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SC Court of Appeals

AMENDED RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2012-CP-46-00146

Nadine Brantley, Appellant,

v.

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

Of Which The City of Rock Hill, a body politic and subdivision of the State of South Carolina is the
Respondent.

AMENDED RECORD ON APPEAL

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Jeremy D. Melville
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Attorney for Respondent

Nadine Brantley

Nadine Brantley
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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Nadine Brantley,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

**ORDER FOR
SUMMARY JUDGMENT**

Case No. 2012CP4600146

FILED-RECEIVED
2014 SEP -28 AM 9:13
LEXINGTON
S.C. 29501
COURTY, SC

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

STANDARD FOR SUMMARY JUDGMENT

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

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

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

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

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

BACKGROUND

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

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



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

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

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

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

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

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

ANALYSIS

I. Inverse condemnation.

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

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

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

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

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

II. Nuisance.

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

III. Gross negligence.

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

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from flooding once the house was constructed.

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

A. Building and Permitting Claims.

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

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

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

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

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

B. Gross Negligence in Failing to Prevent Floods.

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

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

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

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

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

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

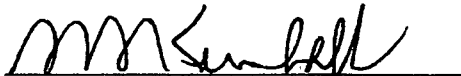
We find a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the City is immune from liability for negligence claims arising out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

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

CONCLUSION

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

AND IT IS SO ORDERED.



S. Jackson Kimball
Special Circuit Court Judge
York County

August 28, 2014

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2012 CP-00146

Nadine Brantley

The City of Rock Hill and Wherry Construction Co., Inc.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeremy D. Melville

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

FILED
2014 SEP 12 AM 9:13
CLERK OF COURT
YORK COUNTY, SC

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

Apex *M. Kim Bell*
Circuit Court Judge

3063
Judge Code

8/29/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 2nd day of Sept, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 2nd day of Sept 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

J. Cameron Halford
238 Rockmont Drive
Fort Mill SC 29708
ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeremy Melville
P.O. Box 790
Rock Hill SC 29731-6790
ATTORNEY(S) FOR THE DEFENDANT(S)
Daniel Hamilton
CLERK OF COURT

Court Reporter:

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

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

FORM 4

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

FILED-RECEIVED
26

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4600146

Nadine Brantley

2014 DEC 18 AM 9:28

Rock Hill City Of

Wherry Construction Co
Inc

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

This matter came before me on October 16, 2014 upon Plaintiff's motion pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the Court's Order filed September 2, 2014. Representing the parties were: J. Cameron Halford for Plaintiff; and, W. Mark White for Defendant City of Rock Hill.

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. *See Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009); *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order.

Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

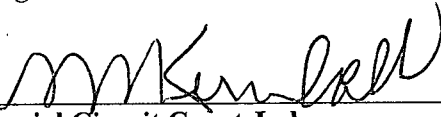
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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


Special Circuit Court Judge

3063

Judge Code

12/15/2014

Date

For Clerk of Court Office Use Only

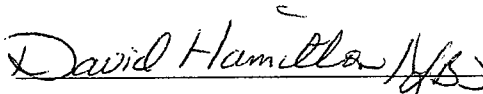
This judgment was entered on 12-18-14 and a copy mailed first class or placed in the appropriate attorney's box on 12-18-14 to attorneys of record or to parties (when appearing pro se) as follows:

J. Cameron Halford 238 Rockmont Drive 238 Rockmont Drive Fort Mill, SC 29708

W. Mark White PO Box 790 Rock Hill, SC 29731-6790

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

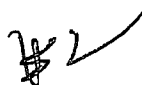


Court Reporter

David Hamilton - Clerk of Court

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

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



COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Nadine Brantley,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 2012CP4600146

COMPLAINT
(JURY TRIAL DEMANDED)

FILED-RECEIVED
2012 JAN 12 PM 2:16
DAVID HARRINGTON
CLERK OF COURT
YORK COUNTY, SC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

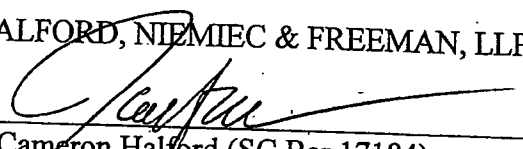
55. That despite written demand and notice pursuant to S.C. Code Ann. §40-59-820, et. seq., Wherry Construction Company, Inc. refuses or is unwilling to correct the defects in the construction, settle or deny Plaintiff's claims necessitating this suit be filed.
56. That as a result of Wherry's placement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

WHEREFORE, Plaintiff prays for the following relief:

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

Respectfully submitted,

HALFORD, NIEMIEC & FREEMAN, LLP



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

STATE OF SOUTH CAROLINA-RECEIVED

COUNTY OF YORK 2012 FEB 21 AM 9:03

IN THE COURT OF COMMON PLEAS

Nadine Brantley,
Plaintiff, YORK COUNTY, SC

vs.

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

ANSWER

(Jury Trial Demanded)

C.A. No. 09-CP-46-2211

2012 CP 46 146

Defendant the City of Rock Hill (the "City"), answering in full the Complaint (the "Complaint") against it, respectfully states as follows.

For a First Defense

1. The City lacks sufficient information with which to form a belief as to the allegations contained in Paragraphs 1 and 2 of the Complaint; therefore, the City denies these allegations and demands strict proof thereof.

2. As to the allegations contained in Paragraph 3 of the Complaint, the City admits that it is a municipal corporation and political subdivision organized pursuant to the laws of the State of South Carolina and that certain activities within the City require a permit as set forth in the Municipal Code. Except as expressly admitted herein, the City denies the allegations contained in said Paragraph and demands strict proof thereof.

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3. The City denies the allegations contained in Paragraphs 4, 6-7, 9, 11-19, 21-32, 35, 37-39, 41-51.

4. As to the allegations contained in Paragraph 5 of the Complaint, the City admits that the City was aware that a building permit had been issued to Wherry Construction Co, Inc. for construction on the subject property from the date said permit was issued. Except as expressly admitted herein, the City denies the allegations in said Paragraph and demands strict proof thereof.

5. As to the allegations contained in Paragraph 8 of the Complaint, the City admits that the subject property is adjacent to Spencer Park. The remaining allegations in Paragraph 8 are vague and ambiguous and the City lacks sufficient information with which to form a belief as to said allegations; therefore, the City denies said allegations and demands strict proof thereof.

6. As to the allegations contained in Paragraphs 10, the City admits it issued a building permit to Wherry Construction Co., Inc. for construction on the subject property. Except as expressly admitted herein, the City denies the allegations contained in said Paragraph and demands strict proof thereof.

7. As to the allegations contained in Paragraphs 20 and 40 which reallege certain allegations contained in the Complaint, the City repeats and incorporates by reference its answers to the realleged paragraphs.

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8. As to the allegations contained in Paragraphs 33-34, the City admits that the City issued a building permit to Wherry Construction Co., Inc. for construction on the subject property. Except as expressly admitted herein, the City denies the allegations in said Paragraphs and demands strict proof thereof.

9. As to the allegations contained in Paragraph 36, the City denies that any taking has occurred with respect to the Subject Property and admits that no condemnation proceedings have been instituted by the City with respect to the subject property. Except as expressly admitted herein, the City denies the allegations in said Paragraph and demands strict proof thereof.

10. Paragraphs 52-58 of the Complaint do not state any allegations with respect to the City and, therefore, no response is required from the City. To the extent a response is required to said Paragraphs, the City denies the allegations contained in said Paragraphs and demands strict proof thereof.

11. Each and every allegation of the Complaint not specifically admitted herein is denied and strict proof is demanded thereof.

For a Second Defense

12. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

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13. Plaintiff's claims, in whole or in part, should be dismissed with prejudice pursuant to Rule 12(b)(6), SCRCP, for failure to set forth factual allegations sufficient to constitute a cause of action as against the City.

For a Third Defense

14. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

15. Upon information and belief, the South Carolina Department of Transportation and other persons or entities own and are responsible for certain rights of way, culverts, roadways, ditches, drainage fields, structures and other property referenced and implicated by Plaintiff in the Complaint.

16. Therefore, Plaintiff's claims should be dismissed pursuant to Rule 12(b)(7), SCRCP, for failure to join necessary parties pursuant to Rule 19, SCRCP.

For a Fourth Defense

17. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

18. Plaintiff's claims, in whole or in part, are barred pursuant to the doctrine of sovereign immunity under the provisions of the U.S. CONST. amend. XI.

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For a Fifth Defense

19. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

20. Plaintiff's claims are barred under the doctrine of laches.

For a Sixth Defense

21. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

22. Plaintiff's damages, if any, were caused by her own acts or omissions and these acts or omissions bar any recovery by Plaintiff from City.

For a Seventh Defense

23. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

24. Plaintiff's damages, if any, were caused by the acts or omissions of others not within the control of City and these intervening acts or omissions bar any recovery by Plaintiff from City.

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For an Eighth Defense

25. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

26. Plaintiff's claims, in whole or in part, are barred by the doctrines of waiver or release.

For a Ninth Defense

27. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

28. Plaintiff's claims are barred by the Statute of Limitations.

For a Tenth Defense

29. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

30. In the event it is determined that a nuisance exists in this case, which is specifically denied by the City, Plaintiff's recovery should be diminished in whole or in part based on the grounds that she voluntarily came to the alleged nuisance.

For an Eleventh Defense

31. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

32. Plaintiff's claims against City are governed by and subject to the terms, conditions and limitations of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

33. Plaintiff may recover, if at all, only actual damages, and only upon the terms and conditions and subject to the limitations contained in the Act, as amended.

34. The City pleads the terms, provisions, conditions and limitations of the Act as an absolute or pro tanto defense to these causes of action.

35. Specifically, these causes of action, in whole or in part, are barred by one or more subsections contained in S.C. Code Ann. § 15-78-60.

For a Twelfth Defense

36. Each and every allegation, admission and denial not inconsistent herewith is hereby incorporated and realleged as fully as if set forth verbatim herein.

37. Plaintiff's claims should be barred or diminished based on the doctrine of assumption of the risk.

For a Thirteenth Defense

38. If it is determined that the City was grossly negligent, reckless or willful, which is specifically denied, the City avers that the negligence, gross negligence, recklessness and willfulness of Plaintiff combined, concurred and contributed with the gross negligence, recklessness or willfulness of the City.

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39. Plaintiff's claims are barred by the doctrine of comparative negligence or, in the alternative, the amount of recovery available to Plaintiff should be reduced by the percentage of Plaintiff's own negligence, gross negligence, recklessness and willfulness.

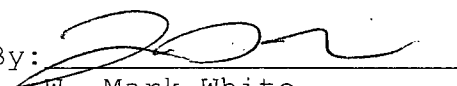
Jury Trial Demand

40. The City hereby demands a trial by jury of all legal issues raised in this matter.

WHEREFORE, the City of Rock Hill, having answered the Complaint as against it, prays that the Complaint be dismissed with prejudice, with costs and such other and further relief as the Court deems just and proper.

SPENCER & SPENCER, P.A.

February 12, 2012

By: 
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Jeremy D. Melville
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ATTORNEYS FOR DEFENDANT THE
CITY OF ROCK HILL

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Nadine Brantley,

Plaintiff,

v.

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

Defendants.

Case No. 2011-CP-46-146

**PLAINTIFF OBJECTIONS, CLAIMS OF
PRIVILEGE, AND RESPONSE TO
INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS BY
DEFENDANT CITY OF ROCK HILL**

Subject to the Objections and Claims of Privilege below, Plaintiff Nadine Brantley hereby responds to the April 12, 2012 Interrogatories and Request for Production of Documents propounded by City of Rock Hill pursuant to SCRCP 33 and SCRCP 34. Plaintiff expressly reserves the right to supplement responses as discovery and litigation in this case continues due to the ongoing nature of investigation concerning claims and defenses in this case:

**GENERAL OBJECTIONS AND
CLAIMS OF PRIVILEGE**

1. By responding to Defendant's First Interrogatories and First Request for Production of Documents, Plaintiff does not concede that Defendant's Requests *seek information and documents that are relevant to the parties' claims or defenses in this litigation nor reasonably calculated to lead to the discovery of admissible evidence*. Plaintiff reserves both the right to object to further discovery concerning the subject matter of Defendant's First Requests for Admission of Facts and the right to object to the introduction of evidence of any responses to Plaintiff's responses thereto at trial.

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2. Plaintiff's responses to Defendant's Interrogatories and Request for Production of Documents is made without in any way waiving or intending to waive, but, on the contrary, preserving or intending to preserve the following rights:
 - a. The right to object to the use of the information provided in any subsequent proceedings or the trial of this or any other action on the grounds, including, but not limited to, authenticity, relevancy, materiality, privilege and admissibility.
 - b. The right to object on any ground at any time to other discovery requests involving the information provided and/or the subject-matter thereof.
3. Plaintiff objects to each request that seeks information protected from discovery under the attorney-client privilege, the attorney work product doctrine, the South Carolina and/or the Federal Rules of Civil Procedure, the Federal Rules of Evidence and/or any other applicable statute or law.
4. Plaintiff objects to each request for production of documents that calls for the disclosure of information prepared in anticipation of litigation or trial.
5. Plaintiff objects to each request for production of documents that calls for the identification or disclosure of any information reflecting the mental impressions, conclusions, opinions, or legal theories of any attorney or representative of Plaintiff.
6. Plaintiff objects to each request for admission of fact that seeks the disclosure of any confidential, commercial or proprietary information.
7. Plaintiff objects to each request that fails to describe the information sought with reasonable particularity or assumes facts not established, or which form a legal conclusion not yet established by the Defendant.
8. Plaintiff objects to each request that is: (a) unreasonably cumulative or duplicative; (b) seeks information obtainable from some other source that is more convenient, less burdensome or less expensive; or (c) otherwise constitutes an abuse of discovery under the South Carolina or Federal Rules of Civil Procedure.
9. Without waiving the objections set for the above and subject to the limitations stated above and below, Plaintiff provides non-privileged information in Plaintiff's possession believed to be responsive to Defendant's Interrogatories and Request for Production that has been uncovered by reasonable investigation. Plaintiff reserves the right to supplement its responses to Defendant in the event that Plaintiff discovers additional responsive information not currently in Plaintiff's possession or that of Plaintiffs' counsel given the ongoing nature of investigation and discovery in this case.

RESPONSE TO INTERROGATORIES

1. Identify all Persons known or believed by you to have knowledge of any facts or circumstances of this case, and as to each, identify any written statements taken from such Person and set forth a summary of the knowledge, information or facts known to or observed by such Person.

1. Todd Williams. Prior business client of the Plaintiff, expected to be familiar with litigation as between Plaintiff and Mr. Williams and the foreclosures involving Charleston and York County properties, including the subject property, and circumstances under which Plaintiff acquired the subject property.
2. Paul Deese. Relative of Plaintiff familiar with the property flooding, culvert blockage due to debris, property condition, photographing of the property, personal observations of extent of flooding and damages to the subject property and personal attempts to assist Plaintiff in removal of molded flooring, carpets, and use of fans to try to dry up interior flooding of the home.
3. Angela (last name unknown) – City of Rock Hill Storm Water Services. Took Plaintiff's complaint and verbally Referred Plaintiff to Risk Management and advised Plaintiff that the City of Rock Hill "has maintained a file on the house and property for years" (sic).
4. Trudy Amick – City of Rock Hill Storm Water Services. Advised Plaintiff verbally that the subject property floods frequently, that the problem cannot be fixed, and that the house was built "without proper permitting". She advised Plaintiff that she personally had observed flooding of the subject property during two Christmas holiday days watching the house in question flood. She likewise advised Plaintiff that Risk Management had a "very large" file on the subject property spanning several years.
5. Judy Pavese – City of Rock Hill Risk Management. Requested Plaintiff send pictures of the property and write a letter as to why Plaintiff believed City of Rock Hill was responsible for the flooding of the subject property. According to Plaintiff she did not provide a proper claim form to Plaintiff.
6. Emily Turner – City of Rock Hill Building Department. Formerly with York County Stormwater. Commented to Plaintiff verbally that "everyone knows that the house floods" referencing the subject property.
7. Ann Greer – Insurance Adjuster for Hewitt Coleman. Representative for City of Rock Hill through Hewitt Coleman for determining claims. Issued letter denying claim due to no gross negligence, see Exhibit A. (P. 084)
8. David Brantley – Plaintiff's brother in law. Plaintiff solicited his advice and assistance in finding a way to help to file a claim with City of Rock Hill.

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9. Peggy Upchurch. Former York County Commissioner. Personal acquaintance of Plaintiff who referred Plaintiff to Kevin Sutton, city councilman. Plaintiff was seeking assistance in investigating the flooding problem and filing a claim.
10. Kevin Sutton – Rock Hill city councilman. Expected to be familiar with the subject property, the house, and expected to have visually observed the property in a flooded state with water approximately 5" up the exterior walls.
11. Betty Floyd. Owner of adjacent property neighboring the subject property. Advised Plaintiff that anyone who has ever owned the property has been forced to relocate due specifically to repeated flooding of the property.
12. Jimmy McConnel – City of Rock Hill Building Inspection Department. Discussed portions of the building permit with Plaintiff verbally and could not explain whether or not the engineering report identified in the permitting process had ever been obtained or not. Advised Plaintiff he did not know why the residence concrete slab was approved or why it was poured prior to footings for the home being inspected. Advised Plaintiff he did not know why the dwelling structure was built within the side setback in deviation from the site plan. Advised Plaintiff that building permits were sometimes approved by the permitting authority "verbally". Advised Plaintiff of the city inspectors on this property, including Cindy Helms, Harry Peart, and Luther McDonald.
13. Diane L. Kehler – Remedies Restoration Carolinas, LLC. Supplied an estimate for remediation of the property to Plaintiff but ultimately opined to Plaintiff that the flooding would occur again.
14. Rhett Butler – Killingsworth Environmental. Supplied an estimate to Plaintiff for remediation but ultimately opined to Plaintiff that the property would flood again.
15. Kenneth Bumgardner – Killingsworth Environmental. Supplied an estimate to Plaintiff for remediation but ultimately opined to Plaintiff that the property would flood again.
16. Bill Gallagher - Superior School of Real Estate. Advised Plaintiff that the City of Rock Hill should have denied or revoked the building permit for the subject property, that the topic of Stormwater Management is unfamiliar to most persons including city-employed personnel, and that it would be a good topic for continuing education of government employees, realtors, and the public in general.

17. Robert R. Medford. Fishcer-Scherer, Inc. Surveyor. Would not speak with Plaintiff about the subject property, referred Plaintiff to Mr. Wherry (builder) and the City of Rock Hill inspection department. Expected to be familiar with the surveys pertinent to the subject property.

18. Building Permit Inspectors (now or formerly with city of Rock Hill – address and contact unknown at this time):

- a. Cindy Helms.
- b. Harry Peart. (now with Lancaster County Building Department on information and belief).
- c. Luther McDaniel.

19. Melinda Lucka, attorney Finkel Law Firm. Plaintiff consulted with this attorney over how slow the City was producing its file, about Plaintiffs' personal theories and findings regarding the subject property, and she suggested Plaintiff employ a FOIA request to obtain a copy of the file. Advised Plaintiff to consult a local attorney in York County.

2. Identify each Person whom you expect to call as a fact witness in the trial of this matter, and as to each Identify and set forth the subject matter and facts on which you expect such witness to provide testimony. **Plaintiff objects pursuant to paragraphs (4) and (5) above, specifically as seeking information prepared in anticipation of litigation and reflecting the mental impressions and/or legal theories of Plaintiff's authorized representatives. Subject to this objection, and without waiver, Plaintiff has not identified or selected which of the fact witnesses identified above it would rely upon at trial at this time, and reserves the right to supplement this request accordingly. Plaintiff incorporates by reference the responses to Interrogatory No. (1) above and reserves the right to supplement accordingly as discovery and litigation continues in this case. Plaintiff likewise reserves the right to call any fact witness identified in documents produced under Exhibit A.**

3. Set forth and Identify all damages claimed to have been sustained by Plaintiff relating to the allegations in the Complaint or for which Plaintiff is otherwise seeking compensation in this lawsuit. **Plaintiff objects pursuant to paragraphs (1), (2), (4), (5) and (7), specifically as overburdensome at this stage of the litigation. Subject to these objections, and without waiver, Plaintiffs' claims she has suffered a taking of the entire economic value of the property due to conduct, errors and/or omissions by the City of Rock Hill as described in the Complaint, the allegations of which are incorporated by reference. Plaintiff has also incurred damage or loss of personal property and improvements to the subject residence show in documentation under Exhibit A.**

4. Identify each Person whom you expect to call as a expert witness at the trial of this case, and for each such expert provide the following: **No Experts Have Been Consulted or Retained to Date. Plaintiff reserves the right to supplement discovery responses to this request prior to trial.**

- A. Identify all Documents which have been read, reviewed, considered, relied upon or prepared by the expert;
- B. Identify every field or area of expertise in which you expect to qualify the expert;
- C. Set forth and Identify subject matter or issues on which the expert is expected to testify;
- D. State and Identify all education, training and experience which qualifies the expert to provide opinion testimony for each subject matter and issue;
- E. State and Identify the substance of the facts and opinions to which the expert is expected to testify; and
- F. Provide a summary of the grounds for each opinion.

5. Identify all Documents that relate to any claim, defense or issue in this lawsuit. This interrogatory includes, but is not limited to, memoranda, notes, contracts, correspondence, financial records, photographs, plats, sketches, drawings, surveys, appraisals, videotapes or prepared documents of any type whatsoever. **Plaintiff objects pursuant to paragraphs (1), (2), 2(a), 2(b), (5), and (7), specifically as over burdensome and seeking information available to City of Rock Hill through its own files. Subject to these objections, and without waiver, Plaintiff produces the information attached as Exhibit A.**

6. Identify all persons associated with the City and Wherry Construction Co., Inc. with whom you have communicated, orally or in writing, relating to the Subject Property, the flooding thereof, or the incidents set forth in the Complaint. **Plaintiff identifies the Complaint in this action and the Notice of Construction Defect and Right to Cure sent to Wherry Construction prior to commencement of this lawsuit. Plaintiff has had verbal and written contact with city officials and adjusters identified in documents produced under Exhibit A and those persons identified in response to Interrogatory No. (1) above.**

7. Identify all third-parties with whom you have communicated, orally or in writing, relating to the flooding of the Subject Property or the incidents set forth in the Complaint. **Plaintiff objects to the request pursuant to paragraphs (1), (2), (4), (5) and (7) as seeking information not reasonably calculated to lead to the discovery of admissible evidence, seeking identification and disclosure of information prepared in anticipation of litigation, and overly burdensome. Subject to these objections, and without waiver, Plaintiff identifies the persons identified in response to Interrogatory No. (1) above and those persons identified in documents produced under Exhibit A.**

8. Identify each and every draining ditch, bed, channel, water course, culvert, road, gully, drainage bed, drainage field, ditch, right of way and pipe (collectively, "Watercourses") which you contend have caused or in any way contributed to the flooding at issue in this Lawsuit; and as to each Watercourse you have identified, identifying the owner or other Person(s) responsible for such Watercourse and all facts and Documents forming the basis of your determination of such responsible Person(s). **Plaintiff objects pursuant to paragraphs (1) through (7), specifically as seeking the mental impression of Plaintiff's authorized representatives, overly broad, and requesting information contained within the files of the City of Rock Hill**

or Risk Management through a more convenient or less costly source. Subject to these objections, and without waiver, Plaintiff identifies an improperly sized culvert and pipe directly adjacent to the subject property on the front right quadrant (see "pipe" on pp. 554 of Exhibit A extending under Cummings Street) and Plaintiff identifies the water course as that channel running front to rear through the adjacent property (front to rear) to said pipe without easement. Plaintiff has visually observed flooding as waters exceed the watercourse channel onto her property, and on information and belief the culvert and pipe identified is owned and maintained by the City of Rock Hill. See response to Interrogatory (9) below.

9. Identify the culvert pipes referenced in Paragraph 7 of the Complaint and Identify all facts and Documents evidencing or otherwise supporting your allegation that City installed such pipes, that the City responsible for the maintenance of such pipes and that such pipes are inadequate. Plaintiff objects pursuant to paragraphs (1), (2), 2(a), 2(b), (3), (4), (5) and (7), specifically as seeking information calling for disclosure of information prepared in anticipation of trial, the mental impressions of Plaintiff's authorized representatives, and available to Defendant City of Rock Hill through its own files. Subject to these objections, and without waiver, Plaintiff responds as follows: See City of Rock Hill Storm Water Engineer Reports addressing mitigation, recommending culvert size should be increased from 24" to 54" inches, and referencing the culvert as part of the City of Rock Hill stormwater management system, p. 242. See also City of Rock Hill website stormwater management responsibilities, which is incorporated by reference. See also, pp. 554 Exhibit A "pipe" as identified on plat. Plaintiff has visually observed City of Rock Hill maintain the pipe and remove debris since this claim was filed. Plaintiff seeks reciprocal discovery of these items through counsel for City of Rock Hill.

10. Identify all studies, reports or analyses conducted by Plaintiff, the City, Wherry Construction Co., Inc. or any third party relating to the flooding of the Subject Property or the mitigation or abatement thereof. Plaintiff objects pursuant to paragraphs (1), (2), (4), (5) and (7), specifically as available to City of Rock Hill through its own files. Plaintiff seeks reciprocal discovery of the same information. Subject to these objections, and without waiver, Plaintiff identifies and produces the information attached under Exhibit A, pp. 242 Tim Brooks, City of Rock Hill Engineer with Planning and Development to James G. Bagley.

11. Identify the studies, reports, analyses to which you refer in Paragraphs 14, 21, 28 and 42 of the Complaint. Plaintiff objects pursuant to paragraphs (1), (2), (4), (5) and (7), specifically as available to City of Rock Hill through its own files. Plaintiff seeks reciprocal discovery of the same information. Subject to these objections, and without waiver, see response to Interrogatory No. (10) above. Plaintiff identifies and produces the information attached under Exhibit A, p. 242.

12. Identify all studies, reports, analyses, Correspondence or other Documents evidencing or otherwise relating to the value of the Subject Property including, but not limited to, appraisals. Plaintiff objects pursuant to paragraphs (1), (2), (4) and (5) above, specifically as not

relevant to the claims and defenses in this action and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiver, Plaintiff produces the documents attached under Exhibit A.

13. Identify all Documents and tangible items of any nature and description which you intend to introduce into evidence or to use for impeachment purposes or as any type of evidence at the trial of this matter. Plaintiff object to the request pursuant to paragraphs (4), (5), (7) and (8) above, specifically as failing to identify what is sought with particularity, seeking information prepared in anticipation of litigation, and seeking attorney client work product and mental impressions of Plaintiffs' authorized representatives. Subject to these objections and without waiver, Plaintiff has identified and produced under Exhibit A all documents in Plaintiffs' possession and reserves the right to rely upon any documents produced. Plaintiff further reserves the right to supplement discovery response to this Interrogatory as investigation and litigation continue through reciprocal discovery.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all documents identified, described or listed in any of your responses to interrogatories. Plaintiff objects to the request pursuant to paragraph (7) of the foregoing claims of privilege and objections, specifically as being vague, overly broad, and failing to identify with particularity the documents being sought by Defendant. Subject to these objections, and without waiver, Plaintiff produces the documents attached under Exhibit A. Plaintiff assisted with framing of responses to these requests for information by Defendant City of Rock Hill.

2. Produce all documents reviewed or consulted in preparing your responses to any of the interrogatories. Plaintiff objects pursuant to paragraphs (1), (2), (3) and (4) of the above listed general objections and claims of privilege, specifically as seeking the disclosure of information prepared in anticipation of trial and documents subject to attorney client privilege; Subject to these objections, and without waiver, Plaintiff produces the documentation attached under Exhibit A.

3. Produce all documents that have been reviewed, considered, relied upon, possessed or prepared by any expert whose testimony you may use at the trial of this action. Plaintiff has not yet consulted or engaged an expert in this matter, and expressly reserves the right to supplement response to this request prior to trial.

4. Produce all Documents and Correspondence evidencing, supporting or relating to your claim for inverse condemnation against the City in this Lawsuit. Plaintiff objects pursuant to paragraphs (1), (2), (3), (4), (5) and (7) of the foregoing general objections and claims of privilege, specifically as overly burdensome at this stage of the litigation and seeking information available to the City of Rock Hill through its own files. Subject to these objections, and without waiver, Plaintiff produces the documents attached under Exhibit A, p. 239.

5. Produce all Documents and Correspondence evidencing, supporting or relating to your claim for gross negligence against the City as alleged in this lawsuit. **Plaintiff objects pursuant to paragraphs (1), (2), (5) and (7), specifically as over-burdensome and seeking information available to City of Rock Hill through its own files, which Plaintiff seeks reciprocal discovery of. Subject to these objections, and without waiver, Plaintiff produces the documents attached under Exhibit A.**

6. Produce all Documents and Correspondence evidencing, supporting or relating to your claim for nuisance against the City in this Lawsuit. **Plaintiff objects pursuant to paragraphs (1), (2), (5) and (7), specifically as seeking the identification of mental impressions, conclusions, or legal theories of Plaintiffs' authorized counsel and representatives. Plaintiff objects to disclosure of information sought in preparation of litigation and/or trial. Subject to said objections, and without waiver, Plaintiff produces the information and documents attached under Exhibit A.**

7. Produce all plats, maps, diagrams, sketches or other Documents showing or relating to the drainage ditches, beds, channels, water courses, culverts, road, gulleys, drainage beds, drainage fields, right of ways and pipes (collectively "Watercourses") which you contend contribute to the damages alleged in this Lawsuit. **Plaintiff objects pursuant to paragraphs (1) and (2) above, specifically as the request seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, and without waiver, Plaintiff produces the information attached under Exhibit A. The culvert pipe is identified on p. 404 and 544.**

8. Produce all Documents and Correspondence relating to your determination of the owner or Person (s) responsible for the repair, monitoring and maintenance of the Watercourses referenced in Request for Production Number 7, above. See p. 239 – 242. **Plaintiff seeks reciprocal discovery of any and all studies performed by or for the City of Rock Hill.**

9. Produce all studies, reports, analyses and other Documents relating to the flow of water across the Subject Property, the flooding of the Subject Property or the mitigation or abatement thereof. See response to (8) above.

10. Produce all studies, reports, analyses and other Documents relating to the value of the Subject Property, including, but not limited to, any appraisals of the Subject Property. **Attached under Exhibit A., p. 488.**

11. Produce all Documents and Correspondence between you and the City relating to the Subject Property and the flooding incidents (s) at issue in this Lawsuit. **Plaintiff objects pursuant to paragraphs (1) through (7) above, specifically as seeking information prepared in anticipation. Subject to these objections and without waiver, Plaintiff produces the information attached under Exhibit A.**

12. Produce all Documents and Correspondence exchanged between you and Wherry Construction Co. Inc. relating to the Subject Property and the flooding incidents at issue in this Lawsuit. **Plaintiff identifies the Notice and Right to Cure letter attached under Exhibit A, including p. 344.**

13. Produce all Documents and Correspondence evidencing, supporting or relating to your allegation that the City is responsible for the installation of the culvert pipe referenced in Paragraph 7 of the Complaint, that the City is responsible for the maintenance of said pipe and that said pipe is inadequate. **Plaintiff objects pursuant to paragraphs (1) through (7) above, specifically as overly broad and seeking documents available to Defendant City of Rock Hill through its own files, or a more convenient and less costly source. Plaintiff seeks reciprocal discovery of this information. Subject to these objections, and without waiver, Plaintiff identifies and produces the documents attached under Exhibit A, specifically referencing P. 001, 239-240, 350, 363.**

14. Produce all Documents and Correspondence relating to the lawsuit between you and Todd Williams and the settlement thereof, including, but not limited to, pleadings, discovery requests and responses, settlement agreements, deeds, court orders and correspondence between the parties. **Plaintiff objects to the request pursuant to paragraphs (1) through (7), specifically as seeking information not relevant to the claims and defenses in this action, not reasonably calculated to lead to the discovery of admissible evidence, and overly burdensome being available to the Defendant City of Rock Hill through its own files. Subject to these objections, see attached under Exhibit A.**

15. Produce all Documents and Correspondence relating to your acquisition of the Subject Property, including but not limited to, all Documents and Correspondence relating to the closing of the transaction. **Plaintiff objects pursuant to paragraphs (1), (2), 2(a), 2(b), and (7), specifically as seeking information not relevant to the claims and defenses in this action and not reasonably calculated to lead to the discovery of admissible evidence. Subject to said objections, and without waiver, Plaintiff produces the documents attached under Exhibit A. The property was acquired by Plaintiff through foreclosure action brought as against Todd Williams, documents attached under Exhibit A.**

16. Produce all Documents and Correspondence exchanged between you and Todd Williams relating to the Subject Property. **Plaintiff objects pursuant to paragraphs (1) and (2) of the foregoing general objections and claims of privilege, specifically as seeking information not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiver, Plaintiff produces the documents attached under Exhibit A.**

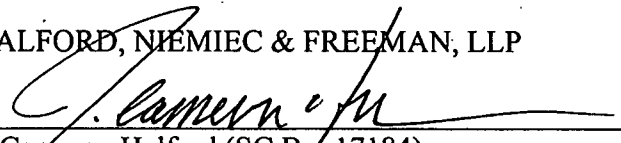
17. Produce all Documents and Correspondence exchanged between you and any third-party relating to the Subject Property, the flooding thereof or the claims and defenses in this Lawsuit. **Plaintiff objects pursuant to paragraphs (1) through (7), specifically as failing to identify with particularity the third parties or information being sought. Subject to these objections, and without waiver, Plaintiff produces the documents attached under Exhibit A.**

18. Produce all statements of any witnesses regarding any claim, defense or issue in this lawsuit. **Plaintiff objects pursuant to paragraph (7) of the foregoing general objections and claims of privilege. Subject to these objections and without waiver, Plaintiff is in possession of no written statements of any fact witness. See response to Interrogatory No. (1) above. See also, pp. 238-240 documents obtained through informal discovery with City of Rock Hill claims officials.**

19. Produce all Documents obtained from any person not a party to this action relating to the Subject Property or the claims and defenses in this lawsuit, whether obtained by subpoena or otherwise. **Plaintiff objects to the request as overly broad, failing to identify with particularity the third parties or information sought, and overly burdensome. Subject to these objections, see attached under Exhibit A.**

20. To the extent not produced in response to any of the foregoing requests, produce all documents which may constitute evidence in this case, including, but not limited to, memoranda, notes, contracts, correspondence, financial records, photographs, plats, sketches, drawings, surveys, appraisals, videotapes, or other items a tangible nature. **Plaintiff objects the request pursuant to paragraphs (1), (4), (5) and (7) of the general objections and claims of privilege, specifically as failing to identify that which is sought with particularity, vague, overly broad and available to Defendant City of Rock Hill through its own files. Plaintiff seeks reciprocal discovery of information responsive to this request. Subject to these objections and without waiver Plaintiff produces the information and documents attached under Exhibit A.**

HALFORD, NIEMIEC & FREEMAN, LLP



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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Nadine Brantley,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

**RESPONSES TO PLAINTIFF'S
REQUESTS FOR ADMISSIONS**

C.A. No. 09-CP-46-2211

Responding to Plaintiff's Requests for Admissions (the
"Requests"), in accordance with Rule 36, SCRPC, defendant City of
Rock Hill ("City") respectfully submit as follows.

RESPONSES

1. Admit that the City of Rock Hill issued construction
permit 99-00896 to Wherry Construction for construction of a
dwelling.

Response: Admit.

2. Admit that the permit referenced above was for
construction of a single family dwelling upon TMS # 628-15-01-018.

Response: Admit.

3. Admit that the subject property is not designated as or
within a FEMA flood zone.

Response: Admit.

4. Admit that the adjacent parcel TMS # 628-15-01-10 is
property owned and maintained by the City of Rock Hill.

Response: Denied.

5. Admit that the adjacent parcel TMS # 628-15-1-15 is property owned and maintained by the City of Rock Hill.

Response: City admits that it is the record owner of the real property identified as TMS # 628-15-01-15. The City objects to the remaining portion of the request on the grounds that it is ambiguous.

6. Admit that the pipe identified in p. 554 of documents produced by Plaintiff was installed by the Defendant City of Rock Hill Storm Water Division.

Response: Denied.

7. Admit that the City of Rock Hill is responsible for inspection and maintenance of the culvert pipe referenced in Paragraph (3), per p. 266 of Exhibit A produced by Plaintiff.

Response: Denied.

8. Admit that the City of Rock Hill maintains an easement and 50' Right of Way across Cummings Street, directly adjacent to the front of Plaintiff's parcel 0.386 acres 1020 Willowbrook Road, Rock Hill, South Carolina.

Response: Denied.

9. Admit that Tim Brooks is an engineer employed with the City of Rock Hill, Planning Development and Infrastructure as of August, 2011.

Response: Admitted.

10. Admit that a water drainage evaluation and analysis were performed by Tim Brooks for City of Rock Hill in year 2009 concerning the subject property.

Response: The City admits that Tim Brooks performed a preliminary drainage investigation and analysis concerning the subject property in 2009. Except as expressly admitted herein, the City denies the allegations in Request 10.

11. Admit that James G. Bagley, Jr. P.E. was Assistant City Manager in year 2009.

Response: Denied.

12. Admit that the City of Rock Hill documented a claim for property damage due to the flooding concerning the subject property on May 6, 2003.

Response: The City objects to this Request on the grounds that it is ambiguous. Subject to the foregoing, the City admits that a claim for flooding of the subject property was made in 2003.

13. Admit that the drainage study was done specifically concerning 1020 Willowbrook under a prior claim filed with the City of Rock Hill in year 2009.

Response: Denied.

14. Admit that the Defendant City of Rock Hill has performed feasibility and cost analysis of possible improvements to the downstream Central Creek run-off which crosses the subject property.

Response: Admit.

15. In reference to document "Brantley no. 71" - admit that no engineer report or "OK" exists subsequent to the July 7, 1999 building inspection done on the property.

Response: City object to this request on the grounds that it is ambiguous and therefore the City denies the Request.

16. Admit that Brantley no. 71 references on 3-13-2000 "slab already poured".

Response: City objects to this request on the grounds that it is ambiguous and therefore the City denies the request.

17. Admit that permit 99-00896 issued by the City of Rock Hill after construction commenced on the residence by Wherry Construction.

Response: Denied.

18. Admit that the concrete slab of the residence was poured prior to an engineer being consulted per notes identified 7-7-1999 on p. 001 (Permit 99-00896).

Response: City objects to this request on the grounds that it is ambiguous. Subject to the foregoing, the City denies the request.

19. Admit that the City of Rock Hill has denied prior claims filed with regard to the subject property specifically over flooding.

Response: Admitted.

20. Admit that the City of Rock Hill Stormwater Division was established in year 1995.

Response: Denied.

21. Admit that "dwelling flooding" was a project priority for maintenance and improvements under fee schedules adopted and discussed in publication under Exhibit A, p. 22 as produced by Plaintiff.

Response: City objects to this Requests on the grounds that it is ambiguous and therefore the City denies the request.

22. Admit that the City of Rock Hill maintains nor is granted any Easement encroaching the subject property.

Response: City objects to this request on the grounds that it is ambiguous and therefore denies the request.

23. Admit that the City of Rock Hill is granted a 50' Right of Way across Cummings Street which fronts Plaintiff's property at 1020 Willowbrook.

Response: Denied.

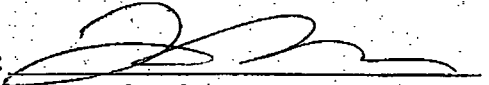
24. Admit that the pipe depicted in p. 554 of Exhibit A of documents produced by Plaintiff to the City of Rock Hill is a 24" culvert pipe.

Response: Denied.

25. Admit that Bobby Banks is Public Works Director for the City of Rock Hill.

Response: Denied.

SPENCER & SPENCER, P.A.

By: 

W. Mark White
Jeremy D. Melville
226 East Main Street
P.O. Box 790
Rock Hill, SC 29731
803/327-7191 - Telephone
803/327-3868 - Telecopy

ATTORNEYS FOR CITY OF ROCK
HILL

October 10th, 2012

SPENCER & SPENCER, P.A.

ATTORNEYS AT LAW

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P.O. BOX 790

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August 15, 2013

Via Hand Delivery

J. Cameron Halford, Esq.
238 Rockmont Drive
Fort Mill, SC 29708

Re: Nadine Brantley v. City of Rock Hill
C.A. No. 2012-CP-46-00146

Dear Cam:

The City of Rock Hill ("City") hereby supplements its Responses to Plaintiff's Interrogatories dated October 10, 2012 ("Responses") as follows.

In addition to those persons identified in response to Plaintiff's Interrogatory 8, the following persons may have knowledge regarding the facts and circumstances of this case: Harry Peart, Cyndi Helms, and Goodwin Thomas.

Harry Peart and Cyndi Helms were employed by the City of Rock Hill in the Department of Inspection at or around the time the dwelling was constructed on the Subject Property and are knowledgeable regarding the inspection and permitting of the improvements made to the Subject Property by Wherry Construction which are a subject of this action.

Goodwin Thomas (deceased) was an engineer who, upon information and belief, evaluated the issues noted in the City's Building Inspection Record for the Subject Property (Brantley Doc. No. 71) on or about July 7, 1999 and provided an engineering report with respect thereto.

The City will continue to supplement its Responses if and as necessary pursuant to the SCRCF.

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J. Cameron Halford

August 15, 2013

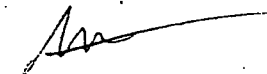
Page 2

Also, I am recently informed that your client has filed a complaint (or complaints) with the South Carolina Department of Labor, Licensing and Regulation with respect to the subject property. With respect to her complaint to SCLLR and any resulting matters, please supplement your responses to Interrogatories Nos. 1, 5, 7 and Request for Production Nos. 17, 18 and 19.

Finally, the City will take the depositions of the plaintiff and Ronald E. Wright, P.E. Please provide four or five suitable dates for these depositions.

Respectfully,

SPENCER & SPENCER, P.A.



W. Mark White

cc: Jimmy Bagley, P.E.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Nadine Brantley,	)	
	)	
Plaintiff,	)	Case No. 2011-CP-46-146
	)	
v.	)	
	)	
	)	<u>PLAINTIFF SUPPLEMENTAL</u>
	)	
	)	DISCOVERY TO DEFENDANT
	)	CITY OF ROCK HILL
	)	
	)	
The City of Rock Hill, a body politic and	)	[Interrogatories (4) and (7)]
Subdivision of the State of South	)	
Carolina; and Wherry Construction Co.,	)	[Request for Production (2) and (3)]
Inc.,	)	
	)	
Defendants.	)	

TO: JEREMY MELVILLE and MARK WHITE, ATTORNEYS FOR CITY OF ROCK HILL:

Plaintiff Nadine Brantley hereby supplements responses to Interrogatory No. (4) and (7), and Request for Production No. (2) and (3) of the April 12, 2012 Discovery demands propounded by the City of Rock Hill, pursuant to SCRCP 26, SCRCP 33 and SCRCP 34, subject to the following continuing objections and claims of privilege which are incorporated by reference :

CONTINUING GENERAL OBJECTIONS AND CLAIMS OF PRIVILEGE

1. By responding with supplemental information to Defendant's Interrogatories and Request for Production of Documents, Plaintiff does not concede that Defendant's Requests *seek information and documents that are relevant to the parties' claims or defenses in this litigation nor reasonably calculated to lead to the discovery of admissible evidence.* Plaintiff reserves both the right to object to further discovery concerning the subject

1
[Signature]
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matter of Defendant's Interrogatories and Request for Production and the right to object to the introduction of evidence of any responses thereto at trial or any hearing in this case.

2. Plaintiff's responses to Defendant's Interrogatories and Request for Production of Documents is made without in any way waiving or intending to waive, but, on the contrary, preserving or intending to preserve the following rights:
 - a. The right to object to the use of the information provided in any subsequent proceedings or the trial of this or any other action on the grounds, including, but not limited to, *authenticity, relevancy, materiality, privilege and admissibility*.
 - b. The right to object on any ground at any time to other discovery requests involving the information provided and/or the subject-matter thereof.
3. Plaintiff objects to each request that seeks information protected from discovery under the attorney-client privilege, the attorney work product doctrine, the South Carolina and/or the Federal Rules of Civil Procedure, the Federal Rules of Evidence and/or any other applicable statute or law.
4. Plaintiff objects to each request for production of documents that calls for the disclosure of information prepared in anticipation of litigation or trial.
5. Plaintiff objects to each request for production of documents that calls for the identification or disclosure of any information reflecting the mental impressions, conclusions, opinions, or legal theories of any attorney or representative of Plaintiff.
6. Plaintiff objects to each request that seeks the disclosure of any confidential, commercial or proprietary information.
7. Plaintiff objects to each request that fails to describe the information sought with reasonable particularity or assumes facts not established, or which form legal conclusions not yet established by the Defendant.
8. Plaintiff objects to each request that is: (a) unreasonably cumulative or duplicative; (b) seeks information obtainable from some other source that is more convenient, less burdensome or less expensive; or (c) otherwise constitutes an abuse of discovery under the South Carolina or Federal Rules of Civil Procedure.
9. Without waiving the objections set for the above and subject to the limitations stated above and below, Plaintiff provides non-privileged supplemental information in Plaintiff's possession believed to be responsive to Defendant's Interrogatories (4) and (7), and Request for Production (2) and (3), that has been uncovered by reasonable investigation. Plaintiff reserves the right to supplement its responses to Defendant in the event that Plaintiff discovers additional responsive information not currently in Plaintiff's possession or that of Plaintiffs' counsel given the ongoing nature of investigation and discovery in this case.

**INTERROGATORY NO. (4) and (7) SUPPLEMENTAL
RESPONSES TO DISCOVERY**

4. Identify each Person whom you expect to call as a expert witness at the trial of this case, and for each such expert provide the following: **Plaintiff identifies the firm of Berman & Wright, LLC, specifically individuals Robert G. Barfield, AIA, NCARB, and Ronald E. Wright, PE. Robert Barfield is a consulting architect with the firm. Ronald Wright is a consulting engineer.**

- A. Identify all Documents which have been read, reviewed, considered, relied upon or prepared by the expert. **Produced at and available for download at :**

<https://www.dropbox.com/s/fy6e5vlhz0aivuu/Berman%20and%20Wright-Brantley-completed%20file-RGB.zip>

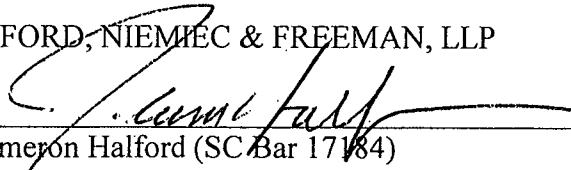
- B. Identify every field or area of expertise in which you expect to qualify the expert. **Robert Barfield performed all on-site inspections and visual observations at Spencer Park and the Plaintiffs' property. Expert qualification may be sought as to Robert Barfield pertinent to regulatory, permitting or construction issues related to the property at 1020 Willowbrook. Ronald Wright is a consulting engineer with the firm. Expert qualification may be sought as to Ronald Wright, PE, addressing civil engineering matters relevant to the ownership of the storm water system existing at Spencer Park, existing watercourses, topography, storm water system improvements, culverts, servicing and/or drainage characteristics of the watershed.**
- C. Set forth and Identify subject matter or issues on which the expert is expected to testify. **See response to (B) above, which is incorporated by reference. See also June 28, 2013 report of Berman & Wright, LLC and documents available to the Defendant at the FTP address listed in 4(a) above.**
- D. State and Identify all education, training and experience which qualifies the expert to provide opinion testimony for each subject matter and issue. **See attached curriculum vitae for Robert Barfield and Ronald Wright attached under Exhibit A pp. 1 – 22.**
- E. State and Identify the substance of the facts and opinions to which the expert is expected to testify: **Reference is made to the June 28, 2013 Bermand & Wright report which is incorporated by reference and produced previously.**
- F. Provide a summary of the grounds for each opinion. **See response to subparagraph (E) above, incorporated by reference.**

7. Identify all third-parties with whom you have communicated, orally or in writing, relating to the flooding of the Subject Property or the incidents set forth in the Complaint. **Plaintiff attaches under Exhibit B (pp. 22 – 50) documents submitted to or received from the York County Tax Assessor and State of South Carolina Department of Labor Licensing & Regulation. (pp. 51-123). Plaintiff incorporates by reference paragraphs (1), (4), (5), (6) and (7) of the foregoing objections and claims of privilege, specifically as confidential information, information prepared in anticipation of litigation, and not seeking information reasonably calculated to lead to the discovery of admissible evidence at trial or hearings in this case. Plaintiff further objects pursuant to paragraph (7) as overly burdensome and requesting documents which Plaintiff has previously produced in documented form (or received from) Defendant City of Rock Hill in discovery to date or available to Defendant through some other more convenient or less costly source, including Defendants' own records.**

**REQUEST FOR PRODUCTION
NO. (2) and (3) SUPPLEMENTAL RESPONSES**

2. Identify all third-parties with whom you have communicated, orally or in writing, relating to the flooding of the Subject Property or the incidents set forth in the Complaint. **See attached Exhibit B communications between Plaintiff and York County Tax Assessor and/or Roger Lowe at SC Dept. of Labor Licensing & Regulation.**
3. Produce all documents that have been reviewed, considered, relied upon, possessed or prepared by any expert whose testimony you may use at the trial of this action. **Plaintiff objects pursuant to paragraphs (4) and (5) of the foregoing general objections and claims of privilege, specifically as seeking information prepared in anticipation of litigation and seeking the mental impressions and conclusions of Plaintiff's authorized representatives. Subject to these objections, and without waiver, plaintiff produces the file of Berman & Wright at the address indicated in 4(A) above.**

HALFORD, NIEMIEC & FREEMAN, LLP



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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Nadine Brantley,
Plaintiff,
vs.

**NOTICE AND MOTION
FOR SUMMARY JUDGMENT**

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

2012-CP-46-1460

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

PLEASE TAKE NOTICE that Defendant City of Rock Hill ("City") hereby moves, at such time and place as is convenient to the Court and counsel, but no sooner than 10 days from the date of service of this Motion, for entry of an order granting summary judgment in favor of the City, pursuant to Rule 56, SCRPC.

The City submits the following grounds for its Motion for Summary Judgment.

1. The record lacks evidence sufficient to establish the necessary elements for inverse condemnation against the City as a matter of law.

2. The record lacks evidence sufficient to establish the necessary elements for liability in gross negligence against the City as a matter of law.

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DAVID H. JON
C.C.P. & U.S.
YORK COUNTY, SC

3. Plaintiff's causes of action against the City are barred by the statute of limitations.

4. The record lacks evidence sufficient to establish the necessary elements for liability in nuisance against the City as a matter of law.

5. Plaintiff's causes of action are barred by the South Carolina Tort Claim's Act.

6. The record lacks sufficient evidence to sustain the elements the causes of action set forth against City as matter of law and there is no genuine issue of material fact to be determined by trial. Therefore, summary judgment should be granted in favor of the City on the Complaint in its entirety.

Prior to the hearing on this Motion, and in accordance with the South Carolina Rules of Civil Procedure, the City may file with the Court and serve upon Plaintiff reply affidavits, as well as other evidence and a memorandum in support of this Motion. At the hearing the City will make such arguments and offer such law as appears pertinent and dispositive at that time.

WHEREFORE, the City respectfully requests that the Court enter an order granting summary judgment in favor of the City as set forth herein.

SPENCER & SPENCER, P.A.

Date: March 28, 2014

By: 

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Page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
Nadine Brantley,	)	
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	<u>SUMMARY JUDGMENT</u>
vs.	)	
	)	C.A. No. 2009-CP-46-2211
The City of Rock Hill, a body	)	
politic and subdivision of the	)	
State of South Carolina and	)	
Wherry Construction Co., Inc.,	)	
	)	
Defendants.	)	
	)	

In support of its Motion for Summary Judgment (the "Motion"), defendant City of Rock Hill (the "City") respectfully submits the following.

I. Statement of Case

Plaintiff is the owner of the property located at 1020 Willowbrook Avenue in Rock Hill, South Carolina ("Property"). Spencer Park, a public park owned by the City, is situated upstream from the Property. Willowbrook Avenue, a street owned by the South Carolina Department of Transportation ("SCDOT"), is situated immediately downstream from the Property. (Brantley Aff., p. 1, ¶3.) A stream flows through a well-defined channel across Spencer Park and the Property. The stream then travels through a culvert located underneath Willowbrook Avenue (the "Culvert") and discharges downstream into Manchester Creek.

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On January 12, 2012, Plaintiff filed this lawsuit regarding flooding of the stream and Property during periods of heavy rain. Plaintiff has asserted three causes of action against the City: (1) inverse condemnation (Complaint, ¶¶ 8-19), (2) gross negligence (Complaint, ¶¶ 20-39) and (3) nuisance (Complaint, ¶¶ 40-51.)

Plaintiff has designated two expert witnesses in this matter: Robert G. Barfield ("Barfield"), a consulting architect, and Ronald E. Wright ("Wright"), a consulting engineer. (Supplemental Responses to Int., p. 3.) The scope of Barfield's opinion testimony is limited to issues relating to the construction permit issued to Wherry Construction. (Barfield Dep., pp. 24:7-18, 35:14-18.) The scope of Wright's opinion testimony is limited to waterflow, the inadequacy of the Culvert in tunneling the Watercourse under Willowbrook Avenue, and the permit issued to and construction performed by Wherry Construction. (Wright Dep., pp. 70:8 - 71:10.)

II. Statement of Facts

The following facts pertaining to this Motion are not in dispute.

1. The City issued a residential building permit to Lawrence Wherry, a licensed homebuilder, on May 11, 1999. (Wright Dep., Exhibit A, p. 1.)

2. Wherry Construction constructed a dwelling house on the Property which was completed in 2001. (Wright Dep., Exhibit A, p. 1.)

3. Previous owners of the Property filed claims with the City for flood events that occurred in 2001, 2003 and 2007. (Wright Dep., Exhibit A, pp. 1-2.)

4. Plaintiff acquired the Property in July 2010. (Brantley Dep., pp. 20:18 - 25:22.)

5. A stream flows through a well-defined channel with banks in a fixed course that crosses Spencer Park and the Property (the "Watercourse"). The Watercourse then travels through the Culvert located underneath Willowbrook Avenue and naturally discharges downstream into Manchester Creek. (Bagley Aff., p. 1, ¶ 4; Brantley Aff. p. 1, ¶ 1.)

6. The stream is a natural watercourse. (Bagley Dep., p. 1, ¶ 4; Barfield Dep., p. 15:4-8; Brantley Aff. pp. 1-2, ¶¶ 1, 3; Wright Dep., p. 86:18-21.)

7. The City does not own and has not assumed control over the Watercourse on the Property. (Bagley Dep., p. 2, ¶ 5.)

8. The record lacks any evidence that the City has altered the Watercourse. (Wright Dep., pp. 46:20-47:8, 51:15-23; Bagley Aff., p. 2, ¶ 6.)

9. The record lacks any evidence that the City has altered the volume or velocity of water flowing through the Watercourse. (Wright Dep., pp. 46:20-47:8; 51:15-23; Bagley Dep., p. 2, ¶ 6.)

10. The Property flooded on or about August 13, 2011. (Brantley Dep., pp. 40:11 - 41:7.)

11. Plaintiff was not present at the Property during the alleged flood and did not witness the event. (Brantley Dep., p. 72:21-23.)

12. Plaintiff's experts did not perform a hydrology study, analyze volume or velocity of water flow, or otherwise analyze the hydrological factors relating to the alleged flood. (Wright Dep., pp. 41:18-23, 57:14-23; Barfield Dep., p. 12:12-16.)

13. Plaintiff's expert testified that the condition of Spencer Park likely reduces the velocity of water traveling downstream towards the Property. (Wright Dep., pp. 45:5-46:19.)

14. The Culvert which tunnels the Watercourse under Willowbrook Avenue immediately downstream from the Property is owned and maintained by the SCDOT. (Bagley Aff., p. 2, ¶ 9; Brantley Dep., pp. 32:22-24, 33:24-34:7, 36:9-37:9, 38:11-14; Wright Dep., pp. 40:18-42:17; Barfield Dep., p. 32:24-33.)

15. The Watercourse on the Property has not been dedicated to or accepted by the City. (Bagley Aff., p. 2, ¶ 11; Brantley Dep., p. 85:5-10.)

16. The City has not been granted fee simple title or a right-of-way to the Subject Stream located on the property. (Bagley Aff., p. 2, ¶12; City Dep., pp. 19:9-20:7.)

III. Summary Judgment Standard

Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder. Bankers Trust of S.C. v. Benson, 267 S.C. 152, 226 S.E.2d 703 (1976). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC.

When seeking to avoid a motion for summary judgment, the non-movant must disclose the facts on which he intends to rely by affidavit or other proof. Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe v. Settle, 315 S.C. 510, 517, 445 S.E.2d 651, 655 (Ct.App.1994). In this matter, no genuine issues of material fact exist and the Motion should be granted.

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IV. Discussion

A. The record is void of facts sufficient to support Plaintiff's claim for inverse condemnation

"To establish an inverse condemnation, a plaintiff must show:

(1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence." Hawkins v. City of Greenville, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004). "The South Carolina cases addressing inverse condemnation are uniform in requiring that the claim be proved by 'affirmative, positive, aggressive' acts by the governmental agency. Allegations of mere failure to act are insufficient." Hawkins v. City of Greenville, 358 S.C. 280, 291, 594 S.E.2d 557, 563 (Ct. App. 2004).

The holding of Hawkins is controlling in this case. The record in Hawkins contained evidence that private developers installed pipes in a creek to expand the creek's ability to handle runoff; that the City of Greenville subsequently installed an additional pipe to increase the creek's stormwater capacity; and that the City of Greenville installed riprap along the banks of the creek. Id. Following these improvements, a rainstorm caused the creek to overflow and flood the plaintiff's property. The plaintiff alleged that the City of Greenville's actions were a cause of the flood and asserted claims against the city for

inverse condemnation, negligence, trespass and nuisance, among others. The Court of Appeals found that the City of Greenville's actions did not rise to "affirmative" and "positive" acts required for inverse condemnation.

Under Hawkins, the record in this case contains no facts that can be construed as an affirmative, positive, aggressive act by the City. The municipality in Hawkins took greater action with respect to the watercourse than the City has in this case. In this case, the record reveals that the City has not materially altered or exercised even a minimum amount of control over the Watercourse above, within or below the Property.

Upstream from the Property, the record indicates that the City has not altered the Watercourse or altered the volume or velocity of water flowing through the Watercourse; the City has not diverted surface waters towards the Property; and the City has not artificially collected surface waters and cast them in concentrated form on the Property. (Wright Dep., pp. 46:20-47:8.) These facts are not in dispute. According to Plaintiff's expert, it is more likely that Spencer Park reduces the volume or velocity of water flowing through the Watercourse. (Wright Dep., p. 46:2-19.)

Within the Property, the record contains no evidence showing the natural Watercourse located thereon has been dedicated to the

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City, was accepted by the City or has been designed, constructed, or in any manner altered by the City.

Immediately below the Property, the City does not own or exercise control over the Culvert; the City was not involved in the design or construction of the Culvert; and the City has not made any improvements or modifications to the Culvert.

Therefore, the record lacks any evidence demonstrating an "affirmative" act by the City sufficient to support a claim for inverse condemnation and summary judgment should be granted thereon.

B. Plaintiff's Nuisance claim against the City fails as a matter of law

The South Carolina Tort Claims Act ("SCTCA") bars claims for nuisance against the City. The SCTCA provides that "a governmental entity is not liable for a loss resulting from. . . a nuisance." S.C. Code Ann. § 15-78-60(7). Plaintiff's cause of action for nuisance should be dismissed.

Even if the nuisance claim was not barred, the record in this case lacks any facts to support Plaintiff's nuisance claim. "A nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his property." Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125 S.E.2d 628 (1962).

"Generally, a private nuisance is that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person

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of his own property, personal or real. Nuisance law is based on the premise that every citizen holds his property subject to the implied obligation that he will use it in such a way as not to prevent others from enjoying the use of their property." O'Cain v. O'Cain, 322 S.C. 551, 561, 473 S.E.2d 460, 466 (Ct. App. 1996).

Based on the record in this matter, Plaintiff's nuisance claim fails for a number of reasons. First, as discussed above, Plaintiff has not specified any acts or uses which could be classified as unreasonable, unwarrantable or unlawful in this action. The City owns a public park on which a natural stream flows downhill in the normal course. The record is void of any evidence that the City's park has been used in as to interfere with Plaintiff's use and enjoyment of her Property.

C. Plaintiff's gross negligence claim fails as a matter of law.

Though Plaintiff has not specifically identified the alleged gross negligent acts by the City, it appears this claim flows from one or two components. First, she seems to argue that the City was grossly negligent in the issuance of the construction permit. Second, she seems to argue that the City is grossly negligent in failing to prevent the house from flooding once the house was constructed. Both contentions fail as a matter of law.

1. Building and Permitting Claims

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Plaintiff's claim for gross negligence in issuing the construction permit fails as a matter of law. First, Plaintiff's negligent permitting claim is barred by the two year statute of limitations under the South Carolina Tort Claims Act ("SCTCA"). S.C. Code Ann. § 15-78-110. Given all material facts and characteristics were known or readily knowable upon completion of the residence, the limitations period expired during 2003. Even assuming that the limitations period did not commence running under the discovery rule¹ until a flood event put an owner on inquiry notice, these claims are still barred by the expiration of the statute of limitations. According to Plaintiff, the Property flooded in 2001, 2003 and 2007 and claims were filed with the City. Therefore, the two year statute of limitations period expired well before the filing of this action.

Second, Plaintiff's claim for negligent permitting is barred by the SCTCA and fails for lack of duty. "The Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the [South Carolina Tort Claims] Act." Hawkins v. City of Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004). "The determination of the existence of a duty is solely the responsibility of the court. Whether the law recognizes

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¹ Pursuant to the discovery rule "[t]he statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996).

a particular duty is an issue of law to be decided by the Court. An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003).

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

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

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2. Gross Negligence in Failing to Prevent Floods

In her claim that the City's refusal and failure to preventing flooding is actionable gross negligence, Plaintiff's theory of liability is seemingly premised on the inaccurate belief "that all the water that falls onto the ground in Rock Hill belongs to the City." (Brantley Dep., p. 48:3-16.) Plaintiff's misplaced theory is shared by both of her designated experts in this case. (Wright Dep, pp. 60:14-18, 79:3-12; Barfield Dep., pp. 30:25-31:7.) Plaintiff's claim for gross negligence fails as a matter of law for at least three reasons.

First, this case involve a natural watercourse.² An upstream owner has a right and expectation that water will flow unobstructed" Johnson v. Williams, 238 S.C. 623, 633, 121 S.E.2d 223, 228 (1961); see Dize Awning & Tent Co. v. City of Winston-Salem, 29 N.C. App. 297, 302, 224 S.E.2d 257, 260 (1976) (holding that "surface waters may be drained into a natural drainway without liability to lower property owners for damage caused to lands along the lower drainway as a result of increased flow of a natural stream."). Although the case law actually

² "To constitute a water course, there must be a stream usually flowing in a particular direction, though it need not flow continually. It may sometimes be dry. It must flow in a definite channel, having a bed, sides, or banks, and it naturally discharges itself into some other stream or body of water." Johnson v. Williams, 238 S.C. 623, 633, 121 S.E.2d 223, 228 (1961).

allows an upstream owner to reasonably increase the rate of flow in a watercourse, the record establishes that the City has not materially altered the Watercourse and has not increased the volume or velocity that naturally drains into the Watercourse. The City is not strictly liable to Plaintiff for waters flowing through a natural watercourse as a matter of law.

Second, the City has no duty under South Carolina law to protect all property or in this case, the subject Property, from flooding. The record has no evidence that the flooding at issue is the result of any action by the City. The City has not altered the Watercourse or the flow of water upstream from the Property. The City does not own and has not assumed control over the Watercourse on the Property. Finally, the City has no control over the infrastructure located immediately downstream from the Property. Willowbrook Avenue and the drainage infrastructure associated with Willowbrook Avenue is owned and maintained by the SCDOT. In short the record is void of evidence upon which to find the existence of a duty owed by the City to prevent flooding at the Property.

Third, Plaintiff's claim for gross negligence is barred pursuant to the SCTCA. The Court of Appeals recently held that municipal stormwater activities are excepted from the general waiver of immunity provided under the SCTCA. Hawkins v. City of

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Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004). The court articulated the applicable exceptions that "bear directly upon the alleged acts and failures to act by the City with respect to the municipal drainage system." Id. The court states:

Specifically, under section 15-78-60, the City is not liable for a loss resulting from: (1) legislative, judicial, or quasi-judicial action or inaction; (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature; (3) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies; (4) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee; or (5) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety. S.C. Code Ann. § 15-78-60(1), (2), (4), (5), and (13).

Hawkins v. City of Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004). The Court further stated that "municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable." Hawkins v. City of Greenville, 358 S.C. 280, 294, 594 S.E.2d 557, 564 (Ct. App. 2004). There is nothing in the record to support any contention that the City owns

or controls the Watercourse on the Property or the Subject Culvert. For the City to assume ownership or control would require the legislative action of City Council. The SCTCA bars claims against the City regarding such discretionary actions.

V. Conclusion

Based on the foregoing, City requests that the Court enter an order of summary judgment in its favor and dismiss the Complaint as against it.

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Date: August 8, 2014

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

NADINE BRANTLEY,)
)
 PLAINTIFF,)

-VS-

) CA NO. 2012-CP-46-146
THE CITY OF ROCK HILL,)
A BODY POLITIC AND)
SUBDIVISION OF THE STATE)
OF SOUTH CAROLINA, AND)
WHERRY CONSTRUCTION CO.,)
INC.,)
)
 DEFENDANTS.)

TRANSCRIPT OF PROCEEDINGS
YORK SOUTH CAROLINA
AUGUST 11, 2014

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1 P R O C E E D I N G S

2 BEFORE: THE HONORABLE S. JACKSON KIMBALL

3 9:38 A.M.

4 * * * * *

5 The Court - This is Case Number 2009-CP-46-
6 2211, Nadine Brantley against the City of Rock Hill
7 and others.

8 Present and representing the plaintiffs,
9 Mr. Cam Halford. Present and representing the
10 defendant, The City of Rock Hill, Mr. Mark White
11 and Mr. Jeremy Melville.

12 I have two motions, Cross Motions for Summary
13 Judgement. The City's was filed first so go ahead.

14 Mr. White - Thank you, Your Honor. I
15 apologize in advance. I'm sick. I'll try not
16 to have a coughing fit. I'll probably be briefer.

17 The Court - I feel much sorrier for Mr.
18 Melville than I do myself because I'm a good
19 distance away from you.

20 Mr. White - Your Honor, this case arises from
21 a property at 1020 Willowbrook. Did the Court
22 receive the memo?

23 The Court - I did. Yes, I did by email. I
24 didn't print it out. Do you have a hard copy?

25 Mr. White - I don't think I do.

1 The Court - I typically don't print them
2 out. Yes, I read the memo.

3 Mr. White - I'll get you a hard copy. 1020
4 Willowbrook is a house that was built by Donald
5 Wherry. He pulled the building permit in 1999.
6 I think he completed construction around 2001.

7 The City owns property upstream, immediately
8 upstream from the subject property in the form of
9 Spencer Park. Spencer Park is a natural setting
10 park. For all material purposes for this, trees
11 and grass.

12 The Court - For purposes of my understanding,
13 did it used to be called Confederate Park?

14 Mr. White - There is a Confederate Park, but
15 ---

16 The Court - Okay. I was trying to place it,
17 but go ahead. I thought maybe they changed the
18 name.

19 Mr. White - I don't think the Spencer Park is
20 any of the Spencers I know. The lay of the land is
21 such that Spencer Park does occupy a slope, a
22 natural occurring slope.

23 There is stream which everyone has identified
24 as a naturally occurring stream. It has defined
25 banks flowing through the park as it always has.

1 When the stream gets to the subject property,
2 is an open ditch with sides. The open ditch runs
3 along the property line where it comes in
4 perpendicular to Willowbrook. Willowbrook is a
5 DOT road. There is a culvert under Willowbrook,
6 24 inch culvert.

7 The stream then traverses Willowbrook via the
8 culvert where it proceeds downstream some length
9 until it gets to Manchester.

10 The Court - You said it runs along a property
11 line to some -- I'm not oriented now. I thought
12 I had an idea of the lay of the thing. The stream
13 runs along a property line between the City and
14 somebody else. I thought it went through the
15 middle ---

16 Mr. White - It runs from the middle of
17 Confederate Park (sic) and when it gets down to the
18 rectangle that is the subject property that's owned
19 by the plaintiff, it skirts right along her
20 property line.

21 The Court - Skirts her property line?

22 Mr. White - I believe it's all on her
23 property. Her driveway is on that side. Again,
24 it's an open ditch where it then hits the culvert.

25 The property has experienced flooding numerous

1 times. The house is built on a slab. The
2 elevation difference between the slab and the ditch
3 is such that whenever water comes down in
4 sufficient quantities, if Willowbrook can't handle
5 – the 24 inch culvert can't handle it, it backs it
6 up on the subject property, which then it will jump
7 the banks of the stream and make its way over to
8 the house.

9 The Court - So, her property backs up to
10 City property?

11 Mr. White - The City park up here and her
12 rectangle ---

13 The Court - Do you want to try to draw it up
14 here so I can – Mr. Halford, do you have map?

15 Mr. Halford - Your Honor, I don't know if
16 you looked at the Memorandum that we clocked in
17 last week but there is an overview of the City's
18 GIS system showing the properties. I believe
19 that's Exhibit C to our memorandum. I apologize
20 that I didn't email that, Your Honor. There is
21 a map of the parcels in there.

22 The Court - That's what I need. Bear with
23 me just a minute.

24 Mr. White - Your Honor, for the record, we've
25 not received a copy.

1 The Court - Are you talking about Exhibit
2 D?

3 Mr. Halford - Yes, sir.

4 Mr. White - This is Confederate (sic).

5 The Court - Right.

6 Mr. White - There is the stream in question.
7 1020 Willowbrook is right here. The house sits
8 on the side. There's an open ditch beside the
9 property line where it comes in. That's the
10 continuation of the stream.

11 The Court - Okay. So, it does back up to the
12 City's property?

13 Mr. White - Yes. I believe 1012 and 1020 were
14 built at the same time by the same ---

15 The Court - Hers is 1020?

16 Mr. White - 1020.

17 The Court - Thank you.

18 Mr. White - Previous owners of the property
19 filed claims with the City for flood events in
20 2001, 2003 and 2007.

21 The subject claim is for a flood in 2011.
22 By the way, on our memo, we had the wrong caption.
23 This is not a 2009 case. This is a 2012. I
24 apologize for that, Your Honor. The correct
25 I.D. Number is ---

1 The Court - I see that on this.

2 Mr. White - That was my mistake. From all
3 accounts in the record, the stream is naturally
4 occurring. Plaintiff's experts did not do a
5 hydrology study, but they did testify under oath,
6 if anything, that Spencer Park has a retarding
7 effect on surface waters in general. Nobody
8 testified to anything in the park that accelerates
9 flow. The record lacked any evidence that the City
10 has altered this water course. The record lacks
11 any evidence that the City altered the volume or
12 velocity of the water through the water course.

13 The Court - I read something somewhere that
14 the plaintiff claims that there had been some
15 alteration -- I think the word used is alterations
16 -- It may say improvements or something to the bank
17 of the creek.

18 Mr. White - In their deposition, Your Honor,
19 there's a pipe that's laying in the bottom that
20 doesn't connect to anything. In deposition,
21 neither of the experts could testify that this
22 loose pipe that's laying there has any effect on
23 the flow of the water, whether it's harder or less.
24 There's a picture of it that it existed. They
25 can't tell me what it is. Their testimony ---

1 The Court - I see it. Here it is.

2 Mr. White - I'll go ahead and hand up with
3 your permission. There are three deposition
4 transcripts, two by her experts and one by the
5 plaintiff.

6 In the Brief, in the Statement of Facts, Page
7 2 through 4, there are citations to the record
8 where their experts, when pressed, could not
9 testify that anything the City has done that
10 accelerated water through that park.

11 If anything, the park acts as a reducer or
12 a damper on the water flow that would normal hit
13 Willowbrook had it been used in another way.

14 In Wright's deposition at Page 45 through 46,
15 he testified that Spencer Park likely reduces the
16 velocity of water traveling down the stream toward
17 the property. He testified at Page 46 and 51
18 that he had no evidence the City altered the volume
19 or velocity of water flowing through the water
20 course.

21 We have three causes of action. We have
22 inverse condemnation, nuisance and gross
23 negligence. In the inverse condemnation, it
24 requires, of course, an affirmative, positive and
25 aggressive act on behalf of the governmental

1 agency.

2 Nobody has testified as to any affirmative
3 act that the City has done. There have been
4 inferences that the City should have stopped the
5 water. Of course, the failure to act does not
6 qualify as an affirmative act under the case law,
7 including the Hawkins versus Greenville case.

8 In that case, the City of Greenville even went
9 so far as to place rip rap on the banks of the
10 stream. They actually did do something to the
11 water course. The court found that that was
12 lacking as far as what was required for an
13 affirmative, positive aggressive act on behalf of a
14 governmental agency to form the basis of an inverse
15 condemnation. Here the record doesn't reflect
16 anything that the City did to this water course.

17 As far as the nuisance goes, nuisance, number
18 7, is barred under the Tort Claims Act, can't sue
19 the government for nuisance. Even if you could
20 sue the government for nuisance, there's no
21 evidence in this record of an unreasonable
22 interference. There's nothing the City has done
23 in the park -- There is no evidence that anything
24 the City has done in the park that is an
25 unreasonable use of this property, to damage

1 someone else's property.

2 What's happening here is water is falling on
3 high ground. It's collecting in a stream. It's
4 flowing through the stream all in a natural course.
5 The only thing that the experts testified that was
6 contributing to the cause of the flooding, was the
7 water hitting the culvert under Willowbrook.

8 They did testify that that pipe was not
9 sufficient. Of course, that's a DOT road, it's a
10 DOT culvert. There's no testimony that the City
11 has ever -- that it has been dedicated to the City
12 or the City has accepted the dedication and taken
13 over that culvert.

14 The Court - And, that culvert is at the front
15 of Ms. Brantley's property, right?

16 Mr. White - Yes, sir. The gross negligence
17 was a little harder to discern. It would seem
18 just from the testimony that it flows from one of
19 two places. One, the City was somehow grossly
20 negligent in the permitting of the house or, two,
21 the City was somehow grossly negligent because it
22 did not stop water from getting into the house.

23 The experts testified very sincerely that it
24 is their understanding under South Carolina Law
25 that it is the City's responsibility to prevent

1 water from getting into any house. Ms. Brantley
2 testified roughly the same thing.

3 Turning to the permitting first, even assuming
4 there was a permitting violation, that the City
5 did something in the permitting which would give
6 Ms. Brantley a cause of action, the two year
7 statute of limitation under the Tort Claims Act
8 has expired. The house was permitted in 1999.
9 The house was completed in 2001.

10 I would argue that it was nothing having to
11 do with the permitting that would affect anything
12 so the statute would run immediately upon the
13 issuance of the CO. Even if that's not the case,
14 even if you say, well, it flooded several times.
15 It flooded in 2001. It flooded in 2003. It
16 flooded in 2007.

17 The Court - When did Ms. Brantley buy the
18 house?

19 Mr. White - She didn't buy the house ---

20 The Court - Well, she rents it. It's a
21 rental house.

22 Mr. White - In 2010, she had a judgement
23 against a former business partner and to satisfy
24 the judgement, she accepted title to this property
25 in 2010.

1 There were at least three floods before that.
2 If there were any cause of action, I would argue
3 that the first flood or certainly the second flood,
4 certainly the third flood, that would end the
5 statute of limitations in 2009.

6 Even if there was not a statute of limitations
7 issue there's a Sommers case -- There's no duty --
8 The Sommers case sets forth the general principal
9 that a city does not issue building permits to
10 protect the homeowner. That's not the purpose
11 for which they are out there.

12 The court concluded and held that the
13 Lexington County Department of Planning and
14 Development had no duty to the plaintiffs and;
15 therefore, were not liable and negligent in
16 that case under the argument that they issued
17 a permit that they shouldn't have done.

18 The Court - The permit was originally issued
19 to Wherry?

20 Mr. White - Yes, sir.

21 The Court - In '99?

22 Mr. White - In '99. There is no common law
23 duty or statutory duty -- If you look at what their
24 claim is, their claim is that the house was built
25 too far to the left, facing the house from

1 Willowbrook, than what was shown on the plat.
2 Of course, moving the house to the left,
3 moves it away from the stream.

4 The other argument that they have that they
5 talk about in the depositions is that one of the
6 inspectors noted that the footings needed an
7 engineer to okay them. It is plaintiff's
8 belief that that was never done. Of course,
9 the City has identified somebody in its discovery,
10 if we ever got that far, who would testify that --
11 Thomas Goody (phonetic) actually called the City
12 and okayed those footings on behalf of Mr. Wherry.

13 It doesn't matter. The legal issues we are
14 arguing today is number one, any claim for the
15 gross negligence for permitting -- negligent
16 permitting should have been done within two years.

17 The Court - As I understand it, this property
18 is not in any FEMA designated flood zone, right?

19 Mr. White - It is not.

20 The Court - It's not in any flood zone at
21 all.

22 Mr. White - It may be now. It certainly
23 wasn't in 2010 or 2011 when the suit was filed.

24 The second issue, of course, is that I can
25 understand -- that I can glean from the pleadings

1 and the evidence is the notion that the City has a
2 duty to ensure that water doesn't get into the
3 home.

4 The quote was, from Ms. Brantley's deposition,
5 that all water that falls onto the ground in Rock
6 Hill belongs to the City. She testified to that
7 in Page 48 of her deposition.

8 Her experts had similar testimony at Page
9 60 of Mr. Wright, 79 of Mr. Wright and Barfield
10 at Page 30 and 31.

11 Of course, this case involves a natural
12 water course. An upstream owner has a right and
13 expectation that water will flow unobstructed
14 through a natural water course. That's from
15 the South Carolina case Johnson v Williams.

16 There's some North Carolina cases that pick
17 up that notion including Dies, Ohning and Tenant
18 (phonetic) ---

19 The Court - The Johnson case, is that the
20 one where there was a semi identifiable stream
21 bed sort of, but everybody knew where it flowed
22 or something like that?

23 Mr. White - I've read so many of these. In
24 my current condition, I can't really answer that.

25 The Court - I read them, too, the most recent

1 case we've had about this subject matter.

2 Mr. White - The upshot of the case law
3 though is, is when you have an identifiable stream,
4 there is an expectation by the upstream and the
5 downstream that there's going to be water flow.
6 The upstream can even do things that will increase
7 it so long as they don't increase it unreasonably.
8 The downstream can't even block it unless they
9 provide a vent that's as least as good as what
10 was there originally.

11 In this case, there is no evidence whatsoever
12 -- The experts talked about pieces of rock and rip
13 rap, and they talked about that pipe. When you
14 push them, in their deposition, without exception
15 they say they have no evidence of any increase in
16 flow on behalf of the City in Spencer Park.

17 When you push them hard enough, they testified
18 that, if anything, Spencer Park has a retarding
19 effect on the water flow going towards this
20 property.

21 So, first off, because there's a stream,
22 the City is not the owner of all water courses.
23 As the upstream owner, it has an expectation that
24 water will flow downhill as it always does.

25 Second, there is no evidence that the City

1 has done anything that has caused this house to
2 flood, in the upstream. It has done nothing to
3 the park. On the property, it has never been ---
4 this creek on Willowbrook, 1020 Willowbrook, has
5 never been dedicated to the City. It's never
6 been accepted by the City. Fee simple has never
7 been granted to the City. It doesn't have an
8 easement across it. Once it hits the roadway,
9 that's a DOT road and a DOT culvert.

10 The Court - The City is the upper riparian
11 owner bordering the stream?

12 Mr. White - Yes, sir. The gross negligence
13 claim is barred by the Tort Claims Act. The
14 plaintiff has this notion that because there's
15 a stormwater fee, and thus there is now a
16 stormwater division, which there is, created a
17 few years ago, and the City uses that money to
18 decide which project to take on; that the City can
19 somehow be liable because they have not taken on
20 this one.

21 The Tort Claims Act would bar any sort of
22 case -- Again, Hawkins -vs- City of Greenville.
23 The City in its legislative or judicial or quasi-
24 judicial actions, cannot be held to be responsible
25 for what it chooses to do as a council on whether

1 it wants to adopt an area and take it over and
2 remedy it for the public good. When it chooses to
3 do that in one place and not another, it doesn't
4 create liability. That is a legislative function
5 of government, and the Tort Claims Act preserves
6 the immunities to the State and its subdivisions in
7 making those elections.

8 Municipalities are not liable for the design
9 and planning of their sewage and drainage systems
10 because these acts are considered quasi-judicial,
11 discretionary functions for which a government
12 entity is not liable, citing Hawkins versus
13 the City of Greenville.

14 The property does flood, Your Honor. The
15 City is aware that the property floods. That
16 does not, in and of itself, create strict liability
17 and the City has to go in and use its governmental
18 power to address it.

19 It's not an inverse condemnation because the
20 City has taken no affirmative, aggressive act.
21 The failure to act, of course, the cases are
22 replete that that is not sufficient. The City
23 would have to have done something to create this
24 hazard. The City has not done so, and the
25 deposition testimony makes that clear.

1 Nuisance against the City does not lie as a
2 matter of law and the Tort Claims is barred. The
3 gross negligent claims are either barred by statute
4 of limitations or the fact that the permitting is
5 not an action for which a homeowner has a right
6 to sue. There is no duty to the homeowner because
7 that is not the function for which it serves.

8 Finally, the notion that because the place
9 floods the City is liable, is not grounded in
10 South Carolina law. Certainly when you include
11 the fact that you have riparian rights of an owner
12 and there's no evidence of concentration and
13 focusing of the water. Thank you.

14 The Court - Mr. Melville, do you all have
15 a hard copy of your Brief? I remember facts of
16 cases, but I have a hard time remembering names
17 of them. You don't have one at all?

18 Mr. Melville - I apologize. I do not have
19 one.

20 The Court - Mr. Halford?

21 Mr. Halford - Thank you. May it please the
22 Court. Your Honor, we're here under Rule 56.
23 Just to touch on a few things Mr. White cited to
24 the Court.

25 The Plaintiffs need only to produce a mere

1 scintella of evidence to withstand their summary
2 judgement motion, Your Honor.

3 Mr. White has cited you to the case of Hawkins
4 v. Greenville. I didn't pull it until this
5 morning, Your Honor, and I'll pass it up.

6 It was the case that they allege Hawkins to be
7 controlling this case. I respectfully submit
8 that the more analogous case and the case that is
9 controlling is the Hall case.

10 The Court - What I want to do, Mr. Halford,
11 is go through these causes of action one by one.
12 Let's don't do an umbrella argument. I think I
13 need to address each one singular, inverse
14 condemnation, nuisance and gross negligence.

15 Mr. Halford - All right, sir.

16 The Court - Because they have different
17 elements.

18 Mr. Halford - They do, Your Honor.

19 The Court - We'll do it that way.

20 Mr. Halford - Yes, sir. The inverse
21 condemnation claim, I think Mr. White testified
22 that there is no affirmative, aggressive act on
23 the part of the City.

24 Your Honor, we have taken three depositions,
25 the deposition of Mr. Bagley, who is the City

1 Assistant Deputy Manager. The Plaintiff has
2 identified two experts, all of whom identify
3 certain things on their property.

4 To go back to Mr. Bagley's deposition,
5 testimony, the creek that you've described as
6 riparian ---

7 The Court - Depositions of who that identify
8 something on the property?

9 Mr. Halford - Their City Manager. We're
10 speaking about the water course of the creek ---

11 The Court - I understand.

12 Mr. Halford - That runs through Spencer
13 Park.

14 The Court - Yes, sir.

15 Mr. Halford - The City Manager actually says
16 they own that. Secondly, Plaintiff's experts
17 identified -- not just the broken culvert pipes,
18 Your Honor, there are things out there, for
19 example, brick catch basins, corrugated pipe
20 channels the water into ---

21 The Court - Have those experts said that those
22 elements, we'll call them, in any way, either
23 accelerate or direct the water, concentrate the
24 water and cast it in concentrated form on the
25 property of the Plaintiff?

1 Mr. Halford - The experts have -- At Page 48,
2 Your Honor, which in response to the Brief I just
3 got this weekend. They identify the park. There's
4 about ten acres of Spencer Park or what used to
5 be known as Confederate Park with what is now
6 paved parking ---

7 The Court - Spencer Park used to be
8 Confederate Park?

9 Mr. Halford - I would not know that. I
10 just ---

11 The Court - Ms. Brantley says no.

12 Ms. Brantley - Confederate is a different
13 park.

14 Mr. Halford - In any event, there are paved
15 areas now for parking lots, there are basketball
16 courts, there are channeled corrugated pipes
17 emptying surface water into this creek ---

18 The Court - Is it true that your engineer
19 expert said that the park, if anything, retarded
20 the flow of water?

21 Mr. Halford - When asked hypothetically could
22 an earthen berm -- There's also an earthen berm ---

23 The Court - Answer my question directly,
24 please.

25 Mr. Halford - They did say the park

1 contributes water to the creek.

2 The Court - Well, of course, it contributes
3 water to the creek. My question is, does it
4 -- I understood Mr. White to say that the experts
5 said that the park effectively, to a certain
6 extent, retards water flow.

7 Mr. Halford - They were speaking specifically
8 of elements from the park like rip rap, this is
9 going to the Hawkins case, that he's citing,
10 obviously, Your Honor. There are also elements
11 in that park which are channeled culverts, catch
12 basins. They're taking water, street water, off
13 Sturgis and Cummings and pooling it within the
14 park. There are catch basins there. These are
15 artificial structures. They are not a man
16 made or a natural creek. They are within the
17 water course of Spencer Park, Your Honor.

18 The Court - What is the basis for liability
19 for that?

20 Mr. Halford - The basis -- Again, I've quoted
21 the Hall decision, Your Honor. The municipality
22 is perfectly within its right to collect stormwater
23 and to channel it through. If it does so
24 in a stream or a course it knows to be inadequate
25 to handle it, then liability does attach.

1 That's the issue here, Your Honor. We've
2 known for some time this property, since permitting
3 -- If this was just about the permitting, they would
4 win under the tort ---

5 The Court - I want to take them one by one.
6 What we want to talk about is a positive,
7 aggressive act that the City has done to, in
8 effect, cast water upon Ms. Brantley's property.

9 Mr. Halford - Exhibit B to our Memorandum,
10 concentration and directing of stormwater. This
11 creek ---

12 The Court - No. A positive, aggressive act is
13 different from just channeling. I don't have their
14 Briefs so I don't remember the names of the
15 cases. I don't know if it's Hawkins that says
16 this. I think it's another case. It says -- In
17 other words, failures to act don't constitute a
18 basis for an inverse condemnation.

19 Mr. Halford - I would agree with that, Your
20 Honor. However, we have the deforestation, the
21 cutting of trees, the washing of debris, the
22 channeling of water, the concentrating of water
23 and then directing it down stream.

24 The Court - Why is deforestation a positive,
25 aggressive act? I know of no case holding that.

1 Mr. Halford - I just mention it as the terms
2 of creating a scintilla factor, Your Honor. The
3 watershed from Spencer Park, which they acknowledge
4 that they own, the creek within Spencer Park is
5 being directed at our client's property.

6 The Court - I understood it that the creek bed
7 is as it always has been?

8 Mr. Halford - I would have to disagree, Your
9 Honor.

10 The Court - What proof do you have of that.

11 Mr. Halford - It's in Exhibit B to our
12 Brief which includes both the pipes, the rip rap
13 recited by Mr. White, the brick catch basins.
14 There are several photographs in there, Exhibit
15 B, from Page 3 of 18 to Page 18 of 18, Your Honor.
16 There are certainly things that constitute an
17 affirmative act, not the least of which is the
18 collection of water and the directing of that
19 water towards my client's property.

20 We are talking about stormwater, Your Honor.
21 It's not the natural flow of the creek.
22 Admittedly, this property doesn't flood every
23 week. It may not be flooding today in today's
24 rain; however, in events of significant rainfall
25 water is discharged. The property has flooded at

1 least five times. We can document three within
2 the past two years, since my client acquired
3 title.

4 The Court - When were the positive aggressive
5 acts done and who did them?

6 Mr. Halford - We don't know, Your Honor.
7 They are done upon the City of Rock Hill's
8 property. They are, again, installations -- It
9 can be no one else's property but theirs.

10 If it had been a matter of them just ---

11 The Court - There's no evidence that the
12 City created these things in the park?

13 Mr. Halford - It's the City's name on the
14 stormwater culverts and the manholes that are on
15 the park. Again, this is not just the maintenance
16 of a naturally occurring water course. This water
17 course has been altered on their property.

18 The Court - I asked you what proof is there
19 of that?

20 Mr. Halford - Their improvements, Your Honor.
21 They admit that they own ---

22 The Court - Their improvements -- The fact
23 that they made improvements does not prove that
24 they altered the water course. It may affect
25 water flow.

1 Mr. Halford - I'd argue that they collected
2 and concentrated that water and directed towards
3 her property.

4 The Court - What evidence is there? You told
5 me you don't even know -- There's no evidence of
6 who made these so-called improvements or committed
7 these so-called aggressive acts, affirmative,
8 aggressive acts in the park?

9 Mr. Halford - Well, Your Honor, the evidence
10 would be that they own these improvements.

11 The Court - Owning it doesn't make them --
12 That is not a positive, aggressive act. Mr. White,
13 Mr. Melville, any evidence that the City created
14 these -- I'm looking at one photo that's 17 of 18,
15 it says metal pipe and culvert at Sturgis Street.
16 I don't know what that is.

17 Mr. White - The experts testified that they
18 found things that they thought weren't there in the
19 natural condition. They couldn't state where they
20 came from nor could they state that they increase
21 flow. He tried to say a couple times, well, it
22 could or it couldn't. But, when you really pushed
23 him, and I'll be able to give you lines for this,
24 he said he could not testify that it increased the
25 flow.

1 He did not do a hydrology study. He couldn't
2 testify as to what the flow was ---

3 The Court - Is there any evidence in the
4 record that - even if we consider these to be
5 positive, aggressive acts - that these things were
6 done by the City?

7 Mr. Halford - I would respectfully offer that
8 the core head pipe coming off both the parking lots
9 and the basketball courts were channeled and there
10 is a photograph of that in there from the expert's
11 report, into the park. Those are positive,
12 aggressive acts.

13 What I'm alluding to, again, Your Honor, is
14 going back to the Ward (phonetic) decision. They
15 can channel their stormwater. That's quoted in
16 that decision.

17 The Court - Let me ask you this. I guess this
18 affects the gross negligence cause of action in
19 part, assuming that there's a gross negligence
20 cause of action to be made. Is there any testimony
21 as to the proximate cause of injury to the
22 Plaintiff?

23 Everything I read, both yours and theirs,
24 indicates that the essential problem is an
25 inadequate culvert at Willowbrook, which is owned

1 and maintained by the SCDOT.

2 Mr. Halford - I don't know that there's
3 anything in the record showing that culvert pipe
4 belongs to DOT. I've not seen the first thing.

5 You're correct. That's a DOT road. There is
6 a culvert pipe under that road.

7 The Court - Am I wrong in saying that it seems
8 to be the agreement of everyone that that pipe is
9 the proximate cause of the damming up of water on
10 Ms. Brantley's property?

11 Mr. Halford - No, sir. I think the expert
12 testimony of Mr. Barfield states that the
13 concentration of the water is coming off the park
14 leading to that pipe or the proximate cause.
15 There's no question that there's damming or pooling
16 at the pipe. There's no question that it's been
17 inadequate for some years. There's also -- The
18 entry on the property, again, this was the
19 predecessor owner to my client, to replace that
20 stormwater system, which we can't find records in
21 discovery, ever occurred. They entered the
22 property ---

23 The Court - They don't have a duty to replace
24 stormwater systems.

25 Mr. Halford - I would agree. They have a

1 duty to protect the private property from being
2 damaged, Your Honor. The duty ---

3 The Court - By a positive, aggressive act.

4 Mr. Halford - Correct. If they direct
5 through a channel, that is correct, Your Honor.

6 The Court - Stormwater is by definition water
7 that is collected and channeled.

8 Mr. Halford - Again, this is the question
9 of fact. Has it been intensified in volume or
10 increased upon my client's property through a
11 water course originating within their property,
12 Spencer Park. Mr. Barfield, Plaintiff's expert,
13 says that it has.

14 The Court - Is it not then correct to say that
15 the expert says that the park has a retarding
16 effect on the water?

17 Mr. Halford - Again, that's being ---
18 Your Honor, that's being taken as addressed. If
19 you go back in the deposition, which I have right
20 here, addressing the earthen berm. They cite,
21 the park is contributing water run off.

22 The Court - Let's deal with the nuisance
23 case of action. How would you deal with the Tort
24 Claims Act there?

25 Mr. Halford - Yes, sir. The Tort Claims

1 Act, Your Honor, would bar them from ordinary
2 negligence. Here, Your Honor —

3 The Court - No, nuisance. There's a specific
4 exception for nuisance in the Tort Claims Act.

5 Mr. Halford - Was the unreasonable use of
6 their property, which lies adjacent to and behind
7 ours, that would create a continuing nuisance to
8 the Plaintiff?

9 The Court - No, sir. What I'm trying to say
10 is, I believe Mr. White is correct when he says
11 that the Tort Claims Act -- Let me say it this
12 way. The City retains its sovereign immunity
13 as to claims for nuisance. What's the specific
14 section?

15 Mr. White - Seven.

16 The Court - Subsection 7 of what? Which
17 section?

18 Mr. White - 15-78-60, Subsection 7.

19 The Court - Read the heading first. I don't
20 have it in front of me since I don't have your
21 Brief. May I borrow your copy of their Brief?
22 Do you have it?

23 Mr. Halford - No, I do not, Your Honor.

24 Mr. White - The government entity is not
25 liable for a loss resulting from, and it's one

1 through six. Seven is a nuisance. That
2 continues on.

3 The Court - That also includes discretionary
4 acts in that section?

5 Mr. White - 13, deregulatory inspection
6 powers and functions including the power -- the
7 failure to make an inspection or inadequate or
8 negligent inspection. The way the Tort Claims
9 Acts, of course, works is, the government waives
10 its sovereign immunity with certain exceptions.
11 These are these exceptions. It's just a blanket.
12 They do not waive their immunity for ---

13 The Court - What about that?

14 Mr. Halford - Your Honor, if the nuisance is
15 created and permitted by them is continued, I
16 argue that's your question of fact. It's not just
17 not a nuisance ---

18 The Court - No. No. No. If I understand
19 the statute right, what it says is, we don't care
20 how a nuisance is created, the government still
21 retains its immunity from suit for the creation
22 of nuisances. It doesn't matter where it comes
23 from or how it's created or whether it's continuing
24 or recurring or whatever. Is that not right?

25 Mr. Halford - I believe that would be correct

1 statement, Your Honor.

2 The Court - What about the gross negligence
3 claim and the discretionary authority of the City
4 to permit -- I remember reading, A, that one
5 particular negligence was the permitting of the
6 house.

7 Mr. Halford - Your Honor, if this case was
8 about permitting, certainly they would have the
9 Tort Claims Act to bar any claims.

10 The Court - Well, tell me what it's about
11 then for gross negligence?

12 Mr. Halford - It goes back to whether or not
13 there's an affirmative fact. We've discussed,
14 Your Honor, and I cited the Hall case to the
15 Court which is 227-SC-375. I'll be glad to hand
16 up a copy of that.

17 The Court - You already did.

18 Mr. Halford - Your Honor, the municipality
19 may not absolve itself from liability by diverting
20 its stormwater from its streets, which the experts
21 testified is occurring here. It's channeling
22 through Spencer Park into a natural water course,
23 which they say it is a natural water course with
24 respect to this stream, that's too small to carry
25 it off. That's been the finding since 2009.

1 Now, they entered the property in 2001
2 under a different property owner to replace the
3 stormwater drainage system. That didn't occur that
4 we can find out. They have been back on the
5 property numerous times with other flooding events.
6 There have been five that we can document, one
7 just recently in the month of June.

8 There is a wide recognition that the channel
9 narrows and becomes more shallow at Willowbrook
10 at that culvert. Again, there is an affirmative
11 act directing concentrated water that way where
12 they know the culvert is too small, Your Honor,
13 then we've got a private landowner next door,
14 which is my client, 1020 Willowbrook, at that
15 culvert.

16 I've argued there is a constitutional
17 duty, if not a statutory duty found in the
18 ordinances for the City, or as Mr. White brought
19 up, they are not just the permitting authority
20 they are the stormwater utility.

21 So, she's paid stormwater fees. Your Honor,
22 if I can't get it in under constitutional duty
23 related to taking in this case that's prefaced
24 in the first cause of action as an inverse
25 claim, inverse condemnation claim, Your Honor,

1 then certainly the duty would arise by ordinance
2 in the City or by collection of stormwater fees.

3 Lastly, if I can't get it in under any of
4 those three, I respectfully submit that the duty
5 would arise by condition of property, private
6 landowner, Your Honor, next door to a water
7 course being fed by discharge of stormwater
8 from their property upstream.

9 The Court - You understand that a landowner
10 has a right to dam up water coming on his property
11 such that it may affect an adjacent landowner
12 without sustaining any liability?

13 Mr. Halford - Yes, sir. I'm also aware of
14 what I've quoted to the Court in the Hall case. I
15 apologize. I didn't put it in my Brief. I
16 didn't pull it up until this morning. Again,
17 if they know that that water course is too small
18 or to inadequate to carry off their stormwater,
19 then they're under a duty to protect the owner.

20 The Court - Does that not depend on when
21 that work is done?

22 Mr. Halford - I don't believe it does,
23 Your Honor. It depends on ---

24 The Court - So, then does it create an
25 affirmative duty on the City if things get worse,

1 to make it better?

2 Mr. Halford - I would argue that once you
3 have five repeated flooding events or, in this
4 case, the City's own engineer studies which say
5 that the creek or the channel leading to the
6 culvert is inadequate and that there is a pipe
7 there that, by the way, we should replace with
8 a 54 inch diameter pipe. They've gone beyond
9 discretionary. They've —

10 The Court - It's not their pipe.

11 Mr. Halford - There's no evidence in the
12 record of that, Your Honor.

13 The Court - There's no evidence in the
14 record that it is, right?

15 Mr. Halford - Which is why I cited in my
16 Brief that I don't think the facts are even
17 fully developed yet?

18 The Court - In a 2012 case?

19 Mr. Halford - Yes, sir. I think we've
20 passed inverse, and we're looking at the gross
21 negligence now.

22 The Court - Yes, sir.

23 Mr. Halford - Gross negligence is the failure
24 to exercise even slight care since my client has
25 acquired the property.

1 If you read her affidavit, Your Honor, she
2 can't even get ---

3 The Court - It's premised first on a duty.

4 Mr. Halford - Correct. It is premised first
5 on a duty, which I cited first the constitutional
6 duty and, if not, then certainly by statute. If
7 not by statute, contract. Lastly, if not by
8 contract I think we could get it in on an
9 existing condition ---

10 The Court - What statute?

11 Mr. Halford - The Constitution of the State
12 of South Carolina.

13 The Court - What statute?

14 Mr. Halford - I don't have the exact
15 stormwater ordinance with me, Your Honor. It's
16 their stormwater ordinances.

17 The Court - How does that create a duty ---

18 Mr. Halford - Your Honor, if there is water -
19 --

20 The Court - A private cause of action?

21 Mr. Halford - They should protect the private
22 property owner if there is a threat, a risk to
23 safety, health, welfare or damage to private
24 property. I will argue there is a duty there.

25 The Court - What you're asking me say is it

1 a violation of a statute or an ordinance that
2 codifies the City's stormwater authority creates
3 a private cause of action in favor of the private
4 landowner.

5 Mr. Halford - The City's stormwater mandate
6 is attached to our Brief as Exhibit D, I believe it
7 is, Your Honor. The stormwater fees are collected
8 for a purpose, which is to maintain ditches,
9 culverts. They're prioritized. I understand
10 that, Your Honor. At this point, we've got a ten
11 year history of flooding, three different owners,
12 now my client. Three flooding incidents with my
13 client.

14 The Court - Are you just saying they've
15 waited too long?

16 Mr. Halford - I'm saying they failed to
17 exercise even slight care to prevent what they know
18 is a permitted flooding hazard which has exceeded
19 many years now.

20 In this case, and to take up his statute
21 of limitations argument, Judge, we wouldn't have
22 known until the first flood which was August 13,
23 2011.

24 By exercise of reasonable diligence, and I'm
25 addressing his statute of limitations argument,

1 there's no way my client could have known to
2 exercise due diligence until the first flood
3 occurs. So, she files within the two year statute
4 on the Tort Claims Act. She prevails on that, I
5 would argue, Your Honor.

6 Then we get to whether or not there's an
7 affirmative duty. I argue there is one by virtue
8 of the Constitution, if not by their own stormwater
9 statutes or ordinances in the City of Rock
10 Hill. Again, I apologize. I can't cite you to a
11 code section.

12 Lastly, they are the stormwater utility,
13 Your Honor. Stormwater utility fees, taxes,
14 for that matter, have been paid by my client.
15 This condition has been permitted to exist for
16 years after they knew about it. It has flooded out
17 three families prior to her ---

18 The Court - That's the whole idea, I think.
19 They don't have -- That's why it's called a
20 positive, aggressive act. The failure to act does
21 not qualify as a taking.

22 Mr. Halford - Correct. I've pointed to the
23 Court positive, aggressive acts that we cited are
24 in expert's report, taken on their property which
25 is upstream from client's property.

1 The Court - Okay. So, then, with respect
2 to the gross negligence -- Let me try to
3 understand.

4 You're not saying that it's grossly -- Are you
5 saying that it's grossly negligent for the City
6 to fail to attack this project as a stormwater
7 project?

8 Mr. Halford - When you say attack this
9 project, if they're directing stormwater, yes.

10 The Court - You already said they have a
11 right to prioritize. When then does it become
12 grossly negligent for the City to fail to pursue
13 a remedy on this project as opposed to another
14 project?

15 Mr. Halford - When you know there's a
16 distinct risk to the public's safety, health or
17 in this case private property.

18 The Court - Suppose they all do? Do they
19 have a duty to -- Is it grossly negligent for the
20 City not to -- The statute that we're talking
21 about, the exception in the Tort Claims Act, is the
22 City -- Not just the City, in any governmental
23 entity, retains immunity for the exercise, in
24 essence, or the discretion in how it does its
25 business.

1 What I'm asking you is, is how does this
2 situation remove that discretionary power which
3 would grant the City immunity?

4 Mr. Halford - Because the City has failed
5 to exercise even slight care after changing the
6 discharge characteristics of Spencer Park.

7 The Court - Changing the discharge
8 characteristics consists of cutting trees and
9 what?

10 Mr. Halford - Directing concentrated water.

11 The Court - Into the stream?

12 Mr. Halford - Into the stream towards my
13 client's property. That is correct.

14 The Court - And, they've been doing that
15 how long?

16 Mr. Halford - They've been doing it ever
17 since they discovered the culvert was inadequate
18 in 2009, according to their own study. It would
19 be different if we didn't have numerous other
20 flooding claims, Your Honor. The Plaintiff's
21 claim comes along long after they know about a
22 flooding hazard that they've failed to remedy.

23 The flooding characteristics, Your Honor,
24 is there an affirmative, aggressive act? Again,
25 they have collected concentrated, channeled more

1 directed water through -- Again, they've told the
2 Court, this is a natural water course. The
3 pictures show it's not. At least not when it
4 resides on their property, Your Honor. They're
5 upstream from us.

6 If they have directed water in concentrated
7 form, not every day rain events but in high
8 incidents of flooding, and they know there is a
9 risk of damage to private property, at that
10 point, Your Honor, if they've done nothing to
11 correct it, that would create a question of fact
12 which gross negligence arguably is the question of
13 fact.

14 The Court - Mr. White?

15 Mr. White - Your Honor, the two experts, one
16 was named Barfield and one was named Wright.
17 Barfield testified that he wasn't a hydrology guy.
18 He said on Page 12 when asked, do you consider
19 yourself an expert in hydrology? No. Have you
20 performed any study or analysis overflow dynamics
21 of surface waters? No. He testified on Page 13,
22 now, based on your field of study and experience do
23 you believe yourself capable of providing an
24 opinion as to the effect of any man made elements
25 of concentration of water? No, that would not be

1 my field of expertise.

2 The Court - What was his field of expertise?

3 Mr. White - He was the permitting guy, talking
4 about the house.

5 The Court - All right.

6 Mr. White - I asked him, if I represented to
7 you yesterday that yesterday Mr. Wright testified
8 that the subject property would have flooded
9 without any man made structures being present in
10 the park, would you agree or disagree with that?
11 I would agree. He kind of wandered. The areas of
12 stone within a ditch, that would slow water down,
13 not speed it up, correct? Potentially but, again,
14 I don't -- That's not exactly my field of expertise
15 so I'd prefer to -- Has your firm done any
16 study as to whether any stone in a ditch slows or
17 accelerates water in that ditch? No. No.

18 Then we turn to Mr. Wright, Page 46 Mr. Wright
19 is asked -- Again, he didn't do a hydrology study.
20 We never talked about deforestation. Mr. Bagley
21 was asked was the park ever deforested, and he said
22 no.

23 On Page 46 at Line 8, well, it's a component,
24 but of other types of components.

25 The Court - What's a component.

1 Mr. White - We were talking about the park.
2 Is it one with the least impactful topography
3 as far as flows go? That's about types of
4 flows and topographies. He says, It would --
5 The park, because of it being a park in a
6 natural setting, it helps reduce the coefficient
7 that would be used for how fast flow over the land
8 would be. So if you want to call that mitigating
9 it, it's just part of the whole. I guess you could
10 say assembly of the basin. 'Cause you've got
11 some roads, houses and other things back up to
12 that flow into that area. So it's just part of
13 what the whole basin is made of. I asked him,
14 In your inspection of the park, did you see any
15 evidence that the flow of water had been
16 intensified or directed? By the park -- What I
17 saw appeared to be conditions that had been that
18 way for a while. I didn't see any improvements
19 or new construction that would be around that
20 area that I saw. My question, stepping one-half
21 step back is, did you see any evidence of
22 manipulated or intensification of flow. No.
23 I mean, again, it appeared things were at a
24 state that had been that way for a while. I
25 didn't see anything that looked like there's been

1 an increased amount of flow.

2 This is on Page 51. So just to be clear,
3 since we have that confusion, you didn't see
4 anything in that park that you believe is evidence
5 of manmade focusing of surface water onto
6 Plaintiff's property? The witness answers, nothing
7 I saw being a change that would have made any
8 increase to it, that's correct.

9 Q What was his expertise? He was a hydrologist?

10 A He was a hydrologist, but he didn't do any
11 hydrology ---

12 The Court - Study.

13 Mr. White - He didn't do a study on this.
14 The Hall case, Greenville County, there was
15 direct testimony based on a hydrology study where
16 Greenville increased the flow 25 to 30 percent
17 to that property. It had taken a lot of action
18 in the drainage basin coming off the streets.

19 In this case, you have a park. You have
20 some things that don't look like they were a
21 natural setting park, but nobody testified where
22 they came from. You can't say, oh, well, there's
23 a pipe, it's the City's. The City must have put
24 the pipe there. You can't say, well, because
25 there's a pipe that's manmade that must

1 intensify because the expert said no. A, they
2 couldn't say it intensified or they said over all
3 they didn't see anything that intensified water.

4 The Court - Did Mr. Wright testify concerning
5 any offsite work had any effect on this problem?

6 Mr. White - Mr. Wright testified nothing
7 to that. He testified that everything in the
8 park -- He took out all the loose little rocks
9 and things all those pictures are of and pipe
10 just setting there. You take all that stuff out,
11 the swing set, you take all that stuff out, this
12 house still floods. It floods because of the
13 culvert.

14 The Court - I'm trying to understand what
15 Mr. Halford was telling me. Is there any
16 testimony concerning the construction of -- I
17 don't want to qualify it by recent but construction
18 of offsite but adjacent, artificial collection
19 mechanisms that's contributed to the problem?

20 Mr. White - No, Your Honor.

21 The Court - Do you see what I'm saying?

22 Mr. White - I do.

23 The Court - Let's say like a year ago or
24 a year before the lawsuit was brought, they
25 constructed a new catch basin intentionally

1 directing the water into Spencer Park.

2 Mr. White - There is nothing in the record
3 anywhere like that.

4 The Court - I understood that to be Mr.
5 Halford's argument that the problem was just not
6 the park but that the City has done stuff offsite
7 to materially increase the flow of water.

8 Mr. White - I heard that, but you're not
9 going to find it in our record. Those depositions
10 are very interesting reading, and they're very
11 short. There was not anything like that discussed
12 with these folks. They wanted to talk about this
13 and that but when you push them on this and that,
14 they got right of if and said, well, no,
15 I have no evidence of increase of flow. I asked
16 him about, well, why is this the City's
17 responsibility. He said, well, if it falls in the
18 City, it's their responsibility. I asked Mr.
19 Wright about what's the City's system? He said,
20 well, it's everything.

21 So, I don't know what to do with that. There
22 was no testimony about any work done on a street.
23 There's no testimony about any project upstream
24 that changed anything, the characteristics of
25 this flow.

1 Again, he didn't do a flow dynamic. He
2 couldn't testify to that if he wanted to.

3 The Court - Nobody has done a study of the
4 water flow; is that correct?

5 Mr. White - No engineer has done a hydrology
6 study that quantifies the water flow.

7 The Court - Or an increase in water flow?

8 Mr. White - There is no evidence of any
9 increase in water flow.

10 The Court - Mr. Halford?

11 Mr. Halford - I'm going to object on two
12 grounds. One, their own city engineers did a
13 hydrology study. That's reviewed in our expert's
14 report. Secondly,---

15 The Court - Well, your expert said he couldn't
16 identify anything that increased the flow,
17 according to what Mr. White said unless you can
18 show me something different.

19 Mr. Halford - A little bit further in the
20 deposition, Page 48, referring to the collection
21 points on Spencer Park. It collects the water
22 into a concentrated stream as compared to letting
23 it run natural, over flow down.

24 So, on one hand it may be that it actually
25 escalates how quickly water may get to the

1 stream bed that goes down the stream.

2 Then, he asked the expert to assume -- Aren't
3 you assuming that's not the natural course.
4 He identifies that culverts don't appear in
5 nature. They're manmade. Those manmade culverts
6 are on their property.

7 The Court - Well, the fact that they are
8 manmade -- Will you agree with me that the City
9 has the right, if they wanted to, to -- instead
10 of having a stream there, have pipes there that
11 are part of their storm drain system?

12 Mr. Halford - They already do, Your Honor.

13 The Court - No, they don't. I have looked
14 at these pictures. That is not what it is. It's
15 clear that's not true. I don't know where that
16 came from. You don't know where it came from.
17 I don't know where it came from. There's no
18 testimony about where it came from. It is
19 clearly not piped water on the park.

20 Mr. Halford - Your Honor, there are pipes
21 within the stream ---

22 The Court - I see pipes in the stream. I
23 see them in the picture, and the water is running
24 over the pipes. It's not running through the
25 pipes. The pipes are plugged up.

1 Do you have condensed copies of these
2 depositions to give me? I think I need to
3 read them.

4 Mr. White - I have condensed of two experts.
5 I may have the condensed of Ms. Brantley.

6 The Court - I think where we are -- At least
7 where I am is, there needs to be some -- If this
8 were a trial, I would not deem these issues to
9 be within the ambit of lay knowledge and would
10 require expert testimony. What we're talking about
11 is -- from the Plaintiff's point of view is
12 intensifying by collection of a quantify of water
13 and causing a result. I think that fairly requires
14 expert testimony.

15 Mr. White - If I could see Mr. Wright's.

16 The Court - Excuse me?

17 Mr. White - If I could see Mr. Wright's?

18 Mr. Halford - I have the full copy but not
19 the condensed.

20 The Court - I want the condensed because it
21 is easier for me to read.

22 Mr. White - I will say this, Your Honor, to
23 answer your previous question. On Page 57 Mr.
24 Wright was asked. Okay. There's a sentence in the
25 report that says, quote, considerable flow of

1 waters directed to the creek from adjoining
2 property includes the park, residential
3 neighborhoods and some commercial properties, end
4 quote. He answered yes. I asked him. Are you
5 familiar with that sentence? Did your firm do
6 any work to quantify those sources, whether by
7 percentage or by magnitude. His answer, no.

8 You asked me a minute ago did anybody do
9 any study off site. I said no. I did ask him
10 that. I had forgotten that I asked him that.

11 The Court - Here's what I'm going to do.
12 I grant the motion with respect to nuisance.
13 I am going to review these depositions about --
14 I grant the motion as to inverse condemnation.
15 There's been no testimony of a positive, aggressive
16 act that causes problems.

17 Does either of these experts talk about this
18 pipe under Willowbrook?

19 Mr. White - Yes, Your Honor, Mr. Wright does.

20 The Court - What does he say? I'm going to
21 read it but what does he say?

22 Mr. White - Says it causes the flooding.

23 The Court - I'm going to study the gross
24 negligence question in light of Tort Claims Act
25 and review these depositions.

1 The only thing I've set in stone is the
2 nuisance cause of action. I grant that. Let
3 me review the others. I'll do it quickly, and
4 we'll go from there.

5 In light of all that, is there any need to
6 hear the Plaintiff's Motion for Summary Judgement?

7 Mr. Halford - I don't believe so at this
8 time, Your Honor. I think you're dealing with a
9 question of fact.

10 The Court - No, I don't think I'm dealing
11 with a question of fact. I think I'm dealing with
12 a question of law. If the Plaintiff wants her
13 motion heard, I will be glad to hear it.

14 All I'm trying to say is -- I guess what I'm
15 really trying to say is your position is that
16 there's a question of fact. If there's a question
17 of fact, you can't have summary judgement.

18 Mr. Halford - She does wish to have it heard,
19 Your Honor.

20 The Court - Everything you have argued so
21 far has been to the effect that there is a question
22 of fact.

23 Mr. Halford - In defense of their motion,
24 yes, sir, Your Honor ---

25 The Court - Is there not a question of fact

1 then also with respect to your cause of action?
2 Could it not go the other way? If I apply the
3 same standard to your motion that you want me to
4 apply to theirs and there's a question of fact,
5 how can you be entitled to summary judgement?

6 Mr. Halford - I've discussed this
7 with my client, Your Honor. I'll just argue with
8 the Court's permission.

9 The Court - Put it on the record.

10 Mr. Halford - Your Honor, in regards to the
11 Plaintiff's Motion for Summary Judgement,
12 there's no dispute in this case that there is
13 stormwater, that the property is damaged. The
14 property is repeatedly damaged and no expert or
15 city official has identified any other source
16 other than stormwater that's doing the damage.

17 Mr. White has brought up the culvert at
18 Willowbrook. There's nothing in the record that
19 identifies that culvert pipe as DOT's, nothing.

20 What is in the record is ---

21 The Court - Somebody said it's a state
22 highway.

23 Mr. Halford - It is a state highway.

24 The Court - That's their responsibility.

25 Mr. Halford - If it's their pipe, yes, sir.

1 The Court - It is their pipe if it's a state
2 highway.

3 Mr. Halford - The channeling of water from
4 Spencer Park, Your Honor, that's the only place
5 the water is coming from. It may be damming or
6 pooling there, but the experts, when you do read
7 approximately Page 48 to 51 of Mr. Wright's
8 deposition, the experts are saying that this
9 water is being channeled or pooled.

10 I've pointed the Court to the decision of
11 Hall versus Greenville where they are seeking to
12 use Hawkins as the controlling law in this case,
13 Your Honor. That case says the municipality
14 may not absolve itself from liability by diverting
15 the surface stormwater from its streets, which
16 is discussed on Page 51, to a natural water course
17 that's too small to carry it off. Their own
18 studies have demonstrated, and they have actually
19 entered the property to correct or replace the
20 drainage structures, Your Honor, and that never
21 occurred.

22 The Court - Is there any expert testimony that
23 the creek is too small to handle the water.

24 Mr. Halford - Their own engineer in Exhibit
25 B in our Brief cites not only that the culvert

1 pipe that we're discussing is too small but that
2 the creek narrows and becomes more shallow.
3 At the top of Spencer Park, which they own, at
4 the juncture where it meets Willowbrook, it
5 shallows and becomes more narrow. It bottlenecks.

6 The Court - Bottlenecks because of the pipe.

7 Mr. Halford - It's not just because of the
8 pipe, Your Honor.

9 The Court - Is there any testimony that the
10 creek is insufficient to handle the water flow
11 absent the 24 inch culvert?

12 Mr. Halford - To answer the Court's question,
13 I believe going back into their engineer's study,
14 which was a hydrology study, the answer to that
15 question is yes. Mr. White can correct me if I'm
16 wrong.

17 The Court - Go ahead.

18 Mr. Halford - We move for summary judgement.
19 There's no question of fact that the property has
20 been damaged. It has been damaged specifically
21 from stormwater and that the City has taken
22 affirmative acts, not the least of which, includes
23 entry upon the property as Exhibit F to my Brief,
24 to replace the stormwater drain which hasn't
25 occurred. They ended up cleaning debris out of

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

6 The Court - Mr. White.

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

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

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

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

1 Is there a deposition of the gentleman who
2 opined something about the water who is an employee
3 of the City? What was his name? Brooks?

4 Mr. Halford - There is a deposition of Mr.
5 Brooks, Your Honor.

6 Mr. White - We will get you a condensed of
7 Mr. Brooks and Mr. Bagley.

8 The Court - You can email those to me. Have
9 you got it there?

10 Mr. White - I don't have condensed, but I
11 have ---

12 The Court - No.

13 Mr. White - I will email them.

14 The Court - Email me a condensed version.
15 It's much easier to handle.

16 Thank you. That's all we'll do today.

17 Mr. White - Thank you, Your Honor.

18 Whereupon - Hearing was concluded at 10:50
19 a.m.

CERTIFICATE OF REPORTER

State of South Carolina)

County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 31st day of August, 2014, in the City of Rock Hill, County of York, State of South Carolina.

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:

8-18-2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-46-0146

NADINE BRANTLEY)
VS.) TRANSCRIPT OF RECORD
CITY OF ROCK HILL, ET AL)

OCTOBER 16, 2014
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE S. JACKSON KIMBALL

APPEARANCES:

J. CAMERON HALFORD, ESQUIRE
FORT MILL, SOUTH CAROLINA

ATTORNEY FOR THE PLAINTIFF

MARK WHITE, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:

(NO WITNESSES)

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	EV.

(NO EXHIBITS)

1 THE COURT - This is case number 2012-CP-46-146,
2 Nadine Brantley against the City of Rock Hill. Mr.
3 Halford, I believe it's your Motion to Reconsider.

4 MR. HALFORD - That's right. Good morning, Your
5 Honor. May it please the Court.

6 THE COURT - Yes, sir.

7 MR. HALFORD - Judge Kimball, we were last before
8 you on August the 11th, Motion for -- Cross Motion for
9 Summary Judgment and your Order dated September the 2nd --
10 clocked September 2nd granted Summary Judgment to the City
11 of Rock Hill on all three of the Plaintiff's causes of
12 action, which I would recite for the Court were inverse
13 condemnation, gross negligence and nuisance, Your Honor.
14 In review of the Court's Order of the record, Your Honor,
15 the Plaintiff has asked that I motion the Court for
16 reconsider -- reconsideration of two of those points, those
17 being the inverse condemnation claim, Your Honor, and,
18 specifically, the affirmative element with the inverse
19 condemnation claim, and secondly, the gross negligence
20 claim. I'm going to proceed with the inverse condemnation
21 first, Your Honor.

22 THE COURT - Yes, sir.

23 MR. HALFORD - As we left Court in -- or as we
24 came into Court before you last time, Your Honor, August
25 the 11th, Your Honor will recall I provided a memorandum

1 with some exhibits, one of which was the Plaintiff's
2 Exhibit D which was a color copy just to give you a
3 depiction of the property. Subsequent to the Summary
4 Judgment hearing, Your Honor, the flood -- the property is
5 now identified completely as pretty much consumed within a
6 flood zone. That's Exhibit A to my current motion. And I
7 don't know precisely when that occurred, but up until the
8 time of Summary Judgment when I referenced the website by
9 the City of Rock Hill it was not and had not been
10 identified ---

11 THE COURT - Are you talking about FEMA or what?

12 MR. HALFORD - No, it's ---

13 THE COURT - What kind of flood zone?

14 MR. HALFORD - It's a flood zone denoted by the
15 City of Rock Hill pursuant to a study that was done in the
16 year 2013, Your Honor.

17 THE COURT - Well, what does that mean? I mean I
18 understand what a flood zone or flood plain or whatever you
19 want to call it means in the context of federal -- the
20 federal framework, which is what surveyors and everybody
21 else uses to determine, for example, if you have to buy
22 flood insurance, but I'm not -- I don't know what the
23 significance of a determination of something being a flood
24 zone is for the purposes of the City of Rock Hill. What
25 does that mean?



1 MR. HALFORD - Well, in my understanding it's not
2 FEMA. This is a City flood zone map, Your Honor, and the
3 Court will probably recall the number of flooding incidents
4 ---

5 THE COURT - Yes, sir.

6 MR. HALFORD - --- in this particular case, Your
7 Honor.

8 THE COURT - Yes, sir.

9 MR. HALFORD - So I'm asking to address the
10 affirmative act element. I think Your Honor's prior Order
11 was correct as there have been no improvements upstream,
12 thus Spencer Park, but I think the Court's Order is in
13 error and that there have been no changes upstream of this
14 property within Spencer Park, and the affirmative act
15 element we would like to address for reconsideration is the
16 concentration, Your Honor, or the intensification of
17 stormwaters.

18 THE COURT - I don't recall any -- I looked
19 through the motion and I looked back at the Order -- I
20 don't recall -- let me say it this way. In the -- in the
21 cases that talk about an affirmative aggressive act,
22 they're -- and find -- make a finding of inverse
23 condemnation, they almost -- they seem to me to uniformly
24 deal with an act that can be identified within a certain
25 timeframe, which has changed something. I -- from looking

1 at the pictures, and, for example, that pipe that we talked
2 about last time, the drainage pipe that's in -- in the
3 park, it appears to be a joint of pipe that's partially
4 buried, doesn't look to be -- I don't recall any evidence
5 of any new or recent act or act by the City in the park
6 since the Plaintiff acquired the property.

7 MR. HALFORD - And I understand ---

8 THE COURT - In other words, if you bought it with
9 -- subject to the status quo, I think somehow the
10 aggressive, the affirmative aggressive act has to be tied
11 to something you've done -- I don't want to say lately,
12 because that's not exactly what I mean - but it certainly
13 at least subsequent to the person acquiring title to the
14 property. What was -- when was the title acquired?

15 MR. HALFORD - Your Honor, and you reference this
16 in your Order -- Ms. Brantley got the title to a deed
17 through your offices in the year 2010.

18 THE COURT - Yes. Yes, yes, yes. And that's --
19 that's right. And I don't -- anyway go ahead. I'm sorry.
20 That's what I -- that was my understanding of the facts.

21 MR. HALFORD - And I can't sit here and give the
22 Court a timing of when they would've made an adjustment or
23 an improvement. I can tell you that there have been paving
24 of basketball courts out there, a large parking lot added.
25 There has been pipes -- corrugated pipes that I referenced

1 in my last motion, which are discharging water into natural
2 water course that these properties share upstream from my
3 client's property, but the affirmative act element that
4 we'd like for -- to reconsider, Your Honor, is as of 2009 -
5 - and this was the Brooks study by their engineer
6 technician -- they clearly recognize there's been a lot of
7 claims of flooding on this property, and I'm not going
8 strictly ---

9 THE COURT - Not claims. There've been the fact
10 of flooding. I don't know of any other claims.

11 MR. HALFORD - Well, there were claims filed with
12 the City which were denied.

13 THE COURT - I don't remember that's in the
14 record.

15 MR. HALFORD - That's incorrect.

16 THE COURT - Was that in the correct?

17 (No response)

18 THE COURT - Anyway, go ahead.

19 MR. HALFORD - There have been multiple claims.
20 My client was the most recent of which, Your Honor, but as
21 of 2009, the study of the need to mitigate flooding of this
22 property -- it was the Tim Brook study for the City --
23 recognizes that the culvert -- and it's another item of
24 Your Honor's Order I'd respectfully address as the direct
25 cause. Where that culvert is too small and where they

1 recognize the stream is too shallow -- yes, the stream is on
2 my client's property downstream from the park -- becomes
3 impounded. They have done a conscious decision; they have
4 actually looked at improving the downstream area from
5 Spencer Park and they have ascertained that it would far
6 outweigh the value of the single family residence. From
7 that point forward, Your Honor, they don't get claimed
8 until my client acquires in 2010, but they've made a
9 conscious -- and this would go more to the gross negligence
10 cause of action -- they've made a conscious decision not to
11 act where there's private property being damaged by flood
12 water. It's not just any ordinary water runoff. It is
13 stormwaters that are impacting the private property which
14 my client now owns. And secondly, their study by Tim
15 Brooks sets there are ways to remedy this but just would
16 cost too much. So ---

17 THE COURT - I recall that.

18 MR. HALFORD - So the affirmative act we're asking
19 you to address is the intensification or the -- I can't say
20 directly, because I think your Order's right, it's a
21 natural water course. I think Your Honor's Order is right
22 that upstream from any other streets where stormwater may
23 be collected, they can even bring it down into culverts,
24 and there are, according to her expert, man-made culverts,
25 not just the pipe that Your Honor references, there are

1 culverts, ditches, basins, corrugated discharge pipes.
2 There have been changes to the park. I can't tell you
3 precisely when they have occurred. Certainly they would've
4 occurred after 2001 but before 2010, but your Order ends
5 this case, and I can't prove any of that, and maybe that's
6 my fault, but as for an affirmative or an aggressive act --
7 -

8 THE COURT - Well, I don't think it's anything --
9 your fault. I think there's just simply, from looking at
10 all the pictures and the extensive history that was
11 provided, I don't -- it appears to me there were no acts
12 subsequent to 2010.

13 MR. HALFORD - It could've been before 2010, but I
14 understand the Court's ruling. That's my argument on
15 affirmative act, Your Honor. I think if you view the
16 evidence -- and there is an extensive history done on this
17 property between his firm and mine -- the property's been
18 flooded -- flooding repeatedly, but now it's in a flood
19 zone. Subsequent to Summary Judgment it's in a flood zone
20 as determined by them ---

21 THE COURT - Whatever that means.

22 MR. HALFORD - --- whatever that means -- through
23 a study that they listed by -- which by the way in
24 discovery, they identify that this property wasn't subject
25 to any other studies other than the Tim Brooks that's

1 Exhibit B to my motion. It's not in any other studies
2 except for Mr. Brooks' study from 2009, and lo and behold,
3 it turns out to be part of the Keck and Wood study. In
4 fact, they identified -- you'll remember this from last
5 time, they identified that the prioritize, which, again, I
6 realize that they can do under the law, this property is
7 number 20, but it's private property that's flooding. So
8 the second part of your Order I'd like to address as the
9 duty of it. There's no duty here. And you mentioned a
10 number of factors, either by status or condition of
11 property, contract, you know, what would be the affirmative
12 duty here owed by the City in addressing the gross
13 negligence claim. First and foremost and I miscite this in
14 my brief, Article I, Section 13 of the state constitution,
15 they know this is private property and there have been
16 other families who have been displaced by this. I will be
17 clear that this is investment property to my client, but
18 it's private property nonetheless, and they know it's
19 flooding. They have known for some time it's flooding.
20 There have been no warnings. And so whether we're
21 addressing the affirmative act under an inverse
22 condemnation or the failure to exercise any care under
23 gross negligence, I believe Your Honor's Order respectfully
24 cites that gross negligence would be barred by the Tort

1 Claims Act, and I'll note using the light most favorable to
2 the ---

3 THE COURT - No, it -- gross negligence would not
4 be barred by the Tort Claims Act.

5 MR. HALFORD - And I'm quoting from memory,
6 because I may have misstated, but in review of your Order I
7 believe it was, so ---

8 THE COURT - There are certain -- there are
9 certain exclusions to the exception of the Tort Claims Act.

10 MR. HALFORD - I'm almost finished with my
11 argument, Your Honor. I don't have a lot more. You know,
12 addressing the duty ---

13 THE COURT - Well, go ahead.

14 MR. HALFORD - --- on page 6, again, I think you
15 have the statute -- I think you have the Stormwater
16 Ordinances in the City of Rock Hill. I think you have
17 contract -- she's -- she obviously cannot opt out of
18 stormwater utility fees. No owner prior to her could've
19 opted out. She is there by contract I would respectfully
20 submit -- they are the utility and then most importantly
21 due to property interest. This is private property that's
22 been repeatedly flooded by nothing more than stormwaters.
23 So I don't know that the culvert -- I think I would agree
24 with Your Honor, and I think Your Honor's Order is correct
25 that the culvert's too small and everybody in this case has

1 so found, but again going back to what has changed to now
2 place this -- and this is Exhibit A to my motion -- to
3 place it in a flood zone all of a sudden, there's got to be
4 some cause and effect.

5 THE COURT - There is.

6 MR. HALFORD - Something had to have caused it.
7 It wasn't this lawsuit; it wasn't Your Honor's ruling, so
8 I'd respectfully submit that the Plaintiff's entitled to
9 reconsideration on inverse condemnation, specifically as to
10 the affirmative act and that would be intensifying or
11 concentrated stormwaters, not the average flow of the
12 nature stream, Your Honor, extreme rainfall events off the
13 park. Again, I think your Order is correct as to above the
14 park. I think your Order is correct as to the point where
15 is culvert or below (sic) -- the tributary into Manchester
16 stream, but within the confines of Spencer Park. There
17 were another (sic) of things. I will bring up one last
18 thing. The riprap. Why would you need riprap? I think
19 Mr. White talented used that. Doesn't it truly retard
20 water? That's exactly what riprap does. Why would we need
21 that there? If you're viewing this in the light most
22 favorable to the non-movant, why do we need riprap there if
23 there's not some form of intensification of flooding? It's
24 there for a reason. It's man-made. It's not naturally
25 occurring and it's been in the park for some time prior to

1 her acquisition. Again, I can't give you the date
2 precisely when it was put down, obviously, and that may be
3 my fault. Lastly, you know, I think your Court -- excuse
4 me -- Your Honor, this Court identifies the critical factor
5 on page six of Your Honor as the culvert. That's the
6 culprit in this case. That's what's causing the flooding.
7 I don't know if you -- in the light most favorable to the
8 Plaintiff that that's the case. We would ask for
9 reconsideration of those elements or both the inverse
10 condemnation claim and the gross negligence, Your Honor.

11 THE COURT - Okay. Mr. White.

12 MR. WHITE - Thank you, Your Honor. The motion
13 has two components. It has a 59(E) element and element
14 under Rule 60(B). The 59(E) element is interesting. 59(E)
15 has a ten-day requirement as there's no extended time for
16 mailing. The Order was entered on September 2nd; it was
17 mailed on September 2nd; my office received it on the 3rd;
18 the motion was served on the 17th. So unless the Order took
19 an extra five days to get over to Cam's office, then 59(E)
20 is barred and cannot be extended. Second, --

21 THE COURT - The ten days runs from ---

22 MR. WHITE - Actual receipt.

23 THE COURT - --- actual receipt. Yes.

24 MR. WHITE - Yes, Your Honor. We got ours on the
25 3rd. I can't say when Cam got his, but that means it was

1 five days later. The -- taking the Keck and Wood study, I
2 don't profess to know everything that occurs in my life,
3 and I'm sure Cam doesn't either, but the Keck and Wood
4 study -- Keck and Wood was identified in discovery
5 responses going back to October 12, 2012. The discovery
6 responses were supplemental December 13th. The study that
7 he's referring to was completed in January of 2014. It was
8 produced on September the 10th -- excuse me -- February the
9 10th, 2014. There's some e-mail traffic going back and
10 forth. On the 24th Cam sends an e-mail to Jerry saying,
11 since you forgot to remind me, I'm sending staff over today
12 to keep up the report; just giving you a heads-up so you
13 can have it at reception counter where it mostly has been
14 for a week, laugh out loud. It was produced. Of course,
15 it has nothing to do with affirmative acts. Part of the
16 City is studying its stormwater areas. Keck and Wood was
17 engaged to study the basins, study the hydrology in the
18 basis and figure out -- help the City Council exercise its
19 discretion under the neighboring statutes of the general
20 sessions -- of our general assembly and then make decisions
21 based on allocation of finite resources to a much larger
22 problem. None of that has anything to do with the record
23 in the case which is there are not affirmative acts of the
24 City within the park. Their expert testified he'd not done
25 a hydrology study. He testified that there was no evidence

1 of increase flow or directed flow, did not do a study of
2 before and after, and he testified, quite clearly when you
3 asked him what his conclusions are, that the flooding here
4 is a result of the culvert underneath the DOT road. So in
5 that way the Order for Summary Judgment is correct. Mr.
6 Wright doesn't provide any evidence of any sort of act that
7 can make the City responsible. It would seem that the
8 Plaintiff's contention is that all the City has to have is
9 knowledge. If the City has some knowledge of flooding,
10 then there's an affirmative act, some strict liability kind
11 of standard, and, of course, that's not the -- it's not the
12 case law under the Hawkins case. It's not the law under
13 the Tort Claims Act. Tort Claims Act protects the
14 governing body of making legislative decisions of where to
15 allocate public resources over private properties. There's
16 no absolute duty that it has to act. So that deals with
17 the 59(E) part and it also deals with the new evidence.
18 There's no new evidence. Everything they're talking about
19 ---

20 THE COURT - Let me clarify something myself. Mr.
21 Halford the 60 -- the Rule 60 basis is -- the new evidence
22 is the flood study? Is that what you're saying?

23 MR. HALFORD - Not only the flood study, the fact
24 that they now identify it specifically as consumed - not
25 consumed -- in a flood zone, Your Honor.

1 THE COURT - Okay. Yes, the designation as a
2 flood zone. All right, go ahead.

3 MR. WHITE - It doesn't technically designate as a
4 flood zone. I think that's a FEMA related entity. It --
5 in analyzing this area, Keck and Wood identified it as an
6 area prone to flooding. I would want to stay away from
7 the, you know, designation X or the special -- a special
8 area under the ---

9 THE COURT - So, in fact, there has been no
10 designation of anything, just the finding that it floods?

11 MR. WHITE - If you look on the maps from maps
12 from Keck and Wood it does show a -- kind of a tear-drop
13 looking area that does include part of this property ---

14 THE COURT - All right.

15 MR. WHITE - --- as an area that's prone to
16 flooding, ---

17 THE COURT - All right.

18 MR. WHITE - --- but it does not take on itself to
19 designate into a special hazard area under the FEMA
20 analysis of a flood zone.

21 THE COURT - Is there any -- is there any
22 procedure by which the City on its own similarly
23 characterizes flood prone areas, some analogous to FEMA's
24 thing? Do they ---

1 MR. WHITE - Not for the same purpose for what
2 FEMA's doing. What the City is doing is it's studying its
3 drainage areas in the Manchester creek area trying to
4 identify those areas that are prone to flooding to quantify
5 them so that the City management can then make
6 presentations to the governing body for how to allocate the
7 limited resources for sort of mitigation.

8 THE COURT - So, for example, that study would not
9 be used to deny somebody a building permit?

10 MR. WHITE - No, sir. That study would be used --

11 -

12 THE COURT - Which would be the case with FEMA,
13 for example.

14 MR. WHITE - Correct. Well, FEMA would trigger --

15 -

16 THE COURT - Insurance.

17 MR. WHITE - --- you know, you've got your federal
18 insurance requirements ---

19 THE COURT - Yes, yes, building requirements and
20 all ---

21 MR. WHITE - This doesn't trigger the same -- the
22 same federally constituted course of conduct that a FEMA
23 study would.

24 THE COURT - All right. Okay.

1 MR. WHITE - The Keck and Wood, if you look at the
2 purpose -- and I have a copy of it, and it's bate stamped
3 City Documents 383 through ---

4 THE COURT - Well, I read considerable excerpts
5 from that study if I recall correctly.

6 MR. WHITE - Yes, Your Honor. I -- it's ---

7 THE COURT - They were covered in the depositions
8 I think.

9 MR. WHITE - The long and short of it is not new
10 evidence after the judgment and then on the affirmative act
11 element, either by affidavit or by affidavit signed why
12 affidavits weren't available, there needed to be some
13 putting into the record of an intensification -- you know,
14 stormwater -- you know, flood waters and stormwater,
15 they're all a common entity. It's not strict liability
16 standard for the City under Hawkins and a number of other
17 cases, and so the Plaintiff had a duty at Summary Judgment
18 stage to come forward. In fact, their evidence show the
19 opposite which was there is no evidence of intensification
20 within Spencer Park, and as they even mentioned in their
21 motion, there's no evidence of it outside the top of the
22 park. So for those reasons the Court's Order was correctly
23 entered and the City ask that this motion be denied.

24 THE COURT - All right, I think when we boil all
25 this down, the -- the culprit if we want to call it that,

1 is the culvert that is within the scope of maintenance
2 under DOT under Willowbrook, and no matter what the City
3 does downstream, it's not going to change that, and looks
4 like no matter what it does upstream can't change it
5 either, because all that water's going to go there. I'm
6 satisfied with the Order as it's written, and I deny your
7 Motion.

8 MR. WHITE - Thank you, Your Honor.

9 MR. HALFORD - Thank you, Your Honor.

10 THE COURT - I will do a Form-4. Let me do
11 address this. I also find that there's no basis for
12 amending or altering the Order under Rule 60 by the
13 identification of the property as a flood prone area,
14 because that was -- that was considered and the fact of
15 flooding was an integral part of arguments that I heard and
16 were made before, but furthermore, the fact that a study
17 indicates that it's flooding just confirms a fact. It
18 doesn't bestow on the property any special classification
19 as I asked -- you know, that would go along with the
20 identification of being in a flood zone for FEMA purposes,
21 for example. So maybe you better do the Order, because
22 that's a little more involved. All right, thank you.

23 MR. WHITE - Thank you, Your Honor.

24 THE COURT - If you'll e-mail it to me, please,
25 Mark.

1 MR. WHITE - Yes, sir.

2 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 21 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Nadine Brantley vs. The City of Rock Hill, et al., as taken by me in the Court of Common Pleas for the Sixteenth Judicial Circuit on October 16, 2014 and provided by me this the 5th day of February 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

1 funding?

2 A. We do from time to time.

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

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

8 Q. The single statement.

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

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

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

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

25 A. I am not.

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

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

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

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

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

14 A. That's correct.

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

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

19 Q. Are you aware --

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

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

25 A. That's okay.

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

4 A. No.

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

7 A. Not specifically, no.

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

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

13 Q. Okay.

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

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

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

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

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

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

6 Q. Okay. How about you heard Mr. Brooks testify as to
7 this record. I know you've seen it. Can you

8 identify what that record is? I believe it's marked
9 as Number 8.

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

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

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

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

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

1 sure why he said that.

2 Q. What date does it state?

3 A. 3/13.

4 Q. 3/13 of what year?

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

6 Q. And that indicates that the slab and the pour was
7 okay but that comes after the -- if I'm reading it
8 right, July 7th, 1999, notation; does it not?

9 A. It does.

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

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

13 Q. Do you have personal knowledge of when a disapproval
14 is written on there, can the City stop the permit or
15 stop the construction? Does the City have the power
16 to do so?

17 A. We do. Typically if it's one that's associated with
18 something out of the ordinary, like water, that the
19 builder typically may not have had a report. If
20 they fill like it needs additional information, they
21 would say you need to go get additional information
22 before we'll allow you to go on.

23 Q. In fact this was notated that we needed an engineer
24 to okay?

25 A. That's correct.

1 My object continues.

2 EXAMINATION CONTINUES BY MR. HALFORD:

3 Q. I would tell you that gross negligence is the
4 failure to exercise even slight care. That's the
5 way the law defines it. Tell me in your
6 professional opinion how the City has exercised any
7 care to prevent further flooding at this property?

8 A. I don't think the City had a duty to prove any
9 further flooding to the property.

10 Q. It's been aware of at least four claims that are
11 documented, okay, you've instituted or at least
12 somebody in the City instituted a study through
13 Mr. Brooks, correct?

14 A. Correct.

15 Q. You've testified as to yet another study with an
16 engineering firm named Keck & Wood; is that right?

17 A. Yes. It's not a study per se for that address.
18 They looked at the entire City as a whole with all
19 of its basins, which of course Willowbrook is just a
20 portion of.

21 Q. I understand. Thus the new study, do you have a
22 copy of that study?

23 A. Not with me, but we do, yes.

24 Q. Can you provide that to your Counsel, please?

25 A. We can.

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

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

6 A. Yes.

7 Q. Okay. And what were your conclusions?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Direct Mr. White

Deposition of Robert Glenn Barfield, AIA, NCARB

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1 system?

2 A. The stormwater system.

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

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

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

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

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

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

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

Deposition of Ronald E. Wright, P.E.

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

4 MR. HALFORD:

5 Object to form.

6 WITNESS CONTINUES:

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

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

15 MR. HALFORD:

16 Object to form.

17 WITNESS CONTINUES:

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

Deposition of Ronald E. Wright, P.E.

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1 of this case is a result of that?

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

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

13 A. (No response.)

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

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

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

Direct Mr. Halford

Deposition of Ronald E. Wright, P.E.

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

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

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

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

14 MR. WHITE:

15 Object to the form.

16 WITNESS CONTINUES:

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

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

1 A. Yes.

2 MR. WHITE:

3 Object to the waste of time.

4 EXAMINATION CONTINUES BY MR. HALFORD:

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

8 MR. WHITE:

9 Object to the form.

10 WITNESS CONTINUES:

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

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

17 A. Yes.

18 MR. WHITE:

19 Object to form.

20 EXAMINATION CONTINUES BY MR. HALFORD:

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

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

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

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

6 A. Yes.

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

9 A. Yes.

10 Q. Do you recall how many you saw?

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

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

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

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

24 A. Yes.

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

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

3 A. Yes.

4 Q. Where would that be from?

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

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

13 A. You mean as to the governmental entity?

14 Q. Yes, sir.

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

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

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

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

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

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

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

6 MR. WHITE:

7 Object to the form.

8 WITNESS CONTINUES:

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

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

14 A. Yes.

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

19 A. Yes, it does.

20 Q. Would that also include my client?

21 A. Yes, it would.

22 Q. All right.

23 MR. HALFORD:

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

Deposition of Ronald E. Wright, P.E.

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

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

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

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

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

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

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

21 Q. To what degree?

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

Deposition of Ronald E. Wright, P.E.

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

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

9 MR. WHITE:

10 I have no further questions.

11 REEXAMINATION BY MR. HALFORD:

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

16 A. Yes.

17 MR. WHITE:

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

20 MR. HALFORD:

21 That's all I have.

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

1 a slab so it's low to the ground." And he indicated
2 that it was non-preventable on the City's behalf.

3 So I'm assuming the fact that it was something --

4 Q. I probably have a copy --

5 A. That's okay. That's fine.

6 Q. I don't mean to be passing it back and forth. Page
7 two says, "See attached photos." Can you read the
8 comment in the box? Who would have made that
9 comment?

10 A. Chris Costner signed it, so he would have made it.

11 Q. So Chris Costner was employed by the City of Rock
12 Hill?

13 A. Yes.

14 Q. Can you read the comment for me?

15 A. "See attached photos, see attached building
16 inspection record. It appears footings were never
17 approved."

18 Q. And going back to Exhibit Number 8, which is
19 highlighted for you, that would be consistent with
20 that business record; would it not?

21 A. I'm not sure if that's what he's talking about or
22 not.

23 Q. It says it appears that the footings were never
24 approved. Was there in fact --

25 A. This says the footings were approved. So I'm not

1 that would identify he had looked at it. And again,
2 the inspection process is not one that's done out of
3 duty or obligation. It's one that's done, just
4 again, to try to better our community to make things
5 more structurally sound.

6 Q. Going back to Number 8, there's two highlighted
7 portions and my Client was just kind enough to point
8 out that -- what does the -- if you can read it, the
9 highlighted portion read there at the bottom? Does
10 it say the slabs were already poured?

11 A. Yes. It says, "Slab and footing already poured."

12 Q. And the City okayed it?

13 A. Correct.

14 Q. And the entry that's dated April 10th, 2000, the
15 third yellow line, what does it state in full?

16 A. I'm not sure what that says. It says disapproved,
17 but I can't make out the latter part.

18 Q. It appears that Number 8, if I'm reading it right,
19 has two words on it that state disapproval twice.

20 A. I can't verify that at all.

21 Q. Well, let's refer to the top line.

22 A. Oh, you're asking me the entire document or that one
23 line? The one line I don't believe says disapproval
24 twice.

25 Q. I'm sorry if I'm misstated that. Let's look at the

Deposition of Nadine Catalfano Brantley

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1 rehabs?

2 A. Yes.

3 Q. Okay.

4 A. He does things right.

5 Q. Are you a realtor? A licensed realtor?

6 A. Yes, in North Carolina.

7 Q. And who do you work for?

8 A. Myself.

9 Q. You have a broker's license?

10 A. Yes.

11 Q. Is that the way they do it up there? There's a
12 broker-in-charge, or --

13 A. I am the broker and the broker-in charge.

14 Q. Okay. What's the name of that company?

15 A. Brantley Real Estate Services.

16 Q. Right now, how many listings would you have?

17 A. I think I have four.

18 Q. Four? Do you normally represent buyers?

19 A. Both.

20 Q. Okay. Your four listings, would they be commercial
21 or residential?

22 A. They're residential.

23 Q. Okay.

24 A. What -- well with acreage and -- yeah.

25 Q. Okay. Do you do any commercial listings over the

1 uptown. And then I moved to Carolina Place when it
2 opened.

3 Q. You had the shop until when?

4 A. Till 2000. July of 2000. Yes, I did them
5 simultaneously.

6 Q. I was wondering how you juggled that. So when you
7 say you rehab houses, that was begun by your husband
8 and who?

9 A. Actually, my husband and I, we started doing that in
10 about 1982.

11 Q. Would you buy a separate structure and rehab it or
12 did you start with your own home, rehab it, and keep
13 it a year and sell it?

14 A. We did both. We also kept some as rentals.

15 Q. How many properties do you own now, you or your
16 husband?

17 A. Well, we have this one -- I have this one in Rock
18 Hill. Then we have two rentals in Charlotte, and
19 our personal home. And then we have a vacation home
20 out of the country.

21 Q. Okay. Where's that?

22 A. In Mexico.

23 Q. Oh, you mean, I'm sorry, I thought you meant out in
24 the country. I didn't know you meant --

25 A. Out --

1 A. No.

2 Q. Have you ever been a defendant in a lawsuit?

3 A. No.

4 Q. Okay. Now, when I say subject property, I'm talking
5 about the residence that you own down off of
6 Willowbrook, okay?

7 A. Have I ever lived there?

8 Q. Yes, ma'am.

9 A. No.

10 Q. When I say subject property, I'm talking about that
11 house.

12 A. Okay.

13 Q. How far is it from where you do live to around here?

14 A. About 30 miles.

15 Q. About 30 miles. Have you ever rented this property?

16 A. No.

17 Q. This subject property?

18 A. No.

19 Q. No? How often have you visited the property?

20 A. Probably about 40 or 50 times.

21 Q. Your ownership of the subject property began when?

22 A. July of 2010.

23 Q. You've visited it, roughly, 40 times since then?

24 A. Forty to 50.

25 Q. Are your visits scheduled?

1 A. No.

2 Q. You don't maintain like a once a month or a weekly
3 sort of schedule?

4 A. No.

5 Q. You just come down as available or as needed?

6 A. I come down to check on the rainfall.

7 Q. Okay. So you come whenever it rains?

8 A. Not a light rain. I have come down to do work on
9 the property prior to the flooding.

10 Q. All right. What sort of work have you done to the
11 property?

12 A. Well, it has -- we put in a new kitchen,
13 countertops, and all new lighting in conjunction
14 with some repairs that were being done when we
15 acquired it.

16 Q. All right, so during your visits, you'd come down to
17 check on rainfall, you did the work that you just
18 mentioned. What else would you do when you'd check
19 on rainfall? What would be your list of things that
20 you would do?

21 A. I opened the door. I looked to see if there's water
22 been in the house. I walk to the -- to the ditch.
23 I check the condition of the culvert. I check the
24 condition of the ditch to see if there's debris in
25 it. And then I drive all the way around

1 Willowbrook, Cummings, Sturgis, and East -- I think
2 it's Eastwood. Just drive around that general area,
3 and check out the general area, and then I go home.

4 Q. You do this for any non-minimal rainfall?

5 A. Yeah, for example, heavy rain was expected last
6 week.

7 Q. Right.

8 A. So after that, after Thanksgiving, I went down, and
9 checked it. Now, it's different. Our weather's
10 different.

11 Q. Right. Have you ever hired a management company?

12 A. No.

13 Q. Have you ever hired a handyman to watch over it?

14 A. No.

15 Q. Do you know any of the neighbors that watch out for
16 it for you?

17 A. No.

18 Q. Have there been any rainfall events that you've
19 missed?

20 A. Yes.

21 Q. Because you were either out of town, or it was
22 inconvenient, or it rained, and you weren't
23 expecting it?

24 A. Out of the country.

25 Q. Oh, in Mexico.

1 A. Out of the country.

2 Q. How often do you go to Mexico?

3 A. Once a year.

4 Q. Is that a scheduled once a year, or just whenever
5 the --

6 A. It's in the winter.

7 Q. How long do you stay?

8 A. Usually two to four months.

9 Q. Winter in Mexico, it has a nice ring to it. So how
10 did you acquire the property?

11 A. The subject property?

12 Q. The subject property.

13 A. I had a deficiency judgment against another
14 property, and I exercised the deficiency judgment on
15 this property, that was owned by the same person.

16 Q. Who was that person?

17 A. Todd Williams.

18 Q. How did you come to have a deficiency judgment
19 against Todd Williams?

20 A. Well, Todd had been one of my clients, and he's
21 buying investment properties. He had a very good
22 track record. And he came one day, and said that he
23 had this opportunity in Charleston to buy a very
24 attractive piece of property, but his loan had not
25 yet been approved. And he needed some -- I can't

1 remember exactly how many thousands of dollars to
2 complete this purchase; but he would only need it
3 for a short period of time, because the approval of
4 his loan was eminent, and he was going to be losing
5 this contract. They had a backup offer on it. So I
6 loaned him the property, or the money for that
7 property in Charleston. And then he didn't pay what
8 he was supposed to. He -- he started falling behind
9 in his payments. So he told me that it was because
10 he was having problems with getting the Building
11 Department, and the Historical Commission on track
12 for the -- for the permits to rebuild this property,
13 and that was holding up his loan. So he asked me if
14 I could roll some of the back payments into the note
15 so that increased the amount that he owed me. Now,
16 then I found out that he had paid cash for this
17 house in Rock Hill from the sale of his property in
18 Tega Cay, which was his personal residence that we
19 could not attach. So he took the money he was
20 supposed to pay me and bought this house. And so
21 when I had the deficiency judgment, then I exercised
22 it against this property. That's how I acquired it.

23 Q. All right. Was there a lawyer involved in the loan?

24 A. You know, there had to have been, but I don't -- I
25 don't recall.

1 Q. Was it a typical loan with a note?

2 A. It was like, you know, a South Carolina -- I think a
3 South Carolina, you know, I really don't remember.
4 I'd have to look at my records.

5 Q. Okay. Do you still have documents from --

6 A. Yes.

7 Q. -- this time period?

8 A. Yes.

9 Q. Relating to this transaction?

10 A. Yes.

11 Q. Do you remember how much you loaned the fellow to
12 begin with?

13 A. I think it might have been -- I really don't. I --
14 I couldn't really make a -- I'd have to look in my
15 records.

16 Q. Knowing -- sitting here today, knowing you don't
17 remember specifically, what number just pops in your
18 head, just so I know. Is it 10,000? Is it 50,000?

19 A. It's --

20 Q. I mean the documents will tell us.

21 A. -- more like 60.

22 Q. Okay. So you may have loaned him somewhere around
23 \$60,000?

24 A. Yeah.

25 Q. The question is, was he to make multiple payments,

1 or just a lump sum payment?

2 A. He was making monthly payments.

3 Q. All right.

4 A. And then a balloon.

5 Q. Was it a six-month loan, a one-year loan?

6 A. I think -- I think it was a -- a year, but, again, I
7 don't remember, 'cause it was -- he said -- he told
8 me at first it was just a matter of days.

9 Q. All right. So then you threw some back payments,
10 and, of course, interest and all that was accruing,
11 so that made it much bigger. Did you sue him?

12 A. No, just foreclosed.

13 Q. Foreclosed on what?

14 A. On the property in Charleston.

15 Q. Oh, so you took a mortgage -- I see, I missed that
16 part. All right, so you actually funded the
17 purchase of the property. He was going to
18 refinance, and take you out?

19 A. Exactly.

20 Q. Okay.

21 A. You've got it.

22 Q. You foreclosed, so you were a plaintiff in the
23 foreclosure?

24 A. Yes.

25 Q. Okay. So we're not playing got you, but to go back,

1 you've been a plaintiff in three personal injuries,
2 and that one now?

3 A. Yes, and the second foreclosure, the execution of
4 the judgment hearing --

5 Q. Right.

6 A. -- in York County too.

7 Q. Right.

8 A. So I -- I -- I heard you say lawsuits, I didn't
9 realize you --

10 Q. No, no, I'm not -- there's no got you there.

11 There's no great moment, I'm just trying to get a
12 good list. All right, so when you foreclosed on the
13 property in Charleston, who was the successful
14 bidder at the foreclosure?

15 A. A -- a young individual. I talked -- I spoke with
16 him, but I don't remember his name.

17 Q. Did you bid at the foreclosure?

18 A. There's something about the South Carolina law that
19 I don't understand, with the -- it's very different
20 from North Carolina. So I don't really know why it
21 was -- what was done the way it was done. The only
22 thing that I know is that the young man told me that
23 nobody else showed up to bid. So he got -- he must
24 -- I must have had a bid in there, but I don't know
25 what it was.

1 Q. Did you go --

2 A. I didn't want to own that property either.

3 Q. Did you go to the foreclosure sale?

4 A. No.

5 Q. But you probably had a lawyer.

6 A. I had a lawyer.

7 Q. All right, and he may have entered a bid for you.

8 A. Yes.

9 Q. But you were not the successful bidder at the sale?

10 A. No.

11 Q. So the difference between whatever that young man
12 bid and the debt was now your deficiency?

13 A. Yeah, less expenses.

14 Q. Right. So then you enrolled that judgment in York
15 County?

16 A. Right.

17 Q. It became an immediate attachment on the subject
18 property?

19 A. Yes.

20 Q. Then you foreclosed that and became the owner of the
21 subject property?

22 A. Yes.

23 Q. Did you go all the way through proceedings, or did
24 you strike a deal with Todd Williams, and satisfy
25 the whole judgment when you took the subject

1. property?

2 A. I -- I think we just satisfied the whole judgment.

3 I did not strike a deal. I was not in communication
4 with Todd at that time. Couldn't find him.

5 Q. Was there a foreclosure sale on the subject
6 property?

7 A. Yes.

8 Q. You bid at that?

9 A. Yes.

10 Q. You bid in your full debt?

11 A. Yes.

12 Q. Did someone else bid?

13 A. No.

14 Q. Do you have documents from all that time period?

15 A. Yes, I believe you have them.

16 Q. When you identified the subject property and sought
17 to foreclose it, and before you became the owner,
18 did you inspect the property?

19 A. I was out of the country, and my -- had given the --
20 my power of attorney to my son-in-law.

21 Q. Well, on your behalf, did he inspect the property?

22 A. Yes.

23 Q. All right, and how many times did he go to the
24 property?

25 A. I don't know.

1 had occasion to meet him there at the house while
2 the repairs were being done, so -- but I have not
3 spoken to Todd.

4 Q. When you went by the property, or when your son-in-
5 law went by the property, did you see any evidence
6 of fire damage?

7 A. Yes.

8 Q. There's two kind of fire damages. One's where the
9 fire does most of the damage, and one where there's
10 a little fire and lot of smoke damage.

11 A. I think it was mostly smoke damage.

12 Q. So a little fire and a lot of smoke damage. Did you
13 see any evidence of any flooding issues?

14 A. No.

15 Q. Did you see a water mark on the wall?

16 A. No.

17 Q. Did you notice the ditch when you viewed the
18 property?

19 A. Yes.

20 Q. What was the condition of the ditch?

21 A. It had some water in it. And other than that, it
22 just had some water in it.

23 Q. Okay. When you viewed the property, did you take
24 notice of the fact that a city park was an adjoining
25 property owner?

1 A. Yes.

2 Q. Did you view that as a positive?

3 A. Yes.

4 Q. That's an enhancement of value?

5 A. I thought so.

6 Q. When you looked at the property for the first time,
7 or any subsequent time there around the time you
8 were going to take ownership, did you have any
9 concerns about flooding?

10 A. I questioned, but I looked on the maps, and it's not
11 in any kind of flood zone.

12 Q. All right, so you pulled a FEMA map?

13 A. Yes.

14 Q. Have you ever taken a loan out on this property?

15 A. No.

16 Q. Did you speak with any of the neighbors around the
17 time of taking title to the property?

18 A. No, I did not.

19 Q. In your litigation with Mr. Williams, you were not
20 forced to take this property in satisfaction of your
21 deficiency judgment against him, were you?

22 A. Not forced.

23 Q. It was a decision you made?

24 A. No other avenue to take to recoup that money.

25 Q. Do you understand that a judgment in South Carolina

1 Q. What did you do?

2 A. We cleaned out the ditch. I -- I, personally, did
3 not clean out the ditch; but when my husband and
4 son-in-law went down to mow the grass, they would
5 take the debris out of the ditch.

6 Q. This is before the 2011 period?

7 A. Yes. Every time they went down to cut the grass,
8 they would clear the ditch.

9 Q. How often would they cut the grass?

10 A. About once every two to three weeks, in the -- in
11 the summer, not in the winter, of course.

12 Q. Now, the open ditch doesn't have water in it all the
13 time, does it?

14 A. A little bit.

15 Q. It always has some water?

16 A. A little bit. It depends on, of course, we've been
17 through a period of drought, prior to this year.

18 And this year we've had a lot more water, so it's
19 varied from being dry to having water in it. Like
20 right after Thanksgiving, it had about this much
21 water (indicating) in it down by the culvert.

22 Q. Speaking of the culvert, what is your understanding
23 of whose culvert that is?

24 A. I don't know.

25 Q. Okay. What is your understanding of whose road that

1 is that the culvert runs under?

2 A. Well, now, I understand that -- I've seen two
3 different maps where one says it's the State's, and
4 the other one says it's not. The one that says it's
5 not is a census map, U.S. census map.

6 Q. Are you aware of any publication that would list DOT
7 roads?

8 A. No.

9 Q. Have you ever inquired of the DOT if that's their
10 road?

11 A. Yes, I did prior -- after -- after the June flood
12 that I experienced.

13 Q. Right. What did the DOT say?

14 A. They said it was their road.

15 Q. Okay. So based on that, do you understand it's
16 their road?

17 A. I think I'll let my expert witnesses answer that
18 question.

19 Q. I'm asking what your understanding is. I'm not
20 asking you to put a stamp of this is truth. I'm
21 just asking --

22 A. Well, if the DOT says it's their road, then I would
23 assume it's their road.

24 Q. So do you have any information that that road is a
25 City of Rock Hill road?

1 A. No.

2 Q. Do you have any information that the City of Rock
3 Hill built that road?

4 A. No.

5 Q. Do you have any information that the City of Rock
6 Hill installed that culvert?

7 A. No.

8 Q. Do you have any information that would tend to show
9 that that culvert is a City of Rock Hill structure?

10 A. In that it's part of the stormwater system. I -- I
11 don't know. But in that it's part of the stormwater
12 system, and that the City website refers to keeping
13 the culverts clean, I would have to answer yes.

14 Q. All right. Are you aware of the practice of the
15 City of Rock Hill that its roads have culverts on
16 them in certain places?

17 A. Yes, I've seen them.

18 Q. Are you aware that if it's a City of Rock Hill road,
19 that the City most likely installed and maintains
20 those culverts underneath its road?

21 A. Yes.

22 Q. All right. Are you aware that the DOT has culverts
23 in certain places under its roads?

24 A. Yes.

25 Q. All right. Would it be your understanding the DOT

1 maintains the culverts that are located under its
2 roads?

3 A. Yes and no.

4 Q. All right. Tell me about the culverts under DOT
5 roads which you have an understanding that DOT does
6 not maintain.

7 A. Well, they've not come out to maintain the culvert
8 in front of my house.

9 Q. Is it cracked?

10 A. I don't know.

11 Q. Do you have any information that would tend to show
12 that the City of Rock Hill constructed the culvert
13 near your subject property under the DOT road?

14 A. No.

15 Q. Okay. Do you have any information that would show
16 that that culvert is part of the City of Rock Hill
17 systems?

18 A. The City of Rock Hill's water flows through that
19 culvert.

20 Q. All right. What's your basis for that statement?

21 A. The -- the City owns the water. The -- but you know
22 what? I think I should let my expert witness
23 testify to that.

24 Q. All right. So to go back to what led to that
25 question, you don't have any personal knowledge that

1 would show that that culvert belongs to the City of
2 Rock Hill?

3 A. Only that they've come out and cleaned it out.

4 Q. Well, is it your understanding that the City of Rock
5 Hill, in providing assistance to the synergy, would
6 only clean out its structures, or might clean out
7 anything that someone was complaining about?

8 A. I don't know.

9 Q. Okay. How many times have you viewed a City of Rock
10 Hill employee cleaning out that culvert?

11 A. Never.

12 Q. All right. What is your basis of your understanding
13 that the City of Rock Hill's employee has cleaned
14 out that culvert?

15 A. I made a request for the culvert to be cleaned out
16 after the June flood.

17 Q. June of?

18 A. 2013.

19 Q. Okay.

20 A. Are you not aware of that flood?

21 Q. You stated that the City of Rock Hill employee has
22 cleaned out the culvert.

23 A. Yes.

24 Q. I asked you what is your basis of knowledge, since
25 you didn't see it, that a City of Rock Hill employee

1 A. No, I'm not aware of any claim -- any claim that's
2 been paid.

3 Q. Are you aware of claims that have been made to the
4 City that have been denied?

5 A. Yes.

6 Q. Do you believe there have been prior floodings to
7 the house?

8 A. Yes.

9 Q. Prior to your ownership?

10 A. Yes.

11 Q. Based on the flood water, the line, and what got
12 damaged, is it your understanding that waters would
13 come through the open ditch, and then would hit the
14 culvert, and either because it was too much water
15 for the culvert, or the culvert was obstructed in
16 some form, there would be ponding starting from that
17 point backing up into the property?

18 A. I would re -- re -- defer that to my experts.

19 Q. Okay. You're not aware of any sheet flowing across
20 the entire property hitting the house on, say, the
21 northwest corner?

22 A. I am not.

23 Q. All right.

24 A. I have never seen any flood there. I've not
25 witnessed one.

1 A. I'm not aware of a -- but, please, ask my -- my
2 expert witnesses.

3 Q. All right. So other than the fact that the City in
4 your view allowed this house to be built, is there
5 any other basis that you believe the City is liable
6 to you?

7 A. Well, it's in their stormwater management system.

8 Q. What is in their stormwater management --

9 A. The house -- the lot is in the stormwater management
10 system.

11 Q. I don't understand what you mean by that sentence.

12 A. Well, the -- the water -- all the water that falls
13 onto the ground in Rock Hill belongs to the City.

14 Q. What do you base that sentence on?

15 A. Well, again, the -- the -- I would refer you to my
16 expert witnesses.

17 Q. Okay. All right, so you believe the City is liable
18 to you because it allowed a house to be built, and
19 because all the water that falls in the City is the
20 City's water; and, thus, I guess, the City is
21 responsible to make sure it -- it flows without
22 going into your home?

23 A. Yes, and I believe you could find that on the
24 website.

25 Q. All right. Is there any other basis you believe the

1 channeled through, under Sturgis Street, into
2 another huge ditch, and there is a berm in front of
3 that ditch. And so the water from these two
4 ditches, and from whatever falls at the top of the
5 park, then goes down into a water course that
6 appears to be manmade; so all of that looks like
7 it's manmade. And it's on City property, so I would
8 assume that the City made the structures.

9 Q. All right. What I asked you was are you aware of
10 anything within City park that accelerates water.
11 Let's take it piece by piece. The berm does not
12 operate to accelerate any water. In fact, if
13 anything, it slows it down, correct?

14 A. It channels it into --

15 MR. HALFORD:

16 Object to form.

17 WITNESS CONTINUES:

18 A. It -- it channels it into a -- into a -- a -- a
19 narrow spot, which, of course, water accelerates;
20 but you can talk to my expert witnesses about that
21 as well.

22 Q. You have no information about the condition of the
23 park or anything that's not known to your expert; is
24 that correct?

25 A. I don't know -- I don't know if they -- if they've

1 done any -- done any -- I -- I'm not aware of.

2 Q. What I'm asking is, you've referred me a number of
3 times to your expert.

4 A. Yes.

5 Q. My question is, do you have any knowledge that your
6 expert does not have as to the condition of the park
7 or the City structures within the park as far as
8 accelerating or flowing water?

9 A. Do I have any knowledge?

10 Q. Right, do you have more knowledge than he does?

11 A. I don't think so.

12 Q. Okay. Any information I need from your case about
13 that, I can get from him?

14 A. I think so.

15 Q. Then I don't need to ask you about it. Do you
16 believe the original builder of the home is liable
17 to you for the condition of the property?

18 A. I refer you to my attorney on that.

19 Q. Did you sue him?

20 A. I --

21 Q. Answer the question the best you can, please.

22 A. I think he's named in the suit, but you'll have to
23 ask my attorney about what the progress on that is.

24 Q. Well, I'm not asking what the progress is, I'm
25 asking you do you wish to hold him responsible and

1 A. Yeah, I would say that would be --

2 Q. I mean it could be the waters from the high ground
3 hit your house first. It could be that the waters
4 from your house stay in the ditch until they hit
5 this culvert, which is inadequate to flow the
6 waters, and then they pond and back up into the
7 house.

8 A. I have never seen the house in the flooding stage.

9 Q. Right. I'm asking you what your understanding
10 though is. It's your understanding that no water
11 jumps out of the ditch until water has hit the
12 culvert, and doesn't flow through it sufficiently,
13 and then backs up and ponds?

14 A. Well, you know, water comes off the ten-foot strip
15 that the City owns on the left-hand side of the
16 house, and it could puddle up against the house
17 there and come in through the vent, 'cause the vent
18 is very low.

19 Q. I'm asking what your understanding is.

20 A. It could be many things.

21 Q. All right, so sitting here today, you don't know how
22 it is your property floods, whether --

23 A. I've never seen it in the actual flood stage.

24 Q. All right. I note in some of your communications
25 with the City you noted that the house is built

1 dedication or acceptance of the property. You're
2 aware the City has the power of eminent domain; is
3 that correct?

4 A. Yes.

5 Q. Okay. Mr. White asked you had there been a
6 dedication of your property by you or any prior
7 owner. Are you aware of any such dedication?

8 A. No.

9 Q. Are you aware of any such acceptance by the City?

10 A. No.

11 Q. You described that the City was using it. How is
12 the City using your property?

13 A. Well, they're collecting stormwater there that, you
14 know, they're using -- they're using this one piece
15 of property for the public use, not for -- it -- it
16 -- to my detriment, without compensation, just
17 compensation.

18 Q. Now, let's deal with what you're seeking in damages
19 in this lawsuit. What are you looking for?

20 A. Well, I'll tell you what, my -- my cost of ownership
21 of this property is approaching \$150,000 as we sit
22 here at this table paying for the deposition. I
23 have spent every single night since this flood going
24 to sleep thinking about it. Waking up in the
25 morning thinking about it. All during the day

1 REEXAMINATION BY MR. WHITE:

2 Q. Do you have any education or training in hydrology
3 studies?

4 A. No.

5 Q. In surface water studies?

6 A. No.

7 Q. Do you consider yourself an expert in stormwater or
8 surface water runoff?

9 A. No. That's why I hired an expert.

10 MR. WHITE:

11 I've no further questions.

12 REEXAMINATION BY MR. HALFORD:

13 Q. Speaking of your expert, how much have you spent
14 with your expert to date; if you know?

15 A. Close to 10,000 before the next deposition.

16 Q. Why did you spend that money?

17 A. I felt that it was necessary to do so given the
18 mediation that we went through months ago.

19 MR. HALFORD:

20 No further questions.

21 (OFF RECORD)

22 REEXAMINATION BY MR. WHITE:

23 Q. You mentioned you omitted to mention someone you
24 spoke to at the City in response to one of my
25 questions. If you'd like to complete that response,

Direct Mr White

Deposition of Ronald E. Wright, P.E.

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1 Q. I will have to say that pun was intended.

2 A. I missed it, what was it? I'm sorry.

3 Q. You formed opinions in your own right.

4 A. Oh.

5 Q. So --

6 A. My wife always gets all the opinions about me being
7 right.

8 Q. Is it your understanding that Robert has formed
9 opinions that you do not have?

10 A. I would say we both share all the opinions, but he
11 would have more understanding, more background, more
12 knowledge of the ones that dealt with more of the
13 regulatory aspects, and having seen the property and
14 looked at it, understanding the physical
15 characteristics of the property.

16 Q. All right, let's try it this way. On what do you
17 rely in forming your opinions in this case?

18 A. Definitely all the documents that deal with the
19 exhibits to the report. And then a number of my
20 opinions are based off of past experience, and the
21 understanding of the way in which the surface
22 runoff, and the calculations, and the manner in
23 which that whole process is done; which that's from
24 back when I was in college, educational experience
25 through that, and then also performing those

1 actually on projects both with Owens Illinois and
2 through the work with the contractors.

3 Q. All right. What else forms the basis for your
4 opinions in this case?

5 A. I -- I would say that the City of Rock Hill
6 stormwater manual does provide further basis for
7 opinions that I would say already had used or based
8 those opinions off of past experience; but that also
9 further supported the basis of those opinions.

10 Q. What specifically in the Rock Hill ordinances did
11 you use in forming your opinions?

12 A. That the intensity that should be used or calculated
13 for the way in which you would treat runoff for --
14 especially through a culvert type condition, and
15 what rainfall intensity should be used for that type
16 of a calculation.

17 Q. You used the current Rock Hill materials for that?

18 A. It was one that had a December 10th, was the last --
19 or December 2010 was the last revision from the one
20 that I saw; but it matched fairly close to the type
21 of intensities that were used by the engineer for
22 the City that did the calculations at the time in
23 evaluating the property.

24 Q. Be more specific, at what time? The time the home
25 was built?

Deposition of Ronald E. Wright, P.E.

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1 A. His was after that.

2 Q. All right. Do you have any knowledge whether that
3 same ordinance was in existence at the time this
4 home was built?

5 A. That I do not know.

6 Q. All right. Do you have any knowledge or idea or
7 information as to what the requirements were at the
8 time this home was built?

9 A. No, not that I'm aware of. I've not seen something
10 dated from that time period.

11 Q. Okay. Have you formed opinions as to the City's
12 culpability regarding the initial construction of
13 this home?

14 A. Yes.

15 Q. Is it accurate to state that you've done so using
16 the City's current stormwater plan?

17 A. And their documents that were contiguous at the time
18 as to at least the reference that an engineer needed
19 to look at drainage based off of what permit records
20 show.

21 Q. Well, my question was in forming your opinion as to
22 the City's alleged culpability with respect to the
23 construction of the home, you've done so based on
24 the City's current stormwater ordinance?

25 A. Looked at whichever one the City engineer had used,

1 which would not have been the one I looked at
2 online, because he did that study before that one
3 would have been published, I believe.

4 Q. Okay. But your opinions that you formed and are
5 ready, willing, and able to provide here later as to
6 the City's culpability with respect to the
7 construction of this home is not based on any
8 stormwater ordinance existing at the time the home
9 was constructed; is that correct?

10 A. That's correct. I'm not aware of what the original
11 requirements were at the time of construction for
12 the stormwater.

13 Q. Were there any emails between you and counsel, or
14 you and Ms. Brantley?

15 A. No, not that I know of.

16 Q. Are there any emails with respect to this property
17 or this project?

18 A. No.

19 Q. Y'all don't email in between each other in your
20 office?

21 A. Robert may have some, but I don't have any.

22 Q. All these questions are related to information
23 that's not part of your file that you've produced.

24 A. Okay.

25 Q. If it's been produced, then I have it, and I don't

1 need to know anymore about it. Are there any
2 documents that's not part of that production that
3 were sent by anybody with your firm to Ms. Brantley,
4 or her counsel?

5 A. Not that I'm aware of.

6 Q. Are there any documents received from Ms. Brantley
7 or counsel that's not already included in that
8 stack?

9 A. Again, not that I'm aware of.

10 Q. Can you provide for me, please, your professional
11 opinions in this matter?

12 A. Sure. The pipe that exists underneath of the
13 roadway, willowbrook, that leads from Spencer Park,
14 and a creek leads down to that that's adjacent to
15 this property, it's a 24-inch diameter RCP that then
16 goes to a 30-inch RCP downstream. But the inlet for
17 that 24-inch is not sufficiently sized to be able to
18 handle the amount of flow of water that will come
19 off of that property surrounding that area that
20 drains to that point. And because of that, then it
21 will back up to the point that it had and will reach
22 the level above the finished floor of the residence.

23 Q. All right, any other professional opinions?

24 A. The original permit notation card indicated there
25 was a requirement or request to have an engineer

1 evaluate the property, it appeared prior to further
2 constructing the building; and had not seen any
3 records showing such an indication which may have
4 prevented any of the problems like we're
5 experiencing now.

6 Q. So your professional opinion with respect to that
7 issue would be there should have been an engineering
8 report, not that it would have any bearing, but just
9 that there should have been one?

10 A. Yes.

11 MR. HALFORD:

12 Object to the form.

13 EXAMINATION CONTINUES BY MR. WHITE:

14 Q. Do you have any professional opinions about the
15 original permit under the assumption that the City
16 did receive an engineering report, per that comment?

17 A. I missed that question, sorry.

18 Q. I want you to assume since you testified you're not
19 aware of any engineering report was ever provided to
20 the City in response to that notation.

21 A. Yes.

22 Q. That's true, right?

23 A. Yes.

24 Q. Assume that there was an engineering report provided
25 to the City in response to that notation.

1 those of his own?

2 A. That's correct.

3 Q. Although you agree with all of his opinions?

4 A. That's correct.

5 Q. Y'all don't have a rift?

6 A. That's correct.

7 Q. Is it your understanding of the underlying facts
8 that water entering the structure has come from
9 ponding resulting from water backing up at the
10 culvert underneath Willowbrook?

11 A. Yes.

12 Q. You have no information or understanding that water
13 is entering the structure coming from sheet flowing
14 across the property, or in any form other than
15 ponding from the blockage, or the restriction of the
16 culvert underneath willowbrook?

17 A. That's correct.

18 Q. Is it also your understanding that willowbrook is a
19 state maintained roadway?

20 A. Yes.

21 Q. Do you have any facts or understanding that the
22 culvert underneath the roadway is anything other
23 than the State's?

24 A. What I recall, it seemed as if there were some
25 conflicting information as to whether the State

1 owned all of the road bed including that culvert, or
2 if because of the water flow that was occurring from
3 adjoining property to another Rock Hill property,
4 that that then was part of the Rock Hill stormwater
5 management program. It appears from demarcation,
6 that that's being a State-maintained road, it should
7 be part of the State's to take care of.

8 Q. In your experience in South Carolina, has a culvert
9 underneath a road ever been the responsibility or
10 owned by an entity other than the owner and
11 controller of the road?

12 A. My recollection, it's always been whoever had that
13 road was who owned that water management device
14 under it.

15 Q. Have you ever seen anything inconsistent with that
16 recollection?

17 A. Not that I recall, no.

18 Q. Did you perform a hydrology study of this drainage
19 basin?

20 A. No, I did not.

21 Q. Have you analyzed the contributors by percentage or
22 by volume of the water in this drainage basin?

23 A. No, I have not.

24 Q. So it is accurate to say that your opinions are not
25 as to those issues, but as to the cause of the

1 ponding occurring on the subject property, which at
2 times and sufficient rainfall can actually enter the
3 home?

4 A. Yes.

5 Q. All right.

6 A. Yes.

7 Q. Have you ever visited the property?

8 A. I drove by it on the way here today.

9 Q. Did you get out of your car?

10 A. No, I did not.

11 MR. WHITE:

12 Let's go off the record for a second.

13 (OFF RECORD)

14 EXAMINATION CONTINUES BY MR. WHITE:

15 Q. Are your opinions as to the flooding cause and to
16 the Plaintiff's property based on any analysis
17 through that watercourse?

18 A. Yes, through that that had been done by the City
19 engineer.

20 Q. Are you aware of the professional qualifications of
21 the man who performed that analysis?

22 A. No, I don't know of him directly. I believe he was
23 listed as being a professional engineer within the
24 City's, I believe, planning department.

25 Q. If he were a professional engineer, then his report

1 would be one that you believe that you could rely
2 upon in forming conclusions and opinions?

3 A. Or even as an engineer, not just because he's a
4 professional engineer; but also the rationale, and
5 the way that he approached it, and the different
6 aspects of what he included within his report for
7 that was consistent with what I would have done if I
8 had developed my own analysis; but since he had done
9 it, I did not recreate another analysis.

10 Q. Does it affect your opinions in any way if you were
11 to know that he was not a licensed or an engineer?

12 A. No. I believe it listed him as being an engineer,
13 but even with that, it would not necessarily be.
14 'Cause, again, the approach that was used in the --
15 the methodology was the way to go about doing it.

16 Q. Under the hypothetical condition that that document
17 is inaccurate or incomplete, does that affect your
18 opinions in this case as to the flooding?

19 MR. HALFORD:

20 object to form. Can you specify what document
21 you're talking about?

22 MR. WHITE:

23 I believe he was referring to the study, for lack of
24 a better term, by Mr. Brooks.

25 MR. HALFORD:

1 Thank you.

2 WITNESS CONTINUES:

3 A. I remember Mr. Brooks was the one that issued it,
4 yes.

5 Q. All right. The question is if under the
6 hypothetical condition that study by Mr. Brooks is
7 inaccurate or incomplete, does that affect your
8 professional opinions in this case?

9 A. It would very much depend on what the inaccuracies
10 or what the issues were. I mean, of course,
11 something could affect it; but based on what he had,
12 and also having even driven around the site today,
13 seeing the basin that would drain to that area, what
14 he had in terms of the area, the intensities, I -- I
15 would almost question it maybe should be even a
16 higher coefficient instead of the -- what he had
17 used. But in terms of what he had used for it
18 appeared to match what the conditions would be.

19 Q. Have you ever been through the park?

20 A. Not other than just viewing it from what I could see
21 through the car this morning.

22 Q. From your car.

23 A. I -- I drove the perimeter around that whole area.

24 Q. Are you aware of any actions taken by the City than
25 your professional opinion in the park increases flow

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1 of water?

2 A. I'm not sure I understand.

3 Q. I'll start over.

4 A. Yeah.

5 Q. Is it accurate to state that the presence of that
6 park in its condition actually mitigates the
7 intensity of flow onto the Plaintiff's property?

8 MR. HALFORD:

9 You said mitigates?

10 MR. WHITE:

11 Mitigates.

12 WITNESS CONTINUES:

13 A. With the park being a part of the -- the basin for
14 that, it definitely makes it so you have a lesser
15 amount of water getting to that culvert because it
16 can absorb some of the water; but it's just the fact
17 that it's still a huge basin, that the amount of
18 water that would get to that culvert's going to
19 overload it.

20 Q. I'm just asking you right now about the park. The
21 presence of that park is a mitigating factor, not an
22 augmenting, or an increasing factor of the flow
23 going onto Plaintiff's property?

24 MR. HALFORD:

25 Object to form.

1 WITNESS CONTINUES:

2 A. The park in and of itself would not increase flow.
3 If -- if, for some reason, the park had more trails,
4 or structures they were built on or anything like
5 that, then that would increase; but as it stands, I
6 mean it's just a component of the whole area that
7 would drain to that location.

8 Q. Well, it's a component, but of other types of
9 components, it is one with the least impactful
10 topography as far as flows go, correct?

11 A. It would -- the park, because of it being a park in
12 a natural setting, it helps reduce the coefficient
13 that would be used for how fast flow over the land
14 would be. So if you want to call that mitigating
15 it, it's just part of the whole -- I guess you could
16 say assembly of the basin. 'Cause you've got some
17 roads, houses, other things that back up to it that
18 flow into that area. So it's just a part of what
19 the whole basin is made of.

20 Q. In your inspection of the park, did you see any
21 evidence that the flow of water has been intensified
22 or directed?

23 A. By the park -- what I saw appeared to be conditions
24 that had probably been that way for a while. I -- I
25 didn't see any improvements or new construction that

1 would be around that area that I saw.

2 Q. My question stepping one-half step back is did you
3 see any evidence of manipulated and intensification
4 of flow?

5 A. No. I mean, again, it appeared things were at a
6 state that's been that way for a while. I didn't
7 see anything that looked like there'd be an
8 increased amount of flow.

9 Q. Did you see any conditions in the park which would
10 have the opposite effect, which would have the
11 effect of reducing the natural flow rate?

12 A. There was a roadway embankment that went across that
13 was a dirt road. It goes off of -- I believe that
14 may have been Spencer Road. It does a big curve,
15 and if you went straight, you'd go into the park,
16 which at least in terms of that would be an area,
17 where water upstream of that may be slowed; but it
18 still had a culvert underneath that that then would
19 allow that water to still flow downstream.

20 Q. But the existence of that elevated road bed would
21 have a retarding effect upstream from it as the
22 water collected and then worked its way through the
23 pipe?

24 MR. HALFORD:

25 object to form as to the last question by the way.

1 You may answer the question.

2 WITNESS CONTINUES:

3 A. I would term it more that it -- it collects the
4 water into a concentrated stream as compared to
5 letting it run natural overflow down. So in one
6 hand it may be that it actually escalates how
7 quickly water may get to the streambed that goes
8 downstream; because it's collecting it from the
9 surrounding areas, and brings it down to one culvert
10 underneath that pipe, which then goes directly down.

11 Q. You're assuming that that wasn't the natural course
12 in that response, weren't you?

13 A. Well, nature would not have had a culvert to begin
14 with, so I -- that's how I meant that it's
15 definitely taking a different course of how that's
16 going to get to that creek compared to coming to a
17 culvert. It may have been the stream was still
18 upstream, and it would have naturally fed to the
19 stream which still would have gone that direct path;
20 and probably did, because most culverts are put,
21 where you have a stream already occurring.

22 Q. Right. So, number one, you don't know what the pre-
23 existing condition was before that culvert was
24 placed?

25 A. That's correct.

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

4 MR. HALFORD:

5 Object to form.

6 WITNESS CONTINUES:

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

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

15 MR. HALFORD:

16 Object to form.

17 WITNESS CONTINUES:

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

1 is minimizing how quick water gets downstream, I
2 would say, no, it's just putting it in a different
3 way. It's not really minimizing how quickly water's
4 going to get down there.

5 Q. If you have a natural watercourse through an open
6 ditch, and you remove an area in which water can
7 flow down and naturally flow through the corridor of
8 the ditch, you reduce the height, and you now put a
9 top on it like a culvert, doesn't that if not
10 lessen, cannot possibly increase the rate of flow?

11 MR. HALFORD:

12 object to form. It's been asked and answered also.

13 WITNESS CONTINUES:

14 A. The culvert's that's there allows the stream to just
15 go through it, so I'm not sure that it's reducing or
16 increasing. You're just letting that be the course
17 of the water through that roadbed because now it's
18 through the culvert versus an open ditch.

19 Q. I understand, but when I ask you, you said you don't
20 know whether it's increasing or decreasing, but when
21 I asked you that in the affirmative, you say you
22 don't know, and it may be increasing. That's my
23 confusion.

24 A. Okay.

25 Q. Is there any way in your professional opinion that

1 that structure, which may be pre-existing except for
2 the pipe, increases flow onto the Plaintiff's
3 property?

4 A. As concerning to the Plaintiff's property, I don't
5 think there's going to be any change with how that
6 is.

7 Q. All right.

8 A. What I was talking about is right at that point is
9 what I was meaning that -- how that culvert has
10 replaced the stream at that location where water may
11 have gone on the other side of that roadbed to get
12 to the creek versus now it's back behind that and
13 then through the thing. That's all I was meaning
14 with that regard.

15 Q. So just to be clear, since we have that confusion,
16 you didn't see anything in that park that you
17 believe is evidence of a manmade focusing of surface
18 water onto the Plaintiff's property?

19 MR. HALFORD:

20 Object to form.

21 WITNESS CONTINUES:

22 A. Nothing that I saw being a change that would have
23 made any increase to it, that's correct.

24 Q. Are you familiar with a report dated June 28th,
25 2013, from your firm?

1 A. By Berman & Wright? Yes.

2 Q. Did you sign it?

3 A. Yes.

4 Q. By signing it, it means you're familiar with all the
5 contents of it?

6 A. Yes.

7 Q. In your report you have a number of facts. The
8 conclusions that you will be prepared to testify to
9 at trial, even though the report may have additional
10 ones, the conclusions that you're going to be
11 prepared to testify as to the permitting issue, as
12 far as the engineering report, and the cause of
13 flooding to the residence due to the 24-inch culvert
14 pipe?

15 A. Yes. The things associated with that in terms of
16 the way in which the water flow and all those things
17 would occur.

18 Q. In the report it mentions a setback issue where the
19 house might be too far over to the left.

20 A. Yes.

21 Q. Are you familiar with that?

22 A. Yes.

23 Q. The flooding is coming from surface waters on the
24 right?

25 A. If you're facing the house, yes.

1 that was one aspect of what had happened was removal
2 of the debris.

3 Q. My question to you though is aren't you assuming the
4 debris did not get to the pipe after the flood?

5 A. To me, it's indicating it was there with the flood.

6 Q. Okay.

7 A. So, therefore, it would be part of the contributing
8 factors.

9 Q. So if debris is found after a flood event a week,
10 ten days, afterward, then it's your professional
11 opinion that it had to be there during the flood
12 event?

13 A. Yes.

14 Q. Okay. There's a sentence in the report that says,
15 "Considerable flow of waters directing to the creek
16 from adjoining property that includes the park,
17 residential neighborhoods, and some commercial
18 property."

19 A. Yes.

20 Q. Are you familiar with that sentence? Did your firm
21 do any work to quantify those sources, whether by
22 percentage, or by magnitude?

23 A. No.

24 Q. Do you have any opinion as to the breakdown of those
25 sources?

1 A. To the degree I believe I've seen that the park
2 itself is about a ten-acre tract of land, which the
3 basin that was used for calculations was about 54
4 acres. So that means that 44 acres would be the
5 surrounding residential and commercial area that
6 would then drain to that ten-acre property of the
7 park.

8 Q. But have you done any analysis as to the breakdown
9 by contributor, or the proper coefficient, or by
10 percentage, or by quantity of the contributors of
11 water into this watercourse?

12 A. No other than what I just said.

13 Q. Okay.

14 A. Which would make it about 20 percent then would be
15 the park, and 80 percent would be the surrounding
16 area.

17 Q. Twenty percent of what?

18 A. Of the 54 acres.

19 Q. Is it your testimony today that the park contributes
20 20 percent of the water in this watercourse?

21 A. No, it's 20 percent of the area.

22 Q. Okay. My question in this little subset is did you
23 do any analysis as to the contributor of water to
24 this watercourse, either by percentage, or by
25 volume?

1 A. No.

2 Q. But for the document written by Mr. Brooks, do you
3 have any basis for your professional opinion that
4 the 24-inch culvert under DOT's road is
5 insufficiently sized?

6 A. No, I relied upon that document as the way in which
7 I understood the -- the hydrology characteristics
8 for that area.

9 Q. All right. If that document is incorrect, then your
10 opinion is changed?

11 A. Again, it depends upon the document, and what you
12 mean by something's wrong in it. Because based upon
13 what I saw, again, the methodology, and based upon
14 the maps he had included, the areas that were shown,
15 and what I saw, especially looking today, would be
16 characteristics of the drainage basin. And then the
17 intensity, and then the -- the coefficient that he
18 would have used for those still match what would be
19 consistent.

20 Q. What you're telling me, his report passed the sniff
21 test?

22 A. Yes.

23 Q. All right.

24 A. I guess what I'm saying, I don't see what within
25 that report would be inaccurate, other than possibly

1 tried to do this myself.

2 A. (Reviews documents.)

3 MR. WHITE:

4 We can go off the record.

5 (OFF RECORD)

6 EXAMINATION CONTINUES BY MR. WHITE:

7 Q. Have you reviewed your report?

8 A. Yes.

9 Q. Now, just on the division of labor side, you have
10 some opinions that you're primarily offering and
11 Robert has some opinions?

12 A. Yes.

13 Q. Your opinions are as what we talked about, correct?

14 A. That's correct.

15 Q. I guess Robert will fill in the rest that I find in
16 that document?

17 A. Yes.

18 Q. okay. Is that a complete copy of your firm's
19 report?

20 A. Yes, it appears that it is.

21 Q. It's accurate, and no omissions?

22 A. That's correct.

23 MR. WHITE:

24 If we can mark that as Number 1, please. All right,
25 how about let's make it A? That way we don't have

1 one and one.

2 (Court Reporter Plaintiff's Exhibit Number A, Report,
3 attached hereto.)

4 EXAMINATION CONTINUES BY MR. WHITE:

5 Q. When were you retained by the Plaintiff?

6 A. I think it was January 2nd, 2013.

7 Q. On one of the invoices it has analyzed calculations
8 for stormwater drainage. Was that performed by you
9 or Robert?

10 A. I believe that would have been me. I know he looked
11 at them also, but I did more of the analysis.

12 Q. Is that more than what we talked about before or is
13 that you just looking over documents that were in
14 your work file?

15 A. It was through the documents in the work file.

16 Q. That doesn't change your answer you didn't perform
17 any independent calculations?

18 A. That's correct.

19 Q. Were you involved in the preparation of a draft
20 report dated February 14th, 2013?

21 A. Yes.

22 Q. What are the differences between the draft report
23 and the final report?

24 A. I don't recall. I think there may have been some
25 additional documents that we received, looked at,

1 and included as exhibits as compared as to what
2 would have been in that. And then also there were
3 some discussions about the timing of some of the
4 events that I recall, and so the order of how things
5 may have appeared within the report would have
6 changed. I don't recall that there is any
7 substantive changes to the opinions that were within
8 it.

9 Q. Did you perform the damages calculations?

10 A. No.

11 Q. Do you have any opinions as to any damage
12 calculations?

13 A. I looked at, and agree that there would be the
14 necessity for doing some of the repairs to the
15 interior of the home that were called for or shown
16 as the repairs in the estimates that have been
17 provided by Ms. Brantley. So I -- I would agree
18 with the scope, and the numbers look like they would
19 be appropriate for the type of scope of repairs that
20 would be needed.

21 Q. All right, what you just said is you don't disagree
22 with anything. What I'm asking you is are you
23 sitting here today or at trial going to say that in
24 your professional opinion these are the damages
25 causing from these flood events, and these are the

1 fixes, and these are the amounts? Are you going to
2 do that affirmatively on your own, or is that going
3 to be by Robert, or by somebody else?

4 A. I haven't been asked to testify on that, but I would
5 have no problems of testifying about the scope of
6 repairs that would be necessary to match what's
7 called for in the repairs estimates that have been
8 provided.

9 Q. Sitting here today though, you're not prepared to,
10 and you have no personal opinions as to those
11 figures or scope?

12 A. To the cost of the scope, I would say it matches in
13 terms of the repairs that we recommended.

14 Q. Have you looked at the complaint?

15 A. I know I did. It's been a long time ago.

16 Q. All right. Other than what you've testified today,
17 on those two issues on your opinions was contained
18 on those two issues in your report, do you have any
19 opinions about this matter? By that I mean, what's
20 in the complaint, or about this property?

21 A. I don't recall what's specifically in the complaint
22 to say if there's any other ones in that; but I
23 would only say that if they meet or talk about these
24 two issues we've talked about before, then it would
25 deal with that. I don't know of any outside of that

1 that it would do.

2 Q. Well, the purpose of this deposition today is for me
3 to discover what your opinions are, and the basis
4 therefore what you've looked at, and so that at
5 trial I'm not surprised. Do you understand the
6 purpose of this proceeding for that?

7 A. Yes.

8 Q. All right. So what I'm asking you is kind of an
9 exhaustive question, but just to make sure we've
10 been thorough, you're going to testify as to the
11 effect of the 24-inch inlet pipe underneath
12 Willowbrook as far as causing ponding into the
13 subject property and into the home?

14 A. Right.

15 Q. You're going to testify as to what you characterize
16 as permitting irregularities in the construction as
17 far as based on your review of this an omitted
18 engineer report, and perhaps culpability in your
19 opinion as to the City flowing from that?

20 A. Yes.

21 Q. Is there any other categories of opinions that you
22 will have at trial in this case?

23 A. Not that I can think of that don't relate to those
24 two issues.

25 Q. Okay.

1 A. I mean they would go to that as to the -- the
2 requirement, in my opinion, that the City of Rock
3 Hill would need to control the flow of water to that
4 location, that aspect of it.

5 Q. Right. I guess maybe that's a third opinion, that
6 your understanding of the document we referred as
7 Exhibit 12 of your report is that the City has
8 responsibility under its code to control water such
9 that no adjoining property floods?

10 A. That's correct.

11 Q. Now, are you aware of any document that we have not
12 discussed which contributes to any of your opinions?

13 A. Not that I can think of.

14 Q. A similar question, are you aware of any
15 conversation that you've had with anybody, or you're
16 aware was had with anybody, that contributes to any
17 of these three opinions?

18 A. No.

19 Q. Are you aware of any treatise source, learned
20 material, that we haven't discussed, that
21 contributes to your -- any of your three opinions
22 here today?

23 A. Not that I can think of.

24 Q. Are you aware of any fact or factor that we've not
25 discussed today that contributes to any of your

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1 white, please answer them.

2 REEXAMINATION BY MR. WHITE:

3 Q. You testified, I believe, just now, that water was
4 being directed to Plaintiff's property through
5 Spencer Park?

6 A. Through Spencer Park, yes.

7 Q. You earlier testified you had no knowledge of what
8 the pre-existing condition of the park was prior to
9 any sort of activity upon it?

10 A. (No response.)

11 Q. Do you have any knowledge of any activity by the
12 City in the park as to directing or focusing water?

13 A. Only that that is where the water goes through is
14 Spencer Park to get down to that 24-inch culvert;
15 but the facilities and things that are on that park
16 would definitely be there, and part of what would
17 allow water then to be drained towards that area.

18 Q. All right. Do you have any doubt that water has
19 always flowed to what is now Spencer Park toward
20 what is now the subject property?

21 A. I believe it probably always has, yes.

22 Q. Tell me what structures you're referring to within
23 the park you say water is flowing through.

24 A. Well, you have the culvert we talked about that was
25 underneath that manmade road.

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

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

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

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

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

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

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

21 Q. To what degree?

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

1 Q. Is it a material change?

2 A. Yeah, from man -- from natural to manmade.

3 Q. No, no. The structures you called are what I'm
4 looking at in 26. Does that make a material change
5 in any flows on the Plaintiff's property from the
6 park?

7 A. Well, material in that, yes, it adds additional
8 amount of water that will reach that point. How
9 much, I don't know.

10 Q. I'm asking you is the change material? Is it
11 significant, or is it de minimis, in which case it's
12 incident?

13 A. Just to look at the brick only, I would say those by
14 themselves are minimal; but the other aspect of that
15 road in the different kinds of conditions that were
16 allowing roads from surrounding areas to go there,
17 that would not be minimal.

18 Q. You're sitting here testifying today that anything
19 that you believe was done to that park by the City
20 of Rock Hill has a material impact on the rate of
21 flow of water coming out of that park onto the
22 Plaintiff's property; is that your professional
23 opinion here today?

24 A. Yes, there are things that would have increased the
25 amount of water.

1 Q. Sir, I'm asking you, is it your professional opinion
2 sitting here today that any of the structures you
3 referred to has a material impact on the rate of
4 flow from that park onto Plaintiff's property?

5 A. Yes, I would say so, it does make material, because
6 any increase in water adds to the amount of water
7 that would cause flooding.

8 Q. That's your definition of material?

9 A. For my purposes in answering your question, yes.

10 Q. All right. Do you have any information to indicate
11 that if none of these, as you say, manmade
12 conditions were present in the park, that the
13 property would not have flooded but for them?

14 A. No, I believe it still would have, because the 24-
15 inch pipe would still be too small.

16 Q. You're comfortable as a professional engineer,
17 without doing any analysis on the rate of flow,
18 testifying that the change in rate of flow coming
19 off of these manmade structures as you call them has
20 a material impact on the rate of flow?

21 A. Did you ask that to make it that I say, yes, that I
22 agree that it does make a material change, then I'm
23 saying yes.

24 Q. You can testify to that without having any
25 calculations as to what the rate of flow is or what

1 these structures do to the coefficients?

2 A. Yes. I would say that you do not need an analysis
3 because you can understand how hydrology works;
4 therefore, it does not take a matter of fine-tuning
5 it with mathematical functions to understand that
6 that does cause an increase.

7 Q. Oh, that's right. In your view, anything that
8 increases flow is material?

9 A. That's what I said, earlier, yes. 'Cause flooding
10 is flooding, and when you get more water, that gets
11 more flooding.

12 Q. But to cap it back, you have no opinion to the
13 effect of or no knowledge that any flood events on
14 the Plaintiff's property would not have occurred had
15 any of these structures not been in place?

16 A. That's correct, I don't have any knowledge that
17 without those it still would not have flooded.

18 Q. In your review of the park, did you notice any
19 manmade changes that reduced the flow coming from
20 it?

21 A. Not that I noticed, no.

22 Q. So sitting here today, you can't tell me what the
23 net effect is?

24 A. I would say there is nothing that would reduce the
25 flow at the park.

1 Q. All right, so your testimony here today is there's
2 nothing in the park that reduces the flow of water
3 through it?

4 A. That's correct.

5 Q. You're comfortable testifying to that as an expert
6 in the field without performing any analysis or any
7 studies greater than driving by in your car?

8 MR. HALFORD:

9 Object to form.

10 WITNESS CONTINUES:

11 A. And also having looked at what Mr. Brooks had as his
12 calculations and understanding the topography from
13 the site maps that he had. All those things
14 factored together, that's right, I have the
15 professional opinion about that.

16 Q. Okay. Tell me every alteration by the City of Rock
17 Hill that in your professional opinion increases the
18 rate of flow coming through that park onto
19 Plaintiff's property.

20 A. That manmade road, the brick structures, the roads
21 surrounding that park would be manmade structures
22 that also support flow into the park. There's an
23 additional stone head wall on the arch. I believe
24 that's it as far as what I would have directly
25 understood to be there.

Direct Mr. White
~~Amules~~

Deposition of Robert Glenn Barfield, AIA, NCARB

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1 A. No, I'm not aware.

2 Q. Did you bring any documents with you today?

3 A. I have a curriculum vitae.

4 Q. That will save us some time. Thank you. Is this
5 case the first time you've worked on a case that
6 involved surface water runoff from multiple property
7 parcels?

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

9 Q. What was your understanding of the scope of your
10 engagement?

11 A. We were asked to investigate and evaluate the
12 property that's owned by Ms. Brantley to determine
13 the issues that were causing the flooding that's
14 occurred multiple times, and so we simply did that
15 and investigated and took photographs and ultimately
16 wrote a report.

17 Q. Investigated the cause of flooding to Ms. Brantley's
18 property off Willowbrook?

19 A. Correct.

20 Q. And for purposes of proceeding, when we say the
21 property or subject property, we're referring to
22 1020 Willowbrook.

23 A. That is correct, that is the address.

24 Q. But if I make that terminology, that's what I'm
25 referring to.

1 A. Okay. Understandable.

2 Q. If I refer to the park, then I'm probably referring
3 to the city park immediately south or -- south and
4 north of her property on her backline.

5 A. I understand, sure.

6 Q. It feels like it ought to be north, but I don't
7 think that's right. All right. Did you write the
8 report that is set forth there as Exhibit A to Mr.
9 Wright's deposition?

10 A. I was not the sole author of the report. It was
11 written in conjunction with Mr. Wright.

12 Q. Did you write the entire first draft?

13 A. No, it was not done in a draft setting in that way.
14 We were both responsible for writing the report, so
15 I would not determine that either of us wrote one
16 draft or anything of that nature.

17 Q. Did Mr. Wright draft any parts of it from scratch?

18 A. I believe that is correct, yes. He was responsible
19 for writing some portions of it. But again, it was
20 a fluid process.

21 Q. Okay. Looking at your CV and noting your response
22 a minute ago this is your first surface water
23 runoff, --

24 A. Uh-huh.

25 Q. -- is it accurate to state that your work has

Deposition of Robert Glenn Barfield, AIA, NCARB

10

1 consisted until this case of analyzing construction
2 defects or issues regarding wall or roofing work?

3 A. I would say that's correct.

4 Q. Have you ever performed work for a litigation matter
5 that did not involve Mr. Wright?

6 A. No.

7 Q. Tell me about your first contact with Ms. Brantley?

8 A. We received a phone call. I was the one that took
9 the phone call, and she explained the situation that
10 she was dealing with and asked if we could assist
11 her.

12 Q. How did she describe the assistance she was seeking?

13 A. She basically said that she owned a home in Rock
14 Hill that was flooding and wanted someone to
15 investigate the issue and determine the cause of the
16 flooding and who was responsible for the flooding.

17 Q. Okay. What did you do next?

18 A. We wrote up a service agreement and sent it to her.

19 Q. Is the service agreement included in the documents
20 you provided to Mr. Halford?

21 A. I believe that it is, yes.

22 MR. WHITE:

23 off the record for a second.

24 (OFF RECORD DISCUSSION)

25 EXAMINATION CONTINUES BY MR. WHITE:

Deposition of Robert Glenn Barfield, AIA, NCARB

12

1 A. I believe that's correct, yes.

2 Q. You took the photographs yourself?

3 A. Yes, sir.

4 Q. Okay. Are you aware of any photograph or media of
5 the subject property of these issues other than the
6 photographs attached to your report?

7 A. There were some photographs I think were provided by
8 Ms. Brantley that I think she took that we just
9 simply reviewed.

10 Q. Okay. How many?

11 A. I'm not sure of the exact number, less than ten.

12 Q. Do you consider yourself an expert in hydrology?

13 A. No.

14 Q. Have you performed any study or analysis overflow
15 dynamics of surface waters?

16 A. No.

17 Q. What were your impressions when you visited the
18 property over the issues that you were asked to
19 consider and analyze?

20 A. My impression of the property and the surrounding
21 property as well was that there was a concentration
22 of water onto the site into the creek that was just
23 adjacent to the property.

24 Q. When you say concentration, do you mean a man-made
25 concentration or just a concentration?

1 A. I believe that some of it is in fact man-made, yes.

2 Q. Did you do any investigation as to when these man-
3 made factors were added?

4 A. I believe that we attempted to determine that but we
5 could not do so.

6 Q. So sitting here today you don't know what the
7 condition of the park was prior to the City's
8 control of that area?

9 A. No, sir, my first visit to the park was on that day.

10 Q. And in your investigation you have not revealed any
11 information which informs you as to condition of the
12 property before the City controlled ownership of
13 that property?

14 A. No.

15 Q. Now based on your field of study and experience, do
16 you believe yourself capable of providing an opinion
17 as to the effect of any man-made elements of
18 concentration of water?

19 A. No, that would not be my field of expertise.

20 Q. If I represented to you yesterday that yesterday
21 Mr. Wright testified that the subject property would
22 have flooded without any man-made structures being
23 present in the park, would you agree or disagree
24 with that?

25 A. I would agree with that.

1 Q. How about that. That's the first time I've had that
2 answer in six or seven years. As a part of your
3 training and experience, not conclusions you've
4 drawn just as an average layperson applying everyday
5 common sense, what professional opinions do you have
6 about this property in this case?

7 A. My professional opinion is related to issues related
8 to the building permit and how the project was
9 ultimately constructed. Beyond that, as you just
10 said yourself, would be lay opinions.

11 Q. Okay. I was curious about an architect in a
12 flooding case. So at trial any certification you as
13 an expert or opinions that I'll hear as resulting
14 from that certification will not have anything to do
15 with the flooding or the cause, it will be as to the
16 permitting issue when the home was being built in
17 '99 or 2000?

18 A. I would agree with that.

19 Q. Okay. What are your professional opinions relating
20 to the permitting of -- well, what are your
21 professional opinions on this case?

22 A. That the home probably should have never been
23 allowed to be constructed on this site to begin
24 with.

25 Q. So it's your professional opinion the owner of the

1 Q. I said I'm just trying to figure out whether it's a
2 strict liability standard that's being imposed on
3 the City of Rock Hill by your company or whether if
4 an owner and a builder provides an engineering
5 report that passes it, whether that would satisfy
6 your company as far as the opinions the governing
7 body's obligation in its permitting process?

8 A. Okay, yeah, allow me to respond to that. I believe
9 that if an engineer report did exist that okayed the
10 footing, that would certainly answer the question
11 that we're talking about now that refers to need
12 engineer to okay on the inspections log. However, I
13 don't believe that that would absolve the City of
14 Rock Hill from maintaining their water system and
15 preventing continual flooding onto a property.

16 Q. Two branches, first, is it your professional opinion
17 that the City of Rock Hill has an obligation to
18 prevent flooding onto this property?

19 A. Yes.

20 Q. And that's part of your opinions as to the
21 permitting process?

22 A. I would say that that is an opinion that is derived
23 from research as to the ownership of the system and
24 who is responsible for maintaining it.

25 Q. Let's define some terms here. What do you mean by

1 system?

2 A. The stormwater system.

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

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

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

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

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

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

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

1 City of Rock Hill is legally obligated to own and
2 maintain a stormwater system throughout its borders?

3 A. Yes.

4 Q. Okay. Is it your understanding that Mr. Wright
5 shares this fundamental understanding of the City's
6 obligation?

7 A. Yes.

8 Q. In the hypothetical condition that the City of Rock
9 Hill has no such duty throughout its borders, that
10 the City of Rock Hill would only be responsible for
11 certain structures but not all components of the
12 features and land and structures that migrate water
13 throughout, so in the hypothetical condition the
14 City has no duty as to all stormwater within its
15 boundaries, and that further, the City of Rock Hill
16 would only be responsible for those structures that
17 is either accepted by ordinance or is part of land
18 that it owns, does that change your opinion that the
19 City has an obligation to insure that the subject
20 property doesn't flood?

21 A. I would agree with you that they're responsible for
22 maintaining what they own and what they have
23 claimed.

24 Q. And do you have any facts that the City has accepted
25 either by dedication or by ordinance the ditch which

1 runs along the subject property?

2 A. Other than the knowledge that they own the park and
3 the ditch runs through the park, I would say no to
4 that.

5 Q. And I was referring not to any ditches within the
6 park but the ditch in the subject property next to
7 the house.

8 A. I understand.

9 Q. Do you have any knowledge or facts to support that
10 the City has accepted the duty of maintenance of 24-
11 inch pipe running underneath the DOT's road of
12 Willowbrook?

13 MR. HALFORD:

14 Object to form. When I do that, you can answer.

15 WITNESS:

16 I'm sorry, what's --

17 MR. HALFORD:

18 I said I objected to form, but when I do that, you
19 can answer.

20 EXAMINATION CONTINUES BY MR. WHITE:

21 Q. He's just showing he's awake.

22 A. I understand. I'm sorry, can you repeat that
23 question again?

24 Q. Have you -- do you have any facts to support that
25 the City has undertaken or accepted a duty to

1 maintain the 24-inch pipe underneath the DOT road of
2 Willowbrook?

3 A. Specifically, none.

4 Q. All right. So your conclusion a few minutes ago
5 that the City has a general obligation to insure
6 that the property does not flood is based solely
7 upon your assumption that the City has such a legal
8 duty within its borders?

9 A. Yes, that's correct.

10 Q. Going back to permitting, you have mentioned two
11 discrepancies of the 2006 building code notation on
12 a building permit which should have been issued in
13 1999.

14 A. Uh-huh.

15 Q. And there's an inspection log which says need
16 engineering report and you have no facts or
17 knowledge that there was such an engineering report?

18 A. Correct.

19 Q. Have you seen all the City's discovery responses in
20 this case?

21 A. I don't believe that I have.

22 Q. Did you read any deposition transcripts?

23 A. No, I have not read any deposition transcripts for
24 this case.

25 Q. All right. Other discrepancies in the permitting of

1 this, was it just those two or are there more?

2 A. I would say that there is one more issue.

3 Q. Okay.

4 A. At one point when the property was flooded, I don't
5 recall at which point it was, it's flooded three or
6 four times, the City of Rock Hill sent an employee
7 out to investigate the issue. He thusly filled out
8 a supervisor's incident report, and in the comment
9 section of that report, it states it appears the
10 ~~footings were never approved.~~

11 Q. Okay. Do you have any underlying facts apart from
12 that notation on that incident report that the
13 underlying fact is correct, that the footings were
14 never approved?

15 A. Other than, again, the inspections log that seems to
16 imply the same, no.

17 Q. But that's the only reason why you think that may
18 have occurred is that that person noted it?

19 A. Yes, those are the only two documents that seem to
20 imply that.

21 Q. And are you aware of what department within the City
22 or what the job duties of the person who wrote that
23 are or were?

24 A. I believe that they were within the stormwater
25 division of the City of Rock Hill, if I remember

1 correctly.

2 Q. And the approval or disapproval of footings would be
3 in the planning department?

4 A. Planning or inspection department most likely, yes.

5 Q. Are you aware of whether the inspection department
6 or the inspectors for the City of Rock Hill then or
7 now are in the planning division or in some other
8 division -- department?

9 A. I'm sorry, can you repeat that question?

10 Q. Are you aware of in the City of Rock Hill's
11 hierarchal tree whether the inspectors are a part of
12 the planning department or some other department?

13 A. I don't have any knowledge of that right now, no.

14 Q. Okay. So your opinions in this case fall solely
15 within the permitting process and they flow from
16 three discrepancies; is that accurate and complete
17 as far as your opinions in this case?

18 A. Yes.

19 MR. WHITE:

20 It's about 11, why don't we take a little break?

21 (BRIEF RECESS)

22 (Jeremy Melville enters deposition room.)

23 EXAMINATION CONTINUES BY MR. WHITE:

24 Q. Just because a lull of time, do you have any other
25 opinions, professional opinions, about this property

- 1 or the subject matter of this lawsuit other than the
2 ones that we've talked about?
- 3 A. No.
- 4 Q. Is Mr. Wright's opinions based in any part on your
5 underlying work; to your knowledge?
- 6 A. Yes, the photographs.
- 7 Q. Other than the photographs, is Mr. Wright's opinions
8 based in any part on your underlying work?
- 9 A. No.
- 10 Q. I think you said earlier, but it's been a while, you
11 didn't perform any hydrology studies or analyze what
12 properties are contributing to any flow of water by
13 percentage or by volume?
- 14 A. Personally, no.
- 15 Q. Do you know of anyone at your firm that did so?
- 16 A. Mr. Wright did some analysis based upon the
17 engineering report that was performed by the City of
18 Rock Hill, but I'm not sure to what extent that
19 would qualify as a hydrology study.
- 20 Q. Okay. Other than any work that might have been
21 performed by Mr. Wright, anybody else at Berman &
22 Wright that would have done so?
- 23 A. No.
- 24 Q. Nobody else worked on this file other than the two
25 of you?

1 A. That is correct, absolutely.

2 Q. The three discrepancies we've talked about as to
3 permitting, --

4 A. Uh-huh.

5 Q. -- there's a sentence on page 5 of the report that
6 says, "A building permit" -- a sentence fragment, "A
7 building permit was not appropriately obtained prior
8 to starting construction."

9 A. Okay.

10 Q. The underlying basis of that sentence is one of the
11 three discrepancies, correct?

12 A. Yes, I would agree.

13 Q. There's no other facts on which that sentence is
14 based?

15 A. That's correct.

16 Q. In other words, if a building permit was issued in
17 1999 for the construction in '99 or 2000, then that
18 sentence is not correct?

19 A. Yes, I agree with that.

20 MR. WHITE:

21 I don't have any other questions at this time.

22 MR. HALFORD:

23 No questions -- hold on, hold on.

24 (OFF RECORD)

25 MR. HALFORD:

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-2014 AUG -7 PM 2:21

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Nadine Brantley,

Plaintiff,

vs.

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

Defendants.

AFFIDAVIT OF
JAMES G. BAGLEY, JR.

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

12-146

PERSONALLY APPEARED before me James G. Bagley, Jr. who, being
duly sworn, deposes and says that:

1. He is a Professional Engineer employed by the City of
Rock Hill ("City") as Deputy City Manager. He has been employed
by Rock Hill for more than 20 years.

2. As Deputy City Manager he oversees the following
departments, among others: Utilities, Public Works, and Parks,
Recreation and Tourism.

3. In his capacity as Deputy City Manager and Professional
Engineer, he has personal knowledge of the matters contained
herein.

4. A stream flows through a well-defined channel with banks
in a fixed course that crosses Spencer Park and the Property (the
"Subject Stream"). The Subject Stream then travels through a
culvert located underneath Willowbrook Avenue and naturally
discharges downstream into Manchester Creek.

5. The City does not own and has not assumed control over the Subject Stream.

6. The City has not altered the fixed course of the Subject Stream or increased the volume or velocity of water flowing through the Subject Stream.

7. The City has not diverted surface water towards the Property or artificially collected surface water and cast it on the Property.

8. The City has not obstructed the flow of the Subject Stream.

9. The culvert which tunnels the Subject Stream under Willowbrook Avenue immediately downstream from the Property is owned and maintained by the South Carolina Department of Transportation ("SCDOT").

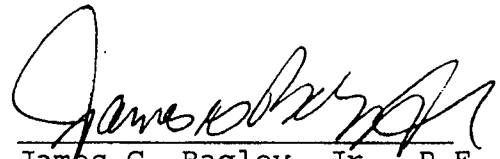
10. The City does not own, maintain or assume control over stormwater infrastructure owned or constructed by other public entities or private parties unless the infrastructure was dedicated and accepted by the City or the City was granted fee simple title or a right of way by the appropriate owner.

11. The Subject Stream located on the Property has not been dedicated to or accepted by the City.

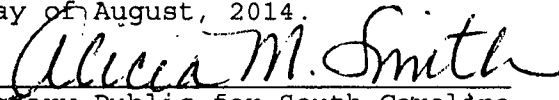
12. The City has not been granted fee simple title or a right of way to the Subject Stream located on the Property.

Further, the Affiant sayeth naught.

Date: 8/7/14


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

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


Notary Public for South Carolina
My Commission Expires: 8/23/21

PLAINTIFF'S
EXHIBIT
4
Blumberg No. 5113

1
0
2
0

WM 55

Log # 37650 Map # 628-15-01-018

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

Date of Permit 5-11-99
Permit No. 99-00896
Contractor Wherry Const.
151 Eagle Dr.
Rock Hill SC 29732
324-5775

OWNER Lawrence Wherry
Location of Building 536 Cummings St.
1020 WILLOWBROOK

INSPECTIONS

Type	Inspector	Date	Explanation	Type	Inspector	Date	Explanation
PE	TH	2-7-99	discovered - deep near branch - 100 ft water - mtd. longer to OK				
PR	HP	3-1-00	OK				
HA	HP	3-13-00	Shut & fix already paid				
HA	HP	3-27-00	OK				
ES	HP	3-27-00	OK				
SL	HP	4-10-00	discovered already paid				
HP	HP	5-30-00	OK				
EC	HP	4-20-00	OK 200 AMP V6				
CO	HP	5-10-00	Cond. fix sewer				
CO	HP	2-15-01	OK				
CO	HP	2-21-01	Call & Dept. mess. to call me - 2-22-01				
			(cust. never responded)				

Wm. J. ...
called cust
2-21-01



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

CERTIFICATE OF INSPECTION FOR OCCUPANCY OR USE
CITY OF ROCK HILL

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

*
Rock Hill, SC 2-15 2001

THIS IS TO CERTIFY that I have inspected _____

LOCATION: 536 Cummings St. 1020 WILLOWBROOK

OWNER: W. Henry Const.

OCCUPANT(If Occupied): _____

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

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

EXCEPTIONS (if any) _____
H.P. Don Hauke (DC)
Deputy Building Official

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



24/6

February 14, 2013

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

Re: 1020 Willowbrook Avenue Residence Report

Dear Mrs. Brantley,

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

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

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

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

New Jersey

North Carolina

Ohio

8226 Village Harbor Drive, Cornelius, NC 28031

T: 704-625-1618

WWW.BERMANWRIGHT.COM





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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



The investigations performed by Berman and Wright also indicate the presence of mold within the home. Berman & Wright recommends that all construction deficiencies be properly addressed to prevent and stop flooding of the property and water intrusion into the residence. A remediation protocol should be developed and remediation actions taken in accordance with a CIH or other environmental professional to fully address and provide clearance of mold conditions in your residence to a level that you may inhabitant the residence again.

However, your residence was constructed and is now present on the property. Berman & Wright recommends that drainage issues causing the flooding through and onto your property should be addressed by the City and/or SCDOT. This should include a full engineering analysis of the drainage issues and subsequent development of design documents for implementation. Rework of the culvert and drainage pipes/system will be needed as Mr. Brooks initial assessment indicated. Further, the City should evaluate your residence on the property and any requirements that may be needed for changes to its location and elevation of the floor level.

After these evaluations are made, and dependent on the outcome of actions determined by the City as to your residence location/elevation, repairs should be made to the water damaged materials on your residence. A CIH or other qualified environmental professional should evaluate conditions and determine what further remediation measures are needed to address the mold that is present. The scope and protocol for performing repairs should incorporate the CIH's required steps in the remediation plan. Repairs should be made and documented by a general contractor licensed in the state of South Carolina. Documentation through photographs should be made for the extent of damages and for the locations of the repairs made. Upon completion of the repairs, a clearance mold evaluation should be performed and any other necessary corrective actions taken to achieve clearance by the CIH for reuse of the residence.

Opinions expressed within this report are based upon information provided to Berman & Wright to date and the visually observable and accessible conditions seen during our investigations. Berman & Wright has no financial interest in the outcome of this proceeding except that the firm will be compensated as an expert witness should that become necessary in the usual manner at a standard hourly rate and expense basis for time spent in connection with this matter. Berman & Wright reserves the right to supplement or modify opinions should additional information become available.

Sincerely,

BERMAN & WRIGHT ARCHITECTURE, ENGINEERING & PLANNING, LLC

Ronald E. Wright, P.E.
Principal

Attachments

cc: Cameron Halford, Esq.



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_013.JPG

13

* General overview of park showing slope



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_020.JPG

20

* General overview from rear of park

8-18

254



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_002.JPG

2

* Front elevation

* 24" diameter pipe at culvert with rip rap



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_009.JPG

9

* Rear elevation

* General overview of park at rear of home

10/18

256



JOB#: 13004

DATE: 1/2/13

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

26

★ Retaining wall along creek at rear of park



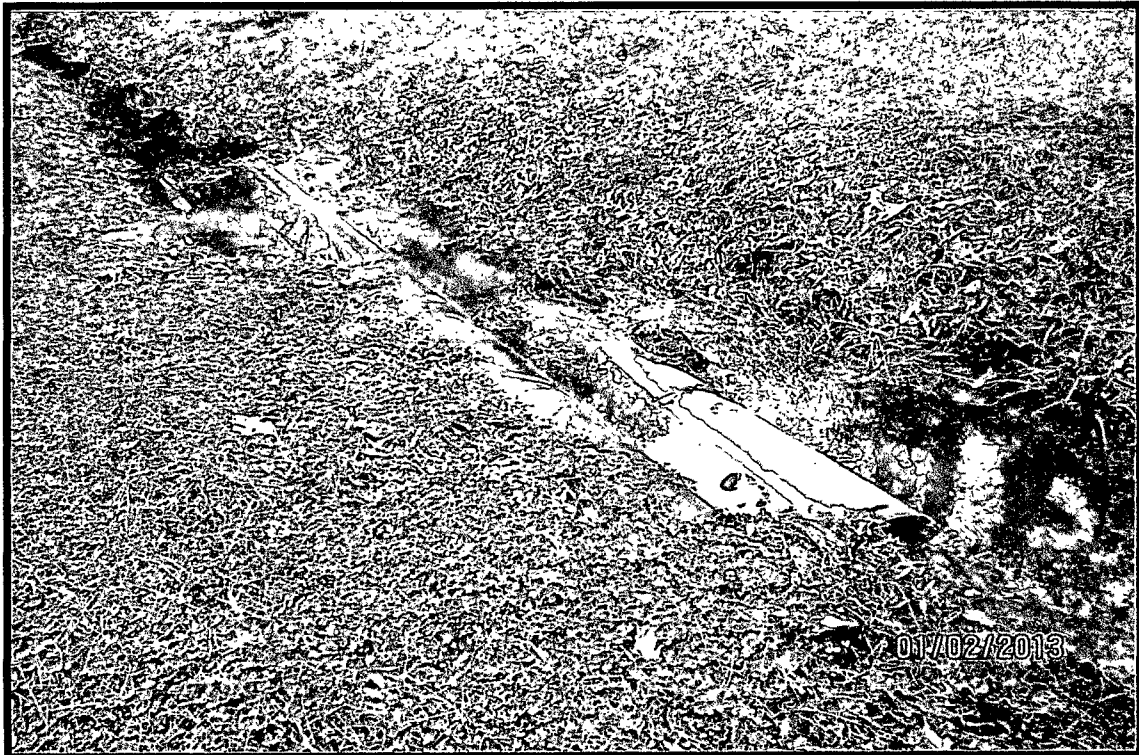
JOB#: 13004

DATE: 1/2/13

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

22

* Maintenance road at rear of park



JOB#: 13004

DATE: 1/2/13

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

12

★ Metal drainage pipes in reek through park area



JOB#: 13004

DATE: 1/2/13

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

16

★ Rip rap installed in creek through park



JOB#: 13004

DATE: 1/2/13

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

15

★ Rip rap installed in creek through park



JOB#: 13004

DATE: 1/2/13

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

14

* General overview of park showing slope



JOB#: 13004

DATE: 1/2/13

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

21

* Metal pipe and headwall of culvert at Sturgis Street



JOB#: 13004

DATE: 1/2/13

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

18

★ Drainage pipe and headwall at culvert near rear of park



Fw: 1020 Willowbrook Drainage Study

Tim Brooks to: Jimmy Bagley
Cc: Paul Carlisle

08/05/2011 12:53 PM

Jimmy,

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

Thanks.

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

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

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

Bobby,

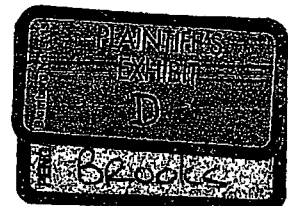
A preliminary drainage investigation and analysis was performed for the 1020 Willowbrook single family residence. A summary of findings is as follows:

Drainage Outlet:

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

Watershed:

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



Residence / Drainage Outlet Hydraulic Relationship:

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

Drainage Study Summary:

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

Requirements to Alleviate Flooding Potential:

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

Supporting Calculations & Data:



1020 Willowbrook.pdf

Please let me know if you need any additional information.

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



Fw: 1020 Willowbrook Drainage Study & Additional Info

Tim Brooks to: mcrawford, Keith
A. Costley

05/23/2011 12:18 PM

Matt, Keith,

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



20091225_01.JPG



20091225_02.JPG



20091225_03.JPG



20091225_04.JPG



1020 Willowbrook Permit.pdf

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

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

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

Bobby,

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

Supporting Calculations & Data:



1020 Willowbrook.pdf

Please let me know if you need any additional information.

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



Fw: 1020 Willowbrook Drainage Study
Tim Brooks to: Jason Bailey

01/13/2010 03:54 PM

Jason,

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

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

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

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

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Supporting Calculations & Data:

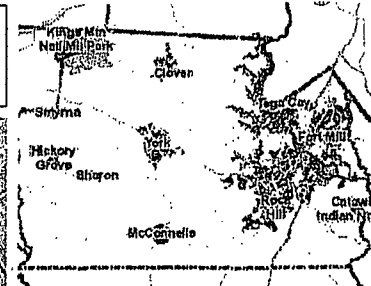
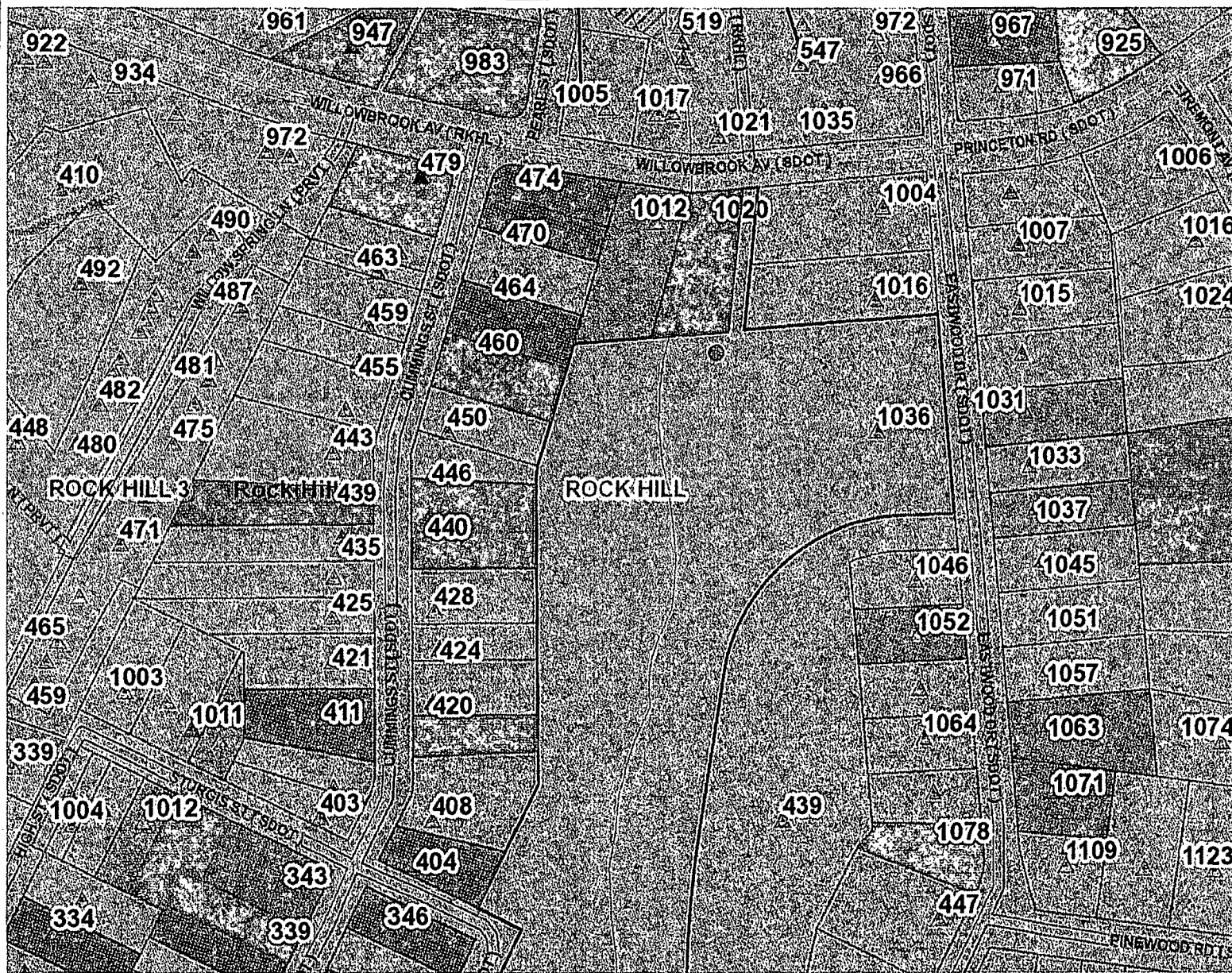


1020 Willowbrook.pdf

Please let me know if you need any additional information.

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

Spencer Park



Legend

- Parcels (PV)
- School District Boundary
- Fire Districts
- City Boundary
- Yearly Sales**
- 2016
- 2014
- 2013
- 2012
- 2011
- 2010
- 2009
- 2008
- North Corner and Lake Wylie
- Block House and Lake Wylie
- Address
- Roadway
- Parcels
- Parcels (Child)
- Child Parcel
- Base flood elevation lines
- Flood Hazard Zone Areas
- 100 Year Floodplain
- 500 Year Floodplain
- Surface water area features
- Creeks

1:2,400



Notes

Enter Map Description

0.1 0 0.04 0.1 Miles

NAD_1983_StatePlane_South_Carolina_FIPS_3900_Feet
© GIS@YorkCountyGov.com

Printed: 8/6/2014

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

THIS MAP IS NOT TO BE USED FOR NAVIGATION



271



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_001.JPG

1

* Front elevation

* General overview



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_003.JPG

3

* Right elevation

* General overview



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_004.JPG

4

* Front elevation

* Debris removed from creek



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_005.JPG

5

* Right elevation

* French drain outlet pipes from residence into creek



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_006.JPG

6

* Right elevation

* Creek to culvert along right side of house



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_007.JPG

7

* Back elevation

* General overview



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_008.JPG

8

* Back elevation

* Debris removed from creek



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_010.JPG

10

★ Rear elevation

★ General overview of park at rear of home



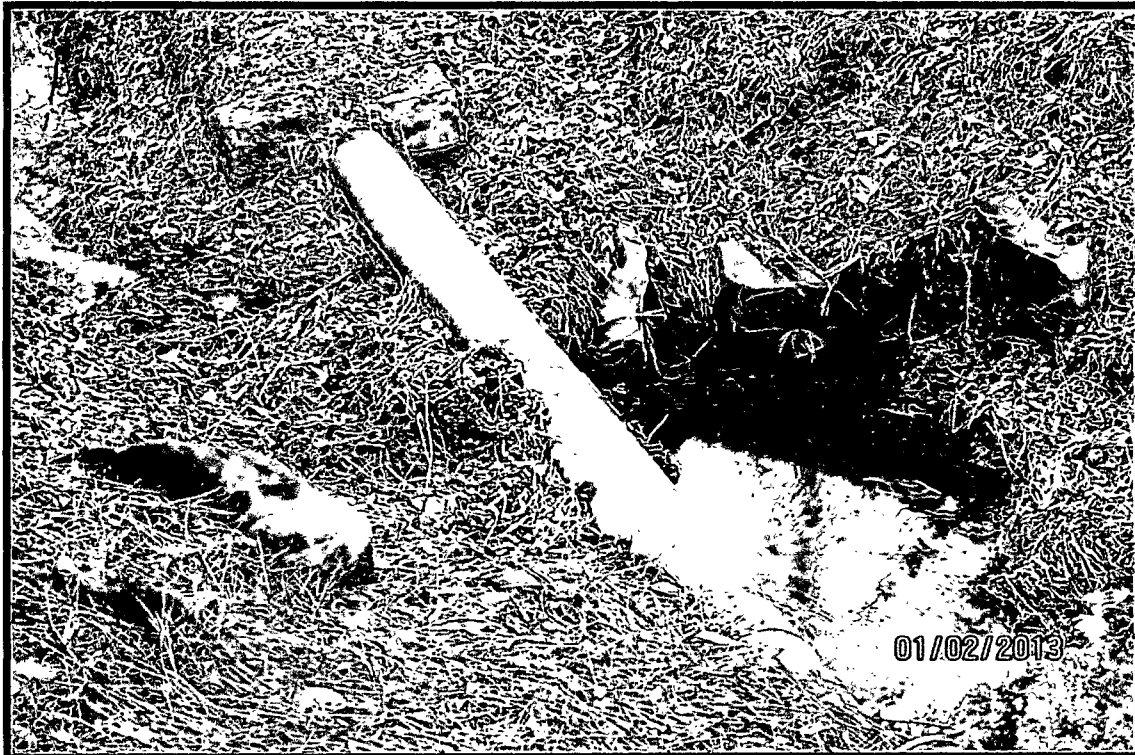
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_011.JPG

11

★ Sanitary sewer in park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_017.JPG

17

★ Sanitary sewer line installed in creek through park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_019.JPG

19

★ Sanitary sewer manhole in rear of park



JOB#: 13004

DATE: 1/2/13

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

21

★ Metal pipe and headwall of culvert at Sturgis Street



JOB#: 13004

DATE: 1/2/13

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

22

* Maintenance road at rear of park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_023.JPG

23

★ Sturgis Street

★ General overview from park area



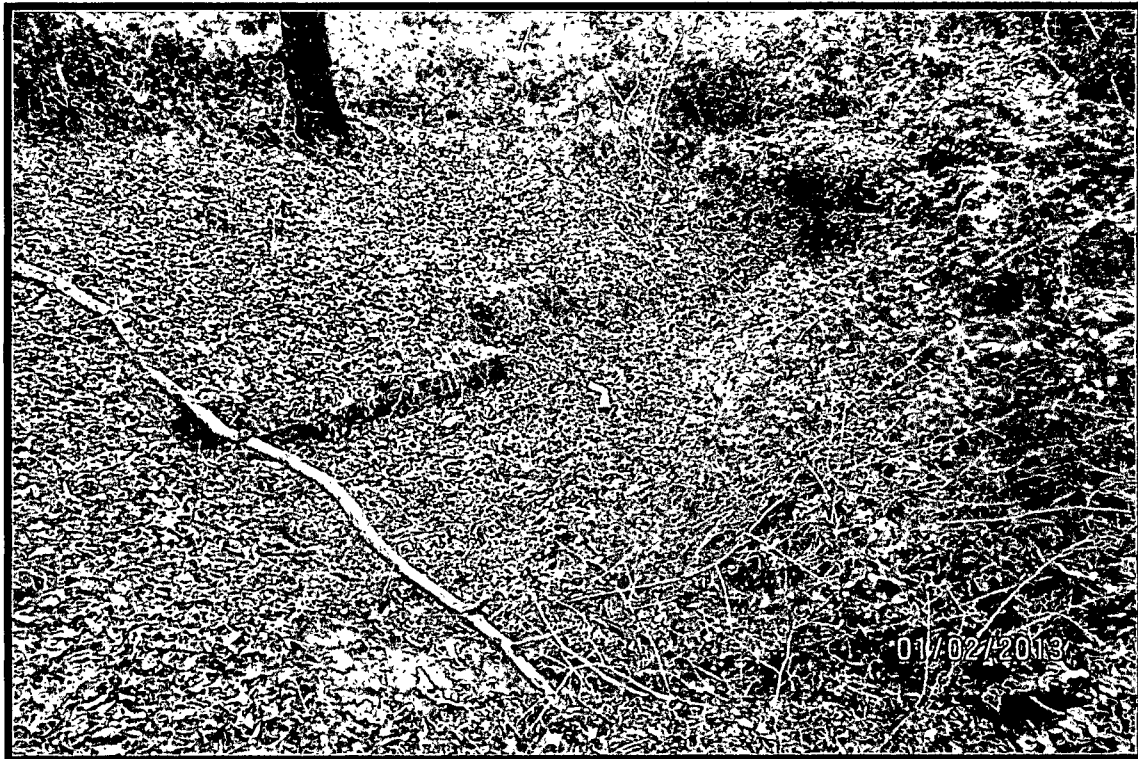
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_024.JPG

24

* Retaining wall along creek at rear of park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_025.JPG

25

★ Retaining wall along creek at rear of park



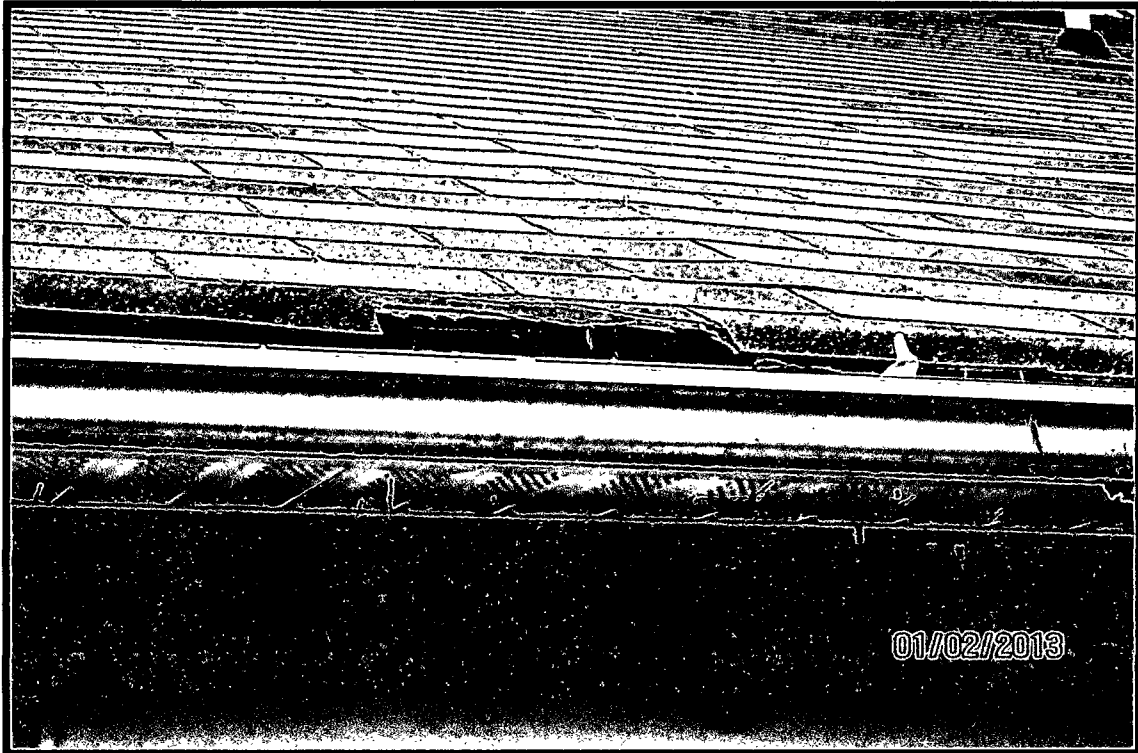
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_027.JPG

27

★ Stone used along creek in park



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_028.JPG

28

* Rear elevation

* Damaged roof shingles and sheathing



JOB#: 13004

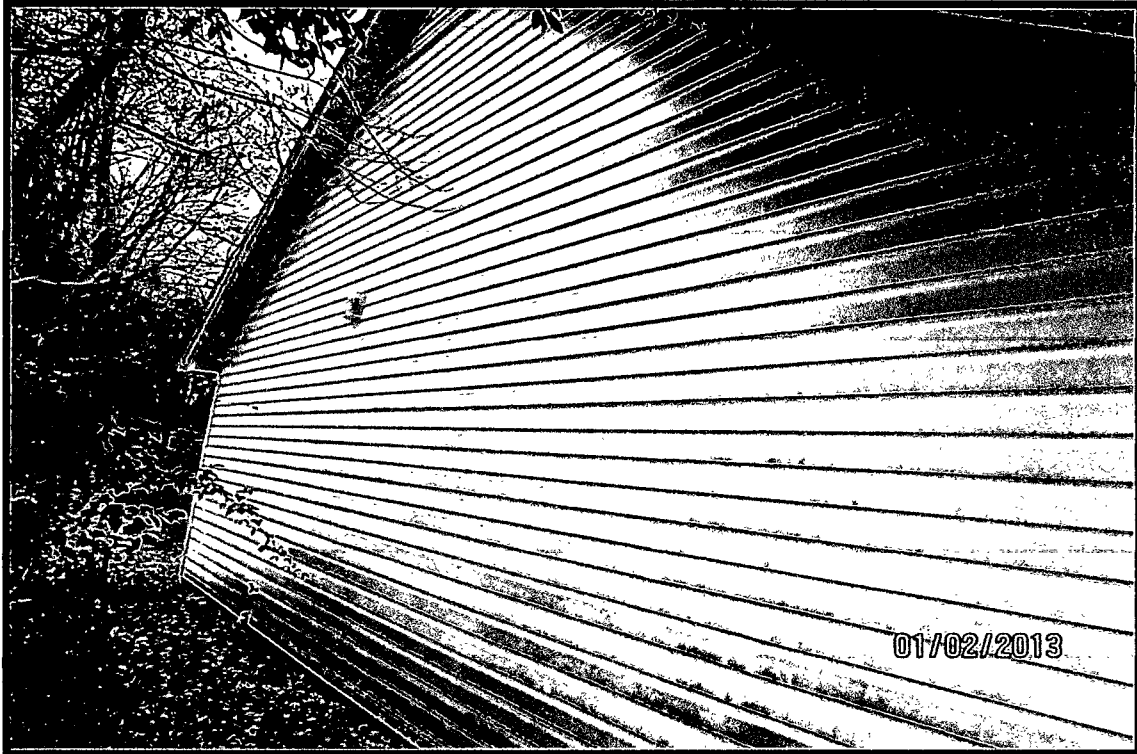
DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_029.JPG

29

* Rear elevation

* Damaged shingles



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_030.JPG

30

* Left elevation

* General overview



JOB#: 13004

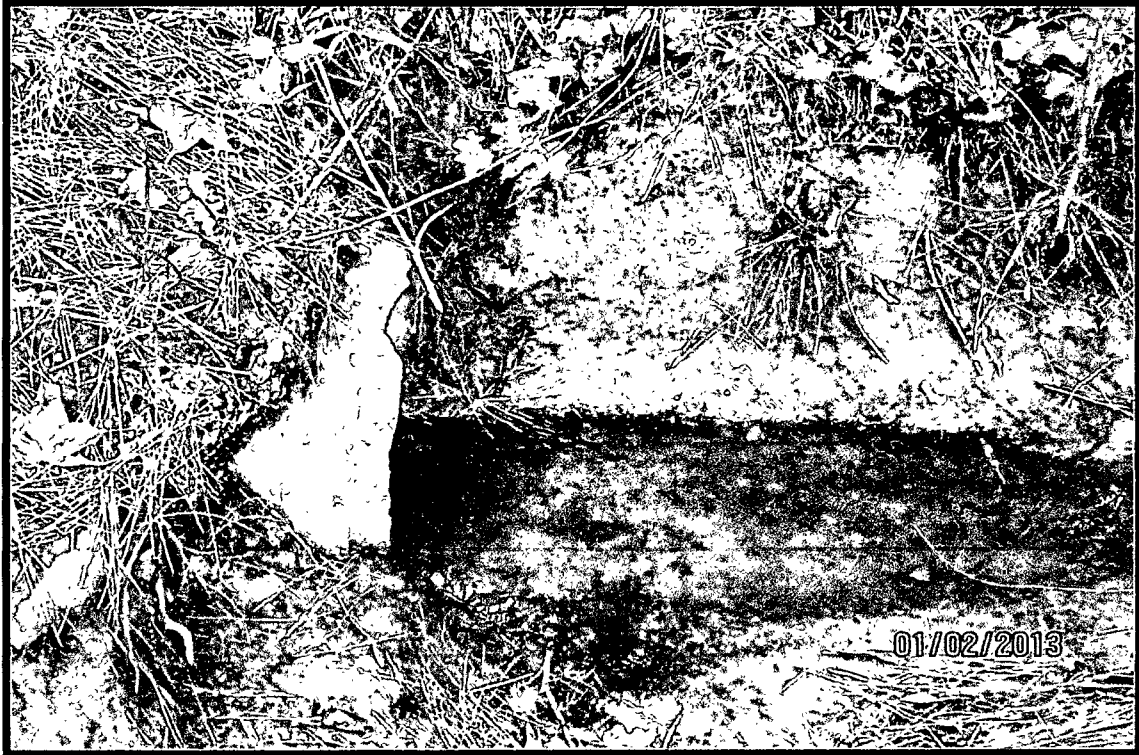
DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_031.JPG

31

* Front elevation

* Standing water in driveway



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_032.JPG

32

* Drainage culvert pipe at road



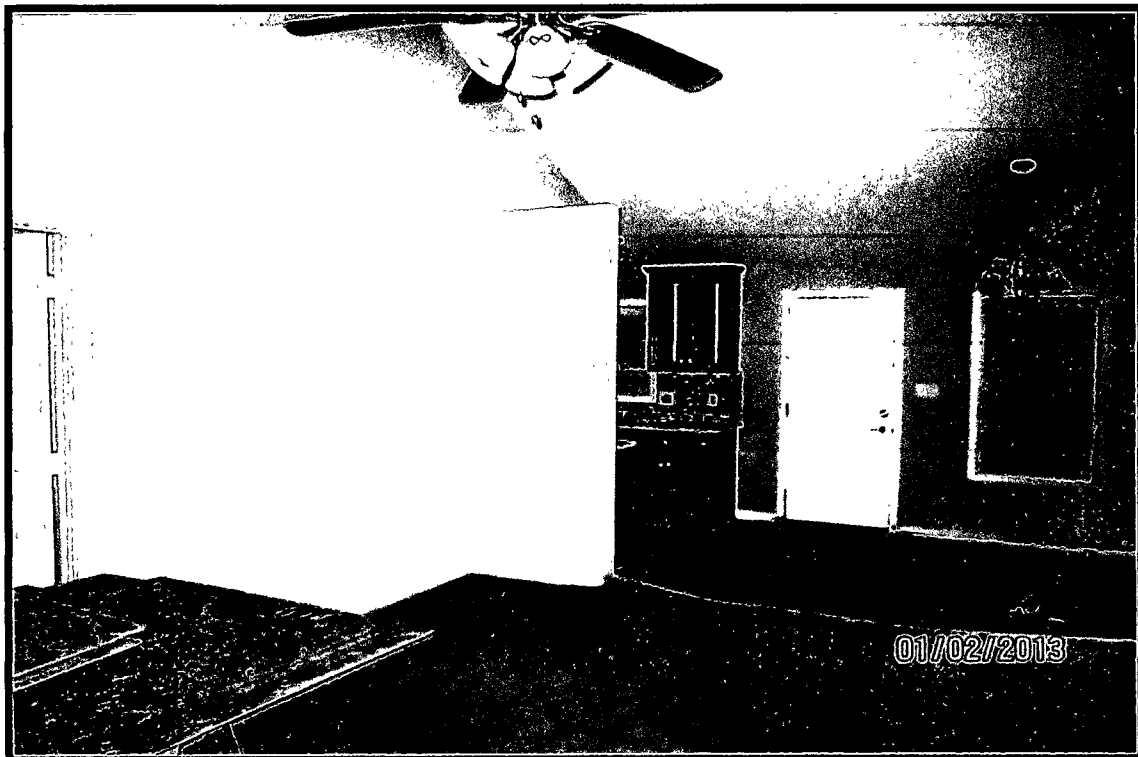
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_033.JPG

33

★ Roadway curb inlet for stormwater above culvert area



JOB#: 13004

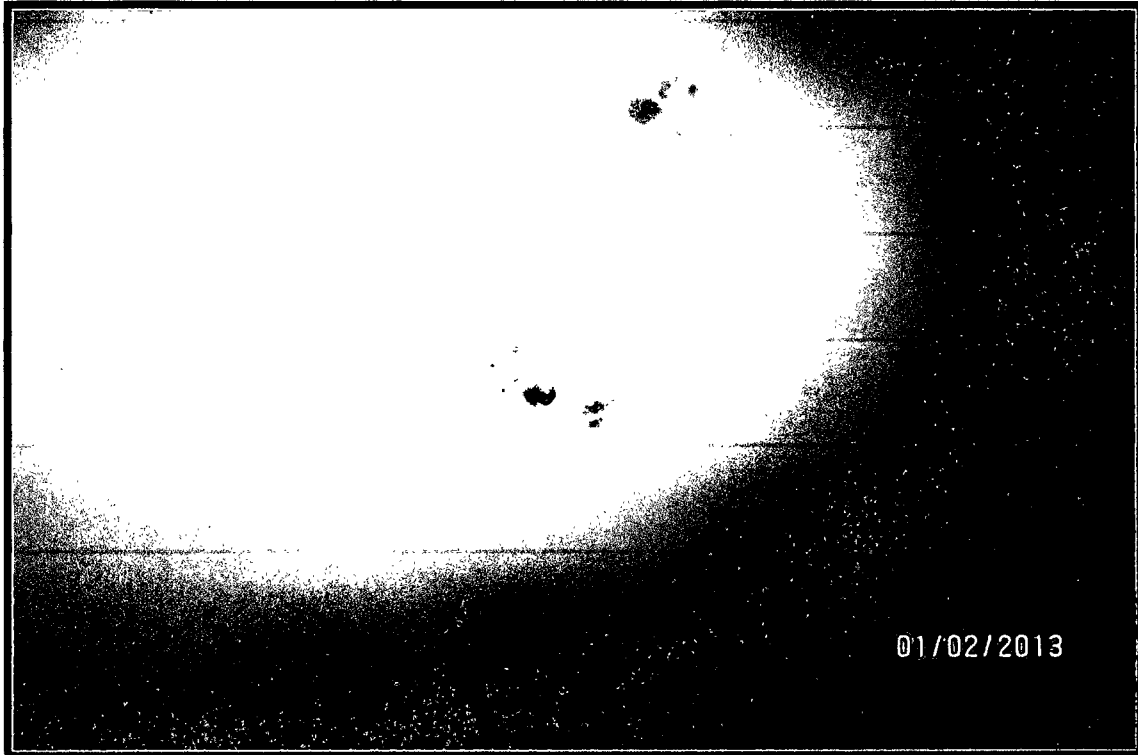
DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_034.JPG

34

* Living room and kitchen

* General overview



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_035.JPG

35

* Living room

* Mold growth and water damage on ceiling



JOB#: 13004

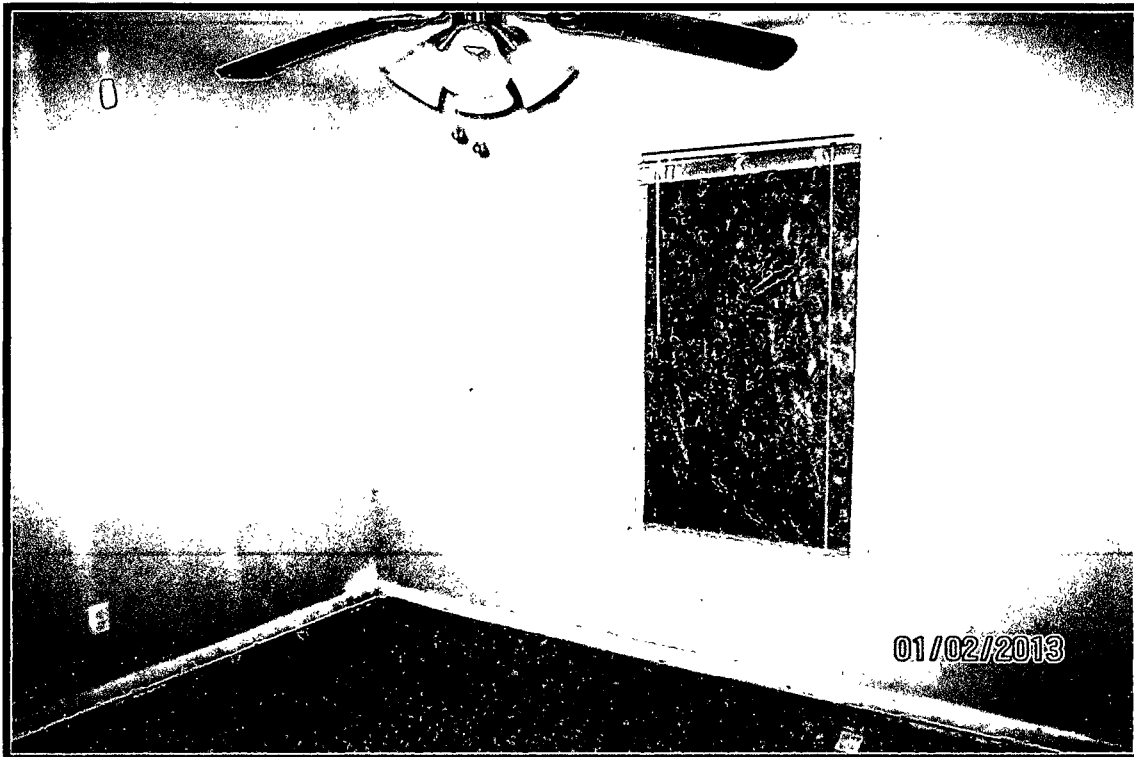
DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_036.JPG

36

* Kitchen

* General overview



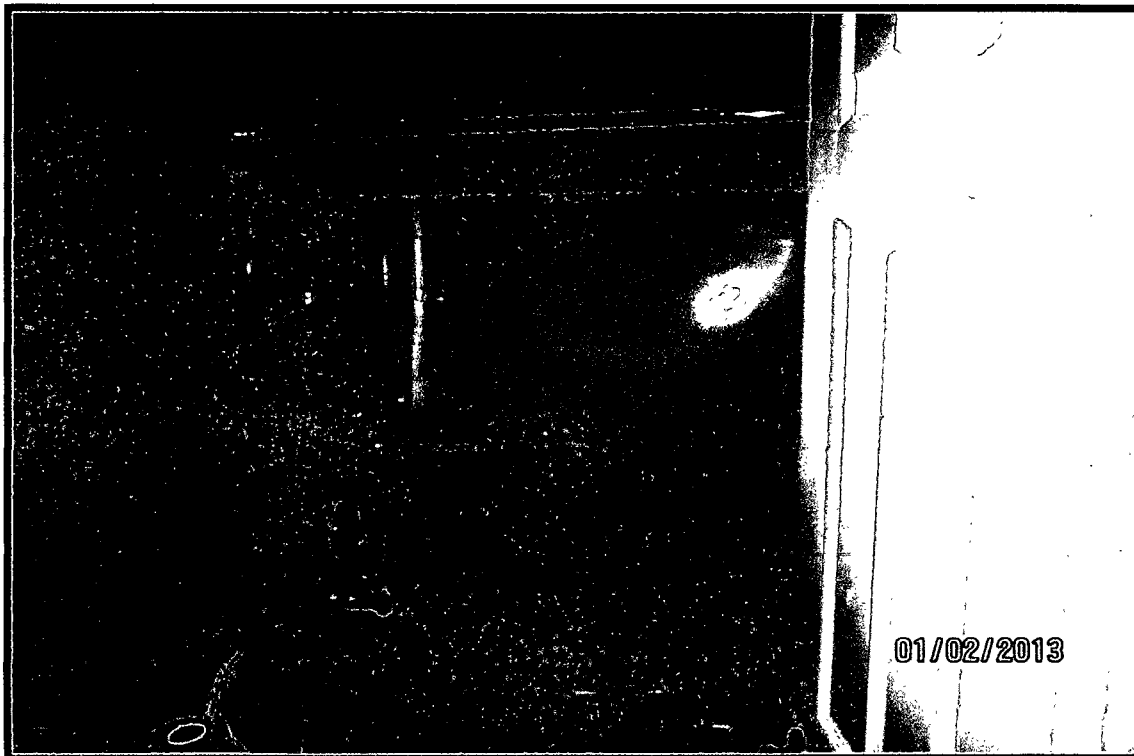
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_037.JPG

37

- * Right elevation
- * Front right bedroom
- * General overview



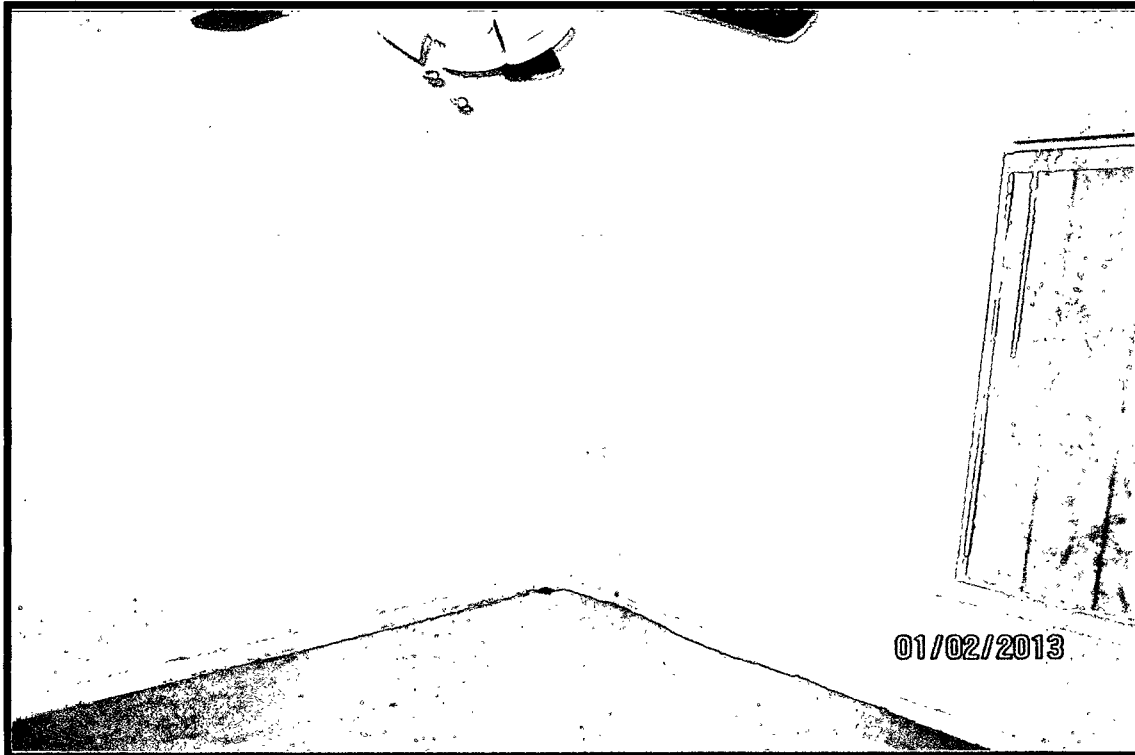
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_038.JPG

38

- * Right elevation
- * Bathroom
- * General overview



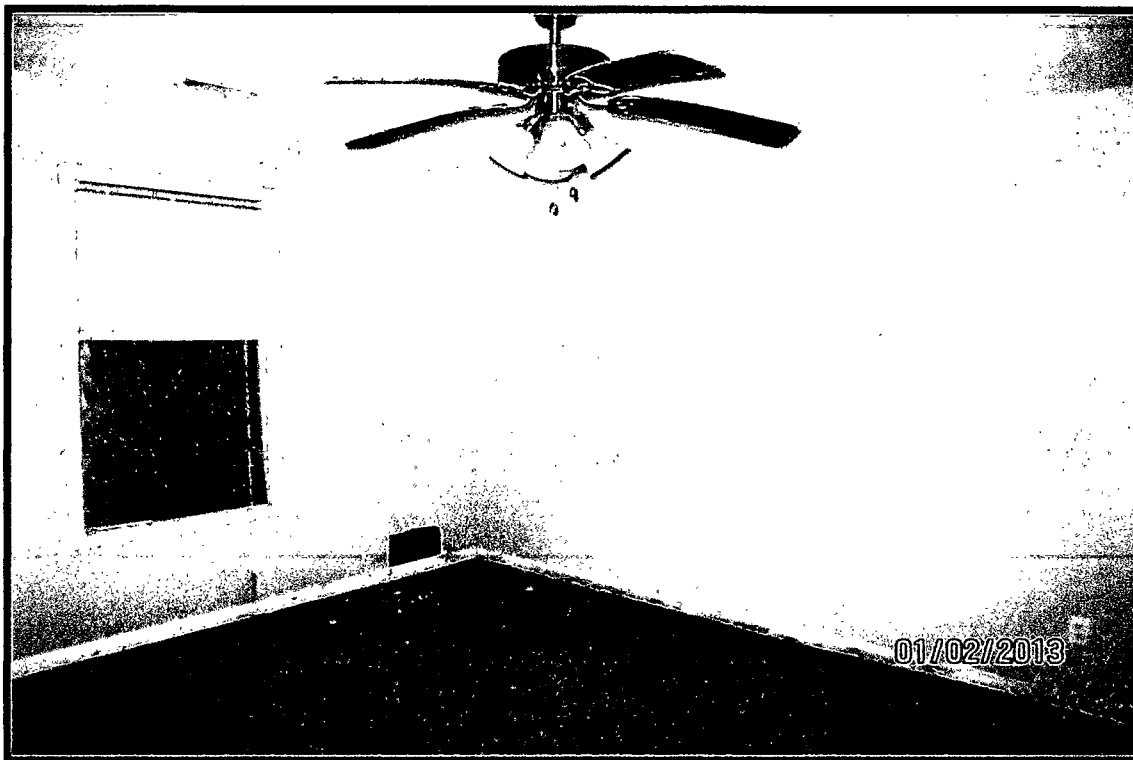
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_039.JPG

39

- * Right elevation
- * Back right bedroom
- * General overview



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_040.JPG

40

- * Left elevation
- * Front left bedroom
- * General overview



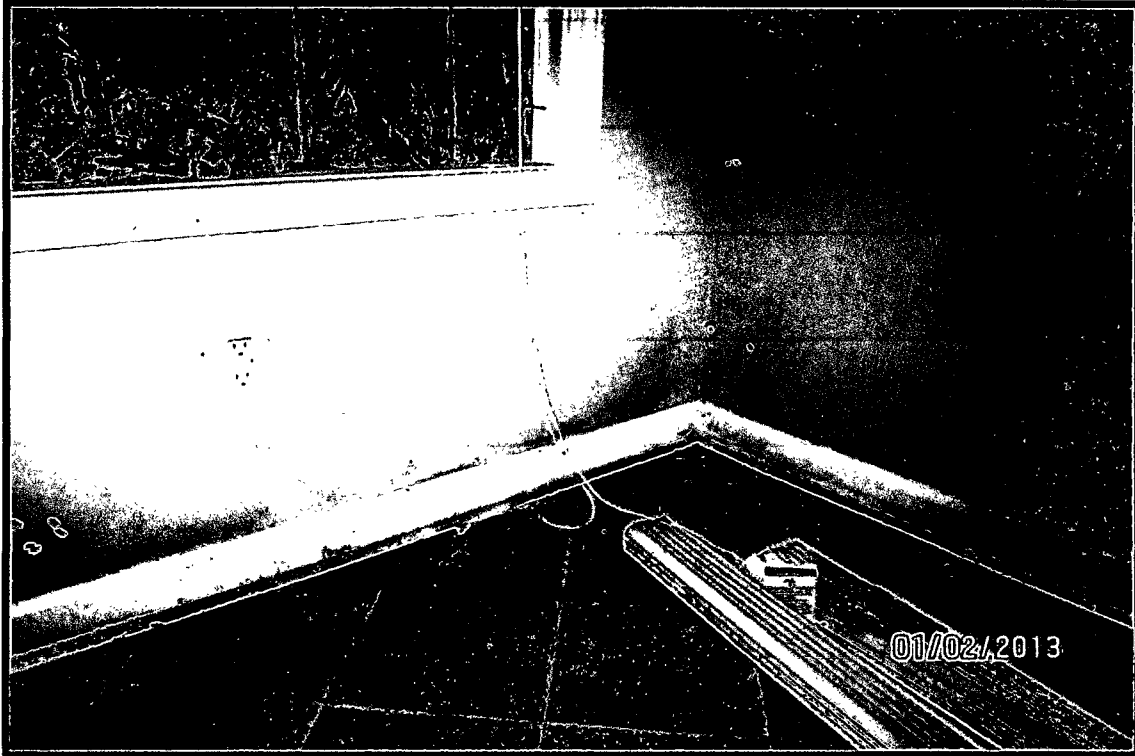
JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_041.JPG

41

- * Front elevation
- * Living room
- * Mold growth on drywall



JOB#: 13004

DATE: 1/2/13

PHOTO#: 2013-01-02-RGB_042.JPG

42

- * Back elevation
- * Kitchen area
- * Mold growth and water damage on drywall and baseboard

BUILDING PERMIT



CITY OF ROCK HILL
PLANNING DEPARTMENT
INSPECTIONS DIVISION
155 JOHNSTON STREET, P.O. BOX 1170
ROCK HILL, SC 29731-170
803/329-5590 FAX: 803/329-722

PERMIT NUMBER: 99-00896 PROJECT NUMBER: 99-AHJ DATE ISSUED: 05/11/99

PROJECT LOCATION: CUMMINGS STREET (536) 1020 WILLOWBROOK
SEQUENCE #: 37650 SUBDIVISION:
LOT: TAX MAP: PARCEL: 628-15-01-018
USE ZONE: FLOOD ZONE: REPORT CODE: 101
SEWER SYSTEM: WATER SYSTEM: SPRINKLER

OWNER NAME: LAWRENCE WHERRY
ADDRESS: 1151 EAGLE DRIVE TELEPHONE: (803) 324-5775
CITY: ROCK HILL STATE: SC ZIP CODE: 29730

CONTRACTOR NAME: LAWRENCE WHERRY
ADDRESS: 1151 EAGLE DR. TELEPHONE: (803) 324-5775
CITY: ROCK HILL STATE: SC ZIP CODE: 29730
COMPANY NAME: WHERRY CONSTRUCTION
CONTRACTOR GROUP: RESIDENTIAL CONTRACTOR TYPE: BUILDER
CONTRACTOR ID: WHERRY CONSTRUCTION

DESIGNER:
ENGINEER:

DESCRIPTION OF WORK:
SINGLE FAMILY DWELLING, 3 BEDRMS, 2 BATHS, 1040 HTD SQ FT, GAS PACK,
GAS WATER HEATER, GAS FURNACE, ELECT, PLUMB, MECH
OCCUPANCY TYPE: CONSTRUCTION TYPE: SQUARE FOOTAGE:
MAXIMUM OCCUPANCY: UNITS: STORIES:

VALUATION: \$40320.00 FEES DUE: \$319.00 FEES PAID: \$319.00

SPECIAL CONDITIONS:
SETBACKS APPROVED AS SHOWN ON THE ATTACHED SITE PLAN

DIRECTIONS TO JOB SITE:

ALL WORK MUST COMPLY WITH THE 1997 STANDARD BUILDING CODE AND THE 1997
NATIONAL ELECTRICAL CODE. ALL PROVISIONS OF LAWS AND ORDINANCES
GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED
HEREIN OR NOT.

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS
NOT COMMENCED WITHIN 6 MONTHS OR IF CONSTRUCTION OR WORK IS SUSPENDED
OR ABANDONED FOR A PERIOD OF 1 YEAR AT ANY TIME AFTER WORK IS COMMENCED.

PURSUANT TO S.C. CODE SECTION 15-3-520 YOU HAVE THE RIGHT TO CONTRACT FOR
A GUARANTEE OF THE STRUCTURE BEING FREE FROM DEFECTIVE OR UNSAFE
CONDITIONS BEYOND THIRTEEN YEARS AFTER SUBSTANTIAL COMPLETION OF THE
IMPROVEMENT FOR WHICH THE PERMIT IS ISSUED.

SIGNATURE OF OWNER OR CONTRACTOR: *Lawrence Wherry*

INSPECTION REQUEST REQUIRED: NOUR NOTICE

Partial Building Permit

Report Code: 101 - Single Family Houses Detached

Permit Number: 199900896

Date Issued: 05/11/1999



000001

ROCK HILL
PLANNING & DEVELOPMENT

Site Address: 1020 WILLOWBROOK AV.

Zoning:

Special Districts:

Owner Name: Lawrence Wherry

Address: Same

Tax Map ID:

Lot Number:

Subdivision:

Telephone:

General Contractor

Contractor: Lawrence Wherry

License # 7493

Company: Wherry Construction

Telephone: (803)324-5775

Address: 1151 Eagle Dr.
Rock Hill, SC 29730-

SubContractors:

Permit Details

Occupancy Type: Units: 0 Bedrooms: 0

Construction Type: Stories: 0 Baths: 0

Square Footage: 0 Buildings: 0 Is Bldg. Sprinklered:

Description of Work, Special Conditions or Comments

SINGLE FAMILY DWELLING, 3 BDRMS, 2 BATHS, 1040 HTD SQ. FT., GAS PACK, GAS WATER HEATER, GAS FURNACE, ELECT., PLUMB., MECH.

Valuation: \$ 60,320.00

Fees: Permit Fee 319.00
\$319.00

All work shall comply with the 2006 International Plumbing Code, 2006 International Mechanical Code, 2006 International Fuel Gas Code, 2008 National Electrical Code, 2003 Existing Building Code and the 2006 Energy Code as applicable. Commercial Buildings shall comply with the construction requirements of the 2006 International Building Code and Residential Structures shall comply with the construction requirements of the 2006 Residential Code. All other provisions of Laws and Ordinances governing this type of work will be complied with whether specified or herein or not.

All permits, except for temporary signs, become Null and Void if work is not commenced within 6 months from Date of Issue, or if work is suspended or abandoned for a period of 6 months. Temporary sign permits are valid for period specified above.

I certify no construction or portion of construction will be built over or under any electrical, water, sewer, stormwater or any other utility easements or right-of-way.

Signature of Owner, Agent or Contractor:

no signature



ROCK HILL

SOUTH CAROLINA

July 10, 2001

Asia L Renwick
536 Cummings Street
Rock Hill SC 29730

RE: Permission to be on your property to replace the drainage structure

Dear Ms. Renwick:

The City of Rock Hill Storm Water Division has received your storm water request, asking the Storm Water Division to replace the drainage structure to prevent the flooding in the roadway. In order to perform this work, the Storm Water Division will need to enter on the property of 536 Cummings Street. Our records indicate that you own the property. Before we can enter onto your property, the Storm Water Division will need your signature and a witness signature on the enclosed Right of Entry form. Please sign and return the form, in the enclosed envelope.

If you do not wish for the Storm Water Division to be on your property, please sign (space provided) and return the form in the enclosed envelope.

If you have any questions, please feel free to contact me at 329-5614 from 8:00 AM to 5:00 PM Monday thru Friday. Thank you for your assistance with this project.

Sincerely,

Chris Cosner
Storm Water Supervisor

OPERATIONS CENTER

319 COLUMBIA AVENUE, P.O. BOX 11706
ROCK HILL, SC 29731-1706 803-329-7900

307

Public Works Department Work Request

Address of service/violation: 536 CUMMINS ST #2

Date: 5/14/01 Call back with status report? yes no

Reporting person's name: ASIA BEN WICK

Reporting person's address: _____ Phone: 404-532-1241

Service problem

Sanitation:

- ☐ missed rollout
- ☐ needs repair
- ☐ remove old rollout
- ☐ dump and leave old rollout
- ☐ missed curbside trash
- ☐ missed backyard service
- ☐ dead animal
- ☐ yard waste
- ☐ leaves
- ☐ other: _____

Street:

- ☐ needs sweeping
- ☐ tree blocking view/right of way
- ☐ pot hole/utility cut/low cut (circle)
- ☐ signs: _____

☐ need driveway apron

☐ sidewalk repair

☐ high asphalt/low driveway

☐ barricades/cones needed

☐ other: _____

Commercial:

- ☐ needs dumpster
- ☐ needs Dial Truck/Dial Dumpster (circle)
- ☐ dump & return
- ☐ add pick up day
- ☐ foreign debris
- ☐ other: _____

Environmental Inspections:

- ☐ tree blocking view/private property
- ☐ overgrown lot
- ☐ junk/abandoned vehicle
- ☐ rollout left on street
- ☐ mixed pile of trash
- ☐ debris in yard
- ☐ items City doesn't take on street
- ☐ received notice; not theirs

Stormwater:

- ☒ ditch/creek blockage
- ☒ ditch/creek cleaning
- ☐ catch basin blockage
- ☒ flooding/flood damage
- ☐ sink holes
- ☐ cover missing/broken
- ☐ question about billing

Other Information:

NEED TO CHECK INLET CAPACITY
H2O OVER TOP CURB & FLOODS YARD

Work Request completed by (City staff): _____

Action Taken: _____

Action completed by: _____

Date: _____



ROCK HILL

SOUTH CAROLINA

May 22, 2003

MEMORANDUM

TO: Chris Costner Utility/Stormwater
FROM: Joan Barnes, Risk Management
SUBJECT: 1020 Willowbrook Ave. *Joan*

This office has been contacted regarding a possible claim. Please complete the Supervisor's Incident Report Form (copy attached). Also attached is a copy of the Accident/Injury Review Form which must be completed related to this reported incident and returned to this office.

Your recommendation is needed on this incident within the next five working days in order that we may respond promptly.

Let us know if you have any questions.

Jb

Attachments

Rm # 140 - 2003

CITY OF ROCK HILL SUPERVISOR'S INCIDENT REPORT

FOR ALL INCIDENTS OTHER THAN EMPLOYEE INJURY OR AUTO ACCIDENT

IF ANY THIRD PARTY INJURED TELEPHONE 329-7025 AS SOON AS POSSIBLE
FORWARD THIS REPORT TO THE RISK MANAGEMENT OFFICE WITHIN 24 HOURS OF INCIDENT

- ☐ This report originated by the _____ Department.
- ☒ This report originated by claimant's notice to the Risk Management Office on 5/21/03 (date) and sent to Utility/Stormwater Department on 5/23/03 (date). Please complete, amend or submit entirely new report if so indicated.

1. DATE OF ACCIDENT: May 6, 2003 2. TIME: _____
3. LOCATION: 1020 Willowbrook
4. DESCRIPTION OF INCIDENT: Storm drainage clogged and congested which prevented proper drainage. As a result water overran onto property and into house. Water left a trailing mark around house; some marks are visible on walls inside house. All eight rooms have damage.

Use Reverse Side If Needed.

5. CITY EMPLOYEE INJURED? ☐ YES - Submit regular Workers' Compensation First Report Form. ☒ NO

6. NON-EMPLOYEE INJURY? YES - Call 329-7025 and complete Section 6.

(A) Name & Address of Injured Person: _____ Telephone: _____

(B) Describe Injury: _____

(C) Medical Treatment (By Whom, Facility): _____

(D) What Caused Injury: _____

For additional persons injured, used additional sheets - ☐ See Additional Sheets.

7. ANY DAMAGE TO NON-CITY PROPERTY? ☒ YES ☐ NO

(A) Describe property and how damage occurred: House at 1020 Willowbrook has water damage to all eight rooms because, as claimant states, storm drain clogged which prevented water to run off.

(B) Who owns the property: Name Asia L. Renwick
Address 1020 Willowbrook Ave.
Rock Hill, SC 29730
Telephone 704/844-6673 X100 work

(C) Estimated Cost to Repair: _____

ANY DAMAGE TO CITY PROPERTY? ☐ YES ☒ NO(A) Describe property and how damage occurred: _____

(B) Estimated Cost to Repair: _____

ANY WITNESS (Applies to Sections 6, 7, and 8)?

Name and Address: _____

Telephone: _____

WAS ANY CITY ACTIVITY OR FUNCTION INVOLVED OR RELATED TO THIS INCIDENT?

☒ NO ☐ YES If Yes, Briefly describe such activity or function:

CITY EMPLOYEE(S) INVOLVED:

Employee Name	Department	Division	Time in This Job
_____	_____	_____	_____
_____	_____	_____	_____

WERE ANY SAFETY REGULATIONS, CITY OR DEPARTMENTAL RULES, POLICIES OR REGULATIONS VIOLATED OR IGNORED THAT RELATE TO THIS INCIDENT?

☐ YES (Specify)☒ NO Should there be an applicable rule or regulation: ☐ YES ☒ NO

IF YOU FEEL FURTHER EXPLANATION WOULD BE HELPFUL, PLEASE ATTACH SEPARATE STATEMENTS, PHOTOGRAPHS, ETC. TO THIS REPORT.

OPTIONAL SPACE - PLEASE INDICATE NUMBER OF RELATED QUESTION:

SEE ATTACHED PHOTOS. SEE ATTACHED BUILDING INSPECTION
RECORD. IT APPEARS FOOTING WERE NEVER APPROVED

INITIALS:

Immediate Supervisor

Date

Department Head or Designate

Date


Division Supervisor

Date

04/02/03

140 - 2003

City of Rock Hill
Accident/Injury Review

(Read "Suggestions" on reverse side prior to starting review.)

Department/Division: UTILITIES / STORMWATER Employee: _____

Date, Time & location of accident/injury: MAY 2, 2003 (EVENING) Job title: _____

City vehicle/equipment involved: N/A

Description of accident/injury: HOUSE FLOODED

Other contributing factors: 2" TO 3" OF RAIN FELL OVER SHORT PERIOD TIME
OF C. 3 (ABOUT 2 HOURS)

Cause of accident/injury: EXCESS OF RAIN & DEBRIS OVER END OF PIPE
HOUSE CONSTRUCTED ON SLAB (LOW TO GROUND)

Corrective measures: _____

In your opinion, was this accident/injury: Preventable _____ Non-preventable X

(Note: A preventable accident is an occurrence resulting in bodily injury to the employee, or others, or property damage, regardless of the extent of the injury or the amount of the property damage; in which the employee in question failed to do everything he/she reasonably could have done to prevent the occurrence.)

1. Violation of a specific/general safety regulation: Yes _____ No _____
2. No general or specific regulation applicable: Yes _____ No _____

If answer to #2 is "no," should a safety regulation be written for this activity? Explain why or why not:

Other comments: _____

City of Rock Hill Accident/Injury Review

(Read "Suggestions" on reverse side prior to starting review.)

Department/Division: Public Works/Stormwater Employee: Jason Tinkler
Job title: Street/Stormwater Superintendent
Date, Time & location of accident/injury: 12/30/2007 approximately 1:00 PM
1020 Willowbrook
City vehicle/equipment involved: no

Description of accident/injury: Trash and debris from the drainage ditch and piles next to the catch basin inlet on the street washed into the storm drain system due to the excessive amount of rainfall which caused the pipe to clog and not drain properly which caused flooding in the yard and home.

Other contributing factors: Trash & debris from private drainage feature blocked culvert ~~port~~ which contributed to flooding. Ditch should keep clear of debris to prevent culvert from being blocked.

Cause of accident/injury: Trash washed into the storm drain system in which prevented the water from draining out properly.

Corrective measures: Do not ~~put~~ pile yard debris next to storm drain inlets.

In your opinion, was this accident/injury: Preventable _____ Non-preventable ☒

(Note: A preventable accident is an occurrence resulting in bodily injury to the employee, or others, or property damage, regardless of the extent of the injury or the amount of the property damage; in which the employee in question failed to do everything he/she reasonably could have done to prevent the occurrence.)

1.	Violation of a specific/general safety regulation:	Yes _____	No ☒
2.	No general or specific regulation applicable:	Yes _____	No ☒

If answer to #2 is "no," should a safety regulation be written for this activity? Explain why or why not:

Other comments:

JAN 14 2008

City of Rock Hill Utilities Incident Report

Incident Number : 20071230123643

Phone : (803)324-4696

Repeat Call : No

Address : 1020 WILLOWBROOK AV

Customer Name : SHARRON PEAY

GIS Number : None

Status : Call complete

Original Incident: 0

LifeLine : No

Outage type : Storm Water

Callback requested : No

Power is cutoff : No

Additional information : None

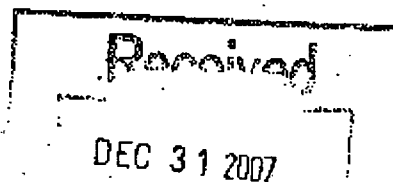
Crew Status : Not called

Serviceman assigned : ~~Jimmy Bagley~~

Comment : ms says her yard is flooded//cleaned out storm drain

Jason Bailey
Aaron Mabry
Willie Estes

Related Incidents:



12/31/2007 2:57:08 PM

S.C.M.I.R.F. LOSS NOTICE

(Please complete when reporting – Attach additional pages if necessary)
ALL FIELDS MUST BE COMPLETED

Participant City (name, address)

City of Rock Hill

P.O. Box 11706

Rock Hill, SC 29731-1706

Person to Contact

Name: Joan Barnes

Title: Customer Service Clerk III

Telephone Number: 803/329-7022

The Incident

Day of the week: Sunday

Date & Time of occurrence: 12/30/07

Date reported to you 12/31/07

Location: 1020 Willowbrook

By whom: Jeffrey Drakeford

Please describe what is alleged to have occurred Claimant states his home was flooded with 3" on water on inside and 7" in yard.

Municipal Personnel Involved: (see codes on back)

(Name)

(Dept Code)

(Job Code)

(Supervisor)

(Telephone)

Municipal Property Damaged

(Year)

(Make)

(Model)

(Serial #)

(Location of Vehicle)

Claimant(s)

Name: Drakeford, Jeffrey

Address: 1020 Willowbrook Rh, SC

29730

Telephone Number (H):

Telephone Number (W): Cel 803/524-

0856

Property Damage

(Year)

(Make)

(Model)

(Estimate)

(Location)

Injured Persons/ Additional Claimants

Name:

Address:

Telephone Number: (home)

Telephone Number: (work)

Injuries Alleged (description)**Witness (name, address, phone)**

Name:

Address:

Telephone Number: (home)

Telephone Number: (work)

Any Comments:

Submit both the Front & Back of the Police Report

SUMMONS & COMPLAINTS SHOULD BE FAXED IMMEDIATELY!

CITY OF ROCK HILL
SUPERVISOR'S INCIDENT REPORT

LIBRARY 009281
425-2007

FOR ALL INCIDENTS OTHER THAN EMPLOYEE INJURY OR AUTO ACCIDENT

#2

IF ANY THIRD PARTY INJURED TELEPHONE 329-7025 AS SOON AS POSSIBLE
FORWARD THIS REPORT TO THE RISK MANAGEMENT OFFICE WITHIN 24 HOURS OF INCIDENT

- ☐ This report originated by the _____ Department.
- ☒ This report originated by claimant's notice to the Risk Management Office on _____ (date) and sent to PW/Stormwater Department on 1/4/08 (date). Please complete, amend or submit entirely new report if so indicated.

1. DATE OF ACCIDENT: 12/30/07
2. TIME: _____
3. LOCATION: 1020 Willowbrook
4. DESCRIPTION OF INCIDENT: House & yard flooded
Flooding occurred due to large amounts of debris washing into the storm
down system in which prohibited the water from draining properly. The
debris was piled next to the inlet for the storm drain. The house
Use Reverse Side If Needed.

5. CITY EMPLOYEE INJURED? ☐ YES - Submit regular Workers' Compensation First Report Form. ☒ NO

6. NON-EMPLOYEE INJURY? YES - Call 329-7025 and complete Section 6.

(A) Name & Address of Injured Person: _____ Telephone: _____

(B) Describe Injury: _____

(C) Medical Treatment (By Whom, Facility): _____

(D) What Caused Injury: _____

For additional persons injured, used additional sheets - ☐ See Additional Sheets.

7. ANY DAMAGE TO NON-CITY PROPERTY? ☒ YES ☐ NO

(A) Describe property and how damage occurred: Reported that house had 3" of water and yard
7"

(B) Who owns the property: Name Jeffrey Drakeford / Buying on Lease Purchase basis
Address 1020 Willowbrook RH, SC29730

Telephone Cell 803/524-0856

(C) Estimated Cost to Repair: _____

RIGHT OF ENTRY

City of Rock Hill

Address: 536 Cummings Street

County of York

Tax Code No.: 628-15-01-018

I/We, Asia Renwick the undersigned owner/s of that certain property at 536 Cummings Street do hereby give, grant and/or convey unto the City of Rock Hill or its Contractor the right of enter upon or across said property for the purpose of replacing the drainage structure.

The City of Rock Hill or its Contractor is relieved of any and all responsibility for damage to shrubbery, flowers, trees and any and all other improvements which may be damaged by the work being performed in a reasonable manner.

It is further agreed that the right of entry granted shall waive claim of trespass on said property and shall not be deemed as a trespass.

IN WITNESS WHEREOF, I, WE, have hereunto set our hands and affixed our seals this the 23 day of July, 2001.

Asia L. Renwick
(Property Owner signature)

Christina G. G...
(Witness signature)

(Property Owner signature)

(Witness signature)

I/We Asia Renwick the undersigned owner/s of that certain property at 536 Cummings Street do not hereby give, grant and/or convey unto the City of Rock Hill or its Contractors the right of enter upon said property.

(Property Owner Signature) (Date)

(Witness Signature) (Date)

(Property Owner Signature) (Date)

(Witness Signature) (Date)





ROCK HILL

SOUTH CAROLINA

January 4, 2008

Companion Claims Services
Attn: Connie Martin
P.O. Box 11512
Columbia, SC 29221- 1512

Dear Connie:

Enclosed are the following related to an incident that occurred on 12/30/07 at 1020 Willowbrook, Rock Hill, SC 29730. Resident reported flooding in house and yard. Mr. Drakeford is buying house on Lease/Purchase basis, and picked up a Claimant Reporting Form; however he has not returned it to this office. We have not heard from owner as of this morning. Reporting forms will be sent as soon as received.

I spoke with Cindy on Tuesday, January 2, 2008 because this house flooded in 2003 with a different owner. It is built on a slab, sits low and receives water run off at least two directions.

Completed GL Notice of Occurrence form.

We are forwarding this to your office for handling.

Please give me a call if there are any questions.

Sincerely,

Joan Barnes,
Risk Management Office

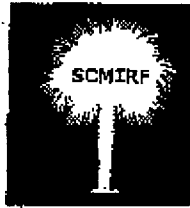
jb

Enclosures

OPERATIONS CENTER

349 COLUMBIA AVENUE, P.O. BOX 11706
ROCK HILL, SC 29731-1706, 803-329-7000

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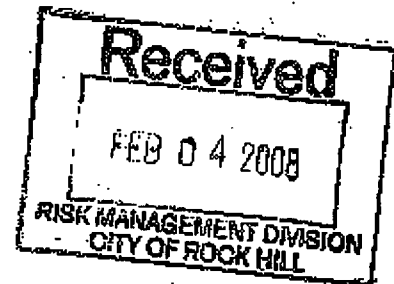


SC Municipal Insurance & Risk Financing Fund

#425-2007

January 30, 2008

Mr. Larry Drakeford
1020 Willowbrooke
Rock Hill, SC 29730



Re: Participant: *City of Rock Hill*
Claimant: *Mr. Larry Drakeford*
Date of Loss: 12/30/2007
Claim No.: 690001C04547

Dear Mr. Drakeford:

We have reviewed the circumstances surrounding this incident and believe we have sufficient information to make a proper decision regarding your claim.

Please understand that our duty as an administrator is not to pay all claims but to pay only those claims for which our participant is legally liable. We have carefully examined the circumstances surrounding this incident and have determined that the City of Rock Hill is not responsible for your damage. We must therefore, respectfully decline any payment on this claim.

Thank you for your understanding. Should you have any questions, I can be reached at (803) 933-1253.

Sincerely,

Marcy Holland MH
Claims Adjuster

cc: City of Rock Hill

COMPANION THIRD PARTY ADMINISTRATORS, LLC

1411 GERVAIS STREET ■ POST OFFICE BOX 11512 ■ COLUMBIA, SC 29211
TOLL FREE (877) 825-0544 ■ FAX: (803) 933-1295

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1020 Willowbrook Drainage Study

Tim Brooks to: Bobby Banks

12/31/2009 01:22 PM

Cc: David Dickson, Bill Meyer

Bobby,

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

Drainage Outlet:

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

Watershed:

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

Residence / Drainage Outlet Hydraulic Relationship:

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

Drainage Study Summary:

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

Requirements to Alleviate Flooding Potential:

- Upgrade downstream stormwater system from creek discharge point to Willowbrook (no consideration has been given for potential utility

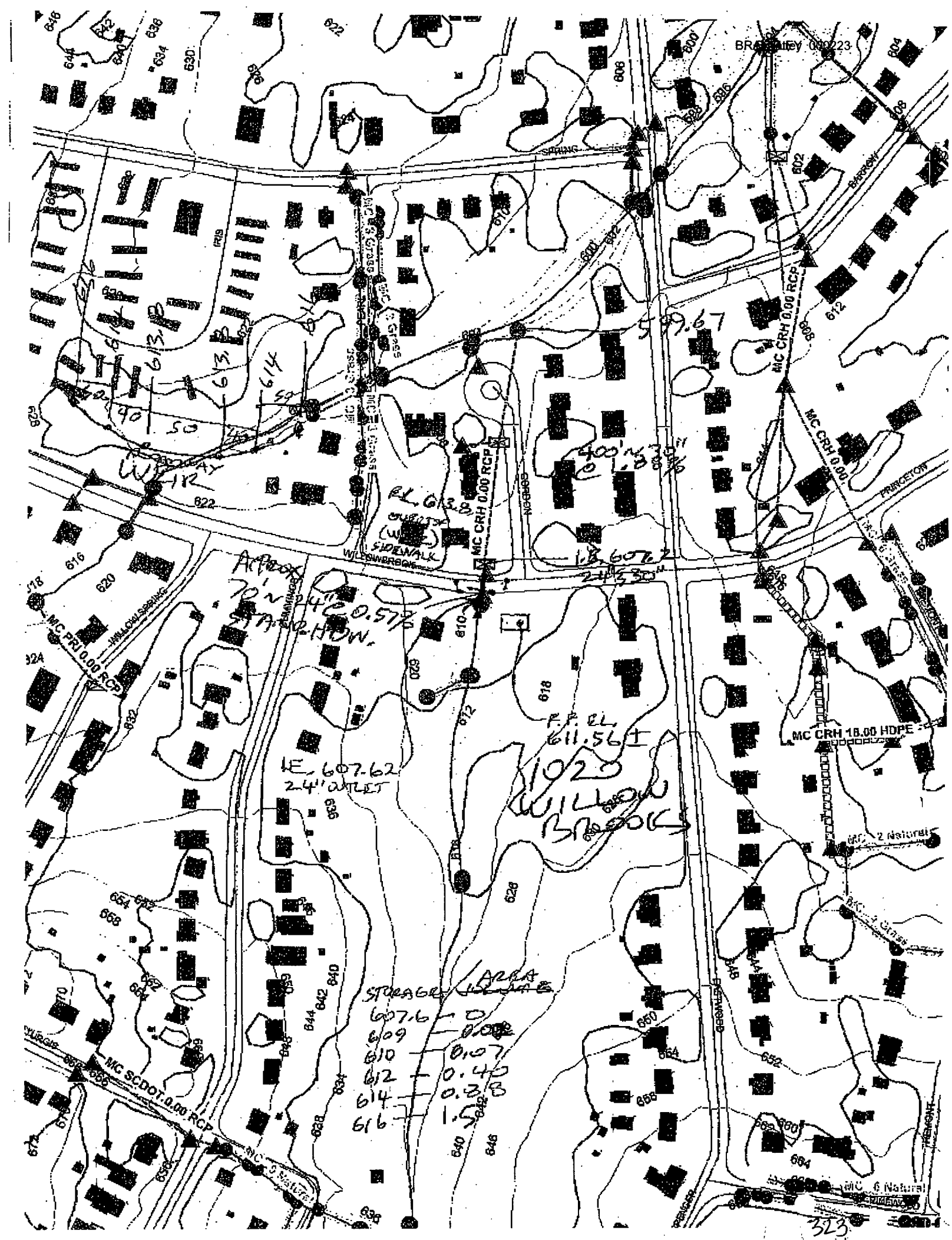
Replace existing pipe system with aprox. 470' of 54" pipe at 1% grade
(lower I.E. to improve hydraulic condition) or
- Raise residence F.F. elevation to a minimum of 1' above roadway relief
elevation

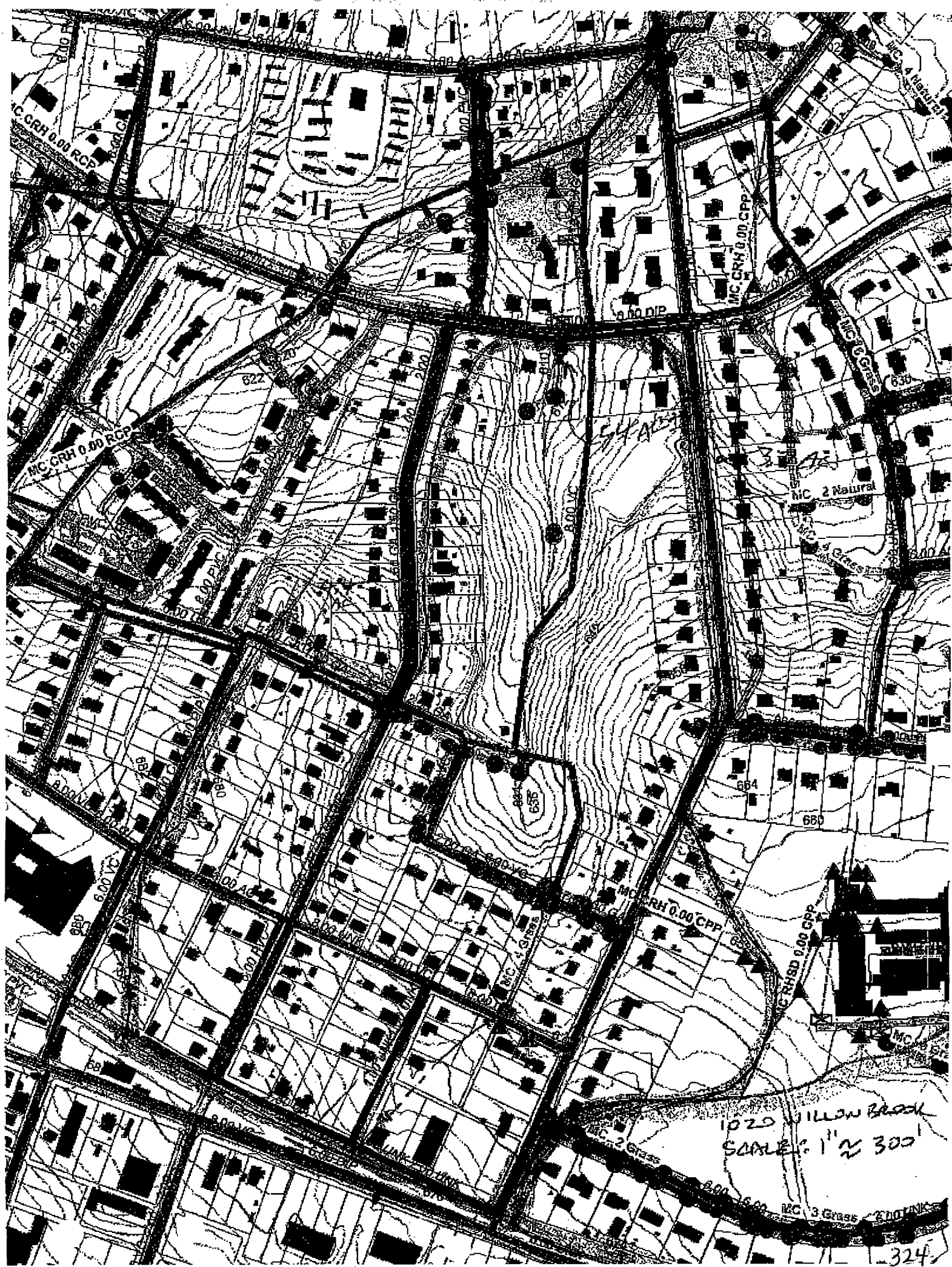
Supporting Calculations & Data:

[attachment "1020 Willowbrook.pdf" deleted by Jimmy Bagley/Rock-Hill]

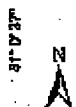
Please let me know if you need any additional information.

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

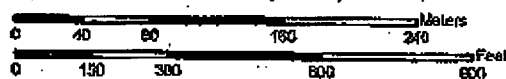




Hydrologic Soil Group—York County, South Carolina
(1020 Willowbrook)



Map Scale: 1:4,210 if printed on A size (8.5" x 11") sheet



Hydrologic Soil Group—York County, South Carolina
(1020 Willowbrook)

MAP LEGEND

Area of Interest (AOI)

 Area of Interest (AOI)

Soils

 Soil Map Units

Soil Ratings

-  A
-  AO
-  B
-  B/D
-  C
-  C/D
-  D
-  Not rated or not available

Political Features

 Cities

Water Features

 Oceans

 Streams and Canals

Transportation

 Roads

 Interstate Highways

 US Routes

 Major Roads

 Local Roads

MAP INFORMATION

Map Scale: 1:4,210 if printed on A size (8.5" x 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:15,840.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
Coordinate System: UTM Zone 17N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: York County, South Carolina
Survey Area Data: Version 8, Jan 8, 2009

Date(s) aerial images were photographed: 7/10/2008

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

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Hydrologic Soil Group

172 AC - WOODS POOR CONDITIONS
42 AC - 1/4 - 1/3 AC RAS VOBNT, L-2

Hydrologic Soil Group—Summary by Map Unit—York County, South Carolina				
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
CcB1	Cecil clay loam, 2 to 6 percent slopes, severely eroded	B	34.3	62.6%
CdB2	Cecil sandy loam, 2 to 6 percent slopes, eroded	B	18.5	33.9%
FeB2	Enon sandy loam, 2 to 6 percent slopes, eroded	C	1.9	3.4%
IdB2	Indell loam, 2 to 6 percent slopes, eroded	C/D	0.0	0.1%
Totals for Area of Interest			54.7	100.0%

Description

Hydrologic soil groups are based on estimates of runoff potential. Soils are assigned to one of four groups according to the rate of water infiltration when the soils are not protected by vegetation, are thoroughly wet, and receive precipitation from long-duration storms.

The soils in the United States are assigned to four groups (A, B, C, and D) and three dual classes (A/D, B/D, and C/D). The groups are defined as follows:

Group A. Soils having a high infiltration rate (low runoff potential) when thoroughly wet. These consist mainly of deep, well drained to excessively drained sands or gravelly sands. These soils have a high rate of water transmission.

Group B. Soils having a moderate infiltration rate when thoroughly wet. These consist chiefly of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C. Soils having a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils of moderately fine texture or fine texture. These soils have a slow rate of water transmission.

Group D. Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

If a soil is assigned to a dual hydrologic group (A/D, B/D, or C/D), the first letter is for drained areas and the second is for undrained areas. Only the soils that in their natural condition are in group D are assigned to dual classes.



Rating Options

Aggregation Method: Dominant Condition

Component Percent Cutoff: None Specified

Tie-break Rule: Lower

1020 WILLOWBROOK DRAINAGE STUDY RATIONAL METHOD

WATERSHED AREA $\approx$ 54 AC.

"C" FACTOR $\approx$ 0.45

$T_c = 18$ MIN (FROM TR-55)

$I_2 = 3.8$ $I_{10} = 4.9$ $I_{25} = 5.6$ $I_{100} = 6.8$

$Q_2 = 0.45(3.8)54 = 92$ CFS

$Q_{10} = 0.45(4.9)54 = 119$ CFS

$Q_{25} = 0.45(5.6)54 = 136$ CFS

$Q_{100} = 0.45(6.8)54 = 165$ CFS

HOUSE P.F. ELEV. $\approx$ 611.56

24" I.E. $\approx$ 607.62

ROAD OVERTOP $\approx$ 613.8

HYDRAULIC GRADE Δ $611.56 - 607.62 = 3.94'$

HW/D FOR EXISTING CONDITIONS EXCEEDS ROAD
OVERTOPPING ELEV. FOR 2-YR STORM

- IF AVAILABLE HW IS 8', A PIPE DIA. OF 48" WOULD SUFFICE
- IF 6.5' HW, A DIA. OF 54"

SUMMARY: RATIONAL METHOD COMPARES
FAVORABLY WITH SCS

Type.... Master Network Summary

Page 2.01

Name.... Watershed

File.... C:\Documents and Settings\user\My Documents\Fond Pack\1020 Willowbrook.ppw

MASTER DESIGN STORM SUMMARY

EX 24th

Network Storm Collection: CRH-6hr

Return Event	Total Depth in	Rainfall Type	BNF ID
Pre 2	2.5300	Synthetic Curve	TypeII-6hr
Pre 10	3.6500	Synthetic Curve	TypeII-6hr
Pre 25	4.3600	Synthetic Curve	TypeII-6hr
Pre100	5.5300	Synthetic Curve	TypeII-6hr

MASTER NETWORK SUMMARY
SCS Unit Hydrograph Method

(*Node=Outfall; +Node=Diversion;)

(Trun= HYG Truncation; Blank=None; L=Left; R=Rt; LR=Left&Rt)

Node ID	Type	Return Event	HYG Vol ac-ft	Trun	Qpeak hrs	Qpeak cfs	Max WSEL ft	Max Pond Storage ac-ft
54 AC WATERSHED	AREA	2	2.113		3.3500	30.94		
54 AC WATERSHED	AREA	10	4.987		3.3000	80.72		
54 AC WATERSHED	AREA	25	7.088		3.3000	118.03		
54 AC WATERSHED	AREA	100	10.967		3.3000	186.03		
8AC WILLOWBRK	AREA	2	.680		3.2000	13.87		
8AC WILLOWBRK	AREA	10	1.277		3.2000	26.38		
8AC WILLOWBRK	AREA	25	1.676		3.2000	34.56		
8AC WILLOWBRK	AREA	100	2.372		3.2000	48.52		
JUNC 10	JCT	2	2.793		3.3000	32.11		
JUNC 10	JCT	10	6.264		3.2500	54.43		
JUNC 10	JCT	25	8.765		3.5000	92.29		
JUNC 10	JCT	100	13.339		3.3500	204.75		

S/N:

Bentley PondPack (10.01.04.00)

9:33 AM

Bentley Systems, Inc.

12/31/2009

Type.... Master Network Summary

Page 2.02

Name.... Waterbed

File.... C:\Documents and Settings\user\My Documents\Pond Pack\1020 Willowbrook.ppw

MASTER NETWORK SUMMARY
SCS Unit Hydrograph Method

(*Node=Outfall; +Node=Diversion;)
(Trun= HYG Truncation: Blank=None; L=Left; R=Rt; LR=Left&Rt)

Node ID	Return Type Event	HYG Vol ac-ft	Trun	Qpeak hrs	Qpeak cfs	Max WSEL ft	Max Pond Storage ac-ft
NAT-STORAGE	IN POND 2	2.113		3.3500	30.94		
NAT-STORAGE	IN POND 10	4.987		3.3000	80.72		
NAT-STORAGE	IN POND 25	7.088		3.3000	118.03		
NAT-STORAGE	IN POND 100	10.967		3.3000	186.03		
NAT-STORAGE	OUT POND 2	2.113		3.5000	24.79	610.91	.165
NAT-STORAGE	OUT POND 10	4.987		3.6500	37.98	613.36	1.219
NAT-STORAGE	OUT POND 25	7.088		3.5000	81.65	614.08	1.794
NAT-STORAGE	OUT POND 100	10.967		3.3500	175.73	614.34	2.041
*OUT 20	JCT 2	2.793		3.3500	32.05		
*OUT 20	JCT 10	6.486		3.2500	74.50		
*OUT 20	JCT 25	9.019	R	3.1500	74.50		
*OUT 20	JCT 100	13.631		3.1000	74.50		

ROAD OVERTOPPING ELEV. $\approx$ 613.8
HOUSE F.F. ELEV. $\approx$ 611.56
24" CULVERT I.E. $\approx$ 607.62
 Δ ELEV. BETWEEN
HOUSE F.F. & PIPE I.E. = 3.94'

S/N:

Bentley PondPack (10.01.04.00)

9:33 AM

Bentley Systems, Inc.

12/31/2009

331

Type.... Master Network Summary

Page 2.01

Name.... Watershed

File.... C:\Documents and Settings\user\My Documents\Pond Pack\1020 Willowbrook-Post2.ppw

MASTER DESIGN STORM SUMMARY

PROP. 72"
SET AT EXIST. I.E.
(COVER CONFLICT)

Network Storm Collection: CRH-6hr

Return Event	Total Depth in	Rainfall Type	RNF ID
Prs 2	2.5300	Synthetic Curve	TypeII-6hr
Prs 10	3.6600	Synthetic Curve	TypeII-6hr
Prs 25	4.3600	Synthetic Curve	TypeII-6hr
Prs100	5.5300	Synthetic Curve	TypeII-6hr

MASTER NETWORK SUMMARY
SCS Unit Hydrograph Method

(*Node=Outfall; +Node=Diversion;)

(Trun= HYG Truncation; Blank=None; L=Left; R=Rt; LR=Left&Rt)

Node ID	Type	Return Event	HYG Vol ac-ft	Trun	Qpeak hrs	Qpeak cfs	Max WSEL ft	Max Pond Storage ac-ft
54 AC WATERSHED	AREA	2	2.113		3.3500	30.94		
54 AC WATERSHED	AREA	10	4.987		3.3000	80.72		
54 AC WATERSHED	AREA	25	7.088		3.3000	118.03		
54 AC WATERSHED	AREA	100	10.967		3.3000	186.03		
8AC WILLOWBRK	AREA	2	.680		3.2000	13.87		
8AC WILLOWBRK	AREA	10	1.277		3.2000	26.38		
8AC WILLOWBRK	AREA	25	1.676		3.2000	34.56		
8AC WILLOWBRK	AREA	100	2.372		3.2000	48.52		
JUNC 10	JCT	2	2.793		3.3500	39.47		
JUNC 10	JCT	10	6.260		3.3000	97.83		
JUNC 10	JCT	25	8.765		3.3500	131.52		
JUNC 10	JCT	100	13.339		3.3500	192.46		

S/N:

Bentley PondPack (10.01.04.00)

9:58 AM

Bentley Systems, Inc.

12/31/2009

332

Type.... Master Network Summary

Page 2.02

Name.... Watershed

File.... C:\Documents and Settings\user\My Documents\Pond Pack\1020 Willowbrook-Post2.ppw

MASTER NETWORK SUMMARY
SCS Unit Hydrograph Method

(*Node=Outfall; +Node=Diversion;)
(Trun= HYG Truncation: Blank=None; L=Left; R=Right; LR=Left&Right)

Node ID	Type	Return Event	HYG Vol ac-ft	Trun	Qpeak cfs	Qpeak hrs	Max WBEL ft	Max Pond Storage ac-ft
NAT-STORAGE	IN POND	2	2.113		3.3500	30.94		
NAT-STORAGE	IN POND	10	4.987		3.3000	80.72		
NAT-STORAGE	IN POND	25	7.088		3.3000	118.03		
NAT-STORAGE	IN POND	100	10.967		3.3000	186.03		
NAT-STORAGE	OUT POND	2	2.113		3.4000	30.33	609.57	.027
NAT-STORAGE	OUT POND	10	4.987		3.3500	80.21	610.91	.165
NAT-STORAGE	OUT POND	25	7.088		3.3500	110.32	611.56	.322
NAT-STORAGE	OUT POND	100	10.967		3.4000	165.24	612.61	.759
*OUT 20	JCT	2	2.793		3.3500	38.99		
*OUT 20	JCT	10	6.264		3.3500	97.30		
*OUT 20	JCT	25	8.765		3.3500	131.31		
*OUT 20	JCT	100	13.339		3.3500	191.29		

72" Ø PIPE SET AT EXIST. I.E.
COVER NOT SUFFICIENT
250X12 STORM EQUALS F.F. ELEV.

Type.... Master Network Summary

Page 2.01

Name.... Watershed

File.... C:\Documents and Settings\user\My Documents\Pond Pack\1020 Willowbrook-Post3.ppw

MASTER DESIGN STORM SUMMARY

PROP. 54"
 @ 1% FROM
 CREEK OUTLET

Network Storm Collection: CRH-6hr

Return Event	Total Depth in	Rainfall Type	RNF ID
Pre 2	2.5300	Synthetic Curve	TypeII-6hr
Pre 10	3.6600	Synthetic Curve	TypeII-6hr
Pre 25	4.3600	Synthetic Curve	TypeII-6hr
Pre100	5.5300	Synthetic Curve	TypeII-6hr

MASTER NETWORK SUMMARY
 SCS Unit Hydrograph Method

(*Node-Outfall; +Node-Diversion;)
 (Trun= HYG Truncation: Blank=None; L=Left; R=Right; LR=Left&Right)

Node ID	Type	Return Event	HYG Vol ac-ft	Trun	Qpeak hrs	Qpeak cfs	Max WSEL ft	Max Pond Storage ac-ft
54 AC WATERSHED	AREA	2	2.113		3.3500	30.94		
54 AC WATERSHED	AREA	10	4.987		3.3000	80.72		
54 AC WATERSHED	AREA	25	7.088		3.3000	118.03		
54 AC WATERSHED	AREA	100	10.967		3.3000	186.03		
NAT-STORAGE	IN POND	2	2.113		3.3500	30.94		
NAT-STORAGE	IN POND	10	4.987		3.3000	80.72		
NAT-STORAGE	IN POND	25	7.088		3.3000	118.03		
NAT-STORAGE	IN POND	100	10.967		3.3000	186.03		
NAT-STORAGE	OUT POND	2	2.113		3.4000	30.33	606.51	.003
NAT-STORAGE	OUT POND	10	4.987		3.3500	80.21	608.10	.016
NAT-STORAGE	OUT POND	25	7.088		3.3500	116.34	609.08	.033
NAT-STORAGE	OUT POND	100	10.967		3.3500	181.90	611.50	.325

S/N:

Bentley PondPack (10.01.04.00)

10:25 AM

Bentley Systems, Inc.

12/31/2009

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Type.... Master Network Summary

Page 2.02

Name.... Watershed

File.... C:\Documents and Settings\user\My Documents\Pond Pack\1020 Willowbrook-Post3.ppw

MASTER NETWORK SUMMARY
SCS Unit Hydrograph Method

(*Node=Outfall; +Node=Diversion;)

(Trun= NYC Truncation: Blank=None; L=Left; R=Right; LR=Left&Right)

Node ID	Type	Return Event	NYC Vol ac-ft	Trun	Qpeak hra	Qpeak cfs	Max WSEL ft	Max Pond Storage ac-ft
*OUT 20	JCT	2	2.113		3.4000	30.33		
*OUT 20	JCT	10	4.987		3.3500	60.21		
*OUT 20	JCT	25	7.088		3.3500	116.34		
*OUT 20	JCT	100	10.967		3.3500	181.90		

S/N:

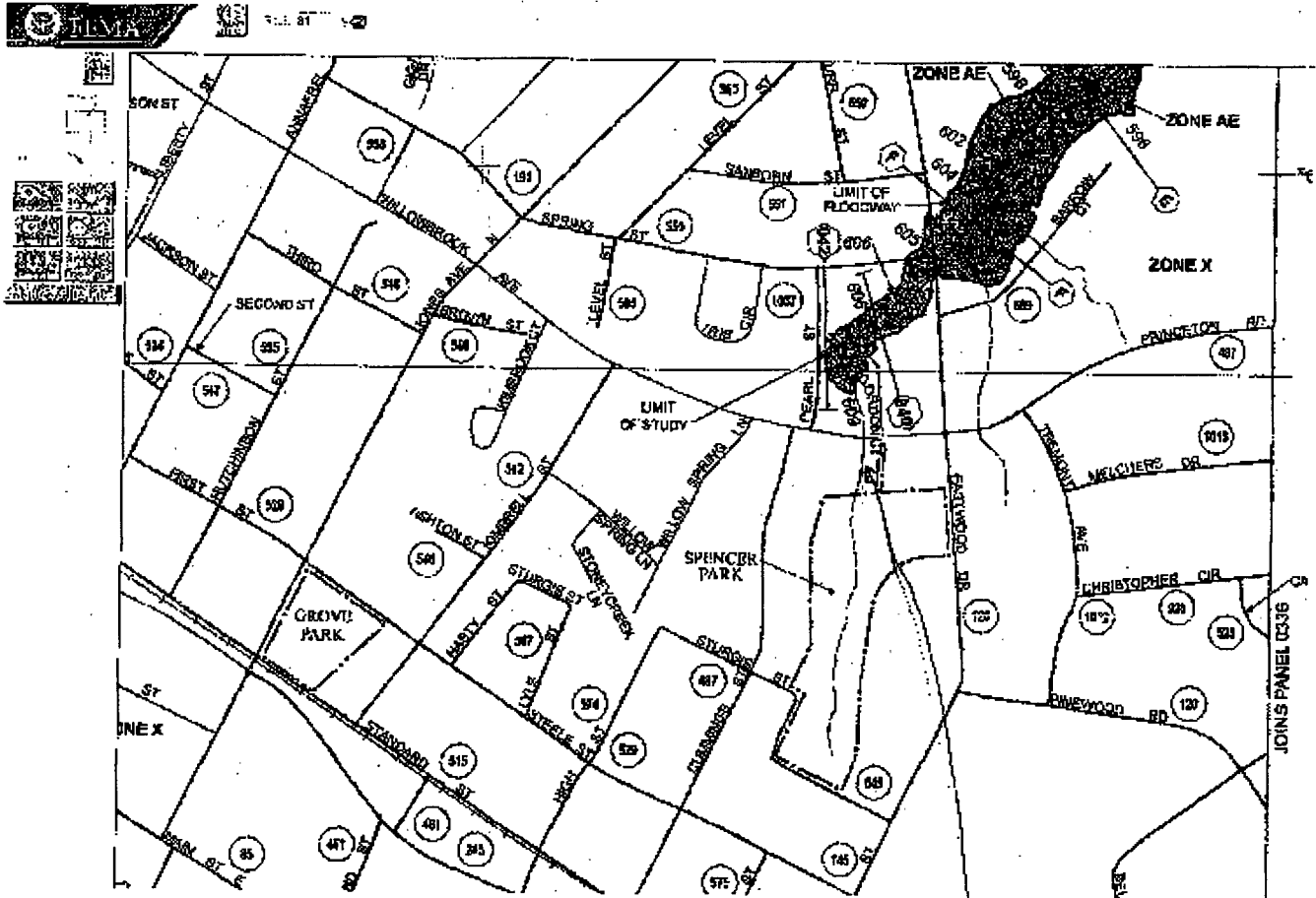
Bentley PondPack (10.01.04.00)

10:25 AM

Bentley Systems, Inc.

12/31/2009

18



336

City of Rock Hill

Risk Management Division
P.O. Box 11706
Rock Hill, S.C. 29731-1706
(803) 438-7022/829-7025

CITY OF ROCK HILL CLAIMANTS REPORTING FORM

Please type or print, except where signature is indicated. If this claim is being submitted for damage to a registered vehicle, the registered owner(s) of the vehicle must be the claimant(s). In the case of personal injury, or non-vehicular claims, documentation of losses will be required. In addition to this form, please submit any relevant repair estimates, paid invoices, photos, documents, drawings, etc. All applicable blanks on this form must be completed.

DATE: 11/4/2011	CLAIMANT(S) NAME AND ADDRESS: Nadine + Thomas Brantley 9501 Gypsum Ridge Dr Charlotte NC 29277		TELEPHONE #: H (704) 541-1212 C (704) 779-2357	
DATE OF INCIDENT: on or about 8/13/2011	TIME OF INCIDENT: unknown ☐ AM ☐ PM	ADDRESS WHERE INCIDENT OCCURRED: 1120 Willowbrook Ave Rock Hill SC 29731		
COUNTY: York	WAS THIS INCIDENT REPORTED TO LAW ENFORCEMENT AGENCY? ☐ YES ☒ NO		IF SO, LIST AGENCY:	
PROPERTY DAMAGED/DESCRIBE INJURY: House and lot inundated		ESTIMATED COST TO REPAIR/MEDICAL COSTS: unknown		
IF PROPERTY IS A VEHICLE COMPLETE THE FOLLOWING: MAKE, MODEL, AND YEAR OF VEHICLE: N/A		TAG NUMBER:	STATE:	ESTIMATED DAMAGE:
VEHICLE INSURANCE COMPANY:		POLICY NUMBER:		
ARE YOU THE LEGAL OWNER OF VEHICLE LISTED ABOVE? ☐ YES ☐ NO		OWNERS ADDRESS:		
IF NOT, PROVIDE LEGAL OWNERS NAME:		OWNERS TELEPHONE NUMBER:		
		H C W		
PLEASE GIVE A DETAILED DESCRIPTION OF INCIDENT, INCLUDING CAUSE, TYPE OF DAMAGE/INJURY: Heavy rain washed debris from Spencer Park into culvert causing water to back up into structure see attached documents dated 8/24 + 8/29/2011 see photos and via email				
PLEASE EXPLAIN WHY YOU FEEL THE CITY IS LEGALLY LIABLE: see attached documents dated August 24 and Aug 29 2011				
WITNESS TO INCIDENT: (NAME, ADDRESS, NUMBER) none				
CLAIMANTS SIGNATURE Nadine Brantley Thomas Brantley			DATE 11/4/2011	

Estimate**Kenneth Bumgardner**

General Contractor

5245 Auburndale Road
Charlotte, North Carolina

28205

Phone (704)535-5341
Cell Phone (704)634-7669Email Address
Web Site Address**BILL TO: Nadine Brantley**
1020 Willowbrook Ave
Rock Hill SC 29730

Quotation Date: 10/31/2011

Quotation Number: 653

Phone 704 779-2357

Valid Until:

Description	Supplies / Parts	Amount
Repair drywall as needed 2 ft. above floor level. Install new baseboards and shoe moldings as needed. Remove and reinstall water heater for floor install in laundry. Replace all carpet and vinyl flooring with similar product. Remove and reinstall kitchen cabinets as needed. Paint all interior walls and trim to match existing.		
Labor and materials:		\$10,425.00
	Subtotal	\$10,425.00
	Shipping	\$0.00
	Total Tax	\$0.00
	TOTAL	\$10,425.00

Comments / Notes

This job will require a 40% down payment to cover the cost of materials, equipment, etc...with the remainder due upon project completion. This project can be expected to take aprox. 2 weeks from start to completion not including mold remediation.

Thank You for Your Business!



An ESOP Company

Property & Casualty Division

1.800.421.9139 • 864.240.5800

F 864.233.2486

November 7, 2011

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

RE: Our Insured: City of Rock Hill
 Date of Loss: On or about August 13, 2011
 Our File No.: 001-1100659-001

Dear Mrs. Brantley:

Hewitt Coleman is the third party administrator who handles the self-insured liability claims for the City of Rock Hill. In that capacity, we have received your claim in which you have claimed damages to the house located at 1020 Willowbrook Avenue in Rock Hill, South Carolina for the incident that occurred on or about August 13, 2011.

Please accept this letter acknowledging receipt of your claim for compensation on behalf of yourself for the expenses and damages you have claimed for the house located at 1020 Willowbrook Avenue in Rock Hill, South Carolina. I have reviewed all of the documentation that was provided to our office. In addition I have discussed the claim with the appropriate representatives from the City of Rock Hill. Based on the review of the facts and law, we are denying the claim because there was no negligence by the City. The City's duty to provide compensatory damages arising only when there is a clear showing of gross negligence and that showing has not occurred.

In this instance, the damages that you incurred were due to the water that entered onto your property after a sudden, heavy rain in the City of Rock Hill. The City of Rock Hill is not able to control the amount of rain that falls and cannot be responsible for what occurs naturally during a heavy rain storm. There is no standard of care requiring the City to prevent rain from entering onto your property or into your house and there is no evidence that the City caused the water to enter onto your property. We regret that the incident did occur but the occurrence does not by itself impose liability upon the City, absent a showing of negligence to the degree required by the law. In this case we find no negligence by the City.

Top Line Performance Bottom Line Results

Under the South Carolina Tort Claims Act the City of Rock Hill was not negligent and does not have the responsibility for the clean up or the damages associated with this claim. Therefore, on behalf of the City of Rock Hill I am denying any and all claims that may be associated with this incident.

If you have any further questions, you may contact me at 1-800-421-9139, ext. 862, Monday - Friday, 8:00 am - 4:30 pm.

Sincerely,


Ann Greer
Liability Claims Adjuster

Cc: City of Rock Hill

THIS IS NOT A TAX BILL

NOTICE OF CLASSIFICATION APPRAISAL & ASSESSMENT OF REAL ESTATE 2011 BRANTLEY TAX YEAR

ASSESSMENT RATIO CLASSIFICATION	ASSESSMENT RATIO	TOTAL APPRAISED VALUE	ASSESSMENT RATIO	TOTAL ASSESSMENT
OWNER OCCUPIED RESIDENTIAL				
OTHER PROPERTY	1	94,500	X	5,670
MARKET VALUE - AGRICULTURAL				
USE VALUE - AGRICULTURAL				
TOTAL ASSESSED VALUE				5,670

TAX MAP NUMBER
628-15-01-018
CURRENT MARKET APPRAISAL
94,500
CURRENT TAXABLE APPRAISAL
94,500



TI PI **AUTO 5-DIGIT 28277 R40
BRANTLEY NADINE
9501 GREYSON RIDGE DRIVE
CHARLOTTE N C 28277

was 99,500 5970.00
actual tax bill \$2294.87

York County
South Carolina
ASSESSOR'S OFFICE

YORK COUNTY TAX ASSESSOR
P.O. BOX 57
YORK, S.C. 29745
TELEPHONE 803-684-8526

PROPERTY LOCATION - SUBDIVISION - LEGAL DESCRIPTION
LOT A .386 AC CUMMINGS ST

IF YOU DISAGREE WITH THE APPRAISAL AND ASSESSMENT, YOU MUST FILE WRITTEN OBJECTION WITH THE ASSESSOR WITHIN 90 DAYS OR BEFORE 08/09/2011

TAX DISTRICT	DATE OF NOTICE
3	08/09/11

THIS IS NOT A TAX BILL

NOTICE OF CLASSIFICATION APPRAISAL & ASSESSMENT OF REAL ESTATE

OWNER OCCUPIED RESIDENTIAL					
OTHER PROPERTY					
MARKET VALUE - AGRICULTURAL					
USE VALUE - AGRICULTURAL					
TOTAL ASSESSED VALUE					

YORK COUNTY
SOUTH CAROLINA
TELEPHONE 803-684-8526

PROPERTY LOCATION - SUBDIVISION - LEGAL DESCRIPTION

IF YOU DISAGREE WITH THIS APPRAISAL AND ASSESSMENT, YOU MUST FILE WRITTEN OBJECTION WITH THE ASSESSOR WITHIN 90 DAYS OR BEFORE 08/09/2011

EXPLANATION OF NOTICE

1. DATE NOTICE IS PRINTED FOR MAILING.
2. THE TAX DISTRICT WHEREIN THE PROPERTY IS LOCATED.
3. NAME OF OWNER AS OF DECEMBER 31 AS REQUIRED BY LAW.
4. THE ACTUAL APPRAISED VALUE (MARKET VALUE OR AGRICULTURAL USE VALUE IF APPLICABLE) AS OF DECEMBER 31.
5. THE CURRENT TAXABLE APPRAISED VALUE (THE VALUE USED FOR TAX CALCULATION).
6. ASSESSMENT RATIO AS PRESCRIBED BY LAW.
7. ASSESSMENT WHICH WILL BE USED BY TAXING AUTHORITIES WHEN LEVYING TAXES.

ASSESSMENT X MILLAGE RATE = TAX

IF YOU WISH TO APPEAL THE ASSESSMENT ON YOUR PROPERTY

If you disagree with the assessor's appraisal of your property and wish to appeal, state law provides the following procedure in Section 12-60-2510 thru 2560 of the 1976 Code of Laws, as amended:

1. Within 90 days of the date of the assessment, you must file written objection with the assessor.
2. Within 30 days of receipt of your written objection, or as soon after that as practical, the assessor must schedule a conference with you to discuss your objection.
3. At the conference, you may request that the assessor have a field review conducted on your appraisal/assessment. The assessor, in turn, will request that you provide additional data to help estimate the value of your property.
4. After the field review has been completed, the assessor will notify you in writing of the findings. If you still disagree with the assessment, you have 30 days to file a written notice of appeal to the County Board of Assessment Appeals, a panel of private citizens who serve as the final local authority in such appeals. If you disagree with the County Board of Assessment Appeals decision, you may appeal to the Administrative Law Judge.
5. State law requires that you must pay 80% of tax generated on the proposed assessment if it appears that the appeal will not be settled by December 31 of the tax year in question.

THIS IS A NOTICE OF CLASSIFICATION APPRAISAL AND ASSESSMENT OF REAL ESTATE

Section 12-43-220 of the 1976 Code of Laws as amended provides for the classification and uniform assessment ratios of property. The property described herein has been appraised and assessed at the appropriate assessment ratio by the assessor.

Parcel Number: 6281501018

Lot #: A

York County Government, SC Stormwater Map & Property Report

Report generated 1/29/2013 9:02:37 AM



Taxlot in the center

Property Information

Parcel Number:	6281501018	Land Value:	\$7,000
Total Lots:	1	Sales Price:	\$81,352
Total Acres:	0	Sales Date:	7 / 2 / 2010
Deed Book/Page:	11478 / 135	School District:	3
Plat Book/Page:	B228 / 1	Municipality:	RH
Owner(s):	BRANTLEY NADINE		
Mailing Address:	9501 GREYSON RIDGE DRIVE, CHARLOTTE N C, 28277		
Previous Grantor:	WILLIAMS TODD D		
Property Location:	1020 WILLOWBROOK AVE.		

Assessment

Total Assessed Value:	\$420	Total Market Value:	\$7,000
Total Tax Value:	\$7,000	Building Value:	\$0

Buildings Without Land

Site Address(es)

Tax ID	Owner	Mailing Address	Site Address	Type	Unit	Census Tract	County Council	School District	Water District	Electric District	Fire District	County Zoning	Road Owner
			1020 WILLOWBROOK AV			060200	4	3	ROCKHILL	Rock Hill			

Disclaimer: While every effort is made to keep information provided over the internet accurate and up-to-date, York County does not certify the authenticity or accuracy of such information. No warranties, express or implied, are provided for the records and/or mapping data herein, or for their use or interpretation by the User.

In the early 1990's, City Council recognized the need to address failing and undersized storm water systems. In 1995, City Council appointed a citizen Task Force group to assess Rock Hill's stormwater problems. As a result of this task force, City Council established the Stormwater Division to improve storm water systems in 1996. The citizen Task Force consist of city staff, citizens and business people.

The Stormwater Advisory Board consists of 5 members (2 city staff and 3 citizens) and meets every two months. The Board's purpose is:

- to discuss existing drainage problems in the city
- to recommend to City Council an annual work program to set priorities and schedules for projects
- to approve all projects over \$25,000

Fee Schedule

Rates for stormwater fees are divided into three categories:

Residential

- <10,000 SF parcel \$2.37 per month
- >10,000 SF parcel \$2.88 per month

Non-Residential and Undeveloped

- Based on amount of impervious area - (ex. concrete, gravel, rooftop, asphalt, and water surface)
- Outside City Limits
- No Charge

The funds that are generated by the Stormwater Division is set aside solely for maintenance & improvements of the drainage system.

Reporting Stormwater Issues

To report a storm water issue, please call .

Project Prioritization

Maintenance and improvements include repair to ditches, culverts and pipes in targeted areas. Ranking of typical problems:

1. Major structure damage to dwelling and public facility, sinkhole in roadway, road and dwelling flooding.
Example: Road Flooding
2. Sinkhole on private property, major channel erosion/scour and minor flooding and major pipe blockage.
Example: Major Channel Erosion/Scour
3. Channel erosion/scour, re-cut ditch, major ditch blockage and minor pipe blockage.
Example: Channel Erosion
4. Minor channel erosion, debris removal and ditch maintenance.
Example: Minor Ditch Erosion

Project Prioritization Criteria:

Imminent Danger to Life: Projects that prevent major flooding to bridges or roadways or prevent flooding that cause homes or businesses to be evacuated.

Health Hazard: Projects that prevent sewage infiltration into creeks and streams caused by flooding. This sewer infiltration can carry disease to the public.

Infrastructure Damage: Projects that correct any damaged infrastructure related to storm water and drainage.

Major Flooding: Projects that prevent flooding that stands in streets or neighborhoods for a long period of time.

Major Erosion: Projects that correct drainage problems causing major erosion to property.

Exposure: Projects that correct flooding or drainage problems over a large number of acres or that impact a large number of structures or persons.

Unique Case: Projects that provide a solution to an unforeseen storm water problem that may arise unexpectedly.

System-wide Projects: Projects that improve problems system wide rather than a project that affects one specific property.

1,000 Rain Gardens or York County

Municipal Separate Stormwater Sewer Systems (MS4)

Capital Improvement Projects List



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

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

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



Address

1020 WILLOWE

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

Zoom to Location

Address: 1003 EASTWOOD DR
ROCK HILL
Jurisdiction: City of Rock Hill
(INSIDE City Limits)

Do you have any questions or issues with this map?

828-960-1001

tel: 803-329-8723

Current Owner:

email:

MORENO JOSE

gis@cityofrockhill.com

PERO & ASSOC

Previous Owner:

FEINSTER

Contractors do not

warrant the accuracy

of the displayed

Parcel: 0.31688

Taxable Value of

Parcel: \$5000

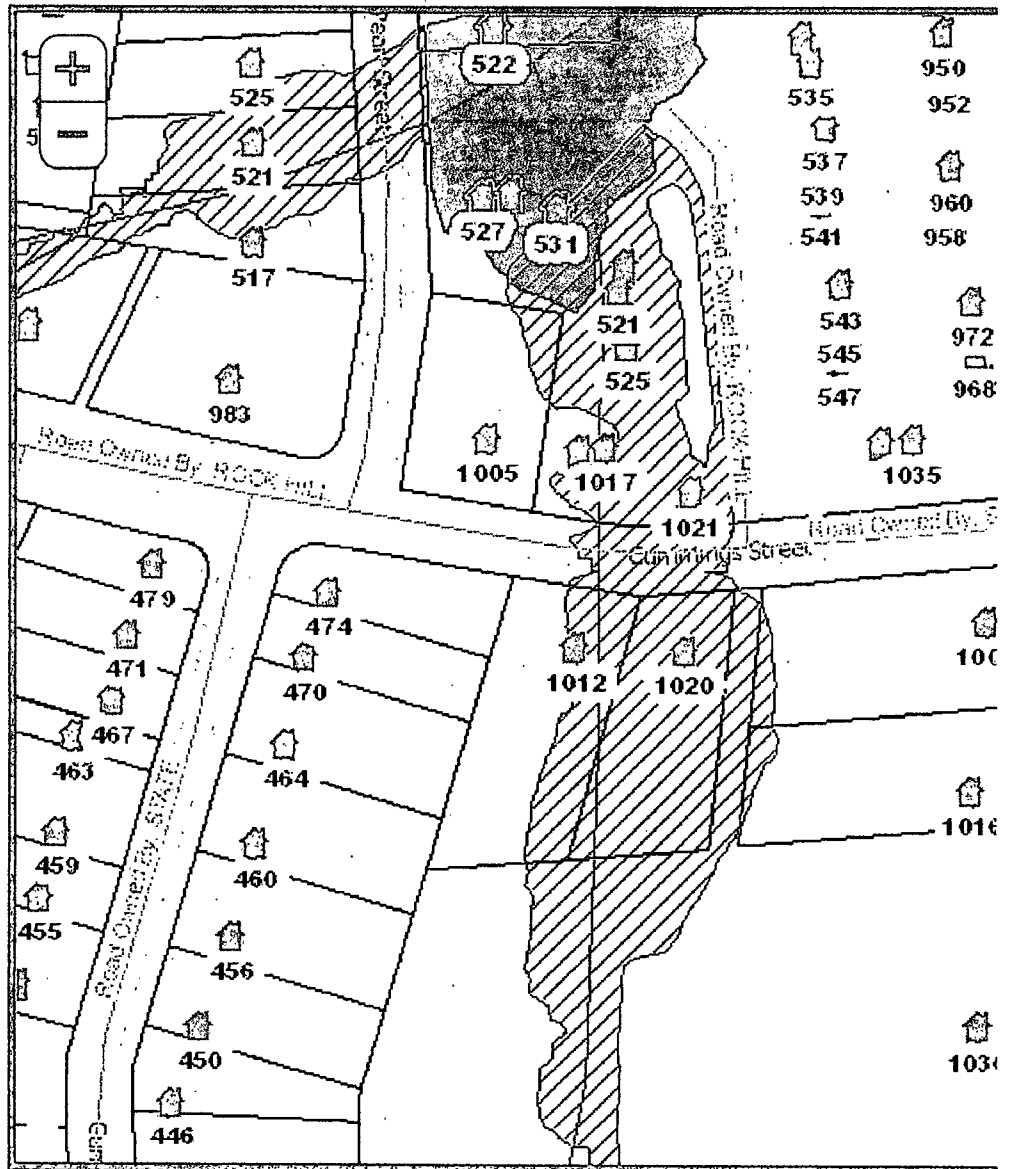
Any 100 Year Flood

merchandise or

fitness for a particular

purpose?

Plain? No



CERTIFICATE OF APPELLANT

I, Nadine Brantley, ProSe, certify that the Amended Record on Appeal contains material proposed to be included by any of the parties and not other materials.

Nadine Brantley

Nadine Brantley, ProSe
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Charlotte, North Carolina 28277
704-779-2357

RECEIVED
MAR 15 2016
SC Court of Appeals