

7 MR. MOODY: --- fairly long, I, I say long.

8 THE COURT: All right, so you want to go ahead and
9 break for lunch now?

10 MR. MOODY: If, if that's the Court's pleasure.

11 THE COURT: That'll be fine, okay.

12 All right, ladies and gentlemen, we're going to go ahead
13 and break for lunch at this time. It's a little early. It's
14 about ten till 12. I'll go ahead and give you until 1:30.
15 Please be back in the jury room at 1:30. That'll give you an
16 hour and a half to eat lunch. Do not discuss the case even
17 among yourselves. Don't conduct any independent
18 investigations. I hope everybody has a good lunch and we'll
19 see you back at 1:30. Thank you very much.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right, anything from the Plaintiff
23 before we break for lunch?

24 MR. MOODY: Just one matter, Your Honor, I think I've
25 got a couple of exhibits I did not move into evidence. I'll

1 move them in now.

2 THE COURT: All right.

3 MR. MOODY: Nine, 13 and 17. We'd move to have those
4 admitted into evidence.

5 MR. MILLS: I suspect there's no objection at all.
6 Let me just look at them.

7 THE COURT: All right.

8 MR. MILLS: Nine, 13 and 17 are without objection,
9 Your Honor.

10 THE COURT: All right, Plaintiff's Exhibit Nine,
11 Plaintiff's Exhibit 13 and Plaintiff's Exhibit 17 are admitted
12 into evidence without objection.

13 {Plaintiff's Exhibit Number Nine [7-26-06 letter],
14 Plaintiff's Exhibit Number 13 [11-8-06 letter from Strickland]
15 and Plaintiff's Exhibit Number 17 [4-5-07 letter from
16 Richardson to Wachovia] admitted into evidence and
17 appropriately marked.)

18 MR. MOODY: That's all I have, Your Honor.

19 THE COURT: All right, anything from the Defense
20 before we break?

21 MR. MILLS: Just a housekeeping matter off the record,
22 Your Honor.

23 THE COURT: All right, hold for a minute, let me make
24 this note so I can advise the jury when they come back. What
25 was that Nine?

1 MR. MILLS: 13 and 17.

2 THE COURT: 13 and 17. All right, Mr. Mills.

3 MR. MILLS: If - may we approach?

4 THE COURT: Yeah, come on up.

5 (Whereupon, a bench conference is held.)

6 THE COURT: All right, we'll be in recess till 1:30.

7 OFF THE RECORD

8 (On the record. The following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, anything from the Plaintiff
11 before we bring the jury in?

12 MR. MOODY: Not at this time, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. MILLS: Ready to proceed, Your Honor.

15 THE COURT: All right, let's go ahead and bring the
16 jury in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, ladies and gentlemen, welcome
20 back. Hope everybody had a good lunch. We're ready to resume
21 the trial of this case. I remind you if you have any cell
22 phones or pager devices if you would turn those off at this
23 point in time.

24 Now, during one of the - I can't - believe it was the
25 witness before last there was some mention of some exhibits.

1 So as an administrative matter when you - when we broke for
2 lunch we went back on the record outside your presence and the
3 Plaintiff did introduce without objection Plaintiff Exhibits
4 9, 13 and 17. So those have now come into evidence without
5 objection from the Defendant.

6 All right, the Plaintiff can call their next witness.

7 MR. MOODY: May it please the Court, Your Honor, we'd
8 call David Repko to the stand.

9 THE COURT: All right.

10 Whereupon, David M. Repko was called to the stand, duly
11 sworn by the clerk and testified as follows:

12 THE CLERK: Please be seated, state and spell your
13 name for the record.

14 MR. REPKO: David Repko, D-A-V-I-D, R-E-P-K-O.

15 DIRECT EXAMINATION

16 BY MR. MOODY:

17 Q Dave, you're, you're the Plaintiff in this case; aren't
18 you?

19 A I am.

20 Q Where are you from, sir?

21 A Baltimore, Maryland.

22 Q Okay, you're going to have to speak up a little bit for
23 me.

24 A Yeah, Baltimore, Maryland.

25 Q Okay, and tell the jury a little bit about yourself.

1 Where were you born and raised?

2 A Baltimore, Maryland.

3 Q And did you attend high school in Baltimore, I take it?

4 A Archbishop Curley High School.

5 Q How about college?

6 A Washington College, it's in Chestertown, Maryland, on the
7 eastern shore of Maryland.

8 Q Okay.

9 A Loyola College for graduate school.

10 Q Okay, now, this, this nice lady has to take down every
11 word you say.

12 A Oh, I'm sorry.

13 Q So try not to speak over me if you can and I'll try to,
14 try not to speak over you as well. What do you do for a
15 living?

16 A I'm a financial advisor.

17 Q Okay, and tell the jury exactly what a financial advisor
18 does.

19 A Well, I've done it for 22 years and a day. I was
20 appointed 22 years ago yesterday. I work for Ameriprise
21 Financial. I'm independent through them. It's self employed.
22 What I do is I consult with clients. I help them make
23 investments most notably for their children's education and
24 for retirement.

25 Q So you advise people about investments and that sort of

1 thing?

2 A People come into my office, many times I know them. Many
3 times I don't know them because they're referred for another -
4 by another client and we shake hands and I, I help them invest
5 their money and I have a fiduciary to help them invest their
6 money and do it properly, yes.

7 Q How did you come to Georgetown County, South Carolina?

8 A Well, in the past I've come down to South Carolina to
9 play golf in the - like on trips, but my best friend moved
10 here a few years back.

11 Q Okay, and how - when was the first time you came to
12 Georgetown County?

13 A I mean, it was on, I guess, in like 2005, 2006, I guess
14 in that range.

15 Q Okay, and you say your friend, that was Matt who's ---

16 A Yeah.

17 Q --- seated over there?

18 A Matthew Almony, yes.

19 Q Okay, he's been a long-time friend of yours; is that
20 right?

21 A We met in college. We've been very good friends ever
22 since.

23 Q Okay, and you'd come down to visit with Matt?

24 A Yes.

25 Q Okay, how did you come to learn about Harmony Township?

1 A Well, when Matt moved down here he was involved - he got
2 involved in real estate and he came across the development,
3 and you know, we were talking one time and we talk, you know,
4 several times a week, and he was like, "Hey, this place is,
5 you know, really nice," and you know, went through like some
6 of the amenities at that time, the marina, and at that time
7 there was a lot for sale and we had talked about it and we
8 made a purchase.

9 Q Okay, and is that one of the lots we're here to talk
10 about today?

11 A No.

12 Q Okay, and what attracted you to Harmony Township?

13 A Well, there's, I mean, several things. It was really the
14 Town of Georgetown and, you know, the first, the first time I
15 came to visit and we came into Harmony and that's really when
16 Matt was, was working here then because he started working for
17 Harmony, I mean, after the original purchase. I guess he met
18 people and started working there and he brought me to the
19 development because I wanted to see it and see where it worked
20 and see where we bought the lot and, you know, in, in the
21 development, you know, I've been to Florida. I've been to
22 Arizona. I've been to California. I've talked about clients.
23 That's what I do. I talk about their retirement plans and in
24 the future with what they want to do, and when I came across
25 Harmony I walked in. I was like, "Hey, this is a place I can

1 live."

2 Q Okay, so the first time you saw it was maybe back in '05,
3 '06; is that right?

4 A Yes.

5 Q Okay, and tell me how, how did it come about that you
6 actually bought these two lots in Harmony?

7 A Well, later on, you know, just in conversations he would
8 tell me what's going on in the project. Again, we have talks
9 about many different things. I mean, you know, and he had
10 said that they were going to another phase and then and, and
11 talking about like another phase and I was asking him
12 questions and then he was like, "There's two lots, you know,
13 that are like they're the least costly lots in this area.
14 They're right next to each other. You can build on both
15 lots," and we went back and forth, and I was like, "You know,
16 Matt, it's like, you know, I want to, I want to purchase
17 this."

18 Q And those lots were those the two that you purchased 1076
19 of phase 2-D-1 and 1076 of phase 2-D-2?

20 A It was 1076 and 1077 I believe.

21 Q Correct, correct, I'm sorry.

22 A Of, of D-1.

23 Q In fact ---

24 A They're right next to each other, you know, they're right
25 next.

1 Q Why don't we do this, why don't I hand you copies of the
2 deeds and let you look at them. We'll get these marked. I'm
3 going to show you what's been marked as Plaintiff's Exhibits
4 19 and 20 and ask you if you could identify those for the
5 record.

6 A Yes.

7 Q Okay, and what are those?

8 A They're my deeds.

9 Q Okay, and Exhibit Number 19 is for which lot?

10 A That's lot number 1077 in plat of Phase D-1 Community II,
11 West Stewart, Harmony Township.

12 Q And how much did you pay for that lot?

13 A This lot was \$78,000.

14 Q Okay, and then the Exhibit 20 is for Lot 1076; is that
15 correct?

16 A Lot 1076 of the same subdivision, West Stewart, D-1.

17 Q And you paid how much for that lot?

18 A \$77,000.

19 Q Okay, so collectively you paid \$155,000 for those lots?

20 A Yes, sir.

21 Q And that was in October of 2006?

22 A Yes, sir.

23 Q Okay.

24 MR. MOODY: We'd offer those as Plaintiff's Exhibits
25 19 and 20.

1 MR. MILLS: No objection to the deeds, Judge.

2 THE COURT: All right, Plaintiff's Exhibit 19,
3 Plaintiff's Exhibit 20 admitted into evidence without
4 objection.

5 (Plaintiff's Exhibit Number 19 [Deed to Lot 1077] and
6 Plaintiff's Exhibit Number 20 [Deed to Lot 1076] admitted into
7 evidence and appropriately marked.)

8 BY MR. MOODY:

9 Q Now, Mr. Repko, although you're a financial advisor do
10 you speculate in real estate?

11 A No, I do not.

12 Q Have you bought properties before?

13 A Yes.

14 Q Okay, have you bought any properties that did not have
15 roads and infrastructure to them when you purchased them?

16 A No, this was my first time of buying a lot.

17 Q Why would you buy property that did not have
18 infrastructure to it?

19 A Well, I mean, one would be that there - well, there are
20 guaranties that the infrastructure is going to be put in, you
21 know, and the other would be, sure, to hopefully buy something
22 at a lower cost, then it would appreciate. I mean, I, I don't
23 want to buy something that goes down in value.

24 Q What was your intention with these properties when you
25 bought the land?

1 A Well, these properties was ultimately in the development
2 to live, I mean, or to retire, have a residence there. You
3 know, when I went to the residence again, it, you know, I love
4 the trees hanging over the road and the moss hanging down and,
5 I mean, I love, you know, I really liked the place and all the
6 plans and what was told in the sales office and the
7 progression of and what was going to be there. I, you know, I
8 was like, "This is a place I could be."

9 Q Okay.

10 A I like Georgetown County.

11 Q So your intention was to eventually reside here or use it
12 as a second home?

13 A Yes.

14 Q Were you in the business of flipping houses at the time?

15 A No, I mean, I've invested in property and resold it,
16 sure, but I, yeah, I was never, never in the business of, of
17 flipping houses.

18 Q Okay, now, let's look at the, the map that I've put up.
19 This is Plaintiff's Exhibit Number Five. Is, is this the
20 phase map for 2-D-1 where your property is located?

21 A Yeah.

22 Q Okay, and this obviously shows roads and cutout lots and
23 that sort of thing as on the plat; does it not?

24 A Yes.

25 Q Can, can you point out where your lots are on this map?

1 A The, the main road goes here.

2 Q Okay, let me see if I can - are you talking about this
3 road?

4 A That's, actually I believe it's the other one.

5 Q This one, okay, that's the main road.

6 A Yeah, and that's actually a road meaning that you can
7 drive a car on it or other vehicles.

8 Q Okay.

9 A And then the lots are back here, I believe, like right
10 back there.

11 Q You're talking about in this area?

12 A Right in front, right over here. Go, go down to the
13 center of the page, up a little bit.

14 Q Right in here?

15 A Yeah, right to the left a little bit like right to the,
16 to the left.

17 Q I got you.

18 A On my left.

19 Q Your left, there you go, right in there.

20 A Yeah, it's right over there.

21 Q So that's where your lots are towards the back of that
22 phase; is that right?

23 A Yes.

24 Q And but you - but there are no roads or - there's no
25 asphalt going to them or anything like that; is there?

1 A There's, there's no road there.

2 Q Okay, well, let's back up a little bit. After you
3 purchased these properties what was your expectation as to
4 when you could build on the lots?

5 A Well, I mean, without the infrastructure it would be a
6 few years off. You know, so it was to get in or to invest
7 early and then have the infrastructure go in and ultimately
8 build a house that I could come - I mean, I'm not going to
9 retire now. So I would build a house to come and vacation on,
10 have my parents come down, other, my brother, other family
11 members.

12 Q Were you going to build two separate houses?

13 A I didn't really have an exact plan, you know. It was
14 something that would have been done, you know, in a few years.
15 So, I didn't really know if I was, you know, would build a
16 house along both lots to have some more space, you know, not
17 being able to physically go, I mean, this is - it was, it was
18 different because there was like a, you know, like a mock
19 diagram of the development, you know, so you could see it, but
20 I, I - you couldn't really picture the size of the lots. So I
21 couldn't really quantify what type of house. I don't have a
22 house picked out, but I liked the development and I liked the
23 area and, and that's why and again, they were at a cost where
24 I thought I had some flexibility to, you know, to purchase
25 them.

1 Q And I think you said this earlier but you said these were
2 the cheaper lots in the subdivision?

3 A My sales associate told me they were the least expensive
4 lots in that area.

5 Q Okay, and going forward, at some point did you find out
6 that the developer filed bankruptcy?

7 A I did.

8 Q Okay, tell me how that came about.

9 A Well, I would get notices in the mail, and then in, in,
10 you know, talking with Matt, you know, that, that also.

11 Q What was your understanding of the bankruptcy proceedings
12 with Harmony?

13 A Well, when a developer would go bankrupt, I mean, they
14 would restructure and come out and continue the project or
15 another developer would take over the project if they couldn't
16 restructure and continue the project, but all along that -
17 there are financial guaranties. You just don't allow, you
18 know, the County doesn't just allow a developer to just go out
19 on land and just start, you know, tearing down trees. I mean,
20 there's a financial guaranty to put the infrastructure in
21 place.

22 Q Did you ever have any concern that the infrastructure
23 would not be put in?

24 A No.

25 Q Okay, and ---

1 A And can I expound on that?

2 Q Yeah.

3 A And the reason is is because of the financial guaranties.
4 I mean, the reason they're there are because the developers
5 many times they don't handle the money properly. So it is a
6 guarantee that the work would ultimately be done.

7 Q Would you have purchased in Harmony without a financial
8 guaranty in place with the County?

9 A No.

10 Q Okay, would you have invested 150 plus thousand dollars
11 in Harmony without those guaranties in place?

12 A No.

13 Q Okay, all right, let me show you, get this marked as
14 Plaintiff's Exhibit 21 and should have asked you about this a
15 little bit earlier but take a look at Plaintiff's Exhibit 21.
16 Tell me what that is.

17 A That's a check that I wrote. It's for \$150,000. I put a
18 initial deposit down.

19 Q And that was the monies towards the purchase of those
20 lots?

21 A Yes, sir.

22 Q Okay.

23 MR. MOODY: We'd offer that as Plaintiff's Exhibit 21.

24 THE COURT: Any objection?

25 MR. MILLS: No objection, Judge. What number is it?

1 MR. MOODY: 21.

2 A 21, yeah.

3 MR. MILLS: Thank you.

4 THE COURT: All right, Plaintiff's Exhibit Number 21
5 admitted into evidence without objection.

6 (Plaintiff's Exhibit Number 21 [Copy of Check for
7 \$150,000] admitted into evidence and appropriately marked.)

8 BY MR. MOODY:

9 Q Now, Mr. Repko, you bought these in October of 2006 and
10 understood that there was some time before the infrastructure
11 would be put in. When did the bankruptcy proceedings stop?
12 When did - when was it finalized? Do you know?

13 A Well, now in, in, in, in looking at things the trustee
14 kind of walked away from filing the bankruptcy in June of 2011
15 and I believe it was filed in the courts in July of 2012.

16 Q Okay, so bankruptcy really wasn't over until ---

17 A Yeah.

18 Q --- middle of 2011 as far as you know?

19 A Yes.

20 Q Okay, and the developer has not emerged from bankruptcy
21 obviously to this point?

22 A No.

23 Q Okay, at what point did you ever determine that you might
24 potentially have a claim against Georgetown County?

25 A It was in March of 2012.

1 Q And how did that come about?

2 A An e-mail that was forwarded to me.

3 Q Okay, and what I'm going to do is I'm going to hand you
4 up ---

5 MR. MOODY: Beg the Court's indulgence one second so I
6 can talk to Mr. Mills.

7 THE COURT: All right, that'll be fine.

8 MR. MOODY: Your Honor, can we approach one second?

9 THE COURT: All right.

10 (Whereupon, a bench conference is held in the presence
11 but out of the hearing of the jury.)

12 BY MR. MOODY:

13 Q Trying to get some extraneous matters off of this
14 exhibit. Let me get this marked as Plaintiff's Exhibit 22 and
15 get you to take a look at it. All right, David, what is that
16 portion of that piece of paper?

17 A This, this is, I guess, the beginning of the letter that
18 Matt had forwarded to me and it said, it's dated March 30th,
19 2012, at 7:04 p.m. It says, "Read this, Bro."

20 Q So you received some sort of forward of an e-mail?

21 A Yes.

22 Q Was it at that point that you were put on notice that
23 there may have been a problem with the County's hire -
24 handling of these financial guaranties?

25 A Yes.

1 Q In March of 2012?

2 A Yes.

3 Q Okay, and at that point what did you do?

4 A I called Matt and said, "Can you find me an attorney down
5 there?"

6 Q Okay, he didn't ask you for a good one, I guess? You
7 just asked for an attorney.

8 A Yes, a good one.

9 Q Okay, and as a result you've had to file this action; is
10 that correct?

11 A That's correct.

12 Q Okay, and we filed this in spring of 2012; is that about
13 right?

14 A That's correct.

15 Q Okay, now, as a result of having purchased this property,
16 did you also incur expenses associated with the homeowners'
17 association dues?

18 A Yes, there's \$600 per lot per year for homeowners dues.

19 Q Did you pay those for every year from 2007 forward?

20 A No.

21 Q How many years did you pay?

22 A I believe it was two.

23 Q So we've got \$155,000 in the lots; right?

24 A Yes.

25 Q And then you said you paid those dues?

- 1 A Yes.
- 2 Q For two years?
- 3 A Right.
- 4 Q At \$600 per lot, so that's \$2400; is that correct?
- 5 A Yes, sir.
- 6 Q And those dues are accruing now; are they not?
- 7 A Yes, sir.
- 8 Q Have you stopped paying them?
- 9 A Yes, sir.
- 10 Q And why is that?
- 11 A Well, because of the bankruptcy, the - I consulted, you
- 12 know, another HOA president and/or in conversations with my
- 13 client who's an HOA president who actually bought in Harmony
- 14 and he had consulted with his attorney and he was like, "Yeah,
- 15 we're not responsible to pay those dues."
- 16 Q Okay, and going forward as well, so you still owe back
- 17 HOA dues at this point as far as you know?
- 18 A I believe there's liens on the property, yes.
- 19 Q Okay, and that would have been from 2009 through 2012.
- 20 A I would expect, yes.
- 21 Q And so you owe probably another \$3600 there?
- 22 A So, would we say '07, '08, so there's 9, 10, 11, 12, 13.
- 23 Q Okay, so that would - and that continues to accrue to
- 24 this year; is that correct?
- 25 A That'll continue to accrue, I mean, as long as I have the

1 lots it's going to - well, they're not really lots, but as
2 long as I have the property that'll accrue. I'm responsible
3 for that.

4 Q And throughout this time have you continued to pay
5 property taxes to Georgetown County for the privilege of
6 owning these lots?

7 A I have, yes.

8 Q Okay, and that's been accruing since 2007 since you
9 purchased these lots; is that correct?

10 A Yes.

11 Q Okay, let me get, get my other printout here and I'll
12 hand these up to you for your view, and it looks like the
13 property taxes on each lot were exactly the same; were they
14 not?

15 A Yes.

16 Q Okay, what I'm going to do is I'm going to collectively
17 hand up to you this entire exhibit. It all has property tax
18 bills and receipts attached, but on the front you'll have two
19 printouts from the County. Let me get those marked as
20 Plaintiff's Number - I'm sorry.

21 MR. MILLS: Your Honor, I do not anticipate an
22 objection but to save time may I just take a quick look?

23 THE COURT: All right.

24 BY MR. MOODY:

25 Q All right, let me show you what's been marked as

1 Plaintiff's Exhibit 23 and it's a collection of documents but
2 can you tell the jury what that is?

3 A Yeah, they're tax bills. This one's on 1077. This one's
4 on 1077, \$458.84. This is for '07.

5 Q Okay, so collectively on the, on the front page there
6 does it say ---

7 A Yes.

8 Q --- how much collectively you paid on property taxes for
9 that single lot written on the front page?

10 A It says for this one for this year it's 458, \$458.84, oh,
11 oh, down, I'm sorry, I didn't - it's ---

12 Q Do you have some additional due that you're not ---

13 A --- \$1992.83, sorry about that.

14 Q And that would have been just for that lot; right?

15 A Yes, sir.

16 Q Okay, and then we've got two lots at that amount; do we
17 not?

18 A Yes, sir.

19 Q Give me that number one more time?

20 A I'm sorry?

21 Q The number one more time?

22 A \$1,992.83.

23 Q So we're going to write that twice, and those continue to
24 accrue. Have you - you hadn't paid 2013 yet I take it,
25 because you hadn't got a bill yet; have you?

1 A When do I pay these? 12-16, it'll be the end of this
2 year.

3 Q Okay, now, going forward, David, is there any prospect of
4 anyone putting in the infrastructure to Phase 2-D-1?

5 A No.

6 Q Okay, has your phase or anybody approached you, a
7 developer, subsequent developer, anybody approached you with
8 regards to possibly putting in the rest of the infrastructure
9 there?

10 A No.

11 Q Okay, are all those lots owned individually? Do you
12 know?

13 A I don't know in that phase if every single one is bought
14 but the majority of them are bought by individuals, yes.

15 Q Individuals much like yourself?

16 A Yes, it would have been property owners that would have
17 come here to live or vacation, yes.

18 Q Can you think of any reason why a developer would want to
19 come and spend hundreds of thousands of dollars to complete
20 the infrastructure in that development if it doesn't have the
21 ability to sell lots?

22 MR. MILLS: Objection, lack of foundation, Your Honor.
23 This witness is not qualified to talk about development.

24 THE COURT: I'll overrule it. I'll allow it. Go
25 ahead.

1 BY MR. MOODY:

2 Q Go ahead and answer.

3 A Okay, and, and the question was again?

4 Q Can you think of any reason why a developer would want to
5 come in and put hundreds of thousands of dollars in
6 infrastructure in a phase where all of the lots are
7 individually owned?

8 A No, if the bond money was there, well, there's a -
9 potentially yes, but as it stands right now no.

10 Q Okay, and how does a developer make money?

11 A A developer?

12 Q Yeah.

13 A Well, I assume in this case that he made money by buying
14 a raw tract of land, getting approval with a plan that was
15 submitted and approved to then put in a planned development
16 and he sells the or she sells, the entity sells the lots for
17 more than what they have in the ground and the infrastructure.

18 Q Okay, and if a developer didn't have lots to sell in this
19 phase would they want to invest their money?

20 A If the developer ---

21 Q Did not have lots to sell in this phase they wouldn't
22 want to - would they want to invest their money?

23 A No.

24 Q Okay, is there any prospect of anybody completing the
25 infrastructure in this part of Harmony?

1 A No.

2 Q At this point do you have a rough idea of what you think
3 the value of your property is?

4 A It's zero.

5 Q Okay, and how did you come about that?

6 A Well, in the past I think it's been - like within the
7 past 18 months I believe one lot was sold. It was sold for
8 \$500. I mean, by the time you pay the cost and the fees to
9 sell it you're basically you're just selling for a negative
10 number. You know, it costs more than \$500 to sell the lot.
11 So it's, it's zero.

12 Q Okay, now, have you been out to Harmony recently?

13 A I went out this past Sunday.

14 Q Okay, tell me what you saw when you went out there.

15 A It's basically a woods. There's nothing. There's
16 nothing there.

17 Q And is there a road going in there?

18 A It's not a road. It's - it was a path that was probably
19 cleared, you know, seven years ago you could drive a truck on
20 and, you know, I mean, on a farm it wasn't, it wouldn't - it
21 we be more clear on a farm.

22 Q Okay, how about any sort of sewer or piping
23 infrastructure?

24 A Yes, there's, there's some of the water work. I'm not an
25 expert in water work, if it's been completed or not, but

1 there's work there that was done by an entity that puts in
2 sewer and ---

3 Q Have you seen any evidence of any work being done out
4 there in the, in the recent past?

5 A No, there's nothing being done out there.

6 Q Dave, why are you, why are you bringing this
7 lawsuit?

8 A I mean, I've been financially harmed. I've - you know,
9 by it and there's no prospect of the development continuing
10 and putting the infrastructure in and there were to be
11 guaranties there and I mean during - after the bankruptcy and
12 I would talk to my clients that bought here I would tell them,
13 "Look, I mean, bond money's been posted, a letter of credit's
14 been posted." You know, I, I, you know, I know that and, and
15 then when we filed the suit and looking into it more I
16 realized that it was gross negligence on the money being spent
17 and not, not for the infrastructure of what it was supposed to
18 be spent for.

19 Q Okay, are you asking this jury to award you your damages
20 including your cost in the lots as a result of the County's
21 conduct?

22 A That's, that's what I'm asking for, yes.

23 Q Okay.

24 MR. MOODY: I don't have any further questions at this
25 time, Your Honor.

1 THE COURT: All right, Mr. Mills.

2 MR. MILLS: Your Honor, I have a clarification about
3 an exhibit. Did that package, because I'm going to have some
4 questions for Mr. Repko, did that package of tax papers go
5 into evidence?

6 MR. MOODY: I would move to admit them into evidence
7 as Plaintiff's Exhibit Number?

8 THE COURT: 22?

9 MR. MOODY: 22.

10 MR. MILLS: Or 23.

11 REPORTER: 23.

12 MR. MOODY: 23.

13 THE COURT: Oh, 23.

14 MR. MILLS: May I, Mr. Repko? Thank you, sir.

15 A Yes, sir.

16 THE COURT: Any objection?

17 MR. MILLS: I'll take just one moment, Your Honor. I
18 suspect not. Not at all, no, sir.

19 THE COURT: All right, Plaintiff's Exhibit 23 admitted
20 into evidence without objection.

21 (Plaintiff's Exhibit Number 23 [Property Tax Information]
22 admitted into evidence and appropriately marked.)

23 MR. MILLS: Cross examination, Your Honor?

24 THE COURT: Yes, sir.

25 CROSS EXAMINATION

- 1 BY MR. MILLS:
- 2 Q Good afternoon, Mr. Repko.
- 3 A Good afternoon, Mr. Mills.
- 4 Q I'm David Mills.
- 5 A Yes, sir.
- 6 Q You recall we met during your deposition?
- 7 A Yes, sir.
- 8 Q All right, sir, I'll have some follow-up question from
- 9 those Mr. Moody had for you.
- 10 A Absolutely.
- 11 Q I won't take you through your entire life history, but to
- 12 back up you're a Baltimore resident?
- 13 A I am.
- 14 Q Okay, and you are, sir, a certified financial
- 15 planner?
- 16 A I am.
- 17 Q You, you tell folks or advise folks where to put their
- 18 money.
- 19 A Yes, sir.
- 20 Q Okay, your advice even extends to clients who are
- 21 interested in real estate investment trusts; doesn't it?
- 22 A May I define a real estate investment trust?
- 23 Q Do you know what a real estate investment trust is?
- 24 A I do.
- 25 Q Okay, have you had clients that you recommended make

1 investments in real estate investments trusts, Mr. Repko?

2 A Yes.

3 Q Okay, and you yourself have some experience in investing
4 in real estate; don't you, sir?

5 A Yes.

6 Q Okay, you mentioned your friend, Matt Almony, am I saying
7 that right Almony?

8 A Yes.

9 Q You've been friends for many, many years.

10 A Since college.

11 Q Okay, and well, it hadn't been that many years.

12 A It's been, it's been a long time.

13 Q All right, you've made some real estate purchases with
14 Mr. Almony himself; haven't you?

15 A I have.

16 Q A couple of houses in North Carolina; right?

17 A There were, there were condos in South Carolina.

18 Q Condos, did you and Mr. Almony hang onto those or did you
19 sell them?

20 A We sold those.

21 Q Okay, did you have some houses in North Carolina?

22 A Yes.

23 Q Okay, what'd you do with those?

24 A Well, well, there is two we still have.

25 Q You still own them?

- 1 A Yeah, there was one that was let go.
- 2 Q And then, of course, there is the other, I'll call it the
- 3 other Harmony lot, that's Lot 17; is it, Mr. Repko?
- 4 A Yes, sir.
- 5 Q Okay, that's not the one you're suing over. You're suing
- 6 over, as you just told Mr. Moody, 1076 and 1077; right?
- 7 A Yes, yes, sir.
- 8 Q But there is a lot, Lot 17, that you and Mr. Almony own
- 9 together to this day.
- 10 A Yes, sir.
- 11 Q And Mr. Almony introduced you to Harmony. You wouldn't
- 12 have known about it in Baltimore, Maryland, but for your
- 13 friend, Matt Almony; correct?
- 14 A Sure, absolutely.
- 15 Q And Mr. Almony himself worked as a real estate agent for
- 16 Harmony Development; didn't he?
- 17 A Yes.
- 18 Q He actually was there at the Harmony sales center?
- 19 A Yes.
- 20 Q Okay, did Mr. Almony earn a commission when you purchased
- 21 the two lots that you purchased in Harmony?
- 22 A I hope so.
- 23 Q Okay.
- 24 A That's what he did for a living.
- 25 Q All right, okay, you met some of the other folks out at

1 Harmony; didn't you?

2 A Absolutely, yeah, they had a whole sales center.

3 Q You went out to dinner with them?

4 A Well, with Matt working there they became friends.

5 Q Okay, you never asked them about infrastructure; did you,
6 Mr. Repko? And by them I mean these other folks out at
7 Harmony.

8 A Well, it was discussed during the sales process and in
9 the sales office. I mean, we went to dinner. I can't exactly
10 recall, but no, infrastructure in the development was not a
11 topic of conversation.

12 Q Okay, and in fact, you never got around to asking them,
13 "Hey, guys, when are you going to cut roads and pave roads and
14 put in pipes out here?" You didn't ask that to Tim Casey and
15 Brad Jenkins and Kim Pavao and all these other folks
16 affiliated with Harmony.

17 A Well, it was, it was years off, you know. So it was, it
18 was I'm sure discussed because I can remember like the knowing
19 that I was not going to be, if you want to say, in a position
20 at that point in time to hire an architect or a builder or
21 whatever to go through the process. So it was something for
22 the future. I wasn't looking to move there right away or, or,
23 you know, vacation there, if you want to say, at that absolute
24 time.

25 Q So the answer to my question is you never discussed

1 infrastructure with them; did you?

2 A No.

3 Q Okay, let's go back to this packet of documents because I
4 want to ask you about something that's about in the middle of
5 the stack.

6 MR. MILLS: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MR. MILLS:

9 Q If you don't mind I'm going to share with you for a
10 moment and we'll flip through. It's that one right there, Lot
11 17, there you go. Give you those. I'm going to ask you about
12 Lot 1076 and 1077 that you're suing the County over, but
13 before I do let me ask you about that one. That's Lot 17 that
14 you just told me about; isn't it?

15 A Yes.

16 Q Okay, and Lot 17 is the lot that you bought with Mr.
17 Almony and you still own to this day.

18 A Yes.

19 Q And Lot 17 is in a section called Old Town.

20 A Yes.

21 Q Harmony?

22 A Yes.

23 Q And Lot 17 has roads, water, sewer, curbs, gutter, all
24 the infrastructure is in place; isn't it?

25 A Yes.

1 Q Okay, if you want to put a house there you could.

2 A Yes.

3 Q All right, you and Mr. Almony paid \$95,000 in 2005 for
4 that lot?

5 A I don't know exactly when, but yes.

6 Q Okay, the reason I ask you is take a look at that portion
7 of Exhibit One that I've just handed it to - handed to you ---

8 A Yes.

9 Q --- involving Lot 17, the lot with all the infrastructure
10 as you just told us. What is the assessed value on Lot 17 on
11 that tax bill?

12 A This is a tax assessment and it says \$30,000.

13 Q \$30,000.

14 A Yes, which is too high.

15 Q For a lot that you - it's actually too high?

16 A Well, yeah, it's \$30,000, yeah.

17 Q Okay, and you paid \$95,000 for that lot in 2005, and as
18 time progressed even though it had all of the infrastructure
19 there something's happening, the value, the assessed value is
20 going down; isn't it, all the way down 66 and two-thirds
21 percent, Mr. Repko, to a figure of \$30,000 that you claim is
22 actually too high; isn't it?

23 A It's \$30,000, yes.

24 Q May I retrieve that back from you?

25 A Yes.

1 Q Okay, thank you. I'll take the whole package if I could.
2 Now, we've already seen come into evidence a personal check
3 you wrote for \$150,000?

4 A Yes.

5 Q All right, and you paid \$150,000 from a personal check
6 for Lots 1076 and 1077 in the year 2006?

7 A Yes, it's a check off of a line of credit, yes.

8 Q Okay, when you wrote this check you had never laid eyes
9 on Lots 1076 and 1077; is that correct?

10 A No.

11 Q Okay, and I - do you remember when I took your deposition
12 and I asked you the very question, "To this day you've never
13 laid eyes on the lots you paid at least \$150,000 for"; right?

14 A That's correct. You can't find them.

15 Q And you told me at that time you had never seen them but
16 I believe you just told the jury that you went out there on
17 Sunday?

18 A Yes.

19 Q Sunday of this week?

20 A Yes.

21 Q The reason I ask is you purchased in 2006, 2007, 2008, 9,
22 10, 11, 12, you bring a lawsuit and the first time you see
23 with your own eyes what's going on out there is 2013,
24 September of 2013; is that right, Mr. Repko?

25 A No.

1 Q Okay, you had seen them previously?

2 A No, but I was on the, on the development from the time
3 that we purchased the lots before Sunday going to - my friend
4 had a boat on the development. So we drove by where the area
5 was supposed to be but there's no road back to it. So I
6 would, I would ask him where because when you drive out it's a
7 very large piece of land. You can't really, you know, find
8 they're at. I'd be like, "Show me where West Stewart's going
9 to be," as we drove by to go to the boat, and he was like,
10 "It's, it's back there."

11 Q But you went out there Sunday; correct?

12 A Yes.

13 Q You went down the dirt road?

14 A Yes.

15 Q And that was the first time since you'd owned it?

16 A Yes.

17 Q Okay, Mr. Almony, your friend you told us about, he
18 actually held a power of attorney to sign the closing papers
19 when you purchased these two lots; isn't that right?

20 A He had a power of attorney. I don't know if he actually
21 signed the lots for them, I guess in recollection, but he had
22 a power of attorney to do, to do several things, sure.

23 Q Okay, well, we've talked about your communications with
24 Mr. Almony. We've talked about your discussions with people
25 at Harmony. Let me ask you, sir, did you ever have any

1 contact with anyone at Georgetown County, Georgetown County
2 concerning the infrastructure in Phase 2-D-1 where your lots
3 were?

4 A No.

5 Q Now, back to the big Exhibit 23, there's no extra copies.
6 So we're just going to have to work together on this as I ask
7 you some questions.

8 A Sure.

9 Q If I look through this stack I see that in December of
10 2007, you purchased in 2006; right?

11 A Yes.

12 Q The fall of 2007 the tax bill comes out; doesn't it?

13 A Yes.

14 Q And you contact the tax assessor's office in Georgetown
15 County; don't you?

16 A Matt did it for me.

17 Q Okay, but with your authorization?

18 A Yes.

19 Q Okay, and if I'm reading that correctly you write, "I'm
20 requesting a tax assessment on the following properties."

21 What you were doing was appealing your tax bill; weren't you,
22 Mr. Repko?

23 A Yes.

24 Q That's 2007 and you say, I'm quoting from the middle line
25 there, "The properties are still unbuildable which negatively

1 affects their market values"; right?

2 A Yes.

3 Q You knew that, sir, in December of 2007, you knew you had
4 lots that were unbuildable.

5 A Yes.

6 Q Okay.

7 A The, the property was in - well, I would assume the
8 property started to be in bankruptcy at that time.

9 Q Okay, and there's some handwriting on the bottom that
10 indicates a reduction. You see those two lines?

11 A Yes.

12 Q In fact, Georgetown County dropped your tax bill on that
13 lot; didn't they?

14 A Yes, I was happy to get the relief.

15 Q And they did that for the other lot, too, both Lot 1076
16 and 1077 they reduced both lots at your request?

17 A Yes.

18 Q Okay, we come forward and make my way through the stack
19 again, we come forward all the way into 2008. I'll put this
20 up so we can all see it. How's that, Mr. Repko, can you read
21 that one?

22 A Yes.

23 Q Okay, so here we are in 2008, and to shortcut this for
24 both Lot 77 and 78 you're appealing your tax bill again to
25 Georgetown County; aren't you?

1 A Yes.

2 Q And you say, "I respectfully request an inquiry into the
3 property in question. There have been no changes in the
4 project over the last 19 months due to unfortunate
5 circumstances beyond our control. I believe it is unfair to
6 contribute to the tax base when we are unable to reap the
7 benefits of where our tax money is spent. The property has no
8 utilities and not able to be built upon. The property values
9 have steadily decreased and continue to decrease," and you
10 close your letter to the tax assessor's office by saying, "It
11 is basically without value." Right, Mr. Repko?

12 A Yes.

13 Q Okay, so not only in 2007 when you knew you had
14 unbuildable lots, in 2008 you go back to the County and say,
15 "You gotta' drop my tax bill. You're taxing me too much on
16 these properties." Isn't that what's going on?

17 A I tried to get it reduced, yes.

18 Q Okay, did it get reduced?

19 A Yes.

20 Q Okay, and those inquiries were directed to the Georgetown
21 County Assessor's Office, those are the people who levy taxes;
22 right?

23 A Yes.

24 Q But you never directed the inquiry to the Planning
25 Department; did you?

1 A No.

2 Q Okay, your involvement in the bankruptcy case you
3 referenced that in your testimony to - under Mr. Moody's
4 questioning. You were part of a creditor class; is that
5 correct, sir?

6 A You have to - I don't know really what you mean by that.

7 Q Let's do this.

8 A Okay.

9 Q I've got a document here that's signed by a lawyer. It's
10 got a signature on it. Let me get a copy of it and show it to
11 you, see what we're talking about. I don't think this is in
12 the stack. So I'm going to get a get fresh one. Thank you.

13 MR. MILLS: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. MILLS:

16 Q I'm handing you what's been marked as Defendant's Exhibit
17 Two ---

18 A Sure.

19 Q --- Mr. Repko, and that was in the files that you
20 produced to me during the course of discovery in this case;
21 wasn't it?

22 A Yes.

23 Q All right, sir, and if you flip to page three, I've
24 turned my version over to page three, there is a ballot for
25 accepting or rejecting the plan and it bears a signature;

1 doesn't it?

2 A Yes.

3 Q And that is your signature; right?

4 A Yes.

5 Q In September of 2008?

6 A Yes.

7 Q Okay, okay, now, I want to talk to you a moment, please,
8 sir, about your testimony with Mr. Moody about the damages you
9 allege that you have suffered here. You still own the dirt;
10 right?

11 A Yes, I own the dirt.

12 Q Okay.

13 A I'm obligated to pay on the dirt.

14 Q Okay, in your estimation it's worth absolutely nothing.

15 A It's worth nothing.

16 Q Okay, have you had an appraisal performed?

17 A No.

18 Q You would agree with me, sir, that if your property has
19 gone down in value, some portion of that, some portion of that
20 diminution in value is attributable to the fact that you own
21 dirt in a development where a developer went bankrupt;
22 wouldn't you?

23 A The bankruptcy did not help the values.

24 Q Not at all.

25 A Well, well, no, but the - that the, the bankruptcy in

1 that it's an unfortunate incident. Again, there are
2 protections in place to protect me and the other property
3 owners against that.

4 Q And bankruptcy doesn't help the values because people
5 know, purchasers know, smart investors like yourself know that
6 when a project has gone into bankruptcy it's got a taint on
7 it; doesn't it?

8 A It's on complete hold.

9 Q Okay, it doesn't help sales when the project's in
10 bankruptcy; does it?

11 A Does not help sales.

12 Q Okay, so we talked about your view of the value. We
13 talked about the impact of the bankruptcy. How about
14 something more basic? You're a certified financial planner;
15 correct?

16 A Yes.

17 Q You follow the markets; don't you?

18 A Markets meaning?

19 Q The Dow Jones Industrial average to local real estate
20 markets.

21 A The Dow Jones and S&P 500, NASDAQ, investments like that,
22 yes. You mentioned real estate investment trusts. I can only
23 invest clients' money in something that is, is signed by my
24 broker dealer. I need to have authorization. I cannot just
25 tell clients to go invest in places. Real estate investment

1 trusts they have what's called a CUSIP and they need to be
2 brought - bought in a brokerage account. You don't have many
3 times land like that in a real estate investment trust. They
4 can be, but it's a completely different investment.

5 Q Let's make it easier, Mr. Repko.

6 A So, I'm sorry, can I say one more thing?

7 Q Well, you can, you can answer any questions Mr. Moody
8 has, but mine's very direct and it's real simple, is the
9 economy better or was the economy better in 2012 or 2006 when
10 you bought your lots?

11 A In 2012 and 2006, I would say the economy is improving.
12 I'm not, I don't think, qualified to say that the economy is
13 better than that now. I think corporations are in a better
14 financial position, that's helped the equity markets, but I'm
15 not one to contest on the economy nor local real estate
16 markets. That's completely different.

17 Q So you couldn't tell this jury whether 2006 was a better
18 time to buy a property in Georgetown County or 2011 or 12?

19 A Now you're saying to buy a property.

20 Q Yes, sir.

21 A In 2006 there was more activity than, than in 2012 but it
22 is improve - it is improving now.

23 Q Okay.

24 A May I, may I correct my - may I correct my statement?

25 Q Well, answer this for me first. Real estate conditions

- 1 got worse; didn't they, in Georgetown County?
- 2 A At what period of time?
- 3 Q From 2005 when you bought your Lot 17 to 2008 and the
- 4 bankruptcy to 2011 and '12.
- 5 A There's no doubt that real estate conditions and
- 6 perception of market values from 2005, 2006 to 2008 there's no
- 7 question they went down.
- 8 Q Okay.
- 9 A From 2008 to 2012, I mean, you have to look at, you know,
- 10 who's investing or the perception.
- 11 Q Mr. Repko, Harmony is out on - I'm pointing south -
- 12 Highway 17 toward Charleston, take a right on Pennyroyal Road;
- 13 right?
- 14 A I know it's close to the Sampit River and I know it's
- 15 over a bridge so.
- 16 Q When you drive out toward Charleston you take a right
- 17 back toward the river to get to Harmony?
- 18 A I'm sorry?
- 19 Q You went to Harmony on Sunday, sir.
- 20 A Yes, sir, I don't know the names of the roads.
- 21 Q Okay.
- 22 A I mean, I'm not that, you know. I mean, yeah, I know
- 23 that, yeah, we go down the main stretch, the main highway,
- 24 what is that called; do you know?
- 25 Q It's Highway 17.

1 A Highway 17.

2 Q Yes, sir.

3 A We do make a right. We go back and then you make another
4 right into the development, yes.

5 Q There we are. Have you ever gone the other way over the
6 bridge? Have you ever looked at a subdivision out there
7 called Cravens Grant?

8 A Yes.

9 Q You've seen Cravens Grant?

10 A Yes.

11 Q Does it have infrastructure?

12 A I never really looked at it that way. There's a pool
13 there, I believe, and a clubhouse.

14 Q Do you know what lots in Cravens Grant are selling for
15 right now?

16 MR. MOODY: Objection, Your Honor. There's - this is
17 irrelevant to what's going on in Harmony Township.

18 THE COURT: I'll allow the question if he knows what
19 they're selling in Cravens Grant. Go ahead.

20 Q Yes, sir.

21 A I have no idea.

22 Q Okay, go on up the road a little more. There's one
23 called South Island Plantation. You ever been to South Island
24 Plantation?

25 A No, sir.

1 Q So, you have no idea what lots are selling for in South
2 Island Plantation; would you?

3 A Like I said, I don't really look at local real estate
4 when I come down. I come down to enjoy myself except for this
5 trip.

6 Q And the HOA dues you talked about, the homeowners'
7 association dues, some of them you haven't paid; have you?

8 A Yes, sir, I have not.

9 Q Okay, and the taxes that you pay that are assessed by
10 Georgetown County you have to pay the taxes if you own the
11 dirt; don't you, Mr. Repko?

12 A I'm a taxpayer in Georgetown County, absolutely.

13 Q As we all are.

14 A Well, you asked me and I said, "Yeah, I pay the taxes."
15 I'm a taxpayer in Georgetown County, absolutely.

16 Q Okay.

17 MR. MILLS: Excuse me one moment, Your Honor.

18 THE COURT: All right.

19 MR. MILLS: Thank you, Mr. Repko.

20 THE COURT: Redirect?

21 MR. MOODY: Very, very little, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MOODY:

24 Q Mr. Repko, Mr. Mills showed you a letter about a
25 creditors class in bankruptcy court?

1 A Yes.

2 Q Anything in there put you on notice that the County was
3 drawing down these letters of credit?

4 A Absolutely not, no.

5 Q You own a lot in - with Matt Almony in Harmony, but you
6 haven't brought an action against the County for that lot;
7 have you?

8 A No, sir, no.

9 Q Why is that?

10 A Because I would say in my anticipation the County did
11 their fiduciary duty to make sure the work was completed.

12 Q And that's why you've brought this lawsuit for the other
13 two lots?

14 A That's correct.

15 MR. MOODY: No further questions.

16 THE COURT: All right, you can step down. Let me see
17 the attorneys for a second.

18 (Whereupon, a bench conference is held in the presence
19 but out of the hearing of the jury.)

20 THE COURT: All right, Plaintiff can call your next
21 witness.

22 MR. MOODY: Your Honor, the Plaintiff rests its case.

23 THE COURT: All right.

24 All right, ladies and gentlemen, the Plaintiff has rested
25 their case and now is the time of the trial where I have to

1 take up some matters of law with the attorneys. So I'm going
2 to excuse you back to the jury room for a brief moment and
3 I'll tell you why we excuse you back to the jury room. It's
4 not that we're trying to hide anything from you or keep
5 anything from you but as I told you in the opening charges you
6 and you alone decide the facts of this case and you decide
7 those facts based exclusively on the testimony and exhibits
8 that are presented during the trial. Now, as the determiner
9 of the law I determine what law is to be applied in this case
10 and it's time for me to discuss with the attorneys the law to
11 be applied at this juncture in this case. Well, in doing so
12 it often requires me as the Judge and the attorneys in stating
13 their position to argue factual issues. Well, whatever we say
14 is not evidence in this case. So we do not want you to be
15 influenced by anything we say when we discuss the law in your
16 determination of the facts and that's why we excuse you back
17 to the jury room while we discuss these legal issues. So I'm
18 going to excuse you back to the jury room for a brief moment
19 while we discuss these legal issues. I caution you again do
20 not discuss the case with anyone. You can check your cell
21 phones. You can return calls but do not discuss this case.
22 Also, do not conduct any independent investigation and we'll
23 bring you back out in just a few minutes. Thank you very
24 much.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right, any motions at this time?

3 MR. MILLS: Your Honor, the Defendant, County of
4 Georgetown, will move for a directed verdict. Would the Court
5 grant me a personal indulgence? I'm facing a paper blizzard
6 here. Could I just shift for a moment?

7 THE COURT: Okay, yeah, that'll be fine.

8 MR. MILLS: Thank you.

9 THE COURT: All right, sir.

10 MR. MILLS: Thank you, Your Honor.

11 The Defendant moves for a directed verdict at the close
12 of the Plaintiff's case on a number of separate and distinct
13 grounds. If I may briefly outline them for the Court, there
14 will be one, there is no duty to the Plaintiff, no cause of
15 action can lie. Two is the public duty rule. Three is the
16 statute of limitations. Four is the intentional interference
17 claim is barred. Fifth, due process is not a cause of action
18 cognizable under these circumstances, and sixth, the failure
19 to enforce the law is a recognized exclusion under the Tort
20 Claims Act, and finally, there's no evidence from which a jury
21 could ever conclude that there was gross negligence because
22 gross negligence is the absence of even the slightest of care.

23 With that outline I'll start with my first one. There -
24 this is a tort case. It is, it is captioned gross negligence,
25 the first cause of action. The second is intentional

1 interference with the Plaintiff as an intended third-party
2 beneficiary, the letter of credit, and the third is due
3 process. The complaint, I won't cite chapter and verse
4 because it's there before the Court in the record, but it is
5 replete with allegations about violations of a statute,
6 violations of the County's own land development regulations.
7 It's set forth in the background of the complaint, the first,
8 second and third causes of action. The County has
9 affirmatively pled from the day this suit was filed that the
10 action is barred because the Plaintiff's trial evidence, like
11 his complaint, centers on this development regulation which on
12 its face expressly disclaims any duty to Plaintiff or to
13 anyone else, and you cannot premise a tort claim based on a
14 statute when the statute itself, the legislative act by which
15 gives rise to the cause of action, tells you there is no duty.

16 I had Mr. Johnson testify for the Court. I know you can
17 read it, but it's Exhibit One, on its face says, "Acceptance
18 of a financial guaranty by Georgetown County shall not be
19 construed as an obligation to any other agency, utility or
20 property owner within the affected development." It is a very
21 rare thing for a statute to expressly say on its face that
22 there is no duty arising out of this statute. That's what we
23 have here. The Plaintiff can't sue on the ordinance upon
24 which the whole case is based and ignore that critical
25 language. I respectfully submit to His Honor that you cannot

1 find a duty here without writing that language completely out
2 of the statute and it's improper to do.

3 On those same lines, I cite the Court to the authority of
4 Brady Development Company versus the Town of Hilton Head
5 Island. The Brady case is from 1994. It states specifically
6 that there it was involved the Town of Hilton Head, there was
7 an allegation that the town failed to enforce its own
8 ordinance or had negligently administered its own ordinance.
9 The Court went through exceptions to the public duty rule and
10 said that development standards ordinance does not create a
11 special duty to the Plaintiff in that case. These facts
12 before you, Your Honor, are even more compelling. There's no
13 indication from the Brady case that the Town of Hilton Head's
14 ordinance specifically disclaimed a duty. You have that here.
15 The land development regulation that you're confronted with
16 expressly tells you from the outset there is no duty
17 whatsoever.

18 Now, the Court is well aware of the public duty rule. I
19 know you deal with it and have dealt with it in other cases.
20 If you'll indulge me I'll state it briefly. "Many statutes
21 impose a duty on public officials to perform certain acts.
22 Generally, however, such officials enjoy an immunity from a
23 private cause of action under the public duty rule. This rule
24 holds that public officials are generally not liable to
25 individuals for their negligence in discharging public duties

1 as the duty is owed to the public at large rather than anyone
2 individually." I've cited at length in my trial brief from
3 the Steinke case. There are a number of exceptions to the
4 public duty rule which are enumerated in the Steinke, S-T-E-I-
5 N-K-E, case and you will find them as well in the Brady
6 Development Company case. It's the County's position that
7 first we contend there is no gross negligence, but even if the
8 ordinance was negligently administered the public duty rule
9 applies and no exception to that rule applies under the six
10 enumerated factors because as His Honor will note one of the
11 requirements is that the statute either directly or indirectly
12 impose a specific public officer, imposes on a specific public
13 officer a duty to guard against or not cause that harm.
14 Again, I take the Court back to the face of the statute at
15 issue here, which point blank tells us there is no duty to any
16 other utility, agency or property owner within the affected
17 development, no, no exception to the public duty rule applies,
18 and the public duty rule will bar this claim by the Plaintiff,
19 all three causes of action.

20 I'm prepared to move forward with my argument. If the
21 Court has any questions for me about the public duty rule ---

22 THE COURT: No, I'm fine. Go ahead.

23 MR. MILLS: Our second position at the directed
24 verdict stage is that the undisputed facts reflect that the
25 two-year statute of limitations under the Tort Claims Act

1 expired years before the Plaintiff filed this lawsuit in 2012,
2 undisputed from the evidence His Honor heard. He purchased
3 the property in 2006. He filed suit in April of 2012. I just
4 cross-examined the Plaintiff on Plaintiff's Exhibit 23, which
5 is the package of tax documents. In December of 2007 he gets
6 his first tax bill. He appeals to the County of Georgetown,
7 "I have no infrastructure. You're taxing me too much." He
8 comes back to the County assessor in November of 2008 and says
9 the property has no utilities and not able to be built upon.
10 It is basically without value. Under the Tort Claims Act he
11 has suffered at that point a demonstrable loss. He has
12 suffered a loss, and four and a half years after that first
13 letter and three and a half years after the second letter he
14 files suit, and our position is the Tort Claims Act is the
15 exclusive civil remedy for any tort committed by a
16 governmental entity, a governmental entity is protected from
17 suit and the action is forever barred if, if the action is not
18 commenced within two years after the date the loss was or
19 should have been discovered, and it's the date a claimant has
20 a loss, not when he has a remedy, not when he has a full-blown
21 theory of recovery. I've cited in my trial brief the Joubert
22 case, J-O-U-B-E-R-T which says that under the Tort Claims Act
23 the statute of limitations begins to run when the Plaintiff
24 should know that he or she might have a potential claim
25 against another, not when he or she develops a full blown

1 theory of recovery, and I think what you're going to hear from
2 the Plaintiff here in opposition is that, "Gee, how was I to
3 know? I didn't know how the County was handling its affairs
4 internally with regard to the letter of credit," but the
5 important thing was he knew, by his own admission, he knew a
6 letter of credit was in place, by his own admission he made no
7 inquiry whatsoever of the County. It was incumbent upon him
8 to do something. You can't have exercised reasonable
9 diligence when you've done nothing. It cannot be deemed to be -
10 to have been reasonable when you've exercised no diligence at
11 all. He knew the bond was in place. That's undisputed. He
12 knows he's got a problem with infrastructure in 2007, and it
13 wasn't till he gets an e-mail he says that, "That's what
14 triggered me. That's when I knew something was wrong." Our
15 position is that argument points to why under the Tort Claims
16 Act and the law of South Carolina the date on which the
17 discovery of the cause of action should have been made is an
18 objective, not a subjective standard. You look at the dates
19 and you determine objectively.

20 I've cited, again, pardon the continued references to my
21 trial brief, but they're, they're stated there for ease of
22 reference to His Honor, the Logan versus Cherokee, Cherokee
23 County case and that case is important because very candidly
24 it holds that if there is conflicting evidence of when a
25 Plaintiff knew or should have known he had a claim against a

1 governmental entity that's a question for a jury. Fair
2 enough. If you look at Logan versus Cherokee County there the
3 claimant said, "You tricked me, County. The Cherokee County
4 Board of Planning threw me off the trail by failing to answer
5 my FOIA request. You're equitably estopped." That's
6 conflicting evidence. If the Plaintiff had contended here
7 that, "Georgetown County did me wrong. They hid the ball.
8 The pulled the wool over my eyes. They were less than
9 forthcoming with me," that's conflicting evidence and we would
10 have to rebut that. You don't have that here because he tells
11 you, "I never talked to anybody from Georgetown County." So
12 it is incumbent upon the Plaintiff to do something and he
13 didn't because our position has always been, Your Honor, if
14 that's the case then what you're left with is a continuously
15 perpetuating and ever bringing statute of limitations. If Mr.
16 Repko can say, "I didn't know," what's to stop the next
17 Plaintiff subjectively from coming to Court and saying, "Well,
18 gee, I didn't know the letter of credit was reduced until Mr.
19 Repko sued in 2012. Therefore, my statute of limitations is
20 not till 2014," and then the next owner says, "Well, gosh, I
21 didn't know until the guy sued in 2014. So my statute's
22 2016." It never ends. There has got to be an objective
23 standard and it starts with the loss and the loss is not the
24 reduction of the letter of credit. The loss is the loss in
25 the value to him of buildable property and that is the basis

1 of the County's statute of limitations argument.

2 If I may proceed to the intentional interference with the
3 Plaintiff as an intended beneficiary of the letter of credit I
4 very candidly don't know what that cause of action is. I
5 don't know if it purports to be a tort, intentional
6 interference with contractual relations or a contract based
7 claim which is intentional interference with contractual
8 relations. There, there are two different concepts at work
9 there in the Plaintiff's pleadings, both of which fail.

10 MR. MOODY: Your Honor, if I may, I might be able to
11 make Mr. Mills' life a little easier. We're only proceeding
12 on the first cause of action. We're - I'm not proceeding on
13 ---

14 THE COURT: Gross negligence?

15 MR. MOODY: Yes, sir, on - well, it's couched gross
16 negligence, but it alleges negligence as well, Your Honor.
17 I'm not proceeding on the second and third cause of action.

18 THE COURT: All right.

19 MR. MOODY: I'm trying to save Mr. Mills some time.
20 I'm sorry.

21 MR. MILLS: That's too bad because I was rolling,
22 Judge.

23 THE COURT: Okay.

24 MR. MOODY: Well, we could listen.

25 MR. MILLS: I don't - I will move quickly and dispense

1 with my arguments with cause of actions number one, or excuse
2 me, number two and number three because those will no longer
3 be in play.

4 I have cited, once again in my trial brief, to some
5 defenses that are available to the County in a negligence
6 action under the South Carolina Tort Claims Act. One of those
7 is 15-78-60(4). That's 60(4). The Health Promotions case
8 from June 12th, 2013, reiterates that a governmental entity is
9 not liable for loss resulting from adoption, enforcement or
10 compliance with any law or failure to adopt or enforce any
11 law, including a regulation. Our position is and we pled this
12 as an affirmative defense, that the Plaintiff contends that
13 the County enacted development regulations and failed to
14 enforce them. They failed to follow their own statute;
15 therefore, that acts as a complete bar to that cause of
16 action. Other Tort Claims Act that we've raised to the Court
17 by way of affirmative defense is, include, I mentioned
18 60(B)(4), they include 60(B)(5), the exercise of discretion or
19 judgment by a governmental entity or employee or the
20 performance or failure to perform any act or service which is
21 in the discretion or judgment of the governmental entity or
22 employee. That's what we have here, discretionary acts.
23 You've heard extensive testimony from the witnesses that the -
24 both the acceptance of a letter of credit and the reduction of
25 a letter of credit are discretionary acts with the County.

1 This section of the Tort Claims Act provides immunity, and
2 finally, almost finally, subsection 12 talks about licensing
3 powers, when the power and function is exercised in a grossly
4 negligent manner, this is essentially a licensing function.
5 That's what we're doing. We're licensing or permitting the
6 developer to move forward with his platted subdivision plat
7 and sell lots. So we contend that subsection 12 applies as
8 well, and finally, there is subsection 13 which involves
9 regulatory inspection powers. Your Honor, I think the subtext
10 of what's going on here is the Plaintiff contends that the
11 County was negligent and I think you picked this up from many
12 of the questions that were asked in not in itself inspecting
13 or negligently inspecting the work that was done. Our
14 position, of course, is we have no duty to do so, but even if
15 we did the subsection 13 would provide a complete bar under
16 the Tort Claims Act. So that is the County's position on the
17 directed verdict stage as well as on the issue of gross
18 negligence. Very generally as His Honor knows that is the
19 failure to exercise even the slightest care. I don't think a
20 reasonable juror could conclude that the County failed to
21 exercise even the slightest of care. That means I didn't
22 care, I didn't do anything, it didn't matter to me. The
23 record is replete with evidence that the County undertook
24 acts, including reliance on engineers to, to discharge its
25 duties pursuant to the statute and that is the, excuse me, the

1 County's position at the directed verdict stage.

2 THE COURT: All right, Mr. Moody.

3 MR. MOODY: May it please the Court? Take statute of
4 limitations argument first, Your Honor, this, this argument's
5 been made twice before, now it comes before you on directed
6 verdict with no new additional evidence and/or testimony with
7 regards to that issue. Your Honor, my client clearly
8 testified that he understood that the County had a letter of
9 credit in place and that everything had stopped because they
10 were waiting on the bankruptcy to be finished and then when
11 the bankruptcy would be completed the developer would come out
12 of bankruptcy and finish the infrastructure. It wasn't until
13 sometime in 2011 that it was determined the bank, the
14 developer was not going to come out of bankruptcy and then at
15 that point that's when Mr. Repko found out in 2012 that the
16 County had acted negligently. Mr. Repko never ---

17 THE COURT: Excuse me, let me ask, what kind of
18 bankruptcy did the developer file?

19 MR. MOODY: He filed a reorganization, Your Honor.

20 THE COURT: Reorganization, okay, go ahead.

21 MR. MOODY: And, and so, the testimony from Mr. Repko
22 is, "I'm waiting on them to come out of bankruptcy."
23 Bankruptcy ends and it's, "They're not coming out and then I
24 find out thereafter by e-mail in March of 2012 that the County
25 has messed up, they made a mistake. They allowed this letter

1 of credit, which I thought was there the entire time through
2 the bankruptcy, to be wrongfully reduced." So you have a
3 question of fact there, Your Honor, and I think - I've written
4 two briefs in opposition to his motions for summary judgment
5 on that issue, both of which are with - in the file.

6 THE COURT: Yeah, but your motion for summary judgment
7 was based upon the preface that there were disputable facts;
8 correct?

9 MR. MOODY: That's correct, Your Honor.

10 THE COURT: Okay.

11 MR. MOODY: And in this case in a directed verdict
12 motion the Court has to take the evidence in the light most
13 favorable to the non-moving party. So in the case that Mr.
14 Mills cites and I've cited in my brief to the Court previously
15 is the Cherokee County case in which the Court there clearly
16 said that if there is a dispute as to the facts of when a
17 person knew or should have known they had a cause of action
18 against a party that is a question ---

19 THE COURT: Yeah, but wasn't that ---

20 MR. MOODY: --- for the jury.

21 THE COURT: But wasn't that case based upon the
22 Plaintiff's reliance upon the County's assertions?

23 MR. MOODY: That's correct, Your Honor, but I also
24 cited in my brief to the Court several other cases that hold
25 the same position and I'll be glad to - if I can pull those

1 up. You can pull my brief up, motion for summary judgment.

2 THE COURT: Well, I mean, did they have any
3 participation by the County where the Plaintiff went to the
4 County and inquired and was misled to some extent?

5 MR. MOODY: I'm sorry. Say that again. I apologize.

6 THE COURT: I mean, as I understand the Cherokee
7 County case ---

8 MR. MOODY: Uh-huh.

9 THE COURT: --- basically says, "No, County, you can't
10 mislead someone or have somebody rely upon your assertions and
11 then claim the statute of limitations when those assertions is
12 what caused them to delay in bringing their action."

13 MR. MOODY: I understand that. That, that's a
14 distinction that the Cherokee County case makes, but there are
15 additional cases that I cite in my brief and I'll pull them up
16 here in just a second, Your Honor ---

17 THE COURT: Okay.

18 MR. MOODY: --- in which in negligence actions the
19 courts have held that if there is evidence - any evidence for
20 both sides as to when the party knew or should have known they
21 had a cause of action against a Defendant then that is a
22 question for the jury and not a question for the Court, and
23 I've cite - and Mr. Maring, my legal assistant here ---

24 THE COURT: All right.

25 MR. MOODY: --- is quickly pulling up my cases for

1 you. So with that being said, Your Honor, you have to apply a
2 reasonable person standard in determining when someone knew or
3 should have known they had a cause of action, which requires
4 someone to not only know that the letters of credit were in
5 place, which my client did know, but also know that the County
6 had done something with those letters of credit that would -
7 that was either negligent or grossly negligent and if you'll
8 bear with me, Your Honor, I'll certainly cite to you the
9 additional cases I have with regards to that issue. Arant
10 versus Kressler is a 1997 case, when testimony conflicts
11 regarding the time of discovery of a cause of action becomes
12 an issue for the jury to decide. Johnston versus Bowen, 1993
13 case, when a claimant knew or should have known that they had
14 a cause of action is a question for the jury. 1989 case,
15 Santee Portland Cement versus Daniel International Corp.,
16 application of the discovery rule - bear with me one second,
17 Your Honor, I'm sorry - application of the discovery rule to a
18 claim is a question of fact for a jury. You got Brown versus
19 Finger, 1962, when testimony is conflicting upon the statute
20 of limitations it becomes an issue for a jury to decide. Got
21 1998 case, Maher versus Tietex Corp., in determining whether
22 statute of limitations begins to run under discovery rule jury
23 must resolve conflicting evidence as to whether a claimant
24 knew or should have known they had a cause of action. All of
25 those cases are cited from the same premise which I tell -

1 which I would assert today, Your Honor, that taking the
2 evidence in the light most favorable to the non-moving party
3 we have a question of fact here as to when Mr. Repko knew or
4 should have known or had discovered that he had a cause of
5 action against the County for their negligence. So, that
6 would be my argument with, with regards to the statute of
7 limitations.

8 Going to the issue of negligence, Your Honor, Your Honor
9 pointed out to us the Brady case in chambers and one footnote
10 that you also pointed out holds true and that is the Brady
11 case was decided at a time in the window between when
12 sovereign immunity was abolished and the enactment of Tort
13 Claims Act took place. So there was that window of about five
14 years or so where the Tort Claims Act and sovereign immunity
15 did, did not overlap. Your Honor, since that time the Tort
16 Claims Act has been adopted which says that a governmental
17 entity is liable for its negligent conduct just as any other
18 party would be liable with these exceptions, and those
19 exceptions are laid out in the Tort Claims Act of the 37
20 exceptions that are there. So a governmental entity is liable
21 for even regular negligence based upon the Tort Claims Act.
22 It's only those exceptions that require gross negligence or
23 give absolute immunity. So going forward the County is not
24 immune from this lawsuit. The question is is there a duty,
25 and I would cite to you the two cases that I have in front of

1 me today. The first one is Trask versus Beaufort County.
2 It's a 2011 case from the Court of Appeals and it talks about
3 the public duty rule and based upon a statute and it starts
4 with, "In a negligence cause of action against a governmental
5 entity it is a Plaintiff's burden to establish that a duty of
6 care is owed to him by the Defendant," and then it goes on to
7 say, "Though common law does not impose a duty to act, a
8 statute may create an affirmative duty owed to the Plaintiff."
9 Now here we have an ordinance that specifically says, "We as a
10 County don't have to accept a financial guaranty but if we do
11 this is how we're going to handle it." So clearly ---

12 THE COURT: But it also says it doesn't create a duty
13 to any particular owner, agency or anything of that nature.

14 MR. MOODY: Well, Your Honor, if that were the case
15 then why wouldn't a governmental entity enact every single
16 statute or ordinance and just say, "You can't ever - this
17 ordinance or statute does not create a duty to anyone. So you
18 can't sue me."

19 THE COURT: Well, I mean, well, I mean, why can't they
20 do that?

21 MR. MOODY: Clearly, the governmental - a, a county is
22 not allowed to just wipe away, waive any of its liability
23 based upon the Tort Claims Act. The Tort Claims Act is
24 applicable to all governmental entities.

25 THE COURT: But I mean, are you saying it's an

1 enforceable ordinance? It's not an enforceable ordinance or
2 you can - only saying it's enforceable for the first two
3 sentences of that, of 3-1 and the third sentence is not
4 enforceable?

5 MR. MOODY: I'm not saying that at all, Your Honor.
6 What I'm saying is the County cannot override South Carolina
7 law with regards to their liability for their negligent
8 conduct just by writing in an ordinance that, "We don't owe a
9 duty to anybody." If they did that they could ---

10 THE COURT: Well, no, they're not saying, "We don't
11 owe a duty to anybody." As I understand what this ordinance,
12 what the - their position is that you're relying on the
13 ordinance 3 - I forgot the name of the ordinance, the
14 development ---

15 MR. MOODY: Section 3, the improvements.

16 THE COURT: --- improvement standards and development
17 regulations ordinance ---

18 MR. MOODY: Right.

19 THE COURT: --- under Section 3 you're relying upon
20 that ordinance as what creates a duty of care from the County
21 to your client.

22 MR. MOODY: That's correct, Your Honor.

23 THE COURT: All right.

24 MR. MOODY: And this is based upon state law which
25 allows a county to do this.

1 THE COURT: Okay, that same ordinance says though, "By
2 enacting this ordinance we're not creating a private duty."

3 MR. MOODY: Okay, and again, what the County is trying
4 to do is they're trying to waive any responsibility that a -
5 the Tort Claims Act imposes upon them regardless of where they
6 say it or not. They could say that in every single ordinance
7 that the County enacts and it still does not override the
8 South Carolina Tort Claims Act which says that a governmental
9 entity is, is obligated or can be sued for their negligence
10 except in these circumstances.

11 THE COURT: Okay.

12 MR. MOODY: And so what they're - just because the
13 County wrote it in there doesn't allow the County off the hook
14 because of the Tort Claims Act. So with that ---

15 THE COURT: So you're saying it would be better for
16 the County to just repeal this ordinance in its entirety, not
17 even have that in there, and therefore, there would be no duty
18 created.

19 MR. MOODY: In fact, you are exactly right, Your
20 Honor, because this is - in their own ordinance themselves
21 they say that, "We're not obligated to do this, but if we do
22 do this at that point the duty does arise to, to my client and
23 to the property owners out there." They have assumed that
24 duty. They have taken responsibility for that duty and with
25 the public duty rule it essentially says that and let me get

1 the exact language so I won't be, won't be wrong, in the same
2 case that I cited to you earlier, Your Honor, and I'll hand it
3 up for the Court so the Court can see it as well, Trask versus
4 Beaufort County. It clearly says that, "When the statute at
5 issue creates or defines the duties of a public official the
6 public duty rule applies. This rule holds that public
7 officials are generally not liable to individuals for their
8 negligence in discharging their public duties as a duty is
9 owed to the public at large. The public duty rule is a
10 presumption that is owed to the public at large. However, the
11 presumption may be overcome when the statute creates a special
12 duty to the Plaintiff," and there are six elements to that, "A
13 special duty exists if, number one, an essential purpose of
14 the statute is to protect against a particular kind of harm."
15 The purpose of this financial guaranty statute was to ensure
16 that if someone like Mr. Repko purchased raw land in a
17 development to be built that the monies would be there to
18 ensure that the infrastructure was completed if the developer
19 failed to go forward.

20 THE COURT: Okay, well, how do you - how is that
21 distinguishable then from Brady ---

22 MR. MOODY: Again ---

23 THE COURT: --- because Brady that was the same thing,
24 they, they allowed the ---

25 MR. MOODY: Brady predates the Tort Claims Act, Your

1 Honor.

2 THE COURT: Yeah, but it's not overturned. It just
3 says that there might be some additional considerations, but
4 it's still - Brady is still the law.

5 MR. MOODY: I understand that, Your Honor, but, but
6 here's, here's - listen to my six elements for one second and
7 I'll tell you why we had this special duty to plead it. The
8 essential purpose of this statute is there to protect a
9 particular - against a particular kind of harm and that we
10 have that here. In the Brady case all that was was a general
11 statutory scheme with regards to the issuance of building
12 permits by a county and they used the, the general welfare
13 provisions of the ordinance to say that this is a duty owed to
14 the entire public of the Town of Hilton Head. In this case
15 the duty created by accepting this financial guaranty under
16 this ordinance is a duty owed to the property owners within
17 that phase of that subdivision, what the letter of credit was
18 accepted for. So there is a specific duty to specific, to a
19 specific class of people in a private development with no
20 public roads. So the County has assumed that duty by allowing
21 the developer to post these letter - this letter of credit.
22 The second step says the statute or ordinance either directly
23 or indirectly imposes on a specific public official a duty to
24 guard against or not to cause that harm. This ordinance
25 imposes upon the planning department, ostensibly the planning

1 director, that to ensure that the funds are there and
2 available if the developer goes belly up, and it gives
3 specific guidelines as to how a letter of credit is to be
4 reduced if at all and it talks about when it's supposed to be
5 - how, how many times it can be reduced, how much you have to
6 keep as a cost of to complete all the way through the process.
7 So it puts into the ordinance specific requirements on the
8 public official.

9 The third element is the class of persons the ordinance
10 intends to protect is identifiable before the fact. The class
11 that was intended to protect are property owners who purchase
12 properties in developments that don't have infrastructure so
13 that a developer could start selling immediately. Finally
14 you've got a couple of other elements here. The Plaintiff is
15 a person with a protected class. I think that's clear. The
16 fifth element's the public officer knows or has reason to know
17 of the likelihood of the harm to the members of class if he
18 fails to do his duty, obviously with a failure - with the
19 negligence of handling of this bond we have exactly what the
20 County was supposed to guard against and that was having a
21 development where the developer has gone bankrupt and we can't
22 finish the infrastructure. They sold these lots to unwitting
23 folks who the only reason they probably would have bought out
24 there is because the financial guaranties were in place, and
25 finally the last element is the officer is given sufficient

1 authority to act in the circumstances or he undertakes the act
2 in the exercise of his office. Your Honor, obviously the
3 planning department exercised their acts within what they
4 thought the ordinance allowed them to do. That obviously was
5 contrary to the statutory - the ordinance's requirements.
6 They were clearly negligent in their actions. There is no
7 other exemption that, that falls within the Tort Claims Act
8 that gets them off the hook. I think that ---

9 THE COURT: So you don't think subsection four,
10 failure to enforce an ordinance ---

11 MR. MOODY: Let me, let me read it again, Your Honor.

12 THE COURT: --- why is that not an exemption? A
13 government entity is not liable for a loss resulting from
14 failure to enforce any law including an ordinance.

15 MR. MOODY: At that point, Your Honor, they're not,
16 they're not failing to enforce this ordinance. They actually
17 in their enforcement mechanism they're required to make sure
18 that they administer the reductions in the letter of credit
19 properly. They're not looking to enforce an ordinance. They
20 have an administrative function at that point to ensure that
21 these monies are not improperly reduced or spent and that's
22 what's happened in this case. This isn't - this doesn't go to
23 adoption or enforcement of a law or statute. It goes directly
24 to the handling of their own functions within the, within the
25 County offices. The other exemptions if you'll tell me again,

1 Your Honor, I don't have Mr. Mills' exemptions in front of me.

2 THE COURT: The other one, what was it, failure to
3 inspect.

4 MR. MILLS: Four, five, 12 and 13, Your Honor.

5 MR. MOODY: With regards to Number Five, Your Honor,
6 there is no discretion in the statute with regard - the
7 ordinance with regards to how much monies are to be retained
8 going forward. The statute - ordinance requires that 125
9 percent of the cost to complete is supposed to be retained.
10 There's no discretionary function to go below that. The
11 employees decided or the County decided to allow that to
12 happen. So that's not a discretionary matter. That's clearly
13 a requirement of the ordinance, four, five, I'm sorry.

14 MR. MILLS: Four, five, 12.

15 MR. MOODY: 12.

16 MR. MILLS: 13.

17 MR. MOODY: 12 and 13. Your Honor, with regards to
18 12, 12 it talks about licensing functions. That's - clearly
19 goes to business licensing, that sort of thing. It - this
20 does not go towards the licensing of a contractor. It only
21 deals with - the only thing that this ordinance deals with is
22 whether the contractor posts sufficient monies to ensure the
23 cost to complete this infrastructure. It doesn't go,
24 actually, to the licensing function or the issuance or denial
25 of that, of that license. Essentially, Your Honor, it was a

1 discretionary matter only as to whether they were going to
2 accept the letter of credit or not. At that point once they
3 accept it and they have that duty it doesn't have anything to
4 do with the licensing function.

5 Thirteen, to the extent that - the allegations in the
6 complaint are not to the, to the failure to inspect. The
7 allegations of the claim are directly related to the failure
8 to maintain sufficient funds to ensure that the infrastructure
9 is in place and that the letters of credit were reduced
10 contrary to the ordinance which required no more than once
11 every six months reduction in the letter of credit and also to
12 maintain 125 percent of the cost to complete. That's where
13 the negligence is. We haven't - although we have ---

14 THE COURT: So you're saying it was not negligent for
15 them not to send their own inspector out there to check?

16 MR. MOODY: That is correct, Your Honor. I don't
17 think that they have the obligation under the ordinance to do
18 that and I'm not saying that they were completely negligent as
19 to that. I will say that they were negligent as to how they
20 handled the funds, which is the whole basis of our negligence
21 claim in this case. So, with that being said, there's clearly
22 a special duty that was created by the ordinance. The County
23 can't wipe away its liability under the Tort Claims Act just
24 by saying, "We're not liable," and that none of these
25 exceptions apply under the Tort Claims Act. The County is

1 liable for its own negligence just as any other person would
2 as the Tort Claims Act requires. So that would be our
3 position with the public duty rule and with the negligence
4 claim, Your Honor.

5 THE COURT: All right, anything in reply?

6 MR. MILLS: Just very briefly, Your Honor, we
7 mentioned the Brady Development case. It's interesting
8 because Brady and its progeny show that the public duty rule
9 in establishing a special duty is still very much in force
10 because Brady Development cites to Jensen versus Anderson
11 County DSS in that footnote two, we follow all the way forward
12 to the Steinke case I referenced for you which cites Jensen
13 and lets you know the public duty rule is still very much in
14 force in light of the Tort Claims Act because that's exactly
15 what was going on both in the case against DSS and the case
16 against LLR on the bungee jumpers. Sure there's the Tort
17 Claims Act but the Court of Appeals did an exhaustive analysis
18 of those six factors and the factors aren't there simply
19 because factor two and three can't be established because you
20 have to have a statute that either directly or indirectly
21 imposes a specific duty. This statute disclaims any duty, and
22 in fact, there can't be a duty where it's disclaimed, and
23 exception three is the class of persons the statute intends to
24 protect is identifiable before the fact. Quite to the
25 contrary the statute here not only identifies them, it carves

1 them out and tells that, that there is no liability, no
2 obligation and there can be no liability and I'd close with
3 the Tort Claims Act itself, Your Honor, that says that, you
4 know, these provisions are to be construed in favor of
5 limiting liability because the waiver of sovereign immunity is
6 a serious matter. It should only be applied when it's clearly
7 applicable. It's not here.

8 THE COURT: All right, all right, Mr. Mills, if I
9 could get you to prepare an order I'm going to grant the
10 Defendant's motion for directed verdict. First of all,
11 Plaintiff withdraws all causes of action except for the first
12 cause of action as I understand and I'm granting it on the
13 Brady versus - I find that there's no duty based upon Brady
14 versus Hilton Head, and the disclaimer set forth in the
15 ordinance, that there is no duty owed by the County to this
16 Plaintiff individually, well, then there is no creation of a
17 cause of action. Also I find that the Tort Claims Act is
18 applicable under 15-78-60, subsections four, five and 13. I
19 don't think 12 is applicable, the licensing function, but I
20 think that four, five and 13 are applicable. I know the
21 Plaintiff is saying that they were not negligent in not
22 sending any inspectors out there but I think the whole crux of
23 their case was that the County or the allegations were that
24 the County was negligent for somehow relying upon the
25 assertions of the other engineers and the other powers that be

1 in this private development when they came to them and said,
2 "We have completed or substantially completed this work," and
3 then they drew down on the letters of credit.

4 Anything I have not addressed? I think that's got it.
5 Anything else comes up you can put it in there. Make sure Mr.
6 Moody reviews it before you send it to me.

7 MR. MILLS: Yes, sir.

8 THE COURT: All right, and I, you know, I agree with
9 the Plaintiff, it seems like that you do have an ordinance
10 here that was not followed, but I think Brady and the Tort
11 Claims Act I think it's pretty clear that under this fact
12 situation it does not create a private cause of action for the
13 Plaintiff in this case and that they're not, not liable to
14 this Plaintiff individually for that. All right, thank you
15 very much.

16 Oh, excuse me, let's go back on the record. Put in there
17 that I am not granting the directed verdict on the statute of
18 limitations argument, okay?

19 MR. MILLS: Yes, sir.

20 THE COURT: I think that that might - I need to go
21 back and review the Cherokee case, but I'm, I'm kind of
22 inclined to believe that that might have been a factual issue
23 to be determined by the, by the jury. So I am denying the
24 motion for a directed verdict on the statute of limitations
25 argument. All right, thank you.

1 MR. MILLS: Yes, sir, got it.

2 THE COURT: Oh, yeah, I guess we do need to bring the
3 jury back in so I can cut them loose and then we've got -
4 there we go. Let's go - anything from the Plaintiff before we
5 bring the jury in?

6 MR. MOODY: Not at this point, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. MILLS: No, sir.

9 MR. MOODY: All right, let's go ahead.

10 (Jury excused by Court.)

11 THE COURT: All right, anything further from the
12 Plaintiff?

13 MR. MOODY: Nothing further, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. MILLS: No, Your Honor.

16 THE COURT: All right, thank you very much.

17 (Adjourned.)

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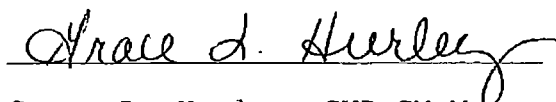
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of David M. Repko versus County of Georgetown, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on September 16 and 17th, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

November 19, 2013.

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 2012-CF-22-00558

DAVID M. REPKO, CYNTHIA)
M. GOSSETT, GROVER)
GOSSETT, CHARLES V.)
SATTI AND MARSHA SATTI,)

Plaintiffs,)

Transcript of Record

vs.)

December 19, 2013

COUNTY OF GEORGETOWN, A)
BODY POLITIC,)

Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

William T. Moody, Esquire
Attorney for Plaintiff

David J. Mills, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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E X H I B I T S

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(There were no exhibits marked during the hearing.)

1 (December 19, 2013)

2 THE COURT: This is 2012-CP-22-558. This is the case of
3 David M. Repko, R-E-P-K-O, versus County of Georgetown, a Body
4 Politic. According to my roster, the matter is before the
5 Court on a Motion to Reconsider. Please give the Court
6 Reporter your names and who you represent.

7 MR. MOODY: Bill Moody, here on behalf of David Repko,
8 the Plaintiff.

9 MR. MILLS: And I'm David Mills, M-I-L-L-S, on behalf of
10 the Defendant, County of Georgetown.

11 THE COURT: All right. Mr. Moody, this is your motion?

12 MR. MOODY: Yes, sir, Your Honor.

13 THE COURT: Thank you.

14 MR. MOODY: If I may hand up a Brief in support of my
15 motion.

16 THE COURT: All right. Thank you.

17 MR. MOODY: Please the Court, Your Honor, this is a
18 Motion for Reconsideration which arises out of the case you
19 tried here in Georgetown County back in September. At the
20 close of the Plaintiff's case you had directed a verdict in
21 favor of the County on a couple of issues. One being that the
22 Court found that there was no duty owed to my client; and
23 number two, the Court found that there are at least three
24 immunities under the Tort Claims Act in which the verdict was
25 directed.

1 Just a quick summary of the facts Your Honor, since it's
2 been a few months, this arises out of a -- my client purchased
3 property out at Harmony Township in which the developer went
4 bankrupt. The County had Letters of Credit in place, which
5 they actually took possession of the funds after the developer
6 went bankrupt, they held those funds pursuant to the County's
7 ordinance with regards to financial guarantees. The basis of
8 our claim is that the County was grossly negligent in the
9 handling of those funds, allowing those funds to be drawn down
10 subsequently -- by a subsequent developer rather, and that
11 they do not follow the purview in the letter of the ordinance
12 itself regarding financial guarantees. So, those were the --
13 that was the main crux of the case, Your Honor. To start
14 with, the issue of whether there was a duty owed to my client.
15 Your Honor, I've cited a long line of cases that deal with
16 trying to determine whether a statute or an ordinance creates
17 a special duty as opposed to a private public duty as was
18 argued previously. And in -- there's a test in which -- that
19 was originally adopted in the Rayfield case that I sat in my
20 Brief on page 3, and that test is a six part test of which --
21 right now I'll just read it so that I'm clear to the Court.
22 In Rayfield, it says in order to show that the defendant owes
23 him a duty of care arising from the statute, the plaintiff
24 must show two things, that the essential purpose of the
25 statute is to protect from the kind of harm the plaintiff has

1 suffered, and that he's a member of the class or persons
2 statute is intended to protect. If you look at the actual
3 statute itself, which is -- it was Court's or Plaintiff's
4 Exhibit Number One to the transcript, and I'll be glad to hand
5 that up, Your Honor. I think I've cited the provisions of the
6 statute in there or in the other ordinance on the next page,
7 Page 4, that deal with rejections and releases of financial
8 guarantees, but I'll be glad to hand to the entire ordinance
9 if Your Honor would like to see it. But essentially ---

10 THE COURT: Well, I mean, is this -- what you've got in
11 your Brief?

12 MR. MOODY: I believe it is but, if you need more
13 background, I have the entire ordinance. But essentially this
14 ordinance was adopted by Georgetown County, it's in Appendix B
15 to the Code of Ordinances from Georgetown County and its
16 entitled Improvement Standards and it talks about requirements
17 of the development in a subdivision in Georgetown County. And
18 specifically, what it starts out with in Sections (1) and (2),
19 it gives a general provisions. It talks about subdivisions
20 required to have infrastructure of water, roads and sewer for
21 any properties can be sold or any building permits issued.
22 But then it skips to Section (3), where we talk about
23 financial guarantees, and that is the section where -- that we
24 claim creates a duty and to our client. And under the
25 Rayfield analysis essentially says, first, that the essential

1 purpose of the statute is to protect from the kind of harm the
2 Plaintiff has suffered. What we have is my client has
3 purchased two properties in Harmony. The developer has gone
4 bankrupt. The Letter of Credit was in place specifically for
5 the purpose of ensuring that the infrastructure would
6 eventually be completed should the developer go belly up, and
7 there's good reason for that. The developer wanted to be able
8 to presale lots and couldn't do so without either having the
9 infrastructure in place or these financial guarantees. And
10 also, the developer -- or the County wanted to make sure that
11 it was protecting its citizens or the property owners out
12 there to ensure that the infrastructure would be completed if
13 the developer did go belly up.

14 So, the actual purpose of the statute was to ensure to
15 give, number one, the developer the ability to presale these
16 lots; and number two, to make sure there was a mechanism or a
17 fund in place to make sure the infrastructure was completed.
18 So, clearly, we meet the first prong of the Rayfield case,
19 which is that the essential purpose of the statute is to
20 protect from the kind of harm the Plaintiff has suffered. The
21 Plaintiff now has property in a subdivision with no
22 infrastructure and no ability to build on.

23 The second prong is that he's a member of a class of
24 persons the statute is intended to protect. This statute,
25 Section (3), dealing with financial guarantees is not for the

1 benefit of the general public. It is solely for the benefit
2 of those people who buy within a subdivision where the
3 infrastructure is not already in place and a financial
4 guarantee has been put in place by the developer and held
5 eventually by the County.

6 So, clearly, the development or nondevelopment of Harmony
7 does not touch on the general public. It doesn't affect me as
8 being a property owner in Litchfield or Murrells Inlet, it
9 only affects those people within that subdivision; so, we have
10 a defined class. Once you get past that, that test, then
11 Rayfield says, okay, well there's a public duty doctrine out
12 there and we have to get around the public duty doctrine to
13 show that there is a special duty owed. And that six-part
14 test is as follows: Number one, an essential purpose of the
15 statute is to protect against particular harm, we just covered
16 that. Number two, the statute either directly or indirectly
17 opposes on a specific public officer a duty to guard against
18 or not to cause that harm. Number three, the class the
19 purpose of the statute intends to protect is identifiable
20 before the fact. Number four, the Plaintiff is a person
21 within the protected class. Number five, the public officer
22 knows or has reason to know the likelihood of harm to members
23 of the class if he fails to do his duty. And Number six, the
24 officer is given sufficient authority to act in circumstances
25 or undertake to act in the exercise of his office.

1 Your Honor directed a verdict finding that the Plaintiff
2 had failed to meet the six-prong test, specifically the second
3 and third prong, in your order, which deals with the statute
4 either directly or indirectly imposes on a specific public
5 officer the duty to guard against or not to cause that harm,
6 that was the first reason.

7 Now, what I've done, Your Honor, is I've gone through
8 later in the Brief and I cited exactly, beginning about Page 6
9 of the Brief, I've cited the provisions of Section (3) of the
10 ordinance dealing with financial guarantees where it shows
11 that the language therein clearly imposes the duty upon the
12 planning department to safeguard these financial guarantees
13 and the monies that have been posted for purposes of ensuring
14 the infrastructure. And I'm quoting directly the sections
15 throughout, beginning with Section 3-2, it talks about
16 financial guarantees shall be submitted to the planning
17 department and follow procedures enumerated below.

18 THE COURT: I mean, wasn't that done, though?

19 MR. MOODY: I'm sorry?

20 THE COURT: Wasn't that done in this case?

21 MR. MOODY: The financial guarantees were.

22 THE COURT: Right.

23 MR. MOODY: And what I'm trying to show with the language
24 in the statute is that there is a defined department within
25 the County that has an obligation, a special obligation, a

1 specific obligation, to ensure that they followed the
2 ordinance.

3 THE COURT: Okay.

4 MR. MOODY: Because the ordinance clearly throughout
5 Section 3 identifies -- the planning department is the
6 department who administers this ordinance to make sure the
7 Letter of Credits are proper, make sure that they're handled
8 properly and they follow the procedure in that ordinance. So,
9 with regards to the second prong of the Rayfield test, we
10 believe that the ordinance itself clearly shows that it either
11 directly or indirectly imposes on a specific public officer a
12 duty to guard against or not to cause that harm. Meaning the
13 statute, the ordinance itself goes on to say if we call a
14 Letter of Credit or a bond, going to make sure that we
15 maintain 125% of the cost to complete and we're not going to
16 allow reductions or releases more than once every six months.

17 If you'll remember the testimony, Your Honor, every --
18 there were three witnesses from the County, all three of them
19 testified that they clearly allowed these funds to be released
20 or reduced more than once every six months and never
21 maintained 125% of the cost to complete the infrastructure.
22 In fact, questioning Holly Richardson on the stand I showed
23 her a document from Georgetown County that showed the cost to
24 complete was \$1.1 million plus and at the time the County was
25 holding \$300,000 in the Letter of Credit and they still

1 reduced the amount they were holding. So, the purpose -- my
2 point there is to say that the harm that was caused here to my
3 client is that he has property that's worthless as a result of
4 the fact that there is no infrastructure. And the whole
5 purpose of the financial guarantee section of the ordinance
6 was to ensure that if a developer went down the tubes that the
7 money would be there to protect against the harm that would
8 come to these property owners. So, that was second prong of
9 the Rayfield test. The other prong that the Court found that
10 we didn't meet our burden was the third prong which says, The
11 class of persons the statute intends to protect is
12 identifiable before the fact. I think we've already -- I've
13 only touched on that and I don't want to belabor that point.
14 But it's essentially the class of people that the statute
15 ordinance is there to protect are those persons who buy in
16 undeveloped subdivisions with the expectation that the
17 infrastructure is going to be completed by the developer.
18 That's the only class that is there to protect.

19 Finally, Your Honor, we go to -- well, that's not finally
20 -- with regards to the duty aspect of this, the County argues
21 that they put in their ordinance a provision that says, quote,
22 acceptance of a financial guarantee by Georgetown County shall
23 not be construed as an obligation to any other agency, utility
24 or property owner within the affected developments. I think
25 the Defendants have relied on that to show that they have

1 basically wrote into the law the fact that they have no duty
2 to anyone. Now, I've cited ---

3 THE COURT: But I mean the law is the -- but, you're
4 saying that the law is one that creates the duty.

5 MR. MOODY: That's correct. It creates a special duty,
6 Your Honor.

7 THE COURT: So, aren't you like relying on part of the
8 law and ignoring the other part when you say the ordinance
9 creates and things you can't disclaim the duty under the same
10 ordinance?

11 MR. MOODY: There's a reason why.

12 THE COURT: Okay.

13 MR. MOODY: And the South Carolina Tort Claims Act is the
14 exclusive remedy to deal with claims against a governmental
15 entity. And I've cited for you a case in my Brief that talks
16 about -- it's the Pride v. Southern Bell case, it talks about
17 the court's decision recognized the general principal that
18 considerations of public policy prohibit a party from
19 protecting himself by contracting against liability for
20 negligence in the performance of the duty of public service
21 or where a public duty is owed or public interest is involved
22 where public interest requires the performance of a private
23 duty or when the parties are not on equal party terms.

24 Essentially what the County has sought to do is
25 circumvent the Tort Claims Act by including that language. I

1 would back up and say that language is not for the purpose of
2 saying we disclaim any duty owed to anybody. I think that if
3 you look at the reading of the language in the context of the
4 ordinance, I think it's clear what Georgetown County was say
5 is we'll allow financial guarantees but we are not going to be
6 the ones responsible for putting in the infrastructure if
7 things go bad. We just want to make sure this mechanism there
8 to retain this money until someone else to stand.

9 THE COURT: But isn't that also the crux of this argument
10 that they don't have to duty to spend taxpayers -- to spend
11 taxpayer dollars to send out another appraiser to see if the
12 appraisal they got was accurate. Isn't that what happened in
13 this case? They got word that the infrastructure was in and
14 they relied upon that word, wrote down the bond when in fact
15 that was an in accurate appraisal and the question was whether
16 or not they should've sent out their own appraiser.

17 MR. MOODY: My Complaint was purely negligence as to how
18 they handled the bond. We do not alleged in our Complaint
19 that they failed to inspect or failed to verify the
20 information. What we allege in our Complaint is that under
21 the statute they had a very special duty to ensure that they
22 held on to these funds, that they maintained 125% of the cost
23 to complete, and that they not allow it to be reduced more
24 than once every six months, and they clearly violated both of
25 those provisions in their own ordinance. I think Your Honor

1 is correct in saying that they probably had the right to rely
2 on some of those documents that were coming to them as to the
3 cost to complete. But, if you will remember, and I can pull
4 it from the transcript from the testimony of Holly Richardson,
5 I held a document which is an exhibit to the transcript and
6 said, Ms. Richardson, this document says it's gonna cost 1.1-
7 plus million dollars to complete on this day. And it's in
8 your file? Yes, it is. But yet, within two weeks later, the
9 County is releasing more money when you only have \$300,000
10 left to complete the infrastructure. So, we're not saying
11 that it's the County's obligation to go out and inspect.
12 We're not even saying that the County is obligated to make
13 sure the infrastructure is completed. All we're saying is
14 that the County was obligated when they took possession of
15 these funds to follow its own ordinance that it created for
16 itself and that created the special duty.

17 Now, with regards to -- and I'll sit down after I do the
18 Tort Claims Act -- well, I take that back I have one other
19 issue. Under the Tort Claims Act, Your Honor found that
20 provisions of under Section 15-78-60 (4), (5) and (13) gave the
21 County absolute immunity as to -- they dealt with licensing,
22 discretionary functions and administration of the statute.
23 But one thing that was not touched upon and that may have been
24 my fault in the argument against directed verdict, although
25 none those three exceptions had a gross negligence standard,

1 the County did raise other Tort Claims Act defenses, one of
2 which 15-78-60, (12) requires that that immunity is only
3 applicable when the power of function is exercised in a
4 grossly negligent manner -- except when it's exercised in a
5 grossly negligent manner. Our cases have held, specifically
6 the Steinke case, which is cited in Your Honor's order, that
7 whenever a County or a governmental entity raises tort claims
8 defenses and one of those requires a gross negligence
9 standard, it's applicable to all of those defendants, so that
10 our position would be that under the Tort Claims Act in this
11 case the provisions of which the Court directed a verdict on,
12 there should've been in a gross negligence standard applied to
13 those defenses not an absolute immunity. We would ask that
14 the Court reconsider that decision as well. Also cited for
15 the Court -- and I'm gonna butcher this name -- Chakrabarti v.
16 City of Orangeburg case, it's a 2013 case, and it's a really
17 good case that deals with the Tort Claims Act and governmental
18 immunities. In that case the County -- or City, actually,
19 condemned a house, tore the house down and the Court there --
20 it went to the jury, the jury found for the Plaintiff. On
21 appeal, the Court of Appeals held up the argument that the
22 gross negligence standard applied to those defenses and all
23 those defenses, as well, and cited the Steinke case again and
24 actually upheld the jury verdict in that case and I would just
25 submit that for your reading.

1 Finally, Your Honor, I think that there was clearly, at
2 least sufficient evidence, to show that there was gross
3 negligence on the part of the County, and that it should've
4 gone to the jury, and I've cited the standard for gross
5 negligence.

6 With regards to the Brady case, Your Honor, that you
7 cited in your Order directing verdict, I will say to you this,
8 that the Brady case is clearly distinguishable for this reason
9 in this reason only. The Bradys in the Town of Hilton Head
10 case actually sued the town claiming that the town was
11 negligent in issuing a development permit for the entire
12 development to develop. That was the case where the Bradys
13 purchased a piece of property in the development and the
14 developer went bankrupt. As a result, they could get water
15 and sewer to their property, they continue to build anyway.
16 The City wouldn't give him a CO because there were some funds
17 that were due the Sewer and Water Authority and that wouldn't
18 allow them to hook up the water. The house eventually burns
19 down and that's when the Bradys sued the Town saying you
20 should not have issued a development permit to this developer
21 for this entire development and as a result I've been harmed.
22 So, it was a general argument of the entire development
23 ordinance. What we have here is different from Brady ---

24 THE COURT: I mean, but that dealt with writing down --
25 the City's writing down on letters of credit as well, didn't

1 it?

2 MR. MOODY: I don't think that went -- that was not the
3 issue in that case. The issue in that case was whether the
4 City should have issued a development permit for the entire
5 development, as I read the case itself. I'm not privy to the
6 actual pleadings in that case or the testimony, but if you
7 read the opinion, that seems to be the basis of the opinion.
8 It doesn't go into a specific ordinance of the City for a
9 financial guarantee. It doesn't talk about whether the City
10 did or didn't call bonds or letter of credit or whether they
11 released funds at all that. It clearly just do this with
12 Bradys saying you were negligent in issuing the development
13 permit to these people and now I've been cause harm because,
14 because you issued an overall development permit. That's the
15 distinction there I find with the Brady case. And I would say
16 this, the Brady case predated the Tort Claims Act. It
17 wouldn't have had that six-factor test that I've cited in
18 Rayfield that survived the Tort Claims Act. So, if you go
19 through the analysis of the public duty doctrine, I think
20 you'll find that this provision of the ordinance, this
21 financial guarantee provision of the ordinance creates a
22 special duty in which the County can't back away from. They
23 have to at least follow their own rules when they accept a
24 financial guarantee.

25 Finally, Your Honor, one last argument not in my Brief

1 that I have to raise for the Court. Your Honor, since the
2 trial in this case, and this is on my request for new trial as
3 well, since the trial of this case my client is come into
4 information that Your Honor actually did work out at Harmony
5 to the extent of which I do not know -- I believe that perhaps
6 there were some real estate transactions that you may or may
7 not have handled for the developer to the extent that that may
8 or may not have weighed on your decision, making my clients
9 believe that it probably should've been proper for you to, sua
10 sponte, recuse yourself from the hearing of this case at the
11 trial. So, I race that for the record.

12 THE COURT: Did I represent your clients in their
13 closing?

14 MR. MOODY: No sir, you didn't.

15 THE COURT: Did I represent the developer in their
16 closing?

17 MR. MOODY: I don't believe that you did, no sir.

18 THE COURT: Did I represent any party in this action?

19 MR. MOODY: You did not represent my client and I don't
20 know that you have ever represented Georgetown County. Those
21 were the only two parties in this action.

22 THE COURT: In this action, okay. But I'll admit I did
23 some closings out there. I did a bunch of closing out there
24 for people that purchased lots out there but that was
25 basically the extent of my involvement out there. Is there --

1 the fact that I just did closings out there, is that what
2 they're saying is the conflict?

3 MR. MOODY: Your Honor, I think my clients don't know the
4 extent to which you were involved. So, to the extent that
5 that raises that issue, my clients would raise the issue for
6 the record.

7 THE COURT: All right. Sounds good. Thank you.

8 Mr. Mills?

9 MR. MILLS: Thank you, Your Honor. Very briefly, on the
10 last issue, the County questions the timeliness of the issue
11 being raised to His Honor, first of all. Secondly, the County
12 discerns neither a conflict with his honors presiding over the
13 trial of the case or any appearance of impropriety. That's
14 the County's position.

15 On the substance of the matter, I don't expect the Court
16 to remember its order and its ruling from three months ago.
17 The case was tried September 16th and 17th of this year and
18 the Court entered an order shortly thereafter. I've just been
19 handed Mr. Moody's Brief, so I'm not sure what's in there but
20 of this I am confident, the Court's Order relied extensively
21 on Brady Development. All right? Mr. Moody just took you
22 through an extensive analysis of the Rayfield case and the
23 public duty rule and special duty, that was from 1988. The
24 Brady Development case that we've discussed at some length
25 here this morning is from 1993. Brady is still good law. And

1 to answer His Honor's question -- I happen to bring Brady with
2 me -- and the Court noted that in the Brady case between June
3 and December of 1985, the Town allowed the company to draw
4 down on the Letter of Credit as improvements were completed.
5 So, the Letter of Credit, like in the Repko case here was at
6 issue in the Brady case. Brady continues to be cited all the
7 way through the 90s and into the 2000s. I think it's
8 important to step back and understand they don't get to the
9 Tort Claims Act, okay, you don't even deal with those
10 immunities and exceptions as a matter of law except as an
11 additional sustaining ground. The premise of the Court's
12 ruling on directed verdict was that where there is no duty,
13 there can be no tort. You've got to start with that analysis
14 and you start on the duty analysis with the public duty
15 doctrine and that is a duty to everyone is a duty to no one
16 individually. Taking it a step further, however, if a
17 statute, a statute creates a special duty then you get into
18 the six-factor Brady test and that's the analysis the Court
19 undertook in its ruling on directed verdict and that's what we
20 have here. No special duty arises because under these
21 development regulations, they are for the benefit of the
22 general public, the scheme of development in Georgetown
23 County, how we all are allowed to develop our property.

24 THE COURT: And isn't that what Brady stated?

25 MR. MILLS: It is, and if the Court will recall, Brady

1 involved a planning department, it involved drawn down letters
2 of credit, it involved the, quote, negligent administration of
3 the development standards ordinance, which we contend is
4 exactly what's challenged here, the County's administration of
5 its own development regulations. And Brady went through and
6 decided that if we do this, if we allow this claim and we
7 create a special duty here you make the municipality in that
8 case, in our case a County, an insurer. It's essentially --
9 the entity is essentially backing up developers and that's a
10 step the Supreme Court was not willing to take and I don't
11 believe will be willing to take today to impose that kind of
12 liability. That's why Brady continues to this day to be good
13 law. The protection is for the entire County not for
14 individuals.

15 So again, the question arises, can a County essentially
16 disclaim a duty to individuals? It certainly may. We're
17 talking about the waiver of sovereign immunity here. We look
18 to the statute. The only way the duty arises is from the
19 statute and the statute here, as the court will recall,
20 specifically provides acceptance of a financial guarantee by
21 Georgetown County shall not be construed as an obligation to
22 any other agency, utility, or property owner within affected
23 developments. That's exactly what the County meant to do.
24 In the absence of that provision, we would still contend to
25 His Honor that there is no special duty that arises here under

1 the rubric of the development ordinance. But in the face of a
2 specific disclaimer which is not present in any of these other
3 cases, I don't think it could be much clearer that the special
4 duty is on its face is claimed no special duty arises. So,
5 that's the County's position because no special duty arises,
6 because on the face of the statute there is no direct duty
7 imposed on the County official vis-à-vis the individual
8 property owner, other -- the water and sewer district, other
9 agencies, the developer itself, there can be no duty. The
10 Plaintiff does not clear the special duty hurdle and we don't
11 get into the tort claims analysis. If you do, even if one
12 assumes that the Plaintiff cleared the special duty hurdle and
13 we get into the Tort Claims Act exceptions, they do apply,
14 there is a gross negligence standard if applicable. We did
15 argue subdivision (12), this court ruled, I'm rejecting that
16 argument, it's not applicable. And the ones that the Court
17 held did apply, Number (4), (5) and (6), inspection powers and
18 those sorts of things don't have a gross negligence exception.
19 So, the County views it and the Court's order essentially
20 states that those ---

21 THE COURT: Have you read the Orangeburg case he
22 referenced? I haven't read it.

23 MR. MILLS: Yes, sir. That case interestingly I came
24 across in my research -- let me back up a minute and tell you
25 -- I'll answer the Court's question, yes, sir. I found in my

1 research a 1999 case called Tanner, Tanner v. the Florence
2 County Treasurer. That's of interest because Justice Toal,
3 writing for the court, brings Brady forward, the case the
4 Court relied upon, and says, In general, we have been
5 reluctant to find special duties statutorily imposed. And the
6 now Chief Justice cites a litany of cases, starting with
7 Brady, the Bellamy case, the Summers case, the Jenson case
8 with DSS, all of which the Court rejected statutorily imposed
9 duty. In the Tanner case, they actually said this involves a
10 tax notice of a joint tax sell, we think there was a duty
11 there because of the entire purpose of the statute is to give
12 notice to taxpayers. I bring that Tanner case to the Court's
13 attention simply because it contains a nice synopsis of the
14 Court's history in rejecting the imposition of statutorily
15 imposed duties, waving aside the whole issue of the facial
16 disclaimer of duty that we are dealing with here. Now, to
17 answer the Court's question about the City of Orangeburg case,
18 that's just come out and interestingly that is on -- the Court
19 of Appeals' decision is being appealed to the Supreme Court
20 right now. An appellant's number has been assigned, I don't
21 know if cert has been granted. So, that's may be subject --
22 subject to further review. The City of Orangeburg case is --
23 it does not contain any disclaimer in the statute like we have
24 here, a disclaimer of any individual or special duty, that
25 makes a difference. The City of Orangeburg case is -- the

1 Courts of Appeals essentially said you can't tell this guy --
2 you can't write him a letter, give him two building permits,
3 your code allows him to refurbish the house within two years,
4 and then within six months you demolish the house and send him
5 the bill. That's what happened there. So, it's greatly
6 factually distinguishable including -- one of the City of
7 Orangeburg case distinguishing factors is that the City is
8 dealing directly with this Plaintiff, they are telling him
9 what he can and cannot do, there is a series of letters, a
10 hotly contested factual scenario of who said what, what was --
11 you don't have that here. There's no interaction between Mr.
12 Repko and the County of Georgetown. What Mr. Repko is
13 challenging is the County of Georgetown's actions vis-à-vis
14 the developer. So, significant factual distinctions between
15 that City of Orangeburg case. That's we see is the
16 difference. So, in summary, I'll answer any questions the
17 Court has but with all due respect, we think the Court got it
18 right in its reliance on the Brady case. That's good law to
19 this day. There is no special duty implied in this instance,
20 especially in light of the direct statutory language itself.

21 THE COURT: All right. Anything in reply?

22 MR. MOODY: Briefly, Your Honor. The Brady case -- I
23 agree with Mr. Mills, the Brady case adopted the Rayfield test
24 and the Jensen test and that test still survives today, the
25 six-prong test as to whether a special duty is created. I

1 will tell, Your Honor, there are no allegations in the Brady
2 opinion, and maybe I'm missing them, if I am, that the City
3 itself was negligent in the way that it handled the financial
4 guarantees. In fact, the language I will tell you is that in
5 the discussion it says that the Town contends that the Trial
6 Judge erred in ruling as a matter of law that it owed a
7 special duty of care in issuing a development permit under the
8 development standards. That's different from the City
9 actually calling in a financial guarantee, holding those
10 monies and having obligations under their own ordinance to
11 disperse those monies in compliance with that ordinance. In
12 addition, I would tell Your Honor the City of Orangeburg case
13 -- I'm not even going to try to pronounce the Plaintiff's name
14 again -- it is a really good discussion of public duty rule,
15 Tort Claims Act ---

16 THE COURT: Now, is that -- is he right, is there a cert
17 opinion on the Supreme Court on that one?

18 MR. MOODY: As I understand it, they have requested cert
19 but this, this case is still out there and if you go through
20 the discussion of gross negligence, the public duty rule,
21 whether a special duty is created, tort claims immunities,
22 it's all contained -- all the law that we cited is contained
23 ---

24 THE COURT: I mean, is his -- Mr. Mills' recitation of
25 the facts correct where the City said you've got a two-year

1 permit to build up your house and then they had it demolished
2 within six months?

3 MR. MOODY: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. MOODY: That's correct. And there, they did not
6 comply with their statute or their ordinance that said you're
7 supposed to have that amount of time. In our case, very
8 closely to it, our ordinance says you are required to maintain
9 125% of the cost to complete, if you have that information,
10 and you cannot allow reductions or releases to the letter of
11 credit more than once within a six-month period of time, both
12 of which were violated by the County. So, I won't belabor
13 that anymore but -- and if you'd like for me to I'll hand up
14 my City of Orangeburg case for the Court.

15 THE COURT: Well, no, if y'all agree on the facts and
16 what the court held, then that's fine.

17 MR. MOODY: I think it's a good discussion of the law,
18 though.

19 THE COURT: Okay. Well, what I'm going to do is I'm
20 going to take it under advisement because I want to read, read
21 the Brady case. I have an even looked at the Orangeburg case,
22 I'll take a look at that and see what it says. When did they
23 come out with that one?

24 MR. MOODY: May? Its' very recently.

25 MR. MILLS: It's 2013. Judge, we happen to have copies

1 of Brady, we've got a copy of Tanner, we've got a copy of the
2 City of Orangeburg, if that'll help save you some trouble,
3 I'll hand it up.

4 THE COURT: Okay. Because I want to reread those cases
5 because I do recall I relied almost -- if I recall correctly,
6 and I don't know that I do, I want to say -- because I need to
7 go back and read my order again -- I want to say that I
8 almost, that I relied almost exclusively on Brady. I thought
9 Brady was pretty much dead on point and that's the case I
10 relied on. It kind of shocked me when I found the case
11 because I was thinking that it was kind of more of a novel
12 issue involved. I need to reread my order, reread the Brady
13 case and read that Orangeburg case.

14 MR. MOODY: And I think the facts are clearly -- the
15 opinion itself is not very specific as to those facts but ---

16 THE COURT: Well, see, that's what I need to see because
17 I was thinking that it was almost right on point. Rather than
18 a County, it dealt with individual property owner within a
19 development, it dealt with the City and an individual property
20 owner within a development where the City allowed them to draw
21 down on the letters of credit and the allegations were he
22 negligently did that. And the Supreme Court said, we're not
23 going to impose upon the City a duty to go out and guarantee
24 developments and that that was the basis. That's the way I
25 recall it off the top of my head. That's been several months

1 ago and I've probably been through I don't know how many cases
2 since then, so I don't know if I've got it right or not but
3 I'll readdress the issues, take a look at it and let you know
4 my decision.

5 MR. MOODY: Thank you, Your Honor.

6 MR. MILLS: Judge, I've got copies of Brady, Steinke, the
7 Summers case out of Lexington County and the City of
8 Orangeburg case to hand up. Thank you, Your Honor.

9 THE COURT: Thank you.

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(Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Repko, et al. versus County of Georgetown, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on December 19, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

February 5, 2014.

ARTICLE V. IMPROVEMENT STANDARDS

Sec. 1. General Provisions.

1-1. *Conformance.* Improvements to major subdivision shall be installed in accordance with the requirements and standards set forth in this Ordinance. Every subdivision developer shall be required to grade and improve streets, and to install curbs, monuments, sewers, storm water inlets, fire protection, and water mains, in accordance with specifications established by the Georgetown County Planning Commission. Where specifications adopted by local authorities conflict with standards set forth in these subdivision regulations, the higher set of standards as determined by the Planning Commission, shall govern.

1-2. *Commencement.* No land disturbance, construction or installation of improvements shall begin in a proposed major subdivision until the Planning Commission approves a preliminary plan, and provided that the Zoning Administrator has issued a Development Permit.

1-3. *Access.* Applicable public agencies shall have the ability to access the premises and structures of land developments governed by this Ordinance during reasonable hours to make those inspections as deemed necessary by them to ensure compliance with the provisions of this Ordinance.

1-4. *Inspection.* Before beginning any land disturbance within a major subdivision, the applicant or applicant's designated agent(s) shall make arrangements with all applicable agencies charged with the enforcement of this Ordinance to provide for adequate inspection of the improvements.

1-5. *Final Plat Approval.* Final plans shall not be approved for recording unless the applicant has installed the required improvements as specified and required in this Article, or has provided a financial guarantee as specified in Section 3 of this Article.

For major subdivisions that do not require the recording of a final plat, building permits shall not be issued until such time as the applicant satisfies those conditions placed on the proposed development by the Planning Commission or the Zoning Ordinance.

Final plats shall be submitted for recording in accordance with the provisions of Articles II and III. Upon submission, Planning Department staff shall have 15 business days to review such plat and provide revision comments, if any.

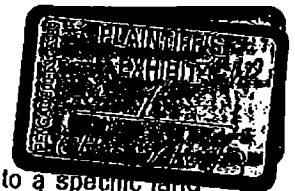
1-6. *Changes in the Approved Plans and Specifications.* If unexpected site conditions necessitate changes in approved preliminary plans, the applicant shall request approval of such changes. The Planning Commission shall review and approve any major changes to a proposed development. The applicant shall not proceed with construction involving any changes prior to obtaining approval of the requested changes. Minor changes to a development may be reviewed and approved by the applicable county department or public agency.

Minor changes may include, but are not limited to changes that:

1. Do not increase density within the development;
2. Do not change the exterior boundary of the development;
3. Do not materially change the location or amount of land devoted to a specific land use;
4. Do not significantly change the exterior appearance of structures from those shown on any plans that are submitted for review; or
5. Result in the minor shifting of buildings, proposed streets, public or private ways, utility easements, parks, or other public open spaces or other development features.

PLAINTIFF'S
EXHIBIT

3 1/12/12



All other change or modification not mentioned above shall constitute a major change and shall require review and approval by the Planning Commission.

Sec. 2. Required Improvements.

2-1. 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 of curve in each street. The top of the monuments 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 (1/2") inch in diameter and twenty-four (24") inches long and driven so as to be flush with the finished grade.

2-2. Storm Water Management. An adequate drainage system, including storm sewers, necessary open ditches, pipes, culverts, intersection drains, drop inlets, bridges, etc., shall be provided for the proper drainage of surface water. Cross drains shall be provided to accommodate all natural water flow and shall be of sufficient length to permit full width roadways and the required slopes. 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.

2-3. Roadway Improvements.

A. General. All paved streets designated and shown on the final plat shall be graded, constructed and surfaced in accordance with the standards found in the Georgetown County Standards and Procedures Manual or the requirements of the South Carolina Department of Transportation (SCDOT), whichever is the more stringent. All unpaved roads shall be constructed per the standards of the Georgetown County Public Works Department. Higher standards than those required by the standard specifications may be required by the Planning Commission to provide adequately for unusual soil conditions, extraordinary traffic volumes or other abnormal conditions.

Developments containing 10 or fewer lots (Minor Subdivision) that maintain private streets or utilize a shared private driveway easements are allowed to deviate from these requirements. (See Article II, Section 3-10, for the specific standards that shall be met in these circumstances).

B. 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 topographical conditions and/or significant trees, deviations from the above will be allowed only with special approval of the Planning Commission.

1. Preparation. Before grading is started, the entire right-of-way area shall be cleared of all trees, stumps, roots, brush, and other objectionable materials. Significant and landmark trees shall be exempt from this requirement. Further, tree protection shall be installed prior to any land disturbance for all significant and landmark trees, in the location of the right-of-way, to be retained.

2. Cuts. All tree stumps and other obstructions shall be removed to a depth of two (2') feet below the sub-grade.

3. 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 (6") inches loose and compacted by a sheep's foot roller unless another method of preparation of the sub-grade is approved by the County Department of Public Works.

C. Pavement Standard. Due to the diversity of development in Georgetown County, ranging

from sparsely populated rural areas to densely populated urban areas; the required widths of surface treatment of highways and streets (by the developer) will necessarily vary with the character of the development. Appendix A, Table 1 states the minimum widths and pavement standards for the various types of highways and streets.

If a new minor development is created on an existing non-paved public road, the subdivider shall not be required to pave such road as a prerequisite for development. However, if the existing road does not meet the right-of-way width requirements as shown in Appendix A, Table 1 the subdivider shall provide one-half the required width in accordance with the standards established in Article IV.

D. Curbs. The subdivider shall install curbs of no lower classification than machine formed concrete curbs. The curb shall be installed after the prime coat is applied to the base. Backfill shall be toward the curb to ensure drainage of surface water into the drainage system. Curbs in residential areas may utilize a rolled curb. In lieu of curbs as the drainage system on cul-de-sacs and loop streets, the Planning Commission may accept one of the following alternatives:

1. Swales may be used on streets where the finished grade does not exceed two (2) percent;
2. Streets with an inverted crown may be used provided that the drainage area of the street does not exceed five (5) acres. One-half (1/2") inch to three-fourth inch (3/4") expansion and contraction joints for the curbs shall be placed at intervals not exceeding forty feet (40').

E. Shoulders, Side Slopes and Ditches. All shoulders, side slopes and ditches shall be prepared in compliance with standard specifications. All shoulders, side slopes and ditches shall be protected from erosion by either sodding or seeding as set forth in the standard specification plans for erosion control and shall be a part of the required improvements plans to be submitted by the subdivider with the preliminary plat.

2-4. Utilities and Services.

A. General. 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 completely approved throughout the length of the road across the flat section.

B. Water Supply Systems. Water mains properly connected with the community water supply system or with an alternative supply approved by the Department of Health and Environmental Control (DHEC) shall be constructed in such 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 written approval of all applicable inspection agencies, and shall conform with acceptable standards of good practice for public water systems and adequate fire protection.

C. Sanitary Sewers. Where lots cannot be economically connected with a sewerage system, they must contain adequate area for the installation of septic tank and disposal fields. The Department of Health and Environmental Control shall approve such system in writing.

D. Street Name Signs. Appropriate street signs are required. Street names shall appear at all intersections of approved certified streets.

E. 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.

Sec. 3. Financial guarantees.

3-1. General. Financial guarantees may be posted in lieu of completing improvements required by this Ordinance to allow for the recording of a final plat or to obtain building permits for properties for which ownership will be transferred. A financial guarantee is not required to be posted prior to obtaining model home permits once a preliminary plan has received conditional approval.

Acceptance of financial guarantees is discretionary and Georgetown County reserves the right to refuse a financial guarantee for any remaining improvements and require that such improvements be completed before the recording of a final plat or issuance of building permits. Acceptance of a financial guarantee by Georgetown County shall not be construed as an obligation to any other agency, utility or property owner within affected developments.

3-2. Submittal. Financial guarantees shall be submitted to the Planning Department and follow procedures enumerated below. Failure to follow these procedures may delay the approval of such guarantee and recording of a final plat or issuance of building permits.

An itemized cost estimate shall be submitted for the improvements that the financial guarantee will cover. Such estimate shall bear the original signature and seal of a licensed professional engineer, be on company letterhead, and be in a form acceptable to the Georgetown County Planning Department. Cost estimates may include, but are not limited to the following:

1. Water and sewer systems.
2. Storm drainage systems and erosion control measures.
3. Street improvements including curbs, gutter, temporary cul-de-sacs and required grassing or landscaping within the rights-of-way or easements.
4. State road right-of-way improvements upon agreement between Georgetown County and South Carolina Department of Transportation.
5. Street monuments.
6. Street intersection lighting.

Upon receipt of an itemized cost estimate, the Planning Department shall forward such estimate to the appropriate departments or agencies for review.

3-3. Acceptance of Financial Guarantees. The Planning Department may accept bonds issued by a surety in an amount and upon such terms as acceptable by the County, letters of credit or cash deposits as financial guarantees to ensure the completion of public or private improvements in accordance with the requirements enumerated below.

Approved guarantees shall be independent of the development project's construction loan. The Planning Department shall not accept any guarantee that requires drawdowns for monthly expenditures. Payment of monthly expenditures is the sole responsibility of the developer and does not affect the amount of money held by the Planning Department.

Approved bonds and letters of credit shall adhere to the following standards:

1. Be equal to 125% of the approved cost estimate.
2. Be issued for an initial coverage period not less than 12 months from the date that the final plat is submitted for recording.
3. Be irrevocable, unconditional and subject to presentation for drawing within the State of South Carolina.
4. Be payable to Georgetown County.

adopted in 2004 by the South Carolina Legislature, the following standards are established to specify the point at which a development is considered to have obtained a vested right.

A. A vested right is attached to a development project once the developer or landowner has:

1. Single-phased developments: Satisfied all conditions of preliminary plan approval placed upon the proposed project by Georgetown County staff and the Planning Commission during the review of such development.
2. Multi-phased developments: Satisfied all conditions of preliminary plan approval that are placed on the proposed phase of development by Georgetown County staff and the Planning Commission during the review of such development phase.

For the purpose of establishing a vested rights, conditions of preliminary plan approval are deemed satisfied once all items within Article 2, Section 2.2 (B and C) of the Georgetown County Development Regulations have been supplied to the Georgetown County Planning Department.

B. Such vested right shall extend for an initial period of two (2) years. Within one hundred twenty (120) days of expiration of the initial two-year vesting period, the developer or landowner may request, in writing, to the Georgetown County Planning Department a one-year extension of the vesting period. Extensions of vested rights shall be given in one-year increments and shall not exceed five (5) extensions -- for a total vesting period of seven (7) years.

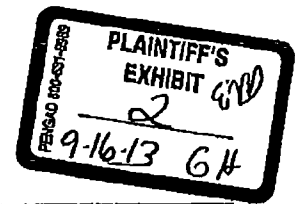
Requests for extensions shall be presented to the Planning Commission for consideration. The Planning Commission must approve the annual extension unless an amendment to the land development regulations has been adopted that prohibits approval. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development regulations. Requests for extensions that must go to the Planning Commission for approval shall be required to pay any applicable fees enacted at the time of the extension request.

C. A preliminary plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation or special exception is obtained.

D. Variances or special exceptions approved by the Zoning Board of Appeals prior to Planning Commission approval of a preliminary plan or phased development plan do not create vested rights until the Planning Commission approval of the development plan is obtained and all conditions for approval are satisfied.

E. A vested right pursuant to this Section is not a personal right, but attaches to and runs with the applicable real property. The landowner and all successors to the landowner who secure a vested right pursuant to this Section may rely upon and exercise the vested right for its duration. This Section does not preclude judicial determination that a vested right exists pursuant to other statutory provisions. This Section does not affect the provisions of a development agreement executed pursuant to the South Carolina Local Government Development Agreement Act in Chapter 31 of Title 6 of the Code of Laws of South Carolina.

(Ord. No. 2005-38, 6-28-05)



From: Wesley Bryant <wbryant@GeorgetownCountySC.org>
To: 'underwoodrock@bellsouth.net' <underwoodrock@bellsouth.net>
CC: Wesley Bryant <wbryant@GeorgetownCountySC.org>; Holly Richardson
<hrichardson@GeorgetownCountySC.org>; Boyd Johnson <bjohnson@GeorgetownCountySC.org>
Sent: 3/2/2009 3:59:25 PM
Subject: RE: Web Site Information Request-Harmony Township

Mr. Underwood,

There is currently \$165,291.03 left in a Letter of Credit (not a bond) account that Georgetown County holds in trust for Harmony Township. When the LOC was cashed, it was only around \$565,000.00 and Harmony also gave the County \$140,000.00 from an account they held at Wachovia to hold in trust with the other funds for the management of their completion of West Stewart. They only delivered the \$140k after we refused to give them the \$565k so they could independently and without oversight finish West Stewart. They, at that time in late 2007, was Tim Casey, owner. At no time has Georgetown County owned any property or any part of Harmony Township and at no time has Georgetown County ever taken over a development that has fallen into financial dire straits. It is very unfortunate what has occurred at Harmony. Over the past 1.5 years Georgetown County has done everything in its power to help Harmony finish the infrastructure in the areas that have already been sold to the public. Simply put, Harmony utilized over 3 different engineering companies to engineer and approve reductions in the letter of credit over a three year period. Georgetown County, upon submittal for a reduction of proceeds held in trust by the Harmony project engineer, will allow for a reduction to occur, but only upon the signature of the engineer and his accompanied seal, which represents his statements are true and accurate. Now I am not stating that any one engineer of Harmony purposefully reduced the LOC beyond the amounts it should have, but I am stating that with all the different engineers something went awry and when Harmony came to us in late 2007 to explain they were without funds and could not finish the infrastructure and wanted the money we held in trust (LOC), it was then discovered that money held in trust would not be enough to fix what was broken in Harmony and complete what remained. Harmony wanted the County to hand the money over. We refused and agreed that we would submit payment directly to a contractor that Harmony hired to complete the improvements, first in Shackleford where houses were already built and then in West Stewart, but would not spend all the money the County held until they had a financial plan in place for the rest of the infrastructure for West Stewart. Harmony would submit invoices from contractors to the County and we would send our road department to make sure the roads looked good or the Water and Sewer District (a separate entity from the County) would verify that particular infrastructure, at least what occurred to that date, was ok and accurate with what was being invoiced. Then the County would submit payment directly to the contractor, but keep in mind it was with Harmony's money, the same money we refused to return to them. Harmony filed Bankruptcy soon thereafter and their bankruptcy attorney called me declaring I needed to release the LOC monies to Harmony to finish the infrastructure. We refused because it was clearly not enough, not even half of what was needed, and we believed Harmony would not spend the money efficiently. We felt we had a good monitoring system in place and also had a fiduciary duty to the citizens who purchased property in Harmony to effectively manage this LOC money and not let Harmony throw it into the wind. New owners purchased Harmony LLC. We held the same deal with them for about 8 months. They employed a company named Livingston Trucking, I believe out of Summerville, SC, to do site work involving storm water drainage, water, sewer, and road grading and paving in West Stewart. We told the new owners of Harmony, then Chuck Thompson and David Eldridge, that we would release funds directly to Livingston as long as Livingston was working on West Stewart but we would not reduce the monies we held past \$150k until the bankruptcy financial plan was approved by the Court and we KNEW they would finish the work in West Stewart with the LOC money and newly acquired funds from an out side entity. After about 6 months of work, engineering, etc...Chuck Thompson, one of the owners in the Harmony partnership left the project. I never heard from the owner that was left, David Eldridge, and I never received any notification of their status. I called the bankruptcy attorney in late November and she was out of the Country. Next thing I know I am reading the article in the newspaper about their current situation.

So that is a quick synopsis of where it is today involving the County. We have money that is not ours that must be utilized by the owner of Harmony for infrastructure at Harmony. We are not even sure who will be the new owner. I have my guesses. A gentleman named Barney Ng from California contacted me over a year ago stating he held the 30 million or so mortgage on Harmony. At that time he was confident he would eventually take over and wanted a good relationship with the County. I have listed his number below if you want to contact him, but

SUPP GTWN 000864

he has been a big part of the bankruptcy proceedings, from what I understand.

So I want to apologize if Harmony misguided you with their statements. I have spoken to MANY owners in Harmony over the past 1.5 years. One owner expressed to me the thought that Harmony did was criminal...I give no opinion to that, but I can tell you there are others undergoing the tremendous stress you are regarding this development. The County will certainly do everything it can to help, we will work with the new owner, etc to facilitate completion of the project, but as to your statements below the County cannot trespass onto private land and spend public monies to complete a private development, that action would be criminal. Right now with the owner in limbo and the bankruptcy court freezing all assets involving Harmony, the County's hands are tied. Keep in mind that even the roads in Harmony are privately owned, they were built below County minimum public right of way standards so the developer could save money and this is acceptable as long as they stay privately owned (below standards means the right of way is not wide enough, county right of ways must be 50ft) and the County cannot accept roads below county standards, even if they wanted to give the private roads to the County. I have also included the bankruptcy attorney's name and number below, although she may not be able to speak with you about Harmony's position in the bankruptcy proceeding.

Barney Ng
925-283-1771

Barbara Barton, Esq.
803-256-6582

Thanks,

Wesley P. Bryant

County Attorney
Georgetown County
PO Box 421270
Georgetown SC 29440

843-545-3194
843-545-3126 fax

-----Original Message-----

From: Boyd Johnson
Sent: Friday, February 27, 2009 7:11 PM
To: 'underwoodrock@bellsouth.net'
Cc: Wesley Bryant
Subject: Re: Web Site Information Request

I will email you Monday. There is about \$100,000 available.

----- Original Message -----

From: Nancy Underwood <underwoodrock@bellsouth.net>
To: Boyd Johnson
Sent: Fri Feb 27 03:53:00 2009
Subject: Re: Web Site Information Request

Mr. Johnson, You say you are holding a small amount of money, what do you mean by that. We were told that there would be enough money in that bond to finish with water, road etc for building. We own Lot 1081 Community II West Stewart Phase D which was the first section they released for sale and Harmony told us that roads, sewers and water were being built and a bond with the county was being held for a problem I guess we are facing today. In fact we had to postpone our closing because of obtaining this bond with the county. We were told that the county would take over.
Rook Underwood

On Feb 26, 2009, at 5:18 PM, Boyd Johnson wrote:

> Dear Mr. Underwood:
> This is difficult to address. The County is still holding a
> relatively small amount of money from the previous developer's

SUPP GTWN 000655

> letter of credit, I do know there is not enough funding to complete
> the infrastructure in all of the West Stewart area. Until the
> bankruptcy process runs its course, I don't know that the County
> could proceed with any construction since there would not be an
> owner. There would be no one to deed the infrastructure to or to
> accept the water and sewer systems.
> Certainly the money the County is holding will eventually be
> spent for the project, but as I said we do not believe it will be
> close to what is needed. We all hope this situation will be resolved
> as soon as possible.

>
> Boyd
> Johnson
> Director
> of
> Planning
> and
> Code
> Enforcement

>
> -----Original Message-----
> From: Holly Richardson
> Sent: Wednesday, February 25, 2009 9:14 AM
> To: Boyd Johnson
> Subject: FW: Web Site Information Request

>
> How should I respond to this?

>
>
> From: underwoodrock@bellsouth.net [underwoodrock@bellsouth.net]
> Sent: Tuesday, February 24, 2009 7:17 PM
> To: Holly Richardson
> Subject: Web Site Information Request

>
> The following form was submitted on 2/24/2009 7:17:30 PM
> From IP address: 65.4.116.30

>
> mailto: Holly Richardson
> name: Rock and Nancy Underwood
> email: underwoodrock@bellsouth.net
> message: I am a property owner in Harmony Township. I had just
> read that it is going into Chapter 7. What is happening with those
> bonds that the county was given by Harmony to have the roads paved
> and the water etc put in for the West Stewart area. That was
> supposed to be done last year.

>
> Thank you
> Rock Underwood

Harmony Township Development

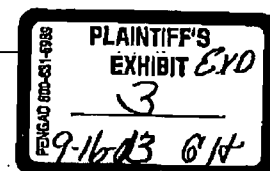
-----Original Message-----

From: Wesley Bryant <wbryant@GeorgetownCountySC.org>
 To: kimpavao@aol.com
 Cc: Boyd Johnson <bjohnson@GeorgetownCountySC.org>; Holly Richardson <hrichardson@GeorgetownCountySC.org>; Wesley Bryant <wbryant@GeorgetownCountySC.org>
 Sent: Tue, 15 Jan 2008 9:31 am
 Subject: RE: LOC Procedures

Actually Kim If you go back and look at the current LOC regs, the only thing we are changing is the 125% to 150%. The regs have always stated no reductions will be allowed within 6 months after a previous reduction and no reduction will be allowed past 125% of the new revised construction estimate. Remember that the whole point behind an LOC is to protect the owners who purchase property and are made promises that are not kept. It is not technically for the benefit of the contractor, although some, including myself, think it does protect the contractor as well, it is for the property owners. The LOC is a guarantee of protection, just as a bond is, and technically is not supposed to be used to pay contractors unless a default occurs and the County cashes it in, such as in Harmony's case, that is the only time the money is to go to contractors. We are not settling up any mechanic's lien firestorm because the LOC procedures of Georgetown County have nothing to do with a private developer's agreement with a contractor. The fact that a developer puts money in an LOC with the expectation that the same money will be used to pay a contractor is fine if he wants to take that chance or go that route, so long as he understands the law as set by the County. The County does not deal with private developer's contractors, in fact Harmony is the first time we have had to act as trustee for funds for default, and the clarification and emphasis of our LOC procedure and its revisions is to ensure that property owners are not put through this same situation in the future. The theory is money in an LOC should not be used to pay a contractor every 30 days, 2 months, what have you. The money in a LOC is for protection and is capital that will be used for protection if deemed necessary. Just as in bond, the money that goes to pay bond premiums is not used to pay private contractors by the developer. I think you are looking at it all wrong. What we are doing is remedying the problems that you have pointed out with LOC reductions and documentation in the past and certainly making it so money will always be available in an LOC to finish ALL infrastructure left in a phase/project...but now you are complaining about the protections we are setting up due directly to what we have learned could happen and has happened. Please be reminded that the LOC procedures already set up and law are the same as the revisions/clarifications except the 150%. We are clarifying and rewording in these revisions to make it unequivocally clear how the process works and what the protections are. Thanks.

Wes

From: kimpavao@aol.com [mailto:kimpavao@aol.com]
 Sent: Monday, January 14, 2008 8:22 PM
 To: Wesley Bryant
 Subject: LOC Procedures



Wes;

I just got a copy of the LOC Revisions. Wesley, tell me how this is in the best interest of anyone. How do you expect a developer to put up 150% of the costs and then ask a contractor to wait 6 months for payment? You're setting up a Mechanics' Lien Firestorm.

I pray that I'm not understanding this new process. Call me, I'd like to hear what I'm missing from this formula.

Kim Pavao
 Harmony Township Development
 241-0442

1/5/2011

GTWN_000285

Holly Richardson

From: Wesley Bryant
Sent: Wednesday, December 05, 2007 6:27 PM
To: 'Josh Acevedo'; Boyd Johnson
Cc: Kim Pavao; Holly Richardson; Wesley Bryant
Subject: RE: Harmony Infrastructure

You sure do have a great deal of nerve to actually state Georgetown County holds any liability whatsoever in Harmony for incomplete infrastructure. If you would actually research Letters of Credit you will find that they are held by governmental entities to insure against the DEVELOPER'S default and or foreclosure and or failure to properly finish a development in which he has begun or has sold property to the citizens and taxpayers of Georgetown County, and now has failed to come through with his promises of infrastructure. Not only that, Letters of Credit are solely for the benefit of the property owners out there and with that said, Georgetown County, as a beneficiary of this Letter of Credit, is to ensure the proceeds are spent wisely and correctly so as to complete the phases you have failed to complete. Now you can say anything you want to say about liability but I assure you that Georgetown County is not responsible for your failure to complete a water or sewer system or any other infrastructure you have failed to complete. Please keep in mind these systems were incomplete a good time before the County cashed in the Letter of Credit upon our own initiation and your request so there would be funds available to complete it. Also, please note that you are not in charge of this fund, that is the whole idea of a letter of credit, Georgetown County acts as a trustee or "keeper of the purse" so to speak so the funds are used wisely and purposefully. I have already instructed Ben Cox Company to finish their estimate for West Stewart and to not proceed with any other work on 2C besides cleaning and mucking the manholes (estimate from 12/3/2007) or any other phase until County Council approves the costs. I assure you he is aware that without the County's authorization, no invoice will be accepted. You say "it will cost what it cost" and that is the kind of cavalier attitude that put Harmony in the position it is currently in. When all estimates are in, then all entities will sit down and discuss what is a priority and what needs to be completed with the funds available. Please note that when these funds are gone, there is no more. So instead of taking an offensive front you may want to consider the help and efforts put forth by the County thus far to ensure the citizens receive in Harmony what they originally bargained for, no matter what has occurred with the entity that owns and made the promises, because remember this money is for their benefit.

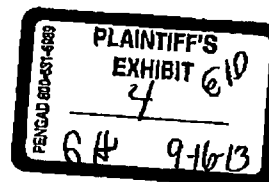
Please note that no funds will be distributed to any entity unless Georgetown County Council has given prior authorization to do so based upon written estimates. Ben Cox is aware of the situation with West Stewart and I assure you that you may want to let CR Jackson, Earthworks or whatever contractor know as well that no funds will be distributed by Georgetown County unless prior approval is granted based upon their written estimates. Money from a letter of credit is to go to completion of infrastructure for the citizen taxpayers that own property in Harmony, not for Harmony's benefit, meaning the goal is to COMPLETE it, not half complete or somewhat complete it, as has been in the past. The County has done nothing so far but work as efficiently and effectively as possible to benefit the property owners. Harmony is YOUR development and we are glad to be trustee of funds to complete necessary infrastructure but I assure you Georgetown County will not participate in any effort that is not calculated and precise, meaning when the details are final, the estimates will be approved for what all feel is necessary to finish with the available funds.

Wesley P. Bryant

From: Josh Acevedo [mailto:joshacevedo@hotmail.com]
Sent: Wednesday, December 05, 2007 4:29 PM
To: Wesley Bryant; Boyd Johnson
Cc: Kim Pavao
Subject: Harmony Infrat

To all it may concern:

1/5/2011



CERTIFICATE OF APPROVAL FOR RECORD
 I, the undersigned, being a duly qualified and authorized officer of the State of Georgia, do hereby certify that the foregoing plat of land, containing the subdivision of land, has been duly approved by me, and that the same is in conformity with the provisions of the Act in that behalf made, and that the same is in conformity with the provisions of the Act in that behalf made, and that the same is in conformity with the provisions of the Act in that behalf made.

CERTIFICATE OF OWNERSHIP AND DESTINATION
 The undersigned, being a duly qualified and authorized officer of the State of Georgia, do hereby certify that the foregoing plat of land, containing the subdivision of land, has been duly approved by me, and that the same is in conformity with the provisions of the Act in that behalf made, and that the same is in conformity with the provisions of the Act in that behalf made, and that the same is in conformity with the provisions of the Act in that behalf made.

CERTIFICATE OF APPROVAL OF PUBLIC WATER AND SEWER SYSTEMS
 The undersigned, being a duly qualified and authorized officer of the State of Georgia, do hereby certify that the foregoing plat of land, containing the subdivision of land, has been duly approved by me, and that the same is in conformity with the provisions of the Act in that behalf made, and that the same is in conformity with the provisions of the Act in that behalf made, and that the same is in conformity with the provisions of the Act in that behalf made.

NOTES:
 1. The lot area of the subdivision is 100.00 acres.
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 96. The lot area of the subdivision is 100.00 acres.
 97. The lot area of the subdivision is 100.00 acres.
 98. The lot area of the subdivision is 100.00 acres.
 99. The lot area of the subdivision is 100.00 acres.
 100. The lot area of the subdivision is 100.00 acres.

OWNER/DEVELOPER:
 HARMONY HOLDINGS, LLC
 11111 HARMONY DRIVE
 GEORGETOWN, SC 29542

PREPARED FOR:
 HARMONY HOLDINGS, LLC

DATE:
 9-17-13

SCALE:
 1" = 50'

LOCATION MAP (NOT TO SCALE)

PLANTIFFS EXHIBIT CVD
5
9-17-13 6A

PLAINTIFF'S
EXHIBIT CVO
6 9-17-13

WACHOVIA

CLEAN, IRREVOCABLE STANDBY LETTER OF CREDIT
NUMBER SM220037W

LETTER OF CREDIT AMOUNT	ISSUE DATE	EXPIRY DATE
USD 1,301,705.63	05/23/06	05/23/07

BENEFICIARY:
GEORGETOWN COUNTY
120 BROAD STREET
GEORGETOWN, SC 29440

APPLICANT:
HARMONY HOLDINGS, LLC
1478 PECKEREL RD.
GEORGETOWN, SC 29440

WE HEREBY OPEN OUR CLEAN, IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR FOR THE ACCOUNT OF THE ABOVE MENTIONED APPLICANT IN THE AGGREGATE AMOUNT OF (USD 1,301,705.63) ONE MILLION THREE HUNDRED ONE THOUSAND SEVEN HUNDRED FIVE AND 63/100 US DOLLARS AVAILABLE BY PAYMENT AT OUR COUNTERS WHEN ACCOMPANIED BY THE FOLLOWING:

1. A DRAFT DRAWN AT SIGHT ON WACHOVIA BANK, NATIONAL ASSOCIATION AND DULY ENDORSED ON ITS REVERSE SIDE THEREOF BY THE BENEFICIARY, SPECIFICALLY REFERENCING THIS LETTER OF CREDIT NUMBER.
2. THE ORIGINAL LETTER OF CREDIT PLUS ANY AND ALL AMENDMENTS ATTACHED THERETO.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT SHALL BE DULY HONORED IF PRESENTED AT OUR OFFICES LOCATED AT 401 LINDEN STREET, WINSTON-SALEM, NORTH CAROLINA 27101, ATTENTION: STANDBY LETTER OF CREDIT DEPARTMENT ON OR BEFORE THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED DATE THEREOF IF APPLICABLE.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

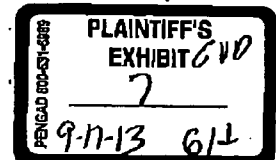
SINCERELY,


AUTHORIZED SIGNATURE
WACHOVIA BANK, NATIONAL ASSOCIATION
BY: DKN

PLEASE DIRECT ANY CORRESPONDENCE INCLUDING DRAWING OR INQUIRY QUOTING OUR REFERENCE NUMBER TO:

WACHOVIA BANK, NATIONAL ASSOCIATION
401 LINDEN STREET, MAIL CODE NC6034
WINSTON-SALEM, NORTH CAROLINA 27101

OUR CUSTOMER CARE PHONE NUMBER FOR QUERIES IS 800-776-3862
OUR FAX NUMBER IS 336-735-0950



HARMONY TOWNSHIP
1478 Pickerel Road
Georgetown, SC 29440
843-436-4343
843-436-0233 Fax

VIA FACSIMILE ONLY - 545-3299

DATE: 7-20-06

TO: Denise Sherman

GC Planning

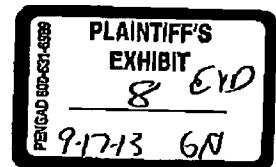
FROM: Kim Pavao
Harmony Township

RE: Leith works
Pay Requests # 3 & #4

Comments:

#3 - loc from Wachovia

#4 - loc from Charter Bay



JUL 20 2006 10:09AM PA

FAX NO.: 8434360233

FROM: HARMONY

FROM: HARMONY

FORM NO. 1843458233

JUL 20 2006 10:19 AM '12

APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702

TO OWNER: Harmony Township
1478 Hickory Road
Georgetown, SC 29440

PROJECT: 2005-1007 Phase 2D
Pay Request #3

APPLICATION NO: 00001
PERIOD TO: 6/28/2006
PROJECT NOS:

PAGE ONE OF PAGES

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐

FROM CONTRACTOR: Ascend Construction Corp
Post Office Box 3588
Murrells Inlet, SC 29576

VIA ARCHITECT: The Earthworks Group
11661 Hwy 707
Murrells Inlet, SC 29576

CONTRACT DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$1,045,621.00
2. Not change by Change Order \$0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$1,045,621.00
4. TOTAL COMPLETED & STORED TO DATE \$351,311.00
(Column G on G703)
5. RETAINAGE:
a. 0 % of Completed Work \$0.00
(Column D + E on G703)
b. 0 % of Stored Material \$0.00
(Column F on G703)
Total Retainage (Line 5a + 5b or
Total in Column I on G703) \$0.00
6. TOTAL EARNED LESS RETAINAGE \$351,311.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$0.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$351,311.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$714,310.00
(Line 8 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order		\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued, and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Ascend Construction Corp

By: *[Signature]* Date: 7-17-06

State of SC
County of Horry
Subscribed and sworn to before
me this 13th day of July, 2006
Notary Public Shirley S. Johnson
My Commission expires 3/28/2010

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$351,311.00

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: Harmony Township

By: *[Signature]* Date: 13 JUL 06

This Certificate is non-negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Insurance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATE FOR PAYMENT - 1992 EDITION - AIA® - ©1992 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20005-4022
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FROM: HERRONY
 FAX NO.: 813/4368233
 Jul 1, 20 2006 10:10AM P3

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 1 OF 1 PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's Signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: 00001
 APPLICATION DATE:
 PERIOD TO: 6/28/2006
 ARCHITECT'S PROJECT NO.:

In tabulations below, amounts are stated in dollars and cents.

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO. _____

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G+C)	I BALANCE TO FINISH (C-G)	J RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D-E)	THIS PERIOD					
0000010	General Conditions	\$85,740.00	\$0.00	\$20,000.00	\$0.00	\$20,000.00	30.42%	\$45,740.00	\$0.00
0000020	Waterline	\$240,385.00	\$0.00	\$0.00	\$200,000.00	\$200,000.00	83.20%	\$40,385.00	\$0.00
0000030	Fire Hydrant	\$24,180.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$24,180.00	\$0.00
0000040	Sewer Main	\$189,071.00	\$0.00	\$0.00	\$89,071.00	\$89,071.00	47.11%	\$100,000.00	\$0.00
0000050	Storm Drainage	\$122,240.00	\$0.00	\$0.00	\$22,240.00	\$22,240.00	18.19%	\$100,000.00	\$0.00
0000060	6" Stone base	\$114,255.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$114,255.00	\$0.00
0000070	1 1/2" Asphalt base	\$184,760.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$184,760.00	\$0.00
0000080	18" Curb	\$104,898.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$104,898.00	\$0.00
		\$1,045,521.00	\$0.00	\$20,000.00	\$311,311.00	\$331,311.00	31.69%	\$714,210.00	\$0.00



Georgetown County
Department of Planning and Code Enforcement
120 Broad Street
Georgetown, SC 29440
(843) 545-3158 office
(843) 545-3299 fax

July 26, 2006

Wachovia Bank
401 Lindeli Street, Mail Code NC6034
Winston Salem, NC 27101

RE: Irrevocable Standby Letter of Credit -- SM220037W
Harmony Holdings, LLC
1478 Pickens Road
Georgetown, SC 29440

To Whom it May Concern:

A request has been received to amend (reduce) the Letter of Credit referenced above in the amount of \$331,311.00. The request for this release has been reviewed and approved by this office. We will release the Letter of Credit in the amount of \$1,301,705.63, upon acceptance of an amended letter in the amount of \$970,394.60.

Thank you for your assistance in this matter.

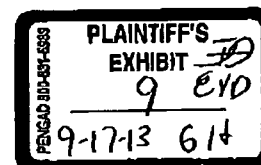
97039463
Rex

Sincerely,

Denise Sherman

Denise B. Sherman
Associate Planner

Co: Brad Jenkins, Spanish Moss Development
File: Harmony Planned Development



20-Web Stuart



Georgetown County
Department of Planning and Code Enforcement
120 Broad Street
Georgetown, SC 29440
(843) 545-3158 office
(843) 545-3299 fax

October 9, 2006

Wachovia Bank
401 Linden Street, Mail Code NC6034
Winston Salem, NC 27101

RE: Irrevocable Standby Letter of Credit - SM220037W
Harmony Holdings, LLC
1478 Pickens Road
Georgetown, SC 29440

To Whom it May Concern:

A request has been received to amend (reduce) the Letter of Credit referenced above in the amount of \$117,024.42. The request for this release has been reviewed and approved by this office. We will release the Letter of Credit in the amount of \$970,394.63, upon acceptance of an amended letter in the amount of \$853,370.21.

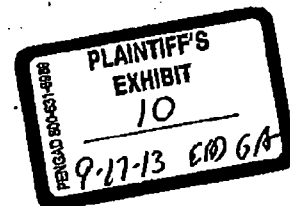
Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise B. Sherman".

Denise B. Sherman
Associate Planner

Cc: Brad Jenkins, Spanish Moss Development
File: Harmony Planned Development



APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702.

PAGE ONE OF PAGES

TO OWNER: Harmony Township
1478 Pickeral Road
Georgetown, SC 29440

PROJECT: 2006-1007 Phase 2D

APPLICATION NO: 00002

Distribution to:

PERIOD TO: 9/26/2006

PROJECT NOS:

- ☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐

FROM CONTRACTOR: Ascend Construction Comp
Post Office Box 3589
Murrells Inlet, SC 29576

VIA ARCHITECT: The Earthworks Group
11661 Hwy 707
Murrells Inlet, SC 29576

CONTRACT DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract Confirmation Sheet, AIA Document G703, is attached.

- ORIGINAL CONTRACT SUM \$1,045,621.00
- Net change by Change Orders \$0.00
- CONTRACT SUM TO DATE (Line 1 + 2) \$1,045,621.00
- TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$417,024.42
- RETAINAGE
 - 0 % of Completed Work (Columns D + E on G703) \$0.00
 - 0 % of Stored Material (Columns F on G703) \$0.00

Total Retainage (Line 5a + 5b or Total in Column I on G703) \$0.00
- TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total) \$417,024.42
- LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$300,000.00
- CURRENT PAYMENT DUE \$117,024.42
- BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$628,596.58

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Ascend Construction Comp

By: [Signature] Date: 9-25-06

State of South Carolina

County of Way

Subscribed and sworn to before

in this 28th day of September, 2006

Notary Public: Shirley S. Johnson

My Commission expires: 3/28/2011

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$0.00

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Confirmation Sheet that are changed to conform to the amount certified.)

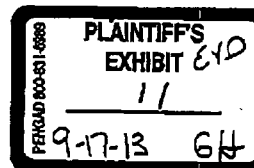
ARCHITECT: Harmony Township

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

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G702-1992



G702_000730

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 1 OF 1 PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached.

In regulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: 00002

APPLICATION DATE:

PERIOD TO: 9/26/2006

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G+C)	I BALANCE TO FINISH (C-G)	J RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					
0000010	General Conditions	\$65,740.00	\$20,000.00	\$22,731.00	\$0.00	\$42,731.00	63.00%	\$23,009.00	\$0.00
0000020	Waterline	\$240,386.00	\$0.00	\$16,408.22	\$168,689.00	\$185,097.22	77.00%	\$55,288.78	\$0.00
0000030	Fire Hydrant	\$24,160.00	\$0.00	\$6,040.00	\$0.00	\$6,040.00	25.00%	\$18,120.00	\$0.00
0000040	Sewer Main	\$189,071.00	\$0.00	\$43,278.70	\$89,071.00	\$132,349.70	70.00%	\$56,721.30	\$0.00
0000050	Storm Drainage	\$122,240.00	\$0.00	\$0.00	\$22,240.00	\$22,240.00	18.19%	\$100,000.00	\$0.00
0000060	6" stone base	\$114,266.00	\$0.00	\$28,666.50	\$0.00	\$28,666.50	25.00%	\$85,599.50	\$0.00
0000070	1 1/2" Asphalt base	\$184,760.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$184,760.00	\$0.00
0000080	18" Curbing	\$104,998.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$104,998.00	\$0.00
		\$1,045,621.00	\$20,000.00	\$117,024.42	\$289,000.00	\$417,024.42	39.88%	\$628,596.58	\$0.00

Repko Record on Appeal, Pg-301



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G702.4000

GTWN_000731

11661 HIGHWAY 707
P.O. BOX 201
MURRELLS INLET, SC 29576

843/651-7900
FAX 843/651-7903



November 7, 2006

Mr. Boyd Johnson
Georgetown County Planning Department
120 Broad Street
Georgetown, SC 29440

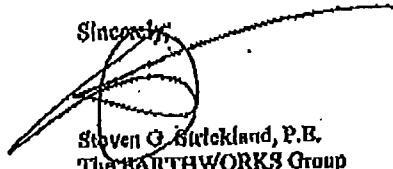
RE: Harmony Township, 2D Pay Application #3
TEG#: 061172

Dear Mr. Johnson:

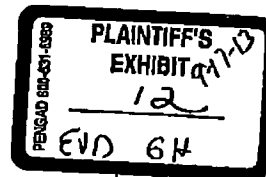
This office has reviewed pay application #3 for Phase 2D. This pay application reflects the work completed as of October 25, 2006. We are requesting your approval to distribute funds from the L.O.C. to the contractor.

If you have any further questions please, at your earliest opportunity, contact me at 651-7900.

Sincerely,


Steven G. Kirkland, P.E.
The BARTHWORKS Group

Attachments



APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702 PAGE ONE OF PAGES

TO OWNER: Hammy Township PROJECT: 2006-1007 Phase 2D APPLICATION NO: 00003 Distribution to:
1478 Pickeral Road PERIOD TO: 10/26/2006 ☐ OWNER
Georgetown, SC 29440 PROJECT NOS: ☐ ARCHITECT
FROM CONTRACTOR: Ascent Construction Corp VIA ARCHITECT: The Earthworks Group CONTRACT DATE:
Post Office Box 3589 11661 Hwy 707 ☐ CONTRACTOR
Marrells Inlet, SC 29576 Marrells Inlet, SC 29576 ☐

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$1,045,621.00

2. Net change by Change Orders \$0.00

3. CONTRACT SUM TO DATE (Line 1 + 2) \$1,045,621.00

4. TOTAL COMPLETED & STORED TO DATE \$417,000.00
(Colom: 6 on G703)

5. RETAINAGE:

a. 0 % of Completed Work \$0.00
(Colom: D + E on G703)

b. 0 % of Stored Material \$0.00
(Colom: F on G703)

Total Retainage (Line 5a + 5b or
Total in Colom: I on G703) \$0.00

6. TOTAL EARNED LESS RETAINAGE \$417,000.00
(Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$117,000.00

8. CURRENT PAYMENT DUE \$300,000.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$628,621.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Ascent Construction Corp

By: [Signature] Date: 10-25-06

State of South Carolina

County of Horry

Subscribed and sworn to before

me this 25th day of October, 2006

Notary Public: [Signature]

My Commission expires: Aug 11, 2016

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$300,000.00

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet if they are changed to conform to the amount certified.)

ARCHITECT: Hammy Township

By: [Signature] Date: 7 NOV 06

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CON TATION SHEET

AIA DOCUMENT G703

PAGE 1 OF 1 PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: 00009

APPLICATION DATE:

PERIOD TO: 10/25/2006

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C-G)	I RETAINAGE (IF VARIABLE) RATE
			D FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G÷C)		
0000010	General Conditions	\$55,740.00	\$20,000.00	\$0.00	\$0.00	\$20,000.00	30.42%	\$45,740.00	\$0.00
0000020	Waterline	\$240,386.00	\$170,000.00	\$0.00	\$0.00	\$170,000.00	70.72%	\$70,386.00	\$0.00
0000030	Fire Hydrant	\$24,160.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$24,160.00	\$0.00
0000040	Sewer Main	\$189,071.00	\$119,000.00	\$0.00	\$0.00	\$119,000.00	62.93%	\$70,071.00	\$0.00
0000050	Storm Drainage	\$122,240.00	\$68,000.00	\$0.00	\$0.00	\$68,000.00	55.62%	\$54,240.00	\$0.00
0000060	6" stone base	\$114,266.00	\$40,000.00	\$0.00	\$0.00	\$40,000.00	35.00%	\$74,266.00	\$0.00
0000070	1 1/2" Asphalt base	\$184,780.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$184,780.00	\$0.00
0000080	18" Curbing	\$104,998.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$104,998.00	\$0.00
		\$1,045,521.00	\$417,000.00	\$0.00	\$0.00	\$417,000.00	39.88%	\$628,521.00	\$0.00

Repko Record on Appeal, Pg. 304

GTWN_001221



Georgetown County Planning and Code Enforcement
120 Broad Street
Georgetown, SC 29440
(843) 545-3158 or (843) 545-3299 (FAX)

November 8, 2006

RE: Irrevocable Standby Letter of Credit - SM220037W
Harmony Holdings, LLC
1478 Pickersel Road
Georgetown, SC 29440

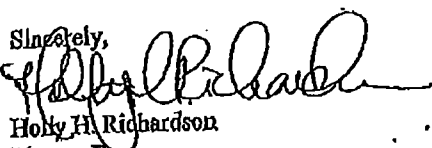
Wachovia Bank
401 Linden Street, Mail Code NC6034
Winston Salem, NC 27101

To Whom It May Concern,

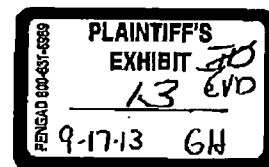
A request has been received to amend (reduce) the Letter of Credit referenced above in the amount of \$300,000.00. The request for this release has been reviewed and approved by this office. We will release the Letter of Credit in the amount of \$853,370.21, upon acceptance of an amended letter in the amount of \$553,370.21.

Thank you for your assistance in this matter.

Sincerely,


Holly H. Richardson
Planner II

cc: Brad Jenkins, Spanish Moss Development
File: Harmony Planned Development



11661 HIGHWAY 707
P.O. BOX 201
MURRELLS INLET, SC 29576

843/651-7900
FAX 843/651-7903



December 6, 2006

Mr. Kevin Chestnut
Georgetown County Public Works Dept.
P.O. Box 421270
Georgetown, SC 29442

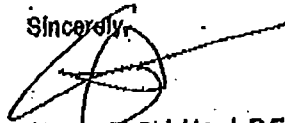
RE: Harmony Phase 2D-1 & 2D-2 (TEG# 061172)
Contract Amount Change

Dear Mr. Chestnut,

Our office has reviewed and accepted the following changes in price to Harmony 2D1 and 2D2. This change is a result of a reduction in the scope of work due to redesigns by the owner.

If you have any further questions please, at your earliest opportunity, contact me at 651-7900.

Sincerely,


Steven G. Strickland, P.E.
The EARTHWORKS Group



The EARTHWORKS Group
PHASE 2D 2 COST ESTIMATE 48 LOTS

Roads and Site						
ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE
1	Clearing Roads	4.27	AO	\$4,500.00	\$19,215.00	0%
2	Clearing Alley	1.28	AO	\$4,500.00	\$5,826.00	0%
3	6" S&B Roads	9108	SY	\$10.76	\$97,889.50	0%
4	6" Asphalt Roads	9108	SY	\$8.60	\$77,401.00	0%
5	4" Recycled Asphalt Alley	3032	SY	\$3.78	\$11,370.00	0%
6	18" Curb & Gutter	7160	LF	\$10.60	\$76,226.00	0%
7	Crossing	3.81	AO	\$1,600.00	\$6,116.00	0%
8	Construction Entrance	1	LS	\$1,200.00	\$1,200.00	0%
9	Road Fill	724	CY	\$1.76	\$1,287.00	0%
10	Road Cut	048	CY	\$1.60	\$1,287.60	0%
11	Road & Alley Grading	6909	LF	\$3.76	\$24,484.26	0%
12	Stone	12	EA	\$225.00	\$2,700.00	0%
SUBTOTAL					\$338,369.26	\$338,369.26

Drainage						
ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE
1	Catch Basins	18	EA	\$1,600.00	\$28,800.00	0%
2	Grate Inlet Basins	9	EA	\$1,800.00	\$16,200.00	0%
3	Manhole Box	8	EA	\$1,400.00	\$11,200.00	0%
4	18" RCP	600	LF	\$20.00	\$12,000.00	0%
5	24" RCP	487	LF	\$24.00	\$11,808.00	0%
6	30" RCP	731	LF	\$30.00	\$21,930.00	0%
7	36" RCP		LF	\$36.00	\$0.00	0%
8	42" RCP		LF	\$64.00	\$0.00	0%
9	Outlet Structure	2	EA	\$9,200.00	\$18,400.00	0%
10	Rebar	18	CY	\$180.00	\$3,240.00	0%
SUBTOTAL					\$112,968.00	\$112,968.00

Sanitary Sewer

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Single Services		6 EA	\$525.00	\$3,150.00	0%	\$3,150.00
2	Double Services		21 EA	\$650.00	\$13,650.00	0%	\$13,650.00
3	6" Clean Out		27 EA	\$125.00	\$3,375.00	0%	\$3,375.00
4	Tie-In to Existing System		2 EA	\$2,000.00	\$4,000.00	0%	\$4,000.00
5	Manholes 6-8		2 EA	\$1,000.00	\$2,000.00	0%	\$2,000.00
6	Manholes 8-8		1 EA	\$1,700.00	\$1,700.00	0%	\$1,700.00
7	Manholes 8-10		1 EA	\$1,900.00	\$1,900.00	0%	\$1,900.00
8	Manholes 10-12		2 EA	\$2,000.00	\$4,000.00	0%	\$4,000.00
9	Manholes 12-4		3 EA	\$2,200.00	\$6,600.00	0%	\$6,600.00
10	6" PVC 0-0		0 LF	\$30.00	\$0.00	0%	\$0.00
11	6" PVC 8-8		280 LF	\$33.00	\$9,240.00	0%	\$9,240.00
12	6" PVC 8-10		1 LF	\$37.00	\$37.00	0%	\$37.00
13	6" PVC 10-12		1 LF	\$42.00	\$42.00	0%	\$42.00
14	6" PVC 12-4		1210 LF	\$48.00	\$58,080.00	0%	\$58,080.00
SUBTOTAL					\$109,610.00		\$44,075.00

Water

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	6" PVC Water Line		2432 LF	\$37.00	\$89,984.00	0%	\$89,984.00
2	6" Bend 90		1 EA	\$160.00	\$160.00	0%	\$160.00
3	6" Bend 45		12 EA	\$160.00	\$1,920.00	0%	\$1,920.00
4	40" Bend 22.5		1 EA	\$160.00	\$160.00	0%	\$160.00
5	6" TEB		3 EA	\$160.00	\$480.00	0%	\$480.00
6	GV & G Box		6 EA	\$800.00	\$4,800.00	0%	\$4,800.00
7	Fire Hydrant		2 EA	\$1,200.00	\$2,400.00	0%	\$2,400.00
8	Valve Marker		3 EA	\$200.00	\$600.00	0%	\$600.00
9	Tie-In to Existing System		2 EA	\$100.00	\$200.00	0%	\$200.00
SUBTOTAL					\$100,084.00		\$100,084.00

SUBTOTALS

SEWER SYSTEM
WATER SYSTEM

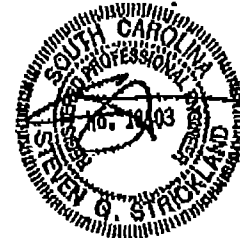
\$109,610.00
\$100,084.00

ROADS & SITE REMAINING IMPROVEMENTS
DRAINAGE REMAINING IMPROVEMENTS

\$338,389.25
\$112,858.00

TOTAL

\$660,926.25



The EARTHWORKS Group

PHASE 2D 1 OPINION OF PROBABLE COST 72 lots

Roads and Site

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Clearing Roads	5.95	AC	\$4,500.00	\$26,775.00	0%	\$26,775.00
2	Clearing Alleys	2.05	AC	\$4,500.00	\$9,225.00	0%	\$9,225.00
3	6" SABC Roads	12,674	SY	\$10.75	\$136,245.50	0%	\$136,245.50
4	1.5" Asphalt Roads	12,674	SY	\$8.50	\$107,729.00	0%	\$107,729.00
5	4" Recycled Asphalt Alleys	4,957	SY	\$3.75	\$18,588.75	0%	\$18,588.75
6	Compacted Subgrade Alleys	4,957	SY	\$2.85	\$14,127.45	0%	\$14,127.45
7	18" Curb & Gutter	10,376	LF	\$10.50	\$108,948.00	0%	\$108,948.00
8	Grassing	4.97	AC	\$1,500.00	\$7,455.00	0%	\$7,455.00
9	Construction Entrance	1	LS	\$1,200.00	\$1,200.00	0%	\$1,200.00
10	Road Fill	1440	CY	\$1.75	\$2,520.00	0%	\$2,520.00
11	Road Cut	5873	CY	\$1.50	\$8,809.50	0%	\$8,809.50
12	Road & Alley Grading	8903	LF	\$5.75	\$51,192.25	0%	\$51,192.25
13	Stops	14	EA	\$225.00	\$3,150.00	0%	\$3,150.00
SUBTOTAL					\$496,115.45		\$496,115.45

Drainage

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Catch Basins	25	EA	\$1,900.00	\$47,500.00	0%	\$47,500.00
2	Grate Inlet Basins	10	EA	\$1,800.00	\$18,000.00	0%	\$18,000.00
3	Junction Box	7	EA	\$1,480.00	\$10,360.00	0%	\$10,360.00
4	15" RCP	1834	LF	\$20.00	\$36,680.00	0%	\$36,680.00
5	18" RCP	705	LF	\$24.00	\$16,920.00	0%	\$16,920.00
6	24" RCP	1169	LF	\$30.00	\$35,070.00	0%	\$35,070.00
7	30" RCP	157	LF	\$35.00	\$5,552.00	0%	\$5,552.00
8	36" RCP	251	LF	\$54.00	\$13,554.00	0%	\$13,554.00
9	24" Flared Ends	6	EA	\$375.00	\$2,250.00	0%	\$2,250.00
10	Outlet Structure	4	EA	\$3,200.00	\$12,800.00	0%	\$12,800.00
11	Riprap	44	CY	\$150.00	\$6,600.00	0%	\$6,600.00
SUBTOTAL					\$205,386.00		\$205,386.00

Sanitary Sewer

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Single Services	13	EA	\$525.00	\$6,825.00	0%	\$6,825.00
2	Double Services	38	EA	\$650.00	\$24,700.00	0%	\$24,700.00
3	6" Clean Outs	52	EA	\$125.00	\$6,500.00	0%	\$6,500.00
4	Tie-in to Existing System	2	EA	\$2,000.00	\$4,000.00	0%	\$4,000.00
5	Manholes 0-5	2	EA	\$1,600.00	\$3,200.00	0%	\$3,200.00
6	Manholes 6-8	2	EA	\$1,700.00	\$3,400.00	0%	\$3,400.00
7	Manholes 9-10	3	EA	\$1,900.00	\$5,700.00	0%	\$5,700.00
8	Manholes 10-12	11	EA	\$2,000.00	\$22,000.00	0%	\$22,000.00
9	Manholes 12-+	4	EA	\$2,200.00	\$8,800.00	0%	\$8,800.00
10	8" PVC 0-5	383	LF	\$30.00	\$11,490.00	0%	\$11,490.00
11	8" PVC 6-8	499	LF	\$33.00	\$16,467.00	0%	\$16,467.00
12	8" PVC 8-10	1144	LF	\$37.00	\$42,328.00	0%	\$42,328.00
13	8" PVC 10-12	841	LF	\$42.00	\$35,322.00	0%	\$35,322.00
14	8" PVC 12-+	1001	LF	\$46.00	\$46,046.00	0%	\$46,046.00
SUBTOTAL					\$240,978.00		\$36,615.00

Water

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	8" PVC Water Line	4923	LF	\$37.00	\$182,151.00	0%	\$182,151.00
2	8" Bend 90	0	EA	\$175.00	\$0.00	0%	\$0.00
3	8" Bend 45	43	EA	\$175.00	\$7,875.00	0%	\$7,875.00
4	8" Bend 22.5	11	EA	\$150.00	\$1,650.00	0%	\$1,650.00
5	8" Bend 11.25	1	EA	\$150.00	\$150.00	0%	\$150.00
6	8" TEE	8	EA	\$150.00	\$1,200.00	0%	\$1,200.00
7	8" GV & CI Box	11	EA	\$500.00	\$5,500.00	0%	\$5,500.00
8	8" Plug	2	EA	\$100.00	\$200.00	0%	\$200.00
9	8" GV & CI Box	4	EA	\$500.00	\$2,000.00	0%	\$2,000.00
10	8" Tee	4	EA	\$125.00	\$500.00	0%	\$500.00
11	Fire Hydrant	4	EA	\$1,200.00	\$4,800.00	0%	\$4,800.00
12	Valve Marker	5	EA	\$250.00	\$1,500.00	0%	\$1,500.00
13	Tie-in to Existing System	3	EA	\$700.00	\$2,100.00	0%	\$2,100.00
SUBTOTAL					\$210,726.00		\$210,726.00

SUBTOTALS

SEWER SYSTEM	\$240,978.00
WATER SYSTEM	\$210,726.00
ROADS & SITE REMAINING IMPROVEMENT	\$496,115.45
DRAINAGE REMAINING IMPROVEMENT	\$205,386.00
TOTAL	\$1,153,205.45

The EARTHWORKS Group
PHASE 2D 2 COST ESTIMATE 48 LOTS

Roads and Site

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Clearing Roads	4.27	AC	\$4,600.00	\$19,215.00	0%	\$19,215.00
2	Clearing Alleys	1.25	AC	\$4,500.00	\$5,625.00	0%	\$5,625.00
3	6" SABC Roads	9106	SY	\$10.75	\$97,889.50	0%	\$97,889.50
4	1.5" Asphalt Roads	9106	SY	\$8.50	\$77,401.00	0%	\$77,401.00
5	4" Recycled Asphalt Alleys	3032	SY	\$3.75	\$11,370.00	0%	\$11,370.00
6	Compacted Subgrade Alleys	3032	SY	\$2.85	\$8,641.20	0%	\$8,641.20
7	18" Curb & Gutter	7490	LF	\$10.50	\$78,225.00	0%	\$78,225.00
8	Grassing	3.81	AC	\$1,500.00	\$5,715.00	0%	\$5,715.00
9	Construction Entrance	1	LS	\$1,200.00	\$1,200.00	0%	\$1,200.00
10	Road Fill	724	CY	\$1.73	\$1,257.00	0%	\$1,257.00
11	Road Cut	845	CY	\$1.50	\$1,267.50	0%	\$1,267.50
12	Road & Alley Grading	5959	LF	\$5.75	\$34,494.25	0%	\$34,494.25
13	Signs	12	EA	\$225.00	\$2,700.00	0%	\$2,700.00
SUBTOTAL					\$345,010.45		\$345,010.45

Drainage

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Catch Basins	18	EA	\$1,900.00	\$30,400.00	0%	\$30,400.00
2	Grate Inlet Basins	9	EA	\$1,800.00	\$16,200.00	0%	\$16,200.00
3	Junction Box	5	EA	\$1,480.00	\$7,400.00	0%	\$7,400.00
4	15" RCP	800	LF	\$20.00	\$16,000.00	0%	\$16,000.00
5	18" RCP	497	LF	\$24.00	\$11,928.00	0%	\$11,928.00
6	24" RCP	731	LF	\$30.00	\$21,930.00	0%	\$21,930.00
7	30" RCP		LF	\$35.00	\$0.00	0%	\$0.00
8	36" RCP		LF	\$54.00	\$0.00	0%	\$0.00
9	Outlet Structure	2	EA	\$3,200.00	\$6,400.00	0%	\$6,400.00
10	Riser	18	CY	\$150.00	\$2,700.00	0%	\$2,700.00
SUBTOTAL					\$112,958.00		\$112,958.00

Sanitary Sewer

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	Single Services		6 EA	\$525.00	\$3,150.00	0%	\$3,150.00
2	Double Services		21 EA	\$650.00	\$13,650.00	0%	\$13,650.00
3	5" Clean Outs		27 EA	\$125.00	\$3,375.00	0%	\$3,375.00
4	Tie-In to Existing System		2 EA	\$2,000.00	\$4,000.00	0%	\$4,000.00
5	Manholes 0-6		2 EA	\$1,600.00	\$3,200.00	0%	\$3,200.00
6	Manholes 6-8		1 EA	\$1,700.00	\$1,700.00	0%	\$1,700.00
7	Manholes 8-10		1 EA	\$1,900.00	\$0.00	0%	\$0.00
8	Manholes 10-12		2 EA	\$2,000.00	\$4,000.00	0%	\$4,000.00
9	Manholes 12-+		5 EA	\$2,200.00	\$11,000.00	0%	\$11,000.00
10	8" PVC 0-6		0 LF	\$30.00	\$0.00	0%	\$0.00
11	8" PVC 6-8		283 LF	\$33.00	\$9,504.00	0%	\$9,504.00
12	8" PVC 8-10		1 LF	\$37.00	\$0.00	0%	\$0.00
13	8" PVC 10-12		1 LF	\$42.00	\$0.00	0%	\$0.00
14	8" PVC 12-+		1216 LF	\$46.00	\$55,936.00	0%	\$55,936.00
SUBTOTAL					\$109,515.00		\$44,075.00

Water

ITEM #	ITEM DESCRIPTION	AMOUNT	UNITS	UNIT COST	TOTAL COST	COMPLETE	REMAIN COST
1	8" PVC Water Line		2432 LF	\$37.00	\$89,984.00	0%	\$89,984.00
2	8" Bend 90		1 EA	\$150.00	\$150.00	0%	\$150.00
3	8" Bend 45		12 EA	\$150.00	\$1,800.00	0%	\$1,800.00
4	8" Bend 22.5		1 EA	\$150.00	\$150.00	0%	\$150.00
5	8" TEE		3 EA	\$150.00	\$450.00	0%	\$450.00
6	GV & CI Box		5 EA	\$600.00	\$3,000.00	0%	\$3,000.00
7	Fire Hydrant		2 EA	\$1,200.00	\$2,400.00	0%	\$2,400.00
8	Valve Marker		3 EA	\$250.00	\$750.00	0%	\$750.00
9	Tie-In to Existing System		2 EA	\$700.00	\$1,400.00	0%	\$1,400.00
SUBTOTAL					\$100,084.00		\$100,084.00

SUBTOTALS

SEWER SYSTEM \$109,515.00
WATER SYSTEM \$100,084.00

ROADS & SITE REMAINING IMPROVEMENT \$345,010.45
DRAINAGE REMAINING IMPROVEMENT \$112,959.00

TOTAL \$667,567.45

Holly Richardson

From: Kimpavao@aol.com
Sent: Friday, March 09, 2007 12:53 PM
To: Holly Richardson; Kevin Chestnut; lee@gcwsd.com; dwightm@gcwsd.com
Cc: WillieT843@aol.com; Kiwics100@aol.com; BTJNKS@aol.com; sstrickland@earthworksgroup.com; mdonevanti@earthworksgroup.com
Subject: Harmony Township Pay Application #4

Good Afternoon All;

I am in the process of faxing to you the REVISED pay request from February 7, 2007. Please disregard that pay request in the amount of \$307,983.82.

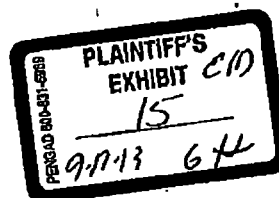
The Pay Request and subsequent inspections are for Phase 2D-1 in the amount of \$342,426.10. We apologize for the confusion and the delay of this submital. We would sincerely appreciate your efforts in expediting this matter.

Holly;
This payment will be drawn on the Wachovia LOC # SM220037W

-Kim Pavao

See K.M. Smith
\$396,600.16

AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.





April 3, 2007

Ms. Holly Richardson
Georgetown County Planning Department
P. O. Drawer 1270
Georgetown, SC 29440

RE: Harmony Township, Phase 2D1 AIA Pay Application # 4 Revisions

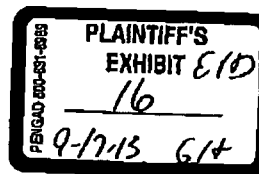
Dear Holly:

This office has reviewed pay application # 4 for Phase 2D1 and an error was made that did not include the stored materials. This pay application reflects the work completed as of February 28, 2006. I apologize for any inconvenience.

If you have any further questions please, at your earliest opportunity, contact me at 651-7900.

Sincerely,

Mark Donovan
The EARTHWORKS Group



11661 Highway 707 • P.O. Box 201 • Murrells Inlet, SC 29576
Phone: (843) 651-7900 • Fax: (843) 651-7903 • www.earthworksgroup.com

TO OWNER: Harmony Township LLP
1478 Pickens Rd.
60060, SC 29440

PROJECT: Harmony Phase 2 D

APPLICATION NO.: 4
PERIOD TO:
PROJECT NOS.:

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐

FROM CONTRACTOR: Coastal Services LLP
1457 E. Palmetto St.
Florence SC 29506

VIA ARCHITECT

CONTRACT DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G705, is attached.

1. ORIGINAL CONTRACT SUM \$ 1,045,621.00
2. Net change by Change Orders \$ 200,000.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 1,245,621.00
4. TOTAL COMPLETED & STORED TO DATE \$ 813,666.18
(Column G on G705)
5. RETAINAGE:
 - a. _____% of Completed Work \$ 0
(Columns D + E on G705)
 - b. _____% of Stored Material \$ 0
(Column F on G705)Total Retainage (Line 5a + 5b or Total in Column I of G705) \$ 0
6. TOTAL EARNED LESS RETAINAGE \$ 813,666.18
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 417,000.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 396,666.18
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 486,142.22
(Line 3 less Line 8)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	<u>200,000</u>	
Total approved this Month		
TOTALS	<u>200,000</u>	
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____
State of _____
County of _____
Subscribed and sworn to before
me this _____ day of _____

Notary Public
My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 396,666.18
(Attach explanation if amount certified differs from the amount applied for in all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

By: Steve Strickland 4/13/07
Architect, Engineer
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA DOCUMENT G705 • APPLICATION AND CERTIFICATE FOR PAYMENT • 1992 EDITION • AIA® • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20005-4002 • WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

G702-1992

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GTWN_000749



Georgetown County Planning and Code Enforcement
120 Broad Street
Georgetown, SC 29440
(843) 545-3158 or (843) 545-3299 (FAX)

April 5, 2007

RE: Irrevocable Standby Letter of Credit -SM220037W
Harmony Holdings, LLC
1478 Pickorel Road
Georgetown, SC 29440

Wachovia Bank
401 Linden Street, Mail Code NC6034
Winston Salem, NC 27101

To Whom It May Concern,

A request has been received to amend (reduce) the Letter of Credit referenced above in the amount of \$396,666.18. The request for this release has been reviewed and approved by this office. We will release the Letter of Credit in the amount of \$553,370.21, upon acceptance of an amended letter in the amount of \$156,704.03.

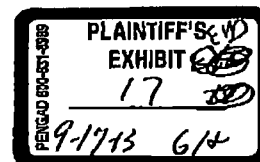
Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Holly H. Richardson".

Holly H. Richardson
Chief Planner

cc: Brad Jenkins, Spanish Moss Development
File: Harmony Planned Development



AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT
04/09/07

GEORGETOWN COUNTY
120 BROAD STREET
GEORGETOWN, SC 29440

LETTER OF CREDIT NO. SM220037W

GENTLEMEN:

WE HEREBY AMEND OUR ABOVE-REFERENCED LETTER OF CREDIT ISSUED IN YOUR FAVOR
FOR THE ACCOUNT OF HARMONY HOLDINGS, LLC AS FOLLOWS:

-THE LETTER OF CREDIT AMOUNT IS DECREASED BY USD 396,666.18 TO A NEW
AGGREGATE TOTAL OF USD 156,704.03.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

THIS AMENDMENT LETTER IS TO BE ATTACHED TO AND BECOME AN INTEGRAL PART OF
THE ORIGINAL CREDIT INSTRUMENT.

This is a true copy of the
original instrument issued by

Wachovia Bank, N.A. on the

Date noted 9-17-13

AUTHORIZED SIGNATURE
WACHOVIA BANK, NATIONAL ASSOCIATION
SM220037
05/DDS

THE ORIGINAL OF THIS LETTER OF CREDIT AMENDMENT CONTAINS AN EMBOSSED SEAL
OVER THE AUTHORIZED SIGNATURE.

CONSENT TO THIS AMENDMENT IS REQUIRED FOR IT TO BECOME EFFECTIVE.
PLEASE DATE AND SIGN BELOW AND RETURN A COPY TO US AT OUR OFFICE LOCATED AT
401 LYNDEN STREET, WINSTON-SALEM, NC 27101, ATTN: STANDBY LETTER OF CREDIT
DEPARTMENT OR FAX TO 336-735-0950 WITH COPY TO FOLLOW USING ENVELOPE PROVIDED.

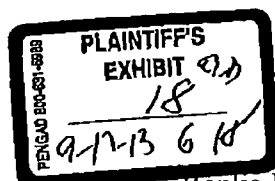
() AMENDMENT ACCEPTED IN ITS ENTIRETY

() AMENDMENT REJECTED IN ITS ENTIRETY

DATE

AUTHORIZED SIGNATURE
GEORGETOWN COUNTY

PRINTED NAME OF AUTHORIZED SIGNER



Instrument Book Page
200600021833 225 137

200600021833
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
10-07-2006 At 03:31 PM.
DEED 13.00
STATE TAX 202.80
COUNTY TAX 85.80
Book 225 Page 137 - 143

Prepared by Wilcox, Bayck & Williams, P.A., 71-B DaGullah Way, Pawleys Island, SC 29585

Warranty Deed

The State of South Carolina)
COUNTY OF GEORGETOWN) KNOW ALL MEN BY THESE PRESENTS, THAT

HARMONY HOLDINGS, LLC (hereinafter called the "Grantor") in the State and County aforesaid, for and in consideration of the sum of Seventy Eight Thousand and 00/100 (\$78,000.00), to it in hand paid at and before the sealing of these presents by: David M. Repko (hereinafter called the "Grantee") in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the said Grantee, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property to wit:

ALL that certain piece, parcel, or lot of land situate, lying and being in the County of Georgetown, State of South Carolina, more particularly shown and delineated as LOT NUMBER 1077 as shown on that certain map entitled "Secured Final Subdivision Plat of Phase D-1, Comm II, West Stewart, Harmony Township prepared for Harmony Holdings, LLC", prepared by Thomas & Hutton Engineering Company dated April 21, 2006 and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina on May 24, 2006 in Plat Slide 602 at Pages 1-5, reference to which is craved as forming a part and parcel of this description.

Page 1 of 4

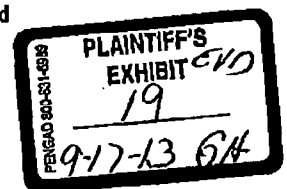


Exhibit #44

GEORGETOWN COUNTY PARCEL # 1-438-1
(New TMS # 1-122E-77) SPE

Also, a non-exclusive easement of ingress and egress over and across the roadways as they now exist or may hereafter exist leading from the above described premises to all available public rights-of-way; said easement being appurtenant to and running with the above described real property and subject to all covenants and conditions of record.

This being a portion of the premises heretofore conveyed unto Harmony Holdings, LLC by Deed of Harmony Plantation, LLC dated April 28, 2000, duly recorded in the Office of the Register of Deeds for Georgetown County, South Carolina as of May 5, 2000 in Deed Book 1078 at Page 67.

The conveyance of the aforesaid real property shall be subject to all easements, reservations, rights-of-way, restrictions, encroachments, and covenants of record which may affect the above described property, and all governmental statutes, ordinances, rules and regulations.

TMS #:

Grantee's Address: 217 Egret Run Lane #923, Pawleys Island, SC 29585

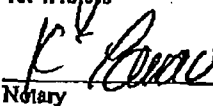
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all the singular the said Premises before mentioned unto the said Grantee, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion and the Grantor does hereby bind the Grantor and the Grantor's Heirs, Successors, Executors Administrators and Assigns, to warrant and forever defend all and singular the said Premises unto the said Grantee and the Grantee's heirs and assigns as hereinabove provided against it and its Heirs, Successors, Executors, Administrators and Assigns and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

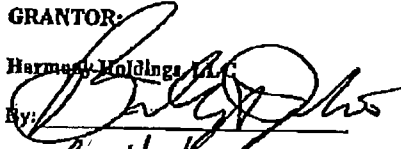
WITNESS the Grantor's hand and seal this 3rd day of October, 2006.

Signed, Sealed and Delivered in the presence of:



1st Witness


Notary

GRANTOR:
Harmony Holdings, LLC
By: 

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) **ACKNOWLEDGMENT**
) **(S.C. CODE ANN. §30-5-30(B)(C))**

Bradley T. Jenkins, the undersigned, a Notary Public for South Carolina, do hereby certify that as president of Harmony Holdings, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of the foregoing Corporation (and/or LLC).

Witness my hand and official seal this 3rd day of October, 2006.

Kenneth Pardo (L.S.)
Notary Public in and for the State of South Carolina
My Commission Expires: JANUARY 18, 2011
My Commission Expires January 18th, 2011



STATE OF SOUTH CAROLINA

County of GEORGETOWN

AFFIDAVIT

S.C. Code Ann. §12-24-20 et. seq.

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at Lot #1077 Phase 2-D, West Stewart, Harmony Township, Georgetown, SC 29440 bearing Georgetown County Tax Map Number, was transferred by Harmony Holdings, LLC, to David M. Repko on October 3, 2006.
3. Check one of the following: The deed is
 - (a) ☒ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☐ Exempt from the deed recording fee because (See Information section of affidavit):
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$78,000.00.
 - (b) ☐ The fee is computed on the fair market value of the realty which is _____ (\$ _____) Dollars.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____ (\$ _____) Dollars.
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: _____
6. The deed recording fee is computed as follows:

(a) Place the amount listed in Item 4 above here:	\$78,000.00
(b) Place the amount listed in Item 5 above here:	0.00
(c) Subtract Line 6(b) from Line 6(a):	\$78,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: 288.60.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: SELLER

I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 3rd day of October, 2006.

Kimberly Pavao (L.S.)
Notary Public
My Commission expires 31, Commission Expires January 18th, 2011

Harmony Holdings, LLC
By: *David M. Repko*
It's: President

Instrument Book Page
200600021833 225 141

47749 Wellcoy

200600021833
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
10-09-2006 At 03:31 pm
DEED 13.00
STATE TAX 202.80
COUNTY TAX 85.80
Book 225 Page 137 - 143

Wanda J. Grevette

RECORD THIS DATE



AUDITOR GEORGETOWN CO.

LINDA S. MOCK



WANDA F. PREVATTE

GEORGETOWN COUNTY
REGISTER OF DEEDS

P.O. BOX ~~XXX~~ 421270
GEORGETOWN, SC 29442

235
TELEPHONE
(843) 627-6316

CERTIFICATE OF MISSING PAGES

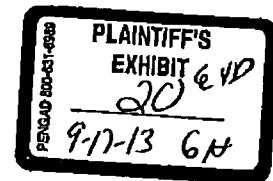
THIS IS TO CERTIFY THAT PAGE (S) 142 + 143
OF THIS VOLUME IS/ARE AUTHORIZED MISSING PAGE (S).

DATE 10/10/06

Marlene McConnell
CAMERA OPERATOR

Instrument Book Page
200600021836 225 151

200600021836
Filed for Record in
GEORGETOWN, SC
REGISTER OF DEEDS
10-09-2006 At 03:36 PM.
DEED 11.00
STATE TAX 200.20
COUNTY TAX 84.70
Book 225 Page 151 - 155



Prepared by Millicox, Buick & Williams, P.A., 71-B DaCullin Way, Pawleys Island, SC 29585

Warranty Deed

The State of South Carolina) KNOW ALL MEN BY THESE PRESENTS, THAT
COUNTY OF GEORGETOWN)

HARMONY HOLDINGS, LLC (hereinafter called the "Grantor") in the State and County aforesaid, for and in consideration of the sum of Seventy Seven Thousand and 00/100 (\$77,000.00), to it in hand paid at and before the sealing of these presents by: David M. Repko (hereinafter called the "Grantee") in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the said Grantee, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property to wit:

ALL that certain piece, parcel, or lot of land situate, lying and being in the County of Georgetown, State of South Carolina, more particularly shown and delineated as LOT NUMBER 1076 as shown on that certain map entitled "Secured Final Subdivision Plat of Phase D-1, Comm II, West Stewart, Harmony Township prepared for Harmony Holdings, LLC", prepared by Thomas & Hutton Engineering Company dated April 21, 2006 and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina on May 24, 2006 in Plat Slide 602 at Pages 1-5, reference to which is craved as forming a part and parcel of this description.

Page 1 of 4

Exhibit #3

GEORGETOWN COUNTY PARCEL # 41-438-1
(New TMS # 1-122E-76) SPE

Also, a non-exclusive easement of ingress and egress over and across the roadways as they now exist or may hereafter exist leading from the above described premises to all available public rights-of-way; said easement being appurtenant to and running with the above described real property and subject to all covenants and conditions of record.

This being a portion of the premises heretofore conveyed unto Harmony Holdings, LLC by Deed of Harmony Plantation, LLC dated April 28, 2000, duly recorded in the Office of the Register of Deeds for Georgetown County, South Carolina as of May 5, 2000 in Deed Book 1078 at Page 67.

The conveyance of the aforesaid real property shall be subject to all easements, reservations, rights-of-way, restrictions, encroachments, and covenants of record which may affect the above described property, and all governmental statutes, ordinances, rules and regulations.

TMS#:

Grantee's Address: 2317 -3 Boston Street, Baltimore, MD 21224

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all the singular the said Premises before mentioned unto the said Grantee, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion and the Grantor does hereby bind the Grantor and the Grantor's Heirs, Successors, Executors Administrators and Assigns, to warrant and forever defend all and singular the said Premises unto the said Grantee and the Grantee's heirs and assigns as hereinabove provided against it and its Heirs, Successors, Executors, Administrators and Assigns and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the Grantor's hand and seal this 3rd day of October, 2006.

Signed, Sealed and Delivered in the presence of:

GRANTOR:

Harmony Holdings, LLC

By:

Its:

President

1st Witness

Notary

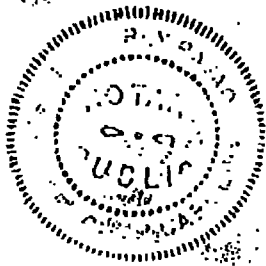
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGMENT
(S.C. CODE ANN. §30-5-30(B)(C))

Beadley T. Jenkins I, the undersigned, a Notary Public for South Carolina, do hereby certify that *Beadley T. Jenkins* as *President* of *Harmony Holdings, LLC* personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of the foregoing Corporation (and/or LLC).

Witness my hand and official seal this 3rd day of October, 2006.

Kimberly Pavao (L.S.)
Notary Public in and for the State of South Carolina
My Commission Expires: *KIMBERLY PAVAO*
My Commission Expires January 18th, 2011



STATE OF SOUTH CAROLINA

County of Georgetown

)

)

AFFIDAVIT

S.C. Code Ann. §12-24-20 et. seq.

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at Lot 1076 Phase 2-D, West Stewart, Harmony Township Georgetown, SC 29440 bearing Georgetown County Tax Map Number, was transferred by Harmony Holdings, LLC, to David M. Repko on October 3, 2006.
3. Check one of the following: The deed is
 - (a) ☒ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ Exempt from the deed recording fee because (See Information section of affidavit): _____
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$77,000.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____ (\$ _____) Dollars.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____ (\$ _____) Dollars.
5. Check Yes _____ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: _____
6. The deed recording fee is computed as follows:

(a) Place the amount listed in Item 4 above here:	\$77,000.00
(b) Place the amount listed in Item 5 above here:	0.00
(c) Subtract Line 6(b) from Line 6(a):	\$77,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: 284.90.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: SELLER

I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Subscribed and sworn to before me this 3rd day of October, 2006.

Notary Public _____ (L.S.)

My Commission Expires: _____
KIMBERLY PAVAO
My Commission Expires January 18th, 2011

Harmony Holdings, LLC

By _____
Its _____ President

Instrument Book Page
200600021836 225 155

47752 Wellcorp

200600021836
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
10-09-2006 At 03:36 pm.
DEED 11.00
STATE TAX 200.20
COUNTY TAX 84.70
Book 225 Page 151 - 155

Wanda J. Orevatte

RECORD THIS DATE


AUDITOR GEORGETOWN CO.
LINDA S. MOCK

DAVID M. REPKO 09-09
2317 UNIT 3 BOSTON ST. PH. 410-675-0161
BALTIMORE, MD 21224

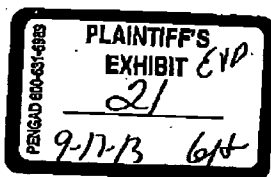
Date 9/16/06

104
1-218816
620

Pay to the order of David Repko \$ 150,000.
One Hundred & Fifty Thousand ⁰⁰/₁₀₀ Dollars  
citibank®
CITIBANK F.S.B.
PO BOX 706114
ST. LOUIS, MO 63179
ESA

Memo Harmony Lts

[Signature] ^{MP}



Print

Page 1 of 2

Subject: Fwd: Harmony Law Suit
From: jmalmony@hotmail.com (jmalmony@hotmail.com)
To: dmrepko@yahoo.com;
Date: Friday, March 30, 2012 7:04 PM



Read this bro.

Sent from my Verizon Wireless Phone

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

From: "Kim Payao" <kimpavao@aol.com>
Date: Fri, Mar 30, 2012 6:37 pm
Subject: Harmony Law Suit

To: <dan@skerman.org>, <barbj1012@hotmail.com>, <jmalmony@hotmail.com>, <timhci1@aol.com>, <jamie36ic@yahoo.com>, <gallorealstate@yahoo.com>, <lanny49@truvista.net>, <cmeyer@chaseenterprises.com>, <amhap@aol.com>, <rchurch@rsmatco.com>, <peconic31@hotmail.com>, <sunaerie@sccoast.net>, <petermstevens86@hotmail.com>, <oriond08@gmail.com>, <angner@sccctv.net>, <scott.deel@hds.com>, <j.p777@comcast.net>, <joshacevedo@hotmail.com>, <tvfg@earthlink.net>, <cindy.kueifenma@gmail.com>, <blakeharwell@ymail.net>, <savfrust1@verizon.net>, <hugmart@aol.com>, <DGundling@gundlinglaw.com>, <tchawley@aol.com>, <esands2@netscape.net>, <guy-d-murphy@verizon.net>, <lydjagreen@aol.com>, <alfred.smith3@boeing.com>, <kgpa@aol.com>, <dvrogers21@gmail.com>, <ecthoren@gmail.com>, <susannahjohnson@insightbb.com>, <jmorg68@yahoo.com>, <guarddoc@comcast.net>, <paul@capecodkitchentech.com>, <dggreenfamily@aol.com>, <richardbertetti@hotmail.com>, <slipaweigh@gmail.com>, <drycleanman68@aol.com>, <denjack28@yahoo.com>, <pjb448@msn.com>, <625krhoads2@comcast.net>, <marpaul@optonline.net>, <richardbertetti@hotmail.com>, <jmorg68@yahoo.com>, <dggreenfamily@aol.com>, <paul@capecodkitchentech.com>, <marpaul@optonline.net>, <guarddoc@comcast.net>, <landgc@bellsouth.net>, <joe.creel@fluor.com>, <satti@verizon.net>, <blakeharwell@ymail.com>, <hattee@truvista.net>, <slimnancy@gmx.com>, <luke@fibexincorporated.com>, <csatti55@hotmail.com>, <tchawley@aol.com>, <esands2@netscape.net>, <bmwdennishw@hotmail.com>, <msj9593@bellsouth.net>, <guy-d-murphy@verizon.net>, <kgpa@aol.com>, <susannahjohnson@insightbb.com>, <hugmart@aol.com>, <ecthoren@gmail.com>, <eddigioia@netscape.net>, <dvrogers21@gmail.com>, <david.eldredge@verizon.net>, <625krhoads2@comcast.net>, <acs751@msn.com>, <pjb448@msn.com>, <lydjagreen@aol.com>, <rchurch@rsmatco.com>, <Leeann.Austin@kadiehl.com>, <drycleanman68@aol.com>, <alex@fleetnj.com>, <denjack28@yahoo.com>, <alfred.smith3@boeing.com>

Receipt# 2007 052102 A *** REAL ESTATE NOTICE ***
TMS 01 0122 E 0770000

Entered 12/18/2007

Name: REPKO DAVID M

Paid 12/28/2007

458.84 R6

00394

217 EGRET RUN LANE # 923
PAWLEYS ISLAND SC 295850000
District: 010 SOUTH OF HWY 521

Replaces 2007 052102

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	
						39,500	
Res.							
Farm							
Other	6	1.0	39,500				
Desc	LOT 1077	COMMUNITY II	WEST STEWART PHASE	Serial#			
City-LEVY-County		City Tax	County Tax	WSPD	028.1	Extra Fees	Total
	165.5		392.24		66.60		458.84
Tax Aftr Exempt			392.24		66.60		458.84
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	458.84
Comment:	**APPEAL FINAL REVIEW**						
12/18/07	**APPEAL SETTLED**				(JA)		
Cf8-Fees	JD					PAID	
Cf1-New Name	Cf7-Exit						

\$1,992.83



Receipt# 2008 063720 *** REAL ESTATE NOTICE ***

TMS 01 0122 E 0770000

Entered 10/20/2008

Name: REPKO DAVID M

Paid 12/16/2008

471.63 BK

00000

217 EGRET RUN LANE # 923

PAWLEYS ISLAND SC

295850000

District; Q10 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	39,500
Res.							
Farm							
Other	6	1.0	39,500	1			
Desc	LOT 1077	COMMUNITY II	WEST STEWART PHASE	Serial#			
City-LEVY-County	City Tax	County Tax	WSFD	028.1	Extra Fees	Total	
	170.9	405.03		66.60		471.63	
Tax Aftr Exempt		405.03		66.60		471.63	
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	471.63
Comment:							

Cf8-Fees

PAID

Cf1-New Name Cf7-Exit

Receipt# 2009 053756 *** REAL ESTATE NOTICE ***

TMS 01 0122 E 0770000

Entered 10/19/2009

Name: REPKO DAVID M

Paid 12/28/2009

481.59 BK

00000

217 EGRET RUN LANE # 923

PAWLEYS ISLAND SC

295850000

District: Q10 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	39,500
Res.							
Farm							
Other	6	1.0	39,500	1			
Desc	LOT 1077	COMMUNITY II	WEST STEWART	PHASE	Serial#		
City-LEVY-County		City Tax	County Tax	WSPD	028.1	Extra Fees	Total
	175.1		414.99		66.60		481.59
Tax Aftr Exempt			414.99		66.60		481.59
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	481.59
Comment:							

Cf8-Fees

Cf1-New Name Cf7-Exit

PAID

Receipt# 2010 053270 *** REAL ESTATE NOTICE ***
TMS 01 0122 E 0770000

Name: REPKO DAVID M

Entered 11/19/2010

Paid 12/17/2010

193.59 BK

00000

217 EGRET RUN LANE # 923

PAWLEYS ISLAND

SC

295850000

District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	15,000
Res.							
Farm							
Other	6	1.0	15,000				
Desc	LOT 1077	COMMUNITY II	WEST STEWART PHASE D	Serial#			
City-LEVY-County	City Tax	County Tax	WSFD	028.8	Extra Fees	Total	
	186.3	167.67		25.92		193.59	
Tax Aftr Exempt		167.67		25.92		193.59	
Jan Amt			Mar Amt				
Penalty:		Fee:	Interest:		PAID	193.59	
Comment:							

Cf8-Fees

PAID

Cf1-New Name Cf7-Exit

Receipt# 2011 055318 *** REAL ESTATE NOTICE ***

TMS 01 0122 E 0770000

Entered 10/03/2011

Name: REPKO DAVID M

Paid 1/09/2012

193.59 BK

00000

217 EGRET RUN LANE # 923

PAWLEYS ISLAND SC

295850000

District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	15,000
Res.							
Farm							
Other	6	1.0	15,000				
Desc	LOT 1077	COMMUNITY II	WEST STEWART PHASE	Serial#			
City-LEVY-County		City Tax	County Tax	WSFD	028.8	Extra Fees	Total
	186.3		167.67		25.92		193.59
Tax Aftr Exempt			167.67		25.92		193.59
Jan Amt		Feb. Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	193.59
Comment:							

Cf8-Fees

PAID

Cf1-New Name Cf7-Exit

Receipt# 2012 054936 *** REAL ESTATE NOTICE ***
TMS 01 0122 E 0770000

Name: REPKO DAVID M Entered 10/01/2012
Paid 12/21/2012
193.59 BK

00000

217 EGRET RUN LANE # 923
PAWLEYS ISLAND SC 295850000
District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	15,000
Res.						TAX	
Farm						EXEMP-	
Other	6	1.0	15,000			TIONS	
Desc	LOT 1077	COMMUNITY II	WEST STEWART PHASE	Serial#			
City-LEVY-County	City Tax	County Tax	WSFD	028.8	Extra Fees	Total	
	186.3	167.67		25.92		193.59	
Tax Aftr Exempt		167.67		25.92		193.59	
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	193.59
Comment:							

Cf8-Fees
Cf1-New Name Cf7-Exit

PAID

Receipt# 2007 052101 A *** REAL ESTATE NOTICE ***

TMS 01 0122 E 0760000

Entered 12/18/2007

Name: REPKO DAVID M

Paid 12/28/2007

458.84 R6

00394

2317-3 BOSTON STREET

BALTIMORE

MD

212240000

District: 010 SOUTH OF HWY 521

Replaces 2007 052101

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	39,500
Res.							
Farm							
Other	6	1.0	39,500				
Desc	LOT 1076	COMMUNITY II WEST STEWART PHASE D	Serial#				
City-LEVY-County	City Tax	County Tax	WSFD .028.1	Extra Fees	Total		
165.5		392.24	66.60		458.84		
Tax Aftr Exempt		392.24	66.60		458.84		

Jan Amt

Feb Amt

Mar Amt

Penalty:

Fee:

Interest:

PAID

458.84

Comment: ****APPEAL FINAL REVIEW****

12/18/07

****APPEAL SETTLED****

(JA)

Cf8-Fees JD

PAID

Cf1-New Name Cf7-Exit

TMS Q1 0122 E 0760000

Paid 12/16/2008

471.63 · R8

2317-3 BOSTON STREET

BALTIMORE

MD

212240000

District: 010 SOUTH OF HWY 521

Repko Record on Appeal, Pg.-338

Receipt# 2009 053755 *** REAL ESTATE NOTICE ***
TMS 01 0122 E 0760000

Entered 10/19/2009
Paid 12/28/2009
481.59 BK

00000

Name: REPKO DAVID M.

2317-3 BOSTON STREET

BALTIMORE

MD

212240000

District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	39,500
Res.							
Farm							
Other	6	1.0	39,500	1			
Desc	LOT 1076	COMMUNITY II WEST STEWART PHASE.D	Serial#				
City-LEVY-County		City Tax	County Tax	WSFD	028.1	Extra Fees	Total
	175.1		414.99		66.60		481.59
Tax Aftr Exempt			414.99		66.60		481.59
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	481.59
Comment:							

PAID

Cf8-Fees

Cf1-New Name Cf7-Exit

Cf16-Memo Inq

RECEIVED 2010 000207 *** REAL ESTATE NOTICE ***
TMS 01 0122 E 0760000

Name: REPKO DAVID M

Entered 11/19/2010

Paid 12/17/2010

193.59 BK

00000

217 EGRET RUN LN #923

PAWLEYS ISLAND SC

295850000

District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	15,000
Res.							
Farm							
Other	6	1.0	15,000				
Desc	LOT 1076	COMMUNITY II	WEST STEWART PHASE D	Serial#			
City-LEVY-County	City Tax	County Tax	WSFD	028.8	Extra Fees	Total	
	186.3	167.67		25.92		193.59	
Tax Aftr Exempt		167.67		25.92		193.59	
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	193.59
Comment:							

Cf8-Fees

PAID

Cf1-New Name Cf7-Exit

Receipt# 2011 065317 *** REAL ESTATE NOTICE ***

TMS 01 0122 E 0760000

Entered 10/03/2011

Paid 1/09/2012

193.59 BK

00000

Name: REPKO DAVID M

217 EGRET RUN LN #923

PAWLEYS ISLAND SC

296850000

District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld. Value	TotValue	15,000
Res.							
Farm							
Other	6	1.0	15,000				
Desc	LOT 1076	COMMUNITY II	WEST STEWART PHASE D	Serial#			
City-LEVY-County	City Tax	County Tax	WSPD	028.8	Extra Fees	Total	
	186.3	167.67		25.92		193.59	
Tax Aftr Exempt		167.67		25.92		193.59	
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	193.59
Comment:							

Cf8-Fees

PAID

Cf1-New Name Cf7-Exit

Receipt# 2012 064935 *** REAL ESTATE NOTICE ***
TMS 01 0122 E 0760000

Name: REPKO DAVID M

Entered 10/01/2012

Paid 12/21/2012

193.59 BK

00000

217 EGRET RUN LN #923

PAWLEYS ISLAND SC

295850000

District: 010 SOUTH OF HWY 521

Ratio	Acres	Lots	Land Value	# Bld.	Bld.Value	TotValue	15,000
Res.							
Farm							
Other	6	1.0	15,000				
Desc	LOT 1076	COMMUNITY II	WEST STEWART	PHASE D	Serial#		
City-LEVY-County		City Tax	County Tax	WSPD	028.8	Extra Fees	Total
	186.3		167.67		25.92		193.59
Tax Aftr Exempt			167.67		25.92		193.59
Jan Amt		Feb Amt		Mar Amt			
Penalty:		Fee:		Interest:		PAID	193.59
Comment:							

Cf8-Fees

PAID

Cf1-New Name Cf7-Exit



GEORGETOWN COUNTY, SOUTH CAROLINA

P.O. Box 421270 • Georgetown, SC 29442

Loretta D. Washington-Cooper, County Treasurer/Tax Collector



REAL ESTATE AND PERSONAL PROPERTY TAX NOTICE

44635 1 MB 0.360 *****AUTO**MIXED AADC 290

044635

REPKO DAVID M
2317 BOSTON ST UNIT 3
BALTIMORE MD 21224-3669

44635
186

Please make checks payable to: Loretta Washington-Cooper, Treasurer/Tax Collector

Do not send partial payment.

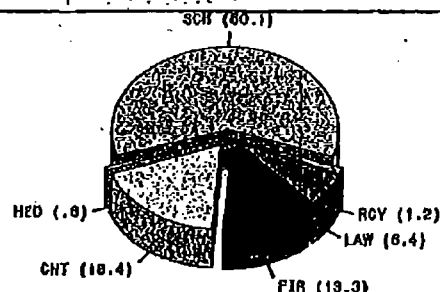
You can pay your taxes online at: www.georgetowncountysc.org

Unpaid taxes will become DELINQUENT after
3/16/2008 and will be subject to additional
penalties and costs.

TAX YEAR 2007	
PROPERTY DESCRIPTION	
RECEIPT # 2007-052101	
01 0122E 0760000	
LOT 1076 COMMUNITY II	
WEST STEWART PHASE D	
1.0 LOTS/ACRES	79,000 MARKET
RATIO %	6.0
ASSESSMENT	4,740
TAX RATE	.1936
TAX BREAKDOWN	
TAX BEFORE CREDITS	917.66
NET PROPERTY TAX	917.66
TOTAL DUE	917.66
ON/BEFORE JAN 15	
PENALTY SCHEDULE	
AMOUNT DUE AFTER 1/15/2008	945.19
AMOUNT DUE AFTER 2/1/2008	1,009.43
* Please write receipt # on check. *	
*** US FUNDS ONLY! ***	

GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE & TAX DOLLARS

NR	AGENCY	TAXES	AGENCY	CODE	% OF BILL
116.3	SCH	551.26 SCHOOL PURPOSES	SCH	60.1	
35.7	CNT	169.21 COUNTY PURPOSES	CNT	18.4	
25.7	FIR	121.82 FIRE PROTECTION	FIR	13.3	
12.4	LAW	68.78 LAW ENFORCEMENT	LAW	8.4	
2.4	RCY	11.98 RECYCLE/SOLID WASTE	RCY	1.2	
1.1	HED	5.21 HIGHER EDUCATION	HED	.6	



PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2007-052101
01 0122E 0760000 LOT 1076 COMMUNITY II
REPKO DAVID M

2317-3 BOSTON STREET
BALTIMORE MD 21224

ADDRESS

CHANGES

PENALTY SCHEDULE	
AMOUNT DUE BY 1/15/2008	917.66
AMOUNT DUE AFTER 1/15/2008	945.19
AMOUNT DUE AFTER 2/1/2008	1,009.43
AFTER 3/16/2008 PLACED IN EXECUTION WITH ADDITIONAL COSTS ADDED	
* Please write receipt # on check. *	
*** US FUNDS ONLY! ***	

2007 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

2007 000000 52101 00001766 5

GEORGETOWN COUNTY, SOUTH CAROLINA

NOTICE OF CLASSIFICATION, APPRAISAL & ASSESSMENT OF REAL ESTATE 2007 TAX YEAR

Georgetown County Assessor's Office
129 Screven Street
PO Box 421270
Georgetown, South Carolina 29442

Notice:
This is **NOT** your
Tax Dollar Amount.

3068 1 MB 0.360 ****AUTO**MIXED AADC 290
003068
REPKO DAVID M
2317 BOSTON ST UNIT 3
BALTIMORE MD 21224-3669 13
3068

CLASSIFICATION	ACRES/LOTS	MARKET VALUE	X	RATIO	=	ASSESSMENT
* OWNER OCCUPIED RESIDENTIAL						
* OTHER PROPERTY	ACRES	1.0		79,000	X 6%	= 4,740
MARKET VALUE - AGRICULTURAL						
* USE VALUE - AGRICULTURAL						
TOTAL ASSESSMENT						= 4,740

TAX MAP NUMBER

01-0122E-0760000

THE TOTAL MARKET
VALUE ESTIMATE IS

79,000

REASON FOR CHANGE

11 NEW PARCEL

PROPERTY LOCATION - SUBDIVISION - LEGAL DESCRIPTION

LOT 1076 COMMUNITY II
WEST STEWART PHASE D

IF YOU DISAGREE WITH THE APPRAISAL AND ASSESSMENT, YOU MUST FILE WRITTEN
OBJECTION WITH THE ASSESSOR WITHIN 90 DAYS OR BEFORE: 12/21/2007

TAX DISTRICT DATE OF NOTICE

01

9/22/2007

FOR INFORMATION CALL: (843) 546-3014

IF YOU WISH TO APPEAL THE ASSESSMENT ON YOUR PROPERTY

If you disagree with the assessor's appraisal of your property and wish to appeal, state law provides the following procedure in Section 12-60-2620 of the 1976 Code of Laws, as amended:

1. Within ninety (90) days after dated notice of reassessment, the property owner or his agent must file a written objection with the assessor.
2. The assessor will conduct a review and notify the property owner of the results of the review.
3. Within thirty (30) days of further objection, a conference will be scheduled. The assessor, in turn, will request that you provide, within thirty (30) days, additional data to help determine the value of your property.
4. After the conference has been completed, the Assessor will notify you in writing of his finding. If you still disagree with the assessment, you have thirty (30) days to file a written notice of your request to appeal your assessment to the Board of Assessment Appeals.
5. State law requires that you must pay 80% of tax generated on the proposed assessment if it appears that the appeal will not be settled by December 31 of the tax year in question. A taxpayer may pay more than 80% if agreed in writing by the taxpayer.

THIS IS A NOTICE OF CLASSIFICATION, APPRAISAL AND ASSESSMENT OF REAL ESTATE

Section 12-60-2610 of the 1976 Code of Laws, as amended provides for the classification and uniform assessment ratio of property. The property described herein has been appraised and assessed at the appropriate assessment ratio by the assessor.

THIS IS NOT A TAX BILL

EXPLANATION OF NOTICE ON BACK

The Assessment is not
Your tax dollar amount.
ASSESSMENT X MILLAGE RATE= TAXES



**ANNOUNCING ADVANCE INSTALLMENT PAYMENTS FOR TAX YEAR 2008 REAL PROPERTY TAXES
(NOT FOR THE ENCLOSED 2007 TAX YEAR NOTICE)**

It is my pleasure to provide Advance Installment Payments of Real Property Taxes to the citizens of Georgetown County.

Beginning with the next (2008) tax year, Georgetown County taxpayers will have the opportunity to make advance installment payments on real property taxes. Only real property taxes (land, buildings, mobile homes) will be accepted. Installment payments are not allowed for business personal, vehicle, boat/motor, or taxes paid through an escrow account. Those wanting to participate will make five (5) advance payments based on the previous year's taxes paid. The first payment will be due by February 15, 2008. The balance will be billed by November 15, 2008.

Visit our web-site at www.georgetowncountysc.org for an application. Click on Tax Information and then go to Treasurer. You must apply for tax year 2008 installment payments by January 15, 2008.

Lovetta D. Washington-Cooper
Treasurer/Tax Collector

LORETTA D. WASHINGTON-COOPER
TREASURER/TAX COLLECTOR
PO BOX 421270
GEORGETOWN, SC 29442

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
GREENVILLE, SC
PERMIT NO. 1284

RETURN SERVICE REQUESTED

IMPORTANT TAX RECEIPT INSIDE

1629

ALMONY JAMES M
REPKO DAVID M
217 EGRET RUN LN#923
PAWLEYS ISLAND SC 29585-7405



LORETTA D. WASHINGTON-COOPER
TREASURER/TAX COLLECTOR
PO BOX 421270
GEORGETOWN, SC 29442

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
GREENVILLE, SC
PERMIT NO. 1284

RETURN SERVICE REQUESTED

IMPORTANT TAX RECEIPT INSIDE

1672

REPKO DAVID M
217 EGRET RUN LANE # 923
PAWLEYS ISLAND SC 29585-7405



LORETTA D. WASHINGTON-COOPER
TREASURER/TAX COLLECTOR
PO BOX 421270
GEORGETOWN, SC 29442

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
GREENVILLE, SC
PERMIT NO. 1284

RETURN SERVICE REQUESTED

IMPORTANT TAX RECEIPT INSIDE

1671

REPKO DAVID M
217 EGRET RUN LN #923
PAWLEYS ISLAND SC 29585-7405



Georgetown County, South Carolina
LORETTA D. WASHINGTON-COOPER, TREASURER/TAX COLLECTOR
PO BOX 421270 • GEORGETOWN, SC 29442
REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT



ALMONY JAMES M
REPKO DAVID M
217 EORET RUN LN#923
PAWLEYS ISLAND SC 29585

BK 2005

Itemization of your tax levy & distribution

MILLS	CREDITS	TAX \$'s
GEN. FUND DEBT	8.1	14.58
COUNTY GENERAL	25.7	46.26
HIGHER EDUC.	1.2	2.16
AGEING	.4	.72
ECONOMIC D	.6	.90
SOLID WASTE	2.3	4.14
TOTAL COUNTY		68.76
SCHOOL OPER.	104.9	188.82
SCHOOL DEBT SRV	28.6	51.30
TOTAL SCHOOL		240.12
COUNTY FIRE 123	26.2	47.10
RECYCLING	2.6	4.68
LAW ENFORCEMENT	14.7	26.46
TOTAL SPECIAL		78.30

RECEIPT NUMBER	2012 000768
TAX YEAR	2012
01-0122A-017-00-00 LOT 17 'HARMONY OLD TOW N' SLD 373-2	
TAX BREAKDOWN	
Appraised Value	30,000
Tax Before Credits	387.18
Net Property Tax	387.18
PAID	12/21/2012
TAX:	
PENALTY:	
FEE:	
INTEREST:	
TOTAL PAID	387.18



Georgetown County, South Carolina
LORETTA D. WASHINGTON-COOPER, TREASURER/TAX COLLECTOR
PO BOX 421270 • GEORGETOWN, SC 29442
REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT



REPKO DAVID M
217 EORET RUN LANE # 923
PAWLEYS ISLAND SC 29585

BK 2005

Itemization of your tax levy & distribution

MILLS	CREDITS	TAX \$'s
GEN. FUND DEBT	0.1	0.18
COUNTY GENERAL	25.7	46.26
HIGHER EDUC.	1.2	2.16
AGEING	.4	.72
ECONOMIC D	.6	.90
SOLID WASTE	2.3	4.14
TOTAL COUNTY		53.36
SCHOOL OPER.	104.9	188.82
SCHOOL DEBT SRV	28.6	51.30
TOTAL SCHOOL		240.12
COUNTY FIRE 123	26.2	47.10
RECYCLING	2.6	4.68
LAW ENFORCEMENT	14.7	26.46
TOTAL SPECIAL		78.30

RECEIPT NUMBER	2012 054936
TAX YEAR	2012
01-0122E-077-00-00 LOT 1077 COMMUNITY II WEST STEWART PHASE	
TAX BREAKDOWN	
Appraised Value	15,000
Tax Before Credits	193.59
Net Property Tax	193.59
PAID	12/21/2012
TAX:	
PENALTY:	
FEE:	
INTEREST:	
TOTAL PAID	193.59



Georgetown County, South Carolina
LORETTA D. WASHINGTON-COOPER, TREASURER/TAX COLLECTOR
PO BOX 421270 • GEORGETOWN, SC 29442
REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT



REPKO DAVID M
217 EORET RUN LN #923
PAWLEYS ISLAND SC 29585

BK 2005

Itemization of your tax levy & distribution

MILLS	CREDITS	TAX \$'s
GEN. FUND DEBT	0.1	0.18
COUNTY GENERAL	25.7	46.26
HIGHER EDUC.	1.2	2.16
AGEING	.4	.72
ECONOMIC D	.6	.90
SOLID WASTE	2.3	4.14
TOTAL COUNTY		53.36
SCHOOL OPER.	104.9	188.82
SCHOOL DEBT SRV	28.6	51.30

RECEIPT NUMBER	2012 054935
TAX YEAR	2012
01-0122E-076-00-00 LOT 1076 COMMUNITY II WEST STEWART PHASE D	
TAX BREAKDOWN	
Appraised Value	15,000
Tax Before Credits	193.59
Net Property Tax	193.59
PAID	12/21/2012
TAX:	

11/3/2008

To Whom It May Concern:

I am writing to request an appeal on the taxes assessed to the following property.

01-0122E-0770000

Lot 1077 Community II West Stewart

My name is David M. Repko owner of the above property. I respectfully request an inquiry into the property in question. There have been no changes in the project over the last 19 months due to unfortunate circumstances beyond our control. I believe it is unfair to contribute to the tax base when we are unable to reap the benefits of where our tax money is spent. The property has no utilities and not able to be built upon. The property values have steadily decreased and continue to decrease.

Harmony Township has been and will be in Bankruptcy proceedings for quite some time. No properties are selling and the community is falling into disrepair. This property has been on the market for over 6 months without one inquiry. It has been listed and marketed. It is basically without value.

Thank you for your consideration,

David M. Repko

Sent 11/3/08

Jeanette Alston

TMS 1-122E-76

1-122E-77

From: David Repko [dmrepko@yahoo.com]
Sent: Monday, December 17, 2007 3:28 PM
To: Jeanette Alston
Cc: Matt Almony
Subject: Tax Assessment

Dear Ms. Alston,

I am requesting a tax assessment on the following properties:

01-0122E 0760000
Lot 1076 Community II
West Stewart Phase D

01-0122E 0770000
Lot 1077 Community II
West Stewart Phase D.

The properties are still unbuildable which negatively affects their market values.

Also this letter acts as authorization to allow James Matthew Almony at 843.655.4554 to act on my behalf in paying these taxes and all matters going forward. Should you have any questions for me please contact me anytime at 443.257.9500.

Thank you for your help.

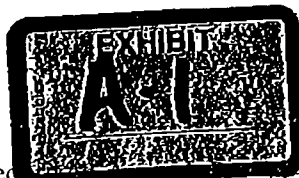
David Repko

2317-3 Boston St.
Baltimore, Md 21224

Accept via
phone

Lot 76 Reduced 39,500
Lot 77 Reduced 39,500
for 2007

12/17/2007



Repko Recd on 12/17/2007



GEORGETOWN COUNTY, SOUTH CAROLINA
P.O. Box 421270 • Georgetown, SC 29442
Loretta D. Washington-Cooper, County Treasurer/Tax Collector



REAL ESTATE AND PERSONAL PROPERTY TAX NOTICE



T3B P44 **AUTO 5-DIGIT 29585 PLT2
REPKO DAVID M
217 EGRET RUN LN #923
016089 PANLEYS ISLAND SC 29585

Please make checks payable to: Loretta Washington-Cooper, Treasurer/Tax Collector

Do not send partial payment.

You can pay your taxes online at: www.georgetowncountysc.org

Unpaid taxes will become DELINQUENT after
3/16/2013 and will be subject to additional
penalties and costs.

TAX YEAR		2012	0195
PROPERTY DESCRIPTION			
RECEIPT # 2012-054935			
01 0122E 0760000			
LOT 1076 COMMUNITY II			
WEST STEWART PHASE D			
1.0 LOTS/ACRES		15,000	MARKET
RATIO %	6.0		
ASSESSMENT	900		
TAX RATE	.2151		
LAST YEAR TAXES ONLY - DOES NOT INCLUDE FEES OR PENALTIES.			193.5
TAX BREAKDOWN			
TAX BEFORE CREDITS			193.5
NET PROPERTY TAX			193.5
TOTAL DUE ON/BEFORE JAN 15			193.5
PENALTY SCHEDULE			
AMOUNT DUE AFTER 1/15/2013			199.4
AMOUNT DUE AFTER 2/1/2013			212.9
* Please write receipt # on check. *			
*** US FUNDS ONLY! ***			

GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE & TAX DOLLARS					
MILLS	AGENCY	TAXES	AGENCY	CODE	% OF BILL
133.4		120.06 SCHOOL PURPOSES		SCH	62.0
37.0		33.30 COUNTY PURPOSES		CNT	17.2
26.2		23.58 FIRE PROTECTION		FIR	12.2
14.7		13.23 LAW ENFORCEMENT		LAW	6.8
2.6		2.34 RECYCLE/SOLID WASTE		RCY	1.2
1.2		1.08 HIGHER EDUCATION		HED	.6

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2012-054935
1 0122E 0760000 LOT 1076 COMMUNITY II
EPKO DAVID M

17 EGRET RUN LN #923
AWLEYS ISLAND SC 29585

ADDRESS _____

CHANGES _____

PENALTY SCHEDULE	
AMOUNT DUE BY 1/15/2013	193.59
AMOUNT DUE AFTER 1/15/2013	199.40
AMOUNT DUE AFTER 2/1/2013	212.95
AFTER 3/16/2013 PLACED IN EXECUTION WITH ADDITIONAL COSTS ADDED	
* Please write receipt # on check. *	
*** US FUNDS ONLY! ***	

2012 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

2012 000000 54935 000019359 1

DAVID REPKO 08-12 1422 CLARKVIEW RD. SUITE 401 BALTIMORE, MD 21209		7-11 620 0098	108
DATE 12/16/2012			
PAY TO THE ORDER OF <u>Lozeth Washington - Cooper, Treasurer</u>		\$ 193.59	
<u>One Hundred & Ninety Three 59/100</u>		DOLLARS ☒ MyChoice Plus	
 M&T Bank Greenspring Garden Office			
MEMO <u>Receipt # 2012-054935</u>		<u>[Signature]</u>	



GEORGETOWN COUNTY, SOUTH CAROLINA
P.O. Box 421270 • Georgetown, SC 29442
Lorella D. Washington-Cooper, County Treasurer/Tax Collector



REAL ESTATE AND PERSONAL PROPERTY TAX NOTICE



T31 P39 **AUTO 5-DIGIT 29585 PLT2
ALMONY JAMES M
REPKO DAVID M
009130 217 EGRET RUN LN#923
PAWLEYS ISLAND SC 29585

Please make checks payable to: Lorella Washington-Cooper, Treasurer/Tax Collector

Do not send partial payment.

You can pay your taxes online at: www.georgetowncountysc.org

Unpaid taxes will become DELINQUENT after
3/16/2013 and will be subject to additional
penalties and costs.

TAX YEAR		2012	009
PROPERTY DESCRIPTION			
RECEIPT # 2012-000758			
01 0122A 0170000			
LOT 17 "HARMONY OLD TOW			
N" SLD 373-2			
1.0 LOTS/ACRES		30,000 MARKET	
RATIO %		6.0	
ASSESSMENT		1,800	
TAX RATE		.2151	
LAST YEAR TAXES ONLY - DOES NOT INCLUDE FEES OR PENALTIES.		387.	
TAX BREAKDOWN			
TAX BEFORE CREDITS		387.	
NET PROPERTY TAX		387.	
TOTAL DUE		ON/BEFORE JAN 15	
		387.	
PENALTY SCHEDULE			
AMOUNT DUE AFTER 1/15/2013		398.	
AMOUNT DUE AFTER 2/1/2013		425.	
* Please write receipt # on check. *			
*** US FUNDS ONLY! ***			

GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE & TAX DOLLARS					
MILLS	AGENCY	TAXES	AGENCY	CODE	% OF BILL
133.4	240.12	SCHOOL PURPOSES	SCH	62.0	
37.0	66.60	COUNTY PURPOSES	CNT	17.2	
26.2	47.16	FIRE PROTECTION	FIR	12.2	
14.7	26.46	LAW ENFORCEMENT	LAW	6.8	
2.6	4.68	RECYCLE/SOLID WASTE	RCY	1.2	
1.2	2.16	HIGHER EDUCATION	HED	.6	

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2012-000758
01 0122A 0170000 LOT 17 "HARMONY OLD TOW
ALMONY JAMES M
REPKO DAVID M
217 EGRET RUN LN#923
PAWLEYS ISLAND SC 29585

ADDRESS _____

CHANGES _____

PENALTY SCHEDULE
AMOUNT DUE BY 1/15/2013 387.
AMOUNT DUE AFTER 1/15/2013 398.
AMOUNT DUE AFTER 2/1/2013 425.
AFTER 3/16/2013 PLACED IN EXECUTION
WITH ADDITIONAL COSTS ADDED
* Please write receipt # on check. *
*** US FUNDS ONLY! ***

2012 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

2012 000000 00758 000038718 8

DAVID REPKO 08-12
1422 CLARKVIEW RD, SUITE 401
BALTIMORE, MD 21209

7-11 3098
520

DATE 12/16/12

110

PAY TO THE ORDER OF Loiseth Washington-Lopez, Treasurer \$ 387.18
Three Hundred Eighty Seven 18/100 DOLLARS 
M&T Bank
Originating Institution Office

MEMO Receipt 2012-000758  MP



GEORGETOWN COUNTY, SOUTH CAROLINA

P.O. Box 421270 • Georgetown, SC 29442

Lorella D. Washington-Cooper, County Treasurer/Tax Collector



REAL ESTATE AND PERSONAL PROPERTY TAX NOTICE



T3B P44 **AUTO 5-DIGIT 29585 PLT2
REPKO DAVID M
217 EGRET RUN LANE # 923
PAWLEYS ISLAND SC 29585
016090

Please make checks payable to: Lorella Washington-Cooper, Treasurer/Tax Collector

Do not send partial payment.

You can pay your taxes online at: www.georgetowncountysc.org

Unpaid taxes will become DELINQUENT after 3/16/2013 and will be subject to additional penalties and costs.

TAX YEAR 2012

PROPERTY DESCRIPTION

RECEIPT # 2012-054936

01 0122E 0770000

LOT 1077 COMMUNITY II

WEST STEWART PHASE

1.0 LOTS/ACRES 15,000 MARKET

RATIO % 6.0

ASSESSMENT 900

TAX RATE .2151

LAST YEAR TAXES ONLY - DOES NOT INCLUDE FEES OR PENALTIES. 193.

TAX BREAKDOWN

TAX BEFORE CREDITS 193.

NET PROPERTY TAX 193.

TOTAL DUE ON/BEFORE JAN 15 193.

PENALTY SCHEDULE

AMOUNT DUE AFTER 1/15/2013 199.

AMOUNT DUE AFTER 2/1/2013 212.

* Please write receipt # on check. *
*** US FUNDS ONLY! ***

GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE & TAX DOLLARS

MILLS	AGENCY	TAXES	AGENCY	CODE	% OF BILL
133.4		120.06 SCHOOL PURPOSES	SCH	62.0	
37.0		33.30 COUNTY PURPOSES	CNT	17.2	
26.2		23.58 FIRE PROTECTION	FIR	12.2	
14.7		13.23 LAW ENFORCEMENT	LAW	6.8	
2.6		2.34 RECYCLE/SOLID WASTE	RCY	1.2	
1.2		1.08 HIGHER EDUCATION	HED	.6	

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2012-054936
01 0122E 0770000 LOT 1077 COMMUNITY II
REPKO DAVID M

217 EGRET RUN LANE # 923
PAWLEYS ISLAND SC 29585

ADDRESS

CHANGES

PENALTY SCHEDULE
AMOUNT DUE BY 1/15/2013 193.5
AMOUNT DUE AFTER 1/15/2013 199.4
AMOUNT DUE AFTER 2/1/2013 212.9
AFTER 3/16/2013 PLACED IN EXECUTION
WITH ADDITIONAL COSTS ADDED
* Please write receipt # on check. *
*** US FUNDS ONLY! ***

2012 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

2012 000000 54936 000019359 9

DAVID REPKO 08-12 1422 CLARKVIEW RD. SUITE 401 BALTIMORE, MD 21209		7-11 520 3098	109
DATE 12/16/2012			
PAY TO THE ORDER OF Corretta Washington - Cooper, Treasurer		\$ 193.59	
One Hundred & Ninety Three 59/100		DOLLARS ☒ MyChoice Plus	
 M&T Bank Overseas Branch Office			
MEMO Receipt # 2012-054936			

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2012-000758
01 0122A 0170000 LOT 17 "HARMONY OLD TOW
ALMONY JAMES M
REPKO DAVID M
217 EGRET RUN LN#923
PAWLEYS ISLAND SC 29585

ADDRESS

CHANGES

PENALTY SCHEDULE

AMOUNT DUE BY 1/15/2013	387.1
AMOUNT DUE AFTER 1/15/2013	398.8
AMOUNT DUE AFTER 2/1/2013	425.9
AFTER 3/16/2013 PLACED IN EXECUTION WITH ADDITIONAL COSTS ADDED	
* Please write receipt # on check. *	
*** US FUNDS ONLY ***	

2012 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

2012 000000 00758 000038718 8

DAVID REPKO 08-12 1422 CLARKVIEW RD. SUITE 401 BALTIMORE, MD 21209		7-11 3098 620	110
DATE <u>12/16/12</u>			
PAY TO THE ORDER OF <u>Loiseth Washington-Lopez, Treasurer</u>		\$ 387.18	
<u>Three Hundred Eighty Seven 18/100</u>		DOLLARS  MyChoice Plus	
 GreenSpring Station Office			
MEMO <u>Receipt # 2012-000758</u>			RP



GEORGETOWN COUNTY, SOUTH CAROLINA
P.O. Box 421270 • Georgetown, SC 29442
Loretta D. Washington-Cooper, County Treasurer/Tax Collector



REAL ESTATE AND PERSONAL PROPERTY TAX NOTICE

44635 1 MB 0.360 ****AUTO**MIXED AADC 290
044635
REPKO DAVID M
2317 BOSTON ST UNIT 3
BALTIMORE MD 21224-3669

Please make checks payable to: Loretta Washington-Cooper, Treasurer/Tax Collector

Do not send partial payment.

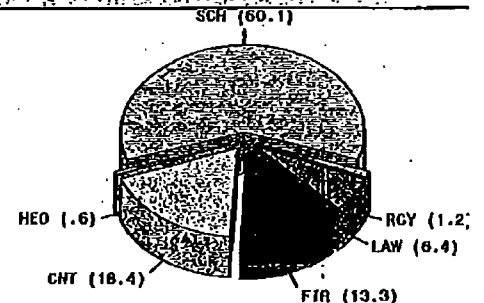
You can pay your taxes online at: www.georgetowncountysc.org

Unpaid taxes will become DELINQUENT after
3/16/2008 and will be subject to additional
penalties and costs.

TAX YEAR 2007	
PROPERTY DESCRIPTION	
RECEIPT # 2007-052101	
01 0122E 0760000	
LOT 1076 COMMUNITY II	
WEST STEWART PHASE D	
1.0 LOTS/ACRES	79,000 MARKET
RATIO %	6.0
ASSESSMENT	4,740
TAX RATE	.1936
TAX BREAKDOWN	
TAX BEFORE CREDITS	917.66
NET PROPERTY TAX	917.66
TOTAL DUE ON/BEFORE JAN 15	917.66
PENALTY SCHEDULE	
AMOUNT DUE AFTER 1/15/2008	945.19
AMOUNT DUE AFTER 2/1/2008	1,009.43
* Please write receipt # on check. *	
*** US FUNDS ONLY! ***	

GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE & TAX DOLLARS

MILLS	AGENCY TAXES	AGENCY CODE	% OF BILL
116.3	551.26 SCHOOL PURPOSES	SCH 60.1	
35.7	169.21 COUNTY PURPOSES	CNT 18.4	
25.7	121.82 FIRE PROTECTION	FIR 13.3	
12.4	68.78 LAW ENFORCEMENT	LAW 6.4	
2.4	11.38 RECYCLE/SOLID WASTE	RCY 1.2	
1.1	5.21 HIGHER EDUCATION	HED .6	



PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2007-052101
01 0122E 0760000 LOT 1076 COMMUNITY II
REPKO DAVID M
2317-3 BOSTON STREET
BALTIMORE MD 21224

ADDRESS

CHANGES

PENALTY SCHEDULE	
AMOUNT DUE BY 1/15/2008	917.66
AMOUNT DUE AFTER 1/15/2008	945.19
AMOUNT DUE AFTER 2/1/2008	1,009.43
AFTER 3/16/2008 PLACED IN EXECUTION WITH ADDITIONAL COSTS ADDED	
* Please write receipt # on check. *	
*** US FUNDS ONLY! ***	

2007 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

GEORGETOWN COUNTY, SOUTH CAROLINA

NOTICE OF CLASSIFICATION, APPRAISAL & ASSESSMENT OF REAL ESTATE 2007 TAX YEAR

Georgetown County Assessor's Office
129 Screven Street
PO Box 421270
Georgetown, South Carolina 29442

306B 1 MB 0.360 *****AUTO**MIXED AADC 290
003068
REPKO DAVID M
2317 BOSTON ST UNIT 3
BALTIMORE MD 21224-3669 13
3068

Notice:
This is NOT your
Tax Dollar Amount.

CLASSIFICATION	ACRES/ LOTS	MARKET VALUE	X	RATIO	=	ASSESSMENT
* OWNER OCCUPIED RESIDENTIAL						
* OTHER PROPERTY	ACRES 1.0	79,000	X	6%	=	4,740
MARKET VALUE - AGRICULTURAL						
* USE VALUE - AGRICULTURAL						
TOTAL ASSESSMENT						= 4,740

TAX MAP NUMBER
01-0122E-0760000

THE TOTAL MARKET
VALUE ESTIMATE IS
79,000

REASON FOR CHANGE
11 NEW PARCEL

PROPERTY LOCATION - SUBDIVISION - LEGAL DESCRIPTION
LOT 1076 COMMUNITY II
WEST STEWART PHASE D

IF YOU DISAGREE WITH THE APPRAISAL AND ASSESSMENT, YOU MUST FILE WRITTEN
OBJECTION WITH THE ASSESSOR WITHIN 90 DAYS OR BEFORE. 12/21/2007

TAX DISTRICT	DATE OF NOTICE
01	9/22/2007

FOR INFORMATION CALL: (843) 545-3014

IF YOU WISH TO APPEAL THE ASSESSMENT ON YOUR PROPERTY

If you disagree with the assessor's appraisal of your property and wish to appeal, state law provides the following procedure in Section 12-60-2520 of the 1976 Code of Laws, as amended:

1. Within ninety (90) days after dated notice of reassessment, the property owner or his agent must file a written objection with the assessor.
2. The assessor will conduct a review and notify the property owner of the results of the review.
3. Within thirty (30) days of further objection, a conference will be scheduled. The assessor, in turn, will request that you provide, within thirty (30) days, additional data to help determine the value of your property.
4. After the conference has been completed, the Assessor will notify you in writing of his finding. If you still disagree with the assessment, you have thirty (30) days to file a written notice of your request to appeal your assessment to the Board of Assessment Appeals.
5. State law requires that you must pay 80% of tax generated on the proposed assessment if it appears that the appeal will not be settled by December 31 of the tax year in question. A taxpayer may pay more than 80% if agreed in writing by the taxpayer.

THIS IS A NOTICE OF CLASSIFICATION, APPRAISAL AND ASSESSMENT OF REAL ESTATE

Section 12-60-2510 of the 1976 Code of Laws, as amended provides for the classification and uniform assessment ratio of property. The property described herein has been appraised and assessed at the appropriate assessment ratio by the assessor.

THIS IS NOT A TAX BILL

EXPLANATION OF NOTICE ON BACK

The Assessment is not
Your tax dollar amount.
ASSESSMENT X MILLAGE RATE= TAXES



**ANNOUNCING ADVANCE INSTALLMENT PAYMENTS FOR TAX YEAR 2008 REAL PROPERTY TAXES
(NOT FOR THE ENCLOSED 2007 TAX YEAR NOTICE)**

It is my pleasure to provide Advance Installment Payments of Real Property Taxes to the citizens of Georgetown County.

Beginning with the next (2008) tax year, Georgetown County taxpayers will have the opportunity to make advance installment payments on real property taxes. Only real property taxes (land, buildings, mobile homes) will be accepted. Installment payments are not allowed for business personal, vehicle, boat/motor, or taxes paid through an escrow account. Those wanting to participate will make five (5) advance payments based on the previous year's taxes paid. The first payment will be due by February 15, 2008. The balance will be billed by November 15, 2008.

Visit our web-site at www.georgetowncountysc.org for an application. Click on Tax Information and then go to Treasurer. You must apply for tax year 2008 installment payments by January 15, 2008.

Loretta D. Washington-Cooper
Treasurer/Tax Collector

Georgetown County Assessor
129 Screven Street
PO Box 421270
Georgetown, South Carolina 29442
(843) 545-3014
Fax (843) 545-3156

Date 11-5-08

David M. Repko
217 Equus Run Lane #923
Pawleys Island, SC 29585

Tax Map Number 01-122E-077-00-00 Lot 1077

Your request for review of the market value of the above referenced property for the 2008 tax year has been carefully considered and a re-inspection of the property and or a telephone conference has been made.

The result of this review per ☒ site inspection / ☐ conference call / ☒ other is as follows:

Total Appraised value-with change in value _____ Ratio _____

Total Appraised value-with no change in value 39,500 Ratio .06

If you agree with the results, please sign below and return to our office within 30 days of notice. If not please call me at the above phone number to discuss further.

Accepted by _____ Date _____

Respectfully yours,



Jeanette Alston
Georgetown County Assessor Office

This document may be returned via return mail or fax

Georgetown County Assessor
129 Screven Street
PO Box 421270
Georgetown, South Carolina 29442
(843) 545-3014
Fax (843) 545-3156

Date 11-5-08

David M. Repko

2317-3 Boston St

Baltimore, Md 21224

Tax Map Number 01-0122E-076-00-00 Lot 1076

Your request for review of the market value of the above referenced property for the 2008 tax year has been carefully considered and a re-inspection of the property and or a telephone conference has been made.

The result of this review per ✓ site inspection / conference call / ✓ other is as follows:

Total Appraised value-with change in value _____ **Ratio** _____

Total Appraised value-with no change in value \$ 39,500 Ratio .06

If you agree with the results, please sign below and return to our office within 30 days of notice. If not please call me at the above phone number to discuss further.

Accepted by _____ Date _____

Respectfully yours,

Alota

Jeanette Alston
Georgetown County Assessor Office

This document may be returned via return mail or fax



GEORGETOWN COUNTY, SOUTH CAROLINA
P.O. Box 421270 • Georgetown, SC 29442
Loretta D. Washington-Cooper, County Treasurer/Tax Collector



REAL ESTATE AND PERSONAL PROPERTY TAX NOTICE



REPKO DAVID M
2317-3 BOSTON STREET
BALTIMORE MD 21224

Please make checks payable to: Loretta Washington-Cooper, Treasurer/Tax Collector
Do not send partial payment.
You can pay your taxes online at: www.georgetowncountysc.org

Unpaid taxes will become DELINQUENT after
3/16/2009 and will be subject to additional
penalties and costs.

TAX YEAR		2008
PROPERTY DESCRIPTION		
RECEIPT # 2008-053719		
01 0122E 0760000		
LOT 1076 COMMUNITY II		
WEST STEWART PHASE D		
1.0 LOTS/ACRES	39,500	MARKET
RATIO %	6.0	
ASSESSMENT	2,370	
TAX RATE	.1990	
LAST YEAR TAXES ONLY - DOES NOT INCLUDE		
HOUSEHOLD FEE OR PENALTIES.	458.8	
TAX BREAKDOWN		
TAX BEFORE CREDITS	471.6	
NET PROPERTY TAX	471.6	
TOTAL DUE		
ON/BEFORE JAN 15	471.6	
PENALTY SCHEDULE		
AMOUNT DUE AFTER 1/15/2009	485.7	
AMOUNT DUE AFTER 2/1/2009	518.7	
* Please write receipt # on check. *		
*** US FUNDS ONLY! ***		

AGENCY			GOVERNMENT AGENCIES RESPONSIBLE FOR MILLAGE & TAX DOLLARS		
MILLS	TAXES		AGENCY	CODE	% OF BILL
121.7	288.43	SCHOOL PURPOSES	SCH	61.2	
35.7	84.60	COUNTY PURPOSES	CNT	17.9	
25.7	60.91	FIRE PROTECTION	FIR	12.9	
12.4	29.39	LAW ENFORCEMENT	LAW	6.2	
2.4	5.69	RECYCLE/SOLID WASTE	RCY	1.2	
1.1	2.61	HIGHER EDUCATION	HED	.6	

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT IN THE ENCLOSED RETURN ENVELOPE

RECEIPT # 2008-053719
01 0122E 0760000 LOT 1076 COMMUNITY II
REPKO DAVID M

2317-3 BOSTON STREET
BALTIMORE MD 21224

ADDRESS

CHANGES

PENALTY SCHEDULE	
AMOUNT DUE BY 1/15/2009	471.63
AMOUNT DUE AFTER 1/15/2009	485.76
AMOUNT DUE AFTER 2/1/2009	518.76
AFTER 3/16/2009 PLACED IN EXECUTION	
WITH ADDITIONAL COSTS ADDED	
* Please write receipt # on check. *	
*** US FUNDS ONLY! ***	

2008 TAX NOTICE
Georgetown County Real Estate and
Personal Property Tax Notice

2008 000000 53719 000047163 3

Georgetown County Treasurer/Tax Collector

Po Box 421270

Georgetown, SC 29442

www.georgetowncountysc.org

Loretta D. Washington-Cooper

Phone (843) 545-3098

Fax (843) 545-3295

Application for Advance Installment Payments of Real Property Taxes

ALL LINES MUST BE FILLED OUT

Please print all information

Tax Map Number

(submit separate application for each tax map number)

Owner's Name

Owner's Mailing
Address

Date

Signature

Printed Signature

By completing this application you are electing to participate in the Advance Installment Payment of Real Property Taxes, according to SC Code of Laws Section 12-45-75 and County of Georgetown Ordinance #2007-04. An installment election is not allowed for business personal, vehicle, boat/motor or taxes paid through escrow. Participants pay five (5) installments, based on the previous year's tax amount. The final balance will be billed by November 15th of the tax year. The payment of installments and the credit allowed arising from these payments in no way alters the due date, penalty schedule and enforced collection of property taxes as provided by law. If a taxpayer electing to pay in installments does not timely make each payment pursuant to the schedule in subsection (3), the county may refuse to accept all other installment payments. If the county refuses to accept all other installment payments, the remaining balance is due in accordance with Section 12-45-70. If a taxpayer elected to participate and decides to cancel the installment payment option written notification is required.

ANNOUNCING ADVANCE INSTALLMENT PAYMENTS FOR TAX YEAR 2009 REAL PROPERTY TAXES:
(NOT FOR THE ENCLOSED 2008 TAX YEAR NOTICE)

Enclosed is an application for Advance Installment Payments. Georgetown County taxpayers will have the opportunity to make advance installment payments on real property taxes. Only real property taxes (land, buildings, mobile homes) will be accepted. Installment payments are not allowed for business personal, vehicle, boat/motor, or taxes paid through an escrow account.

Those wanting to participate will make five (5) advance payments based on the previous year's taxes paid. The first payment will be due by February 15, 2009. The balance will be billed by November 15, 2009. You must apply for year 2009 installment payments by January 15, 2009.

Loretta D. Washington-Cooper
Treasurer/Tax Collector

3660



PLA
STAN
HEF

☐ PLEASE CHECK IF NEW ADDRESS

LORETTA D. WASHINGTON-COOPER
GEORGETOWN COUNTY TREASURER/TAX COLLECTOR
PO BOX 1422
COLUMBIA SC 29202-1422



	GEORGETOWN COUNTY WATER AND SEWER DISTRICT				
	Administration	(843) 237-9727	Finance/Purchasing	(843) 527-3204	
	Engineering	(843) 237-9719	Customer Service	(843) 546-8408	
	Fax (Pawleys Island)	(843) 237-1615	Fax (Georgetown)	(843) 527-3004	
P.O. Box 2730 Pawleys Island, SC 29585		P.O. Box 2746 Georgetown, SC 29442		www.gcwsd.com	

April 3, 2007

Ms. Holly Richardson
Georgetown County Planning
and Development Council
120 Broad Street
Georgetown, South Carolina 29440

RE: Harmony Township Phase 2D-1 & 2D-2
GCWSD Project No. 06 - 67

Dear Ms. Richardson:

This letter is forwarded to you at the request of The Earthworks Group, the project engineer for the above referenced project. Based upon the enclosed letter addressed to you dated March 7, 2007 regarding "Harmony Township, Phase 2D1 AIA Pay Application #4", District staff has conducted a site inspection of the water and sewer utility infrastructure installed to date.

Based upon this inspection, it appears that the construction of the sewer mainlines, manholes, and sewer service laterals as permitted for the project have been completed as indicated in the above letter. Likewise, all water mainlines, valves and hydrants have been installed. There are some minor appurtenances, such as valve boxes for the gate valves and protective collars for the sewer clean-outs and gate valve boxes, that have yet to be installed, but these are usually installed during or after the roadways have been graded with base rock and curbing has been installed. In any regard, the materials were observed to be on the site, and ready for installation.

If you have any questions please contact Mr. Lee Eaddy in the Engineering Department at 237-9727.

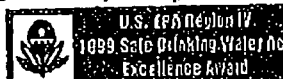
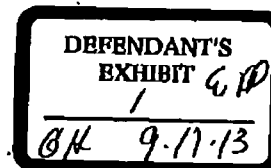
Sincerely,
GEORGETOWN COUNTY WATER AND SEWER DISTRICT



Dwight J. Mohaffy, PE
Engineering Manager

Cle/enclosures

cc: Mr. Steven G. Strickland, P.E., The Earthworks Group
Mr. Brad Jenkins, Spanish Moss Development, LLC
File: 06-57



Wachara LOC

COLUMBIA

CHARLEST

FLORENCE

GREENVILLE

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.770.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

STANLEY H. MCGUFFIN
CERTIFIED BANKRUPTCY SPECIALIST
DIRECT DIAL NUMBER 803.640.7836
EMAIL smcguffin@hsblawfirm.com

August 25, 2008

Dear Creditors and Parties In Interest:

You are receiving this letter from the Official Committee of Unsecured Creditors for Harmony Holdings, LLC ("Committee") because you are either a creditor or property owner in Harmony Township. The purpose of this letter is to provide you a status report on recent developments in the Chapter 11 case and a recommendation from the Committee regarding the proposed Chapter 11 Plan of Reorganization ("Plan").

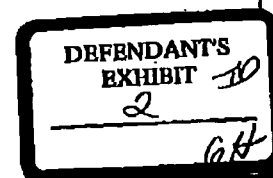
You should have received by now a package from the Debtor containing the Disclosure Statement and Plan. The Court will consider the Plan for approval at a hearing on September 18, 2008 at 10:30 a.m. at the United States Bankruptcy Court in Charleston (located in Room 225 King & Queen Building 145 King Street). You are invited to attend although your presence is not required. However, it is important that you file your ballot regarding the Plan. Ballots must be received by the Bankruptcy Court on or before September 8, 2008, in order to be counted. Ballots should be completed, signed and then mailed to:

United States Bankruptcy Court
1100 Laurel Street
Columbia, S.C. 29201-2423

The Committee is recommending that creditors and property owners file a ballot to "Accept" the Plan. If you have any questions regarding how to complete your ballot, please do not hesitate to contact me.

Although there have been rumors and promises of different proposals to complete development of Harmony Township from various sources, the Plan is currently the only formal proposal that has been filed with the Bankruptcy Court and presented to creditors for consideration. It is not perfect and may undergo some minor changes before it is ultimately considered by the Bankruptcy Court. However, if approved, the Plan would accomplish some major goals in that it would (a) get development of Harmony Township moving forward in accordance with the original development

Columbia 1081593 v 1



Haynsworth
Inkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

Creditors and Parties In Interest
August 25, 2008
Page 2

concept and (b) provide for payment of allowed claims. Unsecured claims are scheduled to be paid by December 31, 2009, with a partial payment of the claims to be made by December 31, 2008.

You should be aware that there are still obstacles to be overcome before the Plan is approved. The Debtor has obtained a financing commitment for \$19,000,000 which has to be approved by the Bankruptcy Court. This approval is critical to moving forward with the Plan. It is anticipated that the proposed financing will be opposed by Barney Ng. A hearing has now been scheduled on the matter for September 18, 2008, at 10:30 a.m. in Charleston, S.C. along with the Plan confirmation hearing and other related matters.

Another hurdle facing the Debtor are pending motions by Barney Ng and R.E. Loans, LLC to dismiss the Chapter 11 case or to allow these creditors to proceed with a pending foreclosure action. If either of these motions are granted, the Chapter 11 case likely will fail. Hearings on these matters were conducted on August 21 and 22 in Charleston. The judge has the matter under advisement and we expect a ruling within the next week or so. We are hopeful and cautiously optimistic that the Court will deny the motions of Barney Ng and R.E. Loans so that the case can proceed.

We will endeavor to keep you apprised as matters develop.

Sincerely,

Stanley H. McGuffin (SR)

Stanley H. McGuffin
Attorney for Official Committee of Unsecured
Creditors of Harmony Holdings, LLC

cc: Alan Wheeler
Jon Montgomery
Lisa Rowe
Peter Stevens
Anthony Tocco

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Harmony Holdings, LLC
Spanish Moss Development, LLC

) CHAPTER 11

) CASE NO: 08-00599
) 08-00804

Debtor(s).

) BALLOT FOR ACCEPTING OR
) REJECTING PLAN

Harmony Holdings, LLC filed a plan of reorganization dated July 23, 2008 in this case. The court has approved a disclosure statement (either conditionally or after notice and upon hearing) with respect to the plan. The disclosure statement provides information to assist you in deciding how to vote your ballot. If you do not have a disclosure statement, you may obtain a copy from the proponent of the plan whose name and address is shown on the order setting confirmation hearing. Court approval of the disclosure statement does not indicate approval of the plan by the court. The plan referred to in this ballot can be confirmed by the court only if two-thirds in amount and more than one-half in number of creditors in each class and at least two-thirds in amount of each class of interests voting on the plan, accept the plan.

You should review the disclosure statement and plan before you vote. You may wish to seek legal advice concerning the plan and your classification and treatment under the plan. Your claim or equity interest has been placed in a specific class under the plan. If you hold claims or equity interests in more than one class, the proponent should provide you with a ballot for each class in which you are entitled to vote.

Return this ballot on or before September 8, 2008 to the United States Bankruptcy Court, 1100 Laurel Street, Columbia, SC 29201-2423 and serve a copy on the proponent of the plan shown on the order setting confirmation hearing. Ballots accepting or rejecting the plan shall be counted only if received by the United States Bankruptcy Court on or before September 8, 2008. If your ballot is not received by the United States Bankruptcy Court by the deadline, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the plan. If the plan is confirmed by the court it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN*

(Fill in A, B, or C; if creditor has a claim in more than 1 area file a separate ballot for each claim)

A. The undersigned voter is a property owner and a party in interest.

THE VOTER IS A Class 8: CLASS OF CREDITOR AND () ACCEPTS THE PLAN OR () REJECTS THE PLAN
(Harmony)
OR

B. The undersigned voter is the holder of a BOND, DEBENTURE, OR OTHER DEBT SECURITY, and has a claim against the debtor in the amount of \$ _____ (principal amount). The undersigned should describe the bond, debenture or other debt security, and for purposes of this ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.

THE VOTER IS A _____ CLASS OF CREDITOR AND () ACCEPTS THE PLAN OR () REJECTS THE PLAN

OR

C. The undersigned voter is the holder of an EQUITY INTEREST, and has _____ shares or other interests of (describe equity interest: _____) in the debtor.

THE VOTER IS A _____ CLASS OF CREDITOR AND () ACCEPTS THE PLAN OR () REJECTS THE PLAN

Dated: _____

David M. Repko
Print or type name of creditor

[Signature]
Signature

212-3 Burton St
Title (if corporation or partnership)

Baltimore, MD 21224
Address

*Failure to provide complete information in the applicable section may result in the court being unable to classify and count this ballot.

C11-1013/10/05

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Harmony Holdings, LLC
Spanish Moss Development, LLC

CHAPTER 11

CASE NO: 08-00599
08-00804

Debtor(s).

BALLOT FOR ACCEPTING OR
REJECTING PLAN

Harmony Holdings, LLC filed a plan of reorganization dated July 23, 2008 in this case. The court has approved a disclosure statement (either conditionally or after notice and upon hearing) with respect to the plan. The disclosure statement provides information to assist you in deciding how to vote your ballot. If you do not have a disclosure statement, you may obtain a copy from the proponent of the plan whose name and address is shown on the order setting confirmation hearing. Court approval of the disclosure statement does not indicate approval of the plan by the court. The plan referred to in this ballot can be confirmed by the court only if two-thirds in amount and more than one-half in number of creditors in each class and at least two-thirds in amount of each class of interests voting on the plan, accept the plan.

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ACCEPTANCE OR REJECTION OF THE PLAN¹

(Fill in A, B, or C; if creditor has a claim in more than 1 area file a separate ballot for each claim)

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THE VOTER IS A Class 8 CLASS OF CREDITOR AND ☒ ACCEPTS THE PLAN OR () REJECTS THE PLAN
(Harmony)
OR

B. The undersigned voter is the holder of a BOND, DEBENTURE, OR OTHER DEBT SECURITY, and has a claim against the debtor in the amount of \$ (principal amount). The undersigned should describe the bond, debenture or other debt security, and for purposes of this ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.

THE VOTER IS A CLASS OF CREDITOR AND () ACCEPTS THE PLAN OR () REJECTS THE PLAN
OR

C. The undersigned voter is the holder of an EQUITY INTEREST, and has shares or other interests of (describe equity interest:) in the debtor.

THE VOTER IS A CLASS OF CREDITOR AND () ACCEPTS THE PLAN OR () REJECTS THE PLAN

Dated:

David M Repko
Print or type name of creditor

[Signature]
Signature

231723 Boston St
Title (if corporation or partnership)
Baltimore, MD 21224
Address

¹ Failure to provide complete information in the applicable section may result in the court being unable to classify and count this ballot.

C11-1013/10/05

rec'd 11-04-08

11/3/2008

To Whom It May Concern:

I am writing to request an appeal on the taxes assessed to the following property.

01-0122E-0760000

Lot 1076 Community II West Stewart

\$39,500
AV \$2,370
amt for
11-12-08

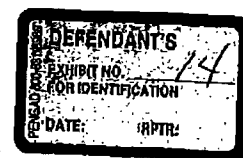
My name is David M. Repko owner of the above property. I respectfully request an inquiry into the property in question. There have been no changes in the project over the last 19 months due to unfortunate circumstances beyond our control. I believe it is unfair to contribute to the tax base when we are unable to reap the benefits of where our tax money is spent. The property has no utilities and not able to be built upon. The property values have steadily decreased and continue to decrease.

Harmony Township has been and will be in Bankruptcy proceedings for quite some time. No properties are selling and the community is falling into disrepair. This property has been on the market for over 6 months without one inquiry. It has been listed and marketed. It is basically without value.

Thank you for your consideration,

David M. Repko

David M. Repko



DEFENDANT'S EXHIBIT# _____

11/3/2008

To Whom It May Concern:

I am writing to request an appeal on the taxes assessed to the following property.

01-0122E-0770000

Lot 1077 Community II West Stewart

My name is David M. Repko owner of the above property. I respectfully request an inquiry into the property in question. There have been no changes in the project over the last 19 months due to unfortunate circumstances beyond our control. I believe it is unfair to contribute to the tax base when we are unable to reap the benefits of where our tax money is spent. The property has no utilities and not able to be built upon. The property values have steadily decreased and continue to decrease.

Harmony Township has been and will be in Bankruptcy proceedings for quite some time. No properties are selling and the community is falling into disrepair. This property has been on the market for over 6 months without one inquiry. It has been listed and marketed. It is basically without value.

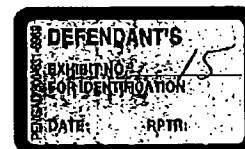
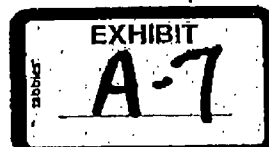
Thank you for your consideration,

David M. Repko

David M. Repko

NOV 3 2 2308

\$39,500
\$2370
sent HR
11-12-08



DEFENDANT'S EXHIBIT# _____

NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas**

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-0385

David M. Repko,

Appellant,

v.

**County Of Georgetown, a
*Body Politic***

Respondent.

**FILED
GEORGETOWN COUNTY, S.C.
2014 JAN 15 PM 4:05
ALMA Y. WHITE
CLERK OF COURT**

NOTICE OF APPEAL

David M. Repko appeals the order of the Honorable Benjamin H. Culbertson dated December 19, 2013. Appellant received written notice of entry of this order on December 19, 2013.

January 13, 2014


Stephen Goldfinch, Esq.
Post Office Box 829
Murrells Inlet, South Carolina 29576
(843) 357-9301 telephone
(843) 357-9303 facsimile
Attorney for Appellant

Other Counsel of Record:
David J. Mills
Dan V. Butler
Post Office Box 1469
Pawleys Island, South Carolina 29585
Attorneys for Respondent
(843) 235-4100 telephone
(843) 235-4101 facsimile

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-0385

David M. Repko,

Appellant,

v.

County Of Georgetown, a
Body Politic

Respondent.

FILED
GEORGETOWN COUNTY, S.C.
2014 JAN 15 PM 4:06
ALMA Y. WHITE
CLERK OF COURT

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of January, 2014, the forgoing Notice of Appeal was hand delivered to the following counsel of Record:

David J. Mills
Dan V. Butler
McNair Law Firm
Post Office Box 1469
Pawleys Island, South Carolina 29585
Attorneys for Respondent



Stephen Goldfinch, Esq.
Post Office Box 829
Murrells Inlet, South Carolina 29576
(843) 357-9301 telephone
(843) 357-9303 facsimile
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-22-558

David M. Repko, et al.
PLAINTIFF(S)

County of Georgetown
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs' Motion to Reconsider and for New Trial is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

FILED
GEORGETOWN COUNTY, S.C.
2013 DEC 19 PM 3:45
ALMA Y. WHITE
CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Dec. 19, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on December 10th 2013, and a copy mailed first class or placed in the appropriate attorney's box on December 20th 2013, to attorneys of record or to parties (when appearing pro se) as follows:

William Thomas Moody 11019 Tournament Blvd Suite 203
Murrells Inlet, SC 29576

David J. Mills PO Box 1469 Pawleys Island, SC 29585
Danny Villacarlos Butler PO Box 336 Myrtle Beach, SC
29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Kay H. Richardson

Gary Bailey, Deputy for
Alma Y. White - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

AMENDED NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-0558

David M. Repko,

Appellant,

v.

County Of Georgetown, a
Body Politic

Respondent.

FILED
GEORGETOWN COUNTY, S.C.
2014 JAN 17 PM 4:45
ALMA Y. WHITE
CLERK OF COURT

AMENDED NOTICE OF APPEAL

David M. Repko appeals the order of the Honorable Benjamin H. Culbertson dated December 19, 2013. Appellant received written notice of entry of this order on December 19, 2013.

January 17, 2014


Stephen Goldfinch, Esq.
Post Office Box 829
Murrells Inlet, South Carolina 29576
(843) 357-9301 telephone
(843) 357-9303 facsimile
Attorney for Appellant

Other Counsel of Record:
David J. Mills
Dan V. Butler
Post Office Box 1469
Pawleys Island, South Carolina 29585
Attorneys for Respondent
(843) 235-4100 telephone
(843) 235-4101 facsimile

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-22-0558

David M. Repko,

Appellant,

v.

County Of Georgetown, a
Body Politic

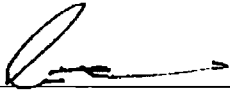
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of January, 2014, the forgoing Amended Notice of Appeal was hand delivered to the following counsel of Record:

David J. Mills
Dan V. Butler
McNair Law Firm
Post Office Box 1469
Pawleys Island, South Carolina 29585
Attorneys for Respondent

FILED
GEORGETOWN COUNTY, S.C.
2014 JAN 17 PM 4:45
ALMA Y. WHITE
CLERK OF COURT


Stephen Goldfinch, Esq.
Post Office Box 829
Murrells Inlet, South Carolina 29576
(843) 357-9301 telephone
(843) 357-9303 facsimile
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NO. 2012-CP-22-558

David M. Repko, et al.
PLAINTIFF(S)

County of Georgetown
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs' Motion to Reconsider and for New Trial is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
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N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Dec. 19, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on December 10th 2013, and a copy mailed first class or placed in the appropriate attorney's box on December 20th 2013, to attorneys of record or to parties (when appearing pro se) as follows:

William Thomas Moody 11019 Tournament Blvd Suite 203
Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

David J. Mills PO Box 1469 Pawleys Island, SC 29585
Danny Villacarlos Butler PO Box 336 Myrtle Beach, SC
29578

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter- Kay H. Richardson

Joey C. Bailey Deputy for
Alma Y. White - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Goldfinch Winslow

Attorneys and Counselors at Law

Physical Address:
11019 Tournament Blvd., Suite 202
Murrells Inlet, SC 29576

Telephone: (843) 357-9301
Facsimile: (843) 357-9303

Mailing Address:
Post Office Box 829
Murrells Inlet, SC 29576

January 17, 2014

South Carolina Court of Appeals
Clerk of Court, Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: David M. Repko V. County of Georgetown

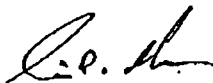
Dear Court of Appeals:

Please find enclosed our Amended Notice of Appeal in the above matter. The Clerk's office in Georgetown called my office yesterday to inform me that we had case number 2012-CP-22-0385 on the Notice. Originally there were two cases 2012-CP-22-0385 and 2012-CP-22-0558 and the Court had consolidated the two cases and proceeded under case number 2012-CP-22-0558. This Amended Notice is simply correcting the case number. I apologize for both the incorrectness of the original notice and for any inconvenience or confusion this may have caused.

Should you have any questions or wish to discuss the matter further, please do not hesitate to contact me.

With kindest regards, I am

Yours sincerely,



Stephen Goldfinch, Attorney at Law

SG/rb
Enclosure
cc: David Mills, Esq.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-22-00385-558

DAVID M. REPKO,
PLAINTIFF,

vs.

COUNTY OF GEORGETOWN,
a body politic,
DEFENDANT.

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION AND FOR
A NEW TRIAL

FILED
GEORGETOWN COUNTY, S.C.
2012 OCT -9 AM 11:49
CLERK OF COURT

TO: THE DEFENDANT NAMED ABOVE AND IT'S COUNSEL, DAVID J. MILLS, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, David M. Repko (hereinafter "Repko"), by and through his undersigned counsel, will move before the Honorable Benjamin Culbertson, on the within ten (10) days of service hereof upon you, or as soon thereafter as this matter may be heard, for an Order of this Court granting Repko's Motion for Reconsideration and Motion for a New Trial as a result of that certain Order for Directed Verdict signed by Judge Culbertson on September 30, 2013, and served on Repko on October 1, 2012 (a copy of said Order is attached hereto and incorporated herein by reference as Exhibit "A", hereinafter referred to as "Order"). This Motion is based upon Rule 59 of the South Carolina Rules of Civil Procedure.

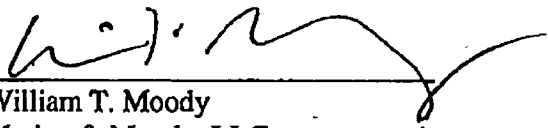
In support of their motion, Repko would request that the Court reconsider the following:

1. The decision of the Court to direct a verdict against in favor of the Defendant, finding that the Defendant owed no duty to the Plaintiff under Article V, Section 3 of the Georgetown County's Development Regulations based upon

the language of the Ordinance disclaiming any duty.

2. The decision of the Court to direct a verdict in favor of the Defendant by applying the Public Duty Rule.
3. The decision of the Court to direct a verdict in favor of the Defendant based upon the South Carolina Tort Claims Act, Section 15-78-10, et. seq. of the South Carolina Code of Laws, 1976, as amended, specifically, Sections 15-78-60(4), (5), and (13) thereof.

This motion will be further supported by the transcript of testimony at the trial of this case, argument, memoranda, stipulations of fact, the pleadings, and/or other materials as may be filed and served upon the parties in accordance with the South Carolina Rules of Civil Procedure.



William T. Moody
Maring & Moody, LLC
PO Box 478
1130 Highmarket Street
Georgetown, SC 29442
(843) 545-9544
Fax: (843) 545-9735
Attorneys for David M. Repko

Georgetown, South Carolina

October 9, 2013

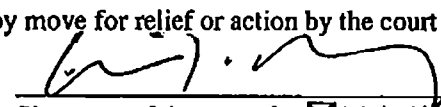
STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

David M. Repko,
Plaintiff,
vs.
County of Georgetown,
Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-22-0385 ⁵⁵⁸

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>William T. Moody, Bar No. 63035</u> Address: <u>PO Box 478, Georgetown, SC 29442</u> Phone: <u>843-545-9544</u> Fax: <u>843-545-9735</u> E-mail: <u>bill@mmattorneysatlaw.com</u> Other: _____		Defendant's Attorney: <u>David J. Mills, Bar No. _____</u> Address: <u>PO Box 1469, Pawleys Island, SC 29585</u> Phone: <u>843-235-4100</u> Fax: _____ E-mail: <u>dmills@mcnair.net</u> Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion for Reconsideration and New Trial</u>			
Estimated Time Needed: <u>45 minutes</u>		Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		<u>10/09/13</u> Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by:  Date Filed: <u>10-9-13</u>			
☐ MOTION FEE COLLECTED: \$ <u>25</u>			
☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

David M. Repko,)
)
Plaintiff,)
)
vs.)
)
County of Georgetown,)
a body politic,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2012-CP-22-558
(Previous Case No. 2012-CP-22-385)

**ORDER GRANTING DEFENDANT'S
MOTION FOR DIRECTED VERDICT**

Date of Trial:
Presiding Judge:
Attorney for Plaintiff:

Attorney for Defendant:
Court Reporter:

September 16 – 17, 2013
Honorable Benjamin H. Culbertson
William T. Moody, Esquire
Robert W. Marling, Esquire
David J. Mills, Esquire
Grace Hurley

ALMA Y. MOORE
CLERK OF COURT

2013 SEP 30 AM 11:54

FILED

INTRODUCTION

This matter came before the Court on September 17, 2013 on a Motion for Directed Verdict by the Defendant County of Georgetown ("County") at the close of Plaintiff's case. Based on the Findings of Fact and Conclusions of Law set forth below, County's Motion for Directed Verdict should be, and the same hereby is, **GRANTED**.

BACKGROUND/FINDINGS OF FACT

Plaintiff's Complaint filed on April 20, 2012, alleges that he purchased two (2) lots in a subdivision in Georgetown County known as "Harmony Township." Plaintiff's Complaint was premised on Article V, Section 3 of Georgetown County's Development Regulations, which provide for the acceptance and reduction of financial guarantees. Under the Development Regulations, financial guarantees may be posted in lieu of

completing improvements, including Infrastructure such as roads, water, and sewer in a subdivision. Plaintiff alleged that County negligently reduced the Letter of Credit which served as a financial guarantee for the completion of infrastructure in the phase of development in Harmony Township in which he purchased lots. Plaintiff contended his lots cannot be used and are therefore worthless because there are no roads, water or sewer to those lots. Plaintiff claimed that County owed him a "special duty" pursuant to Article V, Section 3 of the Georgetown County Development Regulations and sued County on three (3) causes of action: (1) Gross Negligence; (2) Intentional Interference with Rights of the Plaintiff as an Intended Beneficiary of the Letter of Credit; and (3) Violation of Due Process.

A jury was qualified, impaneled, and seated for the trial of the case. Plaintiff's presentation of his case to the jury included the trial testimony of Holly Richardson, the Chief Planner in the Georgetown County Planning Department; Boyd Johnson, the Director of Planning and Code Enforcement for Georgetown County; Georgetown County Attorney Wesley Bryant; and the Plaintiff. Plaintiff admitted into evidence, without objection, a number of exhibits relating to his purchase of the property, the Letter of Credit at Issue, and the County Planning Department's authorization of reductions to the Letter of Credit.

At the close of Plaintiff's case, County moved for a directed verdict pursuant to Rule 50, South Carolina Rules of Civil Procedure, on a number of distinct grounds including:

1. there existed no duty to the Plaintiff;
2. the Public Duty Rule;

3. the Statute of Limitations; and
4. various exceptions to the waiver of immunity under the South Carolina Tort Claims Act which were affirmatively pleaded as defenses in the County's Answer.

After considering the arguments of counsel and relevant case law and statutory authority, the Court granted the County's Motion for Directed Verdict as set forth below.

CONCLUSIONS OF LAW

County's responsive pleadings, the testimony it elicited at trial, and its directed verdict motion all alleged the lack of a duty to Plaintiff. Specifically, Article V, Section 3 ("Financial Guarantees") of the County's Development Regulations provides in pertinent part as follows:

"Acceptance of a financial guarantee by Georgetown County shall not be construed as an obligation to any other agency, utility or property owner within affected developments."

The Court concludes that the Development Regulation provision relating to financial guarantees expressly disclaims any "private duty" to Plaintiff who is a "property owner within the affected development" (i.e. Harmony Township). The Court concludes that the quoted language is clear and unambiguous and cannot be ignored or "written out" of the Development Regulations.

Where there is no duty there can be no tort.¹ "The Court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict." Steinke v. S.C. Department of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (S.C. 1999).

¹ The County also moved for directed verdict on Plaintiff's second and third causes of action for "Intentional Interference" and "Violation of Due Process", but those claims were voluntarily abandoned by Plaintiff, who elected to go forward only on his negligence claim.

South Carolina case law also compels the conclusion that the County owed no private duty to Plaintiff on the facts presented here. In Brady Development Co., Inc. v. Town of Hilton Head, 312 S.C. 73, 439 S.E.2d 266 (S.C. 1993), the Supreme Court was confronted with similar facts. In Brady Development, the lot owner's contractor was required to stop work on a house because water and sewer infrastructure had not been approved. The constructed house was vandalized and eventually burned. The owner sued, claiming that the Town had negligently administered its own Development Standards Ordinance. The Town moved for a directed verdict on the grounds that the Development Standards Ordinance did not create a special duty owed to the individual lot owner. The trial judge denied the Town's motion, the jury returned a verdict for the owner, and the Town appealed.

In reversing the trial court, the Supreme Court discussed, and relied upon, the Public Duty Rule in holding that the trial judge had erred in ruling that the subject ordinance had created a special duty. This Court quotes at length below from Brady Development because the analysis of the Public Duty Rule is particularly applicable here:

The Town contends that the trial judge erred in ruling as a matter of law that it owed Brady a special duty of care in issuing a development permit under the Development Standards Ordinance. We agree.

Public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually. Jensen v. Anderson County Dept. of Social Services, 304 S.C. 195, 199, 403 S.E.2d 65, 617 (1991). However, an exception to this general rule exists when a special duty is owed to an individual rather than the public only. Id. at 200, 403 S.E.2d at 617. To determine if a special duty arises from a statute, a court must find:

1. an essential purpose of the statute is to protect against a particular kind of harm;
2. the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;
3. the class of persons the statute intends to protect is identifiable before the fact;
4. the plaintiff is a person within the protected class;
5. the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and
6. the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Id.; Bellamy v. Brown, 305 S.C. 291, 408 S.E.2d 219 (1991). The trial judge ruled that each of these elements had been proved as a matter of law.

[312 S.C. 77] Section 16-7-10, the preamble of the Development Standards Ordinance states:

The town council finds that the health, safety and welfare of the public is in actual danger . . . if development is allowed to continue without limitation.

Additionally, Development Standards Ordinance section 16-7-113 provides:

The purpose of this chapter is to promote the public health, safety and general welfare; to preserve the environmental, historical and social heritage and character of the town; to protect public, private and institutional investment; and to facilitate the timely and adequate provision of transportation, water, sewage disposal, schools, parks and other requirements.

The purpose of this chapter is to promote the public health, safety and general welfare; to preserve the environmental, historical and social heritage and character of the town; to protect public, private and institutional investment; and to facilitate the timely and adequate provision of transportation, water, sewage disposal, schools, parks and other requirements.

We hold that the Development Standards Ordinance does not create a special duty to Brady. The essential purpose of the ordinance is to protect the public from the dangers of overdevelopment on the Island of Hilton Head. Brady argues that the essential purpose of the ordinance is to protect those who buy lots, building sites and buildings because the ordinance requires improvements and services agreements to be in existence or a surety guaranteeing these services for a development permit to be granted. To recognize such a duty would make the Town substantially an insurer of all developments it undertook to inspect and control through its Development Standards Ordinance and would likely discourage all efforts at such control. See Hannon v. Counihan, 54 Ill.App.3d 509, 12 Ill.Dec. 210, 369 N.E.2d 917 (1977) (to recognize a special duty for the city in the administration of its building codes would make a municipality substantially an insurer of all construction it undertook to inspect and control through its building codes and would discourage all such efforts at such control); See also Summers v. Harrison Constr., 398 S.C. 451, 381 S.E.2d 493 (Ct.App. 1989) (the duty to issue a building permit to only qualified applicants does not impose upon public officials the responsibility to guard against poor performance in construction). Accordingly, we hold that the trial judge erred in ruling that the Development Standards Ordinance created a special duty. [Footnote omitted].

Consistent with the Supreme Court's holding and rationale in Brady Development, this Court concludes that the Development Regulations at Issue in this case do not create a special duty to the Plaintiff. To paraphrase Brady Development, "To recognize such a duty would make the [County] substantially an insurer of all developments it undertook to inspect and control through its Development [Regulations] and would likely discourage all efforts at such control."

Subsequent South Carolina case law confirms the "six-factor" test described above in Brady Development. The Court of Appeals reiterated the test in Steinke v. South Carolina Department of Labor Licensing and Regulation, *Supra*.

The County argued in support of its directed verdict motion here that Plaintiff also fails the "special duty" test at factors 2 and 3 as enunciated in Brady Development and Steinke. Specifically, the Georgetown County Development Regulations at Issue here

neither directly nor indirectly imposed on any specific public officer of Georgetown County a duty to guard against or not cause a specified harm. Moreover, the class of persons the statute intends to protect was not "identifiable before the fact" here. This is so because, as stated earlier, the Georgetown County Development Regulation at issue neither imposes a duty on Georgetown County's public officials nor identifies a "protected class"; on the contrary, the Development Regulations specifically disclaim any obligation on the part of the County as a result of its acceptance of a financial guarantee. Because no duty arises under the Development Regulations, County cannot have breached any duty to Plaintiff and County is entitled a directed verdict on Plaintiff's negligence claim.

The County also raised in its pleadings, and asserted as an additional basis in support of its directed verdict motion, a number of defenses available under the Tort Claims Act. For the reasons set forth below, the Court concludes that the County is immune from Plaintiff's claims as a matter of law based on the Tort Claims Act exemptions specified below.

In reviewing County's directed verdict motion premised on the South Carolina Tort Claims Act, S. C. Code Ann. §15-78-10, *et seq.*, the Court is mindful of two (2) explicit instances in the Act wherein the General Assembly provided for liberal construction of the Act to limit liability of the State.

First, in its "Legislative findings; declarations of public policy; extent of, and construction of, waiver of immunity" subsection, the legislature declared that "the provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official

duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. §15-78-20(f). Second, this liberal construction mandate is reaffirmed in §15-78-200 of the Act:

Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act" is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting in the scope of the employee's official duty. The provisions of this chapter provide limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.

§15-78-60 ("Exceptions to Waiver of Immunity") provides that "the governmental entity is not liable for a loss resulting from" forty (40) enumerated exceptions. As additional grounds for its Motion for Directed Verdict, the County contended that it could not be liable for any loss resulting from damages purportedly suffered by Plaintiff pursuant to subsection (4):

"Adoption, enforcement or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation or written policies."

It is undisputed here that Georgetown County promulgated a "regulation" with regard to acceptance of financial guarantees in lieu of the completion of infrastructure within developments. The gravamen of Plaintiff's Complaint and his trial evidence was that Georgetown County failed to comply with or enforce its own regulation regarding the acceptance and reduction of a financial guarantee. Simply put, Plaintiff contended that the County adopted the Development Regulation relating to financial guarantees and then failed to enforce it against itself, committing violations of the regulation ranging from excessive reductions in the Letter of Credit to tying reductions to the developer's contractor Pay Applications to failing to procure revised construction cost estimates or

forwarding same to the Georgetown County Department of Public Works for approval. The Court concludes that Plaintiff's allegations of failure to enforce the Development Regulation fall squarely within exception §15-78-60(4), and the County is not liable for any loss allegedly resulting from that conduct.

§15-78-60(5) provides that a governmental entity is not liable for loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." The face of Section 3.1 of the Development Regulations explicitly provides, and the testimony of the County's employees at trial confirmed, that County's acceptance of the financial guarantee was discretionary. Moreover, the County employees testified that the decision to authorize reductions in the Letter of Credit was itself a discretionary act. Chief Planner Richardson testified that she could have denied the developer's requested reductions to the Letter of Credit, but she had no reason to do so after considering the submissions of engineering certifications and confirmation of completed infrastructure from the Georgetown County Water & Sewer District. Accordingly, the Court concludes that the questioned conduct of the County employees here constituted the exercise of their discretion or judgment and the County cannot be liable for any loss resulting from that conduct pursuant to §15-78-60(5).

Finally, §15-78-60(13) exempts a governmental entity from liability for loss resulting from "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or

ordinance or contains a hazard to health or safety." Testimony elicited from County employees Richardson, Johnson and Bryant confirmed that decisions to authorize reductions in the Letter of Credit were based not upon inspections by Georgetown County personnel, but rather reliance upon submissions of the owner/developer of Harmony Township, the certifications of the developer's engineers, and written confirmations from a separate entity (the Georgetown County Water & Sewer District). Director Johnson testified that it was not the County's practice – nor was it incumbent upon the County under Development Regulation Article V, Section 3.1 – to inspect conditions on the ground in Harmony Township. Planner Richardson and County Attorney Bryant were also examined concerning inspection of the infrastructure placement. The testimony Plaintiff elicited from the County's employees during Plaintiff's case underscored Plaintiff's theory that the County's failure to make inspections of actual infrastructure conditions prior to authorizing reductions in the Letter of Credit constituted a breach of duty by the County and proximately caused Plaintiff's loss. The Court finds and concludes that §15-78-60(13) exempts the County from any loss allegedly resulting from failures to make inspections.

The Court also considered, but rejected, as grounds for the grant of directed verdict the County's arguments that: (i) the 2-year statute of limitations under the Tort Claims Act expired before Plaintiff filed suit; and (ii) §15-78-60(12) exempted the County from liability on Plaintiff's claims.

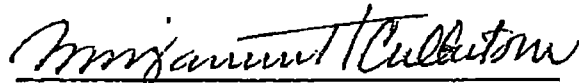
NOW, THEREFORE, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the plaintiff's causes of action for "Intentional Interference with Rights of the Plaintiff as an Intended Beneficiary of the Letter of Credit" and "Violation of Due Process" are **VOLUNTARILY DISMISSED** by the plaintiff, with prejudice; it is further

ORDERED, that the Motion for Directed Verdict by the Defendant at the close of the Plaintiff's case is **GRANTED**; it is further

ORDERED, that this case is **DISMISSED**, with prejudice.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina
September 25, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

David M. Repko,)
Plaintiff,)

vs.)

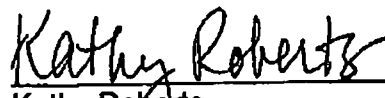
County of Georgetown, a body)
politic,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-22-00558
(Previously Case No.: 2012-CP-22-00385)

CERTIFICATE OF SERVICE

I, Kathy Roberts, hereby certify that on the 1st day of October 2013, I caused a true and correct copy of the **Order Granting Defendant's Motion for Directed Verdict** in the above captioned matter to be served via United States Mail, postage prepaid, addressed as follows:

William T. Moody, Esquire
Maring & Moody, LLC
Post Office Box 478
Georgetown, SC 29442


Kathy Roberts

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-22-00385 558

DAVID M. REPKO,)
PLAINTIFF,)
V.)
COUNTY OF GEORGETOWN,)
a body politic,)
DEFENDANT.)

CERTIFICATE OF MAILING

I the undersigned, secretary of Maring & Moody, LLC, hereby certifies that I have this 9th day of October, 2013, served a copy of the document(s) listed below on the person or persons below by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

DOCUMENT(S): Notice of Motion and Motion for Reconsideration and for a New Trial

ADDRESSEE(S): David J. Mills, Esquire
McNair Law Firm, PA
PO Box 1469
Pawleys Island, SC 29585


Maribel V. James

ALMA V. WHITE
CLERK OF COURT
2013 OCT -9 AM 11:50
FILED
GEORGETOWN COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

DAVID M. REPKO,

PLAINTIFF,

V.

COUNTY OF GEORGETOWN,
a body politic,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-22-00385

) MEMORANDUM BRIEF OF THE
) PLAINTIFF IN SUPPORT OF HIS
) MOTION FOR RECONSIDERATION
) AND FOR A NEW TRIAL

FILED
GEORGETOWN COUNTY, S.C.
JAN 21 AM 9:21
ALMA Y. WHITE
CLERK OF COURT

BACKGROUND

These proceedings arise as the result of an action filed by the Plaintiff against the Defendant claiming that the Defendant was grossly negligent in its handling of a letter of credit or bond being held by the County to ensure that certain infrastructure was completed at that real estate development located in Georgetown County, South Carolina, known as "Harmony Township".

On October 9, 2006, the Plaintiff purchased Lots 1076 and 1077 in Phase D-1 located in the West Steward Subdivision of Harmony Township in Georgetown County for \$77,000.00 and \$78,000.00, respectively. At that time of the purchase, the Plaintiff was given assurances by the developer that the basic infrastructure, including water, sewer, roads and electricity, would be constructed in the development. Financial guarantees were in place with the County to guarantee the implementation and construction of the infrastructure, which were intended to directly benefit the Plaintiff and other purchasers and to provide them with assurances that should the developer become insolvent after the Plaintiff purchased the lots, the financial guarantee would be used by the County to complete the infrastructure.

The financial guarantees provided by the developer were as a result of a Georgetown County ordinance. Specifically, Article V, Section 3 of the Georgetown County Development Regulations provides for the posting of financial guarantees by a developer before approval of a development similar to Harmony Township in the County. Furthermore, said regulation provides for the "Acceptance and Release of Financial Guarantees" for land development in Georgetown County. Section 3-5 of the Regulations allows for certain reductions in the financial guarantees, and Section 3-6 requires that a release of a financial guarantees shall occur only after all site improvements, including infrastructure, have been installed, received final inspection and a warranty financial guarantee (when applicable) has been submitted and approved. Pursuant to the Regulations, Georgetown County required that the developer of Harmony Township obtain a surety bond/letter of credit, and the developer for the West Steward Subdivision of Harmony Township in Georgetown County obtained a surety bond/letter of credit.

The Plaintiff alleges that the provisions of the Georgetown County Development Regulations, including Article V, Section 3, created a special duty owing from Georgetown County to the Plaintiff since the essential purpose of the financial guarantee provisions of the Regulations is to protect against the developer's failure to complete improvements and infrastructure. The Regulations, either directly or indirectly, impose a special duty on Georgetown County to guard against, or not cause the harm of infrastructure not being completed in the subdivision, therefore causing property values to drop and making the land unusable and unmarketable. The Plaintiff, as a landowner in West Steward Subdivision of Harmony Township in Georgetown County, is in a class of persons the ordinance is intended to protect. Georgetown County had control and authority to either release or not release the surety bond/letter of credit and/or the monies posted as a surety bond.

The developer of the West Steward Subdivision declared bankruptcy and was not discharged from the Bankruptcy Court in June of 2011. The basic infrastructure, including basic utilities and roads, was never completed. Georgetown County has control of the surety bond/letter of credit, and even as recently as January of 2013, the County claims to still have some of the money from the bond and is funding the infrastructure.

As a result of the failure of the infrastructure to be completed, the value of the property owned by the Plaintiff decreased from in excess of \$155,000.00 per lot in 2008 to less than \$15,000.00 per lot in 2010. The Plaintiff's property cannot be used because there is no water, sewer, or roads to it.

A trial of this case was held on September 16 and 17, 2013. At the close of the Plaintiff's case, the Court directed a verdict against the Plaintiff on his sole remaining cause of action in which the Plaintiff claimed that the Defendant was grossly negligent in the handling of the financial guarantees submitted to the Defendant by the developer. Specifically, the Court found that (1) there existed no duty owed to the Plaintiff from the Defendant; (2) the Plaintiff's claim was barred by the Public Duty Rule; and (3) the Defendant was absolutely immune from the Plaintiff's claim by virtue of Sections 15-78-60(4), (5) and (13) of the South Carolina Code of Laws, 1976, as amended (the "Tort Claims Act").

LEGAL ISSUES

1. Did the Defendant owe a special duty to the Plaintiff under the Plaintiff's theory of gross negligence?
2. Is the Defendant absolutely immune from the Plaintiff's gross negligence claim by virtue of Sections 15-78-60(4), (5) and (13) of the Tort Claims Act?

ARGUMENT AND APPLICABLE LAW

In ruling on a motion for directed verdict and JNOV, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 476, 514 S.E.2d 126, 130 (1999). The trial court should deny the motion where either the evidence yields more than one inference or its inference is in doubt. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003).

1. Appendix B to the Georgetown County Code of Ordinances, Article V, Section 3 of the Improvement Standards created a duty due and owing by the Defendant to the Plaintiff.

In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care that is owed to him by the defendant. See McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 390-91, 684 S.E.2d 566, 571 (Ct. App. 2009) ("An essential element in a negligence cause of action is the existence of a legal duty of care owed by the defendant to the plaintiff. Without such a duty, a plaintiff cannot establish negligence.") (internal quotation marks and citation omitted); Chastain v. Hiltabidle, 381 S.C. 508, 519, 673 S.E.2d 826, 832 (Ct. App. 2009) ("If no duty exists, the defendant is entitled to judgment as a matter of law."). Though the common law generally does not impose a duty to act, a statute may create an affirmative duty owed to a plaintiff. Vaughn v. Town of Lyman, 370 S.C. 436, 441, 635 S.E.2d 631, 634 (2006).

In Rayfield v. South Carolina Department of Corrections, 297 S.C. 95, 103, 374 S.E.2d 910, 914 (Ct. App. 1988), cert. denied, 298 S.C. 204, 379 S.E.2d 133 (1989), the Court of Appeals set forth the analysis to apply when determining whether a statute creates a duty whose breach allows for a private right of action:

"In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff demonstrates these two elements, he has established the first element of a negligence claim—a duty owed to him by the defendant." 297 S.C. at 103, 374 S.E.2d at 915. However, when the statute at issue creates or defines the duties of a public official, the public duty rule applies." 297 S.C. at 105, 374 S.E.2d at 915. "This rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually." Vaughn, 370 S.C. at 441, 635 S.E.2d at 634 (quoting Steinke v. S.C. Dep't of Labor, Licensing, & Regulation, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999)). The public duty rule represents a presumption that such a statute "has the essential purpose of providing for the structure and operation of the government or of securing the general welfare and safety of the public," and thus does not satisfy the elements of the two-part Rayfield test. 297 S.C. at 105, 374 S.E.2d at 915.

The presumption may be overcome when the statute creates a "special duty" to the plaintiff. 297 S.C. at 106, 374 S.E.2d at 916. In Rayfield, the Court stated:

"A special duty exists if: (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not to cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the

circumstances or he undertakes to act in the exercise of his office." Id.; see also Vaughn, 370 S.C. at 441, 635 S.E.2d at 634 (referring to the six-part Rayfield test as "the well established 'special duty' exception"); Jensen v. Anderson Cnty. Dep't of Soc. Servs., 304 S.C. 195, 203, 403 S.E.2d 615, 619 (1991) (adopting the six-part Rayfield test and calling it an "exception to the public duty rule"). If a special duty is found to exist after analyzing a statute under this test, courts can be sure the Legislature intended that a plaintiff within the protected class injured by a public official's breach of the duty have a private right of action against the official. 304 S.C. at 201, 403 S.E.2d at 618; see Vaughn, 370 S.C. at 442, 635 S.E.2d at 634 ("The public duty rule is a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action [T]he dispositive issue is . . . whether the statute was intended to provide . . . a private right of action").

Sections 1 and 2 of Appendix B to the Georgetown County Code of Ordinances, Article V entitled Improvement Standards set forth the specific requirements for the development of subdivisions in Georgetown County. Those sections require that all infrastructure including roads, water and sewer be installed before lots can be sold or building permits issued. Section 3 thereof is an exception to the requirements of 1 and 2, and only permits lots to be pre-sold so long as financial guarantees are in place. Sec 3-1 (a copy of the entire Improvement Standards Ordinance is Court's Exhibit 1 to the trial transcript). The pertinent section giving rise the Plaintiff's Complaint are contained in Sections 3-5 and 3-6 thereof, and they read as follows:

3-5. Reductions. A developer may reduce a financial guarantee during the initial coverage period. A request to reduce the financial guarantee shall be submitted to the Planning Department and include a revised construction cost estimate. The Planning Department will forward the revised cost estimate to the Georgetown County Department of Public Works for approval.

Reductions of financial guarantees will not be allowed within 6-months of any previous reduction request and shall be no less than one hundred twenty-five (125) percent of the revised construction cost estimate.

3-6. Release of a Financial Guarantee. The Planning Department shall release guarantees to the financial institution or responsible entity. Authorization shall occur once all improvements have been installed, received final inspection and a warranty financial guarantee (when applicable) has been submitted and approved. In addition, the developer's engineer shall furnish the Planning Department a letter certifying that all non-county owned or maintained improvements have been completed and accepted by the applicable entities that will own or maintain such improvements. Such letter shall be on company letterhead with an original signature and professional seal. (Emphasis added).

The trial court specifically found that factors 2 and 3 of the six-factor test which has been set forth in Rayfield, *supra*, as well as the Steinke, Brady and Jensen cases cited in the Court's Order Granting Defendant's Motion for Directed Verdict, failed to be met, thus leading to the Court to direct a verdict. The second factor of the Rayfield test is as follows:

(ii) The statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not to cause that harm. Reading Section 3 of the Ordinance, the language therein clearly imposes the duty to maintain any financial guarantees squarely on the Planning Department of Georgetown County. Section 3-2 states that financial guarantees "shall be submitted to the Planning Department and follow procedures enumerated below...be in a form acceptable to the Georgetown County Planning Department...the Planning Department shall forward such estimate to the appropriate departments or agencies for review." Section 3-3 specifies, "Planning Department may accept letters of credit or cash deposits...the Planning Department shall not accept any guarantee that requires drawdowns for monthly expenditures...the amount of money held by the Planning Department". Section 3-4 requires that any request for extensions of financial guarantees be submitted to and approved by the Planning

Department. Sections 3-5 and 3-6 cited above place the responsibility and obligations with regards to reductions and/or release of financial guarantees squarely on the Planning Department.

Furthermore, Wesley Bryant, county attorney for Georgetown County, Holly Richardson, Chief Planner for Georgetown County, and Boyd Johnson, Director of Planning for Georgetown all testified that the Planning Department for the Defendant was responsible for safeguarding the financial guarantees submitted to the Defendant and following the provisions of the ordinance concerning the reduction and/or release of financial guarantees. All three witnesses also testified that the purpose of requiring the posting of financial guarantees by the Defendant was to ensure that if the developer failed to complete the infrastructure that the funds would be available for completion. Thus, the ordinance itself directly imposed upon the Planning Department to guard against or prevent the harm contemplated and leading to the passage of the ordinance.

Factor 3 of the six-factor test that has been set forth in Rayfield, *supra*, states as follows:

(iii) The class of persons the statute intends to protect is identifiable before the fact. The provisions of Section 3 clearly apply to only one identifiable class before the fact, the class being those parties who purchase lots in subdivisions that are undeveloped and the infrastructure has yet to be constructed. The class of persons affected by the ordinance is finite, and the ordinance does not affect the general public of Georgetown County.

As an initial matter, the Court in Brady specifically ruled the trial judge erred in ruling as a matter of law that the Town owed Brady a special duty of care in issuing a development permit to the developer under the Development Standards Ordinance. The issuance of a development permit to a developer based upon final plat approval is significantly and materially different than

the facts in this case. The claim of the Plaintiff in this case arises specifically as to the Defendant's failure to comply with the very narrow procedure for reducing and/or releasing a letter of credit under Section 3 of the Improvement Standards. The Brady case is clearly distinguishable from the case at bar although the analysis used in Brady to determine whether a special duty exists is still applicable.

Finally, the trial court cited the provision in Section 3 of the ordinance which states:

"Acceptance of a financial guarantee by Georgetown County shall not be construed as an obligation to any other agency, utility or property owner within affected developments."

The trial court reasoned that this language expressly disclaims any "private duty". Our Supreme Court has held in Pride vs. Southern Bell Tel., 244 S.C. 615, 138 S.E. 2d 155 (1964), "our decisions recognize the general principle that considerations of public policy prohibit a party from protecting himself by contract against liability for negligence in the performance of a duty of public service, or where a public duty is owed, or public interest is involved, or where public interest requires the performance of a private duty, or when the parties are not on roughly equal bargaining terms. Murray v. Texas Co., 172 S.C. 399, 174 S.E. 231; Savannah Bldg. Supply vs. Atlantic Coast Line Railroad Co., 85 S.C. 405, 67 S.E. 1135. See: Annotation: 175 A.L.R. 14, 16."

2. The Defendant is not absolutely immune under Sections 15-78-60(4), (5) and (13) of the Tort Claims Act, as the additional defenses raised by the Defendant under the Tort Claims Act required a gross negligence standard be applied to all of the Tort Claims Act defenses raised by the Defendant.

The trial court found that the Defendant was immune from liability under Sections 15-78-60(4), (5) and (13) of the Tort Claims Act. None of the three exceptions cited in the preceding sentence contain a gross negligence standard; however, when an exception that contains a gross negligence standard applies to a case, the gross negligence standard is read into any of the other applicable exceptions. See Steinke, *supra*. The Defendant asserted other provisions of the Tort Claims Act as affirmative defenses, some of which required a "gross negligence" standard. Specifically, the Defendant asserted Section 15-78-60(12) which states "licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner". Emphasis added.

Our Courts have upheld this proposition recently in the case of Chakrabati v. City of Orangeburg, 403 S.C. 308, 743 S.E. 2d 109 (S.C. App. 2013). In that case, the Defendant asserted that it is immune to liability pursuant to the following three subsections of section 15-78-60 of the Act: (1) section 15-78-60(2) (governmental entity is not liable for a loss resulting from administrative action or inaction of a legislative, judicial, or quasi-judicial nature); (2) section 15-78-60(4) (governmental entity is not liable for a loss resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies); and (3) section 15-78-60(23) (governmental entity is not liable for a loss resulting from institution or prosecution of any judicial or administrative proceeding). S.C. Code Ann. §§ 15-78-60(2), (4), (23) (2005).

None of these three exceptions contained a gross negligence standard. The Court held that "[w]hen an exception that contains the gross negligence standard applies to a case, the gross negligence standard is read into any of the other applicable exceptions. *See Steinke*, 336 S.C. at 398, 520 S.E.2d at 155 ("[T]he trial court often faces Tort Claims Act cases in which at least one of the asserted exceptions contains the gross negligence standard while other asserted exceptions do not. We hold that when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended.")." The Court went further to state that "it would make no sense to conclude Orangeburg may be found grossly negligent in a licensing decision, yet allow it to escape liability under one of these other exceptions. Because we find Orangeburg may be liable if it was grossly negligent in its licensing per section 15-78-60(12), and the trial court properly denied Orangeburg's motion for a directed verdict for gross negligence, we also find the court properly denied Orangeburg's motions for directed verdict based on sections 15-78-60(2), (4), and (23). "

Gross negligence is proved by demonstrating the "intentional conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do," or "the failure of slight care." *Jinks*, 355 S.C. at 345, 585 S.E.2d at 283.

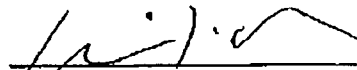
Finally, with regards to the analysis of the Defendant's liability, the Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *See Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its

agents except as provided in § 15-78-70(b)." S.C. Code Ann. § 15-78-20(b) (Supp. 2002) (emphasis added). "[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a) (Supp. 2002) (emphasis added). According to the Act, "[n]otwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200 (Supp. 2002) (emphasis added).

CONCLUSION

Based upon the foregoing, the Plaintiff would that the Court should reconsider its Order Directing Verdict for the Defendant, finding that the Plaintiff is entitled to a new trial.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2014-000156
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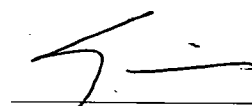
David M. Repko.....Appellant,

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County of Georgetown Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2014, the foregoing **Final Brief of Appellant** has been served by hand delivery upon David J. Mills, Esquire, of McNair Law Firm, at 11019 Ocean Highway, Post Office Box 1469, Pawleys Island, SC 29585.



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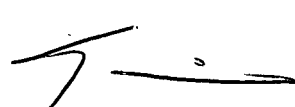
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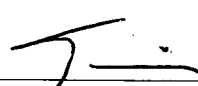
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