

NC



Milken Addition 1/20/04 - 7/9/04

4

P.O. Box 54
 Dallas, TX 75355-0054
 (972) 994-0588

Couriers & Freight, Inc.

1129401

DATE 6/17/04

CHARGE TO:
 Mike Mariner

PICK UP FROM:
 TOWN OF Addison
 16801 Westmore
 Addison TX 75001 9724502871

DELIVER TO:
 Robert Maris
 1450 Meadow Park Bldg., 10440 N. Central
 Dallas TX 75231 2147060920 Exp.

C & F USE:

DEL. CHARGE

ADD. CHARGE

PCS. WT.

C.O.D.

MSGR.

ON

OFF

NOT LIABLE FOR LOSS OF INCOME, INTERESTS, OR PROFIT IN CONNECTION WITH ANY DELIVERY. DECLARED VALUE \$50.00 UNLESS OTHERWISE SPECIFIED.

X

RECEIVED IN GOOD ORDER

3 Milliken Home GIS PRINTS

ON TIME COURIERS

(214) 740-9999

www.ontimecouriers.com

ORDERED BY

CONTROL NO.

DATE	CHARGE TO	ACCT#	DELIVERY CHARGE	
6/17/04	MARIS J. LAVER, P.C. 10440 N. CENTRAL EXPY #1450 DALLAS, TX 75231	8897	PIECES	TOTAL WT
			ROUND TRIP	WAIT TIME
			IMMEDIATE	1 HOUR
			2 HOUR	3 HOUR
			COMMENTS	
			MESSENGER 6	
			ON 2:15	
			OFF	

PICK UP FROM:
 NAME: Mike Mariner
 COMPANY: 16801 Westmore
 ADDRESS: Addison TX 75001
 CITY: ZIP: PHONE:

DELIVER TO:
 NAME: Robert Maris
 COMPANY: 1450 Meadow Park Bldg.
 ADDRESS: 10440 N. Central
 CITY: Dallas TX 75231
 PHONE: 214-706-0920
 SIGNATURE: [Signature]

RECEIVERS COPY

The liability of ON TIME COURIER is limited to the Sum of \$100.00 unless greater value is declared. Claims must be made within 72 hours of delivery date.

P.O. Box 54
 Dallas, TX 75355-0054
 (972) 994-0588

Couriers & Freight, Inc.

1129402

DATE 7/1/04

CHARGE TO:
 Mike Mariner

PICK UP FROM:
 TOWN OF Addison
 16801 Westmore
 Addison TX 75001 9724502871

DELIVER TO:
 Robert Maris
 1450 Meadow Park Bldg. 214-706-
 10440 N. Central Exp. 706-0920
 Dallas TX 75231

C & F USE:

DEL. CHARGE

ADD. CHARGE

PCS. WT.

C.O.D.

MSGR.

ON

OFF

NOT LIABLE FOR LOSS OF INCOME, INTERESTS, OR PROFIT IN CONNECTION WITH ANY DELIVERY. DECLARED VALUE \$50.00 UNLESS OTHERWISE SPECIFIED.

X

RECEIVED IN GOOD ORDER

Mike's VCR TAPE

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702

10440 N. Central Expressway

Dallas, Texas 75231

214-706-0920

214-706-0921 (FAX)

July 9, 2004

VIA HAND DELIVERY

Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

Re: *Pat Milliken v. City of Addison*
TML Claim No. 0200085821
File No. 607-066

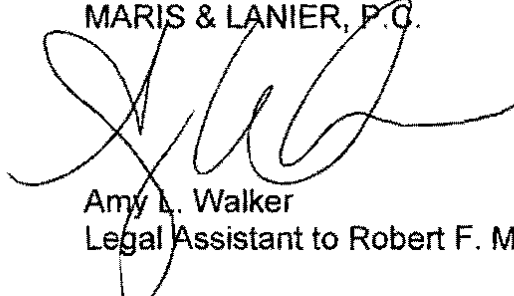
Dear Mike:

Enclosed I am returning your original file in this matter.

Should you have any questions, comments, or concerns, please do not hesitate to contact me.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**DEFENDANT TOWN OF ADDISON’S OBJECTIONS AND RESPONSES TO
PLAINTIFF PAT MILLIKEN’S FIRST SET OF INTERROGATORIES, REQUEST
FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR ADMISSIONS**

TO: Plaintiff Pat Milliken, by and through her attorney of record, Thomas H.
Keen, LOOPER REED & MCGRAW, 1601 Elm Street, Suite 4100, Dallas,
Texas 75201.

COMES NOW Defendant Town of Addison (“Defendant” or “Addison”) and, pursuant to
Rules 196, 197 and 198 of the Texas Rules of Civil Procedure, timely files its objections and
responses to the interrogatories, request for production of documents and request for admissions
served by Plaintiff Pat Milliken (“Plaintiff” or “Milliken”). In support thereof, Defendant shows the
following:

I.

General Objections

Defendant hereby generally objects to the Directions and Instructions provided by Plaintiff
to the extent that they seek to impose greater obligations upon Defendant than those required under

the Texas Rules of Civil Procedure. Defendant hereby incorporates this objection to each and every Interrogatory and/or Request as if fully set forth below.

II.

Reference of Specific Objections

1. Defendant objects to this Interrogatory and/or Request for the reason that it is overly broad and unduly burdensome in that it seeks to require Defendant to provide information, documents and/or tangible things that are not reasonably related in scope or time to causes of action that have been asserted, or that may properly be asserted, in this litigation. This discovery is improper in that it seeks to impose an unreasonable burden upon Defendant to produce information, documents and/or tangible things for which there is no reasonable expectation that it will aid in the resolution of the dispute between the named parties and the burden. As such, it constitutes an impermissible fishing expedition. The expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues of the case.
2. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require Defendant to marshal all of their evidence prior to trial and fails to comply with the rule requiring specific requests for documents. See *Loftin v. Martin*, 776 S.W.2d 145 (Tex.1989).
3. Defendant objects to this Interrogatory and/or Request for the reason that it is vague and ambiguous in that it fails to define terms essential to a clear understanding of what information, documents and/or tangible things are being sought from Defendant.
4. Defendant objects to this Interrogatory and/or Request for the reason that it is multifarious or contains discreet sub-parts in that it seeks to require Defendant to provide two (2) or more responses for one (1) numbered Interrogatory and/or Request.
5. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require Defendant to provide information, documents and/or tangible things that are protected by the attorney-client privilege, work product privilege or joint defense privilege.
6. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require Defendant to admit or state opinions as to legal conclusions or propositions of law that are not binding on a court and do not preclude either party from proving fact issues. *Exparza v. Diaz*, 802 S.W.2d 772, 775 (Tex.App.--Houston [14thDist.] 1990, no writ).
7. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require

Defendant to provide information, documents and/or tangible things based upon a stated factual premise provided by Plaintiff that is false, misleading or deceptive.

8. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require Defendant to provide information, documents and/or tangible things that are confidential and/or proprietary in nature to Defendant or Defendant's business or that Defendant considers to be a closely protected trade-secret. Defendant will not disclose confidential, proprietary or trade-secret information.
9. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require Defendant to provide information, documents and/or tangible things that are equally accessible to Plaintiff in that they are matters of public record or are in the possession, or subject to the control, of third-parties and/or Plaintiff. Such discovery is clearly obtainable from some other source that is more convenient, less burdensome or less expensive and is only brought to impose upon Defendant unnecessary expenses, harassment and annoyance.
10. Defendant objects to this Interrogatory and/or Request for the reason that it is unnecessarily repetitious, cumulative and duplicative and, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake, is unreasonably burdensome and expensive.
11. Defendant objects to this Interrogatory and/or Request for the reason that it seeks to require Defendant to provide information, documents and/or tangible things that are only discoverable through Rule 194.2 of the Texas Rules of Civil Procedure.

III.

Discovery Requests

Request for Production No. 1. Please Identify and produce each and every document You reviewed, or which was submitted to the Town of Addison as part of the approval process for the subdivision of Defendants' Lots. This request necessarily includes each and every preliminary plat, final plat, engineering drawings, drainage plans, topographic maps, civil engineering drawings, application for approval and other Documents submitted to the Town of Addison as part of the subdivision process.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant

hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 2. Please identify and produce each and every Document the Town of Addison reviewed in making the determination that Defendant Builders drainage plans were adequate.

Response. 7. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 3. Please identify and produce the plans, budget, and drainage calculations used to design the storm water drainage facility located at the rear of the Milliken Property, and installed by Bowman Construction.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Interrogatory No. 1. Please Describe each and every example of drainage remediation work performed on the Milliken Property at the request of the Town of Addison.

Response. 2., 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that the drainage remediation work performed on the Milliken Property at the request of the

Town of Addison may be ascertained from the documents produced by Defendant herein and Defendant hereby produces documents responsive to this Request that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 4. Please produce any settlement agreements or offers of settlement between, memoranda, correspondence relating to, notes of, or any Documents relevant to the agreement between the Town of Addison and Defendant Builders to construct the drainage facility at the rear of the Milliken Property.

Response. 7. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 5. Please produce the contract between the Town of Addison and Bowman Construction Company to install the drainage facility at the rear of the Milliken Property.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 6. Please produce all invoices, canceled checks, money orders, purchase requests, and any other indicia of money spent by the Town of Addison on drainage

remedial efforts on the Milliken Property.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Admission No. 1. Admit that Plaintiff Pat Milliken verbally protested to officials of the Town of Addison, prior to the development of Defendants' Lots with regard to drainage which might be generated from Defendants' Lots.

Response. Deny.

Request for Admission No. 2. Admit that Pat Milliken objected to officials of the Town of Addison about the grade change being effected on Defendants' Lots, compared to the natural grade.

Response. Admit.

Request for Admission No. 3. Admit that Defendant Builders raised the elevation of Defendants' Lots above the natural grade immediately prior to development.

Response. Deny.

Request for Production No. 7. Produce any and all Documents showing the grade changes in Defendants' Lots during the Relevant Time period.

Response. 9. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 8. Please produce all topographic or drainage area maps showing the area contributing to drainage onto or from Defendants' Lots.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Admission No. 4. Admit that the Town of Addison recognized that a drainage problem had been caused by the development of Defendants' Lots.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that it recognized that a drainage problem had been caused by the actual development of the Developer Defendants' Lots, but denies that any such drainage problem would have been caused by the development of the Developer Defendants' Lots had it followed Defendant's instructions..

Request for Admission No. 5. Admit that the fire department of the Town of Addison was dispatched to help combat the flooding and aftermath of flooding at the Milliken Property on at least one occasion.

Response. Admit.

Interrogatory No. 2. Please Identify each and every Person authorized by the Town of Addison to enter the Milliken Property for the purpose of assessing damage, mitigating damage, evaluating drainage issues, installing drainage systems, installing grass and foliage, and otherwise relating to the flooding or threatened flooding from Defendants' Lots or the aftermath therefrom.

Response. 4. Subject to, and without waiving, the foregoing objections, if any, Defendant

states that the following persons are known by Defendant to have entered upon Plaintiff's Property: Ron Whitehead, Chris Terry, Carman Moran, Lynn Chandler, Michael E. Murphy, P.E., Steve Chutchian, David Wilde, Slade Strickland, Ron Lee, Joel Sales, Dan Wood, Greg Fenn, Jim Bowman and Scott Edwards of Jim Bowman Construction and Douglas Osbourn of Hollywood Pools.

Request for Admission No. 6. Admit that after the development of Defendants' Lots, the Milliken Property was flooded at least once.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that Plaintiff's Property flooded during the development of the Developer Defendants' Lots, but denies that any flooding occurred after the development of the Developer Defendants' Lots.

Request for Admission No. 7. Admit that after the development of the Defendants' Lots, the Milliken Property flooded at least twice.

Response. 3. Defendant admits that Plaintiff's Property flooded during the development of the Developer Defendants' Lots, but denies that any flooding occurred after the development of the Developer Defendants' Lots.

Request for Production No. 9. Please produce any and all weather reports, almanac information, newspaper articles, reports, or other meteorological data related to the relevant time period which You assert relates in any way to the flooding of the Milliken Property.

Response. 9. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas,

Texas 75231 upon the request of Plaintiff.

Interrogatory No. 3. Please explain the grade change which existed from Defendants' Lots to the Milliken Property prior to the year 2000.

Response. 1., 3., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant states that of the three (3) lots in question, Plaintiff's Property sets at a point lower than the other two (2).

Interrogatory No. 4. Please explain the grade change which exists between Defendants' Lots and the Milliken Property currently.

Response. 3., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant states that of the three (3) lots in question, Plaintiff's Property sets at a point lower than the other two (2).

Interrogatory No. 5. Please Describe the drainage issue which arose between Christian Laetner, the former owner of the property immediately south of Defendant The Preston Group Designer and Builders, Inc.'s lot, and The Preston Group Designer and Builder, Inc.

Response. 1., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant states that ground water was seeping through a newly erected fence several feet below grade.

Request for Production No. 10. Produce all Documents relating to the drainage issue with Christian Laetner referred to above.

Response. 1., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas,

Texas 75231 upon the request of Plaintiff.

Interrogatory No. 6. Describe the attributing drainage area served by the drainage improvement installed at the rear of the Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that the attributing drainage area served by the drainage improvement may be ascertained from the documents produced by Defendant herein and Defendant hereby produces documents responsive to this Request that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Interrogatory No. 7. Describe the capacity of the drainage improvement installed at the rear of the Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that, the capacity is based on a 100 year event in drainage area highlighted in Kyle Korey's drainage area map dated January 28, 2002. The map indicates flow during a 100 year event that would be created by all upstream lots and capacity was based on that number in cubic feet per second, or 11.8 cubic feet per second.

Request for Admission No. 8. Admit that the Town of Addison offered to install additional trees on Plaintiff's Property following the grading for and installation of the drainage improvement installed at the rear of the Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that it offered to replace the two (2) 8 ½" caliper Soapberry trees located outside of the easement and the three (3) largest Hackberry trees that were located within the easement, even

though they were not eligible for replace due to their location within the easement.

Request for Admission No. 9. Admit that the Town of Addison had installed grass sod in the back yard of the Milliken Property following the development of the builders' lots.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant denies that it installed grass sod in the backyard of Plaintiff's Property after the development of the Developer Defendants' Lots, but admits that it installed grass sod after the installation of the drainage system *during* the development of the Developer Defendants' Lots.

Request for Admission No. 10. Admit that the Town of Addison installed the drainage improvement at the rear of the Milliken Property in an attempt to ameliorate the drainage coming from Defendants' Lots onto the Milliken Property.

Response. 3., 4. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that it installed the drainage improvement at the rear of Plaintiff's Property to improve drainage on Plaintiff's Property.

Request for Admission No. 11. Admit that the drainage flow from the Defendants' Lots was increased in quantity following the grade elevation of Defendants' Lots.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that it is without sufficient information to admit or deny and, therefore, denies.

Request for Admission No. 12. Admit that the drainage flow was increased in speed following the raising of the elevation of Defendant's Lots.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that it is without sufficient information to admit or deny and, therefore, denies.

Request for Admission No. 13. Admit that but for the development of Defendants' Lots, the Milliken Property would not have flooded on the occasions referenced in Plaintiff's Original Petition.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant is denies.

Interrogatory No. 8. Identify each and every contributing factor which You contend led to the flooding of the Milliken Property during the relevant period.

Response. 2., 6. Subject to, and without waiving, the foregoing objections, if any, Defendant states that the following factors contributed to the flooding of the Plaintiff's Property in December 16, 2001 and January, 2002: unusually high volume of rain water falling within a short period of time, the construction of the fence between the Watters' property and Plaintiff's Property, the failure of Plaintiff to maintain the drainage on the Property, including, but not limited to, the drains located at the base of the wall between the Watters' property and Plaintiff's Property, the failure of Plaintiff to maintain the drainage easement by allowing uncontrolled growth of vegetation and stock-piling of junk prohibiting flow through the easement, the fact that Plaintiff's Property rest at the lowest point on the lot with no drainage protection and the elevation of the Developer Defendants' Lots by the Developer Defendants without following Defendant's instructions.

Request for Production No. 11. Produce any and all documents related to Your contention referenced above.

Response. 2. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or

subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Admission No. 14. Admit that there is a natural swale running from the northern boundary of Defendants' Lots to the patio located on the Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant denies.

Request for Admission No. 15. Admit that You recommend a berm be constructed on the Milliken Property to ameliorate drainage coming from Defendants' Lots.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that this question is not entirely clear if Plaintiff intends to ask whether Defendant recommends the construction of a berm now or whether it was recommended in the past, but Defendant admits that it did recommend the erection of a berm to protect the Plaintiff's Property during construction of the Developer Defendants' Lots.

Request for Admission No. 16. Admit that the Town of Addison constructed a berm on the Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant denies.

Request for Admission No. 17. Admit that the Town of Addison authorized the construction of a berm on the Milliken Property.

Response. 3., 7. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that Defendant and Plaintiff authorized the construction of a berm on the Plaintiff's Property.

Request for Admission No. 18. Admit that the Town of Addison paid for the construction of a berm on the Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant admits.

Request for Admission No. 19. Admit that Defendant Builders paid for the construction of a berm on the Milliken Property.

Response. 3., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant is without sufficient information to admit or deny and, therefore, denies.

Request for Production No. 12. Identify and produce any and all Documents submitted to Your testifying experts for their consideration in rendering an opinion in the Lawsuit.

Response. 11. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 13. Produce each and every Document submitted to any consulting expert for their review, if that consulting expert has discussed the events related to the Lawsuit with a testifying expert, or if that consulting expert's opinion is relied upon by any testifying expert.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas,

Texas 75231 upon the request of Plaintiff.

Request for Production No. 14. Produce any and all Documents which were either reviewed by, or under the control of Michael Murphy of the Town of Addison, related to the drainage characteristics of Defendants' Lots and/or the Milliken Property both prior to the development of Defendant's Lots, and after development of those lots.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Interrogatory No. 9. If You contend that there is currently no lot-to-lot drainage between Defendants' Lots and the Milliken Property, explain each and every fact on which you rely to reach such conclusion.

Response. 2., 7. Subject to, and without waiving, the foregoing objections, if any, Defendant states that there is still, technically, lot-to-lot drainage, but that this lot-to-to drainage is to the eastern and western boundaries of Plaintiff's Property as drainage is designed to flow and not from the center of the Developer Defendants' Lots directly to the center of Plaintiff's Property, as is contended in this lawsuit. Defendant knows this because, on several occasions during heavy storms, Defendants' chief engineer, Michael E. Murphy, P.E., personally observed that all water at the center of Plaintiff's Property, which then flows naturally to directly towards Plaintiff's house and pool, was as a result of rainwater landing directly on Plaintiff's Property or coming from Plaintiff's roof.

Request for Production No. 15. Produce any and all Documents related to Your contention

referred to above.

Response. 2. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Interrogatory No. 10. If You contend that the lot to lot drainage between Defendants' Lots and the Milliken Property was not increased during the relevant period, explain each and every factor which you rely to reach such conclusion.

Response. 2., 3. Subject to, and without waiving, the foregoing objections, if any, Defendant states that it is not clear what Plaintiff is asking in this interrogatory because it seems to ignore the fact that a drainage system was installed during the relevant period. So while lot-to-lot drainage may have increased on the two (2) occasions during which there were unusually heavy rainstorms, it has not increased after the installation of the drainage system. Defendant states that its chief engineer, Michael E. Murphy, P.E., has personally observed the performance of the drainage system during heavy rainstorms and that rainwater has neither overflowed from the wall separating the Developer Defendants' Lots and Plaintiff's Property nor has it bypassed the drainage inlet located on the Developer Defendants' Lots.

Request for Production No. 16. Produce any and all Documents related to Your contention referred to above.

Response. 2. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or

subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 17. Identify all Documents related to the acquisition by Builder Defendants of the Defendants' Lots, including consideration paid, date of acquisition, development plans, deeds of trust, mortgage notes, etc.

Response. 9. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 18. Produce the plans, including engineering plans, construction plans, builders' drawings, or other submissions which Defendant Builders submitted to Defendant Town of Addison for the issuance of building permits on Defendants' Lots.

Response. 9. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Admission No. 20. Admit that Town of Addison, in corroboration with Builder Defendants entered upon the Milliken Property, and destroyed trees, shrubbery, and ground cover, and altered the terrain of the parcel.

Response. 4., 7. Subject to, and without waiving, the foregoing objections, if any, Defendant denies.

Request for Admission No. 21. Admit that the Defendant Town of Addison authorized development of Defendant Builders Lots in the manner in which they are currently developed.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant denies.

Request for Production No. 19. Produce any and all drainage plans created by the Town of Addison reflecting drainage patterns or alterations thereto on Defendant Builders Lots or the Milliken Property.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Admission No. 22. Admit that Plaintiff Pat Milliken lost personal property as a result of the flooding incidents referred to in Plaintiff's Original Petition.

Response. 6., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant is without sufficient information to admit or deny and, therefore, denies.

Request for Admission No. 23. Admit that Plaintiff Pat Milliken's home located on the Milliken Property, has been damaged by flooding during the relevant period.

Response. 6. Subject to, and without waiving, the foregoing objections, if any, Defendant denies.

Request for Admission No. 24. Admit that officials and employees of the Town of Addison were called to the Milliken Property on several different occasions as a result of flooding of the

Milliken Property.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that it was called to the Plaintiff's Property by Plaintiff on or about December 17, 2001 and on or about January 30, 2002.

Request for Admission No. 25. Admit that officials and/or employees of the Town of Addison were called to the Milliken Property as a result of flooding of the Milliken home during the relevant period.

Response. 3., 10. Subject to, and without waiving, the foregoing objections, if any, Defendant refers Plaintiff to Defendants' response to Request for Admission No. 24., above.

Request for Admission No. 26. Admit that officials of the Town of Addison or employees of the Town of Addison were called to the Milliken Property because of the grade change effected on Defendants' Lots, and the threatened flooding of the Milliken Property.

Response. 3., 4. Subject to, and without waiving, the foregoing objections, if any, Defendant denies that it was "called to the Milliken Property," but admits that it visited the site as soon as it became aware that the Developer Defendants' were brining in fill dirt onto the Developer Defendants' Lots.

Request for Production No. 20. Please produce any and all Documents relating to the Town of Addison's defense that it was exercising a governmental function in seeking to remedy the drainage problem between Defendants' Lots and the Milliken Property.

Response. 6. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or

subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 21. Please produce any correspondence between the Town of Addison and Defendant Builders relating to lot-to-lot drainage between the Defendants' Lots and the Milliken Property.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 22. Produce any "red tags" or stop work orders issued by the Town of Addison to Defendant Builders during the construction of residences on Defendants' Lots.

Response. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Interrogatory No. 10. Describe any and all remedial efforts taken by Defendant Builders to ensure no increase in lot-to-lot drainage between Defendants' Lots and the Milliken Property.

Response. 2., 9. Subject to, and without waiving, the foregoing objections, if any, Defendant states that this Interrogatory is more properly directed to the Developer Defendants, but that it is aware that the Developer Defendants constructed a berm on Plaintiff's Property, removed junk stacked in the five (5) foot easement on Plaintiff's Property, removed trees from the easement,

constructed a retaining wall between the Plaintiff's Property and the Developer Defendants' Lots and allowed for a drainage inlet to be constructed on the Developer Defendants' Lots.

Request for Production No. 23. Produce all policies of insurance, or insurance-type agreements relating to defense of or payment for damages in the Lawsuit.

Response. 11. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Production No. 24. Produce all Documents consisting communication between all the Town of Addison and Plaintiff during the relevant period.

Response. 3. Subject to, and without waiving, the foregoing objections, if any, Defendant hereby produces documents responsive to this Request, if any, that are within its possession, or subject to its control, at MARIS & LANIER, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon the request of Plaintiff.

Request for Admission No. 27. Admit that the Town of Addison is a property owner with regard to rights it has as an easement owner in the drainage easements on the Milliken Property.

Response. 6. Subject to, and without waiving, the foregoing objections, if any, Defendant admits that it was granted two (2) five-foot easements along the southern and western boundaries of the Plaintiff's Property by Plaintiff.

Respectfully submitted,

MARIS & LANIER, P.C.

Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
10440 N. Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF SERVICE

This is to certify that a true, correct and complete copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the 28th day of June, 2004 to:

Thomas H. Keen
LOOPER REED & MCGRAW
1601 Elm Street, Suite 4100
Dallas, Texas 75201
VIA CERTIFIED MAIL RECEIPT
NO. 7003 1680 0004 2873 5228

Anthony Vitullo
Zach Mayer
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
VIA REGULAR MAIL

Robert F. Maris

607.066\discovery.rsp.wpd

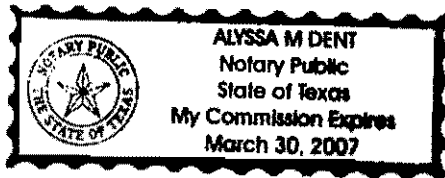
VERIFICATION

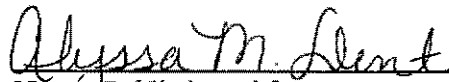
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, personally appeared the person known to me to be Michael E. Murphy who, upon being duly sworn under oath, deposed and stated that he is a duly authorized representative of the Town of Addison, that he has reviewed the foregoing interrogatories and that the answers given in response thereto as within his personal knowledge and true and correct.


Michael E. Murphy, P.E.

SIGNED under oath on the 28 day of June, 2004 before:




Notary Public in and for
The State of Texas

HP LaserJet 3200se



HP LASERJET 3200

JUN-28-2004 2:06PM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
56	6/28/2004	2:05:05PM	Send	92147060920	1:01	2	OK

**TOWN OF ADDISON
PUBLIC WORKS**

To: Mike McElroy From:
Company: M-L
FAX #: 214 706 0920
Date: 6-28-04
No. of Pages(Including cover): 2

Michael E. Murphy, P.E.
Director of Public Works
Office: 972/450-2878
Fax: 972/450-2837
16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

Fax THIS
Mike McElroy
with main/owner.

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702

10440 N. Central Expressway

Dallas, Texas 75231

214-706-0922

214-706-0921 (FAX)

AMY L. WALKER

June 15, 2004

VIA FACSIMILE

Zach T. Mayer

Fee Smith Sharp & Vitullo, L.L.P.

One Galleria Tower

13355 Noel Road, Suite 1200

Dallas, Texas 75240

VIA FACSIMILE

Mike Murphy

Public Works Department

Town of Addison

P.O. Box 9010

Addison, Texas 75001

Re: Pat Milliken v. Town of Addison, et al.
Cause No. 02-4715-F in the 116th District Court, Dallas County
File No. 607-066

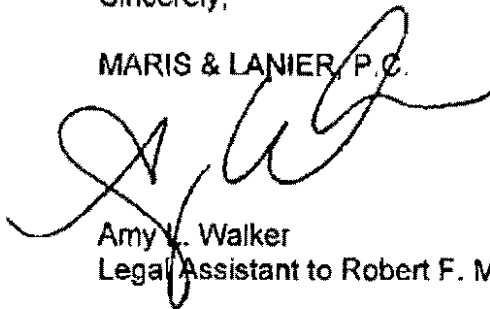
Dear Zach and Mike:

This will confirm that we have rescheduled the meeting to prepare for Plaintiff's expert's depositions for **Wednesday, June 16, 2004 at 3:30 p.m.** at our office. Zack, this will confirm that your expert will also be present at the meeting.

Thank you for your time and attention to this matter.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Steve ✓

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: June 8, 2004

To: Zach Mayer Via Telecopier Number: 972-934-9200

To: Mike Murphy Via Telecopier Number: 972-450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 1

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Debbie at: 1-214-706-0924

Re: File No. 607-066; Pat Milliken v. Town of Addison

Message: This will confirm the meeting scheduled for this Thursday at 3:30 p.m. at our office.

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile
214-706-0922 direct dial

awalker@marislanier.com

June 8, 2004

VIA FACSIMILE

Zach T. Mayer
Fee Smith Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240

VIA FACSIMILE

Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

Re: Pat Milliken v. Town of Addison, et al.
Cause No. 02-4715-F in the 116th District Court, Dallas County
File No. 607-066

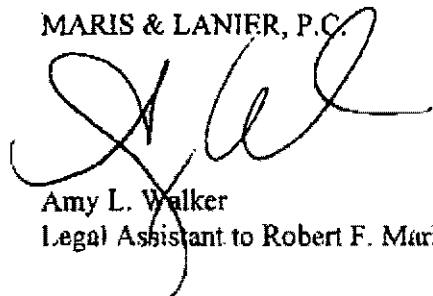
Dear Zach and Mike:

This will confirm that we have scheduled a meeting at our office on **Thursday, June 10, 2004 at 3:30 p.m.** Zach, this will also follow-up with my voice mail regarding your expert being available to attend the meeting.

Thank you for your time and attention to this matter.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., L.B 702 10440 N. Central Expressway

Dallas, Texas 75231

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: June 3, 2004

To: Rickey Garen Via Telecopier Number: (512)491-2366

To: Ken Dippel Via Telecopier Number: (214)672-2020

To: Mike Murphy Via Telecopier Number: (972)450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 19

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Debbie at: 214-706-0920

Re: File No. 607-066; Pat Milliken v. Town of Addison

Message: See attached discovery to Defendant from Plaintiff.

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile
214-706-0922 direct dial

awaalker@marislanier.com

June 3, 2004

VIA FACSIMILE

Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78754

VIA FACSIMILE

Ken Dippel
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, TX 75202

VIA FACSIMILE

Michael E. Murphy, P.E.
Lynn Chandler
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010

Re: Pat Milliken v. City of Addison
TML Claim No. 0200085821
File No. 607-066

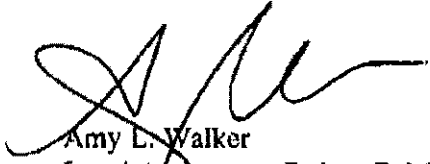
Dear Gentlemen:

Attached for your file is a copy of Plaintiff Pat Milliken's First Set of Interrogatories, Request for Production of Documents and Request for Admissions to Defendant Town of Addison. The deadline for us to respond is **June 25, 2004**. To the extent that you have information and/or documents (which haven't been previously provided to us) responsive to Plaintiff's requests, please provide same before the deadline above.

Thank you for your time and attention to this matter.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure

CAUSE NO. 02-4715

PAT MILLIKEN,

Plaintiff,

vs.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., JON B. COLEMAN,

Defendants.

§
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§
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§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

**PLAINTIFF PAT MILLIKEN'S FIRST SET OF INTERROGATORIES,
REQUEST FOR PRODUCTION OF DOCUMENTS AND
REQUEST FOR ADMISSIONS TO DEFENDANT TOWN OF ADDISON**

TO: TOWN OF ADDISON, by and through its attorney of record, Michael J. McKleroy, Jr.,
MARIS & LANIER, P.C., 1450 Meadow Park Blvd., LB 702, 10440 N. Central
Expressway, Dallas, Texas 75231.

Pursuant to Rule 197 of the Texas Rules of Civil Procedure, Plaintiff, PAT MILLIKEN,
("Plaintiff") submits these interrogatories to the attorney of record for Defendant TOWN OF
ADDISON ("Addison"), and requests that Addison answer separately and fully in writing under
oath each of the following written interrogatories. The answers must be signed by the person
making them. A true copy of Your responses and any objections to these interrogatories must be
served on the undersigned attorney within thirty (30) days after service.

DEFINITIONS AND INSTRUCTIONS

A. "You," "Your," or "Defendant" shall mean the named Defendant to whom this
discovery is addressed, and as the context requires, their respective agents, representatives and
attorneys and all other Persons acting on her behalf in a representative capacity.

B. "Plaintiff," "Our," or "Milliken" means Plaintiff Pat Milliken and, as the context requires, each of her respective employees, agents, representatives and attorneys and all other Persons acting on her behalf in a representative capacity.

C. "Lawsuit" shall mean this proceeding filed as Cause No. 02-4715 in the 116th District Court of Dallas County, Texas.

D. "Settlement Agreement" means any and all Documents which compromise, settle, indemnify, divide or shift responsibility, subrogate responsibility, or in any way affect any of the parties to the Lawsuit regarding the payment of damages, assessment of liability or responsibility, or an attempt to provide remedial efforts for the damages set forth in Plaintiff's Original Petition and any amendments thereto.

E. "RFD Responses" means Your Responses to Our Request for Disclosure.

F. "Identify" with respect to any Person means the individual's name, or, as applicable, the name of the entity. Your RFD Responses should include in Your response to Tex.R.Civ.P. 192 and 194 details of "the name, address and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case."

G. "Calculate the Damages" with respect to any Interrogatory means to provide that information requested in response to Tex.R.Civ.P. 194 detailing "the amount and any method of calculating economic damages."

H. "Identify" with respect to any Document means to describe the Document with such particularity that a Person who had never seen the Document could adequately frame a Motion to Compel Production or Request for Production in accordance with Tex.R.Civ.P. 167.

I. "Person" shall include individuals, firms, associations, partnerships, ventures, companies, corporations and any other legal entity together with their respective agents, representatives, employees, partners, managers, officers, directors, shareholders and attorneys.

J. "Expert" shall mean any one or more Persons whom You have consulted as an expert witness to provide testimony in this Lawsuit.

K. "Document" shall mean without limitation, information of every kind, source and authorship, both originals and all non-identical copies in your possession, custody or control, of any electronic communications (collectively "e-mails"), contracts, agreements, papers, books, reports, evaluations, recommendations, conclusions, studies, summaries, manuals, schedules, calendars, diaries, logs, computer printouts, invoices, purchase orders, writings, letters, memoranda, inter-office communications, drawings, graphs, charts, records, files, electronic files, photographs, electronic, videotape or audio recordings, and other written information and/or data compilations and tangible things from which information can be obtained and translated, if necessary, into reasonably usable form.

L. "Computer Based Information." In those instances when requested information is stored only on software information storage or retrieval systems, or other data compilations, Defendant should either produce the raw data as it is maintained (including, without limitation, in ASCII or hexadecimal format), along with all codes, programs and software for translating it into usable form, or produce the information in a finished usable form that includes all necessary glossaries, keys, and indices for interpretation of the material in regard to the Defendant.

M. "Document Destruction." All Documents, Computer Based Information, and/or other data compilations that might impact on the subject matter of the Lawsuit shall be preserved and any ongoing process of Document destruction and/or computer file deletion involving such Documents shall cease.

N. "Milliken Property" means the residence of Pat Milliken located at 14905 Lake Forest Drive in the Town of Addison.

O. "Defendants' Lots" means the two lots developed and/or owned by Defendants Preston Group Designers and Builders, William Long, Preston Homes, Inc. and Jon B. Coleman, adjacent to the Milliken Property.

OBJECTIONS

As to any Interrogatory or Request for Admission or Request for Production that is requested for which Defendant has an objection or for which a privilege or other exemption or protection from disclosure is asserted, state in your response the specific ground for which each such privilege, exemption or protection is claimed in a manner sufficient to permit the party submitting these Interrogatories and the Court to determine whether the claim, privilege or exemption is proper, and identify any Document affected by Your objection with sufficient particularity that a Person who has never seen the Document could adequately frame a Request for Production in accordance with Tex.R.Civ.P. 196.

RELEVANT TIME PERIOD

Unless otherwise specified in this First Set of Interrogatories, the designated time period shall be during the period of time from January, 1998 through the date of Your response and any supplement thereto.

DUTY TO SUPPLEMENT

You are under a duty to supplement Your answers to the Interrogatories that are incomplete or incorrect when made. Furthermore, You are under a duty to seasonably amend Your answers if You obtain information on the basis of which You know that an answer either (1) was incorrect or incomplete when made, or (2) although correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading.

REQUESTS

REQUEST FOR PRODUCTION NO. 1:

Please Identify and produce each and every document You reviewed, or which was submitted to the Town of Addison as part of the approval process for the subdivision of Defendants' Lots. This request necessarily includes each and every preliminary plat, final plat, engineering drawings, drainage plans, topographic maps, civil engineering drawings, application for approval and other Documents submitted to the Town of Addison as part of the subdivision process.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

Please identify and produce each and every Document the Town of Addison reviewed in making the determination that Defendant Builders drainage plans were adequate.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Please identify and produce the plans, budget, and drainage calculations used to design the storm water drainage facility located at the rear of the Milliken Property, and installed by Bowman Construction.

RESPONSE:

INTERROGATORY NO. 1:

Please Describe each and every example of drainage remediation work performed on the Milliken Property at the request of the Town of Addison.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

Please produce any settlement agreements or offers of settlement between, memoranda, correspondence relating to, notes of, or any Documents relevant to the agreement between the Town of Addison and Defendant Builders to construct the drainage facility at the rear of the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Please produce the contract between the Town of Addison and Bowman Construction Company to install the drainage facility at the rear of the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

Please produce all invoices, canceled checks, money orders, purchase requests, and any other indicia of money spent by the Town of Addison on drainage remedial efforts on the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 1:

Admit that Plaintiff Pat Milliken verbally protested to officials of the Town of Addison, prior to the development of Defendants' Lots with regard to drainage which might be generated from Defendants' Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 2:

Admit that Pat Milliken objected to officials of the Town of Addison about the grade change being effected on Defendants' Lots, compared to the natural grade.

RESPONSE:

REQUEST FOR ADMISSION NO. 3:

Admit that Defendant Builders raised the elevation of Defendants' Lots above the natural grade immediately prior to development.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Produce any and all Documents showing the grade changes in Defendants' Lots during the Relevant Time period.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

Please produce all topographic or drainage area maps showing the area contributing to drainage onto or from Defendants' Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 4:

Admit that the Town of Addison recognized that a drainage problem had been caused by the development of Defendants' Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 5:

Admit that the fire department of the Town of Addison was dispatched to help combat the flooding and aftermath of flooding at the Milliken Property on at least one occasion.

RESPONSE:

INTERROGATORY NO. 2:

Please Identify each and every Person authorized by the Town of Addison to enter the Milliken Property for the purpose of assessing damage, mitigating damage, evaluating drainage issues, installing drainage systems, installing grass and foliage, and otherwise relating to the flooding or threatened flooding from Defendants' Lots or the aftermath therefrom.

RESPONSE:

REQUEST FOR ADMISSION NO. 6:

Admit that after the development of Defendants' Lots, the Milliken Property was flooded at least once.

RESPONSE:

REQUEST FOR ADMISSION NO. 7:

Admit that after the development of the Defendants' Lots, the Milliken Property flooded at least twice.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

Please produce any and all weather reports, almanac information, newspaper articles, reports, or other meteorological data related to the relevant time period which You assert relates in any way to the flooding of the Milliken Property.

RESPONSE:

INTERROGATORY NO. 3:

Please explain the grade change which existed from Defendants' Lots to the Milliken Property prior to the year 2000.

RESPONSE:

INTERROGATORY NO. 4:

Please explain the grade change which exists between Defendants' Lots and the Milliken Property currently.

RESPONSE:

INTERROGATORY NO. 5:

Please Describe the drainage issue which arose between Christian Laetner, the former owner of the property immediately south of Defendant The Preston Group Designer and Builders, Inc.'s lot, and The Preston Group Designer and Builder, Inc.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents relating to the drainage issue with Christian Laetner referred to above.

RESPONSE:

INTERROGATORY NO. 6:

Describe the attributing drainage area served by the drainage improvement installed at the rear of the Milliken Property.

RESPONSE:

INTERROGATORY NO. 7:

Describe the capacity of the drainage improvement installed at the rear of the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 8:

Admit that the Town of Addison offered to install additional trees on Plaintiff's Property following the grading for and installation of the drainage improvement installed at the rear of the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 9:

Admit that the Town of Addison had installed grass sod in the back yard of the Milliken Property following the development of the builders' lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 10:

Admit that the Town of Addison installed the drainage improvement at the rear of the Milliken Property in an attempt to ameliorate the drainage coming from Defendants' Lots onto the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 11:

Admit that the drainage flow from the Defendants' Lots was increased in quantity following the grade elevation of Defendants' Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 12:

Admit that the drainage flow was increased in speed following the raising of the elevation of Defendant's Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 13:

Admit that but for the development of Defendants' Lots, the Milliken Property would not have flooded on the occasions referenced in Plaintiff's Original Petition.

RESPONSE:

INTERROGATORY NO. 8:

Identify each and every contributing factor which You contend led to the flooding of the Milliken Property during the relevant period.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:

Produce any and all documents related to Your contention referenced above.

RESPONSE:

REQUEST FOR ADMISSION NO. 14:

Admit that there is a natural swale running from the northern boundary of Defendants' Lots to the patio located on the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 15:

Admit that You recommend a berm be constructed on the Milliken Property to ameliorate drainage coming from Defendants' Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 16:

Admit that the Town of Addison constructed a berm on the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 17:

Admit that the Town of Addison authorized the construction of a berm on the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 18:

Admit that the Town of Addison paid for the construction of a berm on the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 19:

Admit that Defendant Builders paid for the construction of a berm on the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12:

Identify and produce any and all Documents submitted to Your testifying experts for their consideration in rendering an opinion in the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:

Produce each and every Document submitted to any consulting expert for their review, if that consulting expert has discussed the events related to the Lawsuit with a testifying expert, or if that consulting expert's opinion is relied upon by any testifying expert.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:

Produce any and all Documents which were either reviewed by, or under the control of Michael Murphy of the Town of Addison, related to the drainage characteristics of Defendants' Lots and/or the Milliken Property both prior to the development of Defendant's Lots, and after development of those lots.

RESPONSE:

INTERROGATORY NO. 9:

If You contend that there is currently no lot-to-lot drainage between Defendants' Lots and the Milliken Property, explain each and every fact on which you rely to reach such conclusion.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15:

Produce any and all Documents related to Your contention referred to above.

RESPONSE:

INTERROGATORY NO. 10:

If You contend that the lot to lot drainage between Defendants' Lots and the Milliken Property was not increased during the relevant period, explain each and every factor which you rely to reach such conclusion.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16:

Produce any and all Documents related to Your contention referred to above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:

Identify all Documents related to the acquisition by Builder Defendants of the Defendants' Lots, including consideration paid, date of acquisition, development plans, deeds of trust, mortgage notes, etc.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:

Produce the plans, including engineering plans, construction plans, builders' drawings, or other submissions which Defendant Builders submitted to Defendant Town of Addison for the issuance of building permits on Defendants' Lots.

RESPONSE:

REQUEST FOR ADMISSION NO. 20:

Admit that Town of Addison, in corroboration with Builder Defendants entered upon the Milliken Property, and destroyed trees, shrubbery, and ground cover, and altered the terrain of the parcel.

RESPONSE:

REQUEST FOR ADMISSION NO. 21:

Admit that the Defendant Town of Addison authorized development of Defendant Builders Lots in the manner in which they are currently developed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:

Produce any and all drainage plans created by the Town of Addison reflecting drainage patterns or alterations thereto on Defendant Builders Lots or the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 22:

Admit that Plaintiff Pat Milliken lost personal property as a result of the flooding incidents referred to in Plaintiff's Original Petition.

RESPONSE:

REQUEST FOR ADMISSION NO. 23:

Admit that Plaintiff Pat Milliken's home located on the Milliken Property, has been damaged by flooding during the relevant period.

RESPONSE:

REQUEST FOR ADMISSION NO. 24:

Admit that officials and employees of the Town of Addison were called to the Milliken Property on several different occasions as a result of flooding of the Milliken Property.

RESPONSE:

REQUEST FOR ADMISSION NO. 25:

Admit that officials and/or employees of the Town of Addison were called to the Milliken Property as a result of flooding of the Milliken home during the relevant period.

RESPONSE:

REQUEST FOR ADMISSION NO. 26:

Admit that officials of the Town of Addison or employees of the Town of Addison were called to the Milliken Property because of the grade change effected on Defendants' Lots, and the threatened flooding of the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20:

Please produce any and all Documents relating to the Town of Addison's defense that it was exercising a governmental function in seeking to remedy the drainage problem between Defendants' Lots and the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:

Please produce any correspondence between the Town of Addison and Defendant Builders relating to lot-to-lot drainage between the Defendants' Lots and the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:

Produce any "red tags" or stop work orders issued by the Town of Addison to Defendant Builders during the construction of residences on Defendants' Lots.

RESPONSE:

INTERROGATORY NO. 10:

Describe any and all remedial efforts taken by Defendant Builders to ensure no increase in lot-to-lot drainage between Defendants' Lots and the Milliken Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:

Produce all policies of insurance, or insurance-type agreements relating to defense of or payment for damages in the Lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:

Produce all Documents consisting communication between all the Town of Addison and Plaintiff during the relevant period.

RESPONSE:

REQUEST FOR ADMISSION NO. 27:

Admit that the Town of Addison is a property owner with regard to rights it has as an easement owner in the drainage easements on the Milliken Property.

RESPONSE:

Respectfully submitted,

LOOPER, REED & MCGRAW, P.C.

By: 

THOMAS H. KEEN

State Bar No.: 11163300

ELIZABETH P. ARDANOWSKI

State Bar No.: 00793275

1601 Elm Street, Suite 4100

Dallas, Texas 75201

Telephone: 214.954.4135

Facsimile: 214.953.1332

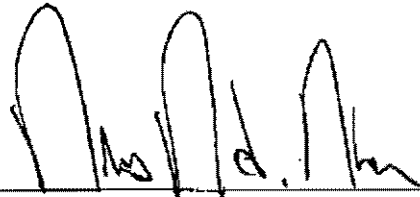
ATTORNEYS FOR PLAINTIFF
PAT MILLIKEN

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded via certified mail, return receipt requested, to the person listed below on this 26th day of May, 2004 in accordance with the TEXAS RULES OF CIVIL PROCEDURE:

Michael J. McKleroy, Jr.
MARIS & LANIER, P.C.
1450 Meadow Park Blvd., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Zach Mayer
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240



THOMAS H. KEEN

S:\AT\K\clients\Miliken, Pat\Discovery\Interrogs, RFP, RFA to Town of Addison.doc

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: May 18, 2004

To: Mike Murphy

Via Telecopier Number: 972-450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover +

37

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Autna at: 1-214-706-0932

Re: Pat Milliken v. Town of Addison

File No. 607-066

Message: See attached letter dated May 18, 2004.

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

** Copy of Building*
** 23RD*

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

214-706-0922

214-706-0921 (FAX)

awalker@marislanier.com

May 18, 2004

VIA FACSIMILE

Mike Murphy

Public Works Department

Town of Addison

P.O. Box 9010

Addison, Texas 75001

Re: *Pat Milliken v. City of Addison*
TML Claim No. 0200085821
File No. 607-066

Dear Mike:

Per my telephone conversation with your assistant, Sue Ellen, I am enclosing the following documents for your review:

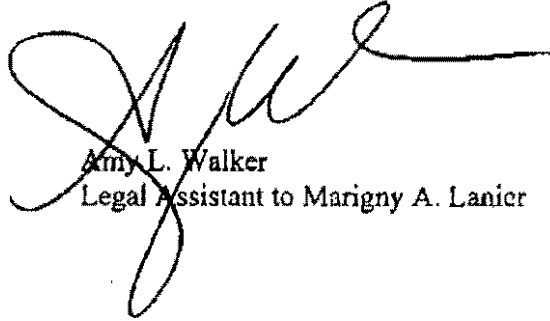
1. Notice of Oral Deposition Duces Tecum of David Knighton;
2. First Amended Notice of Oral Deposition Duces Tecum of Gary M. Petit, P.E.;
3. June 11, 2003 letter from Plaintiff's counsel regarding David Knighton with his attached report;
4. Plaintiff's Response to Defendant Town of Addison's Motion to Exclude or Limit Expert Testimony; and
5. Supplement to Plaintiff's Response to Defendant Town of Addison's Motion to Exclude or Limit Expert Testimony; and
6. Plaintiff Pat Milliken's Responses to Defendant Town of Addison's Rule 194 Request for Disclosure.

Robert would like for you to attend the depositions of Knighton and Petit on **June 23, 2004 beginning at 10:00 a.m. at our office.** He would also like for you to review the enclosed documents in preparation for same, as well as meet with him prior to the depositions. *After you have had a chance to review the enclosed, please telephone me at my direct dial, 214-706-0922 to schedule same. Robert currently has June 22, 2003 completely open.*

Should you have any questions, comments, or concerns, please do not hesitate to call.

Sincerely,

MARIS & LANIER, P.C.

A handwritten signature in black ink, appearing to read 'AW', with a long horizontal flourish extending to the right.

Amy L. Walker
Legal Assistant to Marigny A. Lanier

Enclosure

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FIRST AMENDED NOTICE OF ORAL DEPOSITION
DUCES TECUM OF GARY M. PETIT, P.E.

To: Plaintiff, Pat Milliken, by and through her attorney of record, Thomas H. Keen, Looper Reed & McGraw, 1601 Elm Street, Suite 4100, Dallas, Texas 75201.

To: Defendants The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman, by and through their attorney of record, Zach Mayer, Fee, Smith, Sharp & Vitullo, LLP, One Galleria Tower, 13355 Noel Road, Suite 1200, Dallas, Texas 75240.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of Gary M. Petit, P.E., at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on June 23, 2004 beginning at 10:00 a.m. and continuing thereafter from day to day until the deposition is completed. Please be advised that Mike Murphy may be present at the deposition.

Please take further notice that deponent shall produce at the commencement of the taking of the deposition, the documents listed on Exhibit "A" attached hereto.

Respectfully submitted,

MARIS & LANIER, P.C.



Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
10440 N. Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile


ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF SERVICE

This is to certify that a true, correct and complete copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on May 17, 2004 to:

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
VIA FACSIMILE

Anthony Vitullo
Zach Mayer
Fee, Smith, Sharp & Vitullo, LLP
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
VIA FACSIMILE



Robert F. Maris

EXHIBIT "A"

I.

Definitions

The term "document" is defined to include any and all manner of written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring, correlating, directly or indirectly, in whole or in part, to each request, and the term includes, but is not limited to:

- (a) Papers, books, records, pamphlets, journals, ledgers, accounts, telexes, statements, memoranda, reports, invoices, work sheets, work papers, stenographic or handwritten notes, transcriptions of notes, letters correspondence, witness statements (whether written or recorded), abstracts, checks, reports, surveys, calculation cards, computer tapes or print-outs, diagrams, plans, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, pocket calendars, lists, logs, studies, publications, advertisements, instructions, minutes, orders, purchase orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes or recordings, or any other writing, typing, printing, photostats, or other forms of communications are recorded or reproduced, as well as all notations on the foregoing;
- (b) Originals and all other copies not absolutely identical, such as copies containing a commentary or notation of any kind that does not appear on the original or any other copy;
- (c) All drafts and notes (whether typed, handwritten or otherwise) made or prepared in connection with such documents, whether used or not; and
- (d) Any other writing or recording of any kinds.

II.

Requested Documents

1. Any documents reflecting the opinions to be given by Gary M. Petit at the trial in this case.
2. All reports prepared by Gary M. Petit in connection with this case.
3. All documents reviewed by or relied upon by Gary M. Petit in reaching his opinions.
4. Any agreements between Plaintiff or Plaintiff's counsel and Gary M. Petit.

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

NOTICE OF ORAL DEPOSITION DUCES TECUM OF DAVID KNIGHTON

To: Plaintiff, Pat Milliken, by and through her attorney of record, Thomas H. Keen, Looper Reed & McGraw, 1601 Elm Street, Suite 4100, Dallas, Texas 75201.

To: Defendants The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman, by and through their attorney of record, Zach Mayer, Fee, Smith, Sharp & Vitullo, LLP, One Galleria Tower, 13355 Noel Road, Suite 1200, Dallas, Texas 75240.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of David Knighton at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on June 23, 2004 beginning at 2:00 p.m. and continuing thereafter from day to day until the deposition is completed. Please be advised that Mike Murphy and/or Janice Moore will be present at the deposition.

Please take further notice that deponent shall produce at the commencement of the taking of the deposition, the documents listed on Exhibit "A" attached hereto.

Respectfully submitted,

MARIS & LANIER, P.C.



Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
10440 N. Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF SERVICE

This is to certify that a true, correct and complete copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on May 17, 2004 to:

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
VIA FACSIMILE

Anthony Vitullo
Zach Mayer
Fee, Smith, Sharp & Vitullo, LLP
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
VIA FACSIMILE



Robert F. Maris

EXHIBIT "A"

I.

Definitions

The term "document" is defined to include any and all manner of written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring, correlating, directly or indirectly, in whole or in part, to each request, and the term includes, but is not limited to:

- (a) Papers, books, records, pamphlets, journals, ledgers, accounts, telexes, statements, memoranda, reports, invoices, work sheets, work papers, stenographic or handwritten notes, transcriptions of notes, letters correspondence, witness statements (whether written or recorded), abstracts, checks, reports, surveys, calculation cards, computer tapes or print-outs, diagrams, plans, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, pocket calendars, lists, logs, studies, publications, advertisements, instructions, minutes, orders, purchase orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes or recordings, or any other writing, typing, printing, photostats, or other forms of communications are recorded or reproduced, as well as all notations on the foregoing;
- (b) Originals and all other copies not absolutely identical, such as copies containing a commentary or notation of any kind that does not appear on the original or any other copy;
- (c) All drafts and notes (whether typed, handwritten or otherwise) made or prepared in connection with such documents, whether used or not; and
- (d) Any other writing or recording of any kinds.

II.

Requested Documents

1. Any documents reflecting the opinions to be given by David Knighton at the trial in this case.
2. All reports prepared by David Knighton in connection with this case.
3. All documents reviewed by or relied upon by David Knighton in reaching his opinions.
4. Any agreements between Plaintiff or Plaintiff's counsel and David Knighton.

Looper Reed & McGraw

ATTORNEYS

A Professional Corporation
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
V 214.954.4135
F 214.953.1332
www.lrlmlaw.com

Thomas K. Keen
E-Mail: tkeon@lrlmlaw.com

June 11, 2003

Michael J. McKleroy, Jr.
MARIS & LANIER, P.C.
1450 Meadow Park Blvd., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

VIA FACSIMILE (214) 706-0921

James W. Jennings, III
BELLINGER & DEWOLFE, LLP
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231

VIA FACSIMILE (214) 954-9541

Anthony Vitullo
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240

VIA FACSIMILE (972) 934-9200

Re: *Pat Milliken v. Town of Addison, et al*; Cause No. 02-4715-F in the 116th
Judicial District Court of Dallas County, Texas
Supplemental Designation of Experts

Gentlemen:

In addition of disclosure of Gary M. Pettit, P.E., Robert P. White, and Thomas H. Keen, please be advised that Plaintiff in this matter also may present the testimony of Clyde Crum, of Clyde Crum Appraisal Consultants. Mr. Crum's credentials are included with his appraisal report which has previously been furnished to all parties in this matter. Mr. Crum will testify as to the diminution in value of Plaintiff's property following the drainage problem, and subsequent remedial efforts by Defendants. The general substance of Mr. Crum's opinion is that the property has been diminished in an amount of \$250,000.00. While the basis of his opinion is more thoroughly set forth in his report, Mr. Crum physically visited the site, and is familiar with comparable sales, and the effect of flooding problems on the sale of existing homes. In addition, as for my own opinion with regard to attorney's fees, I believe an estimate for Plaintiff's attorney's fees of \$150,000.00 to \$200,000.00, excluding expert fees and costs, is appropriate.

June 11, 2003
Page 2

Please be advised that Plaintiff's drainage expert, Gary M. Pettit, P.E., has visited the site since his original report, to ascertain the as-built, finished conditions of the properties adjacent to Ms. Milliken, and any opinion he offers will include the observations made from such inspection, just as, I would imagine, the opinions of your experts will.

In an abundance of caution, Plaintiff may also call David Knighton of Knighton Homes, Inc. to testify with regard to the effect on salability of a house after it has been flooded, the possible adverse consequences which may occur in a house which has been flooded, and the future suitability of the existing Milliken lots for redevelopment. A copy of Mr. Knighton's observations is attached hereto as Exhibit "A".

Following the Defendant's disclosure of experts, Plaintiff may wish to call Defendant's experts in its direct case. Based upon this possibility, Plaintiff designates these experts, subject to the right to challenge their qualifications prior to trial.

After the recent site inspection, I suggested that we try to schedule a mediation for sometime in mid-July. Hopefully, this schedule is still acceptable, and we can move toward finalizing a date with the mediator.

Sincerely,



Thomas H. Keen

THK/sll

KNIGHTON HOMES, INC.
6623 Windrock Rd.
Dallas, TX 75252

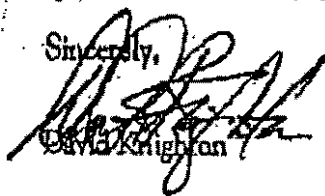
31 Jan 03

Ms. Millican:

You asked me to look at the drainage situation at your residence on Lake Forest Dr. in Addison, and I subsequently visited the property with you and was shown photographs that you have taken during heavy rainfall. It appears that the front portion of your property has enough natural fall in it to promote adequate drainage toward the street, and the far back of the property has been modified to carry water across the rear of your property into a drainage culvert, but it appears that the center portion of your lot has no way to drain to either of these directions, and that runoff in that area must follow a south to north path around the back patio and pool area of your residence. The water from this area is supposed to be drained eastward toward the street through an underground pipe and apparently this arrangement has worked until recently. It is my understanding that this particular drainage pipe became necessary when the masonry wall on the north side of your lot was erected. Although the drainage from this area is limited you told me that it had worked adequately in the past. Since you have lived there 20 plus years and have not experienced any water in your residence in that time I think that it is evident that there is increased water flow across the mid part of your lot that cannot be accommodated by the existing drainage scheme. You can either reduce or redirect the water flow across this part of your property, or increase the discharge of this water onto the property to your north, although the property owner there may not agree with this option. These two lots are probably not suitable for any new residential construction without considerable grade changes to stop the south to north waterflow across them and to redirect all runoff to an east and west flow. This will have to be well planned or the property to your immediate north will be negatively impacted.

In closing let me caution you about letting the existing situation continue without being adequately addressed. In this day of mold awareness, insurers, lenders, prospective homeowners, real estate agents, etc. are all extremely cautious about properties that have a history of water damage because of the potential for the existence of black mold. Many of these people are completely avoiding all property with any possibility of increased mold liability. The fact that this residence has partially flooded in the past and may do so again in the future may make it quite difficult to sell for future use as a single family dwelling.

Sincerely,


David Knighton



CAUSE NO. 02-4715 **FILED**

PAT MILLIKEN,

Plaintiff,

vs.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., JON B. COLEMAN,

Defendants.

§ 04 APR -6 IN THE DISTRICT COURT OF
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§ JIM HANCOCK
§ DISTRICT CLERK
§ EAST TARRANT TEXAS
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§ DALLAS COUNTY, TEXAS
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§
§ 116th JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE TO DEFENDANT TOWN OF
ADDISON'S MOTION TO EXCLUDE OR LIMIT EXPERT TESTIMONY**

COMES NOW, Plaintiff PAT MILLIKEN, and files this Response to Defendant Town of Addison's Motion to Exclude or Limit Expert Testimony, and respectfully shows the Court the following:

I.

BACKGROUND FACTS

1. Defendant's motion was not timely filed. According to the Agreed Scheduling Order in this matter, Defendant's Motion was due no later than Friday, March 12th. Defendant claims that it served a copy of the Motion on the 15th day of March, 2004, and same was received by Plaintiff on March 17, 2004. Since the Motion was not timely filed, it should not be considered.

2. Defendant has received expert reports, statements, and qualifications on the referenced experts through the discovery process. Defendant has elected not to take any depositions of Plaintiff's experts. Yet, despite taking no depositions, and making no attempt to

point out any specific disqualification based on the resumes of the experts, and further despite finding any fault with their opinions, Defendant has moved to disqualify them completely. In fact, Defendant does not differentiate between the experts, Defendant simply makes a blanket motion to disqualify all of Plaintiff's experts.

II.

Addison's Specific Objections and Plaintiff's Responses Thereto:

3. Again, without pointing to specific fact, Defendant Addison makes the blanket statement that "Plaintiff's experts simply do not possess the requisite expertise, by education or training or specialized knowledge, skill or experience, to testify about the subject matters for which they have been designated." However, Plaintiff's experts are not only qualified, but each, with the exception of David Knighton, have been qualified as experts in other proceedings before various courts.

4. Plaintiff requests that it be allowed to recover attorney's fees in the minimum amount of \$3,000.00, together with any expert fees charged for responding to this facial challenge without substance, and without foundation against Defendant Town of Addison and its attorneys. If this matter were raised during trial, Defendant would no doubt take the opportunity to *voir dire* Plaintiff's experts on their qualifications and the basis for their opinions. Only after such *voir dire* would Defendants be allowed to make a motion to limit or exclude testimony, and certainly only after some testimony was given, would the Court consider such a motion. Without taking any depositions, and without challenging directly any of the witnesses' qualifications, Defendant Town of Addison has attempted to disqualify all of Plaintiff's experts, with the slightest of effort, by the mere drafting of a *pro forma* expert challenge motion. While Plaintiff acknowledges the Court's role as "gate keeper" a simple reference to a few of the cases cited by

Defendant Town of Addison is necessary to reveal the high level of consideration and respect given an expert witness by a court determining whether to admit the testimony. In none of the cases cited by Defendant are the experts excluded simply by a mere objection. Rather, specific references to testimony and background were cited by the party attempting to limit the testimony. In particular, references to *DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995) and *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 718-719 (Tex. 1998) reveal the level of detail necessary to weigh the admissibility of an expert's opinion. Defendant Town of Addison, having done none of the work necessary, simply makes a cavalier motion to exclude all experts. While Plaintiff acknowledges its responsibility for sponsoring expert testimony, it recognizes the burden of acceptable qualifications, reliability of the opinions, foundation of the opinions, the relevancy, and the probative value, when dealing with professionals, such as Gary M. Pettit, Professional Engineer, a licensed engineer who specializes in drainage issues, or Clyde Crum, a state certified appraiser with a list three pages long of clients, appraisals, and matters in litigation in which he has testified, or finally David Knighton, a professional home builder, and a man with extensive experience in selling, trading, and buying homes, Defendant's Motion does not rise to the level dignity which should be countenanced by the Court.

5. The frivolity of Defendant's Motion is most keenly shown by paragraphs D. and E. of its Motion. Defendants' acknowledge that facts relevant to flooding, damages to Plaintiff's home, and causation of the flooding are all in dispute. Gary M. Pettit is a drainage engineer, who has been on the site, observed conditions long before Defendants' homes were completed, and has extensive experience in drainage and lot development issues. Clyde Crum, a professional appraiser has visited Plaintiff's home, examined the damages thereto, looked at the surrounding

area and has provided a thorough appraisal of the loss in market value of Plaintiff's property. David Knighton, also a custom home builder, and an individual frequently involved in buying, trading, and selling homes, has been on the Plaintiff's property, examined market forces and factors, and, based on his experience, has rendered an opinion with regard to the effect of the flooding on the salability of Plaintiff's property in the future. All of this testimony is directly relevant to issues of fact in conflict in case. Addison's contention that these opinions are not relevant is simply beyond belief, and has no support.

6. Likewise, Addison points to no facts which would in any way indicate that there would be unfair prejudice, confusion, or delay caused by these experts' testimony. Addison contends that the Plaintiff's experts' opinions are not reliable, because they are "based upon flawed reasoning and/or methodology and/or for the reason that Plaintiff's experts lack experience and observation in the discipline." Addison does not even identify the "discipline" it believes the experts will testify about, and again Addison says nothing about the lengthy experience cited in the credentials for the experts, and in fact raises no issue about the reasoning of the experts, other to make the blanket statement that their opinions are based on flawed reasoning. Plaintiff submits that Addison knows nothing about any of these expert witnesses, and their challenge should be ignored and overruled.

7. The final element of Addison's weak challenge is that the Plaintiff's expert testimony lacks adequate foundation. All of the experts have been to Plaintiff's property, have walked the property, have observed conditions, and have stated their observations, the facts they rely upon, and their experience in their respective industries.

Plaintiff urges that Defendant, Town of Addison's Motion be denied outright, based upon its lack of effort, based upon the delay, expense and the effort which would be required to hold a

separate evidentiary hearing on each of the experts' qualifications. If the Court is inclined to entertain Defendant Town of Addison's Motion, Plaintiff requests that the Court set aside a full day for an evidentiary hearing, so that the factors raised by Defendant's Motion, and the factors required to be considered by Texas Supreme Court, be given adequate review for the Court to make a decision. Again, Plaintiff requests that it be entitled to recover its attorney's fees and expert witness fees for responding to such an ill-conceived, and frivolously prepared Motion.

Respectfully submitted,

LOOPER, REED & MCGRAW, P.C.

By: 

THOMAS H. KEEN

State Bar No.: 11163300

1601 Elm Street, Suite 4100

Dallas, Texas 75201

Telephone: 214.954.4135

Facsimile: 214.953.1332

ATTORNEYS FOR PLAINTIFF
PAT MILLIKEN

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded via first class United States mail, postage prepaid, to the person listed below on this 6th day of April, 2004:

Michael J. McKleroy, Jr.
MARIS & LANIER, P.C.
1450 Meadow Park Blvd., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Zach Mayer
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240

James W. Jennings, III
BELLINGER & DEWOLFF, LLP
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231



THOMAS H. KEEN

S:\THK\Clients\Milliken, Pat\Pleadings\Response to D's Motion to Exclude-Limit Expert Testimony.doc

CAUSE NO. 02-4715

PAT MILLIKEN,

Plaintiff,

vs.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

SUPPLEMENT TO PLAINTIFF'S RESPONSE TO DEFENDANT TOWN OF ADDISON'S MOTION TO EXCLUDE OR LIMIT EXPERT TESTIMONY

COMES NOW, Plaintiff PAT MILLIKEN, and in addition to her previous Response to Defendant Town of Addison's Motion to Exclude or Limit Expert Testimony, she files the Affidavits of Gary M. Pettit, P.E., a professional engineer, and Clyde Crum, a state certified appraiser. The Affidavits are attached hereto as Exhibits "A" and "B", respectively.

1. Plaintiff would show that, despite Defendant's lack of identification of any issue or qualification lacking from its expert witnesses, that Plaintiff has provided these additional affidavits to support the offer of these two experts, previously identified and disclosed to Defendant.

2. Plaintiff would show that it had not offered any such Affidavit on behalf of Robert P. White, as Mr. White is deceased, necessitating the previously granted Motion for Continuance. Plaintiff will supplement its designation of experts, once a new expert has been found to take Mr. White's place.

Respectfully submitted,

LOOPER, REED & MCGRAW
A Professional Corporation

By: 

THOMAS H. KEEN
State Bar No.: 11163300

1601 Elm Street, Suite 4100
Dallas, Texas 75201
Telephone: 214.954.4135
Facsimile: 214.953.1332

ATTORNEYS FOR PLAINTIFF
PAT MILLIKEN

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded via first class United States mail, postage prepaid, to the person listed below on this 9th day of April, 2004:

Michael J. McKleroy, Jr.
MARIS & LANIER, P.C.
1450 Meadow Park Blvd., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Zach Mayer
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240

James W. Jennings, III
BELLINGER & DEWOLFE, LLP
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231



THOMAS H. KEEN

S:\THK\Clients\Milliken, Pat\Pleadings\Response to D's Motion to Exclude-Limit Expert Testimony-supplement.doc

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., AND JON B. COLEMAN

Defendants.

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IN THE DISTRICT COURT

116TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

AFFIDAVIT OF GARY M. PETTIT, P.E.

STATE OF TEXAS

COUNTY OF DALLAS

§
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§

BEFORE ME, the undersigned authority, personally appeared GARY M. PETTIT, an individual personally known to me, who after being duly sworn, testified upon his oath as follows:

1. "My name is Gary M. Pettit, I am President of Nationwide Water Resource Services, Inc. I am over the age of twenty-one, and am otherwise competent to make this Affidavit. The facts set forth below are true and correct and are within my personal knowledge.

2. "I am a professional engineer, registered in Texas and ten other states. I have a Bachelor of Science in Civil Engineering from Texas Tech University, and a Master of Science in Civil Engineering-Water Resources Option, Texas Tech University, 1974. I have also completed specialized short courses and continuing education in the water resources field, including floodplain hydrology, sedimentology, urban stormwater management, dam safety, storm water quality management and related technical subjects. A list of my curriculum vitae is attached hereto. I have

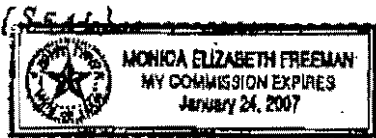
previously qualified in numerous civil trial matters, as an expert on drainage, hydrology and storm water issues. All opinions that I give in this matter, or in any other as a professional engineer, are based upon my education, experience, training, and upon proven, accepted techniques in the engineering field. The opinions I give are true and accurate, and are within my best professional judgment.

3. I have provided consulting services to the Plaintiff in this case, Pat Milliken, with regard to the flooding of her property, as the result of development on the adjacent two lots to the south of her property.

FURTHER, AFFIANT SAYETH NAUGHT.

Gary M. Pettit
GARY M. PETTIT

SUBSCRIBED AND SWORN TO BEFORE ME on April 7, 2004, to certify which witness my hand and seal of office.



Monica Elizabeth Freeman
Notary Public in and for the State of Texas

GARY M. PETTIT, P.E.**PRESIDENT****NATIONWIDE WATER RESOURCE SERVICES, INC.****EDUCATION**

B.S., Civil Engineering, Texas Tech University, 1972

M.S., Civil Engineering-Water Resources Option, Texas Tech University, 1974

Short Course on Flood Plain Hydrology, University of Texas at Austin, 1979

Short Course on Hydrology and Sedimentology of Surface Mined Lands, University of Kentucky, 1979

Workshop on Sediment Pond Design, Kentucky Center for Energy Research, Lexington, 1979

Southwest Regional Symposium and Workshop on Urban Stormwater Management, Texas A&M University, 1983

Short Course on Stormwater Quality Management, Texas A&M University, 1991

Numerous Symposia, Short Courses and Technical Meetings in the Water Resources Field

PROFESSIONAL ENGINEERING REGISTRATION

Texas #41977

Colorado #17354

Arizona #32097

New Mexico #10787

Arkansas #5307

Kentucky #12861

Louisiana #18969

Alabama #13085

Mississippi #8136

Indiana #19822

Maryland #16445

PROFESSIONAL AND HONORARY SOCIETIES

American Society of Civil Engineers

National Society of Professional Engineers

Texas Society of Professional Engineers

American Council of Engineering Companies

Association of State Dam Safety Officials

Texas Tech University, Civil Engineering Advisory Council

Tau Beta Pi

EXPERIENCE

As President of Nationwide Water Resource Services, Inc., Mr. Pettit directs the activities of a professional consulting firm specializing in water resources engineering for the public and private sectors. Mr. Pettit has a diversified background and over 30 years of water resources experience in the academic, regulatory, and consulting fields. Among his areas of specialization are water supply studies, river basin master planning, water rights, hydraulics, hydrology, dam safety, emergency preparedness planning, computer modeling, water quality, environmental assessments, design of dams and drainage improvements, and regulatory support activities on the federal, state, and local levels.

Prior to the establishment of Nationwide Water Resource Services, Inc., Mr. Pettit was Water Resources Manager of the Dallas Division of Espey, Huston & Associates, Inc. for more than eight years. He was responsible for the analysis and design of drainage and flood protection improvements for cities, the preparation of watershed management plans, water supply studies, master planning for river authorities, environmental assessments, and flood plain reclamation projects. He served as technical advisor to municipal committees and staff with regard to flood plain management, runoff control, and flood hazard mitigation. Mr. Pettit was also heavily involved in water resources engineering for the mining and electric utility industries. He participated in and directed a number of baseline hydrologic assessments, water availability analyses, water quality monitoring programs, and hydraulic design tasks for mining and power plant projects in several states. Mr. Pettit was responsible for the surface water aspects of power plant siting studies, fatal flaw analyses for potential surface and underground mines, and environmental impact analyses for a variety of industrial and commercial projects. He participated in various federal, state, and local permit support activities involving stream diversions, flood plain encroachments, flood protection levees, dam and spillway rehabilitations, water rights, and effluent discharges.

Prior to entering the consulting field, Mr. Pettit was employed by the Texas Department of Water Resources (a predecessor agency to the Texas Commission on Environmental Quality) for five years. His experience with the State water agency encompassed the fields of dam safety, water availability, water rights administration, computer modeling, and hydraulic adequacy analyses of existing and proposed projects. His initial duties with the agency dealt with implementation of the State's river basin water availability model, developing base flow and flood flow data at various accounting points within the watersheds and compiling water rights data throughout the Guadalupe, San Antonio, and Colorado River Basins in Texas. Mr. Pettit conducted hydraulic adequacy analyses of existing and proposed dams throughout Texas in conjunction with the State's dam safety program. These studies resulted in a number of dam and spillway modifications for the correction of unsafe conditions. He also made numerous on-site inspections of dams under the State's dam safety program and participated in Phase I of the U.S. Army Corps of Engineers' National Dam Safety Program for significant hazard and high hazard dams. Mr. Pettit conducted water availability analyses in connection with applications to appropriate surface water in Texas. These analyses included hydrologic simulations, reservoir operations and yield studies, flow frequency studies, evaluations of effects on existing water rights, and formulation of low-flow restrictions for the protection of downstream water rights. Mr. Pettit testified for the staff in public hearings regarding his findings and recommendations concerning water availability and dam safety.

While attending graduate school at Texas Tech University, Mr. Pettit served as a Teaching Assistant in the Department of Civil Engineering, teaching undergraduate courses in statics and fluid mechanics lab. He also served as a Research Assistant for the Texas Tech Water Resources Center, conducting research on wastewater reuse.

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON GROUP DESIGNERS AND BUILDERS, WILLIAM LONG, PRESTON HOMES, INC., AND JON B. COLEMAN

Defendants.

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IN THE DISTRICT COURT

116TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

AFFIDAVIT OF CLYDE CRUM

STATE OF TEXAS

COUNTY OF Anderson

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BEFORE ME, the undersigned authority, personally appeared CLYDE CRUM, an individual personally known to me, who after being duly sworn, testified upon his oath as follows:

1. "My name is Clyde Crum, the owner of Clyde Crum Appraisal Consultants. I am over the age of twenty-one, and am otherwise competent to make this Affidavit. The facts set forth below are true and correct and are within my personal knowledge.

2. "I am a professional appraiser, certified by the Texas Appraiser License and Certification Board, Certification No. TX-1323786-G. I have been involved in the real estate business, including appraisal, brokerage, investing, building, and construction for the past forty (40) years. I have prepared several thousand appraisals. I have performed building inspections, and I have also been involved in the evaluation of land, farms, ranches, specialty properties, residential, industrial, commercial, mobile home, machinery, equipment, and personal property. I have been

qualified as an expert in numerous courts in Texas as an appraisal witness. My professional qualifications are attached hereto.

3. I was requested by the Plaintiff in this matter, Patsy B. Milliken, to prepare an appraisal of her property located at 14905 Lake Forrest Drive in both its "before damage" state as of 12-16-01, and its "after damage" state as of 4-16-02. I have personally walked the property, and inspected the interior and exterior of the property, and using proven appraisal techniques and methods, I have rendered my best, professional, expert opinion, and Ms. Milliken was damaged in the amount of \$250,000.00, all as set forth in the appraisal report tendered in this matter.

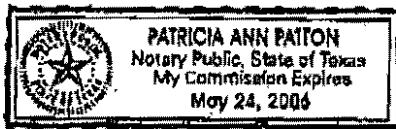
FURTHER, AFFIANT SAYETH NAUGHT.

Clyde Crum
CLYDE CRUM

SUBSCRIBED AND SWORN TO BEFORE ME on April 8, 2004, to certify which witness my hand and seal of office.

{SEAL}

Patricia Patton
Notary Public in and for the State of Texas



STATE OF TEXAS, County of Dallas, Part Pleadings Affidavit of Clyde Crum.doc

Thomas H. Keen
Texas State Bar No. 11163300
LOOPER, REED & MCGRAW, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Telephone: 214-954-4135
Fax: 214-953-1332

ATTORNEYS FOR PLAINTIFF
PAT MILLIKEN

CAUSE NO. 02-47815

PAT MILLIKEN,

Plaintiff,

vs.

TOWN OF ADDISON, THE
PRESTON GROUP DESIGNERS
AND BUILDERS, WILLIAM
LONG, PRESTON HOMES, INC.,
JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

PLAINTIFF PAT MILLIKEN'S RESPONSES TO
DEFENDANT TOWN OF ADDISON'S
RULE 194 REQUEST FOR DISCLOSURE

TO: Defendant, by and through its attorney of record, Marigny A. Lanier, Esq., Maris & Lanier, P.C., 10440 North Central Expressway, Suite 1450, LB 702, Dallas, Texas 75231

Pursuant to Rule 194.1 of the Texas Rules of Civil Procedure, Plaintiff, Pat Milliken ("Plaintiff"), submits the following Responses to Defendant's Rule 194 Request for Disclosure.

In addition to these responses (and particularly the witness and expert lists) Plaintiff adopts the responses to Requests for Disclosure filed by the Defendant as now filed and as they may be later amended, which are incorporated by reference.

10/15/03

Respectfully submitted,

LOOPER, REEB & McGRAW

By: 

Thomas H. Keen
State Bar No. 11163300

1601 Elm St., Suite 4100
Dallas, Texas 75201
Telephone: 214-954-4135
Facsimile: 214-953-1332

**ATTORNEY FOR PLAINTIFF
PAT MILLIKEN**

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the above and foregoing document to be served via certified mail, return receipt requested, to those persons listed below, on this 25th day of October 2002.

Marigny A. Lanier, Esq.
Maris & Lanier, P.C.
10440 North Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231

James Jennings
Bellinger & DeWold, LLP
10,000 North Central Exp., Suite 900
Dallas, Texas 75231


Thomas H. Keen

RESPONSES TO RULE 194 REQUESTS FOR DISCLOSURE

- (a) the correct names of the parties to the lawsuit;

RESPONSE: Plaintiff believes the parties are correctly named.

- (b) the name, address, and telephone number of any and all potential parties;

RESPONSE: Plaintiff is unaware of any potential parties.

- (c) the legal theories and, in general, the factual basis of the responding party's claims or defenses;

RESPONSE: Plaintiff believes those are adequately covered in her pleadings and in the responses to discovery served contemporaneously.

- (d) the amount of and any method of calculating economic damages; i.e., taxes in dispute and/or attorney's fees;

RESPONSE: Plaintiff anticipates a total damage calculation of approximately \$750,000, plus attorneys' fees. The damages include approximately \$200,000 in real property taken and used temporarily or permanently by Defendants, \$275,000 for loss of mature trees and approximately \$275,000 in lost personal property, inconvenience, clean up time and expense, lost rental and reconstruction costs. This does not include punitive damages and temporary or permanent loss of value of Plaintiff's structure as a home.

- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection in the case;

RESPONSE: All individual parties to the case.

1. Ron Whitehead - Knows of result of drainage and damage to Plaintiff's property. Admitted Town of Addison liability.
2. Carmen Moran - Knows of frequent complaints from Plaintiff and Town's offer to fix problem.
3. Mike Murphy - Knows of Town's involvement in approval of development, observed flooding and aftermath, and has knowledge of remedial measures taken by Town.

4. Lynn Chandler - Knows of frequent complaints by Plaintiff, codes, laws and ordinances of Town of Addison.
5. Unknown Town of Addison policemen - Know of Plaintiff's objection to presence of Defendants on Plaintiff's property.
6. Unknown Town of Addison firemen - Know of flooding damage and pool drainage.

(f) for any testifying expert:

(1) the expert's name, address and telephone number;

- RESPONSE:**
1. Gary M. Petit, P.E. (See attached curriculum vitae).
 2. Robert P. White (see attached resume).
 3. Thomas H. Keen

(2) the subject matter on which the expert will testify;

- RESPONSE:**
1. Drainage problem on Plaintiff's property. State law, proper procedures and remedies.
 2. Proper home and lot development. Remedial construction costs.
 3. Reasonable and actual attorneys' fees.

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject the control of the responding party, documents reflecting such information;

- RESPONSE:**
1. Defendant homebuilders had insufficient drainage plans and improperly handled drainage changes caused by development.
 2. Defendant homebuilders did not follow proper lot development techniques to hand drainage. Cost of reconstruction of lower part of Plaintiff's home is probably cost prohibitive, but might be as much as \$200,000.
 3. Reasonable attorneys' fees based on issues, efforts, time, complexity, experience of attorney and results obtained.

- (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

RESPONSE: Produced contemporaneously, as well as site inspection.

- (B) the expert's current resume and bibliography;

RESPONSE: Attached.

- (g) any discoverable witness statements.

RESPONSE: None recorded. Recounted in documents produced contemporaneously.

- (h) Any settlement agreements described in Rule 192.3(g); and

RESPONSE: None.

- (i) Any witness statements described in Rule 192.3(h).

RESPONSE: None.

GARY M. PETTIT, P.E.
PRESIDENT
NATIONWIDE WATER RESOURCE SERVICES, INC.

EDUCATION

B.S., Civil Engineering, Texas Tech University, 1972
M.S., Civil Engineering-Water Resources Option, Texas Tech University, 1974
Short Course on Flood Plain Hydrology, University of Texas at Austin, 1979
Short Course on Hydrology and Sedimentology of Surface Mined Lands, University of Kentucky, 1979
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Southwest Regional Symposium and Workshop on Urban Stormwater Management, Texas A&M University, 1983
Short Course on Stormwater Quality Management, Texas A&M University, 1991

PROFESSIONAL ENGINEERING REGISTRATION

Texas #41977	Louisiana #18969
Colorado #17354	Alabama #13085
Arizona #32097	Mississippi #8136
New Mexico #10787	Indiana #19822
Arkansas #5307	Maryland #16445
Kentucky #12861	

PROFESSIONAL AND HONORARY SOCIETIES

American Society of Civil Engineers
National Society of Professional Engineers
Texas Society of Professional Engineers
American Council of Engineering Companies
Association of State Dam Safety Officials
Arkansas Floodplain Management Association
Tau Beta Pi

EXPERIENCE

As President of Nationwide Water Resource Services, Inc., Mr. Pettit directs the activities of a professional consulting firm specializing in water resources engineering for the public and private sectors. Mr. Pettit has a diversified background and over 27 years of water resources experience in the academic, regulatory, and consulting fields. Among his areas of specialization are water supply studies, river basin master planning, water rights, hydraulics, hydrology, dam safety, emergency preparedness planning, computer modeling, water quality, environmental assessments, design of dams and drainage improvements, and regulatory support activities on the federal, state, and local levels.

Prior to the establishment of Nationwide Water Resource Services, Inc., Mr. Pettit was Water Resources

Manager of the Dallas Division of Espey, Huston & Associates, Inc. for more than eight years. He was responsible for the analysis and design of drainage and flood protection improvements for cities, the preparation of watershed management plans, water supply studies, master planning for river authorities, environmental assessments, and flood plain reclamation projects. He served as technical advisor to municipal committees and staff with regard to flood plain management, runoff control, and flood hazard mitigation. Mr. Pettit was also heavily involved in water resources engineering for the mining and electric utility industries. He participated in and directed a number of baseline hydrologic assessments, water availability analyses, water quality monitoring programs, and hydraulic design tasks for mining and power plant projects in several states. Mr. Pettit was responsible for the surface water aspects of power plant siting studies, fatal flaw analyses for potential surface and underground mines, and environmental impact analyses for a variety of industrial and commercial projects. He participated in various federal, state, and local permit support activities involving stream diversions, flood plain encroachments, flood protection levees, dam and spillway rehabilitations, water rights, and effluent discharges.

Prior to entering the consulting field, Mr. Pettit was employed by the Texas Department of Water Resources (a predecessor agency to the Texas Natural Resource Conservation Commission) for five years. His experience with the State water agency encompassed the fields of dam safety, water availability, water rights administration, computer modeling, and hydraulic adequacy analyses of existing and proposed projects. His initial duties with the agency dealt with implementation of the State's river basin water availability model, developing base flow and flood flow data at various accounting points within the watersheds and compiling water rights data throughout the Guadalupe, San Antonio, and Colorado River Basins in Texas. Mr. Pettit conducted hydraulic adequacy analyses of existing and proposed dams throughout Texas in conjunction with the State's dam safety program. These studies resulted in a number of dam and spillway modifications for the correction of unsafe conditions. He also made numerous on-site inspections of dams under the State's dam safety program and participated in Phase I of the U.S. Army Corps of Engineers' National Dam Safety Program for significant hazard and high hazard dams. Mr. Pettit conducted water availability analyses in connection with applications to appropriate surface water in Texas. These analyses included hydrologic simulations, reservoir operations and yield studies, flow frequency studies, evaluations of effects on existing water rights, and formulation of low-flow restrictions for the protection of downstream water rights. Mr. Pettit testified for the staff in public hearings regarding his findings and recommendations concerning water availability and dam safety.

While attending graduate school at Texas Tech University, Mr. Pettit served as a Teaching Assistant in the Department of Civil Engineering, teaching undergraduate courses in statics and fluid mechanics lab. He also served as a Research Assistant for the Texas Tech Water Resources Center, conducting research on wastewater reuse.

ROBERT P. WHITE

bob.rpweb@atthl.com

5178 Longvue Drive
 Frisco, Texas 75034
 Office - (469) 384-4965
 Fax - (469) 384-8910
 Cell - (972) 989-5074

QUALIFICATIONS SUMMARY**SENIOR REAL ESTATE EXECUTIVE • PROJECT MANAGEMENT • GENERAL AND FINANCIAL MANAGEMENT**

- ◆ Extensive real estate industry knowledge with construction, appraisal, and brokerage expertise.
- ◆ High-energy, focused individual who moves easily from vision and strategy to implementation, problem-solving, and follow-through.
- ◆ Highly motivated and accomplished senior management professional with entrepreneurial experience in all facets of construction operations.
- ◆ Negotiated long-term, strategic partnerships with key vendors that resulted in preferential vendor pricing and joint marketing programs.
- ◆ Proven ability in planning, implementing, and overseeing high-dollar construction projects from concept to certificate of occupancy and through warranty.
- ◆ Home selected by the Dallas Home Builder's Association as the **Luxury Home of the Year - 2000**
- ◆ Selected by National Association of Home Builders and *Ladies Home Journal* magazine to build the **Demonstration Home** for 2000 Home Builder's Convention.
- ◆ Home selected by Neiman-Marcus as the **1996 Christmas House**.
- ◆ Selected by *Southern Living* magazine to build the **Dillard's Holiday House - 1995**.
- ◆ Master of Business Administration degree - Southern Methodist University Cox School of Business - 1993
- ◆ Analytical and solution-oriented; customer focused; top-rank presenter and communicator.

PROFESSIONAL EXPERIENCE

2002-Present **ROBERT P. WHITE CONSULTING GROUP • Frisco, Texas**
Owner

- Organized June 2002 to capitalize, as a consultant to owners and builders, on experience in real estate industry.
- Providing services to owners in the construction of high-end residential properties from concept to completion.

1999-2001 **CUSTOM HOMES GROUP, L.L.C. • Dallas, Texas**
President/CEO

- Organized Custom Homes Group, L.L.C. in August 1999 and purchased the construction assets of Robert P. White Custom Homes, Inc.
- Increased the capitalization of Custom Homes Group, L.L.C. by \$1.3 Million through a private placement.
- Organized a Board of Directors to guide the strategic planning for the company.
- Positioned the company to increase construction volume by 100%.
- Led in the design and installation of an office network that integrated the accounting, estimating, and scheduling.

1968-1977

**THE ROBERT WHITE COMPANIES - Miami, FL.
President/CEO**

- Due to the extraordinary free time available while employed as a pilot for Eastern Airlines founded The Robert White Companies, Miami, FL.
- The Robert White Companies was the builder and developer of large single-family custom homes, multi-family projects and light commercial projects in South Dade County Florida.
- Led the Company from annual revenue of \$400K to annual revenue of \$5 Million and 115 employees in four years.
- Developed several tracts of land that included more than 190 home sites.
- Recognized in 1974 as the fourth largest developer/builder in South Dade County.
- During hurricane Andrew in 1991 all of these projects were at, or near, the "eye of the hurricane" and sustained no known structural damage and relatively insignificant other damage.

1965-1991

**EASTERN AIRLINES, INC. - Miami, FL., New York, NY, Atlanta, GA.
Flight Engineer, Pilot, Captain, Flight Manager, and Asst. Chief Pilot**

- To achieve a life goal, began taking flying lessons in January 1964 and received Commercial and Multi-engine License with Instrument Rating in Spring 1965.
- Hired by Eastern Airlines in November 1965 and assigned to B-727 Flight Engineer training.
- Completed all training throughout career with over 75% of the training instructor's remarks ranging from "excellent" to "outstanding".
- Progressed from Flight Engineer to First Officer (Co-Pilot) to Captain as quickly as the seniority system allowed.
- Led the Eastern Airlines unit of the Airlines Pilot's Association to develop alternative methods during intense labor negotiations in 1985-86 that resulted in the sale of Eastern Airlines to Texas Air Corp.
 - These efforts resulted in the ratification of the only labor agreement that Frank Lorenzo, Texas Air, ever signed and honored.
 - Many believe these efforts resulted in extending the corporate life of Eastern by five years.
- Led an *ad hoc* group of Eastern Pilots in a nine-month lobbying effort in 1987-88 before the United States Congress opposing the militant efforts of union officials to close down Eastern Airlines.
- Testified on behalf of the Eastern Pilots before the U.S. House Transportation subcommittee and before the U.S. Senate Aviation Subcommittee.
- Promoted to Manager of Flying on B-727; B-757; and A-300.
 - Provided training and flying technique review for line pilots.
- Promoted to Assistant Chief Pilot for the Northern Region - 1988 - at that time the largest pilot domicile of any airline in the nation.
 - Developed and managed programs for safety and standards for pilots of the Northern Region (New York, Boston, and Washington D.C.)
- Early retirement from Eastern Airlines effective January 17, 1991.
- Eastern Airlines ceased all operations and began final liquidation at 5:30 PM January 18, 1991.

EDUCATION

Bachelor of Arts in History and Pre-Law, 1962
Baylor University, Waco, Texas

Masters of Business Administration, 1993
Southern Methodist University Cox School of Business, Dallas, Texas

LICENSURE

FAA Airline Transport Pilot License - Current
Airplane Single and Multi-engine Land with Commercial Privileges
Ratings on B-757, B-767, B-727, A-300, and L-1011
Texas Real Estate Brokers License, 1991 - Current
Texas State Certified General Real Estate Appraiser, 1991 - 1996
Florida General Contractor License, 1970 - 1979

PROFESSIONAL AFFILIATIONS

Member, Greater Dallas Board of Realtors
Member, National Association of Home Builders
Member, Dallas Home Builder's Association
Member, Texas Home Builder's Association
Past Director, National Association of Home Builders
Past Director, North Dallas/Collin County Home Builder's Association
Past Member, Appraisal Institute (MAI)

REFERENCES

- ◆ *From our first meeting, we had total confidence in Bob and Doug's abilities, talents and most importantly, their trustworthiness. The home they built for us is beyond our own great expectations...their attention to detail is amazing. The people they surround themselves with are professional in their craft, and have our respect for doing a great job. Lisa and Scott Sams*
- ◆ *It's important to find a builder that you can work with throughout all aspects of the building process. We were able to customize features and finishes of our home that were important to us. Bob White continued to stand behind his work, providing any needed support and resources, even 18 months after closing on our home. Lynn A. Bace/Monte Jones*
- ◆ *Your choices of subcontractors were the best in the business; your concern about details and finish was beyond the call-of-duty; and most importantly, your long-term interest about what was behind the walls, all reflected high integrity and good taste. You did what you said you were going to do, and all without fanfare. Bob and Jane Mallow*
- ◆ *You can't test the infrastructure of a home until you have moved in. Our home exceeded our expectations in all the categories where we just had to take his word for it. Above all else, you should be able to trust your builder. We trust Bob White to the point where we call him a friend. Bob and Bernadett DeRhodes*

Additional references on request.

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



FACSIMILE COVER PAGE

Date: May 19, 2004

Time: _____

Total Number of Pages (including this sheet): 2Normal/Rush: NormalClient/Matter #: 3195/27512TO: (1) Mike Murphy
(2) Steve ChutchianFAX: 972.450.2837
FAX: 972.450.2837PHONE:
PHONE:FROM: Angela K. WashingtonDirect Dial #: (214) 672-2144

MESSAGE: RE: Parcel 8 (Outback Steakhouse), Addison Widening of Road Project

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL

Yolanda Rodriguez at (214) 672-2629

Thank you.

IMPORTANT\CONFIDENTIAL: This message is intended only for the use of the individual or entity to which it is addressed. This message contains information from the law firm of Cowles & Thompson which may be privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee, or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately at our telephone number (214) 672-2000. We will be happy to arrange for the return of this message to us, via the United States Postal Service, at no cost to you.

COWLES & THOMPSON
COWLES & THOMPSON
 A Professional Corporation
 ATTORNEYS AND COUNSELORS



ANGELA K. WASHINGTON
 214.672.2144
 AWASHINGTON@COWLESTHOMPSON.COM

May 19, 2004

VIA FACSIMILE (972) 450-7065

Ms. Carolyn Burgette
 Accounting Manager
 Town of Addison
 P.O. Box 9010
 Addison, TX 75001-9010

**RE: Parcel 8 (Outback Steakhouse)
 Addison Widening of Road Project**

Dear Carolyn and Steve:

In connection with Parcel 8, Addison Extension of Road Project, enclosed are the following documents:

1. A copy of the executed Purchaser's Settlement Statement; and
2. A copy of the executed Easement Agreement.

Republic Title has scheduled Closing for this Friday, May 21, 2004. Once the money has been forwarded to Republic Title, they will forward the purchase price to the Seller. Wiring instructions are enclosed. If we cannot meet the closing date, please let me at your earliest convenience. Thank you for your assistance.

Sincerely,

Angela K. Washington

AKW/yjr
 Attachments

c w/o Enclosures: Mr. Mike Murphy *Via Facsimile (972) 450-2837*
 w/o Enclosures Mr. Steve Chutchian *Via Facsimile (972) 450-2837*
 Mr. Ken C. Dippel, w/firm

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: May 11, 2004

To: Ken Dippel Via Telecopier Number: 214-672-2020
To: Rickey Garen Via Telecopier Number: 512-491-2366
To: Mike Murphy Via Telecopier Number: 972-450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 13

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Debbie at: 1-214-706-0924

Re: Pat Milliken v. City of Addison
File No. 607-066

Message: See attached depo notices of Plaintiff's experts.

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

214-706-0922 telephone

214-706-0921 facsimile

awalker@marislanier.com

May 11, 2004

VIA FACSIMILE

Thomas H. Keen

Looper Reed & McGraw

1601 Elm Street, Suite 4100

Dallas, Texas 75201

VIA FACSIMILE

Zach T. Mayer

Fee Smith Sharp & Vitullo, L.L.P.

One Galleria Tower

13355 Noel Road, Suite 1200

Dallas, Texas 75240

Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F in the 116th District Court, Dallas County
File No. 607-066

Dear Counsel:

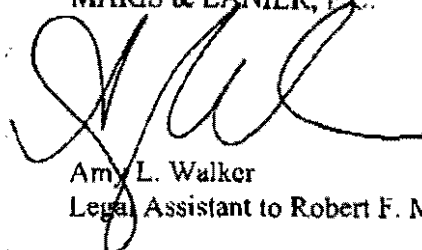
Attached please find the following:

1. Notice of Oral Deposition Duces Tecum of Gary M. Petit, P.E.;
2. Notice of Oral Deposition Duces Tecum of Robert P. White; and
3. Notice of Oral Deposition Duces Tecum of Clyde Crum.

The depositions have been noticed for June 23, and 24 beginning at 10:00 a.m. at our office. Should you have any questions, comments, or concerns, please do not hesitate to call.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker

Legal Assistant to Robert F. Maris

Enclosure

SENT BY: ;

214 706 0921

; MAY-12-04 12:02PM;

PAGE 3/13

cc: **VIA FACSIMILE**
Marion Ward & Associates
(w/encl.)

bcc: **VIA FACSIMILE**
Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78754
(w/encl.)

VIA FACSIMILE
Ken Dippel
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, TX 75202
(w/encl.)

VIA FACSIMILE
Michael E. Murphy, P.E.
Lynn Chandler
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
(w/encl.)

****Gentlemen, the enclosed deposition notices are for Plaintiff's designated experts. Your attendance is not mandatory, but you are welcome to attend. If you do want to attend, please advise me prior to the depositions, so that I may advise the other side. Thank you.**

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

NOTICE OF ORAL DEPOSITION DUCES TECUM OF GARY M. PETIT, P.E.

To: Plaintiff, Pat Milliken, by and through her attorney of record, Thomas H. Keen, Looper Reed & McGraw, 1601 Elm Street, Suite 4100, Dallas, Texas 75201.

To: Defendants The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman, by and through their attorney of record, Zach Mayer, Fee, Smith, Sharp & Vitullo, LLP, One Galleria Tower, 13355 Noel Road, Suite 1200, Dallas, Texas 75240.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of Gary M. Petit, P.E., at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on June 23, 2004 beginning at 10:00 a.m. and continuing thereafter from day to day until the deposition is completed.

Please take further notice that deponent shall produce at the commencement of the taking of the deposition, the documents listed on Exhibit "A" attached hereto.

Respectfully submitted,

MARIS & LANIER, P.C.



Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
10440 N. Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

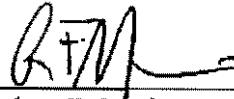
ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF SERVICE

This is to certify that a true, correct and complete copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on May 11, 2004 to:

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
VIA FACSIMILE

Anthony Vitullo
Zach Mayer
Fee, Smith, Sharp & Vitullo, LLP
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
VIA FACSIMILE



Robert F. Maris

EXHIBIT "A"I.
Definitions

The term "document" is defined to include any and all manner of written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring, correlating, directly or indirectly, in whole or in part, to each request, and the term includes, but is not limited to:

- (a) Papers, books, records, pamphlets, journals, ledgers, accounts, telexes, statements, memoranda, reports, invoices, work sheets, work papers, stenographic or handwritten notes, transcriptions of notes, letters correspondence, witness statements (whether written or recorded), abstracts, checks, reports, surveys, calculation cards, computer tapes or print-outs, diagrams, plans, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, pocket calendars, lists, logs, studies, publications, advertisements, instructions, minutes, orders, purchase orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes or recordings, or any other writing, typing, printing, photostats, or other forms of communications are recorded or reproduced, as well as all notations on the foregoing;
- (b) Originals and all other copies not absolutely identical, such as copies containing a commentary or notation of any kind that does not appear on the original or any other copy;
- (c) All drafts and notes (whether typed, handwritten or otherwise) made or prepared in connection with such documents, whether used or not; and
- (d) Any other writing or recording of any kinds.

II.
Requested Documents

- 1. Any documents reflecting the opinions to be given by Gary M. Petit at the trial in this case.
- 2. All reports prepared by Gary M. Petit in connection with this case.
- 3. All documents reviewed by or relied upon by Gary M. Petit in reaching his opinions.
- 4. Any agreements between Plaintiff or Plaintiff's counsel and Gary M. Petit.

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

NOTICE OF ORAL DEPOSITION DUCES TECUM OF ROBERT P. WHITE

To: Plaintiff, Pat Milliken, by and through her attorney of record, Thomas H. Keen, Looper Reed & McGraw, 1601 Elm Street, Suite 4100, Dallas, Texas 75201.

To: Defendants The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman, by and through their attorney of record, Zach Mayer, Fee, Smith, Sharp & Vitullo, LLP, One Galleria Tower, 13355 Noel Road, Suite 1200, Dallas, Texas 75240.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of Robert P. White at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on June 23, 2004 beginning at 2:00 p.m. and continuing thereafter from day to day until the deposition is completed.

Please take further notice that deponent shall produce at the commencement of the taking of the deposition, the documents listed on Exhibit "A" attached hereto.

Respectfully submitted,

MARIS & LANIER, P.C.



Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
10440 N. Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF SERVICE

This is to certify that a true, correct and complete copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on May 11, 2004 to:

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
VIA FACSIMILE

Anthony Vitullo
Zach Mayer
Fee, Smith, Sharp & Vitullo, LLP
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
VIA FACSIMILE



Robert F. Maris

EXHIBIT "A"

I.

Definitions

The term "document" is defined to include any and all manner of written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring, correlating, directly or indirectly, in whole or in part, to each request, and the term includes, but is not limited to:

- (a) Papers, books, records, pamphlets, journals, ledgers, accounts, telexes, statements, memoranda, reports, invoices, work sheets, work papers, stenographic or handwritten notes, transcriptions of notes, letters correspondence, witness statements (whether written or recorded), abstracts, checks, reports, surveys, calculation cards, computer tapes or print-outs, diagrams, plans, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, pocket calendars, lists, logs, studies, publications, advertisements, instructions, minutes, orders, purchase orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes or recordings, or any other writing, typing, printing, photostats, or other forms of communications are recorded or reproduced, as well as all notations on the foregoing;
- (b) Originals and all other copies not absolutely identical, such as copies containing a commentary or notation of any kind that does not appear on the original or any other copy;
- (c) All drafts and notes (whether typed, handwritten or otherwise) made or prepared in connection with such documents, whether used or not; and
- (d) Any other writing or recording of any kinds.

II.

Requested Documents

- 1. Any documents reflecting the opinions to be given by Robert P. White at the trial in this case.
- 2. All reports prepared by Robert P. White in connection with this case.
- 3. All documents reviewed by or relied upon by Robert P. White in reaching his opinions.
- 4. Any agreements between Plaintiff or Plaintiff's counsel and Robert P. White.

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

NOTICE OF ORAL DEPOSITION DUCES TECUM OF CLYDE CRUM

To: Plaintiff, Pat Milliken, by and through her attorney of record, Thomas H. Keen, Looper Reed & McGraw, 1601 Elm Street, Suite 4100, Dallas, Texas 75201.

To: Defendants The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman, by and through their attorney of record, Zach Mayer, Fee, Smith, Sharp & Vitullo, LLP, One Galleria Tower, 13355 Noel Road, Suite 1200, Dallas, Texas 75240.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of Clyde Crum at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on June 24, 2004 beginning at 10:00 a.m. and continuing thereafter from day to day until the deposition is completed.

Please take further notice that deponent shall produce at the commencement of the taking of the deposition, the documents listed on Exhibit "A" attached hereto.

Respectfully submitted,

MARIS & LANIER, P.C.



Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
10440 N. Central Expressway
Suite 1450, LB 702
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF SERVICE

This is to certify that a true, correct and complete copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Proccdurc on May 11, 2004 to:

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
VIA FACSIMILE

Anthony Vitullo
Zach Mayer
Fee, Smith, Sharp & Vitullo, LLP
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
VIA FACSIMILE



Robert F. Maris

EXHIBIT "A"

I.

Definitions

The term "document" is defined to include any and all manner of written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans or other representations of any kind of anything pertaining, describing, referring, correlating, directly or indirectly, in whole or in part, to each request, and the term includes, but is not limited to:

- (a) Papers, books, records, pamphlets, journals, ledgers, accounts, telexes, statements, memoranda, reports, invoices, work sheets, work papers, stenographic or handwritten notes, transcriptions of notes, letters correspondence, witness statements (whether written or recorded), abstracts, checks, reports, surveys, calculation cards, computer tapes or print-outs, diagrams, plans, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, pocket calendars, lists, logs, studies, publications, advertisements, instructions, minutes, orders, purchase orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, magnetic tapes, visual tapes, transcriptions of tapes or recordings, or any other writing, typing, printing, photostats, or other forms of communications are recorded or reproduced, as well as all notations on the foregoing;
- (b) Originals and all other copies not absolutely identical, such as copies containing a commentary or notation of any kind that does not appear on the original or any other copy;
- (c) All drafts and notes (whether typed, handwritten or otherwise) made or prepared in connection with such documents, whether used or not; and
- (d) Any other writing or recording of any kinds.

II.

Requested Documents

1. Any documents reflecting the opinions to be given by Clyde Crum at the trial in this case.
2. All reports prepared by Clyde Crum in connection with this case.
3. All documents reviewed by or relied upon by Clyde Crum in reaching his opinions.
4. Any agreements between Plaintiff or Plaintiff's counsel and Clyde Crum.

FOR OFFICE USE ONLY

BUILDING INSPECTION
TOWN OF ADDISON
P.O. BOX 9010
ADDISON, TX 75001-9010
214-50-2880

TOWN OF ADDISON

PERMIT APPLICATION

FAXED
5/17/01

ZONING	R-1
OCCUPANCY	R-3
CONSTRUCTION	V13

DATE 25 July 01

ADDRESS <u>4005 Lake Forest Dr</u>		SUITE NUMBER	
DIVISION <u>Medley Estates</u>	LOT <u>1</u>	BLOCK	
BUILDING OWNER <u>Preston Homes Inc</u>	PHONE <u>cell 214-924-9009</u> <u>972-307-0707</u>		
BUILDING ADDRESS <u>573 Bentley Dr</u>	CITY <u>Plano</u>	STATE <u>TX</u>	ZIP CODE <u>75093</u>
GENERAL CONTRACTOR <u>Preston Homes Inc</u>	ADDISON LIC. NO. <u>003688</u>	PHONE <u>cell (214) 924-9009</u> <u>972-307-0707</u>	
BUILDING ADDRESS <u>4573 Bentley Dr</u>	CITY <u>Plano</u>	STATE <u>TX</u>	ZIP CODE <u>75093</u>
PLUMBING CONTRACTOR <u>A & S Plumbing - Chris Wital</u>	ADDISON LIC. NO. <u>0011611 927</u>	PHONE <u>214-538-5385</u> <u>972-382-3612</u>	
BUILDING ADDRESS <u>P.O. BOX</u>	CITY <u>Celina</u>	STATE <u>TX</u>	ZIP CODE <u>75009</u>
MECHANICAL CONTRACTOR <u>Environmental Controls</u>	ADDISON LIC. NO. <u>Paul Harris</u>	PHONE <u>214-801-8272</u>	
BUILDING ADDRESS <u>901 N. Mill Suite 203</u>	CITY <u>Lewisville</u>	STATE <u>TX</u>	ZIP CODE <u>75057</u>
ELECTRICAL CONTRACTOR <u>Elect Services</u>	ADDISON LIC. NO. <u>003716</u>	PHONE	
BUILDING ADDRESS	CITY	STATE	ZIP CODE
IRRIGATION CONTRACTOR <u>Texas Water Boys</u>	ADDISON LIC. NO. <u>Brad Taylor</u>	PHONE <u>972-733-4343</u>	
BUILDING ADDRESS <u>PO Box 797068</u>	CITY	STATE	ZIP CODE

NOTES:
April Chandy
8-6-01

perm # 01088730
fee \$ 2505.75

DATE ISSUED: 9-7-01 4465

WORK BEING DONE <input checked="" type="checkbox"/> NEW BLDG. <input type="checkbox"/> INT. COMPLETION <input type="checkbox"/> ADDITION <input type="checkbox"/> REPAIR <input type="checkbox"/> INT. REMODEL <input type="checkbox"/> EXT. REMODEL <input type="checkbox"/> POOL <input type="checkbox"/> IRRIGATION <input type="checkbox"/> OTHER (EXPLAIN)	AREA IN SQUARE FEET <u>7387 sq ft</u>	USE OF BUILDING <u>Single Fam. Res</u>
	ESTIMATED EVALUATION <u>1,000,500.00 (361,350)</u>	
	UTILITY INFORMATION WATER METER _____ SEWER TAP _____ GAS IN BUILDING <input type="checkbox"/> YES <input type="checkbox"/> NO	NAME OF TENANT <u>N/A</u>

DATE OF APPLICATION _____ SIGNATURE [Signature]

NOTICE TO APPLICANT This permit is issued on the basis of information furnished in this application and on any submitted plans, and is subject to the provisions and requirements of the Town of Addison Code of Ordinances and any other applicable ordinance. This permit is issued only for the purpose of allowing construction conforming to the codes and ordinances of the Town, regardless of information

BUILDING INSPECTION
TOWN OF ADDISON
P.O. BOX 9010
ADDISON, TX 75001-9010
972/450-2880

TOWN OF ADDISON

PERMIT APPLICATION

FOR OFFICE USE ONLY

ZONING	R-1
OCCUPANCY	R-3
CONSTRUCTION	VB

DATE _____

CONSTRUCTION ADDRESS <u>14921</u> 14807 Latte Forest Dr		SUITE NUMBER	
SUBDIVISION <u>Medley Estates</u>		LOT <u>2</u>	BLOCK
BUILDING OWNER <u>The Preston Group</u>		PHONE <u>469-241-9111</u>	
MAILING ADDRESS <u>2301 Ohio Dr suite 235</u>	CITY <u>Plano</u>	STATE <u>TX</u>	ZIP CODE <u>75093</u>
GENERAL CONTRACTOR <u>The Preston Group</u>		PHONE	
ADDISON LIC. NO. <u>003687</u>		PHONE	
MAILING ADDRESS <u>2301 Ohio Dr suite 235</u>	CITY <u>Plano</u>	STATE <u>TX</u>	ZIP CODE <u>75093</u>
BUILDING CONTRACTOR <u>A F J Plumbing - Chris What</u>		PHONE <u>214-538-5385</u>	
ADDISON LIC. NO. <u>0011611 9-27</u>		PHONE <u>972-382-3612</u>	
MAILING ADDRESS <u>PO Box 369 Celina</u>	CITY <u>Celina</u>	STATE <u>TX</u>	ZIP CODE <u>75009</u>
HVAC CONTRACTOR <u>Paul Harris ENVIRONMENTAL CONTROLS</u>		PHONE <u>214-801-9272</u>	
ADDISON LIC. NO.		PHONE	
MAILING ADDRESS <u>901 N Mill Suite 203</u>	CITY <u>Lewisville</u>	STATE <u>TX</u>	ZIP CODE <u>75057</u>
ELECTRICAL CONTRACTOR <u>Elec Services</u>		PHONE	
ADDISON LIC. NO. <u>003716</u>		PHONE	
MAILING ADDRESS	CITY	STATE	ZIP CODE
IRRIGATION CONTRACTOR <u>Texas Water Boys</u>		PHONE <u>972-733-4343</u>	
ADDISON LIC. NO.		PHONE	
MAILING ADDRESS <u>PO Box 747 065</u>	CITY <u>Dallas</u>	STATE <u>TX</u>	ZIP CODE <u>75379</u>

NOTES:

Open Chandeliers
8-6-01

Permit # 01088729
fee \$2332.15

DATE ISSUED: 9-7-01 4464

WORK BEING DONE <input checked="" type="checkbox"/> NEW BLDG. <input type="checkbox"/> EXT. REMODEL <input type="checkbox"/> INT. COMPLETION <input type="checkbox"/> POOL <input type="checkbox"/> ADDITION <input type="checkbox"/> IRRIGATION <input type="checkbox"/> REPAIR <input type="checkbox"/> OTHER (EXPLAIN) <input type="checkbox"/> INT. REMODEL	AREA IN SQUARE FEET <u>6774 sq ft</u>	USE OF BUILDING <u>Single Families</u>
	ESTIMATED EVALUATION <u>(338,700) 935,000</u>	
UTILITY INFORMATION WATER METER _____ SIZE _____ NUMBER _____ GAS IN BUILDING _____ SEWER TAP _____ _____ <input type="checkbox"/> YES <input type="checkbox"/> NO		

DATE OF APPLICATION

7 Sept 01

SIGNATURE

[Signature]

NOTICE TO APPLICANT This permit is issued on the basis of information furnished in this application and on any submitted plans, and is to the provisions and requirements of the Town of Addison Code of Ordinances and any other applicable ordinance. This permit is issued only for the purpose of allowing construction conforming to the codes and ordinances of the Town, regardless of information and/or plans submitted.

BUILDING INSPECTION
TOWN OF ADDISON
P.O. BOX 9010
ADDISON, TX 75001
972/450-2880

RECEIVED
4-9-02

TOWN OF ADDISON

PERMIT APPLICATION

FOR OFFICE USE ONLY

ZONING	R-1
OCCUPANCY	Y Y
CONSTRUCTION	VB

DATE 4.8.02

CONSTRUCTION ADDRESS		SUITE NUMBER	
14901 Lake Forest DR			
SUBDIVISION	LOT	BLOCK	
BUILDING OWNER	PHONE		
Bill Long (Preston Group)			
MAILING ADDRESS	CITY	STATE	ZIP CODE
14901 Lake Forest DR	Addison	TX	
GENERAL CONTRACTOR	ADDISON LIC. NO.	PHONE	
Southern Wind Pools	003792	972 783 4090	
MAILING ADDRESS	CITY	STATE	ZIP CODE
11837 Judd Ct #118	Dallas	TX	75243
PLUMBING CONTRACTOR	ADDISON LIC. NO.	PHONE	
Southwestern	00118	214 675 5424	
MAILING ADDRESS	CITY	STATE	ZIP CODE
13391 George Foster Rd	Ponder	TX	76259
HVAC CONTRACTOR	ADDISON LIC. NO.	PHONE	
MAILING ADDRESS	CITY	STATE	ZIP CODE
ELECTRICAL CONTRACTOR	ADDISON LIC. NO.	PHONE	
Agua Tech	003636	972 243 2162	
MAILING ADDRESS	CITY	STATE	ZIP CODE
11346 Emerald	Dallas	TX	75229
IRRIGATION CONTRACTOR	ADDISON LIC. NO.	PHONE	
MAILING ADDRESS	CITY	STATE	ZIP CODE

NOTES:
4-10-02
4-16-02
Jeff May
Of your handle
4-10-02

Proj # 02049272
fee \$ 492.25

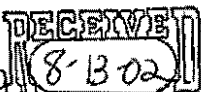
DATE ISSUED: 4-16-02 §128

WORK BEING DONE <input type="checkbox"/> NEW BLDG. <input type="checkbox"/> INT. COMPLETION <input type="checkbox"/> ADDITION <input type="checkbox"/> REPAIR <input type="checkbox"/> INT. REMODEL <input type="checkbox"/> EXT. REMODEL <input checked="" type="checkbox"/> POOL <input type="checkbox"/> IRRIGATION <input type="checkbox"/> OTHER (EXPLAIN)	AREA IN SQUARE FEET <p style="text-align: center; font-size: 2em;">580</p>	USE OF BUILDING
	ESTIMATED EVALUATION <p style="text-align: center; font-size: 1.5em;">\$ 35,000</p>	
	UTILITY INFORMATION WATER METER _____ SIZE _____ NUMBER _____ GAS IN BUILDING _____ SEWER TAP _____ YES <input type="checkbox"/> NO <input type="checkbox"/>	NAME OF TENANT

DATE OF APPLICATION 4.8.02 SIGNATURE James Summers 214 802 9617

NOTICE TO APPLICANT This permit is issued on the basis of information furnished in this application and on any submitted plans, and is to the provisions and requirements of the Town of Addison Code of Ordinances and any other applicable ordinance. This permit is issued only for the purpose of allowing construction conforming to the codes and ordinances of the Town, regardless of information on the plans submitted.

BUILDING INSPECTION
TOWN OF ADDISON
P.O. BOX 9010
ADDISON, TX 75001-9010
972/450-2880



TOWN OF ADDISON

PERMIT APPLICATION

FOR OFFICE USE ONLY

ZONING	R-1
OCCUPANCY	R-3
CONSTRUCTION	VB

DATE 8/13/02

CONSTRUCTION ADDRESS 14901 LAKE FOREST DR. SUITE NUMBER _____

SUBDIVISION	LOT	BLOCK
BUILDING OWNER <u>PRESTON HOMES</u>	PHONE	
MAILING ADDRESS	CITY	STATE ZIP CODE
GENERAL CONTRACTOR	ADDISON LIC. NO.	PHONE
MAILING ADDRESS	CITY	STATE ZIP CODE
PLUMBING CONTRACTOR	ADDISON LIC. NO.	PHONE
MAILING ADDRESS	CITY	STATE ZIP CODE
HVAC CONTRACTOR	ADDISON LIC. NO.	PHONE
MAILING ADDRESS	CITY	STATE ZIP CODE
ELECTRICAL CONTRACTOR	ADDISON LIC. NO.	PHONE
MAILING ADDRESS	CITY	STATE ZIP CODE
IRRIGATION CONTRACTOR <u>TEXAS WATERBOYS, INC.</u>	ADDISON LIC. NO. <u>60357</u>	PHONE <u>972-733-4343</u>
MAILING ADDRESS <u>P.O. Box 797068 DALLAS, TX. 75379</u>	CITY <u>DALLAS</u>	STATE <u>TX</u> ZIP CODE <u>75379</u>

NOTES:
8-15-02 Notified
Alynn Chandler
8-15-02
add 50 to renew
perm # 02089643
fee 83.25
50.00

DATE ISSUED: 8-28-02 10227 total \$ 133.25

WORK BEING DONE <input type="checkbox"/> NEW BLDG. <input type="checkbox"/> EXT. REMODEL <input type="checkbox"/> INT. COMPLETION <input type="checkbox"/> POOL <input type="checkbox"/> ADDITION <input checked="" type="checkbox"/> IRRIGATION <input type="checkbox"/> REPAIR <input type="checkbox"/> OTHER (EXPLAIN) <input type="checkbox"/> INT. REMODEL	AREA IN SQUARE FEET _____	USE OF BUILDING _____
	ESTIMATED EVALUATION <u>2500.00</u>	NAME OF TENANT _____
UTILITY INFORMATION WATER METER _____ SIZE _____ NUMBER _____ GAS IN BUILDING _____ SEWER TAP _____ <input type="checkbox"/> YES <input type="checkbox"/> NO		

DATE OF APPLICATION 8/13/02 SIGNATURE [Signature]

NOTICE TO APPLICANT This permit is issued on the basis of information furnished in this application and on any submitted plans, and is to the provisions and requirements of the Town of Addison Code of Ordinances and any other applicable ordinance. This permit is issued only for the purpose of allowing construction conforming to the codes and ordinances of the Town, regardless of information

HP LaserJet 3200se



HP LASERJET 3200

MAY-18-2004 4:13PM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
757	5/18/2004	4:11:09PM	Send	92147060921	2:37	5	OK

**TOWN OF ADDISON
PUBLIC WORKS**

To: Ammy From:
Company: _____
FAX #: _____
Date: 5-18-04
No. of Pages (including cover): 5

Michael E. Murphy, P.E.
Director of Public Works

Office: 972/450-2878
Fax: 972/450-2837

16801 Westgrove
P.O. Box 9010
Addison, TX 75001-8010



BUILDING INSPECTION DEPARTMENT

16801 Westgrove Drive

(972) 450-2880 Fax: (972) 450-2837

Post Office Box 9010 Addison, Texas 75001-9010

March 6, 2002

Ms. Pat Milliken
14905 Lake Forest Drive
Addison, Texas 75254

Dear Ms. Milliken:

I had a meeting with Bill Long to discuss the retaining wall on the north property line of the home under construction at 14901 Lake Forest Drive, Addison, Texas. He informed me that after the soil settles in this area he will grade the area to approximately four inches below the top of the retaining wall.

The roof will have rain gutters that drain to the front and rear of the property. That will leave only the five to six foot area between the house and retaining wall that will receive direct rainfall or water from the sprinkler system. Due to the size of this area, the water that falls in this area shouldn't drain over the top of the retaining wall. If a portion of the runoff should breach the wall there is a drainage easement along the wall that will accommodate such an occurrence.

If you have any questions, you may reach me at 972/450-2889.

Sincerely,


Lynn Chandler
Building Official

(g) In the event that the owner of the property fails or refuses or for any other reason does not pay the expenses specified in subsection (f) of this section within 30 days after the first day of the month following the month in which the work was done or improvements were made by the town, the city council may assess expenses incurred, those expenses defined in subsection (f) of this section, against the real estate on which the work was done or improvements made by the town.

(h) To obtain a lien against the property, the city council, the town health authority, the city manager, or town tax authority shall file a statement of expenses, those expenses defined in subsection (f) of this section, with the county clerk. The lien statement must state the name of the owner, if known, and the legal description of the property the lien attaches upon the filing of the lien statement with the county clerk.

State law reference—Similar provisions, V.T.C.A., Health and Safety Code § 342.007(b).

(i) The lien obtained by the town is security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the town.

(j) The lien is inferior only to:

- (1) Tax liens; and
- (2) Liens for street improvements.

(k) The city council may foreclose a lien on property under this section in a proceeding relating to the property brought under V.T.C.A., Tax Code ch. 33, subch. E (V.T.C.A., Tax Code § 33.91 et seq.).

State law reference—Similar provisions, V.T.C.A., Health and Safety Code § 342.007(h).

(l) In lieu of utilizing the provisions of subsection (j) of this section, the town may bring a foreclosure action to recover the expenditures and interest due.

(m) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the town in doing the work or making the improvements.

(n) The remedies provided by this section shall be in addition to all other remedies available to the town.

(Code 1982, § 10-26)

Sec. 34-114. Nuisance located upon easements; duties of abutting property owners and occupants.

(a) For purposes of this section, the term "easement" shall mean a right, vested in the public generally or in the community as a whole, to use and enjoy the land of another person for a special purpose. Such term shall include, but not be limited to, all drainage and floodway dedications or easements located within the corporate limits of the town. In the event that a nuisance is found to exist upon any easement within the town, or in the event that any person whose property is burdened by any easement within the town limits, fails to comply with the foregoing provision of this article, the city manager or his duly appointed representative may give a ten-day official notice to such person which is creating such nuisance or is violating the terms of this article. If such person fails or refuses to comply with the provisions of section 35-115 and division 2 of this article within the ten days following notification, they shall be considered to be in violation and subject to a fine as provided in section 1-7 of this Code. The provisions of this section shall apply only to the owner of the servient estate or the property burdened by the easement and shall not apply to the grantee or holder of such easement. Property owners and occupants shall be jointly responsible for nuisances and abatement thereof under this article up to the curb or sidewalk, and between the curb and sidewalk, of the streets and to the pavement of alleys on abutting property they own or occupy. Existing drainage areas and creeks traversing drainage and floodway, easements within the town shall remain as open channels (unless required to be enclosed by other ordinances) at all times and shall be maintained by the individual owners of the lots that are traversed by or adjacent to the drainage and floodway easements. The town shall not be responsible for maintenance or operation of such creeks or drainage or for any damage or injury to private property or person that results from the

§ 11.086[0]. OVERFLOW CAUSED BY DIVERSION OF

WATER. (a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section[0] does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

All Week

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: April 9, 2004

To:	<u>Rickey Garen</u>	Via Telecopier Number:	<u>(512)491-2366</u>
To:	<u>Ken Dippel</u>	Via Telecopier Number:	<u>(214)672-2020</u>
To:	<u>Mike Murphy</u>	Via Telecopier Number:	<u>(972)450-2837</u>
To:	<u>Lynn Chandler</u>	Via Telecopier Number:	<u>(972)450-2837</u>
To:	<u>Larry Dobbs</u>	Via Telecopier Number:	<u>(972) 722-8655</u>
To:	<u>Charlie Johnson</u>	Via Telecopier Number:	<u>(972) 503-9143</u>
To:	<u>Mark W. Roberts</u>	Via Telecopier Number:	<u>(214)739-5961</u>
To:	<u>Stan Randall</u>	Via Telecopier Number:	<u>(972)772-5314</u>
To:	<u>Janice Moore</u>	Via Telecopier Number:	<u>(972)732-6003</u>

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 3

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Autna at: 214-706-0932

Re: File No. 607-066; Pat Milliken v. Town of Addison

Message: See attached Notice of Jury Trial Setting for August 2, 2004. ✓

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

214-706-0920 telephone

214-706-0921 facsimile

214-706-0922 direct dial

awalker@marislanier.com

April 9, 2004

VIA FACSIMILE ONLY

Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78754

Robert Stanley ("Stan") Randall, Jr.
Robert Stanley ("Robert") Randall, III
Arboricultural Systems Integration
Route 6, Box 240
Sulphur Springs, Texas 75482

Ken Dippel
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, TX 75202

Larry E. Dobbs, MAI
Mike Shaw, MAI
Larry E. Dobbs, MAI, Inc.
105 North Alamo
Rockwall, Texas 75087

Michael E. Murphy, P.E.
Lynn Chandler
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010

Mark W. Roberts, P.E.
Nathan D. Maier Consulting Engineers
8080 Park Lane, Suite 600
Dallas, Texas 75231

Charles D. Johnson
4106 Courtshire
Dallas, Texas 75229

Janice Moore
6011 Derek Trail
Dallas, Texas 75252

Re: Pat Milliken v. City of Addison
TML Claim No. 0200085821
File No. 607-066

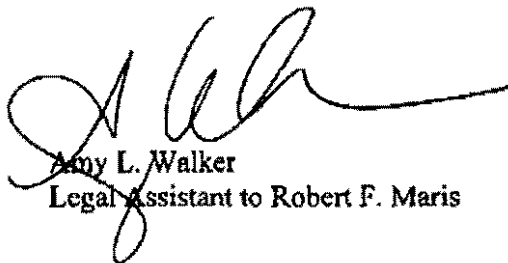
Dear Ladies and Gentlemen:

Attached please find a copy of the Notice of Jury Trial Setting for **August 2, 2004**. Please mark this date/time on your calendar as each of you will need to be present at least a portion of this week for trial testimony. A corporate representative from the Town of Addison will need to be present during the entire trial. If you have any conflicts with this week, please advise me at your earliest convenience.

Thank you for your time and attention to this matter.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure



116TH DISTRICT COURT
GEORGE L. ALLEN, SR. COURTS BUILDING
600 COMMERCE STREET
DALLAS, TEXAS 75202-4610

Chambers of JUDGE ROBERT H. FROST

APRIL 5, 2004

ROBERT FRANK MARIS
10440 N CENTRAL EXPRWY
SUITE 1450, LB 702
DALLAS TX 75231

RE: Case No. 0204715-F

MILLIKEN PAT VS. ADDISON TOWN OF

All Counsel of Record:

Please take note of the following settings:

Pre-Trial:

Jury Trial: 08/02/04

Non Jury Trial:

Trial announcements must be made in accordance with Rules 3.02-3.05 of the Local Rules of Dallas County. Pursuant to Local Rule 3.04, please be advised that if this case is not reached as set, it may be carried to the following week.

When no announcement is made for plaintiff, this case will be dismissed for want of prosecution.

Except as provided by court order, completion of discovery, presentation of pretrial motions and other matters relating to preparation for trial are governed by the Local Rules and the Texas Rules of Civil Procedure.

Sincerely yours,


Robert H. Frost

ROBERT H. FROST
DISTRICT JUDGE
116TH DISTRICT COURT
DALLAS COUNTY, TEXAS

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231
214-706-0922
214-706-0921 (FAX)

awalker@marislanier.com

April 8, 2004

Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

Re: Pat Milliken v. City of Addison
TML Claim No. 0200085821
File No. 607-066

Dear Mike:

Per our telephone conversation, enclosed please find a copy of Plaintiff Pat Milliken's Response to Defendant Town of Addison's Motion for Summary Judgment. The hearing on Defendant's Motion for Summary Judgment and Motion to Exclude has been rescheduled to April 26, 2004 at 9:00 a.m., per the Court's request. Upon a determination on the motion, we will telephone you.

Thank you for your time and attention to this matter. Should you have any questions, comments or concerns, please do not hesitate to call.

Sincerely,

MARIS & LANIER, P.C.



Ainsy L. Walker

Legal Assistant to Robert F. Maris

Enclosure

CAUSE NO. 02-4715-F

FILED

2004 APR -2 PM 4:44

IN THE DISTRICT COURT
JIM HAMLIN
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY
116TH JUDICIAL DISTRICT

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., AND JON B. COLEMAN

Defendants.

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DALLAS COUNTY, TEXAS

**PLAINTIFF PAT MILLIKEN'S RESPONSE TO DEFENDANT
TOWN OF ADDISON'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Pat Milliken ("Plaintiff" or "Milliken"), files this her Response to Defendant Town of Addison's ("Defendant" or "Town of Addison") Motion for Summary Judgment (the "Motion"), and would respectfully show the Court as follows:

INTRODUCTION

Plaintiff asserted numerous claims against the Town of Addison and The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman arising out of damages sustained to her real and personal property as a result of actions and omissions on the parts of all of the Defendants involved in this action. Against the Town of Addison, Ms. Milliken has asserted the following claims: 1) negligence, 2) unlawful diversion of water under the Texas Water Code § 11.086, 3) trespass and damage to real property, and 4) constitutional violations, including taking, damaging or destroying of her property for public use without adequate compensation.

The Town of Addison filed a Motion for Summary Judgment on each claim made against it.

For the reasons more specifically set out below, Ms. Milliken would show that genuine issues of material fact exist regarding each and every one of the claims raised against the Town of Addison; therefore, the Town of Addison has failed to prove that it is entitled to summary judgment on any of Ms. Milliken's claims against it as a matter of law.

UNDISPUTED FACTS

1. On September 7, 2001, the Town of Addison issued building permits to The Preston Group Designers and Builders and Preston Homes, Inc. (together with William Long and Jon Coleman, referred to as "the Developers") to develop two lots adjacent to Ms. Milliken's property. Those two lots were originally one larger lot. (Milliken Aff. ¶ 3-4)
2. The Town of Addison initially issued the building permits without requiring any sort of grading map, drainage map, or engineer's certification that the construction of any improvements on the two lots would not have a negative impact on adjacent properties. (Milliken Aff. ¶ 4)
3. The Town of Addison claims that the Developers failed to inform the Town of Addison, prior to the issuance of the building permits, that they intended to bring in fill dirt and raise the elevation of the two properties adjacent to Ms. Milliken's property. When the Developers began bringing fill dirt onto the properties in approximately August 2001, Ms. Milliken immediately became concerned that the elevation of the two properties would adversely affect her property. Acting on her concerns, Ms. Milliken immediately began to raise questions with both the Town of Addison and the Developers about the existence of drainage plans, the elevation of the lots, and the potential for damage to her property if these issues were not properly addressed. The Town of Addison and the Developers told Ms.

Milliken that the Developers could put in as much fill as they wanted, even if it elevated the lots by twenty feet, and she was assured by the Town of Addison and the Developers that the development of the lots would create no adverse drainage affects on her property, despite the fact that there was no drainage plan in place at that time. (Milliken Aff. ¶ 5-6)

4. Ms. Milliken continued to raise her concerns with the Town of Addison and the Developers. After Ms. Milliken made the Town of Addison aware that the Developers were using fill dirt, and after Ms. Milliken repeatedly discussed her growing concerns with employees at the Town of Addison, Ms. Milliken convinced the Town of Addison to issue a temporary stop work order to determine if the Developers would need to provide a grading map, drainage map, and engineer's certification that any improvements would have no adverse impact on the adjacent properties. Finally, the Town of Addison determined that a drainage plan was required. (Milliken Aff. ¶ 7)
5. On November 16, 2001, the Developers allegedly sent a letter to Michael E. Murphy, P.E., Director of Public Works at the Town of Addison, and claimed that they would 1) "grade the property for proper drainage," 2) remove two sections of fence between Ms. Milliken's property and the Developers' properties, and 3) provide an engineer's report for the retaining wall and fill within two weeks of November 16, 2001. The letter reiterated the Developers assertion that the planned construction would not adversely impact neighboring properties. (Milliken Aff. ¶ 8)
6. Not surprisingly, the Developers did not do what they had promised in their letter, and the Town of Addison took no further action to remedy the situation. (Milliken Aff. ¶ 9)
7. In December 2001, Ms. Milliken experienced severe flooding on her property and in her

home as a result of the Developers' changes to their properties and the Town of Addison's failure to require the Developers to do anything about Ms. Milliken's legitimate concerns about the adverse impact of the Developers' construction on the properties adjacent to hers. Specifically, the alteration of the adjacent properties' terrain resulted in the collection and diversion of the natural flow of surface water from those properties onto Ms. Milliken's property, in addition to an increased velocity of runoff onto Ms. Milliken's property. (Milliken Aff. ¶ 10)

8. On December 16, 2001, Ms. Milliken personally informed employees of the Town of Addison that her property had experienced flooding, just as she had been warning the Town of Addison and the Developers for four (4) months. (Milliken Aff. ¶ 11)
9. Had the Developers implemented a sufficient drainage plan, and had the Town of Addison required to the Developers to implement and follow a sufficient drainage plan, no flooding on Ms. Milliken's property would have occurred. (Milliken Aff. ¶ 13)
10. During the period from February 4, 2002 to March 18, 2002, the Town of Addison and Jim Bowman Construction entered Ms. Milliken's property to construct a drainage system within the existing five (5) foot easement on Ms. Milliken's property. The Town of Addison requested that Ms. Milliken, prior to entrance on her property, sign a release fully relieving the Town of Addison of any wrongdoing or liability in connection with the construction of the drainage system on her property. Ms. Milliken did not sign the release. Ms. Milliken requested that she be shown the plans for the drainage system, and the Town of Addison provided the detailed plans to Ms. Milliken, which outlined how construction of the drainage system was to be accomplished and directed Jim Bowman Construction how to build the

NEVER ASKED HER
DID NOT HAPPEN

drainage system. (Milliken Aff. ¶ 14)

11. Ms. Milliken permitted entrance onto her property for the construction in the easement because she was told it would alleviate the surface water and flooding problems caused by the fill dirt brought in by the Developers and permitted by the Town of Addison. Ms. Milliken did not design the plans for the drainage system in the easement, she did not have any right to direct the Town of Addison or Jim Bowman Construction in their construction of the drainage system, and Ms. Milliken did not have any “hands-on” involvement in the construction or direction of construction of the drainage system in and around the easement. (Milliken Aff. ¶15-16)
12. The Town of Addison directed Jim Bowman Construction in its day-to-day operation on Ms. Milliken’s property, and controlled the manner and method of the work done by Jim Bowman Construction. (Bowman Aff ¶ 5-7; Milliken Aff. ¶ 21).
13. During the construction of the drainage system in and around the easement on Ms. Milliken’s property, the Developers occasionally sent workers and/or motor driven machinery to Ms. Milliken’s property for the purpose of aiding in construction of the drainage system in and around the easement. (Milliken Aff. ¶ 17)
14. During the Town of Addison’s, Jim Bowman Construction’s, and the Developers’ work on the drainage system, Ms. Milliken’s property was damaged outside the confines of the easement. Specifically, the drainage system itself intruded on the property beyond the confines of the easement, and the Town of Addison, Bowman Construction, and the Developers damaged trees, removed valuable trees, shrubbery, and ground cover from Ms. Milliken’s property, and altered the terrain of Ms. Milliken’s property. Not surprisingly, the

easement “improvements” did not alleviate the problems with surface water runoff and flooding created by the Town of Addison and the Developers, and Ms. Milliken’s property has since flooded due to the Developers’ and the Town of Addison’s diversion of the surface water at least two more times. (Milliken Aff. ¶ 18-20)

SUMMARY JUDGMENT EVIDENCE

Milliken relies upon the following summary judgment evidence appended to this Response:

- Exhibit 1 Order Granting Agreed Motion for Continuance and Scheduling Order
- Exhibit 2 Plaintiff’s First Original Petition and Application for Temporary Restraining Order and Injunctive Relief
- Exhibit 3 Affidavit of Pat Milliken
- Exhibit 4 Affidavit of Jim Bowman

STANDARD OF REVIEW

It is well established that the purpose of summary judgment is to eliminate patently unmeritorious claims or untenable defenses; summary judgment is not intended to deprive litigants of their right to a full hearing on the merits of any real issue of fact. *Gulbenkian v. Penn*, 151 Tex. 412, 416, 252 S.W.2d 929, 931 (1952). With a traditional motion for summary judgment, a summary judgment movant must conclusively prove all essential elements of its claims, or show that there is no genuine issue of material fact regarding the other party’s claims, and that it is entitled to judgment as a matter of law. *Nixon v. Mr. Property Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). The Court must take as true all summary judgment evidence favorable to the non-movant, must indulge every reasonable inference in favor of the non-movant, and resolve all doubts in the non-movant’s favor. *Harwell v. State Farm Mutual Auto Ins. Co.*, 896 S.W.2d 170, 173 (Tex. 1995);

Nixon v. Mr. Property Management Co., 690 S.W.2d 546, 548-549 (Tex. 1985). Summary judgment should never be granted when the issues are inherently those for a jury or trial judge, as in cases involving intent, reliance, reasonable care, uncertainty and the like. *Smith v. Little*, 903 S.W.2d 780, 785-786 (Tex. App.-Dallas 1995), *affirm'd in part and rev'd in part on other grounds*, 943 S.W.2d 414 (Tex. 1997). Nor should summary judgment be granted when the cause of action depends on proof of facts not ordinarily subject to absolute verification or denial, such as the intent or other state of mind of a party. *Bauer v. Jasso*, 946 S.W.2d 552, 556 (Tex. App.-Corpus Christi, 1997, no writ); *Hendricks v. Thornton*, 973 S.W.2d 348 (Tex. App.-Beaumont 1988, rev. denied); *Frias v. Atlantic Richfield Co.*, 999 S.W.2d 97 (Tex. App.-Houston [1st] 1999, rev. denied).

Under Rule 166a(i), the trial court must not grant a no-evidence motion for summary judgment if the respondent produces summary judgment evidence raising a genuine issue of material fact on each essential element of each claim raised in the motion. TEX. R. CIV. P. 166a(i); *see Reynosa v. Huff*, 21 S.W.3d 510, 512 (Tex.App.-San Antonio 2000, no pet.). The non-movant has the burden of coming forward with more than a scintilla of evidence to raise a factual issue on each element essential to its case. *Id.*

The Town of Addison bears the burden of proving its entitlement to summary judgment as a matter of law. *Nixon*, 690 S.W.2d at 548. A summary judgment for a defendant disposing of the entire case is proper only if, as a matter of law, the plaintiff could not succeed upon any theory pleaded. *Interstate Fire Ins. Co. v. First Tape, Inc.*, 817 S.W.2d 142, 144 (Tex.App.-Houston [1st Dist.] 1991, writ denied); *Golden Harvest Company, Inc. v. City of Dallas*, 942 S.W.2d 682, 685 (Tex.App.-Tyler 1997).

ARGUMENT AND AUTHORITIES

The Court Should Not Consider the Town of Addison's Motion for Summary Judgment Because it Failed to Timely File the Motion.

The Town of Addison was required to file any motion for summary judgment or other dispositive motion at least 30 days before trial. (See Exhibit 1, page 2). Trial was scheduled for April 12, 2004. Therefore, Town of Addison's Motion for Summary Judgment should have been filed on or before March 13, 2004.

Town of Addison's Motion for Summary Judgment was filed and served on March 15, 2004. Accordingly, the Motion for Summary Judgment was not timely filed, and the Court should not consider the motion for any purposes and deny the motion in its entirety.

Evidence Exists for Each Element of Plaintiff's Negligence Claim, and the Town of Addison is Not Entitled to Sovereign Immunity on Plaintiff's Negligence Claim Against It.

Plaintiff has alleged that the Town of Addison is liable for negligence in damaging her property while using a motorized vehicle to install and/or modify an existing drainage system. The Town of Addison has argued in its motion for summary judgment that it is entitled to sovereign immunity from Ms. Milliken's negligence claim, that there was no statutory waiver of its immunity because no employee of the Town of Addison operated a motor-driven vehicle which resulted in damages to her, that no liability of an independent contractor can be imputed to it, that Plaintiff has not established a causal nexus between her damages and operation of a motor-driven vehicle or motor-driven equipment, and, finally, that there is no evidence of any of the elements of Plaintiff's negligence claim against the Town of Addison.

While the Town of Addison ignores that the need for a modification was only due to the fact that the Town of Addison approved the Developer Defendants' use of fill dirt in the properties

adjacent to Ms. Milliken's property, despite Ms. Milliken's concerns regarding the adverse consequences to her property. The Town of Addison and its agents and employees were negligent in the construction of the drainage system in the easement on her property, further diversion of surface drainage, and destruction of trees, shrubs and groundcover, which caused damages to Ms. Milliken.

The elements of a negligence cause of action are (1) duty, (2) breach of that duty, and (3) damages proximately caused by the breach of that duty. *Doe v. Boys Club of Greater Dallas, Inc.*, 907 S.W.2d 472, 477 (Tex. 1995). The elements of proximate cause are cause in fact and foreseeability. *Travis v. City of Mesquite*, 830 S.W.2d 94, 98 (Tex. 1992). The test for cause in fact is whether the negligent "act or omission was a substantial factor in bringing about injury," without which the harm would not have occurred. *Doe*, 907 S.W.2d at 477 (quoting *Prudential Ins. Co. v. Jefferson*, 896 S.W.2d 156, 161 (Tex. 1995)).

Addison first argues in its motion for summary judgment that, as a governmental unit, it is immune from negligence suits under the doctrine of sovereign immunity. Specifically, it claims that the Texas Tort Claims Act § 101.001 (3)(B) provides that it is immune from liability for damages resulting from the flooding. See TEX. CIV. PRAC. & REM CODE § 101.001 (3)(B). (Interestingly, the Town of Addison does not address the other damages claimed by Ms. Milliken).

Waiver of Immunity

As a governmental entity, the Town of Addison is generally immune from liability for negligence claims, except where the Legislature has explicitly waived such immunity. *Dallas County Mental Health & Mental Retardation v. Bossley*, 968 S.W.2d 339, 341 (Tex. 1998). Sovereign immunity is waived and a governmental unit is liable for property damage caused by an employee acting within the scope of his employment if the damage arises from the operation of a

motor vehicle or motor driven equipment and the employee otherwise would be liable to the claimant under Texas law. TEX. CIV. PRAC. & REM. CODE § 101.021(1).

The Town of Addison's governmental immunity in this case was waived. The summary judgment evidence shows that the Town of Addison is liable for property damage proximately caused by negligence of an employee acting within the scope of employment for the Town of Addison because the property damage arises from the operation or use of a motor-driven vehicle or motor-driven equipment and the employee would be personally liable to the claimant under Texas law. More precisely, the Town of Addison designed specific plans for the drainage system, and provided those detailed plans and the method in which to implement the plans to its own employees and to Jim Bowman Construction. (Bowman Aff. ¶ 5; Milliken Aff. ¶ 14) While the Town of Addison argues first that none of its employees drove the motor driven equipment and, second, that Jim Bowman Construction was an independent contractor and thus, any actions of Bowman Construction employees cannot be imputed to the Town of Addison, the summary judgment evidence shows otherwise.

Employee

The Act defines an "employee" as a person, including an officer or agent, who, by competent authority, is in the paid service of a government unit. CIV. PRAC. & REM. CODE § 101.001(2); *Rodriguez v. Dept. of Mental Health*, 942 S.W.2d 53, 57 (Tex.App.-Corpus Christi 1997, no writ). Independent contractors and others who perform tasks the details of which the governmental unit does not have the legal right to control are excluded. Thus, the statutory definition requires both control and paid employment.

While employers are responsible for the negligence of their employees under the theory of

vicarious liability, the general rule is that an employer is not liable for the acts or omissions of its independent contractors. See *Abalos v. Oil Dev. Co.*, 544 S.W.2d 627, 631 (Tex. 1976); *American Nat'l Ins. Co. v. Denke*, 128 Tex. 229, 95 S.W.2d 370, 373 (Comm. App. 1936). "Independent contractor" has been defined as "any person who, in the pursuit of an independent business, undertakes to do a specific piece of work for another person, using his own means and methods, without submitting himself to their control in respect to all its details." *Home Interiors & Gifts, Inc. v. Veliz*, 695 S.W.2d 35, 40-41 (Tex. App.-Corpus Christi 1985, writ ref'd n.r.e.) (citing *Pitchfork Land & Cattle Co. v. King*, 162 Tex. 331, 346 S.W.2d 598 (1961)). Whether one is an independent contractor is a question of law when there is no dispute as to the controlling facts and only one reasonable conclusion can be inferred. *Wackenhut Corp. v. Perez*, 865 S.W.2d 86, 89 (Tex. App.-Corpus Christi 1993, writ denied); *Sherard v. Smith*, 778 S.W.2d 546, 548 (Tex. App.-Corpus Christi 1989, writ denied). However, when there are disputed factual issues, and more than one reasonable conclusion can be inferred from the facts, a fact issue exists, and determination of whether a party was in independent contractor is an issue for the fact finder to determine.

The Texas Supreme Court has recently restated its long-standing test for determining whether a worker is an employee rather than an independent contractor: whether the employer has the right to control the progress, details, and methods of operations of the work. *Limestone Products Distribution, Inc. v. McNamara*, 71 S.W.3d 308, 312 (Tex. 2002) (citing *Thompson v. Travelers Indem. Co.*, 789 S.W.2d 277, 278 (Tex. 1990); *Farrell v. Greater Houston Transp. Co.*, 908 S.W.2d 1, 3 (Tex. App.-Houston [1st Dist.] 1995, writ denied)). An employer controls not merely the end sought to be accomplished, but also the means and details of its accomplishment. *McNamara*, 71 S.W.3d at 312 (citing *Thompson*, 789 S.W.2d at 278; *Darensburg v. Tobey*, 887 S.W.2d 84, 88 (Tex.

Civ. App.-Dallas 1994, writ denied); *Travelers Ins. Co. v. Ray*, 262 S.W.2d 801, 803 (Tex. Civ. App.-Eastland 1953, writ ref'd)). The right to control is measured by considering:

- (1) the independent nature of the worker's business;
- (2) the worker's obligation to furnish necessary tools, supplies, and materials to perform the job;
- (3) the worker's right to control the progress of the work except about final results;
- (4) the time for which the worker is employed; and
- (5) the method of payment, whether by unit of time or by the job.

McNamara, 71 S.W.3d at 312 (citing *Pitchfork Land & Cattle Co. v. King*, 162 Tex. 331, 346 S.W.2d 598, 603 (Tex. 1961); *Farrell*, 908 S.W.2d at 3; see also *Thompson*, 789 S.W.2d at 279; *United States Fid. & Guar. Co. v. Goodson*, 568 S.W.2d 443, 447 (Tex. Civ. App.-Texarkana 1978, writ ref'd n.r.e.)).

The summary judgment evidence shows that there is a genuine disputed issue of fact regarding whether the person operating the motor-driven vehicle or equipment was an "employee" of the Town of Addison. The Town of Addison claims that Jim Bowman Construction was an independent contractor; the summary judgment evidence indicates otherwise: The Town of Addison maintained control over how Jim Bowman Construction endeavored to construct the drainage system and drainage inlets on Plaintiff's property. (Bowman Aff. ¶ 5-7) The Town of Addison designed the plans for the drainage system to be constructed on Plaintiff's property. (Bowman Aff. ¶ 5) The Town of Addison was far more involved than simply hiring a third-party to accomplish the work. (Bowman Aff. ¶ 5-7)

The summary judgment evidence shows that Jim Bowman and its employees submitted

themselves to the direction of the Town of Addison during construction of the drainage system on Plaintiff's property. (Bowman Aff.¶ 5-8) Additionally, the motor-driven vehicles used in the construction of the drainage system were operated by employees (whether they were full-time Addison employees or Jim Bowman Construction employees) of the Town of Addison under the statutory and common law definitions of employee and by virtue of the fact that they are excluded as independent contractors. (Bowman Aff.¶ 5-8) It is unclear from the summary judgment evidence whether the Town of Addison supplied all or some of the other tools and equipment for the construction of the drainage system on Plaintiff's property.

The summary judgment evidence creates a fact issue about whether the Town of Addison exercised sufficient control over the details and method of construction of the drainage system on Plaintiff's property to prevent the Court from determining at this stage that Jim Bowman Construction was, as a matter of law, an independent contractor. Thus, the Town of Addison has not established as a matter of law that none of its employees operated the motor-driven vehicle which caused damage to Ms. Milliken's property.

Therefore, to the extent that the Town of Addison argues that its immunity was not waived because none of its employees operated the motor-driven equipment that damaged the property, that argument is, at this point, a disputed factual issue precluding summary judgment.

Nexus Between Damages and Operation of Motor-Driven Vehicle or Motor-Driven Equipment

The Town of Addison damaged Property through the operation of motor driven equipment. Addison's motion fails to address the allegation that it was negligent in causing damage to Plaintiff's property, and specifically attempts to blur the distinction between damages from the first flooding and the damages caused by the Town of Addison and its construction crews' negligence on Ms.

Milliken's property. Moreover, the Town of Addison incredibly claims that "Plaintiff's alleged damages [are] from flooding that occurred prior to the installation of the drainage system," see Motion at p. 10, and wholly fails to address Ms. Milliken's other damages claims. Milliken clearly pleaded the following:

The Town of Addison, in collaboration with the Developer Defendants, installed a drainage system that intruded upon Ms. Milliken's property beyond the easement owned by the Town of Addison. The Town of Addison . . . also damaged and/or removed valuable trees, shrubbery and ground cover and altered the terrain of Ms. Milliken's parcel while installing the drainage inlet. The installation of the inlet has not completely alleviated the unlawful diversion of water onto Ms. Milliken's property from the adjoining parcel. Indeed, rain events continue to result in the flooding of Ms. Milliken's property causing irreparable damages. The alterations performed by the Town and Defendant Developers have now permanently altered the drainage patterns of Plaintiff's land, and have created pooling and erosion.

(See Original Petition, ¶¶ 15 – 16.) Clearly, Ms. Milliken suffered additional damages beyond damages from the flooding caused by the diversion of surface water, a claim which the Town of Addison has ignored. Those damages include damage to trees, removal of trees shrubbery and groundcover, and alteration of the terrain of her property, as well as exceeding the boundaries of the easement. (Milliken Aff.¶ 18-20, 22-24) As the Town of Addison has not addressed these particular damages claim of Ms. Milliken in its motion, it is not entitled to summary judgment on Ms. Milliken's claims against it for damage to her property caused in the construction of the drainage system. TEX. R. CIV. P. 166a(c); *Mafrige v. Ross*, 866 S.W.2d 590, 591 (Tex. 1993).

Moreover, with respect to the damages claims regarding flooding, Ms. Milliken's property has subsequently flooded on at least two other occasions after construction of the drainage system on her property. (Milliken Aff.¶ 12) The drainage system was allegedly designed to alleviate the concern of flooding, but instead it led to more flooding. (Milliken Aff.¶ 12). The Town of Addison

negligently used motor-driven equipment and vehicles to construct the drainage system on Ms. Milliken's property and alter the terrain on her property, which further exacerbated the surface water diversion issues related to her property and led to the additional incidents of flooding that occurred subsequent to the construction of the drainage system on Ms. Milliken's property. (Milliken Aff. ¶¶ 12, 18) Through the use of motor driven equipment, the Town of Addison ripped out trees and damaged other trees which are now sick and dying from the injuries. Therefore with respect to the Town of Addison's claim that it is entitled to summary judgment because there is no evidence of a nexus between Ms. Milliken's damages and use of a motor-driven vehicle or motor driven equipment, the Court should deny the Town's motion for summary judgment.

Evidence of Each Element of a Negligence Claim against the Town of Addison Exists.

As stated earlier, the elements of a negligence cause of action are (1) duty, (2) breach of that duty, and (3) damages proximately caused by the breach of that duty. *Doe v. Boys Club of Greater Dallas, Inc.*, 907 S.W.2d 472, 477 (Tex. 1995).

The statutes of this state and the constitution of this state establish that the State and its governmental units have a duty to not damage or otherwise encumber or take the property of private citizens. (See Texas Water Code § 11.086 and Texas Constitution, Art. I, Section 17). The Town of Addison cannot in good conscience argue that it did not have a duty to not cause damage to Ms. Milliken's property.

Breach of the duty has been shown in two ways: first, the Town of Addison issued building permits to the Developers without requiring a drainage plan, and allowed the builders to bring in fill dirt and did not require that the builders remove the fill dirt. The negligent manner in which the building permits were issued, the negligent manner in which the Town ignored Ms. Milliken's

legitimate concerns, and the negligent manner in which the Town of Addison failed to require the Developers to remove the fill dirt until an adequate drainage plan could be designed and implemented establishes more than a scintilla of evidence that the Town of Addison breached its duty to not cause damage to Plaintiff's property. While outrageous and irresponsible, for these actions, the Town of Addison may be immune.

However, the summary judgment evidence establishes that the Town breached its duty to not cause damage to Ms. Milliken's property when it and its employee contractors damaged her property by damaging and removing trees, building the drainage system outside of the easement, removed shrubbery, and altered the terrain of her property. All of these actions show breach of the Town's duty to not damage Ms. Milliken's property.

Ms. Milliken has provided more than ample evidence regarding her damages and the fact that those damages were proximately caused by the Town.

Furthermore, to the extent that the Town of Addison challenges on no-evidence grounds Plaintiff's negligence claim against it, Plaintiff has already established in this response more than a scintilla of evidence of each element of her claim. Therefore, the Town of Addison is not entitled to summary judgment on Plaintiff's negligence claims under either a traditional summary judgment standard or a no-evidence standard.

**Evidence Exists for Each Element of Plaintiff's
Trespass Claim Against the Town of Addison.**

A trespass to real property is committed when a person enters another's land without consent. *Ward v. N.E. Tex. Farmers Co-op Elevator*, 909 S.W.2d 143, 150 (Tex. App.-Texarkana 1995, writ denied). The entry need not be made in person but may be made by causing or permitting a thing to

cross the boundary of a property. *City of Keller v. Wilson*, 86 S.W.3d 693, 714 (Tex. App.-Fort Worth 2002) (citing *Gregg v. Delhi-Taylor Oil Corp.*, 162 Tex. 26, 344 S.W.2d 411, 416 (1961); *Glade v. Dietert*, 156 Tex. 382, 295 S.W.2d 642, 645 (1956); *City of Arlington v. City of Fort Worth*, 873 S.W.2d 765, 769 (Tex. App.-Fort Worth 1994, writ dismissed w.o.j.)).

The Town of Addison developed the plans for placement of the drainage system, and hired a contractor to construct the drainage system according to its plans. (Bowman Aff. 3-7) Ms. Milliken gave permission for the Town of Addison to construct the drainage system in the easement, but did not give permission or assent to construction of any part of the drainage system or inlet outside of the easement. (Milliken Aff. ¶ 15-16) One of the drainage inlets is located wholly outside of the easement on Plaintiff's property, causing a trespass. (Milliken Aff. ¶ 18, 21, 23) A second drainage inlet is partially outside the easement, causing a trespass. (Milliken Aff. ¶ 23) The Town of Addison intended for the drainage inlets to be located where they were placed, the Town of Addison hired contractors to build the inlets, and the inlets were located by the contractors where the Town of Addison planned for them to be placed.

Therefore, the Town of Addison entered Ms Milliken's land without consent by causing or permitting the drainage inlets to cross the boundary of her property (and outside of the easement), resulting in a trespass to her real property.

Furthermore, to the extent that the Town of Addison challenges on no-evidence grounds Plaintiff's trespass claim it, Plaintiff has already established in this response more than a scintilla of evidence of each element of her claim. Accordingly, the Town of Addison has not shown that, as a matter of law, it is entitled to summary judgment on Ms. Milliken's trespass claim.

**Evidence Exists for Each Element of Plaintiff's Claim of
Unlawful Diversion of Water Against the Town of Addison.**

To prevail on a claim under TEXAS WATER CODE § 11.086, Ms. Milliken must prove a diversion or impoundment of the natural flow of surface water which caused damage to her property.

Kraft v. Langford, 565 S.W.2d 223, 229 (Tex. 1978).

The Town of Addison argues that Plaintiff did not articulate any specific action undertaken by it that caused the diversion of water from the Developer Defendants' property to the property of Plaintiff. What the Town does not address is Plaintiff's claims that the Town issued building permits to the Developers that permitted the Developers' activities, and failed to prohibit the Developers from causing a diversion of the natural flow of the surface water after Ms. Milliken warned the Town of Addison that the Developers were using fill dirt and that the Developers' actions would result in diversion of the surface waters from the Developers property to her property. The Town permitted the Developers' actions, and thus is also liable, as are the Developers, for diverting the natural flow of the surface water onto Ms. Milliken's property.

Moreover, the Town of Addison also designed the drainage system on Plaintiff's property and hired a contractor to build the drainage system on Ms. Milliken's property. (Milliken Aff. ¶ 14-18; Bowman Aff. ¶ 3-7) The alterations to the existing drainage system resulted in a change of the terrain of Ms. Milliken's property, which in turn diverted the natural flow of the surface water on her own property and surrounding properties into the middle of her yard, where it previously had not been. (Milliken Aff. ¶ 18, 22, 24).

The Town of Addison argues that the Water Code cannot be read to impose liability upon a third-party for failure to act to prevent diversion of surface water. Plaintiff does not seek to do this.

There is simple summary judgment evidence indicating that the Town of Addison took direct actions that resulted in the diversion of surface water onto Ms. Milliken's property. Addison is hardly a third-party.

Furthermore, to the extent that the Town of Addison challenges on no-evidence grounds Plaintiff's unlawful diversion of surface water claim against it, Plaintiff has already established in this response more than a scintilla of evidence of each element of her claim. Accordingly, the Town of Addison has not shown that, as a matter of law, it is entitled to summary judgment on Ms. Milliken's unlawful diversion of water claim.

**Evidence Exists for Each Element of Plaintiff's
Unconstitutional Taking of Private Property Claim.**

Article I, Section 17 of the Texas Constitution forbids the State or any State agency from taking, damaging, or destroying a person's property for public use without payment of adequate compensation. TEX. CONST. Art. I, § 17; *Texas Workforce Commission v. Midfirst Bank*, 40 S.W.3d 690, 696 (Tex.App.-Austin 2001). To establish a violation of this portion of the State Constitution, Ms. Milliken must prove that (1) the Town of Addison intentionally performed certain acts, (2) that resulted in a taking of her property, (3) for public use. *Texas Workforce Commission v. Midfirst Bank*, 40 S.W.3d 690, 696 (Tex.App.-Austin 2001) (citing *Green Int'l, Inc. v. State*, 877 S.W.2d 428, 434 (Tex.App.-Austin 1994, writ dismissed)). "Article I, Section 17 is itself a waiver of sovereign immunity from both suit and liability." *Texas Workforce Commission v. Midfirst Bank*, 40 S.W.3d 690, 697 (Tex.App.-Austin 2001) (citing *Steele v. City of Houston*, 603 S.W.2d 786, 791 (Tex. 1980)).

Texas law defines "taking, damage, or destruction" as (1) actual physical appropriation or

invasion of the property, or (2) unreasonable interference with the landowner's right to use and enjoy her property. *Allen v. City of Texas City*, 775 S.W.2d 863, 865 (Tex. App.-Houston [1st Dist.], 1989). Other courts for years have found "public use" when private land was used for the diversion of surface water, *Soule v. Galveston County*, 246 S.W.2d 491 (Tex.Civ.App.-Galveston 1951, writ ref'd, and when plaintiffs' property was flooded as a result of a drainage project, *City of Perryton v. Huston*, 454 S.W.2d 435 (Tex.Civ.App.-Eastland 1970, writ ref'd).

The Town of Addison argues that Plaintiff has only alleged a negligence claim, and thus there is no intentional act, and sovereign immunity attaches. This argument is flawed, as Article I, Section 17 is itself a waiver of sovereign immunity. Therefore, the Town of Addison is not immune from this claim.

The Town of Addison intentionally issued the building permits to the Developers, intentionally did not stop the developers from using fill dirt, and it intentionally designed the drainage system and intentionally designed and built the drainage system, which was constructed in accordance with the plans but was still outside the easement on Plaintiff's property. Defendant's claim that it did not engage in an intentional act leading to a taking of Ms. Milliken's property without compensation ignores reality and ample summary judgment evidence. Besides the physical location of the drainage inlets outside of the easement, Defendant Town of Addison has taken a defacto easement across Plaintiff's yard, where the drainage water was graded to go.

Moreover, the Town of Addison's argument that Plaintiff cannot establish any act of Defendant that proximately caused her damages is, likewise, controverted by the summary judgment evidence. Had the Town of Addison not designed a new drainage system for the easement on Plaintiff's property, and had the Town of Addison not hired contractors to construct the drainage

system, and had the Town of Addison assured that the drainage system remained within that easement, Plaintiff's property would not have been taken by installation of at least a portion of the drainage inlets outside the confines of the easement. (Milliken Aff.¶ 10, 12, 18, 22-24) The Town of Addison's design of the system and its hiring of the contractors to build the drainage system to its specifications proximately caused the taking of the property outside of the easement. It was foreseeable that if the Town of Addison deviated from the confines of the easement in any manner, Plaintiff's property would be "taken." Additionally, because the drainage system benefited and continues to benefit the public, the taking was for public use. (Milliken Aff.¶ 25)

Moreover, portions of Plaintiff's property were removed, such as trees, groundcover and shrubbery, for the benefit of the public.

The Town of Addison argues that Plaintiff consented to construction of the inlet. This is a misstatement. Plaintiff consented to construction of the drainage system in the existing easement. (Milliken Aff.¶ 15) Plaintiff did not consent to construction of the drainage inlet outside of the easement. (Milliken Aff.¶ 15) Defendant's argument that Plaintiff allowed Jim Bowman Construction onto her property has no bearing whatsoever on whether Plaintiff consented to a taking of her property (outside of the easement) for public use.

Defendant has produced no evidence that the drainage inlets are entirely within the confines of the easement, despite its protestations to the contrary. There is sufficient summary judgment evidence to show that the inlets are located outside of the easement and that other portions of Ms. Milliken's property were taken for public use. Defendant Town of Addison does not even attempt to address the defacto easement caused by the regarding of Plaintiff's yard, and the channeling of drainage water from the adjacent properties into that easement. At the very least, there is a fact issue

created, and therefore summary judgment is inappropriate on this basis.

Furthermore, to the extent that the Town of Addison challenges on no-evidence grounds Plaintiff's unconstitutional takings claim against it, Plaintiff has already established in this response more than a scintilla of evidence of each element of her claim. Accordingly, the Town of Addison has not shown that, as a matter of law, it is entitled to summary judgment on Ms. Milliken's unconstitutional takings claim.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Pat Milliken respectfully prays that Town of Addison's motion for summary judgment be denied in its entirety, and that the Court grant Ms. Milliken such other and further relief to which she may show herself justly entitled.

Respectfully submitted,

LOOPER, REED & MCGRAW
A Professional Corporation

By: _____

THOMAS H. KEEN
State Bar No. 11163300
ELIZABETH P. ARDANOWSKI
State Bar No. 00793275

4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Telephone: 214.954.4135
Facsimile: 214.953.1332

ATTORNEYS FOR PLAINTIFF PAT MILLIKEN

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served via facsimile transmission and certified mail, return receipt requested to the persons listed below on this 2nd day of April 2004, pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

Michael J. McKleroy, Jr.
MARIS & LANIER, P.C.
1450 Meadow Park Blvd., LB 702
10440 N. Central Expressway
Dallas, Texas 75231


VIA FACSIMILE (214) 706-0921

James W. Jennings, III
BELLINGER & DEWOLFE, LLP
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231

VIA FACSIMILE (214) 954-9541

Zach Mayer
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240

VIA FACSIMILE (972) 934-9200



THOMAS H. KEEN

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PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**ORDER GRANTING AGREED MOTION FOR
CONTINUANCE AND SCHEDULING ORDER**

On the ____ day of August, 2003, came on for hearing the Agreed Motion for Continuance filed by Plaintiff Pat Milliken ("Plaintiff") and Defendants Town of Addison ("Addison"), The Preston Group Designers and Builders ("Preston Group"), William Long ("Long"), Preston Homes, Inc. ("Preston Homes") and John B. Coleman ("Coleman")(collectively "Defendants")(Plaintiff and Defendant collectively the "Parties"). Upon consideration of the Parties motion, the papers on file with this court and arguments of counsel, this court is of the opinion that the Parties' motion should be GRANTED as follows:

IT IS ORDERED, ADJUDGED and DECREED that the trial currently scheduled in the above-styled and -numbered cause for December 8, 2003 is hereby stricken from the trial docket and the trial of this matter shall be rescheduled for the ~~12th~~ day of April, 2004.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the following deadlines shall be applicable to this matter:

Deadline to amend pleadings asserting new causes of action or defenses without leave of

court: 120 days prior to trial.

Deadline to amend all other pleadings without leave of court: 30 days prior to trial.

Deadline to file dispositive motions: 30 days prior to trial.

Deadline to file motions to exclude or limit expert testimony: 30 days prior to trial.

Deadline to file all other motions: 30 days prior to trial.

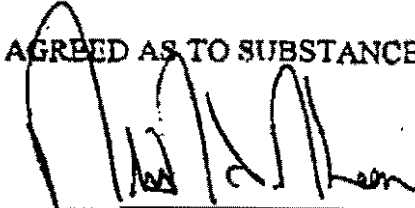
Deadline to complete discovery: 30 days prior to trial.

Deadline to complete mediation: 30 days prior to trial.

SIGNED this _____ day of August, 2003.

JUDGE PRESIDING

AGREED AS TO SUBSTANCE AND FORM:



Thomas H. Keen
Attorney for Plaintiff

Zach T. Mayer
Attorney for Defendants
Preston Group Designers
and Builders, Preston Homes, Inc.,
William Long and Jon B. Coleman



Michael J. McKeroy, Jr.
Attorney for Defendant
Town of Addison

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**ORDER GRANTING AGREED MOTION FOR
CONTINUANCE AND SCHEDULING ORDER**

PAGE 2

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Deadline to amend all other pleadings without leave of court: 30 days prior to trial.

Deadline to file dispositive motions: 30 days prior to trial.

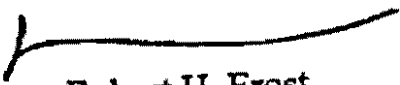
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Deadline to complete mediation: 30 days prior to trial.

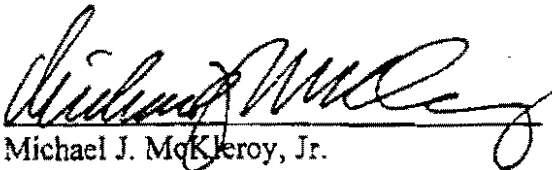
SIGNED this 19th day of August, 2003.


Robert H. Frost
JUDGE PRESIDING

AGREED AS TO SUBSTANCE AND FORM:

Thomas H. Keen
Attorney for Plaintiff

Zach T. Mayer
Attorney for Defendants
Preston Group Designers
and Builders, Preston Homes, Inc.,
William Long and Jon B. Coleman



Michael J. McKleroy, Jr.
Attorney for Defendant
Town of Addison

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**ORDER GRANTING AGREED MOTION FOR
CONTINUANCE AND SCHEDULING ORDER**

PAGE 2

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Deadline to amend all other pleadings without leave of court: 30 days prior to trial.

Deadline to file dispositive motions: 30 days prior to trial.

Deadline to file motions to exclude or limit expert testimony: 30 days prior to trial.

Deadline to file all other motions: 30 days prior to trial.

Deadline to complete discovery: 30 days prior to trial.

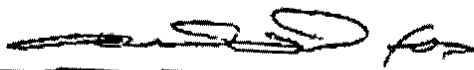
Deadline to complete mediation: 30 days prior to trial.

SIGNED this _____ day of August, 2003.

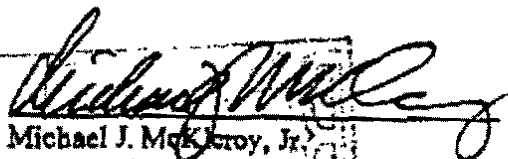
JUDGE PRESIDING

AGREED AS TO SUBSTANCE AND FORM:

Thomas H. Keen
Attorney for Plaintiff



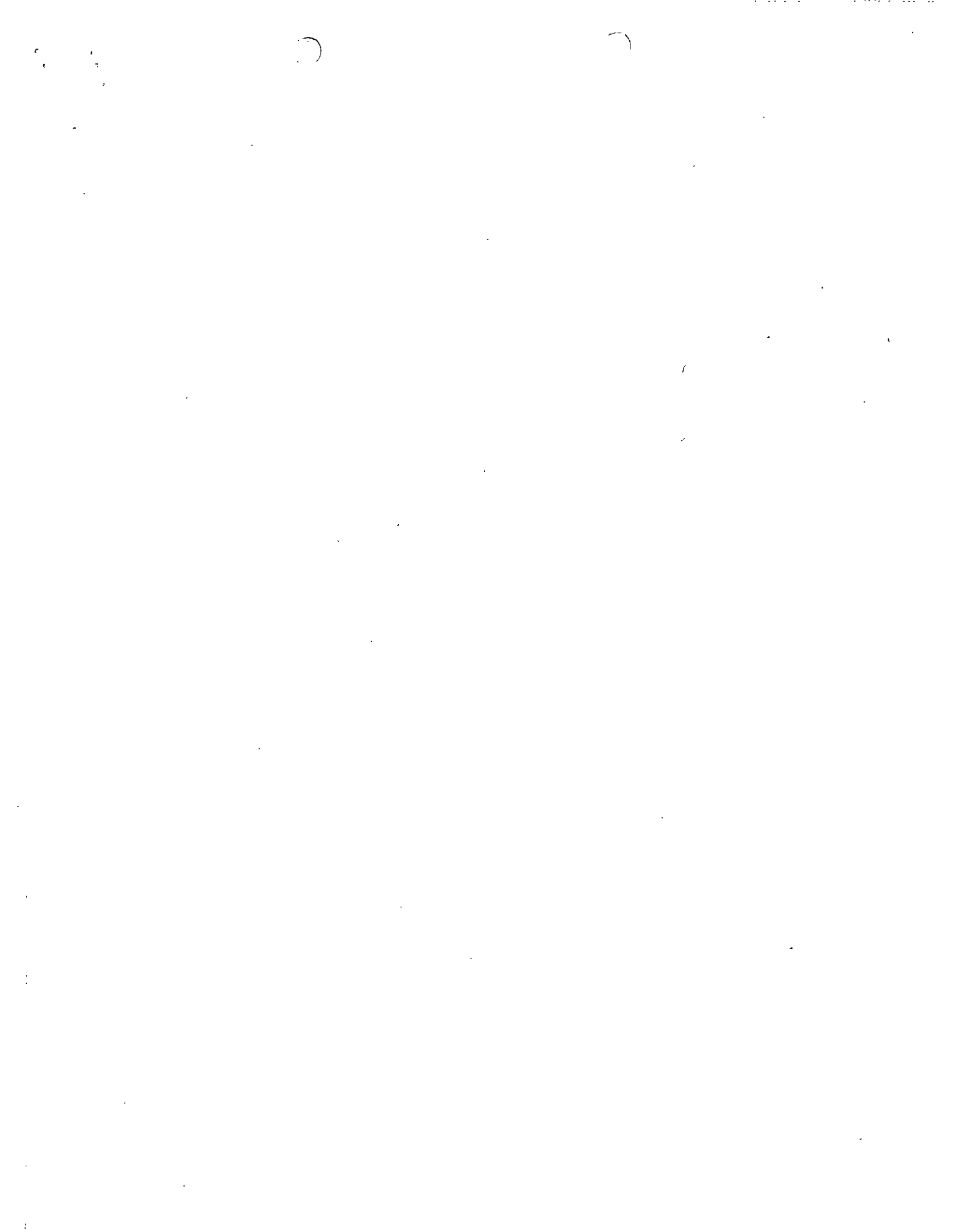
Zach T. Mayer
Attorney for Defendants
Preston Group Designers
and Builders, Preston Homes, Inc.,
William Long and Jon B. Coleman



Michael J. McKelroy, Jr.
Attorney for Defendant
Town of Addison

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**ORDER GRANTING AGREED MOTION FOR
CONTINUANCE AND SCHEDULING ORDER**



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FILED

CAUSE NO. 02-4715

2002 MAY 24 AM 11:48

PAT MILLIKEN,

Plaintiff,

vs.

TOWN OF ADDISON, THE PRESTON GROUP
DESIGNERS AND BUILDERS, WILLIAM
LONG, PRESTON HOMES, INC., JON B.
COLEMAN,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116 JUDICIAL DISTRICT

**PLAINTIFF'S FIRST ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF**

Plaintiff Pat Milliken ("Milliken") files her First Original Petition complaining of Defendants Town of Addison, The Preston Group Designers and Builders, William Long, Preston Homes, Inc., and Jon B. Coleman ("Defendants") and states as follows:

I.

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190, discovery is intended to be conducted under Discovery Control Plan Level 2.

II.

PARTIES

2. Ms. Milliken is an individual who resides in Dallas County, Texas.

3. Defendant Town of Addison is a municipality in Texas and may be served with process by serving the secretary, Carmen Moran, at 5350 Belt Line Road, Town of Addison, Dallas County, Texas 75001.

4. Defendant The Preston Group Designers and Builders is a Texas corporation whose principal place of business and home office is 2301 Ohio Drive, Plano, Texas 75093-3927, and may be served with process by serving its registered agent for service of process, Warren C. Lyon, at 5600 West Lovers Lane, Suite 228, Dallas, Dallas County, Texas 75205.

5. Defendant William Long is an individual who is a resident of Texas and may be served with process at his usual place of business, 5652 Gleneagles, Plano, Collin County, Texas 75093.

6. Defendant Preston Homes, Inc. is a Texas corporation whose principal place of business and home office is 4573 Bentley Drive, Plano, Texas 75093-7150, and may be served with process by serving its registered agent for service of process, William S. Banowsky, at 200 Crescent Court, Suite 1030, Dallas, Dallas County, Texas 75201.

7. Defendant Jon B. Coleman is an individual who is a resident of Texas and may be served with process at his usual place of business, 3801 W. Spring Creek Parkway, #1712, Plano, Collin County, Texas 75023.

III.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendants because they have done business in and have sufficient contacts with Texas and are amenable to service by a Texas court. The Court has jurisdiction over the controversy because Ms. Milliken's damages are within the

jurisdictional limits of the Court. Venue is proper in Dallas County, Texas because all or a substantial part of the events or omissions giving rise to the claims occurred in Dallas County, Texas. Additionally, the parcel of property damaged by Defendants is located in the Town of Addison, Dallas County, Texas.

IV.

STATEMENT OF FACTS

9. Ms. Milliken's residence is located at 14905 Lake Forest Drive, Town of Addison, Dallas County, Texas. Her home is located on a 1½ acre wooded parcel consisting of two lots. Besides her residence, her property is improved with, among other things, a pool.

10. On an adjacent parcel (previously one lot, but now subdivided into two lots) located south of Ms. Milliken's residence, Defendants The Preston Group Designers and Builders, Preston Homes, Inc. and Messrs. Long and Coleman (collectively the "Developer Defendants") began constructing homes. In developing the adjacent property, the Developer Defendants' activities included, but are not limited to, removing natural vegetation, grading, substantially elevating the parcel by hauling in dirt, installing cement decks and driveways, and modifying the parcel's natural water drainage.

11. The development of the adjacent parcel is reducing the permeability of the land and increasing the volume and velocity of the surface water runoff.

12. When Developer Defendants began bringing in fill dirt, in approximately August of 2001, Plaintiff began to raise questions about the drainage, the elevation of the lots, and the potential damage to her property. She was informed by the Town that the Developer Defendants

could put in as much fill as they wanted, even if they elevated the lot by twenty feet, and that the development of these lots would have no adverse drainage effects on her property.

13. Beginning on or about December 16, 2001, Ms. Milliken's home and parcel were flooded as a result of the Developer Defendants' development activities. Specifically, the Developer Defendants' alteration of the adjacent property's terrain resulted in the collection and diversion of the natural flow of surface water onto Ms. Milliken's property, in addition to increasing the velocity of runoff onto Plaintiff's property. The floodwaters intruded into her home, damaging or destroying both improvements and personal property, her pool, and is causing erosion.

14. As a result of these floodwaters, Ms. Milliken sustained irreparable damages in an amount in excess of the minimal jurisdictional limits of the Court.

15. Subsequent to the first flooding incident, the Town of Addison, in collaboration with the Developer Defendants, encroached upon Ms. Milliken's property to install a drainage inlet. Although the Town of Addison's Director of Public Works promised to install the inlet within the existing five foot drainage easement on Ms. Milliken's property, the Town of Addison, in collaboration with the Developer Defendants, installed a drainage system that intruded upon Ms. Milliken's property beyond the easement owned by the Town of Addison. The Town of Addison, in collaboration with the Developer Defendants, also damaged and/or removed valuable trees, shrubbery and ground cover and altered the terrain of Ms. Milliken's parcel while installing the drainage inlet. The installation of the inlet has not completely alleviated the unlawful diversion of water onto Ms. Milliken's property from the adjoining

parcel. Indeed, rain events continue to result in the flooding of Ms. Milliken's property causing irreparable damages.

16. The alterations performed by the Town and Defendant Developers have now permanently altered the drainage patterns of Plaintiff's land, and have created pooling and erosion.

17. The continued development and construction of homes on the adjacent property will further reduce the permeability of the land and increase the volume and velocity of the surface water runoff, causing additional flooding and erosion to Ms. Milliken's property.

V.

**FIRST CAUSE OF ACTION:
NEGLIGENCE**

18. The Developer Defendants owe a duty to Ms. Milliken to develop the adjacent property in a manner that does not harm Ms. Milliken's property. The Developer Defendants breached their duty. As a proximate cause of the Developer Defendants' acts or omissions, Ms. Milliken sustained and continues to sustain damages.

19. Additionally, Defendant Town of Addison, in collaboration with the Developer Defendants, owed a duty to Ms. Milliken not to damage her property while installing the drainage inlet within the existing easement on her property. But Defendant Town of Addison, in collaboration with the Developer Defendants, breached this duty while utilizing its motorized vehicles to modify the existing drainage system. As a proximate cause of the Defendants' acts or omissions, Ms. Milliken sustained and continues to sustain damages.

VI.

**SECOND CAUSE OF ACTION:
UNLAWFUL DIVERSION OF WATER**

20. Collectively, the Defendants' activities have and continue to divert the natural flow of surface water in such a manner as to overflow onto Ms. Milliken's property causing flooding and erosion. The Defendants' acts and/or omissions constitute a violation of the common law of the State of Texas and section 11.086 of the Texas Water Code. Ms. Milliken suffered and continues to suffer damages as a result of the Defendants' unlawful diversion of water.

21. Additionally, Developer Defendants were consciously indifferent to an extreme risk of harm to Ms. Milliken arising from the diversion of surface water and are therefore liable to Plaintiff for punitive and exemplary damages.

VII.

**THIRD CAUSE OF ACTION:
TRESPASS AND DAMAGE TO REAL PROPERTY**

22. The Developer Defendants' acts and/or omissions resulted in the flooding of Ms. Milliken's property and the erosion of soil. Similarly, Defendant Town of Addison, in collaboration with the Developer Defendants, entered upon Ms. Milliken's property and destroyed her valuable trees, shrubbery and ground cover and altered the terrain of her parcel. These acts and/or omissions occurred without the permission of Ms. Milliken. Collectively, the Defendants' acts and/or omissions caused and continue to cause damages to Ms. Milliken.

VIII.

**FOURTH CAUSE OF ACTION:
CONSTITUTIONAL VIOLATIONS**

23. Defendant Town of Addison authorized the development of the adjacent property by the Developer Defendants without a sufficient drainage plan. Prior to the development and construction of homes on the adjoining parcel, Ms. Milliken's property was not subject to flooding. However, subsequent to the development and construction of the homes, water emerged and continues to emerge and cover Ms. Milliken's property causing extensive damage to Ms. Milliken's home, personal property, land, and to the improvements thereon.

24. Additionally, Defendant Town of Addison, in collaboration with the Developer Defendants, installed a drainage inlet and modified the natural drainage characteristics on Ms. Milliken's property outside the boundaries of an existing easement. Prior to such modifications to Ms. Milliken's property, Defendant Town of Addison failed to obtain Ms. Milliken's permission and/or pay for the portion of her parcel used to install the inlet.

25. Defendant Town of Addison's acts constitute a taking, damaging or destroying of Ms. Milliken's property for or application to public use without adequate compensation having been made, in violation of Section 17 of Article 1 of the Constitution of the State of Texas, as well as the Fifth and Fourteenth Amendments of the United States Constitution.

26. Alternatively, the Town of Addison has illegally taken a portion of Ms. Milliken's property for private use, and Ms. Milliken has been damaged thereby.

27. Defendant Town of Addison was afforded notice of Ms. Milliken's claim in compliance with state law.

IX.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

28. The diversion and overflow of surface water is causing irreparable damage to Ms. Milliken by the flooding and erosion of her home and land which is unique in character, which damage will increase with the development and construction of homes on the adjacent property. As the development and construction of the homes occur, the permeability of the land will be reduced and the overflow of surface water will be increased, which will result in greater flooding and erosion to Ms. Milliken's home and property. Ms. Milliken has no adequate remedy at law for the damages suffered, which are ongoing and which will increase in the future.

29. Ms. Milliken seeks a temporary restraining order against Defendants, a temporary injunction and permanent injunction restraining and enjoining Defendants from:

- (a) Diverting the natural flow of surface water onto the property of Ms. Milliken in any manner including, but not limited to the alteration of the terrain of the adjacent property by development of the property; and
- (b) Changing or manipulating the grade of the property, erecting buildings or continuing to erect buildings or other improvements on the adjacent property.

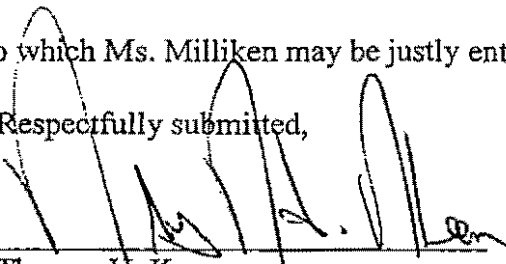
30. The application for temporary restraining order is supported by the Affidavits of Pat Milliken and Gary M. Pettit, which are attached hereto as Exhibits A and B and are incorporated herein for all purposes.

WHEREFORE, PREMISES CONSIDERED Ms. Milliken prays:

- (1) The Court issue an ex parte temporary restraining order restraining Defendants and all persons acting in privity or in concert with them from:
 - (a) Diverting the natural flow of surface water onto the property of Ms. Milliken in any manner including, but not limited to the alteration of the terrain of the adjacent property by developing the property; and
 - (b) Changing or manipulating the grade of the property, erecting buildings or continuing to erect buildings or other improvements on the adjacent property.
- (2) After final hearing, render permanent injunction enjoining Defendants and all persons acting in privity or in concert with them from:
 - (a) Diverting the natural flow of surface water onto the property of Ms. Milliken in any manner including, but not limited to the alteration of the terrain of the adjacent property by developing the property; and
 - (b) Erecting buildings or continuing to erect buildings on the adjacent property.
- (3) Issue a mandatory injunction requiring Defendants to restore the trees, landscaping, and shrubbery that they removed.
- (4) Judgment for actual damages in excess of the minimal jurisdictional limits of the Court sustained by Ms. Milliken by the acts of Defendants.

- (5) Exemplary damages against all Defendants.
- (6) Costs of court.
- (7) Such other and further relief to which Ms. Milliken may be justly entitled.

Respectfully submitted,



Thomas H. Keen
State Bar No. 11163300
Clayton E. Bailey
State Bar No. 00796151
Linda M. Dedman
State Bar No. 24007098

BAKER & MCKENZIE
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
Telephone: (214) 978-3000
Facsimile: (214) 978-3099

ATTORNEY FOR PLAINTIFF
PAT MILLIKEN

CERTIFICATE OF CONFERENCE

The undersigned certifies that on the 24th day of May, 2002, I spoke with counsel for the Town of Addison and they have no position on the Temporary Restraining Order since it is not sought against the Town, and to the best of my knowledge, the Developer Defendants are not represented by counsel.



Thomas H. Keen

CAUSE NO. _____

PAT MILLIKEN,
OF

§ IN THE DISTRICT COURT

Plaintiff,

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§
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vs.

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§

TOWN OF ADDISON, THE PRESTON GROUP
TEXAS
DESIGNERS AND BUILDERS, WILLIAM
LONG, PRESTON HOMES, INC., JON B.
COLEMAN,

§ DALLAS COUNTY,

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§
§

Defendants.

_____ JUDICIAL DISTRICT

AFFIDAVIT OF PAT MILLIKEN

Before me, the undersigned authority, personally appeared Pat Milliken, the Plaintiff in the above captioned case who, after being by me duly sworn deposed and said:

1. "My name is Pat Milliken. I am over the age of twenty-one (21), and am otherwise competent to make this Affidavit. This Affidavit is based upon my personal knowledge, and the facts contained herein are true and correct.

2. "I reside at 14905 Lake Forest Drive in the Town of Addison, Dallas County, Texas. I have lived there with my family for over twenty (20) years.

3. "In the latter part of 2001, it became apparent to me that the Developer Defendants were bringing in a large amount of fill dirt and depositing it on the two lots adjacent to my home. I was extremely concerned about the run-off and drainage from those lots onto my property, because it appeared that the lots were being raised quite a bit higher than their natural elevation. It looked to me like the lots were being raised anywhere from 4 to 6 feet above the natural elevation along the line where the immediately adjacent lot adjoins mine. While I raised those concerns to the Town of Addison, I was told that nothing could be done.

4. "In December of 2001, when the construction of homes on the two parcels was well under way, run-off from the two lots was diverted onto my property, and my home was flooded. The flooding damaged the furniture, carpet, electric equipment, CDs, and a big screen television, all of which were on the first floor of my house. In addition, my pool was flooded, and a great deal of dirt and other debris clogged the filtration system.



5. "Since December, my house has flooded a second time, with similar damages. In addition to the flooding that intrudes into the house, my yard has been eroded from the run-off, and attempts by the Town of Addison and the home developers to remedy the situation have altered the grade and slope of my backyard, and has been inadequate to keep my house from flooding. Run-off continues to deposit dirt and other debris from the sidewalks, driveway, back patio, and sometimes inside my home. During heavy rains, the runoff continues to threaten my home and my property.

6. "It is obvious to me from the grade change installed by the developers, and by observing the rain pouring over the wall erected by the developers into my yard, that this run-off comes directly from the two lots adjacent to my home. This kind of flooding never occurred before the activity of the Developer Defendants as set forth in the foregoing petition.

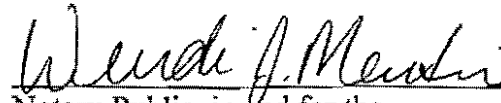
7. "I have read the statement of facts recited in the petition, and they are true and correct."

FURTHER AFFIANT SAYETH NOT.



Pat Milliken

SUBSCRIBED AND SWORN TO BEFORE ME on this 20nd day of May 2002.

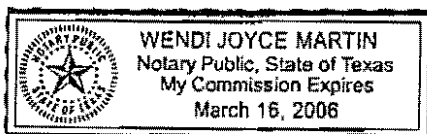


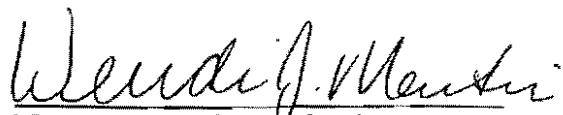
Notary Public, in and for the
State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged by Pat Milliken before me, this 20nd day of May, 2002.

(seal below)





Notary Public, in and for the
State of Texas

PAT MILLIKEN,

Plaintiff,

vs.

TOWN OF ADDISON, THE PRESTON GROUP
DESIGNERS AND BUILDERS, WILLIAM
LONG, PRESTON HOMES, INC., JON B.
COLEMAN,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

____ JUDICIAL DISTRICT

AFFIDAVIT OF GARY M. PETTIT

Before me, the undersigned authority, personally appeared Gary M. Pettit, P.E., who, after being by me duly sworn, deposed and said:

1. "My name is Gary M. Pettit. I am over the age of twenty-one (21), and I am otherwise competent to make this Affidavit. The facts herein are based upon my personal knowledge, and my opinion as a drainage expert, and they are true and correct to the best of my knowledge and belief.

2. "I am a professional engineer, licensed in the State of Texas and ten other states in the United States. I hold a bachelor of science in civil engineering from Texas Tech University, a master of science in civil engineering (water resources option), from Texas Tech University, and have completed numerous seminars, workshops, and short courses on hydrology, hydraulics, sedimentology, and storm water management. I have been a practicing consulting engineer since 1978, including the past 15 years as co-owner and president of Nationwide Water Resource Services, Inc. in Dallas, Texas.

3. "I personally inspected the Plaintiff's property located at 14905 Lake Forest Drive in the Town of Addison on May 6, 2002. I have also viewed the adjacent parcels about which the Plaintiff complains in the foregoing petition. I have also reviewed documents purporting to be drainage plans submitted by some of the Defendants to the Town of Addison, presumably in conjunction with their development of the sites adjacent to Ms. Milliken's property.

4. While a complete drainage study of the total drainage area has not been made available to me, it is clear from observations of the subject property that the construction of retaining walls, the addition of fill, and the construction of improvements on the two lots located immediately to the south of Ms. Milliken's property have significantly altered the natural flow of surface waters from the Developer Defendants' property onto the Plaintiff's property. In my opinion, the diversion of water violates Section 11.086 of the Texas Water Code, because the diversion and alteration of the natural drainage characteristics of the Developer Defendants'

*Kyle Kory's
DRAINAGE
MAP
6/10/02*



properties have caused, and unless corrected, will continue to cause, flooding on Ms. Milliken's property. In reviewing the photographs of the flooded portions of Ms. Milliken's home, it is clear that Defendants' diversion of water has caused damage. If the Defendants are allowed to continue their construction activities, the damages to Ms. Milliken are likely to continue.

5. "Although there has been a new storm water inlet placed near the western boundary line of Developer Defendants' property, just to the south of Ms. Milliken's property, I have serious reservations as to whether this system will control a sufficient rate and volume of storm water runoff to alleviate the flooding of Ms. Milliken's property, and it is apparent that, not all of the water diverted onto Ms. Milliken's property has come from the area where the storm water inlet is located. Based on my observations, it appears that a portion of the runoff from the adjacent lot has flowed over the retaining wall, directly onto Ms. Milliken's property, at a point quite some distance from the storm water inlet. (How much?)

BASED ON WHAT?

6. Based upon my current knowledge, observations, and review of documents that have been made available to me, it does not appear that an adequate storm water drainage study has been performed for the area and appropriate measures taken to ensure the protection of Ms. Milliken's property and residence from altered drainage associated with the Defendants' construction activities."

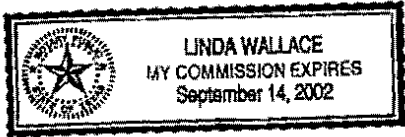
FURTHER AFFIANT SAYETH NOT.

What are opinions based on
1. Drainage area map
2. Flow rates
3. Drainage - rainfall events

Gary M. Pettit
Gary M. Pettit, P.E.



SUBSCRIBED AND SWORN TO BEFORE ME on this 21 day of May 2002.



Linda Wallace
Notary Public, in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged by Pat Milliken before me, this ___ day of May, 2002.

(seal below)

Is he aware of easements

Notary Public, in and for the State of Texas

Questions / Does he know how much flow the Drainage system can handle. Does he know how much flow

in 100 yr event

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., AND JON B. COLEMAN

Defendants.

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IN THE DISTRICT COURT

116TH JUDI CIAL DISTRICT

DALLAS COUNTY, TEXAS

AFFIDAVIT OF PLAINTIFF PAT MILLIKEN

STATE OF TEXAS

COUNTY OF DALLAS

§
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§

BEFORE ME, the undersigned authority, on this day personally appeared Pat Milliken, who is known to me, and after first being duly sworn upon her oath deposed and stated as follows:

1. "My name is Pat Milliken. I am over 18 years of age and I have never been convicted of a felony. The statements contained herein are all true and correct and are based upon my personal knowledge as set forth herein.

2. "I am the Plaintiff in this case. I own and have lived at the home located at 14905 Lake Forest Drive, Addison, Texas 75254 (the "House") for over twenty (20) years. I have lived continuously in the House ever since my former husband and I purchased it. My home is located on 1 and ½ acre wooded parcel consisting of two lots (the "Property"). In addition to the home, I have a pool located on the Property.

3. "During 2001, on a property located adjacent to and to the south of mine (which was previously one lot, but is now subdivided into two lots), Defendants The Preston Group Designers and Builders, Preston Homes, Inc., and Messrs. Long and Coleman (the "Developers") began constructing homes. Those two lots were originally one larger lot. Drainage from the Property previously sheet flowed naturally over my property towards the creek to the north of my house.

4. I learned that the Town of Addison initially issued the building permits to the Developers without requiring any sort of grading map, drainage map, or engineer's certification that the construction of any improvements on the two lots would not have a negative impact on adjacent properties.

5. "I saw that the Developers were bringing in fill dirt to the properties in approximately August 2001. I was immediately concerned about drainage because the elevations of the two lots were being raised much higher than mine, and I was afraid that the new elevations of the two lots would cause flooding on my property.

6. "I immediately began to raise questions with both the Town of Addison and the Developers about the existence of drainage plans, the elevation of the lots, and the potential for damage to my property. The Town of Addison and the Developers ignored my concerns and told me that they (the Developers) could put in as much fill dirt as they wanted, even if it meant that the lots would be raised by twenty-five feet. The Town of Addison and the Developers also assured me that the development of the lots would not create any adverse drainage affects on my property, despite the fact that there was no drainage plan in place at that time.

7. "As construction continued, I continued to express my concerns to the Town of Addison and the Developers. At some point prior to December 2001, the Town of Addison issued a temporary stop work order, in what I assume was a response to my growing concerns and the Town of

Addison's knowledge that the fill dirt being brought in by the Developers might indeed cause a problem. It is my understanding that the purpose, in part, of the stop work order was to determine if the Developers would need to provide a grading map, storm drainage map, regular drainage map, and engineer's certification that any improvements would have no adverse impact on the adjacent properties, including mine. Finally, the Town of Addison determined that a drainage plan was required.

8. "On November 16, 2001, the Developers sent a letter to Michael E. Murphy, P.E., Director of Public Works at the Town of Addison, and claimed that they would 1) "grade the property for proper drainage," 2) remove two sections of fence between my property and the Developers' properties, and 3) provide an engineer's report for the retaining wall and fill within two weeks of November 16, 2001. The letter reiterated the Developers' assume that the planned construction would not adversely impact neighboring properties. I was given a copy of the letter by someone with the Town of Addison.

9. "Based on my personal observations and conversations with employees of the Town of Addison, I learned that the Developers did not do what they had promised in their letter, and the Town of Addison took no further action to remedy the situation.

10. "In December 2001, I experienced severe flooding on my property and in my home. Based on my observations of the flow of the surface water off of the Developers' property onto mine, it was clear to me that the flooding of my property and home was directly related to the Developers' changes to their properties and the Town of Addison's having issued the building permits in the first place without requiring a drainage plan prior to issuance of the building permits. Specifically, the alteration of the adjacent properties' elevation and terrain resulted in the collection and diversion of the previous natural flow of surface water from the Developers' properties onto my property, and it

caused an increase in the volume and speed of the surface water runoff onto my property.

11. "On December 16, 2001, I personally informed employees at the Town of Addison that my property and home had experienced flooding, just as I had feared and been trying to avoid for four months.

12. "My home and property flooded a second time in January 2002, the patio flooded again in April, 2003, and my home flood and again on March 4, 2004.

13. "Had the Developers implemented a sufficient drainage plan, and had the Town of Addison required to the Developers to control the surface drainage prior to issuing the building permits to the Developers, no flooding of my home or property would have occurred.

14. "During the period from February 4, 2002 to March 18, 2002, the Town of Addison, Jim Bowman Construction, and the Developers continuously entered my property to construct a drainage system within the existing five (5) foot easement on the west side of my property. The Town of Addison requested that I sign a release fully relieving the Town of Addison of any wrongdoing or liability in connection with the construction of the drainage system on my property prior to the time that construction began. I refused to sign the release. I requested that I be shown the plans for the work on my property, and I was told that there were no plans and that the workers knew what to do without plans. At some point, the Town of Addison provided somewhat more detailed plans to me, which outlined how construction of the drainage system was to be accomplished and directed how the drainage system was to be built.

15. "I permitted entrance onto my property for construction in the easement because I was told it would alleviate the surface water and flooding problems caused by the Developers and the Town of Addison. I did not give anyone permission to place improvements on any of my property that was not a part of the easement (other than some general regarding, and resodding), nor did I give

permission to come on my property at other times.

16. "I did not design the plans for the drainage system in the easement, I did not have any right to direct the Town of Addison or Jim Bowman Construction in their construction of the drainage system, and I did not have any "hands-on" involvement in the construction or direction of construction of the drainage system in and around the easement. The only time I asserted any control was when I insisted that a earth dam located outside of the easement and constructed by the Town of Addison be removed from my property.

17. "During the construction of the drainage system in the easement and on my property, I observed the Developers occasionally send workers and/or motorized machinery to my property to aid in construction of the drainage system in the easement and on my property. From my observations, Town of Addison employees, Jim Bowman Construction employees and employees of the Developers took part in construction of the drainage system on my property.

18. "During the Town of Addison's, Jim Bowman Construction's, and the Developers' work on my property, my property was damaged, both inside and outside the confines of the easement. The drainage system itself intruded on the property beyond the confines of the easement, and the Town of Addison, Jim Bowman Construction, and the Developers damaged trees and removed several valuable trees, shrubbery, and ground cover from my property. They also altered the terrain of my property. The easement "improvements" did not alleviate the problems with surface water runoff and flooding created by the Town of Addison and the Developers, and my property has since again flooded due to the Developers' and the Town of Addison's diversion of the surface water at least two more times, since the attempt to alienate the problem was made.

19. "I am seeking damages for numerous things, some of which include damage to my property and home as a result of the Town of Addison's having using a motorized vehicle to install and/or

modify the existing drainage system on my property.

20. "I have read the affidavits submitted by the Town of Addison in its Motion for Summary Judgment, and I dispute some of the statements made in those affidavits. For instance, I personally observed Town of Addison employees involved in the construction of the improvement on my property, and I personally observed that the use of motor-driven vehicles caused damage to my property, such as the removal and damaging of trees, shrubbery and groundcover (both inside and outside the easement) from my property.

21. "It was my personal observation that the Town of Addison was controlling the progress and details of the work on my property. I observed the Town of Addison directing its employees, and Jim Bowman Contractors' employees in the work being done on my property while they were constructing the drainage system and inlets both inside and outside of the easement. 23. ~~From my~~ observations, the Town of Addison did not merely hire a contractor to construct the drainage system and leave Jim Bowman Construction alone to build it. It was my observation that the Town of Addison was actively involved in a fairly continuous manner in constructing the drainage system.

22. "The Town of Addison in collaboration with the Developer Defendants installed a drainage system on my property that permanently intruded upon my own property beyond the easement. The Town of Addison damaged and removed valuable trees, shrubbery and ground cover and altered the terrain of my property while installing the drainage system and inlets. The installation of the inlets has not completely alleviated the diversion of surface water onto my property from the adjoining properties. In fact, heavy rain continues to result in the flooding of my property and home causing irreparable damages. The alterations performed by the Town of Addison and the Developers have permanently altered the drainage patterns of my property and have created pooling and erosion on my property that did not exist prior to August 2001.

23. "The entirety of one drainage inlet and part of a second drainage inlet is located outside of the five-foot easement on my property, both of which occurred without my permission.

24. "Moreover, the Town of Addison is responsible for the design and construction of the drainage system on my property, and they hired a contractor to assist in building the drainage system on my property. The alterations to the existing drainage system resulted in a change of the terrain of my property, a change which I have personally observed and for which I did not give permission. The change of the terrain of my property in turn diverted the natural flow of the surface water on my own property and surrounding properties into portions of my yard where it previously had not been. The change resulted in a definite channel from the south and southwest corner of my property directly towards my house. I am suing the Town of Addison not only because of the flooding of my house, but because they took a portion of my property by permanently directing drainage.

25. "The drainage system is part of a system that includes the drainage of surface waters from other properties in the area, which benefits the public and is used by the public.

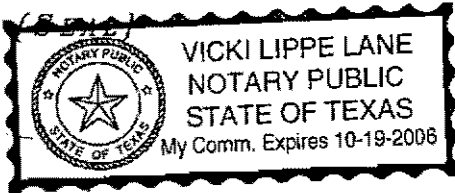
26. "I consented to construction of the drainage system in the existing easement. I did not consent to construction of any portion of the drainage system or a drainage inlet outside of the easement."

FURTHER AFFIANT SAITH NAUGHT.



PAT MILLIKEN

SUBSCRIBED AND SWORN TO BEFORE ME on April 2, 2004, to certify which witness my hand and seal of office.



Vicki Lippe Lane
Notary Public in and for the State of Texas

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CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., AND JON B. COLEMAN

Defendants.

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IN THE DISTRICT COURT

116TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

AFFIDAVIT OF JIM BOWMAN

STATE OF TEXAS

COUNTY OF COLLIN

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BEFORE ME, the undersigned authority, on this day personally appeared Jim Bowman, who is known to me, and after first being duly sworn upon her oath deposed and stated as follows:

1. "My name is Jim Bowman. I am over 18 years of age and I have never been convicted of a felony. The statements contained herein are all true and correct and are based upon my personal knowledge as set forth herein.
2. "I am the owner and General Manager of Jim Bowman Construction. I have been the owner of this business for twenty (20) years. I have a degree in civil engineering from the University of Texas at Arlington, which I received in 1972.
3. "During February and March 2002, the Town of Addison hired Jim Bowman Construction to

construct improvements to a drainage system in an easement at a residence in the Town of Addison. That residence was located at 14905 Lake Forest Drive, Addison, Texas 75254. It was my understanding that the residence and property were owned by Pat Milliken.

4. "From conversations at the beginning of the project that I had with employees of the Town of Addison, it was clear to me that the situation was politically charged among the Town of Addison, the persons developing the property adjacent to and to the south of Ms. Milliken's property, and Ms. Milliken. Therefore, I determined that I would be very careful to insure that I and Jim Bowman Construction followed the instructions of the Town of Addison to the letter and let the Town of Addison direct Jim Bowman Construction's work on the project on Ms. Milliken's property.

5. "During the course of the project on Ms. Milliken's property, Jim Bowman Construction used plans designed by the Town of Addison to construction the drainage system and inlets. Jim Bowman Construction did not design the plans used in the project. While the work was ongoing, the Town of Addison, on an almost daily basis, inspected and approved the work done by Jim Bowman Construction and gave me and my employees direction on the manner in which to accomplish of the work. As my employer on this project, the Town of Addison was more involved in the day to day accomplishment the project on Ms. Milliken's property than normal for my projects, probably because of the political implications.

6. "I allowed the Town of Addison to exert control over the progress of Jim Bowman Construction's work on the project because of the political nature of the situation. I therefore determined that Jim Bowman Construction would allow the Town of Addison to essentially control in almost every respect the details of how the project was accomplished. I made that decision because I wanted to insure that there were no problems caused by or resulting from Jim Bowman

Construction's work on the project. I did not want the situation to be exacerbated, and I was concerned that Jim Bowman Construction might become the target of a lawsuit if anything was done that was not strictly in the plans, or if anything went wrong.

7. "Not only was Jim Bowman Construction given the plans for the project on Ms. Milliken's property by the Town of Addison, the Town of Addison directed Jim Bowman Construction in the details of the accomplishment of the project. The Town of Addison maintained control over how Jim Bowman Construction constructed the drainage system and drainage inlets on Ms. Milliken's property.

8. "It is my opinion, based upon my observations on the property and many years of experience as a civil engineer and as a person involved in the construction business for twenty years, that the Town of Addison was attempting to remedy a surface water drainage problem created by the persons developing the property to the south of Ms. Milliken's property, and that the Town of Addison was trying to appease Ms. Milliken and alleviate the problems cause by surface water diversion and runoff after the property levels to the south of Ms. Milliken's were substantially elevated by the persons developing those properties."

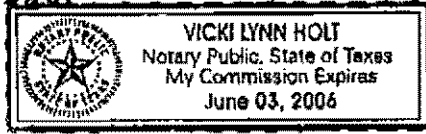
FURTHER AFFIANT SAITH NAUGHT.



JIM BOWMAN

SUBSCRIBED AND SWORN TO BEFORE ME on April 2, 2004, to certify which witness my hand and seal of office.

{SEAL}



Vicki Lynn Holt
 Notary Public in and for the State of Texas

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Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., L.B 702 10440 N. Central Expressway

Dallas, Texas 75231
214-706-0922
214-706-0921 (FAX)

awalker@marislanier.com

March 10, 2004

FAXED
3/10/04

VIA FACSIMILE ONLY

Lynn Chandler
Development Services Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

Post-it* Fax Note	7671	Date	3/10/04	# of pages	
To	Amy		From	[Signature]	
Co./Dept.			Co.	[Signature]	
Phone #			Phone #		
Fax #			Fax #		

Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

Re: Pat Milliken v. City of Addison
TML Claim No. 0200085821
File No. 607-066

Dear Gentlemen:

Attached hereto are drafts of your affidavits. Please review them for accuracy and if you have no changes, please sign them before a notary and fax back to me by **Friday, March 12, 2004**. We will need to file our Motion for Summary Judgment by next Monday. If there are changes that need to be made, please call me at my direct dial, 214-706-0922.

Thank you for your time and attention to this matter. Should you have any questions, comments or concerns, please do not hesitate to call.

Sincerely,

MARIS & LANIER, P.C.

[Handwritten Signature]

Amy D. Walker
Legal Assistant to Robert F. Maris

Enclosure

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

TOWN OF ADDISON, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC. and JON B. COLEMAN,

Defendants.

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IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

AFFIDAVIT OF MICHAEL E. MURPHY, P.E.

STATE OF TEXAS

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§
§

COUNTY OF DALLAS

BEFORE ME, the undersigned Notary Public, personally appeared the person known to me to Michael E. Murphy, P.E. who, upon being duly sworn, upon his oath deposed and stated the following:

1. "My name is Michael E. Murphy, P.E. I am more than eighteen (18) years of age, have never been convicted of a crime involving moral turpitude and am otherwise competent to provide an affidavit. The facts contained within this affidavit are within my personal knowledge and are true and correct.

2. "I am employed as a professional engineer licensed by the State of Texas. I have been so licensed by the State of Texas since 1987. I am currently employed as the Director of Public Works for the Defendant Town of Addison ("Defendant"). Prior to being employed as the Direct of Public Works, I was employed by Defendant as the Assistant Director of Public Works and as the

City Engineer. As the Assistant Director of Public Works and City Engineer, I was in charge of overseeing the engineering department with respect to their construction projects, capital projects, sewer and waste management projects. I have been employed as the Director of Public Works since 2000. My duties as the Director of Public Works include carrying on the duties of the City Engineer and to oversee the Water & Sanitary Sewer, Streets, Traffic Control, Solid Waste, Storm Water and Animal Control Departments.

3. "I am familiar with the property owned by Plaintiff Pat Milliken ("Plaintiff") located at 14905 Lake Forest Drive, Addison, Texas (the "Property"). I became aware of complaints made by Plaintiff regarding fill dirt being brought in by the developers of the properties located at 14885 and 14901 Lake Forest Drive, Addison, Texas, which are immediately to the south of the Property. When the initial building permits were issued to The Preston Group Designers and Builders ("The Preston Group") for the property located at 14901 Lake Forest Drive, Addison, Texas and by Preston Homes, Inc. ("Preston Homes") for the property located at 14885 Lake Forest Drive, Addison, Texas, it was determined that no additional drainage plans were necessary. The Preston Group and Preston Homes, together with their representatives Defendants William Long ("Long") and Jon Coleman ("Coleman"), respectively, are collectively referred to herein as the "Developer Defendants." However, I was not made aware at that time that the Developer Defendants intended to bring in the fill dirt. After observing the site after the fill dirt was brought in, I was concerned that the existing drainage plans for the construction of the adjacent properties would not be sufficient. Therefore, I requested additional drainage plans be submitted by the Developer Defendants, including a grading map and engineer's certification that any improvements will not have any negative impact upon adjacent properties before the Developer Defendants could continue making

improvements.

4. Additional drainage plans were submitted in October, 2001. True, correct and complete copies of the drainage plans are attached hereto as Exhibit "B-1," and made a part herein by reference. Before approving the additional drainage plans, I notified the Developer Defendants that Defendant would require that the Developer Defendants grade their property to direct water to the existing easement on the western boundary of the Property. Defendant further required the Developer Defendants to obtain engineer reports approving plans for the retaining wall between the Developer Defendants' properties and the Property and any grading toward that wall. In addition to verbally informing the Developer Defendants of Defendant's requirements, I passed along my recommendations to Lynn Chandler, the Building Official for Defendant. Lynn Chandler confirmed Defendant's requirements in two (2) letters to the Developer Defendants dated October 23, 2001 and November 8, 2001. True, correct and complete copies of the October 23, 2001 and November 8, 2001 letters are attached to the Affidavit of Lynn Chandler as Exhibits "A-6," and "A-7," respectively, and made a part herein by reference. In my opinion, based upon my observations of the Developer Defendants' properties and the Property, my experience, education and training, had the drainage work required by Defendant been performed, no flooding of the Plaintiff's Property would have occurred.

5. On November 16, 2001, I received a letter from Long confirming that the Developer Defendants agreed to re-grade the Property "for proper drainage," remove two sections of the fence between the property immediately adjacent to the Property and the Property and provide engineer reports for the retaining wall and fill, all within two (2) weeks. The letter confirmed that the planned construction will not have any negative impact on neighboring properties. A true, correct and

complete copy of the November 16, 2001 letter is attached hereto as Exhibit "B-2," and made a part herein by reference.

6. On or about December 17, 2001, I learned that the Plaintiff's Property had experienced flooding. I later determined that the Developer Defendants had not performed the drainage work which had been required by Defendant and promised by Developer Defendants prior to the flooding.

7. On or about February 1, 2002, I conferred with Plaintiff about constructing a drainage system within the five (5) foot easement owned by Defendant on the western boundary of the Property. A true, correct and complete copy of a letter dated February 1, 2002 to Plaintiff describing the construction of the drainage system is attached hereto as Exhibit "B-3," and made a part herein by reference. Plaintiff and Plaintiff's attorney, Tom Keen, verbally informed me that they consented to the construction of the drainage system within the five (5) foot easement owned by Defendant on the western boundary of the Property. work being performed. The work was to be performed by Jim Bowman Construction. During the construction, I further informed Plaintiff that the construction would re require the removal of two (2) trees located outside of the five (5) foot easement and offered to replace these trees with three (3) higher quality trees at Defendant's expense. A true, correct and complete copy of a letter dated February 19, 2002 to Plaintiff informing her of the removal of the trees is attached hereto as Exhibit "B-4," and made a part herein by reference. Again, Plaintiff verbally consented to the removal of the trees.

8. By March 18, 2002, all drainage work had been completed by Jim Bowman Construction. I have reviewed the drainage system constructed by Jim Bowman Construction. The drainage system is entirely within the five (5) foot easement owned by Defendant along the western

and southern boundaries of the Property.

9. I am a custodian of records for Defendant. Exhibits "B-1" through "B-4" are records that are kept by Defendant in the regular course of business, and it was in the regular course of business of Defendant for an employec or representative of Defendant with knowledge of the act, event, or condition, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. Exhibits "B-1" through "B-4" are exact duplicates of the originals."

FURTHER AFFIANT SAYETH NOT.

Michael E. Murphy
MICHAEL E. MURPHY, P.E.

SIGNED AND SUBSCRIBED TO BEFORE ME, the undersigned Notary Public, on the 15 day of March, 2004.

Candy Marie Martinez
Notary Public in and for
The State of Texas



607.066\msj-mm.mln.wpd

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: March 10, 2004

To: Mike Murphy Via Telecopier Number: (972)450-2837

To: Lynn Chandler Via Telecopier Number: (972)450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 11

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Autna at: 214-706-0932

Re: File No. 607-066; Pat Milliken v. Town of Addison

Message: See attached Affidavits to be executed by this Friday. Thanks.

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702 10440 N. Central Expressway

Dallas, Texas 75231

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: January 20, 2004

To: Mike Murphy Via Telecopier Number: 972-450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover +

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL Autna at: 1-214-706-0932

Re: Pat Milliken v. Town of Addison
File No. 607-066

Message: Attached please find a copy of the Defendant's Notice of Intention to Take Oral Deposition of Plaintiff, Pat Milliken. The location and time are stated on the deposition notice. If you need any other information, please do not hesitate to contact me at my direct line, 214-706-0922. Thanks.

Original will follow by mail Original will NOT follow by mail

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the numbers listed. Thank you.

ZUR.0275

CAUSE NO. 02-4715

PAT MILLIKEN

V.

TOWN OF ADDISION, THE PRESTON
GROUP DESIGNERS AND BUILDERS,
WILLIAM LONG, PRESTON HOMES,
INC., JON B. COLEMAN

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

116TH JUDICIAL DISTRICT

**DEFENDANT'S NOTICE OF INTENTION
TO TAKE ORAL DEPOSITION
OF PLAINTIFF PAT MILLIKEN**

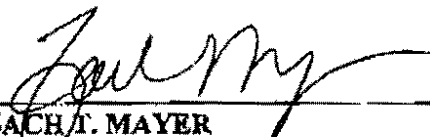
TO: **Pat Milliken, PLAINTIFF**, by and through her attorney of record, Thomas H. Keen,
Looper, Reed & McGraw, 4100 Thanksgiving Tower, 1601 Elm Street, Dallas, Texas
75201.

PLEASE TAKE NOTICE that at 10:00 a.m. on **Wednesday, January 21, 2004**, and
continuing thereafter from day to day until complete, **ZACH T. MAYER**, attorney for
Defendants will take the oral deposition of **Pat Milliken** pursuant to the Texas Rules of Civil
Procedure, at the offices of Defense counsel, Zach T. Mayer, located at 13355 Noel Road, Suite
1200, One Galleria Tower, Dallas, Texas, 75240. The deposition will be taken before a certified
court reporter from Steve Gentry and Associates, Inc. and a video person.

Said deposition, when so taken and returned according to law, will be used in evidence
upon the trial of said cause, and you are invited to attend and cross-examine the witness as you
may see proper.

Respectfully submitted,

FEF, SMITH, SHARP & VITULLO, L.L.P.



ZACH T. MAYER
State Bar No. 24013118
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240
(972) 934-9100
(972) 934-9200 [Fax]

ATTORNEYS FOR DEFENDANT
WILLIAM LONG, PRESTON
HOMES, INC., THE PRESTON
GROUP DESIGNERS AND
BUILDERS, AND JON B. COLEMAN

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record as indicated below, on this the 7th day of January, 2004.

Via Fax Only:

Thomas H. Keen
Looper, Reed & McGraw
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201

Via Fax Only:

Michael J. McKelroy, Jr.
Maris & Lanier, P.C.
1450 Meadow Park Blvd., LB 702
10440 N. Central Expressway
Dallas, TX 75231



ZACH T. MAYER

DEFENDANTS' NOTICE OF INTENTION TO TAKE ORAL DEPOSITION OF PLAINTIFF PAT MILLIKEN