

Board of Adjustment  
Thursday, December 15, 2016  
7 PM Midland Town Hall  
4293-B Hwy. 24/27 E  
Midland, NC 28107

**Attendance:** Commissioners: Chair Darrell Page; Commissioners Ann Holland, Pam Carter, Pam Barger, Michael Aldridge, Steve Clark, Steve Burroughs; Planning and Zoning Clerk to the Board Hilda Keeney; Planning & Zoning Administrator Kassie Watts; Town Manager Doug Paris; Engineer Richard McMillan

**Others:** Councilman Rich Wise; Richard Smith; Anthony Fox; Robert B. Blythe; James E. Scarbrough; Harry Grimmer;

**Item #1 Open** – Chair Page called the meeting to order at 7:08 PM.

**Item #2 Approval of Minutes** – Open Sessions 02-23-2016 & 03-22-2016

**Motion** by Commissioner Holland and seconded by Commissioner Clark to approve open session 02-23-2016 minutes. **Motion carried 7-0.**

**Motion** by Commissioner Holland and seconded by Commissioner Carter to approve open session 03-22-2016 minutes. **Motion carried 7-0.**

**Item #3 Approval of Agenda**

**Motion** by Commissioner Holland and seconded by Commissioner Carter to approve the agenda. **Motion carried 7-0.**

**Item #4 Notice of Administrative Appeal Hearing** – Notice of Violation of the Town of Midland Development Ordinance – Tucker Chase Neighborhood

Mr. Smith gave an overview of what a quasi-judicial hearing

- evidence presented is based on sworn testimony
- presenting evidence must be sworn in before Board
- no one is allowed to speak if not sworn
- Board is basing actual decision on sworn testimony
- evidentiary based

Chair Page – Does anybody have any questions before we start? Mrs. Keeney has Certificate of Notification be sent?

Mrs. Keeney – Yes.

Chair Page – would anyone like to read or hand me the notification so we can...

Mrs. Keeney – It will be in your notebook of record.

Chair Page – I don't know how anyone would know if they have a conflict of interest unless we know what this is about.

Anthony Fox – may want to deal with the exhibit books and any stipulations with regard to

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admissibility or acceptance of the exhibit book before the Board. Jim Scarbrough and I have had discussion about the exhibits on behalf of Tucker Chase LLC and on behalf of the Town of Midland. We have some 27 exhibits and Jim Scarbrough has 23 exhibits. We have agreed that some of the exhibits are duplicate. We have agreed [inaudible] that these are admissible as evidence except that one exhibit number....

Jim Scarbrough – my tab #16 is emails between me and staff, me and Nick Tosco, attorney for Town, and Mr. Fox has objected to them on grounds they are settlement discussions so if you rule that they are inadmissible than I would offer them into the record [inaudible].

Anthony Fox –I think, I would make a motion at the appropriate time that those documents not be considered by the Board. Those type of discussions are not appropriate for this Board. If you agree with my motion then the exhibit Mr. Scarbrough presents would be admitted except for that exhibit and that exhibit would be tendered just for purposes of the record, to be put into record. While my objection to those documents will continue for the purposes of the record.

Jim Scarbrough – we are going to remove #16.

Anthony Fox – with that stipulation as to the admissibility of the exhibits as to Tucker Chase as amended and then the Town of Midland exhibits as presented, we can provide those to the Board.

Harry Grimmer – Mr. Chairman, could you have the speaker to speak into the microphone.

Chair Page – Certainly. Certainly. If anybody has a question or anything, please speak closer into the microphone.

Jim Scarbrough – if you would, check and see in the notebook I gave you, there should not be anything under tab 16. Just to double check.

Chair Page – yes sir that is correct. I think everybody has had enough time to see what this is about. This is involving the Tucker Chase subdivision. So if anyone on Board has a conflict and cannot have an impartial decision on this matter, please identify yourself.

Commissioner Holland – Mr. Chairman, I need to recuse myself, due to living in the development.

Chair Page – Commissioner Holland does live in that subdivision.

Commissioner Burroughs – I need to recuse myself as well. I live in the same subdivision.

Chair Page – Scott also lives in that same subdivision.

Chair Page – Need a motion from the Board to remove from the Commission.

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**Motion** by Commissioner Carter and seconded by Commissioner Barger to recuse Ann Holland and Scott Burroughs from the hearing. **Motion carried 5-0.**

Chair Page – thank you for recusing yourselves. Mr. Fox and Mr. Scarbrough, have you decided who will present first?

Jim Scarbrough – sorta. Yes, since I appealed I'll go first.

Chair Page – those people that are going to present testimony and evidence, anybody that is going to do that for either side, the Town or Mr. Scarbrough, will need to be sworn in. So you need to come up front before our Board of Adjustment Clerk and be sworn in.

Mrs. Keeney presented a group oath to the following individuals: Mary Kressler, Marny Mortimore, Joe and Jerri Haase, Marie Isenhour, Adam Dagenhart, Harry Grimmer, Hy Nguyen, Chuck Taylor, Craig Grimmer, Kassie Watts, Richard McMillan.

Chair Page – are all those people been sworn in?

Ms. Keeney – would you like for me to go through the list?

Chair Page – just a reminder to everybody. You were sworn in so you will be under oath as you give your testimony. OK. Mr. Scarbrough.

Anthony Fox – excuse me. I just wanted to make sure we have a record of the people who were sworn.

Chair Page – has all those people been sworn in?

Anthony Fox – just want to make sure we have a list of people where were actually sworn.

Chair Page – you won't be able to get up here unless you are sworn in and speak. Just want to let you know that.

Ms. Keeney – the list (Mary Kressler, Marny Mortimore, Joe and Jerri Haase, Marie Isenhour, Adam Dagenhart, Harry Grimmer, Hy Nguyen, Chuck Taylor, Craig Grimmer) that had signed up and were sworn in.

Chair Page – we are good to go.

Jim Scarbrough – Mr. Chairman, I would like to give an opening statement. My name is Jim Scarbrough, I'm from Concord. I represent Harry Gimmer and Tucker Chase LLC. With me is my partner and my son, John Scarbrough. We are here tonight because we appealed the tab #13 which is a Notice of Violation and tab #14 which is a Civil Citation. I'm told those are the two relevant

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documents. I first would like to say that we would move to dismiss the proceedings or at least continue them because we can't tell who has been charged with these violations. Is it the LLC, is it Harry Grimmer or both? I repeatedly asked staff and, not Anthony Fox, but another attorney in his firm, who are you charging? If you look at tab #13 Notice of Violation, dated October 14, 2016, it says Mr. Harry Grimmer, Tucker Chase LLC and it's got an address and says Dear Mr. Grimmer and then it says Notice of Violation has been issued to you pursuant to....OK are we talking tonight about Harry Grimmer or are we talking about the LLC? Then if you go over, and then it says "you" all the way through, it does not make it clear. I tried to get it clarified then if you look at the Civil Citation, the next tab over which is 14, it is even more ambiguous. It says Mr. Harry Grimmer, Tucker Chase LLC and does not even say dear or who, it just says "you" remain in violation. So once again I've raised this issue, I thought it was simple enough to say either or, or both. I never got an answer. I sent some of those emails, by the way I think were the emails that said can somebody please clarify this. It makes a big difference to us may not make a lot of difference to a lot of people but it does to us. Because Harry Grimmer as we are going to show in our evidence, is not the developer, he is a member of the LLC, Tucker Chase LLC. Now, all the documents in the subdivision are going to show that he never signed a plat, the certificate of maintenance on the roads, it was the LLC that signed, and he never signed the restrictions. It was the LLC that was identified as the developer and the restrictions. Our evidence is also going to show, that I did not know until today, until I started downloading the restrictions from the Internet that as of January 21, 2015, Jupiter Land LLC, which is owned by a friend of his, purchased the last phases of this subdivision which was, I guess, to help him out but Jupiter Land became the successor developer and that is recorded too. So we don't even have the developer here tonight. I frankly thought that Tucker Chase LLC was the developer. Then I got on the Internet and started pulling down these restrictions. So that is what our evidence is going to show tonight. I think Mr. Grimmer or Tucker Chase LLC throughout this process has been wanting to work out something with the Town and go forward and do these, he did not want his friend to get in this predicament so he has been wanting to do it but I couldn't let him come up here tonight and represent Tucker Chase LLC as the developer because it is not, it is this Jupiter Land LLC is probably the developer now, successor developer. That is probably a legal question I don't really have a good answer for you, I just found out about it today. So that is one reason to continue it, to find out but another is, and by the way Tucker Chase LLC is in good standing with the Secretary of State and I've got a certificate for that in here so it is a valid company. Then another issue we are going to have tonight is, what Ordinances did we really violate. If you look at the Notice of Violation, I think it is the Notice of Violation or Civil Citation, might be the Civil Citation, it goes into talking about the streets have not been properly constructed or maintained and it states they were not maintained consistent standards contained within the development Ordinances adopted by the County both previous and subsequent to the incorporation of Midland and with those development Ordinances adopted by Midland as early as 2000. I don't know what development Ordinances they are talking about. I know which ones they are talking about now that were adopted by the Town, I think in 2010 or somewhere along there, a UDO, but I don't know what those early Ordinances were and again I sent emails asking for clarification. What are we suppose to have violated here? So I'm going to offer those emails in evidence, hope I brought them. Then our evidence will say that in the Notices of Violation and Civil Citation, the Town should have specified what portions of the streets it believes are inadequate or unsafe. We never knew, and I asked for

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that too. Is it this pothole or is it that one, what is it? I know they have a lot of pictures tonight and engineering reports, we don't know. We can't defend ourselves if we don't know what the unsafe part of the road is. We have our own engineer here tonight, I could not tell him what to look at, I don't know. So he went around the whole subdivision. So we say you can't just make a blanket statement that the streets are unsafe or that it is inadequate and not tell us what part, when or how. The UDO was actually adopted after completion of many of these roads. So the UDO the citations in the UDO in the Notice of Violation and Civil Citation are actually being applied retroactively to our roads. Maybe you can argue it is a continuing violation or something like that. But I'm just pointing that out. It is important for us to know what is suppose to have been the violation. The notices also site that the road maintenance certificates on the plat were violated, those were signed by the LLC. Our evidence will show there is no road maintenance agreement on the first plat that was recorded, so technically nobody has certified that maintenance. Our evidence will also show that Tucker Chase LLC is insolvent, Harry Grimmer is not responsible personally for maintenance of the road and our evidence will show this is not a good idea to deny building permits out there to D. R. Horton because they are our only hope we have got to finish this subdivision. So I'm telling you it is not a good idea to be here and I have been preaching this to the staff, I don't know who decided to do this. We wanted to have an escrow agreement, put the money from the lot sales...

Anthony Fox – objection.

Jim Scarbrough – into escrow and here we are tonight we are going to shut it down and the subdivision is going to die.

Jim Blythe – what is the objection?

Anthony Fox – is dealing with control remedies for the violation an issue that is before this Board, was there or was there not a violation of an Ordinance or plat or provision of the Town of Midland and not deal with what happens to cure the violations.

Jim Scarbrough – the words have already come out and you can't put them back in. So here you go.

Anthony Fox – Good Evening, I'm Anthony Fox and I'm representing the Town of Midland in the appeal. This appeal is pursuant to Notice of Violation that [inaudible] as Exhibit 18. This appeal is pursuant to the Notice of Violation that was issued and contained in Exhibit 18. The notice was issued and dated on October 14, 2016. It was indeed issued to a Mr. Harry Grimmer and Tucker Chase LLC. Somewhat comical that I'm hearing that the notice does not properly identify the parties when in the similar proceeding over two years ago we had the same notice and same parties representing with no objection. The purpose, and furthermore, the couple points to be made there is under Exhibit #2 of the Town's exhibits, you will see the Department of Secretary of State for purposes of the Tucker Chase LLC, you will see that the manager of the LLC is the one, Harry Grimmer, you will see the next page as their annual report that the report is signed by none other than Mr. Harry Grimmer. You will also see as we get into the evidence under Exhibit #5 one of six final plats that have been recorded for purposes of Tucker Chase development and you will see that

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the signature on the maintenance agreement with regards to the Tucker Chase, answer to the ownership and dedication certification on that plat that the signature there was signed by none other than Mr. Grimmer as well as if you look to the right of that document you will see a certificate of road maintenance that was also signed by Mr. Grimmer. That is proof positive we believe that the proper parties before this Board...

Jim Scarbrough – he signed it as manager.

Anthony Fox – the proper party we believe the proper party is before this Board. As to the issue of the Ordinance, you will hear testimony from the Town that there was a 2001 subdivision Ordinance that continued up until 2011, that there was a 2011 subdivision Ordinance that contains to this day. There are provisions in both Ordinances that address the obligations of sub-dividers of land within the Town of Midland that those provisions require and commit and mandate that developers maintain the streets that are shown in the subdivisions that they build. You will hear testimony and have documents related to ongoing conditions that have been existing out in the Tucker Chase subdivision for years, starting back as early as 2010 and continuing well into today's date. Our evidence will show that notice is simple. As to what conditions are or have or have not been met, it simply requires riding along the streets of Tucker Chase and can visibly see the defects that will appear. We will have competent evidence to present to you that will show an analysis of the conditions as to the streets in Tucker Chase and demonstrate that those conditions are volatile of the Town of Midland's Ordinances, hence those conditions support the Notice of Violation. A notice that was given to Mr. Grimmer and Tucker Chase as to the inadequacy of the street construction of the streets and the inadequacy of the maintenance of the streets and the failure of the owner/developer to meet the covenants that he promised not only to the citizens and residents of the Town of Midland but to people who purchase and put their life's money into properties that they own in that subdivision.

Jim Scarbrough – Mr. Chairman, may I ask now, the Board, are we to understand now from the Town for the first time that both of them are being charged with the violation, Mr. Grimmer and the LLC? Because that is what I thought I heard for the first time.

Chair – yes sir. Based on what Mr. Fox said and what I see from the violation it has both names on there.

Bob Blythe – not sure if he is ready to actually put that as a motion. You can ask.

Jim Scarbrough – I had a motion to dismiss....

Bob Blythe – a motion at this time to continue these proceedings?

Jim Scarbrough – I did have a motion to continue based on the inadequacy of the notice and the alternative motion to dismiss against Harry Grimmer or the LLC because I can't tell who the respondent is.

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Bob Blythe – the responsible party.

Chair Page – according to the documents here, he signed.

Jim Scarbrough – there is not one document that he signed as an individual. He always signed as a manager in his capacity representing the LLC. Not one document and not seen one either.

Bob Blythe – what type of continuance are you looking for?

Jim Scarbrough – actually it would be the Town that would ask for the continuance too. To get this straight so I will be able to prepare. You can't have inadequate notice and due process at the same time. That is my objection. Now if the Town wants to go forward with this Notice of Violation, I'm OK with that, I'm just telling you I object to it. I move to dismiss.

Anthony Fox – I think the issue is whether or not Tucker Chase LLC is a correct and appropriate party and had been properly served and I believe the register agent, the Secretary of State, list Harry Grimmer as the agent for Tucker Chase LLC.

Jim Scarbrough – yes. The manager is always the agent for the LLC.

Anthony Fox – the notice went to the agent of the LLC, Mr. Harry Grimmer.

Jim Scarbrough – we got it alright. That's correct. We got it.

Anthony Fox – the only issue then becomes is Mr. Grimmer personally subject to this action.

Jim Scarbrough – right and my motion is to dismiss because there is not one piece of paper that he signed as an individual. Now you know in Bethel Glen we had some where the developer signed as an individual on the certificates. You remember that. Well there is not that here. There are all under the LLC.

Anthony Fox – and the LLC has been included as party before the Board.

Bob Blythe – that part is clear.

Chair Page – understand the LLC. That is definitely the proper party. The question we have got to determine is whether or not is Mr. Grimmer.

Bob Blythe – I'm assume you are objecting to a dismissal with Mr. Grimmer. Is that correct?

Anthony Fox – we were noticing him as Tucker Chase LLC and so it was in his capacity wherever that capacity is regards to the Tucker Chase LLC entity. Tucker Chase entity is the entity that is

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contained on the plats and has made commitments as to streets and the maintenance at the Tucker Chase subdivision.

Jim Scarbrough – I can understand that. That is why I put the restrictions in here. The restrictions all identify Tucker Chase LLC as owner/developer.

Bob Blythe – are we conceding that the Notices of Violation were Tucker Chase LLC?

Jim Scarbrough – I'll go forward tonight on that basis.

Chair Page – are you representing Tucker Chase LLC, Mr. Scarbrough?

Jim Scarbrough – yes sir, I am.

Chair Page – I need a motion if everybody thinks we need to dismiss Mr. Grimmer personally for liability on the notification. Do I have a motion from the Board for that?

Chair Page – sorry Mr. Scarbrough. There is no motion.

Jim Scarbrough – the Town can actually dismiss him from it. You don't have to stick your neck out.

Chair Page – would the Town like to dismiss him, Mr. Fox? Since the Board will not make a motion to do so.

Anthony Fox – I would like to confer with Doug Paris and Kassie Watts.

Brief recess for Mr. Fox to confer with Doug Paris and Kassie Watts.

Chair Page – Mr. Fox.

Anthony Fox – it appears there is no action that the Board has not made a motion or ruled on the motion in either way. I think the appropriate thing is to reserve that for the record, there is an objection to that and proceed based on the notice that has been issued. Mr. Scarbrough and his client will certainly have that reserved for any action or should there be action that flows from this hearing.

Chair – there is no motion here and the Town is not going to excuse him. Mr. Scarbrough would you like to proceed.

Jim Scarbrough – yes sir. At this time, I would like to offer into evidence an email from me to Mr. Tosco, Doug Paris, Kassie Watts. The email is dated October 28 of this year and I'm point blank asking them, this is the third letter written, which states at the top Notice of Violation. I'm saying here there is no title added to Harry's name, it names him and the LLC can you clear up this

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ambiguity? I said it is the same type of ambiguity the City had in its Notice of Violation with the developer in Bethel Glen. That is how I know it is intentional. Do you continue that Mr. Harry Grimmer is personally liable? If so, on what grounds. So I want to hand this to the Board, I would like it in the record to show that I have been asking to clear up this ambiguity.

Anthony Fox – I would prefer that that just be noted for the Board. There are some other things in that document that pertain to the issues that are being precluded from the Board's review. I would just ask, I think that is sufficient Jim that you have just entered into the record everything you will need for the purposes of preserving that objection.

Jim Scarbrough – I offer in evidence the first three paragraphs, don't look at the last two.

Anthony Fox – you just read the first three paragraphs Jim.

Jim Scarbrough – no I didn't. I paraphrased it. See I can folded it just like this.

Chair Page – can we make copies of that Mr. Scarbrough and blank out what you don't want us to see?

Anthony Fox – that is redacted appropriately.

Jim Scarbrough – the rest of it is where I hand an excellent solution to the whole problem.

Anthony Fox – objection.

Chair Page – sustained.

Anthony Fox – If we are going to have boundaries around not talking about remedies or settlement discussions, which are totally inappropriate for a trial proceeding, then we need to have boundaries.

Chair Page – yes, I agree.

Jim Scarbrough – while I can go ahead and proceed with the witness now.

Chair Page – yes sir.

Jim Scarbrough – Mr. Grimmer.

Jim Scarbrough – would you state your name and address for the record, please.

Harry Grimmer – is the mike on?

Jim Scarbrough – no.

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Ms. Keeney – pull it closer to you.

Harry Grimmer – is the mike on? My name is.....what was the question?

Jim Scarbrough – name and address.

Harry Grimmer - Harry Grimmer, 8720 Lake Challis Farm, Charlotte.

Jim Scarbrough – what is your occupation?

Harry Grimmer – I am a builder/developer.

Jim Scarbrough – OK, how long have you done that?

Harry Grimmer – about 40 years.

Jim Scarbrough – do you know what Tucker Chase LLC is?

Harry Grimmer – yes.

Jim Scarbrough – you have a notebook in front of you there. Who developed Tucker Chase subdivision?

Harry Grimmer – Tucker Chase LLC.

Jim Scarbrough - what is your capacity at Tucker Chase LLC?

Harry Grimmer – I'm a managing member and other partners that are managing members that sign some of the documents as managing members.

Jim Scarbrough – when did Tucker Chase LLC start the subdivision?

Harry Grimmer – Start the subdivision?

Jim Scarbrough – yes.

Harry Grimmer – I believe it was in 2004.

Jim Scarbrough – look at tab #1. Do you know what that is?

Harry Grimmer – part of the approval process for the subdivision along with the document from, it's not in here, from Cabarrus County.

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Jim – OK. It appears to be addressed to Charles Stevens?

Harry Grimmer – yes. Appears to be addressed to Charles Stevens.

Jim Scarbrough – who is that?

Harry Grimmer – he was a working partner of mine, had property approved by Cabarrus County. Basically a HUD kind of subdivision. Approached me about being a partner here. He was the managing partner for several years.

Jim Scarbrough – when you say partner, are you talking about the LLC?

Harry Grimmer – yes.

Jim Scarbrough – that is not a partnership - that is not a partnership agreement.

Harry Grimmer – it's not partnership it's a corporation of the LLC. It was a corporation and he was a working manager until some point it became more important that I be the manager.

Jim Scarbrough – look at tab #2. Do you recognize that?

Harry Grimmer – yes. That is a copy of the recorded covenants and restrictions maybe an original copy they were amended at a later date.

Jim Scarbrough – I'm just talking about this one in front of you right now.

Harry Grimmer – it's a copy of the original.

Jim Scarbrough – it has on there a date of October 24, 2005.

Harry Grimmer – yes.

Jim Scarbrough – it says Tucker Chase LLC, a North Carolina Limited Liability Company and what does it say after that on the first paragraph?

Harry Grimmer – referred to in this instrument as developer.

Jim Scarbrough – have you ever had a document in that subdivision where you were referred to as a developer individually?

Harry Grimmer – the first one?

Jim Scarbrough – yes.

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Harry Grimmer – no. Because every subdivision has a different LLC.

Jim Scarbrough – OK, I'm just talking about Tucker Chase subdivision, OK. So you had your attorney prepare this?

Harry Grimmer – probably Mr. Stevens had this prepared.

Jim Scarbrough – look at the next tab, tab #3.

Harry – basically the same document as the one before several years later.

Jim Scarbrough – in the first paragraph of that who is identified as the developer?

Harry Grimmer – Tucker Chase LLC.

Jim Scarbrough – turn over to the signature page which is page 19, it says 19 at the bottom where the signature is.

Harry Grimmer – the signature?

Jim Scarbrough – yes.

Harry – Chuck Stevens.

Jim Scarbrough – what capacity did he sign that in?

Harry Grimmer – manager.

Jim Scarbrough – manager. OK

Jim Scarbrough – then tab #4. Are you on tab #4?

Harry Grimmer – yes.

Jim Scarbrough – OK, what is that?

Jim Scarbrough – what is it?

Harry Grimmer – pardon?

Jim Scarbrough – what is tab #4?

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Harry Grimmer – supplemental amendment to CCR.

Jim Scarbrough – OK, who is identified as the developer in that document?

Harry Grimmer – Tucker Chase LLC.

Jim Scarbrough – OK, let's look at tab #5. Do you know what that is?

Harry Grimmer – supplement amendment.

Jim Scarbrough – look in the first paragraph.

Harry Grimmer – Jupiter Land, LLC referred to as successor developer.

Jim Scarbrough – the date on it is January 21, 2015, is that correct?

Harry Grimmer – yes.

Jim Scarbrough – is Tucker Chase LLC still a developer or is Jupiter Land the developer?

Harry Grimmer – Jupiter Land.

Jim Scarbrough – OK, did you sell to Jupiter Land. Did Tucker Chase LLC sell any land to Jupiter Land?

Harry Grimmer – every shovel full of dirt. I don't own anything in the subdivision any more.

Jim Scarbrough – OK, turn over to page 3 where the signature line is.

Harry Grimmer – tab 3?

Jim Scarbrough – no page 3 of that same document. Do you see that signature line?

Harry Grimmer – yes.

Jim Scarbrough – how is it signed?

Harry Grimmer – Jo M. Best, she is the manager.

Jim Scarbrough – of what?

Harry Grimmer – of Jupiter Land.

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Jim Scarbrough – then under her name it says successor developer.

Harry Grimmer – yes.

Jim Scarbrough – and how long have you, is that a woman, is that a female?

Harry Grimmer – yes.

Jim Scarbrough – how long have you known her?

Harry Grimmer - known her husband a number of years he is a major developer, I've known her maybe two years, maybe.

Jim Scarbrough – turn over to tab #7 dated July 6, 2016, what is that? Tab #7.

Harry Grimmer - supplemental amendment of covenants and restrictions.

Jim – who signed that as successor and developer?

Harry Grimmer – Jupiter Land as successor developer.

Jim Scarbrough – look at tab #8.

Harry Grimmer - looks like reproduced copies of recorded plats.

Jim Scarbrough – do you see a road certification, maintenance certification on there?

Harry Grimmer – *[inaudible]*.

Jim Scarbrough – the first map on that tab.

Harry Grimmer – the road maintenance on the bottom left corner.

Jim Scarbrough – who signed that?

Harry Grimmer – Jo M. Bess, Manager.

Jim Scarbrough – look at the next page. Is that the entrance to the subdivision?

Harry Grimmer – that is map 1. *[inaudible]*

Jim Scarbrough – is there a road certificate on that?

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Harry Grimmer – no.

Jim Scarbrough – look at the next map, says map #2. Is there a road certificate on that?

Harry Grimmer – yes.

Jim Scarbrough – who signed that?

Harry Grimmer – Mr. Stevens, the original partner.

Jim Scarbrough – well it actually says Tucker Chase LLC Stevens. Is that right?

Harry Grimmer – Tucker Chase LLC by Stevens.

Jim Scarbrough – the next map says map #3. Is there....

Harry Grimmer – map #3, certificate of road maintenance, signed by my son, Craig Grimmer, he was manager in the company also of the LLC.

Jim Scarbrough – that is in the lower right hand side?

Harry Grimmer – yes.

Jim Scarbrough – that says Harry Grimmer, Manager. In the lower right hand side. Map #5.

Harry Grimmer – I'm sorry.

Jim Scarbrough – it is map #3, I'm sorry.

Harry Grimmer – that was me.

Jim Scarbrough – you signed as Manager. Then the next page is map #4.

Harry Grimmer – that was signed by me as Manager.

Jim Scarbrough – of Tucker Chase LLC. Is that right? You signed for the Manager of Tucker Chase LLC.

Harry Grimmer – Tucker Chase LLC, yes.

Jim Scarbrough – the next one is map #5.

Harry Grimmer – that is the one signed by my....no it was signed by me. Tucker Chase LLC.

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Jim Scarbrough – you signed as manager?

Harry Grimmer – yes.

Jim Scarbrough – that is the last map. Look at tab #9 it appears to be a letter, at the top it says Tucker Chase LLC, can you tell us what that is?

Harry Grimmer - that is a letter to Mr. Richard Flowe, former Planning Director, in reference to subdivision repair of Mud Drive.

Jim Scarbrough – did Tucker Chase LLC do some repairs at that time?

Harry Grimmer – yes. Unusual but I have never been able to find where that street was ever bonded but that street needed some major repairs and we came to the conclusion with Mr. Flowe that we would take care of that and agreed to repairs and we finished that at a tune of about \$70,000 and have requested the Town take it over. They are to DOT standards as far as we are concerned. The Town does not even have a form to take streets over, they told us to write a letter.

Jim Scarbrough – and you did that?

Harry Grimmer – don't know if we have done it yet or not.

Jim Scarbrough – who approved the roads as you built them in the subdivision?

Harry Grimmer – the subdivision was....all the engineering was done by DPR an engineering firm. They were responsible for design and [inaudible] pre-construction according to Department of Transportation specifications, etc. You get out there and grade the property and put the streets in typically. County inspectors or Town inspectors inspect. On the first couple of maps Midland did not have any, I'm not sure they were even incorporated on the first couple of maps. Did not have any planning department or inspectors or whatever so the County inspected all the property and all the work that was going on and would have issued final communication verbally that it was ready, or the street would be ready to be paved. If there was a soft spot that needed fixing, fixed that and come back and let us know and we take a look at it and come back and say OK. You can pour the curb or reinforce street and the compaction is good, the soil density [inaudible] soil is good and you can pour the streets. We have built over 500 upper price range houses in the last 30 years and we have developed thousands of lots. Be stupid of us to try and pour streets or whatever that haven't been constructed to the Ordinances and approved by the County or Municipality inspectors because then they could take back and tell us we did not approved what they asked. Didn't ask for it. So that is not what is required of Tucker Chase LLC or required of any subdivision in North Carolina as far as I know.

Jim Scarbrough – did you build the streets according to DOT standards?

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Harry Grimmer – yes. To the best of my knowledge.

Jim Scarbrough – who would have past them? Who would have approved them? What entity approved the streets?

Harry Grimmer – depends a little bit. Most of time you have certain people with an entity long enough working with them several times. In the case of Midland we've been working part of the time we were working with Cabarrus County who approved the subdivision then they turned, Midland hired their own planning staff, engineers, etc. and the County turned that responsibility over to them at their request. All bonds were turned over from the County to Midland so we had a different group of inspectors. There's various phases of it and various maps.

Jim Scarbrough – are the bonds in effect now?

Harry Grimmer – no. They were not bonds they were letters of credit.

Jim Scarbrough – what happened to them?

Harry Grimmer – I think in 2008 for some reason when Kassie Watts was senior planner for Cabarrus County she let the letters of credit expire and she asked us to renew them which we did and then transferred them to Midland. In 2008 or 2009, Midland staff was within one day of letting them expire and brought it to our attention and we renewed them and a year later Midland staff by error or whatever let them expire five years ago. There's no letters of credit [inaudible] except map 6 that Ms. Bost signed.

Jim Scarbrough – now you said Ms. Bost that is Jupiter Land.

Harry Grimmer – that is Jupiter Land, yes. There have been a lot of mistakes made, we tried to stick with it even though there are no letters of credit outstanding for us to maintain the responsibility of the streets [inaudible] try to work that out and try to finish the project for the neighborhood.

Jim Scarbrough – how many lots potentially can be developed that are left?

Harry Grimmer – single family section is when modified 152, seven lots on the ground, builder has applied for permits 30-35 days ago and the Town has not responded and there's additional 35 lots.

Jim Scarbrough – who is your builder?

Harry Grimmer – D. R. Horton. One of the major national builders in the country.

Jim Scarbrough – have they been agreeable to purchase lots?

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Anthony Fox – I object. I don't know where/how this is relevant to whether or not the Notice of Violation is appropriate which means whether or not the streets have been constructed properly or whether or not maintenance has been occurring on the streets properly. That is the issue before this Board.

Jim Scarbrough – I'm trying to show some history of the subdivision because that is exactly what the Town is going to do when it presents its evidence.

Anthony Fox – I don't know how D.R. Horton relates to the history of the subdivision.

Jim Scarbrough – they are the future of the subdivision.

Anthony Fox – again my objection is to this line of questioning.

Jim Scarbrough – it will only take a couple of minutes. It won't hurt.

Bob Blythe – I think he has a valid objection.

Chair Page – sustained.

Jim Scarbrough – then I'm going to object when he presents his history. So we are here tonight to talk about roads, is that correct, the violation pertains to roads?

Harry Grimmer – pardon?

Jim Scarbrough – the violation pertains to roads, is that correct? Just roads.

Harry Grimmer – that's the way I understand it.

Jim Scarbrough – does it have anything to do with swimming pool?

Harry Grimmer – no.

Jim Scarbrough – has the residents told you what their preference is to finish?

Anthony Fox – objection.

Chair Page – sustained.

Jim Scarbrough – OK. You can answer for the record.

Anthony Fox – objection.

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Jim Scarbrough – I get to put his answer for the record. You know that.

Harry Grimmer – my understanding is you, Mr. Scarbrough, legal counsel for Tucker Chase LLC, is requested advising you what their safety issues that the Town has [inaudible] school buses going in and out of there, garbage trucks going in and out of there, police are going in and out, fire trucks going in and out, 100 some residents/families going in and out and we have not received any response what makes those roads unsafe. In fact, the City Ordinance on subdivisions basically creates the problem. The easy thing for the developer would be for city/town/municipality to require roads be finished to be taken over by DOT at the beginning. They don't want to be responsibility of the roads being torn up by dump trucks and what have you so the allow you to put a coat of asphalt down and the builder/developer keep up with the maintenance and provide a letter of credit or bonds until the project is finished so Town knows they are going to get money if developer doesn't finish streets where they can turn them over to finish streets. So it seems to me that our responsibility and agreement is that we maintain the streets until it is accepted, can't maintain to DOT standards because they are not finished unless you fix potholes and stuff. We do that and have done that and we have done one there is no agreement on the map. That is the City's responsibility. We fixed the City's potholes and willing to sit down with the Town and willing with escrow funds to finish the streets and bring them up to DOT standards but we have to have the remaining lots built for cash flow.

Jim Scarbrough – is your builder able to get building permits to build houses at this time?

Anthony Fox – I'll object. If I can be heard. I object to this line of questioning and if he wants to preserve it for the record, I would ask they preserve it outside the presence of the Board.

Chair Page – agree.

Jim Scarbrough – let me ask this, we will switch gears here a little bit. In the Notice of Violation was there anything in there about denying permits?

Harry Grimmer – yes.

Jim Scarbrough – what was it?

Harry Grimmer – first they said they were going to stop issuing permits and asking the County not to issue Certificates of Occupancy. We you have 20 housing coming into Town and people ready to move in and the Town decides it wants to stop us from going any further and they are not going to issue any Certificates of Occupancy and they are coming in with a moving van and fortunately the NC Homebuilders Associate passed legislation last year that prevents municipalities from doing something like that unless it is a safety issue. In my opinion, this proceeding is not about the streets or the safety of the streets it is about not issuing any more building permits forced streets to be fixed before they need to be fixed [inaudible].

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Jim Scarbrough – let me ask you this about the roads. Is there a topcoat on the streets? A topcoat? A final topcoat?

Harry Grimmer – There is on Mud Drive that we just spent \$70,000 on and two of the cul-de-sacs. The rest of them are basically further on the Town use to start with. If they are unsafe now, they were unsafe before a house was built basically not finish streets. It is not an issue that is different from any other Town or County it is an issue the Towns do not want to keep the streets up.

Jim Scarbrough– when does the final topcoat go on?

Harry Grimmer – typically in the last phase when which is the back phase and we'll have numbers of dump trucks and concrete trucks and what have you going [inaudible] the first phase. If we put final coat on at this point there would be major repairs [inaudible] before all the houses would be built. The Town would expect us to come back in and fix that after they have already accepted them and it would be their responsibility. Right now there is no letters of credit that the Town can call to fix them. Hopefully, no responsibility for Tucker Chase LLC until this issue is resolved and we can sell the lots in the back and create an escrow fund to fix the streets, if they are private streets then the homeowner has to fix them.

Anthony Fox – objection.

Jim Scarbrough – let me ask you this. You have heard me say tonight that Tucker Chase LLC is insolvent. Do you agree with that?

Anthony Fox – objection. Objection as to the relevancy of this financial condition.

Jim Scarbrough – I've already said it several times tonight.

Chair Page – yes you have, yes you have.

Jim Scarbrough – he is just confirming it. OK. Mr. Grimmer, is there anything else that you can think of that you would like to address the Board with regarding the Notice of Violations?

Harry Grimmer – I just need the Board to understand that we have advised the Town on three different occasions, I think, that we have a contract for the back 35 lots with D.R. Horton that expired December 4<sup>th</sup>. We have been talking about this issue with Mr. Paris and Kassie for six months without making any progress. My contract has expired [inaudible] I don't know if I have that property sold or not. I can maybe go back to them and get it worked out but if we had it solved that no contract from a builder does not make any economic sense for anybody, Jupiter Land that owns the land now, or me that actually made it for them, to finish project so to have a buyer. So you know until we have an agreement with the Town to sit down with us and negotiate the issues.....

Anthony Fox – objection.

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Harry Grimmer – the swim club....

Anthony Fox – objection.

~~Harry Grimmer – plan approvals and all the things that need to be done, it seems to me that it makes the most sense is for this Board to consider delaying a decision for 60 days so we can ask the Town and developer to try and work this out.~~

Anthony Fox – I would object to move to strike that testimony from record.

Chair Page – yes. Ms. Kenney please remove that last part, please. Mr. Fox, do you have a rebuttal or questions?

Anthony Fox – Mr. Grimmer thank you for your time coming here tonight. Mr. Grimmer, isn't it true that the first phase of Tucker Chase subdivision was.....

Harry Grimmer – I'm sorry. I have hearing aids [*inaudible*]

Anthony Fox – isn't it true that the first phase of the Tucker Chase development as reflected in Map 1 was recorded in 2005?

Harry Grimmer – what tab is it?

Jim Scarbrough – should be #8.

Harry Grimmer – yes.

Anthony Fox – that phase included Tucker Chase Drive, is that correct?

Harry Grimmer – about 50% of it.

Anthony Fox – has a final topcoat been placed on Tucker Chase Drive, the portion shown on Map 1.

Harry Grimmer – no.

Anthony Fox – so since 2005 there's been no completion of the Tucker Chase portion, Tucker Chase Drive portion of Tucker Chase for that segment?

Harry Grimmer – no. There has been maintenance of potholes fixed and what have you. That is what is required.

Anthony Fox – have you been, when was the last time that you visited Tucker Chase Drive?

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Harry Grimmer – I don't know. Maybe five or six days ago.

Anthony Fox – did you notice any construction issues that were related to the Tucker Chase Drive, segment that is shown on Map 1?

Harry Grimmer – yes and my son and I met with Town Engineer Richard McMillan and walked the property in the last couple weeks or so and they noticed in front of the model home some repairs that need to be made at the intersection of Tucker Chase Drive and Thurber Place and a little on Paver Drive, I believe. We are in the process now of trying to get a crew out there to fix that.

Anthony Fox – now if you turn to Map #3 of your Exhibit #8, does that reflect a portion of Tucker Chase that includes Tucker Field Road, Tucker Chase Drive, Granite Street and Mud Drive.

Harry Grimmer – yes. Mud Drive is the one we just brought up to DOT standards and in the process of asking the City to pay for it.

Anthony Fox – you mentioned you brought Mud Drive up to DOT standards. Was that through the completion of the topcoat on Mud Drive that you just testified to?

Harry Grimmer – has the topcoat been finished?

Anthony Fox – yes, and that is how you believe you brought it up to DOT standards, is that correct?

Harry Grimmer – well, Mud Drive was fully done to be honest with you and don't know how [inaudible] street got put in like it did. It basically a sealer coat over the rock and it was in bad shape and that is the one I don't think there was a letter of credit on. Anyhow, we went back and asked the Town's engineer, former engineer, Mr. Flowe was there. What do we need to do to bring that street up to safety and correction? They finally said, we don't know. You fix them like you think it needs to be done for DOT specifications to take it over. So we got with the asphalt people and we went through it, my son did, and they decided a considerable, unnormal, unusual expense to it. We went back in and ground out the existing install of most of the gravel and re-did that street from the bottom up. Been there five or six years it was solid compacts and we put what we felt was necessary to bring it up to finish code for DOT.

Anthony Fox – now Mud Drive and this plat occurred, this final plat, for the streets I just referenced occurred or was recorded in 2008, isn't that correct?

Harry Grimmer – yes.

Anthony Fox – that is three years after the 2005 Map #2 that you just testified to, is that correct?

Harry Grimmer – yes.

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Anthony Fox – you mentioned by your own testimony that Mud Drive was in bad shape to the extent you had to dig it up and re-do it, is that correct?

Harry Grimmer – yes.

Anthony Fox – now did you also dig up and re-do Tucker Field Road?

Harry Grimmer – road?

Anthony Fox – did you also dig up or re-do Granite Street?

Harry Grimmer – we maintained it which you read that...

Anthony Fox – I'll get to that, Mr. Grimmer. I'm just asking you a specific question right now, in 2008 when you dug up Mud Drive because of its condition, did you also dig up Granite Street, Tucker Field Road or Tucker Chase Drive at that time?

Harry Grimmer – I don't recall or not. They needed no maintenance that we had taken care of and all probability had done that been torn up by the time we got out of the back section. City would not have wanted to take it to start with. We never did that on any subdivision.

Anthony Fox – now Granite Street, does it have a final topcoat?

Harry Grimmer – no.

Anthony Fox – Tucker Field Road does it have a final topcoat?

Harry Grimmer – no.

Anthony Fox – Tucker Chase Drive as shown on Map 3, does it have a final topcoat?

Harry Grimmer – Map 3.

Anthony Fox – the 2008 map that we were just talking about.

Harry Grimmer – Granite Street and Tucker Field Road, which street?

Anthony Fox – we were talking about Tucker Field Road and it also shows some Tucker Chase Road as well as Granite Street.

Harry Grimmer – Tucker Chase is the main road in and none of that has final topcoat.

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Anthony Fox – that is almost nine years ago.

Harry Grimmer – what’s your point?

Anthony Fox – that road had been constructed almost nine years ago, is that correct?

Harry Grimmer – *[inaudible]* I don’t understand the point.

Anthony Fox – you understand that residents have bought their homes that have been built and sold upon on those streets have they not?

Harry Grimmer – yes.

Anthony Fox – and people have bought homes and so they are driving on those streets on a daily basis, is that correct?

Harry Grimmer – yes, that is correct.

Anthony Fox – they are driving on those streets on a daily basis for nine years without any improvements not a final topcoat on those streets, is that correct?

Harry Grimmer – yes sir.

Anthony Fox – the streets that you do have placed a final topcoat on was merely Mud Drive which you testified was in poor condition.

Harry Grimmer – well, the point is what I said earlier that is the way the Town wants the streets to be done that is the way they approved them with bonds to start with so either the developer or the Town would have the money and the bond uses 35% more than what the cost is. So if they required us to put in the final coat to start with they could have been doing all this repair work for nine years.

Anthony Fox – I hear that Mr. Grimmer...

Harry Grimmer – the point you are missing is my understanding from the people that visit the sales office and live out there, their main concern is that the Town work with us to get the swim club. They want work out something. *[inaudible]*

Anthony Fox – Mr. Grimmer, you mention the swim club but should the residents who spend money to buy homes have to make choices between a street and swim club?

Harry Grimmer – swim club is part of commitment to the approval of the subdivision.

Anthony Fox – let’s talk about commitment. Did you not make a commitment in 2005 when you as

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Tucker Chase committed to a certain level of maintenance of the streets in the subdivision that property owners were going to buy?

Jim Scarbrough – object. Now we are getting into the history that I was not allowed to get into.

Chair Page – agree.

Anthony Fox – tell me, does your Exhibit #4 not contain a certificate of road maintenance that was executed by Tucker Chase LLC that certified that we or I will maintain the roads to the standards set forth by the North Carolina Department of Transportation until the respective governmental agent takes over the responsibility?

Harry Grimmer – certify that we will maintain the roads to the standards set forth by the North Carolina Department of Transportation....maintain the roads, it does not say finish them and keep them finished, fix them until the subdivision is finished and trucks are tearing them up and that the City was gonna go ahead and let us do all patches and kind of stuff and did not want to take them on. This is the City's requirement, if they want to change it then not have this problem in the future what they need to do is let the developer finish the streets upfront. They accept them upfront and they maintain them.

Anthony Fox – you agreed Mr. Grimmer that none of these streets shown in Map 1 through Map 6 have been accepted by the Town of Midland as a part of its street system.

Harry Grimmer – never been accepted. No one ever asked us to. They said fix them and we will accept them and we will maintain them while you all build the rest of the houses.

Anthony Fox – I recall earlier, your testimony you said someone told you to write a letter and that was not done.

Harry Grimmer – there is on Map 6 one of the cul-de-sacs is finished then Mud Drive is finished and have asked the City to take those over. We have requested a form to ask the City to take them over. The City says write us a letter we don't have a form.

Anthony Fox – what is your relationship with Juniper LLC?

Harry Grimmer – I have no relationship with them other than buyback [inaudible] bank for finishing the project and acting as their agent to do the work and when we sell a lot, they release each lot from their loan I have with them.

Anthony Fox – are you a member of the LLC?

Harry Grimmer – no.

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Anthony Fox – is Tucker Chase LLC a member of the LLC?

Harry Grimmer – no.

Anthony Fox – how is your agency relationship memorialized?

Harry Grimmer – do what?

Anthony Fox – do you have a written agency agreement with them?

Harry Grimmer – yes. It is a contract between Tucker Chase LLC and Juniper LLC, two corporations.

Anthony Fox – let me understand. You have an agency relationship with Juniper LLC, Juniper as it sells lots you have the opportunity to buy the lots back?

Harry Grimmer – has nothing to do with lots, owns the land. I don't own one shovel full of dirt out there.

Anthony Fox – what is the buyback option you have with Juniper?

Jim Scarbrough – he said Tucker Chase LLC has the agreement. You keep saying “you”. Just like the Notice of Violation I kept asking who is “you”.

Anthony Fox – he said he was the agent. He clarified it that way. Check the record.

Harry Grimmer – Juniper Land is basically the bank and they have a note, they don't have a note but they own the land but have a buyback agreement with me that as I use my money to finish the project, I use another investor or get a bank loan or whatever, when we record the lots [inaudible] that is what has been done for Map 6 until we get down to the last seven lots. The Town won't issue permits. It is a complicated issue. The project almost went into foreclosure because the bank that is the only way I could work it out is further decrease the value of the property of this.

Anthony Fox – Mr. Grimmer you have been developing property how long?

Jim Scarbrough – Did you hear the question?

Anthony Fox – I asked how long you have been a developer?

Harry Grimmer – since 1975.

Anthony Fox – how long have you been developing property within the Town of Midland?

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Harry Grimmer – this is my first project in Midland.

Anthony Fox – have you had other properties since this property that you have developed in Midland?

Harry Grimmer – yes. Continuing development in several other places. One in Lancaster County, one in Union County we've developed property Union County, Mecklenburg County, Lancaster County, Cabarrus County, Gaston County.....

Anthony Fox – with regards to Midland, how many properties, how many developments have you undertaken within the corporate limits of Midland?

Harry Grimmer – just this one. Thank goodness.

Anthony Fox – Bethel Glen is not one of your properties?

Harry Grimmer – no.

Anthony Fox – did you develop Bethel Glen?

Harry Grimmer – Bethel Glen?

Anthony Fox – yes.

Harry Grimmer – no.

Anthony Fox – with regards to your development activities, your familiar with the, as a developer you become familiar with the Ordinances of the jurisdiction in which you are developing in, is that correct?

Harry Grimmer – yes. I don't necessarily. I don't know all of them an intern [inaudible] just like you have a paralegal to help you. I don't know all the Ordinances the Town works with us [inaudible] abide by them.

Anthony Fox – either you or people that are retained by you or work in your interest are familiar with the Ordinances of the Town of Midland in order to complete a development. Is that correct?

Harry Grimmer – yes.

Anthony Fox – are you familiar with the requirement under the Town of Midland's Ordinance for a developer to maintain bonds on a project?

Harry Grimmer – we maintain them until the Town lets them default.

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Anthony Fox – I'll wait until you get back.

Harry Grimmer – I'm sorry. I need to look at something.

Anthony Fox – I'm asking what you are looking at and if I can see it as well?

Harry Grimmer – original consent of agreement. Cabarrus County approved this subdivision.

Anthony Fox – I think I'm moving on to a different issue right now.

Ms. Keeney – speak into the microphone Mr. Grimmer. Speak into the microphone.

Anthony Fox – Mr. Grimmer I'm really talking right now about bonds. You mentioned about bonds....

Harry Grimmer – you asked if I was familiar with Midland...

Anthony Fox – the Midland Development Ordinances, yes.

Harry Grimmer – Midland Ordinances are not applicable. This document says disagreement in the development [inaudible] wait a minute, let me find the right place.

Anthony Fox – are you contending that Tucker Chase is not a subdivision within in the corporate limits of the Town of Midland?

Harry Grimmer – repeat that please.

Anthony Fox – is Tucker Chase a subdivision within the Town of Midland? If...I can ask the question...

Jim Scarbrough – he gets to finish his answer. He is not finished yet.

Harry Grimmer – it was approved by Cabarrus County and it said the regulation Ordinance is positive in plan government in permitted use of density and general configuration of project hereby [inaudible] on 6/1/04....developer can [inaudible] can't find the paragraph.

Anthony Fox – I believe, I don't know if he is being responsive to question at this point.

Harry Grimmer – it is in here somewhere, I can't put my finger on it. It says in the Ordinances in 2004 of Cabarrus County shall be the only effective Ordinances for this subdivision. Ms. Watts reference to Midland's Ordinances are not applicable, in my opinion, yours may be different.

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Anthony Fox – I think it is. Let's go forward with regards the bonds you mentioned that you have or Tucker Chase LLC has no further responsibility for the roads in Tucker Chase because the bonds have expired. Is that your testimony?

Harry Grimmer – I think that is a legal question that I can't answer.

Anthony Fox – would you agree though that the Town of Midland's subdivision Ordinance requires that performance bonds shall remain in full force and effect until such time as the construction of improvements and installation of utilities are completed and accepted by the Town of Midland?

Jim Scarbrough – objection. Is that one of violations? I don't remember that. I don't think it says anything about performance bonds in here.

Chair Page – not the violations. Not the violations, it does not.

Anthony Fox – but he opened the door about bonds and he indicated earlier that bonds had expired, then he indicated that out of the good....if I could finish....

Harry Grimmer – letters of credit not bonds.

Anthony Fox – maturities/guarantees had expired and that they at one point with the City of Concord they renew them, then he indicated that when it became an issue for the Town of Midland they expired, then renewed them once and then they are expired and they have been expired for five years.

Chair Page – he did open that up. You are correct.

Anthony Fox – my question regarding the Ordinance requirement is that your familiarity with the Ordinance are you familiar with the fact that the failure to maintain the required guarantees should result in a revocation of the preliminary plat approval and any permits issued as a result of the preliminary plat approval.

Harry Grimmer – I'm not familiar with that. Cabarrus County in 2004 [*inaudible*] and the former planning director every time we talked about it we back and got the old books so he had those old Ordinances because he said that Ordinances he had written for the Town of Midland were not applicable. The new planning director says the old planning director did not know what he was doing. They are applicable. That's not the case. Not what these documents say.

Anthony Fox – I'm back on the bonds though Mr. Grimmer. When you said that you voluntarily renew those bonds when they were at Concord and at least in one instance, I mean with the County, at least one instance when they were here, did you do that because the Ordinance placed an obligation on you as a developer to continue to keep bonds in place for development?

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Harry Grimmer – we did that because we were still in a situation where we could sit down with the Town and work things out. We rapport enough with administration that it made sense to renew them. We did not let bonds expire, the LC expire the Town did. It has been five years and they want to stop us from finishing the project and jeopardize everything else. If we don't finish this project for the homeowners and I've been working a year and a half to two years and not make a penny. If we don't do that they are going to have to divulge every time somebody sells a house by real estate law that the streets are private streets. Money is going to have to be made to fix them because the developer is insolvent does not own anything else out there and the Town let the bonds expire and want sit down and talk about it.

Anthony Fox – let's talk about the bonds and that is what I'm trying to get at you, I'm trying to ask some questions so if you will allow me to ask some questions. You mentioned you were not aware of the Ordinance of the Town of Midland for requiring bonds be automatically renewed. Is that correct?

Harry Grimmer – I don't know all the Town's Ordinances.

Anthony Fox – do you acknowledge that you received a letter on September 8, 2016 addressed to you regarding this development and it was addressed from Kassie Watts and Richard McMillan?

Harry Grimmer – I don't have that.

Anthony Fox – You don't recall?

Harry Grimmer - *[inaudible]*

Jim Scarbrough – what tab is that?

Anthony Fox – it is tab #17 under the Town's exhibits. Mr. Grimmer, you do live at 8720 Lake Challis Lane in Charlotte North Carolina. Is that correct?

Harry Grimmer – yes.

Anthony Fox – the letter that I am referring to Exhibit #17 and that appears to be addressed to you and references Tucker Chase Development. Is that correct?

Harry Grimmer – yes.

Anthony Fox – this pertains to the parking requirements for the Tucker Chase amenities area. Do you recall that discussion or that letter?

Harry Grimmer – yes.

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Anthony Fox – now if you turn to the last page of that document, turn to the last page of that Exhibit #17, sir.

Harry Grimmer – OK. Yes, sir.

Anthony Fox – do you see the last four paragraphs there and you can take some time to read that.

Harry Grimmer – yes.

Anthony Fox – does it indeed talk about the Tucker Chase LLC has not maintained the required bond or irrevocable letter of credit as required by Article 16.1-9(B) of the Town's Ordinance and does it not say that Tucker Chase is required to provide such guarantee and does it not go on to say that since a significant amount of time has passed the estimate for the repairs and construction of Phases 1 and 2 need to be updated and approved by the Town?

Jim Scarbrough – we have already agreed to allow this in evidence so it speaks for itself. I don't think there is any need to ask him what it says. It says what it says.

Anthony Fox – I think I have the right to publish it in any manner I like.

Jim Scarbrough – it's not part of the hearing and it is getting late.

Anthony Fox – does the letter also say that the bond or letter of credit shall be written such that it is auto renewing and only the Town of Midland may cancel the bond or letter of credit as required by Article 16.1-9(B) for the amount required shall be 125% and 150% of the estimated amount. So the Town goes on and this is specific because you indicated that you had not be asked to provide a bond this is a specific request by the Town to you as Tucker Chase LLC to provide a guarantee completion and begin repairs of the roadway immediately. Is that correct?

Harry Grimmer – it's a request that I have the bank renew the letters of credit. That bank has no banking relationship with LLC, as far as I know it is Juniper Land, any more. That bank has been bought out and Mr. Paris has been to see them about getting letters of credit renewed and they have been denied. I did not let the letters of credit expire five years ago. The Town did. The Town made a mistake and now they want me to correct it. I have offered to correct it, if they would meet with me.

Jim Scarbrough – I want to object to the whole line. Because we have been over this several times now.

Chair Page – I think we can move on past the bonds.

Anthony Fox – I have no further questions.

Jim Scarbrough – just one question Mr. Grimmer and then you can come back to your chair. You

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have been a developer for a long number of years you said. What is the standard practice and development and road construction and development of subdivision with regard to putting on a topcoat? What is the standard practice? When is it done?

Anthony Fox – objection. I believe that is an engineer determination not a developer.

Jim Scarbrough – he is the one that hires people to do it. He is the developer.

Anthony Fox – I don't think he is demonstrating experience in road construction when a topcoat is necessary.

Jim Scarbrough – I said, what is the standard practice in your industry, the development industry.

Chair Page – I'll allow him to answer that.

Jim Scarbrough – you are in the development business, correct?

Harry Grimmer – first of all you try to judge the market, to see if there is a market economically feasible to buy a piece of property. Have it engineered by...

Jim Scarbrough – no, he is talking about the topcoat.

Harry Grimmer – oh, the topcoat. The standard practice is what is being done here at this point. Standard practice is to put the streets in and the developer agree to maintain the streets until you reach the point the project is basically finished. Then you come back in and bring any patches, cracks or curb, or whatever up to DOT standards. Where North Carolina Department of Transportation will take it over and maintain it.

Jim Scarbrough – so it comes at the end of the subdivision. Is that what you are saying?

Harry Grimmer – the municipality in this case, since the State does not take over streets in municipalities, would take it over.

Jim Scarbrough – all right.

Chair Page – I think you answered the question for him but I'm curious it is at the end of the development. Is that correct?

Harry Grimmer – bottom line is typically that is the way it is done.

Jim Scarbrough – you started this subdivision before the recession. Is that correct?

Harry Grimmer – yes.

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Jim Scarbrough – did you sell lots during the recession?

Harry Grimmer – we starting putting it together in 2014. I don't remember when we recorded the first map.

Jim Scarbrough – I'm talking about....you know when the recession was, don't you?

Harry Grimmer – yes.

Jim Scarbrough – you remember that. How many years did the recession last for you?

Harry Grimmer – we had two builders in there, we've had four builders in this project and it was projected originally to be, first map was recorded in about 2008 I think, and it was to be a four year project. We have been in it 12 years at this point. In 2008 and 2009 when the real estate depression swept across the country, we lost our builder and we did not sell a lot for over a year. Builders/developers were going out of business and foreclosures were occurring, banks were selling property half price which is what happen to developers in Saddlebrook. True Homes came in there and bought those properties at considerably, from the bank, at cost.....

Chair Page – that is good enough. We are talking about Tucker Chase and the recession.

Jim Scarbrough – I have no more questions.

Anthony Fox – just a couple of questions. Tucker Chase is a phased development, is it not?

Harry Grimmer – phased?

Anthony Fox – yes.

Harry Grimmer – yes.

Anthony Fox - you build in phases. Is it not common as you complete a phase to finalize that phase with a topcoat on the streets in that phase?

Harry Grimmer – I don't think I can answer that question. Depends on the street layouts and in this case you gotta go through all the main streets to get to the back. That's the part you are going to tear up. Depends on the layout.

Anthony Fox – Mr. Grimmer, you talked about your years of experience in phase developments, you have put topcoats on a segment of a phase development once that phase was completed. Is that not correct?

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Harry Grimmer – no not necessarily.

Anthony Fox –not necessarily or you haven't? Under oath.

Harry Grimmer – I have done it that way?

Anthony Fox – you say not necessarily or you say you have never done that?

Harry Grimmer – not that I recall.

Anthony Fox – no further questions.

Jim Scarbrough – no questions. Thank you, Mr. Grimmer. Would you leave that notebook up there? You can get your papers right there.

Chair Page – We have been going at this for over two hours, so we are going to take about a five to ten minute break. If that is OK with everybody. So we are recessed.

**BREAK**

Jim Scarbrough – Mr. Nguyen

Chair Page – Mr. Nguyen, would you come forward please? Mr. Nguyen, I want to remind you are still under oath. Please state your name for the record.

Hy Nguyen – Hy Nguyen.

Jim Scarbrough – would you spell that for the record.

Hy Nguyen – first name H-Y and the last name is N-G-U-Y-E-N.

Jim Scarbrough – what is your occupation?

Hy Nguyen – I'm a civil engineer.

Jim Scarbrough – who do you work for?

Hy Nguyen - DPR Associates.

Jim Scarbrough – as a civil engineer what kind of work do you do?

Hy Nguyen – we focus in land developments. So we do planning and civil engineering for subdivision and commercial park work.

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Jim Scarbrough – is your company the one that has done road work in Tucker Chase?

Hy Nguyen – we were the designer for the subdivision.

Jim Scarbrough – have you been on the roads recently in Tucker Chase?

Hy Nguyen – yes I have.

Jim Scarbrough – look at tab #13 in the notebook. That says Notice of Violation October 14, 2016 and turn to page two at the top of page there is a sentence that says “The current condition of the streets are substandard and may pose a potential threat to public safety.” Did you observe a potential threat to public safety when you investigated the roads?

Anthony Fox – objection. Proper foundation.

Jim Scarbrough – it’s late. How long have you been an engineer?

Hy Nguyen – 17 years.

Jim Scarbrough – 17 years and are you licensed in North Carolina.?

Hy Nguyen – yes sir.

Jim Scarbrough – have you testified as an expert before?

Hy Nguyen – not in this setting but I have been in other settings.

Jim Scarbrough – like courtroom?

Hy Nguyen – I have not been to the courtroom but I have been to re-zoning.

Jim Scarbrough – were you accepted as an expert witness?

Hy Nguyen – yes sir.

Jim Scarbrough – I tender him as an expert engineer in civil engineering.

Chair Page – yes. I agree. He is fine.

Jim Scarbrough – all he has to do is know more than the rest of us and he is an expert and he certainly does. So I’ve read that sentence to you “The current condition of the streets are substandard and may pose a potential threat to public safety.” Did you observe a potential threat to

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public safety?

Hy Nguyen – if I may before I answer that, your question. We have not been involved in the construction administration or inspection. We are involved when DPR is called for some request. I have not been there on a daily basis or weekly basis or monthly basis. So based on my observation from the connectivity and the layouts point of view, my belief the streets network are in compliance with the approved plans.

Jim Scarbrough – do you see any public safety issue?

Hy Nguyen - based on the information I have seen, again based on the connectivity and the signage that I have observed, I do not believe it pose any public safety concerns.

Jim Scarbrough – you have heard testimony tonight about final topcoat?

Hy Nguyen – yes sir.

Jim Scarbrough – in this particular subdivision would you expect there to be a final topcoat before the last phase is constructed?

Hy Nguyen – typically in Midland as I understand as in other jurisdictions, topcoat typically is not put in until the final phase of the development.

Jim Scarbrough – OK, no further questions.

Anthony Fox – Mr. Nguyen, based on your testimony, you don't make an opinion as to the quality of construction or the quality of the maintenance on the street. Is that correct?

Hy Nguyen – yes sir.

Anthony Fox – your only opinion is relating to the actual design connection and network layout of the streets. Is that correct?

Hy Nguyen – correct.

Anthony Fox – I have no further questions.

Jim Scarbrough – when did you actually visit the subdivision?

Hy Nguyen – throughout the last few years I've probably been there about three or four times and I've been there this afternoon.

Jim Scarbrough – I've been there this afternoon too. No further questions.

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Chair Page – Mr. Fox, anything else?

Anthony Fox – no.

Chair Page – thank you Mr. Nguyen.

Jim Scarbrough – Craig Grimmer.

Chair Page – Mr. Craig Grimmer, I still have to remind you your still under oath.

Jim Scarbrough – would you state your name and address for the record, please?

Craig Grimmer – Craig Grimmer 2200 Beaucatcher Lane Charlotte.

Jim Scarbrough – Harry Grimmer is your dad, is that correct?

Craig Grimmer – yes.

Jim Scarbrough – what is your occupation?

Craig Grimmer – I wear a lot of hats but deals with real estate. I do look over construction for him as part of Tucker Chase LLC.

Jim Scarbrough - how long have you been in real estate development?

Craig Grimmer – since '97, I believe.

Jim Scarbrough – are you familiar with Tucker Chase?

Craig Grimmer – somewhat, yes.

Jim Scarbrough – did you go to the subdivision recently with the Town's engineer?

Craig Grimmer – yes.

Jim Scarbrough – when was that, approximately?

Craig Grimmer – a month ago, maybe.

Jim Scarbrough – was that Mr. McMillan?

Craig Grimmer – yes.

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Jim Scarbrough – what was the purpose of that visit?

Craig Grimmer – we wanted to walk the streets and look at the areas that needed to be repaired and what would be required by the Town so I would know how to instruct the contractors to fix any areas that might be an issue.

Jim Scarbrough – so you have a list of what to do?

Craig Grimmer – somewhat. We did not write down a list we just did a general walk through. We did not do a formal one.

Jim Scarbrough – has he sent you a list?

Craig Grimmer – not a formal one, no.

Jim Scarbrough – were any public safety issues point out to you at the time?

Craig Grimmer – nothing....

Anthony Fox – objection. I don't know if he can qualify to talk about public safety issue.

Jim Scarbrough – I asked him if the Town engineer pointed any.

Anthony Fox – oh, I'm sorry. I misunderstood the question.

Craig Grimmer – nothing specific.

Jim Scarbrough – no further questions.

Anthony Fox – Mr. Gimmer, do you recall the streets that you visited when you were accompanied by Mr. Easter?

Craig Grimmer – Mr. McMillan, Town engineer?

Anthony Fox – was it McMillan or Easter? Do you recall?

Craig Grimmer – Mr. McMillan.

Anthony Fox – do you recall the date of that visit?

Craig Grimmer – not exactly, about month ago or something.

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Anthony Fox – do you recall the streets you actually visited at that time?

Craig Grimmer – vaguely. If I looked at a map I could point them out. Which tab has the maps? 16.

Jim Scarbrough – I think it is 8. Here is a big map right here.

Craig Grimmer - started on Map 1, we parked toward the middle of the subdivision, we basically walked up to the front entrance and we walked Map 1 and then came up onto Map 2 and then we went down Map 5 and back up and finished walking up Map 2 and then walked down Map 3 went back across Map 2 and I think that is as far as we walked.

Anthony Fox – how much time did you spend out there?

Craig Grimmer – probably an hour or two.

Anthony Fox – tell the Board how you are affiliated with Tucker Chase LLC.

Craig Grimmer – I work as a manager for that company.

Anthony Fox – are you a member of the LLC?

Craig Grimmer – no.

Anthony Fox – as a manager of the company, do you receive correspondence directly to the company from time to time?

Craig Grimmer – sometimes yes.

Anthony Fox – I would like to approach the witness. I'm handing you what has been marked as Town's Exhibit #16 of its exhibit book. Are you familiar with the letter dated September 1, 2016?

Craig Grimmer – vaguely yes.

Anthony Fox – were you involved with the amenities center application to the Town for the Tucker Chase subdivision?

Craig Grimmer – I was part of discussions with engineers and layouts, ideas and thoughts, if that is what mean.

Anthony Fox – do you recall the contents of the letter with regards to addressing the issues around the amenities center in the September 1, 2016? It also contains issues of street maintenance.

Craig Grimmer – I believe if I'm reading this right this is the letter after we had submitted the

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amenities site plan.

Anthony Fox – yes.

Craig Grimmer – When this came back we were surprised.

Recorder stopped recording. The following was taken from the clerk's notes:

Anthony Fox – the letter that was received, have you seen the documents following the letter in Exhibit #16?

Craig Grimmer – I have seen some of this.

Anthony Fox – what part have you seen?

Craig Grimmer – pages 118 and 119. I'm not sure about page 120, possibly pages 121, 122, not sure about page 123, pages 124-136 came as group.

Anthony Fox – pages 124-136. Did you use this document in your meeting with Mr. McMillan to talk about the condition of the roads?

Craig Grimmer – it was not in front of me.

Anthony Fox – did you and Mr. McMillan talk about paving conditions?

Craig Grimmer – yes.

Anthony Fox - in your meeting with Mr. McMillan, did you walk Tucker Chase Drive and were the cracks still present with Mr. McMillan?

Craig Grimmer – most likely.

Anthony Fox – what about the pavement below?

Craig Grimmer – \_\_\_\_\_

Anthony Fox – did you notice any settling?

Craig Grimmer – there was some settling.

Anthony Fox – \_\_\_\_\_

Craig Grimmer – I think two.

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Anthony Fox – what were the condition of the manholes on Tucker Chase Drive?

Craig Grimmer – the manholes were above the pavement.

Anthony Fox – did you notice any cracks or patches on Thurber Place?

Craig Grimmer – I do not recall.

Anthony Fox – [question regarding cracks]

Craig Grimmer – I recall there \_\_\_\_\_.

Anthony Fox – is it safe to say Tucker Chase streets have cracks in the curbs?

Craig Grimmer – yes.

Anthony Fox – by design, some of the manholes are above the pavement?

Craig Grimmer – yes.

Anthony Fox – did you see some streets with gatoring and cracking?

Craig Grimmer – saw gatoring and cracking and did see potholes with Mr. McMillan.

Anthony Fox – is it appropriate to say some streets contain potholes?

Craig Grimmer – a couple I may be aware of.

Anthony Fox – did you observe them with Mr. McMillan?

Craig Grimmer – it is possible.

Anthony Fox – do you recall meeting with Town staff in June 2016?

Craig Grimmer – probably so.

Anthony Fox – when did you meet with Mr. McMillian?

Craig Grimmer – about month ago.

Anthony Fox – do you reflect being told to repair to State standards by staff?

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Craig Grimmer – no, did not come up.

Anthony Fox – no further questions.

Jim Scarbrough – did you notice manholes above pavement by design?

Craig Grimmer – manholes are installed to the realm of the topcoat.

Jim Scarbrough – with your experience, the final topcoat goes on at start, middle or end of project?

Craig Grimmer – typically end of list.

Jim Scarbrough – no further questions.

Anthony Fox – no further questions.

Jim Scarbrough - that concludes our evidence and I don't know the how long the City will take but it is approaching my bedtime.

Anthony Fox – I have a couple of witnesses and could take a couple of hours.

Chair Page – we will recess this meeting until January 24, 2017 here at Town Hall at 7 PM if that is agreeable.

Anthony Fox – good.

Jim Scarbrough – ok.

Chair Page – we will continue this hearing on January 24, 2017 at 7 PM here at Town Hall.

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Darrell Page, Chair Midland Board of Adjustment

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Hilda Keeney, Planning & Zoning Clerk to the Board

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