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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

S. Jackson Kimball, Special Circuit Court Judge

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SC Court of Appeals

Case No. 2015-CP-46-002460

Morningstar Fellowship Church,

v.

York County, South Carolina,

Appellant/Respondent

Respondent/Appellant

RECORD ON APPEAL
Volume III

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Deposition of Derrick Boyte

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

MORNINGSTAR FELLOWSHIP)
CHURCH,)

)
) PLAINTIFF,)

-VS-) CA NO. 2013-CP-46-00246

)
YORK COUNTY, SOUTH)
CAROLINA,)

)
) DEFENDANTS.)

_____)

DEPOSITION OF DERRICK E. BOYTE
COLUMBIA, SOUTH CAROLINA
MARCH 20, 2014

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

DALLAS REPORTING
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

1 They were actually handled as a different project
2 for the overall development of Regent Park. And I
3 do know that Gerald had some -- to do a TIA study
4 and all for traffic analysis for this. I'm not
5 sure exactly what these comments were. I'd have to
6 look through the files to see.

7 Q Do you recall if Gerald was still working for Power
8 Engineering at the time that you met with the
9 client to discuss County roadway comments?

10 A I do not recall. You will have to have Jenni pull
11 the exact dates.

12 Q Was it a surprise to you when Gerald was let go?

13 A Yes, it was.

14 Q Why is that?

15 A Well, because, I mean, it -- Gerald being let go
16 was not -- was nothing to do with Gerald's work.
17 It was the fact that Power Engineering was
18 struggling financially at the time.

19 Q Okay.

20 A We did not have enough work to keep everyone busy.

21 Q And so, when you met with a client to discuss the
22 County roadway comments, do you recall if Gerald
23 was at that meeting?

24 A I do not recall, no.

25 Q Do you recall anything about that meeting on

1 August 25th?

2 A No, sir. I see there were two dates back to back.
3 The first date probably would've been preparing for
4 the meeting and the second would've then been the
5 actual meeting, probably. But I do not recall what
6 the specifics of the meeting was about.

7 Q Do you fill in your own time entries or does
8 somebody else fill it?

9 A I do.

10 Q What do you recall about that meeting?

11 A Off the top of my head, nothing.

12 Q Do you recall if these road comments -- roadway
13 comments related to the Tower Project, the Tower
14 site or to an offsite issue?

15 A I do not know if these specific -- what these
16 specific comments related to. I mean, there were
17 several issues dealing with the roads leading up to
18 the site.

19 Q Who did you meet with, with the client?

20 A I'd have to go back through my e-mails, but I
21 would -- Typically, based on what I remember, it
22 would've probably been Pat Selvey.

23 Q Approximately, how many meetings did you have
24 with Pat Selvey?

25 A Over the years, maybe four.

1 Q Would you typically communicate with him by
2 e-mail?

3 A No, not necessarily, not always; occasionally by
4 e-mail.

5 Q Do you know any reason why Power would not still
6 have e-mails from that period of time?

7 A No, I don't.

8 Q Do you think they would have them stored somewhere?

9 A Yes. I mean, I do know I have my e-mails.

10 Q Okay. Well, I'd ask you to make sure you hold onto
11 those. We may need to look at them.

12 A Yeah.

13 Q And we'll talk with -- I guess we'll need to talk
14 with the manager of this office to see the best way
15 about getting copies of electronic e-mails.

16 A If you talk to the manager, it'll be me that gets
17 them for you.

18 Q Okay. How --

19 A Because I'm the network administrator.

20 Q Then I'm glad you're here. How do we go about
21 getting a disc or a download of any e-mails to or
22 from anybody at Power and anybody at Morningstar?

23 A Well, the request would have to go through the
24 appropriate channels here at the office, and then
25 they would ask me to restore the e-mails.

1 Q Okay.

2 A So, other than myself, the e-mail addresses that
3 you're talking about have been archived, so --

4 Q Is that an involved process or something that's
5 fairly easy to pull up?

6 A It will take several hours to pull up and restore
7 these. I'll have to get our outside IT department
8 to assist me to make sure, because I don't want
9 to put them back on the server permanently.

10 Q Sure. And so you think it might've been Pat Selvey
11 that you met with on these dates?

12 A Very possibly.

13 Q Were you aware, at that point in time, of the
14 status of site plan approval for the project?

15 A No.

16 Q Did you have any knowledge of the status of the
17 site plan approval, at that time?

18 A Based on my e-mails and what I did look through,
19 my first involvement with dealing with this was, I
20 believe, after this, when we were attempting to
21 resolve some billing issues.

22 Q Okay. Tell me what you did to get ready for this
23 deposition.

24 A For this deposition? I roughly glanced through
25 this and glanced through the files, and I just

1 roughly went through my e-mails to see if I had
2 anything of major knowledge.

3 Q Approximately how many e-mails were you able to
4 locate that had anything to do with this project?

5 A Well, I was copied on a lot of stuff. But e-mails
6 directly to me, I'm -- ten, maybe.

7 Q And who else would've been on the e-mails that you
8 got copied on internally?

9 A Some of them would've been Keith -- possibly Keith,
10 possibly Gerald, Joe Hammond, because all three of
11 them were the ones that were actually doing the
12 majority of the work on this project.

13 Q Right. And do you recall who, at Morningstar,
14 would've been copied on e-mails or sent e-mails
15 for -- e-mails received from?

16 A Other than Pat Selvey, that's the only name I
17 recall.

18 Q E-mails to or from the County; do you recall?

19 A Yes, we would typically receive e-mails from the
20 County for the comments. They always e-mailed the
21 comment responses.

22 Q So those would come by e-mail.

23 A Yes.

24 Q All right. On September 3rd of 2009, there's a
25 meeting with the County. What do you recall about

1 that meeting?

2 A I do not recall anything specifically. Does it
3 show up -- Will you tell me what page it shows up?

4 Q Yes, it's right here on the same page, on Page 6.

5 A Oh, I see it. Okay. Meeting with the county.
6 That would've had to have been based on a comment
7 letter we received from them.

8 Q Okay.

9 A But I have no specific knowledge of what was in
10 that letter.

11 Q Do you recall who, at the County, that would've
12 been with?

13 A It probably would've been multiple attendees.

14 Q And so --

15 A Depending on the -- I know there were several
16 people involved in this project, but -- at the
17 County, you know, all the way from Mark Kettlewell
18 to Jennifer. But I can't say, off the top of my
19 head, who was actually in that meeting.

20 Q Okay. We're talking about York County, right?

21 A Right.

22 Q So would it probably have included Mark?

23 A It could have.

24 Q And who else?

25 A Well, Jennifer Culver was the head of the

1 Stormwater Department; so, if there was stormwater
2 questions, you know, she would've been there. But,
3 like I say, I do not know specifically who was
4 there that day.

5 Q Okay.

6 A I'd have to look at the comments.

7 Q Do you recall doing any work on the Morningstar
8 Tower Project after that meeting with the County?

9 A No, sir, I don't.

10 Q And you testified you didn't know whether this was
11 a fixed-fee contract or --

12 A I have not seen the contract.

13 Q And do you ever recall any discussions with anybody
14 about being upside-down on this project or --

15 A At the very end, when we were attempting to get
16 paid for the work, I was involved with -- Since I
17 was the only one in the engineering department left
18 from Charlotte, I did have some e-mail
19 correspondence back and forth trying -- attempting
20 to get paid the final invoices that we had billed.

21 Q And what were the issues y'all were dealing with,
22 at that point in time, trying to get paid?

23 A What type of issues are you referring to?

24 Q What were the subject of the e-mails? I mean,
25 what --

1 A It was just, you know, we have an outstanding
2 invoice, you know, can we receive payment, and why
3 have we not received payment.

4 Q Was there any reason given why payment hadn't been
5 received?

6 A One e-mail was -- The only e-mail that I recall
7 seeing was the fact that they had not received
8 copies of the stamped plans from the County.

9 Q Okay. Was this before or after Gerald was let go?

10 A I don't recall the exact date of when this e-mail
11 was.

12 Q If he was still with Power, he would've been copied
13 on an e-mail like that; wouldn't he?

14 A Not necessarily. When it comes to billing and
15 stuff like that, there was no need to have three or
16 four people in the office dealing with it.

17 Q Do you ever recall talking with Gerald about the
18 fact that Morningstar hadn't received a copy of the
19 stamped plans?

20 A No, I do not.

21 Q What did you do, in response to that e-mail, when
22 you were told that they hadn't received copies of
23 stamped plans?

24 A As I recall, from the e-mail that I wrote back to
25 them, that they would not receive stamped -- copies

1 of the stamped approved plans until the pre-con
2 meeting was held.

3 Q Okay.

4 A And it had not been set up.

5 Q And so that wasn't a concern for you that they
6 hadn't received the stamped plans.

7 A No, the plans, at that point -- My understanding
8 was, at that point, the plans were approved. It's
9 just the County does not give you copies of them
10 until you have the pre-con.

11 Q Okay. Did it appear to you that Morningstar was
12 using the fact that they hadn't received stamped
13 plans as a reason not to pay Power, pay a bill?

14 A Well, that was their first response and they -- As
15 I recall, they did pay, you know, once we had --
16 because, we did have -- I believe we would've
17 received a letter from York County saying the plans
18 are approved, which is not a copy of the plans
19 themselves.

20 Q Would you have received that or would Gerald have
21 received that?

22 A It would've come to the office and been filed.

23 Q Are you aware of such a letter existing?

24 A I have not personally laid eyes on it. I've been
25 told that it exists.

Deposition of Patrick Selvey

1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK CASE NO.:2013-CP-46-00246

MORNINGSTAR FELLOWSHIP,)
CHURCH,)
 Plaintiff,)

vs.)

YORK COUNTY,)
SOUTH CAROLINA,)

Defendants.)

VIDEOTAPED DEPOSITION OF PATRICK SELVEY

WILKESBORO, NORTH CAROLINA

AUGUST 19, 2014

REPORTER: WENDY ALCOCK, RPR

Deposition of Patrick Selvey

14

1 with engineers.

2 Q. And was your job in that process still
3 coordinating?

4 A. It was doing all the construction -- they call
5 it construction document --

6 Q. Yes, sir.

7 A. -- preconstruction analysis.

8 Q. Did you actually perform the analysis, or did
9 you coordinate the work of others who were performing the
10 analysis?

11 A. I didn't perform any of the engineering
12 analysis. We got certified engineers. We flew down a
13 couple of times to the ICC, the International Code Council
14 in Atlanta who sets the international code for all
15 commercial buildings --

16 Q. Yes, sir.

17 A. -- in the whole country. We got advice from
18 them. We flew down with our chief architect and our
19 structural engineers who were doing the analysis, and they
20 presented all the findings and they agreed that the
21 building was very viable and it would be a shame to tear
22 it down. And they were happy to do --

23 MR. FENNELL: Objection, hearsay.

24 A. I mean, they told me that direct. But anyway,
25 sorry.

1 Q. I understand. You're going to hear objections
2 every now and again from Mr. Ballou and from me. The
3 judge will figure that out, so answer the question.

4 A. Okay.

5 Q. Don't assume from the fact that there's an
6 objection that it's something you said.

7 A. Okay.

8 Q. Who else was involved in the process of
9 analyzing the viability of the tower on behalf of
10 MorningStar?

11 A. Stewart Engineering was the chief structural
12 engineering company that did all the analysis. And they
13 did a really thorough on-site analysis. They X-rayed
14 concrete. They did stuff that only structural engineers
15 can do.

16 Q. Yes, sir.

17 A. And we also hired a company to do a soil
18 analysis. And they drilled really deep, took core
19 samples. And we submitted all of that to the ICC engineer
20 because we're not qualified to read those and analyze
21 them, they are. And that was one of the criteria that
22 York County put on us. "Prove to us the building is
23 structurally sound. Then we'll move forward." So we did
24 that.

25 Q. Who else was involved other than Stewart

1 Engineering?

2 A. There was a man -- sorry, these names are six,
3 seven years old.

4 Q. Understood.

5 A. Five years old. Eddie Brown --

6 Q. Yes, sir.

7 A. -- did some cost analysis work for us. Stewart
8 did the structural engineering.

9 Q. Yes, sir.

10 A. J.C. Woodall's concept architect did also a lot
11 of that work. And, I'm sorry, I can't remember who did
12 the soil engineering. That report was pretty important,
13 but I don't remember the name.

14 Q. That's fine. Is it fair to say that your job
15 through this process was also coordinating rather than
16 actual in-field analysis?

17 A. I'm not sure I know what you mean.

18 Q. Let me try it again. What did you do with
19 respect to analyzing the viability of the tower? What did
20 you specifically do?

21 A. I commissioned the engineers to do the work for
22 us that York County was asking, and then I accompanied
23 them and helped them. You know, they needed a jungle
24 guide on the job site.

25 Q. Yes.

1 A. And, "What is it the County is asking for
2 again?" And so I could reiterate for them. And we put
3 together the package and then we -- that was my job to put
4 all that together and then submit it to York County,
5 because we were attempting to get a development agreement
6 between us and the County. And that was the preliminary
7 criteria they asked for.

8 Q. Yes, sir. Can you explain to the jury what a
9 development agreement entails?

10 A. I'll try.

11 Q. Yes, sir.

12 A. The development agreement is a contract, a
13 binding contract between someone like ourselves or a
14 company like Walmart and a county entity where both sides
15 agree, "This is what we'll do, and this is what you'll
16 do."

17 Q. Yes, sir.

18 A. So, for example, maybe a county will give an
19 incentive and promise to bring utilities to an area. And
20 a company may say, "We'll promise to build a building and
21 hire this many people."

22 Q. Did you have any involvement with respect to the
23 development agreement other than attempting to coordinate
24 the studies that would determine whether or not the tower
25 was viable?

1 A. Yes. I sat in the hot seat, so to speak, with
2 the County on one side, and our attorneys on the other
3 side as we hammered that out. And it took -- you know, I
4 can't remember. It was more than five or six. It was
5 many meetings where we would come together with Michael
6 McKendrick [sic], who was, I believe, the current -- at
7 the time the --

8 Q. Were you the --

9 A. -- attorney.

10 Q. I'm sorry.

11 A. Melvin McKeown and -- anyway.

12 Q. Were you the only representative from
13 MorningStar other than the lawyers involved in those
14 meetings?

15 A. From time to time Rick Joyner would come --

16 Q. Yes, sir.

17 A. -- who's the president. But he didn't need to
18 be there. The attorney assured him, "You don't need to be
19 here for all these. This is just hammering this thing
20 out. That's the way it goes."

21 Q. Yes, sir.

22 A. And all the meetings were friendly and amicable.
23 It was just working out lots and lots of details.

24 Q. How about Gary Sanderson, was he involved in the
25 tower project?

1 A. Yes.

2 Q. Were you involved in the generation of that site
3 plan?

4 A. Yes.

5 Q. Can you explain what your involvement was?

6 A. Same as the other construction documents to
7 identify who would develop that site plan for us, also to
8 identify what York County was requiring, because the site
9 plan is a document we submit to the County and they
10 approve it.

11 Q. Was that something unique to the tower project
12 in your experience in construction? In other words, was
13 this a new requirement, that the County had to approve the
14 site plan?

15 A. No. Site plans for commercial projects of this
16 scope, that's where you start. You can't do anything
17 until you get a site plan approved.

18 Q. Okay.

19 A. It's part of the permitting process. A
20 prerequisite.

21 Q. Yes, sir.

22 A. Yeah.

23 Q. Were you involved in communicating with York
24 County with respect to site plan approval in connection
25 with the tower?

1 A. Yeah. Uh-huh.

2 Q. Can you describe that process to us?

3 A. It's a long process, but --

4 Q. Do you remember when the site plan was submitted
5 to York County?

6 A. I do not remember that date, but Power
7 Engineering, I believe, was the engineer for it.

8 Q. Can you tell the jury who Power Engineering is?

9 A. They're a local Rock Hill -- and maybe other
10 cities, too, if I remember right -- engineering company
11 that does site plans, among other things.

12 Q. And you said --

13 A. Civil engineering.

14 Q. You said they were involved in the tower
15 project?

16 A. Yes.

17 Q. And they were involved in generating the site
18 plan?

19 A. Yes. We had a contract with them to generate
20 the site plan and get it approved. Until it was approved,
21 yeah.

22 Q. Did you communicate directly with the
23 representatives of Power Engineering with respect to the
24 site plan?

25 A. Yes.

1 Q. Did you personally do that?

2 A. Yes.

3 Q. Do you remember the representatives at Power
4 that you discussed site permit issues with?

5 A. If you told me their names, I would recall them.
6 It would be familiar, but --

7 Q. Gerald Lee?

8 A. Yeah.

9 Q. Derrick Boyte?

10 A. Yes. I believe I may have emailed Derrick and
11 met with Gerald. There was another man before that.
12 During the time we hired Power Engineering they went
13 through a shake-up. They had financial troubles. And
14 they had to downsize like just about everybody in 2009,
15 2008. It was a tough time.

16 Q. Yes, sir.

17 A. And construction projects, so many of them just
18 went in the toilet. And so I got -- that project got
19 handed to a few folks. And I believe -- you know, I
20 believe it went longer than it was supposed to, and they
21 probably put in more hours than they were supposed to.

22 And I remember it being a real struggle for them
23 to finish the project. But we were in a position where we
24 had to hold them to the price they quoted. And so those
25 are my biggest memories of it.

1 communications with Ms. Britt about how the site plan was
2 coming along?

3 A. It was handed off to David, I think, by the time
4 we got near the end of it. And David is a busy guy. He's
5 a nice guy. I don't want to throw him under the bus, but
6 often I would reach out and I wouldn't get an answer. And
7 sometimes I would just drive all the way over there and I
8 would catch him in the hall and he would go, "Sorry. What
9 do you need? Make it quick."

10 And it wasn't that he was putting us off I
11 didn't feel like on purpose, just maybe buried. But it
12 was hard to get answers sometimes from them. The few
13 answers I ever got was, "It's not ready yet. It's got
14 like -- you don't realize we have eight desks it has to go
15 through and get signed off on and these things take time."

16 Q. Yes, sir.

17 A. Yep.

18 Q. Did you have direct communications with anyone
19 at Power Engineering during this time period about, "Hey,
20 when are we going to be done? When am I going to have
21 approval?"

22 A. Yeah. Yeah. Power Engineering, I do remember,
23 because I had to discuss this with Rick Joyner, our
24 president. They wanted to get paid for the completion of
25 the job. And usually you retain until an engineer gets

1 the product that he's doing the project for. It might be
2 a permit. In this case it was a set of stamped plans.
3 The site plan that the County approved and stamped and
4 said it's approved.

5 And so they said, "We've finished our work. You
6 can call the County and ask them, 'Do you have the site
7 plan?' Well, we have the site plan, but we need the
8 stamped version. We don't have the stamped version from
9 the County. You know that." And I do know that as a
10 contractor.

11 MR. BALLOU: I object to the hearsay. Go
12 ahead.

13 A. Yeah. Have I answered the question yet? I got
14 off on a bunny trail there.

15 Q. That's okay. Let me try to bring you back.

16 A. Yeah.

17 Q. Can you remember any specific communications
18 with Power prior to the exchange between you and Mr. Boyte
19 regarding getting paid about, "Hey, when you going to get
20 done? What's taking so long?"

21 A. Yeah. He said, "We are" --

22 MR. BALLOU: Objection.

23 A. -- "in financial" -- in fact I've got emails, I
24 guess, probably, or you do, where we approved the payment
25 process. And I remember that. It should be in there.

1 They asked to be paid before we got an approved site plan,
2 and his pushback was, "York County has no more objections.
3 You can call them and ask them. They're just not
4 releasing the site permit, but it's not because of any
5 comments."

6 And the way a site plan approval process works
7 is you submit your first set of drawings, and you know
8 you're always going to get comments back. Comments are,
9 "We can't approve it because of these," and there will be
10 line items.

11 Q. Yes, sir.

12 A. That's just about every plan I've ever
13 submitted. There's always something. And it's okay, it's
14 part of it. I appreciate that. But after submitting that
15 site plan and resubmitting it, each time the comment list
16 gets shorter.

17 Q. Yes, sir.

18 A. Sometimes they find something new, and they
19 always reserve the right to add things.

20 Q. Yes, sir.

21 A. And he got down to the end where there was no
22 more comments now. The site plan is approved in our mind.
23 Your work is done. But he told me that they weren't ready
24 to release it yet.

25 MR. BALLOU: Objection.

1 Q. Okay. Now, prior to --

2 A. So we went ahead -- yeah, we paid them.

3 Q. Prior to the meeting that you discussed with
4 Mr. Baker, had you ever heard from anyone that all of the
5 work was done and you were just waiting for a stamped set
6 of plans?

7 A. Yes.

8 Q. Okay. Who had you heard that from?

9 A. From Power Engineering.

10 Q. And do you remember --

11 A. Well, they told me all of "their" work was done.

12 Q. Yes, sir.

13 A. Yeah.

14 Q. And do you remember -- again, don't guess, but
15 can you put it in time with respect to the meeting with
16 Mr. Baker as to when you were told by Power, "Hey, we've
17 done everything we can do. It's on the County"?

18 MR. BALLOU: Object to leading. Object
19 to -- calls for hearsay.

20 A. I recall that we were finished with Power for
21 months.

22 Q. Yes, sir.

23 A. And from time to time someone would say, "Well,
24 where are we at with the site plan?" And I would say, "I
25 don't know. I can find out." But we were just so busy

1 trying to -- trying to work with a completely different
2 economic field than we started with --

3 Q. Yes, sir.

4 A. -- that we weren't -- "We need a site
5 plan today." We knew it was approved in the back
6 of our minds. It's approved. We're going to get it. And
7 we're ready for it. But nothing's on fire. We're not
8 demanding it right now. But I just figured maybe it's
9 going through all of those steps.

10 Q. Right.

11 A. Or for whatever reason. And then the day we met
12 /with Mr. Baker, I said, "Well, we don't even have a set of
13 stamped plans from you. We don't have a site plan
14 approval." And David Pettine said, "Pat, I can send that
15 over to you today."

16 MR. FENNEL: Objection.

17 A. And he did. He sent it as to me probably the
18 very next day after that meeting. That was probably --
19 because I think they -- I remember something like, "That
20 was approved back in August." And I go, "Why didn't you
21 ever send it to me?" I looked at Dave and that's when he
22 said he would. And he did the very next day. He sent it
23 over.

24 (Exhibit Number 1 was marked for identification.)

25 Q. Let me show you what I've marked for

1 identification as Plaintiff's Exhibit No. 1 and ask you to
2 take a moment to review it. And if you would, review
3 every page. You don't need to read it in detail, but just
4 review all the pages.

5 A. Okay. This was from David Pettine. Okay. Is
6 this a copy of the same thing?

7 Q. Yeah. It's a couple of different email strings.
8 I think the first two pages just have an additional email.

9 A. Okay. So it's just copying the same --

10 Q. Yes, sir.

11 A. So what is --

12 Q. If you'll go to page 51, you'll see -- yes, sir.

13 You'll see at the bottom an email from you to a lot of
14 people. And I think you've identified Rick Joyner and
15 Dave Yarnes. Can you tell us who Buddy Motz is?

16 A. Buddy Motz was -- I believe he was the council
17 chairman for York County.

18 Q. How about Paul Lindemann?

19 A. Paul Lindemann was the councilman for our
20 particular district.

21 Q. And Susan Britt I think you've identified. How
22 about Steve Allen?

23 A. Was he also a councilman maybe?

24 Q. If you don't remember, that's fine. And then
25 Dave Priester from Choate?

1 A. Probably because it would have related to all of
2 them.

3 Q. Do you remember why you sent this communication?

4 A. This may have been in response to some folks at
5 the County saying, "We haven't heard from you guys in a
6 while. We're not sure what you're doing." Looks like one
7 of those every once in a while I would go, "Hey, here's
8 where we are." Yep. Because we had a pretty good rapport
9 for a while.

10 Q. Did someone at MorningStar ask you to send this,
11 do you remember?

12 A. I'm sure David Yarnes would have asked me to
13 send it. I didn't do anything like this without -- I was
14 directly, you know, responsible to him --

15 Q. Okay. In the email --

16 A. -- as far as communicating with the County.

17 Q. What was the news that you were attempting to
18 communicate to the County?

19 A. Where we are. What we're doing. We hadn't
20 spoken with them in a -- you know, since probably the end
21 of the summer, you know, in detail about stuff. And so --
22 I'm trying to remember.

23 Q. You've got an underlined sentence, "Our waiting
24 list for reservations is now over 20 deep which triggers a
25 significant milestone for us." Do you see that?

1 A. Uh-huh.

2 Q. Do you remember what the significant milestone
3 was?

4 A. I do remember that we had some milestones set
5 out and placed. Some targets to shoot for from our
6 financiers. They wanted to see presold units, and that
7 was probably what that was. The reservations, you know,
8 show something salable or doable.

9 Q. The next email up looks to be an email response
10 from David Pettine to you. Do you see that?

11 A. Uh-huh.

12 Q. And do you see what time it was sent?

13 A. Time of day?

14 Q. Yes, sir.

15 A. 5:30 p.m.

16 Q. 5:13?

17 A. 5:13, yes.

18 Q. And you sent yours about 20 minutes earlier.

19 4:54.

20 A. Okay.

21 Q. Do you see that?

22 A. Yeah.

23 Q. Just read this email to yourself.

24 A. Uh-huh. (Witness complies.)

25 Q. And in the first paragraph Mr. Pettine says,

1 "Thanks for the update. Sounds like things have been
2 progressing on the project. However, you may want to
3 review the DA as our understanding was there was a six
4 month period following the site plan approval to provide
5 proof of financing for the project. If that did not
6 occur, the DA became void."

7 Do you remember what he's referring to in this
8 email?

9 A. Yeah.

10 Q. Can you explain that to the jury, please?

11 A. There's a place in the development agreement
12 that said once we get site plan approval, that triggered a
13 milestone where I believe maybe a performance bond was
14 required by us to show -- performance bond possibly.
15 That's a pretty complex document.

16 Q. Yes, sir.

17 A. And I haven't looked at it in five years.

18 Q. Understood.

19 A. But I do remember being surprised that David was
20 speaking about the development agreement because we had
21 never done that before. He had always stayed his area.
22 He doesn't represent the legal side of York County, and I
23 don't represent the legal side of MorningStar. And he
24 started speaking to me as an attorney, pointing out --
25 pointing out a legal clause in the development agreement.

1 But my first thought was, well, we haven't gotten the site
2 plan approved yet.

3 Q. In the next sentence of his email he states,
4 "Under that provision, financing would need to be secured
5 by late February in order for the project to proceed as
6 plans were approved in August." Do you see that?

7 A. Yeah.

8 Q. Now, had you been told at any point from late
9 August until January 12, 2010, that the County perceived
10 the six-month clock to have started?

11 A. No. That was the shocker right there.

12 Q. And had you been told by anyone at Power
13 Engineering that the County was taking the position that
14 the six-month clock had started?

15 A. Absolutely not.

16 MR. BALLOU: Object to leading.

17 A. We would have been scrambling if anyone would
18 have told us that that clock started.

19 Q. And the next email up, you write back, "I am
20 aware of the language you're referring to, however, it is
21 my understanding that the site plan has not been approved.
22 Last time we talked with your offices, it was still in
23 review and we were happy to have more time as we are doing
24 our level best to perform as promised." Do you see that?

25 A. Yes.

1 Q. And that's copied to Susan Britt?

2 A. Uh-huh.

3 Q. Do you see that?

4 A. Yep.

5 Q. Why did you copy Susan Britt?

6 A. Because she was David's boss. I didn't want
7 to -- I just felt like I was in the right. I felt like
8 David was -- I had never gotten a communication like this
9 from him. And I was trying to figure out why the new
10 face. What's going on. You know, could I just explain?

11 Q. No, sir, just answer questions.

12 A. Okay.

13 Q. When you reference "last time we talked with
14 your offices," do you remember when that was approximately
15 prior to January 12, 2010?

16 A. Sorry.

17 Q. You don't remember?

18 A. I don't remember.

19 Q. That's fine. And then if you'll go to the first
20 page of that exhibit, which is page 48, you'll see
21 Mr. Pettine's email back to you the next morning.

22 A. Uh-huh.

23 Q. Where it says, "After looking at our plan review
24 software, the commercial site plan for the tower was
25 approved by staff on August 24th, 2009." Do you see that?

1 A. Where you at?

2 Q. The first sentence of the first email.

3 A. Yes.

4 Q. I'm sorry. Do you see that?

5 A. Uh-huh.

6 Q. And had you ever been told that commercial site
7 plan approval had been sent on August 24th, 2009?

8 MR. BALLOU: Object to leading.

9 A. I don't remember.

10 Q. Or had you ever been told that the site plan
11 approval had been sent at any point from August 24, 2009
12 through January 13, 2010?

13 MR. BALLOU: Same objection.

14 A. No. During this -- these couple of days, this
15 was all news to us. Never heard this before from anybody.
16 (Exhibit Number 2 was marked for identification.)

17 Q. Then I think you referenced some communications
18 with Power Engineering in this time period, so let me show
19 you what I've marked as Plaintiff's Exhibit No. 2 and ask
20 you to take a moment to review it, and tell me if you
21 recognize it.

22 A. Yeah, I remember this.

23 Q. Can you tell us what it is?

24 A. We're talking about that last bit of money that
25 we owe Power, and just wanting to make sure that they're

1 finished with their work before we release the, you know,
2 retainer.

3 Q. You begin on page 3 of the exhibit.

4 A. Okay.

5 Q. You can trace that through. It looks like Power
6 is looking to get paid on the final invoice.

7 A. Yep.

8 Q. And then you approved a payment for \$2,593.04
9 instead of \$3,593.04. Do you see that?

10 A. I'm sorry, which page are you on again? Page 2?

11 Q. Yes, sir. If you go backwards from page 4
12 you'll see an exchange about the payment of the invoice.

13 A. Yep.

14 Q. And then it looks like the invoice got paid.

15 A. We kept a thousand out.

16 Q. Right.

17 A. Because in my mind I'm still thinking I need the
18 site plan with the County's stamp on it, because it
19 doesn't exist until you get it with a stamp on it from the
20 County.

21 Q. Right.

22 A. And so --

23 Q. And then --

24 A. So I held that thousand out for that at that
25 point.

1 Q. And then there's an email from Patricia Smith to
2 Jenni Cooper copying Derrick Boyte on the first page. Do
3 you see that?

4 A. Page 1, yes.

5 Q. Did you -- first, who is Patricia Smith?

6 A. Dave Yarne's secretary/assistant. And she also
7 helped me, as well.

8 Q. Did you instruct Patricia Smith to send this
9 email?

10 A. Yes. Either I did or Dave did. We might have
11 together.

12 Q. "As soon as we hear from Power that our site
13 plan has been approved, the contract will be complete and
14 my manager will release the last \$1,000.

15 A. Uh-huh.

16 Q. Did you tell Ms. Smith to communicate that to
17 Power?

18 A. Uh-huh.

19 Q. You need to say yes or no.

20 A. Yes, sir, I did.

21 Q. And then Mr. Boyte responds, "I do not
22 understand why Pat thinks the project is not approved."
23 Do you see that?

24 A. Uh-huh.

25 Q. And then it looks like he attached copies of the

1 approvals from York County and SCDHEC from November. Do
2 you see that?

3 A. Yeah. South Carolina DHEC.

4 Q. Do you remember those documents?

5 A. I don't remember them, but I know that that's
6 part of it. Yeah, I recognize that.

7 Q. Do you remember looking at the documents and
8 coming to an a conclusion one way or the other as to
9 whether you had ever seen them, or was Derrick sending you
10 new things or things you already knew?

11 MR. BALLOU: Objection, leading.

12 A. No. You know, I can't remember. I do remember
13 that he convinced me that his work was complete with the
14 County.

15 Q. Okay.

16 A. That there was no more work for him to do on the
17 site plan.

18 Q. So in the copy now, that's from you to Patricia
19 Smith, Derrick Boyte, and Jenni Cooper. Do you see that?

20 A. Uh-huh.

21 Q. And then you say, you're right, "I desire to
22 clear this matter up for you as soon as possible."

23 At this point on January 21st, 2010, did you
24 believe that MorningStar had received site plan approval?

25 A. No.

1 A. On the last page?

2 Q. Yes, sir.

3 A. What is that I'm looking at?

4 Q. Commercial Zoning Compliance Permit, do you see
5 the title of the document at the top?

6 A. Uh-huh.

7 Q. If you can say yes or no, please.

8 A. Yes, I see it, "Commercial Zoning Compliance
9 Permit."

10 Q. Do you remember seeing this document prior to
11 February 4, 2010?

12 A. I'm sorry, I can't even really remember this
13 document.

14 Q. Do you remember anyone from the County telling
15 you that the zoning compliance permit had been issued?

16 A. No one told me that that I can remember.

17 Q. Who was at the meeting that you described a few
18 moments ago?

19 A. It was David Pettine, I believe Michael
20 McKendrick [sic] was there. Man, I'm not 100 percent on
21 that one. Myself, David Yarnes, James Baker.

22 Q. Was there anyone other than MorningStar
23 representatives and York County representatives?

24 A. Not to my knowledge, but I could have forgotten
25 that.

1 Q. Did you say anything in the meeting about the
2 site plan approval?

3 A. Yes.

4 Q. What did you say?

5 A. I called attention to the fact that we still had
6 not received a set of stamped plans from them, which is a
7 site plan approval.

8 Q. Yes, sir. And did anyone from York County
9 respond to what you said?

10 A. David Pettine did.

11 Q. What did he say?

12 A. He said, "We've done that. I've got that. I
13 can send that over to you." And he pulled out his smart
14 phone.

15 MR. BALLOU: Objection to the leading and
16 to the hearsay.

17 A. And I assumed he was typing a note to do that,
18 and he did follow up.

19 Q. Okay. Do you remember receiving any other
20 communications from Mr. Pettine with site-plan-related
21 documents other than Exhibit 3? Do you understand my
22 question?

23 A. I don't -- I don't recall anything other than
24 that.

25 Q. Were there any other discussions in the meeting

1 about the site plan approval issue?

2 A. That was -- that was discussed quite a bit, but
3 I don't remember enough details to quote anyone.

4 Q. That's fair.

5 A. But that was -- that was kind of a sticking
6 point, because we thought we were going to update the
7 County on, "Hey, it's going slower than we thought, but
8 it's moving forward." It was a horrible time to be trying
9 to do a large construction project because of the economy,
10 and so it just slowed everything down. And we went with
11 that idea that turned into this -- you know, this one
12 paragraph in this 30-, 40-page development agreement.

13 Q. Did the County state a position with -- or did
14 representatives from the County state a position with
15 respect to site plan approval in that meeting?

16 A. Yeah. We talked about the site plan quite a
17 bit.

18 Q. Yes, sir. But did anyone from the County state
19 a position that, "You were approved in August"?

20 A. Yes.

21 Q. "This is new information."

22 A. Yes.

23 Q. "And we'll look at it."

24 A. Yes. Which is why I objected and said, "We
25 never got that. We were never told, 'Come pick up your

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60

1 A. Uh-huh.

2 Q. And then the permit process and the performance
3 bond.

4 A. Okay.

5 Q. In that order. So you understood the process
6 that this project was going to undergo?

7 A. I did, I suppose.

8 Q. Because you drafted this document, didn't you?

9 A. I did. Yeah.

10 Q. And you called this "a chronological order of
11 expected events"?

12 A. Yes.

13 Q. So it wasn't a surprise to you that by the time
14 you got site plan approval, this project needed to have
15 the financing in place?

16 A. Well, your question was did I understand the
17 180-day time clock to start and that clause in the
18 development agreement.

19 Q. That is a separate question. I'm talking about
20 this chronology.

21 A. Okay. So what was the question again?

22 Q. The question is that under your chronology --

23 A. Uh-huh.

24 Q. -- near-term and long-term financing began or
25 occurred prior to the permit process and performance bond?

1 MR. FENNEL: Objection. You should still
2 answer.

3 Q. That's the chronology you laid out, isn't it?

4 A. I'm still not -- I'm losing you. I'm not sure
5 why.

6 Q. Is that the chronology you've laid out? This is
7 the order of expected events for the Heritage Tower
8 project?

9 A. Yeah, I've laid out a chronology here.

10 Q. All right. And so it really wasn't a surprise
11 to you that the financing that was going to be required to
12 show the County that this project could actually be
13 completed, and as you've indicated a \$50 million project
14 would have the suitable financing to be completed, but
15 that was something that was going to have to be shown
16 prior to, at least in your chronology, even the permit
17 process?

18 MR. FENNEL: Objection.

19 A. No. The permit process hadn't begun yet. And
20 where it says "****The permitting process begins here****"
21 that's huge. That could have been several pages of
22 description right there of what that looks like. That
23 whole permitting process.

24 But in my mind, there wasn't a milestone where I
25 would go and show the County the financing and that would

1 trigger something. It was -- it was that we're trying to
2 get the loan, it's all tangled up in the accounting with
3 you. The development agreement is in place. They've
4 approved the site plan. They approved preconstruction
5 documents. Lenders want to see all of those things.

6 Q. And you said in your mind, that's how it was
7 going to work?

8 A. Part of the process, yeah.

9 Q. That's not what the development agreement says,
10 is it?

11 A. Well, I'm not sure what you're --

12 Q. Doesn't the development agreement say that
13 within 180 days of permit site plan approval that
14 MorningStar has to produce the performance bonds or a
15 suitable substitute?

16 A. Yeah, it does say that.

17 Q. It does say that?

18 A. Yeah.

19 Q. Okay. And, in fact, earlier your testimony, I
20 believe, was that based on your discussions with Power
21 Engineering in the fall of 2009 that, "We were approved,"
22 but you just hadn't received the stamped site plan?

23 A. No. Power Engineering's work was approved.

24 Q. Okay. Let's back up. Power Engineering is the
25 engineering company that MorningStar hired to obtain --

1 among other things, to obtain site plan approval for the
2 tower project.

3 A. They were hired to develop the site plan.

4 Q. And part of their job was to obtain site plan
5 approval --

6 A. Sure. Yeah.

7 Q. -- for MorningStar?

8 A. It has to be approved, yes.

9 MR. FENNELL: You need to let him finish.

10 Q. The answer is yes?

11 A. Uh-huh.

12 Q. They're engineers. They're experienced in this
13 process, correct?

14 A. Uh-huh.

15 Q. MorningStar relies on the engineers to do their
16 job, right?

17 A. That's correct.

18 Q. And when the engineers say they've done their
19 job, you take them at their word?

20 A. I take them at their word sometimes, after due
21 diligence.

22 Q. Did you ever not take Power Engineering at their
23 word?

24 A. Sure. They said they were done, "Pay us." And
25 we had to do due diligence to see if they really were

1 done. If you get billed by someone, you want to check it
2 out. You don't want to just have them say, "I'm finished.
3 Pay me."

4 Q. So they did tell you that they were finished and
5 that the project had been approved?

6 A. Yes, they did. They told me they were finished
7 and that the County had no more comments for them and that
8 the project was approved.

9 Q. And they told you that in August of 2009?

10 A. I believe that's when they sent me the email for
11 that, yeah.

12 Q. But to your mind, since you didn't have a
13 stamped set of plans, you didn't think the clock was
14 running?

15 A. The clock wasn't running.

16 Q. Okay.

17 A. Yeah, because we had not received --

18 Q. So you still believe that?

19 A. The County's told us so many times, "Until you
20 get a stamped permit, a stamped set of plans and a permit
21 in your hand, you are not permitted and you are not
22 approved. No matter who tells you, you have to pick that
23 up. You have to have that." Every contractor has that
24 drummed into their head over and over.

25 Q. Let me show you what's been -- I'm going to mark

1 Q. Let's look at Exhibit 7.

2 A. Okay.

3 Q. In the middle of that page is an email from
4 Derrick Boyte, not from Gerald Lee. Do you recall the
5 transition between Gerald and Derrick?

6 A. It's pretty foggy.

7 Q. But there was a transition of some kind?

8 A. There was a couple of transitions at Power
9 Engineering, yeah.

10 Q. And here he says, "It was my understanding that
11 it was being held until approval which we have according
12 to the County."

13 A. Where are you reading again?

14 Q. In the middle of that email on September 9,
15 2009, 2:02 p.m, from Derrick to Patricia, your assistant.

16 A. Yeah.

17 Q. Okay. Did Patricia ever so show you this email?

18 A. She probably did. She usually asked me what to
19 do with things like that. I don't recall. But that would
20 have been our procedure.

21 Q. And do you recall at this point in time telling
22 Derrick, "We're withholding your invoices until we get a
23 stamped set of plans"?

24 A. I recall telling him that. I don't recall if I
25 told him that as a reaction to this particular email at

1 this particular time.

2 Q. That was later on, wasn't it?

3 A. I don't -- I don't recall these dates, I'm
4 sorry. It was so long ago.

5 Q. Let me just show you what I'm going to mark as
6 Exhibit 8.

7 (Exhibit Number 8 was marked for identification.)

8 Q. Do you recognize this document?

9 A. Vaguely, yeah. I mean, it's a DHEC doc.

10 Q. A grading permit? Storm water permit?

11 A. Is that what it is?

12 Q. Have you ever seen a document like this before?

13 A. Yeah.

14 Q. So have you worked on projects where you have
15 received permits from DHEC?

16 A. Yeah. It's been a while since I've looked at
17 these documents. It's part of why I was saying earlier
18 there was a lot going on with these big projects.
19 Construction documents.

20 Q. That's right.

21 A. Yeah.

22 Q. And so from all your experience in construction
23 documents, you know that you can't get one of these
24 permits until the site plan has been approved, don't you?

25 A. I don't know that to be true. I don't know that

1 it to far. I don't think the development agreement is
2 void at that point.

3 Q. But that's what the development agreement says,
4 doesn't it?

5 A. I don't know. Let's look at it. I can't say.

6 Q. You were part of that discussion and negotiation
7 with the development agreement?

8 A. It's a thick document. You can't pull out a
9 paragraph and ask me if it says that. I'm not a lawyer.

10 Q. It's fair to say that even during this period of
11 time you didn't pull out of the development agreement, did
12 you?

13 A. That's not fair to say. You just tried to get
14 me to agree that the development agreement was void after
15 180 days, and I don't recall if that language is in there
16 like that.

17 Q. But you did not, at this point in time in
18 January of 2010, pull out the development agreement to
19 determine whether or not that's what you were required to
20 do?

21 A. No, because this email is about Power
22 Engineering receiving a stamped approval for what we hired
23 them to do.

24 Q. That's right.

25 A. And the notification that I would get from them

1 were those plans with the stamp. Not a heads up, "Hey,
2 we're done." These guys have my email address.

3 Q. Well, let's put this into context, sir.

4 A. So they could have emailed me directly, but they
5 emailed the secretary, "Where is the check?" That's
6 sometimes a way to find out, "Okay. Why are they holding
7 the check? Let me see what it is. But I'm not actually
8 going to ask Pat for the money right now because I know I
9 haven't done all of this stuff. But let's just find out.
10 Test the waters." It's all friendly. It's all welcome.
11 It's all okay.

12 Q. But what I understand, sir, is that this is
13 exactly the same time as your conversation with the County
14 about not having the bond information, right?

15 MR. FENNELL: Objection.

16 A. I don't know. Is that --

17 Q. Let's look at Exhibit 1. Take a look at Exhibit
18 1 and let's take a break.

19 VIDEOGRAPHER: This is the end of media
20 unit No. 1 of the video deposition of Pat Selvey. We're
21 off the record at 10:41 a.m.

22 (A recess was taken.)

23 VIDEOGRAPHER: This is the beginning of
24 media unit No. 2 of the video deposition of Pat Selvey.
25 We're on the record at 10:48 a.m.

1 have given Derrick those plans with the stamp. And
2 Derrick's saying, "The only reason I don't have those is
3 the County saying, no, they want to meet with you and your
4 contractor first." I did not know why.

5 Q. And so in your mind, a stamped set of plans is
6 what you were looking for?

7 A. Waiting for.

8 Q. You were waiting for.

9 A. Yes.

10 Q. You didn't put that -- MorningStar did not put
11 that as a requirement of the development agreement, did
12 they?

13 A. It is a requirement of the permitting process.
14 We don't have to put all the permitting processes.

15 Q. Okay. Well, let's look at Exhibit 1, the
16 language quoted by Dave Pettine. MorningStar certainly,
17 with its attorneys, could have negotiated language that
18 says "within 180 days of the receipt of a stamped set of
19 plans," right?

20 A. Yes.

21 Q. That's not what it says, is it?

22 A. Do you want me to read it?

23 Q. I want you to answer the question.

24 A. Okay. What was the question again?

25 Q. This provision of the development agreement does

1 not require a stamped set of plans. This provision,
2 quoted by Dave Pettine in Exhibit 1.

3 MR. BALLOU: Objection.

4 A. It doesn't mention "stamped set of plans," no.

5 Q. Correct. Okay. And ultimately that check was
6 cut for Power Engineering to pay their invoices in full?

7 A. I'm sure it was, yeah.

8 Q. And you authorized it, didn't you?

9 A. Yeah.

10 Q. This may be part of another exhibit. Let's go
11 ahead and look at it separately. We'll make it Exhibit 9.
12 (Exhibit Number 9 was marked for identification.)

13 Q. This is an email from you to Dave Pettine and
14 Susan Britt, January 12, 2010, correct?

15 A. Yes.

16 Q. And you say, "David, I am aware of the language
17 you are referring to, however, it is my understanding the
18 Site Plan has not been approved." That's what your
19 position was at that point in time?

20 A. Uh-huh.

21 Q. "Last time we talked with your offices, it was
22 still in review."

23 A. Uh-huh.

24 Q. Okay? Now, you just talked about how it is
25 difficult when an owner and an engineer are both talking

1 to the county.

2 A. About the same thing.

3 Q. About the same thing. You don't want to get
4 wires crossed, so you let the engineers do the talking,
5 correct?

6 A. Yes.

7 Q. Okay. So the last time you talked to David was
8 the summer of 2009, wasn't it?

9 A. Oh, I can't remember that.

10 Q. I think you testified earlier that it was the
11 late summer of 2009.

12 A. I testified that I hadn't talked to him between
13 the late summer of 2009 and January 12th?

14 Q. No. I think you testified that -- well, I mean,
15 do you recall talking to him in the summer of 2009?

16 A. You know, that was five years ago. I probably
17 couldn't put dates to any conversations. These emails are
18 helping because they have dates attached to them, but
19 phone calls, visits to the office...

20 Q. You would agree with me, though, that --

21 A. There were times when there were a few months
22 that we didn't talk. I'm just busy, he's busy. And that
23 would usually provoke one of those tower updates that was
24 brought up earlier just to let them know, "Guys, we're
25 still working on it. Here's where we are."

1 Q. But here you say, "Last time we talked with your
2 offices" --

3 A. Uh-huh.

4 Q. -- "it was still in review."

5 A. Yes.

6 Q. You still hadn't received the zoning approval,
7 for instance, correct?

8 A. I don't know. I can't remember that.

9 Q. But it was still in review, correct?

10 A. Yes. Well --

11 Q. For storm water?

12 A. I don't know if those -- some of those things
13 were approved. The way the process works is there might
14 be nine categories, and they may approve of two or three
15 of them right away, and then some of them are conditional
16 upon you doing -- and they let you know. And some of them
17 are just disapproved.

18 Q. But you don't recall exactly when this
19 conversation occurred, do you?

20 A. I don't recall -- what's the question again?

21 Q. You don't recall exactly when this conversation
22 occurred?

23 A. This one?

24 Q. Yes, sir.

25 A. Well, it would have occurred on that date,

1 because the email tells you the date it occurred on.

2 Q. No, I'm talking about, "Last time we talked with
3 your offices."

4 A. Oh, no, I don't recall.

5 Q. You really don't recall?

6 A. I really don't. I'm sorry.

7 Q. Well, whenever it was, it was still in review
8 from the County?

9 A. Yes.

10 Q. And that was at a time when primarily it was
11 Power talking to the County, correct?

12 A. Yes. About the site plan.

13 Q. And then in August of 2009 Power says, "We've
14 gotten approval," right?

15 A. Do you want to refer me to a document?

16 Q. That's what we looked at earlier.

17 A. I know, but you're trying to get me going off my
18 memory.

19 Q. No, I just want you to --

20 A. I don't remember. If you want to lock me in on
21 a date, you need to show me or give me a minute to look it
22 up. Power did tell me before --

23 Q. Look at Exhibit 6.

24 A. -- before approval happened that they were done
25 and approval had happened, but it hadn't yet.

1 Q. On Exhibit 6, on August 19, Gerald Lee says,
2 "Since we did not have approval before, we did not push
3 the issue, but now that we do I need to bring it up."

4 A. Okay.

5 Q. That's what he says.

6 A. What was the question?

7 Q. He told you, "We have approval."

8 A. He did. Right there on August -- is that August
9 19th? I'm just saying: Just because he said it, don't
10 make it true. That's all. But Gerald's a good guy. But
11 we clearly understood there was still one more hoop we had
12 to jump through, and the ball was in the County's court.
13 They wanted to meet with us and our construction
14 contractor for some reason.

15 Q. I'm trying to sort through documents we've
16 already looked at. So if you will give me a moment.

17 (Exhibit Number 10 was marked for identification.)

18 Q. I'm showing you what has been marked as Exhibit
19 10. Take a minute and review that document.

20 A. (Witness complies.)

21 Q. Okay?

22 A. Yes.

23 Q. This is your document. You drafted this
24 document, correct?

25 A. Uh-huh.

1 Q. The first page of this exhibit is an email from
2 you to Patricia Smith with a copy to Rick Joyner. Was it
3 typical for you to have sent documents going to Rick or to
4 Dave to Patricia, or is there a reason you directed this
5 to Patricia?

6 A. That would have been for Dave.

7 Q. So whatever Patricia got, Dave got?

8 A. Yeah, it's safe to say.

9 Q. In fact, you write, "Patricia, I've attached a
10 document for Dave. He is expecting it." Right?

11 A. Uh-huh.

12 Q. Okay. Just out of curiosity, this may have
13 nothing do with anything. But the top where it looks like
14 your attorney printed this out, it says, "Steve
15 Report.docx" on the first page. At the very top of the
16 page it says, "Attachments: Steve Report.docx." Do you
17 see that?

18 A. Oh, yes. Attachments, yes.

19 Q. Is that a name you gave that document?

20 A. Yeah.

21 Q. Who is Steve?

22 A. Steve Thompson is -- used to be a vice president
23 at MorningStar. One of the founders.

24 Q. Okay. Did he write this document?

25 A. No, I did.

1 Q. Why is it called "Steve Report"?

2 A. Because -- probably because I originally gave it
3 to Steve.

4 Q. Was Steve no longer at MorningStar at the time
5 you gave it to Dave?

6 A. I think he had left. I'm pretty sure he had
7 left, yep. The answer to that is he was no longer there.

8 Q. Did he leave under negative circumstances?

9 A. You would have to ask him.

10 Q. Okay. When did you originally give this to
11 Steve?

12 A. I do not recall, I'm sorry.

13 Q. Was Steve with MorningStar at the time?
14 Approximately February of 2010?

15 A. No, he was gone.

16 Q. Did he leave during the tower project?

17 A. Yes. As far as I know, the tower project still
18 going on.

19 Q. Did he leave because of the tower project?

20 A. You would have to ask him why he left.

21 Q. You don't have any information as to why he
22 left?

23 A. It would be speculation. He was a vice
24 president. He left. It was a pretty big deal when the
25 vice president leaves. A lot of folks have reasons that

1 they think. Maybe -- you know, maybe it's this, maybe
2 it's that. But, man, I wouldn't want to say what I
3 thought it was under oath and speak for Steve.

4 Q. What was Steve's name?

5 A. Thompson.

6 Q. And where is he now?

7 A. I believe he lives in Colorado, but I'm not
8 certain of that.

9 Q. Do you believe he has any information relating
10 to the issues in this case?

11 A. I doubt it.

12 Q. So had you had a conversation with Dave telling
13 him you're sending him this document? You told him you
14 were sending this document, right? He's expecting it?

15 A. Yes.

16 Q. Had you talked to him about the substance of the
17 document?

18 A. Yes.

19 Q. Okay. And did he request you to put it into a
20 written form?

21 A. No. It was already in a written form.

22 Q. When did you first talk to Dave -- to Dave about
23 this document?

24 A. After I gave it to Rick.

25 Q. And when did you first give it to Rick?

1 A. I can't remember the date.

2 Q. Did you give it to Rick before your email to the
3 County giving them an update in January of 2010?

4 A. I gave it to Steve actually on a piece of paper,
5 and Steve gave it to Rick.

6 Q. Before that?

7 A. But I can't remember when.

8 Q. Would it have been around that time?

9 A. What was the time again?

10 Q. January of 2010.

11 A. So a month before this? I don't recall. It
12 could have been.

13 Q. You have no recollection of when you first gave
14 this document to somebody to review?

15 A. I don't, because it was a sensitive thing you
16 don't say. It wasn't official. It was my private
17 comments. It says at the end of the page, "This is not
18 for public review or scrutiny." I don't know what I said,
19 but it's supposed to be private between me, Steve, and
20 Rick. And if you want me to tell you how David Yarnes got
21 involved with it, I can. But I don't want to answer a
22 question not asked.

23 Q. Well, we're going to talk about this. I want to
24 know how this document came to be in existence, what you
25 were thinking of when you were preparing it, and let's

1 start from there --

2 A. Okay.

3 Q. -- you know. When did you first start working
4 on this document?

5 A. Well, I just knocked it out. It wasn't that I
6 started working on it. It was a process.

7 Q. This document was the result of conversations
8 with a number of people, wasn't it?

9 A. Well, Steve Thompson asked me for the document.

10 Q. But the content of this document contains
11 information obtained from several sources, including Paul
12 Towel?

13 A. Yeah. I think it's just -- it's just some notes
14 that I had because I'd had a meeting with Paul Towel. I
15 don't recall if it was -- I don't even recall where the
16 meeting was. I just recall the notes.

17 Q. All right. Who is Paul Towel?

18 A. Paul Towel is a Raymond James -- I don't know if
19 he's a principal there or what you would call his title.
20 But he was one of the many finance organizations --
21 Raymond James was -- that he were talking with. And Paul
22 Towel was their representative that would come to
23 MorningStar from time to time. We would get on the phone,
24 we would Skype, we would email.

25 Q. And is Raymond James one of the institutions

1 that MorningStar was looking to for long-term financing?

2 A. Yes.

3 Q. For advice as to performance bonds?

4 A. Not performance bonds.

5 Q. What else?

6 A. Just bonds. Loans. Mortgages.

7 Q. Financing --

8 A. A mortgage bond.

9 Q. Financing a \$50 million project?

10 A. Yes. Which they were happy to do when we
11 started. And then the world changed. The economy went in
12 the toilet. And I think in 2007 they were eleven
13 \$50,000,000 senior housing project bonds sold on Wall
14 Street. And then the following year there was only one,
15 and it was a refi. And they went away.

16 Q. So in 2008 there was one?

17 A. I believe so. Or it could be those two years
18 are 2008, 2009. But there was eleven. And ours was
19 looking like it would be a normal one, and then everything
20 changed and the road got tough. And Raymond James backed
21 out.

22 Q. And so Raymond James never issued you a firm
23 commitment for long-term financing?

24 A. No, they did not.

25 Q. In fact, no entity has issued a commitment for

1 long-term financing for this project.

2 A. Well, I can't -- you would have to ask Dave
3 Yarnes.

4 Q. To your knowledge, though?

5 A. To my knowledge, no.

6 Q. All right. So let's talk about your comments --
7 the comments from Paul Tower.

8 A. Well, can you define "firm commitment"? If you
9 mean a letter of credit or loan approval, we did not get
10 those. Yep.

11 Q. Let's talk about your comments from Paul
12 Towel --

13 A. Okay.

14 Q. -- at Raymond James. "Your real estate 'as is'
15 cannot be valued at market rate because the bank knows it
16 would not be able to take the property and make it work
17 because it is located on your campus. The value you are
18 putting on it is not accurate as a 'stand alone'
19 appraisal."

20 A. Yep.

21 Q. Why was that significant?

22 A. I don't know how significant it was.

23 Q. It was significant enough to put it into your
24 memo.

25 A. Yeah.

1 Q. Why did you put it in?

2 A. I was putting in -- I was asked by Steve, he
3 said, "I feel like there's some negative things about the
4 tower project that we're not being told. And if I'm
5 wrong, just tell me. But if I'm right, I'd like to hear
6 it. Give me all the bad news."

7 Q. And Steve Thompson --

8 A. And that's what this was.

9 Q. Okay. So --

10 A. This was like -- and at the time, honestly, I
11 was discouraged. It was tough -- it was a tough
12 environment. Everything changed from the time we started
13 this project until a few years in. And, man, just
14 probably a huge percentage of development agreements all
15 over the Carolinas were under duress and struggling with
16 either timing or financing.

17 But this document was -- Steve asked me for it.
18 He said, "I want to hear the negative." I said, "Will it
19 stay off the record? I don't want to just give out a
20 negative document. It's only a negative, there's not an
21 explainer going on saying there's other things to say
22 here."

23 And I gave it to him and he said, "Can I just
24 give this to Rick like this?" He was going to just talk
25 to Rick. And he said, "Can I give him this document?" I

1 said, "Okay." And then I met with Rick and Rick said,
2 "You know, you're discussing Dave Yarnes in that document
3 and that wasn't very faithful as a friend to not give him
4 a copy of it."

5 And I said, "You're right. I shouldn't have
6 done that." It was kind of chicken of me to slip it
7 around and not tell him, because Dave is a friend. So I
8 sent it over to Patricia and I just copied Rick on it.

9 Q. So Steve Thompson, who was -- you say a vice
10 president?

11 A. Yes.

12 Q. Asked you, "Tell me the bad news"?

13 A. Yes.

14 Q. "Give me straight information"?

15 A. I believe he actually had a dream that there was
16 something being hidden in the tower process. Something
17 like that. I vaguely remember something like that.

18 Q. And so he asked you --

19 A. He said, "I'm talking about negative --
20 something that somebody doesn't want to say. Give me the
21 bad news. I can take it." So that's what I did.

22 Q. And you put together this information --

23 A. Yep.

24 Q. -- to respond to his request for tough news?

25 A. Uh-huh.

1 Q. Okay. And so go through this and tell me what
2 the bad news you're giving him is.

3 A. Well, Raymond James was giving us the reasons
4 why they weren't going to do the bond that they had said
5 that they were going to do the year before. They said,
6 "This is a slam dunk. This is very doable. We put this
7 document together. It's a financial instrument. Wall
8 Street understands it. It will go on the floor and
9 someone will buy it because they'll look at it and go,
10 "Yep, want one of these." And that's the way those big
11 bonds work. I don't understand the details, but I can
12 describe that a little bit.

13 And so we kind of just trusted in that. Fast
14 forward a couple years. Raymond James is saying, "We
15 don't want any part of this like that. We'll do it if you
16 can get another suitor to break it up into small bites, 20
17 million each. There's no way we're going to do this. You
18 can't do this anymore.

19 "And you can't call your tower a collateralized
20 possession or asset because of the way it is right now
21 being on your campus. A bank couldn't repossess it and
22 sell it. Who wants to be right there with you?" It would
23 be like getting a, you know, slicing off part of your
24 driveway or something, but it's your house. Or you're
25 just selling your garage, detached garage. So...

1 Q. So that was the first issue is that --

2 A. That was that first issue you were asking about.

3 Q. -- you couldn't really foreclose on it
4 effectively because it's part of this campus?

5 A. Yeah. He was saying, "We're not interest in it.
6 Come up with a down payment. Come up with cash."

7 Q. Okay. What's the next point?

8 A. Do you want me to read it?

9 Q. Yes.

10 A. "You should calculate and compare the difference
11 of what it would cost to tear down that building and build
12 something else that fits better with your campus and
13 today's building advantages."

14 Q. What did that mean to you?

15 A. That meant that they didn't like that project as
16 a rehab project.

17 Q. Did they tell you why they didn't like it?

18 A. Doesn't tell me why.

19 Q. Okay.

20 A. Except maybe it would be more cost effective.

21 Q. These are your notes from your conversation with
22 Paul Towel?

23 A. These are his comments, yes.

24 Q. To you?

25 A. Yes, to me.

1 Q. What else? What's next?

2 A. Do you want me to read it?

3 Q. Yes.

4 A. "Your project is much too big to fund with a
5 bond. Your balance sheet could never carry this project.
6 You need a project that is 24 million or less to even
7 consider a successful launch."

8 And that was him commenting on our financial
9 situation versus the viability of the project. They
10 didn't want this project anymore, but they did want it.
11 They suited us. They flew to our campus over and over.
12 They really wanted it. And then everything changed and
13 they no longer wanted it unless our balance sheet could
14 carry it. Which means if you don't fill it up, you
15 don't -- everybody doesn't come, you need to be able to
16 pay for it with other resources, and you can't.

17 "If you borrow the money and you don't fill up
18 those 200 apartments or however many it ends up being, you
19 can't pay for it. So we don't want to do it."

20 Q. Okay.

21 A. And no one was doing bonds that size anymore.
22 Before, they were.

23 Q. Again, this is in 2010?

24 A. I don't recall the date.

25 Q. That's when you gave it to Dave.

1 A. Yeah. That was early in 2010.

2 Q. Right.

3 A. Yeah. So the document could have been made in
4 2009. I'm not sure. Sometimes there was a little bit of
5 a gap between giving something to Rick and hearing back
6 from him -- from him on it. So I just can't remember.

7 Q. So you don't know exactly when this was drafted?

8 A. I don't.

9 Q. Okay. How about the next paragraph? Would you
10 read that, please?

11 A. Yes. "There has always been a sense that there
12 is a significant amount of Friends & Family money out
13 there." This is Paul Towel speaking. "All along the way
14 we have been moving forward with you because of that
15 understanding. If there is not at least 15 million or
16 more of Friends & Family money funding available at a low
17 rate, this project just doesn't work."

18 Q. What's friends and family money?

19 A. People that know the ministry, venture
20 capitalist kind of people that may say -- we had several,
21 and I assume they're still there. Folks that say, "We'll
22 get involved. We can't do the heavy lifting on this, but
23 we're good for part of it."

24 And the idea all along the way was that money
25 would be loaned to us at a really low interest rate from

1 friends and family of the ministry.

2 Q. And what Paul Towel is saying is if you don't
3 have at least 15 million of that kind of money --

4 A. Uh-huh.

5 Q. -- this project is not going to work?

6 A. Not with them, yeah.

7 Q. And how much friends and family money do you
8 think they had at that point?

9 A. I couldn't venture to guess on that. I was not
10 in on those meetings or those conversations. And because
11 of the sensitivity of people having that kind of money
12 available, those names were never thrown around or
13 revealed.

14 They were people that Rick and the board of
15 MorningStar knew. But when they didn't tell us, it was on
16 purpose. The last thing somebody like that needs is to
17 have their name thrown out somewhere that they're
18 considering funding something. You know what I'm saying?
19 So I don't know.

20 Q. Well, but Paul Towel knew there wasn't 15
21 million, right?

22 A. I don't think he's saying that. He said if
23 there's not at least -- he's giving conditions here. That
24 was my understanding.

25 Q. Okay.

1 A. He said, "If you guys can't come up with this
2 right here, you've been talking about it" -- and it was --
3 he threw down a gauntlet a little bit.

4 Q. All right. What's the next section?

5 A. "We need to make the effort and find out how
6 much."

7 Q. What did that mean?

8 A. We need to make the effort and find out how
9 much. Is it 15 million? Is it 10 million? Is it 20
10 million? Because everything had changed. So his
11 assumption is, "Do you really know if you still have that?
12 And if you do, how much? And let's" -- he was saying, "We
13 don't want to do this," but he was making it clear that
14 they still did want to do it, but they didn't want to do
15 it the way they first approached us.

16 Q. Okay.

17 A. The conditions -- economic conditions changed,
18 so now the conditions changed.

19 Q. All right.

20 A. And so it was discouraging news, but he wasn't
21 our only suitor. But he had been a big one.

22 Q. Let's go down to the next section. We'll talk
23 about some of the other suitors. The next section, read
24 that, please.

25 A. "Tax exempt will be a problem if we maintain

1 Christian ties and stay with Active Adult 55."

2 Q. What did you understand to be his concern there?

3 A. I understand -- I understood that he threw that
4 out, but then when I checked into it a little bit, he's
5 not an attorney and it was really showing. It was too
6 emphatic of a statement, so it wasn't really true.

7 Q. Okay.

8 A. But that's what he was -- it's true that you
9 could lose your status. You could. But it's not like,
10 "If you do this, you'll lose your status." You do this
11 and you do it a certain way.

12 Q. Okay. How about the next section?

13 A. "Tax exempt housing qualification is only
14 available for senior housing which is age 62 and above.
15 Active adult housing is a designation, but not for tax
16 exempt. We will be at real risk of losing our entire
17 nonprofit status if we put in a subdivision like this."

18 I also found out later he was wrong about that
19 because at least South Carolina and the Fed allow you to
20 have real estate that is in a -- that you do hold real
21 estate that's for profit as a nonprofit, if the purpose
22 has something to do with your stated goals and objectives
23 of your nonprofit. Which was the launching of senior
24 citizens in the ministry, which was the point of
25 subdivision.

1 Q. Did you consult with an attorney to learn that
2 information?

3 A. I'm trying to remember how I learned that, but
4 I'm not recalling the details. But you know how sometimes
5 you know you've settled something? So I don't remember if
6 it was through an attorney or something that we read that
7 was written by an attorney.

8 Q. You don't have any recollection of speaking with
9 an attorney on the tax-exempt status of this kind of
10 housing?

11 A. We did that a lot. But I don't recall it after
12 speaking to Paul Towel. But, yes, we did. We talked to
13 several attorneys.

14 Q. Now, the next section is redacted, and I
15 understand that there may be some attorney/client
16 discussions in there.

17 A. I didn't redact it.

18 Q. I know.

19 A. You guys would have done that.

20 Q. Your attorney did.

21 MR. FENNELL: I did.

22 Q. My question is: Was the advice you were getting
23 in the context of litigation, or was it in the context of
24 trying to determine tax-exempt status issues?

25 A. We were trying to figure out: Do we separate

1 the tower out as a separate entity? And based on the
2 newer laws -- "newer" not being the last year, but the
3 last few years at that time, the newer laws that allow
4 501(c)3s to hold real estate and things like that, and
5 that not jeopardizing their tax-exempt status.

6 And a lot of it depended on what you do with the
7 money if there is an excess, or what -- you know, the
8 secular market might call it a profit but, of course, in
9 this regard it wouldn't be a profit. It would still be
10 protected.

11 Q. What I'm trying to determine -- maybe put some
12 dates to this, because if the matter had not gone into
13 default, you might be talking to attorneys on one issue,
14 but if it was after default it might be a different issue.
15 And I can't ask you what your attorneys told me.

16 A. Yeah. I don't recall ever talking to attorneys
17 after -- which default are you saying?

18 Q. The default declared by the County.

19 A. When the County said we were in default?

20 Q. That's correct.

21 A. Yeah. By that time I was part time. I
22 wasn't -- I don't recall meeting with any attorneys after
23 that. You would have to talk to Mr. Yarnes about that.

24 MR. FENNELL: Let's take a break for just a
25 second and you step outside so I don't prompt you.

1 THE WITNESS: Okay.

2 MR. FENNEL: Remember your microphone.

3 VIDEOGRAPHER: We're off the record at
4 11:25 a.m.

5 (Discussion off the record.)

6 VIDEOGRAPHER: We're on the record at 11:27
7 a.m.

8 Q. Mr. Selvey, we're back from the break and we
9 were looking at page 2 of Exhibit 10. And looking --
10 let's move to the last section, last paragraph on that
11 page. "85%." Would you read that, please?

12 A. "85% presold is the new 70% presold. Projects
13 at 70% are not able to sell their bonds anymore and
14 probably never will be. We must cash flow 1.4 of debt
15 payment or higher for bond to be viable."

16 Q. Okay. So explain what you understood that to
17 mean.

18 A. Lenders like to see a 70 percent presold for any
19 project to finance. And it was that way for decades.
20 That's my understanding. This is my first senior housing
21 project ever. He said everything changed as a result of
22 the economic depression/recession. Whatever you call it.
23 And that now some lenders are wanting 100 percent, but 85
24 percent is the new 70. They want more presold. They want
25 less possibilities. More people are backing out of

1 things.

2 Q. At the time you wrote this had you achieved 70
3 percent presold?

4 A. I don't recall where we were.

5 Q. Do you recall whether this project ever achieved
6 70 percent presold?

7 A. Actually -- actually, we hadn't -- we hadn't
8 begun -- I don't think we had begun preselling, because
9 that is a determination -- you have to be a little further
10 along in the process. We had, I think, well over 100
11 percent deposits. Reservation deposits. But that's
12 different than presold. Presold is a contract, down
13 payment money is put up. It's got teeth to it.

14 And we took reservations that were 100 percent
15 refundable. All you had to do was request your money back
16 and you got your money back and your place in line was no
17 longer. You know, you lost your place in line. Because
18 being in line was everything.

19 If I got a depot, a reservation, I'm in line and
20 I get choose my apartment. Which means I get to choose my
21 view. Because it was all -- you know, it's windows. And
22 so we took reservations for that, but it was always 100
23 percent refundable. Just ask for it and we'll give it
24 back. And we did every single time, right away, to my
25 knowledge. I approved every one that came across my desk

1 when I was on staff.

2 Q. Okay.

3 A. But presold was something that you really
4 started. And they liked to see, you know, a lot more
5 reservations than you had units to sell because some
6 people would back out.

7 Q. So even with all the reservations that you had,
8 you weren't even looking at 70 percent presold?

9 A. Well, he was just giving us that fact. He was
10 just saying, "You think you're going to have to do 70, but
11 let me tell you, you're going to have to do 85."

12 Q. That's presold, not the reservations you
13 described.

14 A. He wasn't commenting on how many we had or
15 didn't have yet. He was just saying, "This is what we
16 told you last year, and we're not telling you this
17 anymore, we're telling you this."

18 Q. The environment has changed?

19 A. The environment has changed.

20 Q. All right. So on the next page, this next
21 statement, read that, please.

22 A. "We cannot, cannot, cannot discriminate unless
23 we only use private funds. If we do, we could lose our
24 tax exempt status going back for several years."

25 Q. Okay. Why did you put that into this memo?

...dree, Michael

From: Pettine, David
Sent: Wednesday, January 13, 2010 7:30 AM
To: 'Pat Selvey'
Cc: Britt, Susan
Subject: RE: Heritage Tower Update

Pat,

After looking in our plan review software, the commercial site plan for the tower was approved by staff on August 24th, 2009. The approval notice was sent to the engineer by our DCC staff. I also recall staff having the engineer come to the offices in York to add a few notes to the plan that were needed to get approval and save the re-review cost of an additional submittal.

The engineer for the project should have the letter generated by staff following approval of the plans. The note from the DA is below and is in section C "Bonds or Letter of Credit".

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

Please let me know if there is anything else we can provide at this time. I'll be in a workshop all day, but will check email periodically. We should have some time Thursday or Friday to discuss further as needed. Just let me know. Thanks Pat.

Dave Pettine
Assistant Director, Planning and Development Services

York County Government
Planning & Development
1070 Heckle Blvd. A-5
Rock Hill, SC 29732-2863
Direct: (803) 909-7173
Toll Free: (800) 922-7271
Phone: (803) 909-7240
Fax: (803) 909-7478
Email: david.pettine@yorkcountygov.com
Website: www.yorkcountygov.com

From: Pat Selvey [mailto:patselvey@gmail.com]
Sent: Tuesday, January 12, 2010 7:15 PM
To: Pettine, David
Cc: Britt, Susan
Subject: Re: Heritage Tower Update

vid.



I am aware of the language you are referring to, however, it is my understanding that the Site Plan has not been approved. Last time we talked with your offices, it was still in review and we were happy to have more time as we are doing our level best to perform as promised.

Pat

On Tue, Jan 12, 2010 at 5:13 PM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

Thanks for the update. Sounds like things have been progressing on the project. However, you may want to review the DA as our understanding was there was a six month period following site plan approval to provide proof of financing for the project. If that did not occur, the DA became void.

Under that provision, financing would need to be secured by late February in order for the project to proceed as plans were approved in August.

I am out of the office at the moment, but I will provide you with the section of the DA that references the 180 day provision tomorrow morning.

Again, this is our understanding of that language and should be reviewed by both legal counsels prior to making a final determination. I have a council retreat all day tomorrow but as stated will get you the language I am referencing in this email in the morning so you can conduct review on your end. Let's plan on talking on Thursday or Friday so we can all make sure we are on the same page.

Thanks Pat. Have a good night.

Dave

From: Pat Selvey <patselvey@gmail.com>
To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <gws717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jwoodall@conceptarc.com>; Rich.Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>
Sent: Tue Jan 12 16:54:54 2010
Subject: Heritage Tower Update
Happy New Year to our friends at York County.

It has been a while since our last update. We have been working diligently throughout 2009, primarily on one thing: Sales. We have good news to report.

Our waiting list for reservations is now over 20 deep which triggers a significant milestone for us. We are now ready to build our "model unit". Plans will be submitted to YC very soon for the model unit which will be constructed very quickly now that we have enough reservations to proceed with the next stage of our Master Plan.

Once the model is built, we will be able to come under contracts which will in turn trigger construction financing. Our project is proceeding as planned in every way, except for timing. It took longer in this economy than we initially thought to get to this milestone, but given the time constraints of our Development Agreement, we should have plenty of time to complete everything within the 5 years allotted for our PD Plan.

Please feel free to contact us with any questions about our project.

Pat Selvey
Heritage Tower Project

Kendree, Michael

From: Pat Selvey <patselvey@gmail.com>
Sent: Tuesday, January 12, 2010 7:15 PM
To: Pettine, David
Cc: Britt, Susan
Subject: Re: Heritage Tower Update

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Thanks Pat. Have a good night.

Dave

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To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <gws717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jcwoodall@conceptarc.com>; Rich. Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>
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Please feel free to contact us with any questions about our project.

Pat Selvey

Heritage Tower Project

Dan Ballou

From: Pat Selvey <patselvey@gmail.com>
Sent: Thursday, January 21, 2010 9:18 AM
To: Patricia Smith
Cc: Derrick E. Boyte; Jenni Cooper
Subject: Re: FW: Morningstar Fellowship Church open invoices

Derrick,

I desire to clear this matter up for you as soon as possible.
I will process your check this week and accounting should print it early next week.
I will need a signature from Power Eng to release the final payment. If you or a representative are not able to come to our office, I would be happy to email the release to you and you can sign and scan back to me and then I can mail the check.

Which do you prefer?

Pat

From: Derrick E. Boyte [dboyte@powereng.net]
Sent: Thursday, January 21, 2010 8:51 AM
To: Patricia Smith
Cc: Jenni Cooper
Subject: RE: Morningstar Fellowship Church open invoices

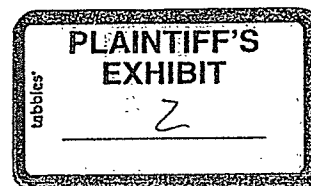
Patricia,
I do not understand why Pat thinks the project is not approved. I have attached copies of the approvals from York County and SCDHEC from November. The SCDHEC approval was the only thing we were waiting on and that was sent directly to Pat Selvey. As for copies of stamped approved plans, York county will not release those until a preconstruction meeting is held with your contractor. Hope this resolves the issue.

Please let me know if you have any other questions.

Derrick

From: Patricia Smith [mailto:PSmith@morningstarministries.org]
Sent: Wednesday, January 20, 2010 6:00 PM
To: Jenni Cooper
Cc: Derrick E. Boyte
Subject: RE: Morningstar Fellowship Church open invoices

Dear Jenni,



The contract that was signed says that MorningStar will receive notification from Power that our site plan has been approved by York County. Because we have not received this approval yet, my manager decided to hold back this \$1,000.00. As soon as we hear from Power that our site plan has been approved, the contract will be

complete and my manager will release the last \$1,000.

I emailed Derrick Boyte concerning this information, on behalf of my manager (Pat Selvey) on November 9, 2009.

If you have any other questions, please let me know.

Thanks,
Patricia

From: Jenni Cooper [mailto:jenni@powereng.net]
Sent: Wednesday, January 20, 2010 10:58 AM
To: Patricia Smith
Subject: RE: Morningstar Fellowship Church open invoices

Patricia,

We received a check in the mail today but the check was for \$2,593.04, not the full amount outstanding of \$3,593.04. There is still an outstanding balance of \$1,000.00 on Invoice #1416. Would you please look into this and find out when we should receive that outstanding amount. Please let me know if you need anything to get this payment made.

Thanks for your help tracking this payment down.

Jenni

From: Patricia Smith [mailto:PSmith@morningstarministries.org]
Sent: Monday, January 18, 2010 11:17
To: Jenni Cooper
Subject: RE: Morningstar Fellowship Church open invoices

Jenni,

I heard back from Accounting and they are going to put the check in the mail today (check number 90053). If you do not receive it by the end of the week, please let me know.

Have a good week,
Patricia

From: Jenni Cooper [mailto:jenni@powereng.net]
Sent: Thursday, January 14, 2010 3:31 PM
To: Patricia Smith
Subject: RE: Morningstar Fellowship Church open invoices

Patricia,

Thanks for the prompt response. If you could let me know when that is put in the mail I would appreciate it.

Thanks again,
Jenni

From: Patricia Smith [mailto:PSmith@morningstarministries.org]
Sent: Thursday, January 14, 2010 15:28
To: Jenni Cooper
Subject: RE: Morningstar Fellowship Church open invoices

Jenni,

Thanks for your email. I am sorry that this has not gotten in the mail yet. I was told by Accounting yesterday that they got behind over the holidays with cutting checks. They processed my request for a check to be sent to you several weeks ago, however did not create the check. They told me they plan to get this cut and mailed tomorrow. I can email you verification when this happens if you like.

If you have any questions, please give me a call: (803) 547-9615. If I can't help clarify, our Project Manager, Pat Selvey can help.

Thank you,
Patricia

From: Jenni Cooper [mailto:jenni@powereng.net]
Sent: Thursday, January 14, 2010 3:15 PM
To: Patricia Smith
Subject: RE: Morningstar Fellowship Church open invoices

Patricia,

As of today, 1/14/10, I still have not received payment on these outstanding invoices. Could you please check on that for me and let me know when to expect payment?

Thanks,
Jenni

From: Patricia Smith [mailto:PSmith@morningstarministries.org]
Sent: Monday, December 21, 2009 13:29
To: Jenni Cooper
Subject: RE: Morningstar Fellowship Church open invoices

Jenni,

Thanks for your email and invoices attached. I noticed that my records on how much MorningStar owed Power was not the same as what you sent me, so upon further investigation I found that we had not received the invoice number 0017721. I am going to adjust our amount and put in the paperwork soon for our Accounting to put a check in the mail.

If you have any questions, feel free to let me know.

Thank you and Merry Christmas,
Patricia

From: Jenni Cooper [mailto:jenni@powereng.net]
Sent: Wednesday, December 16, 2009 10:29 AM
To: Patricia Smith
Subject: Morningstar Fellowship Church open invoices

Patricia,

I have attached copies of the invoices you requested, as well as an Aged Accounts Receivable list which shows the total amount due and an Accounts Receivable Ledger which shows all billings and payments made for this project.

The original amount due for Invoice #0001416 was \$2,398.00, but a payment was made and the outstanding balance on that invoice is \$1,000.00. The full amount is due for Invoice #0017721 (\$2,593.04). That brings the total due to complete payment on this project to \$3,593.04.

Please let me know if you have any questions or need additional information.

Thank You,

Jenni Cooper

Power Engineering Company, Inc.

(803) 216-8777

Britt, Susan

From: Pettine, David
Sent: Thursday, February 04, 2010 4:39 PM
To: Pat Selvey; dave yarnes
Cc: Britt, Susan; Baker, Jim
Subject: Commercial Site Plan Approval Documents
Attachments: Plan_Tracking_Report.pdf; Zoning_Compliance_8_28_2009.pdf

Pat,

Good afternoon. I have attached the documents that were sent to Gerald Lee of Power Engineering on August 24th, 2009, along with the Zoning Compliance that is created following commercial site plan approval.

In regards to the info on the Plan Tracking Report attachment, plans received conditional approval on August 4th, 2009. The conditions for final approval were the addition of a few notes on the plans. York County staff worked with Gerald to have him add and initial the notes on the plans to staff's satisfaction rather than request a full re-submittal. The addition of the notes resulted in the conditions being met for final approval with the attached correspondence outlining staff's acknowledgement of the notes being added and sent to Gerald Lee. Following that, the plans were stamped approved and the Zoning Compliance was created which is formal acknowledgement of the plans meeting the requirements of the applicable ordinances. Copies of the approved, stamped plans are in our offices and we can provide copies to you upon request.

Please let me know if there is anything else we can provide or if you have any additional questions on the attached documents. Thanks Pat.

Dave Pettine
Assistant Director, Planning and Development Services

York County Government
Planning & Development
1070 Heckle Blvd. A-5
Rock Hill, SC 29732-2863
Direct: (803) 909-7173
Toll Free: (800) 922-7271
Phone: (803) 909-7240
Fax: (803) 909-7478
Email: david.pettine@yorkcountygov.com
Website: www.yorkcountygov.com

-1005





LETTER OF NOTIFICATION

York County Site Plan Revision Letter

YORK COUNTY DEVELOPING COORDINATING CENTER

1070 Heckle Blvd, Rock Hill, South Carolina 29732-2863

Phone: 803 909 7238 or 803 909 7232 FAX 803 909 7227

website: www.yorkcountygov.com

To: POWER ENGINEERING, INC
138 WESTPARK BLVD
COLUMBIA, SC 29210

Attention: GERALD LEE

FAX: (803)216-8070

Project Number: 20080392
Project Name: HERITAGE TOWER PROJECT
Project Address: 225 STAR LIGHT DR
Plan Number: 4
Date Submitted: 7/16/2009
Types of Plans: Commercial Site Plan

We have completed our review of your site plans for the project referenced above. The comments listed on the attached plan review report must be addressed and revised plans resubmitted.

Once the above comments have been addressed, please submit a cover sheet with the revisions that thoroughly detail the changes/responses and the associative locations on the plans. When revised plans are received, we will resubmit the plans to staff for review. We require 7 complete sets for re-review. Please note that we require separate checks for zoning and storm water re-review fees (both payable to York County). See attached comments to verify if fees are applicable.

We remind owners, designers and contractors, or their representatives, that while this review is an integral part of this project, it does not relieve them from the individual or collective responsibility to comply with applicable provisions of the adopted codes and standards. Nor should this examination be construed as a check of every item in the submitted documents and does not prevent this agency, nor other state or local authorities, from hereafter requiring corrections of errors in plans or construction. Please call if you have questions or if we can help you

Sincerely,

Ann Dodgen

Development Coordinating Center



Initial: Tuesday, August 4, 2009
Printed: Monday, August 24, 2009

NS: 1 1



COMMENT LISTING OF ALL REVIEWS YORK COUNTY DEVELOPMENT COORDINATING CENTER

20080392

PROJECT NAME: HERITAGE TOWER PROJECT

PLAN NUMBER: 4

PLAN TYPE(S): SITE

Phase	Section	1st Lot	2nd Lot

Eng-water-sewer

STATUS	SPECIFIC DIVISION COMMENTS
Approved	

Engineer-roads

STATUS	SPECIFIC DIVISION COMMENTS
Approved	

Fire Prev.

STATUS	SPECIFIC DIVISION COMMENTS
Approved	

Planning

STATUS	SPECIFIC DIVISION COMMENTS
Conditional	Please add a note to the plans, that should SCDOT request that portion of Starlight Drive be closed due to safety concerns between the school and potential stacking at the railroad tracks, the TIA will need to be revised to reflect those changes.

August 24th, 2009: Planning notes that this note has been placed on the plans.

To expedite the review of the re-submitted documents, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please contact Sarah Rayfield in the Planning Department at 803.909.7233 or sarah.rayfield@yorkcountygov.com

Stormwater

STATUS	SPECIFIC DIVISION COMMENTS
Conditional	1. Per York County Ordinance Section-152.41.A.10.i., Flumes are not an acceptable means of runoff conveyance. Please propose an alternative method for conveyance and either come by and revise the text by hand and initial the revision on each page that reflects the flume notation. 2. On sheet C.1.7, please include the wall at the proposed flume location to be part of the demolition activities. The wall must be partially demolished due to the proposed inlet and associated RCP shown. This can be completed as part of item #1. 3. We will require a check for NPDES permitting made payable to SCDHEC in the amount of \$125 prior to approval. 4. Even though this project has been issued a "Rejection" status, all of these items can probably be completed in the offices of York County with the assistance of the engineer of record. If all of the plans can be obtained and either sheets replaced or hand revised, then approval can be issued. FYI: Due to the fact that I had to place comments in Plan Tracking, an approval could not be



Thursday, February 4, 2010

C:\Program Files\BCS\Plan Tracking\reports\Review_Comments.rpt

Page 1 of 2

issued...although....Gerald Lee.....call me to setup this time to fix these couple of items and if all other departments have approved your project.....then after revisions are made...then I can approve.....Billy Payne

08-18-2009

Mr. Gerald Lee (Engineering Manager for Power Engineering) came by my office today (at lunch time 12:00) and placed the required TIA note to sheet C.1.0 as note # 27 per Mrs. Sarah Rayfield review comment. These note(s) was physically hand written, dated and initialed by the engineer of record, on each plan set, witnessed by Mr. Billy Payne-York County Env. Compliance Plans examiner. Mr. Gerald Lee also revised the plan set sheets that previously stated "Proposed Flume" within the parking lot area to read "Proposed Concrete Curb Opening". Mr. Gerald Lee also placed one note on each plan set demolition sheet to state that "A portion of the existing wall shall be removed for the installation of proposed RCP". No other revisions were made to this submittal and will be approved by Billy Payne for NPDES permitting.

Zoningcom

STATUS	SPECIFIC DIVISION COMMENTS
Conditional	Approved per conditions outlined and indicated on site plan on the improvements to the roads and Development Agreement.



Thursday, February 4, 2010

C:\Program Files\BCS\Plan Tracking\reports\Review_Comments.rpt

Page 2 of 2



YORK COUNTY GOVERNMENT

Planning & Development Services

Customer Service Division
(803) 909-7200

Building & Codes Division
(803) 909-7201

Planning Services Division
(803) 909-7220

Zoning Services Division
(803) 909-7230

Administration
(803) 909-7240

Commerical Zoning Compliance Permit

Project Description:

Heritage Tower

Plan Tracking: Number

20080392

Zoning Permit #

ZC-091595

Tax Map Number:

7290000457

Type of Work

Heritage Tower Project

Project Name:

Heritage Tower Project

Zoning District:

PD (Custom)

Community

Fort Mill, SC 29715

Property Address:

225 Starlight Dr

Fort Mill, SC 29715

Building Height

Total Access Drives

see site plan

Access Drive Width

see site plan

Structure Setbacks Requirements:

Front: see site plan

Rear: see site plan

Right: see site plan

Left: see site plan

Buffer Yard Type:

Front: see site plan

Back: see site plan

Left Side: see site plan

Right Side: see site plan

Buffer Yard Structure/Plants:

Front: see site plan

Back: see site plan

Left Side: see site plan

Right Side: see site plan

Parking Lot Requirements:

Parking Spaces

see site plan

Parking Size

see site plan

HC Spaces

see site plan

HC Size

see site plan

Special Conditions:

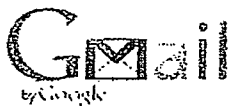
See conditions under site plan and site must comply with the Development Agreement. See site plan for additional requirements along with all requirements of the Development Agreement.

Applicant
Power Engineering

Zoning Official
Shannon Catoe

Date Issued
Aug 28 2009

Fee \$100.00



dave yarnes <dyarnes@gmail.com>

Pat Selvey- Tower Update 3.21.2008

1 message

dave yarnes <dkyarnes@gmail.com>
To: dave yarnes <dyarnes@gmail.com>

Mon, Mar 24, 2008 at 8:25 AM

----- Forwarded message -----

From: Pat Selvey <patselvey@gmail.com>

Date: Fri, Mar 21, 2008 at 11:51 AM

Subject: Tower Update 3.21.2008

To: Buddy Motz <b.motz@relianceadm.com>, Buddy Motz <Buddy.motz@yorkcountygov.com>, Paul Lindemann <Paul.Lindemann@yorkcountygov.com>

Cc: "Britt, Susan" <Susan.Britt@yorkcountygov.com>, "Pettine, David" <David.Pettine@yorkcountygov.com>

To all,

I have attached an update for your convenience showing where we are in our plan for the Heritage Tower Project.

Please keep this report confidential.

Thank you,

Pat Selvey

--
This message and any attachments are confidential to the ordinary user of the email address to which it was addressed and may also be privileged. If you are not the addressee, you may not copy, forward, disclose or use any part of the message or its attachments and should delete them from your system and kindly notify the sender immediately by return email. Any opinions contained in this message are those of the author. Internet communications cannot be guaranteed to be secure or error-free as information

 State of the Tower Report 3.21.docx
14K



THIS REPORT IS CONFIDENTIAL. IT MAY NOT BE SHARED OR COPIED WITHOUT WRITTEN PERMISSION FROM THE SENDER.
THIS REPORT INCLUDES FORWARD THINKING PLANS THAT ARE SUBJECT TO FLUCTUATIONS IN MARKET CONDITIONS.

State of the Tower Report - 3.21.2008

(A chronological order of expected events for the Heritage Tower Project)

Concept Plans become Permittable Plans:

The Structural Engineering Firm - Stewart Engineering has begun an "Existing Conditions Survey" which could take several weeks. Core samples, X-rays and various site analyses must be completed before engineering plans can be completed and readied for Permit application.

***** The permitting process will begin here *****

Near Term Convertible Financing:

Private Issue Bond proposal for *Friends & Family* is being reviewed by a group of our backers & partners. This instrument will likely prove to be a tremendous help with the lion share of construction debt.

Long Term Financing:

Out of 14 invitations, we have 4 institutions who are still adjusting their terms to compete for our business.

This competition process has the potential to save our ministry over \$140,000 per month in interest.

Permit Process:

This following process has been approved by local and national officials:

Permittable plans will be completed.

The **Site Plan** will be submitted to YC and the **Construction Plans** will be submitted to ICC in Birmingham on the same day.

These two plan review processes are estimated to take about 4 months.

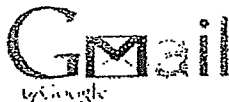
Performance Bond:

We are in talks with Shelco and two other unnamed Commercial Contractors from Charlotte.

All of which will be able, along with us, to secure proper bonding for performance.

The firm that will assign the risk and issue the bond is in a "ready when you are" state.

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dave yarnes <dyarnes@gmail.com>

Re: Tower update 6.10.2008

1 message

Pat Selvey <patselvey@gmail.com>

Thu, Jul 17, 2008 at 5:14 PM

To: Buddy Motz <b.motz@relianceadm.com>, Buddy Motz <Buddy.motz@yorkcountygov.com>, Paul Lindemann <Paul.Lindemann@yorkcountygov.com>

Cc: "Britt, Susan" <Susan.Britt@yorkcountygov.com>, "Pettine, David" <David.Pettine@yorkcountygov.com>, dave yarnes <dyarnes@gmail.com>, Gary Sanderson <gws717@gmail.com>, Rick Joyner <rickjoy@aol.com>

To the York County Council and Staff

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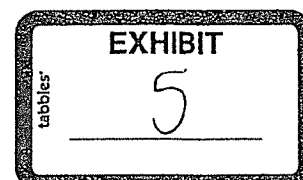
Please keep this report confidential.

Thank you,

Pat Selvey

HERITAGE TOWERS 375 Star Light Dr. Fort Mill, SC 29715
patselvey@gmail.com (O) 803.547.9615 (F) 803.547.9667

 State of the Tower Report 7.17.docx
17K



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State of the Tower Report - 7.17.2008

(A chronological order of expected events for the Heritage Tower Project)

Concept Plans TO Permittable Plans:

Structural engineering firm Stewart Engineering is 100% complete with the "Existing Conditions Survey". Core samples, X-rays and various site analyses have been completed and analyzed. Engineering plans can now be completed and readied for Permit application.

Critical Path:

Bond requirements and Due Diligence for permanent financing include establishing a Sales Office for Marketing & Presale activity. This is a requirement for the bond process, even though our clients are from our own constituency. We are in the process of hiring staff and establishing offices for presale presentations.

CURRENT APPLICATIONS:

Much of our efforts are now focused in two areas:

- (1) Legal Contracts allowing us to properly collect 10% deposits and begin the Bond Requirement Process that ultimately results in 70% pre-sale as evidenced by 10% on deposit.
- (2) A model unit that will be established offsite

Near Term Convertible Financing:

Private Issue Bond proposal for *Friends & Family* continues to be reviewed by a group of our backers & partners.

This instrument will likely prove to be a tremendous help with the lion share of construction debt.

*** The permitting process will begin here ***

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Johnson Mortgage has issued our second engagement letter.

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Debbie Helms

From: Patricia Smith <PSmith@morningstarministries.org>
Sent: Thursday, August 20, 2009 9:36 AM
To: Gerald A. Lee
Subject: RE: Tower Project Approval

Gerald,

Thanks for your flexibility. I will set it up with Dave to give you a call at 10:30 am this Monday, the 24th of August. Will you let me know the best number that he can reach you at?

Thank you,
Patricia

From: Gerald A. Lee [<mailto:gerald@powereng.net>]
Sent: Wednesday, August 19, 2009 1:53 PM
To: Patricia Smith
Subject: RE: Tower Project Approval

Currently I have nothing on my schedule. Let me know what time he would prefer and I will keep that time open.

From: Patricia Smith [<mailto:PSmith@morningstarministries.org>]
Sent: Wednesday, August 19, 2009 1:52 PM
To: Gerald A. Lee
Subject: RE: Tower Project Approval

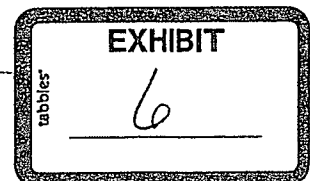
Dear Gerald,

I was able to speak with Dave and we found that next week would work better for his schedule to talk on the phone. There is a conference going on Thursday – Saturday this week which will keep him pretty occupied just about every moment. Will you have Monday, the 24th of August available for a conference call with Dave? He has 10 am or 10:30 am available.

I look forward to hearing from you.

Thanks,
Patricia

From: Gerald A. Lee [<mailto:gerald@powereng.net>]
Sent: Wednesday, August 19, 2009 10:38 AM
To: Patricia Smith
Subject: Tower Project Approval



I do not have an e-mail for Dave so I will send this through you. I had a meeting with York County yesterday to go over the last of some minor changes they wanted on the plans and they actually allowed me to just write the changes on the previously submitted drawings. That is the last of the comments and it is my understanding that they will be issuing their approval letter next. We probably need to talk again and discuss where we need to go from this point. Please call me at your earliest convenience. There is also an issue of past due billings. Since we did not have the approval on the work we did I did not push the issue but now that we do I need to bring it up. The last payment we received from Morningstar I believe was back in January and it was a partial payment. We need to get current with billings. Thanks

Gerald A. Lee, PE

Power Engineering Company, Inc.

138 Westpark Blvd

Columbia, SC 29210

Tel: 803-216-8777

Fax: 803-216-8070

Debbie Helms

From: Patricia Smith <PSmith@morningstarministries.org>
Sent: Wednesday, September 09, 2009 2:03 PM
To: Derrick E. Boyte
Subject: RE: Rescheduling with Dave Yarnes

Thanks Derrick. I am going to shoot for the mornings of either of those days, just so you know.
Have a good day,
Patricia

From: Derrick E. Boyte [<mailto:dboyte@powereng.net>]
Sent: Wednesday, September 09, 2009 2:02 PM
To: Patricia Smith
Subject: RE: Rescheduling with Dave Yarnes

I should be available either day as it stands now. I will try to keep those days free until I hear back from you.

I do need one favor from you. Can you check on the status of our outstanding invoices associated with this project. It was my understanding that it was being held until approval which we have according to the county. It would help if we could collect the outstanding balance this month.

Thanks,
Derrick

From: Patricia Smith [<mailto:PSmith@morningstarministries.org>]
Sent: Wednesday, September 09, 2009 1:46 PM
To: Derrick E. Boyte
Subject: Rescheduling with Dave Yarnes

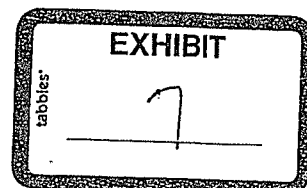
Hello Derrick,

I hope you are having a good week. I am writing because Dave has asked me to reschedule the conference call we have planned for this Friday to another time next week. I am looking at putting a few other things on his calendar, so if you don't mind I will get back with you soon on Dave's availability. I will look at rescheduling the conference call for either Thursday the 17th of Sept. or Friday the 18th of Sept.

If either of these dates will not work for you, please let me know. I will get in touch with you soon.

Thanks for your flexibility,
Patricia

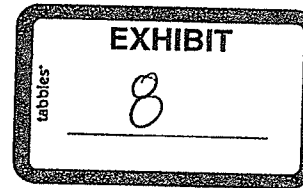
Patricia Smith
Assistant to David Yarnes
psmith@morningstarministries.org
(803)802-5544 x378
(803)547-9615





C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment



November 25, 2009

PAT SELVEY
MORNINGSTAR CHURCH
375 STARLIGHT DR.
FORT MILL SC 29715

RECEIVED

DEC 03 2009

RE: HERITAGE TOWER PROJECT, York County; File number: 46-09-11-15

POWER ENGINEERING CO., INC.

Dear Pat Selvey:

The Department of Health and Environmental Control (Department or DHEC) has received approval of and the Notice of Intent for the above-referenced project from York County. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities SCR100000 (2006 CGP), this project was granted coverage under the 2006 CGP on November 25, 2009. This project's general permit coverage number is SCR10M044. The total disturbed area for this site is 4.8 acres. This NPDES coverage expires on 11/25/2014, 5 years from the date of issuance.

The inspections for this site must be performed by qualified personnel who meets the requirements list in Section 3.10.D of the 2006 CGP. Qualified personnel must be one of the following:

1. SWPPP preparer
2. Person under direct supervision of SWPPP preparer
3. Person who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC (see our website for a list of approved courses)
4. Person with registration equivalent of SWPPP preparer
5. Person under direct supervision of person with registration equivalent to SWPPP preparer

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (46-09-11-15), NPDES coverage number (SCR10M044), and project name HERITAGE TOWER PROJECT.

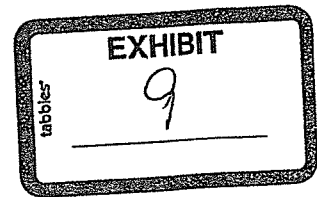
An as-built survey(s), signed and sealed by a S.C. Licensed Land Surveyor or Professional Engineer, should be submitted to York County for all detention structure(s) on this site. The survey(s) should show grades, contours, and depths for all structure(s) and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/ or analysis must be accepted by York County before a Notice of Termination (NOT) can be submitted to the Department.

The 2006 CGP can be downloaded at the following website:
<http://www.scdhec.gov/environment/water/docs/finalcgp.pdf> or you may request a copy from us via email (stormwatercgp@dhc.sc.gov). You are responsible for ensuring your contractor(s) complies with the approved SWPPP and the minimum requirements of the 2006 CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act) and the Federal Clean Water Act (CWA).

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Lancaster EQC Office
2475 DHEC RD
LANCASTER SC 29720
803-285-7461

From: Pat Selvey [mailto:patselvey@gmail.com]
Sent: Tuesday, January 12, 2010 7:15 PM
To: Pettine, David
Cc: Britt, Susan
Subject: Re: Heritage Tower Update



David,

I am aware of the language you are referring to, however, it is my understanding that the Site Plan has not been approved. Last time we talked with your offices, it was still in review and we were happy to have more time as we are doing our level best to perform as promised.

Pat

On Tue, Jan 12, 2010 at 5:13 PM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

Thanks for the update. Sounds like things have been progressing on the project. However, you may want to review the DA as our understanding was there was a six month period following site plan approval to provide proof of financing for the project. If that did not occur, the DA became void.

Under that provision, financing would need to be secured by late February in order for the project to proceed as plans were approved in August.

I am out of the office at the moment, but I will provide you with the section of the DA that references the 180 day provision tomorrow morning.

Again, this is our understanding of that language and should be reviewed by both legal counsels prior to making a final determination. I have a council retreat all day tomorrow but as stated will get you the language I am referencing in this email in the morning so you can conduct review on your end. Let's plan on talking on Thursday or Friday so we can all make sure we are on the same page.

Thanks Pat. Have a good night.

Dave

From: Pat Selvey <patselvey@gmail.com>

To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <gws717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jcwoodall@conceptarc.com>; Rich. Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>
Sent: Tue Jan 12 16:54:54 2010
Subject: Heritage Tower Update

Happy New Year to our friends at York County.

It has been a while since our last update. We have been working diligently throughout 2009, primarily on one thing: Sales. We have good news to report.

Our waiting list for reservations is now over 20 deep which triggers a significant milestone for us. We are now ready to build our "model unit". Plans will be submitted to YC very soon for the model unit which will be constructed very quickly now that we have enough reservations to proceed with the next stage of our Master Plan.

Once the model is built, we will be able to come under contracts which will in turn trigger construction financing. Our project is proceeding as planned in every way, except for timing. It took longer in this economy than we initially thought to get to this milestone, but given the time constraints of our Development Agreement, we should have plenty of time to complete everything within the 5 years allotted for our PD Plan.

Please feel free to contact us with any questions about our project.

Pat Selvey

Heritage Tower Project



Fennell, Rich

From: Pat Selvey [patselvey@gmail.com]
Sent: Monday, August 18, 2014 9:21 AM
To: Fennell, Rich
Subject: Fwd: Sensitive Document attached - PS to DY
Attachments: Steve Report.docx

----- Forwarded message -----

From: Pat Selvey <patselvey@gmail.com>
Date: Tue, Feb 23, 2010 at 2:40 PM
Subject: Re: Sensitive Document attached - PS to DY
To: Patricia Smith <psmith@morningstarministries.org>
Cc: Rick Joyner <rickjoy@aol.com>

forgot to attach...here it is

On Tue, Feb 23, 2010 at 2:34 PM, Pat Selvey <patselvey@gmail.com> wrote:
Patricia,

I have attached a document for Dave.
He is expecting it.
It is sensitive, please do not read/review or allow others to see.

Pat

--
Patrick Selvey
International Director
Hydrating Humanity Inc
www.hydratinghumanity.org

Comments from Paul Towel – Raymond James

"Your Real Estate "as is" cannot be valued at market rate because the bank knows it would not be able to take the property and make it work because it is located on your campus. The value you are putting on it is not accurate as a "stand alone" appraisal."

"You should calculate and compare the difference of what it would cost to tear down that building and build something else that fits better with your campus and today's building advantages."

"Your project is much too big to fund with a bond. Your balance sheet could never carry this project. You need a project that is 24 million or less to even consider a successful launch."

"There has always been a sense that there is a significant amount of Friends & Family money out there. All along the way, we have been moving forward with you because of that understanding. If there is not at least 15 million or more of friends and family funding available at a low rate, this project just doesn't work."

"We need to make the effort and find out how much..."

"Tax exempt will be a problem if we maintain Christian ties and stay with Active Adult 55."

"Tax-exempt housing qualification is only available for "senior housing" which is age 62 and above. "Active adult" housing is a designation...but not for tax exempt. We will be at real risk of losing our entire non-profit status if we put in a "sub-division" like this."

REDACTED

"85% pre-sold is the new 70% pre-sold. Projects at 70% are not able to sell their bonds anymore and probably never will be."

"We must cash flow 1.4 of debt payment or higher for bond to be viable."

"We cannot, cannot, cannot discriminate unless we ONLY use private funds
If we do, we could lose our tax-exempt status going back for several years."

"None of the models work for giving out 100% or even 90% or even 85% refunds. We must stop telling people we will refund their entrance fee if they change their mind when we really only intend to refund a portion of it. We could get in serious trouble for bait and switch for what we have already said and sent out as far as webinars, sales calls, newsletter, pulpit announcements and literature."

"We only have 106 reservations out of 350 needed"

Pat's Comments

Several key folks have tried to talk us into starting over with another more practical building if we feel that strongly about taking care of our seniors.

The numbers do not work...we are still trying to tweak the sales numbers to make it work. The value of what we are asking people to put their entire livelihood into verses what they will receive has been challenged by EVERY finance person we have talked to. The ones who are telling us what we want to hear are the ones we are giving money to...like our marketing guy for example who says he is confident we can convert into sales when the time comes...I do NOT trust him to have our best interest at all.

We could have torn it down and cleaned up the mess for the money we have put into it to date. It would be cheaper to build housing for people from scratch than to rehab that building because we would not be forcing our plan into that mold.

There are no financing instruments that we can find to help people get mortgages for a life lease.

RJ gets partial reports....Dave and I used to meet w/ RJ once per week until I said a couple of things in the spirit of full disclosure and I haven't been invited back since. (I may be wrong about why.)

The numbers do not work...we are still trying to tweak the sales numbers to make them work. They are not a proper value for people...we must be careful about telling people that this is a "great value".

People are told that RJ is going to buy the first one and move in himself...but I was told by ECCU that our books show that he will "receive an apartment" without paying for it. Rick deserves that and much more...I am ONLY commenting on the slick way this whole thing is being presented.

This reminds me of all the mustering of Y2K ... then after nothing happened the right thing to do was to say...that was wrong and move on...however, many people still tried to make something good out of it by trying to continue on.

Fennell, Rich

From: Pat Selvey [patselvey@gmail.com]
Sent: Monday, August 18, 2014 9:19 AM
To: Fennell, Rich
Subject: Fwd: Pat Selvey mtg

----- Forwarded message -----

From: Patrick Selvey <patselvey@gmail.com>
Date: Thu, Sep 2, 2010 at 4:03 PM
Subject: Re: Pat Selvey mtg
To: "rickjoy@aol.com" <rickjoy@aol.com>

Of course. Sorry about that. I'll call her now.

Pat Selvey
704.756.3053
(Sent from my iPhone)

On Sep 2, 2010, at 3:55 PM, rickjoy@aol.com wrote:

Pat,

I'd be glad to, but please call Nichole at 803-547-9657
for a time.

RJ

-----Original Message-----

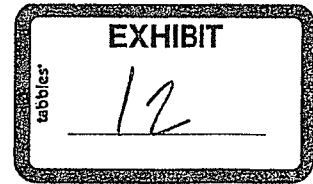
From: Pat Selvey <patselvey@gmail.com>
To: Rick Joyner <rickjoy@aol.com>
Sent: Thu, Sep 2, 2010 1:21 pm
Subject: Pat Selvey mtg

Rick,

Can you please give me 15 minutes?
I wouldn't ask if it wasn't really important and time sensitive.

(you name the time and place and I'll be there)

Pat



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2013-CP-46-00246

MORNINGSTAR FELLOWSHIP
CHURCH,

Plaintiff,

VS.

YORK COUNTY, SOUTH CAROLINA,

Defendant.

AFFIDAVIT OF PATRICK SELVEY

Patrick Selvey, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.

2. I worked for MorningStar for a number of years. I was reduced to a part time capacity in the early spring of 2009 and resigned completely on May 30, 2009 to pursue other ministry goals. I then returned mid July in a limited capacity as a consultant with respect to the tower project.

3. My job duties were basically those of a project manager's assistant being responsible to the Tower Project Manager, David Yarnes. I interacted as needed with the design and engineering professionals on the job. The project engineer initially was Power Engineering.

4. I also communicated directly with York County officials.

5. Power Engineering prepared and submitted a preliminary site plan for us in December, 2008. A site plan consists of detailed engineering and architectural drawings. It basically lets the reader know how the infrastructure is to be installed, how landscape issues (including drainage) are to be dealt with, and traffic and parking details managed. It also shows the location of the vertical construction.

6. We did not receive an approved site plan from the County at any point, until after they started accusing us of being in default. There were a number of notices regarding site plan issues that were sent to our project engineer in order to let them know of perceived deficiencies. These notices listed compliance problems with various aspects of the plan. Hindsight shows that these issues were eventually addressed and corrected, but we never received the stamped site

plan document from the County. The normal procedure for stamped approval concerning plans and permits is that the County contacts our office to let us know we can pick up our set of *stamped* approved plans. This was the procedure the County followed for every project we *permitted* during the previous years, except for this one.

7. To my knowledge, the county failed to produce a *stamped site plan* for our engineer, or to us, which according to the county's procedure is the only approval that is real or binding.

8. I have been personally advised by the County on more than one occasion that every developer and contractor must know; rumored approval or even verbal approval means nothing, and projects cannot be started, nor counted on UNTIL the county stamps the site plan and releases a stamped copy, which they did not.

9. I sent an update to the County in January, 2010. I was shocked at their response. They contended that the site plan had been approved in August, 2009, and we had to present performance bonds to them in a matter of a couple of weeks. That was impossible. Performance bonds require approved site plans that have been stamped by the county. The stamped site plan document is as valuable to the loan and bond document process as a home inspection or appraisal is to a mortgage.

10. Derrick Boyte at Power Engineering sent the email to me that is marked as Exhibit M. I disagreed that anyone could view the documents he referenced as an approved site plan. I described the problems with such an approach in paragraph 6. No one at Power Engineering had ever taken that position before. Morningstar paid the \$1,000 in dispute because we knew they were having significant financial problems and we were dealing with the County directly on the site plan issue. It didn't seem worth fighting about. We were made aware that the engineering work was completed, but that the County was still not through with their internal process for completing the approval. It wasn't the first time the County took time processing our plans after the engineering work was done, as they would go from one department to the next awaiting final review and approval from each department head. We reasonably assumed the process was ongoing according to their administration process.

11. We met with several county representatives on February 4. The County's response was consistent throughout. They contended that we were taking people's money, the

project could not be completed anyway, and they were not going to back down on the default. As far as I know, they have never changed their minds.

12. I told them that we did not have plans, and that the plans were critical to be able to bid the job. That was the first time I ever heard that the plans were available at the County offices. It was too late to do anything with them in February 2010. We needed them in August, 2009.

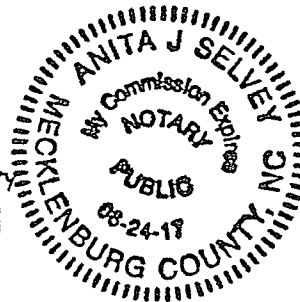
13. By this point the media was picking up on the dispute, and the project went into limbo, at least from a construction standpoint.

This 13th day of June, 2014.

Patrick Selvey
Patrick Selvey

Sworn to and subscribed before
me this 13th day of June, 2014.

Anita J. Selvey
Notary Public for North Carolina in Mecklenburg
Print Name: Anita J. Selvey County
My Commission Expires: 6-24-17



CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AFFIDAVIT OF PATRICK SELVEY** has this date been delivered to counsel for Defendant by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to them as follows:

Daniel J. Ballou
W. Keith Martens
Hamilton Martens Ballou & Carroll, LLC
P.O. Box 10940
Rock Hill, SC 29731

Michael K. Kendree
York County Attorney
P.O. Box 299
York, SC 29745

JAMES, MCELROY & DIEHL, P.A.

By: _____
Richard B. Fennell
S.C. Bar No. 10467
rfennell@jmdlaw.com
600 S. College Street
Charlotte, NC 28202
704-372-9870
704-333-5508 (fax)
Attorneys for Plaintiff

This _____ day of June, 2014.

Deposition of James E. Baker

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)
MorningStar Fellowship Church,)
Plaintiff,)
-vs-) 2013-CP-46-00246
York County, South Carolina,)
Defendant.)

DEPOSITION OF JAMES EVERETT BAKER

ROCK HILL, SOUTH CAROLINA

OCTOBER 13, 2014

REPORTED BY: Cathy L. Young, CVR-M

Dallas Reporting, Inc. Rock Hill, S.C. 803-328-9640

Deposition of James E. Baker

65

1 EXAMINATION CONTINUES BY MR. FENNEL:

2 Q. This is Exhibit 16.

3 A. Yes.

4 Q. If you would, take a moment and tell me when you're
5 ready to talk about it.

6 A. (Reviews document.) Yes, I'm familiar with it.

7 Q. Do you remember the letter?

8 A. Yes, I do.

9 Q. Mr. Yarnes describes a meeting at your office on
10 February 4, 2010?

11 A. Yes.

12 Q. Do you remember the meeting?

13 A. Yes, I do.

14 Q. Do you remember who was there?

15 A. Not everyone that was there. David Yarnes was
16 there. I'm thinking that Reverend Joyner was there.
17 I don't remember whether Pat Selvey was there. We
18 had myself, I was there, Melvin McKeown was there.
19 I think Susan Britt and some other staff from
20 Planning Department were there.

21 Q. How would you describe the basic tenor of the
22 meeting? Hostile? Cooperative? Some other
23 adjective?

24 A. Probably frustrating from both perspectives.

25 Q. And what was frustrating for you?

1 A. The meeting was -- we reached a quick -- we seemed
2 to come to an impasse very quickly. The tenor of
3 the meeting was MorningStar was asking us to extend
4 the deadline indefinitely for them to present their
5 financing, and not to take any action on the notice
6 of default.

7 Q. Yes, sir.

8 A. The County's position was that we were more than
9 willing to talk about an extension of time, but
10 there needed to be a specific timeframe as opposed
11 to an open-ended timeframe.

12 Q. When you're talking about timeframe, are you talking
13 about from a construction standpoint or from a
14 presentation of evidence of feasibility?

15 A. Well, the latter, but more specific in terms of that
16 there were a couple of issues that related to were
17 deliverables in the 180 days after the Site Plan had
18 been approved.

19 Q. Yes, sir.

20 A. The financing commitment was one, and I'm not -- I
21 don't recall now whether it was exactly the same
22 timeframe, but there was also an ICC build ability
23 or structural stability type of report that was also
24 being discussed in the same timeframe. So what we
25 were basically saying is we're not comfortable with

1 giving you an open-ended extension of time. We're
2 willing to consider an extension of time if you can
3 tell us when you might be able to deliver those
4 items.

5 Q. Yes, sir.

6 A. MorningStar's consistent position was they couldn't
7 tell us that time.

8 Q. And did they explain why?

9 A. They said given the economy, they just didn't think
10 it was -- they could predict when they might be able
11 to proceed and get the financing.

12 Q. Were they making any allegations at that point that
13 you had done something wrong or the County had done
14 bad things?

15 A. No. No. They had -- they had -- the only thing
16 that they had said at that point was that if we
17 issued a notice of default, it would make their
18 marketing that much more difficult. The discussion
19 point that really seemed to stalemate us, and why I
20 say it was frustrating, is they again reasserted
21 this fact that we didn't have any notice of the --
22 you know, we didn't have any actual notice of the
23 Site Plan being approved.

24 Q. Yes, sir.

25 A. And I don't recall whether it was me, Melvin, or

1 who, but somebody from the County side basically
2 said, well, we don't know whether the Council would
3 go for it, but if we gave you 180 days from today,
4 would you be able to deliver your -- the financing
5 commitment, and the answer was no, they weren't
6 willing to accept that 180 days because they didn't
7 know if they could deliver.

8 Q. Who said that on the MorningStar side?

9 A. I don't remember to be honest with you. Because I
10 wasn't -- wasn't paying attention to --

11 Q. I understand.

12 A. -- who was communicating what, and -- but at that
13 point, I kind of said, well, then we're not really
14 talking about a notice issue, we're really talking
15 about inability to do that. So at that point, the
16 discussion was -- I do remember I'm the one that
17 basically communicated and said, look, I don't think
18 -- this is the Council's decision and we plan to
19 present it to the Council. You know, they had asked
20 us not to present it to the Council. I said, well,
21 it's their decision, not mine, I need to present it
22 to the Council, but I don't believe based on the
23 feedback that I've had from them that there's any
24 realistic likelihood that they will accept an
25 indefinite extension. If you can't give us some

1 specific timeframe in which you think you can meet
2 these requirements under the DA, I don't think the
3 Council is going to accept that. And that's where
4 things -- they basically said we don't think we can
5 give you a specific date. I said I don't think we
6 can sell anything else, you know, that's kind of the
7 way the meeting ended.

8 Q. Do you remember how long approximately the meeting
9 was?

10 A. Twenty minutes, something like that. It wasn't
11 long.

12 Q. So do you remember Mr. Yarnes or Mr. Selvey getting
13 upset in the meeting?

14 A. Not visibly upset. The tone of it -- it was evident
15 that everybody felt we weren't making progress.

16 Q. Do you remember anybody on the York County side
17 saying anything insulting towards the MorningStar
18 representatives?

19 A. No, I don't recall that.

20 Q. Did anybody on the MorningStar side get upset or
21 raise their voice?

22 A. I don't recall anybody on either side raising their
23 voice. There probably was more intensity in
24 people's voices just because we weren't getting to
25 -- we were kind of at loggerheads, but no, I don't

Britt, Susan

From: Pettine, David
Sent: Thursday, February 04, 2010 4:39 PM
To: Pat Selvey; dave yames
Cc: Britt, Susan; Baker, Jim
Subject: Commercial Site Plan Approval Documents
Attachments: Plan_Tracking_Report.pdf; Zoning_Compliance_8_28_2009.pdf

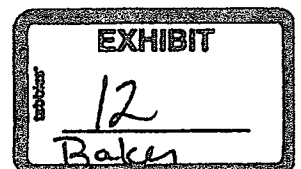
Pat,
Good afternoon. I have attached the documents that were sent to Gerald Lee of Power Engineering on August 24th, 2009, along with the Zoning Compliance that is created following commercial site plan approval.

In regards to the info on the Plan Tracking Report attachment, plans received conditional approval on August 4th, 2009. The conditions for final approval were the addition of a few notes on the plans. York County staff worked with Gerald to have him add and initial the notes on the plans to staff's satisfaction rather than request a full re-submittal. The addition of the notes resulted in the conditions being met for final approval with the attached correspondence outlining staff's acknowledgement of the notes being added and sent to Gerald Lee. Following that, the plans were stamped approved and the Zoning Compliance was created which is formal acknowledgement of the plans meeting the requirements of the applicable ordinances. Copies of the approved, stamped plans are in our offices and we can provide copies to you upon request.

Please let me know if there is anything else we can provide or if you have any additional questions on the attached documents. Thanks Pat.

Dave Pettine
Assistant Director, Planning and Development Services

York County Government
Planning & Development
1070 Heckle Blvd. A-5
Rock Hill, SC 29732-2863
Direct: (803) 909-7173
Toll Free: (800) 922-7271
Phone: (803) 909-7240
Fax: (803) 909-7478
Email: david.pettine@yorkcountygov.com
Website: www.yorkcountygov.com





LETTER OF NOTIFICATION

York County Site Plan Revision Letter

YORK COUNTY DEVELOPMENT COORDINATING CENTER

1070 Heckle Blvd, Rock Hill, South Carolina 29732-2863

Phone: 803 909 7238 or 803 909 7232 FAX 803 909 7227

website: www.yorkcountygov.com

To: POWER ENGINEERING, INC
138 WESTPARK BLVD
COLUMBIA, SC 29210

Attention: GERALD LEE

FAX: (803)216-8070

Project Number: 20080392

Project Name: HERITAGE TOWER PROJECT

Project Address: 225 STAR LIGHT DR

Plan Number: 4

Date Submitted: 7/16/2009

Types of Plans: Commercial Site Plan

We have completed our review of your site plans for the project referenced above. The comments listed on the attached plan review report must be addressed and revised plans resubmitted.

Once the above comments have been addressed, please submit a cover sheet with the revisions that thoroughly detail the changes/responses and the associative locations on the plans. When revised plans are received, we will resubmit the plans to staff for review. We require 7 complete sets for re-review. Please note that we require separate checks for zoning and storm water re-review fees (both payable to York County). See attached comments to verify if fees are applicable.

We remind owners, designers and contractors, or their representatives, that while this review is an integral part of this project, it does not relieve them from the individual or collective responsibility to comply with applicable provisions of the adopted codes and standards. Nor should this examination be construed as a check of every item in the submitted documents and does not prevent this agency, nor other state or local authorities, from hereafter requiring corrections of errors in plans or construction. Please call if you have questions or if we can help you

Sincerely,

Ann Dodgen

Development Coordinating Center



Initial: Tuesday, August 4, 2009
Printed: Monday, August 24, 2009

NS: 1 1



COMMENT LISTING OF ALL REVIEWS YORK COUNTY DEVELOPMENT COORDINATING CENTER

20080392

PROJECT NAME: HERITAGE TOWER PROJECT

PLAN NUMBER: 4

PLAN TYPE(S): SITE

Phase

Section

1st Lot

2nd Lot

Eng-water-sewer

STATUS	SPECIFIC DIVISION COMMENTS
Approved	

Engineer-roads

STATUS	SPECIFIC DIVISION COMMENTS
Approved	

Fire Prev.

STATUS	SPECIFIC DIVISION COMMENTS
Approved	

Planning

STATUS	SPECIFIC DIVISION COMMENTS
Conditional	Please add a note to the plans, that should SCDOT request that portion of Starlight Drive be closed due to safety concerns between the school and potential stacking at the railroad tracks, the TIA will need to be revised to reflect those changes.

~~August 24th, 2009: Planning notes that this note has been placed on the plans.~~

To expedite the review of the re-submitted documents, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please contact Sarah Rayfield in the Planning Department at 803.909.7233 or sarah.rayfield@yorkcountygov.com

Stormwater

STATUS	SPECIFIC DIVISION COMMENTS
Conditional	1. Per York County Ordinance Section-152.41.A.10.i., Flumes are not an acceptable means of runoff conveyance. Please propose an alternative method for conveyance and either come by and revise the text by hand and initial the revision on each page that reflects the flume notation. 2. On sheet C.1.7, please include the wall at the proposed flume location to be part of the demolition activities. The wall must be partially demolished due to the proposed inlet and associated RCP shown. This can be completed as part of item #1. 3. We will require a check for NPDES permitting made payable to SCDHEC in the amount of \$125 prior to approval. 4. Even though this project has been issued a "Rejection" status, all of these items can probably be completed in the offices of York County with the assistance of the engineer of record. If all of the plans can be obtained and either sheets replaced or hand revised, then approval can be issued. FYI: Due to the fact that I had to place comments in Plan Tracking, an approval could not be



Thursday, February 4, 2010

C:\Program Files\BCS\Plan Tracking\reports\Review_Comments.rpt

Page 1 of 2

issued...although....Gerald Lee.....call me to setup this time to fix these couple of items and if all other departments have approved your project.....then after revisions are made...then I can approve.....Billy Payne

08-18-2009

Mr. Gerald Lee (Engineering Manager for Power Engineering) came by my office today (at lunch time 12:00) and placed the required TIA note to sheet C-1-0 as note # 27 per Mrs. Sarah Rayfield review comment. These note(s) was physically hand written, dated and initialed by the engineer of record on each plan set, witnessed by Mr. Billy Payne-York County Env. Compliance Plans examiner. Mr. Gerald Lee also revised the plan set sheets that previously stated "Proposed Flume" within the parking lot area to read "Proposed Concrete Curb Opening". Mr. Gerald Lee also placed one note on each plan set demolition sheet to state that "A portion of the existing wall shall be removed for the installation of proposed RCP". No other revisions were made to this submittal and will be approved by Billy Payne for NPDES permitting.

Zoningcom

STATUS	SPECIFIC DIVISION COMMENTS
Conditional	Approved per conditions outlined and indicated on site plan on the improvements to the roads and Development Agreement.



Thursday, February 4, 2010

C:\Program Files\BCS\Plan Tracking\reports\Review_Comments.rpt

STATE OF SOUTH CAROLINA)
 IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)
)
MorningStar Fellowship Church,)
)
 Plaintiff,)
)
-vs- 2013-CP-46-00246
)
)
York County, South Carolina,
)
 Defendant.

DEPOSITION OF MARTHA SUSAN BRITT, AICP
TEGA CAY, SOUTH CAROLINA
OCTOBER 9, 2014

REPORTED BY: Cathy L. Young, CVR-M

1 System.

2 Q: Okay. And again, your best memory is is that August
3 the 24th letter that York County says is the Site
4 Plan approval?

5 A. That's correct.

6 Q. All right. Now with respect to zoning compliance,
7 does that happen -- or does the zoning compliance
8 permit get issued before or after Site Plan
9 approval?

10 A. Zoning compliance report permit would have been
11 issued when the Site Plan was approved.

12 Q. Okay.

13 MR. FENNELL:

14 Would you mark that as the next Exhibit 4?
15 (Court Reporter marks Plaintiff's Exhibit Number 4,
16 Commercial Zoning Compliance Permit, attached hereto.)

17 EXAMINATION CONTINUES BY MR. FENNELL:

18 Q. Let me show you what I've marked as Exhibit Number 4
19 for identification and the same basic questions.
20 Please take a moment to review it and tell me if you
21 have ever seen it.

22 A. (Reviews document.) I would not have seen the
23 actual permit.

24 Q. Yes, ma'am.

25 A. But I am familiar with the concept of the permit.

1 Q. Yes, ma'am. Just again going back to the standard
2 way that York County did business, should this
3 zoning compliance permit have been sent to the
4 project engineer?

5 A. The zoning compliance would have been sent to the
6 engineer of record as the contact.

7 Q. Yes, ma'am.

8 A. Because that's who they have listed here as the
9 applicant.

10 Q. Yes, ma'am. Do you know if that took place in this
11 case?

12 A. I can't say for sure, but my assumption since this
13 is signed, yes.

14 Q. All right. Now should there be evidence of the fact
15 that it was sent to the engineer of record?

16 A. Other than what's in the system, which is a copy of
17 the permit? This again, the permit system is a
18 computerized system.

19 Q. Understood.

20 A. It tracks who it sends it to, if -- that's a
21 blueprint system.

22 Q. Yes, ma'am. So if there's nothing in the tracking
23 system which indicates that it was sent to the
24 engineer of record, then it wasn't sent to the
25 engineer of record; is that fair?

1 MR. BALLOU:

2 Object to the form.

3 WITNESS CONTINUES:

4 A. I'm confused. It would have been issued to the
5 engineer of record.

6 Q. Yes, ma'am. And if it was actually --

7 A. You have to have someone actually sign the permit.

8 Q. If it was actually transmitted to the engineer of
9 record, would there be an indication of that in the
10 file related to this project?

11 A. It would have been in the computer system.

12 Q. So would there be an indication in the computer
13 system that it was actually transmitted if it in
14 fact was transmitted?

15 A. It's an automatic transmission.

16 Q. Okay. I think we're sort of talking past each
17 other. If it took place, the computer system would
18 indicate that it took place, yes, that it had been
19 transmitted to the engineer of record?

20 A. It should have, yes.

21 Q. All right. Is there any reason you can think of why
22 it wouldn't?

23 A. Computer glitch?

24 Q. Yes, ma'am. Was it acceptable during your time in
25 planning for someone to simply hand the zoning

1 compliance permit to the engineer of record and not
2 note that it had been done?

3 MR. BALLOU:

4 Object to the form.

5 WITNESS CONTINUES:

6 A. They could be submitted to them.

7 Q. But was that acceptable for someone to simply hand
8 it to engineer of record and not note what they had
9 done?

10 MR. BALLOU:

11 Same objection.

12 WITNESS CONTINUES:

13 A. The permit requires a signature.

14 Q. And I promise you I understand that. But my
15 question is was it acceptable during your time at
16 planning for someone to hand or send or otherwise
17 transmit the zoning compliance permit to the
18 engineer of record without noting that they had done
19 so?

20 MR. BALLOU:

21 Objection.

22 WITNESS CONTINUES:

23 A. As I stated previously, they have to sign the
24 permit.

25 Q. Yes, ma'am. And I guess -- let me try it one last

1 time, and then we'll just leave it. When the zoning
2 compliance permit gets issued, it's supposed to be
3 transmitted to the owner or the engineer of record,
4 yes?

5 A. It is transmitted to the engineer of record, and
6 then there is usually a permit board to be picked
7 up.

8 Q. Yes, ma'am. Now there's going to be or should be
9 some indication of that transmission in the computer
10 records, yes?

11 A. It should be automatic.

12 Q. Okay, so it should be there, right?

13 A. Should be.

14 Q. So if it's not there, we can assume from that that
15 it was never transmitted, right?

16 MR. BALLOU:

17 Object to the form.

18 EXAMINATION CONTINUES BY MR. FENNELL:

19 Q. Isn't that fair?

20 A. I'm not going to make that assumption.

21 Q. How long did you work there?

22 A. I worked there from August 2006 to May of 2010.

23 Q. Yes, ma'am, and can you think of any reason why
24 evidence of the transmission would not be in the
25 computer records other than I think you said a

1 computer glitch?

2 A. I can't think of anything. Again, the permit is
3 issued through the computer system. The actual
4 document has a signature on it.

5 Q. Yes, ma'am. And this says that it was issued on
6 August the 28th, 2009, right?

7 A. That's correct.

8 Q. So after Mr. Lee was in the office on August the
9 24th of 2009, yes?

10 A. Yes.

11 Q. Do you know if Mr. Lee continued to be employed by
12 Power Engineering after August the 24th of 2009?

13 A. No.

14 Q. Did you ever hear from Mr. Lee after August the 24th
15 of 2009?

16 A. I did not personally.

17 Q. Do you know if anybody on York County's behalf
18 continued to deal with Mr. Lee?

19 A. No.

20 Q. If there are any communications with Mr. Lee after
21 August the 24th, 2009, there would be some notation
22 of those in York County's file, yes?

23 A. I don't know.

24 Q. There should be, right?

25 A. I would think there would be some notation of

1 whatever person they talked with.

2 Q. Yes, ma'am. Emails were supposed to be kept, right?

3 A. That was the IT policy.

4 Q. And if somebody had a phone conference with Gerald
5 Lee about zoning compliance permits, they should
6 have noted in the computer, "I talked to Gerald
7 today," right?.

8 A. They would have noted in the file.

9 Q. Okay. And that was a procedure that everyone that
10 worked for you understood, right?

11 A. Yes.

12 Q. And would you assume that the documents that
13 currently exist in the York County file are the
14 complete set of documents that evidence
15 communication between York County and the engineer
16 of record?

17 MR. BALLOU:

18 Object to the form.

19 WITNESS CONTINUES:

20 A. I can't answer that.

21 Q. During your time with York County, was there a
22 policy with respect to document retention?

23 A. Yes, there was a standard policy retention document.

24 Q. And with respect to destroying documents, was there
25 a policy which set out what documents could be

1 destroyed and what documents had to be kept?

2 A. That's governed under the State requirements.

3 Q. Okay. And while you were there, York County
4 complied with those requirements, yes?

5 A. Yes.

6 Q. Okay. And do you have any reason to believe that
7 York County stopped complying with those
8 requirements after you left?

9 A. No.

10 Q. What was your first involvement with the tower
11 project; do you remember?

12 A. My first involvement, not necessarily with the tower
13 project, but when I took the position with York
14 County in 2006, I was made aware shortly thereafter
15 of a planned development requirement that indicated,
16 and I believe that was with Earl Coulston, that
17 indicate that the tower was to be removed and the
18 vested timeframe for that removal was approaching.

19 Q. Okay. Who made you aware of that?

20 A. That -- Steve Allen and Rich Whipple. Rich Whipple
21 was the assistant director at the time. Steve Allen
22 had been interim director.

23 Q. Did they make you aware of that in conjunction with
24 some action request on your part?

25 A. That's correct.

1 Q. What did they ask you to do?

2 A. It was really, really, for me to be informed of that
3 and discuss it with the manager at the time who was
4 Al Green.

5 Q. Yes, ma'am. And did you discuss it with Al Green?

6 A. I did.

7 Q. Did you have any notion of the history of the
8 MorningStar project in York County prior to that
9 point?

10 A. No. I knew about the history in general of the PTL,
11 Mr. Coulston's development, but nothing in
12 particular, nothing I was personally aware of.

13 Q. Okay. When you got to York County, was the tower
14 sort of viewed as a problem?

15 MR. BALLOU:

16 Object to the form.

17 WITNESS CONTINUES:

18 A. Not that I'm aware of.

19 Q. Did anyone when you got to York County give you any
20 background on the tower and the history of how the
21 tower had evolved and why it was still there,
22 etcetera?

23 A. Only in conjunction with the planned development
24 discussion.

25 Q. Did you get any notion from Mr. Allen or Mr. Whipple

1 that they really wanted the tower gone?

2 A. No.

3 Q. You mentioned PTL, did Mr. Allen or Mr. Whipple
4 refer to PTL --

5 A. No.

6 Q. Hold on a second. Did Mr. Allen or Mr. Whipple
7 refer to PTL when they were discussing the tower
8 with you?

9 A. Only that it was first developed at the time it was
10 built, I believe, in '82.

11 Q. Yes, ma'am. Was there any indication to you that
12 Mr. Allen or Mr. Whipple or other officials with the
13 York County believed MorningStar to be simply a
14 continuation of PTL?

15 A. No.

16 Q. Any indication to you that there was any sort of bad
17 blood between York County and MorningStar because of
18 a -- I guess you'd call it a PTL hangover?

19 A. No.

20 MR. BALLOU:

21 Object to the form.

22 MR. FENNELL:

23 Let's take a break for a second.

24 (BRIEF RECESS)

25 EXAMINATION CONTINUES BY MR. FENNELL:

1 Q. So we were discussing your conversations with Mr.
2 Allen and Mr. Whipple about an approaching deadline
3 with respect to the tower.

4 A. The respect was to the deadline on the planned
5 development district.

6 Q. Okay. So the tower at that time was still part of
7 the planned development district?

8 A. That's correct.

9 Q. Yes, ma'am. Was there any other point of contention
10 about how the planned development was going other
11 than progress with the tower?

12 A. There was a notation on the planned development that
13 required demolition of the tower. That was a point
14 that had not been concluded in the planned
15 development district implementation.

16 Q. Yes, ma'am.

17 MR. FENNELL:

18 Mark this I think 5.

19 (Court Reporter marks Plaintiff's Exhibit Number 5,
20 Emails, attached hereto.)

21 EXAMINATION CONTINUES BY MR. FENNELL:

22 Q. Let me show you what I've marked for identification
23 as Exhibit 5 to your deposition and ask you to take
24 a moment to review it and then tell me if you
25 recognize it?

1 A. (Reviews document.) I do.

2 Q. It purports to be an email string with the top email
3 from Neal McGlohon to you; do you see that?

4 A. Yes.

5 Q. And then underneath that is an email from you to
6 Mr. McGlohon and others I think discussing what you
7 were just explaining to me with respect to the
8 deadline and demolishing the tower?

9 A. That's correct.

10 Q. Can you tell me who Neal McGlohon is?

11 A. To tell you the truth, I can't remember.

12 Q. Was he a media representative?

13 A. I don't believe so. I think that he represented --
14 he was a community representative from a subdivision
15 in Regent Park.

16 Q. Okay. And do you think Mr. McGlohon had contacted
17 someone in York County to find out what was going on
18 with the tower?

19 A. Yes.

20 Q. Did that inquiry --

21 A. Yes, he actually contacted me and Rich -- he
22 actually contacted Rich Whipple who actually sent
23 that on to me.

24 Q. Okay. Did that inquiry from the community
25 representative spark the issuance of the notice of

1 violation?

2 A. No, we had been already discussing that since the
3 deadline was approaching.

4 Q. Okay. So Exhibit Number 5 to Mr. McGlohon was
5 simply for notice purposes?

6 A. That's correct. It's in response to his inquiry.

7 Q. Yes, ma'am.

8 (Court Reporter marks Plaintiff's Exhibit Number 6,
9 Letter, attached hereto.)

10 EXAMINATION CONTINUES BY MR. FENNELL:

11 Q. Let me show you what I've marked for identification
12 as Exhibit Number 6 and ask you to take a moment to
13 review it and then tell me if you recognize it.

14 A. (Reviews document.) I do.

15 Q. And can you tell us what it is?

16 A. It's basically informing Mr. Joyner of the deadline
17 on the demolishing of the tower as the requirement
18 in the PDD.

19 Q. Yes, ma'am. And how did you send it to Mr. Joyner?

20 A. By certified mail.

21 Q. Why did you send it by certified mail?

22 A. To ensure receipt.

23 Q. Was there some line of demarcation that you had when
24 you worked in York County about what you would send
25 by email versus regular mail versus certified mail?

1 A. In something of this nature, because it dealt with a
2 planned development district, the planned
3 development district had been approved by the
4 previous declarant Earl Coulston.

5 Q. Yes, ma'am.

6 A. And I believe that that property had been sold to
7 Mr. Joyner in the interim.

8 Q. Yes, ma'am.

9 A. That's why I would have sent this by certified mail.

10 Q. You considered this letter to be significant, yes?

11 A. I do.

12 Q. And one of the reasons why it was significant was
13 because it was informing Mr. Joyner that unless he
14 did certain things, the tower was going to get torn
15 down, right?

16 MR. BALLOU:

17 Object to the form.

18 WITNESS CONTINUES:

19 A. It informed him of the process.

20 Q. Yes, ma'am. And unless he complied with the
21 process, the tower was going to get torn down,
22 right?

23 MR. BALLOU:

24 Object to the form.

25 EXAMINATION CONTINUES BY MR. FENNELL:

1 Q. Is that right?

2 A. It actually gave him options.

3 Q. Yes, ma'am. And if he did not comply with the
4 options, the tower was going to come down, right?

5 A. He -- if he did not comply with any of the
6 options, --

7 Q. Yes, ma'am.

8 A. -- Mr. Joyner chose to make this application for a
9 site specific plan removing MorningStar from the
10 PDD.

11 Q. And I'm with you. But if he did not comply with the
12 directives or options given to him by York County,
13 the tower was going to come down, right?

14 A. That's what the PD called for.

15 Q. Yes, ma'am, so it would happen?

16 A. I can't say it would or wouldn't.

17 Q. And if it happened, it would cost MorningStar and
18 Mr. Joyner a lot of money, right?

19 MR. BALLOU:

20 Object to the form.

21 WITNESS CONTINUES:

22 A. From what I believe happened -- would have happened
23 with a certified letter this, if he did not comply,
24 there would have been violation penalties.

25 Q. Yes, ma'am.

1 A. And those would have been monetary penalties or he
2 could remedy the situation by complying with the PDD
3 or amending the PDD to remove the tower or appealing
4 the determination to the Board of Zoning Appeals.

5 Q. Yes, ma'am. Was this unique in your tenure at York
6 County, this one letter that you sent certified mail
7 to Mr. Joyner?

8 A. No.

9 Q. You sent correspondence by certified mail
10 frequently?

11 A. It would have -- anything that dealt with a zoning
12 violation of this magnitude would have been sent by
13 certified letter.

14 Q. Okay. So anything of significance went by certified
15 mail?

16 MR. BALLOU:

17 Object to the form.

18 WITNESS CONTINUES:

19 A. I don't think I would say anything of significance.
20 I'm saying a zoning violation.

21 Q. Yes, ma'am.

22 A. The ordinance required a notification by certified
23 mail of a zoning code violation. This was a
24 violation of the zoning requirement for the PD.

25 Q. Okay. So that's the -- because of the zoning

Status	TimeStamp	Recipient	Recipient Email	Sender	Subject	Notes
✓	8/12/2009 7:27:10 AM	Addressing	USERS	Ann Dodgen	LATE/WARN REVIE (PROJECT: TILLBERG WAY ROAD IMP)	
✓	8/11/2009 5:23:50 PM	RYAN C TURNER	turner@compcoeng Juke Buchanan	200901492	EMail Sent	
✓	8/11/2009 5:23:14 PM	GARY SANDERSON	gsan717@gmail.com Juke Buchanan	200901392	EMail Sent	
✓	8/11/2009 5:22:17 PM	HY NGUYEN	hnguyen@dresscod Juke Buchanan	200900389	EMail Sent	
✓	8/11/2009 7:42:09 AM	Subdivision	USERS	Juke Buchanan	LATE/WARN REVIE (PROJECT: CALIFORNIA RD - FINAL PL)	
✓	8/11/2009 7:42:09 AM	Stormwater	USERS	Juke Buchanan	LATE/WARN REVIE (PROJECT: TILLBERG WAY ROAD IMP)	
✓	8/11/2009 7:42:09 AM	Floodplain	USERS	Juke Buchanan	LATE/WARN REVIE (PROJECT: CALIFORNIA RD - FINAL PL)	
✓	8/10/2009 11:59:21 AM	KEITH RAINS	rainsgroup@gmail.com Ann Dodgen	200901692	EMail Sent	
✓	8/10/2009 11:57:46 AM	MICHAEL J. CAYOLLA	mcayoll@cmvire.com Ann Dodgen	200901743	EMail Sent	
✓	8/10/2009 11:56:23 AM	KEITH RAINS	rainsgroup@gmail.com Ann Dodgen	200901692	EMail Sent	
✓	8/10/2009 11:54:30 AM	ROBERT W WORLEY JR	rworley@cmvire.com Ann Dodgen	200901631	EMail Sent	
✓	8/10/2009 11:53:44 AM	GROUPS	USERS	Ann Dodgen	NOTIFY APPROVAL 200901631	
✓	8/10/2009 11:53:09 AM	DAVID DECKER	ddecke@landuse.com Ann Dodgen	2007022316	EMail Sent	
✓	8/10/2009 11:53:04 AM	JASON	jasonrj@cmvire.com Ann Dodgen	2007022316	EMail Sent	
✓	8/10/2009 11:52:48 AM	GROUPS	USERS	Ann Dodgen	NOTIFY APPROVAL 2007022316	
✓	8/10/2009 7:07:29 AM	Subdivision	USERS	Ann Dodgen	LATE/WARN REVIE (PROJECT: SPANISH OAKS - FINAL PL)	
✓	8/7/2009 1:53:47 PM	JOEL WOOD / CHRIS W	ewood@compcoeng Ann Dodgen	200900303	EMail Sent	
✓	8/7/2009 1:54:47 PM	ALAN PARISH	aparish@compcoeng Ann Dodgen	200900745	EMail Sent	
✓	8/7/2009 1:33:17 PM	JOEL WOOD / CHRIS W	ewood@compcoeng Ann Dodgen	200902007	EMail Sent	
✓	8/7/2009 1:52:25 AM	ROB RUTH	ruth@cmvire.com Ann Dodgen	200901501	EMail Sent	
✓	8/6/2009 3:29:29 PM	GENE COURTNEY	gene@courtneybbcc Ann Dodgen	200901247	EMail Sent	
✓	8/6/2009 11:09:01 AM	M LOCKLAIR	mlochla@cmvire.com Ann Dodgen	200901501	EMail Sent	
✓	8/6/2009 11:07:15 AM	GROUPS	USERS	Ann Dodgen	NOTIFY APPROVAL 200901601	
✓	8/6/2009 11:03:56 AM	KEITH RAINS	rainsgroup@gmail.com Ann Dodgen	200901631	EMail Sent	
✓	8/6/2009 11:02:47 AM	KEITH RAINS	rainsgroup@gmail.com Ann Dodgen	200901681	EMail Sent	
✓	8/6/2009 1:27:16 PM	ANDREW GULLONE, P.E	agullone@cmvire.com Ann Dodgen	200901651	EMail Sent	
✓	8/6/2009 1:25:13 PM	STEPHEN DIXLEY	sdixley@cmvire.com Ann Dodgen	2007045122	EMail Sent	
✓	8/6/2009 1:25:35 PM	GENE COURTNEY	gene@courtneybbcc Ann Dodgen	200901247	EMail Sent	
✓	8/6/2009 7:55:33 AM	Building & Code	USERS	Ann Dodgen	LATE/WARN REVIE (PROJECT: CAMP CAYIAH - 2007 & 200	
✓	8/6/2009 7:55:32 AM	Planning	USERS	Ann Dodgen	LATE/WARN REVIE (HEAD NOTICE	
✓	8/4/2009 4:52:58 PM	ROD GREEN	rgreen@cmvire.com Ann Dodgen	200901581	EMail Sent	
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7. Plans must show all fittings, fire hydrants, and valves including sizes. Each appurtenance must be properly labeled.
 8. Fire Hydrant locations must comply with design guidelines and installed along water main line extensions at intervals not to exceed 300 feet in commercial or industrial areas.
 9. On sheet C6.1 there is a note that states "Proposed SS Cleanout for Pool discharge...." Contact David Hughes at 803-628-3200 regarding a pool backwash filter. Provide a copy of the letter with the next plan submittal.
 10. The waterline is shown on the plans to terminate at a water valve. Where does this waterline connect to?
 11. The plans show a waterline labeled as a 10" sanitary sewer line. Please clarify.
 12. Bench marks must be tied to NAD83 South Carolina State Planes, 1983, US Foot coordinate system. This should be referenced on the plans.
 13. Show the existing water and sewer lines in an existing York County 20' easement.
 14. Proposed and existing sewer lines must be shown with flow directions.
 15. All buildings requiring sprinkler systems must propose a fire line with a Double Detector Check Valve Assembly (DDCVA) with a 1/2" bypass meter.
- To expedite the review of the re-submitted documents, in addition to the revised drawings, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please call Amanda Cain in the Engineering Department at 803-818-5754.



Engineer-roads

Approval Code: 1

Reviewer: AC

Forward Date: 12/09/2008

Return Date: 12/19/2008

NOTE: This is a preliminary review based on the information provided for this site plan. Please submit the approved/stamped PD/DA with the next submittal. Any information that was required from the PD/DA must be shown on the next submittal. New comments may need to be addressed based on the required documentation being submitted.

1. Show the site plan at a 1:40 scale. It is difficult to read at the current scale.
2. Sight distance triangles and easement information must be shown on the plans for all roadway intersections including all existing and proposed. Sight triangles will be calculated by multiplying the speed limit of the road being accessed by ten (for example, for a speed limit of 45 miles per hour, the distance would equal 450 feet). Sight visibility must be measured from a height of three feet, nine inches at a stop condition road/curb cut to an object with a height of six inches on the intersection road.
3. All angles of intersections must be noted on the plans.
4. Intersection radii must be labeled on plans.
5. Starlight Drive is labeled as Regent Parkway and needs to be corrected.
6. Show the locations of existing and proposed rights-of-ways (gas lines, telephone lines, power lines, road rights-of-ways and water and sewer easements)
7. Show the location of telephone, gas, and power lines.
8. Show the location of all proposed directional signs.
9. Bench marks must be tied to NAD83 South Carolina State Plane, 1983, US Foot coordinate system and NADV88 Vertical Datum.30. This must be referenced as a note on the plans.

To expedite the review of the re-submitted documents, in addition to the revised drawings, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please call Amanda Cain in the Engineering Department at 803-818-5754.



Fire Prev.

Approval Code: 4

Reviewer: F8

Forward Date: 12/09/2008

Return Date: 12/15/2008

Note, due to the building being sprinkled then the 2006 International Fire Code section 508.5.1 states: The location and number of fire hydrants shall be determined by the fire official. The York County Dept. of Fire Safety requires a fire hydrant connected to a public water supply be located within 100 feet to the fire sprinkler system's "fire department connection".



Floodplain

Approval Code: 1

Reviewer: ED

Forward Date: 12/09/2008

Return Date: 12/12/2008

1. Please include map, community and panel number from current FEMA NFIP map dated September 26th 2008 in general notes section.



Planning

Approval Code: 1

Reviewer: SR

Forward Date: 12/09/2008

Return Date: 12/29/2008

1. Please indicate the speed limit(s) of Zenith Drive.



9/2/2010

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2. Please show the lane configuration of the public road adjacent to the project site. This includes showing any lanes, medians, and if it is a two-lane or a four-lane road.
3. Please show the widths of curb cuts and driveways (20-foot minimum and 40-foot maximum) (155.425 (A)).
4. Please consider reconfiguring the proposed sidewalk at the drop-off so that it connects straight across the frontage drive path of the parking lot to the proposed sidewalk.
5. Please show the distance from proposed curb cuts to adjacent curb cuts and street intersections. This distance should be measured from centerline to centerline and from centerline to right-of-way intersecting lines. NOTE: Exact location of adjacent curb cuts and access points must be indicated on the site plan (155.594). Please include both sides of the street.
6. Curbing must be provided along boundaries to control the ingress and egress of vehicles or pedestrians. All parking facilities, except those for single-family detached and two-family dwellings, will be designed so that all existing movements onto a public street are in a forward motion (155.425(7) (E)).
7. Please consider removing/adjusting applicable layers so that the traffic circulation plan and parking can be fully evaluated.
8. Please correctly label all roadways.
9. Please submit the approved PD and DA with the next submittal, as this will greatly expedite the review. Additionally, review comments may alter with the provision of these documents.

To expedite the review of the re-submitted documents, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please contact Sarah Reyfield in the Planning Department at 803.809.7233 or sarah.reyfield@yorkcountypa.gov



Stormwater

Approval Code: 1

Reviewer: JEFFS

Forward Date: 12/09/2008

Return Date: 12/18/2008

1. Please correct the NOI.

Signatures - Sign and Date

Please ensure application is not signed in black ink.

2. Please provide Water Quality calculations.
3. Please provide more detail for modification to existing structure.
4. Please provide location and elevation of emergency spillway of existing pond.
5. Please remove note on sheet C3.1 stating "Storm Drainage System to be cleaned from Outlet Structure to discharge point prior to construction". Note does not apply to structure labeled.
6. Please provide post-proposed pond Data sheet in calculations.
7. Please provide double row silt fence along edge of existing pond.
8. Please provide a sequence of construction operations on the plans describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various three stages or phases of earth disturbance and construction as well as a stated start and finish date. The sequence of construction shall, at a minimum, include the following activities:

Please ensure #1 is as below:

1. Contact the sediment and erosion control inspector at 803-684-8571 to set up a preliminary construction meeting 48 hours prior to any Land Disturbance.

9. Please provide Demolition Notes to include the proper disposal of construction debris.
Please ensure #1 is as below:

1. Contact the sediment and erosion control inspector at 803-684-8571 to set up a preliminary construction meeting 48 hours prior to any Land Disturbance.

10. Please state and provide detail for inlets located in areas of Asphalt/concrete where the installation typical inlet protection is not possible.

11. Please revise maintenance notes in detail for inlet protection provided on sheet C3.2.

12. Please provide propose size and depth of pit shown in Concrete Washout detail. Detail must meet the criteria for design as stated under SCDHEC standards for concrete washout area. These requirements may be found under Land and Waste management. (Copy of requirements e-mailed)

13. As part of SWPPP requirements, please provide Spill Prevention and Response as part of your SWPPP/Plan submittal. This should include a list of potential chemicals and/or materials on site that would be present during construction that could cause potential contamination of storm water and Emergency phone numbers.

14. Will there be a need for a soil stockpiles? If so, please show proposed locations and add a statement to the plan that references installation of silt fence around the stockpile and removal or stabilization of the stockpile before the site is released for final plat approval.



8/2/2010

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All stockpiles need to be included in the limits of disturbance, shown with appropriate erosion and sediment control provided and stabilized as soon as possible.

Please place notes below on plans.

Within seven calendar days, temporary stabilization measures shall be completed on topsoil stockpiles. The burial of any cellulose debris will need to be planned. The removal of soil or waste from the proposed site will need to be taken to a permitted Landfill or another permitted site with a valid Land Disturbance Permit. The associated site would also be required to provide the appropriate erosion and sediment control necessary to retain sediment on site (within the limits of disturbance permitted).

15. As of July 1, 2007, the design of roads, sanitary sewer (gravity sewer piping), storm drain piping, and water quality and detention ponds shall be completed using ground profiles generated from field surveys. The field survey(s) shall be certified by a South Carolina professional land surveyor. Profiles generated from GIS information shall not be accepted. This requirement includes any development that has not been approved for construction as of July 1, 2007.

Field surveys are to be tied to the South Carolina State Plane Coordinate System as defined by the North American Datum of 1983 (NAD83), and mean sea level as defined by the North American Vertical Datum of 1988 (NAVD88).

Record drawing information shall be submitted in reference to the North American Datum of 1983 (NAD83), and mean sea level as defined by the North American Vertical Datum of 1988 (NAVD88). Record drawing information is to be submitted in AutoCAD format (or another County accepted format - compatible with the County's GIS system).

Please provide Surveyors certification.

16. This was a preliminary review performed with information provided; future comments may need to be addressed with the submittal of stamped approved copy of the Developers Agreement and any new information.

17. Once the above comments have been addressed, please submit a cover sheet with the revisions that thoroughly details the above changes/responses and the associative locations on the plans and the \$50.00 re-review fee for Stormwater re-review (checks should be made payable to York County). Please note that the Applicant's and Professional's Certification must be signed on all revisions to the plans submitted for review. If there are any questions or concerns, please contact Jeff Smith at 803-684-8571 or jeff.smith@yorkcountygov.com.



Water & Sewer

Approval Code: 1

Reviewer: DAVIDH

Forward Date: 12/09/2008

Return Date: 12/18/2008

Utility plans are not complete. Please refer to YCEng comments.



Zoningcom

Approval Code: 1

Reviewer: DAVEP

Forward Date: 12/09/2008

Return Date: 12/30/2008

1. The York County Zoning Department has received your submittal for the proposed site. Being preliminary in nature due to the lack of needed information, this is not to be construed as the final review. Please submit the approved and stamped PD plan along with the recorded Development Agreement with the next submittal. All requirements that were approved with the Development Agreement must be indicated and included on the proposed site plan. Please refer to the York County Zoning Code, Chapter 155.594, 155.530, 155.285, and 155.428 to ensure this project meets all standards of the York County Zoning Code. A full plan review shall be conducted upon submittal of site plans that are within compliance with York County Zoning standards. However, the following items listed below would be essential to the above referenced project and need to be addressed when a formal site plan is submitted.

2. Property boundary description and dimensions do not match York County Records nor the Development Agreement. (Any discrepancies in lot lines must be approved by the subdivision department. Leased lots should be shown as dashed lines and labeled as such, and all development standards must be shown around recognized property boundaries. Benchmark and tie lines must be indicated with coordinates). Section 155.594 of the York County Commercial Development Standards

3. The proposed site plan must include the entire site for commercial review.

4. Please, indicate the location and dimensions of the required three amenities for the proposed site in accordance with Development Agreement.

5. Please, remove notes #8 and #9 from sheet C1.2 that do not pertain to the proposed site in accordance with Development Agreement.

6. The proposed landscape plan must include the entire site for review in accordance with Development Agreement.

7. Revise the proposed site plan to include the required setbacks (should be indicated as a heavy bold dashed line and labeled) to be placed around interior perimeter of property lines. NOTE: No structures are allowed in setbacks. Section 155.594 and 155.428 of the York County Commercial Development Standards

8. Revise the proposed site plan to include the required bufferyards (should be indicated as a dashed line and labeled) to be placed around perimeter property lines. (Include type, distance, plants and required structures). NOTE: No buildings, parking spaces, driveways, drainage devices, or other structures are allowed in required bufferyards. Section 155.594, 155.412, and 155.288 of the York County Commercial Development Standards

9. Revise the proposed site plan to include the approximate location and size of existing and proposed storm sewers, sanitary sewers, water lines, culverts, septic systems, and wells. Section 155.594 of the York County Commercial Development Standards

10. Revise the proposed site plan to include the location of all existing/proposed fire hydrants within 500 feet of the proposed development. Section 155.594 of the York County Commercial Development Standards

11. Revise the proposed site plan to include the existing and proposed easements and existing and proposed rights-of-way (Gas line, telephone line, power line, road rights-of-way, and water and sewer easements). NOTE: If utility lines run longitudinally within a



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bufferyard, the width of the bufferyard must be increased by the same amount that is cleared for the placement of the utility lines. Section 155.594 of the York County Commercial Development Standards

12. Revise the proposed site plan to include the approximate location of telephone, gas, and power lines. Section 155.594 of the York County Commercial Development Standards

13. Revise the proposed site plan to include all required landscaped islands and provide square footage of each. A landscaped area, not less than 250 square feet, with a minimum width of eight feet, is required for every 16 parking spaces, with each landscaped area having at least one large maturing tree of two inches caliper. These areas are to be spaced throughout the parking and circulation areas so that no parking space is more than 75 feet from a tree. Section 155.534 of the York County Commercial Development Standards

14. Revise the proposed site plan to include any additional landscaped areas in an amount not less than 10% of impervious parking area which shall include one large maturing tree of 3 inches DBH for every 1,600 square feet of additional landscaped area required. Please refer to definition of impervious area for these calculations, which must be shown on the proposed site plan. Section 155.534 of the York County Commercial Development Standards

15. Revise the proposed site plan to include the calculation of total caliper inches required for the site. Section 155.534 of the York County Commercial Development Standards

16. Revise the proposed site plan to designate the type of open space that will be provided in accordance with Section 155.429 of the York County Zoning Code

17. Revise the proposed site plan to specify the manner in which the open space will be perpetuated, maintained, and administered in accordance with Section 155.429 of the York County Zoning Code

18. Revise the proposed site plan to include a legend for each required bufferyard that must include the planting symbols, type of trees, required quantity, and the proposed quantity based on increments of 100 feet. Section 155.412 of the York County Commercial Development Standards Appendix C, Exhibit 2.

19. The Development Agreement needs be amended to include the new tax parcel number for the 5 acres that was subdivided for financing.

Please add the following notes to the site plan:

a. Land designated as common open space may not be separately sold or developed. Open space areas shall be maintained so that their use and enjoyment as open space are not diminished or destroyed. Section 155.429 of the York County Zoning Code

b. In the event that any private owner of open space fails to maintain same, the county, in accordance with the open space plan and following reasonable notice and demand that deficiency of maintenance be corrected, enter the open space to maintain same. The cost of the maintenance shall be charged to those persons having the primary responsibility for maintenance of the open space. Section 155.429 of the York County Zoning Code

c. Signage to be permitted separately. Section 155.470, 155.288, and 155.342 of the York County Zoning Code

Once the above comments have been addressed, please submit a \$100.00 Re-Review fee and a cover sheet with the revisions that thoroughly details the above changes/responses and the associative locations on the plans. Please note that the Applicant's and Professional's Certification must be signed on all revisions to the plans submitted for review. If there are any questions or concerns, please contact Shannon Catoo at 803-809-7232 or shannon.catoo@yorkcountygov.com.

Approval Letters				
Letter Type	Date	Attention	Company	FAX
Revision	12/30/2008	JOE HAMMOND	POWER ENGINEERING CO INC	(704)526-2516

END OF PLAN 1



PLAN 2

Friday, January 30, 2009

Type of Plans: SITE

Number of Plans Submitted: 1

Revision of Plan: 200803921

Maximum Review Days: 20



8/2/2010

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Primary Contact
POWER ENGINEERING CO INC
JOE HAMMOND
13310 SOUTH RIDGE DR SUITE A
CHARLOTTE NC 28273

General Plan Comments

212 Units

Submitted 8 revised plans, 8 DA agreements (w/6 PD's), response letter, letter from W&S regarding pool backwash, NOI, s/w cakes & SWPPP, \$100 zoning fee, \$50 s/w fee.

REVIEWS**✓ Addressing**

Approval Code: 2

Reviewer: CM

Forward Date: 01/30/2009

Return Date: 02/02/2009

The International Building Code section 1106.1: 400 to 500 parking spaces required 8 handicap parking spaces. The development agreement states that the tower is to have 420 parking spaces.

② Building & Code

Approval Code: 1

Reviewer: CM

Forward Date: 01/30/2009

Return Date: 02/11/2009

The International Building Code section 1106.1: 400 to 500 parking spaces required 8 handicap parking spaces. The development agreement states that the tower is to have 420 parking spaces.

② Eng-water-sewer

Approval Code: 1

Reviewer: AC

Forward Date: 01/30/2009

Return Date: 02/19/2009

1. On sheet C7.2, all of the details must be the most current YC details. They are available on our website at www.yorkcountygov.com.

2. All sewer lines and fire hydrants must be shown in a 20' easement.

3. Per page 7 section VII of the DA, submit anticipated flow rates for the County's review and evaluation of the effects on the utility system.

4. All water meters that are 1" or greater in size will require a separate back-flow preventer. Show the back flow preventer located at the back of the meter outside of the easement.

5. York County will require the 6" meter to be a harsco MVR with remote read capability. A detail will need to be shown on the plans. Contact Rick Carter to discuss this further.

6. Label the 20R sewer easement on the utility plan.

7. Impact fees will have to be paid for water and sewer.

8. Show the material and length of the fire hydrant extension pipe.

9. The note on the fire line should read "SCDHEC approved double detector check valve assembly (DDCVA) to be installed inside building" not Back flow Preventer....

To expedite the review of the re-submitted documents, in addition to the revised drawings, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please call Amanda Cain in the Engineering Department at 803-818-5754.

② Engineer-roads

Approval Code: 1

Reviewer: AC

Forward Date: 01/30/2009

Return Date: 02/17/2009

Note: All of the information shown on the overall site plan is too small to see. Include the information for this site on sheet C1.2 in addition to the overall site plan.

1. The site distance shown on Starlight Drive is for a speed limit of 35. Per note 10 on sheet C1.0, the speed limit is 25 on Starlight Drive. Also, show the site distance on sheet C1.2. Please note that the speed limit per the PD is 25 for Zenith Drive and should be noted the overall site plan (sheet C1.0).

2. Per previous comment #4, "Intersection radii must be labeled on plans." Show the radius of the intersection at Starlight Drive. Label the radius on the overall site plan as well as sheet C1.2.

3. Per previous comment #9, "Show the locations of existing and proposed rights-of-ways." Please show the right-of-way limits of Starlight Drive on the overall site plan as well as sheet C1.2.

4. Per the PD, "Existing Starlight Drive to be relocated prior to or during the construction of the future addition." The site plan that is submitted is for the "future addition" so the Starlight Drive relocation must be included as a part of this site plan and will have to be completed before or during the construction of the future addition. Please note that per the DA, any roadway related improvements or new road construction shall meet all County and SCDOT transportation standards. Any roadway construction will have to be inspected by a York County Inspector.

5. Place a note on the plans that states that the 52 acre development is currently accessed via private roads in the Regent Park development. Any private road proposed for dedication to York County must meet the York County road standards at the time of dedication. (This is stated on page 8 of the DA).



8/2/2010

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To expedite the review of the re-submitted documents, in addition to the revised drawings, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please call Amanda Cain in the Engineering Department at 803-618-5754.

✓ **Fire Prev.** Approval Code: 2
Reviewer: F8 Forward Date: 01/30/2009 Return Date: 02/05/2009

✓ **Floodplain** Approval Code: 2
Reviewer: ED Forward Date: 01/30/2009 Return Date: 02/13/2009

② **Planning** Approval Code: 1
Reviewer: SR Forward Date: 01/30/2009 Return Date: 02/17/2009

1. Please address the reconfiguration of Starlight Drive, as expressed on the PD Plans and in the DA (Exhibit A (to the Morning star PD Standards)). This drive is to be relocated prior to or during the construction of the future addition.

2. Additionally, all road improvements must meet minimum York County and SCDOT standards, as expressed in the DA (page 6).

3. Please show Zenith Drive in its entirety along the parcel, it 'appears' to have disappeared for a stretch.

4. Please note that the speed limit for Starlight Drive is labeled in the notes on Sheet C 1.0 as 25mph, thank you. Additionally, please add a note to the plans, preferably on Sheet C1.0 that the speed limit for Zenith Drive is also 25mph, per the PD plan.

5. Please include the driveway width at Starlight Drive to the new parking.

To expedite the review of the re-submitted documents, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please contact Sarah Rayfield in the Planning Department at 803.909.7233 or sarah.rayfield@yorkcountygov.com

② **Stormwater** Approval Code: 1
Reviewer: BILLYP Forward Date: 01/30/2009 Return Date: 02/13/2009

1. Please correct the NOI.
Signatures - Date of Signature

A new check is required as the one on file is older than sixty days.

2. Please provide Water Quality calculations for all areas not draining to the existing pond as demonstrated inside the DA under Standards for Development Section 5-J. Excerpt: In other areas such as parking lots that do not drain into the existing pond, other methods for water quality treatment such as bio-retention islands, and or catch basin inserts may be utilized. Prior to any construction, a detailed design with supporting calculations will be submitted for approval by York County Engineering or Environmental Compliance Division. Also, please add this to the narrative and remove the statement that currently exists concerning water quality.

3. Please provide more detail for modification to existing structure like the width, how the skimmer will be installed and also the outlet invert.

4. Please provide double row sill fence along edge of existing pond with a statement from the engineer of record on the plans stating that the sill fence maintenance be completed only by hand.

5. Please provide propose size and depth of pit shown in Concrete Washout detail. Detail must meet the criteria for design as stated under SCDHEC standards for concrete washout area. These requirements may be found under Land and Waste management. (Copy of requirements e-mailed). Please place same detail as found in the SWPPP on the plans on sheet C3.1.

Thanks.

6. Please revise the water quality calculations on 3-40 to state a 3.5-ft weir opening instead of 435-ft. Thanks.

7. On sheet C1.2, there is a disconnection shown behind the existing building between the two sections of storm drainage piping. Please clarify.

8. Please show on the plans where the piping continues to outfall within the parking area to the right of the existing building.

9. On page 15 of the SWPPP, please state a minimum 60% stabilization and on page 14, please revise the dimensions for the stabilized construction entrance. Thanks.

10. Once the above comments have been addressed, please submit a cover sheet with the revisions that thoroughly details the above changes/responses and the associative locations on the plans and the \$50.00 re-review fee for Stormwater re-review (checks should be made payable to York County). Please note that the Applicant's and Professional's Certification must be signed on all revisions to the plans submitted for review. If there are any questions or concerns, please contact Billy Payne or Jeff Smith at 803-684-8571 or jeff.smith@yorkcountygov.com; billy.payne@yorkcountygov.com

② **Zoningcom** Approval Code: 1
Reviewer: SAC Forward Date: 01/30/2009 Return Date: 02/18/2009

1. Please be aware that all improvements to the site, such as roadway, amenities, utilities, stormwater, erosion control, zoning requirements and etc. must comply with the approved Development Agreement and must be included on the site plan submitted for the entire 52 acres not just for the tower location. All improvements must be installed and completed according to the York County Code and the Development Agreement.

2. Revise the proposed site plan to include the approximate location and size of existing and proposed storm sewers, sanitary sewers, water lines, culverts, septic systems, and wells for the 52 acres in accordance with Section 155.594 of the York County Commercial Development Standards.

3. Revise the proposed site plan to include the location of all existing/proposed fire hydrants within 500 feet of the proposed development in accordance with Section 155.594 of the York County Commercial Development Standards



8/2/2010

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4. Revise the proposed site plan to include the existing and proposed easements and existing and proposed rights-of-way for the 52 acres (Gas line, telephone line, power line, road rights-of-way, and water and sewer easements). NOTE: If utility lines run longitudinally within a bufferyard, the width of the bufferyard must be increased by the same amount that is cleared for the placement of the utility lines in accordance with Section 155.584 of the York County Commercial Development Standards.

5. Revise the proposed site plan to include the approximate location of telephone, gas, and power lines for the entire 52 acres in accordance with Section 155.584 of the York County Commercial Development Standards.

6. Revise the proposed site plan to include the calculation of total culper inches required for the entire 52 acres in accordance with Section 155.534 of the York County Commercial Development Standards.

7. Revise the proposed site plan to designate the type of open space that will be provided for the entire 52 acres in accordance with Section 155.428 of the York County Zoning Code. What type of recreational use is being proposed for the areas labeled as recreational?

8. The proposed site plan indicates existing vegetation to be used for the bufferyard requirement. However a tree survey needs to be submitted indicating the type and location of the existing trees.

9. The proposed site plan indicates 1375 existing parking spaces however the development agreement indicates the existing parking as 1377.

Please contact our Development Services Department at 909-7236 to schedule a meeting with the reviewers before any site plans are resubmitted.

Approval Letters

Letter Type	Date	Attention	Company	FAX
Revision	02/19/2009	JOE HAMMOND	POWER ENGINEERING CO INC	(704)525-2515

END OF PLAN 2



PLAN 3

Wednesday, April 1, 2009

Type of Plans: SITE

Number of Plans Submitted: 1 Revision of Plan: 200803922 Maximum Review Days: 20

Primary Contact POWER ENGINEERING CO INC JOE HAMMOND 13310 SOUTH RIDGE DR SUITE A CHARLOTTE NC 28273

General Plan Comments

212 Units

Submitted 8 plans, response letter, check for \$50 for SAN review fee, project narrative, NOI, check for \$125 for DHEC fee, Water Quality Calcs, SWPPP pg 15 and letter from Power concerning Estimated Unit Contributory Loadings.

2 Extra sets given to Shannon

Check for \$250 will be mailed by Power for zoning re-review.



REVIEWS

✓ Building & Code

Reviewer: CM

Approval Code: 2

Forward Date: 04/01/2009

Return Date: 04/16/2009

⊗ Eng-water-sewer

Reviewer: AC

Approval Code: 1

Forward Date: 04/01/2009

Return Date: 04/13/2009

1. The letter submitted for the Estimated Unit Contributory Loadings should be addressed to:
 Mark Kellawell, County Engineer
 York County Engineering Department
 6 South Congress Street
 York, SC 29745

Please add the following statement to the letter: "Per York County's request, we are providing this document for information purposes only."

2. Include the York County detail 11.07 for the water tapping sleeve and valve.

3. Per previous comment #3, submit calculations for review and approval.



8/2/2010

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4. On sheet 6.0, for the domestic water line, remove the note that says "SCDHEC approved DDCVA to be installed inside vault". Per previous comment #4 All water meters that are 1" or greater in size will require a separate back-flow preventer located at the back of the meter outside of the easement or right-of-way. Include the back flow preventer in the legend or label it accordingly on the plans as "SCDHEC approved back flow preventer to be located behind the meter". The note on the fire line is shown correctly.

To expedite the review of the re-submitted documents, in addition to the revised drawings, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please call Amanda Cain in the Engineering Department at 803-818-5754.

✓ **Engineer-roads** Approval Code: 2
Reviewer: AC Forward Date: 04/01/2009 Return Date: 04/13/2009

✓ **Fire Prev.** Approval Code: 2
Reviewer: TICEA Forward Date: 04/01/2009 Return Date: 04/07/2009

② **Planning** Approval Code: 1
Reviewer: SR Forward Date: 04/01/2009 Return Date: 04/15/2009

1. Planning understands that SCDOT has requested that a portion of Starlight Drive be closed due to safety concerns between the school and potential stacking at the railroad tracks. Please provide documentation of this request.

2. Please note that upon receipt of the above, the TIA will need to be revised to reflect those changes.

To expedite the review of the re-submitted documents, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please contact Sarah Rayfield in the Planning Department at 803.909.7233 or sarah.rayfield@yorkcountygov.com

② **Stormwater** Approval Code: 1
Reviewer: BILLYP Forward Date: 04/01/2009 Return Date: 04/21/2009

1. Previous comment #2. Please provide Water Quality calculations for all areas not draining to the existing pond as demonstrated inside the DA under Standards for Development Section 5-J. Except: In other areas such as parking lots that do not drain into the existing pond, other methods for water quality treatment such as bio-retention islands, and/or catch basin inserts may be utilized. Prior to any construction, a detailed design with supporting calculations will be submitted for approval by York County Engineering or Environmental Compliance Division. New Comment: Areas still exist that do not drain to the water quality pond and have not been accounted for in the water quality design. The parking areas above the existing castle and a smaller area below the existing castle have not been included for water quality. The inserts that have been proposed must reflect that the inserts can provide water quality based upon the contributed stormwater runoff associated with the 10-year storm event per the current drainage area. Please add the details associated with the water quality inserts on the plans and also please call out the type of inserts to be utilized on the plan sheets (especially the blow-up inset) and include a required maintenance schedule detailing how and when the inserts shall be maintained. Please add the note for the water quality inserts on sheet C1.3 Thanks.

2. Previous comment #2. The 1/4-inch of runoff draining to the existing pond is still incorrect. The correct volume would be 163,937.10 cubic feet of storage required with a drain time of 27.94 hours.

3. New Comment: The sub-catchment drainage area map that was emailed to me on 04-14-09 does not reflect the same sub-catchments as the construction drawings and calculations demonstrate. Also, the referenced DA map needs to reflect all runoff directed to all the inlets and the associated drainage areas. Bypassed areas have not been accounted for, thus these flows should be included in the overall inflow to the pond and the storm drainage piping that flows to the pond. Also the sub-catchment DA map reflects the incorrect drainage area for DA SD 4 that states 0.41 acres on the map but 1.51 acres in the calculations. I will email of copy of the DA map that has been colored with some notes referencing this comment.

4. New Comment: Due to plan revisions, the calculations do not correlate with the storm drainage inlets that are shown on the construction drawings.

5. New Comment: On the pre & post DA maps, please re-submit new maps that include the on-site parking drainage area and bypassed runoff flows. On the colored map I have sent you, we have shown the storm drainage inlets that the survey did not reflect. Please show the associated drainage areas and flows for those structures that added and emailed. This may require another "bypass analysis point". Please seal and sign these maps.

6. New Comment: Based upon revised plans, on sheet 2-30 of the calculations, based upon the new submitted construction drawings, please include the other inlets that drain to SD 23. Also, the plans and calculations call out SD 18 and SD8A as a proposed type 8 yard inlet. Are those inlets not proposed in asphalted areas? Also, the construction drawings and calculation sheet 2-30 do not match. Please revise calculation sheet 2-30 to reflect the correct location for SD 24 (prop YI) connecting to SD 13 (prop YI) & also SD 7A and SD 15(CI) as shown on the plans and sheet 2-33. Please also investigate why calculation sheet 2-31 & 2-33 shows SD15 receiving 0-cfs runoff but sheet 2-7 reflects 3.2 cfs of runoff. The profiles included with the calculations will also need revisions so that they correlate with the plans. I will email to you the highlighted sheet 2-30 for your reference.

7. New Comment based upon previous comment #2. Would you also revise and include the overall inflows from the project site that flows to the pond in the narrative summary as well as the pond outflows? See previous comment #2. Also, would you please revise the table to state Post-Dev Flow (CFS) as Post Dev Flows with Modified Riser and the other last column as Post Dev Flows (CFS) as Existing Structure & Pond. Please also include the bypassed flows for the entire site (may require the use of multiple analysis points). Thanks.

8. New Comment: Based upon revised plans, please take a look at sub-catchment 29S DA (SD 24) Tc of 8.8 minutes and CN 79 on calculation sheet 2-6. Please also include SD1 (HW) and SD 23.

9. New Comment: Based upon a brief site visit conducted by yours truly on Wednesday April 15, 2009, several inlets were found that have not been identified on the construction drawings. I will sketch them out and send it via email to you to assist you in calculating the additional runoff. These should be shown and labeled on the plans and the runoff associated with the inlets should be included within the calculations.

10. New Comment: There is a incorrect note on sheet C3.1 stating the disturbance is 4.32 acres which is not consistent with the FRO, other notes & forms. Please revise this to correlate, thanks.

11. Once the above comments have been addressed, please submit a cover sheet with the revisions that thoroughly details the above changes/responses and the associative locations on the plans and the \$237,500 re-review fee for Stormwater re-review



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(checks should be made payable to York County). Please note that the Applicant's and Professional's Certification must be signed on all revisions to the plans submitted for review. If there are any questions or concerns, please contact Billy Payne or Jeff Smith at 803-684-6571 or jeff.smith@yorkcountygov.com; billy.payne@yorkcountygov.com

**Zoningcom**

Approval Code: 1

Reviewer: SAC

Forward Date: 04/01/2009

Return Date: 04/21/2009

1. Per previous comment #1. Please be aware that the proposed site must comply with the approved Development Agreement. The site plan submittal must include the entire 52 acres and not just the tower location. All improvements must be installed and completed according to the York County Code and the Development Agreement.

2. Per previous comment #6. Revise the proposed site plan to include the calculation of total culper inches required for the entire 52 acres in accordance with Section 155.534 of the York County Zoning Code.

3. Per previous comment #7. Revise the proposed site plan to designate the type of open space that will be provided for the entire 52 acres in accordance with Section 155.429 of the York County Zoning Code. What type of recreational use is being proposed for the areas labeled as recreational?

4. Per previous comment #8. The proposed site plan indicates existing vegetation to be used for the buffer requirement. However, a tree survey needs to be submitted indicating the type and location of the existing trees.

5. Per discussion with Dave Pettine, the Zoning Administrator a meeting should be scheduled to discuss the outstanding issues before any revised plans are submitted. Please contact Shannon Caloe at 809-7232 to schedule that meeting.

If there are any questions or concerns, please contact Shannon Caloe at (803)909-7232 or shannon.caloe@yorkcountygov.com.

Approval Letters

Letter Type	Date	Attention	Company	FAX
Revision	04/22/2009	JOE HAMMOND	POWER ENGINEERING CO INC	(704)525-2515

END OF PLAN 3

**PLAN 4**

Thursday, July 16, 2009

Type of Plans: SITE

Number of Plans Submitted: 1

Revision of Plan: 200803823

Maximum Review Days: 20

**Primary Contact**

POWER ENGINEERING, INC
POWER ENGINEERING
138 WESTPARK BLVD
COLUMBIA

SC

29210

General Plan Comments

212 Units

Submitted 8 Revised Plans, response letter, revised SAN calcs, check for \$100 for Zoning review fee and check for \$237.50 for SAN fee

3 Extra sets given to Shannon.

**REVIEWS****✓ Eng-water-sewer**

Reviewer: AG

Approval Code: 2

Forward Date: 07/16/2009

Return Date: 07/28/2009

✓ Engineer-roads

Reviewer: AC

Approval Code: 2

Forward Date: 07/16/2009

Return Date: 07/23/2009

✓ Fire Prev.

Reviewer: F8

Approval Code: 2

Forward Date: 07/16/2009

Return Date: 07/20/2009

✗ Planning

Reviewer: SR

Approval Code: 4

Forward Date: 07/16/2009

Return Date: 08/24/2009

Please add a note to the plans, that should SCDOT request that portion of Starlight Drive be closed due to safety concerns between the school and potential stacking at the railroad tracks, the TIA will need to be revised to reflect those changes.

August 24th, 2009: Planning notes that this note has been placed on the plans.



8/2/2010

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To expedite the review of the re-submitted documents, please submit a letter outlining the changes made to each of the items listed above. If further information is needed regarding this portion of the plan review, please contact Sarah Rayfield in the Planning Department at 803.909.7233 or sarah.rayfield@yorkcountypa.gov

**Stormwater**

Approval Code: 4

Reviewer: BILLYP

Forward Date: 07/16/2009

Return Date: 08/18/2009

1. Per York County Ordinance Section-152.41.A.10.i, Flumes are not an acceptable means of runoff conveyance. Please propose an alternative method for conveyance and either come by and revise the text by hand and initial the revision on each page that reflects the flume notation.
2. On sheet C.1.7, please include the wall at the proposed flume location to be part of the demolition activities. The wall must be partially demolished due to the proposed inlet and associated RCP shown. This can be completed as part of Item #1.
3. We will require a check for NPDES permitting made payable to SCDHEC in the amount of \$125 prior to approval.
4. Even though this project has been issued a "Rejection" status, all of these items can probably be completed in the offices of York County with the assistance of the engineer of record. If all of the plans can be obtained and either sheets replaced or hand revised, then approval can be issued. FYI: Due to the fact that I had to place comments in Plan Tracking, an approval could not be issued...although...Gerald Lee...call me to setup this time to fix these couple of items and if all other departments have approved your project...then after revisions are made...then I can approve...Billy Payne

08-18-2009

Mr. Gerald Lee (Engineering Manager for Power Engineering) came by my office today (at lunch time 12:00) and placed the required TIA note to sheet C.1.0 as note # 27 per Mrs. Sarah Rayfield review comment. These note(s) was physically hand written, dated and initialed by the engineer of record, on each plan set, witnessed by Mr. Billy Payne-York County Env. Compliance Plans examiner. Mr. Gerald Lee also revised the plan set sheets that previously stated "Proposed Flume" within the parking lot area to read "Proposed Concrete Curb Opening". Mr. Gerald Lee also placed one note on each plan set demolition sheet to state that "A portion of the existing wall shall be removed for the installation of proposed RCP". No other revisions were made to this submittal and will be approved by Billy Payne for NPDES permitting.

**Zoningcom**

Approval Code: 4

Reviewer: SAC

Forward Date: 07/16/2009

Return Date: 08/04/2009

Approved per conditions outlined and indicated on site plan on the improvements to the roads and Development Agreement.

Approval Letters

Letter Type	Date	Attention	Company	FAX
Revision	08/24/2009	GERALD LEE	POWER ENGINEERING, INC	(803)216-8070

END OF PLAN 4

OTHER DOCUMENTS

8/2/2010

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York County Zoning Department
1070 Heckle Blvd Ste 107
Rock Hill S.C. 29732
803-909-7232
803-909-7216
Fax: 803-909-7227

Commerical Zoning Compliance Permit

Project Description:

Heritage Tower

Plan Tracking: Number

20080392

Zoning Permit #

ZC-091595

Tax Map Number:

7290000457

Type of Work

Heritage Tower Project

Project Name:

Heritage Tower Project

Zoning District:

PD (Custom)

Community

Fort Mill, SC 29715

Property Address:

225 Starlight Dr
Fort Mill, SC 29715

Building Height

Total Access Drives

see site plan

Access Drive Width

see site plan

Structure Setbacks Requirements:

Front: see site plan

Right: see site plan

Rear: see site plan

Left: see site plan

Buffer Yard Type:

Front: see site plan

Buffer Yard Structure/Plants:

Front: see site plan

Back: see site plan

Back: see site plan

Left Side: see site plan

Left Side: see site plan

Right Side: see site plan

Right Side: see site plan

Parking Lot Requirements:

Parking Spaces

see site plan

Parking Size

see site plan

HC Spaces

see site plan

HC Size

see site plan

Special Conditions:

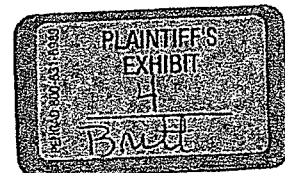
See conditions under site plan and site must comply with the Development Agreement. See site plan for additional requirements along with all requirements of the Development Agreement.

Applicant
Power Engineering

Zoning Official
Shannon Catoe

Date Issued
Aug 28 2009

Fee \$100.00



STAKING PLAN
EROSION CONTROL PLAN
EROSION CONTROL NOTES AND DETAILS
GRADING PLAN
STORM DRAINAGE PLAN
STORM DRAINAGE PROFILES
UTILITY PLAN
UTILITY DETAILS
STORM STRUCTURE DETAILS
BAYSAYER DETAILS
STORM STRUCTURE DETAILS

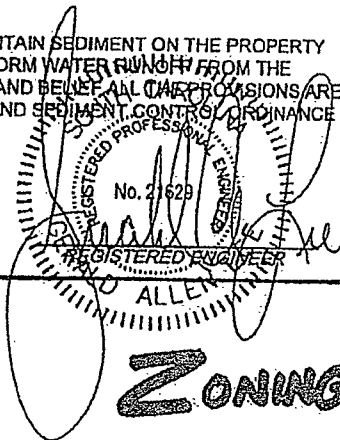
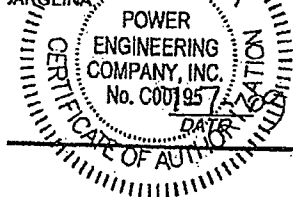
ALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR
RDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHERED AND
ATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR
CTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF
ELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR
ORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS."

THAT TO THE BEST OF MY KNOWLEDGE, THESE PLANS CONTAIN ALL INFORMATION REQUIRED BY THE
YORK COUNTY SC AND AS REFERENCED BY THIS APPLICATION. "I (WE) HERBY CERTIFY THAT ALL LAND
INCLUDING CLEARING, GRADING, CONSTRUCTION AND/OR DEVELOPMENT WILL BE DONE PURSUANT TO
TO INDEMNIFY ANY PERSON DAMAGED BY FAILURE TO COMPLY WITH THE APPROVED PLAN. COUNTY AND
LL BE ALLOWED TO ENTER UPON THE PROJECT SITE PROVIDED THEY PRESENT APPROPRIATE

7-8-09
DATE

Pat Henry
PERMIT APPLICANT

THIS PLAN IS DESIGNED TO CONTAIN SEDIMENT ON THE PROPERTY
OVIDE FOR THE CONTROL OF STORM WATER RUNOFF FROM THE
THE BEST OF MY KNOWLEDGE AND BELIEF ALL PROVISIONS ARE IN
STORM WATER MANAGEMENT AND SEDIMENT CONTROL ORDINANCE OF
CAROLINA



ZONING PERMIT #

2C-091595

**FOR YORK COUNTY USE ONLY
APPROVED**

Subject to York County Code of
Ordinances by
initials and date below.

	Reviewer	Date
Zoning:	<i>AL</i>	8-19-09
Engineering:	<i>AL</i>	7-25-09
Env Comp:	<i>AL</i>	8-17-09

Changes/Alterations to this plan may
void permit # *2C-091595*

ZONING
Copy

Kendree, Michael

From: Tim Tummers <ttummers@yahoo.com>
Sent: Saturday, October 03, 2009 8:01 PM
To: Pettine, David
Subject: Fw: Morningstar tower status

David,

I appreciate your timely response to my first email with questions regarding the "Tower" on the Morning Star Ministries property. I was curious if you have had the opportunity to research the follow up questions I had as well as the accuracy of the dates when they had secured financing and plan approval.

Thanks,
Tim Tummers

----- Forwarded Message -----

From: Tim Tummers <ttummers@yahoo.com>
To: "Pettine, David" <David.Pettine@yorkcountygov.com>
Sent: Wednesday, September 30, 2009 3:45:47 PM
Subject: Re: Morningstar tower status

Dave,

Thanks for the response. Not being knowledgeable about the commercial zoning, building process I have a few questions. Who is responsible to get the approval from the ICC. Is this a process the county has to do or is it the developer/contractors responsibility? If it is the counties how long do you expect it to take to get the necessary approvals? If it the developers how long do they have to complete this before they are in breach of their timeline agreement?

I understand they received the necessary funding and got the counties approval but I thought that was done in 2008 and a year has passed without anything else happening at least visual changes.

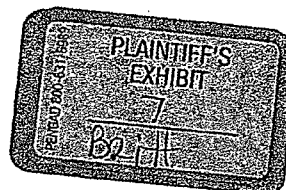
Your information is greatly appreciated,
Tim Tummers

From: "Pettine, David" <David.Pettine@yorkcountygov.com>
To: ttummers@yahoo.com
Sent: Wednesday, September 30, 2009 1:52:29 PM
Subject: RE: Morningstar tower status

Mr. Tummers,

Good afternoon. I am emailing in response to your question regarding the Heritage Tower on the Morningstar Ministry property. As you may be aware the property went through a rezoning and development agreement that specified timelines and requirements for re-use of the tower.

Commercial site plans for re-use of the tower were approved by staff in August 2009. However, we have not received any plans for the building/structure or updates on approval of the building/structure from the ICC (national building code organization).



Staff understands the development agreement to require the developer or contractor to secure bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or substantial equivalent acceptable to the County within 180 days of approval of the commercial site plan, which occurred in August 2009, in order to continue moving forward with the proposed re-use of the tower.

I hope this information is helpful in answering your questions. Should you need additional information or have additional questions, please let us know. Thank you and have a good afternoon.

Dave Pettine
Assistant Director, Planning and Development Services

York County Government
Planning & Development
1070 Heckle Blvd. A-5
Rock Hill, SC 29732-2863
Direct: (803) 909-7173
Toll Free: (800) 922-7271
Phone: (803) 909-7240
Fax: (803) 909-7478
Email: david.pettine@yorkcountygov.com
Website: www.yorkcountygov.com

From: Tim Tummers [mailto:ttummers@yahoo.com]
Sent: Monday, September 28, 2009 8:35 PM
To: Buchanan, Julie
Subject: Morningstar tower status

To Whom It May Concern,

I am a resident of York County and have been curious about the status of the renovation of the "tower" in Regent Park that is owned by The Morning Star Ministry. I have looked online and the only information I can find is almost a year old. I would like further information on what the time line that was agreed upon is and where Morning Star currently stands in meeting their obligation. I live in the area and there is concern about the effect on property values the dilapidated building is having and will have in the future.

Thanks,
Tim Tummers
ttummers@yahoo.com
(704)508-0614 (C)
(803)548-3758 (H)

Kendree, Michael

From: Britt, Susan
Sent: Friday, January 22, 2010 2:52 PM
To: Pettine, David
Subject: FW: Morningstar Development Agreement

FYI

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Motz, Buddy
Sent: Friday, January 22, 2010 2:51 PM
To: Baker, Jim; 'cmsinc@comporium.net'; Cox, Joe; 'starr7827@gmail.com'; Harmon, David; Huell, Tonya; Larson, David; McKeown, Melvin; Norris, Linda; 'plindemann@hotmail.com'; 'rlbt@comporium.net'; Blake, Roy; 'O=YORKCOUNTYGOVEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Teria.sheffield'; 'tfsmittysc@aol.com'; Moore, Anna
Cc: Britt, Susan
Subject: Re: Morningstar Development Agreement

Thanks Jim, I see them as being made in the same mold as the old PTL, and just as scheming. They are only out to fleece the investors of the units and bilk them for every dime they can get. The county has delayed this for to long and I see no reason for us to allow them to continue further. It would not be accepted for other businesses and it should not be allowed for them.

Thanks,
Buddy
Sent from my BlackBerry
Cell # 1-803-322-5654

From: Baker, Jim
To: Buddy Motz (buddy.motz@yorkcountygov.com); Chad Williams <cmsinc@comporium.net>; Cox, Joe (Joe.Cox@yorkcountygov.com); Curwood Chappell (starr7827@gmail.com) <starr7827@gmail.com>; Harmon, David; Huell, Tonya; Larson, David (david.larson@yorkcountygov.com); McKeown, Melvin; Norris, Linda; Paul Lindemann (plindemann@hotmail.com) <plindemann@hotmail.com>; rlbt@comporium.net <rlbt@comporium.net>; Roy Blake (roy.blake@yorkcountygov.com); Sheffield, Teria (Teria.Sheffield@yorkcountygov.com); Tom Smith (tfsmittysc@aol.com) <tfsmittysc@aol.com>; Wilson, Anna (Anna.Wilson@yorkcountygov.com)
Cc: Britt, Susan
Sent: Fri Jan 22 14:29:01 2010
Subject: Morningstar Development Agreement

All,



A key milestone in the Morningstar Development Agreement (DA) is their obligation to provide a performance bond or letters of credit within 180 days of York County's approval of the commercial site plan as a prelude to beginning the construction process. This deadline comes at the end of February, 2010.

Recent discussions with Morningstar representatives have disclosed that they are highly unlikely to reach this goal in the near-term future. We have been told they need more time to sell advance "reservations" for units within the renovated tower in order to gain the financing commitments they need. Staff will be meeting with them soon and we plan to tell them the matter will be placed on the Council's executive session agenda for March 1, 2010 and, if they are not in compliance with the terms of the Development Agreement by that date, we plan to recommend the Council issue a notice of default under the Agreement.

Such a notice only starts the resolution process. The DA gives Morningstar another 60 days to negotiate a resolution to any claimed breach of the Agreement and even if we remain stalemated after 60 days, they can request mediation prior to any final action being taken.

I have no idea whether there is a realistic probability that Morningstar will complete this project. However, more than anything else, staff and I believe the Council should take a strong stance and give notice of default to Morningstar if they cannot provide the financial assurances that were promised in a Development Agreement they signed on April 28, 2008. Again, the initial stages of this process will not necessarily be public and will take substantial time. However, I wanted to give everyone some advance notice about this upcoming deadline because this project has been so prominent in the public's eyes.

Jim

Kendree, Michael

From: Britt
Sent: Friday, January 22, 2010 2:21 PM
To: McKeown
Subject: RE: Heritage Tower Project meeting request

Thanks Melvin. These folks are too slick for me.

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone 803.909.7242
Email. susan.britt@yorkcountygov.com

From: McKeown, Melvin
Sent: Friday, January 22, 2010 8:57 AM
To: Britt, Susan; Baker, Jim
Cc: Larson, David; Pettine, David
Subject: RE: Heritage Tower Project - meeting request

I agree with Susan concerning the place and terms of the meeting.

Melvin McKeown

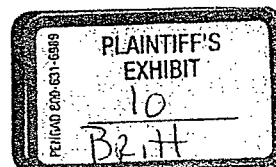
From: Britt, Susan
Sent: Friday, January 22, 2010 8:44 AM
To: Baker, Jim
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: FW: Heritage Tower Project - meeting request
Importance: High

Jim,

Will you be replying to Buddy or do I need to do so? As to meeting with Morningstar folks, I prefer to meet with them only with our attorney in attendance as this is likely to end up as a legal action. I also prefer to meet at a County facility. I am sensitive to any appearance of complicity by again visiting/touring their property. What are your thoughts? I would like to reply to Mr. Yarns as soon as possible.

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone 803.909.7242



Email: susan.britt@yorkcountygov.com

From: Motz, Buddy
Sent: Friday, January 22, 2010 7:07 AM
To: Britt, Susan; Baker, Jim
Subject: Fw: Heritage Tower Project - meeting request

Where are they as to time line to complete and work completed?

Thanks,
Buddy
Sent from my BlackBerry
Cell # 1-803-322-5654

From: Pat Selvey <patselvey@gmail.com>
To: Britt, Susan
Cc: dave yarnes <dyarnes@gmail.com>; Rick Joyner <rickjoy@aol.com>; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith <psmith@morningstarministries.org>
Sent: Thu Jan 21 18:14:59 2010
Subject: Heritage Tower Project - meeting request
To Susan Britt:

We would like to meet together with you (and your staff at your discretion) in order to demonstrate and discuss with you where we are in our process with the Heritage Tower Project. We want to report on Sales, Financing and Construction. We would like to review areas of the development agreement as well.

We are happy to visit your facility or host at our facilities and show you our sales offices. Could you please reply with a few options for dates and times that work best for you, and we will confirm. A 90 minute time period should allow for all discussion.

Sincerely,

Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2013-CP-46-00246

MORNINGSTAR FELLOWSHIP
CHURCH,

Plaintiff,

vs.

YORK COUNTY, SOUTH CAROLINA,

Defendant.

AFFIDAVIT OF DAVID YARNES

FILED-RECEIVED
2014 JUN 19 PM 2:49
DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

David Yarnes, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. I am the Vice President of MorningStar Fellowship Church ("MorningStar").
3. MorningStar is a multifaceted organization which is engaged in non-denominational Christian faith based ministry around the world.
4. MorningStar purchased the former PTL property in Fort Mill in 2004. It included, among other things, a hotel and conference center and various smaller buildings. It also included a 21-story structure (the Tower) that had never been completed. MorningStar's initial plan was to demolish the Tower. However, investigation revealed that the Tower was in remarkably good condition. The value of the Tower was estimated to be over \$10,000,000.
5. MorningStar began investigating the possibility of saving the Tower. Market research showed a strong demand for multi-family, retirement styled living facilities in the York County area. We decided to move forward with saving the Tower.
6. Despite the economic turmoil of the last few years, I believe that demand still exists.
7. After purchasing the property, we refurbished over 500,000 square feet of the old PTL facilities.
8. The Tower was a more complicated task. We engaged architects and engineers to determine the best way to approach its completion and renovation, and began to put together a development plan.

9. The County determined that a detailed Development Agreement was necessary in order to formalize the development plan. It was negotiated over many months, signed on January 13, 2008, and finally filed on May 5, 2008. A copy is attached to my affidavit as Exhibit A.

10. The Agreement recites that it is effective for a period of five (5) years and shall thereupon terminate unless extended by mutual agreement. Section X., ¶ C. provides, however, that "[t]he Parties acknowledge that the market conditions may, and will likely, affect the pace and character of the Property. Therefore, the Parties agree that they shall take into account . . . any change in market conditions, demographics or similar matters when deliberating disputes or negotiating for future modifications to this Agreement made pursuant to this Paragraph." There was never any sense of urgency to move the project forward as quickly as possible. We wanted to do it right, and deliver something that would help the County as well as us. The economic problems that began to manifest in 2008 brought most development to a halt. We continued to move forward, though, and everything looked positive.

11. MorningStar began feasibility work and engineering studies immediately after the Agreement was signed. We also began a significant effort at pre-selling units. The interest was real, and we had over 200 prospective purchasers evidenced by financial commitments.

12. The project engineers at the time worked for Power Engineering. Their primary point of contact with MorningStar was Pat Selvey. Mr. Selvey served in an assistant project manager role. He reported to me.

13. Feasibility and engineering expenses eventually exceeded \$1.2 million. We worked hard on a site plan.

14. A site plan generally contains architectural plans, landscape architecture documents, and detailed engineering drawings. I have been involved in multifamily and hotel development for many years, and realize the significance of the plan. It is not possible to receive reliable construction bids until final site plan approval is received.

15. Work continued on the site plan throughout 2009. The County interacted with Power Engineering on different issues related to the site plan. This process took longer than I thought it would, and I believed for many months that it must be close to completion. As stated, no one at MorningStar ever received formal notification that the site plan had been approved.

16. Section VII., ¶ A. of the Agreement states that “[p]rior to site plan approval, Developer shall sign the County’s non-reimbursable extension agreement” providing for relocation and extension of water and sewer lines. Section VII., ¶ C. reiterates this requirement. The non-reimbursable extension agreement was not provided to MorningStar for its review and was never executed by MorningStar. This was a critical part of the development process from a cost standpoint, and impacted the entire building process. We had not even talked about it with the County at this point. This compounded the problems described in paragraph 14. MorningStar did not consider the project to be in jeopardy at that point. It simply believed that the County was in no real rush to get started.

17. However, the lack of formal approval of the site plan continue to delay the development process. MorningStar continued to work on the project, and expended significant funds on architectural work.

18. We honestly were waiting for the utility extension meeting and agreement and the certified letter to as evidence that we had crossed this threshold. In the meantime, we worked hard to manage the sales and development of the tower and the massive amount of correspondence related to it.

19. In January, 2010, we sent, as a matter of courtesy, an email explaining the progress we were making with our marketing. We talked about the milestone of opening our Model. We were shocked at the response. The County contended, for the first time, that the site plan had been approved in August, 2009 and that we were expected to produce the performance bonds described in Section IV of the Development Agreement within a matter of a few weeks.

20. We responded by telling them that we had no idea what they were talking about.

21. Ironically we had been working on our certificate of occupancy for our sales “Tower Model” unit prior to the notice and had been working with county development agencies to get our model open and begin the closing process of our 200 plus reservations holders. No mention of a problem was ever given by related county personnel during this development.

22. They responded to our questions by sending a copy of a document that they claimed to have shared with Gerald Lee with Power Engineering in August, 2009. We pointed out that a site plan is exactly that, a plan, and that we had not seen one that showed what was being approved. The document that they sent wasn’t a site plan approval. It was one of a

number of notices about compliance issues with portions of the plan. By this time it was too late to meet their deadline.

23. We met with the County to try to explain the untenable position they were putting us in. We did not get any response other than a repeated reference to the deadline and threatened action to make us tear down the tower. They also questioned our integrity and the genuineness of our efforts to complete the Tower.

24. It seemed at that point that the decision had been made. The agreement contains a number of provisions requiring mediation and consideration of economic realities that might require extending deadlines. We tried to follow them.

25. I then sent a formal "Notice of Dispute." It is attached as Exhibit B. It was my effort to set out what I thought were the problems with the County's position. Most importantly, the agreement has a notice provision which requires all notices to be sent by certified mail addressed as follows:

Rick Joyner
President, Morningstar Fellowship Church
375 Star Light Drive
Fort Mill, SC 29715

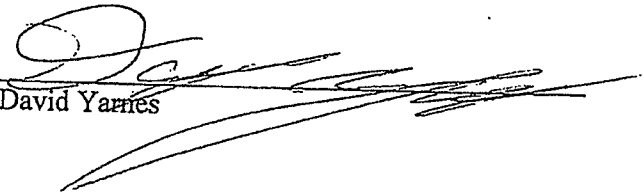
I think this notice provision was in every draft of the development agreement. It was important to make sure that each party could avoid surprises and in a large organization like ours (200 plus employees) that legal notices be routed to the appropriate office. The general thrust of what I sent was that we could not meet their deadlines because they did not communicate information about the site plan in order to let us know that the clock had started.

26. I personally gathered the information requested by the County throughout this process and answered all questions they posed, including about our solvency and ability to complete the development. The message never changed. The County believed it held a trump card, and after going through requisite hoops, would require us to tear the tower down. It seemed like the entire spirit of the Development agreement, the 5 year time frame to develop, the process of notices being given, the economic downturn language, the ability to resolve disputes, was thrown out now that the county had what they thought was the upper hand.

27. The internal emails produced by the County bear this out. Shortly after we reached out to them, the County Commissioners were planning to use the site plan issue to require us to tear the tower down. We were compared to the old PTL, and accused of being dishonest at best and thieves at worst. These emails are attached as Exhibit C.

28. The County sent a notice of default which was picked up in the media. It was, for all intents and purposes, a death knell for the project. We continued to try to limit the damage and move the project forward. The County's position has simply been to say "No" to everything we present. The mediation process has been a farce. We have provided everything they have asked for since February 2010, but the goal posts keep being moved on us. It is obvious that nothing short of demolition will be acceptable to the county, and that we have wasted over two million dollars. I still believe the project is a good one, and could be completed, but only if steps are taken to reduce the impact of these improper claims of "default." We still have over 100 people who have not cancelled. We simply need to be out from under these allegations.

This 16 day of June, 2014.


David Yarnes

Sworn to and subscribed before
me this 16 day of June, 2014.

Patricia S. Smith
Notary Public for York County
Print Name: Patricia S. Smith
My Commission Expires: 23 Feb. 2021

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

MORNINGSTAR

DEVELOPMENT AGREEMENT

200800017332
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
05-05-2008 At 09:49 am.
AGREEMENT 54.00
DR Vol 10017 Page 95 - 143

THIS MORNINGSTAR DEVELOPMENT AGREEMENT (this Agreement) is entered into this 13th day of January, 2008, by York County, a unit of government organized and existing pursuant to the laws of the state of South Carolina (County), and Morningstar Fellowship Church, its successors and assigns (the Developer) (County and the Developer are hereafter collectively referred to as the "Parties").

RECITALS:

WHEREAS, by deed recorded on September 28, 2006 in Book 6582 at Page 28, in the Office of the Clerk of Court, York County, South Carolina, Coulston Enterprises, Inc., a South Carolina corporation, conveyed to Developer a parcel of approximately 52 acres of real property identified as Tax Map No. 7290000014, which is located within a private development known as Regent Park in Fort Mill Township, York County, South Carolina, as more fully shown and described on Exhibit A attached hereto (the Property);

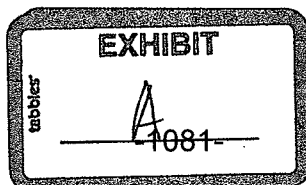
WHEREAS, the Property is unique within the County in that the Property has improvements consisting of a 20-story Tower (Tower), a church, school, bunkhouses and retreat center, ingress and egress to which is across private roads not owned by Developer, fronting in part on a man-made lake;

WHEREAS, the Developer wishes to rehabilitate and complete development of the Tower, for use and occupancy by Age Target 55 and older, with no children, which includes active senior adult and assisted and skilled nursing home residents, and to continue developing the remaining 52 acres of the Property upon which already exists a church, school, retreat center and bunkhouses (the Development), pursuant to the zoning standards set forth in the Morningstar Planned Development District Standards attached hereto as Exhibit B, the Official Zoning Map of York County, as amended (including by the Morningstar Fellowship Church PD Plan), as well as in accordance with all applicable state and local laws and regulations;

WHEREAS, County agrees to the completion of the Development by the Developer, pursuant to the Morningstar Planned Development District Standards, upon the terms and conditions set forth herein;

WHEREAS, the Parties desire for County to impose certain provisions of the Interim Development Ordinance (IDO), adopted by the York County Council on June 18, 2007, upon the Development for Developer to satisfy in connection with the completion of the Development, upon the terms and conditions set forth herein; and

WHEREAS, in order to assure the Developer of the standards, rules and regulations which will apply to the Development, which is a significant, unique capital improvement project, and in order to direct County's control over the Property, which is within its limits, by imposing certain requirements and restrictions thereon, the Parties enter into this Development Agreement pursuant to and in accordance with S.C. Code Ann. § 6-31-10 et seq. (Rev. 2004).



WITNESSETH:

NOW, THEREFORE, in consideration of the foregoing preamble recitals and the mutual covenants and agreements contained herein, the Parties hereby agree as follows.

I. DEFINITIONS

A. **Age Target 55** – A category of residential use that is targeted for adults over the age of fifty-five, who have no children currently living in the residence.

B. **Bunkhouses** – Two sixteen unit residential buildings located on the Property to be used as rental apartments.

C. **Major Modification** – Pursuant to S.C. Code Ann 6-31-60, a major modification to this Agreement requires public notice and hearing before the modification can be effected. The Parties agree that a major modification is one which changes the beneficial use of the Property. The following are examples of major modifications to this Agreement:

1. Increase in density or intensity of use of the Development;
2. Change in permitted uses of the Development;
3. Increased overall impervious coverage or square footage of structures;
4. Increased demand for traffic circulation and public utilities;
5. Decrease in public or private open space or on-site amenities; and
6. Increased numbers of dwellings.

D. **Minor Modifications** – These are modifications that do not require public notice and hearing prior to implementation but do require administrative approval. The Parties agree that a minor modification is one which does not change the beneficial use of the Property. The following are examples of minor modifications to this Agreement.

1. Changes in the location and type of landscaping and/or screening so long as the approved character and intent are maintained;

2. Changes in the orientation of portions of parking areas so long as the effectiveness of the overall site circulation and parking are maintained. Parking areas shall not be relocated any closer than twenty (20) feet from any residential structure or ten (10) feet from any street or right-of-way lines and the number of required parking spaces shall not be reduced by the relocation;

3. Changes in the location of sidewalks or pathways; provided that the continuity of pedestrian circulation remains;

4. The reorientation, but not complete relocation of structures;

5. Changes that will not impact properties or uses outside of and adjacent to the Development; and

6. Redesign of open space that does not decrease the recreational, buffering, or environmental benefits of the open space; and

7. Modifications to the roof design of the Tower, provided such modifications do not affect the structural integrity of the Tower.

E. Morningstar Fellowship Church PD Plan or PD Plan - The graphical depiction of the Development included as a part of the Morningstar PD attached hereto as a part of Exhibit B.

F. Morningstar Planned Development District Standards or Morningstar PD - The guidelines attached to this Agreement as Exhibit B, which provide greater detail as to the standards for development and uses of the Property.

G. Open Space - For purposes of this Agreement and as used herein, the term "open space" shall mean and refer to land used for recreation, amenity or buffer, freely accessible to all residents of the Development, which may be vacant or unimproved, or improved by buildings or structures within which are allowed recreational uses or amenities.

H. Private Hospitality - A category of commercial use, which includes a retreat facility.

I. Private Retail - A category of commercial use, including a cafeteria, merchandise shop, convenience store, hair salon, restaurant and nurses' station (which may be staffed on occasion by a doctor), which are only available for use by residents or guests of residents.

J. Tower - The twenty (20) story building located on the Property.

II. OPEN SPACE ON THE PROPERTY

A. **Designation of Open Space.** A minimum of twenty (20%) percent of the Development must be designated as permanent Open Space. Open Space shall be located within the Development as shown on the PD Plan attached hereto as a part of Exhibit B. The specific requirements for Open Space are set forth in the Morningstar PD attached hereto as Exhibit B. To the furthest extent practicable, the provisions of York County Ordinance § 155.429 shall be harmonized with this Section II, Open Space on the Property. County may consider certain variations from the definition of Open Space contained in York County Ordinance § 155.429, i.e., roof top gardens or green roofs. All Open Space shall constitute a common element available for use by all residents of the Development.

III. DEVELOPMENT AMENITIES

A. On-Site Amenities. Within the Open Space on the Development, Developer shall provide amenities available to all residents of the Development, in accordance with Ordinance §155.216.

B. Number of Amenities. Pursuant to York County Ordinance § 155.216, because the Development will not exceed 500 residential units, the Developer is required to provide a minimum of three (3) different amenities within the Development.

C. Allowable Amenities. The following are allowable amenities within the Development: swimming pool (indoor or outdoor) sized to comply with NRPA standards; a clubhouse or senior center; basketball, volleyball, shuffleboard or other sports court; one (1) picnic area with a minimum size of two thousand five hundred (2,500) square feet, including a minimum of one (1) picnic table and one (1) barbeque grill pit; and any other amenity approved by County in advance of construction thereof.

IV. ECONOMIC FEASIBILITY

A. Construction Contract and Plans. Developer shall cause to have prepared AIA construction contract documents and plans for the rehabilitation and completion of the development of the Tower, as well as any other construction in the Development in accordance with the Morningstar PD, as well as all applicable state laws and regulations, and any local laws in effect on the date of final approval of this Agreement. The construction contract documents and plans for the Tower shall set forth that any rehabilitation and/or completion of the Tower for residential occupancy shall meet or exceed the 2003 ICC building code requirements as approved and adopted by the State of South Carolina and York County by ordinance as of the date of this Agreement.

In connection with issuance of building permits for the Development, County shall promptly provide the construction contract documents and plans to the Plan Review Division of the International Code Congress (ICC) in Birmingham, Alabama. The ICC shall conduct its review; and, upon completion shall either recommend approval, rejection, or approval with modifications. Upon receipt of the ICC's recommendation(s) for the project, the County shall review for compliance with Chapter 150, Building Regulations, of the York County Ordinances, in effect on the date of final approval of this Agreement. Should the ICC recommend approval of the contract documents and plans, the County shall issue permits in conformity with the ICC's recommendation and terms contained herein. Should the ICC reject or recommend approval with modifications, the County shall issue a letter of requested changes to the Developer which shall within no later than 45 days provide alternate plans in conformity with the requested changes. Any modifications to the construction contract documents and plans submitted by Developer in response to an ICC recommendation must be re-transmitted to the ICC for review and evaluation of conformity with initial ICC recommendations. In all events, the County must approve the construction contract documents and plans and issue a building permit prior to any construction activity occurring at the Development.

The County and Developer recognize that there is no precise way to estimate the time period for ICC review; and therefore, neither party to this Agreement can claim any harm or hardship relative to the period of time during which the ICC review process takes place. In the event the ICC determines that rehabilitation of the Tower is infeasible from an engineering standpoint, in that designated ICC standards for engineering integrity cannot be met, regardless of the plans for rehabilitation by Developer, then this Agreement shall be voided and the Tower shall be demolished with all costs borne by the Developer.

Any modifications to the construction contract documents and plans during construction / renovation of the Tower that affect the structural or life and safety design of the Tower shall be submitted to the ICC for a recommendation of approval.

B. Preliminary Engineering Report of Cost of Construction. Upon approval by County of the construction contract documents and plans, Developer shall cause to have prepared a preliminary engineering report of the cost of construction. County may review the preliminary engineering report of the cost of construction in advance of Developer seeking bids, upon written request by County.

C. Bonds or Letter of Credit.

1. Prior to Developer's completion of the contract documents for rehabilitation and/or completion of the Tower for residential occupancy, Developer shall submit to County the specimen bid, performance and payment bonds, for County to approve as to form, with such approval not to be unreasonably withheld. In addition to the bid, performance and payment bonds, which, collectively, provide County with financial assurance that the contractor awarded the job of rehabilitation and/or completion of the Tower is insured to finish the job for the amount of the bid, in accordance with the contract documents and with payment to all subcontractors and suppliers, Developer shall furnish to County prior to issuance of any building permit for the Tower, a demolition bond or financial equivalent, in the amount projected as necessary to demolish the Tower based upon its current condition, upon which County may draw or make claim, but only in the event of a Failure to Complete the Project. Should there be a Failure to Complete the Project, County may demolish the Tower and defray the cost thereof by drawing down the entire principal amount of the demolition bond or financial equivalent. As used herein, "Failure to Complete the Project" means and refers to: i) the general contractor not satisfactorily completing the work within six months after demand for satisfactory completion; ii) the performance bond surety not undertaking its contractual responsibility to hire a substitute contractor to finish the work within six months after demand is made on the performance bond; and iii) Developer or its assignee not re-letting the work to another contractor or otherwise arranging for the work to be done in accordance with the contract documents within six months after termination of the contractor.

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

V. ROAD CONNECTIVITY

A. **Traffic Impact Analysis.** County requires Developer to undertake a traffic impact analysis (TIA) as a part of County's evaluation of the impact of the Development on the area roads located in the County pursuant to York County Ordinance § 154.035. The purpose of the TIA is to outline mitigation measures that are necessary for road infrastructure to accommodate the increased traffic demands created by the Development. The criteria to be included in the TIA shall be as set forth in Ordinance § 154.035(A)(1); the findings of the TIA shall be held subject to the traffic service standards set forth in subsection (A)(5); and the contents of the TIA report shall meet the requirements of (A)(7), all as attached hereto at Exhibit C. County shall follow the process for the review and evaluation of the TIA, assist in the preparation of the TIA, and shall report its findings with respect thereto, in accordance with (A)(8) and (A)(9), respectively, also as set forth on Exhibit C. Based upon the density of the Development as less than 500 residential units, which shall be reflected in the project description section of the TIA as the designated use, and which shall be shown on the approved PD Plan for the Development, the scope of the required TIA includes the following intersections and background developments: Regent Parkway / Highway 21, AO Jones / Springfield Parkway, Dorman / Harrisburg Road, Starlight Drive / Regent Parkway / Railroad, New Fort Mill High and Elementary Schools, Bloom grocery store, Baden Village, and Haden Hall. As of the date of entry into this Agreement, County has approved the required TIA.

B. **Public Roads.** The 52-acre development is currently accessed via private roads in the Regent Park development. Should the roads within the Development be accepted for ownership and maintenance by the County, public road access to the Development would be available. Any dedication of the private access roads must meet County road standards in effect at the time of dedication to County and have been approved by the County Council for acceptance into the County's maintenance system. All proposed public roads within the Development shall be required to meet the County's road standards at the time of dedication. If Regent Parkway is accepted for ownership and maintenance by the County, Developer shall pay its fair share for the cost of maintenance of Regent Parkway for two (2) years after dedication, based upon the percentage of use of Regent Parkway by Developer, including its contractors and residents, compared to cumulative use of Regent Parkway by all, including Developer, the same as any other user of Regent Parkway during this two (2) year period. Any roadway-related improvement or new road construction shall meet all County and SCDOT transportation standards.

C. **Private Roads.** Developer does not own or control the roads within the Regent Park development. In the event Developer has any right or other legal basis for improving or ensuring the improvement of Regent Parkway located within the Regent Park development, Developer is willing and hereby covenants that, if there are increased traffic demands on Regent Parkway attributable to the Development, Developer shall contribute financially on a pro-rata basis with others whose developments or use of Regent Parkway have rendered the level of service of the road unacceptable to County, based upon the percentage of use of Regent Parkway by Developer, including its contractors and residents, compared to

cumulative use of Regent Parkway by all, including Developer. Developer's right to use of and access to the private roads within the Regent Park development is set forth in the Title to Real Estate dated September 27, 2004, recorded September 28, 2004 in Book 06582 at Page 00028, in the Office of the Clerk of Court, York County, South Carolina.

VI. NONPUBLICLY-OWNED UTILITIES

A. **Planned Development Standards.** The Developer shall cause any Non Publicly-Owned Utilities provider or its contractor to install the Non Publicly-Owned Utilities in compliance in all respects with the Morningstar PD and any other aesthetic requirements which may be applicable to the Development.

VII. PUBLICLY-OWNED UTILITIES

A. **Water and Sewer Service .** York County has the willingness and capability to serve the development with water and sewer service. However, demands on the County's water distribution system and loadings on its sanitary sewer collection system are not known at this time. Developer is to submit anticipated flow rates for County's review and evaluation of the effects on the utility systems. Water and sewer system extensions and/or upgrades to the County's existing utility system required to serve the Development (but not any other area(s)) are to be provided by Developer. Booster pump stations for the service to the Tower and fire suppression systems and associated storage and pumping requirements are to be constructed, owned and maintained by the Developer. Prior to site plan approval, Developer shall sign the County's non-reimbursable extension agreement if there is a proposed extension or relocation of existing County-owned water and sewer lines. Developer is to pay water and sewer system fees in accordance with County Ordinances in effect at the time of the execution of this Agreement.

B. **Existing Easement Agreement .** Developer acknowledges there are existing County-owned utility easements on the Property recorded in Deed Book 1778, Pages 120 through 185. All site plan submittals by Developer shall show these easements and approximate locations of the utility lines. Should field investigations reveal the exact locations of these utility lines differ from those described in Deed Book 1778, Pages 120 through 185, Developer shall notify the County and have the utility lines surveyed by a land surveyor registered in the state of South Carolina. Developer shall have amended easements with revised surveyed line locations recorded with the York County Clerk of Court. Should a new easement be recorded with the Clerk of Court due to the identification of utilities in the field, the width of the permanent easement shall be twenty (20) feet in width (being ten (10) feet to the left and ten (10) feet to the right of the centerline of the existing water and sewer lines). The revised easement shall be for full, permanent and perpetual right, privilege, right-of-way and easement to go in, through, over, under and across the strip of land identified as easement for the purpose of laying, constructing, excavating, operating, maintaining, inspecting, protecting, repairing, removing, renewing and/or replacing one or more lines of similar or different sizes, facilities, fixtures, equipment, pipes, meters, pumps, tanks, valves, connections, appliances and all appurtenant equipment for the testing, purification treatment, impoundment, detention, discharge, transfer, conveyance and disposal of sewage and/or water, together with the full and perpetual right, privilege and

easement of access, ingress and egress to go over, under, through, across or upon property of the grantor for the purposes aforesaid.

C. Future Easement Agreement. In the future, if Developer submits to County a site plan that includes the proposed extension or relocation of County-owned utility lines, Developer shall sign a non-reimbursable extension agreement prior to site plan approval. For any future utility lines, extensions, or relocations of existing County-owned utility lines on property owned by Developer, Developer shall assign to County, at the time of dedication thereof to County, a full, permanent and perpetual right, privilege, right-of-way and easement to go in, through, over, under and across a strip of land twenty (20) feet in width (being ten (10) feet to the left and ten (10) feet to the right of the centerline of the water and/or sewer line) for the purposes of laying, constructing, excavating for, operating, maintaining, inspecting, protecting, repairing, removing, renewing or replacing one or more lines of similar or different sizes, facilities, fixtures, equipment, pipes, meters, pumps, tanks, valves, connections, appliances and all appurtenant equipment for the testing, purification, treatment, impoundment, detention, discharge, transfer, conveyance and disposal of sewage and/or water, together with the full and perpetual right, privilege and easement of access, ingress and egress to go over, under, through, across or upon property of the grantor for the purposes aforesaid. On any property not owned by Developer, County shall grant Developer an encroachment permit for the installation of utility lines and appurtenances if within road rights-of-way owned by County; and if the utility lines are to be located on private property, Developer shall be required to acquire easement from the property owner and have it dedicated to the County. For utilities to be dedicated to the County, Developer shall install, construct, relocate if necessary, and convey all water and/or sewer lines, appurtenances, and easements to the County, at no cost to the County, as described in detail in the non-reimbursable extension agreement.

VIII. STORM WATER MANAGEMENT, WETLANDS AND SOLID WASTE DISPOSAL

A. Storm Water Management.

1. Construction Requirements. Developer agrees that Developer shall be solely responsible for designing and constructing a storm water runoff and drainage system for any improvements to the Property made after the date hereof, including the Tower which is being rehabilitated and completed, (hereafter, Storm Water System), in accordance with the requirements of SC DHEC, and other applicable federal, state and local laws and regulations (the Storm Water Management Plan). The Storm Water Management Plan shall comply in all respects with the requirements of the South Carolina Storm Water Management and Sediment Reduction Act of 1991, S.C. Code Ann. § 48-14-10 et seq., and shall be subject to the approval of applicable state and local authorities. Any required approval by County of the Stormwater Management Plan shall not be unreasonably withheld.

All storm drainage features (i.e. storm drain piping, ditches, utility conflicts, and water quality and detention ponds shall be designed using ground profiles and/or contours generated from field surveys certified by a South Carolina professional land surveyor. Field surveys shall be tied to the South Carolina State Plane Coordinate System as defined by the North American

Datum of 1983 (NAD83) and mean sea level as defined by the North American Vertical Datum of 1988 (NAVD88). Profiles generated from GIS information shall not be accepted by County.

2. Design Standards. Developer shall utilize the natural or constructed reservoir located on the Property as a part of the Storm Water Management Plan to the extent feasible. Developer must demonstrate that existing features utilized will meet all current requirements of applicable law. This Plan shall be reviewed and approved by the County Engineer or his designee prior to the start of any construction pursuant to the Storm Water Management Plan. Developer, at its expense, shall perform, at a minimum, weekly inspections of the silt fencing and associated stormwater management and sediment control features to assure its integrity. A report of each inspection shall be provided to County within twenty-four (24) hours of the inspection. Inspections shall also be performed after all significant rain events and in accordance with SC DHEC's Construction General Permit requirements. All storm drainage easements not centered on property lines shall be surveyed, and shown on the Final Plat.

3. On-Site Storm Water. Maintenance of all temporary and permanent erosion and stormwater management outside public rights-of-way is the responsibility of Developer or its designee. County reserves the right to perform work in these areas should Developer or its designee not properly maintain these areas causing potential danger to the integrity of any roadway or County owned infrastructure. Should County be required to maintain these areas, Developer or its designee shall be billed for costs incurred by County.

B. Wetlands. If required under applicable laws, Developer shall submit a wetlands delineation proposal to the Army Corps of Engineers. The Developer shall comply with the conditions of any wetlands permits and other wetlands regulations affecting the Property, including any protective covenants that may be imposed by the Army Corps of Engineers. All correspondence to and from the Army Corps of Engineers relating to wetlands shall be supplied to the County Environmental Compliance Division. Written approval may be necessary from FEMA, ACOE and SC DHEC for any disturbance of wetlands, creeks and flood plain prior to issuance of any grading permit.

C. Solid Waste Removal. Developer shall be responsible for the disposal of all waste materials generated through the demolition and construction phases of the project. Waste materials are to be disposed in an approved regulatory manner and certain waste materials may be buried on site upon approval by County in accordance with County ordinances in effect as of the date of disposal. Developer may use hardened concrete, cured asphalt, brick, and block that have not been in direct contact with hazardous constituents (e.g., pesticides, etc.), petroleum products, or painted with lead based paint as structural fill in accordance with applicable state and local laws and regulations. Materials buried for structural fill shall be buried free of voids that may cause long term surface subsidence or sink holes. Other construction and demolition debris, such as drywall, dimensional lumber (i.e., 2x4, 2x6), metals, glass, roofing felt, shingles, paper, and plastic, shall not be buried on site.

Developer is responsible for costs associated with the transportation and disposal of waste materials and may contract with a solid waste removal provider to furnish solid waste

removal services to the Development. Recycling of waste materials (e.g. brick, concrete, asphalt and metal) is encouraged.

In the event of any conflict between this Agreement, County ordinances and SC DHEC regulations, the most stringent of the guidelines, ordinances or laws over solid waste removal and any burial of certain waste materials, shall take precedence.

D. Roadside Ditches. Developer, or its representatives, shall not pipe or fill in roadside ditches nor discharge lot or roof drainage systems into roadside ditches, enclosed roadside drainage systems, or road rights-of-way without submitting a road encroachment permit (if applicable) or discharge plan to County for approval.

IX. DEVELOPMENT STANDARDS

A. Morningstar PD and Plan. Developer shall improve the Property in strict compliance with the terms, covenants and provisions of the Morningstar PD, including the PD Plan made a part thereof, and applicable local, state and federal laws and regulations.

B. Zoning Requirements. Except as otherwise provided in this Development Agreement (including the Morningstar PD and PD Plan), the Development shall conform in all respects to the requirements of Chapter 155 of the York County Ordinances (Zoning Ordinance), in effect on the date of final approval of this Agreement. Developer shall also specifically meet all of the requirements and procedures associated with a Planned Development District (PD) as set forth in Sections 155.205 through 155.215 of the Zoning Ordinance and with a Land Development Agreement as set forth in S.C. Code Ann. § 6-31-10. Unless specifically displaced by this Agreement (including the Morningstar PD and PD Plan), all local laws and regulations shall remain in full force and effect.

C. Designated Uses

1. Allowable Uses of the Tower. The Tower shall be renovated and completed by Developer for use and occupancy by Age Target 55 and older, with no children, which includes active senior adult and assisted and skilled nursing home residents. As part of the development of the Tower, Developer shall offer certain private retail amenities to residents of the Tower, their guests, Morningstar staff and conference and church attendees. These private retail amenities may include a convenience store, hair salon, restaurant and nurses' station (which may be staffed on occasion by a doctor). These are the permitted, allowable, approved and adopted uses for the Tower. The specific requirements for each type of designated and allowable use within the Tower are set forth in greater detail in the Morningstar PD attached hereto as Exhibit B. The locations of each type of designated and allowable use within the Tower are shown on the PD Plan attached hereto, which forms a part of Exhibit B.

2. Allowable Uses of the Development. Currently, Developer has constructed and is operating a retreat center, a school offering classes from kindergarten through twelfth grade and an associate's degree program, a church and certain private retail facilities, including a merchandise shop and a cafeteria. In connection with these existing facilities on the Property, the allowable land uses of the Property will include church, school, residential, private retail and private hospitality services, as well as such other future uses as may be designated by Developer and allowed by County. The specific requirements for each type of designated and allowable use within the Development are set forth in greater detail in the Morningstar PD attached hereto as Exhibit B. The locations of each type of designated and allowable use within the Development are shown on the PD Plan attached hereto, which forms a part of Exhibit B.

3. Future Uses. Any addition to the above allowable uses shall constitute a major modification to this Agreement and require public notice and hearing, as more particularly set forth in S.C. Code Ann. § 6-31-60 (Rev. 2004), as well as supplementation to the Morningstar PD, including the PD Plan attached thereto.

4. Specific Uses of the Development.

a. Residential. Residential uses, limited to Age Target 55 and older with no children, which includes active senior adult and assisted and skilled nursing facilities, along with appropriate amenities, may be built within the Development on that portion of the Property identified on the PD Plan as the Grand Tower, in accordance with the terms and conditions set forth below. The Tower shall not exceed 250 dwelling units. The total residential component of the Development shall not exceed 300 dwelling units.

i. The Tower shall meet all of the requirements of the Zoning Ordinance, with the following exception. In the event of a conflict between the Zoning Ordinance and this Agreement, the requirements of this Agreement shall prevail, but not over the attached Morningstar PD and Plans which shall ultimately control and govern.

ii. The Tower shall have wet sprinkler fire protection systems, in accordance with the 2003 ICC Standards.

iii. In addition to the Tower, the two bunkhouses located on the Property shall be designated as residential units available for rent. These two bunkhouses represent a total of 32 residential units, in addition to the 250 dwelling-unit limit for the Tower.

b. Church and School. Church and school uses, which include a sanctuary, church office and a school building housing classrooms and offices, have already been built within the Development on that portion of the Property identified for church and school use.

c. Private Hospitality. Private hospitality uses, which include a retreat center, have already been built within the Development on that portion of the Property identified for private hospitality use. Developer may also construct a multi-use facility in the Development, which could include a gymnasium and additional sanctuary space. Construction

of this building is a potential addition to the Development, which may be constructed during the five year period of this Agreement.

d. **Private Retail.** Private retail uses, such as a cafeteria and merchandise shop, currently exist in the Development. Additional private retail uses, such as a convenience store, hair salon, restaurant and nurses' station (which may be staffed on occasion by a doctor) will exist within the Tower, in accordance with the terms and conditions set forth in this Agreement.

5. **Limitations on Land Use.** The land uses in the Development are limited to those set forth in the Morningstar PD and as shown on the PD Plan incorporated therein.

D. **Bufferyards.** Bufferyards to be constructed in the Development shall be natural with existing plant material retained. In those limited instances where minimal vegetation exists and topography constrains grading of surrounding land, Developer may request permission from County planning staff to disturb the bufferyard. The bufferyard requirements are more particularly set forth in the Morningstar PD and are located in areas as shown on the Plans incorporated therein.

E. **Access to the Property.** The Developer shall grant representatives of County and other governmental agencies having jurisdictional rights over the proposed development access to the Property for inspection purposes at all reasonable times.

F. **Signage.** All signage in the Development shall conform to the requirements of the York County Ordinances §§ 155.470-155.480 and the specifications set forth in the Morningstar PD.

G. **Surface Ratio.** The maximum impervious surface ratio will not exceed 80% of the Development. Setbacks shall be measured from the prescriptive road right-of-way for Star Light Drive along the western and southern portions of the property and from the property lines along the northern and eastern portions of the property. These requirements are more particularly set forth in the Morningstar PD and are depicted in areas as shown on the Plans incorporated therein.

H. **Parking.** Parking space requirements shall be coordinated with the planning and zoning departments during submittal of construction drawings. Existing parking as depicted on the Plans which form a part of the Morningstar PD shall be verified during the design and renovation phases of the rehabilitation and completion of the Tower.

Parking Required (For Existing Uses)

Existing Sanctuary/Hotel = 543 spaces
Food Court/Convention Center = 375 spaces
Main Street = 108 spaces
Bunkhouses = 32
Grand Tower = 420 spaces

Total: * 1,478 spaces

** A minimum of 50% of the sanctuary capacity will be from onsite Tower/Hotel occupants. Also, a minimum of 1/3 of the convention center occupants will be from the Hotel/Tower.*

Adjusted Parking Required (for overlapping uses)

Total Parking Required = 1,478 spaces

Less ½ of Existing Sanctuary requirement = (112 spaces)

Less 1/3 of Convention Center Requirement = (123 spaces)

Total Adjusted Parking Required = 1,243 spaces

Total Existing Parking Provided = 1,377 spaces (as depicted on the PD Plan)

The dimensions of the parking area in the Development are 1250' X 600'.

In the event additional structures are built in the Development that would require additional parking spaces, Morningstar has the right to use any excess parking spaces then in existence as a credit toward any future parking requirements.

I. Building Height. The maximum building height for the Tower shall be 280 feet.

X. **REPRESENTATIONS, WARRANTIES, DEFAULT AND REMEDIES**

A. General Representations and Warranties by Developer. Developer represents, warrants and covenants as follows.

1. Developer is a church, validly existing and in good standing under the laws of the state of South Carolina, created or formed under the laws of the state of North Carolina.

2. The execution, delivery and performance of this Agreement have been duly authorized by Developer.

3. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Developer in order for Developer to enter into and perform its obligations under this Agreement.

4. In connection with Developer's obligations under this Agreement, Developer shall comply with all applicable federal, state and local laws and regulations and shall obtain all required federal, state, and local permits and licenses.

5. The performance of this Agreement by Developer and each employee provided by Developer will not violate any contracts or agreements with third parties or any third party rights including, but not limited to, any non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights.

6. Developer shall construct any improvements within the Development in accordance with the ordinances, rules, regulations and other applicable federal, state and local laws, including County's zoning regulations, ordinances and land development regulations, and with this Agreement and the Morningstar PD, including the Plans attached thereto.

B. Default.

1. The nonperformance by County of any term, covenant, or condition of this Agreement which is not cured within 60 days after written notice thereof shall constitute an event wherein Developer may exercise its options under Section X (C) below.

2. On behalf of the County, the York County Planning Director and/or the Planning Director's designee shall review the project and this Agreement at least once every six (6) months, at which time Developer will demonstrate its efforts and actions to comply with the terms of this Agreement. If, as a result of a periodic review, the County reasonably finds and determines in good faith that Developer has committed a material breach of the terms or conditions of this Agreement, then County will so notify Developer in writing, within a reasonable time after the periodic review, such notice setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Developer a reasonable time, not more than 60 days in which to cure the material breach.

3. If the Developer fails to cure any material breach discovered through periodic review within the time period provided, then the County unilaterally may terminate or modify this Agreement; provided, that the County has first given the Developer the opportunity: (1) to rebut the County's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the County with respect to the findings and determinations.

C. Remedies on Default.

Regarding rights under this Agreement, the County will look solely to the developer/property owner as to any rights it may have against the developer, and hereby waives any right to assert claims regarding this Agreement against individual members of the developer/property owner membership. Likewise, developer/property owner agrees to look solely to the County as to any rights it may have against the County under this Agreement, and hereby waives any right to assert claims for personal liability against individuals acting on behalf of the County, its County Council members, agencies, boards, or commissions.

Upon receipt of notice from the non-defaulting party that it believes the other party to be in material breach under this Agreement, the other party shall either (i) use good faith efforts to attempt to cure the breach within the time stated in the notice of the breach, or (ii) notify the non-defaulting party that it disputes that party's determination that it has breached this Agreement.

In the event that the alleged defaulting party disputes the alleged breach, the Parties agree to negotiate in good faith with each other in order to resolve the situation to their mutual satisfaction. If such negotiation fails to resolve the dispute within 60 days or if the

alleged defaulting party fails to cure a material breach within the time given, the Parties agree that the dispute as to whether a breach exists shall be resolved through mediation, with mediation being a condition precedent to instituting legal or equitable actions within the courts of South Carolina.

Developer and York County shall endeavor to resolve claims, disputes, or other matters in question between them by mediation in an informal process in which a third-party mediator facilitates discussions between the parties. The parties may designate a mediator mutually agreeable to both York County and Developer to conduct the mediation. Mediation shall be conducted in accordance with the mediation provisions of the South Carolina Circuit Court Alternative Dispute Resolution Rules. The mediation shall be conducted in York County, South Carolina. A request for mediation shall be filed in writing with the other party to this Agreement, and legal or equitable proceedings shall be stayed pending mediation for a period of sixty days from the date of the request for mediation is filed, unless stayed for a longer period of time by agreement of the parties or court order. The cost of a third-party mediator will be shared equally by the parties.

If the parties reach an agreement during the mediation process, they shall reduce the agreement to writing and sign it with their attorneys, if any. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

No waiver of a breach of any of the covenants, promises, or provisions contained in this Agreement shall be construed as a waiver of any succeeding breach of the same covenant or promise or any other covenant or promise thereof. In no event shall any failure by either party to fully enforce any provision of this Agreement be construed as a waiver by such party of its right to subsequently enforce, assert, or rely upon such provision.

Nothing herein is intended to limit or preclude County from pursuing the surety or issuer of the letters of credit, to the extent allowable by law, should Developer fail to cure a material breach of this Agreement covered by any such bonds or letters of credit. Nothing in these provisions shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose; or (ii) following the completion of any mediation proceeding held pursuant to this Paragraph, limit the right of County to exercise any self-help remedies such as setoff or any judicial remedies to improve collection of any judgment, such as attachment, or to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession or the appointment of a receiver. County may only exercise such other or additional remedies after the pendency of such mediation proceeding brought pursuant to this Agreement. The exercise by County of such other or additional remedies shall not constitute a waiver of the rights of any party, including the Developer, to mediate the merits of the controversy or claim arising hereunder occasioning resort to such remedies.

If the mediation results in a finding that Developer has materially breached this Agreement, Developer shall thereafter have a reasonable period of time, but not to exceed 60 days to cure the material breach. In the event that Developer is unable to cure the breach within a reasonable time, then County may terminate this Agreement unless Developer shall consent to modify the terms hereof in order to meet the concerns of County with respect to the findings and

determinations of the mediator(s) as set forth above. Such modification may include, without limitation, an extension of the term of this Agreement in order to permit more time to comply with its requirements. In the event that this Agreement is terminated, said termination shall not affect (a) zoning regulations applicable to the Property set forth herein, or (b) any portion of the Property (i) which has been previously transferred upon York County Council approval to bona fide third party owners, (ii) which is then improved consistent with this Agreement, or (iii) as to which there are outstanding approved plats or building permits issued in conformity with this Agreement. In the event that the Developer is unable or unwilling to cure the breach within a reasonable time and the County elects not to terminate this Agreement, the County shall be entitled to such remedy or remedies of injunction and/or specific performance or judicial modification of this Agreement consistent with the findings resulting from mediation.

The Parties acknowledge that market conditions may, and will likely, affect the pace and character of the development of the Property. Therefore, the Parties agree that they shall take into account, and shall direct the mediator(s) to take into account, any change in market conditions, demographics or similar matters when deliberating disputes or negotiating for future modifications to this Agreement made pursuant to this Paragraph.

If the mediation results in a finding that County has materially breached this Agreement, County shall thereafter have a reasonable period of time, but not to exceed 60 days to cure the material breach. In the event that County is unable to cure the breach within a reasonable time, then Developer shall be entitled to such remedy or remedies of injunction and/or specific performance or judicial modification of this Agreement consistent with the findings resulting from mediation.

D. Force Majeure. Notwithstanding any contrary term or provision of this Agreement, no liability or breach shall result from the delay or nonperformance caused by circumstances beyond the reasonable control of the party affected, including, without limitation, Acts of God, fire, flood, snowstorm, war, government action, riot, and civil disturbance.

XI. MISCELLANEOUS TERMS AND CONDITIONS

A. Relationship of the Parties. This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party.

B. Consistency with the County's Comprehensive Plan and Land Use Regulations. This Agreement is consistent with the 2004 York County Comprehensive Plan and current regulations, as amended to the date of this Agreement (Current Regulations). Whenever express or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Current Regulations, the standards set forth in the Current Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered *in pari materia* to give effect to both the Current Regulations and this Agreement; provided, however, that in the event of a conflict, and subject to the provisions of 6-31-80, the standards set forth in this Agreement shall govern. In the event of a dispute between the parties to this Agreement as

to whether a provision in the Comprehensive Plan or Current Regulations is inconsistent with express or implied substantive provisions of this Agreement, the parties must first submit such disputed interpretation to County Council and must wait seven days after such submittal before invoking the remedies afforded them under this Agreement.

C. **Schedule for Completion; Time is of the Essence.** Time is of the essence with respect to Developer's and County's performance under this Agreement.

D. **Assignment and Assumption.** Developer shall not sell, convey, assign, transfer, hypothecate, encumber or permit or suffer any encumbrance of all or any portion of Developer's interest in this Agreement other than in connection with a sale or other transfer of all or any portion of the Property as set forth below unless approved in writing in advance by County, which approval shall not be unreasonably delayed or withheld. Any attempt to so transfer or encumber any such interest in contravention hereof shall be void. Any transfer or encumbrance of any interest shall be subject to this Agreement, which is recorded in the chain of title to the Property.

E. **Caption Sections.** Paragraphs, titles, headings and captions contained in this Agreement are inserted only for convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

F. **Waiver and Severability.** If any part of this Agreement, for any reason, is declared invalid or void, such declaration shall not affect the remaining portions of the Agreement which shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated. However, if any provision which has been declared invalid or unenforceable shall be a provision that would prevent or materially impair the continued and complete performance of this Agreement by Developer and/or County, then Developer and County hereby agree that they will use their best efforts to renegotiate that term or provision in order to otherwise render the Agreement valid and enforceable. If either Developer or County decides not to enforce a provision of this Agreement, such decision in favor of non-enforcement shall not constitute a complete and full waiver of the right of that entity in the future to enforce that provision of the Agreement in the event of any subsequent breach or failure to comply in full with that provision of the Agreement.

G. **Governing Law.** Except to the extent that this Agreement may be governed by any federal law, including federal bankruptcy law, this Agreement shall be governed by, construed and interpreted under, and enforced exclusively in an accordance with the laws of the state of South Carolina, and the courts of the state of South Carolina shall have exclusive jurisdiction with respect to any dispute arising hereunder, unless such dispute is mitigated in accordance herewith.

H. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, addressed as follows:

To Developer:

Rick Joyner, President
Morningstar Fellowship Church
375 Star Light Drive
Fort Mill, SC 29715

With Copy to:

James W. Sheedy, Esq.
Spencer & Spencer, P.A.
226 East Main Street, Ste. 200
P. O. Box 790
Rock Hill, SC 29730

To County:

James E. Baker
County Manager
York County
6 South Congress Street
P. O. Box 66
York, SC 29745

With Copy to:

Melvin B. McKeown, Jr., Esq.
McKeown Law Firm
P. O. Box 299
York, SC 29745-0299

I. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by Developer and/or County as long as each has signed one or more of the counterparts.

J. No Construction Against Drafter. County and Developer hereby acknowledge that they have each drafted or participated in the drafting of this Agreement, have reviewed this Agreement and have been afforded an opportunity to consult with an attorney. County and Developer concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

K. Covenant to Sign Other Documents. County and Developer acknowledge that consummation of the transaction contemplated hereby may require the execution prior hereto, contemporaneously herewith and/or sometime hereafter of certain documents in addition to this

Agreement which each of them, by their signatures herein below, covenants, represents and warrants that they will promptly do.

L. **Modification and Amendment.** Except as provided below, no change, amendment or modification of this Agreement shall be effective unless signed in writing by both Developer and County and any major modification of this Agreement can only be approved by County after public notice and a hearing. In the event any state law is enacted or modified after the execution of this Agreement, which state law conflicts with any term or provision of this Agreement, this Agreement shall be automatically modified or suspended to the extent necessary to bring this Agreement into compliance with such law.

M. **Terms of this Agreement Controlling.** Except as otherwise specifically provided herein above, in the event of any inconsistency or conflict between any term, covenant or condition of this Agreement and any other document pertaining to this Agreement, including, but not limited to, any applicable zoning provisions, all terms, covenants and conditions of this Agreement shall in all respects be controlling, and any contrary term, covenant or condition in any other document, or any amendment or modification thereof, is hereby displaced, except for the Morningstar PD (as amended), including the Plans incorporated therein, which shall govern and prevail over this Agreement.

N. **Entire Agreement.** Except as otherwise provided herein, this Agreement shall constitute the entire and full agreement and understanding between Developer and County, and shall supersede all prior and/or contemporaneous agreements, understandings and discussions between them, written and/or oral, all of which shall be deemed merged into this Agreement and shall be of no further force and effect.

O. **Developer's Successors and Assigns.** As used herein, the term "Developer" shall include Morningstar Fellowship Church, together with the successors, assigns and successors in title of said entity with respect to all or any portion of the Property, as applicable.

P. **Non-Discriminatory Treatment.** County shall not impose any fees, charges or other requirements on or against Developer, the Property, the Development or any use or user of the Development (the "Development Parties") which are or have the effect of being applicable solely, or in substantial part only, to the Development Parties or which are or has the effect of being in excess of or different from similar fees, charges or requirements imposed against other parties, property or uses within the County. It is the intent of this requirement that fees, charges and other requirements imposed by County be generally uniform throughout County and that the Development Parties pay such fees and charges at rates no greater than those otherwise imposed by County, and the Development Parties comply with such requirements the same as any other party in the County.

XII. EFFECTIVENESS OF AGREEMENT

A. **Conditions Precedent to Effectiveness of this Agreement.** The effectiveness of this Agreement is contingent upon the happening of the following events.

1. PD Plan and Planned Development District Standards. Approval by County of Developer's PD Plan for the Development and Morningstar Planned Development District Standards, both of which shall operate as an amendment to the Official Zoning Map of York County and relieve Developer of the notice of violation of the Regent Park PD.

2. Statutory Requirements. The public hearing, notice and publication requirements set forth in S.C. Code Ann. § 6-31-50 (Supp. 2000) must be satisfied.

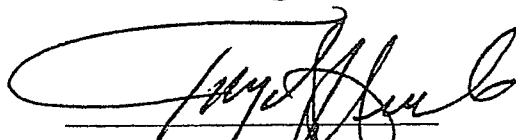
3. Recordation of this Agreement. It is understood and agreed that within fourteen (14) days after the Effective Date, County must record the Agreement with the Clerk of Court for York County so that the Agreement appears in the chain of title to the Property.

B. Effective Date of this Agreement. This Agreement shall become effective upon the occurrence of all of the contingencies set forth in Paragraph A of this Section. However, if County is unable to accomplish all of the conditions precedent on or before May 31, 2008, then this Agreement shall, at the option of the Developer, terminate. Because the Property is fifty-two (52) acres, this Agreement shall have a duration of five (5) years, at the end of which the Agreement shall terminate. Pursuant to S.C. Code Ann. 6-31-60(A)(2), the Parties have the right to extend the termination date of this Agreement by mutual written agreement.

IN WITNESS WHEREOF, Developer and County have caused their respective names to be subscribed hereto, all on the date set forth above.

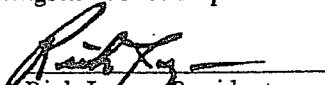
Witnesses:


Pat Sely

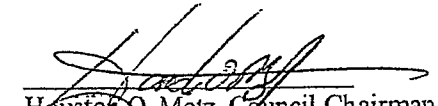

Houston O. Motz

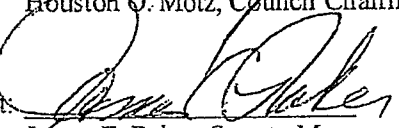
DEVELOPER

Morningstar Fellowship Church

By: 
Rick Joiner, President

YORK COUNTY

By: 
Houston O. Motz, Council Chairman

Attest: 
James E. Baker, County Manager

STATE OF SOUTH CAROLINA

COUNTY OF YORK

)
)
)

PROBATE

Personally appeared before me the witness whose name first appears above, and made oath that he/she saw the within named Rick Joyner, President of Morningstar Fellowship Church, sign, seal and as its act and deed, deliver the within written Development Agreement; and that he/she with the other witness whose name appears above, was present and witnessed the execution thereof.

Pat Selby
Witness

Sworn to before me this 28 day
of April, 2008

Thomas Petriew

Notary Public for York County
My Commission Expires: 3-29-16

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

PROBATE

Personally appeared before me the witness whose name first appears above, and made oath that he/she saw the within named Houston O. Motts, Council Chairman, York County Council, sign, seal and as its act and deed, deliver the within written Title to Real Estate; and that he/she with the other witness whose name appears above, was present and witnessed the execution thereof.

W.B. Williams
Witness

Sworn to before me this 18th day
of ~~February~~, 2008

Patricia W. Redinger

Notary Public for S.C.

My Commission Expires: Aug. 25, 2010

EXHIBIT A

EXHIBIT A

All that certain piece, parcel, or tract of land consisting of 52.00 acres as shown and depicted as "Tract - 1 52.00 Acres" on a plat of survey entitled "Boundary Survey for Morningstar Fellowship Church, Located in the Fort Mill Township, York County, South Carolina" dated August 11, 2004, revised September 7, 2004, and September 9, 2004, prepared and certified by Robert R. Medford, S.C.P.L.S. #11065 of Fisher-Sherer, Inc., Engineering & Surveying, recorded in Plat Book C-318 at Page 6 in the Clerk of Court's Office for York County, South Carolina; which plat is incorporated herein by reference and having such metes and bounds, courses and distances as by reference to said plat will more fully appear;

Further, a non-exclusive easement, appurtenant to the Property, for purposes of ingress, egress, and regress to and from the Property, over and across that portion of the right-of-way of Regent Parkway from its intersection with the right-of-way of U.S. Highway 21 and extending for a distance of approximately 2.0 miles to the northernmost boundary of a certain tract of land of 52.00 acres as depicted in Plat Book C-318 at Page 6 in the Clerk of Court's Office for York County, which non-exclusive easement shall be subject to terms of that certain Cost Sharing and Maintenance Agreement for the portion of Regent Parkway located between U.S. Highway 21 and the Norfolk-Southern Railroad tracks as entered into between Coulston Enterprises, Inc., Regent Park Corporation, and Regent Carolina Corporation, dated September 27, 2004 and recorded in Record Volume 6581 at Page 314 in the Clerk of Court's Office for York County, South Carolina;

Subject to a non-exclusive easement reserved in favor of Regent Carolina Corporation, its successors and assigns, as set forth in a deed from Regent Carolina Corporation to Coulston Enterprises, Inc., dated September 27, 2004, and recorded in Record Volume 6581 at Page 311, in the Clerk of Court's Office for York County, S.C., over, across, and through that portion of that roadway known as Regent Parkway, as the same now exists or as may be modified in the future, commencing near the northwestern corner boundary of the Property where Regent Parkway now enters said property, and continuing at a right-of-way width of sixty-six feet (66') across the Property, to a terminating point near the southeastern corner of the Property where Regent Parkway now enters other adjoining properties now or formerly owned by Regent Carolina Corporation, or as such properties may be owned in the future by Regent Carolina Corporation's successors and assigns in ownership, which easement shall be for purposes of ingress, egress and regress, and shall be deemed appurtenant to said properties of Regent Carolina Corporation, and its successors and assigns; and

Further subject to and reserving a second non-exclusive easement, extending from the terminus of the easement above at the northernmost boundary of the aforesaid 52.00 acre tract, along a sixty-six foot (66') right-of-way known as Regent Parkway, as the same now exists or may be modified in the future, and running through and across the said 52.00 acre parcel to the northernmost boundary of a 108.00 acre tract of land depicted in Plat Book C-318 at Page 5 in the Clerk of Court's Office for York County,

which easement shall be for purposes of ingress, egress, and regress to and from properties located within said 108.00 acre tract.

EXHIBIT B

PLANNED DEVELOPMENT DISTRICT STANDARDS

For

MORNINGSTAR FELLOWSHIP CHURCH

I. Statement of General Facts, Conditions, and Objectives

- A. **Property Owner:** Morningstar Fellowship Church
- B. **Property Size:** Approximately 52 acres
- C. **York County Tax Map No.:** 729-00-00-014
- D. **Frontage:** Approximately 2,000 lf along Farm House/Starlight Drive located approximately 750' south of the intersection of Farm House Road and Regent Parkway.

E. **Statement of Purpose:** Morningstar is developing this 52 acre parcel as a planned development district to create a religiously-affiliated residential and retreat facility in northern York County. Through the implementation of a planned development district, Morningstar will be able to utilize a 20 story tower (Tower), rather than demolish this building. The Tower will be used as an Age Targeted 55 residential building for active adult and assisted and skilled nursing care. In addition to the Tower, Morningstar plans to continue developing the remaining acreage, including further renovations to the retreat facility, school and sanctuary. The result shall be a blend of use relationships throughout the 52 acre site.

II. Definitions

A. **Age Target 55** – A category of residential use that is targeted for adults over the age of fifty-five, who have no children currently living in the residence.

B. **Bunkhouses** – Two sixteen unit residential buildings located on the Property to be used as rental apartments.

C. **Major Modification** – Pursuant to S.C. Code Ann 6-31-60, a major modification to this Agreement requires public notice and hearing before the modification can be effected. The Parties agree that a major modification is one which changes the beneficial use of the Property. The following are examples of major modifications to this Agreement:

1. Increase in density or intensity of use of the Development;
2. Change in permitted uses of the Development;

3. Increased overall impervious coverage or square footage of structures;
4. Increased demand for traffic circulation and public utilities;
5. Decrease in public or private open space or on-site amenities; and
6. Increased numbers of dwellings.

D. Minor Modifications – These are modifications that do not require public notice and hearing prior to implementation but do require administrative approval. The Parties agree that a minor modification is one which does not change the beneficial use of the Property. The following are examples of minor modifications to this Agreement.

1. Changes in the location and type of landscaping and/or screening so long as the approved character and intent are maintained;
2. Changes in the orientation of portions of parking areas so long as the effectiveness of the overall site circulation and parking are maintained. Parking areas shall not be relocated any closer than twenty (20) feet from any residential structure or ten (10) feet from any street or right-of-way lines and the number of required parking spaces shall not be reduced by the relocation;
3. Changes in the location of sidewalks or pathways; provided that the continuity of pedestrian circulation remains;
4. The reorientation, but not complete relocation of structures;
5. Changes that will not impact properties or uses outside of and adjacent to the Development; and
6. Redesign of open space that does not decrease the recreational, buffering, or environmental benefits of the open space; and
7. Modifications to the roof design of the Tower, provided such modifications do not affect the structural integrity of the Tower.

E. Morningstar Fellowship Church PD Plan or PD Plan - The graphical depiction of the Development included as a part of the Morningstar PD attached hereto as Exhibit A.

F. Morningstar Planned Development District Standards or Morningstar PD – The guidelines contained in this document, which provide greater detail as to the standards for development and uses of the Property.

G. Open Space - For purposes of this Agreement and as used herein, the term “open space” shall mean and refer to land used for recreation, amenity or buffer, freely accessible to all residents of the Development, which may be vacant or unimproved, or

improved by buildings or structures within which are allowed recreational uses or amenities.

H. Private Hospitality – A category of commercial use, which includes a retreat facility.

I. Private Retail – A category of commercial use, including a cafeteria, merchandise shop, convenience store, hair salon, restaurant and nurses' station (which may be staffed on occasion by a doctor), which are only available for use by residents or guests of residents.

J. Tower – The twenty (20) story building located on the Property.

III. General Standards

A. Open Space – Pursuant to York County Ordinance § 155.209 and 155.429, there shall be at least twenty percent (20%) of the Development that is designated permanent open space, as such term is defined in the Development Agreement. Open Space shall be located within the Development as shown on the PD Plan attached hereto as **Exhibit A**. Open space in the Development shall be designed to encourage appropriate character and use and/or to protect the environmentally sensitive areas of floodplain, wetlands, perennial stream channels; and designated significant areas consistent with the Comprehensive Plan of York County, South Carolina.

B. Pedestrian Access – Morningstar will provide pedestrian access, such as walkways and sidewalks between all uses in the Development.

C. Onsite Amenities – The Development consists of more than one hundred fifty (150) residential units, but fewer than five hundred (500) and, as a result, three onsite recreational amenities are required. The following are allowable amenities within the Development: swimming pool (indoor or outdoor) sized to comply with NRPA standards; a clubhouse or senior center; basketball, volleyball, shuffleboard or other sports court; one (1) picnic area with a minimum size of two thousand five hundred (2,500) square feet, including a minimum of one (1) picnic table and one (1) barbeque grill pit; and any other amenity approved by County in advance of construction thereof.

IV. Land Use Designations

A. **Residential** – The uses contained within the Development shall include residential use, which is specifically described as follows. The residential sections of the Development will be for the use and occupancy by Age Target 55 and older, with no children, which includes active senior adult and assisted and skilled nursing home residents. The Tower shall be the location of this use and the total residential units in the Tower shall not exceed 250. In addition to the Tower, there are two bunkhouses located

in the Development which shall be available for rent. The total number of residential units shall be no more than three hundred (300) units.

B. Church – Currently, there is a facility located within the Development which is utilized as a church and includes a structure identified on the PD Plan as a sanctuary. This facility shall be used for Morningstar Fellowship Church to conduct church services and certain other religiously-affiliated activities.

C. School – Currently, there is a facility located within the Development that is utilized as a school building and houses classrooms and offices. In the school, Morningstar conducts classes for grades kindergarten through twelfth grade. In conjunction with the University of North Carolina, Morningstar also has within the school a two year program offering associates degrees and plans to expand the program to offer bachelor and other advanced degrees

D. Private Hospitality – Morningstar currently operates a retreat facility in the Development patronized by various religious groups throughout the United States and abroad. This facility includes both living quarters and meeting rooms that are reserved by various religiously-affiliated groups using the retreat facility for meetings and conferences. These groups also use, to some extent, the sanctuary as well. Morningstar may also construct a multi-use facility in the Development, which could include a gymnasium and additional sanctuary space. Construction of this building is a potential addition to the Development, which may be constructed during the period of the Development Agreement.

E. Private Retail – In conjunction with the renovations and rebuilding of the Tower, Morningstar also plans to utilize certain portions of the Tower for private retail use. These private retail uses may include a hair salon, convenience store, nurses' station (sometimes staffed by a doctor) and a restaurant. These private retail uses of the Tower will be available only to the residents of the Tower, their guests, Morningstar staff and conference attendees and will not be open to the public. The hair salon shall offer certain personal care/personal hygiene services, including those of a barber, beautician and other similar services. The convenience store shall sell certain food stuffs and toiletries to the residents of the Tower, for their convenience. Finally, the restaurant shall provide the residents of the Tower with a convenient onsite dining establishment within which they may dine and entertain their guests.

In addition to the private retail facilities located in the Tower, the retreat facility also contains certain private retail uses, such as a cafeteria and merchandise shop. Again, these facilities are not open to the public, but are open to Morningstar staff and those groups who patronize the retreat facility.

F. Land Use Percentages. The Land Use Percentages of the Development are as set forth below.

The Development contains 863,899 square feet of building space. The following Land Use percentages are based on a percentage of the total square feet of building space for the Development.

1. Residential
 - a. Bunkhouses – 1% of the total square footage (10,529 square feet)
 - b. Main Building (Hotel and Suites) – 18% of the total square footage (157,600 square feet)
 - c. Tower (Condominium Units) – 34% of the total square footage (293,607 square feet)
2. Church – 4% of the total square footage (33,656 square feet)
3. School – 3% of the total square footage (23,590 square feet)
4. Private Hospitality – 12% of the total square footage (101,225 square feet)
5. Private Retail – 9% of the total square footage (79,386 square feet)
6. Mechanical/Circulation/Toilets – 19% of total square footage (164,306 square feet)

The Tower contains 407,560 square feet of building space. The following Land Use percentages are based on a percentage of the total square feet of building space for the Tower.

1. Residential – 72% of total square footage (293,607 square feet)
2. Private Retail – 16% of total square footage (64,727 square feet)
3. Mechanical/Circulation/Toilets – 12% of total square footage (49,226 square feet)

V. Standards for Development

A. **Bufferyards** are depicted on the PD Plan. The required bufferyards are located along the existing and new road frontage (30' bufferyard) as well as the northern property line adjacent to Zenith Avenue (10' bufferyard). The bufferyard along the existing frontage of Farm House/Starlight Drive will be satisfied using the existing berms and plantings. The 30' bufferyard located adjacent to the future Starlight Road relocation along the southern property line (as depicted on the PD Plan) will be satisfied as follows:

- 6 Canopy Trees (per 100 lf)
- 6 Understory Trees (per 100 lf)

24 Shrubs (per 100 lf)

The 10' bufferyard located adjacent to Zenith Avenue (as depicted on the PD Plan) will be satisfied as follows:

4 Understory Trees (per 100 lf)

6 Shrubs (per 100 lf)

All bufferyards shall meet the requirements of York County Zoning Ordinance §§ 155.400 – 155.413 of the York County Zoning Ordinance enacted as of the date the Morningstar PD is approved. In addition to the bufferyard requirements, all trees located within the Development shall comply with the Tree Conservation Ordinance, York County Zoning Ordinance §§ 155.530 through 155.539.

B. Parking Development Standards - All parking located in the Development shall comply with the requirements of York County Zoning Ordinance §§ 155.440 – 155.446.

Parking Required (For Existing Uses)

Existing Sanctuary/Hotel = 543 spaces

Food Court/Convention Center = 375 spaces

Main Street = 108 spaces

Bunkhouses = 32

Grand Tower = 420 spaces

Total: * 1,478 spaces

** A minimum of 50% of the sanctuary capacity will be from onsite Tower/Hotel occupants. Also, a minimum of 1/3 of the convention center occupants will be from the Hotel/Tower.*

Adjusted Parking Required (for overlapping uses)

Total Parking Required = 1,478 spaces

Less ½ of Existing Sanctuary requirement = (112 spaces)

Less 1/3 of Convention Center Requirement = (123 spaces)

Total Adjusted Parking Required = 1,243 spaces

Total Existing Parking Provided = 1,377 spaces (as depicted on the PD Plan)

In the event additional structures are built in the Development that would require additional parking spaces, Morningstar has the right to use any excess parking spaces then in existence as a credit toward any future parking requirements.

The dimensions of the parking area in the Development are 1250' X 600'.

C. Street access - Street access to the Development via Regent Parkway (a privately owned road) is provided for in Deed Book 06582 Page 0028. This access allows a connection to Hwy 21 (a public road). All access points in the Development located on Zenith Drive shall comply with a curb cut requirement of 250 feet and all access points on Star Light Drive shall comply with a curb cut requirement of 150 feet.

D. Shading (Shade Trees) - Shading in the Development shall be provided in accordance with York County Zoning Ordinance § 155.534. All trees planted within the Development shall comply with the Tree Conservation Ordinance, York County Zoning Ordinance §§ 155.530 through 155.539, including the Appendices and Guidelines referenced in § 155.539.

E. Signage - All signage in the Development shall conform to the standards set forth in York County Zoning Ordinance § 155.288.

F. Setbacks - Setbacks within the Development are graphically depicted in detail on the PD Plan and are set forth below as follows:

Front: 50' (Major Street)
25' (Minor Street)
Side: 25'
Rear: 25'

Setbacks shall be measured from the road right-of-way.

G. Impervious surface areas - The impervious surface areas within the Development are depicted on the PD Plan and shall not exceed 80% for the entire Development.

H. Maximum building height - The maximum heights of buildings are graphically depicted on the PD Plan. The tallest building in the Development shall be the Tower, the height of which shall not exceed 280 feet.

I. Density - The Tower is included in the Development and the Development is subject to and in compliance with York County Zoning Ordinance § 155.209(B)(2) requiring a density of eighteen (18) units per gross acre.

J. Stormwater Plans - Prior to construction of any new structure or the renovation of the Tower, an overall stormwater concept plan will be submitted for review and approval by York County Engineering Department, Environmental Compliance Division. This plan will schematically show potential locations for stormwater measures for water quality and water quantity controls. The intent of the design will be to utilize the existing pond for water quality treatment. Calculations can be done to determine the effectiveness of this treatment. In other areas such as parking lots that do not drain into the existing pond, other methods for water quality treatment such as bio-retention islands and/or catch basin inserts may be utilized. Prior to any construction, a detailed design with supporting calculations will be submitted for approval by York County Engineering

Department, Environmental Compliance Division. This design will be done in accordance with regulations by SC DHEC and York County ordinances as applicable. The preliminary plans for treatment of stormwater may change through the planning process, with input from York County.

K. **Screening and Fencing** – Developer plans to utilize landscape plantings to improve the overall visual quality of the development. More detail as to the appropriate landscape elements is provided in Subsection A Bufferyards. Developer plans to retain existing vegetation where practical and to use plantings to minimize visual impacts of parking areas.

V. Developer Standards and Understandings

A. Developer understands that it shall be responsible for the installation and maintenance of all improvements, protective devices, open space and bufferyards.

B. Developer has been informed by York County of the requirements of the County Zoning Ordinance, Stormwater Management and Sediment Control Ordinance, Subdivision Ordinance and Building Code, except as otherwise provided in the Development Agreement, these Standards and the PD Plan.

C. Developer understands that submittals must be made to and approvals obtained from all applicable planning and development services departments prior to grading or construction

D. Developer understands that once the Morningstar PD is approved no changes can be made to the signage plan, permitted uses, restrictive covenants, bufferyard/landscaping standards, and open space standards unless approved by the County Council through the normal rezoning process.

E. The anticipated construction schedule and phasing of the Development is depicted on **Exhibit B** attached hereto.

VI. Administrative Procedures

A. Authorization for a Modification

1. Major Modifications, as defined herein, in all or a portion of the exterior boundaries of the Morningstar PD shall follow the same procedures as required for the approval of a Planned Development District pursuant to York County Ordinance §§ 155.205 through 155.216.

2. Authority to make Minor Modifications, as defined herein, shall be granted to Planning Director and County Engineer, or their designees. The Zoning Administrator shall have the duty to determine whether any specific modification is a Major Modification, as specified above, provided that Developer shall have the right to

have any request for modification processed as a Major Modification, notwithstanding the provisions hereof.

EXHIBIT A

(To the Morningstar PD Standards)

EXISTING MAIN BUILDING (SANCTUARY & HOTEL) - 4 LEVELS

[illegible]

USE DESCRIPTION:	SF/F UNITS	REQUIRED PARKING PER SF UNIT	REQUIRED PARKING SPACES
SUNSHEDGE #1	16 BEDROOMS	1 SPACE PER ROOM	16
SUNSHEDGE #2	16 BEDROOMS	1 SPACE PER ROOM	16
		TOTAL REQUIRED SUNSHEDGES:	32

EXISTING MAIN BUILDING (FOOD COURT/CONVENTION CENTER)

USE DESCRIPTION	SF/20 UNITS	REQUIRED PARKING PER SF/AMT	REQUIRED PARKING SPACES
FLOOR COUNT	6,439 SF	OVERLAPPING USE	0
WITCH	2,358 SF	OVERLAPPING USE	0
WATER ROOMS (DISCOUNT 100%)	18,021 SF	1 SPACE PER 4 PEOPLE	375
STORAGE/STORAGE	14,424 SF	OVERLAPPING USE	0
DRIVE	11,118 SF	OVERLAPPING USE	0
		TOTAL REQUIRED FLOOR COUNT/COMMON AREA	375

EXISTING MAIN BUILDING (MAIN STREET - 3 LEVELS)

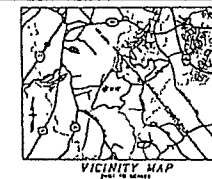
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PROPOSED ADDITION TO MAIN BUILDING (SANCTUARY/GYM)

USE DESCRIPTION	SF/ UNITS	REQUIRED PARKING PER SF/AUT	REQUIRED PARKING SPACES
WAREHOUSE (2,800 SEAT)	22,000 SF	1 SPACE PER 4 SEATS	625
EMPAQUEMENT	15,000 SF	OVERLAPPING USE	0
		TOTAL REQUIRED PARKING/SPACES	625

EXISTING GRAND TONER WITH ADDITIONS (THIRTY LEVELS)

USE DESCRIPTION	SF/2 UNITS	REQUIRED PARKING PER SF/UNIT	REQUIRED PARKING SPACES
GROUND LEVEL COURSEUSE	31,832 SF	OVERLAPPING USE	0
SECOND LEVEL COURSEUSE	31,834 SF	OVERLAPPING USE	0
RESIDENTIAL UNITS (21 BEDROOM)	190 UNITS	1 SPACE PER UNIT	190
RESIDENTIAL UNITS (24 BEDROOM)	140 UNITS	2 SPACE PER UNIT	280
RESIDENTIAL DINING (LEVEL 3)	8,000 SF	OVERLAPPING USE	0
KITCHEN (LEVEL 3)	2,000 SF	OVERLAPPING USE	0
		TOTAL REQUIRED GRAND TOTAL	470



PARKING SUMMARY

PARKING REQUIRED (FOR EXISTING USES)
 EXISTING SANCTUARY/HOTEL = 343 SPACES
 FOOD COURT/CONVENTION CENTER = 375 SPACES
 MAIN STREET = 108 SPACES
 GRAND TOWER = 420 SPACES
 BUNKHOUSES = 32 SPACES

TOTAL PARKING REQUIRED = 1,478 SPACES

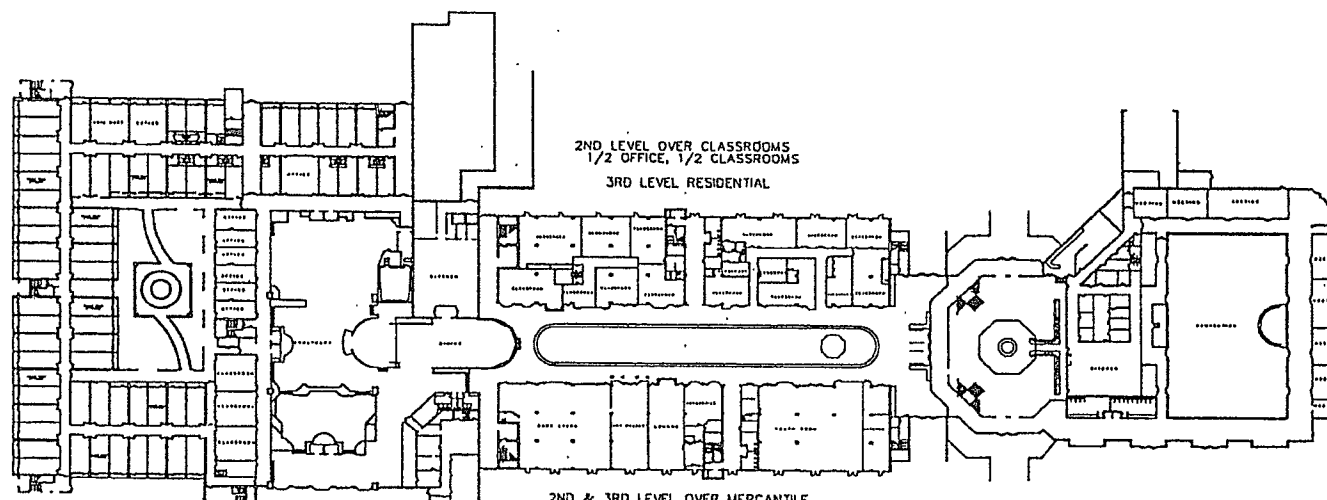
* A SUMMARY OF THE OF THE SIGNIFICANT CAPACITY WILL BE FROM BUREAU REPORTS, REPORTS RECEIVED
ALSO, A SUMMARY OF 1/3 OF THE CONSTRUCTION COSTS OCCURANCE WILL BE FROM THE INVESTIGATION

ADMITTED PARKING REQUIRED (FOR OVERLAPPING USES)
TOTAL PARKING REQUIRED = 1,478 SPACES
LESS 1/2 OF SANCTUARY REQUIREMENT = (112) SPACES
LESS 1/3 OF CONVENTION CENTER REQUIREMENT = (123) SPACES

TOTAL ADJUSTED PARKING REQUIRED = 1,243 SPACES

TOTAL EXISTING PARKING: 1377 SPACES

- 1) PARKING TO MEET THE CURRENT REQUIREMENTS OF YORK COUNTY.
- 2) AREAS DESIGNATED AS "FUTURE PARKING" TO BE USED FOR ANY REQUIRED PARKING AREAS TO MEET THE PROPOSED/NEW USE (I.E. SANCTUARY/GYM)



2ND & 3RD LEVEL OVER MERCANTILE
ALL RESIDENTIAL
EXISTING MAIN BUILDING

EXHIBIT B

(To the Morningstar PD Standards)

MorningStar Tower Project

Development Schedule / TIMELINE

DESCRIPTION	07	07	07	08	08	08	08	08	08	08	08	08	08	08	08	08	09	09	09	09	09	09	09	09	09	09	09	09	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10

This Development Schedule was prepared as a cooperative effort between Capitol Building Consultants, MorningStar Fellowship and Concept Arc Intl.
 Capitol Building Consultants is a licensed Commercial Building Consultant & Cost Estimator.
 Concept Arc Intl is a licensed Commercial Architect.
 MorningStar Fellowship is a licensed Commercial General Contractor.

This timeline is not meant to represent exact dates, rather it is a depiction of the schedule as planned representing the length of time needed for the scope of work.
 Delays due to weather, permitting processes and even the availability of certain building materials cannot be accurately predicted by the developer or planners.

Construction Divisions

(Based on the Construction Specification Index)

Division	Description
01	General Requirements
02	Site Construction
03	Concrete
04	Masonry
05	Metals
06	Wood and Plastics
07	Thermal and Moisture Protection
08	Doors and Windows
09	Finishes
10	Specialties
11	Equipment
13	Special Construction
14	Conveying Systems
15	Mechanical
16	Electrical

EXHIBIT C

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II. Clearing Limitations

§ 154.012 Limitations.

- (A) No person shall proceed with any construction work on the proposed subdivision, including grading, clearing, or grubbing, before obtaining preliminary plat approval and approval of the construction plans by the County Engineer. Construction work shall be the carrying out of any building activity or the making of any material change in the use or appearance of any structure or land. Limited selective clearing may be authorized by the County Engineer and Planning Works Director provided that the applicant has demonstrated the selective clearing will not affect grand trees on the site or degrade surface water quality.
- (B) The applicant may clear sight lines for surveys and provide access for boring equipment when necessary, provided that any related disturbance of the site is the minimum needed to obtain required information for the final engineering plans.

III. Platting Process

Staff shall review the existing platting process to ensure that it achieves the purposes of the subdivision ordinance in accordance with State Law.

(‘77 Code, § 16-3(VI)) (Ord. passed 1-3-00; Am. Ord. 5001, passed 9-17-01; Am. Ord. 2302, passed 7-15-02)

IV. Traffic Impact Analysis

§ 154.035 STREETS.

(A) Traffic Impact Analysis

The intent of this section is to provide the information necessary to allow decision-makers to assess the transportation implications of traffic associated with a proposed development, to address the transportation-related issues associated with development proposals that may be of concern to neighboring residents, business owners and property owners, and to provide a basis for negotiation regarding improvements and funding participation in conjunction with an application for development. This section establishes requirements for the analysis and evaluation of transportation impacts associated with proposed developments.

(1) Purpose

A Traffic Impact Analysis will be required for certain permitted and Special Exceptions, Subdivisions and Site Plans exceeding specific trip generation thresholds. The purpose of a Traffic Impact Analysis will be to:

- (a) evaluate traffic operations and impacts at site access points under projected peak period traffic loads;

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- (b) evaluate the impact of site-generated traffic on affected intersections in the vicinity of the development site;
- (c) evaluate the impact of site-generated traffic on the quality of traffic flow within a reasonable distance of the site of development;
- (d) evaluate the impact of the proposed development on residential streets in the vicinity of the site;
- (e) ensure that site access and other improvements needed to mitigate the traffic impact of the development meet commonly accepted engineering design standards;
- (f) ensure that adequate facilities for pedestrians, transit users and bicyclists have been provided;
- (g) identify transportation infrastructure needs and related costs created by the development and cost sharing for the needed improvements.

(2) Applicability

Traffic Impact Analysis shall be required for any Land Use Plan Amendment, amendment to the Zoning Map, Subdivision, Special Exception Permit, Rezoning or Site Plan under the following described conditions:

- (a) The proposed development will generate more than 125 cumulative trips per acre per day at full occupancy, according to most current versions of the ITE Trip Generation Informational Report or comparable research data published by a public agency or institution, and which will generate, based on the size of the development, 750 or more average daily trips; or
- (b) The proposed development will concentrate 1,500 or more trips per day through a single access point; or
- (c) The proposed development will include 30 or more dwelling units taking sole access from an existing or planned local residential or neighborhood street; or
- (d) The proposed development will include a drive-through facility or structural parking lot entrance that will result in traffic spillover onto local residential, neighborhood or arterial streets.
- (e) Any residential project accessing an arterial street.

(3) Waiver

The requirements of this section for a Traffic Impact Analysis may be waived by the Planning Director and County Engineer when it is determined that such report is not necessary to determine needed road improvements or that no unsafe or hazardous conditions will be created by the development as proposed.

(4) Preparation

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The traffic impact analysis shall be prepared by a Licensed Professional Engineer or qualified AICP planner with no less than five years experience in the preparation of traffic analyses.

(5) Traffic Service Standards

The standards for traffic service that shall be used to evaluate the findings of traffic impact studies are:

(a) Level of Service

For collector or local streets, a Level-of-Service (LOS) "C" or better shall be maintained. On any arterial or higher order street a LOS "D" or better shall be maintained. Level of service will be measured for segments and intersections using ITE standards for LOS calculation. Where the existing LOS is below these standards, the traffic impact analysis shall identify those improvements required to ensure that development related traffic demands result in no net reduction in LOS, and identify additional improvements needed to raise the level of service to the standards on the applicable street to the adopted LOS standard.

(b) Number of Access Points

The number and spacing of access points shall comply with applicable County, State and AASHTO standards.

(c) Residential Street Impact

Average Daily Traffic (ADT) on residential streets shall be within the ranges spelled out in the Thoroughfare Plan for the class of street involved. No non-residential development shall increase the traffic on a residential street with at least 300 average daily trips by more than 25%.

(d) Internal Circulation

On-site vehicle circulation and parking patterns shall be designed so as not to interfere with the flow of traffic on any public street and shall accommodate all anticipated types of site traffic.

(e) Safety

Access points shall be designed to provide for adequate sight distance and appropriate facilities to accommodate acceleration and deceleration of site traffic.

(f) Curb Space Use Plan

Details shall be provided on curb space use on public streets along the edge of the development site when it is intended that such areas be used for parking, parking space access, delivery and loading zones, passenger zones, taxi cab stands, bus stops, fire zones and/or other official/emergency zones. This review shall include a description of existing conditions prior to development, and proposed changes

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resulting from the development, including a description of any loss or gain in curb space use by the activities intended.

(6) Coordination with SCDOT

The applicant shall coordinate with the SCDOT and local road authorities to determine whether planned roadway or intersection improvements affect the capacity of the roadway or designs of roadways or access points proposed by the applicant.

(7) Contents

A Traffic Impact Analysis shall contain information addressing the factors listed below.

(a) Site Description

The report shall contain illustrations and narrative that describe the characteristics of the site and adjacent land uses as well as expected development in the vicinity which will influence future traffic conditions. A description of the proposed development including access plans, staging plans and an indication of land use and intensity, shall be provided.

(b) Study Area

The analysis shall identify the geographic area under study and identify the roadway segments, critical intersections and access points to be analyzed. The applicant shall meet with the County Engineer to establish the study area prior to conducting the study. At a minimum, the study shall encompass all site access points, all intersections adjacent to the site and the first signalized intersection along each road serving the site, provided that the intersection is no further than three miles from the site. The criteria that define the scope for each TIA may vary depending on the size and type of development. Additional factors may be added to the study by the County Engineer if there are known areas of concern that may be impacted by the development, including but not limited to existing congested areas and existing residential development.

(c) Existing Traffic Conditions

The report shall contain a summary of the data used in the analysis of existing traffic conditions, including:

1. traffic count and turning movement information, including the sources, dates and times of traffic count information used in the report;
2. correction factors that were used to convert collected traffic data into representative design hour traffic volumes;
3. roadway characteristics, including the design configuration of existing or proposed roadways, existing traffic control

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measures (speed limits, traffic signals, etc.) and existing driveways and turning movement conflicts in the vicinity of the site; and

4. the existing LOS for roadways and intersections without project development traffic using methods documented in the Special Report 209: Highway Capacity Manual, published by the Transportation Research Board, or comparable accepted methods of evaluation. LOS shall be calculated for the weekday peak hour and, in the case of uses generating high levels of weekend traffic, the Saturday or Sunday peak hour as determined by the County Engineer.

(d) Horizon Year(s) and Background Traffic Growth

The report shall identify the horizon year(s) that were analyzed in the study, the background traffic growth factors for each horizon year, and the method and assumptions used to develop the background traffic growth. Unless otherwise approved by the County Engineer, the impact of development shall be analyzed for the year after the development is expected to be at full occupancy.

(e) Traffic Assignment

The report shall identify projected design hour traffic volumes for roadway segments, intersections or driveways in the study area, with and without the proposed development, for the horizon year(s) of the study.

(f) Mitigation/Alternatives

In situations where the traffic level of service standards are exceeded, the report shall evaluate each of the following alternatives for achieving the traffic service standards:

1. identify where additional right of way is needed to implement mitigation strategies;
2. identify suggested phasing of improvements where needed to maintain compliance with traffic service standards; and
3. identify the anticipated cost of recommended improvements.

(8) Process for the Review and Preparation of a Traffic Impact Analysis

The following steps provide an outline of the steps to be included in the preparation and review of a Traffic Impact Analysis:

- (a) The County Engineer shall be consulted for assistance in determining whether a Traffic Impact Analysis needs to be prepared for a proposed development application;
- (b) The County Engineer and Planning Director shall meet with applicants to identify study issues, assumptions, horizon years and time periods to be analyzed, analysis procedures, available sources of data, past and related studies, report requirements and other topics relevant to study requirements.

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- (c) Following initial completion of a traffic impact analysis, the report shall be submitted to the Planning Director for distribution to the staff of all jurisdictions involved in the construction and maintenance of public roadways serving the development;
- (d) Within ten working days, staff shall complete an initial review to determine the completeness of the report and shall provide a written summary to the applicant outlining the need for any supplemental study or analysis to adequately address any deficiencies. A meeting to discuss the contents and findings of the report and the need for additional study may be requested by the applicant;
- (e) Following a determination that the technical analysis is complete, staff shall prepare a report outlining recommendations that have been developed to address the findings and conclusions included in the study regarding the proposed development's access needs and impacts on the transportation system. Depending on the type of application, the recommendations may be presented to the Planning Commission or County Council.
- (f) In the case of a Traffic Impact Analysis showing deficiencies requiring mitigation within the public right-of-way, negotiations based on the conclusions and finding resulting from the traffic study shall be held with the County Engineer, Planning Director and County Attorney. A Development Agreement, detailing the applicant's responsibilities and the County's responsibilities for implementing identified mitigation measures, shall be prepared following the negotiations for final action by County Council and the applicant.

(9) Report Findings

If staff finds that the proposed development will not meet applicable service level standards, staff shall recommend one or more of the following actions by the public or the applicant:

- (a) Reduce the size, scale, scope or density of the development to reduce traffic generation;
- (b) Divide the project into phases and authorize only one phase at a time until traffic capacity is adequate for the next phase of development;
- (c) Dedicate right-of-way for street improvements;
- (d) Construct new streets;
- (e) Improve intersection design and/or signalization;
- (f) Expand the capacity of existing streets;
- (g) Redesign ingress and egress to the project to reduce traffic conflicts;
- (h) Alter the use and type of development to reduce peak hour traffic;
- (i) Reduce background (existing) traffic;
- (j) Eliminate the potential for additional traffic generation from

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- undeveloped properties in the vicinity of the proposed development;
- (k) Integrate non-vehicular design components (e.g., pedestrian and bicycle paths or transit improvements) to reduce trip generation;
- (l) Recommend approval of the development contingent upon making improvements or addressing items required to mitigate traffic and access issues and impacts;
- (m) Contribute to an improvement that provides needed capacity, is on the capital improvements program or is approved to be added to the capital improvements program; or
- (n) Recommend denial of the application for development for which the traffic study is submitted.

V. Development Agreements

154.038 DEVELOPMENT AGREEMENTS

- (A) **Purpose.** The purposes of a Development Agreement are coordinate the provision of adequate public facilities with the timing of development and otherwise document the terms of subject developments in accordance with State Law (Title 6, Chapter 31 S.C.sec 6-31-10 Code). The Development Agreement may incorporate the provisions of a Development Bonding Agreement.
- (B) **Applicability.** A Development Agreement is a voluntary agreement between the County and an applicant that may be required by the County when an applicant decides to proceed with a development that would not otherwise be approved due to one or more of the following conditions:
 - 1. The County finds that there is the need to coordinate the provision of adequate public facilities, which may include water, sewer, stormwater, transportation, school or other mutually agreed-upon public facilities, with development generating the need for those facilities;
 - 2. The County finds that there is the need for specific development conditions associated with a planned development; or
 - 3. The County finds that there is the need to document other specific conditions applicable to the timing, intensity, location or design of a development.
- (C) **Contents.** While each Development Agreement will be unique to the applicable development, agreements may include any of the following provisions:
 - 1. Description of required on-site and/or off-site improvements;
 - 2. Assignment of the timing and responsibility for provision of required improvements;
 - 3. Assignment of funding responsibilities for required improvements;
 - 4. Establishment of a phasing plan for development;

DAVE YARNES
VICE PRESIDENT
MORNINGSTAR MINISTRIES

375 STAR LIGHT DRIVE
FORT MILL, SC 29715

TELEPHONE
(803) 802-5544 EXT. 378

E-MAIL
PSMITH@MORNINGSTARMINISTRIES.ORG

February 17, 2010

Via Certified Mail and E-Mail

James E. Baker
6 South Congress Street
Post Office Box 66
York, South Carolina 29745
county.manager@yorkcountygov.com

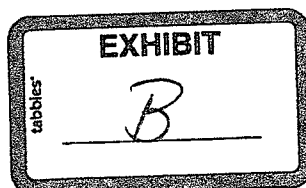
Melvin McKeown
26 West Liberty Street
Post Office Box 299
York, South Carolina 29745

Dear Sirs,

It is with considerable disappointment that I send the enclosed Notice of Dispute. On Thursday, February 4, 2010 at 10:00 am myself and Pat Selvey, in an attempt to discuss matters with York County informally and provide an update on progress, found it disheartening to find a large group of County employees and advisors assembled with little or no intention of discussing the project's merits or progress. It seems the sole intention and that "mind's were made up" to cause serious harm and detriment to the project by means of filing default without regard for the spirit, definition, due processes allowed for in the development agreement.

MorningStar Fellowship Church is heavily invested in the project and therefore takes these matters seriously. Comments made by James Baker, County Manager, said in the meeting that although "he is unaware of the progress" is "fully intent on advising county government to issue a notice of default". We find York County not working within good faith of agreement and therefore are issuing the following notice of dispute.

Again, on February 12th correspondence was sent to Mr. Baker and Mr. Melvin McKeown which stated concerning Morningstar Fellowship Church "we are in the process of reviewing, with legal counsel, any and all claims concerning the Development Agreement and matters stated at that meeting. Due to the serious nature of that meeting and the fact that if handled improperly actions could cause irreparable financial harm to MorningStar Fellowship Church and its projects," and "requesting that no formal



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communication, actions, notices, inquiries, or meetings take place until we have had a chance to review with our legal counsel" and "reply to you in writing."

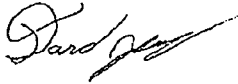
To which Mr. James Baker replied, "At our meeting, I indicated County staff intended to bring this matter to the attention of the York County Council at their meeting on March 1, 2010" thus allowing for no review, comment, investigation or reasonable interest in our claims or financial harm that could be brought about by this hasty action.

Also in Mr. Baker's letter he stated, "If we haven't heard anything further, prior to March 1st, I will certainly bring Mr. Yarnes letter to the Council's attention along with our staff recommendations." This indicates a violation of several areas of the development agreement calling for reasonable time frames and also that without a single consideration the County staff had formulated "recommendations."

This serious course of action if not handled properly could cause disreputable harm financially to MorningStar Fellowship Church and its projects. We again iterate that no communication in any public manner or public discussion, which could cause irreparable harm and significant damage to Morningstar Fellowship Church take place until our items of concern and dispute can be identified, and resolved.

Attached please find an initial list of disputes, notices, rebuttals and suggestions for reasonable courses of action.

Sincerely,



David Yarnes
Vice President

Enc.

Notice of Dispute

Let this serve as an official notice of dispute concerning the development agreement by and between MorningStar Fellowship Church and York County. We ask that immediate action take place concerning the disputes and notices in order to prevent irreparable harm and significant damage to Morningstar Fellowship Church, and specifically no communication in any public manner or public discussion, which could cause irreparable harm and significant damage to Morningstar Fellowship Church take place until items of concern and dispute can be identified, and resolved.

According to the terms of the Development Agreement set forth on page 15, "Developer and York County shall endeavor to resolve claims, disputes and other matters in question between them by mediation in an informal process..." Further terms as outlined on Page 2, section D states: "Minor Modifications ... do not require public notice and hearing prior to implementation" and "minor modification is one which does not change the beneficial use of the Property." Be it known that, the Developer is bringing several individual instances of dispute, formally before York County identified in the following manner:

Item 1

No Proper Notice Given for "Site Plan Approval"

As per page 17 of the Development Agreement, section H notes, "All notices, certificates and other communications hereunder shall be deemed sufficiently given and shall be deemed given when mailed by certified or registered mail, postage pre-paid, addressed as follows: To the Developer: Rick Joyner, President MorningStar Fellowship Church, 375 Star Light Drive, Fort Mill, SC 29715."

No notice of the Site Plan Approval has been provided to the developer as per the development agreement that we are aware of. Also stamped certified drawings of the Site Plan have not been provided to the developer or any party related to the developer. We in fact find little information delivered officially as per the terms set forth in the agreement for "notices, certificates, and communications." Also MorningStar Fellowship Church believes it can not take into account notices of substance unless provided in the above mentioned form.

Item 2

Significant Documentation Withheld

Stamped certified drawings of the Site Plan have not been provided to the Developer or any party related to the Developer. This documentation is vital in attesting to "what" was approved. We again, in fact, find little information delivered officially as per the terms set forth in the agreement for "notices, certificates, and communications." Also MorningStar Fellowship Church believes it can not take into account notices of substance unless provided in the above mentioned form.

Item 3

Change in Normal Protocol

It is our understanding that normal protocol for Site Plan Approval involves the distribution of stamped or certified drawings, clear communication as to the approval of various departments. Ambiguous documentation concerning the approval of drawings was made mention of in certain unofficial

documentation but it is impossible to ascertain a specific Site Plan, dates of critical notices which are normally provided and usually in the course of business. MorningStar Fellowship Church feels this is in violation to numerous sections of the Development Agreement.

Item 4

Attorney Not Present

Representatives of MorningStar Fellowship Church attended a meeting with representatives of York County on February 4, 2010 to informally discuss progress of the development of the Heritage Tower Project and matters concerning the Development Agreement. No notice was given that the County would have an attorney believed to be present, and as is usual and customary, therefore MorningStar Fellowship Church was not able to arrange to have themselves represented in that meeting by an attorney. It is our understanding, and is usual and ordinary in these matters, that should either party have legal counsel present during a meeting, the other party will be notified.

Item 5

Failure by York County Representatives to Comply with Sections of the Development Agreement

Page 14, section 2 of the Development Agreement implies that the County will review and discuss "Developers Efforts" during "Periodic Reviews" with the Developer.

MorningStar Fellowship Church welcomes and seeks any and all efforts by York County to work together cooperatively in a spirit of mutual benefit to make sure that it is presenting all necessary information including, thorough Progress Reports. Also we feel that using "Good Faith Efforts" York County should be providing clarification on requirements, interpretations and information. MorningStar Fellowship Church has had no such "Periodic Review" to its knowledge and has not been afforded "Good Faith Efforts" listed in this section.

Item 6

Failure by York County to Acknowledge Market Conditions

Page 16 of the Development Agreement clearly indicates "The parties acknowledge ... Market Conditions... and the parties agree to take into account...when deliberating disputes or negotiating." On Thursday, February 4, 2010 representatives of MorningStar Fellowship Church tried to verbally discuss Local Regional, National and International economic factors of an unprecedented historic nature with members of York County and were unilaterally dismissed as not relevant. MorningStar Fellowship Church finds this a grievous deviation from the language and spirit of the Development Agreement and a possible indication of malice.

Item 7

Failure to Allow Discussion in "Good Faith Efforts" as Allowed in the Development Agreement

On Thursday, February 4, 2010 representatives of MorningStar Fellowship Church tried to verbally discuss the Development Agreement, Progress of the Project, need for clarification and other areas in a "Good Faith" manner. Representatives of MorningStar Fellowship Church were told verbally by County Administrator James Baker that he had previously contacted members of York County Legislature informing them of a potential breach of contract and had predetermined to "advise for notice of

default" which would cause reputable and significant financial hardship to MorningStar Fellowship Church.

MorningStar Fellowship Church believes it was not afforded "Good Faith Effort" or given the ability to address in a reasonable "Good Faith" manner the progress of the project, potential obstacles as allowed for in the Development Agreement before escalating measures can be considered.

Item 8

Failure to Allow Discussion of Potential Non-material Changes to the Development Agreement

On Thursday, February 4, 2010 representatives of MorningStar Fellowship Church tried to verbally discuss possible potential non material changes to the Development Agreement. Representatives of MorningStar Fellowship Church were told verbally by County Manager James Baker that he had previously contacted members of York County Legislature informing them of a potential breach of contract and had predetermined to "advice for notice of default" which would cause irreparable and significant financial hardship MorningStar Fellowship Church.

MorningStar Fellowship Church believes it was not given the ability to address in a reasonable "Good Faith" manner potential non-material changes as allowed for in the Development Agreement before escalating measures can be considered.

Item 9

Comments and Actions Made Without Inquiry or Thoughtful Investigation, Sufficient Data or Request for Supporting Documentation

On Thursday, February 4, 2010 representatives of MorningStar Fellowship Church tried to verbally discuss the Development Agreement, progress of the project, need for clarification on minor issues and other areas in a "Good Faith" manner. Representatives of MorningStar Fellowship Church were told verbally by County Manager James Baker that he had previously contacted members of York County Legislature informing them of a potential breach of contract, had solicited their concurrence and had predetermined to "advice for notice of default" which would cause irreparable and significant financial hardship MorningStar Fellowship Church. MorningStar Fellowship Church believes in comments and actions made without inquiry, thoughtful investigation, sufficient data or request for supporting documentation as allowed for in the Development Agreement before escalating measures can be considered.

Additional Notices

Let the following serve as official notices concerning: the Development Agreement by and between MorningStar Fellowship Church and York County; the Intent of MorningStar Fellowship Church; and actions taken.

Notice to stay escalating measures before reasonable remedies, actions and inquiries

On Thursday, February 4, 2010 representative of MorningStar Fellowship Church tried to verbally discuss the Development Agreement, progress of the project, need for clarification on minor issues and other areas in a "Good Faith" manner. Representatives of MorningStar Fellowship Church were told verbally by County Manager, James Baker that he had previously contacted members of York County Legislature informing them of a potential breach of contract, had solicited their concurrence and had predetermined to "advise for notice of default" which would cause irreparable and significant financial hardship to MorningStar Fellowship Church. MorningStar Fellowship Church therefore serves notice to stay escalating measures before reasonable remedies, actions and inquiries and further no communication in any public manner or public discussion, which could cause irreparable harm and significant damage to Morningstar Fellowship Church takes place until items of concern and dispute can be identified, and resolved.

Notice of Withdrawal of Site Plan

Because of the above mentioned items of dispute, MorningStar Fellowship Church officially withdraws its application for Site Plan Approval until at such time, in its sole discretion, these matters have been sufficiently addressed including: ascertaining complete formal process, ascertaining fair and amicable treatment, understanding of protocol concerning the delivery of plans, and notices and timing involved.

Notice of Flawed, Incomplete and Contradicting information in the Development Agreement and Request for Modification

Because of the above mentioned items MorningStar Fellowship Church officially gives Notice of Flawed, incomplete and contradicting information in the Development Agreement and requests modification to provide clarity and continuity.

Kendree, Michael

From: Britt, Susan
Sent: Friday, January 22, 2010 2:52 PM
To: Pettine, David
Subject: FW: Morningstar Development Agreement

FYI

Susan

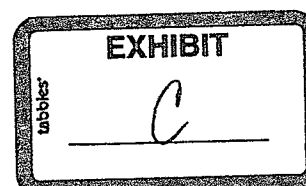
Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Motz, Buddy
Sent: Friday, January 22, 2010 2:51 PM
To: Baker, Jim; 'cmsinc@comporium.net'; Cox, Joe; 'starr7827@gmail.com'; Harmon, David; Huell, Tonya; Larson, David; McKeown, Melvin; Norris, Linda; 'plindemann@hotmail.com'; 'rlbt@comporium.net'; Blake, Roy; 'O=YORKCOUNTYGOVEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Teria.sheffield'; 'tfsmittysc@aol.com'; Moore, Anna
Cc: Britt, Susan
Subject: Re: Morningstar Development Agreement

Thanks Jim, I see them as being made in the same mold as the old PTL, and just as scheming. They are only out to fleece the investors of the units and bilk them for every dime they can get. The county has delayed this for too long and I see no reason for us to allow them to continue further. It would not be accepted for other businesses and it should not be allowed for them.

Thanks,
Buddy
Sent from my BlackBerry
Cell # 1-803-322-5654

From: Baker, Jim
To: Buddy Motz (buddy.motz@yorkcountygov.com); Chad Williams (cmsinc@comporium.net); Cox, Joe (Joe.Cox@yorkcountygov.com); Curwood Chappell (starr7827@gmail.com) <starr7827@gmail.com>; Harmon, David; Huell, Tonya; Larson, David (david.larson@yorkcountygov.com); McKeown, Melvin; Norris, Linda; Paul Lindemann (plindemann@hotmail.com) <plindemann@hotmail.com>; rlbt@comporium.net <rlbt@comporium.net>; Roy Blake (roy.blake@yorkcountygov.com); Sheffield, Teria (Teria.Sheffield@yorkcountygov.com); Tom Smith (tfsmittysc@aol.com) <tfsmittysc@aol.com>; Wilson, Anna (Anna.Wilson@yorkcountygov.com)
Cc: Britt, Susan
Sent: Fri Jan 22 14:29:01 2010
Subject: Morningstar Development Agreement
All,



A key milestone in the Morningstar Development Agreement (DA) is their obligation to provide a performance bond or letters of credit within 180 days of York County's approval of the commercial site plan as a prelude to beginning the construction process. This deadline comes at the end of February, 2010.

Recent discussions with Morningstar representatives have disclosed that they are highly unlikely to reach this goal in the near-term future. We have been told they need more time to sell advance "reservations" for units within the renovated tower in order to gain the financing commitments they need. Staff will be meeting with them soon and we plan to tell them the matter will be placed on the Council's executive session agenda for March 1, 2010 and, if they are not in compliance with the terms of the Development Agreement by that date, we plan to recommend the Council issue a notice of default under the Agreement.

Such a notice only starts the resolution process. The DA gives Morningstar another 60 days to negotiate a resolution to any claimed breach of the Agreement and even if we remain stalemated after 60 days, they can request mediation prior to any final action being taken.

I have no idea whether there is a realistic probability that Morningstar will complete this project. However, more than anything else, staff and I believe the Council should take a strong stance and give notice of default to Morningstar if they cannot provide the financial assurances that were promised in a Development Agreement they signed on April 28, 2008. Again, the initial stages of this process will not necessarily be public and will take substantial time. However, I wanted to give everyone some advance notice about this upcoming deadline because this project has been so prominent in the public's eyes.

Jim

Kendree, Michael

From: Britt, Susan
Sent: Friday, January 22, 2010 2:34 PM
To: Pettine, David
Subject: Fw: Morningstar Development Agreement

FYI

From: Baker, Jim
To: Motz, Buddy; Chad Williams <cmsinc@comporium.net>; Cox, Joe; Curwood Chappell (starr7827@gmail.com) <starr7827@gmail.com>; Harmon, David; Huell, Tonya; Larson, David; McKeown, Melvin; Norris, Linda; Paul Lindemann (plindemann@hotmail.com) <plindemann@hotmail.com>; rlbt@comporium.net <rlbt@comporium.net>; Blake, Roy; Sheffield, Teria (Teria.Sheffield@yorkcountygov.com); Tom Smith (tfsmittysc@aol.com) <tfsmittysc@aol.com>; Moore, Anna
Cc: Britt, Susan
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Jim

Kendree, Michael

From: Britt, Susan
Sent: Friday, January 22, 2010 10:35 AM
To: Baker, Jim
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: RE: Heritage Tower Project - meeting request

I'll ask Dave to contain Mr. Yarnes and arrange the meeting. We will coordinate with Linda regarding your calendars and Melvin's.

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Baker, Jim
Sent: Friday, January 22, 2010 10:30 AM
To: Britt, Susan
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: RE: Heritage Tower Project - meeting request

Susan,

I replied to Buddy and forwarded the message to you and Melvin. I also agree with your comments below. Let's set up a meeting at our offices with the Morningstar folks and just take things one step at a time. I'll draft day short notice to the entire council later today and copy everyone with that messages as well.

Jim,

From: Britt, Susan
Sent: Friday, January 22, 2010 8:44 AM
To: Baker, Jim
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: FW: Heritage Tower Project - meeting request
Importance: High

Jim,

Will you be replying to Buddy or do I need to do so? As to meeting with Morningstar folks, I prefer to meet with them only with our attorney in attendance as this is likely to end up as a legal action. I also prefer to meet at a County facility. I am sensitive to any appearance of complicity by again visiting/touring their property. What are your thoughts? I would like to reply to Mr. Yarnes as soon as possible.

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Motz, Buddy
Sent: Friday, January 22, 2010 7:07 AM
To: Britt, Susan; Baker, Jim
Subject: Fw: Heritage Tower Project - meeting request

Where are they as to time line to complete and work completed?

Thanks,
Buddy
Sent from my BlackBerry
Cell # 1-803-322-5654

From: Pat Selvey <patselvey@gmail.com>
To: Britt, Susan
Cc: dave yarnes <dyarnes@gmail.com>; Rick Joyner <rickjoy@aol.com>; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith <psmith@morningstarministries.org>
Sent: Thu Jan 21 18:14:59 2010
Subject: Heritage Tower Project - meeting request
To Susan Britt:

We would like to meet together with you (and your staff at your discretion) in order to demonstrate and discuss with you where we are in our process with the Heritage Tower Project. We want to report on Sales, Financing and Construction. We would like to review areas of the development agreement as well.

We are happy to visit your facility or host at our facilities and show you our sales offices. Could you please reply with a few options for dates and times that work best for you, and we will confirm. A 90 minute time period should allow for all discussion.

Sincerely,

Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project

Kendree, Michael

From: Baker, Jim
Sent: Friday, January 22, 2010 10:30 AM
To: Britt, Susan
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: RE: Heritage Tower Project - meeting request

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Importance: High

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Sent: Friday, January 22, 2010 7:07 AM
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Subject: Fw: Heritage Tower Project - meeting request

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Thanks,
Buddy

Sent from my BlackBerry
Cell # 1-803-322-5654

From: Pat Selvey <patselvey@gmail.com>
To: Britt, Susan
Cc: dave yarnes <dyarnes@gmail.com>; Rick Joyner <rickjoy@aol.com>; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith <psmith@morningstarministries.org>
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Sincerely,

Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project

Kendree, Michael

From: Britt, Susan
Sent: Friday, January 22, 2010 10:29 AM
To: Pettine, David
Subject: FW: Heritage Tower Project - meeting request

FYI

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Baker, Jim
Sent: Friday, January 22, 2010 10:20 AM
To: McKeown, Melvin; Britt, Susan
Subject: FW: Heritage Tower Project - meeting request

From: Baker, Jim
Sent: Friday, January 22, 2010 10:19 AM
To: Motz, Buddy
Subject: RE: Heritage Tower Project - meeting request

Buddy,

Ironically, we just had a staff meeting yesterday regarding Morningstar. They will almost certainly default on their agreement to secure a financing commitment by the end of February, 2010. Based on recent conversation with them, their game plan appears to be to convince us extend the time for reaching this milestone while they attempt to sell more "reservations" for future units in hopes of assembling enough cash up front to prompt someone to be willing to finance the balance. This is an untenable position for the County because there is doesn't appear to be any reasonable likelihood of Morningstar obtaining financing this way in the near-term future and we are unsure whether any funds they may receive from "reservations" will be available for refunds should this financing plan fall through.

We will set up a staff meeting with them and assuming circumstances don't change by the end of February, we plan to place an item on the executive session agenda on March 1st, asking the Council to authorize sending a default notice to Morningstar. Our agreement grants them 60 days to negotiate a resolution with us following such notice and, assuming an impasse remains after that 60 day period, they can request mediation before we can actually take final action.

Right now, it seems clear we will need to start the process by declaring a default before they will seriously re-evaluate their options and resolve once and for all whether they can realistically complete the tower.

Jim

From: Motz, Buddy
Sent: Friday, January 22, 2010 7:07 AM
To: Britt, Susan; Baker, Jim
Subject: Fw: Heritage Tower Project - meeting request

Where are they as to time line to complete and work completed?

Thanks,
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From: Pat Selvey <patselvey@gmail.com>
To: Britt, Susan
Cc: dave yarnes <dyarnes@gmail.com>; Rick Joyner <rickjoy@aol.com>; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith <psmith@morningstarministries.org>
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Sincerely,

Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project

Kendree, Michael

From: McKeown, Melvin
Sent: Friday, January 22, 2010 8:57 AM
To: Britt, Susan; Baker, Jim
Cc: Larson, David; Pettine, David
Subject: RE: Heritage Tower Project - meeting request

I agree with Susan concerning the place and terms of the meeting.

Melvin McKeown

From: Britt, Susan
Sent: Friday, January 22, 2010 8:44 AM
To: Baker, Jim
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: FW: Heritage Tower Project - meeting request
Importance: High

Jim,

Will you be replying to Buddy or do I need to do so? As to meeting with Morningstar folks, I prefer to meet with them only with our attorney in attendance as this is likely to end up as a legal action. I also prefer to meet at a County facility. I am sensitive to any appearance of complicity by again visiting/touring their property. What are your thoughts? I would like to reply to Mr. Yarns as soon as possible.

Susan

Susan Britt, AICP
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1070 Heckle Boulevard, Suite 105
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Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Motz, Buddy
Sent: Friday, January 22, 2010 7:07 AM
To: Britt, Susan; Baker, Jim
Subject: Fw: Heritage Tower Project - meeting request

Where are they as to time line to complete and work completed?

Thanks,
Buddy
Sent from my BlackBerry
Cell # 1-803-322-5654

From: Pat Selvey <patselvey@gmail.com>

To: Britt, Susan

Cc: dave yarnes <dyarnes@gmail.com>; Rick Joyner <rickjoy@aol.com>; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith <psmith@morningstarministries.org>

Sent: Thu Jan 21 18:14:59 2010

Subject: Heritage Tower Project - meeting request

To Susan Britt:

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We are happy to visit your facility or host at our facilities and show you our sales offices. Could you please reply with a few options for dates and times that work best for you, and we will confirm. A 90 minute time period should allow for all discussion.

Sincerely,

Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project

Kendree, Michael

From: Britt, Susan
Sent: Friday, January 22, 2010 8:44 AM
To: Baker, Jim
Cc: Larson, David; Pettine, David; McKeown, Melvin
Subject: FW: Heritage Tower Project - meeting request

Importance: High

Jim,

Will you be replying to Buddy or do I need to do so? As to meeting with Morningstar folks, I prefer to meet with them only with our attorney in attendance as this is likely to end up as a legal action. I also prefer to meet at a County facility. I am sensitive to any appearance of complicity by again visiting/touring their property. What are your thoughts? I would like to reply to Mr. Yarnes as soon as possible.

Susan

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From: Motz, Buddy
Sent: Friday, January 22, 2010 7:07 AM
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Subject: Fw: Heritage Tower Project - meeting request

Where are they as to time line to complete and work completed?

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Cc: dave yarnes <dyarnes@gmail.com>; Rick Joyner <rickjoy@aol.com>; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith <psmith@morningstarministries.org>
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Sincerely,

**Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project**

Kendree, Michael

From: Pat Selvey <patselvey@gmail.com>
Sent: Thursday, January 21, 2010 6:15 PM
To: Britt, Susan
Cc: dave yarnes; Rick Joyner; Pettine, David; Motz, Buddy; Lindemann, Paul; Patricia Smith
Subject: Heritage Tower Project - meeting request

To Susan Britt:

We would like to meet together with you (and your staff at your discretion) in order to demonstrate and discuss with you where we are in our process with the Heritage Tower Project. We want to report on Sales, Financing and Construction. We would like to review areas of the development agreement as well.

We are happy to visit your facility or host at our facilities and show you our sales offices. Could you please reply with a few options for dates and times that work best for you, and we will confirm. A 90 minute time period should allow for all discussion.

Sincerely,

Dave Yarnes
Vice President
MorningStar Ministries
Project Manager
Heritage Tower Project

Kendree, Michael

From: Britt, Susan
Sent: Tuesday, January 19, 2010 2:25 PM
To: Larson, David
Cc: Pettine, David
Subject: RE: Discuss the Morningstar Tower Development Agreement Melvin will attend*~LN~

OK. I guess we will go to York. I'll let Jacque and Steve know that I should probably get back just in time for the YCF workshop.

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

From: Larson, David
Sent: Tuesday, January 19, 2010 2:23 PM
To: Britt, Susan
Subject: RE: Discuss the Morningstar Tower Development Agreement Melvin will attend*~LN~

Susan,

I asked Linda earlier about this and I believe there may a problem with Melvin traveling to RH because of another appointment he had on Thursday.

David

From: Britt, Susan
Sent: Tuesday, January 19, 2010 2:07 PM
To: Norris, Linda; Pettine, David; Larson, David; Baker, Jim
Subject: RE: Discuss the Morningstar Tower Development Agreement Melvin will attend*~LN~

Linda,

I think the time is OK but I talked to David about changing the location to the small conference room here at the Heckle Complex. We have a workshop with YCF starting at 5:00 pm and it would help if we didn't have to travel back from York.

Susan

Susan Britt, AICP
Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

-----Original Appointment-----

From: Norris, Linda

Sent: Tuesday, January 19, 2010 10:28 AM

To: Pettine, David; Larson, David; Baker, Jim; Britt, Susan

Subject: Discuss the Morningstar Tower Development Agreement Melvin will attend*~LN~

When: Thursday, January 21, 2010 3:30 PM-4:30 PM (GMT-05:00) Eastern Time (US & Canada).

Where: County Manager's Conf. Room

Linda,

Good afternoon. I am emailing to see if it would be possible to set up a meeting for sometime next week with Jim, David Larson, Melvin and/or Michael to discuss the Morningstar Tower Development Agreement. All parties, with the exception of Michael at the moment, are aware of the matter and a meeting to discuss further is needed.

On a related note, do you have access to my calendar? Let me know if not and I'll get that squared away.

Thanks Linda. Have a good afternoon.

Dave

Kendree, Michael

From: Britt, Susan
Sent: Tuesday, January 19, 2010 2:07 PM
To: Norris, Linda; Pettine, David; Larson, David; Baker, Jim
Subject: RE: Discuss the Morningstar Tower Development Agreement Melvin will attend*~LN~

Linda,

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Susan

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Director
York County Planning & Development Services
1070 Heckle Boulevard, Suite 105
Rock Hill, SC 29732-2863
Phone: 803.909.7242
Email: susan.britt@yorkcountygov.com

-----Original Appointment-----

From: Norris, Linda
Sent: Tuesday, January 19, 2010 10:28 AM
To: Pettine, David; Larson, David; Baker, Jim; Britt, Susan
Subject: Discuss the Morningstar Tower Development Agreement Melvin will attend*~LN~
When: Thursday, January 21, 2010 3:30 PM-4:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: County Manager's Conf. Room

Linda,

Good afternoon. I am emailing to see if it would be possible to set up a meeting for sometime next week with Jim, David Larson, Melvin and/or Michael to discuss the Morningstar Tower Development Agreement. All parties, with the exception of Michael at the moment, are aware of the matter and a meeting to discuss further is needed.

On a related note, do you have access to my calendar? Let me know if not and I'll get that squared away.

Thanks Linda. Have a good afternoon.

Dave

Kendree, Michael

From: Pat Selvey <patselvey@gmail.com>
Sent: Friday, January 15, 2010 3:41 PM
To: Pettine, David
Subject: Re: Heritage Tower Update

Thanks David!

On Fri, Jan 15, 2010 at 3:11 PM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

We are waiting on confirmation of a meeting next week from the manager's office to discuss further. The meeting will include only county staff at this time. However, it is anticipated that we will discuss with council at their February meeting. They are aware of the general provisions of the DA, but we haven't discussed with the full council to date.

I will have more details and information on next steps following that meeting. Once the meeting is scheduled I'll let you know the date and follow up with you afterwards.

I would suggest in the meantime that any information you have regarding financing for the project be organized and prepared for possible review and discussion in the coming weeks.

I'll get back to you with more info as soon as I have it. I will be back in the office on Wednesday but will check email periodically.

Thanks Pat. Have a good weekend.

Dave

From: Pat Selvey <patselvey@gmail.com>
To: Pettine, David
Sent: Fri Jan 15 12:42:23 2010
Subject: Re: Heritage Tower Update
resending....

On Wed, Jan 13, 2010 at 8:17 AM, Pat Selvey <patselvey@gmail.com> wrote:
David,

Are you and Susan planning to bring this up before the County Council? Or should we proceed as we were with the plan? In other words, do we have a problem?

Pat

On Wed, Jan 13, 2010 at 7:30 AM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

After looking in our plan review software, the commercial site plan for the tower was approved by staff on August 24th, 2009. The approval notice was sent to the engineer by our DCC staff. I also recall staff having the engineer come to the

offices in York to add a few notes to the plan that were needed to get approval and save the re-review cost of an additional submittal.

The engineer for the project should have the letter generated by staff following approval of the plans. The note from the DA is below and is in section C "Bonds or Letter of Credit".

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

Please let me know if there is anything else we can provide at this time. I'll be in a workshop all day, but will check email periodically. We should have some time Thursday or Friday to discuss further as needed. Just let me know. Thanks Pat.

Dave Pettine

Assistant Director, Planning and Development Services

York County Government

Planning & Development

1070 Heckle Blvd. A-5

Rock Hill, SC 29732-2863

Direct: (803) 909-7173

Toll Free: (800) 922-7271

Phone: (803) 909-7240

Fax: (803) 909-7478

Email: david.pettine@yorkcountygov.com

Website: www.yorkcountygov.com

From: Pat Selvey [mailto:patselvey@gmail.com]
Sent: Tuesday, January 12, 2010 7:15 PM
To: Pettine, David
Cc: Britt, Susan
Subject: Re: Heritage Tower Update

David,

I am aware of the language you are referring to, however, it is my understanding that the Site Plan has not been approved. Last time we talked with your offices, it was still in review and we were happy to have more time as we are doing our level best to perform as promised.

Pat

On Tue, Jan 12, 2010 at 5:13 PM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

Thanks for the update. Sounds like things have been progressing on the project. However, you may want to review the DA as our understanding was there was a six month period following site plan approval to provide proof of financing for the project. If that did not occur, the DA became void.

Under that provision, financing would need to be secured by late February in order for the project to proceed as plans were approved in August.

I am out of the office at the moment, but I will provide you with the section of the DA that references the 180 day provision tomorrow morning.

Again, this is our understanding of that language and should be reviewed by both legal counsels prior to making a final determination. I have a council retreat all day tomorrow but as stated will get you the language I am referencing in this email in the morning so you can conduct review on your end. Let's plan on talking on Thursday or Friday so we can all make sure we are on the same page.

Thanks Pat. Have a good night.

Dave

From: Pat Selvey <patselvey@gmail.com>

To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <ews717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jcwoodall@conceptarc.com>; Rich Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>
Sent: Tue Jan 12 16:54:54 2010
Subject: Heritage Tower Update

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It has been a while since our last update. We have been working diligently throughout 2009, primarily on one thing: Sales. We have good news to report.

Our waiting list for reservations is now over 20 deep which triggers a significant milestone for us. We are now ready to build our "model unit". Plans will be submitted to YC very soon for the model unit which will be constructed very quickly now that we have enough reservations to proceed with the next stage of our Master Plan.

Once the model is built, we will be able to come under contracts which will in turn trigger construction financing. Our project is proceeding as planned in every way, except for timing. It took longer in this economy than we initially thought to get to this milestone, but given the time constraints of our Development Agreement, we should have plenty of time to complete everything within the 5 years allotted for our PD Plan.

Please feel free to contact us with any questions about our project.

Pat Selvey

Heritage Tower Project

Kendree, Michael

From: Pat Selvey <patselvey@gmail.com>
Sent: Friday, January 15, 2010 12:42 PM
To: Pettine, David
Subject: Re: Heritage Tower Update

resending....

On Wed, Jan 13, 2010 at 8:17 AM, Pat Selvey <patselvey@gmail.com> wrote:
David,

Are you and Susan planning to bring this up before the County Council? Or should we proceed as we were with the plan? In other words, do we have a problem?

Pat

On Wed, Jan 13, 2010 at 7:30 AM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

After looking in our plan review software, the commercial site plan for the tower was approved by staff on August 24th, 2009. The approval notice was sent to the engineer by our DCC staff. I also recall staff having the engineer come to the offices in York to add a few notes to the plan that were needed to get approval and save the re-review cost of an additional submittal.

The engineer for the project should have the letter generated by staff following approval of the plans. The note from the DA is below and is in section C: "Bonds or Letter of Credit".

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From: Pat Selvey [mailto:patselvey@gmail.com]

Sent: Tuesday, January 12, 2010 7:15 PM

To: Pettine, David

Cc: Britt, Susan

Subject: Re: Heritage Tower Update

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Thanks Pat. Have a good night

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To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <gws717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jcwoodall@conceptarc.com>; Rich Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>
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Please feel free to contact us with any questions about our project.

Pat Selvey

Heritage Tower Project

Kendree, Michael

From: Pettine, David
Sent: Thursday, January 14, 2010 1:44 PM
To: Norris, Linda
Subject: Meeting

Linda,

Good afternoon. I am emailing to see if it would be possible to set up a meeting for sometime next week with Jim, David Larson, Melvin and/or Michael to discuss the Morningstar Tower Development Agreement. All parties, with the exception of Michael at the moment, are aware of the matter and a meeting to discuss further is needed.

On a related note, do you have access to my calendar? Let me know if not and I'll get that squared away.

Thanks Linda. Have a good afternoon.

Dave

Kendree, Michael

From: Pettine, David
Sent: Wednesday, January 13, 2010 5:04 PM
To: Britt, Susan
Subject: Re: Morningstar Development Agreement

Jim was going to handle the agenda mtg this afternoon himself since there was an hour gap in between the last retreat item and the meeting. I gave him a heads up this afternoon, along with Melvin and will follow up everyone tomorrow on this issue.

From there we can coordinate discussions with Buddy and council about next steps. I think it would be good for staff to be on the same page and inform council from there.

Executive session may ne better in Feb so we can have time to work through the issues and let Melvin fully review any details of the DA.

See you in the morning.

Dave

From: Britt, Susan
To: Pettine, David
Sent: Wed Jan 13 14:13:00 2010
Subject: Fw: Morningstar Development Agreement

From: Bass, Gary
To: Britt, Susan
Sent: Wed Jan 13 14:11:56 2010
Subject: RE: Morningstar Development Agreement

Susan,

FYI

I believe Dave is referring to the site plan, we have not seen any building plans from anybody since this thing begin.

From: Britt, Susan
Sent: Wednesday, January 13, 2010 11:25 AM
To: Pettine, David; Moore, Eddie; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Subject: Re: Morningstar Development Agreement

I think that Jim and David need to be made aware of this ASAP. We should ask Jim to put this on Council Executive session. I think this is appropriate since we are talking about a contractual document.

Dave, see if you can arrange a meeting for tomorrow with you, me, Eddie, Jim, David, and Melvin. Also you should mention this at the agenda meeting this afternoon with Buddy.

From: Pettine, David
To: Moore, Eddie; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Sent: Wed Jan 13 11:19:51 2010
Subject: Re: Morningstar Development Agreement

Just as a quick FYI, I spoke with Pat and he recognizes the 180 day time, but for some reason he didn't think the plans were approved yet. I confirmed with him that plans were approved on 8/24 and notice went to his engineer.

At this point we need to discuss next steps. Pat was wondering if we were going to discuss the matter with council and it is probably something we need to make them aware of in my opinion.

At this point it seems the appropriate course of action would be to inform council of the deadline, and inform Morningstar that they need to provide the proof of financing as outlined or request a modification of the DA to council.

I will discuss this with Pat tomorrow or Friday if that is the course of action we are going to outline for Morningstar. It is not in our ability to approve an extended timeframe in the DA, that is reserved for council under a request from Morningstar.

Please let me know your thoughts when you get a chance. Thanks.

Dave

From: Moore, Eddie

To: Pettine, David; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary

Sent: Wed Jan 13 11:10:29 2010

Subject: Morningstar Development Agreement

Based on the attached 01/12/10 email from Pat Selvey, I have put a fresh set of eyes on the MDA and approved plans, and offer the following summary and suggestions:

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- It appears clear if Sections A., B., and C. #1 do not exist, Section C. #2 applies.

In determining a 180-day timeframe, I have based deadlines on two scenarios (approved commercial site plan and issued commercial zoning compliance permit):

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- 02/15/10 – 180 day timeframe (based on day after plan approval)
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I highly recommend that Melvin McKeown review Section X. REPRESENTATIONS, WARRANTIES, DEFAULT AND REMEDIES (A. through D.) and Section XII. EFFECTIVENESS OF AGREEMENT (A. and B.) just to make sure the County has lived up to its agreed sections of the MDA.

Pat makes reference in his email about a 5 year development timeframe allotted in the MDA. I interpret this as a vesting of the 08/19/09 approved commercial site plan and not a timeframe associated with the Heritage Tower removal.

Please let me know if you need any additional information.

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Fax - (803) 909-7227

Kendree, Michael

From: Britt, Susan
Sent: Wednesday, January 13, 2010 2:13 PM
To: Pettine, David
Subject: Fw: Morningstar Development Agreement

From: Bass, Gary
To: Britt, Susan
Sent: Wed Jan 13 14:11:56 2010
Subject: RE: Morningstar Development Agreement

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FYI

I believe Dave is referring to the site plan, we have not seen any building plans from anybody since this thing begin.

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Subject: Re: Morningstar Development Agreement

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Please let me know your thoughts when you get a chance. Thanks.

Dave

From: Moore, Eddie

To: Pettine, David; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary

Sent: Wed Jan 13 11:10:29 2010

Subject: Morningstar Development Agreement

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Kendree, Michael

From: Pettine, David
Sent: Wednesday, January 13, 2010 11:27 AM
To: Britt, Susan
Subject: Re: Morningstar Development Agreement

I will talk to them today and let Melvin know we need to meet on this as soon as we can. I will also discuss with Buddy this afternoon.

Thanks.

Dave

From: Britt, Susan
To: Pettine, David; Moore, Eddie; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Sent: Wed Jan 13 11:25:02 2010
Subject: Re: Morningstar Development Agreement

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- 08/28/09 – Approval date
- 02/23/10 – 180 day timeframe (based on day of permit issued)
- 02/24/10 – 180 day timeframe (based on day after permit issued)
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I highly recommend that Melvin McKeown review Section X. REPRESENTATIONS, WARRANTIES, DEFAULT AND REMEDIES (A. through D.) and Section XII. EFFECTIVENESS OF AGREEMENT (A. and B.) just to make sure the County has lived up to its agreed sections of the MDA.

Pat makes reference in his email about a 5 year development timeframe allotted in the MDA. I interpret this as a vesting of the 08/19/09 approved commercial site plan and not a timeframe associated with the Heritage Tower removal.

Please let me know if you need any additional information.

Eddie Moore, AICP
Zoning & Development Standards Administrator
York County Planning & Development Services
1070 Heckle Blvd., Suite 105
Rock Hill, SC 29732-2863
Direct - (803) 909-7234
Toll Free - (800) 922-7271
Fax - (803) 909-7227

Kendree, Michael

From: Pettine, David
Sent: Wednesday, January 13, 2010 11:25 AM
To: Moore, Eddie
Subject: Re: Morningstar Development Agreement

I agree and appreciate your review of this document. It seems clear that the 180 day time is separate from the 5 year vesting that it seems Pat is referring to. The 5 years is only good if the other timeframes are met, like the 180 day time to provide proof of financing.

If this time isn't met, the DA is void and the 5 years issue is moot.

I will talk with Melvin today and we will probably want to sit down with Melvin to discuss it.

Thanks again for your input. Well stated and thorough. Nice job.

Dave

From: Moore, Eddie
To: Pettine, David; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Sent: Wed Jan 13 11:10:29 2010
Subject: Morningstar Development Agreement
Based on the attached 01/12/10 email from Pat Selvey, I have put a fresh set of eyes on the MDA and approved plans, and offer the following summary and suggestions:

IV. ECONOMIC FEASIBILITY – A. Construction Contract and Plans., B. Preliminary Engineering Report of Cost of Construction., and C. Bonds or Letter of Credit.

- This morning, Gary advised me that Sections A. and B. have not been submitted or reviewed by Building & Codes.
- Section A. requires approval of the existing tower by the ICC.
- Section B. is a preliminary engineering report of the cost of construction based upon approval by the County of Section A.
- Section C. #1 – Prior to the Developer's completion of the contract documents for rehabilitation and/or completion of the Heritage Tower for residential occupancy, the Developer must submit to the County – (1) a specimen bid and (2) performance and payment bonds for the County to approve. Also, prior to issuing any building permits, the Developer must submit a demolition bond or financial equivalent in the event of "Failure to Complete the Project."
- Section C. #2 – Within 180 DAYS OF COUNTY APPROVAL of the COMMERCIAL SITE PLAN FOR THE PROPERTY, should the Developer or its contractor be unable to obtain (1) bid, (2) performance and payment bonds from an A+ Best rated insurer, or (3) letters of credit from a national bank or a substantial equivalent acceptable to the County, then the MDA SHALL BE DEEMED NULL AND VOID. At such time, the Tower SHALL BE DEMOLISHED, WITH ALL COSTS FOR ITS DEMOLITION BORNE BY THE DEVELOPER.
- It appears clear if Sections A., B., and C. #1 do not exist, Section C. #2 applies.

In determining a 180-day timeframe, I have based deadlines on two scenarios (approved commercial site plan and issued commercial zoning compliance permit):

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I highly recommend that Melvin McKeown review Section X. REPRESENTATIONS, WARRANTIES, DEFAULT AND REMEDIES (A. through D.) and Section XII. EFFECTIVENESS OF AGREEMENT (A. and B.) just to make sure the County has lived up to its agreed sections of the MDA.

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Kendree, Michael

From: Pettine, David
Sent: Wednesday, January 13, 2010 11:20 AM
To: Moore, Eddie; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Subject: Re: Morningstar Development Agreement

Just as a quick FYI, I spoke with Pat and he recognizes the 180 day time, but for some reason he didn't think the plans were approved yet. I confirmed with him that plans were approved on 8/24 and notice went to his engineer.

At this point we need to discuss next steps. Pat was wondering if we were going to discuss the matter with council and it is probably something we need to make them aware of in my opinion.

At this point it seems the appropriate course of action would be to inform council of the deadline, and inform Morningstar that they need to provide the proof of financing as outlined or request a modification of the DA to council.

I will discuss this with Pat tomorrow or Friday if that is the course of action we are going to outline for Morningstar. It is not in our ability to approve an extended timeframe in the DA, that is reserved for council under a request from Morningstar.

Please let me know your thoughts when you get a chance. Thanks.

Dave

From: Moore, Eddie
To: Pettine, David; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Sent: Wed Jan 13 11:10:29 2010
Subject: Morningstar Development Agreement
Based on the attached 01/12/10 email from Pat Selvey, I have put a fresh set of eyes on the MDA and approved plans, and offer the following summary and suggestions:

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Kendree, Michael

From: Moore, Eddie
Sent: Wednesday, January 13, 2010 11:10 AM
To: Pettine, David; Britt, Susan; Allen, Steve; Catoe, Shannon; Walling, Chuck; Bass, Gary
Subject: Morningstar Development Agreement
Attachments: Pat Selvey - 1-12-10 Heritage Tower Update Email.pdf; Heritage Tower - Approved Plan Stamp.pdf; Heritage Tower - Commercial Zoning Compliance Permit.pdf

Based on the attached 01/12/10 email from Pat Selvey, I have put a fresh set of eyes on the MDA and approved plans, and offer the following summary and suggestions:

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Kendree, Michael

From: Pat Selvey <patselvey@gmail.com>
Sent: Wednesday, January 13, 2010 8:18 AM
To: Pettine, David
Subject: Re: Heritage Tower Update

David,

Are you and Susan planning to bring this up before the County Council? Or should we proceed as we were with the plan? In other words, do we have a problem?

Pat

On Wed, Jan 13, 2010 at 7:30 AM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

After looking in our plan review software, the commercial site plan for the tower was approved by staff on August 24th, 2009. The approval notice was sent to the engineer by our DCC staff. I also recall staff having the engineer come to the offices in York to add a few notes to the plan that were needed to get approval and save the re-review cost of an additional submittal.

The engineer for the project should have the letter generated by staff following approval of the plans. The note from the DA is below and is in section C "Bonds or Letter of Credit".

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

Please let me know if there is anything else we can provide at this time. I'll be in a workshop all day, but will check email periodically. We should have some time Thursday or Friday to discuss further as needed. Just let me know. Thanks Pat.

Dave Pettine

Assistant Director, Planning and Development Services

York County Government

Planning & Development

1070 Heckle Blvd. A-5

Rock Hill, SC 29732-2863

Direct: (803) 909-7173

Toll Free: (800) 922-7271

Phone: (803) 909-7240

Fax: (803) 909-7478

Email: david.pettine@yorkcountygov.com

Website: www.yorkcountygov.com

From: Pat Selvey [mailto:patselvey@gmail.com]

Sent: Tuesday, January 12, 2010 7:15 PM

To: Pettine, David

Cc: Britt, Susan

Subject: Re: Heritage Tower Update

David,

I am aware of the language you are referring to, however, it is my understanding that the Site Plan has not been approved. Last time we talked with your offices, it was still in review and we were happy to have more time as we are doing our level best to perform as promised.

Pat

On Tue, Jan 12, 2010 at 5:13 PM, Pettine, David <David.Pettine@yorkcountygov.com> wrote:

Pat,

Thanks for the update. Sounds like things have been progressing on the project. However, you may want to review the DA as our understanding was there was a six month period following site plan approval to provide proof of financing for the project. If that did not occur, the DA became void.

Under that provision, financing would need to be secured by late February in order for the project to proceed as plans were approved in August.

I am out of the office at the moment, but I will provide you with the section of the DA that references the 180 day provision tomorrow morning.

Again, this is our understanding of that language and should be reviewed by both legal counsels prior to making a final determination.

I have a council retreat all day tomorrow but as stated will get you the language I am referencing in this email in the morning so you can conduct review on your end. Let's plan on talking on Thursday or Friday so we can all make sure we are on the same page.

Thanks Pat. Have a good night.

Dave

From: Pat Selvey <patselvey@gmail.com>

To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <gws717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jcwoodall@conceptarc.com>; Rich. Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>
Sent: Tue Jan 12 16:54:54 2010
Subject: Heritage Tower Update

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Once the model is built, we will be able to come under contracts which will in turn trigger construction financing. Our project is proceeding as planned in every way, except for timing. It took longer in this economy than we initially thought to get to this milestone, but given the time constraints of our Development Agreement, we should have plenty of time to complete everything within the 5 years allotted for our PD Plan.

Please feel free to contact us with any questions about our project.

Pat Selvey

Heritage Tower Project

Kendree, Michael

From: Dodgen, Ann
Sent: Wednesday, January 13, 2010 7:53 AM
To: Pettine, David
Subject: Heritage Tower Project

Dave,

Those comments were sent out 8-24-09. They went to Gerald Lee with Power Engineering. I checked the email log and the email did go at 5:42 pm.

Ann

Ann Webb
Development Coordinating Assistant
York County Planning & Development
803-909-7236
ann.webb@yorkcountygov.com

Kendree, Michael

From: Pettine, David
Sent: Wednesday, January 13, 2010 7:30 AM
To: 'Pat Selvey'
Cc: Britt, Susan
Subject: RE: Heritage Tower Update

Pat,

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From: Pat Selvey [mailto:patselvey@gmail.com]
Sent: Tuesday, January 12, 2010 7:15 PM
To: Pettine, David
Cc: Britt, Susan
Subject: Re: Heritage Tower Update

David,

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Thanks Pat. Have a good night.

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From: Pat Selvey <patselvey@gmail.com>

To: Rick Joyner <rickjoy@aol.com>; dave yarnes <dyarnes@gmail.com>; Buddy Motz <b.motz@relianceadm.com>; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson <gws717@gmail.com>; Dave Priester <DPriester@choateco.com>; JEFFERSON WOODALL <jcwoodall@conceptarc.com>; Rich Whipple <Rich.Whipple@yorkcountygov.com>; Bowyer, Rebecca; Catoe, Shannon; David Yarnes <pselvey@morningstarministries.org>

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Please feel free to contact us with any questions about our project.

Pat Selvey

Heritage Tower Project

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Pat Selvey
Heritage Tower Project

Kendree, Michael

From: Pettine, David
Sent: Tuesday, January 12, 2010 5:14 PM
To: 'patselvey@gmail.com'
Cc: Britt, Susan
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Pat Selvey
Heritage Tower Project

Kendree, Michael

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Sent: Tuesday, January 12, 2010 4:55 PM
To: Rick Joyner; dave yarnes; Buddy Motz; Motz, Buddy; Lindemann, Paul; Britt, Susan; Allen, Steve; Pettine, David; Gary Sanderson; Dave Priester; JEFFERSON WOODALL; Rich.Whipple; Bowyer, Rebecca; Catoe, Shannon; David Yarnes
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Pat Selvey
Heritage Tower Project

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2013-CP-46-00246

MORNINGSTAR FELLOWSHIP
CHURCH,

Plaintiff,

vs.

YORK COUNTY, SOUTH CAROLINA,

Defendant.

AFFIDAVIT OF PATRICK SELVEY

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

2014 JUN 19 PM 2:49

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Patrick Selvey, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.

2. I worked for MorningStar for a number of years. I was reduced to a part time capacity in the early spring of 2009 and resigned completely on May 30, 2009 to pursue other ministry goals. I then returned mid July in a limited capacity as a consultant with respect to the tower project.

3. My job duties were basically those of a project manager's assistant being responsible to the Tower Project Manager, David Yarnes. I interacted as needed with the design and engineering professionals on the job. The project engineer initially was Power Engineering.

4. I also communicated directly with York County officials.

5. Power Engineering prepared and submitted a preliminary site plan for us in December, 2008. A site plan consists of detailed engineering and architectural drawings. It basically lets the reader know how the infrastructure is to be installed, how landscape issues (including drainage) are to be dealt with, and traffic and parking details managed. It also shows the location of the vertical construction.

6. We did not receive an approved site plan from the County at any point, until after they started accusing us of being in default. There were a number of notices regarding site plan issues that were sent to our project engineer in order to let them know of perceived deficiencies. These notices listed compliance problems with various aspects of the plan. Hindsight shows that these issues were eventually addressed and corrected, but we never received the stamped site

plan document from the County. The normal procedure for stamped approval concerning plans and permits is that the County contacts our office to let us know we can pick up our set of *stamped* approved plans. This was the procedure the County followed for every project we *permitted* during the previous years, except for this one.

7. To my knowledge, the county failed to produce a *stamped site plan* for our engineer, or to us, which according to the county's procedure is the only approval that is real or binding.

8. I have been personally advised by the County on more than one occasion that every developer and contractor must know; rumored approval or even verbal approval means nothing, and projects cannot be started, nor counted on UNTIL the county stamps the site plan and releases a stamped copy, which they did not.

9. I sent an update to the County in January, 2010. I was shocked at their response. They contended that the site plan had been approved in August, 2009, and we had to present performance bonds to them in a matter of a couple of weeks. That was impossible. Performance bonds require approved site plans that have been stamped by the county. The stamped site plan document is as valuable to the loan and bond document process as a home inspection or appraisal is to a mortgage.

10. Derrick Boyte at Power Engineering sent the email to me that is marked as Exhibit M. I disagreed that anyone could view the documents he referenced as an approved site plan. I described the problems with such an approach in paragraph 6. No one at Power Engineering had ever taken that position before. Morningstar paid the \$1,000 in dispute because we knew they were having significant financial problems and we were dealing with the County directly on the site plan issue. It didn't seem worth fighting about. We were made aware that the engineering work was completed, but that the County was still not through with their internal process for completing the approval. It wasn't the first time the County took time processing our plans after the engineering work was done, as they would go from one department to the next awaiting final review and approval from each department head. We reasonably assumed the process was ongoing according to their administration process.

11. We met with several county representatives on February 4. The County's response was consistent throughout. They contended that we were taking people's money, the

project could not be completed anyway, and they were not going to back down on the default. As far as I know, they have never changed their minds.

12. I told them that we did not have plans, and that the plans were critical to be able to bid the job. That was the first time I ever heard that the plans were available at the County offices. It was too late to do anything with them in February 2010. We needed them in August, 2009.

13. By this point the media was picking up on the dispute, and the project went into limbo, at least from a construction standpoint.

This 13th day of June, 2014.

Patrick Selvey
Patrick Selvey

Sworn to and subscribed before
me this 13th day of June, 2014.

Anita J. Selvey
Notary Public for North Carolina in Mecklenburg
Print Name: Anita J. Selvey County
My Commission Expires: 6-24-17



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2013-CP-46-00246

MORNINGSTAR FELLOWSHIP)
CHURCH,)
Plaintiff,)
-vs-)
YORK COUNTY, SOUTH)
CAROLINA,)
Defendant.)

**AFFIDAVIT OF
REBECCA BOWYER**

Personally appeared before me, Rebecca Bowyer, who first being duly sworn deposes
and says that:

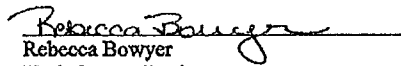
1. She is over the age of eighteen (18) years; she is the York County Engineer; has been employed by York County as Assistant County Engineer or County Engineer for approximately 10 years; and while she is not familiar with this litigation, she is familiar with the underlying facts, and has been asked to provide this affidavit to address an issue which she has been informed is relevant to the above-captioned litigation.

2. The matters set forth in this affidavit are based upon her personal knowledge and/or belief as an Engineer for York County.

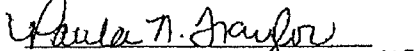
3. Specifically, referring to the Development Agreement in issue and the requirement of Plaintiff having to sign a non-reimbursable agreement as described on page 7, section VII A of the Development Agreement, the requirement would only have been applicable if there had been a proposed extension or relocation of an existing County-owned water and sewer line (applicable section attached and incorporated herein by reference).

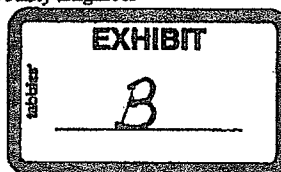
4. At the time of the site plan approval in issue, there was no proposed extension or relocation of an existing County owned water and/or sewer line proposed by Morningstar or required by York County; consequently, there was no agreement to sign.

5. Further Affiant sayeth not.


Rebecca Bowyer
York County Engineer

Sworn to before me this
16th day of June, 2014


My commission expires: 01-05-2019



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2013-CP-46-00246

MORNINGSTAR FELLOWSHIP
CHURCH,

Plaintiff,

vs.

YORK COUNTY, SOUTH CAROLINA,

Defendant.

AFFIDAVIT OF DAVID YARNES

FILED-RECEIVED
2014 AUG 13 AM 9:36
DAVID HAMILTON
C.C.P. & J.S.
YORK COUNTY, SC

David Yarnes, being duly sworn, testifies as follows:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. Attached to my affidavit is a copy of the Notice of Approval previously presented to the Court as Exhibit H to the County's motion for summary judgment. It is entitled "Notice of Approval" but refers only to storm water issues and lacks the definitive information and designation for an approval of this nature.
3. Our attorney presented the document to me on Thursday, August 7, 2014. He told me it was attached to an email I sent to him on November 30, 2012 that he had found in going back through all of his files to prepare the case for trial. I am not sure after having identified it on November 30, 2012 it was not included in the volumes of documents we produced. It certainly was not intentionally withheld from the thousands of pages we organized and produced.
4. To the best of my memory, it was given to me by the County as evidence of site plan approval after I asked for it in mediation.

5. As I stated in my original affidavit, the first time I knew that the County was contending that the "clock had started" in providing the information required under IV(c) of the Development Agreement was January, 2010. As previously mentioned, I was waiting to discuss a utility extension agreement, and was stunned. I asked the County not to declare default based on numerous erroneous items I pointed out. I further contended that the County declaring default would keep us from producing the necessary financial items they were asking for that were called out for in the agreement. I proved to be right, and Morningstar suffered damage as a result.

This 12 day of August, 2014.


David Yarnes

Sworn to and subscribed before me
this 12 day of August, 2014.

Patricia Smith
Notary Public, Patricia Smith
My commission expires: 02/23/2021



YORK COUNTY GOVERNMENT

Engineering Department

NOTICE OF APPROVAL

DATE: 08-24-2009

TO: Power Engineering Company, Inc.
Mr. Gerald Lee, PE
138 Westpark Boulevard
Columbia, South Carolina 29210

FROM: Billy J. Payne Jr., York County Stormwater Plans Examiner-CSPR

SUBJECT: Heritage Tower Project, Storm-water Management and Sediment and
Erosion Control Plan, Permit #08-152 Tax Map # 7290000457.

I have reviewed the Storm-water Management and Sediment Control plan for the above project. The submittal met the requirements of the Storm water Management and Sediment Control Ordinance of York County. Please call 803-684-8571 48 hours in advance in order to schedule a time for the pre-construction meeting so that the grading permit can be issued. This meeting will occur on-site with a representative from our office, the financially responsible party and the grading contractor. This grading permit must be posted at the job site prior to beginning land disturbance. Please note that the York County does not issue the preliminary grading permit until the financial responsible person has received the NPDES permit from SCDHEC.

The Storm water Management and Sediment Control Office must be notified at least 48 hours prior to commencing land disturbance. Additionally, this office should be contacted should the plans require revision for any reason. Revisions of the Storm water Plan may require additional review and approval.

Failure to comply with either of these procedures is a violation of the ordinance.

THE APPLICANT IS RESPONSIBLE FOR OBTAINING APPROVALS FROM OTHER COUNTY, STATE AND FEDERAL DEPARTMENTS OR AGENCIES. STORMWATER MANAGEMENT AND SEDIMENT CONTROL REVIEW AND APPROVAL DOES NOT GUARANTEE NOR IMPLY SUBDIVISION, ZONING, OR BUILDING AND CODE REVIEW OR APPROVAL.

If you have any questions, contact me at the telephone number provided.

Thank you

Billy Payne
Environmental Code Compliance Plans Examiner

Post Office Box 148, 6 South Congress Street York, South Carolina 29745-0148
Telephone: (803) 684-8571 Fax (803) 684-8596 Web www.yorkcountygov.com

MORNINGSTAR_17521

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-CP-46-00246

Morningstar Fellowship
Church,

Appellant,

v.

York County, South Carolina,

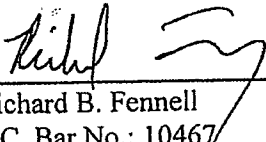
Respondent.

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 14-3-330(2), Morningstar Fellowship Church appeals the Order on Defendant York County's Motion to Exclude Damages and Motion *In Limine* of the Honorable Daniel D. Hall, announced on the record February 2, 2015, and entered on February 3, 2015.

Pursuant to S.C. Code Ann. § 14-3-330(1), Morningstar Fellowship Church also appeals the Order for Partial Summary Judgment of the Honorable S. Jackson Kimball, dated July 16, 2014 and entered on July 17, 2014.

February 3, 2015


Richard B. Fennell
S.C. Bar No.: 10467
James, McElroy & Diehl, P.A.
Charlotte, NC 28202
(704) 372-9870
Attorney for Appellant

Other Counsel of Record:
Daniel J. Ballou
W. Keith Martens
Hamilton Martens Ballou & Carroll, LLC
P.O. Box 10940
Rock Hill, SC 29731
Attorneys for Respondent

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FEB 06 2015
SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4600246

Morningstar Fellowship
Church

York County South
Carolina

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.
- ☒ 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 INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: **ORDER ON DEFENDANT YORK COUNTY'S MOTION TO EXCLUDE DAMAGES AND MOTION IN LIMINE**

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.

s/ Daniel D. Hall

2753

2/2/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on February 3, 2015, and a copy mailed first class or placed in the appropriate attorney's box on February 3, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Richard B. Fennell James, Mcelroy & Diehl, PA 600 S.
College Street Charlotte, NC 28202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel Joseph Ballou PO Box 10940 Rock Hill, SC 29731
Michael Kurt Kendree Sr. PO Drawer 299 York, SC 29745

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

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.

STATE OF SOUTH CAROLINA
COUNTY OF YORK
Morningstar Fellowship Church,

FILED-RECEIVED
2015 FEB -3 AM 8:29
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-46-00246

Plaintiff,

v.

York County, South Carolina,

Defendant.

ORDER ON DEFENDANT YORK
COUNTY'S MOTION TO EXCLUDE
DAMAGES AND MOTION *IN LIMINE*

This matter comes before me on (1) Motion by York County (the "County") for an order excluding damages alleged to have been sustained by Plaintiff Morningstar Fellowship Church ("Morningstar") and (2) Motion *in limine* to exclude certain testimony and evidence at the trial of this case. After reviewing the motions and responses, as well as the deposition testimony and other submissions of counsel for the parties, I find and conclude as follows:

FACTS

This case arises from a development agreement entered into by Morningstar and the County pursuant to S.C. Code Ann. §6-31-10, et seq. (2004)(the "Agreement"), recorded May 5, 2008. The Agreement concerns, among other things, the intended completion, rehabilitation and remodeling of what was previously known as Heritage Tower, a 21-story condominium planned to have been part of the PTL Ministries development in the Regent Park area of Fort Mill, South Carolina (the "Tower"). Paragraph IV.C.2. of the Agreement provides:

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

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Morningstar contends that the County breached the Agreement by, among other things, failing to give it notice by certified or regular mail of the approval of the Morningstar site plan for the project, by declaring default when Morningstar failed to provide required financial information within 180 days after approval of its site plan and by allegedly failing to comply with the dispute resolution procedures set forth in the Agreement. The County denies the allegations of breach and contends that Morningstar's failure to provide the financial information required by Paragraph IV.C.2. constitutes a breach and default under the Agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. MORNINGSTAR'S DAMAGES

In response to standard interrogatories served upon Morningstar by the County, Morningstar contends as follows:

"3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Morningstar.

RESPONSE: Plaintiff's damages are in three basic categories:

- (a) Loss of Value of the Tower which Defendants seek to have demolished. \$11,889,719.00
- (b) Cost of the engineering, marketing, architectural legal and development spent to date \$1,201,456.00
- (c) Lost income from reservation holders at the towers over the next 5 years \$7,187,421.00."

The County has moved to exclude these damages on the grounds that they lack foundation, are based on conjecture and speculation, and are not recoverable as a matter of law.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). As set forth hereinbelow, I find and conclude that the damages

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claimed by Morningstar are not recoverable in this action as a matter of law, and all evidence supporting such evidence should be excluded from the trial of this case.

1. Morningstar Cannot Prove "Loss of the Value of the Tower."

Morningstar contends that it should be allowed to present evidence of the "lost value of the Tower," which its CEO and 30(b)(6) designee, Rick Joyner, testified was the value of the partially constructed building in place that would not have to be paid for if the Tower were completed. Joyner at 498-504. Morningstar therefore claims, should it prevail at trial, the difference between the amount estimated in 2008 and whatever that value is today, representing the alleged increased costs of construction if it is allowed to complete the project. However, Morningstar has not determined what this number is, and Joyner admitted he cannot put a value on it with any degree of certainty. Joyner at 511 - 514.

The expert witnesses identified by Morningstar to testify as to the "General Economics of the Project/Damages," including Moore Stephens & Lovelace and Integra Realty Resources, and the documents related to such witnesses, all relate to matters prior to Morningstar's default under the Development Agreement. Morningstar has not provided any evidence whatsoever of any damages to the value of the Tower occurring after March 5, 2010, the date on which the County declared default. In fact, Morningstar's architect, Jefferson C. Woodall specifically stated in a letter to Plaintiff's counsel dated February 12, 2014, that "it is my opinion that the cost to renovate and restore has not significantly increased due to any change in the building condition over the period between the cost estimates in 2010 and the present."

Morningstar's evidence of any increased costs associated with the completion of the Tower is based upon conjecture and speculation and is contradicted by its own experts. Morningstar therefore cannot establish any amount of damages resulting from "Loss of the Value

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of Tower," asserted in Response 3(a), and that component of damages is excluded from the trial of this case.

2. Morningstar Cannot Recover Damages for Development Costs.

Morningstar also seeks an award of damages for the "engineering, marketing, architectural, legal and development spent to date \$1,201,456.00." Prior to trial, Morningstar revised this number downward to \$819,460.89, representing the amount it contends was spent on the Tower that must be incurred again if it is allowed to complete the project. Deposition testimony reveals that Morningstar has made no attempt to verify whether any of the expenses must in fact be incurred again, but instead simply calculated what had been spent on the Tower to date according to its internal accounting records. Joyner at 582-584; Deposition of David Yarnes at 368, 578-580, 591-592. Without evidence of which expenses assigned to the Tower are required to be incurred again if the Tower were allowed to be completed, the calculation of damages proximately caused by the alleged breach become a matter of conjecture and speculation.

While proof of Morningstar's damages with mathematical certainty is not required, "in order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)(citing Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968)). The evidence as to the added development costs is in the Court's view speculative, not only as to the amount but speculative as to the portion thereof proximately and directly resulting from the alleged breach on the part of

#4 OOH

the County. Accordingly, such evidence has no real probative value in ascertaining the amount of any actual damage property resulting from such alleged breach.

3. Morningstar has Produced No Evidence of Lost Profits Resulting from Actions of the County.

Morningstar also seeks recovery for lost future income in the amount of \$7,187,421.00 which it has characterized as the income it anticipated receiving from future sales over five years. Yarnes at 594-597. Mr. Yarnes testified that he prepared an undated preliminary operating statement containing the proposed calculation, but could not identify who compiled the information contained within the operating statement or when it was compiled. Yarnes at 598. He further stated that the information contained in the spreadsheet was obtained from other projections within the same document and had not been verified by Morningstar's own accountants. Id., at 598-601. Moreover, Morningstar has offered no evidence that any person who made any reservation for a unit in the Tower withdrew that reservation because of the declaration of default by the County.

Not only has Morningstar failed to provide any detail or evidence supporting its blanket allegation of lost income, but any assertion that such alleged damages were the proximate result of any activity by the County is pure speculation. Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 208, 662 S.E.2d 444, 450-51 (Ct. App. 2008)(holding that a claim for lost prospective profits, requires proof that such profits: (1) were reasonably certain to have been realized; and (2) can be ascertained and measured from the evidence produced with reasonable certainty); see also Petty v. Weyerhaeuser Co., 288 S.C. 349, 355, 342 S.E.2d 611, 615 (Ct.App.1986).

Here, Morningstar has simply proposed a number, \$7,187,421.00, which it contends, without any objectively measurable support, constitutes an amount of lost income over the next 5 years on a project that was not complete and had no funding in place. No back up for this

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calculation exists in any of the documents provided to the County, no methodology has been proposed to calculate it, and no witness has been identified who would substantiate it. So too, no evidence from any witness has been provided to substantiate the reason for any reservation holder to request a refund of their reservation, or whether such refunds had anything to do with the actions of the County.

In Drews Co., Inc., v. Ledwith-Wolfe Assoc., Inc., 296 S.C. 207, 371 S.E.2d 532 (1988), our Supreme Court discussed the requirements for establishing an evidentiary basis for claiming lost profits. Under Drews, recovery of lost profits for a new business requires a showing that the profits were lost as a natural consequence of the breach of contract, that they were foreseeable at the time the contract was made, and that they be established with reasonable certainty. 296 S.C. at 213.

The profits that Morningstar seeks to recover were allegedly the result of lost sales of life leases in the Tower. At the time of the declaration of default, and in fact as the reason for the default, Morningstar was unable to provide evidence of financial viability of the project. Therefore, there is no evidence that profits of any kind were the natural consequence of the declaration of default, even if it were a breach of the Agreement. Moreover, in response to the County's interrogatories, Morningstar concedes that many of the "Priority Reservation Applications" it claims were refunded because of the County's alleged breach occurred before the County declared default. Morningstar's Response to Defendant's Interrogatories No. 11 and 12. Similarly, lost profits could not have reasonably been in the contemplation of the parties without evidence that the project was financially viable. 296 S.C. at 213.

Even more crucially, Morningstar is unable to establish lost profits with any reasonable certainty. As noted in Drews, an owner's expectations, unsupported by any particular standard

or fixed method for establishing net profits, are wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty. 296 S.C. at 214. As a result, I conclude that Morningstar's alleged lost profits were not a natural consequence of the declaration of default, were not within the reasonable contemplation of the parties and find that they cannot be ascertained or measured from the evidence produced with any reasonable certainty and that they should therefore be excluded.

B. THE COUNTY'S MOTIONS IN LIMINE

1. Evidence of Settlement Discussions and Mediation

Morningstar's complaint includes allegations that the County did not negotiate "in good faith" as the parties attempted to resolve their dispute prior to litigation. Complaint ¶¶ 27.c. and 32. The County seeks to prevent the introduction of any testimony concerning the parties' settlement discussions, including discussions occurring in connection with the parties' failed attempts at mediation. The County further seeks to specifically exclude the following exhibits, which have been identified by Morningstar as trial exhibits:

29.	Carl Epps May 3, 2010 Letter	MorningStar 17443-17445
30.	Jim Baker Letter July 14, 2014	MorningStar 17460-17462
31.	Yarnes Letter January 3, 2011	MorningStar 17441-17456
32.	Carl Epps Aug. 12, 2010 Letter	MorningStar 17527-27529
33.	Jim Baker June 24, 2010 Letter	MorningStar 17437-17439
34.	Yarnes January 3, 2011 Letter	MorningStar 17460-17462
35.	Carl Epps March 3, 2011 Letter	MorningStar 17430-17432
36.	Yarnes June 30, 2011 Letter	MorningStar 17433-17444
37.	MorningStar Mediation Responses	MorningStar 155-197

South Carolina has long held that "evidence of disclosures made by either party to the other, directly or indirectly, in negotiations for a compromise" is inadmissible for purposes of

#7 004

establishing liability or damages. Woodward v. Southern Ry. Co., 88 S.C. 453, 70 S.E. 1060, 1061 (1911). More recently, South Carolina has adopted Rule 408 S.C. R. Evid., which provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering to accept, valuable consideration in compromising or attempting to compromise a claim which was disputed as to validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. . . .

Rule 408 S.C. R. Evid.

South Carolina's Rule 408 is identical to Federal Rule of Evidence 408. It "is broader than the common law exclusionary rule in many jurisdictions and excludes from evidence *all statements made in the course of settlement negotiations.*" Fiberglass Insulators, Inc. v. Dupuy, 856 F.2d 652, 654 (4th Cir. 1988)(comparing Federal Rule 408 to common law exclusionary rules)(italics added). The purpose of Rule 408 "is to encourage the parties to be able to meet and attempt to settle claims outside of court . . . through "frank and open discussion of the strengths and weaknesses of each side's case." Polk v. BP Amoco Chem. Co., 586 F. Supp. 2d 619, 622 (D.S.C. 2008).

Like Evidence Rule 408, South Carolina's mediation rules encourage the parties to engage in "frank and open discussion" and also unequivocally state that "[c]ommunications during a mediation settlement conference shall be confidential." S.C. ADR Rules, Rule 8. In fact, Rule 8 provides:

[T]he parties and any other person present *shall* maintain the confidentiality of the mediation and *shall not* rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding. . . .

Id. (italics added).

Morningstar contends that it seeks to introduce evidence of information exchanged and positions taken in mediation "to demonstrate the County's failure to properly follow the dispute resolution procedures required under the Development Agreement," which is itself a basis alleged by Morningstar for its claim of breach of the Agreement. I therefore find and conclude that all such communications, statements and other information is inadmissible under Rule 408 and ADR Rule 8. These rules make clear that statements and correspondence exchanged by parties during the course of settlement discussions or mediation may not later be introduced as evidence at trial. Accordingly, all such evidence is excluded.

2. Subjective Views of Former York County Councilman Buddy Motz

Morningstar also seeks to offer evidence in the form of emails and live testimony from former York County Councilman Buddy Motz concerning his alleged views of Morningstar's ministry. (Plaintiff's pretrial Ex. 18. "Motz January 22, 2010 email - County Production p. 656"). Mr. Motz is the apparent author of an email that includes unflattering comments about Morningstar and its perceived connection to the former owner of the subject property, PTL Ministries. Morningstar seeks to introduce Mr. Motz's testimony and email as evidence of the County's bias and its alleged motivation for declaring Morningstar in default of the Agreement.

Even if Mr. Motz harbored personal bias against Morningstar, his alleged bias cannot be imputed to the County. Furthermore, Morningstar's attempt to introduce Mr. Motz's personal views and emailed comments as evidence of the County's alleged bias is not permitted. In Bear Enterprises v. County of Greenville, the South Carolina's Court of Appeals admonished a landowner for "interrogating" individual members of the Greenville County Council in an attempt to demonstrate that the County had arbitrarily denied the landowner's rezoning request.

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319 S.C. 137, 139 n.1, 459 S.E.2d 883, 885 n.1 (Ct. App. 1995). As the Court of Appeals stated in that case,

We are aware of no authority allowing someone challenging action by Council to interrogate members individually to impeach Council's decision. The governing body of a municipality acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise. If individuals are not satisfied with decisions made by members of a municipal government within the limits of the law, their remedy is at the polls, not the courts.

Id. The Court of Appeals criticized the landowner's tactics as "inappropriate," even though "the County did not object to the procedure." Id. In this case, York County *does* object to Plaintiff's planned interrogation of Mr. Motz, a former member of York's County Council.

Similarly, the Supreme Court cited Bear Enterprises with approval in finding that subpoenas for county council members were properly quashed by the trial court in Greenville Co. v. Kenwood Enters., 353 S.C. 157, 175 S.E.2d 428 (2003), *overruled on other grounds* by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005). As Justice Waller noted, "[w]hat County Council members' motivations were for passing the Ordinance simply is not a proper inquiry." Id. Likewise, what the personal motivations Mr. Motz or any other member of County Council may have had in voting to hold Morningstar in default is not a proper inquiry in this case, and all such evidence is hereby excluded.

3. Motion to Exclude Evidence of Damages

The County's Motion in this regard is a restatement of its Motion to Exclude Damages dealt with previously in this Order, and is granted for the reasons set forth herein.

4. Evidence or Argument that is Contrary to the Court's Prior Substantive Rulings

The County seeks to exclude any evidence or argument that is contrary to the court's prior substantive rulings in this case. In particular, the County seeks to preclude Plaintiff from introducing testimony or argument that the parties' Agreement required the County to deliver notice of site plan approval to Plaintiff by certified mail. Morningstar agrees that it cannot argue that notice by certified mail was required by the language of the Agreement, but seeks to argue that it should be permitted to state that it expected notice in that fashion given the gravity of the consequences of default. I find that nothing in Judge Kimball's Orders in this case precludes Morningstar from arguing that it expected notice by certified mail of site plan approval, and decline to exclude testimony or argument to that effect.

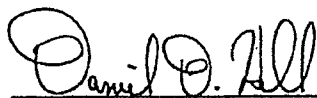
5. "Petition Regarding Interest" to York County Council

Finally, Morningstar seeks to introduce a "Petition Regarding Interest" that it contends was submitted to the York County Council in February 2011 (Pl. Ex. 6 - "Petition Regarding Interest - MorningStar 103-131"). The petition post-dates the County's declaration of default by eleven months, and has no probative value to the issues for trial – whether the County breached the Agreement; whether Morningstar defaulted on the Agreement; and what rights, remedies and obligations the parties possess under the Agreement. The "Petition Regarding Interest" that Morningstar seeks to introduce is not relevant or probative to any of those issues, and further is clearly an out of court statement offered for the proof of the matter asserted, i.e. that there was a market for the Tower project if it could have been completed. Accordingly, it is hearsay barred by Rule 801, S.C. R. Evid. Moreover, the petition is likely to be misconstrued or misunderstood by the jury, and its potential to cause unfair prejudice, confusion of the issues, or to mislead the jury substantially outweighs any probative value of the document. Rule 403 S.C. R. Evid. Accordingly, such evidence is excluded from the trial of this case.

CONCLUSION

IT IS THEREFORE ORDERED that York County's Motion to Exclude Damages be, and is hereby GRANTED; that York County's Motions *in limine* 1, 2, 3 and 5 are hereby GRANTED, and that its Motion *in limine* 4 is DENIED.

AND IT IS SO ORDERED.



Daniel D. Hall
Resident Judge
Sixteenth Judicial Circuit

York, South Carolina
February 2, 2015

4843-6187-9329, v. 1

#1200A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-CP-46-00246

Morningstar Fellowship
Church,

Appellant,

v.

York County, South Carolina,

Respondent.

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. §§ 14-3-330(1) and 14-4-330(2), Morningstar Fellowship Church appeals the Order Granting Defendant's Renewed Motion for Entry of Judgment of the Honorable Daniel D. Hall, entered on November 10, 2015.

Pursuant to S.C. Code Ann. §§ 14-3-330(1) and 14-4-330(2), Morningstar Fellowship Church also appeals the Order for Partial Summary Judgment of the Honorable S. Jackson Kimball, dated July 16, 2014 and entered on July 17, 2014, and the Order on Defendant York County's Motion to Exclude Damages and Motion *In Limine* of the Honorable Daniel D. Hall, announced on the record February 2, 2015, and entered on February 3, 2015.

November 12, 2015


Richard B. Fennell

S.C. Bar No. 10467

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Morningstar Fellowship Church,
Plaintiff,

Civil Action No. 2013-CP-46-00246

v.

York County, South Carolina,
Defendant.

**ORDER GRANTING DEFENDANT'S
RENEWED MOTION FOR
ENTRY OF JUDGMENT**

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This matter comes before me on the Defendant's Renewed Motion for Entry of Judgment. Present and representing the parties at the hearing on October 27, 2015, were Richard B. Fennell for the Plaintiff, and Daniel J. Ballou and W. Keith Martens for the Defendant. Based upon the record before the Court, the applicable law, the papers filed by the parties and the arguments of counsel, I make the following findings and conclusions.

FINDINGS OF FACT

1. This case arises from a development agreement entered into by the Plaintiff, Morningstar Fellowship Church ("Morningstar") and the Defendant, York County ("County") pursuant to S.C. Code Ann. § 6-31-10, et seq. (2004), recorded May 5, 2008 (the "Agreement"). The Agreement concerns, among other things, the intended completion, rehabilitation and remodeling of what was previously known as Heritage Tower, a 21-story condominium planned to have been part of the PTL Ministries development in the Regent Park area of Fort Mill, South Carolina (the "Tower").

2. The Agreement was the result of extended negotiations between Morningstar and the County, and provided for specific milestones to be met by



Morningstar in order to proceed with the project. The history behind the Tower project is set forth more fully in the Court's Order for Partial Summary Judgment dated July 17, 2014, a copy of which is attached hereto as Exhibit A, and which is Incorporated herein by reference.

3. The parties' dispute involves competing allegations concerning performance under the Agreement, which contemplated the submission by Morningstar of a commercial site plan for approval by the County. It is undisputed that Section IV.C.2 of the Agreement requires Morningstar to provide specific information as to the project's financial viability to the County within 180 days of the County's approval of Morningstar's site plan. The Agreement further provides that should Morningstar be unable to produce the required financial information within 180 days of approval, the Agreement is deemed to be null and void, and "[a]t such time, the Tower shall be demolished, with all costs for its demolition borne by [Morningstar]." See, Exhibit A, pp. 2-4.

4. The County approved the Morningstar site plan on August 24, 2009, and notified Morningstar's engineers of such approval. See, Exhibit A, p.3, see also, Order on Motion to Alter or Amend, September 29, 2014, a copy of which is attached hereto as Exhibit B, and which is Incorporated herein by reference. Morningstar did not provide any form of evidence of the financial backing of the project as required by the Agreement within 180 days of August 24, 2009, and has not to date. See, Exhibit A, p.3. Nevertheless, Morningstar contends that it did not receive reasonable notice of site plan approval, and that therefore the 180 day time limit did not begin to run. Morningstar further contends that the alleged lack of reasonable notice as well as the



County's subsequent declaration of default constitutes a breach of contract for which it seeks an award of actual and consequential damages.

5. On January 24, 2013, Morningstar filed this lawsuit against the County alleging breach of contract, and seeking a declaratory judgment that it is not in default under the terms of the Agreement and that the County breached the Agreement. On March 25, 2013, the County answered denying breach, and asserting counterclaims for, among other things, breach of contract and declaratory judgment that Morningstar was in default under the Agreement.

6. On September 15, 2014, the County filed a Motion to Exclude Damages on the grounds that the damages alleged by Morningstar were not recoverable as a matter of law and that the evidence relied upon by Morningstar to support such damages was speculative and incompetent and therefore inadmissible as a matter of law. After reviewing extensive discovery, including Interrogatory responses and numerous documents and depositions submitted by counsel for the parties, the Court agreed that Morningstar's claims to money damages were not supportable and that the evidence of damages was incompetent and inadmissible and should be excluded from the trial of this case. Order of February 3, 2015 ("Order"), a copy of which is attached hereto as Exhibit C, and which is incorporated herein by reference.

7. Morningstar mailed an Initial Notice of Appeal on February 3, 2015. On February 4, 2015, the County filed a Motion for Entry of Judgment, which Motion was stayed during the initial appeal. The Court of Appeals dismissed Morningstar's appeal as interlocutory, and following remand, the County filed an amended Motion on May 18, 2015, which was renewed on October 20, 2015.



8. The County moves for judgment pursuant to South Carolina Rules of Civil Procedure 54(b), 56, and 58(a)(2) on the grounds that, in light of the February 3, 2015 Order, Morningstar cannot establish an essential element of its cause of action for breach of contract, and that the claim for breach of contract should be dismissed. The County further moves to dismiss Morningstar's cause of action for declaratory judgment as simply a recasting of its breach of contract claim, and likewise moves that it be dismissed.

9. At the hearing on this Motion, counsel for both parties agreed that Morningstar could not proceed on its breach of contract claim seeking money damages without evidence of such damages.

10. Based upon the papers filed herein, the prior orders of the Court, and the arguments of counsel, I find that Morningstar is unable to establish an essential element of its breach of contract cause of action, and that this cause of action should therefore be dismissed. I further find that Morningstar's cause of action for declaratory judgment is not fully subsumed within its claim for breach of contract, and I decline to enter judgment as to that claim at this time.

CONCLUSIONS OF LAW

1. In order to recover under a breach of contract cause of action, the plaintiff must establish by the greater weight of the evidence (a) that the parties entered into a binding contract, (b) that the defendant breached or unjustifiably failed to perform this contract, and (c) that the plaintiff has suffered damage as a direct and proximate result of the breach. See, Tom J. Ervin, Ervin's South Carolina Request to Charge - Civil § 22-13, at 181 (1994), 17A Am. Jur. 2d Contracts § 716.



2. Proof of damages is an essential element of a breach of contract claim and the inability to prove that element warrants dismissal of the claim. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 686 S.E.2d 200 (Ct. App. 2009), see also, Collins Entertainment, Inc. v. White, 363 S.C. 546, 559-60 611 S.E.2d 262, 268-69 (Ct. App. 2005) (affirming directed verdict on contract cause of action where plaintiff failed to prove damages).

3. Because this Court has granted the County's Motion to Exclude Damages, entry of judgment in favor of the County as to Morningstar's cause of action for breach of contract is appropriate. S.C.R.Civ. P. 58(a)(2).

CONCLUSION

IT IS THEREFORE ORDERED that York County's Motion for Entry of Judgment be, and is hereby GRANTED in part and DENIED in part. Judgment shall be entered against Morningstar on its cause of action for breach of contract, but not as to its cause of action for declaratory judgment.

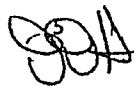
IT IS FURTHER ORDERED that this action is stayed until final disposition of any appeal from this order.

AND IT IS SO ORDERED.



Daniel D. Hall
Resident Judge
Sixteenth Judicial Circuit

York, South Carolina
November 9, 2015



STATE OF SOUTH CAROLINA
COUNTY OF YORK
Morningstar Fellowship Church,
Plaintiff,
vs.
York County, South Carolina,
Defendant.

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DAVID HAMILTON
C.C.P. GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

ORDER FOR PARTIAL
SUMMARY JUDGMENT

Case No. 2013CP4600246

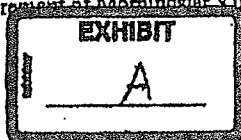
This matter came before me on June 19, 2014, upon Defendant's Motion for Summary Judgment or Partial Summary Judgment. Present and representing the parties at the hearing were: Richard B. Fennell for Plaintiff, and, Daniel J. Ballou and Michael K. Kendres for Defendant. Based on the record before the Court, the applicable law, and the arguments of counsel, I make the following findings and conclusions.

FACTUAL BACKGROUND

This case arises from a development agreement entered into by Morningstar Fellowship Church ("Morningstar") and York County ("County") pursuant to S.C. Code Ann. § 6-31-10, *et seq.* (1976, as amended) (the "Development Agreement" or "Agreement"). The Development Agreement concerns, among other things, the intended completion, rehabilitation and remodeling of what was previously known as Heritage Tower ("Tower"), a 21-story condominium planned to have been part of the former PTL Ministries ("PTL") development in the Regent Park area of Fort Mill, South Carolina.

PTL began construction on the Tower in 1986, but with the dramatic collapse of its ministries and bankruptcy in 1987, all work on the Tower ceased. This left a partially constructed shell that has progressively deteriorated. It now requires major repairs and reconstruction to be rehabilitated and completed to a usable condition.

Prior to its purchase by Morningstar, the subject property was owned by Regent Carolina Corporation ("Regent"). In the summer of 2004, Regent contracted to sell property consisting of 162 acres to Coulston Enterprises, Inc. ("Coulston"). In turn, in July, 2004, Coulston agreed to sell 52 acres, including the Tower, to Morningstar for \$1,600,000.00. Demolition of the Tower was made a specific contractual requirement of Morningstar's purchase from Coulston.



In its Complaint, Morningstar describes the Tower at the time of its purchase as "abandoned and derelict." Morningstar avers that PTL "... abandoned the property approximately twenty (20) years ago." Complaint at ¶ 5. It further alleges that although others had attempted, unsuccessfully, to use the property, it had been abandoned approximately seven years prior to the purchase from Coulston. *Id.* Morningstar did not inspect the Tower prior to purchasing the 52 acre tract. The tract also contained other significant improvements.

Further, Morningstar contracted with Coulston that it would demolish the Tower within 24 months of closing, or pay Coulston an additional \$300,000.00. It also acknowledged that York County could still require the demolition of the Tower anyway. Morningstar's deed also contained a specific easement allowing Coulston to enter the property to demolish the Tower, presumably in the event Morningstar failed to do so. Coulston remained involved in the redevelopment of the property, and submitted a proposed PD Development Plan to York County on behalf of Morningstar, which was approved in January of 2005. That Plan specifically required Morningstar to demolish the Tower by January, 2007.

Notwithstanding the foregoing contractual provisions, and after acquiring the property, Morningstar announced its intention to complete construction of the Tower, and redevelop it for residential use. In pursuit of that intention, Morningstar engaged Roe Messner ("Messner"), a real estate developer specializing in church properties, to develop plans for redevelopment of the Tower. In the Fall of 2005, Messner requested that York County allow Morningstar to renovate and complete the Tower. On December 14, 2005, York County rejected that request, citing the requirements of the existing PD Development Plan.

In response, Morningstar proposed entering into a development agreement that provided a framework for either the completion or demolition of the Tower within five years, which was the stated term of the Agreement. The Agreement reflects that the County would not agree to an indefinite time frame for Morningstar to complete the Tower project, and further required specific benchmarks Morningstar was required to meet along the way. Specifically, Morningstar was required to produce evidence of satisfactory financing for the project within 180 days of site plan approval. Section IV.C.2. of the Agreement provides:

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

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In pursuit of its plan, Morningstar engaged Power Engineering ("Power") to serve as its project engineer to handle dealings with York County, and designated Power as the entity with which the County would correspond. Gerald Lee ("Lee"), then the manager of Power's Charlotte office, was assigned by Power as project manager in early 2009, and he communicated directly with Morningstar's construction manager, Pat Selvey, concerning the site plan approval process. There were rounds of comments and changes through the spring and summer of 2009 concerning the site plan.

On August 18, 2009, Lee met with Billy Payne ("Payne"), the County's Stormwater Plans Examiner, and made some additions and corrections to the plans. Following that, Lee considered that the site plan had met all requirements for final approval. On August 24, 2009, Payne issued a "Notice of Approval" pertaining to the "Heritage Tower Project, Storm-water Management and Sediment and Erosion Control Plan." The "Notice of Approval" indicates that it was received by Power on November 23, 2009. Morningstar asserts that it had no direct knowledge of site plan approval until early 2010, through an exchange of emails and meeting between Morningstar and County representatives.

With regard to notices, the Agreement provides:

H. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, addressed as follows:

To Developer:

Rick Joyner, President
Morningstar Fellowship Church
375 Star Light Drive
Fort Mill, SC 29715

It is undisputed that no other document relating to official approval of the site plan was issued by the County, and no formal "notice" of the approval was sent to Joyner per the provision in the Agreement quoted above.

Morningstar did not provide any form of evidence of the financial backing of the project as required by the Agreement within 180 days from August 24, 2009, and has not to date. As a result, by letter from James Baker, the County Manager, dated March 5, 2010, the County formally notified Morningstar in writing that it was in default under the Agreement for its failure to comply with Section IV.C.2. of the Agreement. Pursuant to the Agreement, the County thereafter



allowed Morningstar an opportunity to cure the asserted default well beyond the Development Agreement's 60 days cure period, and beyond 180 days from the time it had given actual notice of the site plan approval directly to the responsible Morningstar employee. Subsequently, the parties have engaged in mediation as per the Agreement, but without resolution of the dispute.

Morningstar filed this action on January, 24, 2013. In its Complaint, Morningstar asserts three causes of action: a declaratory judgment; breach of contract; and, breach of covenant of good faith and fair dealing. Each is essentially based on these particulars of breach of contract: (1) failure to give notice of site plan approval; (2) declaring a default without any basis for doing so; (3) failure to participate in the mediation process in good faith; and, (4) breach of an implied covenant of good faith and fair dealing.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate 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), S.C.R.C.P. In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn from that evidence 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 the 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). Within this framework, summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law.

It is not, however, sufficient that the nonmoving party seeks to create an inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary judgment. *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006); see also, *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991). However, 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

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remedy and should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); *Hooper v. Ebenezer Senior Svcs. & Rehabilitation Ctr.*, 377 S.C. 217, 226-27, 659 S.E.2d 213, 217 (Ct. App. 2008); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

DISCUSSION

A. The Agreement.

The construction or interpretation of a written contract is a question of law for a court, where the language of the instrument is clear and unambiguous. *Hawkins v. Greenwood Developmant Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997); *United Dominton Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 105, 413 S.E.2d 866, 868 (Ct.App.1992); *J.T.M. Co., Inc. v. Vane*, 283 S.C. 512, 323 S.E.2d 794 (Ct.App. 1984); *Stackhouse v. Pure Oil Co.*, 176 S.C. 318, 180 S.E. 188 (1935); *Huntley v. Sullivan*, 170 S.C. 391, 170 S.E. 664 (1933). "The court must enforce an unambiguous contract according to its terms, regardless of the contracts wisdom or folly, or the parties' failure to guard their rights carefully." *Ellie, Inc. v. Micetohi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493 (Ct. App. 2004).

"To discover the intention of a contract, the court must first look to its language-if the language is perfectly plain and capable of legal construction, it alone determines the documents force and effect." *Id.*, 358 S.C. at 94, 594 S.E.2d at 493. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct.App. 2008).

The foundation of Morningstar's claim is that the County did not give Morningstar notice of the approval of the site plan for the project. All of Morningstar's claims flow from this pivotal assertion. It further asserts that notice must be in the form and manner specified in the Agreement for the giving of notice to parties. It contends that it did not know that the site plan was approved in August, 2009, and that the procedure for giving notice under the Agreement was not followed. It further contends that notice to its designated engineer-agent on the project was ineffective, because the termination-demolition clause a contractual issue, not a design or construction issue, and was therefore, beyond the scope of its engineers' agency. Thus, it asserts, the County has breached the Agreement by declaring a default.

I find and conclude that the Agreement does not require that Morningstar receive formal notice of site plan approval as specified in Article XI, § H., of the Agreement quoted herein.


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While if notice is given in the manner specified in the applicable provision it is conclusively deemed to have been given and received, the language does not exclude the giving and receiving of notice by other means. In fact, the record presented reveals that the progress of the project was monitored and communicated by other means, such as emails or direct interaction between Power and the County, and Power and Morningstar, throughout the approval process.

Nevertheless, in looking into the intention of the parties, it is also relevant to consider "... the situation of the parties, as well as their purposes, at the time the contract was entered into." *Klutts Resort Realty, Inc. v. Down'round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977). "In the absence of an express provision in the contract, the law will imply an agreement to do those things that according to reason and justice should be done to carry out the purpose for which the contract was made." *Columbia East Associates v. Bi-Lo, Inc.*, 299 S.C. 515, 520-521, 386 S.E.2d 259, 262 (Ct.App. 1989).

Although Section IV.C.2. of the Agreement says only that the 180 days for compliance starts with approval of the site plan, it is not reasonable to suppose that no notice of such approval was required. Based on the record presented, and applying the required standard of review, I conclude that some standard of reasonable notice should be implied as part of this provision of the Agreement. It would make no sense to suppose that the County could secretly approve the site plan, then make no communication of such approval to Morningstar, or its responsible agent, and wait for the 180 days to elapse to declare a default.

By making such a conclusion, I do not intend to suggest that the notice given and relied upon by the County was not sufficient. Rather, I believe that such sufficiency is a question of fact based on the record presented. It is clear that Morningstar's engineer, Power, was designated as its representative and agent for dealing with the County on this project, and that part of Power's duties included dealing with the County on all aspects of approval of the site plan. Under the circumstances, the engineer would necessarily be the first to have knowledge of site plan approval.

Thus, I find and conclude that under the circumstances of this case and the parties' relationship, a full presentation of the facts pertaining to the reasonableness of the notice of approval of the site plan is appropriate. Such a conclusion precludes a grant of summary judgment on Morningstar's breach of contract and declaratory judgment causes of action.

B. Morningstar's Third Cause of Action.

Morningstar asserts a separate cause of action based upon a covenant of good faith and fair dealing. In this state, there is no separate cause of action for breach of the covenant of good faith

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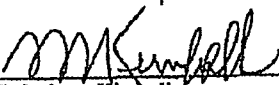
and fair dealing. *Rotec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004). Hence, the County is entitled to a dismissal of the third cause of action.

CONCLUSION

Based on the findings and conclusions herein, the arguments presented, the exhibits submitted for the Court's consideration, and the applicable law, it is ordered that Defendant's Motion for Summary Judgment be denied as to Plaintiff's first and second causes of action. It is further ordered that Defendant's motion be granted as to Plaintiff's third cause of action.

AND IT IS SO ORDERED.

July 16, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

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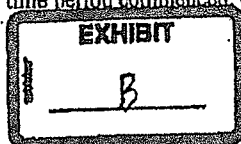
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COUNTY OF YORK 2014 SEP 29 AM 9:42 THE COURT OF COMMON PLEAS
Morningstar Fellowship Church, DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC
Plaintiff,)
) ORDER ON MOTION
) TO ALTER OR AMEND
) (RULE 59(e), SCRPC)
vs.)
) Case No. 2013CP4600246
York County, South Carolina,)
) Defendant.)

This matter came before me on September 18, 2014, upon motion of Defendant, York County, pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the ruling in the Court's Order filed July 17, 2014. Representing Plaintiff was Richard B. Fennell, and representing Defendant was Daniel J. Ballou.

The purpose of Rule 59(e), SCRPC, 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, particularly the specific deposition testimony and exhibits cited by Plaintiff, and the arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the Order. I further find no basis for reconsideration or amendment of the ruling in the prior Order. However, I make the following comments for clarification. In doing so, I incorporate by reference the entirety of the factual background, discussion and analysis set forth in the prior order.

I reiterate that there is no genuine issue of fact concerning approval of the Morningstar site plan. Further, it is clear that such approval status was understood by Morningstar's agent, namely, its engineer responsible for the project, who is the person to whom the County would normally communicate notice of approval. It also appears that Morningstar's Pat Selvey was aware of approval. Morningstar's reliance on its assertion of an understanding that notice was accomplished, and the critical 180 day time period commenced, only upon receipt of a "stamped"



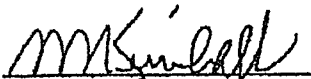
set of plans is misplaced. The language of the parties' agreement imposes no such requirement, and such a requirement is refuted by, and inconsistent with, the deposition testimony of Morningstar's engineers. The engineers anticipated a post-approval, but pre-construction, meeting prior to delivery of "stamped" sets of plans, which did not occur.

I view the only issue to be whether reasonable notice of approval was communicated, and knowledge of such approval was received, by Morningstar, either directly, or its agent. Applying, as is required, the very stringent "scintilla" standard, I do not believe summary judgment is appropriate to remove the issue of sufficiency of notice from consideration by the fact finder. As already stated in my prior order, I do not intend to suggest that the notice given and relied upon by the County was not sufficient, only that the applicable standard of review precludes summary judgment on that issue under the facts of this case.

Therefore, it is ordered that Plaintiff's Motion for Reconsideration (Rule 59(e), SCRCP) be, and the same hereby is, denied.

AND IT IS SO ORDERED.

September 25, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

#2

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 2015 FEB -3 AM 8:29
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

Morningstar Fellowship Church,
 Plaintiff,

v.

York County, South Carolina,
 Defendant.

Civil Action No. 2013-CP-46-00246

ORDER ON DEFENDANT YORK
 COUNTY'S MOTION TO EXCLUDE
 DAMAGES AND MOTION *IN LIMINE*

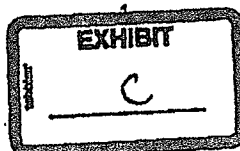
This matter comes before me on (1) Motion by York County (the "County") for an order excluding damages alleged to have been sustained by Plaintiff Morningstar Fellowship Church ("Morningstar") and (2) Motion *in limine* to exclude certain testimony and evidence at the trial of this case. After reviewing the motions and responses, as well as the deposition testimony and other submissions of counsel for the parties, I find and conclude as follows:

FACTS

This case arises from a development agreement entered into by Morningstar and the County pursuant to S.C. Code Ann. §6-31-10, et seq. (2004) (the "Agreement"), recorded May 5, 2008. The Agreement concerns, among other things, the intended completion, rehabilitation and remodeling of what was previously known as Heritage Tower, a 21-story condominium planned to have been part of the PTL Ministries development in the Regent Park area of Fort Mill, South Carolina (the "Tower"). Paragraph IV.C.2. of the Agreement provides:

2. Within 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to County, then this Development Agreement shall be deemed null and void. At such time, the Tower shall be demolished, with all costs for its demolition borne by the Developer.

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Morningstar contends that the County breached the Agreement by, among other things, failing to give it notice by certified or regular mail of the approval of the Morningstar site plan for the project, by declaring default when Morningstar failed to provide required financial information within 180 days after approval of its site plan and by allegedly failing to comply with the dispute resolution procedures set forth in the Agreement. The County denies the allegations of breach and contends that Morningstar's failure to provide the financial information required by Paragraph IV.C.2. constitutes a breach and default under the Agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. MORNINGSTAR'S DAMAGES

In response to standard interrogatories served upon Morningstar by the County, Morningstar contends as follows:

"3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Morningstar.

RESPONSE: Plaintiff's damages are in three basic categories:

- (a) Loss of Value of the Tower which Defendants seek to have demolished. \$11,889,719.00
- (b) Cost of the engineering, marketing, architectural legal and development spent to date \$1,201,456.00
- (c) Lost income from reservation holders at the towers over the next 5 years \$7,187,421.00."

The County has moved to exclude these damages on the grounds that they lack foundation, are based on conjecture and speculation, and are not recoverable as a matter of law.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). As set forth hereinbelow, I find and conclude that the damages

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claimed by Morningstar are not recoverable in this action as a matter of law, and all evidence supporting such evidence should be excluded from the trial of this case.

1. Morningstar Cannot Prove "Loss of the Value of the Tower."

Morningstar contends that it should be allowed to present evidence of the "lost value of the Tower," which its CEO and 30(b)(6) designee, Rick Joyner, testified was the value of the partially constructed building in place that would not have to be paid for if the Tower were completed. Joyner at 498-504. Morningstar therefore claims, should it prevail at trial, the difference between the amount estimated in 2008 and whatever that value is today, representing the alleged increased costs of construction if it is allowed to complete the project. However, Morningstar has not determined what this number is, and Joyner admitted he cannot put a value on it with any degree of certainty. Joyner at 511 - 514.

The expert witnesses identified by Morningstar to testify as to the "General Economics of the Project/Damages," including Moore Stephens & Lovelace and Integra Realty Resources, and the documents related to such witnesses, all relate to matters prior to Morningstar's default under the Development Agreement. Morningstar has not provided any evidence whatsoever of any damages to the value of the Tower occurring after March 5, 2010, the date on which the County declared default. In fact, Morningstar's architect, Jefferson C. Woodall specifically stated in a letter to Plaintiff's counsel dated February 12, 2014, that "It is my opinion that the cost to renovate and restore has not significantly increased due to any change in the building condition over the period between the cost estimates in 2010 and the present."

Morningstar's evidence of any increased costs associated with the completion of the Tower is based upon conjecture and speculation and is contradicted by its own experts. Morningstar therefore cannot establish any amount of damages resulting from "Loss of the Value

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of Tower," asserted in Response 3(a), and that component of damages is excluded from the trial of this case.

2. Morningstar Cannot Recover Damages for Development Costs.

Morningstar also seeks an award of damages for the "engineering, marketing, architectural, legal and development spent to date \$1,201,456.00." Prior to trial, Morningstar revised this number downward to \$819,460.89, representing the amount it contends was spent on the Tower that must be incurred again if it is allowed to complete the project. Deposition testimony reveals that Morningstar has made no attempt to verify whether any of the expenses must in fact be incurred again, but instead simply calculated what had been spent on the Tower to date according to its internal accounting records. Joyner at 582-584; Deposition of David Yarnes at 368, 578-580, 591-592. Without evidence of which expenses assigned to the Tower are required to be incurred again if the Tower were allowed to be completed, the calculation of damages proximately caused by the alleged breach become a matter of conjecture and speculation.

While proof of Morningstar's damages with mathematical certainty is not required, "in order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)(citing Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968)). The evidence as to the added development costs is in the Court's view speculative, not only as to the amount but speculative as to the portion thereof proximately and directly resulting from the alleged breach on the part of

the County. Accordingly, such evidence has no real probative value in ascertaining the amount of any actual damage properly resulting from such alleged breach.

3. Morningstar has Produced No Evidence of Lost Profits Resulting from Actions of the County.

Morningstar also seeks recovery for lost future income in the amount of \$7,187,421.00 which it has characterized as the income it anticipated receiving from future sales over five years. Yarnes at 594-597. Mr. Yarnes testified that he prepared an undated preliminary operating statement containing the proposed calculation, but could not identify who compiled the information contained within the operating statement or when it was compiled. Yarnes at 598. He further stated that the information contained in the spreadsheet was obtained from other projections within the same document and had not been verified by Morningstar's own accountants. Id., at 598-601. Moreover, Morningstar has offered no evidence that any person who made any reservation for a unit in the Tower withdrew that reservation because of the declaration of default by the County.

Not only has Morningstar failed to provide any detail or evidence supporting its blanket allegation of lost income, but any assertion that such alleged damages were the proximate result of any activity by the County is pure speculation. Vortex Sports & Entmt., Inc. v. Ware, 378 S.C. 197, 208, 662 S.E.2d 444, 450-51 (Cl. App. 2008)(holding that a claim for lost prospective profits, requires proof that such profits: (1) were reasonably certain to have been realized; and (2) can be ascertained and measured from the evidence produced with reasonable certainty); see also Petty v. Weyerhaeuser Co., 288 S.C. 349, 355, 342 S.E.2d 611, 615 (Cl.App.1986).

Here, Morningstar has simply proposed a number, \$7,187,421.00, which it contends, without any objectively measurable support, constitutes an amount of lost income over the next 5 years on a project that was not complete and had no funding in place. No back up for this

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calculation exists in any of the documents provided to the County, no methodology has been proposed to calculate it, and no witness has been identified who would substantiate it. So too, no evidence from any witness has been provided to substantiate the reason for any reservation holder to request a refund of their reservation, or whether such refunds had anything to do with the actions of the County.

In Drews Co., Inc. v. Ledwith-Wolfe Assoc., Inc., 296 S.C. 207, 371 S.E.2d 532 (1988), our Supreme Court discussed the requirements for establishing an evidentiary basis for claiming lost profits. Under Drews, recovery of lost profits for a new business requires a showing that the profits were lost as a natural consequence of the breach of contract, that they were foreseeable at the time the contract was made, and that they be established with reasonable certainty. 296 S.C. at 213.

The profits that Morningstar seeks to recover were allegedly the result of lost sales of life leases in the Tower. At the time of the declaration of default, and in fact as the reason for the default, Morningstar was unable to provide evidence of financial viability of the project. Therefore, there is no evidence that profits of any kind were the natural consequence of the declaration of default, even if it were a breach of the Agreement. Moreover, in response to the County's interrogatories, Morningstar concedes that many of the "Priority Reservation Applications" it claims were refunded because of the County's alleged breach occurred before the County declared default. Morningstar's Response to Defendant's Interrogatories No. 11 and 12. Similarly, lost profits could not have reasonably been in the contemplation of the parties without evidence that the project was financially viable. 296 S.C. at 213.

Even more crucially, Morningstar is unable to establish lost profits with any reasonable certainty. As noted in Drews, an owner's expectations, unsupported by any particular standard

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or fixed method for establishing net profits, are wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty. 296 S.C. at 214. As a result, I conclude that Morningstar's alleged lost profits were not a natural consequence of the declaration of default, were not within the reasonable contemplation of the parties and find that they cannot be ascertained or measured from the evidence produced with any reasonable certainty and that they should therefore be excluded.

B. THE COUNTY'S MOTIONS IN LIMINE

1. Evidence of Settlement Discussions and Mediation

Morningstar's complaint includes allegations that the County did not negotiate "in good faith" as the parties attempted to resolve their dispute prior to litigation. Complaint ¶¶ 27.c. and 32. The County seeks to prevent the introduction of any testimony concerning the parties' settlement discussions, including discussions occurring in connection with the parties' failed attempts at mediation. The County further seeks to specifically exclude the following exhibits, which have been identified by Morningstar as trial exhibits:

29.	Carl Epps May 3, 2010 Letter	MorningStar 17443-17445
30.	Jim Baker Letter July 14, 2014	MorningStar 17460-17462
31.	Yarnes Letter January 3, 2011	MorningStar 17441-17456
32.	Carl Epps Aug. 12, 2010 Letter	MorningStar 17527-27529
33.	Jim Baker June 24, 2010 Letter	MorningStar 17437-17439
34.	Yarnes January 3, 2011 Letter	MorningStar 17460-17462
35.	Carl Epps March 3, 2011 Letter	MorningStar 17430-17432
36.	Yarnes June 30, 2011 Letter	MorningStar 17433-17444
37.	MorningStar Mediation Responses	MorningStar 155-197

South Carolina has long held that "evidence of disclosures made by either party to the other, directly or indirectly, in negotiations for a compromise" is inadmissible for purposes of

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establishing liability or damages. Woodward v. Southern Ry. Co., 88 S.C. 453, 70 S.E. 1060, 1061 (1911). More recently, South Carolina has adopted Rule 408 S.C. R. Evid., which provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering to accept, valuable consideration in compromising or attempting to compromise a claim which was disputed as to validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. . . .

Rule 408 S.C. R. Evid.

South Carolina's Rule 408 is identical to Federal Rule of Evidence 408. It "is broader than the common law exclusionary rule in many jurisdictions and excludes from evidence *all statements made in the course of settlement negotiations*," Fiberglass Insulators, Inc. v. Dupuy, 856 F.2d 652, 654 (4th Cir. 1988)(comparing Federal Rule 408 to common law exclusionary rules)(italics added). The purpose of Rule 408 "is to encourage the parties to be able to meet and attempt to settle claims outside of court . . . through "frank and open discussion of the strengths and weaknesses of each side's case." Polk v. BP Amoco Chem. Co., 586 F. Supp. 2d 619, 622 (D.S.C. 2008).

Like Evidence Rule 408, South Carolina's mediation rules encourage the parties to engage in "frank and open discussion" and also unequivocally state that "[c]ommunications during a mediation settlement conference shall be confidential." S.C. ADR Rules, Rule 8. In fact, Rule 8 provides:

[T]he parties and any other person present *shall* maintain the confidentiality of the mediation and *shall not* rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding. . . .

Id. (italics added).

Morningstar contends that it seeks to introduce evidence of information exchanged and positions taken in mediation "to demonstrate the County's failure to properly follow the dispute resolution procedures required under the Development Agreement," which is itself a basis alleged by Morningstar for its claim of breach of the Agreement. I therefore find and conclude that all such communications, statements and other information is inadmissible under Rule 408 and ADR Rule 8. These rules make clear that statements and correspondence exchanged by parties during the course of settlement discussions or mediation may not later be introduced as evidence at trial. Accordingly, all such evidence is excluded.

2. Subjective Views of Former York County Councilman Buddy Motz

Morningstar also seeks to offer evidence in the form of emails and live testimony from former York County Councilman Buddy Motz concerning his alleged views of Morningstar's ministry. (Plaintiff's pretrial Ex. 18. "Motz January 22, 2010 email - County Production p. 656"). Mr. Motz is the apparent author of an email that includes unflattering comments about Morningstar and its perceived connection to the former owner of the subject property, PTL Ministries. Morningstar seeks to introduce Mr. Motz's testimony and email as evidence of the County's bias and its alleged motivation for declaring Morningstar in default of the Agreement.

Even if Mr. Motz harbored personal bias against Morningstar, his alleged bias cannot be imputed to the County. Furthermore, Morningstar's attempt to introduce Mr. Motz's personal views and emailed comments as evidence of the County's alleged bias is not permitted. In Bear Enterprises v. County of Greenville, the South Carolina's Court of Appeals admonished a landowner for "interrogating" individual members of the Greenville County Council in an attempt to demonstrate that the County had arbitrarily denied the landowner's rezoning request.

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319 S.C. 137, 139 n.1, 459 S.E.2d 883, 885 n.1 (Ct. App. 1995). As the Court of Appeals stated in that case,

We are aware of no authority allowing someone challenging action by Council to interrogate members individually to impeach Council's decision. The governing body of a municipality acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise. If individuals are not satisfied with decisions made by members of a municipal government within the limits of the law, their remedy is at the polls, not the courts.

Id. The Court of Appeals criticized the landowner's tactics as "inappropriate," even though "the County did not object to the procedure." *Id.* In this case, York County *does* object to Plaintiff's planned interrogation of Mr. Motz, a former member of York's County Council.

Similarly, the Supreme Court cited Bear Enterprises with approval in finding that subpoenas for county council members were properly quashed by the trial court in Greenville Co. v. Kenwood Enters., 353 S.C. 157, 175 S.E.2d 428 (2003), *overruled on other grounds* by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005). As Justice Waller noted, "[w]hat County Council members' motivations were for passing the Ordinance simply is not a proper inquiry." *Id.* Likewise, what the personal motivations Mr. Motz or any other member of County Council may have had in voting to hold Morningstar in default is not a proper inquiry in this case, and all such evidence is hereby excluded.

3. Motion to Exclude Evidence of Damages

The County's Motion in this regard is a restatement of its Motion to Exclude Damages dealt with previously in this Order, and is granted for the reasons set forth herein.

4. Evidence or Argument that is Contrary to the Court's Prior Substantive Rulings

The County seeks to exclude any evidence or argument that is contrary to the court's prior substantive rulings in this case. In particular, the County seeks to preclude Plaintiff from introducing testimony or argument that the parties' Agreement required the County to deliver notice of site plan approval to Plaintiff by certified mail. Morningstar agrees that it cannot argue that notice by certified mail was required by the language of the Agreement, but seeks to argue that it should be permitted to state that it expected notice in that fashion given the gravity of the consequences of default. I find that nothing in Judge Kimball's Orders in this case precludes Morningstar from arguing that it expected notice by certified mail of site plan approval, and decline to exclude testimony or argument to that effect.

5. "Petition Regarding Interest" to York County Council

Finally, Morningstar seeks to introduce a "Petition Regarding Interest" that it contends was submitted to the York County Council in February 2011 (Pl. Ex. 6 - "Petition Regarding Interest - MorningStar 103-131"). The petition post-dates the County's declaration of default by eleven months, and has no probative value to the issues for trial – whether the County breached the Agreement; whether Morningstar defaulted on the Agreement; and what rights, remedies and obligations the parties possess under the Agreement. The "Petition Regarding Interest" that Morningstar seeks to introduce is not relevant or probative to any of those issues, and further is clearly an out of court statement offered for the proof of the matter asserted, i.e. that there was a market for the Tower project if it could have been completed. Accordingly, it is hearsay barred by Rule 801, S.C. R. Evid. Moreover, the petition is likely to be misconstrued or misunderstood by the jury, and its potential to cause unfair prejudice, confusion of the issues, or to mislead the jury substantially outweighs any probative value of the document. Rule 403 S.C. R. Evid. Accordingly, such evidence is excluded from the trial of this case.

CONCLUSION

IT IS THEREFORE ORDERED that York County's Motion to Exclude Damages be, and is hereby GRANTED; that York County's Motions *in limine* 1, 2, 3 and 5 are hereby GRANTED, and that its Motion *in limine* 4 is DENIED.

AND IT IS SO ORDERED.



Daniel D. Hall
Resident Judge
Sixteenth Judicial Circuit

York, South Carolina
February 2, 2015

4843-6187-9329, v. 1

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4600246

Morningstar Fellowship
Church

York County South
Carolina

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.
- ☐ 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 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.

s/Daniel D. Hall
Circuit Court Judge

2753
Judge Code

11/9/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on November 10, 2015, and a copy mailed first class or placed in the appropriate attorney's box on November 10, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Richard B. Fennell James, Mcelroy & Diehl, PA 600 S.
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Michael Kurt Kendree Sr. PO Drawer 299 York, SC 29745
Walter Kelth Martens 130 E. Main Street Rock Hill, SC
29731

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

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.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

RECEIVED

The Hon. Daniel D. Hall, Circuit Court Judge NOV 30 2015
S. Jackson Kimball, Special Circuit Court Judge

SC Court of Appeals

Case No.: 2013-CP-46-00246

Morningstar Fellowship Church,

Appellant-Respondent,

v.

York County, South Carolina

Respondent-Appellant.

NOTICE OF CROSS APPEAL

Respondent-Appellant York County hereby gives notice that it appeals the Order for Partial Summary Judgment entered in this matter on July 17, 2014, by the Honorable S. Jackson Kimball, Special Circuit Court Judge, County of York, and the Order on Motion to Alter or Amend (Rule 59(e), SCRCP) entered on September 29, 2014.

Respondent-Appellant received a copy of the Appellant-Respondent's Notice of Appeal on November 16, 2015.

November 17, 2015

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2015-CP-46-002460

Morningstar Fellowship Church,

Appellant/Respondent

v.

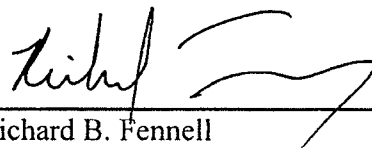
York County, South Carolina,

Respondent/Appellant

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 2, 2016



Richard B. Fennell

S.C. Bar No.: 10467

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(704) 372-9870

Attorney for Appellant/Respondent

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2015-CP-46-002460

Morningstar Fellowship Church,

Appellant/Respondent

v.

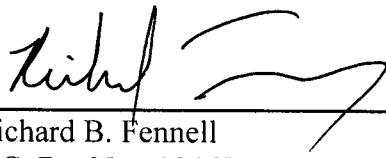
York County, South Carolina,

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June 2, 2016



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JUL 06 2016

SC Court of Appeals