

TOWN OF MIDLAND BOARD OF ADJUSTMENT
 4293-B Highway 24/27E
 Midland, North Carolina 28107

RE: TUCKER CHASE SUBDIVISION,
 APPEAL HEARING
 Petitioner.

On Tuesday, February 28, 2017
 Beginning at 7:00 p.m.

Commissioners: Darrell Page, Chair
 Steve Clark
 Pam Carter
 Pam Barger
 Michael Aldridge

For the Board: Robert B. Blythe, Esq.
 5925 Carnegie Blvd., Suite 200
 Charlotte, North Carolina 28209

Planning and Zoning Clerk: Hilda Keeney

For the Petitioner: John F. Scarbrough Esq.
 James E. Scarbrough, Esq.
 Scarbrough & Scarbrough, PLLC
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 Concord, North Carolina 28025

For the Town of Midland: Anthony Fox, Esq.
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 Charlotte, North Carolina 28202

Reported by: Sally W. Lowrance, CVR-M

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PROCEEDINGS

(at 7:00 p.m.)

MR. PAGE: We are going to reconvene the Board of Adjustments for the appeal hearing on January 24, 2017. Does any member of the Board have a conflict of interest and an opinion on the case at hand that's not susceptible to change or any relevant evidence or ex parte conversation that needs to be shared at this time?

MS. BARGER: Mr. Chair, I do have a text from December that was -- could possibly be construed as ex parte. Do you want the details on that?

MR. PAGE: Yeah, general details, please.

MS. BARGER: I had sent a text to Mr. Flow asking him a question about grandfathering, which was because of a conversation that I had with Councilman Wise about Bethel Glen and the Saddlebrook subdivision and the opening of streets. And I got a very nice reply, very good answer, but as I read down in the text, there was mention of Tucker Chase. At that point I closed it and have not looked at it since, and so I wanted to disclose that that had occurred.

MR. PAGE: So there's nothing you've read in your text message related to this specific case?

MS. BARGER: No. No, there is not. If we need to do anything else, I have it, and I am willing to let

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Re: Tucker Chase (2/28/17)

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everyone see it.

MR. PAGE: Mr. Fox or Mr. Scarbrough, do you have any objections?

MR. FOX: I have no objections.

MR. PAGE: Mr. Scarbrough?

MR. JAMES SCARBROUGH: Just a second.
 (A discussion was held off the record.)

MR. JAMES SCARBROUGH: No, no objections. Nobody lives in Tucker Chase that's on the Board?

MS. BARGER: No, sir.

MR. PAGE: No, sir. They were -- they recused themselves earlier.

MR. JAMES SCARBROUGH: Okay, thank you.

MR. PAGE: Based on that, can I have a motion to either keep or remove Pam from the Board? I don't think there's any evidence there that's related to this case, but can I have a motion just to be within the law?

MS. CARTER: I make a motion that we keep Pam.

MR. PAGE: Do I have a second?

MR. ALDRIDGE: Second.

MR. PAGE: All in favor?

THE BOARD: Aye.

MR. PAGE: Anybody opposed?
 (No response by the Board.)

MR. PAGE: Thank you. Okay, we will now move on. Mr. Fox,

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1 I believe you had witnesses' testimony when the recorder
 2 quit again?
 3 MR. FOX: Yes, and let me tell you where it quit. It quit
 4 at the end of Kassie's cross-examination by
 5 Mr. Scarbrough. It looks like she had gotten through
 6 most of it. However, there is one element of her
 7 testimony that Mr. Scarbrough would like to reserve and
 8 make a part of the record, and by stipulations we would
 9 agree with the statement that he would like to enter
 10 into the record.
 11 MR. JAMES SCARBROUGH: Yes, sir. This is the stipulation
 12 with -- between the parties would be that Kassie Watts
 13 testified that all the violations are charged against
 14 Tucker Chase, LLC only and not against Harry Grimmer
 15 individually. And if you recall during the testimony,
 16 the Chair stopped when she said that and asked Mr. Fox
 17 did he understand that, and he said yes, that's her
 18 testimony.
 19 MR. PAGE: Do you agree with that, Mr. Fox?
 20 MR. FOX: Yes, so we would just ask that the record reflect
 21 that entry as part of the testimony of Kassie in the
 22 record. One other point, I'd like to add Exhibit Number
 23 28 to the Town's exhibit book and only that it is a
 24 certification from the town clerk of Midland, that the
 25 attached exhibits are official records of the Town of

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1 Midland and the original documents are on file with the
 2 Town. And I know there are some question about the
 3 originality of these records. I just wanted to, for the
 4 record, clarify that. And I will submit that as Exhibit
 5 Number 28.
 6 MR. JAMES SCARBROUGH: And I've seen that, and I don't have
 7 any objection.
 8 MR. PAGE: Okay, thank you, Mr. Scarbrough.
 9 MR. FOX: And therefore, where we are now, based upon that
 10 stipulation, is we do not need to recall Kassie at this
 11 point, but we do need to start anew with my only other
 12 witness. And I'd like to, at this point, call the Town
 13 engineer, Richard McMillan, as a witness for the Town.
 14 MR. PAGE: All right. Mr. McMillan, you realize you are
 15 still under oath?
 16 MR. McMILLAN: Yes, sir, always.
 17 (Richard McMillan takes the stand.)
 18 DIRECT EXAMINATION BY MR. FOX
 19 Q. Richard, before you is the exhibit book for the Town,
 20 and I'd ask that you turn to Exhibit Number 25, and
 21 we'll talk about that later. But just tell the Board --
 22 give to the Board your name and where you're employed.
 23 **A. Good evening, Board. My name is Richard McMillan. I am**
 24 **employed with the Wooten Company as the Town engineer**
 25 **with the Town of Midland.**

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1 Q. And how long have you held that position?
 2 **A. Roughly, about six months.**
 3 Q. Tell the Board briefly any previous roles that you've
 4 held prior to joining the Town as the Town engineer.
 5 **A. Previously I've held about 28 years -- 29 years of**
 6 **public service, most recent being the assistant director**
 7 **in Union County of public works over water and sewer;**
 8 **prior to that, eight years with -- as assistant director**
 9 **in the City of High Point over public works; prior to**
 10 **that, a short stint with the City of Marion as public**
 11 **works director; prior to that, engineering director for**
 12 **the Town of Mooresville; prior to that, chief engineer**
 13 **with Charlotte-Mecklenburg Utilities over the wastewater**
 14 **collection system; prior to that, chief engineer over**
 15 **water and sewer in Forsyth and Winston-Salem; prior to**
 16 **that, chief engineer over construction, water and sewer,**
 17 **roadway, all work done by the City, with the City of**
 18 **Winston-Salem.**
 19 Q. And you mentioned several cities and towns and local
 20 government, and in those roles, did those roles include
 21 any planning and subdivision administration and
 22 enforcement?
 23 **A. Yes, sir, with the construction early on with the City**
 24 **of Winston-Salem, and well, I guess also with a lot of**
 25 **divisions. In water and sewer I had to deal in**

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1 **Winston-Salem with developers with some of their needs;**
 2 **with the City of Charlotte a lot of development issues**
 3 **in relating to water and sewer; Mooresville, as director**
 4 **of engineering, overseeing plan, plan reviews,**
 5 **implementation, inspection, construction, and so forth.**
 6 Q. Okay. Give the Board a little background into your
 7 educational training.
 8 **A. Okay, went to NC State, graduated with a bachelor of**
 9 **science in civil engineering; passed the engineering**
 10 **exam training, national exam; worked four years as an**
 11 **intern; passed the North Carolina Board of Examiners**
 12 **exam for professional engineer in 1992; since that time**
 13 **have taken numerous, numerous, numerous courses in**
 14 **professional management, technical aspects of**
 15 **construction, design, numerous workshops, conferences**
 16 **and so forth over the years.**
 17 Q. Any professional certifications?
 18 **A. Yes, sir, a professional engineer with the State of**
 19 **North Carolina.**
 20 Q. Describe now your current role as the Town engineer for
 21 the Town of Midland.
 22 **A. Currently as Town engineer I oversee all the technical**
 23 **aspects of the Town, which include subdivision review,**
 24 **plan review, implementation out in the field, review of**
 25 **construction, drainage issues, basically work as the**

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1 **Town's technical arm.**
 2 Q. And as part of your current role, are you tasked with
 3 enforcing and administering the Town's MDO?
 4 **A. Yes, sir, I am.**
 5 Q. Now, a little bit about the Midland Development
 6 Ordinance, if you can turn to tab 1, page 1. Tell the
 7 Board, is that the Town's MDO or part of the Town's
 8 development ordinance under tab 1?
 9 **A. You said tab 1, what page?**
 10 Q. Just behind tab 1, the second page in?
 11 **A. Yes, sir, it appears to be a part of it, a portion.**
 12 Q. And tell this Board what an MDO is.
 13 **A. From -- I guess it helps decide how development is going**
 14 **to take place, what steps have to take in order for it**
 15 **to take place. There is a whole lot from very early on**
 16 **through the end of construction about how it's supposed**
 17 **to happen.**
 18 Q. Okay.
 19 (A discussion was held off the record.)
 20 Q. Tell me about -- you mentioned that you're a licensed
 21 engineer. Describe the training that you've undertaken
 22 as an engineer.
 23 **A. A lot of it. When you're in school there's a lot of**
 24 **theoretics and design principles, practices, how to**
 25 **design things. Once you leave school, that's really**

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1 **where your learning begins at that point. You learn**
 2 **then how to put those practices into play, how to design**
 3 **things properly. You learn a lot about construction at**
 4 **that point, how it all fits together then. So over the**
 5 **years, I guess my background is a little different than**
 6 **a lot of design engineers, the fact that I've had**
 7 **design, but I've also had an immense amount of**
 8 **construction and then a large amount of operations**
 9 **beyond that. So in my background I've seen things from**
 10 **multiple points of view in the life of a project.**
 11 Q. And Mr. McMillan, tell the Board what kind of exposure
 12 you've had and knowledge you've gained with regards to
 13 street and street construction.
 14 **A. Early on I built a lot of streets, miles and miles and**
 15 **miles of streets, subdivision streets, road widenings,**
 16 **bridges, culverts, large culverts, divided boulevards, a**
 17 **lot of different construction practices. On the**
 18 **maintenance end of it, seeing a lot of problems -- at**
 19 **least what causes problems -- even as a construction**
 20 **engineer, you go back years later and look at streets**
 21 **that you built: Are they still in good shape; are they**
 22 **holding up; if there was a failure, what possibly caused**
 23 **the failure. You go back and look at a lot of things to**
 24 **analyze how to make your work better.**
 25 Q. And does your training and knowledge of streets include

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1 determining compliance with certain requirements and
 2 standards with regard to street construction?
 3 **A. Yes, sir.**
 4 Q. What requirements and standards do you look at when you
 5 determine whether or not a street is being maintained or
 6 constructed according to standards?
 7 **A. All right, let's separate construction and maintenance.**
 8 **The construction aspect, a lot of that is dictated by**
 9 **the standards and specifications of the municipality or**
 10 **the agency you're with. If they don't have very strict**
 11 **or very detailed -- a lot of times they refer back to**
 12 **NCDOT standards. Construction standards, compaction**
 13 **standards, material standards, all of that come into**
 14 **play at that point.**
 15 **On the maintenance side you look at potholes, base**
 16 **failures. You look at is the street performing the way**
 17 **it should be performing; are there issues with the**
 18 **maintenance that's going to cause other problems down**
 19 **the road; are there safety issues. A lot of times, most**
 20 **cities, you have a 24- to 48-hour pothole rule, and once**
 21 **a pothole's called in, you have 24 to 48 hours to get it**
 22 **filled in.**
 23 Q. And have you had occasion to look at street construction
 24 or maintenance with regards to NCDOT standards and the
 25 Town standards?

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1 **A. With the Town of Midland?**
 2 Q. Yes.
 3 **A. Yes.**
 4 Q. And are you familiar with the requirements and standards
 5 of the NCDOT as they relate to street construction?
 6 **A. Yes, sir.**
 7 Q. Tell the Board a little bit more about your experience
 8 in determining whether or not a street is built to NCDOT
 9 standards.
 10 **A. Okay. A lot of it boils down to materials, what type of**
 11 **materials are you using, have they been certified by the**
 12 **State. The State is very detailed in the way they want**
 13 **things done, and there's no need for a lot of cities and**
 14 **municipalities to try to duplicate that effort when it's**
 15 **already been done for them. So that's why so many**
 16 **people refer back to DOT. Not only do they specify**
 17 **materials, they specify how it should be done, what**
 18 **standards it should be done to. For example, if you**
 19 **have a utility cut if you're laying a storm drain,**
 20 **they'll tell you 95 percent compaction up to the last**
 21 **foot. The last foot's 100 percent. Subgrade, curbing,**
 22 **gutter, they'll tell you what type of curb -- what type**
 23 **of concrete to use, how it's to be done, if you pour it**
 24 **with a extruder, a curb machine, or if you do it by**
 25 **hand. There's -- anything you can think of, they tell**

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1 **you how to do it in their books.**
 2 Q. Now, you talked earlier about the number of
 3 municipalities you've worked for and the various roles
 4 you've had. How many streets have you reviewed to
 5 determine whether or not streets have been built to
 6 NCDOT standards in that period of time?
 7 **A. Anthony, I'll be honest with you. I don't know if I can**
 8 **give you a number. Miles and miles and miles and miles**
 9 **of streets.**
 10 Q. More than one more than two?
 11 **A. I'd say you're probably talking more, four or five**
 12 **hundred.**
 13 Q. Now, I pointed you earlier to tab 25, and what is tab
 14 25?
 15 **A. That is my resume.**
 16 Q. And does that resume fairly and accurately describe your
 17 work experience, education, and qualifications?
 18 **A. Yes, it does.**
 19 MR. FOX: At this point I'd like to
 20 tender Mr. McMillan as an expert in the field of
 21 civil engineering, including road construction and
 22 street maintenance.
 23 MR. PAGE: Agreed.
 24 Q. Let's talk a little bit about Tucker Chase subdivision.
 25 Are you familiar with the Tucker Chase subdivision?

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1 **A. Yes, sir, I am.**
 2 Q. How did you become familiar with Tucker Chase?
 3 **A. When I first started work here with the Town, the first**
 4 **day, the previous Town engineer, Chad Easter, the one**
 5 **day we spent together, we talked about a number of**
 6 **things here in the office, then went out in the field.**
 7 **Tucker Chase was one of the first developments he took**
 8 **me to to talk about the issues with the roadway and what**
 9 **the Town had been dealing with in trying to get the**
 10 **roads up to repair.**
 11 Q. Have you had a chance to review any files of the Town of
 12 Midland as it relates to Tucker Chase?
 13 **A. Yes, sir, I have.**
 14 Q. Did that help you also in your familiarity with the
 15 Tucker Chase subdivision?
 16 **A. Yes, sir, it did.**
 17 Q. Now, you mentioned that you personally visited the
 18 Tucker Chase subdivision.
 19 **A. Yes, sir.**
 20 Q. When did you make that visit?
 21 **A. The first day back in July but numerous days since that**
 22 **time.**
 23 Q. Did you happen to visit the Tucker Chase subdivision in
 24 November of 2016?
 25 **A. Yes, sir, I did.**

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1 Q. I ask you to turn to Exhibit Number 26 and tell me if
 2 you recognize Exhibit Number 26.
 3 **A. Yes, sir.**
 4 Q. What is Exhibit Number 26?
 5 **A. This is a fairly simple exhibit that I put together with**
 6 **some photos of the development and some of the issues in**
 7 **the streets. It is by no means identification of every**
 8 **problem in the development, but it's more of a -- just**
 9 **here are samples of the type of things that are going on**
 10 **in the neighborhood.**
 11 Q. And this document was prepared by you, is that correct?
 12 **A. Yes, sir, that is correct.**
 13 Q. And how did you go about preparing the document?
 14 **A. I basically went out in the field, took photos of**
 15 **various types of repairs or issues with the road that we**
 16 **observed, pulled the maps as they were platted and kind**
 17 **of just made reference of this map here and the type of**
 18 **things we saw, this map, these roads here, the type of**
 19 **things we observed.**
 20 Q. And were the pictures that are a part of Exhibit Number
 21 26 taken on or about the time that you prepared this
 22 report in November of 2016?
 23 **A. Yes, sir. All these photos were taken November 29th of**
 24 **2016.**
 25 Q. Now, the first page, tell the Board what the first page

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1 of Exhibit Number 26 represents.
 2 **A. Are you talking about the one with the overall aerial?**
 3 Q. Yes.
 4 **A. Okay. That's just an overall aerial from Google just**
 5 **showing the roughway out of the neighborhood. The map**
 6 **on the bottom is what is referred to as Map 1 in the**
 7 **development.**
 8 Q. And at the top you do reference that not every defect is
 9 shown in this plan, is that correct?
 10 **A. Yes. Yes, sir, that is correct.**
 11 Q. Now, turning to the second page, page 171 in our exhibit
 12 book, you have two photos of Tucker Chase Drive. And
 13 could you tell the Board what those conditions are that
 14 you have included in this report?
 15 **A. Okay, the upper picture right there is just showing a**
 16 **tangential crack in the middle of the pavement that is**
 17 **opened up now. It's -- you've got a joint failure,**
 18 **you've got some potholes that have popped up, and a**
 19 **little bit of base failure that's occurring around in**
 20 **that area. The bottom photo is an area of base failure,**
 21 **and if you look at it, I know it's a little grainy, but**
 22 **you can see the alligator cracking in the payment beside**
 23 **the curb right there.**
 24 Q. Okay. Are these conditions that you find in the
 25 subdivision streets that you typically review?

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1 **A. In Tucker Chase or in general?**
 2 Q. In general?
 3 **A. In general you'll find a few here and there. Most of**
 4 **the time in most developments, if they're built right**
 5 **and if they're built well, you'll find a few but not all**
 6 **of them.**
 7 Q. How can you tell in Exhibit 28 that joint and base
 8 failure had occurred in the upper top photograph?
 9 **A. Well, you can see the patching that has taken place, how**
 10 **the pavement is cracked in the middle, and it's starting**
 11 **to separate and fall apart.**
 12 Q. And now, if you could, turn to page 171 of Exhibit
 13 Number 25, and tell me what is shown -- 26, and tell me
 14 what is shown on that page.
 15 **A. 171 or 72?**
 16 Q. 172.
 17 **A. 72 is the next map, considered Map 2, and the image you**
 18 **see at the bottom is the intersection of Tucker Chase**
 19 **and Paver Lane. This was the section where it was like**
 20 **some base pavement was put in and is literally -- you**
 21 **can see it's falling and coming apart in that first**
 22 **section right there.**
 23 Q. Are there different materials being used on that portion
 24 of Tucker Chase Drive?
 25 **A. They're both asphalt, but they're different gradations**

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1 **of asphalt.**
 2 Q. Is the level of the asphalt the same on both of those in
 3 that picture?
 4 **A. They're close to the same, but the bottom pavement, the**
 5 **section that looks the roughest, is called a base**
 6 **pavement. The aggregate is a little bit larger.**
 7 **There's not as many fines, and it's made to be -- and**
 8 **that's why they call it base. It's made to go**
 9 **underneath and be topped out with other layers of**
 10 **asphalt on top of it.**
 11 Q. And you've heard some discussion about topcoat. Is a
 12 topcoat -- does this street have a topcoat shown in this
 13 picture?
 14 **A. No, sir, it does not.**
 15 Q. Is there room for a topcoat to occur?
 16 **A. Yes, sir, there is, but you would not want to put it on**
 17 **top of this.**
 18 Q. Okay, why not?
 19 **A. Because of the condition this pavement's in, the way**
 20 **it's falling apart.**
 21 Q. Based on your experience, what would need to be done to
 22 repair this street for acceptance by DOT?
 23 **A. You'd have to mill this pavement out, this asphalt out,**
 24 **get back down to stone base, check to make sure it's in**
 25 **good shape, and then put a layer of asphalt back on it**

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1 **to seal up the stone in preparation for your 1-inch**
 2 **overlay over the whole development.**
 3 Q. Now, let's turn to the next page of Exhibit Number 26,
 4 page 173. Tell the Board what these two photographs
 5 represent.
 6 **A. Both of these photographs are of Tucker Chase Drive and**
 7 **Thurber Place. The intersection here was really falling**
 8 **apart, in bad shape, a lot of settlement, potholes**
 9 **across the intersection. You can see in the lower**
 10 **picture there were some patches that were put in due to**
 11 **previous settlements. Some of the asphalt adjacent to**
 12 **those, base failure, asphalt's popping up so it's really**
 13 **just -- you've got a whole conglomeration of failures in**
 14 **this one section.**
 15 Q. All right. Is this section built to NCDOT standards as
 16 represented on this photograph?
 17 **A. No, sir, it is not.**
 18 Q. What would be required to bring this section up to NCDOT
 19 standards?
 20 **A. What would be required is to remove the pavement, grade**
 21 **it out, proof roll it, see if there's anything going on,**
 22 **and then if there is, dig down and get it fixed and**
 23 **bring it back up.**
 24 Q. You said proof roll it to see if anything is going on.
 25 What do you mean by that?

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1 **A. Correct. Proof rolling is one of the most cheapest and**
 2 **effective ways to test a roadway. You can get -- in a**
 3 **normal development you could take 50 density tests, but**
 4 **each intensity test is a point on that pavement. You**
 5 **can -- you may test fine here and move over 3 feet and**
 6 **it's bad. A proof roll, what we do and what's been done**
 7 **in the past, the DOT, they do proof rolling with a 50-**
 8 **ton proof roller, and you may have seen these on jobs.**
 9 **They're a large orange -- yellow trailers, single axle,**
 10 **four wheels, and it's pulled with a -- basically a**
 11 **tractor. And it's -- roughly, it's 50 tons, and that's**
 12 **why they call it a 50-ton proof roller. As it moves**
 13 **across the soil, it'll tell you if there's anything**
 14 **wrong because it will pump. You'll see the dirt drop**
 15 **down and spring back up. Those are areas that need to**
 16 **be dug out and fixed.**
 17 **In developments, because these are kind of hard to**
 18 **come by and they're a little hard to move, a lot of**
 19 **times in developments we'll allow developers to bring in**
 20 **a tri-axle or a quad-axle, bring it in legally loaded,**
 21 **once you're on-site, overload it with additional stone**
 22 **and lift the front axles. So in a sense, you're not**
 23 **really getting 50 tons, but you're getting a whole lot**
 24 **of weight on those wheels, more than this road will ever**
 25 **see legally.**

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1 So by proof rolling you'll make three passes on
 2 your subgrade on your dirt. If it passes, you've got a
 3 good road. If it doesn't, if it sponges or if there's
 4 any areas that are detected that are soft, contractor
 5 has to dig them out, recompact them, bring them back up,
 6 and you re-proof roll it once that's done. Once all
 7 that's done and passes, then you're allowed to put your
 8 stone down. What I've seen over the years, proof
 9 rolling is the single most important thing done to road
 10 construction to ensure a road will last for many years
 11 in the future.

12 Q. Now, if you can turn to Exhibit Number 26, on page 174,
 13 tell the Board what these two photographs depict.

14 A. These are additional areas on Tucker Chase Drive where
 15 the pavement is alligatored. The base has completely
 16 failed in these areas, like we talked about with the
 17 sponging. Every time that asphalt sponges up and down,
 18 a crack pops into it, another crack, another -- so as
 19 traffic keeps moving over it, these cracks keep
 20 occurring and you end up with a base that looks like
 21 this (indicating).

22 The bottom one, you can see other patches that
 23 have been done in the past for settlement. You can also
 24 see broken curb and how the curb dips and comes back up.
 25 A lot of these areas we've observed in this neighborhood

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1 and another one are where laterals, or water and sewer
 2 connections going across the road, they're not
 3 compacted. And so what do they do, settle, but usually
 4 with the curb and gutter on top, what happens, the curb
 5 and gutter breaks and settles with it. So now you have
 6 dips in the road, and you have to replace it all. So
 7 that's kind of what you're seeing in a couple of these
 8 pictures here.

9 Q. Okay, and with regards to these areas of Tucker Chase
 10 Drive, were they built to NCDOT standards?

11 A. It does not appear to be from the surface.

12 Q. And what would be required to bring them up to NCDOT
 13 standards?

14 A. These areas you'd have to remove the curb that's broken,
 15 bring it back up to grade. If the curb has settled,
 16 pull the string line, get it back up to the right grade.
 17 If you've got soft areas in the pavement, take the
 18 pavement off, proof roll your stone. If it pumps, you
 19 have to dig the stone out, recompact it, and basically
 20 get it to where it can pass a proof roll.

21 Q. Now, turn to page 175 of the same exhibit, and tell the
 22 Board what is shown there.

23 A. What you see here in the top picture is the intersection
 24 of Tucker Field Road and Tucker Chase. That's an area
 25 of the same situation, where you've got a rough asphalt

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1 put in as surface and it's coming apart. The lower
 2 picture is another area. You can see how the curb -- if
 3 you look at the curb line and the yellow line, it shows
 4 how much that curb has settled. So all of that curb
 5 between those lines will have to be removed, brought
 6 back up level, recompact, along with the -- you can
 7 see the patch in the road as well is indicative of
 8 settlement that's taken place in that area as well.

9 Q. Do any of these streets have a topcoat?

10 A. No, sir.

11 Q. And it looks like there are three different types of
 12 pavement shown in the top photograph of this exhibit,
 13 is that correct?

14 A. Yes, sir. There's probably about four.

15 Q. Okay, and why is that?

16 A. You see the asphalt around the structure, and I think in
 17 part that was done to help stabilize the structure or
 18 maybe keep it from sticking up as much, which is very
 19 typical. That's very common. The asphalt around that
 20 is probably a B surface mix. The asphalt that is so
 21 rough there is probably a binder or a base, and then the
 22 asphalt on the back side going into the cul-de-sac is
 23 probably going to be a service mix.

24 Q. And does this street, in your opinion, meet NCDOT
 25 standards?

Page 24

1 A. The section with the base there, rough base, normally
 2 you don't see that in a roadway, especially in that
 3 condition, because you don't like that exposed aggregate
 4 and the loose -- I don't want to say the roughness of it
 5 exposed to the weather because that allows water down
 6 into the subgrade. No, typically you don't see that.
 7 And the lower one with the settlement, no, you don't
 8 like to see that. That's an indication of something
 9 going on underneath.

10 Q. Does the loose asphalt move around when cars travel over
 11 it?

12 A. No, it's actually -- it's a base, and it's mixed. It's
 13 just a very course stone. And typically you like to
 14 seal that off because if not, it will allow water to get
 15 down into the subgrade and create other problems.

16 Q. Is there a limitation on periods of time that a street
 17 should remain in this condition?

18 A. If you've got your more coarse asphalt, like your base
 19 or your binder, typically you like to get those topped
 20 out within a very short time period, typically a week or
 21 two. If you have to go longer it might be okay, but
 22 typically whenever you put down the more coarse
 23 asphalts, you like them to get tightened up quicker.

24 Q. Do you know how long this condition has existed on this
 25 street?

Page 25

1 **A. That, I do not.**
 2 Q. Okay. Now, turn to page number 176, Tucker Field Road,
 3 and what are the conditions that are shown in Exhibit
 4 26?
 5 **A. Okay, the top is just Map 3. The bottom one is another**
 6 **base failure with settlement there on Tucker Field Road.**
 7 Q. And now, if you can turn to page 177, which is Granite
 8 Drive, tell the Board what this exhibit shows.
 9 **A. This is a photo of the cracked curb on top, and it's**
 10 **fairly typical throughout the development. It's not all**
 11 **the curb. It's probably somewhere in the neighborhood**
 12 **of about 15 to 20 percent that is cracked throughout the**
 13 **development that will have to be replaced.**
 14 Q. They do or do not have to be replaced?
 15 **A. They do have to be replaced.**
 16 Q. Is that part of NCDOT standards?
 17 **A. No, sir, it is not.**
 18 Q. Is that part of the Town's standards?
 19 **A. No, sir, it is not.**
 20 Q. Okay. Why does it have to be replaced?
 21 **A. Well, the structural stability of that curb is shot.**
 22 **Curb -- and most people don't understand. Curb cracks,**
 23 **concrete cracks, and that's why you put the joints. As**
 24 **you see every about 9 to 10 feet you'll see a**
 25 **contraction joint tooled into the curb line. And if you**

Page 26

1 go down about every 90 to 100 feet you'll actually see a
 2 little felt expansion joint. So as concrete expands and
 3 contracts, that felt joint takes up the pressure, but
 4 the control joints or the contraction joints, you're
 5 telling the concrete where to crack, because if you pour
 6 concrete in a straight run, it will crack about every 9
 7 to 10 feet, whether you want it to or not. And that
 8 control joint is -- you're telling it, "I want you to
 9 crack here." So all concrete's going to crack, but when
 10 you start seeing this, this is indicative of some other
 11 issues going on.
 12 Q. Would the Town of Midland accept a street with curbing
 13 like this for --
 14 **A. No, sir, not like this picture.**
 15 Q. Okay. Now, if you can turn to page 178 of Exhibit 26,
 16 and tell the Board what is shown there.
 17 **A. Okay. The top photo is Map 4 showing Mudd Drive. The**
 18 **bottom photo, I had heard a lot about how Mudd Drive was**
 19 **in poor condition. When I came here in July, this had**
 20 **just been replaced, dug up, milled up, and paved back so**
 21 **there was fresh pavement on it. I certainly give Craig**
 22 **credit for that. I think they got out there and worked**
 23 **on that.**
 24 **But I wanted to see what it was like, and so the**
 25 **images you see here are actual Google images. If you go**

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1 on -- drop the little dude on Google Maps, you've got to
 2 spin around and see what it looks like. And when I
 3 brought these up and kind of looked at them, I was a
 4 little shocked at them. I've seen some bad roads in my
 5 time, and I'm going to say this probably is not the
 6 worst, but it's probably in the top five as far as the
 7 condition of the roadway.
 8 Q. And what makes it one of the worst that you've seen?
 9 **A. Basically your entire base is completely shot at this**
 10 **point. Your asphalt is in tiny pieces. It is --**
 11 **there's a lot of it all the way down the roadway.**
 12 **You're starting to get rutting. This road on a pavement**
 13 **condition rating would probably score somewhere around 5**
 14 **to 10.**
 15 Q. And this was the road that the developer did fix at one
 16 point?
 17 **A. Yes.**
 18 Q. And this picture is not the picture of the improved or
 19 repaired --
 20 **A. That is correct. Let me be clear on that. This is a**
 21 **photo that was taken before they did repairs on it. So**
 22 **I don't want to mislead anybody, because they have gone**
 23 **in and repaired this road.**
 24 Q. And as I recall from some of the documents, the repair
 25 -- do you recall what the repairs were for this road?

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1 **A. I do not. I know Craig and I have discussed what was**
 2 **done, and I did talk to the contractor, and he told me a**
 3 **little bit about what was done, about basically milling**
 4 **it out, resetting up stone, and repaving it. So that's**
 5 **hearsay from Craig and from the contractor, the only way**
 6 **I know.**
 7 Q. And if you turn back to page 177, that's Granite Drive.
 8 Granite Drive was also a street that was improved by the
 9 developer at one point, is that correct?
 10 **A. This section, I'm not sure if it is the one he fixed,**
 11 **but this is a section -- in the photo at the bottom of**
 12 **177 is a section where you can literally see the curb,**
 13 **how it undulates up and down, and literally at every**
 14 **drop is where the water and sewer laterals are at that**
 15 **point, i.e., it has settled. And these are areas that**
 16 **we would have to come back, remove the curb, straight --**
 17 **streamline it and make it straight, and get it fixed**
 18 **back right.**
 19 Q. Now, turn to page 179. That is further -- another
 20 photograph of Mudd Drive. What is captured on that
 21 page?
 22 **A. Okay, this is the same thing as Google Image. It's**
 23 **showing your complete failure of the roadway. Your**
 24 **asphalt is completely broken down, your stone base is**
 25 **completely broken down, there's no stability. So as**

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1 every car is driving across it or every vehicle, it's
 2 literally just pumping and rolling.
 3 Q. Now, on page 180 you have photographs of Paver Lane and
 4 Cordell Court. Tell the Board what those photographs
 5 show.
 6 A. The Paver Lane is just indicative of other utility cuts
 7 that have settled throughout the neighborhood. This is
 8 one that has been patched that is coming apart again.
 9 Cordell, this is a section in the middle of the road
 10 where you can just see where base failure is starting to
 11 get in. It's a soft spot sitting in the middle of the
 12 road that has vehicles drive over it. It slowly pumps
 13 and just starts coming apart.
 14 Q. What causes the condition that exists on the lower
 15 photograph?
 16 A. On the lower photograph is soft subgrade. It could be a
 17 soft area of dirt underneath the stone, it could be a
 18 thin layer of stone, but the bottom line is it's
 19 pumping. It's moving up and down.
 20 Q. Does this condition meet NCDOT standards for purposes of
 21 the Town's acceptance of the street?
 22 A. No, sir, it does not.
 23 Q. And what would be required to correct this condition?
 24 A. The one on the bottom, you would end up having to cut
 25 that section of pavement out, find out is it stone or is

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1 it something underneath. Proof rolling it or checking
 2 it with a probe rod, if it's soft and if it's
 3 underneath, then you have to dig down and fix what's
 4 underneath. If you don't, if you pave over it, it's a
 5 year before it's reflecting back up.
 6 Q. And with regards to the Paver Lane photograph, there
 7 appears to be loose asphalt that's on the fringes of the
 8 road, is that correct?
 9 A. Yes, sir. I think that is a pothole on the side there.
 10 Q. Now, if you can turn to the next page, page 181, and
 11 tell the Board what your report included as to that
 12 street.
 13 A. Okay, this is what's referred to as Map 6. This is a
 14 section of Granite Lane. It's fairly new, or it's
 15 newer. The section you see here is where there's a 2 to
 16 4 inch settlement immediately adjacent to the curb line.
 17 You can see where the water is running down beside the
 18 pavement there.
 19 Q. What, if anything, would need to be done to this street
 20 to bring it up to NCDOT standards?
 21 A. The same thing, you need to investigate what's causing
 22 that settlement because roads just don't settle by
 23 themselves. They have to have loose subgrade
 24 underneath.
 25 Q. And could you then summarize for the Board what your

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1 report dated November 29, 2006, found?
 2 A. The summary I just put on the back page here on 182.
 3 Basically you've got numerous base failures of stone
 4 grade and subgrade throughout the development on most
 5 roads. Settlement has occurred around many of the
 6 utility structures, catch basins, laterals crossing the
 7 street. Curb and gutter failure is substantial with
 8 breaks in settlement roughly 10 to 15 percent of the
 9 total length, and that is an estimate. I didn't go out
 10 and measure piece of curb.
 11 The developer has made repairs to Mudd Drive at
 12 the time this was done, which completely failed.
 13 Extended repairs were unknown at least at this Town
 14 staff. I don't know if the previous Town staff knew
 15 exactly what they did, but adequate repairs is expected
 16 to be extensive. Taking the photos, one of the things I
 17 noticed were vehicles swerving around these settled
 18 areas, the potholes, sometimes coming on to oncoming
 19 traffic. If one car is coming down, they would swerve
 20 and get -- it's just people move around to avoid hitting
 21 those things with their vehicles. You know, overall,
 22 with these -- I'll -- let's remove Mudd Drive since it's
 23 already been fixed. The rest of the streets in the
 24 neighborhood, there are significant repairs that need to
 25 be done within the development. If you go out and put a

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1 topcoat on top, it won't last a year with a lot of
 2 areas. It will reflect back up through, and it's a
 3 waste of money. So what needs to be done is go out,
 4 find each area, fix the curb and gutter first because
 5 that has to be done first, get in here and fix your soft
 6 areas once those are fixed and brought up, and then top
 7 it all out.
 8 Q. If you could now, turn to tab number 1, page 22, and
 9 there is a section of the Town's ordinance, 16.2-6. If
 10 you can take a minute to review that --
 11 A. 16.2-6?
 12 Q. Yes. And tell the Board what this section requires with
 13 regards to streets and utilities.
 14 A. It's referring to "all streets and utilities must comply
 15 with the requirements of all other applicable plans and
 16 manuals adopted by the Town of Midland, including, but
 17 not limited to, the Town of Midland Technical Standards
 18 and Specifications Manual."
 19 Q. And are you familiar with the Town of Midland's
 20 Technical Standards and Specification Manual?
 21 A. Yes, sir, I am.
 22 Q. And what does that manual provide in regards to street
 23 or street construction?
 24 A. The main portion of it provides a -- I'm going to say a
 25 typical section that shows the type of road where curb

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1 and gutter is, stone, general information about that.

2 Q. And does the manual apply to the streets in Tucker

3 Chase?

4 A. Yes, sir, it does.

5 Q. And are the manual standards met as to the streets in

6 Tucker Chase?

7 A. As far as a topping, no, because there is a requirement

8 on that that after 80 percent of the homes are -- 75 or

9 80 percent of the homes or within one year, that it's

10 supposed to be topped out.

11 MR. JAMES SCARBROUGH: Objection. Move

12 to strike because I can't tell what time frame

13 he's in. The roads were put in a long time ago,

14 and I don't know when this ordinance was.

15 MR. FOX: I think the testimony that it

16 was one year is -- the streets have been in there

17 longer than 2000-and -- a year from today.

18 MR. JAMES SCARBROUGH: Well, he's saying

19 that the ordinance requires the topcoat in one

20 year. Is that what you said?

21 A. Yes, sir.

22 MR. JAMES SCARBROUGH: Okay, but when was

23 this ordinance adopted?

24 MR. FOX: It's on the first page. 2011.

25 MR. JAMES SCARBROUGH: And what was the

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1 ordinance before that?

2 MR. FOX: That's in the exhibit book, but

3 I think the --

4 MR. JAMES SCARBROUGH: Have you got the

5 old ordinance in there?

6 MR. FOX: The old ordinance is in the

7 exhibit book under tab number 9.

8 MR. JAMES SCARBROUGH: Mr. Chairman, I

9 say this because the old ordinance prohibited the

10 topcoat back then.

11 MR. PAGE: Do we have a copy of that

12 ordinance, Mr. Scarbrough or Mr. Fox?

13 MR. FOX: The old -- we're talking about

14 the technical manual, actually.

15 MR. PAGE: Right.

16 MR. FOX: The ordinance is actually found

17 under tab 9, and that ordinance is an ordinance

18 that was adopted by a council and took effect

19 February of 2001 --

20 MR. PAGE: 2001.

21 MR. FOX: -- and remained in effect until

22 September 13th of 2011. I think what you heard is

23 the testimony of the engineer as to the manual

24 that applies to the Town and the requirement of

25 the manual that applies to the Town and has

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1 applied since 2011 as to the condition that a

2 topcoat be installed within one year of

3 construction. You've also heard testimony of the

4 engineer, and you also heard the testimony of,

5 quite frankly, Mr. Grimmer that no topcoat has

6 been installed on those streets. As a matter of

7 fact, their argument was that you don't put a

8 topcoat on because you don't do it until you're

9 near completion. So I don't know what the issue

10 is. There is evidence that there is no topcoat

11 been involved, and we're talking about a technical

12 standard that requires a topcoat within one year.

13 MR. JAMES SCARBROUGH: Right, and the

14 standard was new, and it comes after the streets

15 were constructed. That's -- I can -- I can --

16 MR. FOX: I think that's an argument of

17 law.

18 MR. JAMES SCARBROUGH: Right.

19 MR. FOX: And I'm actually in the middle

20 of doing my --

21 MR. JAMES SCARBROUGH: And we have a

22 witness for that, so I'm through. Go ahead.

23 MR. PAGE: Well, I guess if you get back

24 to that issue, we really need to see where it says

25 -- the technical manual, I guess we can get that

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1 and show that it says within one year, but we need

2 to see -- I think we need to see where you're

3 talking about it said it didn't have to be done.

4 MR. JAMES SCARBROUGH: Right.

5 MR. PAGE: If we had that documentation

6 we could look at that.

7 MR. JAMES SCARBROUGH: And I have

8 Mr. Flowe here for that purpose.

9 MR. PAGE: But we still need a copy of

10 the actual documentation, not just testimony.

11 MR. JAMES SCARBROUGH: Right, and I don't

12 have that. The Town has that.

13 MR. PAGE: Okay. We can't -- we can't --

14 I understand but --

15 MR. JAMES SCARBROUGH: Mr. Flowe says

16 it's in your subdivision -- the old subdivision

17 ordinance.

18 MR. FOX: Well, it's kind of awkward.

19 We've got an objection, and either the objection

20 is sustained or overruled, and I'm conducting --

21 MR. JAMES SCARBROUGH: Well, I'm okay. I

22 think Mr. Fox has shown that the testimony relates

23 to this standard in this ordinance and not to --

24 and it's clear enough it doesn't mean that that

25 was the standard prior to the ordinance.

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1 MR. FOX: I have not made a comment as to
 2 what existed. I will -- if I can proceed with my
 3 case --
 4 MR. PAGE: Yes, sir, Mr. Fox.
 5 MR. FOX: -- there's a way I'd like to
 6 present it, and I'd like the opportunity to do
 7 so. Thank you, though.
 8 MR. PAGE: Yes. Objection noted, Mr.
 9 Scarbrough.
 10 MR. JAMES SCARBROUGH: Thank you.
 11 BY MR. FOX:
 12 Q. And Mr. McMillan, if you can also, while you're in tab
 13 1, refer to section 16.2-7 and tell the Board what that
 14 section requires.
 15 **A. This is a statement on street design. "The design of**
 16 **all public streets and roads within the Town of Midland**
 17 **shall conform to standards set forth in the Town's**
 18 **Standards and Specifications Manual. Private streets,**
 19 **where permitted, shall be constructed to the Town of**
 20 **Midland's design standards. Disclosure and approval by**
 21 **the highway division shall comply with G.S. 136-102.6."**
 22 **And then it goes on to talk about cul-de-sacs, adjoining**
 23 **streets, and stub streets.**
 24 Q. Now, if you can, we're going to turn and look at the tab
 25 number 3, and these are the plats that were filed. And

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1 are you familiar with tab number 3?
 2 **A. Yes, sir, the maps of the development, 1 through 6.**
 3 Q. Right. And just briefly describe for the Board what's
 4 contained in tab number 3, Map Number 1.
 5 **A. This is a recorded Map Number 1 of Tucker Chase showing**
 6 **the first section of roadway on Tucker Chase as it's**
 7 **recorded.**
 8 Q. Now, tab number 4, tell the Board what is behind tab
 9 number 4.
 10 **A. This is recorded Tucker Chase Map 2 as it was platted,**
 11 **Tucker Chase section of Paver, Thurber, Tucker Field**
 12 **Road, and a short section on Granite.**
 13 Q. And does tab number 4 contain a Certificate of Road
 14 Maintenance?
 15 **A. Yes, sir, it does.**
 16 Q. And what does that certificate provide?
 17 **A. It states, "I/we hereby certify that I/we will maintain**
 18 **the roads and standards set forth by North Carolina DOT**
 19 **until respective government agency takes over the**
 20 **responsibility. This does not include removal of snow**
 21 **or ice."**
 22 Q. Okay. Now, in tab number 26 you went through certain
 23 streets that you have reviewed. Did you determine
 24 whether or not those streets had been maintained in
 25 accordance with the certificate that was made here?

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1 **A. No, sir, they were not.**
 2 Q. Now, tab number 5, what is contained in tab number 5?
 3 **A. Tab 5 is Map 3 of Tucker Chase.**
 4 Q. Does tab 5 include a Certificate of Road Maintenance?
 5 **A. Yes, sir, it does in the lower right-hand corner.**
 6 Q. And just explain, paraphrase, what that certificate
 7 provides for.
 8 **A. It says the same thing, that they will maintain the**
 9 **roads to the standards set forth by DOT until a**
 10 **respective governmental agency takes over the roads. It**
 11 **does not include removal of snow and ice.**
 12 Q. And the streets that are shown on Map 3, tab 5, includes
 13 Tucker Field Road, Tucker Chase Drive, and a portion of
 14 Granite and Mudd Streets, is that correct?
 15 **A. It's specifically referring to the cul-de-sac on Tucker**
 16 **Field, a section of Granite, and a short section on**
 17 **Mudd.**
 18 Q. Okay. Did you determine whether all or a portion of
 19 those streets were maintained in the course of NCDOT
 20 standards?
 21 **A. These sections have maintenance issues also.**
 22 Q. Now, with regards to tab number 6, does tab 6, which
 23 deals with Tucker Chase Map 4, also include a
 24 Certificate of Maintenance?
 25 **A. Yes, it does.**

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1 Q. And I believe it's at the lower right-hand corner, is
 2 that correct?
 3 **A. Yes, sir, that is correct.**
 4 Q. And is that the same certificate as shown on several of
 5 the other maps and plats for the Tucker Chase
 6 subdivision?
 7 **A. Yes, sir, it is.**
 8 Q. And what streets are included on the tab -- on Map 4
 9 under tab 5?
 10 **A. This is specifically Mudd Drive.**
 11 Q. And did you make any determination about this portion of
 12 Mudd Drive as to whether or not it has been maintained
 13 in accordance to NCDOT standards?
 14 **A. Well, it has definitely been repaired. Now, as far as**
 15 **due to the photos before that, seeing I have not laid**
 16 **eyes on it specifically, it's hard to say, but the**
 17 **photos definitely show a lot of issues.**
 18 Q. And tab number 7 includes Map 5, and are you familiar
 19 with this map?
 20 **A. Yes, sir, I am.**
 21 Q. And does it contain a Certificate of Maintenance?
 22 **A. Yes, sir, it does in the lower right-hand corner.**
 23 Q. And is it the same Certificate of Maintenance that is
 24 present on several of the other plats that you just
 25 testified to?

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1 **A. Yes, sir, it is.**
 2 Q. And what streets are included or addressed under Map 5
 3 in the Tucker Chase --
 4 **A. This is the lower half of Paver Lane down to Cordell and**
 5 **then Cordell from the intersection up to the cul-de-sac.**
 6 Q. And your Exhibit Number 26 did show part of Paver Lane,
 7 is that correct?
 8 **A. Yes, sir, and Cordell.**
 9 Q. Okay, and did you make a determination or do you have an
 10 opinion as to whether or not Paver Lane and Cordell as
 11 shown on Map Number 5 meets or has been maintained in
 12 accordance to NCDOT standards?
 13 **A. It does not appear to have been maintained.**
 14 Q. And what is under tab number 8? Is that a Map Number 6,
 15 which is a part of Tucker Chase subdivision?
 16 **A. Yes, sir, that is correct, Map 6.**
 17 Q. And are there any issues with regards to the streets
 18 that are shown on Map Number 6?
 19 **A. The only issue is the settled area along the shoulder or**
 20 **along the curb line of Granite Street, Striker Lane, and**
 21 **I believe -- if I'm not mistaken, I think Trowel Court**
 22 **has already been topped out. So I think it's received**
 23 **its last -- its final inch of asphalt.**
 24 Q. So let me direct you now to -- if you can turn to tab
 25 number 16 --

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1 **A. Yes, sir.**
 2 Q. -- and if you can page through tab number 16, 118, 120,
 3 121, 122, 123 and then 124 and so forth, and if you can
 4 just focus on page 123, are you familiar with the
 5 memorandum to Doug Paris from Chad Easter?
 6 **A. Yes, sir, I am.**
 7 Q. How are you familiar with that memo?
 8 **A. This is one of the things Mr. Easter and I discussed**
 9 **prior to me taking over and looking at some of the**
 10 **files, and this is one where he talks about the issues**
 11 **in Tucker Chase.**
 12 Q. And are you also familiar with the documents that are
 13 behind that exhibit, 124 through 136?
 14 **A. Yes, sir, I am.**
 15 Q. And how are you familiar with that?
 16 **A. I had reviewed these with Chad on that day, and I've**
 17 **seen them, of course, in some of the correspondence.**
 18 Q. And what is this document?
 19 **A. This is from one of the previous -- I think it's Bill**
 20 **Coleman, and I can't tell the other name. I think it's**
 21 **in his letter here where someone has literally walked**
 22 **through the development and looked at each issue in the**
 23 **development and made note on it as far as the stations**
 24 **go. The stations are -- it's just an engineer survey in**
 25 **the way of letting you know where are you on the street.**

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1 **So zero plus zero-zero is at the entrance of the**
 2 **development. And as they call Tucker Chase, you see it**
 3 **go all the way through, listing various issues as you**
 4 **walk through.**
 5 Q. And did you use this, refer to it, or rely upon it in
 6 any way when you prepared your document dated November
 7 of 2016 --
 8 **A. No, sir.**
 9 Q. -- for Tucker Chase? Okay.
 10 **A. And the reason for that is most of what I was looking at**
 11 **-- and Craig Grimmer and I, we had walked the**
 12 **development, and we've had some good discussions about**
 13 **things that needed to be done. And as I looked at the**
 14 **development and I told him, "I'm not going to require**
 15 **you to fix every little piece of broken curb. If it's a**
 16 **straight break and it's tight and it's not a sheer**
 17 **break, leave it alone. It's better off left alone.**
 18 **So we've had this discussion, and in my report,**
 19 **what I want to do is just get some representative**
 20 **pictures of what's going on in the development. This is**
 21 **a very detailed list showing everything that's going on,**
 22 **whereas mine's more of a -- I guess a whole list of**
 23 **"Here are the type of failures you see in the**
 24 **neighborhood."**
 25 Q. Now, you talked about you have visited Tucker Chase, in

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1 particular, in November of 2016. What other times have
 2 you visited Tucker Chase?
 3 **A. Several other times prior to that going through the**
 4 **development. Craig Grimmer and I have walked it, I want**
 5 **to say, maybe twice or at least two different times**
 6 **talking about various issues, different types of repairs**
 7 **that need to be done.**
 8 Q. And have you visited since November of 2016?
 9 **A. Yes, sir, I have on several occasions.**
 10 Q. Do you recall those occasions?
 11 **A. One specific day he spent all day out there with Craig**
 12 **and his contractor that were making repairs out there in**
 13 **two locations specifically on that one day.**
 14 Q. Do you recall the locations and the nature of the
 15 repairs?
 16 **A. The locations were at the intersection of Thurber and**
 17 **Tucker Chase. That intersection was one of the worst.**
 18 **And the other was at the intersection of Paver and**
 19 **Tucker Chase, where the asphalt was in really bad shape.**
 20 Q. And what type of repairs were made to those
 21 intersections?
 22 **A. Paver Lane, there, they removed the pavement on top. We**
 23 **scarified the stone, they reset it up, we proof rolled**
 24 **to make sure there were no underlying issues. It passed**
 25 **pretty well, and so they just topped that out with a**

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1 binder to put it back under asphalt. The intersection
 2 of Thurber had a lot more issues going on. From the
 3 surface I could tell there were settlement issues.
 4 There were compaction issues underneath. Once they
 5 removed the pavement, they regraded the stone, rolled
 6 it, tightened it up, we proof rolled it. It showed
 7 numerous -- about four different failures around the
 8 intersection.
 9 As we dug down through the stone trying to find
 10 out what was going, most of them were utility-type
 11 settlements, settlement around the catch basin,
 12 settlement over water lines, settlement over water taps,
 13 sewer laterals. We dug down through the stone to get
 14 down. As we dug down, they tried to tighten it up. I
 15 was able to take a probing rod and almost bury it to the
 16 handle, which indicated very loose material underneath
 17 in the ditch lines. So they basically -- we dug down to
 18 the top of the water line, had to recompact, re-stone,
 19 all the way back up, and when they got everything done,
 20 at that point, we proof rolled everything. It held up
 21 good. They went ahead and paved on top of it.
 22 Q. Would you have known of those conditions had you not --
 23 from just observing it from walking a visual inspection
 24 of the site?
 25 A. Yes.

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1 Q. And those types of observations are reflected in your
 2 opinions that are contained in your report dated
 3 November of 2016?
 4 A. Yes, sir, that is correct.
 5 Q. Now, you mentioned earlier that you are familiar with
 6 NCDOT standards and requirements with regards to street
 7 maintenance. Have you formed an opinion as to whether
 8 or not the streets in Tucker Chase at the time of this
 9 violation notice met or meet the requirements and
 10 standards of NCDOT?
 11 A. They did not.
 12 Q. Do you have an opinion with regards to whether or not
 13 the streets in Tucker Chase are built to NCDOT
 14 standards?
 15 A. Based on my observation from walking the streets today
 16 -- now, granted, I wasn't there when it was built, I
 17 wasn't there when it was proof rolled. So I can't say
 18 then what was going on, but from the failures that I see
 19 today and what we saw during the repairs out at the
 20 intersection, it's obvious. And the type of failures
 21 you see are very indicative of ditch lines that were
 22 compacted properly, soft base, these type of things that
 23 tells me today by looking at the failures they were not
 24 the proper tests on everything done at the time it was
 25 built.

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1 MR. FOX: One minute. (Examines
 2 documents.) No further questions.
 3 MR. PAGE: Mr. Scarborough?
 4 CROSS-EXAMINATION BY MR. JAMES SCARBROUGH
 5 Q. Mr. McMillan, you've got your exhibits in front of you
 6 there?
 7 A. Yes, sir.
 8 Q. Let's go back to those plat maps.
 9 A. Yes, sir.
 10 Q. Tab 3 is plat Map 1, and let's see, that does not have a
 11 maintenance certificate on it, does it?
 12 A. Not that I can locate, no, sir.
 13 Q. Okay. And the rest of them do?
 14 A. Yes, sir.
 15 Q. Now, let's look at these maps, and the print's kind of
 16 small. Is there a certificate on there -- I see Jeff
 17 Moody's certificate on there.
 18 A. I'm sorry, are we still referring to Map 1?
 19 Q. We are.
 20 A. Yes, sir.
 21 Q. There is a certificate by Jeff Moody dated October 7,
 22 2005. What is that?
 23 A. It is a certification of streets, water, and sewer
 24 system improvement and other improvements where Jeff has
 25 signed it stating that, "I hereby certify that all

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1 streets, storm drain systems, water and sewer systems,
 2 and all other improvements have been designed" -- it
 3 looks like there's a word missing there -- "designed
 4 manner and according to specifications and standards of
 5 Concord and installed, or their installation guaranteed,
 6 in an acceptable and the state in North Carolina in the
 7 Tucker Chase subdivision."
 8 Q. Okay, and who was Jeff working for?
 9 A. That, I do not know.
 10 Q. Okay.
 11 A. But since it's stated here, because it's talking about
 12 the standards of Concord, I don't --
 13 Q. That's a mistake. Does it say Concord? Yes, it does.
 14 A. It does, and it says design.
 15 Q. Well, I'll represent -- well, it says installed also.
 16 A. Yes, it does, "and installed."
 17 Q. And doesn't somebody from the City or the County or the
 18 Town or the County do inspections as roads and
 19 infrastructure are being built?
 20 A. For the most part, yes.
 21 Q. And wasn't Jeff Moody the engineer for the Town at the
 22 time?
 23 A. I'm sorry, I do not know.
 24 Q. Okay. And that was 2005. Let's look at the next map.
 25 This is Map Number 2, tab 4. We have another Jeff Moody

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1 certification, and it says the same thing except they
 2 took out the word -- no, they've got the word Concord
 3 back in there. And it's dated January 11, 2006, so
 4 that's the same certification, is that right?
 5 **A. Yes, sir, that is correct.**
 6 Q. Okay.
 7 MR. PAGE: Mr. McMillan, would you read
 8 the full paragraph, please, sir?
 9 **A. Yes, I will. Be happy to. "Certification of streets,
 10 water, and sewer system approval and other improvements.
 11 I hereby certify that all streets, storm drainage
 12 systems, water and sewer systems, and all other
 13 improvements have been designed, manner, and according
 14 to specifications and standards of Concord, and
 15 installed in their installation guarantee and acceptable
 16 and" -- yeah, it jumps all -- "and acceptable in the
 17 state of North Carolina."**
 18 MR. PAGE: It doesn't say "and," it says
 19 "or their installation."
 20 **A. "Or their installation guarantee," yes, thank you.**
 21 MR. PAGE: Right.
 22 **A. "In an acceptable and the state of North Carolina and
 23 Tucker Chase subdivision."**
 24 Q. Okay. And then let's look at tab number 5.
 25 MR. JAMES SCARBROUGH: Does the Town want

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1 to stipulate that Jeff Moody was the Town engineer
 2 at the time?
 3 MR. FOX: I don't personally know.
 4 MR. JAMES SCARBROUGH: Well, the Town is
 5 here. The Town knows. I know.
 6 MR. PAGE: He was.
 7 MR. JAMES SCARBROUGH: See, we all know
 8 he was.
 9 MR. FOX: Okay. I don't know, so I can't
 10 stipulate to something I don't know.
 11 BY MR. JAMES SCARBROUGH:
 12 Q. Okay. So there we're on tab number 5, Map Number 3,
 13 there's another Jeff Moody certificate, but it looks
 14 like it's different. What does that say?
 15 **A. Yes, it does. We're on Map 3?**
 16 Q. We're on Map 3.
 17 **A. Yes, sir. This one is Certificate of Streets, Approval
 18 and Other Improvements. "I hereby certify that all
 19 streets, storm drainage system, and all other
 20 improvements have been designed manner according to the
 21 specifications and standards of Midland and installed
 22 water installation guaranteed in an acceptable -- and
 23 the state of North Carolina and the Tucker Chase
 24 subdivision."**
 25 Q. Okay, and that's dated March 10, 2008?

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1 **A. Yes, sir.**
 2 Q. Okay, and then we go to tab number 6, and we have
 3 another Jeff Moody certificate. I guess what I'm aiming
 4 at here is when the Notice of Violation says the design
 5 -- and it was not designed and built according to Town
 6 standards or somebody's standards, this is a
 7 certificate, wouldn't you agree, that contradicts that?
 8 **A. Well, I'm not sure exactly what the -- I guess the
 9 Notice of Violation is.**
 10 Q. Okay, let's go to that because we haven't talked about
 11 that, that's true. That is tab --
 12 MR. FOX: 18.
 13 Q. -- 18. So let's go to tab 18, and do you see in tab 18
 14 -- it's already in evidence, it says Notice of
 15 Violation.
 16 **A. Yes, sir.**
 17 Q. Which is why we're here today, and it says that -- it
 18 starts out by saying -- the second sentence, "The Town
 19 of Midland has found that inadequate street construction
 20 and inadequate maintenance exists." Okay. And then on
 21 page 2, let's go to page 2, it talks about, "In addition
 22 to your material breach of covenants contained within
 23 the Certificate of Road Compliance on the final plats,
 24 the streets within the development are also in violation
 25 of several provisions of the Midland Development

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1 Ordinance. Specifically you're in violation of the
 2 Midland Development Ordinance Article 16, Section 16.1
 3 and 16.2, Subsection 16.2-6, Streets and Utilities, and
 4 16.2-7, Street Design because the streets' conditions in
 5 the development do not comply with Midland's public
 6 street design and construction standards and
 7 regulations." I believe we established that that
 8 ordinance was adopted after the streets were built. I
 9 can't -- these streets were built according to some
 10 other design standard, is that right?
 11 **A. Well, if I may say this --**
 12 Q. Yes.
 13 **A. -- as far as -- because I know there's debate on which
 14 ordinance and everything else. DOT standards over my
 15 30 years have not changed much an inch, and that's
 16 really what dictates roadway construction.**
 17 Q. Right, okay.
 18 **A. Even everything in the Midland ordinance does not
 19 specifically go into roadway construction.**
 20 Q. Right, but we're not being charged with DOT standards,
 21 we're being charged with Midland's public street design
 22 and construction standards. So I guess my point is, we
 23 have certificates on these plats saying they were
 24 designed and installed per the standards. Are you
 25 agreeing?

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1 **A. I would agree there's a statement on there for that.**
 2 Q. And my original point was, doesn't that contradict this
 3 that charges us with not designing and constructing
 4 according to Midland standards?
 5 **A. Well, I think -- from my understanding I think the basis**
 6 **of all this is the maintenance.**
 7 Q. That's what I think. I agree, yes. I just want to get
 8 that part out of the way. Okay, and then it says -- and
 9 then it refers to, "Maintain the streets until
 10 acceptance by a public entity," which follows the
 11 successful compliance with design and construction
 12 standards. So I'm agreeing with you on that. It's --
 13 we're talking about maintenance, really.
 14 **A. Then we're in agreement.**
 15 Q. Okay. And -- okay. I don't think there's any point in
 16 going back to the other maps, but that was my point.
 17 And the topcoat, I guess we can leave that for another
 18 day. You know what the current ordinance states?
 19 **A. Yes. Yes, and I do -- if I may just expand on that for**
 20 **just a moment here --**
 21 Q. Yeah.
 22 **A. -- because I know there's been a lot of discussion about**
 23 **topcoat, when to put it on, when not, and everything**
 24 **else. And I think it's important to explain and**
 25 **understand why the topcoat came about. Most**

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1 municipalities in years past, you build a road, 2 inches
 2 of asphalt. Sometimes it was 1-and-a-half inches of
 3 asphalt and 6 inches of stone, which was really
 4 substandard pavement.
 5 Most cities have 2 inches of asphalt on 8 inches
 6 of stone. A lot of cities, before letters of credit and
 7 everything else, developers had to build the entire
 8 infrastructure, everything in place, before you could
 9 record a plat. So the road was up to the edge of curb.
 10 Everything was completely finished at that point.
 11 What a lot of cities were finding out is, when the
 12 homebuilders would go in and start building, it wasn't
 13 tearing up the structure of the road. What they were
 14 doing in the process of loading and unloading materials,
 15 bricks, skid steers, dumpsters on pavement, they were
 16 scratching up and marring the surface of the pavement.
 17 So when the homes were finished, you had a pavement that
 18 was just -- the topcoat was just worn out and scratched
 19 up, and it looked bad. So what a lot of cities said is,
 20 "Okay, here's what we're going to do, folks. Build the
 21 structure in your pavement, 2 inches on 8. Lower it
 22 1 inch. Now build your houses, do all you want to.
 23 Mr. Developer, when you're done and the road is marred
 24 up and scratched up, now come in and make it pretty with
 25 your top inch."

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1 I guess there's been some testimony that, "Well,
 2 the streets are going to get torn up with all the house
 3 building." Folks, I've built enough roads to tell you
 4 if the roads are built right, they're not going to fail.
 5 They're not going to have these issues. Yeah, you're
 6 going to have a spot here or there, but for the most
 7 part, they're going to be in pretty good shape, minus
 8 some surface scratching. And so that's where that top
 9 inch comes in on top, really to make the street pretty.
 10 And you've got a new development, you've got new houses,
 11 why not have a brand new street on top? And that's
 12 really what this 1-inch topping is all about. That's
 13 why most cities across the state are requiring that now.
 14 So I hated to throw that out there.
 15 Q. I understand. You just explained the difference between
 16 the way we used to do it and the way we do it now, is
 17 what you're doing.
 18 **A. And I'm saying used to as in a number of years ago.**
 19 Q. Right, like when these streets went in.
 20 **A. Well, this was even before then.**
 21 Q. Okay. You pointed out some -- these are valley curbs I
 22 saw.
 23 **A. Yes, sir.**
 24 Q. You pointed out some damage to these valley curbs. Is
 25 that something that these homebuilder trucks and

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1 construction equipment might damage a curb like that?
 2 **A. There is damage that can occur from homebuilders if**
 3 **they're running over it, if they mark with equipment,**
 4 **and doing other things. So there is some curb out there**
 5 **that may be the result of that, yes.**
 6 Q. Okay. And those manhole covers that are raised a little
 7 bit, some may be raised more than an inch, I don't know,
 8 but you've inspected the manhole covers?
 9 **A. In the process of riding through the neighborhood, yes,**
 10 **just in looking at them.**
 11 Q. Are those adjustable?
 12 **A. They are adjustable.**
 13 Q. So we could lower those if it was a problem?
 14 **A. You could.**
 15 Q. Okay.
 16 **A. Well, let me back up. Lowering is difficult.**
 17 Q. Okay.
 18 **A. If the ring is sitting on top of the base or the cone**
 19 **section, there's not a whole lot of lowering at that**
 20 **point.**
 21 Q. Okay, so it just depends?
 22 **A. Exactly.**
 23 Q. And I didn't hear you describe in your testimony any
 24 safety issues that exist out there.
 25 **A. I'll be happy to.**

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1 Q. Okay.

2 **A. The safety issues I observed out there typically was**

3 **with the settle cups and the potholes, people swerving**

4 **around. Now, that's during the daytime, and that's for**

5 **residents. The biggest safety concern is not with the**

6 **residents, but it's the people visiting, especially at**

7 **night. They don't know what to expect. You're hitting**

8 **dips, you're hitting potholes. That's where people tend**

9 **to jerk the wheel if they're encountering things that**

10 **are not expected on a public street. Those are the**

11 **things that really stand out as far as a safety issue**

12 **with settlements and the potholes, and it's the type of**

13 **roadway surface that a traveling public is not expecting**

14 **to encounter.**

15 Q. Okay. Now, and I'm not being facetious here, but I

16 encounter those on some Concord streets.

17 **A. Yes, sir, and I do as well in other streets. So you are**

18 **correct, and that's why, when I was assistant director**

19 **of public services in High Point, it was critical when**

20 **we received calls for potholes, we had 24-hours response**

21 **time.**

22 Q. Yeah.

23 **A. And it's for that reason. It's for the safety issues.**

24 Q. I understand. And let me check with the boss. I might

25 be through here.

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1 **A. Yes, sir.**

2 **(A discussion was held off the record.)**

3 Q. Thank you.

4 **A. Yes, sir, you're welcome.**

5 MR. PAGE: Thank you, Mr. Scarbrough.

6 Does the Board have any questions for

7 Mr. McMillan?

8 (No response by the Board.)

9 MR. PAGE: Okay. Mr. McMillan, you can

10 step down.

11 MR. FOX: Your Honor, I may have a few

12 just follow-up questions.

13 MR. PAGE: Oh, okay, I'm sorry. You have

14 a redirect? Okay.

15 MR. FOX: Yeah, just a few.

16 REDIRECT EXAMINATION BY MR. FOX

17 Q. Mr. McMillan, if you can turn to Exhibit Number 9, tab

18 9, and that is the ordinance that was in existence from

19 2001 to 2011, is that correct?

20 **A. Yes, sir, based on the certification, yes.**

21 Q. And if you can turn to 12.B, page 29, our exhibit page

22 46?

23 **A. Yes, sir.**

24 Q. Does that address public roads and roads classified

25 designated for the public?

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1 **A. Yes, sir, it does.**

2 Q. And does it talk about that these roads shall be

3 maintained -- it talks about roads being designated for

4 the public shall be conclusively presumed to be an offer

5 of dedication. And I assume that's what the plat that

6 we've talked about was, an offer of dedication of those

7 roads to the public, is that correct?

8 **A. Yes, sir, that appears to be the case here.**

9 Q. And it talks about "these roads shall be maintained by

10 the developer/owner or the lot purchasers through a

11 recorded maintenance agreement until the respective

12 governmental agency assumes responsibility for

13 maintenance." Now, that agreement, is that the

14 certificate of road maintenance that is recorded and is

15 a part of the plat that has been filed with the Cabarrus

16 County Register of Deeds?

17 **A. Any map in particular?**

18 Q. Yes, if you turn to tab number -- I think Mr. Scarbrough

19 pointed out that 3 did not have a certificate, but if

20 you turn to the certificate on Map Number 2 contained

21 behind tab number 4, and it says Certificate of Road

22 Maintenance.

23 **A. On, I'm sorry, Map 2?**

24 Q. Yes, Map 2, and that's the Certificate of Road

25 Maintenance that we were referencing earlier.

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1 **A. It is -- well, it is not verbatim, but it does --**

2 Q. You would not --

3 **A. -- paraphrase --**

4 Q. Okay, go ahead.

5 **A. I was going to say it does seem to paraphrase the two,**

6 **even though it's not verbatim. Both refer to that the**

7 **developer will maintain the roads as the standards set**

8 **forth. And the ordinance talks about roads shall be**

9 **maintained by the developer/owner, or lot purchasers**

10 **through a recorded maintenance agreement until the**

11 **respective government agency assumes responsibility for**

12 **the maintenance.**

13 Q. Okay. Now, if you could turn to tab number 1 and page

14 number 4 and 5, 5 by the exhibit standards, and 1.1-2, a

15 third of the way down the page -- I'm sorry, two-thirds

16 of the way down the page. It talks about relationship

17 of this ordinance to any pending action. Tell the Board

18 what that section states.

19 **A. Okay, refer back --**

20 Q. 1.1-2 on page number 5 of tab 1.

21 **A. Are you referring to 1.11-2?**

22 Q. I'm sorry, yeah. That's it.

23 **A. Okay.**

24 Q. I'm sorry, my fault.

25 **A. I just -- I wanted to make sure. Relationship of this**

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1 **Ordinance to Any Pending Action says, "The adoption of**
 2 **this ordinance shall not affect any suit, any action**
 3 **suit, notice of violation, citation, or proceeding that**
 4 **may be pending at this date the ordinance becomes**
 5 **effective. All rights and liabilities that have been**
 6 **received or created and any violation that has occurred**
 7 **under any previous provisions of the code of ordinances**
 8 **of the Town of Midland that have been superseded by this**
 9 **ordinance are still valid and may be preserved and**
 10 **enforced."**
 11 Q. And you've referred to a lot of roads in those exhibits
 12 numbered 3 through 8, I believe, and there is a
 13 reference to a Certificate of Street Approval and Other
 14 Improvements. Is it true that those references all
 15 still required all roads in Tucker Chase to be built to
 16 NCDOT standards?
 17 **A. Are you referring to the Certificate of Streets?**
 18 Q. Yes. Well, I'm -- yes, I am.
 19 **A. The one signed by Jeff Moody?**
 20 Q. Yes.
 21 **A. It does refer to street, stormwater, water and sewer**
 22 **systems designed and according to specifications and**
 23 **installed or otherwise, or their installation guaranteed**
 24 **and acceptable to the State of the North Carolina and**
 25 **the Tucker Chase development.**

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1 Q. And the installation, of course, in the state of North
 2 Carolina, would that be NCDOT standards?
 3 **A. Yes, sir. That is correct.**
 4 Q. Thank you. No further questions.
 5 RECROSS-EXAMINATION BY MR. JAMES SCARBROUGH
 6 Q. Mr. McMillan --
 7 **A. Yes, sir?**
 8 Q. -- let's go back to that 1.11-2, the relationship of
 9 this ordinance to any pending action.
 10 **A. Give me one second.**
 11 Q. Okay. It's tab number --
 12 **A. One five?**
 13 Q. -- one five, uh-huh.
 14 **A. Yes, sir, 1.11-2?**
 15 Q. Right.
 16 **A. Yes, sir.**
 17 Q. I'm trying to understand that last sentence. "All
 18 rights and liabilities that have been received or
 19 created and any violation that has occurred under any
 20 previous provision of the code of ordinances in the Town
 21 of Midland that have been superseded by this ordinance
 22 are still valid and may be preserved and enforced." Do
 23 you take that to mean that the Town can charge a
 24 violation of a superseded ordinance?
 25 MR. FOX: I think that's a question for

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1 this Board, not for this witness.
 2 **A. Well, that's what I was going to refer to is this gets**
 3 **beyond my expertise. If you want to talk construction,**
 4 **I can do that.**
 5 Q. Yeah, but we saw the Notice of Violation. It wasn't --
 6 those are all referring to the current ordinance, is
 7 that right?
 8 MR. FOX: Again, I'll object to this. I
 9 think that's an appropriate interpretation for the
 10 Board to make, not for the engineer witness.
 11 MR. PAGE: I agree.
 12 Q. All right, thank you.
 13 **A. Yes, sir. You're welcome.**
 14 **(Witness exits the stand.)**
 15 MR. FOX: That will be the showing for the Town. I believe
 16 that you may have citizens that want to --
 17 MR. JAMES SCARBROUGH: We have one witness for rebuttal.
 18 MR. FOX: I'll object to any new witnesses to be introduced
 19 at this time.
 20 MR. JAMES SCARBROUGH: How can you do that?
 21 MR. BLYTHE: For rebuttal he has a right to do it. You may
 22 object, but I believe he does.
 23 MR. PAGE: And this rebuttal witness is in what area,
 24 Mr. Scarbrough?
 25 MR. JAMES SCARBROUGH: It's your former planner, the area of

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1 your ordinances and all the Notice of Violations here.
 2 It goes right to the heart of everything that was just
 3 presented by the Town.
 4 MR. PAGE: Okay, this could get a little lengthy. If you
 5 want to take a 10 minute recess, we've been here about
 6 an hour-and-a-half.
 7 MR. FOX: Thank you, and I may want to be heard.
 8 (A recess was taken from 8:28 to 8:39 p.m.)
 9 MR. PAGE: Okay, we're going to reconvene from the recess.
 10 MR. FOX: I'd like to be heard on the introduction of a
 11 rebuttal witness by the petitioner here. I had asked
 12 for a copy of the Board's Rules of Procedure, and the
 13 Rules of Procedure do not provide there in its order the
 14 hearings for rebuttal. It's actually kind of silent on
 15 that issue, but it is in my mind a little bit of a --
 16 it's within a -- I assume, as these rules are, it's
 17 within the discretion of this Board.
 18 This Board heard arguments at the beginning of
 19 these proceedings with regards to the desire of the
 20 petitioner to reopen his case in chief by the surprise
 21 witness of Mr. Flowe, and we objected at that time, and
 22 this Board, through a decision of this Board, decided
 23 not to allow that witness to testify. I think what you
 24 have before you is an end run to achieve the same thing.
 25 I don't know if this Board is benefitted by any

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1 additional testimony. Certainly, Mr. Scarbrough had the
 2 same opportunity as the Town had to develop his
 3 witnesses in advance and in the presentation of his case
 4 in chief when he initially announced the witnesses that
 5 would be a part of his case and then subsequently added
 6 this additional witness, and when that witness was not
 7 allowed to testify, has now come with a new tactic to
 8 add this witness. The issue for this Board is whether
 9 there is anything that might be probative of the issues
 10 that are before this Board that can be enlightened by an
 11 additional witness at this late hour, and that would be
 12 the basis of my objection.
 13 MR. PAGE: Mr. Scarbrough?
 14 MR. JAMES SCARBROUGH: It's just a simple case of due
 15 process. It's rebuttal. He put on his evidence. I put
 16 on my evidence first. I've tried to reopen it. I was
 17 denied. Okay. Well, he puts on his evidence for the
 18 Town, and now I have an opportunity for rebuttal, a
 19 rebuttal witness. That's just due process.
 20 MR. PAGE: I will ask again. What specific area is he
 21 rebutting on?
 22 MR. JAMES SCARBROUGH: Okay. He's going to testify about
 23 vested rights in the consent agreement with the County,
 24 he's going to testify about the Notice of Violation --
 25 he's the one that wrote your 2011 ordinance -- and he's

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1 going to testify about the design and construction
 2 features in the Notice of Violation, whether the
 3 ordinances in that section should have been the prior or
 4 the current ordinance being violated, what design and
 5 construction standards apply to Tucker Chase. He's
 6 going to say who Jeff Moody is and what did Jeff Moody
 7 certify, what the prior ordinance said about topcoat,
 8 what were the factors creating the defects in these
 9 streets, were there any proof rolls prior to him getting
 10 there on these streets what -- and then the standards,
 11 the engineering standards, that Jeff Moody used, what
 12 affected the recession and the long wait for these new
 13 topcoats, and whether there is a bond requirement for
 14 maintenance under state law. This is his area of
 15 expertise.
 16 MR. FOX: No, it's not.
 17 MR. JAMES SCARBROUGH: Yes, he is.
 18 MR. FOX: He's not an engineer.
 19 MR. JAMES SCARBROUGH: He's a planner.
 20 MR. PAGE: Well, I had the same question, Mr. Scarbrough.
 21 Some of the things you stated would have to be from an
 22 engineer.
 23 MR. JAMES SCARBROUGH: Well, the objection can come if he
 24 gets into that area. There could be an objection, but
 25 why can't I get my evidence in that we've been charged

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1 with the wrong ordinance?
 2 MR. FOX: I think the issue -- what he seeks for this
 3 witness to do is to supplant the authority of this
 4 Board.
 5 MR. JAMES SCARBROUGH: No.
 6 MR. FOX: This Board -- if I could be heard.
 7 MR. JAMES SCARBROUGH: No.
 8 MR. FOX: If I could be heard --
 9 MR. JAMES SCARBROUGH: There's no -- there's -- no one has
 10 given the old ordinance. He will testify what's in the
 11 old ordinance.
 12 MR. FOX: This Board is to look -- yes, you have the old
 13 ordinance. The old ordinance is Exhibit 9 of the
 14 exhibit book.
 15 MR. JAMES SCARBROUGH: Well, actually --
 16 MR. FOX: This Board is to make interpretations --
 17 MR. JAMES SCARBROUGH: It's in the engineering standards,
 18 not the ordinance. It's in the engineering standards.
 19 MR. FOX: You said ordinance.
 20 MR. JAMES SCARBROUGH: That's why you didn't see it, that
 21 Jeff Moody used. It's in his standards.
 22 MR. FOX: But --
 23 MR. PAGE: Clarification here. The plats that we see right
 24 here that are signed, were they not signed before any
 25 kind of work was done on any of these plats?

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1 MR. JAMES SCARBROUGH: I don't know. They were recorded.
 2 MR. PAGE: Well, why -- they're recorded. The plats are
 3 recorded?
 4 MR. JAMES SCARBROUGH: After the work's done. That's a
 5 final plat.
 6 MR. PAGE: After the work's done.
 7 MR. JAMES SCARBROUGH: After the work's done.
 8 MR. FOX: Let me just go through each of the ones that I've
 9 heard from him. The Notice of Violation, Richard Flowe
 10 has nothing to do with a Notice of Violation that was
 11 issued in -- whatever the date of the Notice of
 12 Violation was. He was not the -- in October 14, 2006.
 13 He was not the planning director for '16. He was not
 14 the planning director for the City. He had no ability
 15 to influence that. He has nothing to offer of substance
 16 as it relates to that Notice of Violation. The Notice
 17 of Violation is what it is. That's what got you here
 18 today based upon the appeal from that. He is only going
 19 to opine about what should or could have been done or
 20 what he might have done had he issued it. That's not
 21 relevant to what the Notice of Violation is.
 22 MR. JAMES SCARBROUGH: No, that's -- he has personal
 23 knowledge of what the engineering standards were that
 24 should have been charged in this case. He has personal
 25 knowledge of that.

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1 MR. FOX: Again, if I can go through, then the design and
2 construction, that is -- we had an engineer.
3 Mr. Scarbrough had an engineer that he brought up to
4 testify. Whether or not that engineer provided enough
5 information that he would have wanted for his case in
6 chief, that's his issue. That's not an opportunity to
7 correct that at this late stage. He had that
8 opportunity. He failed on that opportunity.
9 MR. JAMES SCARBROUGH: We can --
10 MR. FOX: With regards to Jeff Moody -- if I can finish.
11 MR. JAMES SCARBROUGH: This is due process. We're being
12 told we don't --
13 MR. FOX: I'm arguing my objection.
14 MR. JAMES SCARBROUGH: We have a right to put a witness on
15 that stand.
16 MR. FOX: I should have a right to object to your attempt to
17 put rebuttal evidence -- a witness before this Board on
18 matters that this witness is not qualified to testify
19 to.
20 MR. JAMES SCARBROUGH: We want a fair hearing. That's all
21 we're asking for, fairness.
22 MR. FOX: You're getting -- again, as to --
23 MR. JAMES SCARBROUGH: You want to deny us fairness?
24 MR. FOX: As to Jeff Moody, there was an admission that Jeff
25 Moody was a Town engineer at that time. Why does he

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1 need to weigh in on that for?
2 MR. JAMES SCARBROUGH: Why are you guessing at everything?
3 Why are you testifying?
4 MR. FOX: I'm not testifying. I'm trying to demonstrate --
5 MR. ALDRIDGE: Gentlemen, I'm going to interject here for a
6 second. The Chair made an observation that Jeff Moody
7 was the Town engineer. Now, as a sitting Board member,
8 I can live with that coming from the Chair of this
9 Board. I think that's a moot point as far as it's
10 concerned.
11 MR. JAMES SCARBROUGH: That was one of my minor points.
12 MR. ALDRIDGE: Now, my concern, we have the public here. I
13 understand, Mr. Scarbrough, that this is a due process
14 issue. I get that. I understand it. Well, let's get
15 some civility in here, and let's get it calmed back
16 down. Take it point by point. We're trying to listen.
17 We're trying to take notes so we can deliberate and be
18 fair to your client and be fair to the Town of Midland.
19 So let's just step back, settle down, and go with some
20 civility.
21 MR. FOX: And I apologize if I --
22 MR. ALDRIDGE: That's fine.
23 MR. FOX: -- suggested there is anything but civility. We
24 go way back, and so this is not a fight, but this is
25 just a point of clarification I feel strongly about

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1 though. And the point of clarification is the defects
2 in the street, that's an engineer that needs to talk
3 about that, someone that's competent.
4 MR. PAGE: I agree.
5 MR. FOX: So the things that he's mentioned for the most
6 part are not things --
7 MR. JAMES SCARBROUGH: He is guessing at what the witness is
8 going to testify to. How does he know?
9 MR. FOX: I'm not guessing. I based it on what you just
10 represented.
11 MR. PAGE: Okay, Board, I need a motion to either allow the
12 rebuttal witness or to not allow the rebuttal witness,
13 and if he does testify, I'm going to ask questions
14 myself but --
15 MR. BLYTHE: There should be objections -- if he testifies,
16 there could be individual objections to the particular
17 testimony too.
18 MR. PAGE: Okay. All right, what's the Board's pleasure? I
19 need a motion to either allow or not allow the rebuttal
20 witness. What's your feeling then? Because I don't
21 have a motion.
22 MR. ALDRIDGE: Well, I'm going to ask Mr. Blythe -- he
23 mentioned something before we recessed about potentially
24 -- there was a right that they had for a rebuttal
25 witness. Where do we stand on that?

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1 MR. BLYTHE: It depends on what his testimony is --
2 MR. PAGE: Yeah.
3 MR. BLYTHE: -- if he's going to be -- his testimony to --
4 if he rebuts, actual rebut, and it is within his
5 expertise to do so, I think that Jim has a valid point
6 there. Obviously, there could be matters that are not
7 that I think that the Town can object to, and they
8 should not be considered. And I think each of you have
9 the ability to discern what -- after the objections, if
10 you want to do it. We may be extending the time on
11 this, but that's my feelings on it.
12 MR. PAGE: All right, Mr. Scarbrough, I'm going to allow
13 this as long as you don't draw this thing out and as
14 long as we addresses specific issues.
15 MR. JAMES SCARBROUGH: I'll move quickly.
16 MR. PAGE: Okay.
17 MR. JAMES SCARBROUGH: Thank you.
18 MR. PAGE: You need to be sworn in, Mr. Flowe, please, sir.
19 (Zoning Clerk administers an oath to Richard Flowe.)
20 (F. RICHARD FLOWE takes the stand.)
21 DIRECT EXAMINATION BY MR. JAMES SCARBROUGH
22 Q. Mr. Flowe, for the record, would you state your name?
23 A. Yes, sir. My name is Richard Flowe.
24 Q. And would you tell the Board what your background is and
25 what your occupation is?

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1 **A. Yes. My background and occupation is in city and town**
 2 **planning and land development.**
 3 Q. Okay, how long have you been doing that?
 4 **A. A little over 30 years as a self-employed individual**
 5 **servicing municipalities and private clients.**
 6 Q. Okay. And have you ever worked for the Town of Midland?
 7 **A. Yes, sir.**
 8 Q. In what capacity?
 9 **A. I was under contract here as the planning, zoning, and**
 10 **subdivision administrator from April of 2010 until**
 11 **sometime in May 2016, about six years.**
 12 Q. Okay. And during that time were you familiar with
 13 Tucker Chase subdivision and Tucker Chase, LLC?
 14 **A. Yes, sir.**
 15 Q. And what dealings did you have with them?
 16 **A. When I arrived there were several subdivisions that had**
 17 **essentially stopped developing or building because of**
 18 **the recessionary situation that was going on nationwide,**
 19 **and my initial involvement with Tucker Chase was in**
 20 **meeting with the former County planning director, Gerald**
 21 **Newton, to hammer out what appeared to be a missing link**
 22 **in the development approvals for the Tucker Chase**
 23 **subdivision, which had been handled under Town**
 24 **jurisdiction by County staff who was serving under**
 25 **contract to service the Town's staff.**

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1 Q. Okay, so prior to you there had not been a Town planner?
 2 **A. Well, there had been, but it was County staff playing**
 3 **that role.**
 4 Q. It was County staff, okay.
 5 **A. That's correct.**
 6 Q. I understand. Okay, and what dealings did you have with
 7 Mr. Grimmer and Tucker Chase?
 8 **A. The first steps were to come to a term or set of terms**
 9 **for the completion of an amenity package which had been**
 10 **left out of the original approval in terms of the time**
 11 **frame for its construction and installation.**
 12 Q. Right.
 13 **A. And we worked together on that and reached an agreement**
 14 **under the supervision of the liaison from the Town**
 15 **council who was assigned to that department.**
 16 Q. Okay, and so you did reduce that to writing?
 17 **A. It was produced in writing. It was amended a couple of**
 18 **years later for some small adjustments, but it was**
 19 **largely hammered out in 2010, not long after I first**
 20 **arrived.**
 21 Q. Okay. And how was your relationship with Mr. Grimmer at
 22 that time?
 23 **A. Mr. Grimmer was -- surprisingly, Mr. Grimmer was one of**
 24 **the few developers still standing, I'll say it that way,**
 25 **of the independent developers. And he was kind of an**

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1 **old-school developer, you know, always right, and I was**
 2 **always wrong in our dealings, in his mind anyway. I was**
 3 **a bureaucrat.**
 4 Q. Okay. Let me hand you a document here.
 5 MR. JAMES SCARBROUGH: Can you tell me
 6 what my last exhibit number was?
 7 MR. FOX: You're introducing a document
 8 that has not been testified to or been introduced
 9 into evidence at this point.
 10 MR. JAMES SCARBROUGH: That's right.
 11 He's going to identify it.
 12 MS. KEENEY: 24.
 13 MR. JAMES SCARBROUGH: The last one was
 14 24, so this one will be 25?
 15 Q. I've marked that Exhibit 25. Just take a minute and
 16 look at it if you would.
 17 MR. JAMES SCARBROUGH: I don't think you
 18 have this in your book if you want to pass this
 19 around.
 20 MR. FOX: I'll object or reserve
 21 objection to the relevancy of this document.
 22 MR. JAMES SCARBROUGH: We haven't looked
 23 at it yet.
 24 MR. FOX: Well, the issue before the
 25 Board is a violation of whether or not the streets

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1 are properly maintained, and I don't know how a
 2 consent agreement is going to address whether or
 3 not the streets have been maintained. So I'm
 4 waiting to hear that.
 5 Q. Mr. Flowe, can you shed some light on that?
 6 **A. Yes, sir. This consent agreement for Tucker Chase**
 7 **subdivision development for Cabarrus County, this was a**
 8 **process that was in place in the first decade of the**
 9 **2000s, and it was a countywide policy that had to do**
 10 **with adequate public facilities for schools and other**
 11 **things. It's no longer used in this configuration**
 12 **today. However, it did include with it a statement**
 13 **about the vested rights and identified, and I think this**
 14 **is important to note, that this development must be done**
 15 **in accordance with and it's recognized as a vested right**
 16 **under the zoning, subdivision, development, growth**
 17 **management, platting, environmental, open space,**
 18 **transportation, and other land use plans, laws and**
 19 **regulations in existence and effective on June 1, 2004.**
 20 **And that appears at the bottom of page 2 and the top of**
 21 **page 3. That's really relevance of this document.**
 22 Q. And when you were Town planner, did you use this
 23 document to refer to the standards that were in effect
 24 on June 1, 2004?
 25 **A. I did. In addition to being normal practice for a**

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1 development of that nature, land development such as a
 2 subdivision, that it would be recognized under the rules
 3 in effect at the time it was approved. And that is not
 4 pertaining to the homes, that's pertaining specifically
 5 to the infrastructure, the layout of the streets as
 6 shown on the preliminary plat or what we might call a
 7 master plan, as well as the types of design
 8 configurations of those streets, which might be spelled
 9 out in the terms of the configuration of the curb and
 10 gutter, the width of the street, and other improvements.
 11 MR. FOX: I'll object to this because I
 12 don't see the relevance of the vested rights.
 13 There's been no suggestion that Mr. Grimmer does
 14 not have the right to develop Tucker Chase. The
 15 issue before this Board is whether or not the
 16 commitments that he made have been met.
 17 MR. JAMES SCARBROUGH: No. No, this says
 18 that the standards are in effect, the ones in
 19 effect June 1, 2004. We're being charged with the
 20 ones in effect in 2011.
 21 MR. FOX: Again, I heard this witness
 22 talk about vested rights, and this has nothing to
 23 do with whether or not he has a right to proceed.
 24 Show me --
 25 MR. JAMES SCARBROUGH: Well, let's go to

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1 the Notice of Violation.
 2 BY MR. JAMES SCARBROUGH:
 3 Q. Mr. Flowe, you've got in front of you -- there's an
 4 exhibit book there. Turn to tab 18. Just take a minute
 5 and acquaint yourself with that.
 6 **A. (Examines document.) I've scanned it. I'm generally**
 7 **familiar with it.**
 8 Q. All right, and are you familiar with the ordinances of
 9 Midland that were adopted in 2011?
 10 **A. Yes, sir.**
 11 Q. And how are you familiar with them?
 12 **A. I prepared that. I drafted that for this town.**
 13 Q. Okay. Does this Notice of Violation -- when it refers
 14 to these sections, is it referring to the 2011 Midland
 15 Development Ordinance?
 16 **A. Yes, sir.**
 17 MR. FOX: Objection. That's a decision
 18 for this Board to make.
 19 MR. BLYTHE: I agree.
 20 MR. PAGE: Sustained. Yes, I agree.
 21 Q. Was there a Midland Development Ordinance prior to 2011?
 22 **A. Prior to 2011 there was a development ordinance, a**
 23 **zoning ordinance, as well as a subdivision section in**
 24 **that zoning ordinance. So it was kind of a unified**
 25 **development ordinance in a way.**

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1 Q. Okay. And then in 2011 was it entitled Midland
 2 Development Ordinance?
 3 **A. Yes, sir.**
 4 Q. Okay. Or MDO?
 5 **A. Yes, sir.**
 6 Q. All right. And did the MDO exist on June 1, 2004?
 7 **A. No, sir.**
 8 Q. And when you were talking to the developer of Tucker
 9 Chase about his streets, what ordinances did you refer
 10 back to?
 11 MR. FOX: Objection. I'll strike the
 12 objection.
 13 MR. JAMES SCARBROUGH: I'm just
 14 supporting his testimony that he's being
 15 consistent.
 16 MR. BLYTHE: I think he can answer the
 17 question.
 18 MR. FOX: Yes.
 19 **A. I was referring to the ordinance in effect at the time**
 20 **these plats were approved in the 2004 ordinance, and**
 21 **that ordinance was revised substantially over several**
 22 **years.**
 23 MR. FOX: Objection to that part as being
 24 nonresponsive. He's answered the question.
 25 MR. PAGE: Sustained.

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1 Q. Okay. And what design and construction standards, if
 2 you know, would have applied to the Tucker Chase
 3 subdivision streets?
 4 MR. FOX: Objection; not competent to
 5 testify.
 6 MR. PAGE: Say that again, Mr. Fox.
 7 MR. FOX: He's not competent to testify
 8 as to what will apply to Tucker Chase. He's
 9 competent if he knows what's in the ordinance, but
 10 he can't testify -- he wasn't there.
 11 MR. JAMES SCARBROUGH: Yes, he can. Your
 12 present Town planner signed the Notice of
 13 Violation.
 14 MR. PAGE: Well, he was -- well, I'll
 15 have to say he said -- you asked him -- what was
 16 the question?
 17 MR. JAMES SCARBROUGH: What design and
 18 construction standard would have applied to the
 19 streets in Tucker Chase.
 20 MR. PAGE: And you started working here
 21 when, Mr. Flowe, 2008?
 22 **A. 2008.**
 23 MR. FOX: He wasn't around.
 24 MR. JAMES SCARBROUGH: April 2010.
 25 MR. PAGE: Okay. He can't answer that

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1 question.

2 Q. Well, what about, can you answer the question of what

3 design and construction standards would have applied in

4 2016?

5 **A. As of May 2016, yes, and that would be the UDO -- or**

6 **MDO, excuse me.**

7 Q. Yeah, except when it came to the design and construction

8 standards, and those were -- what about the engineering

9 standards?

10 **A. The engineering standards were detailed in the**

11 **ordinances, and the engineering standards to the extent**

12 **of them defining a width and a road type and a design**

13 **type, not necessarily specifications on densities and**

14 **thicknesses. And the older ordinances that were here in**

15 **effect at the time had a wider street with a rollback**

16 **curb, for example, as was described by the previous**

17 **witness, the engineer who did an excellent job, in my**

18 **opinion, of summarizing the problems. I don't take any**

19 **objection or have any opinion as to -- to differ with**

20 **that engineer about the conditions out there.**

21 MR. FOX: Okay, I think he's asked and

22 answered that. I don't think he's gotten the

23 question.

24 MR. JAMES SCARBROUGH: Well, this is not

25 a courtroom. We're supposed to have a little

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1 leeway. Okay.

2 MR. PAGE: That's true. Go ahead.

3 Q. Well, let's go back to the issue of -- you're familiar

4 with the ordinance that existed prior to 2011, is that

5 right?

6 **A. Yes, I administered that prior to the adoption of the**

7 **MDO.**

8 Q. And did that ordinance have anything to say about when

9 to put the topcoat on?

10 **A. The engineer at the time, Jeff Moody, which, of course,**

11 **your public works engineer and your planning and zoning**

12 **subdivision administrators will work closely together,**

13 **the requirement of the engineer was not to allow the**

14 **topcoat until the 75th percentile of the homes were**

15 **built.**

16 MR. FOX: Objection. He's talking about

17 the requirement of the engineer. We were asking a

18 question about what does the ordinance say.

19 MR. PAGE: Yes, that's an engineering

20 issue. I agree.

21 MR. FOX: Move to strike.

22 Q. Let's go to the tab number 3. That refers to Concord.

23 Let's go to one that's a little clearer. Let's go to

24 tab number 5. Do you see the certification by Jeff

25 Moody?

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1 **A. Yes, sir.**

2 Q. And it refers to specifications and standards of

3 Midland?

4 **A. Correct.**

5 Q. Do you know what that refers to?

6 MR. FOX: Objection. He did not sign

7 this. He's merely offering an opinion that this

8 Board is just as equally competent to --

9 MR. JAMES SCARBROUGH: Well, if he knows,

10 he can say. If he doesn't know, he can say, "I

11 don't know."

12 **A. It would have been the standard --**

13 MR. FOX: But it also can be whether or

14 not the Board thinks that's valuable for their

15 determination of whether or not a violation exists

16 here.

17 MR. JAMES SCARBROUGH: Well, we've been

18 talking about this certification for an hour and

19 what it means.

20 MR. PAGE: Well, I think we've read it

21 enough. I think everybody knows what it says.

22 MR. JAMES SCARBROUGH: But the standards

23 would have included the engineering standards, and

24 Jeff Moody would have included no topcoat.

25 MR. FOX: But Jeff Moody's not here, and

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1 this is not Jeff Moody.

2 MR. JAMES SCARBROUGH: But this witness

3 has knowledge of that, and this is a fairness

4 issue. I want it in the record.

5 MR. PAGE: The question is, did you work

6 with Jeff Moody?

7 **A. I did work with Jeff Moody at the time. I contacted him**

8 **to determine at what point or what threshold they were**

9 **requiring the topcoat to seal the roads because the**

10 **exposed basecoat had been out there for a number of**

11 **years. And we were concerned that it needed to be**

12 **covered up, but at the time the policy was different.**

13 **It was based on the percentile of homes constructed.**

14 MR. FOX: And if he was allowed to

15 testify, he's going to offer things that he

16 learned from a conversation, which is hearsay.

17 MS. BARGER: Exactly.

18 MR. PAGE: I agree. I agree.

19 MR. JAMES SCARBROUGH: Well, wait a

20 minute. Is this not a fair hearing?

21 BY MR. JAMES SCARBROUGH:

22 Q. Now, Mr. Flowe, do you have any other knowledge --

23 MS. BARGER: Produce the documents.

24 MR. PAGE: Okay, if he had a conversation

25 with Mr. Moody, we need the documentation or email

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1 or something that shows that --

2 MR. JAMES SCARBROUGH: I'll move away

3 from the conversation --

4 MR. PAGE: Okay.

5 MR. JAMES SCARBROUGH: -- and ask

6 Mr. Flowe if he has any other knowledge of whether

7 that topcoat could be put down at the time.

8 MR. PAGE: Okay, ask. Go ahead and ask.

9 **A. Would you please clarify the question for me, please?**

10 Q. Yes. There was no topcoat in Tucker Chase for a long

11 period of time. If -- would putting a topcoat have been

12 allowed under the standards that were in effect?

13 **A. When I arrived here, the ordinance that the Town had**

14 **adopted did not speak to it at all, and that was**

15 **administered solely by the engineer. That's why the**

16 **technical standards manual was done as far as the new**

17 **MDO, because we did not have guidance on that subject at**

18 **the subdivision administration level, and it was up to**

19 **the engineer to determine.**

20 Q. And so what did Mr. Moody's standards require?

21 MR. FOX: Objection. How does he know

22 what the standards are?

23 MR. JAMES SCARBROUGH: There were

24 engineering standards that applied throughout the

25 county.

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1 **A. It's not the standard. He stated to me that we could**

2 **not allow the surface until --**

3 MR. FOX: He stated to him, which is an

4 objection --

5 **A. -- the 75th percentile.**

6 MR. FOX: -- which is an objection based

7 upon hearsay.

8 MR. JAMES SCARBROUGH: Okay.

9 MR. FOX: That's my point.

10 MR. PAGE: I agree.

11 Q. But you worked in other jurisdictions in the county, is

12 that right?

13 **A. In the past.**

14 Q. Yes, and you knew Jeff Moody from those other

15 jurisdictions too?

16 **A. Correct.**

17 Q. He applied the same engineering standards in those

18 jurisdictions, is that right?

19 MR. FOX: Objection to leading.

20 MR. PAGE: Yeah, that's still hearsay,

21 Mr. Scarborough, as he's not here to testify.

22 MR. JAMES SCARBROUGH: All right.

23 MR. PAGE: And I'm assuming, if I know,

24 Jeff Moody was going by DOT standards at the time

25 for any roads he built.

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1 MR. JAMES SCARBROUGH: Well, how do you

2 know?

3 MR. PAGE: I can't testify but -- well, I

4 can step down and testify.

5 MR. JAMES SCARBROUGH: Okay.

6 Q. Now, I want to make clear that I'm not asking you to

7 testify what Jeff Moody told you, okay?

8 MR. FOX: Is there a question in that, or

9 is that --

10 MR. JAMES SCARBROUGH: No. I'm saying --

11 **A. I'll answer the question he asked, which is, okay, I**

12 **understand.**

13 Q. Okay. So other than what Jeff Moody told you, do you

14 have knowledge of whether the topcoat could have been

15 put on under the current standards?

16 **A. For clarification, the standards from the 2004**

17 **ordinance?**

18 Q. Yes.

19 **A. In my mind there was nothing that would have prevented**

20 **that to be done other than the Town saying yes or no.**

21 Q. Yes, but we were talking about the engineering

22 standards. Did you have any knowledge of that other

23 than what Jeff Moody told you, I mean, throughout the

24 County where you were?

25 **A. The standard practice was the 75th percentile --**

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1 MR. FOX: Objection.

2 Q. Okay, well --

3 **A. -- on all the projects that I personally did and was in**

4 **charge of.**

5 Q. Was what?

6 **A. 75.**

7 Q. 75 percent completion of the houses?

8 **A. Yes.**

9 Q. Okay. Before you came with the Town, do you know

10 whether there was any proof rolling done of the streets?

11 MR. FOX: Objection about the nature.

12 MR. JAMES SCARBROUGH: I'm just asking

13 yes, no, whether he knew. This is not a

14 courtroom, by the way. We're not going to get --

15 we're going to be here late unless I get to ask

16 questions.

17 MR. PAGE: Mr. Scarborough, I'll allow

18 him to answer yes or no. Yes, sir, go ahead.

19 **A. Would you please repeat the question?**

20 Q. Do you know whether the streets were proof rolled during

21 construction by the Town prior to the time you got here?

22 **A. I can't say for sure.**

23 Q. Okay, and then did you institute any policy after you

24 got here?

25 **A. Yes.**

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1 Q. And what was that?

2 **A. On all new streets as they were constructed, the Town**

3 **staff represented -- or the Town's interest in approving**

4 **proof rolls, not just accepting the developer's**

5 **engineer's certification.**

6 MR. FOX: Objection to relevancy. He

7 testified that he didn't start in 2010. The plat

8 said --

9 MR. JAMES SCARBROUGH: We're going to be

10 here a long time --

11 MR. FOX: I understand, but I don't --

12 MR. JAMES SCARBROUGH: -- if counsel is

13 going to interrupt every single time the witness

14 testifies.

15 MR. FOX: I'm not interrupting him.

16 MR. JAMES SCARBROUGH: I didn't interrupt

17 him that much.

18 MR. FOX: I recall Kassie's testimony,

19 remember? But no, I mean, I want to make sure the

20 Board clearly understands that this witness's

21 testimony relates to a time period and the plats

22 relate to a different time period. So I just want

23 to make sure that that's --

24 MR. JAMES SCARBROUGH: Well, that was my

25 whole argument about your notice of violation.

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1 You're in the wrong time period.

2 MR. FOX: Yeah.

3 MR. JAMES SCARBROUGH: Okay, I got that.

4 All right, your witness.

5 CROSS-EXAMINATION BY MR. FOX

6 Q. Mr. Flowe, what's your arrangement for coming here

7 tonight? Are you being paid?

8 **A. Yes. I was asked to come and to shed light on any**

9 **questions that I was asked that I knew the answer to.**

10 Q. For a fee?

11 **A. Yes, sir.**

12 Q. No further questions.

13 REDIRECT EXAMINATION BY MR. JAMES SCARBROUGH

14 Q. One question, do you work for free?

15 **A. No, I do not work for free.**

16 Q. Thank you. I'm done.

17 MR. PAGE: Wait. Hold on, Mr. Flowe.

18 I'm sorry, I didn't mean to let you go. Did the

19 Board have any questions for Mr. Flowe?

20 MS. CARTER: No.

21 EXAMINATION BY THE BOARD

22 BY MR. PAGE:

23 Q. Mr. Flowe, did you report to the Town council at any

24 time about the status of the problems with the roads at

25 Tucker Chase?

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1 **A. Yes, sir.**

2 Q. Would you like to elaborate on that just a little bit?

3 **A. Yes. I've had -- essentially as the subdivision**

4 **administrator, all of the subdivisions that were in**

5 **process fell under my purview, much like they would be**

6 **under Kassie's purview today. And in our roles we had**

7 **to coordinate with the various persons involved, whether**

8 **it's an engineer or the developer or both, and we, at**

9 **the staff level, had an engineer review these streets.**

10 **That engineer also met with the contractor that**

11 **installed the streets apparently and -- to go over**

12 **everything that was a concern.**

13 **We, as you can tell from the past correspondence,**

14 **were very detailed in our review, as was pointed out by**

15 **a previous witness, to make sure that we documented**

16 **this. There is no debate that the streets were in poor**

17 **condition. That's visible to the engineer and the non-**

18 **engineer alike. That was reported to the Council. The**

19 **approach, recommended approach, was that through a**

20 **heavy, aggressive enforcement we would probably inherit**

21 **an abandoned development, and the approach was taken to**

22 **try to work with that developer to help them get their**

23 **approvals -- to get enough building going on and get**

24 **their approvals for their second phase so that they**

25 **could obtain funding to afford to do the repairs. Many**

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1 **of the spot repairs that were done out there were at the**

2 **insistence of me or my staff during that time.**

3 **So while I am paid to answer questions and I'm**

4 **being paid by the person who is appealing this, I am**

5 **here to speak specifically about what our findings were,**

6 **and I think that they would agree that I was not easier**

7 **than the current administration on the interpretations.**

8 **My interpretation was, however, that the previous**

9 **standards applied, not the new MDO standards. And**

10 **that's what I reported to the Council, as well as the**

11 **planning and zoning commission.**

12 Q. And I'm just looking at one of the reports here, and you

13 told the Council that the staff sticking to pursuit in

14 both neighborhoods would bring about compliance. And

15 one indicates -- well, this was Tucker Chase -- that the

16 roads be maintained until they are accepted by this body

17 for public maintenance; Council cannot sign off on them

18 as meeting standards, and the engineer could not either.

19 **A. That's right.**

20 Q. Thank you, sir.

21 MR. PAGE: Any further questions?

22 (No response by the Board.)

23 MR. PAGE: Thank you, Mr. Flowe.

24 **A. Thank you.**

25 **(Witness exits the stand.)**

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1 MR. JAMES SCARBROUGH: That's all on
 2 rebuttal.
 3 MR. PAGE: Okay, we have some other
 4 individuals signed up to testify, I believe. Are
 5 they still here tonight?
 6 MS. KEENEY: I have some. Some have left. Mary Kressler?
 7 MS. KRESSLER: Here.
 8 (Mary Kressler takes the stand.)
 9 MS. KRESSLER: Do I just make my statement?
 10 MR. PAGE: State your name, please.
 11 MS. KRESSLER: Is this the mic?
 12 MR. PAGE: I think so. Tap it and see.
 13 MS. KRESSLER: Mary Kressler.
 14 MR. PAGE: And you do understand you're still under oath?
 15 MS. KRESSLER: Yes.
 16 MR. PAGE: Yes, ma'am. Thank you. Go right ahead.
 17 MS. KRESSLER: I am understanding that this hearing is
 18 basically for the roads and the maintenance of the roads
 19 and no other topics. We have lived in the subdivision
 20 the longest of anybody and traveled on the roads more
 21 than anybody. We were the second people to buy a house.
 22 The first ones have since moved. The roads were in
 23 extremely good condition when we moved in, which was
 24 2007, had no complaints. There wasn't any traffic.
 25 There was nothing. So there was nothing to deter and

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1 degrade any of the roads.
 2 The certificate that the gentleman talked about
 3 that was signed in 2008, I believe, that said the roads
 4 were fine, they were. The roads were fine -- or in
 5 2007. The roads were fine in 2008. There wasn't any
 6 traffic or building because of the recession and so
 7 forth, but as things grew and time grows, we've formed
 8 an architectural board, and I am secretary of that. And
 9 as the subdivision grew with more people and more homes,
 10 then the roads started to have potholes and cracks in
 11 the curb, which I think there's more than 20 percent.
 12 There's a lot of them. Cracks in the sidewalk.
 13 We had listed in our board minutes to the
 14 management company and so forth about the potholes,
 15 about our concerns with the sidewalks being, you know,
 16 broken and so forth. The road had heaved between
 17 Thurber and Paver, that section, to Tucker Field, where
 18 we have a natural speed bump now that was never there
 19 before. And so when we drive our car, we have a very
 20 low car, and it hits that baby every time. And like he
 21 said earlier, anybody who comes into the subdivision
 22 that doesn't know the subdivision, and God forbid
 23 they're going fast, goes flying over that bump, it could
 24 cause some serious damage to their car, plus possibly a
 25 house or a person.

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1 The problems I have with the maintenance of the
 2 roads, that when they were asked to fix the potholes,
 3 and we had a house across the street from us on the
 4 corner of Tucker Field and Granite that had a problem
 5 with the driveway, it wasn't fixed for over two years,
 6 and we had on numerous occasions written to them and
 7 asked them about it. The potholes would take sometimes
 8 three months, sometimes six months. It was never a 24-
 9 hour turnaround like you talked about in Concord. The
 10 roads now, after living there almost ten years -- or it
 11 will be ten years next month -- are really not in good
 12 shape, and they should be updated.
 13 Now, we have always talked to the Grimms about,
 14 well, it's stupid to do now because we're going to have
 15 building trucks come and pinch it. But we're over at
 16 75 percent capacity now filled with 150 homes that they
 17 plotted. We have that 75 percent of residents there
 18 now. So if the roads according to, if I understand
 19 correctly, your certificate or regulations, that at
 20 75 percent it be maintained, they are not. And I
 21 really, as a resident, would appreciate the fact that I
 22 could drive down that road smoothly and not have to go
 23 like this (indicating), because you do. And even when
 24 you're going 20 miles an hour you're like that.
 25 And I appreciate what he did on the corner of

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1 Thurber and Paver and Mudd Court especially going back
 2 into Granite. That is beautiful, but the whole
 3 subdivision should be like that from the entrance to the
 4 end, and that's all I've got to say.
 5 EXAMINATION BY MR. JAMES SCARBROUGH
 6 Q. Ma'am, Ms. Kressler, do you understand that the Town has
 7 stopped building permits in the subdivision?
 8 A. Yes, I do.
 9 Q. Okay, and that three's also an amenity package, a pool
 10 that's supposed to be built?
 11 A. That is true, which we probably will never see.
 12 Q. Okay.
 13 A. Mr. Grimmer asked me tonight to express an opinion that
 14 he would like us, as residents, to tell the zoning board
 15 and that he would definitely like to meet with you guys
 16 and work out an agreement with getting funding for the
 17 roads and the pool, but to me that's kind of -- I just
 18 think that's a delay and a put-off, and it won't get
 19 done. And so this is not about the pool. This is about
 20 the maintenance of the roads, the conditions of the
 21 roads right now.
 22 Q. Okay.
 23 A. And they are not very good. I'm sorry, Harry, but
 24 they're not very good.
 25 Q. Well, I'm not disagreeing with you on that.

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1 **A. You know, I would love to have the zoning board and**
 2 **Mr. Grimmer, who has always been a developer to me -- I**
 3 **was surprised since these hearings started to find out**
 4 **he was not, quote, our developer, that LLC Tucker Chase**
 5 **was non-funded now, and it went to a new Jupiter-**
 6 **something. That was not even addressed to any of the**
 7 **residents that that could happen. He's always been --**
 8 **and even you, at the meeting that you and Harry had for**
 9 **the residents, introduced him as our developer, and you**
 10 **didn't know that Jupiter Landing or whatever it was**
 11 **insolvent at that time too. So you know, there's a lot**
 12 **of new things that have come out to the residents that**
 13 **we never knew.**
 14 Q. Who said Jupiter Land was insolvent?
 15 **A. I didn't say -- I meant Tucker Field or Tucker Chase.**
 16 Q. Okay. And you're aware of an agreement between -- are
 17 you aware that there is an agreement between Tucker
 18 Chase, LLC and Jupiter Land to buy lots and finish the
 19 subdivision?
 20 **A. I am now. I wasn't before these hearings started.**
 21 Q. Okay, thank you.
 22 MR. PAGE: Mr. Fox?
 23 MR. FOX: Just a question.
 24 EXAMINATION BY MR. FOX
 25 Q. Ms. Kressler, you indicated that you've lived in Tucker

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1 Chase, you were the second owner to live out there.
 2 **A. The first have since moved, so we're the old people.**
 3 Q. You're the originals, and you've been there for more
 4 than ten years?
 5 **A. It will be ten years in April.**
 6 Q. And you've described the current conditions of the
 7 street. Do the current conditions of the street present
 8 any safety concerns for the public?
 9 **A. Yes.**
 10 Q. Okay. What type of safety concerns?
 11 **A. Again, like I said, if you find somebody speeding down**
 12 **that street and a kid runs in front of the car -- I**
 13 **mean, if it's pouring rain, water puddles in certain**
 14 **parts, but I'm more concerned about really from Thurber**
 15 **and Paver to Tucker Field because it's all like this**
 16 **(indicating).**
 17 MR. FOX: And what she's describing is a
 18 humpy road conditions --
 19 **A. It's like a speed bump --**
 20 MR. FOX: -- speed bump conditions.
 21 **A. -- that wasn't put in right.**
 22 Q. I have no further questions.
 23 MR. PAGE: Does the Board have any
 24 questions for Ms. Kessler?
 25 (No response by the Board.)

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1 MR. PAGE: Thank you, ma'am.
 2 MS. KRESSLER: You're welcome.
 3 (Ms. Kressler exits the stand.)
 4 MS. KEENEY: Marny Martimore?
 5 MR. PAGE: Please state your name, and do you realize you're
 6 still under oath?
 7 MS. MARTIMORE: Yes, sir.
 8 Mr. PAGE: Okay.
 9 MS. MARTIMORE: My name is Marny Martimore. I have been a
 10 resident of Tucker Chase with my family for three years,
 11 as of this past December. When we moved in -- to speak
 12 on the roads -- our house was the last house built on
 13 Granite at the time before the latest phase that was put
 14 in. It was our house and a house directly across the
 15 street from us were completed within a day of each
 16 other.
 17 And the first thing I want to say on that is the
 18 fact that the sidewalk -- because I know this kind of
 19 comes up with the curb -- ends at the house previous to
 20 mine when mine was built. That was part of the phase
 21 before my house. My house was just kind of an add-on
 22 right there. When the new homes were built, the
 23 sidewalk stopped at the house before mine and started at
 24 the house after mine. My house is the only home in the
 25 entire Tucker Chase subdivision without a sidewalk on

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1 that entire side that has sidewalk, which is easy to
 2 spot, really ugly, and it makes it very difficult. I
 3 have had parents actually complain to me that when their
 4 children are riding bikes, that they are on the sidewalk
 5 to be safe and have to go out into the road and come
 6 around my home to get back on the sidewalk, causing
 7 their children to fall off their bikes. They have been
 8 hurt to the point of bleeding. Children have bled
 9 because that has not been done. This has been addressed
 10 with the Grimmers on multiple occasions via phone calls,
 11 and nothing has been done to fix that.
 12 When the homes next to me in this last phase that
 13 was completed were built, we used to walk. My children
 14 and I would ride bikes and walk up and down the
 15 building. It was a great way to get exercise before the
 16 residents were there. And I would look at the
 17 construction, and the sidewalks, as they were put in,
 18 were cracking. Before my neighbor directly next to me
 19 -- so if you're facing the house to the right on Granite
 20 Street. Before they moved in, their sidewalk was
 21 cracked, before the house was completed. When they came
 22 to do their home inspection, I pointed out to their
 23 inspector, and I said, "You might want to bring that
 24 up." And they said, yeah, they're going to" -- you
 25 know, I don't know what they're doing with it. It

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1 wasn't my business, but it was -- and I'm not talking a
 2 little split. We're talking it was shattered.
 3 Now, there were no construction trucks driving
 4 over it, there were no cars driving over it. I am a
 5 stay-home mom. I am kind of a neighborhood watch
 6 person. Anyone on Facebook knows it. I report
 7 everything I see in the neighborhood. So nothing was
 8 done to that sidewalk to put it in that condition except
 9 for crappy building. This continued as we walked. The
 10 entire new sidewalk on Granite Street was just breaking
 11 apart.
 12 Now, other areas are as well, but my concern was
 13 this was brand new. It should not be cracking brand
 14 new. Again, I had reported this; nothing was done. It
 15 wasn't my home. I kind of let that one slide. I
 16 figured the new homeowners should be reporting on their
 17 end what was done there.
 18 I've had people come to do work on my home, pest
 19 control people, people that have come just to fix things
 20 in the house, that have complained to me about their
 21 trucks hitting potholes and damage coming to our home.
 22 I have one gentleman from pest control who comes to my
 23 house several times a year to do just the pest control
 24 stuff they do and said, you know, he came in before the
 25 last phase was completed. He's been there since, and he

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1 says, "It's amazing. You know you don't even have to
 2 know anything about this subdivision to know where the
 3 new phase was because it's -- the roads themselves are
 4 beautiful in this area. And even you drive, it's
 5 horrible, horrible, horrible, and then all of sudden,
 6 whoa, we can actually drive on a street." And when a
 7 company is complaining to you about actually driving to
 8 your home to do work that they're getting paid for, to
 9 me that's a big ol' problem.
 10 And then the last thing that I really want to
 11 speak on is kind of a character assessment of the
 12 Grimmers. When we first moved into Tucker Chase three
 13 years ago, there was no HOA whatsoever to speak of. It
 14 was -- the Grimmers ran everything, and I being, again,
 15 a stay-at-home mom, I wanted to be a part of this
 16 community. I was excited to raise my family here. And
 17 so we had a meeting and decided to elect two residents
 18 to become a part of the board -- would be the Grimmers
 19 and two residents, because I didn't believe that for the
 20 seven years prior there was no HOA. All these residents
 21 had no say whatsoever.
 22 So I was voted in, became a member of the board,
 23 and discovered very quickly that there was no
 24 communication between the residents and the Grimmers.
 25 And any attempt at communication that was made was shot

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1 down. There were no responses from the Grimmers to
 2 complaints from residents. We have a Facebook page for
 3 our community that everyone speaks on, and when issues
 4 are brought up, we would say, "Well, bring it to the
 5 board." Brian Rieland, who was on the board with me at
 6 that time who is no longer a resident of Tucker Chase,
 7 we took everything to the Grimmers, and nothing was ever
 8 done. I ended up leaving when I was getting harassed by
 9 residents because they thought that I should fix all the
 10 problems by being on the board, and when things weren't
 11 being fixed I was getting harassing phone calls and
 12 emails, and I was done. So I left that. We do have new
 13 members on the HOA. Still nothing being done.
 14 So to me that's just a little character assessment
 15 about how I feel. Like, we can complain all we want,
 16 and the residents see no change. The fact that we had a
 17 pretty packed meeting on the first night that we had
 18 this two months ago, and it has since dwindled down to,
 19 what, six homeowners? And it's not because people don't
 20 care, it's because the residents are so fed up with this
 21 and it being attempted to be dragged on and on and on
 22 and on. We're done. You know, I'll always be here
 23 because I am, like I said, I'm like neighborhood watch.
 24 I'm the one who goes back and reports all these notes
 25 that I took tonight and over the last two months, but

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1 it's a shame.
 2 It came to the point where I'm ready to move
 3 because of how bad it's getting, and I like my
 4 neighbors. It's not the neighbors. It's the people
 5 that we have to deal with. So that's my piece.
 6 MR. PAGE: Mr. Scarborough? Mr. Fox?
 7 MR. JAMES SCARBROUGH: No questions.
 8 MR. FOX: No questions.
 9 MR. PAGE: Thank you, ma'am. Appreciate you coming.
 10 (Ms. Mortimore exits the stand.)
 11 MS. KEENEY: Joe and Jeri Haase?
 12 (Ms. Jeri Haase takes the stand.)
 13 MR. PAGE: Please state your name, and you realize you're
 14 still under oath, right?
 15 MS. HAASE: Yes, sir, I do. I'm Ms. Haase, Geraldine Haase.
 16 My husband and I live at 4296 Tucker Chase Drive. We
 17 have seen this and been to all the hearings, and if
 18 you'll bear with me, I would like to say as a resident
 19 my husband and I think it's important to give the Town
 20 and Mr. Grimmer a perspective on this very lengthy
 21 situation.
 22 So when we purchased our home, we purchased our
 23 home in 2013. We were given a copy of the 2005 and the
 24 2007 CCRs, and that stated the developer shall mean and
 25 refer to Tucker Chase, LLC, its successors and assigns.

<p>Page 105</p> <p>1 Therefore, whether it's Jupiter Land, Tucker Chase, LLC, 2 or the developer, Mr. Grimmer, someone has control. 3 Now, we all know that a good business person creates a 4 limited liability company in order to establish personal 5 asset protection against any wrongdoing in which his 6 company may be involved, thereby assuring that if there 7 are irregularities in the company, he will not suffer 8 consequences on a personal financial basis. So Tucker 9 Chase CCRs and the HOA have been set up so that Harry 10 Grimmer and Craig Grimmer, the developers, have all of 11 the control. 12 Now, Tucker Chase is managed by Harry Grimmer and 13 Craig Grimmer, along with others. The HOA board of 14 directors has five directors: a Class A membership, 15 which is one vote for each residential lot owner; a 16 Class B membership, which is the developer or Harry 17 Grimmer, has three votes for each lot he still owns. 18 Now, the residents are outnumbered by three votes to our 19 one vote until any one of three things happen. Well, I 20 have the three things. I won't go into that. Eleven 21 years later, evidently, since this development was 22 started, not one of the three things outlined to change 23 this has happened. So if, as Mary is saying, if you're 24 living here that long, you begin to think will anyone 25 take this seriously. Okay, so here we are.</p>	<p>Page 107</p> <p>1 in place, nor is it the Town's fault that Mr. Grimmer 2 and his bonding company did not renew their bond as 3 required. That problem must obviously be due to poor 4 planning by the administrators of Tucker Chase, LLC 5 since they knew all along. Their obligations were 6 specifically outlined in the CCRs, and they should have 7 established an escrow account for this years ago. Okay. 8 Now, you can't have authority over happenings 9 without having responsibility over these happenings, and 10 in court, which we're not, we've all heard that. Many 11 times under the law ignorance is no excuse. Okay, on to 12 this next part. 13 The Tucker Chas HOA Board of Directors, as I said, 14 has five directors. Three of these are in the Grimmer 15 family: the president, the secretary, the vice 16 president. The community is allowed only two directors. 17 The HOA board of directors has three from the Grimmer 18 family, two directors from the community. Because the 19 developer holds a major voting right and has more 20 directors on the board, a resident feels that we have no 21 voice in our own neighborhood due to restrictions that 22 should have been addressed years ago since all this 23 started in 2005. So according to the CCRs this board 24 plan was to last for seven years, starting in 2005. 25 Well, before the seven years ran out in 2012, the</p>
<p>Page 106</p> <p>1 It doesn't appear now that the developer wishes to 2 hand over responsibility to someone else if he can't get 3 his own way completing the last sale of the lots. And 4 my husband and I have gathered this by looking into 5 things and making notes on this hearing. Perhaps the 6 developer's profit has overreached his sense of 7 obligation. Those who purchase their homes thinking the 8 pool and the roads would be done in the near future have 9 waited around 11 years. Mr. Scarbrough represents the 10 developer and states that Tucker Chase, LLC is now 11 insolvent and cannot live up to its obligations any 12 longer. Insolvent usually refers to bankruptcy. Has 13 Mr. Grimmer filed bankruptcy for Tucker Chase, LLC? 14 There is a difference between the lack of funds 15 available and bankruptcy. 16 Now, another unclear area is the matter of the 17 bond. No resident has any say or control in what 18 happens within Tucker Chase, LLC, the developer, or any 19 of the managers, the administrators who keep tabs on the 20 company's business requirements, and they were to 21 receive from the bond company a notice of expiration 22 date. I believe that's common. Did they receive it? 23 The Town requires Tucker Chase, LLC to automatically 24 renew their bond as required. It is not the residents' 25 fault that for the past five years there's been no bond</p>	<p>Page 108</p> <p>1 developer had time period extended to ten years. In 2 2015 that time ran out. 3 The two classes of voting membership, which are, 4 A, homeowners get one vote for their lot, and B, the 5 developer getting three votes for each lot the developer 6 owns. The community may never get control over their 7 neighborhood. He has control of three-fifths of the 8 votes of the membership of the association. He can pass 9 whatever changes he likes, and at this rate it may be 10 another decade before we even have a say in our own 11 community. 12 On December the 6th residents received a letter 13 from Scarbrough and Scarbrough, attorneys representing 14 the developer, Harry Grimmer, and Tucker Chase, LLC. We 15 have been assured over the last ten years that road 16 maintenance and the planned pool would be forthcoming. 17 Well, obviously, after many years this has not happened, 18 and that's just a fact. Another concern is the pool, 19 and I know we're not talking about that tonight, but 20 what about people who purchased their homes close to it 21 and probably paid a premium for that right? Will they 22 be refunded their money because it's not been built? 23 The developer in our legal papers on purchasing 24 our houses refers to Tucker Chase, LLC, its successors 25 and assigns. The name, whether Jupiter Land or Tucker</p>

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1 Chase or Mr. Grimmer, it doesn't matter to us living in
 2 the community. So it's hard to believe that
 3 Mr. Grimmer, who has all this experience as a
 4 businessman for all these years, made no provisions
 5 since 2005 for the required maintenance and upkeep of
 6 the roads and all the rest of the amenities, including
 7 the pool. Why wasn't that escrow account established
 8 years ago? So if you sit in this hearing and you listen
 9 to all these facts, if the developer is insolvent or
 10 Tucker Chase, it must be the result of his poor planning
 11 and inadequate management of his business.
 12 Now, we have no control over that. The letter we
 13 received from Mr. Grimmer's attorney, Mr. Scarbrough,
 14 dated December the 9th was mailed by the Longview
 15 Association, which that controls our HOA. The postage
 16 was paid by the Tucker Chase HOA through all of our dues
 17 every year, okay? Why is our HOA paying for postage to
 18 mail a letter from the attorney, Mr. Scarbrough? Now,
 19 either Mr. Scarbrough or his client should pay for the
 20 postage, not our HOA funds.
 21 As for the letter itself, my husband and I found
 22 that Mr. Scarbrough's letter was very condescending. He
 23 had an insulting tone that indicated that the residents
 24 are mentally competent and not capable of understanding.
 25 His attempt to oversimplify and shade the facts in favor

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1 of his client is commendable, yes, but when we purchased
 2 our homes, we purchased them, and we placed faith in
 3 Mr. Grimmer's words, not Mr. Scarbrough's. There's been
 4 a lot of legalese and shifting of responsibility here.
 5 It's not really pleasant to sit and listen to a lot of
 6 what's been going on, and as residents we simply feel
 7 that, aside from legalities, there is a moral
 8 responsibility, a responsibility for adhering to the
 9 rules set down in 2005 for our community, for Tucker
 10 Chase, LLC, for the development, everything.
 11 In the CCRs the developer has responsibility for
 12 the maintenance of the roads, as well as fulfilling the
 13 amenities as set out. Now, as residents we absolutely
 14 resent the different entities involved in this using the
 15 blame game to stall and evade. How long can this
 16 reasonably go on without clarification and
 17 responsibility? So we would like this settled as soon
 18 as possible. The residents can be protected against
 19 failures on the part of developer and we're sorry that
 20 it has come to this, but it appears that the Town of
 21 Midland is trying to enforce regulations that are best
 22 for our community. Okay.
 23 So either the roads are built correctly and
 24 maintained, or they're not, and all of this legal
 25 posturing and everything, okay, that's not the point.

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1 Okay, the roads fail, the sewer lines fail, the water
 2 fails, then what are we going to do? We all have to
 3 chip in and fix it? You know, let's get real here. We
 4 would very much like to see this resolved in a fair
 5 manner, but my husband and I felt it was important that
 6 you understand how we feel living it, and I want to
 7 thank you for your time.
 8 MR. PAGE: Thank you, ma'am. Mr. Scarbrough? Mr. Fox?
 9 Does the Board have any questions?
 10 (No response by the Board.)
 11 MR. PAGE: Thank you, ma'am. You can step down.
 12 (Ms. Haase exits the stand.)
 13 MS. KEENEY: Adam Dagenhart?
 14 (Adam Dagenhart takes the stand.)
 15 MR. PAGE: Please state your name, and you do realize you're
 16 still under oath?
 17 MR. DAGENHART: Yes, I do, Adam Dagenhart. My name is Adam
 18 Dagenhart. I live at 11645 Mudd Drive, and I have
 19 resided there for the last three-and-a-half years. We
 20 were one of the first homes built when development
 21 picked back up in Tucker Chase and have seen continued
 22 growth over the last three years with approximately 67
 23 lots having closed in that time frame. We, along with
 24 the other 119 families that live in Tucker Chase, were
 25 told of a pool being built by the developer, some of

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1 whom have been waiting since 2007. In addition to that,
 2 the condition of the roads are substandard, and yet
 3 while some have been fixed, the majority have not been
 4 fixed.
 5 The NOV issued by Midland is concise in that it
 6 states that he has violated Article 16, Sections 16.1
 7 and 16.2, Subsection 16.2-6, Streets and Utilities, and
 8 16.2-7, Street Signs. Mr. Grimmer and/or his agent
 9 signed the final plats of the report to be able to sell
 10 lots with a Certificate of Road Maintenance, which is a
 11 standard practice within all jurisdictions, whether
 12 municipal or state. The certificate states that the
 13 owner, and I quote: I/we hereby certify that I/we will
 14 maintain the roads to a standards set forth by the NCDOT
 15 until the respective government agency takes over
 16 responsibility. This does not include snow or ice
 17 removal. Until the roads meet the articles listed
 18 previously, the Town of Midland will not accept the
 19 roads for maintenance. Therefore, until such time, it
 20 is Mr. Grimmer's responsibility for maintenance.
 21 I am personally aware of many instances over the
 22 last three years of Midland working with Mr. Grimmer
 23 with this situation. I applaud them for drawing a line
 24 in the sand and exercising their right and duty to the
 25 residents of Midland, those that actually live in

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1 Midland and pay taxes, not those who develop land here.
 2 I know that Town of Midland has done everything it could
 3 prior to this NOV to work with Mr. Grimmer on putting
 4 some capital to fix the roads in light of the '08-09
 5 recessions that we have experienced. He built over half
 6 the subdivision lots today that been sold in the last
 7 three years with a total 75 percent buildout. Where is
 8 that capital now?
 9 It has been stated by Mr. Grimmer that he is not
 10 responsible for the roads, that if he cannot build the
 11 remaining lots the capital is not there for the required
 12 repairs. While I certainly commend Mr. Grimmer for
 13 sticking with developing Tucker Chase, the recession,
 14 the lack of capital for anything else does not absolve
 15 him of his requirements to maintain the infrastructure
 16 as he has installed. He talks about being insolvent,
 17 but is there not 9.84 acres in the front of Tucker Chase
 18 that were to be developed as townhomes/commercial that
 19 are currently owned by Mr. Grimmer and Jupiter LLC?
 20 Nothing has happened on that property since day one, so
 21 could that not be used to be his collateral from a bond
 22 requirement for the repairs and a pool?
 23 In addition, the register of deeds showed the plan
 24 transaction from Jupiter to Tucker Chase, LLC, yet no
 25 monetary value was placed on those transactions. But in

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1 entrance, as well as to repair the existing streets
 2 comes to 687,000, for a difference of approximately
 3 \$95,000, which will go to Mr. Grimmer. Why should the
 4 residents continue to wait for Mr. Grimmer to recoup all
 5 of his costs and be without completed approved roads and
 6 an amenity that is still advertised today, as well as a
 7 second access as required by fire code? But yet Mr.
 8 Grimmer wants you to believe he needs 35 lots released
 9 to be able to finish the repairs, second access, and the
 10 pool. Why is Mr. Grimmer not willing to use the money
 11 from the sale of the remaining lots to pay himself or
 12 any outstanding creditors, which I find hard to believe
 13 there are any since he has been able to hold onto this
 14 development even through the recession when so many
 15 other developments and companies were not able to.
 16 Do I agree with the NOV? Yes, I do. Are we here
 17 tonight to discuss the escrow and the time lines or the
 18 litigation threatened by Mr. Grimmer? No, we are here
 19 about the NOV, which is clear as well as the multiple
 20 attempts the last three or four years to work with him
 21 on resolving the matter. Why was all this information
 22 provided? It wasn't to get revenge against
 23 Mr. Grimmer, as stated by his attorney, but to provide
 24 you some insight of the Board of Adjustment as well as
 25 anyone else here tonight of the attempts made by Midland

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1 the cash flow analysis provided by his attorney there is
 2 a land clause to repay Bill Water, i.e. Jupiter, of
 3 300,000. No one has been given an explanation why the
 4 legal transaction had no monetary value but his plan
 5 says there's a need for it.
 6 A second access point has not been completed Mr.
 7 Grimmer, yet Midland and the County fire marshal have
 8 both given concessions to allow the maximum number of
 9 lots before a second access is required by fire code of
 10 30 but be changed to 150. Another instance of Midland
 11 working with Mr. Grimmer, yet he is unwilling to work
 12 with Midland.
 13 I asked the question of his attorney, what is the
 14 scope of Best Landscaping as shown in the cash flow
 15 analysis? His response is, "I don't know what that work
 16 is for in that category." Well, based upon my research
 17 with Secretary of State and the utilities commission,
 18 Best Landscaping and Grading is neither a licensed
 19 utility contractor or a company, period. To be able to
 20 install at a minimum the required water and sewer needed
 21 to finish out the remaining 35 lots, a licensed utility
 22 contractor is required.
 23 Based upon the information that I have stated
 24 above, there is approximately 782,000 of funds that are
 25 questionable, yet costs to build the pool, the second

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1 and unkept promises of Mr. Grimmer to make what is right
 2 as required by the ordinance. If Mr. Grimmer wants to
 3 post a letter of credit, cash, check, bond, I have no
 4 problem with this plan, but the escrow plan, along with
 5 a great many of others, I have huge concerns. The time
 6 line, of course, isn't what we would like but is what we
 7 have come to expect from Mr. Grimmer.
 8 I ask you this question now: Which is better, one
 9 developer who has his toes stepped on or 120-plus
 10 existing households of Tucker Chase upset? I also
 11 wanted to add that as far as the safety issue, unless
 12 you're out there in the mornings or in the afternoons
 13 when the school bus comes, when those school buses come,
 14 because there's no second access, they have to do a
 15 three-point turn. Well, we have school buses that come
 16 as early as 6 o'clock in the morning, and there's, you
 17 know, three, high school, middle school, and elementary.
 18 Those parents -- some parents drop their kids off
 19 waiting for the bus. The school bus has to come in and
 20 make a three-point turn. Not only do they have to
 21 maneuver around those cars for those parents, but they
 22 also have to deal with the traveling people going to
 23 work, coming to work, in the mornings and the
 24 afternoons. Now, it's been stated, where is there any
 25 safety issue? To me, that is a huge safety issue.

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1 Mary alluded to earlier the water -- there's been
 2 bird baths -- you -- you again, the manholes, having to
 3 drive around them. I live on Mudd Drive, as I stated
 4 earlier, and I can certainly appreciate what's been done
 5 on Mudd Drive. But I work for the City of Concord, and
 6 the joke at work is Mudd Drive was the worst street that
 7 our inspection department has seen in 15 years.
 8 MR. PAGE: Mr. Scarborough? Mr. Fox?
 9 MR. FOX: No questions.
 10 MR. PAGE: Does the Board have any questions?
 11 (No response by the Board.)
 12 MR. PAGE: Thank you. Thank you for coming.
 13 (Mr. Dagenhart exits the stand.)
 14 MS. KEENEY: Chuck Taylor? (No response.) Okay, that's it.
 15 MR. PAGE: That's it? We scared a bunch of them off or wore
 16 them off, one or the other?
 17 MS. KEENEY: Well, a lot have signed up and said no, that
 18 they did not want to testify.
 19 MR. PAGE: I was just joking. Mr. Scarborough and Mr. Fox,
 20 any closing remarks?
 21 MR. JAMES SCARBROUGH: Well, first, I want to make sure the
 22 Board understands my argument. Well, let me -- I better
 23 stick with my plan here. The Notice of Violation was
 24 inadequate because of the charges in the Notice. It
 25 refers to the 2011 ordinance, and the roads were already

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1 finished by then. So we're doing a retroactive
 2 application of that ordinance to some older roads, and
 3 so we were never notified of the proper provision which
 4 was being violated.
 5 Now, Harry Grimmer's not the developer. That's
 6 been stipulated to, so we ask for a dismissal of
 7 everything against him. What ordinances did we violate?
 8 The Notice of Violation says that the streets have not
 9 been properly maintained or maintained consistent with
 10 the standards contained within the development ordinance
 11 adopted by Cabarrus County, both previous and subsequent
 12 to the incorporation of Midland, with those development
 13 ordinances adopted by Midland as early as 2000. You
 14 know, that's a reference to the fact that Midland was
 15 incorporated in 2000, and the County was running the
 16 show for a number of years, and then you passed
 17 ordinances. And so all I'm saying is that the 2011
 18 ordinances don't apply to this, and we were never
 19 notified specifically of what Cabarrus County ordinances
 20 would have applied so we don't have notice of that, and
 21 that's a basic due process provision.
 22 We never got notice of what portions of the
 23 streets -- we got some evidence at the hearing about
 24 that, but we never got that in the Notice of Violation.
 25 Just a blanket statement that they were not constructed

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1 and maintained is not adequate. Is the final coat on
 2 the streets being required? No, the NOV does not state
 3 that, and so I don't know what the final -- I don't what
 4 this topcoat has got to do with anything. But you heard
 5 testimony that the topcoat in your own ordinance was not
 6 required until 75 percent completion.
 7 Now, there was a lady that testified, well, it's
 8 75 percent now, but we haven't heard or seen the figures
 9 on that, and I believe it's not 75 percent. At any
 10 rate, the Town didn't put on any evidence of that.
 11 The UDO was adopted after completion of these
 12 roads -- or the MDO you call it. And according to
 13 Richard Flowe, the standards are not under the MDO as
 14 charged in the Notice of Violation. Now, he also
 15 testified to the consent agreement with the County that
 16 said that we have vested rights to the ordinances in
 17 effect at that time.
 18 Now, there has also been evidence that we've tried
 19 to meet with the Town, and these residents need to hear
 20 this. They may not know this. We've tried to -- Tucker
 21 Chase is insolvent. There's nobody to fix these roads
 22 or do the amenities. We wanted another meeting with the
 23 Town to discuss an escrow agreement. We got the
 24 message, "No, the Town won't talk to you." Okay. I
 25 mean, we have a plan for escrowing money from future lot

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1 sales which will do all this, and that's what one of the
 2 witnesses referred to, the cash flow analysis. If the
 3 Town is not going to meet with us, what can we do? We
 4 can't sell lots. We've been prohibited from using
 5 building permits. We're done. Is that what you want?
 6 I don't think that's what the residents of the
 7 subdivision want, but nobody's going to listen to us.
 8 Nobody is listening to us now. The Town is not
 9 listening to us, the residents -- everybody's mad at us.
 10 I understand that, but somebody's got to have a
 11 solution, and just charging us with violations is not a
 12 solution. So we've repeatedly told the staff we want to
 13 work this out. Now our builder, DR Horton, is gone. We
 14 don't have a builder anymore.
 15 So you know, we would say that the Board should
 16 dismiss this as to Mr. Grimmer and find that the --
 17 dismiss this to the LLC because it's not even the
 18 developer/owner, Jupiter Land is. It's taken its place,
 19 and the NOV doesn't give us notice of the right charges.
 20 The issue is simply maintenance, as your engineer and I
 21 agreed with, and so, you know, where's the money coming
 22 from? Nobody has mentioned money. Where's the money
 23 coming to do all this? We don't have it. We proposed a
 24 solution to that. Nobody listened to us. So that's all
 25 we can do. We're done. Thank you.

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1 MR. PAGE: A question, Mr. Scarbrough, you stated a while
 2 ago that Jupiter Land and Tucker Chase had an agreement.
 3 They were buying lots and building on the lots?
 4 MR. JAMES SCARBROUGH: Yes. Tucker Chase has a takedown
 5 agreement with Jupiter. It's going to take down so many
 6 lots a quarter and sell it to the builder to build
 7 houses, and we were going to escrow the money to finish
 8 the subdivision. And that's our agreement with Jupiter
 9 Land, and now we can't perform under that agreement
 10 because we don't have a builder anymore.
 11 MR. PAGE: So in some form or fashion Tucker Chase, LLC
 12 still exists with the agreement with Jupiter Land?
 13 MR. JAMES SCARBROUGH: It does.
 14 MR. PAGE: Okay.
 15 MR. JAMES SCARBROUGH: But we're going to be -- we're not in
 16 violation of that agreement right now, but we're soon
 17 going to be, maybe in about six months.
 18 MR. PAGE: Okay, thank you. Any questions for
 19 Mr. Scarbrough?
 20 (No response by the Board.)
 21 MR. PAGE: Mr. Fox?
 22 MR. FOX: Good evening. Thank you for your time and your
 23 patience and sorry this has gotten a little bit -- at
 24 some point you may have interpreted it being
 25 contentious. It is not contentious, it's just a

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1 heartfelt belief as to the positions of our clients.
 2 And my client is not just a Town. My clients are the
 3 residents that live in Tucker Chase, and I feel for
 4 those residents because this is not about a shell game
 5 of moving dollars around. This is about a commitment
 6 that was made by a developer back in 2005 and 2008 and
 7 2010.
 8 Every plat that was recorded in that subdivision
 9 carried forth that same commitment, and that commitment
 10 was to maintain those roads and streets in Tucker Chase
 11 until such time as a governmental entity took them over.
 12 Boiled down, that is the violation. Did they or did
 13 they not meet that commitment that they not only made to
 14 the Town, to Cabarrus County at the time apparently, to
 15 the residents, and to the purchasers who bought property
 16 in that subdivision? And so we believe that the Notice
 17 of Violation is sound. It is sound, and it is
 18 enforceable. It is enforceable for a number of reasons.
 19 One, in 2001 there was an ordinance in place that
 20 talked about for when you offer streets for dedication
 21 you shall agree to a maintenance of those streets. That
 22 ordinance is reflected in the language that made its way
 23 into the certificate. Then that commitment carried
 24 forth under the 2011 ordinance of the Town. It is
 25 called a continuing commitment, a continuing violation,

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1 and the ordinance in 2011 picks up on that same spirit
 2 and said for any violations or any things that were
 3 existing at the time of this ordinance, those conditions
 4 shall still be pending and be enforceable under this
 5 ordinance. So I don't know where they're trying to go
 6 to because the ordinance fabric is woven together where
 7 it still carries forward the obligation.
 8 And then there's the simple logical thing, how
 9 could one make a commitment in 2005, 2008, 2010 and then
 10 try to get out of the commitment subsequently in 2011
 11 when the conditions have not been met? You heard from
 12 Mr. McMillan, and he testified about going through that
 13 neighborhood and looking at those streets. And he gave
 14 you detailed pictures. And pictures speak volumes,
 15 quite frankly. He gave you a picture of Mudd Street,
 16 and he gave you a picture of Granite Street, and you saw
 17 those streets and those conditions. And quite frankly,
 18 the gentleman that just -- Adam Dagenhart just
 19 testified, and what he said about that very same Mudd
 20 street that he lives on, he said that the joke in
 21 Concord is that is the worst street in 15 years that
 22 they've ever seen. That's the condition that this
 23 developer wants you to believe that he has no further
 24 obligations to adhere to. That's the street and those
 25 are the conditions that he says are compliant with his

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1 obligations under that final plat and under our
 2 ordinances.
 3 I submit that they are not in compliance, that the
 4 Notice of Compliance is valid. The Notice of Violation
 5 cites for the lack of maintenance. The lack of
 6 maintenance is evident through the testimony, it's
 7 evident through the pictures, it's evident through what
 8 you've heard over the last three hearings on this point.
 9 There is also a Notice of Violation related to
 10 construction. You heard some testimony from
 11 Mr. McMillan that there was moving sewer pipes and water
 12 lines that caused the streets to sort of compress. That
 13 I submit could be woven into the maintenance, but it's
 14 also a construction-related component, and that's why
 15 they were included in the Notice of Violation that was
 16 sent out. I will agree, we have stipulated, that if you
 17 look at the maps that are contained in the exhibits and
 18 the Notice of Violation, although they didn't do an
 19 artful job, that the violation relates to Tucker Chase,
 20 LLC, and they will stipulate that Mr. Grimmer is not a
 21 component -- did not sign in his individual capacity.
 22 So that's not an issue for you to decide or you can --
 23 you can decide to remove him, as Mr. Scarborough has
 24 said, but nonetheless there is a violation that's there.
 25 We would ask that you uphold the determination of

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1 your code enforcement officer as to the Notice of
 2 Violation of the Tucker Chase subdivision and give these
 3 residents some relief and some hope by the prospect of
 4 getting the benefit of their bargain. When they bought
 5 homes in there, they bought homes with the expectations
 6 that they would have -- no one would suspect that ten
 7 years later you would have a street that was not
 8 conforming. Give them the hope that they can get the
 9 benefit of their bargain. Thank you.
 10 MR. PAGE: Mr. Fox, just to clarify for everyone, you're
 11 saying that the citation of violation probably should be
 12 going just to Tucker Chase, LLC and not to Mr. Grimmer?
 13 MR. FOX: Tucker Chase, LLC is the entity that signed the
 14 plats that made the Certificate of Maintenance
 15 commitment, and that's where it should lie.
 16 MR. PAGE: Okay, thank you, sir. Any questions for
 17 Mr. Scarbrough or Mr. Fox?
 18 MS. CARTER: How long has somebody been paying HOAs?
 19 MR. JAMES SCARBROUGH: HOA? I have no idea, but that was
 20 not really relevant to why we're here.
 21 MR. PAGE: It's really not relevant to what we're looking
 22 at, but it's a good question but not relevant.
 23 MR. JAMES SCARBROUGH: But there's something else that
 24 wasn't relevant too, and that's where's the solution?
 25 Everybody's talking about the problem.

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1 MR. ALDRIDGE: Mr. McMillan, let's say these roads are
 2 approximately ten years old.
 3 MS. KRESSLER: 2007 is when the HOA started.
 4 MR. ALDRIDGE: Well, let's be generous.
 5 MR. PAGE: Okay.
 6 MR. ALDRIDGE: Based on your experience and education,
 7 should the road conditions in Tucker Chase be what they
 8 are in the amount of time that's elapsed?
 9 MR. McMILLAN: No, sir. The streets that I live on in
 10 Concord are 30 years old and have never been resurfaced.
 11 MR. ALDRIDGE: Thank you.
 12 MR. JAMES SCARBROUGH: And if we hadn't had the recession,
 13 that subdivision would be finished, six-year recession.
 14 MR. ALDRIDGE: Understood. It was just strictly in his
 15 expert capacity that was --
 16 MR. PAGE: Ma'am, are you going to answer a question from --
 17 MS. KRESSLER: Yeah. We moved there in 2007, and we paid
 18 HOA dues at that point in time and from then on out.
 19 MR. PAGE: Any other questions?
 20 MS. MARTIMORE: I just want to point out that when we moved
 21 in three years ago, HOA dues were still at an increased
 22 rate to raise money for the pool. So there was extra
 23 money being paid by residents for many years before the
 24 rates had been dropped down shortly after we moved in.
 25 There was extra money being paid by all those residents

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1 for many, many years that were not -- it was not needed.
 2 MR. PAGE: Thank you, ma'am. That's just not relevant for
 3 what we're --
 4 MS. MARTIMORE: I just wasn't sure what she was asking.
 5 MR. PAGE: I know, but it's not relevant for what we're here
 6 -- but I appreciate that.
 7 MR. JAMES SCARBROUGH: Now, you know, we have a meeting
 8 Thursday, the engineers do. You don't have to make a
 9 decision tonight.
 10 MR. FOX: That's a different case.
 11 MR. JAMES SCARBROUGH: Oh, that's right.
 12 MR. PAGE: Don't confuse us, Mr. Scarbrough.
 13 MR. JAMES SCARBROUGH: Yeah, my mistake.
 14 MR. ALDRIDGE: Mr. Fox, am I understanding that you are not
 15 objecting to Mr. Grimmer personally being dismissed from
 16 the violation?
 17 MR. PAGE: Exactly.
 18 MR. FOX: Right, I think that's what the evidence shows.
 19 MR. PAGE: Correct.
 20 MR. ALDRIDGE: Okay, I just wanted to make sure that that
 21 was, you know --
 22 MR. PAGE: The violations are now just --
 23 MR. ALDRIDGE: Tucker Chase.
 24 MR. PAGE: -- Tucker Chase, and the citation is just Tucker
 25 Chase, LLC.

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1 MR. ALDRIDGE: Right. I guess we have to --
 2 MR. PAGE: Right. Well, we will state that in the motion,
 3 but yeah, we'll clarify that again. Okay, I'm going to
 4 close the public hearing. All right, ladies and
 5 gentlemen, discussions, are there any discussions? You
 6 need any further clarifications on any testimony you've
 7 heard tonight? And regardless of what testimony we have
 8 heard tonight, we are making the decision on whether
 9 we're upholding, in other words affirming, or reversing
 10 or modifying the decision made by Ms. Watts acting as
 11 the planning and zoning and substation administrator for
 12 the Town of Midland. And any motion we have for
 13 affirming, reversing, or modifying the violation and the
 14 citation, we must give substantial reasons for that,
 15 whether you are citing the items that have been
 16 presented as evidence or plats, other testimony, but we
 17 need to have those specific reasons why for the motion.
 18 Is there any other discussion, anything you need to talk
 19 about, anything else you want to look at?
 20 (No response by the Board.)
 21 MR. PAGE: Ma'am?
 22 MS. BARGER: I'm not quite sure how to say this. The
 23 correlation between the signatures on the plats for
 24 either the streets, water, and sewer or the actual one
 25 for road maintenance, how those two fit together, I'm

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1 not quite clear whether that is relating directly back
 2 to the ordinance or not. And my feeling is that it
 3 states that, and I just wanted to make sure I'm clear on
 4 that or if I have a wrong assessment because the
 5 ordinance states that there are certain things that must
 6 be done. Those certificates both state certain things
 7 need to be done.
 8 MR. PAGE: Right.
 9 MS. BARGER: And I just want to make sure that I have that
 10 correct.
 11 MR. PAGE: And Map 1 didn't have a signature --
 12 MS. BARGER: It does not have anything on it, yes.
 13 MR. PAGE: -- for a Certificate of Road Maintenance. The
 14 others did, and all were signed by a representative of
 15 Tucker Chase, LLC except for the last one, which is a
 16 different signature, but it doesn't say whether it's
 17 Jupiter Land.
 18 MS. BARGER: Right.
 19 MR. PAGE: But it was testified that that person's signature
 20 was a representative for Jupiter Land on the last one.
 21 MS. BARGER: Okay.
 22 MS. CARTER: But Tucker Chase, LLC, Mr. Grimmer signed,
 23 Harry Grimmer.
 24 MS. BARGER: Right.
 25 MR. PAGE: Yes.

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1 MS. BARGER: All right, thank you.
 2 MR. PAGE: Anything else? Do you need some more time to
 3 look at anything? We can take more time to look at
 4 something else.
 5 (No response by the Board.)
 6 MR. PAGE: Questions, any clarification on anything else?
 7 MS. CARTER: I just feel like -- you just don't have the
 8 money to do it? I mean, is that what it boils down to,
 9 whether it should be done or not, there's no money there
 10 to do it?
 11 MR. PAGE: Well, we just need to make a determination on
 12 whether we agree with what the Midland planning and
 13 zoning administrator issued the citation of violations.
 14 We really can't make a determination as to where or how
 15 they're going to get the money. They can work that out
 16 if they need to.
 17 MS. CARTER: I mean, that's what we've heard as witnesses --
 18 MR. PAGE: Right.
 19 MS. CARTER: -- "We don't get the lots, we don't have the
 20 money, and we can't do anything."
 21 MR. PAGE: Right. Now, you can -- I'm not suggesting it,
 22 but I just -- for clarification you can make a motion
 23 where you modify the violation where that they have to
 24 work together to work that out before anything is done,
 25 fines are done or anything.

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1 MR. CLARK: But the Midland MDO went into effect in 2010,
 2 correct?
 3 MR. PAGE: The current one.
 4 MR. CLARK: The current one.
 5 MR. PAGE: The current one. There was something in place in
 6 2001, and before then they were operating under the
 7 Cabarrus County ordinances, whatever they said.
 8 MR. CLARK: But they continued after the new MDO under the
 9 new ordinance.
 10 MR. PAGE: Right. Any other questions?
 11 (No response by the Board.)
 12 MR. PAGE: All right. Are we ready to make a motion to
 13 affirm, reverse, or modify the actions taken by
 14 Mrs. Watts acting as the planning and zoning and
 15 substation administrator for the Town of Midland? If
 16 so, we still need to make the reasons why. Well, you
 17 can state -- I guess you can state the whole -- just
 18 state the whole book of examples, but I don't want to go
 19 through those individually.
 20 MS. BARGER: I'm just going back through the actual
 21 violation if you can give me just a moment.
 22 MR. ALDRIDGE: Yeah, that's what I'm doing.
 23 MR. PAGE: Sure, no problem. We want to make the right
 24 decision for everybody involved.
 25 MR. PAGE: Anything anybody else needs clarified?

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1 Questions?
 2 MS. BARGER: No, sir.
 3 MR. PAGE: Everybody ready to make a decision?
 4 MS. CARTER: I am.
 5 MR. PAGE: Okay, do we have a motion to affirm, reverse, or
 6 modify the citation and violation issued by planning and
 7 zoning and substation administrator for the Town of
 8 Midland?
 9 MR. ALDRIDGE: I'm going to make a motion to affirm the
 10 Notice of Violation. The basis for that is, under the
 11 MDO, Section 16.1-8 deals with road maintenance. Based
 12 on the testimony of the Town's engineer, the roads have
 13 not been maintained per the certification on the plats
 14 to North Carolina DOT standards. And on 16.2-6 to the
 15 construction, based on the testimony of the Town's
 16 engineer and what he has presented, the construction of
 17 the roads with the obvious failures do not meet NCDOT
 18 standards.
 19 MR. PAGE: And that is for Tucker Chase, LLC, correct?
 20 MR. ALDRIDGE: For Tucker Chase, LLC.
 21 MR. PAGE: Any modification of that and the workings between
 22 the two, or is that just your only --
 23 MR. ALDRIDGE: That's it, yes.
 24 MR. PAGE: That's your motion? Okay, we have a motion. Do
 25 we have a second?

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1 MS. CARTER: I second.
 2 MR. PAGE: A motion and second. Do we have any further
 3 discussion? All in favor say aye.
 4 THE BOARD: Aye.
 5 MR. PAGE: Anyone opposed?
 6 (No response by the Board.)
 7 MR. PAGE: Okay. Please record the decision made by the
 8 Board of Adjustment at this time, this date, please. We
 9 are -- do I have a motion to adjourn?
 10 MS. CARTER: I make a motion.
 11 MR. PAGE: Make a motion to --
 12 MR. ALDRIDGE: Second.
 13 MR. PAGE: Second? All in favor?
 14 THE BOARD: Aye.
 15 (WHEREUPON, the foregoing hearing was
 16 concluded at 10:22 p.m. and the record was closed.)
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Re: Tucker Chase (2/28/17)
 STATE OF NORTH CAROLINA
 COUNTY OF MECKLENBURG

CERTIFICATE OF REPORTER

I, SALLY W. LOWRANCE, CVR-M, Notary Public, do
 hereby certify that the foregoing hearing was taken and
 transcribed under my supervision and direction, that the
 parties were present as stated, and that I am not of counsel
 for, or in the employment of any of the parties to this
 action, nor am I interested in the outcome of this action.

I do further certify that the foregoing 133 pages
 constitute a true and accurate transcript of the testimony.

This the 19th day of March 2017.

SALLY W. LOWRANCE, CVR-M
 Notary #19971610098