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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-7392
Appellate Case No. 2014-001728

Frank "Doc" Haynie.....Appellant,

v.

The City of Forest Acres, Mark W. Williams, Shaun Greenwood, and Clark Frady, in their individual capacities.....Respondents.

RECORD ON APPEAL

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Volume 2

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Volume 2

MR. COX: Object to the form.
MR. SHEALY: Object to the form. You may answer.
A: I may have told Clark to go and investigate the property, but I've never called authorities or specifically told him to go over there with authorities.
Q: And we talked earlier about the tickets. You testified that you did not write any tickets. Is that correct?
A: That's correct.
Q: Did you ever attempt to write tickets?
MR. SHEALY: Object to the form. You may answer.
A: I've never written any parking tickets.
Q: Was there ever a conflict between you and the Police Chief regarding a parking issue of any sort?
A: No.
Q: Okay. So, if the Police Chief testified or said that there was, that would be untrue?
MR. SHEALY: Object to the form.
MR. COX: Object to the form.
A: As far as I know, he's never said anything to me about my enforcement of the parking ordinance.
Q: Do you enforce the parking ordinance with

citations? How do you enforce the parking ordinance?

A: I've never had an occasion to write a citation -- well, I've never -- it's never gotten to that level. It's too easy for people to move their cars.

MR. PORTER: Nothing further. Thank you, Mr. Greenwood.

MR. COX: I just want to ask one question.

CROSS EXAMINATION BY MR. COX:

Q: You mentioned that the City, due to Mr. Haynie's allegations against the City, would document interaction with them more so than possibly other people who have building code issues?

A: Yes, sir.

Q: Other than that, did the City in any way, you know, pick out Mr. Haynie just because he was Mr. Haynie or selectively enforce its codes against him?

MR. PORTER: Object to the form.

A: No.

MR. COX: Those are all the questions I have.

CROSS EXAMINATION BY MR. SHEALY:

Q: Did you have any -- you've talked about not

having any conversations with Mr. Alquaza about his permits. Do you recall having any conversation with Mr. Alquaza, period?

A: Yes. I was in the office when Mr. Frady had a conversation with Mr. Alquaza. Mr. Frady was trying to explain to Mr. Alquaza about issuing new permits, and Mr. Alquaza was not understanding very clearly, and so I attempted to explain it in another way.

Q: What did you say?

A: Mr. Alquaza had indicated that he was having problems with his contractor, Mr. Haynie, and he wanted to know that if he hired someone else, could they then finish the work under the permits, and according to state law, we cannot allow someone else to work under someone else's permit. So, what I told Mr. Alquaza was, that in order for us to issue a new permit for this new person for the remainder of the work, we needed a written document stating that Mr. Haynie was no longer the contractor of record which would absolve him of any liability for any of the work completed under this new permit, and that we would need a new scope of work, and the building official would have to

look at the plans to ensure that it meets code.
Q: Okay. And once you explained that, did you feel like Mr. Alquaza understood after you gave him that explanation?
A: Yes. He walked out the door. We were standing near the door, and he walked out at that point.
Q: And initially, you were not involved in the conversation. It was just between Mr. Alquaza and Mr. Frady?
A: Yes. Mr. Alquaza was sitting at Mr. Frady's desk, and just being in the office, I overheard the conversation.
MR. SHEALY: No further questions.
REDIRECT EXAMINATION BY MR. PORTER:
Q: Did Mr. Alquaza get a new contract?
A: I'm not sure. I don't know how that played out. That was pretty close to my last week there, and I was really just in the office closing out open issues, and I was finishing up writing the new zoning ordinance, so that was really the only thing I worked on that last probably week-and-a-half or two weeks.
Q: So, we're talking late April of 2011?
A: Yes.
Q: So, are you aware of whether or not a permit

was reissued?
A: I'm not.
Q: Do you have any documentation of what you just talked about, what you said to Mr. Alquaza or anything like that?
A: No. It was a conversation in the office.
MR. PORTER: No further questions. Thank you.
(Whereupon, the deposition concluded at 4:47 o'clock p.m.)

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

- - -

FRANK "DOC" HAYNIE,	:	CIVIL ACTION NO. 2012-CP-40-7392
Plaintiff,	:	
vs.	:	
THE CITY OF FOREST ACRES, MARK M. WILLIAMS, SHAUN GREENWOOD AND CLARK FRADY IN THEIR INDIVIDUAL CAPACITIES,	:	
Defendants.	:	

- - -

Monday, December 9, 2013

- - -

ORAL DEPOSITION OF BARRY EPPS, taken at Gallivan, White & Boyd, 1201 Main Street, Suite 1200, Columbia, South Carolina, commencing at 2:10 p.m., before Cynthia First, a Federally Approved Registered Professional Reporter, Certified Realtime Reporter and Notary Public.

- - -

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ALSO PRESENT:

Frank "Doc" Haynie

Mark M. Williams

Shaun Greenwood

(INDEX AT REAR OF TRANSCRIPT.)

- - -

(It is hereby stipulated and agreed by and among counsel for the respective parties that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent waives reading and signing of this deposition transcript.)

- - -

BARRY EPPS, after having been first duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. COX:

Q Can you give me your full name, please?

A James Bradford Epps.

Q Mr. Epps, my name is Johnston Cox. And I'm representing the City of Forest Acres in a lawsuit that's been brought by Mr. Haynie sitting down there. You have been identified as a witness, so we're here to do what's called take your deposition.

A Okay.

Q Have you ever had a deposition taken

before?

A No.

Q Let me explain the process to you a little bit. It's a fairly informal process. Obviously, we're just sitting around the table talking, but it is formal in the sense that you have been sworn to tell the truth just like you're in a court of law. Okay?

A Okay.

Q A deposition can be used for a lot of things. It can be used to find out what you know, what you're going to say. It can be used for cross-examination at time of trial. You know, if you say something different at trial than you did at your deposition, that could be pointed out, that sort of thing. Okay?

A Okay.

Q All right. A couple things just about the process. First of all, if I ask you any question you do not understand, let me know.

A Okay.

Q I'll be glad to re-ask the question. I mean, if I mumble or whatever, just let me know.

A Uh-huh.

Q Because I want to make sure that you're

understanding exactly what I'm asking you. All right?

A All right.

Q And if I ask you a question and you answer it, is it fair for me to assume that you understood the question?

A Yes.

Q Great. Also, if you need to take a break at any time, let me know.

A Okay.

Q This is not a marathon.

A Okay.

Q It's not a contest to see who can sit here the longest. Just let me know. We'll take a break.

The rules of court do require me to tell you that now that the deposition has started, you can't ask for help from anybody.

A Okay.

Q You can't take a break and ask, "How should I answer this?" You're on your own just like you would be in court.

A Okay.

Q If you do talk with anybody during the break, I can ask you what you talked about.

What is your address?

A I live at 1034 Crystal Springs Drive, Pelion, South Carolina.

Q How long have you lived there?

A Since September of 2004, so it's about nine years.

Q Okay. And who do you live there with?

A My wife.

Q What's her name?

A Diane, D-I-A-N-E.

Q Do you have any children above the age of 18?

A Not biologically. I have stepchildren and they are, yes.

Q What are their names?

A Crystal, Crystal Michael. That's her last name.

Q Michael. Okay. Is she married?

A Yes.

Q What's her husband's name?

A John.

Q John.

A Poe.

Q P-O --

A P-O-E. She's been separated for 10 years, I think, but they never got divorced.

Q Understood. And where do they live?
A She lives with us.
Q Okay. And is Crystal Springs in Richland County?
A No. It's Lexington County.
Q That is Lexington County?
A Uh-huh.
Q How about your other stepchild?
A Tracy Elstad, E-L-S-T-A-D.
Q And do they live in Richland or Lexington County?
A Lexington County.
Q Do you have any relatives that live in Richland County? Cousins, brothers, sisters, parents?
A Not that I recall, no.
Q What is your date of birth?
A 9/10/64.
Q And what's your Social Security number?
A XXX-XX-4649.
MR. PORTER: And for good measure, can we just do Xs?
MR. COX: Just the last four is fine. That will be fine.
BY MR. COX:

Q Have you ever been in the military?
A No.
Q And where did you grow up?
A I grew up in basically Union, South Carolina. That's where I graduated from high school.
Q And when did you graduate from high school?
A 1982.
Q And did you receive any schooling after high school?
A Yes.
Q Tell me about that.
A I have a two-year associate's degree that I received from USC Union, which is a two-year campus there in Union, South Carolina.
Q What was your degree in?
A Mathematics.
Q All right. Any other schooling, other than the mathematics?
A No.
Q How about technical school, any type of specialized training for work or anything like that?
A I've had training as a building inspector with the City of Columbia, and also City of Forest

Acres. And I've had training as a water inspector, I guess, for the City of Columbia. I had certification with that at one time.

Q Okay. Are you employed now?

A No.

Q When is the last time you were employed?

A With the City of Forest Acres.

Q Okay. And you haven't held any jobs since then?

A I have had some positions that I've held part-time, helping churches out and things. I'm an ordained Southern Baptist minister.

Q Okay. And do you have a specific church that you are a pastor?

A I'm serving at Still Waters Baptist Church right now.

Q Still Waters.

A Uh-huh.

Q How long have you been there?

A Since April of this year.

Q And tell me what is -- you say it is part-time?

A Part-time minister. I take care of the church services and some visitation for the congregation.

Q Is that a position that when somebody leaves, that you're kind of an interim person, or how does that work?

A Actually, it's a small church so they can't afford a full-time minister. So I receive a compensation for my services.

Q Got it. What other churches have you --

A I served at Dry Creek Baptist Church.

Q And when did you serve there?

A That would have been, let's see, September of 2010 until April of this year.

Q And why did you leave Dry Creek?

A I had finished my tenure there and moved on to another church to help them out.

Q What do you mean by finished your tenure?

A The ministry had reached a point to where I was no longer necessary, they could move on to the next step with a person more qualified to help them out. Their finances grew.

Q Got it. All right. Did you attend seminary anywhere or how did you --

A I have not. Basically, I've just been in the ministry since 1999 as an ordained minister and have basically been -- it's called a bivocational ministry. It means you serve part-time at the

church and then you usually have a full-time occupation. So for the most part, it's not an occupation. It's more of a calling, I guess you could say.

Q Got it. What's the process of becoming ordained?

A I go through an ordination board. I went through the Midland Columbia Chapter of the Baptist Association.

Q Okay. And I'm sorry. Is it Southern Baptist?

A Southern Baptist, uh-huh.

Q And so tell me -- I guess, from September 2010 until April 2013, you were at Dry Creek. Were you at a church before then?

A Yes.

Q Tell me about that.

A Let's see. I have to recount here.

Q I'm sorry. I'm taxing your memory.

A Let's see. I was at -- actually, I had a part-time ministry that I did from -- would have been February of 2009 until April of 2010.

Q Where was that?

A That was in Red Bank. That was a personal project.

Q Tell me about that.

A Basically, two years prior, I had served at the South Lexington Community Church, which was an establishment of the Church of God from Anderson, Indiana.

Q Okay.

A And so the church had disbanded abruptly, and I still maintained contact with some of the folks. And some of them had not been churched or anything, so I organized them into a congregation to kind of help them transition into another church. And then April, everybody seemed to be getting back on their feet pretty good. Like I said, it was just a personal project.

Q So February 2009 to April 2010, you did that?

A Uh-huh.

Q Did you receive any compensation for that?

A No, sir.

Q And so when you say -- I mean, it's Still Waters now.

A Uh-huh.

Q Are you being compensated for that?

A Yes.

Q But that's just on a part-time basis?

A Right. I received a 1099, and then all my expenses and mileage and things are taken from there. If there's a remainder, then that's counted as income for me for the year.

Q Other than the Still Waters Baptist Church, have you worked anywhere since April 2013?

A No.

Q And the same thing for Dry Creek Baptist?

A No.

Q Okay. I ask this question of everybody, so please don't be offended. Do you have a criminal record of any kind?

A No.

Q Have you ever been treated for any drug or alcohol problems?

A No.

Q Again, I ask that of everybody, so I'm not singling you out.

A Not a problem.

Q Tell me about your -- other than being -- so you said the last place that you felt like you were employed on a full-time basis was the City of Forest Acres?

A That's correct.

Q Where did you work before the City of

Forest Acres?

A I worked for F&ME Consultants. F&ME.

Q When did you work for them?

A I worked for them from April of 2006 until July of 2007.

Q What did you do for them?

A I was a state inspector.

Q Tell me about that.

A The company had a -- state inspections had gotten away from using municipalities in the area for their inspections and were hiring private contractors to do the inspections. And so the private contractors were having some of their employees certified for state inspections.

And I had worked with this company prior and had a reputation with them. And they were hiring at that time to take on some of these types of contracts.

Q Okay. And so what were you -- what training did you go through to be a state inspector?

A Basically the City of Columbia, I went for certification examinations in residential and commercial inspections and received a certification. Then I maintained the certifications through education hours throughout the year.

Q So you were a certified residential and commercial inspector?

A Yes. I was a residential inspector in all aspects, and I had a commercial certification in building, mechanical and plumbing.

Q And did you receive those while you were working at F&ME?

A No. I received those while I was working for the City of Columbia.

Q All right.

A They were just maintained throughout the years.

Q So let me back up then.

A Okay.

Q So when you came on at F&ME, you were already a certified residential inspector.

A Yes. And commercial grade, yes.

Q And commercial. Okay. And why did you leave that job?

A Health issues.

Q Health issues. Okay. What type of health issues were you having?

A I had an injury in 2003 when I worked for City of Columbia.

Q Okay.

A And it damaged my spine and neck area. And I was in hopes of finding a job that could accommodate my injury and still maintain a living in my profession. And it was just too much for me to handle. The job was a lot more physical then than I was led on to believe.

Q Okay.

A Because I did more than just the state inspections. I was doing the commercial inspections for construction projects and things, as well. So I just couldn't keep up with the workload.

Q What's the difference between a state inspection and a commercial inspection?

A A state inspector, basically, doesn't have to do concrete testing and carry equipment, those types of things. He's just basically responsible for checking code issues and has minimal equipment involved.

Q Okay. Where did you work before F&ME?

A I worked for England Enterprises.

Q How long did you work for them?

A Approximately a year, from May of 2005 until July of 2006.

Q And what did you do for them?

A State inspector, private and state

inspector.

Q Did you do any inspections for City of Forest Acres while you were at England?

A Yes. Mr. England had a contract with the City of Forest Acres to do their inspections, and I was the primary inspector for those.

Q Okay. Where did you work before England?

A Before England, I worked for the City of Columbia.

Q How long did you work there?

A I worked there from September of 1995 until April of 2005.

Q Let me back up to England. Why did you leave there?

A Basically, he was new in the business and did not have a lot of benefits and things. And it maintained for a year and just never did surface. And so with the F&ME Consultants, there were benefits and things, and so I transferred from there.

Q Got it. City of Columbia, what did you do for them?

A I was a building official -- excuse me -- a building inspector, residential building inspector, the last position that I held. And I've

also been an inspector for the water department and a customer service rep for the water department. Those were the three positions I held at the City of Columbia.

Q Which one did you hold first?

A The first one was the customer service representative.

Q How long were you one of those?

A September of '95 until approximately November of '96.

Q And what did you do after that?

A I moved into the Lake Murray Water Treatment Plant as a lab technician/inspector.

Q How long did you do that?

A I was there from November of '96 until approximately July of '98. Then I served the remainder of the time as a residential inspector.

Q '98 to 2005?

A Uh-huh.

Q Did you do any commercial with the city?

A No. I just had commercial certifications.

Q And when did you come on with the City of Forest Acres?

A Oh, that would have been in July of 2007.

Q Do you still maintain any of your

licenses?

A No.

Q Or your certifications?

A Since I'm not a state employee, I cannot maintain those without a lot of cost involved. And I don't have the finances to maintain them, so I just let them lapse.

Q So you're not a residential inspector anymore?

A No.

Q So you came on July of 2007?

A Yes.

Q And when did you leave?

A October of 2009.

Q And when you came on in July of 2007, what position did you hold?

A I was a provisional building official.

Q Explain that to me.

A Provisional means that I had applied for a position as a building official with the State of South Carolina. And at that point you have two years to continue your certifications and achieve the building official certification.

Q Okay.

A In that time period I can still function

as a building official in all aspects of commercial and residential inspections.

Q And explain that to me. So you're on a provisional status.

A Uh-huh.

Q And so I'm assuming you have additional tests you have to take to become a certified building official?

A Yes. I needed to obtain a commercial electrical certification. Once I did that, that would give me the four certifications necessary to take the building official certification exam.

Q So you have to take the commercial electric and pass that?

A Correct.

Q And then you have to take another exam?

A Right.

Q Okay. Which is the, I guess, the building official exam?

A The building official, yes.

Q But during that provisional status, during that time, you can do all inspections that you feel comfortable with?

A Yes.

Q Whether they're commercial or residential?

A That's correct.

Q What other job duties did you have, other than as a building official?

A Basically, I helped out Shaun sometimes with tree inspections whenever he was out of the office. And then for the most part, I would do plans review.

Q Plans review?

A Uh-huh.

Q Was part of your job there also code enforcement, general code enforcement, if needed?

A As in ordinances and things?

Q Right.

A Not necessarily, no. I'd usually refer those to Shaun.

Q What type of tree inspections were you talking about?

A Basically, if somebody wanted to cut down trees, they had to have them inspected to make sure they were a certain size and met the ordinance requirements for chopping a tree down.

Q Was that a type of a code inspection?

A It would have been an ordinance inspection.

Q An ordinance inspection?

A Uh-huh.

Q And you did some of those?

A Uh-huh.

Q Okay. How about zoning issues? Did you ever deal with zoning issues?

A I did some parking -- I did have zoning certification, and so I did parking for some of the projects.

Q Tell me what you mean. I mean --

A Basically, yes, you had to maintain a certain area of parking for a building size. And so you'd have to have a certain number of parking places to maintain certain square footages and things.

Q Okay. Were you ever asked to go out and look at, for instance, residential properties because of complaints made regarding trash or high grass or whatever, any type of complaints made by neighbors?

A I have investigated complaints, yes.

Q And tell me what type of complaints you would investigate for that.

A Most of the time it was parking issues. And then there was also, like I said, dumpster issues would be the majority of those things.

Q Tell me what parking issues you've looked into.

A Most of the time -- one of the main ones was some parking that was on the main road behind A.C. Flora High School.

Q Okay.

A People were allowed to park in the right-of-way. And it was just something that was a complaint with the neighborhood.

Q Was that an ongoing thing?

A It resolved itself for the most part, yes.

Q All right. I'll get back to that. And then the next one was dumpster issues. What does that mean?

A Just had to maintain dumpsters in the area. And some people just didn't like them in their neighborhood. So I would just go and make sure there was no trash around them and those types of things. And also construction equipment was maintained in a proper location.

Q We'll talk about some of those some more. I would think that was more general -- isn't that general ordinance or general code issues?

A Yes.

Q So you did investigate some of those on

behalf of the city?

A I would. I just did not enforce them. I would usually --

Q I see.

A Right. I would investigate them and pass the information on to someone else who could take care of that.

Q I see. So you would be asked to go out and look at different things --

A That's correct.

Q -- but you would never, for instance, write a ticket --

A Huh-uh.

Q -- or leave a warning or anything like that?

A No.

Q Did you ever -- when you're investigating those types of complaints, did you ever talk to the person being complained about or did you just go look at it?

A I would just go look at it mainly, yes.

Q So you wouldn't make contact with the homeowner necessarily?

A No.

Q And if it was something that you had, "Uh,

there might be some issue there that needs to be followed up on," you would come back to Shaun and say --

A Right.

Q -- yes, there is an issue there?

A Shaun or Mark, yes.

Q Or no, there's not an issue there?

A Right.

Q And from then on, somebody else would handle it?

A That's right. Which was standard at the City of Columbia, as well. I couldn't move cars or anything. If we had a problem with that, we'd have to call the police officer to take care of those situations.

Q Got it. Do you know Clark Frady?

A I've heard the name. I wouldn't recognize him if I saw him.

Q Have you ever worked with him before?

A No.

Q Or done any inspections with him?

A No, sir, not that I recall.

Q Never talked to him, that you know of?

A I don't believe so, no.

Q What other types of issues, complaints

would you go look at for the city, other than the dumpster and the parking?

A Just basically people that had yards that neighbors didn't like the way they looked, you know, for the most part.

Q Not keeping up yards, that sort of thing?

A Usually it was construction going on in the property. It wasn't like they just didn't -- had tall grass or something. It was usually a construction project that the complaint was about.

Q Who did the city have doing its building inspections before you came on? Was that where they had the contract with England?

A Yes, they had the contract with England, and they finished that contract and I was hired on to replace the contract.

Q And who interviewed you?

A Mark.

Q Good. And you, obviously, got the job?

A Uh-huh.

Q And you were there from 2007 to October 2009?

A That's correct.

Q And who was your supervisor?

A It would have been Mark.

Q When you were first hired?
A Yes.
Q Did that ever change?
A No.
Q All right. Was Shaun ever your supervisor?
A No.
Q Was Shaun there when you got there?
A Yes.
Q He was already hired there?
A Uh-huh.
Q What was he doing when you got there?
A He was ordinance inspector.
Q And did his job change while you were there?
A Yes.
Q When did that happen?
A He became assistant city manager.
Q Do you remember when that was?
A No, sir.
Q Was he still dealing with the ordinance --
A Yes.
Q -- inspection and enforcement at the same time as being assistant city manager?
A Yes.

Q Tell me -- you mentioned that when you came on, you were hired as a provisional building official --

A Uh-huh.

Q -- and you had a two-year provisional time period.

A Yes.

Q What happens if you don't get the certifications you need during that two-year period of time?

A I never really got past that point. The two years lapsed and I've never investigated further to find out what options I had.

Q As far as -- isn't it through the LLR that you have a two-year time frame?

A Yes.

Q Does that mean you can't do the inspections anymore?

A I could have gotten an extension under different circumstances, but I had spoken to the -- I've forgotten his name now, the guy who was over LLR. But I never did pursue that.

Q And why not?

A I didn't see myself getting back into the profession, and so I just didn't go any further with

it.

Q Okay. Did you get your certifications you needed -- oh, I'm sorry. They're running wire up there.

Did you get the certifications you needed during the two-year time period?

A No, I was not able to obtain them.

Q Why was that?

A Just could not pass the exams. And if you don't pass the exams, you can't get them.

Q I hear you. Okay. That's fair.

And I guess the question I was asking, if your two years lapses and you haven't gotten what you need to get to become a building official --

A Right.

Q -- what ramifications does that mean for you? Does that mean you can't do them? I just don't know the answer to that.

A I can only inspect what I am certified in at that point. So I can still maintain inspections in building, plumbing and mechanical certifications for commercial, and then also my zoning certifications and residential certifications. I would still be qualified to do those types of inspections.

Q Unqualified to do what?

A Electrical or building official.

Q And why did you leave the City of Forest Acres?

A I was dismissed.

Q Okay. And why were you dismissed?

A I had not obtained my certifications and I had some health issues at the time which compounded my coming back to the office.

Q Was that part of the deal when you were hired: Look, you need to get your certifications in two years?

A Yes.

Q And you just failed to live up to that?

A Yes.

Q Did you disagree with your termination at that time?

A I had some question about the basis of it.

Q Why?

A Just possibility of maybe continuing employment after I returned back from medical leave.

Q All right. And let me ask you about that. Were you out on medical leave for a certain period of time?

A Yes.

Q Tell me about that.

A From July of 2000 -- or in July of 2009, I had a disc replacement surgery in order to try to alleviate some of the problems I had from my injury in 2003.

Q Okay. And how long were you out?

A I was out from July until October, at the time of my termination.

Q Were you -- did you ever come back to work from your --

A No.

Q Okay.

A I did make phone calls to help out Margo with some questions and stuff from time to time, but I was instructed not to do that since I was on medical leave.

Q Gotcha.

A That was early on in my medical leave.

Q I understand. Was your medical leave up by October 12th, 2009?

A No.

Q It was not up? You were still --

A Yes.

Q How long was your medical leave?

A I continued until just recently when I was

dismissed from the vocational rehabilitation department.

Q I guess my question was did you have a set period of time to be out on your medical leave for the city?

A Yes.

Q How long?

A I had signed freedom of -- what's it called?

Q FMLA?

A FMLA, Family Medical Leave Act, and hoped to return to work within six weeks, but that did not transpire. So I had to keep Mark posted on my progress with therapies and continued doctors' appointments and things. They continued to spread out and I had no definite time when I would return to work.

And based upon that, plus I was not able to maintain my certifications or obtain the certifications, then he felt it was best for the City of Forest Acres to move on.

Q All right. I don't want to put words in your mouth, but from what I'm hearing, in October of 2009, you were not ready to come back to work physically?

A No.

Q All right. And I think I had down as your last day at the city as October 12, 2009. Does that sound about right?

A October 15th, actually, yeah.

Q 15th, somewhere around there?

A Uh-huh.

Q And we've been provided an affidavit, and we're going to talk about the affidavit --

A Okay.

Q -- that you signed in this matter. Is it safe to assume that if your last day was October 15th, 2009, that anything that you talk about in this affidavit happened before that?

A Yes.

May I take a break?

MR. COX: Absolutely.

(Recess in the proceedings from 2:47 to 2:55.)

BY MR. COX:

Q We were talking about your employment with the city.

A Yes.

Q And when did you first meet -- I guess, let's start with meet Doc Haynie?

A I'm not sure of the exact date. It would have been early on there, probably in 2007, with the project.

Q Did you ever have any dealings with Doc Haynie before coming to the city through --

A No.

Q -- any of your other inspector jobs --

A No.

Q -- that you know of?

A Not that I recall.

Q Would you even remember if you did back when you were working for the city or working for --

A Probably not. Doc mostly did commercial projects, so I probably wouldn't have come in contact with him.

Q Okay. How do you know Doc did mostly commercial projects?

A That's what he mostly did when he was with the City of Forest Acres. He had restaurants and different things that he was renovating and doing. It's just an assumption on my part.

Q I just had to ask you because I didn't know.

A Right.

Q And tell me, when did you first -- did you

ever actually meet Doc face to face?

A Yes.

Q During your time with the city?

A Yes.

Q My other question, which is a little more general, is when did you first become involved with any project or property that Mr. Haynie was involved with?

A It was a property that his daughter lived in, and he was building a shed in the backyard.

Q And I think we've been calling that 1325 Brentwood?

A Yes.

Q Okay. And he was building some structure in the back?

A A shed, uh-huh.

Q And under what circumstances did you first get involved with Doc over that piece of property?

A I had to inspect the construction. I believe the first thing we probably talked about was progression of the project. It had kind of slowed down and we just needed to check on the permit status and things, I believe.

Q So do you believe, when you first got involved, that the project had been permitted before

you ever came on with the city?

A Yes.

Q And that the work had halted for whatever reason?

A Usually home projects that are of a personal kind linger around for a while with the City of Columbia and other places, as well. So as an inspector, it's not uncommon.

Q And tell me what your initial conversation was with him regarding the shed going up in the back.

A Just basically trying to find out what his schedule might be, when he'd have it completed or ready for the next inspection.

Q And what prompted you to have that conversation with him?

A Basically, I was just asked to go check up on the project. So I did and left him a card. And he and I got in contact with each other and talked about it.

And then to just renew his permits, as well. If I remember correctly, it was about a year old. And it wasn't really an established procedure, but it was kind of an understood procedure for how to progress with lapsed permits and things.

Q To get it renewed?

A Yes.

Q Is that an uncommon procedure, to get a renewed permit after a year?

A No. It's actually covered in the codes for how to proceed. And then you can modify it to suit your own purposes with your individual jurisdictions.

Q Did you tell him that, hey, look, if you're going to start this back up, you need to renew your permit?

A I believe I might have, yes, because it was about a year old. So I just asked him if he could renew it and we could continue on with the project and get the inspections going.

Q Was that anything out of the ordinary for a municipality to require somebody to renew a permit after a year or so?

A No.

Q Is it your understanding that you went over there based upon complaints from neighbors about equipment laying around, trash in the yard, that sort of thing?

A I think the first complaint I had was toys in the yard that I went to investigate.

Q All right.

A And basically just an unkept yard, those types of things. And then I've investigated construction equipment in the yard that was just not contained, and trash dumpsters, those types of things.

Q All right. For each of those complaints that you just mentioned, when you went to the Brentwood property, was it your understanding that people in the neighborhood were complaining about the condition of the property at 1325 Brentwood?

A Yes.

Q And how did -- how were you -- how did you end up being the one to go out there?

A It was a permitted project, so I would be probably the best person to do it, most likely, since it might be some construction involved, as well, so...

Q Got it. So you went out there to investigate these issues with toys and debris in the yard --

A Uh-huh.

Q -- and saw the condition of the unfinished project?

A Yes.

Q And that's when you talked with Mr. Haynie about what's going on with the project, "Are you going to finish this or not?"

A Uh-huh. What's his time schedule, yes.

Q Was there a discussion with him, "If you're not going to finish this, you need to get all this stuff cleaned up"?

A Yes, I did ask him to keep things contained and the equipment in a certain area, that type of thing.

Q All right. What was his response to you?

A I'll take care of it.

Q And did he say that he would get a new permit?

A Yes.

Q Was there any question that he needed a permit to build that shed back there?

A No.

Q Did you investigate multiple complaints over the years you worked with the city about that property at Brentwood?

A Yes.

Q Would you say -- is it fair to say that the complaints from the neighbors continued from the time that you got there, maybe even before you got

to the city, until the time you left in 2009?

MR. PORTER: Object to the form.

THE WITNESS: I wouldn't know about before, but while I was there, there was a continuation of complaints, yes.

BY MR. COX:

Q What's the city supposed to do when neighbors complain about property conditions?

A We always sent somebody to investigate it. And if it was your jurisdiction, that's where you went -- or your area that you inspected.

Q Right. I mean, the city is not supposed to ignore those things.

A No. You see if there's any validity to the complaint and you address it.

Q All right. The entire time you worked with the city -- I think I know your answer to this because you said you weren't into enforcement.

A Right.

Q Did you ever write Mr. Haynie a ticket despite all the complaints that you investigated from the neighbors?

A Not to my recollection, no.

Q To your knowledge -- if you don't know, you don't know. But to your knowledge, did Shaun

Greenwood, during the time you were there with the city, ever write Mr. Haynie a ticket despite all the complaints from the neighbors?

A I believe there may have been a parking ticket written for some cars that were on the property. That's the only thing I recall.

Q Okay. Do you know that for a fact?

A I do not recall for a fact, no. But I know there was quite a number written on one particular day.

Q Just up and down the street?

A Up and down Brentwood, yes, based on student cars that were parked in the right-of-way.

Q So you're not sure whether Haynie received a ticket for that or if other people on the street did or both?

A Correct. I know that some people received parking violations for having cars in the right-of-way along Brentwood.

Q Okay. When was that?

A It would have been early on, probably 2007, I would say, fall.

Q Fall of 2007?

A I'm just guessing, yeah. Because it was early on in my tenure with the City of Forest Acres.

Q Do you know if any tickets were actually written or just notices put on cars or warnings?

A I seem to recall having to revoke some tickets because of some complaints from the neighbors because they had received them. And so they were dismissed.

Q Would you be the one to dismiss tickets?

A No. I would only dismiss a ticket that I wrote.

Q So you didn't write any tickets for parking?

A No, not to my recollection.

Q So what situations would you have been involved in where you dismissed parking tickets?

A I would not have written a parking ticket. Tickets that I write are on the building code, residential and commercial.

Q Right.

A There are provisions for those. So if somebody does some work and it's not meeting the code standards, then I can cite them for that and have them resolve the problem. And if I see the problem is resolved, I can revoke the ticket prior to court time, if I want to.

Q Understood.

A Right.

Q I thought you had just said a few minutes ago that you were involved with revoking parking tickets that were given out by Shaun.

A No.

Q No?

A I understood that to have happened. I was privy to the situation.

Q Okay. How do you understand that that happened? Tell me how you know that.

A Just talk in the office.

Q Who?

A Shaun and I would sit together in the office and talk.

Q Did Shaun tell you that he had any tickets for parking that he gave up and down Brentwood rescinded or revoked?

A I seem to recall something like that, yes, that he had written some tickets.

Q But you don't know if he'd ever written Mr. Haynie any or his neighbors or both?

A We didn't discuss specific people.

Q To your knowledge, did Mr. Greenwood ever write Mr. Haynie any tickets for, you know, the condition of the property, toys in the yard, high

grass, any of the complaints the neighbors were making about Brentwood?

A Not that I recall.

Q Do you know where Mr. Haynie actually lived?

A Yes. I don't recall the address, but I can drive you there if we need to. Just from personal recollection.

Q Right. Were there ever any code issues with his house, his residence?

A None that I saw. Near the end of my tenure, he was doing a construction renovation project on his home, so he had some work going on there.

Q Is it something he pulled a permit for?

A Yes.

Q Is that why you went over there?

A That's correct.

Q To inspect whatever work he was doing?

A That, and there was some complaints about debris and things in the area, too.

Q Okay. Do you recall when that was?

A It would have been near the end of my tenure, probably sometime around March of 2009. Just guessing.

Q And so you went -- then that's his personal residence. I can't remember what road he lives on. And there was --

A I want to say it was Falcon maybe. It's not Falcon. That's what the school is on.

Q I think it's the next one over.

MR. HAYNIE: Florawood.

THE WITNESS: Florawood.

BY MR. COX:

Q Florawood. So you had some inspections you needed to do for permitting?

A Yes, but I never did do an inspection there. He never got to a point of needing an inspection from me while I was at the City of Forest Acres. That was something that progressed after I left.

Q And then you said there may have been some complaints from his neighbors about debris in the yard over at his residence?

A Yes. I was instructed to go check out construction debris.

Q Did anything ever happen with that?

A No. It was fine. There was no -- in my opinion, it wasn't anything that was unsightly, I guess you could say.

Q Or a violation of the code?
A Or a violation, yeah.
Q And did you tell Shaun that, I guess?
A Uh-huh.
Q Yes?
A And Mark, as well, yeah.
Q And what was their response, if any?
A I don't remember any specific response now.
Q Anything out of the ordinary about being asked to go look at some complaints about construction debris in that instance, at Mr. Haynie's house?
A No.
Q And I'm assuming, since you didn't really do enforcement, Mark Williams never directed you to write Mr. Haynie a ticket at any time?
A Not that I recall.
Q Are you aware of any other single piece of property in Forest Acres that received more complaints than the 1325 Brentwood?
MR. PORTER: Object to the form of the question.
THE WITNESS: No.
BY MR. COX:

Q Would you say that the 1325 Brentwood address received more complaints than any other property you're aware of in Forest Acres during the time you were there?

MR. PORTER: Same objection.

THE WITNESS: I investigated quite a bit. I don't know necessarily it was generated by a complaint, but I did investigate it at instruction -- as instructed.

BY MR. COX:

Q Would the complaints come in to you?

A No.

Q Who would they come into?

A They would come into the office. Usually Tara, the secretary, would take the complaints and they would be passed on to me.

Q Okay. Do you have any information or any knowledge of any time that you went and visited or investigated the 1325 Brentwood address that a complaint had not been made?

A I don't know. I just followed the instructions. It could have been some times, yes.

Q But you don't know?

A No.

Q And it could be, in fact, that every time

you went out there was in response to a complaint by a neighbor?

MR. PORTER: Object to the form of the question.

THE WITNESS: It was quite frequent if it wasn't, but yeah, it was kind of extensive investigation, I guess.

BY MR. COX:

Q Okay. And, again, my question was --

A And I was actually instructed at one time to just drive by on a regular basis just to see what was going on and see if there was any cause for a complaint.

Q As far as you know, are you aware of any time that you went out there when the reason for you going was not a complaint by a neighbor?

A Yes.

Q Tell me about that.

A I guess I could recount that. As I just said, I was instructed to drive by the construction site on a regular basis just to check. I would usually check in on Friday before I left for the week and maybe about Monday and about midweek just to see if the construction project was presentable.

Q Okay. Were you -- do you know if that was

based upon a complaint by a neighbor saying that Mr. Haynie was doing commercial business out of there?

A No, it was just instructions --

MR. PORTER: Object to the form.

THE WITNESS: -- from Mark.

BY MR. COX:

Q From Mark?

A Yes.

Q What did Mark tell you?

A To check up on the property on a regular basis.

Q For what reason?

A Just to make sure it was maintained. And the other --

Q What was maintained?

A -- the other reason was to make sure there was no commercial activity going on on the property. It was just all strictly residential.

Q Right. Were you aware that there were complaints by the neighbors saying that Mr. Haynie was running a business out of there?

A Yes. That was the reason we were checking for construction debris -- or commercial construction debris.

Q And that had to do with the dumpster; is that right?

A Yes.

Q And tell me about the dumpster.

A It was a dumpster that was maintained on a residential property for use of the construction that was going on with the property.

Q And were you asked to determine whether or not there was construction debris in that dumpster from something other than what was going on at his house?

A Uh-huh. I was actually instructed to take pictures. And I've also been instructed to just basically watch the property --

Q Did you --

A -- to see if any construction equipment came on the property.

Q Construction equipment or debris from other job sites?

A Uh-huh.

Q And when you visited the property, did you see Mr. Haynie's employees at the property at any time?

A One occasion, I did.

Q Tell me about that.

A They were on the property to obtain some extension cords or something that he had on the property. He told them where they were, and so they came and got those so they could take them to a job they were going on.

Q Did you glean from that encounter that Mr. Haynie was storing equipment that his workers were using for jobs on other sites?

A No. I felt it was personal stuff that he needed and sent somebody to get it.

Q Personal stuff that he needed to do what?

A To work on a project.

Q That was not at the house?

A That was not at the house, uh-huh.

Q Correct. And did you tell those fellows anything about, look, you can't come over -- you can't be here for doing commercial, getting supplies for other jobs at that time?

A I did tell them that, yes, it was not a commercial location, yes.

Q And what were you over there for at that time?

A At that time I was over there to do electrical inspection. Doc had called for inspection and said it was ready for me to check the

rough inspection on that.

Q And it was at that time that you were just there doing your inspection, some of his employees rolled up and --

A They were there when I arrived.

Q What were they doing when you arrived?

A They were putting some drop cords into the truck and about ready to leave, if I recall.

Q All right. All right. Did you see construction debris in the dumpsters?

A No.

Q Never?

A Not that I would call commercial construction debris. It looked like residential debris and things, or home trash, those types of things.

Q Well, let me ask you. Was it related to the work that was going on at the Brentwood property or was it debris that looked like it had come from somewhere else?

MR. PORTER: Counselor, can we clarify which property we're talking about?

MR. COX: The Brentwood property. Sorry.

THE WITNESS: I could not make a determination about that.

BY MR. COX:

Q All right.

A It normally was pretty much empty. There wasn't much in it for the most part.

Q Did you investigate other residential properties where there were complaints about business activities going on?

A No, not that I recall.

Q Not that you recall. Do you know whether or not Shaun Greenwood ever did?

A Not that I recall.

Q Not that you recall or you just don't know?

A I'm not aware of anything.

Q Is it possible that he did, you just don't know about it?

A That's true.

Q Tell me about any other projects of Mr. Haynie's in Forest Acres that you had any involvement in.

A The only other one that I recall was a restaurant renovation that was over near the Dollar General. I forget the name of the street.

Q Covenant Road?

A Covenant Road, yes.

Q Other than that Covenant Road project, were you -- did you do any inspections for any other projects that Mr. Haynie did in Forest Acres, that you know of?

A Not to my recollection. Just his home, which I never did an inspection on that, and then the home that his daughter was living in on Brentwood.

Q Are you aware of any time that Doc was -- I'm sorry. Mr. Haynie.

MR. HAYNIE: That's okay.

BY MR. COX:

Q Mr. Haynie was denied a permit, a building permit?

A I don't recall anything, no. I didn't really issue the permits. Margo usually did most of that. If she had a question, she might call me about that. But for the most part, that was her job.

Q Well -- and thank you for clarifying that. You didn't issue permits?

A I did not issue permits, no.

Q Who did issue permits?

A Margo Pierce.

Q Anybody else, other than Margo?

A Tara. Tara's last name slips my mind, but she was Mark's secretary. She may, on occasion, do permits in Margo's absence.

Q Okay. So nothing -- how about -- did you do any inspections on a project that Doc did for Paul Cash, where he built kind of a nice man kind of shed kind of thing in the backyard?

A I don't recall. I may have. It doesn't ring a bell.

Q You don't recall anything out of the ordinary on that?

A No, sir. I don't recall the project, actually.

Q From time to time, would Mark Williams pass along complaints he'd received from residents of Forest Acres to you and to Shaun, things to check up on?

A Uh-huh.

Q And I forgot to remind you. You need to say yes or no.

A Oh, yes.

Q Thank you. I'm assuming he would do that for lots of different issues, not just dealing with Mr. Haynie?

A That's correct.

Q And did you ever consult with Mark, bounce things back and forth with him on projects, questions you had, zoning issues, with --

A No. I was usually the final authority on most of those issues, so I didn't really consult Mark on almost anything.

Q Would you ever ask him advice on how to handle things with anybody other than Mr. Haynie? Do you understand my question?

A No.

Q Okay. Were there times where you would ask Mark, "Well, what do you think I should do about this?" You see what I'm saying?

A Huh-uh.

Q On different issues?

A No. I would just take the raw information and go do what I needed to do and make a judgment on that.

Q What I want to do is I'm going to go through some of these documents with you real quickly.

A Okay.

(Work Order Information dated 10-11-07, Bates stamped 000169-000173 marked Epps Exhibit Number 1, for

identification.)

BY MR. COX:

Q I want to hand you this document. I'm not going to go through all of it. But are you familiar with this iWorQ spreadsheet?

A Yeah. It was something I never really mastered, but I do, yes.

Q And would you from time to time type stuff in related to ordinance issues?

A I would, yes.

Q Okay. I would like for you to turn over to the second page of this exhibit.

A (Witness complies with request.)

Q And this is dealing with -- it's different complaints. Okay?

A Uh-huh.

Q And you'll see on the second page, it says, "Trashy property complaint, 1325 Brentwood."

A Okay. We're on the second one, which is --

MR. PORTER: Page 2.

BY MR. COX:

Q Page 2 of the --

MR. PORTER: And I will indicate.

MR. COX: That's fine.

THE WITNESS: Brentwood Drive. Okay.
BY MR. COX:
Q And down here it says, on October 18, 2007, SG -- I'm assuming it's Shaun Greenwood.
A Uh-huh.
Q "Barry and I had looked at the property. The only violations observed dealt with building materials due to expired permits. The permits have since been renewed. The property will be further inspected for any violations."
A Yes.
Q Is that the first time that you actually went out to that property?
A It's possible, yes.
Q And up here on 10/22 it says, "SG-Called and notified Mrs. McCollough that we could not do anything about the toys and that the owner has come and update permits for the building."
A Yes.
Q Do you recall that?
A Yes, that was what we were talking about earlier with toys in the yard and those types of things.
Q It also says here on 10/18, there is no ordinance to address the toys. It's just not an

ordinance violation.

A Right.

Q Right? Okay. Was that --

A It should be noted, too, that "SG" stands for Shaun Greenwood, if you didn't know that, as well.

Q That's correct, Shaun Greenwood. So y'all went and looked. There was a complaint.

A Uh-huh.

Q You went and looked. You didn't find an ordinance violation.

A Right.

Q Except for the fact that the permit was expired.

A Right.

Q And there was still construction equipment around.

A Yes.

Q All right. And so was that anything out of the ordinary?

A No, just investigating a complaint.

Q Was there anything involved in that encounter where the building code was overemphasized?

A Building code? No. Basically it was an

ordinance issue. There was no building code involved.

Q Was there anything in that scenario where the codes or ordinances were overemphasized by the city?

A No, sir.

Q All right. If you flip over, here is additional complaints. Okay?

A Uh-huh.

Q And this is coming down 5 -- if you start at the -- I believe you start at the bottom, where it says 5/5/2008.

A Uh-huh.

Q You start writing there. And I guess because of the software, then you go back up because you ran out of room or something like that.

A Well, it does the newest -- the newest entry would be --

Q The latest entry?

A Right. And then if you had additional things, it would just go above -- it would be a separate entry. You would have come in at a separate time on the same date if it has the same date. It would just be a newer entry.

Q I'm going to apologize to the court

reporter beforehand, but we're going to read through this, because this kind of gives a history, it appears to me.

A Okay.

Q Have you looked at this?

A I have not.

Q Do you want to read it first before we go through it?

A You can go through it. That's fine.

Q This says, "On October 22nd, 2007, Doc Wild was given notice for continuing work without a permit."

A Okay.

Q I thought there was something else. Sorry. It actually starts up where it says JBE. Do you see that?

A Actually, it doesn't.

Q Where does it start, do you think?

A It starts at where you were. The JBE would be an initial -- most likely it would have been a morning entry on the bottom one, and then maybe an afternoon entry on the top one. That would have been a continuation from the top entry.

Q Let's start where it says JBE, because that seems like that's chronologywise where it

starts.

A But it's not. Chronologically it would be starting here (indicating). And then another entry would have been made on the same day here (indicating). And that would have been what came from that entry. These are two separate entries.

Q Got it.

A This would have been initial entry. This would have been a supporting entry later on in the day or maybe even a couple minutes later or something (indicating).

Q Well, see where it says -- there's the 5/5/2008, the bottom one. And then it says JBE right above that?

A Yeah.

Q Let's start there. "Doc Wild Haynie obtained a permit to build a work shop on the property at 1325 Brentwood in October 2006."

A Uh-huh.

Q "When I came on staff, on July 29th, 2007, it was -- the project was not complete and the property had been investigated for neighborhood complaints."

A Uh-huh.

Q How did you learn that?

A Just from being on the property, I was told to investigate the permit or, actually, the permit was -- Margo had looked it up and told me it had expired.

Q How did you know it had been investigated for neighborhood complaints? Okay. How did you know that?

A Excuse me?

Q You said, "the project was not complete and the property had been investigated for neighborhood complaints," when you came on staff in July of 2007.

A Because this is 2008, and back here in 2007, we had investigated some neighborhood complaints.

Q And then it says, "Notice was given to Doc Wild on October 18th, 2007, in writing and by voice mail that his permit had expired, because it was a year old and due to no activity."

Is that true?

A Yes.

Q "Doc Wild came to our office and we discussed his plans to continue the construction. He informed our office that he would get another permit once he began work again on the building."

A Yes.
Q Did that happen?
A Yes.
Q "At this time the building was just a pole building with a dirt floor."
A Yes.
Q "On October 22nd, 2007, Doc Wild was given notice for continuing work without a permit."
Who did that?
A That was me.
Q Okay. And why did you give him notice for continuing work without a permit?
A Because he didn't have a permit. It had expired, as informed from Margo Pierce to me.
Q The next sentence says, "Concrete workers were on the property setting up forms when I went to the property to investigate a neighborhood complaint about toilets on the front porch and toys scattered in the yard."
A Yes.
Q Let me ask you some questions about that before we go on.
A Okay.
Q So on October 22nd, 2007, there was an additional complaint by neighbors about toilets and

toys scattered in the yard.

A Uh-huh.

Q Is that correct?

A Yes.

Q Sorry. I'm just trying to remind you to say yes or no.

A That's fine.

Q And when you went out there, you saw that Mr. Haynie had workers out there working on the shed.

A Yes.

Q And he had workers out there working on the shed without renewing his permit.

A No. He did not know it needed to be renewed at that time. At this particular time, he was informed that it needed to be renewed.

Q Okay.

A And that work cannot proceed until it was renewed. And then the JBE that you're citing is what happened afterwards. His permit had been issued in response to my warning to him.

Q Well, okay. Let's back up. Because you say on October 18th, he was notified in writing and by voice mail that his permit had expired.

A Right.

Q And then after that, he came in and y'all talked about it, and that he would get a new permit.

A When the project proceeded, as we read in this one here.

Q Correct. Then you went out there on October 22nd --

A Uh-huh.

Q -- and he was working?

A Right.

Q And you gave him notice for continuing work without a permit?

A That he needed to get the permit renewed, yes.

Q Correct. So he had actually started the work back?

A Right.

Q Without renewing his permit?

A That's correct.

Q All right. Did you ask him why he did that?

A Just to -- no, not really. I just said, "You need to get your permit updated."

He said, "I'll take care of it."

And then my entry as JBE shows that he took care of it.

Q After you went out there and found him working on the project?

A That's correct.

Q Doc Wild obtained a permit after you told him, look --

A That would be the sequence according to here, yes.

Q -- stop working.

"Forms for a monolithic slab were approved for concrete on 10/5/2007. Building was closed in and inspected and approved for electricity 2/4/08."

MR. PORTER: Let the record reflect the prior date was 10/25.

MR. COX: What did I say?

MR. PORTER: 10/5. Not a big deal.

MR. COX: Sorry. This is all going to be in the record because it's here.

BY MR. COX:

Q "The yard continued to have commercial materials and equipment stored in and around the building."

Why did you note that?

A Just part of what I was there for, just to see what was going on in the project.

Q I mean, what was the significance that

there was still commercial materials and equipment stored in and around the building?

A That the equipment was being used for the residential property, so definitely there would have been equipment on the property.

Q "On 3/11/08, Doc Wild was given written notice that all materials and equipment not related to the completion of the building needed to be removed from the property."

A Yes.

Q Is that accurate?

A Yes. That was in response to a complaint that there was commercial stuff going on with the project. And when I got there, I just informed him that make sure anything that's on the project is related to the project or in storage.

Q Got it. Anything out of the ordinary there?

A No.

Q Are you in any way overemphasizing the ordinances of Forest Acres?

A Just responding to a complaint.

Q Right. And then now we go up to the top JBE, right?

A Right. That would be the sequence.

Q Where it says, "Notes continued"?

A Right.

Q Okay. And then again on 4/23/08, his permit expired again?

A Let's see.

Q I'm not reading verbatim, obviously.

A Yes, because you're given a certain amount of time once the permit is issued, six months, three months, whatever, you know, he thinks he might be able to finish the project in. That's usually discussed and just, you know, approved from our discussion how long he thinks. If he needs additional time, then it's just a matter of getting together and saying, "I need additional time."

Q All right. And he needed to call to schedule a final inspection?

A Yes.

Q Now, this 4/23/08, was this in response to continued complaints about the condition of the property or were you just following up, knowing that he needed a final?

A It was generated that you might want to check up on this permit and see if it's expired. So I did and it had expired, so I investigated it.

Q And do you know how that was generated or

who generated it?

A From Mark.

Q Do you know if he received a complaint from somebody about it?

A I do not.

Q Is it possible that he did, you just don't know?

MR. PORTER: Objection.

THE WITNESS: It's possible.

BY MR. COX:

Q Again, you told him that all commercial equipment and materials will need to be removed from the property and that all personal materials would need to be stored in the building?

A Yes.

Q Basically, get it up out of the yard?

A Uh-huh.

Q And this is where you saw his employees --

A Yes.

Q -- there.

A Uh-huh.

Q And you told them they were not allowed to be on the property to do work for Doc Wild's business?

A Yes.

Q Why did you tell them that?

A Because that's just -- it's a residential property and it's not for commercial maintenance or use.

Q And did you tell them that because you had the impression that that's what they were doing there?

A Just happenstance, just to make sure they understood, for clarification.

Q I'm skipping down because a lot of this is just fill in. But essentially down here it says, "He asked if he could call and schedule the final inspection for the first part of the next week. I agreed. As of Thursday, May 1, I had not received a call."

A Okay.

Q So I called him and we all traded phone calls.

And you eventually went out there and you gave -- for the final inspection, correct?

A Uh-huh.

Q And he did not pass that, correct?

A I don't recall. No. According to my notes, he didn't.

Q Was your determination that he did not

pass the final inspection a proper one?

A It was based on code violations that were not taken care of, which is part of my inspections, to be an extra pair of eyes for the contractor, to point out things that he may have neglected or not seen.

Q Did anybody from the city tell you to fail Doc Haynie's inspection, whether it made good or not?

A No.

Q Was this completely your decision not to pass him?

A Yes. And I discussed the results with Doc Haynie about that.

Q Sure.

A That's just part of the job.

Q That's what you normally do?

A Yes.

Q You've got a problem. You've got to fix this and then everything will be okay.

A Uh-huh.

Q Did you treat him any differently than you would any other person from Forest Acres?

A No.

Q In that instance, where he did not pass

the final inspection, were you overemphasizing the building code?

MR. PORTER: Object to the form of the question.

THE WITNESS: I just basically did my inspections, if that's what you're asking.

BY MR. COX:

Q You did your job?

A I did my job, yes.

Q Were you hypervigilant in enforcing the building code by not passing him?

A No. It just had some violation he was not aware of that I observed and brought them to his attention so he could correct them and call for a reinspection.

Q Okay. And you say that, "He told me he would make the corrections done and ready for inspection. Photos were taken of the property, 3/7, 3/17, 4/8, 4/23. And the written notices were filed in the address file. Photos downloaded."

A Uh-huh.

Q What were the pictures of?

A They were pictures of the dumpster and the property.

Q Okay. And that was, again, looking to

see, I guess, if there was debris coming from other sites?

A Yes. I was instructed to investigate that on a regular basis. And this was part of my investigation, was taking the photographs and referring them to Mark.

Q Got it. Do you know Jeff Crane?

A I know the name. I don't -- it's been a while.

Q Do you know if either Shaun Greenwood or Mark Williams know Jeff Crane?

A I'm sure the name's been in the office. I would not know. You'd have to ask them.

Q You don't have a personal relationship with him?

A No.

Q You never talked to him?

A I may have. I don't recall. I'd have to check phone logs and things from that time.

Q Up here on 5/22/2008, this is again, SG, Shaun, right?

A Yes.

Q And Shaun says at that time, "The property has been mostly cleared of violations. A letter has been sent to Doc about a stipulation for further

construction activity on the property. He is being issued a permit to construct a wall and is being granted extension of the permit to construct the accessory building."

A Yes.

Q Anything there where Shaun Greenwood is hypervigilant about the codes in regards to Mr. Haynie?

MR. PORTER: Object to the form.

THE WITNESS: Just looks like he's basically writing down observations to me.

BY MR. COX:

Q After this time in 2008, which looks like May of 2008, were you ever involved with the Brentwood property again?

A I don't recall anything, no. I mean, I'd have to look at work logs and things, but I don't recall anything.

Q Okay.

A It's been five years, and I didn't review anything before coming today; so I don't have access to those types of --

Q Right. Anything that we have talked about so far in this -- what we talked about in Exhibit Number 1, where in dealing with the complaints about

the 1325 Brentwood property, did Shaun Greenwood instruct you to overemphasize the building codes as they pertained to Mr. Haynie?

A I thought it was extensive, what we were doing, but I followed instructions and did what I was told.

Q Okay. Do you know if the complaints were extensive?

A I have no idea. I just know that my instructions were extensive. I was told to go out on a regular basis and things, and I thought it was a bit of an overkill myself.

Q Are you aware of any time that Shaun Greenwood ever instructed you to go out there that it wasn't related to a complaint that he had received?

MR. PORTER: Object to the form.

THE WITNESS: I just know that I got orders. I don't know where it came from. I mean, it could have been -- I did what I was told.

BY MR. COX:

Q So you felt that it was excessive, but you don't have any knowledge of what was -- what complaints were generating your trips out there?

MR. PORTER: Object to the form.

BY MR. COX:

Q Is that correct?

A All I know was I was following orders. I was told to do these things, so that's what I did.

Q Okay. And if people were complaining, it was the city's responsibility to go out there and check it out?

A Sometimes I was aware of it being a complaint, but not every time.

Q And if people were complaining, it was the city's responsibility to go and investigate. Do you agree with that?

A To me, to be instructed to sit on a job site and to go by at least three or four times a week is extensive and excessive. That's just my opinion. But I was instructed to do that, so that's what I did.

Q And you don't know what was generating your requests to go out there?

MR. PORTER: Object to the form.

THE WITNESS: Other than my orders to do it.

BY MR. COX:

Q Right. You don't know if somebody was

calling the city and saying, "You need to go over there now because they're doing it now"?

A I would have no knowledge of that, no.

Q And if that was going on, if they were receiving calls like that, "Please send somebody over there now because it's happening now," then that would be something that would be something the city should do?

A Yes.

Q Do you agree with that?

A Within reason, yes.

(City of Forest Acres Work Permit and Inspection Results marked Epps Exhibit Number 2, for identification.)

BY MR. COX:

Q Now, this, I don't know if you -- this is -- Number 2 is the permit that he was issued in 2006 --

A Okay.

Q -- for the shop. Okay?

A Uh-huh.

Q And then after this, on pages -- some inspection results. And on the third page, on the bottom, 10/22/07.

A Uh-huh.

Q Tell me what this is.

A This would be a written notice and warning that I gave to Doc. It looks like -- let me double check -- just a standard warning to just generate action.

Q Okay.

A I did this with the City of Columbia, as well. It doesn't mean that I'm going to enforce the fees and things. It just means that there's a possibility these things could happen and it's been brought to our attention that this needs to be taken care of.

Q I understand. This is dated 10/22/07. This is what we talked about earlier?

A Yes.

Q Where you went out there and said, "Work has started without a new permit issued."

A Uh-huh.

Q Correct?

A Yes.

Q And this is after you had the conversation with Mr. Haynie where he told you he would get a new permit before he started any new work, correct?

A That's correct.

Q And he did not do that?

A To my knowledge, there was never any work done until later on the next year.

Q Okay. Well, you said, "Work has started without a permit."

A It appeared that work had started on the project, yes. But there was no workers there or anything like that. It just appeared it was possible the work had begun. And so I wrote a notice to him.

Q So you didn't run off and write him a ticket?

A No. This was a warning. He wasn't there to talk to so I put a written warning on the property.

Q And then after that he came in and he got a new permit?

A Right.

Q What made you think there was new work going on?

A It just seemed like there may have been some new construction materials on the property. There was not a dumpster at that time, but I think there may have been a Bobcat on the property, some things like that, which would have been maybe used for that.

This is before I actually knew who Doc was. I never really met him, so I just went on assumption. It was not really something that we could substantiate. So this is generating, you would say, "Okay, I've been here. I'm the building inspector."

Q Give me a call?

A We need to talk so I can figure out what's going on, basically, is what this was.

Q Neither Shaun nor Mark Williams told you, write him a ticket. Treat him any differently than you treat anybody else?

A No. I believe on this one I was just instructed to go to the property because Margo had said that it was determined that his permit was expired and I needed to go check it, and check and see if anything was going on with the property.

Q And then the next page, 10/25/07, you're back out there. You say, "Footing approved for concrete."

A Yes.

Q Do you recall anything about that inspection?

A Other than that he just really did a lot of extra work and did it on a commercial level

instead of a residential level and it was done very well, no.

Q What did he do? Tell me.

A Basically, a concrete form was made to -- as I said, it was originally just a dirt floor. And so he was going to put a concrete floor in there, which is not uncommon for a residential shop. And when he did it, he had rebar and all types of other stuff which would have been a commercial-grade footing. And I thought it was done very well.

Q Good. And then the next one is just "Approved for meter."

A Yes. That allows construction -- electricity on the site to maintain work equipment and that type of thing.

Q And then the last one is May 1, where you say we're not there yet. You didn't pass the final. Fix some things up?

A Right, which is not uncommon. Sometimes you miss things as a contractor. Again, I'm a second pair of eyes.

Q On any of those inspections, were you instructed by Mark Williams or Shaun Greenwood to harass Doc Haynie or treat him any different than anybody else was treated in Forest Acres?

A I don't know where that really applies to any of this, but basically these were just inspections I did based on scheduling with Doc Haynie to do inspections. They had nothing to do with the office. It was just me and the contractor discussion.

Q All right.

A Other than just the permit one, check out the permit, the first one. That was instructed from the office. Everything else was Doc Haynie and I communicating and scheduling inspections, which is common.

Q All right. Next thing I want to talk to you about is this e-mail.

(E-mail dated 4-30-08, Bates stamped 000178 marked Epps Exhibit Number 3, for identification.)

BY MR. COX:

Q If you could read over this and tell me if you've seen this before (handing).

A (Witness complies with request.) I do not recall it, no. No, sir.

Q You don't recall that?

A I don't recall.

Q How about this one (handing)?

(E-mail dated 05-11-08, Bates stamped 000018-000020 marked Epps Exhibit Number 4, for identification.)

THE WITNESS: I recall this, yeah.

BY MR. COX:

Q And you --

A This looks sort of familiar, yes.

Q That's Number 4. You were actually copied on that e-mail, right?

A I don't know.

MR. PORTER: Would you like me to indicate?

MR. COX: It's somewhere up in there.

THE WITNESS: Oh, yes, B. Epps. Yes.

BY MR. COX:

Q And from reading the e-mails, is it your understanding that this was a complaint, Number 3 was a complaint that the city received regarding the property at 1325 Brentwood? Number 3, the one we handed you before that (indicating).

A This one?

Q Yes, sir.

A Petty, but yeah, it's a complaint.

Q And you provided this e-mail to Doc Haynie?

MR. PORTER: Object to the form.

THE WITNESS: I don't recall.

BY MR. COX:

Q You told Doc Haynie who was making the complaints about him, that Mr. Crane was making complaints about him?

A I do not recall.

Q Petty or not, the city needs to look into things that people complain about?

A That's it. They're voters. They are taxpayers.

Q Exactly. And you received this response from Doc?

A Yes.

Q And Number 5 (handing).

(E-mail chain dated 05-11-08, Bates stamped 000021 marked Epps Exhibit Number 5, for identification.)

BY MR. COX:

Q Did you receive that response from Mr. Crane?

A I believe I did. It looks familiar. Or did I? I did, yeah.

Q Okay. So you're aware that at least Mr. Crane --

A That there was a war going on between Mr. Crane and Mr. Haynie, yes.

Q I don't know if there was a war, but there was discussion going on about this property, and Mr. Haynie obviously agreed with their assessment?

A Uh-huh.

Q Do you know who any of these other folks are that are listed on the e-mail chain?

A I believe Brunson was the mayor, if I recall, Mark Williams, Shaun Greenwood. Nothing else looks familiar, but it doesn't mean I don't know them. I just don't recall.

Q You don't know if they're neighbors of these folks or not?

A No.

(E-mail dated 06-02-09, Bates stamped 000039-000041 marked Epps Exhibit Number 6, for identification.)

BY MR. COX:

Q I wanted to ask you about this one, which is Number 6 (handing). Tell me what that is, if you don't mind.

A Looks like something I gave to Mark. During the month I would investigate permits just to see how projects were going on. And in preparation

for his monthly council meeting, I would give him updates from time to time on some of the properties that he had concerns about, or basically just to let him know what was going on.

Q Do you know if these are properties that various citizens complained about or asked about, you know, what's going on with these?

A For the most part, these are properties that I investigated on a personal basis.

Q Tell me what you mean.

A On the process of going on a permit inspection, I would check a project and I would look to see if it looked like there was any work going on or if there might be some possible problems or complaints. And so this is just kind of like something to give Mark a heads up in case some complaints were generated on these properties, he would know this is the status of the property. This has nothing to do with Mark. This is my monthly inspections just to check up on status on projects.

Q Were all these projects being worked on by Doc Haynie?

A No.

Q I believe there's only one, is that right, that Doc was mentioned?

A Again, these are not generated by complaints. These are my personal report on things that I observed while I'm out on my rounds in the City of Forest Acres.

Q Understood. I completely understand.

A Okay.

Q But I'm just saying, there are a lot of other properties, a lot of other contractors that are dealing with these that have nothing to do with Doc Haynie?

A Right.

Q But there is one 3724 Covenant Road, Dollar General?

A Uh-huh.

Q Tell me what your concerns with that property were.

A Basically, I was just letting him know what the status of the project was. Let's see. Basically, just giving an update on what the status of the project is in case something came up during council meeting, he would be aware of what was going on and could intelligently answer the questions.

Q Got it. This is not something that Mark Williams asked you to specifically go check on that project, Doc Haynie's?

A No. This is part of my job as an inspector, which is something I did for the City of Columbia and other jurisdictions. We were instructed to look at our permits on a monthly basis, if possible, to review them and see if the project was still going on, if it looked like it had stalemated or if there was any possible problems on the property and just generate a report. These were some I generated to Mark in case something came up.

Q Again, you were treating Mr. Haynie the same as you were treating every other contractor in Forest Acres?

A Yeah. And this was actually stuff that I knew from talking to Mr. Haynie about. It's not something I said, "Hmm, it looks like he's having a sewer problem."

I basically, in the course of talking to my contractors, of which he was one, he said, "I just want to let you know, I've got some problems going on here. That's why I haven't done anything else on the project."

No problem. I'll make a note of it in case something happens.

Q What did he tell you about the problems he was having there at the Dollar General?

A That's been a while. Basically, all I can address is what I wrote here about the sewer problems. That's a construction thing. It has nothing to do with a --

Q A permitting thing.

A Yeah.

Q "The project is delayed due to sewer connection dispute between contractor and East Richland Sewer."

A Right.

Q What did he tell you about that, if you recall?

A That there was a dispute going on between the contractor and East Richland Sewer. That's all that I can recall at this time. It's been five years.

Q I understand. I've got to ask you if you remember.

A Basically, I just put the general -- this is what's happening. It's none of my business what happens or how it transpires. All I know is he's working out the details with them to get it resolved.

Q And he told you that he's, "Currently pursuing a class action suit against East Richland

in conjunction with Bruger's Bagels and Duke's Sandwich Shop concerning grease trap sizing and tap fees"?

A Yes, that would have been part of the dispute, most likely, because he was following the same code standards to do those types of things that had happened to these projects that were now having difficulties and problems. So they were parallel problems, I guess you could say.

Q Got it.

(E-mail chain dated 06-16-09, Bates stamped 000043 marked Epps Exhibit Number 7, for identification.)

BY MR. COX:

Q The next one (handing). Tell me if you can -- your e-mail comes first down here at the bottom, and then Mark responds to you. Can you read through that and tell me what's going on here?

A (Witness complies with request.) I don't recall, other than the face value of what it is. I can't recall what lines we're talking about because I didn't put what code I was looking up. I don't know if it was plumbing, electrical or what. I'm trying to remember.

Q Well, it talks about East Richland again.

So are we talking about -- you think you're talking about a sewer line or something?

A Probably talking about the sewer line. And basically -- okay. It's fuzzy. People like SCANA, SCE&G, sewer line companies, things like that, they have their own restrictions that are not code-enforced, if that makes sense.

Q Uh-huh.

A So basically what I was doing here was establishing that, as far as everything here, Doc is still in compliance by the code. If he still has issues with the company itself that he needs to resolve, then that's not part of our -- as far as I'm concerned, he's ready to move on to the next phase.

Q Do you recall your -- it says you reference a discussion with, I guess, Mark about it. You said, "after our discussion." I'm not sure if you're representing your discussion with Doc or your discussion with Mark. Do you have any idea? Let me back up.

Did you have any discussion with Mark Williams about this, do you know?

A Basically, what I would discuss with Mark is that there is a dispute going on.

Q Yeah.

A Because he really has no jurisdiction on whether to approve it or not. Basically, I'm the final authority on approving code issues like this.

Q Okay.

A And so basically, it looks like I was just continuing awareness on his part to make sure that he knew what was going on.

Q Okay.

A But --

Q And he just responded, "Look, if it meets our code, then he's good to go"?

A Right.

Q Was there anything in this exchange where Mark Williams was directing you to treat Doc Haynie differently than anybody else?

A I don't even see where that applies to what we're talking about, but it's just basically standard procedure to talk to the contractor about projects and find out what's going on. I don't know how that -- that doesn't really answer your question, but...

Q Was there any attempt by Mark Williams to prevent Doc Haynie from completing his project there on Covenant Road?

A You're actually talking apples and oranges. This is basically a construction project. The delay is because of this. I continued, just like I did here, updates, knowing what's going on and where our stance is, and where the plumbing company or the sewer line company's stance is, that this is where we are and that type of thing. I just basically discussed that with him to let him know, this is what Doc and I talked about. This is where we stand on that.

Q That's what I'm asking.

A Yeah.

Q This was not Mark Williams trying to keep Doc from doing business or hamper him in any way from getting the Covenant Road project done?

A Again, it's apples and oranges. This is basically just for Mark's information. In case something comes up, he knows how to address it.

Q So the answer would be no?

A It's stuff that I'm doing in trying to keep him informed.

Q Right. So the answer would be no. This is not Mark trying to in any way apply the code differently to Haynie than anybody else?

MR. PORTER: Object to the form.

THE WITNESS: I don't know how to answer that because it doesn't seem like the question applies to what we're talking about.

BY MR. COX:

Q Okay.

A I mean, it seems like you're saying that by me writing something like this, I'm saying it was generated by Mark. Is that what you're saying, for me to do this and to investigate this?

Q Correct.

A Then you're in error. This is something I generated. It's something I investigated and something that I made a conclusion about and made Mark aware of. It's just public knowledge. It's not something --

Q That's really my question. Mark had nothing to do with it?

A No.

MR. PORTER: Object to the form.

BY MR. COX:

Q Do you see what --

A There's two different contexts, when you're saying Mark had nothing to do with it. Mark had nothing to do with it in that he's just an innocent bystander. It's something I generated and

informed him.

Q Correct. Right. It wasn't that you didn't generate this and -- at the request of Mark? You see what I'm saying?

A I guess you could say he did, because as a building official, I'm supposed to keep him informed of things. So you could say that Mark did tell me to do this because it's part of my job. How about that?

Q It's part of your job?

A It's part of my job to keep him informed, so yes, he did.

Q Got it. Okay. But it wasn't anything different than you would do for any other project that was going on that had a similar problem?

MR. PORTER: Object to the form.

THE WITNESS: Correct, just like I did the list for the council meetings.

BY MR. COX:

Q I know that you had -- well, let me ask you this: That Covenant Road project, did Mark Williams in any way instruct you to make Doc Haynie's life miserable on the Covenant Road project?

A I don't see the significance of that, but

I just -- that was just a project like anything else that was on our records that I took care of.

Q So no?

A No.

Q Did he instruct you to be hypervigilant towards Doc Haynie on the Covenant Road project in your inspections?

A No.

Q Did he tell you to overemphasize the building codes or the ordinances in regards to the work that Doc Haynie was doing on the Covenant Road project?

A Mark really had no involvement with the Covenant Road project, other than he just knew it was a project going on with the City of Forest Acres that was my job to investigate and inspect.

Q How about -- same questions for Shaun Greenwood in regards to the Covenant Road project. Would Shaun Greenwood have any involvement in the Covenant Road project, that you know of?

A I don't know. He and Mark may have, but I have no idea.

Q You don't know?

A No.

Q Did Shaun Greenwood ever instruct you to

be hypervigilant in codes enforcement or building code enforcement in regards to the Covenant Road project being done by Doc Haynie?

A Building code, no. Ordinance, I thought he would just say, "Mark wants you to go check this out."

Q At the Covenant Road project?

A Different projects that -- not Covenant Road, no. I'm thinking Brentwood. Sorry.

Q You're thinking Brentwood?

A Yeah.

Q Other than the Covenant Road project and his property, or his daughter's property or daughter's and wife, or whatever --

A It's his property. His daughter lived in it is my understanding.

Q -- at Brentwood, you're not aware of any other project or work where you were involved with Doc Haynie?

A Just his personal project, which I just basically permitted. I never did an inspection or, you know, did permit inspections. A permit inspection is basically a monthly review of the property to see how the project is progressing. And so that's why I call it a permit inspection.

Q And that would have been at his resident on Florawood?

A The residence, where he was doing the renovation, yes.

MR. COX: Do you want to take a break? I've got a few things to finish up.

THE WITNESS: I'll just stand up, if that's okay.

MR. COX: That's fine.

- - -

(Discussion off the record.)

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(Affidavit of James Barry Epps marked Epps Exhibit Number 8, for identification.)

BY MR. COX:

Q Let's talk about the affidavit you signed. Can you tell me what that is? It's Number 8.

A It's some answers to questions and things that I did at Mr. Porter's office.

Q When did you execute this?

A November the 7th, 2013, according to the document.

Q And how did you come to do this?

A Doc Haynie informed me that he was

pursuing a case against City of Forest Acres and knew that he and I had a good work relationship, and that -- knew that I felt that he had been, you know, maybe overemphasized in his work on the projects and things, and wondered if I would help him out to substantiate that. And I told him I would.

Q All right. How did he know that you felt that way?

A How did he know? He and I talked about it. Because when I would go to the job site, I would apologize to him for it. "Just want to let you know I was sent out here to check out some stuff," if he happened to be on the job site.

Q By "job site," you mean Brentwood?

A Brentwood.

Q "Sorry. I'm here again"?

A Sorry, yeah.

Q "I've been told to come by"?

A Yeah.

Q Okay. And did he tell you, you know, at that time that he felt that he was being picked on?

A No. It was just a personal observation. It's my personal opinion.

Q Did he tell you at that time, you know, "Look, what's going on? Who is making these

complaints about me," that sort of thing?

A He was curious, yes.

Q And are you certain you didn't tell him that Mr. Crane was one of the people?

A At the very beginning, I was not aware of anybody complaining, but I may have told him later on as I discovered things on my own. Because as I said, I didn't get all the details of the complaint. I was just told what to do.

Q And did he tell you that he felt that the city was selectively enforcing the ordinances against him and they weren't enforcing them against anybody else?

A Not in so many words, but he felt like he was being picked on, yes.

Q And, obviously, he told you that before you left the city?

A Yes.

Q Did he ever tell you anything about other -- other properties, other residential properties that he felt were also violating the ordinance against running a business out of a residential property?

MR. PORTER: Object to the form of the question.

THE WITNESS: I don't recall.

BY MR. COX:

Q Okay. And so how did you end up -- you said you went over to Mr. Porter's office?

A Yes.

Q And tell me about the -- how did that conversation or meeting generate this document?

A He basically just told me generally what they were looking at. He understood that I might have some witness information that would help the case and was wondering if I would participate. And I said, "Sure."

Q And tell me, who -- how was this drafted?

A On Mr. Porter's computer. After our initial discussion, he converted his notes to this and had me read it and approve it and sign it.

Q All there at that same time?

A Yes.

Q I wanted to ask you some questions about it, if you don't mind --

A Okay.

Q -- and go through. Number 5, Early on in my employment, I began to observe hypervigilance toward and a particularized focus on, it says, contractor Frank Doc Haynie.

A Uh-huh.

Q And is early on in your employment, that's when we were going through those notes?

A October and those type -- yeah, October 2007.

Q 2007, 2008?

A Uh-huh.

Q And those were the times that neighbors were calling and complaining about Doc Haynie?

A There were a lot of times that were generated that I was told to go investigate the property. I don't know if it was complaints generated.

But some instructions were ongoing instructions. Just like I said, I was instructed to go regularly by the property to check it, not necessarily because it was a complaint, but because they wanted to make sure it was maintained.

Q I guess my question is: Were the complaints about the property hyper or was the -- or was the attention being given to him by the city hyper? Do you understand my question?

A Uh-huh.

Q I don't know if you can answer it.

A Well, it's one of those things where hired

officials are governed by elected officials. And their jobs can be made uneasy so they want to make sure things run as smoothly as possible.

So whoever complains, whoever it is, they want to make sure it was addressed to the satisfactory point. And if a person continues to complain, and they happen to be a prominent person in the community or something, they get special attention.

That happened at the City of Columbia quite often with me. I was told to drop everything I was doing and go to certain properties. And it was no different for City of Forest Acres. There were certain people who were more vocal and squeakier than others, so they got the oil first.

Q We talked about that in Mr. Haynie's deposition, that the squeaky wheel generally gets the grease.

Do you know if any of these people complaining about Mr. Haynie's property were in any way important people?

A I do not know their status.

Q So basically, what you're saying is all you know is you were -- felt you were told to go by Mr. Haynie's property more than you were told to

about other properties?

A Excessively, yes.

Q And you don't know if that excessiveness was because people continued to complain or if it was because of some other reason?

A Preventive maintenance, maybe. I don't know.

Q All right. On 6 you say, I once heard Mark Williams the city manager remark -- it's paraphrased -- I have no use for Doc Haynie.

A Uh-huh.

Q Tell me about that.

A Basically, if I recall, it would have been sometime probably near the end of 2008, beginning of 2009. I can't remember the exact context, but for some reason we were talking about contractors, and I happened to mention Doc Haynie as a potential contractor. And he basically said, "I have no use for Doc Haynie."

And that just implied to me that if Doc Haynie were the only contractor to do it, he wouldn't have even consulted him.

Q Give me more detail about the conversation.

A That's about all I can do. It was just a

remark that just kind of stuck in my brain. Whoa, where did that come from, you know?

Q What kind of contractors were you talking about? I don't understand.

A I don't recall. It was just something that made an impression on me for somebody to say that. We were actually in just the waiting room there at the City of Forest Acres office, outside of his office, when the conversation went on.

Q You don't remember anything about the conversation, what it was about, what you were talking about?

A Other than that we were discussing a project or something to do with utilizing some contractors or something. And Doc Haynie's name came up, and I mentioned it as a possibility. And he said, "I have no use for Doc Haynie."

Q Who was in the room?

A Just me and Mark. We were in the waiting area, standing there. I was coming in from the field and we happened -- I was going to talk to him about what had happened that day, and just standing in the waiting room. Just kind of an, "Oh, by the way."

Q Was there any other occasion where you

heard Mark Williams say anything like that about Haynie again?

A No.

Q Did you ever hear Mark Williams say anything derogatory about Doc Haynie to anybody else?

A No.

Q How about Shaun? Did you ever hear Shaun Greenwood say anything derogatory about Doc Haynie?

A Not that I recall.

Q 7. I think we've kind of gone over 7. It says you were often directed by Williams and Greenwood to monitor Haynie's home, checking dumpsters on his property, and look for code violations?

A Yes.

Q Do you know if the reason you were asked to go out there and check the dumpsters were because neighbors were complaining that Doc was bringing in debris from other areas and dumping it in the dumpster?

MR. PORTER: Object to the form of the question.

BY MR. COX:

Q If you know.

MR. PORTER: Same objection.

THE WITNESS: I really don't know. I just know that it was, "We need to check this out. People seem to think construction was going on there. Check for commercial debris, if you would."

BY MR. COX:

Q Number 8 is the one that troubles me. Okay?

A Uh-huh.

Q You said Mr. Williams and Greenwood were targeting Mr. Haynie, is your opinion.

A Uh-huh.

Q Let's start with that. What evidence do you have that Mr. Williams and Mr. Greenwood were doing anything other than responding to complaints from neighbors --

MR. PORTER: Object to form of the question.

BY MR. COX:

Q -- when they were asking you to go out and check these things out?

MR. PORTER: Same objection.

THE WITNESS: Again, just excessive, what do you call it -- I'm losing my words.

Patrolling the area, those types of things, just seemed to be targeting somebody to make them aggravated enough to just go away and leave you alone. It's just a personal opinion.

Like I said, again with the instructions to continue to go to the area to check it regularly seemed quite excessive for a small work shed that was being done on the property.

BY MR. COX:

Q And, again, as we've said, I guess, over and over again, the reason you were asked to do that could have been because people were complaining about it?

MR. PORTER: Object to the form of the question.

THE WITNESS: It could have been preventive maintenance, too.

BY MR. COX:

Q But you agree that neighbors could have been complaining and calling over and over and over again about these problems?

MR. PORTER: Same objection.

THE WITNESS: In my opinion, highly unlikely.

BY MR. COX:

Q Why is that?

A Because of the extensiveness of what I was told to do. It's not practical or realistic to do that. Even in a small jurisdiction, I was never told to do anything like that with the City of Columbia, and it just seems quite extensive and strong-arm-type situation.

Q In your notes you indicated that you went out there four times.

A Uh-huh.

Q Okay. And that you took pictures on those four occasions.

A Right.

Q Did you go out there and take pictures whenever you went out there?

A Not every time, no.

Q Were there other times that you went out there that you didn't put in your notes?

A Yes.

Q Do you know when those times were?

A No. It may be in my work log, but I don't have access to those. I have personal handwritten work logs, but -- and journals that I maintain, but those have since been destroyed and done away with.

Q I understand. So you don't know if they

were complaints. You just kind of felt that it was over the top to be going to Doc so much?

A Yes.

Q "It is my belief that Williams essentially wanted to run Mr. Haynie out of town."

Tell me the basis for that.

A Just basically, when you continue to aggravate somebody, the -- I would think, a reasonable expectation was that you just didn't like having them around. That's just a personal observation.

Q Okay. Did anybody suggest that you include that in your affidavit?

A No.

Q So because Shaun and Mr. Williams would ask you to go out and look at Mr. Haynie's property on Brentwood, you are willing to put an affidavit that it was your opinion that Mr. Williams was trying to run Mr. Haynie out of town?

MR. PORTER: Object to the form of the question.

THE WITNESS: Not just on the Brentwood. Just all points considered.

BY MR. COX:

Q What else is there? I've already asked

you. You didn't get involved with the Covenant Road, correct?

A Huh-uh.

Q You're not aware of any other issues where Mark Williams had anything to do with any other projects that Haynie was involved in; is that right?

A Uh-huh.

Q So the only thing we're talking about is Brentwood?

A Basically.

Q So what other instances, other than asking people to go and look at Brentwood, would give you the opinion or the thought that Mr. Williams was trying to run Mr. Haynie out of town?

A Just because the same thing started to occur at his own personal residence where he was doing renovations, and then just seemed like a continuing process.

Q So the one complaint that you received, that the city received about some construction debris at his personal residence?

A The one known complaint, yes.

Q That you went out and looked at?

A Uh-huh.

Q And that's it?

A I've done more than one complaint for stuff on the property. I've gone out to investigate construction equipment that was on the job, to investigate the suspicion of construction debris in the dumpster, to say that people are on the project and they shouldn't be on the project.

MR. PORTER: Objection.

THE WITNESS: And so it wasn't -- just because it wasn't written down doesn't mean I didn't go additional times.

BY MR. COX:

Q Again, I think we're talking about two different things. I was talking about his personal residence, the Florawood.

A Yes, with Florawood. I was told to check out some situations there, as well, and so to basically keep a watch on the job.

Q I thought earlier you told me you went out to Florawood once in response to a complaint about construction debris or something.

A Florawood is one of the projects kind of close to the end of my tenure. So probably about once or twice is all I would have done, most likely.

Q So what we're talking about is the Brentwood and the one or two times you went to

Florawood?

A Uh-huh.

Q Anything else?

A No.

MR. PORTER: Object to the form.

THE WITNESS: But from basically October of 2007 to May of 2008, to go on a regular basis to check out a job site does seem quite extensive for seven months, when normally I would only go one time per month on a regular permit inspection project.

BY MR. COX:

Q If people didn't complain about anything?

MR. PORTER: Object to form.

BY MR. COX:

Q Fair?

A I suppose, yes.

Q Number 9. I think we talked about this, too.

A Yes.

Q "Early on in Mr. Greenwood's career at the city" -- so that would have been -- was that before you got there or --

A 2007, yeah. It probably would have been around the same time, October, September.

Q That he ticketed several cars parked on the shoulders outside of A.C. Flora High School. Where was that?

A Basically on Brentwood, which is the road behind the school. A lot of students drove their personal vehicles and there was not sufficient parking. And so some of the residents on Brentwood allowed them to park on their right-of-way, some for a small fee, some just out of the goodness of their heart. And they would just walk to the school from that and park their cars in that area.

And it was a neighborhood concern. And if I recall correctly, Shaun got a little bit aggravated because he had ticketed some vehicles and had to recall them.

Q Okay. And I think we've gone over all that.

A Uh-huh.

Q I just wanted to make sure we were talking about the same thing.

So apparently we had some Forest Acres residents complaining about it.

A The ones that were ticketed, yes.

Q Well, complaining about the problem.

A Oh, yes.

Q And then you had the people that got the tickets that complained about getting the tickets.

A Correct.

Q No-win situation.

A Right.

Q Let's see. "I was asked by Mr. Greenwood," it says, "allegedly on behalf of Mr. Williams."

Tell me about that.

A Which one are we looking at here?

Q 10.

A 10. Okay.

Q "To go check out solely the cars parked in Mr. Haynie's yard."

Where did the "allegedly on behalf of Mr. Williams" come from?

A I just assumed it was Mark that had instructed him to tell me. Shaun would come up from downstairs sometimes and say, "Hey, go check this out."

Sometimes he would actually say, "Mark was wondering if you'd go check this stuff."

So allegedly I'm just assuming it came from Mark.

Q So you don't have any evidence whatsoever

that it came from Mark Williams?

MR. PORTER: Object to the form of the question.

BY MR. COX:

Q You don't have any evidence whatsoever that Mark Williams asked Mr. Greenwood to ask you to go check out cars parked in Mr. Haynie's yard?

MR. PORTER: Same objection.

THE WITNESS: It would be reasonable that it was Mark, since Shaun was not my supervisor. He would be relaying something from Mark, which he did quite frequently.

BY MR. COX:

Q But you don't know that happened --

MR. PORTER: Same objection.

BY MR. COX:

Q -- correct, in this instance?

A I would say that it did.

Q Why would you say that?

A Because of continuity. It was a standard procedure. Mark would give instructions to Shaun, because Shaun and Mark had a relationship and they would talk in the office. They worked together at other jurisdictions, so they were friends, as well.

And Mark would just say, "By the way, if

you would, tell Barry about this."

He might give me a piece of paper that Mark had written down that he wanted me to check out. Sometimes it was verbal, sometimes it was written. Just kind of like cutting out the middle man.

"Why should I call Barry on the phone when you're going upstairs anyway? If you would, give him this message."

Q It could have happened, it could not have happened, in this instance?

MR. PORTER: Object to the form.

THE WITNESS: I would say it did.

BY MR. COX:

Q What evidence do you have of that?

MR. PORTER: Object to the form.

THE WITNESS: Shaun is not my supervisor.

BY MR. COX:

Q Did Shaun tell you that Mark Williams said to go check out the cars in Haynie's yard?

A No, but it would be a reasonable assumption to say that he did. Because Shaun is not my supervisor. Any instructions that Shaun would have given me would have come from Mark. Even though he specifically didn't say it, based on past

history, the way things happened and the normal procedure for things, that's what would have happened.

Q And normal procedure for things, just in general, like somebody's complained about something to Mark and Mark passes it to Shaun and Shaun passed it to you?

A It would happen, yes.

Q So it never happened that Shaun would receive a complaint from somebody that Mark didn't know anything about and he would ask you to go look into it?

A Probably not, no.

Q No? Not for codes --

A No.

Q -- issues?

A Huh-uh.

Q Did you ever go look at parking issues, other than this one instance at Mr. Haynie's yard?

A It seemed like I might have driven down the road once during the course of -- after Shaun had written the tickets and before the blowup with the neighbors and things, just to see if it was still being maintained with no cars.

Q Just in general in the neighborhood?

A Yes.

Q So was it from time to time something you did was to go check on or look at parking violations?

A Just this one incident. And after it was resolved, it never happened again.

Q Well, tell me what happened in this instance with the cars in Mr. Haynie's yard.

A Basically, the cars in Mr. Haynie's yard were in a circular driveway that he maintained on his property which were not in the right-of-way, so there would not have been any kind of right-of-way violation.

Q Did you report that back?

A Yes.

Q Did you talk with Mr. Haynie about it at all?

A No. I didn't see a violation, so I didn't see any reason to follow through with anything.

Q You mentioned that some people were charging people to park in their yards?

A That was my understanding.

Q Who gave you that understanding?

A Shaun.

Q Who was charging people to park in their

yards?

A I do not know specific people. Just if you pick out 10 houses down through the road that cars were parked at, at least one of them would have been charging for him to have said something like that.

Q Okay. Do you know if it was Mr. Haynie?

A No, I do not.

Q You never heard anything about Mr. Haynie charging students to park in his yard?

A No.

Q All right. And here you say, "ticketing cars was wholly outside my jurisdiction."

You didn't do any codes enforcements?

A Ordinance inspection.

Q Right. Is this an ordinance?

A This is an ordinance.

Q So you wouldn't write a ticket, whether it was high grass or a parking violation?

A I would either call Shaun or call the police officer.

Q Same thing you would do if you were asked to go look at high grass or toys in the yard or trash and debris; is that right?

A Uh-huh, which is the way it was in the

City of Columbia or any other jurisdiction I've been with, yes.

Q So it wasn't that going to look for parking violations was outside your job, it was writing tickets was outside your job?

A Right. I could investigate it, but it still had to be confirmed by a person who could write the ordinances -- or write the tickets. Excuse me. Kind of a manpower-type thing. You can't be everywhere, so if I'm free, would you mind go checking this out?

Q Exactly.

A Yeah.

Q I mean, Shaun would go if he could. If he had other complaints he was looking at, he would ask you to fill in or go check things out?

A Yeah.

Q Tell me what -- you say that Shaun disliked Mr. Haynie. Tell me why you say that.

A Just from the main things that we've been going over, that they just didn't give him an inch. They basically looked towards, you know, anything -- if we could find something, go ahead and do it. Write him a ticket, whatever, you know.

Q Didn't give him an inch?

A Uh-huh.

Q Did Shaun ever write him a ticket?

A Not to my recollection.

Q Okay. How was that not giving him an inch?

MR. PORTER: Object to the form.

THE WITNESS: Just because you don't write a ticket doesn't mean that you couldn't have written one. There has to be a violation for that to have happened. So if you continue to investigate, maybe one day there might be a violation. But if there is never a violation, it doesn't mean you didn't investigate to the umpteenth time.

BY MR. COX:

Q He never wrote him a ticket for something that wasn't a violation, correct? Shaun.

A There was nothing to write a ticket about. That doesn't discredit investigation.

Q That doesn't what? I'm sorry.

A That doesn't mean there wasn't an investigation to see if there was a reason to write a ticket.

Q Right. Because people were complaining.

MR. PORTER: Object to the form of the

question.

THE WITNESS: Not every time.

BY MR. COX:

Q You don't know that.

A I do know that because I told you I was instructed to drive by the property on a regular basis.

Q Did Shaun ever tell you he didn't like Doc Haynie?

A Not to my knowledge.

Q Did you ever have any discussions with Shaun one way or the other about Doc Haynie, other than, "Hey, can you go look at this stuff for me?"

A I don't recall exact details, no, but to my recollection, no.

Q Again, why did you say Shaun didn't like Doc Haynie?

MR. PORTER: Object to the form of the question.

THE WITNESS: Just his relationship and friendship with Mark. They seemed to be in agreement with things. Personal observation once again.

BY MR. COX:

Q And that's the complete basis for your

opinion that Shaun didn't like Mark?

MR. PORTER: Object to the form of the question.

BY MR. COX:

Q Excuse me. Shaun didn't like Doc.

A Well, I guess --

Q I just want to make sure there's nothing else.

A No. That's a personal opinion.

MR. COX: Why don't we take a break real quick.

(Recess in the proceedings from 4:28 to 4:35.)

MR. COX: I'm done.

- - -

EXAMINATION

- - -

BY MS. ZWING:

Q We met earlier. My name is Lyndey Zwing. I represent the individual defendants in this lawsuit.

I just have a few follow-up questions. I might jump around a little bit. I just kind of kept notes on the side. I apologize if I jump around a little bit.

When you were talking about the churches that you have worked for, do you know of any churches that you have worked for that are in Richland County?

A Yes.

Q And which ones are those?

A Just one. It would have been Mount Olive Baptist Church.

Q Okay. And did you work for them?

A I was an actual contract pastor there, again, part-time, from February of 1999 until July of 2003.

Q Okay. Did you work part-time for them?

A Yes.

Q Okay.

A It was not my primary --

Q But you worked throughout that entire period, 1999 to 2003, for them?

A Yes.

Q All right. Did you ever attend any churches in Richland County?

A Yes.

Q Can you name those for me?

A Let's see. I attended Bayview Baptist Church.

Q Okay. I don't need the years for those.

A Okay. Let's see. It would have been Bayview. From there, I went to East Columbia Baptist Church, which disbanded. Not because of me, but -- I was just a church member.

That would have been all --

Q Okay.

A -- that I recall.

Q You spoke earlier about how your certifications lapsed after you left your employment at the City of Forest Acres.

A Uh-huh.

Q Do you recall when they would have lapsed?

A Basically, over a two-year period, you have to maintain, I believe -- it's been a while -- I think it's 12 credit hours. And so I would have been in July of 2009. They would have lapsed in July of 2011, because I did not maintain any continuing education hours.

Q Did you attend any education hours after you left Forest Acres?

A No.

Q None. Okay. I want to talk a little bit about the parking tickets that were issued near -- or that you allege were issued near the school. Do

you know any of the persons who were complaining that tickets were issued? Do you know any names?

A I do not. I would assume it was people who would be on the right side of the road, but I don't know addresses or names or anything.

Q So you didn't receive any complaints by anybody about the ticketing issue?

A No.

Q Do you recall anybody coming into the office to complain about the tickets?

A No.

Q Okay. Do you know how many people were complaining about tickets?

A No. The only reason I knew they were complaining is because Shaun mentioned it.

Q Do you recall having any conversations with Margo Pierce about Doc Haynie?

A Yeah. Most of it was professional, talking about permits and jobs and scheduling appointments, though.

Q Did you ever have any conversation with Margo about the city's alleged selective enforcement of the codes?

A Not that particular phrasing. I just thought it was said, "I'm going out to Doc's again,"

that type of thing, just kind of --

Q Would Margo keep track of your schedule, that sort of thing? You would just let her know where you were going?

A Not necessarily in writing. She would just know that I was out in the field somewhere, and if she needed me, she could call me.

The only thing she would be aware of my actual schedule is if I had an actual schedule inspection sheet. She would help set those up for me.

Q Did you ever indicate to anybody in the city that you believed they were selectively enforcing the codes or the ordinances against Haynie?

A Not that I recall, no.

Q If you thought that the city was selecting enforcing the ordinances, who would you bring that to? Is there a person at the city that you would say, "Hey, I think this is wrong"?

A No. I would just basically -- there was nothing I could do about it, so I just would follow orders, for lack of a better -- I don't know if you're asking.

Q Sure. Let me back up.

A Okay.

Q If you thought the city was doing anything wrong, not with regard to Haynie, if you just thought they were not enforcing the code as you thought it should be applied or you thought something was going on that wasn't right, is there an HR person? Who would you complain to?

A I'm sure there was, but I never gone that route with anything. I usually just -- as long as it wasn't something that affected my job or my integrity, I didn't worry about it.

Q Okay. I want to talk a little bit about the conversation where you say Mark said to you that he had no use for Doc.

A Uh-huh.

Q Do you know if Mark was looking for contractors at his personal residence or were you talking about projects in general?

A If I recollect, it was just projects in general.

Q Once he said to you he had no use for Doc Haynie, did you ask why?

A No. I just said, "Okay," and walked out. That was basically the extent of the conversation.

Q Okay. And did Mark say anything else, to

your memory, that -- why he would have no use for Doc?

A No. That was just a blurted out statement that just came out. It was like, "Okay." That was the conversation between us, and I went to my office.

Q Do you recall telling anyone about that statement that Mark told you?

A I may have told Margo.

Q Margo?

A Uh-huh.

Q And --

A But I can't recall if I did or not, because usually I didn't try to get her involved in anything. I just kept things to myself. But it is possible I did tell her.

Q If you had told Margo, what would you say? "This is what Mark told me"?

A Yeah. I probably would have said, "I just had a conversation with Mark."

Q Would you have asked Margo advice on what to do if you heard a statement like that?

A No. It would have just been in general conversation.

Q Would you have any particular reason to

tell Margo something that Mark told you?

A She and I worked closely together and we were friends, so it would just be like a conversation between friends.

Q But to your knowledge, you don't remember having any specific conversations about Haynie -- about Mr. Haynie with Margo?

A I do not.

Q In other words, you wouldn't be following up with Margo, saying, "Hey, this substantiates our belief that they're --

A No.

Q -- selectively enforcing because they didn't like him?

A It was basically an underlying joke, "Hey, I'm heading back out to Doc's," that kind of thing.

Q Okay. I think you stated earlier that you didn't recall when Shaun became the assistant city manager; is that right?

A I assumed it might have been the beginning of the fiscal year, maybe July of 2009, possibly, or -- I don't recall. I'm just grasping here. Maybe March, something like that. Whenever he graduated, I'll put it that way. He was eligible for that time --

Q Sometime at the end of the year?

A Uh-huh.

Q When Shaun became assistant city manager, did he then become your supervisor?

A To my understanding, still Mark was my supervisor. He had different areas that he was over and I had areas that I was over.

Q Do you have anything in writing which would show who had authority over you?

A Other than Mark hired me and that would show he was the one that approved me for employment.

Q But you don't have anything saying, my chain of command is Mark Williams only?

A No. But I was never informed anything contrary to that, to my knowledge.

Q Okay. Let me just make sure. I think I'm done. I just want to make sure I don't have anything.

Do you recall having specific conversations with Mr. Haynie after you left your employment with the City of Forest Acres?

A Not until recently when I found out about the suit.

Q How recently have you been contacted by Mr. Haynie or his attorney regarding this lawsuit?

A Two months ago, maybe.

Q Okay. But before that, had you talked to him about these allegations, selective enforcement of the codes?

A No, I don't recall.

Q Okay. Do you ever recall talking with Mr. Haynie about Shaun -- Mr. Greenwood's interpretation of the code?

A You mean --

Q Have you ever talked with Mr. Haynie about the way or manner in which Mr. Greenwood is enforcing or interpreting the codes?

A Other than just he said, "Is Shaun certified as a code official?"

And I'd say, "No."

He'd say, "Okay."

Something to that effect. He was just kind of questioning his authority, I guess.

Q And those conversations would occur during your investigations, while you were still employed?

A Yes.

Q But after that, you don't recall any conversations?

A I don't.

MS. ZWING: I think that's all I have.

MR. COX: Are you going to have anything?

MR. PORTER: Yeah, I'll have a brief redirect.

Are you good now? Do you need a break or anything to drink? I'll ask a few questions.

Doc and I will step out a minute and then we'll reconvene. Or I may have a few that Doc tells me to ask the first time.

- - -

EXAMINATION

- - -

BY MR. PORTER:

Q When Mark Williams said that he had no use for Doc Haynie, were they taking bids for the Wheeler Hill Park project?

MR. COX: Object to the form.

THE WITNESS: I really don't know. It's -- I'm almost certain it was a city project, but I couldn't say for certain.

BY MR. PORTER:

Q A City of Forest Acres project?

A Yes.

Q So they were taking bids for a particular project at that time?

MR. COX: Object to the form.

THE WITNESS: I couldn't tell you. It's just -- it's possible, yes.

BY MR. PORTER:

Q Okay. Defendant's Exhibit 7 -- that's the one (indicating). Mark Williams' e-mail to you has the importance labeled as high. Do you see where I'm referring on the top portion of the e-mail?

A Yes.

Q Did Mark Williams send all of his e-mails to you with the importance labeled high?

A I don't recall.

Q Sure. Did y'all use Outlook?

A Yes, but I didn't know how to use that very well either. I was good at e-mails and that was about it.

Q Would you get some e-mails just normal and then different e-mails that had a little red exclamation point going with the e-mail?

A I don't recall.

Q You don't recall? Do you believe that Mr. Williams placed a particular high import on goings on with Doc Haynie?

MR. COX: Object to the form.

THE WITNESS: Just as we've already talked about. It just seemed like things were

excessive and, you know, a target point. Or just to see if you could find something.

BY MR. PORTER:

Q And it's your testimony here today that you had the final say-so with regard to building permit and codes issues, correct?

A Yes.

Q So would it have been common for you to have to ask permission from Mark to give a final approval or a final inspection pass?

A No.

MR. COX: Object to the form.

BY MR. PORTER:

Q So if in this context you were requesting permission from Mark Williams to give city approval for a project Doc was working on, that would have been uncommon?

MR. COX: Object to the form.

THE WITNESS: Well, I'm not really asking for approval. I'm just letting him know that, per our discussion, this is what we talked about, what I informed you about was going on. Are you still in agreement with this, knowing that it's -- basically, what we're looking at with this is that something happened with Doc.

I wanted to let Mark know what was going on. And this is my stance on it as a code official.

And so finding out that the problem is not a code issue, but a -- what you call it -- the sewer company's issue with their personal thing, I just wanted to let Mark know what was going on. I said, "Are we still in agreement that the code takes priority and we can move on from this point, basically, from what we talked about prior?"

That makes it kind of confusing, but...

BY MR. PORTER:

Q Defendant's Exhibit 6.

A Okay.

Q This is only one update, correct?

A Yes.

Q This is the update for the period 6/02/09, correct?

A Yes.

Q You've had more updates sent than just this one, correct?

A Yes.

Q And those updates would have been left with the City of Forest Acres; is that correct?

A Yes.

Q Isn't it true that you were told to go check out Doc Haynie's multiple times throughout the weeks?

MR. COX: Object to the form.

THE WITNESS: Well, it was like an on-standing instruction to check it out regularly. It wasn't something he said, "Did you go by Doc's," or something. Just basically, "Do this."

I kind of let him know what was going on in the process.

BY MR. PORTER:

Q He wouldn't call you three times a week and tell you, "Go check it out." He had just told you that you were to go check out Doc's house two or three times a week?

A Two or three times.

MR. COX: Object to the form.

BY MR. PORTER:

Q So obviously -- strike that.

Within those two to three times a week that you would go on that standing order, was there a complaint preceding every one of those two to three times a week?

MR. COX: Object to the form.

THE WITNESS: Not to my knowledge.
BY MR. PORTER:
Q And no one directed you to go at that specific time; is that correct?
A No. It was whenever I felt I had time for.
Q We'll look at the final page of Defendant's 2. I'll just put them in front of you.
MR. COX: That's fine. I can dig them out of there.
BY MR. PORTER:
Q Those remarks, those are related to the electrical, correct?
A Yes.
Q Do you recall whether that would have been a final electrical inspection or the final inspection?
A It would have been a final inspection, which includes all aspects of the construction, electrical, plumbing, structural, anything that might happen.
MR. PORTER: If y'all go ahead -- I don't have copies. But if y'all find, and I'll wait until you get ahold of it, 000501 of one of y'all's production.

MR. COX: Is that the LLR thing?

MR. PORTER: The memorandum.

MR. COX: Yeah, that's fine.

MS. ZWING: Yeah.

(Memoranda of Interview dated 07-26-11, Bates stamped 000501 marked Epps Exhibit Number 9, for identification.)

BY MR. PORTER:

Q Do you recall being interviewed by LLR official, I believe, Mr. Jerry Merritt?

A Yes, I do. I had forgotten about that.

Q In that interview, did you inform Mr. Merritt that you believed Forest Acres had been selective toward Doc Haynie?

MR. COX: Object to the form.

THE WITNESS: I --

BY MR. PORTER:

Q I'll tell you what. Why don't you read for me that last paragraph.

A Just to refresh my memory.

Q I've indicated to the paragraph just above the time and date, the bottom left.

A (Witness complies with request.) Yes. I do believe that he was, and that was my opinion that I gave to the person at LLR.

Q Will you read the last -- the paragraph.

A "Investigator asked him if, in his experience, the Respondent was being pressed by his superiors to be selective about the complaint, he stated 'yes'."

Q Who were your superiors that you were referring to?

A Mark.

Q Do you stand by that statement?

A Yes.

Q The investigation of the scale you were asked to perform on Doc Haynie, everything you basically testified here about today, were you asked to do an investigation of that scale toward anyone else at Forest Acres?

A No.

Q And was it more the amount you were asked to investigate Doc Haynie?

MR. COX: Object to form.

THE WITNESS: Do what, now?

BY MR. PORTER:

Q You were never asked to investigate anyone of the same scale as Doc Haynie; is that correct?

MR. COX: Object to the form.

THE WITNESS: I had other complaints, but

nothing that was as extensive as Doc Haynie's.
BY MR. PORTER:
Q And when you say "extensive," is it fair to say it was also excessive?
MR. COX: Object to the form.
THE WITNESS: I have stated that it was excessive, yes, in my opinion.
BY MR. PORTER:
Q And here today, you've only been shown one formal complaint. And I'll refer you to Defendant's 3. Is that correct, that you've only been shown one formal complaint?
MR. COX: Object to the form.
THE WITNESS: Yes.
BY MR. PORTER:
Q And that's by Mr. Jeff Crane, or Defendant 3 is a complaint drafted by Mr. Jeff Crane; is that correct?
A Yes.
Q We'll look at Defendant's 1. We can only see complaints from, or reference to complaints made by Mrs. Martha McCollough and a reference to Mr. Jeff Crane; is that correct?
A Yes.
Q And you testified that you didn't get the

complaints; is that correct?

A Yes.

Q So for all you know, this complaint by Ms. McCollough and Jeff Crane are the only two complaints that Doc Haynie ever got?

MR. COX: Object to the form.

BY MR. PORTER:

Q For all you know?

A As far as I know.

MR. PORTER: Let me talk briefly with Doc. We may be done.

MR. COX: You want me to ask some real quick?

MR. PORTER: We'll just do this and then I can finish my cross and then you can jump in.

MR. COX: Perfect.

(Recess in the proceedings from 4:57 to 5:00.)

BY MR. PORTER:

Q A few more questions. In your experience with Doc Haynie, has he always been an honest person?

MR. COX: Object to the form.

THE WITNESS: Yes.

BY MR. PORTER:

Q And has Doc Haynie ever lied to you?

MR. COX: Object to the form.

THE WITNESS: Not to my knowledge.

BY MR. PORTER:

Q Is Doc Haynie a good contractor?

A In my opinion, yes.

Q When someone's permit lapsed, was it typically a big deal getting renewal?

A No.

Q Do you recall whether or not it was made a big deal for Doc Haynie?

A I don't think it was. Just a matter of, like I say, instructing him he needed a new permit. He came in within a reasonable amount of time and got it taken care of.

Q And you don't think it was for the situation you were involved in; is that correct?

A I couldn't really conclude that.

Q Were you ever required to take pictures of other trash cans or was that just for Doc Haynie?

A Just Doc Haynie.

Q Were you ever required to investigate toys in a yard for anyone other than Doc Haynie?

A No.

Q On Number 8, the affidavit, paragraph 10.

This occurrence that you talk about in paragraph 10 here, Mr. Greenwood asked you to go check out only the cars in Haynie's yard but not the other cars on, I guess, is that Florawood or Brentwood or whichever wood?

A This would have been after the incident had happened and tickets were taken care of and things. This would have been something after the fact, yes.

Q And the -- you were asked only to look at the cars in Haynie's yard, not the other yards?

MR. COX: Object to the form.

THE WITNESS: Yes, according to what I said earlier. I stand by that.

MR. PORTER: No further questions.

MR. COX: Just let me clarify that.

- - -

EXAMINATION

- - -

BY MR. COX:

Q You were told to go look at Mr. Haynie's property but ignore everything else?

A Do what, now?

Q You were told to go look at Mr. Haynie's property for cars, but don't look at anybody else's?

A Yes.

Q Who told you that?

A If memory serves me, Shaun said that Mark wanted me to go check out if there's any cars in front of Doc's house.

Q Did he tell you not to check out any cars in front of any other house?

A It was just a specific location to go check out, so I did just the specific location.

Q But you weren't told, don't look at cars in anybody else's yard?

MR. PORTER: Object to the form.

THE WITNESS: I wasn't led to believe that there were any cars in anybody else's yard, other than Doc's.

BY MR. COX:

Q So you were not told, go only to Doc's, don't look at any other cars?

A Right. Basically -- again, I would have assumed that there was a complaint generated there were cars in front of Doc's house, so go check it out to see if it was true.

Q And you were not told to ignore any cars in anybody else's yard?

A In the process of my investigation, if I

had seen other cars there, just because, I would have reported it.

Q Sure.

A But I was not told. But I would have been thorough, I guess you could say, in the investigation, just because of past history with the problem.

Q All right. What would you need to do, or how would you go about investigating a complaint about a business being run from a residential property?

A That was a business license, which I didn't have a lot of dealings with. But if it was, basically, I would give them a notice that they needed to obtain a business license to maintain the business. And then they would have a reasonable amount of time to comply with that. If they didn't, then a ticket could be issued.

Q Well, what would you need -- I mean, if somebody's making a complaint about, "Hey, I think somebody is running a business outside of this house over here. They're not supposed to be doing that."

What type of things would you need to see to determine whether they were or not?

A I guess I would have to see an absence of

any reasonable reason why something might be there. I mean, if you're seeing a Bobcat on a job site, for instance, but there's construction going on on the job site and it's a reasonable piece of equipment, I couldn't make a conclusion that it was for another job and he's just putting it there or something; that it's possibly for that job. It's his personal property.

And if he needs someplace to put something, I -- you know, just overnight, as long as it's concealed in the area and isn't an eyesore to the community. It was like boats or anything else. I think the ordinance for the City of Forest Acres was to, in the yard, it couldn't be out in the front yard, those types of things. So as long as something was stored in the backyard, then...

Q So one thing you need to see is whether there was commercial equipment on the property that one might not have any use --

A Right.

Q -- at the property?

A Right.

Q And there might be property, commercial equipment that comes and goes?

A Yes.

Q Right? So like you said, it might be there for a short amount of time?

A Right.

Q I guess another thing to look at is whether or not there are employees coming onto the property?

A Yes.

Q Would you agree that that's going to take more than one visit to determine whether or not there might be employees out there, there might be equipment coming and going, that there might be property or equipment out there that's being used somewhere else?

A Not necessarily.

Q No? You think you can do it all in one visit?

A Once I approached the person who owns the property about it and find out what's going on, I think you can do it in one visit sometimes, yes.

Q Did you do that in this case with Mr. Haynie?

A I did address it with Mr. Haynie and let him know what he needed to do to maintain appearances, that it was a residential project, that these were just some of his personal things that

were on the property things and he complied with that, as well.

Q He did?

A Yes.

Q How do you know that?

A Because I was instructed to go because somebody said there was construction equipment on the property. And so I went and looked. And when I went and looked, they were in a proper location. So I had no problem with what was going on with the property.

Q And when you went back, you said you went a number of times?

A Uh-huh.

Q Correct? Was the property there, the commercial equipment always being used on the property?

A No. But there's not always people on the property. Sometimes -- I mean, you're never going to be on a project, especially a residential project, a hundred percent of the time activity. Until you get into maybe a home that is in a final aspect, you might have plumbers and painters and everybody else on there. But for the most part, there is going to be lag time, because contractors

overlap their projects and they'll work on this one for a week. They might be somewhere else for a week and things, so it's not uncommon to see unattended equipment on the property.

Q You don't dispute there was a lot of commercial equipment on the property while there was no work going on on the property?

A There was one Bobcat, to my knowledge, that was the only commercial equipment that was ever on the property, other than maybe some forms or something like that. Nothing extensive.

Q There was apparently no work going on for an extended period of time?

A No, but the forms would have been used on the job site and the Bobcat would have been used on the job site, considering what was being done there with the concrete and those type of things. So it was not unreasonable to have commercial equipment on the project, especially since he is a commercial contractor. And if I had the equipment to make it easier, why not, rather than using shovels and wheelbarrows.

Q Did you ever have any conversation with Doc that he -- as a result of the complaints being made about his property, that he decided to move all

his equipment and move his equipment to another location?

A He did. That was the Covenant Road. He was moving things to that location to alleviate any complaints and, again, trying to comply and make the neighbors happy.

Q Well, wouldn't that indicate that he was storing property as -- or storing equipment at his property that he's using as a business if he, in fact, moved it to another location?

A As I said, if it's his property, he can do whatever he wants to as long as it maintains a certain appearance, in my understanding in enforcement.

Q What is your understanding of the code in Forest Acres, as to commercial activity at a residence?

A Commercial activity?

Q Uh-huh.

A That --

Q Or running -- we've been calling it running a business out of a residence. What is your understanding of the ordinance? What does it say?

A I have no idea. I'd have to have it in front of me. I don't know exactly.

Q Did you know what it said back then?
A I may have reviewed it. I don't remember.
Q Do you recall reviewing the ordinance so that you can determine --
A To maintain a business on the property -- to me, maintaining a business on the property means you have a secretary on the property, you have a payroll on the property, people come and pick up their paychecks, those type of things. To store equipment does not constitute running a business, to me, on the property.
Q Did you review the ordinance before you went over there to determine whether or not he was operating a commercial business out of the home?
A No, because it would have been something simple to determine.
Q Okay. Shaun is not certified as a code official?
A He was not at that time. He was an ordinance person.
Q A code -- what's the difference? You're talking about building code?
A Building code, yes.
Q Right.
A He was not a building code official.

Q Correct. And Shaun didn't do any building code inspections, correct?

A No.

Q But he was certified as an ordinance general codes official?

A Yes.

Q You mentioned sometimes you'd drive by the house two or three times a week. For how long?

A Sometimes I actually sit in the school parking lot for about 20 or 30 minutes just to see if anything happened.

Q Any employees would come, any equipment come in?

A (Shakes head.)

Q That's what you're looking for?

A That's what I'm looking for, yes.

Q Is that one way you would determine whether or not employees were coming and going and if activity was going on at the house?

A Yes.

Q And for how long did you -- you said two or three times a week. For what period of time?

A Probably about three or four months.

Q And all of that was in 2008 time frame?

A 2007-2008, yes.

Q In fact, as we discussed, everything in your affidavit was from the 2007-2008 time frame?

A 2007-2009 with my dismissal, yes.

Q And I guess your last date, again, was October 12th, 2009?

A October 15th was my actual date in the office. And we talked about it, yes. I spoke with Mark on the 12th, but there was no indication of termination. He just wanted to talk to me in the office. When I got to the office, he told me I had been terminated.

MR. COX: Got it. Thank you. That's all I've got.

MS. ZWING: No further questions. Thank you.

- - -

EXAMINATION

- - -

BY MR. PORTER:

Q In your experience, do most contractors work out of their pick-up trucks?

MR. COX: Object to the form.

THE WITNESS: Yes.

BY MR. PORTER:

Q Do you think it's reasonable for a

contractor who works out of his pick-up truck to have to rent an office just for the sake of having one?

MR. COX: Object to the form.

THE WITNESS: If you could do the same work in your truck, I guess. I worked with contractors who didn't have formal offices. They just --

BY MR. PORTER:

Q So those contractors who didn't have formal offices, when they park their pick-up trucks in their driveway and their toolbox on the bed of their pick-up truck was in the driveway with their truck, would they be operating a business from out of their home?

A I guess you could say they are, yes, because that's their primary location for going back to.

MR. PORTER: No further questions.

MR. COX: I'm good.

- - -

(Witness excused.)

- - -

(Deposition was concluded at 5:15 p.m.)

- - -

CERTIFICATE OF REPORTER

I, Cynthia First, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 9th day of December 2013, at Chapin, Lexington County, South Carolina.

Cynthia First

Cynthia First,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 16, 2018

I N D E X

	PAGE
Stipulation	3
EXAMINATION	
By Mr. Cox	3, 146
By Ms. Zwing	125
By Mr. Porter	135, 156
Certificate of Reporter	159

E X H I B I T S

EPPS	EXHIBITS	DESCRIPTION	MARKED
1		Work Order Information dated 10-11-07, Bates stamped 000169-000173	56
2		City of Forest Acres Work Permit and Inspection Results	78
3		E-mail dated 4-30-08, Bates stamped 000178	83
4		E-mail dated 05-11-08, Bates stamped 000018-000020	84
5		E-mail chain dated 05-11-08, Bates stamped 000021	85
6		E-mail dated 06-02-09, Bates stamped 000039-000041	86
7		E-mail chain dated 06-16-09, Bates stamped 000043	91
8		Affidavit of James Barry Epps	99
9		Memoranda of Interview dated 07-26-11, Bates stamped 000501	141

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		CIVIL ACTION NO. 2012-CP-40-7392
Frank "Doc" Haynie,	)	
Plaintiff,	)	
v.	)	**AFFIDAVIT OF CLARK FRADY**
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,	)	
	)	
Defendants.	)	

PERSONALLY appeared before me, Clark Frady, who, being first duly sworn, deposes and states that:

1. I am a citizen and resident of West Columbia, South Carolina.

2. I am over the age of eighteen and am of sound mind to give this affidavit.

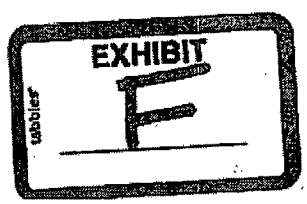
3. I have personal knowledge of and am competent to swear to the facts set forth in this affidavit.

4. I currently work as a Building Inspector for the County of Richland.

5. From March 2010 until December 2012, I was employed by the City of Forest Acres as Director of Code Enforcement/Building Official. I took this position with the City of Forest Acres following the resignation of Barry Epps, former Building Codes Officer for the City.

6. Prior to my employment with the City of Forest Acres, I was employed by the County of Richland from May 2003 to March 2010 as a Building Inspector.

7. I have personal knowledge of and am familiar with applicable state and local laws affecting the City of Forest Acres, including municipal ordinances, International Building Codes, and International Residential Codes.



8. On or about March 15, 2011, Frank "Doc" Haynie applied for a building permit for construction of a "10 x 20 storage shed" at his residential property located at 1325 Brentwood Drive. *See* Building Permit Application attached hereto as **Exhibit 1**. Mr. Haynie's building permit application was approved.

9. On or about March 21, 2011, I inspected Plaintiff's Brentwood Drive property and the proposed storage shed. During my inspection, I noticed that the manner by which Mr. Haynie was attempting to construct the footings and foundation system was not in compliance with the International Residential Code (2006).

10. I asked Mr. Haynie to provide a set of plans to the City and issued a Notice of Result of Inspection on or about March 21, 2011, requesting plans for the building, because I believed the building did not comply with the applicable International Residential Code (2006). *See* Notice of Result of Inspection attached hereto as **Exhibit 2**. I asked Mr. Haynie to particularly describe on the plans how he planned to construct the foundation.

11. I am informed and believe that Mr. Haynie submitted drawing specifications for the proposed shed approximately one or two days after I inspected the property.

12. After reviewing Mr. Haynie's plans for the proposed storage shed on his Brentwood Drive property, I realized that the plans were not in conformance with the minimum standards set forth in the 2006 International Residential Code.

13. Specifically, I identified the following violations regarding Mr. Haynie's proposed 10x20 storage shed, which I attempted to discuss with Mr. Haynie in late March 2011:

a. The footings, as depicted on the plans submitted by Mr. Haynie, were not compliant with the International Residential Code (2006). There is a minimum

depth requirement for all footings and Mr. Haynie's plans were contrary to the code.

b. The plans submitted by Mr. Haynie were incomplete in reference to the design of the roof system; proper anchorage of the structure to the slab; the application of the O.S.B. to the structural support members being spaced what appeared to be about eight (8) feet apart; roof trusses spaced thirty-two (32) inches on center and no supporting truss package from the manufacturer indicating if the trusses could be used in the manner depicted on the plans.

c. There was no indication in Mr. Haynie's plans of uplift prevention (hurricane ties) or other approved manner as depicted.

d. There was no indication of the proper drainage or the six (6) and ten (10) rule that applies to the final grading of the site adjacent to the structure when completed.

14. On or about April 5, 2011, I discussed with Mark Williams by email Mr. Haynie's allegations that the storage shed on his property had been built to code. *See* email (April 5, 2011), attached hereto as **Exhibit 3**.

15. On or about May 2, 2011, I emailed a "Stop Work" order to Mr. Haynie, ordering that no further construction could continue on Plaintiff's proposed shed at his Brentwood Drive property. *See* email to Haynie (May 2, 2011), attached hereto as **Exhibit 4**. I subsequently posted a Stop Work order directly onto Plaintiff's Brentwood Drive property. *See* photograph of Stop Work Order attached hereto as **Exhibit 5**.

16. Mark Williams informed Mr. Haynie that he could appeal my decision to the Board of Appeals. Haynie submitted his appeal and the Board convened on May 11, 2011. *See* Code

Board of Appeals Application and Code Board of Appeals Meeting Agenda, attached hereto as **Exhibit 6** and **Exhibit 7**. I attended the hearing on behalf of the City.

17. On May 12, 2011, Mr. Haynie contacted Mark Williams and me by email to indicate that he was going to scale back his proposed storage shed located on Brentwood Drive to less than 120 square feet. *See* email from Haynie (May 12, 2011) attached hereto as **Exhibit 8**. Mr. Haynie asked that the "Stop Work" Order I issued on his property be removed. Mark Williams responded in an email to Mr. Haynie and carbon copied to me that Mr. Haynie's building permit fee of $15.00 would be refunded. *Id.*

18. Additionally, on or about May 6, 2011, I inspected property located on Covenant Road along Scott Turner. I was informed that Mr. Haynie was the general contractor for the project and Mr. Nassar Alquza was the property owner.

19. During our inspection of the Covenant Road property, we determined that the bathrooms were not compliant with the requirements of the Americans with Disabilities Act ("ADA"). We informed Mr. Alquza that the sink could be moved to make the bathroom wheelchair-accessible pursuant to the ADA. I requested that Mr. Alquza and/or Mr. Haynie submit new drawings for the redesigned bathroom to the City for review.

20. I also determined that Mr. Haynie's building permit for the Covenant Road project had expired. I emailed Mark Williams about Mr. Haynie's expired permit on or about May 6, 2011. *See* email to Mark Williams (May 6, 2011), attached hereto as **Exhibit 9**.

21. Shortly after my May 2011 inspection of the Covenant Road property, Shaun Greenwood and I met with Mr. Alquza and several subcontractors. I informed Mr. Alquza that Mr. Haynie needed to renew his building permits in order to perform the necessary redesign construction in the bathroom. At that time, Mr. Alquza informed me that Mr. Haynie was finished with his part

of the construction and that his services were no longer required. I informed Mr. Alquza that he needed to write a letter stating Mr. Haynie was no longer the general contractor on the project for liability purposes and Mr. Alquza signed a letter to that effect. *See* **Exhibit 9**. ("Mr. Alquza has indicated to me that Doc Wild Construction has finished with their part and their services is no longer required.").

22. On or about June 20, 2011, I issued three Uniform Ordinance Summons to Mr. Haynie. *See* copies of Uniform Ordinance Summons attached hereto as **Exhibit 10**. These citations were issued to Mr. Haynie as a result of his failure to remove rubbish and garbage from his residential property on Brentwood Drive, his storage of construction materials on his residential property on Brentwood Drive, and his operation of his business out of his residential property on Brentwood Drive. *Id.*

FURTHER AFFIANT SAYETH NOT.

Clark Frady

SWORN TO BEFORE ME THIS 26th
DAY OF December 2013

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12/3/2017

DO NOT WRITE IN SHADED AREAS

Building Permit Application

Permit No. (74-80)	Receipt No.	Permit Fee	Date Permit Issued: Day (37-38)	Mo. (39-40)	Year (41-42)	Issued By
2011B-3103	17401	$ 15.00	15	3	2011	MWP

LOCATION OF IMPROVEMENT

Address: Street No. (1-6) 1329 ~~1469~~ Street Name (8-32) Brentwood Street Type Dr.

City (33-34)	County (35-36)	Zip Code	School (44) District	Fire (45-46) District	Census (47-51) Tract	Tax District
Columbia	Richland	29204				

TAX MAP — Page | Block | Lot

SUBDIVISION — Name | Section | Block | Lot

	NAME	MAILING ADDRESS	ZIP CODE	TELEPHONE	LICENSE NO.
OWNER	L. Haynie	1469 Florawood	29204	238-0157	
ARCHITECT					
GEN. CONTRACTOR	Dorwild's	"			

SELECTED CHARACTERISTICS OF WORK

NATURE OF WORK
- [x] 1. New Building (52)
- [ ] 2. Addition
- [ ] 3. Alteration
- [ ] 4. Repair/Replacement
- [ ] 5. Demolition
- [ ] 6. Moving/Relocation
- [ ] 7. Foundation Only

OWNERSHIP (53)
- [ ] 1. Private (Individual, Corporation, Other)
- [ ] 2. Public (Federal, State, Local Gov'ts., Other)

DIMENSIONS
1. Number of Floors _____
2. Total Floor Area of New Construction Based on Exterior Dimensions
   _____ Sq. Ft.
   Heated _____
   Basement _____
   Accessory Structures _____
3. Land Area _____ Sq. Ft.

DESCRIPTION OF WORK
10x20 Storage Shed

ESTIMATED DATE OF COMPLETION 19.

PROPOSED USE (IF DEMOLITION INDICATE MOST RECENT USE)

TYPE OF OCCURRENCE (54)
- [ ] 1. Assembly
- [ ] 2. Business
- [ ] 3. Educational
- [ ] 4. Hazardous
- [ ] 5. Factory - - Industrial
- [ ] 6. Institutional
- [ ] 7. Mercantile
- [ ] 8. Residential
- [ ] 9. Storage

IF RESIDENTIAL (55) — **UNITS (56-58)**
- [ ] 1. One Family 1
- [ ] 2. Mobile Home 1
- [ ] 3. Duplex 2
- [ ] 4. Apartment
- [ ] 5. Condominium
- [ ] 6. Dorm/ Rooming House
- [ ] 7. Other (Specify)

If Conversion, Explain

OFF STREET PARKING
- [ ] 1. Indoor Number
- [ ] 2. Outdoor Number
- 3. Total

SINGLE FAMILY ONLY

Rooms	Number
Bedrooms (59)	
Bathrooms–Full (60)	
Bathrooms–Partial (61)	
Total Rooms (62)	

PRINCIPAL TYPE OF FRAME
- [ ] Type 1 - Fireproof
- [ ] Type 2 - Fire Resistant
- [ ] Type 3 - Heavy Timber
- [ ] Type 4 - Non-Combustible
- [ ] Type 5 - Ordinary Construction
- [ ] Type 6 - Wood Frame

PRINCIPAL HEATING FUEL (63)
- [ ] 1. Gas
- [ ] 2. Oil
- [ ] 3. Electricity
- [ ] 4. Coal
- [ ] 5. Wood
- [ ] 6. Other (Specify)

SOURCE OF WATER SUPPLY

SOURCE OF SEWAGE DISPOSAL (Permit No.)

TYPE OF WORK	$ VALUE	CONTRACTOR
Building	2800	Dorwild
Electrical		
Plumbing		
Heating		
Air Conditioning		
Other (Excluding Land)		
TOTAL (64-71)		

FLOOD PLAIN DATA — COMPLETE ONLY IF SITE WITHIN 100 YEAR FLOOD PLAIN

Elevation of 100 Year Flood: _____ Feet | First Floor Elevation Above Mean Sea Level: _____ Feet

Zoning Approval | Subdivision Approval | Storm Drainage Approval

AFFIDAVIT OF APPLICANT

1. No work will be started before permit card is posted or continued if the permit card is destroyed, lost or stolen.
2. No work is to be continued if permit card is destroyed, lost, or stolen.
3. Contractor and subcontractors will secure (if required) a business license before beginning any work.
4. This permit is void if job is not started within 6 months of application date.
5. I will be responsible and will pay for the business license of any contractor or subcontractor doing work on this project if found without a license.
6. The undersigned owner or agent understands that the approval of this application does not constitute a privilege to violate any applicable governmental ordinances, codes, or laws, and that any omission of or misrepresentation of fact with or without intention of the undersigned or any alteration or change from this application without approval of the Building Official, shall constitute sufficient ground for revocation of any permit issued which was based on the approval of this application. This permit does not authorize any encroachment upon public property.

Signature of Applicant — F. HAYNIE — 3-15-11

1469 Florawood Columbia SC — 050102-000001 — Date 000203

Address

OFFICE USE

EXHIBIT 1

City of Forest Acres

BUILDING INSPECTIONS

☐ MAY PROCEED

☑ CORRECTIONS and REINSPECTION REQUIRED

TYPE INSPECTION

Footer

NOTICE OF RESULT OF INSPECTION

Permit# 2011R-3703 Date: 3/21/11

Location: 1325 BRENTWOOD

Contractor/Owner: Phillips / Lottie Haynie

Clark 3-22-11

Inspector

City of Forest Acres Building Inspections
5205 North Trenholm Road • Forest Acres, SC 29206
(803) 782-4245

REMARKS:

PLANS REC'D.

FOOTING NO

EXHIBIT 2

Mark Williams

From: Clark Frady
Sent: Tuesday, April 05, 2011 12:47 PM
To: Mark Williams
Subject: Doc Haynie (details of the disagreement with the contractor)

Mark,

After I originally visited the site where Mr. Haynie is building the garage, I noticed that the manner of which he was attempting to construct the footings and foundation system was not adequate and pursuant to the 2006-IRC. He attempted to describe his plans to incorporate two types of foundations into one, but it seemed very confusing and I asked Mr. Haynie for a set of plans particularly describing how he plans to construct the foundation. After I received and reviewed his plans (March 23, 2011), it was clear that it was not in conformance to the minimum standards as prescribed in the 2006-IRC.

The details concerning Frank Haynie (Doc Wild) and his 10 by 20 building project is as follows:

- The footings, as depicted on the plans submitted by him, are not compliant with the 2006-IRC. There is a minimum depth requirement for all footings and his plans are contrary to this code. Pole building design is by professional engineering and stamped accordingly. (i.e.: Hoover Buildings)
- The plans submitted are incomplete in reference to the design of the roof system; proper anchorage of the structure to the slab; the application of the O.S.B. to the structural support members being spaced what appears to be about 8 feet apart; roof trusses spaced 32 inches on center and no supporting truss package from the manufacturer indicating of the trusses can be used in the manner as depicted on the plans.
- No indication of uplift prevention (hurricane ties) or other approved manner to prevent the roof/truss system from being uplifted by wind as prescribed by the 2006-IRC. When asked, he denied that this was unnecessary to his construction.
- No indication of proper draining or the 6 and 10 rule that applies to the final grading of the site adjacent to the structure when completed.

I attempted to discuss this with Mr. Haynie last week in the conference room. He refused to discuss the plan review with me for an acceptable and reasonable means to construct and secure the building as per the 2006-IRC. After my last attempt to discuss the plans, I simply asked Mr. Haynie to re-submit an amended set of plans with corrections as prescribed in the 2006-IRC. Mr. Haynie just walked out of the meeting. I am currently awaiting a set of revised plans from him.

Clark A. Frady, CFM
Code Official
City of Forest Acres
5205 N. Trenholm Rd.
Columbia, SC 29206
Office: 803-404-5348
Fax: 803-782-8737
cfrady@forestacres.net

EXHIBIT 3

Mark Williams

From: Clark Frady
Sent: Monday, May 02, 2011 8:20 AM
To: Doc Haynie
Cc: Mark Williams
Subject: RE: perhaps you should study more

Mr. Haynie,

Please Stop Work on all of your projects and refer to the building codes board of appeals with Forest Acres. It is obvious that we have a disagreement with the code versions. I certainly would not want you to continue building for our citizens with the incorrect building codes in use, thereby causing the citizen to be caught in the middle. I will place the permit for Brentwood on hold as well as not opening any other of your permits until the board of appeals have heard this case and have made their decision. If you continue working after receiving this order, you can be summoned to the Magistrate for violating the stop work order.

Clark Frady, Code Offical

-----Original Message-----
From: Doc Haynie [mailto:DocWild@Liaison.to]
Sent: Friday, April 29, 2011 5:47 PM
To: Clark Frady
Cc: Mark Williams
Subject: perhaps you should study more

before holding yourself out as an authority??

EXHIBIT 4

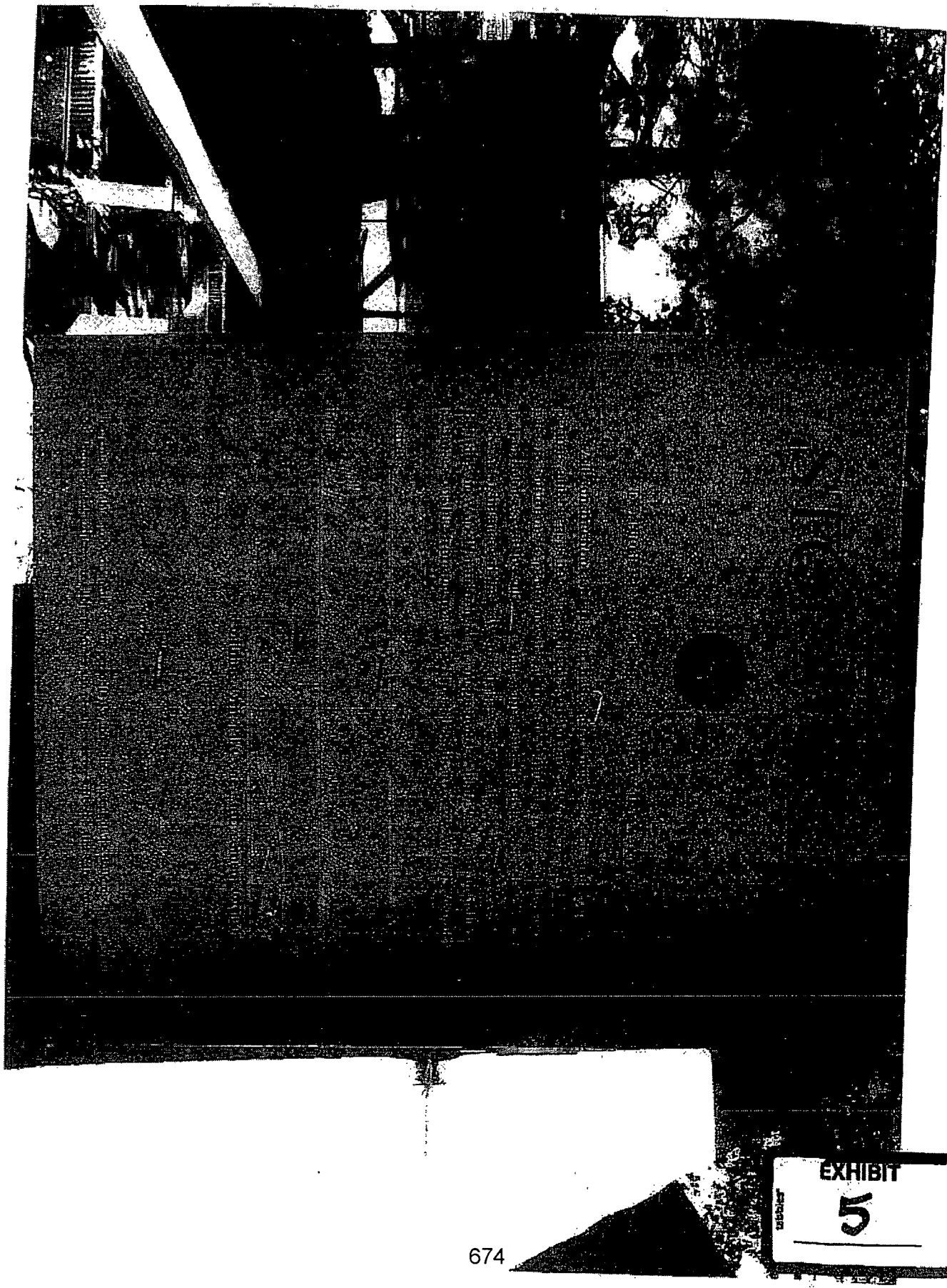


EXHIBIT
5

Mark Williams

City of Forest Acres, S. C.
Code Board of Appeals Application

Name of Applicant: F.M Haynie

Address of Applicant: 1469 Florawood Dr.

Telephone No. of Applicant: 238-0757

Name of Property Owner: Lottie Haynie

Address of Appeal: 1325 Beechwood Dr. TMS #

Code Reference and Edition Being Appealed: 2009 IRC

Section(s): R 105.2(1)

Agent Designation (If applicable)

Designated Representative: F.M. Haynie

Signature of Property Owner:

Date:

In addition to this application please submit a letter detailing the reason for your appeal and your interpretation of this code section. Please include any drawings or graphic renderings that you would like the board to review.

F.M. Haynie
Name of Applicant (Please Print)

Signature of Applicant

5-5-11
Date

EXHIBIT 6

DocWild

Owner / Contractor

City of Forest Acres
Code Board of Appeals

As a preface, kindly note that I was among the group that took the very first state contractor licensing exam and since that day, 35yrs ago, I have never had a "stop work" order placed on a project for a code issue. Further, the most substantial request ever made of me by a building official was for a compaction test of fill we had placed. As with any legitimate request made of me, we had the test performed and were found to exceed requirements. Further, I was called on by Loveless Commercial Contracting to manage the construction of Riverbanks Botanical Garden, a $7,000,000 project. That turned out OK, I think.

As previously note R105.2 (1) of the 2009 International Residential Code regarding Work Exempt from permit: *One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses provided the floor area does not exceed 200 square feet (18.58m^2).* Accordingly, since the structure in question is 190sf, it is exempt from permitting and thus inspection.

As for the structural design, my daughter's storage shed is classed as a monolithic slab with integral spread footings. R403.1.1 states *"spread footings shall be at least 6" inches in thickness."* My drawing is noted such. To make the footing 12" deep as Mr. Frady wants, the slab would be below grade level, a totally unsatisfactory condition. The footing design meets code and generally accepted practice throughout S. Carolina for the past 40yrs.

The framing is to be "post & beam". There is exactly one sentence in the code that relates to post & beam construction: 407.3 *columns shall be restrained laterally to prevent lateral displacement of bottom end.* That is as designed. Mr. Frady referenced uplift force multiple times in his explanation of why the posts needed to be set in a 2'x2'x4' deep hole w/concrete. The emphasis on uplift for the past 12yrs by insurance companies and testing labs has nothing to do with pulling a post out of the ground. Rather it refers to pressure differentials that generate enough force to tear off roof sheathing. The code does not require we comply with the instructions of an unqualified back-seat engineer.

As with the appeal filed yesterday regarding Covenant Rd, we do not wish to appeal any code but rather require it be properly enforced. I remain convinced this effort is unnecessary.

Sincerely,

DocWild@Liaison.to
1469 Florawood Dr. Ste.102
Columbia, South Carolina
29204
(803) 238-0757 cell

5/6/11
City of Forest Acres
Code Board of Appeals

As a preface, kindly note that I was among the group that took the very first state contractor licensing exam and since that day, 35yrs ago, I have never had a "stop work" order placed on a project for a code issue. Further, the most substantial request ever made of me by a building official was for a compaction test of fill we had placed. As with any legitimate request made of me, we had the test performed and were found to exceed requirements. Further, I was called on by Loveless Commercial Contracting to manage the construction of Riverbanks Botanical Garden, a $7,000,000 project. That turned out OK, I think.

R105.2 (1) of the 2006 International Residential Code regarding Work Exempt from permit: *One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses provided the floor area does not exceed 120 square feet..* The current, 2009, IRC version reverted back to the 03 standard of 200 square feet. Accordingly, since the structure in question is 190sf, we wish to apply the more widely used version exempting us from permitting and thus inspection.

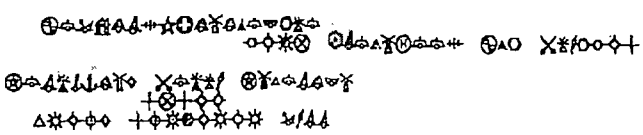
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As with the appeal filed yesterday regarding Covenant Rd, we do not wish to appeal any code but rather require it be properly enforced. I remain convinced this effort is unnecessary.



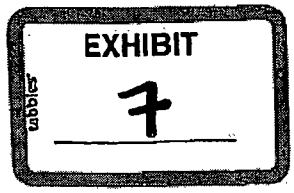
Sincerely,



Meeting of the Forest Acres Code Board of Appeals
Wednesday, May 11, 2011
6:00 PM

Agenda

1. Call to order-determination of a quorum
2. 1325 Brentwood; Appeal of Building Official's interpretation of 2006 IRC Section R403.1.1 (pertaining to footings).
3. Adjourn



Clark Frady

From: Mark Williams
Sent: Thursday, May 12, 2011 2:53 PM
To: Doc Haynie
Cc: Margo Pierce; Clark Frady
Subject: RE: 1325 Brentwood

Importance: High

Acknowledged; your permit fee will be refunded.

Mark M. Williams
City Administrator

City of Forest Acres
5205 N Trenholm Rd.
Forest Acres, SC 29206
803-782-9475
803-782-3183 FAX

-----Original Message-----
From: Doc Haynie [mailto:DocWild@Liaison.to]
Sent: Thursday, May 12, 2011 8:28 AM
To: Clark Frady; Mark Williams
Cc: 'HAYNIE, LOTTIE S'; Tandi Ross
Subject: 1325 Brentwood

FYI: We have decided to scale building size back to under 120sf (pursuant to your interpretation of the building code) and Sky is going to build it with my help. Will remove the stop work order since it no longer applies.

Regards,
Doc Haynie

=======
Email scanned by PC Tools - No viruses or spyware found.
(Email Guard: 7.0.0.21, Virus/Spyware Database: 6.17500) http://www.pctools.com/ =======



Mark Williams

From: Mark Williams
Sent: Friday, May 06, 2011 9:17 AM
To: 'Doc Haynie'
Subject: FW: appeal??

From: Clark Frady
Sent: Friday, May 06, 2011 9:12 AM
To: Mark Williams
Subject: RE: appeal??

Doc Wild's building permit for 3724 Covenant Road has been expired for over 6 months now. The last inspection was February 2010 and none since. Permits expire after 180 days of having no activity or inspections (2006-IBC) and the owner, Mr. Alquaza, has indicated to me that Doc Wild Construction is finished with their part and their services is no longer required.

From: Mark Williams
Sent: Thursday, May 05, 2011 2:53 PM
To: Clark Frady
Subject: FW: appeal??

Mark M. Williams
City Administrator

City of Forest Acres
5205 N Trenholm Rd.
Forest Acres, SC 29206
803-782-9475
803-782-3183 FAX

From: Doc Haynie [mailto:DocWild@Liaison.to]
Sent: Thursday, May 05, 2011 2:52 PM
To: Mark Williams
Subject: appeal??

I went to Covenant Rd project to get Mr. Alquza's signature as you requested. They were busy at work installing hood and waiting on Fire Marshal & DHEC but Mr. Alquza was still in KY. His nephew explained there is no need for appeal because you issued a new permit directly to Mr. Alquaza. Please clarify.

Doc Haynie

DocWild.com
803-238-0757

EXHIBIT
9

July 14

UNIFORM ORDINANCE SUMMONS

CITY OF FOREST ACRES, SC — NO. 1496

VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME
LAWNIE	FRANK	M. JR.

ADDRESS: 1469 Florawood Dr. Cola, SC 29204

SOCIAL SECURITY NUMBER: SCDLF 00159760 WM 4-13-47

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT 5205 NO TRENHOLM ROAD (address) FOREST ACRES, SC 29206-4807

ON DATE OF TRIAL: JUNE 30, 2011 AT TIME OF TRIAL: 8:30 (AM) PM

FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:

Ordinance Section No.	Date Issued	Bond Amount
5-4	6-20-11	$1,092.50

Description of Ordinance: NO BUILDING PERMIT

Date of Violation	Time of Violation	Place of Violation
6-20-11	8:15 AM	1327 - Brentwood Dr.

Name of Issuing Officer: C. Brady — Title: Code Official

For Official Use Only

Bond Received $	Date	By

Disposition

Defendant Did Not Appear ☐	Appeared ☐	Date of Disposition		
Forfeited Bond ☐	Dismissed ☐	Nolle Prosequi ☐		
Plea	Nolo Contendere ☐	Guilty ☐		
Trial	Bench ☐	Jury ☐	Verdict: Guilty ☐	Not Guilty ☐
Fine $	Suspended $	Assessments $	Amount Collected $	STP
Sentenced to Jail: Days		Community Service		PTI

Municipal Court Judge _____

Date _____

ISSUING OFFICER'S COPY

tabbies EXHIBIT 10

July 14

UNIFORM ORDINANCE SUMMONS

CITY OF FOREST ACRES, SC — NO. 1498

VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME
LAWNIE	FRANK	M. JR

ADDRESS: 1469 Florawood Dr Cola, SC 29204

SOCIAL SECURITY NUMBER: SCDLF 00159760 WM 4-13-47

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT 5205 NO TRENHOLM ROAD (address) FOREST ACRES, SC 29206-4807

ON DATE OF TRIAL: JUNE 30, 201[illegible] AT TIME OF TRIAL: 9:30 (AM) PM

FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:

Ordinance Section No.	Date Issued	Bond Amount
5-5 (307.1) PMC	6-20-11	$1092.50

Description of Ordinance: Rubbish & Garage - Pod - 5

Date of Violation	Time of Violation	Place of Violation
6-20-11	8:15 AM	1325 Brentwood

Name of Issuing Officer: C. Brady — Title: Code Official

For Official Use Only

Bond Received $	Date	By

Disposition

Defendant Did Not Appear ☐	Appeared ☐	Date of Disposition		
Forfeited Bond ☐	Dismissed ☐	Nolle Prosequi ☐		
Plea	Nolo Contendere ☐	Guilty ☐		
Trial	Bench ☐	Jury ☐	Verdict: Guilty ☐	Not Guilty ☐
Fine $	Suspended $	Assessments $	Amount Collected $	STP
Sentenced to Jail: Days		Community Service		PTI

Name of Presiding Municipal Court Judge _____

Certified Correct By: _____ Date _____

ISSUING OFFICER'S COPY

050102-000001 000230

July 14

UNIFORM ORDINANCE SUMMONS

CITY OF FOREST ACRES, SC NO. 1497

VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME
HAYNIE	FRANK	M. III

ADDRESS: 1969 Florawood Dr. Cola, SC 29204

SOCIAL SECURITY NUMBER: SS# 001-50-7760 D/B: 4-13-47

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT 5205 NO. TRENHOLM ROAD (address) FOREST ACRES, SC 29206-4807

ON DATE OF TRIAL: JUNE 30, 2011 AT TIME OF TRIAL: 8:30 AM PM

FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:

Ordinance, Code or Sec. No.	Date Issued	Bond Amount
27-146	6-20-11	$1,092.50

Description of Ordinance: HOME OCCUPATION VIOLATION

Date of Violation	Time of Violation	AM PM	Place of Violation
6-20-11	8:15		1969 FLORAWOOD DR

Name of Issuing Officer: T. FRANCY Title: CODE OFFICIAL

For Official Use Only

Bond Received $	Date	By

Disposition

Defendant Did Not Appear ☐	Appeared ☐	Date of Disposition
Forfeited Bond ☐	Dismissed ☐	Nolle Prosequi ☐
Plea: Nolo Contendere ☐	Guilty ☐	
Trial: Bench ☐ Jury ☐	Verdict: Guilty ☐	Not Guilty ☐

Fine $	Suspended $	Assessments $	Amount Collected $	STP

Sentenced to Jail Days	Community Service	PTI

Name of Presiding Municipal Court Judge _____

Certified Correct By: _____ Date _____

ISSUING OFFICER'S COPY

RECEIVED
KOS 1:28 PM
JAN 09 2014
053004-00001

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
	CIVIL ACTION NO. 2012-CP-40-7392
Frank "Doc" Haynie,)	
Plaintiff,)	
v.)	**AMENDED AFFIDAVIT OF CLARK FRADY**
)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,)	
)	
Defendants.)	

FILED
RICHLAND COUNTY
2014 JAN -5 AM 9:5
JEANETTE W. KOZIER
C.C.P. & G.S.

PERSONALLY appeared before me, Clark Frady, who, being first duly sworn, deposes and states that:

1. I am a citizen and resident of West Columbia, South Carolina.

2. I am over the age of eighteen and am of sound mind to give this affidavit.

3. I have personal knowledge of and am competent to swear to the facts set forth in this affidavit.

4. I currently work as a Building Inspector for the County of Richland.

5. From March 2010 until December 2012, I was employed by the City of Forest Acres as Director of Code Enforcement/Building Official. I took this position with the City of Forest Acres following the resignation of Barry Epps, former Building Codes Officer for the City.

6. Prior to my employment with the City of Forest Acres, I was employed by the County of Richland from May 2003 to March 2010 as a Building Inspector.

7. I have personal knowledge of and am familiar with applicable state and local laws affecting the City of Forest Acres, including municipal ordinances, International Building Codes, and International Residential Codes.

EXHIBIT
sabbler
F

8. On or about March 15, 2011, Frank "Doc" Haynie applied for a building permit for construction of a "10 x 20 storage shed" at his residential property located at 1325 Brentwood Drive. *See* Building Permit Application attached hereto as **Exhibit 1**. Mr. Haynie's building permit application was approved.

9. On or about March 21, 2011, I inspected Plaintiff's Brentwood Drive property and the proposed storage shed. During my inspection, I noticed that the manner by which Mr. Haynie was attempting to construct the footings and foundation system was not in compliance with the International Residential Code (2006).

10. I asked Mr. Haynie to provide a set of plans to the City and issued a Notice of Result of Inspection on or about March 21, 2011, requesting plans for the building, because I believed the building did not comply with the applicable International Residential Code (2006). *See* Notice of Result of Inspection attached hereto as **Exhibit 2**. I asked Mr. Haynie to particularly describe on the plans how he planned to construct the foundation.

11. I am informed and believe that Mr. Haynie submitted drawing specifications for the proposed shed approximately one or two days after I inspected the property.

12. After reviewing Mr. Haynie's plans for the proposed storage shed on his Brentwood Drive property, I realized that the plans were not in conformance with the minimum standards set forth in the 2006 International Residential Code.

13. Specifically, I identified the following violations regarding Mr. Haynie's proposed 10x20 storage shed, which I attempted to discuss with Mr. Haynie in late March 2011:

a. The footings, as depicted on the plans submitted by Mr. Haynie, were not compliant with the International Residential Code (2006). There is a minimum

depth requirement for all footings and Mr. Haynie's plans were contrary to the code.

b. The plans submitted by Mr. Haynie were incomplete in reference to the design of the roof system; proper anchorage of the structure to the slab; the application of the O.S.B. to the structural support members being spaced what appeared to be about eight (8) feet apart; roof trusses spaced thirty-two (32) inches on center and no supporting truss package from the manufacturer indicating if the trusses could be used in the manner depicted on the plans.

c. There was no indication in Mr. Haynie's plans of uplift prevention (hurricane ties) or other approved manner as depicted.

d. There was no indication of the proper drainage or the six (6) and ten (10) rule that applies to the final grading of the site adjacent to the structure when completed.

14. On or about April 5, 2011, I discussed with Mark Williams by email Mr. Haynie's allegations that the storage shed on his property had been built to code. *See* email (April 5, 2011), attached hereto as **Exhibit 3**.

15. On or about May 2, 2011, I emailed a "Stop Work" order to Mr. Haynie, ordering that no further construction could continue on Plaintiff's proposed shed at his Brentwood Drive property. *See* email to Haynie (May 2, 2011), attached hereto as **Exhibit 4**. I subsequently posted a Stop Work order directly onto Plaintiff's Brentwood Drive property. *See* photograph of Stop Work Order attached hereto as **Exhibit 5**.

16. Mark Williams informed Mr. Haynie that he could appeal my decision to the Board of Appeals. Haynie submitted his appeal and the Board convened on May 11, 2011. *See* Code

Board of Appeals Application and Code Board of Appeals Meeting Agenda, attached hereto as **Exhibit 6** and **Exhibit 7**. I attended the hearing on behalf of the City.

17. On May 12, 2011, Mr. Haynie contacted Mark Williams and me by email to indicate that he was going to scale back his proposed storage shed located on Brentwood Drive to less than 120 square feet. *See* email from Haynie (May 12, 2011) attached hereto as **Exhibit 8**. Mr. Haynie asked that the "Stop Work" Order I issued on his property be removed. Mark Williams responded in an email to Mr. Haynie and carbon copied to me that Mr. Haynie's building permit fee of $15.00 would be refunded. *Id.*

18. Additionally, on or about May 6, 2011, I inspected property located on Covenant Road along Scott Turner. I was informed that Mr. Haynie was the general contractor for the project and Mr. Nassar Alquza was the property owner.

19. During our inspection of the Covenant Road property, we determined that the bathrooms were not compliant with the requirements of the Americans with Disabilities Act ("ADA"). We informed Mr. Alquza that the sink could be moved to make the bathroom wheelchair-accessible pursuant to the ADA. I requested that Mr. Alquza and/or Mr. Haynie submit new drawings for the redesigned bathroom to the City for review.

20. I also determined that Mr. Haynie's building permit for the Covenant Road project had expired. I emailed Mark Williams about Mr. Haynie's expired permit on or about May 6, 2011. *See* email to Mark Williams (May 6, 2011), attached hereto as **Exhibit 9**.

21. Shortly after my May 2011 inspection of the Covenant Road property, Shaun Greenwood and I met with Mr. Alquza and several subcontractors. I informed Mr. Alquza that Mr. Haynie needed to renew his building permits in order to perform the necessary redesign construction in the bathroom. At that time, Mr. Alquza informed me that Mr. Haynie was finished with his part

of the construction and that his services were no longer required. I informed Mr. Alquza that he needed to write a letter stating Mr. Haynie was no longer the general contractor on the project, so that Mr. Haynie would be protected from liability for any future work on the project. I presently cannot recall whether Mr. Alquza ever sent me such a letter. *See* **Exhibit 9**. ("Mr. Alquza has indicated to me that Doc Wild Construction has finished with their part and their services is no longer required."). Thereafter, I issued one or more work permits to licensed contractors to perform work within the scope of their respective licenses.

22. On or about June 20, 2011, I issued three Uniform Ordinance Summons to Mr. Haynie. *See* copies of Uniform Ordinance Summons attached hereto as **Exhibit 10**. These citations were issued to Mr. Haynie as a result of his failure to remove rubbish and garbage from his residential property on Brentwood Drive, his storage of construction materials on his residential property on Brentwood Drive, and his operation of his business out of his residential property on Brentwood Drive. *Id.*

FURTHER AFFIANT SAYETH NOT.

Clark Frady

SWORN TO BEFORE ME THIS 30th

DAY OF September 2013

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12/3/2017

DO NOT WRITE IN SHADED AREAS

Building Permit Application

Permit no.	Receipt No.	Permit Fee	Date Permit Issued: Day (37-38)	Mo. (39-40)	Year (41-42)	Issued By
(74-80) 2011B-3703	17401	$ 15.00	15	3	2011	MWP

LOCATION OF IMPROVEMENT

Address: Street No (1-6)	Street Name (8-32)	Street Type
1325 ~~1469~~	Brentwood	DR.

City (33-34)	County (35-36)	Zip Code	School (44) District	Fire (45-46) District	Census (47-51) Tract	Tax District
Columbia	Richland	29204				

TAX MAP Page	Block	Lot	SUBDIVISION Name	Section	Block	Lot

	NAME	MAILING ADDRESS	ZIP CODE	TELEPHONE	LICENSE NO.
OWNER	L. Haynie	1469 Florawood	29204	238-6757	
ARCHITECT					
GEN. CONTRACTOR	DoeWild's	"			

NATURE OF WORK
- ☒ 1. New Building (52)
- ☐ 2. Addition
- ☐ 3. Alteration
- ☐ 4. Repair/Replacement
- ☐ 5. Demolition
- ☐ 6. Moving/Relocation
- ☐ 7. Foundation Only

OWNERSHIP (53)
- ☐ 1. Private (Individual, Corporation, Other)
- ☐ 2. Public (Federal, State, Local Gov'ts., Other)

DIMENSIONS
1. Number of Floors ____
2. Total Floor Area of New Construction Based on Exterior Dimensions
   ____ Sq. Ft.
   Heated ____
   Basement ____
   Accessory Structures ____
3. Land Area ____ Sq. Ft.

DESCRIPTION OF WORK
10x20 Storage Shed

ESTIMATED DATE OF COMPLETION 19.

PROPOSED USE (IF DEMOLITION INDICATE MOST RECENT USE)

TYPE OF OCCURRENCE (54)	IF RESIDENTIAL (55)	UNITS (56-58)
☐ 1. Assembly	☐ 1. One Family	1
☐ 2. Business	☐ 2. Mobile Home	1
☐ 3. Educational	☐ 3. Duplex	2
☐ 4. Hazardous	☐ 4. Apartment	
☐ 5. Factory - - Industrial	☐ 5. Condominium	
☐ 6. Institutional	☐ 6. Dorm/ Rooming House	
☐ 7. Mercantile	☐ 7. Other (Specify)	
☐ 8. Residential		
☐ 9. Storage	If Conversion, Explain	

OFF STREET PARKING
- ☐ 1. Indoor Number ____
- ☐ 2. Outdoor Number ____
- 3. Total ____

SINGLE FAMILY ONLY

Rooms	Number
Bedrooms (59)	
Bathrooms–Full (60)	
Bathrooms–Partial (61)	
Total Rooms (62)	

PRINCIPAL TYPE OF FRAME
- ☐ Type 1 - Fireproof
- ☐ Type 2 - Fire Resistant
- ☐ Type 3 - Heavy Timber
- ☐ Type 4 - Non-Combustible
- ☐ Type 5 - Ordinary Construction
- ☐ Type 6 - Wood Frame

PRINCIPAL HEATING FUEL (63)
- ☐ 1. Gas ☐ 2. Oil ☐ 3. Electricity ☐ 4. Coal ☐ 5. Wood
- ☐ 6. Other (Specify) ____

SOURCE OF WATER SUPPLY

SOURCE OF SEWAGE DISPOSAL (Permit No.)

TYPE OF WORK	VALUE	CONTRACTOR
Building	$2800	DoeWild
Electrical		
Plumbing		
Heating		
Air Conditioning		
Other (Excluding Land)		
TOTAL (64-71)		

FLOOD PLAIN DATA — COMPLETE ONLY IF SITE WITHIN 100 YEAR FLOOD PLAIN

Elevation of 100 Year Flood ____ Feet | First Floor Elevation Above Mean Sea Level ____ Feet

Zoning Approval	Subdivision Approval	Storm Drainage Approval

AFFIDAVIT OF APPLICANT

1. No work will be started before permit card is posted or continued if the permit card is destroyed, lost or stolen.
2. No work is to be continued if permit card is destroyed, lost, or stolen.
3. Contractor and subcontractors will secure (if required) a business license before beginning any work.
4. This permit is void if job is not started within 6 months of application date.
5. I will be responsible and will pay for the business license of any contractor or subcontractor doing work on this project if found without a license.
6. The undersigned owner or agent understands that the approval of this application does not constitute a privilege to violate any applicable governmental ordinances, codes, or laws, and that any omission of or misrepresentation of fact with or without intention of the undersigned or any alteration or change from this application without approval of the Building Official, shall constitute sufficient ground for revocation of any permit issued which was based on the approval of this application. This permit does not authorize any encroachment upon public property.

F. Haynie — 3-15-11

Signature of Applicant — Date

1469 Florawood Col. SC 000001 — 000203

Address

OFFICE USE

EXHIBIT 1

City of Forest Acres

BUILDING INSPECTIONS

☐ MAY PROCEED

☑ CORRECTIONS and REINSPECTION REQUIRED

TYPE INSPECTION

Footer

NOTICE OF RESULT OF INSPECTION

Permit# 2011R-3703 Date: 3/21/11

Location: 1325 BROOKWOOD

Contractor/Owner: ~~Doug~~ Griffin's / Lottie Haynie

Clark 3-22-11

Inspector

City of Forest Acres Building Inspections
5205 North Trenholm Road • Forest Acres, SC 29206
(803) 782-4245

REMARKS:

P/Hrs Req'd.

Footer No

EXHIBIT 2

Mark Williams

From: Clark Frady
Sent: Tuesday, April 05, 2011 12:47 PM
To: Mark Williams
Subject: Doc Haynie (details of the disagreement with the contractor)

Mark,

After I originally visited the site where Mr. Haynie is building the garage, I noticed that the manner of which he was attempting to construct the footings and foundation system was not adequate and pursuant to the 2006-IRC. He attempted to describe his plans to incorporate two types of foundations into one, but it seemed very confusing and I asked Mr. Haynie for a set of plans particularly describing how he plans to construct the foundation. After I received and reviewed his plans (March 23, 2011), it was clear that it was not in conformance to the minimum standards as prescribed in the 2006-IRC.

The details concerning Frank Haynie (Doc Wild) and his 10 by 20 building project is as follows:

- The footings, as depicted on the plans submitted by him, are not compliant with the 2006-IRC. There is a minimum depth requirement for all footings and his plans are contrary to this code. Pole building design is by professional engineering and stamped accordingly. (i.e.: Hoover Buildings)
- The plans submitted are incomplete in reference to the design of the roof system; proper anchorage of the structure to the slab; the application of the O.S.B. to the structural support members being spaced what appears to be about 8 feet apart; roof trusses spaced 32 inches on center and no supporting truss package from the manufacturer indicating of the trusses can be used in the manner as depicted on the plans.
- No indication of uplift prevention (hurricane ties) or other approved manner to prevent the roof/truss system from being uplifted by wind as prescribed by the 2006-IRC. When asked, he denied that this was unnecessary to his construction.
- No indication of proper draining or the 6 and 10 rule that applies to the final grading of the site adjacent to the structure when completed.

I attempted to discuss this with Mr. Haynie last week in the conference room. He refused to discuss the plan review with me for an acceptable and reasonable means to construct and secure the building as per the 2006-IRC. After my last attempt to discuss the plans, I simply asked Mr. Haynie to re-submit an amended set of plans with corrections as prescribed in the 2006-IRC. Mr. Haynie just walked out of the meeting. I am currently awaiting a set of revised plans from him.

Clark A. Frady, CFM
Code Official
City of Forest Acres
5205 N. Trenholm Rd.
Columbia, SC 29206
Office: 803-404-5348
Fax: 803-782-8737
cfrady@forestacres.net

EXHIBIT 3

Mark Williams

From: Clark Frady
Sent: Monday, May 02, 2011 8:20 AM
To: Doc Haynie
Cc: Mark Williams
Subject: RE: perhaps you should study more

Mr. Haynie,

Please Stop Work on all of your projects and refer to the building codes board of appeals with Forest Acres. It is obvious that we have a disagreement with the code versions. I certainly would not want you to continue building for our citizens with the incorrect building codes in use, thereby causing the citizen to be caught in the middle. I will place the permit for Brentwood on hold as well as not opening any other of your permits until the board of appeals have heard this case and have made their decision. If you continue working after receiving this order, you can be summoned to the Magistrate for violating the stop work order.

Clark Frady, Code Offical

-----Original Message-----
From: Doc Haynie [mailto:DocWild@Liaison.to]
Sent: Friday, April 29, 2011 5:47 PM
To: Clark Frady
Cc: Mark Williams
Subject: perhaps you should study more

before holding yourself out as an authority??

EXHIBIT
4

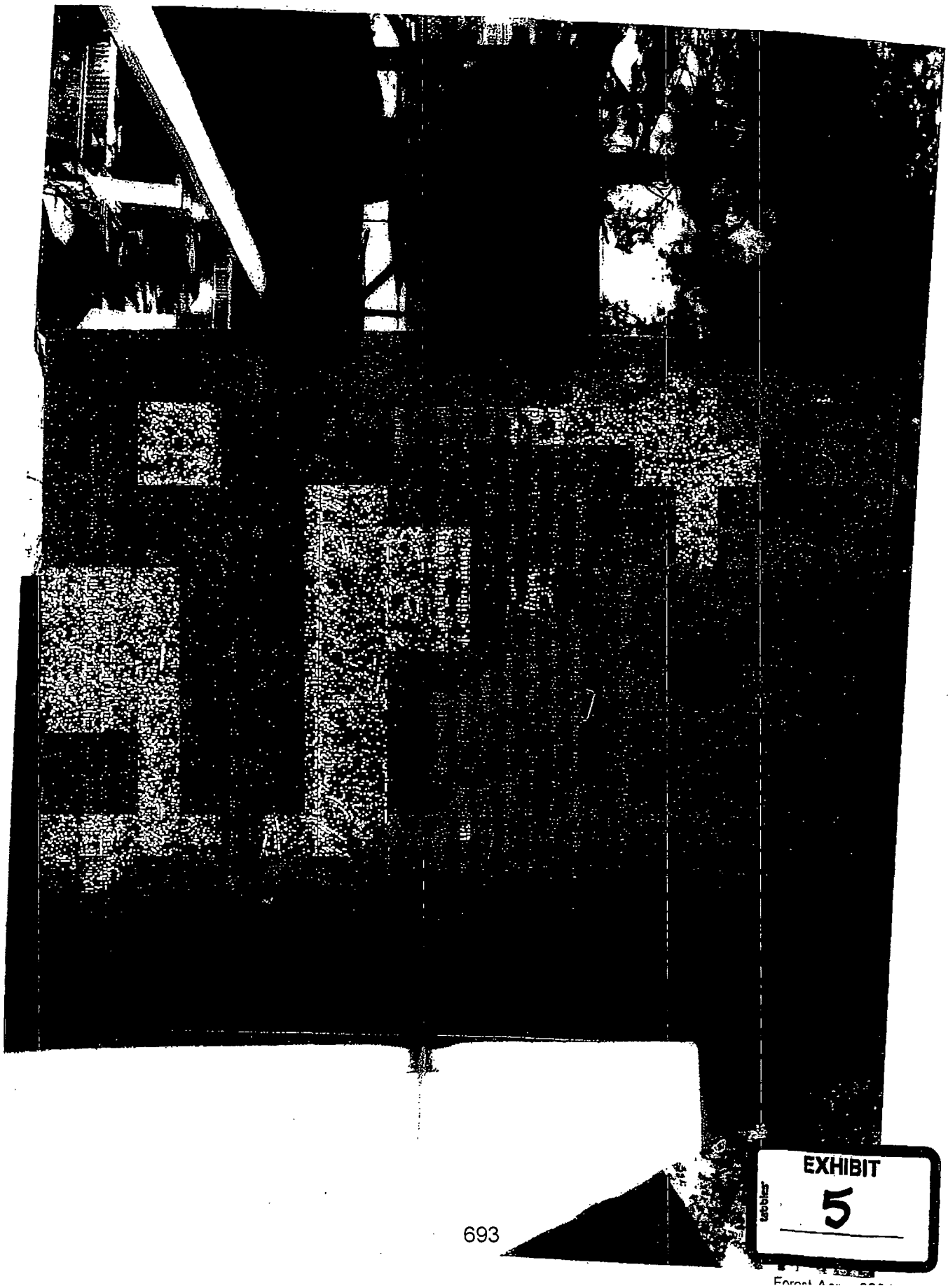


EXHIBIT
5

Mark Williams

City of Forest Acres, S. C.
Code Board of Appeals Application

Name of Applicant: F.M. Haynie

Address of Applicant: 1469 Florawood Dr.

Telephone No. of Applicant: 238-0757

Name of Property Owner: Lolie Haynie

Address of Appeal: 1325 Beechwood Dr. TMS #

Code Reference and Edition Being Appealed: 2009 IRC

Section(s): R 105.2(1)

Agent Designation (If applicable)

Designated Representative: F.M. Haynie

Signature of Property Owner:

Date:

In addition to this application please submit a letter detailing the reason for your appeal and your interpretation of this code section. Please include any drawings or graphic renderings that you would like the board to review.

F.M. Haynie
Name of Applicant (Please Print)

Signature of Applicant

5-5-11
Date

EXHIBIT
tabbies
6

DocWild

Owner / Contractor

City of Forest Acres
Code Board of Appeals

As a preface, kindly note that I was among the group that took the very first state contractor licensing exam and since that day, 35yrs ago, I have never had a "stop work" order placed on a project for a code issue. Further, the most substantial request ever made of me by a building official was for a compaction test of fill we had placed. As with any legitimate request made of me, we had the test performed and were found to exceed requirements. Further, I was called on by Loveless Commercial Contracting to manage the construction of Riverbanks Botanical Garden, a $7,000,000 project. That turned out OK, I think.

As previously note R105.2 (1) of the 2009 International Residential Code regarding Work Exempt from permit: *One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses provided the floor area does not exceed 200 square feet (18.58m^2).* Accordingly, since the structure in question is 190sf, it is exempt from permitting and thus inspection.

As for the structural design, my daughter's storage shed is classed as a monolithic slab with integral spread footings. R403.1.1 states *"spread footings shall be at least 6" inches in thickness."* My drawing is noted such. To make the footing 12" deep as Mr. Frady wants, the slab would be below grade level, a totally unsatisfactory condition. The footing design meets code and generally accepted practice throughout S. Carolina for the past 40yrs.

The framing is to be "post & beam". There is exactly one sentence in the code that relates to post & beam construction: 407.3 *columns shall be restrained laterally to prevent lateral displacement of bottom end.* That is as designed. Mr. Frady referenced uplift force multiple times in his explanation of why the posts needed to be set in a 2'x2'x4' deep hole w/concrete. The emphasis on uplift for the past 12yrs by insurance companies and testing labs has nothing to do with pulling a post out of the ground. Rather it refers to pressure differentials that generate enough force to tear off roof sheathing. The code does not require we comply with the instructions of an unqualified back-seat engineer.

As with the appeal filed yesterday regarding Covenant Rd, we do not wish to appeal any code but rather require it be properly enforced. I remain convinced this effort is unnecessary.

Sincerely,

DocWild@Liaison.to
1469 Florawood Dr. Ste.102
Columbia, South Carolina
29204
(803) 238-0797 cell

5/6/11
City of Forest Acres
Code Board of Appeals

As a preface, kindly note that I was among the group that took the very first state contractor licensing exam and since that day, 35yrs ago, I have never had a "stop work" order placed on a project for a code issue. Further, the most substantial request ever made of me by a building official was for a compaction test of fill we had placed. As with any legitimate request made of me, we had the test performed and were found to exceed requirements. Further, I was called on by Loveless Commercial Contracting to manage the construction of Riverbanks Botanical Garden, a $7,000,000 project. That turned out OK, I think.

R105.2 (1) of the 2006 International Residential Code regarding Work Exempt from permit: *One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses provided the floor area does not exceed 120 square feet..* The current, 2009, IRC version reverted back to the 03 standard of 200 square feet. Accordingly, since the structure in question is 190sf, we wish to apply the more widely used version exempting us from permitting and thus inspection.

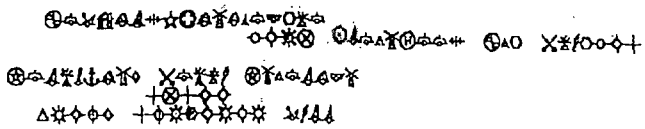
As for the structural design, my daughter's storage shed is classed as a monolithic slab with integral spread footings. R403.1.1 states *"spread footings shall be at least 6" inches in thickness."* My drawing is noted such. To make the footing 12" deep as Mr. Frady wants, the slab would be below grade level, a totally unsatisfactory condition. The footing design meets code and generally accepted practice throughout S. Carolina for the past 40yrs.

The framing is to be "post & beam". There is exactly one sentence in the code that relates to post & beam construction: 407.3 *columns shall be restrained laterally to prevent lateral displacement of bottom end.* That is as designed. Mr. Frady referenced uplift force multiple times in his explanation of why the posts needed to be set in a 2'x2'x4' deep hole w/concrete. The emphasis on uplift for the past 12yrs by insurance companies and testing labs has nothing to do with pulling a post out of the ground. Rather it refers to pressure differentials that generate enough force to tear off roof sheathing. The code does not require we comply with the instructions of an unqualified back-seat engineer.

As with the appeal filed yesterday regarding Covenant Rd, we do not wish to appeal any code but rather require it be properly enforced. I remain convinced this effort is unnecessary.



Sincerely,



Meeting of the Forest Acres Code Board of Appeals
Wednesday, May 11, 2011
6:00 PM

Agenda

1. Call to order-determination of a quorum
2. 1325 Brentwood; Appeal of Building Official's interpretation of 2006 IRC Section R403.1.1 (pertaining to footings).
3. Adjourn

EXHIBIT
7

Clark Frady

From: Mark Williams
Sent: Thursday, May 12, 2011 2:53 PM
To: Doc Haynie
Cc: Margo Pierce; Clark Frady
Subject: RE: 1325 Brentwood

Importance: High

Acknowledged; your permit fee will be refunded.

Mark M. Williams
City Administrator

City of Forest Acres
5205 N Trenholm Rd.
Forest Acres, SC 29206
803-782-9475
803-782-3183 FAX

-----Original Message-----
From: Doc Haynie [mailto:DocWild@Liaison.to]
Sent: Thursday, May 12, 2011 8:28 AM
To: Clark Frady; Mark Williams
Cc: 'HAYNIE, LOTTIE S'; Tandi Ross
Subject: 1325 Brentwood

FYI: We have decided to scale building size back to under 120sf (pursuant to your interpretation of the building code) and Sky is going to build it with my help. Will remove the stop work order since it no longer applies.

Regards,
Doc Haynie

=======
Email scanned by PC Tools - No viruses or spyware found.
(Email Guard: 7.0.0.21, Virus/Spyware Database: 6.17500) http://www.pctools.com/ =======

EXHIBIT
8

Mark Williams

From: Mark Williams
Sent: Friday, May 06, 2011 9:17 AM
To: 'Doc Haynie'
Subject: FW: appeal??

From: Clark Frady
Sent: Friday, May 06, 2011 9:12 AM
To: Mark Williams
Subject: RE: appeal??

Doc Wild's building permit for 3724 Covenant Road has been expired for over 6 months now. The last inspection was February 2010 and none since. Permits expire after 180 days of having no activity or inspections (2006-IBC) and the owner, Mr. Alquaza, has indicated to me that Doc Wild Construction is finished with their part and their services is no longer required.

From: Mark Williams
Sent: Thursday, May 05, 2011 2:53 PM
To: Clark Frady
Subject: FW: appeal??

Mark M. Williams
City Administrator

City of Forest Acres
5205 N Trenholm Rd.
Forest Acres, SC 29206
803-782-9475
803-782-3183 FAX

From: Doc Haynie [mailto:DocWild@Liaison.to]
Sent: Thursday, May 05, 2011 2:52 PM
To: Mark Williams
Subject: appeal??

I went to Covenant Rd project to get Mr. Alquza's signature as you requested. They were busy at work installing hood and waiting on Fire Marshal & DHEC but Mr. Alquza was still in KY. His nephew explained there is no need for appeal because you issued a new permit directly to Mr. Alquaza. Please clarify.

Doc Haynie

DocWild.com
803-238-0757

EXHIBIT 9

July 14

UNIFORM ORDINANCE SUMMONS

CITY OF FOREST ACRES, SC — NO. 1496

VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME
JAYNE	FRANK	M. JR.

ADDRESS: 1469 FLORALWOOD DR Cola, SC 29204

SOCIAL SECURITY NUMBER: SCDL#00159760 W/M 4-13-47

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT (address) 5205 NO TRENHOLM ROAD FOREST ACRES, SC 29206-4807

ON DATE OF TRIAL: JUNE 30 2011 AT TIME OF TRIAL: 8:30 (AM) PM

FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:

Ordinance Section No.	Date Issued	Bond Amount
5-4	6-20-11	$1,092.50

Description of Ordinance: N/O BUILDING PERMIT.

Date of Violation	Time of Violation	Place of Violation
6-20-11	8:15 AM PM	1325 BRENTWOOD DR

Name of Issuing Officer: C. FRADY — Title: CODE OFFICIAL

For Official Use Only

Bond Received $	Date	By

Disposition

Defendant Did Not Appear ☐	Appeared ☐	Date of Disposition / /	
Forfeited Bond ☐	Dismissed ☐	Nolle Prosequi ☐	
Plea: Nolo Contendere ☐	Guilty ☐		
Trial: Bench ☐ Jury ☐	Verdict: Guilty ☐	Not Guilty ☐	
Fine $	Suspended $	Assessments $	Amount Collected $	STP
Sentenced to Jail: Days	Community Service	PTI	

Municipal Court Judge _____

Date _____

ISSUING OFFICER'S COPY

tabbies EXHIBIT 10

July 14

UNIFORM ORDINANCE SUMMONS

CITY OF FOREST ACRES, SC — NO. 1498

VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME
JAYNE	FRANK	M. JR

ADDRESS: 1469 FLORALWOOD DR Cola, SC 29204

SOCIAL SECURITY NUMBER: SCDL#00159760 W/M 4-13-47

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT (address) 5205 NO TRENHOLM ROAD FOREST ACRES, SC 29206-4807

ON DATE OF TRIAL: JUNE 30 2011 AT TIME OF TRIAL: 5:30 (AM) PM

FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:

Ordinance Section No.	Date Issued	Bond Amount
5-7 (3-7.1) PMC	6-20-11	$1,092.50

Description of Ordinance: ROOFING + GARAGE - POOR-TS

Date of Violation	Time of Violation	Place of Violation
6-20-11	8:15 AM PM	1325 BRENTWOOD

Name of Issuing Officer: C. FRADY — Title: CODE OFFICIAL

For Official Use Only

Bond Received $	Date	By

Disposition

Defendant Did Not Appear ☐	Appeared ☐	Date of Disposition / /	
Forfeited Bond ☐	Dismissed ☐	Nolle Prosequi ☐	
Plea: Nolo Contendere ☐	Guilty ☐		
Trial: Bench ☐ Jury ☐	Verdict: Guilty ☐	Not Guilty ☐	
Fine $	Suspended $	Assessments $	Amount Collected $	STP
Sentenced to Jail: Days	Community Service	PTI	

Name of Presiding Municipal Court Judge _____

Certified Correct By: _____ Date _____

ISSUING OFFICER'S COPY

050102-000001 000230

July 14

UNIFORM ORDINANCE SUMMONS

CITY OF FOREST ACRES, SC

NO. 1497

VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME
[illegible]	FRANK	A. JR

ADDRESS: 7969 Florawood Dr. Cola SC 29209

SOCIAL SECURITY NUMBER: SC# 001596760 D/B 4-13-47

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT 5205 NO. TRENHOLM ROAD

(address) FOREST ACRES, SC 29206-4807

ON DATE OF TRIAL: June 30, 2011 AT TIME OF TRIAL: 8:30 AM/PM

FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:

Ordinance Section No.	Date Issued	Bond Amount
21-146	6-20-11	$1,092.50

Description of Ordinance: TRONE OCCUPATION VIOLATION

Date of Violation	Time of Violation	Place of Violation
6-20-11	8:15 AM/PM	7969 FLORAWOOD DR

Name of Issuing Officer: T. FRADY Title: CODE OFFICIAL

For Official Use Only

Bond Received $	Date	

Disposition

Defendant Did Not Appear ☐		Appeared ☐	Date of Disposition / /	
Forfeited Bond ☐		Dismissed ☐	Nolle Prosequi ☐	
Pled	Nolo Contendere ☐	Guilty ☐		
Trial	Bench ☐ Jury ☐	Verdict: Guilty ☐	Not Guilty ☐	
Fine $	Suspended $	Assessments $	Amount Collected $	STP
Sentenced to Jail Days		Community Service		PTI

Name of Presiding Municipal Court Judge _____

Certified Correct By: _____ Date _____

ISSUING OFFICER'S COPY

State of South Carolina) Court of Common Pleas
)
County of Richland) No.: 2012-CP-40-7392

Frank "Doc" Haynie,

Plaintiff,

vs.

The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,

Defendants.

Deposition of PAUL COWLES

December 5, 2013

Deposition on oral examination of PAUL COWLES, reported by Brad H. Thomas, Certified Realtime Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure, at the Offices of Adams and Reese, LLP, 1501 Main Street, Columbia, South Carolina, on December 5, 2013, at the hour of 10:00 a.m.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211

Appearances

Representing the Plaintiff:

J. PAUL PORTER, ESQUIRE
Cromer & Mabry
1225 Pickens Street
Columbia, South Carolina 29211-1675
pporter@jlewiscromerlaw.com

Representing the Defendant City of Forest Acres:

A. JOHNSTON COX, ESQUIRE
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1110
Columbia, South Carolina 29201
jcox@gwblawfirm.com

Representing the Defendants Mark Williams, Shaun Greenwood, and Clark Frady:

KIRBY D. SHEALY, III, ESQUIRE
Adams and Reese, LLP
1501 Main Street, Suite 500
Columbia, South Carolina 29202
kirby.shealy@arlaw.com

CONTENTS

Deposition of PAUL COWLES

	Page
Exhibit Index	3
Stipulations	4
Examination by Mr. Shealy	4
Examination by Mr. Cox	46
Examination by Mr. Porter	90
Re-examination by Mr. Cox	92
Certificate of Reporter	94

* * * * *

EXHIBIT INDEX

Exhibits:		Marked at Page
(Copy of exhibits attached to each copy of transcript.)		
1	Building Permit Application	77
2	Work Permit Dated 11-21-08	78
3	Work Permit Dated 12-3-09	79
4	Work Permit Dated 12-8-09	80
5	Notice of Result of Inspection	85

* * * * *

This deposition is taken in accordance with the South Carolina Rules of Civil Procedure.

It is agreed and stipulated by the Deponent and respective counsel that the reading and signing of the deposition by the Deponent is expressly waived.

WHEREUPON:

PAUL COWLES, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

EXAMINATION

BY MR. SHEALY:

Q. Mr. Cowles, I'm Kirby Shealy. We met off the record and I explained to you that we were going to take your deposition today. I just want to go over a few things while we're on the record.

As I indicated to you, a deposition is just an opportunity for lawyers in a case to put a witness under oath and ask the person questions about what he or she knows that has anything to do with the lawsuit. So I'm going to ask you a series of questions, first to get to know you a little bit. We've been talking for a little while waiting for this to get started. Then I'm going to ask you

about what you know about this lawsuit, which you're not a party to. You were just named as a witness.

If at any point today I ask you a question that you find to be vague or confusing or if I use words that you don't know or the way I say those words you don't understand it, just let me know. It's not my intention today to try to confuse you, but I might ask a bad question. Particularly if we start talking about the electrical field, as I indicated to you, I don't know what I'm talking about there. So if I ask you a question you don't understand, we'll talk about that and I'll try to rephrase it.

If you do have some issue with a question that I have though, you need to -- you do need to make sure that you direct that to me. And otherwise after I have a chance to ask questions the other lawyers in the room will have a chance to ask you questions.

A. Okay.

Q. Feel free to take a break at any time. We're going to try to move through this. I don't anticipate this is going to take very long, but if you need to take a break for any reason, just let me know.

A. Okay.

Q. And as you're doing now, if you'll provide your answers to my questions both verbally, in other words, yes, no, yellow, 1946, whatever the answer happens to be, and at sufficient volume for our court reporter to take down your answer, that will make for a clean record that we don't have to interpret a non-verbal response.

A. Okay.

Q. And also if you will -- just because this deposition is being taken down stenographically, if you can wait until I have finished posing a question to you before you answer it, I'll do you the return courtesy of waiting until you've finished answering before I ask you the next question. Okay?

A. Okay.

Q. All right. Great. Mr. Cowles, could you state your full name?

A. Paul E. Cowles.

Q. And do you spell your last name C-o-w-e-l-l-s?

A. No. It's C-o-w-l-e-s.

Q. Okay. The reason I ask is -- and the reason I know anything about you, that you exist, is because you were named in this set of materials that

I received from the attorneys for Frank Doc Haynie, who has brought a lawsuit against the City of Forest Acres and then my clients, Mark Williams, Shaun Greenwood, and Clark Frady. And your name appears in this document here. It indicates that you're an electrician subcontractor who has general knowledge of the facts and circumstances giving rise to this action. So, Mr. Cowles, where do you live?

A. I live in Lugoff, South Carolina.

Q. Okay. Lugoff is in Kershaw County?

A. It is in Kershaw County, yes, sir.

Q. Okay. Do you have any family living in Richland County?

A. Yes, I do.

Q. Other than Cowles, what are the last names of your family members?

A. Bernique and Mata.

Q. Okay.

A. Well, I don't even -- excuse me. Let me change that. Bernique lives in Lexington, I believe. My daughter lives in -- Mata lives in Richland County. And my mother, but she's a Cowles.

Q. All right. And did you grow up in Kershaw County?

A. No.

Q. Where are you from originally?
A. Williamsport, Pennsylvania.
Q. How long have you lived in South Carolina?
A. Since 1974.
Q. And since you've been here have you always been working as an electrician?
A. Primarily. I also sold insurance for three years.
Q. Where did you do that?
A. Here in Columbia, Public Insurance Company out of Charleston.
Q. And have you -- now, sitting here today you are the owner of your own --
A. Yes.
Q. -- business?
A. I'm sorry. Yes.
Q. What is the name of your business?
A. Electrical Systems Technologies, LLC.
Q. And do you have any employees other than yourself?
A. No.
Q. How long have you operated your business?
A. 11 years.
Q. And then before that were you affiliated with some other business?

A. Yes.
Q. What was that business?
A. That was Pontiac Foods, electrical technician with that company.
Q. And what kind of -- what was the main product of Pontiac Foods?
A. Coffee and spices and tea.
Q. Okay. It's a wholesaler of those products?
A. Yes. That's a Kroger subsidiary.
Q. All right. And so you did electrical work for them?
A. Yes, sir.
Q. All right. And then before working for Pontiac what did you do?
A. I worked for several different companies in electrical, Cashion Electricians, Fogle Electricians, Carolina Electrical, Barker and Associates, Advanced Electric. They are all family owned small businesses.
Q. And you have a State issued electrician's license?
A. Yes, I do.
Q. And that's a specialty contractor's license?

A. Yes, it is.
Q. How long have you held that license?
A. I've had that 11 years.
Q. Before getting that license did you have any other kind of certification or licensure?
A. Yes, I did. I had a -- not an apprentice, but -- it wasn't a master, but I had -- with the City of Columbia I had a licensed electrical card just to work in the city of Columbia.
Q. Okay.
A. But, I mean, it's just the first class card. It wasn't the master's.
Q. Okay. Whatever that is?
A. Right. I can't remember.
Q. What the City issued?
A. Yes, it was a City issued card.
Q. Okay. How far did you go in school?
A. 12th grade.
Q. And then after high school you went into the electrical field?
A. In high school I went in the electrical field. I trained in high school. And then I went in the Marine Corps after that and again took more electrical training in the Marine Corps. And then I went to Midland Tech, but I never finished. And I

took electrical engineering technology there.

Q. Okay. And has your license -- the State issued license ever been suspended or revoked for any reason?

A. No, it has not.

Q. All right. Now, how long have you known Frank Haynie, who goes by Doc Haynie?

A. I've known of Doc back in 1970 -- probably '75, '76 because the company I worked for did work for him. I didn't really get to know him personally until I was in business for myself, which was probably 11 years ago.

Q. All right. And at the time that you first sort of knew of him because -- the company you were working for in the '70s was what?

A. Electrical. We did electrical work for his company, which I'm not sure what the name of it was back then.

Q. Okay. But what was the name of your company that you were working for?

A. I was working for Barker & Associates.

Q. Okay. And Barker did work for whatever company --

A. Right. He was a subcontractor, electrical subcontractor, and he worked for -- he did

electrical for Doc's homes.

Q. Okay. And so 11 years ago when you went into work for -- went into business for yourself how did you get into any kind of a business relationship with Doc Haynie?

A. I was working on one of Doc's friends' homes. And Doc was doing some work there and that's how I ran into Doc again, but I didn't start doing any work until later on after that for Doc.

Q. All right. So you and Mr. Haynie were hired separately by that friend of his?

A. Right.

Q. But you just were sort of thrown together in the same --

A. Right. I just had -- yeah. Just one afternoon he came up to me and started talking to me.

Q. Okay. Do you remember the name of the person that you were working for?

A. Oh, man. I do, but I can't recall it right at the moment.

Q. If it comes to you, let me know.

A. Yeah. He owned the Columbia Athletic Club on Forest Drive at that time. Man, I can't remember.

THE WITNESS: I mentioned it to you yesterday. I don't know if you can remember the name. Man, I can't remember. Anyway, I can't remember his name.

BY MR. SHEALY:

Q. Is it Coley Brown?

A. It is. Thank you.

Q. All right. And then over a period of time did you sort of become Doc Haynie's sort of go to electrical subcontractor?

A. Yes.

Q. And over what period of time did you serve in that role?

A. I figured probably nine or ten years from the time that I was actually -- that he started calling me consistently on every job that he did and he would give me a call to do his work.

Q. All right. During that period of time were you also working for other general contractors?

A. Yes.

Q. And at any given time how many different general contractors do you do work for?

A. I have been running about four contractors to six contractors I work for.

Q. Okay. Who were some of the folks that

you've worked with?

A. I worked for CGI Renovations, general contractor. I worked for -- man, now I'm losing track of who these people are. Rance Woodley. As a matter of fact, he's one of my primary contractors. Al Brewer, who passed away. So I don't do his anymore, but I did at the time. Buck Scoggins, Sawgrass is what his -- I don't know the full name, but he does homes. Those are the main ones right now that I can think of. Brown Construction. I'm working for them right now.

Q. Now, when was the last time you did work on a project with Doc Haynie?

A. I'm working on something right now with him in his house or his personal property right now.

Q. All right. Which --

A. On Brentwood.

Q. All right. And what are you working on on Brentwood?

A. Remodeling.

Q. Remodeling the inside of that residence?

A. Yes.

Q. And when did that work start?

A. About three months, four months. It's been ongoing. It's since the summertime. It might

be longer than that.

Q. And how much longer do you expect to work on that?

A. A couple days.

Q. You're almost finished?

A. Yes, I'm almost finished.

Q. Okay. Before that project when was the last time that you had worked with Mr. Haynie?

A. It's been a long time now. Before the pizza -- before the Nasser -- before this thing here at pizza. When he started -- he started the pizza place for Nasser because there was three permits pulled on that. And Doc the first two times that I pulled permits was the general contractor on that.

Q. Okay. All right. So let me make sure the record is clear. The project you're talking about was a project on Covenant Road?

A. Yes, sir.

Q. And that was a project for Nasser Alquza?

A. Yes, sir.

Q. And do I understand you correctly that that project, up until this recent one that started in the summertime, was the last time that you worked for Doc Haynie?

A. Yes, sir.

Q. Okay. And do you remember approximately when your work on that project ended, the one on Covenant Road?

A. It would have probably -- I didn't look at any of my records. So I'm just shooting in the dark here. I'm thinking the beginning of 2011 maybe. I'm not sure exactly when we finished that job.

Q. Okay. During the time that you were working consistently with Doc Haynie what percentage of your overall work was done working with Doc Haynie versus other contractors?

A. Could you kind of restate that because I'm kind of confused on that one.

Q. Sure. What I'm trying to find out is over the -- you said you worked consistently with Doc Haynie over a nine, ten-year period, I think is what you said?

A. Right.

Q. During that period of time, you know, what I'm trying to find out is in the great grand scheme of all the work that you were doing at any --

A. Small amount.

Q. All right. So Haynie was not sort of the primary person that --

A. No.

Q. -- worked with you?

A. No. He had a lot of remodel work, little small additions. I don't think Doc has ever had anything large that I can remember that I worked on besides the Nasser job.

Q. Okay. Now, you said that -- I mean, you made reference to this lawsuit when you talked about the Nasser Alquza project. What familiarity do you have with this lawsuit?

A. Only through conversation with Doc when I went to get -- he called me to get a permit for the third time for this job. And when I went down to get the permit with -- Doc, if I remember correctly, called me ahead of time and said that he wasn't allowed to pull a permit, but Nasser kept calling me and wanting me to go get a permit so he could get moving on the job.

So I went down to Forest Acres' inspection division to get a permit and was denied a permit due to the fact there was not a general contractor. So at that point in time, as far as any litigation or anything like that going on, it wasn't -- Doc was confused at that time of why he couldn't have a permit. I mean, he was kind of upset because, you know, it's something new to him why he was refused

that.

Q. Okay. All right. Well, let me back up. I want to talk to you in detail about the Covenant Road project from start to finish, but what -- my question to you earlier was what familiarity do you have with this lawsuit and where does that come from?

A. The only familiarity -- the only way I'm familiar with it is through Doc.

Q. Okay. And what has Mr. Haynie told you about this lawsuit?

A. The only thing he has mentioned to me that, you know, there is a lawsuit going on and that has -- that's probably either the first part of this year, I believe, is when he actually told me that anything was taking place. I'm not for sure when all that took place, but he's the one that told me.

Q. Okay. Do you remember the context of -- did he just run into you or did he call you up and let you know that a lawsuit has been filed?

A. No. It's just -- it may have been when -- and I'm sorry if I can't be exact on this.

Q. That's okay.

A. It may have been when I started this job in the summertime that he mentioned this happening

as far as the lawsuit going on.

Q. All right. He told you the lawsuit -- he had filed a lawsuit, correct?

A. Right.

Q. And did he tell you what -- why he had filed a lawsuit?

A. There was no -- the only -- I have no specifics as why this took place. He never went into detail. Again he was searching for answers as to why he had problems with the inspection division.

Q. Okay.

A. That's the only thing.

Q. Okay. Did he ever ask you for your assistance with the lawsuit in any way?

A. He called me one day and asked me if I would be willing to give a statement to the fact that I knew what was going on or what happened when I went down to get my permits.

Q. Okay. And what did you tell him?

A. I just told him that the things that I know I would share with whomever.

Q. Okay. All right. And when did he call and ask you that?

A. I cannot -- I mean, no exact dates I can't really tell you, but it's been this year. That's

all I can tell you.

Q. All right. And you've -- you mentioned as you were responding to an earlier question of mine that you had a conversation, I guess, with Mr. Porter, Mr. Haynie's lawyer, correct?

A. Right.

Q. All right. And that happened when?

A. Yesterday.

Q. Okay. How many times have you had conversations with Mr. Porter or any --

A. Yesterday.

Q. Okay.

A. Well, excuse me. There was just informing me that this was taking place, that I was being called in, because I didn't know that I was even a part of this.

Q. Okay.

A. You know, I mean, I was surprised I was brought into this being unaware.

Q. Right.

A. And several weeks. I mean, it's been a short period of time since I've known that.

Q. Okay. All right. Let me ask you about the Covenant Road project.

A. All right.

MR. PORTER: And, Kirby, I have no issue with you going into our conversations or anything.

MR. SHEALY: Well, we may do that, but, I mean, I'm going to get back to that maybe in a minute.

BY MR. SHEALY:

Q. I want to ask you about the Covenant Road project.

A. Yes, sir.

Q. Were you involved in that project from the beginning?

A. Yes, sir.

Q. Okay. And do you remember approximately when the project began?

A. I would suspect, just trying to think of it, it was probably about 2008 maybe.

Q. Okay.

A. Or sooner than that. It was about three years it took to get that job done.

Q. All right. And as I understand it, it was a start and stop kind of an issue?

A. Yes, sir.

Q. You worked for awhile and then you didn't work for awhile?

A. Right.
Q. All right. How did you get involved in the project? Did Mr. Haynie call you?
A. He called me to be the contractor -- the subcontractor on the job.
Q. All right. Was he seeking a bid from you, I mean, at the time that he -- to do the work or what was the call?
A. He asked for a price.
Q. All right.
A. But he wasn't going to hold me to it, but he also told me that I was going to do the job.
Q. All right. So he at that time was just trying to form a bid to give to --
A. To Nasser.
Q. To the owner?
A. Right. Yes, sir.
Q. All right. And the owner of the project was Nasser Alquza, correct?
A. Yes, sir.
Q. And you met with that gentleman?
A. Yes, sir.
Q. But the contract that you had was with Doc Haynie, correct?
A. Yes, sir.

Q. All right. And what was the scope of the project?

A. On mine it was all doing complete electrical for the restaurant, building or installing a service big enough to handle four stores plus the pizza place that he was going to run.

Q. All right. Just so I have a good understanding of sort of the global scope of the project, that had been a grocery store?

A. It was.

Q. All right. And Nasser Alquza, I guess, bought it from the owner of the grocery store?

A. I believe so, yes.

Q. And was going to convert it into four separate businesses; is that right?

A. Yes, sir.

Q. All right. And he was going to run one and then lease out the space to other tenants?

A. Yes.

Q. Okay. And the business he was going to run was some sort of pizza restaurant?

A. Yes.

Q. All right. And you were going to do the electrical work for the whole thing?

A. At that point, yes.

Q. Okay. And so did you get involved in the project from its inception or did some -- did there have to be some other work done, site work or demolition work or something, before you could get going?

A. Yes, it did. There had to be some other like walls put in, et cetera, before I entered the job.

Q. All right. So do you know how long the job sort of had been going actively before you began doing your part of it?

A. No.

Q. Do you know how long -- sort of the first time that you were actively working there, do you know how long you were actively working before you stopped?

A. I believe, and this is only just trying to remember, I probably got in there maybe two or three weeks and then it stopped.

Q. Okay. And how did it -- why did it stop?

A. Money issues by the owner.

Q. Okay. And were you told that by Doc Haynie?

A. No, I don't believe so.

Q. Who told you that there --

A. I believe it was just the point that I wasn't needed to come back. I had done my rough in and I wasn't called back again.

Q. Okay.

A. But I would check in with Doc to see if it was moving. And I kept checking with him every so often and he said it's -- you know, at that point in time that nothing was going on there.

Q. All right. Okay. So your involvement in the project was for a particular aspect of your work that --

A. Yes.

Q. -- has to be completed before the next step could take place?

A. Yes.

Q. And that's the rough in?

A. Yes, sir.

Q. And were you paid for the rough in work?

A. Yes, sir.

Q. All right. And Doc Haynie paid you?

A. Yes, sir.

Q. Now, to do the rough in work did you have to pull any permits or did --

A. Yes, sir.

Q. You did?
A. Yes.
Q. And you pulled the permit from the City of Forest Acres?
A. Yes, sir.
Q. And once your rough in was done was there an inspection performed?
A. Yes, sir.
Q. Who performed the inspection?
A. I'm not sure the name of the inspector at that time. He was from Richland County, as a matter of fact.
Q. Okay.
A. Or he was -- I guess he was hired by Forest Acres. At that point in time Richland County was doing the inspections.
Q. Okay. Somebody was maybe on loan or something from Richland County?
A. Yes.
Q. But they were under the umbrella of Forest Acres when they did it?
A. I expect that's what that was, yes.
Q. And did your work pass inspection?
A. Yes, it did.
Q. All right. And so then how much time

passed?

A. About a year, year and a half before it was reopened.

Q. All right. And so how did you learn that it was time --

A. Doc had asked me to pull another permit or come back to do some more work on the job.

Q. All right. So you had to pull another electrical permit?

A. I pulled another electrical permit.

Q. And then what was the scope of the work that you were going to do at that point?

A. At that point in time I was going to start pulling wire. The parts -- I mean, just getting it ready for -- you know, that Sheetrock was up. Getting it ready for the rest of the trim at that point in time.

Q. Now, the Sheetrock was already up?

A. On the second time around, right.

Q. Okay. Now, I thought that you pulled the wire before the Sheetrock was installed?

A. All this is conduit run. This is commercial work.

Q. Okay.

A. It's not the same as residential.

Q. Yeah. All right. So that's what the rough in involved was putting in the conduit?

A. All the conduit, yes.

Q. All right. So you were going to pull wire?

A. And put devices in, et cetera, at that point in time. Again it stopped.

Q. All right. How long did you work before it stopped again?

A. Oh, man. I may have -- again it may have been a couple weeks. It doesn't take long for electrical to actually do. I mean, it's not something -- a long duration. So you get in there a couple weeks and, you know, you come to a standstill if other things don't keep moving along.

Q. Okay. So how far along with pulling wire and performing the tasks you needed to perform did you get?

A. I got all the wire pulled in that I can remember. I'm not for sure if I even got to putting devices in at that point in time. I just can't remember that part of it.

Q. All right. What I'm trying to figure out is were you -- did you get to a natural stopping point, in other words, where you would have to wait

anyway on other trades to do something?

A. No. Because there's -- I could have went ahead and started the service on that.

Q. Okay.

A. But it just came to a stop where money again became an issue.

Q. Okay. So at this point it wasn't -- like the first time around you finished the rough in?

A. Right.

Q. And you have to wait for other things to happen before you can pull wire?

A. Right.

Q. This time you're not really --

A. I'm not complete.

Q. All right. And how do you learn that you have to stop?

A. There again I can't give you an exact on that, whether Nasser had mentioned it or whether Doc had mentioned the fact that he had to wait on more money, he couldn't pay me.

Q. All right.

A. I mean, I got paid up to what I did, but he couldn't pay Doc any more, my understanding at that point, but I don't know who said that.

Q. Okay. But somebody did?

A. Somewhere along the line, yes.
Q. Okay. Again at this time you're doing all the work by yourself?
A. Yes, sir.
Q. Okay. All right. And do you know approximately when we are in time?
A. That's going to be probably early 2010, maybe late 2009, early 2010, one of the two, somewhere around there I'm believing.
Q. All right. And then how long of a layoff?
A. It's about another year it seemed like.
Q. Another year?
A. Yeah.
Q. All right. And so then how do you learn that it's time to start back up again?
A. Doc called me.
Q. All right. And what did he tell you?
A. He said that he wanted to go ahead -- that Nasser had told him that he's ready to go ahead and finish the job.
Q. Okay. All right. So had you had any conversation with Nasser Alquza yourself at that point?
A. I don't believe so, no. We're talking about the third time around. No, not yet.

Q. All right. So Mr. Haynie calls you up, says --

A. They are ready to go.

Q. Ready to go again. So what do you need to do to be able to get started again?

A. I need to go ahead and get a permit.

Q. Okay. How long do these permits last when you pull them?

A. I'm not for sure about how long they last. I just know that I'm asked to go get a permit and make sure that I'm legal when I go on the job.

Q. All right.

A. They may extend past the point of when you stop and start. I do not know.

Q. Okay. But did Mr. Haynie ask you on the third time to pull another permit?

A. Yes.

Q. Okay. And did you go do that?

A. I did.

Q. All right. Each time you pulled a permit, I mean, the other two times before this one did you just go by yourself down to Forest Acres?

A. I did. Yes, I did.

Q. All right. And the third time did you go down there by yourself?

A. The first time I did, yes, sir.
Q. The third time did you go down there --
A. The third time I went twice.
Q. Okay.
A. This is where things kind of change.
Q. All right. So let me hear what happened when you went down there.
A. The first time I went down there I asked to pull the permit. The receptionist that signs it out and all talked with the inspector at that point in time and they said that I could not have a permit because there's no general contractor on the job.
Q. Okay. And do you remember who exactly said that to you?
A. That would have been Mr. Frady. Is that Frady?
Q. Okay.
A. The main inspector.
Q. Had you had any dealings with Mr. Frady to this point?
A. No.
Q. Okay. He had not been -- I guess there had only been one inspection on the Covenant Road project?
A. Right.

Q. Okay. At the rough in stage?
A. At the rough in stage.
Q. All right. And that was not performed by Clark Frady?
A. No.
Q. All right. So Clark Frady tells you that, well, you can't pull a permit at this point because there's not a general contractor on the job?
A. Correct.
Q. All right. So what did you do?
A. Of course, I left.
Q. Okay.
A. And I let Doc know, but Doc already told me he wasn't the general contractor, but I let him know that I couldn't get the permit.
Q. All right. Well --
A. And Nasser called me.
Q. Let me back up. When Mr. Haynie called you to tell you to pull a permit he told you in that conversation he wasn't the contractor any longer?
A. No, not that first time.
Q. Okay.
A. He called me ahead of time telling me that he was getting ready to start -- to finish the job.
Q. Okay.

A. And that we needed to finish, Nasser said he's ready to have it finished.

Q. Okay.

A. So he called me and said that I need to go ahead and -- go ahead and get started on it and to make sure I got the permit.

Q. Okay. So then during the -- then after you left when you were denied the permit after you left Forest Acres and you called Mr. Haynie what did he tell you at that point?

A. Well, he just -- we just went over the same thing. He said, you know, "I'm not the contractor on the job," but me and -- you know, we were just discussing the fact that I couldn't have the permit.

Q. Okay. Now, so it was news to you at that point that Mr. Haynie was not the contractor on the job?

A. I knew before I went in there he wasn't the contractor, but I -- because he was still dealing with Nasser I just -- because I wasn't actually dealing with Nasser, I'm not really supposed to be dealing with Nasser straight between me and the owner. It's always between whomever is involved, the contractor, the main contractor. So

he's the only one I knew to contact.

Q. All right. Well, forgive me for getting a little confused. All right. Doc Haynie calls you --

A. Right. He called -- there's more than one conversation here.

Q. Okay. All right. Well, let me try to break it down into little small steps. All right. The third time you were to start work Doc Haynie calls you?

A. Right.

Q. And he says Nasser is ready to start back?

A. Yes, sir.

Q. Go ahead and pull a permit?

A. Yes, sir.

Q. During that conversation were you aware that Mr. Haynie was no longer the contractor?

A. No.

Q. All right. Did you first become aware that he was no longer the general contractor on the job when you arrived at Forest Acres?

A. I knew then.

Q. That's when you became aware?

A. I knew prior to that because I had talked to Doc -- I didn't go down the same day that Doc

talked to me the first time.

Q. Okay.

A. There was another conversation after that before I did go down there. It may have been several days between these conversations.

Q. Okay.

A. Doc called me and said he went down to get his permit and he couldn't get it.

Q. Okay.

A. All right. So he said I need to go down because Nasser wanted to do it. Doc was still interested in finding out what was going on with him and Forest Acres at that point in time.

Q. All right. Now, let me -- so the second conversation you had with Doc Haynie that you just described, he called you back up?

A. Right.

Q. And he tells you at that point, "I'm not the" --

A. General contractor.

Q. And how did he become aware he wasn't the general contractor?

A. He went down to pull a permit and couldn't get one.

Q. Okay.

A. Now, this is what I know. I'm sorry if I -- because I'm only going by what the information was passed to me. Whether Nasser said something to him or whether Forest Acres said something, but I know he said he went to pull a permit. This is what he told me.

Q. Right.

A. He went to pull a permit for general contracting permission and they denied him a permit.

Q. Okay. And did he tell you anything else about that?

A. No.

Q. Okay. So did you have any other conversations with Mr. Haynie or with Mr. Alquza from that point until the point that you went out to Forest Acres to pull the permit?

A. No.

Q. All right. Knowing that Mr. Haynie was not the general contractor any longer, did you expect to be able to pull a permit when you went down there?

A. I didn't know. I didn't know what was going to happen.

Q. Okay.

A. So I went down to see about pulling it

because again I'm not for sure of all the legalities on how that works as far as you have to have a general contractor or not on the job to do my end of the work.

Q. Okay.

A. So I didn't know what that deals with.

Q. You just know that you needed a permit?

A. I know I need a permit.

Q. And you just need to know who is paying you?

A. Correct. That's the way it usually works out.

Q. Okay. I mean, those would be -- those would be the things that I would want to know too.

A. Right.

Q. Okay. So when you went down there they said, "Well, you can't have a permit because there's not a general contractor on the job"?

A. Correct.

Q. All right. Did they say anything else to you about Mr. Haynie while you were there?

A. The question asked of me is do I work for -- after I asked for the permit Mr. Frady asked me about if I work for Doc Haynie.

Q. Okay.

A. At that time.
Q. And what did you say?
A. And I told him that I didn't work for Doc Haynie, but I'm a subcontractor.
Q. Okay.
A. That whenever he has a job he may call me.
Q. Okay. And what did Mr. Frady say?
A. He just said, "Okay," you know, and that was it.
Q. Okay. All right. So then you have the conversation with Mr. Haynie again, say, "I wasn't able to pull a permit"?
A. Right. And he still -- yes, that's true.
Q. Okay. And did he -- what else did you all talk about during that conversation?
A. The only thing is that he just still was wondering why he couldn't have -- why he couldn't pull the permit for that job. That's the only conversation -- part of that conversation. He still didn't know why.
Q. Okay. And did you have -- all right. So then what happened after that?
A. Obviously he referred it to Nasser.
Q. Okay.
A. And Nasser called me.

Q. All right. And what did Nasser Alquza tell you?

A. Well, he said -- he asked me to go with him down because he was going to see if he could get a permit, a general contractor's permit himself, so I could get a electrical permit to continue the job.

Q. Okay. Now, did you -- did he explain to you or talk to you about what had happened as far as Doc Haynie's involvement with the project?

A. Not at that time.

Q. All right. Did he ever?

A. I believe after I got the permit and started working back on the job he started referring to Doc Haynie, but as far as any verbiage being said, I couldn't remember anything right now what he said.

Q. All right.

A. It was negative in general to start with, but I can't give you any specifics on that.

Q. Okay. So these are negative comments that Mr. Alquza said to you?

A. Right.

Q. After you got back started working?

A. Right.

Q. Okay. So you go down to Forest Acres for

the second time?

A. Right.

Q. To pull the third permit?

A. Correct.

Q. With Mr. Alquza?

A. I did, yes.

Q. And describe for me what happened then.

A. I went in and the discussion was started. First I asked for -- the discussion was can Nasser get the general contractor permit on it. And there was two men; Mr. Frady, the inspector, and there was somebody else, whether it was his assistant.

Q. Okay.

A. I'm not for sure the name of these guys.

Q. Okay.

A. But they were in there at that time.

Q. All right.

A. And it was said that he could pull a permit.

Q. Okay.

A. And during that period of time again negative words were being said about Doc. Again I cannot say what they are because I can't remember what they were.

Q. Right. Do you know who was saying

negative words?

A. Both -- both the main inspector, Mr. Frady, and this other fellow, whom I don't know, were just talking amongst each other while I was sitting there trying to get a permit with Nasser. It was just negative comments they were making about Doc, I mean, but again I can't say what they were. I just can't remember. I wish I could, but I just can't remember.

Q. Do you know who initiated the negative comments being --

A. It really became a joke kind of sort of between all three of them. They were all laughing about what they were saying. I can't say who initiated it because they were all involved in it. So, you know, I can't -- I can't point a finger at any certain person. Again, like I told you, I can't give specifics on what words were used.

Q. Okay.

A. Now, I knew back then, but I didn't know it was going to come down to this where I was going to sit here.

Q. Okay. All right. So you pull a permit?

A. I got the permit.

Q. Okay. And you completed your work?

A. I completed my work, yes.

Q. And you were paid at that point by Mr. Alquza?

A. He paid me, yes.

Q. And did your work, was it inspected again?

A. Yes, it was.

Q. And who inspected it?

A. Mr. Frady.

Q. Did it pass inspection?

A. It passed inspection.

Q. And you mentioned earlier that as you were finishing the project Mr. Alquza was saying negative things --

A. Right.

Q. -- about Mr. Haynie, correct?

A. Yes.

Q. Okay. But you don't remember the specifics?

A. I just don't remember those specifics. I wish I could.

Q. Okay. Did you have any other conversations with Mr. Haynie after leaving the Forest Acres administration building the second time with Mr. Alquza?

A. No, not that I can remember. There was no

direct contact with Doc after that.

Q. All right. Until the lawsuit had been filed?

A. Right. Yes. Because I haven't done -- that I can recollect, I haven't done any work with Doc since then. As a matter of fact, it was a great long restful period of time before those two jobs.

Q. Were you doing other work though in between the end of the Covenant Road project and this?

A. Oh, yes. I mean, it's been very slow, but -- at that period of time because of construction, but, yeah, I had work.

Q. All right. While you were actively engaged in the Covenant Road project were you -- were you just going directly to that job site to do your work?

A. Yes.

Q. Okay. You wouldn't meet Mr. Haynie at some other place?

A. No, sir.

Q. Were you engaged in any other project with him while the Covenant Road project was going on?

A. No.

Q. Do you recall specifically any other

projects that you worked with Mr. Haynie on, say, in the last five, six years?

A. I worked on probably a couple houses over off of Jackson Boulevard back in -- off of Jackson Boulevard.

Q. Not in the City of Forest Acres?

A. Not that I recollect, no.

Q. Okay. I would assume that --

A. I don't know if that's the -- whether that was Columbia or Forest Acres. I don't know where their boundaries actually end.

Q. Okay. You don't remember where you had to go to pull the permits for those work -- that work?

A. On houses I don't have to pull a permit.

Q. Okay.

A. Only on commercial work.

Q. Okay.

A. And I'm not for sure in Forest Acres whether that's a requirement on houses there. I mean, every entity has its own particulars on when you have to pull permits, but I know that normally on houses that's not something that's required. The general has to pull the permits for everybody. You just have to be up to date at that -- with a business license at the entity that you're doing

work in.

Q. All right. Any other conversation that you remember with any representative of Forest Acres pertaining to this?

A. No.

Q. Pertaining to Doc Haynie?

A. No, there was no other conversation about Doc from the City of Forest Acres.

Q. Okay. Or any individual that worked for Forest Acres?

A. No. The only people I had contact with, if anybody, was the inspector and it was only a couple times outside of actual permits. And that was during inspections.

Q. Okay.

A. No one else.

Q. And in the course of those inspections no conversation came up about Doc Haynie?

A. No, sir.

MR. SHEALY: All right. I don't think I have any further questions at this point. I'll pass you over to Mr. Cox.

EXAMINATION

BY MR. COX:

Q. I do have some follow-up. Again I'm

Johnston Cox.

A. How are you doing?

Q. I'm doing fine. I'm representing the City of Forest Acres in this lawsuit. And I do have some follow-up questions for you. What were you paid for doing your work on the Covenant Road job, do you remember?

A. The total amount?

Q. Yeah.

A. It was around $26,000.

Q. 26,000?

A. Yes, sir.

Q. All right. And do you know what the -- what the total contract amount was?

A. No, I do not know that.

Q. Okay. All right. And were you fully paid for your work?

A. Yes, sir.

Q. All right. And after you finished the pulling in of the wires and you were stopped, after that point you were paid by who?

A. I was paid by Nasser.

Q. Okay. All right. Did you have a written contract with anybody?

A. No.

Q. Did Doc have a written contract with Nasser?

A. I do not know.

Q. What portions of the building did you work on in 2009 under the first and second permits, I guess is the easiest way to --

A. Just the pizza restaurant.

Q. Okay. All right. And do you remember what suite? Was that Suite B, do you remember?

A. Goodness gracious. It could have been. I mean, that's the first one on the front corner. So that might be B.

Q. All right. So in 2009 then the first two permits, that's all you --

A. That's all I dealt with, yes, sir.

Q. Did you ever work on any other suite other than the pizza place?

A. No, I didn't.

Q. So you did not work on the tobacco place?

A. No, sir. Nasser hired another company to do the tobacco.

Q. Okay. All right. Were you aware of any issue that -- with East Richland Sewer over the Covenant Road property?

A. Did I know anything about it?

Q. Correct.

A. Nothing -- no more than what Doc was talking with me about, I believe. And that was when it first started I think they were having problems with the sewage out in the front parking lot.

Q. All right. What did Doc tell you about the dispute with East Richland?

A. I'm not going to say that I know exactly what it is. There was just something that went wrong with the way the sewer was done and we had to redo it or something like that, I believe. I'm not for sure.

Q. Okay.

A. Really as far as verbiage, again I can't remember anything being said that far back.

Q. Did the East Richland issue, to your knowledge, cause any delay in the work, progress of the work?

A. Not knowingly I couldn't tell you. I mean, I'm not going to be --

Q. You just weren't involved in that part of it?

A. No. I just -- the electrical part of that was torn up wires for the parking lot lights where all that stuff was taking place and needed repaired.

He asked me to help him fix that stuff, but I -- that wasn't part of my job.

Q. Did you have any inspections of your work that did not pass?

A. No.

Q. How about any stop work orders?

A. No.

Q. All right. So you -- judging from your earlier testimony, you were just told to go get new permits?

A. Yes.

Q. You weren't told why you need to do that or -- it's just, "Hey, look, we just need to go get a new permit now"?

A. Get a permit to start work again.

Q. Okay. All right. Do you know if the original permits had expired at that time and that's why you had to go get --

A. No, I do not know.

Q. Do not know?

A. No.

Q. Okay. All right. Does Doc have employees?

A. Oh, man. I'm not for sure if the people working for him is employees or if they are actual

subcontractors.

Q. Okay.

A. I don't know.

Q. Do you know the names of any of the folks who were working with him on the Covenant Road project?

A. I don't know the plumbing company. I know them, but I don't know their names of the plumbing company that worked there. I don't know -- Nasser had his own heating people. There was -- he had his own -- he did his own ceiling -- Nasser did a lot of work in there by himself.

Q. Okay.

A. So he didn't hire a whole lot. The people that put in the hood for the cook area, he had to hire in somebody for that, but again I don't know who any of those were.

Q. What work did Doc do on the Covenant Road?

A. He built the walls. I think he had -- did some of the finishing work on the concrete that had to be done. I'm really not for sure everything that -- I'm not sure if he replaced the windows on the suites or not. I don't know if he was involved in that or not. He probably did some of the tear out or demolition.

Q. Did he do work on any other part of the building other than the pizza restaurant?

A. Only if there was demolition. He may have gotten -- he may have worked through the back part of it, a small amount of it, getting ready because I seen concrete cut, et cetera, for sewage line, water lines and stuff, but that's the only thing I know that he may have done beyond that.

Q. What do you know, if anything, about any problem with any window openings or anything like that?

A. The only thing I know about is what Doc had showed me on all the windows that were installed. The lintels over the windows were not supporting anything above it and it's all brick and block. Again Doc showed me where that was at in the building.

Q. When did he do that?

A. That's when he was working on the front part. So that would have been in the first phase of it he was talking about it or second phase before he couldn't get a permit.

Q. All right. So who did that work?

A. That's what I don't know is whether Nasser took it upon himself to have a company come in and

do it, but I know that Doc had told -- well, Doc -- I didn't know it for sure, but Doc said that he notified Nasser that he -- the lintels over the windows were not by code and that Nasser needed to get them fixed.

Q. And when did he tell you that?

A. During that same period of time that I had just referred to, the first -- when Doc actually worked on the job.

Q. Okay.

A. Or could work on the job. When I left the job -- whether this is anything or not, but when I left the job though those corrections were never done for those windows. The lintels were still not set the way they were supposed to be on blockwork.

Q. Okay. And as far as the lintels are concerned, is that something you have knowledge of or you just -- it's just telling you it's not done right?

A. Right. It's very, very little do I know about commercial work, the support systems for windows, but these were very short. I mean, they were probably as wide as the windows. They needed to go all the way across supporting areas of the blockwork.

Q. Okay. And I guess the question I'm asking, are you qualified --

A. I am not a qualified person, but an electrician.

Q. Gotcha. Okay. And that's what I was asking.

A. All I'm -- everything I'm giving is knowledge from someone else.

Q. Okay. All right. And what else did Doc tell you about conversations he had with Nasser about getting that fixed?

A. That's the only thing. He just said that he notified Nasser and Nasser would never -- Nasser never did anything about it, never changed it. So that's why I say I don't know who actually did the work, why would he -- why would he be notifying Nasser if he had done the work because I never know -- Doc would fix his own work. So that was just a question that kind of was raised in that.

Q. Yeah. And my question is why would Doc not know about it if he's a general contractor?

A. Well, he knew about it.

Q. After it was done?

A. Obviously after -- whoever did it, he noticed it and he was notifying Nasser to -- it

needed repaired. It would seem silly for, if Doc did it, to leave it like that and tell me about it. That wouldn't be -- that's not Doc's way of doing things. Doc fixes the things that he sees needs fixed.

Q. Well, was Doc the general contractor on the job or was he just another contractor?

A. He was the -- he was the general contractor to start with. The third time that I went to pull permits he wasn't allowed to pull it. So I don't -- and that's the question that was raised is why, you know, he could not have a permit.

Q. I mean, I thought what a general contractor's role was to kind of supervise the work that was going on at the property?

A. General contractor does or they can also be like I am. They can do the work too.

Q. Right.

A. But in general he would hire in people.

Q. Nasser would or Doc would?

A. No. Doc would hire in people to do the jobs because it's required you have to have mechanical electricians, mechanical heating and air, and mechanical plumbing. You have to have those three permitted.

Q. Right.

A. I'm not for sure about any other, the structural part of it, but those three are a requirement of commercial work. The only two permits that I seen was mine. And I never did see the actual plumber permit, but I think there was a permit pulled for the installation of the hood on the final go-round. Obviously the plumber did pull a permit eventually, but because Nasser had his own heating and air guys I never seen a permit for that in the window.

Q. Okay.

A. Mine actually was the only permit in that window for most of the job.

Q. Okay. And I've got some I can show you just -- we'll go through some of those. Okay. All right. Well, did Doc tell you about the dispute that he was having with Nasser over this window issue?

A. No.

Q. Did Doc tell you that he reported Nasser to the LLR?

A. No.

Q. Did Doc tell you that Nasser didn't want him to be the GC on the job anymore?

A. No.

Q. Did Nasser tell you that he had fired Doc as the GC?

A. Yes.

Q. Okay. When did Nasser tell you that?

A. After the third permit was pulled and I was on the job, that was the time that he had notified me that -- that was the negative part of that talk, discussion was that he didn't want Doc on the job.

Q. Okay.

A. But he didn't say why. There wasn't no reason given.

Q. All right. He didn't tell you why, he just said, "I let him go. I didn't want him to be part of this anymore"?

A. Right. And whether it was a monetary thing or whatever it was, I don't know. I have no clue.

Q. All right. And Doc never told you that Nasser fired him?

A. No, not that I can remember.

Q. Okay. The only thing Doc told you was that the City wouldn't give him a permit?

A. Right. And he couldn't understand that.

Q. But he later told you that he knew he was not the GC on the job anymore?

A. He told me -- again before I took -- actually went down to get the permit he -- after the second conversation he said that he couldn't get a permit. So that meant he couldn't be the general contractor.

Q. Well, did he tell you that he wasn't the general contractor?

A. Well, that's what he said. He says, "I'm not -- I can't pull a permit." So that means he's not. If you can't pull a permit, you can't be the GC. I mean --

Q. Well, did he tell you he couldn't pull the permit because he wasn't the GC?

A. No.

Q. Okay.

A. He told me he just couldn't. Again he didn't know by what he -- by the discussion we had he didn't know at that point in time why he couldn't pull the permit. So when did Nasser fire him?

Q. Okay. You don't know the answer?

A. Yeah, I have no idea about that. Was that prior to that? If Nasser and him were still in communication at that point in time and he calls me

to say go get a permit, my understanding is he's still the general contractor. There's no reason not to think that. So --

Q. From your point of view?

A. From my point of view. So between that conversation and the next time I talked to him something took place. Like I said, it could have been several days before I went down for the first time and get denied my permit because there wasn't a GC. So between them two points in time whether there was an argument going on between them, I have no idea.

Q. Gotcha. All right. When Nasser called you to go down to the City with him did he tell you at that time that Doc was no longer involved in the project?

A. Well, I already knew at that point in time.

Q. All right. Because Doc had told you?

A. Right.

Q. All right. And you never asked Nasser about --

A. No.

Q. -- why isn't Doc involved, what's the deal?

A. No.

Q. All right. And you went down there. And where did you go?

A. Forest Acres inspection division on the second floor.

Q. Is that the second floor of the Forest Acres --

A. City Hall. I guess that's what it is, yeah.

Q. Or whatever. The same place the police station is?

A. Yeah. I guess that's -- where all the police cars sit.

Q. Okay. All right. And tell me exactly -- you walk in with Mr. Alquza?

A. Right.

Q. All right. And tell me exactly what happened when you walk upstairs?

A. We go into the inspection -- into the reception area of the inspection division.

Q. Is that where a lady sits?

A. A lady sits. And I, of course, asked for permission to pull a permit. Well, actually we talked about Mr. Frady -- or not -- Nasser getting a general contractor because there wouldn't be no

sense in me trying to pull a permit again without a general contractor on it. So the first conversation was to have both the inspector -- or to have the inspector talk to Nasser first to see if he could have a general contractor's license -- permit, if he could pull a permit because he owned the building.

Q. Okay.

A. And it was decided between the contractor -- I mean, the inspector's -- excuse me -- the inspector's and Nasser's discussion that they would allow it, him to be the GC on the job.

Q. All right. Where did this conversation take place between Nasser and the --

A. Right there in the --

Q. -- City inspector?

A. Right there in the reception area with -- where I was sitting.

Q. Okay. Was there -- is there a -- is the reception area separate from where these guys like had their offices?

A. Yes.

Q. Okay. And who was present for the initial conversation about whether or not he could get a permit?

A. There was Mr. Frady and there was another

fellow, who could be the second inspector. I don't know who the fellow is. I can't -- his name don't come -- I've only seen him one time.

Q. Well, how did it come up? What was the question about if he could get a permit?

A. Nasser asked Mr. Frady, you know, in the situation that was at that point in time if he could have -- if he could go ahead and pull a general contractor's permit so he could continue finishing the job.

Q. Okay. Did he tell the City folks why he would need to do that?

A. No.

Q. Did he tell the City folks that he didn't want Doc Haynie on the job anymore?

A. No. Not in front of me he didn't.

Q. Okay. Well, obviously the City knew that Doc had been the GC at one point, correct?

A. Yes.

Q. Okay. So there was no conversation at all about what happened with Doc Haynie?

A. Not right then.

Q. Okay. Was there ever?

A. The only thing -- going back, the first time I went down the only conversation that was said

or the only thing brought to my attention by Mr. Frady was asking me if I worked for him. That's the only time he mentioned anything to me about it. As far as why Doc was not no longer allowed to have the permit for general contractor on that, nothing was said to me directly by them at all.

Q. Okay. Was there ever a time where they spoke with Mr. Alquza not in your presence?

A. Now, that I don't know.

Q. Okay. How about the day you went down there?

A. He stood behind me with the other inspector. I was here. Mr. Frady was behind -- standing behind the desk of the secretary or in that general area talking. Behind me what they were talking about, you know, I'm still waiting to know if I could get my permit, but I was not part of any of that conversation. So the only thing I know is that Nasser went in, as I said before, and asked if he could get a permit as a general contractor and they told him he could. Now, I have one -- may I ask a question?

Q. Absolutely. Yeah. Well, I don't know if I can answer.

A. I don't either. I have no clue. Because

of all the times I pulled permits down there you get a hard copy card. And I believe they are yellow or orange. Is there a difference in what type they are?

Q. I have no idea.

A. See, I don't either. I never knew there was a difference in them.

Q. All right. When you would get your permit what color was it?

A. I never paid attention to it. That's the whole problem. The last one I got was an orange color one. And now I understand that that one issued on the third time -- because I've gotten yellow ones. And this is the only time I can remember getting an orange one, but I don't know the difference in them. I didn't know there was a difference or what color means or what. My understanding is the orange is for a general contractor's permit. And that's what was issued to me.

Q. All right. Who told you that?

A. Now, there again that come from Doc by his knowledge of what -- because I even asked him several times, I said, "What are you talking about?" I said, "It says electrical permit on it."

Q. All right. And when did this conversation with Doc take place?

A. Probably the past six months.

Q. Okay.

A. Because he brought it to my attention because he asked me, "Did you realize that you were the general contractor on the job?" I says, "I was never the general contractor." Because it implies that I went down there to pull a general contractor's permit to help Nasser and that wasn't the case. And I just want to be sure that that's not something -- because I don't know what the colors mean on these permits. I didn't know there was such a thing as distinguishing permit colors.

But I had asked Doc several times if he's sure if that's the case because, you know, I know for a fact that I asked for an electrical contractor's license.

Q. Okay.

A. A permit, I mean. And Nasser was in there at that time. So did they issue me that card as a general contractor just with the electrical -- that's why I need to know was that actually a color deal on a piece of paper. I don't know.

Q. No clue. All right. Now, tell me the

negative things that Nasser said about Doc while you were at the City.

A. At the City down getting the permit? He never said anything that I know directly to me. I don't know what -- I can't remember the conversation in that whole setting because it's been so long ago. I've tried to think it through and I can't figure out what was said, but I know that they were making remarks about Doc at that point in time, but I can't tell you what it was.

Q. They being Nasser?

A. The two inspectors. And they were joking and, you know, they were kind of cutting up also about it, but I can't give you the specifics on it because I can't remember.

Q. Was Nasser also saying negative things?

A. I'm really not for sure if he was part of that conversation or just the two inspectors, but, you know, being that they were all laughing and talking, I just -- I would pull all three of them together.

Q. Okay. All right. And after that you've never had any conversation with the City about Doc?

A. No.

Q. Do you have any knowledge of any City

employee ever speaking poorly about Doc after that?

A. I haven't had no personal contact with anybody from the City.

Q. Okay. Did you work on Paul Cash's house or the --

A. I did.

Q. -- shed behind his house?

A. You mean the man cave?

Q. The man cave?

A. Yes.

Q. Yes. And you worked on that job?

A. Yes, I did.

Q. Okay. Were you part of that lawsuit?

A. No. Not that I know of.

Q. Okay. Were you paid for that job?

A. Yes. Except for part of it.

Q. What part was that?

A. The part that they didn't get paid for, that Doc didn't get paid for.

Q. Okay.

A. If I remember correctly, either on the service changeover I believe there was, you know, a couple hundred dollars that was not available because of money.

Q. It wasn't a whole bunch of money?

A. No, it wasn't nothing that would really hurt.

Q. Okay. All right. What do you know about the septic system that was put in that place, if anything?

A. I really don't know what kind of septic system or whatever was for that building.

Q. Did you testify at that trial?

A. I wasn't ever there. I was never called on that thing. I didn't know there was a lawsuit.

Q. Okay. When you went back, I guess, started the work back in 2011, I think it was when you --

A. When I finished it.

Q. How much work was left to be done on the building at that point?

A. Quite a bit of work. I had to build the service, which is humongous. There was 800-amp service for all those stores. So I had to get all that done, pull the wire in and finish up the front trimming it out. So there was a good portion of work left to be done.

Q. All right. How about the rest of the building? I mean, as far as that suite what other work needed to be done?

A. As far as the pizza?

Q. Correct.

A. I just finished trimming it out. The hood -- he had a hard time getting the hood guy to come in there and get it finished so I could finish up the fire suppression system and all that that needed the electrical part of that. It was like dragging, dragging out quite awhile because trying to get subcontractors in there since there wasn't a general contractor anymore.

Q. All right. Well, that was my question. As far as the work that Doc would have done, what work was left to be done? Was Sheetrock all in at that point?

A. Sheetrock was in.

Q. All right. So what remained to be done to the --

A. Structure?

Q. Yeah.

A. The ceiling grid had to be finished.

Q. Now, is that part of the stuff that Alquza was doing himself?

A. That's some of the stuff that he did end up doing himself. I don't know if Doc would have had anything to do with that eventually anyways.

I'm not for sure what their contract dealt with. The bathroom -- really there were some bathroom changes that Sheetrock had to be taken out and dealt with, I believe. Issues come up with two bathrooms.

Q. The ADA issues?

A. Yeah, I believe so, which is another slowdown on the job, but overall there really wasn't a whole lot left besides trimming out what I had to do and putting ceiling tile in and doing the, you know, cosmetics. Just waiting on people to come in and get their job done so I could move on.

Q. Right. What do you know about the ADA bathroom issues, if anything?

A. If I can remember correctly, they had -- the space was wrong or something in the bathroom the way they were set up to start with, but I'm not for sure how all that went. They were talking about moving it because my switches were in the -- going to end up being in the wrong place if they had to move the -- change the door swings or whatever and the inside of the bathrooms had to be -- something had to be moved inside there. I don't have no clue.

Q. Did they eventually work it out?

A. I believe they had worked it out because it passed inspection.

Q. Okay. Are you aware of any permit being issued directly to Mr. Nasser --

A. No.

Q. -- Alquza? Mr. Alquza? I'm sorry.

A. Right. I'm not sure his last name, but I've never seen it.

Q. Did you ever hear either Frady or the other fellow say to Mr. Nasser that Doc was a very bad contractor?

A. I can't say -- again to recollect anything being said, that's hard to say.

Q. Did you ever hear either one of them say that Alquza needed to get rid of Haynie and get a new contractor?

A. No, I wouldn't have never heard that one said, but I don't believe I heard that said. I say on that statement that would have had to happen -- that would have had to happen before I went down to pull the permit the first time because --

Q. Yeah. The first time of the third time?

A. Yeah, the first -- the first time of the third time, yeah. So there's twice I had to go down there, but it had to happen before I went down there the first time of that third time before anything said like that.

Q. Because at that point it was already known that --

A. It was already done.

Q. -- Doc was not the GC?

A. It was already done.

Q. But you certainly didn't hear anything like that?

A. Not that I -- not that direct.

Q. Did Doc store any equipment or anything down there at that location on Covenant Road?

A. He did.

Q. Did he rent a space from --

A. Yes, he did.

Q. -- Mr. Alquza?

A. Yes, he did.

Q. Okay. Why did he do that?

A. My understanding, again what Doc said, because he had built a building at Brentwood and he was told he couldn't use it for his business.

Q. Okay.

A. So he stopped using that place and went down and asked Nasser if he could rent part of his building to keep things in it. So he did.

Q. All right. And Doc told you that?

A. Yes.

Q. Do you know when he started renting space?
A. No, I really don't. It was before the job started, I believe. He already had things in there.
Q. I believe Paul Cash's house is in Forest Acres?
A. Yes.
Q. Do you recall working on any other job with Doc in Forest Acres?
A. I'm sure I have, but I can't really -- I don't know the boundaries as to where --
Q. That's fine.
A. You know, I just -- I'm sure I have, but there hasn't been many. I haven't done a whole lot of work in Forest Acres to start with.
Q. All right. And maybe this is a better question, I guess. You had to go to pull permits because this was a commercial job?
A. Yes, sir.
Q. Okay. Had you worked on any other commercial jobs in Forest Acres for Doc?
A. No. That I can remember.
Q. All right. Was commercial work -- what kind of percentage of Doc's work was commercial work?
MR. PORTER: Object to the form.

BY MR. COX:

Q. If you know? I mean, you were his main go-to guy, right?

MR. PORTER: You still need answer the question. I'm just saying an objection for the record.

THE WITNESS: Could you restate?

BY MR. COX:

Q. Yeah. I mean, of the jobs you worked with Doc what percentage of them were commercial as opposed to --

A. Very small. Probably none other than this one.

Q. Okay. Most of them were residential?

A. Yes.

Q. Smaller --

A. Right.

Q. -- jobs? What was -- would Paul Cash have been -- and I can't remember where Paul Cash's house fell. Probably sometime during this same time you were working on Covenant Road?

A. It was before that.

Q. It was before that?

A. Right. It was probably a couple years before that.

Q. All right. Was Paul Cash the last job you worked with Doc before the --

A. May not -- there again in Forest Acres I'm not for sure. I mean, I'd have to go back and dig up my records to even know that because his jobs are so small and they were all over the place in that whole area out there, like I said, all the way over to Jackson Boulevard. There wasn't an abundance of work is what I'm saying --

Q. Understood.

A. -- with Doc. Doc just did, you know, jobs here and there, but I couldn't tell you for sure in Forest Acres if there was any other things than Cash's house during that period of time.

Q. Okay. Had you ever been to the Brentwood house before you started working there recently?

A. Yes.

Q. Tell me about that.

A. I was called in to add a circuit for air conditioning before this.

Q. Just he was putting air conditioning in the house or something?

A. Right. As a matter of fact, I wired his shop.

Q. Did you?

A. Yeah, I wired that shop in the back.
Q. When he was -- the big one?
A. Well, yeah, that -- whatever that is that he's got back there, warehouse he's got in the back right there.
Q. Okay. So you were involved when he built that?
A. Yes.
Q. The big one? And you know there's two there now?
A. There's a little shed?
Q. There's a little one and then the bigger one?
A. Right.
Q. Did you work on the little one?
A. No. That wasn't there that I can remember. It might have been, but I never paid attention to it.
Q. Okay. You didn't have anything to do with building that one?
A. No.
Q. Okay. Has Doc ever told you anything about the process of building that?
A. No.
Q. That little shed?

A. No.

Q. Okay. Did Doc tell you why he was building a big shed?

A. Only to store his stuff in. That's all I know. He needed the storage space for some of his stuff so he could move it out of his -- I guess his house area. He didn't have enough space to put all his wood and saws and stuff in.

Q. All right. Let me see if I can get you to look at these permits real quickly.

MR. COX: I've only got one copy.

MR. PORTER: You've only got one copy? Do you want to make these exhibits?

MR. COX: Yeah. Yeah. That will be Exhibit A.

MR. PORTER: These have been produced, correct?

MR. COX: Yes.

(Exhibit No. 1 was marked for identification.)

BY MR. COX:

Q. All right. Looking at what's been marked as No. 1 there, did you play any role in pulling that permit? I believe that permit was in 2008.

A. Yeah, I had nothing -- this is not --

nothing that I dealt with.

Q. Okay. And on there it has, I know it's kind of hard to see, but basically estimates of amounts of the job sort of thing?

A. Right.

Q. Okay. Did you have any role in putting that information on?

A. No. None.

MR. COX: That's the next one.

(Exhibit No. 2 was marked for identification.)

BY MR. COX:

Q. All right. And tell me what that is that's marked No. 2.

A. That's a permit. That's for sure.

Q. All right. Is that one you pulled?

A. I don't think so.

Q. Why is that?

A. I think he did it for me. I think Doc pulled it for me because my name is wrong.

Q. How is it wrong? I didn't notice that. How is that?

A. My name is l-e-s.

Q. Okay. Do you know whose handwriting that is?

A. I'm not for sure. I would suspect -- I had that as Doc's probably handwriting. Let's see here. I can't tell. I don't know whose handwriting that is if that don't match his.

Q. All right. Well, did you go down and actually pull that permit?

A. No.

Q. Okay. Did you fill out the information on the permit?

A. No.

Q. Let's look at this one. And I think these two things go together actually.

MR. COX: We can mark that as No. 3.

THE WITNESS: I believe Doc had called me one time. How many permits are there? That's a good question.

BY MR. COX:

Q. That's what I'm trying to find out.

A. Yeah. Let's find out how many permits are here.

(Exhibit No. 3 was marked for identification.)

THE WITNESS: Is that the same one on Nasser? Yeah, that's what it says. Because I know he asked me one time -- he went down for me and

pulled a permit for me and he got my permission to do, so.

BY MR. COX:

Q. Okay.

A. And I was just wondering if that is the one.

Q. You good on that?

A. Oh, I'm sorry.

Q. Let's take a look at No. 3 there. And tell me what you -- tell me what that is.

A. Yeah, that's me. I'm the one that signed for this one. That's electrical permit. What date is on this? 2009. Yeah, that's the one I filled out.

Q. Okay. All right. And so you filled that one out. And that one is dated in 2009, correct?

A. Right. That's 2008.

Q. Right.

MR. COX: Just for completeness.

(Exhibit No 4 was marked for identification.)

BY MR. COX:

Q. No. 4, can you tell me what that is?

A. This looks like a general contractor's permit request.

Q. Okay. And what's the date on that one?
A. It's 2009.
Q. Okay. And that's done by Doc?
A. That's done by Doc.
Q. Okay. All right.
A. 12-8. Yeah. Okay. That's after I took mine out.
Q. Okay. Yeah, that's after you took yours out. So he went down there and renewed?
A. On 12-8.
Q. Okay. All right. Now, this one, No. 3, has on it a new number and it says reactivate.
A. Reactivate.
Q. Okay.
A. All right.
Q. All right. So did you actually get a new permit, handed a different piece of paper, or did they just reactivate the old one?
A. They gave me a new -- I believe I got -- now, again I believe I got a new card with it, but maybe I did not. I'm not for sure.
Q. Okay.
A. That's a good question.
Q. Well, that's why I'm asking it.
A. Again those things I don't keep. I mean,

I keep the billing on it, but as far as this, I don't keep it in my files. So I couldn't -- no, I don't know nothing about that there.

Q. Okay. Do you keep your permits? Do you have a file for this work?

A. All this file is going to be -- yeah, I have to keep some record of what I've done down there.

Q. Right. Well, do you still have them?

A. I probably do in some box somewhere at home.

Q. Okay.

A. Stuffed away.

Q. Do you keep the permits that you receive?

A. No, I don't keep the permits. I just keep these for tax purposes.

Q. Okay.

A. That's the only thing I keep. So I don't -- as far as the hard copies for the actual permit sitting in the window, no.

Q. All right. If this is -- if you were given a completely new permit in 2011, would you have gotten another one of these?

A. Uh-huh.

Q. That's the same --

A. Because I had to -- right. Well, I had to pay for that. See, this first one is -- that Doc took out was $1,500.

Q. Actually that's the second one, right, because this is the first one?

A. Well, this one here is not -- you can't pull a permit on this one here, not an electrical. It has to be a separate -- I have to have a separate permit for that because this is -- that's like if that's under a residential. Do you see what I'm saying?

Q. Well, the record is not going to be clear. So you're talking about No. 1?

A. No. 1.

Q. Okay. And tell me about the difference between this --

A. This one, if that's the way that's done, would be like a residential permit pulled where all the subs are underneath Doc's primary general contractor's license, but that's not how it's done in Forest Acres.

Q. And then -- but what you're saying is the individual trades still need to come in and pull their own permit?

A. Yes. Right. Each one has to. So I

have -- as far as this one, I don't know nothing about that one.

Q. Got it.

A. The first one.

Q. No. 1?

A. Right. No. 1.

Q. Okay. No. 2 Doc apparently took --

A. No. 2 Doc pulled it for me. No. 3, obviously I pulled that one.

Q. Those two pages?

A. These two pages right here.

Q. All right. So if you got a separate permit in 2011, you should have a similar document that's --

A. I should have something like that or that.

Q. What we're referring to is the second page of No. 3?

A. Right.

Q. Okay. And you would keep that?

A. I would keep that.

Q. Okay.

A. And this here I'm not for sure what --

Q. If you don't have a similar document to the second document of the third exhibit here in your records, would that mean that you were not

given a separate permit?

A. I would think so, right. If I have it, then that would show I did.

Q. Okay.

A. I believe the -- I believe the amounts on the job may have changed due to the fact of the three years, prices of material and everything. So I may have had to increase the size of it. I'm not for sure.

Q. Okay.

A. In remembering that I don't know.

Q. Okay. I wanted to ask you about this document right here. This will be No. 5. And that's an inspection report. Does the name Scott Turner ring a bell?

A. That sounds like an inspector.

Q. Okay.

A. From the county of Richland County.

(Exhibit No. 5 was marked for identification.)

BY MR. COX:

Q. Is that the fellow that was on loan with the City?

A. Yes.

Q. Okay. All right. Now, did you receive --

this top one, I think it says call Paul?

A. Me. Cowles.

Q. Right. About that. Do you recall that date and what was -- what he was calling you about at that point?

A. Probably to -- well, let's see. I'm not for sure whether it's just to let me know that the inspection had passed. That would be the only reason I would know of him to call me.

Q. Okay. All right. And you mentioned that Nasser hired somebody else to do additional work on the building?

A. Only to do --

Q. The cigar shop?

A. -- the cigar shop. He had someone else do that.

Q. Do you know who that was?

A. No. Never seen that company before. I've talked to them when they were over there, but I --

Q. Al's Construction, does that sound familiar?

A. It could have been. And then they had their own electrician come in and do the electrical on that.

Q. Yeah. A fellow named -- could it be

Farmer? Have you ever heard of them, Farmer Electric?

A. No, I've never heard of them. I don't even know where they are from.

Q. Okay. Willie Farmer.

A. Yeah. I've had a conversation --

Q. You didn't have --

A. I had a conversation with him because they were tying into my service, only that they didn't complete a certain part of their electrical that should have been done on that. The inspection -- the inspector never caught it. So, you know, they got away with it. That's the only time I had a conversation with anybody on the other part of the job.

Q. There was something else I wanted to ask you about, but I can't -- it slipped my mind.

(Off-the-record discussion.)

(A recess transpired.)

BY MR. COX:

Q. I do have just one final thing. All right. We're looking at No. 3 here.

A. Okay.

Q. All right. And this, again it's got a 2011 number written on it?

A. Yes, sir.
Q. And it says reactivated May 5, 2011?
A. Uh-huh.
Q. Is that around the time that you would have been back in there to --
A. It could have been.
Q. Okay. To get the --
A. Final.
Q. -- final permit, third permit?
A. It could have been that time.
Q. Okay.
A. Like I said, it was the early part of that year.
Q. 2011?
A. Right.
Q. And you haven't seen Alquza or heard from him since?
A. No.
Q. Okay.
A. He said he would call me at the end of the job to do some other work, but never heard from him.
Q. Did the pizza place and the tobacco place ever open up?
A. Yes.
Q. It did?

A. Yeah. Some people that I know went there from a supply house that's right down the road that I got the materials from. So they went there. So obviously it opened, but I don't know how long it was open before it was closed, if it did close. Obviously you said you went by there. So --

Q. It's a Dollar General store. So I can tell it doesn't look like any of the work that we're talking about --

A. He had --

Q. You can't even tell.

A. I know he had a sign put up. I mean, I wired -- put wire up there for it and all that, but I believe there was a sign up there at one time.

Q. Okay.

A. So he opened up. And the smoking shop I never seen open. So I don't know what that would be.

Q. Do you know if Doc was owed any money by Nasser when he was let go?

A. No, I don't. He never said anything about that.

Q. And do you know how much he was paid before he was let go?

A. I don't know.

MR. COX: Thank you.

EXAMINATION

BY MR. PORTER:

Q. I've got just a few follow-ups. When you went up there the second time on the third permit is your testimony that Clark Frady, another gentleman, and Nasser were speaking negatively in regards to Doc Haynie; is that correct?

A. Yes.

MR. COX: Object to the form.

MR. SHEALY: Object to the form.

BY MR. PORTER:

Q. When you went up there the second time for the third permit were Clark Frady, another gentleman, and Nasser speaking negatively about Doc Haynie?

A. Yes.

MR. COX: Object to the form.

MR. SHEALY: Object to the form.

BY MR. PORTER:

Q. And you don't recall exactly what they said; is that correct?

A. That's correct.

MR. COX: Object to the form.

BY MR. PORTER:

Q. In your experience is Doc Haynie an honest person?

MR. COX: Object to the form.

MR. SHEALY: Object to the form.

THE WITNESS: Yes.

BY MR. PORTER:

Q. In your experience is Doc Haynie a good contractor?

MR. SHEALY: Object to the form.

THE WITNESS: Yes.

BY MR. PORTER:

Q. What did the other fellow look like who was with Clark Frady?

A. He's taller than me, young.

Q. Was he fat?

A. He was heavyset, up there around that. He was big.

Q. Caucasian?

A. Yes.

Q. Brown hair?

A. I can't tell you that.

Q. Clean cut?

A. Yes.

Q. Did he wear glasses?

A. I can't tell you that either.
Q. Do you know -- in your experience as someone in the construction business do you know in the commercial setting if an owner can be his own general contractor?
A. I never heard of it in commercial work.
Q. Can you as an electrical contractor be a general -- strike that. Can you be a general contractor?
A. No. No.
Q. First time, third permit, is that when Clark Frady asked you if you worked for Doc?
A. Yes.
Q. What was his mannerism when he asked you that?
A. I can't really recall how that went. It's just I know he asked me that question, which kind of struck me as funny.

MR. PORTER: I've got nothing further.

RE-EXAMINATION

BY MR. COX:

Q. What does your license allow you to do? Is it a specialty contractor's license?
A. It is, yes. Mechanical electrical.

Q. Mechanical electrical?

A. Yes. ME. I'm allowed to do electrical contracting up to $125,000 per job.

Q. All right. Are you allowed to do any other type of contracting under that license?

A. No.

Q. Are you allowed to hire subs?

A. Only to do electrical.

Q. Only to do electrical?

A. Yes.

Q. Okay.

MR. COX: All right. Thank you.

MR. SHEALY: No questions. Thank you.

Further Deponent sayeth not.

(Whereupon, the taking of the deposition was concluded at 11:46 a.m.)

Certificate of Reporter

I, Brad H. Thomas, Certified Realtime Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the deposition of PAUL COWLES on the 5th day of December, 2013; that the witness was first duly sworn by me, and that the foregoing 93 pages constitute a true and correct transcription of the said deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter sealed and delivered to KIRBY D. SHEALY, III, ESQUIRE, Adams & Reese, LLP, 1501 Main Street, Suite 500, Columbia, South Carolina 29202. This sealed original transcript shall be retained by the above party, who shall be responsible for filing same with Court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof I set my hand and seal this 9th day of December, 2013.

_____

Brad H. Thomas, CRR
and Notary Public for the
State of South Carolina

My Commission
expires 12/12/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Frank "Doc" Haynie,	)	C/A No.: 2012-CP-40-7392
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their Individual capacities	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S CONSOLIDATED[1] MEMORANDUM IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Plaintiff, here asks this Honorable Court to deny the Individual Defendants' Motion for Summary Judgment on his civil conspiracy claim.

INTRODUCTION

Frank "Doc" Haynie ("Plaintiff") is a licensed general contractor. Plaintiff filed this action on November 2, 2012, against the City of Forest Acres ("Defendant City") for negligence/gross negligence against the City of Forest Acres and against Defendants Williams, Greenwood, and Frady ("Individual Defendants") for civil conspiracy. The Defendant City filed its Answer on January 22, 2013. The Individual Defendants filed an Answer on January 18, 2013, and an Amended Answer on January 24, 2013. Neither set of Defendants filed a Rule 12 motion challenging the sufficiency of the pleadings. Voluminous Discovery has been exchanged

[1] Defendant Forest Acres, by and through their counsel Johnston Cox, and Defendants Williams, Greenwood, and Frady, by and through their counsel Kirby Shealy and Lyndey Zwing, have filed separate motions and memoranda for summary judgment. In the interest of judicial economy and efficiency the Plaintiff here responds to both respective motions.

and several depositions have been taken. The Defendants filed separate motions for Summary Judgment in late December, 2013.

The Defendant City argues that it is entitled to Summary Judgment on the basis of South Carolina Tort Claims Act ("SCTCA"). S.C. Code Ann. §15-78-10 *et. seq.* The Individual Defendants move for Summary Judgment on the basis of intra-corporate immunity and the SCTCA[2]. *Id.* The Defendant City's motion fails because the myriad of SCTCA provisions it cites are not established in or applicable to this action. The Individual Defendants' Motion fails because the evidence of record indicates that they acted outside of the course and scope of their employment with the intent to harm Plaintiff. For the reasons summarized herein and elaborated upon below, Summary Judgment should be denied.

FACTS

Plaintiff has been a contractor for approximately 40 years; according to Reverend Barry Epps, a former inspector from 2007-2009for the Defendant City, he was good at his job. (Exhibit 1; Deposition of Frank Haynie, p. 7:7-11), (Exhibit 2; Deposition of Barry Epps, p. 145:5-6), (Exhibit 3; Affidavit of Barry Epps; ¶ 3). Beginning in 2007, the Defendant City's code enforcement office became "hyper-vigilan[t]" of the Plaintiff both as a resident of the Defendant City and as a contractor. (Ex. 3; ¶ 5). Former inspector Epps testified that he had standing instructions to "to go regularly by the property to check it, not necessarily because it was a complaint, but because they wanted to make sure it was maintained." (Ex. 2; p. 103:16-18). Rev. Epps further testified that he was instructed to go more often to inspect the Plaintiff's

[2] Both Defendants argue that their respective statute of limitations (two years for the Defendant City and three years for the Individual Defendants) bar the Plaintiff from citing any occurrence prior to November 2, 2010 (Defendant City) and November 2, 2009 (Individual Defendants) as actionable. The Plaintiff does not contest these arguments but notes that facts and occurrences outside of the Statute of Limitations here are relevant contextually in discerning the actionable issues of fact at hand.

property excessively and more than other properties.[3] (Ex. 2; pp. 104:23-105:2). Such conduct was continued as Defendant Frady, an inspector from March 8, 2010 until December 31, 2012, testified that he inspected Plaintiff's property at least once a week. (Exhibit 4; Deposition of Clark Frady, p. 61:3-6).

Defendant Williams, the City Administrator, had a personal distaste for Plaintiff and once remarked to Rev. Epps "I have no use for [Plaintiff].[4]" (Ex. 2; p. 105:13-22). Rev. Epps testified, that based on his tenure at the Defendant City, he felt Defendants Williams and Greenwood were trying to essentially run Plaintiff out of town by way of "strong-arm" tactics. Ex. 2; pp. 108:14-110:7). At one point, Defendant Greenwood, allegedly on behalf of Defendant Williams, directed Rev. Epps to go ticket solely cars parked in Plaintiff's yard, but not similarly parked cars in other yards—ticketing cars was wholly outside of Rev. Epps jurisdiction. (Ex. 3; ¶ 10). Margo Pierce, a former clerk for the Defendant City, swore by affidavit that she witnessed Defendants Williams and Greenwood "directing first inspector Mr. Barry Epps and later inspector Mr. Frady to monitor [Plaintiff] in a hyper-vigilant manner," and that "the manner in which they were asked to monitor [Plaintiff] was uncommon compared to other builders in the community[5]." (Exhibit 5; Affidavit of Margo Pierce ¶ 7).

Plaintiff complained about such conduct to both the Defendant City's Mayor, two city councilmen, and the City's Attorney. (Ex. 1; pp. 33:18-34:17); (Ex. 6; Affidavit of Carl Holloway). Despite his complaints, the conduct continued. Regularly, Defendants Williams, Greenwood, and Frady would inquire to Ms. Pierce about when Plaintiff's building permits were

[3] By way of his affidavit, Rev. Epps stated that he was specifically directed by Defendants Williams and Greenwood to monitor Plaintiff's home, check in his dumpsters, and find evidence of code violations committed by Plaintiff; however, that he "never uncovered any major code or other violations on the part of [Plaintiff]." (Ex. 3; ¶ 7).

[4] Rev. Epps was also of the opinion that Defendant Greenwood disliked Plaintiff. (Ex. 3 ¶ 11).

[5] Ms. Pierce further surmised that Defendants Williams, Greenwood, and Frady "had a 'witch-hunt' out for [Plaintiff]." (Ex. 5; ¶ 10).

to expire, this was unusual; Ms. Pierce recalls either Defendant Williams or Greenwood on one such occasion stating "We'll get him now." (Ex. 5; ¶ 9).

One point of controversy involved a 10 x 20 storage shed on the Plaintiff's own property. (Ex. 1; pp. 78:23-79:2). Defendant Frady placed a stop work order on the storage shed sighting improper footings susceptible to uplift and the following occurred: (1) Defendant Frady requested the footings for this 10 x 20 shed be three feet in the ground and incased by 2 feet of concrete; (2) Plaintiff, who has an Industrial Engineering degree from Georgia Tech, thought this was suspect and requested that Defendant Frady cite specific code sections; (3) Plaintiff pointed out that the only code section dealing with specifically footing stated that footings be deep enough not to kick out of the ground; (4) Defendant Frady then cited a provision of the code which states the contractor shall abide by the inspector's wishes; (5) and Defendant Frady maintained the stop work order. (Ex. 1; pp. 10:4-7; 81:5-8; 85:16-86:19). The Plaintiff appealed this action to the Defendant City's Code Board of Appeals; Plaintiff's appeal constituted the first ever meeting of the code board of appeals. Ex. 1; p. 102:9-11. Defendant Frady met with the Code Board of Appeals officials prior to the hearing. (Exhibit 7; Memorandum of Interview: Clark Frady). In this meeting, pre-hearing meeting he instructed the members how they should vote. (Ex. 5; ¶6). Specifically, prior to the hearing, Defendant Frady "told [the board members] his side of the case and how he wanted it handled." (Exhibit 8; Memorandum of Interview: Margo Pierce). The Code Board of Appeals ruled against Plaintiff, without any documentation as to their grounds. (Ex. 1; pp. 102:17-103:15). The Plaintiff then scaled back the building size to 10 x 10 to remove it from code jurisdiction, and got a certified engineer to verify the shed's integrity at The Defendant City Attorney's suggestion. (Ex. 1 p. 103:16-19), (Ex. 6; ¶ 6).

Plaintiff had a certified engineer certify the shed's structural integrity at his own cost. (Exhibit 9; Excerpts from Expert Report 8/2/11).

Another such incident, weeks after the Appeal hearing, involved several Forest Acres police officers and Defendant Frady being called to the Plaintiff's home at 7:30 on a Monday morning over yard rubbish being placed in the wrong location—Plaintiff received four citations out of this event for various alleged infracts including high grass (that was not on his property), and rubbish. (Ex. 1; pp. 100:2-101:20, 111:2-112:4). Plaintiff lost contracts as a result of the Defendants actions including a $60,000 with a long time customer Lisa Graham who would not hire him for fear of undue interruption caused by the Individual Defendants sentiment toward the Plaintiff. (Ex. 1; pp. 32:9-33:24). The Individual Defendants also encouraged a customer, on a more lucrative contract, Nasser Alquza, to terminate the Plaintiff. (Ex. 1; pp. 98:15-99:12). After the Plaintiff was fired, Paul Cowles, a subcontractor on the Alquza job, witnessed Defendant Frady, another gentleman, and Mr. Alquza joking about the Plaintiff while Alquza was pulling his own permit for the job. (Exhibit 10; Deposition of Paul Cowles p. 42:2-18).

Prior to Plaintiff being fired from the Alquza job, Defendant Frady requested that design changes me made to the bathroom after the inspection for the layout had already been approved; this was uncommon. (Exhibit 11; Deposition of David Cook p. 98:7-99:21). After, Plaintiff was released from the job Defendant Frady informed the plumbing contractor, David Cook, that the design changes need not be made to the extent Defendant Frady had first admonished. (Ex. 11; pp. 58:5-60:20). Defendant Frady also informed David Cook "You better be careful if you're still doing work with [Plaintiff]." (Ex. 11; pp. 64:22-65:7).

STANDARD OF REVIEW

Summary judgment is a drastic remedy and is only proper "when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 Ct. App. 1999); Rule 56(c), SCRCP. "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant" *Bayle v. SCDOT*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). "Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008).

Where there are triable issues of fact, "those issues must go to the jury." *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003). Further, even "when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Bayle*, 542 S.E.2d at 738 (*citing Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla*[6] of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (*emphasis added*).

[6] A mere scintilla is a "gleam, a glimmer, a spark, the least particle, the smallest trace." *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724.

ARGUMENT

I. THE PLAINTIFF HAS ESTABLISHED A TRIABLE NEGLIGENCE CLAIM THAT IS NOT PRECLUDED BY THE SOUTH CAROLINA TORT CLAIMS ACT.

A valid negligence claim requires: (1) that the defendant owes a duty of care to the plaintiff, (2) that the duty was breached by negligent act or omission, (3) that the defendant's breach was the actual and proximate result of plaintiff's injury, and (4) that the plaintiff suffered an injury or damages due to the breach. *Stieke v. South Carolina Dep't of Labor, Licensing and Regulaiton*, 336 S.C. 373, 520 S.E.2d 142 (1999). An affirmative duty to act may exist "if created by statute, contract, relationship, status, property interest, or some other special circumstance[s]." Carson v. Adger 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1996) citing, Rayfield v. South Carolina Dept. of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App 1988) There are several "relevant standards of care from various sources [a jury may consider] in determining whether a defendant breached a duty owed to an injured person in a negligence case. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006). "The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." *Id.* Based on the evidence of record, the Plaintiff has established a triable negligence claim.

The Defendant City does not specifically challenge the Plaintiff's negligence claim based on the sufficiency of the evidence to prove the elements. Rather, the Defendant City couches its argument on several provisions within the SCTCA that provide immunity for government entities in certain circumstances. S.C. Code Ann. §15-68-60, *generally*. The specific provisions cited by the Defendant City are not dispositive here.[7]

[7] The Defendant City does however, appear to make a 12(b) argument attacking the sufficiency of the pleadings, and in fact specifically cites Rule 12(b)(6) within the same. The Defendant did not timely raise such an argument; the question before the Court is whether or not the Plaintiff

A. The Defendant City Has Failed To Establish, Its Affirmative Defense That Discretionary Acts Caused the Plaintiff's Damages.

Subsection 5 of SCTCA §15-68-60 is an affirmative defense. Subsection 5 concerns immunity for discretionary functions. Here Plaintiff informed the mayor, two councilmen, Defendant Williams and the City of Attorney of his concerns and his treatment. Such persons, by the admission of the defendants regarding citizen complaints and their conduct, had the responsibility to address such concerns. (See, Exhibit 12; Deposition of Shaun Greenwood p. 19:2-25). There is no evidence of record showing that the actions or inactions of the Defendant City, with regard to investigating the concerns raised by Plaintiff about his treatment, were discretionary in nature; conversely, Plaintiff has put forth sufficient evidence of gross negligence to overcome any bar to immunity. *See, Steinke*, 336 S.C. 373; *see also, Foster v. South Carolina Dep't of Highways & Public Transp.*, 306 S.C. 519, 413 S.E.2d 31, (S.C. 1992) (a governmental entity bears the burden of establishing discretionary immunity as an affirmative defense). The Defendant's motion on this point fails in accord *Sabb v. S.C. State University* where a motion for a directed verdict under subsection 5 was properly denied because the Defendant had not presented evidence that it (1) weighed competing considerations in making the decision at issue or (2) utilized accepted professional standards in resolving the issue. *Sabb*, 350 S.C. 416, 567 S.E.2d 231, (2002).

B. The Plaintiff's Action Against The Defendant City Does Not Rest Upon The Intentional Torts of Its Employees; Thus, S.C. Code Ann. § 15-78-60(17) Does Not Preclude This Action.

Subsection 17 of § 15-78-60 of the SCTCA protects a government from liability for the intentional torts of its employees. The Plaintiff's negligence claim here concerns the actions of the Defendant City, in supervising and investigating the Individual Defendants, after it's

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has established genuine issues of material fact and his claim may go forward as matter of law. Rule 12, SCRCP; Rule 56; SCRCP.

governing officials knew or should have known of their conduct. Negligence and gross negligence do not require intent or malice; thus, the Defendant's argument fails on this point. *See, Swicegood v. Lott,* 379 S.C. 346, 665 S.E.2d 211 (S.C. Ct. App. 2008) (Abuse of process claim not barred by S.C. Code Ann. § 15-78-60(17) where proof of intent or actual malice is not required); *See also, McBride v. Sch. Dist. of Greenville County,* 389 S.C. 546, 698 S.E.2d 845, (S.C. Ct. App. 2010) (Subsection 17 is no bar to malicious production claim since *actual* malice is not a required element), (emphasis added); *and, Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 642 S.E.2d 726 (S.C. 2007) (tortious interference with contract not barred). Plaintiff's negligence claim does not fall within the confines of subsection 17 and it can be no bar to liability here.

C. The Defendant City is not entitled to Quasi-Judicial Immunity

Subsections 1 and 2 of the §15-78-60 (SCTCA) govern quasi-judicial and administrative immunity. With regard to both subsections the Defendant has cited to no and cannot cite to any South Carolina law asserting that actions of Defendant City or a similar body are shielded from liability pursuant to §15-78-60(1) or (2). The Plaintiff's negligence actions here does not lie against the code board of appeals; but rather, against the Defendant City in knowingly allowing the occurrences before and following that board hearing to take place, as described above.

D. The Defendant City is not otherwise Entitled to Immunity under S.C. Code Ann. §15-78-60(4)(12)(13) or (23).

Section 15-78-60 (SCTCA) subsections 4, 12, 13, and 23 concern respectively: compliance with the law, licensure, regulatory inspections, and prosecution of judicial or administrative proceedings. While Plaintiff's employment by its very nature and the processes he underwent touch on such matters, to characterize his claim as being precluded by these provisions is a straw-man argument. Furthermore, based on the evidence submitted a reasonable

jury could conclude that Gross Negligence has been established which overcomes explicitly subsection 12 dealing with licensure. *See, See, Jarvis v. Green,* 257 S.C. 558, 186 S.E.2d 765 (1972). The Plaintiff's Negligence claim here concerns the actions of the Defendant City, in supervising and investigating the Individual Defendants, after it's governing officials knew or should have known of their conduct.

The Plaintiff's Negligence claim is not precluded by the provisions of the SCTCA or otherwise barred.

II. THE PLAINTIFF HAS ESTABLISHED A TRIABLE CLAIM OF CIVIL CONSPIRACY.

To establish a claim for civil conspiracy a Plaintiff must show three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, which (3) causes the Plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989). To establish the first two elements the plaintiff needs to show "additional acts in furtherance of the conspiracy." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). The third element, special damages, must be satisfied to prevent a double recovery. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct. App. 2000); *See Also, Anthony v. Ward*, 336 Fed. Appx. 311, 318, C.A.4 (S.C.), (2009) (attached) (interpreting South Carolina civil conspiracy law and recognizing: "The case law makes clear that the concern is with the plaintiff receiving a double recovery".)

The Individual Defendants assert that the Plaintiff's Civil Conspiracy Claim fails due to intra-corporate immunity and under Section 15-78-70(a) of the SCTCA. The Plaintiff's claim is not barred by Intra-Corporate Immunity because the Defendants were acting outside of the

course and scope of their employment. The Defendants SCTCA argument is unpersuasive for the same reason.

A. Intra-Corporate Immunity does not bar the Plaintiff's Civil Conspiracy Claim.

Civil conspiracies between the employees of a principal and an agent are recognized in South Carolina where the employees and agents acted outside of the scope of their employment. *See*, *Anthony v. Ward*, 336 Fed. Appx 311 (4th Cir. 2009) (unpublished); *citing*, *McMillan v. Occonee Memorial Hospital, inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 886 (2006). Although, the acts of an entity's employees and agents are usually considered the acts of an entity; where those acts fall outside of the scope of employment or agency, the employees and agents may be liable for Civil Conspiracy. *Anthony,* 336 Fed. Appx 311; *See also*, *Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010); *see also*, *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986); (*holding*, "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment"). Furthermore, whether or not the defendants did or did not act within the course and scope of their employment is a fact question not properly addressed on a summary judgment motion. *See*, *Broyhill v. Resolution Mgmt. Consultants*, 401 S.C. 466, 477-478, 736 S.E.2d 867, 872 (S.C. Ct. App. 2012). Plaintiff has proffered a plethora evidence that the Individual Defendants combined together to target him; to hamper his business contracts; to undermine his code board appellate rights, and, among other things, to deteriorate his name in the community. Such conduct, if proven, is most reasonably inferred to be outside of the confines of the Individual Defendants' scopes of employment. Therefore, the Plaintiff's civil conspiracy claim is not barred by intracorporate immunity.

B. Section 15-78-70(a) is not Implicated Here.

Subsection (a) of §15-78-70 precludes liability for torts committed by government employees while they are acting within the course and scope of their employment. Subsection (b) of that same provision states:

> Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, *intent to harm,* or a crime involving moral turpitude. (emphasis added)

Therefore, the Individual Defendants' argument on this point fails for two reasons. First, the conduct at hand took place outside of the course and scope of the Individual Defendants' employment with the Defendant City. Second, civil conspiracy by its elemental nature involves intent to harm. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989).

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests that the Defendants' Motions for Summary Judgment be denied, and that this action proceed to a jury trial.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC

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February 5, 2014
Columbia, SC

EXHIBIT ONE

(EXCERPTS: DEPOSITION OF FRANK "DOC" HAYNIE)

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF RICHLAND	) C/A #: 2013-CP-40-7392
Frank "Doc" Haynie,	)
Plaintiff,	)
v.	)
The City of Forest Acres Mark M. Williams, Shaun Greenwood & Clark Frady in their Individual Capacities,	)
Defendants.	)

DEPOSITION OF

FRANK "DOC" HAYNIE

****

Monday, September 16, 2013
10:25 a.m. - 4:20 p.m.

The deposition of FRANK "DOC" HAYNIE taken on behalf of the Defendant at the law offices of J. Lewis Cromer, LLC, 1522 Lady Street Columbia, South Carolina, on the 16th day of September, 2013 before Amy G. Byrd, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES

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Also Present:
Shaun Greenwood
Mark M. Williams

INDEX

MR. HAYNIE: PAGE
MR. SHEALY . . . . . .EXAMINATION. 3
MR. COX. . . . . .EXAMINATION. 174
MR. SHEALY . . . . . RE-EXAMINATION. 253
Certificate 257
Signature 258

EXHIBITS

(No Exhibits were Marked for this Deposition)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page 257.

Q: And how old are your grandchildren?
A: Nine and 10, no, 10 and 11 now, they just had birthdays.
Q: Okay. And I know that you have a construction business, correct?
A: Yes.
Q: You've been in the construction industry for some 40 years ---
A: Yes.
Q: --- is that right?
A: Yes.
Q: All right. Do you do anything else to produce income other than your construction business?
A: No, not anymore.
Q: All right. How about your wife?
A: She is a manager for SCE&G.
Q: How long has she done that?
A: Almost 40 years.
Q: A manager, does she work at the big office across the river?
A: Yeah, across the river.
Q: Okay. And what area does she work in?
A: Right now she is the -- heads up all the business offices. She runs all their -- and she has a big chunk of the customer service

A: It was Francis Marion Builders, Inc.
Q: Did you serve in the military?
A: No.
Q: And how far did you go in school?
A: I got a degree from Georgia Tech.
Q: All right. And what was that degree in?
A: Industrial Engineering.
Q: Okay.
A: I've got some side education degrees with the Georgia Police Academy.
Q: Okay.
A: I graduated from there.
Q: Okay.
A: And I took some courses in Charlotte in real estate and real estate law.
Q: When did you get your degree from Georgia Tech?
A: 1969.
Q: And any -- I mean you mentioned some of this other side education that you had, but did you ever pursue any post-graduate training toward a masters?
A: I briefly took a shot at a masters degree, that was probably 15 years ago, but it didn't -- the opportunity went away and therefore there was no point in getting it.

do the drawings?

A: No, because the job never happened. I would have been paid.

Q: All right.

A: But it never -- we never -- we graduated from I was doing the work to someone else was doing the work.

Q: All right.

A: She used my drawings. But they're friends, you know, I don't charge for every time I issue a statement.

Q: Had you specked out or estimated what the cost of this job would be?

A: Yeah.

Q: How much did you estimate it to be?

A: We guessed -- estimated it to be about 60, when I was doing it, it was about $60,000 dollars.

Q: And you talked to Ms. Graham about that?

A: Yeah.

Q: Where work permits -- did you pull any work permits for ---

A: No.

Q: --- the job?

A: No.

Q: No?

A: Wasn't allowed.
Q: Never did that.
A: Was never allowed. That would be stupid.
Q: Well, when you say you weren't allowed, I mean, did you attempt to do it and you were stopped?
A: It would be stupid if I did it.
Q: All right. You just -- and you made that decision your self that it wasn't ---
A: She made that decision.
Q: --- going to happen?
Q: I was not going to be the contractor and I was to stay out of it.
Q: All right. And she made that decision because of what you said to her about the problems you were having in Forest Acres?
A: Well, they ---
MR. PORTER: Object to the form. You may answer.
A: They heard all of the things that were going on. I asked -- Eddie Richmond was in business with Mayor Brunson's daddy, okay, so Mayor Brunson knows Eddie. I was explaining to Eddie what was going on. I wanted Eddie to call Brunson and find out why I had this problem and he did.
Q: Okay.

A: And it was clear, I had a problem. And it was also clear that maybe I shouldn't do this job because it would be a problem. It would just be a disaster.

Q: Okay. But that's -- but ultimately -- what I'm trying to figure out is, you told either Dr. Richmond and/or Ms. Graham about problems you were having with Forest Acres, correct?

A: They were in the room when I was talking to people. It was like -- I was sitting at their dining room table. I also called councilwoman Dukes and Mayor Pro Tem, what's his name over there? He's a councilman now. Kurt Riley. You know. You know, I didn't know what was going on. But I knew I was out of business.

Q: Okay.

A: Because I was public enemy number one.

Q: All right. So you were having these conversations on the telephone while you were in Dr. Richmond's house?

A: A couple of them, yeah. Because -- but I was explaining to him too, you know. Because if I'm going to ask him to find out what my problem is, he kind of needs to know why I need to know. So I explained it to him.

Q: I know about the lawsuit against -- with the Cash's.
A: Yeah.
Q: All right.
A: But I think you know about all of the others too.
Q: What other litigation have you been involved in with any other people? I'll limit it to vendors, customers, anything like that. Have you ---
A: No.
Q: --- been involved in any other suits?
A: No, I've been -- in all of my career, one time 30 years ago, that was my one and only time for ever being in a case. Henry McMaster handled it and it was 30 years ago. But I -- I get along with everybody.
Q: Okay. And the lawsuit against the school district was that you were blaming the school district for causing water to be diverted into the house on Florawood?
A: Yes.
Q: Okay. When was the first time that Clark Frady -- that you had an interaction with Clark Frady?

A: When he showed up to inspect the footings on the second shed in 2011.
Q: All right. This shed was being constructed where?
A: Right next to the other one.
Q: All right. At the Brentwood house?
A: Yeah.
Q: Okay.
A: It was on Brentwood.
Q: Okay. Now, what gave rise to the need for a second shed?
A: Well, because the flooding rendered the house inhabitable. Okay. It was not -- the grandkids were allergic to the mold. My daughter was allergic to the mold so she lived in a little portion of the house that didn't have air conditioning and we needed a place to just store her junk.
Q: Okay.
A: It was basically just a storage room for her stuff.
Q: Okay.
A: Otherwise it would get all moldy being in the other part.
Q: All right. So, you had never had any

didn't know his butt from a hole in the ground. And he said that this is a ten by ten -- it's a little -- like you get at Sears, a little storage shed. It's just a little itty bitty thing. Okay. He said that the six by six posts for this little bitty building needed to be three feet in the ground, encased by two feet of concrete. That's what he said, because of the uplift. Okay. I mean, it was just the biggest garbage conversation you ever heard. He said I can't -- well, that's when it became pretty clear that he came with an agenda. It was to stop us. And it never got better.

Q: Okay. So he wouldn't -- he wouldn't let you --

-

A: He did not approve the footings. He said he needed drawings. Which I did the drawings, produced the -- gave them to him the next day. One of them was copied straight out of the code book. Okay.

Q: Which code book?

A: The 2006, I think. The building code book, you know.

Q: Well, I mean, I've seen some materials exchanged here and you were quoting the 2009 --

why I was having this problem, okay?

Q: All right.

A: Because it's just never happened. Never happened before. So I called his old boss and he said well, you just might have a problem because he don't know what he's doing.

Q: Who was his old boss?

A: Smith.

Q: Okay.

A: Smith over at Richland County.

Q: Okay. First name?

A: Mike Smith.

Q: Mike Smith?

A: Yeah.

Q: Okay.

A: And I said, well, I don't want to have to go to Mark Williams for this stupid stuff. He said well, you might have to. Okay. And so I go in, he said -- and what he told me was, he said go in there and ask Clark to cite specific code violations. You know, just show you the code violations that you have. Okay. So I don't study the code book, but for that I did study the code book. In the code book there's exactly one paragraph that has to do with

buildings like we were doing. One paragraph on -- what is it called? On posted beam structures. There's one paragraph that basically says it's got to be deep enough in the ground so it can't kick out. That's all. That's it. One -- it's four lines. That's all there is that relates to this structure. So, I go in there to see Clark Frady and he's very -- he is very clear. He's got a code book, he's highlighting stuff and he starts going down the list. I said Clark, it has nothing to do with what we're doing. That is pertaining to something else. He went to two or three things. I said there's one -- I showed him where this is the only thing in the code book that has to do. Well, that's when he said well here in the code book it says you shall do whatever the building official says. That's what we call the God card.

Q: You call that the God card?

A: In the business, when the building official can't come up with a better idea, he says do what I say. That's the God card. And it fits Clark because he's got a God complex.

Q: Okay.

decided the best thing to do was for him to write on his approval that it needed a professional engineer to design the structure to correct the problems and that was on the permit. They've got it in their file. It's on the permit. And I was telling Frady about that and he needed to be -- because Alquza had started back up, he was beginning to do work. He had been doing just little cosmetic things, but he was starting to work in earnest on opening that restaurant and I knew that there would be an inspection coming up and that he -- and that Frady needed to be apprized of that.

Q: Okay.

A: So I told him about it. And then about -- that's a whole another thing. They got together and they decided that the best thing to do was to fire Doc and he -- that's when they really screwed up the code. Because they said that he needed to give them new architectural drawings. Well, the code doesn't say the same architectural drawings aren't good through the process of the job. But Clark tells him that he needs new architectural drawings, which is not by the code. And that he

needs a new permit, which is not by the code. He just needed -- it just needed to be renewed. And when we got into that argument, it finished ultimately, Clark told Alquza to fire me and he would give him a permit, which is illegal. You cannot give a commercial job -- you cannot give the owner the general contract permit, but they did. Well, actually, what they did was, they wrote the permit for the electrical contractor who was my contractor. They gave the general contract to the electrical contractor who was not a general contractor.

Q: All right. I'm ---

A: You confused?

Q: Well, I'm just -- my original question was how much time elapsed between the stop work order that was issued for the second shed on Brentwood in March of 2011 and the stop work order that was issued to the Covenant Road project?

A: Are you allowed to tell me some dates?

Q: I'm just asking what you know.

A: Well, it was sometime after the SWAT team. Because after this, we went through -- we went to this appeal thing.

Q: Right.
A: We lost the appeal so then we, the permit was refunded. We went to a -- we dropped down to a 100 square foot building, which was, did not need a permit. It was refunded and then about two or three weeks later, we got into an issue with Frady on the property and we -- where we had all the police were out there. When the SWAT team that came out there and then ---
Q: You mean a Special Weapons Assault Team showed up?
A: You know what, when you're -- when the guy who, Joe Fraley -- everybody knows my phone number, my cell phone number, my email address and I know theirs. All he knows is that he can come out and he can call me and say Doc, would you move this and Doc will do it. I will do whatever he tells me to. Well, I did some work for a neighbor on Sunday morning. Okay. No one knew that, you know, what I was doing. On Monday morning at 7:30, no one could have called, you know. Frady wasn't at work Sunday. No one was there but Sunday morning I was met by Joe Fraley ---
Q: Sunday or Monday.

A: Monday. Monday morning. At 7:30, before Forest Acres starts working and four police officers -- to do what? To move a little pile of trash that took exactly 15 minutes to move. Okay. But you might say it was overkill. And Fraley, he was obviously in -- everybody was obviously on the phone. They were all communicating with each other because Fraley was late to the party. He drives up and he says wait until I go get my official truck. So I can't remember her name, but there was a girl officer and she says, you will have to wait here until he gets back. Okay. I said why? And she said because they're going to write you up. And I said we need all of this? And she said you just have to wait here. Okay. And so I'm through. We sit and wait and Fraley comes back and he cites me with these four citations. It was a big deal before 8:00 o'clock in the morning. Before anybody is at work.

Q: All right. Is it fair to say then that the stop work order on Covenant Road was several months after the stop order ---

A: No.

Q: --- on Brentwood?

A: After that, that was when all out war broke out and when it was determined that Alquza was going to have a problem because of what's going on. So I tell Alquza that he needs to go get his permit renewed and it was probably two weeks later.

Q: After?

A: After that confrontation.

Q: All right. Let me go back. You eventually file your appeal with the Forest Acres code?

A: Yeah, they had their very first meeting ever.

Q: And they ruled against you, correct?

A: Clark Frady ruled against me.

Q: You received a ruling from ---

A: No.

Q: --- the Board of Appeals?

A: No. That's actually required, but they did not give that. It was the biggest monkey court you ever saw. There were three people there. Clark Frady was one of them. There was an old inspector buddy of Frady's who was there. They were busy chatting. There was a real estate guy there, who didn't know diddly and then there was an engineer from some group. The engineer was the only one of the group that

had a clue what I was talking -- all I was doing was talking about the engineering. Uplift and so forth. He was the only one who knew what I was talking about. And after I finished my presentation, we go out and it took them 30 minutes. Apparently, he argued -- he must have argued vociferously for my case because it took 30 minutes before we walked back in there and he said you're turned down. You're done. Basically that was Clark Frady that turned us down, you know. But he never gave a written thing to me.

Q: All right. But you received a ruling from the code board of appeals?

A: A verbal ruling that day.

Q: All right. And in response to that, you just changed the size of the ---

A: Dropped it down to 100 square feet and Mark refunded the permit fee.

Q: All right. You changed the size of the project, of the shed ---

A: Right.

Q: --- correct?

A: Yes. So it was exempt.

Q: All right. Now, when in the course of all this

A: That's when he wrote me up for four citations.
Q: What were the four citations?
A: Doing business at the property for -- one was for trash. One of them was for not cutting the grass.
Q: I'm sorry, for not cutting the grass?
A: Not cutting the grass.
Q: All right.
A: And I don't remember what the other one was. There were four of them. You know, I don't know.
Q: You remember but you don't remember the forth one?
A: No.
Q: Okay.
A: They were all bogus.
Q: All right. What happened to those tickets? What happened to those citations?
A: They were -- I went to court. That's when Lewis went to court. I don't really understand what happened. There's a legal term for something like one was -- the no cutting the grass, I gave Lee Holloway a plat that showed it wasn't -- that it was actually the school property, the school had not cut their grass,

not me. It was -- the grass they were concerned with was on school property. So I had to deliver a plat to him just to show him that it wasn't my property.

Q: Okay.

A: Okay. And then two of them had some legal word and I didn't -- I didn't really understand what was going on.

Q: Did you pay a fine for any of those?

A: Yeah, I think so, but I'm not sure how much. It was -- Lewis handled all of that.

Q: Okay. But you paid a fine for one of the four?

A: I don't know.

Q: But you paid a fine of some kind?

A: Yeah.

Q: Okay.

A: One of them -- it was like one of them was left over and I do remember the day in court, although I didn't have a clue, but Clark didn't have a clue what was going on either. But he was really pissed off with Lee Holloway for me not having to -- he thought we -- that it all would all be dismissed.

Q: All right. How did you know that he was really mad at Lee Holloway?

EXHIBIT TWO

(EXCERPTS: DEPOSITION OF BARRY EPPS)

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

- - -

FRANK "DOC" HAYNIE,	:	CIVIL ACTION NO. 2012-CP-40-7392
Plaintiff,	:	
vs.	:	
THE CITY OF FOREST ACRES, MARK M. WILLIAMS, SHAUN GREENWOOD AND CLARK FRADY IN THEIR INDIVIDUAL CAPACITIES,	:	
Defendants.	:	

- - -

Monday, December 9, 2013

- - -

ORAL DEPOSITION OF BARRY EPPS, taken at Gallivan, White & Boyd, 1201 Main Street, Suite 1200, Columbia, South Carolina, commencing at 2:10 p.m., before Cynthia First, a Federally Approved Registered Professional Reporter, Certified Realtime Reporter and Notary Public.

- - -

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

APPEARANCES:

J. LEWIS CROMER & ASSOCIATES, LLC
BY: J. PAUL PORTER, ESQUIRE
1522 Lady Street
Columbia, South Carolina 29211
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pporter@jlewiscromerlaw.com
Representing the Plaintiff

GALLIVAN WHITE & BOYD, P.A.
BY: A. JOHNSTON COX, ESQUIRE
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jcox@jwblawfirm.com
Representing Defendant The City of Forest Acres

ADAMS AND REESE, LLP
BY: LYNDEY RITZ ZWING, ESQUIRE
1501 Main Street, Fifth Floor
Columbia, South Carolina 29202
803-212-4958
lyndey.zwing@arlaw.com
Representing Defendants Mark M. Williams,
Shaun Greenwood and Clark Frady

ALSO PRESENT:

Frank "Doc" Haynie

Mark M. Williams

Shaun Greenwood

(INDEX AT REAR OF TRANSCRIPT.)

- - -

A Uh-huh.

Q And is early on in your employment, that's when we were going through those notes?

A October and those type -- yeah, October 2007.

Q 2007, 2008?

A Uh-huh.

Q And those were the times that neighbors were calling and complaining about Doc Haynie?

A There were a lot of times that were generated that I was told to go investigate the property. I don't know if it was complaints generated.

But some instructions were ongoing instructions. Just like I said, I was instructed to go regularly by the property to check it, not necessarily because it was a complaint, but because they wanted to make sure it was maintained.

Q I guess my question is: Were the complaints about the property hyper or was the -- or was the attention being given to him by the city hyper? Do you understand my question?

A Uh-huh.

Q I don't know if you can answer it.

A Well, it's one of those things where hired

officials are governed by elected officials. And their jobs can be made uneasy so they want to make sure things run as smoothly as possible.

So whoever complains, whoever it is, they want to make sure it was addressed to the satisfactory point. And if a person continues to complain, and they happen to be a prominent person in the community or something, they get special attention.

That happened at the City of Columbia quite often with me. I was told to drop everything I was doing and go to certain properties. And it was no different for City of Forest Acres. There were certain people who were more vocal and squeakier than others, so they got the oil first.

Q We talked about that in Mr. Haynie's deposition, that the squeaky wheel generally gets the grease.

Do you know if any of these people complaining about Mr. Haynie's property were in any way important people?

A I do not know their status.

Q So basically, what you're saying is all you know is you were -- felt you were told to go by Mr. Haynie's property more than you were told to

about other properties?

A Excessively, yes.

Q And you don't know if that excessiveness was because people continued to complain or if it was because of some other reason?

A Preventive maintenance, maybe. I don't know.

Q All right. On 6 you say, I once heard Mark Williams the city manager remark -- it's paraphrased -- I have no use for Doc Haynie.

A Uh-huh.

Q Tell me about that.

A Basically, if I recall, it would have been sometime probably near the end of 2008, beginning of 2009. I can't remember the exact context, but for some reason we were talking about contractors, and I happened to mention Doc Haynie as a potential contractor. And he basically said, "I have no use for Doc Haynie."

And that just implied to me that if Doc Haynie were the only contractor to do it, he wouldn't have even consulted him.

Q Give me more detail about the conversation.

A That's about all I can do. It was just a

MR. PORTER: Same objection.

THE WITNESS: I really don't know. I just know that it was, "We need to check this out. People seem to think construction was going on there. Check for commercial debris, if you would."

BY MR. COX:

Q Number 8 is the one that troubles me. Okay?

A Uh-huh.

Q You said Mr. Williams and Greenwood were targeting Mr. Haynie, is your opinion.

A Uh-huh.

Q Let's start with that. What evidence do you have that Mr. Williams and Mr. Greenwood were doing anything other than responding to complaints from neighbors --

MR. PORTER: Object to form of the question.

BY MR. COX:

Q -- when they were asking you to go out and check these things out?

MR. PORTER: Same objection.

THE WITNESS: Again, just excessive, what do you call it -- I'm losing my words.

Patrolling the area, those types of things, just seemed to be targeting somebody to make them aggravated enough to just go away and leave you alone. It's just a personal opinion.

Like I said, again with the instructions to continue to go to the area to check it regularly seemed quite excessive for a small work shed that was being done on the property.

BY MR. COX:

Q And, again, as we've said, I guess, over and over again, the reason you were asked to do that could have been because people were complaining about it?

MR. PORTER: Object to the form of the question.

THE WITNESS: It could have been preventive maintenance, too.

BY MR. COX:

Q But you agree that neighbors could have been complaining and calling over and over and over again about these problems?

MR. PORTER: Same objection.

THE WITNESS: In my opinion, highly unlikely.

BY MR. COX:

Q Why is that?

A Because of the extensiveness of what I was told to do. It's not practical or realistic to do that. Even in a small jurisdiction, I was never told to do anything like that with the City of Columbia, and it just seems quite extensive and strong-arm-type situation.

Q In your notes you indicated that you went out there four times.

A Uh-huh.

Q Okay. And that you took pictures on those four occasions.

A Right.

Q Did you go out there and take pictures whenever you went out there?

A Not every time, no.

Q Were there other times that you went out there that you didn't put in your notes?

A Yes.

Q Do you know when those times were?

A No. It may be in my work log, but I don't have access to those. I have personal handwritten work logs, but -- and journals that I maintain, but those have since been destroyed and done away with.

Q I understand. So you don't know if they

Q And has Doc Haynie ever lied to you?

MR. COX: Object to the form.

THE WITNESS: Not to my knowledge.

BY MR. PORTER:

Q Is Doc Haynie a good contractor?

A In my opinion, yes.

Q When someone's permit lapsed, was it typically a big deal getting renewal?

A No.

Q Do you recall whether or not it was made a big deal for Doc Haynie?

A I don't think it was. Just a matter of, like I say, instructing him he needed a new permit. He came in within a reasonable amount of time and got it taken care of.

Q And you don't think it was for the situation you were involved in; is that correct?

A I couldn't really conclude that.

Q Were you ever required to take pictures of other trash cans or was that just for Doc Haynie?

A Just Doc Haynie.

Q Were you ever required to investigate toys in a yard for anyone other than Doc Haynie?

A No.

Q On Number 8, the affidavit, paragraph 10.

EXHIBIT THREE

(AFFIDAVIT OF BARRY EPPS)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Frank "Doc" Haynie,	)	C/A No.: 2012-CP-40-7392
	)	
Plaintiff,	)	**AFFIDAVIT OF JAMES BARRY EPPS**
	)	
v.	)	
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their Individual capacities	)	
	)	
Defendants.	)	

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, James Barry Epps am a competent adult and can testify truthfully.

2. I hereby testify voluntarily of my own knowledge.

3. I am an Ordained Pastor at Stillwater Baptist Church in Leesville, South Carolina; from July, 2007, until October, 2009, I was a building official for the City Forest Acres ("City").

4. I was terminated from the City for failure to obtain a final electrical and building code certification within my first two years of employment; as well as, for reasons related to time I had to take off for a medical condition.

5. Early on in my employment I began to observe a hyper-vigilance toward and a particularized focus upon contractor Frank "Doc" Haynie.

6. I once heard Mark Williams the city manager remark "I have no use for Doc Haynie" (paraphrased).

7. I was often directed by Mr. Williams and Shaun Greenwood (code official and later assistant city manager for the City) to monitor Mr. Haynie's home, check in dumpsters on his property, and find evidence of code violations committed by Mr. Haynie—I never uncovered any major code or other violations on the part of Mr. Haynie.

8. In my opinion the City, by and through, Mr. Williams and Mr. Greenwood were targeting Mr. Haynie; furthermore, it is my belief that, Mr. Williams essentially wanted to run Mr. Haynie out of town.

9. Early on in Mr. Greenwood's career at the City, Mr. Greenwood ticketed several cars parked on the shoulders and in the yards outside of A. C. Flora High School. Many Forest Acres residents and others complained about such and the tickets were rescinded.

10. Thereafter I was, asked by Mr. Greenwood, allegedly on behalf of Mr. Williams, to go check out solely the cars parked in Mr. Haynie's yard across from A. C. Flora, but not other similarly parked cars in other yards; this was unusual, not only because the focus was solely on Mr. Haynie, but also because ticketing cars was wholly outside of my jurisdiction.

11. In my opinion both Mr. Williams and Mr. Greenwood disliked Mr. Haynie; further, it is also my opinion that their distaste for Mr. Haynie was illustrated by their directives to specifically monitor and over-emphasize building codes and other ordinances with regard to Mr. Haynie.

FURTHER AFFIANT SAYETH NAUGHT

James Barry Epps

SWORN to before me this
1 day of November, 2013.

Notary Public for South Carolina
My Commission Expires: September 9, 2021

EXHIBIT FOUR

(EXCERPTS: DEPOSITION OF CLARK FRADY)

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF RICHLAND	) C/A #: 2012-CP-40-7392
Frank "Doc" Haynie,	)
Plaintiff,	)
v.	)
The City of Forest Acres Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,	)
Defendants.	)

DEPOSITION OF

CLARK A. FRADY

****

Friday, January 3, 2014
2:07 p.m. - 4:58 p.m.

The deposition of Clark A. Frady, taken on behalf of the Plaintiff at the law offices of Adams & Reese, LLP, 1501 Main Street, Fifth Floor, Columbia, South Carolina, on the 3rd day of January, 2014, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

APPEARANCES

J. Paul Porter, Esquire
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Mark M. Williams, Shaun Greenwood
and Clark Frady
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Also present:
Frank "Doc" Haynie
Mark M. Williams
Shaun Greenwood

INDEX

MR. FRADY: PAGE

MR. PORTER . . . . . .EXAMINATION. 4

Certificate 132

EXHIBITS

Plaintiff's Exhibit Number One 119

(Affidavit of Margo Pierce)

to get to another property and I would glance over, so.

Q: So it's your testimony, though, that you would drive by at least once a week to check out Doc Haynie's property?

A: Yes.

Q: Would y'all get complaints once a week about Doc Haynie's property?

A: Some weeks we'd get multiple complaints and some weeks they may not. I don't know; I don't answer the phones inside to know. I just know I get a sticky note or I would get an email or something. And a lot of times, it could have been one of the staff members who might have received a phone call or an email, or it could be that Mr. Williams wanted an update and I wanted to provide him with an update on the events going on on Brentwood, especially with the parking situation that we were having. It just so happens that Brentwood, his, or the house in question is on Brentwood, and we were having a lot of issues on Brentwood. So I wouldn't necessarily say we were eyeing his property once a week, but the fact that we ride by, anything in plain view we would observe and

EXHIBIT FIVE

(AFFIDAVIT OF MARGO PIERCE)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Frank "Doc" Haynie,	)	C/A No.: 2012-CP-40-7392
	)	
Plaintiff,	)	**AFFIDAVIT OF MARGO PIERCE**
	)	
v.	)	
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their Individual capacities	)	
	)	
Defendants.	)	

I HEREBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, Margo Pierce am a competent adult and can testify truthfully.

2. I hereby testify voluntarily of my own knowledge.

3. I am a recruiter Aloricka in Mobile, Alabama; from October, 2004, until July 7, 2011 I was a city clerk/assistant city clerk for the City Forest Acres ("City").

4. In my employment at the City I witnessed that Mr. Mark Williams, based on his words and conduct, did not approve of me having a cordial and friendly relationship with Mr. Frank "Doc" Haynie.

6. Also, on one occasion before a building code appeal hearing for an appeal filed by Mr. Haynie, I witnessed Mr. Clark Frady calling the members of the panel to tell them how to vote.

7. I recall Mr. Williams and Mr. Shaun Greenwood directing first inspector Mr. Barry Epps and later inspector Mr. Frady to monitor Mr. Haynie in a hyper-vigilant manner, the

manner in which they were asked to monitor Mr. Haynie was uncommon compared to other builders in the community.

8. In my opinion, I feel that because Mr. Epps was reluctant to monitor Mr. Haynie in the bizarre manner prescribed by Mr. Williams he was terminated.

9. Mr. Williams, Greenwood, and Frady would often inquire about when Mr. Haynie's various building permits were to expire. This was unusual. I recall either Mark Williams are Shaun Greenwood when inquiring about the same saying "We'll get him now (paraphrased)."

10. In my opinion Mr. Williams, Mr. Greenwood, and Mr. Frady had a "witch-hunt" out for Mr. Haynie.

FURTHER AFFIANT SAYETH NAUGHT

Margo Pierce

SWORN to before me this
13th day of November, 2013.

Notary Public for Alabama

Sabrina G Parker
My Commission Expires
02/15/2017

EXHIBIT SIX

(AFFIDAVIT OF CARL HOLLOWAY)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	**CIVIL ACTION NO: 2012-CP-40-7302**
Frank "Doc" Haynie,	)	
Plaintiff,	)	
vs.	)	**AFFIDAVIT OF CARL L. HOLLOWAY**
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities	)	
Defendants,	)	

PERSONALLY APPEARED before me, Carl L. Holloway, Jr., attorney at law, who, being duly sworn, does state as follows:

1. Deponent is the city attorney for the City of Forest Acres and has served in that capacity since 1976.

2. I have known Doc Haynie for many years. His daughter and mine were friends at Heathwood Hall. I have employed his company for construction, remodeling, and repair projects at my residence and a commercial property.

3. He contacted me when he was having a problem in the Covenant Road area with East Richland Public Service District. I referred him to Chip Smith at East Richland as someone in authority with whom he could discuss his situation.

4. I believe he was also in discussions with the City about a zoning violation due to commercial equipment storage. I offered, without charge, to let him park some of his equipment on my personal commercial property for 30 days or so until he could locate a permanent site.

5. In June of 2011, a problem arose at the property he claimed to own at 1325 Brentwood Drive. The property was actually titled in the name of Lottie S. Haynie and April Sky Haynie. His daughter Sky was living in the home. He was issued tickets on June 20, 2011 for No Building Permit (5-4); Home Occupation Violation (21.146), Rubbish & Garbage-Rodent (5-2 307.1) and possibly other charges. He requested a jury trial. I negotiated the charges with his attorney, Lewis Cromer. We agreed upon a plea to resolve the issue. When the time came to enter the plea before the court, Haynie declined to do so based upon his misunderstanding of the plea as discussed with his attorney. As a result the matter was continued.

6. One of the problems at the 1325 Brentwood Drive was the construction of a detached storage building on the back of the property. Haynie and the building inspector disagreed about the application of the building code. Attempting to resolve the issue, I suggested that Haynie get a duly licensed structural engineer to review the site and plans. If the engineer would sign off on the structural integrity of the building , under his seal, the City would nolle pross the No Building Permit violation. Haynie agreed to this proposal. An engineer, Louis Mariaca, signed off on the structural integrity of the building and the City approved the plans and the building permit was duly issued. I suggested this form of resolution because I thought it was an equitable resolution of the issue.

7. Shortly before the remaining citations were to be tried, Lewis Cromer contacted me to determine if the earlier plea offer was still on the table. I reaffirmed that the earlier offer was still valid, consisting of a guilty plea to any one of the charges, at his election, with the fine to be set by the court and duly paid, and upon entering the plea, I would nolle prosse the remaining

charges. He pled guilty to the Rubbish and Garbage-Rodents violation and paid a $750 fine. The remaining charges were nolle prossed under our agreement.

8. In regard to the 1325 Brentwood Drive property, Doc Haynie felt that he was being unfairly prosecuted in that other contractors were engaged in the same home occupation violation(s). He provided my office with photographs of twenty (20) properties that he alleged were in violation. I turned these photographs over to the City codes enforcement office and requested that each property be inspected and citations issued if warranted. I understood that such an investigation was duly conducted.

9. I am unaware of any instance in which Haynie was selectively or unfairly prosecuted by the City of Forest Acres.

Carl L. Holloway, Jr.
1712 St. Julian Place
Columbia, SC 29204
(803) 929-1191
City Attorney
City of Forest Acres

SWORN to and subscribed before
me this 9th day of December, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 7/25/2023

EXHIBIT SEVEN

(MEMORANDUM OF INTERVIEW: CLARK FRADY)

Memoranda of Interview

Person interviewed: Clark Frady

Date of Interview: 07/20/2011

Beginning time: 10:00 AM

Ending time: 11:45 AM

Place of interview: Forest Acres Town Hall

Persons present: Jerry Merritt, Investigator LLR

Respondent was interviewed by Investigators Lowe and Merritt about the complaint filed against him for incompetence or misconduct.

Inv Lowe asked Respondent about his credentials and he replied that he was studying for the exams and would have them passed before his 24 month period is up in March 2012. He states that he has performed some commercial inspections based upon his "competency" which are outside his level of certification.

Respondent explained his side of the issue with the Complainant as the Complainant is trying to erect a structure outside the process of permitting and compliance with codes. Respondent also states that the building is on a residentially zoned lot but will be used for storing of commercial contracting supplies and equipment. He states that the Complainant has been difficult to deal with and refuses to comply with Respondent's direction in complying with local ordinances and the International Residential Code. Respondent has asked for engineered drawings for the 10 X 20 storage building that is being built using a post/frame type construction where the poles are not set to conventional standards. When the Respondent told Complainant to get engineered drawings, the Complainant told him he was "crazy as hell".

When asked about the Board of Appeals meeting, he acknowledges meeting with the members prior to the meeting. The Complainant's appeal was denied by the Board at that meeting.

When asked about receiving pressure from the City Administration to focus on the Complainant, the Respondent denied any such pressure and stated that he treats the Complainant the same as all citizens.

EXHIBIT EIGHT

(MEMORANDUM OF INTERVIEW: MARGO PIERCE)

Memoranda of Interview

Person interviewed: Margo Pierce

Date of Interview: 07/26/2011

Beginning time: 10:00 AM

Ending time: 11:30 AM

Place of interview: 1 Gardenwood Ct., Columbia

Persons present: Jerry Merritt, Investigator LLR

Investigators were given the name of Margo Pierce, the former clerk for the City of Forest Acres as a possible witness.

Ms. Pierce was interviewed in her home.

She was employed as an administrative assistant for the City for 7 years until she was terminated on July 8, 2011. She feels she was terminated because she had become vocal about the activities of several of the employees, including the Respondent.

When asked to be more specific about the Respondent's activities, she stated that she had observed him do several things that were not appropriate as a Building Official, she then stated he would do things like, not review plans but approve them anyway saying that he would "catch them on inspection" which would cause added expense to builders. She also stated that he would perform commercial inspections and not call for assistance from a qualified inspector and would not show up for inspections which result in calls to her office.

When asked about the Appeals Board meeting, she stated that the Respondent called the members together before the meeting and told them his side of the case and how he wanted it handled, she felt that the Complainant was "playing against a stacked deck" when he went into the meeting.

Ms. Pierce filed a sexual harassment complaint against another City official and feels that is why she was terminated.

ADDENDUM: On July 28, 2011, Investigator Lowe returned a call to Ms. Pierce who stated that she wanted to add something to her interview. She stated that there were many times the Respondent would come and set at her desk and talk about sexual issues which made her feel very uncomfortable. Investigator advised her to contact some legal counsel if she wished to pursue this issue.

EXHIBIT NINE

(EXCERPTS: EXCERPTS FROM EXPERT REPORT 8/2/11)

APPLIED BUILDING SCIENCES INC.
Engineers, Architects, and Environmental Consultants

August 2, 2011

J. Lewis Cromer
J. Lewis Cromer Associates, LLC
1522 Lady Street (29211),
Columbia, South Carolina 29201

Re: Frank Haynie v. Town of Forest Acres
Detached Storage Building
1325 Brentwood Dr.
Columbia, South Carolina 29204
ABS Project No.: 1.900.1101

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT 19
10-31-13

Dear Mr. Cromer:

Pursuant to your request, a limited visual survey was conducted at the above-referenced structure. It is understood that the adequacy of the footings of the structure was brought into question by the building inspector. The purpose of the survey was to assess the structural condition of the foundation. This report summarizes my findings.

The building is a recently constructed single story, wood framed structure of post and beam construction. It is rectangular in plan view **(Photo 1)**. The enclosed portion measures approximately 10 feet (ft) 6 inches (in.) in width. A corrugated metal roof deck is attached to wood purlins which are bearing on medium-pitch, gable trusses spaced at 32 in. on center. The trusses are bearing on double 2x8 beams attached to pressure treated timber posts. The posts are approximately 8 ft 6 in. above finish floor elevation. The walls are framed with 2x4 regularly spaced girts and enclosed with ½ in. oriented strand board (OSB) sheathing. An overhead metal door is located on the front side. For reference purposes, the front elevation of the building is facing east.

As indicated on drawings by Mr. Haynie, the owner of the property, the posts are embedded approximately 1 ft 10 in. in the ground with a layer of crusher run and are bearing on flatwise 8x8x4 concrete masonry units (CMU). A 3-1/2 in. thick, fiber reinforced concrete slab on grade was cast on grade for the finish floor surface. The slab measures approximately 26 ft in length; it was built with 8 in. thickened edges and (2) longitudinal #4 reinforcing bars. A moisture retarder barrier was placed under the slab as is recommended practice. On the higher grade of the left hand side of the building, L-shaped #4 transverse bars, spaced at 48 in. on center, provided vertical reinforcing to a 15-1/2 in. high, 3-1/2 in. thick wall. The concrete slab extends to the outside edge of the posts. It was reported by Mr. Haynie that the posts are anchored to the concrete slab.

Upon examination of the structure and review of the construction, and based on my experience with similar types of construction, I find that the foundation provided for this building is adequate for its intended use and meets the intent of the code.

This report has been prepared based on information available as of this writing and in accordance with generally accepted engineering practices and standards. ABS reserves the right to make revisions should additional information become available that affects the findings and conclusions stated herein. If you should have any questions, please do not hesitate to call.

Sincerely,

APPLIED BUILDING SCIENCES, INC.

Luis A. Mariaca, P.E.

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER No. 11977 LUIS A. MARIACA

SOUTH CAROLINA APPLIED BUILDING SCIENCES, INC. No. 2697 CERTIFICATE OF AUTHORIZATION

8/2/2011

EXHIBIT TEN

(EXCERPTS: DEPOSITION OF PAUL COWLES)

COPY

State of South Carolina)		Court of Common Pleas
)		
County of Richland)		No.: 2012-CP-40-7392
Frank "Doc" Haynie,)		
)		
Plaintiff,)		
)		Deposition of
vs.)		PAUL COWLES
)		
The City of Forest Acres,)		
Mark M. Williams, Shaun)		
Greenwood and Clark Frady)		
in their individual)		
capacities,)		
)		December 5, 2013
Defendants.)		
)		

Deposition on oral examination of PAUL COWLES, reported by Brad H. Thomas, Certified Realtime Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure, at the Offices of Adams and Reese, LLP, 1501 Main Street, Columbia, South Carolina, on December 5, 2013, at the hour of 10:00 a.m.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211

Appearances

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Representing the Defendants Mark Williams, Shaun Greenwood, and Clark Frady:

KIRBY D. SHEALY, III, ESQUIRE
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kirby.shealy@arlaw.com

negative words?

A. Both -- both the main inspector, Mr. Frady, and this other fellow, whom I don't know, were just talking amongst each other while I was sitting there trying to get a permit with Nasser. It was just negative comments they were making about Doc, I mean, but again I can't say what they were. I just can't remember. I wish I could, but I just can't remember.

Q. Do you know who initiated the negative comments being --

A. It really became a joke kind of sort of between all three of them. They were all laughing about what they were saying. I can't say who initiated it because they were all involved in it. So, you know, I can't -- I can't point a finger at any certain person. Again, like I told you, I can't give specifics on what words were used.

Q. Okay.

A. Now, I knew back then, but I didn't know it was going to come down to this where I was going to sit here.

Q. Okay. All right. So you pull a permit?

A. I got the permit.

Q. Okay. And you completed your work?

EXHIBIT ELEVEN

(EXCERPTS: DEPOSITION OF DAVID COOK)

Copy & Index

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

- - -

FRANK "DOC" HAYNIE,	:	
	:	CIVIL ACTION NO.:
Plaintiff,	:	
	:	2012-CP-40-7392
vs.	:	
	:	
THE CITY OF FOREST ACRES,	:	
MARK M. WILLIAMS, SHAUN	:	
GREENWOOD & CLARK FRADY	:	
in their individual	:	
capacities,	:	
Defendants.	:	

- - -

Friday, January 17, 2014

- - -

ORAL DEPOSITION OF DAVID COOK, taken at Gallivan, White & Boyd, 1201 Main Street, Suite 1200, Columbia, South Carolina, commencing at 2:02 p.m., before Deidre Osborne, a Court Reporter and Notary Public.

- - -

EVERYWORD, INC.
P.O. Box 1459
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803-212-0012

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(INDEX AT REAR OF TRANSCRIPT.)

with that? I mean, do you --

A. I have an opinion on it.

Q. Are you saying he was -- do you have any opinion that he was wrong or that he was --

A. My opinion at the time was, you know, "We're changing horse midstream. Why can't you allow me to finish the way it was -- it was roughed in and approved for?" And then -- but then, you know, you just -- you suck it up and say, "It is what it is," and you change it.

Q. Okay. All right.

A. Because do I understand what he was saying? Oh, I understood completely.

Q. About the --

A. Uh-huh. About the changes.

Q. Okay. All right. And you said it doesn't cost you a whole bunch of money, and it wasn't thousands of -- hundreds of thousands of dollars?

A. Correct.

Q. Tell me what the, I mean --

A. I had to take the sink from here and then run it down the wall and then re-vent it and bring it over on both sides. The only issue on this side was that it was a firewall and I had to cut

that whole firewall out to do it which means just extra labor and a Sawzall to cut all that Sheetrock.

Q. All right. And was it a turnaround issue? Is that what he was saying? There was not enough clearance for the turn?

A. He was just saying -- yeah. He was just saying that the toilet and the sink were too close together for a wheelchair accessibility or something of that nature or the code has changed to where you have to have something. And I went, "Okay."

Q. Okay. All right. All right. And so what did it -- did Alquza pay for that or how did that work?

A. At times. Here's what ends up happening. To make jobs just go --

Q. Yeah.

A. -- sometimes I just eat the cost and just make them go.

Q. Okay. Do you know what you did on this one?

A. I probably just ate it.

Q. All right. What did it -- do you know what it cost you to do that work?

A. Oh. It's probably -- with time and materials it probably cost me maybe $250.

Q. Okay.

A. But it cost someone else more to redo the Sheetrock and all that stuff that I was tearing up.

Q. Okay. All right. So you had to -- you had to take -- cut some Sheetrock out --

A. Uh-huh.

Q. -- to get to -- I guess to move some stuff. And so that --

A. Right. From what I -- from what I remember I did, yes. If not, then I'd have to cut the studs out and stuff, but I want to say it was Sheetrock.

Q. Okay.

A. I really do.

Q. All right. And so that literally is just cutting out the Sheetrock and then somebody comes behind and patches it and --

A. Right.

Q. -- putty's it and --

A. Right. Correct.

Q. All right. And how long did it take you?

that he was -- he pulled the permits, and he was going to do it so he could finish his job.

Q. Okay.

A. And that was -- I said, "Oh, okay."

Q. All right. Have you ever seen any permit that was issued to Alquza?

A. Not that I recall.

Q. Okay. Were you ever present for any conversation between Clark Frady and Alquza about anything?

A. No, because he was never there. As I said, there was -- there was never a time when we were all in the same room where -- where -- from what I remember, I don't think that Doc, Clark and myself were ever in the same -- same vicinity at the same time or same room.

Q. Got you. And you mentioned you, Doc and Alquza were never in the same room, but I asked you about Clark Frady and Alquza. You never heard any conversation between them?

A. No. Huh-uh.

Q. Okay. All right. Did -- have you ever heard Clark Frady say anything derogatory or not nice about Doc?

A. In terms of "not nice," I guess it all

depends on what you ask about "not nice." Was there the -- the issue -- I think -- I can't remember how that went about. It might have been in general a conversation with him like something of the fact of, "You better be careful if you're still doing work with Doc", in terms of getting stuck with payment or something of that nature.

Q. Tell me when you had this conversation.

A. It was -- it was like -- when was that. I have to remember how that -- how that went because it was -- it was just -- you know, in general it was more of -- I took it as a -- as him being courteous saying, "Hey, this guy might be going out of business. You want to watch what type of dealings you have with him."

So at that time I would have taken that piece of information as -- in a mental note, You might want to watch how you bill him or make sure you collect before because he might know something I don't.

Q. All right. When did this conversation take place?

A. I think that was probably just another time I was in there doing inspection and stuff because I -- he would -- he would either ask me

when someone says, you know, "Watch out," that's usually what they're indicating. It has nothing to do with -- with anything else. It's basically your pocketbook and getting taken on a job.

BY MR. PORTER:

Q. Was it uncommon to have to make -- in your experience, is it uncommon to have to make design changes of the sort you made at the Covenant Road project after the roughed-in inspection.

A. Is it uncommon?

Q. Yes.

A. It is in commercial work. But do I have to make changes? Yes. But those are subject to change orders and those are usually done -- the changes are usually caused because the owners want something changed.

It's usually not a -- an issue through a code or the city or somebody telling me I need to change something. It's usually the homeowner or the owner itself changing the plan because something they wanted or I have to change a rough-in measurement because the equipment they got is different.

Q. Is it fair to extrapolate from your answer it's uncommon to have to make those design changes at that juncture and even more uncommon to have to do so at the behest of the inspector.

MR. COX: Object to the form.

MS. ZWING: Objection.

THE WITNESS: In a bathroom?

BY MR. PORTER:

Q. Yes, sir.

A. In a bathroom, in a commercial bathroom layout, yes, it is very odd that you have to do that unless I didn't read the plans right or there was an issue with something else, like it was a load-bearing wall or I had to change -- I had to change something just for the fact that what they wanted couldn't go where they wanted it.

Q. And that is the -- Covenant Road is the -- strike that. Is Covenant Road the only job in which Frady was the inspector in which you had to make design modifications of that magnitude following the rough-in inspection?

MR. COX: Object to the form.

MS. ZWING: Object.

THE WITNESS: I would say yes because he was my only -- well, he wasn't my only

EXHIBIT TWELVE

(EXCERPTS: DEPOSITION OF SHAUN GREENWOOD)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A #: 2012-CP-40-7392

Frank "Doc" Haynie,	)
	)
Plaintiff,	)
	)
v.	)
	)
The City of Forest Acres, Mack M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,	)
	)
Defendants.	)
	)

DEPOSITION OF

SHAUN GREENWOOD

****

Wednesday, October 2, 2013
3:46 p.m. - 4:47 p.m.

The deposition of SHAUN GREENWOOD, taken on behalf of the Plaintiff at the law offices of Adams and Reese, 1501 Main Street, 5th Floor, Columbia, South Carolina, on the 2nd day of October, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES

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Attorney for the Defendants (Mark M. Williams, Shaun Greenwood and Clark Frady)

Also Present:
Frank "Doc" Haynie, Plaintiff

INDEX

MR. GREENWOOD:

		PAGE
MR. PORTER	DIRECT EXAMINATION	3
MR. COX	CROSS EXAMINATION	41
MR. SHEALY	CROSS EXAMINATION	41
MR. PORTER	REDIRECT EXAMINATION	43
Certificate		45

EXHIBITS

(There were no exhibits marked during this deposition.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

Q: How do you know, or do you know Jeff Crane?
A: I only know Mr. Crane through his calls and emails complaining about property on Brentwood.
Q: Do you know him socially outside of those calls and emails?
A: No.
Q: And we'll look at some documents later on that may help us, but to the best of your recollection, what were those calls and complaints regarding?
A: Mr. Crane was very concerned about the level of activity going on at the Brentwood property. He believed that the property was not validly permitted, and that the owner was, in fact, operating a business from his residence.
Q: Did you investigate Mr. Crane's complaints?
A: I did.
Q: Okay. And did you investigation bring you to any conclusions?
A: Yes.
Q: What were those conclusions?
A: That the permits were, in fact, expired, and that it did appear that there was a business being run from the shed at the back of the property.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Frank "Doc" Haynie, Plaintiff, v. The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2012-CP-40-7392 **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant the City of Forest Acres (hereinafter "the City" or "Defendant"), by and through its undersigned attorneys, has moved for entry of an Order granting its Motion for Summary Judgment on the grounds that there is no genuine issue of material fact, the City is entitled to immunity pursuant to the Tort Claims Act, the statute of limitations bars portions of Plaintiff's claims, and the City is therefore entitled to summary judgment as a matter of law against Plaintiff. The City submits this Memorandum in Support of its Motion.

I. INTRODUCTION AND BACKGROUND

Plaintiff filed this action on November 2, 2012 against the City and individual Defendants Mark Williams, the City Administrator, Shaun Greenwood, Codes Enforcement Officer, and Clark Frady, Building Official. The action stems from a variety allegations made by Plaintiff against the City and the individual Defendants regarding the individual Defendants' investigation of local zoning ordinances and building code violations by Plaintiff. Plaintiff alleges that the City is liable for negligence and gross negligence and Specifically, Plaintiff has alleged that the City was negligent and grossly negligent in appointing Defendants Greenwood and Frady to their positions, in failing to properly supervise Defendants Greenwood and Frady in performance of their duties, in

failing to listen to or follow through with numerous complaints made by Plaintiff, and knowingly allowing disparate and unequal application of the building codes and city ordinances. (*See* Complaint, ¶ 21). The only allegation against the individual defendants is civil conspiracy.

II. FACTS

Plaintiff has been in the construction industry for approximately forty years. (*See* Haynie Deposition, pp. 7, 13; 50, attached as **Exhibit A**). He estimates that only fifteen to twenty percent of his work was performed within the City from 2008 to 2011. (*See* Haynie Deposition, pp. 215-216).

In May 2005, City Administrator Mark Williams hired Greenwood for a position in Code Enforcement with the City based upon Greenwood's performance of similar duties for Williams while both were employed by the Town of Summerville. During Greenwood's tenure with Summerville, Williams was generally impressed with his intelligence and capabilities. After hiring Greenwood, Williams eventually recommended to City Council that Greenwood be reclassified as an assistant City Administrator once he received his Master's in Public Administration. (*See* Williams Affidavit, pp. 1-2, attached hereto as **Exhibit B**). In addition to his duties as Assistant City Administrator, Greenwood maintained his duties in code enforcement. (*See* Greenwood Deposition, p. 11-12, attached hereto as **Exhibit C**). Greenwood left the City for a similar position with the City of Cayce in April 2011.

Defendant Clark Frady was hired by Williams as the Building Official for Forest Acres in 2010. His employment was contingent upon him becoming a certified Building Official within the two year probationary period allowed pursuant to the regulation of the Department of Labor Licensing and Regulation. Frady had previously been employed by Richland County as a residential building inspector. He had performed inspections for the City on a contractual basis. In light of his previous satisfactory work with the City and his years of experience with Richland County, City Administrator Williams decided to hire Defendant Frady over other candidates for the

position of probationary Building Official in 2010. (*See* Williams Affidavit, pp. 2-3). Frady left the City in 2012 and is currently a building inspector for Richland County.

(a) Brentwood Drive allegations

Plaintiff purchased a house for his daughter at 1325 Brentwood Drive in 2006. Shortly after buying the house, he constructed a large shop in the back yard. (*See* Haynie Deposition, pp. 71). In 2007 and 2008, the City received multiple complaints from Plaintiff's neighbors on Brentwood Drive regarding various ordinance violations, including complaints that the property was a mess, Plaintiff was storing construction equipment on his property and that he was operating his construction business from the residence. (*See* Williams Deposition, p. 65, attached as **Exhibit D**; *see also* Greenwood Deposition, p. 19). Defendant Greenwood investigated the complaints against Plaintiff and inspected Plaintiff's property. Defendant Greenwood determined that Plaintiff was running a business from the shed at the back of his property. (*See* Greenwood Deposition, pp. 19, 21, 25).

Plaintiff alleges that in 2007 the Defendants started harassing him about the condition and use of the Brentwood property. He does admit that the neighbors were complaining and that the City had an obligation to investigate those complaints. (*See* Haynie Deposition, pp. 199-201). However, he believes that the City employees were overzealous in their investigation of him. He does admit that despite the numerous complaints by his neighbors, he was not written a single citation for any code violation before 2011. (*See* Haynie Deposition, pp. 201, 203) In response to the discussions with Greenwood and Epps about the use of the property, Plaintiff stated he would move his business operations to another location.

In March 2011, Plaintiff applied for and received a permit to construction a 200 foot storage building on the Brentwood property. Frady went to the residence in March 2011 to perform the

initial inspection. Frady had never heard of Mr. Haynie before performing the inspection. (Frady deposition, p. 38, attached hereto as **Exhibit E**). Frady had questions about the manner in which Plaintiff was attempting to construct the footings and foundation of the storage shed. He was concerned they were not in compliance with the applicable 2006 International Residential Code. Frady requested that Plaintiff provide a set of plans to the City describing how he planned to construct the foundation. In response to Frady's request, Plaintiff submitted the drawings a day or two later. (*See* Frady Affidavit, p. 2, attached to individual Defendants' memorandum in support of motion for summary judgment; *see also* Haynie Deposition, pp. 81-83).

Frady reviewed Plaintiff's plans and identified several concerns and additional questions. Plaintiff disagreed that the proposed footings violated the code and continued working. Frady posted a Stop Work Order on the Brentwood property until the issue could be resolved. (*See* Frady Affidavit, pp. 2-3).

During the dispute, Plaintiff sent numerous emails to Mark Williams questioning Frady's competence and his interpretation of the Code. Considering and responding to Plaintiff's complaint about the Stop Work Order, City Administrator Williams recommended Plaintiff appeal the code issue to the Forest Acres Code Board of Appeals. The Board of Appeals is the appropriate appellate body created by the City for contractors to challenge code interpretations by the Building Official. Qualification for membership on the three-member Board is determined by the building code. At the time, the Board included a building inspector employed by Richland County, an engineer, and a commercial real estate broker. (*See* Williams Affidavit, pp. 4).

The Board of Appeals held a hearing on Plaintiff's complaints on May 11, 2011, at which time it affirmed Frady's Code interpretation.[1] (*See* Williams Affidavit, pp. 4-5). The Board gave

[1] Plaintiff has essentially alleged that the Board of Appeals was a "kangaroo court." It has further been implied that Williams met with the Board prior to the hearing and this meeting and Williams' prior relationship with one of the Board

Plaintiff the options of having an engineer certify the sufficiency of the footing and foundation or adhering to the building Code. Thereafter, Plaintiff informed Defendants Frady and Williams that he would scale back the storage shed to less than 120 square feet. Such adjustments would no longer require a permit according to the Code. Williams acknowledged Plaintiff's request and confirmed that his permit fee would be refunded. (*See* Frady Affidavit, pp. 3-4). Plaintiff did not pursue any other means of redress following the Board's decision.

On June 20, 2011, Frady was called to the Brentwood property as a result of an incident involving Plaintiff and the Richland One School District. While on the property, Frady issued three citations to Plaintiff for rubbish and garbage on the property, operating a business out of the home, and lack of a building permit. (*See* Frady Affidavit, p. 5). Frady issued the ticket for the lack of a building permit, because Plaintiff had poured a foundation and monolithic slab sufficient for a 200 square foot building despite Plaintiff's assertion that he was scaling back the building to 120 square feet.

Once again, wishing to accommodate Plaintiff as much as possible, City Attorney Holloway compromised a deal with Plaintiff in which Haynie agreed to plead guilty to one of the citations and have a licensed engineer certify the foundation in exchange for nolle prossing the other two citations. Haynie plead guilty to the rubbish and garbage violation and paid a $750.00 fine. Haynie hired Louis Mariaca, an engineer, who signed off on the structural integrity of the building. (*See* Holloway Affidavit, pp. 2-3, attached hereto as **Exhibit F**). The other two citations were *nolle prossed.*

(b) Covenant Road allegations

---

members improperly influenced the Board's decision. Williams and Frady have denied that any meeting took place and there is no evidence that the members were unduly influenced in any way.

Plaintiff contracted with Nasser Alquza in 2008 to act as a general contractor in renovating commercial space on Covenant Road in Forest Acres. The job stopped and started over several years. At some point during the renovations, Alquza and Plaintiff had a disagreement over the sufficiency of some worked performed by a subcontractor hired directly by Alquza. Plaintiff reported Alquza to the LLR, because he did not want to be held responsible for the faulty workmanship. Thereafter, Alquza fired Plaintiff as his general contractor. (*See* Haynie Deposition pp. 128-29).

In April of 2011, Alquza contacted the City about moving forward with the project. At that time the building permit had expired and needed to be renewed. Alquza asked Greenwood and Frady how he could move forward on the project without Plaintiff being his general contractor. They told him that he could find another contractor and move forward. Plaintiff alleges that Greenwood and Frady told Alquza that he had to fire Plaintiff in order to renew his permit, but he has no competent evidence that this took place.[2] Mr. Alquza informed Frady that Plaintiff was finished with his portion of the project and that Plaintiff's services were no longer required on the project. (*See* Frady Affidavit, pp. 4-5; *see also* Haynie Deposition, pp. 115, 121, 123).

City Administrator Williams has made it clear that at no time has he instructed any Code Enforcement Officer or Building Official to issue citations in his tenure at with the City. Rather, Williams testified that he informed Defendant Frady and Greenwood to use their best judgment and issue citations if they thought such measures were warranted under the circumstances. Likewise, Williams testified Greenwood did not require day-to-day supervision and it was within Greenwood's judgment to issue citations when he felt it necessary to do so. (*See* Williams Affidavit,

[2] Plaintiff testified in his deposition that Paul Cowles, one of his subcontractors told him that he heard Greenwood tell Alquza that Plaintiff was a very bad contractor and that he needed to fire him before the City would allow him to move forward on his project. (*See* Haynie deposition, pp. 129-130). However, Cowles denied either hearing or telling Haynie any such thing. (*See* Cowles Deposition, pp. 69-71, attached hereto as **Exhibit G**).

pp. 2; 3). Even Plaintiff's friend, City Attorney Holloway, has stated he is "unaware of any instance in which [Plaintiff] was selectively or unfairly prosecuted by the City." (*See* Holloway Affidavit, p. 3).

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Gabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the non-moving party." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). However, "[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings[,] [but] must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). Finally, when reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).

III. ARGUMENT

A. Plaintiff's Complaints of Alleged Wrongdoing Prior to November 2010 Must be Dismissed Pursuant to the Applicable Statute of Limitations

The South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 to –220 (Supp. 2012), governs all tort claims against governmental entities and provides the exclusive remedy against the

City. *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (2004). The Act is a limited waiver of governmental immunity. *Moore v. Florence Sch. Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994). "The provisions of the Act establishing limitations on and exemptions to the liability of [governmental entities] must be liberally construed in favor of limiting liability of the State." *Hawkins*, 358 S.C. at 292. 594 S.E.2d at 563 (citing S.C. Code Ann. § 15-78-20(f)).

Plaintiff's allegations of any alleged wrongdoing prior to November 2010 must be dismissed pursuant to the statute of limitations. Many of Plaintiff's grievances stem from allegations of incidents taking place as early as 2007. However, pursuant to the Tort Claims Act, the statute of limitations for claims against a governmental entity is two years after the date the loss was or should have been discovered. S.C. Code Ann. § 15-78-110. Because Plaintiff filed this action on November 2, 2012, the statute of limitations bars Plaintiff's claims against the City to the extent it is founded upon actions that took place prior to November 2, 2010. In addition to any complaints of alleged malfeasance taking place prior to November 2, 2010, the applicable statute of limitations also necessarily bars any allegations of negligent hiring against the City, as Frady and Greenwood were hired by the City prior to November 2, 2010.

B. Plaintiff's Allegations Against the City Must be Dismissed

Plaintiff has stated very vague and general allegations of wrongdoing against the City, such that Plaintiff's Complaint is insufficient in its allegations against the City. *See Moore v. City of Columbia*, 284 S.C. 278, 326 S.E.2d 157, (Ct. App. 1985) (for a Complaint to be sufficient, the Complaint must inform the Defendant of the ultimate facts which will be proved at trial). To the extent these vague and blanket allegations constitute a sufficient pleading against the City, the City attempts to address each allegation below.

1. Negligent Hiring

First, Plaintiff alleges that the City negligently hired Frady and Greenwood because they were unqualified. This allegation should be dismissed from the complaint for several reasons.

As previously mentioned, Greenwood was hired in 2005 and Frady was hired in March 2010, more than two years before Plaintiff filed this action in November 2012. Therefore, any allegations of negligent hiring are barred by the statute of limitations.

In addition, Plaintiff has produced no evidence that either Frady or Greenwood were unqualified for the job. Rather, it is undisputed that both employees had experience in their fields before accepting positions with the City. Frady was a licensed building inspector while employed with Richland County. Furthermore, the LLR specifically allows municipalities to hire probationary Building Officials who have two years to obtain their certification. Frady obtained his certification within the applicable two-year probationary period.

Likewise, Greenwood previously worked for the Town of Summerville, performing similar duties of business licensing and code enforcement. Thus, the evidence presented is susceptible to only one reasonable conclusion: both Greenwood and Frady were qualified for their employment positions with the City.

Even if one was to indulge in the notion that Greenwood and Frady were unqualified for their respective positions, which the City and all evidence provided refutes, the City is entitled to discretionary immunity from suit for negligent hiring pursuant to § 15-78-60(5) of the Tort Claims Act. A governmental entity is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5). "[T]he determination of immunity from tort liability turns on the question of whether the acts in question were discretionary rather than ministerial." *Hawkins v. City of Greenville*, 358 S.C.

280, 294, 594 S.E.2d 557, 564 (Ct. App. 2004). "A finding of immunity under the Act 'is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.'" *Id.* (quoting *Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511, S.E.2d 355, 357 (1999)).

There is an abundance of direct evidence demonstrating the City weighed competing considerations and made a conscious choice to hire Frady and Greenwood. The decisions to hire Greenwood and then Frady involved analysis of their prior years of experience against other viable candidates, and therefore required the exercise of discretion by City Administrator Williams. In addition, Williams has testified that his hiring decisions were also affected by the fact that both Greenwood and Frady had adequate qualifications for their respective positions beyond their years of experience: Greenwood obtained a Master's in Public Administration and Frady obtained the necessary certification under state law. Therefore, the evidence presented is susceptible to only one conclusion: the City exercised its judgment and discretion in hiring Frady and Greenwood.

Based on the foregoing, it is clear there is no genuine issue of material fact regarding Plaintiff's allegation of negligent hiring and the City is entitled to summary judgment as a matter of law.

2. Negligent Supervision

Plaintiff also alleges that the City was negligent in failing to properly supervise Frady and Greenwood in the performance of their duties to require them to conduct their work "in a competent, fair and thorough manner," and in "failing to listen to or follow through with" the numerous complaints made by Plaintiff or to discourage Frady and Greenwood from "harassing, coercing and interfering with the plaintiff's daily activities." (Complaint, para. 21(b) and (c)).

Again, Plaintiff's Complaint fails to state a valid cause of action against Frady, Greenwood or the City. *See Prior v. South Carolina Medical Malpractice Liability Ins. Joint Underwriting Assoc.*, 305 S.C. 247; 407 S.E.2d 655 (Ct. App. 1991) ("In examining the complaint, we must look beyond the labels describing the acts, to the acts themselves which form the basis of the claim against the insurer."); *Richland County v. Kaiser*, 351 S.C.89, 567 S.E.2d 260 (Ct. App. 2002) ("It is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'"). Although Plaintiff attempts to broadly sweep his allegations under a negligence theory, there is simply no valid cause of action for "failing to listen to or follow through with" someone's complaints.

Similarly, there is no valid cause of action for failing to prevent employees from "harassing, coercing and interfering with the plaintiff's daily activities." This allegation appears to be based upon Plaintiff's belief that Frady was wrong and overzealous in his application of the Code to Plaintiff's storage building and Frady's issuance of several tickets to Plaintiff in 2011. Even if this somehow stated a valid cause of action, the City Administrator Williams stated in his affidavit, the only person employed with the City of Forest Acres at the time trained and knowledgeable regarding the building codes was Clark Frady. Williams has insufficient knowledge upon which to overrule Frady's interpretation of the Code. Instead, after listening and responding to Plaintiff regarding his concern, the City provided Plaintiff the opportunity to appeal Frady's Code interpretation to the Board of Appeals. Plaintiff lost that appeal and did not take the matter any further.

Similarly, Plaintiff agreed to plead guilty to one of the tickets written by Frady in exchange for the City nolle prossing the other two charges. Plaintiff has not alleged a malicious prosecution or wrongful arrest cause of action, because he is barred from doing so by his guilty plea. *See*

Keenan v. Tejeda, 290 F.3d 252, 262 (5th Cir. 2002) (holding that if probable cause existed for any of the charges made, or if a reasonable police officer could believe probable cause existed, a false arrest/malicious prosecution claim fails); *see also Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 220 S.E.2d 649 (1975) ("It affirmatively appearing the respondent was guilty of the criminal offense of simple assault, he cannot successfully maintain this action for malicious prosecution."). Despite this admission and acquiescence, Plaintiff is still attempting to litigate whether the tickets were properly issued through a non-existent "harassment" cause of action. However, there is simply no cognizable cause of action against the City under these circumstances.

Furthermore, it is clear that the City exercised a comparable degree of discretion in choosing how and to what degree to supervise Defendants Frady and Greenwood, such that the City is entitled to discretionary immunity from suit for negligent hiring pursuant to § 15-78-60(5) of the Tort Claims Act. *See Hawkins, supra.*

As attested to by City Administrator Williams, Greenwood's elevated position after receiving his Master's ensured that Greenwood was capable of exercising his own judgment in the performance of his duties and Williams made a conscious choice to lessen the degree of day-to-day supervision. Likewise, it is clear that Frady, who as under Greenwood's direct supervision, was nevertheless properly and adequately supervised by the City through Williams, including an abundance of interaction related to zoning, planning, and enforcement.

Turning to Plaintiff's allegations that the City failed to respond to his concerns, the Plaintiff admits that Williams received his emails, responded to his emails and scheduled a hearing before the Board of Appeals on the storage shed issue. Thus, it is clear the City exercised its discretion in how to handle the dispute between Haynie and Frady over the Code interpretation, and therefore is entitled to immunity for this cause of action pursuant to 15-78-60(5).

Even if the claim were permitted by the Tort Claims Act, it must fail. Negligent hiring and negligent supervision cases "generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties." *Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) (citing *Di Cosala v. Kay*, 91 N.J. 159, 450 A.2d 508, 516 (1982)). Courts should grant summary judgment "when no reasonable factfinder could find that the employer's conduct has fallen below the acceptable standard." *Id.*

Again, there is no evidence of malfeasance on the part of the individual defendants. Even assuming such evidence existed. Plaintiff has presented no evidence that the City knew or should have known of the necessity to exercise control of the individual Defendants, one of whom includes the City Administrator himself, nor has he presented any evidence that the risk of harm to third parties was foreseeable. *See Doe, supra.* Mere speculation and conjecture that the City knew of any intentional and deliberate acts aimed at harming Plaintiff is not enough. Even viewing the evidence in a light most favorable to Plaintiff, there is no genuine issue of material fact that would lead to a reasonable inference that the City was negligent in its hiring, supervision, or administration of the incidents involving Plaintiff. Thus, Plaintiff is entitled to summary judgment as a matter of law.

3. Knowingly allowing disparate and unequal application of the building codes and city ordinances to deny plaintiff the same or similar relief granted to numerous other residents and business located in Forest Acres

Under his broad allegation of negligence, Plaintiff also alleges that the City (Williams) "knowingly" allowed Fraidy and Greenwood to selectively enforce the building code and city ordinances against him. If such allegation is deemed a cause of action, this "cause of action" is attempting to allege an intentional tort. However, the City is not liable for loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual

malice, *intent to harm*, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17) (emphasis added).

Plaintiff's allegation in this regard is quite circular. This point is further driven home by the fact that the Plaintiff alleges that the individual Defendants, including Williams, *intentionally* conspired for the purpose of injuring him. Civil conspiracy is an intentional tort requiring specific intent to accomplish a contemplated wrong. An intentional tory cannot be committed through negligence. 16 Am Jur 2d Conspiracy § 51 ("Elements, agreement.") *citing* Young v. F.D.I.C., 103 F.3d 1180 (4th Cir. 1997) *cert. denied,* 118 S. Ct. 329 (U.S. 1997). Plaintiff has testified that Williams does not like him and has set out to injure him. (*See* Haynie deposition, pp. 41, 141). However, as City Administrator, Williams is the person charged with supervising Frady and Greenwood. If, as Plaintiff claims and alleges, Williams was acting intentionally to injure him, the claim against the City must be dismissed pursuant to the above-referenced immunity provision of section 15-78-60(17) of the Tort Claims Act.

As an additional ground, Plaintiff again has failed to plead or prove a cognizable cause of action against the City. Although his allegations are vague and unclear, it appears that he attempts (and fails) to allege a selective enforcement or selective prosecution cause of action. A claim of selective enforcement or selective prosecution in rooted in the Equal Protection Clause. To establish a claim of selective prosecution, Plaintiff must satisfy a two-pronged test. First, "'he has been singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which he was prosecuted.'" *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 200, 525 S.E.2d 872, 885 (2000) (quoting *United States v. Catlett*, 584 F.2d 864, 864 (8th Cir. 1978)). Second, Plaintiff "'must demonstrate that the government's discriminatory selection of him for prosecution was based upon an impermissible ground, such as

race, religion or his exercise of his first amendment right to free speech.'" *Id.* (quoting *Cailett*, 584 F.2d at 865).

Likewise, "one seeking to show discriminatory enforcement . . . must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced." *Harbit v. City of Charleston*, 382 S.C. 383, 396, 675 S.E.2d 776, 782 (Ct. App. 2009). Thus, "even assuming [the] City is not enforcing [an] ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 922 (2004) (holding that even if there is evidence in the record of unequal enforcement, any such evidence only rose to the level of the exercise of some selectivity in enforcement of the ordinance). Indeed, "'the conscious exercise of selectivity in enforcement is not in itself a federal constitutional violation' provided the selection is not 'deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification.'" *Id.* (quoting *Oyler v. Boyles*, 368 U.S. 448, 456 (1962)); *see also Hill v. S.C. Dep't of Health & Envt'l Control*, 389 S.C. 1, 20, 698 S.E.2d 612, 622 (2010) (holding plaintiff failed to provide any evidence as to the identity of neighboring landowners and their alleged transgressions, such that he could not show that he was similarly situated or evidence of bias or discrimination).

The Plaintiff has not properly pled or proven a cause of action for selective enforcement or selective prosecution, such that his claim must fail pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. He has failed to plead that this alleged disparate treatment was based upon an impermissible ground, such as race, religion, or another impermissible classification.[3] He

[3] Moreover, because Plaintiff is not a member of a suspect class, the ordinances and Code requirements for which he was cited need only have a rational basis to a legitimate government purpose. *See Denene, Inc.*, 359 S.C. at 92, 596 S.E.2d at 920. The Plaintiff has not challenged the codes and ordinances themselves. Even if he had, it is clear that the relevant building code requirements and city ordinances are rationally related to the public safety and welfare.

has neither pled nor proven that the City has failed to investigate or enforce codes and ordinances against similarly situated landowners or contractors.[4] *See Hill, supra.* Moreover, even assuming the individual Defendants or the City were enforcing the Code and ordinances unequally, Plaintiff has failed to provide any evidence that the minimal selective enforcement, which is constitutionally permissible, was deliberately based upon an unjustifiable standard. *See Denene, Inc., supra.* In fact, Plaintiff cannot articulate any reason for the alleged disparate treatment, other than asserting that the individual Defendants "were just looking to get [him]."

Therefore, the City is entitled to summary judgment as a matter of law in its favor against Plaintiff as to Plaintiff's claim that the City "knowingly allowed unequal application of the codes and ordinances."

C. The City is Entitled to Quasi-Judicial Immunity Pursuant to S.C. Code Ann. § 15-78-60(1) and (2)

A governmental entity is not liable for a loss resulting from "legislative or judicial action or inaction" or "administrative action or inaction of a legislative, judicial or quasi-judicial nature." S.C. Code Ann. § 15-78-60(1) and (2).

Plaintiff testified that he believes that Code Board of Appeals hearing was a "kangaroo court" and that it was created and designed so that he would lose his appeal. However, beyond Plaintiff's bald assertions, there is simply no evidence indicating the Board of Appeals was a sham body or that any member or City employee orchestrated the loss of Plaintiff's appeal.[5] Moreover,

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[4] As Defendant Greenwood testified "if [the officers] received a specific complaint, [they] would go by there at least to look at the property to assess if the call addressed a valid complaint or not." (*See* Greenwood Deposition, p. 35).

[5] Plaintiff has alleged that Williams is well-acquainted with a Board member and met with the Board prior to Plaintiff's hearing. All Board members and Williams deny this allegation. Furthermore, even assuming such meeting took place, there is absolutely no evidence indicating that

the Code Board of Appeals is either itself quasi-judicial or performs administrative actions of a quasi-judicial nature. *See Health Promotion Specialists, LLC v. S.C. Board of Dentistry*, 403 S.C. 623, 743 S.E.2d 808 (2013) (holding that Board of Dentistry was entitled to immunity from tort claims asserted by plaintiff pursuant to subsections (1), (2), and (4) of the Tort Claims Act). Thus, the City is immune from suit for any damages Plaintiff claims to have suffered as a result of the Code Board of Appeals hearing pursuant to the immunity provided in subsections (1) and (2) of section 15-78-60 of the Tort Claims Act.

D. The City is Entitled to Immunity under S.C. Code Ann. § 15-78-60 (4), (12), (13), and (23)

A governmental entity is not liable for loss resulting from: (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies"; (12) "licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner; or (13) "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;" and (23) "institution or prosecution of any judicial or administrative proceeding."

Plaintiff's allegations regarding the issuance or renewal of building permits are subject to these exceptions. At the very least, Plaintiff must prove that the City was grossly negligent in

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the meeting was in relation to Plaintiff's appeal or the substance of the meeting in any way improperly influenced the Board's decision. Such assertion is mere conjecture.

allowing its employees to wrongly issue stop work orders or refuse to renew permits. "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corrs.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989). However, Plaintiff has presented no evidence that the City was grossly negligent in enforcing city ordinances or code regulations, in issuing Stop Work Orders, in making decisions related to Plaintiff's building permit, in inspecting Plaintiff's property to determine whether it complied with the Code and ordinances, and in adjudication of code interpretations through the Board of Appeals. Rather, the record is replete with evidence that the City has in place a proper administrative system for the enforcement of building codes and ordinances, decisions concerning permits and work orders, and property inspections, and that such system was properly followed in each of these instances. As there is no evidence of negligence or gross negligence on the part of the City, the City is entitled to summary judgment pursuant to the immunity provisions of subsections (4), (12), (13), and (23) of section 15-78-60 of the Tort Claims Act.

IV. CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court grant summary judgment in its favor and dismiss Plaintiff's cause of action for negligence and gross negligence against it with prejudice.

(Signature on following page)

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY: _____

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ATTORNEYS FOR DEFENDANT CITY OF FOREST ACRES

Columbia, South Carolina
February 5, 2014.

Exhibit A

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A #: 2013-CP-40-7392
	)	
Frank "Doc" Haynie,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood & Clark Frady in their Individual Capacities,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF

FRANK "DOC" HAYNIE

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Monday, September 16, 2013
10:25 a.m. - 4:20 p.m.

The deposition of FRANK "DOC" HAYNIE taken on behalf of the Defendant at the law offices of J. Lewis Cromer, LLC, 1522 Lady Street Columbia, South Carolina, on the 16th day of September, 2013 before Amy G. Byrd, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

Q: And how old are your grandchildren?
A: Nine and 10, no, 10 and 11 now, they just had birthdays.
Q: Okay. And I know that you have a construction business, correct?
A: Yes.
Q: You've been in the construction industry for some 40 years ---
A: Yes.
Q: --- is that right?
A: Yes.
Q: All right. Do you do anything else to produce income other than your construction business?
A: No, not anymore.
Q: All right. How about your wife?
A: She is a manager for SCE&G.
Q: How long has she done that?
A: Almost 40 years.
Q: A manager, does she work at the big office across the river?
A: Yeah, across the river.
Q: Okay. And what area does she work in?
A: Right now she is the -- heads up all the business offices. She runs all their -- and she has a big chunk of the customer service

A: Yeah.
Q: Have you had any other training other than the two courses at South Carolina since you left Georgia Tech?
A: No, that's it.
Q: All right. You -- you're not a licensed professional engineer, correct?
A: No.
Q: Never have been?
A: Never have been.
Q: All right. Did you ever attempt to become licensed?
A: It was -- it was a bad decision, but I didn't see any purpose to it.
Q: Okay. And you have a South Carclina General Contractor's License?
A: I was -- I had one -- I have probably the oldest one.
Q: Okay.
A: Because I was in the very first group that was licensed with the new law.
Q: And have you had any other licenses issued by any other governmental authority in South Carolina?
A: In South Carolina I had a real estate broker's

Q: But it's your testimony nonetheless that if you -- even though it had expired, it was legal for you to continue working after it had expired?
A: I don't ---
MR. PORTER: Object to the form.
A: I don't know the legal. You'll have to -- you guys have to fight about legal.
Q: All right. I'm just asking what you know as a general contractor that's been licensed ---
A: What I know is ---
Q: --- since the 70's.
A: Well, I know that the general contractor license, standard operating procedure in Forest Acres is I didn't have to worry about it.
Q: Okay. All right. So that's the first -- your -- from where I understand where we are in this line of inquiry is in 2008 there was a stop work order put on your work on the shed on Brentwood and that was when Forest Acres first did something that impacted your business?
A: Right.
Q: All right. Now, you were putting in a shed ---
A: That didn't impact my business, it was just an inconvenience.
Q: Okay. But it was the first time that Forest

A: Yeah.
Q: All right. And just -- I mean, this in the materials that have been provided to me but, all right, Florawood Drive is the residence you owned, correct?
A: Uh-huh (affirmative response).
Q: And you live at Florawood Drive?
A: I live at Florawood Drive.
Q: All right. And then you own another residence on Brentwood Drive?
A: Right.
Q: Well, your wife does?
A: Yeah.
Q: Well ---
A: Actually, my wife -- somewhere -- I owned it up until, I believe, April of '08. I'm not certain. But basically, I bought the property for my daughter and grandkids to live there, but I bought it on a note, a personal note. And we decided we needed to finance it. So when we went to finance it, I transferred the ownership, because the way -- we had a problem with the treasury and the taxes with the six percent assessment ratio, so I transferred the place to my wife and my daughter to get that

didn't know his butt from a hole in the ground. And he said that this is a ten by ten -- it's a little -- like you get at Sears, a little storage shed. It's just a little itty bitty thing. Okay. He said that the six by six posts for this little bitty building needed to be three feet in the ground, encased by two feet of concrete. That's what he said because of the uplift. Okay. I mean, it was just the biggest garbage conversation you ever heard. He said I can't -- well, that's when it became pretty clear that he came with an agenda. It was to stop us. And it never got better.

Q: Okay. So he wouldn't -- he wouldn't let you --

A: He did not approve the footings. He said he needed drawings. Which I did the drawings, produced the -- gave them to him the next day. One of them was copied straight out of the code book. Okay.

Q: Which code book?

A: The 2006; I think. The building code book, you know.

Q: Well, I mean, I've seen some materials exchanged here and you were quoting the 2009 --

A: Well, here's ---
Q: --- code book earlier.
A: Here's the way it works, okay, on the code book.
Q: Okay.
A: The law says that if there's a new -- if a new version of the code has been promulgated then that -- using that is equivalent to all of the previous ones. Okay. Now, at the time, I didn't know, but I thought Forest Acres was using the '03 code book. But apparently some time in '10 or '11 they upgraded to the '09 and the state hadn't officially accepted the '09 code book, but it doesn't matter. It's the same thing. They didn't make any big changes. The only thing they changed was is in '03 the code said 200 square foot or less was exempt from permitting. '06 it said 120 square feet was exempt from permitting and in '09 it went back to 200 square feet was exempt from permitting. But all the other stuff, it's the same. The '09, what it says in '09, it's exactly the same as '03.
Q: Okay. All right. So he does not allow you to

go forward without drawings?
A: Without drawings.
Q: And you gave him drawings?
A: Gave him drawings. They were copied directly from the code book.
Q: And from the 2009 code book?
A: Doesn't matter. They're the same. Both code books are the same.
Q: Well ---
A: If you look at both code books, they are the same.
Q: Okay. But you ---
A: Same drawing.
Q: Okay. But you referred earlier to the '09 code book?
A: I wasn't -- when I was doing this, I was not differentiating between which code book. It was the code.
Q: Okay. So you copied drawings from -- a drawing of this kind of building from the code book?
A: Yes.
Q: When you say this kind of building ---
A: It was ---
Q: --- or when I say this kind of building, was the drawing of the footing?

A: I can't think of anything.
Q: All right. So then earlier you talked about then things -- you had issues at Covenant Road?
A: Uh-huh (affirmative response).
Q: Is that right?
A: Yeah.
Q: All right. You mentioned that you had mentioned that there were problems at Covenant Road to Clark Frady the first time you ---
A: The very first time we ever met.
Q: Okay. And was it a couple of weeks after the quote, SWAT team incident, that things then took a bad ---
A: I think so.
Q: --- turn for you?
A: The whole thing from March to July -- so March, April, May, the whole thing encompassed maybe three months.
Q: Okay.
A: Okay.
Q: And so what happened at Covenant Road? How did things ---
A: Well, what first happened was is that I told -- Nassar Alquza, he owns it, he's the owner and he was building a restaurant.

A: No.
Q: All right. I have not asked a question yet.
A: Okay. I'm sorry.
Q: Had the building permit that had been -- that you had been operating under previously, had it expired?
A: Technically, yes.
Q: Okay. And so based on what I understood you to say earlier, Clark Frady, when he inspected the property two weeks after the SWAT team incident, in order to reissue the permit was asking for the drawings that went with the project, is that right?
A: Right.
Q: Okay. Now I'm with you. So he asked you or he asked Alquza for those?
A: He asked Alquza and I had a copy, so I delivered my copy down to Forest Acres.
Q: All right. Did Clark Frady come to the site to do this inspection?
A: No. After the SWAT team thing, I never saw him again.
Q: All right. So did Alquza go down to Forest Acres?
A: Yeah, they went down there to ---

took place and whatever was said by Clark Frady at that -- or others on behalf of Forest Acres at that time, to the extent that you know anything about that, you know that from hearing it from other people, is that correct?

A: Right, but it was Shaun that was actually at that meeting.

Q: Okay. And so then you go to -- you knew they were going to Forest Acres, correct?

A: Yeah.

Q: All right. And then who told you what took place at that point?

A: Paul Cowell, Nassar and David Cook.

Q: Paul Cowell was your electrician?

A: Yeah.

Q: Dave Cook is who?

A: His a plumber.

Q: Was he there too?

A: No. But apparently Frady came -- there was some issues that day. He wanted to change the bathroom, you know, to make it AD compliant and Clark was using an ADA standard that hadn't even been implemented yet. Okay. I mean he was off the chart with what he wanted to do. He had them rebuilding the whole bathroom. I

A: And the need for a new permit.
Q: All right. And the need for a new permit?
A: Yeah.
Q: All right. And so in the course of setting up for that, what happens?
A: That's when -- okay. Because of the way he defined it, that's when it all happens -- I'm just the -- what happened is he related it back to me.
Q: Okay.
A: Basically, they end up issuing a permit. Basically, I get fired. Okay. I'm terminated and so ---
Q: Who fired you?
A: Alquza.
Q: All right. He tells you that?
A: Yes.
Q: All right.
A: He says you're finished, you're gone. Okay. And I said, well, Nassar, you're going to need a general contractor. He said no, no, they're going to give me a permit. I said Nassar, they can't give you a permit. You need to get a general contractor.
Q: Okay.

A: And he said no, they told me that I can have the general contractor. I said, well, that's illegal. I said, you be careful Nassar because they're messing with you. Okay. And basically, what they were doing was being very nice to him because they knew that he would be a very bad witness against you for me.

Q: All right. So, Nassar tells you you're fired?

A: Uh-huh (affirmative response).

Q: And he tells you that they are going to issue a permit directly to him?

A: Right.

Q: And what else did Nassar tell you?

A: And they don't have to do anything.

Q: They don't have to do anything?

A: They don't have to fix anything. He doesn't -- you know, there's no handrail on that thing out there. There's all kinds of -- he gets to do whatever he wants to do.

Q: All right. And any other things that Nassar told you about or that anybody else told you that was said, that they said was said to them by somebody at Forest Acres?

A: Well, Paul told me that in the conversation with Shaun, I was the topic of conversation.

MR. COX: Can we take a two minute break?

MR. PORTER: Yeah.

(A short break was taken from 3:08 p.m. until 3:10 p.m.)

Q: All right. Mr. Haynie, getting back to 2007, 2008 time frame.

A: Okay.

Q: You agree that during that time frame that Jeff Crane, your neighbor, was making complaints about your yard and your ---

A: Yeah, we -- now, I didn't know it then ---

Q: You didn't know?

A: We didn't know who but I found out when I got the email.

Q: All right. So you agree that neighbors were complaining about the condition of the property around that time?

A: Oh, yeah.

Q: All right.

A: There were three of them.

Q: There were three neighbors?

A: Yeah.

Q: Who were they?

A: Jeff Crane and the guy right next door. Now, he killed the dog, okay. And then the --

what's their name?

Q: Goodwin?

A: Goodwin, yeah.

Q: All right. So who was the person, the other person? Goodwin and then who else?

A: He's the -- see I didn't know this until I got the email that he's with BB&T, okay. He's -- I don't know what his name is but he works with BB&T.

Q: Okay. All right. So three neighbors were complaining about your yard?

A: Yeah. The one directly across the street, right next door and then one two doors down.

Q: Okay. All right. And then how about Ms. Martha McCullum, was she complaining as well?

A: Her name has come up just recently. I didn't -- apparently she was in that group but I don't even know who she is.

Q: Okay. So you don't even know who she is?

A: No, I think she's two or three doors down the other way, you know.

Q: Okay.

A: They made it sound like I was really bad, but you have to put it in perspective, when we -- when they were complaining there were two or

three dumpsters parked against our parking lot, you know, behind us. They were ---

Q: At the school?

A: At the school.

Q: On the school property?

A: Yeah, on the school property, okay. And on that -- see, that lot -- that road that goes up beside, that's their property too. Well at 6:30 in the morning there would be three dump trucks lined up there with engines going because -- and we had two little four and five year old kids in the -- but they were parked up there waiting to go one. I mean, we weren't a problem. We were this big relative to them ---

Q: Okay. Let me stop you.

A: Okay.

Q: Regardless of what you thought, your neighbors were complaining, do you agree with that?

A: Yeah.

Q: Okay. All right. And you agree that if the neighbors are complaining about something or citizens are complaining, the City is supposed to check those out?

A: Equally.

Q: Okay. Do you agree with that?

Q: Okay. So despite all of the complaints that were being made about the trash in the yard and toys in the yard, nobody from the City actually came out to talk to you about that?
A: Lee Holloway came out and talked to me.
Q: Lee Holloway came out to talk to you about that?
A: Yeah.
Q: Okay. The City never issued you a single citation as a result of those complaints, not those made by Mr. Crane, Ms. McCullum or anybody else, correct?
A: No.
Q: Okay. All right. The school district, you had some other disputes with the school district as well, didn't you?
A: What others?
Q: Well, there was the issue you talked about with the stumps?
A: Oh, you mean the flooding?
Q: Okay.
A: The flooding, yeah.
Q: Did they ever make any -- did they ever ask you to do anything, the school district, to move equipment or to take any other action?

A: Probably maybe 20, 25 percent.
Q: Twenty, 25 percent which way?
A: What do you mean which way?
Q: Well ---
A: Twenty-five of it was for Forest Acres. It wasn't -- they weren't the big ---
Q: All right. So in 2008, 75 percent of your work was outside of the City limits of Forest Acres?
A: Yeah.
Q: Okay. How about in 2009?
A: At the start of 2009, let's see -- in 2009? Now, we've got to go back over -- I don't know. I did ---
Q: How about in 2010?
A: That's -- that's probably -- see, you're asking me to do all this thinking and I'm sorry but I don't have the capacity to do that.
Q: Well ---
A: I'm trying to keep everything in a time line but I'm better when I've got them all -- all the papers lined up ---
Q: Can you do this more historically? Generally?
A: Generally speaking?
Q: Over the last ---
A: Okay. There are ---

Q: --- five or ten years ---
A: Well --
Q: --- how much of a percentage has been at Forest Acres?
A: I'll give you an example.
Q: Okay.
A: Over there on Spring Lake -- well, actually, before Butch Epps, I did a big job for him but usually what would happen -- and this all changed about ---
Q: Okay. I just want a percentage.
A: I -- well, I ---
Q: I just want a percentage historically.
A: Oh, I would say -- it's probably, I would say at the most 15 percent, maybe 20 percent.
Q: So historically 15 to 20 percent of your work is in Forest Acres?
A: Yeah. One year it was all in Forest Acres.
Q: When was that?
A: I think that was about '05. I got a job over there on Spring Lake and it was like I just worked down the street ---
Q: Okay.
A: --- just right there in Forest Acres.
Q: All right. Have you ever had any inspections

Exhibit B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Frank "Doc" Haynie, Plaintiff, v. The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2012-CP-40-7392 **AFFIDAVIT OF MARK WILLIAMS**

TO: PLAINTIFF, FRANK "DOC" HAYNIE, AND HIS ATTORNEY, LEWIS CROMER

Personally appeared before me, Mark Williams, who after being duly sworn, deposes and states as follows:

1. I am over twenty-one years of age and am competent to testify to the matters stated herein.
2. I have been the City Administrator of the City of Forest Acres for over 8 years. I previously served as the Town Administrator for the Town of Summerville for 4 years and Isle of Palms for 15 years.
3. The information set forth below is based upon my personal knowledge and my extensive experience with the City.
4. I hired Shaun Greenwood for a position in Code Enforcement on May 9, 2005. Shaun previously performed similar duties for me while I was the Town Administrator for the Town of Summerville.
5. During his tenure in Summerville, I was generally impressed with Shaun's intelligence, capabilities, and his ability to deal well with the public. Under my authority as City

Administrator and using my discretion, I hired Shaun in Codes Enforcement at the City of Forest Acres with the intent that I would consider him for more advanced employment when he obtained his graduate degree, specifically a Masters in Public Administration.

6. Upon receiving his Masters, I recommended to City Council that Shaun be reclassified as an assistant City Administrator. Shaun continued to perform Codes Enforcement duties and supervise other building and code enforcement activities.

7. Additionally, he continued to supervise the activities of the Building Department, which necessarily includes the issuance of building permits, business licensing, HTAX administration, and zoning and planning oversight.

8. Although Shaun and I spoke on a daily basis about a variety of topics, Shaun was self-motivated and did not require day-to-day direct supervision. His performance met or exceeded my expectations, and I was confident in his abilities.

9. At no times during his tenure with the City of Forest Acres did I direct Shaun to write a citation. It was within Shaun's judgment to issue citations when he felt it was necessary to do so. I was not aware of any instance in which Shaun selectively or unfairly exercised his discretion in enforcing the Forest Acres codes.

10. In April 2011, after serving the City of Forest Acres for approximately five years, Shaun left for a job opportunity with the City of Cayce.

11. Under my authority as City Administrator and using my discretion, I hired Clark Frady as a probationary Building Official with the City of Forest Acres on March 8, 2010.

12. In order to fill a void, the City of Forest Acres had contracted for Building Inspection services through the Richland County Building Department. Clark was employed by the

County as a building inspector. Through the City's arrangement with the County, Clark performed building inspections for the City of Forest Acres on a rotational basis. During this time, Clark made a good impression on me and other City officials, appearing very knowledgeable and reasonable in his code interpretations.

13. Upon advertising for the vacancy of Building Official, the City of Forest Acres received numerous applications from inspectors around the country. Clark also applied for the position.

14. Weighing Clark's previous satisfactory work with the City of Forest Acres and his years of experience with Richland County against the competing applications of other candidates, I exercised my discretion and hired Clark as a probationary Building Official. He was given two years to obtain his certification under state law, which he accomplished.

15. Although Clark was under Shaun Greenwood's immediate supervision, I interacted with him often, as much of what he regulated overlapped into planning and zoning, thereby implicating general codes enforcement. In addition to his duties as the Building Official, he would also investigate and enforce general code issues.

16. At no time did I instruct or direct Clark to issue citations. Occasionally, I would advise him of code complaints that I had received and/or prompt him to follow up on outstanding code complaints. He occasionally asked me for advice on enforcement. Without putting eyes on a specific issue, I would tell him to use his best judgment and issue citations if he thought such measures were warranted under the circumstances.

17. It is my opinion that during his tenure with the City of Forest Acres, Clark's actions and decisions were measured in response to the circumstances. I believe Clark issued citations only after all other attempts at compliance failed.

18. Clark left the City of Forest Acres' employment in December of 2012.

19. I became aware of a dispute between Clark and Doc Haynie regarding an inspection that Clark had performed on the footings or foundation of a shed Haynie was building in the backyard of 1325 Brentwood in the spring of 2011. Haynie copied me on several emails between him and Clark involving the matter.

20. It appeared to me that Haynie believed that Clark's inspection and interpretation of the code was incorrect and that Clark believed he was interpreting the code correctly.

21. I am not a trained/certified building inspector. However, I do know that the State of South Carolina and the City of Forest Acres adopted the 2006 Building Code and that Haynie continued to reference the 2009 code that had not been adopted at the time of the dispute.

22. The City did not ignore Haynie's complaints about the way that the inspection was handled. Not being qualified to weigh in on the issues and using my discretion, I suggested that Haynie file an appeal with the Forest Acres Code Board of Appeals to in an appeal of Clark Frady's code interpretation dispute.

23. The Code Board of Appeals is the appropriate appellate body created by the City for contractors to challenge code interpretations by the Building Official. Qualification for membership on the three member Board is determined by the building code. The Board included a building inspector employed by Richland County, an engineer and a commercial real estate broker. I understand that the Code Board of Appeals held a

hearing on Haynie's complaints and upheld Frady's interpretation of the 2006 code. I did not attend the hearing. Haynie did not pursue any other means of redress following the hearing.

24. Haynie has also made some allegations regarding work he was doing on Covenant Road for a man named Nasser Alquzza. Haynie testified that he had a dispute with Alquzza and that Alquzza fired him from the job. He has raised some allegations that the City took some improper actions in regards to issuing permits to other contractors to complete the work after he was fired. I have no personal knowledge regarding his firing or the issuance of permits for the Covenant Road project in 2011. I did not direct anyone to take any action regarding Haynie or building permits issued for the Covenant Road project in 2011.

25. I have never directed any Forest Acres employee to treat Haynie any differently than any other contractor or Forest Acres resident. Forest Acres has limited resources and does its best to respond to citizen complaints as they are received and to conduct building inspections as they are needed. These are the only actions that Forest Acres employees have ever undertaken with respect to Haynie.

AFFIANT FURTHER SAYETH NOT.

Mark Williams, City Administrator of
the City of Forest Acres

SWORN to BEFORE me
This 23rd day of December, 2013

(L.S.)
Notary Public for South Carolina
My Commission Expires 01-08-23

Exhibit C

STATE OF SOUTH CARCLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF RICHLAND	) C/A #: 2012-CP-40-7392

Frank "Doc" Haynie,

Plaintiff,

v.

The City of Forest Acres, Mack M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,

Defendants.

DEPOSITION OF

SHAUN GREENWOOD

****

Wednesday, October 2, 2013
3:46 p.m. - 4:47 p.m.

The deposition of SHAUN GREENWOOD, taken on behalf of the Plaintiff at the law offices of Adams and Reese, 1501 Main Street, 5th Floor, Columbia, South Carolina, on the 2nd day of October, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

A: I'm the Assistant City Manager for the City of Cayce.

Q: And I've been provided kind of an employment history for you, and I'm going to run through it, and just ask if it coincides with your recollection of your employment. You've been an Assistant City manager for Cayce since May of 2011?

A: Yes.

Q: Prior to that, you were Assistant City Manager for the City of Forest Acres from July of 2008 to April of 2011?

A: Yes.

Q: Prior to that, you were a Code Enforcement Officer for the City of Forest Acres May of 2005 to June of 2008. Is that correct?

A: Yes.

Q: During that July of 2008 to April of 2011 time frame where you were Assistant City Manager, did you also maintain duties in code enforcement?

A: Yes.

Q: Describe for me your day-to-day, you know, work duties as the Assistant City Manager for the City of Forest Acres.

A: The daily activities, I would assist the City Manager or City Administrator, Mark Williams, with any -- any tasks that he needed assistance with. I handled basic zoning enforcement. I did preliminary plan review for zoning. I would handle code enforcement issues, and I had direct oversight over the business licensing and permitting functions of the City.

Q: And with your May 2005 to June 2008 Code Enforcement Officer, were you primarily working with code enforcement?

A: Yes, business licensing and code enforcement.

Q: Prior to that, were you employed by the Town of Summerville from January of 2002 to December of 2004 in business licensing and code enforcement?

A: Yes.

Q: Prior to that, were you employed by the US Army as a Counter Intelligence Special Agent?

A: Yes.

Q: Prior to that, were you employed by Cinemark Movies has the Assistant Manager?

A: Yes.

Q: Well, let me ask you this. I said "prior to that, were you ..." -- when were you at

Q: How do you know, or do you know Jeff Crane?
A: I only know Mr. Crane through his calls and emails complaining about property on Brentwood.
Q: Do you know him socially outside of those calls and emails?
A: No.
Q: And we'll look at some documents later on that may help us, but to the best of your recollection, what were those calls and complaints regarding?
A: Mr. Crane was very concerned about the level of activity going on at the Brentwood property. He believed that the property was not validly permitted, and that the owner was, in fact, operating a business from his residence.
Q: Did you investigate Mr. Crane's complaints?
A: I did.
Q: Okay. And did you investigation bring you to any conclusions?
A: Yes.
Q: What were those conclusions?
A: That the permits were, in fact, expired, and that it did appear that there was a business being run from the shed at the back of the property.

occupation. One of those is that you can't have employees coming to and from your house. You can't operate the business from any structure other than the primary structure. You cannot generate traffic that's not at an acceptable level for the residential character of the neighborhood, and that's all I can remember off the top of my head, but there's -- there's criteria.

Q: Did you observe any employees at the Brentwood address?

A: I did, and Barry Epps did, as well.

Q: Let me ask you, who is John Cloyd, or do you know a John Cloyd?

A: I don't know him.

Q: Do you know a Mitchell Goodwin?

A: I don't.

Q: Are you aware of Mitchell Goodwin?

A: I think in hearing Mr. Haynie's deposition, I think that it's one of the neighbors.

Q: But prior to that, you don't know him?

A: No.

Q: Who is Barry Epps?

A: Barry Epps is the former building official for the City of Forest Acres.

City Manager, I had oversight over the building official who was the person who did all of the building inspections.

Q: What is the procedure and how would the procedure go through you or be affected by you for somebody to be permitted?

A: Typically, I was only involved in the permitting process if there was a question of the type of permits or the cost of the permit. Other than that, the building official did the plan reviews, and if the building was permittable according to the building code, then a permit was issued.

Q: If you'll turn to the second page of this one, if you don't mind. Beginning in Paragraph 1, it reads, "If it isn't enough, add the multiple police visits and Shaun Greenwood's ticketing of two student cars for parking on the grass while ignoring like violations of 20 other vehicles parked in the neighbors yards, the same day". Do you have any recollection of ticketing two cars in front of Mr. Doc Haynie's house?

MR. SHEALY: Object to the form. You may answer.

A: I did not ticket two cars.

Exhibit D

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #: 2012-CP-40-7392

Frank "Doc" Haynie,

Plaintiff,

v.

The City of Forest Acres, Mack M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,

Defendants.

DEPOSITION OF

MARK WILLIAMS

****

Wednesday, October 2, 2013
1:12 p.m. - 3:34 p.m.

The deposition of MARK WILLIAMS, taken on behalf of the Plaintiff at the law offices of Adams & Reese, 1501 Main Street, 5th Floor, Columbia, South Carolina, on the 2nd day of October, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

don't know where it came from or what it's supposed to be for.

Q: And that's fine. You can look through the other exhibits if it helps you answer the question. When the complaints or citations or issues about the storage building on Brentwood began, was that, to the best of your recollection, on or around March of 2011?

MR. SHEALY: Object to the form.

A: My recollection is the problem started whenever the neighbor sent the email complaining about the condition of the property, and I know in investigating it, staff had a concern that they thought Mr. Haynie was operating his construction business out of the property, and I think that relates to the equipment, but as I said, I don't know where this came from.

Q: And if we read in the section, 3/23/11, and I'm still on the first page, the sentence in the middle of that section beginning, "During this first meeting I told Frady that we had a commercial permit to upfit 3724 Covenant Road and build a restaurant & Nasser Alquaza had been working on interior trim himself & hoped to get the electrician back in to build out the

Exhibit E

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A #: 2012-CP-40-2392
Frank "Doc" Haynie, Plaintiff, v. The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady, in their individual capacities, Defendants.	

DEPOSITION OF

CLARK A. FRADY

****

Friday, January 3, 2014
2:07 p.m. - 4:58 p.m.

The deposition of Clark A. Frady, taken on behalf of the Plaintiff at the law offices of Adams & Reese, LLP, 1501 Main Street, Fifth Floor, Columbia, South Carolina, on the 3rd day of January, 2014, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

Q: Okay. When did you first meet Doc Haynie?

A: The City of Forest Acres got an irrigation request from Mr. Haynie to look at a footing. And I do believe it was in the spring of 2011, possibly -- to look at a footing on the Brentwood Drive property. And at that time, upon doing the inspection, I do believe I met Mr. Haynie for the first time on the site.

Q: Did you know anything about Mr. Haynie before you met him?

A: Never heard of him.

Q: Okay. When you say a footing on the Brentwood Drive site, are we talking about the storage shed?

A: Yes, the 200 square foot storage shed next to an existing storage shed in the backyard of that property at 1325 Brentwood.

Q: What sort of footing was it?

A: What was it supposed to be or what it was?

Q: What was it?

A: The footing that I observed were -- the holes in the ground spaced approximately eight feet apart, four on one side and four on the other were approximately six inches in depth. And the diameter was approximately five or six

Exhibit F

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND [illegible] Plaintiff, vs. The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NO: 2012-CP-40-7302 AFFIDAVIT OF CARL L. HOLLOWAY

PERSONALLY APPEARED before me, Carl L. Holloway, Jr., attorney at law, who, being duly sworn, does state as follows:

1. Deponent is the city attorney for the City of Forest Acres and has served in that capacity since 1976.

2. I have known Doc Haynie for many years. His daughter and mine were friends at Heathwood Hall. I have employed his company for construction, remodeling, and repair projects at my residence and a commercial property.

3. He contacted me when he was having a problem in the Covenant Road area with East Richland Public Service District. I referred him to Chip Smith at East Richland as someone in authority with whom he could discuss his situation.

4. I believe he was also in discussions with the City about a zoning violation due to commercial equipment storage. I offered, without charge, to let him park some of his equipment on my personal commercial property for 30 days or so until he could locate a permanent site.

5. In June of 2011, a problem arose at the property he claimed to own at 1325 Brentwood Drive. The property was actually titled in the name of Lottie S. Haynie and April Sky Haynie. His daughter Sky was living in the home. He was issued tickets on June 20, 2011 for No Building Permit (5-4); Home Occupation Violation (21.146), Rubbish & Garbage-Rodent (5-2 307.1) and possibly other charges. He requested a jury trial. I negotiated the charges with his attorney, Lewis Cromer. We agreed upon a plea to resolve the issue. When the time came to enter the plea before the court, Haynie declined to do so based upon his misunderstanding of the plea as discussed with his attorney. As a result the matter was continued.

6. One of the problems at the 1325 Brentwood Drive was the construction of a detached storage building on the back of the property. Haynie and the building inspector disagreed about the application of the building code. Attempting to resolve the issue, I suggested that Haynie get a duly licensed structural engineer to review the site and plans. If the engineer would sign off on the structural integrity of the building , under his seal, the City would nolle pross the No Building Permit violation. Haynie agreed to this proposal. An engineer, Louis Mariaca, signed off on the structural integrity of the building and the City approved the plans and the building permit was duly issued. I suggested this form of resolution because I thought it was an equitable resolution of the issue.

7. Shortly before the remaining citations were to be tried, Lewis Cromer contacted me to determine if the earlier plea offer was still on the table. I reaffirmed that the earlier offer was still valid, consisting of a guilty plea to any one of the charges, at his election, with the fine to be set by the court and duly paid, and upon entering the plea, I would nolle prosse the remaining

charges. He pled guilty to the Rubbish and Garbage-Rodents violation and paid a $750 fine. The remaining charges were nolle prossed under our agreement.

8. In regard to the 1325 Brentwood Drive property, Doc Haynie felt that he was being unfairly prosecuted in that other contractors were engaged in the same home occupation violation(s). He provided my office with photographs of twenty (20) properties that he alleged were in violation. I turned these photographs over to the City codes enforcement office and requested that each property be inspected and citations issued if warranted. I understood that such an investigation was duly conducted.

9. I am unaware of any instance in which Haynie was selectively or unfairly prosecuted by the City of Forest Acres.

Carl L. Holloway, Jr.
1713 St. Julian Place
Columbia, SC 29204
(803) 929-1191
City Attorney
City of Forest Acres

SWORN to and subscribed before
me this 9th day of December, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 7/25/2023

Exhibit G

COPY

State of South Carolina)		Court of Common Pleas
)		
County of Richland)		No.: 2012-CP-40-7392
Frank "Doc" Haynie,)		
)		
Plaintiff,)		
)		Deposition of
vs.)		PAUL COWLES
)		
The City of Forest Acres,)		
Mark M. Williams, Shaun)		
Greenwood and Clark Frady)		
in their individual)		
capacities,)		
)		December 5, 2013
Defendants.)		
)		

Deposition on oral examination of PAUL COWLES, reported by Brad H. Thomas, Certified Realtime Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure, at the Offices of Adams and Reese, LLP, 1501 Main Street, Columbia, South Carolina, on December 5, 2013, at the hour of 10:00 a.m.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211

A. As far as the pizza?

Q. Correct.

A. I just finished trimming it out. The hood -- he had a hard time getting the hood guy to come in there and get it finished so I could finish up the fire suppression system and all that that needed the electrical part of that. It was like dragging, dragging out quite awhile because trying to get subcontractors in there since there wasn't a general contractor anymore.

Q. All right. Well, that was my question. As far as the work that Doc would have done, what work was left to be done? Was Sheetrock all in at that point?

A. Sheetrock was in.

Q. All right. So what remained to be done to the --

A. Structure?

Q. Yeah.

A. The ceiling grid had to be finished.

Q. Now, is that part of the stuff that Alquza was doing himself?

A. That's some of the stuff that he did end up doing himself. I don't know if Doc would have had anything to do with that eventually anyways.

I'm not for sure what their contract dealt with. The bathroom -- really there were some bathroom changes that Sheetrock had to be taken out and dealt with, I believe. Issues come up with two bathrooms.

Q. The ADA issues?

A. Yeah, I believe so, which is another slowdown on the job, but overall there really wasn't a whole lot left besides trimming out what I had to do and putting ceiling tile in and doing the, you know, cosmetics. Just waiting on people to come in and get their job done so I could move on.

Q. Right. What do you know about the ADA bathroom issues, if anything?

A. If I can remember correctly, they had -- the space was wrong or something in the bathroom the way they were set up to start with, but I'm not for sure how all that went. They were talking about moving it because my switches were in the -- going to end up being in the wrong place if they had to move the -- change the door swings or whatever and the inside of the bathrooms had to be -- something had to be moved inside there. I don't have no clue.

Q. Did they eventually work it out?

A. I believe they had worked it out because it passed inspection.

Q. Okay. Are you aware of any permit being issued directly to Mr. Nasser --

A. No.

Q. -- Alquza? Mr. Alquza? I'm sorry.

A. Right. I'm not sure his last name, but I've never seen it.

Q. Did you ever hear either Frady or the other fellow say to Mr. Nasser that Doc was a very bad contractor?

A. I can't say -- again to recollect anything being said, that's hard to say.

Q. Did you ever hear either one of them say that Alquza needed to get rid of Haynie and get a new contractor?

A. No, I wouldn't have never heard that one said, but I don't believe I heard that said. I say on that statement that would have had to happen -- that would have had to happen before I went down to pull the permit the first time because --

Q. Yeah. The first time of the third time?

A. Yeah, the first -- the first time of the third time, yeah. So there's twice I had to go down there, but it had to happen before I went down there the first time of that third time before anything said like that.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Frank "Doc" Haynie,	)	C/A No.: 2012-CP-40-7392
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their Individual capacities	)	
	)	
Defendants.	)	

This action was filed on November 2, 2012. The Defendant City Forest Acres filed a motion for Summary Judgment on December 23, 2013. Defendants Mark M. Williams, Shaun Greenwood, and Clark Frady ("Individual Defendants") filed a motion for Summary Judgment on December 26, 2013. The plaintiff, Frank Haynie, asserts claims of negligence/gross negligence against the Defendant City and civil conspiracy against the Individual Defendants.

The Defendants' motions were heard by this Court on February 21, 2014. This Court concludes that material issues of fact exist, the Defendants are not entitled to judgment as a matter of law, and summary judgment is properly denied.

Facts

The plaintiff is a licensed General Contractor who performed work within the jurisdiction of the Defendant City and resides there. The Individual Defendants, at the times relevant to this action were employees of the Defendant City.[1]

[1] Respectively, Defendant Mark Williams is the city administrator, Defendant Shaun Greenwood was the assistant city administrator and a code enforcement officer, and Defendant Clark Frady was a building inspector for the Defendant City.

The plaintiff proffered evidence showing that from 2007 through 2011 he was subjected to disproportionate and heightened scrutiny, as both a builder and a resident, by the Defendant City through the Individual Defendants and others. Former inspector, Rev. Barry Epps, testified and swore by affidavit, that he was instructed by Defendants Williams and Greenwood to inspect the plaintiff's job sites and residence excessively and more than any other properties. Defendant Frady testified that when he took over as inspector he inspected the plaintiff's property and job sites on a weekly basis.

Former Inspector Epps, by affidavit and deposition, and former clerk Margo Pierce, by affidavit, testified that the Individual Defendants had a personal distaste for the plaintiff. Rev. Epps testified that Defendant Williams had remarked to him "I have no use for [plaintiff]". Ms. Pierce testified that first inspector Epps and later Defendant Frady were regularly instructed by Defendants Williams and Greenwood to monitor the plaintiff, in what she opined was a 'hyper-vigilant manner.' She further testified that the Individual Defendants would often inquire as to the expiration of the plaintiff's building permits and would remark "we'll get him now."

The evidence of record shows that the plaintiff complained about the conduct he was receiving to the Defendant City's mayor, two of its councilmen, and the City's attorney; placing them on notice of the same. Despite his complaints, the conduct continued. One point of controversy involved a 10 x 20 foot storage shed on the plaintiff's own property. Defendant Frady placed a stop work order on the storage shed for improper footings susceptible to uplift and the following occurred: (1) Defendant Frady requested the footings for this 10 x 20 shed be three feet in the ground and incased by 2 feet of concrete; (2) Plaintiff, who has an Industrial Engineering degree from Georgia Tech, thought this was suspect and requested that Defendant Frady cite specific code sections; (3) Plaintiff pointed out that the only code section dealing with

specifically footings stated that footings be deep enough not to kick out of the ground; (4) Defendant Frady then cited a provision of the code which states the contractor shall abide by the inspector's wishes; (5) and Defendant Frady maintained the stop work order.

The plaintiff appealed the stop work order to the Defendant City's Code Board of Appeals; the plaintiff's appeal constituted the first ever meeting of the code board of appeals. Plaintiff submitted evidence that Defendant Frady met with the Code Board of Appeals officials prior to the hearing and instructed the members how to vote. Specifically affiant Margo Pierce informed an investigator, from the Department of Labor Licensing and Regulation, that before the hearing Defendant Frady "told [the board members] his side of the case and how he wanted it handled." The Code Board of Appeals ruled against Plaintiff. Shortly thereafter several Forest Acres police officers and the Defendant Frady reported to plaintiff's home at 7:30 a.m. on a Monday morning regarding yard rubbish being placed in the wrong location. Plaintiff then received four citations for various alleged infractions including high grass and rubbish.

The plaintiff submitted evidence that he lost contracts as a result of the Defendants' actions. Plaintiff was denied the opportunity of a $60,000 contract with a long-time customer Lisa Graham who the plaintiff testified would not hire him because she feared undue interruption by the Individual Defendants. The plaintiff testified that the Individual Defendants also encouraged a customer, Nasser Alquza, on a more lucrative contract to terminate him. Paul Cowles, a subcontractor on the Alquza job, corroborated this and testified that after the plaintiff was terminated he witnessed Defendant Frady, another gentleman, and Mr. Alquza joking about the Plaintiff while Alquza was pulling his own permit for the job. Another subcontractor on the Alquza job, David Cook, testified similarly that prior to the plaintiff's termination Defendant Frady requested that design changes be made to the bathroom after the inspection for the layout

had already been approved; this was uncommon. However, after the plaintiff was released from the job, Defendant Frady scaled back the initially mandated design changes. Defendant Frady also informed David Cook "You better be careful if you're still doing work with [the plaintiff]."

Standard of Review

Summary judgment is a drastic remedy and is only proper "when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 Ct. App. 1999); Rule 56(c), SCRCP. "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant" *Bayle v. SCDOT*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). "Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008). Where there are triable issues of fact, "those issues must go to the jury." *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003). Furthermore, even "when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Bayle*, 542 S.E.2d at 738 (*citing Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla*[2] of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (*emphasis added*).

[2] A mere scintilla is a "gleam, a glimmer, a spark, the least particle, the smallest trace." *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724.

Discussion

The Defendant City argues that it is entitled to immunity from the plaintiff's negligence/gross action under various provisions of the South Carolina Tort Claims Act. S.C. Code Ann. § 15-68-10 *et. seq*. The Individual Defendants move for summary judgment against the plaintiff's civil conspiracy claim on the basis of intracorporate immunity and Section 15-68-70(a) of the South Carolina Tort Claims Act. Both sets of Defendants argue that events occurring outside of their respective statute of limitations (two years for the Defendant City and three years for the Individual Defendants) are not actionable; the plaintiff stipulates to the same. Applying the summary judgment standard at bar, the Defendant City and Individual Defendants are not immune from suit under the South Carolina Tort Claims Act, and the plaintiff's civil conspiracy claim is not precluded by intracorporate immunity.

1. Negligence/Gross Negligence

A valid negligence claim requires: (1) that the defendant owes a duty of care to the plaintiff, (2) that the duty was breached by negligent act or omission, (3) that the defendant's breach was the actual and proximate result of plaintiff's injury, and (4) that the plaintiff suffered an injury or damages due to the breach. *Stieke v. South Carolina Dep't of Labor, Licensing and Regulaiton*, 336 S.C. 373, 520 S.E.2d 142 (1999). "Gross negligence involves a conscious failure to exercise due care." *Anderson v. Ballenger*, 166 S.C. 44, 164 S.E. 313 (1932). The evidence of record indicates, and the plaintiff stipulates, that the Individual Defendants hire occurred outside of the applicable statute of limitations. Thus, the inquiry here is whether or not the plaintiff has proffered an actionable claim for negligent or grossly negligent supervision. Negligent supervision cases "generally turn on two fundamental elements-knowledge of the employer and foreseeability of harm to third parties." *Doe v. ATC, Inc., 367 S.C. 199, 206, 624*

S.E.2d 447,450 (Ct. App. 2005) (citing *Di Cosala v. Kay*, 91 N.J. 159,450 A.2d 508,516 (1982)). A Court should deny summary judgment where a "reasonable factfinder could find that the employer's conduct has fallen below the acceptable standard." *See, Id.*

The Defendant City does not challenge the sufficiency of the evidence on plaintiff's negligence/gross negligence claim; but rather, argues that it is immune from liability under several provisions of the South Carolina Tort Claims Act. S.C. Code Ann. §15-68-60, *generally*. "The burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense." *Etheredge v. Richland Sch. Dist. One*, 330 S.C. 447, 454, 499 S.E.2d 238, 242 (S.C. Ct. App. 1998) (Rev'd on other grounds by *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (S.C. 2000)); *citing*, *Strange v. South Carolina Dep't of Hwys. and Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994); *Doe v. Orangeburg County Sch. Dist. No. 2*, 329 S.C. 221, 495 S.E.2d 230 (Ct. App. 1997); *and*, *Wooten v. South Carolina Dep't of Transp.*, 326 S.C. 516, 485 S.E.2d 119 (Ct. App. 1997).

A. S.C. Code Ann. § 15-68-60(5)—Discretionary Immunity

Subsection 5 of section 15-68-60 of the South Carolina Tort Claims Act is an affirmative defense which immunizes government entities from liability in cases of discretionary action. *Foster v. South Carolina Dep't of Highways & Public Transp.*, 306 S.C. 519, 525, 413 S.E.2d 31, 35 (S.C. 1992) ("the governmental entity bears the burden of establishing discretionary immunity as an affirmative defense."). "Mere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision." *Sabb v. S.C. State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002); *citing*, *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). "Discretionary immunity is contingent on proof the government entity, faced with alternatives,

actually weighed competing considerations and made a conscious choice using accepted professional standards." *Sabb*, 350 S.C. at 428; *citing*, *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 511 S.E.2d 355 (1999).

Based on the evidence presented, the Defendant City has not established discretionary immunity by proof that it actually weighed competing considerations and made a conscious choice using accepted professional standards. *See*, *Id.* Furthermore, the Plaintiff has presented evidence from which a reasonable jury might find gross negligence; that is, he placed the governing authority of the Defendant City on notice of the conduct of its employees and that governing authority may be found to have failed to exercise the slightest care. *See*, *Clyburn v. Sumter County Sch. Dist. #17*, 317 S.C. 50, 53 (S.C. 1994) ("gross negligence ordinarily is a mixed question of law and fact;" *citing, Rogers v. Atlantic Coast Line R.R. Co.*, 222 S.C. 66, 71 S.E.2d 585 (1952)). Gross negligence is an ultimate bar to Section 60 of the South Carolina Tort Claims Act's various immunity provisions. *See*, *Jackson v. South* Carolina Dep't of Corrections, 301 S.C. 125, 128, 390 S.E.2d 467, 469 (S.C. Ct. App. 1989) ("Section 15-78-60(25) provides an exception to immunity where the governmental entity exercises its responsibility or duty in a grossly negligent manner. Section 15-78-60 (5) must be read in light of this exception. If discretion is exercised in a grossly negligent manner, the exception to the normal rule of immunity applies.") Viewing the evidence in the light most favorable to the non-moving party, the Defendant City has not established the affirmative defense of discretionary action immunity under the South Carolina Tort Claims Act.

B. S.C. Code Ann. § 15-78-60(17)—Immunity for Employee's Intentional Acts

Subsection 17 of § 15-78-60 of the South Carolina Tort Claims Act is an affirmative defense which shields government entity from liability for the intentional torts of its employees.

The Plaintiff's negligence/gross negligence claim concerns the actions of the Defendant City, in supervising and investigating the Individual Defendants. Negligence and gross negligence do not require intent or malice; thus, the Defendant's argument fails on this point. *See, Swicegood v. Lott,* 379 S.C. 346, 665 S.E.2d 211 (S.C. Ct. App. 2008) (Abuse of process claim not barred by S.C. Code Ann. § 15-78-60(17) where proof of intent or actual malice is not required); *See also, McBride v. Sch. Dist. of Greenville County,* 389 S.C. 546, 698 S.E.2d 845, (S.C. Ct. App. 2010) (Subsection 17 is no bar to malicious production claim since actual malice is not a required element), *and, Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 642 S.E.2d 726 (S.C. 2007) (tortious interference with contract not barred). Plaintiff's negligence/gross negligence claim does not fall within the context of subsection 17 and it can be no bar to liability here.[3]

C. S.C. Code Ann. § 15-78-60(1) & (2)—Quasi-judicial & Administrative Immunity

Subsections 1 and 2 of the §15-78-60 of the South Carolina Tort Claims Act is an affirmative defense providing legislative, judicial, quasi-judicial and administrative immunity. The evidence of record does not indicate that the Defendant City, as a negligent/grossly supervisor, is a legislative, judicial, quasi-judicial, or administrative body here. Furthermore, plaintiff's evidence of gross negligence would overcome such immunity if it existed. *See*, S.C. Code Ann. § 15-78-60(25); *and, Jackson*, 301 at 128. While there was a building appeals board hearing in this matter, to construe the plaintiff's negligence/gross negligence claim to be wholly arising out of the same requires an inference in the moving party's favor. Viewing the evidence in the light most favorable to the plaintiff, the Defendant City has not established and affirmative defense under either § 15-78-60 (1) or (2) of the South Carolina Tort Claims Act.

[3] Also, viewing the evidence in the light most favorable to the Plaintiff, he has presented sufficient evidence upon which a jury might find gross negligence; thus, § S.C. Code Ann. 15-78-60(17) is no bar to liability. *See*, S.C. Code Ann. § 15-78-60(25); *and, Jackson, supra.*

D. S.C. Code Ann. § 15-78-60 (4),(12), (13) & (23)—Immunity for compliance with the law, licensure, regulatory inspections and the prosecution of judicial or administrative proceedings

Subsections 4, 12, 13, and 23, of section 15-78-60 of the South Carolina Tort Claims Act, are affirmative defenses that concern respectively: (4) compliance with the law, (12) licensure, (13) regulatory inspections, and (23) prosecution of judicial or administrative proceedings. Plaintiff has presented sufficient evidence of gross negligence to overcome these provisions. *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109, (S.C. Ct. App. 2013), *See also*, S.C. Code Ann. § 15-78-60(25); *Jackson*, 301 S.C. at 128. Furthermore, the evidence of negligent/grossly negligent supervision falls outside of the subsections raised, and to construe the plaintiff's claim as falling within those subsections would require an inference drawn in the moving party's favor.

The Defendant City has not affirmatively established the various South Carolina Tort Claims Act immunity provisions it has raised and its Motion for Summary Judgment is denied.

2. *Civil Conspiracy*

An actionable claim for civil conspiracy requires: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, which (3) causes the Plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989). The Individual Defendants do not specifically challenge the sufficiency of the evidence to support an actionable civil conspiracy claim; but rather, argue that the plaintiff's civil conspiracy claim is barred by intracorporate immunity and Section 15-78-70(a) of the South Carolina Tort Claims Act.

A. Intracorporate Immunity

Generally members of a corporation, or employees of the same employer, cannot conspire with itself for the purpose of individual liability. *See, Goble v. American Ry. Express Co.*, 124 S.C. 19, I 15 S.E.2d 900 (1923). However, civil conspiracies between the employees of a principal are recognized in South Carolina where the employees act outside of the scope of their employment. *Pridgen v. Ward,* 391 S.C. 238, 244 (S.C. Ct. App. 2010); *citing*, Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct. App. 1986) ("the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties"); *See also*, *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986); (*holding*, "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment"). Whether or not the defendants did or did not act within the course and scope of their employment is a fact question not properly addressed on a summary judgment motion. *See, Broyhill v. Resolution Mgmt. Consultants,* 401 S.C. 466, 477-478, 736 S.E.2d 867, 872 (S.C. Ct. App. 2012). The evidence produced by the plaintiff, when viewed most favorably in his light, is sufficient to establish a conspiracy of employees acting outside of the course and scope of their employment. Therefore, intracorporate immunity does not bar the plaintiff's civil conspiracy claim.

B. S.C. Code Ann. § 15-78-70(a)—Immunity for certain employee acts

Section §15-78-70(a) of the South Carolina Tort Claims Act precludes liability for torts committed by government employees while they are acting within the course and scope of their employment. Subsection (b) of that same provision states:

> Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official

> duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

An inference in the moving parties' favor is required to conclude that the conspiracy at hand was within the Individual Defendants' course and scope of employment. Further, civil conspiracy by its elemental nature involves intent to harm; thus, it is not precluded by Section 15-78-70(a) of the South Carolina Tort Claims Act. *See, Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989).

The plaintiff's action for civil conspiracy is triable; the evidence, when viewed most readily in his favor, would allow a reasonable jury to find that the Individual Defendants' actions were outside of the course and scope of their employment.

Conclusion

The Defendants are not entitled to judgment as a matter of law, have not proven their affirmative defenses under the standard at bar, and material fact issues exist.

THEREFORE, the Defendant City of Forest Acres and the Individual Defendants' motions for summary judgment are denied.

_____
Honorable G. Thomas Cooper, Jr.
Fifth Circuit Court Judge
Richland County, South Carolina

March _____, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		CIVIL ACTION NO. 2012-CP-40-7392
Frank "Doc" Haynie,	)	
Plaintiff,	)	
v.	)	**ORDER**
	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,	)	
	)	
Defendants.	)	
	)	

This action came before the Court on February 21, 2014 for a hearing upon a Motion for Summary Judgment filed by Defendants Mark M. Williams, Shaun Greenwood and Clark Frady, in their individual capacities (collectively "Defendants").[1] Defendants assert that they are entitled to summary judgment as to Plaintiff's sole cause of action against them for civil conspiracy on the following grounds: (1) the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70(a), provides that public employees cannot be held liable for acts or omissions committed within the scope of their official duties[2] and (2) South Carolina common law recognizes a bar on intra-corporate civil conspiracy. Defendants assert that at all relevant times regarding this action they were acting within the course and scope of their employment with Defendant City of Forest Acres ("City").

For the reasons that follow, Defendants' Motion is **GRANTED**.

PROCEDURAL POSTURE

Plaintiff Frank "Doc" Haynie ("Plaintiff") initiated this action on November 2, 2012 by filing a Summons and Complaint against City and three of City's current and/or former employees,

[1] The Court also heard oral argument on Defendant City's Motion for Summary Judgment, but addresses each motion in a separate order.

[2] Defendants further argued that they were entitled to partial summary judgment as to events occurring prior to November 2, 2009 pursuant to the applicable three-year statute of limitations. Plaintiff conceded this point in both his Memorandum in Opposition to Defendants' Motion for Summary Judgment and at the motions hearing. Therefore, the Court will not address this issue.

Defendants Mark M. Williams ("Williams"), Shaun Greenwood ("Greenwood"), and Clark Frady ("Frady"). It is undisputed that each of the individual Defendants was at all times relevant to the allegations of Plaintiff's Complaint employed by City to enforce City's ordinances and to administer its government.

Plaintiff alleges that City is liable for negligence and gross negligence and the individual Defendants are liable for civil conspiracy. The wrongful actions allegedly committed by Defendants in pursuit of their alleged civil conspiracy include:

- "demand[ing] that Plaintiff stop work and present drawings and specifications" before continuing construction on a storage shed located on Plaintiff's residential property on Brentwood Drive (Complaint at ¶ 10);
- "inform[ing] Plaintiff that his drawing[s] [for the storage shed on his Brentwood Drive residential property] failed to meet code . . . and that he should not go forward with construction" (*Id.* at ¶ 11);
- "revok[ing] [Plaintiff's] permit and plac[ing] a 'stop work' order on his entire property" as a result of Plaintiff's failure to create job specifications that met the applicable International Residential Code (2006) (*Id.* at ¶ 13);
- "ma[king] [Plaintiff] stop work on all of his projects and charg[ing] that his work done on the Covenant Road project was not acceptable" (*Id.* at ¶ 15);
- "cit[ing] [Plaintiff] for numerous other violations of the building codes" (*Id.* at ¶ 17); and
- "embarrass[ing] the plaintiff publicly in the presence of other people and even on occasions call[ing] in law enforcement to give the false impression that the plaintiff was a dangerous person who might do . . . harm" (*Id.* at ¶ 18).

Although they dispute Plaintiff's allegations and/or characterization of their actions, Defendants moved for summary judgment on December 27, 2013, asserting that even if those allegations and characterizations are true in all respects, there is no genuine issue of material fact regarding the question of whether the actions they took with respect to Plaintiff were within the course and scope of their employment with City.

UNDISPUTED FACTS[3]

On March 21, 2011, Defendant Frady, City's Director of Code Enforcement, visited residential property located on Brentwood Drive, owned by Plaintiff's wife. He conducted a required inspection of a storage shed that was under construction. Inspections and general enforcement of City's building code are a part of Frady's duties as Director of Code Enforcement. Frady and Plaintiff then got into a dispute as to whether the shed's footings met the requirements of the building code. This dispute was eventually referred to and resolved by the Forest Acres Code Board of Appeals ("Board") in accordance with the dictates of the building code.

On or about June 20, 2011, Frady issued citations to Plaintiff related to the Brentwood Property. Issuance of citations for violations of City codes and ordinances is within the course and scope of Defendant Frady's employment with City. Plaintiff pled guilty to one of the three citations and paid a $750 fine. Pursuant to a plea agreement between Plaintiff and City, the remaining two citations were *nolle prossed* by City.

Plaintiff has also alleged that some or all of the individual Defendants instructed or persuaded Mr. Nassar Alquza, owner of commercial property located on Covenant Road that was under construction intermittently from 2008 to 2011, to fire Plaintiff as general contractor on the project. Plaintiff was indeed fired from the job around the time that Frady inspected the project and indicated that a bathroom's dimensions were not in compliance with the requirements of the Americans with Disabilities Act. Plaintiff has introduced no testimony by Mr. Alquza to substantiate his allegations, and the only other witness to the alleged discussion whereby the individual Defendants purported to convince Mr. Alquza to fire Plaintiff was Paul Cowles, an electrical subcontractor hired by Plaintiff to work on the Covenant Road project. Mr. Cowles

[3] The only relevant events occurred after November 2, 2009, three years prior to the date of Plaintiff's filing of the Summons and Complaint in this action. The Court is therefore ignoring the testimony of Barry Epps that was offered by Plaintiff in opposition to the motion, as it undeniably pertains to events that occurred before that date.

testified that he did not believe he ever heard a City employee tell Alquza that Plaintiff was "a very bad contractor" or "that Alquza needed to get rid of [Plaintiff] and get a new contractor."

Another witness, David Cook, testified that after Plaintiff was terminated, he and Frady were able to resolve the issue regarding the bathroom.

LEGAL STANDARD

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), *SCRCP*; *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008); *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). In determining whether any triable issue of fact exists, the evidence, and all inferences which can reasonably be drawn therefrom, must be viewed in the light most favorable to the nonmoving party. *Worthy* at 325, 608 S.E.2d at 158.

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct. App. 2004). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleading. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue." *Id.*

DISCUSSION

Plaintiff's sole cause of action against individual Defendants is for civil conspiracy. A civil conspiracy consists of three requisite elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. *Lee v. Chesterfield General Hosp. Inc.*, 289 S.C. 6, 10, 344 S.E.2d 379, 382 (Ct. App. 1986). "Conspiracy may be

inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007). The Court considers Plaintiff's civil conspiracy action pursuant to South Carolina law and concludes that there is no genuine issue of material fact as to whether Defendants' alleged actions fell within the course and scope of their employment with City. The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, and the common law bar on intra-corporate civil conspiracy preclude Plaintiff's civil conspiracy claim.

Section 15-78-70(a) of the South Carolina Tort Claims Act (2005) provides "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." Section 15-78-70(b) provides: "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." *Id.* Section 15-78-30(i) defines "scope of official duty" as "(1) acting in and about the official business of a governmental entity and (2) performing official duties."

The Tort Claims Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. "The provision of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f) (Supp. 2002); *see also Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct. App. 1998). The South Carolina Supreme Court has stated: "An act is within the scope of a servant's employment where [it is] *reasonably necessary* to accomplish the

purpose of his employment and in furtherance of the master's business." *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006) (emphasis added).

Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003), which is procedurally and substantively similar to the facts of the case at bar, is particularly persuasive. In *Flateau*, employees of the South Carolina Commission for the Blind ("Commission") asserted a claim for civil conspiracy, among other causes of action, against the Commission's governing board ("Board"). The plaintiffs alleged that the Board "commanded" the plaintiffs to attend a hearing in the Commission's board room, required the plaintiffs to remain in the board room for purposes of awaiting interviews while the Board was in executive session, and would not allow the plaintiffs to leave the board room without a security escort or to access their respective offices. The trial court granted the Board's motions to dismiss pursuant to Rule 12(b)(6), SCRCP, finding that none of the plaintiff's allegations constituted sufficient allegations that the Board's members acted outside of the scope of their duties. *Id.* The trial court dismissed the plaintiffs' action for civil conspiracy pursuant to the South Carolina Tort Claims Act. *Id.*

On appeal, the South Carolina Court of Appeals agreed with the trial court that the Tort Claims Act applied to bar the plaintiffs' claims against the Board for its members' alleged wrongful acts. *Id.* Despite the contentions in the plaintiff's complaint, the court found that the alleged wrongful actions were all within the scope of the Board's duties. *Id.* at 205, 584 S.E.2d at 417. "The pleadings clearly and unequivocally allege that the Board members were meeting and acting together as the [Commission], discussing matters in executive session, and voting in their capacity as Commissioners to take the actions in question—all official duties and actions that are about the official business of the Commission, which is a public body established by the General Assembly." *Id.* The Court held that although the Board members may have exceeded their authority, their

actions did not fall outside the scope of their official duty and affirmed the dismissal of the plaintiffs' action. *Id.* (*citing Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct. App. 1985)).

In *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010), however, the South Carolina Court of Appeals held that the Tort Claims Act did not bar the plaintiff's civil conspiracy claim against certain employees of the Department of Corrections. In *Pridgen*, the plaintiff alleged that he was wrongfully fired from his employment with the South Carolina Department of Corrections ("Department") as a result of a civil conspiracy by defendants, plaintiff's superiors at the Department. In support of his complaint, the plaintiff alleged in part that the defendants were dissatisfied with the performance of another employee at the Department and wanted to see her fired. The plaintiff alleged that the defendants wanted him to provide false and derogatory information to the Department about the employee that the defendants disliked. The plaintiff refused to cooperate with the defendants' request and in response the defendants planned a shakedown at one of the prisons in a concerted effort to manufacture a reason to have the plaintiff fired from his job. In contravention to regular practice, the defendants failed to give the plaintiff advance notice of the shakedown. After the unanticipated shakedown, for which numerous safety standards were violated, the plaintiff was fired.

The Court held that there was at least circumstantial evidence in the record to support a finding that the employees acted outside the scope of their employment and with the intent to harm the plaintiff by having him fired from his employment with the Department. *Id.* at 244, 705 S.E.2d at 62. The Court pointed to evidence that the employees deviated from their customary practices in failing to give notice to the plaintiff of a prison shakedown, the plaintiff had refused to comply with a particular defendant's request that he provide false information about his supervisor, and the

plaintiff's poor relationships with the defendants as justifying its decision. *Id.* at 245, 705 S.E.2d at 62. The Court found that the facts indicated the defendants may have had personal motives for harming the plaintiff and indicated that the evidence supported plaintiff's argument that the defendants' conduct was not necessary to accomplish the purpose of their employment. *Id.*

The case at bar is factually distinguishable from *Pridgen v. Ward*, and the individual defendants must therefore be dismissed from this suit pursuant to the rationale of *Flateau v. Harrelson.* In *Pridgen*, the Court considered allegations of wrongdoing within an employment context, by several employees of the Department against another employee of the Department whom the defendants had a reason to dislike. Here, the allegations asserted by Plaintiff are that employees of City enforced zoning and other City ordinances against him in a hyper-vigilant or uneven fashion. Unlike in *Pridgen*, Defendants' actions, such as investigating and prosecuting alleged violations of the law, were taken by employees of City against a third party who has admittedly violated applicable zoning laws and City ordinances. Defendants' alleged actions in this case are more similar to those taken by the Board members in *Flateau v. Harrelson*, which the South Carolina Court of Appeals held were taken within the course and scope of their employment.

The alleged actions forming the basis of Plaintiff's civil conspiracy action were necessary to accomplish the purpose of Defendants' employment with City—even if motivated by ill will or a desire to do harm. Defendants' actions were wholly in furtherance of the City's business and taken within the course and scope of Defendants' official duties. Plaintiff makes no argument that Defendants had anything to gain by "selectively enforcing" the ordinances against him and has failed to come forward with any factual evidence to substantiate his allegations that Defendants' actions were motivated by personal reasons. Even if he had, the Court cannot conclude, based upon the record before it, that Defendants' actions were "wholly disconnected" from the City's business

and therefore the Court finds that all of Defendants' actions were within the course and scope of their employment with City.[4]

Moreover, Plaintiff's action is barred by the common law bar on intra-corporate civil conspiracy pursuant to which South Carolina law recognizes that actions for civil conspiracy require "a combination of two or more persons" and that where a corporation's agents are alleged to have conspired with themselves on behalf of the corporation, there is only one person and no civil conspiracy. *See Lee v. Chesterfield General Hosp. Inc.*, 289 S.C. 6, 10, 344 S.E.2d 379, 382 (Ct. App. 1986). The Court concludes that all of Defendants' actions towards Plaintiff were within the course and scope of their employment and taken while acting on behalf of City. Therefore the common law bar on intra-corporate civil conspiracy actions precludes Plaintiff's action.

"In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010). The "joint combination" requirement is subject to a bar on intra-corporate civil conspiracy. *See Goble v. American Ry. Express Co.*, 124 S.C. 19, 115 S.E.2d 900 (1923). The bar on intra-corporate civil conspiracy arises out of the legal notion that, just as an individual cannot conspire with himself, a corporation (a legal "person") cannot conspire with itself.

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[4] In an attempt to create a material issue of fact, Plaintiff asserts that Defendants did not treat similarly situated contractors who were allegedly in violation of City ordinances the same as they treated Plaintiff. *See* Compl. at ¶ 17 (asserting Plaintiff "showed numerous instances where others were violating the ordinance but were not prosecuted. Plaintiff was selectively prosecuted for this and other violations...."); *see also* Haynie Depo. at 201:20-202:11. Plaintiff also argued to this Court that several witnesses have testified that Defendants did not "like" Plaintiff and made negative comments about Plaintiff. For example, Barry Epps, a former employee of City, testified that Defendant Williams once commented to Epps that he had no use for Plaintiff. *See* Epps Depo. at 105:8-107:7. Plaintiff has also adduced testimony from a plumbing contractor, David Cook, who testified that on one occasions Defendant Frady stated to him: "You better be careful if you're still doing work with Doc." *See* Cook Depo. at 64:22-67:2.

Even if these allegations are true, and for purposes of this motion, the Court assumes such facts to be true, Plaintiff has not indicated how these comments bring Defendants' actions outside of the course and scope of their duties. The Court finds that such evidence does not create a question of material fact as to whether Defendants acted outside of their job duties. *See See also Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct. App. 1986) (holding acts outside servant's authority are still within his scope of duty if done in furtherance of master's business).

Our appellate courts have recognized two scenarios in which the bar on intra-corporate conspiracy applies: First, agents or employees of a corporation cannot conspire with the corporation itself. *See Goble, supra*. Second, some or all agents of a single corporate entity, acting on its behalf, cannot conspire amongst each other. *See Anthony v. Ward*, 336 Fed. Appx. 311, 315 (4th Cir. 2009) (applying South Carolina law) (*citing McMillan v. Oconee Mem. Hosp., Inc.*, 367 S.C. 559, 626 S.E.2d 884, 886-87 (2006); *Anderson v. S. Ry. Co.*, 224 S.C. 64, 77 S.E.2d 350, 351 (1953)).

In *McMillan*, the South Carolina Supreme Court indicated that the scope of employment was relevant to the intra-corporate conspiracy analysis, holding that "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *Id.* at 565, 626 S.E.2d at 887. For example, in *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 596 S.E.2d 67 (Ct. App. 2004), the Court held that city council members cannot be held liable for firing an employee because they "acted within their authority . . . and cannot be sued for doing what they had a right to do." (*citing Antley v. Shepherd*, 340 S.C. 541, 550, 532 S.E.2d 294, 298 (Ct. App. 2000)). The courts have also held that "a conspiracy may not be based upon an act done in the exercise of a legal right." *Kirby v. Gulf Oil*, 230 S.C. 11, 94 S.E.2d 21 (1956); *Howle v. Mountain Ice Co.*, 167 S.C. 41, 165 S.E. 724 (1932).[5]

Plaintiff attempted to provide examples of Defendants' dislike of Plaintiffs during the motions hearing before this Court. Even if this Court accepts as true that the individual Defendants did not like Haynie, there is no dispute that Defendants were authorized by and through their employment with the City of Forest Acres to investigate and prosecute violations of local

[5] At least one other jurisdiction has held that employees of a city police department could not be held liable for civil conspiracy for enforcing a policy or custom of the city. *See McCumons v. Marougi*, No. 08-11164-BC, 2011 WL 308960 (E.D. Mich. 2011). In *McCumons* the Eastern District of Michigan held that city police department employees' acts to further a city policy were within the scope of their employment, even if arguably outside their authority. Therefore, a civil conspiracy claim could not be sufficiently pled and plaintiff's claim was dismissed.

ordinances and building code violations. Additionally, all of the allegations asserted by Plaintiff as forming a basis for his civil conspiracy claim—that Defendants issued citations for his violations of the law—concern actions that fell within the course and scope of the individual Defendants' employment. As Plaintiff's own testimony evidences, Defendants had a responsibility and obligation as part of the course and scope of their official duties to investigate citizen complaints against Plaintiff for alleged violations of the law. *See* Haynie Depo. at 199:8-18; 200:10-22; 201:17-24; 202:2-17.

In sum, each of the alleged overt acts taken by Defendants in pursuit of the asserted civil conspiracy against Plaintiff were acts that the individual Defendants were authorized to take as a matter of their employment with the City.[6] The challenged conduct constituted single acts by the City acting exclusively through its own officers and employees, each of which was acting within the scope of his employment. These alleged wrongful acts fall within the bar on intra-corporate civil conspiracy. The Court concludes that because Plaintiff's action is asserted against three employees of City, it is subject to the bar on intra-corporate civil conspiracy and the South Carolina Tort Claims Act. There is no evidence that Defendant's actions were "wholly disconnected" from City's business or outside of the course and scope of Defendants' job duties and responsibilities.

Therefore, for the foregoing reasons, the Motion for Summary Judgment filed by Defendants Mark Williams, Shaun Greenwood, and Clark Frady is **GRANTED**.

[6] The Court notes that Plaintiff appears to be making out a complaint based on alleged uneven enforcement of the law. *See* Compl. at ¶ 17; *see also* Haynie Depo. at 201:20-202:11. However, Plaintiff has not filed a civil action pursuant to 42 U.S.C. § 1983 for deprivation of his civil rights, nor has he alleged any constitutional violation such as denial of equal protection or due process, or unreasonable search and seizure. Rather, this action is limited to Plaintiff's asserted claim against the individual Defendants for civil conspiracy.

AND IT IS SO ORDERED.

_____
G. Thomas Cooper, Jr., Circuit Court Judge

March _____, 2014

_____, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Frank "Doc" Haynie, Plaintiff, v. The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2012-CP-40-7392 **ORDER GRANTING DEFENDANT CITY OF FOREST ACRES' MOTION FOR SUMMARY JUDGMENT**

This matter comes before me upon the motion of Defendant City of Forest Acres ("City") for an Order granting summary judgment as to the Plaintiff's claims against it. A hearing was held in this matter on February 21, 2014 at the Richland County Judicial Center. A. Johnston Cox appeared for the City of Forest Acres. Kirby Shealy attended for the remaining Defendants. Paul Porter appeared for the Plaintiff.

After consideration of the oral arguments, memoranda and materials submitted by the parties, and viewing the evidence in a light most favorable to the Plaintiff, I find that the City is entitled to summary judgment as a matter of law.

ALLEGATIONS

Plaintiff filed this action on November 2, 2012, against the City and individually against Mark Williams, the City Administrator, Shaun Greenwood[1], a Codes

[1] In May 2005, City Administrator Mark Williams hired Greenwood for a position in Code Enforcement with the City based upon Greenwood's performance of similar duties for Williams while both were employed by the Town of Summerville. During Greenwood's tenure with Summerville, Williams was generally impressed with his intelligence and capabilities. After hiring Greenwood, Williams eventually recommended to City Council that Greenwood be reclassified as an assistant City Administrator once he received his

Enforcement Officer, and Clark Frady[2], the Building Official. The action stems from a variety allegations made by Plaintiff against the City and the individual Defendants regarding the individual Defendants' investigation of local zoning ordinances and building code violations by Plaintiff. The only cause of action against the individual defendants is civil conspiracy.

The Complaint alleges that the City was negligent or grossly negligent in the following particulars: (1) in appointing Defendants Greenwood and Frady to their positions when they were unqualified (2) in failing to "properly supervise defendants Frady and Greenwood in the performance of their duties" (3) in "failing to listen to or follow through with numerous complaints made by the Plaintiff . . . and discourage the defendants Frady and Greenwood from harassing, coercing and interfering with the plaintiff's daily activities and (4) in "knowingly allowing disparate and unequal application of the building codes and city ordinances to deny plaintiff the same or similar relief granted to numerous other residents and businesses. . .". (Complaint, ¶ 21).

FACTS

In March 2011, Plaintiff applied for and received a permit to construct a 200 square foot storage building on property located at 1325 Brentwood in the City of Forest Acres.

Master's in Public Administration. In addition to his duties as Assistant City Administrator, Greenwood maintained his duties in code enforcement.

[2] Defendant Clark Frady was hired by Williams as the Building Official for Forest Acres in 2010. His employment was contingent upon him becoming a certified Building Official within the two year probationary period allowed pursuant to the regulation of the Department of Labor Licensing and Regulation. Frady had previously been employed by Richland County as a residential building inspector. He had performed inspections for the City on a contractual basis. In light of his previous satisfactory work with the City and his years of experience with Richland County, City Administrator Williams decided to hire Defendant Frady over other candidates for the position of probationary Building Official in 2010.

The property was deeded in the names of Haynie's wife and daughter. Frady, in his capacity as building official, went to the residence to perform the required initial inspection. Frady and Plaintiff then got into a dispute as to whether the shed's footings met the requirements of the building code. Plaintiff contacted City Administrator Mark Williams. In response to Plaintiff's concerns, Williams recommended Plaintiff appeal the code issue to the Forest Acres Code Board of Appeals. This dispute was eventually referred to and resolved by the Forest Acres Code Board of Appeals ("Board") in accordance with the dictates of the building code.

In June 2011, Frady was called to the Brentwood property as a result of an incident involving Haynie and the Richland One School District. Ultimately, Frady issued three citations to Haynie for rubbish and garbage on the property, a home occupation violation and lack of a building permit. Haynie and the City entered into a plea agreement in which Plaintiff agreed to plead guilty to the rubbish violation, pay the $750.00 fine and have a licensed engineer certify the shed's foundation in exchange for the City nolle prossing the other two citations.

Haynie also claims that Frady inspected a commercial project located on Covenant Road in Forest Acres on which he was acting as the general contractor. Frady required one of his contractors to move a sink to comply with an ADA requirement. The fix took a couple of hours. Haynie believes that Frady was targeting him when he required that the work be performed.

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine

issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Gabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

LAW

A. Plaintiff's Complaints of Alleged Wrongdoing Prior to November 2, 2010 Must be Dismissed Pursuant to the Applicable Statute of Limitations

The South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 to –220 (Supp. 2012), governs all tort claims against governmental entities and provides the exclusive remedy against the City. *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (2004). The Act is a limited waiver of governmental immunity. *Moore v. Florence Sch. Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994). "The provisions of the Act establishing limitations on and exemptions to the liability of [governmental entities] must be liberally construed in favor of limiting liability of the State." *Hawkins*, 358 S.C. at 292, 594 S.E.2d at 563 (citing S.C. Code Ann. § 15-78-20(f)).

The statute of limitations for claims against a governmental entity is two years after the date the loss was or should have been discovered. S.C. Code Ann. §15-78-110. Plaintiff conceded at the hearing that he cannot recover for any alleged wrongdoing by the City pre-dating November 2, 2010. Therefore, I find Plaintiff's complaints of alleged wrongdoing prior to November 2, 2010 are dismissed as a matter of law.

B. Plaintiff's Allegations Against the City for Negligent Hiring Must be Dismissed

Plaintiff concedes that the cause of action for negligent hiring is precluded by the statute of limitations, as both Greenwood and Frady were hired before that date. In

addition, he concedes there is no evidence in the record to support a cause of action for negligent hiring.

"In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring . . . the employee...." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). Negligent hiring cases "generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties." *Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447, 450 (Ct.App.2005). "[T]hese elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused." *Id.* The standard, according to the Restatement section 317 comment c, is whether the employer knew the offending employee was "in the habit of misconducting [himself] in a manner dangerous to others." *Id.* at 451. Although foreseeability is usually an issue of fact, "the court should dispose of the matter on a dispositive motion when no reasonable factfinder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard." *Id.*

Plaintiff has pointed to no evidence in the record that the City had any knowledge of a propensity of Greenwood and Frady to misconduct themselves in a manner dangerous to others at the time they were hired. The only evidence in the record is that both had extensive experience in their fields before being hired by the City. There is no evidence of misconduct at all prior to their employment with the City. Therefore, the City is entitled to summary judgment as a matter of law as to the negligent hiring claim.

C. The City is Entitled to Summary Judgment Regarding Plaintiff's Cause of Action for Negligent Supervision

The City is entitled to summary judgment as to Plaintiff's cause of action for negligent supervision.

Our supreme court has held that an employer is under a duty in some circumstances to exercise reasonable care to control an employee acting outside the scope of employment. *See Degenhart v. Knights of Columbus,* 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). The Court in *Degenhart* found that an employer may be liable for negligent supervision if the employee intentionally harms another when the employee: (1) is upon the premises of the employer, or is using a chattel of the employer, (2) the employer knows or has reason to know that he has the ability to control his employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control. *Id.* at 115–17, 420 S.E.2d at 496; *see also* Restatement (Second) of Torts § 317 (1965) (outlining the same elements for negligent supervision).

Here, the Plaintiff alleges only that Frady and Greenwood acted outside the scope of their employment and conspired for the purpose of injuring him. Therefore, Plaintiff is required to prove the elements discussed above. However, the alleged actions of Frady and Greenwood took place off of the City's premises – at the Brentwood Property and on the Covenant Road work site. Therefore, Plaintiff has failed to prove the necessary elements of the negligent supervision cause of action and his claim must fail.

Even assuming the alleged incidents were within the scope of the individual defendants' employment, Plaintiff's claim of negligent supervision against the City nevertheless fails.

An employer owes a duty of care to a third party when the possible harm resulting to the third party by the employee could have been reasonably anticipated by the

employer. *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 303, 468 S.E.2d 292, 299 (1996); *see also Doe v. ATC, Inc.*, 367 S.C. 199, 624 S.E.2d 447 (Ct. App. 2005) {"[T]he court should dispose of the matter on a dispositive motion when no reasonable factfinder could find the risk foreseeable or the employer's conduct to have fallen below the acceptable standard."). In addition, any duty the principal owes a third party arising from a contract between them is limited to an obligation on the part of the principal to use due care in supervising the actions of the agent which are undertaken in his capacity as an agent for the principal and not in his individual capacity. *Degenhart v. Knights of Columbus,* 309 S.C. 114, 420 S.E.2d 495 (1992).

As discussed above during the negligent hiring discussion, *supra*, even assuming the alleged incidents were the result of misconduct by the individual defendants, there is no evidence in the record that the misconduct was foreseeable or that any harm allegedly suffered by the Plaintiff was could have been reasonably anticipated by the City. Therefore, the City is entitled to summary judgment as to this cause of action.

D. Plaintiff's Cause of Action for "Knowingly Allowing Disparate and Unequal Application of the Building Codes and City Ordinances to Deny Plaintiff the Same or Similar Relief Granted to Numerous Other Residents and Businesses Located in Forest Acres" Must be Dismissed

Plaintiff alleges that the City "knowingly" allowed Frady and Greenwood to selectively enforce the building code and city ordinances against him. Assuming *arguendo*, such allegation is deemed a cause of action, this "cause of action" is attempting to allege an intentional tort. However, the City is not liable for loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, *intent to harm*, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17) (emphasis added). Thus, this claim fails as a matter of law under the Tort Claims Act.

As an additional ground for dismissal, Plaintiff has failed to plead or prove a cognizable cause of action against the City. Although his allegations are vague and unclear, it appears that he attempts (and fails) to allege a selective enforcement or selective prosecution cause of action. A claim of selective enforcement or selective prosecution in rooted in the Equal Protection Clause. To establish a claim of selective prosecution, Plaintiff must satisfy a two-pronged test. First, he must demonstrate that "'he has been singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which he was prosecuted.'" *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 200, 525 S.E.2d 872, 885 (2000) (quoting *United States v. Catlett*, 584 F.2d 864, 864 (8th Cir. 1978)). Second, Plaintiff "'must demonstrate that the government's discriminatory selection of him for prosecution was based upon an impermissible ground, such as race, religion or his exercise of his first amendment right to free speech.'" *Id.* (quoting *Catlett*, 584 F.2d at 865).

Likewise, "one seeking to show discriminatory enforcement . . . must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced." *Harbit v. City of Charleston*, 382 S.C. 383, 396, 675 S.E.2d 776, 782 (Ct. App. 2009). Thus, "even assuming [the] City is not enforcing [an] ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation." *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 922 (2004) (holding that even if there is evidence in the record of unequal enforcement, any such evidence only rose to the level of the exercise of some selectivity in enforcement of the ordinance). Indeed, "'the conscious exercise of selectivity in enforcement is not in itself a federal constitutional violation' provided the selection is not 'deliberately based upon an

unjustifiable standard such as race, religion or other arbitrary classification.'" *Id.* (quoting *Oyler v. Boyles*, 368 U.S. 448, 456 (1962)); see *also Hill v. S.C. Dep't of Health & Envt'l Control*, 389 S.C. 1, 20, 698 S.E.2d 612, 622 (2010) (holding plaintiff failed to provide any evidence as to the identity of neighboring landowners and their alleged transgressions, such that he could not show that he was similarly situated or evidence of bias or discrimination).

The Plaintiff has not properly pled or proven a cause of action for selective enforcement or selective prosecution, therefore, his claim must fail. He has failed to plead or prove that this alleged disparate treatment was based upon an impermissible ground, such as race, religion, or another impermissible classification.[3] Nor has he pled or proven that the City has failed to investigate or enforce codes and ordinances against similarly situated landowners or contractors.[4] *See, Hill, supra.* Moreover, even assuming the individual Defendants or the City were enforcing the Code and ordinances unequally, Plaintiff has failed to provide any evidence that the minimal selective enforcement, which is constitutionally permissible, was deliberately based upon an unjustifiable standard. *See, Denene, Inc., supra.* In fact, Plaintiff cannot articulate any reason for the alleged disparate treatment, other than asserting that the individual Defendants "were just looking to get [him]."

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[3] Moreover, because Plaintiff is not a member of a suspect class, the ordinances and Code requirements for which he was cited need only have a rational basis to a legitimate government purpose. *See Denene, Inc.*, 359 S.C. at 92, 596 S.E.2d at 920. The Plaintiff has not challenged the codes and ordinances themselves. Even if he had, it is clear that the relevant building code requirements and city ordinances are rationally related to the public safety and welfare.

[4] As Defendant Greenwood testified "if [the officers] received a specific complaint, [they] would go by there at least to look at the property to assess if the call addressed a valid complaint or not." (*See* Greenwood Deposition, p. 35).

For the foregoing reasons, the City is entitled to summary judgment as a matter of law against Plaintiff as to Plaintiff's claim that the City "knowingly allowed unequal application of the codes and ordinances."

THEREFORE, IT IS ORDERED that the Plaintiff's complaint against the City of Forest Acres be dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable G. Thomas Cooper

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	THE FIFTH JUDICIAL CIRCUIT
)	
Frank "Doc" Haynie,)	C/A No.: 2012-CP-40-7392
)	COPY
Plaintiff,)	
)	
v.)	**Consolidated Rule 59(e) Motion To Alter or Amend Judgment**
)	
The City of Forest Acres,)	
Mark M. Williams, Shaun)	
Greenwood and Clark Frady in their)	
Individual capacities)	
)	
Defendants.)	
)	

TO: JOHNSTON COX, ESQ. ATTORNEY FOR DEFENDANT CITY OF FOREST ACRES AND KIRBY SHEALY, ESQ. AND LYNDEY ZWING, ESQ. ATTORNEYS FOR THE INDIVIDUAL DEFENDANTS.[1]

Plaintiff, through the undersigned, respectfully moves this Honorable Court to alter or amend its Orders, dated April 14, 2014, granting summary judgment in favor of the Defendant City of Forest Acres ("City") and the Individual Defendants.

INTRODUCTION[2]

The Plaintiff filed this action on November 2, 2012, alleging negligence/gross negligence against the Defendant City and civil conspiracy against the Individual Defendants. The Defendant City filed its Motion for Summary Judgment on December 23, 2013. The Individual Defendants filed their Motion for Summary Judgment on December 26, 2013. Those motions were fully briefed, and argued contemporaneously before this Court on February 21, 2014. The

[1] As used herein, Individual Defendants refers to Defendants Mark Williams, Shaun Greenwood, and Clark Frady.

[2] By reference, the Plaintiff incorporates hereto the facts and further procedural history as stated in his Consolidated Memorandum in Opposition to the Defendants' to Summary Judgment; the same, in the spirit of judicial efficiency is attached in full, with exhibits, hereto. (Attachment 1; Consolidated Memorandum in Opposition to Summary Judgment, pp. 1-5, and exhibits).

parties served competing proposed orders thereafter. The Honorable G. Thomas Cooper, Jr. filed separate orders granting Summary Judgment in favor the Defendant City and Individual Defendants on April 14, 2014. Those orders were mailed to counsel from the court on April 15, 2014, were received by the undersigned on April 17, 2014,; and this motion is timely filed to alter and amend those orders in accordance with Rule 59(e) of the South Carolina Rules of Civil Procedure.

The Plaintiff moves this Court to alter or amend those orders because they are inconsistent in relation to one another; the orders require inferences drawn in favor of the moving parties; and because they otherwise overlook or misapprehend the governing law on summary judgment in regard to civil conspiracy and negligence cases.

STANDARD OF REVIEW

Although the State law of South Carolina does not address the standard of review applicable to 59(e) Motions, the notes to SCRCP 59(e) state that South Carolina's Rule 59(e) "is substantially the Federal Rule." SCRCP 59, Official Notes.

The South Carolina District Courts and the Fourth Circuit have held that "while the Rule itself provides no standard for when a district court may grant such a motion, we have previously recognized that there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pacific Ins. Co. v. American Nat 'l Fire Assoc.*, 148 F.3d 396, 402, 41 Fed.R.Serv.3d 729 (4th Cir. 1998). See also *EEOC v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112, 74 Fair Empl.Prac.Cas. (BNA) 202 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081, *1993 U.S. App. LEXIS 12052* (4th Cir. 1993); *Rouse v. Nielsen*, 851 F.Supp.171, at 734, *1994 U.S. Dist. LEXIS 21803; Liberty*

Mut. Ins. Co. v. Employee Res. Mgmt., Inc., 176 F. Supp. 2d 510, 529, *2001 U.S. Dist. LEXIS 19679* (D.S.C. 2001). In the context of a motion for reconsideration, a "manifest injustice" is defined as an error by the court that is "direct, obvious, and observable." *In re Oak Park Calabasas Condominium Ass'n,* 302 B.R. 682, *2003 Bankr. LEXIS 1680* (Bankr.C.D.Cal.2003).

ARGUMENT

Negligence

This Court granted Summary Judgment for the Defendants holding:

(1) alleged wrongdoing outside of applicable two year statute of limitations is not actionable;

(2) to the extent Plaintiff alleged negligent hiring, such a claim is precluded by the applicable statute of limitations;

(3) as to Negligent Supervision, the Court concluded such claim was precluded because:
(i) the occurrences at issue occurred off the city's premises,
(ii) the actions of the Individual Defendants were outside of the course and scope of their employment, and
(iii) the harm and misconduct at issue was not foreseeable;

(4) Plaintiff's negligence claim couched in occurrences unequal application of codes and ordinances is precluded because the same constitutes an intentional tort of the Defendant City's employees "outside of the course and scope of [their] official duties . . .[,]" and that the Plaintiff has failed to show an Equal Protection Clause violation. (Ct. Order 4/14/14, Granting Summary Judgment to Defendant City of Forest Acres; p. 7 ("City Order")) (*citing*, S.C. Code Ann. § 15-78-60(17)).

As two the first two grounds for Summary Judgment, Plaintiff stipulated on brief and argument to the Defendant City's statute of limitations argument; thus, these grounds need not be addressed. The third ground for summary judgment misapprehends the governing law, explicitly contradicts the Court's Order granting Summary Judgment for the Individual Defendants, and requires inferential conclusions in favor of the Defendant City. As to the fourth ground, the Plaintiff does not claim, nor has he claimed, a violation of the Equal Protection Clause; rather, Plaintiff has relied on evidence of unequal and heightened enforcement of codes and ordinances

against him as further evidence of the actual claims raised, and is not legally precluded from doing so.

Civil Conspiracy

The Court granted Summary Judgment in favor of the Individual Defendants and held that the Individual Defendants' actions were inside the course and scope of their employment; and therefore, that the South Carolina Tort Claims Act immunized the Individual Defendants from liability for such conduct. This holding is in conflict with the Court's holding for the Defendant City that the Individual Defendants were acting outside the course and scope of their employment, requires inferences to be drawn in favor of the Individual Defendants, and misapprehends the governing law.

I. The Court's Orders Granting Summary Judgment for the Defendant City and Individual Defendants Are Inconsistent.

The Court, in its Order Granting Summary Judgment for the Defendant City held that Plaintiff alleges "that [Defendnats] Frady and Greenwood acted outside the scope of their employment . . ." and that thus he must show negligence in the manner prescribed by *Degenhart v. Knights of Columbus*. (City Order, p. 6 ¶¶ 2-3); *citing*, *Degenhart*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992) (There the South Carolina Supreme Court concluded that an employer could be liable for negligent supervision where its employees intentionally harmed another.) The Court further reasoned that the "City is not liable for loss resulting from 'employee conduct outside the scope of [the Individual Defendants'] official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." (*Id.* at p. 7 ¶ 3 (*citing*, S.C. Code Ann. § 15-78-60(17)). A clear reading of the Court's Order for Summary Judgment in favor of the City indicates that, in part, the basis for that Order was that the Individual

Defendants were acting outside of the course and scope of their employment. (*See, Id.* pp. 6 ¶¶ 2-3, 7 ¶ 3).

The Court in its Order granting Summary Judgment for the Individual Defendants reasoned that the "[Individual] Defendants' actions were in furtherance of the City's business and taken within the course and scope of [the Individual] Defendants' official duties." (Ct. Order, 4/14/14, Granting Summary Judgment to Individual Defendants: p. 6, ¶ 3 ("Individual Defendant Order")). The Court further held "Additionally, all of the allegations asserted by Plaintiff as forming a basis for his civil conspiracy claim . . . concern actions that fell within the course and scope of the [I]ndividual Defendants' employment with the [Defendant] City," and that "The challenged conduct constituted single acts by the City acting exclusively through its own officers and employees, each of which was acting within the scope of his employment." (*Id.* at p. 7 ¶¶ 2-3). The Court held that "because Plaintiff's action is asserted against the Individual Defendants for actions taken within the scope of their employment as employees of the [Defendant City] the South Carolina Tort Claims Act applies and [the Individual] Defendants are immune from Plaintiff's civil conspiracy claim."

The Courts separate orders granting summary judgment to the Defendant City (partially on the ground that the Individual Defendants were acting outside the course and scope of their employment) and granting summary judgment to the Individual Defendants (wholly on the ground that they were acting within the course and scope of their employment) are facially inconsistent. These orders, on the same set of facts, cannot be reconciled. On that basis the contradicting conclusions at hand foster a readily observable manifest injustice warranting alteration and amendment to those Orders. *See, Pacific Ins. Co. v. American Nat 'l Fire Assoc.*, 148 F.3d 396, 402, 41 Fed.R.Serv.3d 729 (4th Cir. 1998).

II. The Court's Orders Misapply the Summary Judgment Standard and Draw Inferences in Favor of the Defendants Who Moved for Summary Judgment.

On Summary Judgment, "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant" *Bayle v. SCDOT*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). That is, while conclusions and inferences, based on the evidence may be drawn, they should be drawn in favor of the non-moving party, here the Plaintiff. *See*, *Charbonnages de France v. Smith*, 597 F.2d 406, 414 (4th Cir. 1979) (A plaintiff is entitled "To have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of all possible inferences drawn in his behalf; and finally, to be given the benefit of all favorable legal theories involved by the evidence so considered"). Furthermore "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla*[3] of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (*emphasis added*).

The Plaintiff submitted a vast expanse of evidence supporting his negligence and civil conspiracy claims. (*See*, Attachment 1; pp. 1-5, exhibits 1-12). The Court's orders make little reference to the corroborating affidavits of Plaintiff's witnesses (Ex. 3 & 5); the testimony of witness Reverend Barry Epps, who testified that he was directed on an inordinately high basis to monitor the plaintiff (Ex. 2); the testimony of Plaintiff's sub-contractors who corroborated much of Plaintiff's testimony; (Ex. 10 & 11); and the documentary evidence submitted showing that Defendant Frady improperly interfered with Plaintiff's code board appellate rights (Ex. 7 & 8). In light of the summary judgment standard at bar and the evidence presented, that Plaintiff has not presented, at least, a mere scintilla of evidence supporting his claims is an error of law.

[3] A mere scintilla is a "gleam, a glimmer, a spark, the least particle, the smallest trace." *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724.

As to Plaintiff's negligence claim, in addition to the conclusion on employee scope referenced above, the Court concluded that Plaintiff's claim was barred for failure to show that the occurrences at issue were on city premises and for lack of foreseeability; both of these determinations require inferences to be drawn away from the Plaintiff and in favor of the Defendant City. (City Order, pp. 6, ¶ 3 – p. 7, ¶ 2). First the plaintiff presented evidence of at least two occurrences where he was harmed by the conduct of the Individual Defendants on the Defendant City's premises: one at the code board of appeals hearing, and the second when one of Plaintiff's customers Nasser Alquza was convinced to fire plaintiff as his general contractor. (Attachment 1; Ex. 1, pp. 98:15-99:12, 102:9-11; Ex. 6, ¶ 6; Ex. 7; Ex. 8 and Ex. 10, p. 42:2-18). Second, the Plaintiff testified that he complained about, and the Defendant City's City Attorney corroborated that the Defendant City was on notice of the, actions being taken by its employees, the Individual Defendants, to harm the Plaintiff. (Attachment 1; Ex. 1, pp. 33:18-34:17; (Ex. 6, ¶ 3). The Court's holding that the negligent acts did not occur on the Defendant City's premises and otherwise we're not foreseeable is error in light of the evidence presented.

As to Plaintiff's civil conspiracy claim, the Court concluded that "the alleged actions forming the basis of Plaintiff's civil conspiracy action were necessary to accomplish the purpose of Defendant's employment with City." (Individual Defendant Order; p. 6, ¶ 3). Such a conclusion requires the Court to draw the inference that personally motivated excessive monitoring of Plaintiff, interference with Plaintiff's code board of appeals rights, and personally motivated interference with Plaintiff's contracts was within the Individual Defendants' course and scope of employment. (*See*, Attachment 1; pp. 2-5, Ex. 1-12). However, on Summary Judgment, inferences may not be drawn in favor of the moving party. *See Bayle v. SCDOT*,

344 S.C. 115, 120; 542 S.E.2d 736, 738 (Ct. App. 2001). Therefore, the Court's Order granting summary judgment for the Individual Defendants constitutes a manifest injustice.

The Orders at issue overlooked the evidence presented by the Plaintiff in opposition to summary judgment, and those Orders are supported by inferences in favor of the moving Defendants; thus, alteration and amendment to those Orders, in the plaintiff's favor, is warranted.

III. The Court's Orders Misapply the Negligence and Civil Conspiracy Law to the Case at Bar.

Negligence

This negligence/gross negligence claim is best couched as a claim of negligent supervision. Negligent supervision cases "generally turn on two fundamental elements-knowledge of the employer and foreseeability of harm to third parties." *See Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447,450* (Ct. App. 2005) (citing *Di Cosala v. Kay*, 91 N.J. 159,450 A.2d 508,516 (1982)). A Court should deny summary judgment where a "reasonable fact-finder could find that the employer's conduct has fallen below the acceptable standard." *See, Id.* The Court held, among other things (addressed above,) that the Plaintiff's negligence/gross negligence claim failed because many of the occurrences at issue did not take place on the Defendant City's premises. (City Order, p. 6 ¶¶ 2-3). Such a holding, in the case of a municipal defendant, misapplies the holding by the South Carolina Supreme Court in *Degenhart*. In *Degenhart* the Court recognized that:

> An employer may be liable for negligent supervision if the employee intentionally harms the employee when he: (i) is upon the premises in possession of the [employer] *or upon which the [employee] is privileged to enter only as his [employee]*, or (ii) is using a chattel of [the employer], and . . . [the employer] (i) knows or has reason to know that he has the ability to control his [employee] and (ii) knows or should know of the necessity and opportunity for exercising such control.

Degenhart, 114 S.C. at 115-117, (bracket modifications original)(emphasis added); *citing*, Restatement (Second) of Torts § 317 (1965). The governing law makes clear that an employer can be held liable for intentional acts of its employees where the actions occur on premises that the employee is solely privileged to enter as an employee of the employer, and where the employer knows, or should know, the necessity and opportunity to exercise control. *Id.* Therefore, the Defendant City can be liable for actions within its jurisdiction, and outside of its own premises, where its employees were present due to their employment, but intentionally harmed a plaintiff in the process. The Order granting summary judgment in favor of the Defendant City misstates *Degenhart*; specifically, it narrows the Court's holding in *Degenhart* to require that all negligent supervision actions against a municipality be brought solely to redress harm that occurred on that municipality's property. *See Id.*

Civil Conspiracy

The Court concluded that this case is similar to the holding South Carolina Court of Appeals, 2003 holding in *Flateau v. Harrelson*. *Flateau*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In that case the Court of Appeals concluded that dismissal under South Carolina Rules of Civil Procedure, Rule 12(b)(6) was proper where while the individual defendants in the case may have exceeded their authority, they were still furthering their employer's interests.. The Court's determination in this case is more aptly directed by the Court of Appeals more recent holding in *Pridgen v. Ward*.[4] *See*, *Pridgen*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App.

[4] It is also necessary to consider, in detail, this State's precedents on the principles for determining liability in a civil conspiracy case: "In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (S.C. Ct. App. 2010) citing, *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (S.C. Ct. App. 2005). "Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Moore v. Weinberg*, 373 S.C. 209, 228,

2010). In *Pridgen* a jury found that the individual defendants, who were co-workers of the plaintiff, were liable for civil conspiracy where the plaintiff alleged that due to his refusal to harm a co-worker, with whom the Individual Defendants were dissatisfied, he was improperly investigated and terminated. *Id.* 391 S.C. at 249. The Court of Appeals found that "the evidence in the record creat[ed] more than one reasonable inference as to whether the [individual defendants] acted outside the scope of their employment" and held that "the jury could infer from the evidence presented that the Appellants' actions were personally, not professionally, motivated, and were wholly disconnected from the business of [their employer]". *Id.* at 245. Similarly here, the Plaintiff presented substantial evidence that the individual defendants acted, in concert with personal animus against him, to cause him harm; such cannot readily be inferred to be within the course and scope of the individual defendants employment with the Defendant City. (Attachment 1; pp. 2-5). Thus, the holding that the Individual Defendants were acting within the course and scope of their employment, in the light of the evidence and governing law, was reversible error.

CONCLUSION

For the reasons stated above, the Plaintiff respectfully requests that this Court alter and amend its Orders in this case to deny summary judgment, and submit this case to a jury trial.

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644 S.E.2d 740, 750 (Ct. App. 2007). "Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable by direct evidence." *Id.* (quoting, *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)). "Moreover, the field of admissibility of evidence is broadened in proof of conspiracy." *Island Car Wash, Inc.*, 292 S.C. at 601; citing *Hall v. Walters*, 226 S.C. 430, 85 S.E. (2d) 729 (1955).

Respectfully Submitted,

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April 28, 2014
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		CIVIL ACTION NO. 2012-CP-40-7392
Frank "Doc" Haynie,	)	
Plaintiff,	)	**DEFENDANTS MARK M. WILLIAMS, SHAUN GREENWOOD AND CLARK FRADY'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S CONSOLIDATED RULE 59(E) MOTION TO ALTER OR AMEND JUDGMENT**
v.	)	
The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady in their individual capacities,	)	
Defendants.	)	

Defendants Mark M. Williams, Shaun Greenwood and Clark Frady, in their individual capacities (collectively referred to as "Defendants"), respectfully file this memorandum in opposition to the Consolidated Rule 59(e) Motion to Alter or Amend Judgment filed on April 28, 2014 by Plaintiff Frank "Doc" Haynie ("Plaintiff").[1] Defendants submit that the Court appropriately granted Summary Judgment in favor of the individual Defendants on Plaintiff's sole cause of action against them for civil conspiracy, for the following reasons.

Standard of Review

Rule 59(e) of the *South Carolina Rules of Civil Procedure* allows a party to move for an order altering or amending a judgment. The decision to grant or deny a Rule 59(e), SCRCP, motion is within the sound discretion of the trial court. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (App. 2012), *reh'g denied, cert dismissed.* A party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App.

[1] Individual Defendants hereby incorporate by reference the legal arguments set forth by Defendant City of Forest Acres in its Memorandum in Opposition to Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment.

2002); *Mailsource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

A motion to alter or amend is typically only granted where the moving party shows that there is a clear factual error to be corrected. *See Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996); *see also Ruscavage v. Zuratt*, 831 F.Supp. 417 (E.D. Pa. 1993) (stating that the purpose of a motion to alter or amend is to correct "manifest errors of law or fact or to present newly discovered evidence"). As the federal courts have recognized, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4th Cir. 1998).

Plaintiff argues that the federal standard for considering a Rule 59(e) motion should be applied here. Under applicable federal law, "there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *See* Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 2 (citations omitted). The federal standard stated by Plaintiff has not been adopted by any South Carolina state court. Nevertheless, even if that standard were to apply, his motion fails. There has not been an intervening change in controlling law or any new evidence that has been discovered which may change the Court's decision. Plaintiff therefore argues that the Court's ruling constitutes "a clear error of law" or a "manifest injustice."

A finding of "manifest injustice" is typically reserved for instances in which a judgment injures innocent third parties or contains an obvious clerical error. For example, in *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170 (4th Cir. 2007), the United States Court of Appeals for the Fourth Circuit upheld a district court's granting of a motion to alter or amend a judgment that

unintentionally permitted the plaintiff to voluntarily dismiss all the claims, where the district court meant to allow the voluntary dismissal of only one claim.

A party's mere disagreement with how the trial court applied the applicable standard when making its decision does not support a motion to alter or amend. *See Hutchinson v. Staton*, 994 F.2d 1076, 1083 (4th Cir. 1993). Where the judgment is factually supported and legally justified, no "clear error of law" or "manifest injustice" exists. *Id.* at 1081-82. Here, Plaintiff's arguments amount only to a disagreement with this Court's application of the law to the facts of this case and present improper grounds to support a motion to alter or amend.

ARGUMENT

I. THE COURT'S SUMMARY JUDGMENT ORDERS ARE NOT INCONSISTENT.

Plaintiff asserts that this Court's orders granting summary judgment to Defendant City of Forest Acres ("City") and the individual Defendants are inconsistent and that such inconsistency amounts to a "readily observable manifest injustice warranting alteration and amendment . . . ." *See* Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 5. Plaintiff would have this Court believe that the two orders are irreconcilable because the Court ruled that City was immune from suit because the individual Defendants' actions were intentional torts, outside of the course and scope of their employment with City, while also finding that the individual Defendants were immune from suit because their actions fell within the course and scope of their duties. Plaintiff misapprehends the bases for the Court's orders.

As the individual Defendants read the Court's Order Granting Defendant City's Motion for Summary Judgment, there are three grounds warranting dismissal of the City. First, the applicable statute of limitations barred Plaintiff's cause of action for negligent hiring. Second, Plaintiff's negligent supervision claim failed because the individual Defendants' conduct occurred away from

City's premises. Third, City could not be held liable for alleged intentional torts by the individual Defendants. *See* South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60 (17). If the individual Defendants' interpretation of the Court's Order is correct, the Court properly recognized that, based on Plaintiff's allegations alone, Defendant City could not be held liable.

On the other hand, the Court dismissed Plaintiff's civil conspiracy cause of action against the individual Defendants based on a lack of evidence amounting to a civil conspiracy. The Court specifically held that "Plaintiff makes no argument that Defendants had anything to gain by 'selectively enforcing' the ordinances against him and has failed to come forward with any factual evidence to substantiate his allegations that Defendants' actions were motivated by personal reasons." *See* Order Granting Individual Defendants' Motion for Summary Judgment at p. 6. *See also* Order Granting Defendant City of Forest Acres' Motion for Summary Judgment at p. 9 ("In fact, Plaintiff cannot articulate any reason for the alleged disparate treatment, other than asserting that the individual Defendants 'were just looking to get [him].'").

As reflected in the record, Plaintiff failed to come forward with evidence that the individual Defendants took any action that fell outside of their job duties, which consisted of interpretation and enforcement of applicable municipal ordinances and building codes. Plaintiff has not articulated any reason why Defendants would be personally motivated to harm him or his business. Moreover, the evidence upon which Plaintiff relies is based on inference, assumption, guesswork, and his ability to "connect the dots," which is insufficient to overcome a summary judgment motion. *See* Deposition of Frank "Doc" Haynie at 153:10-20, 161:14, 244:4-5, 162:2, 162:5, 212:1-15.

"To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture." *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) (Hearn, J., concurring in part and dissenting in part) (*citing McKnight v.*

S.C. Dep't of Corrs., 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009)). *See also Jeffers v. Lafarge North America, Inc.*, 622 F.Supp.2d 303 (D.S.C. 2008) (*citing DeJarnette v. Corning, Inc.*, 133 F.3d 293, 298 (4th Cir. 1998)). "[I]dle speculation, which has no basis in the record, is clearly insufficient to overcome" summary judgment. *See Richland-Lexington Airport Dist. v. Atlas Properties, Inc.*, 854 F. Supp. 400 (D.S.C. 1994). A party "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Id.* (citation omitted). Haynie's speculative opinions do not amount to adequate evidence from which a reasonable inference could be drawn. Although South Carolina courts have recognized that due to the nature of the claim civil conspiracy causes of action are typically based on circumstantial evidence,[2] Plaintiff has failed to come forward with a scintilla of circumstantial evidence to create a genuine issue of material fact in this case.

Contrary to Plaintiff's assertion, the Court's order dismissing Defendant City was based on Plaintiff's own contradictory allegations that Defendants' conduct was intentional but that City was still responsible for their conduct. The Court's basis for dismissing the individual Defendants was based on a lack of evidentiary support for Plaintiff's bald and speculative allegations of alleged intentional wrongdoing. The Court's order granting City's Motion for Summary Judgment is therefore consistent with the Court's Order granting individual Defendants' Motion for Summary Judgment. Accordingly, the orders present no "clear error of law or fact" or "manifest injustice" to Plaintiff and his Consolidated Rule 59(e) Motion to Alter or Amend should be denied.

[2] *See Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010) (allowing direct or circumstantial evidence to support a civil conspiracy cause of action) (*citing Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005)); *see also Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007) (holding "[c]onspiracy may be inferred" because "by its very nature[,] [it] [is] covert and clandestine") (*quoting Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)).