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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2007-CP-38-938

Ajoy Chakrabarti and Sukla Chakrabarti, Respondents

v.

City of Orangeburg, Appellant.

RECORD ON APPEAL

VOLUME I

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SC Court of Appeals

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September 24, 2012

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) C/A NO. 2007-CP-38-938

Ajoy Chakrabarti and Sukla Chakrabarti,)

Plaintiffs,)

-vs-)

City of Orangeburg,)

Defendant.)

ORDER

Circuit Court Judge:
Hearing Date:
Plaintiffs' Attorney:
Defendant's Attorney:
Other Counsel Present:

Honorable Edgar W. Dickson
December 19, 2011
C. Bradley Hutto
Pete Kulmala
Jenny Thomas

After due deliberation and review of the record of the case, memoranda, case law, exhibits and argument of counsel, I am denying the Defendant's Motion for Judgment Notwithstanding the Verdict, Motion for New Trial, and for New Trial Remittitur. After careful review, I do not find anything in the record which would warrant a judgment notwithstanding the verdict. Furthermore, I do not find that there were any mistakes of fact or law that would justify the award of a new trial on this matter. Finally, there does not appear to be any fundamental misunderstanding by the jury on any pertinent part of the law that was charged.

Based on the evidence in the record at trial, I determined as a matter of law that there was a taking in this instance and that the Plaintiffs were entitled to damages resulting from this taking. Defendant asked the Court to review Lee v. City of Norfolk, 706 S.E.2d 330 (Va. 2011), a recent case with very similar facts to the matter at hand from Virginia, Defendant asserted that this case should be controlling. However, in the Virginia

Wingy B. Hutto
CLERK OF COURT
ORANGEBURG COUNTY

case, the homeowner was not challenging the regulations or procedures of the City in demolishing his house. Here, Plaintiffs entered testimony that reflected a direct challenge to the process and procedures that led to the demolition of Plaintiffs' property. Defendant entered evidence showing that the City of Orangeburg adopted the International Property Maintenance Code (IPMC), an international code standard for buildings, and that this standard is used to enforce building codes in Orangeburg. IMPC Section 110.1 provides:

The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

It appears that pursuant to IPMC Section 110.1 that a unsafe house may be demolished as a nuisance if one of three requirements are met: (1) If the city deemed it impossible to save (unreasonable to repair) and ordered its demolition; (2) If the owner and the city both agreed to demolish it; or (3) If in cases where repairs have been undertaken, any substantial construction had ceased for two (2) years. In this instance, none of these requirements were fulfilled.


Subsections (1) and (2) were not issues because Defendant issued two building permits for the reconstruction of the damaged house and there was no evidence submitted that any agreement between the Defendant and Plaintiff was reached for the demolition of the property. Regarding subsection (3), the Defendant issued a second building permit to Plaintiffs six months before the demolition. Defendant produced no

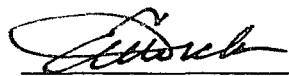
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evidence of a date when substantial construction on the property had ceased for any significant period, much less the required two years. Therefore, Defendant did not use the proper procedure and was not entitled to simply demolish Plaintiffs' property pursuant to police power without just compensation.


I agree with Defendant that Plaintiffs may only collect one of the two remedies provided by the jury and may not double collect by this ruling. Plaintiffs have stipulated that they have no basis to pursue collection of more than one remedy. This Court acknowledges that Plaintiffs elected the damages under the negligence claim, but preserved their right to collect under the taking if the negligence claim was overturned. On appeal, if either of the remedies is not upheld, the Plaintiffs may collect under the award that stands. If none is upheld, the Plaintiffs may not collect. If both are upheld, the election of remedy would remain the negligence recovery.

Finally, the Court denies remitter because the verdict that was reached by the jury was within reason and not disproportionate based on the evidence presented. There has been no showing that the verdict was the product of passion, caprice, prejudice, or anything outside of the evidence presented at trial, and it must therefore be upheld.


January 18, 2012
Orangeburg, SC



Honorable Edgar W. Dickson
First Circuit Court Judge

3/3 

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
 Ajoy Chakrabarti and Sukla)
 Chakrabarti,)
)
 PLAINTIFF,)
)
 v.)
)
 City of Orangeburg,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

C/A No.: 07-CP-38-938

VERDICT

2011 OCT - 7 P 11:11
 FILED FOR
 WINNIE B. CLAY
 CLERK OF COURT
 ORANGEBURG, SC

1. We the jury unanimously find that the City was grossly negligent in demolishing Plaintiff's house:

YES

NO

If you answered Yes to Question 1, please answer Question 2 and then continue to Question 3; if you answered No, please continue to Question 3 only.

2. Due to the gross negligence of the City, we the jury unanimously find the Plaintiff suffered:

\$ 165,000.00 actual damages.

3. We the jury unanimously find that the fair market value at the time of the demolition of Plaintiff's property by the City is:

\$ 85,000.00

SIGNED: Woodrow W. Martin
 JURY FOREPERSON

DATED: October 7th, 2011 in ORANGEBURG, SC

PLEASE NOTIFY THE BAILIFF WHEN YOU HAVE COMPLETED THE VERDICT FORM.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
C/A NO. 2007-CP-38-938

Ajoy Chakrabarti and Sukla Chakrabarti,)
)
Plaintiffs,)
)
-vs-)
)
City of Orangeburg,)
)
Defendant.)

POST TRIAL MOTION

TO: PETE KUMULA, ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiffs, here moves as follows:

On October 7, 2011, a jury returned a verdict in this matter for actual damages based on the Tort Claims Act for One Hundred Sixty-Five Thousand Dollars (\$165,000). The jury also returned a verdict for inverse condemnation in the amount of Eighty-Five Thousand Dollars (\$85,000).

Plaintiffs move the Court to be allowed to accept the One Hundred Sixty-Five Thousand Dollar (\$165,000) verdict. Plaintiffs hereby reserve their rights as to the Eighty-Five Thousand (\$85,000) in the event that this Court or an Appellate Court sets aside or reduces the One Hundred Sixty-Five Thousand Dollar (\$165,000) verdict. Plaintiffs do not seek a double recovery.



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ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing email hand delivery in the manner prescribed by the South Carolina Rules of Civil Procedure.

This 13 October 2011

BY: *Dick M. Ware*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	CASE NO.: 2007-CP-38-938
)	
)	
AJOY CHAKRABARTI and SUKLA	)	DEFENDANT'S MOTION FOR
CHAKRABARTI,	)	JUDGMENT NOTWITHSTANDING THE
Plaintiffs,	)	VERDICT; NEW TRIAL; NEW TRIAL
	)	REMITTITUR; AND FOR ELECTION
vs.	)	OF REMEDIES
)	
CITY OF ORANGEBURG,)	
_____ Defendant)	

TO: PLAINTIFFS ABOVE-NAMED AND THEIR ATTORNEY:

You will please take notice that Defendant, CITY OF ORANGEBURG, by and through undersigned counsel, will move before the presiding Judge of the Court of Common Pleas for the First Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Orangeburg County Courthouse, 190 Gibson Street, Orangeburg, South Carolina, for an Order of Judgment Notwithstanding the Verdict, and in the alternative, for a New Trial, or New Trial Nisi remittitur, and for an Order requiring Plaintiffs to elect a remedy. Each of these motions are made post-trial of the jury trial commenced on October 5, 2011 and with the jury's verdict being rendered October 7, 2011. This motion is to be based upon the applicable statutes and case law of South Carolina, pursuant to Rules 50 (b), 52(b) and 59 (a) SCRPC.

Upon the close of all the evidence, City moved for directed verdict on Plaintiff's cause of actions in negligence, wrongful condemnation and trespass. Plaintiff's inverse condemnation cause of action was resolved by the Court's determination that an inverse condemnation had occurred, and the question of amount of just compensation was submitted to the jury. Upon the close of all the evidence on the matter of just compensation, City renewed its motion for directed

verdict, as to the amount of the jury's determination. City has asserted grounds for the motions as follows:

Negligence – Plaintiff has presented no evidence of the duty owed by City with respect to decisions to condemn and/or demolish private residential structures; and has presented no evidence of a breach of any such non-established duty. Absent evidence of the duty to be obeyed, and any concomitant evidence of breach of duty, there can be no recovery for a plaintiff.

Wrongful condemnation – This cause of action was essentially merged into the negligence cause of action during trial. However, to the extent it was considered as a separate cause of action, the evidentiary failures of the negligence cause of action are also failures of essential elements of wrongful condemnation, such that Plaintiff has failed to present evidence of City's duty and breach of that duty.

City asserted the defenses of waiver and estoppel, based upon the Plaintiffs' admitted failure to pursue the appeals process which was available to them, and described on the Notice of Condemnation dated June 13, 2005.

Trespass – this cause of action was withdrawn prior to submission to the jury.

Inverse condemnation – City's motion for directed verdict on this cause of action, (more properly denominated as Motion for Involuntary Nonsuit) was based on the ground that all the City's actions relating to the property located at 2243 Middleton, in Orangeburg, were undertaken by the City as lawful exercise of its police power under the United States Constitution. This cause of action was divided, with the Court deciding, after all the evidence, that an inverse condemnation had occurred, and submitting only the question of "fair market value" to the jury.

City also sought directed verdict as to all causes of action pursuant to several exceptions to the waiver of sovereign immunity of the South Carolina Tort Claims Act, 15-78-60: (1) A governmental entity is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction; (2) A governmental entity is not liable for a loss resulting from administrative action or inaction of a legislative, judicial, or quasi-judicial nature; (3) A governmental entity is not liable for a loss resulting from execution, enforcement, or implementation of the orders of any court or execution, enforcement or lawful implementation of any process; (4) A governmental entity is not liable for a loss resulting from adoption, enforcement or compliance with any law or failure to adopt or enforce any law; (13) A governmental entity is not liable for a loss resulting from regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety; (23) A governmental entity is not liable for a loss resulting from institution or prosecution of any judicial or administrative proceeding.

All of the foregoing motions were denied, and City now respectfully moves for Judgment notwithstanding the verdict, as to the negligence cause of action, because the decision denying each of the foregoing directed verdict motions were affected by incorrect application of law to the facts and evidence. Similarly, City seeks to alter or amend the Court's determination that an inverse condemnation had occurred.

NEGLIGENCE - Plaintiff's first cause of action was cast as negligence. "To recover on a claim for negligence, a plaintiff 'must show (1) a duty of care owed by the defendant to the

plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach.” Carolina Chloride, Inc. v. Richland County, 2011 WL 3206901.

“A plaintiff must identify a duty that the defendant has to protect him or her from a particular harm to merit consideration of his or her claim by a jury.” Nelson v. Piggly Wiggly Central, Inc., 701 Se 2d 776 (Ct App 2010). Plaintiff offered no evidence of any common law duty owed by a local governmental entity, when undertaking its responsibilities to the community with respect to structures such as fire damages residential buildings. Similarly, Plaintiff presented no evidence of any statutes, ordinances nor regulations enacted by any governmental entity which served to impose upon the local government any particular duty or standard of care. “There can be no inference of negligence from the mere fact of injury, and that the burden is on the plaintiff to produce some reasonable evidence tending to show some breach of duty owed to him.”

Covington v. Atlantic Coast Line R.R. Co., 158 S.C. 194, 155 S.E. 438 (1930).

It naturally follows that, absent proof of the existence or parameters of any such duty, there could be no proof of any breach of duty. And Plaintiffs presented no witness to establish any breach. City presented the testimony of Jim Meggs, expert witness on the municipal procedures for dealing with condemnation and demolition of structures, pursuant to codes and ordinances. In particular, the International Property Maintenance Code, which had been adopted by the City of Orangeburg. Mr. Meggs testified that City complied in all respects with the Code’s requirements for condemnation and demolition. The net result is that Plaintiffs have failed in their burden of establishing the duty of care for the City, and have also failed to establish any breach by the City.

City asserted the defenses of waiver and estoppel, which were charged to the jury. In

returning a Plaintiff's verdict, the jury apparently misunderstood the instruction on the law.

“Waiver is a voluntary and intentional abandonment or relinquishment of a known right. Stated differently, waiver requires a party to have known of a right and known he was abandoning that right. Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do.” Eason v. Eason, 29WL2709378 (2009). On this issue, Defendant's exhibit 17, the June 13, 2005 Notice of Condemnation clearly expresses the recipient's right to appeal the determination which is the subject of the Notice, instructing that:

Any person directly affected by this decision shall have the right to appeal to the Construction Board of Appeals, provided that a written application for appeal is filed within 20 days after the day this was served on you. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means, or that the strict application of any requirement of this code would cause an undue hardship.

Plaintiff Ajoy Chakrabarti did not deny, but admitted receiving the June 13, 2005 (Def. Exh. 17) Notice, and acknowledged the information about the right to appeal on page 2, and candidly admitted that he did not attempt to pursue the appeal which was available to him.

On this failure of proof on the part of the Plaintiffs, and the unrefuted evidence of noncompliance with the appeal provision, City respectfully urges that directed verdict was appropriate, and this request for JNOV should be granted.

INVERSE CONDEMNATION - This cause of action was split, with the Court deciding that there had been a taking, and submitting to the jury the question of the amount of just compensation. For this reason, while a motion for JNOV may not be appropriate on the question of whether or not there was an inverse condemnation, a motion to reconsider and for a new trial

would be appropriate. As to the question of amount of just compensation, City does seek Judgment Notwithstanding the verdict as to the amount of just compensation decided by the jury.

“To establish an inverse condemnation, a plaintiff must show: ‘(1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence.’” Hawkins v. City of Greenville, 594 SE 2d 557 (2004). “The governmental conduct at issue generally takes one of two forms: (1) the entity has physically appropriated private property or (2) the entity has imposed restrictions on the use of the property that deprive the owner of the property's ‘economically viable use.’” Hilton Head Automotive, LLC v. SCDOT, 714 SE 2d 308 (2011).

This is clearly not a regulatory taking, so the analyses employed in those cases is inapposite here. But, even applying the cases of physical taking to the facts before the Court, this is still not a case to be controlled by “takings” jurisprudence. The property in this case was not taken by the City for its use of the property for the public, which is a factor in inverse condemnation cases. Rather, the real property demolished in this case, was determined to be a nuisance, and as a nuisance, it was perfectly appropriate for the structure to be demolished under the City’s police power to deal with public nuisances, without it being considered a “taking” requiring payment of just compensation.

In support of City’s motion for directed verdict, City furnished numbers of citations to controlling law in the relatively rare South Carolina cases on point. “Statutes and municipal ordinances calculated to better the health, safety and welfare of the people have long and universally been recognized to be within the police power.” Richards v. City of Columbia, 88 SE 2d 683 (1955). “Under the police power, the legislative authority may, within proper limitations,

impose and enforce regulations governing buildings upon privately owned property without violating the constitutional property rights of the owner.” Richards v. City of Columbia, 88 SE 2d 683 (1955). “Building regulations for the purpose of promoting a decent and sanitary mode of living in cities and other thickly populated districts . . . is fully justified under the police power.” Richards v. City of Columbia, 88 SE 2d 683 (1955).

“When a building used as a dwelling house is unfit for that use and a source of danger to the community, the Legislature in order to promote the general welfare may require its alteration or require that its use for a purpose which injures the public be discontinued; and, subject to reasonable limitation, the Legislature may determine what alterations should be required and what conditions may constitute a menace to the public welfare and call for remedy.” Richards v. City of Columbia, 88 SE 2d 683 (1955). “The government has authority, under its police powers, to restrict use of private property, without paying compensation.” Sea Cabins on the Ocean IV Homeowners Ass’n. v. City of North Myrtle Beach, 548 SE 2d 595 (2001). “The exercise of police power under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose.” Peoples Program for Endangered Species v. Sexton, 476 SE 2d 477 (1996).

“The authority of a municipality to enact ordinances that restrict the use of privately owned property is founded in the municipality's police power.” Harbit v. City of Charleston, 675 SE2d 776 (Ct. App. 2009).

A recent case of the Virginia Supreme Court, which is factually, nearly identical, to this case, Lee v. City of Norfolk, 706 SE 2d 330 (Va. 2011), aptly recognized the City’s responsibility to its citizens in such circumstances, and upheld the City’s demolition against

claims of inverse condemnation and negligence, as well as due process. The plaintiff in Lee had sought and obtained a municipal permit to restore a fire damaged residential structure. During the time of the permit, and while repairs were ongoing, a city inspector advised that the plaintiff's permits were revoked because of noncompliance with one of the conditions of the permit (the 50% rule), not unlike the 2004 inspection by Dan Cherry in this case, when it was learned that Plaintiffs were not intending to live in the house, a condition of the "owner as contractor" permit. Shortly after revocation of the permits, the Lee plaintiff received a Notice to Demolish the residence. The Notice in Lee advised the plaintiff, in similar fashion to that in this case, that he had the right to appeal the decision to the specified authority within 21 days. Although the Lee plaintiff made a few attempts toward resolving some of the City's concerns with the building, and the City did not demolish when initially announced to the Lee plaintiff, but allowed time extensions of approximately 80 additional days, he never appealed the demolition decision and the City demolished the building 107 days after its Notice to the plaintiff. The plaintiff then filed a lawsuit against the city of Norfolk, based on due process, inverse condemnation and common law negligence, later amended to include a cause of action under 42 USC 1983.

The Virginia Supreme Court agreed with the lower court and concluded that "the City's demolition of Lee's property was not a taking, but rather the abatement of a nuisance for which no compensation is due. Citing, Keystone Bituminous Coal Ass'n. v. DeBenedictus, 480 U.S. 470 (1987). The Court further explained:

"The abatement of a nuisance often requires prompt and summary proceedings, and where the abatement is authorized under the police power of the State and due process of law has been observed, the owner of the property destroyed for the public good has no constitutional rights beyond those provided in the statute under which the abatement is made." Lee v. City of Norfolk, 706 SE 2d at 737.

It is clear under the persuasive authority of the Virginia Supreme Court, that the City's demolition of the house owned by the Chakrabartis at 2243 Middleton, was not a taking for which just compensation was required to be paid to the landowner, but instead, it was the City's abatement of a public nuisance, for which no compensation is in order. According to the foregoing sound principles of law, it is appropriate that the determination of inverse condemnation be reconsidered and amended so as to recognize the City's action as abatement of a nuisance. In the alternative, City seeks a new trial as to this cause of action.

DAMAGES/JUST COMPENSATION - The jury rendered two decisions involving amounts – one amount was the damages (\$ 165,000.00) incurred by Plaintiffs under the negligence cause of action. The second amount (\$ 85,000.00) was the fair market value figure to be used as an award on the inverse condemnation cause of action. In arriving at these figures, the jury erred, and deviated from the instructions on the law charged to them. In reality, there could only be a single number which would derive from adherence to the Court's instruction.

As to inverse condemnation, the amount must be fair market value as of the time of the "taking". Early v. South Carolina Public Service Authority, 90 SE 2d 472 (1955). For damage or injury to real property, the general rule is that the proper measure of damages is the diminution of the market value by reason of that injury, or in other words, the difference between the value of the land before the injury and its value after the injury. Yadkin Brick Co., Inc. v. Materials Recovery Co., 529 SE 2d 764 (Ct. App. 2000). "Collateral damages, including lost business profits, are not recoverable on a takings claim." Mibbs v. South Carolina Dept. of Rev., 524 SE 2d 626 (1999) Plaintiff's evidence of fair market value or actual damages came only from Sukla Chakrabarti, who described the amounts expended for purchase of the burned structure, which

included land, pool house and pool - \$ 35,000.00; and labor and materials used in the restoration process - \$ 120,000.00, and an additional amount of approximately \$ 20,000.00 of unclear nature. The total thus arrived at would be \$ 175,000.00. And Plaintiff testified that she believed this amount reflected the value of the property, confusing the matter of value with amount expended.

The land was not destroyed. The Chakrabartis retained ownership of the land, until it was forfeited for non payment of taxes. So, the initial purchase price cannot fairly be included in the damages from demolition. Also, amounts expended do not necessarily yield equivalent value in fair market value. While Mrs. Chakrabarti may offer her opinion of value, such opinion is clearly based upon a faulty premise.

Significantly, because this is a case of injury or damage to real property, rather than personal injury, the amount of actual damages does not allow for consideration or inclusion of other "soft" or intangible factors to increase the amount of damages.

The only evidence of real, fair market value was that offered by City's expert witness, appraiser Henson. His opinion of fair market value of the property at the time of the demolition in the summer of 2005, was \$ 45,000.00, based upon his appraisal based upon comparable area values. Henson further testified that the demolition cost incurred by the City, in the amount of \$ 12,025.00, would appropriately be deducted from the value, so that the real value of the property in 2005 would have been \$ 32,975.00.

While a plaintiff may certainly testify to an opinion of value, Gauld v. O'Shaughnessy Realty Co., 671 SE 2d 79 (Ct App 2008), when that opinion amounts to a computation of value that is completely devoid of any rational basis, such that there is nothing to take a plaintiff's

opinion of value out of the realm of pure conjecture, such as Mrs. Chakrabarti's recitation of labor and materials expended, the court can properly conclude there was no competent, admissible evidence of the amount of damages.

The only credible evidence of the value of the property at 2243 Middleton Street, was the opinion of the appraiser, and City is entitled to JNOV setting the amount of actual damages as well as just compensation at \$ 33,000.00.

ELECTION OF REMEDIES - City also moves for Plaintiffs to elect one remedy from between the two causes of action upon which decisions have been rendered. "Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action." Taylor v. Medenica, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996). The basic purpose of election of remedies is to prevent double recovery for a single wrong. Save Charleston Found. v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct.App.1985). "When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both. See, Williams v. Riedman, 529 SE 2d 28 (Ct App 2000).

"The doctrine of election of remedies involves a choice between two or more different and coexisting modes of procedure and relief afforded by law for the same injury." Tzouvelekas v. Tzouvelekas, 206 S.C. 90, 33 S.E.2d 73 (1945). "Its purpose is to prevent double redress for a single wrong." Save Charleston Foundation v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct.App.1985). When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both.

(Ct.App.1985). When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both.

“The plaintiff should have a full opportunity to prove his claim to some form of relief, but he should not receive a double recovery. The invocation of one remedy constitutes an election of remedies that will bar another remedy consistent therewith where the suit upon the remedy first invoked reached the stage of final adjudication.” Brown v. Felkel, 320 S.C. 292, 294, 465 S.E.2d 93, 95 (Ct.App.1995)

“In many instances, this means the case can go to the jury on all causes of action supported by the evidence at trial, with election required after verdict but before judgment is entered.” Harper v. Ethridge, 348 SE 2d 374 (Ct. App. 1986); citing, Nichols v. State Farm Mutual Automobile Insurance Co., 306 S.E.2d 616 (1983). Accordingly, City respectfully moves that Plaintiffs be required to elect between the remedies of the two causes of action.

NEW TRIAL/NEW TRIAL NISI REMITTITUR – City also moves for a New Trial, according to Rule 59, on the ground that the jury’s verdict on the negligence count, and on the amount of just compensation are contrary to the weight of the evidence when viewed under controlling law, as set forth in detail, above.

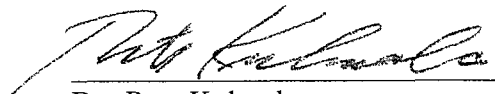
The Court’s determination that a “taking” occurred is similarly contrary to the evidence, when viewed under controlling law. Additionally, the jury’s decision as to the amount of damages in negligence, (\$ 165,000.00) and the amount of just compensation in inverse condemnation (\$ 85,000.00) are each excessive, in light of the evidence presented as to the amount of fair market value of the property, (\$ 32,975.00). Accordingly, in the final analysis, a new trial nisi, remittitur should be ordered, so that the amounts fairly reflect the evidence on the

matter.

CONCLUSION

Based upon the reasoning set forth herein, City respectfully asks the Court to require Plaintiffs to elect from between the two alternative causes of action herein, and to grant judgment notwithstanding the verdict as to Negligence; for reconsideration and amendment of the Court's decision as to inverse condemnation; for JNOV as to the amount of damages in negligence and as to the amount of just compensation in inverse condemnation; for a new trial as to negligence and as to inverse condemnation; and for a new trial nisi remittitur, in light of the excess of the amount of damages in negligence and/or the amount of just compensation in inverse condemnation.

HARVEY & KULMALA, LLC
110 Main Street
P. O. Box 705
Barnwell, SC 29812
(803) 259-5531



By: Pete Kulmala
Attorney for Defendant

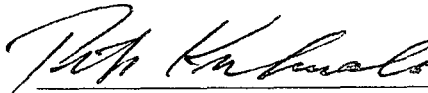
October 17, 2011
Barnwell, South Carolina

CERTIFICATE OF SERVICE

I, Pete Kulmala, attorney for the Defendant, City of Orangeburg, in the case of Chakrabarti v. City of Orangeburg, 07-CP-38-938 do hereby certify I have served the foregoing **Post Trial Motions, for JNOV, New Trial, New Trial nisi remittitur, for Reconsideration and to Amend, and for Election of Remedies** on the date shown below by **HAND DELIVERY** to the persons listed below:

C. Bradley Hutto, Esq.
Williams & Williams
1281 Russell St.
Orangeburg, SC 29116

Honorable Edgar Dickson
151 Docket St., Ste. 207
Orangeburg, SC 29115



Pete Kulmala

October 17, 2011
Barnwell, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
C/A #2007-CP-38- 938

Ajoy Chakrabarti and Sukla)
Chakrabarti,)
)
Plaintiffs,)
)
v.)
)
City of Orangeburg,)
)
Defendant.)
_____)

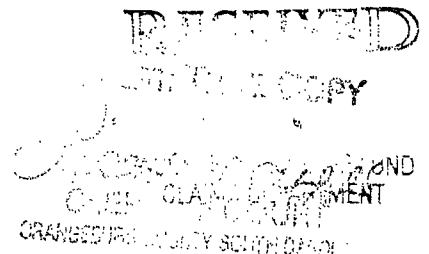
COMPLAINT
(Jury Trial Demanded)

The Plaintiffs above named, complaining of the Defendant, allege:

1) Plaintiffs are residents and citizens of Orangeburg County, State of South Carolina and are the owners of real property located at 2243 Middleton Street, Orangeburg, South Carolina.

2) Defendant is a municipality located within the State of South Carolina and is a governmental entity as defined by the South Carolina Tort Claims Act (South Carolina Code § 15-78-10 et. seq.).

3) Plaintiffs hereby assert a claim pursuant to South Carolina Tort Claims Act for the negligence of Defendant, acting through its agents and employees, which caused the wrongful condemnation, conversion, destruction and demolition of Plaintiffs' home and property located at 2243 Middleton Street, Orangeburg, South Carolina during August 2005.



- 4) Plaintiffs are informed and believe that Defendant was negligent in one or more of the following particulars:
- a) In failing to properly follow procedures for the condemnation and demolition of Plaintiffs' property and home;
 - b) In failing to properly notify Plaintiffs of the process to avoid demolition;
 - c) In failing to provide Plaintiffs with due process;
 - d) In wrongfully converting Plaintiffs' property to the use of Defendant;
 - e) In failing to allow Plaintiffs time to complete repair work after substantial repair work had been made;
 - f) In improperly inspecting the property;
 - g) In finding that the property was unsafe and wrongfully notifying Plaintiffs of the same;
 - h) In finding that the property was unfit for human habitation and wrongfully notifying Plaintiffs of the same;
 - i) In finding that the property was a public nuisance and wrongfully notifying Plaintiffs of the same;
 - j) In finding the property in violation of the International Maintenance Code and wrongfully notifying Plaintiffs of the same;
 - k) In failing to extend the building permit of Plaintiffs;

- l) In providing Plaintiffs with incorrect information and confusing notices regarding the status of the property;
- m) In failing to follow proper condemnation proceedings for posting condemnation notices on the property;
- n) In demolishing the property before the Plaintiffs had an opportunity to appear and respond to the code and enforcement ticket issued to Plaintiffs.
- o) In wrongfully singling out Plaintiffs' property for demolition when numerous other properties were in same or similar status of compliance with City rules, regulations and codes.
- p) In improperly demolishing the property, structures, and pool of Plaintiffs;
- q) In notifying Plaintiffs that they could "settle the case" by complying with the mandates of Uniform Ordinance Summons 0142 and thereafter demolishing the property prior to the time to respond to said Summons;
- r) In allowing its building and enforcement employees to provide confusing, inconsistent, incorrect, and false information to Plaintiffs;

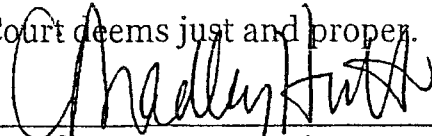
s) In failing to obtain a Court Order or otherwise allow Plaintiffs an opportunity to respond prior to the demolition of Plaintiffs' property;

5. That as a proximate cause of one or more of the acts of negligence or torts enumerated above, Plaintiffs suffered damages to their property located at 2243 Middleton Street, Orangeburg, South Carolina.

6. That due to and proximately caused by the acts and omissions of Defendant, Plaintiffs are informed and believe that they have been damaged in the amount of Five Hundred Thousand Dollars (\$500,000), together with interest thereon.

7. That Plaintiffs hereby make and claim against Defendant under the South Carolina Torts Claim Act in the amount of Five Hundred Thousand (\$500,000) Dollars, together with interest thereon.

WHEREFORE, having made this claim under the South Carolina Tort Claims Act, Plaintiffs pray for judgment against Defendant in the amount of Five Hundred Thousand Dollars (\$500,000) as actual damages, together with interest thereon, and for such other cost as this Court deems just and proper.



C. Bradley Hutto, Esquire
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, South Carolina 29116
(803) 534-5218
ATTORNEYS FOR PLAINTIFF

July _____ 2007
Orangeburg, South Carolina

RECEIVED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	CASE NO.: 07-CP-38-938
)	
AJOY CHAKRABARTI and SUKLA)	
CHAKRABARTI,)	
Plaintiffs,)	
	)	ANSWER
vs.)	
)	
CITY OF ORANGEBURG,)	
Defendant)	

TO PLAINTIFF ABOVE NAMED AND HIS ATTORNEY, H. BRADLEY HUTTO, ESQUIRE:

COMES NOW THE DEFENDANT, CITY OF ORANGEBURG, responding to the Complaint herein, Answering and asserting as follows:

1. Any allegation not hereinafter specifically admitted, denied, qualified or otherwise explained, is denied and proof is demanded thereof.

FOR A FIRST DEFENSE

2. Upon information and belief, the allegations of Paragraph 1 are admitted. The allegations of Paragraph 2 are admitted.

3. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 3 and the same are therefore denied.

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

6. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 6 and the same are therefore denied.

FOR A SECOND DEFENSE

7. Plaintiff has failed to allege facts sufficient to constitute any cause of action against the Defendant and the Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCF.

FOR A THIRD DEFENSE

8. Plaintiffs' claim raises matters which could have been raised in the condemnation proceedings, but were not, and is barred by the doctrine of res judicata and or collateral estoppel, and the Complaint must be dismissed.

FOR A FOURTH DEFENSE

9. Plaintiffs' claim raises matters which could have been raised in the condemnation proceedings, or timely appeal therefrom, but were not, and is barred by the doctrine of waiver, and the Complaint must be dismissed.

FOR A FIFTH DEFENSE

10. Defendant asserts that any injury sustained by Plaintiffs were proximately caused by their own sole negligence and/or gross negligence.

FOR A SIXTH DEFENSE

11. Defendant asserts that, even if it is determined that Defendant was negligent in the manner alleged, which is expressly denied, Plaintiffs are barred from recovery by their own negligence and/or gross negligence which contributed more than 50 % to their injuries.

FOR A SEVENTH DEFENSE

12. Defendant asserts that, even if it is determined that Defendant was negligent in the manner alleged, which is expressly denied, any award of damages to Plaintiffs must be reduced according to the comparative proportion by which their injuries were proximately caused by their own negligence and/or gross negligence.

FOR AN EIGHTH DEFENSE

13. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(1), for legislative, judicial or quasi-judicial action.

FOR A NINTH DEFENSE

14. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of

sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(2), for administrative action or inaction of a legislative, judicial or quasi-judicial nature.

FOR A TENTH DEFENSE

15. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(3), for execution, enforcement, or implementation of the orders of any court or execution, enforcement or lawful implementation of any process.

FOR AN ELEVENTH DEFENSE

16. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(4), for adoption, enforcement or compliance with any law or failure to adopt or enforce any law.

FOR A TWELFTH DEFENSE

17. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(5), for the exercise of discretion or judgment by the governmental entity or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity.

FOR A THIRTEENTH DEFENSE

18. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(13), regulatory inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection to determine whether the property complies with or violates any law, regulation, code or ordinance or contains a hazard to health or safety.

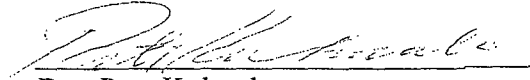
FOR A FOURTEENTH DEFENSE

19. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of

sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(23), for institution or prosecution of any judicial or administrative proceeding.

WHEREFORE, having fully answered the Complaint herein, Defendant prays that the Complaint be dismissed and for such other and further relief as the Court deems just and appropriate.

HARVEY & KULMALA
Post Office Box 705
Barnwell, South Carolina 29812
(803) 259-5531



By: Pete Kulmala
Attorney for Defendant

Barnwell, South Carolina
September 21 2007

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF ORANGEBURG) C/A #2007-CP-38-938

Ajoy Chakrabarti and Sukla)
 Chakrabarti,)
)
 Plaintiffs,)
)
 v.)
)
 City of Orangeburg,)
)
 Defendant.)
 _____)

**AMENDED
 COMPLAINT
 (Jury Trial Demanded)**

The Plaintiffs above named, complaining of the Defendant, allege:

- 1) Plaintiffs are residents and citizens of Orangeburg County, State of South Carolina and are the owners of real property located at 2243 Middleton Street, Orangeburg, South Carolina.
- 2) Defendant is a municipality located within the State of South Carolina and is a governmental entity as defined by the South Carolina Tort Claims Act (South Carolina Code § 15-78-10 et. seq.).
- 3) Plaintiffs hereby assert claims under applicable law and pursuant to the South Carolina Tort Claims Act for negligence and other causes of action, against Defendant, acting through its agents and employees, which caused the wrongful condemnation, conversion, destruction and demolition of

ATTEST: TRUE COPY
Wing K. Lee
 CLERK OF COURT

Plaintiffs' home and property located at 2243 Middleton Street, Orangeburg, South Carolina during August 2005.

FOR A FIRST CAUSE OF ACTION

- 4) Plaintiffs are informed and believe that Defendant was negligent in one or more of the following particulars:
- a) In failing to properly follow procedures for the condemnation and demolition of Plaintiffs' property and home;
 - b) In failing to properly notify Plaintiffs of the process to avoid demolition;
 - c) In failing to provide Plaintiffs with due process;
 - d) In wrongfully converting Plaintiffs' property to the use of Defendant;
 - e) In failing to allow Plaintiffs time to complete repair work after substantial repair work had been made;
 - f) In improperly inspecting the property;
 - g) In finding that the property was unsafe and wrongfully notifying Plaintiffs of the same.;
 - h) In finding that the property was unfit for human habitation and wrongfully notifying Plaintiffs of the same;
 - i) In finding that the property was a public nuisance and wrongfully notifying Plaintiffs of the same;

- j) In finding the property in violation of the International Maintenance Code and wrongfully notifying Plaintiffs of the same;
- k) In failing to extend the building permit of Plaintiffs;
- l) In providing Plaintiffs with incorrect information and confusing notices regarding the status of the property;
- m) In failing to follow proper condemnation proceedings for posting condemnation notices on the property;
- n) In demolishing the property before the Plaintiffs had an opportunity to appear and respond to the code and enforcement ticket issued to Plaintiffs.
- o) In wrongfully singling out Plaintiffs' property for demolition when numerous other properties were in same or similar status of compliance with City rules, regulations and codes.
- p) In improperly demolishing the property, structures, and pool of Plaintiffs;
- q) In notifying Plaintiffs that they could "settle the case" by complying with the mandates of Uniform Ordinance Summons 0142 and thereafter demolishing the property prior to the time to respond to said Summons;
- r) In allowing its building and enforcement employees to provide

confusing, inconsistent, incorrect, and false information to Plaintiffs;

s) In failing to obtain a Court Order or otherwise allow Plaintiffs an opportunity to respond prior to the demolition of Plaintiffs' property;

5. That as a proximate cause of one or more of the acts of negligence, Plaintiffs suffered damages to their property located at 2243 Middleton Street, Orangeburg, South Carolina.

6. That due to and proximately caused by the acts and omissions of Defendant, Plaintiffs are informed and believe that they have been damaged in the amount of Five Hundred Thousand Dollars (\$500,000), together with interest thereon.

FOR A SECOND CAUSE OF ACTION

7. That the acts of Defendant complained of hereinabove constitute the wrongful and improper condemnation of Plaintiffs' property.

8. That the acts of Defendant violated Plaintiffs' rights to due process and constitute an unlawful taking of property without just compensation.

9. Plaintiffs are informed and believe that they have been damaged in the amount of Five Hundred Thousand Dollars (\$500,000), together with interest thereon.

FOR A THIRD CAUSE OF ACTION

10. That the actions of Defendant described hereinabove constitute an unlawful and improper taking in violation of the rights of Plaintiffs.

11. That Defendant followed flawed and improper procedures.

12. That Defendant has failed to properly compensate Plaintiffs for the value of their property.

13. Plaintiffs are informed and believe that they have been damaged in the amount of Five Hundred Thousand Dollars (\$500,000), together with interest thereon.

FOR A FOURTH CAUSE OF ACTION

14. That the actions of Defendant described hereinabove constitute trespass to real property.

15. That Defendant entered onto the property of Plaintiffs without permission.

16. That Defendant entered the property with the intention of doing harm to the property and did in fact substantially harm the property.

17. That Defendant was without lawful authority to enter and destroy the property of Plaintiffs.

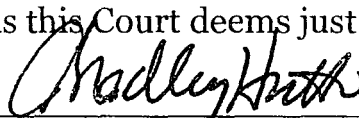
18. That Defendant did interfere with Plaintiffs' property through intention acts and force and without the permission of Plaintiffs.

19. Plaintiffs are informed and believe that they have been damaged in the amount of Five Hundred Thousand Dollars (\$500,000), together with interest thereon.

AS TO ALL CAUSES OF ACTION

20. That Plaintiffs hereby make and claim against Defendant under the South Carolina Torts Claim Act in the amount of Five Hundred Thousand (\$500,000) Dollars, together with interest thereon.

WHEREFORE, having made this claim under the South Carolina Tort Claims Act, Plaintiffs pray for judgment against Defendant in the amount of Five Hundred Thousand Dollars (\$500,000) as actual damages, together with interest thereon, and for such other cost as this Court deems just and proper.



C. Bradley Hutto, Esquire
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, South Carolina 29116
(803) 534-5218
ATTORNEYS FOR PLAINTIFF

August 23, 2011
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
AJOY CHAKRABARTI and SUKLA)
CHAKRABARTI,)
Plaintiffs,)
)
vs.)
)
CITY OF ORANGEBURG,)
)

Defendant)

IN THE COURT OF COMMON PLEAS
CASE NO.: 07-CP-38-938

ANSWER TO AMENDED COMPLAINT

FILED
2007
MAY 11 AM 10:00
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

TO PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY, H. BRADLEY HUTTO, ESQUIRE:

COMES NOW THE DEFENDANT, CITY OF ORANGEBURG, responding to Plaintiffs'

Amended Complaint herein, Answering and asserting as follows:

1. Any allegation not hereinafter specifically admitted, denied, qualified or otherwise explained, is denied and proof is demanded thereof.

FOR A FIRST DEFENSE

2. Upon information and belief, the allegations of Paragraph 1 are admitted. The allegations of Paragraph 2 are admitted.
3. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 3 and the same are therefore denied.
4. The allegations of Paragraph 4 are denied.
5. The allegations of Paragraph 5 are denied.
6. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 6 and the same are therefore denied.
7. The allegations of Paragraph 7 are denied.
8. The allegations of Paragraph 8 are denied.
9. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 9 and the same are therefore denied.

ATTEST: TRUE COPY

Winnys B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

10. The allegations of Paragraph 10 are denied.
11. The allegations of Paragraph 11 are denied.
12. The allegations of Paragraph 12 are denied.
13. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 13 and the same are therefore denied.
14. The allegations of Paragraph 14 are denied.
15. The allegations of Paragraph 15 are denied.
16. The allegations of Paragraph 16 are denied.
17. The allegations of Paragraph 17 are denied.
18. The allegations of Paragraph 18 are denied.
19. This Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 19 and the same are therefore denied.

FOR A SECOND DEFENSE

20. Plaintiff has failed to allege facts sufficient to constitute any cause of action against the Defendant and the Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

21. Plaintiffs' claim raises matters which could have been raised in the condemnation proceedings, but were not, and is barred by the doctrine of res judicata and or collateral estoppel, and the Complaint must be dismissed.

FOR A FOURTH DEFENSE

22. Plaintiffs' claim raises matters which could have been raised in the condemnation proceedings, or timely appeal therefrom, but were not, and are barred by the doctrines of waiver and/or estoppel, and the Complaint must be dismissed.

FOR A FIFTH DEFENSE

23. Defendant asserts that any injury sustained by Plaintiffs were proximately caused by their own

sole negligence and/or gross negligence.

FOR A SIXTH DEFENSE

24. Defendant asserts that, even if it is determined that Defendant was negligent in the manner alleged, which is expressly denied, Plaintiffs are barred from recovery by their own negligence and/or gross negligence which contributed more than 50 % to their injuries.

FOR A SEVENTH DEFENSE

25. Defendant asserts that, even if it is determined that Defendant was negligent in the manner alleged, which is expressly denied, any award of damages to Plaintiffs must be reduced according to the comparative proportion by which their injuries were proximately caused by their own negligence and/or gross negligence.

FOR AN EIGHTH DEFENSE

26. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(1), for legislative, judicial or quasi-judicial action.

FOR A NINTH DEFENSE

27. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(2), for administrative action or inaction of a legislative, judicial or quasi-judicial nature.

FOR A TENTH DEFENSE

28. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(3), for execution, enforcement, or implementation of the orders of any court or execution, enforcement or lawful implementation of any process.

FOR AN ELEVENTH DEFENSE

29. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of

sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(4), for adoption, enforcement or compliance with any law or failure to adopt or enforce any law.

FOR A TWELFTH DEFENSE

30. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(5), for the exercise of discretion or judgment by the governmental entity or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity.

FOR A THIRTEENTH DEFENSE

31. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(13), regulatory inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection to determine whether the property complies with or violates any law, regulation, code or ordinance or contains a hazard to health or safety.

FOR A FOURTEENTH DEFENSE

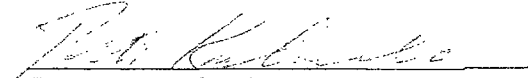
32. Defendant invokes the immunity from suit afforded to it by the exceptions to the waiver of sovereign immunity of the Tort Claims Act, set forth in 15-78-60 of the Act, including the immunity of 15-78-60(23), for institution or prosecution of any judicial or administrative proceeding.

FOR A FIFTEENTH DEFENSE

33. Defendant asserts that its actions hereunder were each and all legitimate and appropriate exercises of its police power under the Constitution.

WHEREFORE, having fully answered the Amended Complaint herein, Defendant prays that the Complaint and Amended Complaint be dismissed and for such other and further relief as the Court deems just and appropriate.

HARVEY & KULMALA, LLC
Post Office Box 705
Barnwell, South Carolina 29812
(803) 259-5531



By: Pete Kulmala
Attorney for Defendant

Barnwell, South Carolina
September 3, 2011

1 DR. AJOY G. CHAKRABARTI, DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Dr. Chakrabarti, is this your wife seated beside me,
4 right behind me on this bench, is that right?

5 A. Yes.

6 Q. Alright, and what's her name, please?

7 A. Sukla, S-U-K-L-A, same last name, Chakrabarti.

8 Q. Alright. And Dr. Chakrabarti, what is your educational
9 background?

10 A. I have two Masters, two Doctorates.

11 Q. Alright. And where do you work?

12 A. I work at South Carolina State University.

13 Q. Alright. And your wife is retired now?

14 A. Yes.

15 Q. And where did she work?

16 A. She doesn't work right now.

17 Q. Where did she work?

18 A. She worked in Technology Center, last job. Before that
19 in Bowman High.

20 Q. Okay. And she was a teacher?

21 A. She was a chemistry teacher.

22 Q. Alright. And what subject do you teach over at South
23 Carolina State?

24 A. Basically biology.

25 Q. Alright. And you've been a teacher, or a professor

1 there for how many years?

2 A. Almost finishing Forty years.

3 Q. Okay. And so, you've been in Orangeburg for almost
4 Forty years?

5 A. Yes.

6 Q. Okay. How many children do you have?

7 A. Three.

8 Q. And you raised your children right here in this
9 community?

10 A. That is correct.

11 Q. Okay. Now, where do you and your wife live, where is
12 your house?

13 A. Two Two Five Mason Street.

14 Q. Okay. And that's a neighborhood right here in the City
15 of Orangeburg?

16 A. That is correct.

17 Q. Okay. Now, I want to bring your attention to a property
18 that's located at Two Two Four Three Middleton Street.

19 A. Correct.

20 Q. Okay? You're familiar with that property?

21 A. Yes, sir.

22 Q. Okay. How did you first take any interest in that
23 property, what drew your attention to that property?

24 A. I'm an investor. I thought that such a structure may be
25 taken down. I saw a future in it, it can be restored.

1 Q. Okay. So, you were aware that there had been a fire
2 there?

3 A. Correct.

4 Q. Okay. And you rode by and looked at it?

5 A. Correct.

6 Q. Alright. You said you are an investor, you own some
7 other rental properties inside the City?

8 A. Yes, sir.

9 Q. Okay. And you saw opportunity in this one?

10 A. Correct.

11 Q. Alright. Who did you contact when you developed an
12 interest in it, who did you go to talk to about it?

13 A. I found out from telephone book Joe Singleton's number.
14 I called him, he said, I don't have any interest in making
15 the house, so if you want you can have it in this price,
16 that was the thing.

17 Q. Alright. So, did you and Mr. Singleton enter into an
18 agreement that you would purchase the house?

19 A. Correct.

20 Q. Alright. And was the deed signed over from Mr.
21 Singleton to you so that you and Mrs. Chakrabarti became the
22 owners of the house?

23 A. Yes.

24 Q. I want to show you what's been marked as Defendant's
25 Exhibit Number Two, and when I say it's been marked, that

1 just means it has a little sticker on the bottom. Okay?
2 And it is, appears to be a deed of real estate from Joe
3 Singleton to Ajoy Chakrabarti and Sukla Chakrabarti. I'm
4 going to ask you if that looks like the deed that is the
5 deed that was used for you to purchase that house?

6 A. Yes, sir.

7 Q. Okay. And does it have on there what the purchase price
8 was?

9 A. I haven't looked at that.

10 Q. Well, you probably know what it was without looking at
11 it.

12 A. I know, Thirty-five Thousand.

13 Q. Okay.

14 A. But it should be there somewhere.

15 Q. Alright. Do you see it right there by your name, it
16 says that the price is Thirty-five Thousand?

17 A. I don't say yes until I see it.

18 Q. Alright. Let me, if I can point, right here on the
19 second line?

20 A. Correct.

21 Q. Okay. And is that how much you and your wife paid for
22 the property?

23 A. Correct.

24 Q. Okay. Now, I want you to tell the jury, at the time you
25 bought this property, describe how it was then, okay?

1 A. The property, most of it was shell, part of the roof was
2 missing on one side, and there was some interior lumber
3 damage. That's the best I can describe.

4 Q. What was the house made out of?

5 A. It is made of, we can call, I don't have the, too much
6 knowledge of architecture but I think they call it brick
7 veneer.

8 Q. Okay.

9 A. A brick layer outside and lumber inside, that's what
10 they call brick veneer. Am I right?

11 Q. Right.

12 A. Okay.

13 Q. And so, in the yard, were there any other structures in
14 the yard other than the one house, the house there?

15 A. There was a beautiful swimming pool. Joe told he paid
16 Thirty-five Thousand Dollars when he built it.

17 Q. You don't need to tell me what Joe said.

18 A. Oh, I'm sorry.

19 Q. What I want to know is, what was in the yard?

20 A. A swimming pool, - - -

21 Q. Okay.

22 A. --- a little pump house, and I should say the, what you
23 call, deck, a big deck covering around the swimming pool
24 going all the way up to the house.

25 Q. Alright. Was the pool and the pump house, those

1 buildings that were outside of the main house, were they
2 damaged in the fire or not?

3 A. They were not damaged by fire but they were damaged by
4 bulldozer.

5 Q. I understand that later, but when you bought the house
6 was the pool and the deck and the pump house, they had not
7 been damaged by the fire?

8 A. Correct.

9 Q. Okay. So, the work that you were going to have to
10 undertake to do, was it all inside the brick veneer shell fo
11 the house?

12 A. Correct.

13 Q. Okay. Alright, so you paid Thirty-five thousand Dollars
14 for the house. What is the next thing that you did, who did
15 you approach about getting to do the work on the house?

16 A. I didn't approach nobody.

17 Q. Okay.

18 A. Joe Singleton called me, he said, you know, Thomas Darby
19 is a good man. I paid him only Two hundred ...

20 Q. Alright, don't tell me what Mr. Singleton told you, - -

21 -

22 A. Okay, okay.

23 Q. --- but Mr. Singleton, - - -

24 A. Joe Singleton.

25 Q. --- he recommended Mr. Darby to you?

1 A. He recommended Mr. Darby to me. I'm sorry.

2 Q. Okay. And we're just going to try and keep the answers
3 simple.

4 A. That is correct.

5 Q. Alright. So, as a result of the conversation with Mr.
6 Singleton you got in touch with Mr. Darby?

7 A. Correct.

8 Q. Did you meet with Mr. Darby and look at the house?

9 A. Yes.

10 Q. And did y'all talk about what needed to be done?

11 A. Correct.

12 Q. What did you talk about?

13 A. He proved to me he has the ability to make the house
14 just like before because he has building contractor license,
15 and Mr. Singleton vouched for it that he can do it, he does
16 good work, and the contract me and him agreed Fifty-two
17 thousand.

18 Q. Alright, so you were going to pay him approximately
19 Fifty thousand Dollars for him to do work on the inside of
20 the house?

21 A. On the work.

22 Q. This is Mr. Darby in the front row right here, in the t-
23 shirt right here?

24 A. Yes.

25 Q. Okay. And so, Mr. Darby hired a crew, or he had some

1 workers and they began working on the house?

2 A. Mr. Darby can do ten in one, he's a very good
3 contractor.

4 Q. Okay.

5 A. But he did hire a couple of people to help him out.

6 Q. Alright. Now, y'all had to go to -- did you have to go
7 to the City to get any kind of permit to be able to do this?

8 A. Mr. Darby could not touch anything without Mr. Allen
9 Ott, the then City Manager issued him a permit.

10 Q. Alright, he was the building official, right?

11 A. Yes.

12 Q. Alright. And so, the City issued a building permit?

13 A. Correct.

14 Q. --- to you and Mr. Darby to do the work -- to you for
15 Mr. Darby to do the work, is that right?

16 A. Right.

17 Q. Okay. Alright, I'm going to show you what's been marked
18 as Defendant's Exhibit Number Four, and ask you if this is
19 the application for the building permit?

20 A. I applied for - - -

21 Q. Let me fix that for you.

22 A. No problem, I can handle it. I applied for
23 authenticated ticket, this also by Mr. Darby, I request you.
24 I'm not saying it's no.

25 Q. I understand this is a copy.

1 A. Right.

2 Q. But this is the building permit?

3 A. Right.

4 Q. Okay. And it says on here that Mr. Darby is going to be
5 the carpenter, is that right?

6 A. Correct.

7 Q. And it says that it's issued to you for the address on
8 Middleton Street, correct?

9 A. Right.

10 Q. And it says that the total estimated cost for the work
11 he's going to do is about Fifty thousand Dollar?

12 A. It's Fifty-two, but that's okay.

13 Q. Well, it says estimated, okay?

14 A. Alright, alright.

15 Q. Alright.

16 THE COURT: What document is that?

17 MR. HUTTO: That is Defendant's Four.

18 THE COURT: Defendant's Number Four?

19 MR. HUTTO: Yes, sir.

20 THE COURT: Thank you, sir.

21 Q. So, after you got the building permit Mr. Darby came
22 onto the property and began work?

23 A. Correct.

24 Q. What kind of work did he do?

25 A. He started interior work first, all interior work. As I

1 told you, he gained my confidence even in the beginning of
2 the work. He took all the, even blackish lumbers out and
3 started replacing them. I will not answer anything until
4 you ask me, I have a lot to talk about.

5 Q. I understand. So, he removed the burnt out, I guess
6 some of the materials were burned and some were probably
7 water damaged from putting the fire out, is that right?

8 A. That is correct.

9 Q. Alright. So, he removed the old things out?

10 A. I will say this, in the second phase we found out some
11 lumber in the basement still had water damage. Mr. Coulter
12 worked very hard - - -

13 Q. Alright, I don't want to get ahead of that.

14 A. Okay. All the work was done except the few lumber in
15 the basement.

16 Q. Okay. And so, over the course of time you were paying
17 Mr. Darby for his work as it went along, is that right?

18 A. I had some bad experiences with contractors so I paid
19 him Five thousand, Five thousand, Five thousand, eight
20 times.

21 Q. Alright, so you -- eight times. So, instead of paying
22 him Fifty thousand you waited until he did some work and you
23 gave him Five thousand, and he did some more and you gave
24 him Five thousand more, is that right?

25 A Right, right.

1 Q. And you paid him Forty thousand Dollars?

2 A. Right.

3 Q. Okay. So, ...

4 A. The other Twelve thousand I paid him like, if I remember
5 right he even helped me with the swimming pool, little,
6 little, I paid him, yeah.

7 Q. Okay. But basically he was doing the majority of the
8 work there for a while, and then the work stopped, is that
9 right?

10 A. Correct.

11 Q. Okay. But while he was doing that work did the City
12 come by and look at the property?

13 A. Mr. Ott was on his back. He was coming all the time.

14 Q. Mr. Ott was the City building man at that time?

15 A. Yeah, Allen Ott was coming all the time, and he praised
16 his work.

17 Q. Okay.

18 A. He called me.

19 Q. Alright.

20 A. Yeah.

21 Q. And so, as far as you knew ...

22 MR. KULMALA: Your Honor, I hate to interrupt in the
23 middle of the dialogue, but when he starts to say what Mr.
24 Ott said, I believe it's subject to hearsay.

25 THE COURT: It is, and if you'd just remind him, he

1 can't say what other people said.

2 Q. I'm asking you what you - - -

3 A. Oh, oh.

4 Q. --- don't tell me what other people said because we'll
5 have other people testify. Okay?

6 A. Okay.

7 Q. Alright. I understand that - - -

8 A. I hear that.

9 Q. --- well, let me ask you, you've never filed a law suit
10 before, have you?

11 A. No.

12 Q. Okay. So, I know this is new to you, but let's just try
13 and follow the rules. Okay?

14 A. Okay.

15 Q. Alright, so, you were, you did see the City come by
16 though as the building was progressing, doing inspections,
17 is that right?

18 A. That is correct.

19 Q. Okay. And then at some point in time the work stopped
20 with Mr. Darby, you had some conversations with the City,
21 and you hired somebody else, is that right?

22 A. Correct.

23 Q. Alright. And so, who was the second group of
24 contractors or buildings or whatever that you hired?

25 A. Mr. Gene Nelson, who was taking the position of Mr.

1 Allen Ott, newly hired person.

2 Q. Alright, but Dr. Chakrabarti, - - -

3 A. I shouldn't have said that.

4 Q. --- I didn't ask you about Mr. Nelson, I asked you who
5 did you hire?

6 A. Good. Mr. Johnnie, Mr., A and J Corporation.

7 Q. Okay.

8 A. Artis and Johnnie Construction Company.

9 Q. Okay.

10 A. He, they were the building, they had the building
11 contractor specialty license, but Mr. Coulter also told,
12 since Mr. Michael Stroman had the general contractor, to
13 make sure everything we do right, Mr. Stroman should be
14 supervising contractor so both of them came.

15 Q. Alright, so let's, I think you covered it, but Michael
16 ~~Stroman was the general contractor and A and J Construction~~
17 was the specialty contractor that - - -

18 A. For building.

19 Q. --- for the building? Okay. And so, when the second
20 permit was pulled it was listed as Michael Stroman as the
21 general contractor, and then, this is Mr. Johnnie Coulter on
22 the second row here?

23 A. Correct.

24 Q. A and J is Artis and Johnnie?

25 A. Artis his son, yes.

1 Q. Okay. Okay, I'm going to show you what's been marked as
2 Defendant's Exhibit Number Thirteen, and ask you, is that
3 another application for building permit? I realize that's a
4 copy, but does that look like what it is?

5 A. It is.

6 Q. Okay. And can you see right here where it says,
7 "Contractor" whose name does it say there?

8 A. Give me a second.

9 Q. Right.

10 A. Michael Stroman.

11 Q. Okay. And then down here where it says, "Carpentry
12 work", who does it say is doing that?

13 A. Artis Coulter.

14 Q. Alright, and that's A and J Construction?

15 A. That is correct.

16 Q. Okay. I'm going to now show you Plaintiff's Exhibit
17 Number Seventeen and ask you if this is the copy of the
18 written agreement involving your contract with A and J as
19 the second contractors to come in?

20 A. That is correct.

21 Q. Okay.

22 MR. HUTTO: Your Honor, for the record, we'd like to,
23 those four documents I've just referred to, the deed, the
24 two building permits and the contract, we'd like to -- and
25 those were exhibits, Defendant's Two, Defendant's Four - - -

1 COURT REPORTER: Wait a minute, I'll have to mark them
2 off as you call them out.

3 MR. HUTTO: Okay. Defendant's Two.

4 COURT REPORTER: Defendant's Two.

5 MR. HUTTO: Defendant's Four. Defendant's Thirteen,
6 and Plaintiff's Seventeen.

7 COURT REPORTER: Okay.

8 THE COURT: You want them marked and moved into
9 evidence?

10 MR. HUTTO: Move them into evidence.

11 THE COURT: Any objection?

12 MR. KULMALA: No objection, Your Honor.

13 THE COURT: Okay, those four documents are now in
14 evidence.

15 MR. HUTTO: Thank you.

16... ..(Defendant's Exhibits Two, Four, Thirteen
17 and Plaintiffs' Exhibit Seventeen
18 marked and filed.)

19 Q. Alright, you told us that you paid Mr. Darby along and
20 along. Did you also pay Mr. Coulter along and along?

21 A. Correct.

22 Q. Okay. I'm going to -- this is going to take just a
23 second, but I'm going to hand you Plaintiffs' Exhibits Two,
24 Three, Four, Six, Seven, Eight, Ten, Eleven, Twelve,
25 Thirteen, Fourteen, Fifteen, a stack that's all marked

1 Eighteen, Nineteen, which is another smaller stack, Twenty,
2 Twenty-one, Twenty-two, and I'm going to ask you if those
3 are all the copies of checks from your checking account.
4 Take a minute and look through them.

5 A. Do you want me to insert them also?

6 Q. Yeah, hand me that stack. Yes, you do need to put -- I
7 want you to be able to say that each one of them, those are
8 your checks. You need to put that one over there.

9 A. The last one?

10 Q. The small one. The one in your left hand -- right hand.

11 A. Okay, thank you.

12 Q. And that's Number Twenty-one. Alright, Dr. Chakrabarti,
13 you've looked at all those exhibits that I previously
14 announced. Do all of these represent checks from your
15 checking account written to Johnnie Coulter?

16 A. That is correct.

17 Q. Okay. I'm sorry, there was one, one of them in here was
18 written to Thomas Darby?

19 A. I have seen that, too, that is also my check.

20 COURT REPORTER: What number was that?

21 MR. HUTTO: Number Four.

22 Q. What do these checks represent, why were you paying this
23 money to Mr. Coulter?

24 A. To do the construction of the, of the Middleton Street
25 house, or some of them may be citations coverage which I

1 cannot put finger on.

2 Q. Okay. But like, for instance, I'm just going to say,
3 for instance, the one that says, Number Fourteen, where it
4 says, "materials Five, five, one, labor, ten eighty-four"
5 that would be your notation of how much you were paying for
6 an invoice for him to buy materials and how much was for his
7 labor, right?

8 A. He had to prove it to me by receipts. I just didn't put
9 that.

10 Q. But you would write them on the bottom of the checks?

11 A. Yeah, yeah.

12 Q. Okay. And so, this is another example of Check, it's
13 part of Exhibit Number Eighteen, but Check Number Three Six
14 Four Nine, it says, "labor, two hundred seventy-five,
15 materials, one thousand and twenty-five." You tried to
16 document all that on your checks, is that right?

17 A. Yes, sir, yes, sir. I, maybe one of them, maybe one or
18 two of them can be written just labeled for just materials,
19 but it is ...

20 Q. Well, I'll show you one, for example. On Check Number
21 Two Two Nine Zero, all it says on that line is, "Two Two
22 Four Three Middleton House remodeling"?

23 A. Those are mostly labor.

24 Q. Labor. Okay.

25 MR. HUTTO: We would move to introduce all of these

1 checks into evidence.

2 THE COURT: Alright, sir.

3 COURT REPORTER: You'll have to read the numbers out
4 and I'll check them off.

5 MR. KULMALA: Your Honor, I'd like to be able to look
6 at the checks.

7 THE COURT: Oh, yeah.

8 MR. KULMALA: Thank you.

9 (Whereupon, counsel approach
10 the bench off the record.)

11 Q. We're going to try and just -- I think it would be
12 simpler just to go through these one at a time. Alright?
13 Exhibit Number Two, Check Number Forty-two Seventy, Three
14 thousand four hundred sixty-four Dollars and Forty-four
15 cents, or excuse me, Sixty-four Dollars and Fifty-five
16 cents, is that a check from you to Mr. Coulter?

17 A. That is correct.

18 Q. And is it related to the construction at Middleton?

19 A. That is correct.

20 Q. Okay.

21 A. If I am allowed to say something, ...

22 Q. No, you're just allowed to answer my questions right
23 now. Okay? Number Three, Check Number Thirty-eight Ninety-
24 two, that actually has the Middleton Street address written
25 on the check. That right?

1 A. Right.

2 Q. Is it related to the work at Middleton Street?

3 A. Right.

4 Q. Check Number -- Exhibit Number Six, Check Number Four
5 Two Two Six, a thousand dollars, it says, "repaired two two
6 four three" does that mean Two Two Four Three Middleton
7 Street?

8 A. Middleton Street, right.

9 Q. Okay. Number Seven, Check Number Forty-two Fifty-nine,
10 it also, what does it have written in the foreline?

11 A. Middleton.

12 Q. Middleton. Was it related to the work at Middleton
13 Street?

14 A. Yes, sir.

15 Q. Number, Plaintiffs' Exhibit Number Eight, Check Number
16 Four Two Three Six, what does it say it's written for?

17 A. Middleton Street, yes, sir.

18 Q. Yes, sir. It's for what was done on the Middleton
19 Street property?

20 A. Yes.

21 Q. Number Ten, Check Number Four Two Nine Seven, is that
22 related to the Middleton Street property?

23 A. I'll have to look at that one.

24 Q. Okay.

25 A. Correct, because that is the only time I had architect.

1 Q. Okay. So, the only time you used an architect was with
2 the Middleton Street property?

3 A. Yes.

4 Q. Okay. Check Number Eleven, I mean Exhibit Number
5 Eleven, Check Number Forty-two Fifty-one, is that related to
6 the Middleton Street property?

7 A. Yes. It was like a -- of work, yes.

8 Q. Okay. Exhibit Number Twelve, Check Number Four Zero
9 Zero Three. It says Twenty-two Forty-three Middleton, does
10 it not?

11 A. Yes, it's saying, labor, yes.

12 Q. Was it related to the work at Middleton Street?

13 A. Yes, sir, yes, sir.

14 Q. Okay. Exhibit Number Thirteen, Check Number Forty-two
15 Eighty-two, is that related to work at Middleton Street?

16 A. Yes, sir.

17 Q. Okay. Check Number, I mean, Exhibit Number Fifteen,
18 Check Number Forty-three Twenty-five, is that related to
19 work at Middleton Street?

20 A. I can't read what has been cut off, but yes, because he
21 was working continuously, and when he was he was running out
22 of materials and labor he was calling me, that's what is
23 happening.

24 Q. Okay. And Exhibit Number Nineteen is four checks, let's
25 look at each one of them, and I want to ask you if those

1 related to the work at Middleton Street?

2 A. Some additional work beyond the contractor also.

3 Q. Okay. But it was related to the work at Middleton
4 Street?

5 A. Right.

6 Q. Alright, now, this is a big stack, Number Eighteen, I
7 think it's got about fourteen checks in it so I need you to
8 just look through these and tell me, some of them clearly
9 are marked Two Two Four Three Middleton and others just say,
10 material and labor, but what I want to know is, are they all
11 related to the work at Middleton Street?

12 A. Alright. Let me look at it. Yeah, a lot of indication
13 is there. Two point five thousand went to Michael Stroman,
14 Two point five thousand went to materials.

15 Q. Okay. But that was related to work at Middleton Street,
16 is that right?

17 A. Yes, yes. That is correct.

18 Q. All fourteen of those checks, Exhibit Number Eighteen,
19 are checks you wrote out for the work that Mr. Coulter did
20 on Middleton Street?

21 A. Correct, yeah, yeah.

22 Q. Alright. Number Fourteen, Exhibit Fourteen, Check
23 Number Thirty-nine Twenty-four, is that a check you wrote to
24 Mr. Coulter for work done on Middleton Street?

25 A. This one, the only thing I can say, it's in the same

1 time frame, that was the only project going on at that time,
2 so it is.

3 Q. Okay. Alright. And Number Twenty, Exhibit Number
4 Twenty, Check Number Forty-five Eighty-six, this was in,
5 what date was it in?

6 A. Eight/one/zero five.

7 Q. And so, that was at about, that's the same month that
8 the house was bulldozed, is that right?

9 A. That is correct.

10 Q. Alright. And what does it say that it's for?

11 A. Two Two Four Three Middleton Street labor.

12 Q. Okay. And then also - - -

13 THE COURT: Which one was that?

14 MR. HUTTO: That was Check, that was Number Twenty,
15 Exhibit Twenty.

16 Q. Exhibit Twenty-one, tell me the date on that?

17 A. Oh, my goodness.

18 Q. Just tell me the date.

19 A. Eight/sixteen, that is the, that is still, it looks like

20 - - -

21 Q. That's just a few days before the demolition, is that
22 right?

23 A. Yes.

24 Q. And this check was written to Mr. Coulter for work on
25 Middleton Street?

1 A. Yeah, yeah.

2 Q. And finally, excuse me, Exhibit Number Twenty-two, Check
3 Number Forty-six Seventy-five, what's the date on that
4 check?

5 A. This is right around the time of demolition, last
6 payment, I put, "last payment on Middleton Street."

7 Q. So, you put last payment on Middleton Street?

8 A. Yeah, because the contractor ...

9 Q. And what was that check for, how much was the amount of
10 that check?

11 A. Five thousand.

12 Q. Alright. But this was for work done on Middleton
13 Street?

14 A. Yeah, yeah.

15 Q. Okay.

16 MR. HUTTO: Your Honor, I'd now move to introduce those
17 exhibits.

18 THE COURT: Any objection?

19 MR. KULMALA: No objection.

20 A. Mr. Hutto, can I say one thing?

21 Q. No, you have -- the rules are you have to answer the
22 questions.

23 A. Alright, alright.

24 THE COURT: Alright, Ms. Harry Dot, I'm going to call
25 them out to you.

1 COURT REPORTER: Well, Judge, either you -- that's
2 fine, but I can't check them off until he actually says
3 he's putting them in. So,...

4 THE COURT: Alright.

5 MR. HUTTO: Alright, I would move to put in Number Two.

6 COURT REPORTER: Alright.

7 MR. HUTTO: Plaintiff's Two, Plaintiff's Three,
8 Plaintiff's Six, Plaintiff's Seven, Plaintiff's Eight,
9 Plaintiff's Ten, Plaintiff's Eleven, Plaintiff's Twelve,
10 Plaintiff's Thirteen, Plaintiff's Fifteen, Plaintiff's
11 Nineteen which is a group, Plaintiff's Eighteen which is
12 another group, Plaintiff's Fourteen, Plaintiff's Twenty,
13 Plaintiff's Twenty-one, and Plaintiff's Twenty-two.

14 THE COURT: And they are all in evidence without
15 objection.

16 COURT REPORTER: Okay. Did you give me the tiny one
17 that was ...

18 MR. HUTTO: That was Twenty-one, yes, ma'am.

19 COURT REPORTER: Alright, sir, thank you.

20 MR. HUTTO: Okay.

21 (Plaintiff's Two, Three, Six, Seven, Eight, Ten,
22 Eleven, Twelve, Thirteen, Fourteen, Fifteen,
23 Eighteen, Nineteen, Twenty, Twenty-one and
24 Twenty-two marked and filed.)

25 Q. So, Dr. Chakrabarti, I talked to you about your two

1 contractors, you had Mr. Darby first and then you had Mr.
2 Stroman, and under him Mr. Coulter, is that right?

3 A. Correct.

4 Q. Okay. Now, also during that time there were different
5 contractors who did some mother things and some other people
6 that you had do cleanup work. Who did you have doing some
7 of the cleanup around the house?

8 A. Mr. Sammie Fields was a constant worker, Mr. Henry - - -

9 Q. Right. This is Mr. Fields right here on the end?

10 A. Yeah. And Mr. Henry Guinyard was, when I said, when
11 Mr. Nelson said, hey, you get this one, right, I take the
12 citation out, I had another contractor overnight to take
13 care of the situation.

14 Q. And the situation mostly had to do with keeping the yard
15 mowed and the weeds cut down?

16 A. Correct.

17 Q. Okay. And so, Mr. Fields did some of that and Mr.
18 Guinyard did some of that?

19 A. Correct.

20 Q. Okay. Did you also have somebody do some electrical
21 work, rewiring the house?

22 A. Mr. Andrew Beach.

23 Q. Okay. Is this Mr. Beach sitting right behind the thing
24 right here?

25 A. Yes, yes.

1 Q. Okay. And so, he did the electrical work?

2 A. Correct.

3 Q. Okay. So, you were hiring, I mean, you're not a
4 carpenter or an electrician, are you?

5 A. No, sir.

6 Q. So, you were hiring the people to do the work that
7 needed to be done to repair this house, is that right?

8 A. Yes.

9 Q. Okay.

10 A. One person passed away, that was Mr. Frank Franklin, who
11 did also -- plumbing was not much damaged but he did the
12 plumbing, too.

13 Q. But he has passed away?

14 A. Yeah.

15 Q. Okay. Alright, now, I need to show you a few more
16 exhibits. I'm just going to take them in the date order
17 that they come along and let's just kind of walk through
18 these. I'm going to show you now what's been marked as
19 Defendant's Exhibit Number Three, and can you tell me, at
20 the top, the letterhead, who does the letter say it's coming
21 from?

22 A. Allen Ott.

23 Q. Alright, but at the top what does it say his title is?

24 A. Building Inspection Division.

25 Q. Building Inspection Division, and above that who does it

1 say it's the Building Inspection Division of who?

2 A. City of Orangeburg, South Carolina.

3 Q. So, this is a letter -- did you receive this letter?

4 A. I received the real letter that he wrote. Yeah, he had
5 sent me one or two letters like this.

6 Q. I didn't - - -

7 A. Yeah, go ahead.

8 Q. --- I want to know, this is a letter that you got from
9 the City of Orangeburg, is that right?

10 A. Yeah.

11 Q. Okay. And that was on what date?

12 A. March Six, Two thousand Three.

13 Q. Alright. And is this the first letter you got from the
14 City of Orangeburg? When did you purchase the house?

15 A. I purchased it in Two thousand Two, isn't that right?

16 Q. The deed's February, Two thousand and Three.

17 A. Two thousand Three, okay.

18 Q. This is March, Two thousand Three, it's the first letter
19 you got from the City?

20 A. Yeah, right, right.

21 Q. Okay. And isn't it fair to say that the City is
22 explaining to you, and the jury will be able to read it, but
23 explaining to you, you're either going to need to demolish
24 the house or repair the house?

25 A. Exactly right.

1 Q. Okay. So, that was the first notice that you got from
2 the City, that they were looking at the house and you needed
3 to do something one way or the other?

4 A. Yeah.

5 Q. Okay.

6 A. Maybe that's why I hired Mr. Darby.

7 Q. Right, exactly. And right after you got this you hired
8 Mr. Darby?

9 A. Right.

10 Q. Okay. Now, a year later, on May Nineteenth of Two
11 thousand and Four, I'm going to hand you what's been marked
12 as Defendant's Exhibit Number Six, and I ask you if that's
13 another letter that's addressed to you from the City of
14 Orangeburg?

15 A. Yes. We took care of it immediately.

16 Q. Okay. That is a letter basically complaining about some
17 overgrown weeds and some tree limbs in the yard at Middleton
18 Street?

19 A. Yeah. Mr. Ott said that if you don't do it, we will
20 issue a citation, so I jumped on and did it. That's what
21 happened.

22 Q. Alright. I'm going to show you Defendant's Exhibit
23 Number Seven, which is a few weeks later, from the City of
24 Orangeburg, correct?

25 A. Yeah, they showed that everything is good.

1 Q. They said they appreciated you cleaning up the yard?

2 A. Yeah, right.

3 Q. Okay. And that was in July of Two thousand and Four,
4 Number Seven. I'm going to show you Defendant's Exhibit
5 Number Eight, August the Fifth, Two thousand Four, is that
6 another letter from the City of Orangeburg? I just want you
7 to tell me yes or no, is that a letter from the City of
8 Orangeburg?

9 A. Yes, sir.

10 Q. Okay. And this letter is talking to you about the
11 swimming pool and some weeds and also finishing up the
12 outside of the house, is that right?

13 A. Correct.

14 Q. Okay. And in fact, I'm going to show you Defendant's
15 Exhibit Number Nine, right during this same time, August of
16 Two thousand and Four, they wrote you a ticket because they
17 said the weeds were too high. Is that right?

18 A. I want to see it, the whole thing.

19 Q. Okay.

20 A. I don't think, they don't send me the letter. Who sent
21 me the letter?

22 Q. That's not a letter, that's a ticket, that's a ...

23 A. Yeah, but maybe the management ordered a change or
24 something.

25 Q. Okay. Well, let me ask you this, you did get some

1 tickets from the City of Orangeburg about weeds?

2 A. Sure, sure, sure.

3 Q. Could this be one of them?

4 A. Yes.

5 Q. Okay. And then a little bit later that same year,
6 September of Two thousand and Four, and that's the year
7 before it got torn down, you had a meeting with the city of
8 Orangeburg to discuss getting a new contractor, this is
9 between Mr. Darby and Mr. Stroman, do you remember having a
10 meeting with the City?

11 A. Yes.

12 Q. Okay. And Defendant's Exhibit Number Eleven, there's
13 certain things that are discussed, and the jury will be able
14 to read these, about the flashing of the chimney, the roof,
15 the wiring, there are different items that they're saying
16 need to be fixed, is that right?

17 A. Sure, correct.

18 Q. Okay. And then, Defendant's Exhibit Twelve was a letter
19 from the City to you talking to you about getting an
20 architect and a new building permit, is that right?

21 A. Correct.

22 Q. Okay. And so, after this meeting and in the fall of Two
23 thousand and Four, you did get the new permit, the one that
24 we earlier marked Number Thirteen, correct?

25 A. Correct.

1 MR. HUTTO: Your Honor, I want to move into evidence
2 Defendant's Exhibit Three, letter from the City of
3 Orangeburg, Defendant's Exhibit Six, letter from the City of
4 Orangeburg, Defendant's Exhibit Seven, letter from the City
5 of Orangeburg, Defendant's Exhibit Eight, letter from the
6 City of Orangeburg, Defendant's Exhibit Nine, a ticket for
7 weeds, Defendant's Exhibit Eleven, a City of Orangeburg memo
8 listing some things that needed to be fixed, and Defendant's
9 Exhibit Number Twelve, another letter to Dr. Chakrabarti
10 from the City of Orangeburg.

11 THE COURT: No objection?

12 MR. Kulmala: No objection.

13 THE COURT: Alright, those are all in evidence.

14 (Defendant's Exhibits Three, Six, Seven,
15 Eight, Nine, Eleven, and Twelve
16 marked and filed.)

17 Q. Those are all the fall of Two thousand and Four, you got
18 the permit in December of Two thousand and four, and Mr.
19 Coulter was working on it in the spring of Two thousand and
20 Five, correct?

21 A. Correct.

22 Q. Okay. Now, I'll take you now to the next series of
23 letters from the City. The first one is Exhibit Number
24 Fifteen, a letter from the City of Orangeburg, is that
25 right? Okay.

1 COURT REPORTER: Answer, sir.

2 Q. You have to answer.

3 A. Yes, yes.

4 Q. And this is a letter dated June Sixth of Two thousand
5 and Five about the weeds and the pool, is that right?

6 A. Correct, correct.

7 Q. Okay. Then, I'm going to show you what's been marked as
8 an internal memo from the City, Exhibit Number Sixteen, and
9 ask if you've seen that. I realize you didn't write that
10 memo but you're aware that the City had a meeting and the
11 memo was done?

12 A. I think I remember seeing this letter and I acted on it,
13 yeah.

14 Q. Right. And it's talking about the pool and maybe the
15 need to put up a fence around the pool?

16 A. No, they were concerned about ...

17 Q. I'm not asking you what they were concerned about, - - -

18 A. Okay.

19 Q. --- but isn't that what it says, it talks about building
20 a fence around the pool?

21 A. Yes, correct.

22 Q. Alright. So, now we're in June of Two thousand and
23 Five, the first letter is talking to you about weeds and the
24 pool, and the second letter is talking about a fence around
25 the pool, and then I want to ask you about this next one,

1 December -- excuse me, Exhibit Number Seventeen, January the
2 Thirteenth of Two thousand and five, is that a letter from
3 the City of Orangeburg? You don't have to tell me what it
4 says. Is that a letter from the City of Orangeburg?

5 A. The only thing I can say, it looks like it.

6 Q. Okay. Alright. But it's addressed to you and your
7 wife, is that right?

8 A. Right.

9 Q. Okay.

10 A. It's so many of them, my goodness.

11 Q. Alright. I think these are the last ones. That was in
12 June of Two thousand and Five, and then Defendant's Exhibit
13 Number Twenty-one, is that a letter dated August the First
14 of Two thousand and Five? Dr. Chakrabarti, right now I just
15 want you to tell me if that's a letter that's dated that day
16 or not.

17 A. Yes.

18 Q. Okay. Thank you. Defendant's Exhibit Number Twenty-
19 two, is this a letter from the City of Orangeburg and dated
20 August the First of Two thousand and Five?

21 A. The only thing I can say, it very well could be.

22 Q. Okay. Well, isn't that the date that's at the top of
23 the letter?

24 A. Yeah.

25 Q. Okay. And Number Twenty-three, is this a letter dated

1 August the First of Two thousand and Five?

2 A. Is it the same letter and the same date?

3 Q. I'm going to ask you about that in a second. Just
4 answer, is that a letter dated August the First of Two
5 thousand and Five?

6 A. I've got some problem with the letter.

7 Q. Right. All three of these last ones I just told you,
8 asked you to identify, Number Twenty-one, Defendant's
9 Twenty-one, Defendant's Twenty-two and Defendant's Twenty-
10 three are all letters to you from the City of Orangeburg all
11 on the same dates, aren't they?

12 A. Yeah.

13 Q. Okay.

14 A. But, but ...

15 Q. No, sir, I just want to know if that's the ones they
16 are. Now, Defendant's Exhibit Number Twenty-four, is this a
17 ticket from the City of Orangeburg? You can just say yes or
18 no.

19 A. Yes.

20 Q. Okay. And is it dated August the First of Two thousand
21 and Five?

22 A. That is correct.

23 Q. So, on August the First of Two thousand and Five the
24 City delivered to you three different letters and a ticket?

25 A. But I got only one at a time, I don't know about the lat

1 one.

2 Q. I understand that, each time you opened up it was
3 something different, but they did send you a bunch of
4 different things all on the same day, is that right?

5 A. Exactly right.

6 Q. Alright. And on the ticket that they gave you that day,
7 what does it say the complaint is, can you read that line
8 right there where it says the complaint is about the ticket?

9 A. Unsafe unit and building.

10 Q. Okay. Unsafe building. And does it tell you that there
11 is going to be a Court date on this and when the Court date,
12 when the date of your Court is?

13 A. Hold. Please hold.

14 Q. Okay. I'll just point to it right there.

15 A. Okay. September Thirteen, Two thousand Five.

16 Q. Alright. So, they brought you a ticket citing you for
17 an unsafe building and telling you your trial date, it says,
18 trial date, or date of trial, September Thirteenth, Two
19 thousand Five?

20 A. That is correct.

21 Q. Okay. What happened before September Thirteenth of Two
22 thousand and Five?

23 A. The building was gone.

24 MR. HUTTO: Dr. Chakrabarti, I think that's all of the
25 questions that I'm going to ask you right now. Mr. Kulmala

1 is going to ask you some questions so just listen to his
2 questions and answer them. Okay?

3 THE COURT: Can I see y'all for one second?

4 (Whereupon, a bench conference
5 is had off the record and out
6 of the hearing of the jury and
7 court reporter.)

8 THE COURT: Alright, ladies and gentlemen, we're going
9 to take a short break. This is that mid-morning break. If
10 you're like me you need that mid-morning break. So, now,
11 you have not heard but just a little bit of the testimony.
12 The thing I'm going to tell you over and over until you're
13 sick of hearing it is, you cannot begin talking about this
14 case yet. Okay? Y'all are now excused to go back to the
15 jury room for a few minutes. Thanks.

16 (Whereupon, the jury retires
17 to the jury room and the following
18 takes place out of the presence
19 of the jury.)

20 THE COURT: Okay. Alright, Dr. Chakrabarti?

21 DR. CHAKRABARTI: Yes, sir.

22 THE COURT: We're taking a break. Okay?

23 DR. CHAKRABARTI: I'm in break, too?

24 THE COURT: Yes, sir, you're in break, too. Now, wait
25 a minute, before you go anywhere, you can step down, go to

1 the restroom, whatever. You cannot talk to anyone about
2 your testimony. Okay? You can't talk to anybody about your
3 testimony. Do you understand that?

4 DR. CHAKRABARTI: I'll keep my mouth shut.

5 THE COURT: That's good. Okay. Keep your mouth shut.

6 MR. HUTTO: That means to me, too, you can't talk to
7 me either.

8 THE COURT: That's right.

9 DR. CHAKRABARTI: Okay.

10 THE COURT: Alright, okay, thank you, sir.

11 (Recess)

12 THE COURT: Bring the jury in.

13 (Whereupon, the jury enters
14 the courtroom and the following
15 takes place in the presence
16 of the jury.)

17 THE COURT: Ladies and gentlemen, I hope y'all
18 appreciated your break as much as I did. We're now ready to
19 resume.

20 Mr. Hutto.

21 MR. HUTTO: Dr. Chakrabarti, before we took the break I
22 had shown you Defendant's Exhibit Number Fifteen, a letter
23 from the City of Orangeburg, and I would move to introduce
24 that into evidence, Fifteen.

25 COURT REPORTER: It's already in.

1 MR. HUTTO: Oh, it is?

2 COURT REPORTER: Yes, sir.

3 MR. HUTTO: Is Sixteen in?

4 COURT REPORTER: No, sir.

5 MR. HUTTO: Okay. I had also shown you Defendant's
6 Exhibit Number Sixteen, talking about putting the fence
7 around the pool. I'd move that into evidence.

8 THE COURT: Why don't you go through all of them and
9 then I'll ask Mr. Kulmala if he has any objections.

10 MR. HUTTO: Okay, I'm going to move Number, Defendant's
11 Exhibit Number Seventeen, a letter dated June the
12 Thirteenth.

13 COURT REPORTER: Defendant's Seventeen.

14 MR. HUTTO: Okay. Defendant's Exhibit Twenty-one,
15 dated August First.

16 COURT REPORTER: Defendant's Twenty-one.

17 MR. HUTTO: Okay. Defendant's Twenty-two.

18 COURT REPORTER: Defendant's Twenty-two.

19 MR. HUTTO: Twenty-five.

20 COURT REPORTER: No, sir.

21 MR. HUTTO: Okay. Defendant's Exhibit Twenty-five.

22 COURT REPORTER: What is that?

23 MR. HUTTO: It's an August the First letter from the
24 City.

25 COURT REPORTER: Just a minute.

1 THE COURT: You have that as Twenty-five? I have
2 Twenty- one, Twenty-two, Twenty-three.

3 MR. HUTTO: I'm sorry, that is -- without my glasses it
4 looked like a five, but it is Twenty-three.

5 COURT REPORTER: Okay.

6 MR. HUTTO: Did you have Twenty-three in?

7 COURT REPORTER: August what letter?

8 MR. HUTTO: August the First of Two thousand Five,
9 Exhibit Twenty-three.

10 COURT REPORTER: Okay. Did I mark it?

11 MR. HUTTO: Defendant's Exhibit Twenty-three.

12 COURT REPORTER: Okay, I've got it.

13 MR. HUTTO: Alright, and Defendant's Exhibit Twenty-
14 four, which is a citation dated August the First of Two
15 thousand Five.

16 THE COURT: Since I have my glasses on, let me see
17 Twenty-three, if you don't mind? Since I have my glasses
18 on. Yeah, that's Twenty-three, yeah. I had a hard time
19 looking at it myself. So, the only one you need to move in
20 at this time is Sixteen has not been in, is that correct?

21 COURT REPORTER: Building permit?

22 MR. HUTTO: I think it was Sixteen.

23 THE COURT: It was an internal memo from the City,
24 fence around the pool.

25 COURT REPORTER: I had it checked off, it should be in.

1 THE COURT: Okay. Just out of an abundance of caution.

2 MR. HUTTO: I had a bunch, all of the last numbers I
3 just called out, I'm moving all of those into evidence.

4 THE COURT: Mr. Kulmala, was there any objection to any
5 of those?

6 MR. KULMALA: I think I may have gotten a little bit
7 confused on that. I want to make sure that the ones that I
8 understand are in with this last batch are Fifteen, Sixteen,

9 - - -

10 COURT REPORTER: Wait a minute, sir, I've got to check
11 them with you.

12 MR. KULMALA: Defendant's Numbers Fifteen and Sixteen?

13 COURT REPORTER: Okay.

14 MR. HUTTO: Correct.

15 MR. KULMALA: Seventeen?

16 COURT REPORTER: Wait a minute, Fifteen and Sixteen.

17 MR. KULMALA: Those are being moved in now.

18 MR. HUTTO: Yeah, these were all defendant's exhibits
19 that I was moving into evidence just now.

20 COURT REPORTER: Alright, Fifteen and Sixteen.

21 MR. HUTTO: Right.

22 MR. KULMALA: And then Seventeen?

23 COURT REPORTER: That's in.

24 MR. KULMALA: And I think I've got a jump here, I've
25 got Twenty-one.

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COURT REPORTER: Wait a minute. Okay. Twenty-one, alright, that's in?

MR. KULMALA: Twenty-two.

COURT REPORTER: I'm asking.

MR. HUTTO: Yes.

THE COURT: Yes, ma'am.

COURT REPORTER: Okay. These are Defendant's Twenty-two.

MR. KULMALA: And Twenty-three and Twenty-four.

COURT REPORTER: Twenty-three and Twenty-four.

MR. KULMALA: Maybe mistaken was Twenty-five.

THE COURT: No, Twenty-five is not in.

MR. HUTTO: That was not ...

THE COURT: He didn't have his glasses on.

MR. KULMALA: Okay. So, I'm in agreement with those

and I have no objection.

THE COURT: Alright, sir. Those are in evidence then. Okay, thank you.

MR. HUTTO: That was Twenty-three.
(Defendant's Exhibits Fifteen, Sixteen, Twenty-one, Twenty-two, Twenty-three and Twenty-four marked and filed.)

THE COURT: Alright, Mr. Hutto, anything else?

MR. HUTTO: Not at this time.

THE COURT: Alright, Mr. Kulmala, your witness.

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1 MR. KULMALA: Thank you, Your Honor, may it please the
2 Court.

3 THE COURT: Yes, sir.

4 (NOTE: Blank lines on this page do not indicate any part of
5 record has been omitted. Headers on testimony pages and
6 hard page breaks between testimony are now required by the
7 Court. See next ensuing page for sequential continuation of
8 record.)

1 DR. AJOY CHAKRABARTI - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Good morning, Dr. Chakrabarti.

4 A. Good morning.

5 Q. I've got a few questions for you and I hope that it's
6 not too lengthy, and I'll see if I can try to make my
7 questions pretty clear. You bought the house at Twenty-two
8 Forty-three Middleton from Joe Singleton back in February of
9 Two Thousand Three, I think that was on that deed, Exhibit
10 Number Two. Do you recall that?

11 A. Yes.

12 Q. And at the time that you bought it, it was already a
13 fire damaged house or shell, is that correct?

14 A. I won't say completely shell.

15 Q. Okay.

16 A. Only certain structures of certain rooms are damaged, so
17 I won't say it's completely shell. I cannot say that.

18 Q. Okay. You paid Thirty-five thousand for it?

19 A. Yeah. That was the deal, yes.

20 Q. And that was the deal, that was essentially the price of
21 the land with the pool?

22 A. Yeah.

23 Q. And it was really, in that purchase price there was no
24 value assigned to the house, was there, realistically?

25 A. Hey, how can you take the package, how can you separate

1 what's in the package, it was the whole thing.

2 Q. Sure, but that lot would have been worth Thirty-five
3 Thousand?

4 A. At least.

5 Q. Okay. Then you set about restoring Twenty-two Forty-
6 three, is that correct? You need to answer verbally for the
7 court reporter.

8 A. Correct.

9 Q. And around the time, within a month after you bought the
10 house you received a letter from the City back in March of
11 O-Three, is that correct?

12 A. Yeah, I recall that letter.

13 Q. And I think that would be Exhibit Number, Exhibit Number
14 Three?

15 A. Yeah, I recall that letter. Thank you.

16 Q. Now, that letter was informing you -- well, let me let
17 you look at the letter to make sure that I'm reading it
18 correctly. In the beginning it says, Dear Dr., "Dear Mr.
19 Chakrabarti, this letter is to inform you that your house,
20 a two story type VI unprotected wood frame structure at
21 Twenty-two Forty-three Middleton Street, Orangeburg, has
22 been declared unsafe." Do you see that?

23 A. Yes.

24 Q. Okay. "This is due to the fact that the house is
25 burned, unfit for use and a public nuisance." Do you see

1 that?

2 A. Yes.

3 Q. Okay. So, when, shortly after you acquired the house
4 then you were dealing with the City of Orangeburg that
5 something needed to be done, is that right?

6 A. Correct.

7 Q. Okay. And the main body of the letter goes on to
8 describe certain things, steps that you needed to take in
9 order to get it out of the status of being, being an unsafe
10 structure and out of being a public nuisance?

11 A. Right. Do you want to hold this copy?

12 Q. I'll put it back down here. Thank you, sir. Okay, so
13 by April of Two thousand and Three, that's when you made
14 your first permit application, do you agree with that?

15 A. I think it has to be right because that's why Mr. Darby
16 was brought in, yeah.

17 Q. And that would be Exhibit Number Four, where I have my
18 thumb, that gives the date, is that correct, April of Two
19 thousand Three?

20 A. I hope so, yes.

21 Q. Okay. Thank you, sir. And in August, Two thousand
22 Five, the City demolished the house at Twenty-two Forty-
23 three, is that correct?

24 A. Correct.

25 Q. And that was, what, Thirty months later?

1 A. Yes.

2 Q. Two and a third, or two and a quarter years?

3 A. Correct.

4 Q. And now you're suing the City, saying that the City
5 should not have demolished it, and that the City didn't give
6 you enough time to finish the work?

7 A. That's different. Can I defend that?

8 Q. Well, no, I'm just asking -- you're suing the City
9 saying that they shouldn't have demolished it. Am I
10 correct?

11 A. Yes.

12 Q. And that you should have had more time to do the work?

13 A. Right.

14 Q. And you're also saying that it was, as Mr. Hutto
15 mentioned earlier today, under the Constitution, a taking
16 without compensation?

17 A. That is correct.

18 Q. And I believe through your earlier testimony we went
19 through some of your checks. You had testified and looked
20 at the checks that you had spent about a hundred and twenty
21 thousand on builder, contractor, different types of services
22 relating to the house?

23 A. Correct.

24 Q. And you paid, I believe you testified you paid Forty
25 thousand to Mr. Darby?

1 A. About Forty-two thousand, because the other Two thousand
2 was a little bit help outside, a little bit help swimming
3 pool, things like that, a total of Forty-two thousand. In
4 fact, we have a little discrepancy on that last Two thousand
5 also. So, I think it's around Forty-two thousand.

6 Q. And your permit - - -

7 A. Yeah.

8 Q. --- Exhibit Number Four, it shows renovation or repair
9 estimated cost of Fifty thousand?

10 A. Correct.

11 Q. So, you didn't quite get to the full Fifty thousand with
12 Mr. Darby?

13 A. No.

14 Q. It was five payments, I'm sorry, eight payments of Five
15 thousand?

16 A. Correct.

17 Q. And on this permit, Exhibit Number Four, the contractor
18 line, if I can show you, on the contractor line, does it
19 say, owner acting as contractor? It's up about one-third
20 the way down.

21 MR. KULMALA: May I approach?

22 THE COURT: Yes, sir.

23 Q. I'm talking about this line right here, contractor line.

24 A. Yeah, that is, yes.

25 Q. Owner acting as contractor. And Darby is listed as your

1 carpenter?

2 A. Correct.

3 Q. Okay. And ...

4 A. I can defend all that, but I'm answering questions now.

5 THE COURT: That's correct. Answer questions.

6 Q. The, the - - -

7 THE COURT: I'm sorry, Mr. Kulmala.

8 Q. --- the owner as contractor, that means that you as the
9 owner of the building are able to serve instead of having
10 somebody, a licensed building contractor on the project, is
11 that correct, is that what you understood?

12 A. No, I understood differently. I understood that Mr.
13 Darby, he's a seasoned contractor, but at that point he had
14 nothing but building contractor's license, so he as good as,
15 so assisted me, that's the way the thing was, even though,
16 even though I was not a general contractor he has the power
17 or license to build the whole house back. I had the
18 confidence because of his license. So, it doesn't matter
19 whether I took the position of general contractor or not,
20 Mr. Darby was well recommended by Mr. Singleton, so I was
21 happy. So, I didn't mind taking the position of general
22 contractor.

23 Q. Okay. So, Darby, on your permit, was the carpenter, and
24 you, yourself, were the owner as contractor?

25 A. Yeah, but Darby is also building contractor. He had the

1 license of building contractor.

2 Q. At the time, April of Two thousand Three, you couldn't
3 legally put Darby's name down as the contractor because he
4 didn't hold the correct license, isn't that correct, isn't
5 that true?

6 A. Let me say this, I think your answer potentially is
7 yes.

8 Q. Okay.

9 A. My answer.

10 Q. And with your name appearing on or acting as contractor,
11 that carries with it responsibilities under the law of South
12 Carolina, does it not?

13 A. Owner acting as a contractor, if that's what Mr. Ott
14 told me to put, I put it because that's the only way this
15 man could work.

16 Q. ~~Sir, I'm not asking you what Mr. Ott told you.~~

17 A. Okay. So, tell me, answer my question -- repeat the
18 question.

19 Q. Right. When you put your name down on a permit
20 application, owner acting as contractor, that carries with
21 it some responsibilities according to State law?

22 A. Correct.

23 Q. And one of the responsibilities or obligations is, an
24 owner acting as contractor cannot put the house up for sale
25 or for rent for two years after completion, am I correct?

1 A. That is correct. That is correct.

2 Q. Okay. And at the time that you applied for this permit
3 in April of Two thousand Three, you put yourself down as the
4 contractor, knowing that you would have to not put the
5 property on the market for two years after completion? And
6 I say, on the market, I mean, for sale or rent?

7 A. I'll be honest with you, that time it was nothing
8 explained like that, at that point, because I felt, what I'm
9 going to do to the house I was not really sure, but I knew
10 also Mr. Allen Ott told me.

11 (Witness's cell phone rings.)

12 THE COURT: I need you to hand that to me.

13 A. Yeah, but can I put it to off?

14 THE COURT: Oh, I can do it.

15 A. I don't know how it came here. Thank you. Let me ...

16 Q. You were about to say what Mr. Allen Ott told you, and
17 I'm going to ask the Judge to instruct you not to say what
18 somebody else said..

19 A. No. Mr. Allen Ott said ...

20 THE COURT: Okay. Now, remember, when Mr. Hutto was
21 asking you questions, do you remember earlier when Mr. Hutto
22 was asking you questions?

23 A. Mr. Turner?

24 THE COURT: Mr. Hutto.

25 A. Yeah, yeah, so I follow the same rule.

1 THE COURT: You follow the same rule. You cannot say
2 what somebody else said.

3 A. Okay. Good. Keep going.

4 THE COURT: Thank you, sir.

5 Alright, Mr. Kulmala.

6 Q. Okay. So, April of Two thousand Three, you had the
7 permit with yourself owner acting as contractor, do we agree
8 on that?

9 A. Correct. Agree.

10 Q. Okay. In September of Two thousand Four then you had a
11 meeting with Mr. Nelson and others from the City concerning
12 the status of your construction project?

13 A. Correct. You don't have to show me anything, I agree.

14 Q. And following that meeting, and that meeting was August
15 Fourth, and that's referenced in this Exhibit Eight, do you
16 agree?

17 THE COURT: Defendant's Eight?

18 MR. KULMALA: Defendant's Exhibit Eight, I'm sorry.

19 THE COURT: Okay.

20 COURT REPORTER: Eight?

21 MR. KULMALA: Eight.

22 Q. Okay, let me make sure that we understand the
23 communication that you received. And you did receive that
24 as far as the certified mail card, do you agree?

25 THE COURT: You need to say out loud, yes or no.

1 A. Yes.

2 THE COURT: Thank you, sir.

3 Q. "Dear Mr. Chakrabarti, this letter is to recap the
4 meeting we had on August Four, Two thousand four. In the
5 meeting you were given until August Nine, Two thousand four,
6 to have the swimming pool completely and securely covered or
7 drained. The pool is to be maintained in a sanitary
8 condition from then on, no future warnings will be given."
9 The next paragraph deals with, "The yard is to be mowed,
10 bushes cut, and debris removed by August Nine, Two thousand
11 four. This includes the front yard, side yards and the rear
12 yard. The entire yard needs to be maintained in a sanitary
13 condition to keep the house from having an abandoned
14 appearance." And you were given Thirty days from August
15 Four, this says, I'm sorry, you were given Thirty days from
16 August Four, Two thousand four, that's the day before this
17 letter, to have the outside completely finished. "This
18 includes, but not limited to having the gable vents
19 installed, boxing enclosed, windows repaired, vinyl siding
20 repaired, and any painting complete. You were also given an
21 additional Ninety days, again, that's from August Four, to
22 complete the inside of the house. This means that you'd
23 have One hundred twenty days from August Four to have the
24 house totally complete. If you count a hundred and twenty
25 days from August Four, that would be September, October,

1 November, that would be around December Fourth, do you
2 agree?

3 A. What year was that?

4 Q. Two thousand four.

5 A. Yes.

6 Q. So, if I understand that letter, then the City was
7 telling you that you had to have the outside finished by
8 September Four, Two thousand four, correct?

9 A. Correct.

10 Q. And you had to have the complete housing restoration,
11 the complete project inside and out by December Four?

12 A. Correct.

13 Q. Then you applied for and received a new permit between
14 August, Two thousand four, and December, Two thousand four,
15 is that correct?

16 A. Yes.

17 Q. Let me refer you to Defendant's Exhibit Twelve, I
18 neglected to address that one, and that's a December,
19 September, I'm sorry, September, Two thousand four, letter
20 that follows the letter we just talked about.

21 THE COURT: That's Defendant's Twelve?

22 MR. KULMALA: This is Defendant's Twelve.

23 THE COURT: Okay.

24 Q. If I could I'd like to read the letter. You might want
25 to follow along to make sure I'm reading it correctly.

1 "Dear Mr. Chakrabarti, this letter will recap our meeting on
2 this date concerning your property at Twenty-two forty-three
3 Middleton Street. The results of the meeting are as
4 follows: We will void your current building permit
5 immediately." That refers to your April, Two thousand
6 three, permit, does it not?

7 A. Correct.

8 Q. Because that's the only one that you had had up until
9 this point in time. The second item, "It will be your
10 responsibility to locate a licensed architect and have him
11 evaluate the condition of the subject property. He will be
12 required to submit a completed, sealed plan of the work that
13 needs to be accomplished to make this house safe and bring
14 it up to building code requirements. This must be done
15 within Thirty days. Sometime extension may be allowed after
16 a request stating the time required. After review of the
17 plans and acceptance by the building official a new permit
18 will be issued to complete the required work. In the
19 meantime the yard and swimming pool shall be maintained in
20 accordance with the Orangeburg Code of Ordinances." And
21 that's signed by Gene Nelson, Building Inspector. Is that
22 correct?

23 A. Correct.

24 Q. And you, you received, acknowledged that you received
25 and dealt with this letter?

1 A. Yes.

2 Q. Did you apply for and get a new building permit as
3 referenced in that letter, in that Exhibit Number Twelve?

4 A. Let me say this, when I talked with Mr. Nelson he said,
5 as long as you - - -

6 MR. KULMALA: Your Honor, ...

7 A. Okay. I'll say, no.

8 Q. You did not get a new building permit?

9 A. We already have two, how many do we need?

10 Q. Well, I'm asking you about the December, Two thousand
11 four. That was your second permit.

12 A. Yeah. After second permit he wanted me to have another
13 permit. I think I followed through, that's what I did.

14 Q. Okay.

15 A. But I didn't take another permit, because it was alright
16 with Mr. Nelson to follow the same permit.

17 Q. Exhibit Number Thir - Defendant's Exhibit Number
18 Thirteen, is that the December, Two thousand four, permit?

19 A. I cannot tell which one is before that date or the
20 letter, or after the date of the letter. What was the date
21 of the letter?

22 THE COURT: That was Number Twelve.

23 Q. The date of the letter was September Ninth, Two thousand
24 four, and that's saying, we will void your current building
25 permit immediately. And that relates to the Two thousand

1 three permit.

2 A. Yeah. So, what is your point?

3 Q. Well, my question is, I want to make sure that you
4 recognize - - -

5 A. Sure.

6 Q. --- Exhibit Thirteen is your second permit. Is that
7 correct? Or I should say permit application.

8 A. Correct. I had only two permit applications, don't
9 forget that, one for Mr. Darby, the other with Mr. Coulter.

10 Q. Now, ...

11 A. I'm not being able to answer all questions because
12 they're not being asked.

13 Q. Exhibit Number Five - - -

14 MR. KULMALA: This is already in, can I just hand him a
15 copy to save some time?

16 THE COURT: Yes, sir.

17 Q. I want to hand you this photocopy of Exhibit Number
18 Five, and ...

19 THE COURT: Mr. Kulmala, do you want to just double
20 check that -- did you check your stack on your desk right
21 there to see if Number Five is in there?

22 MR. KULMALA: Lo and behold, it's not in.

23 THE COURT: Yeah, I didn't think it was. Okay.
24 Alright, thank you, sir.

25 A. Is this not the first contract, Thomas Darby?

1 Q. Well, let me ask you some questions about this, - - -

2 A. Yes.

3 Q. --- it's been marked as Defendant's Exhibit Five, and I
4 apologize, it has not been moved into evidence. That, that
5 is a handwritten application for building permit, April of
6 Two thousand three, is it not?

7 A. Correct.

8 Q. And that's, the signature of applicant is A. G.
9 Chakrabarti?

10 A. Yes.

11 Q. And that shows your renovation repair value of Fifty
12 thousand?

13 A. Yes.

14 Q. Okay. And about the mid point down the page, estimated
15 date of completion has, exterior, June Second, Two thousand
16 three, correct?

17 A. Correct.

18 Q. And interior, August First of Two thousand three.

19 A. Correct.

20 MR. KULMALA: Do you object to me putting that in?

21 MR. HUTTO: I don't object.

22 MR. KULMALA: Okay, I'll go ahead and put it in. I was
23 going to do that at the end but Number Five, I'll move that
24 to be admitted into evidence.

25 THE COURT: And there's no objection, so Defendant's

1 Number Five is in evidence.

2 (Defendant's Exhibit Five
3 marked and filed.)

4 COURT REPORTER: Okay.

5 MR. KULMALA: Thank you.

6 A. Do you want this back?

7 Q. That's my Number Five. Okay, so as we look at the
8 April, Two thousand three, handwritten permit which is
9 Number Five, your work was to be completed June of Two
10 thousand three, and August of Two thousand three, do you
11 agree? I'm sorry, sir, you'll need to answer verbally for
12 the court reporter.

13 A. Yes.

14 Q. And your work wasn't finished by June or August or Two
15 thousand three?

16 A. Whatever is documented is yes.

17 Q. Well, sir, my question is, I mean, you hadn't completed
18 the interior or the exterior restoration by June or August
19 of two thousand three?

20 A. To the very end of completion, the answer is no.

21 Q. Okay. You hadn't finished the work by June or August of
22 Two thousand four, a year later?

23 A. I am not sure if the contractor has changed by the time
24 or not. Would you please check that? It had gone to the
25 hand of another contractor and not ...

1 Q. I'm happy to let you look at Five and Thirteen.

2 A. We are going to mix between two contracts.

3 Q. Well, I'll be happy to let you look at Exhibit Five,
4 which was the Two thousand three application, - - -

5 A. Right.

6 Q. --- and Exhibit Thirteen, which was the December, Two
7 thousand four, and what I'm wanting to ask you ...

8 A. This is Gene Nelson, right? Am I right or wrong? The
9 city official is Gene Nelson, right?

10 Q. Sir, I'm wanting to ask you a question about the two
11 permit applications.

12 THE COURT: Dr. Chakrabarti, Dr. Chakrabarti, let me,
13 just to remind you, he gets to the ask the questions. Okay?
14 And once he asks the questions if you will just respond to
15 his questions. You don't get to ask him questions. Okay?

16 A. --A question--can be always right and not wrong? --

17 THE COURT: I'm just telling you, you just need -- he,
18 regardless, he asks you questions, you answer the questions.
19 You do not get to ask questions. Do you understand that?

20 A. Yes, sir, but if it is being mixed up, how can I say?

21 THE COURT: Dr. Chakrabarti, I just want to make sure
22 you understand that.

23 A. Sure.

24 THE COURT: Okay, thank you, sir.

25 Q. I handed you the two exhibits so that I could ask you a

1 question about timing of work progress. Doesn't it stand to
2 reason, if you had a new permit in December of Two thousand
3 four, that work had not been completed by June or August or
4 Two thousand four, six months earlier?

5 A. If it is reason, not to ask, the answer is no.

6 Q. I'm sorry?

7 A. If reason is not to ask why, the answer as documented,
8 your question's answer is no. It has not been completed.

9 Q. Okay.

10 A. But I'm not answering why. Thank you.

11 Q. Okay. But, so you took out a new permit in December of
12 Two thousand and Four, and at that point you identified
13 another contractor?

14 A. That is correct.

15 Q. At that point Mr. Darby was no longer on the job with
16 you?

17 A. That is correct.

18 Q. And the December, Two thousand four, the December, Two
19 thousand four, application, which is Exhibit Thirteen,
20 refers to the expiration date of completion, does it not, on
21 the right hand side?

22 THE COURT: Mr. Kulmala, you can point it out to him if
23 you want to.

24 A. No, what I'm saying, this date of expiration is
25 handwritten. What is the original contract?

1 Q. What I'm asking you is, is that indicated as June Tenth
2 of Two thousand five? It may be handwritten expiration, but
3 it says, date of completion, June Tenth, Two thousand five,
4 does it not?

5 A. I would like to see the original contract. This could
6 be put on later on.

7 Q. Sir, I'm just asking you if that's what the document
8 says?

9 A. It's not a document, it is written afterwards. The
10 original contract didn't have that.

11 Q. Okay, but the original part, instead of it saying, EST,
12 which is estimated, it's handwritten in there, and it says,
13 expiration, but the words that I'm asking you about says,
14 date of completion, June Tenth, Two thousand five, do they
15 not?

16 A. I am not honoring the handwritten part.

17 Q. As of December, Two thousand four, when you applied for
18 the new permit, when were you to have your work completed on
19 the restoration?

20 A. Are you talking about Two thousand three or Two thousand
21 four? You're talking about this contract or the earlier
22 contract?

23 Q. I'm talking about the December, Two thousand four,
24 permit, - - -

25 A. Yeah.

1 Q. --- which came about as a result of the September letter
2 and meeting.

3 A. Yeah.

4 Q. And when the new permit was authorized in December, Two
5 thousand four, what was, you were to have it completed by
6 June of Two thousand five, were you not?

7 A. I was not general contractor at that time, so I won't
8 take that responsibility.

9 Q. But the project was scheduled to be completed by June of
10 Two thousand five?

11 A. Fine.

12 Q. I'm Sorry.

13 A. Okay. You are right on that, but on the responsible,
14 like I was responsible in the -- the contractor was
15 different and then he had the status of general contractor.
16 So, you cannot rice and beans.

17 Q. Okay: You as the general contractor on the first
18 permit?

19 A. Right.

20 Q. Come June of Two thousand five, June Thirteen, Two
21 thousand five, you hadn't completed, or your contractors
22 hadn't completed the work?

23 A. Yeah, that's better, that's better, my contractors had
24 not completed the last ten per cent, say, he hadn't
25 completed.

1 Q. So, as of June, Two thousand five, the work on the
2 restoration had not been completed?

3 A. But you have to put a per cent there, the answer is no,
4 it has not been completed -- the answer is yes, it has not
5 been completed.

6 Q. Okay. And it was still quite a bit of work to be done
7 to complete it?

8 A. The answer is no.

9 Q. Okay. So if I understand you, you're saying it was just
10 about ready to be occupied?

11 A. Your understanding is correct.

12 Q. So, as of the time given in your second permit, June of
13 Two thousand five, it wasn't complete but it was just about
14 ready to be occupied?

15 A. Can I elaborate that?

16 Q. I'm just asking you if I understand you correctly.

17 A. Yes.

18 MR. HUTTO: Your Honor, but he can elaborate if he
19 wants to.

20 THE COURT: He can explain what he means by just about.
21 Okay.

22 A. I can only yes, no, what else can I answer?

23 THE COURT: No, you're allowed to explain what you
24 meant about just about ready. What do you mean by that?

25 A. Thank you for asking. What I mean that is, I remember

1 some sheet rock work was left in the lower part of the
2 house. The flooring had to be done in some rooms
3 definitely. And not much, not much, it's okay. That's what
4 I said, that much was left.

5 Q. So, a little bit of flooring and a little bit of sheet
6 rock?

7 A. Yeah.

8 Q. And the house had all been cleaned up from the fire
9 damage and ready to go?

10 A. Yes, yes. But some flooring was needed upstairs, too.
11 Flooring could be tile or carpet, that's cosmetics.

12 Q. Let me ask you this, Dr. Chakrabarti, if you had time
13 frames on these permits, the one from Two thousand three
14 that was supposed to have the work completed the summer of
15 Two thousand three, and then the one with, I guess it was
16 Michael Stroman and Mr. Coulter, that work was to be
17 completed by June of Two thousand five, and the contractors
18 didn't meet the deadlines, neither one of them, did they?

19 A. If you don't ask me why I cannot answer.

20 Q. Sir, I just trying to find out, I'm not going to
21 interfere with your ability to explain, but I would just ask
22 you to answer the question and then you can give your
23 explanation. But my question is, that they had not
24 completed their, the contractors had not completed their
25 work by the deadlines?

1 A. You're repeating the same question, I'm repeating the
2 same answer, except what I said, everything was completed.

3 Q. Well, let me ask you a question about the, the first
4 permit where it was owner acting as contractor. We talked
5 about the requirement that it not be put on the market for
6 sale or rent for Twenty-four months after, Twenty-four
7 months after completion of work. Wouldn't that be an
8 incentive to you to get the work finished on time?

9 A. You will be testified by the actual contractor, the work
10 was finished on time and it had a, we had a green signal.

11 Q. You had what?

12 A. We had a green signal on the house, the house was ready
13 to go. When the testimony comes you will hear it.

14 Q. Did, did you have a contract for work to be done by Mr.
15 Darby?

16 A. Yes, sir, you just showed, we just saw that.

17 Q. No, that was the permit application, I believe, that I
18 was talking about.

19 A. Mr. Darby will testify that, yes, the answer is yes. I
20 don't let touch, anybody touch the house until there is a
21 building permit.

22 MR. KULMALA: Do we have Plaintiff's One, I'm sorry,
23 Plaintiff's Six in?

24 COURT REPORTER: Yes, sir.

25 MR. KULMALA: Plaintiff's Six?

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COURT REPORTER: It's checked.

THE COURT: Yeah, it's checked.

MR. KULMALA: This was, I think this was on an earlier exhibit list.

MR. HUTTO: I didn't mark it.

MR. KULMALA: Let me, the only copy I've got is with this tab on it. I'll take that off. Let me mark this as Defendant's Thirty-seven.

COURT REPORTER: That would be thirty-seven, yes, sir. You don't have a label on that one.

MR. KULMALA: No, there's no label on it. It's April Ten, April Ten of O-three.

COURT REPORTER: Okay. And what is it?

MR. KULMALA: Contract with Darby.

COURT REPORTER: I'll have to put the label on it.

MR. KULMALA: I'm trying to get this other one off.

COURT REPORTER: Two pages?

MR. KULMALA: Yes.

COURT REPORTER: Let me staple it.

MR. HUTTO: Here's another copy of it without a label.

MR. KULMALA: I've got the sticker on it.

THE COURT: We've got it.

MR. KULMALA: Cut that other tab off.

(Defendant's Exhibit Thirty-seven,
Contract with Darby,

1 marked for identification.)

2 MR. KULMALA: May I approach?

3 THE COURT: Yes, sir.

4 Q. I'm going to hand you what's been marked Defendant's
5 Exhibit Thirty-seven, and ask you, do you recognize that as
6 a contract between yourself and Mr. Darby?

7 A. The answer is yes.

8 Q. So, that's the contract by which you employed Mr. Darby
9 to do the work for the April, o-three, permit?

10 A. That is our personal contract, that's not a city
11 contract, that's a personal contract.

12 Q. That's a contract between you and Mr. Darby?

13 A. Yeah, yeah.

14 Q. And the first sentence of, the first sentence of Exhibit
15 Thirty-seven - - -

16 ~~MR. KULMALA: May I approach?~~

17 THE COURT: Yes, sir.

18 Q. --- reads, "I, Thomas Darby, hereby contract the
19 responsibility for reconstructing the burned house at
20 Twenty-two forty-three Middleton, Orangeburg, South
21 Carolina, to its original form, including masonry,
22 carpentry, roofing, cleaning to the extent of showing for
23 selling." Is that correct?

24 A. Correct.

25 Q. So, when you and Mr. Darby entered into this contract

1 the plan was that you were going to get the house restored
2 and put it on the market?

3 A. Selling or, means that, that I can put on the market as
4 well.

5 Q. So, at the time that you entered into this contract with
6 Mr. Darby your intention was selling or renting?

7 A. Renting.

8 Q. I'm sorry?

9 A. Selling or renting, but I was not at the top of that two
10 year thing, which I came to know, when I made the choice of
11 not moving, I came to know that. Before I didn't know.

12 Q. Okay. So, so with yourself, owner acting as contractor,
13 you had the responsibility of not putting it on the market
14 for two years after completion, is that correct?

15 A. That is correct, unless I live there.

16 MR. KULMALA: Did I move to admit this into evidence?

17 THE COURT: You have not.

18 MR. KULMALA: Exhibit Thirty-seven, Defendant's Thirty-
19 seven.

20 MR. HUTTO: No objection.

21 THE COURT: It's in evidence without objection.

22 COURT REPORTER: Okay.

23 (Defendant's Exhibit Thirty-seven
24 marked and filed.)

25 Q. Now, Dr. Chakrabarti, if you look at the totals on your

1 two permits, one was Thirty thousand and one was Fifty
2 thousand, that would be a total of Eighty thousand?

3 A. That is correct, but I want -- the letter says yes.

4 Q. The two permits total Eighty thousand?

5 A. Yeah.

6 Q. And you've indicated that you had checks in the vicinity
7 of a hundred, or a hundred twenty thousand?

8 A. That is correct.

9 Q. In June of Two thousand five, you received Exhibit
10 Fifteen ...

11 MR. KULMALA: I'll just hand him my copy.

12 THE COURT: Okay. And that is in evidence.

13 Q. You received that Exhibit Fifteen about June Eighth of
14 Two thousand five, is that correct?

15 A. Correct.

16 Q. And that letter tells you, "Dear Mr. Chakrabarti, once
17 again it has come to the attention of this office that your
18 lot at the above referenced location is in need of mowing
19 and/or weed cutting. Also, the swimming pool must be clean
20 and kept in a sanitary condition. You have been advised
21 numerous times that this property must be maintained during
22 the construction period and you have failed to meet this
23 obligation. The property is in violation of the City of
24 Orangeburg Code of Ordinances, Section Twenty-two point Six,
25 weedy lots and offensive matter. You are hereby notified

1 you have seven days to correct this situation. This gives
2 you until June Thirteenth." Then it goes on to talk about,
3 if you don't correct this within the time that you would be
4 ticketed for the violation. And that was the June Sixth,
5 Two thousand five, letter, is that correct?

6 A. Correct.

7 Q. And you received that?

8 A. Yes.

9 MR. KULMALA: I believe Defendant's Seventeen is also
10 in?

11 THE COURT: I believe so. Let me double check. Yes,
12 sir, it is.

13 Q. Okay, and my copy, I'm going to hand you Exhibit Number
14 Seventeen, which is the June Thirteen, Two thousand five,
15 letter, and that's from the Building Official and Code
16 Enforcement Office of the City of Orangeburg, is it not?

17 A. Yes, sir.

18 Q. And it's dated June Thirteenth, and it's called, "Notice
19 of Condemnation" do you see that?

20 A. I see that.

21 Q. And it reads, "After completing an inspection of the
22 referenced building I find it to be unsafe, unfit for human
23 habitation and a public nuisance. It is in violation of the
24 Two thousand International Maintenance Code, Section One O
25 Eight, point, One, point, Three. Two building permits have

1 been issued on this building, one in April, Two thousand
2 three, a second one on December Seventh, Two thousand four.
3 The City of Orangeburg Code of Ordinances, Twenty-four,
4 dash, Fourteen, point, Three, states that the building
5 permit is good for six months and this time has not expired.
6 Since it has been over two years that you have been working
7 on this property and it is still not completed, no more time
8 can be allowed. I find that you are also in violation of
9 Section One ten, point, one, of the Property Maintenance
10 Code, and the principle residence must now be demolished,
11 IPMC, Section One ten, point, one. You are hereby advised
12 that you must obtain a building permit and demolish the
13 principle dwelling on or before July Thirteenth, Two
14 thousand five. The condemnation notice has been posted on
15 the property and the City has closed the premises. You are
16 also required to replace the pool liner and provide
17 necessary repairs to the pump filter system in order to
18 maintain the pool in a sanitary condition." Have I read
19 that much correctly?

20 A. Yes, as far as what is written, you read it correctly.

21 Q. And the next paragraph states, "If you fail to demolish
22 and make necessary replacements and repairs by July
23 Thirteen, Two thousand five, you will also be ticketed for
24 the violations and summoned to appear before the Municipal
25 Judge. This find could be as much as Two hundred Dollars"

1 per day, I'm sorry, "for violation per day. If you do
2 resolve these matters by July Thirteenth, Two thousand five,
3 the City of Orangeburg will demolish the principle dwelling,
4 remedy the violations, and bill you for the work performed.
5 Failure to pay the bill within Thirty days will result in
6 the charges being added as a lien to your tax bill and the
7 City will attempt the costs by all available legal
8 resources." That's also, did I read that correctly?

9 A. Yes.

10 Q. If you would continue to the top of Page Two, I mean, we
11 can read that other sentence, but -- well, I'll go ahead and
12 do that just to make it clear. "Also be advised, it will be
13 unlawful for the owner of any dwelling unit or structure who
14 has received a compliance order to sell, transfer, mortgage,
15 lease or otherwise dispose of such dwelling unit or
16 structure to another until the provisions of the compliance
17 order have been complied with." Now, the next paragraph
18 reads, "Any persons directly affected by this decision shall
19 have the right to appeal to the Construction Board of
20 Appeals provided that written Application for Appeal is
21 filed within Twenty days after the day this was served on
22 you. An Application for Appeal shall be based on a claim
23 that the true intent of this Code or the rules legally
24 adopted thereunder have been incorrectly interpreted. The
25 provisions of this Code do not fully apply, or the

1 requirements of this Code are adequately satisfied by other
2 means, or that the strict application of any requirement of
3 this Code would cause an undue hardship." And it's signed,
4 Gene Nelson. Did I also read that correctly?

5 A. Yes, sir.

6 Q. And on the first page, the little handwritten note there
7 says, "to be hand delivered by DPS." Do you see that?

8 A. That is correct.

9 Q. Okay. And did you receive this letter on or shortly
10 after June Thirteenth?

11 A. Right.

12 Q. Okay.

13 A. You haven't asked me the other question so I cannot say
14 anything right now.

15 Q. But you acknowledge that you did receive this?

16 A. I did receive it, but what I did about it you didn't ask
17 me, so I cannot do anything.

18 Q. Well, let me ask you this, with respect to Page Two, you
19 did not file any sort of appeal to the Construction Board of
20 Appeals?

21 A. You didn't ask me why. The answer is, yes, I have not
22 filed. No, the answer is no, I have not filed.

23 Q. Okay. So, you did not make any application for an
24 appeal?

25 A. I hope all the whys you ask me later on.

1 Q. Again, to save time, I'm going to be dealing with
2 Defendant's Twenty-one, rather than look through the pile
3 I'll just hand up my copy.

4 THE COURT: And that is in evidence.

5 COURT REPORTER: Defendant's Twenty-one?

6 THE COURT: Defendant's Twenty-one, yes, ma'am.

7 Q. Dr. Chakrabarti, this is also a letter from Building
8 Official and Code Enforcement dated August First of O-0-
9 five, and that says, "You have failed to comply with the
10 Notice of Condemnation dated June Thirteen, Two thousand
11 five, served on you June Fifteenth. The City of Orangeburg
12 will begin the demolition of the principle residence on
13 August Fifth, Two thousand five. As a result of the
14 demolition of the principle residence and your failure to
15 replace the pool liner and make necessary repairs to the
16 pool pump filter system, the pool and it's surrounding
17 structures are unsafe as is and will constitute a hazard to
18 the health and safety of the public. Therefore, this unsafe
19 condition and hazard will also be remedied by the removal of
20 the pool and its surrounding structures. You will be billed
21 Twelve thousand twenty-five Dollars plus land fill fees,"
22 I'm sorry, "land fill fees for the work. If you fail to pay
23 the bill within Thirty days this amount will be added as a
24 lien to your tax bill." And you understand that letter, you
25 also received that letter back about August of O-five?

1 A. I did. I give the copy back. Thank you.

2 Q. We also have Defendant's Exhibit Twenty-two, which I
3 believe is in evidence, - - -

4 THE COURT: It is.

5 Q. ---and that letter, again from Building Code, I'm sorry,
6 Building Official and Code Enforcement, "Dear Mr.
7 Chakrabarti, you have failed to comply with the Notice of
8 Condemnation dated June Thirteenth, Two thousand five, and
9 served on you June Fifteenth, Two thousand five. The City
10 of Orangeburg will begin the demolition of the principle
11 residence on August Fifth, Two thousand five, as a result of
12 the demolition of the principle residence and your failure
13 to replace the pool liner and make necessary repairs to the
14 pool pump filter system, the pool and surrounding structures
15 are unsafe." This is essentially the same letter but this
16 is addressed to Sukla Chakrabarti, is that correct? It is
17 the identical letter but it's also to your wife?

18 THE COURT: Did you answer yes?

19 A. Yes.

20 THE COURT: In other words, you've got to make an oral
21 response.

22 A. Yes.

23 THE COURT: Thank you, sir, appreciate it.

24 Q. Now, Dr. Chakrabarti, if I understand you correctly, the
25 house, the restoration on the house was nearly completed, as

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you explained that a little while ago.

A. The flooring and some, a little bit sheet rock, that was the only thing left.

Q. As of June, Two thousand five?

A. That is correct.

MR. KULMALA: Okay. Your Honor, I'm going to run a video tape, and it will take me just a second, I believe, to turn it on.

THE COURT: Okay.

A. And you have to tell me how you prove that it's of that video.

THE COURT: Dr. Chakrabarti, just ...

MR. KULMALA: I can't do computers nearly as well as anybody under Twenty-five.

THE COURT: Mr. Hutto, have you seen the video?

MR. HUTTO: Yes.

MR. KULMALA: Your Honor, the total run time I believe is about five minutes. I think one is about four and one is about a minute and a half.

THE COURT: Alright, sir.

(Whereupon, a video is played for jury to see and hear.)

THE COURT: Dr. Chakrabarti, you don't need to respond.

DR. CHAKRABARTI: You're seeing the same area again and again.

1 THE COURT: Dr. Chakrabarti, do not speak during the
2 video.

3 (Whereupon, the video continues to be
4 played for jury to view and hear.)

5 MR. KULMALA: That was it.

6 THE COURT: Yes, sir.

7 Q. Now, Dr. Chakrabarti, did you have an occasion to view
8 the video as we just showed?

9 A. Correct.

10 Q. Okay. And that is the house, inside, outside, and some
11 shots of the pool at Twenty-two forty-three Middleton, is
12 that correct?

13 A. That is correct.

14 Q. Okay. And you're not going to dispute, are you, that
15 that was taken about June Thirteenth of Two thousand five?

16 A. That's the house I purchased, and what you're seeing in
17 the house, Mr. Andrew Beach just worked on the electrical
18 work.

19 Q. Okay.

20 A. That has been taken right after I purchased the house.

21 Q. Okay. So, it's your testimony that that video reflects
22 the condition of the house right after purchase back in o-
23 three?

24 A. That is correct.

25 Q. And it does not show what the house looked like in June

1 of Two thousand five?

2 A. I told you, there are some roofing work needed when I
3 purchased. I'm not sure that roofing work has been shown in
4 that video or not, but that is a very early video. If I did
5 not see the potential of the house to get it repaired,
6 paying Fifty thousand, do you think I would buy the house?

7 Q. Does it look like there's been Fifty or a hundred
8 thousand Dollars of work done in that house in that video?

9 A. It doesn't because it was somewhere when we are doing
10 the first contract looks like some work was going on. That
11 was a video, old video .

12 Q. Okay, so you don't agree - - -

13 A. No, I don't agree.

14 Q. --- that that was taken in June of Two thousand and
15 five?

16 A. No, I don't agree.

17 Q. But that is your house?

18 A. Yes, that's my house.

19 Q. Okay. Defendant's Thirty-two, it has been marked but
20 not admitted into evidence yet, do you recognize that
21 letter, sir?

22 A. I have seen this letter but I have no clue how I
23 received this letter. I have seen this letter.

24 Q. Okay. So, you have Seen Thirty-two?

25 A. I have seen this kind of ...

1 Q. No, sir, my question was, you have seen Exhibit Thirty-
2 two, I'm sorry, the number at the bottom of the page?

3 A. Yeah, I have seen, but I, myself, could not believe that
4 the house worth Ten million Dollars, to be honest with you.

5 Q. Okay. But if you would, look at the document with me
6 for a few minutes, and it's one Building Official and Code
7 Enforcement letterhead?

8 MR. HUTTO: Your Honor, just because he's seen it
9 doesn't mean that, I mean, he didn't write it. I object to
10 him talking about it at this point.

11 THE COURT: Alright. Can I talk to y'all for a second?
12 (Whereupon, counsel approach
13 the bench off the record.)

14 THE COURT: Alright, ladies and gentlemen, remember,
15 one of things that I told you is, sometimes we have these
16 conferences is about lunch. This was about lunch. Okay?
17 Now, it's getting, it's almost one o'clock right now. We
18 are going to take a break for lunch. Remember, you have
19 only heard some of the testimony in this case so you cannot
20 begin talking about this case among yourselves or with
21 anyone else, or do any investigation. We're going to take a
22 break for lunch. I'm going to ask y'all to come back at
23 two:fifteen. Okay? So, meet back in the jury room at
24 two:fifteen, and then we'll get started shortly thereafter.
25 Okay? Thank y'all.

1 DR. CHAKRABARTI: Listen, I'll, we can move?

2 THE COURT: Dr. Chakrabarti, do not say a word.

3 (Whereupon, the jury leaves
4 the courtroom and the following
5 takes place out of the presence
6 of the jury.)

7 THE COURT: Could I see the letter that y'all are
8 talking about? Thirty-two? Hand that to me. Thank you.
9 I've got the exhibit. Tell me what this is supposed to be.
10 It looks like a settlement letter.

11 MR. KULMALA: It's a letter that is on the letterhead
12 of Gene Nelson, of the City, - - -

13 THE COURT: Alright.

14 MR. KULMALA: --- with the name of Gerald Stroman and
15 somebody who never worked for the city. It was produced to
16 us in discovery early in the case from plaintiff through his
17 attorney.

18 THE COURT: Okay.

19 MR. KULMALA: And, and, you know, it may be, it looks
20 like it's a settlement letter, but what it -- I don't know
21 that I understand exactly what the letter is, but it's
22 produced to us and it doesn't, it's basically a fake. And
23 it's produced to us in the litigation through discovery, and
24 it's, you know, I mean, can I authenticate it through the
25 usual means? No. But it was provided to me as part of

1 discovery in this case.

2 THE COURT: And Gerald Stroman does not work for the
3 city?

4 MR. KULMALA: There's nobody named Gerald Stroman
5 working for the city.

6 THE COURT: Okay. And you wanted to somehow get this
7 into evidence right now?

8 MR. KULMALA: Sure.

9 THE COURT: Okay. And the reason?

10 MR. KULMALA: The reason is, I think it goes to the
11 credibility of the witness because we've got a document that
12 there's no identifiable source other than from plaintiff and
13 his attorney, and it's being injected into the case as
14 responsive to our discovery in the case.

15 THE COURT: Okay. Alright, Mr. Hutto.

16 MR. HUTTO: Your Honor, we don't know where the letter
17 came from either. He had it, he got it somewhere, but we're
18 not claiming it has anything to do with the case. I don't
19 even know what it's supposed to mean. But you know, what
20 the response is, turn over all the documents you have that
21 may be related, but after further investigation, I've got no
22 clue where this letter came from. And I think they've
23 investigated it and they don't know where it came from. So,
24 it's not relevant.

25 THE COURT: It seems like, to me it seems like a

1 settlement letter. Okay. It's not anything from anybody
2 with the city, you've agreed with that?

3 MR. KULMALA: No, it's not from the city.

4 THE COURT: To me it's one of those situations where
5 this is more confusing than anything else. And the way I
6 look at it, this case is confusing enough, and I'm certainly
7 not intending to give this to the jury at this time. And I
8 will note your objection to my ruling. If something comes
9 up later that you can identify this, but I'm, we're not
10 going to go forward on this part of it. Okay? But I'll note
11 your objection to my ruling. This is Exhibit Number Thirty-
12 two, Defendant's Exhibit.

13 MR. KULMALA: Actually, I think Thirty-three would be
14 more of the same.

15 MR. HUTTO: We have the same objection to Thirty-three.

16 THE COURT: Yeah. I don't know where that came from but
17 they're not, I'm not going to put those in if that's the
18 same thing. So, I'll note that with Defendant's Thirty-two
19 and Thirty-three.

20 COURT REPORTER: They are not in.

21 THE COURT: And I will preserve your objection to my
22 ruling on the record. Okay?

23 MR. KULMALA: Thank you.

24 THE COURT: Thank you, sir.

25 COURT REPORTER: And Judge, they are not in.

1 THE COURT: Thirty-two and Thirty-three are not in.

2 COURT REPORTER: Right. Thank you.

3 THE COURT: Okay. Alright, we are going to take a
4 break, and we'll be back at two:fifteen. Okay?

5 And can I see the attorneys for a second?

6 (Whereupon, counsel approach
7 the bench off the record.)

8 (Recess)

9 THE COURT: This is where we left off, is that correct?

10 MR. KULMALA: That's where we left off, and I was at
11 the end of my cross-examination, I believe, of Dr.
12 Chakrabarti.

13 THE COURT: Okay. So, do you have any other questions?

14 MR. KULMALA: I don't have any other questions on my
15 cross.

16 THE COURT: On cross... Okay... Alright, Mr. Chakrabarti,
17 we're going to -- Dr. Chakrabarti, we are getting ready to
18 begin the redirect examination, I don't know how much there
19 is. Let me just remind you of something. I don't mean to
20 be getting on you, but you need to just answer the questions
21 that are asked of you. Okay?

22 DR. CHAKRABARTI: I'm guilty of that.

23 THE COURT: I know you are, I know you are, and I'm
24 glad that you realize that.

25 DR. CHAKRABARTI: Yes.

1 THE COURT: But what I want you to do is just answer
2 the question, which I assure you that your attorney will ask
3 you anything in followup from what Mr. Kulmala said, okay?

4 DR. CHAKRABARTI: Thank you kindly.

5 THE COURT: Yes, sir. Alright. Would you bring the
6 jury back in? Thank you.

7 (Whereupon, the jury enters
8 to the courtroom, and the following
9 takes place in the presence
10 of the jury.)

11 THE COURT: I hope you had a good lunch. I did. You
12 know, it wasn't long enough. Anyway, we're back to continue
13 with the case.

14 Mr. Hutto.

15 (NOTE: Blank lines on this page do not indicate any part of
16 record has been omitted. Headers on testimony pages and
17 hard page breaks between testimony are now required by the
18 Court. See next ensuing page for sequential continuation of
19 record.)

1 DR. AJOY CHAKRABARTI - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Dr. Chakrabarti, you've answered some questions now from
4 Mr. Kulmala, I get to ask you just a few more to clarify
5 some things. Okay?

6 A. Okay.

7 Q. The very first letter you got from the city, right after
8 you purchased the house in February you got a letter in
9 March of Two thousand and three, that's marked as
10 Defendant's Exhibit Number Three, and in that letter, I want
11 to ask you just one question, does it talk about one of the
12 options is having the house demolished?

13 A. I didn't understand your question. Please repeat.

14 Q. One of the options in this letter discussed having the
15 house demolished?

16 A. Sure.

17 Q. Okay. Next, I want to go to the letter of August the
18 Fifth, which is Two thousand and four, Defendant's Exhibit
19 Number Eight. Okay? Move over to the second page. I just
20 want to touch on the first -- and Mr. Kulmala read this
21 letter to you, but it says that you're supposed to have the
22 swimming pool covered and secured, right?

23 A. (Witness nods in the affirmative.)

24 Q. The second paragraph talks about yard and bushes and
25 weeds and debris and that kind of thing, correct? You have

1 to say yes or no.

2 A. Yes.

3 Q. Okay. The third paragraph says that you have Thirty
4 days from August the Fourth to have the outside of the
5 structure finished, correct?

6 A. Yes.

7 Q. And the last thing that it talks about is that you will
8 be given Ninety days to complete the inside of the house and
9 a hundred and twenty days from August the Fourth to have the
10 house totally complete, is that correct?

11 A. Correct.

12 Q. Alright, now, you went back for a meeting on September,
13 one month later -- this was an August the Fifth letter,
14 September the Ninth of Two thousand and four. There was
15 discussion about what had happened since you got the letter
16 in August, right?

17 A. (Witness nods head in affirmative.)

18 Q. And during that time you were supposed to fix the
19 swimming pool, correct?

20 A. Yes.

21 Q. The weeds?

22 A. Yes.

23 Q. Okay. And then when we get to the letter of September
24 the Ninth, they're no longer complaining about those things,
25 are they?

1 A. No.

2 Q. Because you did them, didn't you?

3 A. Yes.

4 Q. Okay. Then, it also says, the last part of that was,
5 you were going to complete the interior of the house within
6 Ninety days, and the exterior, the whole house within a
7 hundred and twenty. But that didn't happen either, because
8 they didn't give you the permit until December, isn't that
9 true?

10 A. That is correct.

11 Q. Okay. So, the city, would it be fair to say, the city
12 kept telling you these deadlines but they always got pushed
13 back?

14 A. That is correct.

15 Q. And when you got letters from the city did you go and
16 talk to somebody about them?

17 A. I know I am not allowed to talk anything extra.

18 Q. No, sir, I didn't ask you what you said to them, did you
19 go and talk to them?

20 A. Yes, yes, the answer is yes.

21 Q. Did you go and talk to them?

22 A. Yes.

23 Q. Alright. And who did you go and talk to?

24 A. Gene Nelson.

25 Q. Alright. So, when you got a letter that advised you to

1 do something, your response was to go and talk to who?

2 A. Gene Nelson.

3 Q. And he was the city building official?

4 A. That is correct.

5 Q. Alright. So, when -- you made mention that Mr. Kulmala
6 didn't ask you the why, so I'm going to ask you the why.

7 When you got the letter telling you for the third time that
8 demolition was an option, did you go talk with Mr. Nelson
9 then?

10 A. Yes, sir.

11 Q. Okay. And as a result of having that conversation with
12 him, what were you led to believe?

13 A. I was led to believe that he is in full charge of the
14 comment, he's asking like a big brother, he said, hey, don't
15 you trust me? I am taking care of you, you're not the
16 contractor, I am talking with the contractors, you don't
17 know what you know about the building, and as a result of
18 that he also - - -

19 MR. KULMALA: Objection.

20 THE COURT: Hold on one second, Dr. Chakrabarti, I
21 believe - - -

22 A. Maybe I'm not answering to the point.

23 THE COURT: Well, no, that's, I don't think that's the
24 issue.

25 MR. KULMALA: Your Honor, I think that's hearsay again,

1 getting a narration of a conversation.

2 MR. HUTTO: Can I respond to that?

3 THE COURT: Yes, sir.

4 MR. HUTTO: It's not for the truth of the matter
5 asserted, it's why he responded, Number One. Number Two,
6 this is the city, and he is the city official that handled
7 this, and that is, to the extent it's an admission, it's an
8 admission against interest and exception to the hearsay
9 rule.

10 MR. KULMALA: I don't see how it cannot be for the
11 truth of the matter asserted. I mean, I think that's
12 essentially what is a back door entry to the truth of the
13 matter asserted in this conversation.

14 THE COURT: Okay. What I'm going to do, I am going to
15 overrule your objection. I am going to explain to the jury
16 that what is happening is, Dr. Chakrabarti is stating what
17 he believed he understood Mr. Nelson to say; that it's not
18 to be taken by you, the jury, as that he actually said it or
19 what he said was the truth. Okay?

20 Alright, continue. I'm sorry.

21 Q. When you -- as a result of getting that letter and you
22 went and talked to him, what was your understanding of what
23 he was telling you your response should be?

24 A. He was telling that I am not a building contractor.
25 So, I'm not responsible. He's going to talk to the building

1 contractors about this matter and get the result, and I've
2 got to trust him that he means nothing but good to whatever
3 he's doing, doing it as a routine.

4 Q. Alright. So, you did not ignore the letter, did you?

5 A. No.

6 Q. You went down and talked to him?

7 A. No.

8 Q. Okay.

9 A. But I must clarify something.

10 Q. Yes, sir.

11 A. I did not always go to the city. He used to come around
12 the site all the time.

13 Q. Okay, so ...

14 A. And we used to talk, that's the way it was.

15 Q. Sometimes you met him at his office, and sometimes you
16 met him at the house?

17 A. Sometimes, exactly right, exactly right.

18 Q. Okay. Alright, but anytime there was a letter y'all
19 talked about it?

20 A. Sure, because I'm scared - - -

21 Q. Okay.

22 A. --- that he would give me pain or something, something,
23 yeah.

24 Q. Okay. Alright. And on June the Sixth, again, the
25 Defendant's Exhibit Fifteen, I want you to look at this

1 letter, on June the Sixth, okay?

2 A. I'm just looking at the date, sir.

3 Q. I want you to look at the date.

4 A. I don't see no date yet.

5 Q. Let me help you with it. Right up there, it's kind of
6 really typed up at the top, right at the top.

7 A. Yeah.

8 Q. Alright. That's the June the Sixth letter, correct?

9 A. Uh-huh.

10 Q. Alright. It's talking to you about weeds, is it not?

11 A. As long as ...

12 Q. Yes or no, is that letter about weeds?

13 A. Yes.

14 Q. Okay. Is that letter about anything except weeds?

15 A. No, sir.

16 Q. Okay.

17 A. Oh, swimming pool cleaning.

18 Q. The outside, the swimming pool and the outside?

19 A. Right, exactly right.

20 Q. Alright. So, on the Thirtieth, I mean, excuse me, the
21 Sixth of June, Two thousand and five, you got a letter from
22 the city talking about the pool and weeds, right. Did it
23 say anything in there about building is not coming along
24 fine, or anything about the building itself?

25 A. No, sir.

1 Q. Alright. Then, this next, Defendant's Exhibit Number
2 Seventeen, June the what?

3 A. June the Thirteenth.

4 Q. Two thousand and five, correct?

5 A. Correct.

6 Q. Alright. So, the letter I just asked you about was June
7 the Sixth of Two thousand and five, right?

8 A. Right.

9 Q. So, one week later, correct?

10 A. Correct.

11 Q. Alright, so, in one whole week, - - -

12 A. Correct.

13 Q. --- you get a different letter and now it's talking
14 about something totally different, isn't it?

15 A. Correct.

16 Q. Alright. It's now talking about the building?

17 A. Correct.

18 Q. Yet, on June the Sixth they didn't mention to you a word
19 about the building, did they?

20 A. No.

21 Q. Okay. As a result of getting this letter about the
22 building, telling you that they were contemplating
23 demolishing this, did you go and talk to Mr. Nelson?

24 A. All the time.

25 Q. Okay. Do you see in the letter of June the Thirteenth,

1 - - -

2 A. Yes, sir.

3 Q. --- it says that you are violating Section One One Ten,
4 One Zero, point, One Zero?

5 A. Sir, I have a thing I have to bring out here.

6 Q. No, sir, you've got to answer the question. Do you see
7 that?

8 A. Yeah, But I don't know what it is, that's what it is.

9 Q. Well, I'm going to ask you about that. Just tell me
10 whether you see it or not.

11 A. No, I don't. No, I see that must be according to this
12 section which I am not familiar with.

13 Q. Yes, sir. But do you see that it's talking about the
14 section?

15 A. Yes.

16 Q. Will you answer my question?

17 A. Yes.

18 Q. Alright. This is Section One One Ten, Okay? I'm not
19 going to have you answer things you don't know. Okay? This
20 is it. Do you understand?

21 A. Yes, sir.

22 Q. Alright. Had there been any cessation of construction
23 for two years on this project?

24 A. No, sir.

25 Q. Okay. You were still working on it?

1 A. Yes.

2 Q. Okay. Now, I want to go to just probably four or five
3 weeks after that.

4 A. I want to say something very important.

5 Q. No, sir, you just aren't. Okay. We have rules and you
6 have to stick with them.

7 A. Okay.

8 Q. Exhibit Twenty-one, Defendant's Exhibits Twenty-one,
9 Twenty-two, Twenty-three, and Twenty-four are all -- I want
10 you to verify this, all dated on August the First, correct?

11 A. Correct.

12 Q. One of them tells you your house is going to be
13 demolished on August the Fifth, doesn't it?

14 A. Correct.

15 Q. That didn't happen, did it?

16 A. No.

17 Q. Another one tells you your house is going to be
18 demolished on August the Fourth. That didn't happen either,
19 did it?

20 A. No.

21 Q. One of them tells you that you get the right to go to
22 Court on September the Thirteenth, is that right?

23 A. That's right.

24 Q. So, on the same days, the City of Orangeburg told you
25 three different things in four different letters, did they

1 not?

2 A. Correct.

3 Q. Okay. And did you go talk to Mr. Nelson about that?

4 A. Being scared, I went.

5 Q. Okay. And as a result of that what were you led to
6 believe?

7 A. I led to believe he's in charge, these are routine. He
8 has to do as a file that he is working for the city, that
9 his boss man doesn't say anything, but he is protecting me.

10 Q. Right.

11 A. That's exactly what he said.

12 Q. And then when August the Fourth rolls around and it says
13 your house is going to be demolished, nothing happened, did
14 it?

15 A. No.

16 Q. When August the Fifth rolled around and it said your
17 house is going to be demolished, did it?

18 A. No.

19 Q. Okay.

20 A. But he's assuring me nothing will happen.

21 Q. Okay.

22 MR. HUTTO: Okay. Thank you, no further questions.

23 THE COURT: Alright, Mr. Kulmala.

24 MR. KULMALA: Just briefly, Your Honor.

25 THE COURT: Yes, sir.

1 DR. AJOY CHAKRABARTI - RE CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Hutto was asking you about these letters back in
4 September, I'm sorry, August the Fifth of O-Four, which is
5 Exhibit Eight, and indicating that the August Nine letter
6 comes out, and that was even before you started the second
7 permit. Do you remember that discussion here a few minutes
8 ago? The second permit was December of O-Four, do you
9 recall that?

10 A. Two different building officials, right?

11 Q. I'm sorry?

12 A. Two different building officials. One was Allen Ott,
13 another was Gene Nelson.

14 Q. No, my question was not about the officials, my question
15 was about the timing of the letters. Mr. Hutto asked you
16 about some things and it sounded like things were coming out
17 inconsistently because we're telling you to finish by a
18 certain time, and then you didn't even have your new permit
19 by then. That's what I'm trying to get at. Do you remember
20 that you had received a letter, Exhibit Number Eight, Mr.
21 Hutto said a few minutes ago, August Fifth.

22 A. Sir, I have a counter question. Why is it - - -

23 THE COURT: No, Dr. Chakrabarti, - - -

24 A. Oh, my goodness.

25 THE COURT: --- remember, you cannot ask a question,

1 you have to answer the question that you are asked.

2 A. Please repeat the question.

3 Q. Okay. My question is, did you remember receiving that
4 letter that you just discussed with Mr. Hutto, that August
5 Fifth letter?

6 A. That is correct, yes.

7 Q. And that's the letter that tells you, you have thirty
8 days from August Fourth to finish the outside, which would
9 make it September Fourth for the outside?

10 A. Right.

11 Q. Additional Ninety days to do the inside, which would be
12 December Fourth?

13 A. Right.

14 Q. And Mr. Hutto was indicating, asking you questions
15 about, you were supposed to have that finished before you
16 even got your second permit?

17 A. Yes, sir.

18 Q. Because your second permit was December of Two thousand
19 and four. But Mr. Hutto didn't ask you about Number Twelve,
20 which is the September Nine letter. Do you agree that
21 Number Twelve, September Nine, came out after the exterior
22 was supposed to be finished, according to this August
23 letter?

24 A. Shall I respond to that?

25 Q. Yes, sir.

1 A. It should not happen. I don't agree with the contents
2 of the letter.

3 Q. Well, sir, I'm not asking if you agree with the contents
4 of the letter, I'm just asking you about the timing of the
5 letter, September Ninth the City relates to a meeting, and
6 they told you on September Ninth, by this letter, what was
7 going to happen, that you were going to essentially have the
8 old -- you were still under the old Two thousand three
9 permit.

10 A. Okay.

11 Q. And as a result of September Nine, you were going to be,
12 have that permit canceled and a new one issued. That was
13 done by December of O-Four. Do you agree with that, the new
14 permit came out in December of O-Four?

15 A. Let me clear something.

16 Q. Sure.

17 A. Did Mr. Nelson issue two permits the second time, one is
18 Three, one is Four?

19 THE COURT: Dr. Chakrabarti, his question to you was,
20 did you get issued a second permit in December of Two
21 thousand and four, did you get a new permit in December of
22 Two thousand and four, yes or no?

23 A. Show me the permit, please.

24 THE COURT: That was Number Thirteen I believe, I might
25 have it in my head by now. Is that Number Thirteen?

1 MR. KULMALA: Thirteen.

2 THE COURT: Okay.

3 A. Who is this signed, the signature of the applicant, who
4 is this?

5 THE COURT: Okay, Dr. Chakrabarti, all you need to do
6 is answer the question, is that your application in December
7 of Two thousand and four?

8 A. If it is not my signature how can it be application? It
9 is not my signature. Look at that.

10 COURT REPORTER: You said, it is not my signature?

11 A. No.

12 Q. Dr. Chakrabarti, you received a permit December of Two
13 thousand four?

14 A. My contractor will testify to that.

15 Q. I'm sorry?

16 A. See, it is an issue between this -- for me it is an
17 issue between the city official and my contractor. My
18 contract, personal with the contractor. So, all these
19 things that I'm receiving, the letter, how come my
20 contractor doesn't get a copy? Answer me.

21 Q. No, sir, I'm - - -

22 A. You have to answer that, because they are the ones
23 working.

24 Q. I believe the Judge will instruct you, I'm not supposed
25 to answer you.

1 THE COURT: Dr. Chakrabarti, okay, all you do is answer
2 his questions. Okay? That's all you do.

3 A. I'm familiar with that.

4 Q. You received the second permit December Seventh of Two
5 thousand four?

6 A. I did not receive it, let's put it this way, if the
7 contractor has received it he has to testify on that.

8 Q. Okay. But you were the owner of the house as of
9 December, Two thousand four, and it appears, if you look at
10 Exhibit Number Thirteen, an application for building permit
11 in the name of owner, Ajoy Chakrabarti.

12 A. But who signed it?

13 Q. Well, sir, I'm just asking you if you agree that you got
14 a permit in December of Two thousand four?

15 A. Not in my hand. Maybe in contractor's hand.

16 Q. The, I'm sorry, the June Thirteen, Two thousand Five,
17 letter, that's Exhibit Number Seventeen, when we talked
18 earlier you acknowledged that you had received that letter.
19 Mr. Hutto was asking you about the June Sixth, Two thousand
20 five, letter dealing with weeds and grass, and I guess his
21 question was sort of, where did this come from when a week
22 later you get this notice of condemnation. Is that what you
23 understand?

24 A. Both are not related. Two letters' contents are not
25 related, that was the concern. One related to weeds and

1 swimming pool, another related to the building condemnation.
2 They came in a difference of five, six days, right, so
3 that's my question.

4 Q. So, Exhibit Number Fifteen, that's the June Sixth
5 letter, it talks about the swimming pool needs to be kept in
6 a sanitary condition and so forth. It doesn't talk about
7 completion of the building, correct?

8 A. Correct.

9 Q. That's your issue on that one?

10 A. Correct.

11 Q. And then June Thirteen you get a letter that says, this
12 is your notice of condemnation and you must demolish, and so
13 forth. And I guess, the conversation between you and Mr.
14 Hutto was, if it was so important it wasn't mentioned in one
15 letter and now all of a sudden it becomes an issue on June
16 Thirteen?

17 A. Correct.

18 Q. But your permit that we talked about a few minutes ago,
19 December, Two thousand four, and I had showed you in earlier
20 examination, and you disagreed with me about the handwritten
21 part that says, expiration date, - - -

22 A. Correct.

23 Q. --- but the date of completion on this Exhibit Number
24 Thirteen is, what does it say right there, the date of
25 completion?

1 A. Six/Ten/Two thousand five, that is June Tenth.

2 Q. That is June Tenth. So, if you look at the permit which
3 gave you until June Tenth, and then you look at the notice
4 of condemnation, that clock was running the whole time, and
5 you had until June Tenth, according to the permit, to finish
6 your work, did you not?

7 A. There are some basic things missing, though. I am not
8 the one putting hammer and nail. I am talking with my
9 contractor and Mr. Nelson. And they are in agreement, and
10 Mr. Nelson is in agreement, time is being given. So, who am
11 I?

12 Q. But if your contractor didn't finish the work on time,
13 you sued the city, you didn't sue your contractor, did you?

14 A. Do you want me to?

15 Q. I'm just asking, you didn't sue your contractor, did
16 you?

17 A. But the contractor working with Mr. Nelson hand in hand,
18 who is the city, who should I do?

19 Q. But the contractor didn't meet your June Ten deadline?

20 A. Yes, talk with my contractor. I'm sure he would tell you
21 how many times he was stopped by not, by not following the
22 inspection time.

23 Q. And this Exhibit Seventeen also talks about, the second
24 page, which tells you about the notice of right to appeal.
25 We talked about that earlier.

1 A. Yes.

2 Q. A few minutes ago you answered Mr. Hutto that you went
3 to talk to Mr. Nelson, but you did not do what this letter
4 says?

5 A. I'm not supposed to.

6 Q. I mean, you did not file any kind of an appeal.

7 A. I'm not supposed to. If he stops me, I trust all the
8 government officials. That's my training. So, I'm not
9 going to question if somebody says, don't worry about it.
10 Thank you.

11 MR. KULMALA: Thank you, that's all the questions I
12 have.

13 A. Thank you.

14 THE COURT: Thank you, you can step down. Appreciate
15 it.

16 Mr. Hutto, you can call your next witness.

17 MR. HUTTO: Sam Fields.

18 THE COURT: Mr. Fields, if you'd stop right there and
19 put your left hand on the Bible, please, sir, and raise your
20 right hand, please, sir. The clerk's going to swear you in.

21 CLERK: Would you state your name for the record?

22 WITNESS: Sam C. Fields.

23 (Whereupon, Sam C. Fields
24 is duly sworn.)

25 CLERK: Thank you, please have a seat.

1 SAM C. FIELDS - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You're Sammie Fields?

4 A. That's me.

5 Q. And where do you live, Mr. Fields?

6 A. Glover Street, Orangeburg, South Carolina.

7 Q. Okay. And do you know Dr. Chakrabarti?

8 A. Oh, yeah.

9 Q. And you've done some work for him in the past?

10 A. Yes.

11 Q. Okay. And what type of work do you do for him?

12 A. Landscaping, cutting grass, haul off debris.

13 Q. Okay. And he has several different houses that he has
14 you upkeep, is that right?

15 A. That's correct.

16 Q. Okay. Do you recall a house located at Two Two Four
17 Three Middleton Street?

18 A. That's right.

19 Q. Did you do work over there?

20 A. Landscaping, cutting grass, and moving debris, haul it
21 off.

22 Q. Okay. So, you went over there after he purchased it
23 after the fire, correct?

24 A. Correct.

25 Q. And would you just tell the jury the type of work that

1 you did over there?

2 A. Well, I just cut the grass, cut the weeds, pick up
3 debris, haul it off.

4 Q. Okay. And did you do that over the course of the
5 several years between the time he bought it and the time
6 that the bulldozer knocked it down?

7 A. Yeah.

8 Q. Okay. And ...

9 A. After they knock it down?

10 Q. No, no, not after, between the time that he bought it
11 and the time of the demolition?

12 A. Oh, yeah, uh-huh.

13 Q. Okay. And so, if Dr. Chakrabarti needed somebody to
14 come cut the grass and the weeds, you, a lot of times it was
15 you, is that correct?

16 A. When he called me I'd come.

17 Q. Alright. And did you do a good job of doing that when
18 you went over there?

19 A. Yeah.

20 MR. HUTTO: Okay. That's all the questions I have.

21 THE COURT: Anything on cross?

22 MR. KULMALA: Just briefly.

23 (NOTE: Blank lines on this page do not indicate any part of
24 record has been omitted.)

1 SAM C. FIELDS, CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Fields, do you still work for Dr. Chakrabarti now?

4 A. Yes.

5 Q. Where do you work for him now, where do you cut -- do
6 you still do landscaping?

7 A. Yeah.

8 Q. And where do you do that?

9 A. Oh, he got different areas, Boulevard, Windsor Street.

10 COURT REPORTER: What street?

11 A. What street? Boulevard Street, he had a house on Tucker
12 Street, and Windsor Street.

13 Q. So, you do landscaping for -- do you work for anybody
14 else or do you do all your work for ...

15 A. I work with Zeus Industrial, that's what I'm saying,
16 part time.

17 COURT REPORTER: Zeus?

18 A. Zeus Industrial.

19 Q. And how many places is it that you work for Dr.
20 Chakrabarti?

21 A. Many places, he have many places.

22 Q. Many places?

23 A. Uh-huh.

24 Q. Was that rental houses around town?

25 A. Yeah.

1 Q. How many is many, four?

2 A. Probably, let's see, about eight.

3 Q. Eight rental houses where you work?

4 A. Uh-huh.

5 Q. And you've been doing work for him for how long?

6 A. It was back in the eighties.

7 Q. Back in the eighties, so twenty something years?

8 A. Oh, yeah.

9 Q. It's almost thirty something years.

10 A. Since back in the eighties, yeah.

11 Q. You didn't do any of the house renovation work at
12 Twenty-two forty-three, did you?

13 A. On the end I helped pick out some debris out of the
14 house, and some work inside the house? Huh-uh.

15 Q. Okay. So, on the end, do you mean like towards the
16 summer of Two thousand five?

17 A. Well, when they were finishing up, whatever year that
18 was, I helped haul some debris out of the house that they
19 remodeled and tore down.

20 Q. But you didn't do anything like carpentry or sheet rock
21 or any of those kinds of things?

22 A. Huh-huh.

23 MR. KULMALA: Thank you, that's all the questions I
24 have.

25 MR. HUTTO: No further questions. I'd ask that he be

1 excused if he needs to be.

2 THE COURT: Alright, Mr. Fields, you're excused.

3 WITNESS: Thank you.

4 THE COURT: Thank you, sir. Appreciate it.

5 MR. HUTTO: Andrew Beach.

6 THE COURT: Andrew Beach.

7 MR. HUTTO: You're welcome to stay but you can leave if
8 you need to.

9 CLERK: Would you state your name for the record,
10 please?

11 WITNESS: Andrew Beach.

12 (Whereupon, Andrew Beach
13 is duly sworn.)

14 CLERK: Thank you, have a seat.

15 (NOTE: Blank lines on this page do not indicate any part of
16 record has been omitted. Headers on testimony pages and
17 hard page breaks between testimony are now required by the
18 Court. See next ensuing page for sequential continuation of
19 record.)

1 ANDREW BEACH - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You're Andrew Beach?

4 A. Yes.

5 Q. And where do you live?

6 A. Ninety-nine Chester Street.

7 Q. Okay. Here in Orangeburg?

8 A. Orangeburg.

9 Q. And what's your occupation, what do you?

10 A. Electrician.

11 Q. Electrician? And in the course of doing your work as an
12 electrician, did you have the occasion to do some work at
13 Two Two Four Three Middleton Street?

14 A. I did.

15 Q. Alright. And that's the house that was owned by Dr.
16 Chakrabarti after a fire, is that correct?

17 A. Yes.

18 Q. Alright. And under which contractor, which person were
19 you working with initially in the house?

20 A. Well, I started with Mr. Darby, - - -

21 Q. Okay.

22 A. --- and I finished mine with Mr. Coulter.

23 COURT REPORTER: Coulter?

24 A. Coulter, yeah.

25 Q. Alright. So, you worked, you did some electrical work

1 early on and then you did some toward the end, is that
2 right?

3 A. Yes, at the beginning.

4 Q. Okay. And what specifically, as far as the wiring in
5 the house, was it damaged by the fire?

6 A. Some of it.

7 Q. Okay. And so, the wiring that was damaged, did it have
8 to be removed?

9 A. It had to be removed, and, yes, it had to be removed.

10 Q. Okay. And then did you put in new wiring?

11 A. Yes.

12 Q. Okay. And was your work, as you were working, did
13 officials from the City of Orangeburg come by and look at
14 your work?

15 A. Yes, inspector from the DPU, at that time DPU was
16 handling the electrical inspection.

17 Q. What was the name of the man that came and inspected it?

18 A. Bob Boyd, he was the electrical inspector?

19 COURT REPORTER: Bob what?

20 MR. HUTTO: Boyd.

21 A. Bob Boyd, he was the electrical inspector for the DPU at
22 that time.

23 Q. Okay. And you did other work in other houses besides
24 this house, right?

25 A. Yes.

1 Q. And you had different contracts with other people?

2 A. Often.

3 Q. And was it just normal course of business when you do
4 electrical work to have the inspector come behind you?

5 A. Mandatory.

6 Q. Mandatory. And the work that you did at Two Two Four
7 Three Middleton Street, did it pass inspection?

8 A. I got approval from Bob Boyd with DPU.

9 Q. Okay. So, when your electrical work was finished then
10 the sheet rock could go on up?

11 A. Yes, they give permission to go and hang the sheet rock.

12 Q. Okay. But you don't do the sheet rock, you just do the
13 electrical?

14 A. No, I don't, I just -- no, don't touch it.

15 MR. HUTTO: Okay. Thank you.

16 THE COURT: Anything on cross?

17 (NOTE: Blank lines on this page do not indicate any part of
18 record has been omitted. Headers on testimony pages and
19 hard page breaks between testimony are now required by the
20 Court. See next ensuing page for sequential continuation of
21 record.)

1 ANDREW BEACH - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Beach, you didn't see the video tape that we showed
4 this morning?

5 A. No, I did not.

6 Q. As part of the work that you were doing, you ran, the
7 wire you run through houses, you call it conduit?

8 A. Not residential, no.

9 Q. Okay. Well, what do you call the wire that you put in
10 houses?

11 A. Romex.

12 Q. Romex?

13 A. Yes.

14 COURT REPORTER: Romex?

15 Q. You ran Romex wire to replace that that was damaged in
16 the fire?

17 A. Yes.

18 Q. And some of the places that you ran the Romex, you had
19 holes drilled through, and I guess that's standard to drill
20 holes through floor joists to wall studs and things like
21 that?

22 A. That's standard procedure.

23 Q. And some of those, some of those members that you have
24 new wire run through were black, fire damaged, charred wood,
25 was it not?

1 A. It's a possibility, yeah.

2 Q. And did you, did you have, when you were working with
3 Mr. Coulter, Michael Stroman was actually the contractor, is
4 that right?

5 A. Uh-huh.

6 Q. Did you have any -- well, let me ask you this, at that
7 time were you a licensed specialty contractor?

8 A. I still is.

9 Q. Okay. So, you're a licensed electrician?

10 A. Uh-huh.

11 Q. And did you have anybody with a contractor's license
12 say, it's okay to run this wire through the charred members?

13 A. Repeat, be specific with that.

14 Q. I'm sorry?

15 A. Can you be a little bit specific?

16 Q. Did you have either a licensed general contractor or
17 residential contractor or an architect or somebody say, it's
18 okay to run these wires through these charred timbers?

19 A. Not really, no, because when they tell me to go the
20 house, it's ready, just go on and work on it.

21 Q. Okay. So you just did what you knew need to be done,
22 was to wire?

23 A. They said, the house is ready, go on and finish up, go
24 ahead on. That's all I always got.

25 MR. KULMALA: Okay. That's all the questions I have

1 for you.

2 THE COURT: Anything on redirect?

3 MR. HUTTO: I just want to clarify something.

4 (NOTE: Blank lines on this page do not indicate any part of
5 record has been omitted. Headers on testimony pages and
6 hard page breaks between testimony are now required by the
7 Court. See next ensuing page for sequential continuation of
8 record.)

1 ANDREW BEACH - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. If an interior wall is not a weight bearing wall, but
4 it's just going to hang sheet rock, it's going to be covered
5 up, does it matter whether it's got a char mark on it?

6 A. Not necessarily, no.

7 Q. Okay. And when the inspector was there when you ran the
8 wires, it was approved. He never told you to pull out any
9 charred member and replace it, did he?

10 A. No, no, huh-uh.

11 Q. Alright, I'm going to show you - - -

12 MR. HUTTO: I'm going to mark this as the next exhibit.
13 It's Twenty-five, I think.

14 COURT REPORTER: Yes, Twenty-five.

15 (Plaintiff's Exhibit Twenty-five,
16 Photo of yellow wire,
17 marked for identification only.)

18 Q. I'm going to show you what's been now marked as
19 Plaintiff's Exhibit Number Twenty-five and ask you if you
20 see that yellow wire running through the house?

21 A. Yes.

22 Q. Okay. And that would have been the type of wire that
23 you were putting in?

24 A. That's the type of wire.

25 Q. I mean, that's wire that you actually put in?

1 A. That's the type of wire I put in the house.

2 Q. And that is the wire you put in the house?

3 A. Yes, yes, that meets specifications.

4 Q. And so, once it meets specifications and they come and
5 put sheet rock on top of that, you won't see anything
6 that's under there, will you?

7 A. No, no, that's it.

8 MR. HUTTO: Okay. Thank you.

9 THE COURT: Alright. Anything -- nothing else?
10 Alright. Thank you, sir, Mr. Beach, you may step down.

11 MR. HUTTO: We would also ask that he be excused if he
12 needs to be. He's welcome to stay.

13 THE COURT: You may be excused.

14 MR. HUTTO: I'd call Mr. Darby.

15 THE COURT: Thank you, sir.

16 CLERK: State your name for the record.

17 WITNESS: Thomas Darby

18 (Whereupon, Thomas Darby
19 is duly sworn.)

20 CLERK: Have a seat.

21 (NOTE: Blank lines on this page do not indicate any part of
22 record has been omitted. Headers on testimony pages and
23 hard page breaks between testimony are now required by the
24 Court. See next ensuing page for sequential continuation of
25 record.)

1 THOMAS DARBY - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You are Thomas Darby?

4 A. Correct.

5 Q. And Mr. Darby, do you live here in Orangeburg?

6 A. Yes, I do.

7 Q. What's your address?

8 A. Three eighty-eight Fair.

9 Q. Alright. And you hold some sort of licensing or
10 contract to do some type of construction work?

11 A. Correct.

12 Q. What is that?

13 A. I hold a license in roofing, carpentry and masonry.

14 Q. Okay. And did you have the occasion to work on a house
15 that was owned by Dr. Chakrabarti at Two Two Four Three
16 Middleton Street?

17 A. Yes, I did.

18 Q. Did you actually had looked at that house to do some
19 remodeling or something when Joe Singleton owned the house?

20 A. I looked at it to purchase it and he said that he had
21 already had a purchaser.

22 Q. Alright, so you were thinking about doing the same thing
23 that Dr. Chakrabarti was doing, which was to buy the house
24 and fix it up, is that right?

25 A. I had someone that was interested in it.

1 Q. Okay. And because you had expressed some interest in
2 that, Mr. Singleton hooked you up with Dr. Chakrabarti?

3 A. Well, it didn't go quite like that.

4 Q. Quite like that? Alright, but at some point in time,
5 let's just say, at some point in time were you contacted by
6 Dr. Chakrabarti?

7 A. Mr. Singletary, I mean, Mr. Singleton did give him my
8 number.

9 Q. Okay. As a result of that did you enter into
10 conversations with Dr. Chakrabarti and come to some
11 agreement about working on that project?

12 A. That is correct.

13 Q. Okay. And the damage that had been done by the fire,
14 can you describe the damage that had been done to the roof?

15 A. Well, the second floor, the roof had been burned out
16 more on the right hand side over a garage apartment. It had
17 been totally burned out. The one on the front of the house,
18 the door side of the house had been totally burned out. The
19 second story, more than likely runs on the left hand side
20 bedrooms, on the right hand side recreation room, the
21 recreation room was burned out, and the bedroom on the left
22 hand side was burned out.

23 Q. Okay. Did you enter into a contract with Dr.
24 Chakrabarti to make repairs to that house?

25 A. Yes, I had.

1 Q. Alright. And how much was he supposed to pay you?

2 A. The original contract was Fifty thousand Dollars.

3 Q. And did he pay you in installments of Five thousand
4 Dollars?

5 A. Yes, as we'd go on he'd pay Five thousand Dollars each
6 time that we passed inspection.

7 Q. And some of that money went to labor and some of that
8 money went to materials?

9 A. It went to materials more than anything, and when I had
10 to hire someone and paid them cash, that's when it went to
11 labor.

12 Q. Okay. And over the course of the time that you worked
13 for, or at that house with Dr. Chakrabarti, how much total
14 did you get paid?

15 A. As I said, the last time I think we ran out to maximum
16 was Forty thousand Dollars, maybe Thirty-five, but I know it
17 was not more than Forty thousand Dollars.

18 Q. Okay. So, probably eight payments of Five thousand?

19 A. Possibly, yes.

20 Q. Okay. Seven or eight?

21 A. Well, between seven and eight.

22 Q. Okay. Alright. And now, let's talk about the work that
23 you did. As far as the roof and the top of the house, was
24 any of it salvageable, or did you have to take a whole roof
25 off and put a new roof on?

1 A. Well, Mr. Ott came in and he said, all the burnt studs
2 in the house had to be removed because they was not standard
3 as far as, anything wood that is burned to a certain degree,
4 it has to be removed out of the house.

5 Q. That's what the City of Orangeburg said?

6 A. Right.

7 Q. Okay. And they're the ones that issued the permit to
8 have the work done?

9 A. Correct.

10 Q. And so, did you follow their specifications about
11 removing the burnt material?

12 A. Removing the burnt material and replacing it with the
13 new wood that we purchased to put in.

14 Q. Okay. And you actually put in new, I call them rafters,
15 is that what you call those ...

16 A. Right.

17 Q. Okay. You did new ones all the way across the top of
18 the house?

19 A. Well, we tied into what could be salvaged, and what
20 couldn't be salvaged we replaced it with new framing.

21 Q. What about shingles, was the whole roof re-shingled?

22 A. New plywood, new shingles.

23 Q. Okay. So, the entire roof had new plywood, new
24 shingles, and a lot of it had new rafters, but some of it
25 had been tied into a part that wasn't burned?

1 A. Well, the part -- if it's sixteen feet rafters, and it
2 was eight feet that was tar that would burn, we could cut
3 off eight feet of it and tie the original rafter into
4 whatever the length was.

5 Q. Okay. And the City was right there looking at you when
6 you did this work?

7 A. No, they wasn't there looking at me but they would come
8 and inspect it.

9 Q. Okay. I guess that's what I meant, my fault, bad
10 question. They actually came behind you and looked at your
11 work?

12 A. That's, Mr. Ott did inspect it.

13 Q. Alright. And if there was a problem they told you about
14 it and wouldn't approve it?

15 A. Correct. It had to be correct before it was approved.

16 Q. And as you got approved along the project you got
17 approved, Dr. Chakrabarti paid you, is that right?

18 A. Correct.

19 Q. Okay. On the inside, a lot of your work, it would be
20 fair to say, was general with the roof and the upper part of
21 the house?

22 A. Well, there were the areas that was damaged more than
23 anything were the furnace, flooring and the furnace, which
24 would be the right hand back side of the house.

25 Q. Alright, well, let me just -- what did you do in

1 connection with that?

2 A. It was wood that had to be removed because it was burnt,
3 totally burnt.

4 Q. And did you do that?

5 A. Yes, I had.

6 Q. Okay. And did you replace that?

7 A. Yes, I did.

8 Q. Okay. Tell me the next part of the house that you had
9 to work on?

10 A. Well, it was another floor going across to the left side
11 apartments, bedroom side, I should say, and that had to be
12 replaced. The flooring over the back of the left side, some
13 of it mostly cindered, so, just say, the second floor studs
14 in the wall on the back part of the house had to be reframed
15 as well as the floor.

16 Q. Did you do that?

17 A. Correct.

18 Q. Did you have that inspected?

19 A. Yes.

20 Q. Okay. What else did you have to do?

21 A. The back door had burned out, the back framing had
22 burned out. We framed the back frame of the house. The
23 wall on the back of the house where there were a double door
24 to the back kitchen door, that would approximately be about
25 sixteen to twenty feet had totally burned and collapsed in

1 the back side. That wall had to be reconstructed, and the
2 doors had to be reframed.

3 Q. And did you do that?

4 A. Yes.

5 Q. And was it inspected?

6 A. Yes, it had.

7 Q. Okay. Now, let me ask you, did you have to do -- I know
8 you said that one of your specialties was doing some mason
9 work. Did you have to do anything with the brick part of
10 the structure or was it still pretty much intact?

11 A. There were cracks from the heat, or from the age, it's
12 hard to tell, but there were a few cracks. So, we brought
13 in a brick mason, and he came in and he did whatever had to
14 be done. But that hadn't been a part of the inspection, no,
15 there was no masonry to be inspected other than there were
16 a small supported brick area between the kitchen door and
17 the double deck door to go out to the deck, to the pool.
18 So, there had been brick work done there. He did that brick
19 there. That had to be inspected, and that was.

20 Q. And you oversaw that?

21 A. Right.

22 Q. Okay. And so, when you did the part of the work that
23 you did, and I realize you did the earlier part, when you
24 did the part of the work you did was the outside as far as
25 the brickwork and the roof, were they pretty much finished

1 or was there still a few things left to be done?

2 A. The framing of the roof and the shingles was put on the
3 house.

4 Q. By you?

5 A. By another car, I mean, roofer, another - - -

6 Q. But under your supervision?

7 A. --- Yeah, right.

8 Q. Okay. And I think you worked on the house during the
9 year of Two thousand and four, is that correct, Two thousand
10 three or four?

11 A. Two thousand three, yeah.

12 Q. Okay, Two thousand three. Alright, -- excuse me one
13 second.

14 MR. HUTTO: Thank you, answer any questions that the
15 other attorney may have.

16 THE COURT: Mr. Kulmala, your witness.

17 MR. KULMALA: Thank you, Your Honor.

18 It's a large number of exhibits, it's taking me a
19 minute to file through them.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and
22 hard page breaks between testimony are now required by the
23 Court. See next ensuing page for sequential continuation of
24 record.)

1 THOMAS DARBY - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Darby, you began working with, for Dr. Chakrabarti
4 back in the spring of Two thousand three on this house?

5 A. Yes, sir.

6 Q. And did you and he have a contract for the work that you
7 did for him?

8 A. Yes, I had typed out a contract, yes, sir.

9 Q. On the building permit from April, Two thousand three,
10 that was the owner as builder, or owner as contractor, do
11 you recall that?

12 A. Owner as builder or owner as contractor?

13 Q. Owner as contractor.

14 A. You mean, Mr. Chakrabarti had to sign for the release of
15 the work to be done or do you mean ...

16 Q. ... On the permit he was identified as owner acting as
17 contractor?

18 A. That's correct, yes, sir.

19 Q. Okay. And you were identified on that as the carpenter?

20 A. The carpenter, correct.

21 Q. And at that time was there a reason why you were not
22 identified as the contractor?

23 A. At that time any house that was burned with such a
24 degree it had to have a general contractor to do the job. I
25 didn't have a general contractor's license.

1 Q. Okay. And Dr. Chakrabarti presumably didn't have a
2 contractor's license either?

3 A. No, he hadn't.

4 Q. But that allowed the owner to, the law allowed the
5 owner, Mr. Chakrabarti to act as contractor?

6 A. Mr. Ott had explained it to him, the only way for me to
7 have done that contract was for him to take the
8 responsibility for it.

9 Q. Either to hire a licensed general contractor or owner
10 act as builder?

11 A. That's correct.

12 Q. And you're familiar with the provision there, though,
13 that for an owner acting as builder or as contractor, it's a
14 two year requirement for not putting it on the market?

15 A. I remember if they were brought, that had been brought
16 out at one time by Mr. Ott, it had been brought out, but I
17 don't know exactly when it was brought out but, or if Mr.
18 Chakrabarti was there, but I know I heard that, I mean, that
19 specific statement by Mr. Ott, and it may have been Mr.
20 Chakrabarti present, but I do remember he said that he
21 couldn't do anything with that house for selling it or
22 leasing it until the statute was over, he did say that.

23 Q. And that's something you also know as a licensed
24 specialty contractor in South Carolina, right?

25 A. I mean, I've never been principled in any area of that,

1 no, I've never been principled by that.

2 Q. You said that you had typed out a contract that you and
3 Dr. Chakrabarti had signed for the work you were going to do
4 on this project?

5 A. Yes.

6 Q. I'm going to hand you what's been marked Defendant's
7 Exhibit Thirty-seven and ask you if you recognize that as
8 the contract between you and Dr. Chakrabarti?

9 A. Normally my contracts would state forty-sixty. From the
10 time that I have been contracting that's how I've been
11 writing up my contract. I met with Mr. Chak at McDonald's
12 and he made some adjustment about payments or something like
13 that. So, being involved with Mr. Chak as long as I have
14 doing work, I don't, I really wouldn't say because he
15 wouldn't agree on a contract like this. I may have typed it
16 up but he never agreed on it. He wouldn't agree on
17 something like that.

18 Q. So, you're saying you may have typed it up but that he
19 would not have agreed to that?

20 A. No, he wouldn't. As you ...

21 Q. Do you recall, do you recall when I took your deposition
22 back in July of Two thousand nine what your answers were
23 concerning the authenticity of that contract?

24 A. That was a one piece contract. This is a two piece
25 contract. I don't think I reviewed this one. I may have

1 reviewed one but I am not sure if it was this one or one
2 that you were given a copy of.

3 Q. Okay. You've indicated that at the deposition it was a
4 one piece contract that you do not agree with?

5 A. Well, this was -- yes, it wasn't so much as the one
6 piece contract that I didn't agree with, I just didn't agree
7 with the wording that was worded in that. I'd been highly
8 recommended by the previous owner. I wouldn't highlight any
9 contract like that because it's just not the way I do
10 things. That's what I disagreed with, to say that I didn't
11 write it.

12 MR. KULMALA: May I approach, Your Honor?

13 THE COURT: Sure.

14 Q. I'm going to hand you a copy of your deposition from
15 July One, oh, I'm sorry, July Sixth of Two thousand nine,
16 starting on Page Twenty-six at Line Number Seventeen. If
17 you would look along me. Mr. Darby, my question to you,
18 starting on Line Eighteen, "I'm handing you what's been
19 marked Defendant's Exhibit Four to your deposition, I'll ask
20 if you have seen that document if you recognize it?"

21 A. Recognize what is being said in this statement you're
22 asking me?

23 Q. Sir, I'm just asking you, I'm going to read the text
24 and ask you if, you know, if ...

25 A. Okay. No problem.

1 Q. Your response to my question then was, "The heading,
2 Thomas Darby, I mean, the Darby Home Improvement, yes, I
3 recognize the heading, but the contract right here -- okay,
4 Darby -- no, I didn't do this. This was not done by me."
5 And the reference on that page is to Exhibit Number Four,
6 Exhibit Number Four to your deposition, and I'll -- it's
7 clipped in here, but I'll show you Exhibit Number Four to
8 the deposition, if you'll compare that to the exhibit that I
9 just presented to you.

10 A. This is Exhibit Number Four, what would you like me
11 to...

12 Q. This is Exhibit Number Four to the deposition.

13 A. Okay.

14 Q. Do you see that's a two page contract?

15 A. The same as I have, yes, sir.

16 Q. Okay. But a few minutes ago I think you said that, when
17 I showed you in the deposition it was a one page contract,
18 so does this refresh your recollection about the agreement?

19 A. What I stated was, I gave him a one page contract, I
20 didn't give him a two page contract. I gave him a one page
21 contract. Here you have two pages, my contract only had one
22 page. That's one reason why I stated that it's not my
23 contract. That's exactly what I said before and I say now,
24 this is not what I wrote as a contract. What I wrote as a
25 contract, this is not the same contract.

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Q. So, Exhibit Four - - -

MR. KULMALA: I'm sorry, what is the number on that?

THE COURT: Thirty-seven.

Q. Exhibit Thirty-seven, that is not the contract that you and Dr. Chakrabarti had?

A. This is not what I wrote up. I did not draw up this contract.

Q. Well, was there another contract that you and Dr. Chakrabarti had other than that one?

A. One that he didn't agree on.

Q. But was there a contract that you and Dr. Chakrabarti had signed between the two of you?

A. The first contract he made an adjustment, and the adjustments were on payment adjustment. Like I said earlier, I made adjustment forty-sixty, and he disagreed with that and he may have drew out this one. And I may have signed it, but I know each contract that was drawn as far as the first one and even this one, it wasn't the same as the one we did the work under. The contact we did the work under was a verbal contract, not -- well, this contract does not say Five thousand Dollars each payment or any payment of the, nature, but every payment that we done it was Five thousand. So, neither of the contracts represents the issue of the work that had been done.

Q. So, Defendant's Exhibit Number Thirty-seven, that's not

1 the contract by which you and Dr. Chakrabarti did the work
2 on this project?

3 A. Correct.

4 Q. And did you and Dr. Chakrabarti sign that Exhibit Number
5 Thirty-seven?

6 A. That's possible, yes, that's possible.

7 Q. At some point you and Dr. Chakrabarti parted ways on the
8 project around what, the summer of Two thousand four?

9 A. Somewhere around Two thousand -- I know the first,
10 within the year that we had been working on the house, yes,
11 before the end of the year, we did part. I wouldn't say
12 parted, I stopped and waited on them to make a decision on
13 the original agreement, and the additional agreement made me
14 stop and wait until they make the decision if they wanted me
15 to continue because what was added afterwards wasn't what we
16 agreed on, and I stopped. And when I stopped I got no call
17 or nothing. The next thing I know, another contractor was
18 working. That's how I left it.

19 Q. And when you stopped you hadn't reached the Fifty
20 thousand which was the amount that was set forth in y'all's
21 - - -

22 A. Agreement.

23 Q. --- permit and agreement?

24 A. Yes.

25 Q. Did you talk with Dr. Chakrabarti about - - -

1 A. No, sir.

2 Q. --- not completing the payment?

3 A. We never talked anymore since that time.

4 Q. And there were some changed he was wanting to make in
5 the agreement for your work, were there not?

6 A. Correct. Not he, himself. His wife made a suggestion
7 towards having a bathroom put into an area that I, I mean,
8 it's not my job to put bathrooms in. We'd already did what
9 was agreed in the contract. It wasn't my job to do anything
10 else in that area. And that's what I walked out on.

11 Q. It was a change of scope without a change of money?

12 A. That, too.

13 Q. In other words, he wanted you to do more for the money
14 that you had agreed to?

15 A. Well, it was like if it was in the contract for the
16 money that I agreed with and it wasn't.

17 Q. You mentioned some sort of connection or introduction or
18 something between Joe Singleton and Dr. Chakrabarti?

19 A. I'd never been introduced with the both of them. I've
20 never seen the both of them at anytime.

21 Q. But you had done some work for Joe Singleton?

22 A. I'd done some work when Joe's house burned. He had his
23 clothing fabrics of his family in the house, and he asked me
24 to remove it out of the house. When I went to him about
25 what was he going to with the house he asked me what type of

1 work that I was in, and I told him what I was doing, and he
2 said, well, would you like to do this for me? And I had,
3 and at the same time he was mentioning he was doing it
4 because he had a purchaser. I didn't know who the
5 purchaser, I had known nothing of the purchaser, he had
6 never said anything other than he had, and he wanted this
7 work to be done, and I did.

8 Q. And the work that you were doing for Mr. Singleton was
9 what now?

10 A. He had the fabrics in his closets, what furniture left
11 in the house from the burn.

12 Q. Debris removal, essentially?

13 A. Well, basically the furniture and the fabrics, clothing.
14 He never -- we never removed any carpeting or anything, but
15 just the clothing out of the closet, the furniture,
16 refrigerator, stuff like that, and had the big dump, ...
17 sanitation dumps come twice and we threw everything in the
18 dumpster.

19 Q. Did you do -- well, let me ask you this, are you trained
20 in doing any sort of fire damage restoration, you know, to
21 get smoke and so forth out?

22 A. I know how by Mr. Ott giving me his professional
23 interest in having it done his way to pass the approval.
24 So, having Mr. Ott as my guidance, yes, I have had, and
25 that's the only person I ever had that gave me any

1 instruction on doing that. And it's been three houses that
2 we've done, two or three houses that we've done that had
3 been fire damaged, and that's how it had to be handled.

4 Q. And did you do any of the fire cleanup restoration at
5 Twenty-two forty-three Middleton?

6 A. I did it all.

7 Q. You did it all?

8 A. Right.

9 Q. And you had ...

10 A. All that was required by the inspection, yes.

11 Q. You had removed the burned or charred timbers that were
12 required to be removed?

13 A. Correct.

14 Q. And cleaned the surfaces to get the soot and so forth?

15 A. It was nothing really to clean because all the drywall
16 from the house being left as long as it had been, all the
17 drywall was wet from the rain, all the carpet was wet from
18 the rain. So, from the house being burned, wide open, all
19 the water saturated everything inside, so there's no washing
20 or cleaning anything. It's only removing everything.

21 Q. The permit that you were working with Dr. Chakrabarti,
22 that April, Two thousand three, permit, that work was to be
23 completed during the summer of Two thousand three under that
24 permit, was it not?

25 A. I have no time awareness on what the time was with it or

1 to have it done, I wouldn't be aware of that time. If it
2 had been I wasn't aware of it.

3 Q. If you would look at Exhibit Five, about midway down the
4 page, it says, date of completion, and handwritten in there
5 are two dates. Does that say June and August of Two
6 thousand three?

7 A. Yes, it does.

8 Q. And had you completed all of the work that you had by,
9 under the agreement by June of Two thousand three, or August
10 of Two thousand three?

11 A. Everything that had to be inspected by Mr. Ott was
12 completed in due time. We were then working on the drywall.
13 We had over a hundred sheets of drywall in the house. He
14 said, close it up and that's what we were interested in
15 doing, closing it up. But in the process of closing it up
16 Mrs. Chakrabarti came with that interest of what she wanted,
17 and we stopped. Ain't nothing like that going on.

18 Q. So, as far as you know the work that you were doing was
19 to a stopping point but it was not completed by June or
20 August of Two thousand and three?

21 A. I don't know when it was. Like I said, my interest was
22 in getting paid. As far as the times on it, I don't know
23 anything about that.

24 Q. When you left the job the house, was it ready for
25 occupancy?

1 A. It hadn't been ready, no drywall was done, no -- wet
2 carpeting was still in there. We left it with the finishing
3 of all the carpentry work and the structure work was done,
4 but as far as the drywall and the flooring, it hadn't been
5 done.

6 MR. KULMALA: Thank you, sir, that's all the questions
7 I have.

8 THE COURT: Anything on redirect?

9 MR. HUTTO: Just a couple.

10 (NOTE: Blank lines on this page do not indicate any part of
11 record has been omitted. Headers on testimony pages and
12 hard page breaks between testimony are now required by the
13 Court. See next ensuing page for sequential continuation of
14 record.)

1 THOMAS DARBY - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Mr. Darby, you -- when you first talked to Dr.
4 Chakrabarti, your sort of standard was the forty-sixty deal,
5 you presented that to him. He presented you a different
6 offer of paying different, but y'all, which y'all locked up
7 on with the Five thousand Dollars as you went along, is that
8 right?

9 A. Well, that's what we've done, so evidently, that's was
10 the final agreement, yeah.

11 Q. Okay. But, so this thing about whether that one was or
12 your standard, your standard one that's a fort-sixty, - - -

13 A. Right.

14 Q. --- you do that sometimes, he wanted to do something
15 different, but after y'all talked what you agreed on was as
16 you did the work you were going to draw a Five thousand
17 Dollar payment?

18 A. He'd never worked me before, he said, and he don't know
19 what I can do, and he would like to be careful with whatever
20 or however. And I was interested in showing him what I could
21 do, so I agreed.

22 Q. Okay. And so, y'all agreed, y'all finally reach an
23 agreement that you would work, got inspections, got to a
24 certain point, you would draw Five thousand, you'd work some
25 more, you'd draw another Five thousand?

1 A. Correct.

2 Q. Okay. And when you talked about, he asked you about had
3 you done any other fire work before, and you said that you
4 had had some instructions from Mr. Ott, that's Mr. Ott, the
5 City Building Manager, right?

6 A. Correct.

7 Q. Okay. And so, in this particular case, as you were
8 removing different fire charred rafters and wood, Mr. Ott
9 was the one that was there inspecting behind you, is that
10 right?

11 A. That's correct.

12 Q. Okay. And I guess giving you some advice as to which
13 ones had to go and which ones could stay?

14 A. Every step of the way, yes.

15 Q. Okay.

16 MR. KULMALA: I'm going to object to that. Basically,
17 the intention of the question is to elicit hearsay.

18 THE COURT: Okay. I overrule your objection. I'm
19 sorry. Okay.

20 MR. HUTTO: That's all I have.

21 THE COURT: Any recross?

22 MR. KULMALA: Nothing.

23 THE COURT: Sir?

24 COURT REPORTER: I think he said, nothing.

25 THE COURT: Oh, okay. You can step down.

1 MR. HUTTO: I call Mr. Coulter, Johnnie Coulter.

2 THE COURT: Okay.

3 MR. HUTTO: It's C-O-U-L-T-E-R.

4 THE COURT: Alright, Mr. Coulter, if you will put your
5 left hand on the Bible, please, sir, and raise your right
6 hand, the Clerk is going to swear you in.

7 CLERK: Could you state your name for the record,
8 please?

9 WITNESS: My name is Johnnie Coulter.

10 (Whereupon, Johnnie Coulter
11 is duly sworn.)

12 CLERK: Thank you.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and
15 hard page breaks between testimony are now required by the
16 Court. See next ensuing page for sequential continuation of
17 record.)

1 JOHNNIE COULTER - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You're Johnnie Coulter?

4 A. Yes, sir.

5 Q. Alright, Johnnie, you need to speak up. Okay?

6 A. Okay.

7 Q. You do work under the name of A and J Remodeling and
8 Construction Company?

9 A. That's correct.

10 Q. And you're the J of A and J?

11 A. Yes.

12 Q. Who's the A?

13 A. My son.

14 Q. Artis?

15 A. Right.

16 Q. Okay. And I'm going to show you what's been marked as
17 Plaintiff's Exhibit Number - - -

18 MR. HUTTO: You look.

19 COURT REPORTER: Seventeen.

20 Q. - - -Seventeen, and ask you if this is the agreement
21 that you entered into with Dr. Chakrabarti?

22 A. Yes, sir.

23 Q. Okay. And so, you entered into an agreement with him to
24 do some work on a house located on Middleton Street, is that
25 right?

1 A. That's correct.

2 Q. Okay. And prior to entering into that agreement, did
3 you go over and look at the project and see what all was
4 going to be involved?

5 A. Yes, sir.

6 Q. Okay. And at some point this morning, and I'm not sure
7 exactly what time you arrived, there was a series of checks,
8 and I'm just going to ask you to look at Plaintiff's Exhibit
9 Two, Three, Six, Seven, Eight, Ten, Eleven, Twelve,
10 Thirteen, Fifteen, Nineteen, Eighteen, Fourteen, Twenty,
11 Twenty-one and Twenty-two. These all appear to be checks
12 that are made out to you for work on that house, you can
13 take a look at them, and I'll ask if that's money you
14 collected for doing work on this job? There's a couple of
15 them that are stapled together.

16 A. Yes.

17 Q. At various times you would present Dr. Chak with a
18 statement about how much labor was due and how much
19 materials were due, and he'd write you a check, is that
20 right?

21 A. Yes, sir.

22 Q. One of these is actually marked that some of the money
23 on the tab goes to Mr. Stroman. What was Mr. Stroman's role
24 in this project?

25 A. Well, Mr. Stroman is the general contractor.

1 Q. Okay.

2 A. By me ...

3 Q. I'm sorry, you can go ahead and explain that.

4 A. By me not being a specialist, I needed a general
5 contractor.

6 Q. Okay. And so I'm going to show you what's marked as
7 Defendant's Exhibit Number Thirteen, it's like an
8 application for a building permit, and contractor, it says,
9 Michael Stroman, is that right?

10 A. That's correct.

11 Q. And then down here, for carpentry, it says what?

12 A. Artis Coulter.

13 Q. And that's your son?

14 A. Right.

15 Q. Okay. And so, what is -- you do have a license of some
16 sort, is that right?

17 A. Yes, sir.

18 Q. And what's your license in?

19 A. Mine is in carpentry, plumbing and vinyl siding and
20 whatever.

21 Q. Okay. And so, you worked under Mr. Stroman's general
22 contractor license on this project?

23 A. Right.

24 Q. Okay. So, what I was getting back to is that some of
25 the monies, it will say, like on this one, that Five

1 thousand was to go for one thing and then some money was to
2 go to Mr. Stroman, he got paid some of the money?

3 A. Right.

4 Q. Okay. All the checks were written to you but some of
5 it, when it says, like, material ...

6 A. I was more like a project manager.

7 Q. Exactly. So, when it says, materials, like, where were
8 you buying materials?

9 A. From Lowes, ABC Supply, Discount Builders, different
10 places.

11 Q. Okay. And so, when you would go buy the supplies for
12 Dr. Chakrabarti didn't write a check to Lowes or ABC, he
13 would just write the check to you?

14 A. Right. What he would do, I would take the money, or the
15 card and go get this material, whatever was needed after the
16 inspection man come and let me know what I needed to do, he
17 kind of worked with me a little bit, I would buy the
18 material and let Mr. Chak know what I need. He would let me
19 go get the material and bring the receipts and stuff back to
20 him, and document it before he would give me any money for
21 the material and the labor.

22 Q. Okay. And I'm going to show you what's been marked as
23 Plaintiff's Exhibit Number Sixteen. Is this the building
24 permit that you worked under, the one that was issued on
25 December the Seventh of Two thousand and four?

1 A. Yes, sir, under Michael.

2 Q. Under Michael Stroman?

3 A. Yes, sir.

4 MR. HUTTO: I'd move to introduce Plaintiff's Exhibit
5 Number Sixteen into evidence.

6 THE COURT: Any objection?

7 MR. KULMALA: No objection.

8 THE COURT: Plaintiff's Number Sixteen is in evidence.

9 COURT REPORTER: Yes, sir.

10 (Plaintiff's Exhibit Sixteen
11 marked and filed.)

12 Q. Mr. Coulter, if you would, tell us in general terms, or
13 tell the jury in general terms what was the nature of the
14 work you were doing? And I don't know if you want to start
15 at the roof and go down, or start in one room and go to the
16 other, but tell us what you were doing inside that house?

17 A. Well, when I got to look at it, some other guy had been
18 here already had done work in there before. So, I come in
19 on the end, you know, like start, he done quit and then I
20 took over the job, you know.

21 Q. Alright. So, would it be fair to say that the roofing
22 studs had already been put on before you got there?

23 A. Yes, it was.

24 Q. Okay. So, where did you pick up with, what projects did
25 you work on inside the house?

1 A. Well, I pick up first with the roof because when I got
2 there, what his name is, Mr. - - -

3 Q. Mr. Nelson?

4 A. --- Mr. Nelson indicated to me that the roof itself was
5 put on with second grade, third grade lumber. So, they told
6 me that that third grade lumber wasn't going to do for the
7 support of that roof. So, I had to do a lot of taking a lot
8 the sills back out and put first A grade lumber up there for
9 the support, the lumber support.

10 Q. And did you do that?

11 A. Yes, sir.

12 Q. Okay. Alright, now, I realize you weren't there at the
13 time, but Mr. Ott had been the building inspector when the
14 first contractor came, - - -

15 A. Right.

16 Q. --- and by the time you got there it was now Mr. Nelson,
17 right?

18 A. Right, he was just coming in.

19 Q. Just coming in, and he, and when you met with him he
20 told you you had to redo some things?

21 A. Yes, sir.

22 Q. Okay. And did you do that?

23 A. Yes, sir.

24 Q. Okay. Alright, what else did you do inside the house?

25 A. And a lot of the studded walls, some of it still had

1 some charred on some of it. We removed a lot more of the
2 charred from the studded walls inside. The bearing walls
3 was fine. We removed some of the ones, about four of the
4 walls, the bearing outside walls, but mostly inside walls
5 had a little charred on the back of it, it wasn't really, it
6 was a lot of soot on some of it, too. Evidently, the other
7 guy who was there before me done changed out a lot of the
8 wood, so the one that was there it was a lot of soot on, so
9 we end up cleaning some of the wood just to show them that
10 it's not charred all through, you know. And ...

11 Q. Alright, well, let me ask you something about that.
12 Some of the wood structure in the house, as I think you call
13 it weight bearing?

14 A. Right.

15 Q. Okay. And then some of it is just to support like a
16 sheet rock interior walls, that kind of thing?

17 A. Right.

18 Q. And it doesn't actually bear the weight of the roof or
19 anything?

20 A. No, huh-huh.

21 Q. Okay. So, is there a difference between, if some of the
22 wood is charred or not charred, if there a difference on
23 whether that wood is on a weight bearing wall or not a
24 weight bearing wall?

25 A. Yes, it is.

1 Q. Okay. And if it's on a not weight bearing wall, and all
2 it's going to do is have sheet rock nailed to it, just
3 because it's got some black marks on it doesn't keep it from
4 doing its job, does it?

5 A. No, it's just that it's a thickness of the charred. If
6 it's a certain amount of charred on it that takes the
7 strength away from it and he was kind of letting me know
8 which was which, and marked it out and we changed them out.

9 Q. That was Mr. Nelson, the building inspector, told you
10 which ones had to come out and which ones could stay?

11 A. Yes.

12 Q. Alright. And did you do that?

13 A. Yes, sir.

14 Q. Okay. And were you, and tell us what else you did?

15 A. Well, mostly, we done a lot of, after -- well, just like
16 I say, Mr., the electrical man, he was hiring us, too, to do
17 electrical back over because they wasn't satisfied with the
18 electrical wiring the way they had it at first. They did had
19 it, but they had to add different wires and pieced wires
20 together with the old white wire with the yellow, and they
21 made us, I came in and talked to Mr. Nelson and them, and we
22 take, I mean, we take all the white wires back out and done
23 all the, everything back over correctly.

24 Q. Okay. So, some of the work that Mr. Darby had inspected
25 by Mr. Ott, when you came in Mr. Nelson had you redo?

1 A. Yeah, some of it. Some of it still was wrong.

2 Q. Okay. What about the, I mean, could you tell me what
3 else, did you have to take out any of the ceiling or the
4 flooring or whatever?

5 A. Yeah, we take, finish taking all the sheet rock off the
6 ceilings and replaced all the wood that was up there that
7 was rotten, and a lot of it was water damaged like you see
8 it from the water, and it kind of caused, you know, the top,
9 there was a second floor. So, by all the water running on
10 that floor like it was, it kind of weakened the other sills
11 up underneath there from the water. So, we had to restud
12 and regroup all those woods back over, a lot of them we had
13 to do over. That's what caused so much lumber.

14 Q. Okay. And so, you replaced that lumber and then were
15 the city inspectors in and out looking at your work?

16 A. Yeah, Mr. Nelson came by and was kind of like leading
17 me, because what I did, by me knowing him as long as I have,
18 I kind make sure I wasn't going to be going over the same
19 thing. Since they already had a x mark by him already for
20 the problem he had done had, I tried to make sure I go in
21 the right direction so whatever I done, I wouldn't do it
22 wrong to do it twice. And so ...

23 Q. Okay. Now, you do work on other buildings around town?

24 A. Yes.

25 Q. And so, you've had to work with Mr. Nelson on other

1 jobs?

2 A. Yes, sir.

3 Q. Okay. I had you come up here and sit when they were
4 playing that video because I knew you couldn't see it from
5 where you were sitting.

6 A. Correct.

7 Q. A lot of that video was taken on the inside of the
8 house, and very little bit of it was taken on the outside of
9 the house, - - -

10 A. Right.

11 Q. --- but I want to talk to you about the outside of the
12 house. The outside of the house, the bricks and the windows
13 and the doors, that kind of thing, was it finished, was it?

14 A. Not quite finished because the outside wing rafters and
15 the facial boards from the outside and stuff, that wasn't
16 completed yet. As a matter of fact, we was working on that
17 part of it before the demolition.

18 Q. Okay. And the inside of the house, - - -

19 MR. HUTTO: Let me just, I'll tell you what, let me
20 mark -- these are your pictures, I'm going to mark a couple
21 of them.

22 MR. KULMALA: Okay.

23 MR. HUTTO: Let me mark this one.

24 COURT REPORTER: What as?

25 MR. HUTTO: Whatever the next number is.

1 COURT REPORTER: Wait, is this Plaintiff's?

2 MR. HUTTO: Plaintiff's, plaintiff's, yes.

3 COURT REPORTER: Plaintiff's. What number are those?

4 MR. HUTTO: Twenty-six and seven.

5 COURT REPORTER: Plaintiff's Twenty-six through Thirty-
6 one.

7 (Plaintiff's Exhibits Twenty-Six through Thirty-one,
8 photos,
9 marked for identification.)

10 Q. Mr. Coulter, I'm going to hand you the photographs
11 marked Exhibits Twenty-six, Plaintiff's Exhibits Twenty-six
12 through Thirty-one. First of all I'd just ask you to look
13 through them and make sure you can identify them as some of
14 the interior at the house at Middleton Street.

15 A. Yes, sir.

16 MR. HUTTO: I'd admit these into evidence.

17 MR. KULMALA: No objection.

18 THE COURT: Plaintiff's Twenty-six through Thirty-one
19 are admitted into evidence.

20 (Plaintiff's Exhibits Twenty-six through Thirty-one
21 marked and filed.)

22 Q. Mr. Coulter, you told the jury some of the things you
23 had done, but there were some things that were obviously
24 left to do. What was left to do inside the house?

25 A. Well, what was left to do was taking, finish taking the

1 carpet off the steps and the carpet off the two floors. We
2 already had pulled the carpet up but we had it balled up, it
3 wasn't pulled outside. We was prepared that after the
4 inspection we was preparing after inspection with the sheet
5 rock, with the electrical, then we was preparing, we already
6 had ordered the sheet rock to come in, you know, after that.

7 Q. And the sheet rock would be that sort of white board
8 material that you put on the walls?

9 A. Yes, sir.

10 Q. And sometimes on the ceiling?

11 A. Right.

12 Q. Okay. And so, when we see -- I'm going to show you an
13 example here, what's been marked as Exhibit Number Twenty-
14 six, and when you see a row of wood studs like that, that's
15 the type of surface that you would nail the sheet rock to,
16 is that right?

17 A. Right. We done, as a matter of fact, we was just done
18 finished putting the insulation in the walls and everything,
19 preparing for that.

20 Q. Okay. Is that, I'm going to show you what's been marked
21 as Number Twenty-eight, is that a little bit of sheet rock
22 going on right there?

23 A. Yes, sir.

24 Q. Okay. And so, this, the white board, sheet rock board
25 was going to go onto these studs?

1 A. Right.

2 Q. Alright. And so, let me show you, like, Number Twenty-
3 five, you see the yellow wire running through the studs
4 there?

5 A. Yes.

6 Q. Okay. You had to get the electrical inspected before
7 you put the sheet rock on, right?

8 A. Right.

9 Q. Okay. But for instance, on some of these boards you see
10 a little bit, it looks a different color, one looks more
11 board color?

12 A. Yeah, because of the water.

13 Q. Okay.

14 A. Well, it really was soot and water, we pressure washed
15 and cleaned a lot of that off and stuff.

16 Q. But even though they had the discoloration of the black
17 soot on them, that, would that affect their ability to have
18 sheet rock nailed to them?

19 A. No. No, we just done that because we want to get the
20 smoke stuff out of the house to keep from ...

21 Q. The smell?

22 A. Right.

23 MR. KULMALA: Your Honor, I have to object. I think
24 we're getting into areas that would maybe require expertise.
25 He has not been qualified as an expert concerning the load

1 bearing capabilities and so forth.

2 THE COURT: Okay.

3 MR. KULMALA: And he's not, my understanding, not
4 licensed as a general or residential contractor. He's not a
5 structural engineer, so I believe he's getting into an area
6 of expert testimony.

7 THE COURT: Okay. And bear with me one second. I'm
8 trying to remember what -- did you ask him about his
9 qualifications?

10 MR. HUTTO: I did.

11 THE COURT: And I don't remember. What ...

12 MR. HUTTO: He said, vinyl siding, carpentry and, and
13 what else?

14 A. I'm a roofer, well, I was a general contractor for
15 years, since Hugo.

16 Q. Okay.

17 A. Then I, I had, I lose my license back in about eight
18 years ago from being a general contractor. And then, me and
19 my son ended up taking over, doing it over again.

20 Q. Okay.

21 A. So, that's why I'm not, I'm classifying myself for what
22 I'm registered as of now, my specialties.

23 Q. Alright. At one time you were a general contractor?

24 A. Yes, sir.

25 Q. Okay. That license expired and when you went to renew

1 it, you renewed it as a specialty contractor?

2 A. Right.

3 Q. And what specialties, I think what the Judge is saying,
4 what specialties?

5 A. I'm carpentry.

6 Q. Okay.

7 A. Some in electrical.

8 Q. Okay. But you know what putting up sheet rock is?

9 A. Oh, yes, I know the building from the ground up.

10 THE COURT: Okay. I think his objection was, any
11 testimony about whether it was load bearing walls or not.

12 MR. KULMALA: He was expressing opinions about the
13 structural strength and integrity of the members, and I
14 believe that goes into requiring him to be designated as an
15 expert.

16 THE COURT: Okay, well, I think the only questions he's
17 been asking, and we'll clarify it for the record, he was
18 just testifying as to which walls were prepared to put the
19 sheet rock on. If he's going into anything about the
20 structural integrity I would ask you to disregard it.

21 MR. KULMALA: There were some indication or questions
22 about the strength, and I believe that that goes far afield.

23 THE COURT: I don't recall that, but I would limit your
24 examination of him to just what he's qualified to answer.

25 Okay, Mr. Hutto?

1 MR. HUTTO: Yes, sir.

2 THE COURT: Okay.

3 MR. HUTTO: But I think he did this work under the
4 supervision of the city.

5 Q. Mr. Coulter, let me ask you this, what, the pictures
6 that I was showing you, Number Twenty-five through Thirty-
7 one, as far as getting, I think almost all of them show wood
8 surfaces in here. Did you redo the wood that's here in
9 preparation for putting up sheet rock on this surface?

10 A. Yes.

11 Q. Okay. Now, just for instance, let's take this one right
12 here, other than the fact that there's still trash on the
13 floor, structural, is there anything else that needs to be
14 done to get the sheet rock on the walls?

15 A. Structural, on this picture you're missing the
16 insulation that we usually put on the side.

17 Q. Okay. So, this one hasn't been -- there's a piece of
18 insulation, and typically what you do is, you put the
19 insulation in the wall?

20 A. Yes, sir, between the joists.

21 Q. Between. Alright, so that had to be done, and on this
22 one where it shows the wiring, which is Number Twenty-five,
23 - - -

24 A. Right.

25 Q. --- you would put, that would be ready to put sheet rock

1 on?

2 A. Yes.

3 Q. Okay. And then, there's, I'm going to show you this
4 one, like it obviously looks like a bathroom because it's
5 got a bath tub in it, Number Thirty, there's still some
6 black in there, I guess from soot or whatever?

7 A. That's kind of like ceramic tile. That's why come you
8 see that soot on that ceramic. We didn't clean the ceramic
9 off yet.

10 Q. Alright. Y'all were still doing carpentry work in all of
11 the house?

12 A. Right.

13 Q. Okay. So, it wasn't any real need to clean up until you
14 had finished, was it?

15 A. Right, correct.

16 Q. Okay. Now, I'm going to show you what's been marked as
17 Number Twenty-nine. That looks like some discoloration on
18 that board.

19 A. Right.

20 Q. Just because a board is discolored, does that mean you
21 can't, can't use it?

22 A. No, sir.

23 Q. Okay. Did you check all of the boards in the areas that
24 you were responsible for?

25 A. Right.

1 Q. Did you replace the ones that the city required you to
2 replace?

3 A. Yes, sir.

4 Q. Okay. What was left, when you were, well, I guess you
5 were still working on the house right up until the time that
6 they bulldozed it, right?

7 A. Yes, sir.

8 Q. What was left to be done?

9 A. The outside, the, we call it the eaves, - - -

10 Q. Right.

11 A. --- we was going to put better eaves in, and we was
12 going to put around the facial boxings and stuff like we was
13 outside doing that then. And we had some, still some
14 plumbing yet to do before we could close anything in, all
15 the sheet rock in, we had a good little bit of plumbing to
16 the bottom to do yet. And in that corner, up in the top it
17 has a little bit of plumbing we had yet to do there because
18 we had the water running, after -- we had worked on the
19 plumbing as a matter of fact then, too, because after we cut
20 the water on the water was still leaking out some of the
21 copper lines. So then Mr. Nelson told me about - - -

22 MR. KULMALA: Your Honor, we're getting into again,
23 recitation, or hearsay. He's saying, Mr. Nelson told me.

24 A. Well, - - -

25 THE COURT: Hold on one second. I thought he was just

1 going over what repairs he needed to make.

2 MR. KULMALA: Well, he was, but then he characterized
3 it as, Mr. Nelson told me, and I believe that's blatant
4 hearsay.

5 THE COURT: Well, just, if you would just -- hold on
6 one second. Mr. Coulter, if you would just tell us exactly
7 what you had left to do. Okay?

8 A. A little bit of plumbing still had needed to be done
9 with the copper, I mean, copper tubing for the plumbing,
10 some of that had still needed to be replaced before we
11 closed anything in. And a little brief cleaning, and the
12 sheet rocking, and finish the insulation.

13 Q. Okay. So, a little bit of the, the better work around
14 the outside and the facial boards around the outside, and
15 then finish up some plumbing, the sheet rock, the floors and
16 ceilings, right?

17 A. Right.

18 Q. Okay. And you had been making draws against your
19 contract with Dr. Chak up to that time. About how much
20 more, if you can, tell us about how much more dollar work
21 was left to do in that house?

22 A. With the cost of the stuff that we had agreed on it was
23 still about, at least Thirty thousand Dollars more needed to
24 be done to that home yet.

25 Q. Okay. But was most of that inside or outside?

1 A. Mostly inside.

2 Q. Okay. Other than those two, what you call them, metal
3 eaves?

4 A. Yeah.

5 Q. Okay. Other than that, and the facial board around the
6 outside, was there anything else outside that was left to be
7 done?

8 A. And around the chimney where the guy had done the
9 chimney before, he didn't flash it correctly, like it was
10 supposed to be, it had a part chip on it, one of the bowls
11 when we was working on the inside taking the rafters out we
12 had to change out, we actually pushed it up, and that caused
13 the shingles to stick up on the front a little bit, but we
14 pushed that up by taking the rafters and pulling the rafters
15 back off the top, underneath there.

16 Q. So, you would have had to fix that one area where the
17 shingles were pushed up?

18 A. Right.

19 Q. Okay. As you worked, and maybe not every day, but as
20 you worked did people from the city come by and look at your
21 work?

22 A. He checked it thoroughly.

23 Q. Okay. Mr. Nelson did?

24 A. Yes, he did.

25 MR. HUTTO: Okay. Thank you. Answer any questions

1 that Mr. Kulmala might have.

2 THE COURT: Alright, Mr. Kulmala, your witness.

3 MR. KULMALA: Thank you, Your Honor.

4 (NOTE: Blank lines on this page do not indicate any part of
5 record has been omitted. Headers on testimony pages and
6 hard page breaks between testimony are now required by the
7 Court. See next ensuing page for sequential continuation of
8 record.)

1 JOHNNIE COULTER - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Coulter, when was your last date on the job,
4 approximately when?

5 A. Approximately the date of the demolition.

6 Q. And you started with a contract with Dr. Chakrabarti in
7 what, December of Two thousand four?

8 A. Yes.

9 Q. And how much was your contract for?

10 A. I'm trying to remember.

11 Q. Mr. Hutto went over a number of checks with you when you
12 first got on the witness stand. Do you remember that?

13 A. Yes.

14 Q. What's the total amount of the checks that you received
15 from Dr. Chakrabarti?

16 A. I didn't really add all of them up. Let's see, ...

17 Q. Did you have an estimate or a budget that you were
18 working on for the house?

19 A. Yeah, it was, I think it was a hundred and fifty
20 thousand or something like that, I'm not really sure.

21 Q. A hundred and fifty thousand?

22 A. Yeah, with material and labor, I guess, I don't remember
23 exactly how much it was. I think it -- I'm not sure.

24 Q. Okay.

25 A. That was a good little while ago, I done done several

1 things, I just ...

2 Q. Defendant's Exhibit Thirteen is the application for a
3 building permit for December of Two thousand four, and it
4 shows, Carpenter, Artis Coulter. That would be you and your
5 son - - -

6 A. Right.

7 Q. --- or your son's business? And you said you think the
8 contract that you had with Dr. Chakrabarti was about a
9 hundred and fifty thousand?

10 A. I just don't remember that, the price because my son had
11 handled that part of it.

12 Q. But the number you just gave was a hundred and fifty
13 thousand?

14 A. I was really trying to calculate the checks that I had
15 seen just now, then what was what. But being only adding
16 up, I didn't never done that yet.

17 Q. If you would, look on this per -- you're familiar with
18 these permit applications, I guess?

19 A. Yes.

20 Q. Okay. Tell me what the estimated value of repair is
21 December of Two thousand and four? It's over on the right
22 hand side.

23 THE COURT: Step around and show it to him.

24 Q. Right here, renovation and repair, estimated cost?

25 A. Yeah, that was correct, that's what we, according to the

1 contract.

2 Q. But my question is, what is the amount there?

3 A. Thirty thousand.

4 Q. Thirty thousand. And you were paid over a hundred
5 thousand?

6 A. No, huh-uh. I wasn't paid over a hundred thousand, I
7 was just saying I estimated what we was figuring everything
8 would be once I finished.

9 Q. Over six months you got all of these checks that were
10 payable to Johnnie Coulter - - -

11 A. Right.

12 Q. --- that numbers have been thrown around today, I think
13 in excess of a hundred and twenty thousand?

14 A. Yeah.

15 Q. And you said that there was still about Thirty thousand
16 Dollars of work to be done?

17 A. Right.

18 Q. And the permit application with the City of Orangeburg
19 says, Thirty thousand?

20 A. That's what it have on it.

21 Q. Somebody kind of missed the target on that one, didn't
22 they?

23 A. Yes, sir.

24 Q. Plaintiff's Exhibit Number Sixteen, that's a permit that
25 hangs up on the job site, or a copy of the permit that hangs

1 on the job site?

2 A. Yes, sir.

3 Q. And what are all these little lines and stuff down here,
4 is that where the city inspector comes by and looks at
5 things and approves it?

6 A. I guess, that's what it's for.

7 Q. Okay. And when, we got nobody, no initials on this
8 building permit, do we?

9 A. I don't see none on no lines, but he been there watching
10 and checking everything. Everything that we done there he
11 inspected.

12 Q. You were the contractor on this job?

13 A. Yes, sir.

14 Q. And inspections happen when the contractor calls and
15 says, I'm ready to do this, I want you to come check this
16 out?

17 A. Right.

18 Q. Okay. And this was your permit, you as the contractor
19 in December of O-four?

20 A. Say that again?

21 Q. This is the permit with you being the contractor from
22 December of o-four, correct?

23 A. Mike is the contractor, I'm the overseer.

24 Q. Okay.

25 A. So he's the one that do all the calling and all, but I

1 be out there on the job site daily when they do come in.

2 But when he comes in and look over it, before he calls the
3 inspector in, he's the general contractor, we just be under
4 him.

5 Q. And during the time that you've been on the witness
6 stand I've heard words like, the city is supervising, and
7 the city's approving and everything, but this is the
8 document that shows the city's approval or not approval,
9 doesn't it?

10 A. Yes, that's what I told you.

11 Q. And you've got no approvals on there?

12 A. Evidently he ain't filled out and signed that one,
13 because we was still ...

14 Q. The permit on your job's got no approvals?

15 A. Okay.

16 Q. Do you agree with me?

17 A. I see what you're saying.

18 Q. You saw the video tape this morning?

19 A. Yes.

20 Q. And did you recognize the building, the project from
21 what you saw on the video tape?

22 A. Yes.

23 Q. And do you agree that that was the condition of the
24 building at about the time it was demolished?

25 A. Well, some, yeah, most of that, most of it.

1 Q. And so, what we looked at today, or whatever was ten
2 minutes on video tape, you agree that that was the way it
3 looked in June of Two thousand five?

4 A. Well, looking at, by looking at that on there, what I
5 seen, I just didn't see none of the, most of the roof
6 structure stuff. That stuff was actually new stuff, so I
7 don't understand why they shouldn't have, it seemed like it
8 should have had a little more cleaning up, more wood work
9 than it did.

10 Q. Well, you said you worked on it the day before it was
11 demolished - - -

12 A. Yeah.

13 Q. --- up until the day before it was demolished, - - -

14 A. Right.

15 Q. --- did that video tape show the condition of the house
16 about the time it was demolished?

17 A. Yeah, basically.

18 Q. Okay. And then, from that point you had Thirty thousand
19 Dollars more of work based on your estimate?

20 A. I'm saying that with the flooring and carpet and
21 cosmetic, yeah.

22 Q. And I said, estimate, but actually, the permit said a
23 total of Thirty thousand, and you're indicating that it
24 would be Thirty thousand more than what you were already
25 paid?

1 A. Right.

2 Q. If you look at that video tape, do you see a hundred
3 thousand dollars of work in there?

4 A. Yeah.

5 MR. KULMALA: Thank you, sir.

6 THE COURT: Anything on redirect?

7 MR. HUTTO: Yeah, a few things.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and
10 hard page breaks between testimony are now required by the
11 Court. See next ensuing page for sequential continuation of
12 record.)

1 JOHNNIE COULTER - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. I mean, when you get the copy of this before you
4 actually put it up on the wall, if somebody runs a Xerox
5 copy of it as soon as you get it from the city before you
6 take it to the job site is it going to have anything written
7 on it?

8 A. No.

9 Q. Okay. Out of the monies that were paid to you, part of
10 it had to be paid to Mr. Stroman?

11 A. Right.

12 Q. Y'all had to also consult with an architect, and some of
13 those checks show that you had to pay the architect, is that
14 right?

15 A. Right.

16 Q. Some of the monies paid to you were for supplies?

17 A. Right.

18 Q. And some was for labor?

19 A. Right.

20 Q. Okay. And then also, when you had said what was left to
21 do, part of what was left to do, for instance, the carpet,
22 you hadn't agreed to, I mean, that was something that was
23 left to do, but that was something you didn't have to do?

24 A. No, sir, it wasn't.

25 Q. Not under your contract, right?

1 A. No, sir.

2 Q. Okay. And one other thing, when the, when the estimate,
3 or the application or whatever was put in, and he was saying
4 it was like Thirty thousand Dollars, until you got on the
5 job site and saw that Mr. Nelson was going to make you redo
6 some of what Mr. Ott had already approved for Mr. Darby - -

7 -

8 A. Correct.

9 Q. --- you didn't know that, did you?

10 A. Right. That's what changed it a little bit, because
11 when I first looked over the house for what I seen I give
12 him that estimate. And then, once the inspector came in and
13 indicated what he wanted done and how he wanted it done, it
14 changed everything.

15 MR. HUTTO: Okay. Thank you.

16 THE COURT: Anything on recross?

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18 record has been omitted. Headers on testimony pages and
19 hard page breaks between testimony are now required by the
20 Court. See next ensuing page for sequential continuation of
21 record.)

1 JOHNNIE COULTER - RE CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. You said you had to have an architect?

4 A. Yes, sir.

5 Q. And do you have any drawings or plans that you used that
6 were from the architect?

7 A. Mr. Anderson from Columbia came down and talked to Mr.
8 Gene with me. He was the architect. And, because he wanted
9 to find out if the structural down here of the water weight
10 and stuff like that, and they talked it over and made some
11 suggestions what to do with the roof, and we did do that for
12 him.

13 Q. And the money for the architect was included within
14 those checks to you, Johnnie Coulter?

15 A. Right.

16 Q. And you paid the architect?

17 A. Yes.

18 Q. And his name was Anderson?

19 A. Yes, sir.

20 Q. Well, who was E-Nunk?

21 A. E-Nun, that's his name, that's his name, sir. I just
22 ain't talked to him, and that's his name, Mr. E-Nun.

23 Q. But he's not a licensed architect, is he?

24 A. Yes, sir, in Columbia.

25 Q. His name is E-Nun?

1 A. Yes, sir.

2 COURT REPORTER: Spell that.

3 MR. KULMALA: It's E, dash, N-U-N-K.

4 A. It's in Columbia off of Winnsboro Road, it's a place out
5 there.

6 Q. Mr. E-Nun didn't prepare any plans or any kind of
7 listing of what timbers or members had to be cut out and
8 removed, did he?

9 A. Yes, I'm pretty sure he did, but he dealt with Mr. Mike
10 on that.

11 Q. He dealt with who?

12 A. Mr. Mike, the general contractor.

13 Q. Stroman?

14 A. Yes, sir.

15 Q. Okay. And, and how much were your architecture fees out
16 of that?

17 A. Architect, I think he had charged something like Ten per
18 cent or something like that, Ten thousand. When he drewed
19 his drawings up, I think it was like Ten thousand, Seven to
20 Ten thousand Dollars for everything.

21 Q. So, that house that we saw on the video today, that's
22 six months into the permit with -- six months into the
23 permit with Ten thousand Dollars of architectural work and
24 over a hundred thousand Dollars of renovation work?

25 A. All this was mixed in together. It was not, I meant, I

1 don't know how you're separating them, but I'm saying, when
2 you look at, when you count up the checks and stuff,
3 everything, as we done anything he had to give a receipt,
4 and a standard for right before, and give it to Dr. Chak
5 before we can get paid anything.

6 MR. KULMALA: Thank you, sir.

7 THE COURT: Thank you, sir, you may step down.

8 Call your next witness, please, sir.

9 MR. HUTTO: Mr. Holler.

10 THE COURT: If you would put your left hand on the
11 Bible, please, sir, and raise your right hand, please, sir.
12 The Clerk's going to swear you in.

13 CLERK: State your name for the record, please.

14 WITNESS: Bruce D. Holler.

15 (Whereupon, Bruce D. Holler
16 is duly sworn.)

17 CLERK: Thank you.

18 THE COURT: Alright, Mr. Holler, if you would just get
19 up there and get comfortable, and make sure you speak loud
20 enough so we can hear you. Thank you, sir.

21 (NOTE: Blank lines on this page do not indicate any part of
22 record has been omitted. Headers on testimony pages and
23 hard page breaks between testimony are now required by the
24 Court. See next ensuing page for sequential continuation of
25 record.)

1 BRUCE D. HOLLER - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Your name, please?

4 A. Bruce D. Holler.

5 Q. And Mr. Holler, where do you live?

6 A. Right now I'm retired.

7 Q. Okay. And do you live in Orangeburg now?

8 A. Yes, sir.

9 Q. How long have you lived here?

10 A. Nineteen Seventy-eight.

11 Q. Okay. What are you retired from?

12 A. Chemistry at Albermarle-Ethel, and then with my wife at
13 Surf-speedy.

14 Q. Okay. And do you recall a house on Middleton Street
15 burning down?

16 A. Yeah.

17 Q. And did you have the opportunity to be in that
18 neighborhood and watch what was going on?

19 A. Yes, sir.

20 Q. And can you just give us your observations as you --
21 tell us why you were in the neighborhood a good bit and what
22 you observed?

23 A. I was working on a house on Green Street, and I would
24 have to go to Lowes to get material every once in a while,
25 and I would go across, come down Middleton, cross up to go

1 to Lowes, - - -

2 Q. Okay.

3 A. --- and I'd pass the house.

4 Q. And what were your observations as you rode by and were
5 looking at the house?

6 A. I thought everything was going normal, that it was doing
7 alright. The lawn looked like it was being kept up, the
8 house was being worked on, the roof got done. I'd see
9 workers there, I'd go by two or three times a day, a couple
10 of times a week.

11 Q. Okay. And so, as far as there being somebody there and
12 working on the house and keeping it up and that kind of
13 thing, it looked to you when you passed by on many, many
14 times that things were getting done?

15 A. Yes, sir.

16 Q. Okay.

17 MR. HUTTO: Answer any questions that they might want
18 to ask you.

19 THE COURT: Mr. Kulmala.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and
22 hard page breaks between testimony are now required by the
23 Court. See next ensuing page for sequential continuation of
24 record.)

1 BRUCE D. HOLLER, CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Holler, you, did you, do you know Dr. Chakrabarti?

4 A. Yes, sir.

5 Q. And how do you know him?

6 A. Through the clubs here in town.

7 Q. Okay. And how long have you known Dr. Chakrabarti?

8 A. You're asking me to remember many years, I don't know,
9 five, ten years.

10 Q. Okay. And were you aware that he had bought the house
11 at some time shortly after the fire?

12 A. No.

13 Q. When did you find out that Dr. Chakrabarti was the owner
14 of Twenty-two Forty-three?

15 A. When the article appeared in the paper.

16 Q. Okay. And did you contact him at some point?

17 A. No, sir.

18 Q. How did you come to be contacted for being a witness
19 here today?

20 A. I saw him one day at Lowes and we talked about it, and
21 he asked me if I would describe what I saw.

22 Q. Okay. Had you ever been inside the house?

23 A. No, sir.

24 Q. Were you present this morning when we ran the video?

25 A. I didn't see the video.

1 Q. Okay. So, you don't have any idea what the inside of
2 the house looked like?

3 A. No.

4 Q. Or what it looked like at the time of demolition?

5 A. No.

6 Q. Do you, I think you said your background is in
7 chemistry?

8 A. Yes, sir.

9 Q. Do you have any, any credentials or certification of any
10 sort relating to general contractor and building inspecting?

11 A. Yes, sir. I was building a house. I was working on a
12 house.

13 Q. Okay. And what, are you licensed contractor?

14 A. No, sir.

15 Q. Okay. And what are the credentials that you referred
16 to?

17 A. What's my credentials?

18 Q. Credentials as a contractor.

19 A. Well, I worked with my father as an electrician for
20 eight years.

21 Q. Okay. But, I mean, you're not a licensed contractor or
22 a specialty contractor in South Carolina?

23 A. No.

24 Q. Okay. Had you in passing by Twenty-two Forty-three ever
25 stopped to get out and walk around and look?

1 A. No, sir, I had no reason. I had not reason to.

2 Q. Okay, so what your view, or your impression is from a
3 drive by from out on the street?

4 A. Yes, sir.

5 Q. Okay. And you don't have any knowledge or information
6 whatsoever about the degree of work that was done or was
7 being done on the inside?

8 A. No, sir.

9 MR. KULMALA: That's all the questions I have, sir.
10 Thank you.

11 THE COURT: Anything on redirect?

12 MR. HUTTO: Just briefly.

13 (NOTE: Blank lines on this page do not indicate any part of
14 record has been omitted. Headers on testimony pages and
15 hard page breaks between testimony are now required by the
16 Court. See next ensuing page for sequential continuation of
17 record.)

1 BRUCE D. HOLLER - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. But you do know from observations on the outside that a
4 considerable amount of progress had been made from the fire
5 until ...

6 A. Yeah, yes, sir.

7 Q. And when you talked about seeing it in the paper, they
8 had a thing in the paper the day it got bulldozed down?

9 A. Right.

10 Q. Okay.

11 MR. HUTTO: Alright, that's all the questions I have.

12 THE COURT: Anything on redirect, I mean, recross,
13 excuse me. Sir?

14 MR. KULMALA: Nothing further.

15 THE COURT: Okay. Alright, thank you, Mr. Holler, you
16 may step down.

17 MR. HUTTO: I call Mr. Middleton.

18 THE COURT: Okay.

19 COURT REPORTER: What name?

20 MR. HUTTO: Kenneth Middleton.

21 THE COURT: Please place your left hand on the Bible
22 and raise your right hand.

23 CLERK: State your name for the record, sir?

24 WITNESS: Kenneth Earl Middleton.

25 (Whereupon, Kenneth Earl Middleton

1 KENNETH EARL MIDDLETON - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Mr. Middleton, you live here in Orangeburg?

4 A. Yes, sir.

5 Q. Okay. And what's your occupation or business?

6 A. Real estate broker.

7 Q. Okay. And what's the name of your business?

8 A. Middleton and Associates Realtors.

9 Q. Alright. And as -- and you're licensed in that?

10 A. Yes, sir.

11 Q. Okay. And being a licensed realtor, do you have the
12 occasion to know a lot about houses, and look at houses and
13 that type of thing?

14 A. I hope so.

15 Q. Okay. Did you have the occasion to notice the house on
16 Middleton Street after the fire?

17 A. Yes, sir.

18 Q. And did you have a chance to go by there and be looking
19 at it as the progress was being done?

20 A. Yes.

21 Q. Tell the jury what you saw?

22 A. I just saw a house in the process of being remodeled
23 over time.

24 Q. Okay. And did it appear to you from your observations
25 that things were moving along?

1 A. I'd say near the end, yes.

2 Q. Okay. And did you, did you, how did you find out that
3 it got knocked down, or whatever, bulldozed?

4 A. I just drove by and front end loaders or whatever the
5 equipment was out there, literally knocking it down.

6 Q. Were you surprised?

7 A. Yes, sir.

8 Q. Okay. And as far as the appearance of the house, and I
9 realize that you didn't go in -- I'm going to ask you this,
10 did you go in the inside?

11 A. No.

12 Q. Okay. But from the outside, as you're going through the
13 neighborhood and watching that house come about from the
14 time it was burned to the time that it eventually got
15 demolished, could you see progress being made?

16 A. Yes, sir.

17 Q. Okay.

18 MR. HUTTO: Answer any questions that they might have.

19 THE COURT: Mr. Kulmala.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and
22 hard page breaks between testimony are now required by the
23 Court. See next ensuing page for sequential continuation of
24 record.)

1 KENNETH EARL MIDDLETON - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Middleton, you've been a real estate broker for a
4 number of years, right?

5 A. Thirty-three, Thirty-four years, yes, sir.

6 Q. And you're acquainted with Dr. Chakrabarti?

7 A. I am.

8 Q. As a matter of fact, you've been involved in some
9 transactions either as a broker or a real estate agent for
10 Dr. Chakrabarti?

11 A. Yes, sir.

12 Q. And you've made money earning commissions and dealing
13 with Dr. Chakrabarti?

14 A. Absolutely.

15 Q. The, the -- I believe you just testified that you did
16 not get out and go look inside the house at any point?

17 A. I did not.

18 Q. Your observations are from drive by also?

19 A. Yes.

20 Q. And you didn't get out and walk around or anything?

21 A. No, sir.

22 Q. You testified a few minutes ago about progress being
23 made, I think you said toward the end?

24 A. I was talking about the timing.

25 Q. That's right, toward the end of the time frame, just

1 before it was demolished?

2 A. I wouldn't necessarily say just before it was being
3 demolished, but the progress seemed to pick up more momentum
4 prior to its being demolished.

5 Q. As a realtor I know you don't build houses, you move
6 them, you sell them, buy them, and so forth, but are you
7 generally familiar with how long it takes to build a house?

8 A. I would say so.

9 Q. Does two years sound like a long time for building a
10 house?

11 A. Oh, everything is relative.

12 Q. Sure.

13 A. The house was in really bad shape, and so it was a lot
14 of intricate work, I imagine, to be done. So, ...

15 Q. Well, you're speculating about the work to be done,
16 though, would you not?

17 A. It's all speculation, sir.

18 Q. But over two years doesn't sound like a long time for a
19 building permit to restore a house?

20 A. I have no professional opinion in that matter. As you
21 said, it's speculation on my part.

22 MR. KULMALA: Alright, thank you, sir.

23 THE COURT: Anything on redirect?

24 (NOTE: Blank lines on this page do not indicate any part of
25 record has been omitted.)

1 KENNETH EARL MIDDLETON - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Just so, in the other transactions or whatever that
4 you've done with Dr. Chakrabarti as far as buying a house,
5 fixing it up, putting it on the rental market or reselling
6 it or whatever, has he always been professional in his
7 dealings with you in getting the money together to do the
8 repairs or whatever it took to fix the house up so that you
9 as a realtor could present it?

10 A. Yes, sir.

11 MR. HUTTO: Okay, thank you.

12 THE COURT: Anything on recross?

13 MR. KULMALA: Nothing further.

14 THE COURT: Alright. Thank you, Mr. Middleton.

15 MR. MIDDLETON: Yes, sir, thank you.

16 THE COURT: Call your next witness.

17 MR. HUTTO: We'd call Mr. Yow.

18 THE COURT: Okay.

19 Please place your left hand on the Bible and raise your
20 right hand.

21 CLERK: State your name for the record, sir.

22 WITNESS: John H. Yow.

23 CLERK: Would you raise your right hand? Thank you.

24 (Whereupon, John H. Yow
25 is duly sworn.)

1 JOHN H. YOW - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You're John Yow?

4 A. Yes.

5 Q. And what is your position?

6 A. City Administrator.

7 Q. And as the City Administrator are you, in essence, the
8 Chief Executor Officer for the City of Orangeburg?

9 A. Chief Administrative Officer, yes, sir.

10 Q. Chief Administrative Officer. And who do you work for?

11 A. The mayor and the city council.

12 Q. Alright. And the mayor was in here a little bit
13 earlier, was he not?

14 A. Yes, sir.

15 Q. Okay. And so, how long have you been the City
16 Administrator for the City of Orangeburg?

17 A. Twenty years.

18 Q. Alright. And where do you live?

19 A. Middleton Street, Nineteen ten Middleton Street.

20 Q. So, you live on Middleton Street?

21 A. Yes, again, Nineteen ten Middleton Street.

22 Q. How far do you live from where this house was?

23 A. Several blocks. I live close to one end and the house
24 is close to the other.

25 Q. Alright. And how is that out of all the houses in

1 Orangeburg that's got problems with them and boarded up and
2 in need of repair that this is the house that the city chose
3 to tear down?

4 A. I think it was difficulty with your client, sir.

5 Q. Okay. And did you make this decision?

6 A. No, sir.

7 Q. Okay. But you passed this house every day because you
8 live just down the street?

9 A. Not every day, no.

10 Q. Alright. But you're the, you're the person who -- well,
11 how far does the mayor live from this house?

12 A. You'd have to ask the mayor that, sir.

13 Q. Alright. But you know he lives over on Pike Street
14 about two blocks away?

15 A. As you do.

16 Q. Alright. But the jury might not know that.

17 A. Okay.

18 Q. Alright, now, your office is where?

19 A. Middleton Street, Nine Seventy-nine Middleton Street.

20 Q. Right next to this dilapidated building, is it not?

21 A. Yes, sir.

22 Q. How come you haven't knocked that one down?

23 A. I don't think they're trying to move anyone into that
24 building and subject them to health and safety hazards.

25 Q. Alright, but nobody had made a permit for occupancy on

1 Dr. Chakrabarti's building either.

2 A. But he's testified that was his intention.

3 Q. Eventually, but he had to go through the process until
4 the city bulldozed it, right?

5 A. We were trying to get him to go through the process.

6 Q. Alright. And have you tried to get the people that own
7 this building right across from -- you look out your window,
8 you look out at this every day.

9 A. No, I can't see it out of my window, but I do see it,
10 yes.

11 Q. Okay. But you haven't been knocking this one down?

12 A. No, I've already said that, yes, sir.

13 Q. Alright. Who owns the lot at Two Two Four Three
14 Middleton right now?

15 A. I heard testimony earlier that we do, the City of
16 Orangeburg.

17 Q. The City of Orangeburg. And did the City of Orangeburg
18 ever pay Dr. Chakrabarti any money to get that title of
19 that land from his name into your name, I mean, not your
20 name but ...

21 A. No, sir, I think that property, the taxes were not paid
22 on that property and the property went through the tax
23 process through the -- I'm not sure of that but I think
24 that's correct.

25 Q. Okay. But you never, and I don't mean you, I realized

1 I'm asking you in your professional position.

2 A. Right, right.

3 Q. The City of Orangeburg prior to demolishing his house,
4 never paid him any money?

5 A. No, sir, we did not obtain ownership through the razing
6 of the structure. It was for non payment of taxes if I'm
7 correct.

8 Q. Well, that may be, but that's not what I asked you. I
9 asked you if prior to demolishing his house the City of
10 Orangeburg paid him any money?

11 A. Of course not.

12 Q. Alright. But when the City of Orangeburg takes other
13 property they pay people money, do they not?

14 A. We didn't take this property.

15 Q. Well, did you, are you not aware that y'all sent him a
16 notice that said something about condemnation, that y'all
17 were condemning this property?

18 A. That's not a taking of the property, that was removing
19 the unsafe structure.

20 Q. The City of Orangeburg hired the bulldozers that went on
21 this property and knocked it down?

22 A. That's correct.

23 Q. Okay. But did not pay him before you did that?

24 A. Of course not.

25 Q. And have not paid him since?

1 A. We haven't paid anyone in any years for houses that have
2 been condemned for unsafe structures.

3 Q. And this, y'all were sued this time, though.

4 A. The first time ever.

5 Q. Right. Because somebody is finally standing up to the
6 City of Orangeburg. Dr. Chakrabarti, right?

7 A. I don't think that's the case. That's your words.

8 MR. HUTTO: I don't have any other questions.

9 THE COURT: Anything on cross-examination?

10 MR. KULMALA: Your Honor, I don't think I'll be cross-
11 examining Mr. Yow at this point. I may, subject to my right
12 to recall him in my case in chief.

13 THE COURT: Okay. You're going to reserve the right to
14 recall him in your case in chief. Okay. Alright.

15 Mr. Yow, you may step down, and you may be recalled
16 later.

17 MR. YOW: Alright, thank you, sir. Okay.

18 THE COURT: Thank you, sir.

19 MR. HUTTO: Your Honor, if we're at a stopping point,
20 we might have one other person in the morning. If the Court
21 would allow us to stop at this point?

22 THE COURT: It's five o'clock. Any objection to that,
23 Mr. Kulmala?

24 MR. KULMALA: No objection.

25 THE COURT: Alright. And could I see y'all up here

1 GENE NELSON - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Good morning, Mr. Nelson.

4 A. Good morning.

5 Q. You work for the city of Orangeburg?

6 A. Yes, sir.

7 Q. And what's your current title?

8 A. My current title is code enforcement.

9 Q. Code enforcement? You're familiar with the house at Two
10 Two Four Three Middleton Street?

11 A. Yes, sir.

12 Q. And at the time that that house was condemned by the
13 city and eventually demolished you were the building
14 official at that time?

15 A. Yes, Building Official Zoning Administrator.

16 Q. Okay. So, you were the person ultimately charged with
17 making the decision of whether or not to condemn it and
18 demolish it, is that right?

19 A. That's correct.

20 Q. Okay. So, here's the question I want to ask you, prior
21 to doing that did you ask either of the Chakrabartis for
22 their permission to do that?

23 A. As the Code Enforcement Officer I don't have to ask
24 their permission.

25 Q. Okay. I understand that, but you didn't, either, did

1 you, you did not?

2 A. As the Code Enforcement Officer I don't have to ask
3 their permission. When I find properties that are in
4 disarray or in a condition that's a danger to the city I
5 have the right to condemn it by notifying them initially.

6 Q. Okay. What I have marked here is Exhibit Number Thirty-
7 three, which shows a brick house on Middleton Street, it
8 came from a video, I guess, that you or somebody from the
9 city produced. Prior to demolishing it did y'all make any
10 determination as to how much money it would take to bring it
11 to what you would consider to be not in violation of the
12 Code?

13 A. That's not my job to do an estimate. I'm not ...

14 Q. Yes, sir, and twice now you've told me what your job
15 was, but my question is, did you do it?

16 A. I, that's not my job, I don't, I'm not a licensed
17 contractor to determine how much it's going to take. I
18 don't deal with money, I deal with the Code and the
19 structure being built to the Code.

20 Q. Okay. So, a Code can be anything from electrical work,
21 plumbing work, what else?

22 A. Structural.

23 Q. Structural work.

24 A. Heating and air.

25 Q. Heating and air. Alright, but you don't go around every

1 time there's a violation and demolish somebody's house, do
2 you?

3 A. No.

4 Q. Okay. But in this case you didn't ask their permission
5 and you didn't find out what was left to do?

6 A. Yes.

7 Q. Yes, you did not, or yes, you did?

8 A. Ultimately when he, we had a meeting with him, we
9 defined what he had to do.

10 Q. Alright, that was back before the permit was issued, is
11 that correct?

12 A. The second permit.

13 Q. Right. That was like in August or September of O-four?

14 A. Correct.

15 Q. And so, the house wasn't torn down until August of O-
16 five?

17 A. Correct.

18 Q. Okay. He had another ...

19 A. That was ample time to correct.

20 Q. After that meeting in August and September of O-four did
21 you meet with him again in O-five?

22 A. No.

23 Q. The year that the house was torn down you didn't meet
24 with him at all?

25 A. He never responded to my letters and never came in, no.

1 Q. Are you saying you never had any conversations with him
2 in O-five?

3 A. I don't think until the day that we tore the house down.
4 Everything was done by correspondence.

5 Q. Alright.

6 MR. HUTTO: That's all the questions I have, Your
7 Honor.

8 THE COURT: Anything on cross?

9 MR. KULMALA: Your Honor, I'm not going to cross, I'll
10 reserve my questions for my case in chief.

11 THE COURT: Alright, sir. Thank you, sir, Mr. Nelson,
12 you may step down.

13 Alright, Mr. Hutto, if you'd call your next witness.

14 MR. HUTTO: That's all the witnesses plaintiff intends
15 to call at this time.

16 THE COURT: Alright, sir.

17 Alright, ladies and gentlemen, you have now heard all
18 of the testimony in the plaintiff's case. We will take a
19 short break while I take up some matters of law with the
20 parties. Then I'll bring you back out here and we will
21 begin the defendant's case. Now, you know what I'm going to
22 tell you, you cannot begin discussing this because you
23 haven't heard the defendant's side of the case yet. So, if
24 y'all would bear with us for just a second I'm going to
25 excuse you to go back into the jury room. It's going to be

1 a short break I think, and then we'll bring you back out
2 here. Alright. Thank y'all very much.

3 (Whereupon, the jury retires
4 to the jury room and the following
5 takes place out of the presence
6 of the jury.)

7 THE COURT: Any argument for counsel?

8 MR. KULMALA: Your Honor, I've got a couple of motions
9 to make.

10 THE COURT: Alright, sir.

11 MR. KULMALA: First I want to make a motion on behalf
12 of the defendant, a motion for directed verdict as to the
13 negligence cause of action. As is the requirement on
14 negligence cases the elements are duty, breach, proximate
15 cause, and harm, and based on the evidence presented it
16 appears that there's no evidence of the duty owed by the
17 city, and no evidence of any breach of any duty, since
18 there's no duty established and no evidence of a breach of
19 the duty.

20 Secondly, with respect to the negligence, as a sub-part
21 of that on the damages component, I want to make a motion
22 for a directed verdict to exclude any consideration lost
23 rental revenue. There's been no evidence adduced that
24 reveals any, any revenue loss incurred by the plaintiffs.

25 And in keeping with the tort types of actions there's

1 also a cause of action for trespass, and notwithstanding the
2 testimony just elicited from Mr. Nelson about asking
3 permission to enter the premises, there's no indication of
4 anything that would amount to trespass in that the, I think
5 Mr. Nelson stated it correctly, when there's an existing
6 building permit and where there's a permit pending the
7 building officer has the right to enter the premises for
8 purposes authorized in relation to the permit.

9 THE COURT: And I'll be honest with you, Mr. Kulmala, I
10 don't remember any questions about Mr. Nelson regarding
11 trespass. I must have missed that entirely. I thought he
12 was asking if he ever had any conversations with him or if
13 he, if he talked to him before he demolished the building.
14 That was what I remember. I don't think there was any
15 questions about trespass, and I apologize.

16 MR. KULMALA: He was originally questioned about
17 whether he asked permission, when Mr. Nelson asked
18 permission of the Chakrabartis.

19 THE COURT: To tear his house down. Okay.

20 MR. KULMALA: You know, and I see that permission
21 question as relating to, to the trespass cause of action,
22 and my point on that is, and I believe it's in my Request to
23 Charge, by ordinance the building official, it's one of the
24 provisions in the International Property Maintenance Code,
25 I'm sorry, which is about the ordinance, that the building

1 official has, essentially has implicit permission to enter
2 the premises so long as there's a permit, so long as the
3 permit relating to the premises.

4 With respect to the wrongful condemnation, that's
5 essentially the same thing as the negligence, that there's
6 no evidence of the city's particular duty, and no evidence
7 of breach of duty.

8 I have also a motion as to inverse condemnation, I'll
9 deal with that separately or at this time.

10 THE COURT: Go ahead, you might as well do it now while
11 you're up.

12 MR. KULMALA: Alright. With respect to inverse
13 condemnation, that particular cause of action raises the
14 conflict between, or apparent conflict between the Fifth
15 Amendment, taking without just compensation, and police
16 power. There's no evidence that the actions by the city in
17 this case were anything other than actions and activities
18 pursuant to the city's police power. And in particular
19 reference I would cite the, it's not called DOT in the case,
20 but it's Highways and Public Transportation versus Wilson,
21 which I had handed up earlier this morning.

22 THE COURT: Yes, sir.

23 MR. KULMALA: Also, with respect to, or I'd also ask
24 for a directed verdict as to the immunities, the several
25 Tort Claims Act immunities which were raised in my Motion

1 for Summary Judgment, and those are the immunities that
2 relate to the governmental entity being immune for
3 essentially administrative matters, administrative
4 decisions, and -- I'm going to need to take a look at my
5 notes, but it was the three Tort Claims Act ...

6 THE COURT: I'm familiar with those.

7 MR. KULMALA: Okay.

8 THE COURT: I'm familiar with those because I believe I
9 heard the Summary Judgment Motion.

10 MR. KULMALA: That's correct.

11 THE COURT: Yes, sir.

12 MR. KULMALA: And I would just renew on those grounds.
13 And that would be the city's motions.

14 THE COURT: Alright, thank you, sir.

15 MR. HUTTO: Your Honor, - - -

16 THE COURT: Yes, sir.

17 MR. HUTTO: --- we believe there is sufficient evidence
18 in the record that makes it a jury question of all matters
19 he raised. Specifically addressing the trespass, we're not
20 contending that they don't have the right to come on the
21 property for inspectional purposes, but it's a whole lot
22 different when you come on with bulldozers. We think that's
23 where the trespass occurred, not that they didn't have the
24 right to be on the property from time to time. But when
25 they ultimately come on for the purpose of destruction, that

1 that is a trespass without permission. And as to that cause
2 -- as to the others I think there's sufficient evidence in
3 the record from the letters that the city has, that we've
4 gotten in that the city produced, admissions on their part
5 from those letters that there was a whole lot of confusion
6 about the dates and the times that create jury issues, and
7 this matter should go forward.

8 THE COURT: Alright.

9 Yes, sir, Mr. Kulmala.

10 MR. KULMALA: Briefly in response, Your Honor, - - -

11 THE COURT: Yes, sir.

12 MR. KULMALA: On a negligence cause of action it's
13 incumbent to establish the duty and where the duty is
14 something that is beyond the cannon of the ordinary juror
15 then I think it's appropriate to, whether by expert or by
16 other testimony to demonstrate what the particular duty is.
17 And there's been no evidences other than that this was done,
18 but how did this deviate from what the city was supposed to
19 do? If we're negligent, we've breached the duty, what is it
20 that we did wrong? And there's been no evidence of the
21 standard that we're required to adhere to.

22 THE COURT: Alright, Mr. Hutto, anything on reply?

23 MR. HUTTO: Not really, Your Honor, they're required to
24 adhere to their own standards, and that's what we're saying
25 they didn't do. They didn't even follow what they said they

1 were going to do in the letters.

2 THE COURT: And Mr. Kulmala, I think I understand, I
3 mean, I understand your argument, but my take in that is, I
4 think all the citizens need to be safe and secure in their
5 property. I think that's one of the duties that the city
6 has. Now, if the city is going to exercise their police
7 powers then they've got to do it according to, you know,
8 whatever the city ordinances and regulations are. And
9 whether or not they complied I believe is a jury question.
10 So ...

11 MR. KULMALA: With all due respect, - - -

12 THE COURT: Yes, sir.

13 MR. KULMALA: --- in order to determine whether they
14 complied with it the pattern or the requirement, the
15 standard that they're supposed to comply with needs to be
16 established, and I don't believe that there's been any
17 evidence through the plaintiff's case that establishes what
18 we're supposed to do in order to do it correctly.

19 THE COURT: And just for the -- my take on it is, they
20 have introduced a number of letters from the city. Mr.
21 Nelson testified that he had notified them pursuant to being
22 the City Administrator, and before he got on the stand we
23 had all those letters into evidence where they sent them,
24 what I believe was the city's position. Was that not
25 correct?

1 MR. KULMALA: The city's letters would be certainly
2 statements of the city's actions or intended actions.

3 THE COURT: Alright. Therefore, it seems to me that
4 there is sufficient evidence in the record to create a
5 factual question for the jury to determine whether or not
6 they were grossly negligent, I believe, is what they have to
7 be to collect under the Tort Claims Act. Is that correct?

8 MR. KULMALA: The gross negligence standard for the
9 city's ...

10 THE COURT: Is it just simple negligence?

11 MR. KULMALA: I don't recall the specific enhancement
12 that goes to gross negligence on city action. I - - -

13 THE COURT: Alright.

14 MR. KULMALA: --- I stand to be corrected, I'll double
15 check that.

16 THE COURT: No, I mean, I thought the plaintiff's
17 burden was gross negligence.

18 MR. HUTTO: I think it's just negligence.

19 THE COURT: It's just negligence? Okay. Okay. But
20 I'll double check that, but with regard to all of these at
21 this time I believe the plaintiff had made sufficient
22 argument that it should go to a jury question, and so I'm
23 going to let it go to the jury unless at the close of your
24 case I'm convinced that some of these causes of action
25 should end. Okay? So, I am denying your motions regarding

1 all of these at this time. I'll note your objection to my
2 ruling so it can be preserved for the record.

3 MR. KULMALA: Thank you, Your Honor.

4 THE COURT: Yes, sir, thank you.

5 Are you ready to proceed or do you need to take a
6 minute?

7 MR. KULMALA: We are.

8 MR. HUTTO: Mr. Singleton came in.

9 MR. KULMALA: We are ready to proceed.

10 THE COURT: Alright. If the jury's ready, bring them
11 on back.

12 (Whereupon, the jury
13 enters the courtroom.)

14 THE COURT: Ladies and gentlemen, thank you for
15 allowing us that short break. We are now getting ready to
16 proceed with the defendant's case.

17 Alright, Mr. Kulmala, if you'd call your first
18 witness, please, sir.

19 MR. KULMALA: Your Honor, first, Mr. Darby is seated in
20 the courtroom, he was here yesterday, I had him under
21 Subpoena in anticipation I may need to call him today, and
22 I'd ask that he be released from the Subpoena.

23 THE COURT: Okay. Mr. Darby, thank you for coming, but
24 you are released from your Subpoena. Thank you for coming
25 back. You're welcome to stay, but you can leave. Thank

1 you, sir.

2 Alright, thank you, sir.

3 MR. KULMALA: The defendant calls Joe Singleton.

4 THE COURT: Joe Singleton? Alright, Mr. Singleton,
5 come on up, Mr. Singleton. Mr. Singleton, if you'd put your
6 left hand on the Bible, please, sir, and raise your right
7 hand, and the Clerk's going to swear you in.

8 (Whereupon, Joe Singleton
9 is duly sworn.)

10 THE COURT: Alright, Mr. Singleton, if you will get
11 comfortable -- sit down and get comfortable, please, sir.
12 Thank you, sir.

13 Alright, Mr. Kulmala, your witness.

14 MR. KULMALA: May it please the Court.

15 THE COURT: Yes, sir.

16 (NOTE: Blank lines on this page do not indicate any part of
17 record has been omitted. Headers on testimony pages and
18 hard page breaks between testimony are now required by the
19 Court. See next ensuing page for sequential continuation of
20 record.)

1 JOE SINGLETON - DIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Would you please state your name, sir?

4 A. Joe Singleton.

5 Q. Mr. Singleton, you're the former owner of the house at
6 Twenty-two forty-three Middleton?

7 A. That is correct.

8 Q. It was your home at the time of a fire back in August of
9 O-two?

10 A. That is correct.

11 Q. And about how long did you live there?

12 A. I lived there about six years.

13 Q. About six years?

14 A. Yes.

15 Q. So, that was your home, your family home for that period
16 of time?

17 A. That is correct.

18 Q. And after the fire of Two thousand two, did you consider
19 repairing or demolishing, or what, how to deal with the
20 condition of the building?

21 A. Yes, we looked at the building and I talked with some
22 persons who had some more expert advice and recommended,
23 would not recommend that it be restored. If any work to be
24 done they would recommend that we tear it down and start
25 from the ground.

1 Q. Okay. And this was in the time frame of the first few
2 months after the fire damage?

3 A. Right, correct.

4 Q. Okay. And did you receive a letter from the city, or do
5 you recall receiving a letter from the city back in maybe
6 December of Two thousand two, concerning the need to deal
7 with the fire damage to the building?

8 A. Vaguely.

9 MR. KULMALA: May I approach?

10 THE COURT: Yes, sir.

11 Q. I'm handing you what's been marked as Exhibit One,
12 Defendant's Exhibit One, a December, Two thousand two,
13 letter to you from the city.

14 A. Yes, sir.

15 Q. And does that letter advise you that essentially some
16 action or decision is going to be required of you with
17 respect to the house?

18 A. Yes, sir.

19 Q. Okay. And within that time frame you mentioned that you
20 had talked to some people to get some ideas about whether or
21 not to go forward with any restoration?

22 A. Right. Well, it's within the period, I'm not sure
23 exactly what time, but I did with some about it.

24 Q. Sometime between the fire and the time you sold the
25 house?

1 A. Right.

2 Q. And the kind of folks that you talked to, was it like
3 builders or architects or realtors, what type of information
4 did you get?

5 A. There were, I talked with so many folk, builders were
6 included but then also the, some of the insurance people.

7 Q. And your decision based on evaluation and talking with a
8 number of folks was to do what?

9 A. Not to restore it or rebuild there but to look for other
10 land.

11 Q. Did you include among your considerations restoring the
12 structure, and also as a separate consideration, demolishing
13 and building anew?

14 A. That was included in the decision, sir.

15 Q. And why did you decide to not restore?

16 MR. HUTTO: Your Honor, I don't know that that's
17 relevant to this case. Obviously, he made that decision and
18 sold the lot, but why he did that is not relevant to this
19 case.

20 THE COURT: Alright. What's the relevancy?

21 MR. KULMALA: Your Honor, I think it goes to, to the
22 condition of the premises.

23 THE COURT: Well, he's testified he decided not to do
24 it. Correct?

25 MR. KULMALA: He testified he decided not to restore

1 it.

2 THE COURT: Okay. Alright, sir.

3 MR. KULMALA: So, you'll sustain the objection?

4 THE COURT: Yes, sir.

5 MR. KULMALA: Thank you.

6 Q. You sold the property to Mr. Chakrabarti in February of
7 Two thousand three?

8 A. Correct.

9 Q. And I'm going to hand you Defendant's Exhibit Two and
10 ask you if you recognize that as the deed by which you sold
11 to Dr. Chakrabarti?

12 A. Correct, yes, it is.

13 Q. The deed which you just examined and maybe based on your
14 recollection of the transaction, how much was the sale price
15 when you sold the house?

16 A. The sale price, you mean for the ...

17 Q. To Dr. Chakrabarti.

18 A. Thirty-five thousand dollars.

19 Q. Okay. And did the Thirty-five thousand dollar sale
20 price recognize any value for the house or was it for the
21 value of the land and the pool, or what was it?

22 A. Thirty-five was basically to take care of whatever was
23 left there, the land, the pool, the house, or whatever.

24 MR. KULMALA: Alright, thank you, that's all the
25 questions I have. If I could, I'd like to have Defendant's

1 One admitted into evidence.

2 THE COURT: Any objection?

3 MR. HUTTO: No, sir.

4 THE COURT: Alright, Defendant's One is in evidence.

5 (Defendant's Exhibit One
6 marked and filed.)

7 THE COURT: Mr. Hutto.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and
10 hard page breaks between testimony are now required by the
11 Court. See next ensuing page for sequential continuation of
12 record.)

1 JOE SINGLETON - CROSS-EXAMINATION

2 BY MR. HUTTO:

3 Q. Good morning, Mr. Singleton.

4 A. Good morning.

5 Q. Just a few questions. You bought that house back in
6 January of Nineteen Ninety-six from the Terrys, is that
7 right, do you recall their names?

8 A. I don't recall, but at that ...

9 Q. The deed reflects James B. Terry and Susan B. Terry.

10 A. Okay, right, correct.

11 Q. Okay. And you paid a hundred and seventy thousand nine
12 hundred dollars for the house?

13 A. That's correct.

14 Q. And lived in it for about six years?

15 A. Correct.

16 Q. A fire occurred, and you had, you got your insurance
17 money and you had to make a decision about whether you were
18 going to rebuild on that property or invest your proceeds in
19 moving to another property?

20 A. That is correct.

21 Q. And you decided that you were going to not reinvest in
22 that property, and put it on the market, and Dr. Chakrabarti
23 paid you Thirty-five thousand for it?

24 A. That is correct.

25 MR. HUTTO: Okay. Thank you.

1 DAN CHERRY - DIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Good morning.

4 A. Good morning.

5 Q. Would you please state your name?

6 A. My name is Dan Cherry.

7 Q. And Mr. Cherry, you are a resident of Aiken, South
8 Carolina?

9 A. That's correct.

10 Q. And you're here this morning to testify concerning this
11 case involving the Chakrabartis and the City of Orangeburg?

12 A. Yes, sir.

13 Q. And you are employed now by the Lower Savannah Counsel
14 of Governments?

15 A. Well, I'm retired now.

16 Q. Okay.

17 A. I was at that time, yes. That was part time work at the
18 Lower Savannah then, I wasn't on full time.

19 Q. Okay. In the summer of Two thousand four were your
20 working over in Orangeburg County, I'm sorry, in the City of
21 Orangeburg?

22 A. Yes, sir.

23 Q. And that was, you were not employed by the City but you
24 were on loan from Lower Savannah to the City's government?

25 A. Yes, sir.

1 Q. Okay. And in what capacity were you working when you
2 were here in Orangeburg?

3 A. Code Enforcement Officer.

4 Q. And what, what do you mean when you say, Code
5 Enforcement?

6 A. The city and state has adopted International Residential
7 Code which is a building standard, and I was to see that
8 those standards was complied with.

9 Q. And when you say they've adopted the -- the city and the
10 state have adopted codes which are a standard, what do you
11 mean when you say it's a standard, what does it tell
12 someone?

13 A. The work is to be performed in a certain way using
14 certain materials and things of that nature.

15 Q. Okay. And do you remember the approximate time frame
16 that you were working with the City of Orangeburg in O-four?

17 A. As far as the month, no, I can't tell you. I know it
18 was in O-four, but ...

19 Q. And in the summer?

20 A. Yes, sir.

21 Q. Okay. And who did you work for, or who did you receive,
22 who did you report to while you were working for the City?

23 A. Durwood.

24 Q. Mr. Bowden?

25 A. Yes, sir.

1 Q. And he's the Director of Public Works?

2 A. Yes, sir.

3 Q. Are you familiar with the residence at Twenty-two Forty-
4 three Middleton that was owned by the Chakrabartis, a fire
5 restoration?

6 A. Yes, sir.

7 Q. Okay. And while you were working with the City of
8 Orangeburg in that summer, did you have an occasion to do
9 any work with respect to code enforcement on that building?

10 A. Yes, sir, I sure did.

11 Q. And what, what did you do with respect to Twenty-two
12 Forty-three?

13 A. Went and looked at the structural part of the house, and
14 when we were there you could see that the fire had went
15 through the house and the integrity of the frame had been
16 breached so that the house was going to have to be
17 reconstructed or repaired.

18 Q. What I'd like to do is hand you some photographs and ask
19 you if they accurately and fairly depict what you saw, what
20 you recall seeing at the house in the summer of Two thousand
21 four. The first is Defendant's Thirty-five point One?

22 A. Yes, sir.

23 Q. And what of significance do you see in Exhibit Thirty-
24 five point One.

25 A. You can see where the fire had damaged the house.

1 Q. Okay. Is there, from a construction standpoint that
2 appears to be the top, what do you call, where a gable vent
3 would be?

4 A. Yes, sir.

5 Q. And a gable vent is those louvers on the top to let air
6 in and out?

7 A. That's right.

8 Q. And on the right hand side, is that exposed plywood?

9 A. Yes, sir.

10 Q. Does it appear that there's brickwork damaged or
11 missing?

12 A. Yes, sir.

13 Q. Thirty-five point two, if you would, tell me if you
14 recognize that as accurately depicting the condition of the
15 house?

16 A. Yes, sir.

17 Q. And what of significance is there visible in that photo?

18 A. Well, it's further visible evidence of damage done by
19 the fire, and this is the, the, you see the chimney where
20 the fire had scorched the chimney and, plus the part of the
21 roof up here.

22 Q. Do you have any comments or observations on the
23 condition of the roof shingles or the weather boarding?

24 A. Well, you can see where this is buckled probably from
25 the heat.

1 Q. Are you talking about weather boards are buckled?

2 A. Yes.

3 Q. And what about the roof?

4 A. The roof is, other than the flashing up there, the roof
5 seems to be okay.

6 THE COURT: Mr. Kulmala, I hate to interrupt, what was
7 that number?

8 MR. KULMALA: Thirty-five point two.

9 THE COURT: Thirty-five point two. Okay, thank you,
10 sir.

11 Q. If you'd look at Thirty-five point seven, and see if
12 that accurately depicts conditions in the house when you
13 were there?

14 A. Yes, sir.

15 Q. And what of significance do you see from the
16 construction code enforcement perspective?

17 A. You see further damage that the, what the fire had done,
18 plus in the plumbing you've got a, in laymen's term, a
19 splice in the pipes that is, it's not up to standard.

20 Q. I'm handing you Thirty-five point Eight, and I want to
21 ask you if that fairly depicts the condition in the house?

22 A. Yes, sir.

23 Q. And what, from a code enforcement standpoint, is notable
24 to you in that photo?

25 A. Well, you still see the, some of the wood that is

1 burned, and how far the integrity has been breached on that
2 wood I don't have any idea.

3 Q. And when you say, wood that's been burned, you're
4 talking about up above the door?

5 A. Yes, sir, and then some - - -

6 Q. That blackened area?

7 A. --- over on this side and on this side, too.

8 Q. Thirty-five point Ten, does that accurately depict the
9 condition in the house?

10 A. Yes, sir.

11 Q. And from a code enforcement standpoint what is notable
12 in that photo?

13 A. The, still further evidence of the fire and there's
14 nothing been done to go forward, I mean, nothing has been
15 done to correct it.

16 Q. Actually fire damage. Does that indicate whether or not
17 the fire damage had been cleaned up?

18 A. No, sir, it has not.

19 Q. Thirty-five Twelve, does that fairly and accurately
20 depict the conditions?

21 A. Yes, sir.

22 Q. And what from a building code enforcement standpoint is
23 of note to you in that photo?

24 A. Well, this is still the evidence of the fire, and how
25 far the building materials have been breached I'm not an

1 expert to say.

2 Q. It's just that it's visible evidence of damage?

3 A. Yes, sir, yes, sir.

4 Q. And from the code enforcement standpoint is that
5 acceptable?

6 A. No, sir.

7 Q. I'm handing you Thirty-five point One Five and ask if
8 you recognize that as being the conditions in the building
9 when you visited?

10 A. Yes, sir.

11 Q. From a code enforcement standpoint what is notable to
12 you in that photograph?

13 A. Well, still, we have the lumber that's been burned,
14 building materials that's in the building, plus you have
15 electrical wiring that, that's not according to the code.

16 Q. And does that, can you tell, does that appear to be new
17 wiring installed through those studs?

18 A. My estimate would be that it is because you don't see
19 anything charred. The wood around it is charred and that
20 isn't, so that's new.

21 Q. And the visible blackened charring on the lumber in this
22 photograph, with wiring run through it, is that acceptable
23 from a code enforcement standpoint?

24 A. No, sir.

25 Q. Exhibit Thirty-five Sixteen, similarly, does that depict

1 the conditions in the house?

2 A. Yes, sir.

3 Q. And from a code enforcement standpoint what do you find
4 notable in that photo?

5 A. There's damage by the fire, and that's just the way it
6 when the fire come through.

7 Q. Would it be fair to say that that's uncleaned or
8 unrestored fire damage?

9 A. Yes, sir.

10 Q. And from what you see in that photograph would it be
11 appropriate for sheet rock to be applied to move forward?

12 A. No, sir.

13 Q. Exhibit Thirty-five Eighteen, do you recognize that as
14 depictive of the conditions?

15 A. Yes, sir.

16 Q. And from a code enforcement standpoint what's notable
17 about that photo?

18 A. The same as in the other one, that you've got the fire
19 that's damaged the structure, and then you've got new wiring
20 going through it.

21 Q. And from your perspective in code enforcement would that
22 be acceptable for approval to go ahead and close in with
23 sheet rock?

24 A. No, sir.

25 Q. Exhibit Thirty-five Nineteen, does that reflect the

1 conditions you saw in the house?

2 A. Yes, sir.

3 Q. And what is significant to you from code enforcement
4 standpoint?

5 A. Well, you've got the fire damage plus wires hanging
6 there that you have no idea where they go.

7 Q. Would it be appropriate from your position in code
8 enforcement to approve going forward with sheet rocking?

9 A. No, sir.

10 Q. While I'm asking these questions about sheet rocking let
11 me ask you this, when, when studs and wiring are put in
12 place and then sheet rock is put in place, how does the
13 installation of sheet rock affect your abilities as an
14 inspector?

15 A. The permit states that you have a rough in inspection,
16 an inspection that you do before the sheet rock can be put
17 up.

18 Q. And what happens once the sheet rock is put up if you
19 want to inspect the timbers or the wiring?

20 A. It's concealed, you can't see it. That's the reason for
21 the rough in inspection.

22 Q. Do you recognize Thirty-five Twenty-one as showing the
23 conditions at the house?

24 A. Yes, sir.

25 Q. And from a code enforcement standpoint what's notable in

1 that photo?

2 A. Further fire damage.

3 Q. And is it approve able for sheet rocking based on what
4 you see in that photo?

5 A. No, sir.

6 Q. Number Thirty-five Twenty-two, does that appear to
7 reflect the conditions in the house?

8 A. Yes, sir.

9 Q. And what's notable in that photo from a code enforcement
10 standpoint?

11 A. Sheet rock is on one side of it, of the wall, and the
12 switches or switch or a wire that's been cut, and it's, it
13 would be concealed in the wall if sheet rock was put up at
14 that time.

15 Q. Is there information in this photo that you would
16 determine it is or is not approve able for sheet rocking?

17 A. This, this wiring right here, plus this switch, you
18 cannot take and conceal that in the wall.

19 Q. And if the sheet rock were put up it would be concealed?

20 A. Yes, sir.

21 Q. Exhibit Number Thirty-five Twenty-three, does that
22 fairly and accurately depict the conditions you observed?

23 A. Yes, sir.

24 Q. And what's notable from a code enforcement standpoint?

25 A. Still further damage by fire.

1 Q. And you're referring to the blackened, charred overhead
2 timbers?

3 A. Yes, sir.

4 Q. From what you see in that photo, would that be
5 approvable for sheet rocking?

6 A. No, sir.

7 Q. I'm going to hand you finally Thirty-five Twenty-four,
8 do you recognize that as conditions you observed when you
9 visited the house?

10 A. Yes, sir.

11 Q. And what's notable from the code enforcement standpoint
12 in that photo?

13 A. Well, you've got water that's, this would be property,
14 code enforcement, this wouldn't be built.

15 Q. Okay.

16 A. And you've got standing water there that would be a
17 hazard.

18 Q. And in your work while you were working with the City of
19 Orangeburg was for buildings and building permits?

20 A. Yes, sir, yes, sir.

21 MR. KULMALA: I'd like to move into evidence Thirty-
22 five-One, Thirty-five-Two, Thirty-five-Seven, Thirty-five-
23 Eight, Thirty-five-Ten, Thirty-five-Twelve, Thirty-five-
24 Fifteen, Thirty-five-Sixteen, Thirty-five-Eighteen, Thirty-
25 five-Nineteen, Thirty-five-Twenty-one, Thirty-five-Twenty-

1 two, Thirty-five-Twenty-three, and Thirty-five-Twenty-four.

2 THE COURT: Any objection?

3 MR. HUTTO: No, sir.

4 THE COURT: Alright, all of those exhibits are in
5 evidence.

6 COURT REPORTER: So, that would be Thirty-five, point
7 One through Thirty-five, point, Two-four?

8 THE COURT: No, ma'am, we'll have to go through them
9 individually, if you don't mind.

10 COURT REPORTER: Well, I have written them
11 individually, but I've got to list them on my list. Do you
12 want me to do that later?

13 THE COURT: Yes, ma'am, if you don't mind.

14 COURT REPORTER: It will take a while.

15 THE COURT: But I've got them, I have them marked on my
16 -- and I'm just going to review them with you again, Mr.
17 Kulmala, and instead of saying the Thirty-fives, I'm just
18 going to say the other numbers, okay?

19 MR. KULMALA: Sure.

20 COURT REPORTER: What other numbers?

21 THE COURT: Thirty-five, point, One -- okay, Mr.
22 Kulmala, are you ready?

23 MR. KULMALA: Ready.

24 THE COURT: Point One, Point Two, Point Seven, Point
25 Eight, Point Ten, Point Twelve, Point Fifteen, Point

1 Sixteen, and then, Point Eighteen, Point Nineteen, Point
2 Twenty-one, Point Twenty-Two, Point Twenty-three and Point
3 Twenty-four, is that correct?

4 MR. KULMALA: That's correct.

5 THE COURT: Alright, sir. And Ms. Walker, we'll get
6 that straight later on. Okay?

7 COURT REPORTER: Alright, sir.

8 THE COURT: Thank you, ma'am.

9 (Defendant's Exhibits Thirty-five.One, Thirty-five.Two,
10 Thirty-five.Seven, Thirty-five.Eight, Thirty-five.Ten,
11 Thirty-five.Twelve, Thirty-five.Fifteen, Thirty-
12 five.Sixteen, Thirty-five.Eighteen, Thirty-five.Nineteen,
13 Thirty-five.Twenty-one, Thirty-five.Twenty-two, Thirty-
14 five.Twenty-three and Thirty-five.Twenty-four marked and
15 filed.)

16 Q. Mr. Cherry, during the time that you visited Twenty-two
17 Forty-three Middleton were you aware that there was a
18 building permit applicable to that house?

19 A. Yes, sir.

20 Q. And what I'm going to do is, I'm going to hand you two
21 documents, Defendant's Exhibits Four and Five. I'll state
22 to you that they're both dated April Seventh, Two thousand
23 and Three, one is typed, one is handwritten, and they relate
24 to Twenty-two Forty-three. I want you to take a look at
25 those and see if they refresh your memory about the permits

1 for that case, that house?

2 A. Yes, sir.

3 Q. And do you recall the circumstance at that house that, I
4 believe Exhibit Number Four the owner was acting as
5 contractor?

6 A. Yes, sir.

7 Q. And of what significance is owner acting as contractor
8 from the code enforcement perspective?

9 A. The code enforcement says that in a, over a certain
10 amount of work which is cost-wise, and then the city also
11 has an ordinance to that, too, that you have to be a
12 licensed contractor above a certain amount of work, - - -

13 Q. Okay.

14 A. --- price of work.

15 Q. And do you recall, is there a provision that allows the
16 owner to act as contractor instead of having to hire a
17 contractor?

18 A. There again, it's, the code states that within that
19 certain amount that the owner can act as his own contractor,
20 but it's got to be within that amount from zero to whatever
21 it is.

22 Q. And at the time when you went to Twenty-two Forty-three,
23 the summer of Two thousand four, is it your understanding
24 that that permit from April of Two thousand three was the
25 permit that was in effect?

1 A. Yes, sir.

2 Q. Now, in your experience from code enforcement, from
3 inspections and so forth, how long, how much time do you
4 find to be the reasonable range for building a Thirty-five
5 hundred square foot house?

6 A. Building a house?

7 Q. Building a house.

8 A. Normally the contractor will come up and make an
9 application for a building permit, and then a date is set
10 then on, usually, Thirty-five thousand - - -

11 Q. Thirty-five hundred.

12 A. --- Thirty-five hundred square feet, it could be
13 anywhere from Ninety to a year.

14 Q. Okay. After your visit to Twenty-two Forty-three
15 Middleton, what action or activity did you undertake?

16 A. We went back and talked to Durwood and told him that we
17 needed to talk to the owner because the work that was going
18 on, we need to have a meeting with him.

19 Q. Did it appear that there was sheet rock being installed
20 and about to be installed?

21 A. Yes, sir.

22 Q. And when you inspected, from the code enforcement
23 perspective, do I understand you correctly that the
24 condition of the framing, the wiring, and so forth, was not
25 ready to be approved for sheet rocking?

1 A. That's correct.

2 Q. And if the sheet rock got put in then the timbers, the
3 wiring would be concealed?

4 A. That's correct.

5 MR. KULMALA: Thank you, that's all the questions I
6 have. Answer any questions that Mr. Hutto may have.

7 THE COURT: Mr. Hutto.

8 MR. HUTTO: Thank you.

9 (NOTE: Blank lines on this page do not indicate any part of
10 record has been omitted. Headers on testimony pages and
11 hard page breaks between testimony are now required by the
12 Court. See next ensuing page for sequential continuation of
13 record.)

1 DAN CHERRY - CROSS-EXAMINATION

2 BY MR. HUTTO:

3 Q. Good morning, Mr. Cherry.

4 A. Good morning.

5 Q. You were just temporarily assigned to the City of
6 Orangeburg, is that right?

7 A. That's correct, yes.

8 Q. Okay. And so the, and I realize you said you didn't
9 know the exact months, but it was in the time frame of the
10 summer of Two thousand and four?

11 A. Yes, sir.

12 Q. Okay. And I don't know, I don't think you were here
13 yesterday, were you?

14 A. No, sir.

15 Q. Alright, so you may not, you didn't hear the testimony,
16 but are you aware that after the summer of Two thousand and
17 four, specifically in December of Two thousand and four a
18 new building permit was issued?

19 A. No, sir, I was, I wasn't, after that summer I wasn't
20 involved with it.

21 Q. Okay. So, you were aware, though, that the first
22 building permit, the one that was shown to you earlier,
23 Defendant's Exhibit Number Four that had been issued I
24 believe in April of O-Three, you were aware that that one
25 had been issued?

1 A. Yes, sir.

2 Q. Okay. And some work had been done at that time by Mr.
3 Thomas Darby?

4 A. By somebody, yes.

5 Q. By somebody. Okay. Alright, and so, when you went
6 through these various photographs all marked as Exhibit
7 Number Thirty-five point whatever, this is work that had
8 been done up until the summer of Two thousand and four?

9 A. Before I got there, yes, sir.

10 Q. Okay. And so, as far as what work had been done under
11 the -- let me say this, I'll represent to you there was a
12 new building permit that was issued in December of O-Four.
13 Are you aware of the work that was done pursuant to that
14 permit?

15 A. Before December?

16 Q. After December of O-four?

17 A. No, sir.

18 Q. Okay. So what you, what you, and I just want to be
19 clear, what you're here today to testify to is what you saw
20 in the summer of O-Four?

21 A. Yes, sir.

22 Q. Okay. And so, in the summer of O-Four, clearly the
23 house wasn't ready to have sheet rock put up yet, is that
24 right?

25 A. That's correct.

1 Q. Okay. Then as far as whatever work got done on the
2 second building permit, you just weren't around for that?

3 A. No, sir.

4 Q. Okay. Now, we're clear on that, let me go back to
5 something else. As the building enforcement officer, you
6 noted on various of these photos that that would have
7 constituted a violation, or would not have been in
8 compliance with the code, is that correct?

9 A. Yes, sir.

10 Q. Did you issue any tickets to Dr. Chakrabarti for
11 violating the code?

12 A. No, sir.

13 Q. Okay. And so, this was a work in progress, was it not?

14 A. Yes, sir.

15 Q. And so, as a work in progress is going on there are
16 going to be things that aren't up to code, and that's
17 basically what the code inspector, he says, before you
18 can go to the next step you've got to bring that up to
19 code?

20 A. That's correct.

21 Q. So, what you see in these photographs is work being done
22 but it isn't yet ready to meet code?

23 A. That's correct.

24 Q. And you also said that at some point in time y'all
25 called for a rough in inspection -- you never performed, I

1 mean, this wasn't ready for a rough in inspection?

2 A. No, sir.

3 Q. And y'all didn't have a rough in inspection?

4 A. We went -- this was a work in progress inspection.

5 Q. Thank you. So, you were just going by to see how the
6 work was coming, and what you saw was that work was being
7 done but it wasn't yet up to code and it wasn't ready for a
8 rough in inspection yet?

9 A. That's correct.

10 Q. Okay. And you, did you participate in a meeting with
11 Dr. Chakrabarti where y'all called him in and pointed out
12 some things that needed to be done?

13 A. Yes, sir.

14 Q. Okay. I'm handing you what's marked as Defendant's
15 Exhibit Number Eleven, I don't know if you're familiar with
16 that, but take a look at that for a second.

17 A. Yes, sir.

18 Q. Okay. What it repre -- is it fair to say that what that
19 represents is that you and Mr. Epting had an inspection, you
20 reported it to Mr. Nelson, you noted some things that needed
21 to be done, some things that were not up to code yet, and
22 you wanted to convey that to the owner?

23 A. Yes, sir.

Okay. So, this is the, basically from your inspection
the list of things that you wanted to make sure when the

1 City met with Dr. Chakrabarti next that these things were
2 brought to his attention?

3 A. Yes, sir.

4 Q. Okay. Thank you. Excuse me one second.

5 MR. HUTTO: Thank you, I don't have any other
6 questions.

7 THE COURT: Alright, anything on redirect?

8 MR. KULMALA: Nothing on redirect.

9 THE COURT: Alright, sir, thank you so much. You may
10 step down.

11 MR. KULMALA: Can he be excused?

12 THE COURT: Yes, sir, you may be excused.

13 If you'd call your next witness, please, sir.

14 MR. KULMALA: Jeff Mitchum.

15 THE COURT: Jeff Mitchum?

16 MR. MITCHUM: Yes, sir.

17 THE COURT: Hey, Mr. Mitchum, how are you, sir?

18 MR. MITCHUM: I'm good, sir, and you?

19 THE COURT: If you'd put your left hand on the Bible,
20 please. And you've done this before?

21 MR. MITCHUM: Yes, I have.

22 THE COURT: Alright, the clerk's going to swear you in,
23 please, sir.

24 (Whereupon, Jeffrey Wade Mitchum
25 is duly sworn.)

1 JEFFREY WADE MITCHUM - DIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Would you please state your name, sir?

4 A. Jeffrey Wade Mitchum.

5 Q. And you are a sergeant with the Orangeburg Department of
6 Public Safety?

7 A. Yes.

8 Q. Did you have an occasion in the summer of Two thousand
9 five, to go to Twenty-two Forty-three Middleton and make a
10 video of conditions you saw there?

11 A. I did make a video, I'm not sure on the dates, but that
12 would sound about right.

13 MR. KULMALA: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 Q. I'm going to hand you what has been marked for
16 identification Defendant's Exhibit Eighteen and ask if you
17 recognize that?

18 A. Yes, I do.

19 Q. Is that a document that you prepared in your work with
20 the Department of Public Safety when you make a call or an
21 incident?

22 A. Yes, it is.

23 Q. And did you make that report in connection with your
24 visit to Twenty-two Forty-three Middleton?

25 A. Yes, I did.

1 Q. And looking at that document, does that refresh your
2 memory of the date that you went to the Middleton Street
3 address?

4 A. Yes, it does.

5 Q. And what is the date that you went to Middleton Street?

6 A. June Tenth, Two thousand five.

7 Q. Okay. Thank you. And when you went to Middleton on
8 June Tenth, Two thousand five, is that when you made a
9 video, is it a tape or a disc, a video recording of what you
10 saw?

11 A. Yes.

12 Q. Okay.

13 MR. KULMALA: Bear with me one moment, Your Honor,
14 please. If there's no objection ...

15 MR. HUTTO: Your Honor, I'll stipulate that the video
16 we saw yesterday is the one that he took. They don't need
17 to play it, I mean ...

18 MR. KULMALA: I wasn't going to play it, there were two
19 videos and I just wanted to make sure that his was
20 authenticated because there was some question I think in
21 testimony about the date that the video was done.

22 MR. HUTTO: He's testified to that, and I don't object
23 to it.

24 THE COURT: He's satisfied with it.

25 MR. KULMALA: Okay. Then I don't need to play it then.

1 THE COURT: Alright, sir.

2 MR. KULMALA: Thank you, Mr. Mitchum, that's all the
3 questions I have.

4 THE COURT: Alright, sir. Anything on cross?

5 MR. HUTTO: Thank you for coming, Sergeant Mitchum.

6 THE COURT: Thank you.

7 SERGEANT MITCHUM: Thank you, sir.

8 THE COURT: We appreciate it.

9 SERGEANT MITCHUM: Thank you, Your Honor.

10 THE COURT: Yes, sir, have a good day out there.

11 SERGEANT MITCHUM: Thank you, sir.

12 THE COURT: Thank you.

13 Alright, I think this might be a good time for us to
14 take a short break. Okay? Alright, ladies and gentlemen,
15 we're going to take our mid-morning break about now, so I'm
16 going to let y'all go back into the jury room and take a
17 break, and remember, you cannot talk about the case, you
18 haven't heard all of the testimony. Okay, thank y'all very
19 much, appreciate it.

20 (Whereupon, the jury retires
21 to the jury room.)

22 (Recess)

23 THE COURT: Is the plaintiff ready?

MR. HUTTO: Yes, sir.

THE COURT: Okay. And before we proceed let me just

1 DURWOOD BOWDEN - DIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Would you please state your name, sir?

4 A. My name is Durwood Bowden.

5 Q. And Mr. Bowden, you are an employee of the City of
6 Orangeburg?

7 A. That's correct.

8 Q. And I'm sure that we've observed you sitting here
9 through the duration of this trial, and what is your
10 position with the City of Orangeburg?

11 A. I'm the Director of Public Works.

12 Q. Could you briefly tell the jury what is embraced, or
13 what's included within public works?

14 A. Here at the City of Orangeburg it includes the airport,
15 the airport manager reports to me, the garage manager
16 reports to me, the building official and his department
17 report to me also, as well as the sanitation department and
18 administrative division for public works.

19 Q. And how long have you been employed as Director of
20 Public Works?

21 A. This month I believe will be Fifteen years.

22 Q. Could you describe what, what the -- you said the
23 building official and his department, what is involved in
24 the building official's department?

25 A. He has a building inspector that works for him, at least

1 one. At times he's had two, but primarily the one. And part
2 of the administrative group does some of the administrative
3 work for the building official. He also has a part time
4 code enforcement officer working under him.

5 Q. And who is the building official at this time?

6 A. Richard Hall.

7 Q. And during the time that we're talking about here,
8 essentially, Two thousand three through Two thousand five,
9 who in your department served as building official?

10 A. Allen Ott, and then Gene Nelson.

11 Q. And Gene Nelson began at approximately when?

12 A. I believe it was July or August of O-Four, somewhere in
13 that area.

14 Q. What does the building official's department do?

15 A. Okay. They handle ...

16 Q. The kind of functions, I should clear it up, what kind
17 of functions does the building department, building
18 official's department do?

19 A. They do, they're involved with the construction of new
20 houses, the remodeling of houses, code enforcement as far as
21 maintaining your property, both the structure and the
22 property, the grass, the improvements on the property.
23 They're involved in zoning and some planning.

24 Q. Okay. Now, you said they're involved in construction.
25 Your building official does not do construction?

1 A. No, he would be involved in plan review when someone
2 wants to build a new house.

3 Q. And that's the permitting process?

4 A. Permitting, right.

5 Q. So, is that department that issues building permits?

6 A. It is, correct.

7 Q. Okay. And is there any other function that the building
8 official does? You mentioned zoning and you mentioned code
9 enforcement.

10 A. Correct. They handle complaints about unkept property,
11 dilapidated housing, when we get complaints they go out, but
12 they also patrol and try to find it. They also, I hadn't
13 mentioned, are responsible for keeping our street signs,
14 identifying the various streets, up to date; current, and in
15 good condition.

16 Q. So, is it fair to say that the code enforcement
17 department has the responsibility for insuring that the
18 codes enacted by the City are carried out out in the field
19 by builders and residents?

20 A. Correct.

21 Q. And does it apply to builders and residents?

22 A. It does.

23 Q. When I say residents I mean owners of property?

24 A. It does.

25 Q. And with your being in charge of public works for

1 Fifteen years do you know what's the reasoning behind the
2 City having any responsibility over private residences and
3 permits and so forth?

4 A. What, could you repeat the question?

5 Q. From your perspective being in that department for
6 Fifteen years do you have an understanding of why the City
7 has any interest in code enforcement, that is, permits, and
8 then insuring compliance with the several codes?

9 A. Certainly, I see the need, and the charge to, to protect
10 the neighborhood, the City from dilapidated properties,
11 overgrown properties, things that would cause harm, injury,
12 those type things, and they occur.

13 Q. And your code enforcement department examines plans and
14 issues building permits?

15 A. In the building permit function of that group, yes, they
16 review plans and issue permits.

17 Q. And then in the code enforcement section what, what does
18 code enforcement do, for example, if there's a complaint or
19 if a problem is observed?

20 A. Okay. It's going out and determining what the condition
21 is, and if there is a violation of a code, and then the
22 appropriate correction, and bringing it to the property
23 owner's attention or the builder's attention that there is
24 something that is wrong, it needs to be corrected.

25 Q. Is it fair to say that you have codes that govern not

1 only new construction but maintenance of existing
2 structures?

3 A. Correct.

4 Q. I'm holding up a light purple or lavender book called,
5 International Property Maintenance Code of Two Thousand. Do
6 you recognize this pamphlet?

7 A. I do.

8 Q. And is that one of the codes that your department is
9 charged with enforcing?

10 A. That's correct.

11 Q. And if you could, briefly describe, what is it that the
12 International Property Maintenance Code requires of property
13 owners?

14 A. Well, it requires them to maintain their property in a
15 habitable condition, safe condition. It also requires the
16 exterior to be maintained in an acceptable condition as far
17 as appearance.

18 Q. Does the Property Maintenance Code give your department
19 authority to let land owners know when there is a problem
20 that falls below the requirements of the Property
21 Maintenance Code?

22 A. It does.

23 Q. Okay. And then, that would trigger the responsibilities
24 of your code official?

25 A. Right. As a matter of fact, you know, I require them to

1 send a courtesy letter the first time they have a violation
2 with an individual, wanting them to always assume that the
3 individual has no knowledge of that code and that they are
4 in violation of it. And to just make them aware that there
5 are codes and regulations that the City has that they need
6 to comply with.

7 Q. And the point of requiring compliance with these
8 maintenance codes is to do what now, I mean, what business
9 is it of the City if somebody wants to let his house be
10 dilapidated or fall into ruin or not be repaired?

11 A. Well, there's obviously safety issues that are important
12 for the individuals living there and visitors to the
13 property, but also from an appearance standpoint esthetics
14 to the neighborhood. You know, one of the advantages of
15 being in the city is some of those protections that we do
16 give to individuals that live there.

17 Q. Now, with respect to building permits, from the
18 testimony you saw and heard over the last day and a half you
19 are aware that there were two permits issued in this case?

20 A. I am.

21 Q. One was in April of Two thousand and three, I believe
22 that's Exhibits Four and Five, are you aware of and familiar
23 with Defendant's Four and Five?

24 A. I am.

25 Q. And those are April of Two thousand three. Let me show

1 you also, so that the picture is complete, Exhibit Three,
2 which is a March Sixth, Two thousand three, letter to Mr.
3 Ajoy Chakrabarti. I want to ask you if Exhibit Three is
4 what you were referring to a few minutes ago when you said
5 you send out, like an initial letter?

6 A. No, this is, this is the one -- no, this is the actual
7 letter condemning the property, telling him that it's unfit.
8 A courtesy letter would have gone earlier than this had
9 there been one, but there had already been some conversation
10 I believe on this house.

11 Q. Okay. So, as of March, Two thousand three, your office
12 is advising Mr. Chakrabarti that the premises are unfit and
13 that he needs to do something?

14 A. Right.

15 Q. And then, in April of Two thousand three, a permit
16 application was processed, and you have that in those two
17 exhibits, Four and Five, - - -

18 A. Right.

19 Q. --- and the handwritten application, who does that show
20 as the contractor -- I said the handwritten, I meant the
21 typed application?

22 A. Oh, the typed one, the owner is acting as contractor.

23 Q. What difference does it make from how your office
24 handles code enforcement whether it's owner acting as
25 contractor or contractor acting as contractor, what

1 difference does it make?

2 A. Okay, the owner can only act as contractor, if he's not
3 a licensed contractor, in one condition, one circumstance,
4 and that is, there's a State exception that allows the
5 owner of his own property that he is going to live in, he
6 and his family, it allows him to be his general contractor,
7 and either use his own employees or licensed subcontractors
8 to do the work.

9 Q. Okay.

10 A. Did I answer the question?

11 Q. I believe you did. And how was that, that's an
12 exception to the rule that requires a licenced contractor?

13 A. It requires a general contractor, but in this particular
14 case our building official, Allen Ott, in good faith,
15 allowed Dr. Chakrabarti to be his own contractor because he
16 said that they were going to rework this house, remodel this
17 house, restore this house for their personal residence.

18 Q. And is that, that's an important feature of allowing Dr.
19 Chakrabarti to act as contractor?

20 A. That's correct.

21 Q. And is there any additional requirements or conditions
22 imposed on that? In other words, if you act as, owner act
23 as contractor, does it put any limitations on your abilities
24 with the house?

25 A. Yes, you cannot sell it for two years after the

1 certificate of occupancy is issued.

2 Q. Now, the certificate of occupancy, that comes from
3 where, from your department?

4 A. It would, yes, sir.

5 Q. And what does a building owner or contractor need to do
6 to get a certificate of occupancy?

7 A. Satisfactory completion meeting all the codes and
8 various things as it constructs the property.

9 Q. Now, during testimony yesterday, I believe it may have
10 been Mr. Coulter, there was a discussing that the City was
11 supervising construction. Do you remember hearing that?

12 A. I do.

13 Q. And how correct is that, that the City supervises
14 construction?

15 A. That's not correct, you don't sup ...

16 Q. Okay, what does the City do with respect to construction
17 pursuant to permits?

18 A. We inspect to see that it does comply, and we, if there
19 are deficient items we will identify those items.

20 Q. And what's the trigger for your department making
21 inspections?

22 A. Typically it's going to be at the various stages of
23 construction when the contractor reaches a certain stage he
24 knows before, like he can put the sheet rock up that a rough
25 in inspection has to take place, and he would call for it.

1 Now, there are times when perhaps if there's a lot of time
2 expired and you don't get any calls obviously you need to
3 ride by and see if there's construction work going on and
4 they're not calling you. If it's an enforcement action you
5 may go monitor it a little bit closer, even if it involves
6 construction work, but if it's a code enforcement issue and
7 we've actually forced the individual to take corrective
8 action.

9 Q. When you're talking about enforcement, when there's a
10 building permit or even if there's not a building permit, if
11 there's property that is determined by your department to be
12 condemned for whatever reason, - - -

13 A. Correct.

14 Q. --- your inspectors, your personnel have the authority
15 through the City to enter the premises to do whatever
16 enforcement action is appropriate under the code?

17 A. That's correct.

18 Q. And you don't need to call and ask permission to come
19 on the property?

20 A. No. If there were, if the house was secure and you
21 couldn't get in or whatever, yeah, you make arrangements or
22 whatever. It's not, we're not trying to sneak in and make
23 them.

24 Q. Would you look on Exhibit Four and Five and see when Dr.
25 Chakrabarti's renovation project was scheduled to be

1 completed?

2 A. On the handwritten it looks like June Second, Two
3 thousand three and August First, Two thousand three is
4 written on there. Let's see what's on here. I'm going to
5 have to find the line it's on, it's not the same -- Estimate
6 date of completion is not complete on the typed one.

7 Q. But on the handwritten, and that's the one, it says June
8 of Two thousand three and August of Two thousand three for
9 construction completion?

10 A. Date of completion, right.

11 Q. Do you have in your department a typical period of time
12 that permits are issued for?

13 A. Typically it's six months.

14 Q. Okay. And in this case that permit dated April of Two
15 thousand three and the demolition notice came out in June of
16 Two thousand five, is that, does that comport with your
17 recollection?

18 A. Could you repeat that question?

19 Q. The demolition notice notifying -- let me hand you
20 Exhibit Number Seventeen, Notice of Condemnation.

21 A. Okay. And what was the question?

22 Q. That document, Exhibit Seventeen, is dated June
23 Thirteenth of Two thousand five?

24 A. That's correct.

25 Q. So, that's Twenty-six months after the permit?

1 A. Right. And let me, on the last question, one of the
2 things that's important is whether activity continues on the
3 project.

4 Q. Okay. And the, the project was authorized by permit in
5 April of O-three, and the City took final action by Notice
6 of Condemnation on June Thirteenth of Two thousand five?

7 A. That's correct.

8 Q. Did you hear the testimony of Mr. Cherry this morning
9 concerning his involvement in the summer of Two thousand
10 four?

11 A. I did.

12 Q. I believe he described, I believe he describe a meeting
13 that was held after his site visit, did you hear that?

14 A. I did.

15 Q. And were you a party to that meeting?

16 A. I was.

17 Q. And from your standpoint as Direct of Public Works, let
18 me ask you this first, you have chain of command
19 responsibility above the code official, the building
20 official?

21 A. Right.

22 Q. But the building official is separately certified by the
23 State to do his job?

24 A. That's correct.

25 Q. So, while he may report to you in the chain of command,

1 he has the power and authority to make decisions according
2 to the maintenance code - - -

3 A. That's correct.

4 Q. --- or the other codes? Do you recall who participated
5 in the meeting that Mr. Cherry described?

6 A. I don't really remember all but obviously, Mr. Cherry,
7 Mr. Nelson, myself and Dr. Chakrabarti. His contractor at
8 that time, Mr. Darby, was no longer involved with him, they
9 had parted ways.

10 Q. Now, you said, his contractor, but that was still under
11 the permit of owner as contractor?

12 A. Owner, right. His carpenter then.

13 Q. Darby was his carpenter, he was not the contractor?

14 A. Right.

15 Q. And Darby was inactive on the job at that time?

16 A. Yes, sir.

17 Q. And what did you, I'm sorry, did see and hear the
18 testimony when Mr. Cherry was talking about the photographs
19 and some sheet rock being put in place?

20 A. Yes, sir.

21 Q. And during the meeting what of concern to you as
22 Director of Public Works, came out about the status of
23 construction?

24 A. Well, obviously, I was very concerned that the, that
that was being covered up was not acceptable and had to be

1 stopped. But the biggest thing that came out was that Dr.
2 Chakrabarti said that they didn't intend to live in the
3 house.

4 Q. In that meeting in the summer of Two thousand and four,
5 Dr. Chakrabarti said that they didn't intend to live in the
6 house?

7 A. Correct. He said his wife didn't think the house was
8 safe enough to live in and she didn't want to live in the
9 house.

10 Q. And how does that relate to the owner acting as builder
11 requirement?

12 A. He cannot be the contractor any longer on that project.
13 And, you know, like I said, we granted that in good faith,
14 and at some point along the line, I don't know when, it
15 changed, and it was not brought to our attention, and he no
16 longer could serve in that capacity.

17 Q. Did, did your department reach any decisions -- well,
18 let me ask you this first, what, what concerns, if any, did
19 your department have with the statement by Dr. Chakrabarti
20 that he didn't intend to occupy the house, and the
21 observations commented on by Mr. Cherry today about sheet
22 rock beginning to be installed?

23 A. What observations?

24 Q. What concerns, with him saying he was not going to be
25 living the house and Mr. Cherry observing that there was

1 sheet rock being installed?

2 A. That the project, the work had to immediately stop,
3 which, the contractor and he had had a falling out,
4 apparently, and had stopped anyway, but that what they were
5 trying to cover up was just totally unacceptable, and if
6 you're going to use timbers that have been damaged in a fire
7 then he would need an architect engineer involved to, to
8 approve any damaged timbers that were going to be used.

9 Q. So, that relates to what Mr. Cherry was saying about the
10 charred and damaged timbers still being visible, and you, on
11 behalf of the City, wanted to insure the structural
12 integrity by having a qualified architect or engineer or
13 contractor?

14 A. Certainly, and now that he's going to sell the house or
15 rent the house to someone else, everything has got to be up
16 to the code.

17 Q. I'm going to hand - - -

18 A. And it would have needed to be for him to live in it as
19 well, but ...

20 Q. I'm going to hand you Exhibit, Defendant's Twelve, and I
21 know that you didn't author it and didn't write it, but I
22 want to see if you're familiar with it, from it being
23 involved in your department?

24 A. Yes, I'm familiar with it.

25 Q. Would you describe to the jury, if you want to read or

1 if you want to just summarize what that letter is
2 instructing Dr. Chakrabarti?

3 A. It basically says, we're going to, a recap of the
4 meeting that we just talked about that we had, and it said
5 we were going to void the current building permit
6 immediately, and then it would be his responsibility to
7 locate a licensed architect and have him to evaluate the
8 condition of the subject property and submit a completed
9 sealed plan of the work that needs to be accomplished to
10 make the house safe and to bring it up to building code
11 requirements. And he was given Thirty days to do that, and
12 then some time extension would be allowed, may be allowed
13 after request stating the time required, basically. And
14 then after review of the plans and acceptance by the
15 building official a new permit will be issue to complete the
16 required work. In the meantime it talks about the yard and
17 the swimming pool need to be maintained, shall be maintained
18 in accordance with the Orangeburg Code of Ordinances.

19 Q. The, that letter was sent to Dr. Chakrabarti on
20 September Ninth of Two thousand four, and then a new permit
21 was issued on December Seventh of Two thousand four. Do you
22 recall that?

23 A. Yes, sir.

Q. Do you have Thirteen up there?

A. I believe so, yeah, Twelve, Seventeen, Five, Three.

1 MR. KULMALA: Thirteen is in I believe, is it not?

2 THE COURT: Yes, sir, that was one of the earlier
3 documents entered in I believe.

4 COURT REPORTER: Yes, sir.

5 MR. KULMALA: May I hand him my photocopy of Thirteen?

6 THE COURT: You may hand him a copy.

7 Q. Do you recognize Exhibit Thirteen as a document issued
8 out of your office?

9 A. Yes, sir.

10 Q. And that is the December Seven, Two thousand four,
11 building permit application for Dr. Chakrabarti?

12 A. I'm familiar with it being that.

13 Q. Okay. And that shows Dr. Chakrabarti as the owner?

14 A. Yes, sir.

15 Q. And for contractor it shows Michael Stroman?

16 A. That's correct.

17 Q. There is not architect indicated in there. How is it,
18 if you were requiring in your letter that before a new
19 permit be issued that he have and architect, and now we've
20 got a new permit being issued without the architect?

21 A. Mr. Nelson can confirm, but I am confident that the
22 agreement was that he would replace all the fire damaged
23 members in the structure of the house.

24 Q. And Mr. Chakrabarti would not longer owner acting as
25 contractor but instead - - -

1 A. Right, Stroman would.

2 Q. --- a licensed residential contractor would occupy that
3 position?

4 A. That's correct.

5 Q. With respect to the first permit, the April, Two
6 thousand three, permit, did, does your department have any
7 rough in inspection approval, or approval to proceed with
8 sheet rock?

9 A. Do we have to get that approval?

10 Q. No, no, in this case do you have any record of a rough
11 in approval saying, okay, you can go ahead and install sheet
12 rock?

13 A. Do not.

14 Q. And there's no indication that you have that any of your
15 inspectors said, or signed off on the permit that it's okay
16 to install sheet rock?

17 A. That's correct.

18 Q. And as I asked Mr. Cherry, what concern is it to a code
19 enforcement or a building official if, if the City does not
20 approve a rough in inspection and wiring, and sheet rock
21 gets enclosed, what is the concern from the City's
22 perspective?

23 A. Well, you can have hidden defective items that we're not
24 going to see and catch and cause to be corrected.

25 Q. So, sheet rock would cover up charred timbers?

1 A. Charred timbers, the connectors that were in the water
2 line that Mr. Cherry identified as not being correct. In
3 this particular case there was old and new wiring mixed
4 together. Now, you could probably see most of it
5 terminated in the boxes, but still I remember seeing a mix
6 of wires strung in the walls that would have been covered
7 up.

8 Q. Does your code enforcement department have -- let me ask
9 it this way, you had a permit in April of O-Three that was
10 not completed by its deadline, correct?

11 A. Correct.

12 Q. By summer of Two thousand four, you don't have any
13 indication of an approval rough in inspection?

14 A. Right.

15 Q. And that passage of time would be, even if you hadn't
16 been called for an inspection the City would go and check on
17 the progress?

18 A. Correct.

19 Q. A decision was made and a new permit issued in December
20 of Two thousand four, and that permit gave six months?

21 A. Correct.

22 Q. And then, your department issued the Notice of
23 Condemnation through Mr. Nelson, June Thirteenth of O-Five?

24 A. Basically, ...

25 Q. That's Exhibit Seventeen.

1 A. Right. Yes.

2 Q. And you saw the video yesterday, did you not?

3 A. I did.

4 Q. And did that accurately reflect the conditions that were
5 existing at the Twenty-two Forty-three resident at about the
6 time of the Notice of Condemnation letter?

7 A. It did, it does.

8 Q. We heard two builders talking yesterday, Mr. Darby and
9 Mr. Coulter, as well as an electrician, Beach, did you hear
10 their testimony?

11 A. I did.

12 Q. And there are some defendant's exhibits, some checks
13 totaling approximately a hundred and twenty thousand
14 dollars, were you aware of that testimony yesterday?

15 A. Yes.

16 Q. From your experience as a Department of Public Works
17 head and involved with the Code Enforcement Department, did
18 the video tape disclose to you work of that value in that
19 house, a hundred and twenty thousand dollars?

20 A. It did not.

21 MR. KULMALA: I didn't move the admission of Exhibit
22 Fourteen, I believe, did I not?

23 THE COURT: Is Fourteen in?

24 COURT REPORTER: No, sir.

25 MR. KULMALA: I'd move that Fourteen be admitted into

1 evidence.

2 THE COURT: Which one is that?

3 MR. KULMALA: That's the handwritten building permit
4 for Two thousand four.

5 THE COURT: Oh, okay. Any objection?

6 MR. HUTTO: No, sir.

7 THE COURT: Defendant's Number Fourteen is in evidence.
8 (Defendant's Exhibit Fourteen
9 marked and filed.)

10 MR. KULMALA: Thank you, Mr. Bowden, that's all the
11 questions I have, answer any that Mr. Hutto has.

12 MR. BOWDEN: Do you want these back?

13 THE COURT: Alright, Mr. Hutto, your witness.

14 MR. HUTTO: Thank you.

15 (NOTE: Blank lines on this page do not indicate any part of
16 record has been omitted. Headers on testimony pages and
17 hard page breaks between testimony are now required by the
18 Court. See next ensuing page for sequential continuation of
19 record.)

1 DURWOOD BOWDEN, CROSS-EXAMINATION

2 BY MR. HUTTO:

3 Q. Good morning, Mr. Bowden.

4 A. Good morning.

5 Q. You have a, as you testified to, many departments under
6 your title as the head of public works, is that right?

7 A. Correct.

8 Q. And building inspections or building code is just one of
9 them?

10 A. That's correct.

11 Q. But as far as the decision of the building code
12 official, he makes -- you're in his line of command, you
13 supervise him, but he's the one that's actually charged with
14 making the decisions?

15 A. That's correct.

16 Q. Alright. So, an actual decision about what to do
17 relative to a piece of property is made, that comes from a
18 department under your command but it's actually made inside
19 that department?

20 A. Correct.

21 Q. You're not involved in a meeting regarding that, it just
22 happens below you in the chain of command, is that correct?

23 A. It, I may be involved or I may not.

24 Q. Okay. But it's not required that you be involved, he
25 has the authority to make those decisions?

1 A. Right.

2 Q. Okay. And initially when Dr. Chakrabarti first
3 purchased the house from Mr. Singleton the building official
4 for the City of Orangeburg was a man by the name of Allen
5 Ott?

6 A. That's correct.

7 Q. And he had been here for many years?

8 A. Right.

9 Q. At some point in time during the time between the first
10 permit and the second permit Mr. Ott retired?

11 A. That's correct.

12 Q. Okay. And there was an interim time, I think we've
13 heard that Mr. Cherry came in, he was sort of on loan, and
14 Mr. Epting was involved, and they were there sort of as an
15 interim, and then Mr. Nelson came on?

16 A. That's correct.

17 Q. Okay. So, during the course of this project, Mr. Ott,
18 then Epting and Cherry, and then Nelson?

19 A. That's correct.

20 Q. Okay. And ultimately, at the time the decision was made
21 to move forward with the demolition, that was Mr. Nelson's
22 decision?

23 A. That's correct.

24 Q. Okay. The, Dr. Chakrabarti purchased the house from Mr.
Singleton in early February, I think, of Two thousand and

1 three, is that correct?

2 A. I believe so.

3 Q. Okay. And in March of Two thousand and three, so
4 shortly after the time of purchase, I'm going to show you
5 Defendant's Exhibit Number Three, that would be the, I think
6 you called that the initial condemnation letter, is that
7 what you called it?

8 A. Right, I did.

9 Q. Okay. Now, you mentioned something about that
10 generally, or usually, normally y'all send out a courtesy
11 letter, but in this case you didn't do that, you just went
12 straight to a condemnation letter immediately?

13 A. Right. Now, I can't tell you there weren't other
14 letters sent, I believe there was a letter, just a general
15 letter sent to the original owner.

16 Q. To Mr. Singleton?

17 A. Right.

18 Q. And I'll show you that, but that letter was Exhibit
19 Number One, I believe, that letter went to Mr. Singleton?

20 A. Uh-huh.

21 Q. Okay. But to your knowledge was there any prior letters
22 -- here is Exhibit Number One, and if you'll look at --
23 what's the date on it, on Letter Number One?

24 A. December Twelfth, Two thousand two.

25 Q. Okay. Two thousand two.

1 A. Correct.

2 Q. What's the date on the exhibit to Dr. Chakrabarti?

3 A. March Sixth, Two thousand three.

4 Q. Okay. So, at the end of Two thousand and two, a notice
5 went out to the then owner, Mr. Singleton, and a couple of
6 months later, in March of O-Three, the letter goes out to
7 Dr. Chakrabarti?

8 A. Correct.

9 Q. Okay. Now, actually, why don't you hold that, that
10 Exhibit Number Three, and it's two pieces of paper, I think
11 it's easier to read, they're the same -- two copies of the
12 same thing, I think it's easier to read the second page, if
13 you'll, because the first page has that posted thing on it.
14 Okay? That letter was coming from Mr. Ott, who was under
15 you at that time?

16 A. That's correct.

17 Q. In other words, you were, in fact, the Director of
18 Public Works throughout this entire process?

19 A. Apparently, yes.

20 Q. Okay. It says in that letter, does it not, to Dr.
21 Chakrabarti, that he has to either get a permit within, in
22 Sixty days, or either, demolish the house within Sixty days.
23 Is that what it's telling him?

24 A. Let's see. Okay, which line are you reading on?

25 There's several Sixty days, and a hundred and twenty days

1 and several lines on this.

2 Q. Okay. If the house is to be repaired you've got to get
3 a building permit within Sixty days?

4 A. Right.

5 Q. That's one option. Or if it's not going to be repaired
6 you've got to get a demolition permit within Sixty days,
7 correct?

8 A.. Correct.

9 Q. So, sometime before -- that's March the Sixth, sometime
10 before May the Sixth you're supposed to either get a
11 building permit or a demolition permit?

12 A. Right.

13 Q. Correct. Okay. And it goes on to say that if you don't
14 do the repair work, or complete the repair work in a
15 specified time that, Number One, the building official could
16 have the house demolished; or Number Two, you will be
17 ticketed. Correct?

18 A. Correct.

19 Q. And then it says, if you get a ticket -- how about read
20 that Number Two, tell me what that says, right under Number
21 One?

22 A. "Or you will be ticketed and summoned to appear in the
23 Court before the Magistrate or Municipal Judge." Do you
24 want me to continue?

25 Q. Yes, sir, the next line.

1 A. "Once you are ticketed you will have the option of
2 either paying the assessed fine or appearing in Court on the
3 date specified and having your case adjudicated.

4 Q. Okay. So, if you get a ticket and you're telling him in
5 the very first letter that you sent him, if he gets a ticket
6 he's going to have the option of either paying the fine or
7 going to Court and having a hearing in front of a Judge?

8 A. Correct.

9 Q. Okay. But not ticket was issued at that time?

10 A. No.

11 Q. Okay. Alright. I'll let you hold that.

12 A. Okay.

13 Q. I'm going to hand you now Exhibit Number, Defendant's
14 Exhibit Number Six, and can you tell me the date on that
15 letter?

16 A. May Nineteenth, Two thousand four.

17 Q. Okay. And that's a letter from the City to Dr.
18 Chakrabarti, is that correct?

19 A. That's correct.

20 Q. Alright. The, it talks about that there was a meeting
21 and it talks about, the first paragraph is having to deal
22 with the weeds and some limbs in the yard, is that right?

23 A. Correct.

24 Q. Okay. Then, the second, or the next big paragraph talks
25 about the house itself, correct?

1 A. Right.

2 Q. It says, you'll be given Sixty days from receipt of this
3 letter to complete repairs on the exterior of the house.
4 Failure to do so, we'll demolish the house or issue you a
5 ticket. So, that's from May Nineteenth, you're giving him
6 Sixty days to either June Nineteenth or July Nineteenth,
7 correct?

8 A. Repeat the question, please?

9 Q. In that third paragraph where it talks about the house,
10 it says, you are given Sixty days from this notice to
11 complete the repairs on the exterior of the house, exterior
12 of the house.

13 A. Correct.

14 Q. Okay. So, that was in May of O-Four?

15 A. Uh-huh.

16 Q. Alright. At that point in time, y'all aren't telling
17 him he needs to finish it up on the inside, he just needs to
18 finish up on the outside, correct?

19 A. Let's see, let me read it.

20 Q. Okay.

21 A. Okay. And your question is?

22 Q. Isn't that what that letter is telling Dr. Chakrabarti,
23 within the next Sixty days you need to finish up the work on
24 the outside, the exterior?

25 A. That's correct.

1 Q. It doesn't say, you need to finish up the work on the
2 inside?

3 A. That's correct, at this point it doesn't say that.

4 Q. Alright. And you're telling him if he doesn't finish
5 the work on the exterior, the outside, you're either going
6 to demolish the house or give him a ticket.

7 A. Okay.

8 Q. Okay. So, Sixty days from May the Nineteenth of Two
9 thousand four, June the Nineteenth of Two thousand and four,
10 to July the Nineteenth of Two thousand and four, am I to
11 assume that those Sixty days went by and you did not give
12 him a ticket and you did not demolish the house, that he had
13 done the exterior of the house to your satisfaction, because
14 that's what your letter said, if you don't do it in Sixty
15 days we're either going to write you a ticket or tear the
16 house down, and you didn't do either one before July
17 Nineteenth of Two thousand and four?

18 A. Okay. First, you're firing a lot of information at me
19 that I cannot - - -

20 Q. Okay, Well, I'll ...

21 A. --- I can't digest it all at one time. And remember, we
22 had the house going on, which included the exterior.

23 Q. Right.

24 A. We also had the issue, and at least four to six times
25 violations on the yard and the pool.

1 Q. I, and I ...

2 A. And there are letters flying around for all of them,
3 trying to get these things corrected. And like I said in
4 the beginning, in good faith we had started working with him
5 as the contractor, and at this meeting we had been assured
6 that he would keep the outside of the property up to
7 standard while he worked on the house, and we gave him time
8 to do the work, and that didn't happen either.

9 Q. Okay. But that's what I want to be clear about. There
10 are two parts to the letter of May Nineteenth. The first
11 big paragraph deals with the weeds, and the second big
12 paragraph deals with the exterior of the house, am I correct
13 about that?

14 A. That's correct.

15 Q. Alright. The first one says that you've got Fifteen
16 days to fix the problem about the weeds and the swimming
17 pool, correct?

18 A. Correct.

19 Q. And the second one says, you've got Sixty days to fix
20 the exterior of the house?

21 A. Correct.

22 Q. And that if you don't do those things we're either going
23 to demolish the house or give you a ticket. Right?

24 A. That's correct.

25 Q. Alright. So, on August the Tenth of O-Four, now August

1 is on O-Four, alright?

2 A. Okay.

3 Q. I'm going to show you what's been marked as Plaintiff's
4 Exhibit Number Five, do you see that?

5 A. Uh-huh.

6 Q. And that is a ticket that your office issued to Dr.
7 Chakrabarti.

8 A. Uh-huh.

9 Q. And what does it say the violation is?

10 A. Weeds and other offensive matter.

11 Q. Alright, weeds. So, you did give him a ticket after the
12 letter of May Nineteenth for the weeds, but you did not give
13 him a ticket for the exterior. So, what I'm asking you is,
14 I assume, since y'all know how to write tickets, if you
15 wrote him a ticket for the weeds, he hadn't fixed that
16 problem, but you didn't write him a ticket for the exterior,
17 he had fixed that problem?

18 A. The best I recollect on it, yeah, the emphasis in this
19 letter does not, this addressed the exterior of the house.
20 We were getting complaints about these issues. So, the,
21 while the inside of the house had a lot more work to do and
22 needed to be done, to, what we needed immediately was the
23 exterior of the property, the weeds cut, the pool
24 maintained, and the exterior of the house completed. And I
25 cannot tell you by date that, but he did cause the exterior

1 of the house to be improved considerably.

2 Q. Okay, that's what I ...

3 A. And I can't tell you whether exactly the time frame or
4 whatever, but - - -

5 Q. And I appreciate that.

6 A. --- but those were conversations that were going on.

7 Q. Alright. Because I'm not as much interested in the date
8 in my question as in the fact that you do acknowledge that
9 in response to y'all's call for him to get the exterior of
10 the house, the roof and outside of the house looking normal
11 so that people driving by would see a house that looked like
12 a house, he did do that?

13 A. That did take place at some point.

14 Q. Okay. And in fact, this, I'm going to show you what's
15 marked as Defendant's Exhibit Number Thirty-three, and this
16 is a captured image from the video, if you drive by on the
17 street what you saw was a brick house with a door and
18 windows and it looked like, I mean, you wouldn't know from
19 the outside that on the inside there was still walls that
20 needed to be fixed and painted. The outside looked like a
21 normal house?

22 A. That's correct.

23 Q. Okay.

24 A. It's looking better.

25 Q. Alright.

1 MR. HUTTO: I don't think we've marked, I mean, I don't
2 think we've introduced Plaintiff's Exhibit Number Five, so I
3 would move to introduce Plaintiff's Exhibit Number Five.

4 THE COURT: Ms. Harry Dot, would you check that?

5 MR. KULMALA: What's the summons number?

6 MR. HUTTO: It was Three O Two.

7 COURT REPORTER: I'll check it. Thank you.

8 THE COURT: It's in?

9 COURT REPORTER: Now it is.

10 THE COURT: It's in now. Okay. Alright. Plaintiff's
11 Number Five is in without objection.

12 (Plaintiff's Exhibit Five
13 marked and filed.)

14 Q. In fact, I'm going to show you Defendant's Exhibit
15 Number Seven, y'all sent a letter to him acknowledging his
16 efforts to get the exterior of the house cleaned up, did you
17 not?

18 A. This, let's see, when was the ticket written?

19 Q. The ticket was written August of O-Five.

20 A. Okay. I see there's a mixed bag here.

21 THE COURT: I believe it was August of O-Four, if I can
22 interrupt you, if that was the ticket, Plaintiff's Number
23 Five.

24 Q. August, O-Four, it is, I'm sorry.

25 A. Ticket Number Three O Two was August, Four.

1 Q. August O-Four. I don't mean to interrupt, but I mean,
2 grass and weeds grow in the summer. I mean, he might have
3 had the grass cut in July and you gave him the ticket in
4 August.

5 A. But the, I don't have the date.

6 Q. Do you want to see the ticket?

7 A. Yeah, who wrote the ticket?

8 Q. Okay. Here it is. It looks like Mr. Nelson wrote the
9 ticket.

10 A. Okay. Well, that's the thing here. You know, we had
11 the time where Allen was involved with the property, and
12 then Gene Nelson and Dan Cherry and David Epting took over
13 after Allen left. And you've got letters here, both of
14 these that you have shown me are from Mr. Ott, but the
15 ticket is from Mr. Nelson. Therefore, I cannot tell you
16 that this ticket is related to this letter at all. I'd have
17 to go completely through the file and see if there are other
18 letters or why -- and of course, he had been warned enough,
19 Mr. Nelson didn't need to give him any other warnings to
20 write a ticket. So, you know, ...

21 Q. I was not really suggesting that. What I'm suggesting
22 is that knowing what Dr. Chakrabarti was supposed to do,
23 what you wrote him the ticket for was the weeds, not for the
24 exterior.

25 A. Okay. But the discussions that I'm telling you that we

1 had and the house being repaired were after Mr. Cherry and
2 Mr. Nelson, and was not, that letter Mr. Ott wrote was not
3 pertaining to what I'm talking about, because when Mr. Ott
4 left the exterior of the house was not satisfactory.

5 Q. Correct. And so, but it had gotten satisfactory and
6 then y'all had another meeting in August?

7 A. You'll have to show me times, letters, or whatever.

8 Q. Okay.

9 A. There was so many things going on with the exterior,
10 interior, pool.

11 Q. Alright, I'm going to show you this letter, it's Exhibit
12 Number Eight.

13 THE COURT: Defendant's?

14 Q. Defendant's Exhibit Number Eight, yes, sir. First of
15 all it talks about that there was a meeting on August the
16 Fourth.

17 A. Okay.

18 Q. Okay. The first thing, the first paragraph talks about
19 the pool, correct?

20 A. Correct.

21 Q. The second paragraph talks about the, mowing the lawn,
22 or bushes or yard.

23 A. Right.

24 Q. Okay. And then another part of it talks about having
25 the outside completely finished. Okay? Correct?

1 A. Correct.

2 Q. And then it says, you've got Ninety days to do this, and
3 a hundred and twenty days total from August the Fourth to
4 have the house totally complete?

5 A. Okay.

6 Q. And then it says, "Failure to comply with these
7 deadlines will result in enforcement action being taken."

8 A. Okay.

9 Q. And, in fact, the City of Orangeburg did not write any
10 tickets to Dr. Chakrabarti between August the Fifth and that
11 hundred and twenty days.

12 A. Okay.

13 Q. So, y'all were constantly telling him to do something
14 and giving him a deadline, and then nothing would happen,
15 you didn't write him any tickets, and then y'all would meet
16 again and you'd give him a new deadline.

17 A. Okay.

18 Q. And I guess my point is this, y'all obviously know how
19 to write tickets, but every ticket you wrote him had to do
20 with weeds until the last one.

21 A. Okay.

22 Q. And do you agree with that?

23 A. Without - - -

24 Q. Or do you disagree with that?

A. I'm not going to disagree, agree, anything without a

1 time line in front of me and looking at a lot of documents.

2 Q. Alright.

3 A. There's a lot of things that went on there. I can say
4 this as well, Dr. Chakrabarti was not consistent in his
5 dealings with us. The communications that took place, you
6 know, run in, say something, run out, going to do this,
7 going to do that, had different contractors coming in, you
8 know, whatever, subs trying to do stuff, hard to pin down.
9 We want to give everybody the benefit of the doubt and try
10 to work with them, but it was very, very difficult.

11 Q. I appreciate that, but what I'm, the point I'm trying to
12 make is that when you have a problem and you want to try and
13 address it, one mechanism that is at your disposal is to
14 write the person a ticket for the violation that you say
15 they're doing, - - -

16 A. Okay.

17 Q. --- and the City of Orangeburg in working with Dr.
18 Chakrabarti and maybe observing a violation here or a
19 violation there or two violations, or six violations,
20 whatever you observed, you weren't writing him any -- you
21 kept telling him you were going to write tickets but you
22 never did, except for the weeds.

23 A. Okay. Now, what would a ticket - - -

24 Q. So, my point is ...

25 A. --- Okay, what would a ticket have been for on the

1 inside, tell me, what you would write?

2 Q. I, I, according to Mr. Cherry he would have written one
3 for either, he talked about a spliced pipe.

4 A. No, sir, that was, you don't approve the inspection, you
5 don't write a ticket because it doesn't comply.

6 Q. Well, you, but you told him in this letter you would.

7 A. It says, let's see, these were about completion
8 deadlines.

9 Q. Alright. Well, when you finally did -- let me show you
10 a different ticket, then, when you did write the -- Mr.
11 Nelson did write the ticket August, let's see, Defendant's
12 Exhibit Twenty-four, August the First of O-Five, that ticket
13 is for unsafe building, right, violation of the building
14 code? ,

15 A. Is this not the one you referred to yesterday with the
16 three letters?

17 Q. Yes.

18 A. Okay. If I'm not mistaken, this, what I see in those
19 letters, this is, you know, the letters were saying, you
20 haven't met the time line, the deadlines that you had to.
21 So, therefore, you have to demolish the house, and it's up
22 to you to demolish the house. He did not demolish the
23 house. The ticket was for not -- you know, when we came up
24 and said we were going to demolish it in those letters on
25 the First, we're going to demolish it. We had told you you

1 had to demolish it, you did not demolish it, now what we're
2 telling you is, you're in violation, we're issuing you a
3 citation for that, for the failure to demolish your house,
4 and we're telling you we're going to do it now.

5 Q. Okay. You never wrote him any ticket about the house
6 before that?

7 A. What would we write the ticket for, sir?

8 Q. I'm not the code enforcement man, but I'd say there's a
9 whole code there - - -

10 A. Okay, no, we didn't - - -

11 Q. --- that everyone of those - - -

12 A. --- we didn't write the ticket because it was deadlines
13 and working on the building permit, it was not that he
14 committed some crime inside the house or whatever. There
15 was not a violation of something that could not be corrected
16 by the deadline if he so chose to do so.

17 Q. So, his offense then is that he was slow, or his
18 contractor was slow?

19 A. His first offense, or first mistake, or first issue was
20 when he chose to be the general contractor and said he was
21 going to live in the house and then at some point he decided
22 not to and did not come in and make the, take the
23 appropriate steps.

24 Q. Alright, but people can change their mind, can they not?

25 A. I don't know in that -- yeah, certainly, but ...

1 Q. Okay. So, under one set of circumstances he was going
2 to be the general contractor and he was going to hire the
3 subs, but that changed and, in fact, y'all had a meeting
4 about that, and you told him, and he understood he had to
5 get a general contractor for the second permit?

6 A. This is correct.

7 Q. And he did. And you told him - - -

8 A. We tried to work with him because of the amounts of
9 money -- you don't see the results, and what we did not, we
10 could not figure out whether he was telling us the truth
11 about how much money he spent or whether the subs that he
12 had chosen to use were taking advantage of him.

13 Q. But, but whichever, what you really were upset about is
14 that he wasn't moving fast enough, not that he was doing
15 something wrong, as you put it, he wasn't doing anything
16 wrong, he just wasn't getting it done fast enough.

17 A. No, sir, there was one issue, he was trying -- whoever
18 was putting sheet rock over things that they should not have
19 been putting sheet rock. There was an issue.

20 Q. That was in the first contract, that was in, whatever,
21 June of, when Mr. Cherry was there in June of O-Four.

22 A. Okay.

23 Q. Okay.

24 A. Uh-huh.

25 So, that got straightened out by y'all saying, stop the

1 work, you've got to get a general contractor?

2 A. Right.

3 Q. Okay. During the time of the second permit Dr.
4 Chakrabarti and Mr. Coulter, who was working for Mr.
5 Stroman, came in and met with you on several occasions?

6 A. They did.

7 Q. Okay. So, during the time of the second building permit
8 being issued there was activity going on, there were
9 meetings going on, but the bottom line is, I think what I'm
10 trying to understand is, he just didn't finish by June the
11 Tenth?

12 A. You'll have to show me the document again, is that the
13 date we were looking for?

14 Q. Well, that's yet another question, I guess. June the
15 Tenth of O-Five, on Defendant's Exhibit Number Thirteen, I
16 believe, is that what it says?

17 A. Six/Ten/O-Five, correct.

18 Q. Right. And so my question is, because his contractor,
19 or Mr. Stroman, whoever, didn't finish on time your remedy
20 was, rather than making an extension to the permit or
21 anything else, was to demolish -- it wasn't yours, but Mr.
22 Nelson's decision was at that time to demolish the house?

23 MR. KULMALA: Your Honor, - - -

24 THE COURT: Hold on one second.

25 MR. KULMALA: I'd make an objection. I believe

1 counsel's characterization of the reason and decision over-
2 simplifies. We've got an Exhibit Number Seventeen which
3 states the reason.

4 THE COURT: I will overrule your objection. He can
5 testify to that, he can explain that.

6 Q. Is that right?

7 A. What's your question?

8 Q. My question was that Mr. Nelson made a decision that
9 because June the Tenth had come and gone and it hadn't been
10 completely finished, instead of giving an extension or any
11 other, having another meeting or whatever, that was it, he
12 was just going to tear the house down, that was his
13 decision?

14 A. That was his decision, but as to what, what was involved
15 in the decision you'll have to show me the letters that he
16 wrote.

17 Q. Okay. Well, I'm going to -- I think he's going to
18 testify, I'll ask him about that. Okay? Because it was his
19 decision, not yours, correct?

20 A. That's correct.

21 Q. Okay. Okay, I'm going to show you Defendant's Exhibit
22 Seventeen and ask you about, One, Two, Three, Four, Five,
23 Six, Six lines down, it says, "Since it has been over two
24 years that you've been working on this property and it is
25 still not completed, no more time can be allowed."

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A. Okay.

Q. That's what you told him, in essence, time's up?

A. That is what - - -

Q. Mr. Nelson told him.

A. --- Mr. Nelson told him.

Q. Okay. I think I'm about finished, excuse me just one second.

MR. HUTTO: That's all I have.

THE COURT: Redirect?

MR. KULMALA: Nothing on redirect, Your Honor.

THE COURT: Alright. Thank you, sir, you may step down.

Can I see y'all for a second?

(Whereupon, a bench conference is had off the record.)

THE COURT: Ladies and gentlemen, we're not taking a break for lunch yet. I saw the disappointment there, but I am going to let y'all stretch your legs. Go back in the jury room for about ten minutes, and then we'll come back out, we're going to take one other witness, and then we're going to break for lunch. Okay? Remember, you can't talk about the case, you haven't heard everything. Thank y'all (Whereupon, the jury retires to the jury room.)

(Recess)

1 JAMES S. MEGGS - DIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Would you please state your name, sir?

4 A. My name is James S. Meggs, spelled M-E-G-G-S.

5 Q. And Mr. Meggs, you are resident of the Columbia area?

6 A. That's correct.

7 Q. And what I'd like to do is ask you to describe for the
8 jury what you do for a living right now?

9 A. I was trying to be a recovering lawyer but the
10 retirement system is a little shaky, so I'm in private
11 practice in Columbia, South Carolina, with the law firm of
12 Callison, Tigh and Robinson.

13 Q. And you were licensed by the South Carolina Bar when?

14 A. Nineteen seventy-seven.

15 Q. And have you been a member in good standing of the bar
16 since Nineteen seventy-seven?

17 A. Yes, sir.

18 Q. And what is your undergraduate educational background?

19 A. I have a Bachelor of Arts in political science from the
20 Citadel, Class of Nineteen seventy-four.

21 Q. And a Bachelor of Arts, and what was the field?

22 A. I'm sorry, political science.

23 Q. Okay. And you have a law degree from Nineteen seventy-
24 seven?

25 A. That's correct.

1 Q. And do you have any additional post-graduate work?

2 A. I took a combined program at the law school, at the
3 University so as to receive a Masters Degree in public
4 administration, and my law degree, I took the Masters in
5 December after I graduated in May from law school, Nineteen
6 seventy-seven.

7 Q. And after your graduation in May of Seventy-seven, what
8 did you do in the years following insofar as public
9 administration and law?

10 A. Actually, I started my, a public administration type of
11 career while I was in law school during, when you would
12 typically clerk, be a law clerk in a law firm or a state
13 agency. I worked for the Fifteen cities and towns in
14 Lexington County during my early, or my last two years of
15 law school. I hung out a shingle in Lexington in Nineteen
16 seventy-seven as a sole practitioner and realized ultimately
17 that I was not having the kind of career opportunities that
18 I wanted to have, and I went with the City of Columbia in
19 Nineteen eighty-two as an assistant city attorney. That
20 kind of fulfilled my needs to be a public administrator and
21 a lawyer. So, that was my initial move out of private
22 practice.

23 Q. And you worked then for the City of Columbia for
24 approximately how long?

25 A. I worked for the City for a total of Twenty-five years.

1 I was promoted in Nineteen ninety. After my boss retired,
2 City Council decided that they would let me have a shot at
3 the first seat. I was city attorney in Columbia for
4 Seventeen years and retired in Two thousand and seven.

5 Q. What kind of things does the city attorney or the city
6 attorney's office for Columbia do?

7 A. It is a wide myriad of practice areas. I used to say
8 that we did virtually every kind of law with the exception
9 of domestic relations because we had, we had contracts, we
10 had eminent domain practice, we were buying and selling real
11 estate, developing real estate projects, we had public
12 finance issues, we had Municipal Court, prosecutions, we
13 advised all of the city departments, the city council, the
14 mayor, of course. One of the big areas of practice was the
15 interface that we had, the interaction and advice that we
16 had with the Code Enforcement people in housing, building
17 codes. Property maintenance was a big part of what we did
18 in our office.

19 Q. And did the city attorney's office also become involved
20 in law, we're here in a law suit today, it's called
21 litigation, did the city attorney's office become involved
22 in litigation?

23 A. Absolutely. We, with very few exceptions we handled the
24 defense and prosecution of all of the City of Columbia
25 related litigation.

1 Q. Have you in your capacity with the City presented cases
2 to the South Carolina Court of Appeals and Supreme Court?

3 A. Yes, I think last count I had something on the order of
4 Twenty reported decisions in the Courts, Court of Appeals or
5 the Supreme Court.

6 Q. You mentioned a big area of the city attorney's
7 responsibility has to do with code enforcement?

8 A. That's correct.

9 Q. And if you have a time frame, how long have you been
10 involved in code enforcement?

11 A. Since a very cold morning in January of Nineteen eighty-
12 three when I was the office person on the scene of
13 demolitions of substandard properties in Shandon, in the
14 Shandon area. A nice elderly lady had fought the City for
15 almost a decade, all the way to the U. S. Supreme Court, and
16 right after I went with the City in Nineteen eighty-two that
17 litigation ended, and unfortunately, we were pressed into
18 service and had to demolish some of these burned structures
19 in the Shandon and other areas of Columbia.

20 Q. So, then, that would have your experience from the city
21 attorney's office going back Twenty-eight years dealing
22 with code enforcement and demolition?

23 A. That's correct.

24 Q. And during the past Twenty-eight years have you kept
25 yourself educated, informed as to changes in the laws and

1 procedures for code enforcement issues?

2 A. Yes, sir.

3 Q. And have there been changes in the method and mechanics
4 of how cities handle code enforcement?

5 A. There have been changes. We look to the Legislature, to
6 the General Assembly for authority to do things as
7 municipalities and as counties, local governments. In
8 Nineteen eighty-two, when I first went with the City there
9 were a couple of statutes that we would look to for
10 empowerment or authority to engage in activity to help clean
11 up our communities and keep a good, safe, sanitary stock of
12 housing available for folks to help preserve property values
13 and so forth. Some of those authorities were found in State
14 law that dealt with municipalities generally. There's a
15 certain part of the State Code that deals with that.
16 There's some other enabling legislation that's still on the
17 code books from way back and it has to do with unfit
18 dwellings. But what's happened in recent years is, the
19 Legislature has changed its tune, if you will, about codes,
20 about building codes, about electrical codes, these kinds of
21 things. And what used to be power that was given to the
22 cities, towns and counties permissibly, by that, there was
23 no requirement that we adopt certain codes, the Legislature
24 said, you can adopt these if you wish. Not too many years
25 ago that tune changed and the Legislature, the General

1 Assembly decided apparently that it was important to have
2 uniformity all across South Carolina when it came to
3 building codes, housing, electrical, all of these things, so
4 that everybody was singing from the same hymnal, as it were.
5 So the Legislature at one point said to the local
6 governments, you will adopt, you shall adopt, no discretion,
7 you shall adopt the following standard codes, and they
8 listed those codes. They were published by then the
9 Southern Building Code Congress out of Birmingham, Alabama.
10 But most recently those codes have taken on international
11 status, and we now are required, I saw, we, the towns,
12 cities, counties, we are not required by the Legislature to
13 enforce codes, those standard codes, and there's a list of
14 them, building, housing, plumbing, electrical, gas. It is
15 an unfunded mandate from the Legislature, you will enforce
16 these codes. There's another set of codes that continue to
17 be authorized but not required. In other words, the
18 Legislature has said to the local governments, you may
19 adopt these standard codes. It's another class. One of
20 those codes that we are allowed to adopt and enforce but not
21 required to is the International Property Maintenance Code,
22 and that's the code that Orangeburg apparently adopted in
23 the Two thousand version of that code, and this was the
24 code, and continues to be the code that's the subject of
25 this case. So, I have analyzed some of the documentation in

1 the case against the Two thousand International Property
2 Maintenance Code on the City's request.

3 Q. Now, Mr. Meggs, in connection with your work then for
4 the City of Columbia for those Twenty some odd years, do
5 you, do you have any way of describing or recalling how many
6 code enforcement cases involving fire damage or demolition
7 that you've been involved in?

8 A. I couldn't be at all specific, I would hazard a guess
9 that we were involved on several dozen each year.

10 Q. And was it part of your job in the city attorney's
11 office to be familiar with the content of the several codes
12 in order to advise city officials?

13 A. Absolutely, yes, particularly in the -- not so much in
14 the technical aspect of each of the codes but in the
15 administrative provisions, the enforcement provisions.

16 Q. So, you're familiar with how the city, at least the
17 City of Columbia applied the, the requirements of the
18 several codes?

19 A. That's correct. And code enforcement is the subject of
20 a lot of discussion among municipal and county attorneys
21 around the state, both informally, in small groups, and at
22 State and national meetings. So, this is a big area all
23 over the county.

24 Q. And I'm holding up this light purple book called,
25 International Property Maintenance Code Two Thousand, and

1 from your familiarity with the codes that you just
2 described, do you recognize this to be the code, the Two
3 thousand Maintenance Code?

4 A. That appears to be the Two Thousand International
5 Property Maintenance Code, yes.

6 Q. And you're familiar with city administration dealing
7 with building issues pursuant to that code?

8 A. Yes, sir.

9 MR. KULMALA: Your Honor, I believe we have
10 stipulation, I'd like to request on the record that he be
11 qualified to testify as an expert in the municipal
12 procedures dealing with condemnation, demolition of
13 structures, pursuant to codes and ordinances.

14 THE COURT: Any objection?

15 MR. HUTTO: No, sir.

16 THE COURT: Alright, he's so stipulated. Thank you,
17 sir.

18 MR. KULMALA: Thank you, Your Honor.

19 Q. Mr. Meggs, let me ask you at the beginning, you
20 understand that this is a case about condemnation or
21 demolition of a fire damaged house?

22 A. Yes, sir.

23 Q. And you understand that it was a house that was in some
24 degree of restoration pursuant to city building permits?

25 A. I understand that, yes, sir.

1 Q. And at my request have you reviewed documents of the
2 City's file relating to this demolition of Twenty-two Forty-
3 three Middleton?

4 A. Yes, I have.

5 Q. Let me ask you this from a city policy and
6 administration standpoint, in what way does a fire damaged
7 building factor into a city's public health or safety
8 concern, if at all?

9 A. Well, a burned structure invites a lot of problems.
10 Obviously, no good can come from the continued existence of
11 a burned structure. There are safety concerns that the once
12 burned fire is invited again, so, there are fire risks.
13 Typically on a burned structure openings are made in the
14 roof, in the walls, etcetera, which invite insect and
15 rodent, vermin infestation. But perhaps the more important
16 aspect is the effect that the structure has on the
17 surrounding neighborhood. From a property value standpoint,
18 if you think, it would be our common experience as citizens
19 that we would know that having a burned structure in your
20 neighborhood or in the vicinity of your own property is
21 going to have a deleterious effect, a decline effect in the
22 value of your property. The esthetic aspect is important as
23 well, and that again feeds into this decline in property
24 value.. When properties are not maintained properly we know
25 from scientific studies, what we call, some of which we call

1 the broken window syndrom, once you have a problem property
2 in an area the tendency is for folks to slack up and not
3 maintain their own property, so things generally get worse
4 in the area. And certainly it can have an increase in crime
5 and other negative impacts.

6 Q. So, the city has an interest and reason in dealing with,
7 one way or another, dealing with burned out structures?

8 A. The public absolutely has an interest in dealing with
9 substandard properties and seeing that things are maintained
10 properly.

11 Q. This may be obvious, but I just want to ask anyway, what
12 type of alternatives does a city landowner face when a fire
13 has seriously damaged the premises, what type of
14 alternatives are available?

15 A. Well, I think probably the norm is that when a property
16 is burned it's very hard to reconstruct, and typically
17 you're going to see the property demolished and
18 reconstructed. But certainly, it is not a viable
19 alternative for everyone to just stand still and abide the
20 continued existence of such a structure.

21 Q. A few minutes ago you described the, I guess it would be
22 evolution, the changing of, of municipal ordinances and laws
23 dealing with damage to dilapidated structures as law coming
24 from the State has changed, is that fair?

25 A. Yes, sir, that's what I described, yes, sir.

1 Q. And the, the, it's what's called the ICC, is that the
2 International Codes Council?

3 A. International Codes Council, yes.

4 Q. And that organization has drafted or developed numbers
5 of codes, and I believe you said some of them are mandatory,
6 that is, the State has said, you adopt and enforce these?

7 A. Actually, the mandate is even stronger than that. The
8 State, the Legislature at one time said, you will adopt
9 these codes. The Legislature has changed, or the mandate
10 has changed, and the General Assembly has said to local
11 governments, you will enforce. It's no longer a question of
12 adoption, it's a question -- it's not a question, it is a
13 fact that the local governments must enforce the codes from
14 the ICC.

15 Q. Are you familiar with the State requirement concerning,
16 I believe it would be in a State statute concerning building
17 permits that owner acting as builder, any limitations or
18 requirements for an owner to act as a builder on a
19 construction?

20 A. I'm generally familiar with that requirement, it is not
21 part of the - - -

22 Q. Code enforcement?

23 A. --- code set from the ICC.

24 Q. The ICC, you mentioned several codes, one was the
25 building code, that's the one that generally deals with

1 construction of new structures?

2 A. That's correct.

3 Q. And then there's a multiple, electrical, gas and others
4 related to that, those are all mandatory?

5 A. Correct.

6 Q. And the lavender or purple book that I showed a minute
7 ago, that's called the International Property Maintenance
8 Code, correct?

9 A. Yes, sir.

10 Q. And that doesn't control new construction but rather
11 ongoing condition and care of existing buildings?

12 A. That's correct. Dwelling units and all form of
13 structures, commercial, etcetera.

14 Q. Is the Property Maintenance Code one of the mandatory
15 codes?

16 A. It is not, it is a code that is by statute offered to
17 local governments as an option to adopt.

18 Q. It's a package deal tool for local governments to be
19 able to handle problems such as burned out -- issues such as
20 burned out structures?

21 A. That's right, yes, sir.

22 Q. But if the code is enacted or adopted by the City as an
23 ordinance, then what does that do the code then?

24 A. Well, to adopt the International Property Maintenance
25 Code, that's a mouth full, to adopt it requires an ordinance

1 of the governing body. So, in the case of a city you would
2 prepare an ordinance incorporating that lavender book by
3 reference and have two public hearings, two public readings,
4 and adopt an ordinance specifically adopting that book. It
5 then becomes the law of the City of Orangeburg, or the
6 County of Orangeburg.

7 Q. And where the code has been adopted, then you forget
8 about whether it's permissive or mandatory, it now as an
9 ordinance becomes law that must be obeyed by the City of
10 Orangeburg?

11 A. And the property owners and citizens of the City of
12 Orangeburg, correct.

13 Q. It becomes -- an ordinance becomes a law in the City
14 just like any other laws in the City?

15 A. That's correct.

16 Q. And compliance with it is not optional, it's required?

17 A. That's correct.

18 Q. Does the, I'll call it the IPMC, we'll know that's the
19 purple book, does the IP -- and it's a little bit easier
20 that long word, does the IPMC provide the road map for code
21 enforcement now by its adoption in the City of Orangeburg?

22 A. It does, that's correct.

23 Q. So, Orangeburg's code enforcement has no choice or
24 elective but to follow the IPMC that's now in effect?

25 A. That's correct.

1 Q. What I want do in a minute, I'm going to go through some
2 of the steps taken by the City of Orangeburg, but what I
3 want to ask you generally, are you familiar with what the
4 IPMC would require code enforcement to do in the case of a
5 fire burned structure, a fire damaged structure?

6 A. Yes. I don't, I don't know that the code makes any
7 particular distinction among fire damaged or other
8 substandard structures.

9 Q. I'm going to hand you the IPMC and ask you if you would
10 to identify some of the sections in the code that you
11 believe most applicable to dealing with a structure observed
12 to have been fire damaged?

13 A. This code speaks to define unsafe structures and
14 equipment. There's a Section One O Eight that deals
15 specifically with that. The code official makes a
16 determination if there are unsafe structures and equipment,
17 and then provides certain notice to the property owner.
18 Those notices are prescribed in the contents, you know,
19 every little thing that has to go in that notice is set
20 forth in this code, in Section One O Seven. As I viewed the
21 documents and the sequence of events in this particular
22 instance it appears that the code official made that initial
23 determination and then made a notice, gave that notice under
24 Section One O Seven, and you'll have the, obviously, I
25 presume the jury will have this code in your deliberations,

1 but after a period of time there are provisions in the
2 administration of this code that talk to cases involving
3 demolition. And what you'll see is that when the code
4 official determines that it's just not practical that a
5 building is ever going to get renovated, which might have
6 been the case here, or there have been, there's been the
7 cessation of normal construction for two years, cessation of
8 normal construction, then you go to a different area of the
9 code, in Section One Ten, which deals with how the code
10 official goes about to get the property removed. There's,
11 there are notices that are required under Section One Ten,
12 actually, it refers back to Section One O Seven, the owner
13 is given the opportunity to demolish. In the event of the
14 failure of the owner to demolish, then the city has the
15 opportunity to go in and do that on the owner's behalf and
16 put a lien on the property for the expense of the
17 demolition. Very important in both of these, that is, the
18 demolition track and the enforcement track, is that the
19 notices that are given to the owner clearly must advise them
20 of their right to appeal to a Board of Adjustment, which is
21 a city board, but there is a review that's available. You
22 have to request it within Twenty days of the receipt of
23 whatever notice, either the enforcement notice or the notice
24 to demolish the property, it's very important.

25 Q. You mentioned, and throughout the operation under this

1 IPMC, the code official is the person for the city who is at
2 the point with the responsibility and the decision making,
3 is that correct?

4 A. The code official is the point person, yes.

5 Q. And in your experience in training and operation with
6 the City of Columbia, what have you found with respect to
7 the person occupying the office of code enforcement or code
8 official, and also being involved with issuing building
9 permits. Has that posed any problems that you've observed?

10 A. It doesn't pose problems, and in fact, all of these
11 codes are interrelated. And the building official for the
12 jurisdiction for the City of Columbia, the County of
13 Orangeburg, the City of Orangeburg, the building official is
14 the code official. That's how these standard codes work,
15 and that's how the codes work in the mandatory codes, you
16 know, those, that group that the Legislature says, you only
17 enforce these, that's how it works, the building official is
18 the code official. And overseeing and reviewing is a
19 Building Board of Adjustment. So, that's exactly the
20 structure that the Legislature has mandated in, not so much
21 this code because we don't have to adopt this, but if we
22 were talking about a gas code question, or plumbing or
23 building code question, the building official is the point
24 person. Likewise here.

25 Q. If I could ask you, and I'll try to put this in plain

1 saw mill talk, you have one person who is in charge of the
2 office for receiving, processing applications for building
3 permits. That person also handles code enforcement, whether
4 it's IPMC or building code. And I just want to make sure
5 that I understand that there's nothing unusual about that,
6 and you have no problem with that?

7 A. There's absolutely nothing unusual about it, that's the
8 structure that's mandated in the code.

9 Q. Okay. So, if you've got one person wearing two hats,
10 then that's what the code wants you to do?

11 A. I would beg to differ that it's not wearing two hats,
12 it's all, - - -

13 Q. It's all one hat?

14 A. --- it's one great big hat, yes, sir.

15 Q. Okay. And I want to go back on something you were
16 taking about and this relates to the notice, I think it's
17 under Section One O Eight, which would be where you're
18 making a decision to demolish?

19 A. That would be One Ten.

20 Q. I'm sorry, One Ten?

21 A. Yes, sir.

22 Q. And you talk about notice, and that's what I wanted to
23 ask you about is, what that is all about is, somebody has a
24 house, or a building that's got money tied up in it, and
25 here comes the City and knocks it down and doesn't pay them

1 anything for it. Now, that's kind of serious business,
2 don't you reckon?

3 A. I reckon.

4 Q. What I want to make sure that I understand, you talked
5 about notification going to the landowner, and you mentioned
6 something about a Board of Appeals. And that's what I want
7 to make sure I understand. If the City does what the IPMC
8 requires the City to do, once they make that decision the
9 City gives notice not only that you're required to demolish
10 this building, but also if you disagree you'd have a right
11 to have this considered by the Board of Construction
12 Appeals?

13 A. That's correct.

14 Q. Or whatever the name of the -- but it's the City's board
15 that reviews that kind of decision?

16 A. That's right. And then, a review by a Court can occur
17 after that Board of Adjustment Appeal. If a property owner
18 is displeased with the result at the City Board level then
19 they can go on to this Court, Circuit and have the decision
20 reviewed.

21 Q. So, if you own a house that's, you get a notice that
22 you're required to demolish the house, and the notice also
23 says, if you disagree or if you're dissatisfied, or have any
24 problem with this you have a right to appeal, does that give
25 you a real -- you, the land owner, give you a real

1 opportunity to say, hey, stop the presses, this is not the
2 right thing to be done?

3 A. And appeal would, under the IPMC, an appeal stops the
4 demolition.

5 Q. And it gives you, the landowner, the opportunity to
6 have, first, the Board of Appeals look at your position?

7 A. That's correct.

8 Q. And if you're dissatisfied with the Board decision, then
9 you have right to take it into the court and be in a
10 courtroom here like we are today?

11 A. That's correct.

12 Q. So, it's not just the code enforcement official who has
13 total control over this, but the land owner can get higher
14 ups to look at it and see whether the decision was properly
15 made?

16 A. That's correct.

17 Q. Does, does that give a real opportunity then to a land
18 owner to at least have his concerns heard by somebody who
19 can do something about it?

20 A. I think that's pretty obvious, yes, sir.

21 Q. Let me, if I could, go through -- you've had an
22 opportunity to look at in preparation for offering your
23 opinion today some of the exhibits, some of the documents
24 that have been generated by this condemnation demolition
25 process?

1 A. That's correct, yes, sir.

2 Q. First I'm going to hand you Defendant's Exhibit Three,
3 March Sixth, Two thousand three, letter from the City to Dr.
4 Chakrabarti, and ask you if you've had an opportunity to
5 consider that?

6 A. I have seen this letter, yes, sir.

7 Q. Okay. These exhibits have gotten sometimes a little bit
8 jumbled, it may take me a minute, I'm going to try to pull
9 most of them up together. Let me hand you Exhibit Number
10 Four also, which is the April, Two thousand three,
11 typewritten permit, and ask you if you've seen that?

12 A. Yes, sir.

13 MR. KULMALA: Your Honor, to save time I'm going to
14 resort to my copy rather than plow through the stack up
15 there.

16 THE COURT: That's absolutely no problem with the
17 Court.

18 Q. Exhibit Number Four, also April Seventh, Two thousand
19 three, that's a photocopy of the exhibit, have you see that?

20 A. Yes.

21 Q. Exhibit Number Five, that's the handwritten April
22 Seventh?

23 A. Yes, sir, I've seen this.

24 Q. Exhibit Number Six, a City letter to Dr. Chakrabarti,
25 May Nineteenth of Two thousand four?

1 A. I've seen this, yes.

2 Q. Number Seven, City letter to Mr. Chakrabarti, July of
3 Two thousand four?

4 A. Yes, sir.

5 Q. Exhibit Number Eight, which is a City letter of August,
6 Two thousand four, to Mr. Chakrabarti?

7 A. Yes, sir, I've seen this.

8 Q. Exhibit Eleven, which is a memo, September Ninth, of Two
9 thousand four, I don't recall if you've had an opportunity
10 to look at that one?

11 A. Yes, sir, I've seen this.

12 Q. Exhibit Number Fifteen, code enforcement letter to Mr.
13 Chakrabarti, June Sixth of O-Five?

14 A. Yes, sir, I've seen this.

15 Q. And this is a memo, I'm not sure if you've seen this or
16 not, maybe you'll recognize Number Sixteen, that's the memo
17 June Thirteenth of O-Five?

18 A. I've seen this, yes, sir.

19 Q. And finally, Number Seventeen, Notice of Condemnation,
20 June Thirteenth of Two thousand five?

21 A. I've seen this, yes, sir.

22 Q. Now, what, what I want to do is ask you with those
23 several exhibits how the documentary handling of Twenty-two
24 forty-three Middleton by the City of Orangeburg complies or
25 does not comply with the requirements, I guess you could

1 say, mandates of the ordinance adopting the IPMC?

2 A. Alright, sir.

3 Q. Have you had an opportunity in looking at those
4 documents, and if you'd like to look at them for a few
5 minutes more, that's what I want to find out, is, does the
6 documentary presentation of the City's handling of this
7 comport with IPMC requirements?

8 A. I, I actually went back, I didn't have a, the purple
9 book in my collection, so I went back on the web site and
10 pulled the Two thousand version of the IPMC, and they change
11 this thing slightly about every three or four years, so I
12 wanted to be sure I was looking at actually what was the
13 real live code. The, the documentation trail generally
14 complies with the mandates of the IPMC. It is indicative,
15 it shows what is typical in my experience and that is that
16 local government folks aren't about tearing property down or
17 making people tear property down. It's about trying to get
18 compliance with the code. And nine times out of ten you see
19 the code official bending over backwards and going out of
20 his or her way to try to make accommodation and just get the
21 dad-gum house fixed. That's what it's about. So, the early
22 letters are pretty consistent with my Twenty-five plus years
23 of experience in seeing these things unfold. The real
24 critical document in this whole chain is Exhibit Seventeen,
25 June Thirteen, Two thousand five, when the code official

1 finally had had enough, apparently, and gave the notice
2 under Section One Ten of the code. That's the condem - or
3 the demolition notice. Alright, so after a couple of years
4 of trying to get compliance, get compliance, and remember,
5 there were three distinct issues going on on this property,
6 there was the swimming pool, which is kind of outside of
7 this demolition problem, there were the weeds, and then
8 there was the house. And the thing went on and on and on,
9 and finally, this notice went. And I've reviewed this one
10 carefully, and it complies with the notice requirements of
11 Section One O Seven of the IPMC, it contains all of the five
12 elements, and you'll see them right here in the code, it's
13 got to tell the owner where the property is, it's got to
14 tell them what's going to happen, when it's going to happen,
15 and most importantly I think, inform the owner of the right
16 to appeal to the building board of adjustment or whatever
17 you denominate that board in Orangeburg. That is extremely
18 important. I don't know that that was done here, but I do
19 know that t his notice contains all of those elements, and
20 it was a good and effective notice under the code.

21 Q. If I could refer you to Page Two and ask you to read to
22 the jury the paragraph that says at the beginning, "Any
23 person"?

24 A. This is Page Two of Exhibit Seventeen, "Any person
25 directly affected by this decision shall have a right to

1 appeal to the Construction Board of Appeals provided that
2 written application for appeal is filed within Twenty days
3 after the day this was served on you. An application for
4 appeal shall be based on a claim that the true intent of the
5 code or the rules legally adopted thereunder have been
6 incorrectly interpreted, the provisions of the code do not
7 fully apply, or the requirements of this code are adequately
8 satisfied by other means, or that the strict application of
9 any requirement of this code would cause an undue hardship."
10 And that's the notice that's required under the IPMC.

11 Q. Now, that paragraph that you just read, does that
12 adequately and sufficiently state the notice that the IPMC
13 request?

14 A. Yes.

15 Q. And if the landowner were to receive that notice,
16 particularly the provision on Page Two, would that comply
17 with the city's obligation for notice and opportunity to be
18 heard for the landowner?

19 A. Yes, under the IPMC, yes.

20 Q. Now, under the IPMC would it be sufficient for the
21 landowner in response to that notice to go talk to the, go
22 talk to the code official and not take the step of making a
23 proper or formal appeal?

24 A. They will require a formal appeal in writing.

25 Q. So, it's not enough to go and say, what's this all

1 about, and be comforted that nothing is going to happen?

2 A. If I were advising a landowner I certainly wouldn't have
3 them do that.

4 Q. In order to protect the landowner's rights, then Page
5 Two should be followed and an appeal should be lodged?

6 A. Absolutely, yes.

7 Q. Refer if you would to the, excuse me, what I wanted to
8 ask you about is this first paragraph which says, after
9 completing an inspection, would you please read that, sir?

10 A. You, do I understand you want me to read this entire
11 paragraph?

12 Q. Read that paragraph, that's correct.

13 THE COURT: Which exhibit is that, is that still
14 Seventeen?

15 MR. KULMALA: Seventeen, Defendant's Seventeen.

16 THE COURT: Okay.

17 A. Okay. Exhibit Seventeen. "After completing an
18 inspection of the referenced building I find it to be
19 unsafe, unfit for human habitation and a public nuisance. It
20 is in violation of the Two thousand International Property
21 Maintenance Code, Section One O Eight, dot, One, dot, Three.
22 Two building permits have been issued on this building, one
23 in April, Two thousand three, and a second one on December
24 Seven, Two thousand four. The City of Orangeburg, Code of
25 Ordinances, Section Twenty-four, dash, One Four, dot, Three,

1 states that the building permit is good for six months, and
2 this time has now expired. Since it has been over two years
3 that you have been working on this property and it is still
4 not complete, no more time can be allowed. I find that you
5 also are in violation of Section One Ten, dot, One, of the
6 Property Maintenance Code, and the principle residence must
7 not be demolished." And then there's a reference to IPMC
8 Section One Ten, dot, One. "You are hereby advised that you
9 must obtain a building permit and demolish the principle
10 dwelling referenced on or before July Thirteen, Two thousand
11 five. A condemnation notice has been posted on the property
12 and the City has closed the premises. You are also required
13 to replace the pool liner and provide necessary repairs to
14 the pump filter system in order to maintain the pool in a
15 sanitary condition."

16 Q. Now, the statement that you just read is essentially
17 telling the landowner the action being taken by the City and
18 the reasons for that action?

19 A. Yes, sir.

20 Q. And from your experience in the city attorney's office
21 dealing with condemnations and demolitions does that
22 paragraph comply with the requirements of the IPMC in
23 affecting the City of Orangeburg?

24 A. It satisfies in my view one of the several requirements
25 of Section One O Seven notice.

1 Q. So, by sending that notice the City is advising Dr.
2 Chakrabarti the reason why the decision is being made for
3 him to demolish the house?

4 A. That's correct.

5 Q. And it's for him to demolish first, and then if he
6 doesn't demolish, then the City will do it later?

7 A. That's correct.

8 Q. And under the IPMC the City is authorized to, to go
9 ahead and demolish and then issue a ticket for him not doing
10 the requirements of doing it himself?

11 A. That's correct.

12 Q. So, it's not unusual, it's not wrong under the IPMC for
13 the City to say, you demolish it, and if you don't, then I'm
14 going to demolish it and I'm going to give you a ticket?

15 A. That would not be unusual. What is unusual is that the
16 City actual had to do the demolition itself. That was rare
17 in my experience. Usually owners would comply voluntarily.

18 Q. Usually the notice letter would get some sort of
19 compliance response?

20 A. Yes.

21 Q. But whether it's unusual or not, the City's efforts
22 reflected in that letter and in issuing subsequent tickets
23 for the property not being demolished, the City was
24 basically correct in doing those steps?

25 A. All those things are contemplated by the code, yes.

1 Q. Bear with me one moment.

2 THE COURT: Can I see both of y'all? Can I see both
3 attorneys for one second?

4 (Whereupon, a bench conference
5 is had off the record.)

6 Q. The handling of this condemnation and demolition, from
7 looking at the documents, does it appear to you that the
8 City of Orangeburg has complied in all respects with the
9 requirements imposed on the City by the IPMC?

10 A. In reaching the ultimate removal of the property, of the
11 structure, yes.

12 Q. And not just in that decision but all the way through
13 they have essentially, the City has complied with all of the
14 requirements?

15 A. yes, sir.

16 Q. And this being your opinion, let me ask you this, do you
17 hold the opinions that you have just expressed to a
18 reasonable degree of certainty required of building
19 administration, municipal administration personnel?

20 A. Yes, sir.

21 Q. One thing that maybe you can clarify, there's a term
22 that's being used in this case, in fact, Exhibit Number
23 Seventeen says, Notice of Condemnation, do you see that?

24 A. Yes, sir.

25 Q. And from your experience in city administration you're

1 familiar with also condemnation where the City needs to, or
2 the governmental entity needs a piece of property for
3 extending a road or municipal building, are you familiar
4 with that?

5 A. I am, those proceedings are brought under the South
6 Carolina Eminent Domain Procedure Act, and the condemnation
7 notice there is a statutorily dictated form.

8 Q. And when you're sending Notice of Condemnation, for
9 example, in Exhibit Number Seventeen, versus condemnation
10 under the Eminent Domain Procedures Act, those are two
11 different situations?

12 A. Yes, sir, the structure is being first condemned against
13 any further human occupancy pending the resolution of
14 whatever the health or sanitation, or whatever the issues
15 are with the property. And then, ultimately, in this case
16 there was the decision to go ahead with the demolition.

17 MR. KULMALA: Thank you, sir, that's all the questions
18 I have. Answer any that Mr. Hutto may have.

19 THE COURT: Alright, and Mr. Hutto, I'm going to delay
20 you asking questions for a while.

21 Ladies and gentlemen of the jury, we are going to take
22 a break. It's now One:fifteen, I know y'all are probably
23 hungry, so what I'm going to do is, we will take a break,
24 and I'm going to ask y'all to be back here at two:thirty,
25 and we will resume listening to this case. Again, you

1 cannot talk about this case. You haven't heard everything.
2 So, go and enjoy your lunch, enjoy the beautiful day
3 outside, and we'll see y'all at Two:thirty. Thank you.
4 (Whereupon, the jury
5 leaves the courtroom.)

6 THE COURT: And Mr. Meggs, I don't have to tell you,
7 you, you can't talk about your testimony to anybody.

8 MR. MEGGS: Yes, sir.

9 THE COURT: Thank you, sir.

10 MR. MEGGS: Thank you.

11 (Recess)

12 THE COURT: Is the plaintiff ready?

13 MR. HUTTO: The plaintiff's ready.

14 THE COURT: Is the defendant ready?

15 MR. KULMALA: The defendant's ready.

16 THE COURT: Alright. Bring the jury on out. They're
17 going to be so surprised we're starting on time.
18 (Whereupon, the jury
19 enters the courtroom.)

20 THE COURT: Alright, Mr. Hutto, your witness.

21 MR. HUTTO: Thank you, Your Honor.

22 (NOTE: Blank lines on this page do not indicate any part of
23 record has been omitted. Headers on testimony pages and
24 hard page breaks between testimony are now required by the
25 Court.)

1 JAMES S. MEGGS - CROSS-EXAMINATION

2 BY MR. HUTTO:

3 Q. Mr. Meggs, have you ever testified before?

4 A. I have, in fact. As a party and as a witness, way back,
5 in actually a kind of code enforcement case, sure.

6 Q. Alright. But it's not something you regularly do?

7 A. No.

8 Q. Okay. And you were the lawyer for the City of Columbia
9 for quite a while?

10 A. Seventeen years.

11 Q. Have you been the lawyer for the City of Orangeburg?

12 A. No, sir.

13 Q. Okay. And the lawyer for the City of Orangeburg, Mr.
14 Walsh, has sort of been in and out of here, but is it a
15 particular that you got to testify and he couldn't tell us
16 what they did?

17 A. First off, I hadn't seen Mr. Walsh, he's ...

18 Q. He hasn't been here today.

19 A. Oh.

20 Q. Maybe he knew you were going to be here.

21 A. I see. I can't answer that question.

22 Q. Well, let me ask you this, did the City of Orangeburg
23 consult with you at all prior to demolishing Dr.
24 Chakrabarti's house on Middleton Street?

25 A. No, sir.

1 Q. Okay. So, you've been called in to do some explaining
2 after the fact, but you were never consulted before the
3 fact?

4 A. That's correct.

5 Q. Okay. And I represent to you, and I know, I guess, did
6 you ever go out to that house for any reason?

7 A. Never seen it.

8 Q. Okay.

9 A. Other than a video.

10 Q. A video. Alright. This is actually from that video,
11 Picture Number, or Plaintiff's Exhibit Number Thirty-three,
12 and this is the house that was demolished. This is not
13 typical of the appearance of a house that is demolished from
14 blight or unsightliness, is it?

15 A. That's pretty substantial looking, sure.

16 Q. Okay. Now, I want to talk to you, I think we understand
17 that the City adopts codes, some which they have the option
18 of adopting, and some which the State law has mandated that
19 they adopt?

20 A. Partially correct.

21 Q. Okay.

22 A. There are a group of codes, including the IPMC, that
23 remain permissive codes under, I didn't bring my notes, but
24 it's in Title Six, and then in prior times there was a
25 mandate that the localities actually adopt the codes. I

1 think in Two thousand and three that statute was changed,
2 and the statute now says that the local governments shall
3 enforce, and the filter, if you will, for the new, as the
4 codes come out, and I think I testified, these codes are
5 revised from time to time, probably because the ICC wants to
6 sell a bunch of new books, but nonetheless, the people at
7 labor licensing and regulations, state, Building Codes
8 Council for South Carolina, does a review and in some cases
9 makes its own revisions to the mandatory codes, and then
10 basically pronounces on the local governments what codes
11 they shall enforce, not adopt. Slight difference.

12 Q. Alright. This one, what we're calling the IPMC,
13 International Property Maintenance Code, has been adopted by
14 the City of Orangeburg?

15 A. Yes.

16 Q. Okay. And it's your understanding from your review of
17 the documents that this is the code that they adopted as
18 their guidelines for how they would proceed in a case like
19 this?

20 A. That's my understanding, yes, sir.

21 Q. Okay. Now, they may have other statutes on the books
22 also, but this is one of them?

23 A. I'm not sure what else they -- are you talking about
24 state statutes or city ordinances?

25 Q. I'm talking about local, city ordinances.

1 A. I've not reviewed the city code, I don't know, one of
2 the advantages of this IPMC is that it applies to dwellings
3 as well as all other structure. There was a time in South
4 Carolina where it was really unknown as to whether we could
5 touch commercial structures because we had a specific
6 enabling statute in Title Thirty-one that was, dealt with
7 unfit dwellings. So, this was, the IPMC is really quite an
8 improvement over that situation.

9 Q. Alright. Well, and I think I heard you answer the
10 question a minute ago, but I'm going to hand you up a
11 statute that City adopted back in Nineteen Sixty-one dealing
12 with this issue of buildings and, buildings that are
13 dangerous for some reason.

14 A. Right.

15 Q. There's nothing that says that the City can't have that
16 statute and then later come behind it and adopt this other
17 statute, is there?

18 A. No.

19 Q. Okay. I take it you're not familiar with that?

20 A. No, sir.

21 Q. But there would be no prohibition to the City having an
22 older one and then put a newer one on the books?

23 A. No prohibition, that's correct.

24 Q. Alright. But it's your understanding that the City
25 opted, regardless of how many different rules they had on

1 the books, that this is the one they were going to follow in
2 this case?

3 A. That's my understanding.

4 Q. Alright. And part of it says that whenever the code
5 official determines there's been a violation there's a
6 certain process by which you give notice?

7 A. Correct.

8 Q. And that's Section One O Seven?

9 A. That's right.

10 Q. Okay. Do you have a copy in front of you?

11 A. I've got, I've got One O Seven off the ICC web site.

12 Q. I do, too. Do you prefer to look at that or the book
13 while I'm asking you about it?

14 A. Well, since we know that's for sure the Two thousand, -

15 - -

16 Q. Okay.

17 A. --- why don't we look at the book?

18 Q. Alright.

19 A. Okay.

20 Q. Alright. Is it clear that if the City is going to
21 operate under this code, that the notice that it has to give
22 to the citizen is the notice that's prescribed in One O
23 Seven?

24 A. Yes.

25 Q. Mr. Kulmala asked you to look at a particular letter, it

1 was Exhibit Number Seventeen, and he asked you to read the
2 first paragraph, and as I understood it, he asked you if
3 that complied with what was required, and you said that was
4 one of the things that they had to do?

5 A. I believe the, the first paragraph contains one or more
6 of the five required elements.

7 Q. Right. And so, are we in agreement then, from what I'm
8 looking at and I guess what you're looking at that there are
9 five required elements?

10 A. Yes.

11 Q. And would you read out Statement, Element Number Four?

12 A. Yes, sir. This is enumerated as Number Four, "include a
13 correction order allowing a reasonable time to make the
14 repairs and improvements required to bring the dwelling unit
15 or structure into compliance with provisions of this code."

16 Q. Alright, so the notice has to include a correction order
17 allowing a reasonable time to make the repairs and
18 improvements required to bring the dwelling unit or
19 structure into compliance with the provisions of this code?

20 A. That's the notice of violation. If we look back at the
21 section on demolition, which is One Ten, you'll see it's
22 slightly different.

23 Q. Right. But I want you to look right above One O Seven,
24 point, Two, to the last sentence of One O Seven, point, One,
25 and it says, "Notices for condemnation procedures shall also

1 comply with One O Eight, point, Three."

2 A. Okay, where are you reading?

3 Q. Right above One O Seven, point, Two, would be the last
4 sentence of One O Seven, point, One.

5 A. Let's go to the book. One O Seven -- okay.

6 Q. "Notices for condemnation procedures shall also comply
7 with Section One O Eight, point, Three?

8 A. Right.

9 Q. That means then that it's got to also comply with One O
10 Seven. I mean, in One O Seven it says you've got to comply
11 with One O Seven and One O Eight, and maybe One Ten also,
12 right?

13 A. Perhaps.

14 Q. Okay. And so, the perhaps then is, I want you to show
15 me in that letter where Number Four, "include a correction
16 order allowing a reasonable time to make the repairs and
17 improvements required to bring the dwelling unit or
18 structure into compliance with the provision of the code"
19 tell me where that is in Defendant's Exhibit Number
20 Seventeen?

21 A. Under the demolition procedure in One Ten.

22 Q. Right.

23 A. Go to One Ten. You'll see at One -- have you got it?
24 I'm sorry.

25 Q. One Ten, One

1 A. Yeah, One Ten, One, and One Ten, Two, if you read - - -

2 Q. Okay. Alright.

3 A. Correct. If you -- is this the same we think?

4 Q. I think it is, but first of all let's read One Ten, Two.
5 It says, "All notices and orders shall comply with One O
6 Seven."

7 A. Alright.

8 Q. Alright, so One Ten, saying, you've got to start off
9 complying with One O Seven?

10 A. Well, One Ten says this, I think.

11 Q. Well, wait a minute, does it say what I just said it
12 said, does it say, "All notices and orders shall comply with
13 One O Seven"?

14 A. It says that.

15 Q. Okay.

16 A. Alright. But under the demolition section, One Ten,
17 dot, One, there is the order to demolish, and that is the
18 curative instruction that's given in the One O Seven notice.
19 In other words, when Mr., when Mr. Nelson issued this
20 notice, Defendant's Seventeen, the curative instruction was
21 to demolish the structure within a specified period. He
22 says, "You are hereby advised that you must obtain a
23 building permit and demolish, emphasis added, the principle
24 dwelling reference on or before July Thirteen, Two thousand
25 five." That's the curative instruction in a demo case.

1 Q. Right. I mean, you can say that all you want to, but
2 what I want to know is, One Ten says you've got to follow
3 One O Seven, right? Clearly, One Ten says you've got to
4 follow One O seven.

5 A. It does say that, but I think the intent is - - -

6 Q. But now you're going to tell us what they meant? I want
7 to take what it says.

8 A. Alright, let's see what it says. It says, I'm looking
9 at One O Seven, Four, that's the one you're focused on, - -

10 -

11 Q. Right.

12 A. --- and it says, "include a correction order allowing a
13 reasonable time to make the repairs and improvements
14 required to bring the dwelling into compliance." The
15 instruction in the demo, in demolition is to demolish the
16 structure. That will make the improvement required to bring
17 the dwelling into compliance.

18 Q. So, your testimony is that demolition is either a repair
19 or an improvement?

20 A. That's right. That's the only way you can harmonize
21 that.

22 Q. Well, except for the fact that you could, the other
23 thing you could say is that they didn't do Number Four, and
24 they didn't say, "And you've got x number of days to
25 finalize the repairs and improvements, which are the words

1 that are used, repairs and improvements, on the house?

2 A. That had already happened in the initial enforcement
3 action in O-Three. They were given all those opportunities
4 and I know you're the guy asking the question so I won't try
5 to ask you a question.

6 Q. Thank you, we went through that yesterday.

7 A. But I would simply make this observation, if we're now
8 into a One Ten demolition situation -- I'm sorry, I keep
9 dropping all the paper over here, - - -

10 Q. That's alright.

11 A. --- One Ten, One, says, "The code official shall order
12 the owner of any premises on which is located any structure
13 which in the code official's judgement is so old,
14 dilapidated or has become so out of repair as to be
15 dangerous, unsafe and sanitary or otherwise unfit for human
16 habitation or occupancy, and such that it is unreasonable to
17 repair the structure, to demolish and remove such
18 structure."

19 Q. Alright, stop right there.

20 A. Or, and I want to continue my answer.

21 Q. Okay. Go ahead.

22 A. "Or if such structure is capable of being made safe by
23 repairs, to repair and make safe and sanitary, or to
24 demolish and remove at the owner's option, or where there
25 has been a cessation of normal construction of any structure

1 for a period of more than two years to demolish and remove
2 the structure." Now, there's no way in my view that you can
3 harmonize that procedure in One Ten, One, with One O Seven,
4 which says, part of which you've got to tell them is how to
5 repair the property. The repair, the remedy is the
6 demolition of the structure. That's the only way you could
7 read that.

8 Q. Well, let me suggest to you, let's read it this way, in
9 plain English, there are semi-colons in here that would
10 suggest that the first part is one thing, and then there's
11 an or, so that's a big other caveat, and - - -

12 A. Right.

13 Q. --- and then there's another semi-colon, and then that's
14 an or. So, you've got to one of these three things,
15 basically. So, one would be, if they just make the
16 determination that it is so old and dilapidated that it's
17 impossible, that it's just unreasonable to repair, then it's
18 got to be demolished.

19 A. Right.

20 Q. Correct. So, under that scenario if they had determined
21 that they would never issue a building permit, because they
22 would have determined it was impossible to do.

23 A. They would have issued a permit, a building permit to
24 demolish.

25 Q. Right. Okay. So that - - -

1 A. But you, but your reading of One O Seven would preclude
2 that, Mr. Hutto.

3 Q. No, sir, it wouldn't. Let me tell you what, so we agree
4 that this one just doesn't apply because if that one applied
5 they would never issue a building permit for repair, only
6 for demolition?

7 A. But you're suggesting that One O Seven would require
8 that we allow a repair, even when that determination had
9 been made.

10 Q. No, sir, what I'm telling you is, that doesn't apply to
11 this case, does it?

12 A. I don't know about that.

13 Q. Well, you -- what is this?

14 A. That's Exhibit Thirteen.

15 Q. And what's the title of it?

16 A. Building permit.

17 Q. And it's a building permit to make repairs?

18 A. In Two thousand and four.

19 Q. Correct. So, if this applied they would never issue a
20 building permit?

21 A. I don't know what the conditions of the interior were in
22 June of O-Five when Mr., the building official decided to do
23 the demo.

24 Q. Alright. Let me go on to the next one.

25 A. Okay.

1 Q. So, if that's not the one, or if the structure is
2 capable of being made safe by repairs, to repair and make
3 safe or sanitary, or demolish and remove at the owner's
4 expense, you have to do one or the other?

5 A. Right.

6 Q. And the last one is, "or where there has been a
7 cessation of normal construction of any structure for a
8 period of more than two years." Okay?

9 A. Sure.

10 Q. So, we know the last one doesn't apply because clearly a
11 building permit had been issued within five or six months.
12 So, it couldn't have been, no building - - -

13 A. I think the question there whether there had been,
14 whether that was evidence of normal construction. It
15 doesn't, just given the chronology here it doesn't seem that
16 there was ever normal construction. But that's, that's a -

17 - -

18 Q. But you weren't here to know that this house at one time
19 had the whole roof pulled off and put back on, and new
20 shingles, and - - -

21 A. Right, I don't know that.

22 Q. --- now, and right before it was torn it looked like
23 this on the outside?

24 A. Sure. But that determination in that third prong of
25 that section is for the building official and subject to

1 review by the Building Board of Adjustment and ultimately
2 the Circuit Court.

3 Q. Okay. But he didn't give that as a reason.

4 A. Alright.

5 Q. Did he?

6 A. Well, let's look and see what he said.

7 Q. Alright, we will. And it is in Exhibit Number
8 Seventeen, I believe.

9 A. Okay.

10 Q. It didn't say anything about there's not been two years
11 worth of repairs in there, did it? It didn't say any of
12 this normal construction, two years, that's not in there.

13 A. He says, "Since it has been over two years that you have
14 been working on this property and it's still not complete,
15 no more time can be allowed."

16 Q. Right. What does the word, cessation, mean?

17 A. Stoppage.

18 Q. Right. So, not that it's taken longer than two years,
19 but it has been stopped for more than two years.

20 A. Alright.

21 Q. Are you with me on that now?

22 A. I think that certainly is a way you could read that.

23 Q. Alright. So, let's go back to your saying One O Seven,
24 where it clearly says -- well, first of all, One Ten clearly
25 says, you've got to do One O Seven. One O Seven clearly

1 says, "include a correction order allowing a reasonable time
2 to make the repairs and improvements." And what you're
3 saying is, is that the reasonable repairs and improvements
4 was demolition?

5 A. Yes.

6 Q. Okay. And this building permit, Number Thirteen, I
7 asked you to look at that a minute ago, - - -

8 A. Right.

9 Q. --- did it, it was issued to the contractor, is that
10 right, that's who the applicant was, Michael Stroman?

11 A. Applicant, I'm looking for applicant here. I see owner-
12 contractor.

13 Q. Well, do you see, signature of applicant down there?

14 A. I see, yeah, I see a signature, I presume that's not - -
15 -

16 Q. Well, I'll represent to you it is supposed to Michael
17 Stroman.

18 A. Okay. If you say that's Michael Stroman, sure.

19 Q. Alright. So, the building permit was issued to Michael
20 Stroman, and are you telling me then that it is reasonable
21 to condemn a man's property because his contractor is slow?

22 A. Well, it's ultimately the property owner's
23 responsibility to get the property put in shape. And you
24 know, I don't know all of the history on it, the chronology,
25 but clearly, Mr. Nelson's order issued, and it should have

1 been, if there was issue with it, it should have been taken
2 up with the Building Board.

3 Q. Alright. Are you aware that on three prior occasions to
4 the letter, Exhibit Number Seventeen, that the City of
5 Orangeburg had on three earlier occasions written Dr.
6 Chakrabarti letters in there telling him, if you don't do
7 this we're going to condemn, if you don't do this, we're
8 going to condemn, if you don't do this we're going to
9 condemn?

10 A. The record is certainly replete with lots of letters.

11 Q. Right. And every time there was a letter there was no
12 follow through from the City, and they go right back to this
13 discussion of how to get this done. And so, what I
14 understand you're saying is, is that if, because Mr. Kulmala
15 asked you this, if upon receipt of that letter Dr.
16 Chakrabarti did the same thing he always did when he got the
17 letter from the City, he went down and talked to the
18 building official, and Mr. Nelson said, Dr. Chakrabarti,
19 this is the same thing we've gone through before, it's part
20 of my process to move this project along, that somehow that
21 wouldn't lead him, as a citizen, to believe that we're doing
22 what we've done before and there is nothing different about
23 it this time than last time?

24 A. I don't know what communications there were.

25 Q. I understand that.

1 A. Sure.

2 Q. But this thing about, you've got a right to appeal
3 stuff, that had been in other earlier letters to Dr.
4 Chakrabarti.

5 A. It was in the first notice, yes.

6 Q. Exactly.

7 A. Sure.

8 Q. And as a result of that he had conversations with the
9 City and they moved on.

10 A. I would say that the City went above and beyond the call
11 trying to accommodate him.

12 Q. Right. And I realize you're being paid to come in here
13 on behalf of the City, and say -- how much are you being
14 paid to come in here and talk for the City today?

15 A. Two hundred and twenty-five Dollars an hour.

16 Q. An hour. Okay. But you weren't consulted by the City
17 to give an opinion prior to all this happening?

18 A. No, sir.

19 Q. Is it reasonable to condemn a citizen's house and tear
20 it down just because that citizen might be difficult?

21 A. That's not a factual question.

22 Q. Not, so, some people are easy to get along with, and
23 some people are a little more difficult. That should have no
24 bearing on it whatsoever, should it?

25 A. I don't think that should have anything to do with it.

1 Q. Okay. You told us at one time early on in your career
2 you were involved in tearing a house down in the Shandon
3 area of Columbia, it took ten years because of so much back
4 and forth between the landowner and the City?

5 A. No, actually, that case went through the federal system,
6 District Court, Fourth Circuit, Supreme Court, a nice lady,
7 Annie Mary Timmons.

8 Q. Okay.

9 A. --- represented herself. She was quite a character, - -
10 -

11 Q. Alright.

12 A. --- and did a wonderful job pushing us back. But
13 ultimately, the Supreme Court rejected the appeal and - - -

14 Q. After ten years, though?

15 A. Yes.

16 Q. Okay.

17 A. Sure.

18 Q. Alright, so the character in this case, Dr. Chak, he
19 hasn't had but about two or three. So, ten is the norm in
20 your expert opinion?

21 A. Not the norm, that was a highly unusual case.

22 Q. But you did say -- well, I'm glad you used that word,
23 unusual, because you said this case was unusual. You said
24 this case was unusual, and the reason is because there was a
25 history going on between the City and Chakrabarti about this

1 house, and they're complaining that he had two different
2 contractors, yet at the same time he had to deal with four
3 different building inspectors during that same period of
4 time. Were you aware of that?

5 A. Yes, sir.

6 Q. That the City's building, Mr. Ott came and - - -

7 A. I saw the sequence of change in the personnel, yes.

8 Q. Okay.

9 MR. HUTTO: Thank you very much for coming down here,
10 and I know the City is paying you well, I don't want to hold
11 you up.

12 MR. MEGGS: Thank you.

13 THE COURT: Anything on redirect?

14 MR. KULMALA: Just briefly, Your Honor.

15 THE COURT: Alright, sir.

16 (NOTE: Blank lines on this page do not indicate any part of
17 record has been omitted. Headers on testimony pages and
18 hard page breaks between testimony are now required by the
19 Court. See next ensuing page for sequential continuation of
20 record.)

1 JAMES S. MEGGS, REDIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Mr. Meggs, Section One Ten of the IPMC deals with the
4 demolition?

5 A. That's correct.

6 Q. And Plaintiff's Exhibit Seventeen is the letter Mr.
7 Nelson sent to Dr. Chakrabarti which is the notice of
8 condemnation?

9 A. That's right.

10 Q. Alright. One of the reasons you discussed, well, there
11 were two reasons I think you discussed with Mr. Hutto
12 concerning the reason for the decision to demolish. One
13 concerned whether or not it was feasible to repair or
14 restore. The sentence reads, "and such that it is
15 unreasonable to repair the structure," that's one of the
16 explanations. Mr. Hutto was asking you about the issuance
17 of a permit and if it was unreasonable to restore, do you
18 recall that?

19 A. Generally.

20 Q. What I want to ask you is, would it have been the,
21 within the coverage of the IPMC that, unreasonable to
22 repair or restore is a determination that can be made not
23 only at the beginning, but after an extended period of time
24 and it has not been restored?

25 A. I think that's just logical, sure.

1 Q. And the provision that deals with, -- if you would,
2 look at Section One Ten in IPMC, and it says, cessation
3 about two years, if you would read that part, that sentence,
4 or the phrase that says, cessation?

5 A. Okay. Alright. This is the third prong here. "or
6 where there has been a cessation of normal construction of
7 any structure for a period of more than two years, to
8 demolish and remove such structure."

9 Q. Now, that says, cessation of normal construction?

10 A. Correct.

11 Q. And it does not say, cessation of any or all
12 construction?

13 A. That's, you're right.

14 Q. So, essentially, what that addresses is, if you're not
15 making normal building progress and you're just doing some
16 hit or miss or making something here and here but you're not
17 progressing the way normal construction does, then that
18 triggers that two year provision?

19 A. I think that's the, it's got to be the common sense
20 reading on that section, yes.

21 Q. Okay. And, of course, we know that we go from April of
22 O Three to June of O Five in this case?

23 A. Yes, sir.

24 MR. KULMALA: Thank you, sir.

25 THE COURT: Anything on recross?

1 MR. HUTTO: Yes, sir. And I hate to hold him up at his
2 expense, but ...

3 (NOTE: Blank lines on this page do not indicate any part of
4 record has been omitted.)

1 JAMES S. MEGGS, RE CROSS-EXAMINATION

2 BY MR. HUTTO:

3 Q. Normal construction would mean, if they didn't, if the
4 City didn't want to issue a building permit, if they didn't
5 want to issue that second building permit they didn't have
6 to, did they?

7 A. No, they didn't.

8 Q. If they wanted to determine, we've looked at this house
9 and we don't believe it is capable of being made safe with
10 repairs, they could have said, no go, we just don't believe
11 it can be done, I don't care how much money you put in it, I
12 don't care how much time you take, it just can't be done,
13 and we refuse to issue you a building permit. They could
14 have done that?

15 A. Mr. Hutto, that might have been the, ultimately, the
16 mistake the City made, was not doing that from the get go,
17 sure.

18 Q. Okay. But because the City might have made that
19 mistake, what they did is issue building permits and allowed
20 this citizen to invest tens of thousands of dollars into a
21 project?

22 A. Well, I know that's your position.

23 MR. HUTTO: Thank you.

24 THE COURT: Alright, Mr. Meggs, thank you, sir.

25 MR. MEGGS: Thank you.