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SC Court of Appeals

RECORD ON APPEAL

RECORD ON APPEAL

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RECORD ON APPEAL

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DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the record on appeal

1. Complaint 01/12/2012
2. Deposition of Robert Glenn Barfield, R AIA, NCARB Rock Hill, SC
December 11, 2013 pg 30 line 11-~~18~~ ¹⁸ Typo
3. Deposition of Ronald E. Wright, P.E. Rock Hill, SC December 10, 2013
pg. 49 line 18-21, pg. 55 line 20, pg 74 line 6-10, 20, 21, ~~pg 77-78-79~~
pg 90 line 17 pg. ⁵77 line 14-25, pg. 78 line 1-3) pg 99 line 12-24
pg. 84 line 21-25, pg. 85 line 1-3 Exhibit I
4. Deposition of Timothy Elvy Brooks Rock Hill, SC August 15, 2013
pg. 22 line 22-25 pg. 23, line 1-8
5. 30(B)(6) Deposition of James Gwin Bagley, Jr Rock Hill, SC
August 15, 2013 p. 27:22-25 p. 28:1-23 p. 29:1-21 pg. 47 line 10-pg.
pg 55 line 5-9 p. 66: 17-25
6. James G. Bagley Jr affidavit dated August 7, 2014
7. Order/Summary Judgment 08/28/2014
8. Transcript of Proceedings York South Carolina August 11, 2014
pg. 56, line 23-25
9. Plaintiff's Exhibits
Exhibit B page 1-18 Berman and Wright report
Exhibit D Tim Brooks 1020 Willowbrook Drainage Study
Exhibit A(1) permit inspection card
Exhibit A(2) Certificate of Occupancy
Exhibit A photo of flooded house
Exhibit I p1-2 excerpt of Wright deposition
Exhibit F new floodplain
Exhibit G Rock Hill Capital Improvements list

p50:16

COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Nadine Brantley,

Plaintiff,

v.

The City of Rock Hill, a body politic and
Subdivision of the State of South
Carolina; and Wherry Construction Co.,
Inc.,

Defendants.

Case No. 2012CP4600146

COMPLAINT
(JURY TRIAL DEMANDED)

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DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Plaintiff Nadine Brantley, complaining of the above named Defendants, would respectfully show the following:

1. Plaintiff is the title owner of real property located at 1020 Willowbrook Avenue, Rock Hill, South Carolina in York County.
2. Defendant Wherry Construction, Inc. is a business organized and existing under the laws of the State of South Carolina and was responsible for the construction of the house at 1020 Willowbrook Avenue per site plan permitted and approved by the City of Rock Hill.
3. The defendant City of Rock Hill is a body politic and political subdivision of the state of South Carolina and was responsible for the permitting of the building site now known as 1020 Willowbrook Avenue and is responsible for planning, constructing, creating, and maintaining artificial man-made culverts and watercourses that service water runoff from Spencer Park, and which lie adjacent to Plaintiff's home
4. The defendant City of Rock Hill is responsible for studies, planning, monitoring, maintenance, remediation, cleaning, and monitoring involving drainage ditches, beds, channels, water courses, and culverts that lie adjacent to Plaintiff's property, including the monitoring and maintenance of storm, surface and flood water runoff from Spencer Park and city-maintained parking, roads, drainage ditches, gulleys, water courses, drainage beds, ditches, culverts and pipes described in paragraph (3) and which lie adjacent to Plaintiff's house at 1020 Willowbrook Avenue.

5. At all relevant times described, the City of Rock Hill knew, or was substantially certain, that the City had permitted a house site-plan for 1020 Willowbrook and was responsible for ongoing planning and monitoring of surface water, storm water, and surface water runoff though city-created watercourses flowing from Spencer Park through city maintained ditches and culverts permitting the flow of surface, storm and flood waters to impact Plaintiffs property, repeatedly flooding the same.
6. Plaintiff is informed and believes that the City of Rock Hill, despite knowledge, has failed to plan and mitigate flooding by routine cleaning and maintaining city ditches and culverts free of trash and debris causing clogging.
7. Plaintiff is informed and believes that the City of Rock Hill has, despite knowledge, overtly failed to correct flooding and overflow caused by inadequately small culvert pipes not large enough to prevent flooding overflow from city maintained watercourses, the existing 24' pipes being too small to adequately accommodate surface, storm and flood water flows.

FOR A FIRST CAUSE OF ACTION
AS AGAINST THE CITY OF ROCK HILL, SOUTH CAROLINA
(INVERSE CONDEMNATION)

8. Plaintiff is informed and believes that Plaintiff's property is surrounded by and lies adjacent to city-maintained public property comprised of Spencer Park, roadways, culverts, ditches, parking lots, drainage fields and rights of way.
- ✓ 9. Plaintiff is informed and believe that the City of Rock Hill, its employees, agents or assigns, were knowledgeable of and responsible for the situs, installation, construction, location, design, maintenance, and monitoring of surface, storm and flood water discharge from Spencer Park in Rock Hill via pubic creeks, watercourses, parking lots, roads, culverts, gulleys, ditches, and Spencer Park, lying adjacent to Plaintiff's property and home at 1020 Willowbrook Avenue.
10. Plaintiff is informed and believes that the City of Rock Hill approved the site plan for the construction of the residence now owned by Plaintiff at 1020 Willowbrook.
11. That on information and belief, the City of Rock Hill installed inadequately sized 24" culvert pipes with the city-maintained ditch and culvert watercourse to accommodate surface, storm and flood water drainage from Spencer Park and other city maintained properties the lie adjacent to Plaintiff's home, resulting in concentration, overflow, and flooding of Plaintiff's property.
12. On information and belief the 24" culvert drainage pipe installed by and through the City is too small and insufficient to properly accommodate the flow of surface waters from Spencer Park and city maintained watercourses, creeks, ditches, gulleys and culverts that lie adjacent to Plaintiff's home, resulting in reoccurring overflow and flooding of Plaintiffs' house.

13. That the City of Rock Hill has, despite knowledge, failed to maintain, clean, remove and keep clear debris from clogging culverts and watercourses adjacent to Plaintiff's property, resulting in overflow of surface, storm and flood waters repeatedly onto and through Plaintiff's property.
14. That despite knowledge of inadequately sized 24" drainage pipes, flooding, studies, and analyses undertaken by the City of Rock Hill, the City has failed to properly plan, mitigate, or prevent further reoccurring flooding of Plaintiff's property by cleaning and/or maintaining Spencer Park drainage fields, ditches, culverts, roads, rights of way, and drainageways that affect and physically lie adjacent to Plaintiff's property or by install of larger pipes larger than 24".
15. Plaintiff is informed and believes that the City of Rock Hill by refusing to address drainage pipes that are too small, and by refusing to maintain ditches and culverts free of debris, have caused the concentration, pooling, and channeling of water within city watercourses and the casting upon Plaintiffs property of reoccurring flood, surface and storm waters from city culverts, watercourses, and ditches.
16. Plaintiff is informed and believes that the conduct and inaction of the defendant City of Rock Hill, its agents, employees or assigns, by concentrating, channeling, and casting upon Plaintiff's property of flood waters has permanently and irreparably damaged plaintiffs' house, effecting a permanent taking of its entire economic value, and rendered it not inhabitable.
17. Plaintiffs are informed and believes that the taking caused by the defendant City of Rock Hill is continuous and substantial in nature and has permanently deprived plaintiff of the intended use of the house for occupancy, rental, or re-sale and that Plaintiff's property serves as a catch basis and drainage field for approximately 54 acres of city maintained public property, including Spencer Park.
18. Plaintiff is informed and believes that the public use for which plaintiff's property has been and is being taken by defendant, a public body, is for the collection, concentration, diffusion and drainage of storm, surface and flood waters from Spencer park, a city-owned and city-maintained public park, through its surface roads, watercourses, ditches, gulleys, culvert pipes and rights of way.
19. Plaintiff is informed and believe that the damages caused by the defendant, a public body, constitute a permanent taking of private property in violation of plaintiffs' rights as private landowner under the 5th Amendment and Article I, Section 13 of the South Carolina Constitution, for which plaintiffs have been and are being denied just compensation by the City of Rock Hill.

FOR A SECOND CAUSE OF ACTION
AS AGAINST THE CITY OF ROCK HILL, SOUTH CAROLINA
(GROSS NEGLIGENCE)

20. The above allegations of paragraphs (1) through (18) are restated here and incorporated herein verbatim.

21. Plaintiff is informed and believes the City of Rock Hill has performed repeated studies evidencing the need to mitigate flooding impacting Plaintiff's property and others, but has deliberately failed to remediate, plan, mitigate, or minimize flooding of Plaintiff's property which emanates from City-maintained properties, creeks and watercourses.
22. Plaintiff is informed and believes that the Defendant City of Rock Hill has channeled, concentrated, and cast upon Plaintiff's property surface, storm and flood waters draining from city maintained properties, including Spencer Park, after the City of Rock Hill knowingly permitted the site plan for Plaintiff's home for Wherry Construction, Inc. as described below.
23. Plaintiffs are informed and believe that at all times relevant to the events described above the defendant City of Rock Hill had a duty, was capable, had performed studies, and had adequate means to properly plan, minimize, mitigate, remediate, divert, supervise, control, maintain, direct, and/or re-direct storm water drainage to mitigate or prevent flooding of Plaintiffs' house, but failed to do so despite affirmative knowledge of reoccurring flooding of 1020 Willowbrook Avenue.
24. Plaintiff is informed and believes that defendant City of Rock Hill knew 24" culvert pipes servicing Spencer Park watercourses adjacent to Plaintiff's property were too small, and that the City had a duty to monitor, repair, or enlarge inadequate sized pipes to prevent flooding of Plaintiff's property, but knowingly failed to act.
25. Plaintiffs are informed and believes that defendant owed a duty of care to properly repair, permit, maintain, monitor, and correct surface water drainage from Spencer Park affecting Plaintiff's house, but knowingly failed to do after notice of flooding impacting the Plaintiffs' house.
26. That the City of Rock Hill's failure to address culvert debris, replace existing drainage pipes with larger drainage pipes, and failure to plan, mitigate, remediate, re-direct, or address reoccurring flooding is gross negligence, where the city has failed to exercise even slight care necessary under known circumstances of repeated flooding events in direct conscious disregard of Plaintiffs property rights.
27. That as a result of the City of Rock Hill's knowing failures to act, surface water runoff has repeatedly flooded Plaintiffs' house and has inflicted flood damages and harm to plaintiffs' real property, house, Plaintiff's solitude, mental comfort, peace, repose, and the ability to enjoy Plaintiff's real property and house.
28. Plaintiff is informed and believes that the City of Rock Hill's agents or employees did repeated studies and were aware of the channeling, directing, and casting upon Plaintiff's property of flooding damages affecting Plaintiffs' home and the destruction that would foreseeably result from future foreseeable flooding, but knowingly failed to act by enlarging pipes, diverting surface waters, or keeping culverts and ditches free of debris from public properties, including Spencer Park.
29. Plaintiffs are informed and believe that the defendant, its employees, agents or assigns did knowingly employ drainage pipes too small to accommodate and channel water runoff, resulting in over flow and casting upon Plaintiffs property of public surface, storm and flood waters.

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30. Upon information and belief, defendant, its employees or agents were grossly negligent by failing to exercise even the slightest care necessary under the circumstances to prevent further foreseeable flooding and flood damage to Plaintiffs' real property through a conscious failure to mitigate or prevent flooding where the City of Rock Hill knew, or should have known, that the drainage pipes were too small to accommodate surface water runoffs from Spencer Park, city watercourses, and city ditches and culverts.
31. Defendant City of Rock Hill, its agents and employees were grossly negligent, wanton, and reckless by failing to use even the slightest care necessary under the circumstances and employ the proper planning, remediation, mitigation, supervision and correction required to prevent the permitting of the property within city created flood zones, and in preventing overflow of surface waters by improper installation of drainage pipes and culverts larger than 24".
32. That by failing to install drainage pipes larger than 24", including but not limited to 54" or larger drainage pipes, the City of Rock Hill has caused channeling, pooling, concentration and the casting upon Plaintiff's property of flood, surface and storm waters repeatedly.
33. That the City of Rock Hill knowingly permitted the site plan for the construction of the home now owned by Plaintiff at 1020 Willowbrook, despite knowledge that the builder and contractor had poured the house's concrete slab and footings in violation of city-approved site plans for the house without an engineer's report.
34. Specifically, the City of Rock Hill knowingly approved construction site plan with no engineering study or report wherein city officials knew, or were substantially certain, that the house slab and footings were too close to set backs, drainage ditches, culverts and creeks servicing Spencer Park and had been poured with no engineering study.
35. As a result of surface, storm and flood water concentration, overflow and entry onto Plaintiffs lands from Rock Hill watercourses, culverts, ditches, creeks, and pipes, plaintiff has been injured in the amount of the taking of the entire economic value of the Plaintiff's real and private property, and is being denied just compensation by the defendant City of Rock Hill, a public body.
36. Plaintiff is informed and believes that defendant City of Rock Hill did not institute condemnation proceedings prior to the taking of Plaintiffs' property and that Plaintiff's property continues to exist in servitude to city maintained watercourses.
37. Plaintiffs are informed and believes that the City of Rock Hill knowingly employed and used a cost benefit analysis in determining not to undertake repair or maintenance of the Spencer Park ditches, culverts, and runoffs affecting Plaintiff's property and that the overt failures to act to remediate, mediate or redirect flooding is a knowing, deliberate, and calculated decision by City of Rock Hill officials.
38. Pursuant to § 16-5-60 of the South Carolina Code of Laws, (1976 as amended) plaintiffs are informed and believe that Plaintiff is entitled to prosecute the city of Rock Hill for the taking of Plaintiff's property for public drainage and use due to the repeated flooding, water damage, and destruction of Plaintiff's real property which have rendered the

property uninhabitable and converted it to a catch basin, concentrating, channeling, and servicing Public drainage needs of city-maintained properties, including Spencer Park.

39. Plaintiff is informed and believes that the conscious failure to act by the City of Rock Hill to prevent flooding by city Culverts, ditches, and pipes --despite notice-- constitutes a permanent taking in violation of Plaintiffs' 5th Amendment rights and Article I Section 13 of the South Carolina Constitution for which Plaintiff has been denied just compensation.

FOR A THIRD CAUSE OF ACTION
AGAINST THE CITY OF ROCK HILL, SOUTH CAROLINA
(NUISANCE)

40. The above allegations of paragraphs (1) through (38) are re-stated here and incorporated by reference as if set forth verbatim.
41. That despite knowledge of the need to abate flooding across Plaintiff's property, the City of Rock Hill has failed to act to correct concentration, channeling, and casting upon Plaintiff's property flood, surface and storm waters from city watercourses servicing Spencer Park.
42. Plaintiff is informed and believes that the Defendant City of Rock Hill despite multiple studies knew, or should have known, of the foreseeability of repeated episodes of flooding of Plaintiff's land, property and house due to the City's conduct, errors, or overt failures to act City-maintained lands, including runoffs and watercourses servicing Spencer Park that lie adjacent to Plaintiff's house.
43. That but for the city's failures to install pipes larger than 24" and but for failing to maintain, monitor, plan, remediate, remove debris, or redirect surface, flood and storm waters through city maintained watercourses, roads, parks, easements, and ditches adjacent to Plaintiff's property, the city has and has effected a channeling, pooling, concentrating and casting upon Plaintiff's property of surface, storm and flood waters.
44. That the channeling of and casting upon Plaintiff's property surface, storm and flood waters the City is creating unreasonable interference with Plaintiff's use and enjoyment of Plaintiff's land, property, house, causing material financial loss, annoyance, hurt, and discomfort due to repeated flooding which has rendered the house uninhabitable.
45. That the repeated flooding of Plaintiff's property, land and house is the direct and proximate cause of interference by Defendant City of Rock Hill in failing, despite knowledge, to plan, redirect, remediate, control and divert flooding, clean debris fields, and install pipes larger than 24".
46. That but for the City of Rock Hill's failure to plan, supervise, monitor, remediate, correct, redirect and divert repeated flooding, install pipes larger than 24", and keep culverts and ditches clear of debris, there would be no interference with Plaintiff's use and enjoyment or no taking of Plaintiff's property for public drainage use.
47. That the flooding and taking of Plaintiff's property is the direct, natural, and probable consequence of the city's acts and/or overt failures to exercise even slight care under the

circumstances to abate and correct known, repeated flooding impacting Plaintiff's property.

48. That the decision to not abate flooding upon Plaintiff's property after repeated studies is knowing, willful, wanton, deliberate, and in reckless disregard of Plaintiff's rights to the value of her house and land at 1020 Willowbrook Avenue.
49. That the city's channeling, concentration, and casting upon Plaintiff's property of water overflow has worked hurt, inconvenience, damage, has created an inability to use, sale, or lease the property, effecting a taking of its value, is continuous, repeated, and has the potential to reoccur.
50. That the damage and interference being caused to Plaintiff by the City of Rock Hill is substantial, continuous, and is different in kind from any similar nuisance suffered by the public at large, directly implicating Plaintiff's private property rights.
51. Plaintiff is informed and believes it is entitled to an award of actual and punitive damages as against the City of Rock Hill.

FOR A FOURTH CAUSE OF ACTION
[AGAINST WHERRY CONSTRUCTION CO., INC.]
(Construction / Design Defect)

52. Wherry Construction Co., Inc. is the entity responsible for the permit application, site plan, location, planning, construction and grading of the house on 1020 Willowbrook Avenue, Rock Hill now owned by Plaintiff.
53. Plaintiff is informed and believes that the Defendant Wherry Construction Company, Inc. was responsible for the design, placement, and construction of the house at 1020 Willowbrook Avenue, Rock Hill, South Carolina pursuant to Site Plan approved by the City of Rock Hill.
54. That Defendant Wherry Construction, Inc. through its owners, agents, shareholder, employees, and assigns, did negligently construct said house in the following particulars, to wit:
 - a. By construction the residence and house within an area prone to flooding by surface water runoff.
 - b. By locating the house outside of permitted site plan as approved by the City of Rock Hill.
 - c. By construction of house footings and pouring of concrete slab in deviation of city-approved site plans.
 - d. By failing to obtain an engineer's report or study prior to completing construction.

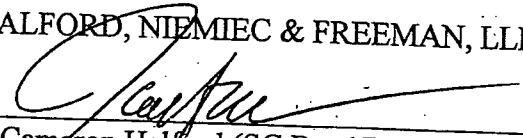
55. That despite written demand and notice pursuant to S.C. Code Ann. §40-59-820, et. seq., Wherry Construction Company, Inc. refuses or is unwilling to correct the defects in the construction, settle or deny Plaintiff's claims necessitating this suit be filed.
56. That as a result of Wherry's placement and construction of the house, Plaintiff's house is routinely flooded by surface water and runoff, and will continue to be flooded by surface water drainage.
57. Plaintiff is informed and believes that it is entitled to an award of damages as against Wherry Construction Co., Inc. for all actual and compensatory damages caused by the negligent workmanship of Wherry Construction Co., Inc.
58. Plaintiff is informed and believes that it is entitled to an award of reasonable attorney's fees and costs pursuant to S.C. Code Ann. 40-59-820, et. seq.

WHEREFORE, Plaintiff prays for the following relief:

1. For trial by jury of the aforementioned matters.
2. For Judgment as against the Defendant City of Rock Hill to compensate Plaintiff for the reasonable value of the taking of Plaintiff's property and interference with the same pursuant to Plaintiffs' First through Third Causes of Action.
3. For Judgment as against Defendant Wherry Construction Co., Inc. on Plaintiff's Fourth cause of action.
4. For an award of all actual and punitive damages as against the City of Rock Hill, including attorney's fees and costs of this action.
5. For attorneys fees and costs associated with bringing this action as against Defendants, jointly and/or severally.
6. For attorneys fees and costs as against Defendant Wherry Construction Co., Inc. pursuant to S.C. Code Ann. 40-59-820, et. seq.
7. For such other and further relief as the court deems just and proper under the circumstances.

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, LLP



J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive,
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 (fax)

1 system?

2 A. ~~The stormwater system.~~

3 Q. Is it your understanding that the stormwater system
4 is -- delineate what's in the system, starting from
5 where to where?

6 A. I'm not sure -- I don't understand your question.
7 Can you say that again?

8 Q. I'm asking you to define for me what the system is
9 by starting at what point and going to what point?

10 A. Well, I think what I -- most importantly maybe, when
11 I refer to the system, we're referring to a large
12 municipal system that is not only in this particular
13 property or next to it, but, you know, just
14 generally overall within the entire City of Rock
15 Hill. I mean it can be -- it's comprised of many
16 things. It's comprised of ditches and branches and
17 culverts and all sorts of things of that nature that
18 control stormwater.

19 Q. Is it an integral part of your professional opinion
20 that the City of Rock Hill owns a stormwater system
21 throughout the city?

22 A. I'm not sure -- ~~I believe that to be correct.~~ yes.
23 I believe that they're responsible for maintaining
24 it, yes.

25 Q. So it's a fundamental part of your opinions that the

Deposition of Ronald E. Wright, P.E.

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1 Q. Two, in your experience, the creation of that type
2 of structure will have a reducing effect in
3 intensity?

4 MR. HALFORD:

5 Object to form.

6 WITNESS CONTINUES:

7 A. Again, I'm not sure it would necessarily reduce it
8 for that particular situation because that was very
9 far upstream. And I'm not sure you would have any
10 difference in flow that would get to the downstream
11 area, because of how the surface characteristics and
12 where the water would go would be.

13 Q. All right, put it this way, in your experience, it
14 would have no impact or a lessening impact?

15 MR. HALFORD:

16 Object to form.

17 WITNESS CONTINUES:

18 A. Again, the only concern I'd have is it may be that
19 ~~you now have it all collected directed down the~~
20 ~~streambed faster than what it may have been if it~~
21 ~~would not have that manmade road bed across there.~~
22 what's behind that is not a storm impoundment type
23 situation it's ~~basically that the culvert's there~~
24 ~~just to be able to continue the stream through~~
25 ~~underneath of that roadbed.~~ so whether that roadbed

Deposition of Ronald E. Wright, P.E.

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1 of this case is a result of that?

2 A. That's correct. I would not say that the debris
3 caused the flooding by itself. It would only be
4 that the flooding is ~~the result of the size of the~~
5 ~~pipe, and the debris may restrict the pipe even~~
6 ~~further making the flooding occur quicker, but it is~~
7 not the cause of the flooding.

8 Q. All right. Then drill that down just one notch
9 farther, do you believe you have enough knowledge of
10 the existence of debris that it is your professional
11 opinion that any flooding on this property occurred
12 as a result of debris?

13 A. (No response.)

14 Q. Is the anecdotal information that you've reviewed
15 sufficient that that is a component of your
16 professional opinion?

17 A. To that degree, I would say yes. The -- the work
18 orders indicated debris was removed, which, in turn,
19 means there was restriction of water flow; so that
20 would have helped ~~contribute to the flooding~~
21 ~~occurring in a faster manner than if there had not~~
22 ~~been any debris.~~

23 Q. Is it your professional opinion that you have
24 sufficient knowledge based on those reports, which
25 are days after any sort of flood, that the debris

Deposition of Ronald E. Wright, P.E.

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1 where the creek came to it, and for some reason,
2 they had it go into the pipe even though it was
3 exposed for a good portion of it as it came through
4 the park.

5 Q. Can you say with any degree of professional
6 certainty whether or not ~~the water is being directed~~
7 ~~in the direction of my client's property?~~

8 A. Yes, based on all the different things that Robert
9 Barfield saw and observed it was all being directed
10 ~~downstream towards where her property is.~~

11 Q. Can you say with any degree of professional
12 certainty whether or not there's an intensification
13 of flow because of those manmade structures?

14 MR. WHITE:

15 Object to the form.

16 WITNESS CONTINUES:

17 A. They would at least direct the water towards that
18 direction to make sure it did go in the direction
19 towards her property. I don't know if it
20 intensifies it. It definitely brings and collects
21 ~~the water to make sure it goes that direction.~~

22 Q. During your study on this project, you're not aware
23 of a detention pond on the property anywhere, are
24 you? By the property, I mean the City owned
25 property, Spencer Park.

Deposition of Ronald E. Wright, P.E.

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1 A. Yes.

2 MR. WHITE:

3 Object to the waste of time.

4 EXAMINATION CONTINUES BY MR. HALFORD:

5 Q. Can you say with any degree of professional
6 certainty that these are not a natural watercourse;
7 that this is a manmade watercourse?

8 MR. WHITE:

9 Object to the form.

10 WITNESS CONTINUES:

11 A. At least portions of it are. There may be some that
12 ~~may have been originally natural, but there~~
13 ~~definitely are portions that are manmade.~~

14 Q. Okay. Take me down and tell me about that culvert
15 down at Willowbrook Avenue. Is that culvert serving
16 ~~as part of the City stormwater management system?~~

17 A. ~~Yes.~~

18 MR. WHITE:

19 Object to form.

20 EXAMINATION CONTINUES BY MR. HALFORD:

21 Q. What do you base your opinion when you say yes?

22 A. The Spencer Park collects the water, and does drain
23 down to that as the point where all the water off of
24 it has to go through, and it goes through a series
25 of culverts underneath the road and adjoining

Deposition of Ronald E. Wright, P.E.

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1 property on the other side of the road to get to
2 another drainage basin that is City property of
3 their stormwater system.

4 Q. Now, take me back, you testified earlier that you'd
5 seen some incident reports regarding debris.

6 A. Yes.

7 Q. Any of those reports lead you to believe that the
8 City of Rock Hill has cleaned that culvert pipe?

9 A. Yes.

10 Q. Do you recall how many you saw?

11 A. I believe there were four incidence reports. I know
12 at least three of those had it about cleaning it.
13 It may have been all four.

14 Q. Okay. Do you know why the City of Rock Hill would
15 undertake to clean a South Carolina Department of
16 Transportation culvert pipe?

17 A. No, other than to make sure that the drainage from
18 their property, the Spencer Park area, would then be
19 unimpeded to be able to go through that culvert to
20 get flow off of the property.

21 Q. Mr. White asked you about some professional
22 treatises, and you referenced the City's stormwater
23 manual?

24 A. Yes.

25 Q. Do you have an understanding of what the stormwater

1 opinion, no, that is not what was occurring there.

2 Q. What evidence do you see of any structure in that
3 park that intensifies flows onto Plaintiff's
4 property?

5 A. There were some brick retaining walls that were
6 positioned out in that property that would also make
7 it where you'd have an intensity of impervious area,
8 because ~~it's now going to be a changed structure out~~
9 ~~there. And those are not natural.~~ The brick was
10 manmade brick, ~~that's been placed out in the~~
11 property.

12 Q. Can you tell me what you're looking at?

13 A. Photo number 26 of the photographs attached as
14 Exhibit 11 to our report.

15 Q. (Reviews photograph.) In your professional opinion
16 that intensifies flow on the Plaintiff's property?

17 A. Again, because the brick is an impervious material
18 as compared to natural soils, it's going to make it
19 that the sheet flow of water off of that property
20 gets increased.

21 Q. To what degree?

22 A. I haven't done calculations on that. It's just the
23 very natural knowledge, that manmade materials are
24 going to make much more quicker direction of water
25 off of them than it is of natural soils.

Deposition of Ronald E. Wright, P.E.

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1 Q. In your professional opinion, is Wherry Construction
2 responsible for the construction of this house in
3 what you believe is in an improper location?

4 A. Possibly, only in the sense that once there's a
5 question raised from the permit process on getting
6 an engineer to approve, that they take on that same
7 responsibility of trying to find out if it was okay
8 to put the house there.

9 MR. WHITE:

10 I have no further questions.

11 REEXAMINATION BY MR. HALFORD:

12 Q. Mr. Wright, in your professional opinion, is my
13 client's lot at 1020 Willowbrook Avenue serving as
14 part of the City's stormwater management system
15 during incidents of flooding?

16 A. Yes.

17 MR. WHITE:

18 Object to the form, it's not a redirect off of my
19 question.

20 MR. HALFORD:

21 That's all I have.

22 (There being no further questions, the deposition was
23 concluded at 1:14 p.m.)
24

Deposition of Ronald E. Wright, P.E.

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1 Q. Is there water coming from ~~anywhere other than the~~
2 ~~park that's channeled towards my client's property?~~

3 A. ~~Yes.~~

4 Q. Where would that be from?

5 A. The surrounding streets, and then there were also
6 ~~residential and commercial spaces that would have~~
7 ~~had flow from those properties that then came down~~
8 ~~to the property of the park into the park area to~~
9 ~~drain further down toward this culvert.~~

10 Q. Okay. Has your firm been asked by the Plaintiff or
11 any other person to determine who is responsible for
12 the permitting of this house site?

13 A. You mean as to the governmental entity?

14 Q. Yes, sir.

15 A. Not directly, but we know by looking at the building
16 ~~permit that would have been the City of Rock Hill.~~

17 Q. All right, thank you. You've not looked at the 1012
18 willowbrook permit; is that correct?

19 A. I -- I recall seeing it, but that's been a while
20 since I've looked at it as to what all it did say.

21 Q. ~~In your professional opinion, if certified as an~~
22 ~~expert in this case, would an engineer have okayed~~
23 ~~this footing on the house or this excavation of the~~
24 ~~house under the same circumstances?~~

25 A. ~~No, I don't believe they would have.~~ They would

Deposition of Ronald E. Wright, P.E.

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1 have looked at the conditions around and understood
2 there was an issue as to the way in which water was
3 directed to that 24-inch pipe.

4 Q. Do you dispute in any way that the City was
5 supervising the permit process at that time?

6 MR. WHITE:

7 Object to the form.

8 WITNESS CONTINUES:

9 A. ~~The City definitely had the duty to monitor and~~
10 ~~manage that permit, and the inspections required for~~
11 that permit.

12 Q. So it's your understanding that the City of Rock
13 Hill has a fee base structure for issuing permits?

14 A. Yes.

15 Q. In fact, in looking at the City stormwater
16 management manual, are you aware of whether or not
17 the City of Rock Hill derives fees for its
18 stormwater system from taxpayers?

19 A. Yes, it does.

20 Q. would that also include my client?

21 A. Yes, it would.

22 Q. All right.

23 MR. HALFORD:

24 I don't believe I have any further questions. If
25 I've spurred of if I've created questions by Mr.

1 adequate with respect to the roadway, but how it
2 reacted with the existing residence that was there.

3 Q. Did you formulate any opinions or conclusions of
4 whether or not the existing pipe was adequate in
5 relation to the residence or the house?

6 A. Yes.

7 Q. Okay. And what were your conclusions?

8 A. Conclusions were that ~~the house was quite vulnerable~~
9 ~~to flooding events on a somewhat frequent level~~.

10 Q. When you say somewhat frequent level, I've read a
11 lot of your work, within a ten-year flood incident,
12 it could suffer multiple floodings; is that what you
13 mean?

14 A. I can't remember exactly what it was, but I think it
15 was ~~less than a ten-year event, it would be~~
16 ~~vulnerable~~.

17 Q. And you were made aware by Mr. Banks that the
18 property had in fact flooded previously; is that
19 correct?

20 A. It was -- that was my understanding that it ~~had been~~
21 ~~impacted by stormwaters in the past~~.

22 Q. And you said the property was vulnerable to
23 flooding, why is that? On what do you base that
24 conclusion?

25 A. The primary reason why it's vulnerable to the

1 flooding there is the vertical elevation it's set
2 at. It is within -- you might consider the
3 hydraulic grade line of that channel or that creek.
4 Even -- I did not study -- even without the pipe
5 being there it might be vulnerable. Even without a
6 roadway it might even be vulnerable to flooding
7 because it is sitting so low with respect to the
8 creek.

9 Q. Are you stating that the creek is at a higher
10 elevation than the culvert pipe?

11 A. Well, yes, as it leads into the culvert, the creek
12 is draining downhill, it's falling in elevation. So
13 it would be logical that the creek is going to be a
14 little bit higher elevation before it gets to the
15 culvert.

16 Q. Is Spencer Park at a higher elevation than the home?
17 Did you measure that?

18 A. I did not survey that or measure it, but based on
19 the topography, it's where that Spencer Park is
20 uphill from the subject residence.

21 Q. Okay. And the water only flows toward the subject
22 residence; isn't that correct?

23 A. It flows into the -- the water flows into the
24 channel to the side of --

25 Q. And I don't ever mean to interrupt you, I'm sorry,

1 funding?

2 A. We do from time to time.

3 Q. That's fair enough. Let me point you to the second
4 paragraph, which is highlighted, and just ask you to
5 read that for me.

6 A. You're not talking about this single statement,
7 you're talking about --

8 Q. The single statement.

9 A. Oh, "The funds that are generated by the Stormwater
10 Division is set aside solely for maintenance and
11 improvements of the drainage system."

12 Q. Okay. And by the drainage system, you're referring
13 to or this publication is referring to systems that
14 are owned by the City of Rock Hill; is that correct?

15 A. Not necessarily. We have done some work outside
16 that, but primarily we try to partner with the DOT
17 if it's a DOT road or DOT project as well as we've
18 had some subdivisions that we've assisted. Some of
19 the assistance may be in education. The street
20 sweeper, certainly they try to keep it out of the
21 streams in the maintenance of the stormwater creeks.

22 Q. Are you aware of any partnering or any consultations
23 with the South Carolina Department of Transportation
24 related to this property?

25 A. I am not.

1 Q. Would the City have typically contacted SCDOT to ask
2 for their assistance?

3 A. We would have. Or we probably would have asked them
4 to take care of it if it's a DOT road. A lot of the
5 work around is a DOT issue, so we'll follow up with
6 a work order to them and notify them if they've got
7 an issue, whether it's a traffic signal, stop sign,
8 what have you.

9 Q. When did you guys notify DOT in this instance that
10 there may be a problem?

11 A. I'm not -- not sure.

12 Q. You're aware that the property's been impacted by
13 flooding at least four occasions, is that correct?

14 A. That's correct.

15 Q. Okay. You're not aware of any contact with the
16 South Carolina Department of Transportation?

17 A. I'm not. Typically we would notify the property
18 owner to contact them directly.

19 Q. Are you aware --

20 A. As a courtesy, we may make a phone call, but most of
21 the time we would go back to the property owner,
22 because they're the ones that have the actual claim
23 with the DOT.

24 Q. I don't ever mean to interrupt you --

25 A. That's okay.

1 Q. -- but you're not aware of any contact between the
2 City of Rock Hill and the State Department of
3 Transportation related to Willowbrook, are you?

4 A. No.

5 Q. Are you aware of any contact between the City of
6 Rock Hill and my client telling her to contact DOT?

7 A. Not specifically, no.

8 Q. If that type of contact had occurred, would it have
9 been a telephone call, would it have been in
10 writing?

11 A. More than likely it would have been a phone call or
12 something in person.

13 Q. Okay.

14 A. Typically when we would go out to a job site,
15 Mr. Costner, more than likely, would have spoken to
16 Ms. Renwick or someone about the situation and
17 identified it as a State road. The roads are on our
18 system, the GIS, we try to direct folks immediately
19 if they have a road problem to talk to the DOT or at
20 least look at the map to see if it's a City issue or
21 a State issue.

22 Q. Let's talk about the project prioritization. That's
23 the third, in fact the arrow is pointing to it, but
24 what were the major priorities for this Stormwater
25 Division? How does it rank its priority?

1 Q. Is that a department that you are involved in?

2 A. That's part of the Planning Inspection Department.

3 I mean I have had involvement over the years, but
4 obviously they're not a direct report to me, no.

5 But I do deal with them on a regular basis.

6 Q. Okay. How about you heard Mr. Brooks testify as to
7 this record. I know you've seen it. Can you
8 identify what that record is? I believe it's marked
9 as Number 8.

10 A. It appears to be the inspection record for 1020
11 Willowbrook.

12 Q. And you know what I'm looking for, the highlighted
13 paragraph there, can you read that for me?

14 A. Certainly. Yes, it says, "Disapproved - damp, near
15 branch and filling with water. I need engineer to
16 okay."

17 Q. Do you have any personal information of any report
18 or engineer okay that would have occurred subsequent
19 to that notation?

20 A. Yeah, I've spoken with the inspectors who neither
21 work for the City any longer. And I asked them if
22 they recall this address specifically, and they do,
23 which surprised me because it's 13 years old. The
24 reason they do, apparently the LLR has recently been
25 involved in similar investigation. So LLR has asked

1 A. That's correct. Nor can I produce the certification
2 for the power to be turned on or a lot of the other
3 documents associated with it.

4 Q. I understand, but in this year, Cindy Helms does
5 document that it's a branch filling with water. The
6 City was aware of that at that time; was it not?

7 A. Correct.

8 Q. Okay. And it appears to go on whether or not there
9 is or in fact there's not an engineer's okay, this
10 structure was cleared for final construction; was it
11 not?

* 12 A. Correct. And it would not have been cleared without
13 a report.

14 Q. So it's your testimony here today that this property
15 wouldn't have been cleared for construction without
16 a report?

17 A. That's correct.

18 Q. And ultimately did the City collect taxes on this
19 property?

20 A. Did we collect taxes on this property?

21 Q. After it was built.

22 A. To my knowledge, we would. I'm sure we would have
23 billed it. The County does all the billing for
24 taxes, but --

25 Q. I understand. The City --

1 sure why he said that.

2 Q. What date does it state?

3 A. 3/13.

4 Q. 3/13 of what year?

5 A. 2000, the slab and footing were poured is okay.

6 Q. And that indicates that the slab and the pour was

7 okay but that comes after the -- if I'm reading it

8 right, July 7th, 1999, notation; does it not?

9 A. It does.

10 Q. And what does the July 7th, 1999, notation read?

11 A. Disapproved damp near branch and filling with water,
12 need engineer to okay.

13 Q. Do you have personal knowledge of when a disapproval

14 is written on there, can the City stop the permit or

15 stop the construction? Does the City have the power

16 to do so?

17 A. We do. Typically if it's one that's associated with

18 something out of the ordinary, like water, that the

19 builder typically may not have had a report. If

20 they fill like it needs additional information, they

21 would say you need to go get additional information.

22 before we'll allow you to go on.

23 Q. In fact this was notated that we needed an engineer

24 to okay?

25 A. That's correct.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Nadine Brantley,

Plaintiff,

vs.

The City of Rock Hill, a body politic and
subdivision of the State of South Carolina and
Wherry Construction Co., Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

**ORDER FOR
SUMMARY JUDGMENT**

Case No. 2012CP4600146

FILED-RECEIVED
2014 SEP -28 AM 9:13
CLERK OF COURT
SOUTH CAROLINA
COUNTY, SC

This matter came before me on August 11, 2014, upon Plaintiff's and Defendant City of Rock Hill's ("City") motions for summary judgment. Present and representing the parties at the hearing were: J. Cameron Halford for Plaintiff; and, W. Mark White and Jeremy D. Melville for the City. Based on the record before the Court, the applicable law, and the arguments of counsel, I make the following findings and conclusions.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate only when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997). In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994).

A party seeking summary judgment has the burden of clearly establishing, with use of the record properly before the court, the absence of a triable issue of fact. *Stanford Fire Ins. Co. v. Marine Contracting and Towing*, 301 S.C. 418, 392 S.E.2d 460 (1990). Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party must

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come forward with facts showing there is a genuine issue for trial in order to avoid summary judgment. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). The non-moving party need only submit a mere scintilla of evidence to withstand a summary judgment motion in cases where the applicable burden of proof is a preponderance of the evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

Summary judgment is a drastic remedy and should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Hooper v. Ebenezer Senior Svcs. & Rehabilitation Ctr.*, 377 S.C. 217, 226-27, 659 S.E.2d 213, 217 (Ct. App. 2008); *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004). Summary judgment is inappropriate where further inquiry into the facts of the case is necessary to clarify the application of law. *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005); *Wogan v. Kunze*, 366 S.C. 583, 591, 623 S.E.2d 107, 112 (Ct. App. 2005); *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 542, 608 S.E.2d 440, 447 (Ct. App. 2004).

However, "[s]ummary judgment should be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct. App. 2009). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see, also, Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment "mirrors" standard for directed verdict).

BACKGROUND

Plaintiff is the owner of the property located at 1020 Willowbrook Avenue in Rock Hill, South Carolina ("Property"), having purchased it through a mortgage foreclosure sale in May, 2010. As with any foreclosure property, she purchased the property "as is" and was on notice of that fact.

Spencer Park is a public park owned by the City, and is situated upstream from the Property. An existing stream flows in a well-defined channel across Spencer Park and the Property. The stream then travels through a 24 inch culvert located underneath Willowbrook Avenue (the "Culvert"), and discharges by its natural course downstream into another natural watercourse, Manchester Creek. The stream carries storm water collected in the City's storm

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water collection system. Willowbrook Avenue is a street owned by the South Carolina Department of Transportation ("SCDOT"), and is situated immediately downstream from the Property and Spencer Park.

In weather events with extraordinary amounts of rain, the culvert under Willowbrook is unable to handle the quantity of water flowing in the stream, and storm water is impounded at Plaintiff's lot, causing flooding of her lot and house. The record is lacking any evidence that the City has performed any work upstream of Spencer Park to increase either the volume, or rate of flow, of storm water discharged into the stream running through Spencer Park since well before Plaintiff purchased her property. Nor is there evidence of work done in Spencer Park since before Plaintiff's purchase, causing such increase.

There are documented events of storm water flooding upon the subject property in 2001, 2003, and 2007, all well before Plaintiff's purchase. Plaintiff's house was built in 2001, although Plaintiff did not acquire the property until 2010.

order of events
A building construction inspection report in 1999, during the construction of the house, indicated disapproval of the foundation footing due to the presence of water in a footing. The report indicates that approval of an engineer would be required to continue construction. It does not specify the form of the approval. Subsequently, construction was resumed and completed, and a certificate of occupancy was issued.

Plaintiff asserts that the house was completed, and a certificate of occupancy issued, without the required approval by an engineer, and that such action constituted gross negligence on the part of the City. While the City is not able to present the engineer's written report from its own file, witnesses confirm that approval of the footing, and a written report of such approval, were obtained. The engineer is now deceased, and the City also offered detailed testimony concerning its unsuccessful efforts to obtain a copy of the report.

On January 12, 2012, Plaintiff filed this lawsuit due to flooding of the stream and her Property during periods of heavy rain. Plaintiff has asserted three causes of action against the City: (1) inverse condemnation; (2) nuisance; and, (3) gross negligence. The City asserts the provisions of the South Carolina Tort Claims Act (S.C. Code Ann. § 15-78-10 *et seq.* (1976, as amended).) ("SCTCA"), as a bar to Plaintiff's claims.

ANALYSIS

I. Inverse condemnation.

"To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public

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use; and (4) the taking has some degree of permanence.” *Hawkins v. City of Greenville*, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004). “The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by ‘affirmative, positive, aggressive’ acts by the governmental agency. Allegations of mere failure to act are insufficient.” *Hawkins, supra*, 358 S.C. at 291, 594 S.E.2d at 563.

Hawkins is controlling in this case. The record in *Hawkins* contained evidence that private developers installed pipes in a creek to expand the creek's ability to handle runoff, that the City of Greenville subsequently installed an additional pipe to increase the creek's stormwater capacity, and that the City of Greenville installed riprap along the banks of the creek. *Id.* Following these improvements, a rainstorm caused the creek to overflow and flood the plaintiff's property. The plaintiff alleged that the City of Greenville's actions were a cause of the flood and asserted claims against the city for inverse condemnation, negligence, trespass and nuisance, among others. The Court found that the City of Greenville's actions did not rise to “affirmative” and “positive” acts required for inverse condemnation.

Like *Hawkins*, the record in this case contains no facts that can be construed as an affirmative, positive, aggressive act by the City. As already stated, there is no evidence that the City has performed any work upstream of Spencer Park to increase either the volume, or rate of flow, of storm water discharged into the stream running through Spencer Park since well before Plaintiff purchased her property. Further, there is no evidence that the City has performed work in Spencer Park since before Plaintiff's purchase that would have such an effect. It is also apparent from the record, including the opinion of Plaintiff's experts, that the flooding occurs directly as a result of the undersized culvert running under Willowbrook Avenue, which is entirely the responsibility of SCDOT.

Thus, Plaintiff's claim of inverse condemnation must fail as a matter of law.

II. Nuisance.

The SCTCA bars claims for nuisance against the City. The Act provides that “[t]he governmental entity is not liable for a loss resulting from . . . (7) a nuisance; . . .” S.C. Code Ann. § 15-78-60(7). Therefore, Plaintiff's cause of action for nuisance fails as a matter of law.

III. Gross negligence.

Though Plaintiff has not identified the alleged gross negligent acts by the City with much specificity, it appears that this claim is based on two factual frameworks. First, she argues that the City was grossly negligent in the issuance of the construction permit and certificate of occupancy for the house. Second, she argues that the City is grossly negligent in failing to prevent the hour

Hawkins does not apply

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from flooding once the house was constructed.

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. . . . Negligence is the failure to exercise due care, while ***gross negligence is the failure to exercise slight care.*** "Gross negligence ordinarily is a mixed question of law and fact. . . . When the evidence supports but one reasonable inference, . . . the question becomes a matter of law for the court. *Clyburn v. Sumter County School Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887-888 (1994) (internal citations omitted)(emphasis added).

A. **Building and Permitting Claims.**

Plaintiff asserts that the City's file on the Property from 1999-2000 contains no written report of an engineer, approving construction of the footing for the house, as noted in the building inspection report showing water in a footing.

First, the totality of the evidence confirms that engineer approval of the footing was obtained in response to the inspection report noting the presence of water in a footing. Even using the appropriate standard, the absence of the written report does not raise a reasonable inference, under the facts presented, that the City was grossly negligent in permitting construction, and allowing completion and occupancy, of the house. Further, the inspection report cited does not require a written report, and Plaintiff has not cited such a requirement. The mere assertion of the lack of a written report in the City's file, without some indication of fraud or deceit, does not present an inference of gross negligence under the facts of this case.

Second, Plaintiff's claim for negligent permitting fails for lack of a duty imposed on the City in this regard. "The Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the [SCTC]." *Hawkins, supra*, 358 S.C. at 293, 594 S.E.2d at 564. "The determination of the existence of a duty is solely the responsibility of the court. . . . Whether the law recognizes a particular duty is an issue of law to be decided by the Court. An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). (Internal citations omitted.)

Under established law the City does not have a duty to a property owner regarding the issuance of a building permit to a homebuilder. *Summers v. Harrison Const.*, 298 S.C. 451, 456, 381 S.E.2d 493, 496 (Ct. App. 1989). In *Summers*, a homeowner sued the Lexington County Department of Planning and Development ("Department"), claiming that the Department was grossly negligent in issuing a construction permit to an unlicensed builder. *Summers*, 298 S.C. at 455, 381 S.E.2d at 496. The Court of Appeals held that the Department owed no duty to the plaintiffs and therefore was not liable in negligence. *Id.*

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In this case, there is neither a common law duty, nor a statutory duty, owed by the City to Plaintiff. The City issued a building permit to Lawrence Wherry, a duly licensed homebuilder, in 1999. The City was not involved in the construction of the house. Therefore, Plaintiff's claim must fail under the SCTCA.

B. Gross Negligence in Failing to Prevent Floods.

Plaintiff claims that the City's refusal and failure to preventing flooding is actionable gross negligence. Such a claim fails as a matter of law for at least three reasons.

First, the claim for gross negligence is precluded by the SCTCA. In *Hawkins, supra*, the Court held that municipal storm water activities are excepted from the general waiver of immunity provided under the SCTCA. *Hawkins, supra*, 358 S.C. at 294, 594 S.E.2d at 564. The court quoted the applicable exceptions that deal with a governmental entity's acts or failures to act with respect to a drainage system. Referring to the SCTCA, the court states:

Several of these exceptions bear directly upon the alleged acts and failures to act by the City with respect to the municipal drainage system. Specifically, under section 15-78-60, the City is not liable for a loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"; (3) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (4) "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"; or (5) "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." *Hawkins, supra*, 358 S.C. at 293, 594 S.E.2d at 564, quoting S.C.Code Ann. § 15-78-60(1), (2), (4), (5), and (13).

Second, the City has no duty under South Carolina law to protect all property, or in this case the subject Property, from flooding. The record has no evidence that the flooding at issue is the result of any action by the City. The City has not altered the natural flow of water upstream from the Property. Further, and critically, the City has no control over the infrastructure located immediately downstream from the Property. The drainage infrastructure associated with Willowbrook Avenue, which is acknowledged by Plaintiff's experts to be the critical factor in causing the flooding, is owned and maintained by the SCDOT. In short the record is void of evidence upon which to find the existence of a duty owed by the City to prevent flooding at the Property.

Finally, in *Hawkins*, the Court analogized design and planning of drainage systems to

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quasi-judicial, discretionary functions, as determined by the Texas Supreme Court. The Court stated:

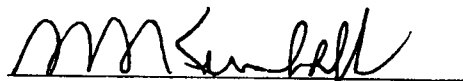
We find a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the City is immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin. 358 S.C. at 294, 594 S.E.2d at 564.

The City of Rock Hill possesses the same discretionary authority, and the SCTCA plainly bars claims against the City regarding such discretionary actions. Thus, Plaintiff's claim of gross negligence based the City's discretionary must fail as a matter of law.

CONCLUSION

Based on the findings, conclusions and discussion herein, the arguments presented, the exhibits submitted for the Court's consideration, and the applicable law, it is ordered that the City's Motion for Summary Judgment be granted, and that Plaintiff's complaint be dismissed with prejudice.

AND IT IS SO ORDERED.



S. Jackson Kimball
Special Circuit Court Judge
York County

August 28, 2014

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IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF

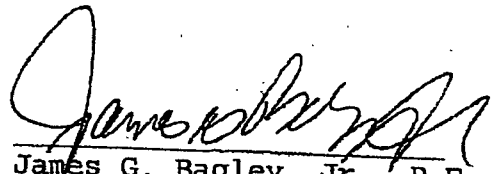
JAMES G. BAGLEY, JR.

C.A. No. 2009-CP-46-2211

Defendants.

5. The City does not own and has not assumed control over the Subject Stream.
 6. The City has not altered the fixed course of the Subject Stream or increased the volume or velocity of water flowing through the Subject Stream.
 7. The City has not diverted surface water towards the Property or artificially collected surface water and cast it on the Property.
 8. The City has not obstructed the flow of the Subject Stream.
 9. The culvert which tunnels the Subject Stream under Willowbrook Avenue immediately downstream from the Property is owned and maintained by the South Carolina Department of Transportation ("SCDOT").
 10. The City does not own, maintain or assume control over stormwater infrastructure owned or constructed by other public entities or private parties unless the infrastructure was dedicated and accepted by the City or the City was granted fee simple title or a right of way by the appropriate owner.
 11. The Subject Stream located on the Property has not been dedicated to or accepted by the City.
 12. The City has not been granted fee simple title or a right of way to the Subject Stream located on the Property.
- Further, the Affiant sayeth naught.

Date: 8/7/14



James G. Bagley, Jr., P.E.
Deputy City Manager
City of Rock Hill, SC

Sworn to before me this 7th
day of August, 2014.

Alicia M. Smith

Notary Public for South Carolina

My Commission Expires: 8/23/21

1 the pipe. The debris, again, would be coming from
2 Spencer Park at a higher elevation. I realize the
3 court disagrees, there are artificial structures
4 atop Spencer Park which the experts are saying
5 concentrate the water, Your Honor.

6 The Court - Mr. White.

7 Mr. White - Your Honor, first, the hydrology
8 studies being referenced are by Tim Brooks, who
9 is not a City engineer. He's not an engineer.
10 One of the department heads asked him to take a
11 look at it. He took a look at it.

12 The City's 30-B-6 witness testified he didn't
13 know why he did it. The City is not relying on
14 that as a hydrology study. It would have one of
15 its engineers do it.

16 Secondly, the notion that -- There's nothing
17 in the record at all that the creek is insufficient
18 for the flow that's going through it. The only
19 testimony we have and the only matters in the
20 record is that the creek is fine until it hits
21 Willowbrook. There is evidence in the record that
22 Willowbrook is a State DOT road.

23 The Court - Okay. Implicit in what you say,
24 Mr. Halford, is that there's a question of fact so
25 I deny the motion.

February 14, 2013

Ms. Nadine Brantley
9501 Greyson Ridge Drive
Charlotte, NC 28277

Re: 1020 Willowbrook Avenue Residence Report

Dear Mrs. Brantley,

As requested, Berman & Wright Architecture, Engineering & Planning, LLC ("Berman & Wright") performed an inspection of your residence and property located at 1020 Willowbrook Avenue, Rock Hill, South Carolina. The purpose of this investigation was to investigate possible flooding and other issues occurring to the residence. The address associated with the property was previously known as 536 Cummings Street. The residence was constructed by Lawrence Wherry of Wherry Construction ("Wherry") beginning in May 1999. Wherry also constructed a residence on the property adjacent to 1020 Willowbrook Avenue.

A zoning permit and compliance form was submitted to the City of Rock Hill ("the City") by Wherry on May 5, 1999. Zoning approval was given for a new structure on May 11, 1999 with the following condition noted: "Setbacks approved as shown on the attached site plan." On the same day, May 11, 1999, a building permit for the residence was issued and signed by Wherry. This permit indicated that construction was to comply with the 1997 Standard Building Code ("1997 SBC") and the 1996 National Electrical Code ("1996 NEC"). A second document indicating to be the residential building permit for the same property was also provided. However, this unsigned permit indicated that construction was to comply with the 2006 Residential Code. The correct building code for the time period of construction was the 1997 SBC.

During the residence construction, a "Building Inspection Record" was generated and maintained by the City's Department of Inspection. This record indicated that an inspection was disapproved on July 7, 1999 due to the "branch filling with water" and noted "need engineer to OK". Based upon subsequent notes, construction apparently proceeded with various notes recorded in 2000 and 2001. However, the building inspection record did not indicate that an engineer approved the condition in question nor is Berman and Wright aware of any separate engineering report approving the condition to allow construction to proceed. A certificate of occupancy was ultimately granted for the residence on February 15, 2001. Copies of the building permits, the building inspection record, and the certificate of occupancy are provided in Exhibit 1.

On July 10, 2001, Chris Costner, Storm Water Supervisor with the City, sent a letter to Asia L. Renwick at 536 Cummings Street. The letter stated that the City received Ms. Renwick's request

New Jersey

North Carolina

Ohio

8226 Village Harbor Drive, Cornelius, NC 28031

T: 704-625-1618

WWW.BERMANWRIGHT.COM



1/18

B
W

"to replace the drainage structure to prevent the flooding in the roadway". The letter requested the property owner's permission to enter the site to perform the work. A Right of Entry form was provided and executed on July 23, 2001 by Asia L. Renwick. A Public Works Department Work Request, completed for Asia Renwick and dated June 14, 2001, had marked that the service problems to be addressed were for storm water "ditch/creek cleaning" and "flooding/flood damage". Additional handwritten notes included under "Other Information" on this request, stated that there was the "need to check inlet capacity". No further documents were provided that indicated improvements were made to the storm water drainage system in the roadway or adjacent to the property at that time. A copy of the letter is provided in Exhibit 2.

Joan Barnes with the City Risk Management department issued a May 22, 2003 memorandum that requested Mr. Costner to complete a Supervisor's Incident Report Form and an Accident/Injury Form regarding a possible claim for the 1020 Willowbrook Avenue property. Mr. Costner submitted a Supervisor's Incident Report dated June 2, 2003 that indicated flooding occurred at the property on May 6, 2003. The report indicated that flooding occurred due to storm drainage being clogged therefore preventing proper drainage from the property. The report further indicated that water from the flooding left trailing marks around the house and water entered into the residence damaging all eight rooms. A final note in the report also stated that "it appears footing were never approved". The Accident/Injury Review form submitted also indicated that the cause was from "excess of rain & debris over end of pipe". Copies of the letter, the Supervisor's Incident Report, and the Accident/Injury Review are provided in Exhibit 3.

Another letter dated January 4, 2008 from Joan Barnes was sent to Connie Martin with Companion Claims Services reporting a flooding incident that occurred at 1020 Willowbrook Avenue on December 30, 2007. The letter further stated that at the time of the incident, Larry Drakeford was buying the house through a lease/purchase agreement. The City provided a Supervisor's Incident Report, an Accident/Injury Review, and an Incident Report related to the claim. The Incident Report, dated December 31, 2007, indicated that the residence yard was flooded and the storm drain was cleaned out. The Supervisor's Incident Report and Accident/Injury Review, both dated January 14, 2008, stated that on December 30, 2007 "flooding occurred due to large amounts of debris washing into the storm drain system...which prohibited the water from draining properly." The Supervisor's Incident Report further indicated that the property did incur damage with 3" of water in the residence and 7" of water in the yard. Copies of the Supervisor's Incident Report, Accident/Injury Review, and Incident Report are provided in Exhibit 4.

A letter dated January 30, 2008 from SC Municipal Insurance and Risk Financing Fund was issued to Mr. Drakeford stating that the City was not responsible for damage to the residence; therefore, declining any payment on the claim for flood damage. No reason was provided in the letter for the claim being declined. A copy of this letter and a loss notice accompanying the letter is provided in Exhibit 5.

A drainage study of the property was undertaken by Tim Brooks, Plan Review Engineer, with the Planning & Development Infrastructure department for the City. In an email dated December 31,

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2009, Mr. Brooks informed others that based upon this preliminary drainage investigation and analysis:

1. 54 acres of residential, park, and commercial property drained to and through a 24" diameter reinforced concrete pipe and headwall adjacent to the property into a 400' long 30" diameter reinforced concrete pipe located under the road and properties on the other side of the road from the 1020 Willowbrook Avenue property.
2. The 1020 Willowbrook Avenue residence finished floor elevation was 2.24' below the roadway overtopping relief elevation.
3. The residence was extremely vulnerable to flooding for storm events below a 10-year occurrence level.
4. The 24" and 30" diameter pipes should be replaced with a 54" diameter pipe the full length of 470'.
5. The residence finished floor elevation should be raised to a minimum of 1' above the roadway relief elevation.

Calculations for determining the area draining towards the pipe area and the drainage characteristics of the soils, surface runoff, volume of water flow, etc. were attached to the email. Copies of the email and calculations are provided in Exhibit 6.

Subsequently, Mr. Brooks issued another email on August 5, 2011 which advised James Bagley, Assistant City Manager for the City, that *"The cost associated with downstream improvements would far exceed the value of the single family residence."* The email further stated that *"This lot might also be a good place to incorporate a shared use trail back into the park area/community."* A copy of this email is provided in Exhibit 7.

Another rain event occurred which led to flooding of the residence again on or about August 13, 2011. After observing the damages from the flooding, you discussed the conditions with Trudy Amick of the storm water management group with the City. Ms. Amick indicated to you that the property had repeatedly flooded, the original builder began construction prior to obtaining a building permit, and that the building permit issue contributed to why the residence was ever allowed to be constructed on the site. Subsequently, you submitted a November 4, 2011 City Claimants Reporting Form stating that heavy rain washed debris from Spencer Park into the culvert adjacent to your property and water backed up into and caused damage to the interior of the residence. A number of documents were referenced as being attached to this form including an estimate from Kenneth Bumgardner dated October 31, 2011 for repairs to drywall, baseboards, and flooring. Copies of the Claimants Reporting Form and estimate are provided in Exhibit 8.

Thereafter, Hewitt Coleman Risk Management Services, on behalf of the City, issued a November 7, 2011 letter to you regarding the claim submitted for the August 2011 flooding issues reported at your residence. The letter indicated the claim was denied because there was no negligence on the part of the City. The letter further stated that *"The City of Rock Hill is not able to control the amount of rain that falls and cannot be responsible for what occurs naturally during a heavy rain"*

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W

storm." The letter concluded that no standard of care required the City to prevent rain from entering onto the property and that there was no evidence the City caused the water to enter the property. A copy of this letter is provided in Exhibit 9.

Current tax records obtained through the York County, South Carolina online website showed you purchased the residence on July 2, 2010 in the amount of \$81,352. As of May 9, 2011, tax records indicated that the real estate tax value had increased to \$94,500. However, the current tax value shown from the York County online website lists the total tax value of the property now to be \$7,000. No value is assigned in this tax value for the residence. Copies of these tax records are provided in Exhibit 10.

Berman & Wright performed an inspection of the residence and property January 2, 2013. Forty-two (42) photographs were taken to document conditions observed during this inspection. The photographs are attached as Exhibit 11 to this report. The photograph descriptions listed below after each issue and damage are followed by numbers in parentheses such as "(X)". The "X" indicates the sequential numbered placement of the photograph among the photographs taken at the residence. The photographs provide examples of the following stated conditions, but are not inclusive of each and every occurrence of building problems and damages that may have occurred or are occurring at the residence.

- General overviews of residence exterior (1,3,7,30)
- Road storm water curb inlet (33)
- General overviews creek and culvert pipe near road (2,6,32)
- General overviews of park areas (9,10,11,13,14,19,20,22,24-26)
- General overview of drainage features within park area (18,21,27)
- General overview of surrounding residential area (23)
- Residence French drain outlet pipes at creek (5)
- Debris removed from creek near road (4,8)
- Debris in creek through park area (12)
- Rip rap installed in creek through park area (15,16)
- Sanitary sewer line running through creek in park area (17)
- Standing water in drive and front area of residence (31)
- General overviews of residence interiors (34,36-40)
- Water damage and mold growth on drywall inside residence (35,41,42)
- Residence roof shingles and sheathing damaged (28,29)

The creek which provides drainage from the rear of Spencer Park to the roadway at Willowbrook Avenue becomes progressively smaller and shallower as it approaches the roadway. Considerable flow of water is directed into this creek from adjoining property that includes the park, residential neighborhoods, and some commercial property. The creek converges to flow through a single culvert under Willowbrook Avenue that consists of one 24" diameter pipe. According to information from both York County and the City Geographic Information Systems, the Willowbrook Avenue roadway is owned and maintained by the South Carolina Department

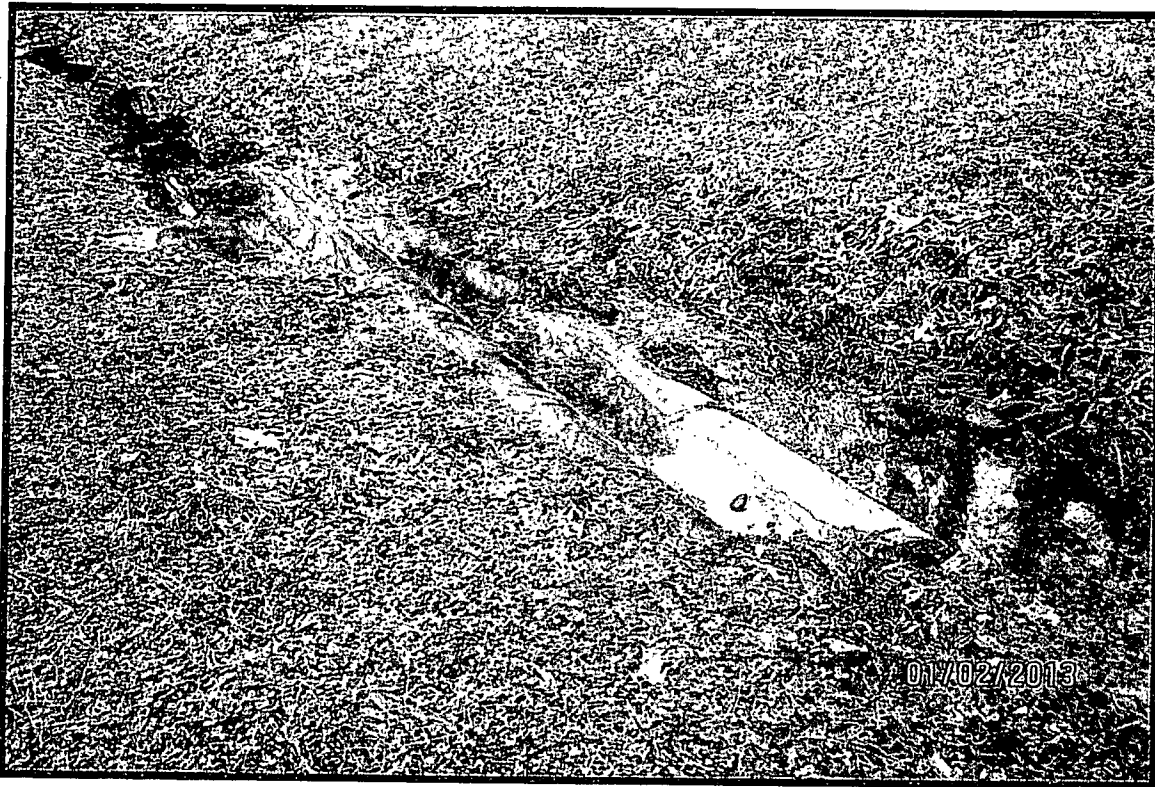


of Transportation ("SCDOT"). The culvert may be the responsibility of SCDOT since it is within the roadway bed under their authority to maintain. Based upon the calculations made by Mr. Brooks of the City, the culvert under the roadway is not adequately sized to manage the volume and flow of water being directed to this area.

Additionally, according to the City official website, the City in 1996 established the Stormwater Division within the Planning and Development department of the City government to "*address failing and undersized storm water systems*". The website continues with stating that the purpose of the Stormwater Division was to improve storm water systems and to prioritize projects for maintenance and improvements that may include repairs to ditches, culverts and pipes. The website includes a ranking of typical problems to be targeted for such repairs with the number one priority for repairs being locations incurring "*Major structure damage to dwelling and public facility, sinkhole in roadway, road and dwelling flooding.*" A copy of the website page providing these statements is included in Exhibit 12. The City had the responsibility to control the water directed onto and through their property (Spencer Park), control and maintain the creek and surrounding area to keep clean of debris, and to insure that the volume and flow of water being generated could be managed with no harm to adjoining properties such as 1020 Willowbrook Avenue.

The City was made aware of flooding conditions onto the property at 1020 Willowbrook Avenue a minimum of 4 times on dates June 14, 2001, May 6, 2003, December 30, 2007, and August 13, 2011. A statement made on behalf of the City that it could not control rain events may have been true, but the City had the ability and responsibility to control the water created from rain events such that properties are not flooded. The evaluation by Mr. Brooks on behalf of the City pointedly found that flooding would happen during less than the level of a 10-year rain event. Further, Mr. Brooks on December 31, 2009 provided specific requirements for actions necessary to alleviate the flooding potential – either replace the existing pipe to a larger pipe for water to flow through or raise the residence above the roadway surface a minimum of one foot. Neither SCDOT nor the City took the necessary actions to address the conditions causing the past flooding onto your property or the current conditions that still remain.

Additionally, based upon original construction permit records, it appeared that the residence at 1020 Willowbrook Avenue should not have been built on the site. The City appeared to allow Wherry to continue construction even though a building permit was not appropriately obtained prior to starting construction. Subsequently, the City had awareness of an issue with drainage on this site during the residence initial construction time period and site assessment by an engineer was requested. The City did not perform such an assessment until Mr. Brooks did so in December 2009. Mr. Brooks further stated that efforts to mitigate the flooding problem would cost more than the value of the residence and the property would be better suited for use as a shared use trail to the park. The value of your property, as recorded by tax records, places the current value to that of the land only with no value provided for the residence. The City did not take the necessary actions to allow proper construction of the residence on your property and did not do an assessment of the property drainage to prevent construction in an area prone to flooding.



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_012.JPG

12

★ Metal drainage pipes in reek through park area



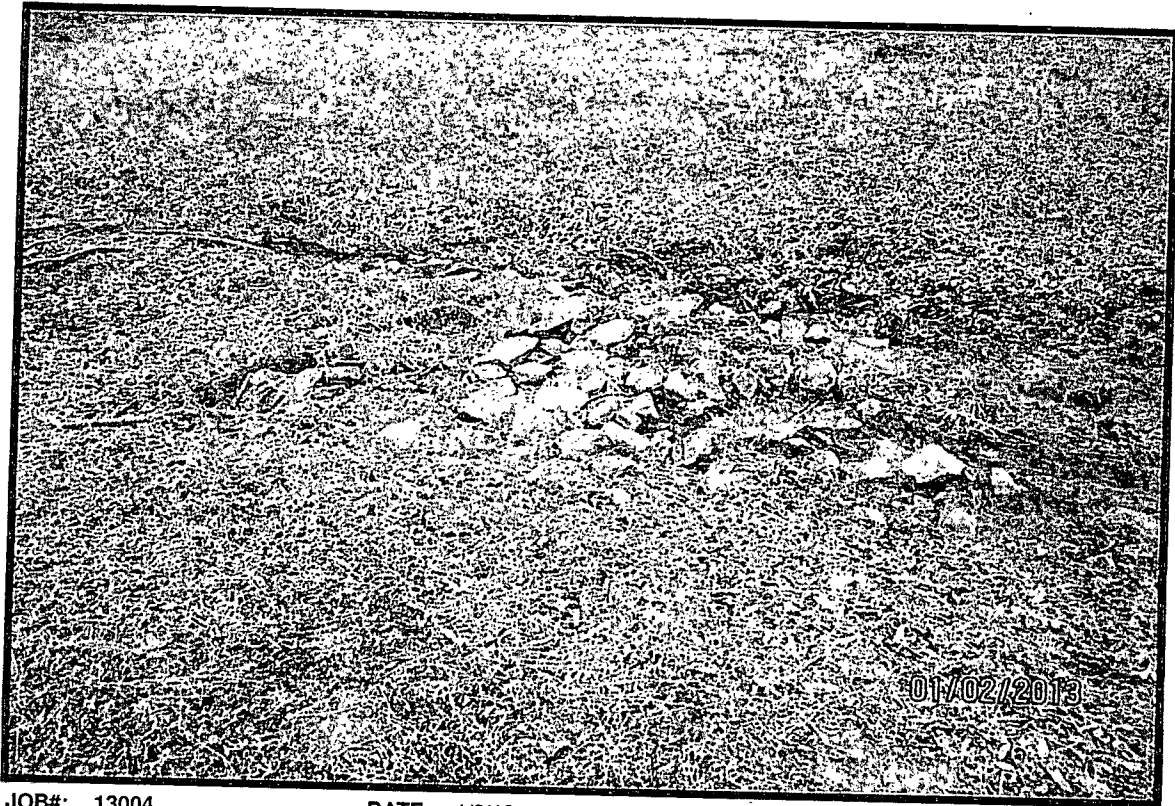
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_014.JPG

14

* General overview of park showing slope



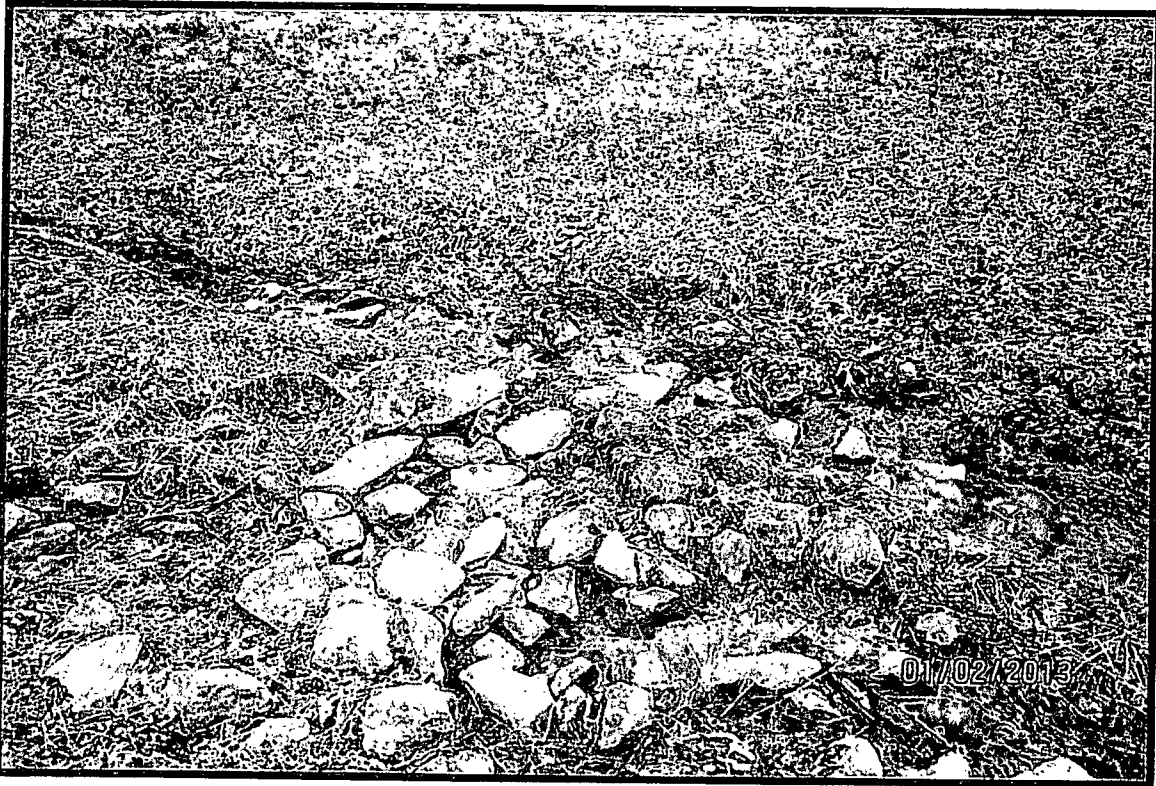
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_015.JPG

15

* Rip rap installed in creek through park



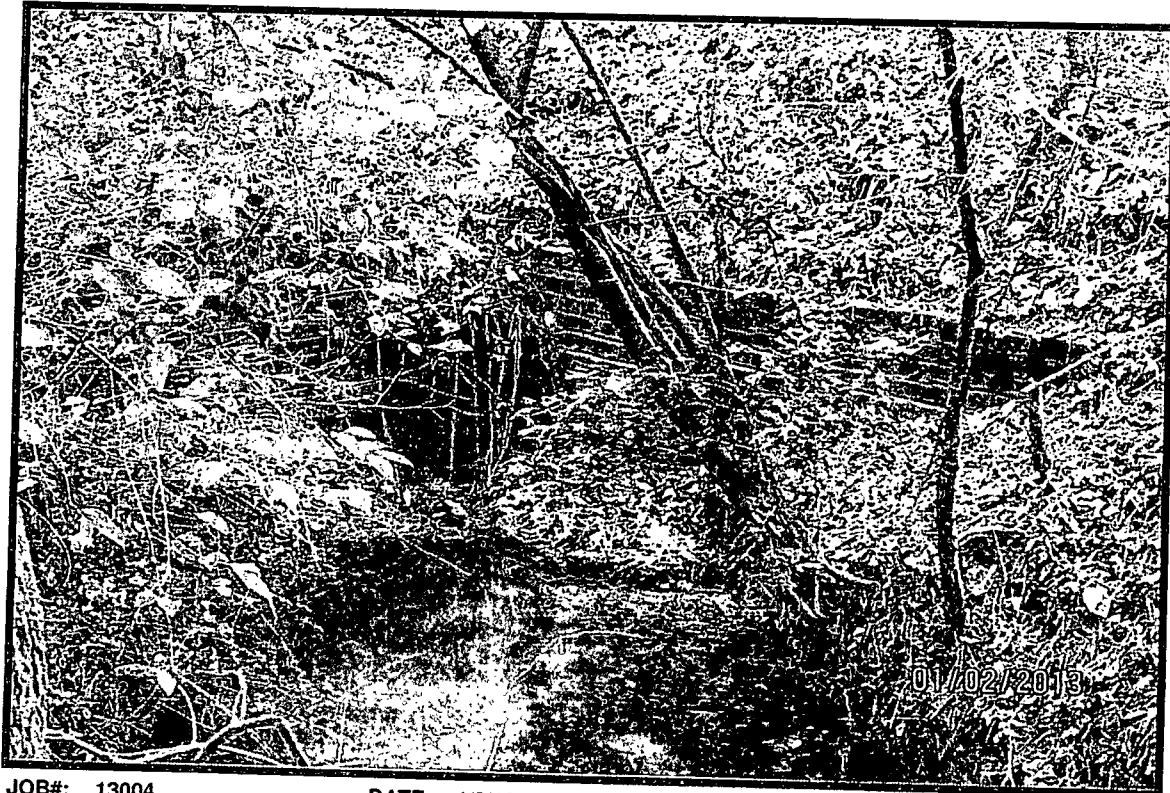
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_016.JPG

16

* Rip rap installed in creek through park



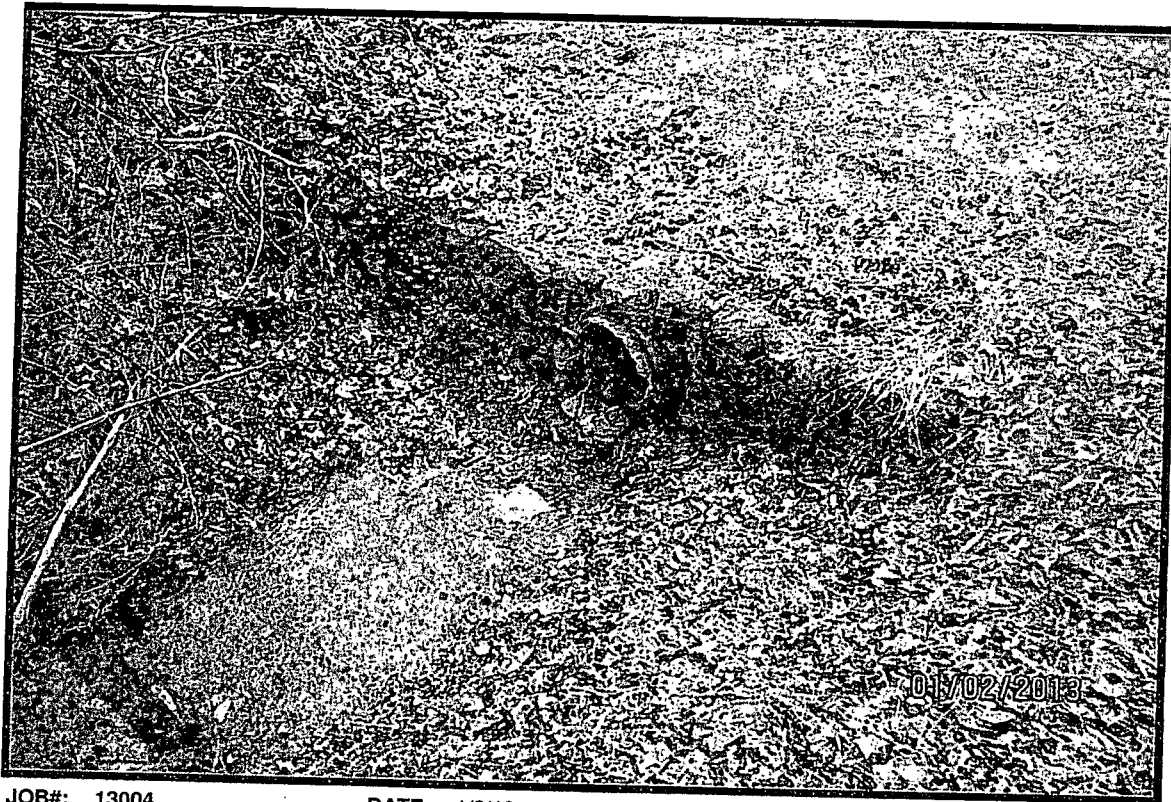
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_018.JPG

18

* Drainage pipe and headwall at culvert near rear of park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_021.JPG

21

* Metal pipe and headwall of culvert at Sturgis Street



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_022.JPG

22

* Maintenance road at rear of park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_026.JPG

26

* Retaining wall along creek at rear of park



Fw: 1020 Willowbrook Drainage Study

Tim Brooks to: Jimmy Bagley

08/05/2011 12:53 PM

Cc: Paul Carlisle

Jimmy,

Here is a copy of the drainage study I did for Bobby (Dec. 2009), with preliminary recommendations to mitigate problem. The cost associated with downstream improvements would far exceed the value of the single family residence. This lot might also be a good place to incorporate a shared use trail back into the park area/community. Let me know if you have any questions.

Thanks.

Tim E. Brooks, CFM, CSPR, LEED AP BD+C, CPESC
Plan Review Engineer
Planning & Development, Infrastructure
City of Rock Hill
155 Johnston Street
PO Box 11706
Rock Hill, SC 29731-1706
803-817-5107
TBrooks@cityofrockhill.com

— Forwarded by Tim Brooks/Rock-Hill on 08/05/2011 12:45 PM —

From: Tim Brooks/Rock-Hill
To: Bobby Banks/Rock-Hill@Rock-Hill
Cc: David Dickson/Rock-Hill@Rock-Hill, Bill Meyer/Rock-Hill@Rock-Hill
Date: 12/31/2009 01:22 PM
Subject: 1020 Willowbrook Drainage Study

Bobby,

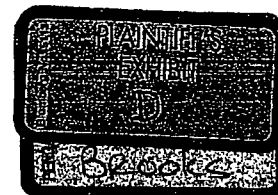
A preliminary drainage investigation and analysis was performed for the 1020 Willowbrook single family residence. A summary of findings is as follows:

Drainage Outlet:

- Existing 24" rcp/headwall crossing pipe @ Willowbrook (aprox. 70')
- Connects to aprox. 400' of existing 30" rcp
- 30" rcp discharges into a tributary of Manchester Creek (feeds into Tech Park Regional Retention facility)

Watershed:

- FEMA FIRM floodplain is located aprox. 200' downstream from subject residence
- Contributing water shed to 24" outlet is aprox. 54 acres of primarily residential, some park land, and little commercial (southern limits extend to NSRR railway)
- Watershed appears to be well established with no recent changes in runoff characteristics



Residence / Drainage Outlet Hydraulic Relationship:

- House F.F. Elev. is 2.24' below roadway overtopping relief elev.
- 24" invert elev. is 3.94' below house F.F. & 6.18' below roadway relief elev.
- All other adjacent structures appear to be above roadway relief elev.
- Structure has a history of being impacted by floodwaters
- * survey data obtained by Public Works (not tied to GIS topographical data)

Drainage Study Summary:

- Pond Pack SCS routing calculations were performed to establish water surface elevations
- Rational method calculations also provided for comparison
- Calculations show residence is extremely vulnerable to flooding for storm events below a 10-yr event
- The 25-yr event shows a flooding stage of approx. 2.5' above F.F. elevation (SCS method)
- Tailwater impact is insignificant at Creek discharge point
- Downstream FIRM floodplain is not a factor on the frequency of upstream flooding potential

Requirements to Alleviate Flooding Potential:

- Upgrade downstream stormwater system from creek discharge point to Willowbrook (no consideration has been given for potential utility conflicts)
Replace existing pipe system with approx. 470' of 54" pipe at 1% grade (lower I.E. to improve hydraulic condition) or
- Raise residence F.F. elevation to a minimum of 1' above roadway relief elevation

Supporting Calculations & Data:



1020 Willowbrook.pdf

Please let me know if you need any additional information.

Tim E. Brooks, CFM, CSPR, LEED AP
Plan Review Engineer
Planning & Development, Infrastructure
City of Rock Hill
155 Johnston Street
PO Box 11706
Rock Hill, SC 29731-1706
803-817-5107
TBrooks@cityofrockhill.com



Fw: 1020 Willowbrook Drainage Study & Additional Info

Tim Brooks to: mcfawford, Keith
A. Costley

05/23/2011 12:18 PM

Matt, Keith,

I have attached a summary of the preliminary analysis I did for Bobby over a year ago. I have also included flooding pics and copy of permit (there is no inspection or paper trail in our data base). This info might be helpful. Let me know if you have any questions.



20091225_01.JPG



20091225_02.JPG



20091225_03.JPG



20091225_04.JPG



1020 Willowbrook Permit.pdf

Tim E. Brooks, CFM, CSPR, LEED AP BD+C, CPESC
Plan Review Engineer
Planning & Development, Infrastructure
City of Rock Hill
155 Johnston Street
PO Box 11706
Rock Hill, SC 29731-1706
803-817-5107
TBrooks@cityofrockhill.com

— Forwarded by Tim Brooks/Rock-Hill on 05/23/2011 12:13 PM —

From: Tim Brooks/Rock-Hill
To: Bobby Banks/Rock-Hill@Rock-Hill
Cc: David Dickson/Rock-Hill@Rock-Hill, Bill Meyer/Rock-Hill@Rock-Hill
Date: 12/31/2009 01:22 PM
Subject: 1020 Willowbrook Drainage Study

Bobby,

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- Raise residence F.F. elevation to a minimum of 1' above roadway relief elevation

Supporting Calculations & Data:



1020 Willowbrook.pdf

Please let me know if you need any additional information.

Tim E. Brooks, CFM, CSPR, LEED AP
 Plan Review Engineer
 Planning & Development, Infrastructure
 City of Rock Hill
 155 Johnston Street
 PO Box 11706
 Rock Hill, SC 29731-1706



Fw: 1020 Willowbrook Drainage Study

Tim Brooks to: Jason Bailey

01/13/2010 03:54 PM

Jason,

I noticed that I did not copy you on this. So, here it is. We never did hear anything from Bobby.

Tim E. Brooks, CFM, CSPR, LEED AP
Plan Review Engineer
Planning & Development, Infrastructure
City of Rock Hill
155 Johnston Street
PO Box 11706
Rock Hill, SC 29731-1706
803-817-5107
TBrooks@cityofrockhill.com

— Forwarded by Tim Brooks/Rock-Hill on 01/13/2010 03:52 PM —

From: Tim Brooks/Rock-Hill
To: Bobby Banks/Rock-Hill@Rock-Hill
Cc: David Dickson/Rock-Hill@Rock-Hill, Bill Meyer/Rock-Hill@Rock-Hill
Date: 12/31/2009 01:22 PM
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2010/01/13/2010 03:52 PM

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Supporting Calculations & Data:

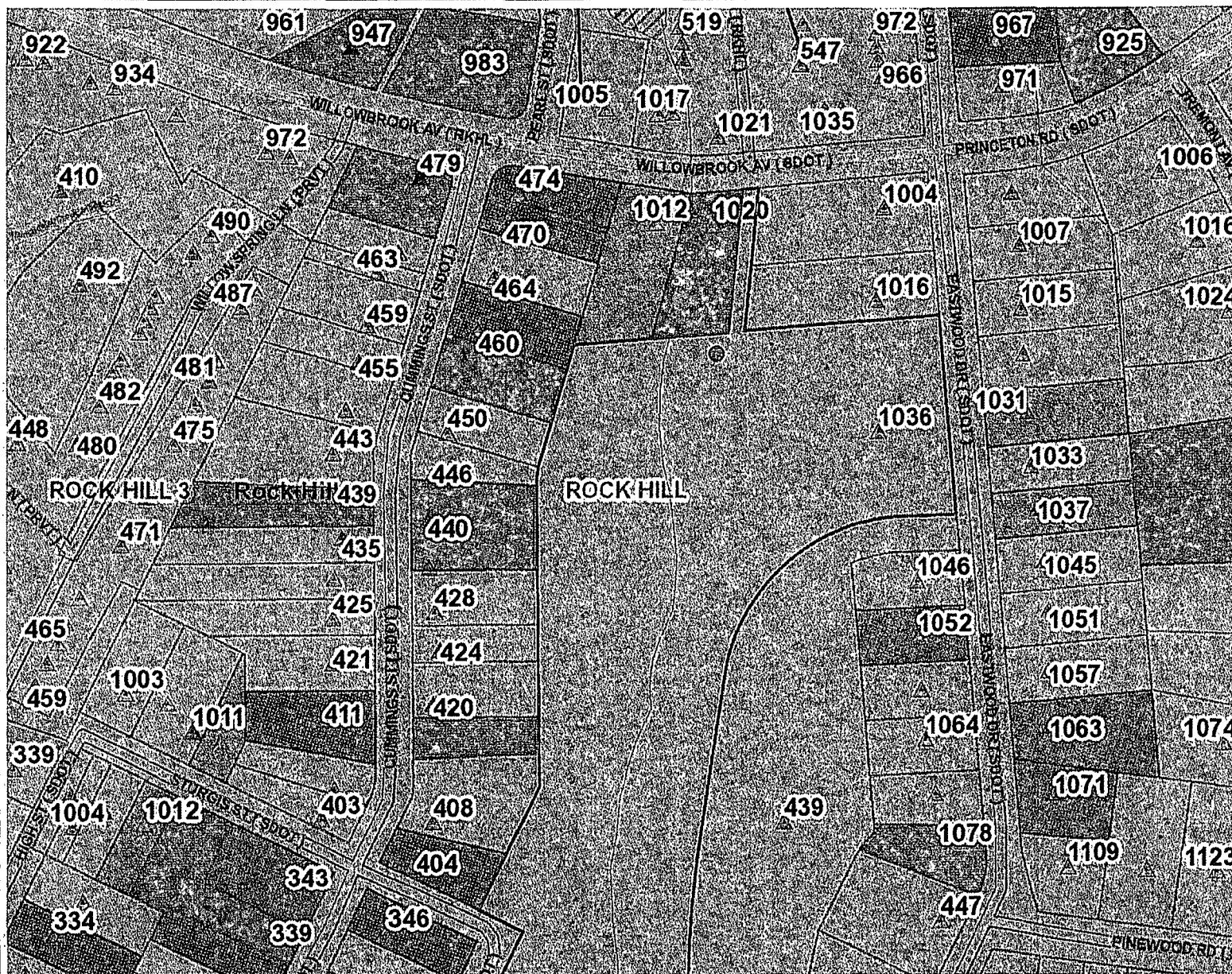
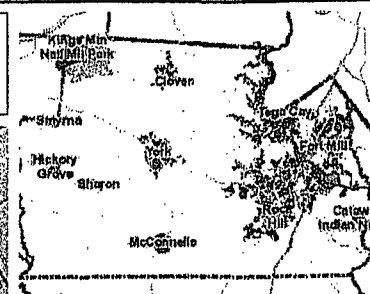


1020 Willowbrook.pdf

Please let me know if you need any additional information.

Tim E. Brooks, CFM, CSPR, LEED AP
 Plan Review Engineer
 Planning & Development, Infrastructure
 City of Rock Hill
 155 Johnston Street
 PO Box 11706
 Rock Hill, SC 29731-1706
 803-817-5107
 TBrooks@cityofrockhill.com

Spencer Park



Legend

- Parcels (PV)
- School District Boundary
- Fire Districts
- City Boundary
- Yearly Sales**

- 2016
- 2014
- 2013
- 2012
- 2011
- 2010
- 2009
- 2008

- North Corner and Lake Wylie
- Block House and Lake Wylie
- Address
- Roadway
- Parcels
- Parcels (Child)
- Child Parcel
- Base flood elevation lines
- Flood Hazard Zone Areas**
- 100 Year Floodplain
- 500 Year Floodplain
- Surface water area features
- Creeks

1:2,400



0.1 0 0.04 0.1 Miles

NAD_1983_StatePlane_South_Carolina_FIPS_3900_Feet
© GIS@YorkCountyGov.com

Printed: 8/6/2014

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Enter Map Description





PLANTIFF'S
EXHIBIT
4
BIRMINGHAM, ALA.

Seg # 37650

Map # 628-15-01-018

City of Rock Hill, SC
Department of Inspection
Building Inspection Record

Date of Permit 5-11-99
Permit No. 99-00896

OWNER Lawrence Wherry

Contractor Wherry Const.

Location of Building 536 Cummings St.
1020 WILLOWBROOK

1151 Eagle Dr.
Rock Hill, SC 29732
324-5775

INSPECTIONS

Type	Inspector	Date	Explanation	Type	Inspector	Date	Explanation
BE	CH	7-7-99	Abandoned - dump near branch schoolhouse rd! (water mound) longer to ok				
PR	HP	3-1-00	OK				
HA	HP	3-13-00	OK + 1/2" already paved				
HA	HP	3-27-00	OK				
ES	HP	3-27-00	OK				
SL	HP	3-30-00	OK				
SL	HP	4-10-00	OK				
EP	HP	3-30-00	OK				
EE	HP	4-20-00	OK 200AMP V6				
CO	HP	5-10-00	OK				
CO	HP	2-15-01	OK				
CO	HP	2-21-01	OK				
CO	HP	2-22-01	OK				
			(list review responses)				

Noted
April
called cost
2-21-01



This certificate is issued in triplicate, the owner getting the original, the first copy for occupant or contractor and second copy for inspector's file.

CERTIFICATE OF INSPECTION FOR OCCUPANCY OR USE
CITY OF ROCK HILL

This certificate is issued pursuant to Sec. 109 of the City Building Code, which requires every owner or occupant to secure a certificate of occupancy for any new building or the change of kind or occupancy in existing buildings.

Rock Hill, SC ^{*} 2-15 20 01

THIS IS TO CERTIFY that I have inspected _____

LOCATION: 536 Cummings St. 1020 WILLOWBROOK

OWNER: W. Henry Const.

OCCUPANT(If Occupied): _____

UNDER PERMIT NO. 99-00896 DATE ISSUED: 5-11 20 99

And found the same to conform to the City Building Code and/or plumbing and electrical codes and other applicable City Ordinances and is hereby released for lawful use or occupancy.

EXCEPTIONS (if any) _____
A.P. Don Hauke (dc)
Deputy Building Official

Inspections _____
Fire _____
Engineering _____
Utilities _____
Forester _____
Economic Dev. _____



Deposition of Ronald E. Wright, P.E.

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1 A. Yes.

2 MR. WHITE:

3 Object to the waste of time.

4 EXAMINATION CONTINUES BY MR. HALFORD:

5 Q. Can you say with any degree of professional
6 certainty that these are not a natural watercourse;
7 that this is a manmade watercourse?

8 MR. WHITE:

9 Object to the form.

10 WITNESS CONTINUES:

11 A. At least portions of it are. There may be some that
12 may have been originally natural, but there
13 definitely are portions that are manmade.

14 Q. Okay. Take me down and tell me about that culvert
15 down at willowbrook Avenue. Is that culvert serving
16 as part of the City stormwater management system?

17 A. Yes.

18 MR. WHITE:

19 Object to form.

20 EXAMINATION CONTINUES BY MR. HALFORD:

21 Q. What do you base your opinion when you say yes?

22 A. The Spencer Park collects the water, and does drain
23 down to that as the point where all the water off of
24 it has to go through, and it goes through a series
25 of culverts underneath the road and adjoining



Deposition of Ronald E. Wright, P.E.

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1 property on the other side of the road to get to
2 another drainage basin that is City property of
3 their stormwater system.

4 Q. Now, take me back, you testified earlier that you'd
5 seen some incident reports regarding debris.

6 A. Yes.

7 Q. Any of those reports lead you to believe that the
8 City of Rock Hill has cleaned that culvert pipe?

9 A. Yes.

10 Q. Do you recall how many you saw?

11 A. I believe there were four incidence reports. I know
12 at least three of those had it about cleaning it.
13 It may have been all four.

14 Q. Okay. Do you know why the City of Rock Hill would
15 undertake to clean a South Carolina Department of
16 Transportation culvert pipe?

17 A. No, other than to make sure that the drainage from
18 their property, the Spencer Park area, would then be
19 unimpeded to be able to go through that culvert to
20 get flow off of the property.

21 Q. Mr. White asked you about some professional
22 treatises, and you referenced the City's stormwater
23 manual?

24 A. Yes.

25 Q. Do you have an understanding of what the stormwater



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Exhibit F

Select Base Map ▼ City Extent Select Parcel Measure Length Measure Area Print Portait - 8.5x

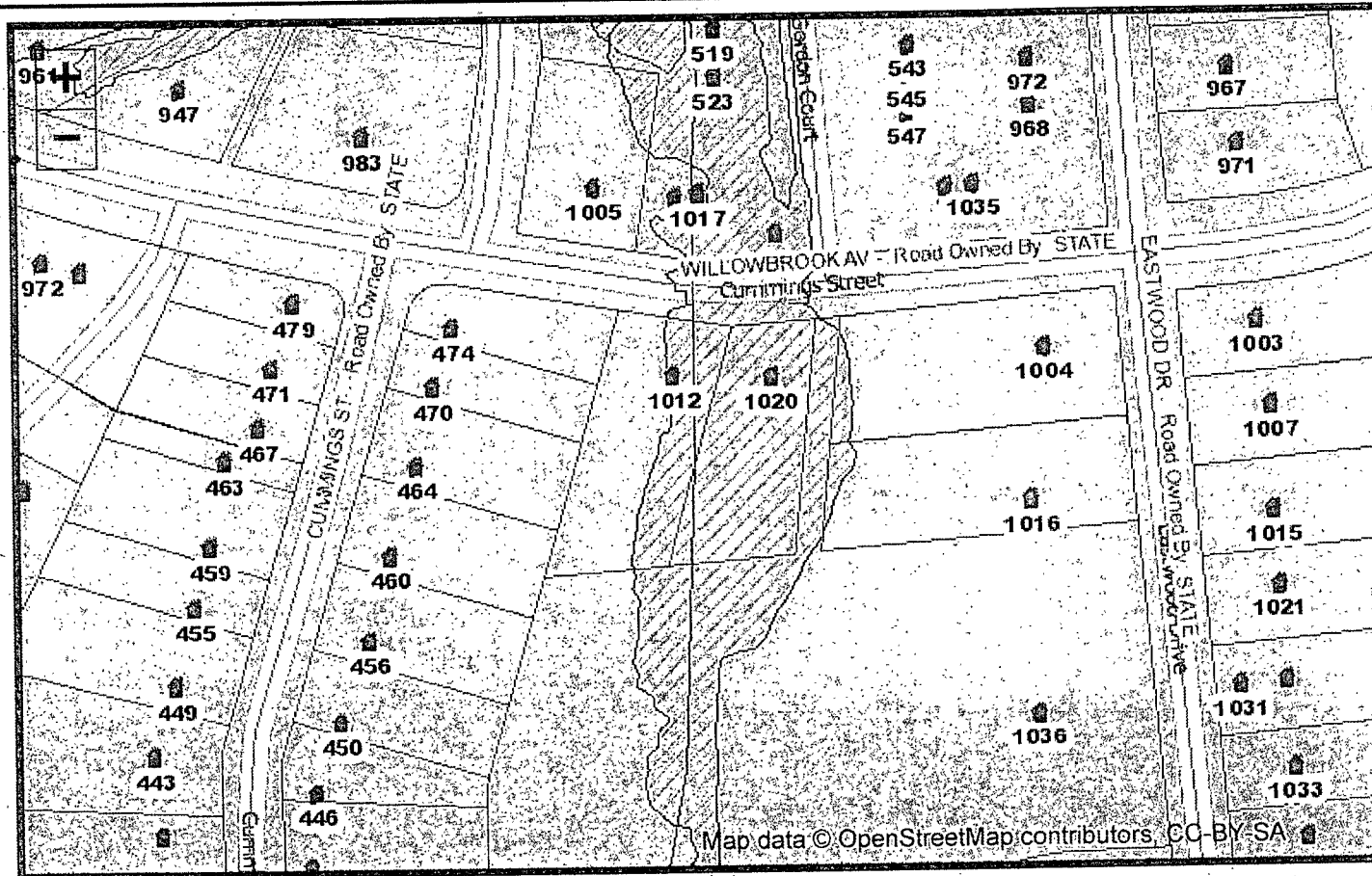
Click "Select Parcel" button then click on map.

Address ▼

(Start typing, then select choice from dropdown list, then click "Zoom to Location" button.)

Zoom to Location

Address: 1020
WILLOWBROOK AV
ROCK HILL
Jurisdiction: City of Rock Hill
Hub (Inside City Limits)
Tax Map ID: 02893048
Current Owner: BRANTLEY MADINE
Previous Owner: WILLIAM S. COBB
Disclaimer: The City of Rock Hill, The County of York and its mapping contractors do not warrant the accuracy of the data or the use of the data. We specifically disclaim any warranty for use of the data for purposes other than those for which it was created.



Capital Improvement Projects List



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Ranking	Area	Road Owner	No. of Structures Potentially Affected	City Complaint History	Cost to Fix (7)	Cost / Structure	
1	Hagins Street/Friendship Drive	RKHL	7	Yard Floods	\$530,000.00	\$75,714.29	City Resident/City Road
2	Charlotte Avenue	RKHL	4	Yards Flooding	\$244,000.00	\$61,000.00	City Resident/City Road
3	Pinevalley Rd/ Midbrook Dr	RKHL	2	Yard Flooding	\$681,000.00	\$340,500.00	City Resident/City Road
3	Woodhaven	SCDOT	4	House Floods	\$117,000.00	\$29,250.00	City Resident/City Road
4	Eagle Drive/Hummingbird Ln/Raven Drive	RKHL	3	No Calls	\$425,000.00	\$141,666.67	City Resident/City Road
5	Roddey Street	SCDOT	7	House Floods	\$450,000.00	\$64,285.71	City Resident/SCDOT Road
6	McDow Drive	SCDOT	1	No Calls	\$183,000.00	\$183,000.00	City Resident/SCDOT Road
	Bose Avenue	SCDOT	1	House Floods	\$191,000.00	\$191,000.00	City Resident/SCDOT Road
	Chandler Dr	SCDOT	(Tops in 2-Year)	No Complaints	\$123,000.00	N/A	City Resident/SCDOT Road
7	Pinewood Lane	SCDOT	4	Yards Flooding	\$450,000.00	\$112,500.00	City Resident/SCDOT Road
8	Charlotte Avenue	SCDOT	1	Yard Floods	\$135,000.00	\$135,000.00	City Resident/SCDOT Road
	Marydale Ln	RKHL	(Tops in 10-Year)	No Complaints	\$105,000.00	N/A	City Resident/SCDOT Road
9	Saluda Street	SCDOT	4	No Calls	\$225,000.00	\$56,250.00	City Resident/SCDOT Road
10	Hollis Lakes Road	SCDOT	3	No Calls	\$175,000.00	\$58,333.33	City Resident/SCDOT Road
11	Finley Road/Pine Terrace Drive	SCDOT	3	Back Yards Flood	\$325,000.00	\$108,333.33	City Resident/SCDOT Road
12	Constitution Blvd./Cemetery	SCDOT	2	No Calls	\$325,000.00	\$162,500.00	City Resident/SCDOT Road
13	Montclair Street	SCDOT	1	Yard Floods	\$152,000.00	\$152,000.00	City Resident/SCDOT Road
	Parkwood	SCDOT	(Tops in 10-Year)	No Complaints	\$540,000.00	N/A	City Resident/SCDOT Road
14	Pearl Street	SCDOT	1	Yard Floods	\$60,000.00	\$60,000.00	City Resident/SCDOT Road
15	Constitution Blvd./Health Care Drive	SCDOT		Multiple Yards Flood in area	\$425,000.00	\$425,000.00	City Resident/SCDOT Road
16	Princeton Road	SCDOT	4	Yards Flood	\$350,000.00	\$87,500.00	City Resident/SCDOT Road
17	Allen Street	SCDOT	1	No Calls	\$225,000.00	\$225,000.00	City Resident/SCDOT Road
18	Anderson Road	SCDOT	1	No Calls	\$328,000.00	\$328,000.00	City Resident/SCDOT Road
19	Ebinport RD / Northgate Ln	SCDOT/RKHL	4	No Calls	\$250,000.00	\$62,500.00	City Resident/SCDOT Road
20	Willowbrook	SCDOT	3	One House Floods	\$225,000.00	\$75,000.00	City Resident/SCDOT Road

* Top 10 Projects = \$4,034,000

* City is planning to proceed with Projects 1, 2, 3 (\$1.5M)



CERTIFICATE OF COUNSEL

RECEIVED

I, Nadine Brantley, ProSe, certify that the record on appeal

DEC 11 2015

contains material proposed to be included by any of the parties

SC Court of Appeals

and not other materials.

Nadine Brantley

Nadine Brantley, ProSe