



November 1, 2016

Notice of Violation and Code Enforcement Order

VIA U.S. MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Mr. Lawrence H. Walsh, Chairman 91 7199 9991 7035 2667 1685

Mr. Kenneth C. Praschan, VP of Operations

Cornerstone Development LLC

Liberty Hills Subdivision Developer

3400 Walsh Parkway

Fayetteville, NC 28311

Mr. Jimmy Kizer, PE

Moorman, Kizer & Reitzel, Inc.

Liberty Hills Subdivision Design and Project Engineer

P. O. Box 53774

Fayetteville, NC 28305 91 7199 9991 7035 2667 1654

Caviness & Cates Building and Development Company

Builder/Grantor of Property at 1035 Liberty Lane

639 Executive Place, Suite 400

Fayetteville, NC 28305 91 7199 9991 7035 2667 1661

Dear Cornerstone Development, Moorman, Kizer & Reitzel, and Caviness & Cates:

As you may know, Mr. Mauro Bazan submitted a complaint to the City of Fayetteville on April 7, 2015, concerning his residential property at 1035 Liberty Lane in Fayetteville regarding recurring flooding and property damage caused by inadequate stormwater drainage in the Liberty Hills Subdivision.

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During our investigation of Mr. Bazan's complaint, the City has reviewed evidence that the stormwater design plans for the Liberty Hills Subdivision have not been effective in preventing frequent flooding and resulting damage to the Bazan property. The ineffectiveness of the design plans has been discussed with each of you at different times over the past year and a half.

Although the City is not legally responsible for errors in plans (or for damages resulting from errors in plans) prepared by a homeowners' developers, engineers, or contractors, the City does have the power and authority under its Code of Ordinances to issue this formal Notice of Violation to:

- Cornerstone Development, LLC, as the Liberty Hills Subdivision developer;
- Moorman Kizer & Reitzel, Inc., as the design and Project Engineer; and
- Caviness & Cates Building and Development Company, as the Builder/Grantor of the Bazan residence.

This Notice of Violation serves as formal notice that the City plans to enforce its Code of Ordinances, specifically Section 23-46 of the Stormwater Control provisions. FAYETTEVILLE, N.C., MUNICIPAL CODE art. III, § 23-46 (2013) (including but not limited to all remedies and penalties provided therein governing enforcement, and as otherwise provided in Article III).

Pursuant to Section 23-46, the City Engineering and Infrastructure Department provides this Notice of Violation and of the City's intent to exercise its powers under Section 23-23 to enforce all regulations and procedures adopted to implement the City Code Ordinance governing Stormwater Control, including the right to file an action in Cumberland County Superior Court to compel your compliance with or to restrain any violation of Article III, and to enforce all provisions of Article III, including but not limited to the enforcement provisions outlined below under Section 23-46.

Pursuant to Section 23-23, the City Engineering and Infrastructure Department has the power and authority to coordinate and oversee the design, construction, operation and maintenance of stormwater facilities and conveyances within the City, and to require residential developments such as the Liberty Hills Subdivision to comply with the mandatory provisions of Article III.

Pursuant to Section 23-46, the responsible persons/entities include "[a]ny person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, practice, or condition in violation of" Article III. All such responsible persons/entities "shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section."

Pursuant to Section 23-46, the responsible persons/entities who are subject to the remedies and penalties set forth therein specifically include "any ***architect, engineer, builder, contractor, developer***, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists." (bold italics added)

Pursuant to Section 23-46, the remedies and penalties for violations shall be cumulative, in addition to any other legal remedy, and may be exercised in any order, including but not limited to:

- a. Withholding of a certificate of occupancy for buildings or improvements constructed or being constructed on the site, until the responsible persons have taken remedial measures regarding noncompliant stormwater practices as set forth in the City's notice of violation, or has otherwise cured the violations described therein;
- b. Disapproval of subsequent permits and development approvals, for as long as a violation of Article III continues and remains uncorrected. The City Engineer may withhold, and the City Council may disapprove, any request for permit or development approval or authorization provided for by Article III or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs;
- c. Injunctions and abatements, under which the City Engineer, with the written authorization of the City Manager, may institute an action in Cumberland County Superior Court for a mandatory or prohibitory Injunction and Order of Abatement to correct a violation of Article III. Any person violating Article III shall be subject to the full range of equitable remedies provided in the North Carolina General Statutes or common law; and
- d. Correction as a public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by N.C. Gen. Stat. § 160A-193, the City Engineer, with the written authorization of the City Manager, may cause the violation to be corrected and the costs to be assessed as a lien against any violating property.

Section 23-46 provides for civil penalties for violation of any provisions of Article III. Section 23-46 also provides for criminal penalties providing that a violation of Article III may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

Pursuant to Section 23-46, this serves as a formal Notice of Violation and Code Enforcement Order for you, as the Developer, Engineer and Builder, to correct all inadequate storm control measures and recurring stormwater drainage issues affecting the Bazan property at 1035 Liberty Lane.

This Notice of Violation directs you, at your expense, to take all necessary action to abate currently existing drainage concerns and violations, including but not limited to all corrective and remedial measures necessary to bring the inadequate storm drainage situation into Code Compliance and to alleviate flooding conditions currently experienced in the Liberty Hills Subdivision, as necessary to address the various causational and contributing factors outlined in a Drainage Report dated September 13, 2016, to the City from Moorman, Kizer & Reitzel, Inc.,

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and by implementing any successful combination of corrective options and remedial measures as outlined in the Drainage Report.

Your deadline for correcting the violation shall be by December 1, 2016.

If you fail to comply fully and timely with this Notice of Violation and Code Enforcement Order by the date stated above, you will each be subject to all enforcement remedies and/or penalties set forth in Section 23-46, including but not limited to those outlined above.

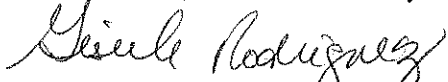
Sincerely,



Rob Stone, PE – Director, Engineering and Infrastructure Department



John F. Larch, PE – Interim City Engineer, Engineering and Infrastructure Department



Giselle Rodriguez, PE – Engineering Specialist II, Engineering and Infrastructure Department

cc: Mauro Bazan 91 7199 9991 7035 2667 1678
Doug Hewett, City Manager
Karen M. McDonald, City Attorney
Alicia L. Young, Assistant City Attorney ✓