

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

DEC 11 2015

APPEAL FROM HORRY COUNTY C. Supreme Court
Court of Common Pleas

Deadra Jefferson, Circuit Court Judge

APPELLATE CASE NO. 2014-000457

Jacklyn J. Donevant Respondent

v.

Town of Surfside Beach. Petitioner

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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**STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED

JAN 7 9 2015

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

SC Court of Appeals

Deadra Jefferson, Circuit Court Judge

C. A. NO. 12-CP-26-4852

Town of Surfside Beach. Appellant

v.

Jacklyn J. Donevant Respondent

RECORD ON APPEAL

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PLAINTIFF 28	426

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2012-CP-26-_____

Jacklyn J. Donevant,

Plaintiff,

v.

Town of Surfside Beach,

Defendant.

COMPLAINT
(JURY TRIAL DEMAND)

FILED
HORRY COUNTY
2012 JUN 19 PM 1:21
MELANIE HIGGINS-WARD
CLERK OF COURT

Jacklyn J. Donevant (hereafter "Plaintiff") complaining of the Town of Surfside Beach (hereafter "Defendant"), would respectfully show and allege unto this Honorable Court as follows:

1. Plaintiff is a citizen and resident of Murrells Inlet, South Carolina.
2. Defendant Town of Surfside Beach is a municipality located in Horry County, South Carolina.
3. This action arises out of the wrongful termination of Plaintiff from her position of employment as the Director of Planning, Building, & Zoning for the Defendant.
4. As Director of Planning, Building, & Zoning, Plaintiff's job responsibilities included, but were not limited to, reviewing and approving building plans, reviewing and approving building permit applications, ensuring builders and/or contractors possessed the appropriate building permits, and issuing "stop work" tickets to builders and/or contractors who failed to comply with the applicable building permitting requirements.

5. During the course of her employment as Director of Planning, Building, & Zoning by Defendant, Plaintiff was required by law to issue "stop work" tickets to builders and/or contractors who failed to comply with the applicable building permitting requirements.

6. If Plaintiff allowed builders and/or contractors to perform work without the proper permit, Plaintiff would lose her license as a certified building official, a license she needed in order to perform her job duties as Director of Planning, Building, & Zoning.

7. As a certified building official, it was Plaintiff's duty to uphold state law, state building codes, local building codes, and Town of Surfside Beach ordinances.

8. Around December 2011, Plaintiff was diagnosed with breast cancer and was placed on medical leave from work for twelve (12) weeks.

9. Before beginning medical leave, Plaintiff issued a demolition permit to the builder performing work at the restaurant located at the Town of Surfside Beach pier (hereafter "Surfside Beach pier restaurant").

10. Demolition began at the Surfside Beach pier restaurant around January 2012.

11. On or about March 13, 2012, Plaintiff returned to work from medical leave.

12. Upon Plaintiff's return to work, James W. Duckett, Jr., Town Administrator for Defendant and Plaintiff's supervisor, met with Plaintiff and instructed her not to reverse anything that was done in her absence or she would be fired.

13. Following the meeting, Plaintiff sent a note to Mr. Duckett, informing him that she did not intend to reverse anything that was done in her absence, but she was obligated to adhere to and enforce state law, state building codes, local building codes, and Town of Surfside Beach ordinances.

14. Subsequently, Plaintiff discovered that construction was underway and that hardwood floors were being installed at the Surfside Beach pier restaurant.

15. Plaintiff traveled to the Surfside Beach pier restaurant to inspect the work being performed at the Surfside pier restaurant.

16. Upon arrival, Plaintiff discovered the builder was installing hardwood floors at the Surfside Beach pier restaurant.

17. Because the builder had only a demolition permit and not a construction permit, Plaintiff placed a "stop work" ticket at the Surfside Beach pier restaurant.

18. The next day, March 21, 2012, Mr. Duckett suspended Plaintiff for three (3) days without pay for what he described as Plaintiff's "inability to follow directions."

19. Mr. Duckett also traveled to the Surfside pier restaurant and unlawfully removed the "stop work" ticket from the location.

20. Upon information and belief, Mr. Duckett then directed Sabrina Morris, who held the position of Code Enforcement/Zoning Official for the Defendant, to issue a construction permit to the builder performing work at the Surfside Beach pier restaurant.

21. At the time Ms. Morris issued the construction permit, construction plans for the Surfside Beach pier restaurant had not been approved.

22. Additionally, when Ms. Morris issued the construction permit, she lacked the proper license and authority to issue the construction permit under State law.

23. Upon information and belief, since at least March 20, 2012, construction has been taking place at the Surfside Beach pier restaurant without the proper permit.

24. On March 25, 2012, Plaintiff wrote a letter to Mr. Duckett, advising that her suspension was unlawful in that she was obligated to follow the law.

25. On April 4, 2012, Mr. Duckett terminated Plaintiff.

26. It is a violation of a clear mandate of the public policy of the State of South Carolina for an employer to terminate an employee for refusing to violate the law.

27. In contravention of the aforementioned public policy of this State, the Defendant wrongfully and willfully terminated Plaintiff.

28. In accordance with her duties as a certified building official and as Director of Planning, Building, & Zoning of the Defendant and in accordance with the law, Plaintiff issued a "stop work" ticket for construction at the Surfside pier restaurant.

29. When Plaintiff did so, the Defendant, through its agent, Mr. Duckett, took swift and immediate adverse and retaliatory employment actions against Plaintiff, including, but not limited to, suspending Plaintiff without pay for three (3) days and thereafter terminating her employment on April 4, 2012.

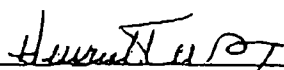
30. As a result of the adverse employment actions taken by the Defendant against Plaintiff, Plaintiff has been damaged and has incurred actual, consequential, and incidental damages, including, but not limited to, loss of wages, loss of benefits, and loss of reputation in the community.

WHEREFORE, Plaintiff prays for relief as follows:

1. Actual, consequential, and incidental damages;
2. Prejudgment interest;
3. For such further relief as this court deems just and proper.

[signature block on following page]

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Myrtle Beach, South Carolina

June 19, 2012

State of South Carolina	)	
	)	C. A. No. 2012CP26-4852
County of Horry, Court of Common Pleas	)	
Jacklyn J. Donevant,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Surfside Beach	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Plaintiff, who was a building official for the Town, alleges that she was wrongfully discharged in violation of public policy for exercising her legal responsibility to issue a “stop work” order. In fact, she was terminated for repeated, deliberate, insubordinate, and obdurate behavior. She seemed to be deliberately provoking a reluctant Town Administrator to fire her. The reason for her discharge, however, is irrelevant to this motion because, even if she had been fired for issuing the stop work order (which the Town denies), this would not constitute discharge in violation of public policy. The issuance of a stop work order is discretionary. The South Carolina Supreme Court has explicitly held that a governmental official/employee fired for exercising a discretionary authority cannot assert public policy discharge.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Roland v. Heritage Litchfield, Inc.*, 641 S.E.2d 465 (2007). The moving party has an “initial burden of showing an absence of evidentiary support for the opponent’s case. In other words, a lack of evidence to support an essential element.” Once this burden is met, “the nonmoving party must come forward with specific facts showing there is a genuine issue for trial and cannot simply rest on mere allegations or denials contained in the pleadings.” *Id.*

Additionally, the South Carolina Supreme Court, in *Young v. S.C. Dep’t of Disabilities and Special Needs*, 374 S.C. 360, 649 S.E.2d 488 (2007), stated the following:

A trial court may properly grant a motion for summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Regarding the amount of evidence the Plaintiff must show to support each necessary element, the South Carolina Supreme Court has held that “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Management Co., Inc.* 673 S.E.2d 801 (S.C. 2009).

However, the mere scintilla standard does not imply that summary judgment is unlikely to be granted. There are many cases, like this one, where there are many disputed factual issues that are simply irrelevant to the legal question. Summary Judgment is to be granted when there is only a legal issue. In fact, the Supreme Court recently affirmed the grant of summary judgment in a public policy discharge case. In *McNeil v. South Carolina Dept. of Corrections*,

the court held that a governmental employee could not assert public policy discharge based on allegations he was fired as a scapegoat and based on false allegations he violated policies and regulations. 2013 Westlaw 1830826. Similarly, it does not matter if Donevant was fired for issuing a stop work order because the tort of public policy discharge does not extend to such situations.

FACTUAL BACKGROUND

Donevant worked for the Town of Surfside Beach as its Building and Zoning Department Director. In December 2010, Jim Duckett became the Town Administrator. Although he heard complaints about Donevant, he resolved to start with a blank slate with all of the Town's employees. (Ex. 1, Dep. Duckett pp. 20-22).

The first problem Mr. Duckett had with Donevant was that she was frequently absent from, or late to, work. Duckett eventually told Donevant to be at work by 9:00 AM or to let him know where she was. (*Id.* at 23-24). Not long after this, in June 2011, Donevant was missing from the office and Duckett could not track her down. When he finally reached her, Donevant claimed she had previously told Duckett she would be late that day. Disbelieving this, Duckett instructed Donevant to inform him in writing (by email) anytime she would be absent and he made her write this instruction down several times. (*Id.* at 24-26). About thirty days later, Duckett again noticed that Donevant was missing from the office and no one knew where she was. After confirming that Donevant had not given him an email as instructed, he issued a written warning to her. (Ex. 2 Written Warning). Two months later, Duckett gave Donevant a written performance review which criticized her for lack of focus and being gone on training too much. (Ex. 3 Performance Review). Three months after the review was given, Donevant wrote

a two-page rebuttal in which she denied being unfocused and defended her attendance at the various training events. (Ex. 4 Rebuttal Letter).

In December 2012, Donevant took an extended leave due to a medical condition. Sabrina Morris took over as the Interim Director during her absence. Because Morris lacked the necessary licensure, she could not approve building plans, so the Town made arrangements with the City of Myrtle Beach for it to perform this function. (Ex. 1, Dep. Duckett p. 59)

Donevant came back to work on March 13, 2012. On her first day back at work, Duckett informed Donevant that she was not to interfere with any decisions made during her absence. He informed her of this in writing and specifically warned her that termination might result if she did interfere with any decisions made during her leave. (Ex. 1 Dep. Duckett pp. 70-72).

Duckett gave this instruction because he was mainly concerned that Donevant would try to interfere with a citation that Morris had issued to a contractor who had removed a tree without permission. During her absence, Donevant had called Morris on the contractor's behalf and tried to get Morris to approve the tree removal. However, Duckett meant the instruction to apply to all decisions that had been made during Donevant's absence. He wanted her to focus on issues going forward. (Ex. 1 Dep. Duckett p. 72).

Duckett also reminded Donevant that she was to report to him and not to the Deputy Administrator Micki Fellner. Duckett felt that Donevant had been avoiding him—preferring to report to Ms. Fellner. Ms. Fellner also acknowledged, in writing, that she told Donevant that she need to report to Duckett, and not to her. (Ex. 1 Dep. Duckett pp. 83-84). In her deposition, Donevant admitted she understood she was to report Duckett and not Fellner. (Ex. 5 Dep. Donevant p. 53).

In 2012, the most prominent public issue in the Town of Surfside Beach was the Town's pier. The Town was attempting, with difficulty, to get space on the pier leased. Various stories had been in the local media about the pier. Both Duckett and Donevant acknowledged in their depositions that the pier was a "hot" public issue. (Ex. 1 Duckett p. 62) (Ex. 5 Donevant Dep. pp. 21, 26). Donevant further agreed that the Town Council thought the pier was a major issue. (Id.). Shortly before Donevant went on leave, the restaurant space on the pier had been leased and the new tenant had received a permit to start demolition in the space. (Ex. 5 Donevant Dep. p. 40).

On March 20, 2012, without telling anyone what she was doing, Donevant went to the pier and looked in a window at the jobsite. Donevant alleges that she saw new flooring, new plumbing, and new openings for windows. She regarded this as new construction not authorized by a demolition permit and therefore issued a "stop work" order and posted it on the door to the job worksite. (Ex. 5 Donevant Dep. pp. 43-45). (The contractor denies that any new construction had occurred). (Ex. 6 Affidavit). Sometime later that day, she told Fellner that she had issued the stop work order. Fellner asked her if she had informed Duckett and Donevant responded that she had not. (Ex. 5 Donevant Dep. pp. 49-50). Although it was customary to give contractors a chance to correct any issues before issuing a stop work order, Donevant never tried to contact the contractor.

When Donevant eventually came back to the office, Fellner saw her and again reminded her that she needed to tell Duckett what was going on. She never did. (Ex. 5 Donevant Dep. pp. 52-54). Duckett first learned of the stop work order when one of the Town Councilmen called him asking what was going on at the pier. (Ex. 1 Dep. Duckett p. 77-78). About the same time, Fellner called Duckett to report her conversation with Donevant. (Id.). Duckett immediately

went to the pier and, to his surprise, was greeted by a television crew and members of council.
(Id.).

Duckett concluded that Donevant had disregarded his instructions and/or had exercised extremely poor judgment by not telling him what was going on. He instructed Donevant to meet him the next workday. (Ex. 5 Duckett Dep. pp. 81). They met, and Duckett first presented Donevant with a written warning. Donevant admits that Duckett told her that the problem was she should have told him what she had done. (Ex. 5 Donevant Dep. pp. 59). The warning explicitly stated it was based on Donevant's failure to communicate. Donevant, however, refused to sign the warning in acknowledgment she received it. Duckett therefore informed her that he was suspending her for three days. He presented her with a suspension notice. This time, Donevant signed the notice. (Ex. 1 Duckett Dep. pp. 84-87). The whole matter could have ended there. Duckett thought that Donevant understood the reason for the discipline and that they could go forward constructively from there. However, upon her return from suspension, Donevant gave Duckett a written note that stated:

My suspension was not right . All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town

(Exhibit 7). Duckett was very surprised by this note as he had thought they had reached an understanding. The note started with the false assertion that he had directed Donevant to violate the law. It continued with the insubordinate statement that she would not follow his instructions. It ended with a clear disavowal that she had done anything wrong regarding any of the disciplinary actions taken against her. Duckett therefore reluctantly concluded that Donevant

was a lost cause and the Town would be best served by getting a new Director. (Ex. 1 Duckett Dep. pp. 92, 99, 102).

ANALYSIS

Almost all of the above facts are legally irrelevant to this motion. Donevant has alleged that she was terminated for issuing a stop work order and that this constitutes discharge in violation of public policy. For purposes of this motion, her allegation that she was terminated for issuing the stop work order must be accepted. However, this would not be discharge in violation of public policy.

In South Carolina, the general rule remains that all employment is “at-will” and employees may be terminated, or may quit, for any reason or no reason at all. This was reaffirmed most recently in *McNeil v. S. Carolina Dep’t of Corr.*, 2013 Westlaw 1830826 (S.C. Ct. App. May 1, 2013). *McNeil* is also the most recent case dealing with the public policy exception to the at-will employment rule.

South Carolina courts do recognize a cause of action for discharge in violation of public policy. However, as the *McNeil* court reaffirmed, it has been applied only to situations in which an employee was forced to choose between his job and committing an illegal act or to cases in which employees were terminated for exercising certain political rights. *Garner v. Morrison Knudsen Corp.*, 456 S.E.2d 907 (S.C. 1995); *Antley v. Shepherd*, 532 S.E.2d 294, 297 (S.C. 2000) (aff’d as modified 564 S.E.2d 116 (S.C. 2002)).

This case is analytically identical to the case asserted by the plaintiff in *Antley v. Shepherd*. Exactly like Donevant, Antley claimed she was fired for exercising her legal duty. That duty was Antley’s statutory right to appeal tax rulings. Antley was the Aiken County Tax

Assessor. As Tax Assessor, she had the right, under South Carolina law, to appeal rulings made by the assessment appeal board. On this point, South Carolina law states: "The assessor is responsible for the operations of his office and shall . . . have the right of appeal from a disapproval of or modification of an appraisal made by him" S.C. Code Ann. § 12-37-90. The Aiken County Administrator, however, decided that these appeals were a waste of effort and directed Antley not to do them. Much like Donevant, Antley responded:

As a public servant for almost 18 years, I have always taken my legal duties and responsibilities very seriously. I have never relinquished them and I can do no less now.

Id. at 296. Given this clear refusal to comply with his directive, the Administrator terminated Antley. Antley sued claiming her firing was a discharge in violation of public policy to terminate her for exercising her clear statutory "right" to pursue appeals. The South Carolina Supreme Court disagreed and adopted the ruling of the Court of Appeals. The Court of Appeals held that, although Antley had a statutory right to file appeals, and was the only County employee with the power to do so, the statute did not "require" her to file appeals. The statute's description of her power as a right, the court held, did not give Antley "unfettered" authority. *Id.*

Donevant's situation is indistinguishable from Antleys. Indeed, Donevant's authority to issue stop work orders is even less established than Antley's clear statutory "right" to pursue appeals.

An official's authority to issue stop work orders flows from statute, to ordinance, to adopted codes. First, South Carolina statutory law requires municipalities to utilize a licensed building official to enforce building codes. It further requires municipalities to establish building codes which they may do so by adopting codes. As allowed by state law, most municipalities adopt the standard "International Building Codes." S.C. Code Ann. § 6-9-60. By Ordinance, the

Town of Surfside Beach utilizes the International Building Code. Section 114 of that code covers stop work orders and provides:

Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or dangerous or unsafe, the building official is **authorized** to issue a stop work order.

Donevant agreed that this was the provision from which she derived authority to issue a stop work order. (Ex. 5 Donevant Dep. pp. 71-72) (emphasis added).

Like the law in *Antley*, this provision does not require the issuance of a stop work order and does not say the building official's authority regarding such orders is unfettered. In fact, it is less emphatic than the grant of the "right" of appeal in section 12-37-90. Donevant agreed that the provision did not require a stop work order for every violation and she agreed that she did not issue one for every violation she found. (Ex. 5 Donevant Dep. pp. 73-74).

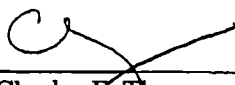
The practical effect of the decision in *Antley* is plain to see. A contrary ruling in that case, or this one, would give countless bureaucrats in countless governmental agencies the ability to presume unfettered discretion to exercise any duty that is prescribed by state law. It would convert most public employees from at-will employees to ones that could not be terminated if the reason touched on some duty defined by law. Such a situation is obviously untenable and the South Carolina Supreme Court has precluded it.

CONCLUSION

For the foregoing reasons, summary judgment should be granted on Donevant's claim that she was terminated in violation of public policy and this matter be dismissed.

Respectfully submitted,

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& OTT LLC



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Attorney for Defendant

May 27, 2013

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STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

COURT OF COMMON PLEAS
2012-CP-26-4852

Jacklyn Donevant)

vs.)

TRANSCRIPT OF RECORD

Town of Surfside Beach)

DEFENDANT)

February 10-11, 2014
Conway, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE; and a jury.

A P P E A R A N C E S:

Henrietta Golding, ESQ.
JAMES K. GILLIAM, ESQ.
Attorneys for the Plaintiff

CHARLES F. THOMPSON, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Opening Statements				
Mr. Gilliam	33			
Mr. Thompson	39			
Jacklyn Donevant				
Ms. Golding	50		216	
Mr. Thompson		127		220
Gary Wiggins				
Mrs. Golding	223			
Mr. Thompson		320		
Micki Fellner				
Ms. Golding	334			
Certificate of Reporter 374				

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	P-1	Job Description Document		22
4	P-2	Handwritten Document		22
5	P-3	Performance Evaluation		22
6	P-4	Written Warning		22
7	P-5	Written Response		22
8	P-6	Building Permit Application		22
9	P-7	Demolition Permit		22
10	P-10	Work Release March 12, 2012		22
11	P-11	Memo File March 13, 2012		22
12	P-12	Stop Work Order		22
13	P-14	E-mail March 21, 2012		22
14	P-15	Handwritten Order March 21, 2012		22
15	P-16	Handwritten Reprimand		22
16	P-17	Handwritten Termination		22
17	P-18	Construction Town Permit		22
18	P-19	Letter March 25, 2012		22
19	P-21	Handwritten Letter		22
20	P-24	Curriculum Vitae of Gary Wiggins		22
21	P-26	Section 115 - Stop Work Order		22
22	P-27	Ordance of Town		236
23	P-28	Adoption Building Codes		236
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25				

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Deposition of Mrs. Donevant		181
D-1	Verbal Warning		25
D-2	July 14, 2011, Written Warning		25
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D-12	Florence Resignation		25
D-13	Florence Leave Policies		25
D-16	Donevant Complaint		25

1 THE WITNESS: So help me God.

2 THE CLERK: Have a seat please, ma'am. State
3 your name for the Court please, ma'am.

4 THE COURT: Spell your last name for the court
5 reporter.

6 THE WITNESS: My last name is Donevant.

7 THE CLERK: Judge, just a moment this mic is not
8 working.

9 THE COURT: Please spell your last name for the
10 court reporter.

11 THE WITNESS: D-O-N-E-V as in Victor A-N-T.

12 THE COURT: You may proceed, Mrs. Golding.

13 MS. GOLDING: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 WHEREUPON,

16 Jacklyn Donevant,

17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. GOLDING:

20 Q Ms. Donevant, I'm going to stand back here because I
21 want you to speak clearly to the jury. And for the record
22 please tell us who's this gentleman that you been sitting
23 beside?

24 A It's my husband 31 years no parole.

25 Q Mrs. Donevant, where do you live?

1 A I live in Plantersville in Georgetown.

2 Q And how long you been living in Plantersville?

3 A We move there in July.

4 Q And why did you move to Plantersville in July?

5 A We got into trouble with the payments on our house
6 and we lost our house. I had a -- I was working on a loan
7 modification and I lost my job.

8 MR. THOMPSON: Your Honor, object ---

9 THE COURT: Please approach.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury, but out of the hearing of the
12 jury.)

13 THE COURT: Madam forelady, ladies and
14 gentleman, I have a very brief matter of law to take up
15 with the attorneys. During this break, please do not
16 discuss the case and please leave your note pads in your
17 seats.

18 (WHEREUPON, the jury retired to the jury room.)

19 THE COURT: What's the basis of your objection?

20 MR. THOMPSON: Several, Your Honor. I object to
21 testimony about the lost of her home for several reasons.
22 One of which is I never received an itemized dollar
23 accounting as requested of that element of damages. Your
24 Honor, lost of the home is not a foreseeable consequential
25 damage arising from the lost of her employment. There's

1 MS. GOLDING: If I may run to the restroom?

2 THE COURT: Yes, and I apologize. I abuse my
3 body. You all have to remind me when you all want to go
4 to the bathroom because I'm horrible and I'm horrible to
5 my court reporters. I always have to do a mea culpa at
6 the end of the week.

7 THE WITNESS: May I go too?

8 THE COURT: Ma'am, you may go to the restroom
9 just please don't discuss your testimony with anyone.
10 We'll be out for about five minutes.

11 (WHEREUPON, a break was taken.)

12 THE COURT: You ready?

13 MR. THOMPSON: Yes, Your Honor.

14 THE COURT: Please bring in the jury.

15 (WHEREUPON, the jury came into open court.)

16 THE COURT: Ladies and gentlemen, we appreciate
17 your patience. We're now going to resume testimony.

18 Ms. Golding, you may proceed when you're ready.

19 MR. THOMPSON: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. GOLDING:

23 Q Mrs. Donevant, can you tell us about your educational
24 background?

25 A Yes, ma'am, I grew up right here in Horry County. I

1 went to Myrtle Beach High School graduated from there,
2 went to Coastal Carolina when it was apart of the
3 University of South Carolina. It only had about two
4 buildings then. It was a small little place. I got a
5 degree in nursing. I got into construction believe it or
6 not. My dad was in construction and I just liked it and
7 got into it. And there was an opening in 1990 in
8 Georgetown County for a building inspector. So I applied
9 for it and got the job, so that's where it started and ---

10 Q How long did you stay in Georgetown County?

11 A I was there about three years and then I lived in
12 Socastee, so it was easier for me -- Horry County had a
13 opening, so I applied in Horry County and moved to Horry
14 County about three years.

15 Q So let me stop you there. So about what year was it
16 when you were in Georgetown County those three years about
17 when was that?

18 A That was like 1990 and that's when I obtained my
19 certifications.

20 Q And then from Georgetown County then you went to work
21 at Horry County?

22 A Horry County. And then I left Horry County and went
23 to the Town of Surfside.

24 Q And how long did you stay with Horry County?

25 A About three years too.

1 Q And what was your job in Horry County?

2 A I started out as just a regular inspector one they
3 call it in their classification. And I gain
4 certifications, you know, we went up. So I went to
5 inspector three I think with Horry County. And then I
6 went -- I applied for deputy building official at Surfside
7 under Eddie Richardson. He was a building official then
8 and I applied for the deputy position and I got that
9 position.

10 Q And what year did you start with Surfside?

11 A Around 1994.

12 Q Okay. And when you started at Surfside, what was
13 your position?

14 A Deputy building official.

15 Q Now, what does a deputy building official -- what
16 does a deputy building official do?

17 A Actually, it helps basically does almost what the
18 building official does. It helps prepare things and, you
19 know, helps look at things, but the building official has
20 to sign off on it.

21 Q I don't know what things are.

22 A I'm sorry.

23 Q You got to tell this jury what does a deputy building
24 official do?

25 A Okay. Well, we make inspections just like every

1 other building.

2 Q Inspections of off?

3 A Residential and construction projects, commercial
4 buildings, residential buildings any construction that's
5 going on.

6 Q Inspections for what?

7 A For electrical to make sure the wiring is correct,
8 for safety to protect the homeowners. And we check
9 plumbing to make sure that plumbing is correct. So that
10 you don't have a back up in your shower or some kind of
11 thing. It's done correctly. We inspect the structural
12 part of the house to make sure that you got the right
13 headers or, you know, the right two by fours that frame up
14 your windows and your doors. We also inspect the
15 insulation as far as energy.

16 Q When you were at Surfside did you -- when you started
17 in '94 at Surfside as a deputy, did you have any
18 promotions?

19 A Yes, I did. In 1998, I moved up to building official
20 at surfside.

21 Q As a building official, does that mean you're a
22 department head?

23 A Yes, ma'am, it does.

24 Q And as department head building official, let me give
25 you what's exhibit number one that's been agreed to

1 Plaintiff's Exhibit 1. Is that the job description that
2 sort of outline what a building official does?

3 A Yes, it does.

4 Q On that job description, what does it say about
5 building and zoning ordinance and code inspections? Is it
6 the second bullet point ---

7 A Yes, that's what -- establishes general policy is
8 that where you're going?

9 Q Right. What does it say makes final decisions?

10 A Absolutely.

11 Q And makes final decisions on what?

12 A On building permits, plan reviews, anything that
13 comes up that's within the scope of the building and
14 planning. Surfside's a little different. Surfside your
15 one inspector does everything. We're not fortunate enough
16 to have a separate plumbing, mechanical, electrical, you
17 know inspector. You have to do all of those one person.
18 One person wears all of those hats.

19 Q And so are you saying like Horry County or the City
20 of Myrtle Beach they have inspectors just for electrical
21 and mechanical work?

22 A Yes, ma'am.

23 Q And in Surfside that's not the case?

24 A No, one person the building official.

25 Q Now, as being the head of the building department in

1 Surfside, are you required to have any type of
2 certificates?

3 A Yes, you have to have your license through LLR, which
4 is the labor and license regulations for the State of
5 South Carolina. And you have to carry what we call a
6 C.B.O., which is a certified building official. The
7 license that you get is a G.1, but you're required to have
8 that license to be the building official.

9 Q And the certified building official certificate is
10 that something that's required under the Town of Surfside
11 to have?

12 A Yes, ma'am, it is.

13 Q Okay. And is that set forth under qualifications on
14 exhibit one?

15 A Yes, it does.

16 Q Now, tell the jury what an official building
17 certification is?

18 A It's that you've taken exams on technical, legal and
19 management examinations to get your license. You have to
20 have that to get your license. You have to have enough
21 certifications and enough education to be able to pass a
22 test.

23 Q Now, with respect to Surfside if you did not have a
24 certified building official status, could you issue
25 building permits?

1 A You could issue them, but they had to be approved
2 because I had a -- I supervised two people. One was a
3 permit technician and the other one was a provisional code
4 enforcement officer. What I mean by provisional she had
5 no certifications, but I hired her and give her a year to
6 get her certifications, which is what the State requires
7 you to do, but they -- I could let them issue permits, but
8 I had to approve them.

9 Q Are you the -- as being the building official at the
10 Town of Surfside, were you the only employee at Surfside
11 that could approve issuance of building permits?

12 A Yes, ma'am.

13 Q How about stop-work orders?

14 A Yes, ma'am, me.

15 Q Anyone else?

16 A No.

17 Q Let's talk about the town administrator. Does the
18 town administrator while you were at Surfside ever have
19 the authority to issue building permits?

20 A No.

21 Q Did the town administrator ever have the authority to
22 issue stop-work orders?

23 A No, ma'am.

24 Q Now, how long have you maintained this certification
25 as a certified building official?

1 A Since 1998, that's 14, 15 years.

2 Q With respect to -- were you also a member of other
3 organizations?

4 A Yes, ma'am, I was the first female president of
5 International Electrical Association and I was a board
6 member on the Coastal Code Enforcement Association. I
7 also was a member of Plumbing Gas and Mechanical
8 Association. I was on the board on that. I was a member
9 of the B.O.A.S.C. I never was on the board of that.

10 Q And for these to have your certification as a
11 licensed building official, did you have to have some many
12 hours schooling every so many years or every year?

13 A Yes, ma'am.

14 Q And was that also required for your positions with
15 some of these professional associations?

16 A It was required by the law. The licensing we had to
17 have.

18 Q And when you say the law you're talking about?

19 A LLR they issue your license. You have to maintain
20 your CBO by taking continuing education. And if you
21 didn't do that, then you, you know, your wouldn't be --
22 your license wouldn't be renewed.

23 Q Mrs. Donevant, I'm not sure -- tell the jury when you
24 say LLR what are you talking about?

25 A Labor, licensing and regulations. They are the state

1 entity that regulates all the licensing in the state, the
2 building license. I think they regulate every license.

3 Q Now, while you were employed by the Town of Surfside
4 how many town administrators were there?

5 A Well, I had a lot of them probably about five or six.

6 Q With those five or six administrators during your
7 employment, did you have any issues with any of those?

8 A No, ma'am.

9 Q Other than Mr. Duckett?

10 A No.

11 Q And Mr. Duckett when did he start working at the Town
12 of Surfside?

13 A December of 2011, 2010 I think.

14 Q And he came in December 2010?

15 A Yes.

16 Q And what was your position in December 2010?

17 A I was the building official.

18 Q And when Mr. Duckett came in in December 2010, do you
19 know if he had any knowledge or training in the
20 construction industry?

21 A No, ma'am, he said he didn't. He told me that.

22 Q What were his basic work hours?

23 A He usually come in pretty early because he would run
24 and then he would come in. And he would leave by about
25 three o'clock every afternoon.

1 Q What were your work hours?

2 A Well, I would -- I actually have eight to five, but I
3 have flex hours. I would may be stop by a job site and
4 not come directly to town hall. I worked 12, 14 hours.
5 I've worked until nine o'clock at night a lot because in
6 my job it's also taking care of -- I'm a liaison for the
7 planning commission, so I have to have all that paperwork.
8 I have meetings at night. I have to attend council
9 meetings. I have to prepare council packets for my
10 department and, you know, I had a lot of other duties.
11 And I also did all the plan reviews that came in. So it
12 was easier when everybody else went home. It was quiet
13 and you could get more work done. So it wasn't -- I
14 worked until nine or ten o'clock at night.

15 Q Now, with respect to -- you said you did inspections
16 on the way to work. When you say inspections, what are
17 you talking about?

18 A Well, a contractor might call me. I live south of
19 Surfside.

20 Q Where did you live?

21 A I lived in Murrells Inlet at the time. And I be
22 driving into work and an inspector would call. Sometimes
23 the office would call. You know, can you stop by so and
24 so, they're pouring concrete. You know, if any of you
25 guys are contractors, you know what is it to stand out

1 there and wait on an inspector when you got the concrete
2 trucking coming. So I would try to, you know, accommodate
3 their contractors and homeowners. So I might stop by a
4 job site or I might just have one that I'm worried about
5 or something like that. I like to, you know, tool through
6 the town and see what's going on before I get to town
7 hall. And I'm only talking -- only live four miles from
8 there and the town's only two square miles. It's like I'm
9 taking six hours riding around looking at the town.

10 Q And was that common or was that a common thing for
11 you to do inspections before you got to work?

12 A Well, it was during that time because we had a lot of
13 stuff going on. We -- Micki -- Ms. Fellner and I worked
14 on the -- a lot of different projects. We did a
15 redevelopment of the town right -- Front Street on the
16 town and they poured concrete every day. I mean, you
17 know, continuously, so, yes, there was a lot of my doing
18 that.

19 Q You just pointed to Ms. Fellner. Did you get along
20 with Ms. Fellner?

21 A Absolutely.

22 Q Now, when Mr. Duckett first started in December of
23 2010, what was his instructions to you about Ms. Fellner?

24 A Ms. Fellner was the same as him. If we needed
25 anything and he was not there, that we were to go to Ms.

1 Fellner.

2 Q Mr. Duckett what time in the afternoons would he
3 usually leave the office?

4 A Usually about three.

5 Q Now, before June of 2011, did any town administrator
6 ever say to you you're not coming to work or anything like
7 that?

8 A Never.

9 Q Let me next hand you what is exhibit number two. And
10 exhibit number two that's been admitted into evidence and
11 tell the jury what is exhibit number two?

12 A This the most childish thing I've ever seen in my
13 life. This is the yellow paper. And I came in the office
14 Mr. Duckett -- I came down the hall. I didn't even get to
15 my office. I had been out doing an inspection. I came
16 in, Mr. Duckett was standing there with a pad with the
17 first line wrote on it.

18 Q Read to the jury what that first line is?

19 A Since, Jim Duckett has a poor memory. I will e-mail
20 -- oh, in the future send him an e-mail if I will not be
21 into work by nine a.m. each day. I had to write this in
22 front of my employees. I'm sorry, in front of other
23 directors in the town and it was very hard to do. I felt
24 like a child, a second grader. As a matter of fact, he
25 called me a child. I said this makes me look like a

1 child. You are a child is what he told me.

2 Q Now, at that point in time ---

3 A I'm so sorry.

4 Q It's all right. Were you humiliated?

5 A Can you imagine what kind of -- what kind of -- my
6 employees what do you think they -- how could, you know, I
7 work them, you know, with them standing there in the hall
8 with everybody looking at me sitting down writing this
9 note.

10 Q This note was written on June 17th 2011?

11 A Yes, ma'am.

12 Q And this note was written that morning I believe.
13 Did you tell Mr. Duckett before that morning that you
14 would not be in?

15 A I called my office. I didn't tell Mr. Duckett. I
16 called Sue in my office and said I'm making an inspection,
17 I'll be in as soon as I make the inspection. I told her
18 where it was, but I don't remember where it was. It was
19 probably at the Front Street over there in town.

20 Q Had you before received any instructions before you
21 walked in that day that you had to e-mail him where your
22 whereabouts?

23 A No, ma'am?

24 Q Had any town administrator ever asked you to do that
25 before?

1 A No, ma'am, and no other department head had to do
2 that just me.

3 Q This document was in your personnel file. What did
4 Mr. Duckett say about putting it in your personnel file?

5 A This docket?

6 Q This document exhibit number two?

7 A Mr. Duckett kept dockets in his right-hand drawer
8 everybody knew it because he told everybody that he did
9 it. So he told me that he was going to take that and put
10 it in the right-hand drawer and that six months if I did
11 okay he'd take it out and tear it up.

12 Q Now, you didn't consider this a warning?

13 A No.

14 Q There's no warning on there, is it?

15 A No.

16 Q And did in fact did at any point in time Mr. Duckett
17 try to apologize to you for this?

18 A When he give me my valuation, I told him that I was
19 still very upset about that. And I was also upset because
20 he had told people on the street how he made me do that.

21 MR. THOMPSON: Object.

22 THE COURT: Basis of the objection?

23 MR. THOMPSON: It's hearsay, Your Honor. He
24 told people on the street.

25 THE COURT: He's the director wouldn't he be an

1 employee? I mean, how is that a hearsay? It's a party
2 opponent.

3 MR. THOMPSON: I withdraw the objection.

4 THE COURT: Objection is withdrawn. You may
5 proceed.

6 BY MS. GOLDING:

7 Q During the apology what did he say about why he
8 thought this was a joke?

9 A He said, well, you know, I really was joking around.
10 I said it wasn't a joke to me and he apologize. And I
11 said you called a council member and told him and he said,
12 yeah, I did. And he said I shouldn't have done that I
13 apologize.

14 Q To your knowledge, did Mr. Duckett take it out of
15 your personnel file and throw it away?

16 A To my knowledge, he did.

17 Q Okay.

18 A I guess it's still in there. Yeah, I'm sure it
19 probably is.

20 Q Now, let me give you what's marked as deposition
21 excuse me -- Plaintiff's Exhibit 4. Now, that's also in
22 evidence and exhibit four is a written warning; is that
23 right?

24 A That's correct.

25 Q And it has written warning at the top?

1 A Yes, it does.

2 Q And what was that written warning for?

3 A You were instructed to e-mail me if you would not be
4 at work by nine a.m. work day. Today, July 14th you were
5 not at town hall at nine a.m. and I did not receive the
6 e-mail. I was not at town hall. I was making an
7 inspection. I was ---

8 Q Is this the first warning -- well, how many warnings
9 before this warning exhibit 14 did you receive while you
10 were working with the Town of Surfside?

11 A None.

12 Q And since the Town of Surfside -- since this June
13 excuse me -- July 14th 2011, had you received any warnings
14 after?

15 A No, ma'am.

16 Q Okay. So in total while you were employed with the
17 Town of Surfside how many written warnings did you
18 receive?

19 A One.

20 Q Okay. And is that exhibit number one?

21 A Yes.

22 Q Exhibit number four excuse me?

23 A Yes. Can I also say one thing?

24 Q Please.

25 A Also when he gave me this, I wrote at the top of it,

1 that's my writing in his office, and I wrote July six
2 months right-hand drawer. Then destroyed -- and it should
3 be destroyed January 14th, that was six months and it
4 should have been destroyed. He stuck it in his right-hand
5 drawer. Then it got -- it should have been thrown away in
6 January.

7 Q So being in your personnel file, did you expect it to
8 be in your personnel file after January?

9 A No, ma'am.

10 Q Now, did you receive any verbal warnings from
11 Mr. Duckett?

12 A No.

13 Q Let me go next is exhibit number three, which is an
14 evaluation, performance evaluation?

15 A Yes, ma'am.

16 Q Do you have that in front of you?

17 A Yes, ma'am.

18 Q And when was this performance evaluation conducted?

19 A In September of -- September 28 -- well, I signed it
20 29, so it's September 29, 2011.

21 Q Is this a performance evaluation conducted by Mr.
22 Duckett?

23 A Yes, he was -- like Mr. Thompson said he didn't do
24 everything the way anybody else did. It was Mr. Duckett's
25 way. So this was his own form he made up. And if you got

1 six or below, you didn't get a raise. So you'll notice
2 mine has number six on it. No increase this evaluation
3 period. Although, he had told me that everybody was going
4 to get a raise. Well, everybody did but me.

5 Q Now, with respect to the first item, tell the jury
6 what's the first item on this evaluation?

7 A Employee is very knowledgeable in the area of
8 building official duties. Employee attends entirely too
9 much training which interferes with her work schedule.

10 Q Let me stop you there. All the training that you did
11 while employed with the Town of Surfside, did you have to
12 get anybody's approval?

13 A Yes, I did get. I had to get Mr. Duckett's approval.
14 He approved every training session that I went to and it
15 was in budget, in my budget.

16 Q Did you go to any training while working at the Town
17 of Surfside that was not approved by Mr. Duckett?

18 A I did not.

19 Q Then the next item has what?

20 A Employee does not focus on town business even
21 sometimes while at work.

22 Q That almost doesn't make since?

23 A It doesn't -- and he couldn't explain it to me. I
24 asked him.

25 Q And how many hours did you say you put in a day

1 working at Surfside on average?

2 A Well, when we were doing all these projects on
3 average, 12 hours a day or more. See other people would
4 leave at five and I would still be there a lot of nights.

5 Q Now, did you respond and make a response to this
6 appraisal?

7 A Evaluation?

8 Q Yeah, excuse me.

9 A Yes.

10 Q Let me give you exhibit five. Now, what date did you
11 respond to that evaluation?

12 A November 29th 2011.

13 Q Okay. And why did you respond -- what delayed your
14 response to that evaluation?

15 A I was diagnosed with breast cancer.

16 Q Did Mr. Duckett know that you were diagnosed with
17 breast cancer?

18 A I'm sure he did. I told him.

19 Q What day were you diagnosed with breast cancer?

20 A October 17 I think.

21 Q And but then after that you went and you made -- you
22 did exhibit number -- the response and evaluation
23 rebuttal; is that right?

24 A Yes, I did. I was working on it and then I was
25 diagnosed.

1 Q And with respect to the evaluation rebuttal, did you
2 ask Mr. Duckett to reconsider?

3 A Yes, I did.

4 Q And what were the grounds for why you would
5 reconsider or why you ask him to reconsider?

6 A Because I didn't think it was right and it wasn't
7 explain to me. I mean, what is that mean. And I just
8 wrote him, put it in writing. And I told him about how
9 busy I was. I was working with SCDOT on the highway
10 project one day and we were walking up and down the road
11 me and Ms. Fellner, half the counsel people all day down
12 the road. And then I attended a town's transportation
13 committee meetings to discuss Highway 17 project. I was
14 in charge or not in charge, but I had to go out and
15 inspect the underground wiring. We did underground wiring
16 on 14th Avenue. I worked Tenth Avenue culvert with Ms.
17 Fellner. Scipio Lane meeting with public works in Horry
18 County, Dog Wood Lake Bank restoration project, street
19 scape project, and from conceptual planning to completion.
20 We put in parking across from the street scape. We put in
21 a statue in the park, you know. And I worked with Micki
22 on all of those things. I wasn't right there all the
23 time. I was in town working, but I wasn't, you know,
24 sitting at the office.

25 Q Let me ask you this with respect to training, what

1 did you say in the rebuttal about training?

2 A Well, I'm sure -- I'll read it for you, but I know I
3 told him he approved all the training that I went to.

4 Q Before that evaluation on September 29th, did he ever
5 tell you you went to too much training?

6 A No.

7 Q Before that evaluation on September 29th, did he ever
8 say that you didn't focus on town business?

9 A No, ma'am.

10 Q Since that evaluation on September 29th to the time
11 he fired you on April 4th, did he complain to you about
12 your training going to too much training?

13 A No.

14 Q Since that evaluation on April 29, 2010, until when
15 you were fired, did he tell you you weren't focusing on
16 any town business?

17 A No, ma'am.

18 Q Since that evaluation or at any time, did he ever
19 tell you that you were not devoting enough time to the
20 town?

21 A No.

22 Q Okay. Did you ever get anything in writing from
23 anybody on behalf of the town that said you didn't devote
24 enough time to the town?

25 A No, ma'am.

1 Q Now, because you had cancer, did you have to take
2 medical leave?

3 A Yes, I did. I had to have surgery. I had a
4 mastectomy, so I had to take leave for 12 weeks.

5 Q Okay. And when you came back to work, do you know
6 about when that was?

7 A March -- about March 13th I think.

8 Q Now, before March 13th the day before, did you try to
9 come back to work?

10 A Yeah, I had a doctor's appointment the next day. So
11 I came back to work and I went upstairs to see Kathy Blair
12 who did our payroll and to see if I had any hours because
13 I was going to take some more hours and go to the doctor
14 and then bring my doctor's excuse in. I had an excuse
15 from the insurance company and the doctor signed on that,
16 but I was going to get a regular waiver of release to work
17 excuse. So I went up and talked to Kathy and she said I
18 had about 22 hours. So I wanted to know that before I
19 went to Mr. Duckett's office. So when I went in there I
20 said I want to talk to you about time because my doctor
21 and I was stopped right there. And he said you don't have
22 any more time. And I said, well, Kathy Blair said I had
23 time. Well, she's wrong, you don't have any more time.

24 Q Did he let you work that day?

25 A No.

1 Q Did you want to work that day?

2 A Yes.

3 Q What did he tell you you had to have?

4 A Well, first, he told me that I had to have an excuse.
5 And I said, well, I have this insurance excuse and it's
6 signed by the doctor and it says I'm released to go to
7 work, you know, but it was an insurance thing. So he said
8 that's not going to work. And I called the doctor's
9 office while I was there. The doctor was in surgery, so I
10 couldn't get the excuse until after two o'clock.

11 Mr. Duckett said he would be leaving at three and the
12 doctor's office was in Myrtle Beach. So I knew I couldn't
13 get there, you know, I mean, if he's going to be there at
14 two o'clock. He probably wasn't right there to do my
15 stuff at two o'clock. He had surgery, you know, so, but I
16 did get it and I got it about three. And Mr. Duckett had
17 told me that he would not be there after three to either
18 lay it on his desk or bring it in the next morning.

19 Q Okay. And did you put -- is this exhibit ten is that
20 the work release that you got from the doctor?

21 A Yes.

22 Q Now, when you returned the next morning with a work
23 release, was there a meeting with Mr. Duckett?

24 A Yes.

25 Q And what was that meeting?

1 A He called me in his office and he called Debra
2 Hermann in the office too.

3 Q Who is Debra Hermann?

4 A She's a newly hired back town clerk. She had been
5 gone, but she was back. And he called me in the office
6 and he called Debra Hermann in there. I had no idea why
7 he called her in there, but any way she sat down and he
8 looked at me and he said you're back now. You've got all
9 your duties. You know, your building duties and all that.
10 But if you change anything that was done while you were --
11 in your absence, I'll fire you. What does that mean?
12 That means if you change anything that was done, I'll fire
13 you. I had no idea what it meant. But then I thought and
14 I said, well, there was an incident with a tree. Sebrina
15 had -- a contractor had called me at home. I was at home.

16 Q On sick leave?

17 A On sick leave. He said we really need to get a tree
18 cut down. Sebrina is going to Florida to take some sort
19 of test. She was going to Florida. She was going to
20 Florida for training. And Sebrina was the provisional
21 code enforcement officer that I hired and she worked under
22 me. Of course, I didn't know she was going there, but I
23 was on medical leave, you know, so she was in charge. And
24 he said she's not leaving ---

25 MR. THOMPSON: I object, Your Honor.

1 THE COURT: Basis?

2 MR. THOMPSON: This is hearsay.

3 THE COURT: Please approach.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: Overrule. You may proceed.

8 BY MS. GOLDING:

9 Q Please tell the jury again what Sebrina Morris said
10 to you?

11 A She said that she was going to Florida to -- for
12 three-day training or something. And I asked her I said,
13 well, I think it was Mike Johnson. He was a tree guy. He
14 called me and he said.

15 Q Don't say what ---

16 A I'm sorry I shouldn't say that. A contractor called
17 me. And he said I really need to ---

18 MR. THOMPSON: Object.

19 THE COURT: Ma'am, you cannot say what anyone
20 else said to you. You can only say what you did as a
21 result of the conversation.

22 A I ask Sebrina if she had time before she left to
23 remove the tree. She said no. And I think -- well, I
24 shouldn't say that. I just stopped right there. And she
25 said, no, that she was leaving.

1 Q When you got back in that meeting with Mr. Duckett
2 that morning, who was present Ms. Debra Hermann?

3 A Debra Hermann.

4 Q And did you ask him or did he gave you any
5 explanation on why he gave you those instructions not to
6 undo anything that had been done?

7 A That was it. That was blanket. If you undue
8 anything, you're going to get fired that was done in my
9 absence.

10 Q Okay. Now, when you came back which was about March
11 the 13th, right?

12 A Yes, ma'am.

13 Q That's March 13th 2012?

14 A Yes, ma'am.

15 Q And what was your position at that time?

16 A Building official.

17 Q And your responsibilities as the building official?

18 A Yes.

19 Q Were the same?

20 A To oversee the department, you know, manage the
21 day-to-day.

22 Q When you were gone, who did the plan reviews?

23 A The City of Myrtle Beach helped us out did the plan
24 reviews.

25 Q And as a result, when you came back what did you do?

1 A When I came back, I went to Myrtle Beach and I got
2 the plans that were pending that had, you know, that they
3 had. I think it was about six or eight plans. I brought
4 it back to the office and started familiarizing myself
5 with plans, you know, looking at the pier.

6 Q Why would you familiarize yourself with the plans?

7 A I'd been gone 12 weeks. I needed to know what was
8 going on and, you know, where who was building and where.

9 Q For inspections?

10 A Yeah.

11 Q And needed to know what was approved and what needed
12 to be improved?

13 A Yes.

14 Q Okay. Now, at that -- why couldn't Sebrina Morris --
15 why did the plans have to go out to the City? Why
16 couldn't Sebrina Morris look at the plans and approve
17 them?

18 A She wasn't qualified.

19 Q Was she ever qualified to do that while you were at
20 the town?

21 A No.

22 Q Was anybody else in the town qualified to review the
23 plans and approve them while you were there?

24 A No, ma'am.

25 Q Okay. So after you got all the plans, did you -- was

1 there also plans with regard to the pier restaurant?

2 A Yes, we had plans to the pier.

3 Q Now, tell us about the pier, who owns the pier?

4 A The Town of Surfside owns the pier and they had a
5 restaurant there and it was there for 20 something years.

6 Q What was the name of that?

7 A Nibbles. I wasn't sure I could say that, but any way
8 and they left. So they were having a hard time leasing
9 the pier restaurant. It was important to lease it. They
10 had leased it. Mr. Duckett found the people that leased
11 it and got it leased. And they had a contractor come in
12 and wanted to demo the interior.

13 Q Let me give you what is exhibit 12. What is exhibit
14 12?

15 A That is my stop-work order for the pier. Let me see
16 if I can find the demo permit. I think it was attached to
17 this other one you gave me. I think it got stuck which
18 number is it six. When you gave me five, I think it was
19 stuck.

20 Q So you had exhibit six?

21 A Yes, ma'am.

22 Q Okay. Exhibit six is that the demolition permit?

23 A Yes, it is.

24 Q And under that permit what could the person at pier
25 restaurant -- what would they be doing? What was

1 permitted under the permit?

2 A Demo of interior of building only.

3 Q And who was the owner that signed?

4 A Bill Howard.

5 Q And under this permit could anything else other than
6 demolition be undertaken?

7 A No, ma'am.

8 Q In exhibit seven is this another copy, but a typed
9 out is this permit itself the demolition permit itself?

10 A That's correct.

11 Q So exhibit six was the application?

12 A Application.

13 Q And then subsequently when you returned, did you find
14 out that other permits had been issued for the pier?

15 A None had been issued.

16 Q Had any application been made?

17 A Application had been made for a plan review.

18 Q Okay. Let me give you what's marked as exhibit 18.
19 And exhibit 18 has two documents attached. This is an
20 application from ---

21 A An application for work at the restaurant.

22 Q And what's the date of that application?

23 A 3-9-12.

24 Q Okay. When you returned on March the 13th, had any
25 approval been issued for this March 9th 2012 application?

1 A No.

2 Q And what was this March 9, 2012, application for?

3 A It was a plan review for a remodel to the pier, pier
4 restaurant.

5 Q Okay. And what did it have, describe the scope of
6 work, what did it have on it?

7 A Electrical, plumbing, HVAC upgrades.

8 Q Okay. Now, why did you go to the pier on March the
9 20th?

10 A Well, I had read in the paper and I think it was the
11 Sun News and it said wood flooring going in at the pier.
12 And I thought, well, they're not permitted and I asked my
13 staff.

14 Q Who?

15 A Sebrina, Sue and John O'Dare (sic) who was the
16 director public works, who was at town hall almost 24/27.
17 So I asked them if there was any work going on there.
18 They looked at me with a deer in a headlight look. Nobody
19 would even say anything to me. So I got in my truck and I
20 rode around and said, well, I'm going by the pier and just
21 check and see. So ---

22 Q About what time was this?

23 A It was about four.

24 Q Four in afternoon?

25 A Yes, it was.

1 Q By that time had Mr. Duckett already left for the
2 day?

3 A Yes, he had.

4 Q Let me ask you this going back. When Mr. Duckett --
5 did he ever tell you what he did when he left for the day
6 at three o'clock?

7 A Yeah.

8 Q What did he tell you?

9 A He going to drink beer.

10 Q And did he ever tell you about his beer drinking on
11 town business driving or anything?

12 MR. THOMPSON: I object, Your Honor.

13 THE COURT: Basis? Basis of the objection?

14 MR. THOMPSON: This is completely irrelevant.

15 THE COURT: Please approach.

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury, but out of the hearing of the
18 jury.)

19 THE COURT: It's sustained. You may proceed.

20 BY MS. GOLDING:

21 Q So about what time did you get to the pier
22 restaurant?

23 A About four o'clock in the afternoon.

24 Q And when you got to the pier restaurant, what did you
25 see?

1 A Well, when I got there, it was obviously obviously
2 something was being done. They cut new openings for doors
3 and windows in the exterior of the building, that's new
4 construction. You know, I didn't know if they had it
5 braced properly, how they had done it. You know, there
6 was no inspection because there's not a permit issued.
7 They had studded up a new wall. I been there for years.
8 I knew there use to be a long cabinet. The cabinet was
9 torn out, which is demo. You could tear that out, but
10 they'd already studded up a new wall, put plumbing in it
11 and new electrical. They had all the subflooring down, so
12 that was new construction. There was nobody on site for
13 me to talk to except there was a fisherman and the ice
14 cream guy was there and I borrowed a piece of tape from
15 him. So I wrote a stop-work order on an inspection ticket
16 and it said work started without a permit stop work until
17 permit is issued. And I hung it on the door.

18 Q Why hang it on the door is that something customary?

19 A Well, you can staple it, tape it as long as you can
20 get it somewhere where they're going see it. When the
21 contractor comes back, he's going to see it and come to
22 the building department or, you know, make arrangements to
23 get his permit.

24 Q Is that customary you work in Georgetown and Horry
25 County and Surfside? Is that customary the way you put

1 stop-work orders?

2 A Yes, it is.

3 Q Now, does the Town of Surfside have a stop-work form
4 that you put?

5 A They have a placard, a red placard?

6 Q Is it larger than the ticket?

7 A Yeah, it's a little bit larger than this not a whole
8 lot and it's red. And, you know, you can attach that to
9 the door, but to be honest with you, I was being discrete.
10 I just put an inspection ticket, that's what I had. I was
11 up on the pier. I had that with me, so that's what I
12 used.

13 Q At that point in time why would you want to stop the
14 work?

15 A It was new construction. They didn't have a permit
16 for what they were doing.

17 Q But why what's the reason for it?

18 A Well, plans weren't approved and the permit wasn't
19 issued.

20 Q And why would that be necessary?

21 A Well, that's required.

22 Q Is it for reasons for public safety or what?

23 A Oh, absolutely to protect the public and, you know,
24 to make sure that what they're doing is right. You know,
25 you have to inspect, but first you got to have a set of

1 plans and know what they're doing before you can inspect.
2 But if you do work that's not inspected, how are we going
3 to see it to make sure that piece of wire going in the
4 wall is correct or, you know, the plumbing, those openings
5 how do we know that they're engineered. We're in a high
6 wind zone every opening on that thing would have to be
7 engineered. We had no permit approved, no engineering, no
8 hood system. There was nothing to work with.

9 Q Well, Mrs. Donevant, you could have just walked away
10 from there?

11 A I couldn't do that.

12 Q Why not?

13 A I'm licensed. When I see -- if I didn't know about
14 it, I'm not responsible for it. But when I see a
15 violation such as that or any other violation of people
16 working without a permit, it's my job. I could lose my
17 license if I did not.

18 Q What do you mean lose your license, what you talking
19 about?

20 A Well, the building codes council ---

21 MR. THOMPSON: I object.

22 THE COURT: Basis? No speaking objections.
23 What's the bases of your objection?

24 MR. THOMPSON: Speculation.

25 THE COURT: Approach please.

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury.)

4 THE COURT: You may proceed.

5 BY MS. GOLDING:

6 Q Mrs. Donevant ---

7 A Yes, ma'am.

8 Q --- as a building official for all these years as you
9 were, are there complaints issued against building
10 officials?

11 A Yes, there are.

12 Q And where are complaints submitted?

13 A To the building codes council or labor and license
14 regulation.

15 Q And have you had complaints submitted against you?

16 A Yes, ma'am, I have.

17 Q And as a result of those complaints, have you ever
18 been disciplined?

19 A No.

20 Q And why not?

21 A They found no basis for the complaints.

22 Q And would there have been any basis for a complaint
23 had you not issued a stop-work order on the pier?

24 A Absolutely.

25 MR. THOMPSON: Same objection, Your Honor.

1 THE COURT: Basis?

2 MR. THOMPSON: It's speculative.

3 THE COURT: Foundation and speculation,
4 sustained.

5 BY MS. GOLDING:

6 Q The Town of Surfside has they adopted a building
7 code?

8 A Yes, it has.

9 Q What is the name of the building code that it's
10 adopted?

11 A The International Building Code.

12 Q And the International Building Code is that -- what
13 is your understanding as to the International Building
14 Code and what body administers that?

15 A Actually, the building codes that we adopt we really
16 don't even have to adopt them because the state mandates
17 what we can adopt. There's certain ones your building,
18 plumbing, mechanical, gas, fuel gas. Those codes are
19 mandatory. The state regulates it and we have to -- we
20 can adopt them. We don't have to, but we can adopt other
21 codes if we'd like. They have different codes property
22 maintenance, you know, different building codes if the
23 town so wants to adopt them. But the codes that regulate
24 my job or the codes that are mandated by the State of
25 South Carolina and the Town of Surfside.

1 Q I just presented to you exhibit 26?

2 A Yes, ma'am.

3 Q Which is section 115 stop-work order. You see that?

4 A Yes, ma'am.

5 Q Is that an ordinance pass by the Town of Surfside?

6 A Yes, it is.

7 Q Okay. And does that ordinance deal with stop-work
8 order?

9 A Yes, it does.

10 Q Okay. And does that -- what does that ordinance
11 provide as your authority?

12 A Whenever the building official finds any work
13 regulated by this code being performed in a manner either
14 contrary to the provisions of this code or dangerous or
15 unsafe the building is authorized to issue a stop work.

16 Q And did you find that the work going on at the pier
17 was contrary to the provisions of the International
18 Building Code?

19 A Yes, I did.

20 Q And how was it contrary?

21 A Well, it was unsafe and it was dangerous. They had
22 openings that anybody could step in and fall. There was
23 loose wires and plumbing. There was stuff that hadn't
24 been inspected, how do you know whether it's safe or not.
25 We have to protect the public. The pier is a busy place.

1 A lot of kids go on there, you know, in evenings. We had
2 some vandalism on houses that were under construction, so
3 it was unsafe.

4 Q And with respect to -- also was there a permit
5 issued?

6 A No, ma'am.

7 Q Does the International Building Code as adopted by
8 the Town of Surfside does it require a building permit
9 before any new construction?

10 A Yes, ma'am.

11 Q Now, under section 115, did you issue a stop-work
12 order to the owner?

13 A I put it on the door. The owner was not there. It
14 was tape to the door, which is standard practice is what
15 we do.

16 Q Okay. And then if work had continued, would that
17 have been unlawful under this statute?

18 A Absolutely.

19 Q After you issued the stop-work order, did you make
20 any telephone calls?

21 A Yes, I did. Councilman Bob Childs -- it was getting
22 late in the afternoon. I was leaving after I issued a
23 stop work going back to my office. I called Bob Childs --
24 can I say the name?

25 Q Yeah ---

1 A Anyway he was a councilman. Councilman Bob Childs I
2 called him because he had called me earlier about
3 something about a gutter and he wanted to know ---

4 Q Not say what he said?

5 A --- I want say what he said. But anyway I called him
6 and I called Micki because I called Micki earlier and she
7 had not returned my call, so I called her back. And she
8 answered and I had a question for her. And I told her I
9 put the stop-work on the pier. And I told her Jim
10 wouldn't like it and she said have you talked to him. I
11 said, no, not yet.

12 Q Let me ask you, did you get Mr. Duckett's approval
13 for the stop-work order?

14 A I don't need his approval.

15 Q Have you ever had a town council -- a town
16 administration approval?

17 A No, I don't need that that's my job, that's my
18 duties.

19 Q To your knowledge, did Mr. Duckett have a right to
20 deny you to issuing a permit?

21 A No.

22 Q Now, at what point in time then, did you speak with
23 Mr. Duckett?

24 A When I got back to my office, got back to my desk --
25 well, I had stopped up at the front on the way back, you

1 know, it's like 4:55, five o'clock, Mr. Duckett was gone.
2 Micki came back in the office and said you need to call
3 Jim. Well, I don't call him after hours, but I don't need
4 to call somebody and tell them I did a stop work. I mean,
5 the pier was a hot item for Surfside, but so was the
6 library and all the other things. So I issued a stop-work
7 order, I did my job and went back to the office. And
8 before I could call him, he called me and he told me to be
9 in the office at eight o'clock in the morning. He said I
10 can't believe you been to that pier.

11 Q Is that the only thing he said I can't believe you
12 been to that pier?

13 A Yes.

14 Q And that night did you hear him on the television Mr.
15 Duckett say anything?

16 A Yes.

17 Q And tell me what you saw on TV?

18 A I saw Mr. Duckett rip my stop-work order off the
19 window and yell to the camera man that something about
20 damn boards. They're putting down damn boards. And then
21 later on at the 11 o'clock news they showed my stop-work
22 order back up on the board.

23 Q Was it crumbled up?

24 A Yeah, I knew he had tore it down.

25 Q Had you ever before had a town administrator tear

1 down a permit or a stop-work order anything like that?

2 A No.

3 Q Did you then meet with Mr. Duckett the next morning?

4 A Yes, I did.

5 Q And tell me about that meeting?

6 A I came in -- can I show you?

7 Q Yes.

8 A I came in his office and he had three pieces like
9 door number one, door number two. He had three pieces of
10 paper laying out like that.

11 Q Let me stop you is this exhibits 15, 16 and 17?

12 A Yeah. Fifteen, 16 and 17. He flipped the first one
13 over, he gave it to me and I read it. And it said
14 Mrs. Donevant called the town and she failed to inform on
15 Monday, March 19th, I instructed you to tell Micki Fellner
16 to tell Mrs. Donevant to report to report -- not to report
17 to Mrs. Fellner but to report to him only him.

18 Q Let me stop you right there. So you walked into his
19 office and he had three pieces of paper turned upside
20 down?

21 A Uh-uh.

22 Q Could you tell what was on those three pieces of
23 paper?

24 A Yeah, a reprimand written.

25 Q Well, before he turned it over?

1 A Oh, I knew what it was. I mean, that's kind of like
2 the way he does things.

3 Q So what was the first piece of paper he pulled out?

4 A It was a -- no, is the second one. Yeah, this is a
5 written reprimand. He's given me a written reprimand. I
6 said I wasn't going to sign it because he had indicated
7 that I had called a councilman -- he has councilman --
8 what he told me was and I have read it he said I told you
9 to report to Micki and here you are out at that pier. And
10 he said here sign this. And I read it and said I'm not
11 gone sign it.

12 Q Why?

13 A It's not true, you know. And I had a right to issue
14 a stop-work order. And I don't know where you get
15 something about a TV camera. I had no idea there was
16 going to be a TV camera out there, you know. But anyway,
17 so I wouldn't sign that. So then he said, well, sign this
18 and I looked at that and it said order of suspension. And
19 I knew what that other piece of paper was and he didn't
20 even have to turn it over. So I signed this one and took
21 three days off without pay and because I needed my job.
22 And I knew what this one would say and it does say that
23 I'm terminated effective today.

24 Q In that first the reprimand in that I'm going to ask
25 you this. Whereas Mrs. Donevant was operating within the

1 scope of her authority, she made no effort to reach me to
2 tell me of her actions. Were you ever instructed by Mr.
3 Duckett to ever tell him that you were going to be issuing
4 a stop-work order?

5 A No. No, ma'am.

6 Q Were you ever instructed by Mr. Duckett to tell
7 anything that you were going to do as a building official?

8 A No, said instead that I call the deputy
9 administrator, which is true. I called Micki, but I
10 called Micki for something else. I was not reporting to
11 Micki. I don't have to report to put a stop-work order on
12 somebody's building that's working without a permit.

13 Q Now, did you make an objection to your three-day
14 suspension?

15 A Yes, I did.

16 Q And is that exhibit 19 let me give you this. Exhibit
17 19 what did you tell Mr. Duckett?

18 A My suspension was not right. All I did was follow
19 the law, which you didn't want me to follow. Like I told
20 you the other day, I will follow the law even if it means
21 not following your instructions. You have been picking on
22 me and treating me badly for a long time even though I do
23 my work by the book and I'm dedicated to the town.

24 Q Why did Mr. Duckett want to be a building official
25 and not you?

1 MR. THOMPSON: Object.

2 THE COURT: Basis of the objection?

3 MR. THOMPSON: Once again it's speculation why
4 did Mr. Duckett think.

5 THE COURT: It's speculation and it's leading,
6 please rephrase. Objection sustained.

7 BY MS. GOLDING:

8 Q Okay. Did Mr. Duckett ever tell you his motives as
9 to his activities relating to the building department?

10 A No.

11 Q When you gave -- when did you give Mr. Duckett your
12 letter exhibit 19?

13 A I think I gave it to him when I got back off
14 suspension.

15 Q Now, when you -- on that day of suspension when he
16 gave you that suspension, what did Mr. Duckett tell you
17 about the pier?

18 A He said you know how hard I been working to get that
19 pier done.

20 Q Okay. Was anybody in the office with you and Mr.
21 Duckett when he put you on suspension?

22 A No.

23 Q Okay. Now, did you work -- what day did you get back
24 from suspension?

25 A Well, it was three days. I got suspended 21st, 22nd,

1 23rd, 24th.

2 Q And when you got back to work between the 24th and
3 April 4th, did Mr. Duckett say anything to you that you
4 did anything wrong or anything like that?

5 A No, ma'am.

6 Q Okay. And what day was it that you were fired?

7 A April 4th 2012.

8 Q And what reasons did Mr. Duckett give you for firing
9 you?

10 A No reason at all. I went in his office. He called
11 me in his office. And there was a policeman walking in
12 the same time I was walking into Mr. Duckett's office. He
13 said you're being terminated effective immediately. This
14 police officer you can take him to your office and get
15 your personal things. You can give him your keys, keys to
16 the building, keys to the truck everything. So I just
17 left, I guess, I was in shock. So I went back to the
18 office and I started packing up my stuff and I called my
19 husband, Bill, he's sitting out there and I told him what
20 happened. And I asked him to please come help me get my
21 personal stuff. So I had to unload my office. I mean,
22 you know, ten years of junk in my office. I had a lot of
23 personal stuff there in boxes and boxes and even the
24 policeman help me, but I had to do that in front of
25 everybody in front Sebrina, Sue, Brenda. The business

1 license people and all that. I had to pack up my crap
2 sorry -- pack up my stuff with a policeman and he escorted
3 me to the car when I got in the car.

4 Q Mr. Donevant, you said ten years and that brought me
5 up to something I forgot to ask you. Tell the jury about
6 your tenure with the City, the periods of that you worked
7 were there a break in service?

8 A Yes, there was. I went to work in -- I think it was
9 '96. I might have said '94, but it's '94 and '96. And I
10 worked with them until 2002. Then I went to work for a
11 local construction company. In 2005 -- well, in between
12 that time, the town would call me and I would pick up
13 plans because they didn't have anybody certified to do any
14 plans. And they had a zoning person and she would check
15 zoning and then they would call me and I do the plans.
16 And, you know, however you call that. And I was working
17 my other job too. And in 2005 everybody knows how bad the
18 economy got. And it was thin over at the other side, so
19 Mayor Hyman, Clyde Merriman who was an administrator ask
20 could I come back full time and I said yes.

21 Q So overall about how many total years were you with
22 the Town of Surfside?

23 A Over ten years.

24 Q The total years the first and the second part would
25 be about 15 years?

1 A Yeah, close to that.

2 Q Now, let me give you exhibit 22 for unemployment.

3 What reason did the town have on that for the reason you
4 were fired?

5 A Discharge operational changes.

6 Q And who signed that for the town?

7 A Mr. Duckett.

8 Q Okay. So that was the reason that was given then on
9 that sheet exhibit 22 was what?

10 A Operational changes.

11 Q Okay. After you were fired, did you try to look for
12 a job?

13 A Yes, ma'am.

14 Q Okay. Let me ask you something, how many times
15 before this had you ever been fired?

16 A Never. I started work when I was 13 years old.

17 Q And what did you do looking for a job?

18 A Of course, the internet everybody use the internet
19 now. I went to the newspaper. I called a lot of building
20 officials to see if they had any openings in their office.
21 I checked with Georgetown County. I checked -- I did that
22 every day, you know, looking for a job.

23 Q Well, were you able to find a job?

24 A Yes, I was. I found a job in Florence County and
25 went to work with them October the 1st as a code

1 enforcement officer.

2 Q And did you have to drive back and forth?

3 A I did. I had to drive back and forth.

4 Q How long did you stay with Florence County?

5 A I stayed with Florence County from October 1st until
6 June 28th.

7 THE COURT: I need her to say the years.

8 A I'm sorry. That's 2012 in June. No, they're both
9 2012. I got it down. I'm sorry I have to keep a book.
10 October 1st 2012 till June 28th 2013.

11 Q And why did you leave Florence as a deputy building
12 inspector on June 28th 2013?

13 A My husband was diagnose with mantle cell lymphoma.

14 Q And so why did you have to leave?

15 A And I had leave to take care of him. So I had to
16 resign from Florence.

17 Q Why didn't you take leave?

18 A Well, I tried to take leave. I asked for FMLA and
19 that is possible because I took FMLA when I was -- had my
20 breast cancer problems, but you had to be with Florence
21 County for a year and I was only there for nine months. I
22 was denied my FMLA leave. So I asked my building official

23 ---

24 Q You can't say what you asked the building official.

25 A Oh, I'm sorry.

1 Q But as a result of your inquiry, were you able to
2 continue as an employee with Florence County?

3 A No, ma'am.

4 Q Okay. And have you -- have you spent time with your
5 husband? What procedures you had to go through with him?

6 A He's had six rounds of chemotherapy every 21 days,
7 plus scans, all kinds of scans. And we go back and forth
8 to MUSC. We just -- he was therefore 60 days with a bone
9 marrow transplant. It just time -- took all my time.

10 Q Had you had 12 weeks under FMLA like the Town of
11 Surfside Beach, would you still have had a job in
12 Florence?

13 A Yes, ma'am.

14 Q Okay. Had you not been fired from the Town of
15 Surfside, how would your husband's illness affected your
16 employment at the Town of Surfside?

17 A Well, at the Town of Surfside, I'm four miles from
18 where I work. And we lived in Murrells Inlet at that time
19 and Bill's cancer center was right in Murrells Inlet was
20 like a mile from the house. You know, I could have took
21 leave and take care of him and went back to work and you
22 can see he's doing real good. I could have been working
23 all the time.

24 Q With respect to -- had you continued your employment
25 with Town of Surfside would you have applied for FMLA

1 leave?

2 A Yes.

3 Q To take care of your husband?

4 A Absolutely.

5 Q And did you have the required tenure with the town
6 to have gotten FMLA leave?

7 A Yes, ma'am.

8 Q Now, since your husband has recuperated thank
9 goodness, have you been looking for a job?

10 A Yes, I have.

11 Q And have you had any success?

12 A Not yet, but I'm still looking.

13 Q How old are you, Mrs. Donevant?

14 A I'm 61. It's kind of hard to find job at 61.

15 Q And how are you looking now?

16 A Same way newspaper, on line. I went to different
17 offices and, you know, called people. I just been calling
18 around. I just been looking for a job. And it's hard for
19 a 60-something-year-old lady with gray hair to get a job.

20 Q Let me give you what's exhibit 23 going to the year
21 2012, you worked at what places in 2012?

22 A I worked at the Town of Surfside.

23 Q And how much did you earn at the Town of Surfside
24 when you were with them in 2012?

25 A \$65,000.

1 Q So how much did you actually earn in 2012?

2 A In 2012, I only made \$16,019.78. And I also worked
3 for Florence County, so I made \$8,844.30, which was
4 \$24,864.08. So what I did was I took the 65,000 that I
5 would have made and I subtracted the 24,864.08 that I did
6 make and it came to \$40,135.92 in 2012.

7 Q That you lost?

8 A Yes.

9 Q So in the calender year 2012, your salary should have
10 been how much at the Town of Surfside?

11 A \$65,000.

12 Q Okay. And so by being fired you lost how much in
13 2012 in lost wages?

14 A 40,135.92.

15 Q How about in 2013 how much did you lose in lost wages
16 in 2013?

17 A I lost 44,000. The difference in my pay -- I went to
18 work at Florence County October to June.

19 Q And how much had you made in Florence County?

20 A 8,844.30.

21 Q Okay. So what was the lost wages that you had in
22 2013?

23 A It was 44,000.

24 Q Now, Mrs. Donevant, how long did you anticipate
25 working for the Town of Surfside?

1 A Change I something. I read the 2012 Florence County
2 thing. I made 21,000 with Florence County doing that up
3 to, you know.

4 Q But your total lost ---

5 A Total lost was 44. I think I told you 18.

6 Q So that wasn't 2012, that was 2013?

7 A Correct.

8 Q So going back, my question was had you stayed with
9 the Town of Surfside, how long had expected to stay?

10 A Sixty-six. Bill and I had decided that I was going
11 to retire at 66.

12 Q Now, your husband Bill had he retired?

13 A Yeah, he's retired from the State of South Carolina
14 and also he retired from the Air Force 31 years in the Air
15 Force.

16 Q And so you were planning to -- your last year was
17 working with the Town of Surfside?

18 A It would be 2018 I be 66.

19 Q Now, had you worked in 2014, what was the salary you
20 would have earned from the Town of Surfside in 2014?

21 A \$65,000. I'm just saying that because I don't know
22 with Mr. Duckett gone I might have got a raise or, you
23 know, cost of living raise or something, but I'll just go
24 with what I was making when I left was 65,000.

25 Q And 2015?

- 1 A \$65,000.
- 2 Q And 2017?
- 3 A \$65,000.
- 4 Q And 2018?
- 5 A 32,666.72.
- 6 Q And why was that only 32,000 in 2018?
- 7 A Because I only had work to my birthday, which was,
- 8 you know, I start January of 2018 and work until my
- 9 birthday September 23rd.
- 10 Q How much are you seeking from the Town of Surfside
- 11 for lost wages total?
- 12 A Total 376,802.64 in lost wages, but I also lost in
- 13 milage too.
- 14 Q Okay. We'll get to that. Was 376,802 ---
- 15 A And 64 cent.
- 16 Q Now, have you include cost of living increase in that
- 17 amount?
- 18 A No.
- 19 Q Okay. Did you include any interest calculations?
- 20 A No.
- 21 Q Okay. And how about retirement? What was the
- 22 retirement benefit that you had from the Town of Surfside?
- 23 A They would match your -- I put money in -- they take
- 24 it out of my pay and then they match it and...
- 25 Q Did you have retirement?

1 A I did, but I had to use it. I had to cash it in.

2 Q Why?

3 A I needed to pay bills and trying to stay a float I
4 guess you could say.

5 Q And have you calculated the contribution by the State
6 in the retirement?

7 A No.

8 Q Now, we're talking about milage. What are you
9 seeking in milage?

10 A Well, like four -- well, let's say eight miles round
11 trip where I live in Murrells Inlet.

12 Q To Surfside?

13 A To surfside. And then to Florence it was 157 miles a
14 round trip. And then I deducted the eight miles that I
15 had from Surfside. And I got 148 miles a day extra that I
16 had to drive.

17 Q And those 148 miles. How many days a month did you
18 have that?

19 A Twenty.

20 Q Okay. And how much total then in dollarwise would
21 the milage have cost you?

22 A I wrote that down I'm sorry. Total will be 14,560
23 because it was like 28,000 miles for the time from October
24 until June.

25 Q And that's 28,000 miles and how much per mile?

1 A Times 56 and that's how I got 14,000.

2 Q Is that the state milage rate you use?

3 A Yes, .56.

4 THE COURT: Ms. Golding, I need the two of you
5 to approach for a moment.

6 (WHEREUPON, a bench conference was held in the
7 presence of the jury, but out of the hearing of the
8 jury.)

9 THE COURT: You may proceed.

10 BY MS. GOLDING:

11 Q Mrs. Donevant, how many miles was that a total of how
12 many miles?

13 A I think it was 26,000. Did I say 28? I got it wrote
14 in my book. 26,820 miles.

15 Q And if you computed 26,820 miles by 40 -- by 40 cents
16 a mile ---

17 A I did 56.

18 Q Right. But I'm going to ask you to do the 40 cents a
19 miles.

20 A Okay.

21 Q Would that be \$10,400?

22 A Yes, ma'am, that's exactly what it be.

23 Q Mrs. Donevant, would you be continuing to search for
24 a job?

25 A Yes, ma'am.

1 Q And why is that?

2 A I need a job. I have to work at least until I'm 66.

3 MS. GOLDING: Please answer any questions

4 Mr. Thompson may have for you.

5 THE COURT: Madam forelady, ladies and
6 gentlemen, we're going to take advantage of this break in
7 testimony to take our evening recess. We're only a couple
8 minutes before five o'clock. And like I said, we're all
9 use to this schedule, but I would imagine you all are a
10 little weary and need a break. So we're going to resume
11 cross-examination of the witness tomorrow beginning at
12 9:30. I don't think the inclement weather is scheduled to
13 roll in until Wednesday sometime. And I think tomorrow as
14 the weather picture develops we'll have a clearer picture
15 of exactly, you know, whether we're going to be affected
16 or not. Again, we'll resume in the morning at 9:30.

17 During this break please do not discuss the case
18 among yourselves or with anyone else. Please don't do any
19 independent research of any type that includes anything
20 that could be found on the internet including any articles
21 or otherwise that will reference during the course of
22 testimony. As the fact finders, you are sworn to decide
23 this case according to what you hear from the witness
24 stand and the other exhibits that are introduced and void
25 of any extraneous sources outside of the evidence. Also

1 please don't have any contact with anyone when you return
2 to the courthouse. Again, I wouldn't want an innocent
3 conversation misinterpreted and please don't make any
4 posts regarding your jury service on any social networking
5 site. You all have a great evening. You'll come directly
6 to your jury room in the morning or I'll put you in the
7 capable hands of the deputies and they'll tell you what
8 you need to do and if you'll leave your note pads in your
9 seats. And again, on that front page write your juror
10 number on the very front page of the notebook, so you'll
11 be able to identify which notebook belongs to you. You
12 all have a great evening. We'll see you in the morning at
13 9:30.

14 (WHEREUPON, the jury excuse for the day.)

15 THE COURT: Ma'am, you may step down, but please
16 don't discuss your testimony with anyone during the break.
17 And then we'll research exactly what the state rate is
18 because it changes every few months. Sometimes it's .50.
19 Sometimes it's .51 and then they'll give us the federal
20 rate. And as soon as they do that for two months, they
21 take it right back down to the 50 cents when we run into
22 shortages. So we'll double check exactly what it is and
23 then we'll go from there and whatever it is you all can
24 stipulate to the amount that eliminate us having to clean
25 that up.

1 MS. GOLDING: Thank you.

2 THE COURT: Anything before we break for the
3 evening from the plaintiff?

4 MS. GOLDING: Nothing from the plaintiff.

5 THE COURT: From the defense?

6 MR. THOMPSON: Instruction to the witness that
7 she's not to discuss ---

8 THE COURT: I've already instructed her.

9 MR. THOMPSON: Okay.

10 THE COURT: I've told her she's not to discuss
11 her testimony with anyone. I think that covers -- and Ms.
12 Golding's been doing this a long time. She knows not to
13 talk to her.

14 MS. GOLDING: Absolutely.

15 THE COURT: Ma'am, if you just leave all the
16 exhibits up there, the court reporter will take care of
17 it. And I would assume you all can leave your stuff.
18 This room will be locked and so only tote what you need
19 to. I wouldn't tote all that stuff unless you absolutely
20 have to. I'll see you all in the morning.

21 (WHEREUPON, the proceedings were concluded for
22 the day to be reconvened on February 11, 2014.)

23 THE COURT: Is the plaintiff ready to proceed?

24 MS. GOLDING: Plaintiff is ready.

25 THE COURT: Is the defense ready to proceed?

1 MR. THOMPSON: Ready, Your Honor.

2 THE COURT: I don't know what the weather is
3 going to hold for us, but I'll just have to see and keep
4 track. I know there's an advisory today and we'll see how
5 it goes, how it goes tomorrow. I'm going to wait to see
6 exactly what the county decides in terms of delayed
7 closings otherwise and then we'll decide from there.

8 Please bring in the jury.

9 Ma'am, if you would retake the stand, I will
10 remind you you're still under oath.

11 (WHEREUPON, the jury came into open court.)

12 THE COURT: Good morning, ladies and gentlemen,
13 I hope you all had a pleasant and restful evening. I'm
14 glad everyone arrived safely in spite of this atrocious
15 weather. As I promised on yesterday, I'm going to monitor
16 the weather situation. And I'll let you know how we will
17 be proceeding. I'm not exactly certain yet how all of
18 this -- the weather front is going to affect all of us. I
19 don't know whether there'll be delayed openings in the
20 morning. And as the day progresses and as the weather
21 progresses, I think we'll have a clearer picture. So I'll
22 keep you all posted. Hope you all enjoyed your breakfast.
23 We're now going to resume with the cross-examination of
24 the witness.

25 Mr. Thompson, you may proceed.

1 Please give the attorneys your undivided
2 attention.

3 MR. THOMPSON: Thank you, Your Honor.

4 THE COURT: You're welcome, sir.

5 CROSS-EXAMINATION

6 BY MR. THOMPSON:

7 Q Good morning, Mrs. Donevant.

8 A Good morning, Mr. Thompson.

9 Q We've met several times before, correct?

10 A Yes, we have.

11 Q Various depositions and mediations. I'll try not to
12 retry to much ground, but I did want to explore a couple
13 things that your testimony covered. I believe we
14 established Mr. Duckett was the new administrator
15 beginning December of 2010?

16 A Absolutely.

17 Q And did you know him before that time?

18 A No, I did not.

19 Q And he didn't know you as far as you know?

20 A No, but I was out having dinner and it was sometime
21 right after he got there and I was at the Beaver Bar with
22 my sister. They had a special on Friday nights all the
23 flounder you can eat for 8.95. And Mr. Duckett showed up
24 there, which was nice. He sat down, had a beer with us,
25 ate dinner with us. I don't know he told me I was working

1 archives. No, sir, I'm not doing plan reviews in my
2 office.

3 Q So do you deny frequently coming in late and leaving
4 early and going missing during the day?

5 A Leaving early. I deny -- well, no, let me tell you
6 this. I come in late. I come in late. The time before
7 Mr. Duckett come there I think I read you yesterday the
8 list of what was going on that I had a part of. I was
9 running a whole department with two people one permit
10 clerk, one provisional code enforcement officer. We did
11 all the planning commission paperwork. We did all the
12 town council. We had to meet with town council every
13 other month or once a month. We had to give a report to
14 them. I had to make sure that all the permits were right
15 that were issued. I had to oversee day-to-day operations
16 in that. Ms. Fellner would call me. I had to drop what I
17 was doing. We have to go to Tenth Avenue look at a
18 culvert. We go to the development look at other things,
19 that will put me behind. I would work late, that's what
20 he told me I needed to stop. He said I don't work that
21 way. You need to go out and not work late at night. I
22 told him I said I can't get everything done. Well, you
23 just need to work on it. When you get through four, five
24 o'clock, you go home, but it didn't happen. I had to work
25 late.

1 BY MR. THOMPSON:

2 Q Now, you don't deny getting a written warning in July
3 of 2011 about your attendance and punctuality, do you?

4 A No, I do not. But I do deny that it was to be put in
5 my personnel file.

6 Q I didn't ask you about that, Mrs. Donevant. We'll
7 get through this quicker if you'll ---

8 MS. GOLDING: Your Honor ---

9 THE COURT: Don't direct the witness, Mr.
10 Thompson.

11 Ma'am, please answer the questions yes or no and
12 then you may explain your answer. You may proceed with
13 your next question.

14 BY MR. THOMPSON:

15 Q And you signed that warning, correct?

16 A Yes, sir.

17 Q And you didn't have a problem with signing that
18 warning?

19 A No, sir.

20 Q If you want to take a look at it, it's exhibit two in
21 the white notebook?

22 A Is this the, Mr. Thompson?

23 Q Yes. And it says I have received a copy and you
24 signed it?

25 A Yes, I did.

1 Q That's your signature?

2 A Uh-huh. May I say what I told him when I got it?

3 Q No, I didn't ask you about that. I'm sorry.

4 MS. GOLDING: Your Honor, you may explain it.
5 Your Honor, the witness can explain.

6 THE COURT: She can. Ma'am, you may answer, but
7 you have to answer yes or no. Then you may explain your
8 answer.

9 A I did sign this Your Honor with protest. I wrote up
10 in the corner and he told me that if I was on time or I
11 e-mailed him that he would put this in his right-hand
12 drawer. And he would destroy it in six months.
13 January 14th 2013, I think would have been 12 would have
14 been six months. So how -- how did you get -- well, I
15 can't ask you a question. That should have been destroyed
16 I told him ---

17 MR. THOMPSON: Your Honor, I don't think that's
18 responsive to my question?

19 A I told him I was not late. All right. Can I say
20 that I was ---

21 THE COURT: Ma'am, I need you to answer the
22 question yes or no. And then you may explain your answer,
23 but I cannot allow you to go off on tangents.

24 MRS. DONEVANT: I'm sorry.

25 THE COURT: And you don't have to apologize.

1 MRS. DONEVANT: It's been so long.

2 THE COURT: Mr. Thompson, proceed with your next
3 question.

4 A What was that question, sir?

5 THE COURT: Please repeat the question.

6 BY MR. THOMPSON:

7 Q I think I only asked her if she signed it.

8 THE COURT: I need you to restate the question.

9 MR. THOMPSON: I'll do the best I can, Your
10 Honor.

11 BY MR. THOMPSON:

12 Q Is that your signature?

13 A Yes, sir.

14 Q I think that was my last question. If you would turn
15 to exhibit three.

16 THE COURT: Defense or plaintiff's?

17 MR. THOMPSON: Defendant's the same white
18 notebook.

19 BY MR. THOMPSON:

20 Q This is a performance evaluation that Mr. Duckett
21 gave you, correct?

22 A Yeah, he made up his own performance evaluation. It
23 was nothing that I had ever seen before.

24 Q That's fine. Says down at the bottom on the line
25 that states I have received a copy. You sign that, right?

1 A Yes, sir, I did.

2 Q All right. And he complimented you on your knowledge
3 of building official duties, right?

4 A Right.

5 Q But he criticized you for taking too much training
6 and I understand you say he approved everything, but he
7 criticized you for that, right?

8 A Yes, sir.

9 Q And then he criticized you for not being focused on
10 town business even while at work, right?

11 A Well, how does he know I'm not focused.

12 Q I'm sorry did he criticized you for work or not?

13 A He wrote it out here. He did not tell me that. He
14 wrote there and I signed it.

15 Q Did you discuss -- did you have a meeting with
16 Mr. Duckett about it?

17 A I certainly did.

18 Q So y'all discussed this?

19 A We discussed this performance evaluation.

20 Q And you did not get a merit increase that period?

21 A I did not. Of course, everyone else did.

22 Q Well, you don't know that, Mrs. Donevant?

23 A Yeah, well... Sorry. I signed it. I told him I
24 said, Mr. Duckett, I have been doing other things. You
25 have always said that you do things differently. I work

1 flex hours. I'm here sometimes at night and Micki can
2 attest to that at nine or ten o'clock at night working. I
3 said I am always have town business on my mind and in my
4 work and what I do. And I'm very dedicated to the town.
5 You don't know how many complaints I answer ---

6 MR. THOMPSON: Your Honor, that's nonresponsive.

7 MS. GOLDING: Your Honor ---

8 THE COURT: Ma'am, you may answer the question
9 yes or no and then you may explain your answer, but I need
10 you to stay on topic.

11 MS. GOLDING: Your Honor, his question ---

12 THE COURT: You may proceed.

13 A What was your question again?

14 Q Let me move on. You gave Mr. Duckett a rebuttal.
15 You were getting ready to talk about rebuttal. Now, we're
16 talking about rebuttal. You gave him a written rebuttal
17 two months later, correct?

18 A Correct.

19 Q Why did you wait two months to give Mr. Duckett a
20 rebuttal of your performance review?

21 A Do you know anybody that ever had breast cancer?

22 Q Yes.

23 A Do you know anybody had a mastectomy?

24 Q Yes.

25 A And you know how you go back and forth. Cancer may

1 leave your body, but it never leaves your life.

2 Q When were you out on leave, Mrs. Donevant?

3 A October 17th I was diagnosed with breast cancer.

4 Q But when did you go out on leave?

5 A January 29th.

6 Q Okay. Your rebuttal is November 29th?

7 A I was diagnosed. I was devastated how can you put a
8 rebuttal up in front of your health. You know, it takes a
9 little time to get yourself together after breast cancer.
10 And then you go every year and you -- it's in your mind.
11 It's in your heart. Is it back? Am I going to have to
12 have this again? I'm sorry. I'm sorry. I'm sorry.

13 THE COURT: Ask the next question.

14 BY MR. THOMPSON:

15 Q This rebuttal was two months before you went out,
16 right?

17 A That's correct.

18 Q Did you get anybody to help you write that rebuttal?

19 A No.

20 Q You didn't ask Sebrina Morris to help you write that
21 rebuttal?

22 A I don't think so, no. Sebrina Morris wasn't talking
23 to me too much at that time.

24 Q Why was she not talking to you?

25 A Well, she was reporting to Mr. Duckett.

1 Q Reporting what?

2 A Anything. Whatever she wanted to, whatever he ask.

3 He was running my department. He was trying to, but he

4 didn't have the credentials to do it.

5 Q You feel like she was spying on you?

6 A Absolutely.

7 Q How about anybody else spying on you? How about Sue?

8 A Sue.

9 Q She was doing it too?

10 A Absolutely.

11 Q What about Micki you think she was spying on you?

12 A No, I think Micki was doing her job if she was
13 required to see where I was, she would go do it, but I
14 don't think she was out trying to find out where I was.

15 Q Do you think Jim was singling you out for harsh
16 treatment?

17 A He was picking on me. He was picking on me. He made
18 me write that thing embarrass the hell out of me.

19 Q Was there something personnel besides work-related
20 things?

21 A Not that I'm aware of. I mean, he's a funny guy. He
22 come up front and stand there all day reading the
23 horoscope to everybody making fun of the finance girls
24 when they come downstairs about what they were wearing. I
25 mean, he was a funny guy. You would like him and then the

1 next thing we'd all say he was hung over and he come in
2 and be a grouch. But, you know, I don't think he really
3 dislike me. I don't know what his problem was. I think
4 he just tried to do my job.

5 Q You went out on leave I think you said January 2012;
6 is that right?

7 A Yes, sir. It is 2012 or 2011? 2012.

8 Q You have a book you can go ahead and check.

9 A I'm pretty sure it's 2012. I think it's 2011. Yes,
10 it's 2011, sir, cause I wrote in my thing November 2011.

11 Q So it was December 2011?

12 A Yes, sir.

13 MS. GOLDING: December 16, 2011.

14 A To be exact, yes.

15 Q I thought you said it was January 2012?

16 A Yes, sir, I'm sorry. I round things off sometimes.

17 Q You return to work around March 12?

18 A Yes, sir.

19 Q And I believe you testified while you were out the
20 City of Myrtle Beach was doing any building plan reviews
21 that came in?

22 A They were. John Harold was doing them.

23 Q And he had started the pier restaurant review, plan
24 review, correct?

25 A Correct.

1 Q Now, when you came back to work, I think you've
2 already testified to this about this Mr. Duckett
3 instructed you not to revisit anything decided in your
4 absence, correct?

5 A Mr. Duckett told me not to undo anything he had done
6 in my absence or I'll be fired.

7 Q And do you think he was referring to an incident
8 where a builder wanted to remove a tree?

9 A Absolutely, I thought that was the problem. I had no
10 idea of going to look up that summons or look up that tree
11 or nothing. That was Ms. Sebrina's she wrote it and then
12 she just didn't appear.

13 Q So you mentioned a summons. So the builder actually
14 got cited for removing the tree without permission?

15 A That's correct.

16 Q And you thought that was what the instruction was
17 about?

18 A Absolutely. What else could it be?

19 Q Did you actually discuss that with Jim?

20 A Yeah.

21 Q Did he mention the tree thing?

22 A No.

23 Q I think you testified correct me if I'm wrong that
24 you had not had problems with your superiors before
25 Mr. Duckett came the administrator?

1 A That's correct.

2 Q Didn't you have some disagreements with Councilman
3 Deaton about the removal of trees?

4 A That was -- a permit was issued. I was a building
5 official. He said that they shouldn't have been cut down.
6 I had to show him the proper procedure, how it was done.
7 And he told me he didn't like trees being cut down and he
8 said something. Is that in here? He said something to
9 the effect you better watch yourself. So what does that
10 mean.

11 Q You felt like you were being threatened by Mr.
12 Deaton?

13 A Yes, I do.

14 Q And you put -- you asked for something to be put in
15 your personnel file about that incident?

16 A I did.

17 Q Now, after you came back from leave, did Mr. Duckett
18 also instruct you that he wanted you to stop reporting to
19 Micki and report to him?

20 A He did after three or four days. I don't remember
21 when he did that. Well, he didn't tell me that. Ms.
22 Fellner told me. She came in my office and told me that.

23 Q She told you that?

24 A She told me that Jim said that.

25 Q But you don't remember Jim telling you?

1 A I don't remember Jim telling me.

2 Q All right. Let's talk about the pier a little bit.

3 The pier -- the town purchased the pier was that why you
4 were there?

5 A Why I was there? I was there before the town
6 purchased the pier.

7 Q Well, that was my question. And was that a
8 controversial decision?

9 A You have to ask council about that. I was not in the
10 meetings with that.

11 Q Well, let me ask you this, were there news media
12 reports about the town?

13 A There was news media reports about the pier, the dog
14 park the -- you name it.

15 Q So the town does own the pier?

16 A Yes.

17 Q And was there an incident when the town violated DHEC
18 permitting by doing a deck extension on the pier?

19 A Yes, they did.

20 Q And y'all had to take the deck down?

21 A That's correct. The town was summon to take the deck
22 down not the building department.

23 Q Right. But you were involved in that?

24 A Yeah, because Micki had asked me to be.

25 Q You actually thought that the town had the permit or

1 had the permit coming necessary to do that?

2 A I actually did, that's correct.

3 Q And did the town have to take that deck off?

4 A Yes, they did. I did not see the order or what it
5 said, but I know they tore it down. The public works
6 people tore it down.

7 Q That was reported in the media as well, correct?

8 A Correct.

9 Q Then there was the restaurant space and the town had
10 a little trouble getting a tenant in there, correct or
11 getting a successful bidder?

12 A Yeah, I heard that at council meetings. I wasn't
13 privy to a meeting where they said that.

14 Q And there were actually several or at least two
15 bidders who were rejected for various reasons, right?

16 A I don't know who was rejected. I know what I read in
17 the paper. I was not in the council making body. The
18 council as a whole does that. The only reason I was
19 helping with things that were out of my scope of work was
20 to help the town with my longevity if there was any
21 questions that Micki had or anyone had. But as far as
22 knowing who bid what or did what, I'm just as blind as you
23 or well you might be more... And I knew they hired a real
24 estate guy to lease it out and then Jim got somebody to
25 lease it out. And, you know, that's all, you know,

1 rumors. And, yes, the news got hold of that.

2 Q So there were several news stories about things that
3 were going on at the pier ---

4 A Absolutely, sir.

5 Q --- including the restaurant?

6 A Yes, sir.

7 Q And you went to the council meetings, correct?

8 A I went to council meetings on my night when I had to
9 give my report of what went on in the building department
10 that's a way we informed everyone what was going on. I
11 had a meeting. I had to be there once a month.

12 Q And the pier was discussed pretty much at every
13 council meeting, wasn't it?

14 A Well, and that's another thing if I may. Everything
15 was done. I use to stand up and report what my building
16 department did, how many permits we issued, how many stop
17 works we did, how many complaints we made, but Mr. Duckett
18 changed that. He got up and reported for the building
19 department and every other department.

20 Q My question was ---

21 A But it was discussed at council meetings, yes, sir.

22 Q Thank you.

23 A But not directly to me.

24 Q So you knew it was if I can use your own words from
25 yesterday a hot issue?

1 A Yes, sir.

2 Q It was a sensitive issue?

3 A Yes, sir.

4 Q It was a prominent issue in the community?

5 A Absolutely.

6 Q Now, after you came back, there was an incident where
7 Mr. Duckett saw you reviewing the pier restaurant plans,
8 correct?

9 A Correct.

10 Q And I believe your testimony is you were looking at
11 the plan so you would know what was going on?

12 A Absolutely. I was back. Mr. Duckett I forgot to
13 tell you in our meeting when he let me go back to work,
14 you got all your duties back. You do whatever it is you
15 do in the building department. All right. If there's
16 plans that the City of Myrtle Beach has issued a permit
17 on, I would just go over those just to look at them. The
18 pier plans the permit had not been issued. It had been an
19 application made. There was corrections that had to be
20 made and they were not made. So it is my job to take over
21 at that point. It's not like everything Myrtle Beach
22 touched just they automatically did, that's not the way it
23 happened.

24 Q You deny then that you understood Myrtle Beach was
25 going to finish any plan reviews they had started?

1 A Yes, why would they?

2 Q You did this inspection we'll talk about it in a
3 minute on March 20th, right?

4 A Yes, sir.

5 Q And you were suspended after that?

6 A Yes, sir.

7 Q But you are aware that on March 21st Myrtle Beach
8 approved the plans and permit?

9 A I was aware of that when I came back.

10 Q But you deny having any kind of understanding that
11 Myrtle Beach was going to finish the work that they had
12 started during your leave?

13 A I deny that. The thing that Mr. Duckett said -- and
14 let me explain. He said why are you looking at Myrtle
15 Beach plans. I said, well, that's my job I look at plans.
16 They're not completed. They're not finished. I want to
17 see what they need, what they're suppose to bring back,
18 that's my job I take over. I went to Myrtle Beach and got
19 the plans.

20 Q Okay.

21 A Jon Harrah happily gave them to me. I been out on
22 leave and I have never ever had anybody try to run my
23 department like Mr. Duckett had in all my life. The Town
24 of Surfside allowed me to take plans home. I lived in
25 Surfside and do reviews there.

1 Q How about other projects that Myrtle Beach started?
2 Did they finish plan reviews and inspections?

3 A If the permit was issued, they would do final
4 inspection on it if the permit was issued.

5 Q How about were there any other pending plan reviews
6 that they had started when you came back that you recall?

7 A No, I had a handful of plans, but I got fired -- I
8 got suspended before I could even look at them. The
9 pier's the first one I had and he walked through there and
10 said how much -- how busy that pier is and council's
11 calling and come to my office.

12 Q So he instructed you when he saw you doing the plan
13 review not to do that?

14 A Yes, he did.

15 Q And so you stopped?

16 A I stopped until he got out of the room and then I did
17 it because it was my job.

18 Q So you ---

19 A How do I get familiar with what's going on if I can't
20 look at a set of plans, what would that cost looking at a
21 set of plans.

22 Q So you disregard his instruction?

23 A No, not really. I only looked at them for a few
24 minutes and rolled them up and went to his office.

25 Q You picked up the plans from John Harrah at Myrtle

1 Beach?

2 A Yes, I did.

3 Q Did you pick up any other plans while you were there?

4 A Yes, sir.

5 Q Did you tell anybody at Town of Surfside that you
6 were getting plans from Jon Harrah?

7 A I called Sue, but I did not e-mail Jim. I think I
8 told Sue because I came in and got my work truck. I park
9 my private car in the parking lot where I always park. I
10 had to go inside and get my keys. And I'm not sure if Sue
11 was there, Brenda was there. And I said I'll be back I'm
12 going to Myrtle Beach. I did not e-mail Jim.

13 Q So let's roll forth to March 20th 2012.

14 A Okay.

15 Q And what were you doing that morning do you recall?

16 A March 12th. Yeah, he was mad. He called me a bull
17 in a china shop. I walked by his office because I was
18 suppose to be there at eight o'clock to see him and he was
19 on the phone. So I just stood out in the hall a little
20 bit.

21 Q I'm talking about March 20th. You're talking about
22 March 20th?

23 A The day I got suspended?

24 Q No, no, on march 20th the day you went to the pier to
25 inspect it?

1 A Oh, okay, I'm sorry. I apologize. I thought you
2 were talking about when I got suspended. Okay. We can
3 talk about that.

4 Q Where were you that morning? If you recall.

5 A I went and got the plans. I went to Myrtle Beach and
6 got the plans.

7 Q Did you tell Jim because you were going to be out,
8 right, so you were suppose to report that you were going
9 to be out, right?

10 A I was doing my job. I thought I get there and get
11 the plans get back before nine o'clock.

12 Q Do you recall notifying Jim that you were going to be
13 ---

14 A No, Jim he wasn't there -- well, he was there because
15 I -- he wasn't there. He wasn't there that day.

16 Q Did you send him an e-mail?

17 A No, I did not.

18 Q So you had disregarded his instruction that day?

19 A If you say that, yeah.

20 Q Well, you had an instruction to e-mail him if you
21 weren't going to be there by nine, right?

22 A Yeah.

23 Q And that was not the only time you disregarded his
24 instruction regarding sending an e-mail if you weren't
25 going to be there by nine, right?

1 A He didn't have to ---

2 MR. THOMPSON: Your Honor, can the witness
3 answer the question.

4 THE COURT: Please answer the question yes or no
5 and then you can explain your answer.

6 A Yes, I did, but can I ask you ---

7 THE COURT: You may explain your answer, ma'am.
8 You cannot ask him question.

9 MRS. DONEVANT: Okay, I'm sorry.

10 THE COURT: But you may explain your answer.

11 A Well, my answer is a piece of paper in a right-hand
12 drawer. And then somebody goes by and says we're changing
13 everything, don't do anything, do this. Then he gives you
14 a written warning. I'm going to put it in my drawer.

15 MR. THOMPSON: I don't think that's responsive,
16 Your Honor.

17 MS. GOLDING: Your Honor, I object.

18 THE COURT: Please re-state the question.

19 Ma'am, answer the question yes or no.

20 A Would you ask me the question again?

21 THE COURT: You may explain your answer.

22 BY MR. THOMPSON:

23 Q I asked you if in the warning -- well, I asked you if
24 you had disregarded his instruction on March 20th. And
25 then I asked you if you had disregarded his instruction to

1 e-mail him on other occasions if you were not going to be
2 in to work by nine o'clock?

3 A Maybe that day I didn't and probably one, but he was
4 pretty good at keeping up with me. He had everybody in
5 the front office finding out where I was.

6 Q Okay. Is it true that Mr. Duckett was an early bird?
7 He would come in early?

8 A Yes.

9 Q You don't deny that?

10 A No, I don't deny that.

11 Q All right. Before you went out to look at the pier
12 restaurant, did you make any remarks to the effect that in
13 the office that you were off to get fired or anything like
14 that?

15 A I may have jokingly, but, no, I did not say that in
16 any form, no. I don't know what I said, but I did not say
17 that.

18 Q All right. Before you went, did you check with
19 somebody about what kind of permit the restaurant had?

20 A Yes, I did. I checked with John Harrah said that the
21 permit wasn't ready. There was some problems he had. I
22 asked Sebrina Morris and Sue. They were up front in Sue's
23 office along John O'Dare, who's there 24/27 and I asked --
24 I said is there new construction going on. I've read it
25 in the paper. I read in the paper they're putting down

1 wood. Is there new construction going on? The only one
2 that said anything was John. The rest of them gave me a
3 deer in a headlight look. I'm their boss. I'm their
4 supervisor. I asked a question they will not answer me.
5 So John said, well, they're cutting openings for new doors
6 and windows.

7 Q Now, Mrs. Donevant, you didn't testify yesterday that
8 Jon Harrah told you anything about the plan about the
9 restaurant project?

10 A Well, we did. We talked about all the plans he said.

11 Q You didn't say that in your testimony yesterday? Why
12 not?

13 A I'm not sure.

14 MS. GOLDING: Your Honor, I object.

15 THE COURT: You need to ask a question in an
16 appropriate foundation. You need to ask the exact same
17 question, give her the opportunity to admit or deny. And
18 then if you have some extraneous proof, you can present
19 it. Proceed.

20 MR. THOMPSON: Okay.

21 BY MR. THOMPSON:

22 Q Let me ask you this, Jon Harrah know -- if you can
23 answer the question, if you can't, that's fine. How would
24 Jon Harrah know what was happening at the pier?

25 MS. GOLDING: Your Honor, I'm going to object..

1 I'm not sure ---

2 THE COURT: Foundation. Proceed. Sustained.

3 BY MR. THOMPSON:

4 Q What was Joh Harrah's involvement in the restaurant
5 project at the pier?

6 A He was the plan reviewer for the City of Myrtle
7 Beach. He was doing our plans.

8 Q To your knowledge, did he do anything except the plan
9 review at the pier?

10 A Not that I'm aware of. You know, I wasn't there so I
11 don't know.

12 Q You know if he did any inspections?

13 A I do not know.

14 Q As far as you know, Mr. Harrah would not know what
15 was going on at the pier?

16 A Well, he would know because there was an e-mail to
17 him. And he e-mailed back to Sebrina that David and
18 somebody had come to ask him why -- how could he speed up
19 the permit and that was from Mr. Duckett. So he would
20 know that it wasn't...

21 Q So you went to the pier that afternoon around four
22 o'clock?

23 A Approximately, yes, sir.

24 Q And you looked in the window I think you said?

25 A Yes, sir, I walked around.

1 THE COURT: Let her finish her answer. Then you
2 may re-state the question.

3 Ma'am, you may finish your answer.

4 A Well, I'll just saw that I saw various things that I
5 thought was new construction.

6 Q Okay. So my question was did you feel in any part a
7 need to be discrete because of the sensitivity of the pier
8 in the community?

9 A I don't need to be discrete because of me.

10 Q I'm not sure I understand.

11 A Because of the LLR, I went through -- if I may
12 explain, six months of being investigated by LLR by
13 Mr. Zoltac and a Mr. Randall, who is now a councilman.
14 And I be on the phone all day long with LLR with an
15 inspector -- the investigator. And then finally, finally
16 after four months of bull, there is nothing found. I was
17 never disciplined. So I kind of walk lightly when I --
18 with my license. I need it. I need a job. I need to
19 work. I'm 59 years old. I need to work. I take my job
20 seriously.

21 Q Okay. Did you call the local TV station to tell them
22 ---

23 A No, sir, and I found out later now this ---

24 MR. THOMPSON: Your Honor, before she goes off
25 on something, if I can finish my question.

1 order at the pier?

2 A I did, but I did not call her for -- to tell her
3 that.

4 Q Why did you call her?

5 A I called her because I had called about a FOIA
6 request, whether you can do a FOIA request online. I did
7 not know, so I called Micki.

8 Q What were you doing a FOIA request?

9 A A letter written to the L.L.R. in my absence.

10 Q All right. And FOIA is Freedom of Information Act?

11 A Uh-huh.

12 Q I'm sorry is that a yes?

13 A That's a yes, I'm sorry.

14 Q I'm not picking on you the court reporter ---

15 A I'm sorry it's a yes.

16 Q The court reporter ---

17 A I'm not trying to pick on you either.

18 Q Okay. You don't deny that Micki told you during that
19 conversation that ---

20 A She said did you call Jim.

21 Q If I can finish the question?

22 A I'm sorry.

23 Q It's partly my fault because I paused.

24 A I'm sorry. I'll try to listen out for your pause.
25 I'll try to pause.

1 Q And you don't deny that Micki Fellner told you you
2 needed to call Jim to let him know about the stop-work
3 order?

4 A I do not deny that.

5 Q And you came back to the town hall, right?

6 A Correct.

7 Q We're still on March 20th. And do you know where
8 Micki was when you called her?

9 A She was in her office, I guess, at town hall.

10 Q You not sure?

11 A Really not sure didn't ask her.

12 Q But when you got to town hall you saw Micki?

13 A Yeah, she came in my office.

14 Q All right. And did you remark to anybody else that
15 you had issued a stop-work order before you talked to
16 Micki?

17 A Not that I recall.

18 Q Did you make any comment to the fact that if I'm in
19 trouble or I think I might get fired or anything like
20 that?

21 A No, not that I know of.

22 Q And you spoke to Micki again in town hall?

23 A Yes, I did.

24 Q And you don't deny that she again instructed you to
25 call Jim and let him know?

1 A Yes, but you don't -- what am I suppose to let him
2 know that I did my job. Hey, Jim, I did a stop-work order
3 on the pier. Hey, Jim, I did a stop-work order on the
4 warehouse. Hey, Jim, I just -- that's my job, sir. Why
5 would I have to report anything to Jim with my job.

6 Q Mrs. Donevant, there's differences and they're
7 between the pier and what was going on in some warehouse?

8 A Let me tell you -- you go ahead.

9 Q Isn't there a difference -- wasn't the pier a lot
10 more significant issue than the normal ---

11 A Well, was the dog park a lot more issue? Was the
12 library a lot more issue? Was everything the street --
13 Front Street, Surfside Drive was that not an issue? Was
14 cutting trees in the park not an issue? I stop worked on
15 those. I didn't have to call Mr. Duckett. I never called
16 anybody. I would have let him know when he came to work
17 the next morning only for courtesy. I was not reporting.
18 I would have put it in my building report. Mr. Duckett
19 called me before I could call him because Sebrina and Jon
20 ran over to his house and told him that I put a stop work
21 on the pier.

22 MR. THOMPSON: Your Honor ---

23 A Okay. All right.

24 Q But the truth is you never tried to call him, did
25 you?

1 A No, not that afternoon, five o'clock afternoon. He
2 would already be at happy hour.

3 Q You didn't think the stop-work order was something he
4 needed to know about. Why didn't you at least follow
5 Micki's instruction to give him twice to call you?

6 A It was happy hour.

7 MR. THOMPSON: Your Honor.

8 THE COURT: Ma'am, you need to answer the
9 question yes or no.

10 MS. GOLDING: His question is why, Your Honor.

11 MR. THOMPSON: Can we approach?

12 A He asked me why I didn't call and that is why.

13 THE COURT: Please approach.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 BY MR. THOMPSON:

18 Q Mrs. Donevant.

19 A Yes, sir.

20 Q Mr. Duckett, did try to call you, didn't he?

21 A He did call me.

22 Q And didn't he try to call you several times before he
23 was able to reach you?

24 A Not that I'm aware of. I was sitting in my office
25 with my phone.

1 Q And when he called you, he told you he wanted you in
2 the office the next morning?

3 A Yeah, he went ballistic. What about that pier. I've
4 tried so hard with that pier.

5 Q He wanted you to meet him the next morning at what
6 time?

7 A I think it was eight o'clock. He was a pretty early
8 guy.

9 Q You met him at eight o'clock or shortly thereafter?

10 A Yeah, shortly thereafter. I wasn't quite eight
11 o'clock exactly.

12 Q Okay. And in that meeting, he gives you a written
13 warning, correct? Exhibit 7.

14 A Yeah, is it seven?

15 Q I believe it is.

16 A March 21st reprimand written. Did I sign?

17 Q Yes -- no, you didn't sign it.

18 A I didn't sign it.

19 Q We will talk about that.

20 A Okay. I got nine.

21 Q Should be number seven in the white notebook. March
22 21, 2012, reprimand?

23 A He said it's the one I hadn't signed. I sign that
24 one.

25 Q March 21, 2012, reprimand written?

1 A Yeah, I signed it.

2 Q Exhibit seven. Are you there?

3 A I'm there.

4 Q And y'all discussed this, right?

5 A Yes, sir.

6 Q He gave it to you to read? He gave it to you to
7 read, correct?

8 A That's correct.

9 Q And you did read it?

10 A I did read it.

11 Q Now, it says in the first paragraph I, referring to
12 Jim, tried to get the administrator Micki Fellner to tell
13 Mrs. Donevant she could no longer report through Ms.
14 Fellner to me. She was to communicate directly with me.
15 She advised Mrs. Donevant had been told. And all that's
16 true, correct, Mrs. Donevant (sic) told you to report to
17 Jim. All that's true correct Mrs. Donevant (sic) told you
18 to report to Jim?

19 A Yes, he did. May I explain?

20 THE COURT: Yes, ma'am, you may explain your
21 answer.

22 A I was not reporting, that's why I didn't sign it. I
23 had nothing to report. I was doing my job.

24 Q I understand. Go to the next paragraph. First
25 sentence is on Tuesday, March 20th, 2012, Mrs. Donevant

1 called me on my town issued cell phone to inform me she
2 was in Myrtle Beach attending to matters in case I was
3 looking for her. Do you recall calling?

4 A Yes, I did.

5 Q Tell me about that?

6 A I went to Myrtle Beach to get plans I guess.

7 Q We talked about that. Later in the afternoon, Mrs.
8 Donevant issued what is commonly called a stop-work order
9 and taped it to the door of the restaurant?

10 A Yes, sir.

11 Q That's correct?

12 A Uh-huh.

13 Q Then the next sentence he says where as Mrs. Donevant
14 was operating within the scope of her authority?

15 A Thank you.

16 Q In the scope of her authority. So at least in this
17 written reprimand, he didn't have a problem with you
18 issuing a stop-work order, correct? He said that's
19 within your authority?

20 A That's correct.

21 Q And he never told you not to issue the stop-work
22 order, did he?

23 A When he tore it off the building he did.

24 Q He never told you not to issue ---

25 A Yes, he did.

1 Q He told you that's your testimony?

2 A Yes, that's my testimony.

3 Q When did he tell you that?

4 A In his office when we were discussing this because we
5 had a big discussion about this. Because I didn't sign
6 the other one where -- is the other one, what does it say.

7 Q My question was -- I think this is the first time
8 I've ever heard this.

9 A Oh, no.

10 MS. GOLDING: Your Honor, I like to make an
11 objection.

12 THE COURT: Basis of the objection?

13 MS. GOLDING: Mr. Thompson was trying to make

14 ---

15 THE COURT: No speaking objections. What is the
16 basis of the objection?

17 MS. GOLDING: Improper question, Your Honor.

18 THE COURT: I need, ma'am, for you to answer the
19 question yes or no. And then you may explain your answer.

20 Mr. Thompson, I need you to repeat the question.

21 BY MR. THOMPSON:

22 Q Did Mr. Duckett at any time tell you you were not to
23 issue a stop-work order?

24 A Mr. Duckett -- can I tell you?

25 THE COURT: Ma'am, you need to answer the

1 question yes or no and then you may explain your answer.

2 A Yes, he did.

3 Q When did he do that?

4 A When I was in his office with this written reprimand
5 when he said I can't believe you put a stop-work order on
6 that. Does that sound like he wants you to do it?

7 Q So you're ---

8 A So let me ---

9 THE COURT: Ma'am, you can't ask him any
10 questions.

11 A I'm sorry.

12 Q But he never gave you an instruction not to issue the
13 stop-work order?

14 A He never gave me an instruction to do anything. I've
15 had two pieces of paper. A little yellow kid thing that I
16 had to write and one in written warning that was suppose
17 to be thrown away. And the next instruction Micki gave me
18 that I was to report to Mr. Duckett what I am suppose to
19 report to Mr. Duckett. Every time I issue a permit, every
20 time I do my job that was not a reportable issue. And he
21 sent me home and fired me over it.

22 MR. THOMPSON: Your Honor, not a responsive.

23 A I'm sorry. I'm sorry.

24 THE COURT: Ma'am, just answer the question yes
25 or no and then you may fully explain your answer.

1 A Yes, ma'am, I'm sorry.

2 Q Did Mr. Duckett ever tell you not to issue a
3 stop-work order?

4 A In my interpretation of what Mr. Duckett said, yes.

5 Q And you're interpreting what language again that he
6 gave you?

7 A Why did you take the -- put a stop-work order on the
8 pier. What did he want me to report to him I don't know.
9 Then I went to the bathroom. I'm sorry, I just...

10 Q It says down at the bottom he wanted you to sign
11 this, right?

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes, sir. I'm sorry.

15 Q And says down at the bottom he's written in -- I
16 received a copy, correct? See that at the bottom?

17 A Yes, sir.

18 Q And you didn't sign it?

19 A I did not.

20 Q Why didn't you sign it?

21 A Well, you know, it's kind of vague. It didn't say go
22 to the pier -- don't you go to the pier and put a
23 stop-work order. It just says would you report through
24 Ms. Fellner and then he tells me what I did was correct,
25 but then he said he had a telephone call from the

1 councilman and Samples. I don't know whether he had a
2 telephone call from Mr. Samples and all. Why would he
3 make me sign that?

4 Q But your signature was not to indicate an agreement,
5 was it?

6 A Well, what was it for then?

7 Q Well, it says I received a copy. Just like your
8 performance review and just like the written warning you
9 got, right?

10 A Yeah, I received a copy, but, you know, why would I
11 sign it. It's not true.

12 Q You signed the written warning you got?

13 A Because I knew the next one I was going to be fired
14 and I needed to work. There was three pieces of paper up
15 there.

16 Q Now, I'm going back to July written warning. You
17 signed that right beside ---

18 A Yeah, because we talked. He did not do anything by
19 the book. We talked. He said I'll tear it up. Nobody
20 will ever know it's been done unless we have a problem.
21 So why wasn't it -- well, I can't ask you that, but it was
22 not torn up.

23 Q All right. And then you did a performance review and
24 you signed right beside that I had received a copy?

25 A Yeah, but I also was not happy with it and I wasn't

1 happy with it there and I told him that. We had a big
2 conversation about that.

3 Q You understood did you not that signing for I have
4 received a copy doesn't mean you agree or disagree? It
5 just means you acknowledge receiving a copy; isn't that
6 true?

7 A Well, it might be.

8 Q And what was untrue that was ---

9 A But Mr. Duckett was not very truthful all the time,
10 so I didn't sign it.

11 Q What was untrue that was in this written warning,
12 what's in the written warning that wasn't true?

13 A At which time I have already been at the pier. Same
14 time was being called by Council Member Samples wanted to
15 know anything terminated in an effort to read and tell me
16 of my action instead call the deputy administrator. I did
17 not call the deputy administrator to report anything. I
18 called her to ask her a question.

19 Q All right. So your testimony is you didn't want to
20 sign because you didn't agree with it?

21 A That's correct.

22 Q Even though you signed the performance appraisal you
23 didn't agree with?

24 A Correct. What else was left?

25 Q Did you see -- did you not understand that you were

1 being insubordinate refusing to sign and acknowledging you
2 received the warning?

3 A I knew I was going to get fired probably if those
4 other two little pieces of paper turned up. I wonder when
5 he wrote those?

6 Q So, Mrs. Donevant, why wouldn't you sign a warning
7 and let it rest at that and instead if you knew the next
8 step was suspension, why would you let it go to a
9 suspension?

10 A Why would I sign something that's a lie?

11 Q You sign the suspension, right?

12 A I signed it.

13 Q If you had signed the written warning, you wouldn't
14 have gotten suspended, wouldn't you?

15 A I don't know. I can't read his mind.

16 Q But you did get suspended for not signing the written
17 warning, right?

18 A I got suspended for putting a permit on the pier.

19 Q All right. Let's look at the next exhibit eight
20 order of suspension.

21 A Issued a no permit stop work. I didn't mean to say
22 permit excuse me.

23 Q And he gave you this next, right?

24 A Uh-huh.

25 Q Is that a yes?

1 A Yes, sir.

2 Q And it says Mrs. Donevant suspended without pay for
3 three days effected today, right?

4 A Uh-huh, yes, sir.

5 Q And you were suspended for those three days?

6 A Yes, I was.

7 Q It says down at the bottom this suspension is due to
8 her inability to follow directions see reprimand same day.

9 A Yes, sir.

10 Q And the reprimand is referring to exhibit seven,
11 correct?

12 A That had nothing to do with me getting fired.

13 Q All right. That's not the question I asked you. He
14 refers to the written reprimand and suspension, correct?

15 A Yes, he does.

16 Q All right. And it says underneath that I understand
17 and you did sign that?

18 A Yeah. I had to keep working. The next paper was
19 turned over would have been my job. I wanted to discuss
20 it with him. I didn't want to sign that written warning.
21 I wanted to let's discuss it. Like you said discuss it,
22 but I didn't have the option to discuss it because he
23 slapped the other one up there for me to sign. And if I
24 didn't sign that one, he was gone slap the other one up
25 there and I guarantee you that was a firing. He fired me

1 because he was mad and he called me. He went to the pier.
2 He tore the stop-work order off the pier, crumbled it up,
3 put it back up and you can see that in the television
4 records. He fired me for putting a stop-work order, for
5 doing my job, what I am paid to do by the Town of Surfside
6 Beach and what I have done for numerous years. I'm sorry
7 I don't mean that at you, Mr. Thompson.

8 Q Well, Mrs. Donevant ---

9 A And you don't see it that way but...

10 Q Isn't it true that if you just signed the written
11 warning, you would have never gotten suspended?

12 A Maybe. If we'd discussed it, I probably would have
13 gotten suspended.

14 Q All right. So did you refuse to sign the written
15 warning because you didn't have an opportunity to discuss
16 it?

17 A Absolutely. It was a lie and I would not sign it. I
18 said I'm not signing that. Then he flipped over another
19 paper. He didn't tell me what. He said you -- you and
20 the stop-worker order on the pier. I can't remember
21 exactly what I said. You put a stop-work order on the
22 pier. I can't believe that out of all the work I've done.
23 Sorry.

24 Q Now, isn't it true, Mrs. Donevant, the problem he had
25 with you that day was you not telling him what you did?

1 Q Had you talk to anybody other than an attorney -- and
2 I don't want you to say anything you said to an attorney.
3 Have you talk to anybody about termination law in South
4 Carolina before your termination?

5 A No, sir.

6 Q Were you aware that other prior town employees had
7 had lawsuits against the town?

8 A Well, yeah.

9 Q Did you make a remark to Sebrina Morris or Debra
10 Hermann to the effect that so and so got money I'm going
11 to get money too?

12 A No, I did not.

13 Q Mrs. Donevant, instead of giving Jim this exhibit 11,
14 why didn't just let the matter lay and move on with your
15 job?

16 A I just wanted to let him know how I felt. That I
17 felt by him ripping that off that he oppose me issuing a
18 stop work and he oppose me doing my job.

19 Q All right. About ripping it off, I do want to make
20 sure we're clear. He put it right back up, didn't he?

21 A Yes, he did at some point, but I don't know when.

22 Q And he told you in the written warning he gave you
23 that he didn't have a problem with your issuing a
24 stop-work order?

25 A Yeah, he said that, that's what it says.

1 A Not if the permit was on site.

2 Q So if there was a code in violation that did not
3 involve a permit problem, you wouldn't always give the
4 builder a stop-work order?

5 A Well, a permit will be issued. They call for an
6 inspection. We go out and do the inspection. If there
7 was something wrong, we would write it up and leave it
8 there for them to correct. But they had a permit.

9 Q So my question ---

10 A The pier -- I'm sorry.

11 Q You can explain any way you want.

12 A Okay.

13 Q So yes or no would you always issue a stop-work order
14 for code violations?

15 A For code violation of no permit, yes, sir.

16 Q For other code violations not involving a permit?

17 A No, sir.

18 Q You would not. You would give the builder a chance
19 to fix the problem before he stop the job?

20 A I don't know. It depends on the job. You know,
21 everything is so different but...

22 Q How many stop-work orders do you think you roughly
23 issued in any given year?

24 A Probably 25 or 30 to square miles.

25 Q Now, would you say when you saw a code in violation

1 you about to give to the court in this case will be the
2 truth, the whole truth and nothing but the truth so help
3 you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Please be seated and state your
6 name for the court please, sir.

7 THE WITNESS: My name is Gary F. Wiggins
8 W-I-G-G-I-N-S.

9 THE COURT: You may proceed.

10 WHEREUPON,

11 Gary F. Wiggins,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GOLDING:

15 Q Mr. Wiggins, where do you live?

16 A I currently reside in Ballentine, South Carolina.

17 Q Okay. And prior to being in Ballentine, South
18 Carolina, did you ever live in the Columbia area.

19 A Well, that is the Columbia area. It's about 19 miles
20 of north of Columbia.

21 Q Okay. So was that your residence the Columbia area
22 Ballentine?

23 A Yes.

24 Q And how long have you lived in the Columbia area?

25 A I lived in the Columbia area 30 years.

1 Q And before in Columbia, did you ever live in Horry
2 County?

3 A Yes, I did, lived in Myrtle Beach.

4 Q Okay. And how long were you living in Myrtle Beach?

5 A Approximately 14 years.

6 Q And were you employed in Myrtle Beach?

7 A I was. I was the building official for the City of
8 Myrtle Beach and also I had a private consulting firm
9 after I left the city.

10 Q And after the City of Myrtle Beach, where were you
11 employed?

12 A After the City of Myrtle Beach, I was -- I went into
13 private consulting in construction and building codes. I
14 was based out of Myrtle Beach.

15 Q But after that, what was your next employment?

16 A It was with the State of South Carolina.

17 Q And how long were you employed with the State of
18 South Carolina?

19 A I was employed for 29 years.

20 Q And when you first became employed with the State of
21 South Carolina what was your position?

22 A My position was the director of the building codes
23 council.

24 Q And we've heard building codes council. We've heard
25 that. Can you explain to the jury what is a building

1 codes council, the state building codes council?

2 A Building codes council is the body within the state
3 organization that governed all of the operations for
4 building codes and for the enforcement of codes. It has
5 other programs as well, but the principle program is the
6 building code program.

7 Q Was there a name of your -- your position when you
8 first started with the building codes council with the
9 state 29 years ago?

10 A Yes, I was the director of the building codes
11 council.

12 Q And how long did you continue in that position as the
13 director?

14 A Well, I been the head of the building codes council
15 from start to finish my entire 29 year career. Although,
16 my title changed a good number of times based on
17 restructuring and how the various departments -- and other
18 departments were organized.

19 Q Now, going back what is your educational background?

20 A My education is high school, graduated from high
21 school. I did take some extension courses out of high
22 school. I was with the Air Force for four years. And at
23 that time was involved with civil engineering and took a
24 number of courses there as well. Basically, I had
25 extension courses in the construction area through

1 Clemson, through South Carolina and the University of
2 Florida.

3 Q Do you currently hold any certificates or license
4 with respect to the building code industry in South
5 Carolina?

6 A Yes, I am currently certified as a certified building
7 official. And I might have a little pride the very first
8 in the State of South Carolina. And I hold the code
9 enforcement officer registration as a building official
10 for the State of South Carolina as well both of those are
11 current.

12 Q When did you become a certified building official in
13 South Carolina?

14 A It was in the 70's. I'm not really sure when, but I
15 was one of 75 people in the entire United States with the
16 first round of exams. And out of the 75 about 44 or 45,
17 did pass. I was fortunate enough to be one of those.

18 Q With respect to the status of being a certified
19 building inspector licensed through LLR, can you explain
20 that to the jury?

21 A Back in 1999, LLR and the building codes council got
22 the responsibility through a statute to license or
23 register all of the code enforcement officers in the
24 state.

25 Q Let me stop you right here. What is LLR for the jury

1 sake?

2 A LLR is a division within state government. It is
3 labor, licensing and regulation. Within LLR, there are a
4 number of tasks performed by the organization one of the
5 task is to license professionals. We had something like
6 64 different professional licensing groups and covers
7 almost all of the professions in the State of South
8 Carolina with the exception of the legal profession, the
9 banking profession and the insurance profession.

10 Q I stopped you. You were explaining about the
11 certified building certificate that was issued by L.R in
12 the late 1990's?

13 A Yes, ma'am.

14 Q Is that when it first started to be issued by the
15 State of South Carolina?

16 A Yes, for code enforcement officers, the program for
17 registrations started in 1999.

18 Q Now, when you say code enforcement officers, who do
19 you mean? Identify code enforcement officers?

20 A Well, code enforcement officers is a general term to
21 include all of the individuals that do any code
22 enforcement at all. It could be a building inspector. It
23 could be a plans reviewer. It could be a building
24 official. So we use a single term to describe all the
25 potential registration holders.

1 Q Okay. Now, for instance with respect to Mrs.
2 Donevant's position when she was with Surfside, was she
3 classified as a building code official?

4 A Building official, yes.

5 Q Mr. Wiggins, your resume has been admitted without
6 objection as exhibit 24?

7 A Yes, ma'am.

8 Q And could you just highlight to the jury some of your
9 past experiences as part of the building code enforcement
10 in the State of South Carolina?

11 A Past experiences other than work experience?

12 Q Work experiences I'm sorry. I want you just to
13 highlight to the jury some work experiences?

14 A Okay. My last work experience prior to my retirement
15 was as a division manager for codes, housing and
16 construction services for the department of labor,
17 licensing and regulation. Prior to that, I was the
18 division manager of codes housing and construction
19 services for the department of labor, licensing and
20 regulation. Prior to that, I was the division manager of
21 codes, housing and construction services and again it's a
22 different -- same title and a different classification and
23 different responsibilities for labor, licensing and
24 regulation. And the reason for the different
25 classifications is because of the different

1 responsibilities that I have received. For instance as
2 the division manager, my last position I was responsible
3 for the building codes council, operations on other
4 programs, the building accessibility program, the modular
5 building program, the code enforcement officer
6 registration program, the manufactured housing board and
7 the contractors licensing board. Before that, I had also
8 involved commercial building inspector licensing, the
9 alarm system contractors licensing, sprinkler contractors
10 licensing, board of safety program. And prior to that, I
11 had the architectural board, the engineering boards. So
12 classifiers, land surveyors. All these group together at
13 one point 19 different boards and commissions.

14 Q Are you familiar with the International Building
15 Code?

16 A Yes, ma'am.

17 Q And explain to the jury what is the International
18 Building Code?

19 A The International Building Code is a single
20 individual document that actually governs the minimum safe
21 level of construction for commercial buildings.

22 Q And how long has the state is that -- has the
23 International Building Code been adopted by the State of
24 South Carolina?

25 A Yes, it has.

1 Q And when was the International Building Code adopted
2 by the State of South Carolina?

3 A International Building Code has been adopted every
4 three years since it's inception. Prior to that, the
5 State of South Carolina used a standard building code and
6 that dates back into the 40's.

7 MS. GOLDING: Your Honor, at this time I would
8 offer Mr. Wiggins as an expert in building code
9 enforcement in the State of South Carolina.

10 THE COURT: Any objection or questions?

11 MR. THOMPSON: Yes, Your Honor, I have an
12 objection.

13 THE COURT: Please approach.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: Admitted without objection. You may
18 proceed.

19 MS. GOLDING: Thank you, Your Honor.

20 THE COURT: And that is building code
21 enforcement, correct?

22 MS. GOLDING: Building code enforcement in the
23 State of South Carolina, Your Honor.

24 THE COURT: You may proceed.

25 MS. GOLDING: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 BY MS. GOLDING:

3 Q We were talking about with respect to building codes
4 in the State of South Carolina in the International
5 Building Code. How does the International Building Code
6 adopted by the State of South Carolina, how does that
7 affect the municipalities like the Town of Surfside?

8 A Well, the buildings code council is charged to adopt
9 the International Code and the International Code Series.
10 Actually, it's all the codes that are included with the
11 International Codes for every jurisdiction in the state.
12 And what that means is the building codes council goes
13 through a hearing process every three years and determines
14 that the latest addition of the code is not only suitable,
15 but the minimum base requirements for every jurisdiction
16 in the state.

17 Q Now, when you say jurisdiction you talking about
18 municipalities, counties, governmental entities?

19 A Yes, ma'am, cities, counties, towns, villages any
20 entity that's incorporated.

21 Q And so how does the state International Building Code
22 how does that affect all these city, town, villages?

23 A Well, the law requires the building codes council to
24 adopt the codes for use in every jurisdiction but requires
25 the jurisdictions to enforce those codes.

1 Q And with respect to Town of Surfside, what was it's
2 role with respect to the International Building Code that
3 was enacted by the State of South Carolina?

4 A Well, the role of the jurisdiction is an enforcement.
5 I mean, that's basically it.

6 Q And when you say enforcement explain that to the
7 jury?

8 A The code -- the provisions of the code as I mentioned
9 are the minimum safe level of construction. The local
10 jurisdiction is obligated to appoint a person and usually
11 it's the building official that would enforce the code and
12 make sure that code is properly used within the
13 jurisdiction, that all the provisions of the codes are
14 followed and that all of the standards and the other
15 documents that are associated with the codes are also
16 followed.

17 Q When -- let's explain to the jury a code? The
18 International Building Code is what pretty thick, would
19 that be fair to say?

20 A It's not that thick, it's about 3 inches.

21 Q What does it cover -- what does it cover? In
22 layman's if you were building a house, what does it cover?

23 A All right. You getting into different areas of the
24 code. I mentioned earlier that we have a series of codes.
25 The International Building Code covers all of the

1 structural elements for commercial buildings. We also
2 have the International Plumbing Code covers all the
3 plumbing. We have the International Mechanical Code
4 covers all what we call HVAC or heat, ventilation and air
5 conditioning systems, gas code, national electrical code
6 and so on. We also have a single independent called the
7 International Residential Code. That within it cover has
8 all of the four building systems, major building systems
9 contained in it. So we have in the residential code, we
10 have the structural, plumbing, electrical and mechanical
11 included.

12 Q So then with respect to the International Building
13 Code that covers commercial projects like the pier
14 restaurant?

15 A Yes, it does.

16 Q And with respect to the Town of Surfside under the
17 International Building Code, what was the Town of
18 Surfside's obligation or responsibilities with respect to
19 the pier restaurant?

20 A Well, the obligation is that any work done on the
21 pier had to be done in accordance with the code.

22 Q And when you say work done in accordance with the
23 code, does the international code have criteria set forth
24 for building permit applications and things of that
25 nature?

1 A It does however when the building codes council
2 adopts the code for local jurisdictions, it only adopts
3 the technical sections of the code. The administrative
4 section, which is chapter one is required to be adopted by
5 or local jurisdictions or the local jurisdiction has the
6 option of developing their own administrative
7 requirements, so it be one or the other.

8 Q And with respect to the Town of Surfside, what are
9 the obligations of the Town of Surfside with respect to
10 the enforcement of the building code -- the International
11 Building Code?

12 A What are the obligations?

13 Q Yes, sir.

14 A Well, the obligation is to enforce the code to make
15 sure that all the provisions of the code and the entire
16 series of codes that are mandatory to be adhered to by
17 every project whether it's city or the county goes in and
18 builds a project or whether it's individual owners.

19 Q And does the Town of Surfside have any ordinances
20 with respect to building permits and building permit
21 applications, stop-work orders?

22 A Best of my knowledge, it does.

23 Q And you have in front of you exhibit number --
24 Defendant's Exhibit Number 11.

25 A Ten.

1 Q Oh, is it ten. And also let me give you Plaintiff's
2 Exhibits 27 and 28. Can you identify those two documents?

3 A Exhibit 27 is a title ordinance of the Town of
4 Surfside Beach and it's ordinance number 08-0641.

5 Q Okay.

6 A And exhibit 28 is section 13-21 adoption of building
7 codes. And there is no further reference on there as to
8 what document this is from.

9 Q And are both of those existing ordinances or were
10 ordinances passed by the Town of Surfside?

11 A According to this, they were and there was a first
12 reading and a second reading.

13 MS. GOLDING: Your Honor, we would offer
14 Plaintiff's Exhibits 26 and 27.

15 THE COURT: Any objection?

16 MR. THOMPSON: May I have a moment?

17 THE COURT: Yes, sir.

18 MR. THOMPSON: No objection, Your Honor.

19 THE COURT: Marked and admitted without
20 objection.

21 (WHEREUPON, Plaintiff's Exhibits Nos. 26, 27 and
22 28 were admitted into evidence.)

23 BY MS. GOLDING:

24 Q Mr. Wiggins, let me give you now Plaintiff's Exhibit
25 26, which has been admitted without objection previously

1 and 26 is what?

2 A This is a section dealing with stop work or stop-work
3 orders and it's out of one of the code. The code is not
4 referenced on this sheet.

5 Q But is it from the Town of Surfside?

6 A It looks like it's a reference out of the -- one of
7 the international codes. I need to point out that this
8 same language is in the International Building and the
9 International Residential Code and there could be
10 different numbers. I believe that the International
11 Building Code references 115 -- 114 International Building
12 Code -- Residential Code I'm sorry. Let me back up. I'm
13 thinking the International Residential Code references
14 section 114 the building code, for commercial buildings
15 115. And this is 115.

16 Q And with respect 114, I believe that was Defendant's
17 Exhibit. Let me give you what's marked as Defendant's
18 Exhibit Number 10. Have you seen Defendant's Exhibit
19 Number 10?

20 A Yes.

21 Q Okay. And Defendant's Exhibit Number 10 is what?

22 A This is chapter one out of again one of the codes
23 either the building code or the residential code. The
24 page is not marked.

25 Q And exhibit number ten is that applicable to

1 commercial construction?

2 A Excuse me I think I found the answer. This is out of
3 the International Residential Code. So the language for
4 the section for stop-work orders is exactly the same for
5 residential and for commercial but to keep the proper
6 reference we need to be on 115 as oppose to 114.

7 Q Okay. Let's go to 115, that's an ordinance pass by
8 the Town of Surfside, right?

9 MR. THOMPSON: I object.

10 THE COURT: Basis?

11 MR. THOMPSON: Your Honor, that's not what the

12 ---

13 THE COURT: Is there a basis for the objection?

14 MR. THOMPSON: Leading and so many facts not in
15 evidence.

16 THE COURT: Sustained, leading, rephrase.

17 MS. GOLDING: Thank you.

18 THE COURT: You're welcome.

19 BY MS. GOLDING:

20 Q Based upon what you have learned with respect to the
21 ordinance of the Town of Surfside, what is the section the
22 ordinance 115?

23 MR. THOMPSON: Objection, Your Honor, calls for
24 legal conclusion.

25 THE COURT: As long as the appropriate

1 foundation is laid that's not a problem.

2 MR. THOMPSON: Your Honor, she's misstating the
3 ordinance.

4 THE COURT: Approach please.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: Bear with us, ladies and gentlemen.

9 (WHEREUPON, a pause in the proceedings.)

10 MS. GOLDING: Your Honor, we had some of the
11 defendant's exhibits the numbers he gave me are different
12 than the numbers that we given to the clerk.

13 MR. THOMPSON: No, it's not.

14 MS. GOLDING: Yeah, I can show you.

15 THE COURT: Well, we'll deal with that later,
16 but I need you all to do what I directed you to do.

17 MR. THOMPSON: Nine is the ordinance, Your
18 Honor.

19 (WHEREUPON, a bench conference was held in the
20 presence of the jury, but out of the hearing of the
21 jury.)

22 THE COURT: Sustain. And I need you all to
23 follow the Court's instructions, so that we can agree on
24 which are applicable.

25

1 BY MS. GOLDING:

2 Q With regard, Mr. Wiggins, to state law, does state
3 law set forth any requirements as to towns such as the
4 Town of Surfside having certified building official
5 designations?

6 A The state law requires all code enforcement officers
7 working for a jurisdiction to be registered. As far as
8 the top position building official that is preferable, but
9 a building official does not have to be registered as a
10 building official to be head of the department -- could be
11 registered in a G2 classification as well.

12 Q With respect to Plaintiff's Exhibit 1 which I just
13 handed you, does it set forth a requirement for the head
14 building official for the Town of Surfside to have a
15 certification?

16 A Yes, it does.

17 Q And what certification must the official have?

18 A Certified building official.

19 Q And going to the certification, what does that mean
20 if the Town of Surfside requires as director of the
21 building department to have a certification as a state
22 building official, then what does that mean with respect
23 to the duties and responsibilities of the Town of Surfside
24 building official?

25 A What this is doing is it is actually exceeding a

1 requirement of the state. The state would allow a G2 or a
2 person that's actually registered as a combination
3 inspector to assume the duties of the department head.
4 But what's occurring with this particular position
5 description is the Town of Surfside is setting that
6 minimum qualification hire. It's setting it as a
7 certified building official as oppose to any other
8 certification offered by the International Code of
9 Council.

10 Q And since the Town of Surfside is requiring or had
11 required Mrs. Donevant to be a certified building
12 official, what obligations did Mrs. Donevant have with
13 respect to the state code enforcement as to the issuance
14 or non-issuance of stop-work orders?

15 A Well, the building official is required regardless of
16 the position whether that person holds a G1 license which
17 is the highest and two which is the next step down, that
18 person is required to follow the provisions of the code.
19 The administrative provisions were adopted by the Town of
20 Surfside ---

21 MR. THOMPSON: Object, Your Honor.

22 THE COURT: Approach.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 THE COURT: You may proceed.

2 BY MS. GOLDING:

3 Q With regard to -- we haven't talked about the
4 requirements. We call it a CBO, a certified building
5 official. Basically what governmental entity monitors or
6 regulates certified building officials?

7 A A certified building official is a certification
8 that's granted not by a state organization but by a prior
9 organization. International Code Council now is the
10 dominate organization that certifies building officials.

11 Q But what does the building council have to do with
12 certified building -- CBO's certified building officials?

13 A Well, the council itself doesn't have anything to do
14 with it. However, a certified building official
15 certification is the base requirement for obtaining a
16 registration with the building codes council. So there's
17 no regulation by the council, but that certification is a
18 necessary item before a person can be registered.

19 Q What does the building -- the South Carolina Building
20 Codes Council do with respect to enforcement of
21 obligations of certified building officials discipline?

22 A The council has the authority to grant licenses. It
23 has the authority to take licenses away, that's one of the
24 responsibilities. So if a person who holds a license with
25 the buildings code council has a complaint lodged against

1 him or her, that complaint is followed up. And if there
2 is grounds for disciplinary action, the council will take
3 it.

4 Q And when you say the council will take disciplinary
5 action, what disciplinary actions -- one of the ranges of
6 disciplinary action that can be taken?

7 A Well, the range of disciplinary actions can go
8 anywhere from a letter of caution to a complete revocation
9 of the license ---

10 Q And with respect to the Town of Surfside if the
11 license is revoked, what affect would that have on the
12 eligibility for that individual to be the town's building
13 official?

14 A Well, that would remove the license for the
15 individual. So it would not just affect the jurisdiction
16 for which the building official was working in at the
17 time, that building official will not be able to work
18 anywhere in the state. The State of South Carolina will
19 be completely off limits. So the work within the
20 profession that person will have to move out of state.

21 Q With respect to disciplinary actions that can come
22 before the South Carolina Building Council, have there
23 ever been any proceedings or actions that you know of
24 relating to building officials not issuing stop orders
25 when required by the International Code?

1 A We have had a couple of cases go before council that
2 dealt specifically with stop-work orders. And one case,
3 however, it was just the opposite. The building official
4 issued a stop-work order and should not have.
5 Consequently, that person got disciplined as well.

6 Q So are you saying then that a grounds for discipline
7 and loosing a certification is issuing a stop work or not
8 issuing a stop-work order?

9 MR. THOMPSON: Your Honor, I think I have to
10 object to that.

11 THE COURT: Basis of the objection?

12 MR. THOMPSON: He's not competent to testify ---

13 THE COURT: Please approach.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: Question is withdrawn. You may
18 proceed.

19 BY MS. GOLDING:

20 Q Now, since you been involved in code enforcements for
21 so many years, can you tell me with regard to what is a
22 stop-work order?

23 A A stop-work order is an order given by the building
24 official to stop work, just completely shut the work down.

25 Q And can you tell the jury fact scenarios in which a

1 building official under the International Code would have
2 to issue a stop-work order?

3 A Well, any time that there is a potential of life
4 safety or fire safety or if there's a direct violation of
5 the law, the building official is obligated to issue a
6 stop-work order.

7 Q In order to commit in the jurisdictions in the State
8 of South Carolina such as the City of Myrtle Beach with
9 whom you were employed, in order to commence employment
10 would there have to be some document issued by the City of
11 Myrtle Beach to commence employment such as a building
12 permit?

13 A I don't understand.

14 Q I'm sorry.

15 A Did you say commence employment?

16 Q Convince construction.

17 A Construction, okay.

18 Q I did say employment.

19 A After a stop-work order is issued?

20 Q No, before.

21 A Prior to?

22 Q Uh-huh.

23 A A stop-work order can be issued virtually at any
24 time. If the building official has reason, has cause to
25 determine that there's a life safety issue or any of the

1 issues that I had pointed out, then a stop-work order must
2 be issued.

3 Q What if with respect to there's no construction
4 permit?

5 A That's a violation of the law. And anytime there's a
6 violation of the law, a stop-work order must be issued.

7 Q With respect to town administrators, if a town
8 administrator does not have a CBO -- is not a certified
9 building official, does that town administrator have a
10 right to issue any type of stop orders?

11 A No, it cannot. As a matter of fact by regulation,
12 state regulation, the building official is charged with
13 that responsibility specifically and no other person
14 either the city manager, the mayor, chief of police, fire
15 chief any other person can perform is authorize or can
16 perform that function or task.

17 Q And under the law can a -- strike that question.
18 With respect to revoking stop-work orders, to your
19 knowledge does a town administrator who does not -- is not
20 a certified building official can that town administrator
21 or does that town administrator have the authority to
22 revoke a stop-work order?

23 A No.

24 Q What authority does a town administrator have with
25 respect to issuing building permits?

1 A None.

2 Q What responsibilities or authority does a town
3 administrator have to tearing down stop-work orders?

4 A None.

5 MS. GOLDING: Your Honor, is this an appropriate
6 time?

7 THE COURT: Lunch hasn't arrived yet. I'm
8 waiting for them to knock. When they knock, we'll break,
9 trying to use as much of our time as possible. If you
10 have a few more questions and can indulge us, I appreciate
11 it.

12 BY MS. GOLDING:

13 Q Mr. Wiggins, with respect to posting building permits
14 or stop-work orders, what is the -- what are the
15 consequences if an individual not authorized, not a
16 certified building official tears down a building permit
17 or take downs a stop-work order?

18 A Well, the person that's not authorized to place a
19 stop-work order cannot remove one.

20 Q And why do you say that?

21 A Because the task is only assign to that one
22 individual the building official.

23 Q And so what would a town do to an individual, what
24 will be the obligations of any jurisdiction, any
25 governmental entity in which a person goes and tears down

1 or takes down a stop-work order?

2 A If a person other than the building official takes
3 down a stop-work order, that person would have to be
4 authorized by the building official to do so.

5 Q Do you know if there any criminal sanctions with
6 respect to that?

7 A I don't know. We only deal with the administrative
8 issues.

9 Q Okay.

10 MS. GOLDING: Your Honor, at this point, I have
11 to go through the other documents.

12 THE COURT: Ladies and gentlemen, we're going to
13 take a brief recess. Hopefully, your lunch will arrive in
14 that interim. We need to get some exhibits in order.
15 During this break, please do not discuss the case. And
16 please leave your notepads in your seats. We appreciate
17 your indulgence. I know it's a little pass lunch. I'm
18 certain you're hungry, but as soon as your lunch arrives,
19 we'll take a lunch recess. If you will go with the
20 bailiffs please.

21 (WHEREUPON, the jury retire to the jury room.)

22 THE COURT: If you all to look at those
23 documents please.

24 (WHEREUPON, a break was taken.)

25 MS. GOLDING: Your Honor, we got Defendant's

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1 know.

2 THE COURT: I would think from the -- if it's
3 specified in six, it would have specified it in one
4 through five if that's the only place it intended for it
5 to apply.

6 MR. THOMPSON: I'm sorry. I don't understand
7 the question.

8 THE COURT: If they intended for the
9 International Plumbing Code to only apply to residential
10 structures, it would stand to reason in subsection one
11 they would have said that.

12 MR. GILLIAM: I agree, Your Honor, that probably
13 the International Plumbing Code does cover commercials.

14 THE COURT: As I understand the argument up to
15 this point, there's stop ---

16 MR. GILLIAM: She wasn't there on the plumbing
17 inspection. She was there for work being done outside the
18 permit.

19 THE COURT: I have to go based on what she's
20 testified to. And if she testified that they're plumbing
21 and regularities...

22 MR. GILLIAM: So what she testified was there
23 was plumbing work being done and there was no permit. She
24 didn't testify that the plumbing work was wrong, done
25 incorrectly, but that it was outside the permit.

1 whether we'll cancel court for tomorrow. I'm just not
2 certain exactly at this moment how we're going to do it.
3 I know many of you have children and I certainly do not
4 want -- I'm going to try to do whatever I do consistent
5 with whatever the school schedule is going to be. But I
6 appreciate again you all being patient until we get some
7 definitive information about how we'll be -- how the
8 weather is going to affect us in the morning or tomorrow
9 during the day, but it is possible -- the best case
10 scenario that we may have a delayed opening, but it is
11 also possible we may have to cancel court tomorrow
12 depending on the condition of the roads. So again I
13 appreciate your patience as we try to sort that out. I
14 would ask that you give the attorneys your undivided
15 attention as we resume examination of the witness.

16 You may proceed, Ms. Golding.

17 MS. GOLDING: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 BY MS. GOLDING:

20 Q Mr. Wiggins, with respect to the town's ordinance
21 Plaintiff's Exhibit Number 7 when the town adopted the
22 International Building Code in those sections and chapter
23 one, what did chapter one apply to?

24 A Chapter one applies to all the administrative
25 requirements.

1 Q And in chapter one of the International Building Code
2 is that applicable to commercial buildings?

3 A Yes.

4 Q Okay. And do you recall what chapter one what it
5 references or states with respect to stop-work orders?

6 A Yes, it gives the authority to issue stop-work orders
7 to the building official.

8 Q And does it state for what reasons the building
9 official has a right to issue stop-work orders?

10 A If there's any violation of the law or if there is
11 any violation of the code like safety issues, fire safety
12 issues things of that nature.

13 Q I have before you I think is Plaintiff's Exhibit 6
14 and Plaintiff's Exhibit 7. Do you see those?

15 A Yes.

16 Q In Plaintiff's Exhibit 6, I believe is a demolition
17 permit application; is that correct?

18 A Number seven is demolition permit.

19 Q And which one is the application?

20 A Number six.

21 Q Six is the application. And what is exhibit seven,
22 Plaintiff's 7?

23 A Is the actual demolition permit itself.

24 Q Okay. In exhibit six and seven, the application and
25 the permit itself does it have a scope of work what can be

1 done?

2 A Yes, it states demo interior of building only.

3 Q What is the date -- the date of the demolition
4 permit?

5 A Permit was issued on January 17th 2012.

6 Q Mr. Wiggins, based upon your expertise assume that
7 for the pier restaurant in the Town of Surfside there was
8 only a demolition permit issued as set forth in exhibit
9 seven and assume that on March 20th 2012 the Town of
10 Surfside building official saw that there was new
11 construction of subflooring, floor, plumbing window
12 openings, electrical, based on upon your experience and
13 expertise do you have an opinion based upon a reasonable
14 degree of certainty as a building code enforcement expert
15 what the building officer for the Town of Surfside should
16 have done on March 20th having seen the new construction?

17 MR. THOMPSON: I object, Your Honor.

18 THE COURT: Basis?

19 MR. THOMPSON: Calls for a legal conclusion.

20 THE COURT: Please approach.

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury, but out of the hearing of the
23 jury.)

24 THE COURT: Objection sustained.

25

1 BY MS. GOLDING:

2 Q Mr. Wiggins, let me rephrase that question. Any
3 building official from the Town of Surfside ---

4 THE COURT: You have to ask it for more
5 generalized than that.

6 BY MS. GOLDING:

7 Q With respect to a municipality that has an ordinance
8 such as Plaintiff's Exhibit 27 relating to the
9 International Building Code, do you have an opinion based
10 upon a reasonable degree of certainty in the field of
11 building code enforcement, would a building official would
12 do if the building official came upon a construction site
13 in which there was only a demolition permit issued and no
14 other permit and there was new construction, what is your
15 opinion as to the authority of that building official?

16 MR. THOMPSON: Object.

17 THE COURT: Basis?

18 MR. THOMPSON: Your Honor, still calls for a
19 legal conclusion what is the authority, but I'm not sure
20 she's established enough foundation.

21 THE COURT: Approach for me please.

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury.)

25 THE COURT: Sustained. You may proceed,

1 rephrase.

2 BY MS. GOLDING:

3 Q Mr. Wiggins, do you have an opinion based upon a
4 reasonable degree of certain as to the duties of a
5 building official, if the building official comes upon a
6 commercial construction in which the commercial
7 construction has no building permit but only a demolition
8 permit of what the official perceives new construction?

9 MR. THOMPSON: I'm sorry, Your Honor, I have to
10 object. I think it calls for a legal conclusion.

11 THE COURT: I don't think there's -- it's not.
12 -- please approach.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury, but out of the hearing of the
15 jury.)

16 THE COURT: Objection sustain. You may
17 rephrase, Ms. Golding.

18 MS. GOLDING: Thank you, Your Honor.

19 BY MS. GOLDING:

20 Q Based upon your expertise, do you have an opinion
21 based upon a reasonable certainty as a building code
22 enforcement official, whether any person which maintains
23 or has possesses a certified building official status
24 comes upon construction, new construction for which
25 there's only a demolition's permit issued, do you have an

1 opinion as to what that individual's responsibilities or
2 duties would be with respect to that construction site?

3 A Yes, I do.

4 MR. THOMPSON: I'm still going to object.

5 THE COURT: Overruled. I'm going to give her
6 some latitude. I think it's a difficult question asked.
7 I'll give her a little latitude.

8 You may answer the question, sir.

9 BY MS. GOLDING:

10 Q Please provide your opinion?

11 A That person is obligated to issue a stop-work order.

12 Q And why is that?

13 A Starting work regardless of whether there's a
14 demolition permit or not, starting work in any capacity is
15 a violation of the law unless a permit is issued for it.

16 Q Base upon a reasonable degree of certainty as a
17 building code enforcement expert, do you have an opinion
18 based upon a reasonable degree of certainty if any
19 building official who did not fulfill an issue --
20 fulfilled a responsibility of duty of issuing a building
21 permit if that official would face any type of discipline
22 or sanctions?

23 MR. THOMPSON: Object.

24 THE COURT: Basis?

25 MR. THOMPSON: It's speculation, Your Honor.

1 THE COURT: Speculation and foundation
2 sustained.

3 BY MS. GOLDING:

4 Q As a building official possessing a building official
5 certificate, what are the responsibilities of a building
6 official to follow to issue a building permit as set forth
7 in the hypothetical I presented to you?

8 A The process would be that a person would make
9 application for a building permit. It generally would
10 require a plan review. It would require possibly other
11 views from other departments as well. After all the
12 reviews have been complete and the building was cleared
13 for issuance of the permit, the application will be
14 returned to the building official. The building official
15 would authorize the permit be issued for that particular
16 project.

17 Q My question is what would be the ramifications of a
18 building official if the building official did not issue a
19 stop-work order based on a hypothetical I presented?

20 MR. THOMPSON: I object, Your Honor.

21 THE COURT: Basis?

22 MR. THOMPSON: It's speculation.

23 THE COURT: Please approach.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury, but out of the hearing of the

1 jury.)

2 THE COURT: Okay. You may proceed, rephrase.

3 MS. GOLDING: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 BY MS. GOLDING:

6 Q With respect to your expertise as a building code
7 enforcement expert, do you have an opinion based upon a
8 reasonable degree of certainty if under the facts I
9 presented to you previously under the hypothetical, that
10 the building official did not issue a stop-work or and a
11 complaint was issued against that building official, what
12 ramifications or possibilities would occur with respect to
13 the building official and the building official standing
14 as a building official in the State of South Carolina?

15 MR. THOMPSON: Same objection, Your Honor.

16 THE COURT: Change the word to could and that
17 remedies the objection. Sustained, rephrased.

18 MR. THOMPSON: I still object.

19 THE COURT: I noted your exception and overruled
20 it.

21 BY MS. GOLDING:

22 Q What ramifications could possibly be subject to the
23 building official if the building official did not issue
24 the work order?

25 A The council would get a complaint and the potential

1 ramifications would be disciplinary action against the
2 license.

3 Q And what are the ramifications or types of possible
4 disciplinary actions that could possibly be invoked in
5 this type of situation?

6 A Well, it can run all the way from a letter of caution
7 to a full revocation of the license itself.

8 Q When you say a license, what license are you
9 referring to?

10 A The license for the code enforcement officer to be
11 able to function in the State of South Carolina.

12 Q And under Plaintiff's Exhibit Number 1 the job
13 description for the head of the building department, a
14 building official in the Town of Surfside, would that --
15 based on that would a possible discipline of a license
16 have any affect upon the duties or responsibilities of
17 that building official in the Town of Surfside?

18 MR. THOMPSON: Object.

19 THE COURT: Sustain, rephrase, foundation and
20 speculation not what could that's speculative.

21 BY MS. GOLDING:

22 Q What are the -- well, not what could happen if in
23 fact a complaint was issued and based upon the job
24 description as set forth in Plaintiff's Exhibit Number 1,
25 what possible ramifications could result to a building

1 official with the Town of Surfside if the complaint
2 resolved it in disciplinary action?

3 MR. THOMPSON: I object, Your Honor, I think ---

4 THE COURT: Question needs to be rephrased to
5 bring it within the ambit of an appropriate hypothetical.
6 BY MS. GOLDING:

7 Q Based upon your expertise as a qualified building
8 code enforcement expert, do you have a reasonable opinion
9 based upon a reasonable degree of certainty as to the
10 possible ramifications that could occur to a building
11 official in the Town of Surfside based upon the job duties
12 and descriptions in Plaintiff's Exhibit 1 if there ever
13 occurred any type of disciplinary action relating to the
14 issue of failure to issue a stop-work order?

15 A The disciplinary actions that could occur or as I
16 stated before could run anywhere from a letter of caution
17 to full revocation. As far as the position description as
18 it concern for the City of Surfside ---

19 MR. THOMPSON: I object, Your Honor. I think
20 he's ---

21 THE COURT: Outside the scope of expertise and
22 foundation unless you can establish his familiarity with
23 those guidelines.

24 MS. GOLDING: Plaintiff's Exhibit Number 1 set
25 forth the guidelines, Your Honor.

1 THE COURT: Still need to lay the appropriate
2 foundational question to ask a question.

3 BY MS. GOLDING:

4 Q In Plaintiff's Exhibit Number 1 is what Mr. Wiggins
5 -- as we questioned previously Plaintiff's Exhibit Number
6 1 is what Mr. Wiggins?

7 A It's the Town of Surfside Beach job description for
8 planning, building and zoning director.

9 Q And what criteria set forth as to the building
10 official having any type of licenses?

11 A Under qualifications it calls for a certified
12 building official designation within one year time period.
13 ICC certification as a D2 inspector and plans reviewer.

14 Q And does it use the word -- can you read those two
15 bullet points directly as to the qualifications required?

16 A Well, I was reading from the bullet points. There
17 are a number of them.

18 Q Does it say must have?

19 A Yes, must have or obtain certified building official
20 designation within one year.

21 Q And what's the second one must have?

22 A Must have or obtain an ICC certification as a G2
23 inspector and plans reviewer.

24 Q And what is ICC certification?

25 A ICC certification is the certification that's granted

1 by the International Code Council that's the body that
2 publishes the building code.

3 Q And what is a G2 inspector?

4 A A G2 inspector is what we referred to as a
5 combination inspector as a person that has the ability to
6 be able to inspect structural, plumbing, electrical, and
7 mechanical work within a project.

8 Q With respect to the requirements set forth in
9 Plaintiff's Exhibit Number 1, do you have an opinion based
10 upon a reasonable degree of certainty as a building code
11 enforcement expert as to whether or not there could
12 possibly have been or would have been -- possibly be any
13 disciplinary actions with respect to a building official
14 at the Town of Surfside not issuing a stop-work order as
15 we -- as you had previously testified?

16 MR. THOMPSON: I object, Your Honor.

17 THE COURT: Basis?

18 MR. THOMPSON: Speculative and outside the scope
19 of his knowledge.

20 THE COURT: I'll be honest with you, Ms.
21 Golding, I kind of lost -- I got lost in the question.
22 Can you restate it?

23 MS. GOLDING: Yeah, I'm sorry.

24 THE COURT: No, that's okay. It was -- it had
25 two trains of thought in it. If you could restate it for

1 me please.

2 BY MS. GOLDING:

3 Q Mr. Wiggins, you already given your opinion as to the
4 duties of a building official in the event there's new
5 construction without a permit; is that correct?

6 A Yes.

7 Q And with respect to the duties and obligations in
8 that job description, do you have an opinion based upon a
9 reasonable degree of certainty as an expert in building
10 code enforcement if any type of disciplinary action may
11 have an affect on the job position of the building
12 official, if that building official is complaint -- is a
13 subject of the complaint just to not issuing a work order?

14 MR. THOMPSON: I object, Your Honor. It's
15 speculative.

16 THE COURT: It needs to be rephrased,
17 Ms. Golding, not if could or may, but if it actually were
18 to happen, that's the only way he'll be able to render an
19 opinion under those circumstances.

20 BY MS. GOLDING:

21 Q Base upon your expertise as a building code
22 enforcement expert, do you have an opinion based upon a
23 reasonable degree of certainty that a building official
24 may be subject to ---

25 MS. GOLDING: I'm going strike that, Your Honor.

1 THE COURT: Okay.

2 MS. GOLDING: I'm going to write down that
3 question.

4 THE COURT: It's okay. It happens to the best
5 of us, not a problem. You need a moment to collect
6 yourself?

7 MS. GOLDING: If you don't mind, I want to write
8 it down because I want to make sure what I say and what I
9 think sometimes doesn't come out the same.

10 THE COURT: I understand.

11 (WHEREUPON, a pause in the proceedings.)

12 BY MS. GOLDING:

13 Q Do you have an opinion based upon a reasonable degree
14 of certainty as a building code expert if a building
15 official with the same job description as in Plaintiff's
16 Exhibit Number 1, who was disciplined by the building
17 codes council for failing to issue a job stop-work order,
18 if that discipline or any type of discipline would have an
19 affect on that building officials job?

20 MR. THOMPSON: I have to object on that.

21 THE COURT: Basis?

22 MR. THOMPSON: It's speculative as to what the
23 town would be if.

24 THE COURT: Well, I think that's the question
25 appropriate for cross-examination, but in the

1 hypothetical, how could it potentially affect her -- a
2 person's employment is not speculative. But I would ask
3 Ms. Golding's going to have to clarify the question by
4 going into what the range of punishment is because I don't
5 think a letter of caution would cause termination, but
6 your loss of certification could cause your termination
7 because it's a requirement of the employment. So the
8 objection is overruled.

9 Sir, you may answer the question. Do you need
10 it repeated. I really don't want to torture Ms. Golding
11 that way.

12 THE WITNESS: I think heard it enough times.

13 THE COURT: You may answer the question.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: You're welcome, sir.

16 A Yes, I do have an opinion. And the opinion is that
17 various disciplinary actions taken by the council could
18 definitely affect the employment of a certified building
19 official or anyone of the code enforcement officers that
20 we register. And I think we register -- I'm sorry I use
21 to register, I'm retired now. A suspension for any length
22 of time would take the building official away from his or
23 her position if that happens, then that could very well
24 jeopardize the job of the building official, certainly
25 revocation would do it. In some cases, the council would

1 issue a disciplinary action that involved a fine or a fine
2 and a suspension. Certainly, those items would also take
3 the building official away from his or her position for a
4 length of time anywhere from 30 to 60 to possibly 90 days
5 and very few jurisdictions can get along without a key
6 person for that length of time.

7 MR. THOMPSON: Please answer any questions that
8 Mr. Thompson may have.

9 THE COURT: Mr. Thompson, you may proceed when
10 you're ready.

11 MR. THOMPSON: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 CROSS-EXAMINATION

14 BY MR. THOMPSON:

15 Q Sorry for all that trouble. Mr. Wiggins, we have met
16 before, correct?

17 A Yes, sir, we have.

18 Q Can you hear me okay? Can you hear me all right?

19 A I will need you to speak a little bit louder. I'm
20 very hard of hearing.

21 Q I'll try. I know we had that problem in the
22 deposition.

23 A Yes. Thank you for that too.

24 Q Now, there is a -- can you tell us what the South
25 Carolina Building Codes Council is?

1 A The South Carolina Building Codes Council is an
2 agency within the of department labor licensing
3 regulation. And it's purpose -- it's original purpose was
4 to review building codes for adoption under statewide
5 basis. And it goes back about 35 almost 40 years. The
6 councils original responsibility was to review the codes
7 and also offer a form for local jurisdictions that want to
8 modify the codes. The responsibilities have grown over
9 the years and consequently the council had picked up a
10 number of programs including the building code -- code
11 enforcement officer registration program which is that
12 question today.

13 Q And who appoints members of the building codes
14 council? How are they appointed?

15 A They're governor appointed.

16 Q And you have never been a member of the council; is
17 that correct?

18 A I have not, no.

19 Q And there is a committee, is there not, that makes
20 recommendations to the council as to disciplinary matters
21 that come up, as to what the council -- recommendation as
22 to what the council should do if anything?

23 A As part of the process, there's an investigative
24 review committee that's an internal LLR committee that
25 does make recommendations that council however does not

1 have to follow them.

2 Q And sometimes they follow them and sometimes they
3 don't?

4 A Yes, that's correct.

5 Q Now, is it true that most disciplinary matters of
6 building officials arise from a complaint?

7 A Yes, that's correct also.

8 Q And sometimes they arise as an off shot of an
9 investigation of a complaint?

10 A That is correct.

11 Q Has it ever been in your experience a disciplinary of
12 -- a discipline of a building official where there was no
13 complaint or it wasn't connected with a -- it was a
14 problem not connected with an existing complaint?

15 A Well, it has to be a complaint driven and whether a
16 complaint comes from the outside or the inside.

17 Q Okay. So the answer to that yes or no would be?

18 A That would be no.

19 Q The LLR doesn't go looking for violations without a
20 complaint; is that correct?

21 A State that again please.

22 Q LLR building codes council does not go looking for
23 problems without a complaint; is that true?

24 A Generally not. However, if a complaint is noted by
25 one of the investigators and brought to the attention of

1 the administrator, then that second spur a second
2 complaint.

3 Q And again that would arise from an existing complaint
4 though?

5 A It could if somebody else is brought into it, yes.

6 Q Most complaints are settled by a consent; is that
7 true?

8 A A good number are.

9 Q And the ones that go to the hearing, the council
10 actually decides what, if any, discipline is imposed;
11 correct?

12 A That is correct.

13 Q And you are not -- they go into an executive session
14 to -- before they come out and vote; is that correct?

15 A They were going to executive session only if there is
16 a hearing. If there's no hearing involved with the
17 disciplinary action, there is not executive session.

18 Q That's what I meant. And the cases of the hearing,
19 they go into executive session, deliberate and then come
20 out and vote?

21 A Yes, sir.

22 Q You're not privy to the executive session, correct?

23 A That's correct.

24 Q And hearings arise where there's no consent agreement
25 and I suppose where council decides to have a hearing; is

1 that true?

2 A That is correct too.

3 Q And just so the jury understands a consent agreement
4 -- can you explain what a consent agreement is?

5 A A consent agreement is a document that is prepared by
6 the attorneys for LLR or for the building codes council I
7 should say, that would offer an agreement that the
8 building official or the code enforcement officer could
9 agree to as far as sanctions are concerned and as far as
10 any -- anything else that would involve the case or
11 concerned as long as it were agreeable with the council,
12 then the council could prepare a document have it signed
13 by the code enforcement officer and then the punishment
14 would be agreed to without any further hearings or any
15 other further actions.

16 Q It's kind of like a settlement?

17 A Like a summons.

18 Q Settlement. Would it be fair to say it was like a
19 settlement as well?

20 A Yes, it is like a settlement.

21 Q And I believe we've already established this, but
22 just so I'm clear. The authority of a building official
23 to issue a stop-work order comes from administrative
24 section of the international codes, right?

25 A Yes, that is correct.

1 Q And those must be adopted -- if the town or
2 governmental entity is going to use those administrative
3 provisions, they have to adopt them, correct?

4 A That is correct.

5 Q But they also have the discretion to come up with
6 their own?

7 A That is correct also.

8 Q And if they don't adopt the administrative section of
9 the international code or come up with their own stop-work
10 order provision, the building official does not have the
11 authority to issue a stop work; is that correct?

12 A Well, not only that, the building official doesn't
13 have the authority to issue permits to collect fees to do
14 anything that is within a realm of the building inspection
15 department, so it just literally shuts the department
16 down.

17 Q So that's a yes?

18 A That is a yes no authority.

19 Q Do you recall the case of an Oconee County building
20 official Mr. Chambers?

21 A Yes, I do.

22 Q Is it true that Mr. Chambers was disciplined at least
23 in part for issuing a stop-work order without ordinance
24 authority?

25 A Yes, that is correct.

1 Q Is it true that you don't know what discipline the
2 building codes council would apply in any particular case?

3 A No, the council here is each case individually and on
4 its own merits and then decides what punishment is
5 applicable.

6 Q And I believe you testified that a building official
7 should issue a stop-work order for work done outside the
8 permit. Did you testify to that?

9 A Work done outside the permit or for no permit at all,
10 that is correct.

11 Q Either one?

12 A Right.

13 Q But you don't know if the building code council would
14 actually discipline a building official for not issuing a
15 stop-work order, do you?

16 A If a complaint was issued, it went through the
17 course. The council would discipline one respect or
18 another because it is a violation of the law. And the
19 council does take that very very seriously.

20 Q You do recall the deposition that you gave in this
21 matter?

22 A Yes, I do.

23 Q I like to direct your attention to page 44 of your
24 deposition transcript goes into page 45 as well. Let me
25 know when you are there.

1 A I'm on page 44.

2 Q Okay. Look down to the line 23. And I ask you the
3 question. Can you in your expertise give a prediction as
4 to where the building code council would do in terms of
5 discipline in any particular situation and what was your
6 answer?

7 A I can't, no.

8 Q And next question on page 45 line three. So the
9 building code council might not necessarily share your
10 view of what is required is issuing a stop-work order in
11 any particular set of circumstances; is that correct? And
12 what was your answer?

13 A May not. I can't speak for the council as a body. I
14 can't speak for the council as individuals.

15 Q So you don't know what the council would do in any
16 particular circumstances regarding failure to issue a
17 stop-work order?

18 A As far as the level of disciplinary action, I can't
19 predict that, but they would give out some level of
20 disciplinary action. It's entirely up to the council.

21 Q I'm confused, Mr. Wiggins, because I asked you in
22 your deposition if you could predict in your expertise
23 what the building code council ---

24 MS. GOLDING: Your Honor, I'm going to make an
25 objection.

1 THE COURT: Basis?

2 MS. GOLDING: Mainly questioning utilizing the
3 deposition.

4 THE COURT: You need to ask him the exact
5 question that you asked, give him the opportunity to admit
6 or deny it. And if it is inconsistent, then you need to
7 read the exact question from the deposition and have him
8 read the exact answer.

9 BY MR. THOMPSON:

10 Q Mr. Wiggins, are you saying that you predict the what
11 the building code council is going to do in terms of
12 discipline in a particular situation?

13 A No, what I stated was the building codes council
14 would issue some form of disciplinary action. I cannot
15 establish what form, what level. I don't know whether
16 they'll issue a letter of caution or a consent agreement
17 or a revocation. It's entirely up to the council. I have
18 no way of predicting that.

19 Q Now, the building code council has held hearings in
20 which they have not imposed any discipline; isn't that
21 correct?

22 A They have actually dismissed action against
23 individuals that there was no merit.

24 Q Okay. And you testified did you not that the
25 building code council might not share your view of what is

1 required in issuing a stop-work order in any particular
2 set of circumstances?

3 A As far as a stop-work order, any issue that's brought
4 before them is a result of an investigation whether I have
5 a view or not is a mute point. They may not share my
6 view. They're all individuals.

7 Q Now, let's talk about your view. Your view is that a
8 stop-work order must always be issued, correct?

9 A That's correct.

10 Q Did you tell in your deposition that the council
11 might share that view?

12 A They may not.

13 Q So you agree that council might not share your view
14 of what a building code official must do in terms of
15 issuing a stop-work order?

16 A They may not, but a stop-work order is a -- when a
17 stop worker order is not issued, it's a violation of the
18 law. And they will address the violation of law.

19 Q But they could dismiss the complaint, could they not,
20 if they don't feel like a stop-work order needed to be
21 issued?

22 A Not likely.

23 Q Could they?

24 A If it's a violation of the law, the council will take
25 action.

1 that a building official communicate with him regarding
2 stop-work orders that he or she may issue?

3 A No, that's not a building code issue.

4 Q And nothing in the building code would prevent an
5 administrator from directing a building official to
6 maintain certain attendance and punctuality standards, is
7 there?

8 A No, that's not a building code issue either.

9 Q And if a building official were insubordinate to a
10 town administrator in terms of -- not accepting discipline
11 in an subordinate manner, there's nothing in the building
12 code that would prevent an administrator from taking
13 action against that building official?

14 A No, that's not a building code issue.

15 MR. THOMPSON: That's all, Your Honor.

16 THE COURT: Any redirect of the witness?

17 MS. GOLDING: None, Your Honor.

18 THE COURT: Any objection to the witness being
19 excused from the plaintiff?

20 MS. GOLDING: None, Your Honor.

21 THE COURT: From the defense?

22 MS. GOLDING: None, Your Honor.

23 THE COURT: Sir, you're excused.

24 (WHEREUPON, the witness leaves the witness
25 stand.)

1 THE COURT: Plaintiff may call its next witness.

2 MS. GOLDING: Call Micki Fellner.

3 THE CLERK: Please raise your right hand and
4 place your left hand on the Bible. Do you solemnly swear
5 the testimony you're about to give to the court in this
6 case will be the truth, the whole truth and nothing but
7 the truth so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Have a seat please, ma'am. State
10 your name for the court please, ma'am.

11 THE WITNESS: Micki Fellner.

12 WHEREUPON,

13 Micki Fellner,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. GOLDING:

17 Q Good afternoon, Ms. Fellner.

18 A Good afternoon.

19 Q Ms. Fellner, you been the town administrator for what
20 a couple of years now?

21 A In May it will be.

22 Q May of what year?

23 A This coming May it will be two years.

24 Q So you became the town administrator in May of 2012
25 and you have served in that capacity until the present?

1 A Right. Well, actually technically from May until
2 August. The beginning of August I was an interim
3 technically and became the town administrator in August.

4 Q And you replaced Mr. Jim Duckett; is that correct?

5 A Yes, ma'am.

6 Q Mr. Duckett resigned I believe he submitted his
7 resignation to the town in April of 2012?

8 A I thought it was May, but it could have been April.

9 Q And he submitted a 60-day resignation, but the town
10 made a decision to ask him to leave rather than work out
11 his 60 days?

12 A That is correct.

13 Q Okay. And before you became the interim town
14 administrator in April of 2012, you had served in that
15 capacity previously, had you not?

16 A Yes, ma'am.

17 Q And when did you serve in that capacity?

18 A In April, I believe it was of 2010 Ed Booth was
19 separated from his employment with the town. And for next
20 seven months, I served as the interim until we went
21 through the job search process and found Mr. Duckett and
22 Mr. Duckett was hired.

23 Q So you were the town administrator -- interim town
24 administrator for eight months before Mr. Duckett came.
25 And then after a year and a half Mr. Duckett was there,

1 then you became a town administrator again; is that right?

2 A Yes, ma'am.

3 Q Now, before the first time you were a town
4 administrator in April of 2010, you were an employee with
5 the town; is that right?

6 A Yes, ma'am.

7 Q And what was your capacity?

8 A I was the executive assistant to the town
9 administrator.

10 Q When did you first start with the town?

11 A In July of 2008.

12 Q Have you been -- you been continuously employed with
13 the town from July of 2008 to the present; is that
14 correct?

15 A Yes, ma'am.

16 Q Okay. And being an employee of the Town of Surfside
17 from July 2008 to the present, is it not a fact that you
18 never had any knowledge up to today that the Town of
19 Surfside never authorized its building official to issue a
20 stop-work order; is that correct?

21 A Can you repeat that.

22 Q That was terrible, wasn't it. Isn't it a fact that
23 the Town of Surfside based upon your knowledge has always
24 authorized its building official to issue stop-work
25 orders; is that correct?

1 A To the best of my knowledge, yes, ma'am.

2 Q And so if Mrs. Donevant issued a work order in March
3 20th of 2012, she had that authority to issue the work
4 order; is that correct? Based upon your knowledge?

5 A Give me the dates again?

6 Q I apologize March 20, 2012, Mrs. Donevant issued a
7 stop-work order on March 20, 2012. Mrs. Donevant, based
8 on your knowledge, had the authority to issue that work
9 order?

10 A To the best of my knowledge, yes, ma'am.

11 Q Now, when you were the town interim administrator,
12 the eight months before Mr. Duckett came, Mrs. Donevant
13 was the building department head; is that correct?

14 A Yes, ma'am.

15 Q Okay. As the town administrator during that period
16 of time, you never told Mrs. Donevant how to do her job,
17 did you?

18 A No, ma'am. There were certain instructions a time
19 that I did give her, but it was not about the scope and
20 authority of her job.

21 Q And in fact as a town administrator, you didn't have
22 the authority to tell her not to issue a permit or not to
23 issue a stop-work order; isn't that correct?

24 MR. THOMPSON: I object, Your Honor.

25 THE COURT: Basis?

1 MR. THOMPSON: Calls for legal conclusion.

2 THE COURT: It goes to the scope of her
3 responsibilities as the town administrator, would it not?

4 MR. THOMPSON: I think she's asking if she had
5 the legal authority to direct her or if she didn't.

6 THE COURT: She's talking about the scope of her
7 authority. It's a proper question. Overruled.

8 You may answer the question, ma'am. Do you need
9 it repeated?

10 THE WITNESS: Yes, please.

11 THE COURT: Please repeat the question.

12 BY MS. GOLDING:

13 Q As the town administrator, the eight months before
14 Mr. Duckett came, you never had the authority to tell Mrs.
15 Duckett (sic) not to issue a permit or not to issue a
16 stop-work order, did you?

17 A I did not.

18 Q And in fact as a town administrator from May of 2012
19 to the present, you've never had that authority to tell
20 the building official at the town not to issue a permit or
21 not to issue stop orders, have you?

22 A No, ma'am.

23 Q Since, you been with the Town of Surfside since 2008
24 to the present. To your knowledge, is there one
25 administrator that the town had that had the authority to

1 tell the building inspector of the town not issue a permit
2 or not to issue stop-work orders?

3 A Not since I been with the town.

4 Q Since, you been with the county do you know of any
5 administrator other than Mr. Duckett that went to a job
6 site and tore down a stop-work order?

7 A I personally do not.

8 Q Now, with respect to Mr. Donevant -- Mr. Duckett
9 excuse me I'm sorry Mr. Duckett he started in -- I think
10 it was December 2010; is that correct?

11 A Yes, ma'am.

12 Q Okay. And just for the juries edification,
13 Mr. Duckett hasn't been to this trial, has he?

14 A No, ma'am.

15 Q He's not been sitting here or been even -- put his
16 head in while the trial's going on, has he?

17 A No, ma'am, not that I know of.

18 Q And he departed the town I think on May 8th 2012; is
19 that correct?

20 A Yes, that seems to be what I recollect.

21 Q And when he left the town, his leaving the town was a
22 voluntary act on his part to your understanding; is that
23 correct?

24 A Yes, there were some circumstances, but, yes, ma'am.

25 Q Okay. When Mr. Duckett first started with the town

1 in December 2010 or early 2011, do you recall him telling
2 the directors including Mrs. Donevant that you were a boss
3 of them just as much he was?

4 A Yes, because my position had just changed.

5 Q And you became a deputy administrator; is that
6 correct?

7 A Yes, ma'am.

8 Q And he said that in my absence he told the directors
9 Mrs. Donevant and the others said in my absence Ms. Micki
10 Fellner is the boss?

11 A Yes, ma'am.

12 Q Okay. Now, Mr. Duckett's work hours were a little
13 different than other town administrators you've had; is
14 that correct?

15 A Yes, ma'am.

16 Q Okay. And his work hours he would come in early, but
17 he usually leave by three o'clock every day would that be
18 fair?

19 A Yes, ma'am, but may I qualify that.

20 Q Certainly, you can explain it?

21 A He did come in generally at five or six in the
22 morning, so he put in a full day.

23 Q Right. But he was gone after three o'clock?

24 A Right. But again, if I might qualify. His thinking
25 was that he would handle all the early morning issues and

1 I still be around there by six usually seven at night to
2 handle what happened after three.

3 Q And then that's when you became the town
4 administrator when he was gone?

5 A Yes, ma'am.

6 Q Okay. Now, when you started in 2008, Mrs.
7 Donevant was head of the building department; is that
8 correct?

9 A That's correct.

10 Q And since you been the interim administrator and
11 knowledge of building departments, you know that if
12 there's one department head that gets more complaints or
13 more problems, it's the building department; isn't that
14 right?

15 A It depends on the year.

16 Q Well, the building department ---

17 A The building department does get their share, yes,
18 ma'am.

19 Q And because the building department has to say no to
20 town residents or people wanting to do business in the
21 town; isn't that right?

22 A Yes, ma'am.

23 Q Okay. And you will agree that Mrs. Donevant is
24 extremely knowledgeable when it comes to the building
25 codes and the construction industry, will you not?

1 A Yes, ma'am, I would.

2 Q Okay. And Mrs. Donevant's knowledge of the
3 construction industry and the code enforcement was
4 extremely helpful to the Town of Surfside, was it not?

5 A Yes, ma'am, it was.

6 Q And when you were interim director, you'd call upon
7 Mrs. Donevant to assist you with things that even were
8 outside of her job, did you not?

9 A Yes, ma'am, if I might qualify. When I thought she
10 had the knowledge to assist me with something particular.

11 Q And she willingly stepped up to the plate and
12 assisted you; is that correct?

13 A Yes, ma'am, she did.

14 Q And Mrs. Donevant she -- her personalty she's not
15 insubordinate. She was never insubordinate to you, was
16 she?

17 A No, ma'am.

18 Q Okay. And Mrs. Donevant did work into the evenings
19 and she worked late in the evenings on many occasions, did
20 she not?

21 A I don't know that work late other than when there was
22 a planning commission involvement.

23 Q If there wasn't a planning commission involved, you
24 would go home at what time?

25 A Six or seven.

1 Q And if you went home at six or seven, you know, there
2 were times when Mrs. Donevant was there reviewing the
3 plans; is that correct?

4 A I cannot recall.

5 Q Okay. Were you present on June 17th 2011, when
6 Mrs. Donevant was jokingly asked to write like a school
7 child?

8 A I was in the building. I was unaware of the
9 circumstances.

10 Q Had you as the interim town administrator ever called
11 and told an employee to sit down and I want you to write
12 five times out that Mr. Duckett has a poor memory and from
13 now on I'll e-mail him, have you ever done that?

14 A No, ma'am.

15 Q Okay. Or anything similar told an employee to sit
16 down like in a grade school, have you ever done that?

17 A I have asked people to sit down before.

18 Q And write out so many times?

19 A No, ma'am.

20 Q You will agree that that is like a grade school --
21 treating someone like they're in a grade school, want you?

22 A If you're asking for my personal opinion to me if he
23 had done that to me, it wouldn't have been big a thing.
24 But I understand that it could be to some people.

25 Q Okay. Well, you understand it was humiliating to

1 Mrs. Donevant, did you not?

2 A She told me that, yes, ma'am.

3 Q And you also understand that Mr. Duckett considered
4 it a joke. He was joking with her. Did you understand
5 that?

6 A That is not what he told me.

7 Q Okay. With respect to Mr. Donevant, you expect him
8 to be in this trial to appear as a witness, don't you?

9 A Mr. Duckett you mean.

10 Q Mr. Duckett I'm sorry.

11 A I believe he is suppose to be a witness.

12 Q Thank you. So Mr. Duckett never told you that he was
13 making Jackie write this out because he was being comical?

14 A No, ma'am, he said he was trying to make a point with
15 her.

16 Q But he didn't say he was kidding and trying to be
17 comical or he was joking with her?

18 A Not to me. He said he was trying to make a point.

19 Q Okay. Did you hear him tell that to other people
20 that he was being comical, he was joking and he was
21 kidding?

22 A I didn't. I'm not in the same area that. I'm not up
23 front where that office is located.

24 Q Now, with respect to the training that the head of
25 the building department, the town has to undergo, you will

1 agree that Mrs. Donevant was required to attend so much
2 training each year to have her license; is that correct?

3 A Yes, ma'am.

4 Q And that's the certified building official license;
5 is that correct?

6 A Yes, ma'am.

7 Q Okay. And as the town administrator, did you approve
8 that training when you were the interim the eight months
9 before Mr. Duckett came?

10 A Yes, ma'am, when she brought me training and said she
11 needed CEO's or whatever, whatever the certification would
12 have needed to go toward I would approve it.

13 Q And once you approve it, that means Mrs. Donevant go
14 and attend the training?

15 A Yes, ma'am.

16 Q And you never complained to Mrs. Donevant and said
17 I've approved this, but this is unnecessary training?

18 A No, ma'am.

19 Q Okay. And you will agree that for the training that
20 you approved Mrs. Donevant, you expected her to take that
21 training during the day while she worked work days?

22 A Well, whenever it was offered, whether it day or
23 night or combination of both.

24 Q But if it was offered in a workday, you expected her
25 to take that training on the workday?

1 A Yes, ma'am.

2 Q Okay. And you wouldn't then tell her afterwards,
3 well, I'm not going to give you a pay raise because you
4 took too much training even though I approve it. You
5 didn't do that, did you?

6 A I did not do that.

7 Q Okay. Now, with respect to inspections done by
8 Mrs. Donevant, you knew when you were the interim director
9 that she would conduct inspections driving to work?

10 A There were numerous occasions that she told me she
11 had done inspections on her way to work, yes.

12 Q And you knew that she would do inspections after work
13 on her way home?

14 A There were times when she said she was doing
15 inspections, yes, on her way home.

16 Q And that wasn't against the policy of the town, was
17 it?

18 A No, ma'am.

19 Q Okay. And you never disciplined her for doing those
20 type of inspections before or after work, did you?

21 A No, ma'am.

22 Q Okay. And in fact when you were the interim
23 director, you never issued any type of discipline to Mrs.
24 Donevant, did you?

25 A No, ma'am.

1 Q Okay. And in fact before June of 2011, and that one
2 morning of Mr. Duckett, Mrs. Donevant had never received
3 any written warnings or disciplines from the Town of
4 Surfside, had she?

5 A Can you repeat that question?

6 Q Certainly. Before June excuse me -- it's July, 2011,
7 Mrs. Donevant had never been issued a written warning or
8 discipline by the Town of Surfside?

9 A None that I'm aware of.

10 Q And you been at the town since 2008; is that correct?

11 A Yes, ma'am, but Mr. Booth, who was prior
12 administrator, would not always share his actions with me.
13 So I would have no way of knowing what he put in someone's
14 file or not.

15 Q Well, you're here and been sitting here as the
16 representative of the council, have you not?

17 A Yes, ma'am.

18 Q Okay. And you will agree as a representative of the
19 town that Mrs. Donevant's personnel file had no type of
20 discipline in her file before July 2011?

21 A That I believe that's the case.

22 Q Okay. Now, you also knew with respect to Mr. Duckett
23 that with respect to this warning that he issued
24 Mrs. Donevant in July of 2011, that he said that if --
25 that it would be put inside a drawer. Did you ever hear

1 him say I'm going to put a warning in a side drawer or put
2 something in a side drawer?

3 A I did. I can't truly recollect what he told me he
4 was going to put in the side drawer, but he had said that
5 on a couple of occasions. And in his mind or excuse me --
6 what he communicated to me was that if the -- whatever he
7 had issued the warning for if the employee corrected that
8 action, it never made it to the personnel file. If they
9 didn't correct the action, then it went into the personnel
10 file.

11 Q Well, you, as the current town administrator, know
12 that there was only one warning issued to Mrs. Donevant
13 when Mr. Duckett was the town administrator and that was
14 the July 2011 warning; isn't that correct?

15 A You're talking about the one that was -- where she
16 had write out is that ---

17 Q No, ma'am. It's Plaintiff's Exhibit Number 4.

18 A Yes, I'm aware of this.

19 Q And that's the only written warning in Mrs.
20 Donevant's employment file; is that not correct?

21 A I'm not sure because I haven't read it recently, it's
22 been a while.

23 Q Let me ask you, do you know of any other warning in
24 Mrs. Donevant's employment file other than Plaintiff's
25 Exhibit Number 4?

1 A Well, do you count the one with the writing out?

2 Q I'm talking about the written warning?

3 A No, I do not, no, ma'am.

4 Q Okay. Now, there was an evaluation done by Mr.

5 Duckett on Mrs. Donevant I think it was September 28,

6 2011; is that correct?

7 A What number is that.

8 Q Would you check I think it's exhibit number three,

9 Plaintiff's Number 3. You see that?

10 A Yes, ma'am.

11 Q Did you type Plaintiff's Exhibit 3?

12 A Yes, I did.

13 Q And that was an evaluation that was done by Mr.

14 Duckett on Mrs. Donevant; is that correct?

15 A Yes, ma'am.

16 Q And the first item says you really are good in your

17 knowledge of the business?

18 A Yes, ma'am.

19 Q Okay. And the second item says too much training.

20 You're spending too much time training; is that correct?

21 A Yes, ma'am.

22 Q Okay. Now, when you wrote that out isn't it a fact

23 that there was not one training event or seminar that Mrs.

24 Donevant attended that was not approved by the town

25 administrator?

1 A Again, I assume because she went to that training
2 that that's the case, but I don't have personal knowledge
3 of that. I didn't see the approval records.

4 Q Do you have personal knowledge of Mrs. Donevant
5 attending any training that was not approved by the town
6 administrator?

7 A I do not have any personal knowledge of that.

8 Q Then next number three it basically says you don't
9 focus on town business while away from work; isn't that
10 basically what it says?

11 A Yes, sometimes while at work, right.

12 Q And before that date do you know at any time that
13 Mrs. Donevant was ever disciplined for not focusing on
14 work?

15 A I don't know of her ever being disciplined for it,
16 no.

17 Q Okay. Did you personally have ever any conversation
18 with Mrs. Donevant before September 28th 2011, and tell
19 her that she didn't focus in on work?

20 A Yes.

21 Q Okay. And when was that?

22 A I think it was the first time I was the interim.

23 Q And when was that?

24 A Which would have been mid April of 2010 up until
25 December when Jim came.

1 Q Did you ---

2 A But it wasn't under the auspices of a warning.

3 Q Okay. That's where I was going to go next. There
4 was warning. There was a discussion with Mrs. Donevant?

5 A It was a discussion and we had discussed that she was
6 having trouble focusing.

7 Q Okay. To your knowledge, do you know of any time
8 Mrs. Donevant did not do her job?

9 A In what respect?

10 Q Did -- when she was ordered to go to -- when she had
11 to issue a building permit, she didn't do it or she didn't
12 review plans?

13 A When she was told to do something, she was very
14 responsive and did it.

15 Q Now, this evaluation that is Plaintiff's Exhibit
16 Number 3, you did not evaluate Mrs. Donevant, did you?

17 A No, ma'am.

18 Q That was Mr. Duckett's evaluation, correct?

19 A Yes, ma'am.

20 Q Okay. And subsequently I think two weeks after that
21 evaluation Mrs. Donevant was informed she had breast
22 cancer; is that correct?

23 A I'm not exactly sure of the date she was informed of
24 that, but it was soon thereafter.

25 Q And Mrs. Donevant told you I've got -- I been

1 diagnosed with breast cancer?

2 A Yes.

3 Q Is that correct?

4 A Yes, ma'am.

5 Q Okay. And it be fair to state that to your knowledge
6 Mr. Duckett was also told that Mrs. Donevant had breast
7 cancer, correct?

8 A I'm not exactly -- I wasn't privy to how he learned
9 of that or who told him.

10 Q Okay. But certainly you knew; is that correct?

11 A Yes.

12 Q And then Mrs. Donevant submitted written rebuttal to
13 that evaluation. I think it was November 28th 2011. You
14 recall that?

15 A Yes, I do. I don't know exactly what the date was,
16 but I do recall the rebuttal.

17 Q Okay. And in that rebuttal without going into all
18 detail, she asked for a reconsideration, did she not?

19 A If you'll let me just take a moment to read it.

20 Q Please, please do. And what Plaintiff's Exhibit
21 Number is that?

22 A Five.

23 Q Plaintiff's Exhibit 5, thank you.

24 A Yes, it's in the first line.

25 Q Okay. She did. And you have personal knowledge that

1 Mr. Duckett refused to reconsider that -- her evaluation?

2 A Yes, ma'am, he did refuse.

3 Q Okay. In fact, you have personal knowledge that Mr.
4 Duckett would not even talk to Mrs. Donevant about her
5 request for reconsideration; isn't that correct?

6 A I do not know that to be a fact.

7 Q To your knowledge, all Mr. Duckett did was take that
8 letter request to reconsider and put it in Mrs. Donevant's
9 file, that's all that was done; is that correct?

10 A Again, I don't know that to be the fact. He could
11 have done other things not sure.

12 Q To your knowledge, he didn't do anything; isn't that
13 correct?

14 A To the best of my knowledge, you're correct.

15 Q Now, also when Mrs. Donevant told you that she had
16 cancer, she had to go to the doctor a lot; isn't that not
17 correct?

18 A Yes, ma'am, she had various appointments.

19 Q Okay. And she would e-mail Mr. Duckett and you that
20 she was going to the doctor for this appointment or this
21 appoint; isn't that correct?

22 A I don't think e-mail was her first choice to do that.

23 Q But she would -- you did receive e-mails and
24 telephone calls?

25 A. Usually, it was a telephone call.

1 Q Okay.

2 A I mean from her to me. I can't say with her to
3 anyone else.

4 Q Okay. Now, Mrs. Donevant requested a medical leave I
5 think it was starting December the 6th; is that correct
6 2011? Do you recall her requesting medical leave?

7 A Yes, but I'm not sure of the date.

8 Q I don't believe it is in an exhibit.

9 A Okay.

10 Q But you recall she requested medical leave?

11 A I do.

12 Q Okay. And the Town of Surfside has family medical
13 leave; is that correct?

14 A Yes, ma'am.

15 Q Okay. And that means that if you're an employee and
16 you been there over a year, you are entitled to take 12
17 weeks; is that correct?

18 A Yes, ma'am.

19 Q But if you not been there a year, you don't have that
20 entitlement to 12 weeks, do you?

21 A That's correct.

22 Q Mrs. Donevant since she been there a number of years.
23 She been there beyond a year, she was entitled to her 12
24 weeks; is that correct?

25 A Yes, ma'am.

1 Q Okay. And when Mrs. Donevant return to work before
2 the end of her 12 weeks, were you present the day she
3 wanted to come back to work, but Mr. Duckett said no?

4 A I was at work that day, but I wasn't there in the
5 beginning of when all that happened because I remember
6 saying -- coming back from something and saying, well,
7 where's Jackie.

8 Q And at that point in time the Town of Surfside didn't
9 have a policy or regulation saying to an employee that
10 came back from FMLA leave before you start to work, you
11 have to have that doctor's release in writing?

12 A That is not correct.

13 Q There was a policy?

14 A We always requested a doctor's note whenever you were
15 out whether it was worker's comp whatever.

16 Q And the release that Mrs. Donevant presented to Mr.
17 Duckett on that day from the insurance company, that was
18 not sufficient to Mr. Duckett, was it?

19 A No, ma'am.

20 Q Okay. And so Mr. Duckett didn't let Mrs. Donevant
21 start to work that day; is that correct?

22 A That's correct.

23 Q And so she had to go and track her doctor down again
24 and say get me another release?

25 A Yes, ma'am.

1 Q Okay. She came to work the next day with the
2 doctor's release?

3 A I'm not sure what day of the week that was. I mean
4 memory -- if it was a Friday, she wouldn't have come back
5 until Monday. But was it during the middle of the week?
6 The next business day can we agree on that?

7 Q That will be good. The next business day she came
8 back and said I've got my doctor's release it's not part
9 of my insurance papers; isn't that right?

10 A Yes, ma'am, that's my understanding.

11 Q Okay. And were you present in Mr. Duckett's office
12 when Mr. Duckett then said, okay, you're back. You got
13 your job duties, but I don't want you to undue anything
14 that's been done. Were you present there?

15 A I don't remember being present at that meeting. I
16 remember actually Jackie telling me that later in his --
17 in her office.

18 Q Okay.

19 A That that's what she was told.

20 Q Okay. While you're town administrator in the
21 interim, did you ever tell an employee that came back from
22 FMLA leave that was out don't undue anything we done?
23 Have you ever done that?

24 A No, ma'am.

25 Q Okay. Do you know of any administrator other than

1 Mr. Duckett that you work for that ever said to an
2 employee coming back, don't undue do anything we done?

3 A No, ma'am.

4 Q Do you know of any other employee other than Jackie
5 Donevant as building official that was told by Mr.
6 Duckett don't undue anything we done?

7 A No, ma'am.

8 Q And in fact Mr. Duckett told her that if you undue
9 anything we done, I'm going to fire you. Isn't that what
10 he told her?

11 A That's what later I heard from both her and
12 Mr. Duckett.

13 Q Okay. Now, talking the about the pier, the pier was
14 a political issue we all agree; is that right?

15 A Yes, ma'am.

16 Q The town had bought the pier and the Nibbles
17 restaurant was on the pier operating; is that right?

18 A Yes, ma'am.

19 Q And then the town got into dispute with Nibbles and
20 basically didn't renew Nibbles lease, did they?

21 A That's correct.

22 Q Okay. And there were other political issues. I
23 think you talked about there was a dog park that was a
24 political issue about; is that right?

25 A Well, that wasn't as big a political issue, but there

1 were a couple of concerned citizens as the way I would
2 describe the dog park.

3 Q Okay. And but pier -- that was in the newspaper the
4 Sun News, right?

5 A It was all over the press, yes, ma'am.

6 Q So we knew and you knew that everybody was watching
7 everything being done on the pier; isn't that right?

8 A That is correct.

9 Q Okay. And if anybody stump their toe and did
10 something that was against the law about the pier, that
11 could be some real problems for that, couldn't it?

12 A Repeat that question.

13 Q Sure. If anybody stump their toe with the Town of
14 Surfside and did something that they weren't authorized to
15 do or permitted to do or was against the law about the
16 pier, that would probably come out somewhere because it
17 was a hot political issue; isn't that right?

18 A Well, I don't know if I can say that. I don't...

19 Q I mean everybody was on top of the pier. It was in
20 the newspaper everybody was watching everything that was
21 happening with the pier?

22 A They were.

23 Q Okay. And so if anybody did something illegal on the
24 pier, somebody would see it find and out about it,
25 wouldn't they more than likely?

1 MR. THOMPSON: Objection, Your Honor.

2 THE COURT: Basis?

3 MR. THOMPSON: Speculative.

4 THE COURT: Sustained. Absent laying the
5 appropriate foundation of her rational perception or
6 personal knowledge of the issue.

7 BY MS. GOLDING:

8 Q How often were you at the pier during the 2011, 2012
9 time period?

10 A A couple times a week.

11 Q Okay. And you were there a couple times a week
12 because of the pier issue involves; is that right?

13 A Yes, ma'am.

14 Q And you will agree that while you were there other
15 people from the town came council members from the town
16 came, right?

17 A Yes, ma'am.

18 Q And you will agree while you were there reporters
19 came to the pier, right?

20 A Sometime, yes, ma'am.

21 Q Okay. So if you were there and you saw something
22 illegal going on, you knew you'd have to do something
23 about it, wouldn't you?

24 MR. THOMPSON: I object, Your Honor, that's just
25 speculation.

1 THE COURT: Sustain, speculation.

2 MR. THOMPSON: I object, Your Honor, we're just
3 going over the same thing. She's made her point.

4 THE COURT: Is that an objection?

5 MR. THOMPSON: Yes, Your Honor.

6 THE COURT: What's the basis of the objection?

7 MR. THOMPSON: Continuing questioning about the
8 pier.

9 THE COURT: No speaking objections. Is the
10 objection asked and answered?

11 MR. THOMPSON: Yes.

12 THE COURT: I'll give you a little more
13 latitude, Ms. Golding.

14 MS. GOLDING: I'm finish with that. Thank you,
15 Your Honor.

16 THE COURT: You're welcome.

17 BY MS. GOLDING:

18 Q Now, in addition to you going to the pier frequently,
19 Mr. Duckett went to the pier frequently, did he not?

20 A He went to the pier very frequently, yes, ma'am.

21 Q Okay. And when Mrs. Donevant was on family medical
22 leave in January and February and early March of 2012, he
23 was at the pier almost every day, wasn't he?

24 A I'm sorry say that again?

25 Q Certainly. When Mrs. Donevant was on family medical

1 leave which was in January and February 2011 and the very
2 first week of March excuse me -- 2012. Let me strike
3 that, let me start again. When Mrs. Donevant was on
4 family medical leave in January 2012, February 2012 and
5 the first week in March 2012, Mr. Duckett was at the pier
6 almost every day; is that not correct? Every business or
7 work day?

8 A I don't know if it was every day, but, yes, ma'am, he
9 was there a lot.

10 Q Okay. You know that Mr. Duckett also was in direct
11 communications with the City of Myrtle Beach about the
12 construction plans, did you not?

13 A Yes, ma'am.

14 Q Okay. And isn't it highly unusual that a town
15 administrator cause a plan reviewer pushing them to get
16 that plan reviewed?

17 A I don't have any personal knowledge of Mr. Duckett
18 calling Jon Harrah to tell him he needed to do that. I
19 think he was asking Sebrina to try to move things forward,
20 that's my understanding. I really don't have a
21 recollection of him personally doing that, that doesn't
22 mean it didn't happen.

23 Q And Mr. Jon Harrah he's with the City of Myrtle
24 Beach; is that correct?

25 A Yes, ma'am.

1 Q And Mr. Harrah was doing the reviewing of the pier
2 plans while Mrs. Donevant was on medical leave; is that
3 correct?

4 A Yes, ma'am.

5 Q And Mr. Harrah -- let me strike that. With respect
6 to the town administrator, you as a town administrator now
7 and previously the interim, you never took it upon
8 yourself to go to the building department and say hurry up
9 with that review, did you? Hurry up with reviewing those
10 plans we need to get that permit issued, did you?

11 A Yes, I did.

12 Q You did?

13 A Yes.

14 Q And when did you do that?

15 A I can recall doing it for one with the fire
16 department when we were building the fire house. And
17 we -- there were a number of issues that came along with
18 regard to that. And then even with the final snow there
19 was a problem with that and I was like you need to hurry
20 up with this. This will be priority.

21 Q Okay. So being priority and hurrying up that was for
22 to get the plans going to get the permit?

23 A To -- well, one was to get a CO issued and there were
24 a number of things that have to take place when it's a
25 commercial building prior to getting that issue.

1 Q And when you say CO for the jury that's certificate
2 of occupancy, right?

3 A That's correct.

4 Q Okay. And that CO that's issued after the
5 construction is complete; is that right?

6 A Yes, it is.

7 Q So there's been a building permit already been
8 issued?

9 A Yes, ma'am.

10 Q Okay. What I'm talking about is not during the
11 construction and not after the permit. I'm talking about
12 before a building permit is issued, did you ever go to
13 Jackie Donevant and say push this we need to get this
14 permit issued?

15 A I personally do not.

16 Q Okay. This is a little bit difficult, but on
17 Plaintiff's Exhibit 14 is an e-mail from Jon Harrah. I've
18 got it right here. And would you read the second
19 paragraph? Unfortunately, the copy's not too good.

20 MR. THOMPSON: I object. She wasn't part of
21 this communication.

22 THE COURT: Pardon me I didn't hear you.

23 MR. THOMPSON: She wasn't part of this
24 communication.

25 THE COURT: What's the basis of the objection?

1 MR. THOMPSON: Outside the scope of her
2 knowledge.

3 THE COURT: You need to lay the appropriate
4 foundation.

5 MS. GOLDING: I thought I had. This is an
6 e-mail ---

7 THE COURT: Is she a party to the e-mail?

8 MS. GOLDING: No, she's not.

9 THE COURT: You have to lay the foundation of
10 her awareness of it.

11 MS. GOLDING: Okay.

12 BY MR. THOMPSON:

13 Q Let me just ask you, were you aware that Mr. Duckett
14 had sent Shaun and David to Myrtle Beach to see Mr. Harrah
15 so that they would speed the process to tell them that the
16 town administrator wanted to see what could be done to
17 speed process, were you aware of that?

18 A I was not aware of that.

19 Q Now, going on March 20th that's the day that the
20 stop-work order had been issued; is that correct?

21 A Yes, that I believe's the day -- I don't have the...

22 Q I'll give that to you I'm sorry Plaintiff's Exhibit
23 12?

24 A Yes, it says March 20th of '12.

25 Q Now, I understand that that morning on March the 20th

1 that morning Mr. Duckett instructed you to tell Mrs.
2 Donevant that any future communications he should direct
3 to her and no longer to you; is that correct?

4 A I'm not sure it was that day. I think it was prior
5 to that, but, yes, the instruction was clearly that from
6 this point forward he felt there were problems that
7 existed. And he wanted direct communication with Jackie.
8 And so he instructed me clearly that she was to report
9 directly to him from this point forward and that he would
10 have conversation with her and that I needed to have
11 conversation with her, which I did.

12 Q Okay. Now, this is a statement may be this will
13 refresh your memory. This was a statement that you wrote
14 about that conversation you had with Mr. Duckett; is that
15 correct?

16 A Right. And this says March 19th which is the day
17 before this not that day.

18 Q Okay. In that statement, you didn't tell Jackie
19 until she had to report to Mr. Duckett? Read what is
20 highlighted what you told Jackie Donevant?

21 A I told ---

22 MR. THOMPSON: Your Honor, I think she's using
23 the document ---

24 THE COURT: If she wrote the document, she can
25 read it. She prepared, didn't she and it was sent to ---

1 MS. GOLDING: Yes.

2 MR. THOMPSON: I don't know what we're looking
3 at.

4 MS. GOLDING: It's your docket.

5 THE COURT: Please show it to him. Could
6 council approach for a second.

7 (WHEREUPON, a bench conference was held in the
8 presence of the jury, but out of the hearing of the
9 jury.)

10 THE COURT: Madam forelady, ladies and
11 gentlemen, we're going to take advantage of this break in
12 testimony to take our evening recess. We are canceling
13 court on tomorrow due to the forecast. The Chief Justice
14 has issued an order directing that all court on tomorrow
15 be canceled.

16 Just so that you know, I been watching the
17 weather as we have been progressing in testimony and not
18 that she needs my okay, but the weather is going to be
19 pretty bad tomorrow. It's already -- Ms. Golding has
20 about ten more minutes of questions, but it's clear that
21 the weather is, you know, steadily getting worse. And I
22 don't want you all to be out in in climate. I rather you
23 all get out ahead of it today instead of being caught in
24 traffic and weather that is continually getting worse.
25 But it's going to be ice, sleet and freezing snow almost

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

2 COUNTY OF HORRY) CASE NO: 2012-CP-26-04852

3 -----
4 B E F O R E: The Honorable Deadra Jefferson
5 February 13 & 14, 2014
6 -----

7 JACKLYN J. DONEVANT,

8 Plaintiff,

9 vs.

 ORIGINAL

10 TOWN OF SURFSIDE BEACH,

11 Defendant.
12 -----

13 APPEARANCES:

14 Henrietta U. Golding, Esq.
15 James K. Gilliam, Esq.

16 For the Plaintiff.

17
18 Charles Thompson, Esq.

19 For the Defendant.
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25

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1 situated.

2 Get the jury for me, thank you, sir. Ma'am,
3 if you will take the witness stand. I'll remind you
4 that you are still under oath.

5 (The jury enters at 11:10 a.m., and the
6 following is heard in the presence of the jury.)

7 THE COURT: Good morning, ladies and
8 gentlemen. I know we've had a rough time with the
9 weather. I appreciate your all's diligence in getting
10 here for us. I hope the delayed start was enough time
11 for everybody to get their affairs in order. I know a
12 lot of people haven't had power. I hope you have
13 power. My clerk didn't, and I told her she looks
14 fabulous. But I do -- I mean it sincerely, we
15 appreciate you being so diligent and accommodating us
16 in getting here today. If we can be of any
17 assistance, let us know, we'll do all we can to help
18 you out. We're going to resume the examination of the
19 witness, I ask that you give the attorneys your
20 attention.

21 MS. GOLDING: Thank you, Your Honor.

22 DIRECT-EXAMINATION(CONTINUED)- MICKI FELLNER

23 BY MS. GOLDING:

24 Q Good morning. Ms. Fellner, when we broke Tuesday
25 afternoon I started to discuss with you a document

1 marked Plaintiff's Exhibit 30. First, can you identify
2 that for the jury, please?

3 A It was a letter I wrote on Wednesday, March 21.

4 Q It is not -- it is a memo, isn't it, it's not a
5 letter?

6 A It is a memo.

7 MS. GOLDING: We offer Plaintiff's Exhibit No.
8 30 into evidence.

9 MR. THOMPSON: No objection.

10 (Plaintiff's Exhibit 30 admitted.)

11 Q (MS. GOLDING) I'll hand you Exhibit 16. It is my
12 understanding you had a good working relationship with
13 Ms. Donevant, did you not?

14 A I did.

15 Q And that is true -- your good working
16 relationship with Ms. Donevant was true from the time
17 you started in 2008 until the time she was terminated
18 in April of 2012; is that correct?

19 A Yes, ma'am.

20 Q And I believe it was March 19th Mr. Duckett
21 either gave you an instruction to tell Jackie Donevant
22 that from that point forward that Jackie was supposed
23 to communicate directly with Mr. Duckett on all issues
24 relating to her job and the execution of her duties; is
25 that correct?

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 A That is correct.

2 Q And he didn't want -- Mr. Duckett, did he explain
3 to you that he did not want Ms. Donevant to communicate
4 with you; is that correct?

5 A Not in work-related issues. She was to report
6 directly to him.

7 Q And then you did instruct Ms. Donevant on
8 March 19th that she was to deal exclusively with him on
9 any and all job-related issues; is that correct?

10 A Yes, ma'am.

11 Q You did not instruct Ms. Donevant to seek
12 approval from Mr. Duckett to issue any stop-work
13 orders, did you?

14 A I did not specifically use those words, no,
15 ma'am.

16 Q And, in fact, this memo, Exhibit 30, that you
17 prepared; is that correct?

18 A Yes, ma'am.

19 Q And this memo that you prepared was put into Ms.
20 Donevant's; is that correct?

21 A Yes, ma'am.

22 Q In the first paragraph it states -- the last
23 sentence -- tell the jury if I read this correctly: In
24 both discussions, I had communicated to Jackie that as
25 of Monday, March 19th she was to deal exclusively with

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 him on any and all job-related issues; is that correct?

2 A Yes, ma'am.

3 Q So you did not tell her that if something
4 happened, you're obligated to call Mr. Donevant --
5 excuse me, Mr. Duckett, did you?

6 A I did not.

7 Q Okay. And this memo, did you present it to Mr.
8 Duckett before it was placed in Ms. Donevant's file?

9 A Yes, I did.

10 Q Was Mr. Duckett the one that prepared this memo?

11 A Yes, ma'am.

12 Q And when you prepared the memo and it was given
13 to Mr. Duckett, you didn't give Ms. Donevant a copy,
14 did you?

15 A I did not.

16 Q And to your knowledge, nobody gave Ms. Donevant a
17 copy of your memo?

18 A Not that I recollect.

19 Q Okay. Now, when Ms. Donevant called you shortly
20 after she issued the stop-work order, she was trying to
21 get information from you that she had tried that
22 morning; is that correct?

23 A That's correct.

24 Q And that morning she called and left a message
25 saying get me information of how to file a Freedom of

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 Information request; is that correct?

2 A That's correct.

3 Q And in that conversation, when Ms. Donevant
4 called you back -- she called you back because you had
5 not called her with the information she requested?

6 A Correct. I was off-site.

7 Q Okay. And during that conversation when you
8 called -- when Ms. Donevant called you, she told you
9 that she issued a stop-work order; is that correct?

10 A Yes, ma'am, she did.

11 Q And you, at that point in time -- she was not
12 obligated to tell you that information?

13 A We could be talking legally or not.

14 Q Let me say this. Before -- since you were
15 essentially the administrator when Mr. Duckett was not
16 there, was there any obligation within the Town of
17 Surfside for Ms. Donevant to call you to say I issued a
18 stop-work order on any project?

19 A I'm not sure how to answer that question because
20 anything of import she would always let me know.

21 Q Was there an obligation that she had to contact
22 you and say I'm going to issue a stop-work order?

23 A I am not aware of any legal obligation.

24 Q And isn't it a fact that she never called you and
25 said I'm going to issue a stop-work order today?

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 A No, she did not.

2 Q Okay. And in that conversation, when Ms.

3 Donevant called you on March 20th after she issued the
4 stop-work order, that conversation was between 4:00 and
5 5 o'clock in the afternoon; is that correct?

6 A I remember it being late in the afternoon, yes,
7 ma'am.

8 Q At that time, Mr. Duckett was not at town hall?

9 A That is correct.

10 Q Mr. Duckett had left for the day; is that
11 correct?

12 A That's correct.

13 Q And in that telephone conversation, Ms. Donevant
14 said I had to issue the stop-work order, it was my
15 responsibility?

16 A That's what she indicated on the phone.

17 Q And, in fact, that is what she wrote on
18 Exhibit 30, too?

19 A Yes, ma'am, that she told me.

20 Q And then Ms. Donevant came back to the office,
21 and it was close to 5 o'clock; is that correct?

22 A She was -- I don't know -- I don't know when she
23 got there because I was off-site, as I said.

24 Q Okay. But after -- at some point in time you saw
25 Ms. Donevant at the office, did you not?

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 A I did, because I was very concerned after our
2 conversation. I left where I was and went right back
3 to the office.

4 Q And in your memo you said, I returned to the
5 office?

6 A Yes, ma'am.

7 Q And that you spoke with Ms. Donevant when you
8 returned to the office?

9 A Yes, I did.

10 Q And when you spoke with Ms. Donevant, she gave
11 you a number of reasons why she had no choice but to
12 issue the stop-work order, did she not?

13 A She was enumerating them, and I was really not
14 interested in listening to them, so I interrupted her
15 and I said -- I asked her did you call the
16 administrator, and she said no, and I said it is what
17 it is, and I immediately left her office and went into
18 mine to call the administrator.

19 Q And under your memo, you said it was at
20 4:55 p.m.?

21 A My recollection is that that is correct.

22 Q When you called Mr. Duckett, he knew that the
23 stop-work order had been issued, did he not?

24 A He already knew at that point, yes, ma'am.

25 Q And did you relay to Mr. Duckett the reasons

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 Ms. Donevant gave you for issuing the stop-work order?

2 A Can you say that again?

3 Q Sure. Did you relay to Mr. Duckett the reasons

4 Ms. Donevant gave you for issuing the stop-work order?

5 A I don't believe we got that far in our

6 conversation.

7 Q Okay. When you had the conversation with

8 Ms. Donevant on March 19th as to Mr. Duckett saying

9 that from now on Ms. Donevant, I want her to talk about

10 job issues with me and not with you, when you talked to

11 her about that, did you tell her that especially with

12 respect to the pier?

13 A I did not. I said any and all job-related

14 issues.

15 Q And so Mr. Duckett, when he gave you that

16 instruction, he didn't say, With the pier, she's got to

17 deal with me?

18 A He said for everything.

19 Q Okay. But he did not say anything about the

20 pier, did he?

21 A I cannot recollect him specifically mentioning

22 the pier.

23 Q In your memo that Mr. Duckett instructed you to

24 do, you made no mention that Mr. Duckett gave you any

25 instructions about the pier?

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 A That is correct.

2 Q And in your memo that you wrote, you also did not
3 say in there that Ms. Donevant was obligated to report
4 all actions that she needed to take in her job?

5 A I did not.

6 Q And you didn't write that in the memo because you
7 didn't report that to Ms. Donevant, did you? You
8 didn't instruct Ms. Donevant that she had to report to
9 Mr. Duckett on any and all actions she would take with
10 respect to her job?

11 A Well, I didn't, but this was a big action that I
12 would have thought she would have reported, that is why
13 I mentioned it on the phone and left where I was to
14 come right back to the office to speak with her yet
15 again about it.

16 Q Now, you are not here today to tell this jury
17 that Ms. Donevant was wrong in issuing that work order,
18 are you, that stop-work order?

19 A I can't say that.

20 Q And you can't say that because you don't know;
21 isn't that correct?

22 A That is correct.

23 Q Okay. Now, in fact, there's been nobody from the
24 Town of Surfside that has told you that Ms. Donevant
25 was wrong in issuing that stop-work order; isn't that

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 correct?

2 A Well, I wouldn't say that. But I would say no
3 one who is in authority has told me that.

4 Q And no one, to your knowledge, has ever told
5 Ms. Donevant that she was wrong in issuing that
6 stop-work order; is that correct?

7 A Say that again.

8 Q No one on behalf of the Town of Surfside has
9 instructed or advised Ms. Donevant that she was wrong
10 in issuing that stop-work order?

11 A Not that I'm aware of.

12 Q Now, I think you also stated earlier that Jackie
13 indicated some fear of losing her job for issuing that
14 order on March 20th?

15 A Yes, she did.

16 Q And you agreed with her statement when she told
17 you that, did you not, that her job was in jeopardy
18 because she issued that stop-work order?

19 A I knew it was a really big hot button and a
20 sensitive issue.

21 Q You need to answer my question yes or no and then
22 explain. You told Jackie, You are right --

23 A I'm not sure that I did tell her that. I know
24 that I listened to her. I know she told me that -- she
25 said, I'll probably be fired for doing this.

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 Q And you will agree that no employee should be
2 fired for doing their job; isn't that correct?

3 MR. THOMPSON: Objection, legal conclusion.

4 THE COURT: That's a very complex question to
5 ask her to answer because it presupposes several
6 things much of which is subjective, and I think you
7 need to rephrase the question, because it is
8 speculative to some extent.

9 Q (MS. GOLDING) You agree that any building official
10 that properly issues a stop-work order should not be
11 disciplined because that official issued a proper work
12 order?

13 MR. THOMPSON: Objection, legal conclusion.

14 THE COURT: Well, that's not the basis of an
15 objection. Please approach.

16 (Whereupon, a bench conference was had.)

17 THE COURT: Sustained. Foundation,
18 speculation.

19 Q (MS. GOLDING) While you were employed with the Town
20 of Surfside, has any building official been fired for
21 issuing a stop-work order?

22 A Not to my knowledge.

23 Q And you will agree that many times stop-work
24 orders are issued by the Town of Surfside?

25 A I don't know about "many times." Maybe a couple

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 times a month.

2 Q And you have been with the Town of Surfside since
3 2008?

4 A Yes, ma'am.

5 Q And I'm not real good with math, but that is
6 close to six years now?

7 A Five-and-a-half.

8 Q And that is 24 times a year, 24 times six, so
9 that is a lot of stop-work orders, isn't it?

10 A I don't think so. Two a month is not a lot, to
11 me.

12 Q So from 2008 -- so you don't think over a hundred
13 stop-work orders is a lot of stop orders?

14 A In six years, no, I don't.

15 Q And during those six years, only one employee,
16 Jackie Donevant, has been fired for anything related to
17 a stop-work order; isn't that correct?

18 A I don't believe she was fired for a stop-work
19 order.

20 Q I'm asking you, during those six years, not one
21 building official has been fired for any actions
22 relating to a stop-work order other than Ms. Donevant?

23 MR. THOMPSON: Objection, asked and answered.

24 THE COURT: Rephrase the question. It
25 presupposes a fact that is in contention. Not that

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 she cannot testify as to the ultimate issue, but the
2 way it is phrased lacks foundation. I need you to
3 rephrase it.

4 Q (MS. GOLDING) Can you tell me the name of any other
5 building official with the Town of Surfside who was
6 disciplined for actions relating to the issuance of
7 stop-work orders?

8 MR. THOMPSON: Objection, Your Honor, she's
9 assuming the fact --

10 THE COURT: Restate the question for me.

11 MS. GOLDING: I want her to identify --

12 THE COURT: I want you to restate the question
13 as you said it.

14 Q (MS. GOLDING) Can you tell me the names of any
15 employee with the Town of Surfside who were
16 disciplined with -- because of actions relating to an
17 issuance of a stop-work order?

18 THE COURT: Objection is overruled. You may
19 answer the question to the best of your knowledge.

20 THE WITNESS: State it again, I'm sorry.

21 Q (MS. GOLDING) That's all right. Tell me the name
22 of any employee with the Town of Surfside who was
23 disciplined for any actions relating to a stop-work
24 order.

25 A I know of none.

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 Q Thank you. Now, in the Plaintiff's Exhibit 16,
2 which is the reprimand that Mr. Duckett wrote out, do
3 you have that in front of you?

4 A Yes, ma'am.

5 Q Now, in that second paragraph, which is the long
6 paragraph, it states that Ms. Donevant called Mr.
7 Duckett at 2:33 p.m. that afternoon; is that correct?

8 A Yes.

9 Q And at 2:33 that afternoon Mr. Duckett was in his
10 office; is that correct? That was before he left?

11 A I'm not sure, because it says she called him on
12 his cell phone.

13 Q But I'm asking you isn't it a fact that he was in
14 the office at 2:33 in the afternoon? He had not left
15 for the day?

16 A I believe he was, but I was in and out, so I
17 can't really -- I don't really recall exactly what time
18 he was there and was not there.

19 Q In this reprimand, it is written also in the
20 second paragraph -- and I know it is not very clear,
21 and I apologize, but that is the best copy I've gotten
22 from the town -- it states, Whereas, Ms. Donevant was
23 operating within the scope of her authority. She made
24 no effort to reach me to tell me of her actions.

25 Did I read that correctly?

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 A Yes, ma'am.

2 Q At no time did you ever instruct Ms. Donevant
3 that she needed to contact Mr. Duckett and -- to tell
4 him of her actions; is that not a fact?

5 A Well, if it was job related, yes, ma'am, she
6 needed to.

7 Q Look at her memo, Plaintiff's Exhibit 30. If you
8 look at your memo, there is no statement in that memo
9 that you wrote and put in Ms. Donevant's file that you
10 told her that she was to contact Mr. Duckett and tell
11 him of her actions?

12 A It says she was --

13 Q Please answer yes and no and --

14 MR. THOMPSON: She was trying to answer.

15 THE COURT: Well, same rules apply. Don't
16 instruct the witness. Ma'am, if you are able to
17 answer yes or no, answer yes or no and then explain.

18 Q (MS. GOLDING) In your memo, Plaintiff's Exhibit 30,
19 which you wrote on the instruction of Mr. Duckett, you
20 did not state in that memo, I instructed Ms. Donevant
21 to tell Mr. Duckett of her actions?

22 A I did not say exactly those words, what you just
23 said.

24 Q The words you used -- sorry, I didn't mean to
25 interrupt.

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 A However, what I did say is she and I did have a
2 discussion, and I told her she was to deal -- and I'm
3 quoting now from the memo -- exclusively with him on
4 any and all job-related issues, and this clearly was a
5 job-related issue.

6 Q Okay. If this instruction was so important, why
7 didn't you put it in writing to Ms. Donevant?

8 A Well, we had more than one discussion, I didn't
9 think I needed to.

10 Q Okay. But did Mr. Duckett put it in writing to
11 you as to what you were to tell Ms. Donevant?

12 A I don't believe he did. I can't recall if he
13 did. He was very plain in what he told me.

14 Q And when Ms. Donevant that morning went through
15 and looked at plans on other projects and did not call
16 Mr. Duckett, are you saying that she should have done
17 that?

18 A Restate the question.

19 Q Certainly. That morning, March 20th, that
20 morning, when Ms. Duckett (sic) was looking at plans or
21 doing activities on other projects, are you saying that
22 she should have contacted Mr. Duckett and told him of
23 her actions in doing that?

24 A If it was anything that was started already, yes,
25 because he was very clear in his miscommunication to

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 her regarding that.

2 Q Where does it say, If anything that had been
3 started already? Where does it say that in your memo?

4 A It is not in my memo.

5 Q Okay.

6 A If I might, that is between he and Jackie.

7 Q Now, after Ms. Donevant was terminated, you had
8 communications with Ms. Donevant; is that correct?

9 A Yes, ma'am.

10 Q And you advised or told Ms. Donevant that you
11 ought to try to contact council members to get your job
12 back; is that correct?

13 A I said it took four votes.

14 Q And that is council members?

15 A Yes, ma'am.

16 Q And then as a result of that, then later you
17 found out that the mayor, who was a new mayor, just
18 elected; is that correct?

19 A Yes, ma'am.

20 Q He went and talked to Sebrina Morris and Sue --
21 how do you pronounce it?

22 A Shmaruk.

23 Q He talked to them about him hiring Jackie back;
24 is that correct?

25 MR. THOMPSON: Your Honor, I have to object.

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 THE COURT: Basis?

2 MR. THOMPSON: Hearsay.

3 THE COURT: She's asking about personal
4 knowledge whether a conversation took place. She
5 hadn't asked her to repeat the conversation. She
6 can't repeat what someone told her unless it is a
7 party in this litigation.

8 A Can you repeat?

9 Q (MS. GOLDING) Isn't it a fact that you know that
10 Mayor Samples went to the city hall and spoke with
11 Sebrina Morris and Sue Shmaruk about Jackie wanting
12 her job back?

13 THE COURT: She can answer that question to
14 the extent it is of her own personal knowledge, if she
15 was present during the conversations.

16 THE WITNESS: I do not have personal knowledge
17 of that taking place.

18 Q (MS. GOLDING) Isn't it a fact that you telephoned
19 Ms. Donevant and said that Mayor Samples went and
20 spoke to Sebrina Morris and Sue Shmaruk about you
21 getting your job back?

22 A I don't recollect that at all.

23 Q Who took Jackie Donevant's place?

24 A Sebrina Morris.

25 Q And Sebrina Morris had -- she had taken Jackie

MICKI FELLNER - DIRECT EXAMINATION (CONT.) BY MS. GOLDING

1 Donevant's place when Jackie was on medical leave; is
2 that correct?

3 A Yes, ma'am.

4 Q And during that time period when Jackie was on
5 medical leave, Sebrina Morris received an increase in
6 compensation; is that correct?

7 A Yes.

8 Q And you will agree that Sebrina Morris did not
9 have -- and still doesn't have -- a certified building
10 official status with the State of South Carolina?

11 A That is correct.

12 Q You certainly had no objection to Jackie Donevant
13 being re-employed if the mayor and council made that
14 recommendation; isn't that a fact?

15 A If they made that recommendation, that would have
16 been fine with me.

17 Q Okay.

18 MS. GOLDING: Thank you.

19 THE COURT: Cross-examination of the witness?

20 MR. THOMPSON: No, Your Honor.

21 THE COURT: You may proceed.

22 MS. GOLDING: Tuesday afternoon they had four
23 individuals from the town, and I would like --

24 THE COURT: I don't want any of that in the
25 presence of the jury. If you need to talk to me about

MICKI FELLNER - DIRECT EXAMINATION BY MR. THOMPSON

1 that permissible?

2 Q (MR. THOMPSON) Go ahead. Describe in your
3 knowledge, without trying to tell us what Mr. Duckett
4 was thinking, what was the reasons for this
5 instruction for Ms. Donevant to report to him and not
6 you?

7 A What Mr. Duckett indicated to me the reason was,
8 was because he was having what he -- what he told me
9 was he felt there were significant issues with her not
10 being available, job performance, the time and
11 attention issues, and he felt that he needed to have
12 her report directly to him so that there was no --
13 there was no one in between them, so he could -- so he
14 felt that he could have his finger on the pulse, so to
15 speak. He wanted to know when and where -- when she
16 was coming in, when she was leaving, where she was
17 going, et cetera. So that is what he asked me.

18 Q Okay. I don't want to go in a lot more detail, I
19 think we already established this, but how would you
20 describe, briefly, the prominence of the pier in the
21 Town of Surfside Beach?

22 A Huge.

23 Q And Ms. Donevant mentioned other things like the
24 library and streetscaping, how would you compare the
25 prominence of the pier to those things?

1 MS. GOLDING: No more questions.

2 THE COURT: Redirect?

3 MR. THOMPSON: No, Your Honor.

4 THE COURT: You may step down. Plaintiff
5 ready to resume its case?

6 MS. GOLDING: I would call Debra Hermann.

7 (DEBRA HERMANN, having been duly sworn,
8 testified as follows:)

9 MR. THOMPSON: I do object to this witness
10 being called.

11 THE COURT: Basis?

12 MR. THOMPSON: Your Honor, it was -- for the
13 reasons we discussed earlier. This is my witness not
14 subpoenaed by the Plaintiff.

15 THE COURT: I don't know that anyone owns a
16 witness. I think they can call a witness in their
17 case. Objection overruled. I'll note it for the
18 record.

19 DIRECT-EXAMINATION

20 BY MS. GOLDING:

21 Q Good afternoon, Ms. Hermann.

22 A Hello.

23 Q You were present on March 13th, 2012 when Ms.
24 Donevant came back from medical leave she was on since
25 December of 2011; is that correct?

DEBRA HERMANN - DIRECT EXAMINATION BY MS. GOLDING

1 A I was present at the meeting, but I don't know
2 when she left for medical leave.

3 Q And that meeting was on March 13, 2012; is that
4 correct?

5 A Yes.

6 Q And that was the first day she was back from her
7 medical leave; is that correct?

8 A I don't know.

9 Q With respect to that meeting, that meeting
10 started that you attended at 8:04, I think you have in
11 your memo?

12 A Yes, ma'am.

13 Q And in your memo -- I'm referring to Plaintiff's
14 Exhibit 11. Do you have that in front of you?

15 A Yes, ma'am.

16 Q Now, in your memo you said Mr. Duckett invited
17 you to attend?

18 A Yes.

19 Q Well, he ordered you to attend; is that not
20 correct?

21 A No, ma'am.

22 Q He invited you?

23 A He asked me if I would mind coming in and
24 listening to the exchange.

25 Q Okay. And that was Mr. Duckett that asked you

DEBRA HERMANN - DIRECT EXAMINATION BY MS. GOLDING

1 that?

2 A Yes.

3 Q And when Mr. Duckett asked you to listen to the
4 exchange, did he give you a reason why?

5 A No, he just said he had to have a talk with one
6 of his employees and he wondered if I would come in as
7 a witness, and I told him I had no problem doing so.

8 Q So your role was as a witness in this meeting?

9 A That's correct.

10 Q And you never supervised Ms. Donevant, did you?

11 A No, I have not.

12 Q You were never an employee of her department,
13 were you?

14 A No.

15 Q And you have no knowledge of the building codes
16 in the Town of Surfside, do you?

17 A Actually, I do, because as town clerk I'm
18 responsible for the ordinances and codifying them so,
19 yes, I do have knowledge of the codes, but I never had
20 to implement or enforce them.

21 Q And since you have knowledge of the codes, you
22 will agree that the Town of Surfside authorizes its
23 building official, such as Jackie Donevant, to issue
24 building permits and stop-work orders; is that not
25 correct?

DEBRA HERMANN - DIRECT EXAMINATION BY MS. GOLDING

1 A I'm sorry, I don't interpret code, just read what
2 it states.

3 Q Do you remember reading that Ms. Donevant had the
4 authority to issue building permits, conduct
5 inspections, issue stop-work orders?

6 A No, ma'am.

7 Q Okay. Now, with respect to this meeting on
8 March 13, 2012, you took no active part in that
9 meeting, did you?

10 A I was simply an observer.

11 Q So you took no active part in that meeting, did
12 you?

13 A No.

14 Q The memo you prepared, Plaintiff's 11, it is fair
15 to state that this memo does not cover everything that
16 Mr. Duckett told Ms. Donevant at that meeting?

17 A Yes, that's fair to say.

18 Q And read -- publish to this jury this memo you
19 wrote.

20 THE WITNESS: Your Honor, may I get my
21 glasses?

22 THE COURT: You absolutely may. Are they in
23 your purse?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Her daughter has them -- I assume

DEBRA HERMANN - DIRECT EXAMINATION BY MS. GOLDING

1 that is your daughter, you fair one another.

2 THE WITNESS: Yes, thank you. I take it as a
3 compliment. Thank you so much. You want me to read
4 the memo?

5 Q (MS. GOLDING) Yes, to the jury.

6 A This is a memorandum to file and it is from me,
7 Debra Hermann, CMC town clerk, "CMC" is certified
8 municipal clerk, dated March 13, 2012 regarding Jackie
9 Donevant, direct order.

10 Q Read a little slower.

11 A Mr. Duckett invited me into his office at
12 8:04 a.m. to witness an exchange between himself and
13 Jackie Donevant which ended about 8:20 a.m.

14 Mr. Duckett explained that Jackie was now
15 officially returned to work, however, he gave her a
16 direct order that she could not and would not change,
17 ameliorate or in any other manner amend any action that
18 was taken during her absence; that if she did so, she
19 would be fired.

20 Mr. Duckett said that he had seldom used the
21 word, quote, fired, end quote, during his career, but
22 reiterated that the -- Jackie's failure to follow that
23 directive would result in her being fired, and Jackie
24 said that she understood.

25 Q Also during that meeting, Mr. Duckett told Ms.

DEBRA HERMANN - DIRECT EXAMINATION BY MS. GOLDING

1 Donevant that she had her full responsibilities and
2 duties as the head building official for the Town of
3 Surfside in that meeting; did he not?

4 A I'm sorry, I don't recall.

5 Q That is not in your memo, is it?

6 A No, ma'am.

7 Q At that meeting, Mr. Duckett did not identify any
8 type of action that Jackie could not undertake, did he?

9 A Yes, he did.

10 Q What did he identify?

11 A He said very clearly that she was to take no
12 action on anything that was already underway or being
13 done.

14 Q Did he identify anything that was already
15 underway or being done?

16 A No.

17 Q Did he mention the pier at all?

18 A He did not say anything specific. He just used
19 the phrase "anything that was already underway or being
20 done."

21 Q And in your memo, it has any action -- amend any
22 action that was taken during her absence. It says the
23 word "action;" is that correct?

24 A Yes.

25 Q Did Mr. Duckett explain to Ms. Donevant what he

DEBRA HERMANN - DIRECT EXAMINATION BY MS. GOLDING

1 meant by "action"?

2 A I don't recall a specific explanation, but I do
3 recall that Jackie said she understood what he was
4 saying.

5 Q And did Mr. Duckett tell her that he knew there
6 was new construction going on on the pier at that time
7 and there was no permit for it?

8 A Not to my knowledge.

9 Q Did Mr. Duckett tell Ms. Donevant that the owners
10 of the pier and he had talked about their filing the
11 permit for the new construction?

12 A Not to my knowledge.

13 Q Did Mr. Duckett tell Jackie that he had just been
14 at the new pier and saw there was new construction
15 going on?

16 MR. THOMPSON: I object, relevance and
17 argumentative.

18 THE COURT: Please approach.

19 MR. THOMPSON: No foundation.

20 (Whereupon, a bench conference was had.)

21 THE COURT: Overruled to the extent the
22 question is rephrased.

23 MS. GOLDING: Thank you.

24 Q (MS. GOLDING) Did Mr. Duckett tell Ms. Donevant
25 during that March 13th meeting that he had been at the

1 pier and saw new construction?

2 A Not to my knowledge.

3 Q After you wrote this memo, you gave it to Mr.
4 Duckett?

5 A Yes.

6 Q And that is because Mr. Duckett asked you to
7 write the memo; is that correct?

8 A Yes.

9 Q You did not give Ms. Donevant a copy of that
10 memo, did you?

11 A I really don't remember if I did or not.

12 Q Do you know if anybody gave Ms. Donevant a copy
13 of the memo, Plaintiff's Exhibit No. 11?

14 A I don't have any knowledge of that.

15 MS. GOLDING: Thank you very much.

16 THE COURT: You may proceed, Mr. Thompson,
17 when you are ready.

18 CROSS-EXAMINATION

19 BY MR. THOMPSON:

20 Q Ms. Hermann, can you take a look at Plaintiff's
21 Exhibit No. 27, I guess?

22 A Thank you. Okay.

23 Q What is that?

24 A Ordinance of Surfside, No. 08, dash, 0641.

25 Q I don't want to waste too much time on this, but

1 let's -- what happens after something like Exhibit 27
2 is passed by the council, where does the language
3 proceed from there?

4 A When an ordinance like this is adopted by the
5 council, it is submitted to our municipal code
6 corporation contractor who codifies it for our town
7 code, and the codification company will take the
8 language in the document and create new pages to
9 replace the old pages in the code that have been
10 changed.

11 Q Does the town clerk work with the -- what did you
12 call it?

13 A Codification company.

14 Q Does the town clerk work with the codification
15 company about language that goes into --

16 A Yes.

17 Q If you would, take a look at -- this is in the
18 white notebook -- Exhibit 9.

19 A Okay.

20 Q Is that the ordinance that is actually put into
21 the book, codified, that flows from Exhibit 27?

22 A Yes, it is.

23 Q Now, looking at Exhibit 27, second paragraph,
24 "Now, therefore," that paragraph, how would you
25 describe -- what is that paragraph?

DEBRA HERMANN - CROSS-EXAMINATION BY MR. THOMPSON

1 A The "now, therefore," paragraph states the
2 intention of the council, and that generally is not
3 codified.

4 Q I'm not sure we established, what is your
5 position with the down?

6 A Town clerk, legislature administrator. I work
7 directly for the council.

8 Q When did you start working for the town?

9 A July 1, 2011, but I previously had worked for the
10 town from 1999 to 2007.

11 Q Did Jackie Donevant tell you anything about the
12 instructions Jim gave her regarding leaving things
13 alone already in progress in her absence?

14 A As relates to this memo, Exhibit 11?

15 Q Yes.

16 A After the meeting, she came in my office and said
17 if she did not do her job, she would lose her license.
18 And I said, Well, your boss is giving you an order, you
19 need to do what your boss tells you, and she said,
20 Well, I have to do my job.

21 Q What, if anything, did Ms. Donevant ever say to
22 you about building a case or setting up the town for
23 subsequent litigation?

24 A May I explain briefly?

25 THE COURT: Yes, ma'am.

DEBRA HERMANN - REDIRECT EXAMINATION BY MS. GOLDING

1 THE WITNESS: We're a particular group. There
2 is several of us that worked for the town under
3 previous administration that had been fired or let go
4 for one reason or another. When I started back with
5 the town, Jackie came in and we laughed about whether
6 I needed condolences or congratulations to come back
7 to work for the town, and she said just start your
8 file, she said I have one going, and if we get fired
9 again, we'll have a case.

10 MR. THOMPSON: Nothing further.

11 THE COURT: Redirect?

12 REDIRECT-EXAMINATION

13 BY MS. GOLDING:

14 Q With respect to the ordinance, Plaintiff's 27,
15 that is an ordinance that was passed by the town; is
16 that correct?

17 A Yes, ma'am, it is.

18 Q And you have -- the town maintains an original
19 copy of that ordinance on record?

20 A Yes, that's correct.

21 Q If there is a mistake or a scribbler's error
22 between what is codified and what is on the ordinance,
23 the ordinance controls; is that not correct?

24 A Yes.

25 MS. GOLDING: No further questions.

1 MR. THOMPSON: Nothing further.

2 THE COURT: Any objection to the witness being
3 excused from Plaintiff?

4 MS. GOLDING: No objection.

5 MR. THOMPSON: None, Your Honor.

6 THE COURT: You are excused.

7 MR. GILLIAM: Plaintiff call Kevin Otte.

8 (KEVIN OTTE, having been duly sworn, testified
9 as follows:)

10 THE CLERK: State your name for the record.

11 THE WITNESS: My name is Kevin Otte, O-T-T-E.

12 DIRECT-EXAMINATION

13 BY MR. GILLIAM:

14 Q Good afternoon, Mr. Otte. As I understand, your
15 current position with the Town of Surfside Beach, it is
16 building official; is that correct?

17 A That is correct.

18 Q And before you became the building official for
19 the Town of Surfside Beach, Jackie Donevant held that
20 position?

21 A It is my understanding.

22 Q Right now my understanding is that Sebrina Morris
23 holds the position of director of planning, building
24 and zoning for the Town of Surfside Beach; is that
25 correct?

1 A Yes, sir.

2 Q Prior to Ms. Morris holding this position, isn't
3 it true that Ms. Donevant held the position of director
4 of planning, building and zoning for the Town of
5 Surfside Beach as well?

6 A That would have been before I was hired.

7 Q Do you have an understanding as to held the
8 position of director of planning, building and zoning
9 prior to you being hired, prior to Ms. Morris taking
10 that position?

11 A No, sir.

12 Q You have no understanding of that?

13 A No.

14 Q Are you a building official that is currently
15 licensed by the State of South Carolina?

16 A Yes, sir.

17 Q Now, my understanding is the way you get to be
18 licensed by the State of South Carolina as a building
19 official is you have to take a test and you have to
20 pass it; is that correct?

21 A Several tests.

22 Q So you take a test and have to pass it. Sebrina
23 Morris hasn't been able to pass that test, has she?

24 MR. THOMPSON: Objection, relevance.

25 THE COURT: Well, it is actually foundation.

KEVIN OTTE- DIRECT EXAMINATION BY MR. GILLIAM

1 You need to lay the foundation that he knows this of
2 his own personal knowledge, because it might well be
3 relevant, I'm not sure. You may proceed.

4 Q (MR. GILLIAM) Ms. Sebrina Morris doesn't hold the
5 position of building official for the Town of Surfside
6 Beach, does she?

7 A No, sir.

8 Q Do you know why she doesn't hold that position?

9 A Basically because she hired me for that position.

10 Q Isn't it true that she's not licensed to hold the
11 position for the Town of Surfside?

12 A She's in the process.

13 Q Isn't it true that she has never passed the test
14 to be a licensed building official for the Town of
15 Surfside Beach?

16 A She's passed one of two.

17 Q My understanding, and correct me if I'm wrong, is
18 that in order to be a building official for the Town of
19 Surfside Beach, you have to pass the whole test, not
20 just part of it; is that correct?

21 A Correct. You have a time frame.

22 Q So she's failed the test?

23 MR. THOMPSON: Objection.

24 THE COURT: Sustained, lack of foundation,
25 speculation, not within his rational perception or

KEVIN OTTE- DIRECT EXAMINATION BY MR. GILLIAM

1 knowledge.

2 Q (MR. GILLIAM) Are you aware of Ms. Morris taking
3 the test to be a building official on a prior
4 occasion?

5 A Yes, sir.

6 Q Are you aware of whether she failed that test?

7 MR. THOMPSON: Object.

8 THE COURT: Basis?

9 MR. THOMPSON: Relevance.

10 THE COURT: Approach for me, please.

11 (Whereupon, a bench conference was had.)

12 THE COURT: Proceed. Objection sustained.

13 Q (MR. GILLIAM) As I understand, you are currently
14 the building official for the Town of Surfside Beach;
15 is that correct?

16 A That's correct.

17 Q And as building official, you have the ability --
18 only you have the ability to make a decision as to
19 whether or not to enforce the building codes of the
20 State of South Carolina; is that correct?

21 A Under the codes, yes.

22 Q No one else who works for the Town of Surfside
23 Beach has that ability, only you; is that right?

24 A Under the building codes, yes.

25 Q No one who works for the Surfside Beach, not your

1 boss, no one can tell you whether to issue a stop-work
2 order; is that correct?

3 A That is authorized through me by the ICC codes.

4 Q So only you can make a decision as to whether to
5 issue a stop-work order or not?

6 A That is correct.

7 Q Your boss can't tell you not to issue a stop-work
8 order; is that correct?

9 A That's correct.

10 Q Let me ask you, do you have to report to your
11 boss, to the town administrator, before you issue a
12 stop-work order?

13 A Under normal circumstances, no, sir, I wouldn't.

14 Q Do you have to report to anybody about the fact
15 that you issued a stop-work order?

16 A Not required to, but I do.

17 Q And it wouldn't make any sense for you to report
18 to anybody, because it is only your decision; that is
19 your testimony, is that correct?

20 A That would be mine, yes.

21 Q Let me ask you another question, because I know
22 you are a building official for the Town of Surfside.
23 We've heard about the pier restaurant being a hot or
24 controversial issue. Is there a provision in the
25 building code of how you are supposed to deal with hot

1 or controversial issues?

2 A Not in the building code.

3 Q My understanding is that the building codes say
4 you are to deal hot or controversial issues the same
5 way as any other issues, right?

6 MR. THOMPSON: Object, argumentative,
7 relevance.

8 THE COURT: Rephrase the question, please.

9 Q (MR. GILLIAM) How are you supposed to deal with hot
10 or controversial issues as building official for the
11 Town of Surfside?

12 A Consistently the same way I deal with everything.

13 Q So it's the same whether it's hot or
14 controversial, or not?

15 A That's correct.

16 Q So if something is hot or controversial in the
17 town, does that give the town administrator the
18 authority to make the building decisions in that
19 situation?

20 A Can you reask it?

21 Q Sure. I'll try. If something is a hot or
22 controversial issue, does that give the town
23 administrator authority to make a building official
24 determination under the building codes?

25 A No.

1 Q The fact of the matter is it doesn't matter, does
2 it, Mr. Otte, if there is an issue that is a hot or
3 controversial issue under the building codes, does it?

4 A No. It is the building official's call.

5 MR. GILLIAM: That is all I have, thank you.

6 CROSS-EXAMINATION

7 BY MR. THOMPSON:

8 Q Good afternoon, Mr. Otte.

9 A Good afternoon, sir.

10 Q Now, Mr. Gilliam asked you about hot and
11 controversial projects in the town or issues, are any
12 of those going on right now that you would characterize
13 that way?

14 A Not really.

15 Q How about in terms of reporting what you have
16 done on a hot and controversial issue, would you do
17 that to the town administrator?

18 A The town administrator should be, as far as I'm
19 concerned, be notified if it involves town property,
20 yes, sir.

21 Q And do you kind of -- if you will describe, how
22 do you use your judgment in deciding what to tell the
23 town administrator things you do versus things you
24 don't bother them with?

25 A Basically, if it is something that involves the

KEVIN OTTE - CROSS-EXAMINATION BY MR. THOMPSON

1 town, as far as town property.

2 Q And is there currently anything going on in the
3 community that is hot, in the media, any building
4 projects?

5 MR. GILLIAM: It's been asked and answered.

6 THE COURT: I'll give him latitude, overruled.

7 Q (MR. THOMPSON) Is there currently anything going
8 on --

9 A At this point there is some work going on around
10 the pier, but it is not really hot or anything that is
11 high in the media or anything.

12 Q And all of the controversy that was going on with
13 Ms. Donevant and with the pier, that was obviously
14 before your employment?

15 A Yes, sir.

16 Q And what, if anything, would you do in terms of
17 keeping the administrator appraised if there were a
18 project in the town that had a lot of media interest?

19 A Well, she needs to be kept aware of anything that
20 I find or anything that I see that would involve
21 anything in the town property that could conceivably
22 involve the town.

23 Q Okay. How often do you issue stop-work orders,
24 would you say?

25 A Current position -- I've been here about 18

KEVIN OTTE - CROSS-EXAMINATION BY MR. THOMPSON

1 months, just over 18 months, and I've issued seven of
2 them in that time frame.

3 Q Can you describe for the jury what your practice
4 is in terms of how you decide when you are going to do
5 a stop-work order when there is a problem.

6 A Normally, to do a stop-work order, I'll come upon
7 a site or get a call of a complaint that there is work
8 that is going on and doesn't know if there is a permit
9 issued or not. I check with the permit technician or
10 check the computer and see if there is anything issued
11 for that. If we don't, I'll stop by the worksite, or
12 if pull up and don't see anything. I'll stop at the
13 worksite and locate the contractor. If the contractor
14 is on scene, we'll discuss what he's doing. I'll ask
15 him for his permit. If he doesn't have the permit,
16 I'll get him in the system to get up and get the
17 application made so we can get the building permit
18 process started for him.

19 If I don't find a contractor, I'll leave a
20 business card with a note to call me so that I can make
21 connection with them to determine what they are doing.
22 After such time that I don't hear anything from them,
23 if I go back again and see more work was done, but
24 nobody contacted me at that point in time, I issue a
25 stop-work order.

KEVIN OTTE - CROSS-EXAMINATION BY MR. THOMPSON

1 Q So you don't immediately issue a stop-work order
2 in all occasions unless you see work?

3 A Normally, stop-work orders are for emergency
4 situations. If I see something like safety or
5 something being done that I question, and by no means
6 am I an engineer, but if I see something that looks
7 like it is unsafe, I certainly would issue it right
8 away.

9 Q Do you feel that is within your discretion of the
10 building codes?

11 A The code gives me that discretion, yes, sir.

12 Q How about for -- we were talking about work done
13 without a permit. How about violations of the code
14 when they are not using the right material or not wired
15 up right, what is your usual practice there?

16 A Normally, I make sure I get with the contractor,
17 whoever it would be, make sure they are aware that they
18 are using conditions or doing work that is outside of
19 the scope of the code and that they need to correct
20 those issues.

21 Q When you see something like that, do you
22 automatically issue a stop-work order?

23 A No. Stop-work orders basically will disrupt
24 and -- you know, I'm not going to shut down a whole job
25 for a small part of it, unless, of course, like I said,

KEVIN OTTE - CROSS-EXAMINATION BY MR. THOMPSON

1 it is a life safety issue or something that needs to be
2 addressed immediately.

3 Q Why not shut down the whole job if you see a
4 violation or work done outside of the permit?

5 A Basically, it disrupts the flow. If somebody is
6 -- if it is a new house in construction, you know,
7 they'll send all the workers home and lose that day,
8 and they may be on a time frame. I try to work with
9 contractors, that is the whole idea, work with these
10 contractors and owners to get the work done, and done
11 correctly.

12 Q And if you find they have avoided you, basically
13 trying to correct it, then you issue a stop-work order,
14 if necessary?

15 A If they seem to fail in their attempts to get it
16 corrected, corrected.

17 Q You regard that as in your discretion under the
18 building codes as adopted by the town to give the
19 builder a chance to fix problems?

20 A I believe it does. It works better for all
21 parties.

22 MR. THOMPSON: Thank you.

23 THE COURT: Redirect?

24 MR. GILLIAM: None, Your Honor.

25 THE COURT: Any objection to the witness being

PLAINTIFF RESTS - JURY OUT

1 excused?

2 MR. GILLIAM: None, Your Honor.

3 MR. THOMPSON: None, Your Honor.

4 THE COURT: You are excused. Call your next
5 witness.

6 MS. GOLDING: Your Honor, the only remaining
7 matter we have --

8 THE COURT: Don't speak in the presence of the
9 jury. Do you have a scheduling challenge?

10 MS. GOLDING: No, I just wanted to introduce
11 Exhibit 5 into evidence.

12 THE COURT: Have you shown it to Mr. Thompson?

13 MS. GOLDING: Yes, he's seen it.

14 MR. THOMPSON: I object.

15 THE COURT: Please approach with the exhibit.

16 (Whereupon, a bench conference was had.)

17 THE COURT: You may proceed.

18 MS. GOLDING: Thank you, Your Honor. The
19 Plaintiff rests.

20 THE COURT: Madam foreman and ladies and
21 gentlemen, there is matters of law I need to take up
22 with the attorneys. It will take us about 15 minutes.
23 We appreciate your patience during that process, after
24 which we'll resume testimony. Please do not discuss
25 the case during this break, and leave your notepads in

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1 your seats. If you'll go with the deputy.

2 (The jury exits at 2:16 p.m., and the
3 following is heard out of the presence of the jury.)

4 THE COURT: Thank you. Plaintiff rested. Is
5 there any motions?

6 MR. THOMPSON: Yes, Your Honor.

7 THE COURT: Please argue them in full. You
8 may proceed.

9 MR. THOMPSON: Your Honor, the Defendant makes
10 a motion for a directed verdict on the following
11 grounds. This case attempts to insert an exception to
12 the at-will employment rule. That exception is the
13 discharge and violation of public policy, the
14 so-called wrongful discharge exception. It is a
15 limited exception, the most recent case dealing with
16 it is a pretty good one that does a good job
17 explaining the law, McNeil versus South Carolina
18 Department of Corrections.

19 In that case, Your Honor, the court reminded
20 us that the at-will employment rule remains the general
21 rule, and that an at-will employee may be terminated at
22 any time for any reason, or for no reason, with or
23 without cause. The McNeil court then went on to
24 explain, Your Honor, that so far the tort -- sorry, the
25 public policy exception has been limited to situations

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1 where, one, the employer requires -- sorry, not
2 limited --

3 THE COURT: What is the citation?

4 MR. THOMPSON: 743 S.E.2d 843. I have a copy.

5 THE COURT: I don't need that. What year?

6 MR. THOMPSON: 2013.

7 THE COURT: You may continue.

8 MR. THOMPSON: I misspoke. They didn't say it
9 was limited, they said so far it has not been expanded
10 beyond two situations.

11 THE COURT: Which is the employer requires the
12 employee to violate the law, or the reason for the
13 employee's termination itself is a violation of
14 criminal law.

15 MR. THOMPSON: Exactly, Your Honor. The court
16 did note, and the two cases from the '90s, Garner,
17 which involved the nuclear whistle blower, and Keiger,
18 an employee threatening an action of the Wage Payment
19 Act. The Court did say in those cases that those
20 presented novel issues which should not be dismissed
21 on a 12(b)(6) motions; instead, the case should be
22 allowed to develop. That is not an expansion of the
23 public policy exception, it is just limited holding,
24 just as I said. Those cases are from the '90s, and
25 since then, there is --

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1 THE COURT: We have current ones, don't we?
2 The Ludwick case that deals with the subpoena and the
3 worker at the mill, correct?

4 MR. THOMPSON: Correct, Your Honor. But I
5 would submit, including Ludwick, there has been no
6 expansion of public policy discharge from those two
7 conditions we just talked about.

8 What is the Plaintiff's theory. Plaintiff's
9 theory is that she was -- well, it could be one of two
10 things, and I'm not sure if it is and/or. She was
11 fired because she issued a stop-work order and she
12 would have violated the law had she not done so --

13 THE COURT: I think the theory is that she was
14 doing her job as an official and he, as a condition of
15 her employment, required her to violate the law, that
16 being her contention, that she had a legal obligation
17 to monitor construction and compliance with applicable
18 ordinances and building codes, and when she was
19 instructed by her employer not to do that, that he was
20 requiring her to violate the law, and now it gets to
21 the person not complying with -- why do I want to call
22 it Ludwig, that's not what it is, it's Ludwick.

23 MR. THOMPSON: I think it fits under one of
24 the first two. If he had not obeyed the subpoena, it
25 would have been a violation of the law, and he was

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1 forced to choose between that and his employment. I
2 think you restated what I was trying to say, that her
3 theory is that she was terminated because she was
4 required to issue a stop-work order. First of all,
5 Your Honor, I don't believe either theory is supported
6 by the evidence. Although Ms. Donevant tried to
7 testify, as did Mr. Wiggins, that she was required to
8 issue a stop-work order, the Building Code Section 155
9 simply does not say that. It says she's authorized.
10 That is a matter of law for you, Your Honor, what that
11 language means even though Mr. Wiggins was permitted to
12 testify about it. I maintain my exception that the
13 town had not even adopted that, but I understand your
14 ruling on that.

15 THE COURT: I think now it has been buffeted
16 by the town clerk's testimony that says in the absence
17 of what we may interpret that that written ordinance
18 is what controls, not what was codified by a company
19 that they employed to codify their ordinances. So I
20 think that's, you know...

21 MR. THOMPSON: I understand your ruling.

22 THE COURT: That clarifies, for me, what the
23 town's intention was, and you wouldn't have -- it
24 wouldn't make sense to me -- her testimony, and I
25 believe her actual testimony was -- I noted it when

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1 they asked the question of her that the ordinance
2 itself controls, not the codification of the
3 ordinance. She's the legislative -- town clerk
4 legislative administrator.

5 MR. THOMPSON: Your Honor, I cite McNeil
6 because it is really good as general guidance, but,
7 really, this case should be governed by the case of
8 Antley versus Shepherd.

9 THE COURT: Repeat that.

10 MR. THOMPSON: 532 S.E.2d 294, Antley versus
11 Shepherd. Antley was an auditor for the county. Her
12 county administrator told her don't appeal any more
13 adverse tax rulings from the tax review committee, and
14 her basic response was I'm not going to do that; in
15 fact, she said something similar to what Ms. Donevant
16 said in her rebuttal. She said that as a public
17 servant for almost 18 years, I've always taken my
18 legal duties and responsibilities seriously. I have
19 never relinquished them, and I can do no less now.
20 She went ahead and appealed, and the administrator
21 terminated her employment.

22 Her authority for that appeal, Your Honor,
23 comes from state statute, and the state statute says
24 she has a right, and I quote, "right" is in the
25 statute, to file appeals. In this case the appellant

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1 court said just because you have a right does not mean
2 you must do so. Even if there is some factual dispute
3 about whether Mr. Duckett instructed her not to issue a
4 stop-work order, her authority to issue a stop-work
5 order is even more permissive than the right that is
6 set forth in state statute to appeal tax rulings.

7 Section 115 of the building code only says
8 she's authorized to do that. That is highly
9 permissive, and Mr. Otte gave us color on that when he
10 talked about, you know, how he viewed the statute and
11 what his discretion and practices are. That is not a
12 requirement. Antley makes clear that if you are going
13 to have this kind of theory, that it has to be
14 something more than a right set forth in statute. It
15 has to be a requirement, and I would assert it has to
16 be a requirement that would subject you to a criminal
17 sanction if you don't do it, like the subpoena.

18 I don't -- Your Honor, we haven't expanded
19 this exception beyond those two things, where the
20 employee is required to violate the law, or the
21 termination itself is a violation of criminal law. We
22 have neither of these here.

23 The building code is clearly discretionary,
24 and that is a decision for this court as to what that
25 building code says. This court is supposed to be a

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1 gatekeeper on what constitutes public policy.

2 THE COURT: The legislature is the gatekeeper?
3 Because they determine what public policy is, I only
4 interpret what they say, but they mandate what it is,
5 and I think McNeil stands to that.

6 MR. THOMPSON: I think there is language to
7 that effect. I think Barron versus Laborer Finders
8 talks about that also. It a question of law for the
9 court to determine, is what I'm getting.

10 THE COURT: What the legislature is saying,
11 but we don't make public policy.

12 MR. THOMPSON: I agree. I think that is true.
13 Now, I want to talk for a minute -- I'm almost
14 done.

15 THE COURT: Take your time.

16 MR. THOMPSON: If the Court allows Donevant to
17 go forward with this theory, it is a dramatic
18 expansion of public policy discharge. Any employee
19 official who can point to a statute, a regulation, an
20 ordinance, professional standard can point to this
21 case and claim that it is wrongful discharge if
22 their --

23 THE COURT: I don't think you can point to
24 professional standard. I don't think there is any
25 support for that in the law. I think the only time

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1 you can point to anything pursuant to McNeil is when
2 it is codified, when the legislature spoke very
3 clearly in regards to what they deem to be something
4 they deem important enough for the protection of the
5 public or otherwise. I don't think -- that is like a
6 lawyer saying or any other profession, engineer,
7 anything that is required to be licensed to say my
8 license requires ethically that I do certain things,
9 that does not give rise to a cause of action.

10 MR. THOMPSON: I think it goes beyond
11 ethically, Your Honor.

12 THE COURT: That is what you said, ethical.

13 MR. THOMPSON: I'll leave off professional
14 standards.

15 THE COURT: I interpreted that to mean that.

16 MR. THOMPSON: I mean more where a standard
17 becomes a regulation -- I'll give you an example.
18 Occupational therapist is 40-36-290. It gives them a
19 lot of duties and says they "shall" and "will do"
20 things, shall develop a treatment plan for each
21 patient. So what if an occupational therapist says
22 you can't tell me what to do in my treatment plan,
23 that's interfering with my duties and instruction that
24 I must do under 40-36-290, you can't discipline me.
25 There is a ton of such things in the regulations and

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1 ordinances, and if we allow Ms. Donevant to go forward
2 on this theory, we're opening the door to this kind of
3 expansion of the public policy exception, and that is
4 something that the legislature and the supreme court
5 has been avoiding the erosion of at-will employment in
6 South Carolina over the past 10 or 15 years.

7 There's been no expansion of the exceptions;
8 in fact, there has been contractions. There is a
9 whistle blower act passed that dramatically reduced
10 that exception to at-will employment. There was the
11 handbook law that removed that as an exception. The
12 Supreme Court and legislature has been active to
13 protecting at-will employment rule for good, sound,
14 public policy.

15 THE COURT: I don't think you can ever argue
16 that South Carolina is anything but an at-will state.

17 MR. THOMPSON: Right, Your Honor.

18 THE COURT: It's the proliferation of industry
19 in our state, which is a good thing for all of us. We
20 love Boeing in Charleston and Google.

21 MR. THOMPSON: That is essentially my
22 argument, that we're expanding the tort.

23 THE COURT: Are we really? Her argument is
24 that in my ~~estimation~~ of what the law required of me,
25 my employer was requiring me to break the law; is that

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1 for me to resolve?

2 MR. THOMPSON: Yes, absolutely. You must be
3 the gatekeeper.

4 THE COURT: Why?

5 MR. THOMPSON: She can't say my
6 interpretation. Antley directly speaks to that. The
7 Court first said, This right and statute is not
8 enough -- is not enough. And then Antley tried to
9 argue, Well, I believed it was enough. I believed I
10 had to do this. The Court, if you look down in the
11 opinion towards the analysis, they specifically say,
12 Well, your belief is not going to help you in this
13 case at all. We're going to look at the statute. The
14 statute said you had a right, that didn't make it
15 mandatory and subject you to criminal act if you
16 didn't do it, therefore, it does not meet public
17 policy exception -- I don't think they mentioned the
18 criminal part actually, but the right was not enough.

19 The Antley court -- one last thing -- I think
20 somewhere in either their opposition to summary
21 judgment or maybe the pretrial brief, they indicated
22 that the Antley court did not understand that the
23 public policy exception was not expressly limited to
24 those two things we discussed. The Antley court early
25 on in the opinion did say -- and I think they cite

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1 Garner and Keiger -- has never been expressly limited
2 to this, it's just hasn't gone beyond it yet.

3 So, Your Honor, the Defendant asks you to
4 dismiss the Plaintiff's case as a matter of law.

5 THE COURT: Is that your full argument?

6 MR. THOMPSON: Yes. Any questions?

7 THE COURT: No, huh-uh.

8 MR. THOMPSON: Thank you.

9 THE COURT: You are welcome. Who would like
10 to respond?

11 MR. GILLIAM: I'll do that, Your Honor. I
12 would like to approach, and I'll hand these to
13 Mr. Thompson. These are statutes that I'm going to be
14 talking about, I think it is easier.

15 THE COURT: Just tell me what they are.

16 MR. GILLIAM: The damage was already done, are
17 you sure?

18 THE COURT: Yeah. My staff -- I'm driving my
19 staff crazy. I bought them all tumblers and
20 everything, we're trying to reduce our carbon
21 footprint (laughing).

22 MR. GILLIAM: Next time I'll know (laughing).
23 I want to address a point that the Town of Surfside
24 Beach was making. He talked about a couple of court
25 of appeals cases, but the case he didn't talk about is

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1 the one that I think deserves most of our attention
2 and that is the supreme court case Barron versus
3 Laborer Finders, 2011 case. That is the most recent
4 case from the South Carolina Supreme Court about the
5 wrongful termination doctrine.

6 For the town to assert that the wrongful
7 termination doctrine is limited to situations where an
8 employer requires an employee to violate the law, that
9 would be right if not for Barron. What Barron says,
10 and I'm quoting, Accordingly, we overrule the Court of
11 Appeals' opinion to the extent it holds the public
12 policy exception, applies only in situations where the
13 employer asks the employee to violate the law or the
14 reason for the termination itself is a violation of the
15 criminal law.

16 The supreme court clearly recognized that the
17 wrongful termination did not limit it to the situations
18 that the Town of Surfside Beach has outlined. What
19 Barron also says -- and I think it makes the analysis
20 for this tort so much easier. I think before Barron it
21 was sort of difficult to articulate what exactly
22 wrongful termination tort meant. What Barron says --
23 what the tort makes unlawful is it makes it unlawful
24 for an employer to terminate an employee in violation
25 of a clear mandate of public policy. What Barron says

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1 is the best place to look for what the public policy of
2 the State of South Carolina is is through general
3 expressions -- for the expressions of the general
4 assembly, and I think that is what we should do in this
5 case.

6 Title 6 of the South Carolina Code of Laws is
7 the title that deals with building codes. I want to
8 talk first about six, nine, five, South Carolina Code
9 of Laws, 6-9-5. There is a title of that particular
10 code section, and what it says is public policy for
11 building codes. I want to read it to you. It says,
12 The public policy of South Carolina is to maintain
13 reasonable standards of construction and buildings and
14 other structures in the state consistent with the
15 public health, safety and welfare of its citizens.

16 So the public policy of the State of South
17 Carolina is to maintain reasonable construction
18 standards. To achieve that purpose, we go to 6-9-10,
19 this is the next section in Title 6. 6-9-10 says --
20 this is the mandatory language we're looking for -- it
21 says, All counties, all municipalities shall enforce
22 the building codes. Have to.

23 So the public policy is for reasonable
24 construction standards. The only way we can achieve
25 that policy is if we require counties and

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1 municipalities to enforce the building codes. 6-9-20
2 -- I'm sorry, I misspoke. I knew I was going to do
3 that. I was correct, 6-9-20 requires each county and
4 each municipality -- again, mandatory language -- shall
5 appoint a building official.

6 So the building official is the person who has
7 to enforce the building codes in the State of South
8 Carolina. In 6-9-50, which we talked about yesterday,
9 says that, well, the State of South Carolina adopts all
10 of the International Building Codes except for Chapter
11 1. Chapter 1 doesn't apply, and that is the
12 administration provision of the International Building
13 Codes, that doesn't apply unless they have been adopted
14 by the municipal or county governing body.

15 In Section 13-21, Town of Surfside Beach Code
16 of Ordinances, they adopted Chapter 1 or the
17 administrative provisions of the International Building
18 Code. The International Building Code requires
19 mandatory language, Your Honor. It says, The building
20 code officials shall. The building code officials
21 shall enforce the building codes.

22 There is Section 104.1, 104.2, 104.3. 104.2
23 states, The building official shall enforce compliance
24 of the provisions of this code, shall. Not "may," but
25 "shall." 105.1 says, Any owner who is going to do any

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1 sort of construction shall first make application to
2 the building official, shall obtain a permit. 113.1
3 says, It shall be unlawful for any person to construct
4 any structure in violation of the provisions of this
5 code.

6 So, Your Honor, what we have is -- in this
7 case we have an expression of public policy in the
8 State of South Carolina, public policy reasonable
9 construction standards. In order to achieve -- in
10 order to meet this public policy, we require all
11 counties and municipalities to enforce the building
12 codes of the State of South Carolina through building
13 officials, and we have the adoption of Chapter 1.
14 Chapter 1 doesn't give Ms. Donevant any discretion. It
15 says, Shall enforce the building codes.

16 105.1 states that before you can begin
17 construction, you shall first make timely application,
18 shall obtain a permit. 113.1 says, It is unlawful to
19 do construction if you don't have a permit. Your
20 Honor, what happened in this case -- this case is not
21 Antley. It is not a situation where Ms. Donevant had
22 any discretion, and I will point out that Antley is
23 pre-Barron. It envisions a situation where the Public
24 Policy Doctrine only works if an employer makes an
25 employee violate the criminal law. Clearly, Barron

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1 said that is overruled. It is up to what the general
2 assembly says what the public policy of State of South
3 Carolina is, and we have that here.

4 But in this case, Ms. Donevant -- there was
5 un-permitted construction going on. She was required
6 by Chapter 1 of the International Building Codes to
7 enforce the codes and stop that work. Her testimony is
8 in that effect, and so is Mr. Wiggins'. I want to
9 talk, too, about Section 115, the stop-work order. You
10 know, Your Honor, if you look at that -- I'm big on
11 what the title says, I think that is what it tells us.
12 It says "authority." "Authority" means power. It
13 doesn't mean may. What that provision says is that a
14 building official is authorized to enforce the building
15 codes. So the building official has the power to do
16 that; not "may," it doesn't say that.

17 I think whenever we're thinking about a
18 statute or any building codes, we have to adhere to the
19 Rules of Statutory Construction, and that prevents us
20 from just focusing in on 115.1. We can't ignore the
21 rest of Chapter 1 of the International Building Code or
22 Section 104. 104 states very clearly that the building
23 official shall -- shall enforce the building codes of
24 the State of South Carolina. It does not make it
25 discretionary; it is mandatory.

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1 So, Your Honor, what I would say in this case
2 is that any time you rule on a directed verdict motion,
3 all we're looking for is whether this is an issue of
4 fact, not about --

5 THE COURT: Whether you met the elements of
6 your cause of action by a preponderance of the
7 evidence.

8 MR. GILLIAM: Yes, ma'am. And in this case we
9 had the testimony of Ms. Donevant. She said that she
10 witnessed un-permitted construction. There is no
11 dispute that there was no building permit at the time.
12 You know, it is a factual issue whether or not the
13 construction was taking place, but we have her
14 eyewitness observation where she says there was more
15 than demolition going on. There was only a demolition
16 permit at that period of time. She saw new flooring,
17 new window openings being cut, new plumbing. She was
18 required by law to issue a stop-work order under those
19 circumstances.

20 Your Honor, we also have the testimony from
21 Ms. Donevant and Mr. Wiggins that she was required to
22 do that by law, and if she would not have, then it
23 would have subjected her license to suspension or
24 subject her to discipline. I just think for the Town
25 of Surfside Beach to characterize this as a great

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1 expansion, it is not accurate. That expansion has
2 already taken place. Barron already said it is not
3 limited to the situations that they say it is limited
4 to. Barron says we have to look to the general
5 assembly. If we look to the general assembly, they use
6 the word "public policy of South Carolina." I can
7 assure you, Your Honor, I looked at a bunch of
8 different statutes in this case, and there are very few
9 statutes that use the word what the public policy of
10 South Carolina is. They use those words very
11 sparingly. Those words meant something, and the public
12 policy of the State of South Carolina is to maintain
13 reasonable construction standards, and they've enacted
14 a set of statutes to achieve that purpose, and those
15 statutes require the building official to stop work if
16 there is un-permitted construction. If you think about
17 it, it makes sense because it is a safety and health
18 issue. I don't want to keep make the same point, so
19 I'll sit down.

20 THE COURT: Anything further?

21 MR. THOMPSON: Not much. I would point out,
22 Your Honor, that the Antley court did specifically
23 recognize that the tort has not -- never been limited
24 to such situations. So it is entirely consistent with
25 Barron. Ludwick, the employee was -- tried to get him

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1 to violate a subpoena, which was a violation subject
2 to criminal penalties. I don't see how Antley is not
3 on all fours, even though the auditor, and I quote
4 from the statute under F, 12-37-90 had the right of
5 appeal from a disapproval or a modification of an
6 appraisal made by him. Appeals court says that is not
7 enough, and all Ms. Donevant had was the authority to
8 issue a stop-work order.

9 THE COURT: How many witnesses do you plan to
10 call?

11 MR. THOMPSON: Mr. Duckett, and I still don't
12 know about Sebrina Morris and her situation.

13 THE COURT: On your list you have -- bear with
14 me. You have Ms. Shmaruk, Mr. Samples, the mayor --
15 do you still plan to call him?

16 MR. THOMPSON: Yes, Ms. Shmaruk and the mayor.

17 THE COURT: And then you have Bonita Andrews.

18 MR. THOMPSON: She's the one in Florence who
19 could not make it here today.

20 THE COURT: Jack O'Quinn.

21 MR. THOMPSON: Not calling him.

22 THE COURT: We called Mr. Otte. So you
23 said -- you don't know if Ms. Morris will be
24 available, but you plan to call Mr. Duckett?

25 MR. THOMPSON: I definitely will have Mr.

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1 Duckett tomorrow.

2 THE COURT: Do you know how early he'll get
3 here? I assume as soon as court starts?

4 MR. THOMPSON: That is the plan.

5 THE COURT: Did you plan to call -- any
6 indication when you'll have an update on Ms. Morris?

7 MR. THOMPSON: Apparently, we don't know how
8 she's doing.

9 THE COURT: Okay. So you are calling Mr.
10 Duckett, we've had Ms. Fellner.

11 MR. THOMPSON: Ms. Andrews would be very short.
12 Probably guess that Mr. Duckett will take awhile.

13 THE COURT: Is Ms. Shmaruk -- you are ready to
14 go forward with her. And Mr. Samples, is he here?

15 MR. THOMPSON: He's here.

16 THE COURT: I'm thinking that may take us a
17 minute, at least another 30, 40 minutes.

18 MR. THOMPSON: Mr. Samples and Ms. Shmaruk?
19 Oh, yes.

20 THE COURT: Ms. Andrews you would not call?

21 MR. THOMPSON: Not today.

22 THE COURT: But as an overall question, do you
23 plan to call her?

24 MR. THOMPSON: Yes.

25 THE COURT: You have her for tomorrow?

MOTIONS

1 MR. THOMPSON: Yes, Your Honor.

2 THE COURT: You are not calling Mr. O'Quinn?

3 MR. THOMPSON: Correct.

4 THE COURT: So you have Mr. Duckett,
5 Ms. Morris potentially, and Ms. Andrews for tomorrow?

6 MR. THOMPSON: Yes, Your Honor. Did you say
7 Ms. Shmaruk?

8 THE COURT: I'm including the people for
9 today. You didn't have anything further in response
10 to Plaintiff's argument?

11 MR. THOMPSON: Just the two things I
12 mentioned.

13 THE COURT: I'll take the matter under
14 advisement. We'll forge ahead with testimony.

15 MR. THOMPSON: Can I have a moment?

16 THE COURT: Yes, absolutely.

17 MS. GOLDING: Your Honor, with respect to
18 Mr. Samples, it is my understanding the Court's
19 ruling, since he was not listed as a witness, I can
20 speak to him?

21 MR. THOMPSON: He was listed in my
22 interrogatory responses and in my pretrial brief.

23 MS. GOLDING: We don't...

24 MR. GILLIAM: I can't find it.

25 MS. GOLDING: We can't find it, that he was

3:30

DOUGLAS SAMPLES - DIRECT EXAMINATION BY MR. THOMPSON

1 DIRECT-EXAMINATION

2 BY MR. THOMPSON:

3 Q Good afternoon.

4 THE COURT: If you could spell your last name.

5 THE WITNESS: Certainly. S-A-M-P-L-E-S.

6 THE COURT: Thank you.

7 Q (MR. THOMPSON) Obviously, you are currently the
8 mayor?

9 A Yes, sir.

10 Q And what was your position regarding the town at
11 the time Ms. Donevant was employed there?

12 A I had served on town council for a number of
13 years, and I believe I was mayor elect when she was
14 released.

15 Q From time to time, would the council be advised
16 of employees and personnel concerns?

17 A Yes.

18 Q And were there times where the council was
19 advised of concerns with Ms. Donevant before
20 termination?

21 A Mr. Duckett expressed reservations, yes.

22 Q And before Mr. Duckett became the town
23 administrator, was the council advised of any concerns
24 regarding Ms. Donevant's employment?

25 A Before Mr. Duckett?

DOUGLAS SAMPLES - DIRECT EXAMINATION BY MR. THOMPSON

1 Q Yes.

2 A You know, I don't have any specific recollection.
3 You know, there was a period we were going through so
4 many administrators that I just don't recall.

5 Q Do you recall meeting with Mr. Duckett at the
6 beginning of his tenure as administrator to discuss
7 issues with the town?

8 A Certainly council did, yes.

9 Q Did you have any part in that meeting?

10 A Yes. I'm sure we did, to clarify. Yes.

11 Q Do you recall anything being said to Mr. Duckett
12 about concerns about Ms. Donevant?

13 A Not specifically, I don't.

14 Q Could you explain to the jury, and it was touched
15 on a lot, but why was the pier at the time Ms. Donevant
16 was employed there an important public issue?

17 A Certainly. The town acquired the pier in late
18 2008. It was the single most expensive item that the
19 town had ever purchased. It was a new venture. It
20 became very controversial over the tenancy.

21 There was a restaurant that had been in place for
22 a number of years and council, frankly, became divided
23 over that specific issue. We wound up without a tenant
24 on the pier. It got a lot of press. Frankly, I don't
25 believe that I would be mayor, nor would I have run,

DOUGLAS SAMPLES - DIRECT EXAMINATION BY MR. THOMPSON

1 frankly, to be mayor except for the controversy
2 surrounding that pier and tenancy.

3 Q Do you recall any other issue in the community
4 which approached the sensitivity and public awareness
5 that the pier had?

6 A Not in my tenure.

7 Q Do you recall an incident in which you became
8 aware that Ms. Donevant issued a stop-work order on the
9 pier restaurant project?

10 A I do.

11 Q How did you first learn of that stop-work order?

12 A I actually received the phone call from somebody
13 in the press, and I don't remember who asked me if I
14 would be willing to --

15 MS. GOLDING: Object to any third-party asking
16 him. It is hearsay.

17 THE COURT: It is hearsay, but is it being
18 offered for its truth? Refrain from telling us
19 anything that someone said to you, but you can say
20 what you did as a result of the conversation.

21 THE WITNESS: Sure.

22 A After being asked to do an interview by the media
23 at the pier, I made arrangements late afternoon that I
24 was going to do an interview at the pier. So before
25 doing the interview, I called the administrator, Mr.

DOUGLAS SAMPLES - DIRECT EXAMINATION BY MR. THOMPSON

1 Duckett, and I asked Mr. Duckett to bring me up to
2 speed on what is the latest, anything going on that I
3 need to know about. My recollection is that I actually
4 left a message on his telephone. I didn't get a
5 response, but I was -- I used to work in Pawley's
6 Island, and I was heading back to Pawley's Island to
7 the town to do the interview when Mr. Duckett called me
8 on the telephone. He was very upset and let me know
9 that a stop-work order had been put on the pier.

10 At that time, when I began talking with Duckett,
11 I was probably less than two minutes away. I indicated
12 that I'd be right there, meet him at the pier.

13 Q (MR. THOMPSON) Did you get the call from the media
14 that same day?

15 A Yes. Yes. But I did not learn of the stop-work
16 order until I spoke with Mr. Duckett.

17 Q Again, you were about two minutes away from being
18 confronted by a TV crew and a stop-work order, which
19 absent Mr. Duckett calling you, you would have known
20 nothing about; is that correct?

21 A Yes.

22 Q Would you have found that embarrassing --

23 MS. GOLDING: Object to that.

24 THE COURT: I haven't heard the question, the
25 entirety of the question.

DOUGLAS SAMPLES - DIRECT EXAMINATION BY MR. THOMPSON

1 Q (MR. THOMPSON) Would that have been embarrassing in
2 any way for you to appear on the scene with a TV crew
3 and there be a stop-work order?

4 THE COURT: Sustain. Leading.

5 Q (MR. THOMPSON) How would you have felt if you got
6 there without prior notice of the stop-work order
7 being issued?

8 A I would have felt it was an embarrassment to the
9 town. Frankly, I did not do the interview, okay, given
10 the stop-work order had been issued. I didn't have any
11 facts to deal with except that. Again, in my mind,
12 this big problem, the pier, the restaurant that the
13 town spent a lot of money to acquire was not generating
14 revenue. The background is that council finally worked
15 out an agreement after over a year of it being vacant.
16 Again, lots of attention. So, yeah, I felt that it was
17 a problem at the time, yes.

18 Q Did you have any problem with Ms. Donevant's
19 authority to issue stop work orders?

20 A Not at all.

21 Q That wasn't the issue?

22 A No. In fact, I'm certain they were issued in the
23 past.

24 Q Now, it's been mentioned something about a
25 meeting that you went to to discuss Ms. Donevant with

DOUGLAS SAMPLES - CROSS-EXAMINATION BY MS. GOLDING

1 Sue Shmaruk and Sebrina Morris, maybe others; do you
2 recall a meeting, after her termination?

3 A Yes.

4 Q What was that meeting about?

5 A Actually, I was approached, and my recollection
6 is by Sue. Sue and I had a very comfortable
7 relationship in terms of talking, what's going on, that
8 sort of thing. I was going to be seated as mayor in
9 early May. I had not yet been sworn as mayor. I did
10 receive a call and, again, my recollection is that it
11 was from Sue, that there were a number of staff that
12 would like to have the chance to sit down with me and
13 discuss Ms. Donevant.

14 Q What did she express their position was on her
15 reemployment?

16 A They indicated to me that it would not be good
17 for the town. It wouldn't be good for the town.

18 Q Thank you.

19 MR. THOMPSON: Answer any questions that
20 Ms. Golding may have.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MS. GOLDING:

24 Q Mr. Samples, you testified it was embarrassing to
25 the town that a stop-work order was issued; did I

DOUGLAS SAMPLES - CROSS-EXAMINATION BY MS. GOLDING

1 understand that correctly?

2 A It was embarrassing to have another negative
3 event from public perception, you know. We were all
4 embarrassed in the town over the entire episode.

5 Q When you went to the pier --

6 A Clarification, if I could. Just to clarify, as I
7 said, council became divided over the pier and,
8 frankly, we worked hard to get back together so that we
9 could move forward on the pier, and that wasn't easy.
10 So this was a surprise, that is what I'll say.

11 Q When you went to the pier, did you go in to see
12 why the stop-work order was issued?

13 A No, I did not.

14 Q You have never -- if I understand what you are
15 saying, Ms. Donevant had the authority to issue the
16 stop-work order?

17 A In my mind, she did.

18 Q And so you understand she issued that because
19 there was new construction going on that had not been
20 permitted?

21 A I learned that at some point, but would not be
22 able to distinguish what that means, really.

23 Q Had not that new construction been going on, Ms.
24 Donevant would not have been required to issue that
25 stop-work order; is that not correct?

DOUGLAS SAMPLES - CROSS-EXAMINATION BY MS. GOLDING

1 A Yes. I would say that is probably so.

2 Q So isn't it a fact the embarrassment to the town
3 was that the town permitted -- the town sanctioned
4 un-permitted work to be done, that is what the
5 embarrassment was; isn't that a fact?

6 A No, not from my perspective. Not from the
7 mayor's perspective or council members' perspective who
8 has wrestled with -- I'll repeat it, because it is a
9 fact -- the single most expensive, \$2.8 million, that
10 the little town, nice town, of Surfside Beach paid cash
11 for this pier with the expectation that it was going to
12 be a revenue generator and focal point. We're just
13 coming out of a year of it being empty, lots of hard
14 feelings amongst individual council members. We had
15 just had an election where, again, in my mind it was
16 the single most -- the primary issue within the town,
17 because the people were all concerned about it, and the
18 -- we were finally making some headway. This is my
19 view, finally making headway. We had a tenant there.
20 There was an agreement made, and they were moving
21 forward, and for whatever reason, more attention, my
22 perception, more attention being a light shined on the
23 pier with a negative connotation to it.

24 So that really is why. Again, I'm not seated as
25 mayor at that time, but I'm going to be seated within a

DOUGLAS SAMPLES - CROSS-EXAMINATION BY MS. GOLDING

1 week or two. My way of thinking was here is an issue
2 we thought we were moving forward on, and guess what,
3 we're still back in the paper, back in the press over
4 something negative. In fact, when I campaigned,
5 because in our town you can go door to door, you can go
6 and knock on every door and talk to the people, more
7 than once I heard from people living in the town that
8 they were tired of being embarrassed outside of town.

9 In fact, I heard people serve on jury duties, and
10 my neighbor made the comment to me, I go to Conway and
11 when I tell them I'm from Surfside, we don't look good.
12 Okay. So that is the full answer. Thank you.

13 Q Okay. So now that we have a full answer, isn't
14 it a fact that if you have such a project like the
15 pier, that the town administrator should make sure that
16 all of the building codes are followed?

17 A Yes.

18 Q And so isn't it an embarrassment if the town
19 administrator did not require that the building codes
20 be followed by -- with respect to the pier?

21 A It would be.

22 Q Now, Ms. Donevant sent you a letter, Defendant's
23 Exhibit 16, that is in front of you; is that correct?

24 A Yes.

25 Q And 16, when you received that letter, that was

DOUGLAS SAMPLES - CROSS-EXAMINATION BY MS. GOLDING

1 just a few days after she was fired; is that correct?

2 A I'm sure it was.

3 Q She had attached to that letter a letter from
4 Gary Wiggins; is that correct? That was part of the
5 letter you received?

6 A I apologize, I'm certain that -- Ms. Donevant
7 came to my home actually and came in and delivered me
8 the letter. I read it once. I mean, we talked. I
9 read it once. I asked the -- took it to town hall,
10 gave it to the town clerk, indicated to her to keep
11 this letter. In truth, I don't recall the Wiggins'
12 letter.

13 Q The last sentence on the first page -- or second
14 to the last sentence --

15 A On her letter?

16 Q Correct. Defendant's 16. It states, Gary
17 Wiggins checked into the matter and issued the attached
18 letter?

19 A Thank you. Then I'm sure I saw it.

20 MS. GOLDING: Your Honor, we offer Defendant's
21 16 with the attached letter into evidence.

22 MR. THOMPSON: I object.

23 THE COURT: Please approach and bring the
24 exhibit.

25 (Whereupon, a bench conference was had.)

SUE SHMARUK - DIRECT EXAMINATION BY MR. THOMPSON

1 A Yes.

2 Q During the time period that you were employed
3 there with Ms. Donevant, what was her punctuality and
4 attendance like?

5 A She normally didn't come in at 8 o'clock. She
6 generally came in around 9:30 or so. She was out quite
7 often.

8 Q During these times when she was out, did you know
9 where she was?

10 A Sometimes I knew; sometimes I didn't.

11 Q Were there times where you had to try to track
12 her down?

13 A Yes.

14 Q And what would be a circumstance or what would
15 prompt you to try to track her down?

16 A Well, the contractors are usually looking for
17 their permits to be approved and their projects are
18 held up because they haven't been approved, so they
19 would usually be in an irate state.

20 Q And can you give the jury a percentage of the
21 time where you felt that Ms. Donevant was AWOL and you
22 didn't know where she was during the time you worked
23 with her, what would that be?

24 A About 40 percent.

25 Q Was there a joke in the office about where is

SUE SHMARUK - DIRECT EXAMINATION BY MR. THOMPSON

1 regarding her employment?

2 A Yes.

3 Q Who was handling the inspections in the plan
4 review while Ms. Donevant was out on medical leave?

5 A Myrtle Beach.

6 Q And were you -- do you recall the day that Ms.
7 Donevant issued the stop-work order?

8 A Yes.

9 Q Did you hear her say anything about issuing that
10 stop-work order in the office before she went out
11 there?

12 A She had mentioned that she was probably going to
13 get herself fired.

14 Q Anything else that she said about that?

15 A That she just had said I'm going to -- I'll get
16 myself fired, and she left.

17 Q And how about when she came back, did you hear
18 her say anything about it?

19 A It was already 5 o'clock by the time she came
20 back, and I was already gone.

21 Q The pier was a big issue in the community?

22 A Really big issue.

23 Q And do you think it was important that the
24 administrator know about a stop-work order issued at
25 the pier?

SUE SHMARUK - CROSS-EXAMINATION BY MS. GOLDING

1 MS. GOLDING: Your Honor, I'll object to the
2 question, foundation.

3 THE COURT: She worked with her. She was her
4 subordinate. It is within her rational perception.
5 Overruled. Answer the question, ma'am, to the best of
6 your knowledge.

7 A Jackie generally tried to work with the people
8 before giving stop-work orders. Like I said, there was
9 not many stop-work orders that were issued during the
10 time that I was there.

11 Q (MR. THOMPSON) Are you aware of any other evidence
12 or any evidence that Jim Duckett fired her for issuing
13 a stop-work order as far as failing to communicate
14 with him about --

15 A I'm not aware of any.

16 CROSS-EXAMINATION

17 BY MS. GOLDING:

18 Q On March 20, when Ms. Donevant came to her
19 office, I think you were with a gentleman name John
20 Adare (phonetic); is that correct?

21 A Yes.

22 Q And John Adare was in your office a lot; is that
23 correct?

24 A No.

25 Q He was not?

SUE SHMARUK - CROSS-EXAMINATION BY MS. GOLDING

1 A No, not my office.

2 Q Sorry?

3 A Not in my office.

4 Q In the building department area?

5 A In the building department area, yes.

6 Q And that area is sort of an open area with a lot
7 of people; is that correct?

8 A My office was like the first office on the right
9 where the reception desk was, so it was like an open
10 book in there.

11 Q At that time, when Ms. Donevant came in, she
12 specifically asked you and Mr. Adare and Sebrina Morris
13 what is happening with the pier?

14 A Yes. Jackie had been out. When she came in, she
15 came and sat in my office and she said, What is the
16 status at the pier.

17 Q And at that point in time, you just -- you didn't
18 respond to her, did you?

19 A I said to her that we have a demo permit, demo
20 only.

21 Q And John Adare said there is new construction
22 going on?

23 A John Adare said it looks --

24 MR. THOMPSON: Objection.

25 THE COURT: Basis?

SUE SHMARUK - CROSS-EXAMINATION BY MS. GOLDING

1 MR. THOMPSON: I don't know who John Adare is,
2 and I think it is hearsay.

3 THE COURT: Approach.

4 (Whereupon, a bench conference was had.)

5 Q (MS. GOLDING) As a result of Mr. Adare responding
6 to Ms. Donevant's questions, did she leave the office
7 and go to the pier?

8 A Yes.

9 Q With respect to contractors, many contractors
10 would communicate directly with Ms. Donevant as to when
11 to come in and inspect their job; is that not correct?

12 A Not usually. They usually came through me.

13 Q But you are not going to deny that contractors
14 contacted Ms. Donevant?

15 A Correct.

16 Q And there was no policy that contractors had to
17 go through you?

18 A Well, Jackie wanted the contractors all to come
19 through me so we would be aware of what was going on.

20 Q Was there a written policy telling the
21 contractors you can't contact Ms. Donevant, you have to
22 call Sue?

23 A It wasn't a written policy, no.

24 Q And you never instructed or issued any
25 instructions that contractors couldn't contact Jackie

SUE SHMARUK - CROSS-EXAMINATION BY MS. GOLDING

1 Donevant, did you?

2 A No.

3 Q With respect to inspections, you knew that Ms.

4 Donevant conducted inspections on the way to work?

5 A Several times she did.

6 Q As far as stop-work orders issued for no permits

7 being issued, that wasn't a situation in which you

8 tried to work with the contractor, is it?

9 A Stop-work order would be if they had no permit at
10 all, a stop-work order would be issued.

11 Q And so when Ms. Donevant worked with contractors
12 that had a permit, she would not automatically issue a
13 stop-work order, she would work with them?

14 A I don't recall issuing a stop-work order when
15 we've had an open permit.

16 Q But when there was no permit, there is no choice,
17 you have to issue a stop-work order; isn't that
18 correct?

19 A Correct. Correct.

20 MS. GOLDING: Nothing further.

21 THE COURT: Redirect?

22 MR. THOMPSON: No, Your Honor.

23 THE COURT: Any objection to having the
24 witness excused?

25 MS. GOLDING: None from the Plaintiff.

THE COURT TO THE JURY

1 MR. THOMPSON: No, Your Honor.

2 THE COURT: Ma'am, you are excused. Counsel,
3 approach for me, please.

4 (Whereupon, a bench conference was had.)

5 THE COURT: Ladies and gentlemen, due to the
6 weather, we're having scheduling challenges from
7 witnesses that have to come from the outer parts of
8 the state they are snowed in, so they can't be here
9 today. However, we anticipate we'll have three short
10 witnesses in the morning, maybe two, and then we'll
11 have closing arguments and instructions. Long story
12 short, I expect to finish the trial tomorrow. We will
13 not be going into Monday. It is a federal and state
14 holiday, so I anticipate that we will do our best to
15 finish tomorrow.

16 During this break, please do not have any
17 discussion among yourselves or anyone else. Don't do
18 any independent research of any type. I know we've had
19 lots of discussions about the subject matter of this
20 case and there were newspaper articles and otherwise
21 that may have been published, but you are instructed
22 that you are not to make any attempts to look up those
23 articles on the Internet or otherwise. You are bound
24 by the oath to decide the case according to the
25 testimony you hear from the sworn witnesses and the

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 A The permit was issued for the pool only and not
2 an extension of the deck.

3 Q Did Ms. Donevant say anything about why no permit
4 was issued for the deck?

5 A I did ask her, because we had no site plans
6 showing the new edition and no plans, but she said it
7 was the building official's discretion.

8 Q As to whether or not to issue a permit?

9 A Yes.

10 Q Thank you, Ms. Morris.

11 MR. THOMPSON: Answer any questions Plaintiff's
12 counsel may have for you.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION

15 BY MR. GILLIAM:

16 Q We met before. It is good to see you good. Your
17 testimony is that while Ms. Donevant worked for
18 Surfside, she was a building official?

19 A Yes.

20 Q And she was extremely knowledgeable in the areas
21 of building code enforcement, was she not?

22 A Absolutely.

23 Q And while Ms. Donevant worked for the Town of
24 Surfside Beach her position was director of planning,
25 building and zoning and building official; am I

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 correct?

2 A No. It was the building and zoning department.
3 They actually formed out -- or hired a consultant to do
4 the planning. So she was the building and zoning
5 director and the building official.

6 Q So she was the building and zoning director and
7 the building official? Two jobs, right?

8 A Yes.

9 Q And the way I understand it is currently you hold
10 the position that Ms. Donevant used to hold, director
11 of planning, building and zoning; is that correct?

12 A Yes, but I'm not the building official.

13 Q I'll get to that. Currently, the building
14 official is Mr. Otte?

15 A That is correct.

16 Q So the Town of Surfside Beach had to hire two
17 people to do the job that Ms. Donevant was doing; is
18 that correct?

19 A No, that is not correct.

20 Q There is not -- Ms. Donevant was doing --

21 A They split the position. When Ms. Donevant was
22 there, there was Ms. Donevant, myself and Sue Shmaruk.
23 There is only three now. I do the planning and zoning,
24 which they farmed out before, but we got it back. Mr.
25 Otte does code enforcement and building official

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 duties, and we have Shawn Basel (phonetic) that does
2 Ms. Shmaruk's job.

3 Q My question is this. While Ms. Donevant worked
4 for the Town of Surfside Beach, she was the director of
5 planning, building and zoning and the building
6 official?

7 A Yes.

8 Q And now there are two people that do that job,
9 you and there is Kevin Otte; is that correct?

10 A That is true.

11 Q I just want to make sure that we're on the same
12 page.

13 Now, as it relates to Mr. Duckett, Mr. Duckett is
14 not qualified to enforce the building codes in the
15 State of South Carolina, is he?

16 A Not to my knowledge.

17 Q In order to be qualified to enforce the building
18 codes in the State of South Carolina, my understanding
19 is that you have to take a test and pass it?

20 A Yes.

21 Q And, to your knowledge, has Mr. Duckett taken the
22 test and passed it?

23 A No.

24 Q So while Mr. Duckett was the town administrator,
25 he had no authority, whatsoever, to enforce the

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 building codes, did he?

2 A No.

3 Q While Mr. Duckett was the town administrator, he
4 couldn't direct Ms. Donevant, the building official, to
5 issue a stop-work order, could he?

6 A No.

7 Q While Mr. Duckett was the town administrator, he
8 could not prevent Ms. Donevant from issuing a stop-work
9 order, could he?

10 A No.

11 Q While Mr. Duckett was the town administrator, it
12 would be unlawful for him to make any building code
13 decisions?

14 MR. THOMPSON: Objection, legal conclusion.

15 THE COURT: She can render an opinion, but you
16 need to lay the appropriate foundation that that
17 knowledge is within her rational perception.

18 Rephrase.

19 Q (MR. GILLIAM) Whose job was it to enforce the
20 building codes while Ms. Donevant was employed there?

21 A Ms. Donevant.

22 Q So no one else was allowed to enforce those
23 building codes?

24 A Correct.

25 Q And when Mr. Duckett ripped down the stop-work

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 order on March 20, 2012 from the pier restaurant, was
2 he allowed to do that?

3 MR. THOMPSON: Objection, foundation.

4 THE COURT: Sustained, speculation. You have
5 to lay a foundation that she was there, that she saw
6 it and she knows of her own personal knowledge.

7 Q (MR. GILLIAM) Are you aware of whether Mr. Duckett
8 went to the pier restaurant on March 20, 2012 and
9 removed a stop-work order?

10 A I saw it on the news.

11 Q You are aware of it?

12 A Yes.

13 Q Is that a legal act that Mr. Duckett did on that
14 day, tearing down that --

15 MR. THOMPSON: Objection, legal conclusion,
16 foundation.

17 THE COURT: Foundation. Sustained.

18 MR. GILLIAM: May I approach?

19 THE COURT: You sure may.

20 (Whereupon, a bench conference was had.)

21 THE COURT: You may proceed.

22 MR. GILLIAM: Thank you.

23 THE COURT: You are welcome.

24 Q (MR. GILLIAM) You testified that Ms. Donevant
25 wasn't on time 35 percent of the time; is that what

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 you said?

2 A No. He asked if she was out of the office or
3 AWOL, and I would say about 35 percent of the time.

4 Q What period of time are you talking about here?
5 When you say 35, what period of time?

6 A I'm talking during the day.

7 Q I mean is that based on -- from what point are
8 you -- is that time frame based on?

9 A 8:00 to 5:00.

10 Q I mean are you talking from when you were hired
11 in 2008 to when she was fired?

12 A Yes.

13 Q Okay.

14 MS. GOLDING: She wasn't hired in 2008.
15 January 2011.

16 Q (MR. GILLIAM) You were hired 2011, I'm sorry. So
17 you are talking about 2011 to when she was terminated?

18 A Yes.

19 Q Did you keep any log or journal as to when you
20 couldn't find her?

21 A No, absolutely not.

22 Q So that is based on your recollection as you are
23 here today?

24 A Yes.

25 Q Are you aware of the reason for Ms. Donevant's

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 termination?

2 A We were told that it was failure to follow
3 instructions.

4 Q Didn't have anything to do with not being on
5 time?

6 A Not to my knowledge.

7 Q Are you aware of when Ms. Donevant returned to
8 work on March 13, 2012 the instructions that Mr.
9 Duckett gave her, not to -- I want to get this correct
10 -- not to reverse anything that was done in her
11 absence; are you aware of that?

12 A Yes.

13 Q By Ms. Donevant issuing the stop-work order on
14 March 20, 2012, was that reversing anything that was
15 done in Ms. Donevant's absence?

16 A No.

17 Q So that was not a violation of Mr. Duckett's
18 instructions when Ms. Donevant issued the stop-work
19 order on March 20, 2012, was it?

20 A No, I wouldn't think so.

21 Q Also -- I want to talk about this. Are you aware
22 that Mr. Duckett instructed through Ms. Fellner that
23 Ms. Donevant was to report directly to him and not to
24 Ms. Fellner; are you aware of that?

25 A No, I was not.

SEBRINA MORRIS - CROSS-EXAMINATION BY MR. GILLIAM

1 Q Fair enough. On the issue of reporting,
2 generally, I think you testified that while Ms.
3 Donevant was absent and on medical leave, the City of
4 Myrtle Beach and City of Conway were doing code
5 enforcement at that time?

6 A Yes.

7 Q And that means they were issuing stop-work orders
8 and things?

9 A Yes.

10 Q Job of a building official?

11 A Uh-huh.

12 Q Okay. And Mr. Duckett would have been the town
13 administrator; is that correct?

14 A Yes.

15 Q Did the City of Myrtle Beach or Conway report to
16 Mr. Duckett before they issued a stop-work order?

17 A To my knowledge they didn't issue any stop-work
18 orders, but they would not have.

19 Q They would have not have. Okay. Would they be
20 required to report to Mr. Duckett that they had, in
21 fact, issued a stop-work order?

22 A No.

23 Q And currently it is Kevin Otte who holds the
24 position that Ms. Donevant had as building official?

25 A Yes.

SEBRINA MORRIS - REDIRECT EXAMINATION BY MR. THOMPSON

1 Q And so he is the person that issues stop-work
2 orders and stuff?

3 A Yes.

4 Q And currently the town administrator is Ms.
5 Fellner?

6 A Correct.

7 Q So if Mr. Otte is going to issue a stop-work
8 order, does he have to report to Ms. Fellner that he'll
9 do that?

10 A He doesn't have to, no.

11 Q Does he have to report to Ms. Fellner about the
12 fact that he issued a stop-work order?

13 A No.

14 MR. GILLIAM: That is all I have. Thank you.

15 REDIRECT-EXAMINATION

16 BY MR. THOMPSON:

17 Q Do you report any significant activity in the
18 building and planning department to the town
19 administrator?

20 A Yes.

21 THE COURT: Any objection to the witness being
22 excused?

23 MS. GOLDING: None from the Plaintiff.

24 MR. THOMPSON: None, Your Honor.

25 THE COURT: You are excused.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Q And what does -- let's talk about Surfside. What
2 does the town administrator of Surfside do, in summary?

3 A Well, in a council form of government, which
4 Surfside beach is, the council operates both as the
5 legislative body, pass laws, and they are also
6 responsible for the executive branch. But the way the
7 ordinance was written during the time I was there was
8 that the administrator was given manager -- city
9 manager type of duties in that the administrator ran
10 the day-to-day operations and was responsible for
11 making the train run on time, so to speak, for hiring
12 and firing department heads. I think the ordinance
13 stated with permission of council.

14 Q And what was Jackie Donevant's job while you were
15 there?

16 A She was a director of a department, and she also
17 was the building official.

18 Q And to whom did she report directly? Who was her
19 direct report?

20 A Supposed to report to me.

21 Q And when you got there, were you given
22 information about Ms. Donevant as an employee? What
23 was your initial impression from information you got of
24 Ms. Donevant as an employee?

25 A Any time I go somewhere, I make it a point to

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 meet with all the members of council individually, and
2 I did that in the first week I was in Surfside Beach.
3 Members of council bring in -- some of them brought in
4 typed out sheets of things they wanted to talk to me
5 about. They bring their own impressions of employees,
6 good employees, poor employees. Quite frankly, in any
7 city there is always some -- the building official is
8 always under some pressure because the building
9 official has to tell people no, so there is always
10 going to be negative -- negativity, and sometimes it is
11 because a council member, herself or himself, was made
12 to jump through hoops by the building official. Same
13 thing happened in Waltherboro when I got there. There
14 was complaints about the building official there who is
15 a very competent individual. That is just the nature
16 of the game.

17 So I took whatever impressions that council
18 members had about different employees, I took them
19 under advisement, but I think it is my duty, and it is
20 my practice, to form my own opinions about employees
21 and their work.

22 Q While you were the town administrator, did you
23 get involved in permitting decisions or decisions about
24 inspections?

25 A Absolutely not.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Q Did you countermand a permit or an inspection
2 decision from the building department?

3 A No, sir.

4 Q Did you ever get questions from council members
5 about these decisions?

6 A Constantly got questions from council members and
7 citizens. It is a normal practice that if you don't
8 like a decision, you go to the manager or you go to the
9 administrator. Oftentimes I would walk -- take the
10 short walk down the hall, as I've always done, and find
11 out what's going on with a particular case, and then I
12 was able to report to whomever about why a decision had
13 been made by the appropriate authority.

14 Q When you walked down the hall to find out about
15 the answer to some question that you were given, who
16 would you look for to get that answer from?

17 A At Surfside I looked for Jackie Donevant.

18 Q As a result of any inquiry from council or a
19 builder or citizen, did you ever countermand or try to
20 override a decision regarding a permit or an inspection
21 or stop-work order?

22 A No, sir.

23 Q Do you recall the June 2011 document that you had
24 Ms. Donevant create regarding her punctuality?

25 A I do.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Q If you will take a look --

2 MS. GOLDING: I'll object and move that it is
3 stricken.

4 THE COURT: No speaking objections. Please
5 approach.

6 (Whereupon, a bench conference was had.)

7 THE COURT: You may proceed.

8 Q (MR. THOMPSON) Do you recall Defendant's Exhibit 1?

9 A Yes, sir. I do.

10 Q Can you tell the jury what led up to this and how
11 this came about?

12 A Well, oftentimes when I would go down to look for
13 Jackie, she wasn't there. Certainly it is part of the
14 building official's job to be out of the office and to
15 do inspections and I simply would want to know when she
16 would be back, those kinds of answers. A lot of times
17 staff didn't know where she was or when she would be
18 back. Particularly, working hours were 8:00 to 5:00.

19 I've been very flexible with people, particularly
20 with department heads. The higher you go, the more
21 flexibility you ought to have. I'm not a stickler for
22 finals, but a lot of times if I couldn't find somebody
23 at 10:00, 11 o'clock, that is unreasonable. I think
24 people should communicate with you if they are not
25 going to be there for a significant portion of the day.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 I asked that -- I asked Jackie to let me know if she
2 was going to be out for any reason, not for me to find
3 out from someone else.

4 On, I guess, this day, June 17th, I couldn't have
5 told you what day it was, but I went looking for Jackie
6 and she wasn't there. I called her on the phone,
7 didn't get an answer. Various people tried to get in
8 touch with her. Several hours later, when some other
9 employee got in touch -- I was told her husband -- on
10 his cell phone, they were in Columbia at an
11 appointment.

12 When Jackie did call me, I think it was
13 mid-afternoon, I don't know exactly, but she was a
14 little bit irate. She said I told you we had this
15 appointment some time ago. I said I'm sorry, I don't
16 remember that. So that wouldn't have been -- well, it
17 could have been this day, I don't remember. But we had
18 a conversation about letting me know.

19 As a result -- my management style is fairly
20 informal and sometimes -- what I was trying to do is
21 get Jackie's attention without having some big official
22 warning, something that goes in your personnel file.
23 So I wrote, under No. 1, Since Jim Duckett has a poor
24 memory -- I thought that was a way to lead, since I
25 obviously don't remember that you'll be out a

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 particular day or afternoon -- I will, in the future,
2 send him an E-mail if I will not be into work by 9:00
3 a.m. each day. I thought that was reasonable to send
4 me an E-mail or communicate with me that you will not
5 be there. I wrote a two, three, four, five, and six,
6 and I put an "S" and a blank and I gave it to her. She
7 didn't fill it out as I asked, and I went back and
8 asked a couple of times. Subsequently, she did bring
9 it to me.

10 Q Did you make her do that in front of other
11 employees?

12 A I don't recall making her do it in front of
13 anybody. I asked her just to do it.

14 Q And were there any follow-up conversations with
15 Ms. Donevant regarding this?

16 A Yeah, there were. It came to my attention from
17 other people that she was very upset about it, and so I
18 talked to her about it. In fact, I apologized. In
19 fact, I think I apologized to her on at least three
20 occasions. I wasn't attempting to publicly embarrass
21 her, I just wanted to get her attention.

22 Q And before this, had you spoken to Ms. Donevant
23 about her being AWOL during the day?

24 A I asked her to make sure that if she was going to
25 be out of the office, to let one of her staff members

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 know so they could tell me where she was and when she
2 would be back if she wouldn't tell me directly.

3 Q Before this, June 17th, Exhibit 1, do you have
4 any idea how many times you might have spoken to Ms.
5 Donevant about being missing?

6 A I don't know specifically. Two, three times
7 perhaps. I would have had to addressed it before I
8 dealt with it in this way.

9 Q And who did you tell Ms. Donevant you were going
10 to do with this Exhibit 1?

11 A I told her -- it's been my practice over many
12 years in management that when there is any kind of
13 employee discipline, that I don't -- I either hold on
14 to it without putting it into their personnel file, or
15 if it is put in the personnel file, I ask them to
16 remind me in one year -- because I might not
17 remember -- and if they were performing well, I would
18 remove -- I've always removed any negative information
19 in somebody's personnel file after a year of good
20 behavior, so to speak.

21 In this case, I put it in my bottom right desk
22 drawer and I said, Remind me in six months, and if
23 there is no problems, I will get rid of it, I'll tear
24 it up and throw it away.

25 Q And did you remove it, tear it up and throw it

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 away?

2 A Evidently I did not, because here it is.

3 Q Why would you not have in her case?

4 A I don't think she asked me to, is my
5 recollection.

6 Q Did her performance with regard to attendance and
7 punctuality improve after this?

8 A I think it was a month or so or less than a month
9 or a little more than a month after this exercise that
10 I went looking for her after 9:00, and she wasn't
11 there. So I asked Ms. Fellner to prepare a written
12 warning, and Ms. Fellner informed me there was a form
13 for that. I don't like government forms, I like to
14 create my own forms. So I asked Micki to create a form
15 that had in huge letters "warning." I simply put in
16 there something to the effect of we talked about this
17 and you weren't here and you didn't communicate with
18 me, and I had Jackie in the office and I had her sign,
19 and she willingly signed. She said you're right, my
20 bad, I think she said, and she signed it.

21 Q And take a look at Exhibit 2 and tell me if that
22 is the written warning that you just testified about?

23 A Yes, it is.

24 Q To your knowledge, what was your impression of
25 her attendance and punctuality after that warning?

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 A I think Jackie attempted to communicate better in
2 that area. She would send E-mails and sometimes would
3 call, tell me she was running late, something like
4 that.

5 Q Did you have any trouble from Ms. Donevant
6 signing that written warning?

7 A No, sir. I think I just said that she said --
8 she admitted that that was true, that she wasn't there,
9 and she understood she was to let me know.

10 Q Take a look, if you will, at Defendant's Exhibit
11 3. Can you tell the jury what this document is and how
12 it came about?

13 A Yes. This is an employee performance evaluation.
14 I'll try to be brief, because I know I tend to explain
15 things too much sometimes.

16 When I got to Surfside Beach, they weren't doing
17 employee evaluations because there hadn't been any
18 money to give raises. Some people theorize that there
19 is no sense of evaluating employees if there is no
20 money to give them a raise. I think you need to
21 evaluate employees in any case. I do it in a very
22 simple way, so simple that no one ever published it
23 because it puts consultants out of business.

24 I think anyone can evaluate anyone else's
25 performance if you give them a number between one and

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 ten. I submit to you that I proved it with councils in
2 four different cities. After they have been trained a
3 little bit, I can call a council member and say I'm
4 doing an evaluation on Jane Smith, John Doe, that time
5 of the year, give me a number between one and ten, and
6 they're able to give me a number.

7 In the beginning, people asked for criteria, and
8 the criteria is whatever your criteria is. So what I
9 did was I did evaluations on the six people that
10 reported directly to me, and I explained to all six of
11 them -- actually five, because Ms. Fellner was the
12 deputy administrator and she didn't do evaluations on
13 people, but she did help me with the ones that I did.
14 I asked all of our department heads to do a simple
15 form, just like the one I have here, and I won't go
16 into detail, but department heads have a way of
17 expanding simple forms.

18 All I do is I give people a number between one
19 and ten and then I make comments, and it is usually two
20 to six comments about things that are significant. I
21 put a lot of thought into these three comments that I
22 put on Ms. Donevant's evaluation.

23 Q I'll bring up that exhibit. Can you tell the
24 jury what I just highlighted, what is the significance
25 of that?

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 A A scale of one to ten, a six is not very high.

2 Q How did the other department heads do, if you
3 recall?

4 A I do recall. Out of six people that reported to
5 me, four got a nine, I might have given them a 9.5
6 even, one of them got a seven, and one got a six.

7 Q Ms. Donevant was the six?

8 A Yes, sir.

9 Q Who was the seven?

10 A The fire chief was the seven.

11 Q As a result, what kind of raise did the fire
12 chief get?

13 A Got a minimum raise.

14 Q And Ms. Donevant?

15 A She got no increase.

16 Q Is there a reason you didn't mention using the
17 word "attendance," or "punctuality" in the evaluation?

18 A Well, in my view, your time is not of great
19 importance. Being on time for a department head, it is
20 what you accomplish, is what I try to evaluate people
21 on.

22 Q Was there an issue with accomplishing things with
23 Ms. Donevant?

24 A There was.

25 Q What was that issue?

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 A Did you -- the issue was that -- two issues. One
2 is that she was gone to training a lot. When she was
3 at training, she obviously was not at work, and when
4 she's not at work, she wasn't getting work done.
5 Because of the nature of Surfside Beach being so small,
6 there is one person doing what she did. I worked in
7 places where there is four to six people that could do
8 part of those duties, so if one person was out, it
9 wasn't that big of a deal.

10 The other thing was that oftentimes it seemed to
11 me that Jackie was not focusing on her work even when
12 she was in the office.

13 Q Did you discuss the performance with Ms.
14 Donevant?

15 A I did.

16 Q Did there come a time when Ms. Donevant gave you
17 something in writing in response to this performance
18 review?

19 A I recall that some time long after -- the date on
20 this was September 28th. I don't know whether it --

21 Q Take a look at Exhibit 4, Mr. Duckett.

22 A Yes. November 29th, so about 60 days later.

23 Q What, if anything, did you do with this
24 evaluation in rebuttal?

25 A I wrote a handwritten note on here and said,

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 A I said I'm not honoring that. Those people
2 aren't on council. In my opinion, they didn't have
3 authority to do that. I believe that the ten years
4 thing was in writing. I think I pulled that from her
5 personnel records. That was documented, and I
6 certainly was going to grant something that was in
7 writing.

8 Q Okay. And when she came back from leave, do you
9 recall any instructions you gave her with regard to
10 what was done, things done in her absence? Tell the
11 jury about that.

12 A Yes. While Jackie was out on medical leave it
13 came to my attention that -- that she was having --
14 that others were having contact with her and that she
15 was asking for things to be done, and when she came
16 back and -- and this is probably the only time in all
17 of my 30 plus years of being a manager -- I wanted to
18 sit down with her and make it clear that I didn't want
19 her going back over any permits that were issued by the
20 professionals that we had an agreement with, primarily
21 from Myrtle Beach. I didn't want her going back and
22 revisiting any of those decisions.

23 As a matter of management, I had a witness for
24 that meeting, the town clerk was in my office, and we
25 were behind closed doors. As I -- the reason I had the

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 town clerk is because she's a real take charge kind of
2 person, and I knew without me ever saying it to her,
3 and I didn't ever say it to her, that she would go back
4 and memorialize the meeting and would have it somewhere
5 in a file in case it ever came up.

6 Q And was there any particular thing that happened
7 during her medical leave that prompted you -- any
8 particular thing more than other things that prompted
9 you to give that instruction?

10 A One thing I remember is there was someone that
11 wanted to remove a tree. I was told that Jackie called
12 Ms. Morris and asked her as a favor to go out and do
13 the tree permit. As I recall, Ms. Morris didn't do
14 that, and subsequently it came to my attention that
15 that individual removed the tree without a permit. As
16 a result, they had been issued a ticket, summons to
17 court. It was my expectation that Jackie probably
18 would want to be involved in that and maybe run
19 interference for that person when she got back.

20 Q In that particular instruction, was there
21 anything specifically mentioned regarding the pier?

22 A I just said that whatever had been done, whatever
23 had been approved by Myrtle Beach was done, and that
24 she needed to focus her attention when she came back on
25 new things that were coming in. One of the things --

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 one of the advantages of having Myrtle Beach is that
2 they have a big staff and very specialized staff.

3 For example, we had gotten spoiled because
4 whereas Jackie had to do all of these different jobs
5 when she was there, Myrtle Beach had a person that did
6 plan reviews, and that is all they do. So when plans
7 come in, in any city that I'm aware of in South
8 Carolina, builders always want their plans reviewed as
9 quickly as possible. According to what your backlog is
10 and how stacked up things are, it can take more time
11 than you would like it to. So we were getting plan
12 reviews turned around in three days, and that is just
13 unheard of.

14 Q What was it normally at the Town of Surfside?

15 A When Jackie got to it, when Jackie was there.

16 Q When she came back from leave, what was your
17 understanding as to the status of the restaurant
18 project at the pier?

19 A My understanding is that they had a permit for
20 demolition, and they were applying for whatever the
21 next permit is, some kind of construction permit, and
22 that was in the hopper, and that is what I knew at that
23 time.

24 Q While she was out on leave -- really -- let me
25 backtrack.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Do you recall the inspection ticket that she
2 issued that had the stop-work order instruction on it?

3 A Yeah. Regretfully, I do recall that.

4 Q From the time she was on leave until she issued
5 that ticket, did you on occasion go out to the pier to
6 see how the project was progressing?

7 A I'm a manager by walking around by my very
8 nature, and I probably was at the pier three, four,
9 five times a week. Pier Outfitters is another business
10 that was there that the town has a 62 page contract
11 with, and that has caused some grief from time to time,
12 but nice people run it. It is a fishing pier, and I
13 oftentimes would take a walk out to the end of the pier
14 and talk to the fishermen.

15 Q Did you look at the restaurant project going on?

16 A I walked by there. Shawn and Bill were the two
17 owners. Bill was primarily getting the place in shape,
18 and I spoke to him and usually shook their hand as I
19 went by.

20 Q I want you to tell me or describe to the jury, if
21 you would, your understanding, if any, of what a
22 demolition permit allowed versus what it did not allow,
23 and I want you -- you may have a different
24 understanding now, but I want you to focus on the
25 understanding you had at the time, if any, that Ms.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Donevant issued the inspection ticket.

2 MS. GOLDING: Object to foundation, witness
3 not qualified.

4 THE COURT: Please approach.

5 (Whereupon, a bench conference was had.)

6 THE COURT: Overruled. You can answer to the
7 best of your knowledge.

8 Q (MR. THOMPSON) Do you need me to repeat it?

9 A No. I'll tell you up front that I don't profess
10 to have an overriding interest or knowledge of
11 building -- I have never built anything. I've never
12 been employed with a construction business. I've
13 always had good advisors in a town or city to have
14 eight, nine, 12, 14 moving parts, as in department
15 heads, and I have always depended implicitly on the
16 building official to answer my questions when I get
17 questioned by other people of why are they doing this
18 or that. I have no knowledge.

19 Q Did you have any inkling back in March of 2012
20 that the restaurant project was doing stuff outside of
21 a demo permit and that was wrong?

22 A I did not.

23 Q Did you have knowledge even to reach that
24 conclusion?

25 A I didn't know.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Q Who was handling inspections and plan review for
2 the restaurant project while Ms. Donevant was out?

3 A City of Myrtle Beach.

4 Q When did you first hear that Ms. Donevant had
5 inspected the restaurant project and issued an
6 inspection ticket?

7 A I don't know exactly. It was sometime that
8 afternoon. I remember -- what I remember is going home
9 and changing clothes. I would go home and change
10 clothes, and in good weather ride my bicycle around
11 town and do whatever. I do specifically -- what I
12 specifically remember is it was election season, like
13 it is now in Surfside Beach, and there was a guy, Bill
14 McGown, who was running for council. He's a person who
15 I have little regard. He was in my driveway being his
16 political self. I asked him to leave my property. I
17 did not want him on my property. I told him that I
18 wish he wouldn't be speaking to the press about things,
19 criticizing the town things that he knew nothing about.
20 I remember leaving from there and going to the pier.

21 At some point, you know, I was carrying two
22 phones. I had a town owned phone, and I got several
23 calls from various people, specifically I remember
24 getting a call from Micki asking me had Jackie called
25 me, and she had not. I got a call from Doug Samples,

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1 who is now the mayor, and he was on his way to the pier
2 to do some kind of interview. There was a camera crew.
3 I walked up to the restaurant and there was an
4 inspection report -- that is it here.

5 Q Exhibit 5, if you want to look at it in your
6 book.

7 A And I remember going up to the door and looking
8 at it. In a fit of anger, I tore it off the door and I
9 immediately -- then they activated the camera, and I
10 don't know how many times everybody else saw it on the
11 news, but I saw it way more times than I ever wanted
12 to. But it was -- I do get angry, and I was angry
13 mostly at Bill McGown, but that is neither here nor
14 there. Immediately when I did that, I won't say what I
15 said under my breath, but I went into the Pier
16 Outfitters and I asked them for some tape. I went and
17 taped it right back up where it had been.

18 Q Why did you tape it?

19 A Because I knew I didn't have the authority to
20 remove it.

21 Q And you mentioned something that reminded me.
22 What were your normal office hours like?

23 A I don't think there is such a thing for a manager
24 or administrator to have normal hours, because it is
25 24/7. But my normal practice was to go in early. I'm

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 council thought she did a good job. Even before I
2 started, I think the contract was finalized, but before
3 I started, Micki called me one day and said, Jim, some
4 people on council want me to get the title of assistant
5 administrator or deputy administrator, but I don't want
6 them to interfere with whatever plans you have, I just
7 wanted to give you a heads up that that move was afoot,
8 and I said I'm perfectly good with that; in fact, that
9 will save me from having to sell that idea six months
10 from now, so that is perfect with me. I didn't care
11 whether it is assistant deputy, because what made us a
12 good fit is that she's strong in all of the areas where
13 I'm not strong, computer work and attention to detail.
14 I like to get out and about and spend time with what I
15 call running a daycare, when you deal with council
16 members all day, it's about the same thing.

17 What had happened -- and I'll tell you all of
18 this not because I think the jury wants to be here all
19 day on a Friday, but I tell you this to say that part
20 and parcel was the question then would be what would
21 her job description be. Job descriptions, like
22 evaluations, they have opinions on them. The job
23 description to me was certainly your deputy is in
24 charge when you are not there, everybody understands
25 that. Every job description anywhere has an item

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1 whether it is nine, ten or 11, all other duties that
2 may be assigned. So I basically said her job
3 description was that she was in charge when I wasn't
4 there. I added that she had the same authority that I
5 had when I was there, and I wanted everybody to
6 understand that. It was like a two-headed
7 administrator, and the rest of her job description was
8 all other duties that may be assigned.

9 So Jackie, unlike the other department heads, had
10 taken that seriously. So Jackie, in my opinion, pretty
11 much avoided dealing with me, and she dealt with me
12 only through Micki. I sometimes learned from Micki a
13 day or two after an event about something that I would
14 have liked to have knowledge sooner about.

15 Q And speaking of that, was it unusual for the
16 building department director to report events of
17 significance in that department to you, or to Micki?

18 A I'm not sure I understand your question. Is it
19 unusual --

20 Q If something significant happened, would you
21 expect the building --

22 A I would expect every building head in every city
23 I worked in to give me a heads up. Rule of thumb is
24 give me no surprises. Give me a heads up if I need to
25 know.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 A No, sir.

2 Q So, if you could, describe for the jury what was
3 the issue that you were mainly concerned about in
4 trying to communicate with Ms. Donevant on March 21 in
5 this disciplinary meeting?

6 A I was trying to communicate that I was blindsided
7 with a TV crew and all kinds -- a council member
8 calling about what was going on, and if I had simply
9 been told whenever it was issued a couple hours before
10 that that is what happened, that would have been fine.

11 Q And what did you ask Ms. Donevant to do regarding
12 this written reprimand?

13 A I put on here, in my handwriting, I have received
14 a copy, and I put a line and I put her name underneath
15 it for her to sign that she received a copy.

16 Q Did you ask her to sign it?

17 A I did.

18 Q What was her response?

19 A She said she would not sign it because it was not
20 true, she had not called Micki.

21 Q I don't understand. What do you think she was
22 trying to say?

23 MS. GOLDING: Objection.

24 THE COURT: Basis?

25 MS. GOLDING: Question is improper, seeking

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 thoughts of another person.

2 MR. THOMPSON: I asked him about his
3 understanding, Your Honor, that was my intention.

4 THE COURT: That is not how you asked it.

5 MR. THOMPSON: Okay. I apologize.

6 THE COURT: The objection is sustained,
7 speculative. You may rephrase it.

8 Q (MR. THOMPSON) What was your understanding of what
9 Ms. Donevant meant by saying she didn't call Micki?

10 A As I recall, it may have been that she was -- Ms.
11 Donevant came back to the office -- anyway, later it
12 turns out that they had talked, but she was -- she was
13 -- I think Jackie was adamant about the fact that she
14 had not called Micki, and so that is why I recall that
15 she was refusing to sign it, because it wasn't
16 accurate.

17 Q And what is the reason you have employees sign
18 disciplinary documents?

19 A Just that they have received a copy, that's all.
20 So later they can't say, I never saw this.

21 Q So when she refused to sign, what was your
22 response?

23 A I wrote on there "refused to sign" and put my
24 initials.

25 Q Take a look at Exhibit 8. Tell the Court about

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Exhibit 8.

2 A Exhibit 8 was the second sheet of paper that I
3 had on my desk after I turned the first one over, then
4 I had an order of suspension.

5 Q What did you tell Ms. Donevant about Exhibit 8,
6 if anything?

7 A I said she was suspended for three days effective
8 that day. She was not to perform any duties related to
9 her job at the Town of Surfside Beach during the
10 suspension. This was due to her inability to follow
11 directions, and I put in parentheses "see reprimand,"
12 same date.

13 Q The reprimand is Exhibit 7?

14 A Yes, sir.

15 Q Did Ms. Donevant look at and review Exhibit 7 in
16 that meeting?

17 A Yes.

18 Q Did Ms. Donevant sign Exhibit 8?

19 A She did.

20 Q If Ms. Donevant had not signed Exhibit 8, if you
21 would, describe if you had an idea of what you would do
22 next, what would that have been?

23 A I had it already written out.

24 Q What was that?

25 A She was going to be terminated.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Q Why would she have been terminated if she didn't
2 sign it twice?

3 A It is just -- it's just a state of mind. It is
4 an attitude, rejecting any authority. She one time
5 told me, you know, I never had a boss before. I said,
6 well, you have one now. It's just -- you know,
7 building officials have a lot of authority and a lot of
8 authority that is not reviewable, but they still have
9 bosses and they have to inform their bosses what they
10 are doing, and they have to communicate. That is not
11 -- I'm not going to excuse someone from answering to me
12 that way.

13 Q Okay. In your practice as a supervisor, the
14 signing of document like a performance review or
15 written warning, do you intend that to be the employee
16 agreeing with everything that is in there?

17 A Absolutely not.

18 Q So what is the purpose?

19 A The purpose is that they will never be able to
20 say that they didn't receive that and that they didn't
21 -- that that conversation didn't occur. You are
22 providing a written record of people's performance
23 activities.

24 Q Did Ms. Donevant give you -- did she refuse in
25 any manner or indicate with reluctance to sign the July

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 written warning or her performance review in September?

2 A No, sir.

3 Q Okay. So she was suspended for three days. What
4 happened when she returned to work?

5 A I told her when she came to work, come see me,
6 when she reported back to duty come back and see me.

7 Q Did she?

8 A She came into the building and poked her head in
9 the office I had a council member in my office, so I
10 told her I would see her shortly.

11 Q So what happened in that meeting?

12 A Then, when the council member left, I went down
13 to her office to get her and she was conducting
14 business just as nothing had happened.

15 Q And what was the problem with that?

16 A It's just -- you know, when you suspend somebody
17 from duty and you take the key to the building and the
18 key to the truck and their ID, it is just a standard
19 practice that when they return to work they return
20 through the same place they left, they come back to
21 you, they just don't assume their duties until they are
22 reissued -- you know, with police officers sometimes
23 you take the uniform and car and everything until they
24 come to duty, and then you reissue them.

25 Q Tell me about the meeting that you had with Ms.

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 Donevant, how that went and what was discussed.

2 A She came in with an unusually good attitude. I
3 felt like, well, I'm finally getting through, we're
4 making progress. This could work out. Then, I don't
5 remember whether she left it on my desk as she left or
6 whether she brought it to me later, but there was an
7 envelope with a message in it that I did not see until
8 later.

9 Q Going back to the meeting, do you recall anything
10 else about what you discussed and why you had this
11 conclusion that it was a good meeting?

12 A I just remember that it felt -- I felt positive.
13 I felt that things were on the amend, they would work
14 out.

15 Q Did you discuss again why you were not happy with
16 the events of March 20th?

17 A If I did, I don't recall that.

18 Q That's fair. So you started to mention -- take a
19 look at Exhibit 11, Mr. Duckett. Tell us again how you
20 got this?

21 A It was in an envelope. I think it was taped shut
22 with my name on it, on the outside.

23 Q Where was it located?

24 A It was on my desk.

25 Q And had you seen Ms. Donevant that day or after

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 this suspension meeting at any time before you got this
2 envelope, if you recall?

3 A I don't recall. I'm just looking at the date.
4 The suspension meeting -- I don't remember what day it
5 was that she returned to work. It was a Monday. I
6 don't know if that was -- I think it was. I'm not
7 sure. I don't know whether -- I don't know if that was
8 March 26th. I don't know if I got this the same day.
9 I think I did, the same day she came back to work, but
10 I'm not a hundred percent sure.

11 Q What was your reaction to getting this letter
12 from Ms. Donevant?

13 A My reaction was, Oh, my goodness, we haven't made
14 any progress at all.

15 Q Why did you feel that way?

16 A May I have a moment to read it?

17 Q Absolutely.

18 A (Witness examines document.) She said, Like I
19 told you the other day, I'll follow the law even if it
20 means not following your instructions. You have been
21 picking on me and treating me badly for a long time
22 even though I do my work by the book and I'm dedicated
23 to the town.

24 I'll tell you what my thought was. My thought
25 was she's involved some kind of lawyer, because it

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1 looks like it was written by a lawyer, not something
2 Jackie would write.

3 Q In the meeting you had with her when she returned
4 from suspension, or the meeting before she was
5 suspended, did you tell Jackie anything like, You are
6 not to follow the law, you are not to issue stop-work
7 orders, anything like that?

8 A No, we had never had a conversation like that.

9 Q So was this letter consistent at all with the
10 reasons you gave Ms. Donevant for disciplining her?

11 A No.

12 Q Now, did you reach -- what, if any, conclusion
13 did you reach regarding terminating her employment
14 immediately after receiving this -- strike that.

15 How did we get -- what was your process in
16 getting from this letter to the decision to terminate
17 her employment a couple of weeks later?

18 A Probably the biggest event that happened -- well,
19 an event happened, and I made a decision. There was an
20 election, and based on who was elected, I didn't have a
21 desire to work for some of those people, and so I made
22 a decision that I was going to resign, you know,
23 consistent with my contract, as is my normal practice,
24 when I leave some place, I try to clean up any mess
25 that has existed so that the next person doesn't have

JAMES DUCKETT, JR. - DIRECT EXAMINATION BY MR. THOMPSON

1 to come in and deal with it. So it was only after I
2 decided that I was going to leave that I decided to
3 terminate Jackie's employment.

4 Q What problems -- and I know we talked about them,
5 but what problems with Jackie did you consider in the
6 calculus in making the termination decision?

7 A I just thought that she was not a good employee,
8 not a team player and not the kind of department head
9 that a new administrator should come in and deal with.

10 Q And all of the problems that we've discussed
11 during the time you were there with Ms. Donevant, did
12 all of those factor in?

13 A Each and every one.

14 Q Had you had to make termination decisions before?

15 A Many times.

16 Q And what is your philosophy regarding terminating
17 an employee?

18 A I hate to terminate employees. I believe if you
19 know anybody that enjoys it, they're sick. They have a
20 problem. I had to do it week before last. Same
21 situation, I had an employee in Walterboro, department
22 head not doing the job. I didn't want to leave that
23 person there for the new city manager to have to deal
24 with.

25 Q What are the kind of factors you consider in

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 enjoyed your break. We'll resume with
2 cross-examination of the witness.

3 CROSS-EXAMINATION

4 BY MS. GOLDING:

5 Q I did understand you to say that on April 4, the
6 day you fired Jackie, that you knew you were going to
7 resign from your position with the Town of Surfside?

8 A That is correct.

9 MS. GOLDING: I have Mr. Duckett's deposition
10 that I placed in front of you.

11 (Court's Exhibit 4 marked.)

12 Q (MS. GOLDING) I took your deposition early
13 November 2012; is that correct?

14 A Whatever it says, yes, sir.

15 Q And 2012, that is the year you terminated Ms.
16 Donevant; is that correct?

17 A That's correct.

18 Q Go to Page 103 of your deposition. I want you to
19 read Line 2, and I want you to read your answer slowly
20 to this jury, Line 2.

21 A Okay. Answer: Well, I resigned, for one thing.
22 I didn't know on April the 4th I was going to resign,
23 but I -- sometimes -- something happened between April
24 the 4th and whenever I sent the letter, which is one of
25 the exhibits that made me decide I hadn't -- I hadn't

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 made a decision that I was leaving. I became part of
2 the changes, too.

3 Q With respect to Ms. Donevant's termination
4 April 4th, you did not tell Ms. Donevant any reasons
5 for the termination other than, We are making changes,
6 that's the only statement you made to Ms. Donevant when
7 you terminated her on April 4; is that not correct?

8 A That's correct.

9 Q And between the date when Jackie returned to
10 work, or between the date you issued Ms. Donevant that
11 suspension, and the date you terminated her on
12 April 4th, therefore, between March 1st and April 4th,
13 there wasn't one thing Ms. Donevant did that was wrong;
14 is that not correct?

15 A As far as I can recall.

16 Q With respect to terminating Ms. Donevant, you
17 don't know when you made that decision to terminate
18 her; isn't that correct?

19 A I think it is fair to say that I thought about
20 that decision many times, yes.

21 Q Would you go to Page 98 of your deposition.

22 A I don't have it, I don't think.

23 Q It's right there.

24 A What page?

25 Q 98. I'll read the question and answer.

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 Question: So when did you make the decision to
2 terminate -- terminate Ms. Donevant on April 4, 2012?

3 Your answer was: I don't know.

4 Is that correct?

5 A It is.

6 MR. THOMPSON: I ask that the witness be
7 allowed to read the rest --

8 THE COURT: You can do that on redirect. You
9 may proceed.

10 Q (MS. GOLDING) Now, Mr. Duckett, it's also -- with
11 all of your past experiences, you've also been
12 involved in consulting and being an expert witness in
13 prison cases or wrongful death cases; isn't that
14 correct?

15 A Correct.

16 Q And you've done that for a number of years; is
17 that correct?

18 A Three or four.

19 Q You'll agree that Jackie Donevant is extremely
20 knowledgeable with respect to the building code and
21 construction industry?

22 A Absolutely.

23 Q And when Ms. Donevant issues any type of permits
24 or stop-work orders, you knew as town administrator
25 that she did that based on her knowledge of the

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 building code and the Town of Surfside's ordinances; is
2 that correct?

3 A Yes, ma'am.

4 Q When Ms. Donevant was asked to write out, like in
5 grade school, in June 2011 a sentence that you asked
6 her to write out, you agree that that was -- you were
7 treating her like she was in grade school; is that not
8 correct?

9 A In a way, yes, that's correct.

10 Q And, in fact, you thought it was a joke or it was
11 comical that you asked her to do that; is that not
12 correct?

13 A I thought it was an attempt on my part to get her
14 attention without making it serious, like as in a
15 reprimand.

16 Q Wasn't this your attempt to be comical?

17 A I guess. I do that a lot.

18 Q Let me go to your deposition, Page 27. Have you
19 got it?

20 A Yes, ma'am. 26?

21 Q 27. 27, Line 2. I'll read it out.

22 I was just -- it was an attempt to be somewhat
23 comical, but at the same time communicate that I need
24 to know when you are not going to be in.

25 Is that what you said?

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 A Yes, ma'am.

2 Q You were trying to deal with this in a kidding
3 manner; is that correct?

4 A Yes, ma'am.

5 Q And when you apologized to Ms. Donevant, you
6 apologized several months later; is that not correct?

7 A I don't remember when the first time was.

8 Q You didn't apologize to Ms. Donevant shortly
9 after you were being comical, did you?

10 A I don't know what the time frame was.

11 Q It's a fact that you did not use this fowl with
12 any other Surfside employees; is that correct?

13 A It's fair to say that no other employees were
14 written up in any way.

15 Q Well, Mr. Duckett, you consider this comical
16 attempt on your part to be a write-up?

17 A I'm sorry, I was trying to answer your question
18 that I deal with other employees the same way, and my
19 answer was attempting to say that I didn't have to deal
20 with other employees in this manner.

21 Q My question was, are you now telling this jury
22 that this comical attempt you made on June 17 with Ms.
23 Donevant was a write-up?

24 A Not per se.

25 Q It's a fact that you did not intend that this

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 write-up -- excuse me, not write-up, that this attempt
2 you made -- let me strike that.

3 It is a fact that Ms. Donevant, after she wrote
4 five times what you told her to write, that piece of
5 paper, you put in your desk drawer; is that correct?

6 A That's correct.

7 Q Okay. It is a fact, though, that that piece of
8 paper went into her file; is that not correct?

9 A It did at some point, yes, ma'am.

10 Q Did you put it in her file?

11 A I don't recall.

12 Q Now, on that same day that you made this comical
13 attempt with Ms. Donevant, you also went to lunch with
14 Bill McGown that day?

15 A That's correct.

16 Q And that was a one-and-a-half hour lunch, I think
17 you testified?

18 A It was.

19 Q And you at that time told him what you made Ms.
20 Donevant do; is that correct?

21 A I did.

22 Q And he was a council member?

23 A Not at that time, no, ma'am.

24 Q So he was not even associated with the Town of
25 Surfside, and you still told someone not associated

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 with the Town of Surfside what you did to Ms. Donevant
2 that day; is that correct?

3 A That's correct.

4 Q You issued a written warning to Ms. Donevant, I
5 think on July 14, 2011, and that is the only written
6 warning you ever issued to Ms. Donevant; is that
7 correct?

8 A I think there was a subsequent one with the
9 suspension.

10 Q That is when Ms. Donevant issued the stop-work
11 order, that's when you told her --

12 A When she didn't communicate.

13 Q That is the stop-work order matter?

14 A I see it as a communication matter.

15 Q Ms. Donevant never had a written warning until
16 July 20, '11 when you issued that written warning?

17 A I don't know whether that is true or false She
18 didn't have one from me.

19 Q That was the only written warning you ever issued
20 to Ms. Donevant; isn't that correct?

21 A Until the second one, yes, ma'am.

22 Q You didn't issue a written warning you suspended
23 her?

24 A I issued her the warning first.

25 Q But you --

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 A As a reprimand, I believe.

2 Q You withdrew that warning. You decided to
3 suspend her; isn't that correct?

4 A No, ma'am.

5 Q Okay.

6 A That is not correct.

7 Q Well, let's go to that day, April 21. You took
8 three pieces of paper and you had them sitting on your
9 desk like this; isn't that right?

10 A I think I had them one on top of the other.

11 Q Okay. And then you had them one on top of the
12 other, like that (indicates)?

13 A Yes, ma'am.

14 Q When you walked in -- when Jackie Donevant walked
15 into your office that morning, did you tell her what
16 were on those three pieces of paper?

17 A No, ma'am.

18 Q You didn't give her any warning, did you, of what
19 these three pieces of paper were for?

20 A No, ma'am.

21 Q You pulled up the first piece of paper and that
22 was a warning; is that right?

23 A Correct. I think it was a reprimand.

24 Q Excuse me, it was a reprimand. When Ms. Donevant
25 said your reprimand was false, you pulled up the second

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 one; is that correct?

2 A Correct.

3 Q And the second one was the suspension?

4 A Correct.

5 Q So you still had one that was turned over?

6 A Correct.

7 Q Is that a fair way to deal with employees to not
8 tell them; is that fair in your mind?

9 A I think it is.

10 Q Let's go to the evaluation that was on
11 September 28 that you issued Ms. Donevant. You gave
12 her a six on that evaluation; is that correct?

13 A Yes, ma'am.

14 Q And a six, that's average; is that correct?

15 A I'd say so, yes, ma'am.

16 Q The first thing you said on the evaluation is,
17 Ms. Donevant, you are really knowledgeable, you know
18 what you are doing in the construction business and
19 building code; isn't that right?

20 A Absolutely.

21 Q And then the second thing you said was you are
22 going to too much training; is that correct?

23 A Correct.

24 Q When you made that statement that she was going
25 to too much training, you knew that she had to have

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 mandatory training hours each year; is that correct?

2 A Yes.

3 Q And she had to have that to keep her
4 certification to issue building permits to act as a
5 building official; is that correct?

6 A She had to have some continuing education each
7 year to do that, yes, ma'am.

8 Q And you testified it was 40 hours a year; is that
9 right?

10 A I couldn't tell you today, but I probably could
11 remember back then.

12 Q So then you didn't expect or require Ms. Donevant
13 to use time away from work to do her training, did you?

14 A Not except on one particular training that she
15 went to that wasn't pertinent for what she was doing.

16 Q So you knew she had to be away from work to get
17 this training; is that correct?

18 A Forty hours, yes, ma'am.

19 Q When you talked to her, you didn't have a list of
20 training that she went to that she shouldn't have, did
21 you?

22 A No, ma'am.

23 Q When you talked to her on that day, you didn't
24 even know one training session that she went to that
25 she shouldn't have gone to; isn't that correct?

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 A I'll just say yes, that's correct.

2 Q So when you talk to her on September 28, 2011,
3 there was not one training session that Ms. Donevant
4 had attended that was unnecessary; is that correct?

5 A I wouldn't agree with that.

6 Q Let's go to your deposition, Page 41 -- excuse
7 me, start with 39 and then we'll go to 41. Line 11.

8 Do you know of any one training session that Ms.
9 Donevant attended before September 28, 2011 which you
10 thought was unnecessary in the calendar year 2011?

11 And your answer was: No.

12 Is that correct?

13 A That is the not the complete answer.

14 Q Well, you read the complete answer.

15 A No, but she could have attended one and not 20,
16 and any one of them would have been sufficient or
17 necessary.

18 I think my testimony today is consistent with
19 that.

20 Q So let's go to 41 -- excuse me, bottom of
21 Page 40. Question -- do you have it?

22 A Yes, ma'am.

23 Question: So there is not one training
24 session that you know of that Ms. Donevant
25 participated in that was unnecessary; is that correct?

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 What was your answer?

2 A I said: Yeah, I'll give you that.

3 Q Now, before this evaluation, you never once told
4 Ms. Donevant that she's taking too much training, did
5 you?

6 A Not that I can recall.

7 Q Now, the third and last item on this evaluation
8 was something about Ms. Donevant not being focused; is
9 that correct? Do you recall that?

10 A Yes, ma'am.

11 Q You stated that your premise for that was because
12 Ms. Donevant's sister came to visit her; is that
13 correct?

14 A That was one of the things, yes.

15 Q But you never told Ms. Donevant that her sister
16 shouldn't come and visit her?

17 A That's correct. Correct.

18 Q There are no other activities, that you know of,
19 on the part of Ms. Donevant, that diverted her from her
20 business as being the town official -- building
21 official, are there?

22 A No, ma'am.

23 Q Now, Ms. Donevant gave you a response letter on
24 November 28th; is that correct?

25 A Yeah. Whatever...

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 Q Rebuttal?

2 A Yes, ma'am.

3 Q You say that rebuttal was about 60 days after you
4 gave her the evaluation?

5 A Correct.

6 Q That rebuttal asked you to reconsider your
7 evaluation. It went through a lot of explanation; is
8 that correct?

9 A Yes, ma'am.

10 Q And the explanation was, Every training session I
11 went to, you approved; that was in the letter, right?

12 A I think it was.

13 Q And, today, that is still true. Every training
14 session Ms. Donevant went to, you approved; is that
15 correct?

16 A As far as I know.

17 Q Okay. Then she said it was her job to deal with
18 contractors and part of the public in the Town of
19 Surfside; is that not correct?

20 A That is correct.

21 Q And you took that rebuttal that she asked you to
22 reconsider and you sent it to her personnel file; is
23 that correct?

24 A That's correct.

25 Q You didn't talk to her about it at all, did you?

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 A Not that I can recall.

2 Q You didn't say a word to her, Jackie, I got it,
3 let's talk later, did you?

4 A No, ma'am.

5 Q And the only reason is because you thought she
6 did it too late?

7 A Correct.

8 Q But you never told her that there was any time
9 period for rebuttal to that evaluation, did you?

10 A No, ma'am.

11 Q And there is no town policy as to any time period
12 when you have to do rebuttal to an evaluation; isn't
13 that correct?

14 A Not to my knowledge.

15 Q And during that same period of time that Ms.
16 Donevant -- those two months, you recall Ms. Donevant
17 found out she had breast cancer?

18 A I don't know when I was told that she found that
19 out.

20 Q Well, you know in October Ms. Donevant was
21 diagnosed with breast cancer, October 2011?

22 A I can't refute that. I don't know when it was.

23 Q You agree that that is a deep concern of an
24 individual when they are diagnosed with cancer?

25 MR. THOMPSON: Objection, speculative,

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 foundation.

2 Q (MS. GOLDING) Isn't that a concern of yours?

3 THE COURT: I haven't ruled on the objection.

4 MS. GOLDING: I'll withdraw.

5 THE COURT: If you can rephrase it.

6 MS. GOLDING: I'll withdraw it.

7 THE COURT: Question is withdrawn.

8 Q (MS. GOLDING) Jackie went on medical leave for her
9 breast cancer, mastectomy, starting December 16, 2011
10 and she came back -- tried to come back on March 11th;
11 is that correct?

12 A Sounds right.

13 Q You wouldn't let her come back on
14 March 11th because you didn't have a release from the
15 doctor; is that correct?

16 A That's correct.

17 Q Okay. So she came back, got the release and you
18 met with her on March 13, two days later when she gave
19 you the release; is that correct?

20 A I met with her whenever I had the release, yes,
21 ma'am.

22 Q When you met with her, you told Ms. Debra Hermann
23 to come into the meeting with you?

24 A Correct.

25 Q You wanted a witness to the meeting with Ms.

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 Donevant coming back from medical leave, you wanted a
2 witness in there, that is why you wanted Ms. Hermann?

3 A Correct.

4 Q And you told Ms. Donevant during that meeting
5 that, Jackie, you are not going to undo anything that
6 has been done; is that correct?

7 A Sounds correct.

8 Q You didn't tell her what you were talking about,
9 did you?

10 A I think it is pretty clear that you don't undo
11 anything that's been done.

12 Q Did you tell her anything that you were referring
13 to?

14 A No, ma'am.

15 Q Then, you had Ms. Hermann prepare a memo that was
16 put in Ms. Donevant's file; did you not?

17 A I did not.

18 Q Ms. Hermann testified yesterday. The memo --

19 MR. THOMPSON: Objection, pinning the
20 witnesses.

21 THE COURT: I need you to rephrase the
22 question. I didn't hear the whole question, so I
23 don't know if it is pinning just yet.

24 Q (MS. GOLDING) Do you know that Ms. Hermann
25 testified yesterday?

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 A I heard she did.

2 Q You also know that that memo Ms. Hermann did, she
3 put -- it was put in Jackie Donevant's file?

4 A I do know that, yes, ma'am.

5 Q Ms. Donevant never got a copy of that memo, did
6 she?

7 A I never gave her one.

8 Q During that meeting, you did not tell her, Don't
9 go to the pier, did you?

10 A No. I wouldn't have done that.

11 Q Let's go to what happened on March 20th, 2012.

12 That day I understood you left the office around
13 3 o'clock; is that correct?

14 A Correct.

15 Q According to your memo, about a half hour before
16 that Ms. Donevant called you?

17 A Correct, because I looked that up on my phone
18 when I did it.

19 Q You left it -- and then Ms. Donevant, somewhere
20 between 4- and 5:00 o'clock after getting certain
21 information, do you know that she went to the pier?

22 A I do now, yes.

23 Q And it's reasonable to assume that a building
24 official who believes, or may believe, that there is
25 construction going on without the permit, it's

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 reasonable that that building official would go to the
2 pier; is that correct?

3 A Absolutely.

4 Q And so she went to the pier and she put up a
5 stop-work order because of what she saw; is that right?

6 A It is.

7 Q And then not very long after that, you went to
8 the pier; is that correct?

9 A Correct.

10 Q And when you got on the pier, you didn't look
11 inside the restaurant to see what was happening, did
12 you?

13 A No, ma'am.

14 Q You didn't call the contractor or the builder and
15 say, hey, what are you doing, did you?

16 A No. She didn't either.

17 Q What you did, though, not looking in the
18 building, not calling the contractor/owner, you went to
19 that stop-work order and you tore it down; isn't that
20 right?

21 A I testified to that, yes, ma'am.

22 Q And you also testified that you didn't have the
23 right to tear it down?

24 A That is correct.

25 Q And you tore it down even though there was new

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 construction going on inside; isn't that correct?

2 A That is what it said, yes.

3 Q Well, don't you think it would have been
4 important to find out if there was new construction
5 going on?

6 A I think it would have been nice if I was told
7 what was going on, yes.

8 Q Don't you think it would have been important to
9 go look in there?

10 A No, ma'am. I never look behind any inspections.

11 Q Okay. You balled it up; is that right?

12 A I don't think so, but it could be true, but I
13 don't remember that. I remember ripping it off and
14 getting the tape and putting it back.

15 Q You said something that was televised? You said
16 this work order -- all this is for putting some damn
17 boards down; isn't that what you said?

18 A I did.

19 Q Must have known something was happening, because
20 you said for putting down these boards, that is why
21 this ticket was issued. So at some point in time you
22 knew something was happening on that pier; isn't that
23 correct?

24 A Yes.

25 Q And when you knew something was happening on that

JAMES DUCKETT - CROSS-EXAMINATION BY MS. GOLDING

1 pier, you didn't contact Ms. Donevant and say, Jackie,
2 there's something wrong going on, did you? When you
3 knew there were boards going down, you didn't contact
4 your building official and say there is something
5 wrong, go and check it out, did you?

6 A I didn't know there was anything wrong with
7 boards to walk on.

8 Q Now, when you decided, whenever that was, to fire
9 Ms. Donevant on April 4th, you didn't fire her because
10 of any attendance problems, did you?

11 A No.

12 Q You didn't fire her because of any supposed
13 punctuality problems, did you?

14 A No, ma'am.

15 Q You didn't fire her because of training too much,
16 did you?

17 A No.

18 Q You told Jackie at that time that you decided you
19 were making changes; is that correct?

20 A That's correct.

21 Q And, subsequently, you told people that you
22 decided to make operational changes, that is why you
23 fired her?

24 A That would be the same, yes, ma'am.

25 MS. GOLDING: No further questions.

JAMES DUCKETT - REDIRECT EXAMINATION BY MR. THOMPSON

1 THE COURT: Any redirect?

2 MR. THOMPSON: Yes, ma'am.

3 REDIRECT-EXAMINATION

4 BY MR. THOMPSON:

5 Q Will you look at Page 98 of your deposition
6 transcript, please. Ms. Golding asked you about Line
7 11 when the decision was made to terminate Ms.
8 Donevant, and I don't believe you had a chance to give
9 your complete answer to that on Line 13. Will you read
10 your complete answer?

11 A My answer was: I don't know. I'm probably one
12 of the slowest people in the world to ever fire
13 someone. I don't even like the term. So it's --
14 there's never a good time to do it, and I've always
15 struggled with it. And I just felt like, okay, we've
16 been through this election cycle, we've been through
17 this, it's time. It's time to move on. I just think
18 it's probably -- I woke up -- I mean, I don't think I
19 had it in my mind specifically that I remember hearing
20 that night someone saying, well, the mayor got
21 defeated, and he -- and he went in and fired Jackie.
22 He got mad and fired Jackie. I mean, that's what
23 happens in a little town, the mayor did it.

24 Q If you will go to Page 40.

25 A 40?

JAMES DUCKETT - REDIRECT EXAMINATION BY MR. THOMPSON

1 Q Question on Line 17 is: I just need to know what
2 training did Ms. Donevant attend that was unnecessary?
3 And your answer -- if you could read the answer.

4 A The volume of training that she went to was
5 unnecessary. I was not saying any specific thing that
6 she went to was -- was wrong. It just -- it just --
7 she -- it interfered with her performing her duties.

8 Q And my last question: What were the performance
9 issues that you reviewed regarding Ms. Donevant in
10 making the decision to terminate her employment?

11 A Performance issues were that she was slow to
12 perform her duties, not in a timely fashion, and that
13 she didn't understand the necessity to keep your boss
14 aware of what was going on so he doesn't get
15 blindsided.

16 Q Did you consider the totality of her employment
17 with you?

18 A Yes.

19 MR. THOMPSON: Nothing further.

20 THE COURT: Any objection to the witness being
21 excused?

22 MS. GOLDING: None from the Plaintiff.

23 MR. THOMPSON: None, Your Honor.

24 THE COURT: You are excused. Defense may
25 proceed.

DEFENSE RESTS - JACKIE DONEVANT - REBUTTAL BY MS. GOLDING

1 MR. THOMPSON: Defense concludes, Your Honor.

2 THE COURT: Do you rest?

3 MR. THOMPSON: Yes, Your Honor.

4 THE COURT: We'll reserve motions. Is there
5 any rebuttal testimony?

6 MS. GOLDING: Yes, Your Honor, Ms. Donevant,
7 Jackie Donevant.

8 (JACKLYN DONEVANT, having been duly sworn,
9 testified as follows:)

10 THE CLERK: State your name.

11 THE WITNESS: Jacklyn Donevant.

12 DIRECT-EXAMINATION (REBUTTAL)

13 BY MS. GOLDING:

14 Q Ms. Donevant, while you were with the Town of
15 Surfside, within the last two years, 2011 and 2012,
16 were there any time cards or attendance records that
17 you had to fill out?

18 A Yes, ma'am. We got -- we had a two week -- every
19 Thursday -- every other Thursday we would fill out our
20 time cards and turn them into Cathy Blair, who sent
21 them to Mr. Duckett to be approved.

22 Q Did, at any time, anyone on behalf of the town
23 get back with you when you filled it out and say, no,
24 this is wrong, you didn't fill it right or you weren't
25 here, any kind of negative feedback from those time

DEFENSE RESTS - JACKIE DONEVANT - REBUTTAL BY MS. GOLDING

1 cards?

2 A No, ma'am.

3 Q Now, while you were ever with the Town of
4 Surfside, did you ever ask a county employee for money?

5 A No, ma'am, not at all. I was taken back by Sue
6 saying I asked her for 60,000. But, no, ma'am, I would
7 not do that. I did not do that.

8 Q Did you all talk finances sometimes?

9 A Oh, yeah, we did that, you know. We worked
10 together. We got along. We talked about everything.

11 Q How about did you ever seek money from any type
12 of contractors or anything like that?

13 A Absolutely not. No.

14 Q Let's go to the Russell Cooper deck. Was there
15 anything with respect to the Russell Cooper deck that
16 was against the building code, to your knowledge?

17 A No. Permit was issued. Sebrina and I just had a
18 disagreement about how high to put the pool equipment
19 according to FEMA regulations.

20 Q But you say a building permit was issued?

21 A Yes, ma'am.

22 Q Now, finally, when, if ever, did you ever tell
23 Mr. Duckett that you never had a boss before?

24 A I don't recall ever doing that.

25 MS. GOLDING: Nothing further, Your Honor.

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1 MR. THOMPSON: No questions, Your Honor.

2 THE COURT: You may step down. Anything
3 further?

4 MS. GOLDING: Nothing from the Plaintiff.

5 MR. THOMPSON: Nothing from the Defendant,
6 Your Honor.

7 THE COURT: Ladies and gentlemen, the
8 Plaintiff and Defense have rested their cases. We
9 have offered lunch, and it should arrive by 12:30. In
10 the meantime, the lawyers and I need to deal with
11 matters of law that will take us to probably 12:30,
12 and then we'll need a brief recess to eat as well.

13 The next process is closing arguments and
14 Court's instructions. During this break, do not
15 discuss the case in any manner, and leave your notepads
16 in your seats. I'll let you know when we'll resume
17 after lunch once we deal with these matters of law and
18 once your lunch arrives. Thank you.

19 (The jury exits at 12:11 p.m., and the
20 following is heard out of the presence of the jury.)

21 THE COURT: Are there any motions?

22 MR. THOMPSON: The Defendant has a motion.

23 THE COURT: Yes, sir.

24 MR. THOMPSON: At this time, the Defendant
25 renews his motion for directed verdict based on the

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1 same arguments that we presented earlier, and that is
2 that the public policy exception to the at-will
3 employment rule has been not expanded beyond
4 situations in which the employer requires the employee
5 to violate a criminal law or where the reason for the
6 employee's termination is itself a violation of
7 criminal law, and as particularly that doctrine was
8 examined in Antley versus Shepherd. That is the case
9 where the auditor was terminated, and it was not a
10 violation of public policy discharge despite there
11 being a statute saying that she had a right to file
12 appeals, and that was clearly the reason she was
13 terminated. The Court of Appeals said that a right
14 does not fit within the public policy discharge
15 exception.

16 In this case, Ms. Donevant is relying upon a
17 very discretionary building code which merely
18 authorizes, but does not require a stop-work order. In
19 addition to that argument, Your Honor, based on the
20 testimony of Mr. Duckett, the Defendant asserts that it
21 is entitled to a direct verdict under the South
22 Carolina Torts Claim Act, Section 15-78 --

23 THE COURT: You can't raise a new ground when
24 you're renewing a motion if you didn't originally
25 state --

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1 MR. THOMPSON: I think I can, Your Honor,
2 because I needed Mr. Duckett's testimony to establish
3 that, that this applies, this section of the Tort
4 Claims Act; I couldn't do it before.

5 THE COURT: Okay.

6 MR. THOMPSON: 15-78-60, sub 5, that states
7 that a government entity is not liable for a loss
8 resulted from the exercise of discretion or judgment
9 of the government entity or employee or the
10 performance of a failure to perform any act of service
11 which is in the discretion or judgment of the
12 governmental entity or employee.

13 I'm also required by the case law to show,
14 Your Honor, that the governmental employee deliberated
15 over the decision and used professional or commonly
16 accepted standards in reaching the decision, and Mr.
17 Duckett's testimony establishes that he deliberated the
18 decision to terminate Ms. Donevant's employment and he
19 used accepted criteria in doing so. That's all, Your
20 Honor.

21 THE COURT: Would you like to respond?

22 MR. GILLIAM: Yes, Your Honor, I would. First
23 of all, just as matter of procedure I'll respond to
24 the last argument first. With respect to the Tort
25 Claims Act barring an employee or former employee from

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1 bringing suit for wrongful termination against an
2 employer, there is no case law that recognizes a Tort
3 Claims Act applies in that matter.

4 I didn't hear Mr. Duckett's testimony to
5 establish any sort of deliberation. His testimony is
6 that he didn't decide until April 4, 2012, and that is
7 when he fired her. As to what relates to the bigger
8 issue, the Town of Surfside Beach continues to rely on
9 a 2002 case from the Court of Appeals in Antley.
10 Antley's understanding of the law is just not what the
11 state of the law is as set forth in Barron, which is a
12 2011 case, most recent case from the South Carolina
13 Supreme Court. In that case, the Court made clear that
14 the only -- the best place to look in terms of whether
15 or not a public policy applies is by expressions of the
16 general assembly, and as I argued to the Court
17 yesterday, there is a public policy in this case. In
18 very few cases in the general assembly do they use the
19 words "public policy." If we look at 695 -- Title 6 is
20 what covers the building codes. 695 states, It is the
21 public policy of the State of South Carolina to
22 maintain reasonable standards of construction in
23 buildings and other structures in the state consistent
24 with the public health, safety and welfare of its
25 citizens.

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1 So it is the public policy of the State of
2 South Carolina to maintain reasonable construction
3 standards. To achieve that purpose, the State of South
4 Carolina requires -- and this is in 6-9-10 and 6-9-20
5 -- all counties and municipalities -- it says "shall."
6 It is not discretion. This is not Antley, because
7 we're not talking about discretion. Shall enforce the
8 building codes. Every county, every municipality shall
9 appoint a building official.

10 Section 13-21 of the Town of Surfside Beach,
11 Code of Ordinances, it establishes that Chapter 1 of
12 the building codes applies in Surfside Beach, applies
13 to this case. This is not an issue where the idea that
14 Ms. Donevant had the discretion as to whether -- to
15 issue a stop-work order is false. If we look at
16 Chapter 104 of the International Building Codes, it
17 says the building official is authorized and directed
18 to enforce the provisions of the code.

19 104.2 says the building official shall enforce
20 compliance with the provisions of this code.

21 104.3 says --

22 THE COURT: That's not what it actually says,
23 is it?

24 MR. GILLIAM: Yes, ma'am, it does.

25 THE COURT: I'm looking at 104.2 and it says

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1 the building official shall receive applications,
2 review construction documents and issue permits for the
3 erection, alteration, demolition and moving of
4 buildings and structures and inspect the premises for
5 which permits have been issued and enforce compliance
6 with provisions of this code. Isn't that the exact
7 language?

8 MR. GILLIAM: But it says, The building
9 official shall -- and it is separated by three parts,
10 shall -- first thing -- receive applications, review
11 construction documents, issue permits for the erection
12 and alteration, demolition and moving of buildings and
13 structures. Also, inspect the premises for which such
14 permits have been issued and enforce compliance with
15 the provisions of this code.

16 The mandatory "shall" still applies. In 104.3
17 it says, The building official shall issue all
18 necessary notices or orders to ensure compliances with
19 this code.

20 105.1, In order for any building to take
21 place, the owner who intends to construct, in large,
22 alter or demolish any structure shall -- shall first
23 make application to the building official and obtain
24 the permit required.

25 113.1 states, It shall be unlawful for any

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1 person to erect, construct, alter, expand or demolish
2 any structure in violations of the provisions of this
3 code.

4 So 105.1 says you shall have a permit. 113.1
5 says it is a violation of this code if you begin work
6 without the permit.

7 THE COURT: All of that deals with
8 contractors. That doesn't really have anything to do
9 with -- the code has subsections and different parts
10 and, really, that is not germane whether she had the
11 authority to act. What is germane is what is
12 designated by statute and the code as to what her
13 authority is.

14 MR. GILLIAM: Authority talks about power.
15 114.1 says that she's authorized to do it, she has the
16 power to do it versus anybody else, versus the town
17 administrator or anybody else. But in terms of our
18 statutory construction rules, we can't just focus on
19 114.1 and forget about 104.1 and --

20 THE COURT: They don't have to be read
21 together to be enforced. They are separate positions
22 that relate to separate duties and obligations.

23 MR. GILLIAM: Exactly. But 114.1 gives her
24 the authority to do it. It doesn't say "may." I
25 think that is the biggest error that the Town of

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1 Surfside Beach is making in terms of their
2 understanding of the code. It doesn't say "may," it
3 just says she has the power to do it, that is all it
4 says. It doesn't say "may." What it says -- 104.1,
5 104.2, 104.3 says she shall enforce the building
6 codes.

7 THE COURT: I'm listening. I can read and
8 listen to you. If I couldn't, I couldn't do my job
9 (laughing).

10 MR. GILLIAM: I didn't stop for you, I stopped
11 for me.

12 THE COURT: You're taking a breath?

13 MR. GILLIAM: Yes. (laughing)

14 THE COURT: I figured you stopped for me.

15 MR. GILLIAM: Sorry.

16 THE COURT: That's okay.

17 MR. GILLIAM: It is just coincidental. We
18 were pausing at the same time.

19 In this case, with that in mind, the testimony
20 in this case is that Ms. Donevant -- what she saw on
21 March 20, 2012 is she saw a permit taking place without
22 a construction permit, and in that situation she had no
23 choice. Specifically what she saw was new flooring,
24 new window openings being cut and new plumbing being
25 put in. She had no choice under the International

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1 Building Code, which is the law of this state, she had
2 no choice but to issue a stop-work order, and that is
3 what she did, and she was terminated for it.

4 The Town of Surfside Beach has not offered any
5 real reason for her termination. Mr. Duckett said it
6 was due to changes. I'll do my best to make it simple,
7 but I want to say that the testimony from Ms. Donevant
8 and Mr. Wiggins was that if Ms. Donevant had not issued
9 that stop-work order on March 21st, 2012, that she
10 could have been disciplined as it relates to her
11 license as a building official. Again, that is
12 something that Mr. Wiggins testified to and Ms.
13 Donevant testified to. Thank you.

14 THE COURT: You're welcome. Yes, sir.

15 MR. THOMPSON: Briefly, Your Honor. I don't
16 know why this keeps getting said, but the Antley court
17 did recognize and understood that although so far the
18 public policy discharge exception had not been
19 expanded beyond those two things, that is requiring an
20 employee to violate a criminal law or the termination
21 itself was a violation of criminal law, it did
22 explicitly recognize that it was not limited to that.
23 So the Antley court did fully understand the law.

24 I would also like to bring to the Court's
25 attention to an employment case in which the Tort Claim

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1 Act was applied, and that is Sabb versus South Carolina
2 State University, 567 S.E.2d 231. This is a supreme
3 court decision, Your Honor. Did is not -- it is an
4 unusual employment case in which they are claiming
5 negligent retention of a supervisor who caused the
6 employee harm, but it does represent a case used in the
7 employment context in which the limits of the Torts
8 Claim Act was considered.

9 THE COURT: This is usually asserted when the
10 police are involved, but it is clearly not applicable
11 in this case. If I was to follow your logic, you
12 would always be immune -- they would always be immune
13 in this type of situation where there is an allegation
14 that they were discharged as a violation of public
15 policy, and I don't think that is the purpose of that
16 statute.

17 There is, however, limited qualified immunity
18 under that exception, but, again, it is usually
19 asserted when police are involved. I've heard it
20 argued many times, and sometimes that's the case, and
21 sometimes it is applicable. In this instance, it is
22 not. If I were to follow that logic, the employer,
23 that being any kind of municipality, county or state
24 could never be held accountable under the public policy
25 context because they would always be immune and say,

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1 Even though we did this, we were rational when we did
2 it, we used a balanced approach when we did it, or
3 maybe we didn't realize when we were doing it, which
4 would go to immunity, and I don't think that is a
5 logical interpretation of that provision.

6 MR. THOMPSON: I agree, and there really is
7 not an appellant decision to guide us on that. That's
8 all, Your Honor.

9 THE COURT: Based on what I already
10 articulated for the record, the motion for directed
11 verdict pursuant to 15-78-60 is not applicable and,
12 therefore, it is denied.

13 Going back to the motions that I took under
14 advertisement, which was the defense's motion for
15 directed verdict made at the close of the Plaintiff's
16 case. I would be dishonest if I said I had not
17 struggled a great deal with whether a directed verdict
18 should be granted in this case and whether the
19 Plaintiff has met the elements of a wrongful discharge
20 by a preponderance of the case.

21 It is a novel set of facts with very little
22 case law to guide us on the issue, and what concerns me
23 I think the most about this is the presentation that
24 somehow what she had to do was mandatory under -- there
25 are many layers to peel back in this. One of which is

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1 whether what she had to do on that -- whether her
2 actions on that particular day were mandatory and
3 whether she was mandated to do it a contravention of
4 certain instructions given to her by her supervisor,
5 that being -- and now that I've heard all of the
6 testimony, Mr. Duckett's testimony is not that he
7 specially told her not to issue a stop-work order, but
8 his instructions was not to go back and revisit any
9 decisions they had contracted out during her absence,
10 which is an insubordination issue, not a direction to
11 violate state law; at least factually that could be
12 argued.

13 Whether she was mandated to take the action
14 that she took on that day, which initially, I have to
15 admit, my first reaction to it, pursuant to the
16 statute, was that she wasn't mandated to do it. She
17 did it of her own accord. She took the volition to do
18 it and contravention of the instructions of her
19 employer, which was not to dabble back in these other
20 matters that already had been approved by other
21 professionals in her absence, and that it was a
22 subjected kind of decision that she made of her own
23 volition to take it upon herself to be involved in this
24 pier issue and to issue the warning that she issued,
25 and whether that was, in fact, mandated by any of the



JURY OUT - MOTIONS

1 International Codes or the statute.

2 Again, as I've indicated, this has many layers
3 to it, and I found myself as I was going through it,
4 while some of this is very clearcut in terms of
5 statutorily, some of it factually is not as clearcut.
6 Of course, on directed verdict it is not the Court's
7 prerogative to weigh the credibility of the witnesses,
8 nor is it for the Court to -- where there is more than
9 one inference that can be drawn from an application of
10 the law -- to sit through that and decide which
11 interpretation or inference should be given the most
12 weight.

13 I think that all of those are arguments to be
14 made by the Defense. In other words, her actions were
15 subjective, that the municipality -- or that being the
16 form of Mr. Duckett -- did not instruct her to not
17 issue a stop-work order, but merely not to contravene
18 instructions or permits or other matters or get
19 involved in other matters that had been done in her
20 absence. The fact that in the light most favorable to
21 the non-moving party, the Defendant in this instance,
22 that they had other reasons why they chose to terminate
23 her. All of those are factual issues to be sorted out
24 by the jury and not the Court.

25 In essence, I ruled on both motions at the

JURY OUT - MOTIONS

1 same time without having to reinvent the wheel.
2 Considering the evidence in the light most favorable to
3 the non-moving party on the -- at the close of the
4 Plaintiff's case, the motion for directed verdict is
5 denied as the evidence is susceptible of more than one
6 inference. I think it is clear that we do have
7 building codes in South Carolina and they are for the
8 protection of the public, and that is a public policy
9 issue.

10 Now, whether she was instructed by her
11 supervisor to break the law, that's a factual issue for
12 a jury to resolve, and that is certainly -- I'm certain
13 the Defense, in the light most favorable to them, will
14 argue that factual -- those facts as they were
15 presented by the Plaintiff, at least that it was her
16 perception that her supervisor was instructing her to
17 break the law or disregard the law, and that she was
18 instructed not to issue a stop-work order regarding the
19 pier project.

20 Then, taking up again the renewal of the
21 motion for directed verdict, that motion is denied as
22 well as the facts are susceptible of more than one
23 inference.

24 All right. Now, we can do charge conference,
25 and I guess the pizza will be here shortly, and I'll

JURY OUT - MOTIONS

1 give you a break as well.

2 MR. THOMPSON: Can I ask Your Honor, for
3 purposes of establishing the record, is the Court
4 saying in this ruling that the view of the Court is
5 that the public policy exception extends beyond its
6 circumstances --

7 THE COURT: I don't think there is an
8 extension. I think it comes clearly within what our
9 courts have already articulated what the law is. It's
10 not my job to expand the law, and I haven't done that.

11 MR. THOMPSON: I understand the Court's
12 ruling, I just want it to be properly preserved.

13 THE COURT: I think you made your argument and
14 it was preserved, and I think I ruled
15 contemporaneously, and it was preserved.

16 MR. THOMPSON: I believe the law is limited to
17 those two prongs.

18 THE COURT: And I've ruled that their position
19 comes within those prongs. I don't know it is within
20 my prerogative to expand the law. I think the law is
21 very clear as it has been articulated. You have an
22 argument that she -- that her actions were not
23 mandatory, and that it is a factual argument for you
24 to make.

25 MR. THOMPSON: Your Honor, I think the case

JURY OUT - MOTIONS

1 law says it has to either be -- the employee is forced
2 to be in violation of the law with criminal penalties,
3 or the violation of the law itself was a violation of
4 criminal law.

5 THE COURT: And that is her position, that he
6 asked her to violate the law. You have a factual
7 difference. Your client says I never told her not to
8 issue a stop-work order. Her position is that he told
9 me to violate the law by not issuing it and that there
10 was penalties applicable to me, whether it is in a
11 form of -- you know, I need to read back through
12 those. I think it is only the loss of her license
13 that she could -- that is really -- again, you know,
14 that sort of highlights the struggle I had with this,
15 because it is really speculative as to whether she
16 would have faced any kind of penalties for failing to
17 issue any kind of stop-work order in this case, but
18 the law is very clear that the public policy exception
19 applies in cases where either the employer requires
20 the employee to violate the law, or the reason for the
21 employee's termination itself is a violation of
22 criminal law, and that is an accurate statement of
23 lack of precedence. Her position is that her employer
24 required her to violate the law by instructing her
25 blatantly to not issue a stop-work order. Her

JURY OUT - MOTIONS

1 position has another layer, which is, by statute, the
2 town is required to adopt this international policy,
3 which then has the effect of law, and pursuant to
4 those regulations, I'm required to issue a stop-work
5 order if I see a violation, and by him instructing me
6 to do that, he thereby asked me to violate the law and
7 I was not willing to do that to maintain my
8 employment.

9 Now, whether that position has any validity
10 factually is a matter for you to argue, but not for me
11 to resolve. You have two different positions, hers and
12 then yours where your client says I never told her to
13 do that. I fired her because, one, she was tardy, she
14 was inattentive to her duties and insubordinate, not a
15 team player. She would not give me notice of something
16 that was very high profile, and I was blindsided in the
17 media, and I didn't appreciate it, and I put the
18 stop-work order -- I taped it back up because I never
19 had the authority to take it down.

20 MR. THOMPSON: Your Honor, I'm reading from
21 the Antley --

22 THE COURT: I'm familiar with the Antley
23 decision, and once I've ruled, I won't go back and
24 regurgitate it.

25 MR. THOMPSON: I understand. If I can -- can

JURY OUT - MOTIONS

1 I read one phrase? I want to preserve the record.

2 THE COURT: I think the record is already
3 preserved, and I think the rules are clear that once
4 you make a full argument and the Court rules, there is
5 no further argument.

6 We could do this all day, and I'm not going to
7 do that. The law is very clear and, again, what the
8 distinction is in this case is -- it is about whether,
9 in fact, she was required by her employer to violate
10 the law, and that is the subsection that it would come
11 under in public policy exception.

12 MR. THOMPSON: It's supposed to be criminal
13 law, that is my position.

14 THE COURT: Well, that's not what the case
15 says, and there is several cases that distinguish
16 Antley that are clear articulations, that being the
17 Barron versus Laborer Finders and the Ludwick, and I
18 think to look at Antley in isolation would be
19 inappropriate for the Court, and I think that those
20 cases articulate what determine the precedence.

21 MR. THOMPSON: Thank you, Your Honor. I
22 apologize if I tried your patience.

23 THE COURT: Oh, no, I have a lot of patience.
24 My bailiffs in Charleston call me Joe. When I'm at
25 the end of my patience, it's gone really far. I'll

VERDICT

1 THE CLERK: State of South Carolina, County of
2 Horry, in the Court of Common Pleas, Case No.
3 2012-CP-26-4852. Verdict: Jacklyn Donevant,
4 Plaintiff, versus town of surfside Beach, Defendant.
5 As to the wrongful discharge cause of action, we, the
6 jury, unanimously find for the Plaintiff in the amount
7 of \$500,000 actual damages. Francis Glatten
8 (phonetic), foreperson, February 14, 2014.

9 Madam forelady, ladies and gentlemen of the
10 jury, is this your verdict; if so, please signify by
11 raising your right hands. Thank you.

12 THE COURT: Is there any request to poll the
13 jury from the Plaintiff?

14 MS. GOLDING: None from the Plaintiff.

15 MR. THOMPSON: No, Your Honor.

16 THE COURT: Ladies and gentlemen, we thank you
17 for your time and your attention to this case. I know
18 the jury service is thankless, and especially with the
19 challenges we have faced this week with the weather.
20 You have been incredible troopers and have been
21 incredibly patient with us and kind and generous with
22 your time. Your jury service is concluded today. Are
23 we prepared for work excuses?

24 THE CLERK: They can do downstairs to the
25 clerk's office.

MOTIONS

1 and you are excused with the Court's profound thanks.
2 I'll hear post-trial motions in a moment.

3 (The jury exits at 4:09 p.m., and the
4 following is heard out of the presence of the jury.)

5 MR. THOMPSON: Can I ask for ten days for --

6 THE COURT: No, I won't remember in ten days,
7 and then I'll have to bother the court reporter for
8 the digital recording so she won't have to type it for
9 me for free, and then I'll have to study it again,
10 because next week I'm moving to another trial. I find
11 that there is no time like the present. I can rule
12 and you can move with whatever pace you need to appeal
13 it, if that is your desire.

14 MR. THOMPSON: May it please the Court?

15 THE COURT: You may proceed when you are
16 ready, yes, sir.

17 MR. THOMPSON: One, Your Honor, we make a
18 motion for remitter. The damages awarded are in
19 excess of the lost wages proven by the Plaintiff.
20 Two, Your Honor, we make a motion for remitter on the
21 basis of South Carolina Tort Claims Act.

22 THE COURT: Oh, yeah, the \$300,000 limitation.
23 I would imagine you would agree to that -- or is it
24 350?

25 MR. THOMPSON: I have the statute, Your Honor,

MOTIONS

1 \$300,000.

2 THE COURT: I thought it was 300.

3 MR. THOMPSON: Finally, Your Honor,
4 essentially renewal of our directed verdict motions.
5 I believe this case should be controlled by the
6 decision of the South Carolina Court of Appeals in
7 Antley, and that is Ms. Donevant was acting pursuant
8 to the stop-work order provision of the building code,
9 and that code is discretionary as to stop-work orders.
10 It says she has the authority; it says no more than
11 that. In Antley, Your Honor, as I said before, that
12 involved a case of an auditor who had a statutory
13 right to pursue appeals, and was terminated for
14 exercising that right, and the Court determined in
15 that case, Your Honor, the right was a discretionary
16 thing. Here we have less than that. It only says she
17 had the authority.

18 The stop-work order provision of the building
19 code is the specific thing that governs what her
20 authority and what her rights were to issue that
21 stop-work order, and it was discretionary under the
22 language, and that is for you, as the finder of the
23 law, to determine, and not the jury.

24 The Antley Court clearly understood the
25 limitations and correctly cited the law and discussed

MOTIONS

1 public policy discharge. Finally, Your Honor, I just
2 reassert that public policy discharge, my argument,
3 that it requires the employee to have been forced to
4 violate a law with criminal penalties. That is our
5 position.

6 THE COURT: Respond?

7 MS. GOLDING: With respect to the remitter,
8 Your Honor, the damages are clearly within the
9 evidence presented. Ms. Donevant testified as to her
10 lost wages. She also testified as to loss of
11 retirement, and that loss obviously goes to her -- to
12 the end -- we had the period of time --

13 THE COURT: Did she specify a figure? I don't
14 recall her saying a figure. It was speculative. She
15 said I've lost this and that. The only thing you
16 quantified was what you reduced to writing and
17 presented to the jury, and it concerns me a little,
18 that it lacks a little bit of -- that it includes
19 things that are not properly considered in a damages
20 assessment, where you basically only ask them to award
21 what you have in that summary.

22 MS. GOLDING: We had wages and mileage loss.

23 THE COURT: But in your argument you said we
24 ask that -- I forgot the amount on that.

25 MS. GOLDING: I forgot my mileage.

MOTIONS

1 THE COURT: Well, no, you had the whole
2 amount, whatever that amount is on that summary is
3 what you asked them to award.

4 MS. GOLDING: Right. Right. \$391,362.64.

5 THE COURT: That included the mileage?

6 MS. GOLDING: Correct. The second item, the
7 remitter based on the Torts Claim Act, this was not
8 specifically pled. He did plead immunities under the
9 South Carolina Courts Claim Act in the answer, but he
10 did -- he made no objection to testimony.

11 THE COURT: I think I'm bound by the law. The
12 Torts Claim Act, you can only sue the State under
13 certain circumstances and you are bound by the damage
14 limitation. That is like in a med malpractice case if
15 the verdict was over what the mal cap is. I don't
16 think you have to plead that cap, that is the law. We
17 all know that you are only bound to collect from the
18 state what the state says you can take from us, and
19 the statutory limit is \$300,000 per occurrence, and I
20 forget what the aggregate is, but that is not
21 applicable in this circumstances; the \$300,000,
22 however, would be.

23 I don't think I have any discretion in that.
24 I think I'm bound by what the statute says, and I don't
25 think he has to -- I think he has -- as a matter of an

MOTIONS

1 answer he has to plead the immunity afforded him in the
2 statute, but I don't think that he has to plead that
3 cap, necessarily. I think that is the law, and
4 everybody is bound by it. That is almost like a
5 setoff. You don't have to plead to a setoff, but you
6 are entitled to it legally -- that might not be the
7 best analogy.

8 MS. GOLDING: With the affirmative defense
9 that must be pled with specificity.

10 THE COURT: I'm sure he pled because he does
11 enough of this, and I doubt he would have overlooked
12 that.

13 MS. GOLDING: What he pled was the Defendant
14 asserts the immunities of the South Carolina Torts
15 Claim Act.

16 THE COURT: That's all he needs to say. He
17 doesn't have to specify the provision of the act, and
18 I think we all know what the limited damages are, much
19 to the chagrin of most lawyers who do Plaintiff work.

20 MS. GOLDING: The third item is that his
21 analysis -- and I don't think I need to go into a
22 great deal other than, obviously, there are two cases
23 that have been decided post-Antley, and those are
24 determinative, and the Court charged the jury properly
25 on the law. Thank you.

MOTIONS

1 THE COURT: You're welcome. Considering the
2 remitter, I'm concerned about the amount. What
3 concerns me, and when you look at remitters you have
4 to look at whether there is any indication of passion,
5 prejudice, sympathy or other motion that is driving
6 the verdict outside the evidence of the case. While I
7 instructed the jury that it doesn't have to be to a
8 mathematical certainty, and while I instructed them
9 that you could consider these elements of damages, I
10 also instructed them that it could not be conjectural
11 or speculative, that it had to be based on something
12 presented in the case. There is simply -- I'm really
13 at a loss as to what would constitute the amount above
14 what was in the summary, which is the \$391,369.64. It
15 makes me think that they considered something out of
16 the evidence, something more than in the nature of --
17 I'm trying to think of a word -- suitable. It just
18 concerns me.

19 I don't know that it really matters, because I
20 think it might be a moot point because I think the
21 Torts Claim Act is controlling, and it is limited to
22 the \$300,000 cap. So I think the first remitter motion
23 made by Mr. Thompson is a moot motion. I think the
24 second remitter motion is clearly substantiated by
25 statute, and all of us are bound -- you can only sue

MOTIONS

1 the State when they say you could sue them and how
2 much. So I think we're all -- you can ask for more,
3 but you are bound by that limitation. So I think under
4 that it would have to be reduced to \$300,000.

5 As in regards to the motion based on Antley,
6 the more I thought about it and the more I went through
7 it, while Mr. Thompson relies on Antley, there are two
8 cases post-Antley that provide clarity on the State's
9 precedent regarding wrongful termination based on the
10 public policy doctrine. What I found most compelling
11 is the language in Barron, which says: However, that
12 an at-will employee may have a cause of action for
13 wrongful termination even if the discharge itself did
14 not violate criminal law or the employer did not
15 require the employee to violate the law.

16 The sentence preceding that says: It was not
17 appropriate to decide the novel issue without further
18 developing the facts of the case -- and that talks
19 about them finishing discovery. I think my language is
20 -- hold on. I might have cut and pasted and cut
21 something off, bear with me for a moment. I skipped
22 over language. What I found more compelling is the
23 language: While the public policy exception applies to
24 situations where an employer requires an employee to
25 violate the law, or the reason for the termination

MOTIONS

1 itself is a violation of criminal law, the public
2 policy exception is not limited to these situations.
3 It referred to Garner versus Morrison and Kager versus
4 Citgo.

5 It indicates that while in those cases the
6 Court has declined to address whether that exception
7 applied, because of the procedural posture of those
8 cases, it indicates that the at-will employee may have
9 a cause of action for wrongful termination, even if the
10 discharge itself did not violate criminal law or the
11 employer did not require the employee to violate the
12 law.

13 The other thing that I thought through even
14 more as the jury was deliberating is that the issue
15 really is not -- the issue in this case is a factual
16 one, and it comes down to whose version of events the
17 jury believed. Apparently, they believed the
18 Plaintiff's version of events.

19 There is an undercurrent in this case, the
20 elephant in the room that no one is talking about,
21 which is the underlying current politically of what was
22 going on in the town, the inference that both the town
23 administrator and the Plaintiff were in some way
24 favoring parties that none of us heard from in this
25 courtroom, and using their influence in some way

MOTIONS

1 inappropriately. So you have all of that going on that
2 no one is talking about it, but we know that is the
3 undercurrent in this case.

4 What it really comes down to is whether -- and
5 the jury believed this version of the events, and I
6 have full confidence in their fact-finding province,
7 and I would never substitute my judgment for theirs,
8 but they believed the Plaintiff when she said -- and
9 there is a circumstantial inference to that testimony,
10 that it was not -- that all of the reasons given by the
11 town was a substitution for why she was fired.

12 In other words, she was instructed not to
13 issue anything that would interfere with what was going
14 on at the pier, which dealt with her responsibilities
15 as a building official. In her estimation, being told
16 not to enforce the building code was instructing her to
17 act contrary to public policy, and in addition to that,
18 there is another layer to that which is he's basically
19 telling me to disregard the law, which the town adopted
20 in the nature of these International Building Codes,
21 and to not do my job and not enforce the law, which is
22 arguably a violation of public policy and violation of
23 the law.

24 But the Barron court is very clear that the
25 public policy exception, while our courts have not yet

MOTIONS

1 come to that point where it had to interpret that, it
2 is not restricting it solely to those two
3 circumstances. Antley, although I read it again, it
4 does not articulate that the public policy exception is
5 solely limited to violations of the criminal law. It
6 doesn't say that. If I were to follow that logic, if a
7 juror were subpoenaed to this court and their employer
8 said, If you go serve on jury service I'm going to fire
9 you, and they don't comply with that subpoena, if I
10 follow that -- which is a civil penalty, civil contempt
11 -- that person would never be able to sue their
12 employer for wrongful discharge if they were an at-will
13 employee. Logically, they could, because jury service
14 a civic requirement. It is a valid subpoena that they
15 have been instructed by their employer to disregard,
16 which happens every day, really. It is interesting. I
17 was trying to find an analogy which would be a logical
18 extension to these facts to another situation, but I
19 don't think you can read the case law that
20 restrictively because we have that language that says
21 very clearly that it is not limited to those
22 situations.

23 It almost says on a case-by-case basis we'll
24 see how people can violate the public policy, but at
25 this moment we're saying there are just these two

MOTIONS

1 categories, but we're not limited to these two
2 categories. The Plaintiff's testimony comes within one
3 of those subcategories, which is that it is her
4 position that her boss told her to disregard the law
5 and violate the law and not to do my job, and as a
6 result of that, he fired me. The other witness'
7 variation of the facts were that, you know, she was
8 AWOL, she never did her job, she was slow, wasn't
9 timely, it held up the Town's business. While she was
10 out, we really got to understand the gravity of that
11 because we used the Town of Myrtle Beach and things
12 came back so quickly, we were surprised how efficiently
13 this job could be done. She did other things on the
14 Town's time, and the whole version of the events she
15 wasn't fired because -- in other words, I never told
16 her to violate the law. I never told her to violate
17 the law. I never questioned her ability to issue a
18 stop-work order. I recognize that was her
19 responsibility as a building official, and I never told
20 her not to issue a stop-work order. I simply told her
21 to make me aware of any action involving this
22 controversial issue. I did not perceive she was a team
23 member. She was difficult to deal with and didn't want
24 to be managed.

25 The jury did not find that version of events

MOTIONS

1 credible or believable, which is in their fact-finding
2 -- and I think the other thing that rang out to this
3 jury is the fact that Ms. Donevant and Mr. Duckett just
4 were oil and water, strong-willed people, both in some
5 terms resistant to authority, butting heads and, you
6 know. Again, that was the undercurrent, unspoken, that
7 was running through -- it was the undercurrent of the
8 facts of this case.

9 Clearly, just like most cases, it comes down
10 to two very differing versions of events of what
11 happened. There was no gray area in this case. Either
12 the jury was going to believe Ms. Donevant's version or
13 the Town's version of the facts. They chose to believe
14 Ms. Donevant's version of the facts.

15 Again, what I find most compelling, without
16 belaboring the hour, is the language in Barron and
17 McNeil. Barron versus Laborer Finders, which is a 2011
18 supreme court case. McNeil, which is the 2013 court of
19 appeals case, which came out subsequent to Antley. The
20 Court found those as persuasive authority and deposit
21 authority on the issue regarding the renewal of the
22 motions and the judgment, notwithstanding the verdict
23 motion.

24 So what will happen is the motions will be
25 marked heard and denied, with the exception of the Tort

MOTIONS

1 Claims Act motion, which will remit the verdict to
2 \$300,000, consistent with the statutory cap imposed by
3 the statute. Anything further?

4 MS. GOLDING: Nothing further.

5 THE COURT: Defense?

6 MR. THOMPSON: Nothing.

7 THE COURT: Thank you for your patience, time
8 and allow me to get this case. You lived this a lot
9 longer than I have, and as most judges probably would
10 tell you, as you sit and as the case goes along, a
11 light bulb comes on a little more, a little more.
12 Even though I read the files before I come to court, I
13 still don't have the same amount of time as you do to
14 learn a case, so I appreciate your patience in my
15 learning curve, and I appreciate your patience with
16 just the challenges we had with the weather.

17 MS. GOLDING: I appreciate your patience.

18 THE COURT: It's been a pleasure. Everybody
19 have a wonderful Valentine's Day.

20 (Whereupon the trial concluded.)
21
22
23
24
25

Town of Surfside Beach ♦ Job Description

Job Title: Planning-Building-Zoning Director FLSA Status: Exempt
Department: Planning-Building-Zoning Report To: Town Administrator
Classification: K Salary Range: \$40,919 - \$51,149
Prepared Date: August 2006

Summary. This is a department director, management, highly skilled professional position which controls the quality of construction and safety of all structures and property through enforcement of building and zoning codes.

Duties

- Establishes general policies and procedures for departmental conduct as relates to building, zoning, and maintenance; reviews and approves all permit applications; performs plan reviews; determines code and ordinance interpretations and recommends updates; performs inspections including construction, electrical, mechanical, and plumbing; enforces town ordinances; addresses and resolves complaints.
- Reviews requests for zoning amendments and makes recommendations
- Makes final decisions on building/zoning ordinance and code interpretation
- Represents the department at meetings and court
- Prepares department budget, manages departmental revenue and compiles annual reports.
- Authorizes certificates of occupancy
- Liaison to and confers with local authorities, civic leaders, other jurisdictions, and land planning and development specialists to devise and recommend land arrangements and physical facilities for residential, commercial, industrial, and community uses for all aspects of building and zoning.
- Counsels property owners, building contractors, and other individuals of housing standard requirements and zoning regulations.
- Verifies that all contractors and construction tradesmen maintain all required local and state licensing and registrations when working in the town.
- Develops, maintains, and enforces local stormwater and floodplain regulations.
- Performs duties of the deputy building official or administrative assistant during absences.
- Manages all departmental staff which includes interviewing, hiring and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and resolving problems.
- Other duties may be required or assigned at the discretion of the town, including EOC.

Physical Demands. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- To talk and hear
- Sit, stand, walk climb, balance, stoop, kneel, crouch, and/or crawl
- Use hands to finger, handle, or feel
- Reach with hands and arms
- Lift and/or move up to 50 pounds
- Vision abilities include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

Qualifications.

- At least 5-years experience or equivalent as an architect, engineer, inspector, contractor or any combination of experience equal to the above, with 3-years in management.
- Oral and written communication skills including public speaking and presentations at council meetings, and problem resolution
- Computer skills including current Microsoft Office Suite and department-related software
- Must have or obtain Certified Building Official designation within one year
- Must have or obtain ICC certification as an G2 inspector and plans reviewer
- Must possess and maintain a valid South Carolina drivers license.



6-17-11

① Since Jim Durbett has a poor memory, I will in the future send him an email if I will not be in to work by 9 AM each workday.

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⑥ Since Jim Durbett has a poor memory, I will in the future send him an email if I will not be in to work by 9 AM each workday.

6-17-2011

S. J. Durbett
John

EXHIBIT

2

Employee Performance Evaluation

Name: Jackie Donevant

Action:

No increase this evaluation
period.

Number: # 6

Scale = 1-10

Comments:

- ⇒ Employee is very knowledgeable in the area of Building
Official duties.
- ⇒ Employee attends entirely too much training, which
interferes with her work schedule.
- ⇒ Employee does not focus on Town's business, even
sometimes while at work.

Prepared by:

James W. Duckett, Jr.
James W. Duckett, Jr., Town Administrator

Date: 9/28/2011

I have received a copy:

Jackie Donevant
Employee Signature

Date: 9-29-2011

EXHIBIT

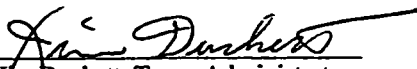
3



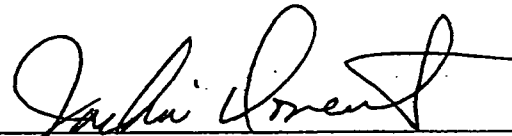
July 6 mos
Rt Paul Bauer
then destroyed
Jan 14
should be destroyed

Written Warning

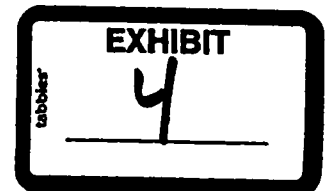
On June 17, 2011, you were instructed to email me if you would not be in to work by 9 AM each workday. Today, July 14, 2011, you were not at Town Hall at 9 AM and I did not receive the email.


Jim Duckett, Town Administrator

I have received a copy:


Jackie Donevant

7-14-11
Date



*Place in
Personnel file*

*Noted
[Signature]
11-29-11*

To: Jim Duckett, Town Administrator
From: Jackie Donevant, Director of Building & Zoning
Date: November 29, 2011
Re: Evaluation Rebuttal

I would like to present the following as a rebuttal and request for reconsideration of my Employee Performance Evaluation that I received September 29, 2011. I would like to address the two areas noted on the evaluation that proved negative, and consecutively cost me my increase in pay.

During the evaluation period I have attended many training classes/courses. The purpose of the training was not only to allow me to maintain my continued education units (CEU's), but to further the knowledge that I was praised for in the evaluation. Building Codes change often and keeping abreast of these changes are vital to the position that I currently hold. Further, I do not feel I should be penalized for attending training that would in fact enhance the functions of the department. I did not disregard the approval process for attending the training, as you, the Town Administrator approved each training session I attended in advance. I do not feel I should be penalized for attending approved training. If you had indicated that there was a problem with any of the training that was scheduled I would not have attended the training. Attending approved training and getting up to date information on code changes should have been a positive in the evaluation process.

I have focused on the Town's business by performing inspections, reviewing all plans submitted for zoning and building code compliance, and meeting with property owners, developers, architects and engineers on projects that are being constructed or proposed for the town. Above and beyond the projects that my department is responsible for, I have also played an active role in the following projects:

- SCDOT on the Highway 17 project
- Attended the Town's Transportation Committee meeting(s) to discuss Hwy. 17 project as well as Frontage Road.
- underground wiring project (14th Avenue)
- 10th Avenue Culvert project
- Scipio Lane meeting between Public Works and Horry County
- Dogwood Lake bank restoration project
- Streetscape project (from conceptual planning to completion)

I have worked in the town for several years, and I know most contractors and the majority of property owners here. What may appear to some as a friendly conversation, or someone just



stopping by to chat about something having nothing to do with town business may in fact and for the most part be town business. Having a good rapport with the citizens that I work with should also be a positive reflection on my evaluation.

I ask that you consider the information submitted and reconsider the merit increase based on this information. If a meeting is appropriate I welcome that opportunity to discuss this further.

I would also request a copy of this letter be placed in my personnel file.

Sincerely,



Jackie Donevant



Town of Surfside Beach
BUILDING PERMIT APPLICATION
Tel: 843-913-6341 Fax: 843-839-0057

PROPERTY STREET ADDRESS 11 Ocean Blvd South TAX MAP # _____

OWNERS NAME Town of Surfside Beach PHONE # _____

ADDRESS _____ CITY, STATE, ZIP _____

LOT _____ BLOCK _____ SECTION _____ ZONING DISTRICT _____

FLOOD ZONE _____ BASE FLOOD ELEVATION _____ FIRM PANEL # _____

TYPE OF WORK TO BE PERFORMED

____ NEW BUILDING OR STRUCTURE ____ ADDITION ____ RENOVATION/REMODEL ____ REPAIR/REPLACEMENT
☒ MOVE/DEMOLITION ____ ELECTRICAL ____ MECHANICAL/GAS ____ PLUMBING ____ OTHER

PROPOSED USE _____ CURRENT USE _____

CONSTRUCTION TYPE _____ OCCUPANCY TYPE _____ GROSS SQUARE FEET _____

OF STORIES _____ HEIGHT ABOVE GRADE _____ SETBACKS: FRONT _____ REAR _____ SIDE _____ SIDE _____

SQ FOOTAGE OF LOT _____ # OF PARKING SPACES _____ # OF BEDROOMS _____ # OF BATHS _____

DESCRIBE IN DETAIL PROPOSED SCOPE OF WORK:

Demo interior of building only

Business owner
CONTRACTOR Bill Howard TELEPHONE # 997 0100

ADDRESS 150 Ave of The Palms CITY, STATE, ZIP Myrtle Beach SC 29579

CONTRACTOR STATE LICENSE # _____ TOWN BUSINESS LICENSE # _____

VALUE OF CONSTRUCTION/IMPROVEMENT \$ 500.00 (INCLUDE ALL LABOR, MATERIAL & PROFIT)

Pursuant to SC Code Section 6-29-1145, is this tract or parcel restricted by any recorded covenant that is contrary to, conflicts with or prohibits the activity described in the permit? YES _____ NO _____ NOT APPLICABLE _____

It is understood and agreed by the undersigned that the issuance of this permit grants the Code Enforcement Official(s) access to the property as listed above and it does not constitute a privilege to violate any town ordinance, codes or regulations and that any omission or misrepresentation of facts or changes from this application or permit without the approval of the Building & Zoning Department shall constitute sufficient grounds for revocation of any permits issued. All permits are non-transferable and non-refundable.

Bill Howard
Signature of Applicant Date 1/17/12



TOWN OF SURFSIDE BEACH

DEMOLITION PERMIT

115 HIGHWAY 17 NORTH SURFSIDE BEACH, SC 29575

Phone: 843-913-6111 FAX: 843-839-0057 www.surfsidebeach.org

DATE ISSUED: 01/17/2012

PERMIT #: 2012- 13486

LOCATION 11 OCEAN BOULEVARD SOUTH

DISTRICT TAX MAP PARCEL#

195-04-09-001

11 OCEAN BOULEVARD SOUTH

LOT

2

ZONING DISTRICT

VE-17

OWNER: TOWN OF SURFSIDE BEACH

TOTAL VALUATION

CONTRACTOR:

\$ 500

SUBCONTRACTOR ID/NAMESUBCONTRACTOR TYPESTRUCTURALUNITSNOTETYPE CONSTRUCTION: DEMO STRUCTUREOCCUPANCY GROUP: TOWN PROPERTYFEE CODEFEE

DEMOLITION

150.00

TOTAL PAID:

150.00

PAID IN FULL

TOTAL AMOUNT:

150.00

REMARKS: DEMO INTERIOR OF BUILDING ONLY

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED, OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

(SIGNATURE OF CONTRACTOR/OWNER)

(ISSUED BY)

(DATE)

(DATE)

EXHIBIT

7



Nikki R. Haley
Governor

Catherine B. Templeton
Director

South Carolina
Department of Labor, Licensing and Regulation

Building Codes Council



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4688
FAX: (803) 896-4814
www.llronline.com

January 26, 2012

Sabrina Morris
Town of Surfside Beach
115 Highway 17N
Surfside Beach, South Carolina 29575

Dear Ms. Morris,

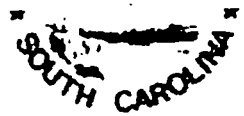
On March 4, 2012, your provisional registration with the Building Codes Council is due to expire. Without an active registration, it is unlawful for you to do any inspections that require registrations. If you have taken and passed any required certification exams that you have not reported to us, please do so immediately.

Please contact us with any questions that you may have.

Sincerely,

Jennie Meade, CBO
Program Coordinator
SC Building Codes Council





www.surfsidebeach.org

SURFSIDE BEACH, SC 29575
Tel: 843-913-6340 Fax: 843-839-0057

February 22, 2012

SC Department of Labor, Licensing and Regulations
Attn: Ms. Jennie Meade
110 Centerview Drive
Columbia, SC 29210

Re: Sabrina Morris' Provisional status Registration #2229

Ms. Meade:

I am writing to correct an error that was made in the registration of Sabrina Morris. Ms. Morris was supposed to be registered as a Provisional Building Official with the requirements and duties set forth as such. As I'm sure you are aware, she has passed the Legal & Management portion of the Certified Building Official certification and will be taking the class offered by England Enterprises, Inc. for the Technology portion of the certification.

I have enclosed the Certified Building Official job description as requested. Please contact me or Sabrina Morris should you need any additional information regarding this matter.

Thank you in advance for your help with this important matter.

Sincerely,


James Duckett
Town Administrator

cc: Sabrina Morris, Building & Planning



Summary: To direct, manage, supervise, and coordinate the programs and activities of the Building Inspection Department; to coordinate assigned activities with other City departments, divisions, and outside agencies; and to provide highly responsible and complex administrative support to the Building Staff.

Essential Duties and Responsibilities:

- Establishes general policies and procedures for departmental conduct as related to building, planning and zoning. Reviews and approves all permit applications; performs plan reviews; determines code and ordinance interpretations and recommends updates; performs inspections including construction, electrical, mechanical, and plumbing; enforces town ordinances; addresses and resolves complaints.
- Reviews request for zoning amendments and make recommendations.
- Makes final decisions on building, planning and zoning ordinance and code interpretations.
- Authorizes certificates of occupancy
- Verifies that all contractors and construction tradesman maintain all required local and state licensing and registrations when working within the town.
- Responsible all services and activities within the Building, Planning and Zoning department including administering, interpreting and enforcing Town Building, Planning and Zoning codes, ordinances and regulations.
- Manage and participate in the development and implementation of goals, objectives, policies, and priorities for assigned programs; recommend and administer policies and procedures.
- Continuously monitor and evaluate the efficiency and effectiveness of service delivery methods and procedures; assess and monitor work load, administrative and support systems.
- Train and motivate Building Inspection personnel; provide or coordinate staff training; work with employees to correct deficiencies; Provide timely, accurate and thorough Performance Reviews for supervised employees.
- Plan, direct, coordinate, and review the work plan for the Building, Planning and Zoning Department; meet with staff to identify and resolve problems; assign work activities, projects and programs; monitor work flow; review and evaluate work products, methods and procedures.
- Manage and participate in the development and administration of the Building, Planning and Zoning annual budget; direct the forecast of funds needed for staffing, equipment, materials, and supplies; direct and implement adjustments as necessary.
- Serve as liaison for the Building, Planning and Zoning Department and other City departments, divisions and outside agencies; negotiate and resolve significant and controversial issues.
- Coordinate development meetings for contractors; provide pre-construction guidelines and information.
- Review development codes with architects, engineers and developers; coordinate the permit process between developers and other City departments and divisions; respond to questions; mediate and resolve conflicts and complaints.
- Provide responsible staff assistance to the Building, Planning and Zoning Department; prepare and present staff reports and other necessary correspondence.
- Conduct a variety of organizational studies, investigations, and operational studies; recommend modifications to building inspections and code programs, policies, and procedures as appropriate.
- Prepare statistical reports on operations and activities including budget program measurements.
- Review and update building, planning and zoning codes to ensure compliance with state and federal laws; stay abreast of new and amended state and federal codes and ordinances.
- Issue citations and testify in court as necessary for Building, Planning and Zoning Department.
- Serve as staff liaison to a variety of boards and commissions; attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of building inspections and zoning code inspections.

- Develop, maintain and enforce local floodplain regulations.
- Perform other duties as assigned.

Physical Demands: Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

- To talk and hear
- Sit, stand, walk, climb, balance, stoop, kneel, crouch and or crawl
- Use hands to handle or feel
- Reach with hands and arms
- Lift and/or move up to 50 pounds
- Vision abilities include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

Qualifications:

- At least 5 years experience or equivalent as an architect, engineer, inspector, contractor or any combination of experience equal to the above, with 3 years in management.
- Oral and written communications skills including speaking and presentations at council meetings, and problem resolution.
- Computer skills including current Microsoft Office Suite and department related software
- Must have or obtain State Certification(s) within 18 months
- Must possess and maintain a valid South Carolina driver's license.



Work/School Release

This patient was seen by:

☐ L. Shayne Webb, MD ☒ Stephen D. Duffy, MD

Patient Name: Jacklyn Donevant Date: 3-12-12

The above patient was seen in our office today. Please excuse this patient from Work/School.

Patient can return back to work/school: Date: 3-12-12

Restriction:

no restrictions

Office Representative: Jessica Brown Date: 3-12-12

Nirvana Plastic Surgery, PA
1331 44th Ave N. Suite 101
Myrtle Beach, SC 29577
Ph: 843.839.2004 FX: 843.839.2011





Memorandum

To: File
From: Debra E. Herrmann, CMC, Town Clerk
Date: March 13, 2012
Re: Jackie Donevant – Direct Order

Mr. Duckett invited me into his office at 8:04 a.m. to witness an exchange between himself and Jackie Donevant, which ended about 8:20 a.m.

Mr. Duckett explained that Jackie was now officially returned to work; however, he gave her a direct order that she could not and would not change, ameliorate, or in any other manner amend any action that was taken during her absence. That if she did so, she would be fired. Mr. Duckett said that he had seldom used the word "fire" during his career, but reiterated that the Jackie's failure to follow that directive would result in her being fired.

Jackie said she understood.



Dedicated people providing quality and responsive service to our community.
115 US Highway 17 North, Surfside Beach, SC 29575-6034 ♦ www.surfsidebeach.org
Main 843.913.6111 ♦ Direct 843.913.6333 ♦ Email dhermann@surfsidebeach.org

SURFSIDE BEACH - CODE ENFORCEMENT

INSPECTION TICKET

(843) 913-6341

DATE 3-20-12

CONTRACTOR Newman

JOB ADDRESS 11 Oak Blvd S

SETBACKS: FR. _____ REAR _____ IS _____ EXS. _____

FLOOD ZONE _____

TYPE INSPECTION	OK	DENIED		OK	DENIED
TEMP. SERVICE	—	—	INSULATION	—	—
U.S.P. ☒	—	—	METER SERVICE	—	—
FOUNDATION	—	—	FINAL	—	—
SLAB/POLYWIRE	—	—	LANDSCP/# TREES	—	—
ANCHORS	—	—	DRIVEWAY	—	—
NAILING	—	—	SWMP	—	—
EXTERIOR STRAPPING	—	—	CO	—	—
ROUGH FIRE	—	—	METER C/O/S	—	—
ROUGH FRAMING	—	—	TREE INSPECTION	—	—
ROUGH ELECTRICAL	—	—	SAFETY INSPECTION	—	—
ROUGH PLUMBING	—	—	POOL BONDING	—	—
ROUGH MECHANICAL	—	—	POOL DECK	—	—
MOISTURE BARRIER	—	—	POOL GROUND	—	—
FLASHING WINDOW	—	—	POOL FINAL	—	—
FLASHING/BRICK	—	—		—	—

REMARKS:

work started

without a Permit

Stop work until
permit issued

INSPECTOR:

J. L. To

EXHIBIT

12

3-20-12

- 1) Got to office 3:30 - John said they were cutting walls out for Doors & Windows. I asked him had he been there
- 2) I ASKED Sue & Sabrina if the permit HAD BEEN ISSUED ^{for the work to be done}. Both SAID ^{at first} No
- 3) When I Got to pier - Windows cut out & DOORS (openings) in exterior wall // INTERIOR wall construction
A) Bud joins on site (fisherman)
B) Ice Cream Man (operator of Jim)
C) Jim's wife
I wrote a stop work until permit is issued
borrowed tape from Jim's wife
and left taped note to locked door
- 4) Returned to office Sabrina said plans were turned in today to MB
(DID NOT TELL ME UNTIL I got back)

EXHIBIT

13

Sabrina Morris

From: [REDACTED]
Sent: Wednesday, March 21, 2012 10:39 AM
To: Sabrina Morris
Subject: RE: Pier Plans

Sabrina,

I have some FYI for you for this project. The transmittal letter from Chris Clark from AA+E architects provided comments to the review, the one that I am concerned with is number 6 comments. I am quoting from the response [REDACTED]

[REDACTED] This comment could set the Town up for law suit if an application of this is put into an assembly. A commercial assembly fall under NFPA 13 and not NFPA13D or R. The Architects response is a new exit is shown that leads to an outside deck on the ocean side of the restaurant. There is no civil plans or any plans that show the exterior decks and access from it. There is a side of caution that they do not have to provide accessible means of egress in alteration. Per section 3409.6 Alteration. This is to provide you means of articulate to the powers to be that the accessibility does not have to be in existing building.

[REDACTED] Also Shawn and David were in my office this morning saying that they were sent by the town administrator to see what they can do to speed the process. I informed them that I would let you know when I finished and that you would be getting in touch with them. They wanted to come back and pick up the plans and bring them to you. That is up to you so just let me know.

Call me if you want to further discuss or have any comments or concerns.

3409.6 Alterations. A building, facility or element that is altered shall comply with the applicable provisions in Chapter 11 and ICC A117.1, unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent technically feasible.

Exceptions:

1. The altered element or space is not required to be on an accessible route, unless required by Section 3409.7.

2. Accessible means of egress required by Chapter 10 are not required to be provided in existing buildings and facilities.

SECTION 1007

ACCESSIBLE MEANS OF EGRESS

1007.1 Accessible means of egress required. Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required by Section 1015.1 or 1019.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

Exceptions:

1. Accessible means of egress are not required in alterations to existing buildings.



Jon Harrah CBO, CFM

Plan Examiner

City of Myrtle Beach

843-918-1193

jharrah@cityofmyrtlebeach.com

From: Sabrina Morris [mailto:smorris@surfsidebeach.org]

Sent: Wednesday, March 21, 2012 8:34 AM

To: Jon P. Harrah

Subject: Pier Plans

Good Morning Jon,

The owners of the Pier Rest informed us yesterday that the revised plans had been dropped off at your office. I wanted you to look at the revisions since the process was started with you, I hope you don't mind. This will be the last plans, I promise. ☺

Let me know if you have any questions or comments.

Thanks SO much for your help on this!



Sabrina Morris

Code Enforcement Official

Town of Surfside Beach

115 U.S. Highway 17 North

Surfside Beach, SC 29575

843-913-6354 (Office)

843-238-5432 (fax)

This e-mail transmission, in its entirety and including all attachments, is intended solely for the use of the person or entity to whom it is addressed and may contain sensitive information which is privileged, confidential, and the disclosure of which is governed by applicable law. If you are not the intended recipient, you are hereby notified that disclosing, distributing, copying, or taking any action in relation to this e-mail is STRICTLY PROHIBITED. If you have received this e-mail in error, please notify the sender immediately and destroy the related message and any attachments. WARNING: All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA), §30-410-SC Code of Laws.

WARNING: All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA), §30-410-SC Code of Laws.

MARCH 21, 2012

ORDER OF SUSPENSION

Ms. Donovan is hereby suspended from duty without pay for three⁽³⁾ days effective today. She is NOT to perform any duties related to her job at the Town of Lakeside Beach during this suspension. This suspension is due to her inability to follow directions. (See REPRIMAND - same date).

James W. Dushoff Jr.
Town Administrator

I understand -

James Dushoff Jr.
James Dushoff Jr.

EXHIBIT

15

MARCH 21, 2012

REPRIMAND (WRITTEN)

On Monday, March 19, 2012, I instructed Deputy Administrator Mike Feller to tell Mr. Donovan, Director of the P.B. & E. Department, that she could no longer report through Mr. Feller to me -- she was to communicate directly with me. She advised that Mr. Donovan had been told.

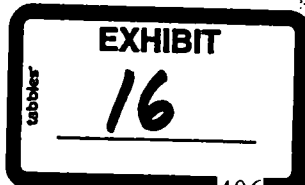
On Tuesday, March 20, 2012, Mr. Donovan called me on my town land cell phone to inform me she was in Myrtle Beach attending to matters (2:30 pm) in case I was looking for her later in the afternoon. Mr. Donovan issued what is commonly called a "stop work" order and taped it to the door of the restaurant on the pier. Whereas Mr. Donovan was operating within the scope of her authority, she made no effort to reach me to tell me of her action. Instead, she called the Deputy Administrator, who then advised me by phone at 4:55 pm, at which time I was already at the pier and at the same time was being called by Council member Sample, who wanted to know if there was anything he needed to know."

James W. Dorch Jr.
TOWN ADMINISTRATOR

Refused to sign

John Donovan

I have received a copy.



March 21, 2012

TERMINATION ORDER

Ms. Doreen is hereby terminated effective today.

James H. Doreen
Team Administrator

EXHIBIT

17

TOWN OF SURFSIDE BEACH

TOWN PERMIT

115 HIGHWAY 17 NORTH / SURFSIDE BEACH, SC

PHONE: (843)913-6111 FAX: (843)839-0057 www.surfsidebeach.org

DATE ISSUED: 03/21/2012

PERMIT #: 2012-301868

LOCATION:	11 OCEAN BOULEVARD SOUTH	DISTRICT	TAX MAP PARCEL
	11 OCEAN BOULEVARD SOUTH	LOT	195-04-09-001
		2	ZONING DISTRICT
OWNER:	TOWN OF SURFSIDE BEACH		VE-17
CONTRACTOR:	6813 LICENSE: 37282	TOTAL VALUATION	
	NB LABOR LLC DBA NEWMAN BROS LTD	\$ 280,000	
	PO BOX 6938	TOTAL SQ FT	
	MYRTLE BEACH, SC 29572	0	
	PHONE: (843) 903-5600	HEATED/UNHEATED	
		0 / 0	



TYPE CONSTRUCTION: REMODEL

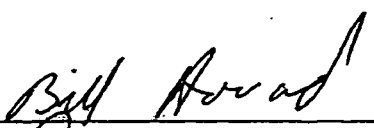
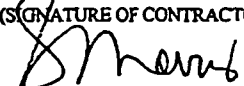
OCCUPANCY GROUP: TOWN PROPERTY

FEE CODE		FEE
		0.00
GENERAL/GENERAL 100000-499999		1,000.00
TOTAL PAID:	1,000.00	**PAID IN FULL**
TOTAL AMOUNT:		1,000.00

REMARKS: REMODEL RESTAURANT WITH ELECTRICAL, PLUMBING AND HVAC UPGRADES

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED, OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.


(SIGNATURE OF CONTRACTOR/OWNER)
(ISSUED BY)3/22/12
(DATE)3/21/12
(DATE)

EXHIBIT

18

Town of Surfside Beach
BUILDING PERMIT APPLICATION

Tel: 843-913-6341 Fax: 843-839-0057

11000.02

PROPERTY STREET ADDRESS 11 Ocean Blvd S TAX MAP # _____

OWNERS NAME Town Surfside PHONE # _____

ADDRESS 115 Hwy 17N Surfside Beach CITY, STATE, ZIP _____

LOT _____ BLOCK _____ SECTION _____ ZONING DISTRICT _____

FLOOD ZONE _____ BASE FLOOD ELEVATION _____ FIRM PANEL # _____

TYPE OF WORK TO BE PERFORMED

☐ NEW BUILDING OR STRUCTURE ☐ ADDITION ☒ RENOVATION/REMODEL ☐ REPAIR/REPLACEMENT
☐ MOVE/DEMOLITION ☐ ELECTRICAL ☐ MECHANICAL/GAS ☐ PLUMBING ☐ OTHER

PROPOSED USE Restaurant CURRENT USE Same

CONSTRUCTION TYPE _____ OCCUPANCY TYPE _____ GROSS SQUARE FEET _____

OF STORIES _____ HEIGHT ABOVE GRADE _____ SETBACKS: FRONT _____ REAR _____ SIDE _____ SIDE _____

SQ. FOOTAGE OF LOT _____ # OF PARKING SPACES _____ # OF BEDROOMS _____ # OF BATHS _____

DESCRIBE IN DETAIL PROPOSED SCOPE OF WORK:

Elect, Plumb, HVAC upgrades

CONTRACTOR Newman Brothers TELEPHONE # 843-385-8191

ADDRESS Box 6938 CITY, STATE, ZIP MA SC 29572

CONTRACTOR STATE LICENSE # G1162041 TOWN BUSINESS LICENSE # _____

VALUE OF CONSTRUCTION/IMPROVEMENT \$ 200,000 (INCLUDE ALL LABOR, MATERIAL & PROFIT)

Pursuant to SC Code Section 6-29-1145, is this tract or parcel restricted by any recorded covenant that is contrary to, conflicts with or prohibits the activity described in the permit? YES _____ NO _____ NOT APPLICABLE _____

It is understood and agreed by the undersigned that the issuance of this permit grants the Code Enforcement Official(s) access to the property as listed above and it does not constitute a privilege to violate any town ordinance, codes or regulations and that any omission or misrepresentation of facts or changes from this application or permit without the approval of the Building & Zoning Department shall constitute sufficient grounds for revocation of any permits issued. All permits are non-transferable and non-refundable.

Signature of Applicant

Date

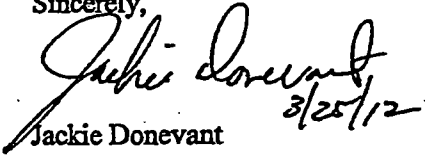
March 25, 2012

Mr. Jim Duckett
Administrator
Town of Surfside Beach

Mr. Duckett,

My suspension was not right. All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town.

Sincerely,


Jackie Donevant 3/25/12





Nikki R. Haley
Governor

Holly G. Pisarik
Director

South Carolina
Department of Labor, Licensing and Regulation

Building Codes Council

BCO 2229
LLR

110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
(803) 896-4688
FAX: (803) 896-4814
www.llronline.com

March 30, 2012

Sabrina Morris
Town of Surfside Beach
115 Highway 17N
Surfside Beach, SC 29575

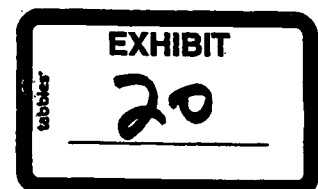
Dear Ms. Morris,

In February, we received a letter from your Town Administrator, James Duckett, stating that an error was made at the time of your registration. The requested change was made, and it has since been discovered that we should not have made the change since your provisional registration had expired on January 18, 2012, one year from the date of hire. Your registration will be placed on lapsed status until such time that you qualify for the position for which you are employed. You are no longer permitted to perform as a building code enforcement officer.

Sincerely,

Gary F. Wiggins, CBO
Administrator
SC Building Codes Council

Cc: James Duckett
Jacklyn Donevant



April 4, 2012

Justin Donovan:

You are terminated effective today from
employment with the Town of Surfside Beach.

James W. Duckett
Administration

EXHIBIT

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ET-101
rev. 3/11SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
REQUEST FOR INFORMATION
UNEMPLOYMENT INSURANCE BENEFITS

CLAIMANT'S NAME: Jacklyn Donevant

SS #: 251-94-7971

NAME WORKED UNDER:

DATE MAILED: 2012-04-05

EMPLOYER'S ACCOUNT #: 125459

RETURN WITHIN SCDEW
10 DAYS OF THE 200 A VICTORY LANE.
ABOVE DATE TO: CONWAY, SC 29526EMPLOYER'S NAME TOWN OF SURFSIDE BEACH
ADDRESS: 115 HIGHWAY 17 N
SURFSIDE BEACH, SC 29575

FAX NUMBER: 843-234-0352

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please explain the reason this person no longer works for you so that a determination can be made on eligibility for benefits. If you reply by letter, fax, email, you must include all information requested, as well as the claimant's name and social security number. For instructions on responding by email, please go to our agency website at www.dscs.gov. YOU WILL RECEIVE A DETERMINATION ON HIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BENEFITABLE AND/OR LIABLE EMPLOYER.

☐ CLAIMANT'S Reason for Separation: DISCHARGED/FIRED/TERMINATED

could not break the law

☐ A telephone interview has already been scheduled for the claimant on 04/16/2012 at 03:00 PM. Please respond by mail, fax, email, telephone, or personal visit to the local ESC office above.

SEPARATION INFORMATION

☐ LACK OF WORK (No additional written explanation is necessary.)

☒ DISCHARGED (Give specific reason) Discharged for cause

State company policy that claimant violated, if applicable, and describe the final incident leading to the separation:

List any warnings, note if verbal or written and give dates:

If discharged for absenteeism, list dates of absences:

☐ VOLUNTARILY QUIT (Give specific reason):

☐ OTHER (Explain in detail):

Dates of Employment: FROM: 4-1-96 (1st Employment) TO: 10-18-02 (Resigned)
During all terms of employment, have you paid this claimant as much as: \$ 2500.00 ☒ YES ☐ NO

If NO, how much have you paid this claimant in all terms of employment? \$ _____

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay? ☐ YES ☒ NO

If YES, what amount? \$ _____ PER _____

Did claimant contribute to pension plan? ☒ YES ☐ NO If YES, what percent? 6.5 %

EMPLOYER NAME: Town of Surfside Beach ACCOUNT NUMBER: 125459

EMPLOYER SIGNATURE: [Signature] TITLE: Administrator

TELEPHONE NUMBER: 843-913-6111 DATE: 4/9/12

**FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED

EXHIBIT

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Lost Wages

2012	\$40,135.92
2013	\$44,000.00
2014	\$65,000.00
2015	\$65,000.00
2016	\$65,000.00
2017	\$65,000.00
2018	\$32,666.72
TOTAL	\$376,802.64



Donevant v. Town of Surfside Beach
Damage Summary

<u>ITEM</u>	<u>AMOUNT</u>
<u>LOST WAGES:</u>	<u>\$376,802.64</u>
○ <u>2012: \$40,135.92</u>	
○ <u>2013: \$44,000.00</u>	
○ <u>2014: \$65,000.00</u>	
○ <u>2015: \$65,000.00</u>	
○ <u>2016: \$65,000.00</u>	
○ <u>2017: \$65,000.00</u>	
○ <u>2018: \$32,666.72</u>	
○ <u>Total Lost Wages = \$376,802.64</u>	
<u>MILEAGE:</u>	<u>\$14,560.00</u>
○ <u>Mileage Driven from October 1, 2012 until June 28, 2013 = \$14,560.00</u>	
<u>SUBTOTAL:</u>	<u>\$391,362.64</u>
<u>LOSS OF CREDIT:</u>	Jury Determination
<u>EMOTIONAL DISTRESS:</u>	Jury Determination

RESUME

Gary F. Wiggins

WORK EXPERIENCE:

9/8/2011 to February 15, 2013 - Division Manager, Codes, Housing and Construction Services, Department of Labor, Licensing and Regulation (LLR), State of South Carolina. Duties included direct supervision of the;

- Building Codes Council;
- Building Accessibility Program;
- Modular Building Program;
- Code Enforcement Officer Registration Program;
- Building Codes Program;
- Manufactured Housing Board;
- Contractors Licensing Board (General Contractors and Mechanical Contractors

Licensing Programs);

- Commercial Building Inspector Program;
- Alarm System Contractors Licensing;
- Sprinkler Contractors Licensing; and,
- Boiler Safety Program.

5/25/10 to 9/7/2011 - Division Manager, Codes, Housing and Construction Services, Department of LLR. Duties included direct supervision of the;

- Building Codes Council;
- Building Accessibility Program;
- Modular Building Program;
- Code Enforcement Officer Registration Program;
- Building Codes Program.

And, supervision of the administrators for the;

- Manufactured Housing Board;
- Residential Builders Commission (Residential Builders, Specialty Contractors

and Residential Inspectors Licensing Programs);

- Contractors Licensing Board (General Contractors and Mechanical Contractors

Licensing Programs);

- Alarm System Contractors Licensing;
- Sprinkler Contractors Licensing;
- Commercial Building Inspector Program;
- Boiler Safety Program;
- Board of Architectural Examiners;
- Landscape Architectural Examiners;
- Board of Registration for Professional Engineers and Land Surveyors; and, Soil Classifier Advisory Council.

6/30/06 to 5/24/2010 - Division Manager, Codes, Housing and Construction Services, Department of LLR. Duties included direct supervision of the;

- Building Codes Council;
- Building Accessibility Program;
- Modular Building Program;

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Code Enforcement Officer Registration Program;
Building Codes Program.

And, supervision of the administrators for the;
Manufactured Housing Board;

Gary F. Wiggins
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Residential Builders Commission;
Contractors Licensing Board;
Alarm System Contractors Licensing;
Sprinkler Contractors Licensing;
Commercial Building Inspector Program; and,
Boiler Safety Program.

11/1/97 to 6/29/06 - Administrator, Department of LLR. Duties included direct supervision of the;
Building Codes Council;
Building Accessibility Program;
Modular Building Program;
Code Enforcement Officer Registration Program (Starting June 1, 1998); and,
Building Codes Program.

5/3/94 to 11/1/97 - Assistant Deputy Director, Department of LLR. Duties included direct supervision of the;

Building Codes Council,
Board for Barrier Free Design;
Modular Building Program;
Building Codes Program.

And, supervision of the administrators for the;
Contractors Licensing Board;
Alarm System Contractors Licensing;
Sprinkler Contractors Licensing;
Commercial Building Inspector Program;
Residential Builders Commission;
Real Estate Appraisers Board; and,
Pyrotechnic Safety Board.

12/01/84 to 5/2/94 - Administrator, Division of General Services, State of South Carolina. Duties included direct supervision of the;

Building Codes Council; and,
Modular Building Program.

02/06/83 to 12/31/89 - President, Consulting Services, Inc. (Building Codes and Construction Consulting).

10/01/70 to 02/05/83 - Director of Building, Zoning and Housing for the City of Myrtle Beach, South Carolina.

10/15/67 to 09/30/70 - Building Inspector and Zoning Administrator for the City of Washington, North Carolina.

10/06/63 to 10/06/67 - U.S. Air Force (Civil Engineering).

05/57 to 10/06/67 - Various jobs, mostly in the construction trades.

PROFESSIONAL ACHIEVEMENTS:

Certifications:

Building Inspector - Southern Building Code Congress International

Gary F. Wiggins

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Building Inspector - American Society of Building and Construction Inspectors

Building Official - International Code Council

Professional Building Official - State of South Carolina

Professional Licenses:

Building Official - South Carolina Building Codes Council

General Contractor - South Carolina Contractors Licensing Board

Residential Home Builder - South Carolina Residential Builders Commission

Residential Home Inspector - South Carolina Residential Builders Commission

Award:

South Carolina Building Official of the Year 1973

PROFESSIONAL SERVICE:

American Arbitration Association:

Member Panel of Arbitrators (Construction Specialist)

State of South Carolina:

Member Building Codes Advisory Board
 Design Professionals Committee
 Housing Solutions Taskforce
 Emergency Management Taskforce

Clemson University:

Member Housing Industry Advisory Council

International Code Council:

Chair Accessibility Certification Committee
Member Code Correlation Committee
 Education Committee
 Major Jurisdiction Committee

Joint Council on Industrialized/Modular Buildings:

Chair Joint Council
 By Laws Committee

Council of States on Industrialized Housing and Buildings:

Delegate State of South Carolina

National Institute of Building Sciences:

Member HHS/CABO/NFPA Codes Study Project Committee

Southern Building Code Congress International, Inc.:

Chair Building Code Committee
 Plumbing Code Committee
 Fire Prevention Code Committee (first chairman)
 Amusement Rides Code Committee (first chairman)
 Fire and Life Safety Subcommittee
 Resolution Committee

Gary F. Wiggins

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Vice-Chair Nominations Committee
Member Seismic Prescriptive Standards Committee
 Board of Directors
 Format Committee
 Correlating Committee
 Interpretation Committee
 Constitution (By-Laws) Committee

State of South Carolina Board for Barrier Free Design:

Vice-Chair (Appointed by Governor Riley)

Building Officials Association of South Carolina:

Officer President
 Vice President
 Secretary/Treasurer
 Board of Directors
Chair Educational Committee
 Legislative Committee
 Nomination Committee
Member Code Interpretation Committee
 Membership Committee

Municipal Association of South Carolina:

Member Legislative Committee

American Society of Sanitary Engineering, SC Chapter:

Officer President (four terms, first president for State of SC)

National Academy of Code Administrators:

Member Certification Committee (selected as one of 25 building officials in the United States to serve on the first committee)

Horry-Georgetown Technical College:

Member Energy Management Advisory Board

Council of American Building Officials:

Member Pilot Certification Group (selected as one of 75 building officials in the United States to take the first Certified Building Official Examination)

World Organization of Building Officials:

Member National Advisory Committee

South Carolina Society of Professional Engineers:

Member Constitution Committee

Richland County Planning Commission:

Member

National Institute of Building Sciences:

Member Modular Housing Project Committee
 Radon Project Committee

Gary F. Wiggins

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South Carolina Partners in Homeownership:

Member Barriers Committee

TEACHING CREDITS:

South Carolina State Fire Inspectors School:

Course Titles Affects of Fire in High Rise Construction
 Standard Fire Prevention Code
 Standard Building Code

Manufactured Housing Institute of South Carolina:

Course Titles Plumbing Concerns
 Effects of High Winds on Manufactured Housing

Wyatt Real Estate Institute:

Course Title Understanding Zoning (for the Real Estate Professional)

South Carolina Board for Barrier Free Design:

Course Titles Introduction to the Americans with Disabilities Act (Beginners Level)
 Introduction to the Americans with Disabilities Act (Advanced Level)

Home Builders Association of South Carolina:

Course Title Affects of the Americans with Disabilities Act on Residential Buildings

Horry-Georgetown Technical College:

Course Titles Standard Building Code
 Home Builders State License Preparation
 Energy Management

State of South Carolina	)	
	)	C. A. No. 2012CP26-4852
County of Horry, Court of Common Pleas	)	
Jacklyn J. Donevant,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Surfside Beach	)	
	)	
Defendant.	)	

MOTION TO CONTINUE TRIAL

This case is currently on the trial roster for the week beginning January 13, 2013. Both parties were ready for trial, however, on December 13, 2013, Plaintiff named a previously-identified expert that she intended to call to testify. Defendant has worked diligently to depose Plaintiff's expert and secure its own expert before trial. Although Defendant was able to depose Plaintiff's expert, and has located experts for its own case, neither of these experts was available to testify the week of January 13 due to preexisting scheduling conflicts.

For the foregoing reasons, the Defendant moves that this case be continued beyond the January terms of court. The case should be ready for trial the next time it appears on the roster.

Respectfully submitted,

MALONE, THOMPSON, SUMMERS
& OTT LLC



Charles E. Thompson, Jr.
Attorney for Defendant

December 30, 2013



339 Heyward Street
Columbia, South Carolina 29201
(803) 254-3300

SECTION 115 STOP WORK ORDER

[A] 115.1 Authority.

Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order.

[A] 115.2 Issuance.

The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

[A] 115.3 Unlawful continuance.

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.



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Ordinance No. 08-0641
First Reading: 06-24-08
Second Reading: 07-08-08

STATE OF SOUTH CAROLINA) AN ORDINANCE OF THE TOWN OF SURFSIDE BEACH
COUNTY OF HORRY) PROVIDING THAT THE TOWN CODE OF ORDINANCES
TOWN OF SURFSIDE BEACH) §§13-21 ADOPTION OF STATE BUILDING CODE
) BE REPEALED AND REPLACED WITH ADOPTION
) OF 2006 INTERNATIONAL BUILDING CODE

WHEREAS, the Mayor and Town Council of the Town of Surfside Beach, in council duly assembled, in order to repeal §13-21 Adoption of State Building Code and replace it with Adoption of 2006 International Building Code.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that §13-21 shall repeal Adoption of State Building Code and hereby adopt the 2006 International Building Code for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, location and maintenance of buildings and structures, including permits, that certain code known as the International Building Code, being particularly the 2006 edition, of which code one copy is filed in the office of the town clerk, and same is hereby adopted and incorporated as fully as if set out at length herein. The administrative procedures contained in Chapter 1 through 35 of the International Building Code are hereby adopted as official policies and procedures, for all permissive and mandatory codes adopted pursuant to Title 6, Chapter 9 of the South Carolina Code of Law. The fees for permits shall be as established in an ordinance adopted by town council.

(a) The following codes are hereby adopted by reference as though they were fully contained herein:

- (1) *International Plumbing Code*, 2006 edition which shall include Chapters 1 through and including 13.
- (2) *International Mechanical Code*, 2006 edition which shall include Chapters 1 through and including 15.
- (3) *International Fuel Gas Code*, 2006 edition which shall include Chapters 1 through and including Chapter 7.
- (4) *International Energy Conservation Code*, 2006 edition which shall include Chapters 1 through 9.
- (5) *International Fire Protection Code*, 2006 edition, which shall include Chapters 1 through and including 45.
- (6) *International Residential Code for One-and Two- Family Dwellings*, 2006 edition, which shall include Chapters 1 through and including 43.

State law references: Adoption of building code by reference, S.C. Code 1976, § 6-9-60.

EXHIBIT

27

Ordinance No. 08-0641
First Reading: 06-24-08
Second Reading: 07-08-08

BE IT ORDERED AND ORDAINED by the Mayor and Council of the Town of Surfside Beach,
South Carolina, in assembly and by the authority thereof, this 8th day of July 2008.

K. Allen Deaton, Mayor

Vicki Blair, Town Council

Joseph B. Martin, Town Council

Robert F. Childs III, Town Council

Douglas F. Samples, Town Council

James S. Truett, Mayor Pro Tem

Mark Johnson, Town Council

Attest:

Sharon Pinnell, Town Clerk

PASSED

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Sec. 13-21. Adoption of building codes.

The following codes are hereby adopted by reference as though they were fully contained herein:

- (1)
2012 International Residential Code which shall include Chapters 1 through and including 43.
- (2)
2012 International Building Code which shall include Chapters 1 through and including 34.
- (3)
2012 International Plumbing Code which shall include Chapters 1 through and including 13.
- (4)
2012 International Fire Code which shall include Chapters 1 through and including 67.
- (5)
2012 International Mechanical Code which shall include Chapters 1 through and including 14.
- (6)
2012 International Fuel Gas Code which shall include Chapters 1 through and including 7.
- (7)
2009 International Energy Conservation Code which shall include Chapters 1 through and including 5.
- (8)
2011 National Electrical Code which shall include Chapters 1 through and including 8.

(Code 1969, § 6-20; Ord. No. 08-0641, 7-8-08; Ord. No. 13-0752, 7-9-13)

State law reference— *Building codes and fire prevention, S.C. Code 1976, § 5-25-10 et seq.*



Wednesday, March 21, 2012

On Monday, March 19th, Jim Duckett discussed with me that it was his desire, henceforth, for Jackie Donevant to report directly to him. He said that he would discuss this directly with her and that I should also make it clear to her. Later on Monday, sometime in afternoon, and again on Tuesday, at approximately 11:30 AM, I communicated to her that she would need to deal directly with the Administrator on all issues relating to her job and the execution of her duties. I told the Administrator that in both discussions I had communicated to Jackie that as of Monday, March 19th she was to deal exclusively with him on any and all job related issues.

On Tuesday, March 20th at 4:25 PM, I was offsite and received a call from Jackie Donevant. She stated that while I would probably not like what she had done, she had just put a "Stop Work Order" on the pier restaurant space. She said it was her responsibility because of the nature of work they were performing. She also stated that she felt she would, consequently, be terminated in the morning. I asked her if she had called Jim, the Administrator, and she indicated that she had not called him yet.

I returned to the office immediately and went to Jackie's office where she was in discussion with Sue Shmaruk. She stated a number of reasons why she felt compelled to issue the order and then I asked her if she had called the Administrator yet and she said no. At that point I said, "It is what it is," and brought the discussion to a close. I returned to my office and immediately called the Administrator to inform him of the situation. By this time it was approximately 4:55 PM. When I reached him he stated that he already knew and he had been trying to reach Jackie.



Micki Fellner, Deputy Administrator



**STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED

JAN 26 2015

SC Court of Appeals

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Deadra Jefferson, Circuit Court Judge

C. A. NO. 12-CP-26-4852

Town of Surfside Beach. Appellant

v.

Jacklyn J. Donevant Respondent

APPELLANT'S INITIAL BRIEF

Charles F. Thompson, Jr.
Malone, Thompson, Summers & Ott
339 Heyward Street
Columbia, S.C. 29201
803-254-3300

Attorney for Appellant

Other counsel of record:

Henrietta Golding, Esquire
McNair Law Firm
2411 N. Oak Street, Suite 206
Myrtle Beach S.C. 29577
843-444-1107

Attorney for the Respondent

000428

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in expanding the public policy exception to at-will employment beyond situations in which (1) the employer requires the employee to violate a law carrying a criminal penalty, or (2) the reason for the employee's termination itself is a violation of criminal law.
2. Assuming the public policy exception to at-will employment is to be expanded, did the trial court err in disregarding the rule laid down in *Antley v. Shepherd*, that the public policy exception does not apply to terminations of employees who insist on performing an act that is discretionary, *i.e.*, that the law does not require them to perform.

STATEMENT OF THE CASE

This case arises from the employment termination of Jacklyn Donevant. Donevant was the building official for the Town of Surfside Beach (the Town). The only legal issue tried was whether or not the Town fired Donevant, in violation of public policy, because Donevant issued a discretionary “stop work” order on a construction project on the Town pier.

The Town contended at summary judgment, directed verdict, and judgment notwithstanding the verdict, that Donevant’s allegations did not meet the requirements of the public policy exception to the at-will employment rule. These contentions were overruled. The case was tried before a Horry County jury from February 10, 2014 through February 14, 2014. The jury returned a verdict of \$500,000 which was reduced by Judge Deadre Jefferson to \$300,000 pursuant to the South Carolina Tort Claims Act. Judgment was dated February 18, 2014 and received by the Town on March 3, 2014. The Town filed a notice of appeal on March 10, 2014.

FACTUAL BACKGROUND

Donevant worked for the Town of Surfside Beach as its Building and Zoning Department Director. Donevant was the only person in the Town's Building and Zoning Department who was licensed to review plans and conduct construction inspections.

In 2010, the Town hired Jim Duckett as its new Town Administrator. He was Donevant's immediate superior. Mr. Duckett heard complaints about Donevant when he began his duties, but he resolved to start with a blank slate with all of the Town's employees. (R. 302) (Tr. II, p.169).¹

The main problem Mr. Duckett had with Donevant was that she was frequently absent from, or late to, work. Donevant's own co-workers testified she was missing from work approximately 40% of the time. (R. 285) (Tr. II p. 126). Duckett eventually required Donevant to be at work by 9:00 AM or to let him know where she was. (R. 304-305) (Tr. II pp. 171-172). Donevant continued to absent herself from work and Duckett escalated pressure to bring her attendance under control by issuing warnings, giving her a negative performance review, and requiring Donevant to report, via email, when she was not going to be in the office during normal operating hours. (R. 304-312) (Tr. II pp. 171-179). In her trial testimony, Donevant partially admitted she had attendance issues. (R. 82, 100-101) (Tr. I pp. 132, 154-155).

Donevant freely admitted that she did not get along with Duckett, whom she regarded as an "idiot" who was constantly "picking on me," and "trying to do my job." She further admitted that disregarded his instructions from time to time. In fact, toward the end of her employment,

¹ A snow/ice storm prevented the court reporter who began the trial from returning and a second reporter finished the trial. Therefore, because page numbering was restarted with the second court reporter, there is a reference to Volume I and II of the transcript).

Donevant informed Duckett, in writing, that she would disregard his instructions. (R. 272, 286, 291, 294, 410) (Tr. II pp. 106, 136, 143, 154) (Tr. P. Ex. 19).

In December 2012, Donevant took an extended leave due to a medical condition. Sabrina Morris took over as the Interim Director during her absence. Because Morris lacked the necessary building official licensure, she could not approve building plans, so the Town made arrangements with the City of Myrtle Beach for it to perform this function. (R. 47-48) (Tr. I pp. 93-94)

Donevant came back to work on March 13, 2012. On her first day back at work, Duckett informed Donevant that she was not to interfere with any decisions made during her absence. He informed her of this in writing and specifically warned her that termination might result if she did interfere with any decisions made during her leave. Duckett gave this instruction because he wanted her to focus on issues going forward. (R. 313-315) (Tr. II pp. 185-187). Donevant admitted that she disregarded this instruction almost immediately upon return to work. (R. 98-100) (Tr. I pp. 152-154)

Duckett also reminded Donevant that she was to report to him and not to the Deputy Administrator Micki Fellner. (R. 92) (Tr. I. p. 146). Duckett felt that Donevant had been avoiding him—preferring to report to Ms. Fellner. Ms. Fellner also testified that she told Donevant that she needed to report to Duckett, and not to her. In her testimony, Donevant admitted she understood she was to report Duckett and not Fellner but admitted that she defied this instruction because she did not feel she “had to report anything to Jim [to do] with my job.” (R. 107-109) (Tr. I pp. 165-167)

The last straw for Donevant had to do with her actions regarding the Town pier. In 2012, the most prominent public issue in the Town of Surfside Beach was the Town’s pier. (R. 230,

276-279) (Tr. II pp. 48, 111-114). The Town was attempting, with difficulty, to get space on the pier leased. Various stories had been in the local media about the pier. Shortly before Donevant went on medical leave, the restaurant space on the pier had been leased and the new tenant had received a permit to start demolition in the space. (Id.).

On March 20, 2012, without telling anyone what she was doing, Donevant went to the pier and looked in a window at the jobsite. (R. 100, 108) (Tr. I pp. 154, 158). Donevant alleges that she saw new flooring, new plumbing, and new openings for windows. She regarded this as new construction not authorized by a demolition permit and therefore issued a "stop work" order and posted it on the door to the job worksite. (R. 52-55) (Tr. I pp. 98-101). Sometime later, she told Fellner that she had issued the stop work order. Fellner asked her if she had informed Duckett and Donevant responded that she had not. (R. 106-108) (Tr. I pp. 164-166).

When Donevant eventually came back to the office, Fellner saw her and again reminded her that she needed to tell Duckett what was going on. (Id.). Donevant admitted she disregarded Duckett's and Fellner's instructions because she felt "why would I have to report anything to Jim with my job?" and "I was doing my job, I had nothing to report." (R. 108, 111) (Tr. I pp. 166, 169). Duckett first learned of the stop work order when one of the Town Councilmen called him asking what was going on at the pier. (R. 318-319) (Tr. II p. 190-191). About the same time, Fellner called Duckett to report her conversation with Donevant. (Id.). Duckett immediately went to the pier and, to his surprise, was greeted by a television crew and members of council. (Id.). Donevant denied tipping off the media that something had happened at the pier. (R. 105) (Tr. I p. 161).

Duckett concluded that Donevant had exercised extremely poor judgment by not telling him what was going on and not reporting to him as instructed. He told Donevant to meet him at

the office the next workday. (R. 121) (Tr. I p. 193). They met, and Duckett first presented Donevant with a written warning. Donevant admits that Duckett told her that the problem was she should have told him what she had done. (R. 112) (Tr. I p. 170). The warning explicitly stated it was based on Donevant's failure to communicate and that Duckett did not question her authority to issue the stop work order. (R. 406) (P. Ex. 16). Donevant, however, refused to sign the warning in acknowledgment that she received it. (Despite the fact that she admitted she had signed prior counseling's with no objections) (R. 83, 84, 86, 116) (Tr. I pp. 137, 138, 140, 174). Duckett therefore informed her that he was suspending her for three days. He presented her with a suspension notice. (R. 115-116) (Tr. I pp. 173-174). This time, Donevant signed the notice. (Id.). The whole matter could have ended there. Duckett thought that Donevant understood the reason for the discipline and that they could go forward constructively from there. However, upon her return from suspension, Donevant gave Duckett a written note that stated:

My suspension was not right . All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town

(R. 410) (Tr. Ex. P. 19). Duckett was very surprised by this note as he had thought they had reached an understanding. The note started with the false assertion that he had directed Donevant to violate the law. It continued with the insubordinate statement that she would not follow his instructions. It ended with a clear disavowal that she had done anything wrong regarding any of the disciplinary actions taken against her.

Even after this note, Duckett still did not fire Donevant. Several weeks later, however, a Town election was held and a new Mayor was elected. Duckett did not want to continue in his position with the changes and decided he would resign. He also decided that, although he was

willing to continue to work with Donevant, that he did not think it right to pass along such a problem employee to the next Town Administrator. He therefore decided to terminate Donevant's employment. (R. 326-327) (Tr. II pp. 204-208).

ARGUMENT

Letting the verdict stand will improperly, and greatly, expand the public policy exception to at-will employment beyond situations in which "(1) the employer requires the employee to violate criminal law, or (2) the reason for the employee's termination itself is a violation of criminal law."

Donevant alleges that she was terminated in retaliation for issuing the stop-work order at the pier and this is in violation of public policy. Donevant, and her attorneys, alleged that Donevant issued the stop-work order because the contractor at the pier only had a demolition permit but was doing some construction work. (R. 401) (P. Ex. 12) (R. 52-55, 147) (Tr. I pp. 98-101, 284). (The construction permit was pending and was, in fact, issued soon after Donevant issued the stop work order). (R. 408) (P. Ex. 18).

The basis of Donevant's authority to issue a stop-work order on the pier restaurant project came from the Town's building code.² (R. 58-59, 147) (Tr. I pp. 104-105, 284) (R. 269) (Tr. II pp. 103). The code section applicable to this case reads:

Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or dangerous or unsafe, the building official **is authorized** to issue a stop work order.

(R. 423) (P. Ex. 26) (emphasis added).

In South Carolina, the general rule remains that all employment is "at-will" and employees may be terminated, or may quit, for any reason or no reason at all. This was

² The Town, like most municipalities, adopts the Uniform Building Code, as written by a national code commission.

reaffirmed most recently in *McNeil v. S. Carolina Dep't of Corr.*, 743 S.E.2d 843 (S.C. Ct. App. 2013). *McNeil* is also the most recent case dealing with the public policy exception to the at-will employment rule.

South Carolina courts do recognize a cause of action for discharge in violation of public policy. However, as the *McNeil* court reaffirmed, it has been applied only to situations in which an employee was forced to choose between his job and committing a criminal act or to cases in which the termination itself was a violation of law containing criminal penalties.³ *Garner v. Morrison Knudsen Corp.*, 456 S.E.2d 907 (S.C. 1995); *Antley v. Shepherd*, 532 S.E.2d 294, 297 (S.C. 2000) (aff'd as modified 564 S.E.2d 116 (S.C. 2002)).

It is for the courts to decide what constitutes public policy and "it is a question of law." It is not a question for the trier of fact. *McNeil*, 743 S.E.2d at 846.

As the exception was originally decided, and in some subsequent cases, the first prong was worded to include only situations in which the employee was required to commit a "criminal act." *Garner v. Morrison Knudsen Corp.*, 456 S.E.2d 907 (S.C. 1995); *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E.2d 213, 214 (S.C. 1985). However, several cases, when describing the first prong, speak of requiring the employee to "violate a law." *Barron v. Labor Finders of South Carolina*, 682 S.E.2d 271 (S.C. Ct. App. 2009); *Lawson v. South Carolina Dept. of Corrections*, 532 S.E.2d 259, 260 (S.C. 2000); *Moshtaghi v. The Citadel*, 443 S.E.2d 915, 919 (S.C. Ct. App. 1994). This difference in language has never been identified as intent to change the exception. In fact, in *Miller v. Fairfield Communities*, 382 S.E.2d 16 (S.C. Ct. App. 1989) the court ruled that public policy discharge required a criminal sanction and a "civil penalt[y] or sanction" was insufficient. *Miller v. Fairfield Communities, Inc.*, 382 S.E.2d 16, 19 (Ct. App. 1989) ("the Supreme Court did not consider public policy outside the sphere of criminal

³ The second prong was first made explicit in *Culler v. Blue Ridge Co-op.*, 422 S.E.2d 91 (S.C. 1992).

sanctions.”). As no reason has been given for the variation in language, *Miller* controls and the first prong requires a criminal sanction.

The *McNeil* court did note that the public policy exception had not been expressly limited to the two situations above but had not been applied beyond them. On this point, the court cited *Garner v. Morrison Knudsen Corp.* 456 S.E.2d 907 (S.C. 1995) and *Keiger v. Citgo Coastal Petroleum*, 482 S.E.2d 792 (S.C. Ct. App. 1997). In *Garner*, the plaintiff alleged termination in retaliation for reporting radioactive contamination and, in *Keiger*, the employee alleged termination in retaliation for reporting wage payment concerns to the South Carolina Department of Labor. Neither of these situations fit within the two prongs identified in *Ludwick* and other cases. However, in *Garner* and *Keiger*, the appeal courts reversed dismissals based on S.C. R. Civ. P. 12(b)(6) because the courts felt the issues were novel and required development through discovery. These courts specifically held, however, that they were not expanding the tort of public policy discharge.⁴

The Building Code authorizing stop-work orders contains no criminal penalty for failing to issue a stop-work order. It does not contain a civil penalty either. In fact, as discussed more fully below, according to the plain language of section 115, a building official is not required to issue a stop-work order at all. They are merely “authorized” to do so. This is far from a requirement, subject to a criminal or civil sanction, that a building official issue a stop-work

⁴ “Because the facts of this case have not been fully developed, we do not address the ultimate question whether the public policy exception to the employment at-will doctrine is applicable in this case.” *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 227, 456 S.E.2d 907, 910 (1995)

order for construction work done without a permit. As such, the court should have granted summary judgment, directed verdict, or judgment as a matter of law.⁵

Donevant will certainly argue that, had she not issued a stop-work order, she would have been failing to enforce the building codes and could have been subject to discipline by the South Carolina Building Codes Council. Gary Wiggins, a former official of the Council, testified as an expert for Donevant and opined that Donevant was required to issue to order and “could” or would be subject to “possible ramifications” of discipline if she had not done so. (R. 151-156) (Tr. I pp. 308-313). In contrast, Donevant’s replacement at the Town testified that he uses his discretion in issuing stop work orders and seldom requires the builder to stop all work on a project if they promptly address the issue. (R. 250-252) (Tr. II pp. 84-86). Donevant testified that she issued stop-work orders for work done without a permit but did not always do so for other violations. (R. 122) (Tr. I pp. 198).

In any event, neither Wiggins, nor any other witness or other evidence, pointed to a criminal penalty. Second, neither Wiggins nor any other evidence identified a civil sanction—only the possibility of discipline. Finally, and most importantly, an expert’s opinion about what a law might require is of no consequence to this court. The court has the obligation to apply the plain meaning of the law which, in this case, gives the building official discretion. *See, e.g., Rauton v. Pullman Co.*, 191 S.E. 416, 420 (S.C. 1937) (“any evidence by an expert as to the meaning of these statutes would be incompetent.”); *Kirkland v. Peoples Gas Co.*, 237 S.E.2d 772 (S.C. 1977) (an expert is not allowed to interpret regulations of the Department of Transportation); *Narruhn v. Alea London Ltd.*, 745 S.E.2d 90, 93 (S.C. 2013) (“court is

⁵ This issue was properly preserved in the Town’s Motion for Summary Judgment and again at the directed verdict and JNOV stages. (R. 6) (Motion for Summary Judgment) (R. 46-52)(Tr. II pp. 92-98, 105-106, 235-237, 314-316).

obligated to follow and to enforce the stated meaning [of the statute]”); *Barth v. Barth*, 360 S.E.2d 309, 311 (S.C. 1987) (It is the right and duty of this court to interpret statutes”); *Benat v. State Farm Mut. Ins. Co.*, 333 S.E.2d 57, 58 (S.C. Ct. App. 1985) (“It is the duty of this court to interpret the [statutory] law.”).

In summary, there was no evidence presented to the court that Donevant was subject to a criminal penalty for failing to issue a stop-work order. There was not even evidence she could properly be subject to a civil sanction (even if a civil sanction were sufficient—which it is not). This is because the building code, as a matter of law, gave her discretion to issue, or not issue, a stop work order. Therefore, Donevant’s allegations simply do not meet the accepted definition of public policy discharge and the judgment should be reversed.

Assuming the public policy exception to at-will employment is to be expanded, the trial court erred in disregarding the rule laid down in *Antley v. Shepherd*, that the public policy exception does not apply to terminations of employees who insist on performing an act that is discretionary, i.e., that the law does not require them to perform.

This case should have been controlled by this court's decision in *Antley v. Shepherd*, 532 S.E.2d 294 (S.C. 2000). The *Antley* court did not consider the question of whether public policy discharge encompassed violation of a law carrying criminal penalties or whether requiring the employee to violate any law was sufficient. The court assumed, without deciding, that violation of any law was sufficient and determined whether Antley was retaliated against for performing a duty she was required by law to perform.

Exactly like Donevant, Antley claimed she was fired for exercising her legal duty as a public official. That duty was Antley's statutory right to appeal tax rulings. Antley was the Aiken County Tax Assessor. As Tax Assessor, she had the "right," under South Carolina law, to appeal rulings made by the assessment appeal board. On this point, South Carolina law states: "The assessor is responsible for the operations of his office and shall . . . have the right of appeal from a disapproval of or modification of an appraisal made by him . . ." S.C. Code Ann. § 12-37-90. The Aiken County Administrator, however, decided that these appeals were a waste of effort and directed Antley not to do them. Much like Donevant, Antley responded:

As a public servant for almost 18 years, I have always taken my legal duties and responsibilities very seriously. I have never relinquished them and I can do no less now.

Given this clear refusal to comply with his directive, the Administrator terminated Antley. Antley sued, claiming her firing was a discharge in violation of public policy to terminate her for exercising her clear statutory "right" to pursue appeals. The South Carolina Supreme Court disagreed and adopted the ruling of the Court of Appeals. The Court of Appeals held that,

although Antley had a statutory right to file appeals, and was the only County employee with the power to do so, the statute did not “require” her to file appeals. The statute’s description of her power as a right, the court held, did not give Antley “unfettered” authority. *Id.*

Donevant’s situation is indistinguishable from Antleys. Indeed, Donevant’s authority to issue stop work orders is even less established than Antley’s clear statutory “right” to pursue appeals.

An official’s authority to issue stop work orders flows from statute, to ordinance, to adopted building codes. South Carolina statutory law requires municipalities to utilize a licensed building official to enforce building codes. It further requires municipalities to establish building codes which they may do so by adopting codes. As allowed by state law, most municipalities adopt the standard “International Building Codes.” S.C. Code Ann. § 6-9-60. By Ordinance, the Town of Surfside Beach utilizes the International Building Code. Section 115 of that code covers stop work orders and provides:

Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or dangerous or unsafe, the building official **is authorized** to issue a stop work order.

Donevant agreed that this was the provision from which she derived authority to issue a stop work order. (R. 58-59, 147) (Tr. I pp. 104-105, 284) (R. 269) (Tr. II pp. 103).

Like the law in *Antley*, this provision does not require the issuance of a stop work order and does not say the building official’s authority regarding such orders is unfettered. In fact, it is less emphatic than the grant of the “right” of appeal in section 12-37-90. Donevant agreed that the provision did not require a stop work order for every violation and she agreed that she did not issue one for every violation she found. Even Judge Jefferson agreed that the stop-work order was discretionary and Donevant “wasn’t mandated to do it.” (R. 366) (Tr. II p. 246). Judge

Jefferson nevertheless (and incorrectly) felt that it was for the jury to decide if the Town required Donevant to violate the law. (R. 367) (Tr. II p. 247).

The practical effect of the decision in *Antley* is plain to see. A contrary ruling in that case, or this one, would give countless bureaucrats in countless governmental agencies the ability to presume unfettered discretion to exercise any duty that is prescribed by state law. There are numerous examples of provisions in state law that give officials various authority, rights, duties, and responsibilities. Some of these include:

Department of Health Agents and Inspectors have “authority to . . . arrest . . . investigate . . . seize . . .” S.C. Code Ann. 44-53-480

Solicitor has : “authority to . . . [prosecute]”

County Administrator “has authority to suspend employees [and interpret Home Rule Act.” S.C. Code Ann. 4-9-650.

Parole Officers have “the authority to enforce the criminal laws of the State.” S.C. Code Ann. 24-21-280.

Assessors have “the authority to reassess property . . . to appeal . . . to enter and examine all new nonresidential buildings . . .” S.C. Code Ann. 12-37-90

Jail Employees “have the authority to make arrests . . .” S.C. Code Ann. 23-1-145.

Election managers have: “authority to maintain good order at the polls and enforce obedience . . .” S.C. Code Ann. 7-13-140

Livestock Inspector “shall have authority to enter premises . . . inspect . . .” S.C. Code Ann. 47-13-620.

Marine Resource Officer “has authority to enter and inspect . . . stop and search . . . arrest . . .” S.C. Code Ann. 50-5-90.

Airport Police “have authority to issue summonses . . . arrest . . .” S.C. Code Ann. 55-11-350.

Adult School Crossing Guard has “authority to . . . direct, control or regulate traffic . . .” S.C. Code Ann. 56-5-740.

Fire Marshall (including local designees) “has authority to confiscate . . .” and authority to enforce code. S.C. Code Ann. 23-26-110; 23-9-30.

Noxious Weed Inspector “shall have authority to stop and inspect . . .” S.C. Code Ann. 46-23-60.

Park Ranger has “the authority to issue summonses [and arrest] . . .” S.C. Code Ann. 51-3-147.

Deputy Sheriff has “authority to perform [duties pertaining to office of his principle.]” S.C. Code Ann. 23-13-50.

Highway Patrolman has “authority to arrest. . .” S.C. Code Ann. 23-5-40

Hospital Designee has “sole authority to detain a child . . .” S.C. Code Ann. 63-7-750

Health Authority has “authority to quarantine . . .” S.C. Code Reg. 61-120

Gas Meter Reader has “authority to visit meters and appurtenances . . .” S.C. Code Reg. 103-425

DHEC Hospital Inspector has “authority [to] inspect . . . investigate . . .” S.C. Code Reg. 61-91.202

DHEC Emergency Coordinator has “authority to commit . . . resources . . .” S.C. Code Reg. 61-79.265.55

DHEC Controlled Substance Inspector has “authority to make inspections . . .” S.C. Code Reg. 61-4-1601.

South Carolina Law Enforcement Division has [various authority involving investigation, arrest, operations of statewide facilities and systems]. S.C. Code Ann. 23-3-15 et. seq.

State Fire Marshall S.C. Code Ann. 23-9-20

State Constables S.C. Code Ann. 23-7-50.

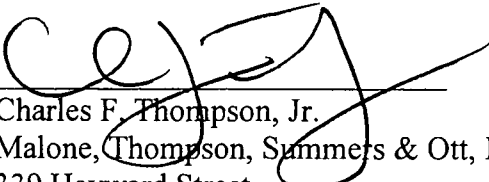
Licensed Engineers “shall hold paramount the safety, health, and welfare of the public in the performance of his professional duties.” S.C. Code Reg. 49-301

Departing from *Antley* would convert many public employees from at-will employees to ones that could not be terminated if the reason touched on some duty defined by law. Such a situation is obviously untenable and the South Carolina Supreme Court has precluded it.

The court should therefore, apply *Antley* to this case and reverse the judgment.

CONCLUSION

For the foregoing reasons, the judgment on Donevant's claim that she was terminated in violation of public policy should be reversed.



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November 11, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Deadra Jefferson
Circuit Court Judge

Case No.: 2012-CP-26-004852

Jacklyn J. Donevant, ...Respondent,

vs.

Town of Surfside Beach, ...Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. As set forth in the Barron v. Labor Finders of South Carolina, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (2011), the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law.
- II. The decision in Antley v. Sheperd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), *affirmed as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002) does not control this case, as Jacklyn J. Donevant, the building official for the Town of Surfside Beach, unlike the tax assessor in Antley, possessed the sole, absolute, and unfettered authority to issue stop work orders and was required to do so to stop unpermitted construction.
- III. The Town of Surfside Beach's employment termination of Jacklyn J. Donevant for issuing a stop work order, which immediately stopped unpermitted construction at the Town owned Pier Restaurant, presents an issue of fact as to whether her termination violates a clear mandate of public policy, as the General Assembly has declared that the public policy of the State of South Carolina is to maintain reasonable construction standards for the protection of the health, safety, and welfare of its citizens, and to that end, the General Assembly has enacted legislation requiring all municipalities and counties to enforce the building code of the State of South Carolina.

STATEMENT OF CASE

This case arises out of the Town of Surfside Beach's (hereafter "the Town") employment termination of Jacklyn J. Donevant ("Donevant"). (R. pp. 1-5). At the time of her termination, Donevant held the positions of Director of Planning, Building, and Zoning and building official. (R. pp. 25-26; R. p. 301; R. pp. 292-93). As building official, Donevant was required by law to enforce the building code of the State of South Carolina, including issuing stop work orders¹ for unpermitted construction. (R. pp. 131-32; R. pp. 144-45; R. p. 295). On March 20, 2012, Donevant observed unpermitted construction at the Surfside Pier Restaurant (hereafter "Pier Restaurant"), which was owned by the Town. (R. p. 49; R. pp. 51-53; R. p. 276; R. p. 279). Donevant issued a stop work order to stop the unpermitted construction. (R. p. 401). Upon learning of the issuance of the stop work order, the Town Administrator, James Duckett, Jr. (hereafter "Duckett"), suspended Donevant for three (3) days, beginning on March 21, 2012. (R. p. 405). Donevant returned to work on March 25, 2012, and on that date, Donevant informed Duckett in writing that she must follow the law even if it meant not following his instructions. (R. p. 410). On April 4, 2012, Duckett terminated Donevant. (R. p. 412). Duckett provided Donevant with no reason for her termination, and subsequently, Duckett informed the South Carolina Department of Employment and Workforce, that Donevant's termination was due to "operational changes." (R. p. 66; R. p. 68; R. p. 413; R. p. 332).

Donevant filed suit against the Town in the Horry County Court of Common Pleas on June 19, 2012, asserting a single cause of action for wrongful termination, alleging the

¹ "A stop work order is an order given by the building official to stop work, just completely shut the work down." (R. p. 143).

Town terminated her in violation of a clear mandate of public policy. (R. pp. 1-5). This case was tried before a jury on February 10, 11, 13, and 14, 2014.² The Honorable Deadra Jefferson presided over the trial.

At the conclusion of Donevant's case, the Town moved for directed verdict, arguing the Town's termination of Donevant did not constitute a violation of a clear mandate of public policy. The trial court denied the Town's motion and, after the Town presented its case, the trial court submitted the case to the jury, which returned a verdict in favor of Donevant in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars. The verdict was reduced to Three Hundred Thousand and 00/100 (\$300,000.00) Dollars pursuant to the relevant provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* (2005 & Supp. 2014). Following the jury's verdict, the Town moved for a judgment notwithstanding the verdict (hereafter "JNOV") on the same grounds as argued in its motion for directed verdict. The trial court denied the Town's JNOV motion, and this appeal followed, with the Town filing a notice of appeal on March 10, 2014. On appeal, the Town contends the trial court erred in denying its motion for directed verdict.

STATEMENT OF FACTS

In 2005, the Town hired Donevant for the positions of Director of Planning, Building, and Zoning and building official.³ (R. pp. 25-26; R. p. 301; R. pp. 292-93; R. p. 387). In this capacity, Donevant served as the head of the building department and

² By order of Chief Justice Toal, all courts in South Carolina were closed on February 12, 2014 due to inclement weather.

³ Previously, Donevant worked for the Town as the deputy building official and then as the building official. (R. pp. 24-25). Donevant left her employment with the Town in 2002 to work in the private sector. (R. p. 67). In total, Donevant worked for the Town for almost fifteen (15) years. (R. pp. 67-68).

supervised two (2) employees, Sabrina Morris and Sue Shmaruk. (R. p. 28). As building official, Donevant was required by law to enforce the building code of the State of South Carolina, including issuing stop work orders for unpermitted construction. (R. pp. 131-32; R. pp. 144-45). Also, as building official, Donevant made all “final decisions on ... code interpretations” and was the only person authorized to approve the issuance of building permits and to issue stop work orders within the Town’s jurisdiction. (R. p. 26; R. p. 28; R. p. 387; R. p. 177; R. pp. 245-46; R. p. 145; R. p. 295).

In December 2010, the Town hired Duckett as Town Administrator. (R. p. 30). Duckett had no experience in the construction industry. (R. p. 30). During Duckett’s tenure as Town Administrator, there was an ongoing controversy with the vacancy of the Pier Restaurant, which was owned by the Town. (R. p. 49; R. pp. 95-96). The Town acquired the Pier, which included the Pier Restaurant, in 2008. (R. p. 276). Shortly after the Town acquired the Pier, a long-time tenant of the Pier Restaurant vacated the premises, leaving the space vacant and depriving the Town of expected revenue. (R. p. 49; R. p. 279). The Town experienced difficulty finding a new tenant for the Pier Restaurant. (R. p. 49; R. p. 94; R. p. 276; R. p. 279). The vacancy of the Pier Restaurant was a prominent, public issue in the Town, with stories appearing in a number of newspaper articles. (R. pp. 95-96). As Town Administrator, Duckett worked to find a new tenant for the Pier Restaurant. (R. p. 49).

Throughout Donevant’s employment with the Town, she regularly inspected construction sites on her way to work in the morning and on her way from work in the evening. (R. p. 34; R. p. 290; R. p. 186). There was no Town policy prohibiting Donevant from conducting inspections in this manner. (R. p. 186). On the morning of June 17, 2011,

Donevant conducted an inspection on her way to work. (R. p. 34). Donevant called a member of her staff to inform her that she was conducting an inspection and would be in the office as soon as she finished. (R. p. 34). Duckett apparently did not know or did not recall that Donevant was conducting an inspection. (R. p. 34). When Donevant completed the inspection and arrived at work, Duckett intercepted Donevant before she could walk in her office. (R. p. 33). Duckett wrote the following sentence on a piece of paper, "Since Jim Duckett has a poor memory, I will in the future send him an email if I will not be in to work by 9 AM each workday." (R. p. 33; R. p. 388). Duckett then gave the piece of paper to Donevant and made her write the sentence five (5) times in front of the employees she supervised.⁴ (R. p. 33; R. p. 388). Duckett considered this funny and told others about it. (R. pp. 334-37).

On September 29, 2011, Duckett conducted performance evaluations of the Town's five (5) department heads, including Donevant. (R. p. 38; R. p. 389). In Donevant's performance evaluation, Duckett acknowledged that Donevant is "very knowledgeable in the area of building official duties ...," but he complained that she attended too much training and did not focus on Town business. (R. p. 39; R. p. 86; R. p. 389). On November 29, 2011, Donevant prepared a rebuttal to Duckett's performance evaluation and requested that he reconsider his findings. (R. pp. 40-42; R. p. 391). In Donevant's rebuttal, she pointed out that Duckett approved every training session she attended, and he never once objected or indicated that there was a problem with her attending required training. (R. pp. 40-42; R. p. 391). Donevant further stated that she focused on the Town's business,

⁴ Prior to the hiring of Duckett as Town Administrator in December 2010, Donevant maintained an unblemished record of service as a Town employee, devoid of any write-ups or disciplinary actions. (R. p. 187).

which involved having good relations with Town citizens, and this should not be reflected negatively in her evaluation. (R. p. 391).

Duckett refused to consider Donevant's rebuttal to the performance evaluation, claiming he received the rebuttal too late after the initial evaluation. (R. pp. 343-44). Donevant submitted the rebuttal to Duckett on November 29, 2011. (R. p. 391). Donevant would have submitted it sooner, but she was diagnosed with breast cancer on October 17, 2011, and this diagnosis "devastated" Donevant, causing her to delay in preparing the rebuttal. (R. p. 40; R. p. 88). When Duckett refused to consider Donevant's rebuttal, he knew of her diagnosis. (R. p. 344). Further, at trial, Duckett conceded that there was no deadline for Donevant to respond to the performance evaluation. (R. p. 344).

After being diagnosed with breast cancer, Donevant applied for and received twelve (12) weeks of leave from work pursuant to the mandates of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (LexisNexis 2014). (R. p. 43). During her absence, the Town was forced to contract with the City of Myrtle Beach to perform Donevant's duties of building official, because no other Town employee was qualified to perform these duties. (R. pp. 47-48). Thus, while Donevant was on sick leave, the City of Myrtle Beach assumed the responsibility of reviewing plans, issuing permits, conducting inspections, and issuing stop work orders within the Town's jurisdiction. (R. pp. 47-48).

While Donevant was on sick leave, Duckett found a new tenant to occupy the vacant Pier Restaurant space. (R. p. 49). The new tenant wished to remodel the interior of the space. (R. p. 49). Because Donevant was on sick leave, the City of Myrtle Beach initiated the plan review for the Pier Restaurant and issued a demolition permit for the requested demolition work. (R. p. 90; R. p. 96; R. p. 394). The demolition permit allowed

for "demo interior of building only." (R. p. 90; R. p. 96; R. p. 394). This demolition permit was the only permit issued to the Pier Restaurant during Donevant's absence. (R. pp. 49-50; R. p. 394). While Donevant was on sick leave, Mr. Duckett visited the Pier Restaurant frequently and remained in direct communications with the City of Myrtle Beach about the construction plans. (R. pp. 200-01; R. p. 316).

Donevant returned from sick leave on March 13, 2012. (R. p. 400). Before allowing her to resume her duties, Duckett required Donevant to meet with him on the morning of March 13, 2012. (R. pp. 44-45; R. pp. 313-14). Duckett requested that Debera E. Herman, Town clerk, witness the meeting. (R. p. 233; R. pp. 44-45). During the meeting, Duckett informed Donevant that she would resume all of her job duties, but he warned her that if she reversed anything that was done in her absence, he would "fire" her. (R. pp. 44-45). Duckett testified the reason for this instruction was to prevent Donevant from revisiting any decisions made by the City of Myrtle Beach in her absence. (R. p. 313). Herman prepared a memorandum from the meeting, that read:

Mr. Duckett explained that Jackie was now officially returned to work; however, he gave her a direct order that she could not and would not change, ameliorate, or in any other manner amend any action that was taken during her absence. That if she did so, she would be fired.

(R. p. 400; R. p. 234).

After the meeting, Donevant spoke with Herman, expressing concern over the instruction given to her by Duckett. (R. p. 240). Donevant informed Herman that "if she did not do [her] job, she would lose her license." (R. p. 240). Herman responded, "well, your boss is giving you an order, you need to do what your boss tells you." (R. p. 240).

On March 19, 2012, Duckett instructed Micki Fellner, the Deputy Town Administrator, to instruct Donevant that she could no longer report to Fellner; instead, from that point forward, she was required to report directly to Duckett. (R. p. 205; R. pp. 212-14; R. pp. 218-19; R. p. 225). This instruction contradicted Duckett's previous instruction regarding Fellner's authority. (R. pp. 179-80; R. p. 321; R. pp. 32-33). In December 2010, when Duckett took over as Town Administrator, Fellner became the Deputy Town Administrator. (R. pp. 179-80). Duckett informed all employees, including Donevant, that Fellner "was in charge when [he] wasn't there." (R. p. 321). Duckett added that Fellner "had the same authority [he] had when [he] was there." (R. p. 321; R. p. 180; R. p. 32).

On March 20, 2012, shortly after Donevant returned to work, she discovered, by reading a local newspaper article, that new construction had commenced at the Pier Restaurant. (R. p. 51). At this point in time, there was no construction permit issued for the Pier Restaurant. (R. p. 50). The only permit issued for the Pier Restaurant was a demolition permit, which allowed for "demo interior of building only." (R. pp. 49-51; R. p. 394). Upon reading the newspaper article, Donevant contacted John Harrah⁵ with the City of Myrtle Beach to ensure that no construction permit was issued in her absence. (R. p. 90; R. p. 102). Donevant was informed that no construction permit had been issued. (R. p. 102).

Thereafter, Donevant drove to the Pier Restaurant to inspect the premises. (R. pp. 52-53). Upon arrival, she saw that new construction had begun at the Pier Restaurant. (R. pp. 52-53). Specifically, Donevant observed that the contractors at the Pier Restaurant had

⁵ John Harrah's name is mistakenly transcribed as "John Harold" on page 144.

cut openings for doors and windows, studded a new wall, installed plumbing, installed electrical, and installed subflooring. (R. p. 53). In Donevant's view, this work constituted "construction," which required the issuance of a construction permit before such work could be lawfully performed. (R. p. 53; R. p. 401). In Donevant's view, allowing unpermitted construction to continue within the Town's jurisdiction posed a significant safety risk to the public. (R. pp. 54-55; R. pp. 58-59). Donevant testified, "Well, it was unsafe and it was dangerous. They had openings that anybody could step in and fall. There was loose wires and plumbing. There was stuff that hadn't been inspected, how do you know whether it's safe or not. We have to protect the public. The pier is a busy place. A lot of kids go [out] there." (R. pp. 58-59). Therefore, Donevant issued a stop work order to halt construction at the Pier Restaurant and taped the stop work order to the door. (R. p. 53).

Donevant, as the building official, was obligated to issue a stop work order to halt the unpermitted construction at the Pier Restaurant. (R. p. 145; R. pp. 152-53). If Donevant refused or neglected to do so, she would be disciplined by the South Carolina Building Codes Council, with such discipline ranging from a letter of caution to a full revocation of her license as a building official. (R. pp. 155-56; R. pp. 161-63; R. pp. 169-72). As Gary Wiggins, an expert in the field of building code enforcement testified, "any time that there is a potential of life safety or fire safety or if there's a direct violation of the law, the building official is obligated to issue a stop work order." (R. p. 144). The following colloquy occurred at trial between counsel for Donevant and Wiggins:

Q. What if with respect to there's no construction permit?

A. That's a violation of the law. And anytime there's a violation of the law, a stop work order must be issued.

(R. p. 145).

When Duckett learned Donevant issued the stop work order, he became angry. (R. p. 319). Duckett immediately drove to the Pier Restaurant, and in his words, "[i]n a fit of anger, I tore [the stop work order] off the door." (R. p. 319). Duckett continued, "I do get angry, and I was angry." (R. p. 319). Duckett also cursed at the stop work order, saying aloud "all this ... for putting some damn boards down." (R. p. 349). Thereafter, Duckett called Donevant that evening and directed her to be in his office at eight o'clock in the morning. (R. pp. 60-61). Duckett added, "I can't believe you been to that pier." (R. p. 61).

After Donevant issued the stop work order, which was after four o'clock in the afternoon on March 20, 2012,⁶ she followed up on others matters on her way back to the office. (R. pp. 59-60). Earlier in the day, Donevant called Fellner to ask a question regarding requesting information in accordance with the Freedom of Information Act. (R. p. 60; R. p. 64; R. p. 106; R. pp. 214-16). Fellner had not returned Donevant's call, so Donevant called Fellner again about the matter on her way back to the office. (R. p. 60; R. p. 64; R. p. 106; R. pp. 214-15). This time, Fellner answered Donevant's telephone call. (R. p. 60). In the course of the conversation, Donevant mentioned to Fellner that she issued a stop work order for unpermitted construction at the Pier Restaurant. (R. p. 60).

⁶ Even if Donevant wanted to report this matter to Duckett, he was gone for the day, when Donevant issued the stop work order. (R. p. 216). Duckett regularly left at three o'clock in the afternoon, as he had done on the date when Donevant issued the stop work order. (R. p. 216; R. p. 180).

Donevant was not “reporting” to Fellner the fact she issued a stop work order. (R. p. 64). As Sabrina Morris, Kevin Otte, current building official for the Town, and Donevant confirmed, the fact that the building official issued a stop work order is not a reportable matter. (R. p. 64; R. pp. 299-300; R. p. 246).

On March 21, 2012, the morning following Donevant’s issuance of the stop work order, she reported to Duckett’s office as he instructed. (R. p. 62). During the meeting, Duckett told Donevant he could not believe she stopped work at the Pier Restaurant after all the work he had done on the project. (R. p. 114; R. p. 120). With this statement, Duckett turned his attention to the three (3) pieces of paper, lying face down on his desk. (R. p. 62). Duckett turned over the first piece of paper, which was a written reprimand. (R. p. 63; R. p. 406). Donevant refused to sign the written reprimand because it was not true. (R. p. 63). When Donevant refused, Duckett turned over the second piece of paper, which was an order of suspension. (R. p. 63; R. p. 405). Donevant disagreed with the suspension and the insinuation of wrongdoing in the suspension notice. (R. p. 63; R. p. 116). However, Donevant suspected the third and final document lying facing down on Duckett’s desk was a termination notice. (R. p. 63; R. p. 116; R. p. 407). Even though she disagreed with the suspension, Donevant signed the document and served a three-day suspension, because she “needed to work.” (R. p. 63; R. p. 116). Donevant testified, “I got suspended for putting a permit on the pier.” (R. p. 118). Duckett claims he suspended Donevant for not reporting directly to him before issuing the stop work order.⁷ (R. p. 322).

⁷ As set forth above, Donevant was under no obligation to “report” that she issued a stop work order. (R. p. 64; R. pp. 299-300; R. p. 246). However, even if she wanted to report this to Duckett, he was already gone for the day when Donevant issued the stop work order at the Pier Restaurant. (R. p. 216).

Donevant returned to work on March 25, 2012, and on that date, Donevant informed Duckett in writing that she must follow the law even if it meant not following his instructions. (R. p. 410). The letter Donevant delivered to Duckett stated:

My suspension was not right. All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town.

(R. p. 410).

On April 4, 2012, Duckett terminated Donevant. (R. p. 412). Duckett provided Donevant with no reason for her termination, and subsequently, Duckett informed the South Carolina Department of Employment and Workforce, that Donevant's termination was due to "operational changes." (R. p. 66; R. p. 68; R. p. 332; R. p. 413; R. p. 350). Donevant maintained that Duckett fired her for issuing a stop work order for unpermitted construction at the Pier Restaurant. (R. p. 120). Therefore, Donevant brought this suit against the Town, asserting a single cause of action for wrongful termination. (R. pp. 1-5).

This case was tried before a jury for four (4) days in Conway, South Carolina. At trial, the Town denied wrongdoing and claimed it terminated Donevant for attendance issues, punctuality issues, and insubordination. The Town made these assertions, even though Duckett specifically testified that Donevant was not fired for these reasons. (R. p. 350). Ultimately, the jury returned a verdict in favor of Donevant in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars. The verdict was reduced to Three Hundred Thousand and 00/100 (\$300,000.00) Dollars pursuant to the relevant portions of

the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* This appeal followed.

STANDARD OF REVIEW

In reviewing a directed verdict, this Court must view the evidence and all reasonable inferences therefrom in the light most favorable to the party opposing the motion. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). The trial court is required to deny motions for directed verdict and JNOV where either the evidence yields more than one inference or its inference is in doubt. Strange v. S.C. Dep't of Hwys. & Pub. Transp., 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). "In essence, this Court must determine whether a verdict for a party opposing the motion would be reasonably possible under facts as liberally construed in his favor." Bultman v. Barber, 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981). The trial court can only be reversed where there is no evidence to support the rulings or where the rulings are controlled by an error of law. Hinkle v. Nat'l Cas. Ins. Co., 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

ANALYSIS

I. SCOPE OF WRONGFUL TERMINATION DOCTRINE

The South Carolina Supreme Court's decision in Barron v. Labor Finders of South Carolina, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (2011) made clear that the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law.

Under the "public policy exception" to the at-will employment doctrine, an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory

termination of the at-will employee in violation of a clear mandate of public policy. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). The public policy exception clearly applies in cases where either: (1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law. Culler v. Blue Ridge Elec. Co-op., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992). In Barron v. Labor Finders of South Carolina, the South Carolina Supreme Court expressly held that the public policy exception is not limited only to situations where the employer asks the employee to violate the law or the reason for the termination itself is a violation of criminal law. 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (2011). The Court in Barron stated:

Here, the Court of Appeals correctly recognizes that the public policy exception applies to situations where an employer requires an employee to violate the law, or the reason for the termination itself is a violation of criminal law. **We find the court erred, however, in holding the exception is limited to these situations Accordingly, we overrule the Court of Appeals' opinion to the extent it holds the public policy exception applies only in situations where the employer asks the employee to violate the law or the reason for the termination itself is a violation of criminal law.**

Id. at (emphasis added).

Barron continues, "[A]n at-will employee may have a cause of action for wrongful termination even if the discharge did not violate criminal law or the employer did not require the employee to violate the law." Id. at 615, 713 S.E.2d at 637.

The Town argues the trial court erred in denying its motion for directed verdict because the wrongful termination doctrine is limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself

is a violation of the law. According to the Town, because Donevant failed to demonstrate that she could face criminal penalties if she refused or neglected to issue the stop work order, the trial court should have directed a verdict in the Town's favor. However, the Town does not correctly articulate the state of the wrongful termination doctrine following the Supreme Court's decision in Barron. Barron clearly holds that the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law. Id. at 615, 713 S.E.2d at 637. The Town's argument that the wrongful termination doctrine is limited to these situations fails to consider the Court's holding in Barron. Accordingly, the trial court correctly denied the Town's motion for directed verdict on this ground, and therefore, this Court should affirm the trial court's ruling.

II. THE ANTLEY DECISION IS INAPPLICABLE TO THIS CASE

The decision in Antley v. Sheperd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), *affirmed as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002) does not control this case, as Donevant, unlike the tax assessor in Antley, possessed the sole, absolute, and unfettered authority to issue stop work orders and was required to do so for unpermitted construction.

In Antley, a county tax assessor refused to comply with the county administrator's directive not to initiate an appeal from a decision by the board of assessment appeals. 340 S.C. at 546, 532 S.E.2d at 296. When the tax assessor refused to dismiss a pending appeal, the county administrator terminated the tax assessor for refusing to follow his directives. Id. Following her termination, the tax assessor filed a claim for wrongful termination against the County, alleging she, as tax assessor, maintained the statutory right to file appeals from decisions by the board of assessment appeals. The tax assessor relied on the

sections 12-37-90 and 12-60-2540 of the South Carolina Code of Laws in support of her argument. 340 S.C. at 549, 532 S.E.2d at 298.

Section 12-37-90(f) of the South Carolina Code of Laws provides that the tax assessor has “the right of appeal from a disapproval of or modification of an appraisal made by him.” S.C. Code Ann. § 12-37-90(f) (2014) (emphasis added). Section 12-60-2540(A) provides that within thirty (30) days of a decision by the board of assessment appeals, “a property taxpayer or county assessor may appeal a property tax assessment.” S.C. Code Ann. § 12-60-2540(A) (2014) (emphasis added).

Based upon the statutory language, the Court of Appeals affirmed the trial court’s decision granting summary judgment to the County on the tax assessor’s wrongful termination claim. Antley, 340 S.C. at 549, 532 S.E.2d at 298. The Court observed the above cited statutory provisions “permitted, but did not require, [the tax assessor] to appeal adverse board decision.” The Court of Appeals continued:

[N]othing in sections 12-37-90 or 12-60-2540 gave [the tax assessor] the sole discretion in determining which cases to appeal. If the General Assembly had intended the assessor’s right of appeal to be unfettered by the county administrator or county council, it certainly could have provided that the decision of whether or not to appeal a board’s determination is solely that of the assessor.

Id. (emphasis added).

The Town interprets the holding in Antley broadly; however, the plain language of Antley announces a much narrower holding than the one advocated for by the Town. The statutes at issue in Antley did not grant any real authority to the tax assessor. The fact that the statutes were discretionary in nature was merely part of the calculus the Court of Appeals used to affirm the trial court’s ruling. The Court of Appeals made three (3)

observations about the statutes to determine they granted no real authority to the tax assessor: (1) they were permissive in nature; (2) they did not grant the tax assessor an “unfettered” right of appeal; and (3) they did not grant her “*sole discretion* in determining which cases to appeal.” Id. (emphasis in original). The Court of Appeals in Antley affirmed the trial court’s grant of summary judgment because the statutes in question granted no real authority to the tax assessor, no mandate she appeal, no unfettered right to appeal, no sole discretion to determine whether to appeal. The fact the statutes were couched in permissive language was again, only part of the calculus. In other words, if the statutes in question clothed the tax assessor with an unfettered right to appeal and/or granted her sole discretion to appeal, the holding may have been different.

The Court of Appeals decision in Antley, as affirmed by the Supreme Court, should be viewed based upon its unique facts and the statutes applicable to the tax assessor. This case presents facts drastically different from Antley, because the statutes and building codes granted absolute authority, sole and unfettered, to Donevant to issue stop work orders. Thus, this Court should affirm the trial court’s denial of the Town’s motion for directed verdict without even reaching the issue of whether Donevant was required to issue the stop work order. Unlike Antley, section 114.1 of the building code⁸ grants exclusive authority to Donevant, as the building official, to issue stop work orders. Section 114.1 of

⁸ Pursuant to section 6-9-50(A) of the South Carolina Code of Laws, the Building Codes Council adopts the International Building Code for every municipality or county governing body in the State, with the exception of Chapter 1 of the International Building Code, which does not apply unless adopted by the municipality or governing body. S.C. Code Ann. § 6-9-50(A) (Supp. 2014). The Town of Surfside Beach adopted Chapter 1 of the International Building Code pursuant to section 13-21 of the Town of Surfside Beach’s Code of Ordinances. Town of Surfside Beach, South Carolina, Code of Ordinances § 13-21. (R. pp. 424-25).

the International Building Code provides, “Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order.” International Building Code § 114.1 (2006).

Every individual who testified about the matter agreed Donevant, and Donevant alone as building official, was empowered with absolute, sole, and unfettered authority to issue a stop work order. (R. p. 28; R. p. 177; R. pp. 245-46; R. p. 145-46; R. p. 295). Donevant, alone, as the Town’s building official, possessed the unfettered and sole discretion to determine whether to issue a stop work order to halt unpermitted construction at the Pier Restaurant. Donevant testified she perceived it to be unsafe and a danger to the public to allow unpermitted construction to continue at the Pier Restaurant. (R. pp. 54-55; R. pp. 58-59). Donevant testified, “Well, it was unsafe and it was dangerous. They had openings that anybody could step in and fall. There was [sic] loose wires and plumbing. There was stuff that hadn’t been inspected, how do you know whether it’s safe or not. We have to protect the public. The pier is a busy place. A lot of kids go [out] there.” (R. pp. 58-59). The building code does not grant any other individual any discretion or any right to make the determination of whether to issue a stop work order. As Gary Wiggins, an expert in the field of building code enforcement, testified “As a matter of fact ..., the building official is charged with [the] responsibility [of issuing stop work orders] specifically and no other person either the city manager, the mayor, chief of police, fire chief any other person can perform is authorize[d] or can perform that function or task.”⁹

⁹ Any alleged defects with respect to Mr. Wiggins’ testimony are unappealed and therefore, the law of the case. See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (unappealed ruling is the law of the case); see also

(R. p. 145). Wiggins further testified that the issuance of a stop work order was required “any time that there is a potential of life safety or fire safety or if there’s a direct violation of the law.” (R. p. 144).

Thus, unlike the tax assessor in Antley, section 114.1 grants real authority to Donevant as the building official for the Town. It grants her the sole, absolute, and unfettered right to make a determination of whether a stop work order should be issued. In this case, Donevant performed this analysis, and in her view, the stop work order was necessary for the protection of the public. Accordingly, this Court should affirm the trial court’s denial of the Town’s motion for a directed verdict because Antley does not control this case.

Furthermore, while this analysis is perhaps unnecessary, this case is also distinguishable from Antley because Donevant, as building official, was required to issue a stop work order at the Pier Restaurant. Section 6-9-10(A) of the South Carolina Code of Laws requires all municipalities and counties to enforce the building code. The exact statutory language provides:

All municipalities ... and counties in this State **shall** enforce building, energy, electrical, plumbing, mechanical, gas, and fire codes, referred to as building codes in this chapter, relating to the construction, livability, sanitation, erection, energy efficiency, installation of equipment, alteration, repair, occupancy, classification, or removal of structures located within their jurisdictions and promulgate regulations to implement their enforcement.

S.C. Code Ann. § 6-9-10(A) (Supp. 2014) (emphasis added).

Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal.”).

Section 6-9-30 of the South Carolina Code of Laws requires all municipalities and counties to appoint a building official or contract for a building official within the municipal limits. S.C. Code Ann. § 6-9-30 (Supp. 2014). Again, the statute uses the mandatory “shall” language. S.C. Code Ann. § 6-9-30. Pursuant to section 6-9-50(A), the International Building Code, with the exception of Chapter 1, is adopted in every municipality or county in the State. S.C. Code Ann. § 6-9-50(A). The Town specifically adopted Chapter 1 of the International Building Code by passing section 13-21 of the Town of Surfside Beach’s Code of Ordinances. Town of Surfside Beach, South Carolina, Code of Ordinances § 13-21. Thus, Chapter 1 of the International Building Code is applicable within the Town’s jurisdiction. Id.

“The building official is hereby authorized **and directed to enforce the provisions of this code.**” International Building Code § 104.1 (2006) (emphasis added). “**The building official shall** ... issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and **enforce compliance with the provisions of the code.**” International Building Code § 104.2 (2006) (emphasis added). “The building official shall issue all necessary notices or orders to ensure compliance with this code.” International Building Code § 104.3 (2006).

Section 105.1 of the International Building Code provides:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, **shall first make application to the building official and obtain the required permit.**

International Building Code § 105.1 (2006) (emphasis added).

“It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, **in conflict with or in violation of any of the provisions of this code.**” International Building Code § 113.1 (2006) (emphasis added).

Thus, pursuant to Chapter 1 of the International Building Code, the building official shall enforce compliance with the provisions of the building code. International Building Code § 104.2. The building official is, in fact, “directed” by the code to do so. International Building Code § 104.1. The code requires any owner or authorized agent, before engaging in any construction on the premises, to “first make application to the building official and obtain the required permit.” International Building Code § 105.1. Chapter 1 declares it unlawful for any person to erect, construct, or alter any building or structure “in violation of any provisions of this code.” International Building Code § 113.1.

Applying Chapter 1 of the International Building Code to the facts in this case illustrates that Donevant was required to issue a stop work order for unpermitted construction at the Pier Restaurant. On March 20, 2012, when Donevant inspected the Pier Restaurant, only a demolition permit was issued for the premises. (R. p. 394). The only work the demolition permit allowed was “demo interior of building only.” (R. p. 394). As Donevant testified, no work could be performed pursuant to the demolition permit other than demolition. (R. p. 50). When Donevant arrived at the Pier Restaurant, she observed work being performed outside the scope of the existing permit. (R. pp. 53-54). That is, Donevant observed “construction” that had been performed at the Pier Restaurant. (R. pp.

53-54). Donevant saw the contractors had cut openings for doors and windows, studded a new wall, installed plumbing, installed electrical, and installed subflooring. (R. p. 53). In Donevant's view, this work constituted "construction," which required the issuance of a construction permit before such work could be lawfully performed. (R. pp. 53-54; R. p. 401). The owner/contractor of the Pier Restaurant failed to obtain a construction permit before beginning this work. Therefore, the work being performed violated sections 105.1 and 113.1 of the International Building Code, in that the construction was being performed without a construction permit. Accordingly Donevant, as the building official, was required by sections 104.1, 104.2, and 104.3 to enforce the building code and to issue a stop work order to halt the unpermitted construction. Thus, unlike the tax assessor in Antley, Donevant was required to issue a stop work order at the Pier Restaurant on March 20, 2012, when she observed unpermitted construction.

Gary Wiggins, an expert in the field of building code enforcement, opined that Donevant, as the building official, was required to issue a stop work order for unpermitted construction. Wiggins testified that if construction was taking place at the Pier Restaurant without a construction permit, "[t]hat's a violation of the law. And anytime there's a violation of the law, a stop work order must be issued." (R. p. 145). Therefore, Wiggins opined that Donevant was required to issue a stop work order for unpermitted construction, that was taking place at the Pier Restaurant. (R. pp. 152-53).

In sum, this case does not present facts analogous to the tax assessor in Antley. Unlike the tax assessor, the above cited statutes and building codes granted Donevant authority, sole and unfettered, to issue a stop work order at the Pier Restaurant. See International Building Code § 114.1. Additionally, the statutes and building codes required

Donevant to issue the stop work order for unpermitted construction. Accordingly, this Court should affirm the trial court's denial of the Town's motion for directed verdict.

III. DONEVANT'S TERMINATION PRESENTS AN ISSUE OF FACT AS TO WHETHER SHE WAS TERMINATED IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY

As an additional sustaining ground, this Court should affirm the trial court's denial of the Town's motion for directed verdict because Donevant presented facts sufficient to submit to the jury for a wrongful termination claim.

"The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration." Barron, 393 S.C. at 618, 713 S.E.2d at 639 (citing Citizens' Bank v. Heyward, 135 S.C. 190, 133 S.E. 709, 713 (1925)). "[O]nce a public policy is established, the jury would determine the factual question whether the employee's termination was in violation of that public policy." Barron, 393 S.C. at 618, 713 S.E.2d at 639.

Title 6 of the South Carolina Code of Laws is the title that deals with the building code. See S.C. Code Ann. § 6-9-5 *et seq.* (1977 & Supp. 2014). Section 6-9-5(A) of the South Carolina Code of Laws provides:

The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens. To secure these purposes, a person performing building codes enforcement must be certified by the South Carolina Building Codes Council, and this act is necessary to provide for certification.

S.C. Code Ann. § 6-9-5(A) (Supp. 2014) (emphasis added).

To achieve the stated public policy of South Carolina, to maintain reasonable construction standards in building to protect the health, safety, and welfare of its citizens,

the General Assembly adopted the remaining statutory provisions in Title 6 of the South Carolina Code of Laws, including section 6-9-10(A) of the South Carolina Code of Laws which requires “[a]ll municipalities ... and counties” to enforce the building code “within their jurisdiction and promulgate regulations to implement their enforcement.” S.C. Code Ann. § 6-9-10(A). It is within this public policy context that the General Assembly allows municipalities and counties to either adopt Chapter 1 of the International Building Code,¹⁰ or to promulgate and adopt its own regulations to enforce the building code. S.C. Code Ann. § 6-9-50(A); S.C. Code Ann. § 6-9-10(A).

The Town adopted Chapter 1 of the International Building Code. Town of Surfside Beach, South Carolina, Code of Ordinances § 13-21. The building code requires any owner or authorized agent, before engaging in any construction on the premises, to “first make application to the building official and obtain the required permit.” International Building Code § 105.1. Chapter 1 declares it unlawful for any person to erect, construct, or alter any building or structure “in violation of any provisions of this code.” International Building Code § 113.1. The building code requires the building official to enforce compliance with its provisions. International Building Code §§ 104.1-104.3.

It is a rare event for the General Assembly to use the magic words “the public policy of South Carolina.” It is additionally an unusual step for the General Assembly to implement the public policy of the State by requiring counties and municipalities to enforce the building code. S.C. Code Ann. § 6-9-50(A); S.C. Code Ann. § 6-9-10(A). This

¹⁰ Chapter 1 of the International Building Code provides a mechanism upon which the building code can be enforced. The General Assembly gives municipalities or counties the option to either adopt Chapter 1 or to promulgate and adopt their own enforcement regulations. See S.C. Code Ann. § 6-9-10(A).

legislative intent, design, and policy of this statutory framework cannot be ignored. See State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002) (“The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.”).

Here, Donevant presented a cognizable theory for wrongful termination, which was correctly sent to the jury. See Barron, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (holding a wrongful termination claim is not limited to situations where the employer requires the employee to violate the law or the reason for the employee’s termination itself is a violation of the law). The public policy of the State of South Carolina is to maintain reasonable construction standards in building to protect the health, safety, and welfare of its citizens. S.C. Code Ann. § 6-9-5(A). To achieve these purposes, the General Assembly requires the building code to be adhered to and requires them to be enforced. S.C. Code Ann. § 6-9-10(A); International Building Code §§ 104.1-104.3, 105.1, 113.1, 114.1. Donevant was enforcing the building code on March 20, 2014, when she issued a stop work order for unpermitted construction at the Pier Restaurant. Donevant presented evidence that after issuing the stop work order, Duckett initially suspended her and ultimately terminated her. Thus, Donevant testified and presented evidence to support a theory for wrongful termination that was proper to submit to the jury.

From there, it was an issue of fact as to whether the jury believed the Town terminated Donevant for issuing a stop work order or for other reasons not related to Donevant’s issuance of the stop work order. Donevant clearly presented evidence to support her theory that “[Duckett] fired [her] for putting a stop-work order, for doing my

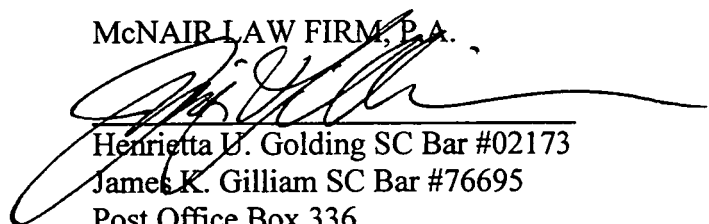
job.”¹¹ (R. p. 120). Ultimately, the jury believed the version of facts as presented by Donevant. Accordingly, this Court should not disturb the jury’s verdict as there was an issue of fact as to whether the Town terminated Donevant in violation of a clear mandate of public policy.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court’s denial of the Town’s motion for directed verdict and uphold the jury’s verdict of Three Hundred Thousand and 00/100 (\$300,000.00) Dollars.

Respectfully submitted,

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January 21, 2015

¹¹ On appeal, the Town does not allege that Donevant failed to present sufficient evidence in support of her wrongful termination claim. Therefore, this issue is not preserved for appellate review.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Deadra Jefferson
Circuit Court Judge

Case No.: 2012-CP-26-004852

Jacklyn J. Donevant, ...Respondent,

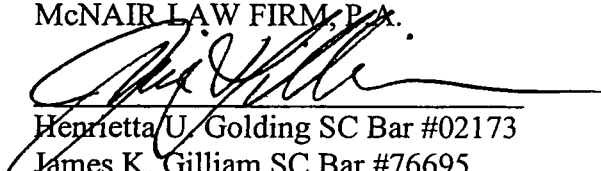
vs.

Town of Surfside Beach, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief complies with Rule 211(b), SCACR.

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January 21, 2015

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Deadra Jefferson
Circuit Court Judge

Case No.: 2012-CP-26-004852

Jacklyn J. Donevant, ...Respondent,

vs.

Town of Surfside Beach, ...Appellant.

PROOF OF SERVICE

I, Carole Koerner, an employee of McNair Law Firm, P.A., attorneys for Respondent Jacklyn J. Donevant, in the above-entitled action, certify that I have served Final Brief of Respondent, Certification of Counsel, and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 21st day of January, 2015 as follows:

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SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Deadra Jefferson, Circuit Court Judge

C. A. NO. 12-CP-26-4852

Town of Surfside Beach. Appellant

v.

Jacklyn J. Donevant Respondent

APPELLANT'S INITIAL REPLY BRIEF

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REGARDING DONEVANT'S FACTUAL BACKGROUND

The factual background of the Appellant and the Respondent are very similar. However, a few of the Respondent's factual assertions in the Respondent's brief warrant comment.

Respondent seems to assert (p. 9) that a reason for issuing the stop work order was that there were unsafe conditions, *e.g.*, holes, at the job site. However, it was actually uncontested that the reason was because the contractor was (allegedly) doing construction when he only had a demolition permit. The stop work order makes this plain. (R. 401) (Tr. P. Ex. 12). Donevant's contemporary notes also make this plain. (R. 402) (Tr. P. Ex. 13). Moreover, Donevant's Complaint (§ 17) affirmatively states the permit was the reason for the stop work order. Finally, Donevant's testimony concedes this point as well. (R. 54) (Tr. I p. 100:13).

Also on page 9, Respondent asserts she would have been disciplined had she not issued a stop work order. There was no evidence that discipline was inevitable. Judge Jefferson herself concluded that Donevant was not required to issue a stop work order and any discipline was speculative. (R. 366) (Tr. II p. 246). Although Respondent cites its expert's testimony in support of this assertion, that expert, in fact, testified only that discipline was possible. (R. 151-156) (Tr. I pp. 308-313).

Respondent alleges (pp. 10-11) that issuance of a stop work order was "not a reportable matter." The testimony cited to support this proposition came from coworkers and was merely to the effect that stop work orders were not normally reported to the City Administrator. The Pier, however, as Donevant acknowledged, was a highly significant community issue. (R. 95-96) (Tr. I pp. 149-50). Furthermore, Donevant had been specifically instructed to report to the City Administrator. Finally, the Assistant Administrator had also specifically (and repeatedly)

instructed Donevant to tell the Administrator that a stop work had been issued. (R. 106-108) (Tr. I pp. 164-166).

ARGUMENT

Donevant is trying to avoid the fact that she is asking the court to dramatically expand the public policy exception to at-will employment

Throughout this case, and again in her appeal brief, Donevant raises the straw-man argument that the Town wrongly argues that the public policy exception “is limited” to situations in which (1) the employer requires the employee to violate criminal law, or (2) the reason for the employee's termination itself is a violation of criminal law. This is simply incorrect. The Town tort has never argued that the exception was “limited” to these situations. This argument is a straw-man because Donevant thinks that by knocking it down, she proves that the tort has been applied and approved for fact situations beyond these two exceptions. It has not. There is a difference between “limited to” and “not applied beyond.”

The Town has repeatedly stated to this court, and to the trial court, that:

- (1) The tort is not limited to matters involving criminal penalties; but
- (2) the tort has not been applied outside of matters involving criminal penalties.

As the Town has acknowledged, this court and the South Carolina Supreme Court has held, the public policy exception has not been expressly limited to the above two situations. However, these courts did not expand the exception. They only held that dismissal of unique public policy discharge arguments on 12(b)(6) motions was premature. *Garner v. Morrison Knudsen Corp.* 456 S.E.2d 907 (S.C. 1995) and *Keiger v. Citgo Coastal Petroleum*, 482 S.E.2d 792 (S.C. Ct. App. 1997).

In *Garner*, the plaintiff alleged termination in retaliation for reporting radioactive contamination and, in *Keiger*, the employee alleged termination in retaliation for reporting wage payment concerns to the South Carolina Department of Labor. Neither of these situations fit within the two prongs identified in *Ludwick* and other cases. The appeal courts reversed dismissals based on S.C. R. Civ. P. 12(b)(6) only because the courts felt the issues were novel and required development through discovery. These courts specifically held that they were not expanding the tort of public policy discharge.

Because the facts of this case have not been fully developed, we do not address the ultimate question whether the public policy exception to the employment at-will doctrine is applicable in this case.

Garner v. Morrison Knudsen Corp., 456 S.E.2d 907, 910 (S.C. 1995).

The Barron court found the public policy exception is not limited to these two situations; however, the exception has not yet been extended beyond them.

McNeil v. S. Carolina Dep't of Corr., 743 S.E.2d 843, 846 (S.C. Ct. App. 2013), reh'g denied (June 25, 2013)

So, although it is true that the tort has not been expressly limited to the above two exceptions, neither has it been applied beyond them. If this court affirms the verdict in this case, then the exception, for the first time, will be extended.

What Donevant seeks to avoid stating is that she is asking this court to expand the public policy exception to at-will employment far beyond how it has been applied to date. Unlike in *Garner* and *Keiger*, Donevant's public policy theory went to trial. There was no premature dismissal based on Rule 12(b)(6). To affirm, this court must, for the first time, expand the exception. In this case that means expanding it to give an exception to at-will employment to every bureaucrat in the state who has some statutory or regulatory authority. The court should decline this invitation.

This case cannot be distinguished from *Antley v. Shepherd*

In *Antley v. Shepherd*, this court held that the public policy exception does not apply to government employees just because they have a legal “right” to exercise some duty. *Antley v. Shepherd*, 532 S.E.2d 294, 297 (S.C. 2000) (aff’d as modified 564 S.E.2d 116 (S.C. 2002)). Donevant is trying to distinguish herself from *Antley* by arguing that she had an “unfettered” right to issue a stop work order whereas Antley’s right to pursue tax appeals was discretionary. A quick view of the sources of Antley’s and Donevant’s authority clearly shows this argument is untenable.

Antley’s Authority to Pursue Tax Appeals

The assessor is responsible for the operations of his office and **shall . . . have the right of appeal** from a disapproval of or modification of an appraisal made by him . . .¹

Donevant’s Authority to Issue a Stop Work Order

Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or dangerous or unsafe, the building official **is authorized** to issue a stop work order.²

Donevant had no greater leeway to issue a stop work order than Antley had to pursue appeals. In fact, the statutory expression of Antley’s duty as a “right” is far stronger than the regulatory expression that Donevant “is authorized” to issue a stop work order.

¹ S.C. Code Ann. § 12-37-90. (emphasis added).

² (R. 423) From Section 115 of the International Building Code adopted by the Town of Surfside Beach. (emphasis added).

Donevant cites testimony of some co-workers and her expert to support the argument that her authority was unfettered. Even if the testimony could be construed that way, the scope of her authority is a legal question—not a fact question. It is one for the court to decide. *See, e.g., Rauton v. Pullman Co.*, 191 S.E. 416, 420 (S.C. 1937) (“any evidence by an expert as to the meaning of these statutes would be incompetent.”); *Kirkland v. Peoples Gas Co.*, 237 S.E.2d 772 (S.C. 1977) (an expert is not allowed to interpret regulations of the Department of Transportation); *Narruhn v. Alea London Ltd.*, 745 S.E.2d 90, 93 (S.C. 2013) (“court is obligated to follow and to enforce the stated meaning [of the statute]”); *Barth v. Barth*, 360 S.E.2d 309, 311 (S.C. 1987) (It is the right and duty of this court to interpret statutes”); *Benat v. State Farm Mut. Ins. Co.*, 333 S.E.2d 57, 58 (S.C. Ct. App. 1985) (“It is the duty of this court to interpret the [statutory] law.”).

In any event, the question, per *Antley*, is whether Donevant was required to issue a stop work order, not whether her authority was unfettered. Even Donevant admitted she did not always issue stop work orders for building code violations.

Q: So, yes or no, would you always issue a stop-work order for code violations?

A: For code violations of no permit, yes, sir.

Q: **For other violations not involving a permit?**

A: **No, sir.**

(R. 122) (Tr. I p. 198) (emphasis added).

Finally, even if the fact or expert witness’s testimony was competent to testify as to Donevant’s regulatory authority (which they were not) they did not testify that her power was unfettered and absolute. They merely testified that she was the only one licensed and authorized to issue stop work orders and they could not revoke a stop-work order.³ (R. 28, 145-146, 177) (Tr. I pp. 74, 245-46, 337) (R. 245-246, 295) (Tr. II pp. 79-80, 155). None of this testimony touched on the critical issue: was Donevant required by law to issue a stop work order. Judge Jefferson

³ Despite this testimony, in fact, nothing in the building code prevents an Administrator from directing a building official to revoke a permit or stop-work order.

concluded Donevant was not required to issue a stop-work order but then erroneously determined that the jury could nevertheless determine that Donevant was fired in violation of public policy. (R. 366-367) (Tr. II pp. 246-247).

**The public policy in favor of building codes and enforcement of those codes
is not relevant to this case**

Donevant argues at length that there is a strong public policy in favor of having, and enforcing, building codes. She refers to building codes being required of municipalities and of the strong “public policy” in favor of code implementation and enforcement.

The public policy in favor of building codes, and the enforcement of them, cannot be disputed. But the point is without purpose. The question is whether Donevant was required by law to issue a stop-work order. Even broadening the issue, would she be required to issue a stop-work order to effectively enforce the building codes? The answer to that question is clearly no. Even Donevant admitted she had discretion when to issue stop-work orders and did not do so in every circumstance.

The general public policy supporting the codes is simply not in question.

The Court should take this opportunity to definitively rule that public policy discharge is limited to situations where the termination is a violation of criminal law or the employee is terminated for refusing to violate a law carrying criminal penalties

As stated above, public policy discharge has not been applied outside situations in which (1) the employer requires the employee to violate a law carrying a criminal penalty, or (2) the reason for the employee's termination itself is a violation of criminal law. However, also as explained above, it has not been limited to these situations.

Although the court could reverse based solely on *Antley*, the Town urges the Court to expressly hold that public policy discharge is limited to the above two exceptions.

CONCLUSION

For the foregoing reasons, the judgment on Donevant's claim that she was terminated in violation of public policy should be reversed.



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December 23, 2014