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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

Case No. 2010-CP-40-8943R
Appellate Case No. 2013-001067

Columbia Venture, LLC,

Appellant,

v.

Richland County,

Respondent.

**REVISED RECORD ON APPEAL
VOLUME 6 OF 13
PAGES 2369 - 2848**

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1 normal -- it was a very unique property and a
2 unique valuation assignment, so when I look --

3 Q. Let me ask this: At this point, were
4 you aware of the developer having any agreements in
5 place with any college, builder, university,
6 hotels, motels, et cetera, to build anything in
7 this proposed development?

8 A. I was not aware of anything.

9 Q. Were you aware of any contracts with
10 any builders who would come in and buy lots and
11 build over -- whether it's a 15-year sell-out or
12 absorption rate or a 30-year absorption rate?

13 A. No, I wasn't shown anything. Never
14 been told anything like that existed.

15 Q. Did you utilize a developmental
16 approach to value at that time, or did you use a
17 different method?

18 A. That's what I was explaining. I did a
19 cost approach for basically looking at where they
20 were in the process and what they had extended in
21 costs to date, including acquisition and the money
22 they had spent to try to get the property entitled
23 to date.

24 Q. In your opinion, was there sufficiently
25 verifiable information available at the time you

1 did your appraisal to do a valid developmental
2 approach?

3 A. No, I don't think there was, and I did
4 not do one.

5 Q. Now, under the cost approach, did you
6 first look at what the -- what the buyer had paid
7 for the property, what Columbia Venture had paid
8 for the property?

9 A. I did look at -- I looked at the
10 purchase of the property, which was about 18.4
11 million dollars.

12 Q. And did you then search the market for
13 comparable sales to try and determine whether the
14 buyer had paid a realistic price for the property?

15 A. I did do that. I looked at four
16 comparables.

17 Q. And did you find comparable sales of
18 tracts of similar size?

19 A. From a little over a thousand to one
20 that was about 20,000 acres. So I found four
21 sales.

22 Q. Did you do an analysis of those
23 comparable sales?

24 A. I did put them in a chart. I did a
25 bracketed analysis of them where those sales range

1 from a little over \$3,100 an acre to a little over
2 \$4,800 an acre. The subject was purchased for just
3 under \$4,200 an acre.

4 Q. What page are you on?

5 A. I'm on Page 46 of my chart and it
6 analyzes the comparables.

7 Q. And what did you determine that meant,
8 in terms of whether Columbia Venture had paid a
9 reasonable price for the property when they paid 18
10 million-plus for it?

11 A. I concluded that that was a fair-market
12 value for the property.

13 Q. In doing a cost approach such as you
14 were doing, was it necessary to make sure they
15 didn't underpay or overpay or that that would be
16 something in the range of what was -- the property
17 was worth?

18 A. To come up with the land going in,
19 that's correct.

20 Q. Once you got those numbers, what did
21 you do to finish or complete your cost approach to
22 value?

23 A. I took the investments that they had
24 made in the property.

25 Q. Are you talking about how much money

1 they had spent on the property?

2 A. To spend in the entitlement process,
3 which, given those documents, I think I have got
4 them summarized at the bottom of Page 50. But I've
5 got the total purchases, their capital investments
6 in '99, 2000, and 2001.

7 Q. Mr. Knight, let the judge catch up with
8 us.

9 THE COURT: I have found it now. Thank
10 you.

11 THE WITNESS: I'm on the second
12 red -- if you have the color copy, the red
13 highlighted, before-assumed taking. And that's the
14 summation.

15 BY MR. JOHNSON:

16 Q. So that it's clear, under, Before
17 assumed-taking tract size acre 4,400 acres, on Page
18 50, where you have land purchases of \$10,932,991;
19 Manning purchase of \$7,460,977, what do those
20 numbers represent?

21 A. Those represent what the actual land
22 purchase price, plus the Manning shares totaled up.
23 When I met with Deas Manning, he basically refers
24 to the purchases in round numbers. The 18 million
25 dollars, I think when we sum it up, it's about 18.4

1 million dollars between the actual dollars and then
2 the Manning shares.

3 Q. So that was a cost item in the
4 property?

5 A. That was the land. And then I had the
6 capital investment numbers.

7 Q. And where did you get -- those are the
8 next three numbers?

9 A. Those are all of the documents that
10 were provided in the financial documents.

11 Q. All right. And then after totaling
12 that, did you add a profit -- gross profit
13 expectation?

14 A. I did. I applied a 25-percent gross
15 profit and -- what that represents is what
16 you -- what the expectation to take that investment
17 at that time, if they could get a line item of 25
18 percent, would be the profit they could expect to
19 receive.

20 That's one of the things that -- if I
21 can find where it is in my analysis -- out of the
22 subdivision valuation book, it talks about trying
23 to get to that point, what a bulk sale would be.

24 It talks about a range of profit from
25 27 to 37 percent or in bulk. And at this point in

1 the process, they didn't even have a fully entitled
2 property, so I applied a 25-percent profit.

3 Q. And then you reached what conclusion,
4 or what did those total costs add up to?

5 A. Those total costs -- the profit
6 expectation is a percentage of total investment was
7 6 million 766, and the total was 33 -- in round
8 numbers -- \$33,800,000.

9 Q. And is that -- was that your opinion of
10 the value of this project as of February the 20th,
11 2002, before any -- as it sat there without any
12 alleged taking?

13 A. Yes, sir, that's my opinion.

14 Q. Now, let me ask you one thing I
15 overlooked.

16 Would you turn to Page 49 and look at
17 the last paragraph. As part of your appraisal
18 process, did you review the appraisal done by Jerry
19 Adkins?

20 A. I did. I was given a copy of it, where
21 he had valued the property for 30 million dollars.

22 Q. And in the last paragraph on Page 49,
23 do you discuss that appraisal?

24 A. Yeah, I reference -- I had also seen
25 that. He was working off of a development plan at

1 that time as well, after they purchased the
2 property and looking at a hypothetical appraisal,
3 assuming completion build-out, discounted to the
4 present value.

5 Q. And what was his value?

6 A. 30 million dollars.

7 Q. How did that correlate with your
8 calculations?

9 A. Well, mine is a little bit higher, but
10 I have also looked at it just at the state of
11 development they're at, and they're fairly similar.

12 Q. Did that provide you any comfort about
13 your conclusion?

14 A. Yes, sir.

15 Q. Now, that took care of Task Number 1,
16 right?

17 A. Yes, sir.

18 Q. After you did that work, what did you
19 do -- where does your appraisal -- the
20 after-assumed-taking appraisal began --

21 A. Page 51 is where it starts.

22 Q. -- on Page 51, do you have a chart that
23 identifies the amount of acreage that is outside
24 the floodway and that amount of acreage that's
25 inside the floodway?

1 A. Yes, sir.

2 Q. And how many acres are outside of the
3 floodway?

4 A. We've got 1,225 acres outside of the
5 floodway and 3,175 acres inside the floodway.

6 Q. And, again, for the property outside
7 the floodway, the 1,225, can that be developed?

8 A. It can be.

9 Q. Can the property within the floodway be
10 developed?

11 A. It cannot.

12 Q. Now, the process you used for valuing
13 after the taking, what process did you use?

14 A. I looked at comparable sales for the
15 land, the 1,225 acres outside the floodway, and the
16 3,175 from inside the floodway.

17 Q. All right. So you used the comparable
18 sales method to value the two different types of
19 property?

20 A. Yes, sir.

21 Q. And are your comparables included in
22 your report for the 1,225?

23 A. I'm sorry, I kicked the microphone.

24 Um, ask me that again. I'm sorry.

25 Q. Do you include in your report the

1 comparables you used for the 1,225 acres?

2 A. Yes, sir. That's summarized on Page
3 54.

4 Q. And what value did you arrive at for
5 the 1,225 acres that could be developed?

6 A. This is the \$15,000 an acre that
7 Mr. Hartnett was referring to.

8 Q. All right. And then did you also get
9 comparables for the 3,175 that was in the floodway
10 and could not be developed?

11 A. Yes, sir. Those are summarized,
12 beginning on 71.

13 Q. And after you reviewed those
14 comparables -- well, let me ask you. Are those
15 comparables, comparables for all land, farmland,
16 hunting land?

17 A. Yes, sir. One of them is
18 adjacent -- and, actually, this is when the
19 recreational tracts were starting to be sold out of
20 Columbia Venture, several of these sales -- 2
21 through 5, I believe -- were actual sales coming
22 out of the property.

23 Q. And how much did you come up per acre
24 for those properties?

25 A. 3,100 an acre.

1 Q. And do you have a chart that reflects
2 your summaries?

3 A. Um, yes, sir. On Page 89, final
4 reconciled value there, I've got the acres outside
5 the floodway, 1,225 acres at \$15,000 per acre,
6 which is 18 million 375. And the acreage inside
7 the floodway, the 3,175 acres, at \$3,100 an acre,
8 which is \$9,842,500.

9 I've totaled that up, \$28,160,000,
10 rounded it to \$28,200,000, just for the purposes so
11 you can see the total blended value. It does show
12 a blended value of \$6,400 an acre for the whole
13 tract.

14 Q. But the total is 28 million 200 --

15 A. \$28,200,000.

16 Q. And is that your opinion of what the
17 property would be worth -- willing buyer, willing
18 seller -- on February 20th of 2002, assuming there
19 had been the alleged taking that prevented building
20 in the floodway?

21 A. No change to the levees. That's
22 correct.

23 Q. All right. Now, you were in the
24 courtroom when Mr. Hartnett testified, weren't you?

25 A. Yes, sir.

1 Q. You heard the discussion about any
2 appraisal by you of the 3,175 acres, assuming it
3 was developed?

4 A. Correct.

5 Q. Did you do any such appraisal?

6 A. Not in this analysis. I appraised it
7 to 3,175, inside the floodway.

8 Q. If you were to -- were asked to do an
9 appraisal of the 3,175 acres, would you have to go
10 through the same process you did on this comparable
11 sales method to gather comparable sales, to analyze
12 them, et cetera, and come up with an opinion?

13 A. Yes, sir.

14 Q. Do you know or have an opinion as to
15 whether the value of that 3,175 acres would be more
16 than \$15,000 -- assuming development -- would be
17 \$15,000 per acre, more than \$15,000 per acre, or
18 less than \$15,000 per acre?

19 A. Well, as I said, I didn't do the
20 analysis. Just on size, I would expect it to be
21 less.

22 Q. Are you in a position -- without
23 giving -- having done an appraisal -- to give an
24 opinion as to what the value would be, assuming it
25 was developable?

1 A. No, sir.

2 Q. Would it be proper for you to even do
3 it?

4 A. Well, I could do it. I could go look
5 for sales for that --

6 Q. No, no, without doing the work.

7 A. Without doing the work, no, sir.

8 Q. Now, I want to ask you one thing. Was
9 this number, \$28,200,000, consistent with
10 information you had learned from Deas Manning and
11 Columbia Venture in terms of an exit strategy they
12 had considered?

13 A. Yes, sir, it was.

14 Q. I want you to turn to Page 52 of your
15 report. At the top of the page -- at the top of
16 the page, read the first paragraph, if you would.

17 A. Top of Page 52: Land value after the
18 taking. My final analysis is based upon both the
19 gross acreage of 4,400 and a blended value per
20 acre. Columbia Venture has produced extensive
21 documents about their awareness of the potential
22 for the February 20th, 2002 FEMA maps to be in
23 place.

24 In addition, in the December 7th, 2000
25 memo, they established an indicated value of the

1 property for their fall-back strategy. Within this
2 document, they have estimated the fall-back
3 strategy for the sale of the property outside the
4 floodway being parceled up and sold for
5 residential, commercial, and compatible industrial
6 uses at an estimated value of \$16,550,000.

7 The balance of the property within the
8 floodway can be sold for agricultural,
9 recreational, conservation uses at an estimated
10 value of \$9,600,000. And I reference that document
11 and do the -- just restate the math that totals
12 \$26,150,000.

13 Q. So did Columbia Venture, prior to you
14 ever getting involved in this appraisal process, in
15 December of 2000, come up with an exit strategy
16 that discussed and analyzed selling 1,225 acres for
17 development purposes?

18 A. Yes, sir. And I've got those documents
19 on Page 107 of my report, way back in the addenda.

20 Q. All right. Let's let the judge catch
21 up with us.

22 Turn to -- you say it's 107?

23 A. 107 is the salable land outside the
24 FEMA floodway.

25 Q. Well, first of all, whose chart is

1 shown on Page 107?

2 A. That's a Columbia Venture document.

3 Q. And explain, if you would, what this
4 chart shows.

5 A. They were showing the values for five
6 different parcels, and the map for that is on Page
7 109. They've identified the parcels. It says
8 1,135 on this chart, but 1,225 was the number they
9 had in the final chart. They've got them parceled
10 up on the map, on 109, where they're looking at the
11 different values per acre.

12 Q. Let me see if I can do this with you.
13 On Page 107 in the first chart, they list five
14 different parcels. Is that correct?

15 A. Correct.

16 Q. And is that the parcels that they give
17 a developed value for?

18 A. Yes, sir.

19 Q. And then if we look on the map that's
20 on Page 109, are those -- the location of those
21 five parcels -- identified?

22 A. Yes, sir.

23 Q. And where did this document come from?

24 A. It came from Columbia Venture, and this
25 is what Deas Manning always referenced to me, the

1 1,225 acres, the plan for that land, and
2 the -- it's outside the floodway.

3 Q. And what did Deas Manning tell you the
4 plan was for that 1,225 acres outside the floodway?

5 A. To sell it for development.

6 Q. And if we go back to Page 51 -- excuse
7 me -- 52, did their memorandum in December of 2000
8 reflect that -- selling some for developed
9 property, the risk for recreational property that
10 they could raise, \$26,150,000?

11 A. That's what that document says.

12 Q. And how did that correlate with your
13 analysis of the value after the assumed taking,
14 using 1,225 as developed acreage and the balance as
15 farmland or recreation?

16 A. I'm about 2 million dollars higher, but
17 they're very close.

18 Q. Did the fact that their number was
19 close to your number provide you with any comfort
20 or confidence in your calculations?

21 A. Sure. Yes, sir.

22 Q. Now, have you now told me about your
23 appraisal?

24 A. I think that's an overview of what I
25 did, yes, sir.

1 Q. I have gone through it kind of quick,
2 but you've told me generally what you did and
3 pointed us to the places where the Court needs to
4 look at numbers?

5 A. Absolutely.

6 Q. And so to sum it up, before the
7 taking was -- the cost analysis approach -- it was
8 33 million-plus?

9 A. 33 million 800,000.

10 Q. After this alleged taking, the value
11 for a reasonable -- what a reasonable buyer and
12 seller would come to was some 28 million dollars?

13 A. 28 million 200,000.

14 Q. A difference of \$5,600,000?

15 A. Yes, sir, that's my opinion.

16 MR. JOHNSON: Would you answer any
17 questions counsel has.

18 MR. BECKER: Your Honor, it's 5:15.

19 I --

20 THE COURT: We can recess.

21 MR. BECKER: Mr. Johnson asked if we
22 might start early in the morning, which is fine
23 with me.

24 MR. JOHNSON: What's your scheduling
25 tomorrow, Judge? You said you had something --

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3

4

Columbia Venture, LLC,

5

Plaintiff,

6

vs.

CASE NO. 2010-CV-40-8943R

7

Richland County,

8

Defendants.

9

10

PROCEEDINGS: TRIAL - VOLUME XII
(Pages 2107 through 2304)

11

12

BEFORE: THE HONORABLE JOHN HAMILTON SMITH

13

DATE: November 13, 2012

14

TIME: 10:00 a.m.

15

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, SC

16

17

REPORTED BY: Susan M. Valsecchi, CRR
Registered Professional Reporter

18

19

20

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 give in this matter will be the truth, nothing but
2 the truth, so help you God?

3 THE WITNESS: Yes, sir.

4 THE COURT: Please be seated.

5 MARK E. HESTER

6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LYDON:

9 Q. Good morning, Mr. Hester. Where do you
10 live?

11 A. I live at 128 Squires Creek Road in
12 Simpsonville, South Carolina.

13 Q. And your full name is?

14 A. Mark Evans Hester.

15 Q. Where are you presently employed,
16 Mr. Hester?

17 A. I'm employed with CH2M Hill.

18 Q. I'm sorry. I couldn't hear you.

19 A. CH2M Hill. It's an unusual
20 abbreviation for some names.

21 THE COURT: Maybe if you'd adjust that
22 microphone a little bit there -- you're somewhat
23 soft spoken -- and maybe that will help.

24 BY MR. LYDON:

25 Q. Say that one more time.

1 A. CH2M Hill.

2 Q. And what is the relationship between
3 CH2M Hill and Lockwood Greene?

4 A. CH2M Hill purchased Lockwood Greene,
5 I'm sure, ten years ago or so. I'm not sure of the
6 time frame.

7 Q. Okay. And how long have you worked for
8 Lockwood Greene or --

9 A. I've been employed there 25 years.

10 Q. 25 years for the same entity,
11 essentially, just a name change?

12 A. Yes, sir.

13 Q. You do the same job and all of that
14 sort of stuff?

15 A. Yes, sir.

16 Q. Okay. And what is your position at
17 CH2M Hill?

18 A. My official title is engineer -- Civil
19 Engineer 6, but it's really a senior civil
20 engineer.

21 Q. Okay. And was that your same position
22 at Lockwood Greene?

23 A. Probably not. Over the years you
24 obtain promotions, but it's the same activities,
25 pretty much.

1 Q. You're doing basically the same job,
2 you've just been promoted to more senior positions?

3 A. Yes, sir.

4 Q. Where did you attend undergraduate
5 school?

6 A. I attended Clemson University, got a BS
7 in civil engineering in 1982.

8 Q. All right. Did you have any education
9 beyond your undergraduate degree?

10 A. Yes, sir, I obtained a graduate degree
11 from the University of South Carolina, a master's
12 in engineering, specialized in civil engineering
13 and specializing in water resources and environment
14 engineering.

15 Q. So you have a master's specializing in
16 environment and water resources?

17 A. Yes, sir.

18 Q. What year was that?

19 A. That was '92.

20 Q. All right. And do you have any
21 professional licenses?

22 A. Yes, sir, I've obtained licenses in
23 South Carolina and other states.

24 Q. And what licenses were those?

25 A. West Virginia --

1 Q. Not what states. What is your --

2 A. Oh, it's a Professional Engineering
3 license.

4 Q. You've got a PE --

5 A. Yes, sir.

6 Q. -- in South Carolina and other states
7 as well?

8 A. Yes, sir.

9 Q. What other states?

10 A. Mississippi, Louisiana, West Virginia,
11 Tennessee, South Carolina.

12 Q. Okay. Have you spent most of your
13 career as an engineer with Lockwood Greene and now
14 CH2M Hill?

15 A. Yes, sir.

16 Q. Okay. And in 1998 were you employed by
17 Lockwood Greene?

18 A. Yes, sir.

19 Q. What was your position in 1998?

20 A. Again, it was a civil engineer. I'm
21 not sure of the title or position at that time, but
22 probably an Engineer 3 or Engineer 4.

23 Q. Okay. What did you do?

24 A. Performed technical activities for the
25 preparation of reports, calculations, studies,

1 engineering drawings, typical civil engineering
2 activities for mainly industrial large-scale
3 facilities, large-scale clients.

4 Q. I'm not sure if this is in the record
5 or not. What does Lockwood Greene do? What was
6 its business in 1998 or 1999?

7 A. A consulting engineering firm
8 specializing in mainly industrial facilities,
9 heavy -- heavy construction, large ports work,
10 things of that nature.

11 Q. And the office is where?

12 A. That office is in Spartanburg, South
13 Carolina, is the one I'm stationed in.

14 Q. And did you have any particular area of
15 expertise?

16 A. No.

17 Q. I mean, do you have any particular area
18 of expertise?

19 A. Uh, civil engineering in general,
20 that's -- you know, I do have a master's in water
21 resources and environment engineering
22 specialization, civil engineering, so I do have
23 that. And I do a lot of calculations, review
24 calculations, for younger engineers, teach younger
25 engineers.

1 Q. If you can -- in 1998, I'm not sure
2 what your title was, but what were your duties at
3 Lockwood Greene at that time?

4 A. Again, civil engineering activities.

5 Q. Who did you work for and who did you
6 report to?

7 A. My direct supervisor was a gentleman
8 named Mr. Carroll Walker.

9 Q. And what was his position? What was
10 his title?

11 A. His title is assistant -- I think at
12 the time it was assistant manager of civil
13 engineering, and we had a department manager that
14 was over structural and civil engineering, so he
15 reported to that gentleman.

16 Q. In 1998 did your position involve
17 preparing construction plans?

18 A. Yes, sir.

19 Q. How about reviewing local land use
20 regulations?

21 A. Yes, sir.

22 Q. Were you involved in getting permits?

23 A. Yes, sir.

24 Q. What about flood mapping and analysis?

25 A. Yes, sir, I mean, we do that on every

1 project.

2 Q. And was that something that you were
3 specifically involved with, you personally?

4 A. Yes, sir.

5 Q. And when did you first learn about the
6 Manning property here in Columbia that we're here
7 about?

8 A. My first activity on this project was
9 there was a FEMA meeting called at the Richland
10 County offices that I was asked to attend. I
11 really didn't have any knowledge of what was going
12 on, but I was asked to attend the meeting and
13 gather information. I'm not even sure of the dates
14 anymore. It must have been whatever that was, '98.

15 Q. Okay. We'll get to that in a minute.
16 Who asked you to attend?

17 A. Mr. Walker asked me to attend -- I
18 think he got that information from
19 Mr. Tillotson -- to have someone there to gather
20 information.

21 Q. And who was Lockwood Greene attending
22 on behalf of? Did you have a client or --

23 A. At that particular point in time, I'm
24 not sure of the contractual relationship. I know
25 we were -- later we were working as a partnership

1 with Columbia Venture and some of the others.

2 But at that point, I'm not sure what
3 the relationship was, if we were doing it as part
4 of a new business effort or as an exploratory
5 effort; I'm not sure what the relationship was at
6 that time.

7 Q. So you don't -- were you there on
8 Mr. Manning's behalf --

9 A. No, I was there on --

10 Q. -- or Burrough & Chapin's behalf, or do
11 you know?

12 A. I don't know. I was asked to attend by
13 Mr. Walker, so I did.

14 Q. But you are aware that somewhere down
15 the road, Lockwood Greene became one of the members
16 of Columbia Venture, LLC?

17 A. Yes, sir.

18 Q. And that was the entity that acquired
19 that property?

20 A. Yes, sir.

21 Q. When you first got involved with this
22 property, what were you assigned to do?

23 A. My first activities were to review the
24 flood mapping information that was published, the
25 preliminary information that came out.

1 Q. And was that before you attended the
2 meeting or after the meeting?

3 A. That was after the meeting.

4 Q. When you went to this meeting in July
5 of 1998, what was your understanding of what was
6 going on and what you were being asked to do?

7 A. I don't think I had really any
8 knowledge beforehand. I just really gathered the
9 information and tried to explain to my supervisors
10 what was going on.

11 Q. As I mentioned earlier, the exhibits
12 are up there. Look at Plaintiff's Exhibits 11 and
13 238, if you will. Let's start with 238.

14 Plaintiff's 238, have you got it?

15 A. Yes, sir.

16 Q. Can you identify that for me?

17 A. Let me get my glasses.

18 Q. You might need a magnifying glass, too.

19 A. Yeah. This is a large-scale map. I
20 can't hardly read the dates on it, but it
21 definitely is a FIRM map of Richland County.

22 Q. Do you know whether that was the map
23 that was the subject of the FEMA meeting that you
24 attended?

25 A. I don't know. I can't read the dates

1 and I'm not sure. It looks like it could have
2 been, but I'm not -- it's the floodways that's on
3 the entire side of Richland County.

4 Q. Okay. So the floodways shown in the
5 entire Richland County --

6 A. Right.

7 Q. And can you see, in the bottom
8 right-hand corner, preliminary June, 5th, 1998?

9 A. There you go, yes.

10 Q. Okay. So was this the map that the
11 meeting was about?

12 A. I believe it is.

13 Q. All right. And as you testified, what
14 does this map show?

15 A. The map shows the crosshatched area
16 which represents floodway. Uh, it appears, you
17 know, the right-hand side of it's cut off, but it
18 appears to be -- the whole property to Bluff Road
19 is included as a floodway --

20 Q. Okay.

21 A. -- if I remember correctly.

22 Q. Okay. Look with me now at Plaintiff's
23 Exhibit Number 11. That would be in Volume 1.

24 Okay. Have you got it?

25 A. Yes, sir.

1 Q. Have you seen this document before?

2 A. I believe I have, but it's been a long
3 time.

4 Q. Okay. Look over with me at the
5 next-to-the-last page, the meeting attendance
6 records. Do you see your name on there?

7 A. Yes, sir.

8 Q. Is this the meeting you're referring to
9 that was held at Richland County?

10 A. I believe it is.

11 Q. All right. Was anybody else from
12 Lockwood Greene there?

13 A. Not that I know of.

14 Q. Okay. So it was just you?

15 A. Yes, sir.

16 Q. And your mission was to gather
17 information?

18 A. Yes, sir.

19 Q. Okay. Did you attend the entire
20 meeting?

21 A. I believe so, yes, sir.

22 Q. Tell us what happened at the meeting,
23 to the best of your recollection.

24 A. That was a long time ago. The only
25 thing that I can recall is the mapping being

1 brought out, indicating that the floodway was being
2 placed on the Richland County side, the levee was
3 not being counted for in the calculations, which
4 was different than the previous map.

5 Q. Okay. Who made the presentation?

6 A. I believe it was a gentleman from
7 Hayes, Seay, Mattern and Mattern. His name is
8 probably on here. I think it was Scott, was the
9 gentleman.

10 Q. Scott Edelman?

11 A. I believe he was the one that made the
12 presentation on behalf of FEMA.

13 Q. And were there questions asked during
14 the course of that?

15 A. It was a long time ago. I don't really
16 recall a lot about it.

17 Q. Okay. Well, let me see if I can
18 refresh your recollection. Look down on the second
19 page. Do you see where it says, the following
20 questions were brought up?

21 A. Yes, I'm there.

22 Q. Read Number G, Under 10.

23 A. If the revised floodway is finalized,
24 how would someone with property now in the floodway
25 be able to build on their property?

1 FEMA regulations allow for no-rise
2 studies to be done for any particular development;
3 however, Richland County has adopted more stringent
4 regulations and doesn't allow any development in
5 the floodway, unless a variance is obtained.

6 Q. Okay. So prior to that, were you aware
7 that Richland County did not allow development in a
8 floodway?

9 A. I don't believe I had any knowledge of
10 that beforehand. I was just gathering information.

11 Q. Had you ever done anything in Richland
12 County before --

13 A. Yes, sir, I had.

14 Q. -- involving flood mapping or anything?

15 A. It was not floodplain-related work,
16 though.

17 Q. So you didn't have -- I'm sorry, go
18 ahead.

19 A. I didn't have a background or basis to
20 note that it was different than...

21 Q. Okay. But at that meeting you would
22 have learned that Richland County had more
23 stringent regulations that did not allow
24 development in a floodway; is that correct?

25 A. The document, I don't recall it

1 specifically, but it's stated there.

2 Q. Okay. Is that something that would
3 have been significant to you in your
4 information-gathering process?

5 A. Yes, sir.

6 Q. Okay. And is that something that you
7 would have reported back to the folks at Lockwood
8 Greene?

9 A. Yes, sir, I'm sure this document went
10 back.

11 Q. Okay. All right. And then look over
12 at letter N on the next page, if you will. Can you
13 read that for me?

14 A. How can the backup data from the Hayes,
15 Seay Mattern & Mattern analysis be obtained?

16 Q. I'm sorry, that's -- I'm --

17 A. HSMM, that's the name of the company.
18 It's Hayes, Seay, Mattern & Mattern. Analysis to
19 be obtained. Submit a written request to Bill
20 Marquez.

21 Q. And Bill Marquez was FEMA?

22 A. FEMA person, yes.

23 Q. All right. Now, Letter N was what I
24 really meant to ask you about.

25 A. Oh, letter N?

1 Richland County represented they are
2 currently using the preliminary maps with the
3 widened floodway for regulatory and permitting
4 purposes.

5 Q. And that map would be the Plaintiff's
6 Exhibit 238 we were just looking at, is that what
7 your understanding was?

8 A. I believe that's the map, yes.

9 Q. Okay. And was that significant to you?

10 A. The map, yes, that was significant.

11 Q. Was it significant that Richland County
12 indicated that they were using the preliminary map
13 for regulatory and permitting purposes?

14 A. That would be significant, yes.

15 Q. And why would that be significant?

16 A. It's a significant change from the
17 previous map.

18 Q. Okay. Did you report that back to the
19 folks at Lockwood Greene?

20 A. Yes, sir.

21 Q. And Richland County's more stringent
22 regulations that prohibited development in a
23 floodplain --

24 A. Floodway?

25 Q. Floodway, I'm sorry. I do that all the

1 time. Thank you.

2 -- in a floodway, and the fact that
3 they were using the revised preliminary map, what
4 effect did that have on this proposed project?

5 A. Well, the -- I mean, it was certainly
6 an impedence to development.

7 Q. And why?

8 A. Because -- well, the floodway is
9 indicated on the entire Richland County side on
10 that drawing.

11 Q. And therefore the property couldn't be
12 developed?

13 A. Well, at this preliminary stage, yes.

14 Q. What do you mean at this preliminary
15 stage?

16 A. It's a preliminary map.

17 Q. Okay. Based on the preliminary map?

18 A. Right. This is a meeting to gather
19 information for technical content to provide to
20 FEMA. So if you have technical content that's
21 different from what FEMA has, you should provide it
22 so they can have the updated information.

23 Q. Did you do an analysis of that
24 preliminary map?

25 A. I had not personally done the analysis

1 of this preliminary map.

2 Q. Did Lockwood Greene do the analysis?

3 A. We -- I don't remember at this date in
4 time, if we had -- if we had a consultant that was
5 helping us perform the HEC-2 analysis. And I'm not
6 sure if he was on board at that time.

7 Q. Okay. When you left that meeting on
8 July the 8th, 1998, did you believe that the
9 preliminary map would ultimately be issued by FEMA?

10 A. I had no basis to know any way, one way
11 or the other.

12 Q. So you didn't know one way or the
13 other?

14 A. No.

15 Q. All right. Did you have any
16 discussions with anybody at Lockwood Greene about
17 whether the map would ultimately be adopted by
18 FEMA?

19 A. At that point in time, I was just
20 gathering information, so...

21 Q. You weren't doing any sort of analysis
22 or evaluation of the map?

23 A. No, sir.

24 Q. Okay. Look with me at Plaintiff's
25 Exhibit 264. First I will ask you to look over at

1 the last page. Or do you know what this document
2 is?

3 A. I don't know if I know what this
4 document is.

5 Q. Okay.

6 A. I mean, I see what the title is, but I
7 don't really know what it entails.

8 Q. Look over at the last page of the
9 document.

10 A. The fax?

11 Q. Yeah. And you see that's dated
12 February 18th, 1999?

13 A. Yes, sir.

14 Q. Turn with me to CV-McNair 2450, which
15 is in the bottom right-hand corner.

16 A. In the same document?

17 Q. Yeah, same document. I'm sorry. It's
18 about four or five pages in. It says Columbia
19 Project Due Diligence on the top of it.

20 A. I think that's it, yes.

21 Q. At this point in time, February of
22 1999, did anybody know what the -- well, had there
23 been any more maps issued since the June 1998 map?

24 A. I can't keep track of the dates.
25 There's so many different dates.

1 Q. So you don't know?

2 A. Well, I know there's multiple issues,
3 and I couldn't tell you the dates.

4 Q. Okay. Well, prior to purchase -- prior
5 to the purchase of the property, do you know
6 whether a new map had been issued or not?

7 A. I don't know the date of purchase. I
8 don't know any --

9 Q. The date of purchase was February 19th.
10 You still don't know? Okay. Well, at this point
11 in time, did anybody know what the next map was
12 going to look like?

13 A. I don't have a way to answer that. I
14 mean, how can you predict what FEMA would do?

15 Q. Okay. So it was up to FEMA.

16 A. Well, it was to provide technical
17 content so the FEMA maps would be most accurate, so
18 I guess that's what our intention was, to provide
19 technical content.

20 Q. All right. Look with me at this
21 Columbia due diligence page where it says FEMA.
22 Are you with me?

23 A. Yes, sir.

24 Q. It says: Currently, the land is in a
25 proposed floodway.

1 Right?

2 A. Yes, sir.

3 Q. And that would be based on the June
4 1998 map?

5 A. Okay.

6 Q. And then it talks about what Lockwood
7 Greene is going to do. Would you read through
8 that? You don't need to read it out loud, just
9 read it to yourself.

10 A. Yes, sir, okay.

11 Q. At the time this was drafted, what was
12 Columbia Venture's plan with respect to dealing
13 with the flood map?

14 A. Again, I wasn't a high-level person
15 that was making decisions on direction. I could
16 just tell you that there was information-gathering.

17 Q. What was Lockwood Greene doing with
18 respect to the proposed flood map?

19 A. Again, we were reviewing information
20 and seeing if it was technically accurate and
21 seeing if we had any additional information, or
22 gathered additional information. I'm not sure of
23 the exact dates. I know we obtained -- we
24 commissioned geotechnical reports, topographic
25 surveys and other technical information to provide

1 input into this.

2 Q. Was it Lockwood Greene's charge to
3 determine a detailed plan of action to have the
4 proposed floodway designation removed from the
5 effective areas?

6 A. Yes, sir, that was the -- I know that
7 was the goal.

8 Q. That was the goal?

9 A. Yes, sir.

10 Q. Okay. And were you working on getting
11 that done?

12 A. I was involved in that; yes, sir.

13 Q. All right. And this was Columbia
14 Venture's plan before they purchased the property;
15 is that correct?

16 A. Again, I don't know the dates.

17 Q. You don't know the dates. Okay. But
18 Lockwood Greene's duty was to come up with a plan
19 of action to get the floodway designation removed
20 from the Manning property.

21 A. Yes, sir.

22 Q. All right. And was this the first
23 thing that needed to be done in order for the
24 development to move forward, getting the map
25 changed?

1 A. It was one of the important parts of
2 it; yes, sir.

3 Q. Okay. And why was that so important?
4 Why did that need to be done?

5 A. Well, it made the property
6 un-buildable, according to -- it made it
7 un-buildable, and you couldn't -- by regulation,
8 you couldn't build in a floodway.

9 Q. As it stood. But if you got the map
10 changed and the floodway rolled back, then what?

11 A. Then it could be developed. If it can
12 certify the levee to a certifiable structure, then,
13 yes, it could be removed.

14 Q. Okay. So step 1 was to get the
15 floodway rolled back.

16 A. Well, there's a lot of steps in between
17 there, but...

18 Q. Right, to provide the technical
19 information and all of that sort of stuff.

20 A. Yes.

21 Q. But you couldn't upgrade the levees or
22 get the levees certified until you got the floodway
23 situation straightened out, right?

24 MR. GRIER: I'm going to object to the
25 leading nature of this, Your Honor.

1 BY MR. LYDON:

2 Q. Okay. Let me rephrase the question.

3 Once you got -- if you got the map changed and the
4 floodway rolled back, what would the next step be?

5 A. If we got the map changed and the
6 floodway rolled back? The floodway rolled back?
7 Are you saying have a letter of map revision
8 obtained, or a CLOMR obtained?

9 Q. Yeah, and that's the technical
10 engineering term. I'm thinking about more just
11 from a developer's standpoint, what the next step
12 would be after you got the --

13 A. It would be master planning the site to
14 see what would actually fit on it and do a land
15 plan, do the engineering, do the roads, figure out
16 costs.

17 Q. Sure, but you couldn't do any
18 development without addressing the levees; is that
19 right?

20 A. Under this map, yes. Under the '95
21 map, you probably could do some development.

22 Q. Could you do the full-scale
23 development --

24 A. Under which map?

25 Q. -- without the levees being certified?

1 A. Without the levees being certified, we
2 could -- again, there's some development like, you
3 know, there's a school there.

4 Q. Right.

5 A. So there could be some development
6 done, but not to the level that was a full
7 build-out or a complete -- and it depends on which
8 map you're looking at.

9 Q. Okay. Let me ask you this: Could the
10 levees be upgraded if the property was in a
11 floodway?

12 A. If the property was in a floodway?

13 Q. Under the 1998 map, the one that was
14 presented at the July 1998 meeting, could you get
15 permits to upgrade the levees?

16 A. To upgrade the levees to bring them to
17 a certifiable state?

18 Q. Better question: To get them
19 certified.

20 A. I don't believe we could.

21 Q. Why not?

22 A. Because the Richland ordinance prevents
23 any development in a floodway.

24 Q. Now, you said that part of your job was
25 to submit information to FEMA.

1 A. Yes, sir.

2 Q. What kind of information were you
3 submitting to FEMA?

4 A. Well, we submitted all types of
5 technical information. We obtained a topographic
6 survey for the complete property. We obtained
7 profiling and location of the levees. At that
8 time -- the levees are very old and the route and
9 the location has not really ever been defined on a
10 map exactly where it is, the heights of the levee,
11 the widths, obtained geotechnical information on
12 borings through the levee at intervals.

13 We were taking boats up the river,
14 taking photographs for Manning's values to
15 calculate -- per the calculations in the HEC-2
16 models.

17 We were reviewing historic information
18 done by the Department of Transportation, the
19 studies they had done. We were researching
20 old -- old calculations, old reports.

21 We were gathering anything historic
22 that we could get, any mapping. We were reviewing
23 historic flood studies. We were taking a wide
24 approach and trying to gather a significant amount
25 of information.

1 Q. Okay. And was all of that submitted to
2 FEMA?

3 A. Yeah, I think all of it was submitted
4 to FEMA, and it seems like they chose to ignore
5 most of it.

6 Q. Okay. And when the data was submitted
7 to FEMA, was there any sort of suggestion or
8 request that, based on that data, the floodway
9 should be moved?

10 A. Yes, sir.

11 Q. Okay. And who did that come from?

12 A. Who did the --

13 Q. Who made the proposal or the
14 suggestion? Was that from Lockwood Greene?

15 A. Yes, sir. We were responsible for the
16 technical part of it. I'm not sure at this
17 particular time -- we had another consultant.
18 Again, it depends on the dates. Martin Becker was
19 asked to be the lead for this activity, since he
20 had significant experience dealing with FEMA.

21 And, at that time, Martin was doing all
22 the contact with FEMA. I wasn't doing any contact
23 with anybody regulatory, so FEMA was --

24 Q. And we'll get to that in a minute. We
25 can put it in the timeline, in context. But what

1 I'm trying to establish now is just that Lockwood
2 Greene and Columbia Venture's objective was to get
3 the map changed --

4 A. Yes, sir.

5 Q. -- before they did anything else,
6 right?

7 A. Yes, sir.

8 Q. Okay. This next section of the
9 project, due diligence, says dike system. And I
10 assume that's referring to the levees.

11 A. Yes, sir, it's a term that could be
12 interchanged.

13 Q. Okay. And what was Lockwood Greene's
14 responsibility with respect to the dike system?

15 A. At this time, of this document?

16 Q. Right. According to this document.

17 A. So this was in -- again, I don't know
18 all of the dates. I think we did a preliminary
19 estimate on what we thought the levee system might
20 cost to bring up to standards. I don't know. I
21 would have to read through all of this at this
22 time.

23 Okay. This looks like some of the
24 initial planning efforts to kind of define what it
25 would take to --

1 Q. Okay. What it would take to do what?

2 A. Well, you know, they're talking about
3 interior pumping systems and construction of the
4 levee, estimated cost to bring it to acceptable
5 standards. It's defining what we think the path
6 forward might be.

7 Q. Okay. And does this relate to the
8 levee certification process?

9 A. Well, I'm sure maybe we didn't quite
10 understand the full certification process.

11 Q. I understand that. This was the
12 preliminary work.

13 A. Right. I'm sure that's the goal.

14 Q. Okay. So levee certification
15 would -- when would you start the levee
16 certification process?

17 A. Well, it depends on the approach, how
18 we would -- whoever is deciding the approach.

19 Q. Okay.

20 A. You would probably do a
21 conditional -- you do the mapping to get the
22 floodway moved.

23 Q. You get the floodway moved first.

24 A. Yeah. And whatever needs to be done to
25 do that, whatever -- there's a whole lot that has

1 to happen before that.

2 And then we prepare plans that
3 would -- that would show physical construction,
4 what would need to be required to bring it up to
5 the certification standard. And then we would
6 probably have to file a conditional letter of map
7 revision, a CLOMR.

8 Q. What is a conditional letter of map
9 revision?

10 A. In other words, if you build it like
11 this, then the levee can be -- they will change the
12 map, is pretty much what they're saying. You're
13 saying, if we build it in this manner and in this
14 fashion, is it to a state that could be certifiable
15 by FEMA standards?

16 Q. Okay. And if you -- if you got the
17 floodway moved to the riverside of the levee, would
18 you still need to get -- to do a CLOMR?

19 A. If the floodway was moved, I don't -- I
20 don't think we would need to. It depends on where
21 it is on the downstream sides and other things.

22 Q. But didn't the levee still have to be
23 certified?

24 A. Yes, sir, the levee would have to be
25 certified.

1 Q. And why would that levee have to be
2 certified?

3 A. It wasn't a certified levee.

4 Q. Okay. And would that -- and so because
5 it wasn't certified -- I will get to that in a
6 minute?

7 Okay. So conditional letter of map
8 revision. And then what would happen?

9 A. That would be submitted to FEMA and
10 would probably incorporate their comments, review
11 comments. And then once that happened, then we
12 would obtain construction permits and construct it.
13 Once it's constructed, then the mapping would be
14 changed.

15 Q. Were you familiar with the Richland
16 County ordinances that prohibited construction in a
17 floodway that were in effect in 1999?

18 A. It's documented there.

19 Q. You were aware of them, though?

20 A. I believe we were aware. I'm not sure
21 of dates again. Sometimes when you obtain
22 preliminary information, you may not fully
23 understand the ramifications of everything.

24 Q. Okay. So we're talking about
25 preliminary information and your date is going back

1 to the July 1998 meeting?

2 A. That's right.

3 Q. Following that meeting and the
4 information you obtained, did you review the
5 Richland County ordinances that were in effect, to
6 confirm whether you could do construction in a
7 floodway?

8 A. We did review the ordinances.

9 Q. Okay. And what did you learn when you
10 reviewed the ordinances?

11 A. The same findings, that there was no
12 construction in the floodway.

13 Q. Okay. What ordinances did you review?
14 Do you recall?

15 A. Just the Richland County ordinance. I
16 don't remember the section and title.

17 Q. Did you look at the zoning ordinance?

18 A. That's too long ago. I can't remember
19 the exact title.

20 Q. Okay, look at Exhibit 250-A, if you
21 will.

22 A. Okay.

23 Q. Is that the zoning ordinance?

24 A. It appears to be.

25 Q. I'm just asking, is that what

1 you -- did you look at that in determining whether
2 or not you could do the construction in the
3 floodway?

4 A. Uh, I don't recall this particular page
5 in the document, but I'm sure we -- I mean, I'm
6 almost sure we looked at --

7 Q. Okay. You don't necessarily remember,
8 but you did look at the Richland County
9 ordinances --

10 A. Yes, sir.

11 Q. -- and confirmed that you couldn't get
12 a permit for construction in a floodway?

13 A. Right.

14 Q. And was it your understanding, based on
15 your review of the ordinances, that a permit would
16 be required in order to improve or upgrade any part
17 of the levee?

18 A. You mean improve, as in to bring it to
19 standard?

20 Q. Right.

21 A. Yes, a permit would be required.

22 Q. Okay. But you couldn't get a permit as
23 long as the property was in the floodway.

24 A. That's correct.

25 Q. And if Lockwood Greene and its

1 affiliated contractors and the guys you were
2 working with were able to convince FEMA to move the
3 floodway back, then you could get the permits and
4 go forward with the plan, right?

5 A. Yes, sir.

6 Q. So the first thing that had to be done
7 was that -- whether for Lockwood Greene and the
8 developer -- was to convince FEMA to show that
9 there was no floodway on the land-side of the
10 levee; is that correct?

11 MR. GRIER: Object to the leading, Your
12 Honor.

13 THE COURT: Yes, sir.

14 BY MR. LYDON:

15 Q. Okay. Let me rephrase that.

16 So based on the meeting that you went
17 to in July of 1998 and your review of the Richland
18 County ordinances, what was the first thing that
19 Lockwood Greene and Columbia Venture had to get
20 done with respect to the maps?

21 A. Gather scientific technical information
22 to provide to FEMA under the condition that we're
23 trying to move the floodway to the levee.

24 Q. I'm sorry. Trying to move the
25 floodway --

1 A. To the face of the levee, to the
2 riverside of the levee.

3 Q. Okay. And what would this
4 accomplish -- what would this accomplish in terms
5 of moving forward with the project?

6 A. It would remove the floodway from the
7 property and make it more -- make it developable.

8 Q. So you could get permits?

9 A. Yes, sir.

10 Q. And if you got the map -- the floodway
11 moved to the riverside of the levee -- then these
12 ordinances that you looked at from Richland County
13 regarding construction in a floodway would no
14 longer be of concern; is that correct?

15 A. That's correct.

16 Q. And could levee certification be
17 accomplished?

18 A. After all of the engineering and -- all
19 of the stuff that has to happen before that, yes.

20 Q. Okay. And once you got the -- this is
21 something I was confused about for a while. I
22 think I understand now. If the floodway was moved
23 to the riverside of the levee, what would be the
24 purpose of getting the levees certified at that
25 point in time? What was the need? It would still

1 be a need to get them certified.

2 A. It would have to be certified for it to
3 change the mapping.

4 Q. Right.

5 A. The mapping will not change until
6 they're actually constructed.

7 Q. And when the floodway was moved, you
8 still had a mapping issue because the property on
9 the other side of the levee was zoned A and AE; is
10 that right?

11 A. Right, it had an elevation associated
12 with the flood BFE.

13 Q. What does it mean, the property to be
14 zoned A and AE?

15 A. That is a designation, A and AE is -- A
16 is saying that it's in a -- the 100-year
17 floodplain. And the AE is the elevation, it has an
18 elevation associated with it.

19 Q. And if you've got -- but you could get
20 that designation removed by getting the levee
21 certified; is that right?

22 A. Yes, sir. You would remove the AE.
23 You would not remove the A.

24 Q. Right. Why was it beneficial for a
25 developer to remove the AE designation?

1 A. Uh, the structures have to be
2 constructed one foot above the base flood
3 elevation. That's a FEMA requirement. So
4 everything -- if you didn't do that, everything
5 would have to be elevated to an elevation higher
6 than that base flood elevation, so all of the
7 construction would have to be up, similar to like a
8 beach house that's on piers.

9 Q. So as long as that AE designation was
10 there, everything would have to be constructed up
11 like we see at the beach?

12 A. Or you do a no-rise certification for
13 the structure. It's still -- the living level
14 would still have to be one foot above the base
15 flood elevation.

16 (DFT. EXH. 24, a letter dated April 6,
17 1999 to Martin Becker from H. Wilson Tillotson, was
18 presented but not admitted.)

19 BY MR. LYDON:

20 Q. Mr. Hester, you've been handed what's
21 been marked as Defendant's Trial Exhibit 24. Can
22 you identify this for me.

23 A. I don't think I have ever seen this
24 document. This is -- I don't know if I have -- I
25 don't know if I have seen this. Is this when we

1 hired Martin? Is that what this is?

2 Q. Well, I mean, that's what I'm asking
3 you. Read it and see if you can tell us what it
4 is.

5 Can you tell me what it is?

6 A. You know, I wasn't copied on it and I
7 wasn't -- I don't know -- I think I have seen this
8 after the fact, but I didn't see this during the
9 time.

10 Q. Okay. So back in 1999, you didn't see
11 it.

12 A. I don't have any knowledge of this.

13 Q. But you have seen it before today.

14 A. I have seen it before today, yes.

15 Q. And I believe you were talking about
16 Mr. Martin Becker earlier in your testimony.

17 A. Yes.

18 Q. All right. And is this a letter in
19 which he was retained by Lockwood Greene?

20 A. It appears to be. I don't have any
21 knowledge of if this was the final or revisions
22 or -- again, I wasn't copied on it and I didn't
23 have any knowledge of it at the time. And I hadn't
24 had any knowledge other than just being presented
25 as --

1 Q. Well, were you aware that Mr. Becker
2 was hired by Lockwood Greene?

3 A. Yes, sir.

4 Q. Okay. Who is Martin Becker?

5 A. Martin is a -- Martin is a -- that's a
6 good question. Martin has experience working with
7 FEMA in the past and has been successful on other
8 projects, removing floodway/floodplain.

9 Q. Okay. And is that what he was hired to
10 do in this situation?

11 A. I think he was hired to help us through
12 the regulatory FEMA maze to get us through the
13 process.

14 Q. Okay. And was he charged with helping
15 you guys to convince FEMA to move the floodway line
16 to the riverside of the levee?

17 A. Martin, yes, was the guy doing all the
18 FEMA contact. He was directing my activities.

19 Q. Okay. So did you report to him?

20 A. Not directly.

21 Q. Okay.

22 A. But he's -- he's the one that told us
23 how to approach it. He had all of the discussions
24 with FEMA: Here is our strategy. So that's how we
25 worked with Martin.

1 Richland County.

2 Q. Right. But I'm trying to understand
3 what he was hired to do, make sure I'm clear on
4 that.

5 A. I think he was our liaison to all of
6 the regulators, how to approach this, Richland
7 County, FEMA.

8 Q. Okay. How long did his engagement
9 last? Do you recall?

10 A. I don't know the dates, but it was a
11 pretty significant amount of time.

12 MR. LYDON: Your Honor, since he didn't
13 really prepare that or otherwise have much
14 involvement with it, I'm not going to ask that it
15 be admitted into evidence.

16 (DFT. EXH. 34, a letter dated April 15,
17 1999 to Mark Hester from Jonathan S. Butters, was
18 presented.)

19 BY MR. LYDON:

20 Q. Mr. Hester, have you got Defendant
21 Trial Exhibit 34?

22 A. Yes.

23 Q. Okay. Can you identify that document?

24 A. Yes.

25 Q. What is this document?

1 A. This is a scope of services from Amos
2 Clark of John R. McAdams Company, to assist us in
3 the HEC-2 modeling.

4 Q. And it's addressed to you?

5 A. Yes, it is.

6 Q. Why was it addressed to you?

7 A. That's a good question. I made the
8 initial contact with him, a technical guy to
9 technical guy, explaining what we needed done. And
10 on a phone call, he wrote it to me, when he
11 probably should have written it to Wilson
12 Tillotson.

13 Q. But did you receive it?

14 A. I don't recall, but, I mean, it's got
15 my name on it, so I probably did.

16 Q. Okay. Read through the first
17 paragraph, project summary. You don't have to read
18 it out loud. Just read it to yourself.

19 A. Yeah, it really, is not really a good
20 summary of what he actually did, but some of that
21 is -- he may not have completely -- maybe we all
22 didn't completely understand what the scope of the
23 work was at that time.

24 Q. But this project summary indicates a
25 number of problems with the proposed -- a number of

1 purported problems with the FEMA map; is that
2 correct?

3 A. That's right. And I think -- maybe
4 this was some discussions -- I think -- I believe
5 that we had some other things going on. He had
6 some other discussions with Martin and some other
7 thing. Some ideas were rolling around in Martin's
8 head that he had mentioned this to Amos and then
9 Amos wrote me the letter, so I think this is
10 probably some of Martin's thoughts.

11 Q. That was my next question, is, where
12 did he get his information from? Was it from you?

13 A. No.

14 Q. Okay. Was John R. McAdams Company
15 hired?

16 A. Yes.

17 Q. And what was their task?

18 A. It was really to do the HEC-2 modeling,
19 assistance in that.

20 Q. And the HEC-2 modeling was information
21 that was going to be provided to FEMA?

22 A. Yes, sir.

23 Q. And the purpose of that was to get FEMA
24 to move the floodway?

25 A. Yes, sir.

1 MR. LYDON: Your Honor, I would ask
2 that Defendant's Exhibit 34 be admitted into
3 evidence.

4 MR. GRIER: No objection.

5 THE COURT: All right. It's admitted.

6 (DFT. EXH. 37, a letter dated June 3,
7 1999 to A. Todd Davison from Wilson Tillotson, was
8 presented.)

9 BY MR. LYDON:

10 Q. Mr. Hester, you've been handed
11 Defendant's Exhibit 37. Do you recognize this
12 document?

13 A. Um, I'm sure I have seen it. I just
14 don't recall a lot of it.

15 Q. Okay. Can you tell us what it is?

16 A. The looks like technical information, a
17 technical summary of findings for the HEC-2
18 computer model.

19 This is when we also hired a Dr. Leo
20 Beard to do the statistical hydrology portion of
21 it. It looks like maybe some technical information
22 about where we had the levees surveyed, where we
23 had different flow rates, proposed different flow
24 rates for the river.

25 I think on the back there's some HEC-2

1 summaries that Amos prepared for the hydraulics
2 based on different flow rates on the river.

3 Q. Were you involved in compiling this
4 technical information?

5 A. It was compiled from multiple sources.
6 I believe I compiled the document.

7 Q. The document that's attached to the
8 letter?

9 A. Right. I believe I did portions of
10 this, compiled it into one.

11 Q. Okay.

12 A. A lot of the contents from the
13 different sources. I believe I prepared that map.

14 Q. So you're referring to which map?

15 A. The FW-1 on 3534.

16 Q. Okay. And then there's some letters in
17 here that are either to you or from you, I believe.

18 A. Um, some letters?

19 Q. Starting at 13550?

20 A. Right, that's right.

21 Q. And is that a letter you wrote to
22 SCE&G?

23 A. Yes.

24 Q. All right. And then SCE&G's response,
25 I believe, is the next page?

1 A. That's right.

2 Q. So you had some direct involvement in
3 putting this document together and then you were
4 overall responsible for physically compiling and
5 putting it together; is that correct?

6 A. Yes, I believe that's correct.

7 Q. All right. And who was it sent to?

8 A. Well, I don't recall, but it says to
9 Todd Davison of FEMA.

10 Q. And what was your understanding of what
11 you were compiling this information for?

12 A. Well, the intent was to lower the flow
13 rates, number one, which would reduce the floodway
14 widths, and also reduce the flood -- you know,
15 bring the floodway back to the levee, as in the
16 previous mapping.

17 Q. Okay. And so this was to be submitted
18 to whom? Not individually, just to FEMA.

19 A. To FEMA, yes.

20 Q. And were you successful in getting that
21 done?

22 A. Oh --

23 Q. Were you successful in getting FEMA
24 to --

25 A. Oh, no.

1 Q. -- move the floodway?

2 A. No. They pretty much ignored a lot of
3 our technical information.

4 MR. LYDON: Your Honor, I would ask
5 that Exhibit 37 be admitted into evidence.

6 MR. GRIER: No objection.

7 THE COURT: No objection. It will be
8 admitted.

9 BY MR. LYDON:

10 Q. Mr. Hester, during the course of your
11 work for Lockwood Greene related to the Columbia
12 Venture property, did you have occasion to talk to
13 the Richland County engineer?

14 A. I believe we did have a meeting with
15 several people, and I was one of those people
16 involved in a meeting with Ralph Pearce.

17 Q. Okay.

18 A. I couldn't remember what we discussed.
19 I mean, it's been so long ago. But it was -- I
20 think it was several people involved, and I just
21 happened to be listening. I wasn't an active
22 participant.

23 Q. But you were present at the meeting?

24 A. Yes.

25 Q. Were you aware that the county engineer

1 interpreted the word impede in the Richland County
2 storm drain ordinance to mean the same as FEMA's no
3 rise standard?

4 A. No.

5 Q. You were not.

6 A. No, we read it as what it says before.

7 Q. Okay. Do you know if anybody else in
8 Lockwood Greene was aware of that?

9 A. Not that I know of.

10 Q. Turn with me to Exhibits 118 and 119
11 that are already in evidence. Let's start with
12 118.

13 A. Okay.

14 Q. Can you tell us what 118 is?

15 A. Um, okay, 118, this is the permit
16 application for maintenance on the levees that
17 we -- the letter is to George Gregory to have his
18 signature added to the permit application.

19 Q. And the letter is from you.

20 A. That's right.

21 Q. And this is seeking a permit to do
22 what?

23 A. This -- I believe this was maintenance
24 activities on the levee..

25 Q. Okay.

1 levees were very old. They needed some
2 maintenance, a little maintenance on them. The
3 areas up near the boat ramp were in a very good
4 condition. Some areas were in not as good a
5 condition. So cleaning and maintenance was needed.

6 Q. Was the permit -- was the application
7 intended to get a permit to upgrade the levees to
8 FEMA standards?

9 A. No, sir, it was a maintenance.

10 Q. And was the application intended to
11 upgrade the levees to meet the county's standards?

12 A. It was maintenance.

13 Q. And then look with me at Exhibit 119.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Oh, yes, this is the one from Gordon,
17 right?

18 Q. From Gordon Greene to you?

19 A. Yes, sir.

20 Q. And do you recall receiving this
21 letter?

22 A. Yes, sir, I do.

23 Q. Look with me at the last sentence of
24 the second paragraph starting with "for example."

25 A. Okay.

1 A. The 17th.

2 Q. Okay. What did you do when it was
3 returned? What did you do with it?

4 A. Reported it up the chain.

5 Q. Okay. To whom?

6 A. First to Carroll Walker and then to
7 Wilson Tillotson.

8 Q. Did you go back and rework the
9 application to address the concerns raised in
10 Mr. Greene's letter?

11 A. I can't remember. We did so many
12 submittals and so many drawing preparations, I
13 can't remember if we replied to this. I'm sure I
14 called Gordon and spoke with him, but it's been so
15 long ago, I can't remember if we filed another -- I
16 know we were working on drawings. I don't know
17 what we did or didn't submit.

18 Q. Okay. So do you know whether that
19 permit application was ever resubmitted to Richland
20 County?

21 A. I don't recall. We looked back in the
22 records and I couldn't find it, but I don't know if
23 we did or if we didn't.

24 Q. If it had been resubmitted, would there
25 have been something in Lockwood Greene's records to

1 show that?

2 A. Normally, yes.

3 Q. And you looked for it.

4 A. We looked for it. That doesn't mean
5 that it couldn't be there, just lost somewhere.

6 Q. Okay.

7 (DFT. EXH. 99, Green Diamond Columbia
8 Venture document, Bates CV000456 through 000545,
9 was presented.)

10 BY MR. LYDON:

11 Q. Mr. Hester, you've been handed what's
12 been marked Defendant's Exhibit 99. Have you got
13 that?

14 A. I do. I believe I do. Yes.

15 Q. All right. Turn with me to Page 462,
16 CV000462.

17 A. Okay. That's the map?

18 Q. The map. We've got a lot of maps
19 floating around in this case. Which map is that?

20 A. Well, it says on the top the Final
21 Determination, 2001.

22 Q. Okay. And where does this map show the
23 floodway?

24 A. I wish we had a color one, you could
25 see it a little better. I can't even read

1 those parties, or perhaps it does. But my
2 impression is it doesn't restrict them just to
3 those parties.

4 It would seem to me that the
5 confidentiality would apply to anything that took
6 place during that mediation, regardless of who
7 becomes a later party to it.

8 So on that ground, I would sustain the
9 objection on the mediation -- the mediation
10 objection. And I will return this to you.

11 MR. LYDON: Your Honor, we would want
12 to offer this as a court exhibit and proffer it.

13 THE COURT: Yes, yes, that will be
14 fine. We will mark it as a court exhibit.

15 (COURT EXH. 1, Notes from mediation,
16 previously Defendant's Exhibit 121, was marked for
17 identification but not admitted into evidence.)

18 BY MR. LYDON:

19 Q. Mr. Hester, there were two models that
20 were utilized in connection with the mapping of
21 this particular area of the Congaree River; is that
22 correct?

23 A. For base flood elevation, yes.

24 Q. And what was the difference between the
25 two models?

1 A. The result of the models or the
2 physical input to the model?

3 Q. Well, tell me, I think they're
4 generally referred to as the Richland model and the
5 Lexington model.

6 A. That's correct.

7 Q. Okay. What was the Richland model?

8 A. The Richland model really did not allow
9 the levee to act as a levee, even though it was in
10 the data file as a -- it's a little difficult to
11 explain if you haven't used one of these before,
12 but it's an elevation and distance from a point
13 that creates a cross-section, and the cross-section
14 creates an area that the computer program
15 determines the waterflow through this
16 cross-sectional area. So if the area is different,
17 the waterflow elevation changes.

18 In the Richland model, both models,
19 actually, had the levee being in the input, as
20 coming across up and over and down. It was a
21 little tiny spike. You know, the floodplain was
22 5,000 feet across. So it's something that's 20
23 feet high and 5,000 feet across. It's just a
24 little blip on the cross-section.

25 But both models had that the Richland

1 County model did not account for the levee acting
2 as a levee. Water could go on either side. Again,
3 it had cross-sections that were incremental. The
4 computer program does not know the difference
5 between the cross-section up here and the next
6 cross-section. And there was nothing between the
7 two. It's distinct so water can flow back and
8 forth either way. So it doesn't recognize that
9 it's a barrier to flow.

10 Q. So the Richland County model didn't
11 treat the levee as a levee?

12 A. It did not.

13 Q. Okay. All right. And what -- how did
14 the Lexington model differ from that?

15 A. The Lexington model, it created a
16 barrier at the levee --

17 Q. Okay.

18 A. -- to prevent, I guess, the floodway
19 from going behind the levee.

20 Q. All right. And did that affect the
21 base flood elevations on the two different models?

22 A. Yes, they had two different base flood
23 elevations.

24 Q. And what was the difference between the
25 two base flood elevations?

1 A. It depended on where you were, but
2 approximately one foot, I believe.

3 Q. Okay. Did FEMA require that any
4 improvement -- well, what was FEMA's requirement
5 with respect to upgrading the levees or to getting
6 the levees certified in terms of the no-rise
7 requirement?

8 A. I mean, there is a no-rise requirement
9 on structures for doing that. Since the Lexington
10 side of the river was already set with the levee
11 being in, it was pretty much already done.

12 Q. How about on the Richland side?

13 A. On the Richland side, once you remove
14 the flood elevation on that side, it would not
15 appear on the Richland side. The BFEs -- you know,
16 once you removed it and certified the levees, the
17 BFEs would not appear behind the levee.

18 Q. But could you certify the levees
19 without increasing the base flood elevation on the
20 Richland --

21 A. Without increasing the base flood
22 elevation on the Richland?

23 Q. Right, yeah.

24 A. Let me ask where you're referencing to,
25 because here you're talking about between the

1 MR. GRIER: No. No.

2 MR. LYDON: Just one minute, Your

3 Honor.

4 BY MR. LYDON:

5 Q. Let me try this one more time.

6 Using the Richland model, if the levees
7 were upgraded, how would that affect the base flood
8 elevation on the Lexington side? Would it affect
9 it?

10 A. Would you say it again? Because I'm
11 not sure --

12 Q. Sure, there's a Richland model and you
13 testified that that shows the levee not acting like
14 a levee.

15 A. Correct.

16 Q. If that levee was upgraded to be a
17 levee, a recognizable levee, would that affect the
18 base flood elevations on the Lexington side of the
19 river?

20 A. The Lexington side was already set high
21 because the levee was in place, so the BFE really
22 won't change from the Lexington side, so the levee
23 was --

24 Q. The BFEs -- it was set high with the
25 levee --

1 A. In place.

2 Q. -- in place.

3 Using the model where the levee was not
4 in place, which was, I think, the Richland model --

5 A. The Richland model, right, it had a
6 lower BFE. And the BFEs for the Richland model
7 were used on the Richland side.

8 Q. But it also went over to the Lexington
9 side too, right?

10 A. It should stop at the county line.
11 That's where the -- where you use one versus the
12 other. The Richland side is on the county line.
13 They mapped the Richland mapping off the Richland
14 model and the Lexington mapping off the Lexington
15 model, so the Lexington model is a higher
16 elevation, yes.

17 Q. Let me ask it this way:

18 According to FEMA's view of the
19 modeling of the Congaree River, could a no-rise
20 have been accomplished when you upgraded the
21 levees?

22 MR. GRIER: Objection, relevance.

23 THE COURT: What's the basis?

24 MR. GRIER: I don't think he talked
25 with FEMA, according to his testimony.

1 THE COURT: I think he's asking him not
2 so much about whether FEMA would determine it
3 no-rise. As I understand the question, it's asking
4 him, as an engineer, whether it would constitute a
5 no-rise. Is that correct?

6 MR. LYDON: That's correct.

7 THE WITNESS: The elevations that are
8 published on the FIRM map are what's directly
9 toward elevations. That's the elevations that we
10 should meet, right? So the BFE that's established
11 in Lexington is on the Lexington model with the
12 higher BFE.

13 BY MR. LYDON:

14 Q. Say that again.

15 A. So anything on the mapping -- if you
16 look at the mapping, between the two -- there's the
17 two maps, the Lexington County map and a Richland
18 County map.

19 Q. Right.

20 A. And if you look between the two,
21 there's an elevation difference. And the elevation
22 difference changes at the face of the levee.

23 Q. Okay.

24 A. So the BFEs, the regulatory BFEs in
25 Lexington, would not be changed, because it's

1 already got the higher elevation of the levee,
2 working as a levee.

3 Q. How about on the Richland side?

4 A. On the Richland side, once you remove
5 the levee, all the BFEs would be gone behind that.

6 Q. What about when you upgrade the levee?

7 A. That's what I mean. I mean, when we
8 upgrade the levee, it would be -- the BFEs would be
9 removed behind the levee --

10 Q. Okay.

11 A. -- so there wouldn't be any comparison.

12 Q. Mr. Hester, have you ever made the
13 statement that the hitch to the project is that the
14 two models show approximately a two-foot difference
15 in elevations, and it would be impossible to show a
16 no-rise in elevation based on the Richland model?

17 MR. GRIER: Your Honor, objection.
18 This is publishing of the statement he made in this
19 document that's been excluded.

20 MR. LYDON: I'm not asking him to
21 publish anything. I'm just asking if he's ever
22 made that statement.

23 THE COURT: I will overrule that
24 objection.

25 BY MR. LYDON:

1 Q. Have you ever made the statement that
2 the hitch to the project is that the two models
3 show approximately a 2 foot difference in
4 elevations, and it would be impossible to show no
5 rise in elevation based on the Richland model?

6 A. That's similar to -- I don't know if I
7 said that verbatim; but what I was talking about
8 there is a comparison between the BFE for one
9 versus the other.

10 And we were told at one time by FEMA
11 that we needed to make that comparison. And I
12 don't believe that that's the intention. They
13 regulate based on the maps, not on --

14 Q. But my question is, Have you ever made
15 that statement before?

16 A. Probably in some form. I don't know if
17 that's exactly the wording, but we did have an
18 issue where we talked about that.

19 Q. You did have an issue.

20 A. Let me say we talked about that -- I'm
21 not sure if it was an issue -- because of the way
22 they regulate the maps, we were told something
23 verbally from FEMA on the discussion that somehow
24 we had to compare the two --

25 Q. Right.

1 proceed.

2 CROSS-EXAMINATION

3 BY MR. GRIER:

4 Q. Mr. Hester, I want to ask you a little
5 bit about the change of command at Lockwood Greene
6 when this process -- when Lockwood Greene and
7 Columbia Venture or Boroughts & Chapin were looking
8 at this particular property and your role in that
9 process and the role of other people in the
10 process. And I think you said Mr. Walker was sort
11 of the person that you reported to?

12 A. He's my direct supervisor, yes.

13 Q. And what about Mr. Wilson Tillotson;
14 was he sort of the manager of this?

15 A. Yes, Wilson was the manager, yes.

16 Q. All right. Now, is it fair to say
17 that -- you're an engineer; are you not?

18 A. That's correct.

19 Q. And was it fair to say that your role
20 that you were assigned was specific sort of
21 engineering tasks, to review technical data, that
22 type of thing?

23 A. Yes, that's correct.

24 Q. And there were other people along with
25 Lockwood Greene that were performing other tasks,

1 is that correct, Mr. Deas Manning, and Mr. George
2 Gregory?

3 A. Yes, that's right.

4 Q. And they were -- they're not engineers;
5 are they?

6 A. No.

7 Q. And so they were assigned
8 non-engineering tasks, so to speak; is that
9 correct?

10 A. That's correct.

11 Q. You're familiar with the certification
12 requirements of certifying levees under FEMA's
13 regulations, are you not, under -- I believe it's
14 Code of Federal Regulations, 65.10.

15 A. Yes, I have read that.

16 Q. And you recall that as part of the
17 certification process, an agency created by state
18 or federal law, like a governmental agency, has to
19 assume responsibility for the maintenance and
20 inspection of the levees; is that correct?

21 A. Yes, sir.

22 Q. And you were not assigned, were you, to
23 talk with Mr. Cary McSwain or anybody else at the
24 county about whether the county would agree to
25 undertake that responsibility; were you?

1 A. No, sir, that wasn't my responsibility.

2 Q. And I think you testified that you had
3 a meeting at the county engineer's office, along
4 with some other people. I believe you testified to
5 that.

6 A. Yes.

7 Q. And I believe you testified that you
8 were unaware of what the county engineer's position
9 was, or the county engineer's interpretation of the
10 Richland County ordinances or the stormwater
11 ordinances; is that correct?

12 A. I don't know -- would you clarify?

13 Q. Yeah, I think you were asked -- you
14 attended this meeting, and I think you were asked
15 whether or not you were aware personally of the
16 county engineer's interpretation of the Richland
17 County Stormwater Ordinance, and I think you said
18 you were unaware of what its interpretation was.

19 A. Right, on the flood --

20 Q. Right.

21 A. -- the no construction in a floodway,
22 correct.

23 Q. And you weren't asked -- or you weren't
24 assigned a task, were you, to meet with the
25 engineer to find out what his interpretation of the

1 ordinance was, were you?

2 A. No, I was not.

3 Q. Now, do you have Exhibit 118 in front
4 of you?

5 A. Okay, I have it.

6 Q. And that's an application for a -- is
7 this a land disturbance permit? Is that what you
8 call this?

9 A. It is.

10 Q. And you prepared this; did you not,
11 sir?

12 A. Yes, I did.

13 Q. And you sent it -- if you look on
14 the -- the first page there, I believe, is a
15 date -- when you faxed a copy of it on March 20th
16 of 2001, you just faxed a copy to George Gregory
17 and Bill Boyd on that date; is that correct?

18 A. I believe that's correct.

19 Q. Yeah, but if you'd look at the next
20 page, this was actually prepared in -- around May
21 of 1999. Is that correct?

22 A. That's correct.

23 Q. And you actually sent it to George
24 Gregory to submit it to the county; did you not,
25 sir?

1 A. That's right. I had his signature and
2 submitted it.

3 Q. You actually gave it to Mr. Gregory to
4 submit to the county. And you don't know how he
5 submitted it, whether he did it by mail or whether
6 he took it over there personally?

7 A. I don't know.

8 Q. Now, take a look at Exhibit 119. And
9 that's the letter dated May 13th, 1999 from
10 Mr. Gordon Greene returning the application and
11 saying that the -- saying: Please be advised that
12 the permit to upgrade the above-referenced levee
13 cannot be issued until a complete set of plans and
14 specifications are provided.

15 Do you see that, sir?

16 A. Yes.

17 Q. And he says, you know: For example,
18 100-year flood information, levee cross-sections,
19 levees -- and elevations and soils analysis.

20 Do you see that, sir?

21 A. Yes.

22 Q. And he says: The aforementioned plans
23 are therefore disapproved until additional
24 information is received.

25 And he says: Also note that the

1 county's ordinance requires that the levee upgrade
2 be in accordance with the U.S. Army Corps of
3 Engineers' manual.

4 And he cites the manual there.

5 Consequently, review and approval by
6 the Army Corps of Engineers will be required.

7 It says that; does it not?

8 A. Yes.

9 Q. And he goes on to say that the county
10 requires all levees protecting residential
11 structures or non-residential structures which are
12 not floodproofed to be designed, constructed and
13 maintained to provide protection against the
14 500-year flood, plus three feet of freeboard; does
15 he not, sir?

16 A. Yes.

17 Q. And so he returns this application and
18 he identifies this additional information that
19 needs to be submitted with the application; does he
20 not, sir?

21 A. Yes, sir.

22 Q. But he does not, in this letter,
23 anywhere say that the application is not approved
24 because Columbia Venture is proposing to improve
25 the levee that's located within a regulatory

1 floodway on a revised preliminary flood map; he
2 doesn't say that, does he?

3 A. I don't believe that's in there.

4 MR. GRIER: Thank you, Mr. Hester.
5 That's all the questions I have.

6 THE COURT: All right, sir. Any
7 redirect?

8 MR. LYDON: Just one second, Your
9 Honor.

10 THE COURT: All right, sir.

11 MR. LYDON: Nothing further from the
12 Defendants, Your Honor.

13 THE COURT: All right, sir, you can
14 step down. You're free to be excused, Mr. Hester.
15 Thank you.

16 MR. JOHNSON: Your Honor, we'll call
17 Lisa Jones. I can get her.

18 THE COURT: Please be seated and then
19 state your name for the record, please.

20 THE WITNESS: My name is Lisa Sharrard
21 Jones.

22 LISA SHARRARD JONES
23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. JOHNSON:

1 Q. Where were you employed in the year
2 1998?

3 A. I was employed with the South Carolina
4 Department of Natural Resources. I was the NFIP
5 state coordinator.

6 Q. And what were your years of employment
7 with DNR?

8 A. I went to work for DNR in May of 1994
9 and I left in October of 2010.

10 Q. Would you describe generally your
11 duties as state floodplain coordinator.

12 A. Yes. My duties were to provide
13 technical assistance with the communities, along
14 with acting as liaison between FEMA and those
15 communities.

16 Q. Can you tell me approximately how many
17 communities in South Carolina participate in the
18 flood insurance program?

19 A. I believe there are over 200.

20 Q. I want to show you a document and ask
21 you if you can identify it as a document. Confirm
22 the number.

23 A. Yes, this is FEMA's community status
24 book, and it lists the communities in South
25 Carolina that participate in the National Flood

1 Insurance Program, and there are 222 communities
2 that do participate in the National Flood Insurance
3 program.

4 MR. JOHNSON: Your Honor, we offer into
5 evidence Defendant's Exhibit 147.

6 THE COURT: All right. Any objection?

7 MR. BECKER: Well, Your Honor,
8 relevance. I'm not sure -- two things -- it's
9 September -- it's dated September 7th, 2012. I
10 don't understand what relevance it has to an
11 alleged regulatory taking that occurred on February
12 20th, 2002.

13 And I don't understand the relevance
14 of -- you know, what other communities
15 participating in the National Flood Insurance in
16 South Carolina have to do with it, either.

17 MR. JOHNSON: Your Honor, it's merely
18 background. That's all it is.

19 THE COURT: All right, sir. I will
20 allow it for background purposes.

21 (DFT. EXH. 147, FEMA Community Status
22 Book Report: South Carolina, was marked for
23 identification.)

24 BY MR. JOHNSON:

25 Q. Now, Ms. Jones, did your job entail

1 reviewing floodplain management ordinances for
2 local governments?

3 A. Yes, it did.

4 Q. Are you familiar with the FEMA flood
5 hazard mapping process?

6 A. Yes, I am.

7 Q. Do you know how to read the FEMA flood
8 insurance rate map?

9 A. Yes, I do.

10 Q. I want to hand you what has been marked
11 Defendant's 131 --

12 (DFT. EXH. 131, FEMA FIRM Panel: Bridge
13 Creek, was presented.)

14 BY MR. JOHNSON:

15 Q. -- and ask you have to look at it. And
16 can you tell me what that is?

17 A. This is a copy of a -- a microfiche
18 copy of a Flood Insurance Rate Map, dated, I
19 believe, 1991.

20 Q. And does it show Bridge Creek located
21 in the unincorporated Richland County?

22 A. Yes. Let me open up this bigger map.
23 I can see it better. Yes, it does.

24 Q. And does it identify the flood hazard
25 zone in which Bridge Creek was located at that

1 time?

2 A. Yes, it does, sir.

3 Q. And what zone was it in?

4 A. It's in Zone A. Bridge Creek is mapped
5 as Zone A.

6 MR. JOHNSON: Ms. Jones, could you hold
7 your map up and kind of inform His Honor what we're
8 talking about.

9 THE COURT: Okay, thank you.

10 THE WITNESS: Yes, this is Bridge
11 Creek.

12 BY MR. JOHNSON:

13 Q. Okay, thank you. Look at the map again
14 and tell me the year of the map.

15 A. The map is dated November 4th, 1981,
16 and it's Panel 0075C.

17 Q. You said 1991 earlier.

18 A. I'm sorry. That was a mistake. Yes.

19 Q. Now, is there a -- what is the
20 difference between a Zone A and a Zone AE?

21 A. A Zone A is an area that is -- the
22 flood hazard has been approximated, particularly
23 off topography, USGS maps. It has not been studied
24 in detail. There's been no hydrology or hydraulics
25 run to determine a base flood elevation or a

1 floodway.

2 Q. Is there a floodway delineated on
3 Bridge Creek on that map in 1981?

4 A. No, sir.

5 Q. No, I want to show you --

6 MR. JOHNSON: Your Honor, we would
7 offer that exhibit into evidence.

8 THE COURT: All right. Any objection?

9 MR. BECKER: Your Honor, I think,
10 again, I just don't understand the relevance, but
11 I'm not going to object.

12 THE COURT: All right.

13 MR. JOHNSON: For the record, Your
14 Honor, the relevance is, this man, Mr. Manning,
15 testified that it was in the flood zone back prior
16 to the eighties. We're establishing that it
17 wasn't.

18 (DFT. EXH. 139, FEMA Flood Insurance
19 Study for Unincorporated Richland County (excerpt),
20 was presented.)

21 BY MR. JOHNSON:

22 Q. Now, do you recognize the document I
23 just handed you?

24 A. Yes, sir.

25 Q. And tell me what that is.

1 A. This is a copy of a Flood Insurance
2 Study, Volume 1 of 2, for Richland County, dated
3 January 19th, 1994.

4 Q. Can you turn to Page 4 and look at the
5 scope of the study?

6 A. Yes, sir.

7 Q. And can you tell me what you see about
8 Bridge Creek on the scope of the study?

9 A. It says here that: The following
10 streams are newly studied with detailed methods for
11 this revision.

12 And it lists Nicholas Creek, Swygert
13 Branch, Moccasin Branch, North Branch, Crane Creek,
14 Beasley Creek, Cumbess Creek, Roberts Branch,
15 Tributary RB-1, Sorghum Branch, Spears Creek,
16 Tributary SP-1 Sandy Branch, Bridge Creek, Rice
17 Creek, and Tributary RP-1.

18 Q. Does this document reflect that there
19 was a detailed study of Bridge Creek in the 1994
20 study?

21 A. That is correct.

22 Q. And what does it tell us as compared to
23 the 1981 map?

24 A. That in 1994 FEMA conducted a detailed
25 analysis or incorporated a detailed analysis of

1 Bridge Creek on the 1994 map, that there was not
2 one prior to that reflected on the 1981 map.

3 Q. And in 1994, was there a zone assigned
4 to Bridge Creek?

5 A. Yes, sir.

6 Q. And what was the zone?

7 A. I believe it was AE.

8 Q. And is that the first time, according
9 to -- looking at these documents -- Bridge Creek
10 had an AE zone?

11 A. Yes, sir, between --

12 THE COURT: Let me ask you this:

13 Bridge Creek, that doesn't have
14 anything to do with this Manning property --

15 MR. JOHNSON: No.

16 THE COURT: -- but there was testimony
17 about a project or something that was done on
18 Bridge Creek, Mr. Manning had testified about, and
19 that's the relevance?

20 MR. JOHNSON: That's correct.

21 THE COURT: Okay, fine. It's been two
22 months, I can forget a lot.

23 MR. JOHNSON: You're pretty sharp.

24 I'll give you that. Let's see.

25 BY MR. JOHNSON:

1 A. Yes, this is a letter to the chief
2 executive officers for those counties and the mayor
3 of West Columbia, Richland and Lexington County,
4 and Mayor of West Columbia, citing who the
5 appellants are that they recognized on
6 behalf -- for the Congaree River study.

7 Q. And who were the appellants that were
8 recognized by FEMA?

9 A. Um, it appears John Grego and Paul
10 Sandifer. And it's also acknowledging appeals from
11 Richland County Council Resolution, Ismail Ozbek,
12 P.E., in Lexington; Sammy Rikard; and a letter from
13 Mayor Rish that they had received, as well.

14 Q. Did DNR appeal on behalf of Richland
15 County?

16 A. No, sir.

17 Q. Did DNR appeal independently of
18 Richland County?

19 A. Yes, they appealed independently based
20 on the fact that it was a landowner that was
21 impacted.

22 Q. Did DNR appeal jointly with Richland
23 County?

24 A. No, sir.

25 Q. Did FEMA recognize DNR as an appellant?

1 A. Yes, sir.

2 Q. Did FEMA recognize Richland County as
3 an appellant?

4 A. No, sir.

5 Q. Now, can you tell me, from having been
6 the state floodplain coordinator, what the purpose
7 of the National Flood Insurance Program is as it
8 relates to land use?

9 A. Yes, sir.

10 The purpose of the National Flood
11 Insurance Program is to protect life and property,
12 as well as to encourage development outside of the
13 flood hazard areas, those high-risk zones, to
14 protect the people and the property -- the tax
15 base, infrastructure, things of that
16 nature -- public safety.

17 Q. And how does FEMA administering the
18 program protect public safety and property?

19 A. The National Flood Insurance Program is
20 a quid-pro-quo program. In exchange for a
21 community adopting regulations that regulate
22 development, new construction, substantial
23 improvement, substantial damage that occur in the
24 flood hazard areas, FEMA allows the sale of flood
25 insurance to occur in that jurisdiction. It is a

1 voluntary program and it is -- but that's a big
2 carrot, to be able to have flood insurance in the
3 jurisdiction.

4 Q. What are the consequences of
5 unregulated development in a floodplain?

6 A. The consequences of unregulated
7 development is that you would be -- by not having
8 it regulated, you have, um -- and not having land
9 use regulations -- you have development that may be
10 inappropriately placed, causing a burden on the
11 taxpayers, as well as inappropriate development
12 being placed there, putting people in harm's way.

13 The National Flood Insurance Program
14 discourages that, and that's why they have the
15 ordinance in exchange for the sale of flood
16 insurance.

17 If the community fails to do what their
18 quid-pro-quo is with FEMA, then there are
19 consequences to that.

20 Q. And is that why it's important to
21 restrict development in a floodway -- floodplain?

22 A. Yes. FEMA asks that we preserve those
23 areas in a floodway for storage capacity -- because
24 that's where you have your greatest velocities and
25 greatest depths and your greatest damage will occur

1 in a floodway -- along with the fact that FEMA does
2 not map future conditions.

3 So if you can look at it from the
4 concept of a glass of water, and you keep adding
5 ice cubes, with the glass of water being the
6 floodway, you keep adding ice cubes to the glass of
7 water, then the water levels will rise.

8 MR. JOHNSON: I want to show you a
9 document marked Defendant's Exhibit 135.

10 BY MR. JOHNSON:

11 Q. And I want to ask you, are you familiar
12 with the document?

13 A. Yes, sir.

14 MR. JOHNSON: Your Honor, we would
15 offer this document into evidence.

16 THE COURT: All right. Any objection?

17 MR. BECKER: Your Honor, I don't think
18 there's been any real foundation laid about where
19 this document came from, who drafted it, what her
20 knowledge of it is; so at this point, my objection
21 would be on a lack of foundation.

22 MR. JOHNSON: Let me lay a foundation.

23 BY MR. JOHNSON:

24 Q. Are you familiar with where the
25 document came from?

1 And now she's talking about policy and
2 her interactions with counties and the reasons why
3 she's the coordinator and the objectives of the
4 program, so I'm going to allow her to testify. I
5 will overrule the objection.

6 MR. BECKER: Yes.

7 BY MR. JOHNSON:

8 Q. And can you explain the concept?

9 A. Yes, sir, I can. The concept of
10 today's floodplain is not tomorrow's floodplain is
11 that, as I illustrated earlier, if you take a glass
12 of water and you keep adding ice cubes to it, the
13 illustration, you know, shows today's floodplain,
14 as you squeeze in the floodplain, FEMA comes up
15 with a one-foot rise in the floodway. And that's
16 how they delineate the floodways, when they come up
17 with that one-foot rise.

18 If you allow development to occur in
19 those areas, over time, you have to consider the
20 floodway as the glass of water, if you keep adding
21 ice cubes to it, that water continues to rise and
22 spreads out further in distance across the
23 landscape.

24 So if you build -- so in looking at
25 that, the current Flood Insurance Rate Maps, the

1 . minute the hydrology and hydraulics is done, is
2 completed, from that time until the time it goes to
3 publication, the maps are outdated because it does
4 not take into account any future conditions in that
5 community.

6 BY MR. JOHNSON:

7 Q. Let me see if I understand what you're
8 saying. If you allow construction in a floodway,
9 over the passage of time, that will increase the
10 base flood elevations?

11 A. That is correct, along with, you know,
12 development that occurs in the floodplain, paving
13 of parking lots, things like that. You know, water
14 runs down.

15 Q. And when a community prohibits
16 construction in a floodway, what effect does that
17 have on the base flood elevations?

18 A. They're trying to preserve the flood
19 storage capacity and keep people out of harm's way,
20 public safety, as well as being able to provide
21 public services in the event of an emergency.

22 Q. Does FEMA encourage participating
23 communities to adopt floodplain management
24 ordinances that are more restrictive than its
25 . minimum standards?

1 A. That's correct. The minimum standards
2 are a broad -- you know, for across the nation.

3 FEMA recognizes that communities, local
4 officials, are the ones who are more knowledgeable
5 about local conditions, more knowledgeable about
6 things that go on in their community, you know,
7 prior flood histories, things like that, and they
8 can take into -- they want them to take into
9 account that knowledge.

10 And, where needed, they want them to
11 adopt higher regulatory standards to match the goal
12 of the Flood Insurance Program, which is to protect
13 health and safety and remove people from harm's
14 way.

15 Q. And did Richland County adopt a more
16 restrictive standard than the minimum FEMA
17 standard?

18 A. Yes, they did.

19 Q. And are you aware of other communities
20 in the state that prohibit construction in the
21 floodway like Richland County does?

22 A. Yes, sir.

23 Q. Can you give us the names of a few?

24 A. I believe Greenville County does and I
25 believe Lexington County does.

1 Q. Now, what is a community rating system?

2 A. The community rating system is a
3 discount program developed by FEMA along the lines
4 of fire -- ISO fire ratings for your homeowner's
5 insurance -- you know, how close you live to a fire
6 hydrant, things like that -- you will get discounts
7 on your homeowner's insurance; the same thing
8 applies with a community rating system.

9 Q. If a community like Richland County
10 adopts a more restrictive ordinance, is there any
11 benefit to the taxpayers?

12 A. Communities that develop or adopt
13 higher regulatory standards or have other
14 provisions in place that minimize flood damage, it
15 does have a benefit in the fact that it reduces the
16 impact of a disaster on that community, the
17 impacts, the effects, plus, the policyholders get a
18 premium discount.

19 Q. Does the more restrictive ordinance
20 provide a higher level of safety?

21 A. Yes, it does.

22 Q. Now, are there consequences to the
23 community that does not comply with the FEMA
24 National Flood Insurance Program regulations?

25 A. Yes, may I explain?

1 Q. You may.

2 A. If the community adopts an ordinance
3 and then fails to enforce it, then the community
4 can be held accountable and be placed on probation,
5 or ultimately suspended.

6 The other option -- the other
7 consequence is that, the community is required,
8 when FEMA comes out with a new study, new Flood
9 Insurance Study, they're required to adopt those
10 maps.

11 If they fail to adopt those maps, they
12 are immediately suspended on the effective date of
13 those maps, and flood insurance is not available
14 for sale within that jurisdiction on the effective
15 date of that map, at 12:01 a.m.

16 Q. Let me ask you this:

17 If in 1999 Columbia Venture had
18 decided, we want to upgrade the levees to get them
19 certified by FEMA, what is the first thing Columbia
20 Venture would had to have done?

21 A. The first thing, I believe, they would
22 have had --

23 MR. BECKER: Objection, Your Honor.
24 That question calls for an opinion, an expert
25 opinion.

1 would have on the adjacent properties, as well as
2 base flood elevations.

3 They would have had to have filed what
4 we call a conditional letter of map revision with
5 FEMA, seeking their approval to amend the -- you
6 know, to revise the map based on their engineering
7 analysis and the scope of what they were trying to
8 do.

9 BY MR. JOHNSON:

10 Q. And then who would have made a decision
11 at that point as to whether to let them to proceed
12 with the upgrade?

13 A. FEMA would have -- if FEMA issued the
14 conditional letter of map revision, then it would
15 have come back to the community, or they could have
16 come back to the community to get a building
17 permit.

18 Q. Okay. In 2002, what would Columbia
19 Venture had to have done to upgrade the levees?

20 A. In 2002, they would have had to have a
21 conditional letter of map revision approved by FEMA
22 in order to begin the process to upgrade the
23 levees.

24 Q. And it would be FEMA who would either
25 issue it, or not?

1 A. That's correct.

2 Q. Not Richland County?

3 A. That is correct, because it is FEMA's
4 map; and according to the regulations, the only one
5 who can amend the FEMA map is the FEMA
6 administrator.

7 Q. Now, during 1998, '99 or 2000, did you
8 participate in any meetings that involved the Green
9 Diamond project?

10 A. Yes, sir.

11 Q. And those meetings were -- did Columbia
12 Venture have personnel present?

13 A. Yes, sir.

14 Q. And did the county have people there?

15 A. Yes, sir.

16 Q. And were there representatives of
17 Lexington County there as well?

18 A. Yes, sir.

19 Q. Now, what concerns did Lexington County
20 have as to whether the levees could or should be
21 upgraded and built up to be certifiable?

22 A. I believe, if I recall correctly --

23 MR. BECKER: Objection, Your Honor,
24 hearsay.

25 MR. JOHNSON: Your Honor, it was in the

1 presence of Columbia Venture.

2 THE COURT: Yeah, I overrule the
3 objection. We're talking about matters that took
4 place with both Columbia Ventures there and
5 Richland County being there.

6 THE WITNESS: My recollection is that
7 there were some questions or concerns about what
8 impact increased flood heights would have on
9 Richland County.

10 BY MR. JOHNSON:

11 Q. Was modeling being done during that
12 time frame?

13 A. What was the time frame again?

14 Q. 2000, 2001, 2002.

15 A. Yes, sir.

16 Q. And was there a Richland County model
17 and a Lexington model?

18 A. Yes, sir; there was.

19 Q. As the state floodplain coordinator,
20 using the FEMA models, what concerns did the
21 modeling reveal regarding the upgrading of the
22 levees and the impact on Lexington County?

23 A. That there was some concerns that, if
24 the project was built, that there would be an
25 increase in the base flood elevations, or a

1 negative impact as far as floodwaters of the flood
2 hazard area in Lexington County.

3 Q. Was that ever resolved or answered --

4 A. Um, not -- can you --

5 Q. -- as to whether it would in fact cause
6 a rise in the base flood elevations?

7 A. I don't believe -- I know DNR never ran
8 a model.

9 Q. Now, did Columbia Venture in 1999 apply
10 to go through these steps to get the levees
11 certified and upgraded?

12 A. Not to my knowledge.

13 Q. In 2002 did they do it?

14 A. Not to my knowledge.

15 Q. To this date, to your knowledge, have
16 they ever done it?

17 A. Not to my knowledge, sir.

18 MR. JOHNSON: Just one second.

19 BY MR. JOHNSON:

20 Q. Let me be sure I understood your answer
21 on one issue.

22 Looking at Exhibit 45, in the third
23 paragraph, would you read that for the Court?

24 A. The first group --

25 MR. BECKER: Sorry, what document are

1 A. Good afternoon.

2 Q. Now, in your current occupation, you
3 work for CSC; is that correct?

4 A. That's correct.

5 Q. What do you do for CSC?

6 A. I'm a trainer.

7 Q. And what does CSC do?

8 A. CSC has a contract with FEMA. We
9 provide the services for the NFIP direct insurance.

10 Q. So you sell flood insurance?

11 A. We manage flood insurance policies. We
12 don't actually sell them. We underwrite them and
13 provide customer service. And I train underwriters
14 and customer service representatives.

15 Q. Okay.

16 A. Agents sell the flood insurance. We
17 just manage the book of business for the agency.

18 Q. I see. You're not an engineer; is that
19 correct?

20 A. That is correct.

21 Q. And you're not a hydrologist?

22 A. That is correct.

23 Q. You have no technical expertise in
24 floodplain modeling and floodplain determinations;
25 is that correct?

1 A. That is correct --

2 Q. Okay.

3 A. -- but I am not --

4 Q. You're not qualified to testify about
5 those topics.

6 A. I'm not qualified to testify about
7 hydrology or hydraulics, although I am qualified to
8 testify about what FEMA's regulations are.

9 Q. Okay. Now, Ms. Jones, I know that we
10 have established that during the time period in
11 question of concern to us here, which is 1999, you
12 were serving as the state floodplain coordinator;
13 is that right?

14 A. That is correct.

15 Q. And you were involved in acting as the
16 liaison, correct, between Richland County and
17 Columbia Venture and FEMA before Columbia Venture
18 purchased the property in question?

19 A. We provide -- yeah, we do -- you know,
20 we assist anybody, whether it's public sector,
21 private sector, citizens that have knowledge or
22 questions about the Flood Insurance Program -- we
23 would provide information.

24 Q. Okay. Let me ask you to take a look at
25 Exhibit 17.

1 Exhibit 123, then.

2 Now, these are the minutes of the
3 Richland County Council session of September 7th,
4 1999. And I would like to ask you to look on the
5 third page of that document.

6 Do you see down there at the bottom
7 where it says Congaree levees?

8 A. Yes.

9 Q. It says: Mr. McSwain briefed council.

10 And this was on the night of September
11 7th, 1999. And we had revised maps by that time,
12 didn't we? We had the June 5th '98 map, right?

13 A. There were three versions of the map.

14 Q. There were lots of different maps;
15 weren't there?

16 A. There were.

17 Q. In fact, the floodway boundaries seemed
18 to sort of bounce like a ping-pong ball from one
19 map to the next; didn't it?

20 A. Uh-huh.

21 Q. Mr. McSwain briefed council on FEMA's
22 approval process of the proposed flood maps. He
23 stated that FEMA estimates that the new maps would
24 be finalized by the spring of 2000; didn't he?

25 A. That's what it says here.

1 Q. And he also stated that FEMA advised
2 that the county use the 1995 maps until the new
3 maps come out.

4 A. That is correct. That's what it says
5 here.

6 Q. Yeah. These are the minutes of the
7 Richland County Council meeting, correct?

8 A. That's what it says. But, again, this
9 is -- the letter that I sent was dated January.
10 These minutes are dated in September of the same
11 year.

12 Q. Yeah. Eight months later, correct?

13 A. Right.

14 Q. Now, let's talk a little bit about the
15 National Flood Insurance Program, since that's the
16 area of your expertise.

17 The National Flood Insurance Program is
18 set forth in Title 44 of the Code of Federal
19 Regulations; is that right?

20 A. That's correct, Title 44, parts 59 and
21 60.

22 Q. Okay. And FEMA regulations, in fact,
23 allow for certified levees; don't they?

24 A. Yes, they do.

25 Q. In fact, if you look at 44 CFR 65.10,

1 um, it sets out all of the design criteria that are
2 necessary for a levee to be certified under FEMA
3 standards, correct?

4 A. That's correct.

5 Q. In fact, it specifically provides that
6 if a landowner wants to build a levee, and they
7 build it in accordance with these specifications,
8 that it would be recognized by FEMA as a
9 flood-control structure. Does it not?

10 A. Yes, that's correct.

11 Q. Because FEMA regulations have a certain
12 internal logic; would you agree?

13 A. Could you clarify that, please?

14 Q. Well, they provide that you can -- the
15 idea is that you're going to make it a little
16 bit -- you're going to make it more difficult to
17 build in a regulatory floodway so that you won't
18 displace water on someone else if you're in the
19 floodway. Is that right?

20 A. What they have determined is that the
21 floodway is where you have your greatest depths and
22 greatest velocities and it's the most hazardous
23 area --

24 Q. Right.

25 A. -- and that that area needs to be

1 reserved for water storage capacity, and the flow,
2 free flow of water, during the flood event, or the
3 one-percent chance flood.

4 Q. Okay. And if a community wanted to
5 adopt a more restrictive regulation than the FEMA
6 minimum standards, the way they would go about that
7 would be to adopt a regulatory floodway that was
8 bigger than the one prescribed by FEMA regulations,
9 correct?

10 A. There's -- that's not necessarily -- I
11 don't think I have seen them adopt one that's
12 bigger than --

13 Q. Well, normally --

14 MR. JOHNSON: Whoa, whoa, whoa, was she
15 finished?

16 THE WITNESS: I don't think I have seen
17 them adopt one that's bigger. I have seen them
18 adopt restrictions within the floodway, I've seen
19 them adopt artificial floodways, you know, where
20 one does not exist, to reserve that storage
21 capacity, for example, in an A zone.

22 BY MR. BECKER:

23 Q. All right. Well, FEMA regulations do
24 permit structures to be built in a floodway, right?

25 A. If you can show that there's no impact

1 to the base flood heights or the flood boundaries
2 for the one-percent-chance flood.

3 Q. All right. In Section 60.3(d)(3), the
4 FEMA regulations provide that, When the federal
5 insurance administrator has provided a notice of
6 final base flood elevations, the community shall
7 prohibit encroachments, right, including fill, new
8 construction, substantial improvements and other
9 development within the regulatory floodway, unless
10 it has been demonstrated through hydrologic and
11 hydraulic analyses performed in accordance with
12 standard engineering practice that the proposed
13 encroachment would not result in any increase in
14 flood levels within the community during the
15 occurrence of the base flood discharge?

16 Isn't that what section 44 CFR
17 60.3(d)(3) says?

18 A. That sounds familiar, not having seen
19 what you were looking at.

20 Q. I will let you look at it.

21 A. Okay. Thank you. All right.

22 Q. Is that correct?

23 A. That appears to be correct.

24 Q. So, in fact, even in a floodway, FEMA
25 regulations allow someone to build something if it

1 won't cause a rise -- if it results in a no-rise,
2 correct?

3 A. If there are no impacts, right, yes.

4 Q. No impact.

5 Now, you're not technically qualified
6 to determine whether or not some encroachment or
7 fill or construction in a floodway would or would
8 not cause a rise, correct?

9 A. No, I'm not an engineer, nor a
10 hydrologist, and would not be allowed to run the
11 models to determine that.

12 Q. And, in fact, we know that actually in
13 that very regulatory floodway that we're talking
14 about, that Heathwood Hall Episcopal School has
15 built some substantial buildings based on a no-rise
16 standard; has it not?

17 A. Yes, it has. It's built it on pilings,
18 I believe, offering minimal resistance to the flow
19 of water.

20 Q. All right.

21 A. They've been elevated.

22 Q. And we also note that the -- let me
23 show you 44 CFR 60.1.

24 If you will look at the highlighted
25 portions, and I will publish those for the record.

1 MR. BECKER: 374.

2 BY MR. BECKER:

3 Q. We know, if you look on page -- well,
4 it's got Defendant's 12759. It's Book 007, Page
5 427.

6 We know from this -- the Stormwater
7 Management Erosion and Sediment Control Ordinance
8 of Richland County -- there in Subsection H of
9 8-26, we know that Richland County made specific
10 exceptions for Heathwood Hall and the City of
11 Columbia Wastewater Treatment Plant that it didn't
12 make for Columbia Venture; didn't it?

13 A. If you could give me just a moment to
14 read through this.

15 Q. Okay, sure.

16 A. Thank you.

17 Excuse me. Could you repeat your
18 question again, please.

19 Q. Well, we know, from Subsections 1. and 2
20 of Section H on that page, that Heathwood Hall,
21 which was a private school constructed and operated
22 before January 1, 2001 on property subsequently
23 classified as a regulatory floodway, and we know
24 that for the Heathwood -- for the City of Columbia
25 Wastewater Treatment Facility, which was

1 constructed and operated on or before January 1,
2 2001 on property subsequently classified as a
3 regulatory floodway, that they weren't subject to
4 the same restrictions on development that Columbia
5 Venture's property was. Correct?

6 A. There was a limited exception
7 for -- because they were preexisting; however, they
8 still had to meet the no-rise certification
9 requirements, or no-impact certification
10 requirements, and they still had to be constructed
11 in accordance with the other regulations that the
12 county requires, structures being elevated, or
13 floodproofed, in accordance with the Floodplain
14 Management Criteria that had been adopted.

15 Q. And we know, from the bottom, from the
16 last part of Subsection H, where it says, This
17 sentence shall not be construed as authorizing the
18 repair or maintenance of any such levee structure
19 to the extent that such repair or maintenance would
20 result in a structure that would be higher or wider
21 than it was before the need arose for such repair
22 or maintenance.

23 Correct? Did I read that correctly?

24 A. It says: This sentence shall not be
25 construed as authorizing or requiring the repair or

1 maintenance of any such structure to the extent
2 that such repair or maintenance would result in a
3 structure that would be higher or wider than it was
4 before the need arose for such repair or
5 maintenance.

6 Q. Okay. So, in effect, through this
7 ordinance, Columbia Venture was prohibited from
8 improving the very levees that FEMA regulations
9 specifically allow for in 44 CFR 65.10, correct?

10 A. I really don't know what the intent was
11 here for this part of the regulation.

12 Q. Now, Ms. Jones, you testified that
13 Lexington County -- you participated in meetings in
14 1999 in which Lexington County expressed certain
15 concerns about the proposed development, how it
16 might impact their community. Do you remember
17 that?

18 A. Yes, sir. I testified that my
19 recollection was that there were questions raised
20 about what the impact would be on Lexington County.

21 Q. Okay. And are you aware that both
22 Richland County and Lexington County passed certain
23 resolutions regarding their concerns?

24 A. It's been so long ago that I don't
25 recall what those resolutions said.

1 (PLF. EXH. 542, Lexington County
2 Resolution, was presented.)

3 (PLF. EXH. 543, City of Cayce
4 Resolution, was presented.)

5 BY MR. BECKER:

6 Q. Let me show you what we've marked as
7 Plaintiff's Exhibit 542:

8 A. Thank you.

9 Q. And 543.

10 A. Thank you. Give me just a moment,
11 please. You said Richland had a --

12 You said Richland and Lexington County
13 both passed resolutions? Because I've got one here
14 for Cayce and Lexington.

15 Q. I meant to say Cayce, if I said
16 Richland. I meant to say the County of Lexington
17 and the City of Cayce.

18 A. I see.

19 Q. All right. Now, you said you were
20 aware that both Lexington County and Cayce had
21 passed those resolutions; is that right?

22 A. I remember Cayce. I don't remember the
23 Lexington one. This has been so long ago.

24 Q. All right. But you were present at
25 those meetings in 1999 where the issues were

1 discussed with representatives of Lexington County
2 and the City of Cayce; were you not?

3 A. They were part of a group that -- you
4 know, probably about 30 people that came to some of
5 these meetings, so, yes.

6 Q. And you testified that you weren't sure
7 how those concerns were ever addressed or how it
8 was ever resolved; is that right?

9 A. Lexington's concerns?

10 Q. Uh-huh.

11 A. I don't recall.

12 Q. Okay. Well, doesn't this answer the
13 question that Mr. Johnson posed to you, that
14 Lexington County and the City of Cayce both wrote
15 to FEMA and told them that they wanted the floodway
16 determinations on their side of the river to be
17 determined in accordance with the Lexington County
18 HEC-2 model and not the Richland County model?

19 A. That's what this says, yes; however,
20 the time frame that you were asking me about was in
21 1999, and this was in --

22 Q. Well, this was in early 2000.

23 A. This was in December of 2000, which
24 would be late 2000, November and December.

25 Q. Oh, excuse me. You're right. Okay.

1 A. It all goes to --

2 Q. Well, sometimes governments take a
3 while to act; don't they?

4 A. That could be an accurate statement;
5 however, I just remember everything happening at
6 lightning speed back then.

7 MR. BECKER: Your Honor, I'm going to
8 offer Defendant's Exhibit 129. Do you have extra
9 copies?

10 MR. JOHNSON: Yeah.

11 MR. BECKER: This is a real switch,
12 Your Honor. I'm actually offering the Defendant's
13 Exhibits into evidence.

14 (Off-the-record discussion.)

15 THE WITNESS: I have 131 here.

16 MR. BECKER: Your Honor, we're going to
17 offer, apparently without objection, Defendant's
18 Trial Exhibits 129 and 130.

19 (DFT. EXH. 129, Flood Insurance Rate
20 Map, was presented.)

21 (DFT. EXH. 130, Flood Insurance Rate
22 Map, was presented.)

23 MR. BECKER: Here is 130, Ms. Jones.
24 And, Your Honor, I just have one copy of Exhibit
25 129, if I could show that to the witness.

1 THE COURT: Certainly.

2 BY MR. BECKER:

3 Q. Now, let me show you Exhibits 129 and
4 130, Ms. Jones, Defendant's Exhibits 129 and 130.

5 Those show a dam built over Bridge
6 Creek; do they not?

7 A. That is correct.

8 Q. All right. Well, would you -- would
9 you agree with me that the -- the regulatory
10 floodway would include the channel of a river, or a
11 creek?

12 A. It would.

13 Q. Okay.

14 A. This is also the 1994 map.

15 MR. BECKER: Ms. Jones, I have no
16 further questions for you. Thank you.

17 THE WITNESS: Thank you.

18 MR. BECKER: Your Honor, we would offer
19 all of the exhibits that I used with her into
20 evidence.

21 THE COURT: All right, sir. They're
22 admitted.

23 (DFT. EXH. 74, FEMA letter to City of
24 Cayce, was presented.)

25 REDIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q. Ms. Jones, to sort of close the loop on
3 these resolutions from Cayce and Lexington, I want
4 to show you a document and ask you if you can
5 identify that as FEMA's response to the
6 resolutions. It's marked as --

7 A. That is correct.

8 Q. Your Honor, we would offer Defendant's
9 Exhibit 74 into evidence.

10 THE COURT: All right, sir. Any
11 objection?

12 MR. BECKER: No, sir, none, Your Honor.

13 BY MR. JOHNSON:

14 Q. I want you to read one portion of it.
15 Would you go to the bottom of the first page and
16 read the last paragraph.

17 A. The remainder of this letter will
18 address --

19 Q. I'll tell you what, let's do this, read
20 the last two.

21 A. All right. Once all appeals have been
22 addressed and the maps are finalized, our Region 4
23 office is available to assist the City of Cayce in
24 its endeavor to seek alternative floodways, which
25 meet their needs and satisfy the minimum federal

1 standards. Please note that the floodway
2 configuration shown on the September 26th, 2000
3 preliminary FIRM does not prevent upgrading of the
4 Manning dike; rather, it requires an assessment of
5 potential increased flood damages to existing
6 structures be identified and mitigated should such
7 a project be within the floodway. This and related
8 requirements are summarized at 44 CFR 65.12.

9 The next paragraph says: The remainder
10 of this letter will address why the December 5th,
11 2000 resolution, if implemented, could exacerbate
12 flooding, and does not meet the minimum floodplain
13 management requirements of the NFIP.

14 It will also discuss the approaches
15 used to develop the proposed BFEs and floodway
16 along the Congaree River, in the area of the
17 Manning dike, and explain why FEMA cannot revise
18 the floodway as requested in the City of Cayce's
19 resolution.

20 Q. Thank you. Could you pull Defendant's
21 [sic] Exhibit 17.

22 A. I think you took it. He took the book.

23 Q. You were asked questions by counsel
24 about this exhibit, correct?

25 A. That is correct.

1 meet, in total, the applicable portions of 44 CFR
2 part 65.10 and the construction necessary for it to
3 meet said requirement is in compliance with state
4 and local floodplain management requirements, then
5 FEMA would revise the maps.

6 A. That is correct.

7 Q. Now, does 44 CFR part 65.10 include the
8 technical requirements that you had discussed
9 earlier today?

10 A. It does have technical requirements in
11 it.

12 Q. To your knowledge, did the Plaintiff in
13 this case ever upgrade to meet the applicable
14 portions of 44 CFR part 65.10?

15 A. Not to my knowledge.

16 Q. Did they ever do the construction
17 necessary to meet the requirements?

18 A. Not to my knowledge.

19 Q. Now, who determines if a community is
20 out of compliance with the FEMA regulations?

21 A. FEMA or the State would come in and do
22 an audit of their enforcement of the program. In
23 other words, they would look at their ordinance and
24 they would come in and do an audit, what we call a
25 community assistance visit. They would take

1 existing structures on their property.

2 Q. Has the Plaintiff, to your knowledge,
3 ever built the first structure on its property?

4 A. To my knowledge, I have not seen
5 anything built on the property.

6 Q. Does anyone live at the water
7 sewer -- at the sewer plant, to your knowledge?

8 A. Not to my knowledge.

9 Q. Does anyone live at Heathwood Hall, to
10 your knowledge?

11 A. Not to my knowledge.

12 Q. If the Plaintiff was permitted to go
13 forward and build houses behind these levees, would
14 people be living there?

15 A. Yes. If they were built behind the
16 levees, people would be living there, yes.

17 Q. Is there a difference in health and
18 safety issues with residences as opposed to places
19 of business or schools?

20 A. I think we only have to look at Katrina
21 to see what happens when a levee fails.

22 Q. Now -- I think you have answered my
23 questions. Thank you.

24 THE COURT: Step down, you're free to
25 be excused.

1 THE WITNESS: Thank you, Your Honor.

2 MR. JOHNSON: Your Honor, we'll call
3 Kit Smith.

4 THE COURT: Ms. Smith, please come
5 around to this chair here; and before you sit down,
6 if you would please raise your right hand so I can
7 swear you in.

8 Do you swear the testimony you give in
9 this case will be the truth and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE COURT: All right, fine. Please
13 have a seat, then, and state your full name for the
14 record.

15 THE WITNESS: Thank you. My name is
16 Katherine Sossamon Smith, and I go by
17 Kit.

18 KATHERINE SOSSAMON SMITH
19 being first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. JOHNSON:

22 Q. Ms. Smith, how old are you?

23 A. 67.

24 Q. Did you serve on the Richland County
25 Council?

1 A. I did.

2 Q. Would you tell His Honor the dates of
3 service?

4 A. I believe it was from 1990 to 2010,
5 twenty years.

6 Q. Did you serve as chairman of the
7 council in two thousand -- what period --

8 A. Again, I believe it was about 2000,
9 2001.

10 Q. Okay. Now, prior to Columbia Venture's
11 purchase of the Manning property, did you meet with
12 a man named George Gregory?

13 A. I did.

14 Q. How many times did you meet with him?

15 A. I recall one meeting.

16 Q. And prior to Columbia Venture's
17 purchase of the Manning property, did you meet with
18 or talk with a man named -- an attorney named Mike
19 Ey?

20 A. I did.

21 Q. Who did Mike Ey represent?

22 A. I believe it was Burroughs & Chapin or
23 Columbia Venture. I'm not sure exactly how they
24 were incorporated at that time.

25 Q. Did you meet with him or did you simply

1 talk to him on the phone?

2 A. I met with him one time early in the
3 fall; and then later on, we had telephone
4 conversation.

5 Q. Do you recall meeting or talking with
6 any other person representing Columbia Venture or
7 Burroughs & Chapin prior to the purchase of the
8 Manning property?

9 A. Except for that one meeting when I was
10 briefed on the project, I don't recall any direct
11 meetings, no.

12 Q. Can you tell me what you recall of the
13 meeting you had with George Gregory?

14 A. There was a meeting in the fall when I
15 was invited by Mike Ey to meet with Mr. Gregory at
16 the McNair Law Firm and to look at a sketch of the
17 proposed project.

18 Q. Do you recall anything else about what
19 you did at that meeting?

20 A. No, there was -- later on, I was
21 surprised that there wasn't more information about
22 financing and levee maintenance. There was no
23 discussion of any other items except to generate a
24 land use plan at that time.

25 Q. During your meeting with George

1 Gregory, did you give him any assurance that the
2 county would grant the necessary permits and zoning
3 changes for the project, his project, to go
4 forward?

5 A. I did not.

6 Q. Did you make him any promises or
7 commitments whatsoever regarding the proposed
8 project?

9 A. I did not.

10 Q. In your communications with Mike Ey,
11 did you give him any assurances that the county
12 would grant permits and --

13 MR. BECKER: Object to the form, Your
14 Honor, leading.

15 THE COURT: I overrule the objection.
16 Go ahead.

17 BY MR. JOHNSON:

18 Q. In your communications with Mr. Mike
19 Ey, did you ever give him any assurances, promises
20 or commitments that the county would grant
21 pertinent necessary permits and zoning changes for
22 the project to go forward?

23 A. I did not.

24 Q. Now, tell me about your meeting and
25 conversations with Mike Ey.

1 A. Well, other than that first meeting,
2 after, in the early fall, I attended a council
3 committee meeting, the development and services
4 committee, on a Tuesday night. And on the agenda
5 was a request from Burroughs & Chapin or Columbia
6 Venture -- I don't recall how it was listed -- and
7 at that time, they were requesting that the county
8 assume responsibility and liability for maintaining
9 the levees.

10 I was not a voting member of that
11 committee, but I left the meeting concerned that
12 the county had not done proper diligence.

13 So after I left the meeting, I
14 proceeded to make some phone calls to folks that I
15 knew and ended up, by Friday morning or Thursday
16 afternoon, very concerned about that proposition,
17 without the county examining and doing more
18 diligence.

19 So I proceeded -- I felt, as a
20 courtesy, I should inform Mr. Ey of my concerns,
21 and I remember calling him on Friday and expressing
22 to him my reservations about the county taking
23 action the following Tuesday night. We had only
24 had five days to look into this.

25 So he asked me what my concerns were.

1 I enumerated them as best I could and told him I
2 was going to be out of town over the weekend and I
3 felt like we should hold up on it.

4 Q. Can you tell us what you told Mr. Ey
5 your concerns consisted of?

6 A. Primarily, at that time, they were the
7 financial liability and how much the maintenance
8 was going to cost.

9 I also had concerns about letting
10 people develop or live behind levees and not being
11 aware of any possibility of problems of living in
12 that kind of environment, but primarily I recall I
13 was worried about the financial end of it.

14 So Mr. Ey said he would work over the
15 weekend and try to have some -- I think I faxed him
16 maybe some bullet points, and over the weekend -- I
17 returned on Monday, and he sent me a copy of a
18 resolution that he was comfortable with, and I said
19 I would introduce it to council.

20 It seemed to address my concerns, which
21 would leave the county some flexibility to conduct
22 more research and gather more information before a
23 final decision could be made.

24 Q. Now, there is a draft resolution -- a
25 draft motion with bullet points that I believe is

1 Defendant's Exhibit 1 in this case.

2 Did you draft that or did Mr. Ey draft
3 that?

4 A. I am not sure who wrote a first draft,
5 but I know that Mr. Ey provided me with a final
6 draft. I think I just sent him some bullets of
7 maybe some language in it, general language in it.

8 Q. Now, tell me this: Did you discuss
9 with him that you were going to make a motion and
10 that you would be making the motion for the
11 adoption of a resolution?

12 A. I did.

13 Q. And was the resolution to contain
14 contingencies?

15 A. It did.

16 Q. And did you explain to him what your
17 concerns were there and why you insisted upon
18 contingencies?

19 A. That's correct.

20 Q. What did you tell him?

21 A. I told him that I felt like the county
22 needed more time to find out -- to test the numbers
23 that had been given us about the cost of
24 maintaining the levees, figure out for sure who was
25 going to pay for the construction of the levees,

1 what kind of design they were going to have. They
2 said they would be to FEMA standards, but
3 there are -- I had learned that there's a lot of
4 different ways to build levees. So there were a
5 lot of issues imbedded in my concerns.

6 Q. What was Mr. Ey's position as to
7 whether he was satisfied with just a contingent
8 resolution?

9 A. They were pushing very hard for council
10 to take action that Tuesday, five days after it had
11 been introduced to us, five working days.

12 And I said I would do the best I could
13 to work with them, it seemed like it left enough
14 open-ended things for the county to work on, and he
15 was satisfied with it.

16 Q. And, Ms. Smith, you had said earlier
17 that you had this meeting -- you first initiated
18 this as a result of going to a committee meeting in
19 the fall.

20 If the record reflects that the
21 committee meeting was on February the 2nd, 1999,
22 would you yield to that in terms of when it was?

23 A. Yes, yes.

24 Q. Now, did the Green Diamond project that
25 Mr. Ey and Mr. Gregory were proposing raise a

1 number of issues regarding FEMA and the Flood
2 Insurance Program and the levees?

3 A. Yes.

4 Q. Had the council, during the time you
5 had been on the council, ever considered a project
6 of the magnitude of Green Diamond?

7 A. Not in my experience, no.

8 Q. Prior to the Green Diamond project, had
9 you had any experience in dealing with FEMA or
10 levee issues?

11 A. No.

12 Q. And did you have concerns about public
13 safety?

14 A. I did.

15 Q. And I think you told me you had
16 expressed those to Mr. Ey.

17 A. I did.

18 Q. Now, did you make the motion that
19 Mr. Ey sent you when you went to the council
20 meeting?

21 A. I did.

22 Q. And, Mr. Ey, was he there?

23 A. He was.

24 Q. Did he give any acknowledgment that he
25 was satisfied with the fact that it was a

1 contingent resolution?

2 A. I recall that he stood up and motioned
3 to council that he was comfortable and that he
4 verified by nod of the head what I presented to
5 council.

6 Q. And did council vote in favor of the
7 resolution?

8 A. We did.

9 Q. What was the vote?

10 A. Unanimous, as I recall.

11 Q. Now, the contingencies that were part
12 of the resolution, were they listed in any
13 particular order?

14 A. Not -- there was no understanding -- I
15 had no understanding that they were, no.

16 Q. Were they to be done in the order they
17 were listed?

18 A. I didn't understand --

19 Q. Were they to be done in the order they
20 were listed?

21 A. No.

22 Q. What was your view -- in looking at the
23 contingencies, which one did you feel needed to be
24 addressed first?

25 MR. BECKER: Objection, Your Honor.

1 relating only to one, singling out a party, that
2 also the good faith nature of it can be tied into
3 the character element.

4 And so that's the reason why this
5 particular witness who was a primary player and
6 cited throughout briefs by the Plaintiff, I would
7 find that, her explanation, in view of what I have
8 read in the briefs, would be allowed, but not
9 to -- but not her opinions as to why a county
10 council itself took a particular -- did something.
11 All right, sir?

12 MR. BECKER: Yes, sir.

13 THE COURT: I'm sorry. I didn't mean
14 to say all right, but that's my ruling.

15 BY MR. JOHNSON:

16 Q. Before I go back to where I was, I gave
17 you the wrong number. I want to show you
18 Plaintiff's Exhibit 167, a copy of it. And do you
19 recognize that as a draft motion?

20 A. I do.

21 Q. And who prepared the final version of
22 that?

23 A. I believe Mr. Ey did.

24 Q. Now, look at Plaintiff's Exhibit 147.
25 Do you recognize that as the minutes of a meeting

1 where you offered your substitute motion?

2 A. Yes.

3 Q. And out of the five contingencies from
4 your standpoint, which one needed to be addressed
5 first?

6 A. I would deduct that we needed to take
7 up the financial matters before we allowed the
8 levees to be constructed. We needed to have a
9 solid agreement as to what the maintenance means,
10 how much it would cost, how the levees would be
11 constructed, who would pay for them, and have a
12 much more definitive agreement before there would
13 be anything else to occur.

14 Q. And which contingency is that?

15 A. That would be number 5. Wait a minute.
16 Let me see.

17 Q. Would it be number 4?

18 A. 4.

19 Q. Now, Ms. Smith, to your knowledge, did
20 Columbia Ventures ever bring forward any evidence
21 that they had met or complied with any of the five
22 contingencies?

23 A. None.

24 Q. In 2001 -- well after Columbia Ventures
25 purchased the Manning property -- did Richland

1 County amend the stormwater ordinance?

2 A. Yes.

3 Q. Did the proposed ordinance prohibit
4 construction in a floodway?

5 A. Yes.

6 Q. Were Heathwood Hall school and the City
7 of Columbia built in what had become a floodway?

8 A. Yes.

9 Q. Did both already have sizable
10 investments in buildings and structures?

11 A. Yes.

12 Q. Did each ask to be exempted from the
13 provision that prohibited further construction in a
14 floodway?

15 A. I do not recall if they specifically
16 asked to be exempted. They wanted to be
17 accommodated in some way.

18 Q. Was there public support for that?

19 A. Yes.

20 Q. What is the process -- was this done by
21 an ordinance? Was it an amendment of the storm --

22 A. It was an ordinance.

23 Q. Would you tell the Court the process
24 for adoption of an ordinance?

25 A. Under state law, counties are required

1 to have three readings or votes for an ordinance
2 with a public hearing. There are certain timelines
3 between readings of votes that are allowed.

4 Q. And did Columbia Venture provide input
5 and take a position initially regarding the
6 proposed ordinance?

7 A. They did.

8 Q. Who was their spokesperson?

9 A. As I recall, by then, it was Mr. Jim
10 Wiseman.

11 Q. And what position did Mr. Wiseman take
12 regarding the proposed ordinance?

13 A. Mr. Wiseman wanted us to adopt the FEMA
14 no-rise standard, which means that, with an
15 engineering study that says the water would not
16 rise, you wouldn't raise the water with your
17 construction, then you would allow the construction
18 to go forward --

19 Q. And the --

20 A. -- if you wouldn't raise the water.

21 Q. Did he object to the exemptions that
22 were being granted to Heathwood Hall and the City
23 of Columbia?

24 A. He did, initially.

25 Q. Initially. Subsequent -- let me ask

1 you this. At this point had Columbia Venture
2 submitted any detailed plans regarding the project?

3 A. They had not.

4 Q. Had they applied for any zoning permits
5 or zoning variances?

6 A. They had not.

7 Q. Had they built any structures on the
8 property?

9 A. They had not.

10 Q. As the process went forward, did
11 Columbia Venture, through Mr. Wiseman, modify or
12 change their position?

13 A. He did.

14 Q. And did he send a letter confirming
15 their position?

16 A. He did.

17 Q. I'm going to show you a copy of
18 Defendant's Exhibit Number 1 and ask you if you
19 recognize that as the letter.

20 A. I do.

21 Q. And would you read the last paragraph
22 on the first page.

23 A. For these reasons and because of your
24 statements that votes on the stormwater ordinance
25 should not be viewed as up or down votes on Green

1 Diamond, we're withdrawing any active opposition to
2 the amendment currently before you.

3 Q. Did he ever give notice that he had
4 changed the position set forth in this letter?

5 A. Not to me, no.

6 Q. Now, in this letter of Defendant's
7 Exhibit 1, in the second paragraph, did he indicate
8 that Columbia Ventures would shortly be submitting
9 detailed information regarding the project?

10 A. He did.

11 Q. What's the date of that letter?

12 A. April 2nd, 2001.

13 Q. And they bought the property in
14 February of '99?

15 A. '99, correct.

16 Q. Had they submitted any detailed plans
17 or information in that interval, '99, from the
18 purchase until --

19 A. There was a lot of information, but it
20 was not relevant to the county's decision-making
21 process.

22 Q. That's what I wanted to know.

23 Thereafter, as he indicated in the
24 letter, did they thereafter submit the detailed
25 information that he describes in that letter?

1 A. They did not.

2 Q. Did they ever submit it?

3 A. They did not.

4 Q. Did the council adopt a stormwater
5 ordinance?

6 A. Yes.

7 Q. Once it was adopted, did it apply
8 countywide?

9 A. It did.

10 Q. Was this during the time you were
11 serving as chairman of county council?

12 A. I believe so, 2000, 2001, I believe so.

13 Q. When you served as chairman of county
14 council, did that position give you any particular
15 control over the votes of the council members?

16 A. It did not.

17 Q. Did your vote count the same as their
18 vote counted?

19 A. I was one of 11.

20 Q. And during this period of time when you
21 were chairman of council, what was your goal in
22 dealing with issues involving the Green Diamond
23 project?

24 A. From the outset, I felt like it was
25 very important to have a balanced debate and to be

1 open and deliberate in our gathering of
2 information.

3 It was a very complicated issue. And
4 most of the time, the more complex things become,
5 the more distrustful people become in dealing with
6 them.

7 And it was important, I thought,
8 particularly as chairman, that I remained as
9 neutral in my stance as I possibly could to try to
10 move the process forward that made sense.

11 Q. Were you interested in everybody that
12 wanted to be heard being heard?

13 A. Yes, I was.

14 Q. Did you feel that the council needed to
15 hear from everyone in order to make, ultimately,
16 the right decision?

17 A. That's correct.

18 Q. Now, Ms. Smith, a little background
19 information about you. What's your education?

20 A. Um, proud graduate of Gaffney High
21 School. I went on to the University of South
22 Carolina and earned a BA in history, a master's in
23 education, and did about 30 graduate hours in
24 public administration.

25 Q. And have you been in government and

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND COURT OF COMMON PLEAS
3
4 Columbia Venture, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CV-40-8943R
7 Richland County,
8 Defendants.
9

10 PROCEEDINGS: TRIAL - VOLUME XIII
11 (Pages 2305 through 2606)
12 BEFORE: THE HONORABLE JOHN HAMILTON SMITH
13 DATE: November 14, 2012
14 TIME: 10:00 a.m.
15 LOCATION: Richland County Judicial Center
16 1701 Main Street
Columbia, SC
17 REPORTED BY: Susan M. Valsecchi, CRR
18 Registered Professional Reporter
19
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376
24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 KATHERINE SOSSAMON SMITH

2 being first duly sworn, testified as follows:

3 CROSS-EXAMINATION

4 BY MR. BECKER:

5 Q. Good morning, Ms. Smith.

6 A. Good morning, Mr. Becker.

7 Q. How are you?

8 A. Great, thank you. How are you?

9 Q. I'm fine, thank you.

10 Yesterday in your direct examination by
11 Mr. Johnson, you testified that at that development
12 and services committee meeting on January 26th,
13 1998, you were a bit surprised at how fast the
14 project was going. Correct?

15 A. I was surprised at how fast the
16 Burroughs & Chapin and Columbia Venture Group
17 wanted us to take action on the levees.

18 Q. All right. And I believe you testified
19 that there was a lot of new information there that
20 you hadn't really been aware of previously. Is
21 that right?

22 A. I would say, not necessarily a lot, but
23 the question of levees I had not been aware of,
24 except when it came out in the committee agenda.

25 Q. Okay. And the floodway/floodplain

1 mapping issues was something of a surprise to you,
2 correct?

3 A. That had been in the paper.

4 Q. Yeah.

5 Let's look at what prior knowledge you
6 would have had of the development. I want to ask
7 you to take a look at Plaintiff's Exhibit 236.

8 Now, this is a letter that came from
9 Mr. Burwell Manning to members of Richland County
10 Council back on May 26th, 1998.

11 Do you see that?

12 A. I do.

13 Q. And it's addressed to Richland County
14 Council members.

15 Do you see that?

16 A. I do.

17 Q. And I believe you were sure at your
18 deposition that it was probably in your inbox?

19 A. That's true.

20 Q. Yes.

21 And so if it was there, you would have
22 read it, correct?

23 A. Not necessarily.

24 Q. You don't read your mail?

25 A. I don't read all of my mail, no, not

1 thoroughly.

2 Q. Well, gee, you know, you're a member of
3 Richland County Council. If someone writes you
4 about a major piece of property in the county
5 jurisdiction, talking about a billion-dollar
6 development, and you don't read that mail?

7 A. I'll note that this is addressed to
8 Richland County Council. It didn't come to my home
9 address, so it was probably put in a packet, and I
10 don't recall reading the letter. I was probably
11 aware generally of the issue from the newspaper
12 reports.

13 Q. Okay, yeah.

14 Well, Page 14, Line 18 in your
15 deposition, you said it was probably in your inbox.

16 A. That's correct, it would have been in
17 my inbox.

18 Q. Okay. You just don't always read your
19 mail?

20 A. The general procedure for our council
21 is, when we get information like this, they sort it
22 into an inbox. At the end of the week -- or, I
23 would say, at least probably weekly, maybe
24 biweekly -- it's collected up into a manila
25 envelope and handed to us. I'm sure that it was

1 probably in that manila envelope, but I don't
2 recall with any specificity.

3 Q. Well, let's just take a look at what
4 Mr. Manning was telling the members of Richland
5 County Council on May 26th, 1998.

6 In Paragraph 2 of that letter he says:
7 This property is being sold for a total new town
8 development, which will have 20-plus or -minus
9 uses, three golf courses, parks, shopping mall,
10 recreational facilities, et cetera. To date, over
11 100 users have been contacted, and the total
12 investment could reach 1 billion dollars, an
13 estimate by Lockwood Greene Engineering and
14 Consultants.

15 Do you see that?

16 A. I do.

17 Q. Do you see down there at the last
18 paragraph, he says:

19 Last week, Mayor Coble, The River
20 Alliance, and Heathwood Hall school agreed to fight
21 and oppose any change of the floodway.

22 Do you see that?

23 A. I do.

24 Q. So this was certainly something that
25 other organizations within the community, including

1 the City of Columbia and The River Alliance, were
2 aware of and were concerned about.

3 Do you see that?

4 A. I do.

5 Q. In the last sentence of that paragraph
6 he says:

7 If the City cannot expand its sewer
8 plant and Heathwood Hall school cannot continue to
9 build, the same for East Richland Public Service
10 District, and all the land values go to zero, I
11 would like to suggest that you have a long list of
12 inverse condemnation takings, and Richland County
13 will be the loser by having nothing to tax.

14 Do you see that?

15 A. I do.

16 Q. And Mr. Manning finishes the letter by
17 saying:

18 Please record your opposition to the
19 proposed floodway change by issuing me and my
20 investors from Ohio, Kentucky, and Arkansas permits
21 to design and upgrade my levees at once.

22 Do you see that?

23 A. I do.

24 Q. Now, in this letter, as we pointed out,
25 Mr. Manning talked about floodway mapping

1 procedures that were ongoing that gave him concern.

2 And you were aware at that time of
3 those proposed floodway mapping procedures being
4 undertaken by FEMA, because the County
5 administrator made you aware of that at that time.

6 Isn't that right?

7 A. I was generally aware.

8 Q. And from this letter, if you had read
9 it, you would have also been aware of a proposed
10 development on the property; would you not?

11 A. I would have.

12 Q. Now, I'm not going to ask you to take a
13 look -- I'm not going to hand this to you, but I
14 want to show you, on June 5th, 1998 -- this is
15 Plaintiff's Exhibit 238 on the screen here -- a
16 Revised Preliminary Flood Insurance Rate Map that
17 was issued that day by FEMA, just a few days after
18 Mr. Manning wrote his letter to the members of
19 Richland County Council.

20 Do you see that?

21 A. I do.

22 Q. And do you see that the shaded portion,
23 which indicates the floodway, extends from about
24 the river's edge on the Congaree River all the way
25 almost to Bluff Road?

1 Do you see that?

2 A. Help me orient. Here is north, the top
3 of the page? I get your drift.

4 Q. Yeah, it's the shaded part.

5 A. Okay, yes.

6 Q. Do you see that?

7 A. I do.

8 Q. So that was a massive expansion of the
9 floodway on that property, correct?

10 A. It was.

11 Q. Now, you were aware, before this, that
12 Mr. Manning owned the property; weren't you? That
13 the Manning family owned all of that property and
14 that he farmed it?

15 A. Generally.

16 Q. And that Heathwood Hall school and the
17 City of Columbia wastewater treatment plant were
18 protected by the levees that Mr. Manning had built,
19 since the seventies?

20 A. I probably was vaguely aware of that,
21 but I don't think I had ever really focused on it,
22 or thought about it.

23 Q. Well, I would like you to look at a
24 letter dated July 14th. This is Plaintiff's
25 Exhibit 12.

1 Is that in that binder?

2 A. I don't see a 12. I see a lot of 200s.

3 Q. Do you see that letter, Ms. Smith?

4 A. I do.

5 Q. This is addressed from Mr. McSwain to
6 FEMA.

7 Do you see that?

8 A. It's addressed to Mr. Buckley from
9 Mr. McSwain.

10 Q. Yes, I'm sorry.

11 It's addressed to -- it's from
12 Mr. McSwain --

13 A. Yes.

14 Q. -- and addressed to Mr. Buckley of
15 FEMA, and it's dated July 14th, 1998?

16 A. Correct.

17 Q. Now, this letter says: This letter is
18 to request officially that the results of the
19 Revised Flood Insurance Study and the subsequent
20 review process be put on hold.

21 Do you see that?

22 A. I do.

23 Q. And Mr. McSwain wouldn't have written a
24 federal governmental official without running this
25 by members of County Council, would he?

1 A. I don't know. If it was within his
2 purview, then he perfectly had the right to do
3 that. I don't recall council being consulted. He
4 may have briefed us on it.

5 Q. All right. In any event, he was acting
6 in his official capacity on behalf of the County in
7 writing this letter, wasn't he?

8 A. Apparently.

9 Q. Yes.

10 If you look on the second page of that
11 letter he says:

12 Given the magnitude of the changes,
13 placement of over 5,000 acres into a floodway
14 designation, and the adverse impact this could
15 cause on the economic viability of this county, we
16 would request the review process be put on hold.

17 Isn't that what it says?

18 A. Yes.

19 Q. So he was -- he was expressing Richland
20 County's concern about the massive expansion of the
21 floodway in asking that the process be put on hold,
22 correct?

23 A. Yes.

24 Q. As he goes on to state in the letter,
25 he says -- he talks about the levees in question

1 and wants the Corps of Engineers in Charleston
2 to -- he says -- acknowledge them and their study
3 done in 1989 and that the County would be
4 contacting them for further information about the
5 levees --

6 A. That's correct.

7 Q. -- is that right?

8 So you likely would have been aware
9 about this when the letter was written, would you
10 not?

11 A. I would probably have been somewhat
12 aware. I do not remember it rising to a degree of
13 great interest at that time.

14 (PLF. EXH. 551, Newspaper article
15 entitled Floodway: Federal Agency Designates 5,300
16 Acres in Richland County as Flood-prone, Worrying
17 developers Along the Congaree River, was
18 presented.)

19 BY MR. BECKER:

20 Q. Okay. Well, we know, just about a
21 little over a week later, it became a matter of
22 public interest. I would like you to take a look
23 at Plaintiff's Exhibit 551.

24 All right. Now, this is an article in
25 The State Newspaper and it indicates it was

1 published on Wednesday, July 22nd, 1998.

2 Do you see that?

3 A. I do.

4 Q. And it looks like -- if you go up just
5 a few lines from there, it looks like it was
6 dated -- written, maybe, July 16th, 1998.

7 Do you see the date there?

8 A. I do.

9 Q. And that would have been just two days
10 after Mr. McSwain sent that letter to FEMA,
11 correct?

12 A. Correct.

13 Q. All right. Now, this article says:
14 Richland County officials --

15 MR. JOHNSON: Your Honor, I object.

16 Is counsel going to offer this document
17 into evidence?

18 THE COURT: Are you going to offer it
19 into evidence?

20 MR. BECKER: Probably.

21 THE COURT: All right.

22 MR. JOHNSON: Well, I object to it
23 coming into evidence. If it's coming in for
24 proving the truth of the matter asserted, it would
25 be hearsay. And if it's not coming into evidence,

1 I object to it being used for questioning purposes.

2 THE COURT: As I understand it, he's
3 using it to determine whether this council person
4 was on notice or had knowledge of what was going
5 on, because she's previously stated she was taken
6 by surprise by how quickly Burroughs & Chapin
7 wanted to act.

8 This line of questioning was an attempt
9 to show that she did have former knowledge, so I
10 overrule the objection.

11 MR. BECKER: Precisely, Your Honor.

12 MR. JOHNSON: Your Honor, I don't have
13 any objection to her being asked if she saw the
14 article. If she didn't see the article, how would
15 it be relevant? But as I understand it, it's not
16 coming in for the truth of the matter asserted.

17 THE COURT: That's right. It's coming
18 in, in regard to whether she had notice.

19 MR. BECKER: She testified earlier
20 today, Your Honor, that it was written about in the
21 newspaper.

22 THE COURT: That's right.

23 MR. BECKER: And that was part of how
24 she became aware of it.

25 THE COURT: His objection is the truth

1 for the matter asserted, and that's not why you're
2 trying to put it in?

3 MR. BECKER: It's not.

4 THE COURT: All right. It's admitted.

5 BY MR. BECKER:

6 Q. Now, as a member of Richland County
7 Council and as an active and involved community
8 leader, Ms. Smith, you read The State Newspaper
9 regularly; did you not?

10 A. I did, but I will have to make a
11 personal note here. This is the time that my
12 father was diagnosed with Stage IV colon cancer,
13 and I was very much involved in tending to him and
14 my family that summer, so I think a lot of things
15 just flew right over my head.

16 I looked at headlines, got the paper
17 some, so I was generally aware of the issue. I did
18 not, at that point, see the real relevance to
19 Richland County Council taking any action.

20 Q. Okay. Well --

21 A. We had not been approached about taking
22 any action, that I was aware of; and we go on
23 recess the month of August.

24 Q. Okay. That letter from Mr. Manning to
25 Richland County Council members was not a request

1 for action?

2 A. I don't remember any motion ever being
3 presented to council.

4 Q. Well, he said: Please record your
5 opposition to the proposed floodway change.

6 And that's what Mr. McSwain did and
7 likely would have briefed council members about and
8 likely would have told you about.

9 A. No request was made of council to take
10 action. There was no motion on our agenda to take
11 this matter up, as I recall, in the spring or
12 summer of that year.

13 Q. Well, I understand. And I'm certainly
14 sorry about your father and I can certainly
15 understand how you might have been preoccupied
16 during this time.

17 But the primary newspaper in the
18 state's largest capital city comes out with a
19 pretty big banner headline that says Richland
20 County officials are howling over a federal study
21 that says 5,300 acres along the Congaree River are
22 at a greater risk of flooding, a decision that
23 jeopardizes the land's development.

24 Isn't that what that article says?

25 A. That is true, but it is also true that

1 I wasn't aware of anybody howling at me to do
2 anything.

3 Q. Okay. Well, I understand.

4 The article goes on, on the second
5 page, Page 2 of 4, to say, in the second paragraph:

6 Richland and Columbia both stand to
7 lose millions of tax dollars if their mostly prime
8 acreage is shackled from future development.

9 How much? Well, it appears
10 Mr. -- Richland County councilman Steve Morris said
11 you can't count that high. 5,300 acres on the edge
12 of the City, with water and sewer, the industrial
13 development, the housing, the commercial
14 development, all of that, it's a terrific amount of
15 taxes.

16 The article then says that Senator
17 Fritz Hollings had intervened with the Federal
18 Emergency Management Agency, and they had agreed to
19 delay a decision.

20 All of that appeared in the newspaper
21 article that earlier in your testimony you said you
22 had heard about from there, right?

23 A. I did say that in my earlier testimony.

24 Q. Okay.

25 A. And it's true.

1 Q. All right. So this was a big deal in
2 the summer of 1998, and you knew about it, didn't
3 you?

4 A. I was aware of it, yes.

5 Q. Okay. In fact, if you look on Page 3
6 of 4, we see that down there toward the middle of
7 the page, the article says:

8 The floodway designation would prevent
9 any substantial improvements to the City of
10 Columbia's sewage treatment plant in the area, and
11 that puts a big dent in the City's plans, according
12 to City Manager Mike Bierman.

13 Did I read that correctly?

14 A. You did. It still remains that there
15 was no action that I felt like was being requested
16 of County Council to get involved in this issue.

17 Q. Okay, okay. But we had 5,300
18 acres -- 4,500 acres -- in the city, in Richland
19 County, that surround the largest wastewater
20 treatment plant in the state and the Heathwood Hall
21 Episcopal School. And we're talking about the
22 expansion of a floodway designation that prevents
23 anything from happening in that area and it's
24 written about in the newspaper. And the city
25 manager is commenting upon how this spells doom for

1 the sewage treatment plant.

2 You would have known about that,

3 Ms. Smith, wouldn't you?

4 A. Well, it appears to me that, as most
5 issues evolve, you get the one-sided doomsday
6 scenario, and then there is consideration of all of
7 the attendant other issues.

8 There's no mention in this article, for
9 example, that there was an expectation that the
10 County would eventually pay for and assume control
11 of maintenance of the levees, or the liability that
12 would be incumbent upon it, or the cost of
13 servicing a big development in that area.

14 So I think that you're very
15 true -- you're very correct -- at this time, there
16 was a great outcry, because only one side of the
17 equation was being considered.

18 Q. Well, that's not what you told us
19 yesterday, though, is it, Ms. Smith? You said you
20 were taken by surprise.

21 A. I was taken by surprise that we were
22 being asked. I did not understand until the
23 January -- there was no briefing of council or
24 request that we would be responsible for the
25 levees, that we would have to certify them to the

1 FEMA government, and that we would incur any
2 liability that might come from a breach in those
3 levees.

4 Q. Mr. Burwell Manning had written council
5 members, and that man right there, Mr. Cary
6 McSwain, the County administrator, in his official
7 capacity, writes FEMA and says, Whoa, wait a
8 minute, put it on hold.

9 A. I think that was a very wise thing to
10 do.

11 Q. That's doing something for Mr. Manning
12 and this development, isn't it?

13 A. I think putting it on hold was not a
14 bad call. We didn't understand all of the
15 ramifications of this decision that we were going
16 to eventually be asked to make, that we weren't
17 being asked to make at that time.

18 Q. Well, let's go on. Let's just see how
19 aware other members of the public were about what
20 was going on here.

21 Look further in that article on Page 3
22 of 4. It says that East Richland County Public
23 Service District, which serves 55,000 residents,
24 including Wildewood and Spring Valley...

25 Now, they're in Richland County, aren't

1 they.

2 A. They are. They're a special-purpose
3 district. They're not under the auspices of the
4 County.

5 Q. Okay. But they're county residents,
6 aren't they?

7 A. Absolutely.

8 Q. Yes.

9 They would also be affected by the
10 expansion of the floodway, correct?

11 A. According to this article, yes.

12 Q. They've got a sewer treatment plant
13 affecting those 55,000 residents; don't they?

14 A. They do.

15 Q. East Richland's plant located on 10
16 acres on Gills Creek serves a 38-square-mile area
17 in the northeast.

18 A. Correct.

19 Q. And Mr. Gene Edwards, the engineer for
20 the East Richland County Public Service District
21 said:

22 We're very much in opposition to it.
23 Hopefully, they'll consider it and the dikes will
24 be re-evaluated.

25 That's what he said in the article.

1 A. Correct.

2 Q. So there was a lot of public outcry and
3 a lot of people involved with significant public
4 entities and organizations, who, as the article
5 says, were howling about what was going on,
6 correct?

7 MR. JOHNSON: Object, Your Honor. This
8 is going to the truth of the matter asserted, not
9 notice to her that this existed.

10 THE COURT: I will overrule the
11 objection.

12 BY MR. BECKER:

13 Q. We also learned from that article that
14 Heathwood Hall Episcopal School was aware. Dr. Bob
15 Shirley -- do you know him?

16 A. I do know Dr. Shirley.

17 Q. He's quoted in the article. He was the
18 headmaster of Heathwood Hall school. He was aware
19 of that. He said, We'll wait and see what happens.

20 Correct?

21 A. According to the article, yes.

22 Q. All right. Now, Ms. Smith, sometime in
23 the fall of 1998, according to Page 33, Lines 5
24 through 7 of your deposition, you met with George
25 Gregory and Mike Ey, correct?

1 A. I recall it was in the fall. It could
2 have been late summer, but sometime before the end
3 of the year, yes.

4 Q. All right. Of 1998?

5 A. Yes.

6 Q. They were making the rounds and
7 briefing members of the council -- Richland County
8 Council -- on the development proposal, correct?

9 A. That was my assumption.

10 Q. Okay. And I believe that meeting
11 lasted about an hour, correct?

12 A. I would think so.

13 Q. Okay. And at that meeting, you looked
14 at a concept plan of land use for development of
15 that property, correct?

16 A. I did.

17 Q. It was a bubble map?

18 A. Right.

19 Q. Remember that?

20 A. I do.

21 Q. You know, it showed where they were
22 thinking about putting commercial here, residential
23 here, that kind of thing?

24 A. Exactly.

25 Q. Okay. It showed the roads, too, didn't

1 it?

2 A. It did.

3 Q. And you were very impressed with it,
4 weren't you?

5 A. For the most part.

6 Q. Well, at your deposition, I asked you:

7 "What did you think about it?"

8 And your answer, on Line 10 of Page 35
9 was:

10 "I was impressed," period.

11 Do you dispute that?

12 A. I think I said I was impressed. I had
13 some problems, just over the first blush, with
14 transportation. They had not connected to
15 Arthurtown and some of the other poorer
16 communities. It was going to be sort of walled
17 off.

18 Q. Okay. Well, you did understand that
19 what they had in mind would be a very large
20 development, didn't you?

21 A. I did.

22 Q. And you remember that, in a development
23 of 5,300 to 4,500 acres, it was going to be a
24 multiuse development, correct?

25 A. Correct.

1 Q. So multiuse would include single-family
2 and multifamily housing on the property, correct?

3 A. Correct, not much affordable housing.

4 Q. A lot of different uses?

5 A. Correct.

6 Q. In fact, I think you said it looked
7 like a good, new urbanist development, and you
8 commented that the internal transportation system
9 looked like it needed some work, but that it looked
10 pretty good to you.

11 A. That's true.

12 Q. Now, I asked you to elaborate on the
13 phrase new urbanist, and it said:

14 Well, you've got sidewalks --

15 MR. JOHNSON: Your Honor, I object.
16 This is an improper use of the deposition. He can
17 ask her the question, and if she doesn't answer the
18 same way, it can be used for impeachment only.

19 THE COURT: Yes, I sustain that
20 objection.

21 BY MR. BECKER:

22 Q. Did you remark about the sidewalks and
23 how it would be convenient for people to move about
24 more efficiently?

25 A. I thought the layout on the

1 initial -- a 30-minute look at a bubble map, a
2 concept map, looked very good.

3 Q. All right. And you noticed that there
4 was open space, correct?

5 A. Correct.

6 Q. And you thought that they had
7 incorporated a lot of the principles of new
8 urbanist design, correct?

9 A. I did.

10 Q. And you thought that was a good
11 alternative, didn't you?

12 A. I did.

13 Q. And this meeting that lasted about an
14 hour, in which you looked over this bubble map, it
15 was basically a meeting where they told you what
16 they had planned for the property if they purchased
17 it, correct?

18 A. In terms of land use, yes.

19 (PLF. EXH. 14, Tillotson letter to
20 McSwain, Re: Manning levees and letter to FEMA
21 (with McSwain annotations), was presented.)

22 BY MR. BECKER:

23 Q. Okay. Ms. Smith, I would like to show
24 you what's been marked as Plaintiff's Exhibit 14.
25 This is not in evidence, but I assume it will come

1 in during the deposition of -- during the testimony
2 of Mr. McSwain, but I would like to ask you about
3 it.

4 And we'll tie this up later when we
5 look at the proposal that was reviewed by the
6 development and services committee meeting on the
7 night of January 26th, 1998, which I believe you've
8 already testified you attended.

9 Do you see --

10 MR. JOHNSON: Your Honor, I object to
11 the use of this document for questioning and
12 presenting to the Court, unless he can put it in
13 through this witness who would have had personal
14 knowledge regarding the document.

15 THE COURT: Yes, sir. If you propose
16 to introduce it, of course, she would have to be
17 familiar with the document.

18 MR. BECKER: That's fine, Your Honor.
19 We'll move on.

20 THE WITNESS: I would like to explain,
21 if I may, the meeting that I had with Mr. Gregory
22 and Mr. Ey to discuss the concept, that that
23 meeting was limited to the land use. There was no
24 discussion of the expectation that Richland County
25 would finance the infrastructure, including the

1 levees, or maintain responsibility for them, or
2 that the levee system would predetermine whether or
3 not that project could go forward and how it would.

4 BY MR. BECKER:

5 Q. Well, you did know, didn't you, that
6 they needed to improve those levees before they
7 could develop the property, did you not?

8 A. It was of -- there was no specificity
9 in discussion of that, and depending on -- it
10 seemed like the whole focus was on the flood maps
11 at the time. They wanted to change the flood maps,
12 rather than take on moving the levees or building
13 them.

14 There was no discussion about how those
15 issues would impact their ability to develop.

16 Q. Okay. Now, let's see.

17 MR. BECKER: Your Honor, Ms. Black just
18 told me that this document is already in evidence
19 as Exhibit 207.

20 THE COURT: It is.

21 BY MR. BECKER:

22 Q. So I'm going to ask you to look at
23 Plaintiff's Exhibit 207.

24 A. I've got it right here.

25 Q. Yeah, it's the same thing.

1 A. Okay.

2 Q. So let's refer to Plaintiff's Exhibit
3 207, Ms. Smith, which is a letter dated December
4 11th, 1998 from Wilson Tillotson of Lockwood Greene
5 to Cary McSwain.

6 MR. JOHNSON: Your Honor, I object,
7 unless the witness has some personal firsthand
8 knowledge of it. Otherwise, it would just be an
9 opinion by a lay witness about something someone
10 else did.

11 THE COURT: I just don't know yet what
12 the question is going to be.

13 BY MR. BECKER:

14 Q. Well, you just told us, Ms. Smith, that
15 until the December -- until the January 26th, 1998
16 meeting, you had no idea that the property owners
17 intended to upgrade the levee system. Isn't that
18 what you said?

19 A. I may have said that. If I did, I
20 should qualify it by saying that I did not -- I was
21 not aware of Richland County's involvement, that
22 Richland County would have to be involved in that,
23 and that we would have to take responsibility. And
24 eventually it came to light that they wanted us to
25 finance it.

1 Q. Well, on December 11th, 1998,
2 Mr. Greene, on behalf of the prospective owners of
3 the property, was writing Mr. Cary McSwain, telling
4 him that very thing, was he not? Look at the
5 bullet points on the second page.

6 A. He was, and that's very -- that kind of
7 thing happens very often in government. The
8 advocates propose the outlines of either an
9 ordinance or a letter, to give guidance to the
10 administrator and their recommendation.

11 Q. In fact, he says -- he's asking
12 Richland County to write a letter to FEMA, saying
13 that the property owners intend to upgrade the
14 levee system to meet the structural requirements as
15 specified in 44 CFR 65.10, correct?

16 A. Correct.

17 Q. And you're telling this Court that at
18 your meeting with Mr. George Gregory and Mike Ey,
19 in the fall of 1998, there was no mention
20 whatsoever of upgrading the levees, or asking the
21 County to be involved in that project?

22 A. As I recall, there was not with me.

23 Q. Are you saying they were --

24 A. Nor is it mentioned in this letter
25 that -- it doesn't spell out what Richland County's

1 responsibility will be subsequent to the upgrade of
2 the levees or any agreement about how they would be
3 financed or the ongoing financial responsibility of
4 the County.

5 Q. All right. Well, we'll get to those
6 concerns in just a bit, Ms. Smith.

7 Now, I'm going to ask you to next look
8 at Plaintiff's Exhibit 166.

9 A. Are the numbers -- do the numbers
10 correspond to this book?

11 Q. Yes, ma'am.

12 A. I think I can find it, got it.

13 Q. Now, this is a proposed action from
14 Mr. Ken Knudsen of the Richland County planning
15 department. It's titled, Richland County Council
16 Proposed Action. This is Plaintiff's Exhibit 166.

17 Do you see that?

18 A. I do.

19 Q. Mr. Knudsen was the planning director,
20 correct?

21 A. He was.

22 Q. This is dated January 20th, 1998,
23 correct?

24 A. Correct.

25 Q. And it says: The purpose of this

1 report is to request County Council's consideration
2 of authorizing the council chairman or his designee
3 to act on the County's behalf to communicate to
4 FEMA, the agreement by Richland County, to accept
5 the right-of-way to the levee system and
6 responsibility to review, monitor, and maintain the
7 levee system, contingent upon proper certification.

8 MR. JOHNSON: Your Honor, I would
9 object to any questions of the witness on the
10 document until it's established that she has some
11 personal firsthand knowledge of it.

12 BY MR. BECKER:

13 Q. Ms. Smith, didn't you testify that you
14 attended the January 26th, 1998 development and
15 services committee meeting?

16 A. I did.

17 Q. And at that meeting, the development
18 and services committee was receiving a report from
19 the County staff about doing this very thing,
20 weren't they?

21 A. They were.

22 Q. And likely, this report would have been
23 circulated to the members of council who were
24 present at that meeting, correct?

25 A. That's correct. I'm not trying to

1 upset you, Mr. Becker.

2 Q. Your lawyer is.

3 You would have been there, right?

4 A. Yes, I was there.

5 Q. And you would have received a copy of
6 this at that meeting, correct?

7 A. Yes, I did.

8 Q. And you would have reviewed it then,
9 correct?

10 A. Yes, I read it before the meeting.

11 MR. BECKER: Are you satisfied now,
12 Mr. Johnson?

13 MR. JOHNSON: I am. And if you would
14 have asked it in the first place, I would have
15 never objected.

16 THE COURT: All right.

17 BY MR. BECKER:

18 Q. This is signed by Mr. Knudsen, correct,
19 Ms. Smith?

20 A. Yes, it is.

21 Q. Also signed by Mr. Milton Pope, the
22 assistant County administrator at that time,
23 correct?

24 A. Yes, it is.

25 Q. And signed by Larry Smith, the County

1 attorney, correct?

2 A. Yes, but I need to explain that.

3 When we route things, they check them
4 in terms of their purview. For example, the lawyer
5 makes sure there's nothing legally wrong. It's not
6 necessarily implying a recommendation.

7 Q. Oh, okay.

8 Well, also the financial officer had
9 also signed off on it, correct?

10 A. Correct.

11 Q. Okay. Now, it also says there above
12 Mr. Pope's signature:

13 We are expecting to receive additional
14 information on Monday regarding this issue.
15 Therefore, a recommendation will be provided at the
16 committee meeting.

17 Correct? That is just above Mr. Pope's
18 signature.

19 A. I'm trying to determine whether or not
20 this is -- that's right. That's correct.

21 Q. Okay. Now, what this says -- we've
22 already been over Paragraph A at the top of Page 2
23 of this document. And in the background, it talks
24 about how the affected area contains the existing
25 City of Columbia sewer treatment plant, the East

1 Richland sewer treatment plant, and Heathwood Hall
2 school; does it not?

3 A. It does.

4 Q. It then talks about the change in the
5 floodway mapping. And in the
6 next-to-the-last -- or the last sentence of
7 Paragraph 2, under Section B, called Background, it
8 says:

9 This has and will continue to have a
10 direct impact on the existing structures within
11 these areas, including the sewer treatment plants
12 and Heathwood Hall, none of which can expand or
13 enlarge.

14 Do you see that?

15 A. I do.

16 Q. Immediately after meeting -- and then
17 the final paragraph under that section says:

18 Immediately after meeting with FEMA
19 officials concerning the finalization of this
20 study, Mr. McSwain, acting in his capacity of both
21 County administrator and chief flood official,
22 requested that FEMA place this revised study on
23 hold.

24 Correct?

25 A. Correct.

1 Q. So this is the subject of what was
2 discussed at that January 26th, 1998 development
3 and services committee meeting that you attended,
4 correct?

5 A. Correct.

6 Q. And it's the same thing that was being
7 discussed as early -- as far back as Mr. Manning's
8 May 1998 letter to members of Richland County
9 Council, correct?

10 A. With one great exception, Mr. Becker.
11 They -- there was no mention in that letter, as I
12 recall, that the County was going to be asked to
13 take over the responsibility for the levees and pay
14 for the ongoing maintenance, to be responsible for
15 any breach or liability that might result from
16 those levees.

17 Q. Okay. Well, in the discussion section,
18 Mr. Knudsen, with the concurrence of Mr. Pope,
19 Mr. Smith, and the financial officer of the County,
20 went on to outline those four proposals that are
21 set forth in Mr. Tillotson's letter to Mr. McSwain
22 dated December 11th, 1998, didn't he?

23 A. That's true.

24 Q. In which it was stated: The property
25 owners intend to upgrade the levee system to meet

1 the structural requirements of FEMA as specified in
2 44 CFR 65.10.

3 Correct?

4 A. Correct.

5 Q. Now, it looks like -- if you will look
6 on the back of -- well, it also said, looking
7 at -- on page -- the next page of Exhibit 166:

8 The County agrees to accept
9 responsibility for operation and maintenance.

10 Do you see that --

11 A. I do.

12 Q. -- Point Number 2?

13 A. I do.

14 Q. Now, it talks about there's a
15 preliminary cost estimate of approximately \$174,500
16 annually for that.

17 Do you see that?

18 A. I do.

19 Q. Look at the last page of this document.

20 A. Past the maps?

21 Q. Yes, ma'am.

22 A. Got it.

23 Q. Do you see there's a spreadsheet there
24 that includes an estimated total annual cost for
25 the maintenance costs? It says:

1 Congaree properties, levee system
2 operation and maintenance cost estimate, 1999
3 costs.

4 Do you see that?

5 A. I do.

6 Q. And it totals \$174,500 annually.

7 Do you see that?

8 A. I do.

9 Q. Are you aware of whether or not in the
10 whole long history of Columbia Venture's attempts
11 to get Richland County to allow it to move forward
12 with its proposed development -- did that number
13 ever change?

14 A. Well, I don't think we ever got around
15 to looking at it, but all I know is, if I'm buying
16 a house and somebody tells me it needs a new roof
17 and it's only going to cost \$10,000, I'm going to
18 get my guy to give me an estimate before I buy the
19 house.

20 Q. Well, wait a minute, Ms. Smith. What
21 do you mean, you never got around to look at it?

22 A. Well, we never got into a formal
23 agreement.

24 Q. Well, but the estimate is attached, is
25 it not, to the official recommendation of the

1 County staff to the development and services
2 committee of Richland County, is it not?

3 A. And I would fault the staff -- it is,
4 and I would fault the staff for not double-checking
5 it and making sure we had our own estimate.

6 Q. Well, your financial officer had signed
7 off on this proposal?

8 A. He was not asked to review the
9 estimate.

10 Q. How do you know that?

11 A. It's not put in there that he reviewed
12 it.

13 Q. Well, he signed off on this proposal.
14 It's attached. It's the only financial information
15 attached to the proposal, and you're here telling
16 this Court that he did not review it?

17 A. Do you know that he did, Mr. Becker?

18 Q. How do you know he didn't? He signed
19 this document.

20 A. The signing does not necessarily imply
21 recommendation. The signing --

22 Q. Oh, oh, oh, wait a minute. Wait a
23 minute.

24 MR. JOHNSON: Wait a minute, let her
25 finish her answer, please.

1 BY MR. BECKER:

2 Q. Tell -- what does someone's signature
3 on document --

4 MR. JOHNSON: Your Honor, I would like
5 for the witness to finish what she was saying. He
6 cut her off.

7 BY MR. BECKER:

8 Q. What does it signify?

9 A. As I explained before --

10 THE COURT: You can explain your
11 answer, if you need to. Go ahead.

12 THE WITNESS: As I explained before,
13 these things are routed, and if they don't see any
14 major financial problems, he would sign off on it.
15 That doesn't mean he recommends it or stands by
16 those numbers.

17 BY MR. BECKER:

18 Q. Precisely. If he doesn't see any major
19 financial problems, he's going to sign off on it.

20 And that's what he did, didn't he?

21 A. Well, let's assume that he did,
22 Mr. Becker. It's still my job as a publicly
23 elected official to look at what's coming before me
24 and give it a second look, and I did not see that
25 there had been any checking of these numbers.

1 Q. Okay. You have an obligation to take a
2 second look.

3 Did you ever ask another engineering
4 firm to double-check these numbers?

5 A. I did not make a motion to do that, but
6 I felt like we needed to do more due diligence on
7 that.

8 Q. Did you ever ask any member of County
9 staff to double-check those numbers?

10 A. I would have before we entered into a
11 definitive agreement.

12 Q. But you didn't, did you?

13 A. We never had a definitive agreement
14 before us.

15 Q. Well, we'll get to that.

16 A. There was also trouble, if I might add,
17 with, number one, the property owners intend to
18 upgrade the levee system, the approximate cost in
19 excess of 6 million dollars. There was no
20 agreement about who was going to ultimately pay for
21 that 6-million-dollar upgrade. It would be
22 implied, but rather loosely, that they were.

23 But it turned out months down the path
24 that that was not so, that there was an expectation
25 that the County would finance it.

1 Q. Tell me where that comes from.

2 A. In revenue bond issues or in the tax
3 credits that they asked for. It was part of their
4 schedule of what would be covered by those.

5 Q. Okay. So you're saying that
6 was -- that was somehow improper?

7 A. I'm saying this was a little vague, and
8 that we needed a definitive agreement and to be
9 absolutely clear about who was going to pay for
10 what. We didn't know -- we had not decided who on
11 our staff would maintain these levees. We didn't
12 know what kind of work that would require. But
13 this was just a very general request, as far as I
14 was concerned.

15 Q. Okay. General request.

16 And you were concerned later about the
17 fact of the request for a multicounty business
18 park, revenue bond financing. Is that right?

19 A. I felt like that they had not been
20 quite forthcoming in their presentation of requests
21 to council, that the levee request came first, and
22 then other things popped up along and along, rather
23 than, Let's get it all on the table and have a good
24 discussion about this.

25 Q. Okay. So they weren't forthcoming with

1 the County about their desire to have a multicounty
2 business park and revenue bond financing. Is that
3 what you're saying?

4 A. At this time, no.

5 Q. Okay. Well, let's look at Bullet Point
6 Number 3 at the top of Page 3 of Exhibit 166.

7 The next thing they were requesting and
8 the County staff was recommending, that Richland
9 County request relocation of the proposed floodway.

10 Do you see that?

11 A. I do.

12 Q. Fourth, upon certification, the County
13 must be the one requesting the map revision.

14 Do you see that?

15 A. I do.

16 Q. Number 5, that the certification of the
17 levee system, self-explanatory, correct?

18 A. Correct.

19 Q. Number 6, we request FEMA confirmation.
20 Prior to acceptance of any responsibility, the
21 County must have the assurance of FEMA that once
22 all of the steps outlined on the levee system are
23 completed, the levee system will be accepted.

24 Did I read that correctly?

25 A. You did.

1 Q. The County must have the assurance of
2 FEMA, correct?

3 A. Correct.

4 Q. All right. Now, it goes on to list
5 three alternatives, right, Ms. Smith?

6 A. It does.

7 Q. According to County staff, County
8 Council, in response to this request, from these
9 landowners, these prospective landowners, had three
10 alternatives.

11 The first of those is, do nothing. The
12 area will stay as is, and any expansion or
13 development within the affected area will be
14 prohibited.

15 Correct?

16 A. Correct.

17 Q. So the County, if it -- if it, in its
18 official capacity, acting in -- as a body -- public
19 body -- if it had serious concerns about liability
20 and financing and all of those kinds of things you
21 have mentioned, it could just do nothing, say, no,
22 we don't want to get involved with this; we're
23 concerned about the liability, we're concerned
24 about who is going to pay for the levee upgrade,
25 we're concerned about the floodway mapping process,

1 and any expansion or development in that area would
2 be prohibited. Right?

3 A. I think that's correct. But I also
4 believe that we didn't know enough about this to
5 make that determination. And that is why I had
6 asked Mr. Ey, I said, Can't we wait?

7 We don't know about levees. We don't
8 know about FEMA mapping. Can you just move a map
9 because you want to develop property? Can you move
10 a flood line, just because somebody has a problem
11 with where the flooding might occur? We didn't
12 know any of the answers to those questions, and we
13 were hit with this on a Tuesday night and asked to
14 make a final decision within one week. That, to
15 me, seemed very, very unrealistic.

16 Q. I understand you felt that way. We're
17 going to get into that in mind-numbing detail in
18 just a little bit.

19 But right now, let's look at
20 Alternative 2, okay:

21 Authorize the council chairman or his
22 designee to begin first steps of acceptance of
23 responsibility and maintenance, contingent upon
24 engineering certification, certification by the
25 Corps of Engineers, and approval and acceptance by

1 FEMA.

2 Correct?

3 A. Correct.

4 Q. And the final alternative, Number 3,
5 was, Defer action.

6 This would mean the County awaits
7 whatever action FEMA imposes upon Richland County.

8 That was the third alternative; wasn't
9 it?

10 A. Yes, it was.

11 Q. And that was, Well, we can just let
12 this floodplain mapping process play out and see
13 where the floodway boundary ends up and just let it
14 all -- you know, just leave it up to FEMA, correct?

15 A. Correct.

16 Q. Now, let's look at financial impact,
17 because it's discussed specifically there.

18 And your financial officer, back on
19 1/21/99 on the first page, had affixed his
20 signature there to discuss, I presume, the
21 financial impact of this proposal.

22 Wouldn't that be a reasonable
23 assumption?

24 A. He was relying on the staff report, I
25 imagine. I don't know that.

1 Q. And probably relying on the last page
2 of that staff report, correct --

3 A. Correct.

4 Q. -- that estimate that never changed
5 throughout this process, correct?

6 A. I don't think it was ever examined.

7 Q. Okay. Well, the staff report says:
8 The financial impact on the County is estimated at
9 \$174,500 per year. This estimate, according to
10 Lockwood Greene, is on the high side and assumes
11 everything must be done yearly. Some items, such
12 as repair and replacement of equipment, will not
13 occur on a yearly basis. These costs should be
14 offset by the rezoning and development of these
15 properties and the accompanying increase in the
16 County's tax base.

17 Isn't that what it says?

18 A. It does say that.

19 Q. Okay. Now, costs would be offset by
20 rezoning and development of these properties and
21 the accompanying increase in the County's tax base.

22 You know, of course, don't you, that
23 there were some studies done about what that
24 financial impact to the County would be.

25 Are you aware of that?

1 A. I am.

2 Q. Are you aware that they were estimating
3 about 80 million dollars in additional tax revenue?

4 A. I was, and I was also aware they were
5 being produced and done by the advocates for the
6 project.

7 Q. Okay. Well, does that mean they were
8 wrong?

9 A. Not necessarily, but --

10 Q. Does that mean they were untrustworthy?

11 MR. JOHNSON: Your Honor, let her
12 finish, please.

13 THE COURT: You have to give her time
14 to finish.

15 MR. BECKER: I'm sorry.

16 THE WITNESS: Not necessarily, but
17 oftentimes studies that are done on land use
18 projects fail to take in a phenomenon known as
19 displacement: How much would you lose from people
20 moving from one part of the county to the other,
21 rather than just seeing it all as a marginal
22 improvement?

23 They also failed to take into the cost
24 of service. And they particularly, in this case,
25 didn't take into effect that they were asking for

1 the county property taxes that otherwise would have
2 been generated by this project to plow back into
3 it.

4 BY MR. BECKER:

5 Q. Well, the County never performed such
6 an alternative study, did it, Ms. Smith?

7 A. No, we didn't. We didn't get that far.

8 Q. Well, let's look at what the staff
9 recommended there. Last item, F, recommendation,
10 on Page 3 of Plaintiff's Exhibit 166.

11 Right there, above the signature of
12 Mr. Knudsen, the land development administrator of
13 Richland County, we have his recommendation, the
14 County staff's recommendation. He says:

15 In view of the above, Alternative 2 is
16 recommended.

17 Correct?

18 A. Correct.

19 Q. And that was, Authorize the chairman,
20 council chairman, or his designee, to begin first
21 steps of acceptance of responsibility and
22 maintenance, contingent upon engineering
23 certification, certification by the Corps of
24 Engineers, and approval and acceptance by FEMA.

25 Right?

1 A. Correct.

2 Q. Alternatives 1 and 3 were not
3 recommended, were they?

4 A. That's correct.

5 Q. All right. Now let's look at the
6 minutes of the meeting on January 26th, 1999, that
7 you attended. That's Plaintiff's Exhibit 20.

8 A. Got it.

9 Q. Now, you were present at this meeting,
10 correct?

11 A. I was.

12 Q. And when the subject of
13 development -- County involvement in the
14 development for the property came up at the
15 meeting, you had some understanding of what was
16 planned for the property, correct?

17 A. I did.

18 Q. And that was based on the meeting that
19 you had with Mr. Gregory and Mr. Ey in the fall of
20 1998, among other things, correct?

21 A. Correct.

22 Q. Now, on the first page of those
23 minutes, it also indicates that Mr. Larry Smith,
24 the County attorney, was present at the meeting,
25 correct?

1 A. Correct.

2 Q. So he was there and could answer
3 questions if people had them, correct?

4 A. Correct.

5 Q. And the issue of liability was duly
6 noted in those minutes, wasn't it?

7 A. It was.

8 Q. That's over on Page 3, correct?

9 A. I believe it was on Page 4. Page 4
10 marked at the bottom, Page 3 of the minutes.
11 You're correct.

12 Q. Okay, thank you.

13 The topic there was: Consideration of
14 accepting maintenance of levee system along the
15 Congaree River.

16 Right?

17 A. Right.

18 Q. Mr. McSwain briefed the council on the
19 background of the levee system, right?

20 A. Correct.

21 Q. A discussion took place regarding
22 liability to the County, if the acceptance of
23 responsibility is agreed upon, right?

24 A. Correct.

25 Q. Mr. Scott -- Ms. Scott, excuse

1 me -- moved, and seconded by Mr. Meetze, to send
2 this item to council for approval, and the vote in
3 favor was unanimous, correct?

4 A. Correct.

5 Q. And Mr. Meetze asked Mr. McSwain to
6 follow up on information on the County's
7 qualifications for obtaining insurance from FEMA
8 for liability, correct?

9 A. Correct.

10 Q. Now, those were some of the concerns
11 you had, right?

12 A. Well, I have to say, at this time, that
13 I knew nothing, ya na-ooch-ish go-vo, as they used
14 to say in my Russian class. But my instincts were
15 that this is a much bigger issue than we were --
16 that we needed to really understand what we were
17 doing here, and we were being really pushed to make
18 a decision on this very quickly. And my instincts
19 were, this is big. We need to understand this.

20 I believe I was the one that raised the
21 initial liability question because that's what
22 became apparent to me from the staff report, that
23 the staff had not considered that issue. So I did
24 raise that issue, and it apparently was shared
25 by -- people wanted some answers to it.

1 Q. Okay. I believe you came out of that
2 meeting -- in view of your concern about these
3 issues, you made a few phone calls and you ended up
4 speaking with Lisa Holland Jones --

5 A. I did.

6 Q. -- who was the flood control
7 coordinator for the State of South Carolina?

8 A. I did.

9 Q. And she told you this was an extremely
10 serious matter that did deserve a great deal of due
11 diligence, didn't she?

12 A. I'm not exactly sure those were her
13 words, but I definitely left the conversation
14 feeling that way.

15 Q. She told you that there was a great
16 deal of literature out there on this and that it
17 was a very serious issue for the local government
18 to get into the levee business, didn't she?

19 A. She did.

20 Q. She affirmed your instinct, did she
21 not, that you needed to slow the train down and
22 make sure this horse had good teeth, right?

23 A. Correct.

24 Q. Now, I believe you talked to Ms. Jones
25 on a Thursday. Is that right?

1 A. The committee meeting was on Tuesday,
2 and I started making inquiry. I, of course, have a
3 job and a family, but I was trying to make a few
4 phone calls, and I believe I ended up speaking to
5 her on Thursday. It could have been Friday morning
6 by the time I found her.

7 Q. And you were going to be out of town
8 that coming weekend?

9 A. As I recall, yes.

10 Q. So you decided to call Mike Ey, right?

11 A. I did.

12 Q. And you told him, I've really got some
13 problems with this, right?

14 A. Well, I believe I said -- I did tell
15 him I had problems with it, but I believe I said,
16 Mike, I really feel like we need to back off and
17 slow this thing down and let the County figure out
18 what its responsibilities are, how we're going to
19 enter into a really formal agreement to get this
20 thing done, if we decide to go forward, but go in
21 fully aware.

22 Q. You wanted your own guys to kick the
23 tires, right?

24 A. What's that?

25 Q. Well, I think you said you wanted your

1 own guys to kick the tires.

2 A. Yes.

3 Q. You wanted the County's staff to study
4 the issue?

5 A. I did.

6 Q. Well, I think you asked Mr. Ey why it
7 needed to be on the fast track, and he told you
8 that they were scheduled to close on the property
9 the Wednesday of the following week, and that if
10 the County didn't take action, they couldn't buy
11 the property. Right?

12 A. I believe he did share that with me.
13 But he didn't tell me why they had to close that
14 Wednesday and why the closing couldn't be put off.
15 He was very reluctant to share any information with
16 me about that. And that was his business, I
17 represented that.

18 Q. It could have been confidential client
19 information, couldn't it?

20 A. Could have been.

21 Q. Now, I believe you said Mr. Ey is a
22 perfectly honorable person, correct?

23 A. He is.

24 Q. And you didn't want to blindside him?

25 A. Correct.

1 Q. So you told him, I'll work with you to
2 see if we can craft a resolution that would be
3 satisfactory to both of us.

4 A. That was his suggestion and I agreed to
5 give it a try.

6 Q. And you told him, But if we can't, I'm
7 going to have to raise these issues with the
8 council, right?

9 A. Words to that effect. I
10 said -- basically, I would not commit to not
11 bringing up my concerns and not sharing with my
12 colleagues the conversations I had had with DNR.

13 Q. You said, I feel like the other council
14 members have a right to understand and know about
15 this information that I've got?

16 A. That's correct.

17 Q. So out of respect for Mr. Ey and the
18 developers who had been forthcoming with the
19 development plan, you agreed to work with Mr. Ey?

20 A. They had been forthcoming with their
21 land use intentions, yes.

22 Q. Now, you understood it was important to
23 the prospective owners to have the County speak to
24 the issue of the levee upgrade and acceptance by
25 the County of responsibility and maintenance for

1 the levee before they bought it, correct?

2 A. I understood that was important to
3 them, but I didn't know why they didn't want to get
4 all of the ducks in a row. I mean, we could
5 have -- but that was their business. If they
6 wanted to make a bet based on an action that we
7 would take, that was up to them.

8 Q. Now, in your direct examination with
9 Mr. Johnson, he asked you what you indicated to
10 Mr. Ey your concerns were, and you listed a number
11 of things. I'm going to go through them.

12 One you said was the financial
13 liability, correct?

14 A. Correct.

15 Q. One you said was how much the
16 maintenance was going to cost, correct?

17 A. And what that involved.

18 Q. Right.

19 And another one was letting people
20 develop or live behind levees and not being aware
21 of any possibility or problems of living in that
22 kind of environment, correct?

23 A. Correct.

24 Q. And you said the County also needed
25 more time to test the numbers that had been given

1 us about the cost of maintaining the levees, right?

2 A. Correct.

3 Q. You said you wanted to figure out who
4 was going to pay for construction of the levees,
5 correct?

6 A. Correct.

7 Q. And you also said you wanted to know
8 what kind of design they were going to have,
9 correct?

10 A. Correct.

11 Q. So these were all the things you told
12 Mr. Ey that you needed to be addressed in that
13 motion that you and he were going to draft
14 together?

15 A. That's correct. But keep in mind, I
16 had two days to examine an issue that is very
17 complex and that we knew nada. I knew nada; maybe
18 there were others who were more informed.

19 And my main hope, Mr. Becker, was that
20 we could delay it and that they would not buy the
21 property until after we had had more definitive
22 agreement and understood exactly what we were
23 partnering to do.

24 Q. Okay. That was your main hope?

25 A. Correct.

1 Q. Delay?

2 A. Correct.

3 Q. Defer action?

4 A. Defer action, yes.

5 Q. Uh-huh. Alternative 3?

6 A. Alternative 3 would have been, in
7 hindsight, much better for everyone, I think.

8 Q. That was your main hope?

9 A. Yes.

10 Q. Go with Alternative 3?

11 A. My main hope was to wait until we had
12 more information to make a decision. I think a
13 decision of that magnitude -- I think what alarmed
14 me the most was, there was so much pressure to get
15 this thing done, that we couldn't make a good
16 decision in that environment and that we needed to
17 really take some time to understand the issues
18 involved.

19 Q. Okay. Well, let's take a look at the
20 resolution that you and Mr. Ey drafted together.

21 That's Plaintiff's Exhibit 167.

22 A. Let's see. Here we go.

23 Q. Excuse me, I misspoke. It's 169.

24 A. Okay, I've got it right here.

25 Q. I misspoke. This is Plaintiff's

1 Exhibit 169.

2 A. And, you know, this is probably
3 irrelevant. I still don't know why we couldn't
4 wait. We didn't.

5 Q. No, you sure didn't.

6 Now, you probably didn't get this from
7 Mr. Ey until Monday afternoon, correct?

8 A. That's -- I know -- I recall that I was
9 going to be out of town that weekend, so my
10 assumption is I didn't get it until Monday.

11 Q. Earlier when I asked you about your
12 role in drafting this, you told me that when you're
13 elected -- your job -- when you're an elected
14 official, your job is to look the gift horse in the
15 mouth.

16 A. Yes.

17 Q. And that's what you wanted to do with
18 this, correct?

19 A. I wanted to have the opportunity to do
20 that, yes.

21 Q. All right. Let's look at the motion
22 that you and Mr. Ey drafted. It starts out -- it
23 says, I move...

24 Was that you?

25 A. Yes.

1 Q. I move....

2 That's you, right?

3 A. Yes.

4 Q. ...that the County accept
5 responsibility for local inspection and enforcement
6 of the operations and maintenance plan as submitted
7 by the owner, and approved by FEMA, and if required
8 by FEMA regulation 44 CFR 65.10 to accept operation
9 and maintenance responsibility for the levee
10 system, contingent upon...

11 Did I read it correctly?

12 A. You did read it correctly.

13 Q. ...one, property owners upgrading the
14 levee system to meet FEMA standards as contained in
15 44 CFR 65.10...

16 Correct?

17 A. Correct.

18 Q. That's exactly what Mr. Tillotson told
19 Mr. McSwain back on December 11th, 1998 in
20 Plaintiff's Exhibit 14 -- excuse me -- 207.

21 Correct?

22 A. Yes.

23 Q. ...two, property owners preparing all
24 required documentation, including operation and
25 maintenance plans, as provided in 44 CFR 65.10...

1 Correct?

2 A. Correct.

3 Q. ...certification that the levee system,
4 as upgraded, meets FEMA standards...

5 Correct?

6 A. Correct.

7 Q. ...and, four, the parties, which
8 include Richland County, the City of Columbia, and
9 the developers, resolving to the satisfaction of
10 the County, the issues of the performance and
11 funding of the operation and maintenance
12 responsibility.

13 Correct?

14 A. Correct.

15 Q. Now, let me jump back.

16 Number one says, property owners will
17 do something, correct?

18 A. That's correct.

19 Q. Number 2 says, property owners will
20 prepare a required documentation, correct?

21 A. Correct.

22 Q. Number 3 says, certification that the
23 levee system, as upgraded, meets FEMA standards,
24 right?

25 A. Right.

1 Q. All right. Now, who was going to do
2 that?

3 A. I don't know how that process works. I
4 don't know who submits it to FEMA for
5 certification. That would be an administerial
6 action, not a policy action.

7 Q. So that's just a detail that you
8 weren't concerned with at the time?

9 A. Correct.

10 Q. And the parties, which include Richland
11 County, the City of Columbia, and the
12 developers -- now, why did the parties include the
13 City of Columbia?

14 A. Um, I really can't recall with any
15 specificity. The City of Columbia was definitely
16 involved. There had been some talk that the land
17 might be annexed into the City, and there was
18 concern from members of our council that the City
19 would annex up to the levees. They would control
20 the development behind the levees, and we would be
21 stuck with the levees, with no control over what
22 went behind them.

23 Also, the City of Columbia water plant
24 was definitely an issue, and we wanted to make sure
25 that they were involved in those discussions and

1 they had met their satisfaction. And I don't
2 really remember that with any specificity.

3 Q. Well, now, this is the thing that you
4 and Mr. Ey were drafting that was supposed to
5 address all of the concerns you had about moving
6 forward quickly with this, right, Ms. Smith?

7 A. We were drafting it with like a
8 six-hour window, and it was very difficult to sit
9 down and hammer out something that would
10 be -- could be much improved upon than this
11 document.

12 Q. Well, let me ask you, one reason the
13 City of Columbia can be involved is because they
14 own a portion of Levee Section 1 that protects the
15 property. Could that be possible?

16 A. That's possible. I would really -- I
17 had no idea about who owned what and what
18 levees -- what they even looked like.

19 Q. Well, I mean, but, you know, this is
20 the document that you and Mr. Ey were drafting
21 together. You faxed him your bullet points, and he
22 came back with this, and it was to address the real
23 serious concerns that you had about moving forward
24 with this project.

25 So I was just assuming, wouldn't it be

1 reasonable to do so, that you would know these
2 details?

3 A. One would think. But, again, we were
4 introduced to this issue on Tuesday. This
5 conversation started on Friday, and on Monday, we
6 had this document that was being -- if there was
7 any howling going on, it was howling to get this
8 thing done by Tuesday night.

9 So we were moving fairly rapidly, and
10 I'm not sure that I defined every word in the
11 document.

12 Q. Okay. Well, let's just think about
13 that a minute.

14 Now, the City of Columbia had owned the
15 State of South Carolina's largest wastewater
16 treatment plant, which was behind and protected by
17 Levee Section 1, right?

18 A. I knew they were behind levees at this
19 point, and I knew that -- I don't know what
20 section -- I didn't have all of that detailed
21 information at the time.

22 Q. And if you could improve -- well, you
23 did know that Mr. Bierman and the City of Columbia
24 were concerned about the expansion of the floodway
25 designation that was going to make it impossible

1 for them to expand their wastewater treatment
2 plant, didn't you?

3 A. I did.

4 Q. Yeah.

5 And if you could improve those levees
6 to certified standards, that would be a really good
7 thing for the City of Columbia, wouldn't it?

8 A. Yes.

9 Q. And since they own a portion of that
10 Levee System 1, wouldn't it be in their financial
11 best interest to want to improve those levees to
12 certified standards so they could add on to their
13 wastewater treatment plan, if they needed to?

14 A. I can't speak with any authority about
15 that, but I can just say, you know, probably. But
16 I had no knowledge of that, except for what had
17 been reported in the paper. No contact with any
18 city council member or Mr. Bierman.

19 Q. You can't just rely on common sense in
20 this instance, Ms. Smith, to agree with me there?

21 A. Well, I don't know the state of their
22 levees. I don't know whether they needed
23 improvement. I don't know if they needed
24 expansion.

25 Q. Continuing on with your motion for

1 levee matter, you said there:

2 The County's acceptance of
3 responsibility, as provided herein, terminates if
4 the developers of the area do not invest at least
5 30 million dollars within ten years of the date of
6 the adoption of this motion. For purposes of this
7 action, developers are those persons or entities,
8 including their successors and assigns, who own or
9 invest in the improvements to the levee.

10 Is that what it says?

11 A. Yes, it does.

12 Q. So that was your idea, right, that that
13 was the requirement that you wanted to insert,
14 isn't it?

15 A. It was either mine, or some council
16 member suggested it to me. I don't think it would
17 have been the developers. I don't recall.

18 Q. Well, normally in any kind of economic
19 development, I believe you said that when the
20 County is going to do something, you require some
21 obligation from the developer.

22 And so you probably did initiate that
23 thought, didn't you, Ms. Smith?

24 A. I don't remember with any specificity,
25 but we normally put a clawback agreement in

1 agreements of this type.

2 Q. Well, you wanted to make sure that the
3 developer invested a lot of their own money
4 improving the property.

5 Isn't that what your intent was there?

6 A. That would have been reported, yes.

7 Q. Because you didn't want the County to
8 be left holding the bag, did you?

9 A. Correct.

10 Q. And so you were requiring here in this
11 motion for levee matter that the developer, or
12 anybody who might buy the property from them, their
13 successors and assigns who own or invest in the
14 improvements of the levee, that they invest at
15 least 30 million dollars in the property within ten
16 years, correct?

17 A. That's what they said they were going
18 to do. There didn't seem any harm putting it in
19 writing.

20 Q. And so that was a way to ensure that
21 the County wouldn't be left holding the bag
22 financially, right?

23 A. Or that we would have to continue
24 maintaining the levees, if there was no
25 development.

1 Q. The next paragraph says: The council
2 chairperson or the chairperson's designee is
3 authorized to take such action necessary and proper
4 to accomplish the purposes of this motion,
5 including signing documents and sending
6 correspondence to appropriate officials.

7 Correct?

8 A. Correct.

9 Q. And this was so that the County staff
10 or the council chairperson could notify other
11 parties outside the County of what the County's
12 decision was with respect to this proposal, right?

13 A. Or to enter into serious negotiations
14 with the developers about working out the terms of
15 a financial arrangement in maintaining and
16 constructing the levees.

17 Q. Yeah, it was there.

18 This part was there to move things
19 forward, wasn't it?

20 A. It should -- yes.

21 Q. And it was there so Mr. Ey -- because
22 Mr. Ey wanted to make sure that somebody could sign
23 the documents that were going to FEMA, right?

24 A. I don't know why Mr. Ey wanted it. I'm
25 sure I supported it so that we could enter into

1 negotiations on a more definitive agreement for
2 financing and liability and construction of the
3 levees.

4 Q. Well, I think that was your reading of
5 it, based on Line 3 on Page 62 of your deposition.

6 Would you agree with me there?

7 A. I can't remember Line 3 of Page 62 of
8 my deposition. That was a pretty long deposition,
9 Mr. Becker.

10 Q. Uh-huh.

11 Well, I'm just telling you that what
12 you said there, was -- your reading of it was that
13 Mr. Ey wanted to make sure that somebody could sign
14 the documents that were going to FEMA.

15 A. That was part of it, yes.

16 MR. JOHNSON: Your Honor, I object to
17 the manner in which this question is posed. If
18 he's going to use the deposition to impeach her,
19 he's got to show it to her and give her a chance to
20 read it.

21 MR. BECKER: Well, let's do that.

22 Let's do that.

23 BY MR. BECKER:

24 Q. Ms. Smith, read -- on Page 62, read
25 your answer, beginning at Line 2, going through the

1 end of Line 5.

2 A. May I read the question first?

3 Q. Sure.

4 A. "The County chairperson or his designee
5 would need the appropriate authority to move
6 forward with the plans that the council had
7 approved, would he not?

8 "ANSWER: I think that it -- dash -- my
9 reading of it would be that Mr. Ey wanted to make
10 sure that somebody could sign the documents that
11 were going to FEMA."

12 MR. JOHNSON: Your Honor, I would ask
13 the witness be permitted to publish 6 through 8 on
14 Page 62.

15 THE WITNESS: Line 6 through --

16 MR. JOHNSON: 8..

17 THE WITNESS: "Okay, fair enough. But
18 I don't recall specifically why that's in there."

19 MR. JOHNSON: Thank you.

20 THE WITNESS: Also, I would say that
21 the -- that was including, but not
22 specifically -- the language says, if I may read
23 it:

24 The County Council or the chairperson's
25 designee is authorized to take such action.

1 necessary and proper to accomplish the purposes of
2 this motion.

3 And then it says: Including signing
4 documents and sending correspondence to appropriate
5 officials.

6 So I think there was a lot of
7 negotiation and discussion that needed to take
8 place prior to sending anything to FEMA. And that
9 would be why that language would have been in
10 there.

11 Of course Mr. Ey wanted us to be able
12 to authorize somebody to act, but there was a lot
13 of preliminary work needed to be done before that
14 action could be taken, in my mind.

15 BY MR. BECKER:

16 Q. Okay. All right. Now, the final
17 paragraph says:

18 The County reserves its right to inform
19 any person building, constructing, renovating, or
20 otherwise changing the land surfaces in the area
21 protected by the levee as to the risk of flooding
22 in the area and opportunities to reduce, eliminate,
23 or insure such risk.

24 Correct?

25 A. Correct.

1 Q. Is that something you wanted in there?

2 A. Absolutely.

3 Q. Now, earlier, among the list of
4 concerns that you testified about in your direct
5 examination -- and I went over with you before we
6 moved on to this motion for levee matter -- you
7 said that one of the issues that you had in
8 drafting it was to figure out who was going to pay
9 for the construction of the levees. Correct?

10 A. Correct.

11 Q. Was that concern addressed through the
12 requirement that the developers invest 30 million
13 dollars in the property within ten years?

14 A. Not necessarily.

15 Q. Well, that was so the County wouldn't
16 be left holding the bag, right?

17 A. Correct.

18 Q. Now, you also mentioned that you were
19 very concerned about what kind of design the levees
20 were going to have.

21 Do you remember that?

22 A. I do.

23 Q. That's not addressed in here, is it?

24 A. Well, I think in the -- generally
25 speaking, the -- Number 4 is a blanket assurance

1 that we would have negotiations before anything
2 went forward about the levees, in my mind.

3 Q. Isn't that addressed in Number 1,
4 Ms. Smith? Don't the provisions of 44 CFR 65.10
5 specify FEMA standards for constructing a certified
6 levee?

7 A. They do. I think -- I'm not sure about
8 this -- and again at the time, I knew very, very
9 little about these issues.

10 But to me, if the County was going to
11 assume responsibility for something that was going
12 to be built, we should have a hand in how it was
13 going to be built.

14 Q. And you did that with Number 1, right?

15 A. We did that with Number 4.

16 Q. Well, that discusses the issues of the
17 performance and funding of the operation and
18 maintenance responsibilities.

19 A. That's correct. And the way a levee
20 performs is based upon how it's constructed.

21 Q. And that's addressed in Number 1?

22 A. Well, let's say they overlap, for the
23 sake of being kind to one another.

24 But in my mind, you don't take over
25 responsibility for something unless you know

1 what -- whether it's just going to be a pile of
2 dirt or whether it's going to be taken down and
3 reconstructed to higher standards.

4 Q. Well, let's go back to the question I
5 asked you earlier: Who is going to certify that
6 the levee system, as upgraded, meets those FEMA
7 standards?

8 A. FEMA would certify it, I guess, if
9 that's what you're asking me. But the point, I
10 think, is that there are a lot of different ways to
11 meet certification, and the County would want to be
12 absolutely sure that the higher standards of
13 construction were being met and implemented.

14 At least, I will speak for myself in
15 saying that, and I would assume the County would
16 want that.

17 Q. Okay. Well, I'm just going with what
18 you and Mr. Ey put in the motion.

19 A. And we did put it in the motion. I
20 don't think you were there.

21 Q. No, I wasn't. But I'm reading the
22 document that you've testified you and he drafted
23 together.

24 A. That's correct.

25 MR. BECKER: Your Honor, we've been at

1 it an hour and a half.

2 THE COURT: Yeah. We'll take our
3 morning recess at this time. We'll take 15
4 minutes.

5 THE WITNESS: Your Honor, do y'all
6 think I'm going to be here past three o'clock?

7 MR. BECKER: No.

8 (A brief recess was held.)

9 THE COURT: Mr. Becker, you may
10 proceed.

11 MR. BECKER: Thank you, Your Honor.

12 BY MR. BECKER:

13 Q. Ms. Smith, I would like you to look at
14 Plaintiff's Exhibit 170.

15 A. Okay.

16 Q. This is a copy of an article that
17 appeared in The State Newspaper on the morning of
18 Tuesday, February 2nd, 1999.

19 Would you agree with that?

20 A. Yes.

21 Q. Down there under the fourth paragraph
22 of the article, it says:

23 The County Council will consider the
24 matter -- and we'll go back to discuss
25 that -- during his meeting tonight at 6, in council

1 chambers, at the County administration building,
2 2020 Hampton Street.

3 Is that what it says in Paragraph 4?

4 A. Yes, yes.

5 Q. So this article would have been in the
6 newspaper on the morning of February 2nd, 1999.

7 You've been out of town the weekend before, right?

8 A. I don't recall where I went, but I
9 recall that I was not available that weekend, yes.

10 Q. So you were back in town on Monday, and
11 you would have received the motion for levee matter
12 from Mr. Ey, I believe, sometime that afternoon,
13 correct?

14 A. Correct.

15 Q. Now, you're quoted in this article by
16 Ms. Mayes, and we'll get to that in a minute. Do
17 you see that on the second page?

18 A. I do.

19 Q. Obviously, you were a public figure and
20 it was fairly normal for a reporter from the State
21 to give you a call and speak to you about matters
22 of public interest, correct?

23 A. Yes.

24 Q. So this probably would have occurred on
25 that Monday that you were back in town, right?

1 A. Yes, yes.

2 Q. The day before?

3 A. Yes.

4 Q. The headline, the first paragraph of
5 the article: Richland County is being asked to
6 assume maintenance of 20-plus miles of levees along
7 the Congaree River once they've been brought up to
8 federal standards.

9 Correct?

10 A. Right. Not the headline, the lead.

11 Q. Yeah, lead -- lead sentence.

12 The estimated annual cost to the County
13 is \$174,500, which some council members say is a
14 small investment for an area that is ripe for
15 development.

16 Is that what it says?

17 A. Yes.

18 Q. However, at least one council member is
19 concerned about the County's potential liability,
20 should the earthen dams along the southeastern
21 beltway fail.

22 That's what it says, right?

23 A. Yes.

24 Q. And that's referring to you, isn't it?

25 A. I don't know.

1 Q. Well, let's look over on Page 2. Down
2 there about halfway down the page, it says:

3 Councilwoman Kit Smith has expressed
4 concerns about the County's liability should the
5 levees fail.

6 Isn't that what it says?

7 A. That's what it says. I stated that at
8 the prior committee meeting, I believe.

9 Q. And it says: I want to see development
10 go forward which can't fool mother nature, she
11 said.

12 Did I read that correctly?

13 A. You did.

14 Q. And that sounds like something you
15 would have said, doesn't it?

16 A. I have no idea. They usually get the
17 quotes pretty right, but sometimes you say a whole
18 lot more and they pick out one thing.

19 So I probably said something like that,
20 yes.

21 Q. You don't disavow that statement, do
22 you?

23 A. Not in its generalities, no.

24 Q. Now, it also says: County Attorney
25 Larry Smith said he had looked into certain aspects

1 of the liability issue but declined further comment
2 until he gives a legal opinion to council tonight.

3 Correct?

4 A. Correct.

5 Q. And Mr. Smith was at that meeting of
6 the development services committee on January 26th,
7 1998, wasn't he?

8 A. Yes.

9 Q. And the issue of liability for the
10 levees came up at that meeting, didn't it?

11 A. It did.

12 Q. And those were questions you had
13 concerns about, correct?

14 A. I raised those issues, yes.

15 Q. You would have been expecting it, would
16 you not, for Mr. Smith to address that issue before
17 the council voted on it, correct?

18 A. Not necessarily.

19 Q. Now, wait a minute, Ms. Smith. You're
20 the one who is offering this motion. You drafted
21 it with Mr. Ey because you had concerns about
22 moving forward too fast.

23 Are you telling me that it didn't
24 matter to you whether or not the County attorney
25 took a look --

1 A. Oh, no, not at all. Not at all. It
2 was a very important issue. What I mean
3 is -- Mr. Smith is a County attorney. He deals
4 with issues that come up more day-to-day, often
5 issues in County and State government.

6 No other county that I know of in South
7 Carolina has been asked to build or maintain
8 levees, and I would think this would be an area of
9 particular expertise that our staff might not have;
10 and as it turned out, it didn't.

11 In fact, later on, we asked another law
12 firm to prepare a brief for us that I think was a
13 couple hundred pages long. I wouldn't expect our
14 staff -- that's why I was so concerned that we were
15 moving forward so hastily, because I think it would
16 take an attorney longer than three days to get a
17 definitive opinion on that -- an issue of that
18 magnitude.

19 Q. Well, you had that concern on February
20 2nd, 1999, didn't you?

21 A. I did.

22 Q. You told Ms. Mayes in The State
23 Newspaper about it, didn't you?

24 A. I stated it publicly at the committee
25 meeting, and that's why I drafted the resolution to

1 bring to council the following Tuesday.

2 Q. And you apparently thought that
3 Mr. Larry Smith didn't have the skills, knowledge,
4 or expertise to advise the County on the legal
5 issue of liability, did you?

6 A. I did not know that he did or did not,
7 but I would just assume that it would be a very
8 difficult issue to resolve in three days and was
9 one of the reasons I wanted to delay.

10 Q. Uh-huh.

11 Well, Mr. Smith is quoted in the
12 newspaper as saying, I'm not sure I have all the
13 answers. I've talked to people and reviewed
14 information, but I haven't had the opportunity to
15 talk to FEMA.

16 So apparently Mr. Smith was confirming
17 your fears about his knowledge and expertise,
18 wasn't he?

19 A. I can't say whether that's why he said
20 that or not.

21 Q. Well, you had concerns that he didn't
22 have the knowledge or expertise to advise on that
23 issue?

24 A. I don't remember thinking about that.
25 I knew that the council didn't have the information

1 that we need.

2 Q. You told me it was a concern of yours
3 on February 2nd, 1998.

4 A. I told you what?

5 Q. You told me that the liability to the
6 County was a concern of yours on February 2nd,
7 1999.

8 A. Yes, it was. It was an ongoing
9 concern.

10 Q. And it was raised at the development
11 and services committee meeting --

12 A. Yes, it was.

13 Q. -- as is duly noted in the minutes of
14 that meeting, correct?

15 A. Correct.

16 Q. Councilman Steve Morris said in this
17 article that the County would show good economic
18 sense if it accepted the maintenance of the levees.
19 Protecting an expansion of the two sewer treatment
20 plants is key to future growth of the City and the
21 County.

22 Do you disagree with that?

23 A. I believe you read it correctly, yes.

24 Q. Do you agree with it or disagree with
25 it?

1 A. Mr. Morris is entitled to his opinion
2 and approach to public policy. Mine has always
3 been to try to get as much information, and
4 balanced information before I make a decision.

5 Q. Well, my question, Ms. Smith, is, you
6 know, if you've got two sewer treatment plants, one
7 the largest in the state, the other that serves
8 55,000 residents of Northeast Columbia, wouldn't
9 you agree with me that providing that those could
10 expand would be important to ensure future economic
11 growth within the county?

12 A. I think that that's a fair statement to
13 make, but I think there may be more than one way to
14 accomplish that.

15 Q. Okay. All right.

16 I would like you to look next at
17 Plaintiff's Exhibit 147.

18 Do you have that?

19 A. I do.

20 Q. Okay. Look on Page 3, please.

21 Do you see there, it says:
22 Consideration of accepting maintenance of levee
23 system along the Congaree River?

24 A. Yes.

25 Q. Now, it says: Ms. Brill stated that

1 the committee recommended approval of authorizing
2 the council chairman to begin first steps of
3 acceptance of responsibility and maintenance,
4 contingent upon engineering certification,
5 certification by the Corps of Engineers, and
6 approval and acceptance by FEMA.

7 Correct?

8 A. That's correct.

9 Q. Now, this was the report -- it says up
10 there, just two headings up, Report of development
11 and services committee.

12 A. That's correct.

13 Q. And at that time, Ms. Brill was
14 chairman of the development and services committee,
15 wasn't she?

16 A. She was.

17 Q. And she was presenting to the council
18 the committee motion, the recommended council
19 action that we discussed earlier, that was approved
20 by the development services committee, right?

21 A. She was.

22 Q. And that was Alternative 2, right --

23 A. Yes.

24 Q. -- that she was mentioning right there
25 in the minutes?

1 A. Correct.

2 Q. The minutes go on to say: Ms. Smith
3 made a substitute motion, seconded by Mr. Pearce.

4 Correct?

5 A. Correct.

6 Q. Now, that's the motion that we
7 discussed earlier, the motion for levee matter that
8 you and Mr. Ey drafted together, correct?

9 A. That's correct.

10 Q. Now, these minutes, are they not,
11 they're the official record of the action taken by
12 the County. Is that correct?

13 A. That's correct.

14 Q. It says: Ms. Smith made a substitute
15 motion, seconded by Mr. Pearce, to accept
16 responsibility for local inspection and enforcement
17 of the levee system and, if required by FEMA, to
18 accept operation and maintenance responsibility for
19 the system, contingent upon the following...

20 Did I read that paragraph correctly?

21 A. You did.

22 Q. And then it goes on to list all five of
23 those contingencies that were set forth on your
24 motion for levee matter, correct?

25 A. Correct.

1 Q. That was Plaintiff's Exhibit 169,
2 right?

3 A. Correct.

4 Q. Now, there's only one -- there are two
5 changes. In Paragraph 4, it does not say resolving
6 to the satisfaction of the County, does it?

7 A. No, it does not.

8 Q. That's left out in these official
9 minutes, isn't it?

10 A. It is.

11 Q. It's also left out -- the last
12 paragraph from Plaintiff's Exhibit 169, your motion
13 for levee matter -- the last paragraph is left out
14 where it says:

15 The County reserves its right to inform
16 any person building, constructing, renovating, or
17 otherwise changing the land surfaces in the area
18 protected by the levee as to the risk of flooding
19 in the area and opportunities to reduce, eliminate,
20 or insure such risk.

21 That's not in there either, is it?

22 A. Correct.

23 Q. But otherwise, all five of those
24 contingencies are exactly as you and Mr. Ey
25 included them in the motion for levee matter,

1 Plaintiff's 169, correct?

2 A. Correct.

3 Q. Now, Mr. Morris made an amendment to
4 delete the paragraph that states the termination of
5 responsibility if the developers of the area do not
6 invest at least 30 million dollars. Is that right?

7 A. He did.

8 Q. I believe that never got a second, so
9 it never went anywhere, correct?

10 A. Correct.

11 Q. The minutes then say: A discussion
12 took place regarding the acceptance,
13 responsibility, maintenance of the levee system,
14 and the effect on taxpayers.

15 Did I read that right?

16 A. You did.

17 Q. Mr. McEachern moved -- on Page 4, top
18 of Page 4 -- seconded by Ms. Scott, the call for
19 the question.

20 The call for the question was approved
21 unanimously, was it not?

22 A. It was.

23 Q. So you voted to terminate, debate, and
24 move on to an up or down vote on your motion,
25 right?

1 A. That's correct.

2 Q. And the vote in favor of your
3 substitute motion was unanimous?

4 A. Correct.

5 Q. 11 to zero?

6 A. Correct.

7 Q. You voted for it?

8 A. I did.

9 Q. Isn't it reasonable to assume,
10 Ms. Smith, that if you voted in favor of something,
11 that you're in favor of it?

12 A. Yes, most of the time. Sometimes you
13 do it as a procedural matter so that you can make a
14 motion later on to reconsider, so you're really not
15 in favor of it, you're lining yourself up to be on
16 the rebuttal side. But most of the time, that's
17 true.

18 Q. So you play political games sometimes?

19 A. I wouldn't call them political games.
20 I characterize them as strategy for implementing
21 good policy.

22 Q. So you take an action in public for
23 reasons you don't share with anybody else. Is that
24 what you do when you play those political games?

25 A. I don't think they're political games,

1 Mr. Becker. I wouldn't characterize them as that.
2 Sometimes somebody is absent and you want to give
3 them an opportunity to vote on something, so...

4 Q. Well, this levee matter was your
5 substitute motion?

6 A. Excuse me?

7 Q. This -- what passed County Council that
8 night was your motion, wasn't it?

9 A. I was in favor of this, yes, I was.

10 Q. The one you drafted with Mr. Ey,
11 correct?

12 A. Correct.

13 Q. And he was the attorney for the people
14 who were buying the property, wasn't he?

15 A. Yes, he was.

16 Q. And he had explained to you that those
17 purchasers needed the County to act before they
18 were going to close on the property, correct?

19 A. I wouldn't say he explained it to me,
20 because it was -- I didn't know why they didn't
21 need zoning redone, why they didn't have to ask for
22 a more definitive agreement about the levees,
23 rather than a resolution with contingencies in it.

24 I was willing to pass a resolution with
25 contingencies. If they wanted to act on that

1 resolution, that was their business. They didn't
2 ask my advice and guidance on that. It was their
3 bet, not mine.

4 Q. Now, wait a minute, Ms. Smith. I think
5 you said Mr. Ey and Mr. Gregory met with you
6 personally for about an hour in the fall of 1998 to
7 explain to you what they intended to do with the
8 property, if they purchased it.

9 A. I don't understand the question.

10 Q. Didn't you say that earlier today?

11 A. They gave me -- they gave us a land use
12 plan, a very general land use plan of the property.

13 Q. Well, isn't that what they planned to
14 do with the property if they purchased it?

15 A. As far as I know. But oftentimes,
16 during the process of zoning or entering into a
17 development agreement, or you go for a PUD rather
18 than straight zoning, which is a planned unit
19 development, the preliminary plan can change
20 dramatically during the process.

21 But generally speaking, yes, they
22 showed me a mixed-use development that they wanted
23 to put on that property.

24 Q. Didn't you also testify that, after you
25 and Mr. Ey worked on that motion for levee matter

1 and he sent it to you, that you looked at it and
2 you reviewed it and you accepted it?

3 A. I was satisfied that it left the County
4 enough room to do diligence on the responsibility
5 and financing of the levees.

6 Q. All right. I'm glad you said that.
7 We're going to get to that.

8 Let's make a mental note of that word
9 you just used. It left them enough room. Right?
10 Let's make a mental note of that, Ms. Smith.

11 A. Well, should I change the word?

12 Q. No, because you have used it before.
13 You have used it before.

14 A. I think I was very clear, Mr. Becker,
15 in my discussions -- I tried to be very forthcoming
16 with Mr. Ey, that I had very much concerns that we
17 needed time. He was not willing to grant the
18 County more time to do diligence. Therefore, I
19 said, I would be willing to craft a resolution that
20 did leave the County some opportunity to do
21 diligence, and he was willing to accept that.

22 I have no idea what his conversations
23 were with his clients, but I was confident that we
24 had enough room to move forward in a responsible
25 fashion.

1 Q. Ms. Smith, let's look at Plaintiff's
2 Exhibit 146.

3 A. Excuse me, 146?

4 Q. Yes, ma'am.

5 This is a letter from David Chambers,
6 dated February 2nd, 1999 to Mr. McSwain and
7 Mr. Smith.

8 And Mr. McSwain was the County
9 administrator on that day, right?

10 A. Correct.

11 Q. And Larry Smith was the County
12 attorney, right?

13 A. That's correct.

14 Q. Who was David Chambers?

15 A. I believe he was our risk manager, but
16 I'm not sure of his title.

17 Q. For the County?

18 A. Yes.

19 Q. Right.

20 And the topic is, Liability insurance
21 for levee maintenance. Correct?

22 A. Correct.

23 Q. Let's go through what he said. He
24 said:

25 I've talked with planning and with the

1 County's insurance broker, Arthur J.
2 Gallagher & Company. However, there's not enough
3 information for the broker to submit the risk to an
4 insurer.

5 The broker stated he had obtained
6 liability coverage for a dam but not for a levee.
7 The cost was \$40,000. He simply can't even
8 ballpark a figure with so little information.
9 Please note the below information on some levee
10 problems in the Midlands.

11 Did I read that correctly?

12 A. I think you left out one word, but
13 otherwise, A plus.

14 Q. Well, he goes on to talk about how he's
15 talked with risk managers in the state, John
16 Henderson of the South Carolina Association of
17 Counties, and Cliff Scott, an association attorney.
18 He's talked with the City of Columbia attorney, and
19 he said, The City had a very substantial liability
20 from a dam break because the contractual agreement
21 with others took it out of the State Tort and
22 Claims Act limitations, correct?

23 A. Yes.

24 Q. He also told Mr. Chambers that Ken
25 Gaines, an attorney with the City of Columbia,

1 said, to the best of his memory, a judgment of 4.8
2 million was obtained by Mr. Manning because of a
3 breach in the levee. The liability was based on a
4 condition in a deed.

5 Is that correct?

6 A. Yes.

7 Q. He talked about an instance where
8 Jackie Spears in Kershaw County -- for the City of
9 Camden -- had an earthen dam burst which caused
10 damage to highway, and some deaths, correct?

11 A. Yes.

12 Q. He went on to say: I expect the
13 liability insurance, if available, to be expensive.
14 I strongly recommend against accepting any
15 liability related to levees. Floods will occur and
16 levees will fail. Just the litigation expense will
17 be considerable.

18 Is that what he said?

19 A. Yes.

20 Q. Now, this would have certainly been
21 reviewed with County Council on the night of
22 February 2nd of 1999, wouldn't it?

23 A. It was not.

24 Q. You're telling me that Mr. McSwain
25 would have had this memorandum, and he wouldn't

1 have briefed County Council on this memorandum
2 before they took a vote --

3 A. I think --

4 Q. -- to accept responsibility for the
5 levee?

6 A. I do not remember reviewing this
7 memorandum.

8 Q. Well, liability was a serious issue of
9 yours. Wouldn't you have asked questions about it
10 at the meeting before offering the motion for a
11 unanimous vote by County Council?

12 A. I felt like that the motion itself gave
13 us time to explore this issue thoroughly, and we
14 would leave ourselves open to look at that in the
15 future. I don't see that anyone could rely on a
16 couple phone calls, in a matter this serious, to
17 know whether or not this was the correct conclusion
18 or not, one way or the other.

19 And maybe there would be prevailing
20 opinions on both sides on this issue, but we needed
21 more than opinions. We needed some expert advice
22 and guidance, which I felt like the resolution gave
23 us time to obtain.

24 Q. You felt like those contingencies in
25 the motion you offered gave the County some

1 maneuvering room; didn't you?

2 A. Well, I don't mean to sound -- use
3 maneuvering in a manipulative way. I think it left
4 us open to do diligence.

5 Q. You said it gave the County maneuvering
6 room, didn't you, Ms. Smith?

7 A. I did use the word maneuvering, but I
8 don't want it to be a pejorative use of the word
9 maneuvering. I think what my intent was, it gave
10 us opportunity to do diligence.

11 Q. You also said that that motion did not
12 at all mean we were going to take the
13 maintenance -- we were not wanting to take over the
14 levees and go forward. We had issues to be
15 resolved.

16 Isn't that what you said?

17 A. When did I say that?

18 Q. Are you denying you said that?

19 A. No, no, no. I just want to make -- I
20 just want to understand the context in which I said
21 it.

22 I think that my feeling all along was
23 that if we're going to do this, we just need to do
24 it with our eyes wide open, that we weren't going
25 to do it until we were satisfied that we had

1 resolved and understood the responsibility that we
2 were assuming.

3 Q. I'm going to read to you the statement
4 you gave, and you need to either say, I made that
5 statement, or I didn't:

6 "But I felt like the contingencies in
7 the motion gave us the ability -- gave us some
8 maneuvering room. But this did not at all mean we
9 were going to take the maintenance -- we were not
10 wanting to take over the levees and go forward. We
11 had issues to be resolved."

12 A. Before I answer your question, which I
13 certainly respect and will answer, could you tell
14 me in what context I said that, in response to what
15 question?

16 I'm sure you're correct that I did say
17 that, I just need to know if I need to explain why
18 I put it in those terms.

19 Q. Well, let's look at Page 78 of your
20 deposition.

21 I asked you --

22 MR. JOHNSON: What page?

23 MR. BECKER: 78.

24 MR. JOHNSON: What line?

25 MR. BECKER: Line 8.

1 BY MR. BECKER:

2 Q. Let's just go over it, Ms. Smith.

3 I asked you on Page 5 [sic]:

4 "So every member of the County Council
5 voted in favor of this?"

6 And you answered "Yes."

7 Correct?

8 A. Yes.

9 Q. And then I said:

10 "And certainly implied in that is that
11 every member of County Council had all of their
12 concerns addressed to their satisfaction. Is that
13 a reasonable assumption?"

14 And what did you say?

15 A. I said, "I can only speak for myself.
16 I don't know why everybody else voted for it. But
17 I felt like the contingencies in the motion gave us
18 the ability -- gave us some maneuvering room. But
19 this did not at all mean we were going to take the
20 maintenance -- we were not wanting to take over the
21 levees and go forward. We had issues to be
22 resolved."

23 MR. JOHNSON: Your Honor, I ask that
24 the witness be permitted to read the next page,
25 Line 1 through 17.

1 MR. BECKER: Good, because I was going
2 to ask her about those.

3 BY MR. BECKER:

4 Q. Let's go forward with that.

5 A. Where are we now?

6 Q. We're right here.

7 MR. JOHNSON: Excuse me, through 21.

8 MR. BECKER: All right.

9 BY MR. BECKER:

10 Q. I asked you at the top of Page 79, Line
11 1:

12 "What kind of maneuvering room did you
13 need?"

14 A. "To get information. This
15 wasn't -- this didn't close -- it left the door
16 open for further discussion/information gathering."

17 "Okay."

18 "And if I could explain a little bit
19 further."

20 Q. Okay. I said, "Okay."

21 And then you said...

22 A. And I asked if I could explain a little
23 bit further, and you said sure.

24 "As I recall that meeting, I
25 probably -- well, I know I said I reported that I

1 had done some work with the flood insurance program
2 coordinator, whatever her title was, and that I had
3 strong reservations about going forward, that I
4 worked over the weekend with Mr. Ey and he had
5 crafted this motion and it had the support of his
6 clients."

7 MR. JOHNSON: Keep reading.

8 BY MR. BECKER:

9 Q. Keep reading.

10 A. Okay.

11 "Mm-hmm. Okay."

12 "And that this left us room to look at
13 the liability question and make sure that all of
14 the financial issues had been resolved before we
15 took over the levees."

16 Q. Now, Ms. Smith, you had -- you had a
17 prospective landowner buying 4,500 acres of
18 property in reliance on this County action.

19 You knew that, didn't you?

20 A. Mr. Ey indicated to me they needed a
21 resolution before they closed.

22 Q. Did you ever explain to Mr. Ey that you
23 wanted things left open-ended?

24 A. That was the whole intent of the
25 resolution having contingencies, and I explained to

1 Mr. Ey that I felt like we had a long way to go on
2 these issues, but if they just needed some gesture
3 from council, some assurance that we were willing
4 to go forward and look at these issues, I was
5 willing to do that.

6 Q. Did you ever tell Mr. Ey you wanted
7 some maneuvering room?

8 A. The maneuvering -- I certainly didn't
9 mean as a -- in the pejorative sense that you're
10 implying. I meant that we needed to have an
11 opportunity to do diligence on these issues. We
12 didn't discuss all of the other issues that were
13 going to have to be resolved.

14 Let's just say we built the levees and
15 we didn't get zoning approved, so it was going to
16 be a long road to hoe, anyway. If they needed a
17 particular resolution about the levees, I was
18 willing to work with them and try to give them the
19 best that we could. If they wanted to rely on
20 that, that was their call.

21 Q. Did you ever tell him you wanted to
22 leave the door open?

23 A. I don't recall my exact words. I don't
24 remember truly, Mr. Becker.

25 Q. So you didn't share with Mr. Ey what

1 your true feelings were about this substitute
2 motion that you offered and that the County Council
3 passed unanimously, did you?

4 A. My true -- why would I have called
5 Mr. Ey if I didn't want to tell him that? We had a
6 very good working relationship. I didn't want to
7 harm that. I could have just sprung up this
8 information I had gathered and thrown a big wrench
9 in everything on Tuesday night. But as a matter of
10 trying to work in the spirit of cooperation, I
11 informed him of the concerns. He said, I'll try to
12 work with you and do that, and we agreed on the
13 resolution.

14 Q. I'm looking at Plaintiff's Exhibit 169,
15 your motion for levee matter, where you said to
16 council that night when you offered this motion:

17 I move that the County accept
18 responsibility for local inspection and enforcement
19 of the operations and maintenance plan as submitted
20 by the owner, and, if required by FEMA regulation
21 44 CFR 65.10, to accept operation and maintenance
22 responsibility for the levee system....

23 A. Contingent upon...

24 Q. Okay, yeah.

25 ...and contingent upon...

1 When you say, "I accept," what do you
2 mean?

3 A. I don't have a dictionary.

4 Q. You don't know what the plain ordinary
5 meaning of the words "I accept" --

6 A. I don't understand -- in the context of
7 this motion?

8 Q. Well, if I say, I accept responsibility
9 for operation and maintenance responsibility, am I
10 signifying to someone who might hear that statement
11 that I want to leave things open-ended?

12 A. I think if the last three words say
13 contingent upon, yes, they do.

14 Q. What about maneuvering room?

15 A. Maybe we can get this straight once and
16 for all. My word maneuvering meant opportunity to
17 do diligence. I apologize if I misled you with
18 that word initially.

19 Q. You didn't mislead me, Ms. Smith. You
20 misled Columbia Venture, didn't you?

21 A. Not intentionally. They had to rely
22 upon their attorney. I assumed that he was talking
23 with them about our conversations. I did not have
24 direct conversation with Columbia Venture.

25 I spoke with Mr. Ey, and I told him, I

1 have strong concerns about the County moving
2 forward so hastily. Why can't we agree to postpone
3 until we work out these issues?

4 No, his response was, we cannot
5 postpone. We need to do this next Tuesday. It
6 seemed to me a very short period of time for us to
7 try to get resolved these major issues.

8 Q. Well, then, if you were so concerned,
9 why did you vote in favor of that motion that
10 night?

11 A. It was at the request of Mr. Ey. And I
12 was comfortable with the resolution that it left us
13 an opportunity to do further due diligence.

14 Q. To change your mind later, right?

15 A. I don't recall that I did.

16 Q. Isn't that what maneuvering room is?

17 A. Once again, my idea of maneuvering was
18 the opportunity to do diligence and gather
19 information. What other way could you maneuver?

20 Q. Isn't that what being open-ended is, so
21 you can change your mind later?

22 A. You know, when somebody has to deal
23 with a problem, and in public policy, I always
24 think that you have the right to change your mind
25 as things evolve and as you gather information.

1 The problem we had here was nobody had
2 made up their mind, because we didn't have any
3 information. I had not made up my mind. To my
4 knowledge, none of the other council -- well, maybe
5 some of the other council members did, but the
6 majority definitely felt like we needed to go
7 forward and gather information.

8 Q. You know, Ms. Smith, if you hadn't made
9 up your mind, wouldn't you have done Alternative 1,
10 which was, do nothing?

11 A. That was my recommendation to Mr. Ey.

12 Q. But he told you that wasn't an option
13 for the purchaser; didn't he?

14 A. That's correct.

15 Q. Yeah.

16 A. Why they couldn't put off purchasing, I
17 don't know, but that was just what he kept telling
18 me.

19 Q. If what you really wanted was that
20 maneuvering room and to leave things open-ended,
21 you could have done Option 3, which was, Defer any
22 action.

23 A. Absolutely. I would have supported
24 that.

25 Q. Wouldn't that have been a more accurate

1 and forthright alternative to take, if you
2 really -- what you really wanted to do was maintain
3 maneuvering room and leave things open-ended?

4 A. I think if they had given us the
5 opportunity to gather information and due
6 diligence, that would have been probably the better
7 way to go.

8 But at the insistence of Columbia
9 Venture, who were very determined that council
10 would take this up, I worked with them to craft an
11 option that I felt like was a good one for us.

12 Q. Well, they weren't holding a gun at
13 your head, were they?

14 A. Not literally.

15 Q. So because Columbia Venture wanted it,
16 you worked with Mr. Ey to draft this substitute
17 motion for levee matter and you presented it to
18 County Council and they voted on it unanimously,
19 and you did it just to please Mr. Ey. Is that what
20 you're telling me?

21 MR. JOHNSON: Your Honor, I object.
22 We've been doing this same routine now for some
23 period of time.

24 THE COURT: I overrule the objection.

25 THE WITNESS: Did I do it just to

1 please Mr. Ey? I did it in the spirit of
2 cooperation and trying to move forward with them.

3 BY MR. BECKER:

4 Q. Let me ask you to look at Plaintiff's
5 Exhibit 22.

6 A. 22?

7 Q. Yes, ma'am. Do you have that?

8 A. I do.

9 Q. We've been over this letter before, and
10 I'm not going to go over it in detail but other
11 than to note it's a letter dated February 17th,
12 1999 from Paul Livingston, the chairman of Richland
13 County Council, on Richland County Council
14 letterhead, to Mr. Michael K. Buckley of FEMA.

15 Do you see that?

16 A. I do.

17 Q. In it he says, beginning at the second
18 paragraph:

19 Richland County, by action of its
20 governing body, the County Council, has agreed to
21 accept responsibility for local inspection and
22 enforcement of the operation and maintenance plan
23 for the levee system -- he mentions in Paragraph
24 1 -- as submitted by the owner and approved by
25 FEMA, contingent upon...

1 And then he lists the contingencies.

2 Correct?

3 A. Correct.

4 Q. Now, he says "has agreed," did he not?

5 A. He has.

6 But, again, you can say, I will marry
7 you, if... I will buy this car from you, if... I
8 agree, contingent upon...

9 So I think it's important to recognize
10 that there's a complete sentence.

11 Q. It would have been important to
12 Columbia Venture to know that what you meant by
13 those contingencies were to leave things completely
14 open-ended and to give you maneuvering room,
15 wouldn't it?

16 A. I was very clear to Mr. Ey about my
17 concerns that the County needed time to perform
18 diligence on this proposal. It was not my
19 responsibility to present that information to the
20 individual members of Columbia Venture or
21 Burroughs & Chapin. I relied upon Mr. Ey to
22 express that concern.

23 I expressed it publicly at the
24 committee meeting and publicly at the County
25 Council meeting.

1 Q. Look at Plaintiff's Exhibit 24,
2 Ms. Smith.

3 This is a letter dated February 19th
4 from Mr. McSwain, the County administrator, to
5 Mr. George Gregory of Burroughs & Chapin.

6 Do you see that?

7 A. I do.

8 Q. And do you see where he indicates that
9 the County -- it's the understanding of the County
10 that the proposed development group represented by
11 your company is desirous of entering into a
12 development agreement for the anticipated
13 development of the Manning property on the Congaree
14 River.

15 Correct?

16 A. Correct.

17 Q. He says: The County is aware of and
18 agrees to work with the development group on issues
19 that are critical to the proposed development, such
20 as zoning, tax-incentive vehicles, and a
21 multicounty business park.

22 Didn't he say that in the third
23 paragraph?

24 A. He did.

25 Q. Now, these two letters, the letter

1 from -- all three of these things, the unanimous
2 resolution of the Richland County Council, the
3 letter from Mr. Livingston, the chair of Richland
4 County Council to FEMA, the letter from
5 Mr. McSwain, County Administrator of Richland
6 County, to Mr. George Gregory of
7 Burroughs & Chapin, is it reasonable for other
8 parties to rely -- rely upon a letter such as this,
9 the unanimous resolution of the County, in deciding
10 how to conduct their affairs in the future?

11 A. That's their judgment.

12 Q. Are you saying it was unreasonable of
13 them to rely upon these documents in moving forward
14 to purchase the property on February 19th?

15 A. I'm not in the real estate business,
16 but the thing that I know is that you can't predict
17 the future. It's up to them to decide what risks
18 they want to take.

19 Q. It's up to them to know whether or
20 not -- what you really mean is, you want
21 maneuvering room and to leave things open-ended?

22 A. Well, again, I think the levee issue
23 made this whole project a more complex one and a
24 totally new experience for us, for the County, and
25 that we needed ample time to look at that issue

1 with more specificity.

2 Q. While we're on the subject of
3 multicounty business parks and that representation
4 that Mr. McSwain made to Mr. Gregory, let's go back
5 to Plaintiff's Exhibit 147.

6 These are the minutes of the County
7 Council meeting on February 2nd, 1999, correct?

8 A. Correct.

9 Q. Take a look on what is shown up at the
10 top, as Page 9628.

11 Now, earlier in your testimony, you had
12 expressed some concern about Columbia Venture's
13 request for multicounty business park financing and
14 revenue bond financing. Is that right?

15 A. I wouldn't say I expressed concern. I
16 would say that we were not fully informed of the
17 total request. It came out a little at a time.

18 Q. Well, providing those kinds of
19 financing was no big deal for the County, was it?

20 A. I wouldn't say it was no big deal. I
21 think when the big announcement came about the
22 Green Diamond proposal, there were all of these
23 numbers about what would be generated, in terms of
24 benefit to the County, without any indication that
25 County revenues would be used to basically build

1 the project.

2 Q. Well, on February 2nd, 1999, Richland
3 County already had a multicounty business park
4 agreement with Fairfield County, didn't it?

5 A. Yes.

6 Q. In fact, that would have been passed
7 back in about 1996, hadn't it?

8 A. Correct.

9 Q. And on that very night when Richland
10 County Council passed your resolution regarding
11 Columbia Venture's property, it also passed an
12 approval of a Memorandum of Understanding, an
13 inducement resolution, and a millage rate agreement
14 for SCT utilities, didn't it?

15 A. That's correct.

16 Q. And it voted to add property to that
17 multicounty business park that it already had in
18 place with Fairfield County, didn't it?

19 A. Yes, we did.

20 Q. In fact, you stated -- did you not,
21 Ms. Smith -- at that meeting, that your committee
22 recommended approval of a Memorandum of
23 Understanding, an inducement resolution, and a
24 millage rate agreement which offered tax incentives
25 to SCT utilities in return for a 47-million-dollar

1 expansion by the company and creation of 700
2 additional jobs?

3 A. That's correct.

4 Q. Yes.

5 And on that night, you voted in favor,
6 the entire council voted in favor, of making this
7 property for SCT utilities a part of the existing
8 multicounty business park for Richland County,
9 correct?

10 A. Yes.

11 Mr. Becker, may I explain the
12 difference here?

13 Q. Go right ahead.

14 A. The -- it's a huge policy issue that I
15 think counties are struggling with across the
16 state, because multicounty business park and
17 revenue bonds are -- to my knowledge, have only
18 been used once or twice for real estate
19 speculation.

20 Usually you have a company coming in
21 that's committed to making major investments and
22 having jobs. You're not just building a building
23 and hoping somebody will come.

24 And this issue never did become ripe
25 for discussion with our council. But the Green

1 Diamond use of multicounty business park was purely
2 a real estate deal. It would be like opening a
3 subdivision with economic development incentive
4 money.

5 That, to my knowledge, was never the
6 intent of state law in providing those incentives.
7 It has been used, I think particularly in Horry
8 County. But in subsequent discussions with the
9 economic development community, at least I was
10 advised, that this should be very carefully
11 considered.

12 So it's a whole different ball game to
13 do economic development incentives for a real
14 estate project than it is when you're bringing in
15 manufacturers or people who are actually going to
16 offer jobs.

17 Q. Well, Ms. Smith, aren't you aware that
18 what SCT utilities was doing with that
19 tax-incentive financing was building a building and
20 roads?

21 A. That was going to have people in it
22 working?

23 Q. Yeah.

24 A. It wasn't speculation.

25 Q. Oh, okay.

1 There's no -- no question in the world,
2 is there -- there's no doubt whatsoever, is there,
3 Ms. Smith -- that as of February 2nd, 1999 and
4 February 19th, 1999, Richland County was in the
5 business of doing multicounty business park deals
6 on property in Richland County, was it -- wasn't
7 it?

8 A. With companies that were going to make
9 a major investment and had jobs coming in, not that
10 they were going to build a building based on a bet
11 that they were going to be able to attract folks.
12 And then once they did attract them, who was going
13 to give them the tax breaks to come there, because
14 it had already been used up.

15 So I'm not necessarily saying that I
16 was opposed to that at the time, but as time went
17 on, that became a critical issue that I think
18 council would have had to address.

19 Q. Ms. Smith, let's move on to the
20 amendment to the Stormwater Management Ordinance.

21 In your direct examination, Mr. Johnson
22 asked you about those amendments to the County's
23 Stormwater Management Ordinance in April of 2001.

24 Do you remember that?

25 A. Wait a minute. I've got to get my head

1 around this. Start over again, if you don't mind.

2 Q. All right. April 2001, Richland County
3 Council voted to make amendments to the Stormwater
4 Management Ordinance?

5 A. We were advised that under NDPES -- and
6 I have forgotten what that stands for that -- that
7 that was something that we needed to take up.

8 Q. Right.

9 Yesterday you testified that that
10 ordinance prohibited construction in a floodway.

11 A. Yes, it did.

12 Q. Okay. And you testified that Heathwood
13 Hall Episcopal School and the City of Columbia
14 already had structures in that area, correct?

15 A. That's correct.

16 Q. And that they wanted to be accommodated
17 in some way with the passage of that Stormwater
18 Management Ordinance, right?

19 A. That's correct.

20 (PLF. EXH. 184, Ellerbe letter to K.
21 Smith, Re: Proposed Stormwater Ordinance
22 Amendment, was presented.)

23 BY MR. BECKER:

24 Q. I want to have you look at Plaintiff's
25 Exhibit 184.

1 Now, this is a letter to you from
2 Mr. Frank Ellerbe of Robinson, McFadden & Moore
3 correct?

4 A. Correct.

5 Q. And it's dated March 20th, 2001,
6 correct?

7 A. Correct.

8 Q. By this time, you were the chairperson
9 of Richland County Council, right?

10 A. Uh-huh.

11 Q. And the subject of it is, Proposed
12 amendments to Richland County ordinances.

13 Right?

14 A. Correct.

15 Q. He says: I am writing in my capacity
16 as chairman of the board of trustees of Heathwood
17 Hall Episcopal School to address the County's
18 restrictions on development in the floodway.

19 Is that what he says?

20 A. Correct.

21 Q. In the last sentence of that paragraph
22 he says:

23 As we have explained in meetings with
24 you, Heathwood has been placed in a very awkward
25 position by FEMA's process of revising the Richland

1 County flood maps. Since 1998 when this process
2 began, Heathwood has been unable to move forward
3 with any building projects to address our need to
4 expand our facilities.

5 Correct?

6 A. Correct.

7 Q. He then goes on to discuss the
8 floodplain mapping process. And in the last
9 paragraph on that page, he says:

10 For these reasons, we are asking County
11 Council to amend its stormwater and zoning
12 ordinances to clarify the existing ambiguity and to
13 adopt the FEMA minimum standards for construction
14 in a regulatory floodway.

15 Correct?

16 A. Correct.

17 Q. As we understood it, adoption of the
18 FEMA requirements would bring Richland County in
19 line with most jurisdictions around the country and
20 would provide a clearly understood standard for
21 permitting construction in a floodway.

22 Adoption of that standard throughout
23 the county would treat all county landowners
24 equally and would not single out Heathwood for
25 special treatment.

1 It would also provide us an enormous
2 benefit, in that we would be able to move forward
3 with our expansion plans while the FEMA mapping
4 process drags on.

5 Did I read that correctly?

6 A. You did.

7 Q. So Mr. Ellerbe, in his official
8 capacity as chairman of the board of trustees of
9 Heathwood Hall Episcopal School, was telling you,
10 Heathwood does not want to be treated separately --

11 MR. JOHNSON: Your Honor, I object --

12 BY MR. BECKER:

13 Q. -- in the stormwater management
14 ordinance, wasn't he?

15 MR. JOHNSON: -- on the grounds of
16 legislative privilege. He's asking about her
17 thought process as to what this letter meant
18 related to the ordinance.

19 THE COURT: I overrule the objection.

20 Go ahead.

21 BY MR. BECKER:

22 Q. Isn't that what he was asking you?

23 A. I think the language speaks for itself.

24 Q. Yeah.

25 That's not what the County did, did it?

1 A. No, it's not.

2 Q. In fact, you treated Heathwood
3 unequally and more preferentially than neighboring
4 landowners, didn't you?

5 MR. JOHNSON: Objection, Your Honor,
6 legislative privilege.

7 THE COURT: I overrule the objection.

8 THE WITNESS: So I'm to answer?

9 THE COURT: Yes.

10 BY MR. BECKER:

11 Q. Yes.

12 A. Well, this was what you would call a
13 sticky wicket. And what we finally determined
14 after working with all of the interested parties is
15 that we would treat the people who had existing
16 structures there -- try to carve out an exemption
17 for them, with a commitment that, should
18 development be authorized on any adjacent property
19 that happened to be in this situation, we would
20 work with them or revisit our position at the time.

21 Q. Ms. Smith, when Mr. Wiseman,
22 representing Columbia Venture, met with you, he
23 wanted the same thing, didn't he? He wanted the
24 County to adopt the FEMA standard?

25 A. He did.

1 Q. And Heathwood Hall wanted that, too,
2 didn't they?

3 A. That's correct.

4 Q. Heathwood Hall and Columbia Venture
5 wanted the same thing, didn't they?

6 A. They did.

7 Q. They wanted the FEMA standard?

8 A. They did.

9 Q. They wanted to be treated equally?

10 A. They wanted to be treated the same.

11 Q. But that's not what the County did, is
12 it?

13 A. The council, as I recall, in our
14 deliberations --

15 Q. If you will just answer yes or no, then
16 you can explain it.

17 A. No, that's -- we did not do that.
18 You're correct.

19 I would like to explain that answer.

20 Q. Go ahead.

21 A. There was a distinction in our mind
22 between existing structures and requests for
23 potential development. And we agreed to revisit
24 any application for rezoning or development to look
25 at our stormwater ordinance at that time, when that

1 occurred. And Columbia Venture agreed with that
2 proposition.

3 Q. We're going to get to that.

4 This wasn't the only communication the
5 County got from Heathwood Hall about what they
6 would prefer, was it?

7 A. We received lots of communication about
8 this issue.

9 (PLF. EXH. 362, Lucas Letter dated
10 3/29/2001 to L. Smith, Re: Proposed Amendments to
11 Richland County Storm Drainage and Zoning
12 Ordinances, was presented.)

13 BY MR. BECKER:

14 Q. Okay. Let me show you Plaintiff's
15 Exhibit 362.

16 This is a letter from Ms. Lucas, April
17 Lucas of Nexsen Pruet Jacobs & Pollard to Mr. Larry
18 Smith, the County attorney, correct?

19 A. Yes.

20 Q. And she was writing to the County
21 attorney as counsel to Heathwood Hall school,
22 correct --

23 A. Yes.

24 Q. -- following up on the letter dated
25 March 20th from Mr. Ellerbe to you, correct?

1 A. Correct.

2 Q. She carbon copied this letter, as you
3 can see, on Page 3, to members of council, with the
4 enclosures. Also to Ms. Mullen Taylor, correct?

5 A. Correct.

6 Q. So you likely would have received it at
7 or about the time it was sent, wouldn't you,
8 Ms. Smith?

9 A. Yes.

10 Q. And since you were County chairperson
11 at this time, you would have reviewed it, because
12 this was such a contentious matter. It was a
13 sticky wicket, right?

14 A. That's correct.

15 Q. Okay. And in this letter, I'm not
16 going to go over it, but, again, she's again
17 asking, is she not, that Richland County adopt the
18 FEMA no-rise standard to apply to Heathwood Hall,
19 right?

20 A. Correct.

21 Q. In fact, she's proposing revised
22 ordinances that adopt the FEMA no-rise standard --

23 A. Correct.

24 Q. -- correct?

25 She's saying -- if you look on the

1 grandfather of schools and wastewater treatment
2 facilities, the next-to-the-last page, down there
3 at the bottom, she is saying -- where it says,
4 primary drainage channel requirements, the last
5 paragraph of that section, it says:

6 Provided, however, that any activities
7 permitted under Sections 1 or 2 above must comply
8 with all other applicable federal, state, and local
9 requirements, including 44 CFR 60.3(d)(3), as
10 amended, correct?

11 A. Correct.

12 Q. Were you aware that that section of the
13 FEMA regulations is where the no-rise standard is
14 found?

15 A. Not -- I couldn't have quoted you that,
16 no, not at the time. But generally speaking, yes.

17 Q. Okay. And then over on the last page
18 under Section 8-62, Primary drainage channel
19 requirements, the revision they're proposing
20 includes the FEMA no-rise standard as part of the
21 proposed language of the ordinance. There at the
22 last part of that it says:

23 Unless it has been demonstrated through
24 hydrologic and hydraulic analyses performed in
25 accordance with standard engineering practice that

1 the proposed encroachment would not result in any
2 increase in flood levels within the community
3 during the occurrence of the base flood discharge.

4 Correct?

5 A. That's correct.

6 Q. That's the no-rise standard; isn't it?

7 A. That's correct.

8 Q. Richland County Council didn't do this,
9 did it?

10 A. Well, no, we did not. And if I might
11 explain.

12 The stormwater regulations are
13 countywide. We have property on Lake Murray, a lot
14 of different lakes, Forest Lake, Lake Katherine, so
15 they would affect other landowners besides
16 Heathwood and Columbia Venture and the Columbia
17 treatment plant.

18 It was our judgment to stay where we
19 were and be open to revision in the future, should
20 there be some development or some special case we
21 needed to look at. So our effort was to
22 accommodate the existing structures and say we are
23 open to revision at a future time.

24 We stated that at the time the motion
25 was made. It was stated by members of council

1 individually, and we ultimately received a letter
2 from Columbia Venture saying, That's fine with us.

3 Because we -- and if I might just throw
4 this in -- as I remember, FEMA standards is the
5 minimum standard. The no-rise standard is the
6 minimum. The County has the opportunity to go with
7 a higher and stricter standard, and that improves
8 your flood insurance rates. So it's a very
9 important consideration, because it affected more
10 than just three property owners.

11 Q. Ms. Smith, please take a look at
12 Plaintiff's Exhibit 374.

13 A. 374?

14 Q. Yes, ma'am.

15 A. I think I stop at 275.

16 Q. It might be -- here it is.

17 Look, if you will, on Page -- it's the
18 page that's marked Book 007, Page 427, down in the
19 middle. It's stamped in there. It's right above
20 Section 8-27.

21 A. Okay, got it.

22 Q. All right. This is the stormwater
23 management ordinance. I will just represent to you
24 that it is. That was passed on April 17th, 2001.

25 And in that Subsection H of Section

1 8-26 that appears on that page marked Book 007-427,
2 the final sentence -- final part of the sentence --
3 under Subsection H-4 says:

4 Provided, however, that this sentence
5 shall not be construed as authorizing or requiring
6 the repair or maintenance of any such structure...
7 referring to a levee, dike, dam, or similar
8 structures... to the extent that such repair or
9 maintenance would result in a structure that would
10 be higher or wider than it was before the need
11 arose for such repair or maintenance.

12 Did I read that correctly?

13 A. You did.

14 Q. Now, you knew back on February 2nd,
15 1999, didn't you, that in order to improve those
16 levees to FEMA standards set forth in 44 CFR 65.10,
17 that Columbia Venture would need to make them
18 higher and wider in some places; didn't you?

19 A. I would assume so, but I didn't know
20 that. I didn't see the design of the levees.

21 Q. Well, of course, if it didn't need to
22 be made higher or wider to meet FEMA standards,
23 there would be no reason to need to upgrade, would
24 there?

25 A. Say that again, please.

1 Q. Well, if they were already met or
2 exceeded FEMA standards, there would be no reason
3 to have to upgrade them, would there?

4 A. Well, they maybe just needed to be
5 strengthened. I don't know.

6 Q. All right. In any event, this sentence
7 prohibits any repair of a levee, dike, dam, or
8 similar structure in Richland County that would
9 make that levee higher or wider than it was before,
10 correct?

11 MR. JOHNSON: Your Honor, I object,
12 legislative privilege.

13 THE COURT: No, sir. He's asking
14 simply what this states.

15 MR. JOHNSON: He's asking the opinion
16 of the legislator as to what the meaning of the
17 statute is.

18 THE COURT: I think he's just asking
19 her to construe what this states, not what went
20 into the passage of it.

21 MR. JOHNSON: Well, Your Honor, if he's
22 asking her opinion of what the ordinance means,
23 that would be a question of law for the Court, and
24 not a lay witness.

25 THE COURT: I will overrule the

1 objection. I think she can give her opinion as to
2 what it says.

3 BY MR. BECKER:

4 Q. That's what this says, doesn't it,
5 Ms. Smith?

6 A. This says higher or wider. I would
7 just point out that in the letter from Mr. Wiseman,
8 it also, in our representation in passing this
9 ordinance, we said we were open to amendment -- to
10 consideration of amendments -- when it would be
11 ripe for change.

12 Q. And we're going to get to that.

13 A. Well --

14 Q. Okay.

15 A. -- I just wanted to remind you.

16 Q. What I want to ask you today is, other
17 than Columbia Venture's levees on the Manning
18 property, are you aware of any other levee in
19 Richland County?

20 A. I am not. We have some dams. I don't
21 know the difference, really, between dams and
22 levees. We've got lots of water being stopped.

23 Q. Let me just tell you. Wouldn't you
24 agree with me that the difference between a levee
25 and a dam is real simple? A dam blocks a river to

1 make a lake and hold water back, so property will
2 be flooded by a lake, correct?

3 A. I'll take your word for that. I will
4 just say, I don't know of any other levees. That's
5 true.

6 I would also just add, that I think
7 this is probably a pretty standard outline for a
8 stormwater ordinance. And even though if we had
9 zero levees, this language would probably still be
10 in there. It says levees, dikes, obstructions that
11 will impede the free flow of water. But I don't
12 know that.

13 Q. Well, this applied to existing
14 levees --

15 A. True.

16 Q. -- right? Because it involved repair
17 or maintenance of a levee.

18 You couldn't repair or maintain a levee
19 that didn't already exist, could you?

20 A. No, you could not.

21 Q. And so my question to you is, are you
22 aware of any other levee in Richland County, other
23 than the ones owned by Columbia Venture on its
24 property?

25 A. No, I'm not.

1 THE COURT: All right. It's a little
2 past 1, and we're going to break until 2.

3 Ms. Smith had inquired earlier whether
4 she would be here after 3. Has there been
5 any -- what about your situation there?

6 MR. BECKER: I think I can finish in an
7 hour, Your Honor.

8 THE COURT: All right, then.

9 MR. BECKER: I will do my dead-level
10 best to do that.

11 THE COURT: All right. That's fine,
12 the best you can do.

13 We'll be in recess, then, for an hour.

14 (The lunch recess was held.)

15 BY MR. BECKER:

16 Q. Ms. Smith, could you please take a look
17 at Plaintiff's Exhibit 4.

18 This is a chronology prepared by
19 Ms. Mullen Taylor about the chronology of the Green
20 Diamond project.

21 Do you see this?

22 A. I do.

23 Q. Look at the entry for May 1999 down
24 there near the bottom of the first page.

25 In May 1999, Burroughs & Chapin asked

1 the County for a permit to make minor improvements
2 to the levees, and the County initially denied the
3 permit for the levee improvements because of FEMA's
4 request that the most recent preliminary flood map
5 be used for decision-making purposes.

6 The recent map places the levees in the
7 floodway, which requires greater restrictions on
8 construction. But the County administrator made a
9 decision to base the County floodplain decisions on
10 the 1994 flood map, which was the last map to be
11 finalized by FEMA. This map does not include
12 levees in the floodway.

13 Later the administrator postponed
14 permit approvals until after the flood maps are
15 finalized.

16 Did I read that correctly?

17 A. Yes, you did.

18 Q. Now, Ms. Taylor was an assistant to the
19 County administrator during this time in question,
20 was she not?

21 A. That's correct.

22 Q. And she was actively involved with you
23 in attending meetings and dealing with the Columbia
24 Venture matter, was she not?

25 A. And others. She was staffed to this

1 issue.

2 Q. And you know that she was asked to
3 prepare this chronology before she left the
4 employment of the County to go to law school,
5 correct?

6 A. I assume so. I had no knowledge of
7 that request.

8 Q. All right. She says at the last
9 sentence:

10 The administrator postponed permit
11 approvals until after the flood maps are finalized.

12 Correct?

13 A. Correct.

14 Q. Now, that really equals, does it not,
15 Option Number 3, on the -- which was to defer
16 action on the proposal from Mr. Knudsen to the
17 development and services committee that was
18 considered on January 26th, 1998, wasn't it?

19 A. I would not deduct that, no.

20 Q. You can't add that together, that two
21 and two together equal four?

22 A. No.

23 Q. Okay. Well, let's look back at it.
24 It's 166.

25 Look on the second page -- third page,

1 excuse me -- Alternatives, 3, under D, Defer
2 action.

3 This would mean the County awaits
4 whatever action FEMA imposes upon Richland County,
5 but we know that when Ms. Taylor wrote this
6 chronology on July 18th, 2001 when it was dated
7 down at the very bottom, Plaintiff's Exhibit 4, she
8 said the administrator postponed permit approvals
9 until after the flood maps are finalized.

10 Isn't that the same thing?

11 A. I would say it was the same thing, but
12 I wouldn't say it was substituting 3 for 2. I
13 would say it falls well within the purview of the
14 action that council took for the administrator to
15 make that call. I had no knowledge that he was
16 doing that.

17 (PLF. EXH. 553, Preliminary Master Plan
18 for Columbia Venture dated 7/14/2000, was
19 presented.)

20 BY MR. BECKER:

21 Q. Ms. Smith, let me ask you to look at
22 Plaintiff's Exhibit 553.

23 A. Thank you.

24 Q. This is a preliminary master plan for
25 Columbia Venture. It's dated July 14th, 2000.

1 Have you seen this before?

2 A. I don't recall that I have. I may
3 have.

4 Q. Are you aware that Columbia Venture
5 spent hundreds of thousands of dollars with the
6 Edward D. Stone & Associates firm in Florida to
7 have this preliminary master plan for their
8 proposed development created?

9 A. No.

10 Q. You didn't know that?

11 A. No.

12 Q. Until today?

13 A. I never heard of EDSA before today.

14 Q. And you have never seen this before?

15 A. I don't recall. I saw some maps. I
16 don't know whether it was this one in particular.

17 Q. Okay. Very well.

18 Let's look back at Ms. Taylor's
19 chronology, Plaintiff's Exhibit 4. If you will
20 look at the entry for September -- excuse me -- for
21 June 15th, 2000, on Page 2 of that document, it's
22 an entry there that indicates you, Greg Pearce,
23 Cary McSwain, Mullen Taylor, George Wolfe, Jim
24 Wiseman, Mike Ey, Jim Fields, Marvin Chernoff, and
25 Gretchen Smith, met on that date to discuss

1 preliminary issues.

2 Columbia Venture stated their
3 willingness to consider cost sharing with expenses
4 incurred by the County to assess and negotiate the
5 project. County and Columbia Venture agreed to
6 develop a work plan.

7 Columbia Venture states that they're
8 not seeking annexation into the City and want to
9 work with the County.

10 Do you see that?

11 A. I do.

12 Q. Did you attend that meeting?

13 A. I did.

14 Q. On June 30th, there's another entry.

15 June 30th, 2000, down there at the bottom:

16 Jim Wiseman and Mullen Taylor work on a
17 draft decision matrix and timeline for the project.
18 Wiseman asked that the County revise its floodway
19 regulations to clear up any ambiguity on whether
20 construction is outright prohibited, or if it is
21 allowed and only if it produces no rise in the base
22 flood elevation.

23 Mullen Taylor discusses the issue with
24 the chair and the vice chair, and they agree that
25 it needs to be clarified and should be done before

1 Columbia Venture's levee upgrade plans are
2 submitted.

3 And you were the chair of the Richland
4 County Council at that time, correct?

5 A. Correct.

6 Q. And Ms. Taylor would have discussed
7 that with you, correct?

8 A. Correct.

9 Q. And you would have decided that these
10 things had to be done before Columbia Venture's
11 levee upgrade plans would be received or submitted
12 to Richland County, didn't you?

13 A. That's correct, with other actions as
14 well.

15 Q. On the next page, on July 20th, 2000,
16 the County and Columbia Venture met again at
17 Chernoff/Silver to continue discussions of the
18 issues, and the draft decision matrix was reviewed,
19 was it not?

20 A. Which date are we on on there?

21 Q. July 20th, 2000.

22 A. Yes.

23 Q. You don't dispute that that happened,
24 do you?

25 A. I do not.

1 Q. On September 5th, 2000, down there
2 toward the bottom two-thirds of the page, a third
3 up from the bottom:

4 On September 5th, 2000, Mullen Taylor
5 and Randy Jorgenson, who was the planning director,
6 met with Jim Wiseman of Columbia Venture to look at
7 a concept plan for Green Diamond for the first
8 time. Taylor and Jorgenson wanted to give feedback
9 on the concept plan to Wiseman before Columbia
10 Venture got too far along with the planning of the
11 project.

12 Following this meeting, Mullen Taylor,
13 George Wolfe and Randy Jorgenson toured the Green
14 Diamond property with Mr. Wiseman.

15 Did I read that correctly?

16 A. You did.

17 Q. Now, this was right about the time when
18 this preliminary master plan was developed by EDSA
19 for Columbia Venture, which is dated July 14th,
20 2000, correct?

21 A. Correct.

22 (PLF. EXH. 555, James Wiseman letter to
23 Mullen Taylor, dated 9/7/2000, was presented.)

24 BY MR. BECKER:

25 Q. Let me ask you to take a look at

1 Plaintiff's Exhibit 555.

2 This is a letter dated September 7th,
3 2000 from Mr. Jim Wiseman of Columbia Venture to
4 Richland County administrator's office, attention
5 Mullen Taylor. He says:

6 Dear Mullen, as you requested, I am
7 pleased to provide you with the attached disk study
8 relating to topographies, the boundary survey, and
9 wetlands delineation.

10 While Columbia Venture is sharing this
11 information with Richland County to facilitate the
12 County's consideration of the proposed development
13 and related contracts, Columbia Venture considers
14 the information to be confidential and proprietary
15 and not subject to disclosure pursuant to the South
16 Carolina Freedom of Information Act.

17 Moreover, the release of the
18 information to the general public might cause harm
19 to the competitive position of Columbia Venture,
20 LLC.

21 If the County believes the attached
22 information should be provided to third parties or
23 the general public, we'll be glad to work with you
24 to determine what, if any, of the information
25 should be released.

1 Did I read that correctly?

2 A. You did.

3 Q. The information was not maintained
4 confidential by the County, was it, Ms. Smith?

5 A. No, it was not.

6 I would like to explain that, if I may.

7 Q. Go ahead.

8 A. I believe -- I have no firsthand
9 knowledge of how it was released, but I don't think
10 that any of the officials of the County were
11 responsible for that. I believe it was a -- a
12 member of our council. But I have no firsthand
13 knowledge of that.

14 Q. Let's go back to Ms. Taylor's
15 chronology, Plaintiff's Exhibit 4.

16 Look at the entry for September 18th,
17 2000. George Wolfe and Mullen Taylor continue the
18 negotiation with Jim Wiseman and Tim Rogers over
19 the process agreement and cost agreement. The
20 process agreement was finalized and ready for
21 County and company approval.

22 Wiseman offered the cost-sharing
23 arrangement that is close to the County's last
24 counteroffer. All agree that the Columbia
25 Venture's offer will be put in writing for both

1 parties' approval.

2 Did I read that correctly?

3 A. You did.

4 Q. The next entry on September 19th, 2000,
5 Mullen Taylor and George Wolfe briefed the County
6 Council on the process agreement and the
7 cost-agreement negotiations during an executive
8 session. Council receives the briefing as
9 information.

10 Correct?

11 A. Correct.

12 Q. And they never entered into that
13 cost-sharing agreement with Columbia Venture, did
14 they?

15 A. Not that I recall.

16 Q. Council never took action on it, did
17 they, Ms. Smith?

18 A. I don't recall there was ever a motion
19 that came forward for consideration through the
20 committee system or -- that we got a formal
21 proposal.

22 Q. That's right. The County could just
23 never get around to it, could it?

24 A. I'm not sure there was a formal
25 request.

1 Q. Look at the entry for October 6th,
2 2000, down on the bottom of what is Page 4 of that
3 document.

4 Mullen Taylor -- that's October 6th,
5 2000 -- Mullen Taylor tries to schedule a meeting
6 date with the County and Columbia Venture, but the
7 company's anxiety level was such that waiting a
8 week to sit down and meet seemed detrimental.

9 Now, this was right after the September
10 26th, 2000 flood insurance rate map had been
11 released, the letter of final determination,
12 correct?

13 A. Correct.

14 Q. Chair and vice chair direct Mullen
15 Taylor and George Wolfe to call Tim Rogers and
16 relay the County's position, that due to the
17 unexpected change in the flood map, it suspends the
18 substantive negotiations with Burroughs & Chapin
19 until the map is finalized and will take the time
20 prior to the final map approval to educate
21 themselves.

22 George Wolfe and Mullen Taylor relayed
23 this to Tim Rogers -- relayed to Tim Rogers the
24 County's position.

25 Did I read that correctly?

1 A. You did.

2 Q. Let's go back to the action that was
3 considered by the development and services
4 committee that night.

5 This, again, is Option Alternative
6 Number 3, is it not, Defer action until the FEMA
7 flood maps are finalized?

8 A. Well, again, it seems to me that
9 the -- that it's all couched under the agreement to
10 take a look at the financial agreement on building
11 the levees and going forward.

12 There's no point in building something
13 you don't know what it's going to be or authorize
14 it to be built, how it's going to be paid for, who
15 is going to be responsible for it, what the
16 liability is.

17 So the effect would be Number 3, but it
18 does -- to me, it very neatly fits under the
19 umbrella of the option that council adopted. There
20 would be deferrals and delays in the process.

21 Q. Look at the entry on Plaintiff's
22 Exhibit 4, Page 5, for November 2000.

23 Do you see that?

24 A. I do.

25 Q. Jim Wiseman provides the County with a

1 levee report addressing the basics of levee design
2 and comparing the Green Diamond levee upgrade with
3 other levees across the county.

4 Did I read that correctly?

5 A. You did.

6 Q. You don't have any reason to doubt that
7 that occurred, do you?

8 A. Well, I thought we discussed there were
9 no other levees in the county.

10 Q. What I'm talking about is Mr. Wiseman
11 providing the County with a levee report,
12 addressing the basics of levee design and comparing
13 the Green Diamond levee upgrade with other levees.

14 Do you have any reason to believe that
15 didn't occur?

16 A. Oh, across the country, not the county.

17 Q. Across the country, yes.

18 A. No. I understand, sure.

19 Q. Do you have any reason to doubt that
20 that occurred?

21 A. I had no knowledge of it.

22 Q. Well, I thought you said that levee
23 design was one of the important issues that were of
24 concern to you.

25 A. Yes.

1 Q. And you were chairman of the County
2 Council at this time, right?

3 A. Yes.

4 Q. And Mr. Wiseman provided a report
5 addressing the basics of this levee design and
6 comparing that design with other designs across the
7 country, and you never knew about it?

8 A. Well, I think at that point,
9 Mr. Becker, we had a whole new situation facing us
10 that we were all trying to assess. And by that
11 time, Lexington County had gotten very involved
12 with what would happen if levees were constructed
13 and pushed water on their side of the river. So
14 there was a whole different scenario and cast of
15 characters that emerged by this time that had to be
16 taken into consideration.

17 Q. Look on the next page, Page 6, the
18 entry for November 21, 2000.

19 Do you see that in the middle of Page
20 6?

21 A. I do.

22 Q. Columbia Venture presents its concept
23 plan for the Green Diamond project to County
24 Council.

25 Did I read that correctly?

1 A. You did.

2 Q. Was that this plan, Plaintiff's Exhibit
3 553?

4 A. I do not recall.

5 (PLF. EXH. 359, Six Reasons to Support
6 Stormwater Regulations and Continue Floodplain
7 Development Standards that is Stricter than FEMA's,
8 was presented.)

9 (PLF. EXH. 556, James Wiseman letter to
10 Kit Smith, Chair of Richland County Council, dated
11 2/27/2001, was presented.)

12 BY MR. BECKER:

13 Q. Ms. Smith, I would like to show you
14 Plaintiff's Exhibit 359. I'm sorry, I meant to say
15 Plaintiff's Exhibit 556. But keep 359, because
16 we'll get to it in just a minute.

17 This is a letter to you, as Richland
18 County Council chair, from Mr. Jim Wiseman; is it
19 not?

20 A. It is.

21 Q. It's dated February 27th, 2001,
22 correct?

23 A. Correct.

24 Q. Mr. Wiseman, in Paragraph 3,
25 says -- excuse me, in Paragraph 2 and 3:

1 More than anything, I have wanted and
2 asked for a process that would be open and fair,
3 with rules and mutual trust and respect. We began
4 that process, and prior to September 26th, we have
5 made good progress.

6 Then I was informed that the process
7 would be suspended indefinitely. With no rules and
8 no forum to discuss how to proceed, I was reluctant
9 to share preliminary information, as we had
10 planned, prior to September 26th.

11 I was reluctant because of what I have
12 been told by many folks about the active role you
13 have personally taken in opposition to our
14 proposal. I was fearful that whatever information
15 we might supply to the County would be quickly
16 diverted to the use of those who are opposed to
17 Green Diamond.

18 What happened on February 5th only
19 confirmed my worst fears.

20 Did I read that correctly?

21 A. You did.

22 Q. And what he's referring to was the
23 release of the information that he gave to
24 Ms. Taylor and asked that it be treated
25 confidentially. Is that correct?

1 A. That's correct.

2 Q. On the second page he says, down toward
3 the close of the letter:

4 We want nothing less than to build a
5 world-class development that will be a major asset
6 to our community. We are committed to new
7 standards of excellence and enhanced economic and
8 educational opportunities. We are committed to
9 producing a development that meets high standards
10 of safety and environmental sensitivity.
11 Hopefully, all groups can work together to achieve
12 this goal.

13 Then he says: Please give our
14 proposals a fair chance to be judged on their
15 merits. That is all we ask.

16 Did I read that correctly?

17 A. You did.

18 Mr. Becker?

19 Q. Yes.

20 A. I would like to respond to that, if I
21 may, besides you just read it.

22 Q. If you feel like you need to clarify
23 something, go ahead.

24 A. I would, very much.

25 Unfortunately in policy deliberation

1 and discussion, there is often a misunderstanding
2 and a misinterpretation of people who simply want
3 to gather information.

4 It turns into, You're against us, you
5 don't like us, when all you're trying to do is to
6 have a fair and open process and have all of the
7 information put on the table at one time. And,
8 unfortunately, I'm afraid that that's what happened
9 in this case.

10 So the letter implies very strongly
11 that I was the one who was working against the
12 project, when I -- from the very beginning, my
13 whole intent was to try to have an open process
14 with all of the information available at once.

15 What I was afraid was occurring was
16 that we were being fed a little bit of
17 this -- there were press conferences popping up
18 like prairie dogs in South Dakota about how we're
19 going to have -- this is going to grow the tax
20 base, it's going to be good for business, it was
21 all of the positives, which I completely
22 understand.

23 Had I been in charge of the PR team
24 that did this, I would have done it exactly the
25 same way.

1 My job, I felt like, twofold, as the
2 elected official and also as chairman of that
3 council, was to make sure that our council had all
4 of the information at one time and not be fed
5 information so that we ended up with costs on the
6 part of the County so that we couldn't get our arms
7 around it; it would be too late.

8 And, unfortunately, for my friends in
9 Columbia Venture, Green Diamond, the McNair Firm,
10 the PR firm I used to work for, the other two law
11 firms that were involved, that was seen as
12 obstructionist. There was nothing I could do about
13 that.

14 The higher calling for me was to do
15 what was in the public interest, which I felt like
16 was important to get everything on the table and
17 deal with it at once. Don't go build the levees
18 and then decide how you're going to pay for them.

19 What are we going to do about zoning?
20 What are we going to do about any damage to the
21 center of the city when all of the development
22 moves down out of the center? I think those were
23 honest issues that we needed to resolve. That
24 didn't mean I was against it. It just meant I had
25 questions.

1 I did not -- under oath, I did not
2 release the information.

3 Q. Those kind of misunderstandings can
4 occur when you vote to accept responsibility for
5 something, but in your heart, you want to maintain
6 maneuvering room and leave things open-ended, can't
7 they, Ms. Smith?

8 A. I would say in response to that, that
9 if that were true, there still wouldn't be anything
10 wrong with it. That I think -- you have a right as
11 a public official, just as Ms. Scott and Mr. Morris
12 were strong advocates for the project, and they did
13 a lot of overtime to bring their positions to
14 council.

15 I was not opposed to the project
16 initially. I was -- I very much wanted to get full
17 information, and there seemed to be tremendous
18 resistance from Columbia Venture in doing business
19 that way. I'm sorry it appeared to be
20 obstructionistic.

21 I was willing to take the heat on that
22 because I felt like I had a higher calling to do
23 so.

24 Q. Let's move on to Plaintiff's Exhibit
25 359, Ms. Smith.

1 A. I'll be glad to.

2 MR. BECKER: Now, this is not in
3 evidence, I don't believe. Oh, I'm sorry, you do
4 have it.

5 THE WITNESS: 357?

6 BY MR. BECKER:

7 Q. 359. I'm sorry, it's right here.

8 A. Okay.

9 Q. This is a document that was produced
10 when we issued a subpoena for the contents of your
11 home computer, correct?

12 A. And let me just clarify that my home
13 computer is my County computer.

14 Q. Okay.

15 MR. JOHNSON: Your Honor, we object to
16 questioning about this document. It is her thought
17 process and reasons to support the stormwater
18 regulations. This is protected by legislative
19 privilege.

20 I think, Your Honor -- let me check
21 here. We haven't had any questions about this
22 previously, Your Honor.

23 THE COURT: All right. Why wouldn't
24 this come under the legislative privilege?

25 MR. BECKER: Uh, well, given the

1 Court's order, it probably does. I'm merely
2 bringing it up to tie in Number 6 at the bottom,
3 which is something that she apparently said to
4 Mr. Wiseman, and he said in a letter back to her.

5 MR. JOHNSON: Your Honor, that's been
6 proved through other evidence anyway.

7 THE COURT: I think this -- you know,
8 it makes reference at the bottom about the motion
9 and their thoughts in regard to the legislation. I
10 think it falls within the legislative privilege.

11 MR. BECKER: Very well, Your Honor.

12 THE COURT: I sustain the objection.

13 MR. BECKER: Okay.

14 (PLF. EXH. 365, Wiseman letter to K.
15 Smith, Re: Stormwater Ordinance and Development
16 Proposal, dated 4/2/2001, was presented.)

17 BY MR. BECKER:

18 Q. Ms. Smith, take a look, please, at
19 Plaintiff's Exhibit 365.

20 Now, this is a letter dated April 2nd,
21 2001 from Mr. Wiseman to you, correct?

22 A. Correct.

23 Q. And Mr. Johnson asked you about it
24 yesterday. Do you recall that?

25 A. Yes.

1 Q. In the letter, Mr. Wiseman says, at the
2 beginning:

3 As you know, tonight is Columbia
4 Venture's meeting with the development and services
5 committee in response to Chairwoman Scott's
6 invitation.

7 He then goes on to talk about, As
8 requested, we'll be submitting a report containing
9 a substantial amount of data on environmental
10 issues, soil studies, wetlands, and other important
11 considerations pertaining to the proposed Green
12 Diamond development.

13 We will also be asking for specific
14 questions and concerns any council members may have
15 about Green Diamond. We wish to proceed with an
16 open dialogue of information that guarantees you
17 receive the data you need to allow Columbia Venture
18 to move forward.

19 We are working very hard on completing
20 our formal development proposal and our goal is to
21 submit the proposal by mid April.

22 Have I read that correctly?

23 A. You did.

24 Q. In the paragraph after that, he says:

25 We appreciate your assurance reiterated

1 most recently at the last council meeting, that if
2 we can reach an agreement on the development of
3 Green Diamond, and if modifications are needed in
4 your stormwater ordinance in order for the project
5 to proceed, you would support appropriate
6 modifications at that time.

7 Did I read that correctly?

8 A. You did.

9 Q. Did you provide that assurance to
10 Mr. Wiseman?

11 A. Yes, I did. I think that the language
12 here -- I mean, basically the project would have to
13 get approval, and then the stormwater ordinance
14 would be amended to accommodate it.

15 Q. All right.

16 A. I did not assure him I would approve
17 all parts of the project, but I assured him I would
18 look at stormwater modifications to accommodate an
19 approved project.

20 Q. Now, in your direct examination, after
21 being questioned about that, you testified that
22 Mr. Wiseman and Columbia Venture never came forward
23 with any information to satisfy the contingencies
24 in the County resolution, either before or
25 after Mr. Wiseman wrote this letter, didn't you?

1 A. Not to my satisfaction, no.

2 Q. Oh, not to your satisfaction?

3 A. As far as I know, I don't think they
4 ever came forward with any detailed information.

5 Q. Okay. I believe that, in fact, it was
6 your position that a significant problem in your
7 consideration of the Green Diamond proposal was a
8 lack of information from Columbia Venture, that
9 they had not been adequately forthcoming with
10 information that was needed to examine their
11 proposal.

12 That was your feeling, wasn't it?

13 A. That's correct.

14 And, again, I believe I said there was
15 lots of information, it was just not in a form that
16 could be taken up by council or staffed by our
17 staff.

18 (PLF. EXH. 550, James Wiseman letter to
19 Bernice Scott, Development and Services Committee
20 of Richland County Council, was presented.)

21 BY MR. BECKER:

22 Q. Well, let me show you Plaintiff's
23 Exhibit 550.

24 This is a letter dated April 2nd to
25 Bernice Scott, chair of the development and

1 services committee of Richland County Council from
2 Mr. James Wiseman, is it not?

3 A. Yes, it is. I'm sorry.

4 Q. It's dated the same date
5 as Mr. Wiseman's letter to you, is it not?

6 A. It is.

7 Q. And it fulfills the promise he made in
8 Paragraph 2 of that letter to you, does it not?

9 A. The letter of April 2nd, 2001?

10 Q. Yeah, in which he said: We will be
11 submitting a report containing a substantial amount
12 of data on environmental issues, soil studies,
13 wetlands, and other important considerations
14 pertaining to the proposed Green Diamond
15 development.

16 A. Yes.

17 Q. He sent those things to Ms. Scott, did
18 he not --

19 A. He did.

20 Q. -- on April 2nd, the same day?

21 A. Correct.

22 Q. And in that, he included, as you can
23 see, Environmental Assessments Phase 1 and Phase 2,
24 an environmental analysis performed as part of any
25 due diligence, reports dealing with wetlands

1 located on the property, a soils analysis conducted
2 by S&ME, a transportation study performed by Wilbur
3 Smith & Associates, the copy of Columbia Venture's
4 proposed levee design, cost estimates for the levee
5 construction and maintenance, and a copy of a Texas
6 statute pertaining to levee improvement districts.

7 Do you see those items on Pages 1 and 2
8 of his letter to Ms. Scott, Plaintiff's Exhibit
9 550?

10 A. I do.

11 Q. All right. Do you see all of the data
12 that was attached?

13 A. I do.

14 Q. What about this information was the
15 County staff unable to review and analyze?

16 A. To what end? Were we supposed to vote
17 on the soil analysis? No. Were we supposed to
18 vote on the transportation study? No.

19 The problem was, Mr. Becker, there was
20 no comprehensive development agreement put forward
21 with a zoning request or what were the expectations
22 on the part of the County. There was no
23 negotiation about how we were going to pay for the
24 levees. We had talked about having a levee
25 district. That was one idea that had been come up

1 with by somebody, but there was no definitive
2 proposal that we could get our arms around.

3 There was lots of information, and I
4 would have hoped that Columbia Venture would have
5 gathered a lot of this before they bought the
6 property, to know whether they could build on it or
7 not. That wasn't the question.

8 The question was, what is the
9 relationship between the developer and the County?
10 What are our expectations? We didn't get that.

11 And if you will note, he keeps saying
12 he's going to get us a proposal for a formal
13 development proposal by April. We never got that.
14 We can't vote on soil analysis.

15 Q. Didn't you say that what you were
16 concerned about in voting on the proposal was cost
17 estimates for levee construction and maintenance
18 and the proposed levee design?

19 A. We never sat down and
20 negotiated -- that would have been part of the
21 development agreement, and to me, that had to be
22 done before anything else could be done.

23 Q. And in looking over the preliminary
24 bubble maps and concept plans for the project, you
25 said that the road system needed a little work,

1 didn't you?

2 A. I did.

3 Q. Wouldn't that be addressed by the
4 transportation study performed by Wilbur
5 Smith & Associates?

6 A. Perhaps, but we didn't know what the
7 final was going to be until you sit down and put it
8 in a development agreement and look at it.

9 Q. Did you ever read any of this material,
10 Ms. Smith?

11 A. Exhaustedly, at times.

12 (PLF. EXH. 557, Kit Smith letter to
13 City of Columbia Mayor Bob Coble and Richland
14 County School District 1 Chair, Vince Ford, dated
15 4/30/2001, was presented.)

16 BY MR. BECKER:

17 Q. Oh, okay.

18 Let me show you Plaintiff's Exhibit
19 557.

20 This is a letter dated April 30th, 2001
21 from you, copying Mr. Jim Wiseman, to Mayor Bob
22 Coble of the City of Columbia, and Mr. Vince Ford,
23 the chairman of the Richland County School District
24 Number 1.

25 Is that correct?

1 A. That's correct.

2 Q. You were inviting Mr. Coble and
3 Mr. Ford, on behalf of the City and the school
4 district to, as it says in the second sentence in
5 Paragraph 1, that the city, county, and school
6 district, now formally established a Green Diamond
7 task force to recommit to a wholistic
8 decision-making model. This will engender open
9 communications among us and to provide a venue for
10 sharing and discussing information.

11 Is that correct?

12 A. Correct.

13 Q. And they agreed to do that?

14 A. They did.

15 Q. And you formed that Green Diamond task
16 force --

17 A. We did.

18 Q. -- did you not?

19 A. We did.

20 Q. And you had many meetings, correct?

21 A. I don't recall that we had many
22 meetings, but we started down that road.

23 Q. Well, we'll get to that.

24 MR. JOHNSON: Your Honor, in the
25 interest of time, I would ask that the second

1 paragraph be read.

2 BY MR. BECKER:

3 Q. Go ahead, Ms. Smith, you can read

4 Paragraph 2 on the first page.

5 A. Our goal would be to avoid making
6 piecemeal decisions and instead agree to work
7 together to consider all issues in relation to one
8 another before any formal actions are taken by any
9 governing body.

10 Since there are many policy decisions
11 to make concerning the Green Diamond project, some
12 have significant public policy ramifications on
13 other jurisdictions. It is vital that we avoid
14 making decisions in isolation of one another.
15 These issues include such items as improving levee
16 upgrades, development incentives, annexation, and
17 zoning.

18 Q. All right. Well, as for approving
19 levee upgrades, you had that plan as of April 2nd,
20 2001, or the development and services committee
21 did, didn't they?

22 A. We had a plan for levee upgrade. We
23 did not have a funding plan.

24 Q. And as for development incentives,
25 Richland County was doing that all the time during

1 this time period, correct?

2 A. Not for real estate speculation.

3 Q. Because you were president -- you were
4 chairman of the committee that approved those kinds
5 of incentive bond financings, weren't you?

6 A. To my knowledge, we had never approved
7 an incentive for real estate speculation.

8 Q. You had -- don't worry.

9 And Mr. Wiseman had already told you
10 that they weren't interested in annexation into the
11 City of Columbia, hadn't he?

12 A. He told -- I'm not sure he told me
13 personally, but he was on the record for saying
14 that.

15 Q. All right. So the only thing --

16 A. He did say they weren't going to West
17 Columbia.

18 Q. The only thing they hadn't addressed at
19 this point would be zoning, correct?

20 A. Addressed, meaning to make a statement
21 about, correct. But there was nothing -- no
22 proposal, no inner government, no Memorandum of
23 Understanding, no contract, no ordinance, no draft
24 of a planned unit development. Nothing had been
25 submitted, to my knowledge, to our planning

1 department.

2 Q. Does this preliminary master plan not
3 constitute a basis for a planning department to
4 review a proposed --

5 A. I don't know whether it's adequate or
6 not, nor do I know if it was ever submitted for
7 review.

8 (PLF. EXH. 558, notes from
9 County/City/School District 1, Green Diamond Task
10 Force, dated 5/22/2001, was presented.)

11 BY MR. BECKER:

12 Q. Let me show you Plaintiff's 558.
13 Have you got Plaintiff's 558 in front
14 of you?

15 A. I do.

16 Q. These are meeting notes for a meeting
17 of the Green Diamond task force, are they not?

18 A. Yes.

19 Q. Of the county, city, and school
20 district 1, correct?

21 A. Correct.

22 Q. Held on May 22nd, 2001, correct?

23 A. Correct.

24 Q. In fact, you were there, because, under
25 Welcome and Introductions, you called the meeting

1 to order and asked everyone to introduce
2 themselves, did you not?

3 A. I did.

4 Q. You agreed to work by consensus,
5 correct?

6 A. Correct.

7 Q. And you presented a draft work plan at
8 that meeting, correct?

9 A. I believe our staff did, yes.

10 Q. And you set forth a meeting schedule
11 that's shown on the next page, did you not?

12 A. That's correct.

13 Q. You called for meetings in June, July
14 of that year, correct?

15 A. Correct.

16 Q. And attached to that is a letter from
17 Ms. Taylor to Mr. Wiseman setting forth an initial
18 request for information regarding the Green Diamond
19 proposal.

20 Do you see that?

21 A. Let me see if I have got that. Yes.

22 Q. If you will look on what is the third
23 page of that exhibit, do you see that?

24 A. Yes.

25 Q. Do you see all of the information that

1 was requested of Green Diamond?

2 A. Yes.

3 Q. Do you have any reason to believe that
4 they never submitted all of the information that
5 was requested to the Green Diamond task force?

6 A. I was told that they did not.

7 Q. Why would they not present it if they
8 wanted to move forward with their development?

9 A. I can't speak to that.

10 Q. Who told you they didn't present it?

11 A. Our staff.

12 Q. Which member of the staff?

13 A. Ms. Taylor.

14 Q. Did you follow up? Did you check
15 behind her?

16 A. I don't recall that I did, no.

17 MR. JOHNSON: Your Honor, we had talked
18 about concluding Ms. Smith's testimony at 3, and I
19 have several questions I need to ask.

20 THE COURT: All right, sir.

21 MR. BECKER: I'm going as fast as I
22 can, Your Honor.

23 THE COURT: Well, Mr. Johnson just
24 wanted to tell us that he was going to be speeding
25 up his questions.

1 MR. BECKER: Good. Thank you.

2 THE COURT: That's all.

3 (PLF. EXH. 559, Greater Columbia
4 Chamber of Commerce letter dated 6/27/2001 from
5 President & CEO, Donald McLeese to Kit Smith, Chair
6 of Richland County Council, was presented.)

7 BY MR. BECKER:

8 Q. Let me show you Plaintiff's 559,
9 Ms. Smith.

10 The Greater Columbia Chamber of
11 Commerce, Ms. Smith, wrote on June 27th, 2001, to
12 endorse the Green Diamond concept proposal, did
13 they not?

14 A. They did.

15 Q. They stated that, after two months of
16 work and discussion, their issues committee
17 recommended that the Greater Columbia Chamber of
18 Commerce endorse the Green Diamond project.

19 Is that correct?

20 A. That's correct.

21 Q. Now, Ms. Smith --

22 A. I would just like to, if I could,
23 expand on that just to remind the record, I guess,
24 that the mission of the Chamber of Commerce is very
25 different from the mission of elected officials, in

1 terms of what interest they protect and who they're
2 responsible for.

3 Q. Ms. Smith, a moment ago I asked you
4 about all of the information that was requested of
5 Green Diamond in the portion that was attached to
6 Exhibit 558, the initial request for information
7 regarding the Green Diamond proposal that was Page
8 4 of that exhibit.

9 Do you recall that?

10 A. I do.

11 Q. You said that Ms. Taylor told you they
12 hadn't gotten all of the information, correct?

13 A. Correct.

14 Q. Do you deny that in your deposition you
15 said, when I asked you:

16 "All right. Do you know if you ever
17 received the information requested in the
18 attachment to Ms. Taylor's letter of May 24th,
19 2001."

20 You said, "I don't recall."

21 A. I probably said that. I mean, I'm sure
22 I did.

23 And, Mr. Becker, if I could clarify
24 that, because I certainly don't want to be seen as
25 fabricating anything.

1 I can remember discussions with our
2 staff repeatedly saying they were frustrated by the
3 fact that they didn't get the information that they
4 requested. I may have misspoken when I said
5 specifically to this document, but I would say,
6 generally speaking, I was advised by staff that
7 there was difficulty in obtaining complete
8 information.

9 (PLF. EXH. 554, a letter dated
10 6/28/2000 from James Wiseman to Mullen Taylor,
11 Richland County Administrator's Office, was
12 presented.)

13 BY MR. BECKER:

14 Q. Ms. Smith, take a look, next, at
15 Exhibit 554.

16 This is a letter to you dated June
17 28th, 2001 from Mr. Austin -- Tim Rogers of Austin,
18 Lewis & Rogers, correct?

19 A. Yes.

20 Q. And he was representing Columbia
21 Venture at that time, was he not?

22 A. Yes, he was.

23 Q. And he's talking about appearing at a
24 meeting that was scheduled -- the second meeting of
25 your Green Diamond task force that occurred on

1 Thursday, June 28th, 2001, is he not?

2 A. He did.

3 Q. And at that meeting, Columbia Venture
4 had four people make presentations on the levee
5 issues, did they not?

6 A. They did.

7 Q. Including two professional engineers, a
8 Ph.D., and Mr. Bill Boyd, an attorney, correct?

9 A. Correct.

10 Q. They had five people make presentations
11 on economic development and infrastructure
12 financing issues, did they not?

13 A. They did.

14 Q. And over in the -- on the second page
15 of that letter, Mr. Rogers goes through all of the
16 key points that were made in those presentations.

17 Do you see that on the second page?

18 A. I do.

19 Q. And do you see that he was providing to
20 you copies of all the written materials pertaining
21 to each presentation that are referenced on Page 1
22 of this exhibit?

23 A. Yes.

24 Q. And you received those materials, did
25 you not?

1 A. Yes.

2 Q. And you would have shared them with the
3 staff, right?

4 A. Yes.

5 Q. Now, the process, the meetings of the
6 Green Diamond task force were completed, weren't
7 they?

8 A. Excuse me, the what?

9 Q. The other meetings were held according
10 to the original meeting schedule?

11 A. I'm not sure that they were.

12 Q. You don't know?

13 A. I can't remember --

14 Q. Okay. You just can't remember?

15 A. -- how many meetings we had and when.

16 Q. All right. Now, earlier you talked
17 about how a lack of information from Columbia
18 Venture was a real problem and that they had not
19 been adequately forthcoming with information that
20 was needed to examine their proposal, correct?

21 A. We never got a firm proposal, what did
22 they want the County to do and when, except for we
23 wanted to build the levees before anything else was
24 decided.

25 Q. Well, I think your complaint about all

1 of the information they gave you was that it just
2 wasn't packaged in a way that you could put your
3 arms around to see what exactly we needed to vote
4 on in what order. Is that correct?

5 A. That's correct.

6 Q. And you also said it just -- it just
7 wasn't -- there was never, This is what County
8 Council needs to decide, here is the deal, correct?

9 A. Correct.

10 Q. In fact, you said there was a lot of
11 data, wasn't there, Ms. Smith?

12 A. A tremendous amount of data.

13 Q. And your main conclusion, as you
14 received all of that data was, there was a point in
15 time that it would be difficult for you to support
16 levee development in a floodplain, to the extent
17 that they wanted, behind those levees, right?

18 A. Eventually I reached that conclusion.

19 Q. You just got to a point that you
20 decided, no matter how much data they submitted,
21 you weren't in favor of the project, were you?

22 A. It was not a matter of being in favor
23 of the project. It was a matter of weighing the
24 costs and benefits of the County assuming
25 responsibility for levees.

1 I was not opposed to developing the
2 land eventually -- and never voted on this, never
3 had an opportunity to -- but I would have argued
4 that the -- Richland County didn't need to take the
5 risk.

6 Q. You became opposed to the project,
7 didn't you, Ms. Smith?

8 A. I became opposed to intense development
9 behind levees.

10 Q. You became opposed to the original plan
11 that Columbia Venture had for the property when it
12 bought it, didn't you, Ms. Smith?

13 A. It would have been fine for me, if
14 those levees had been there, to develop that
15 property in the manner that they described.

16 Q. But you didn't want the levees to be
17 improved, did you, Ms. Smith?

18 A. I didn't want -- I wanted FEMA to
19 decide on the best science information we had, what
20 would be best for Richland County, and go forward
21 with that. I didn't want those flood lines to be
22 designed to accommodate development. They needed
23 to be designed for the health and safety of
24 Richland County.

25 Q. Well, it's the County who passed the

1 ordinance that made it impossible to make those
2 levees higher or wider, wasn't it?

3 A. I think that that was -- that had
4 nothing to do with anything else. We said you
5 could maintain the levees, you could make them
6 stronger. If a rabbit built a nest in it, you
7 could get rid of the rabbit. If a tree grew there,
8 you could pull it out and clog up the roots. But
9 no, you could not improve the levees. You could
10 maintain them.

11 Q. You ultimately came to the conclusion,
12 Ms. Smith -- that as things went on, you reached
13 the conclusion that development in a flood-prone
14 flood-hazard area was not a good idea for your
15 community, didn't you?

16 A. I will remind you --

17 Q. Did you or did you not say that,
18 Ms. Smith? Give me a yes or no, and then you can
19 explain any way you want to.

20 A. I'm not trying to upset you,
21 Mr. Becker.

22 Q. You're not.

23 A. Okay.

24 Q. I just want a yes-or-no answer to my
25 question.

1 Did you say that as things went on, you
2 reached the conclusion that development in a
3 flood-prone flood-hazard area was not a good idea
4 for our community?

5 A. I reached the conclusion that the
6 County would be -- there was no need for the County
7 to assume the risk, yes.

8 Q. Ms. Smith, did you make that statement?

9 A. I don't know -- I don't know. When did
10 I make it?

11 Q. On Page 398 of your deposition, Line
12 22.

13 A. Yes, I made it. Yes, I made it.
14 I would like to explain, further
15 elaborate, if I may.

16 Q. Go ahead.

17 A. I think as time went on, it became
18 apparent to me that we did not need -- the County
19 didn't need to take a risk of building the levees.
20 Getting into the levee business is an
21 extremely -- is a huge policy decision for a
22 community that doesn't need to develop that way.
23 We've got plenty of property in Richland County.
24 And I was very comfortable with development on that
25 land until I understood the liability that the

1 County would assume in doing it. Plus, the
2 attendant problems that we would cause for
3 Lexington County.

4 So it became a more and more complex
5 decision. I'm very much for new urbanist
6 development. I thought that the first plan looked
7 great. Had I been informed and understood the
8 complexities of levees at the beginning, I probably
9 could have said then that I did not support it.
10 But I did not know, and neither did any of our
11 council members.

12 And I would just remind you,
13 respectfully, that I'm 1 of 11. 1 of 11. And I
14 had a right as a public official to form an
15 opinion. In fact, that's what I get elected to do,
16 that I'm supposed to gather the information and
17 exercise my judgment on behalf of the people that I
18 represent, as well as the whole of Richland County.

19 Now, other council members may or may
20 not have reached the same conclusion. It never
21 came to a vote.

22 MR. JOHNSON: Counsel, what page did
23 you say that was on, in the deposition?

24 MR. BECKER: 398, Line 22.

25 (PLF. EXH. 397, Newspaper article

1 entitled Green Diamond Lessons Learned, was
2 presented.)

3 BY MR. BECKER:

4 Q. Ms. Smith, look, please, at Plaintiff's
5 Exhibit 397.

6 This is an article dated January 13th,
7 2003, correct?

8 A. Correct.

9 Q. By Shelly Hill, correct?

10 A. Correct.

11 Q. It's called, Green Diamond: Lessons
12 Learned.

13 Correct?

14 A. Correct.

15 Q. You're quoted in this article on the
16 second page at the -- toward the bottom, under a
17 question of geography. It says:

18 Richland County Council member Kit
19 Smith, the council's most outspoken critic of the
20 project, said the company's style compounded the
21 location problem.

22 Do you see that?

23 A. I do.

24 Q. Do you not deny that you made that
25 statement to Ms. Hill?

1 A. I do not.

2 Q. You said Burroughs & Chapin saw through
3 the eyes of the developer and they saw a wonderful
4 development.

5 MR. JOHNSON: Your Honor, I'm going to
6 object, unless counsel puts this into evidence.

7 MR. BECKER: I do purport to put it
8 into evidence, Your Honor.

9 MR. JOHNSON: And it can't come into
10 evidence for the truth of the matter asserted.
11 It's hearsay.

12 MR. BECKER: She just acknowledged she
13 made the statement.

14 THE COURT: If she's asked whether or
15 not she said this and she said that she did, I
16 don't know why it would be excluded based on that,
17 so I overrule your objection.

18 BY MR. BECKER:

19 Q. Burroughs & Chapin saw it through the
20 eyes of the developer, and they saw a wonderful
21 development, Smith said.

22 Did you say that to Ms. Hill?

23 A. I assume that I did.

24 Q. When public officials looked at it,
25 they saw a wonderful development with risks. There

1 was a real disconnect with our ability to
2 communicate and their ability to understand the
3 view of the officials.

4 That's just like what you've said
5 previously in this courtroom here today, isn't it,
6 Ms. Smith?

7 A. I don't understand the parallel.

8 Q. You don't deny that you made that
9 statement, do you?

10 A. No, I don't.

11 Q. The article goes on: She said the
12 reason -- but she said the reason the development
13 isn't going to happen is still a question of
14 geography.

15 Did I read that correctly?

16 A. That's correct.

17 Q. And you used that phrase with her,
18 didn't you, a question of geography?

19 A. Yes.

20 Q. Then you said: They couldn't have done
21 anything different that would have made it happen.

22 Correct, Ms. Smith?

23 A. In my opinion, yes.

24 And, Mr. Becker, I don't understand the
25 problem with that, because they have trouble

1 building near volcanos, even if they're inactive.

2 I mean, it was a question of geography, ultimately.

3 (PLF. EXH. 350, letter written by Kit
4 Smith, Bates Smith 033, was presented.)

5 BY MR. BECKER:

6 Q. Ms. Smith, please take a look at
7 Plaintiff's Exhibit 350.

8 A. And let me just also, if I could, note
9 the date on that article. I think that's
10 important. It was sometime after, there was sort
11 of a cease of action.

12 Q. Yeah, this was about learning lessons
13 about why the project didn't go forward, wasn't it?

14 A. Right.

15 Q. Actually, that would have happened
16 after it had been determined it wouldn't go
17 forward, right, Ms. Smith?

18 A. At that time, yes.

19 Q. Now, this is -- this also came from
20 your personal computer, Plaintiff's Exhibit 350,
21 right?

22 A. That's right.

23 Q. And this is -- these are your views on
24 the Green Diamond development and Burroughs &
25 Chapin, are they not?

1 A. They're not my views, no.

2 Q. Well, you wrote this, didn't you?

3 A. I did write it.

4 Q. Whose views are they?

5 A. Excuse me?

6 Q. Whose views are they?

7 A. They were -- it was a fantasy. It was
8 an expression of frustration. And as you
9 referenced in the newspaper article, there were
10 some discussion in that article about the style of
11 Burroughs & Chapin and Columbia Venture when they
12 came into this community. And I think that -- that
13 was a problem. It was a problem for me.

14 I like to approach things in a very
15 open, put it out on the table, don't try to push
16 anybody or bully anybody or overwhelm anybody into
17 taking a position. Let's have a reasonable logical
18 discussion and go forward.

19 What I think happened was that the
20 approach of Columbia Venture was, to go around,
21 tell their side of the story, which is a very good
22 story to tell, get the Chamber of Commerce, the
23 mayor, other officials, senators, who didn't have
24 the responsibility for making the decision and
25 didn't have the responsibility for due diligence,

1 to create a big parade that made it really hard
2 politically to stand up to.

3 And my council -- I can't speak for all
4 of them -- but I felt like my council was
5 overwhelmed by all of that, and it fell to me to
6 unfortunately -- or fortunately, or whatever -- my
7 job was to say, Whoa. That was interpreted as
8 opposition.

9 At times it was a pretty lonely place
10 to be, and so I vented.

11 Q. It became your role to defeat the
12 project, didn't it, Ms. Smith?

13 A. If opposition -- if asking for
14 information and trying to figure out -- if
15 information killed the project, yes, I wanted
16 information. And I think that was the right thing
17 to do.

18 There was opposition to my getting that
19 information that made an effort to demonize anybody
20 that tried to get it.

21 Q. Let's just see a little bit of what you
22 wrote in Plaintiff's Exhibit 350. At the beginning
23 you said:

24 It's time to recognize the Green
25 Diamond development for what it is, a zircon of

1 greed.

2 That's what you wrote, isn't it,

3 Ms. Smith?

4 A. I did write that.

5 Q. Down at the bottom you said: Finally,

6 let me say that Burroughs & Chapin is just not the

7 kind of company you want to welcome to your

8 neighborhood. Here's a little rundown on why:

9 First bullet point: They are bullies.

10 That's what you wrote, correct?

11 A. Yes, I wrote this document. You can

12 read all of it, if you want to. I wrote it.

13 Q. Second bullet point on Page 2: They

14 are fraudulent.

15 Correct?

16 A. Correct.

17 Q. Third bullet point: They are fakes.

18 Correct?

19 A. Correct.

20 Q. Fourth bullet point: They are

21 elitists.

22 Correct?

23 A. Correct.

24 Q. Fifth bullet point: They are

25 indifferent.

1 Correct?

2 A. Correct.

3 Q. Sixth bullet point: They are
4 unethical.

5 Correct?

6 A. Correct.

7 Q. And then in the paragraph after that,
8 you wrote:

9 Burroughs & Chapin should be sent
10 packing from Richland County.

11 Correct?

12 A. Correct.

13 Q. And that's exactly what you achieved,
14 isn't it, Ms. Smith?

15 A. I didn't achieve it, Mr. Becker.

16 Q. It was you and the Congaree Task Force,
17 right?

18 A. It wasn't me, Mr. Becker. I am 1 of 11
19 council members, and I'm sorry that you don't
20 appreciate that. Nobody ever saw this. I may have
21 shared it with my husband. I was frustrated.

22 There were 20 million -- I'm getting
23 very exaggerating -- there were a lot of people
24 being paid by Burroughs & Chapin to say the
25 opposite of these things and without giving the

1 whole story. I wanted the whole story out, and
2 this was just a little venting in the privacy of my
3 office because of the style of what was going on.

4 And I think -- I am flattered by the
5 fact that you think I sent them packing. I think
6 it was the community that didn't appreciate the
7 fact that we wanted to build levees to protect a
8 big development that might end up costing the
9 County zillions.

10 Q. Let's see what your final paragraph
11 was.

12 They are corporate welfare pimps. They
13 are a threat to public education, and they are just
14 not good neighbors. They are not even a Green
15 Diamond in the rough. They are a zircon of greed.

16 Your thoughts, correct, Ms. Smith?

17 A. I'm in public relations and marketing.
18 I wrote a lot of stuff like this for lots of
19 clients. I just did it as an exercise to relieve
20 some of the tension and frustration that I felt. I
21 did not share it with anyone, except maybe my
22 husband or a friend.

23 Q. Now, let me ask you to look at
24 Plaintiff's Exhibit 417 and 418.

25 MR. BECKER: Let's go ahead and put

1 both of those in front of her. Let's also give her
2 Plaintiff's 474.

3 (PLF. EXH. 417, email dated 9/15/2004
4 from Kit Smith to Brad Holman, Re: Green
5 Diamond/Chucky, was presented.)

6 (PLF. EXH. 474, Building Our City -
7 Green Diamond Project Revived, was presented.)

8 BY MR. BECKER:

9 Q. Now, Ms. Smith --

10 MR. JOHNSON: Your Honor, I've been
11 handed three documents. Two of them are dated
12 September of 2004. One is dated November the 30th,
13 2007.

14 I object to the documents, to them not
15 being within the relevant time period.

16 THE COURT: Again, as I have previously
17 ruled on these post-taking documents, it depends on
18 whether they relate back to the events that are in
19 controversy prior to the date of taking.

20 MR. BECKER: They do, Your Honor. They
21 relate to the character of the governmental action.

22 THE COURT: All right, sir, I'm going
23 to allow you to go ahead.

24 (PLF. EXH. 560, Email from Kit Smith to
25 Brian Holman, Re: Green Diamond/Chucky, was

1 presented.)

2 BY MR. BECKER:

3 Q. Now, Ms. Smith, Plaintiff's Exhibit 417
4 and 560 from 2004 are some e-mails that you
5 exchanged with Blan Holman.

6 Is that correct?

7 A. Correct.

8 Q. They came from your personal e-mail
9 address, kitsally@aol.com, correct?

10 A. That's also my public e-mail address.

11 Q. Now, Mr. Holman is the executive
12 director of the Southern Environmental Law Center,
13 is he not?

14 A. He is not.

15 Q. What is his role?

16 A. He's a staff attorney.

17 Q. The Southern Environmental Law Center
18 was very instrumental in helping draft the 2001
19 amendments to the County Stormwater Management
20 Ordinance, were they not?

21 A. They were.

22 Q. And Mr. Holman was very intimately
23 involved in that process, was he not?

24 A. Well, let me say, we received drafts
25 and recommendations from a lot of different

1 parties, including Columbia Venture, and the
2 Southern Environmental Law Center also submitted
3 recommendations.

4 Q. And the County passed what the Southern
5 Environmental Law Center recommended, didn't they?

6 A. I believe ultimately they were
7 incorporated into the ordinance, yes.

8 Q. They didn't follow either Heathwood
9 Hall's recommendations or Columbia Venture's
10 recommendations, did they?

11 A. No, they did not.

12 Q. The County adopted what the Southern
13 Environmental Law Center and the Congaree Task
14 Force proposed, didn't they?

15 A. In essence.

16 Q. Yes.

17 Now -- and, in fact, you later
18 became -- at this time, I believe, that you were
19 corresponding with Mr. Holman, you had become a
20 member of the board of trustees of the Southern
21 Environmental Law Center, had you not?

22 A. I had.

23 Q. And when you referred to -- when you
24 were talking to Mr. Holman about Green Diamond, the
25 subject line you chose for your e-mail was Green

1 Diamond, slash, Chucky, correct?

2 A. That's correct.

3 Q. And as we learn from Plaintiff's Trial
4 Exhibit 474, The State Newspaper article, in which
5 you're quoted by the author Clif LeBlanc and Dawn
6 Hinshaw as late as November 30th of 2007, you're
7 quoted as saying:

8 It's kind of like Chucky, the movie,
9 said Richland councilwoman, Kit Smith, a longtime
10 critic. They thought he was dead, and he keeps
11 coming back.

12 Correct?

13 A. Correct.

14 Q. Now, Chucky is a figure from a movie,
15 right?

16 A. Correct.

17 Q. It's a voodoo doll that's inhabited by
18 the soul of a serial killer, is it not?

19 A. You told me that during the deposition.
20 I was not aware of that at the time I used the
21 quote.

22 Q. Well, you knew Chucky kept coming back,
23 right?

24 A. I knew Chucky kept coming back.

25 Q. It was something that had died and kept

1 coming back. And you knew it was from a horror
2 movie, didn't you?

3 A. I knew it was from a pretty scary
4 movie.

5 Q. So it was a horror that kept
6 reoccurring and wouldn't die, wasn't it?

7 A. In the movie it was, yes.

8 Q. Uh-huh.

9 And, of course, that's the movie you
10 were referring to in 2004 when you wrote Mr. Holman
11 about Green Diamond, wasn't it?

12 A. I was probably trying to make the
13 analogy -- I remember when the stormwater
14 regulations first came up, I went, Oh, no, this is
15 going to be another round with Green
16 Diamond/Columbia Venture, when it really had
17 nothing to do with them initially.

18 And I felt like every time we had an
19 issue over those five or six years, it kept coming
20 back and it was so divisive and so stressful for
21 members of council, that I referred to it as
22 something that wouldn't go away.

23 It was a very poor choice of words now
24 that I'm fully informed as to what it did. I
25 should have said something else, maybe like prairie

1 dogs or measles that keep popping up, or something.
2 But I did not mean to imply that I thought Green
3 Diamond was practicing voodoo or evil or returning
4 from the dead.

5 It was a poor choice of analogies in
6 my -- and I guess most people don't even know the
7 movie. I never saw it. I got scared at ET.

8 Q. Did you not mean it when you called
9 Green Diamond and Burroughs & Chapin corporate
10 welfare pimps?

11 A. As I said before, that was fantasizing.
12 Those were not -- those were me thinking somebody
13 else might show up and say that to bring balance to
14 the debate that was going on. I never thought that
15 myself.

16 Q. Did you not mean it when you called
17 them fraudulent fakes, elitists, indifferent, and
18 unethical?

19 A. A lot of the gentlemen -- and I don't
20 know of any woman -- who work at
21 Burroughs & Chapin are good -- I wouldn't say
22 good -- but they're fine acquaintances of mine and
23 my husband's. I certainly did not think that of
24 any of those gentlemen.

25 Q. You didn't share this with them, did

1 you, Ms. Smith?

2 A. With whom?

3 Q. The people at Burroughs & Chapin.

4 A. No, I did not. I'm sure, now -- just
5 like they didn't share with me things that they
6 reportedly said about me. In the heat of battle,
7 things happen, but I hope that we can all be
8 grownups and know and respect one another's views,
9 without resorting to that kind of name calling
10 personally.

11 MR. BECKER: Your Honor, I would move
12 that all of the exhibits I've reviewed with
13 Ms. Smith be admitted into evidence, except for the
14 one that Mr. Johnson objected to, and you excluded
15 on the basis of legislative privilege.

16 THE COURT: All right, sir, they're
17 admitted subject to hearsay, the previously stated
18 objection.

19 MR. BECKER: Thank you, Ms. Smith.

20 THE COURT: All right, then,
21 Mr. Johnson.

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q. Ms. Smith, did Columbia Venture ever
25 submit a development agreement for consideration by

1 council?

2 A. They never submitted a development
3 agreement for consideration.

4 Q. Did they ever make a rezoning request?

5 A. They never submitted a rezoning
6 request, to my knowledge.

7 Q. Did they ever submit any application of
8 any permit relating to going forward with the
9 project, to your knowledge?

10 A. Not to my knowledge.

11 Q. Were you ever called upon to vote for
12 or against whether the project could go forward?

13 A. We were not.

14 Q. Would you ever vote against the project
15 going forward?

16 A. I did not, to my -- I did not.

17 Q. Now, you were asked a number of
18 questions on cross-examination about a resolution
19 with contingencies.

20 Do you recall those questions?

21 A. I do.

22 Q. The discussion, maneuvering room, due
23 diligence, those questions?

24 A. I do.

25 Q. I want to refer you to Plaintiff's

1 Exhibit 275.

2 Do you have that? It's in the second
3 book.

4 A. 275?

5 Q. This 275, does it include a purchase
6 and sale agreement --

7 A. Yes, it does.

8 Q. -- between Burroughs & Chapin and
9 Manning and his companies?

10 A. Yes, it does.

11 Q. Is it dated November the 13th, 1998?

12 A. Yes, it is.

13 Q. I want to turn and -- get you to turn,
14 if you would, to Page 5, Paragraph 8.

15 Does the Burroughs & Chapin contract
16 contain conditions precedent to buyer's
17 obligations?

18 A. Yes.

19 Q. And do they list one, two, three, four,
20 five, six conditions precedent --

21 A. Yes.

22 Q. -- to the buyer's obligation to buy?

23 A. Yes.

24 Q. And on Page 5, does Condition Precedent
25 C relate to an audit which has to be done to the

1 satisfaction of Burroughs & Chapin?

2 A. Yes, it does.

3 Q. Environmental audit?

4 A. Correct.

5 Q. Does Condition Precedent D refer to
6 additional conditions precedent that are stated in
7 the notice and have been and remain fulfilled to
8 buyer's satisfaction?

9 A. Yes.

10 Q. Did Burroughs & Chapin leave itself
11 some maneuvering room or room to do due diligence
12 under its contract?

13 A. I would conclude that from this
14 information, yes.

15 Q. Now, turn, if you will -- go forward to
16 the notice of intention to purchase.

17 A. Notice of intention given.

18 Q. As part of 275, does it include a
19 Notice of Intent to Purchase?

20 A. Yes, it does.

21 Q. And does it list additional conditions
22 precedent to Burroughs & Chapin's obligation?

23 A. It does.

24 Q. Did Burroughs & Chapin leave itself
25 some maneuvering room or room for due diligence

1 under those conditions precedent?

2 A. I would conclude from this that they
3 did.

4 Q. Would the presence of those provisions
5 in those contracts indicate that
6 Burroughs & Chapin, when they got the contingent
7 resolution, was fully familiar with what a
8 contingency was?

9 A. Yes.

10 Q. Now, you were asked questions about
11 Plaintiff's Exhibit 365.

12 A. Yes.

13 Q. And 365 is a letter from Mr. Wiseman to
14 you, dated April the 2nd, 2001?

15 A. Correct.

16 Q. And under -- in the letter, would you
17 read this paragraph, which is, I believe, the fifth
18 paragraph.

19 A. We also appreciate your assistance
20 reiterated most recently at the last council
21 meeting, that if we can reach an agreement on the
22 development of Green Diamond and if modifications
23 are needed in your stormwater ordinance in order
24 for the project to proceed, you would support
25 appropriate modifications at that time.

1 Q. Did Mr. Wiseman, in that paragraph,
2 acknowledge that, at least at that point, there had
3 been no agreement for the development of Green
4 Diamond?

5 A. That's correct.

6 Q. You were asked questions about the
7 stormwater ordinance and the language in the
8 stormwater ordinance that says:

9 Provided, however, this sentence shall
10 not be construed as authorizing or requiring the
11 repair or maintenance of any such structure to the
12 extent such repair or maintenance would result in a
13 structure that would be higher or wider than it was
14 before the need arose for such repair or
15 maintenance.

16 Do you recall that?

17 A. I do.

18 Q. I want you to look at that provision,
19 and it's in Plaintiff's -- Plaintiff's Exhibit 374.

20 You were asked questions whether that
21 language prohibited anyone -- Burroughs & Chapin or
22 Columbia Venture from improving the levees and
23 making them higher or wider.

24 Is the word prohibit used in that
25 paragraph?

1 A. It is not.

2 Q. You were asked questions by council
3 about the validity of the estimate for the
4 maintenance on the levees.

5 Do you recall those questions?

6 A. I do.

7 Q. I believe the figure was \$176,000?

8 A. 178, I think, something like that.

9 Q. And council asked you a number of
10 questions, whether anyone looked at that figure,
11 did that figure ever change, was it checked, et
12 cetera, et cetera.

13 Do you recall that?

14 A. I do.

15 Q. Did Columbia Venture publish and
16 distribute the document called, The Simple Truth
17 about Green Diamond?

18 A. Yes, they did.

19 Q. I want to show you a document marked
20 Defendant's 79.

21 Do you recognize that document --

22 A. I do.

23 Q. -- as being the one we've just...

24 Now, this is a Burroughs & Chapin
25 publication, correct?

1 A. Correct.

2 Q. Turn to Page 3, if you would.

3 At the top of the page, the first full
4 paragraph, would you read --

5 A. The costs associated with the
6 provisions of commercial insurance, permitting, and
7 maintenance of the levees have been estimated at
8 \$300,000 per year.

9 Shall I read more than that?

10 Q. No, that's what I wanted you to read.

11 Now, I want you to turn to the page
12 that has a chart that says, Funds requested for
13 infrastructure, at the top of the page.

14 Are you there?

15 A. Yes.

16 Q. Now, does that represent the funds that
17 Columbia Venture was requesting from the
18 multicounty business park?

19 A. As far as I know, there may have been
20 revenue bonds that incorporated that as well, but
21 they were definitely requesting public funding.

22 Q. And how much in public funding for a
23 project did they request?

24 A. \$79,757,793.

25 Q. Did they request funds, public funds,

1 for the levee upgrade?

2 A. Levee maintenance and insurance,
3 financing and levee upgrade, 8 million.

4 Q. Top item, levee upgrade, how much?

5 A. \$8,102,378.

6 Q. Did they request funds for levee
7 maintenance and insurance, finance, public funds?

8 A. Yes, they did, 6 million dollars.

9 Q. Now, did Columbia Venture or Burroughs
10 & Chapin, when they were talking to you in January
11 and February of 1999, before you put forward the
12 resolution, did they tell you that they were going
13 to turn around and ask for 80 million dollars of
14 public funding to build the project?

15 A. They did not.

16 MR. JOHNSON: Thank you.

17 Your Honor, I move that into evidence,
18 that document.

19 (DFT. EXH. 79, a document entitled
20 Simple Truth About Green Diamond, dated 4/2/01, was
21 presented.)

22 RECROSS-EXAMINATION

23 BY MR. BECKER:

24 Q. Ms. Smith, Richland County could have
25 denied that request for public funding but still

1 allow Columbia Venture to move forward and improve
2 those levees, couldn't it?

3 A. I think that we -- we could have denied
4 the request for funding, but I think, under FEMA
5 requirements, the County has to assume
6 responsibility and maintenance -- a local
7 government has to be in charge of the levee. So we
8 still would have had to figure out some way to
9 finance the maintenance and any repairs that might
10 have to be done over time.

11 Q. Well, Columbia Venture could have done
12 that within the 30 million dollars that it had
13 committed to invest in the property within ten
14 years, couldn't it?

15 A. If we had gotten down to negotiating
16 the proposal, I'm sure those ideas could have been
17 bandied around and perhaps resolved, perhaps not.

18 Q. But the two weren't linked -- the
19 public funding and the permission to improve the
20 levees using Columbia Venture's money weren't
21 necessarily tied together at the hip, were they?

22 A. We did not know. That was the problem.

23 Q. Now, look at the last page of
24 Defendant's Exhibit 79.

25 No certified levee built to the

1 500-year flood level has ever failed. You don't
2 have any information to dispute that, do you,
3 Ms. Smith?

4 A. No. And I don't see any citation on
5 this to give it credence.

6 Q. Thank you, Ms. Smith.

7 A. It's an assertion.

8 MR. JOHNSON: Nothing further, Your
9 Honor.

10 THE COURT: All right. You may step
11 down.

12 THE WITNESS: Thank you.

13 THE COURT: You're welcome.

14 MR. JOHNSON: I understand that the
15 Plaintiff intends to call the former CPA for
16 Columbia Venture who has issued some financial
17 statements where he offers the opinions in the
18 financial statements, that these statements are
19 prepared in accordance with generally accepted
20 accounting principals.

21 Our objections are, first, the witness
22 was not listed as an expert witness, no report of
23 what he said or was going to say was provided. And
24 in the absence of that, we don't believe he can
25 give opinion testimony.

1 THE WITNESS: Thomas Cary McSwain.

2 THOMAS CARY MCSWAIN

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q. Mr. McSwain, for the record, how old
7 are you, sir?

8 A. 72.

9 Q. Did you serve as County administrator
10 for Richland County?

11 A. Yes, I did.

12 Q. During what period of time were you
13 County administrator?

14 A. August 1st, 1994 until I retired
15 November the 1st, 2006.

16 Q. Prior to Columbia Venture's purchase of
17 the Manning property, did you participate in
18 meetings with Deas Manning, George Gregory, and
19 Mr. Tillotson and others, perhaps, related to the
20 Green Diamond project?

21 A. Yes, sir.

22 Q. In your meetings with them, did you
23 ever give them any assurance that the County would
24 grant the necessary permits for the project to go
25 forward?

1 MR. GRIER: Objection, Your Honor, he's
2 leading the witness.

3 THE COURT: Yes, you are leading the
4 witness.

5 BY MR. JOHNSON:

6 Q. What assurance, if any, did you give
7 them that the project would -- that the County
8 would grant the necessary permits?

9 A. I gave none of them any assurance that
10 anything would be approved without the approval of
11 the County Council.

12 Q. Did you make them any promises or
13 commitments whatsoever regarding the project going
14 forward?

15 A. No, I did not.

16 Q. How long had you been in the County
17 administration business by the time you were
18 dealing with the proposed Green Diamond project?
19 How many years?

20 A. Slightly less than 20 years. Right at
21 20 years.

22 Q. Were you aware of the limits on your
23 authority to commit the County on matters relating
24 to a project of this nature?

25 A. Absolutely, yes.

1 Q. Were you aware of the County's
2 authority and prerogative to make decisions
3 regarding a project of this nature?

4 A. Yes.

5 Q. Would you have ever made a commitment
6 on the part of the County relating to this project
7 in the absence of authorization from the council?

8 A. No, I would not.

9 Q. Did you receive any authorization from
10 the council to make any commitments about the Green
11 Diamond project?

12 A. No, I did not.

13 Q. Mr. McSwain, during your tenure as
14 County administrator, did you deal with any number
15 of industry representatives and/or developers who
16 were -- who approached you about operating in
17 Richland County?

18 A. Yes, I did.

19 Q. Did you have a standard response or
20 statement you would make to them about what they
21 needed to do?

22 A. Yeah, basically --

23 Q. Speak up, now.

24 A. Basically, I always stated that if we
25 understood the business plan of the industry and

1 they expressed that to us, that we would always do
2 all that we could to meet their critical path,
3 their chronology of development of their project,
4 provided that their engineers and technical people
5 understood our ordinances and presented
6 applications and presented to the County all of the
7 criteria that we required, we would always meet
8 their schedule or exceed it.

9 Q. Did you make that clear to the
10 representatives of Burroughs & Chapin and Columbia
11 Venture?

12 A. In words to that effect, yes.

13 Q. Now, did -- prior to Columbia Venture's
14 purchase of the property, did you have enough
15 information to form any kind of opinion as to
16 whether it was a good project or a bad project?

17 A. In specificity, no.

18 Q. Prior to the purchase of the property,
19 had you made a decision as to whether you were
20 going to be in favor of it or against it?

21 A. No.

22 Q. Under the applicable County ordinances,
23 if a developer submits the necessary applications
24 and data that's required by an ordinance for a
25 project, is the developer, as a matter of law,

1 entitled to get the permit?

2 MR. GRIER: Objection, he's leading and
3 asking for a legal conclusion, Your Honor.

4 THE COURT: I will overrule the
5 objection.

6 THE WITNESS: From the ordinance
7 itself -- as I recall, the ordinance says, if all
8 of the criteria are met -- when a permit
9 application is given to the County, all of the
10 criteria being met, the County shall issue a
11 permit.

12 BY MR. JOHNSON:

13 Q. Does it matter how the council feels
14 about it, if they otherwise comply with the
15 ordinance?

16 A. Not to my understanding.

17 Q. Does it matter how you feel about it,
18 if they otherwise comply with the ordinance?

19 A. No, it does not.

20 Q. Did Columbia Venture ever submit a
21 development plan or agreement?

22 A. No.

23 Q. Did Columbia Venture ever submit a
24 request for a zoning permit?

25 A. No.

1 Q. Did Columbia Venture ever submit a
2 request for a variance of the zoning ordinance?

3 A. No.

4 Q. Did Columbia Venture ever complete the
5 first application for permit or variance that would
6 have been necessary for the project to be voted on
7 and gone forward?

8 A. No.

9 Q. Now, did the council adopt a contingent
10 resolution?

11 A. Yes.

12 Q. You're familiar with that?

13 A. Yes, sir.

14 Q. Did the resolution contain five
15 separate contingencies?

16 A. My recollection, yes.

17 Q. Did the contingencies allow for the
18 council to consider looking at the project which
19 gave council the ability to get out if they weren't
20 satisfied?

21 MR. GRIER: Objection, Your Honor.

22 THE COURT: Yes, sir, he is leading.

23 BY MR. JOHNSON:

24 Q. What did the contingencies allow the
25 council to do, if they weren't met?

1 A. It allowed the council to bring
2 together those parties who had interest in the
3 project to be able to discuss those issues and try
4 to resolve issues as we went along.

5 Q. And if they weren't resolved to the
6 County's satisfaction, what was the County's right
7 to do?

8 A. Not to go forward.

9 Q. Now, did the -- in your dealings with
10 Columbia Venture or Burroughs & Chapin prior to the
11 purchase of the property, did they mention that
12 they wanted to establish a multicounty business
13 park?

14 A. Yes, they did.

15 Q. Did they tell you anything about the
16 amount of money that they wanted -- public
17 money -- they wanted to assist them in the
18 development prior to the purchase?

19 A. No.

20 Q. Did they, thereafter, pursue or ask the
21 County to look at a multicounty business park?

22 A. Yes, they did.

23 Q. Would you tell us how a multicounty
24 business park works.

25 A. Basically it's the authorization for

1 two contiguous counties to enter into a Memorandum
2 of Understanding, to provide certain benefits to
3 those who were located in that park. In either of
4 the two counties, you would have the benefit of the
5 lowest-tier county.

6 Basically, there had to be an ordinance
7 adopted with regard to that business park. And
8 then amendments were made, if any, and industries
9 were added.

10 Q. Has Richland County, to your knowledge,
11 ever entered into a multicounty business park for a
12 real estate development?

13 A. No.

14 Q. What has it been -- what use has it
15 been limited to?

16 A. Industries. Industries and large
17 companies.

18 Q. What would be the benefit to the
19 developer, such as Columbia Venture, if they could
20 persuade the County to put in a multicounty
21 business park?

22 A. If it were determined to be appropriate
23 and legal, according to the State statutes, the
24 benefit would depend upon how the negotiations went
25 with regard to that particular developer being in a

1 particular -- in a multicounty industrial park.

2 And the benefits could be -- if it was
3 a special source revenue bond, the benefit could be
4 that if the County agreed to that and the agreement
5 was signed between the parties, the County would
6 sell the bonds, and the capital would be available
7 to the industry or the developer upfront.

8 If it was a special revenue credit, the
9 negotiation would be relative to how much the
10 individual taxes would be paid each year by the
11 company.

12 Q. Would that necessarily benefit the
13 developer?

14 A. Yes.

15 Q. What is the impact on the County of
16 such an arrangement?

17 A. On the County itself, it was the
18 wherewithal to negotiate and provide some incentive
19 to bring and locate companies into this county, and
20 it also allowed a sharing of what would have been
21 property taxes that would be called, let's say, a
22 special source revenue credit between the two
23 counties.

24 So the County -- for Richland County,
25 we would go to a lesser developed county for a

1 multicounty park, like Fairfield, and they would
2 get a percentage of the fee and the County would
3 get the remainder. Richland County would get the
4 remainder.

5 So there would be less money for the
6 county, Richland County.

7 Q. Less?

8 A. Less money. But by having a
9 less-developed county partner with us in a
10 multicounty park, it allowed us to present better
11 incentives for that industry.

12 Q. Did the discussions with Columbia
13 Venture ever get to the point where a multicounty
14 business park agreement was proposed?

15 A. No.

16 Q. Did the County ever agree to a
17 multicounty business park --

18 A. No.

19 Q. -- relating to the Green Diamond
20 project?

21 A. No. We explored that to a great extent
22 with the Central Carolina Economic Development
23 Alliance, but no.

24 Q. When the County proceeds with a
25 multicounty business park, is it done and approved

1 by ordinance?

2 A. Yes.

3 Q. And the procedure for the adoption of
4 an ordinance is what?

5 A. Three readings and a public hearing.

6 Q. And can public input at the public
7 hearing influence what the decision would be on the
8 multicounty business park?

9 A. The analysis of that was saying -- in
10 the public hearing, the County Council auditors
11 received information from the public and considered
12 that, along with all of the other facts.

13 Q. Is there any way, when you start to put
14 one forward, to determine whether it will
15 ultimately be approved through the public hearing
16 and the three-reading process?

17 A. No, it's the decision of the governing
18 body.

19 Q. Now, do you know or did you ever
20 analyze whether a multicounty business park for the
21 Green Diamond project would be legal for -- the
22 legal use of the program?

23 A. As I mentioned, we did discuss that
24 among ourselves and with the attorney, and
25 specifically with the Central Carolina Economic

1 Development Alliance.

2 Q. But did you ever resolve it one way or
3 the other?

4 A. We were given reservations about it
5 being legally available to real estate developers.

6 Q. Did you ever get to the point where you
7 did an analysis as to whether it was of economic
8 benefit to the taxpayers of the county?

9 A. We did not get to that point, because
10 there was no decision with regard to the ultimate
11 legality, because we did not have a proposal in
12 front of us. We only had a request to look at it.

13 Q. Prior to Columbia Venture's purchase of
14 the Manning property, did they ever tell you that
15 they were going to seek annexation into the City of
16 Columbia?

17 A. Not to my knowledge, no.

18 Q. Did Columbia Venture petition to be
19 annexed into the City of Columbia?

20 A. Yes.

21 Q. Sir?

22 A. Yes,

23 (DFT. EXH. 84, Columbia Venture
24 Petition for Annexation, was presented.)

25 BY MR. JOHNSON:

1 Q. I want to show you a document marked
2 Defendant's Exhibit 84.

3 Can you tell me what that document is?

4 A. It's a hand-delivered annexation
5 petition from Haynsworth, Sinkler, Boyd, P.A. to
6 Ms. Ardis with the City of Columbia, for Columbia
7 Venture, LLC, and adjoining landowners.

8 Q. If the Manning property that Columbia
9 Venture purchased had been annexed into the City of
10 Columbia, who would have had jurisdiction over
11 permitting of any development?

12 A. The City of Columbia for that property
13 inside the city.

14 Q. To your knowledge, did the City annex
15 Columbia Venture property at any time?

16 A. It did not.

17 Q. Or did they turn it down?

18 A. The City did not.

19 Q. Do you know why they declined to annex
20 it?

21 A. I don't recall specifically.

22 Q. Now, I want to ask you about the
23 permitting process that would have been necessary
24 for Columbia Venture to have started and gone
25 forward with the project.

1 First of all, at the time they
2 purchased the property, were there
3 preliminary -- FEMA preliminary maps that had the
4 levees in the floodway?

5 A. Yes.

6 Q. At the time Columbia Venture purchased
7 the property, did Richland County have in place a
8 zoning ordinance that prohibited construction in a
9 floodway?

10 A. Yes, that was the implementation.

11 Q. I want to show you a copy of what's
12 been marked Plaintiff's Exhibit 250-A.

13 Do you recognize that as the Richland
14 County zoning ordinance, adopted September the 7th,
15 1997, amended through January of 1999?

16 A. I'm just looking at how it's laid out.
17 It looks very similar to what I recall in our
18 County ordinances, yes.

19 Q. Would you turn to Page 484, Sections 26
20 through 73. Page 484.

21 A. 26-73, beginning Part 1.

22 Q. Yes.

23 First of all, is this the section of
24 the ordinance dealing with the County's floodplain
25 management regulations?

1 A. Yes, it appears to be.

2 Q. Now, I want you to turn to Section
3 26-73.1.

4 Are you there?

5 A. Yes.

6 Q. Would you read that section for us.

7 A. 26-73.1, Flood protective areas
8 established as supplementary. The, quote, FW, end
9 quote, end quote, FP, end quote, designations are
10 not intended to be utilized as district
11 classifications, but as designations which identify
12 areas subject to regulations which are
13 supplementary to the regulations of the district to
14 which such designations are attached, appended, or
15 overlaid.

16 Regulations which apply to areas
17 designated on the zoning map as being within such
18 appended or overlaid designations must be
19 determined by joint reference to the regulations of
20 both the basic district classification and the
21 appended or overlay classification.

22 Q. Thank you.

23 Now, 26-73.2, Intent, would you read
24 that for the record, please.

25 A. Certain areas within the County are

1 subject to periodic inundation by floodwaters which
2 results, or may reasonably be foreseen to result,
3 in loss of life and property, health and safety
4 hazards, disruption of commerce and governmental
5 services and extraordinary public expenditures
6 for -- it says floor protection, but I believe it
7 should be flood protection -- for flood protection
8 and relief, all of which adversely affect the
9 public health, safety, and general welfare.

10 These hazards are caused or extended in
11 part by the occupancy of flood hazard areas by uses
12 which increases flood damage upon other lands or
13 uses which are vulnerable to floods because they're
14 inadequately elevated or not otherwise protected
15 from flood damages.

16 It is therefore the intent of this
17 section to lessen such hazards and losses by
18 restricting or prohibiting uses which are dangerous
19 to health, safety, or property in times of flood or
20 which cause excessive increases in flood heights or
21 velocities by requiring that uses vulnerable to
22 floods be protected against flood hazards at the
23 time of initial construction, and by controlling,
24 filling, grading, mineral extraction, placing of
25 obstructions within flood channels and other

1 activities, uses, or characteristics of uses which
2 may increase flood damage.

3 Q. All right. Look at Section
4 26-73(2)(a). And under that section, does the
5 County Council designate the County planning
6 management department as having the primary
7 responsibility for enforcing the ordinance?

8 A. Yes, it does.

9 Q. And does it provide for the appointment
10 of a County flood coordinator?

11 A. Yes, it does.

12 Q. Now, turn, if you will, to Section
13 26-73(4).

14 A. I have it.

15 Q. All right. And I want you to read, if
16 you would, Paragraphs 1 and 2.

17 A. Designations?

18 Q. Yes, sir.

19 A. Areas classified as floodway areas are
20 designated by the notation, quote, FW, end quote,
21 appended to a district classification on the zoning
22 map.

23 Q. And then 2 is filling?

24 A. Filling in floodway areas, dumping of
25 salvaged or scrap material, or replacing of

1 material or obstruction within a floodway area in
2 such a manner as to impede free flow of water
3 during a time of flood, or in such a manner that
4 the elevation of flood waters will be increased is
5 prohibited.

6 Q. Does this provision of the Richland
7 County Zoning Ordinance prohibit construction in a
8 floodway?

9 A. Yes.

10 Q. Now, does the zoning ordinance allow
11 for variances?

12 A. Yes.

13 Q. And would a variance have been
14 necessary before Columbia Venture could have done
15 any construction work on the levees?

16 A. Yes.

17 Q. Is the variance -- or granting or
18 denial of variances subject to appeal under the
19 ordinance?

20 A. Yes.

21 Q. Would you, as the County administrator,
22 have any input or control over whether a variance
23 was granted?

24 A. No.

25 Q. Would County Council have any input or

1 control over whether a variance would be granted?

2 A. No.

3 Q. Would there be any way to predict in
4 advance whether, if Columbia Venture had applied
5 for a variance, when or whether the variance would
6 have been granted?

7 A. No.

8 Q. Did Columbia Venture ever apply for a
9 zoning variance under the zoning ordinance?

10 A. No.

11 Q. Now, did the County put together a list
12 of permits and approvals needed for the project to
13 go forward?

14 A. Yes, I believe it did.

15 Q. I want to show you a document marked
16 Defendant's Exhibit 137.

17 (DFT. EXH. 137, draft timetable for
18 Richland County approvals, was presented.)

19 BY MR. JOHNSON:

20 Q. Is this a draft of the timetable for
21 the County -- Richland County -- approvals? Do you
22 recognize it as such?

23 A. It appears to be that. I don't
24 remember this document specifically, but it appears
25 to be that and -- yes.

1 expect the developer or its representatives to read
2 and pursue permits according to the requirements of
3 the County ordinances?

4 A. Absolutely.

5 Q. Now, I want to show you a letter that's
6 Plaintiff's Trial Exhibit 207.

7 It ought to be in the second -- in that
8 book there. It ought to be in the back of that
9 one.

10 A. This one?

11 Q. Uh-huh.

12 A. I'm walled in by books here. How far
13 in the back? What number?

14 Q. 207.

15 A. Here it is.

16 Q. Now, is this a letter from
17 Mr. Tillotson to you dated December the 11th, 1998?

18 A. Yes, it is.

19 Q. And in the first paragraph, does it
20 refer to a meeting that you had had the day before?

21 A. Yes, yes.

22 Q. And do you recall the meeting that you
23 had with Mr. Tillotson?

24 A. Yes. I had meetings with him in this
25 one.

1 Q. No, do you recall this meeting?

2 A. Yes.

3 Q. And do you recall what Mr. Tillotson
4 asked you to do?

5 A. He asked if we would consider sending a
6 letter to FEMA with certain provisions.

7 Q. And did he send you bullet points that
8 he wanted in the letter?

9 A. Attached to that letter, yes.

10 Q. Did he ever convey any sense of urgency
11 in getting you to write a letter?

12 A. Not in those terms. I think he would
13 prefer it to be done sooner than later, yes.

14 Q. Did you send the letter yourself?

15 A. I did not send the letter.

16 Q. And why not?

17 A. The proposed contents of the letter
18 were not determined to be appropriate at that time.

19 Q. All right. I want to refer you to a
20 letter dated January 20th, 1999. It's Plaintiff's
21 Exhibit 246. I think that must be in the second
22 book. 246.

23 Is that a letter -- is that exhibit a
24 copy of a letter Mr. Tillotson wrote to Lisa Jones?

25 A. Who was Lisa Holland at the time.

1 Q. Oh, Lisa Holland at the time. All
2 right.

3 And turn, if you would, to the letter
4 of January the 20th, 1999. In the last sentence of
5 the first paragraph, would you read it.

6 A. We have had several meetings with
7 Richland County and the City of Columbia and have
8 been asked to represent them, as well, in any
9 clarifications of the FEMA regulations,
10 particularly 44 CFR 65.10.

11 Q. Mr. McSwain, did you ever authorize the
12 developer's engineer to represent the County?

13 A. No, I did not.

14 Q. Did you authorize Mr. Tillotson to
15 represent the County in communications with
16 Ms. Holland or with FEMA?

17 A. No, I did not.

18 Q. Would you have ever authorized the
19 developer's representative or engineer to speak for
20 the County with any other governmental agency?

21 A. No.

22 Q. Now, did you meet with
23 Mr. Gregory in -- George Gregory, in 1998 and '99?

24 A. Yes.

25 Q. Do you recall Mr. Gregory ever

1 providing you any specific detailed information of
2 any proposed development plans for the property?

3 A. No, he did not.

4 Q. Did Burroughs & Chapin, Lockwood
5 Greene, or Columbia Venture submit anything to you
6 in writing that outlined the specific -- in detail,
7 what the proposed development was to consist of?

8 A. No, no specific detailed plans.

9 Q. Can large developments of this nature
10 be done with the development agreement?

11 A. Yes.

12 Q. And are development agreements
13 negotiated documents?

14 A. Yes, there are.

15 Q. And are they then -- does the County
16 approve a development -- how does a County Council
17 approve a development agreement?

18 A. That's also an ordinance that includes
19 the zoning -- the zoning applications and the
20 agreed-upon zonings for all of the development
21 areas.

22 Q. And the ordinance process is three
23 public readings and a public hearing to get public
24 input?

25 A. That's correct.

1 considered under the open meetings law.

2 Q. Did the County's resolution that's been
3 the subject of much testimony -- I think you told
4 me it contained five contingencies, correct?

5 A. Yes.

6 Q. To this day, did Columbia Venture ever
7 submit any evidence that any of the five had been
8 met?

9 A. No.

10 Q. In the summer of 1998 after the first
11 map came out, did you ask -- on behalf of Richland
12 County, did you ask that there be a 90-day hold on
13 the issuance of any final map and notice period?

14 A. Yes, I did.

15 Q. Would you explain to the judge why you
16 did that?

17 A. We were initially sent the maps, I
18 think, about March, and they were provided to
19 Burroughs & Chapin and others. We were asked to
20 publicize, notify the public, and to set a
21 particular date with FEMA, at which time they would
22 officially give us the maps and start a 90-day
23 period for public input, after which time, those
24 maps would become the preliminary best available
25 maps.

1 And I asked because there was
2 considerable immediate reaction, negative adverse
3 reaction, to that map that they were proposing.
4 And in exploring FEMA's requirements, that any
5 objections or any appeals of that map would have to
6 be relevant to scientific and objective analysis.

7 Most of the comments that were made to
8 me also were that they were so thorough and
9 extensive, and a large amount of data. It would
10 take much more than 90 days to get that information
11 back and submit to FEMA and time to have that
12 considered as input.

13 Q. Did the decision to ask for the stay or
14 the delay have anything to do with support or
15 nonsupport of the Green Diamond project?

16 A. No, absolutely not.

17 Q. Now, I want you to look at Plaintiff's
18 Exhibit 24, which should be in the first book.

19 A. I wonder if these things could be put
20 on an iPad.

21 Q. I think we're doing good to have them
22 in books.

23 A. What number?

24 Q. 24.

25 A. 24. I've got it.

1 Q. Is that a letter dated February 19th,
2 1999 that you wrote to George Gregory?

3 A. Yes, it is.

4 Q. How is it that you came to write this
5 letter?

6 A. You know, I mentioned previously that I
7 had had meetings, among which was with George
8 Gregory, and discussing various aspects. The one
9 was to discuss with him and give him this
10 information that the County was in the process of a
11 comprehensive land use plan, which included a
12 visioning process that was very complex, and it
13 took at least 18 months or so. And this was a
14 letter to him with regard to that.

15 As I recall, Mr. Gregory had said that
16 the development that they were envisioning would be
17 compliant with the County's vision, according to
18 the land use plan, and this was sent to George as a
19 non-binding agreement on either side, what the
20 County -- what I said is, the County is aware of
21 and agrees to work with the development group on
22 issues that are critical to the proposed
23 development, such as zoning, tax-incentive
24 vehicles, and multicounty business park, that we
25 agreed to work with them on those issues.

1 Q. And in the first paragraph, would you
2 read that?

3 A. It is the understanding of the County
4 that the proposed development group represented by
5 your company is desirous of entering into a
6 development agreement for the anticipated
7 development of the Manning property on the Congaree
8 River.

9 Q. All right. Now, that's in 1999 where
10 you're writing about --

11 A. February 19th.

12 Q. -- them wanting to enter into a
13 development agreement?

14 A. Yeah.

15 Q. And they hadn't submitted one by the
16 date we discussed in 2001?

17 A. That's correct.

18 Q. And never submitted one?

19 A. No.

20 Q. Now, did you put at the top of the
21 letter the words non-binding?

22 A. Yes.

23 Q. Did you put it at the end of the
24 letter?

25 A. Yes, I did.

1 Q. What did you mean when you said
2 non-binding?

3 A. Exactly what it states, which is
4 non-binding by either party.

5 Q. Were you committing the County to
6 anything by that letter?

7 A. Absolutely not.

8 Q. Did you have any authority from County
9 Council to commit the County to anything regarding
10 the Green Diamond project?

11 A. No. And I put non-binding in there so
12 there would be no mistake about it.

13 MR. JOHNSON: Thank you. Would you
14 answer any questions that Mr. Grier has.

15 CROSS-EXAMINATION

16 BY MR. GRIER:

17 Q. Mr. McSwain, when you came to Richland
18 County and took over as the County administrator,
19 the County was not a participant in the National
20 Flood Insurance Program, was it?

21 A. The County had been a participant for a
22 number of years, and I -- my understanding was we
23 were still yet a participant, but we needed to -- I
24 think we needed to have someone in the planning
25 department who had the certifications to be able to

1 do the enforcements.

2 This was brought to my attention by the
3 planning director. And subsequently we had our
4 employees, the floodplain administrator, and I
5 think someone else in the planning department had
6 attended the certification courses to complete it,
7 to ensure that our citizens continued to be under
8 the Flood Insurance Rate Map and be able to get
9 better premiums on their flood insurance.

10 Q. Okay. But when you got there, it was
11 not an eligible participant in the National Flood
12 Insurance Program. Is that correct?

13 A. I wasn't aware of that at the time I
14 got there. It was sometime after I had been in the
15 office that it was brought to my attention by the
16 planning director, that we really need that. My
17 understanding is that the program was still in
18 effect, but we could not do the proper enforcement
19 unless we had the certified people.

20 Q. Okay. Now, so you had to actually
21 re-establish your eligibility under the program,
22 did you not?

23 A. I don't know if that's the correct
24 terminology or not, but we -- with all the criteria
25 that were required of us, we were trying to make

1 sure that we had satisfied all of it.

2 Q. Have you got a copy of your deposition?

3 A. No, sir, I do not.

4 MR. GRIER: Let's get him a copy of the
5 deposition.

6 BY MR. GRIER:

7 Q. Look at Page 13. On Page 13, Line 11,
8 I asked you this question, did I not?

9 And I believe Richland County was the
10 participant in the National Flood Insurance Program
11 during your tenure as County administrator?

12 Do you see that question?

13 A. Yes, I do.

14 Q. And your answer was:

15 It had been prior to my arrival here,
16 and when I got here, we were no longer a member
17 because we no longer had a certified person.

18 Is that correct? Was that your answer?

19 A. Yes.

20 MR. JOHNSON: Could you read the rest
21 of the answer.

22 THE WITNESS: And I discussed that with
23 the planning director, and our staff was trained
24 and we were again established as a member of the
25 Flood Insurance Program.

1 BY MR. GRIER:

2 Q. But you said, did you not, sir:

3 When I got here, we were no longer a
4 member because we no longer had a certified person.

5 Didn't you say that, sir?

6 A. I believe I did, yes, sir.

7 Q. All right, sir.

8 Now, take a look at Defendant's Exhibit
9 11.

10 Have you got it up there in those
11 books?

12 A. Yes.

13 Q. All right, sir. Now, these are the
14 minutes of a FEMA meeting dated July 8th, 1998.
15 And this was the subject of a Revised Preliminary
16 Flood Insurance Rate Map and Flood Insurance Study
17 that was issued by FEMA on June 5th of 1998. Is
18 that correct?

19 A. Yes.

20 Q. All right. And at that time, June 5th
21 of 1998, this was a Revised Preliminary Flood
22 Insurance Study and Flood Insurance Rate Map. The
23 effective Flood Insurance Rate Map for Richland
24 County was dated in January of 1994. Is that
25 correct?

1 A. I believe that's correct, yes.

2 Q. And under that effective January 1994
3 Flood Insurance Rate Map, the levees were -- the
4 floodway on that map went to the riverside toe of
5 the levees. Is that correct?

6 A. That's my recollection, yes.

7 Q. Okay. And after this meeting, you
8 wrote a letter to Mr. Buckley of FEMA. And look at
9 Exhibit 12.

10 A. I have it.

11 Q. Okay. Is that the letter dated July
12 14th, 1998 that you wrote to Mr. Buckley?

13 A. Yes, it is.

14 Q. All right. And in the first paragraph,
15 you say:

16 This letter is to request officially
17 that the results of the Revised Flood Insurance
18 Study and the subsequent review process be put on
19 hold, i.e., the 90-day review and appeals process
20 be extended or delayed until certain issues are
21 resolved.

22 These issues were discussed in depth at
23 the final meeting held July 8th, 1998 in Columbia,
24 South Carolina, and are encapsulated below for your
25 use.

1 And if we look on the second page, you
2 say in the first paragraph there:

3 Given the magnitude of the changes,
4 placement of over 5,000 acres into a floodway
5 designation and the adverse impact this could cause
6 on the economic viability of this County, we would
7 request the review process be put on hold.

8 You said that, did you not, sir?

9 A. Yes.

10 (PLF. EXH. 13, FEMA letter to McSwain
11 agreeing to put map revision process on hold, was
12 presented.)

13 BY MR. GRIER:

14 Q. All right, sir. Now, Mr. Buckley wrote
15 you back. Take a look at Exhibit 13.

16 Have you got that?

17 A. It goes from 12 to 17. I don't see a
18 13.

19 Q. Okay, sir, you have been handed a copy
20 of Defendant's Exhibit 13.

21 A. Okay, I have it.

22 Q. All right. That's the letter
23 Mr. Buckley wrote you back. It's dated July 28th,
24 1998.

25 He agreed to your request, did he not?

1 A. Yes, he did.

2 Q. All right. Now, let's look at
3 Plaintiff's Exhibit 207 that Mr. Johnson asked you
4 about.

5 A. I have it.

6 Q. Have you got that?

7 Now, that's the -- this is the letter
8 dated December the 11th, 1998 that Mr. Tillotson
9 wrote to you with the -- enclosing the bullet
10 points that he discussed with you at a meeting on
11 December the 10th. Is that correct?

12 A. That's correct.

13 Q. Now, look at Exhibit 15, if you would.
14 Well, actually, look at -- is it Plaintiff's
15 Exhibit 166 -- Plaintiff's Exhibit 166.

16 A. I don't have anything in this book
17 between 12 and 17.

18 Q. Right there.

19 A. Oh, okay. 166.

20 Q. You've got it.

21 Now, did you take that letter and give
22 it to someone at the -- on the County staff?

23 A. Yes, I'm sure I did.

24 Q. Did you give it to Mr. Knudsen?

25 A. It went to the planning director, and

1 Mr. Knudsen worked for the planning director. He
2 was not the planning director. He was -- I forget
3 his exact title, but he was -- worked under the
4 planning director.

5 Q. Okay. Now, Mr. Knudsen, though, he's
6 the one that wrote the report, that is, Plaintiff's
7 Exhibit 166. Is that correct?

8 A. Yes. Yes, his name is on this.

9 Q. And that was signed off by Milton Pope
10 on January 22nd, 1999. Mr. Pope was assistant
11 County administrator at that time?

12 A. That's correct.

13 Q. And it was signed by Larry Smith. He
14 was the County attorney, was he not?

15 A. That's correct.

16 Q. And that was on January 21, 1999. And
17 under Discussions, if you look over on the second
18 page, starting down there, he has the bullet points
19 that correspond to the letter that Mr. Tillotson
20 included in his December 11th, 1998 letter to you.

21 A. You mean the numerical bullet points?

22 Q. Yes.

23 Do you see them down there, 1 through
24 6?

25 A. It's somewhat shorter language, but it

1 appears to be inclusive of others, yes.

2 Q. It appears to be those, does it not,
3 sir?

4 A. Inclusive of those, yes.

5 Q. Now, look under purpose -- Purpose and
6 Recommendation:

7 The purpose of this report is to
8 request the County Council's consideration,
9 authorizing council chairman or his designee to act
10 on behalf of the County to communicate to FEMA the
11 agreement by Richland County to accept the
12 right-of-way to the levee system and the
13 responsibility to review, monitor, and maintain the
14 levee system, contingent upon proper certification.

15 Do you see that, sir?

16 A. Yes.

17 Q. And if we look down under Discussion,
18 under the third sentence, he talks -- he says -- he
19 talks about a FEMA requirement under the National
20 Flood Insurance regulations, that a governmental
21 body accept the responsibility for maintenance and
22 inspection of the levee system, does he not, sir?

23 A. Yes, he does.

24 Q. And he says: This requirement
25 necessitates that the County agrees, in principle,

1 to accepting responsibility for the levee system
2 once completed and acceptable to FEMA.

3 He says that, does he not, sir?

4 A. Yes.

5 Q. Now, and the alternatives -- the second
6 one there, is, Authorize council chairman or his
7 designee to begin the first steps of acceptance of
8 responsibility and maintenance, contingent upon
9 engineering certification, certification by the
10 Corps of Engineers, and approval and acceptance by
11 FEMA.

12 Do you see that, sir?

13 A. Yes.

14 Q. And that's under his recommendation.
15 He recommends that alternative, does he not, sir?

16 A. Yes, sir.

17 Q. All right, sir. Now, look at -- look
18 at Plaintiff's Exhibit 246, if you would.

19 A. I have it.

20 Q. Okay. Now that's the letter that
21 Mr. Tillotson wrote Lisa Holland on January the
22 20th, 1999 that Mr. Johnson asked you about. Is it
23 not, sir?

24 A. The first page is a fax cover sheet,
25 and then there's a letter, yes, from -- to

1 Ms. Holland from Wilson Tillotson.

2 Q. Okay. Now, this is the one where
3 Mr. Tillotson said, We've had several meetings with
4 Richland County and the City of Columbia and have
5 been asked to represent them as well as -- as well
6 in any clarifications of the FEMA regulations,
7 pursuant to 44 CFR 65.10.

8 And I believe you indicated to
9 Mr. Johnson that you had not authorized
10 Mr. Tillotson to represent the County -- is that
11 correct, sir --

12 A. That's correct.

13 Q. -- in writing this letter?

14 A. I'm sorry?

15 Q. In writing this letter?

16 A. To authorize him to write this letter?

17 Q. I think you said that you had not told
18 Mr. Tillotson he could write this letter on behalf
19 of the County. Is that what you said?

20 A. No. I said that Mr. Tillotson was not
21 officially authorized to be speaking on behalf of
22 the County.

23 Q. All right. Did you realize he was
24 going to be writing this letter to Ms. Jones -- or
25 Ms. Holland?

1 A. He didn't show me the letter, no, sir.

2 Q. All right. You got a copy of it, did
3 you not?

4 A. Yes, I did.

5 Q. When you got a copy, did you contact
6 Ms. Holland and tell her that Mr. Tillotson wasn't
7 authorized to write this letter?

8 A. I don't specifically recall that I did,
9 no. There wasn't -- there was no indication that
10 he actually was operating on our behalf.

11 Q. All right. Now, you also received the
12 letter from Mr. Matthew Miller. Look at
13 Plaintiff's Exhibit Number 18.

14 A. I have it.

15 Q. All right. Now, that was the letter
16 from Matthew Miller back to Ms. Holland.

17 Do you recall that you received a copy
18 of this letter?

19 A. I don't specifically recall this
20 letter, but the information in here was information
21 that was discussed in different formats.

22 Q. All right. Do you see a number on
23 there at the bottom that's upside down on my copy,
24 DEF 00000053?

25 A. Yes.

1 Q. That indicates that it was produced by
2 the Defendant in this case, which would be the
3 County. But you don't know whether you
4 received -- saw a copy of this?

5 A. I don't know. I'm saying I don't
6 specifically remember this particular letter. I
7 very likely did have it and read it, but I don't
8 recall it specifically.

9 Q. All right. Now, Mr. Knudsen, if you
10 will, look at Exhibit 166.

11 A. I have it.

12 Q. Wait a minute. That's Mr. Knudsen's
13 report, 166.

14 A. Yes, I see community report.

15 Q. Now, that report was taken up by the
16 development and services committee, was it not,
17 sir?

18 A. Yes.

19 Q. And you were present at that meeting of
20 the development and services committee?

21 A. Yes.

22 Q. And they recommended that it be
23 forwarded on to the entire council with a proposal,
24 did it not?

25 A. That's my recollection, yes.

1 Q. All right. Now, and it came up -- that
2 report from the development and services committee
3 on Mr. Knudsen's recommendation came before the
4 entire council on February 2nd, 1999, did it not,
5 sir?

6 A. I assume that date is correct, yes.

7 Q. And you were present at that meeting,
8 were you not, sir?

9 A. Yes, I was.

10 Q. All right. And that's when the
11 resolution that Ms. Smith made was made, seconded
12 and voted on, passed unanimously, correct?

13 A. In the committee, yes. As I recall, I
14 think it was, in the committee.

15 Q. I believe that's 147, Plaintiff's
16 Exhibit 147.

17 A. I have it.

18 Q. All right. And that's the motion
19 with -- that was passed unanimously on February
20 2nd, 1999, correct?

21 A. Yes.

22 Q. All right. Now --

23 A. Excuse me a minute. The vote was in
24 favor of -- the substitute motion was unanimous.

25 Q. And that was Ms. Smith's motion, was it

1 not, sir?

2 A. Yes.

3 Q. Now, take a look at Plaintiff's Exhibit
4 22, if you would.

5 A. I have it.

6 Q. Now, this is the letter dated February
7 17th, 1999 that Mr. Paul Livingston, who was the
8 chairman of the Richland County Council, wrote to
9 Michael Buckley of FEMA, is it not?

10 A. Yes, yes, it is.

11 Q. And Mr. Livingston was authorized to
12 write this letter, was he not?

13 A. That was my understanding, yes.

14 Q. All right. Now, in this letter, he
15 says:

16 Richland County, by action of its
17 governing body, the County Council, has agreed to
18 accept responsibility for local inspection and
19 enforcement of the operations and maintenance plan
20 for the levee system as submitted by the owner and
21 approved by FEMA, contingent upon...

22 And then it lists four of the
23 contingencies --

24 A. Yes.

25 Q. -- from the resolution that had been

1 passed on February the 2nd.

2 A. Yes.

3 Q. Now, look at Number 4, if you would.

4 And it says: The parties, which
5 include Richland County, the City of Columbia and
6 the developers, resolving, to the reasonable
7 satisfaction of the County, the issues of
8 performance and funding of the operation and
9 maintenance responsibility...

10 Do you see that, sir?

11 A. Yes, sir.

12 Q. And that's made specific reference to
13 the performance and funding and operation and
14 maintenance responsibility -- the issues of the
15 performance and funding of the operation and
16 maintenance responsibilities.

17 And he tells
18 FEMA -- Mr. Livingston -- that those issues need to
19 be resolved to the reasonable satisfaction of the
20 County. Is that correct?

21 A. That's correct.

22 Q. Now, if you look on the last
23 page -- well, the last paragraph, starting on that
24 page, he says:

25 We understand that if the above steps

1 are taken, and upon certification of the levee
2 system as a protected structure, the area protected
3 by the system can be removed from the designation
4 as Special Flood Hazard Area Zone AE or A.

5 And he says: On behalf of Richland
6 County, I request confirmation of this
7 understanding.

8 Finally, Richland County requests that
9 you consider the existing levee system in any
10 current or future calculation of the floodway for
11 this area.

12 He says that, does he not, sir?

13 A. Yes, he does.

14 Q. Now, the first -- go back to the first
15 page. The first contingency he lists here, first
16 item, property owners upgrading the levee system to
17 meet FEMA standards as contained in 44 CFR 65.10.

18 Now, you understood, did you not, that
19 the developers were going to need a permit to begin
20 that process of upgrading the levee system to meet
21 the FEMA requirements?

22 A. There was more than one permit, but,
23 yes, they would have to start with a permit.

24 Q. You understood that they would be
25 seeking a permit at some point, did you not, sir?

1 A. Yes.

2 Q. Now, you wrote a letter -- let me
3 keep -- let me mention one other thing here, and I
4 will get back to that. But FEMA -- on February the
5 19th -- wrote you another letter -- 1999 -- let me
6 find the exhibit number for you. It was Exhibit
7 24. Excuse me. I'm on the wrong exhibit.

8 Let's go ahead and look at this,
9 though, Exhibit 24. I will get to my other one in
10 a minute.

11 A. Okay, I have it.

12 Q. You got it? Okay.

13 Okay. This is the letter that you
14 wrote to George Gregory, dated February 19th, 1999.
15 You were asked about this by Mr. Johnson.

16 And in this letter, it says -- in the
17 second paragraph there, it says:

18 The County is completing its visioning
19 process as part of a comprehensive land use plan
20 which incorporates what citizens of the county want
21 to have in the coming years.

22 Additionally, it is the understanding
23 of the County that the development group is
24 prepared to work with the County within this vision
25 and plan where any parts of the plan are feasible

1 with the development plans and the blending of
2 elements of the development plan with the County's
3 comprehensive land use plan, which is scheduled to
4 be released in the near future.

5 Now, you had conversations with
6 Mr. George Gregory about this visioning plan, did
7 you not, sir -- visioning process?

8 A. Yes.

9 Q. And you discussed with him what this
10 process was in general terms, did you not, sir?

11 A. In general terms, yes.

12 Q. And he discussed with you -- I think
13 you met with him and also met with Mr. Deas
14 Manning --

15 A. Yes.

16 Q. -- and Mr. Wilson Tillotson --

17 A. Yes.

18 Q. -- about this project?

19 A. Yes, I think at different times. I'm
20 not sure I met with all three of them together.

21 Q. But you understood that this project
22 was going to be a development behind levees that
23 were going to be certified under FEMA standards,
24 did you not?

25 A. Yes.

1 Q. And you understood that what they were
2 proposing to build behind these levees was a fairly
3 extensive mixed-use development, did you not, sir?

4 A. In those terms, yes.

5 Q. It was going to have commercial,
6 residential, office buildings, that type of uses,
7 correct?

8 A. Yes.

9 Q. You understood that.

10 A. Inclusive of those things.

11 Q. All right. And you wanted Mr. Gregory
12 to work with you in terms of the visioning process
13 that the County had been developing. Is that
14 correct?

15 A. With me and/or staff --

16 Q. Right.

17 A. -- who were in that process.

18 Q. Right, correct.

19 And he agreed to do that, did he not,
20 sir?

21 A. That's the result of this letter, that
22 he said they would do that.

23 Q. All right. And you had no reason to
24 doubt that he was acting in good faith, did you?

25 A. No.

1 Q. So all things going forward, you
2 expected him to work with the County in good faith
3 to blend their plans to the extent they could with
4 the County's visioning process, correct?

5 A. Yes.

6 Q. All right, sir. Now, at the same time,
7 he also talked with you about zoning tax-incentive
8 vehicles and a multicounty business park. He had
9 those discussions with you, did he not, sir?

10 A. They were mentioned, so I put them in
11 the letter.

12 Q. So you put them in the letter?

13 A. Yes.

14 Q. Okay. At that time, at the time this
15 letter was written, February 19th, 1999, the County
16 already had a multicounty business park with
17 Fairfield County, did it not, sir?

18 A. Yes.

19 Q. Okay. And you were familiar with that
20 process, that multicounty business park?

21 A. Yes. I negotiated on behalf of the
22 County.

23 Q. Now, do you recall that sometime later,
24 around February the 25th, 1999, FEMA came out with
25 another Revised Preliminary Flood Insurance Rate

1 Map and Flood Insurance Study for both Richland and
2 Lexington County?

3 A. Yes.

4 (PLF. EXH. 26, McSwain letter dated
5 2/26/1999, to FEMA, Re: Do not release any more
6 maps, was presented.)

7 BY MR. GRIER:

8 Q. And take a look -- this would be
9 Plaintiff's Trial Exhibit 26, I believe.

10 All right. Now, do you have that
11 exhibit in front of you?

12 A. Yes, I do.

13 Q. Is that your signature?

14 A. Yes, it is.

15 Q. All right, sir.

16 MR. GRIER: Your Honor, we would offer
17 this into evidence.

18 THE COURT: No objection. It's
19 admitted.

20 BY MR. GRIER:

21 Q. Now, in this letter, you, again,
22 request that -- I will just read it.

23 This letter is to request that you not
24 release any maps regarding the floodway or
25 floodplain with respect to the Congaree River

1 through Richland County until we have had the
2 opportunity to address the data forming the
3 foundation for the map development.

4 That was your request to Mr. Buckley?

5 A. Yes, it was.

6 Q. Now, at that time, you were working
7 with Mr. Wilson Tillotson, were you not, in
8 assisting him in presenting data to FEMA?

9 A. No, I wouldn't say that.

10 Q. Okay.

11 A. We had had discussions and he had asked
12 questions of the County. We provided him all the
13 information he wanted. If that's working with him,
14 yes, we were.

15 But as far as partners in the process,
16 we were providing all the information that he
17 needed.

18 Q. Did you ask -- did you at any time ask
19 FEMA to consider to provide information to
20 Mr. Tillotson?

21 A. No.

22 Q. You did not? Okay.

23 A. He did that himself, I believe.

24 Q. All right. But you never did that
25 yourself? You never asked FEMA to give Wilson

1 Tillotson any data or technical information?

2 A. I don't remember any necessity to do
3 that.

4 Q. Now, going back to this letter, you
5 say -- look in the -- well, let me go back to that
6 first paragraph. You say:

7 Until we have had the opportunity to
8 address the data forming the foundations for the
9 map development -- and Mr. Tillotson and Lockwood
10 Greene were assessing that data, were they not,
11 sir?

12 A. On behalf of Columbia Venture.

13 Q. Right.

14 I mean, the County did not have the
15 capability to assess that data, did it?

16 A. We didn't have a staff of -- the number
17 of staff for availability, or probably the
18 expertise, to do that.

19 Q. Okay. So you were looking to Lockwood
20 Greene to sort of assess that data, were you not,
21 sir?

22 A. They were assessing the data on behalf
23 of Burroughs & Chapin and Columbia Venture.

24 Q. Okay. Now, in this second paragraph of
25 this letter, second sentence -- third

1 sentence -- you say, do you not, sir: Richland
2 County has agreed to be the inspector, provide
3 monitoring and review and enforcement after the
4 rebuilding of the levees has been approved and
5 accepted.

6 Do you see that, sir?

7 A. Yes.

8 Q. And you say: In this partnership with
9 FEMA, we are asking that you share this information
10 with us and allow reasonable critique of the data
11 and the modeling prior to any official map release
12 or adoption.

13 You say that, do you not, sir?

14 A. Yes.

15 Q. Now, when you say that Richland County
16 has agreed to be the inspector and provide
17 monitoring and review and enforcement after the
18 rebuilding of the levees has been approved and
19 accepted, you're referring back to the County's
20 agreement that's manifested in the resolution that
21 was passed by the council --

22 A. That's correct.

23 Q. -- in Mr. Livingston's letter?

24 A. That's correct.

25 (PLF. EXH. 27, McSwain letter dated

1 4/07/1999 to FEMA forwarding Tillotson letter
2 request, was presented.)

3 BY MR. GRIER:

4 Q. Now, take a look at
5 Defendant -- Plaintiff's Exhibit 27.

6 A. Well, I go from 24 to 29.

7 Q. I think we're going to hand you a copy
8 of that.

9 A. Thank you.

10 Q. Is this your signature on this letter?

11 A. Yes, it is.

12 Q. And this is the letter you wrote on
13 April 7th, 1999 to Ms. Marquez of FEMA?

14 A. Yeah, it certainly appears to be.

15 Q. I'm sorry?

16 A. Yes.

17 Q. And in this letter, you're actually
18 asking FEMA to provide information to Wilson
19 Tillotson and Lockwood Greene, are you not?

20 A. Yes, in terms of assembling all
21 pertinent data. At the time, we were receiving
22 data from or awaiting receiving data from various
23 sources of those who were interested in Lockwood
24 Greene representing -- Columbia Venture was one of
25 those parties. So, uh, we had asked that any of

1 them be given that data.

2 Q. All right. Now, look at the -- you
3 sent her a letter -- a copy of a letter from Wilson
4 Tillotson dated April the 5th, do you not?

5 A. Yes.

6 Q. And in that letter, Mr. Tillotson asked
7 for some fairly technical information, does he not?

8 A. Yes, he does.

9 Q. And then you follow up and ask
10 Mr. Marquez to provide that information to him. Is
11 that correct?

12 A. Yes, along with others. He had asked
13 for obtaining of that data, yes.

14 Q. Let's look at Exhibit 31.

15 Look at Plaintiff's Exhibit 31, if you
16 would.

17 A. All right, I have it.

18 Q. Now, this is a letter to you from
19 Mr. Todd Davison of FEMA, is it not, sir?

20 A. For Mr. Todd Davison by Clayton
21 Saucier.

22 Q. And he encloses a bulletin, does he
23 not, sir, use of Flood Insurance Data, FIS data, as
24 available data?

25 A. Yes.

1 Q. And that's Floodplain Management
2 Bulletin 198, is it not, sir?

3 A. Yes, it is.

4 Q. And this contains official guidance
5 from FEMA concerning the use of Flood Insurance
6 Study data as available data, does it not, sir?

7 A. Yes, it does.

8 Q. I'm not going to take a lot of time
9 with this bulletin, Mr. McSwain, because other
10 witnesses have talked about this document, but if
11 you look on Page 4 of the bulletin, it has,
12 guidance, FEMA guidance, for Zones AE, and other
13 zones, does it not, sir?

14 A. Yes.

15 Q. And AE is the zone that covered
16 Columbia Venture's property. Is that correct, sir?

17 A. A good portion of it, yes.

18 Q. All right, sir. Now, in his letter, he
19 asks you, does he not, not to issue any permits.
20 Look at the last sentence there.

21 He says, on the first page: In our
22 opinion, permitting the levee construction -- do
23 you see where I'm reading?

24 A. It's on the last page?

25 Q. I'm sorry, sir, it's the first page,

1 last paragraph, last sentence.

2 A. Okay, got it.

3 Q. Do you see that?

4 In our opinion, permitting levee
5 construction before resolution of all technical
6 issues could be viewed by the affected communities
7 and the public as usurping due process and would
8 add additional controversy to this important
9 matter.

10 Do you see that, sir?

11 A. Yes.

12 Q. So he's asking you not to -- not to
13 permit -- not to permit levee construction before
14 the resolution of all technical issues, is he not?

15 A. Yes, he is.

16 Q. And after due consideration, sir, did
17 you accept this recommendation?

18 A. Yes.

19 Q. All right, sir. And that's
20 consistent -- look at Exhibit 4, if you would.

21 A. Okay.

22 Q. Have you got Exhibit 4?

23 A. Yes.

24 Q. Now, this is the chronology of the
25 Green Diamond project.

1 Have you got that, sir?

2 A. Yes, I do.

3 Q. Now, this document was prepared at your
4 direction, was it not, by Ms. Mullen Taylor as she
5 was getting ready to leave the County's employ and
6 go to law school?

7 A. Yes, it was.

8 Q. And you had asked her to prepare this
9 document, did you not?

10 A. Yes. It had been a lengthy and
11 complicated process, and I didn't want to lose her
12 in the transition, all that she knew.

13 Q. Okay. So she put this to writing, and
14 then a copy of it was maintained in the County's
15 files, correct, sir?

16 A. Yes, sir.

17 Q. All right. And if we look at the May
18 19th -- excuse me -- May 19, 1999, it says:

19 Burroughs & Chapin asked the County for
20 a permit to make minor improvements to the levees.
21 County initially denies permit for the levee
22 improvements because of FEMA's request that the
23 most recent preliminary flood be used for these
24 decision-making purposes.

25 The recent map places the levees in the

1 floodway, which requires greater restrictions on
2 construction.

3 The County administrator makes the
4 decision to base County floodplain decisions on the
5 '94 flood map, which is the last map to be
6 finalized by FEMA.

7 This map does not include the levees in
8 the floodway. Later the administrator postpones
9 permit approvals until after the flood maps are
10 finalized.

11 Do you see that, sir?

12 A. Yes, sir, I do.

13 Q. And that last sentence: Later the
14 administrator proposed -- postpones permit
15 approvals until after the floodplains are
16 finalized.

17 That's what Mr. Buckley asked you to do
18 in that letter he wrote you, that we were looking
19 at. Let's see -- yeah, it was 31.

20 That's what he asked you to do. He
21 asked you to -- in our opinion, he asked you to not
22 permit levee construction before resolution of all
23 technical issues, correct, sir?

24 A. That's correct.

25 Q. And I think you just said that

1 you -- after due consideration -- agreed to that
2 request.

3 Now, the technical issues weren't all
4 resolved until the letter of final determination
5 was issued by FEMA. Is that correct, sir?

6 A. Resolved to FEMA's satisfaction that
7 they were the final decision-maker.

8 Q. And that was August 20th of 2001,
9 correct, sir?

10 A. I believe that's correct, yes.

11 Q. August.

12 Now, let's look at Exhibit 118 and
13 119 -- Plaintiff's Exhibit 118 and 119.

14 A. While you're doing that, I would like
15 to make a comment on that chronology.

16 Q. Okay, go ahead.

17 A. That particular part there where it
18 says, Administrator makes a decision to base County
19 floodplain decisions on the 1994 flood map, that
20 was in discussions with the planning staff and the
21 zoning administrator who was also an attorney, that
22 the effective map at the time was a 1994, '95 map
23 that we were using. And it was our understanding
24 that we should be using that map.

25 But later on, we were told it had to be

1 the best available map, not the effective map. And
2 this paragraph represents a time compression.
3 Those decisions would lead you to believe they were
4 made at the same time, but they weren't. There was
5 a time compression on that.

6 Q. It was made during the entire month of
7 May, in other words?

8 A. Yes.

9 Q. Okay. Now, in fact, the decision to
10 use the effective map or to stick with the
11 effective map -- in other words, you decided that
12 you were going to -- you weren't going to permit
13 any -- you were going to postpone permit approvals
14 until after the flood maps are finalized, but your
15 decision to use the effective 1994 map -- FEMA
16 actually told you to do that after they issued
17 another Revised Preliminary FIRM and Preliminary
18 Flood Insurance Study on August the 12th, 1999.

19 After they issued that one, they said
20 for you to use the '95 maps, right, the effective
21 maps?

22 A. I don't recall that.

23 Q. You don't recall that?

24 A. The question is a little confusing,
25 though, in terms of the dates.

1 Q. Okay. You remember that we were
2 talking about on February 25th, 1999 they came out
3 with another Revised Preliminary Flood Insurance
4 Rate Map and Flood Insurance Study?

5 A. Right.

6 Q. And you're asking them to withhold
7 publication of that map, correct?

8 A. Correct.

9 Q. And they agreed. They didn't publish
10 that map?

11 A. At that time.

12 Q. In fact, they never published that map
13 and they got to August the 12th of 1999, and they
14 had another Revised Preliminary Flood Insurance
15 Rate Map and Flood Insurance Study.

16 A. Right.

17 Q. And they decided to publish that map,
18 did they not, sir?

19 A. What was the date again?

20 Q. August 12th, 1999.

21 They published it in September and
22 started an appeal process --

23 A. Yes.

24 Q. -- is that correct?

25 A. That's correct.

1 Q. Now, once they published that map, they
2 asked you -- they told you to use the effective map
3 which dates back to 1994, '95, did they not, sir?

4 A. I don't recall that.

5 Q. Okay. Let's get the minutes of the
6 council on September the 7th. That's Plaintiff's
7 Exhibit 123.

8 Have you got that in front of you?

9 A. Yes, sir, I do.

10 Q. Okay. Look at the -- I guess that's
11 about one or two -- the third page, it says,
12 Congaree levees, down there.

13 A. Yes, I do.

14 Q. Now, it said: Mr. McSwain briefed
15 council on FEMA's approval process of the proposed
16 flood maps. He stated that FEMA estimates that the
17 new maps would be finalized by the spring of 2000.

18 Okay. Now, you're referring here to
19 the maps -- to the revised preliminary maps and the
20 study that was issued in August of 1999, published
21 beginning in September of '99, correct? That's
22 what you're advising the County on, about the
23 FEMA -- FEMA's approval process. That's the appeal
24 process, correct?

25 A. Well, according to the minutes, it

1 appears that's the case.

2 Q. Okay. Now, he stated that FEMA advised
3 the County to use the 1995 maps until the new maps
4 come out. That's -- that would have been the
5 effective maps, correct, sir?

6 A. Yes, that would have been the effective
7 maps.

8 Q. All right.

9 A. But I don't recall specifically when
10 and where and how FEMA expressed that, and whether
11 it was talking about using the effective maps for
12 insurance purposes, which is the case. You have to
13 use the final map. But it says I said here, a
14 maintenance permit could be issued under those
15 maps.

16 Q. Now, let's talk about that a minute.
17 If we wanted to figure out why FEMA told you to use
18 those maps, we could go back and look at that FEMA
19 guidance that they sent you back in May, couldn't
20 we?

21 A. Yes.

22 Q. And that would tell us why they're
23 telling you now to use the effective 1995 map,
24 correct?

25 A. If it addresses the FIRM, yes, the

1 Flood Insurance Rate Maps, yes.

2 Q. And it has to do with the BFEs, does it
3 not, if the BFEs are higher --

4 A. Yes.

5 Q. -- under your effective maps, you're
6 supposed to use those, aren't you?

7 A. Yes.

8 Q. Because if somebody's building a house,
9 seeking a permit, you want to build -- to
10 elevate their living quarters above the higher
11 number, do you not, sir?

12 A. 2 feet above the BFE.

13 Q. Right.

14 And you want to use the higher
15 number --

16 A. Yes.

17 Q. -- whether it's in the revised or the
18 effective, correct?

19 A. That's correct.

20 Q. And so the master came out in August of
21 '99, had lower BFEs than the effective maps, which
22 date back to 1994, '95, correct? Well, if that is
23 correct, that would be why FEMA told you to use
24 those effective maps, correct?

25 A. I can't say right now. I recall that

1 the BFES were lower in '99.

2 Q. Okay.

3 A. I was thinking that the '99 map had
4 higher BFES.

5 Q. Well, we could tell that by going and
6 looking at the maps?

7 A. Yes.

8 Q. All right. We won't take the time to
9 do that, but you would agree with me we could look
10 at the maps and figure that out?

11 A. Yes.

12 Q. And you would agree that whichever is
13 higher, that's the one we ought to be using?

14 A. No. I would agree that we follow
15 FEMA's guidelines for the flood insurance program.

16 Q. Okay. And if it was in that guidance
17 document that they sent you back in May, that's
18 what you should have been following, correct?

19 A. Yes.

20 Q. All right. Now, you said that it was
21 noted under the 1995 maps, the County could issue a
22 maintenance permit to maintain the existing levees.

23 Do you see that?

24 A. Yeah, I see that.

25 Q. I want to ask you about that. You had

1 already made a decision -- this was in
2 September -- you had already made a decision that
3 you were going to postpone any permitting for the
4 levees until after the flood mapping had been
5 completed by FEMA and a maintenance -- a permit to
6 maintain the levees -- first of all, who would you
7 go to, to get a permit to maintain the levees?
8 Would you go to the County engineer's office?

9 A. Yes.

10 Q. And so if you wanted to get a permit to
11 maintain the levees, you would go see the County
12 engineer to see whether you needed a permit or not,
13 correct?

14 A. Yes, that's assuming the first permit
15 would be a land disturbing -- which it typically
16 would be.

17 Q. Right.

18 And if you were going to just cut the
19 grass, something like that, the engineer might say,
20 Well, you don't need a permit to do that?

21 A. That's correct.

22 Q. And if you're going to remove a tree
23 and fill in the hole, the engineer might say, Well,
24 you really don't need a permit to do that?

25 A. Depending on how much acreage and what

1 the specific wording was in the ordinance.

2 Q. Do you know at this time what the
3 engineer, the County engineer's, policy was on
4 whether or not -- what you needed or not needed a
5 permit for to do maintenance on a levee?

6 A. Do I know if he knew?

7 Q. No, do you know what it was?

8 A. It was whatever is required of the
9 ordinance.

10 Q. Okay. Well, maintenance -- what did
11 you understand the maintenance to be?

12 A. There's a long section in the ordinance
13 about maintenance of levees.

14 Q. All right. Well, you had already
15 postponed any approval for the upgrade of the
16 levees.

17 What did you understand that the
18 engineer would permit for maintenance -- or did you
19 have an understanding?

20 A. Any construction was what was
21 considered not to have any permits issuable.

22 Q. I'm sorry, I couldn't hear you.

23 A. The proposal was not to issue any
24 permits for any construction.

25 Q. Any construction?

1 A. Right.

2 Q. But maintenance, you could get a permit
3 to maintain?

4 A. Some people call part of
5 maintenance -- some people call part of
6 construction maintenance, and it depends on how
7 extensive the maintenance would be.

8 At one point, I think the request was
9 to maintain the levees by expanding the footprint
10 and raising the height of it equal to that of the
11 City of Columbia's levees. And that, I don't
12 think, was considered to be maintenance. It was
13 construction, so there was a distinction between
14 maintenance and the construction.

15 It wasn't always presented to us as
16 appropriate to our definition.

17 Q. Now, let's look at Exhibit 119.

18 A. I have it.

19 Q. All right. This is the letter from
20 Gordon Greene.

21 A. 119? I've got the wrong one. I have
22 it.

23 Q. Have you got it?

24 A. To Mark Hester.

25 Q. Yeah. And this was the letter in

1 which -- he turns down the permit that they
2 submitted for proposed levee improvements, and the
3 reason he says here is because the application was
4 not completed?

5 A. That's correct.

6 Q. And he says that, Please be advised
7 that a permit to upgrade the above-referenced levee
8 cannot be issued until a complete set of plans and
9 specifications are provided.

10 For example, 100-year flood
11 information, levee cross-section, elevations and
12 soils analysis. The aforementioned plans,
13 therefore, are disapproved until additional
14 information is received.

15 All right. And this is dated May 13th,
16 1999. And I believe that this application had
17 already been turned down before you made your
18 decision that you weren't going to issue any
19 permits to upgrade the levees to certified
20 standards until after the flood mapping had been
21 completed.

22 A. Right. This is turned down on a
23 totally different basis.

24 Q. Right.

25 It was turned down before you made your

1 decision --

2 A. That's correct.

3 Q. -- that you weren't going to issue
4 any -- or that the County wasn't going to issue any
5 permits to upgrade the levees until after the flood
6 mapping was completed?

7 A. Right. It was turned down because it
8 was incomplete. They hadn't submitted all criteria
9 required.

10 Q. Right.

11 Do you have any idea what it would take
12 or what it would cost to get all of this
13 information together to submit a permit with all of
14 this information in it? Have you got any idea how
15 many thousands of dollars that would cost?

16 A. I don't know that it would be thousands
17 or not. I have no idea.

18 Q. If it was hundreds of thousands, if it
19 was \$200,000, let's say, to get all of this stuff
20 together, would you expect them to get it together,
21 to spend that money, to submit it, just to have the
22 County turn it down, because they had already said
23 they weren't going to issue any permits while the
24 flood mapping was ongoing?

25 A. I don't understand the question,

1 because it would be totally up to them as to
2 whether they presented it or not, whether they
3 spent the money or not, at what point in time they
4 wanted to apply for a permit. It was totally up to
5 the company.

6 And to assume that it may be hundreds
7 of thousands, I have no idea. I don't have any
8 idea on this application whether they wanted to do
9 half a mile, 1 mile, 20 miles, so I can't make a
10 relevant comment or answer to your question.

11 Q. Okay. But you would -- would you agree
12 that it would be a reasonable thing for Columbia
13 Venture to do, if putting all of this information
14 together was \$100,000, \$200,000, to not do that if
15 the County administrator and the County had decided
16 it wasn't going to issue a permit to upgrade the
17 levees until after the flood mapping had been
18 completed? Wouldn't that be a reasonable course of
19 action?

20 A. That's a hypothetical question.

21 Q. Yes, it is.

22 A. And I don't think that has any
23 relevance to the County in terms of whether we
24 would issue the permit or not, had they made the
25 decision to put together all of the criteria

1 required by the County ordinance and submitted that
2 on this date. From the way this was decided, if
3 all of that had been presented, they would have had
4 plans approved, if they had met all of the
5 qualifications and criteria of the ordinance,
6 because the ordinance says you shall issue it if
7 they provide all of this.

8 Q. Okay. But after this application was
9 turned down, you made the decision that you weren't
10 going to -- the County was not going to issue a
11 permit to upgrade the levees until after the flood
12 mapping was completed?

13 A. Yes, but that had no relevance to this
14 application.

15 Q. Now, during this time, 1999, were you
16 aware of the County engineer's interpretation of
17 the stormwater ordinance, the words no impede in
18 the stormwater ordinance? Did the County engineer
19 interpret that to mean a no-rise standard
20 consistent with the FEMA regulations? Are you
21 aware of that, sir?

22 A. His interpretation relative to what the
23 ordinance was?

24 Q. Yes, sir, the words no impede.

25 A. Yes, sir, I'm aware of that.

1 Q. You were aware of that. All right.

2 Mr. Johnson asked you about this zoning
3 ordinance, and I'm going to bring it around here,
4 if I could.

5 He asked you about this specific
6 provision here about filling in a
7 floodway -- filling of floodway areas, dumping of
8 salvage and scrap material or the placing of
9 material obstructions within a floodway area in
10 such a manner as to impede the free flow of water
11 during a time of flood, or in such a manner that
12 the elevation of the flood waters will be increased
13 is prohibited.

14 So it's talking about in such a manner
15 as the elevation of the flood waters will be
16 increased, correct?

17 A. Correct.

18 Q. And that's kind of similar, is it not,
19 to the FEMA no-rise standard, that FEMA, the
20 minimum standard is, you can put something in a
21 floodway, but you have to demonstrate through
22 engineering, hydraulic, hydrologic engineering that
23 it's not going to cause a rise in the waters of the
24 base flood?

25 A. That would be relevant to a no-rise

1 interpretation. But this had two criteria. One,
2 not to increase the BFE, and also not to impede the
3 floodway, waters of the floodway.

4 Q. And you were aware, I believe you said,
5 of the engineer's interpretation of no impede in
6 1999?

7 A. Yes.

8 Q. Now, as the County administrator for
9 Richland County, that's a form of government -- is
10 that spelled out in the state statute?

11 A. Yes, it is.

12 Q. As the authority of the County
13 administrator, is that covered in the statute?

14 A. Yes, it is.

15 Q. The County administrator, is that
16 analogous to the chief executive officer of a
17 corporation?

18 A. Yes.

19 Q. All right. Now, would you agree, in
20 terms of Richland County, that the ultimate
21 authority for interpreting an ordinance would be
22 the policy set by the County Council?

23 A. Yes.

24 Q. In fact, the County Council has the
25 power to change an ordinance, do they not, sir?

1 A. That's correct.

2 MR. GRIER: I think that's all the
3 questions I have. Thank you.

4 MR. JOHNSON: Your Honor, could we just
5 have a second to speak, Ms. Taylor and I, before
6 I -- I had a couple of questions.

7 THE COURT: Yes, certainly.

8 REDIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q. Mr. McSwain, you were asked some
11 questions by counsel about the County engineer's
12 interpretation of the no-impede language, correct?

13 A. Correct.

14 Q. And then you were asked about the
15 zoning ordinance and what it said about that, and
16 you gave testimony about that, correct?

17 A. Yes.

18 Q. Does the County engineer interpret or
19 administer the zoning ordinance?

20 A. No.

21 Q. That's done by who?

22 A. The zoning administrator.

23 Q. All right. You were also asked some
24 questions about whether council was the ultimate
25 authority on the meaning of the statutes or

1 interpretation -- correct interpretation of the
2 ordinance?

3 A. Of the ordinances, yes.

4 Q. Ordinances.

5 A. Ordinances, yes.

6 Q. I want to refer you to the zoning
7 ordinance and Defendant's Exhibit --

8 MS. TAYLOR: No, Plaintiff's Exhibit
9 250-A.

10 BY MR. JOHNSON:

11 Q. -- 250-A. In Section 26-501 titled,
12 Responsibility for Administration, would you read
13 the second paragraph there, please, sir.

14 A. It is further the intent of this
15 ordinance that the function of the County Council,
16 under this ordinance, shall not include hearing and
17 deciding questions of interpretation and
18 enforcement which may arise, but that the County
19 Council shall have only the responsibility for
20 acting on proposals for amendment for repeal of
21 this ordinance and for establishing a schedule of
22 fees and charges as herein provided.

23 (DFT. EXH. 142, Internal County Memo,
24 Re: Status of Manning Property, was presented.)

25 BY MR. JOHNSON:

1 Q. Thank you.

2 Now, you were also asked some questions
3 about which map you used for permitting purposes
4 and why. I want to show you a document
5 dated -- marked Defendant's 142.

6 Do you recognize Defendant's 142 as a
7 memo from Terry Brown, an interim planning
8 director, to you, dated October the 16th, 1998?

9 A. Yes. And looking at it, I recall I had
10 discussions with Terry Brown and he wrote this in
11 response to our discussions.

12 Q. In the second paragraph, the second
13 sentence, does he state:

14 By letter of directive for FEMA, we are
15 required to use the proposed maps, the flood
16 determinations, and permitting purposes when
17 they're distributed. The maps are not used for
18 insurance purposes until they're approved.

19 Is that what he said?

20 A. Yes.

21 Q. And is that what y'all did, at least at
22 that time?

23 A. Yes. And later discussion --

24 Q. Well, actually --

25 A. Excuse me.

1 Q. -- did you have to make any permitting
2 decisions regarding the Manning property? Did they
3 submit applications for any permits other than the
4 one that was denied as being incomplete?

5 A. That's the only one I'm aware of. I
6 don't think there were any others.

7 Q. Now, looking at Plaintiff's Exhibit 4,
8 the paragraph you were asked about, about May of
9 1999 -- and would you read that paragraph into the
10 record.

11 A. Burroughs & Chapin asked the County for
12 permit to make minor improvements to levees.
13 County initially denies permit for levee
14 improvements because of FEMA's request that the
15 most recent preliminary flood be used for
16 decision-making purposes.

17 The recent map places the levees in the
18 floodway, which requires greater restrictions on
19 construction. But County administrator makes
20 decision to base County floodplain decisions on '94
21 flood map, which is the last map to be finalized by
22 FEMA. This map does not include levees in a
23 floodway.

24 Later, the administrator postpones
25 permit approvals until after the flood maps were

1 finalized.

2 Q. Now, is this something that was done in
3 the month of May, 1999?

4 A. Which part of it?

5 Q. All of it. Was that a description of
6 what was -- activities or things that were done,
7 summarized, that were done during the month of May,
8 1999?

9 A. This being the official record, I would
10 assume it was accurate, that it was read at the
11 time.

12 MR. JOHNSON: Thank you. That's all we
13 have.

14 MR. GRIER: That's it, Your Honor.

15 THE COURT: All right, fine. You're
16 free to be excused.

17 (The proceedings were adjourned at 6:14
18 p.m.)

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25

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3

4

Columbia Venture, LLC,

5

Plaintiff,

6

vs.

CASE NO. 2010-CV-40-8943R

7

Richland County,

8

Defendants.

9

10

PROCEEDINGS: TRIAL - VOLUME XIV
(Pages 2607 through 2682)

11

12

BEFORE: THE HONORABLE JOHN HAMILTON SMITH

13

DATE: November 15, 2012

14

TIME: 10:00 a.m.

15

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, SC

16

17

REPORTED BY: Susan M. Valsecchi, CRR
Registered Professional Reporter

18

19

20

A. WILLIAM ROBERTS, JR., & ASSOCIATES

21

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25

1 MR. LYDON: Your Honor, Defendant calls
2 Michael Criss.

3 THE COURT: All right, sir. If you
4 would please just come around to the witness box
5 over there. But before you have a seat, if you
6 would please raise your right hand.

7 Do you swear the testimony you give in
8 this case will be the truth and nothing but the
9 truth so help you God?

10 THE WITNESS: I do.

11 THE COURT: All right. Please have a
12 seat and then state your name for us.

13 THE WITNESS: My name Michael is P.
14 Criss.

15 MICHAEL P. CRISS
16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LYDON:

19 Q. Good afternoon, Mr. Criss. Where do
20 you live?

21 A. I live at 108 Gold Road in Lexington,
22 South Carolina.

23 Q. And where are you employed?

24 A. I am currently self-employed as a
25 consulting planner.

1 Q. And who do you do consulting and
2 planning work for?

3 A. My principal client these days is the
4 Town of Blythewood in Northern Richland County.

5 Q. Mr. Criss, what is your educational
6 background?

7 A. A baccalaureate in fundamental sciences
8 from Lehigh University in 1972 and a master of
9 regional planning from the University of
10 Pennsylvania in 1978.

11 Q. And what did you do after you got your
12 master's degree in 1978?

13 A. Moved to South Carolina with my wife
14 from Philadelphia and took up employment with
15 Lexington County as a county planner.

16 Q. And that would have been in 1979, I
17 believe?

18 A. Late, 1979, yes.

19 Q. Mr. Criss, what was your job at
20 Lexington County?

21 A. Initially, I was the county planner
22 working on the comprehensive plan and was promoted
23 to development administrator with responsibility
24 for zoning administration, subdivision regulation
25 review, floodplain management, coordination with

1 building officials and other members of the
2 department.

3 Q. Okay. And how long did you work at
4 Lexington County?

5 A. A total of 15 years.

6 Q. Okay. So when did you leave?

7 A. So that would have been late 1984 --
8 I'm sorry -- '94.

9 Q. All right. And what did you do when
10 you left Lexington County in 1994?

11 A. I went to work for the South Carolina
12 Department of Natural Resources in Columbia.

13 Q. And what was your position at the
14 Department of Natural Resources?

15 A. I was an assistant sectional chief in
16 the land resources division, a team of about twenty
17 professionals.

18 Q. What does the land resource division do
19 at the Department of Natural Resources?

20 A. At that time they had a wide variety of
21 duties, which included the state floodplain
22 coordinator's office.

23 My duties were focused on bringing the
24 resources of the DNR, Department of Natural
25 Resources, to bear upon the work of local

1 government planners trying to protect natural
2 resources.

3 Q. And what do you mean by -- what were
4 local government planners doing in connection with
5 the protection of natural resources?

6 A. We were encouraging them to consider
7 the protection of wildlife habitat, water supply
8 planning, floodplain management, and a variety of
9 natural resources-related planning efforts.

10 Q. And how long did you stay at the
11 Department of Natural Resources?

12 A. Six and a half years, until mid 2001.

13 Q. Okay. And what did you do when you
14 left the Department of Natural Resources in 2001?

15 A. I went to work for Richland County as
16 their deputy planning director.

17 Q. Okay. What does the deputy planning
18 director do at Richland County?

19 A. It was the head of the department.
20 There was no planning director position at that
21 time, because the county was anticipating possibly
22 sharing planning functions with the City of
23 Columbia, though that never evolved.

24 Q. So you sort of acted as the --

25 A. I was the de facto department head,

1 and, indeed, my title gradually evolved into
2 planning director in the ensuing years.

3 Q. How long did you stay at Richland
4 County?

5 A. I was there for a total of another six
6 and a half years.

7 Q. As deputy planning director and
8 ultimately planning director, what were your
9 responsibilities?

10 A. I supervised a 50-person department,
11 including building services, the building official
12 and their inspectors, the development services
13 division, which included the zoning administrator,
14 and other staff, the geographic information
15 services division, which included, at the time,
16 floodplain management responsibilities, road
17 naming, addressing, and other computer mapping
18 duties.

19 Q. Okay. Who did you report to?

20 A. I reported to Assistant County
21 Administrator Milton Pope at that time.

22 Q. As deputy planning director and then
23 ultimately planning director, were you familiar
24 with the county's zoning ordinance?

25 A. Yes.

1 Q. And does Richland County's zoning
2 ordinance contain part of its floodplain management
3 regulations?

4 A. It did at that time.

5 Q. Turn with me -- look with me, if you
6 will, at Plaintiff's Exhibit 250-A, which
7 is -- yeah, that's it right there.

8 A. 250-A.

9 Q. Have you got it?

10 A. Got it.

11 Q. All right. Look at Page 486.

12 Do you see where it says: Regulation
13 of Floodway Areas?

14 A. Yes, Section 26-73.4.

15 MR. BECKER: Okay. I'm sorry, Tommy,
16 what page are you on?

17 MR. LYDON: It's Number 46 at the
18 bottom.

19 MR. BECKER: 46.

20 MR. LYDON: 46, yeah.

21 MR. BECKER: Thank you, sorry.

22 MR. LYDON: They've got a lot of
23 numbers on them. It's Section 26-73.4.

24 MR. BECKER: I've got it.

25 BY MR. LYDON:

1 Q. Mr. Criss, what is Section 26-73.4?

2 A. That is the Regulation of Floodway
3 Areas.

4 Q. Okay. And what is Subsection 2 of that
5 section?

6 A. That is filling.

7 Q. Okay. Will you read that for us.

8 A. Yes:

9 Filling of floodway areas, dumping of
10 salvaged or scrap material, or the placing of
11 material or obstruction within a floodway area, in
12 such a manner as to impede free flow of water
13 during a time of flood, or in such a manner that
14 the elevation of floodwaters will be increased, is
15 prohibited.

16 Q. Okay. And when you became planning
17 director, or deputy planning director in 2001, was
18 this Subsection 2 in the floodplain overlay
19 district in effect?

20 A. Yes.

21 Q. And had it been amended or otherwise
22 revised?

23 A. Um, it had been revised prior to my
24 arrival.

25 Q. Right, but Subsection 2, I'm referring

1 to.

2 A. Oh, that section, no, not to my
3 knowledge.

4 Q. Okay. Was there another subsection
5 that had been --

6 A. I think 3 was revised.

7 Q. Okay. We'll get to that in a minute.

8 Was it your understanding -- or is it
9 your understanding that at that time a zoning
10 permit was needed in Richland County if you wanted
11 to construct a levee?

12 A. Yes, a zoning permit would have been
13 one of the required permits for construction of a
14 new levee or improvement of an existing levee.

15 Q. Okay. And how would that have been
16 effected?

17 A. The zoning administrator would be
18 primarily responsible for the issuance of the
19 permit.

20 Q. And back to Subsection 2, what is your
21 understanding -- let me back up -- what is the
22 purpose of restricting encroachments in a floodway,
23 Mr. Criss?

24 A. Generally to reduce the loss of life
25 and property during flood events, to reduce the

1 hazard and cost of rescue-and-relief operations
2 during and after flood events, to reduce the cost
3 of community repair of flooded infrastructure after
4 flood events.

5 Q. What do you mean by that?

6 A. Well, damaged roads, storm drainage,
7 water lines, sewer lines, utility lines, to reduce
8 the cost of the economic impact to the community
9 due to the disruption of business activities and
10 delivery of government services, to protect the
11 future capacity of the floodway to continue
12 carrying floodwaters.

13 Q. What does that mean, protect the future
14 capacity of a floodway?

15 A. To help assure that flooding is not
16 increased over time.

17 Q. Okay. Were the Richland County
18 ordinances more restrictive than FEMA's minimum
19 standards?

20 A. Yes, in that the county prevented the
21 impendence of the free flow of flood waters in
22 floodways at the time, rather than the minimum
23 federal standard of a no-rise certification from an
24 engineer that might enable encroachment in the
25 floodway.

1 Q. And how did Richland County's more
2 restrictive standards serve the interest of
3 protecting public health, safety and the general
4 welfare?

5 A. Well, the National Flood Insurance
6 Program standards are minimums. They do not
7 guarantee protection against the hazard of
8 flooding. Indeed, they're aimed primarily at the
9 100-year flood event. And we have seen evidence in
10 America in recent years of alleged 500-year events
11 15 years apart, in the American midwest back in
12 1993, or recently in 2008.

13 The federal government explicitly
14 encourages local jurisdictions participating in the
15 National Flood Insurance Program to exceed their
16 minimum standards and offers incentives to do so,
17 specifically the community rating system that
18 provides jurisdictions with superior floodplain
19 management regulations, reduced premiums for their
20 policyholders, flood insurance.

21 The federal flood maps do not account
22 for the continued urbanization and development of
23 the corresponding watersheds and the resulting
24 increase in stormwater runoff and potential
25 flooding.

1 Q. Okay. What do you mean by that?

2 A. The federal flood maps are
3 retrospective. They rely on historical flood
4 records and don't project the potential of
5 increased flooding in the future from urbanization
6 or from the possibility of more intense storms due
7 to climate change.

8 Q. And how do Richland County citizens
9 individually benefit from the county's more
10 restrictive rules against construction in a
11 floodway?

12 A. Well, they, themselves, are directed to
13 build more out of harm's way than would otherwise
14 be the case. Their neighbors have to do the same,
15 so that the neighbors aren't causing increased
16 flooding on the given property owner's land.

17 The property owner has the availability
18 of affordable flood insurance for their own assets.
19 Presumably they contribute fewer tax dollars to the
20 cost of flooding.

21 Q. Go ahead. Are you finished?

22 And would those same benefits enure to
23 those who actually own property in a floodway?

24 A. Yes, and there are some economically
25 viable uses of floodway lands, including

1 agriculture and forestry, horticulture, hunting and
2 fishing, eco-tourism, parks and open space,
3 recreation, possibly water-related activities.

4 (DFT. EXH. 87, Letter dated 6/20/01
5 from County to City, Re: Zoning ordinance
6 amendment, with attached ordinance, was marked for
7 identification.)

8 BY MR. LYDON:

9 Q. Mr. Criss, I'm handing you what's been
10 marked as Defendant's Trial Exhibit 87.

11 Can you identify this document for me?

12 A. This is an amendment to the county's
13 zoning ordinance regarding floodplain management.

14 Q. Okay. And when was this adopted?

15 A. The third reading by County Council was
16 on May 15th, 2001.

17 Q. Okay. And that was about the time you
18 started working at Richland County?

19 A. Just prior to my arrival in August.
20 And apparently the effective date was May 15th,
21 2001.

22 Q. And, to your knowledge, is this the
23 only amendment to the floodplain overlay zoning
24 district that occurred during the years 2001, 2002?

25 A. Yes, to my knowledge.

1 Q. And is this the amendment to Section 3
2 that you were referring to earlier?

3 A. Yes, permitted uses.

4 Q. Permitted uses, okay.

5 MR. LYDON: Your Honor, I would ask
6 that Defendant's Exhibit 87 be admitted into
7 evidence.

8 THE COURT: All right. It will be
9 admitted without objection.

10 MR. BECKER: No objection, Your Honor.

11 BY MR. LYDON:

12 Q. Mr. Criss, in terms of floodplain
13 management and flood protection what is the
14 difference between providing the possibility of
15 continuing use of a school facility that's located
16 in the floodway versus the possibility of an
17 entirely new mixed-use development?

18 A. Well, of course, an existing school
19 facility would be difficult to move/relocate. It's
20 not typically occupied 24/7, such as a residential
21 community would be. It would still benefit from
22 flood proofing and flood-prevention measures for
23 the safety of faculty and students and other users.

24 Q. Okay. And what about the difference
25 between a sewer plant and a new mixed-use

1 development; how does that differ with respect to
2 floodplain management?

3 A. The sewer plants and water treatment
4 plants and power plants are dependent on proximity
5 to water. The sewer treatment plants, in
6 particular, generally rely on gravity sewer systems
7 that run along streaming and river corridors, so
8 they're inherently located close to flooding
9 sources.

10 Mixed-use communities, of course,
11 involve homes and businesses and offices and
12 intense infrastructure, development, to support
13 them.

14 Q. Okay. And do they also attract more
15 people to the area?

16 A. More people living, working,
17 recreating. And a new community development in the
18 floodplain is coming to the nuisance, is risking
19 the exposure to the hazard that's already been
20 established by the community.

21 MR. LYDON: That's all the questions
22 I've got. Please answer any questions Mr. Becker
23 might have.

24 MR. BECKER: Your Honor, could I have
25 just like five minutes?

1 THE COURT: Sure, you can.

2 CROSS-EXAMINATION

3 BY MR. BECKER:

4 Q. Mr. Criss, how are you, my name is
5 James Becker, I represent the Plaintiff in this
6 action.

7 Mr. Criss, you spoke about a number
8 of -- well, let me first do this:

9 Now, you were not employed by Richland
10 County until August of 2001; is that correct?

11 A. That is correct.

12 Q. And I believe, upon coming to Richland
13 County, you had some discussions with senior staff
14 who were involved with stormwater management issues
15 regarding the amendment to the stormwater ordinance
16 that had occurred just shortly before your arrival
17 in April of 2001.

18 A. I learned about that during discussions
19 with staffing, planning and development.

20 Q. Right. And I believe there had been a
21 debate about the interpretation of the phrase
22 "impede the free flow of water" in the ordinance.

23 Is that correct?

24 A. There was discussion within the county
25 about the meaning, especially in the county

1 Q. Now, at this time, any such amendment
2 to the stormwater ordinance would require a
3 corresponding change to the zoning ordinance, which
4 your department was in charge of enforcing,
5 correct?

6 A. Yes, the two had overlapping language.

7 Q. Yes. And so this idea came before both
8 the -- it came before the planning commission, did
9 it not, do you recall that, this proposed change?

10 A. A change to the zoning code would have
11 to flow through the planning commission at some
12 point for their recommendation to County Council.

13 (PLF. EXH. 47, Excerpts from Minutes of
14 Richland County Planning Commission's March 1, 2004
15 Meeting, was presented.)

16 BY MR. BECKER:

17 Q. All right. Let me show you what's been
18 marked as Plaintiff's Trial Exhibit 47.

19 Now, Mr. Criss, this document is
20 entitled, Excerpts From the Minutes of Richland
21 County Planning Commission, March 1, 2004 Meeting.

22 Do you recognize this document?

23 Let me ask you this: You were the
24 planning director on March 1, 2004, correct?

25 A. Correct.

1 Q. Okay. Let me show you Plaintiff's
2 Exhibits 108, 109 and 110.

3 Take a look at Plaintiff's
4 exhibit -- well, it's 108, actually.

5 Now, I believe that -- would you agree
6 that all of Heathwood's -- Heathwood Hall Episcopal
7 school's property is in the regulatory floodway on
8 FEMA's flood maps?

9 A. Yes, as I recall, the entire campus was
10 within the floodway.

11 Q. And Exhibit 108, do you recognize that
12 as the Heathwood Hall Episcopal school gymnasium?

13 A. I do.

14 Q. And you were involved in reviewing and
15 approving a permit for construction for that
16 building?

17 A. Yes, I was part of a team of reviewers
18 on that project.

19 Q. Okay. And did they provide a no-rise
20 certificate in order to construct that building?

21 A. As I recall, yes. They initially
22 wanted to build at grade, and we required elevation
23 of the principal portion of the structure with the
24 ground level designed to pass the flow of flood
25 waters without toppling the structure.

1 Q. So they originally wanted to construct
2 at grade?

3 A. Yes.

4 Q. Is it more expensive to elevate a
5 structure like this than to build at grade?

6 A. Yes, typically for a gymnasium with a
7 high interior ceiling height, all the more
8 expensive.

9 Q. Take a look at Exhibit 109. Are you
10 familiar with this building?

11 A. The Nord Intermediate Middle School,
12 no, not yet.

13 Q. How about 110?

14 A. Single-family residence.

15 Q. Actually, that's a chapel.

16 A. Chapel, I'm sorry, oops.

17 Q. Do you see the little cross above the
18 lower porticos there?

19 A. I do see that now, thank you. Very
20 subtle.

21 Q. Are you familiar with this building at
22 all?

23 A. No, I do not think so. It looks like
24 it's elevated.

25 Q. Yeah. And the Plaintiff's 109, the

1 middle school building, does that appear to be an
2 elevated structure too?

3 A. I can't tell from this photo, but I do
4 see on the right-hand side indications of
5 elevation, maybe underneath parking. I can't quite
6 tell.

7 Q. Yeah. And just as it was for that
8 gymnasium, it would be more expensive to build
9 these structures if you do it elevated than if you
10 build on grade; is that right?

11 A. Typically, yes.

12 MR. BECKER: That's all I have for you,
13 Mr. Criss, thank you.

14 THE WITNESS: Thank you.

15 MR. LYDON: Just a couple quick
16 questions, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. LYDON:

19 Q. Mr. Criss, you were asked some
20 questions about the minutes of the Richland County
21 planning commission meetings by Mr. Becker.

22 Do you remember that?

23 What is the Richland County Planning
24 Commission?

25 A. Well, planning commissions in South

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND COURT OF COMMON PLEAS
3
4 Columbia Venture, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CV-40-8943R
7 Richland County,
8 Defendants.
9

10 PROCEEDINGS: TRIAL - VOLUME XV
11 (Pages 2683 through 2892)
12 BEFORE: THE HONORABLE JOHN HAMILTON SMITH
13 DATE: November 16, 2012
14 TIME: 10:00 a.m.
15 LOCATION: Richland County Judicial Center
16 1701 Main Street
Columbia, SC
17 REPORTED BY: Susan M. Valsecchi, CRR
18 Registered Professional Reporter
19
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 this case would be the truth, nothing but the
2 truth, so help you God?

3 THE WITNESS: I do.

4 THE COURT: Please have a seat and
5 state your name for the record, please.

6 THE WITNESS: I'm Charlie Compton.

7 CHARLIE COMPTON

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. JOHNSON:

11 Q. Mr. Compton, first of all, for the
12 record, how old are you?

13 A. I'm 67.

14 Q. Where do you live?

15 A. In Lexington, South Carolina.

16 (Interruption in the proceedings.)

17 BY MR. JOHNSON:

18 Q. You were telling me, you live where?

19 A. In Lexington, South Carolina.

20 Q. Could you tell the Court your
21 education.

22 A. Yes, I have a bachelor of science in
23 architecture from Clemson, as well as a master's of
24 city and regional planning from Clemson University.

25 Q. Where are you employed currently?

1 A. With Lexington County.

2 Q. And what's your current title or
3 position?

4 A. My current title is director of
5 planning and GIS.

6 Q. And would you tell His Honor how long
7 you have worked for Lexington County.

8 A. I've worked for a little over 38 years.

9 Q. In 1999 what was your position or
10 title?

11 A. I was director of planning and
12 development for about the first 29 of those years.

13 Q. And would you describe what your duties
14 were.

15 A. Yes. Planning and development include
16 all of the review of development projects,
17 including the engineering review, also all of the
18 building permitting, zoning permitting, as well as
19 the planning and mapping functions.

20 Q. Did you become aware that in February
21 of 1999, FEMA had issued a preliminary revised
22 flood map?

23 A. Yes.

24 Q. Did it involve the Congaree River?

25 A. Yes, it did.

1 Q. Did it involve an expansion of the
2 floodway affecting the Manning property, which is
3 across the river from Lexington County?

4 A. Yes, that was our first knowledge that
5 we had a floodway being preliminary mapped that
6 actually centered on the Congaree River.

7 Q. In May of 1999 were you aware that
8 Columbia Venture submitted a soil, sediment, and
9 erosion control permit application to perform some
10 work on the levees?

11 A. Yes.

12 Q. And what concerns, if any, did you have
13 regarding the changes that were being made in the
14 floodway and the FEMA maps and in the issue of
15 upgrading the Manning levees?

16 A. The first concern was the fact that
17 when we began to realize that what was happening on
18 that side was having an affect on the Lexington
19 County side, the levees created a particular alert
20 for us.

21 We had been blessed with some innocent
22 levees that were designed for low-level flooding,
23 for agricultural flooding. And the notion that
24 that might be widened, heightened, strengthened to
25 create that appearance of a wall on the other side,

1 did create a scary image for Lexington County
2 property owners.

3 Q. And when you say it would have affected
4 the Lexington side, what did you mean by that?

5 A. The fact that, as it currently existed,
6 certainly worst-case scenario is, we could get a
7 certain amount of water, but with good planning,
8 that's fine.

9 However, to have those levees
10 increased, strengthened, widened, or heightened,
11 that creates a situation where water that
12 previously might not come would be coming towards
13 Lexington County.

14 Q. Did you participate in meetings and
15 discussions with representatives from Richland
16 County regarding your concerns and regarding this
17 issue?

18 A. Yes, there were a number of
19 discussions. The first started about April of
20 '99 -- or March of '99, I think, was the first
21 meeting.

22 Q. Did you have any concerns over whether,
23 if the levees were upgraded, it might cause greater
24 flooding on the Lexington County side?

25 A. That was the number-one concern that we

1 had, was the possibility of a wall being created
2 there on the Congaree that would essentially put
3 the water towards us.

4 Q. And did you make those concerns known
5 to the personnel at Richland County?

6 A. Yes.

7 Q. Now, is there a difference between a
8 flood hazard area mapped by FEMA and where flooding
9 may actually occur when flooding does occur?

10 A. Yeah, you really have to remember that
11 FEMA is in the insurance program, and you can only
12 map existing conditions. Flood conditions are
13 constantly changing, generally rising because of
14 increased runoff, especially in smaller watersheds,
15 but even larger watersheds.

16 So the protection you need is going to
17 go beyond what an insurance map for that one
18 snapshot gives you.

19 Q. Can you cite me any example where
20 flooding didn't behave as it was projected to
21 behave on a FEMA flood map?

22 A. Well, it was always surprising. I
23 think the one that was probably closer to me back
24 in the nineties was when a low-pressure area
25 stalled out over Georgia and ended up putting a

1 500-year flood right on top of Albany, Georgia.

2 And then a week later, it turned around and came
3 back and did the same thing.

4 It scares you when you know that, even
5 though we're planning for a 100-year flood, as
6 close as that weather condition is just like we
7 had, you know, created a 500-year back to back.

8 So that's when we know, you know, in
9 reality, that we've got -- flooding is a
10 real -- it's not a natural disaster in the same
11 sense as some. We know it's going to occur, we
12 just don't know when it's going to happen.

13 MR. GRIER: Judge, I would interpose an
14 objection here as to any testimony about areas
15 other than the -- the Richland County and Lexington
16 County area that we're here about today.

17 THE COURT: Well, I think he was just
18 using that as an example of the concern that he had
19 had. I would overrule the objection.

20 BY MR. JOHNSON:

21 Q. Now, as a planner within County
22 administration, is it important to know and
23 recognize that distinction between the difference
24 between a map and where it actually floods?

25 A. Very definitely. Once again, that same

1 concept of the FEMA program is an insurance
2 program.

3 However, even making sure you address
4 the modeling that supports that program, you've got
5 to allow at least an additional foot of protection.

6 But for planning purposes, you have got
7 to make sure you're planning for the future, that
8 you're not permitting for something today that 20
9 years later, you've got to address the fact that,
10 Oh, floods are higher now.

11 So for planners, there's really two
12 different processes. You make sure you put in
13 place your insurance program so your residents in
14 your jurisdiction can get flood insurance.

15 However, for flood planning, you always
16 add more to it. We add 2 feet additional
17 protection in Lexington County all over the county.

18 Q. Is there value in imposing a
19 restriction on construction within a floodway that
20 is more restrictive than the FEMA mapping?

21 A. We've always felt like because a
22 floodway is absolutely the most critical element of
23 flood, that's where the water flows, and it assumes
24 that there won't be any flow anywhere else because
25 that can all be filled in. So that floodway has to

1 be protected, and that's why we consider it. You
2 don't do anything in a floodway.

3 Q. I want to refer you -- I can help you
4 find it.

5 Look in the first book of exhibits, and
6 I think you will find Plaintiff's Exhibit 204.

7 Do you recognize Exhibit 204 as being
8 FEMA's Appeal Resolution, dated September 26th,
9 2000?

10 A. Yes, that's what the cover has on this.

11 Q. Would you look on the second page and
12 the part involving executive summary in the second
13 paragraph -- are you there?

14 A. Yes, I'm there.

15 Q. Would you read the second paragraph
16 aloud.

17 A. Dr. Grego and the South Carolina DNR
18 appealed the assumptions and methods used to
19 determine the 1-percent annual chance, which is a
20 100-year discharge, which in turn is used to
21 determine the BFEs. Both appellants asserted that
22 the entire record for the USGS gage for the
23 Congaree River in Columbia from 1892 to the present
24 should be used, and each provided an alternative
25 statistical analysis of the data.

1 Q. Did that alleviate concerns you have
2 about possible impact of an improved levee, that
3 improved levee would cause on Lexington County?

4 A. Yeah. What I'm reading there is the
5 concerns that we express over what you use to
6 determine the BFEs. And that's always been our
7 number-one concern from the very beginning, as
8 early as -- of 1999, to make sure that we have
9 accurate flow numbers for the purpose of the BFE
10 part of it. Our concern about the levees goes
11 beyond that.

12 Q. Can you explain to me Lexington
13 County's standard for encroachment in a floodway?

14 A. On the face of it, there is no
15 encroachment allowed. We do have a variance
16 process, though, like all jurisdictions are
17 required to have.

18 MR. JOHNSON: Thank you. Answer any
19 questions counsel has.

20 THE COURT: All right, sir, you may
21 examine.

22 MR. GRIER: Judge, if I may take just a
23 minute or two to get this ready.

24 THE COURT: That's fine.

25 CROSS-EXAMINATION

1 BY MR. GRIER:

2 Q. Good morning, Mr. Compton. My name is
3 Manton Grier. I represent the Plaintiff here. And
4 you and I met just when you came in the courtroom
5 today and reminisced a little bit about Charlie
6 Shealy, the old clerk of court over in Lexington.

7 Do you remember him?

8 A. Uh-huh.

9 Q. All right. You're not a hydraulic
10 engineer, are you, sir?

11 A. No.

12 Q. I'm not either.

13 But you don't know how to set up or
14 construct these hydraulic models, the HEC-2 model
15 or the HEC-RAS model or the RMA-2, two-dimensional
16 model? You don't know how to set those up, right?

17 A. No. I'm a user, not an operator.

18 Q. And refer, if you would -- let's look
19 at the -- that Exhibit 204 that you were asked
20 about.

21 A. I'm sorry, I closed that up.

22 MR. GRIER: Your Honor, do you have a
23 color copy of this document? Is yours in color, by
24 the way?

25 THE WITNESS: The color probably is...

1 THE COURT: I have a color one.

2 MR. GRIER: Yours is in color.

3 BY MR. GRIER:

4 Q. It's kind of hard to read this document
5 if it's not in color.

6 A. Yes, it's in color.

7 Q. Let's take a look at the -- Page 29
8 under Conclusions, the last paragraph there, it
9 says:

10 While FEMA seeks to use caution when
11 determining flood hazards, we must disagree with
12 Dr. Grego's assertion that the upper 95-percent
13 confidence limit of the statistical analysis of the
14 Congaree River gage should be used as the discharge
15 in the hydraulic calculations, rather than the
16 point estimate from the same statistical analysis.

17 The NFIP -- and I think that stands
18 for National Flood Insurance Program -- is based on
19 the 100-year flood as the standard level of risk.
20 Using the upper 95-percent confidence limit rather
21 than the point estimate is the same as using a
22 less-probable flood as the standard for flood
23 insurance and floodplain management.

24 Mapping flood hazards based on a flood
25 less probable than the 100-year event would

1 contradict the National Flood Insurance Program's
2 statutory mandate and be inconsistent with decades
3 of nationwide practice.

4 Now, did I read that correctly?

5 A. Yes, I followed you.

6 Q. All right. And Dr. Grego urged FEMA to
7 use a higher discharge number, did he not, sir?

8 A. Yes, he did.

9 Q. And FEMA disagreed with that, did they
10 not, sir?

11 A. That's correct.

12 Q. In fact, what they're saying here is
13 that they're required under their statute, the
14 National Flood Insurance Act, to do flood mapping
15 based on a 100-year flood, not a 500-year flood.
16 Isn't that correct, sir?

17 A. That's correct.

18 Q. Now, you said that the National Flood
19 Insurance Program deals with flood insurance. And
20 that is true, in part, but FEMA also plays a role
21 in flood mapping, do they not, sir?

22 A. That's correct. They provide the maps
23 for that program.

24 Q. And the National Flood Insurance Act
25 authorizes FEMA to promulgate flood elevations

1 determinations for land use purposes.

2 Are you aware of that, sir?

3 A. Right. They furnish maps to local
4 governments to use if you are going to agree to
5 participate in the flood insurance program.

6 Q. And they publish those flood elevations
7 for land use purposes, do they not, sir?

8 A. That's for use for local governments.
9 You must meet that as a minimum standard to be in
10 the flood insurance program.

11 Q. But it's not only for insurance, but
12 the local government is supposed to adopt
13 floodplain management regulations that are
14 consistent with the minimum standards that FEMA
15 has, correct?

16 A. That's -- certainly. I just wanted to
17 make it clear that it is the minimum standard,
18 because we adopted our flood ordinance a year
19 before they published the first maps in Lexington
20 County.

21 Q. Now, are you aware that under the
22 National Flood Insurance Act, regulations that are
23 promulgated by FEMA, that those regulations allow
24 improvements in a regulatory floodway if it can be
25 demonstrated through hydrologic and hydraulic

1 modeling, that whatever the improvement is to go in
2 a floodway, that it will not cause a rise in the
3 levels of the base flood.

4 Are you aware of that, sir?

5 A. Right, because of a no-rise
6 certification.

7 Q. All right. And does the Lexington
8 County -- you talked about the Lexington County
9 standard.

10 Does Lexington County allow
11 encroachments in a floodway if you can demonstrate
12 a no-rise?

13 A. No, we do not.

14 Q. You do not?

15 A. As a part of a variance request, we
16 require them to meet the four standards published
17 by FEMA, essentially, you know, with the minimum
18 amount of risk, hardship. One of those is no harm
19 to anyone else.

20 You could use a no-rise if you wish, if
21 you're dealing with a situation where the appeal
22 body feels like it is justified, and they would
23 make sure there is a no-rise. But a no-rise coming
24 in the door does not get you encroachment into a
25 floodway in Lexington County.

1 Q. Okay. Now, what about the town of
2 Cayce, are you familiar with their -- of their
3 standard?

4 A. The town of Cayce now -- this is
5 different times. They had their own standards back
6 then. Now we have a countywide -- in which our
7 engineering staff does all of it.

8 Back then, Cayce would have had their
9 own standards and enforced their own.

10 Q. Back then, what are you saying?

11 A. I mean, during the time that we're
12 talking about with the publication I'm looking at
13 here.

14 Q. And would Cayce have been consistent
15 with the FEMA minimum standard, the no-rise
16 standard?

17 A. To be in the insurance program, they
18 would have had to at least meet that standard.
19 They would have to.

20 Q. All right. But that was their standard
21 back then?

22 A. I could not speak to that because they
23 did their own enforcement of that during that time
24 period.

25 Q. And you're aware of a number of

1 communities in the state that adhere to the FEMA
2 minimum standard?

3 A. I have no knowledge of that one way or
4 the other. I don't doubt it, though.

5 Q. Okay. Now, the actual flood
6 insurance -- were you -- you were with Lexington
7 County in 1975. Is that right?

8 A. I started in '74.

9 Q. You started in '74, okay.

10 A. Right.

11 Q. And were you aware that there was an
12 Effective Flood Insurance Rate Map and Flood
13 Insurance Study for Lexington County that was dated
14 in 1994/1995?

15 A. Yes.

16 Q. And were you aware that FEMA started
17 re-mapping the Congaree River floodplain in
18 Lexington in 1997/1998?

19 A. That's correct.

20 Q. And were you aware that they
21 promulgated a Flood Insurance Rate Map -- a Revised
22 Preliminary Flood Insurance Rate Map -- and Flood
23 Insurance Study for Lexington County in February of
24 1998?

25 A. Right.

1 Q. Are you aware of that, sir?

2 A. Uh-huh.

3 Q. And they set a floodway in that Revised
4 Preliminary Flood Insurance Rate Map and Flood
5 Insurance Study for Lexington County that was
6 somewhat smaller than the floodway that had been on
7 the effective map.

8 Are you aware of that, sir?

9 A. Uh-huh.

10 Q. You need to say yes or no.

11 A. Yes.

12 Q. Yes, sir.

13 And you are aware, are you not, that on
14 June 5th of 1998, FEMA came out with a Revised
15 Preliminary Flood Insurance Study and Flood
16 Insurance Rate Map for Richland County?

17 A. All right. You've got some dates in
18 there that I couldn't absolutely attest to, but the
19 timetable does feel appropriate.

20 Q. And you recall that map expanded the
21 floodway substantially in Richland County?

22 A. That's correct.

23 Q. And that was -- you recalled -- or
24 maybe you do or do not -- that Richland County
25 asked FEMA not to publish that map for appeal and

1 comment?

2 A. I'm not aware of what they may have
3 done or not done with respect to that. I can't --

4 Q. Okay. But you do know that FEMA
5 published the Lexington County map for appeal and
6 comment?

7 A. Yes.

8 Q. You are aware of that?

9 A. Yes, yes. We were going through that
10 process at the time.

11 Q. And did Lexington County appeal that
12 map?

13 A. No, not at that time, uh-huh.

14 Q. In fact, nobody appealed that map, did
15 they?

16 A. No, that was a later -- you know, later
17 appeals, but not that one.

18 Q. And the map -- actually, the appeal
19 period ended sometime in, I believe, August --

20 A. Yeah.

21 Q. -- of '98?

22 A. Once again, I would have to research
23 the records. That sounds generally like the
24 timetable, but back then, we were -- the published
25 maps would only show your side. I mean, it stopped

1 in the middle of the river. We were only given
2 Lexington County.

3 They never published it as a common
4 boundary. They were published independently of
5 each other. So we had the best knowledge of what
6 was on our side of the Congaree River.

7 Q. And then in February 25th, 1999, FEMA
8 came out with new maps for both Lexington and
9 Richland?

10 A. Yes. I do remember that date
11 specifically.

12 Q. And it reduced the floodway on the
13 Richland side of the river, did it not, sir?

14 A. Wait a minute. That was the first time
15 I remember seeing -- seeing, publicly, the
16 increased floodway.

17 Q. Okay. Well -- and I have the maps
18 here. We can look at them, if you would like to
19 look at them.

20 A. Yeah, yeah. I mean, I can certainly
21 look at it and read it, but I don't have --

22 Q. If I tell you that the floodway went
23 from almost Bluff Road to about halfway -- from
24 Bluff Road to the river on that new map, February
25 25th, 1999 --

1 A. Yeah, but we -- what I recall is the
2 fact that it was somewhere between Bluff Road and
3 the river.

4 Q. Okay. But do you recall that the
5 floodway in Lexington County essentially stayed the
6 same?

7 A. Yes, I am.

8 Q. And do you know that Richland County
9 asked FEMA not to publish the Richland County map?

10 A. No. Once again, I'm not aware of what
11 they may have requested with respect to that.

12 Q. All right. And then are you aware that
13 on August the 12th of 1999, FEMA came out with new
14 maps for both Richland and Lexington Counties?

15 A. Yes, I am.

16 Q. These were revised preliminary maps?

17 A. That's right.

18 Q. And the floodway moved from the -- from
19 the -- where it was on the February 25th, 1999 map,
20 to the levees?

21 A. Right.

22 Q. All right. And do you recall that the
23 floodway in Lexington County essentially stayed the
24 same?

25 A. Yes, I am.

1 Q. All right, sir.

2 A. But we were aware of both at that time.

3 Q. Okay. Now, and then in September of
4 2000, FEMA came out with new Revised Preliminary
5 Flood Insurance Rate Maps and Flood Insurance
6 Studies for both Lexington and Richland?

7 A. Yes.

8 Q. And are you aware that the floodway in
9 Richland County expanded, in some places, over a
10 mile from the river?

11 A. I don't know the exact distance, but I
12 know it expanded.

13 Q. Okay. But the floodway in Lexington
14 County, again, essentially stayed the same, did it
15 not?

16 A. That's correct, sir.

17 Q. All right. Now, you were with
18 Lexington County in 1974?

19 A. Uh-huh.

20 Q. Were you aware of the flood that took
21 place in 1976 on the Congaree River?

22 A. From historically reading it. I did
23 not personally witness it, or go down there, but
24 just from reading history.

25 Q. You didn't go down and look at it?

1 A. No, I did not witness it.

2 Q. Do you recall that the Lexington County
3 floodplain flooded during that flood?

4 A. Yes, yes. Or at least that's what the
5 record shows.

6 Q. All right. And do you recall that
7 the -- there was a breach in the levees -- the
8 portion of the levees that was owned by the City of
9 Columbia during that flood? Do you recall that?

10 A. Once again, my recollection of that is
11 simply reading the record of it, and I don't recall
12 the specific dates. But in reading, there were
13 occasions when there were a breach problem there
14 with the Columbia facility.

15 Q. All right. Let's take a look at
16 Defendant's -- Plaintiff's Trial Exhibit Number 3.

17 Have you got that in front of you?

18 A. I assume it's in this first book.

19 Q. Yeah, it should be in the first book.

20 A. Yeah. It's Richland County Flood
21 Study?

22 Q. Yeah. And that's dated July 1995?

23 A. Yeah, July 17, '95.

24 Q. Right.

25 And this would have been the Effective

1 Flood Insurance Study for Richland County all
2 throughout this period when the Revised Preliminary
3 Flood Insurance Rate Maps and Flood Insurance
4 Studies were being put forth by FEMA?

5 A. Right.

6 Q. Okay. Now, if you look on Page 8, up
7 at the top, the first paragraph says:

8 The floods on the Congaree River
9 between the confluence of Gills Creek and the City
10 of Columbia are affected by a levee built along the
11 east bank of the river.

12 Now, that's referring to what's known
13 as the Manning levee, is it not, sir?

14 A. I assume so, because that's the
15 location of it, Gills Creek and -- I don't know
16 what they mean by the City of Columbia, where
17 they're pinpointing that. But that's certainly in
18 that area.

19 Q. Okay. Elevations along the top of the
20 levee vary but are above the elevations of the
21 100-year flood. The levee was built in the mid
22 1960s to protect farmland in the floodplain along
23 the east side of the river.

24 At the time this report was prepared,
25 development within the area protected by the levee

1 included sewage treatment facilities owned by the
2 City of Columbia, a private school operated by the
3 Episcopal church, and offices, barns, storage
4 sheds, and other facilities owned by the developer
5 of the levees.

6 The remainder of the property within
7 the levee system is primarily used for agriculture.
8 During a flood in October of 1976, which was
9 approximately a 10-year flood, the levee directly
10 west of the sewage treatment facility was breached
11 in two places and the area within the levee was
12 flooded.

13 The breaches have since been repaired;
14 however, a major flood on the Congaree River could
15 be expected to cause similar failures of the levee
16 at other locations.

17 Now, that's the flood that we were just
18 talking about, is it not, sir?

19 A. Yes, 1976.

20 Q. And those two breaches were directly in
21 front of the levee that is in front of the sewage
22 treatment facility, according to this report. Is
23 that correct?

24 A. Well, I have to assume the location is
25 a little unclear, but it's in that stretch of the

1 Congaree River, certainly is what they're
2 describing.

3 Q. Now, during that same flood, the
4 Lexington County floodplain experienced flooding,
5 did it not, sir?

6 A. Yes.

7 Q. All right. Now, let's go back to
8 Plaintiff's Exhibit 204. That's that Appeal
9 Resolution document.

10 Now, in this document, on Page 12,
11 there are three questions that FEMA has here. Do
12 you see those?

13 Where will the dikes --

14 A. Fourth paragraph, after the fourth
15 paragraph?

16 Q. Yes, sir.

17 Where will the dikes most likely
18 breach? What width of breach is likely to occur?
19 How many breaches are likely to occur during a
20 100-year flood event?

21 Do you see those, sir?

22 A. Yes.

23 Q. Now, in this report -- and this was a
24 technical report that accompanied the Revised
25 Preliminary Flood Insurance Study and Flood

1 Insurance Rate Maps that FEMA issued in -- on
2 September 26, 2000. Is that correct?

3 You have seen this before, have you
4 not?

5 A. That's correct. I was just verifying
6 the date on the front. It's September 26th, 2000.

7 Q. Now, FEMA, in this report, did not
8 conclude that these levees during the 100-year
9 flood were going to be completely washed away, did
10 they?

11 A. That was the general impression that we
12 got from their study.

13 Q. Rather, they concluded that there were
14 going to be discrete breaches in the levee, did
15 they not, sir?

16 A. Well, I don't know -- you're saying
17 what their words were. I don't know what words
18 they used.

19 Q. Okay.

20 A. No, the levees were not going to
21 disappear completely. There were going to be
22 failures of the levee.

23 Q. All right. Let's take a look at -- it
24 says the first question here was answered by
25 investigating the potential for failure by piping.

1 Do you know what they mean by piping?

2 A. That's the weathering down or weakness
3 underneath the levee so the water can flow through
4 it.

5 Q. That's when the water kind of builds up
6 on the levee and it erodes, say, a hydraulic pipe?

7 A. A weak spot. It can go through it.

8 Q. Okay. Now, the piping is the most
9 likely mode of failure, as demonstrated by the two
10 areas that failed in '76.

11 Shear failure itself is not a likely
12 cause of breaching because of the relatively low
13 height of the levees to the ground, and the fact
14 that they have gained some degree of stability
15 through consolidation over many years. It is
16 possible that there could be some sloughing and
17 sliding of the steeper landslide slopes, but this
18 would probably be due to the effect of seepage
19 causing piping and removal of some landside toe
20 support, as is suspected in the south failure
21 during the '76 flood.

22 Dike sections that had conditions
23 conducive to piping failure were identified. These
24 are shown in Figure 2.

25 And Figure 2 is on the next page.

1 A. Right.

2 Q. And you see -- do you see the levee
3 going along the Congaree River?

4 A. That's correct.

5 Q. And those yellow areas there on that
6 levee are identified as potential weak spots. And
7 then you see what has been referred to as the cross
8 levee, sort of behind I-77 that goes through there?

9 A. Right.

10 Q. They have identified a number of areas
11 that are weak spots there.

12 A. Right.

13 Q. Now, it says the second question was
14 answered by considering the breaches that occurred
15 in '76 and considering the ratio of hydraulic head
16 across the levee to the base width of the levees.
17 And they say that's the H/L.

18 And they go on in the last sentence
19 there to say:

20 Based on the relative H/L ratio and
21 extensive engineering experience, it was determined
22 that a breach would likely be about 120 feet wide.

23 Do you see that, sir?

24 A. Right.

25 Q. Now, it says the third question was

1 answered by analogy to the 1976 flood. Based on
2 the experience of the two failures in 1976, it
3 would be reasonable to assume that the levee could
4 fail by piping at two or possibly three weak
5 locations during the occurrence of the 100-year
6 flood.

7 Do you see that, sir?

8 A. Right.

9 Q. Now, so FEMA is talking about two,
10 maybe three breaches of 120 feet wide for each
11 breach. Is that correct?

12 A. That's what's in that report, yes, sir.
13 That's correct.

14 Q. Now, they go on -- look on Page 21 at
15 the top. And they discuss -- in the intervening
16 pages there, they discuss some two-dimensional
17 model that they did.

18 Do you see that, sir?

19 A. Right.

20 Q. And they have color diagrams of the
21 output of those two-dimensional models in this
22 report, do they not, sir?

23 A. Right.

24 Q. And do you understand that a
25 two-dimensional model is more sophisticated than a

1 one-dimensional model?

2 A. Correct.

3 Q. Okay. In fact, a two-dimensional model
4 is the only hydraulic model as compared to a
5 one-dimensional model that can tell you what the
6 depth is at any portion of the floodplain and the
7 velocity at any portion of the floodplain. Is that
8 correct?

9 A. That's right. You can deal with
10 cross-sectional look.

11 Q. Now, in fact, the one-dimensional model
12 is based on cross-sections, as you just said,
13 right?

14 A. Uh-huh.

15 Q. Is that correct?

16 A. Well, the cross-section gives you the
17 look that it's two dimensions that they're showing.

18 Q. Well, isn't the two-dimensional model
19 based on a computer grid that replicates the
20 topography of the floodplain?

21 A. You're dealing with the terrain as it
22 exists.

23 Q. All right. Now, look at the top there.
24 It says:

25 The results show that approximately 9.6

1 percent of the total Congaree River discharge will
2 enter the Richland County side of the floodplain
3 during -- through the two breaches.

4 Do you see that? Very first sentence
5 up at the top on Page 21.

6 A. Yes.

7 Q. All right. So we're talking about
8 roughly 10 percent, 9.6, round it off to 10
9 percent.

10 And look on Page 24, if you would,
11 third paragraph there. It says:

12 During the '76 flood, Manning's dike
13 was breached near the City of Columbia wastewater
14 treatment plant. Even though the floodplain in
15 Richland County was flooded during this event,
16 observations indicate that a significant portion of
17 the Congaree River floodwaters were conveyed by the
18 Lexington County-side floodplain.

19 Do you see that, sir?

20 A. Yes.

21 Q. Now, the discharge of the 100-year
22 flood that FEMA determined in this study was
23 292,000 cubic feet per second. Is that correct?

24 A. Yeah, that's what they list in that
25 paragraph.

1 Q. Now, so roughly 29 -- once these
2 breaches -- once we get these breaches in the
3 levee, based on this two-dimensional modeling,
4 roughly 29,000 cubic feet per second of water will
5 enter the Richland County floodplain. Correct?

6 A. That's what the report says, that's
7 correct.

8 Q. And the rest, if we round it off, let's
9 say, to 30, we're going to have about 260,000 cubic
10 feet per second that's going to be flowing down the
11 channel of the river and the Lexington side of the
12 floodplain. Is that correct, sir?

13 A. That's correct.

14 Q. Now, if we look -- let's take a look on
15 Page 20. I'm looking at Figure 7. Do you see
16 that?

17 A. Uh-huh.

18 Q. It's in color. And do you see the
19 little color chart that you see there, whatever
20 that is there?

21 A. Uh-huh.

22 Q. It's got water surface elevation. Do
23 you see that?

24 A. On the upper is water surface. The
25 bottom is velocity.

1 Q. Right.

2 A. The top one is water surface.

3 Q. That's right. That bottom one shows
4 you velocity, but the top one shows you the water
5 surface elevation?

6 A. That's correct.

7 Q. And this is water surface elevation,
8 Manning levees with two piping breaches.

9 Do you see that, sir?

10 A. Right.

11 Q. Now, can you see in this diagram -- do
12 you see the mesh --

13 A. Uh-huh.

14 Q. And I'm going to -- do you see the mesh
15 of the two-dimensional model here?

16 A. Right.

17 Q. Do you see that?

18 A. (Nodding.)

19 Q. Can you see the little brown line going
20 down --

21 A. Right.

22 Q. -- the Congaree River?

23 That's the levees, isn't it?

24 A. That's the levees. That's correct.

25 Q. Can you see that they have removed in

1 the geometry of this model that ring levee that we
2 looked at?

3 A. Over here?

4 Q. Yeah.

5 Do you see that?

6 A. They have taken that out. Just 77 is
7 shown.

8 Q. So they have taken that ring levee out
9 and they have taken the Gills Creek levee out of
10 the geometry of the model, have they not, sir?

11 A. That's correct.

12 Q. And they've modeled these
13 breaches -- you can see them in the little hole
14 there in the Manning levee.

15 Now, if we look at that chart on the
16 left there, the top level is 145 feet?

17 A. Uh-huh, right.

18 Q. And that's blue?

19 A. Right. That's coming in at the top of
20 the Congaree.

21 Q. Yeah. And it's dark blue and it goes
22 to sort of a light blue, down to 140 feet.

23 Do you see that, that 5 feet in there
24 is kind of blue?

25 A. Right.

1 Q. And then we go -- then it starts a
2 green color. Do you see that it goes from kind of
3 a dark green to light green?

4 A. Yeah, uh-huh.

5 Q. And that's from 134 feet to 104 feet.
6 Do you see that, sir?

7 A. That's correct.

8 Q. And then we've got yellow there, and
9 that's 133 feet to 134 feet. Is that right?

10 A. That's right.

11 Q. Then we've got kind of an orange?

12 A. Uh-huh.

13 Q. 132 to 133, and then we get into kind
14 of a red color. And that's 130 to 132. Do you see
15 that?

16 A. That's right.

17 Q. And if you look, you compare the two
18 floodplains there, the Richland floodplain is -- it
19 starts -- there's a little bit of green there by
20 the levee, and then it gets yellow, orange, and
21 then red.

22 Do you see that?

23 A. That's correct.

24 Q. Whereas on the Lexington side, up near
25 the top, you've got a blue, then it goes to green.

1 Pretty much on the whole floodplain, does it not,
2 sir?

3 A. That's correct.

4 Q. That's correct.

5 And that blue area up at the top, isn't
6 that the location of the Riverland Park Estates in
7 there?

8 A. It generally should be there. There's
9 not anything on there to depict, but it certainly
10 should be in that general location.

11 Q. All right. Now, FEMA, in its flood
12 mapping, used these two-dimensional models, it
13 says, in this report for informational purposes,
14 but then it switched to these one-dimensional
15 models to determine the base flood elevations,
16 correct?

17 A. Uh-huh.

18 Q. Is that correct?

19 A. Yes.

20 Q. And they -- in setting the base flood
21 elevation for the Lexington side of the river, they
22 assumed that no flow would be behind these Manning
23 levees. Is that correct?

24 A. That's correct. And we have no problem
25 with that.

1 Q. Okay.

2 A. Worst case scenario is absolutely the
3 best for floodplain management for a local
4 jurisdiction.

5 Q. Okay. So you don't have a problem with
6 that?

7 A. We've never had a problem with that.
8 We want to plan for the worst possible thing to
9 happen. If we have identical scenarios to '76, we
10 want to plan for that.

11 Q. So if somebody is going to build a
12 house or something in a floodplain, you want them
13 to elevate over that high BFE?

14 A. That's correct, yes.

15 Q. Because there's a chance -- FEMA says
16 here that there's a chance that these levees are
17 going to breach in these three places, but there's
18 a chance they might not. Is that correct?

19 A. Well, there's always that, and what may
20 happen when it actually occurs, and there's going
21 to be different things that are going to happen,
22 depending on a particular flood.

23 If we repeat '76, we want to be
24 prepared for what happened in '76.

25 Q. Right.

1 But the chance that those levees won't
2 breach, that's one of the reasons they assumed that
3 there wouldn't be any flow behind them when they
4 set the BFE over in Lexington. Is that correct?

5 A. That's right. That's what you call
6 worst-case scenario was used for Lexington County
7 in the map, and that was not what we contested at
8 all.

9 Q. Now, they did conclude in here that the
10 worst flooding in Lexington County would occur
11 before any levee breaches?

12 A. Say that again.

13 Q. That the worst flooding in Lexington
14 County would occur before any levee breaches?

15 A. I'm not familiar with that statement.

16 Q. Okay. Let's find it in here.

17 A. Yeah, if it's in there, I will
18 certainly attest it to them, if that's the way they
19 said it.

20 Q. I don't want to try to trick you.

21 A. Yeah, yeah.

22 Q. If you look on Page 27 --

23 A. I have got it.

24 Q. -- the first page: The highest
25 water-surface elevation will occur at different

1 times for the floodplain with a dike that does not
2 withstand the 100-year flood.

3 Manning's dike and the Gills Creek dike
4 are both expected to breach in a 100-year flood.
5 Manning's dike will constrict flow along the
6 Congaree River increasing the water surface
7 elevation above what they would be without the dike
8 or levee in place.

9 When Manning's dike breaches, a large
10 volume of water will leave the Congaree Riverbed
11 area and enter the Richland County floodplain.

12 Two-dimensional models indicate that
13 roughly 10 percent of the total flow through the
14 Congaree River will be conveyed through Richland
15 County following a breach of Manning's dike.

16 And you and I talked about that.

17 THE COURT: Read further in that
18 paragraph you're reading from and you may find that
19 section you were talking about.

20 MR. GRIER: All right. Thank you,
21 Judge.

22 THE WITNESS: Yes, last sentence.

23 MR. GRIER: Let me get back on the page
24 here.

25 MR. JOHNSON: We object to help from