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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2016-002118

Lucille H. Ray, Appellant,

v.

City of Rock Hill, South Carolina, a Municipal Corporation, and South
Carolina Department of Transportation, an agency of the State of South
Carolina, Defendants,

Of which City of Rock Hill is the Respondent.

RECORD ON APPEAL
Volume II

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INDEX

Volume I

Index	1
Order of August 12, 2014	4
Order of December 17, 2014	10
Order of April 21, 2015	14
Order of September 13, 2016.....	16
Complaint, filed November 6, 2012	18
Defendant's Answer, filed December 28, 2012.....	28
Amended Complaint, filed February 13, 2013	36
Rule 40(j) Stipulation, filed August 5, 2014.....	44
Defendant's Motion for Summary Judgment, filed May 19, 2014.....	47
Defendant's Memorandum in Support of Motion for Summary Judgment, dated June 18, 2014	51
Plaintiff's Memorandum in Opposition to Motion for Summary Judgment, with exhibits, dated May 7, 2014.....	71
Document Submission Evidencing Positive Affirmative Acts by City, filed May 29, 2014	103
Plaintiff's Motion for Reconsideration, with exhibit, filed August 18, 2014	107
Defendant's Motion to Alter or Amend, filed August 22, 2014.....	112
Plaintiff's Memorandum in Opposition to Defendant's Motion to Alter or Amend and in Support of Plaintiff's Motion to Reconsider, dated April 13, 2015.....	119
Defendant's Second Motion for Summary Judgment, filed August 5, 2015	124
Defendant's Memorandum in Support of Second Motion for Summary Judgment, dated September 22, 2015.....	130
Plaintiff's Memorandum in Opposition to Defendant's Second Motion for Summary Judgment, dated September 17, 2015.....	154

Plaintiff's Pretrial Brief.....	169
Plaintiff's Amended Pretrial Brief with Proposed Exhibits.....	176
Defendant's Pretrial Brief with Exhibits.....	339

Volume II

June 18, 2014 Hearing Transcript.....	470
April 15, 2015 Hearing Transcript.....	587
September 12, 2016 Hearing Transcript.....	637
Transcript Excerpts from the Deposition of Lucille H. Ray.....	686
Cross Examination by Mr. Devlin	687
Cross Examination by Mr. White	747
Transcript Excerpts from the Deposition of Michael Leonard	758
Cross Examination by Mr. White	759
Transcript Excerpts from the Deposition of Edward Staton Cummings, III	789
Cross Examination by Mr. White	790
May 29, 2014 Affidavit of Lucille Ray	802
May 30, 2014 Affidavit of Michael H. Leonard and Correction to Affidavit of Michael H. Leonard.....	840
June 18, 2014 Affidavit of James G. Bagley, Jr.	879
September 17, 2015 Affidavit of Lucille H. Ray.....	883

Volume III

September 17, 2015 Affidavit of Michael H. Leonard and Correction to Affidavit of Michael H. Leonard.....	922
Appellant's October 12, 2016 Notice of Appeal	980

Plaintiff's Responses to Interrogatories, dated June 14, 2013	993
Engineering Evaluation of Michael Leonard, dated September 5, 2012	1002
Certificate of Counsel	1024

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF YORK

3 LUCILLE H. RAY,

4 Plaintiff,

5 vs.

CASE NO. 2012-CP-46-03928

6 CITY OF ROCK HILL, SOUTH CAROLINA,
7 A MUNICIPAL CORPORATION, AND SOUTH
8 CAROLINA DEPARTMENT OF TRANSPORTATION,
9 AN AGENCY OF THE STATE OF SOUTH CAROLINA,

Defendants.

10 BEFORE THE HONORABLE S. JACKSON KIMBALL

11 DATE: June 18, 2014

12 TIME: 2:09 p.m.

13 LOCATION: York County Master--In-Equity
14 1 North Congress Street
York, South Carolina

15 REPORTED BY: ANGELA D. ZUVER,
16 Court Reporter

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24
25 (INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: This is Case Number
2 2012-CP-46-3928, Lucille H. Ray against City of
3 Rock Hill and others.

4 Present and representing the plaintiff
5 is Mr. Rich Fennell and Mr. Charles Bradford.
6 Present and representing the defendant city is Mark
7 White. Present and representing the South Carolina
8 Department of Transportation Mr. John Devlin.

9 I believe I've covered it all.

10 These will be the defendants' various
11 motions for summary judgment. Who wants to go
12 first?

13 MR. DEVLIN: Your Honor, I believe I
14 had earlier filed the motion, so I see no reason I
15 should not.

16 For the record, I'm John Devlin. I
17 represent the defendant, Department of
18 Transportation. We appreciate you making time
19 available on fairly short notice to hear us this
20 afternoon. We were supposed to have this a couple
21 of weeks ago.

22 There have been briefs sent, Your
23 Honor, and I'm sure you're aware of the underlying
24 facts, that this is basically a case in which the
25 DOT and the city have been sued on three theories,

1 trespass, inverse condemnation and injunction
2 because a storm water pipe runs under Mr. Lucille
3 Ray's house on College Avenue and has allegedly
4 caused some property damage to the house.

5 The DOT has three bases for its motion.
6 One is that an affirmative act is required to prove
7 either of the damage relief plans, either trespass
8 or inverse condemnation.

9 Our second argument is the statute of
10 limitations bars --

11 THE COURT: Within the context of
12 trespass, how would you define affirmative act?

13 MR. DEVLIN: An intentional act. An
14 contact by which the defendant intends to cause
15 what occurred.

16 THE COURT: Okay.

17 MR. DEVLIN: There is a case called
18 Snow versus City of Columbia which I believe sets
19 that forth, and I have a copy of it, if you wish.

20 THE COURT: Not yet.

21 MR. DEVLIN: The third point in our
22 summary judgment motion, Your Honor, is that to the
23 extent that it is argued that the statute of
24 limitations is not barred because this is a
25 continuing rather than a permanent trespass or

1 damage, we believe that the requirement in that
2 situation is that the plaintiff set forth evidence
3 to show that the cause of the problem is reasonably
4 abatable. We do not believe that there is any
5 evidence that the cause of the problems of which
6 she complains is in fact reasonably abatable. We
7 think it is a one-time claim which --

8 THE COURT: What does reasonably mean
9 in that context? It seems to me like you could at
10 any -- as impractical as it may seem, it seems to
11 me that at any point you could divert the water.

12 MR. DEVLIN: Yes, sir. Your Honor,
13 anything can be abated with will enough and money
14 enough. I would assume that if the standard is
15 simply abatability rather than reasonable
16 abatability, anything could be done, but I think
17 that in order -- and there's a case called, I
18 think, Hedgepath, although I'll check my brief to
19 make sure, that discusses that it has to be
20 reasonably abatable.

21 I have not found cases that define what
22 determines reasonable abatability. There are cases
23 in which the courts have said the issue of
24 abatability has come up, but we see nothing in the
25 record to indicate -- here I'm referring to Glenn

1 versus Anderson County -- that the storm water
2 system complained of was not permanent and I
3 believe that the better view of the case law is
4 that if the source of the problem is permanent in
5 nature then it is a single cause of action. If it
6 can be efficiently fixed, fixed inexpensively
7 relative to the problems complained of, I think
8 that there might be an argument there.

9 In this case there is simply no
10 evidence presented of what it would actually take
11 to abate the problem. There's, I believe, a single
12 sentence in an expert's affidavit from plaintiff's
13 counsel saying you could fix it by running pipes up
14 the street. And my point, when we get to that,
15 Your Honor, is that it is absolutely impossible for
16 the DOT to abate this problem because College
17 Avenue, which is where the plaintiff's expert
18 suggests the abatement should occur, is a city and
19 not a DOT street and the DOT cannot abate this
20 problem on College Street if it wished -- on
21 College Avenue if it wished.

22 We have submitted an affidavit from an
23 expert in opposition that I think you would have
24 gotten in the mail a couple days from a Tom Griffin
25 that we served on the plaintiffs.

1 THE COURT: I remember that one.

2 MR. DEVLIN: I'll be happy to provide
3 you with a copy of it.

4 THE COURT: That's okay. Go ahead.
5 There's no sense trying to read it right now.

6 MR. DEVLIN: All right. Mr. Griffin
7 says that he's a professional engineer with a
8 career of experience in utilities/storm water
9 management and he says there is no way for the DOT
10 to abate this problem in the Oakland Avenue area,
11 and I can very quickly point out what that is. I'm
12 getting out of order, but I appreciate --

13 THE COURT: We're still talking about
14 statute of limitations here?

15 MR. DEVLIN: Yes, sir.

16 THE COURT: All right.

17 MR. DEVLIN: There is a defense --
18 there is a defense from the statute of limitations
19 trying to anticipate the abatability issue.

20 This is Oakland. This is College.
21 This is Ms. Ray's house right here. It is at the
22 bottom of Strait Street. The water which enters a
23 catch basin right in front of her house and goes
24 underneath her house takes a 45 degree-ish turn and
25 heads over towards Lucas is fed by a pipe coming

1 down Strait Street and two pipes which enter from
2 either side of the other side of College Avenue.

3 For the DOT to abate the problem of
4 water going under her property they would have to
5 stop water from coming off of Oakland onto Strait
6 and the only feasible way they have of doing that
7 is to run a new pipe uphill from Oakland to Strait
8 to Union.

9 THE COURT: Unless they had the
10 cooperation of the City of Rock Hill, right?

11 MR. DEVLIN: Yes, sir.

12 THE COURT: Well, do you think that --
13 do you think that either -- I mean, if this were a
14 condemnation case -- and it isn't. I mean, do you
15 think -- let me just say what I was thinking. Do
16 you think that either governmental body can hide
17 behind the other and say, well, because somebody
18 else is involved, this can't be fixed?

19 MR. DEVLIN: No, sir, Your Honor. I
20 think that if Ms. Ray lived one block up on the
21 corner of Oakland and Strait, she would be able to
22 address the DOT and say, you need to get that water
23 out from under my property, and because it would be
24 coming off of, in theory, a state-owned property
25 and a state-maintained property, we would have to

1 take care of it.

2 We do not -- we -- the DOT does not
3 have an obligation to handle storm water systems
4 outside of its own state-maintained streets.

5 We can't make the city do anything.

6 If --

7 THE COURT: Of course not.

8 MR. DEVLIN: If Ms. Ray wanted to, and
9 I believe she tried to get the city to do
10 something, that is something that is between the
11 two of them. I do not believe that in order to
12 determine abatability you can assume that political
13 cooperation --

14 THE COURT: Let me ask you this. Does
15 that mean, Mr. Devlin, that you have -- that the
16 DOT has successfully handed off the problem of
17 abatability to the city because the city's
18 property -- it is the city's domain, if you will --
19 I'm using that in a general sense -- within which
20 this problem is occurring?

21 MR. DEVLIN: Well --

22 THE COURT: Do you see what I'm saying?

23 MR. DEVLIN: Yes, sir. I see exactly
24 what you're saying.

25 I'm going to get a little bit outside

1 of my area of actual knowledge of how the DOT would
2 handle that kind of situation, so I'm going to have
3 to speculate a little bit. My assumption would be
4 that if there were a desire on the part of the city
5 outside of a litigation context to redo its system
6 to abate a problem and they said, DOT, you're
7 dumping a bunch of water over here, that they could
8 go through some political channel and ask for an
9 appropriation. They could ask --

10 THE COURT: We're talking about the
11 city now?

12 MR. DEVLIN: I'm talking about the city
13 could go to, in the manners that are allowed by
14 law, a state agency and say, we need a
15 contribution, we need indemnification, we need
16 something or another because you are a part of
17 this.

18 THE COURT: Oh. To the state? To the
19 DOT?

20 MR. DEVLIN: Yes. The city could say
21 that to the state, but I do not believe in a
22 lawsuit context that we can be held to have an
23 abatable problem because if something were to
24 happen --

25 THE COURT: Okay. I understand. I

1 understand what you're saying. What I'm saying is
2 you say this is out of your domain -- the DOT's
3 domain of responsibility for storm water.

4 MR. DEVLIN: Yes.

5 THE COURT: You can't do anything about
6 it because you can't correct anything outside of
7 that domain?

8 MR. DEVLIN: Yes.

9 THE COURT: But you're -- what I think
10 I inferred from what you were telling me, that it
11 is within the domain of the city's ability to take
12 action if it wanted to.

13 MR. DEVLIN: To abate the problem?

14 THE COURT: Yes, sir.

15 MR. DEVLIN: I think that is --

16 THE COURT: It's within their domain?

17 MR. DEVLIN: Yes, sir, I believe it is
18 within their jurisdiction and their power to do.

19 THE COURT: Well, then my question is:
20 Has the DOT effectually handed off the problem to
21 the city, the abatement, the abatability problem?

22 MR. DEVLIN: No, sir. And here's why.
23 The problem of which Ms. Ray complains is a pipe
24 which is not an easemented pipe. It's what I would
25 call a road pipe. We didn't know it was there. We

1 can't be held responsible for the city tying into
2 pipes for the use of their storm water system.

3 THE COURT: No. I'm not asking you if
4 you're responsible. I'm trying to get my -- this
5 thing is complicated. Nobody claims to own any of
6 this, yet they continue to maintain a right to
7 channel storm water underneath Ms. Ray's property.
8 And the defense says, well, she waited too long to
9 raise this question, but if we decide that she
10 didn't wait too long then we're back with this
11 thing where -- how can -- the thing that seems
12 strange to me in reading through the file a couple
13 of times is that everybody wants to continue to run
14 the water through her property, but nobody has a
15 right to.

16 MR. DEVLIN: I can respond to that.
17 The DOT has been asked, you don't want this pipe to
18 be blocked off, do you? We say, that's not our
19 responsibility. If you want to block it off,
20 that's up to you.

21 THE COURT: Okay.

22 MR. DEVLIN: We are not taking the
23 position we are entitled to run water through
24 there. What we are entitled to do is to connect to
25 the city system at Strait Street and to assume that

1 the city will manage its water in an appropriate
2 fashion.

3 THE COURT: How are you entitled to do
4 that? I just don't know the answer to that
5 question.

6 MR. DEVLIN: Your Honor, I don't
7 either. I'd have to dig back into probably Title 5
8 of the South Carolina code and see about road
9 construction and about a city obligation to
10 maintain utilities and a state obligation --
11 ability to tie into it. I do not have the law on
12 that, although I'll be happy to look at that if you
13 wish for me to.

14 THE COURT: I may. I may, but I'm not
15 sure what that will do for me.

16 Go ahead.

17 MR. DEVLIN: Well, Your Honor has
18 already succeeded in getting far past the knowledge
19 that I brought into this courtroom, but I'll work
20 through the outline that I had of this and whenever
21 there's something that you want to ask me, please
22 feel free.

23 As I said, Ms. Ray is here.

24 THE COURT: That's right.

25 MR. DEVLIN: There is another pipe

1 which comes down Union, meets a pipe on College,
2 goes under a property here and heads towards the
3 back of Ms. Ray's property. It does not collect in
4 the same pipes. It is a separate drainage area.

5 One of the reasons that we believe this
6 is not abatable by the DOT is we would have to go
7 up here, down here, down College and then go under
8 this house. One, there's not an easement to allow
9 that pipe to go there, and, two, we have actual
10 knowledge that the pipe under that property is
11 crushed and, as the affidavit of Mr. Griffin says,
12 no competent engineer designing a storm water
13 system is going to design more water to go into a
14 pipe system that they know to have a break in it of
15 the size of the one on College Avenue above
16 Ms. Ray's property.

17 THE COURT: If the city were to say --
18 if the city were to say, DOT, no problem, we will
19 be happy to grant you license, permission, whatever
20 it takes to abate your storm water contribution to
21 Ms. Ray's problem, where would you be then with
22 abatability?

23 MR. DEVLIN: I'm not -- that would
24 depend on the answer to the question I told you I
25 don't know the answer to, which is: What are the

1 rights and obligations of the city and the state --

2 THE COURT: No. I'm just -- what if
3 they said, okay, please feel -- if the city said,
4 okay, please feel free to do what you need to do
5 to -- in connection with Ms. Ray's problem to help
6 us abate the problem?

7 MR. DEVLIN: Again, if a study were
8 determined on what it would cost to move from point
9 A to point B to point C, and if we thought a
10 competent design could be drawn up to get that
11 water out from under Ms. Ray's property and out
12 around to another direction and -- so that it were
13 reasonably abatable, that would be a possibility.

14 My understanding of the abatement that
15 has been proposed by Ms. Ray's attorney --
16 Ms. Ray's expert is that a pipe be run from the
17 front of her house uphill on College to Lucas to
18 join a system that runs down there. And I believe
19 Mr. White is going to address the impracticality of
20 that, but there are so many different factors that
21 go into when and how you can add piping to a
22 hundred year old street like that in terms of
23 conflicts that exist and that kind of thing, that I
24 think it would depend, if we were told you can't
25 participate, still on whether or not it was

1 reasonable or whether or not it were so cost
2 prohibitive as to be determined that this is a
3 permanent cause of a problem and that it's not
4 reasonably abatable.

5 THE COURT: Where does cost prohibitive
6 figure into something not being -- to eliminating
7 the possibility of abatement?

8 MR. DEVLIN: Well, because there's case
9 law which I've cited in my brief, Your Honor, which
10 says the problem must be reasonably abatable. And
11 if it's a strict liability standard and if it can
12 be abated, it must be. Then cost prohibitiveness
13 would not be an issue.

14 But if a jury or a court were required
15 to determine is this reasonably abatable, then I
16 would suggest that a cost comparison of what it's
17 going to take to fix it versus the claims at issue
18 is absolutely a standard which must be addressed.

19 THE COURT: Well, doesn't that imply a
20 balancing by somebody of facts?

21 MR. DEVLIN: If there were genuine
22 issues of fact presented to a finder of fact, it
23 might. There are not in this case. There is
24 nothing in this record as to the reasonableness of
25 the abatability. Nothing. There is simply, it

1 could be abated.

2 THE COURT: Because there's no cost
3 figure?

4 MR. DEVLIN: There is no cost figure.
5 There is no background study on whether or not it's
6 feasible to do it in the manner that in the one
7 sentence that the expert says he proposes it to be
8 done. He does not address the fact that the DOT
9 has no license or permission to do any of that
10 work. It is apparently a question of abatability
11 that is addressed to the city rather than to the
12 DOT.

13 So I think that the reasonableness of
14 an abatability situation might in fact require a
15 balancing if there are issues presented --
16 admissible evidentiary issues presented for a
17 factfinder's determination.

18 THE COURT: Okay.

19 MR. DEVLIN: There's a brief time line
20 that I'd like to walk through, Your Honor, which is
21 primarily set forth in my brief that's based on
22 Ms. Ray's testimony and the testimony of the
23 reports of her experts. The most --

24 THE COURT: One more question about it.
25 Both your and the city's motion also deal with --

1 in connection with the statute of limitations, also
2 deal with her knowledge and notice --

3 MR. DEVLIN: Yes, sir.

4 THE COURT: -- knew or should have
5 known. If it were -- if it we were determined that
6 the commencement of the statute, knew or should
7 have known, was within three years of the time she
8 brought the lawsuit, this business of abatability
9 wouldn't matter, would it?

10 MR. DEVLIN: That would be correct.

11 THE COURT: Okay. Go ahead.

12 MR. DEVLIN: Your Honor, no one knows
13 when the first owner of 330 College Avenue had
14 actual knowledge of the pipe running under the
15 property, but it predates 1995 when Ms. Ray bought
16 the property because some previous owner tapped a
17 four-inch gutter pipe that drained a gutter system
18 in the house into the 24-inch pipe that runs
19 underneath the house and I don't believe there is
20 any inference that can be drawn from that fact
21 other than that the owner who tapped into the storm
22 water system knew it was there. You can't aim your
23 gutter drain into a pipe unless you know the pipe
24 is there for it to be drained into, and that
25 predates Ms. Ray's ownership.

1 THE COURT: Is that presupposing that
2 he knew it was underneath the house or just that it
3 was there so he could drain the gutter into it?

4 MR. DEVLIN: Well, Your Honor, I don't
5 know what that owner might have thought, but I
6 would --

7 THE COURT: We don't have any evidence
8 of that?

9 MR. DEVLIN: We don't have any evidence
10 of that one way or the other. We have evidence of
11 a four-inch pipe within the footprint of the
12 current house coming into the 24-inch pipe that
13 goes from the catch basin to a manhole in the
14 backyard and my argument on that is that the only
15 inference you can take from that is knowledge of
16 the existence of a pipe under the house at some
17 point in time before 1985 by an owner of the house.

18 And I'm sure Your Honor is aware of the
19 case law that imputes notice from one owner to the
20 next in the Aarons versus Highway Department case,
21 which I'll be happy to hand up otherwise.

22 THE COURT: That goes back to the
23 question I asked about to what -- what is the
24 extent of the knowledge imputed.

25 MR. DEVLIN: And I may not have

1 answered that to your satisfaction, but I believe
2 if an owner at 1980 knows that there is storm water
3 running directly under that house via a pipe from
4 the catch basin --

5 THE COURT: Well, that's the
6 assumption.

7 MR. DEVLIN: Well, yes, sir. And, Your
8 Honor, I believe that the fact that there's a
9 four-inch pipe sunk down into that 24-inch pipe
10 makes it pretty clear that the only reason that
11 four-inch pipe would have gone there is because
12 somebody knew there was a 24-inch pipe directly
13 under the house.

14 THE COURT: I'm not -- I understand
15 what you're saying, but if I -- you obviously
16 didn't tap onto the segment of the pipe that runs
17 under the house.

18 MR. DEVLIN: Yes, they did.

19 THE COURT: With the gutter? No, no.
20 I said that poorly. The point at which they tapped
21 into the pipe was not under the house?

22 MR. DEVLIN: No, sir. I believe that
23 it was at the point in time that that tap-in was
24 done immediately outside the house, and I believe
25 there's been about ten feet of house added since

1 then, but, Your Honor, if there's a pipe one foot
2 away from the footprint of the house that you're
3 tapping into, I believe that it would -- the only
4 inference that you can take from it -- because that
5 pipe came from somewhere and it didn't start there.

6 THE COURT: No. I agree.

7 MR. DEVLIN: And if somebody walks up
8 to the catch basin --

9 THE COURT: They might not even know
10 which way the water flows.

11 MR. DEVLIN: Unless one were to walk
12 from the catch basin down to the backyard and
13 notice that you're going downhill. That would be
14 my first clue.

15 The second clue I would have would be
16 that the catch basin has a pipe visible as you
17 stand looking at the catch basin pointed at
18 Ms. Ray's house and that pipe would have been
19 visible from before 1985. So that is a fact which
20 I believe would put any owner of that property on
21 notice that there is a pipe running under the
22 property.

23 And, Your Honor, it is my contention
24 that we do not -- the DOT nor the city has to show
25 that there was not only a pipe, but there was water

1 running under it and damage being caused by that so
2 their expert would have to be brought in to
3 determine whether or not there was a claim.

4 I believe that once a property owner at
5 330 College Avenue determines that there is a pipe
6 that they don't own going under their property they
7 are on notice of a trespass onto their property by
8 somebody and that the statute of limitations starts
9 to run because there is somebody's pipe under their
10 property.

11 Now, she might say it's the city's, she
12 might say it's the DOT's, but they are claiming
13 that one of their damages is there's a pipe running
14 under this property and it's not mine and that's a
15 trespass.

16 And you would know it as soon as you
17 seen the pipe, whether you know if there is other
18 physical damage to house or not.

19 THE COURT: Would a reasonable person
20 be entitled to assume that the city must have a
21 right-of-way to do that if they are doing it?

22 MR. DEVLIN: No, Your Honor. I think a
23 reasonable person would be on charge with notice of
24 what's in the public record as to their own
25 property, which in this case would include no

1 easement of record for the city to tap into that
2 pipe.

3 THE COURT: Or anybody.

4 MR. DEVLIN: Anybody to tap into that
5 pipe.

6 I think that any owner of that property
7 is charged with the knowledge that no one has the
8 right to run that pipe where it is in fact run and
9 once somebody becomes aware or should become aware
10 of that pipe, the statute starts to run irrevocably
11 on a one-time cause of action because the trespass
12 doesn't have to cause any other damage. The act of
13 trespassing is the damage right there.

14 Because of that, Your Honor, I would
15 contend that from any one of these seven or eight
16 or nine actions that I described in the brief that
17 are supported by Ms. Ray's testimony about things
18 that happened that caused her concern, if she knew
19 or worried that there was a pipe under her
20 property, whether she could tie it to damage
21 happening to the house, she knows there's a
22 trespass. She knows there's a pipe and the statute
23 begins to run.

24 And she has testified that in 2008 --
25 and this is at Page 289 and 290 of her deposition,

1 if I have not destroyed it already. I've cited --
2 I'm not sure if Mr. White -- I'm sure he has cited
3 it. I'd like to hand up Ms. Ray's original
4 deposition. And I've got a copy of it, if you
5 wish --

6 THE COURT: I've read the material
7 attached to other people's motions that have to do
8 with her deposition.

9 MR. DEVLIN: Okay. Well, I'll be happy
10 to maintain it, Your Honor. I'd just note that I
11 have offered it to the court.

12 THE COURT: You can have it back. I
13 think I've got enough.

14 MR. DEVLIN: I have come to court
15 before without the original deposition and lived to
16 regret it.

17 But, Your Honor, at Pages 289 and 290
18 Ms. Ray says in a fairly straightforward manner,
19 yes, I -- and I'm paraphrasing here. I'll get the
20 exact quote. I was concerned about a piper under
21 my house or on my property in 2008.

22 In 2008 she called the city out because
23 she thought --

24 THE COURT: Is that where the engineer
25 got -- corrected his mistake where he said --

1 MR. DEVLIN: That's where that is --
2 the issue, as I understand it, is Mr. Leonard, the
3 engineer, says in his report she knew in 2008 about
4 it and in 2014 he says, oh, I was mistaken, that
5 was 2008. I've gone back and checked my notes,
6 which are not in the file that he has provided us,
7 and I have -- I don't believe that presents an
8 issue of material fact because she has testified to
9 2008 being when she was concerned about a pipe
10 under her property. That's sworn, uncontradicted
11 testimony. It might be contradicted by her or by
12 her expert, but I don't believe that is sufficient
13 to create an issue of fact.

14 THE COURT: So we're back to
15 abatability again.

16 MR. DEVLIN: In my opinion, because of
17 her testimony as to the 2008 fear that she had as
18 to a pipe under her property, the clock has to
19 start then. She knows there's a pipe. She doesn't
20 know exactly where it goes, but she has been -- she
21 has learned enough to know that she needs to look
22 into this and take reasonable steps to exercise
23 diligence to protect herself.

24 THE COURT: Okay.

25 MR. DEVLIN: And the case of

1 Graniteville versus I.H. Services has been cited in
2 the plaintiff's memorandum for the proposition that
3 the statute won't start to run until an expert
4 witness has been hired who can explain to a
5 plaintiff whether or not there is a problem -- and
6 I'm paraphrasing that -- and I would point out to
7 Your Honor that the Graniteville case has never in
8 the 20 or so years since it was drafted -- since it
9 was published been cited with approval. It has
10 been distinguished and there have been countless
11 cases where the courts have said the statute begins
12 to run when a reasonable person viewed objectively
13 would know or should know of the existence of a
14 claim whether or not they have a full-blown theory
15 of recovery.

16 THE COURT: I've read the Graniteville
17 case.

18 MR. DEVLIN: And I'll be happy to
19 answer any questions about that, if you wish.

20 I've got some cases that cite
21 Graniteville afterwards and say, this is not like
22 Graniteville, this is a different type of case. I
23 simply don't -- I think that is an outlier in these
24 statute of limitations cases.

25 THE COURT: I can't put my hands on it

1 right now. There was some distinction made in a
2 later case between that and Graniteville that had
3 to do with -- and I don't remember exactly. I
4 thought I copied it, but I don't see it.

5 MR. DEVLIN: I have the Republic
6 Contracting case with me, Your Honor, in which the
7 Graniteville case was distinguished, because in the
8 Graniteville case the testimony was uncontradicted
9 that the plaintiff had a fire in their property of
10 unknown origin without --

11 THE COURT: Let's move on about that.
12 I know what you're talking about.

13 MR. DEVLIN: Okay. If you don't mind,
14 as a housekeeping matter, Mr. Fennell and I on
15 behalf of the plaintiff and DOT have a couple of
16 matters that we have stipulated to and I just want
17 to make sure they're on the record --

18 THE COURT: All right.

19 MR. DEVLIN: -- in case they might have
20 an impact on your decision.

21 THE COURT: Certainly.

22 MR. DEVLIN: There are some allegations
23 in his brief that we have agreed do not apply to
24 the DOT. We have stipulated that there's no
25 evidence that the DOT does maintenance to the

1 Strait or College Street storm drains. We have
2 stipulated that there is no evidence that the DOT
3 has known of the pipe under the Ray house since
4 1941, which is -- there's a broad assertion in that
5 brief that defendants had known since 1941. The
6 plaintiff has agreed that there is no evidence that
7 the DOT has known that, and we have stipulated that
8 there is no evidence that the DOT was involved in
9 any alteration of the direction of that water flow.
10 back apparently in the '40s when a portion of pipe
11 behind her property was absconded and a relief pipe
12 was redirected over towards Lucas Street. The
13 stipulation is that there is no evidence that the
14 DOT was involved in that.

15 THE COURT: In this case among these
16 defendants?

17 MR. DEVLIN: Yes, sir, Your Honor. We
18 can't say absolutely, but in the record that the
19 court has and that the parties have developed in
20 discovery there is nothing that would tie the DOT
21 to any of those three sets of facts.

22 THE COURT: I understand.

23 MR. DEVLIN: On the positive,
24 aggressive act, Your Honor --

25 THE COURT: Inverse condemnation?

1 MR. DEVLIN: Well, it's primarily
2 inverse condemnation because that is the precise
3 language she used in the inverse cases, but most
4 inverse cases seem to be brought with an
5 accompanying trespass cause of action and courts
6 have often dealt with whether or not there's been
7 a -- the inverse claim has been met and the
8 trespass claim has been met by the same analysis of
9 was there an affirmative act committed, and I would
10 say, Your Honor, that according to the Hawkins
11 versus City of Greenville case and Glenn versus
12 Anderson County School District case, there is no
13 evidence of an affirmative act by the DOT.

14 And, again, I only represent the DOT.
15 There may be a different argument that I care not
16 about as to the city, but there is no evidence that
17 the DOT has purposefully channeled water under
18 Ms. Ray's house, none, because we did not -- there
19 is no evidence that they knew of the pipe under the
20 house. That has been stipulated to. That is one
21 of the stipulations. There is no evidence that
22 when it started draining water at some point in the
23 deep, dark past off of Oakland that it knew it was
24 going to go through an orphan pipe or a road pipe
25 or whatever. And the case law is clear that the

1 positive or aggressive act for an inverse case or
2 the intentional act for a trespass case has to be
3 the act which is part of the causation of the
4 damage.

5 Now, I received a big, thick package of
6 positive -- documents evidencing affirmative,
7 positive acts by the defendant SCDOT. I'll
8 stipulate to every one of these because they don't
9 have anything to do with Ms. Ray's property having
10 water going under it. We have produced in
11 discovery all of the maintenance records as to DOT
12 on Oakland Avenue and there's ample proof that we
13 patched potholes, that we surfaced streets, that we
14 do what a highway department --

15 THE COURT: Let me be clear what you're
16 telling me.

17 MR. DEVLIN: Yes, sir.

18 THE COURT: You are not saying that if
19 the DOT did some road construction at point A that
20 casts water downstream over property Z that that
21 affirmative act would not be compensable under the
22 theory of inverse condemnation assuming an
23 affirmative act up here that causes damage down
24 here?

25 MR. DEVLIN: Your Honor, under that set

1 of facts, if you can show I put the road up here
2 and all of the sudden a bunch more water started
3 going under an individual property --

4 THE COURT: That's way downstream?

5 MR. DEVLIN: -- way downstream --

6 THE COURT: Okay.

7 MR. DEVLIN: -- that might be
8 sufficient.

9 THE COURT: We're on the same page.

10 MR. DEVLIN: But none of the acts --

11 THE COURT: But if you did something on
12 Oakland that caused -- if you did something on
13 Oakland that caused -- and I'm assuming, I'm not
14 saying you did -- that caused a dramatic increase
15 in the water being cast upon some property down on
16 Lucas Street -- assume those facts -- you could be
17 responsible for that, but --

18 MR. DEVLIN: Before I bind the DOT --

19 THE COURT: No. You don't have to
20 connect to the property that's being damaged.

21 MR. DEVLIN: I know that there's a
22 whole body of inverse condemnation law which talks
23 about the continuity issue. I've not researched
24 that in connection with this, so I honestly can't
25 answer it, but I will be happy to look at it from

1 that angle if you wish for me to.

2 I know that in the Glenn versus
3 Anderson County case there is a line in that
4 opinion in which because there are two defendants
5 upstream of the plaintiff who is complaining, the
6 court allows that the upstream property -- in this
7 situation it would be the DOT -- does not have --
8 and I am paraphrasing the heck out of the case,
9 Your Honor -- does not have exposure because their
10 property went in -- their water went into a county
11 ditch. And I think that it is probably more likely
12 that the law says our responsibility for the water
13 that is on and immediately coming off of my street,
14 if it goes into another municipality system or some
15 other system, it is their responsibility. And if
16 the DOT does something to drastically change the
17 amount of water that is going into a system, I
18 believe that what happens is that before that work
19 gets done they will analyze downstream impact and
20 they --

21 THE COURT: That begs the question.

22 MR. DEVLIN: Pardon?

23 THE COURT: That begs the question.

24 MR. DEVLIN: Yes, sir, it does, but in
25 situations where the best the plaintiffs have come

1 up with --

2 THE COURT: I understand. I know what
3 you're talking about. You've answered my question.

4 Is that it?

5 MR. DEVLIN: There are -- there are no
6 affirmative acts that the expert has at all even
7 sought to tie the DOT to the Ray property. There's
8 not even been an effort to say the DOT performed X
9 other than draining water off of a --

10 THE COURT: I understand. I read that.

11 MR. DEVLIN: And I don't believe that
12 is enough.

13 And if you'll give me just a second to
14 look at my notes.

15 THE COURT: Yes, sir.

16 MR. DEVLIN: Your Honor, that's all I
17 can think of. I don't know whether I've addressed
18 all of my points yet, but I'll look and see. Thank
19 you very much.

20 THE COURT: All right. I think the
21 better thing to do is let me go ahead and hear from
22 Mr. White since you all are attacking the same
23 theories on both fronts.

24 Mr. White.

25 MR. WHITE: Thank you, Your Honor.

1 Your Honor, I represent the City of
2 Rock Hill. The city has filed a motion solely on
3 the grounds of statute of limitation as applied to
4 this matter.

5 In the discussion that preceded there
6 was a -- there are three layers at which the
7 trigger would occur. One layer is that Ms. Ray is
8 bound by the statute being triggered against one of
9 the prior property owners.

10 THE COURT: I don't remember reading
11 anything about that in anything I read. Maybe I
12 just didn't do it thoroughly enough.

13 MR. WHITE: Your Honor, if it's all
14 right, there was a third report by the plaintiff's
15 expert which was not attached to his affidavit. So
16 attached to the affidavit that I presented to the
17 court this morning --

18 THE COURT: This afternoon.

19 MR. WHITE: -- this afternoon -- it's
20 been a long day --

21 THE COURT: 30 minutes ago.

22 MR. WHITE: -- is an affidavit of Jimmy
23 Bagley in which he notes that all -- that the
24 records show there is a tap pipe.

25 Now, I'm not sure it's a gutter. It

1 could be where someone was draining a sink in a
2 house in 1935. That would not be terribly unusual.
3 In which case, it would have been under the
4 original footprint of the house, certainly under
5 the footprint now, and that is in Mr. Bagley's
6 affidavit. But Ms. Ray's expert not in the record
7 today -- he notes it in a report that's not in the
8 record.

9 By the way, I need to be very precise
10 about what's in this record and what's not. There
11 are responses to interrogatories, there is a
12 deposition of transcript of Ms. Ray, there is an
13 affidavit of Ms. Ray, there is affidavit of her
14 expert, Mr. Leonard, with attachments, there is
15 affidavit of the expert from the DOT and there is
16 an affidavit from Mr. Bagley, and that's it.

17 And when you look at this case which
18 is --

19 THE COURT: I'm sorry. Did you name
20 both experts -- both sides' experts?

21 MR. WHITE: I did.

22 THE COURT: Okay.

23 MR. WHITE: There is Mr. Bagley, there
24 is whatever the DOT gentleman's name is --

25 MR. DEVLIN: Griffin.

1 MR. WHITE: -- Griffin, and then there
2 is Mr. Leonard.

3 This case is over a year and a half
4 old. It is plaintiff's responsibility to produce
5 facts sufficient to create the genuine issue of
6 material fact. There are a lot of unknowns which
7 cannot be assumed or inferred negatively against
8 the city because they're not on the record when
9 it's her responsibility to come forward with those
10 facts. For example, it is not in the record --
11 she's produced no facts that the city constructed
12 the subject pipe.

13 Now, the subject pipe that I'm
14 referring to starts at her property line.

15 THE COURT: I think the way the -- I
16 think the way the process works is what first has
17 to happen is the movant needs to demonstrate that
18 there is no genuine issue of material fact and then
19 the nonmoving party must come forward and show that
20 there is one.

21 MR. WHITE: Correct.

22 THE COURT: So let's deal with the
23 first part first.

24 MR. WHITE: So the first part is in
25 Mr. Bagley's affidavit he puts into the record that

1 there is drainage infrastructure located within the
2 watershed, which is area two on the map which is
3 attached to Mr. Bagley's affidavit, that is owned
4 by different public entities and private
5 landowners. Number five, based on the city's
6 review and analysis of the watershed, he gives
7 approximate ownership of that areas within that
8 watershed. The city owns 8 percent, DOT owns a
9 little bit more at 8.6, Winthrop University owns
10 6.9.

11 THE COURT: I've read all that, but
12 what does he mean by that?

13 MR. WHITE: That means in the area
14 within -- you take the surface area within the
15 watershed --

16 THE COURT: No. I understand. What is
17 the significance of that? That's what I mean.

18 MR. WHITE: The significance is on the
19 next paragraph. The city does not own, maintain or
20 assume control over storm water infrastructure
21 unless the infrastructure was constructed by the
22 city, dedicated by the landowner to the city and
23 accepted by the city or the city was granted either
24 fee simple title or some right-of-way. So in that
25 62 percent, unless it falls within one of those

1 three exceptions, is not a city-controlled or owned
2 or liable part of the system.

3 THE COURT: All right. Let me -- is
4 this another way of saying that the city has no --
5 I don't want to say no -- has no control over or
6 right to use the pipe that runs under Ms. Ray's
7 house?

8 MR. WHITE: I did not say that. What
9 I'm saying is --

10 THE COURT: Is that what Mr. Bagley is
11 saying?

12 MR. WHITE: What he's saying is the
13 city does not inherit by some unannounced fiat
14 every area in which water drains in the city. The
15 city has control and liability for those areas that
16 it has in those three categories.

17 He goes on to say this subject pipe --
18 and, again, the subject pipe is from her property
19 line to the manhole behind her house.

20 THE COURT: Is there a manhole behind
21 her house?

22 MR. WHITE: There is a manhole behind
23 her house.

24 THE COURT: On her lot?

25 MR. WHITE: Uh-huh.

1 THE COURT: I don't remember reading
2 that. Okay.

3 MR. WHITE: Now, here's -- now, here's
4 why this is -- why I have to stop there. In 1941
5 there is a drawing by the city -- by a city
6 engineer showing a creation from that manhole going
7 off about 35 degrees. It used to -- apparently
8 this pipe used to run straight back toward the
9 church and hit the open ditch. The city drawing in
10 '41 --

11 THE COURT: You mean the Church of
12 Christ on Charlotte Avenue?

13 MR. WHITE: Yes. Not Charlotte -- yes,
14 Charlotte.

15 The city drawing shows that being
16 abandoned, the continuation from the manhole to the
17 ditch, and a relief valve -- what's described as a
18 relief line coming off about 35 degrees going
19 toward Strait Street -- excuse me -- Lucas, and
20 then catching up with everything that's going down
21 Lucas.

22 THE COURT: That's the angle that
23 shows --

24 MR. WHITE: It could very well be when
25 this case is fully developed, if it gets there --

1 and, again, it's not even known that the city
2 constructed that. All we have right now on the
3 record is -- all that we have is there's a drawing
4 by the city that shows from that manhole over there
5 was a city-designed structure which seems to be in
6 place.

7 THE COURT: And that would be the
8 angular short piece there directly behind the
9 extension of --

10 MR. WHITE: Yes. And when I refer to
11 the subject pipe I'm referring from her property
12 line to that manhole only.

13 THE COURT: Yeah. Where it makes that
14 angle is where the manhole is?

15 MR. WHITE: Yes, sir.

16 THE COURT: All right.

17 MR. WHITE: There is no evidence in
18 this record of who connected to who. There's no
19 evidence in the record that the city connected onto
20 this -- what I call the subject pipe, the pipe that
21 runs under her property to the manhole. There's no
22 evidence in the record to show that. Someone could
23 have put that pipe in and connected it to the city
24 system.

25 By the way, the connection is on city

1 property. The city -- the catch basin is not
2 located on plaintiff's property.

3 THE COURT: Okay.

4 MR. WHITE: So in the record as we have
5 it there is nothing in the record to show any
6 affirmative act from the city as far as
7 constructing the subject pipe. There's no evidence
8 in the record that the city has maintained that
9 pipe. There is no evidence in the record that the
10 city prepared the dirt on top of the pipe for a
11 building pad for a house. There is no evidence in
12 the record the city built the house, and there's no
13 evidence in the record that the city connected to
14 that pipe versus vice versa. Say there was an open
15 ditch and someone just decided to --

16 THE COURT: What do you mean, vice
17 versa? What's vice versa?

18 MR. WHITE: Well, say that the
19 connection was made by the owner of that property
20 removing the existing ditch so they could put a
21 house on it. There's nothing in the record to show
22 that.

23 THE COURT: Well, in fact, the city
24 denies all that, right?

25 MR. WHITE: Correct. The city doesn't

1 claim any ownership or control of that pipe. I
2 mean, if you take it further -- and, again, this is
3 not in the record, but if you take it further, the
4 city took ownership from that manhole down to
5 Lucas. It's quite clear why they didn't take
6 anything else, because somebody -- fool put a house
7 on top of it. It's not the city's obligation to go
8 in and correct someone benefitting themselves to
9 that extent and a judgment of whoever's got to
10 maintain that line.

11 So what we have in the record is the
12 city -- there's no record the city ever exerted
13 control over it, no evidence the city maintained
14 it, no evidence the city constructed it, no
15 evidence the city connected to it.

16 Now, to answer the question you asked
17 earlier, what rights -- by the way, every time
18 Ms. Ray's counsel asked the city, we're going to
19 dam up the pipe, my response is always the same:
20 You do whatever you want to do. The city reserves
21 all rights that it may have under law. That's my
22 response, and here's why I respond that way. From
23 a North Carolina case -- which they have some
24 lovely cases up there -- the surface of the earth
25 is naturally uneven with inequality of elevation.

1 The upper and lower holdings are taken with
2 knowledge of these natural conditions and it's the
3 privilege or easement of the upper tenant to carry
4 off the surface water in its natural course under
5 reasonable limitations and the subserviency of the
6 lower tenant to this easement are the natural
7 incidents of ownership of the soil. That's from
8 Dye's Awnings and Tents versus the City of
9 Winston-Salem.

10 You find that kind of law all over the
11 place, and -- but that's not really why we're here.
12 Why we're here is there is no affirmative act by
13 the city in this record -- unless you just assume
14 things, there is no affirmative act from the city
15 that connects it to that pipe or the location of
16 that pipe where it is.

17 So you don't have an affirmative act
18 for either of the two causes of action against the
19 city, thus trespass fails and inverse condemnation
20 fails.

21 By the way, I would note that their
22 expert makes great note of the fact that in the
23 catch basin in front of her house -- he's very
24 inartful there. He talks about when there was some
25 sewer line work. If you're going south -- you're

1 going down College this way, the right-hand -- the
2 pipe on the right-hand side was severed from the
3 catch basin and the city reconnected it. All
4 that's on city property. There was no -- no work
5 was being done inside the curtilage or the property
6 line of their house.

7 So you had Ms. Ray trying to tell --
8 through her counsel tell the city what to do on
9 city property in its own catch basin located within
10 its own street.

11 THE COURT: Well, what if it -- I mean,
12 is work on its own property that -- whatever that
13 may be, that may cause damage to adjacent private
14 property not an affirmative act?

15 MR. WHITE: There is no evidence in
16 this record of any sort of intensification or
17 acceleration of water from city property into
18 Ms. Ray's property. There's none.

19 THE COURT: You know, what puzzled me
20 about this case is I don't -- as much I've dealt
21 with surface water and what anybody can do with
22 that, I don't remember -- I can't recall reading
23 cases about what you can do piping water
24 underground other than you can't open it up on
25 somebody else's property.

1 MR. WHITE: It doesn't apply to this
2 motion, but the question is not whether it's
3 surface water. The question is: Is it a natural
4 watercourse or has it become one over the operation
5 of time?

6 The key to this case, Your Honor, is
7 someone chose to put an artificial event --

8 THE COURT: We know all that. Tell me
9 the reasons why the city doesn't -- isn't liable or
10 is entitled to summary judgment.

11 MR. WHITE: For purposes of today, the
12 city is not liable because there is no evidence of
13 any affirmative act, which is a necessary prong on
14 both causes of action.

15 And moving on to the statute of
16 limitations, the trigger, just to -- the trigger
17 comes in the form of the prior property owners had
18 to know there was a pipe because they punched a
19 hole in it and they affixed the four-inch pipe to
20 it. If that doesn't work for the court, if for
21 some reason that's found to be insufficient, the
22 plaintiff owned the property from 1985 until past
23 2008 in which she had numerous occasions of bending
24 in her rafters, she had a man fall in a sinkhole.
25 You can stand in front of the property -- in fact,

1 she has many videos of this -- and look down in the
2 grate on the city property and see where the water
3 is going. There's no question it moves through
4 there pretty good.

5 And that's an open and obvious
6 condition on the property for over two decades, but
7 even if that doesn't work, her testimony at her
8 deposition makes it clear -- she testified that in
9 2008 she noticed her front entry steps to her house
10 were sinking. That's level one. There's an issue.
11 In response she contacted the city to investigate
12 the storm damage -- the drain on College. She
13 called them up and said, I want you to look at this
14 drain. Why would she know to ask about the drain
15 if she wasn't worried about it?

16 But we go past that. The employees
17 came out. The employees -- she testified that the
18 employees told her that the drain ran toward her
19 steps.

20 In 2008 she saw city employees digging
21 behind her house, which was at the manhole, and
22 that from that she assumed the line went from front
23 to back of her house. So again, 2008.

24 And then most critically, in 2008
25 she -- quote, she feared the subject pipe ran under

1 her house. So in 2008 -- the case was filed in
2 December of 2009 -- excuse me -- 2012. In
3 November 2008 she testified she feared that that
4 pipe ran under her house at the same time her steps
5 were sinking. The case law on that issue -- South
6 Carolina statute of limitations, quote, requires
7 very little to start the clock. That's under Mayer
8 versus Tytex.

9 In Republic again it distinguishes the
10 other cases. The trigger is once you're put on
11 inquiry notice. It's not a subjective test. It's
12 when you -- a person of reasonable knowledge and
13 experience will notice that they may have a claim.
14 You don't have to know the full extent of the
15 claim. You don't even have to know who the natural
16 defendants are of the claim.

17 She was on notice in November of 2008
18 by her own words.

19 So then you get down to the last prong
20 of the decision tree, which is: Is it a permanent
21 or is it a continuous nuisance or -- not nuisance.

22 THE COURT: Trespass.

23 MR. WHITE: -- trespass or
24 condemnation? And on that issue again the case law
25 is decisive. I am quoting from Hedgepath. A

1 continuing nuisance is defined as a nuisance that
2 is intermittent or periodic.

3 Now, again, nuisance and trespass and
4 inverse condemnation, the analysis on continuing
5 versus permanent is the same, it's used
6 interchangeably. A continuing nuisance is defined
7 as a nuisance that is intermittent or periodic.

8 If you'll note in their expert report,
9 one of the causes ascribed to the damage to the
10 house is that the fill on top of the pipe is not
11 prepared sufficient for a building back. That's
12 continuous. That's not intermediate.

13 This case is not the result of a
14 culvert getting plugged by the proverbial beach
15 ball and then there's a flood and then four years
16 later it gets plugged by someone's lawn chair.
17 This one is being caused by the act of putting the
18 pipe.

19 The cases go on to say, a nuisance is
20 continuing if abatement is reasonable and practical
21 and possible. In your colloquy with Mr. Devlin,
22 it's not a question of whether she has a claim, but
23 whether it's reasonable or not. The question is:
24 When does she have to bring it? And the policy
25 behind that is if it's really, really cost

1 ineffective to replace it then the plaintiff has to
2 stand on their rights even more so as not to
3 prejudice the defendants.

4 THE COURT: How is she to know that?

5 MR. WHITE: Well, in 2008 she knew.

6 THE COURT: She didn't know what the
7 cost was. She didn't know what it would cost the
8 city to -- how does she know that?

9 MR. WHITE: Under our discovery --

10 THE COURT: I read some stuff that said
11 the city wouldn't talk to her about that.

12 MR. WHITE: Under the discovery rule
13 she doesn't have to know the ultimate final cost.

14 THE COURT: No, but you're talking to
15 me about abatable or not, and one element of
16 whether or not it's abatable is what does it cost.

17 MR. WHITE: My argument on abatability
18 today is --

19 THE COURT: Of course, that's what
20 Mr. Devlin was telling me.

21 MR. WHITE: My argument on abatable is
22 it is her burden to show that it's abatable at that
23 level such that the statute of limitations does not
24 apply to her. There is nothing in this record to
25 show that it's abatable, period.

1 THE COURT: Well, it depends on what --
2 how you -- I mean, my concern about that is, is it
3 absolutely necessary for a person to formulate the
4 cost to the punitive defendant to abate a trespass
5 in order to prove that the trespass is abatable?
6 And how would one do that? I have a problem with
7 that.

8 MR. WHITE: If I could address the
9 permanent versus continuous. There are two more
10 cases I want to mention, and then if I could
11 address it head on, I'd like to. If you'll allow
12 me to go in that order it makes more sense.

13 THE COURT: Go ahead.

14 MR. WHITE: Again, on a permanent
15 versus continuous, the court noted in Webb versus
16 Greenwood County, if the injury is of a permanent
17 character then it follows that plaintiff has a
18 single cause of action which cannot be split. A
19 single action only may be maintained for all
20 damages present and prospective caused by a
21 permanent structure properly built and properly
22 maintained on. This is Webb. Holding the
23 day-to-day operations of a power plant was a
24 permanent occasion even though the plant was there
25 every day, it's making the noise, doing the things

1 it did. The statement has a good quote --

2 THE COURT: In other words, the clock
3 starts to run.

4 MR. WHITE: The clock starts to run.

5 THE COURT: I understand.

6 MR. WHITE: That's all it is.

7 THE COURT: I understand.

8 MR. WHITE: So in the Glenn case, Glenn
9 stands on the proposition that drainage
10 infrastructure is permanent. The school district
11 there redid their drainage system. It then went
12 through a county ditch and then it caused damage to
13 Mr. Glenn's property. There they didn't get into
14 whether it was reasonable and all that. What they
15 said is, you waited too long. If they changed
16 their drainage system, those pipes are in the
17 ground, that's a permanent structure. You had, I
18 guess, six years at that time -- six years to bring
19 your claim.

20 THE COURT: From when?

21 MR. WHITE: You didn't do so.

22 THE COURT: From when it was put in the
23 ground?

24 MR. WHITE: I believe they said from
25 when he noticed the erosion.

1 THE COURT: Does it have anything to do
2 with when it begins to leak or --

3 MR. WHITE: I believe the discovery
4 rule applied to Mr. Glenn when he had noticed that
5 he was having erosion issues on his property.
6 That's when he had six years.

7 THE COURT: That's a different
8 question.

9 MR. WHITE: So --

10 THE COURT: Hold on a minute.

11 I agree with you that the placing -- if
12 the damage is caused by the placing of
13 infrastructure in the lot at some point in time,
14 then if that's the cause of the damage -- the
15 proximate cause of the damage, then the clock began
16 to run when it was put there, but if the damage is
17 a result of the failure of that infrastructure, it
18 seems to me that the -- this is laying aside what
19 notice somebody may have -- the failure of the
20 infrastructure, then the clock would begin to run
21 from the time of the failure of the infrastructure
22 which obviously is a later date.

23 MR. WHITE: In this case it doesn't
24 matter which way you look at it because the
25 failure --

1 THE COURT: It may not, but isn't it
2 true?

3 MR. WHITE: I don't know that I really
4 agree with that, but I try not to argue with judges
5 when it doesn't change the result.

6 And in this case --

7 THE COURT: I don't know if I agree
8 with that, but...

9 MR. WHITE: -- the trespass occurred
10 when it occurred. The damage was by the invasion
11 on the property, and in this case --

12 THE COURT: She had notice at some
13 point. We don't know whether it was -- at least I
14 don't remember -- whether it was failure or -- all
15 I'm trying to say is if she had notice of the pipe
16 being there and if the pipe is the cause as opposed
17 to the failure of the pipe is the cause, in my mind
18 that starts the clock at a different time.

19 MR. WHITE: The way I understand the
20 cases is --

21 THE COURT: They've got to tell me what
22 the facts are here in a minute, but...

23 MR. WHITE: Well, as I understand the
24 cases, it is when you have a structure such as a
25 pipe that is a permanent injury to the property and

1 you have a single cause of action for all damage
2 past and prospective.

3 THE COURT: Because it's a trespass?

4 MR. WHITE: Well, because it's also a
5 permanent structure. Let's say you look at inverse
6 condemnation. It's a permanent structure which the
7 government is taking and it has a degree of
8 permanence. Remember that it is an element of
9 inverse condemnation.

10 THE COURT: Let's move on. I
11 understand all that.

12 MR. WHITE: Look at the record of
13 abatability because --

14 THE COURT: That's what I want to do.

15 MR. WHITE: You've asked a lot of
16 questions about whether it's a standard. The only
17 thing you have on abatability, the only thing in
18 this record, one sentence, maybe two. I will note
19 that the last part of Mr. Leonard's says, the
20 attached estimates or repair costs, that has
21 nothing to do with abatability. His repair costs
22 are solely as to fixing the structure, including
23 filling in line, repairing walls and things like
24 that.

25 THE COURT: I'm sorry. Filling in the

1 line?

2 MR. WHITE: Filling in the line.

3 THE COURT: The pipeline?

4 MR. WHITE: The subject pipeline.

5 THE COURT: Okay. Yeah.

6 MR. WHITE: He doesn't look -- there is
7 no cost analysis about what do you do with the
8 water. He just looked at the house, trying to fix
9 the house.

10 So you have the sentence, Paragraph 17
11 on Page 2. The water does not run under the -- the
12 water does not have to run under Ms. Ray's house.
13 You could bury a pipe deep enough so that it ran
14 downhill toward Lucas. Otherwise, divert it around
15 her house.

16 Mr. Leonard is testifying as an expert
17 to render that opinion. Under South Carolina
18 rules, his testimony has to be admissible at trial
19 to be used by the court in the record today.
20 That -- those two sentences -- those two sentences
21 would not be admissible at trial based on this
22 record.

23 He -- in South Carolina -- it's the end
24 of the brief. It's the last three pages. It goes
25 through what is required. South Carolina has not

1 adapted the Daubert test, although South Carolina
2 did adopt Frye under State v Jones and some other
3 cases. Materials used to refute under 56(e) have
4 to be admissible. All expert testimony must meet a
5 reliability threshold and imposes -- Rule 702
6 imposes an affirmative, meaningful gatekeeper
7 function to you, the trial judge. It is a
8 fundamental requirement that the opinions and
9 inferences of an expert must be grounded in fact.
10 More importantly, this underlying factual basis --
11 expert must be the type reasonably relied upon by
12 experts in the field at issue. Failure to set
13 forth the factual basis for an expert's conclusions
14 renders the opinions and conclusions unreliable and
15 inadmissible. That's from Dawkins v Fields, 2003
16 Supreme Court decision.

17 THE COURT: Was that at trial?

18 MR. WHITE: Yes, sir.

19 THE COURT: All right.

20 MR. WHITE: But under 56(e), it applies
21 here today. They've had a year and a half. I'm
22 sorry. That was not a trial. Dawkins was a
23 finding and affidavit in opposition to motion for
24 summary judgment inadmissible for failure to set
25 forth factual basis for the legal conclusion.

1 THE COURT: All right.

2 MR. WHITE: It goes on, conclusory
3 statements do not form a basis for withstanding a
4 motion for summary judgment. That's in Green v
5 State, 2002 decision. An expert's conclusory
6 opinion was inadmissible where the expert offered
7 no factual evidence to support the conclusion.

8 THE COURT: I'm afraid I have -- I
9 don't disagree with you about the law. I agree
10 with you, but I have not had an -- what I have not
11 done somehow is read the report of this -- Leonard
12 is his name?

13 MR. WHITE: Leonard.

14 THE COURT: I don't believe I've read
15 his report.

16 MR. WHITE: I would proffer to the
17 court that his report does not analyze in any form
18 how he would reroute the water. It solely looks at
19 how to fix the house.

20 I would note in Mr. Bagley's
21 deposition, paragraph --

22 THE COURT: Well, he apparently says
23 you can dig a deeper line to Lucas Street --

24 MR. WHITE: Well, that's not in his
25 report.

1 THE COURT: -- so it will flow
2 downhill.

3 MR. WHITE: Well, I'll give you a good
4 example.

5 THE COURT: No. That's a diversion.
6 Get back on your track.

7 MR. WHITE: On Bagley's affidavit he
8 notes that any engineering opinion as to whether
9 existing flow can reasonably be diverted from the
10 subject pipe would first necessitate sufficient
11 facts be developed by engineering studies, mapping
12 and planning. To conclude, at a minimum, to find
13 the following: The amount of flow through the
14 subject pipe, the type of material and
15 specifications of the rerouted infrastructure, the
16 path of the rerouted infrastructure, the existing
17 ownership and cost of acquiring the necessary
18 private property through the rerouted path,
19 conflict avoidance through the rerouted path and
20 the location, depth and adequacy of the downstream
21 infrastructure.

22 What's so interesting about -- the two
23 things that popped to me so fast when I read
24 that --

25 THE COURT: Hold on a second. What

1 you're trying to tell me is that there is no --
2 there is no evidence of what it would cost or what
3 work would be -- well, what work would be necessary
4 and thus what it would cost to abate the situation?

5 MR. WHITE: I'm saying that, but I'm
6 saying further, as a gatekeeper, Mr. Leonard has
7 not provided the facts to justify his conclusory
8 opinion and thus they're inadmissible. He hasn't
9 said where you would go and how you would get
10 there. For example, College has five layers of
11 sewer lines and power lines underneath it. So how
12 would you get so deep to get down there so that,
13 you know, you're at this level and when you finally
14 get over to Lucas you're at here? He doesn't get
15 into whether that's -- he says it's possible, but
16 there's nothing to support it. He hasn't looked at
17 it.

18 THE COURT: But all we're talking about
19 is what is the cost ultimately of abatability.

20 MR. WHITE: I will submit to the
21 court --

22 THE COURT: Of abatement, thus the
23 realistic likelihood of abatement at all.

24 MR. WHITE: I would submit the city's
25 position and I would submit to the court that based

1 on this record there is insufficient facts to even
2 support his opinion that it is abatable at all.
3 There is nothing to support it.

4 The city does not have to defend
5 against a conclusory statement that has nothing in
6 the record and we just assume that it's possible.
7 It was their duty to show that it was.

8 THE COURT: Well, he's going to abate
9 it by filling up the pipe.

10 MR. WHITE: Okay. The water is going
11 to then sheet flow across her own property and
12 right to her steps.

13 THE COURT: Well, maybe she can build
14 something there.

15 MR. WHITE: Well, as I suggested from
16 the North Carolina cases --

17 THE COURT: What is abatement? That's
18 what's troubling me. That sort of begs the fact
19 question. What is abatement?

20 MR. WHITE: I believe under the case
21 law abatement is removing the condition of the
22 trespass or removing the condition of the inverse
23 condemnation, which in this case, according to
24 Mr. Leonard, you've got to move the pipe and the
25 water that flows in the pipe.

1 THE COURT: Or plug it.

2 MR. WHITE: But what Mr. Leonard --
3 under our case law, Mr. Leonard's Paragraph 17 is
4 not admissible and the plaintiff has failed to show
5 in any form that it can be abated, she's failed to
6 show how it can be abated and she's failed to show
7 anything as to cost of the abatement.

8 THE COURT: The tabbed version of all
9 this I have is the DOT's. Which of these tabs is
10 Mr. Leonard's report, Mr. Devlin? Do you know?

11 MR. DEVLIN: Your Honor, I'd have to
12 look at it. I can provide you with a copy of the
13 report easier than I could find it in there.

14 THE COURT: Here we go. Here's the --

15 MR. DEVLIN: Ms. Ray's affidavit has it
16 as an attachment to her affidavit, I believe.

17 THE COURT: Go ahead, Mr. White, but be
18 brief. We've gone over stuff I think I've gotten
19 my mind around listening -- you're making some of
20 the same arguments DOT is, and I think I understand
21 all this, so I don't want to be redundant because
22 these guys -- I want to give them plenty of time.

23 MR. WHITE: Right. Mine is more
24 tailored based on the record and what is not there.
25 And then, secondly, I would note that we received a

1 pack of -- a document that says, these documents
2 were produced and show positive, aggressive acts.
3 Those documents are not in the record. Production
4 of documents does not authenticate or otherwise get
5 documents into -- under the rules of evidence such
6 that they are usable in this proceeding.

7 So we have that, and then the last
8 thing I'd like to point out is, in the document
9 you're looking for, his expert report, a couple
10 interesting things. Number one, he does not make a
11 finding that the pipe is leaking -- the subject
12 pipe is leaking. There's no finding -- he
13 discusses he thinks it is and it might be, but he
14 doesn't discuss that it is.

15 And lastly, he also ascribes damage
16 potentially to the fill material placed on top of
17 the pipe, which, again, goes toward the fact that
18 it's one action from one project. Whoever built
19 the pipe, that's when it all started and it's not
20 the water flowing through the pipe, but actually
21 the pipe condition itself, which under the case law
22 cited in the brief is where the demarcation line
23 comes from one that is permanent versus one that is
24 continuous.

25 So for those reasons the city requests

1 the court enter summary judgment on all claims.

2 Thank you, Your Honor.

3 THE COURT: All right. Mr. Fennell.

4 MR. FENNELL: First, with respect to
5 positive --

6 THE COURT: Before you get into it,
7 help me now while I've got it here with
8 Mr. Leonard's report.

9 Where is the -- Mr. White, where is the
10 information you were trying to cite me in here? It
11 was two sentences or something like that.

12 MR. WHITE: It's in the affidavit of
13 Mr. Leonard.

14 MR. FENNELL: Judge, may I approach?

15 MR. WHITE: Page 2.

16 THE COURT: Yeah.

17 MR. FENNELL: This is a notebook that's
18 got everything that we've been talking to you
19 about. If you look at Tab 14, that's Mikes
20 affidavit.

21 THE COURT: I'm looking at his
22 affidavit.

23 MR. WHITE: Paragraph 17.

24 MR. FENNELL: Yes, sir.

25 THE COURT: What I'm looking at is not

1 in numbered paragraph form.

2 MR. FENNELL: That's his expert report.
3 We did an affidavit for the motion. And that's
4 Ms. Ray's affidavit.

5 THE COURT: I know it is.

6 MR. FENNELL: Here is Mr. Leonard's
7 affidavit.

8 THE COURT: Maybe that's why I haven't
9 seen it.

10 MR. FENNELL: Yes, sir.

11 THE COURT: How does it tie in to his
12 report, if at all?

13 MR. FENNELL: It gives his background,
14 his history, refers to his report. And then what
15 John and Mark have been talking about is the last
16 paragraph of the affidavit.

17 THE COURT: 17?

18 MR. FENNELL: Yes, sir.

19 THE COURT: Does the report deal with
20 that?

21 MR. FENNELL: No, sir.

22 THE COURT: Okay.

23 MR. FENNELL: So Paragraph 17 gives his
24 suggestion for how to abate the problem. The first
25 16 paragraphs talk about what he did with respect

1 to the house and his background. Importantly,
2 Paragraph 6, I believe, is where the affidavit
3 talks about his experience in storm design and that
4 his first job as an engineer out of college was
5 doing this sort of work.

6 So with all due respect to what
7 Mr. White was saying with a great deal of passion,
8 the gatekeeper function is met. He's an expert in
9 this sort of thing and he says that you can fix
10 this problem simple enough --

11 THE COURT: I understand what he says
12 about how to fix it.

13 MR. FENNELL: -- by rerouting the
14 water.

15 Now, the question about whether it's
16 reasonable or not -- and I heard reasonable, I
17 think, about 25 times, but the question about
18 whether it's reasonable or not is for a jury to
19 determine, if that issue even becomes an issue at
20 trial.

21 THE COURT: Well, the first question is
22 whether it is abatable.

23 MR. FENNELL: Yes, sir.

24 THE COURT: What's your position about
25 the cost of abatement?

1 MR. FENNELL: I think the cost of
2 abatement is not something that I've read in any
3 case, that you can't say that at a particular
4 dollar number it's no longer abatable. It's
5 reasonable. So the question about what is
6 reasonable is a question of fact and something for
7 a jury to resolve. There's nothing in the
8 affidavit which would indicate how much that it
9 would cost. The only thing I can tell you about
10 how much rerouting water would cost is just things
11 that we've talked about in settlement negotiations.

12 THE COURT: Go ahead.

13 MR. FENNELL: So with respect to
14 affirmative acts, it's not really putting the pipe
15 under the house that we're talking about. It's
16 collecting and channeling water. If you'll look on
17 this map you'll see the great degree of water that
18 the DOT is responsible for collecting and doing
19 something with under the statute, and that's all in
20 orange. And then the City of Rock Hill has a
21 similar statutory duty to collect and do something
22 with the water on its streets that's all in green.

23 Positive, aggressive act number one by
24 the state is making the decision that they are
25 going to adhere to their statutory duty or comply

1 with their statutory duty by routing the water down
2 Strait Street, and what the state seems to be
3 implying is that, once we do that --

4 THE COURT: Where is it in the record
5 that the state said it was going to do that?

6 MR. FENNELL: That's -- this is -- you
7 can just see from the water there's no dispute --

8 THE COURT: No. That's not my
9 question. From what I gather and read, nobody's
10 got any kind of agreements or anything like that to
11 establish rights or licenses or anything like that.

12 MR. FENNELL: Sure enough.

13 THE COURT: Where has the city
14 calculated -- I mean, I'm sorry, where has the DOT
15 calculated to do that?

16 MR. FENNELL: All that we can -- all
17 that we can know is what we see.

18 THE COURT: We know that water drains
19 into the system.

20 MR. FENNELL: Yes, sir. And we know
21 where the pipes connect.

22 THE COURT: And we know where the pipes
23 connect.

24 MR. FENNELL: Right. And we know that
25 this belongs to the state.

1 THE COURT: Yes, sir.

2 MR. FENNELL: And we know that the
3 state is taking its water down a city street.

4 THE COURT: No. We know the city is
5 taking the state's water down a city street.

6 MR. FENNELL: No, sir, because the city
7 is not collecting the water from this orange area.
8 The state is.

9 THE COURT: Whose pipe runs down Strait
10 Street?

11 MR. FENNELL: That is the city's.

12 THE COURT: All right. That's what I
13 said.

14 MR. FENNELL: The water that is coming
15 off of Oakland --

16 THE COURT: That's right.

17 MR. FENNELL: -- every bit of that is
18 the state's water.

19 THE COURT: That's right.

20 MR. FENNELL: And the state has decided
21 that an easy way to handle their problem under the
22 statute which requires them to manage the water
23 which is -- which flows down this street is to pipe
24 it down Strait for whatever reason.

25 And you're right. We don't have

1 anything in the record that would indicate why they
2 would make the decision --

3 THE COURT: The state didn't make
4 that -- there's nothing in the record to show that
5 the state made that determination other than the
6 state tapped onto an existing pipe.

7 MR. FENNELL: Yes, sir. And by making
8 that decision to tap onto that existing pipe,
9 that's the affirmative act because by making the
10 decision to tap onto that pipe they made a decision
11 to shoot their water that way.

12 THE COURT: When did that occur?

13 MR. FENNELL: We don't know. All that
14 we know is it happened.

15 THE COURT: Well, it happened more than
16 three years before lawsuit was brought.

17 MR. FENNELL: Without question.
18 Without question.

19 So the affirmative act from the state
20 is that. And then what the state is suggesting to
21 you is that once we tap into the city's street
22 or --

23 THE COURT: I frankly don't think that
24 qualifies as an affirmative act by state.

25 MR. FENNELL: That's what we've got

1 with respect to the state, and that the city is
2 then -- the city is responsible for it after it
3 gets into the green section and that they don't
4 have any responsibility to check and see where it
5 goes. And I cited a case to you which indicates
6 that that's not true, that you can't live up to
7 your --

8 THE COURT: Say that again, please.

9 MR. FENNELL: That I've cited a case to
10 you which indicates --

11 THE COURT: No. Before that.

12 MR. FENNELL: The Hill case.

13 THE COURT: You said that the city
14 what?

15 MR. FENNELL: Once the state hands off
16 its water to the city --

17 THE COURT: Yes.

18 MR. FENNELL: -- that the state doesn't
19 have to look and see where it goes, that it's not
20 responsible anymore. And under the Hill case you
21 cannot take your statutory responsibility to deal
22 with the water that comes from your impervious
23 areas by saying that I dumped it off on somebody
24 else.

25 Now, affirmative act number two from

1 the state is their failure to look and see what
2 happened to the water. The record would show that
3 at least since 1941 there can't have been a
4 question as to where that pipe ran because the
5 documents that we've produced which were attached
6 to Mr. Leonard's affidavit show without a doubt
7 that at this point the water runs under this house.
8 And then in 1941 we know without a doubt that the
9 city made a decision that they were going to alter
10 the course of the pipe, and today we know without a
11 doubt that that decision was made and that decision
12 was complied with and construction was completed
13 because that's where the pipe is.

14 So as to the state, the extent of it
15 would be, you collected the water like the statute
16 says you're supposed to do it and you channeled it
17 and you shot it under a pipe that you should have
18 known went under my house.

19 Now, with respect to the city, the
20 affirmative act is similar. The affirmative act
21 is, as to College and Strait, you have a duty under
22 the statute to take care of that water and you have
23 decided that you're going to tap into this pipe --
24 whoever constructed it, that you are going to tap
25 into this pipe in order to comply with the law and

1 you're going to shoot it under our house.

2 Now, we know from the documents that
3 are attached to Mike's affidavit, as I just
4 indicated, that they have known since 1941 that
5 that pipe goes under her house -- and to say
6 otherwise in a strange credulity is a nice way to
7 say it, but the record shows without a doubt that
8 they have known for over 70 years what happens with
9 that pipe.

10 And then if there was any doubt, the
11 record shows that in 2012 Mr. Bradford said clearly
12 that, if you don't believe you have a right to send
13 water under this house, neither do we, and do not
14 reconnect, don't send your water under our house,
15 and they did it anyway.

16 THE COURT: What was it that was
17 disconnected? He mentioned a sewer line.

18 MR. FENNELL: Well, they were doing
19 sewer line work.

20 THE COURT: When they did sewer line
21 work it was disconnected -- the storm water was
22 disconnected?

23 MR. FENNELL: Yes, when they were doing
24 sewer line work the waterline was disconnected and
25 Mr. Bradford wrote the letter which we've attached

1 to Lucille's affidavit saying, don't reconnect,
2 don't send your water under our house anymore, and
3 they did it anyway. Which was consistent with the
4 position that they had taken with Ms. Ray
5 throughout, which was that, we are never moving
6 that pipe.

7 In 2011 when everybody found out and
8 knew for certain that the water was going
9 underneath that house, in Ms. Ray's affidavit she
10 states plainly -- and they can cross-examine her
11 all day long, but she states plainly in her
12 affidavit that she was told by city officials in
13 2011, we're not moving it.

14 So they made a decision -- even if they
15 didn't make it in 1941, they made a decision in
16 2011, reenforced in 2012, that we're going to send
17 our water under your house, and that is a positive,
18 aggressive, affirmative act.

19 And there is no way for them to say
20 that they couldn't know what was going to happen
21 because they saw it. It was open. It was open to
22 all the world and they made a decision in the face
23 of a letter saying not to do it anyway.

24 So with respect to positive, aggressive
25 acts, that's what we have with the city.

1 Now, with respect to abatability, I
2 think I've talked about that. Abatability is a
3 question of what's reasonable, and John and Mark, I
4 think, are saying two inconsistent things, things
5 that can't be true at the same time, which is that
6 there is -- it's not abatable, there's nothing we
7 can do about it, but that it doesn't amount to a
8 continuing problem. It's a continuing problem
9 every time they send water under her house.

10 The pipe itself is what falls in line
11 with Mark's cases, that if the damage is the
12 construction of a particular facility, then we know
13 sure enough that that took place on this date.

14 THE COURT: That's right.

15 MR. FENNEL: And you have to move
16 forward and whatever damage occurred within
17 three years or six years or whatever the statute is
18 from the date of the construction of that
19 particular facility or that particular
20 infrastructure, then you have to bring your
21 lawsuit.

22 This is different. The trespass
23 happens every single time their water goes under
24 our house. And the second way it's different is
25 something that you picked up on, which is that the

1 damage is not resulting from the construction of
2 the pipe. The damage is resulting from its
3 failure.

4 THE COURT: Well, do we know that?

5 MR. FENNELL: Yes.

6 THE COURT: I thought Mr. White said we
7 didn't know that.

8 MR. FENNELL: According to Mr. White,
9 in -- in Mike's expert reports there are grounds
10 where you can cross-examine him about that.
11 Neither one of them have moved on that basis.

12 THE COURT: What, now?

13 MR. FENNELL: In Mike's expert
14 report --

15 THE COURT: Yes, sir.

16 MR. FENNELL: -- there are other
17 possible grounds for the damages that are mentioned
18 other than the water leaking out of the pipe, but
19 Mike says in his affidavit that he is sure -- he is
20 certain that the damage is caused by water leaking
21 out of the pipe.

22 Now, there may be damages --

23 THE COURT: He must have a factual
24 basis for that, must he not?

25 MR. FENNELL: Yes, sir, and the factual

1 bases is the numerous inspections of the home that
2 he's done, the study of the documents that he's
3 been provided with.

4 THE COURT: So then what is the factual
5 basis for it leaking out of the pipe?

6 MR. FENNELL: His expert opinion is
7 based on the fact that the house is 90 years old,
8 that the damage is fairly recent, that there must
9 be something of substance that's happened recently.

10 THE COURT: Is that not Ray Simpson --

11 MR. FENNELL: No, because when you add
12 to it the video that we took in the beginning part
13 of April which shows the particular failures in the
14 pipe, that shows the holes in it, the cracks, that
15 shows the water stains, and then add that to the
16 videos that the city already which showed it not as
17 clearly, but showed that pipe was failing, in his
18 opinion that's evidence that the house is suffering
19 damage because of moisture problems because of
20 leaks in the pipe.

21 THE COURT: So you're telling me that
22 there are videos -- earlier videos that show -- of
23 the city that show apparently no leaking in the
24 pipe and then later videos done by Mr. Leonard that
25 show leaks in the pipe?

1 MR. FENNELL: No. I'm saying that
2 there are three videos. The first two are not very
3 clear. The third one is very clear about where the
4 particular failures are in the pipe. The first two
5 were just -- the quality of the video make it
6 difficult to determine much of anything at all.
7 There are two city videos and then there's one
8 that's Mike's. The motion was not sought on a
9 causation-type issue or we'd be talking about
10 what's in the video, but the video shows with
11 certainty that the pipe has failed and according to
12 Mike, that's what's causing a great deal of damage
13 with Ms. Ray's house.

14 And then what I think Mark was throwing
15 in at the end is that there's also a mention in the
16 expert report that the pipe may have been
17 improperly installed to begin with, that it's not
18 compacted right and that because the soil was
19 improperly compacted around the pipe that some of
20 the settlement damage that she has been suffering
21 is because of that.

22 Mike's response to that is if that was
23 the cause of the damage, it would have manifested
24 more than within the last three or four years. And
25 that's an important issue for the statute of

1 limitations because the statute of limitations -- I
2 mean, I think you argued enough about it with the
3 other lawyers. I won't argue the same points with
4 you, but we presented in the affidavit from Ms. Ray
5 about her testimony that she thought that the
6 damage that she was seeing was normal settlement
7 damage. She suspected that the pipe ran under her
8 house.

9 THE COURT: What about the colloquy
10 with the city in 2008 where she had a city person
11 come out to look at what she believed to be was the
12 pipe running under her house?

13 MR. FENNELL: Yes, sir. And she was
14 told that, first, the pipe doesn't run under her
15 house and, second, the pipe isn't causing any
16 damage, and she believed that, and she believed
17 that until 2011 when she hired Mr. Leonard.

18 THE COURT: But she knew she had damage
19 and she knew she called the city?

20 MR. FENNELL: Yes. Without a question.
21 In her deposition she said that she feared -- I
22 think the exact words were, she feared that the
23 pipe ran under her house in 2008.

24 THE COURT: Did she not have a duty --
25 did that not rise to the level of notice to require

1 her to at least investigate it further?

2 MR. FENNELL: No, not without a more
3 firm connection between the damage and cost.

4 THE COURT: If she was able to isolate
5 it to that extent, it seems to me she's charged
6 with sufficient notice to start the statute.

7 MR. FENNELL: I think that, again,
8 given the denials from the city that waiting until
9 she was able to talk to an expert about the
10 connection between the settlement damage and what
11 was going on in her house -- or rather the
12 settlement damage and the pipe and the leaking from
13 the pipe was reasonable, and that even though it's
14 an objective standard --

15 THE COURT: Well, I read the
16 Graniteville case and I came away from it
17 thinking -- I thought I had it here to look at, but
18 I came away thinking that it was a little bit of an
19 isolated application, not typical to the -- not
20 typical to what we all call, you know, the notice
21 standard, knew or should have known.

22 MR. FENNELL: It may be an outlier, but
23 it's the law and it hasn't been overturned. The
24 Supreme Court hasn't said, don't rely on it. It's
25 the law. And the law of the state of South

1 Carolina says that given the complication in trying
2 to determine the cause of the damage about which
3 she complains that it's up to a jury to determine
4 whether or not it was reasonable for her to do what
5 she did not from a subjective standard, but from an
6 objective standard.

7 And then the last point about the
8 statute of limitations is that since we are talking
9 about a continuing problem, every time it rains
10 they shoot the water under our house, that we are
11 entitled to at least be able to recover from
12 damages which occurred within the statute.

13 THE COURT: That determines on whether
14 the trespass is of a permanent nature, doesn't it?

15 MR. FENNELL: Correct. And that goes
16 back to the point that I was making before, which
17 is --

18 THE COURT: Is the trespass the water
19 or the pipe?

20 MR. FENNELL: The trespass is the pipe,
21 but I can't tell you that either one of these two
22 parties -- or two parties put the pipe there, but
23 the trespass is also channeling the water and
24 shooting it under the house. And if you look at
25 the law in South Carolina -- I think you were

1 asking about this before, you know, what do you do
2 under the common enemy doctrine if water gets
3 channeled in pipes. You get to do whatever you
4 want to do with water that is going to flow
5 downstream on somebody else's property until you
6 make the -- take the affirmative step of channeling
7 or collecting it and both parties in this case are
8 collecting it. Because both parties are collecting
9 it and sending it downhill to Ms. Ray, they're
10 responsible for the resulting damage and they can't
11 escape the resulting damage just by saying, we
12 never looked -- we know we collected the water, we
13 know we sent it somewhere, but we didn't look to
14 see where it went. Especially given the
15 documentation that was readily available in the
16 city's files about where the pipe went. Neither
17 one wanted to take any responsibility for where it
18 went and both of them wanted to take advantage of
19 the fact that somebody put a pipe there because it
20 made things cheaper. They're entitled to use
21 Ms. Ray's property if they want to. They're
22 entitled to use the pipe that goes under her house.
23 They've just got to pay for it, and that's all
24 we're asking for.

25 THE COURT: Anything else?

1 MR. FENNELL: No, sir.

2 THE COURT: Mr. Devlin, help me with
3 this. We've talked about the pipe as a trespass.

4 MR. DEVLIN: Yes, sir.

5 THE COURT: And the pipe is a -- the
6 pipe is a permanent trespass.

7 MR. DEVLIN: Yes, sir.

8 THE COURT: I agree with you about
9 that. Where does the water fit into that equation
10 that runs through the pipe?

11 MR. DEVLIN: It would be another
12 element of what might be causing her damage if she
13 has the expert testimony to prove it.

14 THE COURT: When does the water itself
15 become a trespass or a nuisance?

16 MR. DEVLIN: The water becomes --

17 THE COURT: There is no nuisance cause
18 of action.

19 MR. DEVLIN: Right.

20 The water going into the pipe I would
21 suggest becomes actionable under a theory every
22 time it goes under the pipe. And there may be an
23 abatability issue depending on what's causing the
24 water to come into the pipe, but every time someone
25 sends water underground without --

1 THE COURT: It's a new cause of action.

2 MR. DEVLIN: I would suggest so unless
3 you have an abatability defense to it.

4 THE COURT: Well, that would only
5 increase the liability, don't you think, if there
6 was an abatability --

7 MR. DEVLIN: Yes, sir.

8 THE COURT: Go ahead. You were going
9 to tell me something.

10 MR. DEVLIN: The common enemy rule does
11 not apply to this situation. I do not have the
12 case, Your Honor, but I read it in preparation for
13 this, that says that once you have begun channeling
14 water underground it loses its characteristic as
15 surface water. Common enemy applies to surface
16 water.

17 THE COURT: I understand.

18 MR. DEVLIN: All of Mr. Fennell's
19 argument I would suggest as to collecting and
20 concentrating in this common enemy rule is
21 inapplicable here.

22 I would further point out to Your Honor
23 that the record here contains an expert saying
24 leaking is not confirmed. There is no evidence
25 that leaking is causing the problem.

1 THE COURT: From whose report are you
2 reading?

3 MR. DEVLIN: The plaintiff's expert.

4 THE COURT: Leaking was not confirmed.

5 MR. DEVLIN: Mr. Leonard, according to
6 his report attached to his affidavit, the Bates
7 number is Ray 467, in his opinions, videos of the
8 pipe showed it's old, it's cracking, and other
9 concerns that it may be leaking, parentheses, not
10 confirmed by the study. If it is leaking now or in
11 the future -- and he goes on to make other
12 statements.

13 Several pages before that at Page
14 463 -- Ray 463, the Bates number, he makes several
15 statements about the problems -- Geotech
16 evaluations showing that the foundation was
17 settling as a result of soft pipe fill soil. In
18 the absence of the --

19 THE COURT: That's the original fill,
20 though, right?

21 MR. DEVLIN: No, sir. I believe that
22 would be the -- the original fill that went over
23 the original pipe went when somebody put a pipe in
24 there.

25 THE COURT: That's what Mr. White was

1 saying.

2 MR. DEVLIN: Yes, sir. And I would
3 suggest that because the pipe is permanent and the
4 fill over it is permanent, I would imagine it's
5 under the house.

6 THE COURT: Let me ask you this.
7 Assuming -- if I find as a matter of law there was
8 no affirmative, positive act such as to permit a
9 claim for inverse condemnation, what I hear you
10 frankly telling me, and I appreciate it, is that
11 there could be -- you could have a situation where
12 there is no claim for inverse condemnation because
13 you don't have an affirmative, you know, positive
14 act and all that, but you could still have a
15 recurring trespass claim based on the water.

16 MR. DEVLIN: If there is proof of an
17 intent to put that water under the plaintiff's
18 house.

19 THE COURT: Yeah, but, in other words,
20 you could -- the two are -- excludeing one doesn't
21 exclude the other. I think I answered my own
22 question. You've said that each occasion that the
23 water goes through the pipe under the house could
24 be a trespass --

25 MR. DEVLIN: It could be.

1 THE COURT: -- to use shorthand.

2 MR. DEVLIN: Yes.

3 THE COURT: But that wouldn't -- that's
4 not an affirmative act?

5 MR. DEVLIN: No, sir. The affirmative
6 act would have to be what caused the water to go
7 under the house.

8 THE COURT: Yes, sir. Right. Okay.
9 All right.

10 MR. DEVLIN: And I'd like to address
11 that because Mr. Fennell made a couple of points as
12 to the state's affirmative acts. So one was the
13 state's decision to route water down Strait Street.
14 We don't know if the state decided to tap into a
15 Strait Street pipe or if the city decided to tap
16 into an Oakland Street pipe. There's nothing in
17 the record to show there was a conscious decision
18 by anybody at the DOT, the DHPT or otherwise to do
19 that.

20 THE COURT: I understand.

21 MR. DEVLIN: It's absent from the
22 record.

23 Mr. Fennell argues that an affirmative,
24 positive, aggressive act is a failure to look and
25 see. I don't think you can have an affirmative act

1 that is a failure to act. It has to be an action.

2 THE COURT: No. I know of no inverse
3 condemnation case like that.

4 MR. DEVLIN: And he says that we
5 collected water, put -- we -- the DOT collected
6 water, put it in the pipes and should have known it
7 went under her house. Well, Your Honor, one, it's
8 not official --

9 THE COURT: You've already covered that
10 and I don't believe that the DOT is charged with
11 that knowledge necessarily.

12 MR. DEVLIN: Okay. That's all I have
13 in response, Your Honor.

14 THE COURT: Mr. White.

15 MR. WHITE: I believe Mr. Fennell
16 misspoke. I cannot find in Mr. Leonard's affidavit
17 where he says he's really positive that water is
18 leaking out of the pipe.

19 THE COURT: Well, I think Mr. Devlin
20 just cleared that up.

21 MR. WHITE: Well, the affidavit came
22 later. I think Mr. Fennell was trying to say he
23 supplemented his opinions in the affidavit. I
24 looked, Rich, real quick, but I didn't see it.

25 THE COURT: You mean in his corrected

1 affidavit or whatever?

2 MR. WHITE: No. The affidavit came
3 after the report. So Mr. Fennell was making the
4 argument, well, it's not in his report, but he said
5 it in the affidavit and that gets it into the
6 record.

7 I don't see it in the affidavit itself.
8 I think the only thing in the record is he thinks
9 the pipe might be leaking and it would cause this
10 sort of damage if it did, but I disagree with
11 Mr. Devlin that each occurrence of water flowing
12 through the pipe is a trespass in this case
13 especially since there's nothing in the record to
14 show that the water has caused any damage. It
15 could all be solely attributable, according to
16 opinions of plaintiff's expert, from the soil
17 material. He doesn't distinguish, nor does he nail
18 that down, and he goes into his report saying that
19 he's not nailed it down.

20 Mr. Fennell is wrong on gatekeeper.
21 He's confusing qualifying an expert based on their
22 education and experience versus a gatekeeper of the
23 opinions. The case law that I read in the last
24 three pages of the brief is very clear that each
25 opinion there's a gatekeeper of function to make

1 sure that the opinion is not some guy coming in
2 with a briefcase saying, I'm really smart and an
3 expert and it's because I say so.

4 The city is entitled to be able to test
5 it based on facts and engineering practices, which
6 we have been deprived of in this case.

7 THE COURT: Does it apply to the
8 Scintilla Rule, the act that applies here to the
9 original determination of whether somebody should
10 be considered to be an expert?

11 MR. WHITE: The city is not taking the
12 position that Mr. Leonard is unqualifiable as an
13 expert.

14 THE COURT: He just hasn't said
15 anything about it is what you're saying?

16 MR. WHITE: Our position is there is
17 nothing admissible in this record to support that
18 it is abatable, how it would be abatable or what
19 any costs would be. It's complete -- the record is
20 void and their claims fail because the record is
21 void on that issue that they have to sustain.

22 THE COURT: Okay.

23 MR. WHITE: There is -- the notion that
24 the water is distinct from the pipe is an opposite
25 to the Glenn case. Remember it was water that

1 caused Mr. Glenn's trouble. Mr. Glenn argued, I
2 should get a new cause of action every time the
3 water comes across my property. The court dealt
4 with that and the court rejected it. The court
5 felt -- said that, no, you have a single cause of
6 action. You had six years to bring it, you failed
7 to do so, so even know you're hurt, even though
8 it's wrong, even though we don't like it, you're
9 out of court.

10 There is -- again, in this case it's
11 even more specialized because there's nothing in
12 the record that demonstrates that the water has
13 caused any of the damage to the house.

14 And then finally, in this case the
15 record is void of the city doing anything
16 affirmative to the property, connecting to the
17 pipe, building the pipe. There is nothing about
18 that.

19 THE COURT: I understand.

20 MR. WHITE: And then finally, I can
21 brief this, Your Honor, in full, but again, the
22 case law from South Carolina -- there's a nice old
23 case in the 1800s which is very clear that an upper
24 landowner is entitled for water to flow through its
25 natural watercourse. They have that -- they have

1 that right.

2 THE COURT: This doesn't have anything
3 to do with a natural watercourse.

4 MR. WHITE: It does. The event itself
5 by operation of time can become a natural
6 watercourse. So your question is: By what right
7 would someone --

8 THE COURT: A natural watercourse has
9 to do with surface water.

10 MR. WHITE: I believe the case law
11 distinguishes between surface water and water and
12 watercourses and having banks and delineated paths
13 and has a very different test on --

14 THE COURT: I agree that a watercourse
15 may be different from changing the course of
16 surface water.

17 MR. WHITE: Although it should not
18 matter for purposes of this motion, if for any
19 reason the court feels that whether to grant or
20 deny the city's motion may fall -- whether the city
21 has a right to expect that water will follow its
22 natural path, allow me to please brief it.
23 Otherwise, it really shouldn't matter based on
24 abatability and the statute of limitations.

25 THE COURT: All right.

1 MR. WHITE: Thank you, Your Honor.

2 MR. FENNELL: Judge.

3 THE COURT: No.

4 All right. What I want to do is --
5 hand me up the Edgepath case, the Graniteville
6 case, since I can't find mine, and the Glenn case.

7 I find as a matter of law there is no
8 positive, aggressive act under the current law that
9 qualifies as a -- under the current law there's
10 nothing that qualifies as a positive, aggressive
11 act for the purposes of inverse condemnation, so I
12 grant the motion as to inverse condemnation. I
13 think that necessarily disposes of the need to
14 consider the statute of limitations in that
15 connection.

16 I am going to take under advisement the
17 business of statute of limitations in my reading of
18 the other cases. So the trespass case I'm not
19 ruling on yet -- I mean the trespass cause of
20 action I'm not ruling on. I'll take that under
21 advisement.

22 So why don't we do this. I'm going to
23 get -- I'm going to get Mr. Devlin and Mr. White to
24 prepare me an order concerning the inverse
25 condemnation, but just hold off on doing that until

1 I rule on the rest of it, and I can do -- I'll do
2 my -- if I deny your relief on the other one I can
3 do that myself because that wouldn't require
4 anything.

5 Any questions about that?

6 MR. FENNELL: No.

7 THE COURT: Anybody have anything else?
8 Yes, sir?

9 MR. DEVLIN: Your Honor, there is a
10 cause of action pled for injunctive relief that I
11 briefed but not argued. I don't feel any need to
12 brief it. I believe that Your Honor can look at
13 the law, the arguments made and deal with it as you
14 wish, but I don't believe there is any inadequate
15 remedy at law for the plaintiff here. I believe
16 the plaintiff has legal remedies.

17 THE COURT: Well, nobody's argued that.
18 If anybody wants to argue that, I'll be glad to
19 hear it. I don't to preclude anyone's opportunity
20 to argue that.

21 MR. DEVLIN: I omitted to argue when I
22 first stood up, Your Honor. The points of the
23 defense of the DOT's summary judgment motion said
24 that there is no genuine issue of material fact
25 that would entitle the plaintiff to an

1 injunction -- to a permanent injunction in this
2 case because the standard law which applies for
3 injunctive relief which requires there to be an
4 inadequate remedy of law, I believe that the remedy
5 of law which the plaintiff in this case is
6 possessed of is the right to make a claim timely
7 for any number of causes of action under law such
8 as inverse condemnation or trespass. I don't
9 believe that the possible paths under the statute
10 of limitations being set she has an inadequate
11 remedy of law. She just didn't use it in time.

12 That is the essence of my argument as
13 to the injunctive relief.

14 MR. FENNELL: Your Honor.

15 THE COURT: Mr. Fennell.

16 MR. FENNELL: The response is also in
17 the briefs that we wrote and it is that there is no
18 adequate remedy of law because you can't stop the
19 problem until you cure the source of the problem
20 and what's going to happen if you --

21 THE COURT: Well, let's assume for the
22 moment that, as they have admitted so far, that
23 Ms. Ray -- and apparently Mr. Leonard suggested
24 that Ms. Ray could fill up the pipe, in other
25 words, disconnect it as it runs on her property,

1 and if -- and that would -- there's action she can
2 take to do that and there's a remedy of law to
3 recover for her cost of doing that if that's what
4 she does. That's what injunctive relief is for, to
5 require them to get water out of that pipe.

6 MR. FENNELL: Or to stop sending their
7 water into the pipe, yes, sir.

8 THE COURT: That's right.

9 MR. FENNELL: The problem with that is
10 that, you know, again, with all due respect to my
11 friend Mark, he said the same thing to you that he
12 said in mediation and every other time we talked
13 about it, which is that you can stop up the pipe if
14 you want to --

15 THE COURT: That's right.

16 MR. FENNELL: -- but I retain all my
17 legal rights. And it goes back into the
18 taking/inverse condemnation, which I know you've
19 already ruled on, but if they have rights to the
20 pipe, they've taken it. They keep saying that, you
21 can stop us, but we're going to --

22 THE COURT: They claim no -- they claim
23 no right to the pipe.

24 MR. FENNELL: Yes, sir, they do. They
25 claim a right to the pipe because they've said --

1 Mark just said it about 30 minutes ago, that you
2 can stop up the pipe if you want to, but I'm
3 retaining all my rights against you if you do. And
4 one of the -- the rights either exist or they don't
5 exist. And what they keep contending is that we
6 can't stop them -- it goes back to Charles'
7 letter -- we can't stop them from sending water
8 under the pipe because of whatever theory it is
9 that they -- that this is now a natural
10 watercourse. In order to keep that from happening,
11 there needs to be an injunction that says, you
12 can't do it anymore, you have to stop sending water
13 underneath Ms. Ray's house. And we shouldn't have
14 to spend the money to block up the pipe --

15 THE COURT: Let me say it this way.
16 Your expert witness has proffered an opinion about
17 a remedy short of stopping up the pipe, namely to
18 reroute the water around to Lucas Street, and
19 that's an adequate remedy at law.

20 MR. FENNELL: We can't do that, though.
21 We can't send the water to Lucas. That's not
22 possible for us. Only the entity that owns the
23 road or owns the pipes or owns the water can do
24 that. All we can do is block it up.

25 And I've asked them can I block it up

1 and we get the same sort of curious response, which
2 is, do whatever you want to do, but I'm going to
3 sue you if you do it.

4 THE COURT: No. He didn't say that.

5 MR. FENNELL: I'm retaining all my
6 rights to bring an action if you do it. I believe
7 that's a direct quote.

8 THE COURT: I don't think it is, but
9 assume that it is.

10 MR. FENNELL: And that's the reason why
11 there needs to be an injunction, to tell them to
12 stop doing it. That's why we pled it that way.
13 That's why we asked you for it.

14 THE COURT: Mr. White.

15 MR. WHITE: Your Honor, for the same
16 reason that there's no trespass and no inverse
17 condemnation, there's no basis for an injunction.
18 There isn't remedy of law. It would seem that if
19 the court issued an injunction you would then be
20 constraining another branch of government's
21 exercising the power of imminent domain.

22 And as to issue of --

23 THE COURT: The city can exercise its
24 right of imminent domain.

25 MR. WHITE: If it needed to, it could.

1 THE COURT: They'd pay her for the
2 house and the lot.

3 MR. FENNEL: If it needed to and the
4 circumstances warranted, the legislative body could
5 make that decision. If the court issues an
6 injunction, it would seem to be precluding that.
7 This case doesn't require equitable powers.
8 There's even some case law that says equitable
9 relief doesn't allow against the state and the
10 subdivision, but in this case, that's a more --
11 that's a hanging -- what's driving the bus is, is
12 there a cause of action for trespass, is there a
13 cause of action for condemnation. If there's
14 neither, there is certainly not any claim for an
15 injunction. That's a tag law.

16 THE COURT: All right. I find that the
17 plaintiff has an adequate remedy of law. If it's
18 continuing trespass and the city continues to
19 exercise what it claims may be a right to channel
20 the water even if it doesn't own the property, own
21 the right-of-way, there's a continuing damage for
22 that. They can be compensated. I mean, it doesn't
23 make sense to me to combine the trespass cause of
24 action with the injunctive relief that you seek.
25 So I grant the motion as to the injunctive relief.

1 There is an adequate remedy of law,
2 even to the tune of the destruction of the whole
3 house. Is there any case -- what's troubling me
4 is, is there any case law that says there's no
5 adequate remedy of law if the statute of
6 limitations has expired?

7 MR. DEVLIN: Your Honor, I believe
8 there is case that says the opposite. I don't
9 have --

10 THE COURT: Say that again.

11 MR. DEVLIN: I believe there is case
12 law that says that the passage of the statute of
13 limitations is not proof of the lack of adequate
14 remedy of law.

15 THE COURT: That's what I'm asking.

16 MR. DEVLIN: Yes, sir. I think I -- I
17 think I can find that case for you at about a
18 70 percent level.

19 MR. FENNELL: I don't doubt it.

20 THE COURT: Sir?

21 MR. FENNELL: I don't doubt that. I
22 think he's right.

23 THE COURT: Okay. I grant the motion.
24 And hold off on the order until I deal with the
25 rest of it and then we'll see where we are.

1 MR. DEVLIN: Your Honor asked for
2 several cases.

3 THE COURT: Yes, sir.

4 MR. DEVLIN: The Hedgepath, the Glenn,
5 the Graniteville case. I have extra copies of
6 them, if you wish.

7 THE COURT: Was there another -- well,
8 no. I've got it. That's fine. That's all I need.
9 That's all I need. Somewhere I've got it.

10 MR. WHITE: Your Honor, with your
11 permission, may I also hand up the two cases I
12 cited in my brief?

13 THE COURT: Sir?

14 MR. WHITE: Can I e-mail you two cases
15 that are cited, one out of Georgia and one out of
16 Pennsylvania?

17 THE COURT: No.

18 MR. WHITE: They're cited in the brief,
19 just for your --

20 THE COURT: Well, I'm not interested --
21 I think there's adequate South Carolina law to
22 address the problem.

23 MR. WHITE: These are square on.

24 THE COURT: There's adequate South
25 Carolina law to address the problem.

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All right. Thank you.

(The hearing was concluded at

3:54 p.m.)

1 CERTIFICATE OF REPORTER
2

3 I, Angela D. Zuver, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 30th day of June,
13 2014 at Lexington, Lexington County, South
14 Carolina.

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24 Angela D. Zuver, Court Reporter
25 My Commission expires
June 24, 2024

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

A	act (37) 4:6,12,13;23:12; 28:24;29:9,13;30:1,2, 3,21,23;41:6;43:12, 14,17;44:14;45:13; 48:17;66:23;69:9,19, 24;70:25;71:20,20; 73:18;85:8,14;86:4,6, 24,25;87:1;89:8; 92:8,11	6:12,22;14:11; 34:15,16,22;35:6,13, 13,15,16;36:25;37:3; 56:23;58:7;61:15,16; 63:12,20,22;64:3,4,7, 16;65:2;66:8;71:6; 72:3;73:1,9,12; 75:19;78:4;84:6; 87:16,21,23;88:1,2,5, 7	allow (4) 14:8;50:11;91:22; 98:9 allowed (1) 10:13 allows (1) 32:6 alter (1) 71:9 alteration (1) 28:9 although (4) 5:18;13:12;56:1; 91:17 always (1) 42:19 among (1) 28:15 amount (3) 32:17;58:13;74:7 ample (1) 30:12 analysis (4) 29:8;37:6;48:4; 55:7 analyze (2) 32:19;57:17 Anderson (3) 6:1;29:12;32:3 angle (3) 32:1;39:22;40:14 angular (1) 40:8 answered (3) 20:1;33:3;85:21 anticipate (1) 7:19 anymore (3) 70:20;73:2;96:12 apparently (6) 17:10;28:10;39:7; 57:22;76:23;94:23 application (1) 79:19 applied (2) 34:3;52:4 applies (4) 56:20;83:15;89:8; 94:2 apply (5) 27:23;45:1;49:24; 83:11;89:7 appreciate (3) 3:18;7:12;85:10 approach (1) 63:14 appropriate (1) 13:1 appropriation (1) 10:9 approval (1) 26:9 approximate (1)	37:7 April (1) 76:13 area (8) 7:10;10:1;14:4; 37:2,13,14;38:14; 68:7 areas (3) 37:7;38:15;70:23 argue (5) 53:4;78:3;93:18, 20,21 argued (5) 4:23;78:2;90:1; 93:11,17 argues (1) 86:23 argument (9) 4:9;6:8;19:14; 29:15;49:17,21; 83:19;88:4;94:12 arguments (2) 61:20;93:13 around (5) 15:12;55:14;61:19; 77:19;96:18 artificial (1) 45:7 ascribed (1) 48:9 ascribes (1) 62:15 aside (1) 52:18 assertion (1) 28:4 assume (10) 5:14;9:12;12:25; 22:20;31:16;37:20; 43:13;60:6;94:21; 97:9 assumed (2) 36:7;46:22 assuming (3) 30:22;31:13;85:7 assumption (2) 10:3;20:6 attached (9) 24:7;34:15,16; 37:3;54:20;71:5; 72:3,25;84:6 attachment (1) 61:16 attachments (1) 35:14 attacking (1) 33:22 attorney (1) 15:15 attributable (1) 88:15 authenticate (1) 62:4
Aarons (1) 19:20 abandoned (1) 39:16 abatability (25) 5:15,16,22,24; 7:19;9:12,17;11:21; 14:22;16:25;17:10, 14;18:8;25:15;49:17; 54:13,17,21;59:19; 74:1,2;82:23;83:3,6; 91:24 abatable (21) 5:4,6,20;10:23; 14:6;15:13;16:4,10, 15;49:15,16,21,22, 25;50:5;60:2;65:22; 66:4;74:6;89:18,18 abate (13) 6:11,16,19;7:10; 8:3;10:6;11:13; 14:20;15:6;50:4; 59:4;60:8;64:24 abated (5) 5:13;16:12;17:1; 61:5,6 abatement (13) 6:18;11:21;15:14; 16:7;48:20;59:22,23; 60:17,19,21;61:7; 65:25;66:2 ability (2) 11:11;13:11 able (5) 8:21;79:4,9;80:11; 89:4 above (1) 14:15 absconded (1) 28:11 absence (1) 84:18 absent (1) 86:21 absolutely (4) 6:15;16:18;28:18; 50:3 acceleration (1) 44:17 accepted (1) 37:23 accompanying (1) 29:5 according (6) 29:10;60:23;75:8; 77:11;84:5;88:15 acquiring (1) 58:17 across (2) 60:11;90:3	action (23) 6:5;11:12;23:11; 29:5;43:18;45:14; 50:18,19;54:1;62:18; 82:18;83:1;87:1; 90:2,6;92:20;93:10; 94:7;95:1;97:6; 98:12,13,24 actionable (1) 82:21 actions (1) 23:16 acts (7) 30:7;31:10;33:6; 62:2;66:14;73:25; 86:12 actual (3) 10:1;14:9;18:14 actually (2) 6:10;62:20 adapted (1) 56:1 add (3) 15:21;76:11,15 added (1) 20:25 address (8) 8:22;15:19;17:8; 50:8,11;86:10; 100:22,25 addressed (3) 16:18;17:11;33:17 adequacy (1) 58:20 adequate (8) 94:18;96:19;98:17; 99:1,5,13;100:21,24 adhere (1) 66:25 adjacent (1) 44:13 admissible (6) 17:16;55:18,21; 56:4;61:4;89:17 admitted (1) 94:22 adopt (1) 56:2 advantage (1) 81:18 advisement (2) 92:16,21 affidavit (41)	affirmative (32) 4:6,12;29:9,13; 30:6,21,23;33:6; 41:6;43:12,14,17; 44:14;45:13;56:6; 66:14;69:9,19,24; 70:25;71:20,20; 73:18;81:6;85:8,13; 86:4,5,12,23,25; 90:16 affixed (1) 45:19 afraid (1) 57:8 afternoon (3) 3:20;34:18,19 afterwards (1) 26:21 Again (18) 15:7;25:15;29:14; 38:18;40:1;42:2; 46:23;47:9,24;48:3; 50:14;62:17;70:8; 79:7;90:10,21;95:10; 99:10 against (7) 3:2;34:8;36:7; 43:18;60:5;96:3;98:9 agency (1) 10:14 aggressive (9) 28:24;30:1;62:2; 66:23;73:18,24; 86:24;92:8,10 ago (3) 3:21;34:21;96:1 agree (7) 21:6;52:11;53:4,7; 57:9;82:8;91:14 agreed (2) 27:23;28:6 agreements (1) 67:10 ahead (8) 7:4;13:16;18:11; 33:21;50:13;61:17; 66:12;83:8 aim (1) 18:22 allegations (1) 27:22 allegedly (1) 4:3		

available (2) 3:19;81:15 Avenue (10) 4:3;6:17,21;7:10; 8:2;14:15;18:13; 22:5;30:12;39:12 avoidance (1) 58:19 aware (4) 3:23;19:18;23:9,9 away (3) 21:2;79:16,18 Awnings (1) 43:8	become (4) 23:9;45:4;82:15; 91:5 becomes (4) 23:9;65:19;82:16, 21 began (1) 52:15 begin (2) 52:20;77:17 beginning (1) 76:12 begins (3) 23:23;26:11;52:2 begs (3) 32:21,23;60:18 begun (1) 83:13 behalf (1) 27:15 behind (8) 8:17;28:11;38:19; 20,22;40:8;46:21; 48:25 belongs (1) 67:25 bending (1) 45:23 benefitting (1) 42:8 best (1) 32:25 better (2) 6:3;33:21 big (1) 30:5 bind (1) 31:18 bit (5) 9:25;10:3;37:9; 68:17;79:18 block (5) 8:20;12:19;96:14, 24,25 blocked (1) 12:18 body (3) 8:16;31:22;98:4 Both (8) 17:25;33:23;35:20, 20;45:14;81:7,8,18 bottom (1) 7:22 bought (1) 18:15 bound (1) 34:8 Bradford (3) 3:5;72:11,25 branch (1) 97:20 break (1) 14:14	brief (16) 5:18;16:9;17:19, 21;23:16;27:23;28:5; 55:24;61:18;62:22; 88:24;90:21;91:22; 93:12;100:12,18 briefcase (1) 89:2 briefed (1) 93:11 briefs (2) 3:22;94:17 bring (5) 48:24;51:18;74:20; 90:6;97:6 broad (1) 28:4 brought (5) 13:19;18:8;22:2; 29:4;69:16 build (1) 60:13 building (3) 41:11;48:11;90:17 built (3) 41:12;50:21;62:18 bunch (2) 10:7;31:2 burden (1) 49:22 bury (1) 55:13 bus (1) 98:11 business (2) 18:8;92:17	98:22;99:17;100:14 care (3) 9:1;29:15;71:22 career (1) 7:8 Carolina (14) 3:7;13:8;42:23; 47:6;55:17,23,25; 56:1;60:16;80:1,25; 90:22;100:21,25 carry (1) 43:3 Case (81) 3:1.24;4:17:5:17; 6:3,9;8:14;16:8,23; 19:19,20;22:25; 25:25;26:7,17,22; 27:2,6,7,8,19;28:15; 29:11,12,25;30:1.2; 32:3,8;35:3,17;36:3; 39:25;42:23;44:20; 45:6;47:1,5,24; 48:13;51:8;52:23; 53:6,11;60:20,23; 61:3;62:21;66:3; 70:5,9,12,20;79:16; 81:7;83:12;87:3; 88:12,23;89:6,25; 90:10,14,22,23; 91:10;92:5,6,6,18; 94:2,5;98:7,8,10; 99:3,4,8,11,17;100:5 cases (21) 5:21,22;26:11,20, 24;29:3,4;42:24; 44:23;47:10;48:19; 50:10;53:20,24;56:3; 60:16;74:11;92:18; 100:2,11,14 cast (1) 31:15 casts (1) 30:20 catch (11) 7:23;19:13;20:4; 21:8,12,16,17;41:1; 43:23;44:3,9 catching (1) 39:20 categories (1) 38:16 causation (1) 30:3 causation-type (1) 77:9 cause (27) 4:14;5:3,5,6;5; 16:3;23:11,12;29:5; 44:13;50:18;52:14, 15;53:16,17;54:1; 77:23;80:2;82:17; 83:1;88:9;90:2,5; 92:19;93:10;98:12,	13,23 caused (15) 4:4;22:1;23:18; 31:12,13,14;48:17; 50:20;51:12;52:12; 75:20;86:6;88:14; 90:1,13 causes (5) 30:23;43:18;45:14; 48:9;94:7 causing (5) 77:12;78:15;82:12, 23;83:25 certain (2) 73:8;75:20 Certainly (3) 27:21;35:4;98:14 certainty (1) 77:11 chair (1) 48:16 change (2) 32:16;53:5 changed (1) 51:15 changing (1) 91:15 channel (3) 10:8;12:7;98:19 channeled (3) 29:17;71:16;81:3 channeling (4) 66:16;80:23;81:6; 83:13 character (1) 50:17 characteristic (1) 83:14 charge (1) 22:23 charged (3) 23:7;79:5;87:10 Charles (1) 3:5 Charles' (1) 96:6 Charlotte (3) 39:12,13,14 cheaper (1) 81:20 check (2) 5:18;70:4 checked (1) 25:5 chose (1) 45:7 Christ (1) 39:12 church (2) 39:9,11 circumstances (1) 98:4 cite (2)
B		C		
back (15) 12:10;13:7;14:3; 19:22;24:12;25:5,14; 28:10;39:8;46:23; 48:11;58:6;80:16; 95:17;96:6 background (3) 17:5;64:13;65:1 backyard (2) 19:14;21:12 Bagley (4) 34:23;35:16,23; 38:10 Bagley's (5) 35:5;36:25;37:3; 57:20;58:7 balancing (2) 16:20;17:15 ball (1) 48:15 banks (1) 91:12 barred (1) 4:24 bars (1) 4:10 based (10) 17:21;37:5;55:21; 59:25;61:24;76:7; 85:15;88:21;89:5; 91:23 bases (2) 4:5;76:1 basically (1) 3:24 basin (11) 7:23;19:13;20:4; 21:8,12,16,17;41:1; 43:23;44:3,9 basis (8) 56:10,13,25;57:3; 75:11,24;76:5;97:17 Bates (2) 84:6,14 beach (1) 48:14				

26:20;63:10 cited (11) 16:9;24:1,2;26:1,9; 62:22;70:5,9;100:12, 15,18 City (114) 3:2,6,25;4:18;6:18; 8:10;9:5,9,17;10:4, 11,12,20;11:21;12:1, 25;13:1,9;14:17,18; 15:1,3;17:11;21:24; 22:20;23:1;24:22; 29:11,16;34:1,2;36:8, 11;37:8,19,22,22,23, 23;38:4,13,14,15; 39:5,5,9,15;40:1,4, 19,23,25;41:1,6,8,10, 12,13,23,25;42:4,12, 12,13,14,15,18,20; 43:8,13,14,19;44:3,4, 8,9,17;45:9,12;46:2, 11,20;49:8,11;60:4; 62:25;66:20;67:13; 68:3,4,5,6;70:1,2,13, 16;71:9,19;73:12,25; 76:16,23;77:7;78:10, 10,19;79:8;86:15; 89:4,11;90:15;91:20; 97:23;98:18 city-controlled (1) 38:1 city-designed (1) 40:5 city's (12) 9:17,18;11:11; 17:25;22:11;37:5; 42:7;59:24;68:11; 69:21;81:16;91:20 claim (19) 5:7;22:3;26:14; 29:7,8;42:1;47:13,15, 16;48:22;51:19;85:9, 12,15;94:6;95:22,22, 25;98:14 claiming (1) 22:12 claims (5) 12:5;16:17;63:1; 89:20;98:19 clear (9) 20:10;29:25;30:15; 42:5;46:8;77:3,3; 88:24;90:23 cleared (1) 87:20 clearly (2) 72:11;76:17 clock (7) 25:18;47:7;51:2,4; 52:15,20;53:18 clue (2) 21:14,15 code (1)	13:8 collect (2) 14:3;66:21 collected (4) 71:15;81:12;87:5,5 collecting (7) 66:16,18;68:7; 81:7,8,8;83:19 College (18) 4:3;6:16,20,21; 7:20;8:2;14:1,7,15; 15:17;18:13;22:5; 28:1;44:1;46:12; 59:10;65:4;71:21 colloquy (2) 48:21;78:9 Columbia (1) 4:18 combine (1) 98:23 coming (8) 7:25;8:5,24;19:12; 32:13;39:18;68:14; 89:1 commencement (1) 18:6 committed (1) 29:9 common (4) 81:2;83:10,15,20 compacted (2) 77:18,19 comparison (1) 16:16 compensable (1) 30:21 compensated (1) 98:22 competent (2) 14:12;15:10 complained (2) 6:2,7 complaining (1) 32:5 complains (3) 5:6;11:23;80:3 complete (1) 89:19 completed (1) 71:12 complicated (1) 12:5 complication (1) 80:1 complied (1) 71:12 comply (2) 66:25;71:25 concentrating (1) 83:20 concern (2) 23:18;50:2 concerned (2)	24:20;25:9 concerning (1) 92:24 concerns (1) 84:9 conclude (1) 58:12 concluded (1) 101:2 conclusion (2) 56:25;57:7 conclusions (2) 56:13,14 conclusory (4) 57:2,5;59:7;60:5 condemnation (23) 4:1,8;8:14;28:25; 29:2;30:22;31:22; 43:19;47:24;48:4; 54:6,9;60:23;85:9, 12;87:3;92:11,12,25; 94:8;95:18;97:17; 98:13 condition (4) 46:6;60:21,22; 62:21 conditions (1) 43:2 confirmed (3) 83:24;84:4,10 conflict (1) 58:19 conflicts (1) 15:23 confusing (1) 88:21 connect (4) 12:24;31:20;67:21, 23 connected (5) 40:18,19,23;41:13; 42:15 connecting (1) 90:16 connection (8) 15:5;18:1;31:24; 40:25;41:19;79:3,10; 92:15 connects (1) 43:15 conscious (1) 86:17 consider (1) 92:14 considered (1) 89:10 consistent (1) 73:3 constraining (1) 97:20 constructed (5) 36:11;37:21;40:2; 42:14;71:24	constructing (1) 41:7 construction (6) 13:9;30:19;71:12; 74:12,18;75:1 contact (1) 4:14 contacted (1) 46:11 contains (1) 83:23 contend (1) 23:15 contending (1) 96:5 contention (1) 21:23 context (4) 4:11;5:9;10:5,22 continuation (1) 39:16 continue (2) 12:6,13 continues (1) 98:18 continuing (10) 4:25;48:1,4,6,20; 74:8,8;80:9;98:18,21 continuity (1) 31:23 continuous (5) 47:21;48:12;50:9, 15;62:24 Contracting (1) 27:6 contradicted (1) 25:11 contribution (2) 10:15;14:20 control (5) 37:20;38:5,15; 42:1,13 cooperation (2) 8:10;9:13 copied (1) 27:4 copies (1) 100:5 copy (4) 4:19;7:3;24:4; 61:12 corner (1) 8:21 corrected (2) 24:25;87:25 cost (25) 15:8;16:1,5,12,16; 17:2,4;48:25;49:7,7, 13,16;50:4;55:7; 58:17;59:2,4,19; 61:7;65:25;66:1,9, 10;79:3;95:3 costs (3)	54:20,21;89:19 counsel (3) 6:13;42:18;44:8 countless (1) 26:10 County (6) 6:1;29:12;32:3,10; 50:16;51:12 couple (6) 3:20;6:24;12:12; 27:15;62:9;86:11 course (5) 9:7;43:4;49:19; 71:10;91:15 COURT (273) 3:1;4:11,16,20;5:8; 7:1,4,13,16;8:9,12; 9:7,14,22;10:10,18, 25;11:5,9,14,16,19; 12:3,21;13:3,14,24; 14:17;15:2;16:5,14, 19;17:2,18,24;18:4, 11;19:1,7,22;20:5,14, 19;21:6,9;22:19; 23:3;24:6,11,12,14, 24;25:14,24;26:16, 25;27:11,18,21; 28:15,19,22,25; 30:15,18;31:4,6,9,11, 19;32:6,21,23;33:2, 10,15,20;34:10,17, 18,21;35:19,22; 36:15,22;37:11,16; 38:3,10,20,24;39:1, 11,22;40:7,13,16; 41:3,16,23;44:11,19; 45:8,20;47:22;49:4,6, 10,14,19;50:1,13,15; 51:2,5,7,20,22;52:1, 7,10;53:1,7,12,21; 54:3,10,14,25;55:3,5, 19;56:16,17,19;57:1, 8,14,17,22;58:1,5,25; 59:18,21,22,25;60:8, 13,17;61:1,8,14,17; 63:1,3,6,16,21,25; 64:5,8,11,17,19,22; 65:11,21,24;66:12; 67:4,8,13,18,22;68:1, 4,9,12,16,19;69:3,12, 15,23;70:8,11,13,17; 72:16,20;74:14;75:4, 6,12,15,23;76:4,10, 21;78:9,18,24;79:4, 15,24;80:13,18; 81:25;82:2,5,8,14,17; 83:1,4,8,17;84:1,4, 19,25;85:6,19;86:1,3, 8,20;87:2,9,14,19,25; 89:7,14,22;90:3,4,4, 9,19;91:2,8,14,19,25; 92:3;93:7,17,94:15, 21;95:8,15,22;96:15;

97:4,8,14,19,23;98:1, 5,16;99:10,15,20,23; 100:3,7,13,17,20,24 courtroom (1) 13:19 courts (3) 5:23;26:11;29:5 covered (2) 3:9;87:9 cracking (1) 84:8 cracks (1) 76:14 create (2) 25:13;36:5 creation (1) 39:6 credulity (1) 72:6 critically (1) 46:24 cross-examine (2) 73:10;75:10 crushed (1) 14:11 culvert (1) 48:14 cure (1) 94:19 curious (1) 97:1 current (3) 19:12;92:8,9 curtilage (1) 44:5	Dawkins (2) 56:15,22 day (3) 34:20;50:25;73:11 days (1) 6:24 day-to-day (1) 50:23 deal (9) 17:25;18:2;36:22; 64:19;65:7;70:21; 77:12;93:13;99:24 dealt (3) 29:6;44:20;90:3 decades (1) 46:6 December (1) 47:2 decide (1) 12:9 decided (5) 41:15;68:20;71:23; 86:14,15 decision (18) 27:20;47:20;56:16; 57:5;66:24;69:2,8,10, 10;71:9,11,11;73:14, 15,22;86:13,17;98:5 decisive (1) 47:25 dedicated (1) 37:22 deep (3) 29:23;55:13;59:12 deeper (1) 57:23 defend (1) 60:4 defendant (5) 3:6,17;4:14;30:7; 50:4 defendants (5) 28:5,16;32:4; 47:16;49:3 defendants' (1) 3:10 defense (5) 7:17,18;12:8;83:3; 93:23 define (2) 4:12;5:21 defined (2) 48:1,6 degree (2) 54:7;66:17 degree-ish (1) 7:24 degrees (2) 39:7,18 delineated (1) 91:12 demarcation (1) 62:22	demonstrate (1) 36:17 demonstrates (1) 90:12 denials (1) 79:8 denies (1) 41:24 deny (2) 91:20;93:2 Department (4) 3:8,17;19:20;30:14 depend (2) 14:24;15:24 depending (1) 82:23 depends (1) 50:1 deposition (8) 23:25;24:4,8,15; 35:12;46:8;57:21; 78:21 deprived (1) 89:6 depth (1) 58:20 described (2) 23:16;39:17 design (3) 14:13;15:10;65:3 designing (1) 14:12 desire (1) 10:4 destroyed (1) 24:1 destruction (1) 99:2 determination (3) 17:17;69:5;89:9 determine (7) 9:12;16:15;22:3; 65:19;77:6;80:2,3 determined (3) 15:8;16:2;18:5 determines (3) 5:22;22:5;80:13 developed (3) 28:19;39:25;58:11 Devlin (112) 3:8,13,16;4:13,17, 21;5:12;7:2,6,15,17; 8:11,19;9:8,15,21,23; 10:12,20;11:4,8,13, 15,17,22;12:16,22; 13:6,17,25;14:23; 15:7;16:8,21;17:4, 19;18:3,10,12;19:4,9, 25;20:7,18,22;21:7, 11;22:22;23:4;24:9, 14;25:1,16,25;26:18; 27:5,13,19,22;28:17, 23;29:1;30:17,25;	31:5,7,10,18,21; 32:22,24;33:5,11,16; 35:25;48:21;49:20; 61:10,11,15;82:2,4,7, 11,16,19;83:2,7,10, 18;84:3,5,21;85:2,16, 25;86:2,5,10,21;87:4, 12,19;88:11;92:23; 93:9,21;99:7,11,16; 100:1,4 DHPT (1) 86:18 different (10) 15:20;26:22;29:15; 37:4;52:7;53:18; 74:22,24;91:13,15 difficult (1) 77:6 dig (2) 13:7;57:23 digging (1) 46:20 diligence (1) 25:23 direct (1) 97:7 direction (2) 15:12;28:9 directly (3) 20:3,12;40:8 dirt (1) 41:10 disagree (2) 57:9;88:10 disconnect (1) 94:25 disconnected (4) 72:17,21,22,24 discovery (5) 28:20;30:11;49:9, 12;52:3 discuss (1) 62:14 discusses (2) 5:19;62:13 discussion (1) 34:5 disposes (1) 92:13 dispute (1) 67:7 distinct (1) 89:24 distinction (1) 27:1 distinguish (1) 88:17 distinguished (2) 26:10;27:7 distinguishes (2) 47:9;91:11 District (2) 29:12;51:10	ditch (6) 32:11;39:9,17; 41:15,20;51:12 diversion (1) 58:5 divert (2) 5:11;55:14 diverted (1) 58:9 doctrine (1) 81:2 document (2) 62:1,8 documentation (1) 81:15 documents (8) 30:6;62:1,3,4,5; 71:5;72:2;76:2 dollar (1) 66:4 domain (8) 9:18;11:2,3,7,11, 16;97:21,24 done (8) 5:16;17:8;20:24; 32:19;44:5;57:11; 76:2,24 DOT (47) 3:25;4:5;6:16,19, 19;7:9;8:3,22;9:2,16 10:1,6,19;11:20; 12:17;14:6,18;17:8, 12;21:24;27:15,24, 25;28:2,7,8,14,20; 29:13,14,17;30:11, 19;31:18;32:7,16; 33:7,8;35:15,24; 37:8;61:20;66:18; 67:14;86:18;87:5,10 DOT's (4) 11:2;22:12;61:9; 93:23 doubt (7) 71:6,8,11;72:7,10; 99:19,21 down (24) 8:1;14:1,7,7;15:18; 20:9;21:12;30:23; 31:15;39:20;42:4; 44:1;46:1;47:19; 59:12;67:1;68:3,5,9, 23,24;86:13;88:18,19 downhill (4) 21:13;55:14;58:2; 81:9 downstream (6) 30:20;31:4,5; 32:19;58:20;81:5 drafted (1) 26:8 drain (6) 18:23;19:3;46:12, 14,14,18
D				
dam (1) 42:19 damage (46) 4:4,7;5:1;22:1,18; 23:12,13,20;30:4,23; 44:13;46:12;48:9; 51:12;52:12,14,15, 16;53:10;54:1;62:15; 74:11,16;75:1,2,20; 76:8,19;77:12,20,23; 78:6,7,16,18;79:3,10, 12;80:2;81:10,11; 82:12;88:10,14; 90:13;98:21 damaged (1) 31:20 damages (5) 22:13;50:20;75:17, 22;80:12 dark (1) 29:23 date (3) 52:22;74:13,18 Daubert (1) 56:1				

drainage (5) 14:4;37:1;51:9,11,16 drained (2) 18:17,24 draining (3) 29:22;33:9;35:1 drains (3) 28:1;38:14;67:18 dramatic (1) 31:14 drastically (1) 32:16 drawing (4) 39:5,9,15;40:3 drawn (2) 15:10;18:20 driving (1) 98:11 due (2) 65:6;95:10 dumped (1) 70:23 dumping (1) 10:7 duty (6) 60:7;66:21,25; 67:1;71:21;78:24 Dye's (1) 43:8	elevation (1) 42:25 eliminating (1) 16:6 else (5) 8:18;42:6;70:24; 81:25;93:7 else's (2) 44:25;81:5 e-mail (1) 100:14 employees (4) 46:16,17,18,20 end (2) 55:23;77:15 enemy (4) 81:2;83:10,15,20 engineer (6) 7:7;14:12;24:24; 25:3;39:6;65:4 engineering (3) 58:8,11;89:5 enough (11) 5:13,14;24:13; 25:21;33:12;34:12; 55:13;65:10;67:12; 74:13;78:2 enter (2) 8:1;63:1 enters (1) 7:22 entities (1) 37:4 entitle (1) 93:25 entitled (10) 12:23,24;13:3; 22:20;45:10;80:11; 81:20,22;89:4;90:24 entity (1) 96:22 entry (1) 46:9 equation (1) 82:9 equitable (2) 98:7,8 erosion (2) 51:25;52:5 escape (1) 81:11 Especially (2) 81:14;88:13 essence (1) 94:12 establish (1) 67:11 estimates (1) 54:20 evaluations (1) 84:16 even (19) 21:9;33:6,8;40:1;	46:7;47:15;49:2; 50:24;60:1;65:19; 73:14;79:13;90:7,7,8, 11;98:8,20;99:2 event (2) 45:7;91:4 everybody (2) 12:13;73:7 evidence (32) 5:2,5;6:10;19:7,9, 10;27:25;28:2,6,8,13; 29:13,16,19,21; 40:17,19,22;41:7,9, 11,13;42:13,14,15; 44:15;45:12;57:7; 59:2;62:5;76:18; 83:24 evidencing (1) 30:6 evidentiary (1) 17:16 exact (2) 24:20;78:22 exactly (3) 9:23;25:20;27:3 example (3) 36:10;58:4;59:10 exceptions (1) 38:1 exclude (1) 85:21 excluding (1) 85:20 excuse (2) 39:19;47:2 exercise (3) 25:22;97:23;98:19 exercising (1) 97:21 exerted (1) 42:12 exist (3) 15:23;96:4,5 existence (2) 19:16;26:13 existing (5) 41:20;58:9,16; 69:6,8 expect (1) 91:21 experience (4) 7:8;47:13;65:3; 88:22 expert (36) 6:17,23;15:16; 17:7;22:2;25:12; 26:3;33:6;34:15; 35:6,14,15;43:22; 48:8;55:16;56:4,9, 11;57:6;62:9;64:2; 65:8;75:9,13;76:6; 77:16;79:9;82:13; 83:23;84:3;88:16,21;	89:3,10,13;96:16 experts (4) 17:23;35:20,20; 56:12 expert's (3) 6:12;56:13;57:5 expired (1) 99:6 explain (1) 26:4 exposure (1) 32:9 extension (1) 40:9 extent (6) 4:23;19:24;42:9; 47:14;71:14;79:5 extra (1) 100:5	fall (2) 45:24;91:20 falls (2) 37:25;74:10 far (3) 13:18;41:6;94:22 fashion (1) 13:2 fast (1) 58:23 fear (1) 25:17 feared (4) 46:25;47:3;78:21, 22 feasible (2) 8:6;17:6 fed (1) 7:25 fee (1) 37:24 feel (4) 13:22;15:3,4;93:11 feels (1) 91:19 feet (1) 20:25 felt (1) 90:5 Fennell (77) 3:5;27:14;63:3,4, 14,17,24;64:2,6,10, 13,18,21,23;65:13, 23;66:1,13;67:6,12, 16,20,24;68:2,6,11, 14,17,20;69:7,13,17, 25;70:9,12,15,18; 72:18,23;74:15;75:5, 8,13,16,25;76:6,11; 77:1;78:13,20;79:2,7, 22;80:15,20;82:1; 86:11,23;87:15,22; 88:3,20;92:2;93:6; 94:14,15,16;95:6,9, 16,24;96:20;97:5,10; 98:3;99:19,21 Fennell's (1) 83:18 fiat (1) 38:13 field (1) 56:12 Fields (1) 56:15 figure (3) 16:6;17:3,4 file (2) 12:12;25:6 filed (3) 3:14;34:2;47:1 files (1) 81:16 fill (7)
E			F	
earlier (3) 3:14;42:17;76:22 earth (1) 42:24 easement (4) 14:8;23:1;43:3,6 easemented (1) 11:24 easier (1) 61:13 easy (1) 68:21 Edgepath (1) 92:5 education (1) 88:22 effectually (1) 11:20 efficiently (1) 6:6 effort (1) 33:8 eight (1) 23:15 either (10) 4:7,7;8:2,13,16; 13:7;37:23;43:18; 80:21;96:4 element (3) 49:15;54:8;82:12			face (1) 73:22 facility (2) 74:12,19 fact (23) 5:6;16:22,22;17:8, 14;18:20;20:8;21:19; 23:8;25:8,13;36:6, 18;41:23;43:22; 45:25;56:9;60:18; 62:17;66:6;76:7; 81:19;93:24 factfinder's (1) 17:17 factors (1) 15:20 facts (13) 3:24;16:20;28:21; 31:1,16;36:5,10,11; 53:22;58:11;59:7; 60:1;89:5 factual (7) 56:10,13,25;57:7; 75:23,25;76:4 fail (1) 89:20 failed (5) 61:4,5,6;77:11; 90:6 failing (1) 76:17 fails (2) 43:19,20 failure (12) 52:17,19,21,25; 53:14,17;56:12,24; 71:1;75:3;86:24;87:1 failures (2) 76:13;77:4 fairly (3) 3:19;24:18;76:8	

48:10;62:16;84:17; 19:22;85:4;94:24 filling (4) 54:23,25;55:2;60:9 final (1) 49:13 finally (3) 59:13;90:14,20 find (9) 43:10;58:12;61:13; 85:7;87:16;92:6,7; 98:16;99:17 finder (1) 16:22 finding (3) 56:23;62:11,12 fine (1) 100:8 fire (1) 27:9 firm (1) 79:3 first (16) 3:12;18:13;21:14; 36:16,23,23,24; 58:10;63:4;64:24; 65:4,21;77:2,4; 78:14;93:22 fit (1) 82:9 five (2) 37:5;59:10 fix (6) 6:13;16:17;55:8; 57:19;65:9,12 fixed (3) 6:6,6;8:18 fixing (1) 54:22 flood (1) 48:15 flow (7) 28:9;58:1,9,13; 60:11;81:4;90:24 flowing (2) 62:20;88:11 flows (3) 21:10;60:25;68:23 follow (1) 91:21 following (1) 58:13 follows (1) 50:17 fool (1) 42:6 foot (1) 21:1 footprint (4) 19:11;21:2;35:4,5 form (5) 45:17;57:3,17; 61:5;64:1	formulate (1) 50:3 forth (5) 4:19;5:2;17:21; 56:13,25 forward (3) 36:9,19;74:16 found (3) 5:21;45:21;73:7 foundation (1) 84:16 four (2) 48:15;77:24 four-inch (5) 18:17;19:11;20:9, 11;45:19 frankly (2) 69:23;85:10 free (2) 13:22;15:4 friend (1) 95:11 front (6) 7:23;15:17;43:23; 45:25;46:9,22 fronts (1) 33:23 Frye (1) 56:2 full (2) 47:14;90:21 full-blown (1) 26:14 fully (1) 39:25 function (3) 56:7;65:8;88:25 fundamental (1) 56:8 further (5) 42:2,3;59:6;79:1; 83:22 future (1) 84:11	gets (6) 32:19;39:25;48:16; 70:3;81:2;88:5 given (3) 79:8;80:1;81:14 gives (3) 37:6;64:13,23 glad (1) 93:18 Glenn (10) 5:25;29:11;32:2; 51:8,8;52:4;89:25; 90:1;92:6;100:4 Glenn's (2) 51:13;90:1 goes (22) 7:23;14:2;19:13, 22;25:20;32:14; 38:17;55:24;57:2; 62:17;70:5,19;72:5; 74:23;80:15;81:22; 82:22;84:11;85:23; 88:18;95:17;96:6 good (3) 46:4;51:1;58:3 government (1) 54:7 governmental (1) 8:16 government's (1) 97:20 Graniteville (11) 26:1,7,16,21,22; 27:2,7,8;79:16;92:5; 100:5 grant (5) 14:19;91:19;92:12; 98:25;99:23 granted (1) 37:23 grate (1) 46:2 great (4) 43:22;65:7;66:17; 77:12 Green (3) 57:4;66:22;70:3 Greenville (1) 29:11 Greenwood (1) 50:16 Griffin (5) 6:24;7:6;14:11; 35:25;36:1 ground (2) 51:17,23 grounded (1) 56:9 grounds (3) 34:3;75:9,17 guess (1) 51:18 gutter (6)	18:17,17,23;19:3; 20:19;34:25 guy (1) 89:1 guys (1) 61:22 H half (2) 36:3;56:21 hand (4) 19:21;24:3;92:5; 100:11 handed (2) 9:16;11:20 handle (3) 9:3;10:2;68:21 hands (2) 26:25;70:15 hanging (1) 98:11 happen (4) 10:24;36:17;73:20; 94:20 happened (5) 23:18;69:14,15; 71:2;76:9 happening (2) 23:21;96:10 happens (3) 32:18;72:8;74:23 happy (7) 7:2;13:12;14:19; 19:21;24:9;26:18; 31:25 Hawkins (1) 29:10 head (1) 50:11 heads (2) 7:25;14:2 hear (4) 3:19;33:21;85:9; 93:19 heard (1) 65:16 hearing (1) 101:2 heck (1) 32:8 Hedgepath (3) 5:18;47:25;100:4 held (2) 10:22;12:1 help (3) 15:5;63:7;82:2 here's (5) 11:22;39:3,3; 42:22;61:14 herself (1) 25:23 hide (1)	8:16 Highway (2) 19:20;30:14 Hill (6) 3:3;8:10;34:2; 66:20;70:12,20 hired (2) 26:4;78:17 history (1) 64:14 hit (1) 39:9 Hold (4) 52:10;58:25;92:25; 99:24 Holding (1) 50:22 holdings (1) 43:1 hole (1) 45:19 holes (1) 76:14 home (1) 76:1 honestly (1) 31:24 Honor (48) 3:13,23;4:22;5:12; 6:15;8:19;13:6,17; 16:9;17:20;18:12; 19:4,18;20:8;21:1, 23;22:22;23:14; 24:10,17;26:7;27:6; 28:17,24;29:10; 30:25;32:9;33:16,25; 34:1,13;45:6;61:11; 63:2;83:12,22;87:7, 13;90:21;92:1;93:9, 12,22;94:14;97:15; 99:7;100:1,10 house (83) 4:3,4;7:21,23,24; 14:8;15:17;18:18,19; 19:2,12,16,17;20:3, 13,17,21,24,25;21:2 18;22:18;23:21; 24:21;28:3;29:18,20 35:2,4;38:7,19,21,23 41:11,12,21;42:6; 43:23;44:6;46:9,21, 23;47:1,4;48:10; 55:8,9,12,15;57:19; 65:1;66:15;71:7,18; 72:1,5,13,14;73:2,9, 17;74:9,24;76:7,18; 77:13;78:8,12,15,23 79:11;80:10,24; 81:22;85:5,18,23; 86:7;87:7;90:13; 96:13;98:2;99:3 housekeeping (1) 27:14
	G			
	gatekeeper (6) 56:6;59:6;65:8; 88:20,22,25 gather (1) 67:9 general (1) 9:19 gentleman's (1) 35:24 genuine (4) 16:21;36:5,18; 93:24 Georgia (1) 100:15 Geotech (1) 84:15			

hundred (1) 15:22	indicated (1) 72:4	35:11	45:10;56:24;57:4; 63:1;93:23	80:25;85:7;88:23; 90:22;91:10;92:7,8, 9:93;13,15;94:2,4,5, 7,11,18;95:2;96:19; 97:18;98:8,15,17; 99:1,4,5,12,14; 100:21,25
hurt (1) 90:7	indicates (2) 70:5,10	into (42) 12:1;13:7,11,19; 14:13;15:21;16:6; 18:18,21,23,24;19:3, 12;20:9,21;21:3; 23:1,4;25:22;32:10, 14,17;36:25;44:17; 51:13;59:15;62:5; 63:6;67:19;69:21; 70:3;71:23,25;82:9, 20,24;86:14,16;88:5, 18;95:7,17	jurisdiction (1) 11:18	
I	individual (1) 31:3		jury (4) 16:14;65:18;66:7; 80:3	
IH (1) 26:1	ineffective (1) 49:1	invasion (1) 53:10	justify (1) 59:7	lawn (1) 48:16
imagine (1) 85:4	inequality (1) 42:25	inverse (23) 4:1,8;28:25;29:2,3, 4,7;30:1,22;31:22; 43:19;48:4;54:5,9; 60:22;85:9,12;87:2; 92:11,12,24;94:8; 97:16	K	lawsuit (4) 10:22;18:8;69:16; 74:21
immediately (2) 20:24;32:13	inexpensively (1) 6:6	investigate (2) 46:11;79:1	keep (3) 95:20;96:5,10	lawyers (1) 78:3
imminent (2) 97:21,24	inference (3) 18:20;19:15;21:4	involved (3) 8:18;28:8,14	key (1) 45:6	layer (1) 34:7
impact (2) 27:20;32:19	inferences (1) 56:9	irrevocably (1) 23:10	kind (4) 10:2;15:23;43:10; 67:10	layers (2) 34:6;59:10
impervious (1) 70:22	information (1) 63:10	isolate (1) 79:4	knew (14) 18:4,6,22;19:2; 20:12;23:18;25:3; 29:19,23;49:5;73:8; 78:18,19;79:21	laying (1) 52:18
imply (1) 16:19	infrastructure (12) 37:1,20,21;51:10; 52:13,17,20,21; 58:15,16,21;74:20	isolated (1) 79:19	knowledge (11) 10:1;13:18;14:10; 18:2,14;19:15,24; 23:7;43:2;47:12; 87:11	leak (1) 52:2
implying (1) 67:3	inherit (1) 38:13	issue (22) 5:23;7:19;16:13, 17;25:2,8,13;31:23; 36:5,18;46:10;47:5, 24;56:12;65:19,19; 77:9,25;82:23;89:21; 93:24;97:22	known (11) 18:5,7;28:3,5,7; 40:1;71:18;72:4,8; 79:21;87:6	leaking (14) 62:11,12;75:18,20; 76:5,23;79:12;83:24, 25;84:4,9,10;87:18; 88:9
important (1) 77:25	injunction (9) 4:1;94:1,1;96:11; 97:11,17,19;98:6,15	issued (1) 97:19	L	leaks (2) 76:20,25
importantly (2) 56:10;65:1	injunctive (6) 93:10;94:3,13; 95:4;98:24,25	issues (5) 16:22;17:15,16; 52:5;98:5	lack (1) 99:13	learned (1) 25:21
imposes (2) 56:5,6	injury (2) 50:16;53:25		landowner (2) 37:22;90:24	least (4) 53:13;71:3;79:1; 80:11
impossible (1) 6:15	inquiry (1) 47:11	J	landowners (1) 37:5	legal (3) 56:25;93:16;95:17
impractical (1) 5:10	inside (1) 44:5	Jimmy (1) 34:22	language (1) 29:3	legislative (1) 98:4
impracticality (1) 15:19	inspections (1) 76:1	job (1) 65:4	last (8) 47:19;54:19;55:24; 62:7;64:15;77:24; 80:7;88:23	Leonard (15) 25:2;35:14;36:2; 55:16;57:11,13;59:6; 60:24;61:2;63:13; 76:24;78:17;84:5; 89:12;94:23
improperly (2) 77:17,19	installed (1) 77:17	John (4) 3:8,16;64:15;74:3	lastly (1) 62:15	Leonard's (7) 54:19;61:3,10; 63:8;64:6;71:6;87:16
imputed (1) 19:24	insufficient (2) 45:21;60:1	join (1) 15:18	later (5) 27:2;48:16;52:22; 76:24;87:22	letter (3) 72:25;73:23;96:7
imputes (1) 19:19	intends (1) 4:14	Jones (1) 56:2	law (49) 6:3;10:14;13:11; 16:9;19:19;29:25; 31:22;32:12;42:21; 43:10;47:5,24;57:9; 60:21;61:3;62:21; 71:25;79:23,25,25;	level (5) 46:10;49:23;59:13; 78:25;99:18
inadequate (3) 93:14;94:4,10	intensification (1) 44:16	judge (3) 56:7;63:14;92:2		liability (3) 16:11;38:15;83:5
inadmissible (4) 56:15,24;57:6;59:8	intent (1) 85:17	judges (1) 53:4		liable (3) 38:2;45:9,12
inapplicable (1) 83:21	intentional (2) 4:13;30:2	judgment (8) 3:11;4:22;42:9;		license (2) 14:19;17:9
inartful (1) 43:24	interchangeably (1) 48:6			licenses (1) 67:11
incidents (1) 43:7	interested (1) 100:20			likelihood (1) 59:23
include (1) 22:25	interesting (2) 58:22;62:10			likely (1)
including (1) 54:22	intermediate (1) 48:12			
inconsistent (1) 74:4	intermittent (2) 48:2,7			
increase (2) 31:14;83:5	interrogatories (1)			
indemnification (1) 10:15				
indicate (3) 5:25;66:8;69:1				

32:11 limitation (1) 34:3 limitations (20) 4:10;24;7:14,18; 18:1;22:8;26:24; 43:5;45:16;47:6; 49:23;78:1,1;80:8; 91:24;92:14,17; 94:10;99:6,13 line (20) 17:19;32:3;36:14; 38:19;39:18;40:12; 42:10;43:25;44:6; 46:22;54:23;55:1,2; 57:23;62:22;72:17, 19,20,24;74:10 lines (2) 59:11,11 listening (1) 61:19 litigation (1) 10:5 little (5) 9:25;10:3;37:9; 47:7;79:18 live (1) 70:6 lived (2) 8:20;24:15 located (3) 37:1;41:2;44:9 location (2) 43:15;58:20 long (5) 12:8,10;34:20; 51:15;73:11 longer (1) 66:4 look (23) 13:12;25:21;31:25; 33:14,18;35:17;46:1, 13;52:24;54:5,12; 55:6;61:12;63:19; 66:16;70:19;71:1; 78:11;79:17;80:24; 81:13;86:24;93:12 looked (4) 55:8;59:16;81:12; 87:24 looking (4) 21:17;62:9;63:21, 25 looks (1) 57:18 loses (1) 83:14 lot (5) 36:6;38:24;52:13; 54:15;98:2 lovely (1) 42:24 lower (2)	43:1,6 Lucas (12) 7:25;15:17;28:12; 31:16;39:19,21;42:5; 55:14;57:23;59:14; 96:18,21 Lucille (2) 3:2;4:2 Lucille's (1) 73:1 M mail (1) 6:24 maintain (5) 12:6;13:10;24:10; 37:19;42:10 maintained (4) 41:8;42:13;50:19, 22 maintenance (2) 27:25;30:11 makes (6) 20:10;40:13;43:22; 46:8;50:12;84:14 making (8) 3:18;50:25;61:19; 66:24;69:7,9;80:16; 88:3 man (1) 45:24 manage (2) 13:1;68:22 management (1) 7:9 manhole (12) 19:13;38:19,20,22; 39:6,16;40:4,12,14, 21;42:4;46:21 manifested (1) 77:23 manner (2) 17:6;24:18 manners (1) 10:13 many (2) 15:20;46:1 map (2) 37:2;66:17 mapping (1) 58:11 Mark (6) 3:6;64:15;74:3; 77:14;95:11;96:1 Mark's (1) 74:11 material (8) 24:6;25:8;36:6,18; 58:14;62:16;88:17; 93:24 Materials (1) 56:3	matter (8) 18:9;27:14;34:4; 52:24;85:7;91:18,23; 92:7 matters (1) 27:16 may (22) 5:10;13:14,14; 19:25;29:15;42:21; 44:13,13;47:13; 50:19;52:19;53:1; 63:14;75:22;77:16; 79:22;82:22;84:9; 91:15,20;98:19; 100:11 Maybe (4) 34:11;54:18;60:13; 64:8 Mayer (1) 47:7 mean (16) 5:8;8:13,14;9:15; 37:12,17;39:11; 41:16;42:2,44:11; 50:2;67:14;78:2; 87:25;92:19;98:22 meaningful (1) 56:6 means (1) 37:13 mediation (1) 95:12 meet (1) 56:4 meets (1) 14:1 memorandum (1) 26:2 mention (2) 50:10;77:15 mentioned (2) 72:17;75:17 met (3) 29:7,8;65:8 might (13) 6:8;16:23;17:14; 19:5;21:9;22:11,12; 25:11;27:19;31:7; 62:13;82:12;88:9 Mike (2) 75:19;77:12 Mikes (1) 63:19 Mike's (5) 72:3;75:9,13;77:8, 22 mind (3) 27:13;53:17;61:19 mine (3) 22:14;61:23;92:6 minimum (1) 58:12 minute (2)	52:10;53:22 minutes (2) 34:21;96:1 misspoke (1) 87:16 mistake (1) 24:25 mistaken (1) 25:4 moisture (1) 76:19 moment (1) 94:22 money (2) 5:13;96:14 more (15) 14:13;17:24;31:2; 32:11;37:9;49:2; 50:9,12;56:10;61:23; 69:15;77:24;79:2; 90:11;98:10 morning (1) 34:17 most (3) 17:23;29:3;46:24 motion (16) 3:14;4:5,22;17:25; 34:2;45:2;56:23; 57:4;64:3;77:8; 91:18,20;92:12; 93:23;98:25;99:23 motions (2) 3:11;24:7 movant (1) 36:17 move (5) 15:8;27:11;54:10; 60:24;74:15 moved (1) 75:11 moves (1) 46:3 moving (3) 45:15;73:5,13 much (5) 33:19;44:20;66:8, 10;77:6 municipality (1) 32:14 must (11) 16:10,12,18;22:20; 36:19;56:4,9,11; 75:23,24;76:8 myself (1) 93:3 N nail (1) 88:17 nailed (1) 88:19 name (3)	35:19,24;57:12 namely (1) 96:17 natural (11) 43:2,4,6;45:3; 47:15;90:25;91:3,5,8 22;96:9 naturally (1) 42:25 nature (2) 6:5;80:14 necessarily (2) 87:11;92:13 necessary (4) 45:13;50:3;58:17; 59:3 necessitate (1) 58:10 need (10) 8:22;10:14,15,15; 15:4;35:9;92:13; 93:11;100:8,9 needed (2) 97:25;98:3 needs (4) 25:21;36:17;96:11; 97:11 negatively (1) 36:7 negotiations (1) 66:11 neither (4) 72:13;75:11;81:16; 98:14 new (3) 8:7;83:1;90:2 next (2) 19:20;37:19 nice (2) 72:6;90:22 nine (1) 23:16 Nobody (2) 12:5,14 nobody's (2) 67:9;93:17 noise (1) 50:25 none (3) 29:18;31:10;44:18 nonmoving (1) 36:19 nor (2) 21:24;88:17 normal (1) 78:6 North (2) 42:23;60:16 note (7) 24:10;43:21,22; 48:8;54:18;57:20; 61:25 notebook (1)

63:17 noted (1) 50:15 notes (5) 25:5;33:14;34:23; 35:7;58:8 notice (16) 3:19;18:2;19:19; 21:13;21:22;7:23; 47:11,13,17;52:19; 53:12,15;78:25;79:6, 20 noticed (3) 46:9;51:25;52:4 notion (1) 89:23 November (2) 47:3,17 nuisance (10) 47:21,21;48:1,1,3, 6,7,19;82:15,17 Number (9) 3:1;37:5;62:10; 66:4,23;70:25;84:7, 14;94:7 numbered (1) 64:1 numerous (2) 45:23;76:1	12:18,19;29:23; 32:13;33:9;39:7,18; 43:4;68:15;70:15,23; 92:25;99:24 offered (2) 24:11;57:6 official (1) 87:8 officials (1) 73:12 often (1) 29:6 old (5) 15:22;36:4;76:7; 84:8;90:22 omitted (1) 93:21 once (7) 22:4;23:9;47:10; 67:3;69:21;70:15; 83:13 One (47) 4:6;7:1;8:20;14:5, 8,15;17:6,24;18:12; 19:10,19;21:1,11; 22:13;23:7,15;29:20; 30:8;34:7,8;36:20; 37:25;45:4;46:10; 48:9,17;49:15;50:6; 54:18;62:10,18,18, 23,23;66:23;75:11; 77:3,7;80:21;81:17; 85:20;86:12;87:7; 93:2;96:4;100:15,15 one-time (2) 5:7;23:11 only (14) 8:6;19:14;20:10; 21:3,25;29:14;40:12; 50:19;54:16,17;66:9; 83:4;88:8;96:22 onto (7) 8:5;20:16;22:7; 40:19;69:6,8,10 open (6) 39:9;41:14;44:24; 46:5;73:21,21 operation (2) 45:4;91:5 operations (1) 50:23 opinion (12) 25:16;32:4;55:17; 57:6;58:8;59:8;60:2; 76:6,18;88:25;89:1; 96:16 opinions (6) 56:8,14;84:7; 87:23;88:16,23 opportunity (1) 93:19 opposed (1) 53:16	opposite (2) 89:24;99:8 opposition (2) 6:23;56:23 orange (2) 66:20;68:7 order (9) 5:17;7:12;9:11; 50:5,12;71:25;92:24; 96:10;99:24 origin (1) 27:10 original (7) 24:3,15;35:4; 84:19,22,23;89:9 orphan (1) 29:24 others (1) 3:3 otherwise (6) 19:21;55:14;62:4; 72:6;86:18;91:23 out (23) 7:11,12;8:23;11:2; 15:11,11;24:22;26:6; 32:8;46:17;62:8; 65:4;73:7;75:18,21; 76:5;78:11;83:22; 87:18;90:9;95:5; 100:15,15 outlier (2) 26:23;79:22 outline (1) 13:20 outside (5) 9:4,25;10:5;11:6; 20:24 over (17) 7:25;10:7;28:12; 30:20;36:3;37:20; 38:5;40:4;42:13; 43:10;45:4;46:6; 59:14;61:18;72:8; 84:22;85:4 overturned (1) 79:23 own (13) 9:4;12:5;22:6,24; 37:19;44:9,10,12; 47:18;60:11;85:21; 98:20,20 owned (3) 37:3;38:1;45:22 owner (11) 18:13,16,21;19:5, 17,19;20:2,21;20; 22:4;23:6;41:19 owners (2) 34:9;45:17 ownership (6) 18:25;37:7;42:1,4; 43:7;58:17 owns (6)	37:8,8,9;96:22,23, 23 P pack (1) 62:1 package (1) 30:5 pad (1) 41:11 Page (5) 23:25;31:9;55:11; 63:15;84:13 Pages (4) 24:17;55:24;84:13; 88:24 paragraph (9) 37:19;55:10;57:21; 61:3;63:23;64:1,16, 23;65:2 paragraphs (1) 64:25 paraphrasing (3) 24:19;26:6;32:8 Pardon (1) 32:22 parentheses (1) 84:9 part (8) 10:4,16;30:3; 36:23,24;38:2;54:19; 76:12 participate (1) 15:25 particular (6) 66:3;74:12,19,19; 76:13;77:4 parties (5) 28:19;80:22,22; 81:7,8 party (1) 36:19 passage (1) 99:12 passion (1) 65:7 past (5) 13:18;29:23;45:22; 46:16;54:2 patched (1) 30:13 path (4) 58:16,18,19;91:22 paths (2) 91:12;94:9 pay (2) 81:23;98:1 Pennsylvania (1) 100:16 people's (1) 24:7 percent (3)	37:8,25;99:18 performed (1) 33:8 period (1) 49:25 periodic (2) 48:2,7 permanence (1) 54:8 permanent (22) 4:25;6:2,4;16:3; 47:20;48:5;50:9,14, 16,21,24;51:10,17; 53:25;54:5,6;62:23; 80:14;82:6;85:3,4; 94:1 permission (3) 14:19;17:9;100:11 permit (1) 85:8 person (6) 22:19,23;26:12; 47:12;50:3;78:10 physical (1) 22:18 picked (1) 74:25 piece (1) 40:8 pipe (169) 4:2;7:25;8:7;11:23, 24,25;12:17;13:25; 14:1,9,10,14;15:16; 18:14,17,18,23,23; 19:11,12,16;20:3,9,9, 11,12,16,21;21:1,5, 16,18,21,25;22:5,9, 13,17;23:2,5,8,10,19, 22;25:9,18,19;28:3, 10,11;29:19,24,24; 34:24;36:12,13;38:6, 17,18;39:8;40:11,20, 20,23;41:7,9,10,14; 42:1,19;43:15,16; 44:2;45:18,19;46:25; 47:4;48:10,18;53:15, 16,17,25;55:13; 58:10,14;60:9,24,25; 62:11,12,17,19,20, 21;66:14;68:9,23; 69:6,8,10;71:4,10,13, 17,23,25;72:5,9;73:6; 74:10;75:2,18,21; 76:5,14,17,20,24,25; 77:4,11,16,19;78:7, 12,14,15,23;79:12, 13;80:19,20,22; 81:16,19,22;82:3,5,6, 10,20,22,24;84:8,17, 23,23;85:3,23;86:15, 16;87:18;88:9,12; 89:24;90:17,17; 94:24;95:5,7,13,20,

23,25;96:2,8,14,17 pipeline (2) 55:3,4 piper (1) 24:20 pipes (10) 6:13;8:1;12:2; 14:4;51:16;67:21,22; 81:3;87:6;96:23 pipng (2) 15:21;44:23 place (3) 40:6;43:11;74:13 placed (1) 62:16 placing (2) 52:11,12 plainly (2) 73:10,11 plaintiff (16) 3:4;5:2;26:5;27:9; 15;28:6;32:5;45:22; 49:1;50:17;61:4; 93:15,16,25;94:5; 98:17 plaintiffs (2) 6:25;32:25 plaintiff's (9) 6:12,17;26:2; 34:14;36:4;41:2; 84:3;85:17;88:16 planning (1) 58:12 plans (1) 4:7 plant (2) 50:23,24 please (5) 13:21;15:3,4;70:8; 91:22 pled (2) 93:10;97:12 plenty (1) 61:22 plug (1) 61:1 plugged (2) 48:14,16 pm (1) 101:3 point (20) 4:21;5:11;6:14; 7:11;15:8,9,9;19:17; 20:20,23;26:6;29:22; 30:19;52:13;53:13; 62:8;71:7;80:7,16; 83:22 pointed (1) 21:17 points (4) 33:18;78:3;86:11; 93:22 policy (1)	48:24 political (2) 9:12;10:8 poorly (1) 20:20 popped (1) 58:23 portion (1) 28:10 position (6) 12:23;59:25;65:24; 73:4;89:12,16 positive (15) 28:23;30:1,6,7; 62:2;63:5;66:23; 73:17,24;85:8,13; 86:24;87:17;92:8,10 possessed (1) 94:6 possibility (2) 15:13;16:7 possible (6) 48:21;59:15;60:6; 75:17;94:9;96:22 potentially (1) 62:16 potholes (1) 30:13 power (4) 11:18;50:23;59:11; 97:21 powers (1) 98:7 practical (1) 48:20 practices (1) 89:5 preceded (1) 34:5 precise (2) 29:2;35:9 preclude (1) 93:19 precluding (1) 98:6 predates (2) 18:15,25 prejudice (1) 49:3 preparation (1) 83:12 prepare (1) 92:24 prepared (2) 41:10;48:11 Present (4) 3:4,6,7;50:20 presented (6) 6:10;16:22;17:15; 16;34:16;78:4 presents (1) 25:7 presupposing (1)	19:1 pretty (2) 20:10;46:4 previous (1) 18:16 primarily (2) 17:21;29:1 prior (2) 34:9;45:17 private (3) 37:4;44:13;58:18 privilege (1) 43:3 probably (2) 13:7;32:11 problem (35) 5:3;6:4,11,16,20; 7:10;8:3;9:16,20; 10:6,23;11:13,20,21, 23;14:18,21;15:5,6; 16:3,10;26:5;50:6; 64:24;65:10;68:21; 74:8,8;80:9;83:25; 94:19,19;95:9; 100:22,25 problems (4) 5:5;6:7;76:19; 84:15 proceeding (1) 62:6 process (1) 36:16 produce (1) 36:4 produced (4) 30:10;36:11;62:2; 71:5 Production (1) 62:3 professional (1) 7:7 proffer (1) 57:16 proffered (1) 96:16 prohibitive (2) 16:2,5 prohibitiveness (1) 16:12 project (1) 62:18 prong (2) 45:13;47:19 proof (3) 30:12;85:16;99:13 properly (2) 50:21,21 property (71) 4:4;8:4,23,24,25; 9:18;12:7,14;14:2,3, 10,16;15:11;18:15, 16;21:20,22;22:4,6,7, 10,14,25;23:6,20;	24:21;25:10,18;27:9; 28:11;30:9,20;31:3, 15,20;32:6,10;33:7; 34:9;36:14;38:18; 40:11,21;41:1,2,19; 44:4,5,9,12,14,17,18, 25;45:17,22,25;46:2, 6;51:13;52:5;53:11, 25;58:18;60:11;81:5, 21;90:3,16;94:25; 98:20 proposed (1) 15:15 proposes (1) 17:7 proposition (2) 26:2;51:9 prospective (2) 50:20;54:2 protect (1) 25:23 prove (3) 4:6;50:5;82:13 proverbial (1) 48:14 provide (2) 7:2;61:12 provided (3) 25:6;59:7;76:3 proximate (1) 52:15 public (2) 22:24;37:4 published (1) 26:9 punched (1) 45:18 punitive (1) 50:4 purposefully (1) 29:17 purposes (3) 45:11;91:18;92:11 put (16) 21:20;26:25;31:1; 40:23;41:20;42:6; 45:7;47:10;51:22; 52:16;80:22;81:19; 84:23;85:17;87:5,6 puts (1) 36:25 putting (2) 48:17;66:14 puzzled (1) 44:19	77:5 quick (1) 87:24 quickly (1) 7:11 quite (1) 42:5 quote (5) 24:20;46:25;47:6; 51:1;97:7 quoting (1) 47:25
R				
rafters (1) 45:24 rains (1) 80:9 raise (1) 12:9 ran (7) 46:18,25;47:4; 55:13;71:4;78:7,23 rather (4) 4:25;5:15;17:11; 79:11 Ray (21) 3:2;8:20;9:8; 11:23;13:23;18:15; 24:18;28:3;33:7; 34:7;35:12,13;44:7; 73:4;76:10;78:4; 81:9;84:7,14,94:23, 24 Ray's (28) 4:3;7:21;12:7;14:3, 16,21;15:5,11,15,16; 17:22;18:25;21:18; 23:17;24:3;29:18; 30:9;35:6;38:6; 42:18;44:18;55:12; 61:15;64:4;73:9; 77:13;81:21;96:13 read (15) 7:5;24:6;26:16; 33:10;34:11;37:11; 49:10;57:11,14; 58:23;66:2;67:9; 79:15;83:12;88:23 readily (1) 81:15 reading (6) 12:12;34:10;39:1; 44:22;84:2;92:17 real (1) 87:24 realistic (1) 59:23 really (8) 43:11;48:25,25; 53:3;66:14;87:17; 89:2;91:23				
Q				
qualifies (3) 69:24;92:9,10 qualifying (1) 88:21 quality (1)				

reason (7) 3:14;20:10;45:21; 68:24;91:19;97:10, 16	refer (1) 40:10	62:25	63:3;67:24;68:12,16, 19,25;72:12;74:14; 77:18;82:19;84:20; 86:8,9;91:1,6,21,25; 92:4;94:6;95:8,15,23, 25;97:24;98:16,19; 99:22;101:1	6:13;9:22,24;11:1, 1;20:15;30:18;31:14; 38:4,9,11,12;59:5,6; 65:7;70:23;73:1,23; 74:4;77:1;81:11; 83:23;85:1;88:18; 89:2,15;95:20
reasonable (20) 5:15,22;16:1; 22:19,23;25:22; 26:12;43:5;47:12; 48:20,23;51:14; 65:16,16,18;66:5,6; 74:3;79:13;80:4	referring (3) 5:25;36:14;40:11	require (5) 17:14;78:25;93:3; 95:5;98:7	right-hand (2) 44:1,2	SCDOT (1) 30:7
reasonableness (2) 16:24;17:13	refers (1) 64:14	required (3) 4:6;16:14;55:25	right-of-way (3) 22:21;37:24;98:21	School (2) 29:12;51:10
reasonably (10) 5:3,6,8,20;15:13; 16:4,10,15;56:11; 58:9	refute (1) 56:3	requirement (2) 5:1;56:8	rights (10) 15:1;42:17,21; 49:2;67:11;95:17,19; 96:3,4;97:6	Scintilla (1) 89:8
reasons (3) 14:5;45:9;62:25	regret (1) 24:16	requires (3) 47:6;68:22;94:3	rise (1) 78:25	second (6) 4:9;21:15;33:13; 58:25;74:24;78:15
recall (1) 44:22	rejected (1) 90:4	reroute (2) 57:18;96:18	road (6) 11:25;13:8;29:24; 30:19;31:1;96:23	secondly (1) 61:25
received (2) 30:5;61:25	relative (1) 6:7	rerouted (4) 58:15,16,18,19	Rock (4) 3:3;8:10;34:2; 66:20	section (1) 70:3
recent (1) 76:8	reliability (1) 56:5	rerouting (2) 65:13;66:10	route (1) 86:13	seeing (1) 78:6
recently (1) 76:9	relied (1) 56:11	researched (1) 31:23	routing (1) 67:1	seek (1) 98:24
reconnect (2) 72:14;73:1	relief (12) 4:7;28:11;39:17, 18;93:2,10;94:3,13; 95:4;98:9,24,25	reserves (1) 42:20	rule (7) 49:12;52:4;56:5; 83:10,20;89:8;93:1	seem (4) 5:10;29:4;97:18; 98:6
reconnected (1) 44:3	rely (1) 79:24	resolve (1) 66:7	ruled (1) 95:19	seems (7) 5:9,10;12:11;40:5; 52:18;67:2;79:5
record (55) 3:16;5:25;16:24; 22:24;23:1;27:17; 28:18;35:6,8,10;36:8, 10,25;40:3,18,19,22; 41:4,5,8,9,12,13,21; 42:3,11,12;43:13; 44:16;49:24;54:12, 18;55:19,22;60:1,6; 61:24;62:3;67:4; 69:1,4;71:2;72:7,11; 83:23;86:17,22;88:6, 8,13;89:17,19,20; 90:12,15	remedy (13) 93:15;94:4,4,11, 18;95:2;96:17,19; 97:18;98:17;99:1,5, 14	respond (2) 12:16;42:22	rules (2) 55:18;62:5	segment (1) 20:16
records (2) 30:11;34:24	remember (8) 7:1;27:3;34:10; 39:1;44:22;53:14; 54:8;89:25	response (7) 42:19,22;46:11; 77:22;87:13;94:16; 97:1	ruling (2) 92:19,20	send (6) 72:12,14;73:2,16; 74:9;96:21
recover (2) 80:11;95:3	removing (3) 41:20;60:21,22	responses (1) 35:11	run (19) 8:7;12:13,23; 15:16;22:9;23:8,8,10, 23;26:3,12;39:8; 51:3,4;52:16,20; 55:11,12;78:14	sending (4) 81:9;95:6;96:7,12
recovery (1) 26:15	render (1) 55:17	responsibility (9) 11:3;12:19;32:12, 15;36:4,9;70:4,21; 81:17	running (7) 6:13;18:14;20:3; 21:21;22:1,13;78:12	sends (1) 82:25
recurring (1) 85:15	renders (1) 56:14	responsible (7) 12:1,4;31:17; 66:18;70:2,20;81:10	runs (10) 4:2;15:18;18:18; 20:16;38:6;40:21; 68:9;71:7;82:10; 94:25	sense (4) 7:5;9:19;50:12; 98:23
redid (1) 51:11	repair (2) 54:20,21	rest (2) 93:1;99:25	same (13) 14:4;29:8;31:9; 33:22;42:19;47:4; 48:5;61:20;74:5; 78:3;95:11;97:1,15	sent (2) 3:22;81:13
redirected (1) 28:12	repairing (1) 54:23	result (4) 48:13;52:17;53:5; 84:17	S	sentence (4) 6:12;17:7;54:18; 55:10
redo (1) 10:5	replace (1) 49:1	resulting (4) 75:1,2;81:10,11	satisfaction (1) 20:1	sentences (3) 55:20,20;63:11
redundant (1) 61:21	report (23) 25:3;34:14;35:7; 48:8;57:11,15,17,25; 61:10,13;62:9;63:8; 64:2,12,14,19;75:14; 77:16;84:1,6;88:3,4, 18	retain (1) 95:16	saw (2) 46:20;73:21	separate (1) 14:4
reenforced (1) 73:16	representing (3) 3:17;29:14;34:1	retaining (2) 96:3;97:5	saying (27)	served (1) 6:25
	Republic (2) 27:5;47:9	review (1) 37:6		Services (1) 26:1
	requests (1)	Rich (2) 3:5;87:24		set (6) 5:2;17:21;30:25; 56:12,24;94:10
		right (52) 7:5,6,16,21,23; 8:10;12:6,15;13:24; 23:8,13;27:1,18; 33:20;34:14;38:3,6; 40:2,16;41:24;56:19; 57:1;60:12;61:23;		sets (2) 4:18;28:21
				settlement (5) 66:11;77:20;78:6; 79:10,12

settling (1) 84:17	5:2;10:2;17:14; 32:7;59:4;83:11; 85:11	split (1) 50:18	stipulated (5) 27:16;24;28:2,7; 29:20	59:20;24,25
seven (1) 23:15	situations (1) 32:25	square (1) 100:23	stipulation (1) 28:13	submitted (1) 6:22
Several (3) 84:13,14;100:2	six (5) 51:18,18;52:6; 74:17;90:6	stains (1) 76:15	stipulations (1) 29:21	subserviency (1) 43:5
severed (1) 44:2	size (1) 14:15	stand (3) 21:17;45:25;49:2	stood (1) 93:22	substance (1) 76:9
sewer (6) 43:25;59:11;72:17, 19,20,24	smart (1) 89:2	standard (9) 5:14;16:11,18; 54:16;79:14,21;80:5, 6:94:2	stop (11) 8:5;39:4;94:18; 95:6,13,21;96:2,6,7, 12;97:12	succeeded (1) 13:18
sheet (1) 60:11	Snow (1) 4:18	stands (1) 51:9	stopping (1) 96:17	successfully (1) 9:16
shoot (3) 69:11;72:1;80:10	soft (1) 84:17	start (5) 21:5;25:19;26:3; 47:7;79:6	storm (15) 4:2;6:1;9:3;11:3; 12:2,7;14:12,20; 18:21;20:2;28:1; 37:20;46:12;65:3; 72:21	sudden (1) 31:2
shooting (1) 80:24	soil (4) 43:7;77:18;84:17; 88:16	started (3) 29:22;31:2;62:19	straight (1) 39:8	sue (1) 97:3
short (3) 3:19;40:8;96:17	solely (4) 34:2;54:22;57:18; 88:15	starts (6) 22:8;23:10;36:14; 51:3,4;53:18	straightforward (1) 24:18	sued (1) 3:25
shorthand (1) 86:1	somebody (14) 8:17;16:20;20:12; 21:7;22:8;23:9;42:6; 44:25;52:19;70:23; 81:5,19;84:23;89:9	state (28) 10:14,18,21;13:10; 15:1;56:2;57:5; 66:24;67:2,5,25;68:3, 8,20;69:3,5,6,19,20, 24;70:1,15,18;71:1, 14;79:25;86:14;98:9	Strait (14) 7:22;8:1,5,7,21; 12:25;28:1;39:19; 67:2;68:9,24;71:21; 86:13,15	suffering (2) 76:18;77:20
shot (1) 71:17	somebody's (1) 22:9	state-maintained (2) 8:25;9:4	strange (2) 12:12;72:6	sufficient (6) 25:12;31:8;36:5; 48:11;58:10;79:6
show (23) 5:3;21:24;31:1; 34:24;36:19;40:22; 41:5,21;49:22,25; 60:7;61:4,6,6;62:2; 69:4;71:2,6;76:22,23, 25;86:17;88:14	somehow (1) 57:11	statement (2) 51:1;60:5	street (24) 6:14,19,20;7:22; 8:1;12:25;15:22; 28:1,12;31:16;32:13; 39:19;44:10;57:23; 67:2;68:3,5,10,23; 69:21;86:13,15,16; 96:18	suggest (5) 16:16;82:21;83:2, 19;85:3
showed (3) 76:16,17;84:8	someone (7) 35:1;40:22;41:15; 42:8;45:7;82:24;91:7	statements (3) 57:3;84:12,15	streets (3) 9:4;30:13;66:22	suggested (2) 60:15;94:23
showing (2) 39:6;84:16	someone's (1) 48:16	state-owned (1) 8:24	strict (1) 16:11	suggesting (1) 69:20
shows (9) 39:15,23;40:4; 72:7,11;76:13,14,15; 77:10	somewhere (3) 21:5;81:13;100:9	states (2) 73:10,11	structure (7) 40:5;50:21;51:17; 53:24;54:5,6,22	suggestion (1) 64:24
side (3) 8:2,2;44:2	soon (1) 22:16	state's (4) 68:5,18;86:12,13	studies (1) 58:11	suggests (1) 6:18
sides' (1) 35:20	sorry (4) 35:19;54:25;56:22; 67:14	statute (33) 4:9,23;7:14,18; 18:1,6;22:8;23:10, 22;26:3,11,24;34:3,8; 45:15;47:6;49:23; 66:19;68:22;71:15, 22;74:17;77:25;78:1; 79:6;80:8,12;91:24; 92:14,17;94:9,99:5, 12	stuff (2) 49:10;61:18	summary (7) 3:11;4:22;45:10; 56:24;57:4;63:1; 93:23
significance (2) 37:17,18	sort (6) 44:16;60:18;65:5, 9;88:10;97:1	statutory (4) 66:21,25;67:1; 70:21	subdivision (1) 98:10	sunk (1) 20:9
similar (2) 66:21;71:20	sought (2) 33:7;77:8	step (1) 81:6	subject (12) 36:12,13;38:17,18; 40:11,20;41:7;46:25; 55:4;58:10,14;62:11	supplemented (1) 87:23
simple (2) 37:24;65:10	source (2) 6:4;94:19	steps (5) 25:22;46:9,19; 47:4;60:12	subjective (2) 47:11;80:5	support (5) 57:7;59:16;60:2,3; 89:17
simply (4) 5:15;6:9;16:25; 26:23	South (13) 3:7;13:8;43:25; 47:5;55:17,23,25; 56:1;79:25;80:25; 90:22;100:21,24	stipulate (1) 30:8	submit (3)	supported (1) 23:17
Simpson (1) 76:10	specialized (1) 90:11			supposed (2) 3:20;71:16
single (7) 6:5,11;50:18,19; 54:1;74:23;90:5	specifications (1) 58:15			Supreme (2) 56:16;79:24
sink (1) 35:1	speculate (1) 10:3			sure (12) 3:23;5:19;13:15; 19:18;24:2,2;27:17; 34:25;67:12;74:13; 75:19;89:1
sinkhole (1) 45:24	spend (1) 96:14			surface (10) 37:14;42:24;43:4; 44:21;45:3;83:15,15; 91:9,11,16
sinking (2) 46:10;47:5				surfaced (1) 30:13
situation (7)				suspected (1) 78:7

sustain (1) 89:21	test (4) 47:11;56:1;89:4; 91:13	42:4;74:13;76:12	tying (1) 12:1	unreliable (1) 56:14
sworn (1) 25:10	testified (5) 23:24;25:8;46:8, 17:47:3	top (4) 41:10;42:7;48:10; 62:16	type (3) 26:22;56:11;58:14	unusual (1) 35:2
system (17) 6:2;10:5;12:2,25; 14:13,14;15:18; 18:17,22;32:14,15, 17;38:2;40:24;51:11, 16;67:19	testifying (1) 55:16	toward (5) 39:8,19;46:18; 55:14;62:17	typical (2) 79:19,20	up (32) 5:24;6:13;8:20; 12:20;14:7;15:10; 19:21;21:7;24:3; 30:23;31:1;33:1; 39:20;42:19,24; 44:24;46:13;60:9; 70:6;74:25;80:3; 87:20;92:5;93:22; 94:24;95:13;96:2,14, 17,24,25;100:11
systems (1) 9:3	testimony (11) 17:22,22;23:17; 25:11,17;27:8;46:7; 55:18;56:4;78:5; 82:13	towards (3) 7:25;14:2;28:12	Tytex (1) 47:8	uphill (2) 8:7;15:17
T	theories (2) 3:25;33:23	track (1) 58:6	U	upon (2) 31:15;56:11
Tab (1) 63:19	theory (5) 8:24;26:14;30:22; 82:21;96:8	transcript (1) 35:12	ultimate (1) 49:13	upper (3) 43:13;90:23
tabbed (1) 61:8	theorizing (1) 8:24;26:14;30:22; 82:21;96:8	Transportation (2) 3:8,18	ultimately (1) 59:19	upstream (2) 32:5,6
tabs (1) 61:9	thick (1) 30:5	tree (1) 47:20	unannounced (1) 38:13	usable (1) 62:6
tag (1) 98:15	thinking (3) 8:15;79:17,18	trespass (38) 4:1,7,12,25;22:7, 15;23:11,22;29:5,8; 30:2;43:19;47:22,23; 48:3;50:4,5;53:9; 54:3;60:22;74:22; 80:14,18,20,23;82:3, 6,15;85:15,24;88:12; 92:18,19;94:8;97:16; 98:12,18,23	uncontradicted (2) 25:10;27:8	use (6) 12:2;38:6;81:20, 22;86:1;94:11
tailored (1) 61:24	third (3) 4:21;34:14;77:3	trespassing (1) 23:13	under (88) 4:2;8:4,23;14:2,7, 10:15;11;18:14; 19:16;20:3,13,17,21; 21:21;22:1,6,9,14; 23:19;24:20;25:10, 18;28:3;29:17,19; 30:10,21,25;31:3; 35:3,4;38:6;40:21; 42:21;43:4;46:25; 47:4,7;49:9,12;55:11, 12,17;56:2,3,20; 60:20;61:3;62:5,21; 66:15,19;68:21; 70:20;71:7,17,18,21; 72:1,5,13,14;73:2,17; 74:9,23;78:7,12,14, 23;80:10,24;81:2,22; 82:21,22;85:5,17,23; 86:7;87:7;92:8,9,16, 20;94:7,9;96:8	used (6) 29:3;39:7,8;48:5; 55:19;56:3
taking/inverse (1) 95:18	thoroughly (1) 34:12	trial (6) 55:18,21;56:7,17, 22;65:20	underneath (7) 7:24;12:7;18:19; 19:2;59:11;73:9; 96:13	using (1) 9:19
talk (3) 49:11;64:25;79:9	though (6) 50:24;79:13;84:20; 90:7,8;96:20	tried (1) 9:9	uneven (1) 42:25	utilities (1) 13:10
talked (4) 66:11;74:2;82:3; 95:12	thought (7) 15:9;19:5;24:23; 27:4;75:6;78:5;79:17	trigger (4) 34:7;45:16,16; 47:10	Union (2) 8:8;14:1	utilities/storm (1) 7:8
talking (12) 7:13;10:10,12; 27:12;33:3;49:14; 59:18;63:18;64:15; 66:15;77:9;80:8	three (13) 3:25;4:5;18:7; 28:21;34:6;38:1,16; 55:24;69:16;74:17; 77:2,24;88:24	triggered (1) 34:8	University (1) 37:9	V
talks (3) 31:22;43:24;65:3	threshold (1) 56:5	trouble (1) 90:1	unknown (1) 27:10	valve (1) 39:17
tap (11) 20:16;23:1,4; 34:24;69:8,10,21; 71:23,24;86:14,15	throughout (1) 73:5	troubling (2) 60:18;99:3	unknowns (1) 36:6	various (1) 3:10
tap-in (1) 20:23	throwing (1) 77:14	true (3) 53:2;70:6;74:5	Unless (7) 8:9;18:23;21:11; 37:21,25;43:13;83:2	versa (3) 41:14,17,17
tapped (4) 18:16,21;20:20; 69:6	thus (4) 43:19;59:4,8,22	try (1) 53:4	unqualifiable (1) 89:12	version (1) 61:8
tapping (1) 21:3	tie (5) 13:11;23:20;28:20; 33:7;64:11	trying (10) 7:5,19;12:4;44:7; 53:15;55:8;59:1; 63:10;80:1;87:22		versus (17) 4:18;6:1;16:17; 19:20;26:1;29:11,11; 32:2;41:14;43:8; 47:8;48:5;50:9,15, 15;62:23;88:22
telling (5) 11:10;30:16;49:20; 76:21;85:10	timely (1) 94:6	tune (1) 99:2		via (1) 20:3
ten (1) 20:25	times (2) 12:13;65:17	turn (1) 7:24		vice (3) 41:14,16,17
tenant (2) 43:3,6	Title (2) 13:7;37:24	two (23) 8:1;9:11;14:9; 32:4;37:2;43:18; 46:6;50:9;54:18; 55:20,20;58:22; 63:11;70:25;74:4; 77:2,4,7;80:21,22; 85:20;100:11,14		video (4) 76:12;77:5,10,10
Tents (1) 43:8	today (6) 35:7;45:11;49:18; 55:19;56:21;71:10			videos (8) 46:1;76:16,22,22, 24;77:2,7;84:7
terms (1) 15:22	told (5) 14:24;15:24;46:18; 73:12;78:14			
terribly (1) 35:2	Tom (1) 6:24			
	took (3)			

view (1) 6:3	watershed (4) 37:2,6,8,15	37:1,7,14,14,25;44:9; 74:16;77:24;80:12	2	13:7 56e (2) 56:3,20
viewed (1) 26:12	way (24) 7:9;8:6;19:10; 21:10;31:4,5;35:9; 36:15,16;38:4;40:25; 42:17,22;43:21;44:1; 52:24;53:19;68:21; 69:11;72:6;73:19; 74:24;96:15;97:12	without (11) 24:15;27:10;69:17, 18;71:6,8,10;72:7; 78:20;79:2;82:25	2 (2) 55:11;63:15	6
visible (2) 21:16,19	Webb (2) 50:15,22	withstanding (1) 57:3	20 (1) 26:8	6 (1) 65:2
void (3) 89:20,21;90:15	weeks (1) 3:21	witness (2) 26:4;96:16	2002 (1) 57:5	6.9 (1) 37:10
W	what's (15) 22:24;35:10,10; 39:17;41:17;58:22; 60:18;65:24;74:3; 77:10,12;82:23; 94:20;98:11;99:3	words (5) 47:18;51:2;78:22; 85:19;94:25	2003 (1) 56:15	62 (1) 37:25
wait (1) 12:10	whenever (1) 13:20	work (14) 13:19;17:10;32:18; 43:25;44:4,12;45:20; 46:7;59:3,3;65:5; 72:19,21,24	2008 (18) 23:24;24:21,22; 25:3,5,9,17;45:23; 46:9,20,23,24;47:1,3, 17;49:5;78:10,23	7
waited (2) 12:8;51:15	White (103) 3:7;15:19;24:2; 33:22,24,25;34:13, 19,22;35:21,23;36:1, 21,24;37:13,18;38:8, 12,22,25;39:3,13,24; 40:10,15,17;41:4,18, 25;44:15;45:1,11; 47:23;49:5,9,12,17, 21;50:8,14;51:4,6,8, 21,24;52:3,9,23;53:3, 9,19,23;54:4,12,15; 55:2,4,6;56:18,20; 57:2,13,16,24;58:3,7; 59:5,20,24;60:10,15, 20;61:2,17,23;63:9, 12,15,23;65:7;75:6,8; 84:25;87:14,15,21; 88:2;89:11,16,23; 90:20;91:4,10,17; 92:1,23;97:14,15,25; 100:10,14,18,23	works (1) 36:16	2009 (1) 47:2	70 (2) 72:8;99:18
waiting (1) 79:8	whoever's (1) 42:9	world (1) 73:22	2011 (4) 73:7,13,16;78:17	702 (1) 56:5
walk (2) 17:20;21:11	whole (2) 31:22;99:2	worried (2) 23:19;46:15	2012 (3) 47:2;72:11;73:16	8
walks (1) 21:7	Whose (2) 68:9;84:1	wrong (2) 88:20;90:8	2012-CP-46-3928 (1) 3:2	8 (1) 37:8
walls (1) 54:23	Winston-Salem (1) 43:9	wrote (2) 72:25;94:17	2014 (1) 25:4	8.6 (1) 37:9
wants (3) 3:11;12:13;93:18	Winthrop (1) 37:9	Y	24-inch (4) 18:18;19:12;20:9, 12	9
warranted (1) 98:4	wish (7) 4:19;13:13;24:5; 26:19;32:1;93:14; 100:6	year (3) 15:22;36:3;56:21	25 (1) 65:17	90 (1) 76:7
water (125) 4:2;5:11;6:1;7:8, 22;8:4,5,22;9:3;10:7; 11:3;12:2,7,14,23; 13:1;14:12,13,20; 15:11;18:22;20:2; 21:10,25;28:9;29:17, 22;30:10,20;31:2,15; 32:10,12,17;33:9; 37:20;38:14;43:4; 44:17,21,23;45:3; 46:2;55:8,11,12; 57:18;60:10,25; 62:20;65:14;66:10, 16,17,22;67:1,7,18; 68:3,5,7,14,18,22; 69:11;70:16,22;71:2, 7,15,22;72:13,14,21; 73:2,8,17;74:9,23; 75:18,20;76:15; 80:10,18,23;81:2,4, 12;82:9,14,16,20,24, 25;83:14,15,16; 85:15,17,23;86:6,13; 87:5,6,17;88:11,14; 89:24,25;90:3,12,24; 91:9,11,11,16,21; 95:5,7;96:7,12,18,21, 23;98:20	who's (1) 42:9	289 (2) 23:25;24:17		
watercourse (7) 45:4;90:25;91:3,6, 8,14;96:10	wished (2) 6:20,21	years (13) 18:7;26:8;48:15; 51:18,18;52:6;69:16; 72:8;74:17,17;76:7; 77:24;90:6	290 (2) 23:25;24:17	
watercourses (1) 91:12	Within (16) 4:11;9:19;11:11, 16,18;18:7;19:11;	1	3	
waterline (1) 72:24		14 (1) 63:19	3:54 (1) 101:3	
		16 (1) 64:25	30 (2) 34:21;96:1	
		17 (5) 55:10;61:3;63:23; 64:17,23	330 (2) 18:13;22:5	
		1800s (1) 90:23	35 (2) 39:7,18	
		1935 (1) 35:2	4	
		1941 (7) 28:4,5;39:4;71:3,8; 72:4;73:15	40s (1) 28:10	
		1980 (1) 20:2	41 (1) 39:10	
		1985 (3) 19:17;21:19;45:22	45 (1) 7:24	
		1995 (1) 18:15	463 (2) 84:14,14	
			467 (1) 84:7	
			5	
			5 (1)	

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.
Transcription of a Motion to Reconsider on 04/15/2015

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
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5 LUCILLE RAY,)
6) PLAINTIFF,)
7 VS) C.A. NO. 2012-CP-46-4100
8 CITY OF ROCK HILL,) C.A. NO. 2014-CP-46-3928
9 SOUTH CAROLINA, ET AL.,)
10) DEFENDANT.)
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22 AUDIO TRANSCRIBED BY: KELLY L. REITER
23 DALLAS REPORTING, A HUSEBY COMPANY
24
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TRANSCRIPTION OF A MOTION TO RECONSIDER BEFORE
THE HONORABLE S. JACKSON KIMBALL, III
YORK, SOUTH CAROLINA
APRIL 15, 2015

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1 Motion to Reconsider, audio recorded by the Court, at
2 the Master-in-Equity Court, 1 North Congress Street, York,
3 South Carolina, commencing on April 15, 2015. Please note
4 the audio recording did not include the beginning time of
5 the hearing. The Honorable S. Jackson Kimball, III,
6 presiding.

7 * * * * *

8 Judge Kimball - All right. This is Case Number
9 2012-CP-46-3928, Lucille Ray against the City of
10 Rock Hill and others. Present and representing
11 the plaintiff is Mr. Charles Bradford and Mr.
12 Rich Fennell. Present and representing the City
13 of Rock Hill is Mr. Mark White. I've got both
14 sides' motions to reconsider.

15 Mr. Fennell - Yes, Your Honor.

16 Mr. White - Yes, Your Honor.

17 Judge Kimball - Okay. Whose was filed first?

18 Mr. Fennell - Probably ours.

19 Judge Kimball - Go ahead.

20 Mr. Fennell - Judge, as you recall, we were here
21 last June - - -

22 Judge Kimball - I do recall that.

23 Mr. Fennell - On a Rule 59(b). Here we are, ten
24 months later arguing it. But we argued all of
25 the factual background. You were kind enough to

1 let us go on forever, but we can go over
2 whatever you need in order to get it back in
3 your mind. I don't plan to replot a lot of the
4 old ground, but - - -

5 Judge Kimball - I don't need it. I don't need
6 it replowed. You can tell me as much as you
7 want to - - -

8 Mr. Fennell - Yes, sir.

9 Judge Kimball - But I remember it.

10 Mr. Fennell - Yes, sir. As you remember, Ms.
11 Ray lives in a house on College in Rock Hill.
12 It's 330 College.

13 Judge Kimball - (Indicating yes)

14 Mr. Fennell - And this map is the map that we
15 submitted. I think I submitted one that was
16 mounted with - - -

17 Judge Kimball - I don't know about that.

18 Mr. Fennell - But you can have this one.

19 There's a storm drainage pipe, a stormwater
20 drainage pipe that goes underneath their house,
21 and there's a lot of water that goes through
22 that pipe.

23 Judge Kimball - (Indicating yes)

24 Mr. Fennell - Ms. Ray believes that the water is
25 causing damage to her house, that the pipe has

1 failed in a number of respects. We filed a
2 lawsuit against the city and against the
3 Department of Transportation for a number of
4 different reasons.

5 Judge Kimball - Right.

6 Mr. Fennell - You dismissed the Department of
7 Transportation in your order last August.

8 Judge Kimball - Yes.

9 Mr. Fennell - And then granted a partial summary
10 judgment to the city. Both Mark and I are
11 asking you to reconsider two separate issues in
12 your ruling. The first issue that we're asking
13 you to reconsider comes from the fact that you
14 agreed with me that the trespass that we've
15 alleged is a continuing trespass. That is,
16 every time it rains and there's water that's
17 collected in those pipes - - -

18 Judge Kimball - And the statute of limitations
19 has not run?

20 Mr. Fennell - Yes, sir. And every time the
21 water is collected in those pipes from the
22 city's roads and it is dispersed beneath Ms.
23 Ray's house, that's a new trespass. The law in
24 South Carolina is pretty clear, that if there is
25 a continuing trespass, that an injunction would

1 be the appropriate remedy. Because if you don't
2 let Ms. Ray proceed upon her claim for
3 injunction, and we've prevailed against the city
4 for - - -

5 Judge Kimball - Well, there's a distinction
6 between appropriate and mandatory.

7 Mr. Fennell - Yes, sir. That's true, but you
8 have dismissed the claim for an injunction, so I
9 - - - I can't even argue it. It's an
10 appropriate remedy for a continuing trespass.

11 Because if I prevail at trial and get a damage
12 award based on the condition of the house that
13 I'm able to show the jury, and the water
14 continues to flow underneath the house and
15 nothing is done to stop it, I'm going to have to
16 sue them again and again and again and again.

17 Because of that fact - - - And I've cited three
18 or four cases in my brief that say that when you
19 have a continuing trespass, in order to prevent
20 a multiplicity of suits, you should be able to
21 consider an injunction in order to stop it.

22 Your initial ruling was for - - - on that issue.
23 I remember and recall very well you saying that
24 you were dismissing my claim for an injunction
25 in court. Then we had a telephone conference,

1 and I thought that you said that you agreed to
2 reconsider that decision.

3 Judge Kimball - Rich, I did not pull a copy of
4 my final order. Do you have a copy of that - -
5 -

6 Mr. Fennell - Yes, sir.

7 Judge Kimball - That I can look at, please?

8 Mr. Fennell - Yes, sir.

9 Judge Kimball - I should have it.

10 Mr. Fennell - And I thought you said in a phone
11 conference that you had reconsidered that and
12 had just decided to let me go forward to the
13 jury on whether or not we're entitled to an
14 injunction. Then in the final order, it says
15 that I can't. So it's that issue that's number
16 one on my list of things that I would ask you to
17 think about again. And again, it comes down to
18 the nature of the continuing trespass. I don't
19 want to have to sue the city again. So I would
20 ask you to deny the motion for summary judgment
21 and let the trial court decide whether or not
22 the city should be enjoined from allowing their
23 water - - -

24 Judge Kimball - So are you trying to tell me
25 that the availability, we'll call it, of

1 injunctive relief to deal with a continuing
2 trespass does not - - - I don't even know how to
3 complete that thought. Does not fail by reason
4 of there being an inadequate remedy at law?
5 Mr. Fennell - I think that the cases say that
6 there is no adequate remedy at law, because of
7 the fact that you're going to have to deal with
8 it again. It's not the type of case where you
9 can have a trial, and people will put on their
10 evidence, and a jury can say, this is how much
11 damages you either get or don't get, and the
12 situation is resolved. If the trespass is
13 continuing, then we're going to have to file
14 another lawsuit and another lawsuit and another
15 lawsuit. It's because of that multiplicity of
16 lawsuits that the courts have decided in South
17 Carolina, and I think it's consistent pretty
18 much all over the country, that when you're
19 dealing with such a cause of action, that a
20 court should consider not only damages, but
21 perhaps the conduct of stopping the trespass if
22 the trespass is, in fact, unlawful.
23 Judge Kimball - Just a second. I'm looking at
24 the - - -
25 Mr. Fennell - Yes, sir.

1 Judge Kimball - Inverse condemnation. Okay. Go
2 ahead.

3 Mr. Fennell - And then the second issue that I
4 would ask you to reconsider has to do with - - -

5 Judge Kimball - Well, let's deal with that one
6 first.

7 Mr. Fennell - Yes, sir.

8 Judge Kimball - Mr. White, what about that?

9 Mr. White - Your Honor, I'm aware of no case
10 that says that they have to allow the injunctive
11 relief for their case. It actually says, if
12 there's an adequate remedy at law - - - Rich's
13 hypothesis presumes that there are damages
14 flowing on and on and on and on, and it's - - -

15 Judge Kimball - He said - - - What his
16 hypothesis is that there is no - - - And I won't
17 say hypothesis about the law. That there is no
18 adequate remedy at law for a continuing
19 trespass.

20 Mr. White - I'm not aware of a case that says
21 that continuing - - - a case that involves a
22 continuing trespass, that there is no adequate
23 remedy at law.

24 Judge Kimball - I'm not either.

25 Mr. White - And what the Court found was that

1 money damages can resolve every bit of the
2 damages which she alleges in the complaint or
3 that's in the record, that money damages can
4 resolve that. Then you have an issue of, well,
5 they can sue again and again, but you've got to
6 have damages. There's nothing in the record, at
7 the point that this motion went forward, to
8 suggest that that's the case. So I wasn't aware
9 that the Court was considering rethinking the
10 dismissal of that cause of action. I believe
11 the Court is under just a basic black line rule
12 which is, if money damages make you whole, you
13 don't resort then to the court of equity.

14 Judge Kimball - No, I wouldn't either. Based on
15 the plaintiff's brief or memo that I got - - -
16 Bear with me a second. All right. Let me ask
17 you this - - -

18 Mr. White - Yes, sir.

19 Judge Kimball - Mr. Fennell - - -

20 Mr. Fennell - Yes, sir.

21 Judge Kimball - It is now - - - After reading
22 the order and looking at the relief, is there a
23 distinction to be made between a continuing
24 trespass and a repeated trespass?

25 Mr. Fennell - The cases that I've read argues

1 that - - -

2 Judge Kimball - What is the trespass in this
3 case?

4 Mr. Fennell - The trespass that you found in
5 your order, and based on what our argument - - -

6 Judge Kimball - It's the water, right?

7 Mr. Fennell - Yes, sir. Yes, sir. And then
8 that is continuing because it is going to be
9 repeated a lot. I haven't found - - -

10 Judge Kimball - I didn't rule that.

11 Mr. Fennell - Sir?

12 Judge Kimball - I didn't rule that. What I want
13 to be clear is, my memory is that I didn't - - -

14 There is no - - - I did not rule that the piping
15 itself is a trespass.

16 Mr. Fennell - Correct.

17 Judge Kimball - I did rule that the discharge of
18 the water is a trespass, and that each
19 occurrence of that is a - - - another trespass.

20 Mr. Fennell - Yes, sir.

21 Judge Kimball - I don't know that that makes it
22 a continuing trespass.

23 Mr. Fennell - It is, unless the city stops.

24 Judge Kimball - No, I don't agree with that, and
25 I can - - - To make it easy, if I'm your

1 neighbor and I throw my garbage over my fence,
2 onto your yard, once a week, that doesn't make
3 it a continuing trespass. I'm just repeating it
4 over and over again.

5 Mr. Fennell - Yes, sir. Unless you have a
6 collection system that takes the garbage and
7 naturally shoots it onto my yard. That's the -
8 - -

9 Judge Kimball - Well, I only do it once a week.

10 Mr. Fennell - Which is what the city has. What
11 the city has is, every time it rains, the water
12 that flows onto their streets, which is required
13 by statute to deal with, it deals with it in a
14 manner which ends up with the water going
15 underneath Ms. Ray's house without - - -

16 Judge Kimball - We don't disagree with that.

17 Mr. Fennell - There's no way to stop it. The
18 only way to make them stop it is if you or
19 another judge tells them to stop it.

20 Judge Kimball - Well, no, they can fix it.

21 Mr. Fennell - Correct, but there's no way to
22 make them fix it. If they don't fix it, then I
23 have to sue them again, and again, and again.

24 Judge Kimball - I - - - Okay.

25 Mr. Fennell - And if you look at the Little

1 case, which is the case that says it most
2 directly, but the Little case says that because
3 - - - In order to prevent a multiplicity of
4 lawsuits, that in a continuing trespass
5 situation, an injunction should be considered by
6 the Court.

7 Judge Kimball - Okay. I've considered it in
8 this argument, and I deny it.

9 Mr. Fennell - Yes, sir. Okay. The second issue
10 that we would ask you to reconsider relates to
11 the inverse condemnation claim. I understand
12 your ruling that the pipe itself is not - - -
13 Because it did not present sufficient evidence
14 to satisfy you as to the ownership of the pipe,
15 that I could not use that as evidence of a
16 taking by the city or by the Department of
17 Transportation. I don't want to reargue it, but
18 there was - - - There was evidence that was
19 presented to you, which I can't tell from your
20 order whether you considered it or not, relating
21 to an event in November of 2012. In November of
22 2012, the city was doing some work on College,
23 and the pipes were disconnected from the pipe
24 that runs underneath Lucille Ray's house. Mr.
25 Bradford wrote a letter to the city's lawyer and

1 said, don't reconnect. If you say you don't
2 have an easement, then you don't have a right,
3 and you cannot reconnect to the pipe beneath Ms.
4 Ray's house. They did it anyway. In reading
5 through all of the elements of inverse
6 condemnation, it's a positive, aggressive,
7 assertive act which reduces the claimant's
8 property rights to the government's advantage.
9 I can't imagine more evidence of it than - - -
10 Judge Kimball - That issue was not raised as a
11 positive, aggressive act when we heard this
12 before.

13 Mr. Fennell - Yes, sir. It's in - - -

14 Judge Kimball - I don't believe it was.

15 Mr. Fennell - It's in the brief that I submitted
16 to you. It's on the very last page of the
17 brief.

18 Judge Kimball - Well, it either is, or it isn't.

19 Mr. Fennell - Yes, sir.

20 Judge Kimball - I do not recall that being
21 argued, as a positive, aggressive act sufficient
22 to meet the standard of the case.

23 Mr. Fennell - I've got a copy of the brief that
24 I submitted in the first go-around, if you'd
25 like to see it. It's also in Lucille Ray's

1 affidavit and in my - - -

2 Judge Kimball - I don't have any question about
3 the fact. I'm not questioning the fact.

4 Mr. Fennell - Yes, sir.

5 Judge Kimball - What I do not recall is that,
6 that the reconnection of the pipe was asserted
7 as the positive, aggressive act sufficient to
8 satisfy the case law.

9 Mr. Fennell - Yes, sir. And again, memories - -
10 - Your memory and mine can fade over ten months,
11 but the brief is there. While our minds might
12 be more likely to do that, we - - - We did
13 argue about it in open court, and again, I wrote
14 about it. So I was surprised to see your
15 decision, and - - - Because it didn't reference
16 Charles' letter, I thought that I needed to file
17 a motion in order to have you take a look at it
18 and decide whether or not it changed your mind.
19 But it was a part of the record - - -

20 Judge Kimball - Well, even - - -

21 Mr. Fennell - As well as part of the argument.

22 Judge Kimball - Even if it was, I do not find
23 that it represents a positive, aggressive act
24 within the meaning of the case.

25 Mr. Fennell - Yes, sir.

1 Judge Kimball - Those cases have to do, from my
2 recollection of my reading of them, is that in
3 effect the condemnor - - - or that the punitive
4 condemnor did something different to change the
5 flow of water, for example, reconstructing the
6 roads to create a different pattern of drainage,
7 things like that.

8 Mr. Fennell - Yes, sir. I disagree, but I
9 understand. Then I am arguing against what the
10 city has put before you as their two motions to
11 reconsider. One deals with - - -

12 Judge Kimball - Well, let me hear from him.

13 Mr. Fennell - Yes, sir.

14 Judge Kimball - I'll let you - - - And there's
15 nothing else from you, right?

16 Mr. Fennell - No, Your Honor.

17 Judge Kimball - All right. Well, I deny the
18 plaintiff's motion. Mr. White?

19 Mr. White - Thank you, Your Honor. Two grounds
20 for the basis of the city's motion to alter or
21 amend. The first, the Court in the order found
22 that the water itself was a trespass. The water
23 coming out of the city's pipe, into the subject
24 pipe - - - And let me just say. When I say the
25 subject pipe, I'm talking about the pipe where

1 it starts on her property, where it goes back to
2 the manhole behind it, the part that's under her
3 house.

4 Judge Kimball - I understand.

5 Mr. White - And so the Court found that the city
6 - - - The collection discharge of water under
7 Ms. Ray's house may be considered an affirmative
8 intentional act by the city. The first basis
9 for the motion is that the - - - that finding
10 presupposes information and facts that aren't in
11 the record. If the city had a collection system
12 - - - And let's say it just went into an open
13 ditch. Then someone that owned the property of
14 Ms. Ray's, prior to Ms. Ray, decided they wanted
15 to put a pipe in, the subject pipe. The fact
16 that the city's system collects water and sends
17 it downhill, as it always has gone - - - where
18 it used to be in a ditch, and now it's in a pipe
19 - - - that's not an affirmative, aggressive act
20 by the city.

21 Judge Kimball - Tell me what the presuppositions
22 are.

23 Mr. White - The presupposition is, is that the
24 city's affirmative, aggressive act of sending
25 water through its system into that pipe was

1 caused by the city. Whoever put the pipe in
2 created that situation, not the upstream. The
3 record is completely void of anything that says
4 where that pipe came from. But yet, the finding
5 that the city is creating an affirmative act by
6 discharging its water into that pipe is
7 presuming that the city created the pipe.

8 Judge Kimball - No, I disagree.

9 Mr. White - It - - -

10 Judge Kimball - The act is the water. But the
11 city uses it to dispose of its water, and it is
12 the path of the water itself, which constitutes
13 the trespass.

14 Mr. White - So in a hypothetical, in a
15 hypothetical of - - - The city has a catch
16 basin, which drops off into a ditch. Someone -
17 - - The city is casting its water through the
18 ditch, just like the DOT does down Highway 5
19 with all those little offshoots. That's not a
20 trespass because that's the path the water was
21 going in.

22 Judge Kimball - You mean a natural ditch, or a -
23 - -

24 Mr. White - A natural ditch or a natural flow
25 downstream.

1 Judge Kimball - I don't disagree with that.

2 Mr. White - All right. So if someone - - - Like
3 what actually happened on Highway 5, the little
4 trailer there on the left, when they widened the
5 road, they decided they wanted to put a pipe in
6 to take the water off the road, rather than the
7 open ditch that it was. So they actually piped
8 the discharge of that water off of Highway 5.

9 It now goes to an enclosed pipe, back to a pond
10 back behind the two trailers. Years later, can
11 someone come that owns that property later and
12 say that the DOT's actions of casting water
13 through their culvert and their catch basin into
14 that pipe is an affirmative, aggressive act and
15 a trespass by the water flowing through the
16 pipe?

17 Judge Kimball - Are you asking me a question?

18 Mr. White - I'm just - - - I'm just trying to
19 illuminate why it raises this issue. Because
20 when I look at those two situations, you have to
21 read this record as being the same as that
22 situation and - - -

23 Judge Kimball - I don't - - - I don't agree with
24 that, but go ahead.

25 Mr. White - Well, there's no evidence that - - -

1 Judge Kimball - The only record I have before me
2 is this record.

3 Mr. White - Right, but they have the burden of
4 proof. The burden is, they have to show it was
5 an affirmative, positive, aggressive act.

6 Judge Kimball - They have to show - - -

7 Mr. White - And in the hypothetical - - -

8 Judge Kimball - They have to show a positive,
9 aggressive act.

10 Mr. White - They have to show a positive,
11 affirmative - - -

12 Judge Kimball - Affirmative is in the other
13 equation.

14 Mr. White - All right. So if - - - In the
15 hypothetical, which I would argue that based on
16 our record, you would have to presume would be
17 the case because they didn't show otherwise,
18 then how can it be an aggressive act for water
19 to flow through a pipe, from a city street into
20 a pipe that was created by a landowner? How
21 could that flow be a positive, aggressive act?

22 Judge Kimball - Once again, that's a rhetorical
23 question and not one you're asking me?

24 Mr. White - Well, what I'm asking the Court is
25 to, in considering that, recognize that in this

1 case the city is not putting water through a
2 pipe - - - The city's putting water in a pipe is
3 not an aggressive act, when the record allows
4 for the fact that a previous owner of the
5 property created the situation. Thus, it is not
6 an aggressive act.

7 Judge Kimball - I don't know who created the
8 situation. That's not in the record.

9 Mr. White - It's not in the record. It's not in
10 the record. So how can it be an aggressive act
11 unless it is shown that the city created the
12 situation? It's putting the burden - - - It's
13 shifting the burden from the plaintiff onto the
14 defendant to make that shown, which I will
15 submit is - - -

16 Judge Kimball - Because the city doesn't have to
17 use it to cause damage to Ms. Ray's house.

18 Mr. White - But that's not the test for whether
19 there's a trespass. The test for a trespass is
20 for them to show that the city is actually using
21 - - - is taking - - - is creating an aggressive
22 act, that there's no right to do so. What the
23 Court's order has done, based on this record,
24 has shifted that burden away from them and
25 showing that it's not their pipe and that it was

1 some sort of acquiescence or acknowledge by an
2 owner when they built it, and I - - - I don't
3 think that shifting of the burden basically
4 helps the - - -

5 Judge Kimball - Well, let's - - -

6 Mr. White - The record.

7 Judge Kimball - Let's back up a second. From
8 your perspective, the ruling on the trespass
9 claim was a denial of a 12(b)(6)/summary
10 judgment motion, right?

11 Mr. White - Correct, a fifty - - - a fifty - - -

12 Judge Kimball - There is no appeal from that.

13 Mr. White - There is no appeal.

14 Judge Kimball - Okay.

15 Mr. White - I was just - - -

16 Judge Kimball - Hence, what difference does it
17 make what I say now?

18 Mr. White - Well, it was just - - - I was hoping
19 that, when you saw it as to what was happening,
20 that maybe you would change your mind and
21 reverse that part of the ruling.

22 Judge Kimball - I think that - - - I spent many
23 an hour going through this case - - -

24 Mr. White - Okay.

25 Judge Kimball - And reading cases that I've

1 never read before. I hope I have gained some
2 understanding of that subject matter, and as a
3 result of that, denied the - - - denied the
4 motion to dismiss.

5 Mr. White - The second prong of the city's
6 motion has to do with the availability of - - -
7 Judge Kimball - Let me - - - Let me ask. Mr.
8 Fennell, do you have anything to add about the
9 trespass.

10 Mr. Fennell - No, Your Honor. In addition to
11 what you've already said, they make a decision
12 every time they decide to use the pipe that goes
13 through Ms. Ray's yard to trespass upon her
14 property, whether or not they put the pipe there
15 or not. They don't have to put the water - - -
16 They don't have to deal with the water - - -
17 Again, their statutory mandate is to deal with
18 that street surface water. They decide, every
19 time water goes down that pipe, that they're
20 going to do it that way. That's why it's a
21 trespass. That's why it's an affirmative act.

22 Judge Kimball - All right. Mr. White, what's
23 next?

24 Mr. White - The next issue is on availability.
25 This, of course, deals with whether there was a

1 - - - back then, a six-year statute of
2 limitations or whether it was a three-year
3 statute that's continuing. They have an
4 affirmative duty to show that the issues here
5 are available, so they can get to a continuing
6 trespass. The - - - They - - - In the brief, we
7 cited a number of cases. One of which, I will
8 highlight for you in greater detail. It's Grays
9 versus CAS Medical. I think Mr. Fennell, and
10 probably legitimately so, took issue with the
11 Grays case - - - I mean, excuse me, the Dawkins
12 case because it was a - - - The holding - - -
13 The specific holding in the Dawkins was about
14 the - - -
15 Judge Kimball - What's the full title of the
16 Dawkins case?
17 Mr. White - The full title was - - -
18 Judge Kimball - So I can remember it. Let me
19 see if it's - - -
20 Mr. White - Dawkins v Fields. It's a 2003
21 decision.
22 Judge Kimball - Okay.
23 Mr. White - In that case, it has the same
24 issues, but the court went onto - - - The
25 specific ruling is that the affidavit just makes

1 conclusory legal opinions, ultimate conclusions
2 of the legal opinions. So - - - But also in our
3 brief, we cited Grays v CAS Medical, which I
4 will highlight for the Court. It begins with -
5 - - It's a computer - - - It's about computer
6 code. It was a monitor for children, and it
7 provides - - - There's two issues here. Number
8 one, you have to have expert testimony about
9 what is reasonably and practically available.
10 It deals with that issue. It also deals with,
11 what does it take for an expert to come before a
12 court at summary judgment and be - - - and get
13 his information into the record sufficient to
14 withstand a summary judgment. The court says,
15 we have little trouble concluding as a matter of
16 law that Grays' claim is one such case requiring
17 it for opinion, because it involves complex
18 issues of computer science. Although we use
19 computers in some form or fashion almost every
20 day in our lives, the design and structure of
21 the software they run is beyond the ordinary
22 understanding and experience of the layman.
23 Hence, they must support their allegations with
24 expert testimony. Without it, their claims are
25 subject to dismissal. It does a great job of

1 going through it. You know, it's - - - Rule 703
2 basically is the science and technical - - -
3 will assist the jury as to facts, and then you
4 can have someone admit expert testimony. In
5 this case, the issue again is whether any
6 experts involved are reasonably and practically
7 available. Let's say it can be available. It
8 doesn't say, is it available? It says
9 reasonably and practically available. The court
10 - - - This - - - Our state court has not
11 accepted the Dobbs standard, the federal
12 standard, but there's still a gatekeeper
13 function.
14 Judge Kimball - Wouldn't there always be, at
15 some level, a question of fact about what is
16 reasonable and - - - whatever the other element
17 was. Available?
18 Mr. White - Practical.
19 Judge Kimball - Practical.
20 Mr. White - The question of fact only - - - But
21 only with expert testimony. You can't have - -
22 - You know, a landowner can get up and testify
23 what the value of their property is, because
24 there's a case that says so, and I understand
25 the basis for that. But here, you have a

1 function of what is - - - What is reasonable and
2 practical from an engineering standpoint of
3 redirecting hydrology and redirecting flow?
4 You've got to look at storms and how heavy the
5 storm is, saturations, and concentrations, and
6 hard surfaces. All of that is going to require
7 expert testimony. Remember in this case, all we
8 had - - - The support that was available was a
9 conclusory statement and an affidavit that says,
10 there's no reason for the water to run on her
11 property. That's all it said, I'm paraphrasing.
12 What this case says is, you have an obligation
13 at summary judgment to see whether it would be
14 admissible if that's all that he said at trial.
15 What I'm arguing is, it would not be admissible
16 at trial. Thus, it wasn't admissible here.
17 Since it was part of their necessary proof, they
18 failed to - - - They failed to carry the burden
19 at summary judgment, and summary judgment should
20 be granted. In this case, you have three things
21 you've got to look at. Number one is, is it
22 proper for expert testimony? The second is, was
23 he qualified? And the third is, how reliable
24 was his statements? The court goes on to say
25 that the factors that the court has to consider

1 as to reliability is the facts that he used that
2 he based his decision on, and the methodologies,
3 are they consistent with his expertise? Is that
4 the way that someone in that field would render
5 that decision? He can't just get up there and
6 say, it can be done. He has to say, Fact 1, 2,
7 3, and 4, and as an engineer, I applied these
8 facts. So that I can get another engineer to
9 say, is Fact 1 true? Was it proper? Did he
10 miss a fact? Did he include a fact? And then
11 apply the engineering processes to look at how
12 he came to his conclusion, so - - -

13 Judge Kimball - What did the - - - What did you,
14 in support of the motion, submit to show that it
15 was not reasonable and practical?

16 Mr. White - We have an affidavit from Mr.
17 Bagley.

18 Judge Kimball - Who is an employee of the city?

19 Mr. White - An engineer.

20 Judge Kimball - Who is an electrical engineer?

21 Mr. White - He's in charge of their utility
22 department.

23 Judge Kimball - That's right. Go ahead.

24 Mr. White - It's not my burden, again, to - - -

25 Judge Kimball - What did he say?

1 Mr. White - I'd have to - - - I don't have that
2 document with me, but I believe he testified
3 that based on grades and conflicts, that the
4 relocation of this would be unreasonably - - -
5 Judge Kimball - Expensive.

6 Mr. White - Unreasonably expensive.

7 Judge Kimball - Well, what's expensive got to do
8 with your question?

9 Mr. White - Well, because something that is
10 reasonable and something that's practical - - -
11 I don't believe it was the city's obligation to
12 show there was a - - -

13 Judge Kimball - In other words, this - - - I
14 don't recall there being any engineering study
15 in terms of like - - - Like in the case we had
16 about the park, where the creek ran and flooded
17 the lady's house, I do not recall there being
18 any engineering calculations or data to support
19 the proposition that - - - abating the trespass,
20 in other words rerouting the water, would not be
21 reasonable or practical from an engineering
22 standpoint.

23 Mr. White - I - - -

24 Judge Kimball - I understand perfectly that it
25 may be a very expensive thing from the city's

1 standpoint. Unreasonable, in the city's
2 viewpoint, expensive.

3 Mr. White - Again, in the case you're referring
4 to, there was no hydrology study. That's one
5 reason why the summary judgment was granted,
6 because the plaintiff had an obligation to come
7 forward with that showing. It's not the city's
8 - - -

9 Judge Kimball - Well, in that case, the only
10 evidence was that the small pipe that the state
11 highway department had to deal with was the
12 cause of the problem, not - - - not any - - -
13 pretty much anything else.

14 Mr. White - In this case, it was the plaintiff
15 who bears the obligation to show the continuing
16 nature of the trespass or whatever. Thus, it's
17 Ms. Ray's obligation to come before this court
18 and show that it is available. It's not the
19 city's obligation - - - If it were my obligation
20 to show it's available, then I would have come
21 before this court with a lot of different types
22 - - -

23 Judge Kimball - But it's your motion.

24 Mr. White - It's my motion, but it's my motion
25 testing - - - Rule 56 says I don't have to prove

1 the absence of their case. It shifts the burden
2 to them to show beyond the mere pleadings and
3 the mere speculation, that wouldn't be
4 admissible at trial, that they have satisfied
5 their elements, and they didn't. That was their
6 obligation to show that, and they didn't do it.

7 Under our - - -

8 Judge Kimball - What did they have to rebut?

9 Mr. White - They didn't have to rebut. They had
10 to show that the - - - that the situation that
11 she's complaining of is abatable. Otherwise,
12 she's stuck with a six-year statute that started
13 - - -

14 Judge Kimball - No. Your motion is - - - Your
15 motion, as it sets out, your motion was that it
16 is not abatable because it is not reasonable and
17 practical. You have to offer support of that in
18 your - - - in support of the motion.

19 Mr. White - And I did offer the prima facie
20 support necessary to - - -

21 Judge Kimball - I don't see that's prima facie.
22 I don't accept that as prima facie support, the
23 fact that the city considers it to be
24 unreasonably expensive. There was no
25 engineering data presented by Mr. Bagley, that I

1 recall. Am I wrong about that, Mr. Fennell?

2 Mr. Fennell - You're not. Mr. Bagley said it's
3 too expensive.

4 Mr. White - The - - - Under the Rule 56 process,
5 when - - -

6 Judge Kimball - What it says is, when one side
7 presents an affidavit in support of its motion,
8 then the obligation shifts to the opponent of
9 the motion to present a counter affidavit.

10 Mr. White - I believe what Rule 56 says, and
11 what the case law says is, when a party comes
12 before the court and articulates there's no
13 genuine issue of material fact, it is incumbent
14 upon the plaintiff to put into the record
15 sufficient evidence which, introduced at trial,
16 would be sufficient to satisfy all of its
17 elements, and they haven't done that.

18 Judge Kimball - You just said - - - You just
19 answered the question. You must come forward
20 with something that shows there is no genuine
21 issue of material fact. That's all I found,
22 there is, based on what's before me.

23 Mr. White - And what I'm articulating to the
24 Court is, the lack of any evidence, one way or
25 another, is not sufficient for the plaintiff to

1 withstand a motion for summary judgment. They
2 have to come forward with evidence.

3 Judge Kimball - And my question to you is, how
4 has the city shown that there's no genuine issue
5 of material fact? The answer is, it submitted
6 the affidavit of the city's utility director,
7 who said it's unreasonably expensive. That does
8 not mean that it's - - - As a matter of law, it
9 is - - - It does not show, as a matter of law,
10 that it is not practical or reasonable to
11 reroute the water. From the rest of the
12 evidence, there must only be a scintilla of
13 evidence to be drawn based on any influence in
14 favor of the non-moving party that there's a
15 genuine issue of fact. That's all I want, is a
16 genuine issue of fact.

17 Mr. White - And what I submit to the Court is,
18 there is no scintilla of evidence submitted by
19 the plaintiff in support of that that's
20 admissible.

21 Judge Kimball - With that being the point, I
22 think there is, based on the entire record.
23 There's an inference to be drawn from the entire
24 record.

25 Mr. White - The only way they could get it in is

1 through expert testimony. The expert, the only
2 thing he testified to was a conclusory statement
3 which would not be admissible at trial, and
4 thus, cannot create a scintilla of evidence.

5 It's - - - This - - -

6 Judge Kimball - How can you ignore the fact - -

7 - On either side, how can you ignore the fact
8 that water can be rerouted? That doesn't

9 require an engineer. Water can be rerouted.

10 Mr. White - Well, if that's the Court's ruling,

11 I - - -

12 Judge Kimball - No, that's not my ruling. I'm
13 just telling you, it seems to be that's where
14 you begin.

15 Mr. White - Well, if the Court's position is
16 that it's res ipsa, that it's - - - the thing
17 speaks for itself or - - -

18 Judge Kimball - No, it's not res ipsa.

19 Mr. White - Then - - -

20 Judge Kimball - Those are facts commonly
21 knowable by a layperson.

22 Mr. White - Without seeing Mr. Bagley's
23 affidavit to refresh my - - - It goes more than
24 saying it's expensive. It talks about
25 conflicts. It talks about grades. It talks

1 about water forces. It goes into greater detail
2 than that. I would submit, the way the lay of
3 the land is, I have cases that, you know, maybe
4 we'll look at later in these proceed - - -
5 further proceedings down the road. There's
6 cases that talk about how just the natural grade
7 of the land determines a lot of what happens as
8 far as where the water goes, so - - -

9 Judge Kimball - And nobody would disagree with
10 that.

11 Mr. White - Well, it's the plaintiff's job, in
12 response to a motion for summary judgment, to
13 come before this Court, and you take everything
14 that they present into the record and would be
15 admissible at trial. A jury could make a
16 decision based on that, that there's sufficient
17 evidence, and you - - - You infer everything in
18 their favor. They have not done that. They
19 have not come before this court with sufficient
20 evidence. They have not - - -

21 Judge Kimball - I disagree with you. I don't
22 want to hear anymore.

23 Mr. White - Okay.

24 Judge Kimball - Anything to add to that?

25 Mr. Fennell - No, sir.

1 Judge Kimball - All right. Anything further - -

2 -

3 Mr. White - No, Your Honor.

4 Judge Kimball - From either side?

5 Mr. Fennell - No, Your Honor.

6 Judge Kimball - All right. I will do an order

7 denying both motions by a Form 4.

8 Mr. Fennell - Yes, sir. Thank you.

9 Mr. White - Thank you, Your Honor.

10 Whereupon - The hearing concludes. Please note

11 the audio recording did not include the time the

12 hearing concluded.

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1 CERTIFICATE OF TRANSCRIPTIONIST

2 State of South Carolina)

3 County of York)

4

5 I, Kelly Lynn Reiter, a Notary Public for the State
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7 from court audio the foregoing proceedings at the time and
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9 true, accurate, and correct transcript of the aforesaid
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11 I further certify that I am not a relative, employee,
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13 employee of such attorney or counsel, nor in any way
14 interested in the event of said cause.

15 In witness my hand and official seal this the
16 ____ day of ____, 20____, in the City of Rock Hill,
17 County of York, State of South Carolina.

18

19



20

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Court Reporter/Notary Public

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23 My Commission Expires:

24 7-20-22

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LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015 Index: 1..articulates

<u>1</u>	<u>7</u>	addition	ahead 3:19
		23:10	9:2 19:24
1 3:2 28:6,	703 26:1	adequate 8:6	28:23
9		9:12,18,22	allegations
12(b) (6) /	<u>A</u>	admissible	25:23
summary 22:9		27:14,15,	alleged 5:15
15 3:3	abatable	16 31:4	alleges 10:2
	31:11,16	33:20 34:3	allowing
<u>2</u>	abating	35:15	7:22
	29:19	admit 26:4	alter 16:20
2 28:6	absence 31:1	advantage	amend 16:21
2003 24:20	accept 31:22	14:8	anymore
2012 13:21,	accepted	affidavit	35:22
22	26:11	15:1 24:25	appeal
2012-CP-46-	acknowledge	27:9 28:16	22:12,13
3928 3:9	22:1	32:7,9	applied 28:7
2015 3:3	acquiescence	33:6 34:23	apply 28:11
	22:1	affirmative	April 3:3
<u>3</u>	act 14:7,	17:7,19,24	argue 6:9
3 28:7	11,21	18:5 19:14	15:13
330 4:12	15:7,23	20:5,11,12	20:15
	17:8,19,24	23:21 24:4	argued 3:24
<u>4</u>	18:5,10	aggressive	14:21
	19:14	14:6,11,21	argues 10:25
4 28:7 36:7	20:5,9,18,	15:7,23	arguing 3:24
	21 21:3,6,	17:19,24	16:9 27:15
	10,22	19:14	argument
<u>5</u>	23:21	20:5,9,18,	11:5 13:8
5 18:18	action 8:19	21 21:3,6,	15:21
19:3,8	10:10	10,21	articulates
56 30:25	actions	agree 11:24	32:12
32:4,10	19:12	19:23	
59(b) 3:23	add 23:8	agreed 5:14	
	35:24	7:1	

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2016 Index: articulating..city's

articulating 32:23	33:13, 22 35:16		catch 18:15 19:13
		C	
asserted 15:6	basic 10:11 basically 22:3 26:2	calculations 29:18	caused 18:1 causing 4:25
assertive 14:7	basin 18:16	call 7:25	change 16:4 22:20
assist 26:3	19:13	Carolina 3:3 5:24 8:17	changed 15:18
audio 3:1,4 36:11	basis 16:20 17:8 26:25	carry 27:18	charge 28:21
August 5:7	Bear 10:16	CAS 24:9 25:3	Charles 3:11
availability 7:25 23:6, 24	bears 30:15 begin 34:14	case 3:8 8:8 9:9, 11,20,21 10:8 11:3 13:1,2 14:22 15:8,24 20:17 21:1 22:23 24:11,12, 16,23 25:16 26:5,24 27:7,12,20 29:15 30:3,9,14 31:1 32:11	Charles' 15:16 children 25:6 cited 6:17 24:7 25:3 city 3:9,12 5:2,10 6:3 7:19,22 11:23 12:10,11 13:16,22 16:10 17:5,8,11, 20 18:1,5, 7,11,15,17 20:19 21:1,11, 16,20 28:18 31:23 33:4
award 6:12	beginning 3:4		
aware 9:9,20 10:8	begins 25:4		
	believes 4:24		
B			
back 4:2 17:1 19:9, 10 22:7 24:1	beneath 5:22 14:3 bit 10:1 black 10:11		
background 3:25	Bradford 3:11 13:25		
Bagley 28:17 31:25 32:2	built 22:2		
Bagley's 34:22	burden 20:3, 4 21:12, 13,24 22:3 27:18 28:24 31:1	cases 6:18 8:5 10:25 16:1 22:25 24:7 35:3, 6	
based 6:12 10:14 11:5 20:15 21:23 28:2 29:3 32:22		casting 18:17 19:12	city's 5:22 13:25 16:20,23

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015 Index: claim..damage

17:16,24	completely	conflicts	court 3:1,2
21:2 23:5	18:3	29:3 34:25	6:25 7:21
29:11,25	complex	Congress 3:2	8:20 9:25
30:1,7,19	25:17	considered	10:9,11,13
33:6	computer	13:5,7,20	13:6 15:13
claim 6:2,8,	25:5,18	17:7	16:21 17:5
24 13:11	computers	considers	20:24
22:9 25:16	25:19	31:23	24:24
claimant's	concentrations	consistent	25:4,12,14
14:7	27:5	8:17 28:3	26:9,10
claims 25:24	concluded	constitutes	27:24,25
clear 5:24	36:12	18:12	30:17,21
11:13	concludes	continues	32:12,24
code 25:6	36:10	6:14	33:17
collected	concluding	continuing	35:13,19
5:17,21	25:15	5:15,25	Court's
collection	conclusion	6:10,19	21:23
12:6 17:6,	28:12	7:18 8:1,	34:10,15
11	conclusions	13 9:18,	courts 8:16
collects	25:1	21,22	create 16:6
17:16	conclusory	10:23	34:4
College	25:1 27:9	11:8,22	created
4:11,12	34:2	12:3 13:4	18:2,7
13:22	condemnation	24:3,5	20:20
commencing	9:1 13:11	30:15	21:5,7,11
3:3	14:6	copy 7:3,4	creating
commonly	condemnor	14:23	18:5 21:21
34:20	16:3,4	Correct	creek 29:16
complaining	condition	11:16	culvert
31:11	6:12	12:21	19:13
complaint	conduct 8:21	22:11	
10:2	conference	counter 32:9	D
complete 8:3	6:25 7:11	country 8:18	damage 4:25
			6:11 21:17

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015 Index: damages..entitled

damages	denied 23:3	dismissal	duty 24:4
8:11,20	deny 7:20	10:10	
9:13 10:1,	13:8 16:17	25:25	E
2,3,6,12	denying 36:7	dismissed	
data 29:18		5:6 6:8	easement
31:25	department		14:2
Dawkins	5:3,6	dismissing	easy 11:25
24:11,13,	13:16	6:24	effect 16:3
16,20	28:22	dispersed	electrical
	30:11	5:22	28:20
day 25:20	design 25:20	dispose	element
deal 8:1,7	detail 24:8	18:11	26:16
9:5 12:13	35:1	distinction	elements
23:16,17	determines	6:5 10:23	14:5 31:5
30:11	35:7	ditch 17:13,	32:17
dealing 8:19	difference	18 18:16,	employee
deals 12:13	22:16	18,22,24	28:18
16:11	directly	19:7	enclosed
23:25	13:2	Dobbs 26:11	19:9
25:10	director	document	ends 12:14
decide 7:21	33:6	29:2	engineer
15:18	disagree	DOT 18:18	28:7,8,19,
23:12,18	12:16 16:8	DOT'S 19:12	20 34:9
decided 7:12	18:8 19:1	downhill	engineering
8:16 17:14	35:9,21	17:17	27:2 28:11
19:5	discharge	downstream	29:14,18,
decision 7:2	11:17 17:6	18:25	21 31:25
15:15	19:8	drainage	enjoined
23:11	discharging	4:19,20	7:22
24:21	18:6	16:6	entire
28:2,5	disconnected	drawn 33:13,	33:22,23
35:16	13:23	23	entitled
defendant	dismiss 23:4	drops 18:16	7:13
21:14			
denial 22:9			

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015: equation..go-around

equation	fact 5:13	8:5,25	20:19,21
20:13	6:17 8:7,	9:3,7	27:3
equity 10:13	22 15:3	10:19,20,	flowing 9:14
event 13:21	17:15 21:4	25 11:4,7,	19:15
evidence	26:15,20	11,16,20,	flows 12:12
8:10	28:6,9,10	23 12:5,	forces 35:1
13:13,15,	31:23	10,17,21,	forever 4:1
18 14:9	32:13,21	25 13:9	form 25:19
19:25	33:5,15,16	14:13,15,	36:7
30:10	34:6,7	19,23	forward 7:12
32:15,24	factors	15:4,9,21,	10:7 30:7
33:2,12,	27:25	25 16:8,	32:19 33:2
13,18 34:4	facts 17:10	13,16	found 9:25
35:17,20	26:3 28:1,	23:8,10	11:4,9
excuse 24:11	8 34:20	24:9 32:1,	16:21 17:5
expensive	factual 3:25	2 35:25	32:21
29:5,6,7,	fade 15:10	36:5,8	full 24:15,
25 30:2	fail 8:3	field 28:4	17
31:24 32:3	failed 5:1	Fields 24:20	function
33:7 34:24	27:18	fifty 22:11	26:13 27:1
experience	fashion	file 8:13	
25:22	25:19	15:16	
expert 25:8,	favor 33:14	filed 3:17	
11,24	35:18	5:1	G
26:4,21	federal	final 7:4,14	gained 23:1
27:7,22	26:11	find 15:22	garbage
34:1	fence 12:1	finding 17:9	12:1,6
expertise	Fennell	18:4	gatekeeper
28:3	3:12,15,	fix 12:20,	26:12
experts 26:6	18,20,23	22	genuine
F	4:8,10,14,	flooded	32:13,20
facie 31:19,	18,24 5:6,	29:16	33:4,15,16
21,22	9,20 6:7	flow 6:14	go-around
	7:6,8,10	16:5 18:24	14:24

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015: government's..judge

government's	24:8 25:4		intentional
14:8		I	17:8
highway			
grade 35:6	18:18	ignore 34:6,	introduced
grades 29:3	19:3,8	7	32:15
34:25	30:11	III 3:5	inverse 9:1
granted 5:9	Hill 3:10,	illuminate	13:11 14:5
27:20 30:5	13 4:11	19:19	involved
Grays 24:8,	holding	imagine 14:9	26:6
11 25:3	24:12,13	inadequate	involves
Grays' 25:16	Honor 3:15,	8:4	9:21 25:17
great 25:25	16 9:9	include 3:4	ipsa 34:16,
greater 24:8	16:16,19	28:10	18
35:1	23:10	36:11	issue 5:12
ground 4:4	36:3,5,9	incumbent	6:22 7:15
grounds	Honorable	32:13	9:3 10:4
16:19	3:5	indicating	13:9 14:10
	hope 23:1	4:13,23	19:19
	hoping 22:18	infer 35:17	23:24
H	hour 22:23	inference	24:10
happened	house 4:11,	33:23	25:10 26:5
19:3	20,25 5:23	influence	32:13,21
happening	6:12,14	33:13	33:4,15,16
22:19	12:15	information	issues 5:11
hard 27:6	13:24 14:4	17:10	24:4,24
hear 16:12	17:3,7	25:13	25:7,18
35:22	21:17		J
	29:17	initial 6:22	
heard 14:11	hydrology	injunctive	Jackson 3:5
hearing 3:5	27:3 30:4	5:25 6:3,	job 25:25
36:10,12	hypothesis	8,21,24	35:11
heavy 27:4	9:13,16,17	7:14 13:5	judge 3:8,
helps 22:4	hypothetical	8:1 9:10	17,19,20,
highlight	18:14,15		22 4:5,9,
	20:7,15		13,17,23

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015 Index: judgment..Lucille

5:5,8,18	35:9,21,24	19:1,17,23	18,23 15:8
6:5 7:3,7,	36:1,4,6	20:1,6,8,	25:16
9,24 8:23	judgment	12,22	32:11
9:1,5,8,	5:10 7:20	21:7,16	33:8,9
15,24	22:10	22:5,7,12,	lawsuit 5:2
10:14,19,	25:12,14	14,16,22,	8:14,15
21 11:2,6,	27:13,19	25 23:7,22	lawsuits
10,12,17,	30:5 33:1	24:15,18,	8:16 13:4
21,24	35:12	22 26:14,	lawyer 13:25
12:9,16,	June 3:21	19 28:13,	lay 35:2
19,20,24	jury 6:13	18,20,23,	layman 25:22
13:7	7:13 8:10	25 29:5,7,	layperson
14:10,14,	26:3 35:15	13,24	34:21
18,20		30:9,23	left 19:4
15:2,5,20,		31:8,14,21	legal 25:1,2
22 16:1,	K	32:6,18	legitimately
12,14,17		33:3,21	24:10
17:4,21	Kimball 3:5,	34:6,12,	letter 13:25
18:8,10,22	8,17,19,22	18,20	15:16
19:1,17,23	4:5,9,13,	35:9,21,24	level 26:15
20:1,6,8,	17,23 5:5,	36:1,4,6	limitations
12,22	8,18 6:5	kind 3:25	5:18 24:2
21:7,16	7:3,7,9,24	knowable	list 7:16
22:5,7,12,	8:23 9:1,	34:21	lives 4:11
14,16,22,	5,8,15,24		25:20
25 23:7,22	10:14,19,		lot 4:3,21
24:15,18,	21 11:2,6,	L	11:9 30:21
22 26:14,	10,12,17,		35:7
19 28:13,	21,24	lack 32:24	Lucille 3:9
18,20,23,	12:9,16,	lady's 29:17	13:24
25 29:5,7,	20,24 13:7	land 35:3,7	14:25
13,24	14:10,14,	landowner	
30:9,23	18,20	20:20	
31:8,14,21	15:2,5,20,	26:22	
32:6,18	22 16:1,	law 5:23	
33:3,21	12,14,17	8:4,6	
34:6,12,	17:4,21	9:12,17,	
18,20	18:8,10,22		

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015 Index: made..owns

	meet	14:22	multiplicity	32:8
M			6:20 8:15	
	memo	10:15	13:3	occurrence
made 10:23	memories			11:19
make 10:12	15:9		N	offer 31:17,
11:25	memory 11:13			19
12:2,18,22	15:10	natural		offshoots
21:14	mere 31:2,3	18:22,24		18:19
22:17	methodologies	35:6		open 15:13
23:11	28:2	naturally		17:12 19:7
35:15		12:7		opinion
makes 11:21	mind 4:3	nature 7:18		25:17
24:25	15:18	30:16		opinions
mandate	22:20	needed 15:16		25:1,2
23:17	minds 15:11	neighbor		opponent
mandatory	mine 15:10	12:1		32:8
6:6	money 10:1,	non-moving		order 4:2
manhole 17:2	3,12	33:14		5:7 6:19,
manner 12:14	monitor 25:6	North 3:2		21 7:4,14
map 4:14	months 3:24	note 3:3		10:22 11:5
Mark 3:13	15:10	36:10		13:3,20
5:10	motion 3:1	November		15:17
Master-in-	7:20 10:7	13:21		16:21
equity 3:2	15:17			21:23 36:6
material	16:18,20	number 3:8		ordinary
32:13,21	17:9 22:10	5:1,3 7:15		25:21
33:5	23:4,6	24:7 25:7		owned 17:13
matter 23:2	28:14	27:21		owner 21:4
25:15	30:23,24			22:2
33:8,9	31:14,15,	O		ownership
	18 32:7,9			13:14
meaning	33:1 35:12	obligation		owns 19:11
15:24	motions 3:14	27:12		
Medical 24:9	16:10 36:7	29:11		
25:3	mounted 4:16	30:6,15,		
		17,19 31:6		

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2016 Index: paraphrasing..put

	19 30:10	practically	previous
P		25:9 26:6,	21:4
	piped 19:7	9	
paraphrasing	pipes 5:17,	present	prima 31:19,
27:11	21 13:23	3:10,12	21,22
park 29:16	piping 11:14	13:13 32:9	prior 17:14
part 15:19,	plaintiff	35:14	problem
21 17:2	3:11 21:13	presented	30:12
22:21	30:6,14	13:19	proceed 6:2
27:17	32:14,25	31:25	35:4
partial 5:9	33:19	presents	proceedings
party 32:11	plaintiff's	32:7	35:5
33:14	10:15	presiding	process 32:4
path 18:12,	16:18	3:6	processes
20	35:11	presume	28:11
pattern 16:6	plan 4:3	20:16	prong 23:5
people 8:9	pleadings	presumes	proof 20:4
perfectly	31:2	9:13	27:17
29:24	point 10:7	presuming	proper 27:22
perspective	33:21	18:7	28:9
22:8	pond 19:9	presupposes	property
phone 7:10	position	17:10	14:8 17:1,
	34:15	presupposition	13 19:11
pipe 4:19,	positive	17:23	21:5 23:14
20,22,25	14:6,11,21	presupposition	26:23
13:12,14,	15:7,23	s 17:21	27:11
23 14:3	20:5,8,10,	pretty 5:24	proposition
15:6	21	8:17 30:13	29:19
16:23,24,	practical	prevail 6:11	prove 30:25
25 17:15,	26:18,19	prevailed	pull 7:3
18,25	27:2 28:15	6:3	punitive
18:1,4,6,7	29:10,21	prevent 6:19	16:3
19:5,9,14,	31:17	13:3	put 8:9
16 20:19,	33:10		
20 21:2,25			
23:12,14,			

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015 index: putting..required

16:10	17:7,14	reconsider	13:10
17:15 18:1	21:17	3:1,14	relating
19:5	23:13	5:11,13	13:20
23:14,15	30:17	7:2 9:4	reliability
32:14	read 10:25	13:10	28:1
putting	19:21 23:1	16:11	reliable
21:1,2,12	reading	reconsidered	27:23
	10:21 14:4	7:11	relief 8:1
<u>Q</u>	16:2 22:25	reconstructing	9:11 10:22
qualified	reargue	16:5	relocation
27:23	13:17	record 10:3,	29:4
question	reason 8:3	6 15:19	remedy 6:1,
15:2 19:17	27:10 30:5	17:11 18:3	10 8:4,6
20:23	reasonable	19:21	9:12,18,23
26:15,20	26:16 27:1	20:1,2,16	remember
29:8 32:19	28:15	21:3,8,9,	4:9,10
33:3	29:10,21	10,23 22:6	6:23 24:18
questioning	31:16	25:13	27:7
15:3	33:10	32:14	render 28:4
	reasons 5:4	33:22,24	repeated
<u>R</u>	rebut 31:8,9	35:14	10:24 11:9
rains 5:16	recall 3:20,	recorded 3:1	repeating
12:11	22 6:23	recording	12:3
raised 14:10	14:20 15:5	3:4 36:11	replow 4:3
raises 19:19	29:14,17	redirecting	replowed 4:6
ran 29:16	32:1	27:3	representing
Ray 3:9	recognize	reduces 14:7	3:10,12
4:11,24	20:25	reference	represents
6:2 17:14	recollection	15:15	15:23
Ray's 5:23	16:2	referring	require 27:6
12:15	reconnect	30:3	34:9
13:24	14:1,3	refresh	required
14:4,25	reconnection	34:23	
	15:6	relates	

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015x: requiring..standard

12:12	road 19:5,6	34:4	7:6,8 8:25
requiring	35:5	sending	9:7 10:18,
25:16	roads 5:22	17:24	20 11:7,
reroute	16:6	sends 17:16	11,20 12:5
33:11	Rock 3:10,	separate	13:9
rerouted	13 4:11	5:11	14:13,19
34:8,9	rule 3:23	sets 31:15	15:4,9,25
rerouting	10:11	shifted	16:8,13
29:20	11:10,12,	21:24	35:25 36:8
res 34:16,	14,17 26:1	shifting	situation
18	30:25	21:13 22:3	8:12 13:5
resolve	32:4,10	shifts 31:1	18:2 19:22
10:1,4	ruling 5:12	32:8	21:5,8,12
resolved	6:22 13:12	shoots 12:7	31:10
8:12	22:8,21	show 6:13	situations
resort 10:13	24:25	20:4,6,8,	19:20
respects 5:1	34:10,12	10,17	six-year
response	run 5:19	21:20 24:4	24:1 31:12
35:12	25:21	28:14	small 30:10
rest 33:11	27:10	29:12	software
result 23:3	runs 13:24	30:15,18,	25:21
rethinking	s	20 31:2,6,	sort 22:1
10:9	satisfied	10 33:9	South 3:3
reverse	31:4	showing	5:24 8:16
22:21	satisfy	21:25 30:7	speaks 34:17
rhetical	13:14 15:8	shown 21:11,	specific
20:22	32:16	14 33:4	24:13,25
Rich 3:12	saturation	shows 32:20	speculation
7:3	27:5	side 32:6	31:3
Rich's 9:12	science	34:7 36:4	spent 22:22
rights 14:8	25:18 26:2	sides' 3:14	standard
	scintilla	sir 4:8,10	14:22
	33:12,18	5:20 6:7	26:11,12

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2011

standpoint	streets	30:5 33:1	34:13
27:2 29:22	12:12	35:12	tells 12:19
30:1	structure	support	ten 3:23
started	25:20	25:23 27:8	15:10
31:12	stuck 31:12	28:14	terms 29:15
starts 17:1	study 29:14	29:18	test 21:18,
state 26:10	30:4	31:17,18,	19
30:10	subject	20,22 32:7	testified
statement	16:23,25	33:19	29:2 34:2
27:9 34:2	17:15 23:2	surface	testify
statements	25:25	23:18	26:22
27:24	submit 21:15	surfaces	testimony
statute 5:18	28:14	27:6	25:8,24
12:13	33:17 35:2	surprised	26:4,21
24:1,3	submitted	15:14	27:7,22
31:12	4:15	system 12:6	34:1
statutory	14:15,24	17:11,16,	testing
23:17	33:5,18	25	30:25
stop 6:15,	sue 6:16		thing 29:25
21 12:17,	7:19 10:5	T	34:2,16
18,19	12:23	takes 12:6	things 7:16
stopping	sufficient	taking 13:16	16:7 27:20
8:21	13:13	21:21	thought 7:1,
stops 11:23	14:21 15:7	talk 35:6	10 8:3
storm 4:19	25:13	talking	15:16
27:5	32:15,16,	16:25	three-year
storms 27:4	25 35:16,	talks 34:24,	24:2
stormwater	19	25	throw 12:1
4:19	suggest 10:8	technical	time 3:4
street 3:2	suits 6:20	26:2	5:16,20
20:19	summary 5:9	telephone	12:11
23:18	7:20	6:25	23:12,19
	25:12,14	telling	36:11
	27:13,19		

LUCILLE RAY VS CITY OF ROCK HILL, SOUTH CAROLINA, ET AL.

Transcription of a Motion to Reconsider on 04/15/2015

Index: title..York

title 24:15,	type 8:8	void 18:3	21:9,18
17	types 30:21		22:6,11,
trailer 19:4		W	13,15,18,
trailers	U	wanted 17:14	24 23:5,
19:10	ultimate	19:5	22,24
Transportation	25:1	water 4:21,	24:17,20,
5:3,7	underneath	24 5:16,21	23 26:18,
13:17	4:20 6:14	6:13 7:23	20 28:16,
trespass	12:15	11:6,18	19,21,24
5:14,15,	13:24	12:11,14	29:1,6,9,
23,25	understand	16:5,22	23 30:3,
6:10,19	13:11 16:9	17:6,16,25	14,24
7:18 8:2,	17:4 26:24	18:6,10,	31:9,19
12,21,22	29:24	11,12,17,	32:4,10,23
9:19,22	understanding	20 19:6,8,	33:17,25
10:24	23:2 25:22	12,15	34:10,15,
11:2,4,15,	unlawful	20:18	19,22
18,19,22	8:22	21:1,2	35:11,23
12:3 13:4	Unreasonable	23:15,16,	36:3,9
16:22	30:1	18,19	widened 19:4
18:13,20	unreasonably	27:10	withstand
19:15	29:4,6	29:20	25:14 33:1
21:19 22:8	31:24 33:7	33:11	words 29:13,
23:9,13,21	upstream	34:8,9	20
24:6 29:19	18:2	35:1,8	work 13:22
30:16	utility	week 12:2,9	wrong 32:1
trial 6:11	28:21 33:6	White 3:13,	wrote 13:25
7:21 8:9		16 9:8,9,	15:13
27:14,16		20,25	
31:4 32:15		10:18	
34:3 35:15	V	16:18,19	
trouble	versus 24:9	17:5,23	yard 12:2,7
25:15	viewpoint	18:9,14,24	23:13
true 6:7	30:2	19:2,18,25	Years 19:10
28:9		20:3,7,10,	York 3:2
		14,24	

1 STATE OF SOUTH CAROLINA.

2 -----x

3 LUCILLE H. RAY,

4 Plaintiff,

5 Case No.

6 -against-

2014-CP-46-4100

7 CITY OF ROCK HILL,

8 Defendant.

9 -----x

10 September 12, 2016

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE D. GARRISON HILL

15

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

17 CHARLES S. BRADFORD &

18 RICHARD B. FENNELL

19 Attorneys for the Plaintiff

20

21 WILLIAM MARK WHITE, Esquire

22 Attorney for the Defendant

23 Aileen Butler

24 Official Court Reporter

25

1			<u>I N D E X</u>		
2	<u>WITNESS</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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4		(NO EXHIBITS ENTERED)		
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1 THE COURT: Okay, so we are ready for the jury
2 panel to come up.

3 THE BAILIFF: Judge, the bailiff -- the chief
4 bailiff said that they would send us a jury. It would
5 be anywhere from 10 minutes to 30 minutes.

6 THE COURT: Oh, ok. That's good to know. Well,
7 let's see, let's get some stuff done. Do you all have
8 any voir dire you want to talk about or does everybody
9 agree on it?

10 MR. FENNEL: Your Honor, I filed a proposed voir
11 dire, the most important question is question 42 which
12 has been marked as modified and I think he's correct
13 in the modification.

14 May I approach.

15 THE COURT: Sure.

16 MR. FENNEL: As I indicated because of Judge
17 Kimbrall's orders there is a pretty specific set of
18 rules to apply to this case and I think that more
19 accurately states what we are talking about.

20 MR. WHITE: Your Honor, I don't object. I didn't
21 quite get to finish reading that. That's a little
22 more extensive than I'm use to.

23 My only two requests for voir dire specifics are,
24 does anyone ever had an issue with flooding or anyone
25 had an issue with trespass.

1 MR. FENNEL: And I don't have any problem with
2 that Judge.

3 THE COURT: Okay.

4 MR. WHITE: And I will finish looking at that in
5 the next two minutes.

6 Your Honor, may I approach.

7 THE COURT: Sure.

8 MR. WHITE: Prepared this for your consideration.

9 (WHEREUPON, there was a document handed to the
10 Court.)

11 THE COURT: So I will be inclined to just ask a
12 pretty simple voir dire about if they are related by
13 blood or marriage to the parties or any witnesses and
14 I guess there is a witness list here I can go by. If
15 they have a personnel, social or business relationship
16 with any of those people, whether they ever had an
17 issue with flooding or trespass, whether they've had
18 prior involvement with a civil lawsuit and if so what
19 kind, whether or not they had either had a dispute or
20 filed a claim against the City of Rock Hill or other
21 governmental entity, whether they have some bias or
22 prejudice about the the civil justice system to the
23 extent they couldn't be fair or impartial in a civil
24 case, whether they know of any bias or prejudice about
25 this matter, whether they know the lawyers or related

1 to the lawyers or have a relationship with the
2 lawyers.
3 That will be about probably be as far as I am going
4 to go.
5 MR. WHITE: Yes, sir.
6 THE COURT: Anything else we can talk about before
7 the jury comes in.
8 MR. FENNEL: I don't know that there is a motion
9 that is short.
10 THE COURT: Okay. Do you all want to get into the
11 motion in limine and we see how far we can get before
12 the jury comes up. As much as I enjoy this staring
13 contest, probably not a productive use of our time.
14 So this is the plaintiff's motion in limine.
15 Excuse me -- the City's.
16 MR. WHITE: Thank you, Your Honor.
17 Mark White, I represent the City of Rock Hill in
18 this matter. The City asked the Court to exclude
19 certain anticipated portions of the structural expert
20 retained and proposed the testimony by the plaintiff
21 Miss Ray. Just so we are clear, under our rules there
22 are three thresholds determination for expert
23 testimony. We are only going to deal with the third.
24 The first one is whether the subject matter is one
25 that requires expert testimony. We do not contest

1 that. Number two, is whether the person in question
2 has by experience or education or some form acquired
3 an expertise that's not common to the lay person such
4 as to assist the trier of fact. We do not contest
5 that Mr. Leonard does meet that qualification, except
6 as to perhaps the geotechnical service which we will
7 talk about in a second. But as structural engineer he
8 does and admittedly so by the City.

9 The third requirement though is the one that we are
10 dealing with here. The substance of the testimony
11 must be deemed reliable, and our courts have set up a
12 gatekeeper role for Your Honor and in fact one of the
13 cases, State V White even has a quote that says the
14 familiar evidentiary mantra that a challenged evidence
15 goes to weight, not admissibility. It even preempts
16 what a lot of older judges would say. That familiar
17 mantra can only be evoked by a trial judge after it
18 vetted the matters of qualifications and reliability
19 and admitted the evidence.

20 So the Court has been vested with not only the
21 authority but the mandate to serve as gatekeeper to
22 make sure that evidence that comes under the cloak of
23 expert testimony, scientific testimony, is reliable.
24 When you look at reliability, there are a lot of
25 factors; the publication and pure view technique,

1 prior application of the method, the quality control
2 procedures used to ensure reliability. That one comes
3 in to play here. The consistency of the method with
4 recognized scientific laws and procedures. That's
5 from Graves v CAS Med Systems.

6 THE COURT: Let me -- I see Mr. Hamilton. Is the
7 jury now?

8 THE CLERK: The are waiting out front there
9 whenever you are ready.

10 THE COURT: All right, we are ready I guess.

11 THE CLERK: Bring them in?

12 THE COURT: Okay.

13 MR. WHITE: Thank you, You Honor. We at least got
14 the preamble done.

15 THE COURT: Yes, you did.

16 (WHEREUPON, the jury enters the courtroom.)

17 THE COURT: All right good afternoon, ladies and
18 gentlemen. My name is Gary Hill. I am one of the
19 circuit judges in our state and I'm from Greenville.
20 I am glad to be serving with you this week in the
21 County of York, and we are going to select a jury in
22 the case of Lucille H. Ray versus City of Rock Hill.

23 This case involves allegations about trespass and
24 water runoff that Miss Ray alleges has caused her
25 damage and the lawyers will tell you more about it

1 when we --

2 JUROR: Speak up.

3 THE COURT: You can't hear me? Let's see.

4 THE CLERK: There's a switch.

5 THE COURT: Right here?

6 THE CLERK: Down at the base.

7 THE COURT: Is that any better? I will try and
8 speak up. Can everybody hear me?

9 (Jurors respond affirmatively)

10 THE COURT: Okay.

11 All right, this case is Lucille H. Ray verses City
12 of Rock Hill. It alleges that Miss Ray had damage
13 caused to her property by water runoff or flooding
14 that she alleges is the responsibility of the City of
15 Rock Hill. The lawyers will tell you more about it in
16 their opening statements. Right now we just have to
17 make sure we can find a jury that will be fair and
18 impartial in this matter and can decide it without any
19 kind of bias or prejudice. So to that end I will ask
20 a series of questions and we will have the jury
21 selected hopefully in pretty short order.

22 If you need to response to any of my questions
23 please just stand up if you can or raise your hand and
24 tell me your name and jury number and then can you
25 respond.

1 The first thing I want to do is see if anybody is
2 related by blood or marriage or kin to in any way to
3 Miss Lucille H. Ray. And Miss Ray if you can just
4 identify yourself, ma'am.

5 (WHEREUPON, the plaintiff stands.)

6 THE COURT: If anybody is related by blood or
7 marriage to Miss Ray or kin to her in any way please
8 raise your hand.

9 Does anyone have any personal, social or business
10 relationship which Miss Ray, if so please stand. I am
11 going to ask the lawyers who are going to be involved
12 in this case to introduce themselves and anybody at
13 their table.

14 Yes, sir.

15 MR. FENNELL: Thank you. I am Rich Fennell. I
16 represent Miss Ray. With me is my parnter, Jennifer
17 Houti, and my colleague, Charles Bradford.

18 THE COURT: Thank you, sir.

19 MR. WHITE: My name is Mark White and I represent
20 the City of Rock Hill with my colleague, Jerry
21 Melville.

22 THE COURT: Thank you. Anybody related by blood
23 or marriage or kin to any of the lawyers that are
24 going to be involved in this case, if so please stand.

25 Does anyone have any personal, social or business

1 relationship with any of the lawyers, if so please
2 stand.

3 (Two people stand.)

4 THE COURT: Yes, sir.

5 JUROR: My name is Charles Meadow. My number is
6 116.

7 THE COURT: Thank you.

8 JUROR: And I know Mr. Bradford.

9 THE COURT: Would that effect your ability to be
10 fair or impartial in this case Mr. Meadow.

11 JUROR: I would say yes, I believe that I can be
12 fair, but I don't know the circumstances so I don't
13 want to tell you something that might turn out
14 otherwise.

15 THE COURT: All right. Well, I will excuse you
16 from the case sir, just so you would not feel
17 uncomfortable. All right.

18 Okay. Yes, ma'am.

19 JUROR: Lyla Johnson, 92. I worked for the City of
20 Rock Hill.

21 THE COURT: Okay. How are you employed by them?

22 JUROR: Planning and development department.

23 THE COURT: Okay. Well, I haven't gotten to that
24 question yet, but I appreciate your foresight. I'll
25 come back to you. I'm was asking you about the

1 lawyers right now if anyone is related by blood or
2 marriage to them or have any personnel, social or
3 business relationship with them. Okay.

4 The people who may testify in this case include
5 Daniel Bunnell, B-u-n-n-e-l-l, Allen L. Lumpkin, James
6 J. Bagley, Matt Kirshner, Kim Cassarus, Robert Young,
7 Lucille Ray, Hale Murray, Bob Macock, Marshall Rogers,
8 Mark Leonard, Ed Cummings, Leslie Macock.

9 Is anyone related by blood or marriage or kin to
10 any of these potential witnesses, if so please stand.

11 Does anyone have any personal, social or business
12 relationship with any of these witnesses, if so please
13 stand.

14 Yes, ma'am.

15 JUROR: Marshall Rogers has been a family friend
16 for years and years. He and my brother went to grade
17 school together.

18 THE COURT: And your name?

19 JUROR: Jamie Struif-pheowski 179

20 THE COURT: Thank you. All right, I excuse you
21 from this case ma'am.

22 Has anyone ever been employed by the City of Rock
23 Hill or brought a claim against the City of Rock Hill
24 or had a dispute with them or had a member of your
25 immediate family be employed by the City of Rock Hill,

1 and by mediate family I mean spouse, a parent or a
2 child or sibling.

3 Okay. Starting right here with you, sir.

4 (Indicating)

5 JUROR: Juror number nine, Rock Hill Fire, Rock
6 Hill PD.

7 THE COURT: You currently work there?

8 JUROR: Yes, sir.

9 THE COURT: All right, I will excuse you from the
10 case sir.

11 Yes, ma'am.

12 JUROR: Ninety-two, Lyla Johnson.

13 THE COURT: Okay, I'll excuse you.

14 THE COURT: Ma'am.

15 JUROR: Number 11, Sara Baker. I'm currently
16 employed by the City of Rock Hill.

17 THE COURT: I will I excuse you from the case.

18 Yes, sir.

19 JUROR: Sandy Crowder, number 40, my son is employed
20 by the City of Rock Hill.

21 THE COURT: In what capacity?

22 JUROR: He is on the meter staff.

23 THE COURT: Okay, and would that he effect your
24 ability to be fair and impartial in this case?

25 JUROR: I don't think it would.

1 THE COURT: You could decide the case solely on
2 the evidence and the law?

3 JUROR: Yes, sir.

4 THE COURT: Thank you.

5 JUROR: Harry Fetter, juror 56. Work for an
6 engineering firm that is under contract with the City
7 of Rock Hill, doing storm water.

8 THE COURT: All right, I will excuse you from the
9 case. Storm water.

10 THE COURT: Has anyone ever had an issue with
11 flooding or trespass or water runoff in terms of their
12 property whether you were involved in a dispute with
13 another person about that, or had an issue with it
14 whatsoever? If so please stand or raise your hand.

15 JUROR: Your Honor, Gary Simrill, juror number 164.
16 I represent House District 46 which lies within the
17 City of Rock Hill. I own property in the vicinity of
18 Miss Ray's property and have spoken to her about this
19 case prior to it being adjudicated as her
20 representative and as a property owner in that area.
21 I don't know if you have a box for that you were
22 coming to that sir. I just wanted to make sure --

23 THE COURT: No, I appreciate that Mr. Simrill and
24 I'm glad that your public service has allowed you some
25 benefit.

1 JUROR: Yes, sir.

2 THE COURT: I'll excuse you from the case sir.

3 JUROR: Yes, sir.

4 THE COURT: Thank you for being here.

5 Does anyone have any strong feeling about the
6 civil justice system, or about the Court system to the
7 extent that they don't feel they can be fair and
8 impartial in this civil case? If so, please raise
9 your hand.

10 Has anyone ever been a party to a civil lawsuit
11 before?

12 All right, just tell me the nature of the case.
13 That's all I need to know and whether you brought the
14 case or had it brought against you.

15 JUROR: Juror number 55. I was a defendant in an
16 accident case.

17 THE COURT: Thank you.

18 JUROR: Plaintiff and defendant. It was a
19 landlord/tenant as plaintiff, and as defendant in a
20 district case.

21 THE COURT: Your number?

22 JUROR: Juror 101.

23 THE COURT: Thank you.

24 JUROR: Forty-seven. I was plaintiff in a car
25 accident.

1 THE COURT: Thank you.

2 All right. Does anyone know of any bias or
3 prejudice they might have about anyone involved in the
4 case or any issue involved in this case?

5 Let me ask you to come down here if I could.

6 JUROR: Thank you, Your Honor.

7 (WHEREUPON, juror comes down to the sidebar.)

8 JUROR: My name is Matthew Klein. I am president
9 of North Carolina Utilities, Inc Carolina, it may
10 involve different legal issues similar to here.

11 THE COURT: We will excuse you.

12 All right, we will proceed with the selection of
13 the jury.

14 Yes, ma'am.

15 JUROR: For that last question. You said do you
16 feel --

17 THE COURT: Do you want to come down here?

18 JUROR: I'm Juror number 152, Paige River.

19 (Whereupon, there was an off the record
20 discussion.)

21 THE COURT: You are excused.

22 All right. We are having some computer problems up
23 here evidently. So, there is no reason for people
24 that have been excused to stick around. I'm sure you
25 have better things to do. Do they need to call back

1 tonight?

2 THE CLERK: No, sir, they are going to be
3 dismissed completely.

4 THE COURT: Okay, but I do thank you for your
5 service, and Mr. Simrill, you in particular. You have
6 been a wonderful representative for Rock Hill for a
7 long time and it would have been easy for you to try
8 and avoid your jury obligation. I know you wouldn't
9 do that but you would be surprised how people do try
10 and do it and I think be commended to being here
11 because I know this is a busy time for you when you
12 are out of session. So if anybody been excused you
13 are free to leave at this time and we will work on the
14 sheet up here.

15 How much time do you think you will need with the
16 list?

17 MR. FENNELL: About five minutes.

18 THE COURT: All right. Thank you.

19 (WHEREUPON, there was a brief recess.)

20 THE COURT: Okay, everybody ready. All right.

21 THE CLERK: Alternate back and forth with the
22 plaintiff and the defendant. Plaintiff starting
23 first.

24 MR. FENNELL: We would strike number five.

25 MR. WHITE: Strike number two.

1 MR. FENNELL: Number seven.

2 MR. WHITE: Number one.

3 MR. FENNELL: Number ten.

4 MR. WHITE: Number eight.

5 MR. FENNELL: Number eleven.

6 MR. WHITE: Number six.

7 MR. FENNELL: Number 23.

8 MR. WHITE: Number 22.

9 THE CLERK: I would like to verify the strikes for
10 both sides. I the following strikes for the
11 plaintiff; five, seven, ten, eleven, and alternate
12 twenty-three. Is that correct?

13 MR. FENNELL: Yes, ma'am.

14 THE COURT: And for the the defendant, I have two,
15 one, eight, six and for your alternate twenty-two?

16 MR. WHITE: Yes, ma'am.

17 THE CLERK: Ladies and gentlemen as I call your
18 name please your bring your personnel belongings and
19 move to the jury box here to my right.

20 Juror number 55, Joanne Fallow; Number 23, Rosalind
21 G. Burton; number 76, Linda B. Harris; number 123,
22 Derek Moore; number 89, Fonda D. Hyatt; number 171,
23 Jeannette L Stabler; number 28, David H. Champbell;
24 number 58, Mary C. Finns; number 184, Melissa L.
25 Thompson; number 20, John Buchanan; number 162,

1 Danielle L. Simcox; number 160, Ervin T. Shillinglaw;
2 and number 47, Donna L. Deruyscher.

3 THE COURT: Okay. Any matters or motions related
4 to the selection process or composition of the jury?

5 MR. FENNELL: Not from the plaintiff.

6 MR. WHITE: No, Your Honor.

7 THE COURT: All right. Ladies and gentlemen you
8 have been selected as the jury in the case Lucille H.
9 Ray versus City of Rock Hill. We have some pretrial
10 matters we will have to undertake and have a lunch
11 break. So just be back in the jury room at 3:30 this
12 afternoon. If I am reading that clock right it is
13 about 1:32 right now. Is that correct?

14 THE CLERK: Yes, sir.

15 THE COURT: Okay. So just be back in the jury
16 room at 3:30 and the bailiffs will show you where the
17 jury room is and where you will need to report.

18 Don't talk about the case. Don't do any kind of
19 outside investigation. You haven't heard any evidence
20 yet obviously. So, we will see you back at 3:30.

21 Thank you.

22 (WHEREUPON, the jury leave the courtroom.)

23 THE COURT: All right. Those of you who weren't
24 chosen I can see the disappointment etched on your
25 faces and you will be either further saddened to know

1 this is last case on the docket this week. So, you've
2 satisfied your obligation as a citizen in York County
3 for the purposes of your Circuit Court jury duty. So
4 you have a three year exemption. I can't do anything
5 about City Court, Magistrate Court or Federal Court,
6 but as far as the Circuit Court goes we don't need to
7 see you all for at least another three years. But I
8 know Mr. Hamilton is always glad for you to come by.

9 Have a good afternoon and I appreciate your
10 patience and corporation.

11 (WHEREUPON, jurors leave the courtroom.)

12 THE COURT: We will reconvene at 2:30.

13 (WHEREUPON, court recessed for luncheon recess.)

14 THE COURT: Okay. We were -- Mr. White had made
15 his preamble and we will pick up there I guess, the
16 motion In Limine.

17 MR. WHITE: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. WHITE: I believe I was at the point were also
20 according to Graves v CAS Med Systems held that
21 basically that a witness -- when the Court encounters
22 a witness who objects unreasonably doesn't count for
23 alternative factors and causes it may be inconsistent
24 with the opinion that that expert should be barred or
25 that those opinions barred. "When an expert can not

1 offer an explanation for the rejection of a possible
2 alternative cause the expert's testimony is not
3 sufficiently reliable."

4 THE COURT: Now that's an interesting statement.
5 I read that case many times before. That's kind of an
6 interesting take on the scientific method, isn't it?
7 I mean, scientific method is about guessing anyway.

8 MR. WHITE: About guessing, Your Honor, I think
9 scientific method is about combining two things. You
10 know, kind of like your carburetor you take a spark
11 and fuel and add air and you get some combustion. You
12 got to have the elements though to have the
13 combustion. Where is here we are talking only about
14 those opinion testimony that don't have each one of
15 those key ingredients. There's no facts. There's no
16 -- I put this stress gauge on there and came back
17 every six months over a two-year period and observed
18 it moving this much as opposed to I went by and it
19 looked worse.

20 As I'm applying it here you have a myriad of things
21 going on that is just being completely disregarded
22 such that -- I guess my point is if there were a set
23 of facts and scientific method being applied that
24 someone else can come test it. Here when you don't
25 have that these other causes get lost in the mix

1 because there is no process. It's just because I said
2 so. In my experience I believe this to be true to a
3 reasonable degree of engineering certainty. There has
4 to be some facts. It has to be applied -- the
5 engineering process has to be applied to it at least
6 to a conclusion so that the opposing party can retain
7 the services of someone in that field who can then
8 test and validate it.

9 What we have in this case is on a number of fronts
10 Mr. Leonard has not done that. But to start off with
11 the first area is geotechnical. Mr. Leonard was not
12 retain and is not being offered to the Court as an
13 expert in geotechnical science. Everything below
14 grade is the work of Mr. Cummings. That's the way Mr.
15 Leonard testified in his deposition anyway. Mr.
16 Leonard expressly testified he is not expert in
17 geotechnical science and we have the deposition if the
18 Court is in any way interested if I am accurately
19 reflecting the record. He testified he wasn't a
20 geotechnical engineer in another part. That he's not
21 an expert with directive soil under the structure
22 obtained to the subject matter of the action. He
23 relies and defers upon the geotechnical engineering of
24 Edward Cummings to provide the scientific analysis
25 related to soil mechanics and geotechnical issues.

1 Mr. Leonard though when he gets -- when he starts
2 discussing his conclusions, he starts talking about
3 soil mechanics. He starts saying things that are
4 contrary to Mr. Cummings. What we ask the Court do is
5 to exclude or to bar him from issuing opinion
6 testimony based on soil mechanics or geotechnical
7 science.

8 The second area is testimony of water leaking from
9 the pipes. This is critical. He has testified as his
10 conclusion that the pipe is leaking. He does not base
11 that on any facts or data consistent with engineering
12 sciences. He bases it on he has looked at a tape of
13 the camera that was put through the pipe. He sees
14 some cracks and thus he knows it has to be leaking.
15 Well, our review of the scholarly writings in that
16 field reveal nobody that opines that is consistent
17 with engineering practices. He can offer none. He
18 offered none in his deposition. He testified though
19 he has no physical evidence that the pipe is leaking
20 at any specific point. He did testify that there are
21 a number of non-destructive tests that could have been
22 performed to confirm the pipe is leaking, but that he
23 didn't employ those tests. Now, subsequent to his
24 deposition they did hire a geotechnical expert to
25 perform a test pit at Pier F and the test pit did not

1 support Mr. Leonard's theory. In fact, according to
2 his theory, the water is leaking out of every crack in
3 the pipe and thus it gets worse as it goes downhill
4 and so you should find voids and moisture from the
5 point of the crack downhill.

6 Well, again, the question is is his testimony, his
7 scientific testimony reliable. In his deposition he
8 states that is what you will find. When they dug at
9 Pier F which is about the midpoint of the house well
10 below downstream from a number of cracks that he
11 testified he knows to be leaking, what the geotech
12 encountered -- a man named Kurshner (phonetics) -- he
13 encountered solid soil with no voids and it was dry
14 even though the surrounding conditions were well wet
15 during the time period of the testing.

16 So again we have -- we have again, looking at the
17 Grave's case, we have data which is entirely
18 inconsistent and the lack of any sort of desire or
19 willingness to analyze that data or at least explain
20 it. That is exactly the sort of thing that the
21 gatekeeper is to prevent from getting into these
22 proceedings when we start having a jury verdict. He
23 failed to account for any of the facts and data
24 contrary to his opinion.

25 Mr. Cummings, the original geotech, testified --

1 testified that the soils -- all the consolidation of
2 soils and thus the movement of the piers was due to
3 improper fill material on top of the pipe. He was
4 asked specifically was that the consolidation of
5 improper placed fill in the original instance or
6 because of water coming back later. He said in the
7 original instance. He did testify that if a pipe was
8 leaking it would accelerate it. He was asked did you
9 see any evidence that there's been acceleration of any
10 consolidation due to leaking and he said no. So, here
11 you a plaintiff's case where the geotech has testified
12 the sole cause as improper placement of fill in the
13 original instance. The City of course didn't place
14 that fill. And then you have a structural engineer
15 who is testifying that all these damages are flowing
16 not from that, but from water getting out of the pipe.
17 That's the sort of thing in a very rare case -- this
18 is a very rare case, I admit to you -- but when you
19 read these depositions and what the record has and how
20 he has committed himself, it's a rare case when an is
21 expert divorcing himself of the methodologies of his
22 science and stating things expressly to a reasonable
23 degree of engineering certainty when he doesn't have
24 the data points, any data point, and any sort of
25 engineering methodology to support it.

1 THE COURT: Well, how does he deal with the
2 Kurshner results.

3 MR. WHITE: That occurred after his deposition.
4 I'm not sure.

5 THE COURT: Okay.

6 MR. WHITE: From Mr. Kurshner he was asked to dig
7 that pit. He was told where to dig it. He dug it.
8 He reported his findings and he was sent home on his
9 way. He was asked for nothing further.

10 THE COURT: So, Graves involved differential
11 diagnosis. Are you saying this is a differential
12 diagnosis too?

13 MR. WHITE: Well, sir, I believe Graves is
14 actually a medical case. What happened in Graves was
15 the expert -- there was an alternative potential cause
16 of the occurrence and the expert assumed it wasn't
17 true. He just -- it's was an alarm -- it was about an
18 alarm and the woman said well, I didn't hear the alarm
19 so he assumed it didn't go off. In this case you have
20 an expert coming in who is assuming that water is
21 getting out of the pipe and everything -- pun
22 intended -- flows from there. He didn't first prove
23 that water was getting out of the pipe, although the
24 testing that he did have disproves the water getting
25 out of the pipe.

1 At a minimum, Your Honor, he should have continued
2 his testing until it proved his theory. One would
3 argue that perhaps he could have expanded his scope
4 and looked at potential other theories, but he likened
5 not to do so. But yet he's ready to come in here and
6 sit in front of this jury under the cloak and mantle
7 of an expert in engineering science and pollute their
8 minds because he's testifying not as an engineer using
9 science, but as a witness for whatever reason. I
10 won't profess to know why, but for whatever reason he
11 is testifying of someone just from a frame of
12 reference. He's not using science. It's the old
13 classic, in Federal Court you have a lot of cases that
14 say this, an expert can not come in and say it because
15 I said so. And Mr. Leonard is because he said so.
16 And that's just as to the water leaking out of the
17 pipe. Then you have issue of abatement. This one is
18 even more clear. In this one he -- again, Your Honor,
19 there's a statute of limitations. What Judge Kimball
20 ruled was there may be. He refused to throw out
21 trespass. And he said that there was potential for
22 Miss Ray that she might could come in to Court and
23 prove a trespass and she might could come in and prove
24 that the water somehow is abatable and thus the
25 three-year statute of limitations won't apply here.

1 So she has to prove that the condition of the water
2 flowing through the pipe is reasonably abatable. Not
3 abatable possibly, but reasonably abatable under the
4 case law.

5 Well, Mr. Leonard testified that he had not
6 performed any hydrology study or study the flow of
7 water to or through the pipe -- from page 62 and 63.
8 He testified he had not analyzed whether an
9 alternative drain line could be placed in any
10 particular location to divert water flow. He had not
11 analyzed whether any alternatives could conflict --
12 would conflict with existing infrastructure.

13 What the testimony will show is that College Avenue
14 has a lot of infrastructure in it already and there
15 are conflicts. He has not analyzed the topography of
16 the watershed area and you know, wind and if an
17 alternative line could reroute the water flow because
18 as gravity fed, relative heights is important. He did
19 not study, analyze the feasibility or cost of any
20 alternative of routing the water flow. He testified
21 he never performed a hydrology study of the storm
22 basin watershed. Never studied the sources or amount
23 of water flowing through or to the pipe. Never
24 studied the rate during any storm system, and never
25 analyzed -- critically, never analyzed the flow

1 downstream. It's all got to link up. And so, we did
2 include in there a classic of have you analyzed
3 feasibility at all? No. Have you analyzed cost? No.

4 Your Honor, the statute of limitation bars the
5 trespass claim if they can not show that it's is
6 reasonably abatable and if it's not reasonably
7 abatable then it's a permanent trespass, if at all,
8 and that the three-year statute of limitation had
9 already run pursuant to Judge Kimball's order. So on
10 that issue by his own testimony -- I don't have to go
11 anywhere else -- by his own testimony he has not
12 provided any sort of data or any sort of engineering
13 process. He said I didn't look at it. I just say it
14 can because I say it can.

15 Then you have the issues of causation. With
16 trespass the water -- again the water has to be
17 getting out of the pipe and has to be causing the
18 damage. Here we have two key ingredients. First,
19 there's a time component. It has to be damaged post
20 2009. Well, his report and his testimony talks about
21 damage over a long period of time. Decades. But then
22 when Judge Kimball issued his ruling we find out, oh
23 well, everything is post 2009. All the damage that's
24 on his report. You have other causes affecting this
25 house. Cummings testified that the pipe can affect a

1 six foot wide zone of influence when you get to the
2 house. The zone of influence of the pipe if it were
3 settling because of water getting out of it the zone
4 of influence from that would be six feet. Their
5 expert says six feet. The house has damage well
6 outside -- the same types of structural issues, well
7 outside the six foot zone in both directions; right
8 and left. Mr. Leonard did not analyze in any way any
9 sort of other causes that could be affecting the
10 components of his damage list. Plaintiff has a duty
11 to come in here and not ask for a wish list and not
12 ask for what they think the damages are. They have a
13 duty to come in and prove their damages. Mr. Leonard
14 has testified that he has no information. He did not
15 study in any form whether the damage was before or
16 after 2009. He even said it can't be done. He
17 testified that he didn't look at whether it was from
18 other causes or not. All the damage is from that. So
19 for these reasons -- for these reasons -- you have his
20 testimony -- is not reliable and should not be allowed
21 in.

22 I did skip over on causation. From his own report
23 he stated that the causes were insulation of the fill
24 soil at the time of insulation. Mr. Leonard included
25 that in his report. And then he says also water

1 leakage and back pressure. Well, again, he doesn't
2 differentiate between the affect on the house from the
3 improper placement of fill, with is not the
4 responsibility of the City, and he hasn't made any
5 attempt to try and distinguish between that which is
6 and that which isn't. On back pressure he stated that
7 he did not -- we ask the Court to exclude any sort of
8 reference to damages flowing from back pressure
9 because he didn't do a hydrology study. He didn't
10 analyze what sort of force. He didn't analyze what
11 the rate of flow was. He didn't do any sort of
12 analyze even whether there was a back pressure
13 resulting in damage. So, again, there is no data
14 points and there is no scientific methodology to
15 support or allow that testimony to get into the case.

16 He testified he can't identify damages occurring
17 since or before 2009. That's on page 219. So, when
18 you look at under 702 as the gatekeeper, the Court is
19 being asked to exclude these components of evidence.
20 Also his testimony falls prey to Rule 403, which
21 evidence may be excluded if it's probative value is
22 substantially outweighed by the danger of unfair
23 prejudice, confusion of issues or misleading the jury.
24 In this case his testimony that the plaintiff has been
25 damaged without any sort of data, without any sort of

1 methodology leaves the City without any sort of
2 ability to rebut it which is prejudicial to the City.
3 It does confuse the issue because he is declaring
4 things to be damaged without delineating between
5 causes or time, and he is not using very basic
6 scientific methods in support of his conclusions.

7 For those reasons we ask that the Court exclude
8 those areas. There is one other issue we'll take up
9 after that on the other, but I think that's what
10 encapsulated in the written motion.

11 THE COURT: Thank you, Mr. White. Mr. Fennell.

12 MR. FENNEL: Thank you, Your Honor. Rich Fennell
13 for the plaintiff, Lucille Ray. I will take the
14 arguments in the order that Mark presented them unless
15 there something you want me to go straight to.

16 THE COURT: No, that's okay.

17 MR. FENNEL: With respect to Mr. Leonard's
18 qualifications and his ability to speak as to soil
19 conditions, he did testify a number of times as Mark
20 indicated that he is not a geotechnical engineer and
21 when he gets into a situation, a forensic project,
22 when he is trying to figure out what is going on with
23 a structure in order to determine what is going on
24 below grade he has to hire somebody that's actually
25 studied that and that's why he hired Mr. Cummings.

1 What he also -- I think the dividing line is not at
2 surface and then below surface, the dividing line
3 between what he can do stops at he has studied and is
4 an expert on the soil bearing capacity of dirt.
5 That's what structural engineers do and when there's
6 an issue as to when he thinks the soil bearing
7 capacity of the soil has been impacted he needs a soil
8 tech in order to try to help him figure out why that
9 happened. So he believes based on what he has seen in
10 the structure that the soil bearing capacity of the
11 soil has been impacted and that would be what his
12 expert testimony would be about.

13 THE COURT: And he's going to say what's the cause
14 of that?

15 MR. FENNEL: That's what -- he believes that it's
16 the pipe and then also as Mark indicated he attributes
17 some of the damage to back flow. Rather a leaking
18 pipe. And then he attributes some of damage to back
19 flow and attributes some of the damage to the initial
20 installation of the pipe and then also talks in his
21 deposition about a remodel and the potential impact
22 that that has had on the house. But he said
23 throughout that the leaking pipe is part of the cause.
24 With the soil tests I can't disagree very much with
25 what Mark has said because it's in the deposition.

1 Kurshner is somebody that we hired after they
2 submitted their expert report in February. And the
3 goal was to try to find evidence that would help me
4 rebut primarily their geotechnical evidence. And as
5 Mark said and has Mr. Kurshner has said what I asked
6 him to do was to tell me whether he thought there was
7 any evidence that the pipe was leaking and that was
8 leading to the damage in Miss Ray's house, and he said
9 that he didn't see any evidence of that. He did a
10 visual inspection of the crawl space and then he asked
11 me did you want me to dig a hole. I asked him to dig
12 around Pier F which is the pier that is the most
13 obviously impacted by whatever is going on on that
14 property. It's leaning over a foot and a half. It's
15 got a brace on it. It's obviously been a problem and
16 I wanted to know if there was any moisture in the soil
17 around it. He dug on the side away from the pipe.
18 Again at my direction, he asked me how much of a risk
19 do you want me to take of puncturing the pipe. I said
20 as minimal as you can. So he dug on the other side of
21 the pipe expecting to see some evidence of a void in
22 the soil or moisture in the soil around the footing
23 that had moved so much and said that he did not find
24 any. He then probed on the side of the pipe which is
25 -- rather the side of the pier which faces the pipe

1 and didn't find any evidence that would suggest to him
2 that moisture was playing a part of what was going on.
3 You asked how Mr. Leonard deals with that and Mr.
4 Leonard deals with it by saying that we didn't dig in
5 enough places and that he is still convinced that
6 there is moisture getting out of the pipe because
7 primarily of the video and the defects that it shows
8 and then the location of the damage in the house.

9 THE COURT: Did Mr. Kurshner look at the video?

10 MR. FENNEL: Yes, he's looked at the video.

11 THE COURT: And he said what about it?

12 MR. FENNEL: I don't know if that has changed his
13 opinion at all. So that's what the geotechs have said
14 about the condition of the soil and the ultimate cause
15 of the problems. Mr. Leonard's methodology consists
16 of walking around the house. He's reviewed multiple
17 videos that were shot by the City, and the one that
18 was shot by the company that we hired. He has
19 performed flow analysis to see where the water goes
20 underneath the house. He's looked at the location of
21 the damage inside the house and he believes that the
22 location of the damage inside the house reveals that
23 it's along the zone of influence of the pipe and he
24 adds all of those together and concludes that the
25 leaking water is what is causing the damage. And that

1 would be the sum total of what he would testify to or
2 could testify to.

3 With respect to abatability, the issue is -- as
4 again as Mark described, because of Judge Kimball's
5 Order we are left with having to prove a continuing
6 trespass. Judge Kimball said that because the
7 trespass -- the trespass was the collection of water
8 and the collection of water underneath the city
9 streets and then having that water flow underneath
10 Lucille's house that he believed that under the law
11 that may be a continuing trespass. And if it's a
12 continuing trespass then the statute starts over and
13 over and over again. The issue becomes if it is a
14 permanent trespass. And I think the City's position
15 is that the water has been flowing underneath that
16 house for so long that I have to be able to show that
17 it is abatable because continuing trespass is
18 something that's abatable. It's something you can
19 stop if you wanted to, and the argument that we had in
20 multiple summary judgement motions and now in this
21 Motion in Limine is just really the providence of the
22 Court in determining what is reasonable.

23 Mr. Leonard testified as Mark described in his
24 deposition that he didn't do a cost analysis. He
25 didn't do a logistical analysis. He didn't do a

1 feasibility analysis. What he testified to in his
2 affidavit was that he had experience in storm water
3 design and that you could take on this -- this is a
4 City's document. It would be one of the exhibits in
5 the trial. Miss Ray's house is right here.

6 (Indicating)

7 THE COURT: Okay.

8 MR. FENNELL: And the pipe system flows -- you can
9 see the arrows or I hope can you he see the arrows.
10 These green shaded portions are City maintained roads.

11 THE COURT: Okay.

12 MR. FENNELL: So the water that gets collected on
13 College part of it flows this way and then underneath
14 340. Part of it flows down straight and then under
15 Miss Ray's house and then there's a pipe over here
16 that collects water and takes it over to Miss Ray's
17 house and then underneath it, and then you will see
18 where it elbows and goes over to Lucas.

19 What Mr. Leonard said is that you could if you
20 wanted to dig up the street and change the direction
21 of that pipe and I think the issue that the City has
22 is what evidence do you have that will show that was
23 reasonable.

24 We have another document from the City, and in all
25 candor to the Court all that we know about this

1 document is that the City produced it. And it shows
2 the water flow being changed in the way that Mr.
3 Leonard describes where the water is collected in
4 front of Miss Ray's house and then goes down to Lucas
5 and then down in the pipe. I can't tell you how much
6 that would cost. Whether it's possible. I can only
7 tell you at some point somebody in the City drew it
8 up. That's the evidence of abatability.

9 With respect to the damages issue, the causation,
10 the statute of limitations, again is under Judge
11 Kimball's order, is a hurdle for me. I've got to be
12 able to show that the damage that we are complaining
13 about resulted from a trespass that took place after
14 2009. And the only evidence that we have of that
15 would be Miss Ray's testimony that she didn't really
16 start seeing damage in her house until 2011 and 2012.
17 Mr. Leonard testified, again as Mark said, that he
18 didn't know any sort of engineering study that you
19 could perform in order to verify that fact; that the
20 crack in the wall took place because of the leak that
21 moved a pier or moved a wall after 2009 or before
22 2009. But that would be the evidence, the physical
23 manifestation of the damage took place in 2011, 2012
24 and then going forward and that would be enough to
25 carry out burden and get pass the hurdle that was set

1 up in Judge Kimball's order.

2 With respect to causation, the issue is I think as
3 I described when I first started talking about Mike
4 Leonard's testimony, the causation theory is that
5 there's a zone of damage in the house which appears to
6 be over the pipe, and the pipe video reveals that it
7 has cracks and that it has issues. Some that are
8 little more significant than others. But it has
9 issues because the cracks are there and the water that
10 was getting out from the pipe is impacting the soil
11 and causing the movement.

12 The evidence that Mr. Leonard prepared back in
13 April of 2014 -- in order to help show that again we
14 will use these exhibits from the trial -- and he took
15 the length of the pipe and just marked the defects
16 that are revealed in the video to show where they all
17 were and then can correlate that to the damage that is
18 seen in the house. So I think that's the extent of
19 the evidence. Again, in all candor to the Court, the
20 issue that I think I'm thinkest on is abatability and
21 the abatability evidence as I described it. Mr.
22 Leonard has said that based on his experience
23 designing these systems you can change the water flow
24 if you wanted to. And I don't have a cost analysis.

25 THE COURT: What about his opinion on the leak?

1 What is Mr. Leonard basing that on?

2 MR. FENNELL: The visual of the pipe.

3 THE COURT: Okay.

4 MR. FENNELL: And that since the pipe shows these
5 defects water must be getting out and since there is a
6 pattern of damage in the house that correlates with
7 the location of the pipe that he assumes from that the
8 damage is caused by leaks from the pipe.

9 THE COURT: And he has relating that directly to
10 the sole soil bearing capacity?

11 MR. FENNELL: Yes, sir. I don't think there is
12 any dispute that once water gets in to dirt it does
13 bad things, especially if it gets in fill. What their
14 expert reports have revealed is that the soil bearing
15 capacity of the line above the pipe is approximately
16 1000 PSF. Most of the time for single family
17 construction you want 2000 PSF. The soil that's
18 outside of that zone they measured out at 3000 PSF.
19 So it's firm. If water is getting in to soil that is
20 not compacted or is as weak as the 1000 PFS soil that
21 they found over the pipe then I think Mr. Cummings is
22 right, that the water is going to accelerate the
23 process of settlement that would take place if there's
24 weight that's sitting on that soil. But again, as
25 Mark said, Mr. Cummings could not find evidence that

1 that had happened.

2 THE COURT: What would be the traditional
3 methodology used in Mr. Leonard's field to determine
4 whether there was a water leak?

5 MR. FENNEL: What he thought about doing but then
6 because of the danger didn't do it, was to do a
7 pressure test on the pipe. He would stop the pipe on
8 both ends and then -- or at one end and shoot water in
9 it and then stop it up at the other end and see what
10 happened. And he said that he thought if he did that
11 that the pipe may completely -- I don't know if
12 explode is the right word -- but completely fail, so
13 he didn't do it.

14 THE COURT: So the video is of -- is that a camera
15 inside the pipe?

16 MR. FENNEL: Yes, sir.

17 THE COURT: Where did it come from?

18 MR. FENNEL: There was a company that Mr. Leonard
19 knew about. We hired them to come down April the
20 first of 2014 and shoot the video. Mark was there.
21 The lawyer for the Department of Transportation that
22 was still in the case was there and we all watched as
23 the video was taken and that's one of the exhibits in
24 the case.

25 THE COURT: Does Mr. Leonard have any citation or

1 authority for the view that you can base your opinion
2 about the leaking of the pipe on such a video camera.

3 MR. FENNEL: No, sir. It would be experience,
4 common sense and his education.

5 THE COURT: Right. All right, Mr. White.

6 MR. WHITE: I could put some meat on the bone,
7 Your Honor. The specific references, you just asked
8 the question how would someone test if the pipe is
9 leaking. One way is to fill it up. In Mr. Leonard's
10 report, way back on December 5, 2012, delineated on
11 page three of it, he says, "Further testing would be
12 needed along the entire pipe route to determine if
13 there are washouts or voids in place." So there he's
14 saying the way you test to see is you look for voids
15 and washouts. Mr. Kurshner will testify that that's
16 the way you look. You should have found washouts at
17 Pier F if there was anything ahead of it. And you if
18 you would have done six such tests you would have
19 covered the entire house. So six tests just like he
20 did on that day would have verified once and for all
21 whether the pipe is leaking. But they told him to go
22 home.

23 Mr. -- staying on that subject -- Mr. Cummings,
24 there first year technical, was asked on page 85, "You
25 didn't encounter any strata -- in any strata, any

1 evidence of a washout or impact of water erosion
2 through your strata?" Answer, "No." Then he was
3 asked on page 87 starting at line three, "So, is it
4 your opinion" -- excuse me. "Is that your opinion of
5 what's happening?" He said again, "The piers are
6 settling due to the backfill over the top of the pipe?
7 Question, "Because of the backfill installation method
8 or because of voids created by water?" Answer,
9 "Installation method."

10 He was asked specifically, "Is it your opinion that
11 the settling is because of washouts or because of
12 installation method?" He said, "Installation method."

13 When you talk about abatement the clearest way is,
14 Mr. Leonard was asked on page 126, "What factors if
15 you were designing a storm waterline would you have to
16 require to complete task? How would you abate this?"
17 He says, "In this case or a general case?" He's
18 asked, "In general. Well, you do a model on the
19 watershed based on time of concentration, runoff, pipe
20 sizes. You have you to deal with what's already
21 there. You have to deal with the volume. The design
22 form is. I forgot to mention that first. There is a
23 design rate and you work your way down hill. I
24 actually worked my way up hill in terms of most
25 feasible route, see if that works. If it doesn't you

1 move. Keep moving until you have a solution. That's
2 storm water design simplified."

3 Question after next, "And until you have all these
4 factors you can't testify to a reasonable degree of
5 engineering certainty that a line can be rerouted, can
6 you? Answer, "No. I think we answered that earlier.
7 It would take far more study."

8 On abatement he testified, to get to a reasonable
9 degree of engineering certainty he would have to do
10 study that he hadn't done and he couldn't testify to.
11 So on the issue of leaking we have -- we have a
12 circular organ. We have the pipe that's cracked so
13 I'm going to just say in my experience that means it's
14 leaking and I have damage in the house that I am going
15 to focus on because it's consistent. Actually what
16 you're going to see and this is minutiae, but in the
17 -- the only data he gave us was on a floor. Rich just
18 pulled up the big board. If you look at the slop of
19 the floor it's going the wrong way. It should be
20 sloping toward the indentation of the pipe. Instead
21 it goes the other way. And here's the best one, Your
22 Honor, if you look underneath the house, on top of the
23 pipe, if the soil is consolidated there should be a
24 depression down the length of the pipe. There is
25 isn't. It is completely flat like the rest of house.

1 So you add all that up. You have an engineer who is
2 admitting that he doesn't have the data points. He
3 hasn't done the study. He admits how you're suppose
4 to do abatement and he admits he didn't do it. The
5 geotech states definitively he found no voids and
6 that's not in his opinion what's causing the damage.

7 You have the second geotech they hired stating he
8 dug -- digging in the second spot that they picked.
9 There are no voids. It's solid and its dry. And oh,
10 by the way, you could have done five more and you
11 could have done the entire length of the pipe but it
12 wasn't done.

13 For those reasons, Your Honor, the reliability of
14 Mr. Leonard's testimony is not sufficient to cross
15 over the gatekeeper's threshold and we ask that he be
16 limited accordingly.

17 THE COURT: All right. Well, I know you all tried
18 to resolve this matter out of Court several times and
19 I appreciate that and I think those efforts have been
20 genuine from everything I know about it, but I would
21 urge you to try to explore some resolution. I will
22 take a break. I'm going to take a break.

23 I'm just going to tell you I do have concerns about
24 the admissibility of this testimony of Mr. Leonard,
25 and once I come back out and make a decision it might

1 be a different scenario here in this case, so, we will
2 take a recess and then let you all talk and see if
3 something can be reached in terms of a resolution, but
4 I urge you to do so. I mean, even if it got to the
5 jury, juries are notoriously unpredictable and even if
6 you won this Court there are two other ones the loser
7 could go to. That takes years to do and this is an
8 opportunity to resolve it while you have control over
9 it. So I urge you to talk and we'll take a recess and
10 let you all explore that and I will be back in my
11 office if anybody needs me.

12 Thank you.

13 (WHEREUPON, there was a brief recess.)

14 THE COURT: So the motion to exclude the testimony
15 of the witness, Michael Leonard, concerning the
16 abatability of the alleged trespass is granted. I find
17 that the opinion he has on abatability does not meet
18 the requirements of Rule 702, State versus White or the
19 Grave's decision. He admitted that he had not done any
20 engineering work on this issue, and it would not meet
21 criteria of being reliable or assist the jury. So, I
22 grant that part of the motion.

23 MR. FENNELL: Your Honor, with the ruling and I
24 understand it, the plaintiff must in all candor
25 disclose to the Court that I can't meet my burden. So

1 I believe that at this point in time given the prior
2 rulings of Judge Kimball it would be appropriate to
3 enter judgement against me.

4 THE COURT: Okay. Well, of course as you
5 mentioned earlier, Mr. Fennell, and I appreciate your
6 fine representation you have shown, but Judge
7 Kimball's ruling on the trespass and statute of
8 limitations is the law of the case. It can't be
9 changed at this point. Whether it is right or wrong
10 is not for me to determine at this stage obviously.
11 But he did state that the only genuine issue of fact
12 was whether or not it was abatable. So I understand
13 the quandary you are in sir and I would have to agree
14 there is no issue of fact now given the ruling on Mr.
15 Leonard's expert testimony being inadmissible. So, I
16 will grant the directed verdict. All right.

17 MR. WHITE: Thank you, Your Honor.

18 MR. FENNELL: Thank you, very much.

19 THE COURT: Thank you.

20 So, jury will be discharged at this stage. We
21 don't have to bring them in here unless you all want
22 to.

23 MR. WHITE: No, sir.

24 THE COURT: With your permission I'll just tell
25 them.

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MR. WHITE: Thank you.

THE COURT: All right, thank you all very much.

MR. WHITE: Yes, sir.

MR. FENNELL: Thank you.

(END OF PROCEEDINGS)

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 12th day of September, 2016.

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

December 9, 2016

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF YORK

LUCILLE H. RAY,

Plaintiff,

vs.

CASE NO.: 2012-CP-46-03928

CITY OF ROCK HILL, SOUTH CAROLINA,
A MUNICIPAL CORPORATION, AND
SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, AN AGENCY OF THE
STATE OF SOUTH CAROLINA,

Defendants.

DEPOSITION OF: LUCILLE H. RAY

DATE: November 6, 2013

TIME: 9:44 A.M.

LOCATION: Law Offices of
Charles S. Bradford, P.A.
4 East Liberty Street
York, SC

TAKEN BY: Counsel for the Defendant
South Carolina Department of
Transportation

REPORTED BY: WANDA K. CECIL
Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Q. Okay. How did you know the McDowells?

2 A. Well, they lived -- I think Thomas F.
3 might have been still single then, when I lived on
4 Oak Drive; but sometime in that area they got
5 married. I'm not sure.

6 Q. Okay. And when you bought the house, it
7 did not have the sun porch on it that you have -- I
8 call it a sun porch. You may call it just a porch
9 that you now have; right?

10 A. No.

11 Q. You put a reasonably significant sized
12 addition on to the house on the driveway side;
13 correct?

14 A. Yes.

15 Q. Do you recall if you had the house
16 appraised back in 1980 when you bought it?

17 A. I'm sure they did an appraisal. I have
18 no recall on what it appraised for.

19 Q. Do you recall whether or not, as a
20 condition of the sale occurring, a home inspection
21 had to be performed?

22 A. No.

23 Q. Outside of inspections that have been
24 done by folks you hired as potential experts or
25 experts in this case, have you ever had an

1 it will be clearer.

2 A. (Complying.)

3 Q. Okay. You've now put an asterisk on
4 Exhibit 3 at what is roughly the back property line
5 between the two Xs where the brick wall was located;
6 correct?

7 MR. ABERMAN: Objection.

8 BY MR. DEVLIN:

9 Q. Is the asterisk on Exhibit 3 where you
10 think that wall -- where you think that manhole is?

11 A. Yes.

12 Q. Is there more than one manhole in the
13 back of your house? I'm sorry. In the back of your
14 property?

15 A. Manhole for what?

16 Q. Anything. Is there more than one
17 manhole in the back of your property?

18 A. I think they have taken the other
19 manhole out.

20 Q. Okay. During the time you have owned
21 your property from 1985 forward, has there been more
22 than one manhole on the back side of your property,
23 between the back of your house and the back property
24 line?

25 A. The sewer manhole was on this side lot

1 property. Right (indicating). And no house was
2 over it or in that -- it was on the second lot.

3 Q. Okay. You're indicating that there was
4 a manhole, other than the one that you've already
5 marked, that was on the longer side of your
6 property; is that correct?

7 A. A sewer manhole.

8 Q. Okay. And why don't you draw a -- let's
9 make a circle so that we can keep our shapes
10 different, a circle where that manhole is located.

11 A. This is just a guess.

12 Q. I understand we're not surveying here.

13 A. (Complying.) Somewhere near that wall.

14 Q. Okay. And you called that a sewer
15 manhole and you made a couple of distinctions
16 between manholes of various types. Do you know what
17 functions these two manholes in your backyard were
18 intended to serve?

19 A. No.

20 Q. Do you know what they have been used for
21 generally? Let me make it a little bit easier.
22 There are sewer pipes and there are storm sewer
23 pipes. There's a lot of difference between what
24 flows through the two, if you get my meaning. Okay?
25 The storm sewer pipe that I believe is an issue in

1 this lawsuit runs a storm drain directly in front of
2 your house to a manhole that I believe is behind
3 your house. And that has been referred to generally
4 speaking in this litigation as a storm sewer pipe.
5 Okay? I'm just doing definitions right now.

6 A. Storm sewer, not storm drain?

7 Q. No. A storm sewer pipe or a storm drain
8 carries stormwater. A sewer pipe alternatively does
9 not carry stormwater. In a perfect world, it
10 carries waste. Okay? There are sewer pipes and
11 there are storm sewer pipes.

12 Do you think that one of these two
13 manholes or either of these two manholes are sewer
14 pipes as opposed to -- that they serve as sewer
15 pipes as opposed to storm sewer pipes?

16 MR. ABERMAN: Objection.

17 THE WITNESS: I think this is just a
18 stormwater pipe. (Indicating.)

19 BY MR. DEVLIN:

20 Q. Okay. Now, you're pointing at -- and
21 it's real important for us, Ms. Ray, when you point
22 at something, that we identify what you're pointing
23 at. You're pointing at the asterisk that indicates
24 the manhole more or less directly behind your house;
25 correct?

1 A. Yes.

2 Q. And you think that's a stormwater
3 manhole? And I'm not trying to trick you with the
4 labeling on this. Different people might call it
5 different things. I just want to make sure that we
6 are all talking about the same thing as regards
7 storm sewer versus sewer.

8 A. I think this is only stormwater.

9 Q. Okay. And the one that is marked with a
10 circle, that's on the longer side of your parcel, do
11 you believe that is only stormwater or do you think
12 that might be a sewer line?

13 A. I think that is sewer.

14 Q. Okay. The manhole behind your
15 property -- I'm sorry. Scratch that.

16 The storm sewer manhole, the one with
17 the asterisk, when did you first notice that on your
18 property?

19 MR. ABERMAN: Object to the form.

20 BY MR. DEVLIN:

21 Q. Okay. Whatever that manhole is that you
22 have marked with an asterisk, when did you first
23 notice it?

24 A. We found it in August 2012.

25 Q. And you did not know that it existed

1 able to understand that a month from now.

2 A. Okay. Let's see. Now, you look at it.

3 This is the pipe coming from the Maycocks' house.

4 (Indicating.)

5 Q. Okay. We're looking at Exhibit 5 now?

6 A. Yes. This is the broken pipe that the

7 sewer line people broke. (Indicating.)

8 Q. Okay.

9 A. The three pipes, bam, bam, bam.

10 (Indicating.) The main pipe coming down the hill,

11 you can see the shadow.

12 Q. Down the hill? Down Strait?

13 A. Down Strait Street. This is the shadow

14 of that pipe. (Indicating.) This is the pipe that

15 enters and it's the inlay box that takes all three

16 pipes into it --

17 Q. When you say --

18 A. -- before --

19 Q. When you say inlay box, what do you

20 mean?

21 A. An inlay box is where -- a cement thing

22 that all pipes -- I don't know enough about it.

23 Q. A junction?

24 A. A junction box. Yes. That's the inlay

25 box.

1 Q. And this is a pipe coming from the
2 Maycock house?

3 A. Yes.

4 Q. And going where?

5 A. It junctions right in the center.

6 Q. Right in front of your front walk?

7 A. Right in front of my front walk and goes
8 under my house.

9 Q. Okay. Is there one pipe that goes under
10 your house or do you believe that there's more than
11 one pipe that goes under your house or your
12 property?

13 A. One pipe.

14 Q. And this is the inlay pipe that leads to
15 that pipe; correct?

16 A. Yes.

17 Q. What's above this picture in elevation?
18 College Avenue?

19 A. Yes.

20 Q. And this picture was taken with Ms.
21 Maycock's camera?

22 A. Yes.

23 Q. How many of the pictures that you have
24 provided your counsel came from Ms. Maycock?

25 A. Probably five or eight.

1 Q. Do you know if you got all of the
2 pictures which Ms. Maycock has that relate to these
3 pipes and storm sewer issues?

4 A. Pretty much so.

5 MR. DEVLIN: I'm going to show you Ray
6 7, which will be Defendant's 6.

7 (DFT. EXH. 6, Photograph Bates Stamped
8 RAY000007, was marked for
9 identification.)

10 MR. WHITE: Couldn't sneak one more in
11 there so it'd be seven for seven?

12 MR. DEVLIN: Well, we're going to start
13 jumping real bad in a minute.

14 THE WITNESS: Is this six or seven?

15 BY MR. DEVLIN:

16 Q. That is Defendant's Exhibit 6. It is
17 Bates Stamped Ray 7.

18 A. Oh, okay.

19 Q. Do you know when this picture was taken?

20 A. November probably 17th or 18th. I'm
21 not --

22 Q. Of 2012?

23 A. I'm not exact on the date. 2012.

24 Q. And this is of the construction that
25 went on on College Avenue in that time period;

1 correct?

2 A. Yes.

3 Q. Did you take this picture?

4 A. I really cannot tell you whether it was
5 myself or Ms. Maycock. I mean, I can if I saw my
6 computer -- if I had my computer.

7 Q. Can you tell me what this picture is
8 supposed to be of?

9 A. This is the storm drain that was broken
10 coming out of the Maycocks, the corner of the
11 Maycocks.

12 Q. You say this is the storm drain that was
13 broken?

14 A. Yeah.

15 Q. Point at the line that you're talking
16 about on six that is broken?

17 MR. ABERMAN: Objection.

18 THE WITNESS: (Indicating.)

19 BY MR. DEVLIN:

20 Q. Okay. Go ahead.

21 A. It was -- I mean, it just was broken and
22 being replaced.

23 Q. And the line that I think you're
24 referring to has a brand new piece of pipe right
25 next to the gentleman in the picture?

1 A. Yes.

2 MR. ABERMAN: Objection.

3 BY MR. DEVLIN:

4 Q. On the right-hand side of that picture,
5 there appears to be a manhole. Do you know where
6 that manhole is?

7 A. That is in the middle of College Avenue.

8 Q. And are you -- I'm sorry. Is the camera
9 in this picture aimed in the direction of the
10 Maycock house?

11 A. I think so.

12 Q. So that the bulldozer would be more or
13 less on Strait Street?

14 A. Yes.

15 Q. And your house would be probably to the
16 right of the photographer, roughly?

17 A. I would say my house would be behind the
18 photographer.

19 Q. Okay. Why did you take this picture?

20 A. It was just of construction going on on
21 College Avenue.

22 Q. Do you know what entity was hiring the
23 workers to do the construction work? Was it DOT or
24 was it the City or was it some other entity?

25 MR. ABERMAN: Objection.

1 THE WITNESS: I think it was the City
2 replacing the sewer line.

3 BY MR. DEVLIN:

4 Q. Okay. There is a smaller diameter pipe
5 in the foreground of this picture. Do you know what
6 pipe that is?

7 A. I believe it's water.

8 MR. DEVLIN: I'm going to show you a
9 picture marked Ray 19 that will be Defendant's
10 Number 7.

11 (DFT. EXH. 7, Photograph Bates Stamped
12 RAY000019, was marked for
13 identification.)

14 BY MR. DEVLIN:

15 Q. Can you tell me what this picture is of
16 and where it is?

17 A. It's the storm drain, the end storm
18 drain on the alley off of Strait Street.

19 Q. If I understand correctly, in between
20 College and Oakland, there's an alley that runs
21 behind the properties that front on to those two
22 streets; correct?

23 A. Yes.

24 Q. And it goes both directions off of
25 Strait Street, doesn't it?

1 A. Yes.

2 Q. Okay. Which one of these is that storm
3 drain? Is it the one that would be to the left as
4 you're going uphill or the one that would be to your
5 right?

6 A. You're going up the hill, it'd be to
7 your right.

8 Q. Okay. Why did you take this picture?

9 A. Because it connects to the storm drain
10 going down the hill.

11 Q. And that that storm drain itself is in
12 the alley?

13 A. You mean, this one? (Indicating.)

14 Q. The metal grate that's in the middle of
15 this picture.

16 A. There are four of those.

17 Q. Well, I'm only interested in this one
18 right now.

19 A. Okay.

20 Q. Is this storm drain that's part of
21 Exhibit 7 in the alley --

22 A. Yes.

23 Q. -- on Strait Street? And your purpose
24 in taking that was just to show where water could
25 get into the pipe system that leads down towards

1 your house?

2 A. Yes.

3 Q. And I would assume that water comes from
4 different properties on that alley; is that right?

5 A. It's piped there for storm drain. Their
6 pipe. You know, I don't know where they come from.

7 Q. Okay. Do you know if the water that
8 gets into that storm drain comes off of the property
9 of private landowners?

10 A. I have no idea.

11 Q. Do you know if the water that comes into
12 the storm drain comes off of property that belongs
13 to the DOT?

14 A. It just gets water. That's all I know.

15 MR. DEVLIN: I'm going to show you Ray
16 33, which is going to be Defendant's 8.

17 (DFT. EXH. 8, Photograph Bates Stamped
18 RAY000033, was marked for
19 identification.)

20 BY MR. DEVLIN:

21 Q. Did you take that picture?

22 A. Yes.

23 Q. In November 2012?

24 A. Yes.

25 Q. Someone's feet and a leg appear on the

1 far right-hand side. Is that person standing right
2 next to your front walk?

3 A. Yes.

4 Q. There appear to be three -- there appear
5 to me to be three pipes shown in this cross section.
6 Do you believe that's the correct count of the pipes
7 in this picture?

8 MR. ABERMAN: Objection.

9 THE WITNESS: Yes.

10 BY MR. DEVLIN:

11 Q. Why did you take this picture?

12 A. These three pipes are moving water under
13 my house, storm drain water.

14 Q. And generally speaking, they come from
15 Strait Street, the Maycock property and the McDonald
16 property?

17 A. Yes.

18 MR. ABERMAN: Objection.

19 BY MR. DEVLIN:

20 Q. To the best of your knowledge, were
21 these pipes, after this work is done, connected back
22 up so that they weren't plugged as they appear to be
23 in this picture?

24 MR. ABERMAN: Objection.

25 THE WITNESS: Yes.

1 Q. And behind the photographer and to the
2 photographer's left?

3 A. That's what it looks like.

4 Q. Okay. What was your purpose in taking
5 this picture?

6 A. To show that Oakland was flooded.

7 Q. And why is flooding on Oakland something
8 of importance to you?

9 A. Because all that water will go under my
10 house.

11 Q. Do you know where that water came from
12 other than a storm?

13 A. No.

14 Q. Do you know if it came from any -- do
15 you know if it flowed off of any private property?

16 MR. ABERMAN: Objection.

17 THE WITNESS: I'm sure it did, some of
18 it.

19 BY MR. DEVLIN:

20 Q. Do you know if the water shown in
21 Exhibit 9 in fact drained into the Strait Street
22 system that lead down towards your house?

23 A. Eventually that water, where it is,
24 would get under my house.

25 Q. Unless it evaporated?

1 moving?

2 A. The picture will show the -- the picture
3 shows they're moving.

4 Q. If you look on Exhibit 14 at the -- I'm
5 going to call it the mortar joint that runs from one
6 flower pot to the other. You see what I'm talking
7 about?

8 A. Yes.

9 Q. Had you ever done any repair or had
10 someone do any repair to that mortar joint?

11 A. I cannot remember repairing that mortar
12 joint.

13 Q. Okay. Do you know if any repair had
14 been done to that mortar joint before you bought the
15 property?

16 A. I do not know.

17 Q. Do you know if that mortar joint shows
18 two separate lines of mortar or grout, whatever the
19 substance is?

20 MR. ABERMAN: Objection.

21 THE WITNESS: I honestly can't tell you.

22 BY MR. DEVLIN:

23 Q. Did the steps looks like this in 1985?

24 A. No.

25 Q. And is it your testimony that the first

1 time that you believed the steps were moving was in
2 2011?

3 A. No.

4 Q. When did you believe -- when did you
5 first come to believe that the steps were moving?

6 A. Somewhere around 2008.

7 Q. And what makes you -- why does that date
8 come to mind?

9 A. I guess that is -- that is when I asked
10 for the City's assistance.

11 Q. Okay. And we'll get to the asking the
12 City's assistance part in just a minute.

13 I'm going to hand you a series of
14 pictures marked -- well, one at a time. Ray '93,
15 which is going to be 15.

16 (DFT. EXH. 15, Photograph Bates Stamped
17 RAY000093, was marked for
18 identification.)

19 BY MR. DEVLIN:

20 Q. Did you take that picture?

21 A. Yes.

22 Q. Did you take that in 2011 at the same
23 time you took the one that's marked as Exhibit 14?

24 A. I would assume so.

25 Q. It is a somewhat closer view of the

1 house, they had beams and this is just a support
2 beam going down.

3 Q. When was it put in?

4 A. I think that has always been in there.

5 Q. And that appears to be put in on a
6 diagonal going from the deck of the attic up to the
7 peak of the house; correct?

8 A. You're going to have to talk to my
9 engineer about this. I don't understand any of
10 this.

11 Q. Yes, ma'am. Do you see that piece of
12 wood there behind the more diagonal pieces?

13 (Indicating.)

14 A. Yes.

15 Q. That appears to be going straight up
16 towards the peak of your attic?

17 A. Yeah.

18 Q. Do you know when that was put into your
19 attic?

20 A. That was put in in 2007.

21 Q. And that's the lighter colored piece of
22 lumber that appears to be --

23 A. Correct.

24 Q. -- several pieces of lumber there
25 together? And why was that put in?

1 A. I think it was to support it.

2 Q. Why did your roof need support in 2007?

3 A. It was moving.

4 Q. Was it bending?

5 A. Yeah. I mean, I think some beams were
6 bending. They were -- the long beams were making a
7 bend.

8 Q. Okay.

9 A. But this one was to connect -- to just
10 make sure that that was put together, I think, at
11 the very front.

12 Q. The purpose of the lighter piece of
13 lumber in this picture was to stabilize the roof, to
14 stop it from moving?

15 A. The very front. That was, what, in
16 2007.

17 Q. And the lumber I was referring to is
18 this one that I'm going to put a small circle on.

19 A. Right there. Early 2007. Right.

20 Q. Who put that in?

21 A. Paul Little and Rodney Kirk.

22 Q. Are they contractors?

23 A. I think they had their contracting
24 license then.

25 Q. And when did you first notice bending or

1 movement in the roof frame?

2 A. The very first time I saw it was 1995.
3 Then this was late 2006 and early 2007, just -- now,
4 these were just -- these and this. (Indicating.)
5 After 2011, the other beams, things started moving.

6 Q. Okay. You were pointing at something on
7 29 when you said the other things had started
8 moving. Show me again what on Exhibit 29 started
9 moving after 2011.

10 A. (Indicating.) First thing you talked
11 about.

12 Q. The timber to which all the joists going
13 up attach at the peak of the roof?

14 A. Correct.

15 Q. Okay. When you first noticed the
16 bending in the roof frame in 1995 --

17 A. Let me correct myself. It was not in
18 2011. It was 2012 when I first noticed that.

19 Q. Let's back up.

20 A. Okay.

21 Q. And we'll get back up to 2011 or '12.

22 A. Okay.

23 Q. In 1995, what caused you to notice the
24 bending in the roof frame?

25 A. I was getting my Christmas decorations

1 down.

2 Q. That will do it. Did you take any
3 remedial action to deal with the bending in the roof
4 frame?

5 A. Yes.

6 Q. What did you do?

7 A. There were also squirrels in my roof.
8 And so the guy fixed the siding on the -- all the
9 way around the house where the squirrels had gotten
10 in and he also went in and fixed the bending.

11 Q. Okay.

12 A. They were the single boards.

13 Q. Okay. The guy?

14 A. I don't know what you call him.

15 Q. How did you find the guy? The guy who
16 fixed the stuff, how did you locate him? Did you
17 ask a friend? Did you look him up in the yellow
18 pages?

19 A. He had a construction company. I play
20 golf with him.

21 Q. Did he give you an estimate on what he
22 was going to charge for the repair work he was doing
23 up there or was it just verbal?

24 A. I think I paid 5,000 and I have a bill
25 for it, but most of it was the squirrel damage. He

1 and 2006 or '7, did anything else notable happen on
2 your property that would make you think you might
3 have a problem with the stability of the soil on
4 your property?

5 A. Between what year and what year?

6 Q. Between 1995 and 2006 or '7.

7 A. No.

8 Q. Okay. Was there a time when a gardener
9 stepped into a waist deep hole in your yard?

10 A. He didn't step into it. It went away.
11 Went down on him.

12 Q. All right. And was that a -- when did
13 that happen?

14 A. I would say around 1992. That's a --
15 guessing here.

16 Q. Okay. When that happened -- I'm sorry.
17 I thought that happened after 1995.

18 A. I think it was 1992.

19 Q. When the gentleman stepped into the spot
20 in your yard that he sank waist deep into, what was
21 he doing?

22 A. He was working in my backyard.

23 Q. Gardening? Yard work?

24 A. Yard work. Yeah.

25 Q. Okay. And how close to your house was

1 that spot where he stepped into?

2 A. I'd say 10 to 12 feet away from the back
3 end.

4 Q. Okay. And describe to me what that area
5 looked like, if you can, before he stepped into it.

6 A. It was just pretty grass.

7 Q. And what was this gentleman's name?

8 A. George.

9 Q. Do you remember George's last name?

10 A. I do not.

11 Q. Okay.

12 A. I should though.

13 Q. Was he a gentleman who just did odd jobs
14 occasionally?

15 A. He worked for everybody in the
16 neighborhood.

17 Q. Came around the neighborhood?

18 A. Yes.

19 Q. Asked if you needed any work done?

20 A. Uh-huh.

21 Q. Have you seen him lately?

22 A. He's dead, we think.

23 Q. Were you at home when he stepped into
24 that -- I'm going to call it a hole, but I
25 understand that it was not a hole before he stepped

1 into it; right?

2 A. (Nodding head.)

3 Q. Were you at home when he stepped into
4 the hole?

5 A. I was in the backyard.

6 Q. Did you see him step into it?

7 A. I did.

8 Q. How tall a man was George?

9 A. Probably six feet two.

10 Q. And did he go waist deep into that hole?

11 A. He did.

12 Q. Tell me what happened from that point
13 forward. I'm interested in this story.

14 A. Well, Marshall Rogers was out there and
15 I was out there and we both almost went to the
16 ground laughing.

17 Q. Was George laughing?

18 A. When he got over the shock.

19 Q. After all of you got over the initial
20 surprise of him stepping into something that landed
21 him waist deep, did you investigate that hole in
22 some fashion?

23 A. I had dirt brought in and filled it in.

24 Q. Did you look at the hole before you had
25 that filled in?

1 A. I cannot remember, but I do not think
2 so.

3 Q. Did you take any pictures of it?

4 A. No.

5 Q. Did Mr. Rogers take any pictures of it?

6 A. No.

7 Q. Did you recall whether or not the dirt
8 in that hole was wet or dry?

9 A. I do not recall.

10 Q. Did you investigate in some fashion why
11 there should be a spot in your backyard capable of
12 sinking a six-foot tall man up to his waist?

13 A. No.

14 Q. Why not?

15 A. Honestly, I didn't know to investigate
16 the hole like that.

17 Q. Did you do anything to determine if
18 there were any other places in your yard where such
19 spots existed?

20 A. No.

21 Q. I'm going to show you Defendant's
22 Exhibit 3, which is the white map of your property,
23 and I believe that would be a generally accurate
24 pencil drawing of the outline of your house as it
25 existed in 1992; correct? Because the addition

1 A. This was in November of last year.

2 Q. Okay. And what was covered?

3 A. This was when the lines were broken in
4 the road and they were covered with dirt. They
5 covered them with dirt while they kept on going.

6 MR. DEVLIN: I'm going to show you
7 what's going to be marked as Exhibit 36, which is
8 Ray 412.

9 (DFT. EXH. 36, Photograph Bates Stamped
10 RAY000412, was marked for
11 identification.)

12 BY MR. DEVLIN:

13 Q. And it is during a period of
14 construction, I believe, and it has handwriting in
15 the bottom right-hand corner. I'd ask you what that
16 says?

17 A. This is the broken pipe from the
18 Maycocks' house that goes into the inlay box, which
19 I must -- and it's broken and an original line goes
20 under the water line which you asked about earlier
21 today. (Indicating.)

22 Q. So in the middle of the picture, there's
23 that water line you're referring to?

24 A. Was one of your first pictures.

25 Q. Sure. .

1 A. And it was clean and they were putting
2 the pipe in.

3 Q. Okay.

4 A. This is when they were getting the water
5 out. I don't know where the water -- I think it
6 came from a broken sewer area. The whole area
7 filled with water. And they are getting it out, I
8 guess, to put the pipes in.

9 Q. There are a number of pictures related
10 to the construction in November 2012 and the
11 breaking of pipes; correct?

12 A. Correct.

13 Q. Do you believe or has somebody, not your
14 lawyer, told you that the fact the pipe were broken
15 and later reconnected has caused damage to your
16 house?

17 A. I don't -- I don't know. You'll have to
18 ask the engineer that.

19 Q. I've read the engineer's report and it
20 leaves me curious what, in your mind, the
21 significance of the broken pipes during the
22 construction in 2012 is.

23 A. They were showing three broken pipes
24 coming into my house was the significance.

25 Q. Do you think that those pipes were

1 broken during construction or before the
2 construction began?

3 A. Oh, they were definitely broken during
4 construction.

5 Q. Do you know whether or not they were
6 repaired as the construction concluded and the road
7 was -- I'll say the road was rebuilt?

8 A. They were prepared -- repaired.

9 Q. Do you believe that any damage occurred
10 to your house or to your property as a result of the
11 fact that some of these pipes were broken during
12 construction?

13 A. Not at the time of construction. I
14 mean, that would not have been any part of it. That
15 was just showing broken pipes.

16 Q. Is there some other time, other than at
17 the time of construction, when the fact that these
18 pipes were broken for a period caused damage to your
19 property?

20 A. I don't think these pipes were broken
21 before construction.

22 Q. I understand. Is the fact that during
23 construction the pipes were broken something that
24 you say damaged you?

25 A. What is your question?

1 Q. The pipes were broken during
2 construction?

3 A. Correct.

4 Q. Did that damage your house?

5 A. No.

6 Q. Okay. If that did not damage your
7 house, why did you provide the pictures of it?

8 A. To show that there were three pipes
9 coming into my house.

10 Q. When you say three pipes coming into
11 your house, would another way of saying that be
12 there are three pipes coming into the catch basin in
13 front of your house and one pipe going under your
14 property?

15 A. Correct.

16 Q. Okay. So there aren't three pipes going
17 under your house?

18 A. No.

19 Q. There are three pipes leading to one
20 pipe?

21 A. Correct.

22 Q. Okay. And we'll be reading this
23 transcript for some period to come and I don't want
24 there to be any mistake by somebody about there
25 being maybe three pipes under your house.

1 A. These three broken pipes are in the
2 middle of the road.

3 Q. I understand.

4 I'm going to show you a document that's
5 marked Ray 413. It's going to become Exhibit 37.

6 (DFT. EXH. 37, Photograph Bates Stamped
7 RAY000413, was marked for
8 identification.)

9 BY MR. DEVLIN:

10 Q. And there's a black and white copy of
11 the same picture, I believe, that is going to be the
12 second page of that exhibit. If you'll look at 37,
13 please.

14 A. (Complying.)

15 Q. Was this picture e-mailed to you or from
16 you?

17 A. I e-mailed it to myself from my computer
18 at my house.

19 Q. Okay. You e-mailed it --

20 A. This is an e-mail from me. Leslie
21 Maycock took this picture and she e-mailed to me.
22 We've discussed this picture before.

23 Q. Picture entitled inlay pipe at Lucille's
24 house was taken by Ms. Maycock?

25 A. Correct.

1 4th, you had ever met him?

2 A. Yes.

3 Q. Had you talked to him prior to that?

4 A. I had set up an appointment with his
5 wife.

6 Q. How did you learn of Mr. Leonard's area
7 of expertise?

8 A. I asked a real estate person in
9 Charlotte who was the best structural engineer that
10 they knew of that concerned -- that would know
11 something about stormwater and other structural
12 damages.

13 Q. And who is that real estate person?

14 A. I forget her name. She dated Trip
15 Lightner. I can get you the name later. I just
16 can't --

17 Q. She is a real estate broker or agent?

18 A. She's an agent in Charlotte and she
19 dated a real good friend of mine.

20 Q. Okay. And there's a fairly lengthy four
21 paragraph --

22 A. Can I stop you?

23 Q. You certain can.

24 A. Leigh Cunningham is her name.

25 Q. Very good. Thank you. In the second

1 paragraph of this letter, it appears Mr. Leonard is
2 referring to a conversation you and he have had
3 where it says you also, referring to you, Ms. Ray,
4 also outlined information regarding a history of
5 problems with sinkholes and pipe cave-ins behind
6 your house and at other nearby neighbors.

7 Tell me what you can recall about a
8 history of problems with sinkholes and pipe cave-ins
9 behind your house and at other nearby neighbors.

10 A. The one behind my house was --

11 Q. George?

12 A. -- George, the yard man. And the others
13 that we talked about were in the Marshall Rogers
14 backyard, where they had sewer line cave-in. They
15 had also had that cave-in from the picture that we
16 had seen earlier, where I told it was a March 13th,
17 where the pipe -- they did something with that. So
18 those are the cave-ins we were talking about.

19 Q. Okay. The work that got done on the
20 Rogers' property that ended up taking out the brick
21 wall, was that a sewer line cave-in?

22 A. Yes.

23 Q. Do you know if the Rogers took any
24 pictures of that cave-in?

25 A. I have no idea.

1 Q. At the bottom of that page, there's a
2 reference to a pipeline study which you asked the
3 City to do in 2008. Tell me what caused you in 2008
4 to request a pipeline study.

5 A. I really did not request the pipeline
6 study. The City came in and said they were going to
7 do a pipeline study. I wouldn't have known what a
8 pipeline study was.

9 Q. Okay. Your lawyer is writing the City,
10 if I understand this letter correctly, telling the
11 City that you asked for a pipeline study. Do you
12 think that your lawyer had it backwards? And I hate
13 to break this to you, but lawyers have been known to
14 make mistakes. Do you think that your lawyer got it
15 backwards or did you in fact ask for a pipeline
16 study?

17 A. I just told you, I didn't ask for a
18 pipeline study. I wouldn't have known what a
19 pipeline study was. He probably got it -- I mean,
20 what they did is we came in and that is how they
21 said they would be able to tell if there was a break
22 in the pipe and they would do a pipeline study.

23 Q. In 2008, when the City told you they
24 wanted to do a pipeline study, did they send you a
25 letter? Did they call you? How did they let you

1 know they wanted to do that?

2 A. They just came and did it.

3 Q. Had you had any communication with the
4 City prior to 2008 about any concerns you had about
5 the stormwater pipe that leads out from that catch
6 basin in front of your house?

7 A. No. I didn't even know it was there or
8 think about it.

9 Q. When the pipeline study -- when the
10 video of the pipeline was completed, did you ask for
11 a copy of it?

12 A. I asked what it said and it was lost.

13 Q. Did you find out what the conclusion of
14 that study was?

15 A. That it -- I was told that it was broken
16 at the front and at the end of the pipe and that
17 they could not find it.

18 Q. What was broken at the front and the end
19 of the pipe? I need to make sure I understand what
20 it is.

21 A. Exactly like I'm saying. At the front,
22 there was -- something showed something at the front
23 and at the end of the pipe that. . .

24 Q. The pipe was broken at the front and at
25 the end? Is that what you're saying?

1 A. I didn't say broken. I said there is
2 something at the front and the end of the pipe and
3 that's all that Jason told me.

4 Q. And was that in 2008 that he told you
5 that?

6 A. I don't -- I cannot recall when it was.

7 Q. Did you see him doing the video?

8 A. No.

9 Q. When did you learn that a study or a
10 video had been done in 2008?

11 A. The day it happened, because they had
12 been digging in Marshall's backyard.

13 Q. Do you know why they were digging in
14 Marshall's backyard?

15 A. I would have assumed at that point that
16 they were looking for the pipe.

17 Q. Do you know where in Marshall's backyard
18 generally speaking they were digging?

19 A. Back near his driveway area, behind
20 where the pipe has been found today.

21 Q. There are a number of pipes that we've
22 talked about. I want to make sure that we're
23 talking about the pipe that runs from the catch
24 basin directly in front of your house to the manhole
25 that's behind your house. Right now, that is the

1 only section of pipe that I'm interested in.

2 Was the City digging in Mr. Rogers'
3 backyard, you think, because they were studying that
4 pipe?

5 A. I have no idea.

6 Q. Did you ask Mr. Rogers what the City was
7 doing digging in this backyard?

8 A. He couldn't remember when I asked him.
9 I did not ask him at that time.

10 Q. Do you know when you first got in touch
11 with someone at the utility department about what
12 they were doing with the digging or videoing?

13 A. That would probably be late 2008 or
14 sometime in 2009. I do not recall. And it would
15 have been Mr. Tinkler.

16 Q. Have you ever received any documents
17 showing any results of that pipeline study?

18 A. We finally received -- no. They never
19 gave a document. We received the pipeline studies
20 in May of 2012.

21 Q. Have you ever seen a video that the City
22 did of the pipe under your house in 2008?

23 A. Mr. Leonard has seen it in 2012.

24 Q. Have you seen any video of the pipe that
25 leads from the catch basin in front of your front

1 walk leading down under your house ever?

2 A. I saw -- well, I was sitting outside the
3 truck about 20 feet when they did the second one on
4 June the 2nd -- I mean, the June the 3rd, 2011. And
5 then the insurance people were at my house last week
6 and they were doing a video and we saw the camera
7 then.

8 Q. What I'm talking about, and I'm probably
9 not being very clear, is whether you've ever
10 reviewed the video tape itself? Not viewed somebody
11 making a videotape.

12 A. No, I have not.

13 Q. Are you aware that a 2008 videotape has
14 been produced in this lawsuit by the City?

15 A. Yes.

16 Q. Have you reviewed it?

17 A. No.

18 Q. Has your engineer reviewed it?

19 A. I just told you he had reviewed it.

20 Q. But you said he reviewed it in 2012?

21 A. That's when we got it.

22 Q. Did it show breaks at the front and the
23 end of the pipe?

24 A. His report is right there for you to
25 read. It tells exactly what his report says.

1 Q. You've probably told me this and maybe
2 more than once. When did you first know that there
3 was a pipe under you house?

4 A. Really know that the pipe was under my
5 house?

6 Q. Well, we'll start with that.

7 A. Okay. It was in June 3, 2011.

8 Q. Over the years, you've had a number of
9 appraisals of your house done; correct?

10 A. Correct.

11 Q. Have you ever advised any of those
12 appraisers about problems with the roof frame?

13 A. No.

14 Q. Have you ever advised any of those
15 appraisers about sinkholes in the backyard?

16 A. No.

17 Q. Have you ever advised any of those
18 appraisers about a stormwater pipe running under
19 your house?

20 A. No.

21 Q. How much did you pay for the house in
22 1985?

23 A. I think 80,000.

24 Q. And do you know -- well, what is your
25 opinion on what your house is worth right now?

1 the repair estimate is 147.

2 MR. DEVLIN: Okay. All right.

3 Q. Ms. Ray, let's talk about the addition
4 on your house.

5 A. Okay.

6 Q. When did you get that put on?

7 A. I think it was 2001.

8 Q. Who built it?

9 A. My father and a construction man from
10 Charlotte and I don't know who it was. My father
11 was out there watching it.

12 Q. What is your father's education and
13 background that would qualify him to build a house?

14 A. Well, he had the construction man -- I
15 mean, a builder from Charlotte. I just don't know
16 who the guy was.

17 Q. Okay. Did you pay the builder from
18 Charlotte?

19 A. I paid some of it.

20 Q. Do you remember his name?

21 A. I do not. I mean, I never wrote a check
22 to him personally. That was not what I did in the
23 house.

24 Q. How did you pay for part of it if you
25 didn't write a check to him?

1 briefcase. They're rolled up. I can get you
2 copies.

3 BY MR. DEVLIN:

4 Q. But there are also documents in your den
5 in a briefcase that have something to do with
6 construction.

7 A. Okay.

8 Q. And I'd like those also.

9 A. Okay.

10 MR. FENNEL: We'll get them.

11 (This page contains information to be
12 supplied by counsel and/or the deponent.)

13 BY MR. DEVLIN:

14 Q. How long did it take to add the
15 addition?

16 A. I cannot remember.

17 Q. You don't need to be precise.

18 A. I just don't know. I think I was
19 through in 2000 -- what was it? 2001 or '2. I
20 can't remember.

21 Q. But you think it was finished in 2001 or
22 '2?

23 A. Yeah. I know it was.

24 Q. After that work was finished, were there
25 ever any problems that you had to address with the

1 builder?

2 A. I think there was a problem during the
3 building, when he left the roof off and it got wet,
4 the new section got wet or they didn't get the --
5 thunderstorm came up and it got wet.

6 Q. Did you ever call the builder back to do
7 warranty work?

8 A. I didn't need warranty work done.

9 Q. Congratulations. Did you ever
10 communicate with the builder about any problems that
11 you associate with the construction of the addition?

12 A. The addition has been fabulous.

13 Q. Yes, ma'am. Have you ever been of the
14 opinion that some problem in your house was caused
15 by the addition?

16 A. No.

17 Q. Is your house on the National Historical
18 Register?

19 A. No.

20 Q. Is it on some other type of historical
21 register?

22 A. Not that I know of.

23 (DFT. EXH. 41, Grant of Right-of-Way to
24 The City of Rock Hill, SC for Storm or
25 Sanitary Sewer, Bates Stamped RAY001196

1 through 001200, was marked for
2 identification.)

3 BY MR. DEVLIN:

4 Q. Okay. I'm going to show you a document
5 that's marked as Ray 1196. It is a right-of-way
6 that I'll summarize as something that you granted to
7 the City in 1999.

8 A. Okay.

9 Q. You recognize that document?

10 A. I do.

11 Q. And it shows a stamp on the front page
12 that shows that it was clocked in on December the
13 3rd, 1999?

14 A. Yeah.

15 Q. And to short form it a good bit, you
16 gave the City a right over a 10 foot by 74 foot
17 stretch running down the side lot line on your
18 property to put in a pipe of some sort; correct?

19 A. A sewer line pipe.

20 Q. Although this does say for the
21 installation of --

22 A. Supposed to be sewer. Supposed to be
23 sewer.

24 Q. If you look at the top of the page,
25 first page, does it say for storm or sanitary sewer?

1 BY MR. DEVLIN:

2 Q. I'm going to represent to you, Ms. Ray,
3 that this floor plan, if that's a good label for it,
4 comes from an appraisal that a gentleman named Hugh
5 Rock performed on your house in the first decade of
6 the 2000s.

7 A. Uh-huh.

8 Q. That's where I pulled it from.

9 A. Okay.

10 Q. Does it appear to be an accurate
11 representation of your house floor plan, the main
12 living area after the construction of the addition?

13 A. I'm sure it is.

14 Q. Well, take a minute. I don't want to
15 rush you.

16 A. (Reviewing.) Looks right.

17 Q. Okay. What I would like for you to do
18 is to give me an idea as to each one of these rooms,
19 what damage there is that you attribute to this pipe
20 under your house. Let's just start with an
21 individual room. Okay?

22 On the bottom left of the drawing,
23 there's a patio. Do you know of any damage that you
24 can see to the patio?

25 A. No.

1 Q. There's the dining room immediately
2 adjacent to the patio. Are there any damages of any
3 sort that you attribute to the stormwater pipe?

4 A. No.

5 Q. The living room, which is next to the
6 dining room, do you believe that has any damage as a
7 result of this stormwater pipe?

8 A. My engineer says there's stress in the
9 living room.

10 Q. Okay. And I understand your engineer
11 may be able to --

12 A. I think that's --

13 Q. -- talk about things.

14 A. I really think that's who you have to
15 talk to. I cannot.

16 Q. Well, one day I will; but today, I'm
17 talking to you.

18 A. Yeah. But I don't know anything about
19 damage in the rooms like he does.

20 Q. Well, I'm not asking you for any
21 engineering conclusions.

22 A. Okay.

23 Q. If you know where there are cracks in
24 the wall --

25 A. Okay.

1 Q. -- that I believe you pointed out on
2 the --

3 A. I'll be glad to.

4 Q. -- video. And as to every one of these
5 rooms, if there's a creek on the wall or if there's
6 a problem that you have observed --

7 A. Okay.

8 Q. -- in a floor or anything that you think
9 is a problem caused by this pipe, I want you on a
10 room-by-room basis to tell me about it. Okay?

11 A. Okay.

12 Q. So let's -- patio, dining room, nothing;
13 is that correct?

14 A. Patio. Where are we?

15 Q. Bottom left.

16 A. Patio and dining room? No, nothing.

17 Q. Living room?

18 A. There's some stress.

19 Q. Okay. Where is it and what does it
20 looks like?

21 A. There's some stress as you walk in right
22 before the entry on the -- going back into the bar
23 room, at the top.

24 Q. Okay. If you'll put that down on -- I
25 want you to mark on 43 what wall that stress appears

1 on.

2 A. Okay. Where is the wall? Where is
3 the -- I can't really tell which one we're talking
4 about. I thought the entry was here.

5 Q. I --

6 A. I thought there was an entry -- there is
7 an entry right here. (Indicating.) I'm saying
8 right in here is the stress, I think from this
9 diagram. (Indicating.)

10 Q. When you say there's stress, what does
11 it look like? What is the physical manifestation
12 that you say is the stress?

13 A. The engineer says it moves out, I think.
14 I'm not sure what we're saying; but I mean, you can
15 see it. It's not a straight, straight area.

16 Q. And that's on the wall?

17 A. Going -- I want to say going in this
18 way. (Indicating.)

19 Q. In towards the house?

20 A. Yeah. This is in the living room area,
21 not in the den area. And, actually, it's stressed
22 on this side of the den area also. (Indicating.)

23 Q. Okay. So on the common wall between the
24 living room and the den --

25 A. That is where --

1 Q. -- you say there is some stress on that
2 wall also?

3 A. Uh-huh.

4 Q. And it takes the form of some --

5 A. I don't know how to explain it.

6 Q. Can you see it?

7 A. You're the construction engineer. Can
8 you give me an explanation of it?

9 Q. Can you see anything that indicates the
10 stress?

11 A. It just bulges. I mean, I don't know
12 exactly how to say it.

13 Q. Can you see the bulge?

14 A. I can see it.

15 Q. Okay. Are there any sheetrock cracks or
16 displacement or any other evidence of something that
17 you consider to be damage to your house in the
18 living room?

19 A. I don't believe there are any sheetrock
20 cracks. I don't have sheetrock. I have plaster and
21 I think, right now in the living room, there's not
22 any plaster cracks.

23 Q. Is there anything else in the living
24 room which you think is a problem caused by a
25 stormwater pipe under your house?

1 A. I would have to be in the living room to
2 be able to tell you that right now.

3 Q. Okay. We've got a video in which you do
4 a little bit of a walk around tour, but it's very
5 difficult to figure out while watching the video
6 what particular wall you might be talking about.

7 A. Okay. I can tell you that one.

8 Q. I was hoping that you could show me
9 which wall it is on a piece of paper because that's
10 much, much easier for someone of my limited
11 abilities to figure out. Can you not tell me what
12 walls have cracks on them?

13 A. I honestly cannot right now. But if you
14 show me the video, I'll show you which walls they
15 are.

16 Q. Okay. We'll get to that. Is it your
17 testimony that, as you sit here right now, you can't
18 tell us where any particular crack is without
19 looking at a video?

20 A. There are cracks -- okay. The porch
21 definitely has cracks. There is a -- the doorway
22 going -- the floor in the --

23 Q. Morning area?

24 A. I would call it the bar area is what I
25 would call it, the wet bar area. The floor is --

1 does like this. (Indicating.)

2 Q. Hold on. Does like this? It has a sag
3 in it?

4 A. Yes, it has a sag in it. And a golf
5 ball will roll from one side to other. The bathroom
6 right there, in the corner has a crack.
7 (Indicating.)

8 Q. Okay. Hold on. The bathroom in the
9 corner has a crack?

10 A. Closest to the wet bar area, that
11 corner.

12 Q. All right. It has a crack. Where is
13 that crack in that bathroom?

14 A. You look up at the crack going out the
15 door.

16 Q. Okay. I'm standing in the bathroom,
17 going to walk back out into that hallway, it's in
18 front of me or it's to my right?

19 A. If I'm walking out, to my right.

20 Q. Okay. Hold on. When did you first
21 notice the sag in the wet bar area?

22 A. I could not tell you.

23 Q. When did you first notice the crack in
24 the bathroom?

25 A. That has just happened in the last

1 probably six months to a year. Now there -- the
2 doorway going right through the wet bar area to the
3 back hall, I have never noticed it until last week
4 and it goes like this. (Indicating.)

5 Q. I'm sorry. I didn't follow that. The
6 doorway leading -- okay. The doorway leading right
7 past the wet bar into the back hallway does what?

8 A. You cannot shut the door any longer and
9 it's leaning right, going downhill to the left now
10 probably an inch -- it looks like about
11 three-fourths of an inch, but Mike has not been here
12 to tell me anything about that.

13 Q. Okay.

14 A. My bedroom is cracked, the whole
15 right -- all the way from the walk-in right to the
16 right side where there's a two -- I don't know how
17 to explain it to you. Two tier, where it drops,
18 it's cracked all the way down that side and then
19 it's started cracking across the room.

20 Q. All right. Hold on. Your bedroom?

21 A. Which is at the very back. Right there.
22 (Indicating.)

23 Q. It's at the very back.

24 A. And this wall right here. (Indicating.)
25 There's a wall right here, at the top. I don't know

1 to -- you can't draw it --

2 Q. You're indicating a wall --

3 A. There's a top, like a ceiling.

4 Q. Like a tray ceiling?

5 A. Yeah. That's drops down about that
6 much, where the lamps and all the. . .

7 Q. You've noticed cracks in the ceiling in
8 your bedroom?

9 A. No. It's -- the crack goes down this --
10 it's just like a corner where it drops. Where you
11 have the thing right there, it drops and there's a
12 crack that runs all the way and goes that way across
13 the ceiling. (Indicating.)

14 Q. Is the crack at the joint between the
15 horizontal and the vertical?

16 A. It's at the top. The top.

17 Q. At the top? See, it's very difficult
18 for me to -- you know what you're talking about; but
19 when you say at the top, there are lots of different
20 things that it could be at the top of. I need you
21 to try to --

22 A. Would you like me to take a video of it
23 tonight so you can see it?

24 Q. No, ma'am. I've seen all the videos
25 right now I want to. But I will show you a video at

1 a later point --

2 A. Okay.

3 Q. -- and maybe we can clear it up then.

4 A. Okay.

5 Q. But there are cracks in the ceiling in
6 your bedroom?

7 A. There's a drop ceiling. I guess that's
8 what you call it, where it drops this much below the
9 other part of the ceiling. (Indicating.) Where the
10 lamps are in, the lights. What do they call them?
11 Fluorescent, I mean --

12 Q. Fixtures?

13 A. Huh?

14 Q. Fixtures?

15 A. Well, they're fixtures. You know how
16 you have --

17 MR. WHITE: Can lights?

18 THE WITNESS: Thank you. It's can
19 lights. And so the ceiling drops that much there.
20 Right around the edge of that, there is a crack all
21 the way and it's down the line and it's cracked this
22 way a little now. (Indicating.)

23 BY MR. DEVLIN:

24 Q. When you say it's cracked this way a
25 little bit, to the left of those can lights?

1 A. Yeah.

2 Q. When were those can lights installed?

3 It's not original construction if it's can lights.

4 A. 1990 or something like that.

5 Q. Okay. So --

6 A. It might have been 1986-87, but I don't
7 know.

8 Q. Did you have some renovation done in the
9 bedroom area in the first five or six, seven years
10 you were in the house?

11 A. I just had the can lights put in and the
12 bathroom I picked up put in.

13 Q. Okay. Continuing to look at the sketch
14 map from the Rock appraisal.

15 A. Okay.

16 Q. What other rooms can you recall having
17 any damage to them?

18 A. I really can't recall any other rooms
19 that have -- other than that doorway that I've seen.
20 And we're seeing maybe little cracks, but I've never
21 seen them before. They're just starting to pop up
22 now.

23 Q. If you walk into the bedroom that's
24 immediately adjacent to the hall bath --

25 A. Oh, yeah. There is a crack -- now,

1 there was a hairline crack there years -- I mean,
2 years ago. Right here. (Indicating.) And it has
3 gotten tremendously big in the last couple of years.

4 Q. Define tremendously big. Could I put a
5 cat in it?

6 A. No. But it's pretty --

7 Q. A kitten?

8 A. No.

9 Q. Sorry. In inches, can you measure it?

10 MR. WHITE: What room was that hairline
11 crack it?

12 MR. DEVLIN: There's a bedroom
13 immediately behind the hall bath.

14 THE WITNESS: Yeah.

15 MR. DEVLIN: If you go backwards, wet
16 bar, bathroom, bedroom.

17 THE WITNESS: And over the years, it --
18 in the last year, it has grown tremendously.

19 BY MR. DEVLIN:

20 Q. Okay. And that's what I'm trying to get
21 at. Tremendously means a lot of different things.
22 Does that mean it's a quarter inch now or do you
23 mean three inches now? Reasonable minds can differ.

24 A. It's something you really notice now.

25 Q. And what wall is that on in that

1 bedroom?

2 A. It is on the wall that is against the
3 bathroom.

4 Q. And the wall that is a common wall
5 between that bedroom and the covered porch, did that
6 use to be the exterior edge of the house?

7 A. It did. It did.

8 Q. Okay. Moving back towards the front of
9 the house a little bit into the kitchen area. Are
10 there any signs of any cracks of any sort in the
11 kitchen area?

12 A. There's one little crack coming up in
13 the corner going -- if you're going to the bar area,
14 into the bar area, up in the right corner, top
15 right.

16 Q. Okay. So if I am in your kitchen
17 looking out at the bar area, the crack is in the top
18 right area?

19 A. Right -- just right in that corner.
20 (Indicating.) The very corner.

21 Q. You're drawing pictures in the air that
22 I can't see.

23 A. Well, if you're looking at that corner,
24 let's say that's what we're looking at, going out of
25 my kitchen.

1 Q. Okay.

2 A. It's in that corner, the right corner.

3 (Indicating.)

4 Q. Okay. Are there any other signs in the
5 kitchen area that you believe are evidence of some
6 damage caused by the stormwater pipe?

7 A. No.

8 Q. Have you ever thought that there were
9 some issues in your house that were caused by the
10 addition of the addition?

11 A. No.

12 Q. Have you ever measured any of these
13 cracks so that we could see what amount of change
14 may have occurred in them?

15 A. No.

16 Q. Have you ever had a contractor look at
17 any of these issues to see what they thought an
18 appropriate repair would be?

19 A. No. Except Mike.

20 Q. Have you ever attempted any repair --

21 A. No.

22 Q. Okay. I was going to say, I'm sorry, of
23 any of the issues that we just discussed?

24 A. No.

25 MR. DEVLIN: Before I go on to my next

1 scintillating subject, it's 20 'til 5.

2 THE COURT REPORTER: Off the record

3 or --

4 MR. DEVLIN: Yes. We're off.

5 (Off-the-record conference.)

6 (The deposition was adjourned at 4:40

7 p.m.)

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229

1 THE WITNESS: That's the only map we've
2 received from the City.

3 BY MR. DEVLIN:

4 Q. Okay. I did not have it clear in my
5 head that this was the document that was referred to
6 your complaint.

7 A. Okay.

8 Q. Your statement in the complaint is that
9 this map does not accurately reflect the location of
10 the 24-inch pipe. Where do you believe that pipe
11 goes if Exhibit 2 is not accurate?

12 A. Let's see. Let me look at it. I
13 thought we had already marked it.

14 Q. We may have.

15 A. Okay. Where is my house? Isn't there a
16 better -- there was a better map that we could see,
17 wasn't it?

18 Q. This is the one that you've identified
19 in your complaint.

20 A. Okay.

21 Q. I want to know why you think it's not
22 accurate.

23 A. Well, I know it's not accurate. Okay.
24 This is one that goes down to my house. See.

25 (Indicating.) And it goes all the way to the back

1 of Carolyn Rogers' lot. My house -- my lot ends
2 right here. Right here. (Indicating.) And the
3 storm drain goes here and cuts across.
4 (Indicating.)

5 Q. Okay. So once the storm drain --

6 A. Hits --

7 Q. -- exits underneath your building
8 itself --

9 A. It gets to the doghouse.

10 Q. -- it takes a right and heads for Lucas?

11 A. Right.

12 Q. As opposed to heading straight down to
13 the bottom of that little area?

14 A. Yeah.

15 Q. Okay.

16 A. And it also does not accurately show any
17 other water coming in because it does not show any
18 of the water coming down Strait Street.

19 Q. Who provided that to you?

20 A. The City of Rock Hill.

21 Q. Did anyone at the City of Rock Hill tell
22 you that this map represented the source of all the
23 water coming on to your property?

24 A. No. It's called a partial stormwater.
25 And it was given to us as public -- their public,

231

1 what they have for public.

2 Q. Okay. And who told you that was what
3 they had available for the public?

4 A. They did it, I guess, just for us.

5 Q. Okay.

6 A. Because they wouldn't let my engineer
7 have any other maps.

8 Q. Let me jump backwards to paragraph 5 of
9 that complaint again.

10 A. Okay.

11 Q. You reference in there that you
12 determined what you believed to be a stormwater pipe
13 of the defendant, singular, extended from the street
14 to your front entry. Do you know whose pipe extends
15 from the street on College Avenue to the front entry
16 of your house? Do you know whose that is?

17 A. I do not. Nobody wants it.

18 Q. What information do you have that makes
19 you think that that stormwater pipe belongs to the
20 Department of Transportation?

21 A. I don't think it belongs to me. I don't
22 know who it belongs to.

23 Q. That leaves a fairly large volume of
24 people to sort through to figure out who owns that
25 pipe. Do you have any information that would

1 Q. And so he, Mr. Quantz, told you that he
2 recalls, during his lifetime, somebody replacing
3 those step completely?

4 A. Yeah.

5 Q. What sort of problems did the steps have
6 that he --

7 A. He just said he remembered them
8 replacing those steps.

9 Q. You got a sense that he was referring to
10 not faulty construction of the first set of steps,
11 but that the step were having trouble similar to
12 what you're experiencing?

13 A. I just -- he just said they replaced the
14 steps. He didn't know any more than that.

15 Q. Okay.

16 A. And if you look at them, the two steps
17 are entirely different colors than the old bricks
18 going completely around the house. And I've never
19 replaced any steps.

20 Q. In 2008, when you had the steps issue,
21 didn't you suspect at that time that there was an
22 issue underneath your steps causing this trouble
23 with them?

24 A. No. I didn't know. I just -- all of a
25 sudden, it -- I was getting ready to have a cocktail

287

1 party and it started and they were moving. Before
2 that, I'd never had any issue with them.

3 Q. All right. Well, you've been a
4 seemingly candid witness perhaps. At the time you
5 called the City in 2008 --

6 A. Yeah.

7 Q. -- you suspected there was something
8 going on underneath your steps that was causing the
9 trouble with steps; is that correct?

10 A. I had been looking at my steps. And all
11 of a sudden, I saw, which I had never noticed before
12 and I don't know how, the storm drain setting at the
13 front. And, of course, I'm like anybody else, I
14 went out and looked where it looked like it was
15 going to. And then I called the City to ask where
16 that storm drain was going. So I did do that.

17 Q. I think I misunderstood some earlier
18 testimony because that was bothering me.

19 A. Okay.

20 Q. When you called the City, you suspected
21 there was a storm drain going underneath your steps?

22 A. I called to find out where that storm
23 drain was going.

24 Q. I understand. But when you called them,
25 you thought that storm drain might be going

289

1 City; right?

2 A. I had been seeing this problem with this
3 thing and I had been searching, I'll be the first to
4 admit. And to see a storm drain sitting there,
5 point the flashlight toward it and it looks like
6 it's going that way. I just wanted to know where it
7 went.

8 Q. I understand. I understand that. You
9 wanted to know where it went. But what I'm trying
10 to get you to --

11 A. To say --

12 Q. -- to admit --

13 A. -- that I knew it. I did not.

14 Q. No, ma'am. I'm not asking you to admit
15 that you knew it.

16 A. Okay.

17 Q. Let's see the difference there.

18 A. Okay.

19 Q. That I agree, maybe you didn't know.

20 A. I didn't.

21 Q. What I'm asking -- the question though
22 is, when you called the City in 2008, you feared
23 that stormwater line might be running underneath
24 your steps?

25 A. I might have feared that storm line

1 might be running against my steps.

2 Q. All right. I don't have a problem with
3 the second might, but I have a problem with the
4 first might. You didn't might fear that. You know.
5 Sitting here today, you can testify that you feared
6 that line was running -- might be running underneath
7 your steps?

8 A. I honestly cannot answer that today that
9 way.

10 Q. All right. Well, let's look at the
11 difference.

12 A. Okay.

13 Q. I'm not asking you to testify today that
14 you knew that line ran underneath your steps.

15 A. I did not know it.

16 Q. That's not the question.

17 A. Okay.

18 Q. The question though is, there's no
19 question sitting here today that you feared that it
20 might be running underneath your steps in 2008?

21 A. I agree to that.

22 Q. Did you contact any company, builder,
23 contractor, engineer in 2008 to analyze your steps
24 or where that stormwater line was going?

25 A. No. I talked to nobody but the City.

1 three steps so I don't --

2 A. No.

3 Q. -- have this big long question.

4 A. Okay.

5 Q. You call the City to come look at it?

6 A. Yeah.

7 Q. They came out?

8 A. Trudy came out.

9 Q. And Tinkler came out?

10 A. No. They opened the drain. They looked
11 at it, said it -- the pipe ran toward the steps.
12 Toward it. They didn't say any more than that.
13 Toward it.

14 Q. And --

15 A. Then Tinkler was two months later, or
16 three months, going to run a storm line test, which
17 he ended up running two days before Thanksgiving.

18 Q. Okay. So now with better information,
19 let me do it again. So in 2008 --

20 A. Okay.

21 Q. -- you feared the line might be running
22 underneath your steps and you called the City;
23 correct?

24 A. Correct.

25 Q. Trudy came out. They pull the cover and

1 A. A foot from the right side.

2 Q. Did your brother do the architectural
3 drawings?

4 A. No. I mean, there was a drawing of it.

5 Q. Do you know who built the house
6 originally?

7 A. I think the Dunlaps did, but I'm not
8 sure.

9 Q. Do you know about what year?

10 A. 1920s.

11 Q. 1920? I'm going to show you -- if you
12 would pick up Exhibit 43. That's the sketch. I
13 think it's right on top.

14 A. Okay.

15 Q. Can you describe for me the original
16 footprint of the house?

17 A. It goes front porch, living room. Just
18 right down this area. (Indicating.)

19 Q. All right. The right-hand edge, the
20 living room, the den, the bedroom as listed, that's
21 as it was?

22 A. Uh-huh.

23 Q. What was the back terminus of the
24 original structure? Do you know?

25 A. The back what?

1 there at all?

2 A. Right.

3 Q. And then the bathroom and the bedroom
4 and then the back wall?

5 A. Yeah. The only thing we added was the
6 kitchen, the covered porch and the garage
7 underneath.

8 Q. Okay. Do you believe that pipe was
9 added to this property after the construction of the
10 house?

11 A. I don't see how that pipe could go
12 under. It's pretty deep.

13 Q. So it's your belief the pipe was laid in
14 the property -- constructed on the property first
15 and then the house was put on top of it?

16 A. I would think that that pipe was there
17 before that house was built.

18 Q. Okay. You have no reason to believe the
19 City built this home, do you?

20 A. No.

21 Q. You have no reason to believe that the
22 City had any sort of permitting structure back in
23 the '20s that the City even permitted the
24 construction of this house?

25 A. I have no idea what went on back then.

1 Q. Well, I think I phrased it, you have no
2 reason to think that they did?

3 A. I just know the City is in charge of
4 these water drains, the drainage. It moves it out
5 of the town.

6 Q. We'll talk a little bit about that in a
7 minute. But for purposes of the construction of the
8 house, you have no evidence or reason to believe the
9 City had anything to do with the building of this
10 house on this lot?

11 A. No. I do have no evidence of that.

12 Q. So the fact that the house sits on top
13 of a storm drain, the City's not responsible for
14 that and you have no reason to think they had any --

15 A. I do not think the City built the house.

16 Q. How long do you think water's been
17 running through that pipe that runs through your
18 property?

19 A. Over 92 years, because I think that's
20 about the age of my house. Ninety years, 1920s.

21 Q. So you think the pipe predates 1920s?

22 A. I have no idea. Y'all would have better
23 records than myself.

24 Q. Do you have any information or evidence
25 as to who put that pipe in?

1 A. I do not know. I did not know that pipe
2 was there.

3 Q. Do you have any information or evidence
4 or have you seen any such that the City put that
5 pipe in the ground?

6 A. I have no idea who put that pipe in the
7 ground.

8 Q. Have you ever heard anyone describe that
9 lot prior to the house being built on it?

10 A. No.

11 Q. Have you ever heard anyone describe that
12 lot prior to that pipe being constructed?

13 A. No.

14 Q. There were homes in that general area
15 prior to the 1910s; correct?

16 A. I have no idea.

17 Q. Okay.

18 A. You mean there was a home built where my
19 mine is in 1910?

20 Q. Oh, no. I'm just talking about in the
21 general College Avenue, downtown area?

22 A. Oh, I don't know. I don't know when
23 that area started.

24 Q. Okay. Do you have any knowledge of when
25 curbing was put in on College or Strait Avenues?

1 idea.

2 Q. I understand. But I'm just asking you.
3 It's kind of which came first.

4 A. I have -- you're -- that's way out of
5 my -- I have no expertise in this, junction boxes
6 and pipes and all that.

7 Q. Let me ask you this way then.

8 A. Okay.

9 Q. Somebody in your chain of title -- well,
10 let me start that over.

11 You have no evidence or reason to
12 believe the City constructed the line that runs
13 through your property, do you?

14 A. I have no idea who constructed that
15 line. And, you know, I can't blame it on the City.
16 I think the City uses it, but I don't -- cannot tell
17 you who constructed it.

18 Q. Just as the City would have used any
19 open ditch that predated this pipe?

20 A. Maybe so.

21 Q. Maybe so? If the City had pipes under
22 its road that drop flow into an open ditch and
23 someone in your chain of title converts the open
24 ditch to an underground pipe and puts a house on top
25 of it, is it your view that the City is responsible

313

1 Q. You would agree that if somebody
2 connected something in that house to that pipe, then
3 somebody in your chain of title knew about this
4 line?

5 A. It's very, very possible that they knew
6 about that one.

7 Q. Again, I'm not asking you to agree that
8 someone connected to it; but if they connected to
9 it, they had it know it was there?

10 A. Very possible that they knew it was
11 there.

12 Q. Sitting here under oath, is that being
13 possible the strongest, more accurate way you can
14 answer that question?

15 A. I don't know how it was connected. I
16 really don't. I mean, we never found anything that
17 went to that pipe.

18 Q. I'm not asking you if it was connected
19 because I understand you probably don't know.

20 A. Yeah.

21 Q. But if someone took a pipe and connected
22 it to another pipe, don't they have to know the
23 existence of both pipes?

24 A. Probably so.

25 Q. Probably?

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

Lucille H. Ray,)

Plaintiff,)

-vs-

2012-CP-46-3928

The City of Rock Hill and South)

Carolina Department of)

Transportation,)

Defendants.

DEPOSITION OF MICHAEL HUGHES LEONARD, PE
ROCK HILL, SOUTH CAROLINA
AUGUST 19, 2014

REPORTED BY: Cathy L. Young, CVR-M

1 A. We -- I can relate to this case a little more
2 specifically because it helps, but we will get down
3 to the foundation level where possibly we get to the
4 points under the house, the structure, and we'll
5 probe around footings to see if footings are there,
6 and generally what size they are. If we see
7 evidence of a failure, we'll actually dig and
8 excavate around the footing to determine if it's an
9 adequate footprint. But we're basically not just
10 stopping at the frame of the floor from below, we're
11 looking at the foundation elements themselves. And
12 in some cases, we feel that there is a geotechnical
13 study, in most cases not, but in some cases, we'll
14 ask or recommend that. But at least we will probe
15 the soil ourselves to see if it's relative -- the
16 density -- the relative density of those critical
17 points are nearby. Those on an exterior wall, for
18 example, we have four-foot probing rods that we use.

19 Q. Now on that point, do you hold yourself out to be an
20 expert in geotechnical science?

21 A. I do not.

22 Q. And that's why like in this case you would bring in
23 someone like CESI to do the geotechnical analysis?

24 A. Yes, sir.

25 Q. So just for -- to a layman, your expertise starts at

1 the top of the house and goes to the bottom of the
2 footing, and their expertise is from the top of the
3 dirt down?

4 A. In general. We know the principles of soil
5 mechanics. That's actually part of our program, but
6 to be considered an expert in that, you'd almost
7 have to work in it every day grading and testing the
8 soil. We can form our early opinions, but we'll
9 wait for the geotech when necessary to provide us
10 with more scientific data or results.

11 Q. Okay. Did you compute the loads of any of the
12 members of Ms. Ray's house?

13 A. I did. Most specifically where the areas of trouble
14 have been seen inside the home.

15 Q. Did you write that down?

16 A. It's in my notes somewhere. I can't tell you --
17 I've given all my files to everybody over the period
18 of time, and I don't know where they are.

19 Q. What -- is it just a sheet of paper with a bunch of
20 writing on it?

21 A. Yeah, it would almost -- it'd be a pad probably with
22 math on it.

23 Q. What did you compute the loads of in Ms. Ray's
24 house?

25 A. If you don't mind, I'll have to go to a illustration

1 loca -- or if you locate that pier one foot or the
2 other of any line you establish, your tributary
3 changes by half that distance. So it really does
4 not affect the structure as much as you may think to
5 have one pier one foot further away could be an
6 otherwise. I mean it's all hypothetical.

7 Q. A zone of influence from this subject pipe, it only
8 goes to a certain border, correct?

9 A. That would be a geotechnical question, but in my
10 experience, yes.

11 Q. You've actually prepared a document that shows that
12 border, correct?

13 A. I believe I have.

14 Q. So you're now telling me that it doesn't matter if a
15 pier is one foot inside or half a foot inside that
16 border or half a foot outside that border?

17 A. Oh yes, that would make a difference in some cases.

18 Q. All right. I asked you -- we'll be very precise
19 today. I'm going to ask you very specific questions
20 and I'm looking for a very specific answer to that
21 question alone. It's going to be a long day if we
22 keep answering questions for every generalization
23 for my question. My question to you is in your
24 engineering world, can a one-foot movement of a pier
25 make a material difference?

1 the Coke can, and the load-bearing wall is aligned
2 directly above that pier, and the load of that wall
3 transmits up and down this line, then this pier
4 should be located under the center or the centroid
5 of that load line. You can move it forward and rear
6 somewhat and not have much of an impact if any at
7 all, but if you move that pier, specifically F, left
8 or right, it would no longer be under the bearing
9 wall and it could make a difference. In this case,
10 I believe it would.

11 Q. You keep answering my question based on structural
12 science above the ground. I'm not asking you these
13 questions based on what's above them. I'm asking
14 you questions based on what's going on below it.
15 Are you competent to answer those questions?

16 A. Competent?

17 Q. Yeah, do you consider yourself an expert in the
18 field sufficient to answer my questions as to the
19 zone of influence from the subject pipe?

20 MR. BRADFORD:

21 Objection.

22 WITNESS CONTINUES:

23 A. I'll put it this way. I understand the structure.
24 I understand the loads that go into the ground, and
25 I understand the mechanics of the soil below it, but

1 I'm not an expert about the soil below it.

2 Q. So when I ask you a question about placement of a
3 pier, you're always going to answer the question, no
4 matter how I stipulate the question, based on the
5 loads coming from above as opposed to consolidation
6 of soils from below?

7 A. I won't say always, but in the cases that you've
8 been asking thus far about these piers close to the
9 center line of this pipe -- closest to the center
10 line of this pipe, I can tell you which piers you
11 could move left, right, forward, or back --

12 Q. I just realized what's going on, and I apologize.
13 You're answering questions based on structural loads
14 from above. What I intend my questions to be
15 probing is placement of piers in relation to the
16 expected consolidation of soils from the subject
17 pipe and the proper placement of fill. Do you
18 consider yourself sufficiently knowledgeable in
19 experience or in training to answer questions based
20 on a one foot differential based solely on the
21 consolidated -- the expected consolidation of soils
22 from the subject pipe?

23 A. You asked about working with other engineers, I
24 would rather answer that with Mr. Cummings input.

25 Q. I get it. All right, so you have no opinion, expert

1 know, most people if they decide not to hire you,
2 they -- you never hear from them, so there are
3 chances. I mean I've talked to plenty of clients
4 that in preliminary discussions may not feel
5 comfortable and we never hear from them again. We
6 may even send them a proposal and never hear from
7 them again. I've got a church in Concord right now,
8 Concord, North Carolina, they've got roof problems,
9 for example, and a contractor's involved. I gave
10 them a cost and told them what I thought needed to
11 be done, and I haven't heard from them. That was
12 probably started in March, but that's an example of
13 what I'm talking about.

14 Q. Well, I'm not -- I'm not really delving at, you
15 know, whether someone -- their cost benefit analysis
16 or whether they think they can afford to remedy, I'm
17 saying have you ever been approached by someone who
18 in a legal matter where your opinion did not support
19 their legal position.

20 A. Not that I'm aware of.

21 Q. All right. For purpose of your opinion, are you
22 relying on the work of anybody else?

23 A. In terms of the findings of this case, no, with the
24 exception of Geotech.

25 Q. The fellow that ran the line, are you relying on his

1 accumulate, so I started with my storm water
2 handbook and that was kind of a background start.
3 And then that became secondary to my effort.

4 Q. On that point, you haven't done a hydrology study of
5 this storm basin, this watershed area?

6 A. I have not.

7 Q. You haven't calculated sources of flows?

8 A. No, I have seen scattered documents, all that came
9 through Ms. Ray, that quantify acreage, and in fact
10 when I first walked the watershed of this pipe that
11 I knew, I estimated it to be roughly 14 acres
12 because I'm looking from ground level. I could tell
13 it came from the school, but I did not know it came
14 from further down Oakland towards the east -- I'm
15 sorry, towards the west I believe it would be. So
16 it was a much larger watershed than I estimated
17 originally.

18 Q. All right. But you made no effort and have not
19 calculated the flows from any particular source?

20 A. No, sir. There was a -- I approached that angle or
21 that avenue of knowledge, or whatever the word would
22 be, and that was in my mind it wasn't the critical
23 fact or the critical purpose of me being involved.

24 Q. And so you have no opinions on relative source of
25 the flows that go through the pipe?

1 A. Well, I have an opinion by looking at them, yes,
2 but --

3 Q. An expert opinion?

4 A. No, sir.

5 Q. All right. And did you study the relevantensity of
6 the flows and any sort of environmental event?

7 A. No, that would be a design parameter established by
8 the municipality, in this case Rock Hill or the
9 County, I'm not sure which -- the design parameter
10 comes from the --

11 Q. I'm just asking you did you do any sort of
12 engineering study of that -- of the rates of flow?

13 A. I did not.

14 Q. Or the magnitude based on different storm level
15 events?

16 A. I don't remember whether I calculated, but I
17 estimated one day based on 14 acres as to how much
18 water would be coming straight up Ms. Ray's house if
19 the drain clogged or if the pipe clogged. I was
20 trying to estimate how big a water flow it would be,
21 but I never formed a professional opinion in that.

22 Q. Did you study the before characteristics of any of
23 these features? Did you look at any historical
24 data?

25 A. No, sir.

1 Q. Did you study any before rates of flow or directions
2 of flow?

3 A. I sought maps and specific engineering information
4 from the City of Rock Hill, and I was never provided
5 any of it.

6 Q. Did you perform any engineering studies of historic
7 rates of flow or direction of flow?

8 A. No.

9 Q. In your examination of this project, do you have any
10 information that leads you to believe that the City
11 of Rock Hill built the subject pipe?

12 A. I have an opinion.

13 Q. Do you have any evidence of whether the City built
14 it?

15 A. No, sir.

16 Q. Do you agree that the pipe was most certainly
17 installed in that property before the house was
18 built?

19 A. Yes.

20 Q. Do you agree with that statement?

21 A. I do.

22 Q. Do you also agree -- well, did you do any study as
23 to where the water flowed prior to the creation of
24 the pipe?

25 A. I studied the topography -- the current topography

1 A. Correct.

2 Q. Okay. Other than the study you did under the
3 assumption it was a 14-acre watershed, did you do
4 any sort of flow dynamics of the watershed above
5 stream from Ms. Ray?

6 A. No, sir.

7 Q. Have you done any analysis of below stream from
8 Ms. Ray?

9 A. No, sir.

10 Q. Have you studied any sort of changes in use within
11 this watershed caused by the City of Rock Hill?

12 A. Caused by the City of Rock Hill?

13 Q. Yes.

14 A. I'm aware from photos and the appearances of new
15 pavement and drainage structures that -- I need to
16 refer to the map, if you don't mind, that I had
17 here.

18 MR. BRADFORD:

19 I think he's talking about the City map that you
20 handed him, I think, is that it over there?

21 MR. WHITE:

22 No. I think I took it out when I went to get the
23 stuff.

24 EXAMINATION CONTINUES BY MR. WHITE:

25 Q. If you could, just --

1 opinion creates a tunnel vision effect and can
2 impact the validity of their later work?

3 A. Yes, sir, that's a poor engineering practice.

4 Q. Poor engineering practice. A corollary of that poor
5 engineering practice would be to formulate your
6 testing methodologies to validate a suspected cause
7 rather than generalized testing to identify cause or
8 causes; is that accurate?

9 A. It can be.

10 Q. Do you agree that if engineering opinions are formed
11 that result from either the tunnel vision effect or
12 from a validation support effect only rather than
13 identification of causes could be a suspect opinion?

14 A. Hypothetically yes. I can with certainty say that
15 was not what happened in this case.

16 Q. Well, let's look at it. What opinions do you have
17 as to the cause of any structural issues with
18 Ms. Ray's house?

19 A. I believe it starts with the fact there's a pipe
20 under her house in the first place, that it's never
21 a good practice to put a water conveying component
22 under any property, and primarily because of the
23 backfill in that zone of the pipe, you've disturbed
24 the soil. But more importantly in this case,
25 because the pipe is in such poor condition, in

1 essence, in the process of failing actively, I
2 believe that water is leaking, firmly believe with
3 reasonable degree of engineering certainty that
4 water is leaking from this pipe, and in a given
5 storm even because it's backing up in the pipe from
6 back pressure at the manhole behind her home, and
7 it's eroding, the pipe is certainly leaking, and
8 causing erosion around the pipe which further
9 aggravates the soil conditions. And the visual
10 evidence of distress in the home supports it.

11 Q. So it's your engineering conclusion that the
12 structural damage to Ms. Ray's home is caused
13 because the pipe's leaking? Is that one cause?

14 A. One, yes, sir.

15 Q. Another cause would be that fill placed on top of
16 the pipe was improperly placed?

17 A. I didn't say improperly, no, sir. The fact that it
18 is not virgin soil where the density was affected by
19 placement compacted properly or improperly was up to
20 the geotechnical side to determine.

21 Q. And what did he determine?

22 A. He determined that there was some impact from the
23 soil density and bearing capacity atop the pipe or
24 in the zone of the pipe trench.

25 Q. Is it your testimony today that any fill area will

1 always be a concern for settlement, not just
2 improperly placed fill?

3 A. Just so I make sure I answer this properly, can you
4 ask that question again?

5 Q. I didn't really understand your answer, so one
6 inference is that you're saying the house has
7 experienced structural damage because there's fill
8 even had it been properly placed in its original
9 instance that that would be causing this damage.
10 You objected to the characterization from your
11 geotech that it was improperly placed fill.

12 A. I never saw the word improperly placed.

13 Q. Well, I will observe for you, and Ms. Ray's Counsel
14 is here, and I will give him an opportunity to speak
15 up, but yesterday the geotech testified that the
16 cause of all the damage to the home is from
17 improperly placed fill on top of the line.

18 A. Okay.

19 MR. WHITE:

20 Did I misstate his testimony yesterday?

21 MR. BRADFORD:

22 I thought it was more than not just improperly
23 placed but I thought he said poor soil compaction.

24 MR. WHITE:

25 Well, that would be improperly placed soil if it

1 isn't compacted.

2 MR. BRADFORD:

3 Okay, but --

4 MR. WHITE:

5 That's true. I don't have a problem with that.

6 MR. BRADFORD:

7 Okay.

8 EXAMINATION CONTINUES BY MR. WHITE:

9 Q. Under the hypothetical condition that the geotech
10 that you retained, that is his professional opinion,
11 does that alter your opinions at all?

12 A. As I think I've said this morning, that's certainly
13 one component, but there's more than one. The
14 condition of the pipe and the fact that it's leaking
15 is to me the larger concern.

16 Q. And what -- well, I'll report to you that the
17 geotech also testified that the water leaking out of
18 the pipe is not a causing agent of what's going on
19 with the house, but what evidence do you have that
20 water coming out of the pipe is causing the
21 structural manifestations on Ms. Ray's house?

22 A. Because the quality of the videos that we obtained
23 from Ms. Ray of the pipe studies done prior to 2012,
24 we had our own done, as you know, and that shows a
25 substantial number of cracks, holes, offsets, and

1 voids in these pipes. Has infiltration seams -- or
2 stains, excuse me, that also demonstrate that the
3 pipe is -- there's water coming in and out of the
4 pipe at various locations depending on the flow
5 condition at the time. But we have observed a
6 progression of structural movement and consolidation
7 of fill typically reaches a point of equilibrium
8 where settlement from poor compaction would usually
9 stop or reach a point of no more movement.

10 Q. What do you site as authority for that statement?

11 A. Which one?

12 Q. The notion that improperly placed fill will manifest
13 in the first few years and then stabilize.

14 A. The principles of soil mechanics, which I learned
15 myself, and I've experienced in my career.

16 Q. Do you have any sort of manual or treatise or
17 anything you can refer me to where I can read some
18 sort of peer reviewed study that confirms that
19 belief of yours?

20 A. I'll -- if necessary and if I'm asked, I would seek
21 one, but I don't have one in my possession right
22 now.

23 Q. All right. What are your other opinions as to the
24 causation of structural issues with this home?

25 A. Well, the -- in relation to the pipe condition,

1 there's also a condition -- hydraulic condition that
2 to me is accelerating this problem. Sometime since
3 original placement of the pipe, the pipe has been
4 altered behind the Ray dwelling starting from the
5 manhole that is on her property and passing I'm
6 going to say east towards Lucas Street. The pipe
7 route was changed from going straight to
8 approximately 40 degrees from the manhole to Lucas
9 Street. Concrete pipe was used so we know that was
10 altered since the original placement of the
11 terracotta pipe. So that tells us that there's been
12 a condition that caused this change. They needed to
13 change it for some reason. We observed that early
14 in the process. We've also observed, and in fact I
15 believe Ms. Ray now has video, that water backs up
16 in this manhole because the pipes are undersized,
17 number one, most likely, I've not done the hydrology
18 to prove that, but the obstruction of the manhole
19 itself, and the fact that the water has to build up
20 in the manhole in turn now to the new pipe creates a
21 obstruction which creates backwater pressure in the
22 line. And that backwater pressure will do
23 everything it can to erode and seek its way out of
24 this pipe. I've experienced that firsthand on
25 multiple occasions, other projects. We have an

1 erosion factor, turbulence and erosion factor in the
2 way it's hydraulically performing. So that's the
3 third component.

4 Q. Do you have any other opinions?

5 A. About the cause, no.

6 Q. Are there any other causes affecting the structural
7 integrity of the home?

8 A. Well, the home was built to common standards of the
9 '20s. I'm estimating the date. I don't know the
10 exact date, but we see many older homes built the
11 way this one's built. The footings are brick.
12 They're not concrete. They did not have ready-mix
13 concrete back in that era. The type of footing can
14 allow differential settlement. One pier may settle
15 more than another. There's no doubt. The footings
16 under a wall are brick. Where we examined and
17 probed, they were brick, which at the time was
18 common. They did not pour concrete trenches that
19 you see in construction today. But this type
20 movement or this type differential settlement that
21 may occur by the process or the method of
22 construction eventually seeks course and stops.
23 That is -- truly we've examined more than in 6,000
24 homes, probably more than 8,000 homes, many of them
25 older, and we find that settlement was common, but

1 it stopped. So here's what I'm getting around to.
2 The time component is critical because this movement
3 of the roof separation, the distresses in the walls
4 of Ms. Ray's house, has been caused by something
5 progressive underneath her house. The soil
6 compaction has not changed from the way it was
7 placed. That has not changed since it was
8 installed. Nobody's been under there to loosen it,
9 wet it down, anything. There's never been any top
10 process to change the density of her soil -- the
11 soil under her home. By logic, the water that's
12 seeping from the pipe that we know is there, it
13 would take actually probably a violation of City's
14 practices to prove is the reason that the soil
15 properties are changing, and I have a reasonable
16 degree of engineering certainty about that.

17 Q. Are there any other causes that you examined to
18 potentially explain the structural issues presented
19 at the house?

20 A. By today's standards, floor joists under the living
21 room are overspanned. So we took that into account.
22 The rafters and the roof bracing don't follow
23 current practices and building codes. It's because
24 they did not exist when this home was built. From
25 my experience, there were no building codes in South

1 Carolina or the County or anywhere else of that era.

2 But again, that deflection in an overspanned member
3 reaches a point and stops unless it's overloaded.

4 Q. You're combining two different thoughts there. You
5 have the natural deflection of wood and you also
6 have overspanning of members; is that correct?

7 A. Well, span relates to deflection.

8 Q. Right. But it's your testimony today that an
9 overspanned member will exhibit stress and then
10 stop?

11 A. If the loads, live loads dead load combined, are
12 relatively the same over a period of time, that
13 member will perform the same after it has deflected
14 and formed what we call fibrous stress memory, it
15 will become bent, but it will stay bent, and it will
16 perform. There are some cases if it's overspanned
17 too far, it would be a risk. That's not the problem
18 in this house.

19 Q. And you did those measurements and calculations?

20 A. Yes, sir.

21 Q. And wrote them down somewhere?

22 A. The stress calculations in the wood, probably not.
23 That's done in a computer.

24 Q. Did you perform those?

25 A. Yes.

1 Q. What would be the redline of where it would fail and
2 below the line it would just bend but not break for,
3 let's say, the living room in the front?

4 A. Well, there's a tensiled strength limit in pine that
5 you do not want to exceed. And we did not -- I
6 don't have it in front of me to refer to, but we did
7 not find the span and deflection of this timber was
8 a risk. That is not what is causing it to
9 progressively change in structure.

10 Q. Did you perform the calculations for the floor
11 joists in the living room?

12 A. Yes, sir.

13 Q. That would have been recorded somewhere, wouldn't
14 it?

15 A. I do it in a software program.

16 Q. Did you delete it? Does it have a print function?
17 Does it have results?

18 A. It has a print function. I could print what I have
19 or recreate it if needed. I checked the fibrous
20 stress, the tensile strength stress of that timber,
21 yes.

22 Q. And it's your testimony that it is not overstressed
23 and thus it should have bent to a certain point then
24 stopped over 90 years?

25 A. The form deflection, yes. It will still bounce to

1 middle of the street.

2 Q. Do you have any information -- have you studied that
3 area? You used to work for governing bodies in
4 storm water, didn't you?

5 A. I worked for a consulting firm that did work for a
6 municipality, yes.

7 Q. Have you done the type of work analyzing that line
8 that you would do to establish whether it can be
9 placed?

10 A. No, I'm just saying this was provided. At least
11 they had looked at the option of moving this line.
12 Till then, we had never seen a thing.

13 Q. Are you aware of whether the line that is shown is a
14 proposed line can be constructed from a conflict
15 standpoint?

16 A. I'm not aware of anything. I'd want to see the
17 study that generated this and, I mean if I was
18 responsible for that --

19 Q. I'm asking you, are you aware whether the line that
20 is shown on this map is proposed is capable of being
21 located there from a conflicts perspective?

22 A. I am not aware one way or the other.

23 Q. Are you aware to any other factor, whether it's topo
24 or drop, as to whether that line can be placed
25 there?

1 A. I'm not.

2 Q. Are you aware as to what the cost would be to place
3 that line?

4 A. I am not.

5 Q. Have you done any study as to cost of rerouting --
6 avoiding the line that goes to the subject property?

7 A. No, sir, that's not on Ms. Ray's property.

8 Q. I understand. My question to you is have you
9 studied in any form or to any degree what it would
10 cost to route water not through the subject line?

11 A. I have not.

12 Q. Have you studied what route that route could be that
13 would send water not to the subject line?

14 A. I have not studied it. I thought about it.

15 Q. While taking a shower? What do you mean you thought
16 about it? I don't understand, I mean I'm deposing
17 an expert witness and a professional engineer.

18 A. We're talking about something I have not studied,
19 too.

20 Q. Well, that's my question. Have you done any
21 engineering work such that you can testify as an
22 engineer as to what it would take to send water not
23 to the subject pipe?

24 A. And my answer was no, sir, but I have thought about
25 it.

1 Q. And in your thinking about it, have you analyzed
2 feasibility at all?

3 A. No.

4 Q. Have you analyzed cost?

5 A. No.

6 Q. Do you even know if what you thought about is even
7 possible from a topography, fall lines, or even a
8 conflicts perspective?

9 A. I believe it is possible from what I've observed on
10 the ground out there on these streets.

11 Q. When you worked as a consultant, would you use the
12 level of effort you've made and the degree of
13 probity that you've made as far as what it would
14 take to route the water around the subject pipe in
15 any of the applications when you were working in
16 that field?

17 A. Have I rerouted a pipe before?

18 Q. Based on information that you have on your
19 theoretical reroute?

20 A. No. I mean that's a municipal system. I'm not
21 there for that purpose.

22 Q. I'm not asking what your purpose is. I'm asking
23 what do you know and to what degree do you know it?
24 Can you testify as an engineer that the water in
25 front of Ms. Ray's house can be sent anywhere else

1 other than under her house?

2 A. I am reasonably certain that it can be rerouted,
3 yes, sir.

4 Q. And that's based on no analysis of the system?

5 A. I tried to gather that information.

6 Q. And it's based on no analysis of the conflicts in
7 the areas, correct?

8 A. Correct. All those things have to be studied.

9 Q. And it's based on no analysis of any sort of cost
10 swag?

11 A. Swag?

12 Q. Estimate, guess?

13 A. Well, that certainly enters the equation, yes, sir,
14 you would find the most feasible route.

15 Q. And do you know the elevation of the point that the
16 subject pipe begins and the point downstream where
17 it ultimately goes? Do you know those relative
18 heights?

19 A. No, sir.

20 Q. Do you know the height along the path that you've
21 thought about and maybe could take?

22 A. I'm observing the City's street grade.

23 Q. Do you know what's under that grade already at any
24 level of height?

25 A. You mean the pipe?

1 Q. Any pipes, any conflicts?

2 A. Well, there are lots of pipes in the College Avenue
3 which is why in 2013 we were wondering why they were
4 working on a pipe when it's pretty obvious they've
5 got a bigger problem.

6 Q. All right. So my question to you is you believe you
7 can testify to a reasonable degree of engineering
8 certainty that this water could be reasonably routed
9 around Ms. Ray's house based on what you know right
10 now?

11 A. No, sir. I'm not testifying to that.

12 Q. So you would testify that based on what you know
13 right now you could not testify, you don't have
14 sufficient information to testify to an engineering
15 certainty to what it would take to route the water
16 around this house?

17 A. No, but I believe it can be done, and I believe
18 there is a solution to it.

19 Q. What facts do you base the belief on?

20 A. Site observations and general practice, and here's a
21 study that did that exact thing.

22 Q. Do you think this piece of paper evidences that it
23 can be rerouted?

24 A. It shows me that somebody studied it.

25 Q. Right.

1 Ray's lot?

2 A. Sorry to ask this, but at which part of her lot are
3 you referring to?

4 Q. Was it different?

5 A. Well, I've looked at it at the back -- the rear
6 left.

7 Q. Okay.

8 A. Actually I should say the rear right. I looked at
9 it at the front right corner. I looked at it over
10 on the dining room side as close to the patio as
11 possible. And of course I looked at it in front of
12 the house along the sidewalk at two or three
13 locations. Looking at it, meaning probed it, and at
14 least one place I used the shovel.

15 Q. Did you see different kinds of soil types in those
16 five or six locations?

17 A. No, generally the soil types were the same.

18 Q. What kind of soil type was it?

19 A. I'm not a geotechnical engineer, but I call it a
20 silty, sandy clay.

21 Q. Kind of a clayey soil?

22 A. Yes.

23 Q. What would you expect to see from a clayey type soil
24 which you saw out at Ms. Ray's lot for repeated
25 wetting and drying?

1 A. No, in fact in the budget of our estimate there is
2 an engineering estimate fee to do that level of
3 work, but we are involved with a lot of structural
4 repair work, and the point there is that you can
5 form general estimates of scope as I've done and be
6 reasonably close to what ends up being, only because
7 you assess it piece by piece, which is what that --
8 those two estimates have done. I didn't just throw
9 a dart at the wall, I actually piece by piece looked
10 at it.

11 Q. How much of what you're repairing has occurred prior
12 to, say, you're fixing things that occurred prior to
13 1985?

14 A. That is not entirely definable in my experience. I
15 can relate to what's happened in the last -- since
16 April 2012. So to attribute it as to date, it's
17 very difficult other than what I've seen actively
18 progressing since I've been involved.

19 Q. Do you have any ability to delineate how much of the
20 cost is attributable to matters that have occurred
21 from this date forward or that date back?

22 A. Do you have a specific date in mind that you're
23 asking that question or is it --

24 Q. Say November 6th of 2009.

25 A. Okay. There is no scientific way to do it. There's

1 ways to legit -- logically think it out, but I've
2 not done that.

3 Q. Is it accurate to state that of the entire amount
4 you have expressed is needed to repair the house,
5 that not all of it is resulting from manifestations
6 since November 6th of 2009?

7 A. I'm sorry, again, I have to ask you a question. Was
8 there an event on November 6th of 2009?

9 Q. I'm just asking you if you would -- can you state
10 positively that not all of the \$180 something
11 thousand is caused by results after November 6 of
12 2009?

13 A. I don't know how I could do it other than logic
14 and --

15 Q. Let's do it another way. Can you not affirmatively
16 state that some of the repairs in the \$180,000 are a
17 result of matters that occurred prior to November
18 6th, 2009?

19 A. I really don't know that I can, because I didn't see
20 this dwelling until 2012.

21 Q. All right. So you can testify neither yea nor nay
22 as to whether the \$180,000 you say is required to
23 fix the house is a result of factors occurring after
24 November 6th, 2009?

25 A. First I've never thought about it from that point of

1 reference, and secondly, it would take me some time
2 to try to see if there's a way to differentiate
3 between damages prior to and/or since. I don't know
4 that there is. I don't know of one other than
5 reference to her photographs, her testimony, and
6 perhaps neighbors.

7 Q. Sitting here today you can't --

8 A. No, sir.

9 Q. -- tell me how much of the \$180,000 pre-dated
10 November 6th, 2009?

11 A. Not to any -- no, sir, I cannot.

12 Q. Let's break it up a different way. You have stated
13 three causes of damage to the home. There is the
14 placement of the fill on top of the line, there is
15 this backcharge, and then there's leakage.

16 A. And the one time element I have since 2012.

17 Q. I believe you said the time was over the course of
18 the house's existence on top of the pipe, and the
19 fact it's been there 90 years has an impact on all
20 three; is that accurate?

21 A. Yes, but for me to determine what happened prior to
22 November 6th, 2009, I can't --

23 Q. I understand that. We've moved off of that. I'm
24 not asking you -- can you differentiate for me which
25 elements of damage to the house are the result of

1 improper placement of fill versus water leakage?

2 A. I believe I can provide the most likely cause a
3 little closer than we may already have defined, only
4 in the sense that this gets right back to that cone
5 of influence. Pier A, because we know that we're
6 sitting right on the cut line or right at the cut
7 line, and he did not find saturated soil or any --
8 it's hard to say that that pier could be affiliated
9 with leakage. I don't know. That's not up to me to
10 determine.

11 Q. Well, I'm asking you sitting here today can you tell
12 me how much of the \$180,000 is a result of
13 backcharge pressures versus leakage or between
14 improper placement of fill versus leakage?

15 A. No, sir.

16 Q. Is that possible?

17 A. I would have to think about it further, but I don't
18 know that it is.

19 Q. And much less to a reasonable degree of certainty?

20 A. Yes.

21 Q. In hindsight, there were things that could have been
22 done at earlier periods in time which would have
23 provided very meaningful and repeatable data that
24 could explain or characterize some of these events;
25 is that true? Stress gauges placed in 2005, 2008,

Lucille H. Ray -vs- The City of Rock Hill, et al.
Edward Staton Cummings, III, P.E. on 08/18/2014

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF YORK)
4)
5 Lucille H. Ray,)
6 Plaintiff,)
7 -vs-) 2012-CP-46-3928
8 The City of Rock Hill and South)
9 Carolina Department of)
10 Transportation,)
11 Defendants.)
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23
24 REPORTED BY: Cathy L. Young, CVR-M
25

DEPOSITION OF EDWARD STANTON CUMMINGS, III, P.E.

ROCK HILL, SOUTH CAROLINA

AUGUST 18, 2014

1 that you're lacking that in your experience could be
2 expected that would impact on your opinion?

3 A. No.

4 Q. Other than the handwritten notes that are in
5 documents CESI 1 through 37 and the report, are
6 there any documents you generated, created, or
7 manipulated?

8 A. No.

9 Q. Is it your belief that the house was built prior to
10 the installation of the pipe?

11 A. I have no idea.

12 Q. It is not your belief that the pipe was installed
13 prior to the building of the house?

14 A. I'm sorry, the house -- obviously the pipe would
15 have to be installed before the house was
16 constructed?

17 Q. I could have said that better. That's what I'm
18 trying to figure out. In studying the property,
19 prior to the pipe, what was happening to the water
20 in that area?

21 MR. FENNELL:

22 Objection.

23 WITNESS CONTINUES:

24 A. All right, one more time, please.

25 Q. Prior to the installation of the pipe, what was

1 pipe so that they could make other use to the
2 property on top?

3 A. Yes.

4 Q. Did you see any evidence of that on this property?

5 A. Repeat the question, please.

6 Q. Did you see any evidence that some owner of the
7 subject property installed the subject pipe to make
8 other use to the top of the property that could not
9 be made prior?

10 A. I don't understand the question.

11 Q. You have an open ditch going across a piece of
12 property, you can't put a house on it, can you?

13 A. That's correct.

14 Q. If you put a pipe underground, you can put a house
15 on top of it, can't you?

16 A. I tell all my customers do not do that.

17 Q. Isn't that what happened on this property?

18 A. Correct.

19 Q. So somebody put this pipe in and then put a house on
20 top of it?

21 A. Correct.

22 Q. Are you aware there's nothing in the record of this
23 case that evidences that the City had anything to do
24 with the construction of this pipe?

25 MR. FENNELL:

1 Objection.

2 WITNESS CONTINUES:

3 A. Repeat the question, please.

4 Q. Do you have any evidence that the City of Rock Hill
5 had anything to do with the construction of the
6 pipe, subject pipe?

7 A. No, sir.

8 Q. Are you familiar with the government practice that
9 if the government does take water off of roads, they
10 generally do it through open ditches rather than
11 subterranean pipes?

12 MR. FENNELL:

13 Objection.

14 WITNESS CONTINUES:

15 A. I'm not aware of that policy.

16 Q. The catch basin at issue lies entirely within the
17 road bed, correct?

18 A. The catch basin is in the road bed.

19 Q. What would happen if the City blocked the line
20 running toward Ms. Ray's house? Where would that
21 water go?

22 A. It would come out of the manhole and hopefully flow
23 either up or down College Avenue.

24 Q. Have you looked at that?

25 A. I have looked inside the catch basin, yes, sir.

1 all the way through?

2 A. Yes, sir.

3 Q. When you were doing any borings, did you see any
4 evidence of saturation or water?

5 A. No, sir.

6 Q. Are your test results such that they all support the
7 conclusion or did you find countervailing evidence
8 that actually does not support your conclusions?

9 A. No.

10 Q. All the physical evidence you saw in your
11 professional engineering opinion support the
12 conclusions that you've reached?

13 A. Yes.

14 Q. In looking over your report, do you see any errors?

15 A. No, sir.

16 Q. Have you had any experience with 85-year-old
17 structures?

18 A. This is probably one of the oldest I've worked on.

19 Q. What type of stress or settlement would you expect
20 to see in a house this age?

21 MR. FENNELL:

22 Objection.

23 WITNESS CONTINUES:

24 A. I would expect to see some slight deflection or
25 settlement around the perimeter of the house.

1 A. Repeat the question, please.

2 Q. Assuming this lot -- this house is built on fill at
3 Pier A, is that something you would expect that your
4 testing would have revealed for you?

5 A. If I encountered it, yes.

6 Q. Assuming a hypothetical assumption is that it is,
7 your tests would have shown you that?

8 A. Yes.

9 Q. But your tests didn't show you that?

10 A. No. It's that the fill is over the pipe.

11 Q. You think the only fill is where they put the pipe
12 in and then put dirt on top of it?

13 A. Correct.

14 Q. Is it your expert -- your professional opinion that
15 it's the improper compaction of that fill on top of
16 the pipe that's causing these troubles?

17 A. Yes.

18 Q. In your experience, is the construction methodology
19 of the section of the house from Pier B to the front
20 wall consistent with proper load bearing practices?

21 A. I don't practice structural engineering, so I can't
22 comment on that.

23 Q. You used to build houses, right?

24 A. Correct.

25 Q. Is that the way you'd spread out your loads in the

1 A. Typically on a forensic investigation, our first
2 line of investigation is using the physical
3 excavation of a footing to see what it's bearing on,
4 observing that, and then performing the DCP
5 underneath the footing.

6 Q. In your professional opinion, would performing these
7 other tests provide greater information for you to
8 make your conclusions?

9 A. When the soil -- when fill soil exhibits three or
10 four blows, I have enough data to state that that
11 soil was not properly compacted, it is not suitable
12 for bearing without additional testing.

13 Q. My question to you is would the additional testing
14 that we referred to provide greater information that
15 would help you in the rendering of your conclusion
16 as to causation?

17 A. No.

18 Q. Okay. When you did your testing, the soil around
19 there was actually very dry; is that accurate?

20 A. Yes.

21 Q. If the pipe was cracking to a degree that it was
22 leaking, wouldn't you expect there to be additional
23 moisture or even saturation at that point?

24 A. Yes, sir.

25 Q. Does that lead you to the conclusion that the pipe

1 is not leaking at that point?

2 A. I did not dig down beside the pipe to look at the
3 conditions of the soil below the pipe. I would say
4 that the water would -- any water entering those
5 loose soils would exhilarate the consolidation of
6 those soils.

7 Q. And you would have identified that saturation before
8 getting to the bottom of the pipe?

9 A. Yes.

10 Q. But you didn't find that?

11 A. No.

12 Q. And that leads you to the conclusion that the pipe
13 is not leaking at that point; is that correct?

14 A. It was --

15 Q. You can say it, it's okay.

16 MR. FENNELL:

17 Objection.

18 WITNESS CONTINUES:

19 A. I did not dig to the bottom of the pipe because the
20 difference between the top of the pier to the top of
21 the pipe is five feet and, first of all, lack of
22 money and safety, I did not dig to the bottom of the
23 pipe.

24 Q. I understand you didn't dig to the bottom of the
25 pipe. What I'm asking you is you dug far enough

1 sidewalk or the porch and investigate the soils over
2 the pipe.

3 Q. Are there not tests you could perform without just
4 deconstructing the front steps, directional or
5 otherwise?

6 A. You could go to the side of the porch, but that
7 would put you to one side of the pipe. Usually I
8 focus on the worst area for an excavation and a hand
9 auger boring.

10 Q. What other types of stresses could cause cracking on
11 the front steps that you see?

12 A. Repeat the question, please.

13 Q. What other types of stress could cause the cracking
14 you see in the front steps?

15 A. Possibly a plastic clay.

16 Q. All right. Anything else?

17 A. Poor compaction.

18 Q. Of the line --

19 A. Yeah.

20 Q. -- or of the area in general?

21 A. Of the fill over the line or poor compaction of
22 soil.

23 Q. Assuming this house was built on fill?

24 A. Based on fill over the pipe.

25 Q. Talk about what other stresses other than the pipe

1 could cause the crack from seep -- are you aware of
2 any type of stresses that could cause the step
3 cracks other than the pipe or the filler of the
4 pipe?

5 A. Poor compaction of fill soils.

6 Q. Are you aware of anything else?

7 A. No, sir.

8 Q. So it'd be accurate to state that you didn't take
9 into account any other potential stresses in
10 identifying the cause of the cracks in the steps?

11 MR. FENNELL:

12 Objection.

13 WITNESS CONTINUES:

14 A. Based on my observation of the pipe leading out of
15 the manhole at College Avenue headed straight for
16 that location, I maintain that the settlement over
17 the -- of the sidewalk and porch steps is due to the
18 backfill over the pipe.

19 Q. I understand that's your position. I'm trying to
20 analyze -- inquire did you look to any other
21 potential causes? Did you?

22 A. I reviewed them in my mind what else could possibly
23 be this problem.

24 Q. What's the list you ran through in your mind?

25 A. Based on my observation, I had tested the fill over

1 the pipe because it was just obvious.

2 Q. I'm asking what other potential stress causation
3 factors did you ponder before you latched on to that
4 one to the exclusion of all other causes?

5 A. None.

6 Q. You see why I have to ask, don't you? All your
7 evidence does not flow from your theory. You have
8 to agree to that, don't you?

9 A. I don't understand.

10 Q. The piers at B, E, I, C and K do not support your
11 theory that all the settlement issues are flowing
12 from the backfill over the line. You do agree to
13 that, don't you? I understand you still have your
14 theory, but the fact that B, E, I, K and C do not
15 have any sort of settlement issues, that's
16 inconsistent with your theory.

17 A. I don't understand.

18 Q. You have a theory of what's going on here today?

19 A. Correct.

20 Q. You have a theory of what's going on with these
21 steps?

22 A. Right.

23 Q. You have a theory of how that translates to all the
24 other issues that are manifesting in the house?

25 A. Right.

1 Q. Did you see any damage that you can identify as
2 being within the last ten years?

3 A. They stated -- or Ms. Ray stated to me that the
4 front porch had been repaired before she purchased
5 the house in 1985.

6 Q. So just it would be information you got from
7 somebody else?

8 A. Correct.

9 Q. Did you analyze the surrounding storm water
10 structures?

11 A. No.

12 Q. Did you -- well, you already said you didn't analyze
13 that. Did you analyze the flow characteristics of
14 the water coming through the pipe?

15 A. No. Well, I'm sorry, I did perform or did run water
16 through the catch basin at College Avenue to
17 determine the pipe physically runs underneath the
18 house.

19 Q. Did you analyze any other subsurface utilities in
20 the area?

21 A. I don't recall.

22 Q. Make sure I understand, is it your testimony that
23 the fill over the entire pipe was improperly placed?

24 A. At that location.

25 Q. Just at that location?

1 A. Correct.

2 Q. Is it your -- and the zone of influence at that
3 location would be ten feet in a circle, ten feet
4 laterally on either side?

5 A. Correct.

6 Q. And even though you believe that water is leaking,
7 it's your testimony and your opinion today that it's
8 the placement of the backfill over that line that is
9 causing the damage to the structure?

10 A. Yes, sir.

11 MR. WHITE:

12 Let's take a little break.

13 (OFF RECORD)

14 MR. WHITE:

15 For the record, we're going to put 1 through 37 in
16 as Exhibit 3.

17 (Court Reporter marks Defendant's Exhibit Number 3,
18 Documents Responsive to Subpoena, attached hereto.)

19 EXAMINATION CONTINUES BY MR. WHITE:

20 Q. Did you look at Mike Leonard's remediation plan?

21 A. No, sir.

22 Q. In your experience, have you ever been involved in a
23 situation where you had an area of influence created
24 by a pipe as you opine here and corrected it by
25 dropping piers outside the zone of influence and

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
Civil Action No. 12-CP-46-3928

Lucille H. Ray,)
)
)
Plaintiff,)
)
v.)
)
City of Rock Hill, South)
Carolina,)
a Municipal Corporation, and)
South Carolina Department of)
Transportation, an agency of)
the State of South Carolina,)

AFFIDAVIT OF LUCILLE RAY

Defendants.

FILED-RECEIVED
2014 MAY 29 PM 3:34
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Lucille Ray, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. I own a house and lot located at 330 College Avenue in Rock Hill. I bought it in 1985.
3. I have attached a photos of the house, which are respectively designated respectively as Exhibits A-1, A-2, A-3, and A-4.
4. I have also attached the survey of the property which was available when I bought the house as Exhibit B. It shows what I thought I was purchasing.
5. My house is experiencing significant problems. I hired an engineer in 2012 in order to help me investigate what was going on. His name is Mike Leonard. After investigating, he told me that there was a large pipe running from a drain on College Avenue through my yard and under my house. It is fed by several other pipes which channel stormwater from the surrounding area beneath my home to a spot in the

#1 HHR

rear yard. The water is then diverted through another pipe to Lucas Street. A map showing the stormwater pipes in the area of my house is attached as Exhibit C. Mike's original report dated September 4, 2012 and supplemental Project Memo dated November 30, 2012 report are attached respectively as Exhibits D-1 and D-2.

6. I did not know about the pipes before I bought my house. I did not know that the pipe ran under my house with any degree of certainty until the City confirmed it for me in late May 2011. I know that Mike wrote in some notes that I said I knew it in 2008. He was wrong, and has acknowledged as much. The City took a video in 2008, but would never tell me what it revealed.

7. My house did show some settlement over the years. For example, I did some roof shoring and had problems in the yard in the 1990s. I did not know about the pipe. There was always another explanation for the problems, and for a while, I didn't worry.

8. When damage started to get worse, I began to suspect that there was something beneath the house. I asked the City about it but was told many different things over the course of a few years. In April 2011 they admitted a pipe was on my property but told me definitively that it did not run under the house.

9. When it became obvious that the pipe ran beneath the house, I asked that they simply move it, or reroute the water. This took place in a face to face conversation. I was told plainly that "the pipe will never be moved." This was in 2011. As stated, I hired Mike when I realized I wasn't going to get anywhere with the City.

10. Mike asked for stormwater maps (in 2012) from the City in order to determine what was going on with my property. We finally received a map, but it turned out to be inaccurate. It is attached as Exhibit E.

#2 

11. The City's position on their control of the pipe has been schizophrenic. My lawyer received the letter Defendant attached to its motion disavowing ownership of the pipe. As indicated above they told me that it had to stay where it was. I don't know how they get to have it both ways. Moreover, in late 2012, the City was performing work in front of my house and disconnected the feeder pipes from the one on my property. It was at that point that we knew for sure exactly where the water was coming from that flowed under my house. The pipes were old, clay pipes which were in bad shape. My lawyer wrote to them and told them not to reconnect. That letter is attached as Exhibit F. They did it anyway, and have made it plain that they don't think there is anything I can do about it.

12. I have since learned that the City has maps that show the pipe as part of their stormwater improvements that date back to 1941. One of their maps is attached as Exhibit G. We did not get it until I had to sue the City. They did not give it to me or Mike prior to that point. It shows that the direction of the pipe was altered, and that part of its system involved "abandoning" part of the pipe in the rear of my property. They have never abandoned the pipe that runs under my house, and continue to use it to manage a large amount of water which flows on their streets.

13. When I bought the property, I did not know that other parties were using it to help manage stormwater. I had no idea that the City would take the position that it could reconnect its pipes to this one even after I told them not to. I am involved in litigation with them that doesn't look like will go away anytime soon. I believe that a basic right that would go along with my ownership of this property is the right to decide that water collected from the road system of the City and State should not go under my house if I don't want it to, and that any subsequent purchaser will feel the same way.

#3 #2

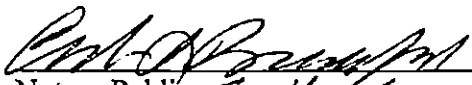
14. On December 26, 2012, there was a significant rain in the Rock Hill area. At that point in time, I was still trying to determine the extent of the water that was feeding into the stormwater pipe running under my house. I walked up Strait Street to its intersection with Oakland Avenue. The southwest side of Oakland Avenue was flooded. A South Carolina Department of Transportation (hereinafter "SCDOT") vehicle was parked on the street, and I spoke with that employee, whose name I do not know. The employee confirmed that he was doing maintenance related to drainage, and that SCDOT owned and was responsible for Oakland Avenue roadway and storm drain maintenance on Oakland Avenue. On that date I was personally able to observe the water going into those storm drains, and I and my engineer Mike Leonard have determined that the water from the Oakland Avenue drains run into pipes that run downhill along Strait Street, and it ends up going into the stormwater pipe that runs directly under my house.

This 29th day of May, 2014.



Lucille Ray

Sworn to and subscribed before me
this 29th day of May, 2014.



Notary Public, South Carolina
My commission expires: 2/16/21

#4 



239 College Avenue



Edit Street View

Report a problem

©2014 Google

Google Earth

34°05'04.25" N, 119°01'38.8" W, sea level

EVLIBIT



587 Strait Street



Exit Street View

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Google earth

34° 54' 05.35" N, 81° 00' 26.18" W, 231 ft, 231 ft, 231 ft

4, 019

EXHIBIT

330 College Ave Rock Hill SC 29730 USA

Google earth



Google earth

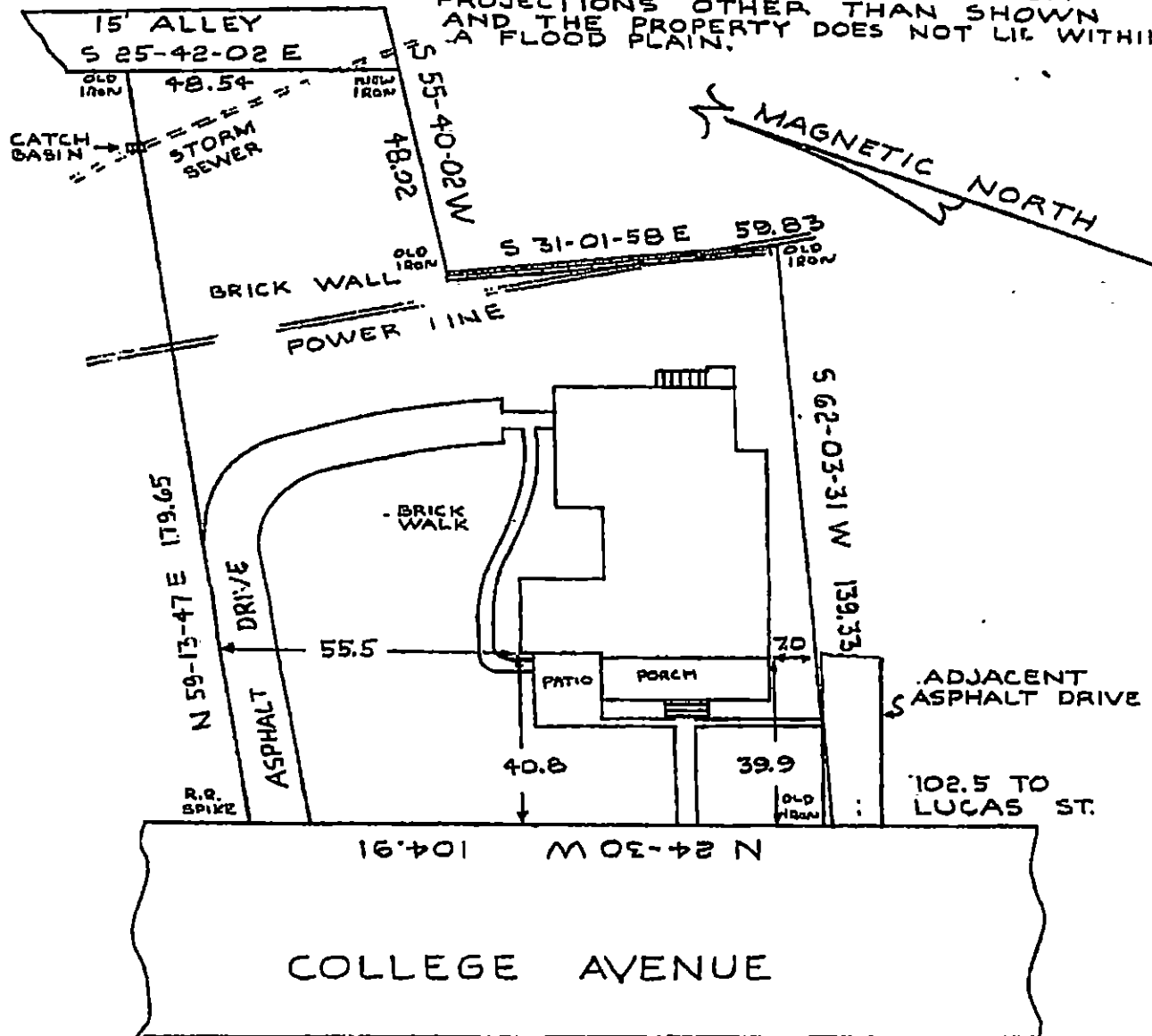
cdimg No. 8118

EXHIBIT

A-4

THIS BEING SHOWN AS LOT 10 AND PART OF 11 & 12 IN BLOCK 28 OF MAP OF PROPERTY OF ROCK HILL BUGGY CO., MADE BY J.L. STACY AND DATED APRIL, 1924. RECORDED IN PLAT BOOK 2, PAGE 200.

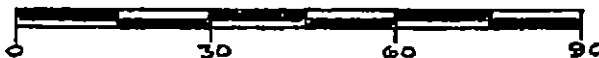
THIS IS TO CERTIFY THAT THIS IS A TRUE AND ACCURATE SURVEY AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN AND THE PROPERTY DOES NOT LIE WITHIN A FLOOD PLAIN.



MAP OF PROPERTY OF
LUCILLE RAY
330 COLLEGE AVENUE
ROCK HILL, S.C.

MAY 23, 1985

SCALE 1" = 30'

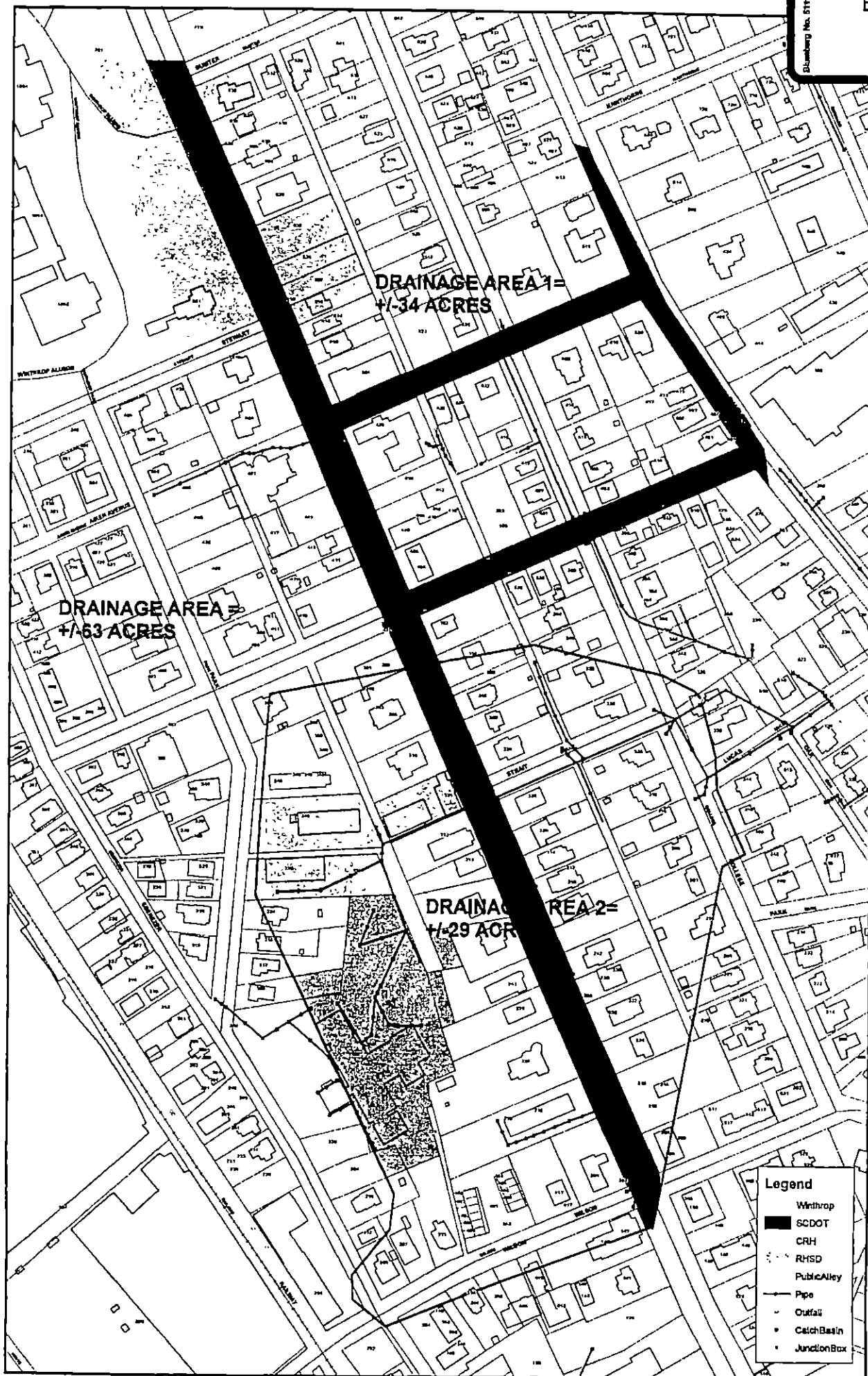


W.C. White
W.C. WHITE R.L.S. #1033
ROCK HILL S.C.

EXHIBIT

B

LUCILLE_RAY00106





ENGINEERING EVALUATION

STRUCTURAL DAMAGES AND
RECOMMENDED REPAIRS

Residence of:
Ms. Lucille Ray
330 College Ave
Rock Hill, SC

MHLCE Project # 12E9555.F
Date: September 5, 2012
By: Michael H. Leonard, PE

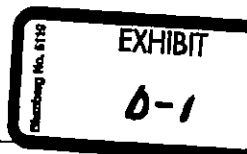


447 South Sharon Amity Road, Suite 201

Charlotte, N.C. 28211

Office (704) 333-2221

mhleopardengineering.com



RAY00046

1. Purpose

The purposes of this study include the following:

- To provide an engineering assessment of private residence to determine cause(s) of progressive structural damages.
- To determine the most feasible structural repairs of the dwelling and subgrade conditions now affecting the foundation.
- To estimate the costs of structural repairs and other remedial work.
- To determine the risks of long-term, progressive damages if remedial work is delayed or not done.

2. Timeline Summary

Ms. Lucille Ray has owned the home at 330 College Ave, Rock Hill, South Carolina since 1985. She has lived there and maintained the single-family residence continuously for 27 years. Over that time, various events or findings have led her to launch this investigation.

This is a timeline summary based on information provided:

- In about 1992, while doing yard work in the rear yard, a gardener stepped into a hole up to his waist within 10 feet of the rear house foundation wall. It had developed suddenly. It was filled and considered surface erosion at that time.
- In 1995, Ms. Ray first found bending in her roof frame while in her attic and proceeded to add bracing in an attempt to stop it.
- In 2001 she renovated the home and added a kitchen, garage, and covered porch on the left side. She noticed unexplained settling of the front patio during construction, requiring additional work and expense.
- In 2007, she noticed separation in her roof frame between adjacent slopes and proceeded to add cross-bracing at the ridge level in an attempt to stop it.
- In 2008, she first noticed that her front entry steps were sinking. At that time she tried to determine potential causes and found that a city storm-water pipe extended (from public city street in front of her home) directly under the front entry of the dwelling. She requested City assistance to review the concern and after multiple attempts, she was finally put in contact with Rock Hill's Mr. Jason Tinkler. A pipeline study was done without shared results. After repeated calls over the next few months (to Tinkler), she was told that the video tape had been lost. He also told her the front steps were simply settling.
- In 2011, after repeated calls to the City, the camera study was done again on June 2 and 3, 2011. Ms. Ray watched the study and video results as the City confirmed that the storm water line extended directly under her home, although they never did excavate to find the rear-yard manhole found during video work. Tinkler informed her then that the pipeline was not a problem but that he would get back to her about it.
- Later in June 2011, Ms. Ray called Tinkler to discuss street flooding but he never called her back. Finally, in August 2011, she discovered that Mr. Tinkler did not work for the City any longer. No other City official has ever contacted Ms. Ray about the known pipeline problem despite repeated calls from her.
- In early 2012, the lack of responses and progress from the City led her to start an owner-investigation at her expense.

3. Executive Summary

On March 20, 2012, Ms. Lucille Ray contacted M.H. Leonard Consulting Engineers, PA to request engineering assistance regarding the problem. She shared her findings and a brief history of the property. We have proceeded to study the dwelling, the site, and the soil conditions around and under the home. We have also conducted simple water flow tests of the storm water piping that extends from Oakland Ave, along Strait Street, to College Avenue, and over to Lucas Street after passing directly under Ms. Ray's house.

After 3 site inspections, a geotechnical evaluation, and limited responses from City officials, this report will summarize our findings.

The investigation has provided evidence of the following facts and opinions:

1. There is a pattern of structural damage in the subject dwelling frame and foundation caused by foundation movement at ground level. These damages appear progressive and we consider them active.
2. An underground 24-inch public storm water pipe extends from the street in front of the home in a line directly under the specific zone of structural damages. There is evidence of multiple foundation piers dropping and leaning along the pipeline route.
3. The public storm water system records for this neighborhood have not been available despite requests to the City of Rock Hill. Those may not be accurate based on one small map obtained by the owner prior to our investigation. That does not show a public pipe on the subject site. *See Attachment #2.* Regardless, the old terra-cotta clay pipe is there and confirmed. It appears aged with cracks and is probably leaking. Those conditions are verified by the videos provided.
4. The storm water system serving this and surrounding lots appears to include a substantial area based on informal water testing completed. We determined that catch basins on Oakland Avenue and beyond are part of the network upstream from the pipe extending under the home. Unconfirmed estimates of the watershed size are 14 acres or more. The flow from that large an area is substantial and increases our concerns with the pipe capacity, flow leakage, and lack of serviceability (being under a private residence).
5. A geotechnical evaluation of on-site soil along the pipe route and under the home confirms that foundation piers and the front stoop, steps, and sidewalk have settled as the result of soft pipe fill soil. Further testing would be needed along the entire pipe route to determine if there are wash outs and voids around the pipe.
6. There are current and long-term risks that pipe failure will lead to soil erosion and substantial structural damages. If pipe failure is rapid enough, structural failure (sinking and partial collapse) is likely.
7. Public utilities require routine maintenance and access, which is why they typically align in public right-of-ways or dedicated easements on private property. Apparently this storm water pipe is not even known or recorded in public documents. The less known about the pipe and its maintenance record, the higher the risks that it is failing now.

Three options were considered to eliminate risks of further failure and to repair structural damages to date. In the best interests of Ms. Ray as property owner, the most feasible remedy includes the following:

- a. re-route of the storm water pipe away from her property (requires independent storm water and hydrology study as City improvement),
- b. abandonment of the existing storm pipe and filling it with a flowable slurry grout,
- c. structural shoring of the existing foundation in pipe trench zone,
- d. framing repairs to floor and roof systems,
- e. replacement of front stoop, including steps and sidewalk,
- f. interior and exterior repairs caused by structural settlement to date,
- g. all general conditions, cleaning, building permits, and construction management.

We estimated the costs of those repairs based on local, prevailing rates of the region. That study was based on our experience as a General Contractor in new construction, renovations, and structural repairs.

The estimated cost to complete the remedial work described is

\$147,711

Although there are alternative methods to shore the dwelling, the costs may vary by 2.5%, based on experience with other structural repair projects of this type.

Time is a critical factor moving forward.

- ⇒ If the existing pipe develops further leaks affecting soil conditions or causing subgrade damages below the home, the extent of structural repairs will rise substantially.
- ⇒ Although the house is nearly 90 years old, structural damages have developed since 1985 (estimated based on owner observations and existing site inspection). The damage appears to be active and risks are high that it is increasing at an unknown rate.
- ⇒ Based on site observations now, we believe the pattern of structural distress is relatively young. Based on video evidence of the storm water pipe in place, risks are high that it will degrade and eventually fail. Between now and then, leaking and effects of further pipe degradation will further damage the house foundation and frame.

The storm water design to re-route the system around this property will require expedited attention from public utilities. Since planning of that type utility project typically takes more than 12 months, risks of structural damage is substantial enough that we recommend a temporary pipe repair and re-lining of the 24-inch clay pipe as soon as possible.

The costs of temporary pipe repairs to reduce risks of short-term structural damages to the dwelling are NOT included in this report.

4. Property and Project History

Ms. Lucille Ray owns the current properties at 330 and 340 College Ave, Rock Hill, South Carolina. The 330 (subject) site includes a one-story, single-family home, including a 2-car garage, partial rear daylight basement, and two covered porch spaces. She purchased the property in 1985, approximately 27 years prior to the date of this report. See Attachment #1: W.C. White, RLS Survey of 330 College Ave, Rock Hill, SC dated May 23, 1985.

The house is built with a masonry foundation, conventional wall, floor, and roof framing, and an asphalt/fiberglass shingle roof. The exterior walls are clad in wood and vinyl siding with a pier and curtain foundation wall, 8-inch all-brick foundation, and CMU foundation. The house includes a front masonry covered stoop and a left-rear covered porch.

Ms. Ray renovated the home in approximately 2001 with a kitchen, garage, and left-rear porch addition. Those areas bear on new foundation systems independently of the main, original home. None of those areas are within the concerns of this report.

In about 2008, Ms. Ray first observed evidence of structural distress in her home. The ceiling and roof frames visible in the attic had separated. She had braces added to prevent further separation. Ms. Ray also recalls similar roof frame repairs were necessary in 1996. She also indicated that a man stepped into a shallow hole in her back yard in about 1985 while helping her – sinking up to his waist. At that time, she did not suspect structural or soil concerns. She did recall the position of the ground hole noted within this report.

On March 20, 2012, Ms. Ray contacted M.H. Leonard Consulting Engineers, PA to evaluate the cause and extent of structural damages further. Since then, this firm has progressed as itemized below:

April 4, 2012

Initial site review – field notes, Investigation plan

April to June 2012

City of Rock Hill, requests for storm water system mapping, information – log of inquiries

June 6 – DVD review of pipe camera studies through Ms. Ray

June to July 2012

Plan geotechnical study, quotes – CESI Ed Cummings, PE

July 6 – MHLCE comprehensive site study of structure, damages, water hose test in storm pipes

August 2012

CESI/Cummings geotechnical study

CESI and MHLCE pipeline location under house - confirmation

5. Findings of Engineering Inspections

House Frame and Foundation:

Our investigation has included a structural inspection of the house frame and foundation, finding that there are patterns of distress caused by active structural movement. The roof frame has separated in two locations, the main level floor system is sloping where foundation piers have dropped from original support positions, and a geotechnical study has verified that the foundation movement has been caused by the excavation zone along the public storm water pipe route.

We observed the following specific damages:

Roof Frame Damages:

- ⇒ Separation of ridge and rafters at ridge beam spanning front-rear near front ridge spanning left-right. A metal cap was installed there to span over a 2-inch gap.
- ⇒ Separation of ceiling joists at ceiling girder beam – about 1¼ inch near middle of original house frame.

Interior Wall/Floor Conditions:

- ⇒ Floor distortion at front living room, center breakfast room, center hall. Slope varies from ¼ to 5/8 inch in 4 feet along axis extended to front entry door.
- ⇒ Corresponding wall and door distortion with cased opening headers or jambs ¼ to ¾ inch out of level and/or ½ to 5/8 inch out of plumb.
- ⇒ Stress cracking on hall walls and baseboard trim.
- ⇒ Stress cracking with shear pattern in center left bedroom, front wall.
- ⇒ Master bath/bedroom area – garden tub deck out of level with separation at floor.
- ⇒ Front door out of plumb/square.

Exterior Damages:

- ⇒ Front stoop and steps with masonry shear cracking. Front step dropping/settlement ¾ to 1¼ inches with shear zone near middle.
- ⇒ Front sidewalk – settlement and tilt to left side near front steps.
- ⇒ Rear yard open hole, approximately 14 inches deep near centerline of known storm-water pipe location.

Foundation Damages:

- ⇒ Miscellaneous stress cracks in front foundation wall.
- ⇒ 7 interior piers with separation at top or leaning from plumb.
- ⇒ 4 interior piers that have been shimmed with wood shims more than 1 inch in depth (multiple re-shimming).

The laundry cellar (forward of rear basement area) includes a slab elevated above the basement level, crawl space, and adjacent furnace cellar. We estimate that slab was used to cap over the known storm water line that appears to be within 32 inches of the top of slab. The pipe depth and clearances are only estimated except those verified during the geotechnical evaluation.

Storm Water System:

We studied a pipeline video camera recording obtained by Ms. Ray in 2008 and determined that 1 of the 3 segments of that recording were of the subject pipeline. The recording revealed that the 24-inch terra-cotta clay pipe is old with random stress cracking, joining a manhole directly behind Ms. Ray's home where a 24-inch RCP pipe extends further East and toward the right rear of her property and beyond.

The City of Rock Hill has denied our requests for access or copies of the public storm-water utility information regarding this location on 3 occasions (attempts logged). The only storm water map we were able to obtain in this study was provided by Ms. Ray (Attachment #2: City of Rock Hill, Department of Planning & Development, dated 09 Dec 1998). That map does not show the pipe that extends under 330 College Ave or across to Lucas St.

It does not reflect other pipe routes and pipe sizes observed during this study.

Ms. Ray also owns the property at 340 College Avenue (immediately west of the subject site). The map shows a 10-inch diameter pipe extending diagonally across and under that dwelling. In fact, the pipe is 30-inch dia clay with a partially collapsed catch basin in the rear yard of that site. There is no doubt that it does extend under the northeast corner (rear left) of that structure. *The effects and condition of this storm-water pipe line are not part of this study.*

Geotechnical Evaluation:

Concord Engineering Services Incorporated (CESI) performed a geotechnical evaluation at the site at our request. Mr. Ed Cummings, PE and Mr. Harold Eaves met us on site on August 2, 2012. Their work included confirmation of the existing storm water line under the house, locating and documentation of the rear yard manhole, effects of soil settlement at the front stoop, and the soil investigation under the home. Their findings are documented in a report (Attachment #3: CESI Geotechnical Engineering Evaluation, Ray Residence, 330 College Ave, Rock Hill SC, dated August 8, 2012).

6. Engineering Summary and Opinions

Based on our site study and the accompanying geotechnical evaluation, evidence indicates that the residential dwelling is in an active state of structural settlement caused by an active public storm water terra cotta pipe buried directly below the home. The 24-inch diameter pipe system is confirmed there and soil conditions in the trench in which it was placed are affecting the foundation elements of the structure. Movement of piers and other foundation elements is causing floor distortion, wall and door distortion, roof frame separation, and settlement of steps, patios, and other functional features. These damages are active and appear progressive based on owner input and historical information back to 1985. The causes of structural damages must be addressed soon to limit the magnitude of damage and costs to repair and restore the dwelling.

The storm pipe under the house serves a significant surface area by current estimates. However, City information has not been available for confirmation of actual drainage system fixtures and the general watershed area. By a limited topographical study, we have estimated that the subject 24-inch pipe is handling flow from up to 14 acres to the South of the subject property. Regardless of the flow rate, the presence of a public storm water pipe under a private residence is unusual – preventing public access for maintenance and repairs. Videos of the pipe indeed show it is old with cracking and other concerns that it may be leaking (not confirmed by this study). If it is leaking now, or in the future, the risks are substantial that it will damage the private dwelling further, eventually leading to partial catastrophic failure if certain conditions develop.

Repairs and stabilization of the building foundation must be considered soon to limit damage. Temporarily, the pipe must be maintained to control risks of leaks and related damage. An epoxy lining should be considered. Ultimately, the line must be moved or re-routed and the effects on the house foundation must be remediated to restore the structural integrity and value of the property. If not, the value and function of the home may be jeopardized – including the risk of full loss of value.

Limited responses from the City of Rock Hill seem to suggest the pipe does not belong to the City (*Attachment #4: Letter – Spencer & Spencer, Mr. Paul Dillingham to Mr. Charles S. Bradford, dated May 18, 2012*). We cannot verify ownership of the pipeline, but there is no doubt that it is not a private drain system. Since the City maintains the streets and other utilities from which the subject storm water pipe originates (recent addition of catch basins near Strait Street by City confirm this), and since the discharge and management of the water in this system are managed by the City, then it appears certain that they have overlooked a buried, old storm water pipeline that pre-dates the construction of the house on this site (estimated to be 90 years old).

7. Recommendations

Options to remedy the problem include:

- A. Removal of home and foundation for adequate ROW for the pipe and to allow access and maintenance.
 - B. Re-route the storm water pipe away from the property, abandoning the existing pipe and repairing the dwelling and foundation. At this stage, the magnitude of damage allows this option. As the pipe continues to degrade and if soil erosion in the underground trench is compromised, this option will become less feasible.
 - C. Reline the pipe, maintain it as positioned, shore and repair the foundation and frame of the dwelling, and confirm the pipe capacity for further risk assessment regarding the home.
- ⇒ Option C is NOT recommended from a structural engineering view point. Risks remain for pipe failure despite any maintenance practices adapted. There may also be substantial legal concerns with a private structure located atop a public utility.
- ⇒ Option B is considered the most feasible and only option if the house remains over the current pipe section.

We recommend the following scope of repairs to re-route of the storm water pipe, cap and fill the abandoned pipe, and restore the structural integrity and function of the dwelling and foundation.

- 1. Excavation and cap of pipe at front and rear exterior of home footprint. Structural fill of the pipe cavity with slurry mix flowable fill.
- 2. Deep foundation shoring devices under house foundation walls and interior foundation piers along pipeline route, any elements within 10 feet of the trench zone. (* See alternative soil densification.)
- 3. Re-build foundation walls, piers, and front stoop as needed to restore function and integrity.
- 4. Jacking and levelling of main level floor system with reinforcement of frame girders affected by damages to date.
- 5. Repair and brace of roof frame, including installation of structural cross-ties and rafter tie-downs.
- 6. Interior repairs of plaster walls, millwork, trim, and flooring affected by structural damages to date.

The general conditions, cleaning, debris hauling, building permits, insurances, and construction management must be included. Engineering design of structural repairs will be required. A reasonable General Contractor's fee must also be included.

We have estimated the costs of this work as itemized in Attachment #5: MHLCE Cost Estimate – Structural Repair, Shoring, and Restoration of Ray Residence, 330 College Ave, Rock Hill, SC, dated August 21, 2012.

We estimate the costs to cap and fill the pipe, to shore and repair the house foundations, and to repair the house frame is \$ 147,711, including Contractor overhead and profit margins and a 2.5% contingency budget.

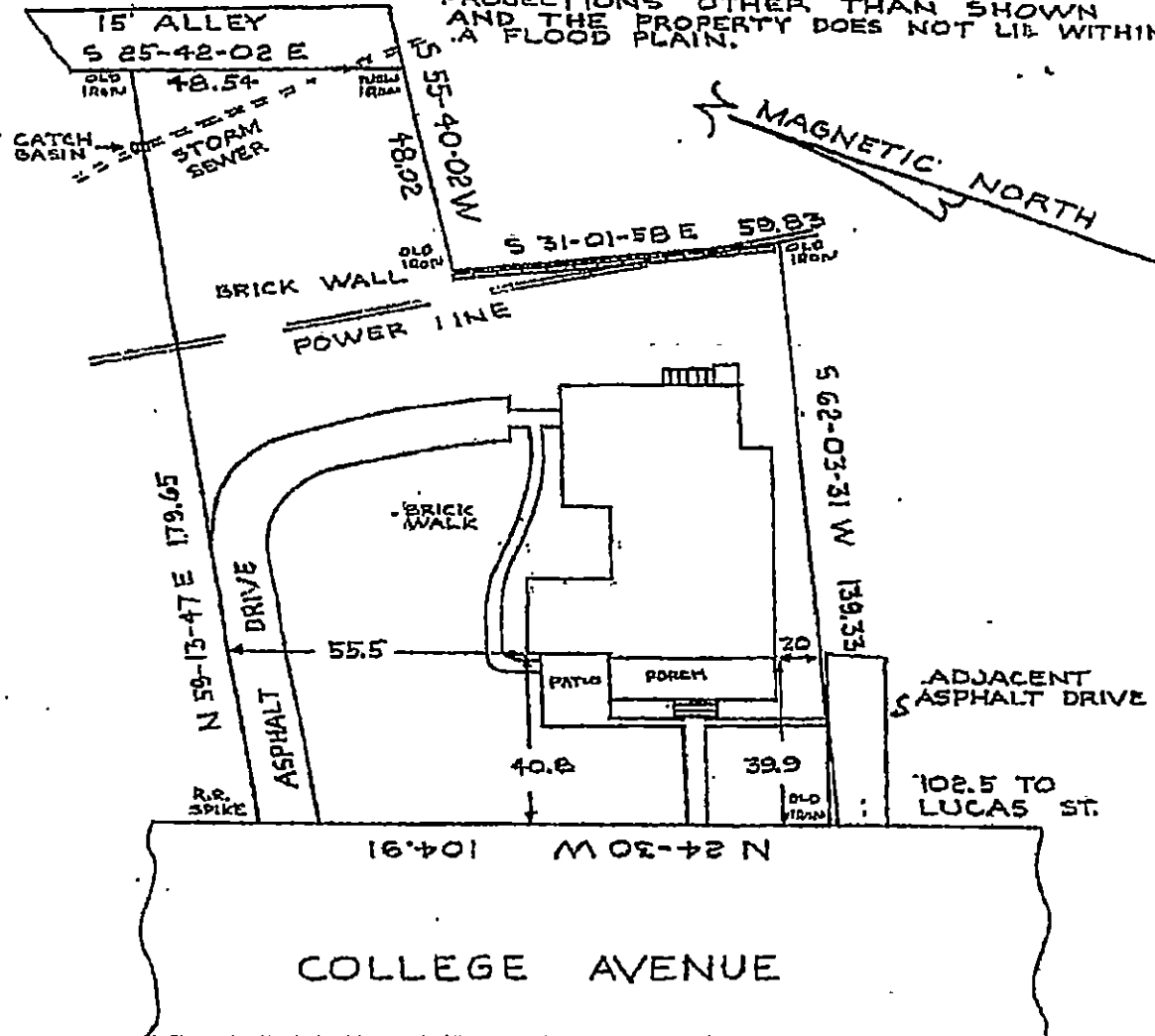
This scope and cost estimate is based on assumptions and conditions as follows:

- ⇒ Repair work is based on status of damages as of August 2, 2012. Time may allow more damage and add to costs.
- ⇒ The cost for engineering includes structural repairs and pipe capping and fill on the subject property. No other part of the existing pipe or future pipe is included.
- ⇒ The pipe fill is only between the existing catch basin at the front and the existing buried manhole at the rear of 330 College Ave. The existing 24-inch diameter RCP that extends between the buried manhole behind the subject house and Lucas Street is not part of this cost estimate for capping and fill.
- ⇒ Existing storm water piping has been re-routed and completed prior to this scope.
- ⇒ Costs for temporary pipe repairs, linings, and/or provisions prior to this scope are not included.
- ⇒ Transportation and fuel costs are included based on rates in place at the time of the estimate.
- ⇒ Water and electricity are provided by the owner during construction work.
- ⇒ A landscape repair allowance is included (\$1200).

Attachment #1: W.C. White, RLS Survey of
330 College Ave, Rock Hill, SC
Dated May 23, 1985

THIS BEING SHOWN AS LOT 10 AND PART OF 11 & 12 IN
BLOCK 28 OF MAP OF PROPERTY OF ROCK HILL BUGGY
CO., MADE BY J.L. STACY AND DATED APRIL, 1924, RECORDED
IN PLAT BOOK 2, PAGE 200.

THIS IS TO CERTIFY THAT THIS IS A TRUE AND ACCURATE
SURVEY AND THAT THERE ARE NO ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN
AND THE PROPERTY DOES NOT LIE WITHIN
A FLOOD PLAIN.



MAP OF PROPERTY OF
LUCILLE RAY
330 COLLEGE AVENUE
ROCK HILL, S.C.

MAY 23, 1985

SCALE 1"=30'



W.C. White
W.C. WHITE R.L.S. #1037
ROCK HILL S.C.



August 8, 2012

Mr. Mike Leonard P.E.
M.H. Leonard Consulting Engineers, PA
447 South Sharon Amity Road
Suite 201
Charlotte, North Carolina 28211

Reference: Geotechnical Engineering Evaluation
Ray Residence
330 College Avenue
Rock Hill, South Carolina
CESI Project Number 120755.000

Mr. Leonard:

CESI has performed a geotechnical engineering evaluation of the storm drain under the Ray Residence in Rock Hill, South Carolina. We completed these services in accordance with your verbal authorization. This report summarizes our Findings, Conclusions and Recommendations.

FINDINGS

On August 2, 2012, CESI's Geotechnical Engineer, Edward S. Cummings III P.E., met Michael Leonard P.E. and Ms. Lucille Ray at her residence in Rock Hill, South Carolina. Ms. Ray indicated her observation of the settlement of the brick sidewalk and stairs at the front porch initiated the structural investigation of the house by Mike Leonard. The purpose of the meeting was to allow our Geotechnical Engineer to observe the storm drain under Ms. Ray's home and the resulting settlement problems as observed by Mr. Leonard and Ms. Ray. Ms. Ray said her residence is 90 years old and was purchased in 1985.

The following specific areas were observed:

- Storm drain catch basin in College Avenue;
- Storm drain manhole in rear yard;
- Loose brick piers in crawl space;
- Settlement of front brick sidewalk and stairs;
- Previous hardwood floor repair by former owner (pre 1985) in entrance foyer directly above and inline with the storm drain.

Facing the Ray Residence, a 24" terra cotta pipe was observed leaving the catch basin and heading toward the center of Ms. Ray's house. See photographs 6 and 7. A 36" terra cotta pipe enters the

catch basin from across College Avenue. An 18" reinforced concrete pipe enters the catch basin from the right. See Photograph 8. A video survey of the 24" terra cotta storm drain pipe was previously performed under Mike Leonard's direction. Mr. Leonard indicated the terra cotta pipe under the residence has cracks.

The geotechnical investigation began with removal of 2.5 feet of fill soil over the storm drain manhole lid in the rear yard. The lid was removed exposing the manhole. See Photographs 1 and 2 in the Appendix. A cracked 24" terra cotta pipe was observed entering the catch basin from the direction of the house. See Photographs 3 and 4. A 24" reinforced concrete pipe was observed leaving the catch basin to the east. See Photograph 5. A drain test was performed by Mike Leonard by placing water in the catch basin on College Avenue in front of the Ray Residence with a garden hose. See photographs 6 and 7. A few minutes later water was observed flowing through the storm drain manhole in the rear yard. See Photograph 4. Mike Leonard pointed out voids in the rear yard along the subject storm drain alignment.

Next, CESI's Geotechnical Engineer entered the crawlspace area to observe the brick piers supporting the wood framed floor system. The brick piers were tapped and observed for looseness between the top of the pier and the floor system. Piers "B", "C", "D", "E", "I", "J" and "K" (as noted in our Hand Auger Location Plan) are in contact with the floor system. The following piers have the observed conditions:

- Brick pier "A" is loose and appears to have been shimmed with a 2"x2" piece of wood at the interface with the floor joist system;
- Brick pier "F" is tilting toward the storm drain line. The pier has been shimmed with a 2"x2" wood shim at the interface with the floor joist system. The wood shim is under great stress. It was also noted that additional wood framing was installed to resist pier overturning;
- Brick piers "G" and "H" are loose and appear to be a retrofit. A 4"x6" wood beam has been placed on and spanning slightly past piers "G" and "H". The wood beam is also loose.

CESI's geotechnical engineer began the subsurface exploration by excavating adjacent to brick pier "A" to determine the footing bearing level and the storm drain location. No concrete footing was observed for the brick pier, however, a brick footing larger than the pier was present. Next, a hand auger boring, HA-1, along with dynamic cone penetrometer (DCP) testing was performed to determine the soil bearing conditions directly beneath the brick pier. The brick pier is bearing on red fine sandy silt (ML) residual soil at HA-1. Soil consistency as measured by DCP testing was stiff 2" below the bearing surface of the brick pier "A" and very stiff 14" below brick pier "A".

The dynamic cone penetrometer is a portable testing device used to estimate penetration resistance of the soil samples, as outlined in Sowers and Hedges paper "Dynamic Cone for Shallow In-Situ Penetration Testing". The device has a 1.5-inch diameter, 45-degree cone point with a surface area of 3.9 inches which is driven with a 15-pound steel weight on a guide rod. After the cone point was completely embedded at the test depth it was driven an additional 1³/₄ inches by the steel weight falling 20 inches onto a steel anvil. The number of hammer blows required to drive the cone the 1³/₄-inch increment was recorded as the "penetration resistance" in units of blows per increment. Penetration resistance, when properly evaluated, is an index to the soil's strength.

Hand auger boring HA-2 was located and performed approximately 22" from the centerline of brick pier "A" and 19'-3" from the right sidewall of residence. This is also the location of the 24" terra cotta storm drain line coming from College Avenue. See Photograph 6. Soft fill soils were observed at 28"

and 48" below the bearing surface of the brick pier. The 24" terra cotta storm drain pipe was encountered at 58" below the bottom of the pier. See Photographs 9 and 10. Brick pier "A" is bearing on the transition zone between residual soils and the storm drain backfill soils. The pier appears to be settling as a result of the soft storm drain back fill soils.

The brick sidewalk and stairs at the front of the residence have settled. Horizontal measurements indicate that the settlement is directly above the storm drain line. See Photographs 11, 12, 13, 14 and 15. The front stairs have settled approximately 1-1/8". The stairs have horizontally displaced 1-1/2" by the consolidation of the storm drain backfill soils. Michael Leonard indicated that he observed in the attic separation in the front porch framing members. Ms. Ray understood the former owner had replaced the brick front stairs prior to 1985.

CONCLUSIONS

Based on our site observations and geotechnical findings, the 24" terra cotta storm drain pipe under the subject residence and the soft storm drain back fill soils have caused the following conditions:

- The settlement of brick pier "A";
- The settlement of brick pier "F";
- The settlement of the front brick sidewalk and stairs;
- Any wall or pier footing within 6 feet of the storm drain pipe is subject to long term settlement due to the consolidation of the underlying storm drain backfill soils.
- The cause of the looseness of the brick piers "G" and "H" at the 4"x6" wood beam interface cannot be explained at this time.

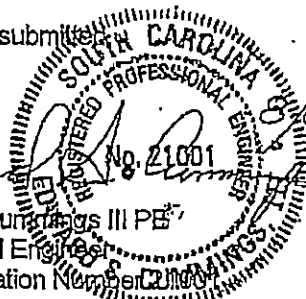
RECOMMENDATIONS

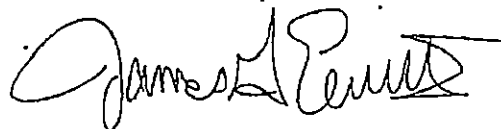
CESI recommends the following:

- Pier and wall footings within 10 feet of the storm drain should be underpinned to adequate bearing soils;
- The 24" terra cotta pipe should be lined underneath the subject residence.

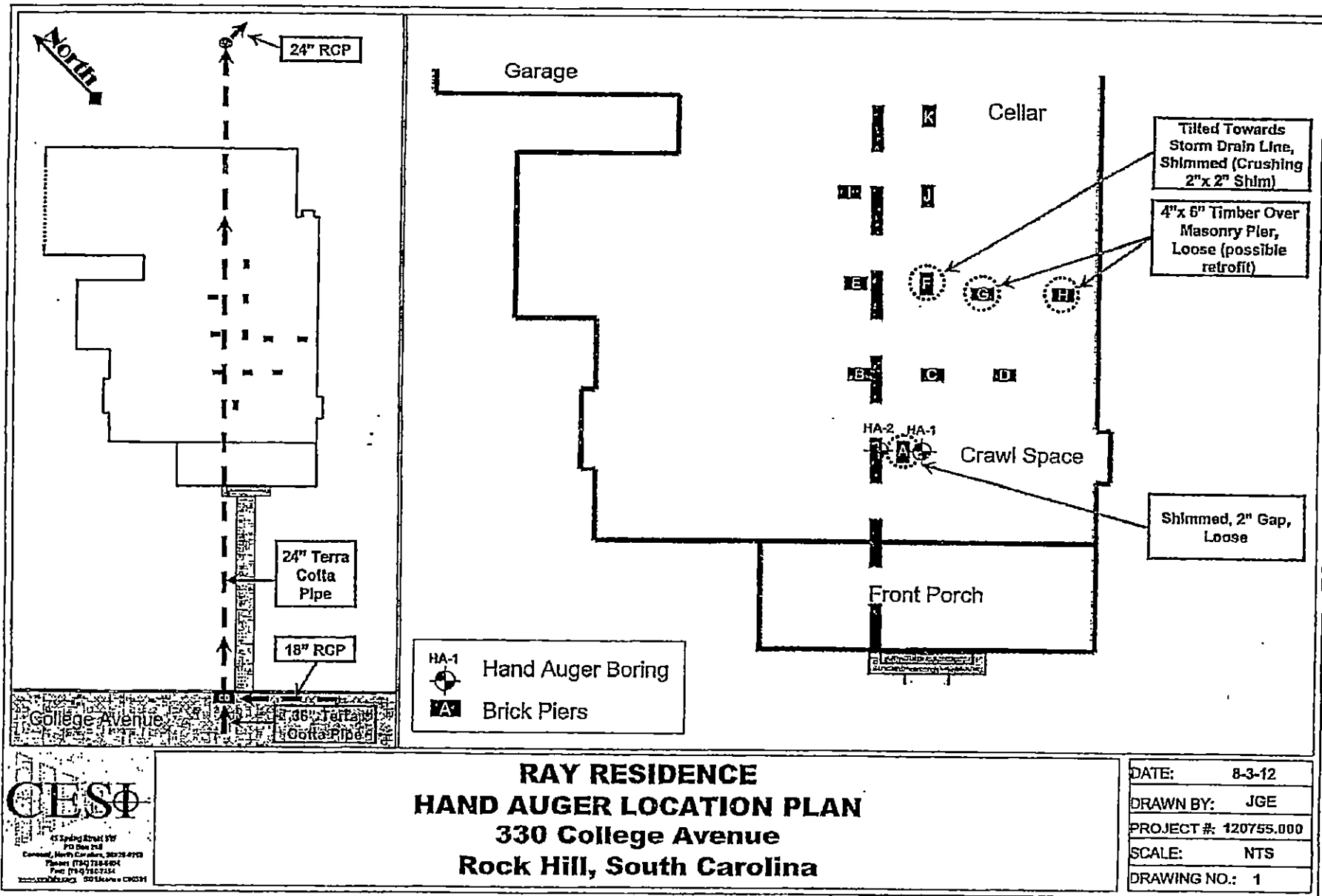
Please contact us if you have any questions regarding this report or if we may be of further service.

Respectfully submitted,
CESI


Edward S. Cummings III PE
Geotechnical Engineer
S.C. Registration Number 21001


James G. Eaves III, PE
Division Manager
S.C. Registration Number 25575

Enclosures: Hand Auger Location Plan
Log of Hand Auger Borings (HA-1, HA-2)
Site Photographs





Job No.: 120755.000

Street Address : 330 College Avenue

CES1 Engineer: Ed Cummings

Penetrometer Blows per 1.75"

[illegible]

RAY000474



Photo 1: Manhole in rear yard



Photo 2: Manhole in rear yard



Photo 3: Manhole in rear yard



Photo 4: Manhole in rear yard



45 Spring Street SW
PO Box 288
Concord, North Carolina, 28028
Phone: (704) 786-5404
Fax: (704) 786-7454
<http://www.cesids.com>

SITE PHOTOGRAPHS **RAY RESIDENCE** 330 College Avenue Rock Hill, South Carolina CESI SC License C-00591

DATE:	08-06-12
PHOTOS BY:	ESC
PROJ. NO.:	120755.000
SCALE:	N/A
SHEET NO.:	1



Photo 5: Manhole in rear yard



Photo 6: Catch basin at College Avenue

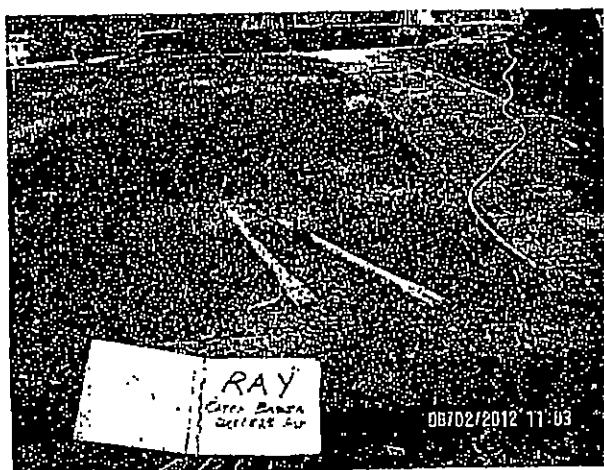


Photo 7: Catch basin at College Avenue

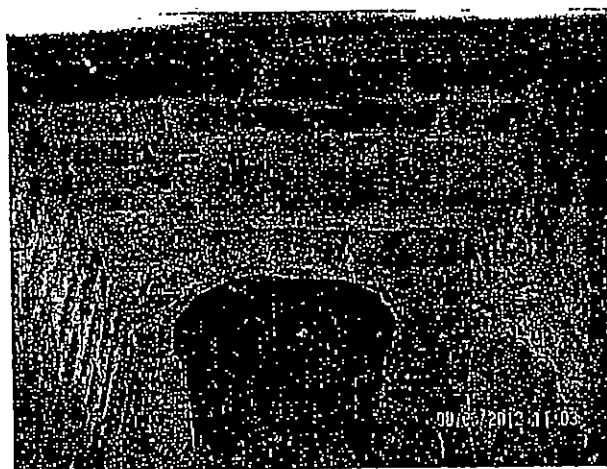


Photo 8: Catch basin at College Avenue

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SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE:	08-06-12
PHOTOS BY:	ESC
PROJ. NO.:	120755.000
SCALE:	N/A
SHEET NO.:	2

RAY000476



Photo 9: Hand auger HA-2 at brick pier 'A'

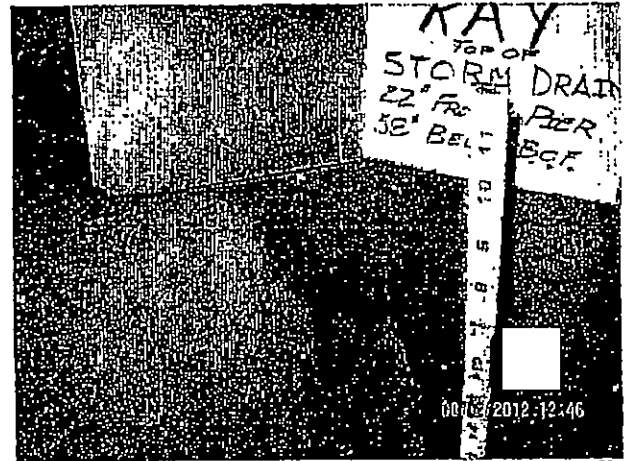


Photo 10: Hand auger HA-2 at brick pier 'A'

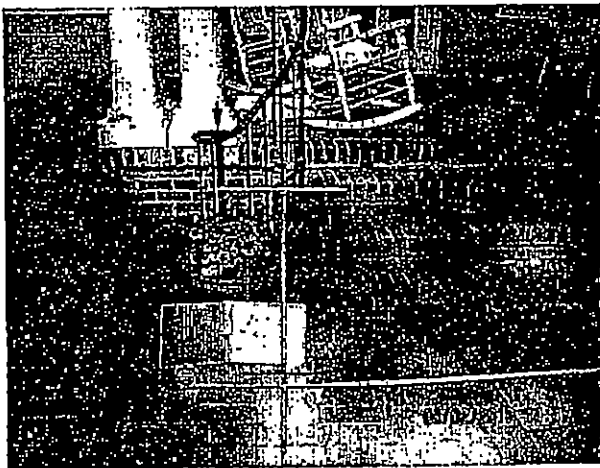


Photo 11: Front sidewalk and steps - Probe rod represents measured alignment of storm drain line.



Photo 12: Front sidewalk and steps

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SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE: 08-08-12

PHOTOS BY: ESC

PROJ. NO.: 120755.000

SCALE: N/A

SHEET NO.: 3

RAY0004

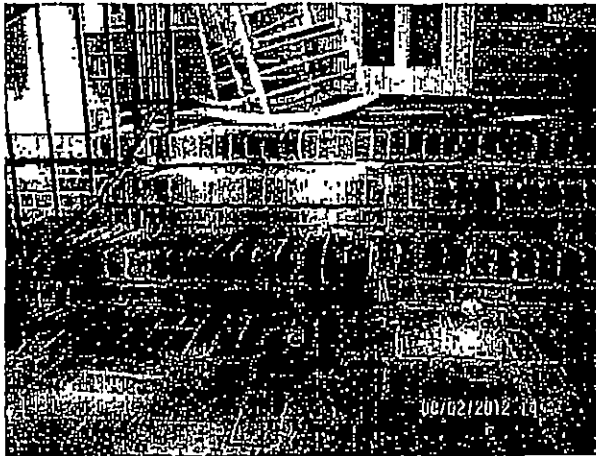


Photo 13: Front sidewalk and steps

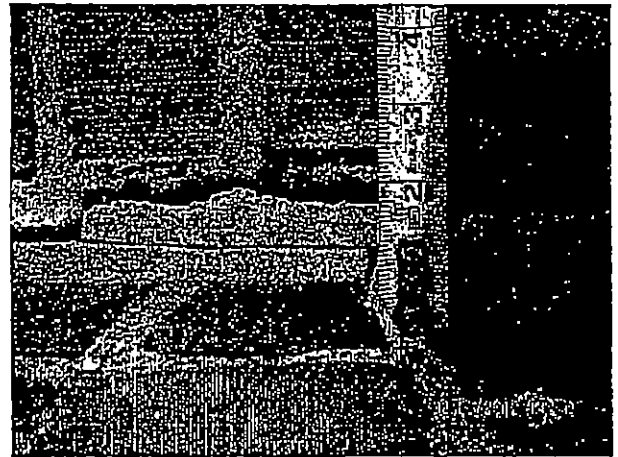


Photo 14: Settlement at front steps

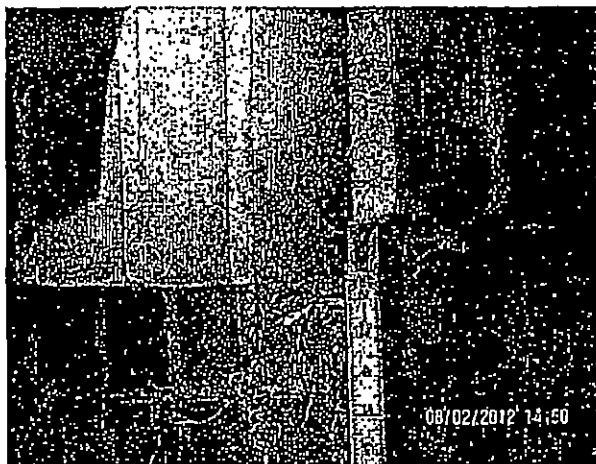


Photo 15: Horizontal movement at front steps

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SITE PHOTOGRAPHS
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Rock Hill, South Carolina
CESI SC License C-00591

DATE:	08-06-12
PHOTOS BY:	ESC
PROJ. NO.:	120755.000
SCALE:	N/A
SHEET NO.:	4

SPENCER & SPENCER
PROFESSIONAL ASSOCIATION
Attorneys and Counselors at Law

Attachment #4: Letter
Spencer & Spencer, Mr. Paul Dillingham to
Mr. Charles S. Bradford
Dated May 18, 2012

C.E. SPENCER (1849-1921)
C.W.F. SPENCER (1876-1950)
C.W.F. SPENCER, JR. (1911-1985)
W.C. SPENCER †
WILLIAM L. "RED" FERGUSON †
EMIL W. WALD †
PAUL W. DILLINGHAM
W. MARK WHITE*
W. CHAPLIN SPENCER, JR.*
R. ALEXANDER SULLIVAN*
R. BRENT THOMPkins*
JEREMY D. MELVILLE*

† Of Counsel
* Also admitted in NC

May 18, 2012

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Charles S. Bradford
P. O. Box 977
York, SC 29745

RE: Lucille H. Ray
330 College Avenue ("Property")

Dear Charles:

I represent the City of Rock Hill ("City"), which has forwarded your letter dated February 24, 2012, to me for a response.

Our firm has also completed a title search of the Property taking the chain back to the deed recorded June 18, 1920 from the Estate of W. E. Lucas to the Rock Hill Buggy Company to confirm the information in your letter. We did not find a right-of-way or easement in favor of the City for the stormwater line running across the Property. My understanding is that the City does not wish to accept this line as a City maintained utility. Do you have any evidence to suggest that the City owns this line?

Thank you for bringing this to my attention.

Sincerely,

SPENCER & SPENCER, P.A.



Paul W. Dillingham

 M.H. LEONARD CONSULTING ENGINEERS, P.A. INSPECTION • DESIGN • INVESTIGATION		MHLCE COST ESTIMATE - STRUCTURAL REPAIR, SHORING, AND RESTORATION MS. LUCILLE RAY RESIDENCE, 330 COLLEGE AVE, ROCK HILL, SC 21-Aug-12 MHLCE Project # 12E9555.F Michael H. Leonard, PE					
Section/Item	Scope	Units	Cost/Unit	Cost	Extension	Cumulative	Total
Section 1	Abandon, Cap Existing 24-inch Pipe						
a	Survey, locate pipe on site				650		
b	Demolition and Excavation				3170		
	Removal front sidewalk at curb, to front stoop, front steps			1350			
	OSHA box, staging			1620			
c	Cap pipe				3300		
	Bulkheads (2), structural reinforcement	4	550	2600			
	Downhill vent	1	700	700			
d	Sturry fill - 2 stages 130 lf, 24 in dia	21	420	8820	10320		
	pumping, vibration	2	750	1500			
e	Sidewalk Replacement 200 sf	220	7	1540	1540		
f	Grade, drainage repairs front, rear yards			840	840		
g	Landscape repairs allowance			1200	1200		
						20820	
Section 2	Foundation Shoring						
a	Interior foundation piers 8 each in zone				12280		
	footings	8	185	1480			
	helical piles	8	1350	10800			
b	Front Foundation Wall 14 lf in zone				4752		
	footings	14	18	252			
	helical piles	3	1500	4500			
c	Front Stoop Walls, Steps 14+8+8 lf steps only				7725		
	footings	3	175	525			
	helical piles	6	1200	7200			
d	Cellar Foundation Wall 14 lf				4500		
	footings	extg					
	helical piles	3	1500	4500			
e	Rear Foundation Wall 14 lf				3600		
	footings	extg					
	helical piles	3	1200	3600		32857	
Section 3	Re-build Foundations, Piers						
a	Front Steps 65 lf	65	15	975	975		
b	4 Interior Piers 4 ea	4	335	1340	1340		
c	Cumulative Foundation Voids misc			700	700		
						3016	
Section 4	Main Floor Frame Repairs, Leveling						
a	Laser level study				1350		
b	Crib, bracing, jacks				850		
c	Leveling and bracing				840		
d	Reinforcement mlf	240	8	35	520		
e	8 new piers				2700		
						6280	

Section 5 Roof Frame Repairs							
a Ridge Bracing, joining	mtl	450	12	35	870		
b Rafter Cross-ties	mtl	200	6	35	410		
c Rafter Tie-downs	mtl	780	16	35	1305		
d Shingle damage/repairs	12 sq		12	180	2160		
e Venting, repairs	80 lf		80	12	1080		
						5825	
Section 6 Interior Restoration							
a Door, C/O repairs	8 units		24	45	1080		
b Millwork removal, reset ref. floor leveling	240 lf		18	45	810		
c Wall, ceiling repairs - plaster, GWS			80	38	3040		
d Hardware adjustments	12 units		18	45	810		
e Painting, cleaning			72	28	2016		
f Floor finishes	1850 sf		1850	4.75	8788		
g Final Cleaning			3200	1.15	3680		
h Trim Mt					950		
						21174	
Section 7 General Conditions							
a Design, Drawings - engineering	24 hr S/E		24	160	3840		
b Building Permits					400		
c Sanitary Facilities			3	150	450		
d Debris - hauling, disposal	loads		4	350	1400		
e Transportation	10 weeks		10	180	1800		
f Tools & Equipment			10	120	1200		
g Communication			3	85	195		
h Site Supervision	12 wk, 38		458	36	16416		
i General Labor	10 weeks		8	25	200		
						25901	
SUBTOTAL							115852
CONTRACTORS FEES							
GENERAL OVERHEAD						15%	17378
PROFIT						10%	11585
CONTINGENCY						3%	2896
TOTAL COST ESTIMATE							147711

To: Lucille Ray
Charles Bradford
From: Mike Leonard, PE – M.H. Leonard Consulting Engineers, PA
Subject: Lucille Ray Residence – Storm Water System and Structural Damages
330 College Ave, Rock Hill, SC
MHLCE Project # 12E9555.F
Date: November 30, 2012

This will confirm recent discussions and a site visit on November 29 with Ms. Ray regarding ongoing sanitary sewer work on College Avenue and Strait Street, being done by the City of Rock Hill.

We are concerned with an increase in risks to the structural integrity of Ms. Ray's home based on developments during that work and visible indicators now on site.

Our previous field observations and review of camera inspection DVDs obtained from the City show the pipes on her property are damaged. (See previous MHLCE Report # 12E9555.F, dated September 5, 2012.) During the sanitary sewer pipe work in front of her home on College Avenue, she took photos of this same storm-water pipe while exposed for repairs. The City has needed to replace storm water piping on Strait Street and College Ave because of damages to the line. We believe that the same pipe under her home is damaged and slowly reaching a point of failure with risk of substantial structural damage. *Furthermore, by repairing/replacing storm-water pipes in the same line along Strait Street and upstream of the pipe under her home, the increased flow in the system will increase risks of progressive pipe damage and eventually could lead to additional structural damages.*

The most substantial risk of all to her home is the loss or erosion of soil around the existing underground storm water pipe, which would lead to consolidation of uncontrolled magnitude, possibly creating a sink hole directly under her foundation bearing elements. We are already concerned with the potential for voids there and we have confirmed soil-bearing problems during geotechnical assessments. *On November 29, 2012, we measured the front step settlement and found that it had progressed 3/8 to 1/2 inch more than found in August. Interior stress cracks along the walls and ceilings are also appearing – in line with the known underground storm-water pipe below her dwelling.* Shrinkage cracks in a wood-framed home tend to increase during the heating season, but these are beyond normal frame shrinkage.

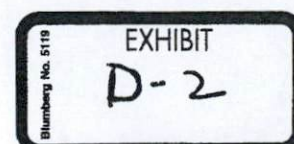
We talked to the General Contractor hired to re-work the sanitary sewer line for the City. He indicated that numerous lines had been found during this work, with undocumented locations and damages. They also have verified that another storm water line extends down and under the dwelling at 340 College Ave (also owned by Ms. Ray).

We observed photographs taken by Ms. Ray during the ongoing sanitary sewer line project. The drop-inlet in front of Ms. Ray's home (330 College Ave) is fed from multiple storm-water pipes. The one utility map we have obtained of this area (provided by Ms. Ray) shows a single pipe adjoining this point, from the line that extends along Strait Street. Furthermore, because the old pipelines are typically clay, the new concrete (RCP) pipes being used to repair the lines do not fit the clay pipe radii. They have been 'fitted' by pouring concrete around the junctures to 'seal' the fits. In our experience, *this is not a water-tight fit, leaving increased risk of line seepage, erosion, and damages downstream of the fit – under Ms. Ray's home.*

Based on our original study and report, and with these new developments, we request access to specific information from the City as follows:

1. Storm water system map of the existing pipe systems, manholes, and junctures currently in place regarding the system that services the public right-of-way around Ms. Ray's property at 330 College Ave. Our previous requests for this information were not granted as documented in previous reports.
2. Storm water and hydrology studies of the same areas of Item 1.
3. Hydraulic profiles of the storm water pipe system in the areas of Item 1.
4. Street maintenance and repair records of Strait Street, College Ave, and any other right-of-way areas above this specific storm water system piping loop – within the last 10 years.

833



5. Storm water system maintenance records regarding the same loop of Items 1 and 4.
6. For similar reasons, we request the same information for existing storm water systems and public right-of-ways for the system that crosses the rear quadrant of 340 College Ave where there is visible damage to the catch basin and piping exposed in the private yard area of that property.

Please call if needed to clarify these latest concerns.

Sincerely,
M.H. Leonard Consulting Engineers, PA

A handwritten signature in black ink, appearing to read "MH Leonard", with a stylized flourish at the end.

Michael H. Leonard, PE
Principal Engineer
Project Manager – Ray Investigation

1 Attachment, 5.0 MB

1. What is the purpose of the study?
 2. What are the research questions?
 3. What is the significance of the study?
 4. What are the limitations of the study?
 5. What are the conclusions of the study?

Paradise Stormwater College Ave



1

EXHIBIT

E

Partial Stormwater - College Ave.



LEGEND

- Inlet
- ⊙ JunctionBox
- ⊙ EndTreatment
- ▲ Drainage
- ~ creeks

1 inch = 87 feet

Feet



Charles S. Bradford, P.A.

ATTORNEYS AT LAW
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YORK, SOUTH CAROLINA 29745
TELEPHONE 803-684-4888
FACSIMILE 803-684-4488
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CHARLES S. BRADFORD

DANIEL H. HARSHAW

PHYSICAL ADDRESS

4 EAST LIBERTY STREET
YORK, SOUTH CAROLINA 29745

November 13, 2012

Paul W. Dillingham, Esquire
Spencer and Spencer
P.O. Box 790
Rock Hill, SC 29731-6790

VIA FIRST CLASS MAIL
& VIA EMAIL

Re: Lucille Ray/330 College Avenue, Rock Hill, SC

Dear Paul:

I am drafting this letter on Monday, November 12. I have just spoken to my client Lucille Ray. As you know, the City is doing some major sewer and storm water work in the College Avenue area.

Ms. Ray advises me that three large pipes, which she estimates to be 36" in diameter have been exposed and severely damaged by the work going on College Avenue. One of the pipes is on Strait Street, and runs down the hill into College Avenue in front of Ms. Ray's house. The other two come from each direction on College Avenue. She says that these three large pipes have all been broken, and it appears that the City is most likely going to replace these damaged or broken pipes. All three of these pipes were depositing water which enters into the 24' storm drain pipe which goes directly under Ms. Ray's house, and which is the subject of the recent lawsuit we have filed against the City.

On behalf of the City, please be advised that Ms. Ray does not consent to allowing any replacement pipes to be connected so as to deposit water into the 24' storm water pipe running underneath her house. Since the City does not claim to own the pipe, the City needs my client's permission or a right-of-way to connect these pipes to the pipe going under her house for purposes of future water discharges.

Please advise the City Utility Department not to connect any new pipes or replacement pipes to the pipe going under my client's house. I have advised my client to deny them permission to connect the new pipes to the pipe running underneath her house, and we will consider any such efforts to connect those pipes to be in violation of my client's rights. I will further advise my client

SA:\p\BRADFORD\CEP\LETTER\MSR\Ray\LucilleDillingham\harr.Lepd

EXHIBIT

F

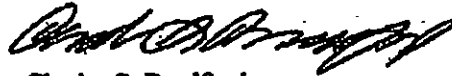
LUCILLE_RAY00120

Paul W. Dillingham, Esquire
Page Two
November 13, 2012

regarding obtaining a temporary restraining order if the City makes any efforts to rebuild those pipes, and to connect them to the system which deposits water which goes into the pipe that runs under my client's house.

If you have any questions, or if you would like to discuss this situation further, do not hesitate to contact me.

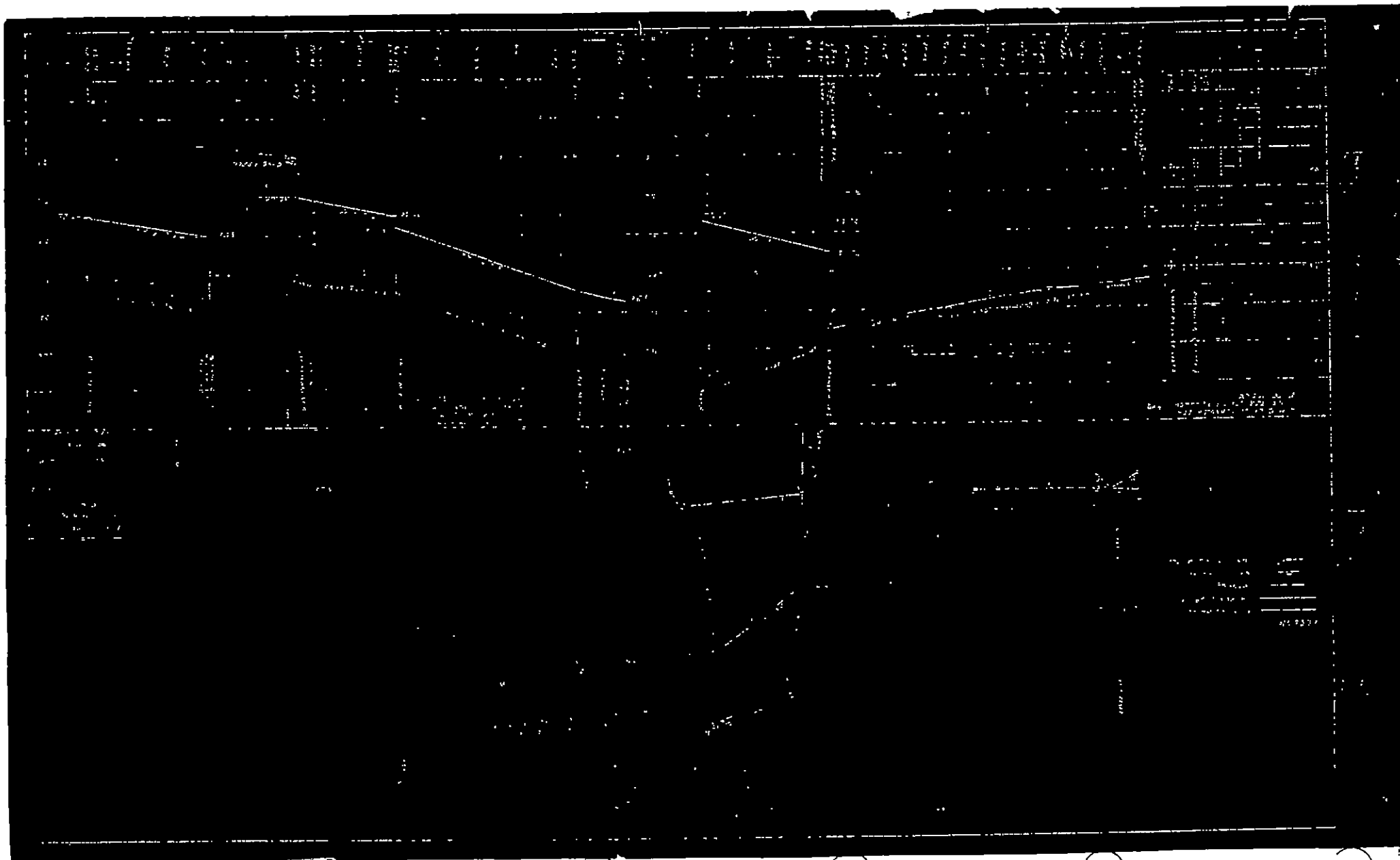
Sincerely,



Charles S. Bradford

CSB/bgb
CC: Lucille Ray

33AppxRARECSEFILES\BCEC\Ray and Dillingham letter 2.mpd



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Civil Action No. 12-CP-46-3928

LUCILLE H. RAY,

Plaintiff,

vs.

COMMONWEALTH LAND,
TITLE INSURANCE COMPANY,
Successor In Interest to Industrial
Valley Title Insurance Company,

Defendants.

AFFIDAVIT OF MICHAEL H. LEONARD

FILED-RECEIVED
2014 MAY 30 PM 2:43
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Michael H. Leonard, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. I am the founder of and a principal in the engineering firm known as M.H. Leonard Consulting Engineers, PA. The firm was incorporated in 2003. Prior to that, I worked as a sole proprietor. I am also the founder of and a principal in the construction firm known as M.H. Leonard Construction Co., Inc. That firm was incorporated in 1985.
3. I am a licensed professional engineer, and a licensed general contractor.
4. I received my degree in civil engineering from North Carolina State University.
5. I have worked in the construction and engineering fields for thirty-five (35) years.
6. My firm specializes in construction management, structural engineering, moisture and thermal protection and drainage and stormwater systems. One of my early jobs out of college was an engineer specializing in storm drainage and public utilities.
7. Lucille Ray hired me in March 2012 to perform an assessment of her house in Rock Hill. It was showing damage usually associated with settlement.
8. The house, however, was about ninety (90) years old when I began my study. Most settlement damage takes place within a few years after the home was built, so this one presented interesting challenges.

9. I have personally been to the site many times. I have examined the dwelling, the soil conditions around and under the home, and the surrounding neighborhood. There is a stormwater pipe that extends from Oakland Avenue along Strait Street to a junction point directly in front of Ms. Ray's house. There is a grate there which catches even more water as it flows down Strait as well as College. Other stormwater pipes feed into the same spot. The pipe continues on directly under the house to a manhole in her rear yard. I have both conducted and witnessed water flow tests and confirmed that the pipe is active and that stormwater drains through it. This is problematic for a number of reasons, and can lead to damage to the house. My initial reports summarize some of these problems. It is attached to this affidavit as Exhibit 1. There is a mistake in it. I stated in a timeline that Mrs. Ray knew in 2008 that the pipe at issue ran under her house. I have checked my notes. That date should be 2011. I have noted the error on my report.

10. The pipe is old; and is made out of Terra Cotta. It is about twenty four inches (24") in diameter. A number of videos have been taken of the pipe, and reveal significant problems with it.

11. I tried to get records for the stormwater system, but was unable to, at least initially. I was eventually provided with a Rock Hill City Stormwater map which has turned out to be incorrect. This is attached to my affidavit as Exhibit 2.

12. I learned a lot about the physical condition of the pipe at issue in late 2012. The City was doing some work on the sanitary sewer system on College Avenue. In the process, several sections of pipe were disconnected from the pipe section running under Ms. Ray's house.

13. The catch basin on College is part of an upstream network that serves a watershed area of twenty-nine (29) acres.

14. When the street was excavated for sanitary sewer work, we found the storm water pipes I have described to be old and badly deteriorated. They indeed channeled water that had been collected from other locations through the pipe which runs under Ms. Ray's house. I generated a supplemental report during these repairs. It is attached to my affidavit as Exhibit 3.

15. The City was told by Ms. Ray not to reconnect those lines. It did so anyway.

16. I have reviewed maps produced by the City in its litigation with Ms. Ray. Those documents are attached to this affidavit as Exhibit 4. Those maps show that the pipe was recognized as part of the City's system of stormwater improvements as far back as 1941. The pipe system was modified so that the section of pipe running into Ms. Ray's back yard is now shorter than it was initially with a "relief line" which travels over to Lucas Street. That indicates to me that the City has exercised control over this line for over seventy (70) years. There is also a manhole on Ms. Ray's property which shows that others maintain the pipe.

17. The water does not have to run under Ms. Ray's house. You could bury a pipe in deep enough so that it ran downhill towards Lucas, or otherwise diverted around her house.

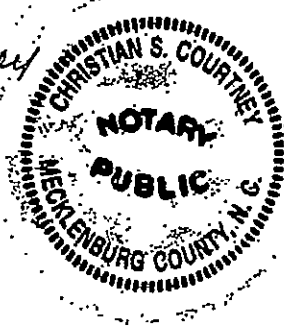
18. I have attached my estimate of repair costs as Exhibit 5.

This 30th day of May, 2014.

Michael H. Leonard
Michael H. Leonard

Sworn to and subscribed before me
this 30 day of May, 2014.

Christian S. Courtney
Notary Public, Christian S. Courtney
My commission expires: 07/01/2016





ENGINEERING EVALUATION

STRUCTURAL DAMAGES AND RECOMMENDED REPAIRS

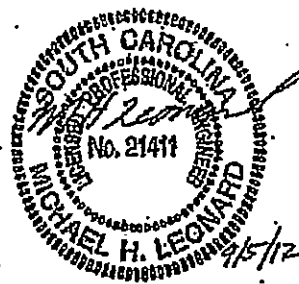
Residence of:

**Ms. Lucille Ray
330 College Ave
Rock Hill, SC**

MHLCE Project # 12E9555.F

Date: September 5, 2012

By: Michael H. Leonard, PE



447 South Sharon Amity Road, Suite 201

Charlotte, N.C. 28211

Office (704) 393-2221

mleonardengineering.com



RAY000461

1. Purpose

The purposes of this study include the following:

- To provide an engineering assessment of private residence to determine cause(s) of progressive structural damages.
- To determine the most feasible structural repairs of the dwelling and subgrade conditions now affecting the foundation.
- To estimate the costs of structural repairs and other remedial work.
- To determine the risks of long-term, progressive damages if remedial work is delayed or not done.

2. Timeline Summary

Ms. Lucille Ray has owned the home at 330 College Ave, Rook Hill, South Carolina since 1985. She has lived there and maintained the single-family residence continuously for 27 years. Over that time, various events or findings have led her to launch this investigation.

This is a timeline summary based on information provided:

- In about 1992, while doing yard work in the rear yard, a gardener stepped into a hole up to his waist within 10 feet of the rear house foundation wall. It had developed suddenly. It was filled and considered surface erosion at that time.
- In 1995, Ms. Ray first found bending in her roof frame while in her attic and proceeded to add bracing in an attempt to stop it.
- In 2001 she renovated the home and added a kitchen, garage, and covered porch on the left side. She noticed unexplained settling of the front patio during construction, requiring additional work and expense.
- In 2007, she noticed separation in her roof frame between adjacent slopes and proceeded to add cross-bracing at the ridge level in an attempt to stop it.
- In 2008, she first noticed that her front entry steps were sinking. At that time she tried to determine potential causes and found that a city storm-water pipe extended (from public city street in front of her home) directly under the front entry of the dwelling. She requested City assistance to review the concern and after multiple attempts, she was finally put in contact with Rook Hill's Mr. Jason Tinkler. A pipeline study was done without shared results. After repeated calls over the next few months (to Tinkler), she was told that the video tape had been lost. He also told her the front steps were simply settling.
- In 2011, after repeated calls to the City, the camera study was done again on June 2 and 8, 2011. Ms. Ray watched the study and video results as the City confirmed that the storm water line extended directly under her home; although they never did excavate to find the rear-yard manhole found during video work. Tinkler informed her then that the pipeline was not a problem but that he would get back to her about it.
- Later in June 2011, Ms. Ray called Tinkler to discuss street flooding but he never called her back. Finally, in August 2011, she discovered that Mr. Tinkler did not work for the City any longer. No other City official has ever contacted Ms. Ray about this known pipeline problem despite repeated calls from her.
- In early 2012, the lack of responses and progress from the City led her to start an owner-investigation at her expense.

RAY000462

3. Executive Summary

On March 20, 2012, Ms. Lucille Ray contacted M.H. Leonard Consulting Engineers, PA to request engineering assistance regarding the problem. She shared her findings and a brief history of the property. We have proceeded to study the dwelling, the site, and the soil conditions around and under the home. We have also conducted simple water flow tests of the storm water piping that extends from Oakland Ave, along Strait Street, to College Avenue, and over to Lucas Street after passing directly under Ms. Ray's house.

After 3 site inspections, a geotechnical evaluation, and limited responses from City officials, this report will summarize our findings.

The investigation has provided evidence of the following facts and opinions:

1. There is a pattern of structural damage in the subject dwelling frame and foundation caused by foundation movement at ground level. These damages appear progressive and we consider them active.
2. An underground 24-inch public storm water pipe extends from the street in front of the home in a line directly under the specific zone of structural damages. There is evidence of multiple foundation piers dropping and leaning along the pipeline route.
3. The public storm water system records for this neighborhood have not been available despite requests to the City of Rock Hill. Those may not be accurate based on one small map obtained by the owner prior to our investigation. That does not show a public pipe on the subject site. See Attachment #2. Regardless, the old terra-cotta clay pipe is there and confirmed. It appears aged with cracks and is probably leaking. Those conditions are verified by the videos provided.
4. The storm water system serving this and surrounding lots appears to include a substantial area based on informal water testing completed. We determined that catch basins on Oakland Avenue and beyond are part of the network upstream from the pipe extending under the home. Unconfirmed estimates of the watershed size are 14 acres or more. The flow from that large an area is substantial and increases our concerns with the pipe capacity, flow leakage, and lack of serviceability (being under a private residence).
5. A geotechnical evaluation of on-site soil along the pipe route and under the home confirms that foundation piers and the front stoop, steps, and sidewalk have settled as the result of soft pipe fill soil. Further testing would be needed along the entire pipe route to determine if there are wash outs and voids around the pipe.
6. There are current and long-term risks that pipe failure will lead to soil erosion and substantial structural damages. If pipe failure is rapid enough, structural failure (sinking and partial collapse) is likely.
7. Public utilities require routine maintenance and access, which is why they typically align in public right-of-ways or dedicated easements on private property. Apparently this storm water pipe is not even known or recorded in public documents. The less known about the pipe and its maintenance record, the higher the risks that it is failing now.

Three options were considered to eliminate risks of further failure and to repair structural damages to date.

In the best interests of Ms. Ray as property owner, the most feasible remedy includes the following:

- a. re-route of the storm water pipe away from her property (requires independent storm water and hydrology study as City Improvement),
- b. abandonment of the existing storm pipe and filling it with a flowable slurry grout,
- c. structural shoring of the existing foundation in pipe trench zone,
- d. framing repairs to floor and roof systems,
- e. replacement of front stoop, including steps and sidewalk,
- f. interior and exterior repairs caused by structural settlement to date,
- g. all general conditions, cleaning, building permits, and construction management.

We estimated the costs of those repairs based on local, prevailing rates of the region. That study was based on our experience as a General Contractor in new construction, renovations, and structural repairs.

The estimated cost to complete the remedial work described is

\$147,711

RAY000463

Although there are alternative methods to shore the dwelling, the costs may vary by 2.5%, based on experience with other structural repair projects of this type.

Time is a critical factor moving forward.

- ⇒ If the existing pipe develops further leaks affecting soil conditions or causing subgrade damages below the home, the extent of structural repairs will rise substantially.
- ⇒ Although the house is nearly 90 years old, structural damages have developed since 1985 (estimated based on owner observations and existing site inspection). The damage appears to be active and risks are high that it is increasing at an unknown rate.
- ⇒ Based on site observations now, we believe the pattern of structural distress is relatively young. Based on video evidence of the storm water pipe in place, risks are high that it will degrade and eventually fail. Between now and then, leaking and effects of further pipe degradation will further damage the house foundation and frame.

The storm water design to re-route the system around this property will require expedited attention from public utilities. Since planning of that type utility project typically takes more than 12 months, risks of structural damage is substantial enough that we recommend a temporary pipe repair and re-lining of the 24-inch clay pipe as soon as possible.

The costs of temporary pipe repairs to reduce risks of short-term structural damages to the dwelling are NOT included in this report.

RAY000464

4. Property and Project History

Ms. Lucille Ray owns the current properties at 330 and 340 College Ave, Rock Hill, South Carolina. The 330 (subject) site includes a one-story, single-family home, including a 2-car garage, partial rear daylight basement, and two covered porch spaces. She purchased the property in 1985, approximately 27 years prior to the date of this report. See Attachment #1: W.C. White, RLS Survey of 330 College Ave, Rock Hill, SC dated May 23, 1985.

The house is built with a masonry foundation, conventional wall, floor, and roof framing, and an asphalt/fiberglass shingle roof. The exterior walls are clad in wood and vinyl siding with a pier and curtain foundation wall, 8-inch all-brick foundation, and CMU foundation. The house includes a front masonry covered stoop and a left-rear covered porch.

Ms. Ray renovated the home in approximately 2001 with a kitchen, garage, and left-rear porch addition. Those areas bear on new foundation systems independent of the main, original home. None of those areas are within the concerns of this report.

In about 2008, Ms. Ray first observed evidence of structural distress in her home. The ceiling and roof frames visible in the attic had separated. She had braces added to prevent further separation. Ms. Ray also recalls similar roof frame repairs were necessary in 1995. She also indicated that a man stepped into a shallow hole in her back yard in about 1985 while helping her - sinking up to his waist. At that time, she did not suspect structural or soil concerns. She did recall the position of the ground hole noted within this report.

On March 20, 2012, Ms. Ray contacted M.H. Leonard Consulting Engineers, PA to evaluate the cause and extent of structural damages further. Since then, this firm has progressed as itemized below:

April 4, 2012

Initial site review - field notes, investigation plan

April to June 2012

City of Rock Hill, requests for storm water system mapping, information - log of inquiries

June 6 - DVD review of pipe camera studies through Ms. Ray

June to July 2012

Plan geotechnical study, quotes - CESI Ed Cummings, PE

July 6 - MHLCE comprehensive site study of structure, damages, water hose test in storm pipes

August 2012

CESI/Cummings geotechnical study

CESI and MHLCE pipeline location under house - confirmation

5. Findings of Engineering Inspections

House Frame and Foundation:

Our investigation has included a structural inspection of the house frame and foundation, finding that there are patterns of distress caused by active structural movement. The roof frame has separated in two locations, the main level floor system is sloping where foundation piers have dropped from original support positions, and a geotechnical study has verified that the foundation movement has been caused by the excavation zone along the public storm water pipe route.

We observed the following specific damages:

Roof Frame Damages:

- ⇒ Separation of ridge and rafters at ridge beam spanning front-rear near front ridge spanning left-right. A metal cap was installed there to span over a 2-inch gap.
- ⇒ Separation of ceiling joists at ceiling girder beam - about 1 1/2 inch near middle of original house frame.

RAY000465

Interior Wall/Floor Conditions:

- ⇒ Floor distortion at front living room, center breakfast room, center hall. Slope varies from 1/4 to 5/8 inch in 4 feet along axis extended to front entry door.
- ⇒ Corresponding wall and door distortion with cased opening headers or jambs 1/4 to 3/4 inch out of level and/or 1/4 to 5/8 inch out of plumb.
- ⇒ Stress cracking on hall walls and baseboard trim.
- ⇒ Stress cracking with shear pattern in center left bedroom, front wall.
- ⇒ Master bath/bedroom area – garden tub deck out of level with separation at floor.
- ⇒ Front door out of plumb/square.

Exterior Damages:

- ⇒ Front stoop and steps with masonry shear cracking. Front step dropping/settlement 3/4 to 1 1/4 inches with shear zone near middle.
- ⇒ Front sidewalk – settlement and tilt to left side near front steps.
- ⇒ Rear yard open hole, approximately 14 inches deep near centerline of known storm-water pipe location.

Foundation Damages:

- ⇒ Miscellaneous stress cracks in front foundation wall.
- ⇒ 7 interior piers with separation at top or leaning from plumb.
- ⇒ 4 interior piers that have been shimmed with wood shims more than 1 inch in depth (multiple re-shimming).

The laundry cellar (forward of rear basement area) includes a slab elevated above the basement level, crawl space, and adjacent furnace cellar. We estimate that slab was used to cap over the known storm water line that appears to be within 32 inches of the top of slab. The pipe depth and clearances are only estimated except those verified during the geotechnical evaluation.

Storm Water System:

We studied a pipeline video camera recording obtained by Ms. Ray in 2008 and determined that 1 of the 3 segments of that recording were of the subject pipeline. The recording revealed that the 24-inch terra-cotta clay pipe is old with random stress cracking, joining a manhole directly behind Ms. Ray's home where a 24-inch RCP pipe extends further East and toward the right rear of her property and beyond.

The City of Rock Hill has denied our requests for access or copies of the public storm-water utility information regarding this location on 3 occasions (attempts logged). The only storm water map we were able to obtain in this study was provided by Ms. Ray (Attachment #2: City of Rock Hill, Department of Planning & Development, dated 09 Dec 1998). That map does not show the pipe that extends under 330 College Ave or across to Lucas St.

It does not reflect other pipe routes and pipe sizes observed during this study.

Ms. Ray also owns the property at 340 College Avenue (immediately west of the subject site). The map shows a 10-inch diameter pipe extending diagonally across and under that dwelling. In fact, the pipe is 30-inch dia clay with a partially collapsed catch basin in the rear yard of that site. There is no doubt that it does extend under the northeast corner (rear left) of that structure. *The effects and condition of this storm-water pipe line are not part of this study.*

Geotechnical Evaluation:

Concord Engineering Services Incorporated (CESI) performed a geotechnical evaluation at the site at our request. Mr. Ed Cummings, PE and Mr. Harold Eaves met us on site on August 2, 2012. Their work included confirmation of the existing storm water line under the house, locating and documentation of the rear yard manhole, effects of soil settlement at the front stoop, and the soil investigation under the home. Their findings are documented in a report (Attachment #3: CESI Geotechnical Engineering Evaluation, Ray Residence, 330 College Ave, Rock Hill SC, dated August 8, 2012).

RAY000466

6. Engineering Summary and Options

Based on our site study and the accompanying geotechnical evaluation, evidence indicates that the residential dwelling is in an active state of structural settlement caused by an active public storm water terra cotta pipe buried directly below the home. The 24-inch diameter pipe system is confirmed there and soil conditions in the trench in which it was placed are affecting the foundation elements of the structure. Movement of piers and other foundation elements is causing floor distortion, wall and door distortion, roof frame separation, and settlement of steps, patios, and other functional features. These damages are active and appear progressive based on owner input and historical information back to 1985. The causes of structural damages must be addressed soon to limit the magnitude of damage and costs to repair and restore the dwelling.

The storm pipe under the house serves a significant surface area by current estimates. However, City information has not been available for confirmation of actual drainage system fixtures and the general watershed area. By a limited topographical study, we have estimated that the subject 24-inch pipe is handling flow from up to 14 acres to the South of the subject property. Regardless of the flow rate, the presence of a public storm water pipe under a private residence is unusual – preventing public access for maintenance and repairs. Videos of the pipe indeed show it is old with cracking and other concerns that it may be leaking (not confirmed by this study). If it is leaking now, or in the future, the risks are substantial that it will damage the private dwelling further, eventually leading to partial catastrophic failure if certain conditions develop.

Repairs and stabilization of the building foundation must be considered soon to limit damage. Temporarily, the pipe must be maintained to control risks of leaks and related damage. An epoxy lining should be considered. Ultimately, the line must be moved or re-routed and the effects on the house foundation must be remediated to restore the structural integrity and value of the property. If not, the value and function of the home may be jeopardized – including the risk of full loss of value.

Limited responses from the City of Rock Hill seem to suggest the pipe does not belong to the City (*Attachment #4: Letter – Spencer & Spencer, Mr. Paul Dillingham to Mr. Charles S. Bradford, dated May 18, 2012*). We cannot verify ownership of the pipeline, but there is no doubt that it is not a private drain system. Since the City maintains the streets and other utilities from which the subject storm water pipe originates (recent addition of catch basins near Strait Street by City confirm this), and since the discharge and management of the water in this system are managed by the City, then it appears certain that they have overlooked a buried, old storm water pipeline that pre-dates the construction of the house on this site (estimated to be 90 years old).

RAY000467

7. Recommendations

Options to remedy the problem include:

- A. Removal of home and foundation for adequate ROW for the pipe and to allow access and maintenance.
- B. Re-route the storm water pipe away from the property, abandoning the existing pipe and repairing the dwelling and foundation. At this stage, the magnitude of damage allows this option. As the pipe continues to degrade and if soil erosion in the underground trench is compromised, this option will become less feasible.
- C. Refine the pipe, maintain it as positioned, shore and repair the foundation and frame of the dwelling, and confirm the pipe capacity for further risk assessment regarding the home.

⇒ Option C is NOT recommended from a structural engineering view point. Risks remain for pipe failure despite any maintenance practices adapted. There may also be substantial legal concerns with a private structure located atop a public utility.

⇒ Option B is considered the most feasible and only option if the house remains over the current pipe section.

We recommend the following scope of repairs to re-route of the storm water pipe, cap and fill the abandoned pipe, and restore the structural integrity and function of the dwelling and foundation.

1. Excavation and cap of pipe at front and rear exterior of home footprint. Structural fill of the pipe cavity with slurry mix flowable fill.
2. Deep foundation shoring devices under house foundation walls and interior foundation piers along pipeline route, any elements within 10 feet of the trench zone. (* See alternative soil densification.)
3. Re-build foundation walls, piers, and front stoop as needed to restore function and integrity.
4. Jacking and leveling of main level floor system with reinforcement of frame girders affected by damages to date.
5. Repair and brace of roof frame, including installation of structural cross-ties and rafter tie-downs.
6. Interior repairs of plaster walls, millwork, trim, and flooring affected by structural damages to date.

The general conditions, cleaning, debris hauling, building permits, insurances, and construction management must be included. Engineering design of structural repairs will be required. A reasonable General Contractor's fee must also be included.

We have estimated the costs of this work as itemized in Attachment #5: MHLC Cost Estimate - Structural Repair, Shoring, and Restoration of Ray Residence, 330 College Ave, Rock Hill, SC, dated August 21, 2012.

We estimate the costs to cap and fill the pipe, to shore and repair the house foundations, and to repair the house frame is \$ 147,711, including Contractor overhead and profit margins and a 2.5% contingency budget.

This scope and cost estimate is based on assumptions and conditions as follows:

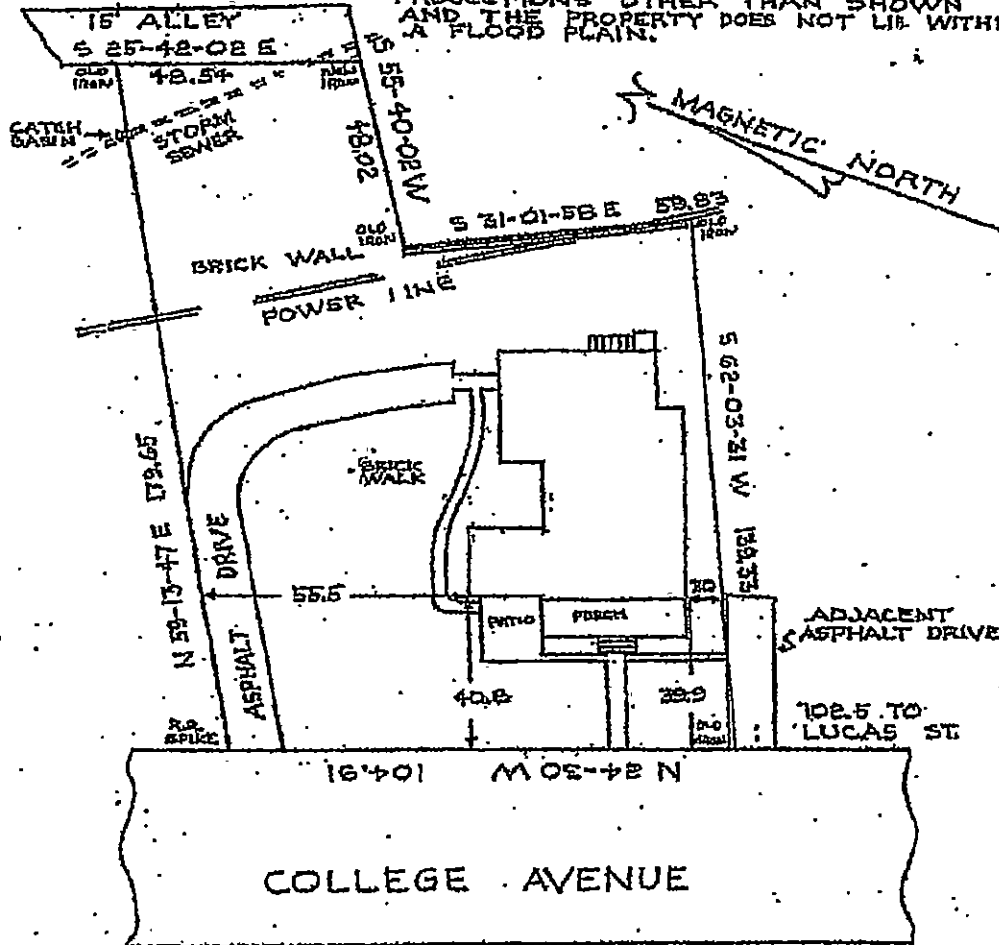
- ⇒ Repair work is based on status of damages as of August 2, 2012. Time may allow more damage and add to costs.
- ⇒ The cost for engineering includes structural repairs and pipe capping and fill on the subject property. No other part of the existing pipe or future pipe is included.
- ⇒ The pipe fill is only between the existing catch basin at the front and the existing buried manhole at the rear of 330 College Ave. The existing 24-inch diameter RCP that extends between the buried manhole behind the subject house and Lucas Street is not part of this cost estimate for capping and fill.
- ⇒ Existing storm water piping has been re-routed and completed prior to this scope.
- ⇒ Costs for temporary pipe repairs, linings, and/or provisions prior to this scope are not included.
- ⇒ Transportation and fuel costs are included based on rates in place at the time of the estimate.
- ⇒ Water and electricity are provided by the owner during construction work.
- ⇒ A landscape repair allowance is included (\$1200).

RAY000468

Attachment #1: W.C. White, RLS Survey of
330 College Ave, Rock Hill, SC
Dated May 23, 1985

THIS BEING SHOWN AS LOT 10 AND PART OF 11 & 12 IN
BLOCK 28 OF MAP OF PROPERTY OF ROCK HILL Buggy
CO., MADE BY J.L. STACY AND DATED APRIL, 1884, RECORDED
IN PLAT BOOK 2, PAGE 200.

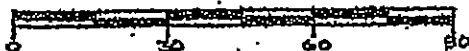
THIS IS TO CERTIFY THAT THIS IS A TRUE AND ACCURATE
SURVEY AND THAT THERE ARE NO ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN
AND THE PROPERTY DOES NOT LIE WITHIN
A FLOOD PLAIN.



MAP OF PROPERTY OF
LUCILLE RAY
330 COLLEGE AVENUE
ROCK HILL, S.C.

MAY 23, 1985

SCALE 1" = 30'



W.C. White R.L.S. #1033
ROCK HILL S.C.

RAY000469



August 8, 2012

Mr. Mike Leonard P.E.
M.H. Leonard Consulting Engineers, PA
447 South Sharon Amity Road
Suite 201
Charlotte, North Carolina 28211

References: Geotechnical Engineering Evaluation
Ray Residence
330 College Avenue
Rock Hill, South Carolina
CESI Project Number 120755.000

Mr. Leonard:

CESI has performed a geotechnical engineering evaluation of the storm drain under the Ray Residence in Rock Hill, South Carolina. We completed these services in accordance with your verbal authorization. This report summarizes our Findings, Conclusions and Recommendations.

FINDINGS

On August 2, 2012, CESI's Geotechnical Engineer, Edward S. Cummings III P.E., met Michael Leonard P.E. and Ms. Lucille Ray at her residence in Rock Hill, South Carolina. Ms. Ray indicated her observation of the settlement of the brick sidewalk and stairs at the front porch initiated the structural investigation of the house by Mike Leonard. The purpose of the meeting was to allow our Geotechnical Engineer to observe the storm drain under Ms. Ray's home and the resulting settlement problems as observed by Mr. Leonard and Ms. Ray. Ms. Ray said her residence is 90 years old and was purchased in 1985.

The following specific areas were observed:

- Storm drain catch basin in College Avenue;
- Storm drain manhole in rear yard;
- Loose brick piers in crawl space;
- Settlement of front brick sidewalk and stairs;
- Previous hardwood floor repair by former owner (pre 1985) in entrance foyer directly above and inline with the storm drain.

Facing the Ray Residence, a 24" terra cotta pipe was observed leaving the catch basin and heading toward the center of Ms. Ray's house. See photographs 6 and 7. A 36" terra cotta pipe enters the

RAY000470

catch basin from across College Avenue. An 18" reinforced concrete pipe enters the catch basin from the right. See Photograph 8. A video survey of the 24" terra cotta storm drain pipe was previously performed under Mike Leonard's direction. Mr. Leonard indicated the terra cotta pipe under the residence has cracks.

The geotechnical investigation began with removal of 2.5 feet of fill soil over the storm drain manhole lid in the rear yard. The lid was removed exposing the manhole. See Photographs 1 and 2 in the Appendix. A cracked 24" terra cotta pipe was observed entering the catch basin from the direction of the house. See Photographs 3 and 4. A 24" reinforced concrete pipe was observed leaving the catch basin to the east. See Photograph 5. A drain test was performed by Mike Leonard by placing water in the catch basin on College Avenue in front of the Ray Residence with a garden hose. See photographs 6 and 7. A few minutes later water was observed flowing through the storm drain manhole in the rear yard. See Photograph 4. Mike Leonard pointed out voids in the rear yard along the subject storm drain alignment.

Next, CESI's Geotechnical Engineer entered the crawlspace area to observe the brick piers supporting the wood framed floor system. The brick piers were tapped and observed for looseness between the top of the pier and the floor system. Piers "B", "C", "D", "E", "F", "J" and "K" (as noted in our Hand Auger Location Plan) are in contact with the floor system. The following piers have the observed conditions:

- Brick pier "A" is loose and appears to have been shimmed with a 2"x2" piece of wood at the interface with the floor joist system;
- Brick pier "F" is tilting toward the storm drain line. The pier has been shimmed with a 2"x2" wood shim at the interface with the floor joist system. The wood shim is under great stress. It was also noted that additional wood framing was installed to resist pier overturning;
- Brick piers "G" and "H" are loose and appear to be a retrofit. A 4"x8" wood beam has been placed on and spanning slightly past piers "G" and "H". The wood beam is also loose.

CESI's geotechnical engineer began the subsurface exploration by excavating adjacent to brick pier "A" to determine the footing bearing level and the storm drain location. No concrete footing was observed for the brick pier, however, a brick footing larger than the pier was present. Next, a hand auger boring, HA-1, along with dynamic cone penetrometer (DCP) testing was performed to determine the soil bearing conditions directly beneath the brick pier. The brick pier is bearing on red fine sandy silt (ML) residual soil at HA-1. Soil consistency as measured by DCP testing was stiff 2" below the bearing surface of the brick pier "A" and very stiff 14" below brick pier "A".

The dynamic cone penetrometer is a portable testing device used to estimate penetration resistance of the soil samples, as outlined in Sowers and Hedges paper "Dynamic Cone for Shallow In-Situ Penetration Testing". The device has a 1.5-inch diameter, 45-degree cone point with a surface area of 3.9 inches which is driven with a 15-pound steel weight on a guide rod. After the cone point was completely embedded at the test depth it was driven an additional 1 3/4 inches by the steel weight falling 20 inches onto a steel anvil. The number of hammer blows required to drive the cone the 1 3/4-inch increment was recorded as the "penetration resistance" in units of blows per increment. Penetration resistance, when properly evaluated, is an index to the soil's strength.

Hand auger boring HA-2 was located and performed approximately 22" from the centerline of brick pier "A" and 19'-3" from the right sidewalk of residence. This is also the location of the 24" terra cotta storm drain line coming from College Avenue. See Photograph 6. Soft fill soils were observed at 28"

and 48" below the bearing surface of the brick pier. The 24" terra cotta storm drain pipe was encountered at 68" below the bottom of the pier. See Photographs 9 and 10. Brick pier "A" is bearing on the transition zone between residual soils and the storm drain backfill soils. The pier appears to be settling as a result of the soft storm drain back fill soils.

The brick sidewalk and stairs at the front of the residence have settled. Horizontal measurements indicate that the settlement is directly above the storm drain line. See Photographs 11, 12, 13, 14 and 15. The front stairs have settled approximately 1-1/8". The stairs have horizontally displaced 1-1/2" by the consolidation of the storm drain backfill soils. Michael Leonard indicated that he observed in the attic separation in the front porch framing members. Ms. Ray understood the former owner had replaced the brick front stairs prior to 1985.

CONCLUSIONS

Based on our site observations and geotechnical findings, the 24" terra cotta storm drain pipe under the subject residence and the soft storm drain back fill soils have caused the following conditions:

- The settlement of brick pier "A";
- The settlement of brick pier "F";
- The settlement of the front brick sidewalk and stairs;
- Any wall or pier footing within 6 feet of the storm drain pipe is subject to long term settlement due to the consolidation of the underlying storm drain backfill soils.
- The cause of the looseness of the brick piers "C" and "H" at the 4"x6" wood beam interface cannot be explained at this time.

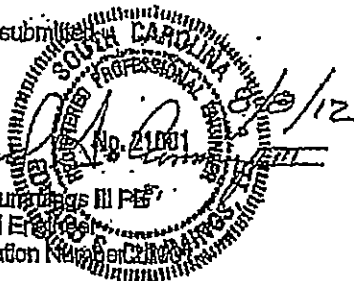
RECOMMENDATIONS

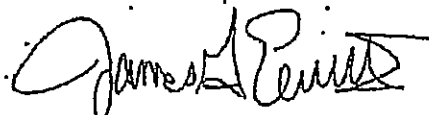
CESI recommends the following:

- Pier and wall footings within 10 feet of the storm drain should be underpinned to adequate bearing soils;
- The 24" terra cotta pipe should be lined underneath the subject residence.

Please contact us if you have any questions regarding this report or if we may be of further service.

Respectfully submitted,
CESI


Edward S. Cummings III, PE
Geotechnical Engineer
S.C. Registration Number 21001


James G. Eaves III, PE
Division Manager
S.C. Registration Number 25576

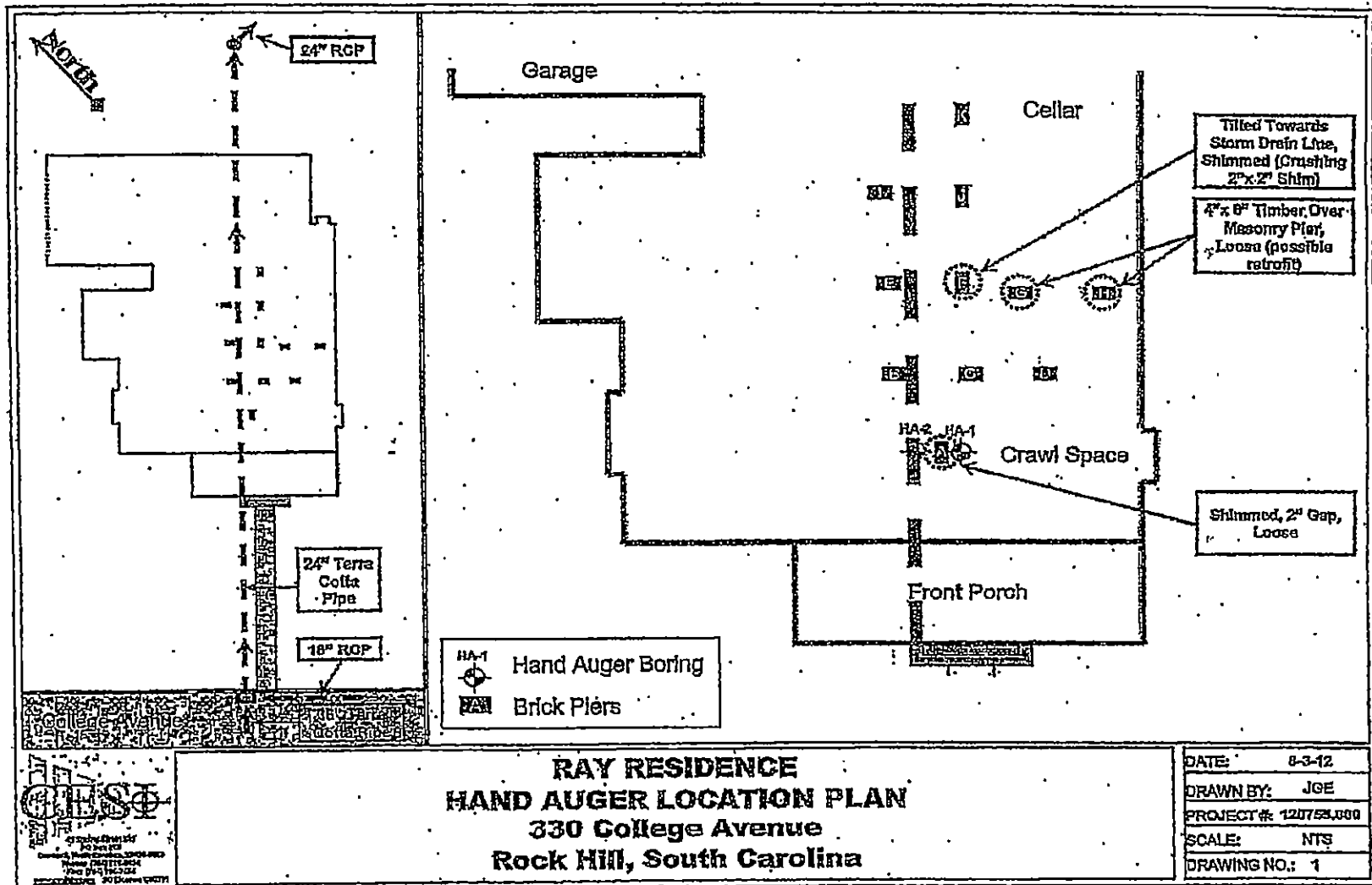
Enclosures: Hand Auger Location Plan
Log of Hand Auger Borings (HA-1, HA-2)
Site Photographs

Ray Residence, Geotechnical Evaluation, Rock Hill, South Carolina
CESI Project Number 120755.000

August 8, 2012
Page 3

RAY000472

RAY000473



City: Rock Hill, South Carolina

Job No: 120785,000

Crest Engineers: Ed Cummings

LOG OF HAND AUGER BORING

Parachrometer Blows per 1.75"

[illegible]



Photo 1: Manhole in rear yard



Photo 2: Manhole in rear yard



Photo 3: Manhole in rear yard



Photo 4: Manhole in rear yard

CESI

...exceeding our clients' expectations
46 Spring Street SW
PO Box 288
Oxford, North Carolina, 28028
Phone: (704) 788-6104
Fax: (704) 788-7454
<http://www.cesi266.com>

SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE:	08-06-12
PHOTOS BY:	ESC
PROJ. NO.:	120756:000
SCALE:	N/A
SHEET NO.:	1

RAY000475



Photo 5: Manhole in rear yard

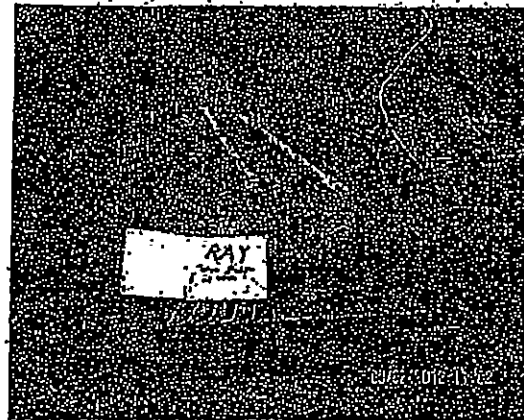


Photo 6: Catch basin at College Avenue

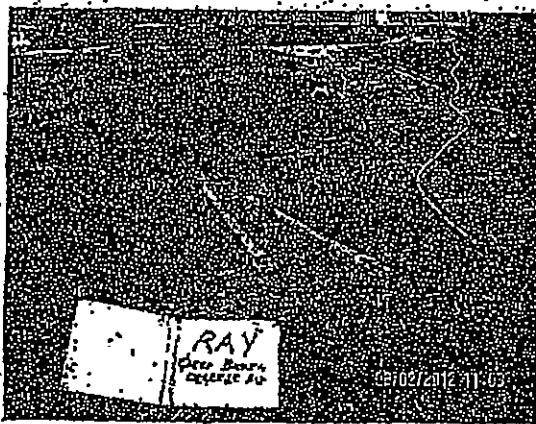


Photo 7: Catch basin at College Avenue

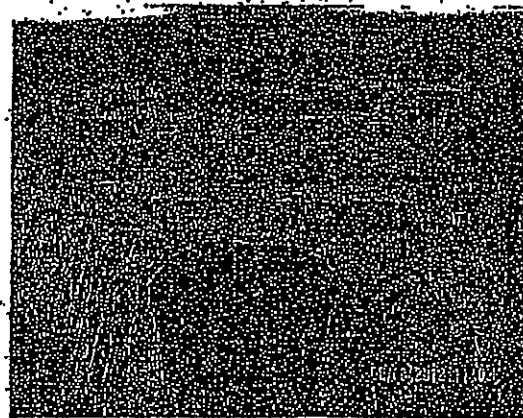


Photo 8: Catch basin at College Avenue

CESE

...connecting our clients' expectations

456 Spring Street SW
PO Box 288
Concord, North Carolina, 28023
Phone: (704) 785-5404
Fax: (704) 785-7434
<http://www.cecse.com>

SITE PHOTOGRAPHS

RAY RESIDENCE

330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE: 08-08-12

PHOTOS BY: ESC

PROJ. NO: 120755.000

SCALE: N/A

SHEET NO.: 2

RAY000476



Photo 9: Hand auger HA-2 at brick pier 'A'



Photo 10: Hand auger HA-2 at brick pier 'A'

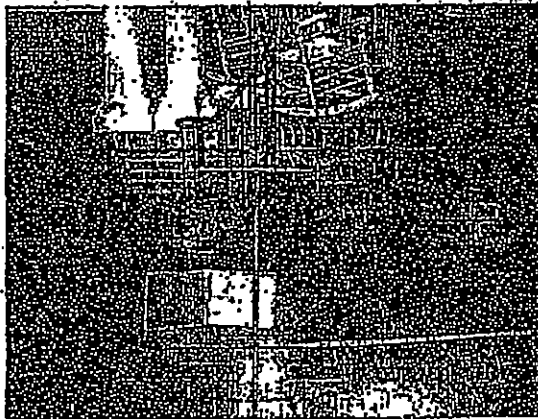


Photo 11: Front sidewalk and steps - Probe rod represents measured alignment of storm drain line.

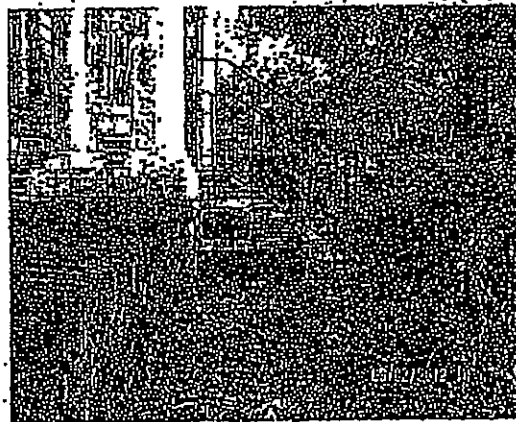


Photo 12: Front sidewalk and steps

CE&S

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Concord, North Carolina, 28026
Phone: (704) 786-6404
Fax: (704) 786-7454
<http://www.cecsl.com>

SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
GESI SC License C-00591

DATE: 08-08-12

PHOTOS BY: ESC

PROJ. NO.: 120765.000

SCALE: N/A

SHEET NO.: 8

RAY000477

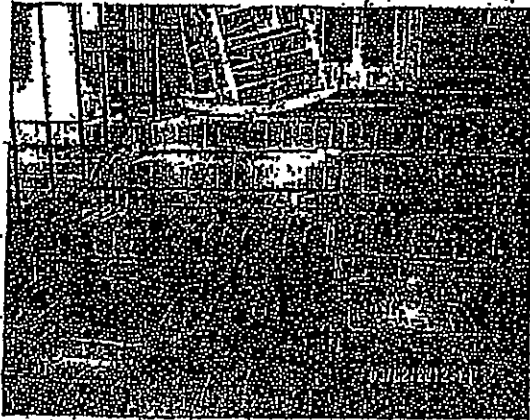


Photo 13: Front sidewalk and steps

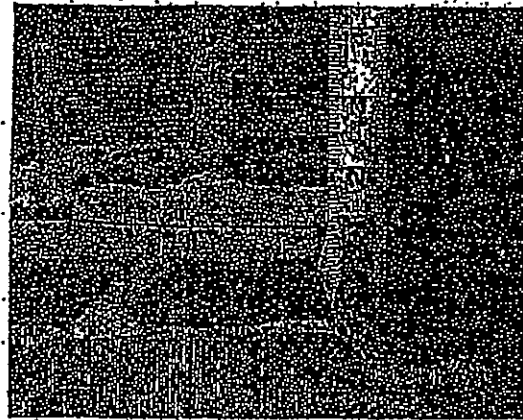


Photo 14: Settlement at front steps.

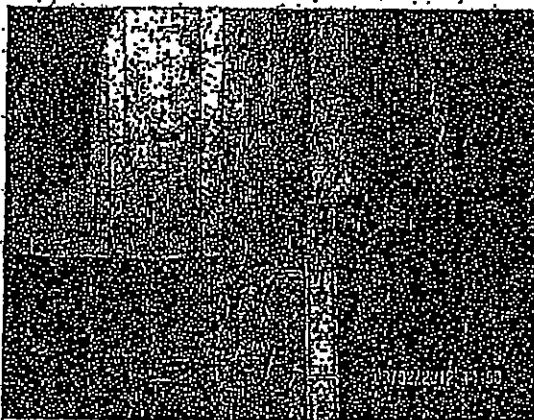


Photo 15: Horizontal movement at front steps.

CESI

Professional Engineering and Surveying

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Concord, North Carolina, 28028
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Fax: (704) 788-7454
<http://www.cesi-sc.com>

SITE PHOTOGRAPHS

RAY RESIDENCE

330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00551

DATE 08-08-12

PHOTOS BY: ESC

PROJ. NO.: 120765.000

SCALE: N/A

SHEET NO.: 4

RAY000478

SPENCER & SPENCER

PROFESSIONAL ASSOCIATION

Attorneys and Counselors at Law

C.E. SPENCER (1849-1921)
C.W.F. SPENCER (1876-1956)
C.W.F. SPENCER, JR. (1911-1985)
W.C. SPENCER †
WILLIAM L. "RED" PEDGUSON †
EMIL W. WALD †
PAUL W. DILLINGHAM
W. MARK WHITE*
W. CHAPLIN SPENCER, JR.*
R. ALEXANDER SULLIVAN*
R. BRENT THOMPSON*
JEREMY D. MELVILLE*

† Of Counsel
* Also admitted in NC

Attachment #4: Letter
Spencer & Spencer, Mr. Paul Dillingham to
Mr. Charles S. Bradford
Dated May 18, 2012

Suite 200
226 EAST MAIN STREET
P.O. Box 790
ROCK HILL, S.C. 29731-0790
Telephone
803-317-7191
Telecopier
803-322-3868
Email Address
pauldillingham@spencerllm.com

May 18, 2012

Charles S. Bradford
P. O. Box 977
York, SC 29745

RE: Lucille H. Ray
330 College Avenue ("Property")

Dear Charles:

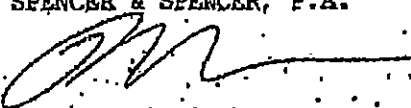
I represent the City of Rock Hill ("City"), which has forwarded your letter dated February 24, 2012, to me for a response.

Our firm has also completed a title search of the Property taking the chain back to the deed recorded June 18, 1920 from the Estate of W. E. Lucas to the Rock Hill Buggy Company to confirm the information in your letter. We did not find a right-of-way or easement in favor of the City for the stormwater line running across the Property. My understanding is that the City does not wish to accept this line as a City maintained utility. Do you have any evidence to suggest that the City owns this line?

Thank you for bringing this to my attention.

Sincerely,

SPENCER & SPENCER, P.A.


Paul W. Dillingham

100101.1

RAY000479

RAY000480

M.H. LEONARD CONSULTING ENGINEERS, P.A. INCORPORATED - by act of the state of South Carolina		MHLCE COST ESTIMATE - STRUCTURAL REPAIR, SHORING, AND RESTORATION MR. LUCILLE RAY RESIDENCE, 330 COLLEGE AVE, ROCK HILL, SC 24-Aug-12 MHLCE Project # 12E9555.F Michael H. Leonard, PE				
Section/Item	Scope	Units	Cost/Unit	Cost	Extension	Cumulative
Section 1	Abandon, Cap Existing 24-inch Pipe					
a	Survey, locate pipe on site				850	
b	Demo and Excavation				8170	
	Removal front sidewalk at curb, to front stoop, front steps			1350		
	OSHA box, staging			1620		
c	Cap pipe				3300	
	Buttresses (2), structural reinforcement	4	550	2200		
	Downhill vent	1	700	700		
d	Shurry fill - 2 stages 130 #, 24in dia	21	420	8820	10320	
	pumping, vibration	2	750	1500		
e	Sidewalk Replacement 200 sf	220	7	1540	1540	
f	Grade, drainage repairs front, rear yards			840	840	
g	Landscape repairs allowance			1200	1200	
						20820
Section 2	Foundation Shoring					
a	Interior foundation piers 8 each in zone				12280	
	footings	8	185	1480		
	helical piers	8	1850	10800		
b	Front Foundation Wall 14 ft in zone				4752	
	footings	14	18	252		
	helical piers	3	1500	4500		
d	Front Stoop Walls, Steps 14+8+8 ft				7725	
	footings	3	175	525		
	helical piers	8	1200	7200		
d	Cellar Foundation Wall 14 ft				4500	
	footings	3	1500	4500		
	helical piers	3	1200	3600		
e	Rear Foundation Wall 14 ft				3600	
	footings	3	1200	3600		
	helical piers	3	1200	3600		
						32857
Section 3	Re-build Foundation, Piers					
a	Front Steps 65 ft				975	
b	4 Interior Piers 4 ea	4	335	1340	1540	
c	Cumulative Foundation Voids misc			700	700	
						3015
Section 4	Main Floor Frame Repairs, Leveling					
a	Laser level study	6	225	1350		
b	Crib, bracing, jacks			650		
c	Leveling and bracing	24	35	840		
d	Reinforcement mtl	8	35	280		
e	6 new piers	8	450	2700		
						6280

Attachment #5: MHLCE Cost Estimate -
Structural Repair, Shoring, and Restoration
of Ray Residence
330 College Ave, Rock Hill, SC
Dated August 21, 2012

Section 5 Roof Frame Repairs							
a Ridge Bracing, Jolting	mil	480	12	35	870		
b Rafter Cross-tie	mil	200	6	85	410		
c Rafter Tie-downs	mil	780	15	85	1305		
d Shingle damage/repairs	12 sq		12	180	2160		
e Venting, repairs	sq ft		80	12	1080		
						5525	
Section 6 Interior Restoration							
a Door, C/O repairs	5 units		24	45	1080		
b Millwork removal, reset ref. floor leveling	240 ft		18	45	810		
c Wall, ceiling repairs - plaster, GYB			80	30	2040		
d Hardware adjustments	12 units		10	45	810		
e Painting, cleaning			72	28	2016		
f Floor finishing	1850 sf		1850	4.75	8788		
g Final Cleaning			8200	1.15	5580		
h Trim MS					550		
						21174	
Section 7 General Conditions							
a Design, Drawings - engineering	24 hr S/E		24	150	3640		
b Building Permits					400		
c Sanitary Facilities			3	150	450		
d Debris - hauling, disposal	loads		4	350	1400		
e Transportation	10 weeks		10	180	1800		
f Tools & Equipment			10	120	1200		
g Communication			3	65	195		
h Site Supervision	12 wk, 3d		468	30	16416		
i General Labor	10 weeks		8	25	200		
						26801	
SUBTOTAL							115562
CONTRACTOR'S FEES							
GENERAL OVERHEAD						15%	17378
PROFIT						10%	11556
CONTINGENCY						3%	2595
TOTAL COST ESTIMATE							147211

From: "Datko, Sue G." <sgd@spencerfirm.com>
Subject: FW: Stormwater data...
Date: May 15, 2012 2:10:17 PM EDT
To: <dhooperfay@comporium.net>
Cc: "Dillingham, Paul W." <pauldillingham@spencerfirm.com>
1 Attachment, 5.0 MB.

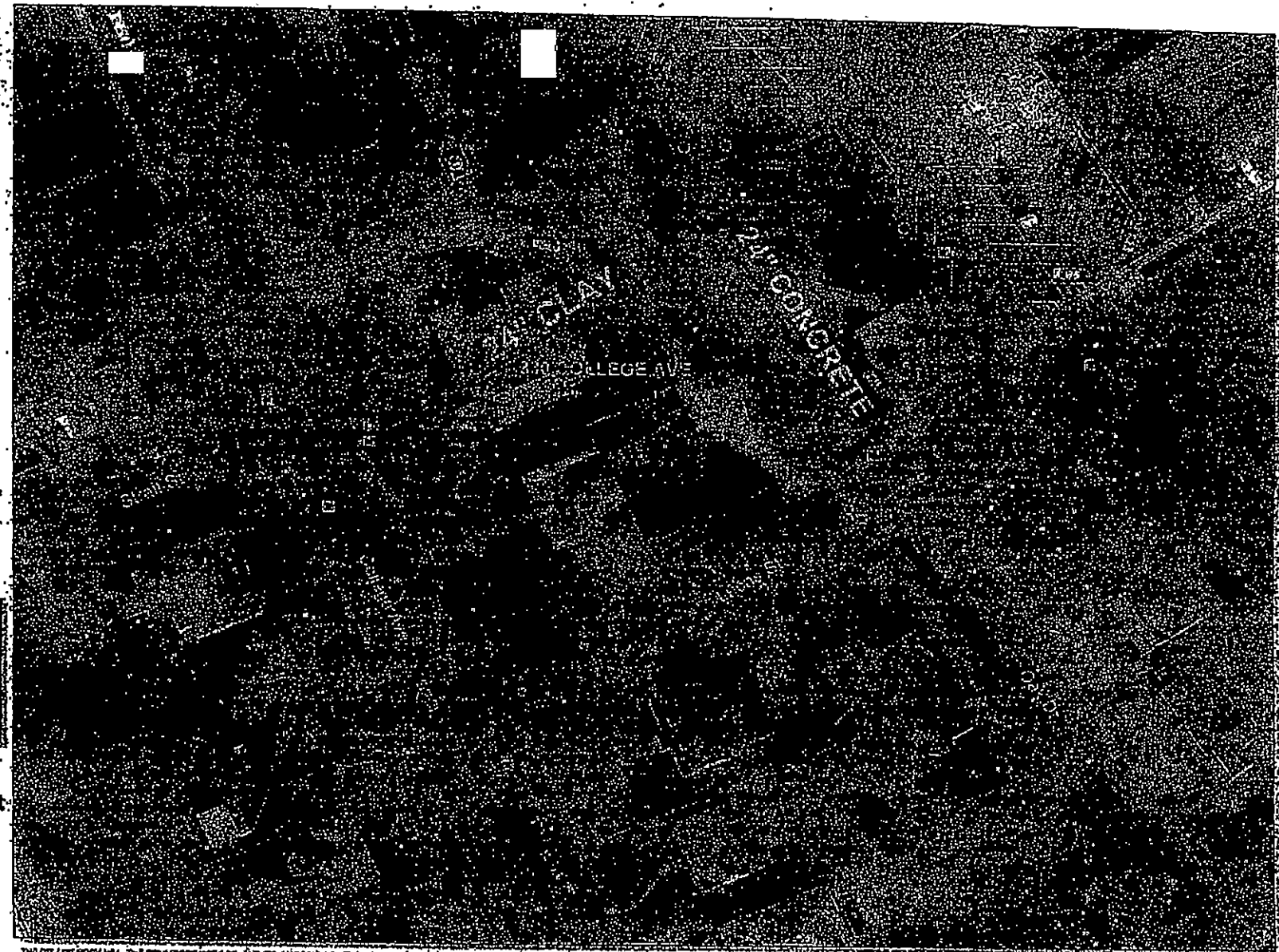
Attached is GIS stormwater map sent to the engineer last week.

Sue Datko
Spencer & Spencer, P.A.
226 East Main Street, Suite 220
P. O. Box 790
Rock Hill, SC 29731
suedatko@spencerfirm.com
803-327-7181 (Telephone)
803-327-7494 (Fax)

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Partial Stormwater - College Ave.





- LEGEND**
- Inlet
 - ⊗ JunctionBox
 - ⊙ EndTreatment
 - ↘ Drainage
 - ~ creeks

1 inch = 87 feet

Feet



MAP INFORMATION
 Map Date: 05/07/2014
 Map Name: COLLEGE AVE
 This map was created by the City of Rock Hill, SC.

THE CITY OF ROCK HILL, THE COUNTY OF YORK, SC, AND ITS EMPLOYEES AND CONTRACTORS DO NOT WARRANT THE ACCURACY OF THE DATA OR INFORMATION AND EXPRESSLY DISCLAIM ANY LIABILITY FOR ANY INACCURACIES OR OMISSIONS FOR ANY PARTICULAR PURPOSE.



To: Lucille Ray
Charles Bradford
From: Mike Leonard, PE - M.H. Leonard Consulting Engineers, PA
Subject: Lucille Ray Residence - Storm Water System and Structural Damages
330 College Ave, Rock Hill, SC
MHLCE Project # 12E9555.F
Date: November 30, 2012

This will confirm recent discussions and a site visit on November 29 with Ms. Ray regarding ongoing sanitary sewer work on College Avenue and Strait Street, being done by the City of Rock Hill.

We are concerned with an increase in risks to the structural integrity of Ms. Ray's home based on developments during that work and visible indicators now on site.

Our previous field observations and review of camera inspection DVDs obtained from the City show the pipes on her property are damaged. (See previous MHLCE Report # 12E9555.F, dated September 5, 2012.) During the sanitary sewer pipe work in front of her home on College Avenue, she took photos of this same storm-water pipe while exposed for repairs. The City has needed to replace storm water piping on Strait Street and College Ave because of damages to the line. We believe that the same pipe under her home is damaged and slowly reaching a point of failure with risk of substantial structural damage. Furthermore, by repairing/replacing storm-water pipes in the same line along Strait Street and upstream of the pipe under her home, the increased flow in the system will increase risks of progressive pipe damage and eventually could lead to additional structural damages.

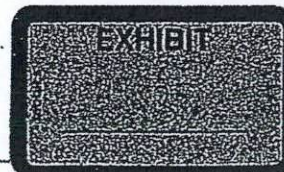
The most substantial risk of all to her home is the loss or erosion of soil around the existing underground storm water pipe, which would lead to consolidation of uncontrolled magnitude, possibly creating a sink hole directly under her foundation bearing elements. We are already concerned with the potential for voids there and we have confirmed soil-bearing problems during geotechnical assessments. On November 29, 2012, we measured the front step settlement and found that it had progressed 3/8 to 1/2 inch more than found in August. Interior stress cracks along the walls and ceilings are also appearing - in line with the known underground storm-water pipe below her dwelling. Shrinkage cracks in a wood-framed home tend to increase during the heating season, but these are beyond normal frame shrinkage.

We talked to the General Contractor hired to re-work the sanitary sewer line for the City. He indicated that numerous lines had been found during this work, with undocumented locations and damages. They also have verified that another storm water line extends down and under the dwelling at 340 College Ave (also owned by Ms. Ray).

We observed photographs taken by Ms. Ray during the ongoing sanitary sewer line project. The drop-inlet in front of Ms. Ray's home (330 College Ave) is fed from multiple storm-water pipes. The one utility map we have obtained of this area (provided by Ms. Ray) shows a single pipe adjoining this point, from the line that extends along Strait Street. Furthermore, because the old pipelines are typically clay, the new concrete (RCP) pipes being used to repair the lines do not fit the clay pipe radii. They have been 'fitted' by pouring concrete around the junctures to 'seal' the fits. In our experience, this is not a water-tight fit, leaving increased risk of line seepage, erosion, and damages downstream of the fit - under Ms. Ray's home.

Based on our original study and report, and with these new developments, we request access to specific information from the City as follows:

1. Storm water system map of the existing pipe systems, manholes, and junctures currently in place regarding the system that services the public right-of-way around Ms. Ray's property at 330 College Ave. Our previous requests for this information were not granted as documented in previous reports.
2. Storm water and hydrology studies of the same areas of Item 1.
3. Hydraulic profiles of the storm water pipe system in the areas of Item 1.
4. Street maintenance and repair records of Strait Street, College Ave, and any other right-of-way areas above this specific storm water system piping loop - within the last 10 years.



5. Storm water system maintenance records regarding the same loop of Items 1 and 4.
6. For similar reasons, we request the same information for existing storm water systems and public right-of-ways for the system that crosses the rear quadrant of 340 College Ave where there is visible damage to the catch basin and piping exposed in the private yard area of that property.

Please call if needed to clarify these latest concerns.

Sincerely,
M.H. Leonard Consulting Engineers, PA



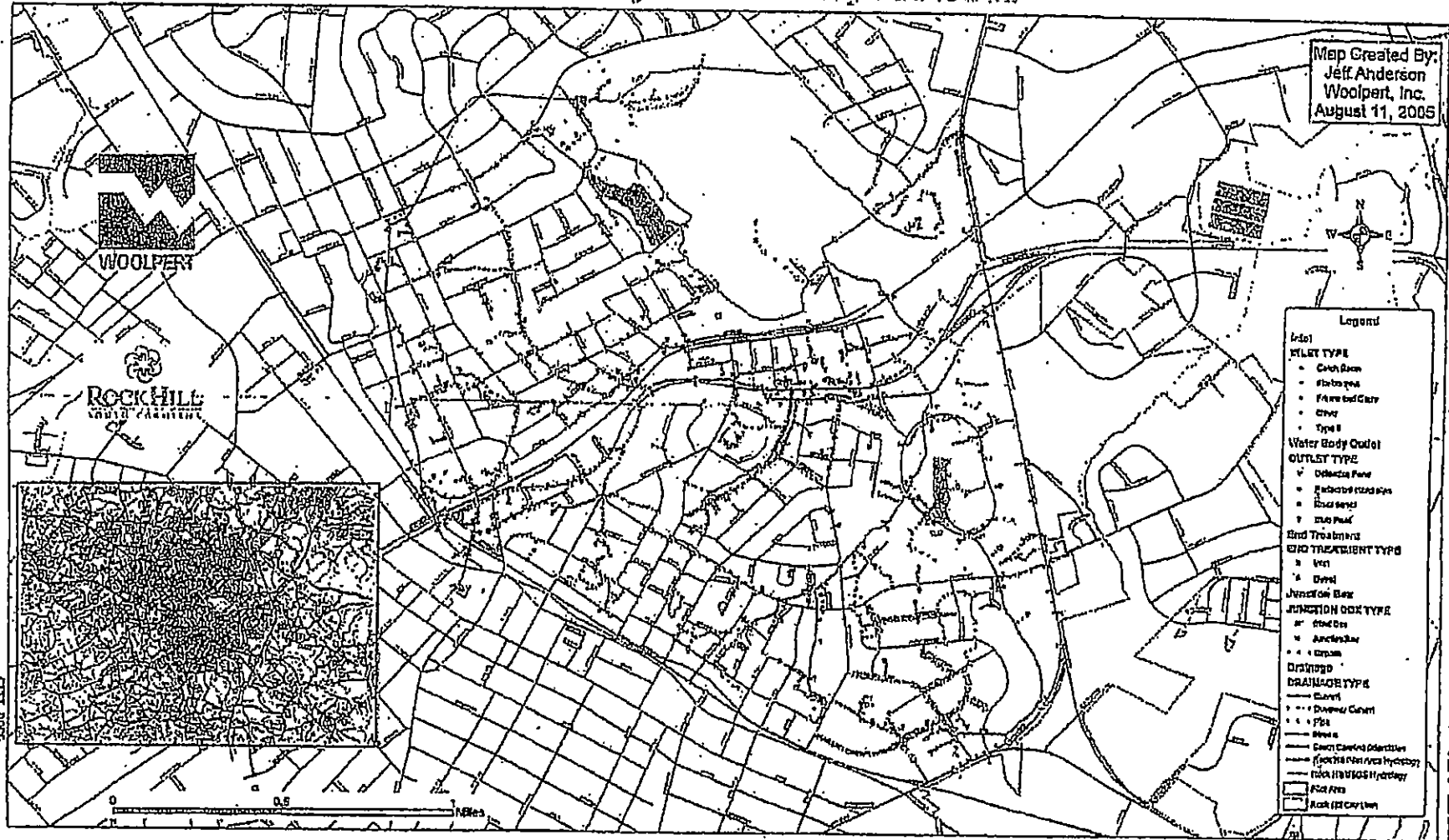
Michael H. Leonard, PE
Principal Engineer
Project Manager -- Ray Investigation



CITY DOCS
00057

Map of Woods Mill Hydrology Planning Area

Map Created By:
Jeff Anderson
Woolpert, Inc.
August 11, 2005

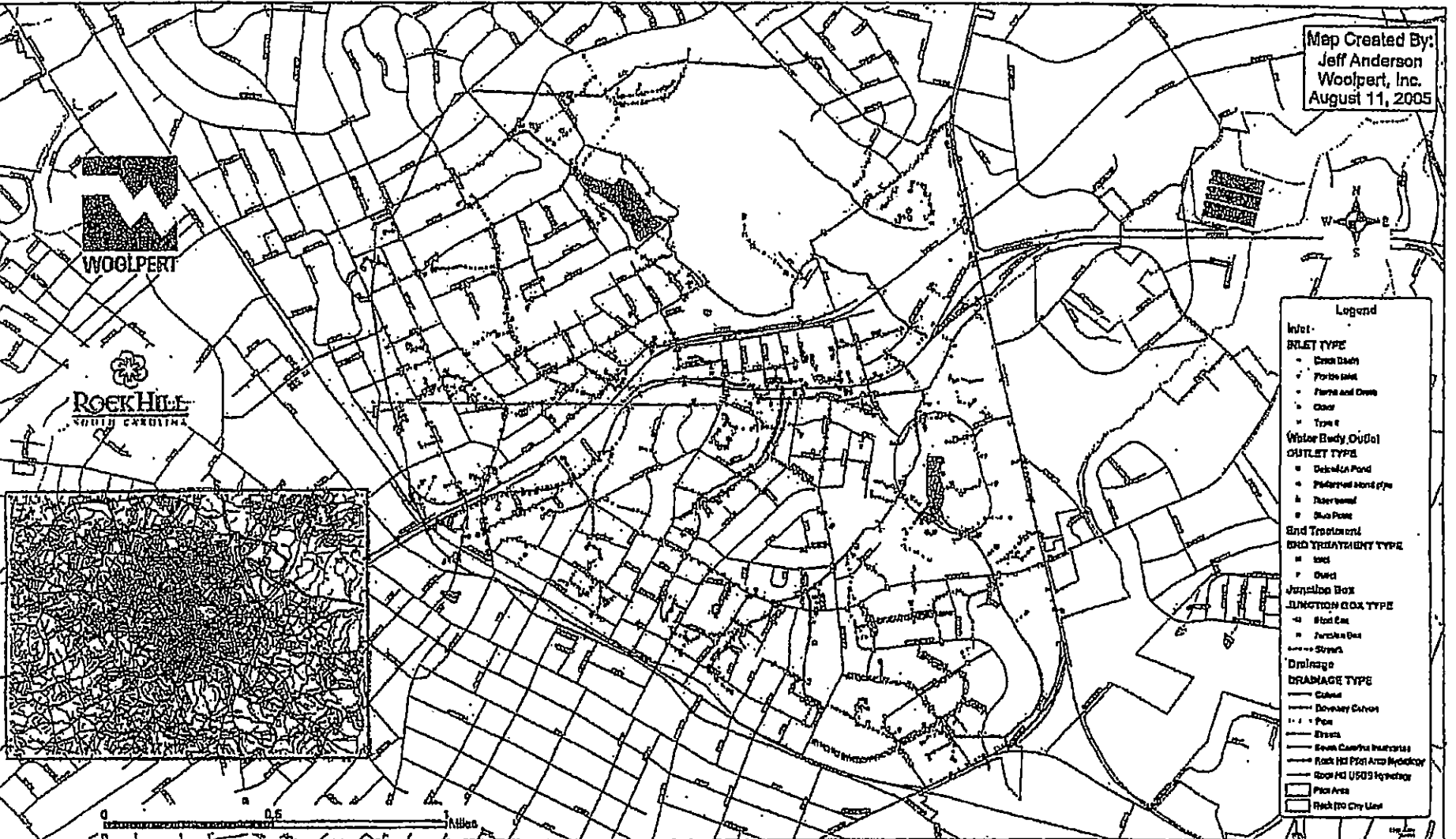


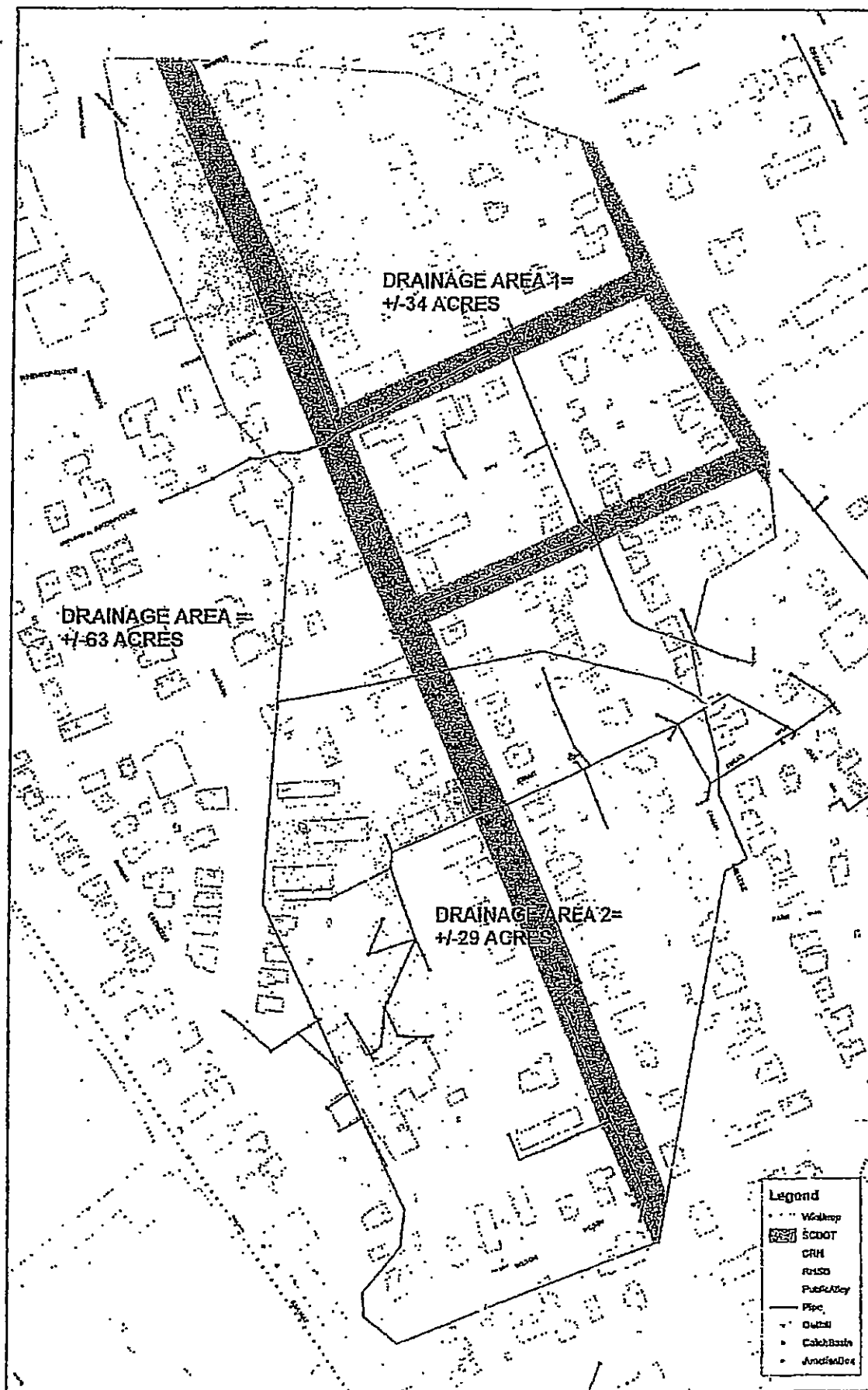
City of Rock Hill System Inventory Pilot Area

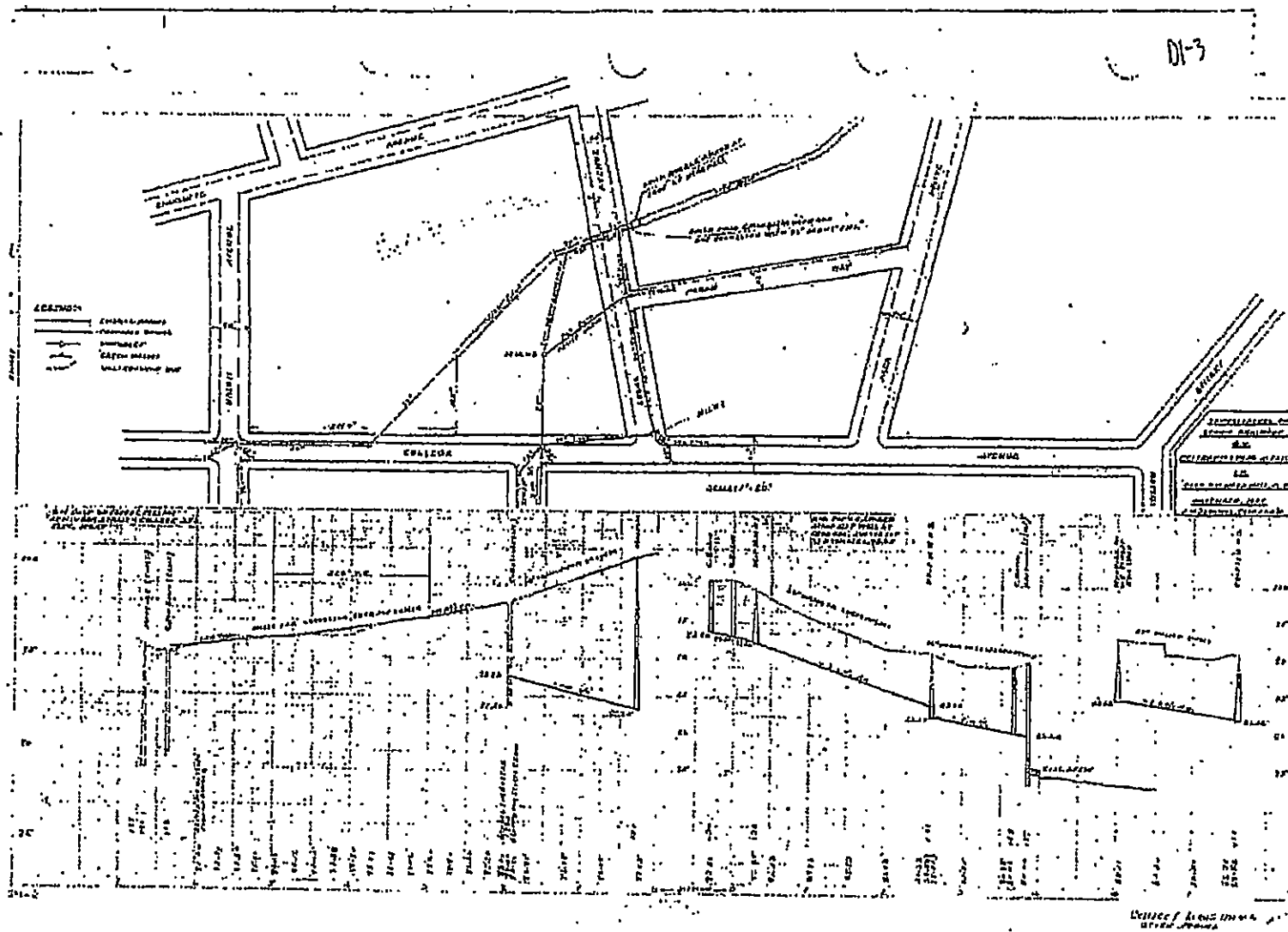
Map Created By:
Jeff Anderson
Woolpert, Inc.
August 11, 2005

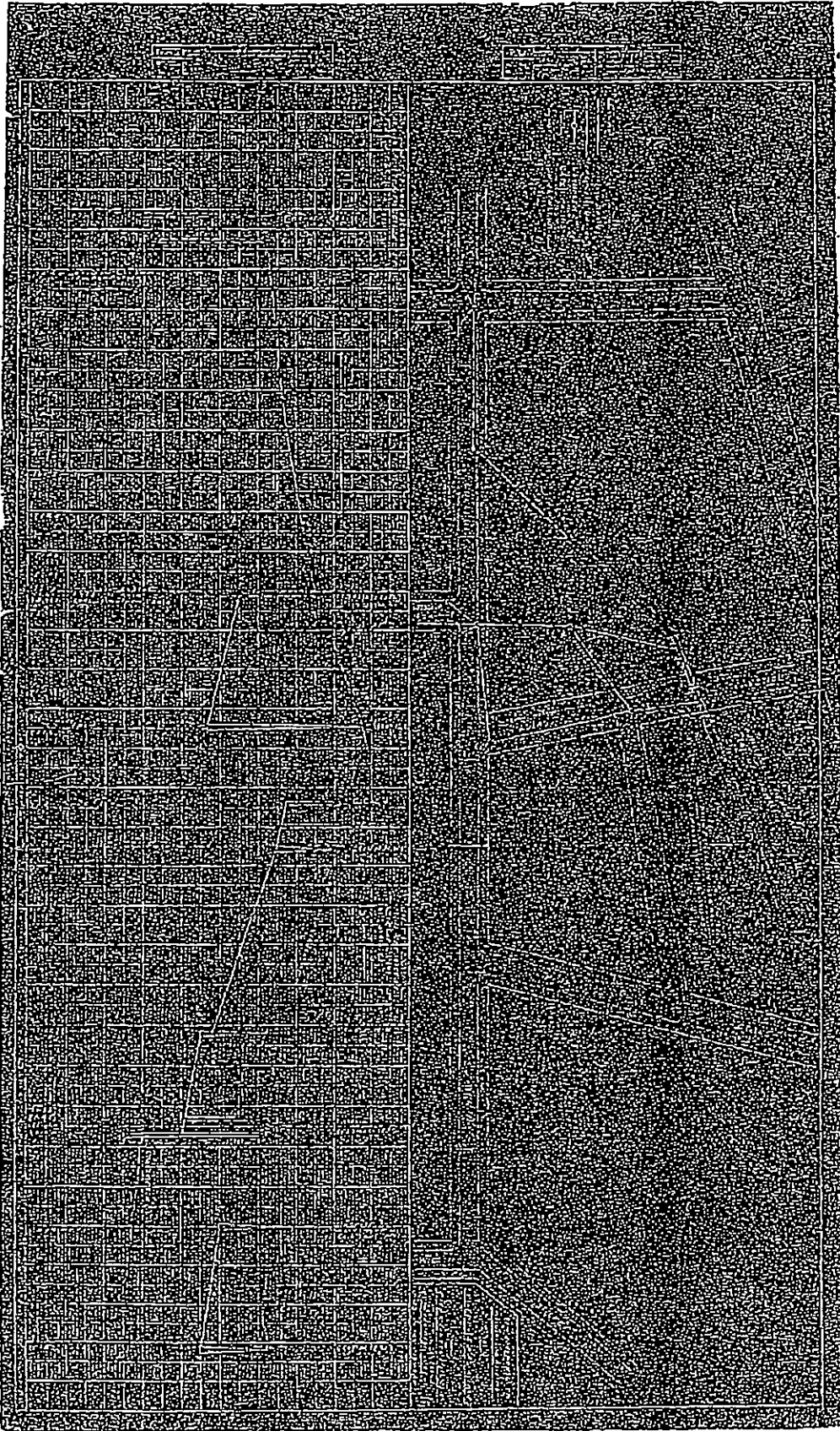
Legend

- Inlet:**
- INLET TYPE**
 - Catch Basin
 - Potable Inlet
 - Storm and Drain
 - Catch
 - Type 1
 - Water Body (Outlet)**
 - OUTLET TYPE**
 - Detention Pond
 - Detention Pond (Dry)
 - Retention Pond
 - Storm Pond
 - End Treatment and**
 - END TREATMENT TYPE**
 - Inlet
 - Outlet
 - Junction Box**
 - JUNCTION BOX TYPE**
 - Inlet Box
 - Junction Box
 - Storm
 - Drainage**
 - DRAINAGE TYPE**
 - Culvert
 - Drainage Culvert
 - Pipe
 - Street
 - Sewer Collection Interceptor
 - Rock Hill Pilot Area Hydrology
 - Rock Hill USGS Hydrology
 - Pilot Area
 - Rock Hill City Limit



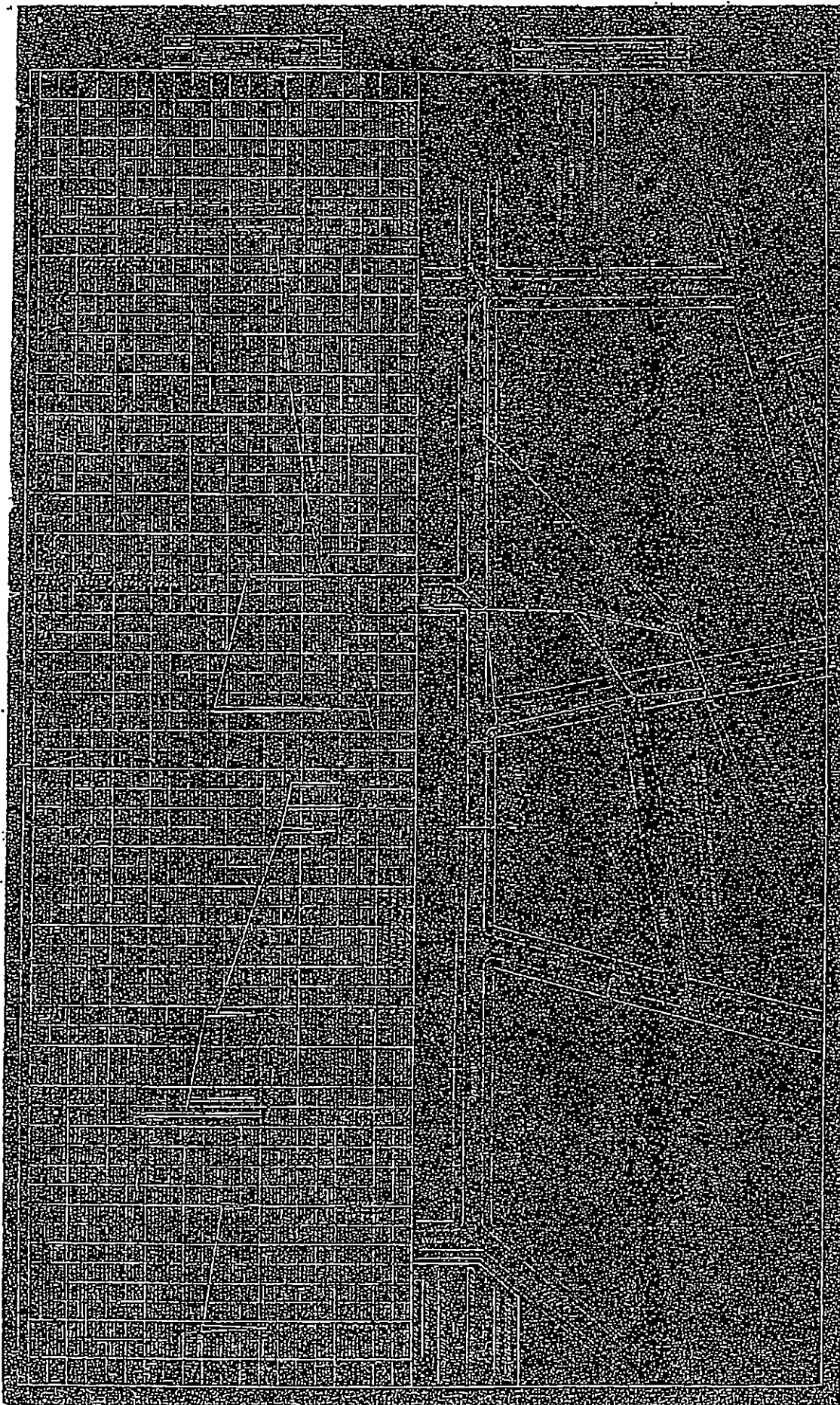






02-18

copy made
00045



02-38



M.H. LEONARD CONSULTING ENGINEERS, P.A. INSPECTION • DESIGN • INVESTIGATION		MHLCB COST ESTIMATE - STRUCTURAL REPAIR, SHORING, AND RESTORATION MS. LUGILLE RAY RESIDENCE, 330 COLLEGE AVE, ROCK HILL, SC 21-Aug-12 MHLCB Project # 12E6858.F Michael H. Leonard, PE Revised March 10, 2014.								
Section/Item	Scope	Units	Cost/Unit	Cost	Extension	Rev.1	Cumulative	Rev.1	Total	Rev.1 Notes
Section 1 Abandon, Cap Existing 24-inch Pipe										
a	Survey, locate pipe on site				650	850				no change
b	Demolition and Excavation Remove front sidewalk at curb, to front stoop, front steps OSHA box, staging			1350 1620	3170	1480 2225				9% Increase 22% Increase
c	Cap pipe Bulkheads (2), structural reinforcement Downhill vent	4 1	650 700	2600 700	3300	3175 865				22% Increase 22% Increase
d	Stump Mill - 2 stages pumping, vibration	130 ft, 24in dia 2	420 750	5460 1500	10320	9700 1850				10% Increase 22% Increase
e	Sidewalk Replacement 200 sf pavers	220 220	7 8.35	1540 1837	1640	1805 1837				17% Increase Scope correction = add pavers
f	Grade, drainage repairs front, rear yards			640	640	700				9% Increase
g	Landscape repairs allowance			1200	1200	1200				no change
							20820	25477		
Section 2 Foundation Shoring										
a	Interior foundation piers footings	8 each in zone			12280	1805				22% Increase
	helical piles	8	185	1480		10800				no change
b	Front Foundation Wall footings	14 lf in zone			4752	4050				Original error (-\$185) + 22% Increase
	helical piles	14	18	252		4500				no change
c	Front Stoop Walls, Steps footings	14+8+8 lf steps only			7725	640.5				22% Increase
	helical piles	3	175	525		7200				no change
d	Center Foundation Wall footings	14 lf			4500	10500				Add 4 h/piles
	helical piles	3	1500	4500						
e	Rear Foundation Wall footings	14 lf			3800	6000	32857	45498		Add 2 h/piles
	helical piles	3	1200	3600						
Section 3 Re-build Foundations, Piers										
a	Front Steps	65 lf			975	1189.8				22% Increase
b	4 Interior Piers	4 ea			1340	3289.6				4 Additional piers + 22% Increase
c	Cumulative Foundation Voids	misc			700	854				22% Increase
Section 4 Main Floor Frame Repairs, Leveling										
a	Laser level study						3016	5313		
b	Crib, bracing, jacks									0% rate Increase
c	Leveling and bracing									17% rate Increase
d	Reinforcement	mi	240							\$7/hr rate Increase
e	8 new piers									\$7/hr rate Increase + 0% Increase
							6260	6980		9% rate Increase

Section 5 Roof Frame Repairs									
a Ridge Bracing, joining	mtl	450	12	35	870	994.5			9% increase + \$7/hr rate increase
b Rafter Cross-ties	mtl	200	8	35	410	470			6% increase + \$7/hr rate increase
c Rafter Tie-downs	mtl	780	15	35	1305	1480.2			9% increase + \$7/hr rate increase
d Shingle damage/repairs			12	180	2160	2736			26% mtl + labor increase
e Venting, repairs		12 sq 80 lf	90	12	1080	1330.8			28% mtl + labor increase
Section 6 Interior Restoration							5825	7042	
a Door, C/O repairs		8 units	24	45	1080	1177.2			\$4/hr rate increase
b Millwork removal, reset ref. floor leveling		240 lf	18	45	810	882			\$4/hr rate increase
c Wall, ceiling repairs - plaster, GWB			80	38	3040	3313.6			9% rate increase
d Hardware adjustments		materials				125			add materials, previous error
e Painting, cleaning		12 units	18	45	810	882			\$4/hr rate increase
f Floor finishes		1850 sf	1850	4.75	8788	2187.44			9% rate increase
g Final Cleaning		3200	1.15	3680	4011.2	9897.5			\$0.60 rate increase
h Trim Mtl				950	1111.6				9% increase
Section 7 General Conditions							21174	23587	17% increase
a Design, Drawings - engineering		24 hr S/E	24	160	3840	3960			\$5/hr rate increase
b Building Permits					400	400			no change
c Sanitary Facilities			3	150	450	555			\$36/mo. rate increase
d Debris - hauling, disposal		loads	4	350	1400	2135			1 added load + 22% rate increase
e Transportation		10 weeks	10	180	1800	2106			17% rate increase
f Tools & Equipment			10	120	1200	1404			17% rate increase
g Communication			3	65	195	228.15			17% rate increase
h Site Supervision		12 wk, 38	456	36	16416	19152			\$6/hr rate increase
i General Labor		10 weeks	8	25	200	2180			Previous error: 6hr/wk x 10 wk + 9% rate +
SUBTOTAL						25801	32120		Rev 1
CONTRACTORS FEES							115952	148024	
GENERAL OVERHEAD									
PROFIT							17378	21904	
CONTINGENCY							11586	14602	
TOTAL COST ESTIMATE							2896	3651	
							147711	188181	

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
Civil Action No. 12-CP-46-3928

LUCILLE H. RAY,)
)
Plaintiff,)
)
vs.)
)
CITY OF ROCK HILL, SOUTH)
CAROLINA, A Municipal)
Corporation, and SOUTH)
CAROLINA DEPARTMENT OF)
TRANSPORTATION, an agency)
Of the State of South Carolina,)
)
Defendants.)
_____)

**CORRECTION TO AFFIDAVIT
OF MICHAEL H. LEONARD**

Plaintiff files the following correction to the Affidavit of Michael H. Leonard, and shows as follows:

1. Michael H. Leonard's affidavit was filed and served on opposing counsel on May 30, 2014.
2. The affidavit has the correct Civil Action Number. The caption, however, is in error. It should read Lucille H. Ray, Plaintiff v. City of Rock Hill, a Municipal Corporation, and the South Carolina Department of Transportation, an agency of the State of South Carolina Defendants.
3. The affidavit should remain, in all respects, the same.

JAMES, McELROY & DIEHL, P.A.

By: _____

Richard B. Fennell
Richard B. Fennell
S.C. Bar No. 10467
rfennell@jmdlaw.com
600 South College Street
Charlotte, NC 28202
(704) 372-9870
(704) 333-5508 (facsimile)

Dated: June 13, 2014
Charlotte, North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Lucille H. Ray,

Plaintiff,

vs.

City of Rock Hill, South
Carolina a Municipal
Corporation, and South Carolina
Department of Transportation,
an agency of the State of South
Carolina,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF
JAMES G. BAGLEY, JR.

C.A. No. 12-CP-46-3928

PERSONALLY APPEARED before me James G. Bagley, Jr. who, being
duly sworn, deposes and says that:

1. He is a Professional Engineer employed by the City of
Rock Hill ("City") as Deputy City Manager. He has been employed
by Rock Hill for more than 20 years.

2. As Deputy City Manager he oversees, among other
departments, Utilities and Public Works for the City.

3. In his capacity as Deputy City Manager and Professional
Engineer, he has personal knowledge of the matters contained
herein.

4. There is drainage infrastructure located within the
Watershed¹ that is owned by many different public entities and
private landowners.

¹ Capitalized terms not otherwise defined herein shall have the meanings
set forth in the Memorandum in Support of City's Motion for Summary Judgment.

5. Based on the City's review and analysis of the Watershed, the City approximates that the surface area within the Watershed is owned as follows: the City owns 8%; SCDOT owns 8.6%; Winthrop University owns 6.9%; Rock Hill School District owns 11%; private landowners own 62%; and public alleys comprise 3.4%. (An annotated GIS map showing the Watershed is attached hereto as Exhibit A.)

6. The City does not own, maintain or assume control over stormwater infrastructure unless the infrastructure was constructed by the City; or was dedicated by a landowner and accepted by the City; or the City was granted fee simple title or a right of way by the landowner.

7. The Subject Pipe is not located on City-owned property or within a City right-of-way.

8. The Subject Pipe was not dedicated to the City and the City has not accepted any ownership or control over the Subject Pipe.

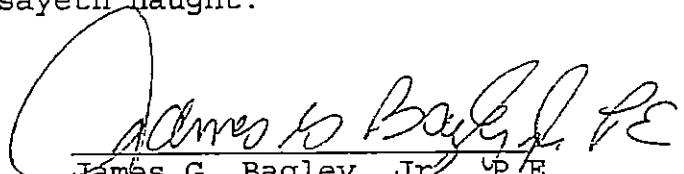
9. A four-inch diameter pipe ("Tap Pipe") taps into the Subject Pipe. This Tap Pipe is located directly under the Plaintiff's home.

10. Any engineering opinion as to whether the existing flow can be reasonably diverted from the Subject Pipe would first necessitate sufficient facts be developed by engineering studies, mapping, planning and analysis at a minimum as to the following:

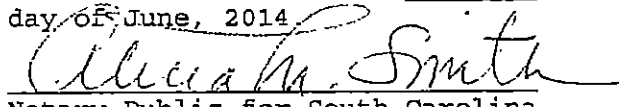
the amount of flow through the Subject Pipe; the type, material and specifications of the rerouted infrastructure; the path of the rerouted infrastructure, the existing ownership and cost to acquire any necessary private property through the rerouted path, conflict avoidance with existing infrastructure (e.g., College Avenue has extensive existing infrastructure at multiple depths); the location, depth and adequacy of downstream infrastructure.

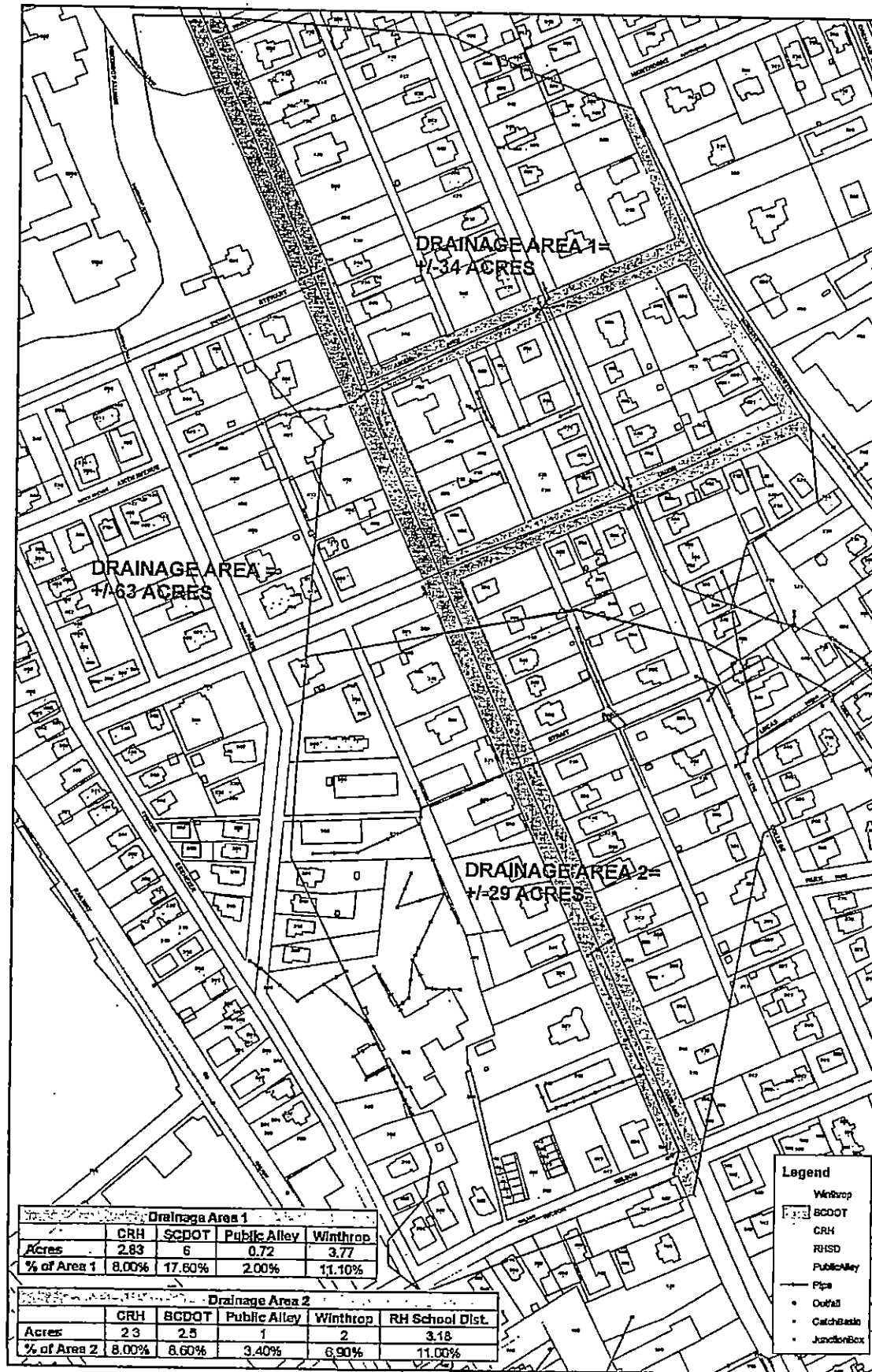
Further, the Affiant sayeth naught.

Date: 6/18/14


James G. Bagley, Jr., P.E.
Deputy City Manager
City of Rock Hill, SC

Sworn to before me this 18th
day of June, 2014


Notary Public for South Carolina
My Commission Expires: 8/23/21



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) IN THE COURT OF COMMON PLEAS

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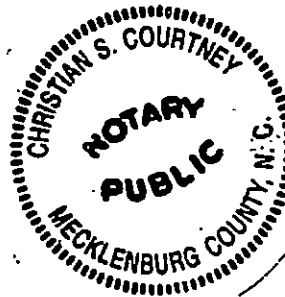
FILED-RECEIVED
2015 SEP 17 PM 3:18
DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

This 9 day of September, 2015.

Lucille H Ray
Lucille Ray

Sworn to and subscribed before me
this 9 day of September, 2015.

Christian S. Courtney
Notary Public, Christian S. Courtney
My commission expires: 07/01/2016



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Civil Action No. 12-CP-46-3928

Lucille H. Ray,

Plaintiff,

v.

City of Rock Hill, South
Carolina,
a Municipal Corporation, and
South Carolina Department of
Transportation, an agency of
the State of South Carolina,

Defendants.

AFFIDAVIT OF LUCILLE RAY

FILED-RECEIVED
2014 MAY 29 PM 3:34
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Lucille Ray, being duly sworn, deposes and says:

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

2. I own a house and lot located at 330 College Avenue in Rock Hill. I bought it in 1985.

3. I have attached a photos of the house, which are respectively designated respectively as Exhibits A-1, A-2, A-3, and A-4.

4. I have also attached the survey of the property which was available when I bought the house as Exhibit B. It shows what I thought I was purchasing.

5. My house is experiencing significant problems. I hired an engineer in 2012 in order to help me investigate what was going on. His name is Mike Leonard. After investigating, he told me that there was a large pipe running from a drain on College Avenue through my yard and under my house. It is fed by several other pipes which channel stormwater from the surrounding area beneath my home to a spot in the

#1 HJR

rear yard. The water is then diverted through another pipe to Lucas Street. A map showing the stormwater pipes in the area of my house is attached as Exhibit C. Mike's original report dated September 4, 2012 and supplemental Project Memo dated November 30, 2012 report are attached respectively as Exhibits D-1 and D-2.

6. I did not know about the pipes before I bought my house. I did not know that the pipe ran under my house with any degree of certainty until the City confirmed it for me in late May 2011. I know that Mike wrote in some notes that I said I knew it in 2008. He was wrong, and has acknowledged as much. The City took a video in 2008, but would never tell me what it revealed.

7. My house did show some settlement over the years. For example, I did some roof shoring and had problems in the yard in the 1990s. I did not know about the pipe. There was always another explanation for the problems, and for a while, I didn't worry.

8. When damage started to get worse, I began to suspect that there was something beneath the house. I asked the City about it but was told many different things over the course of a few years. In April 2011 they admitted a pipe was on my property but told me definitively that it did not run under the house.

9. When it became obvious that the pipe ran beneath the house, I asked that they simply move it, or reroute the water. This took place in a face to face conversation. I was told plainly that "the pipe will never be moved." This was in 2011. As stated, I hired Mike when I realized I wasn't going to get anywhere with the City.

10. Mike asked for stormwater maps (in 2012) from the City in order to determine what was going on with my property. We finally received a map, but it turned out to be inaccurate. It is attached as Exhibit E.

#2 

11. The City's position on their control of the pipe has been schizophrenic. My lawyer received the letter Defendant attached to its motion disavowing ownership of the pipe. As indicated above they told me that it had to stay where it was. I don't know how they get to have it both ways. Moreover, in late 2012, the City was performing work in front of my house and disconnected ^{all of} the feeder pipes from the one on my property. It was at that point that we knew for sure exactly where the water was coming from that flowed under my house. The pipes were old, clay pipes which were in bad shape. My lawyer wrote to them and told them not to reconnect. That letter is attached as Exhibit F. They did it anyway, and have made it plain that they don't think there is anything I can do about it.

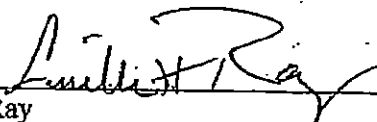
12. I have since learned that the City has maps that show the pipe as part of their stormwater improvements that date back to 1941. One of their maps is attached as Exhibit G. We did not get it until I had to sue the City. They did not give it to me or Mike prior to that point. It shows that the direction of the pipe was altered, and that part of its system involved "abandoning" part of the pipe in the rear of my property. They have never abandoned the pipe that runs under my house, and continue to use it to manage a large amount of water which flows on their streets.

13. When I bought the property, I did not know that other parties were using it to help manage stormwater. I had no idea that the City would take the position that it could reconnect its pipes to this one even after I told them not to. I am involved in litigation with them that doesn't look like will go away anytime soon. I believe that a basic right that would go along with my ownership of this property is the right to decide that water collected from the road system of the City and State should not go under my house if I don't want it to, and that any subsequent purchaser will feel the same way.

#3 JHR

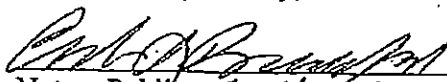
14. On December 26, 2012, there was a significant rain in the Rock Hill area. At that point in time, I was still trying to determine the extent of the water that was feeding into the stormwater pipe running under my house. I walked up Strait Street to its intersection with Oakland Avenue. The southwest side of Oakland Avenue was flooded. A South Carolina Department of Transportation (hereinafter "SCDOT") vehicle was parked on the street, and I spoke with that employee, whose name I do not know. The employee confirmed that he was doing maintenance related to drainage, and that SCDOT owned and was responsible for Oakland Avenue roadway and storm drain maintenance on Oakland Avenue. On that date I was personally able to observe the water going into those storm drains, and I and my engineer Mike Leonard have determined that the water from the Oakland Avenue drains run into pipes that run downhill along Strait Street, and it ends up going into the stormwater pipe that runs directly under my house.

This 29th day of May, 2014.



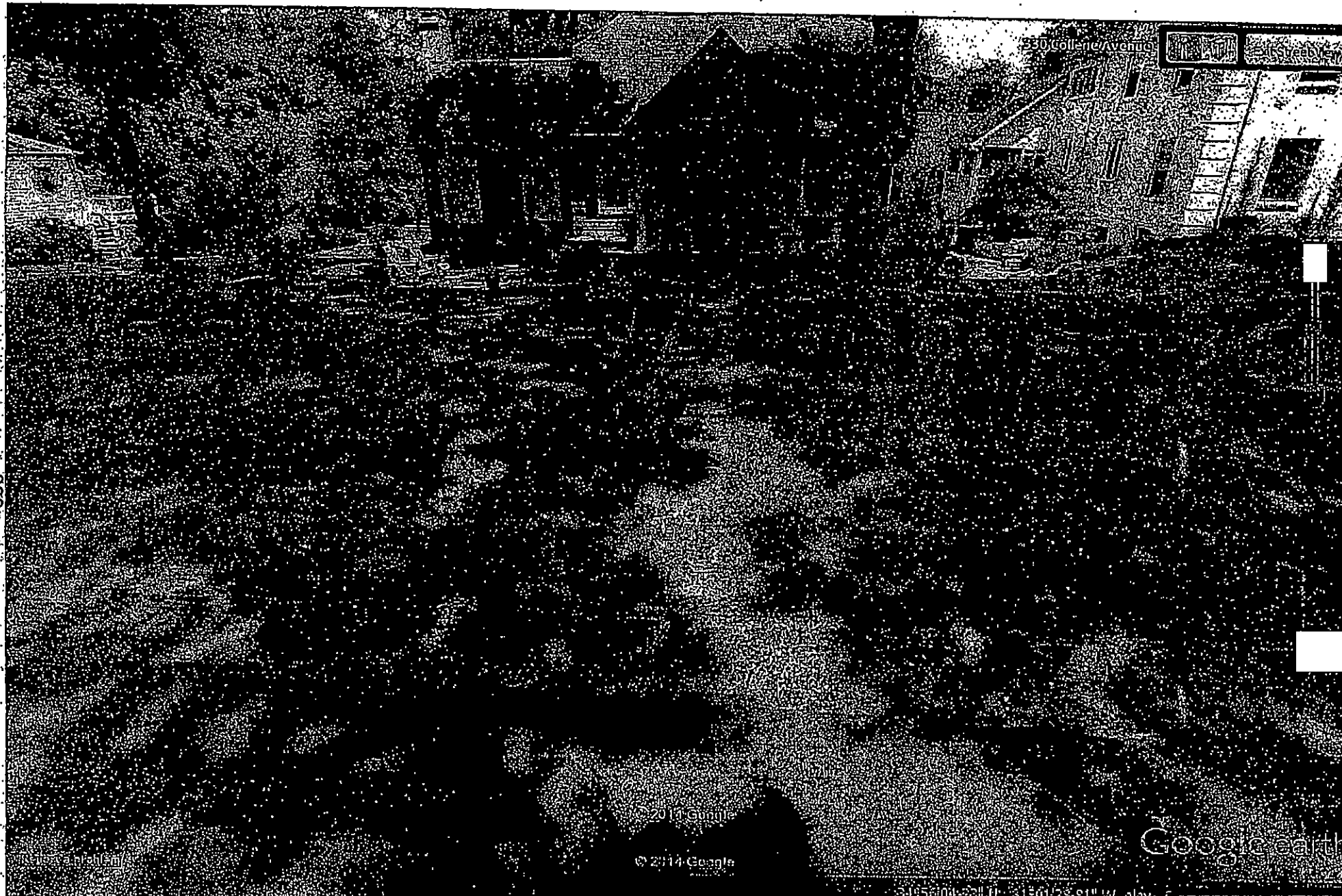
Lucille Ray

Sworn to and subscribed before me
this 29th day of May, 2014.


Notary Public, South Carolina
My commission expires: 2/16/21

#4 

-688-



330 Collene Avenue

© 2014 Google

© 2014 Google

Google earth

31°56'04.23" N 111°01'28.81" W elev. 7



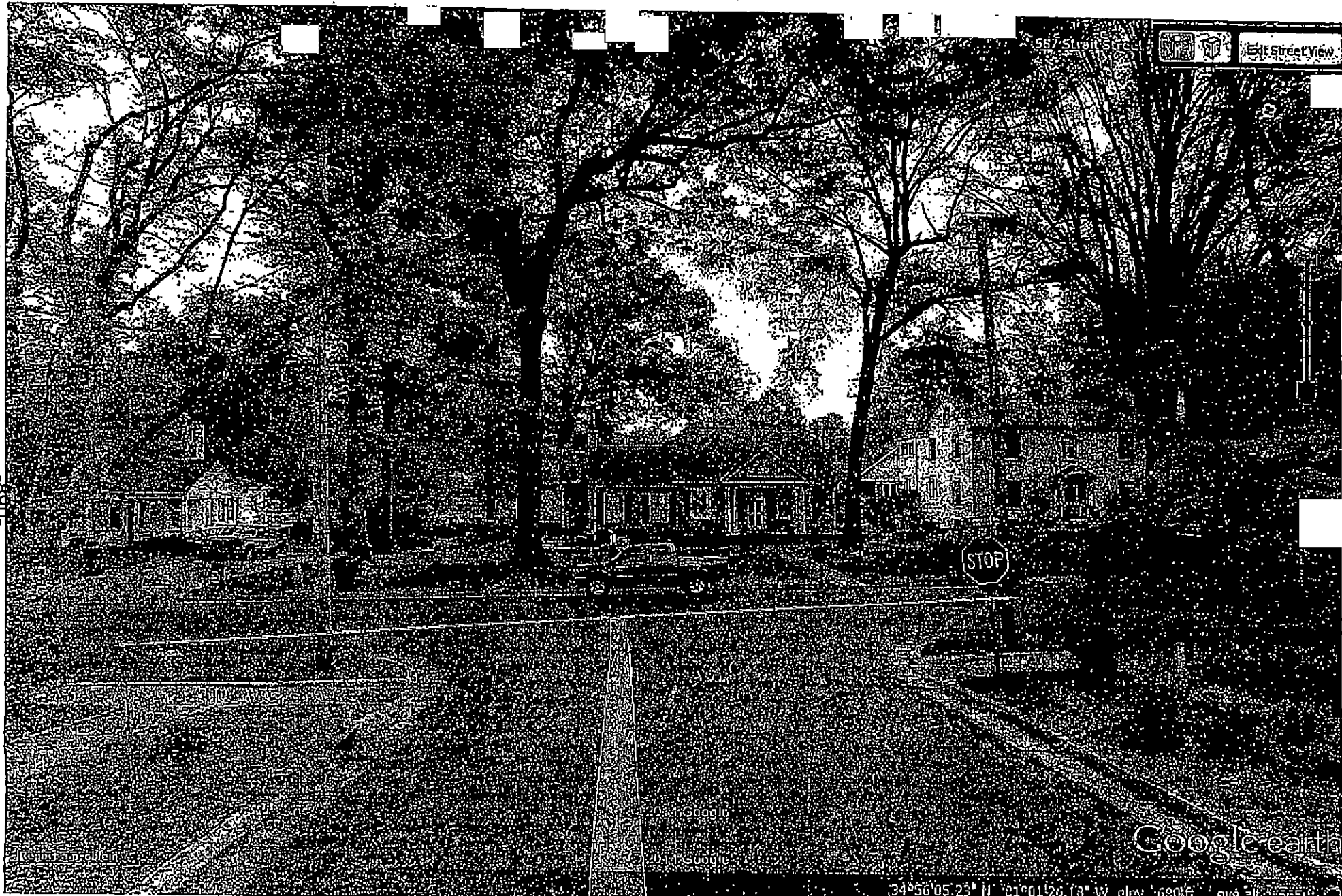


EXHIBIT
A-2

-168-



Google earth

Image Date: 11/20/2014 34°50'07.66" N 81°01'26.53" W elev: 656 ft eye alt: 1731 ft



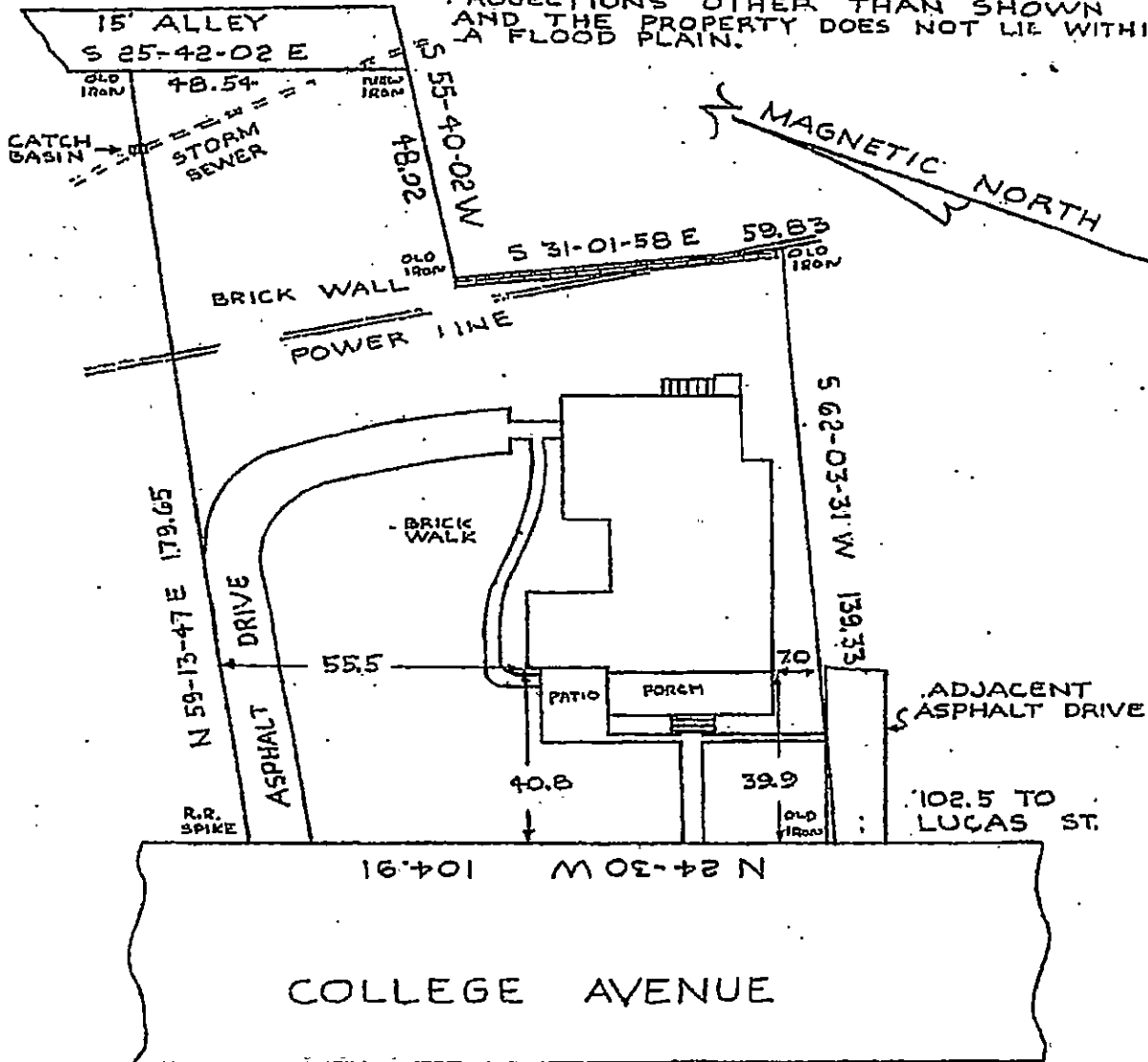
-892-



EXHIBIT
PC 14-54

THIS BEING SHOWN AS LOT 10 AND PART OF 11 & 12 IN BLOCK 28 OF MAP OF PROPERTY OF ROCK HILL BUGGY CO., MADE BY J.L. STACY AND DATED APRIL, 1924. RECORDED IN PLAT BOOK 2, PAGE 200.

THIS IS TO CERTIFY THAT THIS IS A TRUE AND ACCURATE SURVEY AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN AND THE PROPERTY DOES NOT LIE WITHIN A FLOOD PLAIN.



MAP OF PROPERTY OF
LUCILLE RAY
330 COLLEGE AVENUE
ROCK HILL, S.C.

MAY 23, 1985

SCALE 1" = 30'



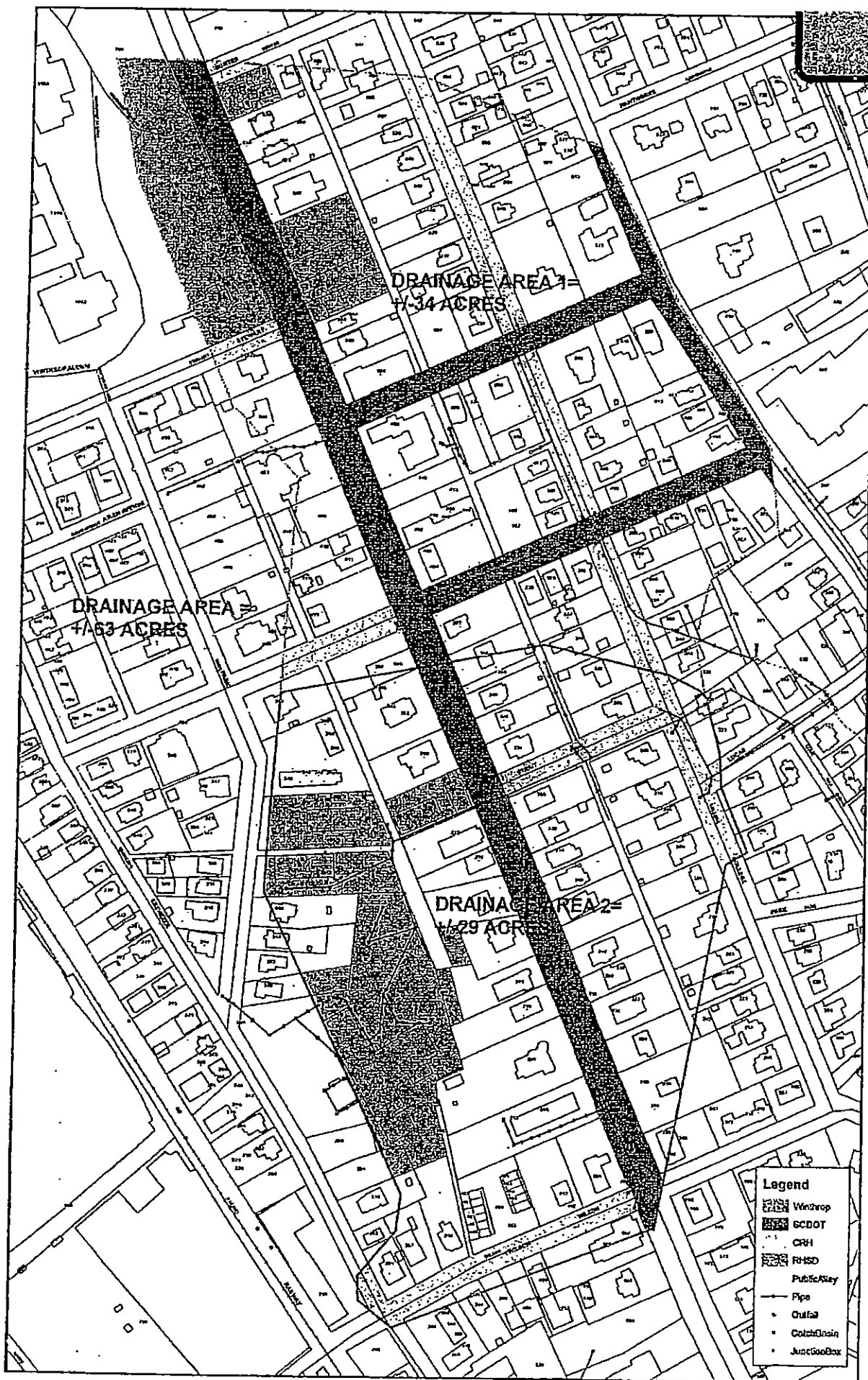
W.C. White

W.C. WHITE R.L.S. #1033
ROCK HILL S.C.



LUCILLE_RAY00106

-893-





ENGINEERING EVALUATION

STRUCTURAL DAMAGES AND RECOMMENDED REPAIRS

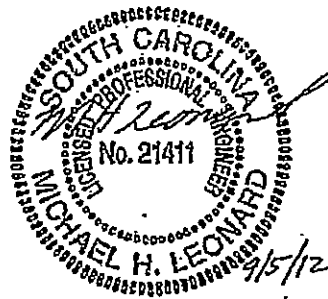
Residence of:

**Ms. Lucille Ray
330 College Ave
Rock Hill, SC**

MHLCE Project # 12E9555.F

Date: September 5, 2012

By: Michael H. Leonard, PE

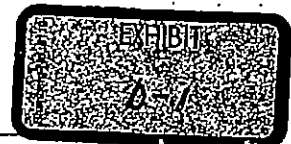


447 South Sharon Amity Road, Suite 201

Charlotte, N.C. 28211

Office (704) 333-2221

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RAY000461

1. Purpose

The purposes of this study include the following:

- To provide an engineering assessment of private residence to determine cause(s) of progressive structural damages.
- To determine the most feasible structural repairs of the dwelling and subgrade conditions now affecting the foundation.
- To estimate the costs of structural repairs and other remedial work.
- To determine the risks of long-term, progressive damages if remedial work is delayed or not done.

2. Timeline Summary

Ms. Lucille Ray has owned the home at 330 College Ave, Rock Hill, South Carolina since 1985. She has lived there and maintained the single-family residence continuously for 27 years. Over that time, various events or findings have led her to launch this investigation.

This is a timeline summary based on information provided:

- In about 1992, while doing yard work in the rear yard, a gardener stepped into a hole up to his waist within 10 feet of the rear house foundation wall. It had developed suddenly. It was filled and considered surface erosion at that time.
- In 1995, Ms. Ray first found bending in her roof frame while in her attic and proceeded to add bracing in an attempt to stop it.
- In 2001 she renovated the home and added a kitchen, garage, and covered porch on the left side. She noticed unexplained settling of the front patio during construction, requiring additional work and expense.
- In 2007, she noticed separation in her roof frame between adjacent slopes and proceeded to add cross-bracing at the ridge level in an attempt to stop it.
- In 2008, she first noticed that her front entry steps were sinking. At that time she tried to determine potential causes and found that a city storm-water pipe extended (from public city street in front of her home) directly under the front entry of the dwelling. She requested City assistance to review the concern and after multiple attempts, she was finally put in contact with Rock Hill's Mr. Jason Tinkler. A pipeline study was done without shared results. After repeated calls over the next few months (to Tinkler), she was told that the video tape had been lost. He also told her the front steps were simply settling.
- In 2011, after repeated calls to the City, the camera study was done again on June 2 and 3, 2011. Ms. Ray watched the study and video results as the City confirmed that the storm water line extended directly under her home, although they never did excavate to find the rear-yard manhole found during video work. Tinkler informed her then that the pipeline was not a problem but that he would get back to her about it.
- Later in June 2011, Ms. Ray called Tinkler to discuss street flooding but he never called her back. Finally, in August 2011, she discovered that Mr. Tinkler did not work for the City any longer. No other City official has ever contacted Ms. Ray about the known pipeline problem despite repeated calls from her.
- In early 2012, the lack of responses and progress from the City led her to start an owner-investigation at her expense.

3. Executive Summary

On March 20, 2012, Ms. Lucille Ray contacted M.H. Leonard Consulting Engineers, PA to request engineering assistance regarding the problem. She shared her findings and a brief history of the property. We have proceeded to study the dwelling, the site, and the soil conditions around and under the home. We have also conducted simple water flow tests of the storm water piping that extends from Oakland Ave, along Strait Street, to College Avenue, and over to Lucas Street after passing directly under Ms. Ray's house.

After 3 site inspections, a geotechnical evaluation, and limited responses from City officials, this report will summarize our findings.

The investigation has provided evidence of the following facts and opinions:

1. There is a pattern of structural damage in the subject dwelling frame and foundation caused by foundation movement at ground level. These damages appear progressive and we consider them active.
2. An underground 24-inch public storm water pipe extends from the street in front of the home in a line directly under the specific zone of structural damages. There is evidence of multiple foundation piers dropping and leaning along the pipeline route.
3. The public storm water system records for this neighborhood have not been available despite requests to the City of Rock Hill. Those may not be accurate based on one small map obtained by the owner prior to our investigation. That does not show a public pipe on the subject site. See Attachment #2. Regardless, the old terra-cotta clay pipe is there and confirmed. It appears aged with cracks and is probably leaking. Those conditions are verified by the videos provided.
4. The storm water system serving this and surrounding lots appears to include a substantial area based on informal water testing completed. We determined that catch basins on Oakland Avenue and beyond are part of the network upstream from the pipe extending under the home. Unconfirmed estimates of the watershed size are 14 acres or more. The flow from that large an area is substantial and increases our concerns with the pipe capacity, flow leakage, and lack of serviceability (being under a private residence).
5. A geotechnical evaluation of on-site soil along the pipe route and under the home confirms that foundation piers and the front stoop, steps, and sidewalk have settled as the result of soft pipe fill soil. Further testing would be needed along the entire pipe route to determine if there are wash outs and voids around the pipe.
6. There are current and long-term risks that pipe failure will lead to soil erosion and substantial structural damages. If pipe failure is rapid enough, structural failure (sinking and partial collapse) is likely.
7. Public utilities require routine maintenance and access, which is why they typically align in public right-of-ways or dedicated easements on private property. Apparently this storm water pipe is not even known or recorded in public documents. The less known about the pipe and its maintenance record, the higher the risks that it is failing now.

Three options were considered to eliminate risks of further failure and to repair structural damages to date.

In the best interests of Ms. Ray as property owner, the most feasible remedy includes the following:

- a. re-route of the storm water pipe away from her property (requires independent storm water and hydrology study as City improvement),
- b. abandonment of the existing storm pipe and filling it with a flowable slurry grout,
- c. structural shoring of the existing foundation in pipe trench zone,
- d. framing repairs to floor and roof systems,
- e. replacement of front stoop, including steps and sidewalk,
- f. interior and exterior repairs caused by structural settlement to date,
- g. all general conditions, cleaning, building permits, and construction management.

We estimated the costs of those repairs based on local, prevailing rates of the region. That study was based on our experience as a General Contractor in new construction, renovations, and structural repairs.

The estimated cost to complete the remedial work described is

\$147,711

RAY000463

Although there are alternative methods to shore the dwelling, the costs may vary by 2.5%, based on experience with other structural repair projects of this type.

Time is a critical factor moving forward.

- ⇒ If the existing pipe develops further leaks affecting soil conditions or causing subgrade damages below the home, the extent of structural repairs will rise substantially.
- ⇒ Although the house is nearly 90 years old, structural damages have developed since 1985 (estimated based on owner observations and existing site inspection). The damage appears to be active and risks are high that it is increasing at an unknown rate.
- ⇒ Based on site observations now, we believe the pattern of structural distress is relatively young. Based on video evidence of the storm water pipe in place, risks are high that it will degrade and eventually fail. Between now and then, leaking and effects of further pipe degradation will further damage the house foundation and frame.

The storm water design to re-route the system around this property will require expedited attention from public utilities. Since planning of that type utility project typically takes more than 12 months, risks of structural damage is substantial enough that we recommend a temporary pipe repair and re-lining of the 24-inch clay pipe as soon as possible.

The costs of temporary pipe repairs to reduce risks of short-term structural damages to the dwelling are NOT included in this report.

4. Property and Project History

Ms. Lucille Ray owns the current properties at 330 and 340 College Ave, Rock Hill, South Carolina. The 330 (subject) site includes a one-story, single-family home, including a 2-car garage, partial rear daylight basement, and two covered porch spaces. She purchased the property in 1985, approximately 27 years prior to the date of this report. See Attachment #1: W.C. White, RLS Survey of 330 College Ave, Rock Hill, SC dated May 23, 1985.

The house is built with a masonry foundation, conventional wall, floor, and roof framing, and an asphalt/fiberglass shingle roof. The exterior walls are clad in wood and vinyl siding with a pier and curtain foundation wall, 8-inch all-brick foundation, and CMU foundation. The house includes a front masonry covered stoop and a left-rear covered porch.

Ms. Ray renovated the home in approximately 2001 with a kitchen, garage, and left-rear porch addition. Those areas bear on new foundation systems independently of the main, original home. None of those areas are within the concerns of this report.

In about 2008, Ms. Ray first observed evidence of structural distress in her home. The ceiling and roof frames visible in the attic had separated. She had braces added to prevent further separation. Ms. Ray also recalls similar roof frame repairs were necessary in 1995. She also indicated that a man stepped into a shallow hole in her back yard in about 1985 while helping her – sinking up to his waist. At that time, she did not suspect structural or soil concerns. She did recall the position of the ground hole noted within this report.

On March 20, 2012, Ms. Ray contacted M.H. Leonard Consulting Engineers, PA to evaluate the cause and extent of structural damages further. Since then, this firm has progressed as itemized below:

April 4, 2012

Initial site review – field notes, investigation plan

April to June 2012

City of Rock Hill, requests for storm water system mapping, information – log of inquiries

June 6 – DVD review of pipe camera studies through Ms. Ray

June to July 2012

Plan geotechnical study, quotes – CESI Ed Cummings, PE

July 6 – MHLCE comprehensive site study of structure, damages, water hose test in storm pipes

August 2012

CESI/Cummings geotechnical study

CESI and MHLCE pipeline location under house – confirmation

5. Findings of Engineering Inspections

House Frame and Foundation:

Our investigation has included a structural inspection of the house frame and foundation, finding that there are patterns of distress caused by active structural movement. The roof frame has separated in two locations, the main level floor system is sloping where foundation piers have dropped from original support positions, and a geotechnical study has verified that the foundation movement has been caused by the excavation zone along the public storm water pipe route.

We observed the following specific damages:

Roof Frame Damages:

- ⇒ Separation of ridge and rafters at ridge beam spanning front-rear near front ridge spanning left-right. A metal cap was installed there to span over a 2-inch gap.
- ⇒ Separation of ceiling joists at ceiling girder beam – about 1½ inch near middle of original house frame.

Interior Wall/Floor Conditions:

- ⇒ Floor distortion at front living room, center breakfast room, center hall. Slope varies from $\frac{1}{4}$ to $\frac{5}{8}$ inch in 4 feet along axis extended to front entry door.
- ⇒ Corresponding wall and door distortion with cased opening headers or jambs $\frac{1}{4}$ to $\frac{3}{4}$ inch out of level and/or $\frac{1}{2}$ to $\frac{5}{8}$ inch out of plumb.
- ⇒ Stress cracking on hall walls and baseboard trim.
- ⇒ Stress cracking with shear pattern in center left bedroom, front wall.
- ⇒ Master bath/bedroom area -- garden tub deck out of level with separation at floor.
- ⇒ Front door out of plumb/square.

Exterior Damages:

- ⇒ Front stoop and steps with masonry shear cracking. Front step drooping/settlement $\frac{3}{4}$ to 1 $\frac{1}{4}$ inches with shear zone near middle.
- ⇒ Front sidewalk -- settlement and tilt to left side near front steps.
- ⇒ Rear yard open hole, approximately 14 inches deep near centerline of known storm-water pipe location.

Foundation Damages:

- ⇒ Miscellaneous stress cracks in front foundation wall.
- ⇒ 7 interior piers with separation at top or leaning from plumb.
- ⇒ 4 interior piers that have been shimmed with wood shims more than 1 inch in depth (multiple re-shimming).

The laundry cellar (forward of rear basement area) includes a slab elevated above the basement level, crawl space, and adjacent furnace cellar. We estimate that slab was used to cap over the known storm water line that appears to be within 32 inches of the top of slab. The pipe depth and clearances are only estimated except those verified during the geotechnical evaluation.

Storm Water System:

We studied a pipeline video camera recording obtained by Ms. Ray in 2008 and determined that 1 of the 3 segments of that recording were of the subject pipeline. The recording revealed that the 24-inch terra-cotta clay pipe is old with random stress cracking, joining a manhole directly behind Ms. Ray's home where a 24-inch RCP pipe extends further East and toward the right rear of her property and beyond.

The City of Rock Hill has denied our requests for access or copies of the public storm-water utility information regarding this location on 3 occasions (attempts logged). The only storm water map we were able to obtain in this study was provided by Ms. Ray (Attachment #2: City of Rock Hill, Department of Planning & Development, dated 09 Dec 1998). That map does not show the pipe that extends under 330 College Ave or across to Lucas St.

It does not reflect other pipe routes and pipe sizes observed during this study.

Ms. Ray also owns the property at 340 College Avenue (immediately west of the subject site). The map shows a 10-inch diameter pipe extending diagonally across and under that dwelling. In fact, the pipe is 30-inch dia clay with a partially collapsed catch basin in the rear yard of that site. There is no doubt that it does extend under the northeast corner (rear left) of that structure. *The effects and condition of this storm-water pipe line are not part of this study.*

Geotechnical Evaluation:

Concord Engineering Services Incorporated (CESI) performed a geotechnical evaluation at the site at our request. Mr. Ed Cummings, PE and Mr. Harold Eaves met us on site on August 2, 2012. Their work included confirmation of the existing storm water line under the house, locating and documentation of the rear yard manhole, effects of soil settlement at the front stoop, and the soil investigation under the home. Their findings are documented in a report (Attachment #3: CESI Geotechnical Engineering Evaluation, Ray Residence, 330 College Ave, Rock Hill SC, dated August 8, 2012).

6. Engineering Summary and Opinions

Based on our site study and the accompanying geotechnical evaluation, evidence indicates that the residential dwelling is in an active state of structural settlement caused by an active public storm water terra cotta pipe buried directly below the home. The 24-inch diameter pipe system is confirmed there and soil conditions in the trench in which it was placed are affecting the foundation elements of the structure. Movement of piers and other foundation elements is causing floor distortion, wall and door distortion, roof frame separation, and settlement of steps, patios, and other functional features. These damages are active and appear progressive based on owner input and historical information back to 1985. The causes of structural damages must be addressed soon to limit the magnitude of damage and costs to repair and restore the dwelling.

The storm pipe under the house serves a significant surface area by current estimates. However, City information has not been available for confirmation of actual drainage system fixtures and the general watershed area. By a limited topographical study, we have estimated that the subject 24-inch pipe is handling flow from up to 14 acres to the South of the subject property. Regardless of the flow rate, the presence of a public storm water pipe under a private residence is unusual – preventing public access for maintenance and repairs. Videos of the pipe indeed show it is old with cracking and other concerns that it may be leaking (not confirmed by this study). If it is leaking now, or in the future, the risks are substantial that it will damage the private dwelling further, eventually leading to partial catastrophic failure if certain conditions develop.

Repairs and stabilization of the building foundation must be considered soon to limit damage. Temporarily, the pipe must be maintained to control risks of leaks and related damage. An epoxy lining should be considered. Ultimately, the line must be moved or re-routed and the effects on the house foundation must be remediated to restore the structural integrity and value of the property. If not, the value and function of the home may be jeopardized – including the risk of full loss of value.

Limited responses from the City of Rock Hill seem to suggest the pipe does not belong to the City (*Attachment #4; Letter – Spencer & Spencer, Mr. Paul Dillingham to Mr. Charles S. Bradford, dated May 18, 2012*). We cannot verify ownership of the pipeline, but there is no doubt that it is not a private drain system. Since the City maintains the streets and other utilities from which the subject storm water pipe originates (recent addition of catch basins near Strait Street by City confirm this), and since the discharge and management of the water in this system are managed by the City, then it appears certain that they have overlooked a buried, old storm water pipeline that pre-dates the construction of the house on this site (estimated to be 90 years old).

7. Recommendations

Options to remedy the problem include:

- A. Removal of home and foundation for adequate ROW for the pipe and to allow access and maintenance.
- B. Re-route the storm water pipe away from the property, abandoning the existing pipe and repairing the dwelling and foundation. At this stage, the magnitude of damage allows this option. As the pipe continues to degrade and if soil erosion in the underground trench is compromised, this option will become less feasible.
- C. Reline the pipe, maintain it as positioned, shore and repair the foundation and frame of the dwelling, and confirm the pipe capacity for further risk assessment regarding the home.

⇒ Option C is NOT recommended from a structural engineering view point. Risks remain for pipe failure despite any maintenance practices adapted. There may also be substantial legal concerns with a private structure located atop a public utility.

⇒ Option B is considered the most feasible and only option if the house remains over the current pipe section.

We recommend the following scope of repairs to re-route of the storm water pipe, cap and fill the abandoned pipe, and restore the structural integrity and function of the dwelling and foundation.

1. Excavation and cap of pipe at front and rear exterior of home footprint. Structural fill of the pipe cavity with slurry mix flowable fill.
2. Deep foundation shoring devices under house foundation walls and interior foundation piers along pipeline route, any elements within 10 feet of the trench zone. (* See alternative soil densification.)
3. Re-build foundation walls, piers, and front stoop as needed to restore function and integrity.
4. Jacking and levelling of main level floor system with reinforcement of frame girders affected by damages to date.
5. Repair and brace of roof frame, including installation of structural cross-ties and rafter tie-downs.
6. Interior repairs of plaster walls, millwork, trim, and flooring affected by structural damages to date.

The general conditions, cleaning, debris hauling, building permits, insurances, and construction management must be included. Engineering design of structural repairs will be required. A reasonable General Contractor's fee must also be included.

We have estimated the costs of this work as itemized in Attachment #5: MHLCE Cost Estimate – Structural Repair, Shoring, and Restoration of Ray Residence, 330 College Ave, Rock Hill, SC, dated August 21, 2012.

We estimate the costs to cap and fill the pipe, to shore and repair the house foundations, and to repair the house frame is \$ 147,711, including Contractor overhead and profit margins and a 2.5% contingency budget.

This scope and cost estimate is based on assumptions and conditions as follows:

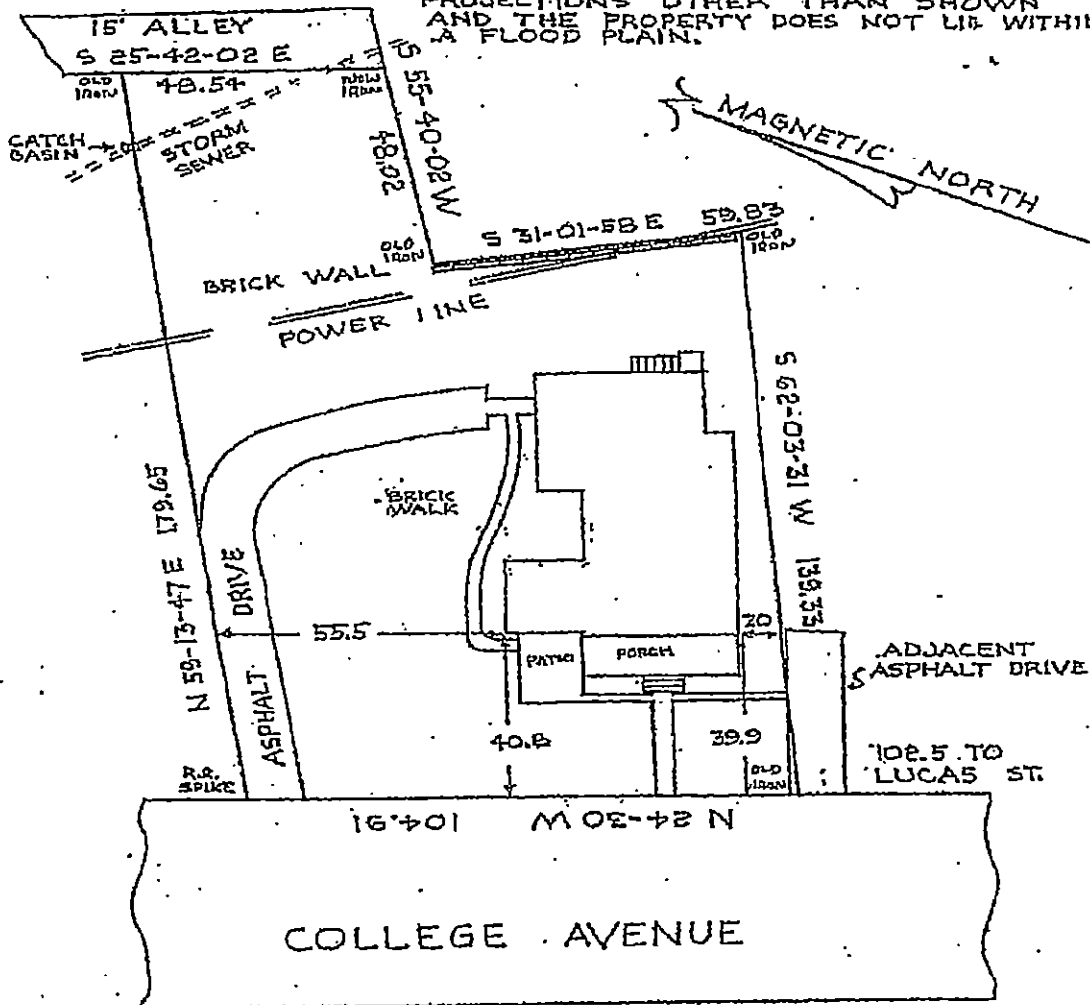
- ⇒ Repair work is based on status of damages as of August 2, 2012. Time may allow more damage and add to costs.
- ⇒ The cost for engineering includes structural repairs and pipe capping and fill on the subject property. No other part of the existing pipe or future pipe is included.
- ⇒ The pipe fill is only between the existing catch basin at the front and the existing buried manhole at the rear of 330 College Ave. The existing 24-inch diameter RCP that extends between the buried manhole behind the subject house and Lucas Street is not part of this cost estimate for capping and fill.
- ⇒ Existing storm water piping has been re-routed and completed prior to this scope.
- ⇒ Costs for temporary pipe repairs, linings, and/or provisions prior to this scope are not included.
- ⇒ Transportation and fuel costs are included based on rates in place at the time of the estimate.
- ⇒ Water and electricity are provided by the owner during construction work.
- ⇒ A landscape repair allowance is included (\$1200).

Attachment #1: W.C. White, RLS Survey of
330 College Ave, Rock Hill, SC

Dated May 23, 1985

THIS BEING SHOWN AS LOT 10 AND PART OF 11 & 12 IN
BLOCK 28 OF MAP OF PROPERTY OF ROCK HILL BUGGY
CO., MADE BY J.L. STACY AND DATED APRIL, 1924. RECORDED
IN PLAT BOOK 2, PAGE 200.

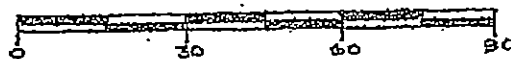
THIS IS TO CERTIFY THAT THIS IS A TRUE AND ACCURATE
SURVEY AND THAT THERE ARE NO ENCROACHMENTS OR
PROJECTIONS OTHER THAN SHOWN
AND THE PROPERTY DOES NOT LIE WITHIN
A FLOOD PLAIN.



MAP OF PROPERTY OF
LUCILLE RAY
330 COLLEGE AVENUE.
ROCK HILL, S.C.

MAY 23, 1985

SCALE 1" = 30'



W.C. WHITE R.L.S. #1037
ROCK HILL S.C.

RAY000469



August 8, 2012

Mr. Mike Leonard P.E.
M.H. Leonard Consulting Engineers, PA
447 South Sharon Amity Road
Suite 201
Charlotte, North Carolina 28211

Reference: Geotechnical Engineering Evaluation
Ray Residence
330 College Avenue
Rock Hill, South Carolina
CESI Project Number 120755.000

Mr. Leonard:

CESI has performed a geotechnical engineering evaluation of the storm drain under the Ray Residence in Rock Hill, South Carolina. We completed these services in accordance with your verbal authorization. This report summarizes our Findings, Conclusions and Recommendations.

FINDINGS

On August 2, 2012, CESI's Geotechnical Engineer, Edward S. Cummings III P.E., met Michael Leonard P.E. and Ms. Lucille Ray at her residence in Rock Hill, South Carolina. Ms. Ray indicated her observation of the settlement of the brick sidewalk and stairs at the front porch initiated the structural investigation of the house by Mike Leonard. The purpose of the meeting was to allow our Geotechnical Engineer to observe the storm drain under Ms. Ray's home and the resulting settlement problems as observed by Mr. Leonard and Ms. Ray. Ms. Ray said her residence is 90 years old and was purchased in 1985.

The following specific areas were observed:

- Storm drain catch basin in College Avenue;
- Storm drain manhole in rear yard;
- Loose brick piers in crawl space;
- Settlement of front brick sidewalk and stairs;
- Previous hardwood floor repair by former owner (pre 1985) in entrance foyer directly above and inline with the storm drain.

Facing the Ray Residence, a 24" terra cotta pipe was observed leaving the catch basin and heading toward the center of Ms. Ray's house. See photographs 6 and 7. A 36" terra cotta pipe enters the

catch basin from across College Avenue. An 18" reinforced concrete pipe enters the catch basin from the right. See Photograph 8. A video survey of the 24" terra cotta storm drain pipe was previously performed under Mike Leonard's direction. Mr. Leonard indicated the terra cotta pipe under the residence has cracks.

The geotechnical investigation began with removal of 2.5 feet of fill soil over the storm drain manhole lid in the rear yard. The lid was removed exposing the manhole. See Photographs 1 and 2 in the Appendix. A cracked 24" terra cotta pipe was observed entering the catch basin from the direction of the house. See Photographs 3 and 4. A 24" reinforced concrete pipe was observed leaving the catch basin to the east. See Photograph 5. A drain test was performed by Mike Leonard by placing water in the catch basin on College Avenue in front of the Ray Residence with a garden hose. See photographs 6 and 7. A few minutes later water was observed flowing through the storm drain manhole in the rear yard. See Photograph 4. Mike Leonard pointed out voids in the rear yard along the subject storm drain alignment.

Next, CESI's Geotechnical Engineer entered the crawlspace area to observe the brick piers supporting the wood framed floor system. The brick piers were tapped and observed for looseness between the top of the pier and the floor system. Piers "B", "C", "D", "E", "I", "J" and "K" (as noted in our Hand Auger Location Plan) are in contact with the floor system. The following piers have the observed conditions:

- Brick pier "A" is loose and appears to have been shimmed with a 2"x2" piece of wood at the interface with the floor joist system;
- Brick pier "F" is tilting toward the storm drain line. The pier has been shimmed with a 2"x2" wood shim at the interface with the floor joist system. The wood shim is under great stress. It was also noted that additional wood framing was installed to resist pier overturning;
- Brick piers "G" and "H" are loose and appear to be a retrofit. A 4"x6" wood beam has been placed on and spanning slightly past piers "G" and "H". The wood beam is also loose.

CESI's geotechnical engineer began the subsurface exploration by excavating adjacent to brick pier "A" to determine the footing bearing level and the storm drain location. No concrete footing was observed for the brick pier, however, a brick footing larger than the pier was present. Next, a hand auger boring, HA-1, along with dynamic cone penetrometer (DCP) testing was performed to determine the soil bearing conditions directly beneath the brick pier. The brick pier is bearing on red fine sandy silt (ML) residual soil at HA-1. Soil consistency as measured by DCP testing was stiff 2" below the bearing surface of the brick pier "A" and very stiff 14" below brick pier "A".

The dynamic cone penetrometer is a portable testing device used to estimate penetration resistance of the soil samples, as outlined in Sowers and Hedges paper "Dynamic Cone for Shallow In-Situ Penetration Testing". The device has a 1.5-inch diameter, 45-degree cone point with a surface area of 3.9 inches which is driven with a 15-pound steel weight on a guide rod. After the cone point was completely embedded at the test depth it was driven an additional 1³/₄ inches by the steel weight falling 20 inches onto a steel anvil. The number of hammer blows required to drive the cone the 1³/₄-inch increment was recorded as the "penetration resistance" in units of blows per increment. Penetration resistance, when properly evaluated, is an index to the soil's strength.

Hand auger boring HA-2 was located and performed approximately 22" from the centerline of brick pier "A" and 19'-3" from the right sidewalk of residence. This is also the location of the 24" terra cotta storm drain line coming from College Avenue. See Photograph 6. Soft fill soils were observed at 26"

and 48" below the bearing surface of the brick pier. The 24" terra cotta storm drain pipe was encountered at 58" below the bottom of the pier. See Photographs 9 and 10. Brick pier "A" is bearing on the transition zone between residual soils and the storm drain backfill soils. The pier appears to be settling as a result of the soft storm drain back fill soils.

The brick sidewalk and stairs at the front of the residence have settled. Horizontal measurements indicate that the settlement is directly above the storm drain line. See Photographs 11, 12, 13, 14 and 15. The front stairs have settled approximately 1-1/8". The stairs have horizontally displaced 1-1/2" by the consolidation of the storm drain backfill soils. Michael Leonard indicated that he observed in the attic separation in the front porch framing members. Ms. Ray understood the former owner had replaced the brick front stairs prior to 1985.

CONCLUSIONS

Based on our site observations and geotechnical findings, the 24" terra cotta storm drain pipe under the subject residence and the soft storm drain back fill soils have caused the following conditions:

- The settlement of brick pier "A";
- The settlement of brick pier "F";
- The settlement of the front brick sidewalk and stairs;
- Any wall or pier footing within 6 feet of the storm drain pipe is subject to long term settlement due to the consolidation of the underlying storm drain backfill soils.
- The cause of the looseness of the brick piers "G" and "H" at the 4"x6" wood beam interface cannot be explained at this time.

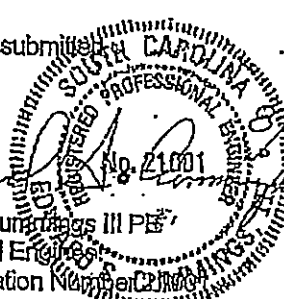
RECOMMENDATIONS

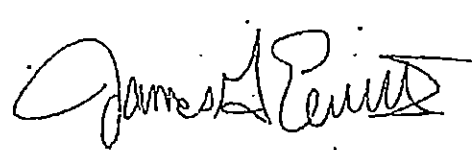
CESI recommends the following:

- Pier and wall footings within 10 feet of the storm drain should be underpinned to adequate bearing soils;
- The 24" terra cotta pipe should be lined underneath the subject residence.

Please contact us if you have any questions regarding this report or if we may be of further service.

Respectfully submitted,
CESI


Edward S. Cummings III, PE
Geotechnical Engineer
S.C. Registration Number 21001

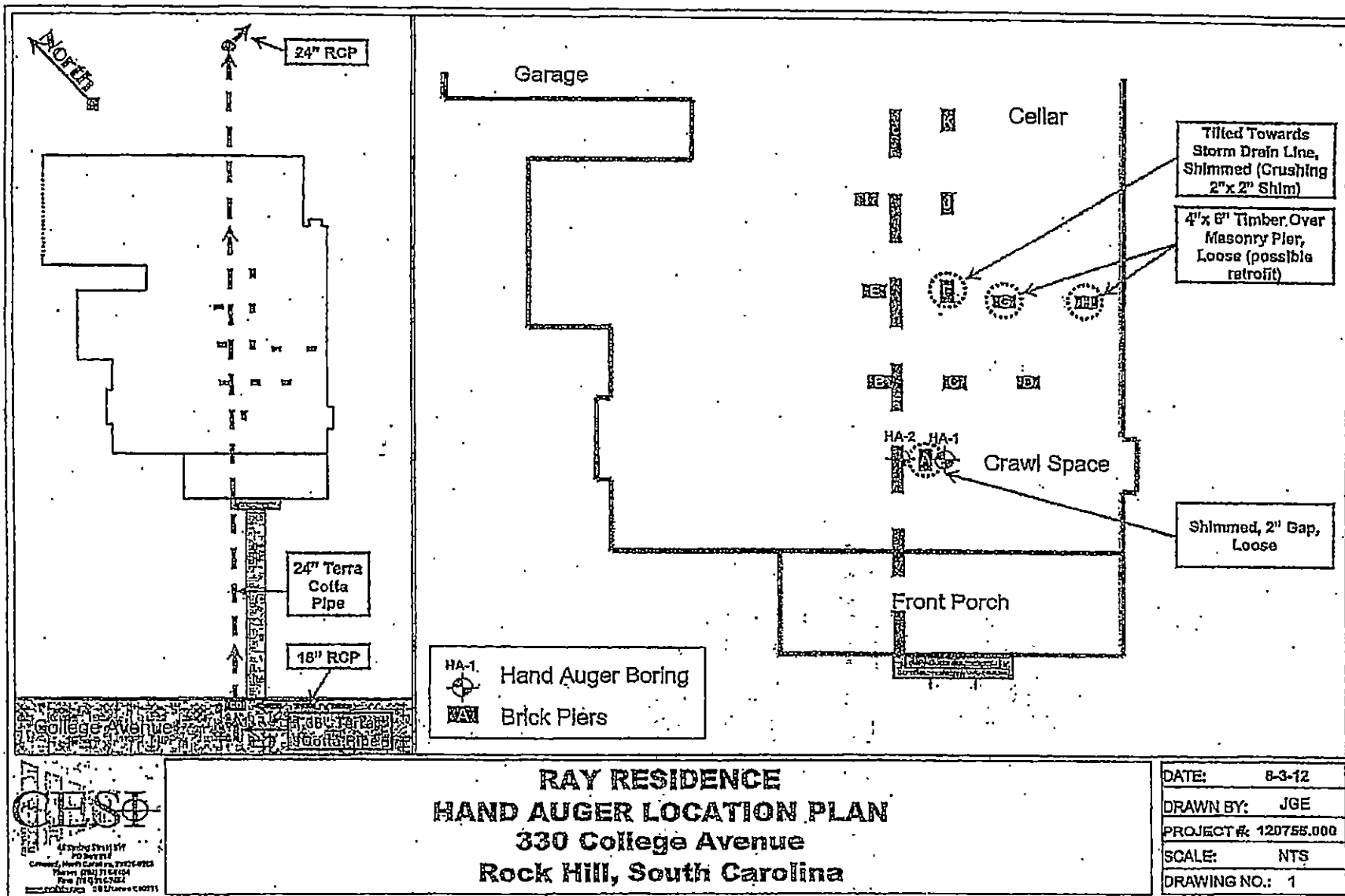

James G. Eaves III, PE
Division Manager
S.C. Registration Number 25576

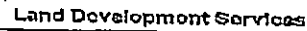
Enclosures: Hand Auger Location Plan
Log of Hand Auger Borings (HA-1, HA-2)
Site Photographs

Ray Residence, Geotechnical Evaluation, Rock Hill, South Carolina
CESI Project Number 120755.000

August 8, 2012
Page 3

RAY000472





Job No.: 120755.000

Street Address : 330 College Avenue

City : Rook Hill, South Carolina

CESI Engineer: Ed Cummings

LOG OF HAND AUGER BORING

Pneumometer Blows per 1.75"

[illegible]



Photo 1: Manhole in rear yard



Photo 2: Manhole in rear yard

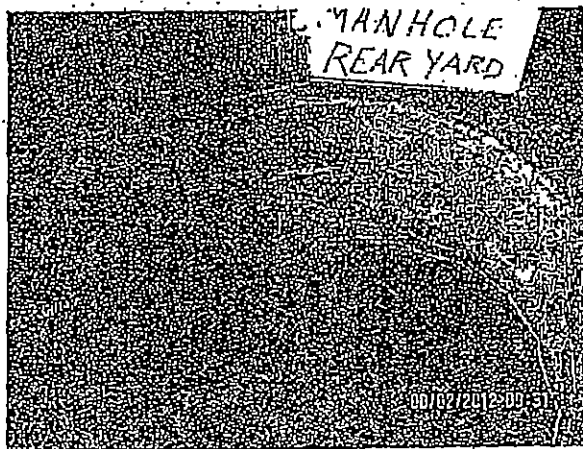


Photo 3: Manhole in rear yard

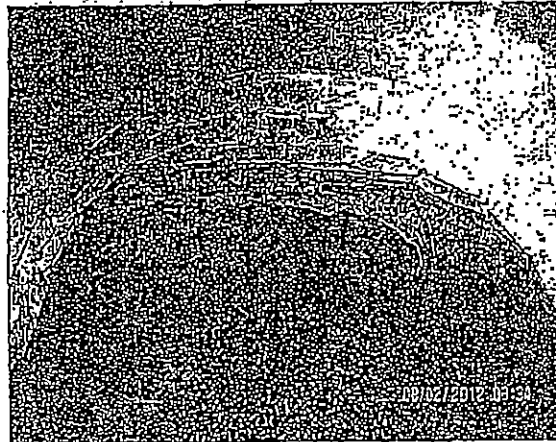


Photo 4: Manhole in rear yard



45 Spring Street SW
PO Box 268
Concord, North Carolina, 28028
Phone: (704) 788-5404
Fax: (704) 788-7454
<http://www.cesi-ida.com>

SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE:	08-06-12
PHOTOS BY:	ESC
PROJ. NO.:	120765.000
SCALE:	N/A
SHEET NO.:	1

RAY000475



Photo 5: Manhole in rear yard

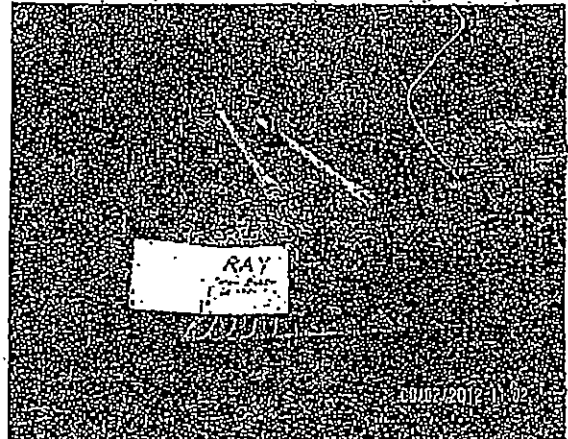


Photo 6: Catch basin at College Avenue

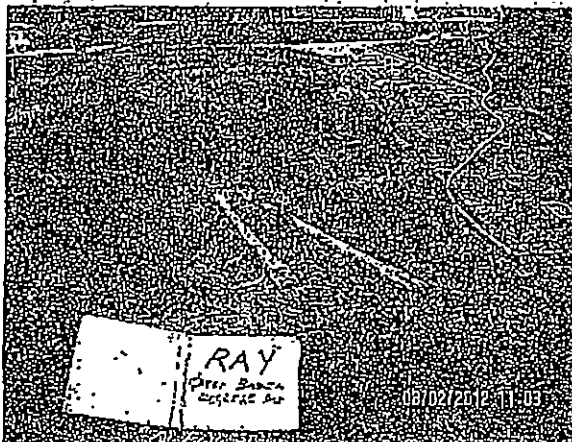


Photo 7: Catch basin at College Avenue

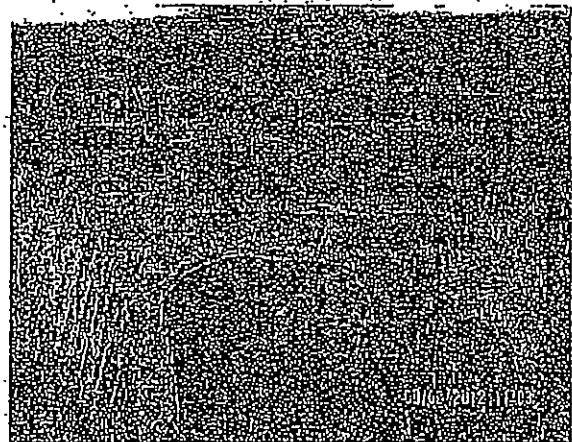


Photo 8: Catch basin at College Avenue

CESI

...exceeding our clients' expectations

45 Spring Street SW
PO Box 268
Corcoran, North Carolina, 28026
Phone: (704) 786-5404
Fax: (704) 788-7454
<http://www.cesi-nc.com>

SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE: 08-08-12

PHOTOS BY: ESC

PROJ. NO.: 120755.000

SCALE: N/A

SHEET NO.: 2

RAY000476

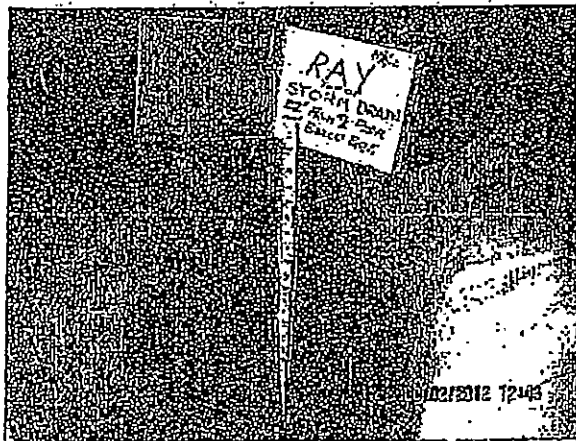


Photo 9: Hand auger HA-2 at brick pier 'A'



Photo 10: Hand auger HA-2 at brick pier 'A'

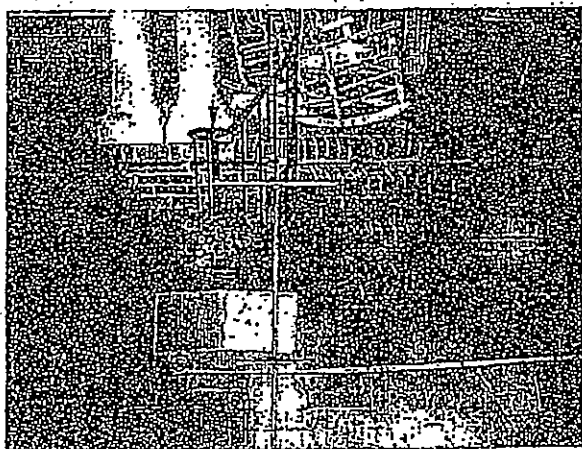


Photo 11: Front sidewalk and steps - Probe rod represents measured alignment of storm drain line.



Photo 12: Front sidewalk and steps



...exceeding our clients' expectations

45 Spring Street SW
PO Box 269
Concord, North Carolina, 28026
Phone: (704) 786-8404
Fax: (704) 786-7464
<http://www.cesids.com>

SITE PHOTOGRAPHS **RAY RESIDENCE** 330 College Avenue Rock Hill, South Carolina CESI SC License C-00591

DATE: 08-08-12

PHOTOS BY: ESC

PROJ. NO.: 120755.000

SCALE: N/A

SHEET NO.: 3

RAY000477

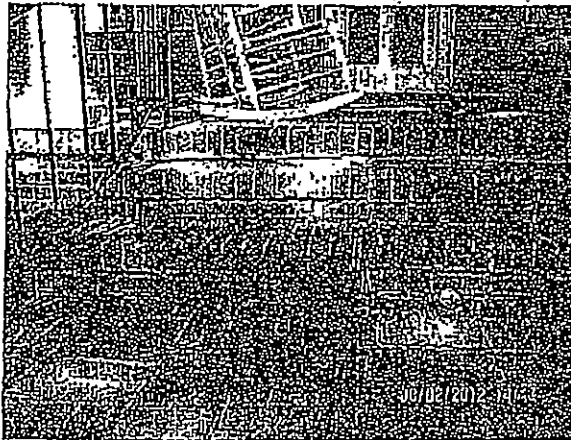


Photo 13: Front sidewalk and steps

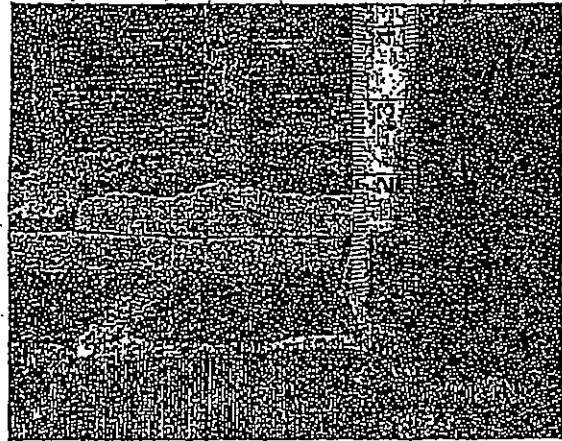


Photo 14: Settlement at front steps

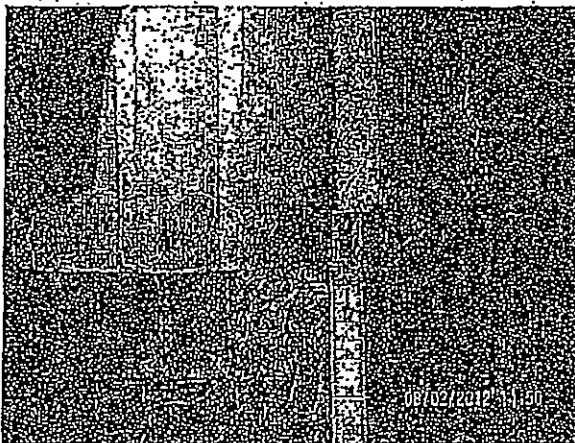


Photo 15: Horizontal movement at front steps

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...exceeding our client's expectations

45 Spring Street SW
PO Box 298
Concord, North Carolina, 28026
Phone: (704) 786-5404
Fax: (704) 786-7454
<http://www.cesiids.com>

SITE PHOTOGRAPHS
RAY RESIDENCE
330 College Avenue
Rock Hill, South Carolina
CESI SC License C-00591

DATE: 08-06-12

PHOTOS BY: ESC

PROJ. NO.: 120755.000

SCALE: N/A

SHEET NO.: 4

RAY000478

SPENCER & SPENCER

PROFESSIONAL ASSOCIATION

Attorneys and Counselors at Law

C.E. SPENCER (1849-1921)
C.W.E. SPENCER (1876-1956)
C.W.E. SPENCER, JR. (1911-1985)
W.C. SPENCER †
WILLIAM L. "RED" FERGUSON †
EMIL W. WALD †
PAUL W. DILLINGHAM
W. MARK WHITE*
W. CHAPLIN SPENCER, JR.*
R. ALEXANDER SULLIVAN*
R. BRENT THOMPSON*
JEREMY D. MELVILLE*

† Of Counsel
* Also admitted in NC

Attachment #4: Letter
Spencer & Spencer, Mr. Paul Dillingham to
Mr. Charles S. Bradford
Dated May 18, 2012

SUITE 200
225 EAST MAIN STREET
P.O. BOX 798
ROCK HILL, S.C. 29731-6790

Telephone
803-327-7191

Telecopier
803-327-3868

Email Address
paul@dillingham@spencerfirm.com

May 18, 2012

Charles S. Bradford
P. O. Box 977
York, SC 29745

RE: Lucille H. Ray
330 College Avenue ("Property")

Dear Charles:

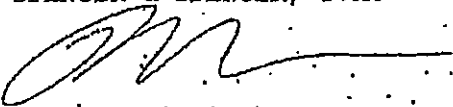
I represent the City of Rock Hill ("City"), which has forwarded your letter dated February 24, 2012, to me for a response.

Our firm has also completed a title search of the Property taking the chain back to the deed recorded June 18, 1920 from the Estate of W. E. Lucas to the Rock Hill Buggy Company to confirm the information in your letter. We did not find a right-of-way or easement in favor of the City for the stormwater line running across the Property. My understanding is that the City does not wish to accept this line as a City maintained utility. Do you have any evidence to suggest that the City owns this line?

Thank you for bringing this to my attention.

Sincerely,

SPENCER & SPENCER, P.A.


Paul W. Dillingham

100101.1

RAY000479

 M.H. LEONARD CONSULTING ENGINEERS, P.A. INSPECTION • DESIGN • INVESTIGATION		MHLCE COST ESTIMATE - STRUCTURAL REPAIR, SHORING, AND RESTORATION MS. LUCILLE RAY RESIDENCE, 330 COLLEGE AVE, ROCK HILL, SC 24-Aug-12 MHLCE Project # 12E9555.F Michael H. Leonard, PE					
Section/Item	Scope	Units	Cost	Unit Cost	Extension	Cumulative	Total
Section 1	Abandon, Cap Existing 24-inch Pipe						
a	Survey, locate pipe on site				650		
b	Demolition and Excavation				3170		
	Removal front sidewalk at curb, to front stoop, front steps			1350			
	OSHA bpx, staging			1620			
c	Cap pipe				3300		
	Bulkheads (2), structural reinforcement	4	650	2600			
	Downhill vent	1	700	700			
d	Sturry fill - 2 stages 130 lf, 24 in dia	21	420	8820	10320		
	pumping, vibration	2	750	1500			
e	Sidewalk Replacement 200 sf	220	7	1540	1540		
f	Grade, drainage repairs front, rear yards			840	640		
g	Landscape repairs allowance			1200	1200		
						20820	
Section 2	Foundation Shoring						
a	Interior foundation piers 8 each in zone				12280		
	footings	8	185	1480			
	helical piles	8	1350	10800			
b	Front Foundation Wall 14 lf in zone				4752		
	footings	14	18	252			
	helical piles	3	1500	4500			
c	Front Stoop Walls, Steps 14+8+8 lf				7725		
	footings	3	175	525			
	helical piles	8	1200	7200			
d	Cellar Foundation Wall 14 lf				4500		
	footings	extg					
	helical piles	3	1500	4500			
e	Rear Foundation Wall 14 lf				3600		
	footings	extg					
	helical piles	3	1200	3600			
						32057	
Section 3	Re-build Foundations, Piers						
a	Front Steps 65 lf				875		
b	4 Interior Piers 4 ea	4	335	1340	1340		
c	Cumulative Foundation Voids misc			700	700		
						3015	
Section 4	Main Floor-Framing Repairs, Leveling						
a	Level level study				1350		
b	Crib, bracing, jacks				850		
c	Leveling and bracing				840		
d	Reinforcement ml	240	8	35	520		
e	6 new piers			450	2700		
						6260	

Attachment #5: MHLCE Cost Estimate -
Structural Repair, Shoring, and Restoration
of Ray Residence
330 College Ave, Rock Hill, SC
Dated August 21, 2012

Section 5 Roof Frame Repairs							
a Ridge Bracing, Joining	ml	450	12	35	870		
b Rafter Cross-ties	ml	200	.8	35	410		
c Rafter Tie-downs	ml	780	15	35	1305		
d Shingle damage/repairs	12 sq		12	180	2160		
e Venting, repairs	no lf		80	12	1080		
						5825	
Section 6 Interior Restoration							
a Door, C/O repairs	8 units	24	45		1080		
b Millwork removal, reset ref. floor leveling	240 lf	18	45		810		
c Wall, ceiling repairs - plaster, GWB		80	30		3040		
d Hardware adjustments	12 units	18	45		810		
e Painting, cleaning		72	20		2016		
f Floor finishes	1850 sf	1850	4.75		8780		
g Final Cleaning		3200	1.15		3680		
h Trim Mtl					950		
						21174	
Section 7 General Conditions							
a Design, Drawings - engineering	24 hr S/E	24	160		3840		
b Building Permits					400		
c Sanitary Facilities		3	150		450		
d Debris - hauling, disposal	loads	4	350		1400		
e Transportation	10 weeks	10	180		1800		
f Tools & Equipment		10	120		1200		
g Communication		3	65		195		
h Site Supervision	12 wk, 30	450	30		16416		
i General Labor	10 weeks	0	25		200		
						25901	
SUBTOTAL							115862
CONTRACTORS FEES							
GENERAL OVERHEAD						15%	17378
PROFIT						10%	11586
CONTINGENCY						3%	2896
TOTAL COST ESTIMATE							147711

To: Lucille Ray
Charles Bradford
From: Mike Leonard, PE – M.H. Leonard Consulting Engineers, PA
Subject: Lucille Ray Residence – Storm Water System and Structural Damages
330 College Ave, Rock Hill, SC
MHLCE Project # 12E9555.F
Date: November 30, 2012

This will confirm recent discussions and a site visit on November 29 with Ms. Ray regarding ongoing sanitary sewer work on College Avenue and Strait Street, being done by the City of Rock Hill.

We are concerned with an increase in risks to the structural integrity of Ms. Ray's home based on developments during that work and visible indicators now on site.

Our previous field observations and review of camera inspection DVDs obtained from the City show the pipes on her property are damaged. (See previous MHLCE Report # 12E9555.F, dated September 5, 2012.) During the sanitary sewer pipe work in front of her home on College Avenue, she took photos of this same storm-water pipe while exposed for repairs. The City has needed to replace storm water piping on Strait Street and College Ave because of damages to the line. We believe that the same pipe under her home is damaged and slowly reaching a point of failure with risk of substantial structural damage. *Furthermore, by repairing/replacing storm-water pipes in the same line along Strait Street and upstream of the pipe under her home, the increased flow in the system will increase risks of progressive pipe damage and eventually could lead to additional structural damages.*

The most substantial risk of all to her home is the loss or erosion of soil around the existing underground storm water pipe, which would lead to consolidation of uncontrolled magnitude, possibly creating a sink hole directly under her foundation bearing elements. We are already concerned with the potential for voids there and we have confirmed soil-bearing problems during geotechnical assessments. *On November 29, 2012, we measured the front step settlement and found that it had progressed 5/8 to 1/2 inch more than found in August. Interior stress cracks along the walls and ceilings are also appearing – in line with the known underground storm-water pipe below her dwelling.* Shrinkage cracks in a wood-framed home tend to increase during the heating season, but these are beyond normal frame shrinkage.

We talked to the General Contractor hired to re-work the sanitary sewer line for the City. He indicated that numerous lines had been found during this work, with undocumented locations and damages. They also have verified that another storm water line extends down and under the dwelling at 340 College Ave (also owned by Ms. Ray).

We observed photographs taken by Ms. Ray during the ongoing sanitary sewer line project. The drop-inlet in front of Ms. Ray's home (330 College Ave) is fed from multiple storm-water pipes. The one utility map we have obtained of this area (provided by Ms. Ray) shows a single pipe adjoining this point, from the line that extends along Strait Street. Furthermore, because the old pipelines are typically clay, the new concrete (RCP) pipes being used to repair the lines do not fit the clay pipe radii. They have been 'fitted' by pouring concrete around the junctures to 'seal' the fits. In our experience, *this is not a water-tight fit, leaving increased risk of line seepage, erosion, and damages downstream of the fit – under Ms. Ray's home.*

Based on our original study and report, and with these new developments, we request access to specific information from the City as follows:

1. Storm water system map of the existing pipe systems, manholes, and junctures currently in place regarding the system that services the public right-of-way around Ms. Ray's property at 330 College Ave. Our previous requests for this information were not granted as documented in previous reports.
2. Storm water and hydrology studies of the same areas of Item 1.
3. Hydraulic profiles of the storm water pipe system in the areas of Item 1.
4. Street maintenance and repair records of Strait Street, College Ave, and any other right-of-way areas above this specific storm water system piping loop – within the last 10 years.



5. Storm water system maintenance records regarding the same loop of Items 1 and 4.
6. For similar reasons, we request the same information for existing storm water systems and public right-of-ways for the system that crosses the rear quadrant of 340 College Ave where there is visible damage to the catch basin and piping exposed in the private yard area of that property.

Please call if needed to clarify these latest concerns.

Sincerely,
M.H. Leonard Consulting Engineers, PA



Michael H. Leonard, PE
Principal Engineer
Project Manager - Ray Investigation

From: "Datko, Sue G." <sgd@spencerfirm.com>
Subject: FW: Stormwater data...
Date: May 15, 2012 2:10:17 PM EDT
To: <lhooper@comporium.net>
Cc: "Dillingham, Paul W." <pauldillingham@spencerfirm.com>
1 Attachment, 5.0 MB.

Attached is GIS stormwater map sent to the engineer last week

Sue Datko
Spencer & Spencer, P.A.
226 East Main Street, Suite 220
P. O. Box 780
Rock Hill, SC 29731
suedatko@spencerfirm.com
803-327-7191 (Telephone)
803-327-7464 (Fax)

This e-mail message has been scanned for Viruses and Content and cleared by NetScout Mailbox: slm

Partial Stormwater - College Ave.



LEGEND
[Symbol] Inlet
[Symbol] Junction Box
[Symbol] End Treatment
[Symbol] Drainage
[Symbol] Creek

1" = 100' Feet



OVERVIEW MAP



-919-

LEGEND

- Inlet
- ⊗ JunctionBox
- ⊙ EndTreatment
- ~ Drainage
- ~ creeks

1 inch = 67 feet

Feet



MAP INFORMATION

Map Date: 09:07:50 AM on Thursday, May 10, 2012

Map Name: COLLEGE.LDD

This map was created by the City of Rock Hill Stormwater

THE CITY OF ROCK HILL, THE COUNTY OF YORK, SC, AND ITS EMPLOYEES/CONTRACTORS DO NOT WARRANT THE ACCURACY OF THE DISPLAYED INFORMATION AND SPECIFICALLY DISCLAIM ANY LIABILITY FOR ANY INACCURACIES IN THIS MAP.



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FACSIMILE 803-834-4488
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DANIEL H. HATCHWAY

4 EAST LIBERTY STREET
YORK, SOUTH CAROLINA 29748

Paul W. Dillingham, Esquire
Spencer and Spencer
P.O. Box 790
Rock Hill, SC 29731-6790

**VIA FIRST CLASS MAIL
& VIA EMAIL**

Re: Lucille Ray/330 College Avenue, Rock Hill, SC

Dear Paul:

I am drafting this letter on Monday, November 12, I have just spoken to my client Lucille Ray. As you know, the City is doing some major sewer and storm water work in the College Avenue area.

Ms. Ray advises me that three large pipes, which she estimates to be 36" in diameter have been exposed and severely damaged by the work going on College Avenue. One of the pipes is on Strait Street, and runs down the hill into College Avenue in front of Ms. Ray's house. The other two come from each direction on College Avenue. She says that these three large pipes have all been broken, and it appears that the City is most likely going to replace these damaged or broken pipes. All three of these pipes were depositing water which enters into the 24' storm drain pipe which goes directly under Ms. Ray's house, and which is the subject of the recent lawsuit we have filed against the City.

On behalf of the City, please be advised that Ms. Ray does not consent to allowing any replacement pipes to be connected so as to deposit water into the 24" storm water pipe running underneath her house. Since the City does not claim to own the pipe, the City needs my client's permission or a right-of-way to connect these pipes to the pipe going under her house for purposes of future water discharges.

Please advise the City Utility Department not to connect any new pipes or replacement pipes to the pipe going under my client's house. I have advised my client to deny them permission to connect the new pipes to the pipe running underneath her house, and we will consider any such efforts to connect those pipes to be in violation of my client's rights. I will further advise my client

52270011A BECSB FILE 1112103070g Lp0104411g hms letter 3.1wpd

EXHIBIT

5

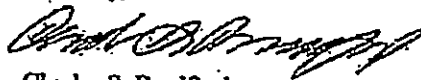
LUCILLE RAY00120

Paul W. Dillingham, Esquire
Page Two
November 13, 2012

regarding obtaining a temporary restraining order if the City makes any efforts to rebuild those pipes,
and to connect them to the system which
deposits water which goes into the pipe that runs under my client's house.

If you have any questions, or if you would like to discuss this situation further, do not hesitate
to contact me.

Sincerely,



Charles S. Bradford

CSB/bgb
CC: Lucille Ray

33A77ASHAREC87LEB11KSC87L-2012-11-13-14:04