

2004-2005

144

Milliken Addition 7/12/04- 1/3/05

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Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

January 3, 2005

VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 3347

Pat Milliken
14905 Lake Forest Drive
Addison, Texas 75254-7617

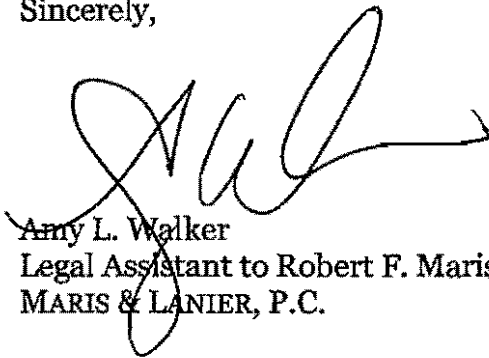
Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F in the 116th District Court, Dallas County
File No. 607-066

Dear Ms. Milliken:

Please be advised that a hearing has been scheduled for **February 16, 2005 beginning at 8:30 a.m.** on Town of Addison's Motion to Reconsider Motion for Summary Judgment and Second Supplemental Motion for Summary Judgment.

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

Sincerely,



Amy L. Walker
Legal Assistant to Robert F. Maris
MARIS & LANIER, P.C.

cc: Court Clerk, 116th Judicial District Court
600 Commerce Street, Suite 693
Dallas, Texas 75202

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

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513

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

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

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

PAT MILLIKEN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	116th JUDICIAL DISTRICT
TOWN OF ADDISON, THE PRESTON	§	
GROUP DESIGNERS AND BUILDERS,	§	
WILLIAM LONG, PRESTON HOMES,	§	
INC. and JON B. COLEMAN,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**ORDER ON TOWN OF ADDISON’S MOTION TO RECONSIDER
MOTION FOR SUMMARY JUDGMENT AND SECOND
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

On the ____ day of January, 2005, came on for hearing the Motion to Reconsider Motion for Summary Judgment and Second Supplemental Motion for Summary Judgment filed by Defendant Town of Addison (“Addison”). Upon consideration of Addison’s Motion, any timely filed responses and/or evidence, any objections to any timely filed responses and/or evidence and the arguments of counsel, this court is of the opinion that Addison’s Motion should be GRANTED as follows:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Pat Milliken (“Plaintiff”) claims against Addison for negligence and inverse condemnation are dismissed with prejudice, except to the extent that Plaintiff contends that Addison constructed the drainage system outside of the easement and on her property.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that, to the extent that Milliken contends that Addison constructed the drainage system outside of the easement

and on her property, that the amount of property taken amounts to no more than twenty-five (25) square feet and the value of said property is no more than \$19.00 per square foot and that, upon Addison's confession of judgment in the amount of \$475.00 on Plaintiff's claims for negligence and inverse condemnation, Plaintiff is awarded judgment against Addison in the amount of \$475.00.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff's claim for declaratory relief under the Texas Uniform Declaratory Judgment Act, including Plaintiff's claim for attorneys' fees, is hereby dismissed with prejudice.

This order is intended to dispose of all claims asserted by Plaintiff against Addison.

SIGNED on the ____ day of January, 2005.

JUDGE PRESIDING

607.066\msj-recon.ord.wpd

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
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Telephone: (214) 706-0920
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Direct: (214) 706-0922

December 21, 2004

Court Clerk, 116th Judicial District Court
600 Commerce Street, Suite 693
Dallas, Texas 75202

Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F
File No. 607-066

Dear Court Clerk:

Enclosed please find the original and one (1) copy of the following:

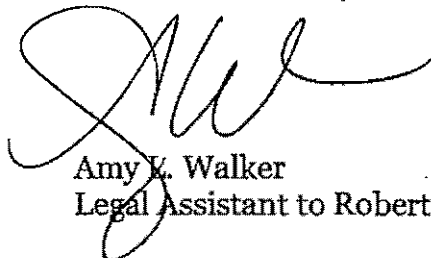
1. Town of Addison's Motion to Reconsider Motion for Summary Judgment and Second Supplemental Motion for Summary Judgment; and
2. Order on Town of Addison's Motion to Reconsider Motion for Summary Judgment and Second Supplemental Motion for Summary Judgment.

Please file the original and return a file-marked stamped copy of the enclosed back to me in the self-addressed stamped envelope provided herein.

Should you have any questions, please do not hesitate to contact me. Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Amy K. Walker
Legal Assistant to Robert F. Maris

Enclosure

COURT CLERK
December 21, 2004
PAGE 2

cc: Pat Milliken
14905 Lake Forest Drive
Addison, Texas 75254-7617
VIA CERTIFIED MAIL 7003 1680 0004 2873 3798
(w/encl.)

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR MAIL
(w/encl.)

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR MAIL
(w/encl.)

COURT CLERK
December 21, 2004
PAGE 3

bcc: Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
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Michael E. Murphy, P.E. ✓
Lynn Chandler
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
(w/encl.)

PAT MILLIKEN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	116th JUDICIAL DISTRICT
TOWN OF ADDISON, THE PRESTON	§	
GROUP DESIGNERS AND BUILDERS,	§	
WILLIAM LONG, PRESTON HOMES,	§	
INC. and JON B. COLEMAN,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**TOWN OF ADDISON’S MOTION TO RECONSIDER
MOTION FOR SUMMARY JUDGMENT AND SECOND
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Town of Addison (“Addison”) and, pursuant to Rule 166a(c) and (i) of the Texas Rules of Civil Procedure, files this motion to reconsider the motion for summary judgment, and supplement thereto, filed against the affirmative claims asserted by Plaintiff Pat Milliken (“Plaintiff”) and to grant further relief as to Plaintiff’s claim for declaratory judgment. In support thereof, the Parties respectfully show this Honorable Court the following:

I.

Summary of Argument

1. Addison filed a Motion for Summary Judgment, and supplement thereto, on March 16, 2004, pursuant to Rule 166a(c) and 166a(i) of the Texas Rules of Civil Procedure. Addison’s Motion for Summary Judgment attacked Plaintiff’s claims for negligence,

trespass, violation of §11.086 of the Texas Water Code and inverse condemnation. On or about July 20, 2004, this court entered an order granting Addison's Motion for Summary Judgment as to Plaintiff's claim for negligence, except to the extent that Plaintiff contends that Addison constructed the drainage system outside of the five (5) foot easement, as to Plaintiff's entire claim for trespass and as to Plaintiff's entire claim for violation of §11.086 of the Texas Property Code. This court denied Addison's Motion for Summary Judgment as to Plaintiff's claim for inverse condemnation. In addition, Plaintiff has added a claim under the Uniform Declaratory Judgment Act to declare the parties' rights in the easement.

2. In light of the recent Supreme Court of Texas decisions in *City of Dallas v. Jennings*, 142 S.W.3d 310 (Tex.2004) and *Tarrant Regional Water District v. Gragg*, 2004 WL 1439646, 47 Tex.Sup.Ct.J. 707 (Tex. June 25, 2004), Addison respectfully requests that this court reconsider its ruling on Addison's Motion for Summary Judgment as to Plaintiff's claim for inverse condemnation and to dismiss all of that claim or, in the alternative, limit it to the extent that Plaintiff contends that Addison constructed the drainage system outside of the five (5) foot easement.

3. Addison further seeks summary judgment on two (2) additional matters: i) as the only evidence before this court presented by Plaintiff is that drainage system encroaches upon twenty-five (25) square feet of Plaintiff's property, and that that property is worth \$19.00 a square foot, Plaintiff's negligence claim and inverse condemnation claim should be limited to a recovery of \$475.00; and ii) Plaintiff's claim for declaratory relief, and attorneys' fees arising therefrom, must be dismissed for the reason that the declaratory relief sought by Plaintiff was already in controversy in this case.

II.

Summary Judgment Evidence

3. Addison relies upon the following summary judgment evidence filed in support of Town of Addison's Motion for Summary Judgment filed on or about March 15, 2004.

III.

Relevant Facts

4. Plaintiff has sued Addison for inverse condemnation. In support of her claim for inverse condemnation, Plaintiff's First Amended Petition filed on or about July 26, 2004 asserts that:

"Addison authorized the development of the adjacent property by [Defendants Town of Addison, the Preston Group Designers and Builders, William Long, Preston Homes, Inc. and Jon B. Coleman] 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. 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."¹

¹ See Plaintiff's First Amended Petition, at paragraphs 25-26, filed on or about July 26, 2004 and made a part herein by reference.

5. In response to an Interrogatory, Plaintiff clarified the portions of land and property “taken” from Plaintiff as such: i) permanent taking of approximately 25 square feet where the drainage inlet extends beyond the existing drainage easement; ii) a temporary taking of approximately 5,500 square feet of the south side of Plaintiff’s property through “regrading, flooding and berming”; iii) a permanent, de facto drainage easement allegedly running from the southwest corner of Plaintiff’s property diagonally across her yard into her home created by the installation of the drainage easement; and iv) permanent taking of her home as a result of flooding.² Plaintiff further contends that the land is valued at \$19.00 per square foot.³

6. In support of Addison’s Motion for Summary Judgment, Addison provided evidence that it did not engage in any intentional act proximately causing the taking of Plaintiff’s property and that Plaintiff could provide no evidence otherwise.⁴ In response, Plaintiff states that:

“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...Besides the physical location of the drainage inlets outside of the easement, Defendant Town of Addison has taken a de facto easement across Plaintiff’s yard, where the drainage water was graded to go.”

² See Affidavit of Robert F. Maris, at paragraph 3, attached hereto as Exhibit “D,” and made a part herein by reference; see Plaintiff Pat Milliken’s Supplemental Answers to Town of Addison’s Interrogatories 2 and 40, at Plaintiff’s Supplemental Response to Interrogatory No. 2, attached hereto as Exhibit “D-1,” and made a part herein by reference.

³ See Exhibit “D-1,” at Response to Interrogatory No. 2.

⁴ See Addison’s Motion for Summary Judgment, at paragraphs 31-33 and 37, and made a part herein by reference.

IV.

Arguments & Authorities

A. Inverse Condemnation.

7. Addison contends that the evidence presented by Plaintiff at the prior summary judgment evidence is insufficient evidence of intent and causation under the new standards created by *Gragg* and *Jennings*, supra. The Supreme Court of Texas held that:

“when a governmental entity physically damages private property in order to confer a public benefit, that entity may be liable under Article I, Section 17 if it: 1) knows that a specific act is causing identifiable harm; or 2) knows that the specific property damage is substantially certain to result from an authorized government action—that is, that the damage is ‘necessarily an incident to, or necessarily a consequential result of the government’s action.’”

8. In doing so, the Supreme Court specifically rejected that a plaintiff need only show that the defendant did some intentional act that, whether purposefully or not, resulted in flooding or that a defendant could only be held liable where it was shown that he intended to damage the plaintiff’s property. The Court’s intent was to “comport with the definition of ‘intent’ in the Restatement of Torts, which we have applied in other contexts. Restatement (Second) of Torts §8A (1965)(‘Intent’ means ‘that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.’).”

9. With regards to: i) the temporary taking of approximately 5,500 square feet of the south side of Plaintiff’s property through “regrading, flooding and berming”; ii) the permanent, de facto drainage easement allegedly running from the southwest corner of

Plaintiff's property diagonally across her yard into her home created by the installation of the drainage easement; and iii) the permanent taking of her home as a result of flooding, Plaintiff's summary judgment evidence falls well short of this standard. Plaintiff's summary judgment evidence must provide facts showing that a specific act, such as installing the drainage system, is causing identifiable harm, ie., flooding; and that Addison knew that the specific property damage complained of was substantially certain to result from Addison's actions--that is, that the damage is 'necessarily an incident to, or necessarily a consequential result of' the government's action.

10. The only evidence presented by Plaintiff is that Addison intended to issue building permits, did not stop the Developer Defendants from using fill dirt, designed the drainage system and built the drainage system, in an attempt to *alleviate* any problems that Plaintiff may have had due the Developer Defendants' construction. There is absolutely no summary judgment evidence that Addison knew that any of these acts would result in the taking which Plaintiff is seeking to recover.

11. Therefore, in light of this new standard, Addison contends that it is appropriate for this court to reconsider its ruling on Addison's Motion for Summary Judgment and to grant Addison's Motion for Summary Judgment as to Plaintiff's claim for inverse condemnation, except to the extent that Plaintiff claims that the drainage system encroaches upon her property, pursuant to Rule 166a(c) and 166a(i) of the Texas Rules of Civil Procedure.

B. Limitation on Negligence and Inverse Condemnation Claim.

12. Arguing further, and in the alternative, Addison contends that Plaintiff's

claims for negligence and inverse condemnation should be limited to the twenty-five (25) feet and compensation set at \$19.00 per square foot. This evidence is undisputed as it comes from Plaintiff's own discovery responses.⁵ Therefore, to the extent that Plaintiff's claims for negligence and inverse condemnation are, or by this motion should be, limited to the extent that Plaintiff contends that Addison constructed the drainage system outside of the five (5) foot easement, this claim should be further limited by the uncontroverted summary judgment evidence and an order entered that Plaintiff's negligence claims and inverse condemnation claims, if proven, shall be limited to compensation at a rate of \$19.00 per square foot of twenty-five (25) square feet of property.

C. Declaratory Relief.

13. Addison further contends that it is entitled to summary judgment as to Plaintiff's claim for a declaratory judgment for the reason that the issue to be declared was already in controversy. A declaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the declaration will resolve the controversy. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex.1995). A declaratory judgment is not appropriate when a controversy is already pending and the declaratory judgment simply answers the claims and asks for no relief outside the scope of the main suit. *BHP Petroleum Co. v. Millard*, 800 S.W.2d 838, 841 (Tex.1990); *University of Tex. v. Ables*, 914 S.W.2d 712, 717 (Tex.App.–Austin 1996, no writ); *Whiteside v. Griffis & Griffis, P. C.*, 902 S.W.2d 739, 747 (Tex.App.–Austin 1995, writ denied); *HECI Exploration Co. v. Clajon Gas Co.*, 843 S.W.2d 622, 638 (Tex.App.–Austin 1992, writ

⁵ See Exhibit "D-1," at Response to Interrogatory No. 2.

denied). A declaratory judgment cannot be used solely as a vehicle for attorney's fees. *Ables*, 914 S.W.2d at 717 ; *HECI*, 843 S.W.2d at 638.

14. In the case at bar, Addison raised the easement, or more specifically the fact that Plaintiff consented to Addison's use of the easement and her waiver of any claim for damages thereto, as a defense to this suit.⁶ Addison then used these defenses in it's prior motion for summary judgment.⁷ Plaintiff was aware of these defenses and Addison's intent to rely specifically upon the terms of the easement when Plaintiff filed Plaintiff's First Amended Petition. Indeed, this fact is acknowledged in the pleading itself.⁸ In direct contradiction to the rules set forth above, Plaintiff then pleaded that the court determine the rights of the parties under the easement and prayed for attorneys' fees.

15. Because the rights of the parties under the easement was already in controversy, Plaintiff's claim under the Uniform Declaratory Judgment Act is wholly improper. Further, to the extent that Plaintiff filed her claim for a declaratory judgment solely to obtain attorneys' fees, this claim must be dismissed. Therefore, Addison respectfully requests that this Honorable Court enter an order dismissing Plaintiff's claim for a declaratory judgment.

V.

Prayer

WHEREFORE, premises considered, Addison respectfully requests that this

⁶ See Defendant Town of Addison's Original Answer, at paragraph 7.

⁷ See Defendant Town of Addison's First Supplemental Motion for Summary Judgment, at paragraphs 3-6.

⁸ See Plaintiff's First Amended Petition, at paragraph 30 ("Defendant Town of Addison has raised an easement, required to be given to the Town, as a defense to this action").

Honorable Court reconsider its ruling on Addison's Motion for Summary Judgment filed on March 16, 2004 and its First Supplement to Motion for Summary Judgment filed on or about June 11, 2004 and enter an order that Plaintiff take nothing by way of her as to Plaintiff's claim for inverse condemnation, except to the extent that Plaintiff alleges a taking of that approximately twenty-five (25) square feet where she contends the drainage inlet is outside of the drainage easement, that Plaintiff's claims for negligence and inverse condemnation be limited to the alleged taking of twenty-five (25) square feet and the compensation be limited to \$19.00 per square foot and that this court dismiss Plaintiff's claim for declaratory judgment and attorneys' fees.

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
1450 Meadow Park Building
10440 N. Central Expressway
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF CONFERENCE

I hereby certify that a conference with Plaintiff was attempted to discuss the relief sought in this motion and:

- _____ Plaintiff does not oppose the relief sought in this motion;
- _____ Plaintiff does oppose the relief sought in this motion and, therefore, a hearing is necessary;
- Plaintiff was unavailable for conference and, therefore, it is unknown whether Plaintiff opposes the relief sought in this motion and, therefore, a hearing is necessary.



Robert F. Maris

CERTIFICATE OF SERVICE

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

Pat Milliken
14905 Lake Forest Drive
Dallas, Texas 75254
VIA CERTIFIED MAIL RECEIPT
NO. 7003 1680 0004 2873 3798

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL



Robert F. Maris

607.00566\msj-recon.mtn.wpd

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

FIAT

PLEASE TAKE NOTICE that a hearing on Town of Addison's Motion to Reconsider Motion for Summary Judgment and Second Supplemental Motion for Summary Judgment is scheduled for hearing on the ____ day of January, 2005 at ____:____.m. before the Hon. _____, George L. Allen, Sr. Courts Building, 600 Commerce Street, Suite _____, Dallas, Texas 75202.

JUDGE PRESIDING
(Or Clerk of the Court)

EXHIBIT “D”

CAUSE NO. 02-4715-F

PAT MILLIKEN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	116th JUDICIAL DISTRICT
TOWN OF ADDISON, THE PRESTON	§	
GROUP DESIGNERS AND BUILDERS,	§	
WILLIAM LONG, PRESTON HOMES,	§	
INC. and JON B. COLEMAN,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

AFFIDAVIT OF ROBERT F. MARIS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, personally appeared the person known to me to Robert F. Maris who, upon being duly sworn, upon his oath deposed and stated the following:

1. “My name is Robert F. Maris. 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 currently an attorney employed by Maris & Lanier, P.C., the law firm representing Defendant Town of Addison (“Defendant”) in the above-styled and -numbered cause. I have represented Defendant in this case since the suit was filed.

3. On or about September 24, 2002, I prepared and Served Defendant Town of Addison’s First Requests for Admission, First Set Of Interrogatories and First Request for

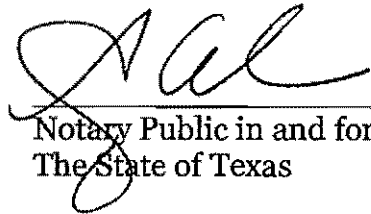
Production of Documents to Plaintiff Pat Milliken ("Plaintiff"). On or about August 31, 2004, Plaintiff served Plaintiff Pat Milliken's Supplemental Answers to Town of Addison's Interrogatories 2 and 48 ("Plaintiff's Supplemental Discovery Responses"). A true, correct and complete copy of Plaintiff's Supplemental Discovery Responses is attached hereto as Exhibit "D-1," and made a part herein by reference.

FURTHER AFFIANT SAYETH NOT.



ROBERT F. MARIS

SIGNED AND SUBSCRIBED TO BEFORE ME, the undersigned Notary Public, on the 20th day of December, 2004.



Notary Public in and for
The State of Texas

607.066\msj-recon-rfm.aff.wpd

EXHIBIT “D-1”

8-31-04

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

**PLAINTIFF PAT MILLIKEN'S SUPPLEMENTAL
ANSWERS TO TOWN OF ADDISON'S INTERROGATORIES 2 AND 40**

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.

As a supplement to Plaintiff's previous responses to Defendant Town of Addison's
Interrogatories, Plaintiff offers the following in addition to its previous response:

2. INTERROGATORY: If you have not unequivocally admitted Request for
Admission No. 1, then describe the damages you seek to recover from Addison in detail. Your
description should state the total amount of damages you seek from Addison broken down to
show each element of damages you seek from Addison (for example, but without limitation,
actual damages, reliance damages, consequential damages, exemplary damages, etc.), the dollar
amount that you attribute for each element of damages; and how the dollar amount attributed to
each element of damages was calculated.

ANSWER: Objection. Plaintiff does not seek damages solely from Addison. Some of
the damages sought will be joint and several. Actual damages include the temporary
taking of 5,500 square feet of my land and the permanent taking of approximately 25
square feet where the drainage inlet extends beyond the existing drainage easement.
Further, there is now a somewhat permanent easement across my yard and my house
where the drainage runs while attempts were made to fix the drainage problem the Town
of Addison created with the builders.

[Handwritten signature and date]

According to the builder's asking price for their land and new homes, the land only is worth \$19.00/sf. The temporary easement was taken for about four months. Beyond the value of the land, however, was the attendant damages imparted by the attempted fixing of the property drainage. The peace of my household was shattered throughout that process. The rental value of my house would be approximately \$6,000 per month.

They killed or removed 11 of my mature trees from the value of my property. If the trees could be replaced with similar type mature trees, it would probably cost between \$25,000 to \$50,000 per tree.

PLAINTIFF'S SUPPLEMENTAL RESPONSE: Without waiving Plaintiff's previous objection, and in an attempt to further clarify the portions of land and property "taken" from Plaintiff, Plaintiff contends that approximately 5,500 square feet of the south side of Plaintiff's property was "taken" through the regrading, flooding, and berming performed by the Town of Addison and its contractor. This property was temporarily taken for approximately 4 months between the time of the original flooding of Plaintiff's property, and the installation of the Town's permanent drainage improvements, which were completed in April of 2002.

In addition, because of the regrading of Plaintiff's property, as well as the creation of the drainage swale and the water source on Defendant builders' properties, a diagonal easement which runs from approximately 100 feet east of the southwest corner of Plaintiff's property to a point at an approximate 45 degree angle from the rear portion of the joint line between Plaintiff's property and Defendant builders Medley Estates, as a more or less permanent drainage easement outside of the bounds of any existing drainage easement. This drainage easement was created by the regrading of Plaintiff's property by the Town and its contractor, and had the effect of funneling surface drainage towards Plaintiff's home. According to Plaintiff's approximate calculations, this easement would be roughly equivalent to a triangle with one side of 250 feet running along Plaintiff's southern property line, another side running approximately 800 feet beginning in the southwest corner of Plaintiff's property line running at approximately a 45 degree angle to Plaintiff's home and the third side being approximately 150 feet running from Plaintiff's home to Plaintiff's southern property line where the first side began. Valuing the property at \$19.00 per square foot, which is the value which Plaintiff believes Defendant builders paid for their properties (approximately), multiplied by the area of the tracts taken, yield Plaintiff's "taking" damages. Plaintiff contends that the "de facto" drainage easement is permanent until such time as Plaintiff's property has been regraded to properly disburse the drainage, or another drainage solution is constructed.

Plaintiff had previously offered that the appropriate rental value of her house would be \$6,000.00 per month. Plaintiff has been unable to renovate her home to alleviate the mold, mildew, and odor problems arising from the water intrusion because Plaintiff cannot afford to do so, and further, until such time as drainage problems are alleviated, renovation of the improvements makes no sense. Plaintiff contends that a majority of the value of her home has been taken since the first flood, because of these problems. While

Plaintiff has continued to live in a part of her home, the downstairs portion of the home, encompassing the entertainment area, den, and storage area has been denied her, the enjoyment of the rest of the house has effectively been denied her as well, because of the smell, and general chaos caused by the joint Defendants' actions. Plaintiff seeks to recover the rental value of her home from the time of the first flood through renovation from the Town of Addison, as well as Defendant developers, to the extent there is joint and several liability between the two.

Plaintiff also contends that 11 of Plaintiff's mature trees were removed or damaged as the result of the regrading of the property, and equipment from Defendants' contractors on Plaintiff's property. Plaintiff contends that to replace those trees with similar type of mature trees, if this could even be done, would property cost between \$25,000 and \$50,000 per tree.

40. INTERROGATORY: Unless you have unequivocally admitted Request for Admission Nos. 38. And 39., above please identify each and every fact upon which you rely to support your contention that Addison took any portion of Plaintiff's property for public use without adequate compensation. Your response should specifically identify that area of the Property which you contend was taken.

ANSWER: SEE PICTURES showing activity outside easement. Plaintiff has received NO compensation

PLAINTIFF'S SUPPLEMENTAL RESPONSE: In addition to the response previously given, and subject to the same objection, Plaintiff would show that Defendant Town of Addison used public dollars and entered into a contract for the construction of public drainage improvements in an easement which was originally taken from Plaintiff without any compensation. The basis for such taking would have been, theoretically, to offset any addition to area drainage created by Plaintiff in redevelopment of its lots. Since Plaintiff has not redeveloped its lots, it has not caused any addition to the public drainage. Nevertheless, apparently to alleviate the drainage caused by Defendant developers, the Town of Addison embarked on a plan to handle public drainage across Plaintiff's property, including the diagonal drainage easement described above in response to Interrogatory No. 2, and the temporary mitigation area created the south one-third to two-thirds of Plaintiff's lot in the temporary mitigation area. Plaintiff contends that the Town of Addison offered no compensation for using these portions of her land, other than to offer to replace some trees with saplings, and resodding some of the temporary mitigation area with grass. Again, the measure of this damage would be the value per square foot for the permanent drainage easement, and the rental value per square foot of the temporary mitigation area during the temporary period.

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

I certify that a true and correct copy of the foregoing document has been forwarded via certified mail, return receipt requested, this 31st day August, 2004, in accordance with the Texas Rules of Civil Procedure to the following person:

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

J. Robert Miller, Jr.
Miller & Brown, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513



THOMAS H. KEEN

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: November 29, 2004

To: Mike Murphy

Via Telecopier Number: 972-450-2837

From: Marigny A. Lanier

Direct Phone Number : (214) 706-0920

Direct Telecopier Number : (214) 706-0921

Pages: Cover + _____

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

Re: Sapp & Waldrep v. Town of Addison, et al
TML No. 0500112185
File No. 607-105

Message: See attached report and mediation information.

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

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0930

MARIGNY A. LANIER
Attorney at Law

November 28, 2004

VIA FAX #512-491-2366

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

Re: Sapp & Waldrep v. Town of Addison, et al
TML No. 0500112185
Civil Action No. 3-03-CV-2593-B
File No. 607-105

Dear Ricky,

This is a preliminary report to facilitate the mediation which was ordered by the court before the Town of Addison was served with process in the referenced matter. The mediation is scheduled before Gary Eisenstat at Figari, Davenport & Graves, 901 Main Street, Suite 3400, Dallas, Texas on November 30, 2004 beginning at 9:00 a.m.

This is a class action lawsuit for discrimination based on failure to provide access accommodation case under Title II and Title III of the ADA. Plaintiff is seeking certification of a class of "well over 1000". Suit was originally filed in October 2003 against the Post properties partnerships which hold and operate the apartment homes and commercial properties in the Addison Circle urban center. The Town of Addison was added as a defendant just recently based on its ownership of the public infrastructure in the center. One of the plaintiffs is Kent Waldrep, a former TCU football player who was severely injured and is now confined to a wheelchair. His co-plaintiff is also paraplegic. They claim that the facilities including the public infrastructure and public accommodations located at the Addison Circle urban center fail to meet the specification of the ADA accessibility standards.

The public infrastructure includes the streets and sidewalks and right of ways and the parks. The plaintiff has presented the report of an accessibility expert/architect who has detailed close to 250 instances of noncompliance with the letter of the accessibility standards in curb ramps, sidewalk surfaces, parking and building entrances. Addison representatives state that the infrastructure plans were prepared to the accessibility specifications by a highly competent engineering firm so compliance was intended.

Ricky Garen
Texas Municipal League
Intergovernmental Risk Pool
November 24, 2004
Page 2

Addison Circle was a planned development project by the Post properties predecessors Gaylord Properties and Columbus Realty, i.e., the original developers. Addison funded the construction of the infrastructure, but assigned the construction management responsibilities to the developers. The master facility agreement specifies that the developers and successors must "use their best efforts to insure that all Improvements are completed . . . in accordance with the construction contract documents, plans and specifications." The construction services agreement for Phase IIB has in addition an indemnification provision benefitting the town as to all claims. These provisions are broad enough to impose responsibility on the Post properties defendant for any deficiencies in ADA compliance and the Town has so interpreted these provisions. Based on my conversations with the Post properties attorney, Post recognizes this obligation.

The claim against the Town is brought under Title II of the ADA which requires governmental entities to insure that facilities constructed by or on behalf of such entity to be designed and constructed in a manner that the facility is readily accessible to and usable by individuals with a disability. Compliance with the accessibility standards presumptively satisfies this obligation. Title II also prohibits discrimination in general. Plaintiffs specifically pled under the facility accessibility provision and the general discrimination statute. No specificity is provided on the exact manner of any discriminatory conduct. They allege injuries including inconvenience, embarrassment, humiliation, emotional distress, indignity and stigma. Equitable relief including an order for remediation is clearly available for noncompliance of the construction standards. The scope of available monetary relief is less clear. My research so far has uncovered only one reported opinion in our circuit on the scope of monetary damages. It holds that economic damages which are reasonably foreseeable may be awarded under Title II, but only if there is evidence of intentional discrimination. That court holds that emotional damages are not contemplated. It is a district court opinion which was reversed on other grounds by the Fifth Circuit. *U.S. v. Forest Dale, Inc.*, 818 F. Supp, 954 (N.D. Tex. 1993). Other circuits treat the matter differently and would allow damages for unintentional failures to meet the facility accessibility requirement and non-economic damages.

The Post properties defendants are being sued under Title III of the ADA and under a state statute which enforces the architectural barrier provisions and sets up presumed damages of no less than \$100 per person when there are violations of the accessibility standards.

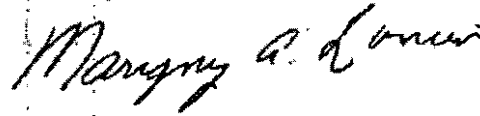
Obviously, where the potential monetary damages of each plaintiff are minimal, the class action vehicle gives the plaintiffs and their lawyers an opportunity to raise the stakes in this case beyond the mere requirement that the infrastructure be brought into compliance and beyond nominal monetary damages and attorney fees. The plaintiff attorneys have a track record under this statute. They have sued two other new developments in the metroplex area and have successfully extracted substantial sums along with mandatory remediation.

Ricky Garen
Texas Municipal League
Intergovernmental Risk Pool
November 24, 2004
Page 3

For purposes of the mediation on Tuesday, I have been told twice by the Post Properties attorney in so many words that Post acknowledges responsibility to the Town for noncompliance with the accessibility standard. He has handled previous cases against these same lawyers and expects the mediation to address the period of time allowed for remediation and the size of the class and how much Post will pay. Our position will be that the Town looks to the Post defendants to resolve all liability and to indemnify the Town.

I am enclosing the mediator's bill and the information letter. Mr. Eisenstat has mediated the prior two cases filed by plaintiffs' attorney and his fee obviously reflects his confidence level. ADA facility accommodation cases are relatively rare. Let me know if you need any more information before Tuesday.

Sincerely,



Marigny A. Lanier
MARIS & LANIER, P.C.

MAL/ad
Enclosures

cc:
Ken Dippel
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202
VIA FAX #214-672-2020

GARY D. EISENSTAT
ATTORNEY - MEDIATOR

3400 BANK OF AMERICA PLAZA
101 MAIN STREET
DALLAS, TEXAS 75202-3796

Telecopy: (214) 939-2090

(214) 939-2000

E-Mail: geisensu@figdav.com

November 23, 2004

Via Telecopy and Regular Mail
Marigny Lanier
MARIS & LANIER
10440 N. Central Expressway, Suite 1150
Dallas, Texas 75231

Re: *Patricia Sapp and Kern Waldrep v. Post Apartment Homes, L.P., Post GP Holdings, Inc., The Town of Addison, Texas; R. Scott Wheeler, in his capacity as Mayor of the Town of Addison, Texas, and the City Council of The Town of Addison, Texas; In the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3-03-CV-2593-B*

INVOICE

MEDIATION: November 30, 2004

MEDIATION FEE: \$1,500.00

DUE DATE: November 30, 2004

Please make check payable to, Figari & Davenport, L.L.P.
(Tax I.D. 75-2137988)

Counsel of Record
November 23, 2004
Page 3

It also would assist me if each of you would send me via mail copies of your latest applicable pleadings (e.g., Plaintiff's Complaint, Defendant's Answer), to the extent you have not previously done so.

For your information, also enclosed are the following documents:

- (a) An access map with directions to my office;
- (b) Rules for Voluntary Mediation; and
- (c) Invoice.

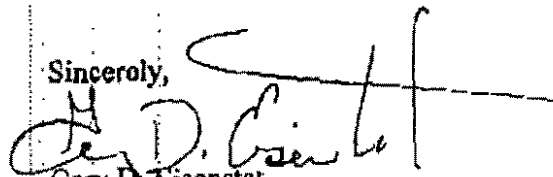
3. Mediation Fee.

The Mediation Fee covers the daily cost of the mediation session, scheduling and administration of the mediation, a working lunch during sessions that commence in the morning, and limited telephone conferences with the attorneys before and, if necessary, after the mediation session. Since we anticipate that the mediation session likely will not exceed one day, each party need only tender the Mediation Fee for a single mediation session. Any time spent beyond the first full day of mediation will be billed at the rate of \$150.00 per hour, per side.

All parties' fee payments, which may be in the form of cash, cashier's check, or check drawn on the bank account of (or payment guaranteed by) a law firm and made payable to Figari & Davenport, L.L.P., should be tendered prior to and no later than the date of the mediation session. For your information, the applicable Federal Tax I.D. Number is 75-2137988.

If you would like to discuss any of these matters further prior to the mediation session, please feel free to call me. I look forward to working with you to resolve this matter during mediation.

Sincerely,



Gary D. Eisenstat

GDE:alh
Enclosures

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: November 29, 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 + 3

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 letter re: hearing on Addison's Motion to Compel.

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.

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Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0922

November 29, 2004

VIA CERTIFIED MAIL NO. 700316800004 2873 3118

Pat Milliken
14905 Lake Forest Drive
Addison, Texas 75001

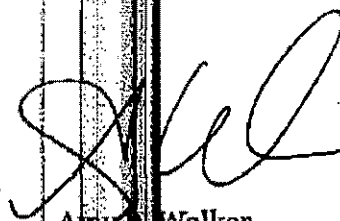
Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F in the 116th District Court, Dallas County
File No. 607-066

Dear Ms. Milliken:

The purpose of this letter is to advise you that the hearing on Town of Addison's Motion to Compel has been rescheduled to Friday, December 3, 2004 beginning at 10:00 a.m. in the 116th Judicial District Court.

Thanking you in advance for your time and attention,

Sincerely,



Amy A. Walker
Legal Assistant to Michael J. McKleroy, Jr.
MARIS & LANIER, P.C.

cc: Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA FACSIMILE

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA FACSIMILE

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

**Mike Murphy
Lynn Chandler
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001
VIA FACSIMILE**

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: October 28, 2004

To: Mike Murphy

Via Telcopier Number: 972-450-2837

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 6

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 first amended depo of Peter Hennessy.

___ 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

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

ROBERT F. MARIS
Attorney at Law

October 28, 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.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

VIA FACSIMILE

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513

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:

I am in receipt of Mr. Mayer's request to reschedule the deposition of Peter Hennessy to December 1, 2004. Therefore, attached hereto is the First Amended Notice of Oral Deposition of Peter Hennessy, P.E.

Thank you for your time and attention to this matter.

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 Robert E. Maris

cc: **VIA FACSIMILE**
Mike Murphy
Steve Chutchian
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/encl.)

CAUSE NO. 02-4715-F

PAT MILLIKEN,

Plaintiff,

v.

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

Defendants.

§
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§
§
§

IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FIRST AMENDED NOTICE OF ORAL DEPOSITION OF PETER F. HENNESSY, 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.
- To: Defendant Legacy Bank of Texas, by and through its attorney of record, J. Robert Miller, Jr. , MILLER & BROWN, L.L.P., 400 South Ervay Street, Dallas, Texas 75201-5513.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of Peter F. Hennessy, P.E. at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on December 1, 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 will be present at the deposition.

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 October 28, 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

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA FACSIMILE



Robert F. Maris

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: October 26, 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 + 6

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 depo notice of Peter F. Hennessy, P.E.

Original will follow by mail Original will NOT follow by mail

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Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

ROBERT F. MARIS
Attorney at Law

October 26, 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.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

VIA FACSIMILE

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513

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

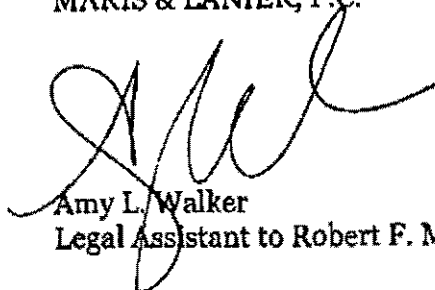
Dear Counsel:

Enclosed please find the Notice of Oral Deposition of Peter F. Hennessy, P.E. Mr. Hennessy's deposition has been scheduled for **November 30, 2004 beginning at 10:00 a.m. at our office**. If this date/time is not agreeable with you, please telephone me at my direct dial, 214-706-0922, and I will be happy to reschedule.

Thank you for your time and attention to this matter.

Sincerely,

MARIS & LANIER, P.C.

A handwritten signature in black ink, appearing to read 'AW', is written over the typed name and title.

Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure

cc: **VIA FACSIMILE**
Mike Murphy
Steve Chutchian
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/ encl.)

CAUSE NO. 02-4715-F

PAT MILLIKEN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	116th JUDICIAL DISTRICT
TOWN OF ADDISON, THE PRESTON	§	
GROUP DESIGNERS AND BUILDERS,	§	
WILLIAM LONG, PRESTON HOMES,	§	
INC., JON B. COLEMAN and	§	
LEGACY BANK OF TEXAS,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

NOTICE OF ORAL DEPOSITION OF PETER F. HENNESSY, 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.
- To: Defendant Legacy Bank of Texas, by and through its attorney of record, J. Robert Miller, Jr. , MILLER & BROWN, L.L.P., 400 South Ervay Street, Dallas, Texas 75201-5513.

Please take notice that Defendant Town of Addison ("Defendant") will take the oral deposition of Peter F. Hennessy, P.E. at Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 on November 30, 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 will be present at the deposition.

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 October 26, 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

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA FACSIMILE



Robert F. Maris

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702
10440 N. Central Expressway
Dallas, Texas 75231

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: October 26, 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 + 3

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 re: hearing scheduled on Town of Addison's
Motion to Compel for November 29, 2004 at 2:00 p.m.**

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

Telephone: (214) 706-0920
Telefax: (214) 706-0921
Direct: (214) 706-0925

ROBERT F. MARIS
Attorney at Law

October 26, 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.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

VIA FACSIMILE

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513

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

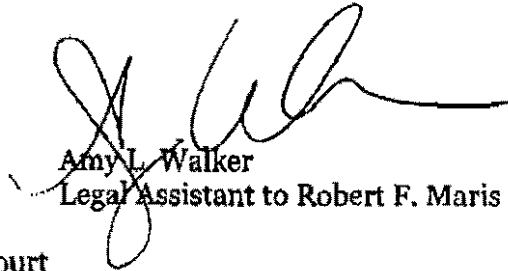
Dear Counsel:

This letter is to advise you that Defendant Town of Addison's Motion to Compel has been reset for hearing on **November 29, 2004 at 2:00 p.m.**

Thank you for your time and attention to this matter.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

cc: Court Clerk, 116th Judicial District Court
600 Commerce Street, Suite 693
Dallas, Texas 75202

cc: **VIA FACSIMILE**
Mike Murphy
Steve Chutchian
Town of Addison
P.O. Box 9010
Addison, Texas 75001

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: September 17, 2004

To: Mike Murphy Via Telecopier Number: (972)450-2837
To: Steve Chutchian Via Telecopier Number: (972)450-2837
To: Bruce Grantham Via Telecopier Number: (972)864-2334

From: Amy L. Walker, Legal Assistant

Direct Phone Number : (214) 706-0922

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 2

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 letter re: pre-inspection meeting.

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

214-706-0921 (FAX)

September 17, 2004

VIA FACSIMILE

Zach T. Mayer
Fee Smith Sharp & Vitullo, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

VIA FACSIMILE

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513

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 Robert:

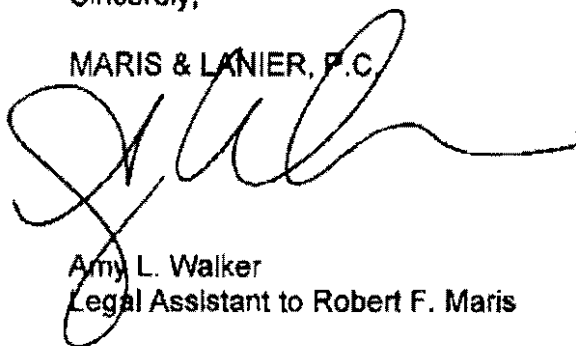
This letter is to advise you that we have scheduled a pre-inspection meeting for **Monday, September 20, 2004 beginning at 3:00 p.m.** The meeting will take place at the Finance Building, located at 5350 Beltline Road, Addison, Texas 75240. Mr. Maris, Mike Murphy, Steve Chutchian, and the surveyor, Bruce Grantham, P.E. will be present at the meeting. Each of you and your respective experts are invited to attend.

Also, I am attaching Grantham & Associates, Inc.'s survey estimate for your client's consideration in splitting the cost of same.

If 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

cc: **VIA FACSIMILE**
Mike Murphy
Steve Chutchian
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/o encl.)

VIA FACSIMILE
Bruce Grantham, P.E.
Grantham & Associates, Inc.

9-15-04

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, AND LEGACY BANK OF TEXAS,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S REQUEST FOR DISCLOSURE**

TO: LEGACY BANK OF TEXAS, by and through its attorney of record, J. Robert Miller, Jr., Miller & Brown, L.L.P., 400 South Ervay Street, Dallas, Texas 75201-5513.

PAT MILLIKEN submits the following responses to LEGACY BANK OF TEXAS' 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 has just recently become aware that Legacy Bank has sold the property. Their buyer is a necessary party to this action..

- (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 previously served. Specifically as to this Defendant, the claim relates to the current status of drainage from the Legacy Bank lot to adjacent lots, and any liability the Bank may have for conveying the property to the new owner without full disclosure of the pending suit.

- (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. As against this Defendant, continued conditions which relate to the diminution of value of Plaintiff's property from the time of Legacy Bank's ownership to the present.

- (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.
7. Gary Petit - Knowledge of inadequate construction measures to control offsite drainage. Lack of adequate drainage studies to effect a solution.

(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. David Knighton (see attached resume).
3. Peter F. Hennessy, P.E. (see attached resume)
4. 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. Existing conditions of drainage from adjacent lots contribute to "pooling" in areas indicated by Plaintiff.
4. 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. See attached.
4. 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 with discovery previously produced. None from Defendant Legacy Bank.

(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.

Respectfully submitted,

LOOPER KEED & 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

ATTORNEY FOR PLAINTIFF PAT MILLIKEN

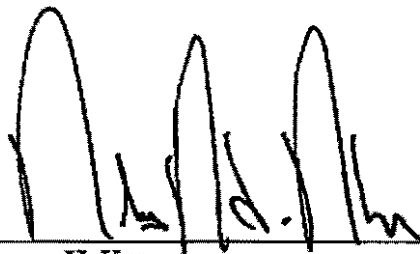
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been forwarded via certified mail, return receipt requested, this 15th day September, 2004, in accordance with the Texas Rules of Civil Procedure to the following person:

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

J. Robert Miller, Jr.
Miller & Brown, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513



THOMAS H. KEEN



HENNESSEY ENGINEERING, INC.

1417 W. MAIN ST. - SUITE 100 - CARROLLTON, TEXAS 75006-6912
(972) 245-9478 - FAX (972) 245-7087

Mr. Thomas LL Keen

August 30, 2004

Looper, Reed and McGraw, Attorneys

Thanksgiving Tower

1601 Elm Street

Dallas, Texas 75201

Re: Mrs. Pal Millikan, Resident

14905 Lake Forest Drive

HE: 0407.05

Phone: 214-237-6351

Fax: 214-953-1332

Attorney Client Privilege

Dear M. Keen,

On August 16, 2004, topographical survey readings were taken at 14905 Lake Forest, Addison, Texas. Since the construction of the house to the south, the resident stated there was a history of flooding at the lower back porch and pool area and of water ponding along the front side of the house. A level loop was used to take spot grade elevations at approximately 50-foot intervals.

The readings confirmed the problem drainage areas the resident described. The ponding along the house in the front yard is due to a low-lying area just in front of the house and east of the entry steps to the front door. This area should be recontoured ensuring drainage away from the house and channeled toward Lake Forest Drive.

The flooding occurs in the back on the lower porch and pool area and inside the lower level of the house. It is caused by a raised area or berm and defined by a cross-tie retaining wall on the south side of the backyard that deflects run-off water toward the house. The water then skirts around a small stone wall and under a wood dock, where it then falls onto the lower porch and pool area.

Recent improvements to the property to the south have included a stone retaining wall with multiple 2" drain holes that drain water pooled up against the wall. There are approximately 34 of these drain holes, about 5 to 8 feet apart from each other, along a majority of the wall. These pipes feed run-off water from the elevated property to the south onto the surveyed property, increasing the amount of run-off water on the property and the chances of flooding. Possible solutions to this problem would be to construct Swale 1 beginning at the southwest corner of the house and running northwest below the cross-tie wall and intersecting with the swale on the west side of the property that leads to a box inlet in the northwest corner of the property. This Swale 1 would channel the water from the adjoining property to the south.

A secondary swale, Swale 2, should be constructed south of the stone retaining wall and running parallel with the wall in a northwesterly direction and turning north after clearing the steps of the wooden deck. This Swale 2 would intersect the inlets along the north boundary line. It is also recommend to extend the stone retaining wall past the wood deck, which would further ensure drainage away from the patio area. There are 4-2'x2' grate inlets along the fence on the north side of the property that handle the drainage from the south. The drains and the 12" pipe servicing the drains are clogged with leaf and grass clippings, which must be cleared.

Some of the grading problems appear to be preexisting prior to the improvements of adjoining property to the south of the site. However, the drainage problems have multiplied in their severity due to the redirection of the volume of water from the improvements on the south adjoining property.

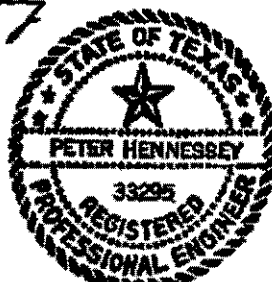
Yours Sincerely,


Peter F. Hennessey, P.E.

President

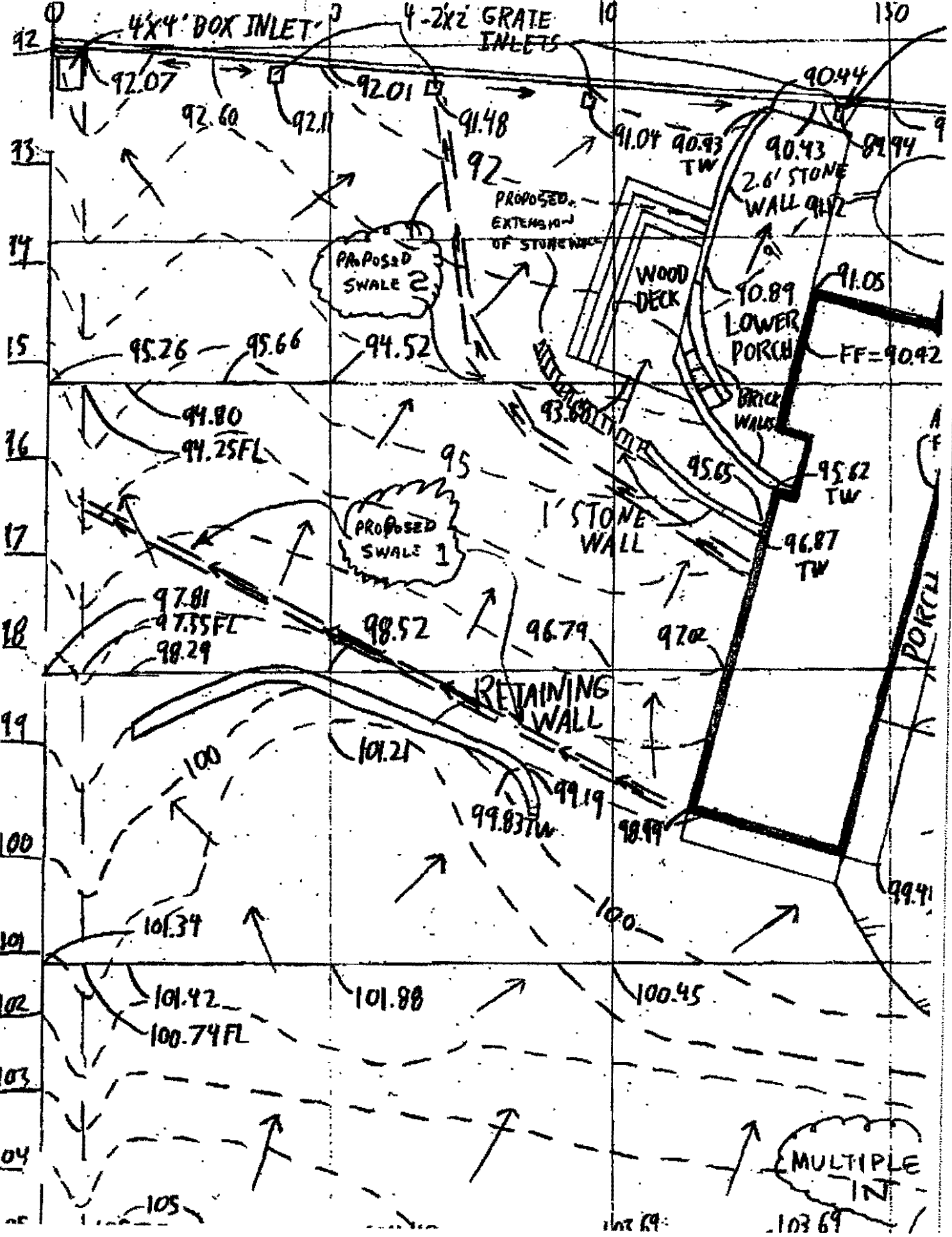
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HE\Word\2004\J0407_05




Jim Lindley

Technical Manager



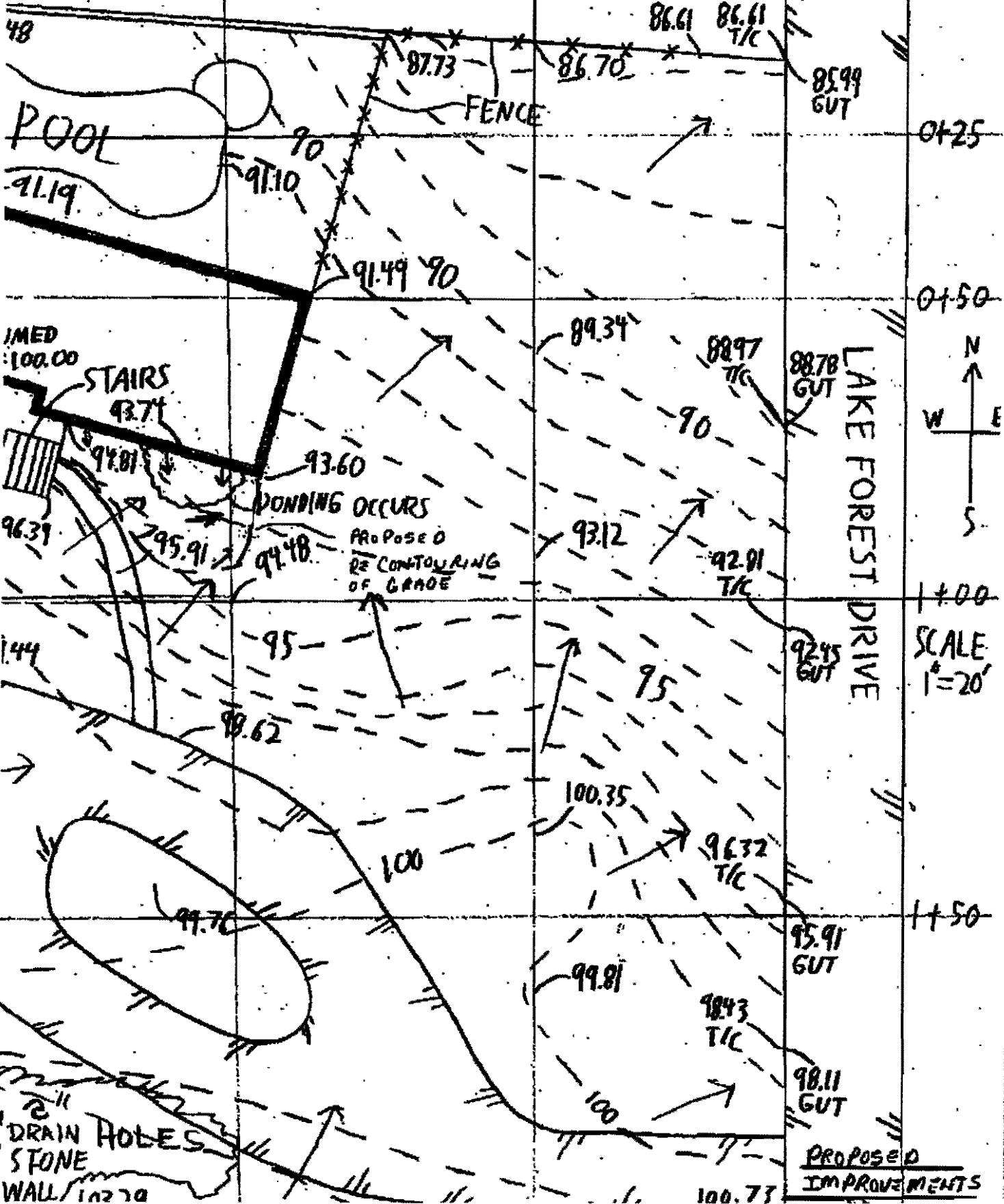
8% TO SLOPES TO 200

250

3" RATE SILET

0+00
PG. 3

8' STUCCO WALL



0+25

0+50

1+00

SCALE
1"=20'

1+50

PROPOSED
IMPROVEMENTS

Peter F. Hennessey, P.E.
CEO

Bachelor of Engineering, University of Queensland, Australia
Graduate Engineering, University of Texas at Arlington
Masters of Business Administration, North Texas State University

ρ Relevant Qualifications

- Registered Professional Engineer
- Registered Public Surveyor
- Over 30 years of experience in the structural engineering design of residential, commercial, industrial, and institutional buildings, as well as civil engineering design and site development related to subdivisions and municipal projects located in the North Texas area.
- Actively involved in Value Engineering to ensure clients obtain the most cost-effective design for their projects including development of economical construction techniques.
- Responsible for the supervision of engineers, designers, draftsmen, and surveyors in the production of design calculations, specifications, and contract documents.
- Extensive experience in the evaluation of soils reports, preparation of cost estimates, checking shop drawings, and conducting field inspections for existing structures as well as projects under construction.

ρ Related Experience

Structural Projects include:

- MetroPort Office Bldg., 11 story, 150,000 sq. ft., post-tensioned concrete, Irving, TX
- La Sierra Office Bldg., 4 story, 58,800 sq. ft., post-tensioned concrete, Dallas, TX
- Market Street West, 5 story office retail remodel, 160,000 sq. ft., Dallas, TX
- Strait Lane Residence, 50,000 sq. ft. Dallas, TX
- Bedford Savings Association, 4 story, 41,000 sq. ft., structural steel, Bedford, TX
- Renner-Frankford Library, 24,000 sq. ft., Dallas, TX
- RHD Medical Center, 3 story, 50,400 sq. ft., structural steel, Farmers Branch, TX
- Forest Green, 5 story concrete office, 100,000 sq. ft., with pre-cast concrete parking garage, Dallas, TX
- Western Extrusion, 150,000 sq. ft. manufacturing facility, Carrollton, TX

Civil Engineering projects include:

- East Meadows residential subdivision, 96 acres, Mesquite, TX
- Thoroughbred Hills, residential subdivision, 32 acres, Duncanville, TX
- Indian Hills Golf Course, 412 acres, construction engineering, City of Carrollton, Carrollton, TX
- Lakeridge Development, 150 acres, Waxahatchie, TX

BRING PHOTOS
OF DRAIN HOLES

9-15-04

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, AND
LEGACY BANK OF TEXAS,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S REQUEST FOR DISCLOSURE**

TO: LEGACY BANK OF TEXAS, by and through its attorney of record, J. Robert Miller, Jr., Miller & Brown, L.L.P., 400 South Ervay Street, Dallas, Texas 75201-5513.

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

RESPONSE: Plaintiff believes the parties are correctly named.

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RESPONSE: Plaintiff has just recently become aware that Legacy Bank has sold the property. Their buyer is a necessary party to this action.

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

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- (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. As against this Defendant, continued conditions which relate to the diminution of value of Plaintiff's property from the time of Legacy Bank's ownership to the present.

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RESPONSE: Produced contemporaneously, as well as site inspection.

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

RESPONSE: Attached.

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RESPONSE: None recorded. Recounted in documents produced with discovery previously produced. None from Defendant Legacy Bank.

(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.

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

ATTORNEY FOR PLAINTIFF PAT MILLIKEN

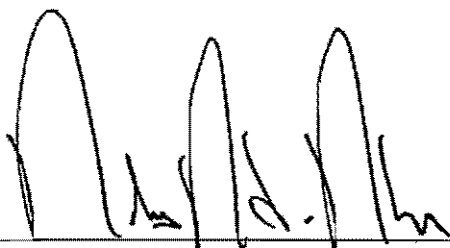
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Zach Mayer
FEE, SMITH, SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Suite 1200
Dallas, Texas 75240

J. Robert Miller, Jr.
Miller & Brown, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513



THOMAS H. KEEN

S:\THK\Clients\Milliken, Pat\Discovery\Response to 1st Disclosures-Legacy Bank.doc



HENNESSEY ENGINEERING, INC.

1417 W. MAIN ST. - SUITE 100 - CARROLLTON, TEXAS 75006-6912
(972) 245-9478 - FAX (972) 245-7087

Mr. Thomas H. Keen
Looper, Reed and McGraw, Attorneys
Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201

August 30, 2004

Re: Mrs. Pat Millikan, Resident

14905 Lake Forest Drive

HE: 0407.05

Phone: 214-237-6351

Fax: 214-953-1332

Attorney Client Privilege

Dear M. Keen,

On August 16, 2004, topographical survey readings were taken at 14905 Lake Forest, Addison, Texas. Since the construction of the house to the south, the resident stated there was a history of flooding at the lower back porch and pool area and of water ponding along the front side of the house. A level loop was used to take spot grade elevations at approximately 50-foot intervals.

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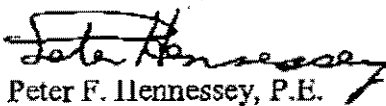
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Recent improvements to the property to the south have included a stone retaining wall with multiple 2" drain holes that drain water pooled up against the wall. There are approximately 34 of these drain holes, about 5 to 8 feet apart from each other, along a majority of the wall. These pipes feed run-off water from the elevated property to the south onto the surveyed property, increasing the amount of run-off water on the property and the chances of flooding. Possible solutions to this problem would be to construct Swale 1 beginning at the southwest corner of the house and running northwest below the cross-tie wall and intersecting with the swale on the west side of the property that leads to a box inlet in the northwest corner of the property. This Swale 1 would channel the water from the adjoining property to the south.

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Some of the grading problems appear to be preexisting prior to the improvements of adjoining property to the south of the site. However, the drainage problems have multiplied in their severity due to the redirection of the volume of water from the improvements on the south adjoining property. **

Yours Sincerely,


Peter F. Hennessey, P.E.

President

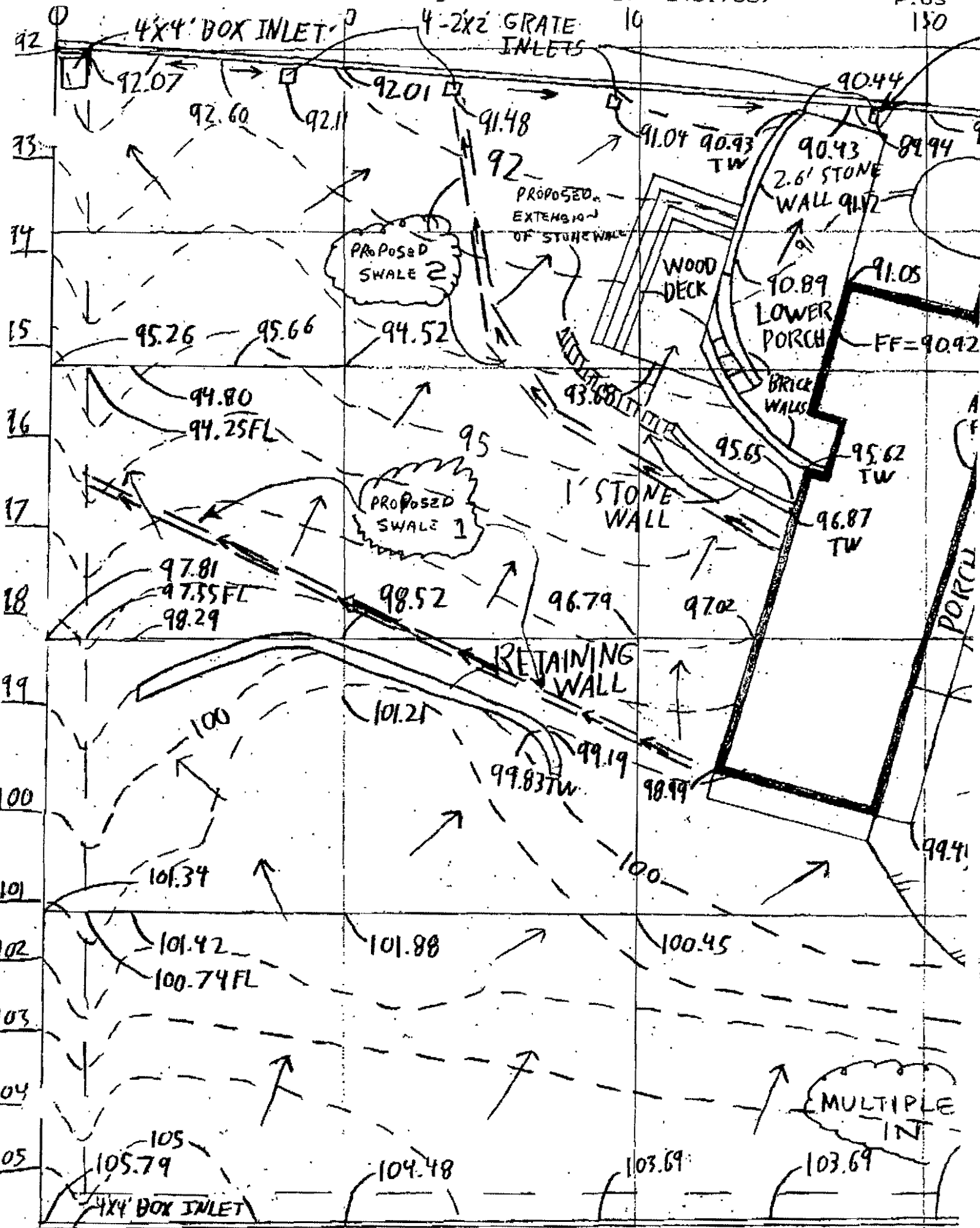
PH/ckk

HE\Word\2004\0407_05




Jim Lindley

Technical Manager



PATIO SLOPES TO 200

GRATE INLET

8' STUCCO WALL

0+00
PG. 3

48

250

POOL

FENCE

85.99
GUT

0+25

91.19

90

91.49 90

0+50

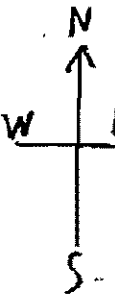
IMED 100.00

STAIRS 93.74

89.34

88.97
T/C

88.78
GUT



LAKE FOREST DRIVE

PONDING OCCURS
PROPOSED
RE-CONTOURING
OF GRADE

1+00

96.39

94.81

93.60

93.12

92.91
T/C

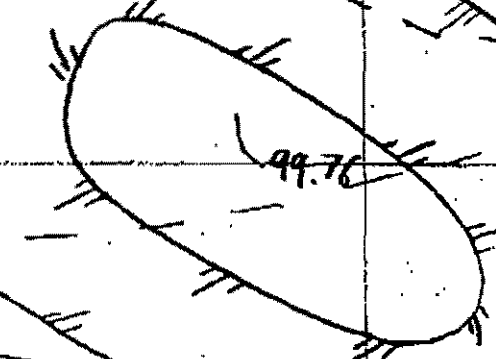
92.45
GUT

SCALE
1"=20'

144

95

95



DRAIN HOLES

STONE WALL

103.29

100

100.35

96.32
T/C

95.91
GUT

1+50

99.76

99.81

98.43
T/C

98.11
GUT

PROPOSED
IMPROVEMENTS

100.45
GUT

100

100.73
T/C

101.68

Peter F. Hennessey, P.E.
CEO

Bachelor of Engineering, University of Queensland, Australia
Graduate Engineering, University of Texas at Arlington
Masters of Business Administration, North Texas State University

ρ Relevant Qualifications

- Registered Professional Engineer
- Registered Public Surveyor
- Over 30 years of experience in the structural engineering design of residential, commercial, industrial, and institutional buildings, as well as civil engineering design and site development related to subdivisions and municipal projects located in the North Texas area.
- Actively involved in Value Engineering to ensure clients obtain the most cost-effective design for their projects including development of economical construction techniques.
- Responsible for the supervision of engineers, designers, draftsmen, and surveyors in the production of design calculations, specifications, and contract documents.
- Extensive experience in the evaluation of soils reports, preparation of cost estimates, checking shop drawings, and conducting field inspections for existing structures as well as projects under construction.

ρ Related Experience

Structural Projects include:

- MetroPort Office Bldg., 11 story, 150,000 sq. ft., post-tensioned concrete, Irving, TX
- La Sierra Office Bldg., 4 story, 58,800 sq. ft., post-tensioned concrete, Dallas, TX
- Market Street West, 5 story office retail remodel, 160,000 sq. ft., Dallas, TX
- Strait Lane Residence, 50,000 sq. ft. Dallas, TX
- Bedford Savings Association, 4 story, 41,000 sq. ft., structural steel, Bedford, TX
- Renner-Frankford Library, 24,000 sq. ft., Dallas, TX
- RHD Medical Center, 3 story, 50,400 sq. ft., structural steel, Farmers Branch, TX
- Forest Green, 5 story concrete office, 100,000 sq. ft., with pre-cast concrete parking garage, Dallas, TX
- Western Extrusion, 150,000 sq. ft. manufacturing facility, Carrollton, TX

Civil Engineering projects include:

- East Meadows residential subdivision, 96 acres, Mesquite, TX
- Thoroughbred Hills, residential subdivision, 32 acres, Duncanville, TX
- Indian Hills Golf Course, 412 acres, construction engineering, City of Carrollton, Carrollton, TX
- Lakeridge Development, 150 acres, Waxahachie, TX

**Grantham & Associates, Inc.****FAXED**
9/10/04

September 10, 2004

Mr. Steve Chutchian, P.E.
Town of Addison
16801 Westgrove Drive
PO Box 9010
Addison, TX 75001-9010

Re: 14905 Lake Forest Drive Lot Survey
Proposal for Surveying Services

Dear Mr. Chutchian:

Pursuant to your request, Grantham & Associates, Inc. (G&A) has prepared this proposal for surveying services at 14905 Lake Forest Drive. The scope of services for this project is being proposed in two phases as outlined below:

Scope of Services**Phase 1 – Lot Survey**

This phase of the project will set down the lot and the existing easements, as well as determine the location of the drainage structures. The following details the scope to be performed during this phase.

- Project control will be established on the site. Per the Town's request, G&A will be setting local control on this lot. The survey will not be tied into the Town's control system.
- The property corners for 14905 Lake Forest Drive will be located and surveyed.
- The existing drainage structures along the rear lot line will be field surveyed.
- The Town will supply the subdivision plat, which G&A will review.
- G&A will prepare a detailed exhibit incorporating the above information.

Phase 2 – Topographic Lot Survey

G&A will perform a complete topographic survey of the property. The following details the scope to be performed during this phase.

- This phase assumes that Phase 1 has been completed or is completed simultaneously.
- Drainage patterns on the property and deck will be established through surveyed elevations.
- All trees on the property will be tied down.
- The house will be located, including the deck and all downspouts.
- The topographic information will be incorporated into the detailed exhibit described in Phase 1.

Schedule

The required field work will be completed between September 20th and September 24th, as previously directed. All deliverables will be submitted to the Town within one week of completing the field work.

Mr. Steve Chutchian
September 10, 2004
Page 2

Proposed Fee

Exhibit A contains a manhour estimate and cost proposal for the surveying services. The following is a summary of the fees described in Exhibit A:

Phase 1 – Lot Survey	\$ 1,450
Phase 2 – Topographic Survey	\$ 2,100
Project Expenses	<u>\$ 200</u>
Total Fee:	\$ 3,750

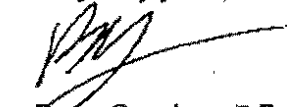
Assumptions

The following assumptions have been made in preparing this proposal:

- The Town will supply the subdivision plat and drainage plans.
- Phase 2 assumes that Phase 1 has been completed or is being completed simultaneously.
- All field work must be completed the week of September 20, 2004.
- The Town will provide the field crew with the authority necessary to enter the property. This may include Town staff on-site to insure that there is not disruption by the property owner of the work to be performed.

If you have any questions about this proposal, please contact me.

Very truly yours,



Bruce Grantham, P.E.
President

AKC/bg

GRANTHAM & ASSOCIATES, INC. PROPOSED MANHOURS / COSTS					
14005 Lake Forest Drive Lot Survey Addison, Texas			DATE: September 10, 2004		
TASK	DISCIPLINE / HOURLY RATE				TOTAL COST
	Project Engineer	Survey Manager	Survey Tech	Survey Crew	
	\$100	\$100	\$50	\$90	
Phase 1: Tie Down Lot, Easements, Drainage Structures					
Set Project Control		1		1	\$ 190.00
Locate Property Corners / Drainage Structures		4		4	\$ 760.00
Research Subdivision Plat		1			\$ 100.00
Prepare Property Exhibit		2	4		\$ 400.00
<i>Sub-Total</i>	0	8	4	5	\$ 1,450.00
Phase 2: Complete Topographic Survey of Lot					
Topographic Survey of Lot	2	4	4	10	\$ 1,700.00
Prepare Property Exhibit		1	6		\$ 400.00
<i>Sub-Total</i>	2	5	10	10	\$ 2,100.00
TOTAL HOURS	2	13	14	15	
TOTAL COST / DISC	\$200	\$1,300	\$700	\$1,350	
PROJECT MANHOUR COST:					\$ 3,550.00
PROJECT EXPENSES					\$ 200.00
TOTAL PROJECT COST					\$ 3,750.00

Notes:

1. Survey must be performed between September 20 and September 24.
2. The Town will furnish the subdivision plats within the project limits.
3. A digital copy of the topographic survey will be submitted to the Town of Addison.
4. The cost to complete Phase 2 assumes that Phase 1 has been completed or is being performed simultaneously.

**TOWN OF ADDISON
PUBLIC WORKS**

To: Amy

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

Company: M&L

Office: 972/450-2878

FAX #: 214 706 0921

Fax: 972/450-2837

Date: 9-10-04

16801 Westgrove

P.O. Box 9010

No. of Pages(including cover): 4

Addison, TX 75001-9010

~~A~~
2nd quote on Miller

M

HP LaserJet 3200se

HP LASERJET 3200

SEP-10-2004 4:42PM



Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
951	9/10/2004	4:41:09PM	Send	92147060921	1:29	4	OK

**TOWN OF ADDISON
PUBLIC WORKS**

To: *Army*
Company: *M&L*
FAX #: *214 7060921*
Date: *9-10-04*
No. of Pages (including cover): *4*

From: 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

A
2nd quote on Miller

M

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)

August 26, 2004

Court Clerk, 116th Judicial District Court
600 Commerce Street, Suite 693
Dallas, Texas 75202

Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F
File No. 607-066

Dear Court Clerk:

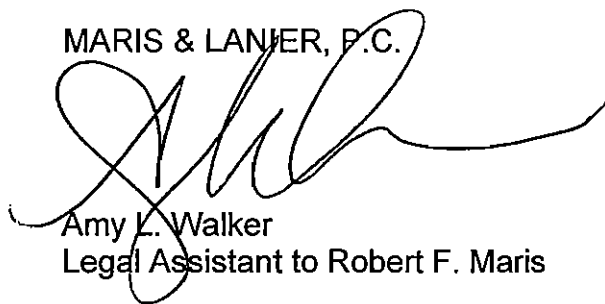
Enclosed please find the original and one (1) copy of Town of Addison's Supplement to its Amended Motion to Exclude or Limit Expert Testimony.

Please file the original and return a file-marked stamped copy of the enclosed back to me in the self-addressed stamped envelope provided herein.

Should you have any questions, please do not hesitate to contact me. Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure

COURT CLERK
August 26, 2004
PAGE 2

cc: Thomas H. Keen
LOOPER REED & MCGRAW, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6935
(w/encl.)

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR MAIL
(w/encl.)

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR MAIL
(w/encl.)

COURT CLERK
August 26, 2004
PAGE 3

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

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

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

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

**TOWN OF ADDISON'S SUPPLEMENT TO ITS AMENDED
MOTION TO EXCLUDE OR LIMIT EXPERT TESTIMONY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Town of Addison ("Addison") and files this supplement to its amended motion seeking to exclude or limit the expert testimony of persons designated by Plaintiff Pat Milliken ("Plaintiff"). In support of this Motion, Addison respectfully shows this Honorable Court the following:

I.

1. Addison attaches the First Amended Affidavit of Robert F. Maris and incorporates same into the Town of Addison's Amended Motion to Exclude or Limit Expert Testimony as if fully set forth therein. This Amended Affidavit is intended to replace the Affidavit of Robert F. Maris attached to Addison's Amended Motion to Exclude or Limit Expert Testimony as Exhibit "C."

II.

Prayer

WHEREFORE, premises considered, Addison respectfully requests that this Honorable Court enter an order granting Addison's Motion to Exclude Expert and striking Plaintiff's Experts from testifying as an expert in this matter or, in the alternative, limiting their testimony as appropriate and for any and all other relief to which Addison may show itself justly entitled.

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

1450 Meadow Park Building

10440 N. Central Expressway

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 26th day of August, 2004, to:

Thomas H. Keen
LOOPER REED & MCGRAW, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
VIA CERTIFIED MAIL RECEIPT
NO. 7003 1680 0004 2873 6935

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL


Michael J. McKleroy, Jr.

607.066\exclude-supp.mtn.wpd

EXHIBIT “C”

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 AFFIDAVIT OF ROBERT F. MARIS

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

BEFORE ME, the undersigned Notary Public, personally appeared the person known to me to Robert F. Maris who, upon being duly sworn, upon his oath deposed and stated the following:

1. "My name is Robert F. Maris. 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 currently an attorney employed by Maris & Lanier, P.C., the law firm representing Defendant Town of Addison ("Defendant") in the above-styled and -numbered cause. I have represented Defendant in this case since the suit was filed.

3. On or about July 15, 2004, Plaintiff Pat Milliken ("Plaintiff") forwarded the documents Bates labeled CRUM 00001 through 00633. A true, correct and complete copy

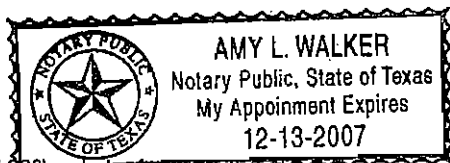
of a portion of those documents that are referenced in Town of Addison's Amended Motion to Exclude or Limited Expert Testimony is attached to the said Motion as Exhibit "C-1," and made a part herein by reference. These documents were produced pursuant to an agreement made during the Deposition of Clyde Crum to produce a list of cases in which he had testified for the last five (5) years, his appraisal log to the extent that it reveals prior appraisals given showing stigma damages and literature supporting his opinions of diminution of value, specifically the stigma or the buyer psychology damages, given in the course of his deposition. Upon reviewing the documents produced, I was able to determine that all that has been produced is an appraisal schedule, including the appraisal of Plaintiff's property, copies of correspondence between Crum and Plaintiff or Plaintiff's attorney, another copy of the appraisal and the literature. The list of testimony was not produced.

FURTHER AFFIANT SAYETH NOT.

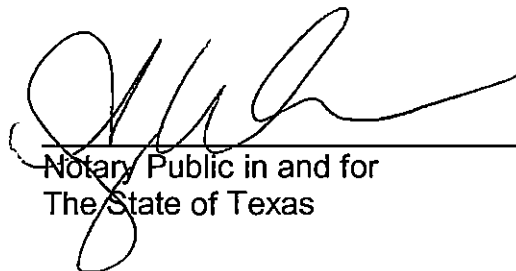


ROBERT F. MARIS

SIGNED AND SUBSCRIBED TO BEFORE ME, the undersigned Notary Public, on the 25th day of August, 2004.



607.0661.doc - 4/11/04 - amr.amr.wpd



Notary Public in and for
The State of Texas



Civil Engineering • Planning • Surveying

August 24, 2004

Mr. Steve Chutchian
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

Re: Proposal for Surveying Services
Lots 1B and 2, Milliken Addition
Addison, Texas

Dear Mr. Chutchian:

ARS Engineers, Inc. is pleased to present this proposal for surveying services. We understand the site is located on Lake Forset Drive and involves Lots 1B and 2 of the Milliken Addition. Summarized below is our proposed scope of work, followed by our fee proposal.

SCOPE OF WORK

Task 1 – Prepare an exhibit indicating the location of existing drainage facilities located along the west line of Lots 1B and 2 in relation to the lot line and 5 foot wide drainage easement

1. Field locate the property lines
2. Field locate surface drainage structures
3. Uncover and field locate the existing storm sewer pipe every 25 feet along the route across Lot 2, special attention will be given to locating the pipe at bends
4. Prepare an exhibit (11 x 17 or larger) showing the lot line, drainage easement and existing drainage facilities
5. All work will be performed under the direct supervision of a registered public land surveyor

Task 2 – In addition to Task 1, prepare a detailed topographic survey of Lot 2

1. Transfer a benchmark to the site from a nearby Town of Addison monument
2. Field locate all surface features including, fences, trees, building, drives, walks, pool, stairs, steps, downspouts, other drainage features, roof lines
3. Field locate ground elevations
4. Prepare a detailed topographic contour map indicating all above ground improvements and the drainage facilities from Task 1 with contours not to exceed one foot interval. Spot elevations will be provided, when needed to describe the direction of fall.

Consulting Engineers

Mr. Steve Chutchian
Lots 1B & 2, Milliken Addition

*DATE MAY CHANGE
TO ACCOMMODATE*
Page 2
August 24, 2004

ARS proposes to perform the work beginning September 13, 2004. Completion of the exhibit for Task 1 will be completed by September 24, 2004 and completion of the topographic map will be completed by October 1, 2004.

We propose to perform the work on a lump sum basis per the following schedule:

Task 1	\$3,950
Task 2	<u>\$4,950</u>
Total	\$8,900

Task 1 can be authorized singularly without Task 2. However Task 2 requires authorization of Task 1 also. We have provided separate authorizations below.

Please feel free to call if you have any questions.

Sincerely,
ARS Engineers, Inc.



Ayub R. Sandhu, P.E., R.P.L.S.
President

Task 1 Authorization to Proceed

Sign	Date	Printed Name & Title
------	------	----------------------

Task 1 & 2 Authorization to Proceed

Sign	Date	Printed Name & Title
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HP LaserJet 3200se



HP LASERJET 3200

AUG-26-2004 9:21AM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
733	8/26/2004	9:20:26AM	Send	912147060921	1:09	3	OK

TOWN OF
ADDISON

PUBLIC WORKS

To: Amy Walker

From: Mike Murphy

Company: Maria & Lanette

FAX #: 214-706-6921

Phone: 972/450-
Fax: 972/450-2837

Date: 8/26/04

No. of pages (including cover): 3

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

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: August 20, 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 + 3

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 proposed Rule 11 Agreement.

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

214-706-0927 direct dial

MICHAEL J. MCKLEROY, JR.

August 20, 2004

VIA FACSIMILE

Thomas H. Keen

LOOPER REED & MCGRAW

1601 Elm Street, Suite 4100

Dallas, Texas 75201

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 Tom:

I am in receipt of your letter dated August 19, 2004 concerning the Motion to Compel and Motion for Entry Upon Land. According, this letter will serve as a Rule 11 Agreement with respect to both.

By signing below, you are agreeing to the Motion for Entry Upon Land, including the date, time, scope of the inspection, and manner of the inspection.

Further, Plaintiff agrees by signing this Rule 11 Agreement, to supplement its discovery responses no later than August 30, 2004. Upon receipt of your signature to this letter, I will cancel the hearing on Defendant's Motion to Compel.

Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Michael J. McKleroy, Jr.

AGREED TO BY:

Tom Keen, Counsel for Plaintiff

cc: Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA FACSIMILE

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA FACSIMILE

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

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

Maris & Lanier

A Professional Corporation

1450 Meadow Park Bldg., LB 702

10440 N. Central Expressway

Dallas, Texas 75231

214
706
0921

TELECOPIER COVER SHEET

PLEASE DELIVER TO ADDRESSEE IMMEDIATELY

Date: August 20, 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 + 20

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 Motion to Compel, Motion for Entry Upon Land.
Notice of Hearing.**

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

August 18, 2004

VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6959

Thomas H. Keen
LOOPER REED & MCGRAW
1601 Elm Street, Suite 4100
Dallas, Texas 75201

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

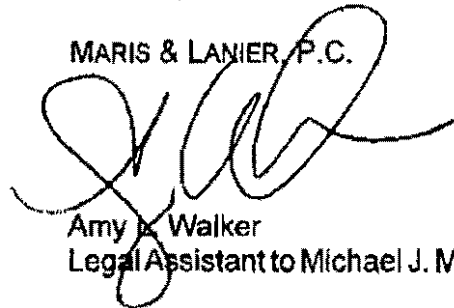
Dear Tom:

Enclosed please find the Request for Entry Upon Land.

Should you have any questions, please contact me at the number listed above.
Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Amy J. Walker
Legal Assistant to Michael J. McKleroy, Jr.

Enclosure

cc: Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL
(w/encl.)

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL
(w/encl.)

bcc: VIA FACSIMILE NO. 512-491-2366
Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78754
(w/encl.)

VIA FACSIMILE NO. 972-450-2837
Mike Murphy
Lynn Chandler
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

**Mike, can you forward a copy of the Request for Entry Upon Land to the surveyor so they will know the date, time, and location? Thanks.

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

REQUEST FOR ENTRY UPON LAND

TO: Pat Milliken, by and through her attorney of record, Thomas H. Keen,
Looper Reed & McGraw, P.C., 4100 Thanksgiving Tower, 1601 Elm
Street, Dallas, Texas 75201.

COME NOW, Defendants, Town of Addison ("Addison"), The Preston Group Designers
and Builders ("Preston Group"), William Long ("Long"), Preston Homes, Inc. ("Preston
Homes"), Jon B. Coleman ("Coleman") and Legacy Bank of Texas ("Legacy Bank")
(collectively "Defendants") and request that they be allowed to enter upon land, including
improvements, owned by Plaintiff Pat Milliken ("Plaintiff") pursuant to T.R.C.P. Rule 196.7.

The particulars of this request are as follows:

1. **Place:** 14905 Lake Forest Drive, Addison, Texas 75001 ("Property"), including entry into the improvements contained on the Property.
2. **Time:** September 24, 2004 at 1:00 p.m.
3. **Manner:** The following individuals will be present at the inspection: Michael Murphy, Robert F. Maris, Michael J. McKleroy, J. Robert Miller, Jr., Zach Mayer, Mark Roberts and ARS Surveyors.

4. **Purpose/Scope:** Defendants request that they be permitted to enter upon, inspect, measure, survey and photograph the property located at 14905 Lake Forest Drive, Town of Addison, Dallas County, Texas. Specifically, Defendants intend to survey the backyard and lower level of Plaintiff's property for the following purposes: 1) determine whether or not the drainage system installed by the Addison exceeds the drainage easement on the west end of Plaintiff's lot; 2) determine elevations in the backyard of Plaintiff's lot to determine the drainage pattern. The surveyor will run elevations to determine whether or not there is anything that the Addison or the builder Defendants did that are currently creating flood problems on Plaintiff's property in the backyard; and 3) view and photograph the additional damage caused to the lower level of Plaintiff's property.
5. **Response to Request:** Plaintiff is requested to file a written response to this request within 30 days after service of the request pursuant to T.R.C.P. Rule 196.7(c).

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
1450 Meadow Park Building
10440 N. Central Expressway
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 and correct copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on August 18, 2004 to:

Thomas H. Keen
Looper Reed & McGraw, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6959

Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL



Robert F. Maris

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

August 18, 2004

VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6959

Thomas H. Keen
LOOPER REED & MCGRAW
1601 Elm Street, Suite 4100
Dallas, Texas 75201

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

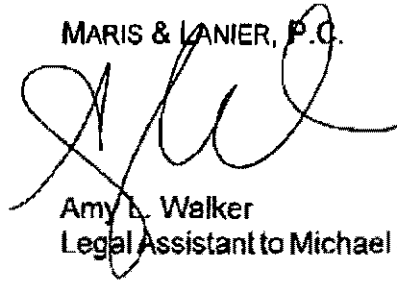
Dear Tom:

This letter is to advise you that a hearing has been scheduled for Defendant Town of Addison's Motion to Compel for **August 25, 2004 beginning at 2:30 p.m. before Judge Sims, Room 354.**

Should you have any questions, please contact me at the number listed above. Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Michael J. McKleroy, Jr.

cc: Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL

Court Clerk, 116th Judicial District Court
600 Commerce Street, Suite 693
Dallas, Texas 75202

bcc: **VIA FACSIMILE NO. 512-491-2366**
Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78754

VIA FACSIMILE NO. 972-450-2837
Mike Murphy
Lynn Chandler
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

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)

August 18, 2004

VIA HAND DELIVERY

Court Clerk, 116th Judicial District Court
600 Commerce Street, Suite 683
Dallas, Texas 75202

Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F
File No. 607-066

Dear Court Clerk:

Enclosed please find the original and one (1) copy of the following:

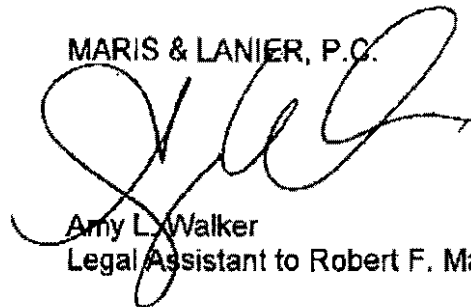
1. Town of Addison's Motion to Compel; and
2. Order on Town of Addison's Motion to Compel.

Please file the original and **set this matter for hearing through the courier delivering same. I can be reached at 214-706-0922 for questions regarding available dates.**

Should you have any questions, please do not hesitate to contact me. Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure

**COURT CLERK
AUGUST 18, 2004
PAGE 2**

cc: Thomas H. Keen
LOOPER REED & MCGRAW, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
VIA CERTIFIED MAIL RECEIPT
NO. 7003 1680 0004 2673 6959
(w/encl.)

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL
(w/encl.)

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL
(w/encl.)

**COURT CLERK
AUGUST 18, 2004
PAGE 3**

bcc: **VIA FACSIMILE
Mr. Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 140194
Austin, Texas 78754
(w/encl.)**

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.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FILED
AUG 18 AM 10:12
CLERK OF DISTRICT COURT
116TH JUDICIAL DISTRICT
DALLAS COUNTY TEXAS

TOWN OF ADDISON'S MOTION TO COMPEL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Town of Addison ("Addison") and, pursuant to Rule 215 of the Texas Rules of Civil Procedures, files this motion seeking to compel the responses to certain interrogatories and request for production of documents propounded upon Plaintiff Pat Milliken ("Plaintiff"). In support of this Motion, Addison respectfully shows this Honorable Court the following:

I.

Brief Background

1. Plaintiff has sued Addison, along with the developers of certain real property adjacent to Plaintiff's property, seeking to recover damages for allegedly taking her property without just compensation and/or negligently installing a drainage system on her property. Addison has denied that any property has been taken from Plaintiff and, specifically, that the drainage system is entirely within an easement owned by Addison.

II.

Addison's Discovery Requests

2. Addison has propounded certain interrogatories and request for production of documents to determine: i) what property has been allegedly taken by Addison; ii) what period of time that property has allegedly been taken; and iii) the fair market or rental value of that property, to wit:

A. Plaintiff's First Set of Interrogatories No. 2 and Request for Production of Documents No. 3.¹

3. Plaintiff was asked to describe the damages she seeks to recover from Addison, including the total amount of damages she seeks from Addison broken down to show each element of damages she seeks from Addison, the dollar amount that she attributes for each element of damages and how the dollar amount attributed to each element of damages was calculated. Plaintiff was further asked to produce any and all written documents which underlie or support the damage calculations she set out in response to Interrogatory No. 2, including, but not limited to, the production of documents evidencing: damages suffered by property (real or personal), remediation efforts, diminution of property value (real or personal), fair market value of property taken, replacement costs of property (real or personal), mental health care and/or physical health care records and any and all damage calculations or summaries which you have prepared

B. Plaintiff's First Set of Interrogatories No. 40 and Request for Production of Documents No. 41.

4. Plaintiff was further specifically asked to identify each and every fact upon

¹ See Plaintiff's Responses and Objections to Addison's First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents, attached hereto as Exhibit "A," and made a part herein by reference.

which she relies upon to support her contention that Addison took any portion of her property for public use without adequate compensation, including specifically identifying each area of the property which she contends was taken. Again, Plaintiff was asked to produce any and all written documents evidencing the fact(s) upon which she relies to support her contention that Addison took any portion of her property for public use without adequate compensation, including each area of her property which she contends was taken.

III.

Plaintiff's Responses

5. Plaintiff has failed to completely respond to Interrogatory Nos. 2. and 40. and Request for Production of Documents Nos. 3. and 41., as set forth above, in that Plaintiff has failed to specifically identify each area of her property that she contends was taken by Addison, the time period the property was taken and the value of the property. In response to Interrogatory No. 40, Plaintiff simply referred Addison to Plaintiff's pleadings and prior discovery responses. As the only discovery response even coming close to responding to Interrogatory No. 40. was Plaintiff's response to Interrogatory No. 2., Addison assumes that the following is Plaintiff's response to both:

"Actual damages include the temporary taking of 5,500 square feet of Plaintiff's land and the permanent taking of approximately 25 square feet where the drainage inlet extends beyond the existing drainage easement. Further, there is now a somewhat permanent diagonal, non-consensual easement across Plaintiff's yard and house where the drainage runs."

"According to the builder's asking price for their land and new homes, the land only is worth \$19.00 /sf. The temporary easement was taken for four months. Beyond the value of the land, however, were the attendant damages imparted by the

attempted 'fixing' of the property drainage. The peace of Plaintiff's household was shattered throughout that process. The rental value of Plaintiff's house would be approximately \$6,000.00 per month."

IV.

Motion to Compel

6. Prior to the filing of this Motion, counsel for Addison contacted counsel for Plaintiff requesting that Plaintiff supplement this response in that it is vague, ambiguous and incomplete and, as such, fails to provide Addison with adequate notice of what Plaintiff is claiming as being taken, when and at what damage to Plaintiff.² Plaintiff has not responded to this request.

C. Identification of Specific Area that Plaintiff Claims Drainage System Is Outside of Addison's Easement.

7. As stated above, at least part of Plaintiff's claim is that the drainage system installed in Addison's easement is on her property. It seems clear that, at a minimum, Plaintiff is saying that the damages resulting from the drainage system being outside of Addison's easement is 25 square feet times \$19.00 per square feet, for a total of \$475.00. However, Plaintiff fails to identify where that 25 square feet is located. Further, while Plaintiff has not refused to produce documents evidencing this information, none has been provided nor has Plaintiff made a statement that no such documents exist. Addison believes that this information is important to put Addison on notice as to Plaintiff's claims in order to permit Addison to investigate Plaintiff's claims to determine their veracity and properly prepare its defense to these charges.

² See July 29, 2004 letter from Michael J. McKleroy, Jr. to Thomas Keen, attached hereto as Exhibit "B," and made a part herein by reference.

8. Therefore, Addison respectfully requests that this Court enter an order requiring Plaintiff to identify each specific parcel of property of her's is being encroached upon by the drainage easement within ten (10) days of the date of a hearing on this motion.

D. Identification of Other Property That was Allegedly Taken By Defendant, Including Location, Dates and Value.

9. The rest of Plaintiff's response is entirely unclear. Plaintiff identifies four (4) potential parcels that were taken, ie., a "somewhat permanent easement," a "temporary easement," a "temporary taking of 5,500 square feet" and "the rental value of [her] house." However, Plaintiff fails to identify where any of these parcels are on her property. For instance, Plaintiff's house is approximately 5,500 square feet (4,494 per tax records). Yet, it is not clear whether the 5,500 square feet refers to the house or to some other, unimproved, parcel on the Property. If it is the house, then it would be logical that she is saying that the temporary taking was \$6,000.00 per month. But for how long? Plaintiff refers to a temporary taking lasting for four months, but says that this refers to a "temporary easement," not the house. Therefore, another interpretation could be that the "temporary easement" is the 5,500 square feet. If so, then it would be logical that she is saying that this 5,500 square feet easement was taken for four months. But here the value of this taking is not disclosed. Finally, is the "temporary easement" different from, or the same as, the "somewhat permanent diagonal, non-consensual easement across Plaintiff's yard and house where the drainage runs." If it is different, what is the value of this property?

10. Further, while Plaintiff has not refused to produce documents evidencing this information, none has been provided nor has Plaintiff made a statement that no such

documents exist.

11. Addison should not be required to defend against Plaintiff's claims of a taking based upon these disclosure and learn for the first time at trial what specific parcels of property Plaintiff alleges was taken, when and what the value was. Therefore, Addison respectfully requests that this Court enter an order requiring Plaintiff to supplement her discovery responses to: i) specifically identify each parcel of her property that she contends was taken (identifying the location and the square footage); ii) when each such parcel was taken and whether each such parcel of her property was taken temporarily or permanently; and iii) state what she contends to be the fair market value for each parcel of the Property she contends was permanently taken or the fair rental value for each parcel of the Property that she contends was temporarily taken, all within ten (10) days from the date of the hearing on this Motion.

V.

Prayer

WHEREFORE, premises considered, Addison respectfully requests that this Court enter an order compelling Plaintiff, within ten (10) days from the date of the hearing on this Motion, to provide clear, concise and complete responses to Addison's First Set of Interrogatories Nos. 2. and 40. and First Request for Production of Documents Nos. 3. and 41., including, but not limited to:

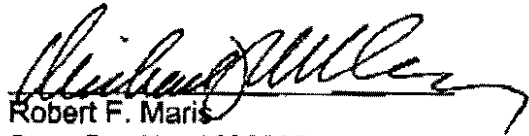
- a. specifically identify each parcel of her property that she contends was taken (identifying the location and the square footage);
- b. when each such parcel was taken and whether each such parcel of her property was taken temporarily or permanently;
- c. state what she contends to be the fair market value for each parcel of

the Property she contends was permanently taken or the fair rental value for each parcel of the Property that she contends was temporarily taken; and

- d. produce any and all documents evidencing this information, if any, or, if none exists, to state that no such documents exist.

Respectfully submitted,

MARIS & LANIER, P.C.

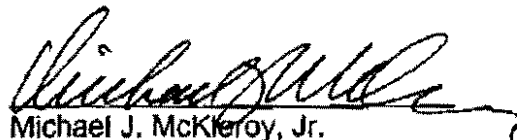


Robert F. Maris
State Bar No. 12986300
Marigny A. Lanier
State Bar No. 11933200
Michael J. McKleroy, Jr.
State Bar No. 24000095
1450 Meadow Park Building
10440 N. Central Expressway
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

CERTIFICATE OF CONFERENCE

I hereby certify that I contacted counsel for Plaintiff to confer about the foregoing motion and that counsel for Plaintiff failed to respond to Addison's request to confer. Therefore, it has been determined that Plaintiff is opposed to the relief sought in this motion and this motion is therefore presented to the court for resolution.



Michael J. McKleroy, Jr.

TOWN OF ADDISON'S MOTION TO COMPEL

PAGE 7

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served in accordance with Rule 21a of the Texas Rules of Civil Procedure on this the 18th day of August, 2004, to:

Thomas H. Keen
LOOPER REED & MCGRAW, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
VIA CERTIFIED MAIL RECEIPT
NO. 7003 1680 0004 2873 6959

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL


Michael J. McKleroy, Jr.

807.066\compel.mtrn.wpd

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

August 19, 2004

VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6942

Thomas H. Keen

LOOPER REED & MCGRAW

1601 Elm Street, Suite 4100

Dallas, Texas 75201

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 Tom:

Enclosed please find Defendant Town of Addison's Fifth Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Should you have any questions, please contact me at the number listed above. Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.


Amy L. Walker

Legal Assistant to Michael J. McKleroy, Jr.

cc: Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL
(w/encl.)

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL
(w/encl.)

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

✓
Mike Murphy
Lynn Chandler
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/encl.)

PAT MILLIKEN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	116th JUDICIAL DISTRICT
TOWN OF ADDISON, THE PRESTON	§	
GROUP DESIGNERS AND BUILDERS, §		
WILLIAM LONG, PRESTON HOMES,	§	
INC. and JON B. COLEMAN,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**DEFENDANT TOWN OF ADDISON'S FIFTH SUPPLEMENTAL
RESPONSE TO PLAINTIFF'S RULE 194 REQUEST FOR DISCLOSURE**

COMES NOW Defendant Town of Addison ("Addison") and, pursuant to Rules 194 of the Texas Rules of Civil Procedure, timely responds to the Request for Disclosure served by Plaintiff Pat Milliken ("Plaintiff"). In support thereof, Addison respectfully shows the following:

194.2 (a) The correct names of the parties:

ANSWER: Plaintiff: Pat Milliken;
Defendant: Town of Addison;
Defendant: The Preston Group Designers and Builders;
Defendant: Preston Homes, Inc.;;
Defendant: William Long; and
Defendant: Jon B. Coleman

194.2 (b) The name, address, and telephone number of any potential parties:

ANSWER: Achariya K. Watters, 14911 Lake Forest Drive, Addison, Texas 75001.

194.2 (c) Legal theories and factual bases of the Defendant's claims and defenses:

ANSWER: Addison generally denies each and every allegation set forth by Plaintiff.

Arguing further, and in the affirmative, Addison asserts the following affirmative defenses:

Sovereign Immunity. Addison asserts that Addison is immune from liability to Plaintiff. A municipality, such as Addison, is immune from liability arising its governmental functions. The planning and construction of drainage improvements is a governmental function. Therefore, Addison is immune from Plaintiff's claims arising from the planning and construction of drainage improvements.

No Waiver of Immunity under TEX.CIV.PRACT.&REM.CODE §101.021. Addison asserts that Addison has not waived its sovereign immunity for Plaintiff's negligence claims under the Texas Tort Claims Act. §101.021 of the Texas Civil Practice and Remedies Code provides the exclusive means by which a municipality may waive its sovereign immunity. Addison asserts that it has not waived its sovereign immunity under §101.021 for the reason that: i) there is no causal connection between the "operation or use of a motor-driven vehicle or motor-driven equipment" and the claimed injury; ii) the injury complained of by Plaintiff did not arise from negligence of an employee of Addison; and/or iii) the injury complained of by Plaintiff did not arise from the operation or use of a motor-driven vehicle or motor driven equipment by an employee of Addison. Therefore, Addison has not waived its sovereign immunity for Plaintiff's claims of negligence.

No Waiver of Immunity under TEX.CIV.PRACT.&REM.CODE §101.057. Addison asserts that Addison has not waived its sovereign immunity for intentional tort claims under the Texas Tort Claims Act. §101.057 of the Texas Civil Practice and Remedies Code provides an explicit exception to the Texas Tort Claim Act's waiver of immunity from suit. Therefore,

Addison has not waived its sovereign immunity for intentional tort claims asserted by Plaintiff, including Plaintiff's claim of trespass and damage to real property.

Comparative Negligence. Addison requests that this Court direct the trier of fact in this matter, after a trial on the merits, to determine the percentage of responsibility of Plaintiff, each defendant named in this suit and each responsible third-party, who may include the owner of the adjacent property immediately to the north of Plaintiff, pursuant to Chapter 33 of the Texas Civil Practice and Remedies Code.

Contributory Negligence. Addison asserts that any negligence found by the trier of fact to be a proximate cause of the damages claimed by Plaintiff which are attributed to the Plaintiff should be applied to diminish the liability and damages sought by Plaintiff from Addison.

Waiver and Estoppel. Plaintiff has waived, and is estopped from, asserting damages arising from the planning and construction of drainage improvements, including damages arising from the ingress and egress Plaintiff's property for that purpose, for the reason that Plaintiff implicitly and explicitly authorized, consented to or ratified such acts and Addison reasonably relied upon Plaintiff's authorization, consent or ratification.

Failure to Mitigate Damages. Addison asserts that any damages sought to be recovered by Plaintiff should be reduced to the extent that Plaintiff has failed to take the reasonable steps that a person of ordinary prudence in a similar situation would have taken to avoid the claimed damages.

194.2(d) The amount and method of calculating economic damages.

ANSWER: Not applicable.

194.2(e) Name, address, and telephone number of persons having knowledge of relevant facts, and brief statement of each identified person's connection with the case:

ANSWER:

Pat Milliken
14905 Lake Forest Drive
Addison, Texas 75001
Plaintiff in the above-referenced cause.

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
214-954-4135
Attorney for Plaintiff. Communicated with Addison officials regarding remediation work.

Jon Coleman
The Preston Group
2301 Ohio, Suite 235
Plano, Texas 75093
214-924-9009
Defendant. Builder of property to the immediate south of Plaintiff.

William Long
The Preston Group Designers & Builders, Inc.
2301 Ohio, Suite 235
Plano, Texas 75093
469-241-9911
Defendant. Builder of property to the immediate south of The Preston Group property.

Michael E. Murphy, P.E.
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Director of Public Works for Addison. Knowledge of the condition of the Plaintiff's property at all times relevant to this lawsuit. Communicated with Plaintiff about complaints to the property and remediation efforts.

Steve Chutchian
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Assistant City Engineer. Knowledge of the condition of the Plaintiff's property at all times relevant to this lawsuit. Communicated with Plaintiff about complaints to the property and remediation efforts.

Ron Whitehead
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

City Manager for the Town of Addison. Responded to a telephone call from Plaintiff in the middle of the night.

Chris Terry
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Assistant City Manager for the Town of Addison. Met with Plaintiff to discuss remediation possibilities.

Lynn Chandler
Les Folse
Carmen Moran
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Building Inspection Department for Addison. Issued building permits to Defendant Builders and have knowledge of condition of the property.

Dave Wilde
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Inspector for the Town of Addison. Knowledge of the condition of the Plaintiff's property at all times relevant to this lawsuit. Took photographs of the property

Slade Strickland
Ron Lee
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Parks and Recreation Department for the Town of Addison. Have knowledge of the condition of the Plaintiff's property and trees.

Jim Bowman
Bowman Construction
10209 Plano Road
Dallas, Texas 75238
214-349-2884

Construction firm hired by Addison to perform remediation work on Plaintiff's property.

Larry F. Smith, P.E.
Brian C. Eubanks, M.S.C.E., E.I.T.
Larry Smith Engineering
2115 Teakwood Lane, Suite 450
Plano, Texas 75075
972-964-2161

Engineering firm retained by Defendant Builders.

Don Cross
Mike Phillips
C & C Engineering, Inc.
12021 Plano Road, Suite 190
Dallas, Texas 75243
972-680-2164

Engineering firm retained by Defendant Builders.

Christian D. Laettner
3325 Eagle Bluff Road
Mound, Minnesota 55364-8596
Former neighbor (to the immediate south) of Defendant The Preston Group
Designers & Builders, Inc.

Achariya K. Watters
14911 Lake Forest Drive
Addison, Texas 75001
Neighbor (to the immediate north) of Plaintiff.

Jim Pierce
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880
Assistant Director of Public Works for Addison. Knowledge of the condition of
the Plaintiff's property on June 29, 2004 at the time videotape (Bates Labeled
Addison 598) was recorded.

Dan Wood
Greg Senn
Joel Sales
Town of Addison Fire Department
4798 Airport Pkwy
Addison, Texas 75001
972-450-7201
Firemen who cleaned out debris from drainage inlets between Plaintiff's
property and Watters' property.

194.2 (f): Testifying experts:

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

ANSWER:

Michael E. Murphy, P.E.
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Charles D. Johnson
4106 Courtshire

Dallas, Texas 75229
972-503-9314

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

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

Mark W. Roberts, P.E.
Nathan D. Maier Consulting Engineers
8080 Park Lane, Suite 600
Dallas, Texas 75231
214-739-4741 phone
214-739-5961 fax

Robert F. Maris
Maris & Lanier, P.C.
10440 N. Central Expressway, Suite 1450
Dallas, Texas 75231
214-706-0920

Janice Moore
6011 Derek Trail
Dallas, Texas 75252
972-732-6000

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

ANSWER:

Mr. Murphy. Mr. Murphy is expected to provide rebuttal testimony to the opinions given by Plaintiff's experts on the sufficiency of the drainage plans and development by the Developer Defendants. In addition, Mr. Murphy is expected to provide expert testimony regarding the drainage system installed on the Property and the condition of the drainage

on the Property at all times relevant to this litigation, including the present.

Mr. Johnson. Mr. Johnson is expect to provide expert rebuttal testimony to the opinions given by Plaintiff's expert on the cost to repair any physical damage to the Property.

Messrs. Randall. Messrs. Randall are expected to provide testimony about the reasonable and necessary costs to replace and/or repair the trees that the Plaintiffs claim were damaged. Messrs. Randall are further expected to provide testimony about the contribution of the drainage of the Property to any damages suffered by Plaintiff.

Mr. Dobbs and Mr. Shaw. Mr. Dobbs and Mr. Shaw are expected to provide testimony about the diminution in value, if any, of the Property.

Mr. Roberts. Mr. Roberts is expected to provide expert testimony about the sufficiency of the drainage plans, the sufficiency of the storm drainage system, and the effect (or lack thereof) of the construction by the Developer Defendants on the drainage on the Property.

Mr. Maris. Mr. Maris is expected to provide rebuttal testimony to the opinions given by Plaintiff's expert on the reasonableness of attorneys' fees allegedly incurred by Plaintiff in this litigation.

Ms. Moore: Ms. Moore will testify concerning the sale value of Plaintiff's property.

(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 to your control, documents reflecting such information;

ANSWER:

Mr. Murphy. Mr. Murphy is expected to testify that the drainage plans submitted by the Developer Defendants were sufficient to provide adequate drainage to the Property and to avoid flooding had they been installed properly and in a timely manner. Mr. Murphy is further expected to testify that the drainage problems, if any, experienced by the Plaintiff existed from conditions unrelated to the Developer Defendants and in the control of the Plaintiff. Specifically, Mr. Murphy is expected to testify that the natural slope of the backyard of the Property, the configuration of the back part of the house, the location of the retaining wall between the Property and the Watters' Property and the ill-maintained condition of the gutters, down-spouts and french drains on the Property contributed to the collection of rain water falling on the Property, remaining on the Property and collecting on the rear patio of the Property that was the proximate cause of the Plaintiff's flooding. Mr. Murphy is further expected to testify that any drainage problems arising outside of the Property were remedied by the installation of the drainage system.

Mr. Johnson. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Messrs. Randall. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Dobbs and Mr. Shaw. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Roberts. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Maris. It is Mr. Maris's opinion that the \$150,000.00 to \$200,000.00 range of attorneys fees estimated by Plaintiff's attorneys' fees expert is not a reasonable fee for this case. Subject to, and without waiving, the foregoing, Mr. Maris will testify that, based upon a review of the file, it is their opinion that Plaintiff has brought no legitimate claim upon which an award of attorneys' fees may be authorized and awarded. Therefore, it is Mr. Maris's opinion that no attorneys' fees were reasonably incurred and should be awarded. Subject to, and without waiving, the foregoing, it is of the opinion of Mr. Maris that: 1) the hourly rate charged of \$175.00 per hour (\$75.00 assistant time), is a reasonable fee; 2) the reasonable and necessary amount of time that can expected to be expended by Plaintiff's attorney in the prosecuting of Plaintiff's claims is no more than fifty (50) hours; and 3) the total attorneys' fees and expenses incurred by Plaintiff through trial should not exceed \$8,750.00.

Ms. Moore: Ms. Moore will testify that given the neighborhood and developments surrounding Plaintiff's property, that the property located at 14905 Lake Forest Drive, Addison, Texas 75001 would sale for lot value only.

(4) if the expert is retained by, employed by, or otherwise subject to your control;
(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

ANSWER:

Mr. Murphy. Mr. Murphy's testimony is formed, primarily, from his personal observations of the Property. To the extent that Mr. Murphy reviewed documents, they

may be made available at the law offices of Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon reasonable request.

Mr. Johnson. Mr. Johnson has reviewed the letter dated January 8, 1998 prepared by Mr. Bob Parker, PMS Property Services, as well as photographs taken of the Property on June 3, 2003, a videotape taken of the Property on June 3, 2003 and the appraisal report prepared by Clyde Crum.

Messrs. Randall. Mr. Randall has relied upon his personal observations of the Property.

Mr. Dobbs and Mr. Shaw. Will supplement per Rule 11 Agreement with Plaintiff.

Mr. Roberts. Mr. Roberts has relied upon his personal observations of the Property, the drainage plans prepared by Kyle Corey and the storm drainage plan.

Mr. Maris. Other than the litigation file, of which Plaintiff should have a copy of all non-privileged documents, no documents have been reviewed or prepared at this time. At such time when documents become available, they may be made available at the law offices of Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon reasonable request.

Ms. Moore: Ms. Moore's opinion is based primarily on her personal experience and expertise in selling houses in the Addison area and specifically in Plaintiff's neighborhood. To the extent that Ms. Moore reviewed documents, they may be made available at the law offices of Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon reasonable request.

(B) the expert's current resume and bibliography.

ANSWER:

Mr. Murphy. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Johnson. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Messrs. Randall. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Dobbs and Mr. Shaw. For Mr. Dobbs, see resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure. Not available for Mr. Shaw.

Mr. Roberts. Not available, will supplement if becomes available.

Mr. Maris. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Ms. Moore: See resume attached hereto.

194.2 (g) Indemnity and insuring agreements described in Rule 192.3(f):

ANSWER: Not applicable.

194.2 (h) Settlement agreements described in Rule 192.3(g):

ANSWER: Not applicable.

194.2 (i) Witness statements described in Rule 192.3(h):

ANSWER: None at this time. However, it is anticipated that depositions of parties and third-party witnesses will be taken. At such time, a copy of said depositions will be made available to each party.

194.2 (j) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

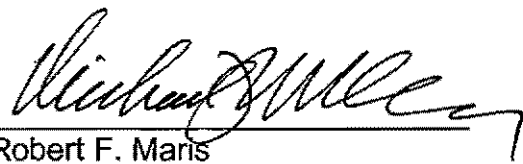
ANSWER: Not applicable.

194.2 (k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

ANSWER: Not applicable.

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

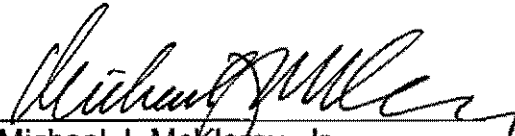
CERTIFICATE OF SERVICE

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 19th day of August, 2004, to:

Thomas H. Keen
LOOPER REED & MCGRAW, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
VIA CERTIFIED MAIL RECEIPT
NO. 7003 1680 0004 2873 6942

Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
VIA REGULAR U.S. MAIL

J. Robert Miller, Jr.
MILLER & BROWN, L.L.P.
400 South Ervay Street
Dallas, Texas 75201-5513
VIA REGULAR U.S. MAIL


Michael J. McKleroy, Jr.

607.066\disclose5.rsp.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: August 4, 2004

To: Rickey Garen Via Telecopier Number: (512)491-2368

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 + 11

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 responses from Plaintiff to our 2nd Set of Discovery.

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

August 4, 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. 0200086821
File No. 807-066

Dear Gentlemen:

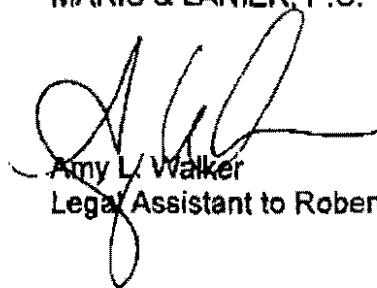
Attached please find a copy of Plaintiff Pat Milliken's Answers to Town of Addison's Second Set of Interrogatories and Responses to Second Request for Production.

August 4, 2004
Page 2

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 "Amy L. Walker". The signature is fluid and cursive, with a large loop at the end.

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.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

**PLAINTIFF PAT MILLIKEN'S ANSWERS TO
TOWN OF ADDISON'S SECOND SET OF INTERROGATORIES
AND RESPONSES TO SECOND REQUEST FOR PRODUCTION**

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.

Plaintiff, PAT MILLIKEN, ("Plaintiff") submits her Answers to Town of Addison's

Second Set of Interrogatories and Responses to Request for Production as follows:

1. **INTERROGATORY:** Please identify all individuals who you contacted to assist you in the clean-up, remediation, and/or repair of your property as a result of the flooding. Specifically, in your deposition transcript taken on January 21, 2004, at page 70, you make reference to a person named "Angelica". Please identify by full name, address, and telephone number, this individual, as well as any other individuals or companies who may have assisted you.

ANSWER: I do not know her last name. I got her as well as a couple of guys from the "labor pool" in Plano. I just paid them in cash. If I had anticipated litigation I would have done it differently to document it, but the Town of Addison was guaranteeing me that they would take care of any and everything that I had to deal with as a result of this flooding losses, costs, all of it.

2. **REQUEST FOR PRODUCTION OF DOCUMENTS:** Please produce for inspection and copying any and all documents to or from any individual or company who assisted you in the clean-up remediation, and/or repair of your property after flood incidents. This includes, but is not limited to, invoices, statements, proof of payment including canceled checks and receipts.

RESPONSE: Plaintiff has no additional documents.

3. **INTERROGATORY:** Please identify by model number, serial number, brand, date of purchase and any other identifying information, the big screen television you allege has been damaged as a result of the flood incidents.

ANSWER: Toshiba 65" Projection Screen, Model No. 65H82, Serial No. 14354608, Chasis No. TAC 0071.

4. **REQUEST FOR PRODUCTION OF DOCUMENTS:** Please produce for inspection and copying of any and all documents evidencing the purchase of the big screen television you claim has been damaged as a result of the flood incidents.

RESPONSE: Plaintiff no longer possesses such documents.

5. **REQUEST FOR PRODUCTION OF DOCUMENTS:** Please produce for inspection and copying true, correct and complete copies of any and all MLS listings and documents providing disclosures for the property located at 14905 Lake Forest Drive, Town of Addison, Dallas County, Texas.

RESPONSE: Objection. This request is not limited to relevant time period. Subject to same, Plaintiff may not have a complete memory of all MLS listings for the subject property, but believes Defendant has requested copies of same. Plaintiff will review those documents, if furnished by Defendant and verify the information contained therein.

6. **INTERROGATORY:** Please identify all individuals, including but not limited to, potential buyers and investors which you have approached, or who have approached you, regarding your property. This request also includes all individuals who have been inside your property at an open-house.

ANSWER: Objection. This Interrogatory is not limited to a relevant time period. Subject to same, Plaintiff has not held an open house. Individuals who have expressed some interest in the house are:

David Slagel
Ida Homes
Dennis Schnell
Shirley Peters
Vivian Young
Patti Laylee
Roxie Lynch
Charlene Gast
Diane Morris
Elizabeth Baker

7. **REQUEST FOR PRODUCTION OF DOCUMENTS:** Please produce for inspection and copying true, correct and complete copies of any and all written documents which evidence those individuals referenced in Interrogatory No. 6 above. This request includes, but is not limited to, business cards, hand-written notes, and lists of individuals viewing your property at an open-house.

RESPONSE: See attached documents.

8. **REQUEST FOR PRODUCTION OF DOCUMENTS:** Please produce for inspection and copying, true, correct and complete copies of any and all written documents or tangible things evidencing any insurance claims made on the property as a result of the flooding and any correspondence to or from the insurance company in connection with the flooding. The relevant time period for this request is January 1, 2000 to the present.

RESPONSE: There are not any additional documents.

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 29th day of July 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:\THK\Clients\Milliken, Pat\Discovery\2nd Resp to Interrogs and REP-Town of Addison .doc

PLAINTIFF PAT MILLIKEN'S ANSWERS TO TOWN OF ADDISON'S SECOND SET
OF INTERROGATORIES AND RESPONSES TO SECOND REQUEST FOR PRODUCTION -- PAGE 4

ILSN# 10026140 Expired 14906 LAKE FOREST DR ADDISON 75254 LP: \$768,800V



Category: Residential Type: Single Family Orig LP: \$850,000
 Area: 10/1 Map: DA/0015/E Also For Lease: No Low: \$795,000
 Subdv: MILLIKEN ADDN Parcel ID: 100049700001A0000 Lot \$ / SqFt: \$134.88
 County: DALLAS Parcel ID: 100049700001A0000
 Legal: MultiParcel: Yes
 Lot: 1A Blk: 497 MUID Dist: Yes

Bedrooms: 5 Tot Baths: 6.1 Liv Areas: 6 Dining Area: 1 Story: 1 Pool: Yes
 Fireplaces: 1 Full Baths: 6 Levels-1st: 5 2nd: 3rd: Bath:
 Sec Sys: No Half Baths: 1 Levels-1st: 1 2nd: 3rd: Bath:

SqFt: 5,884 / Appraiser Yr Bld: 1981 / Prowned HdepAm: No
 # Gar Spaces: 2 Gar Size: 28X32 # Carport Spaces: 0 Cxzd Park: 2
 Acres: 1.4 Lgr Dims: 210 X 300 W/M Subdiv: No
 Media: 4 / 0 / 0 PAR:Y HOA Dues: \$ /

School Dist: CARROLLTON-FARMERS BRANCH ISD
 Type: E
 Type: I
 Type: H
 Type:

Name: CARROLLTON Living 1: 28X18 / 1 F Dining: 15X14 / 1 Mstr BR: 18X15 / 1
 Name: SHEFFIELD Living 2: 28X18 / 1 Breakfast: Bedroom 2: 18X15 / 1
 Name: TURNER Living 3: 12X12 / 1 Kitchen: 18X15 / 1 Bedroom 3: 16X14 / 1
 Name: Study: 12X12 / 1 Other Rm: 22X14 / 1 Bedroom 4: 18X15 / 1
 Utility: 21X9 / 1 Other Rm: 16X16 / 1 Bedroom 5: 12X11 / 1

Building Type	Construction	City Sewer	Stove	Ceramic Tile
Single Detached	Brick	City Water	Wood Burning	Terrazzo
Style of House	Siding	Private Road	Kitchen Equipment	Vinyl
Contemporary/Modern	Foundation	Interior Features	Built-in Icemaker	Wood Floor
Lot Size/Acreage	Pier & Beam	Cable TV Available	Built-in Microwave	Heating/Cooling
1 Acre to 2.99 Acres	Piered Beam Slab	Multiple Staircases	Cooktop-Electric	Central Air-Elec
Lot Description	Slab	Paneling	Dishwasher	Gas Heat
Acreage	Roof	Vaulted Ceilings	Disposal	Zoned
Exterior Features	Composition	Wet Bar	Double Oven	Energy Features
Balcony	Backyard Pool Features	Bed/Bath Features	Oven-Electric	Ceiling Fans
Covered Porch(es)	Attached Spa	Double Shower	Plumbed for Gas in Kitchen	Turbines
Guest Quarters	Diving	Garden Tub	Self Clean	Special Notes
Gutters	Heated	Jetted Tub	Vent Mechaniam	Owner/Agent
Lighting System	In Ground Gunite	Linen Closet	Kitchen Other	Assumption Info
Patio Covered	Type of Fence	Medicine Cabinet	Breakfast Bar	Not Assumable
Satellite Dish	Iron	Separate Shower	Utility Room	Possession
Wood Deck	Rock/Stone	Separate Vanities	Drip/Dry Area	Closing/Funding
Workshop	Wood	Walk-in Closets	Dryer Hookup-Elec	Showing
Other	Parking/Garage	Other	Fullsize W/D Area	Agent Or Owner Present
Soil	Attached	Specialty Rooms	Room for Freezer	
Black	Circle Drive	Spa/Hot Tub Room	Second Pantry	
Urnstone	Front	Unfinished Bonus Room	Separate Utility Room	
Rocky/Shale	Open	Other	Sink in Utility	
Sandy Loam	Oversized	Fireplace Type	Utility Closet	
Mineral Rights	Street/Utilities	Decorative	Flooring	
Unknown	Asphalt	Masonry	Carpet	

Property Description: Wonderful ranch style with its soaring ceilings and walls of glass has come back in style. Some remodeling and you have a beautiful home surrounded by \$1,000,000 to \$3,500,000 mansions on a privately owned cul-de-sac. The mature trees and 1.4 acre yard give a 'in the country' feel.
 Directions: Dallas North Tollway to Beltline. East on Beltline to 2nd light (Preston-wood) turn right (Preston and Lake Forest are the same street)
 Q: PAM01 Pat Milliken LA: 0243313 Pat Milliken

Prepared By: Pat Milliken / Pat Milliken
 --- Information herein deemed reliable but not guaranteed. ---
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MILLIKEN
 1ST Supp. 0001

9590839 Expired 14906 LAKE FOREST DR ADDISON 76001- LP: \$900,000



Category: Residential Type: Single Family Orig LP: \$996,000
 Area: 10/1 Map: DA0015/E Also For Lease: No Low: \$850,000
 Subdv: MILLIKEN REP Parcel ID: 100049700001A0000 Lot \$ / SqFt: \$152.7
 County: DALLAS
 Edge: MultiParcel: Yes
 Lot: 1A BR: 487 MUD Dist: Yes

Bedrooms: 5 Tot Baths: 6.1 Liv Areas: 6 Dining Area: 1 Story: 1 Pool: Yes
 Fireplaces: 1 Full Baths: 6 Levels-1st: 6 2nd: 3rd: Basement:
 Sec Sys: No Half Baths: 1 Levels-1st: 1 2nd: 3rd: Basement:

SqFt: 5,864 / Appraiser Yr Blt: 1960 / Prowmed HdcpAm: No
 # Gar Spaces: 2 Gar Size: 28X32 # Carport Spaces: 0 Curd Park: 2
 Acres: 1.4 Lot Dimen: 210 X 300 Will Subdv: Yes
 Media: 1 / 0 / 0 PAR:Y HOA: None HOA Dues: \$ /

of Dist: DALLAS
 Yes Type: E Name: PERSHING
 Yes Type: M Name: FRANKLIN
 Yes Type: S Name: GRIMES
 Type: Name:

Living 1: 28X18 / 1 F Dining: 15X14 / 1 Mstr BR: 18X18 / 1
 Living 2: 28X18 / 1 Breakfast: Bedroom 2: 10X15 / 1
 Living 3: 12X12 / 1 Kitchen: 18X15 / 1 Bedroom 3: 18X14 / 1
 Study: 12X12 / 1 Other Rm: 22X14 / 1 Bedroom 4: 16X15 / 1
 Utility: 21X9 / 1 Other Rm: 16X18 / 1 Bedroom 5: 12X11 / 1

ing Type	Unknown	City Water	Cooling-Electric	Heating/Cooling
ing Detached	Construction	City Sewer	Oven-Electric	Central Air-Elec
of House	Brick	Asphalt	Double Oven	Gas Heat
emporary/Modern	Siding	Private Road	Self Clean	Zoned
ach	Foundation	Interior Features	Built-In Microwave	Energy Features
Size/Acreage	Pier & Beam	Wet Bar	Vent Mechanism	Ceiling Fans
Acres To 2.99 Acres	Slab	Vaulted Ceilings	Dishwasher	Turbines
Description	Roof	Cable TV Available	Disposal	Special Notes
ubdivision	Composition	Multiple Staircases	Built-In Ice Maker	Owner/Agent
ul De Sac	Backyard Pool Features	Bed/Bath Features	Plumbed for Gas in Kitchen	Assumption Info
enor Lot	In Ground Gunite	Walk-In Closets	Kitchen Other	Not Assumable
avily Treed	Diving	Separate Vanities	Breakfast Bar	Proposed Financing
eror Features	Heated	Separate Shower	Utility Room	Conventional
Covered Porch(es)	Attached Spa	Garden Tub	Separate Utility Room	Cash
Patio Covered	Type of Fence	Jetted Tub	Washer Hookup	Possession
Wood Deck	Wood	Medicine Cabinet	Floor Drain	Closing/Funding
Gutters	Iron	Linen Closet	Fullsize W/D Area	Showing
Guest Quarters	Rock/Stone	Specialty Rooms	Sink In Utility	Agent Or Owner Present
Workshop	Parking/Garage	Gunsroom	Room for Freezer	
il	Attached	Library/Study	Flooring	
Sandy Loam	Front	Other	Carpet	
Black	Circle Drive	Fireplace Type	Vinyl	
Rocky/Shale	Opener	Wood Burning	Ceramic Tile	
Limestone	Oversized	Stone	Terrazzo	
neral Rights	Street/Utilities	Kitchen Equipment	Wood Floor	

Property Description: EXCLUSIVE ADDISON CUL-DE-SAC. UPDATED IN 1984, NEEDS A LOT OF WORK BUT IS LIVEABLE. APPRAISED AT \$900,000 FOR THE LAND ONLY. REDUCED TO \$900,000 42POOL, 13SPA & HGUSE ARE FREE.. MATURE TREES. RECENT SALES ON THIS

LA-DE SAC ARE \$1.3 MILLION AND UP. MUST SELL WILL CONSIDER ANY OVER OVER \$850,000
 Directions: N ON PRESTON, W ON BELTLINE, LEFT ON PRESTONWOODLAKE FOREST N ON TOLLWAY, E ON BELTLINE. RT ON
 5500 WOODLAKE FOREST LA: 0243313 Pat Milliken

Offerings Available:

Lot#	Category	Price	Acreage
------	----------	-------	---------

Prepared By: Pat Milliken / Pat Milliken
 --- Information herein deemed reliable but not guaranteed. ---
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MILLIKEN
 1st Supp. 0002

FEBRUARY 2004
 S M T W T F S
 1 2 3 4 5 6 7
 8 9 10 11 12 13 14
 15 16 17 18 19 20 21
 22 23 24 25 26 27 28
 29

13 February Friday

Bayer's

7:00 a.m. P.M. 12:00

Shelby's
C-21 of Leiferford

Dupe

514-534-3040

WVH Family 214-877-8390

Patti Baker 913-305-7774
214-204-8239

Royal Lynch 462-939-5799
Shelby

James Samuel 214-477-1320
Clayton

Rauh 214-247-9549

MILLIKEN
1st Supp. 0003

4 5 6 7 8 9 10
 11 12 13 14 15 16 17
 18 19 20 21 22 23 24
 25 26 27 28 29 30

7:00 a.m.

part. 13:00

7:35

House Flooded again

8:00

*Call Ed 9/1 - Ted Miller
 with emergency number*

8:30

*Patrol in hallway. Dick's
 wants to determine why and
 why's the dust on top of
 the vent. Dick says it is
 9:19 PM.*

9:45

10:30

10:45

11:35

11:45

5:00

5:15

6:00

6:15

MILLIKEN
 1st Supp. 0004

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
BIRMINGHAM, AL
PERMIT NO. 3290

~~9591-8340~~
94871-8340-*Division Young*

817-346-1475
817-346-1475

817-346-1475

817-346-1475

P.O. Box 10266
33258-0001



817-346-1475
817-346-1475
817-346-1475
817-346-1475

PATSY B MILLIKEN
ALLISON MILLIKEN
14905 LAKE FOREST DR
DALLAS TX 75254-7617

022

Handwritten notes

MILLIKEN
1st Supp. 0005

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: July 29, 2004

To: Rickey Garen

Via Telecopier Number: (512)491-2366

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 + 4

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

Re: File No. 607-086: Pat Milliken v. Town of Addison

Message: See attached letter dated July 29, 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

214-706-0927 direct dial

MICHAEL J. MCKLEROY, JR.

July 29, 2004

VIA FACSIMILE NO. 214-953-1332

Thomas H. Keen

LOOPER REED & MCGRAW

1601 Elm Street, Suite 4100

Dallas, Texas 75201

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 Tom:

In light of the court's order on the summary judgment, I have reviewed Ms. Milliken's discovery responses as it relates to the identification of, and damages resulting from, the alleged taking. In the Town of Addison's first set of discovery (Int. No. 40), Ms. Milliken was asked to identify the area of her Property that she contends was taken. In response, Ms. Milliken referred to her petition and to her prior discovery responses. I believe that this refers to her response to Interrogatory No. 2, in which Ms. Milliken was asked to state the total amount of damages that she is seeking to recover from the Town of Addison, itemized to show each element of damages, the dollar amount attributable to each element and how each element was calculated. In response, Ms. Milliken stated, in part, that:

"Actual damages include the temporary taking of 5,500 square feet of Plaintiff's land and the permanent taking of approximately 25 square feet where the drainage inlet extends beyond the existing drainage easement. Further, there is now a somewhat permanent diagonal, non-consensual easement across Plaintiff's yard and house where the drainage runs."

"According to the builder's asking price for their land and new homes, the land only is worth \$19.00 /sf. The temporary easement was taken for four months. Beyond the value of the land, however, were the attendant damages imparted by the attempted 'fixing' of the property drainage. The peace of Plaintiff's household was shattered throughout that process. The rental value of Plaintiff's house would be approximately \$6,000.00 per month."

MR. THOMAS H. KEEN
JULY 28, 2004

PAGE 2

It seems clear to me that she is saying that the damages resulting from the drainage system being outside of the easement is 25 square feet times \$19.00 per square feet, for a total of \$475.00. However, she does not identify where that 25 square feet is located.

The rest of the response is entirely unclear. Ms. Milliken identifies four (4) potential parcels that were taken, i.e., a "somewhat permanent easement," a "temporary easement," a "temporary taking of 5,500 square feet" and "the rental value of [her] house." I know that Ms. Milliken's house is approximately 5,500 square feet (4,494 per tax records). However, it is not clear whether the 5,500 square feet refers to the house or to some other, unimproved, parcel on the Property. If it is the house, then it would be logical that she is saying that the temporary taking was \$6,000.00 per month. But for how long? She refers to a temporary taking lasting for four months, but says that this refers to a "temporary easement," not the house. Therefore, another interpretation could be that the "temporary easement" is the 5,500 square feet. If so, then it would be logical that she is saying that this 5,500 square feet easement was taken for four months. But here the value of this taking is not disclosed? Finally, is the "temporary easement" different from, or the same as, the "somewhat permanent diagonal, non-consensual easement across Plaintiff's yard and house where the drainage runs." If it is different, what is the value of this property?

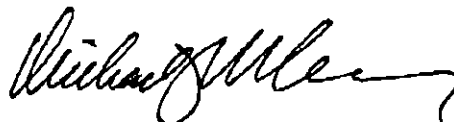
In order to clear up this confusion, I am respectfully requesting that Ms. Milliken supplement her discovery responses to: 1) specifically identify each parcel of the Property that she contends was taken (identifying the location and the square footage); 2) whether each such parcel of the Property was taken temporarily or permanently; and 3) state what she contends to be the fair market value for each parcel of the Property she contends was permanently taken or the fair rental value for each parcel of the Property that she contends was temporarily taken.

I would rather obtain this information without involving the court. Therefore, if you could please provide this information within the next fourteen (14) days, I would appreciate it. If you need more time than that, please let me know and we can work something out. Otherwise, I will have to file a motion to compel.

Should you have any questions, please contact me at the number listed above. Thanking you in advance for your time and attention,

Sincerely,

MARIS & LANIER, P.C.



Michael J. McKleroy, Jr.

Enclosure

MR. THOMAS H. KEEN
JULY 28, 2004

PAGE 3

CC: **VIA FACSIMILE NO. 972-934-9200**
Zach T. Mayer
FEE SMITH SHARP & VITULLO, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

MR. THOMAS H. KEEN
JULY 28, 2004

PAGE 4

cc: **VIA FACSIMILE NO. 512-491-2366**
Rickey Garen
Texas Municipal League
Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78754

VIA FACSIMILE NO. 972-450-2837
Mike Murphy
Lynn Chandler
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001

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: July 26, 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 + 5

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 Agreed Order Granting Continuance. This case will not go forward on August 2, 2004. We will advise you when we receive a new trial setting.

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

214-706-0921 (FAX)

July 26, 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.
Three Galleria Tower
13155 Noel Road, Suite 1000
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

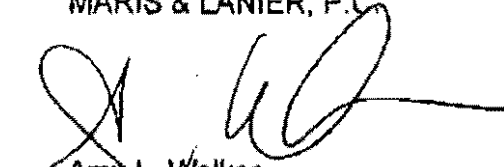
Dear Tom and Zach:

Attached is a conformed copy of the Agreed Order Granting Continuance. I met with the Judge today to get the enclosed order signed. He was concerned about the age of the case and wanted to let all counsel know that he plans on resetting this case for trial within the next six months. He also advised me that the order allowing Legacy Bank to be joined as a party has been granted.

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

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
Mike Murphy
Lynn Chandler
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/encl.)

VIA FACSIMILE
Larry Dobbs
Mike Shaw
P.O. Box 2377
Rockwall, Texas 75087
(w/encl.)

VIA EMAIL
Stan Randall
ASI
Rout 6 Box 240
Sulphur Springs, Texas 75482
(w/encl.)

VIA FACSIMILE
Mark W. Roberts, P.E.
Nathan D. Maier Consulting Engineers
8080 Park Lane, Suite 600
Dallas, Texas 75231
(w/encl.)

VIA FACSIMILE
Janice Moore
6011 Derek Trail
Dallas, Texas 75252
(w/encl.)

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

AGREED ORDER GRANTING CONTINUANCE

On the 20th day of July, 2004, came on for consideration an Agreed Motion for Continuance filed Plaintiff and Defendants in this action. After having considered the parties' motion, the Court is of the opinion that it should be GRANTED. It is therefore ORDERED, ADJUDGED and DECREED that:

1. The above-referenced case is hereby stricken from the Court's trial docket of August 2, 2004.
2. The parties are ordered to file an Agreed Scheduling Order in this case within thirty days after Defendant Legacy Bank enters an appearance in this case. This Scheduling Order will include a proposed trial date.

SIGNED on the 20th day of July, 2004.


Robert H. Frost

JUDGE PRESIDING

AGREED:

Thomas H. Keen
 Looper Reed & McGraw, P.C.
 4100 Thanksgiving Tower
 1601 Elm Street
 Dallas, Texas 75201
 ATTORNEY FOR PLAINTIFF

Zach Mayer, with permission
 Zach T. Mayer
 Fee, Smith, Sharp & Vitullo, L.L.P.
 One Galleria Tower
 13355 Noel Road, Ste. 1200
 Dallas, Texas 75240
 ATTORNEY FOR BUILDER DEFENDANTS

RFM
 Robert F. Maris
 Maris & Lanier, P.C.
 10440 N. Central Expressway
 Suite 1450
 Dallas, Texas 75231
 ATTORNEY FOR DEFENDANT
 TOWN OF ADDISION

607.0661Continue.Ord

AGREED:



Thomas H. Keen
Looper Reed & McGraw, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
ATTORNEY FOR PLAINTIFF

Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
ATTORNEY FOR BUILDER DEFENDANTS

Robert F. Maris
Maris & Lanier, P.C.
10440 N. Central Expressway
Suite 1450
Dallas, Texas 75231
ATTORNEY FOR DEFENDANT
TOWN OF ADDISION

607.665\Continue.Ord

ORDER GRANTING MOTION FOR CONTINUANCE

PAGE 2

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: July 22, 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: Robert F. Maris

Direct Phone Number : (214) 706-0925

Direct Telecopier Number : (214) 706-0921

Pages: Cover + 3

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 letter dated July 22 and Order

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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

ROBERT F. MARIS

July 22, 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:

Enclosed is a copy of Judge Sims' Order on Summary Judgment. Most of Pat Milliken's claims against Town of Addison are dismissed except to the extent that Pat Milliken can prove that the drainage system put in by the city exceeds the five foot easement on the western boundary. The five foot easement theory is problematic for Ms. Milliken for at least two reasons: (1) the drainage system did not exceed the easement (we will need to establish positive proof of this); and (2) the Plaintiff has not advanced a damage theory based on this easement theory.

July 22, 2004

Page 2

This case is currently on the court's trial docket for August 2, 2004. However, all parties have agreed to a continuance inasmuch as Ms. Milliken is adding a new defendant, Legacy Bank.

At this point in time, we ought to consider trying to settle with Ms. Milliken for a nominal amount of money and/or determine an objective way to demonstrate that the drainage system is within the easement and filing another Motion for Summary Judgment based on that fact. Please give these matter your consideration and let me know how you would like to proceed.

Sincerely,

MARIS & LANIER, P.C.

A handwritten signature in black ink, appearing to read 'RFM' with a stylized flourish extending to the right.

Robert F. Maris

RFM/dam

Enclosure

CAUSE NO. 02-04715-F

PAT MILLIKEN)	IN THE DISTRICT COURT
)	
V.)	
)	
TOWN OF ADDISON, THE PRESTON)	DALLAS COUNTY, TEXAS
GROUP DESIGNERS AND BUILDERS,)	
WILLIAM LONG, PRESTON HOMES,)	
INC. and JON B. COLEMAN)	116 TH JUDICIAL DISTRICT

ORDER ON TOWN OF ADDISON'S MOTION FOR SUMMARY JUDGMENT

On the 7th day of July, 2004, came on for hearing the Motion for Summary Judgment filed by Defendant Town of Addison ("Addison"). Upon consideration of Addison's Motion and Supplement to its Motion, the response filed by Plaintiff Pat Milliken ("Plaintiff"), the papers on file with this court and the arguments of counsel, the Court is of the opinion that Addison's Motion should be GRANTED in part, and DENIED in part as follows:

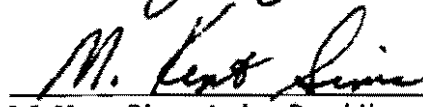
IT IS HEREBY ORDERED, ADJUDGED and DECREED that Addison's Motion is granted as to Plaintiff's claims for negligence except to the extent that Plaintiff contends that Addison was negligent in constructing a drainage system outside of the five (5) foot easement on the western boundary of Plaintiff's property.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Addison's Motion is granted as to Plaintiff's claim for trespass.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Addison's Motion is granted as to Plaintiff's claim for unlawful diversion of water in its entirety.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Addison's Motion is denied as to Plaintiff's claim for inverse condemnation.

SIGNED this 20 day of July, 2004.



 M. Kent Sims, Judge Presiding

*7-21-04 Signed copy
Returned to Army*

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: July 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 + 8

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

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

Message: See attached proposed Agreed Motion/Order for Continuance. Please sign the Motion and fax your signature page back to me. Thanks.

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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 20, 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.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

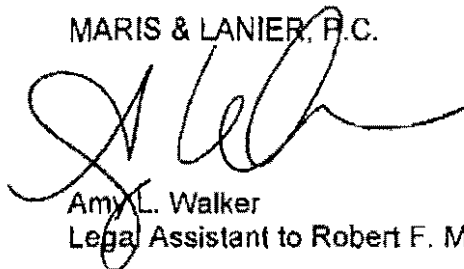
Re: *Pat Milliken v. Town of Addison, et al*
Cause No. 02-4715-F in the 116th District Court, Dallas County
File No. 607-066

Dear Tom and Zach:

We have contacted the Court and we have determined that Judge Frost will not continue this case without the filing of an Agreed Motion for Continuance, and the clients must sign the motion. I have drafted a proposed Motion and Order which are attached. Please review and if the pleadings are proper, please sign where indicated and return your fax signatures to me as soon as possible.

Sincerely,

MARIS & LANIER, P.C.



Amy L. Walker
Legal Assistant to Robert F. Maris

Enclosure

bcc: **VIA FACSIMILE**
Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/ encl.)

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

AGREED MOTION FOR CONTINUANCE

Plaintiff, Pat Milliken, joined by Defendants, Town of Addison, The Preston Group Designers and Builders, William Long, Preston Homes, Inc. and Jon B. Coleman, request that the trial of this case be continued. In support of this motion, the parties state as follows:

1. This case is presently set for trial on August 2, 2004.
2. This case involves *inter alia* the use of certain real estate in Dallas County. Defendants Jon Coleman and Preston Homes, Inc., previously owned one of the tracts at issue in this case. Plaintiff has recently found out that the Coleman/Preston Homes, Inc. tract has been foreclosed upon by Legacy Bank. Inasmuch as Legacy Bank is now the owner of the affected property, it is imperative that the bank be added as a party defendant in this case. On or about July 7, 2004, Plaintiff filed an Agreed Motion to add Legacy Bank as a defendant. This motion is presently pending before the Court.

3. The parties have conferred and they have agreed that the continuance will be necessary to bring Legacy Bank into the case. The parties anticipate that they will confer and agree upon a scheduling order, including a new trial once Legacy Bank makes an appearance.

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
1450 Meadow Park Building
10440 N. Central Expressway
Dallas, Texas 75231
214-706-0920 telephone
214-706-0921 facsimile

ATTORNEYS FOR DEFENDANT
TOWN OF ADDISON

AGREED:

Plaintiff, Pat Milliken

Thomas H. Keen
Looper Reed & McGraw, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
ATTORNEY FOR PLAINTIFF

AGREED MOTION FOR CONTINUANCE

PAGE 2

Defendant, The Preston Group
Designers and Builders

Defendant, William Long

Defendant, Preston Homes, Inc.

Defendant, Jon B. Coleman

Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
ATTORNEY FOR BUILDER DEFENDANTS

Defendant, Town of Addison

By: *Michael E. Murphy*

Printed Name: MICHAEL E. MURPHY
7/21/04

CERTIFICATE OF SERVICE

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

Thomas H. Keen
Looper Reed & McGraw, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201

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

Robert F. Maris

607.055\Continue.Agr

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

AGREED ORDER GRANTING CONTINUANCE

On the ____ day of July, 2004, came on for consideration an Agreed Motion for Continuance filed Plaintiff and Defendants in this action. After having considered the parties' motion, the Court is of the opinion that it should be GRANTED. It is therefore ORDERED, ADJUDGED and DECREED that:

1. The above-referenced case is hereby stricken from the Court's trial docket of August 2, 2004.
2. The parties are ordered to file an Agreed Scheduling Order in this case within thirty days after Defendant Legacy Bank enters an appearance in this case. This Scheduling Order will include a proposed trial date.

SIGNED on the ____ day of _____, 2004.

JUDGE PRESIDING

AGREED:

Thomas H. Keen
Looper Reed & McGraw, P.C.
4100 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
ATTORNEY FOR PLAINTIFF

Zach T. Mayer
Fee, Smith, Sharp & Vitullo, L.L.P.
One Galleria Tower
13355 Noel Road, Ste. 1200
Dallas, Texas 75240
ATTORNEY FOR BUILDER DEFENDANTS

Robert F. Maris
Maris & Lanier, P.C.
10440 N. Central Expressway
Suite 1450
Dallas, Texas 75231
ATTORNEY FOR DEFENDANT
TOWN OF ADDISION

607.0661Continue.Ord

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: July 12, 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 + 17

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 Fourth Supplemental Responses to Disclosures.

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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

214-706-0921 (FAX)

July 12, 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

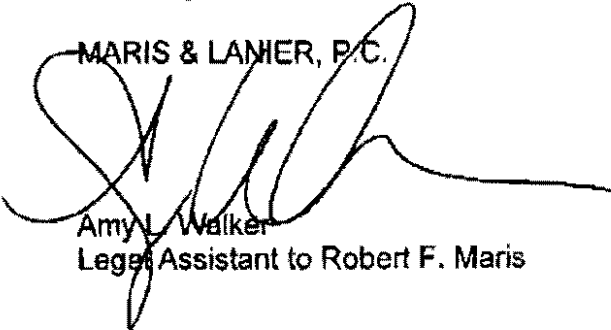
Dear Tom and Zach:

Attached please find Defendant Town of Addison's Fourth Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

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

bcc: **VIA FACSIMILE**
Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/ encl.)

CAUSE NO. 02-4715-F

PAT MILLIKEN,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	116th JUDICIAL DISTRICT
TOWN OF ADDISON, THE PRESTON	§	
GROUP DESIGNERS AND BUILDERS,	§	
WILLIAM LONG, PRESTON HOMES,	§	
INC. and JON B. COLEMAN,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

DEFENDANT TOWN OF ADDISON'S FOURTH SUPPLEMENTAL RESPONSE TO PLAINTIFF'S RULE 194 REQUEST FOR DISCLOSURE

COMES NOW Defendant Town of Addison ("Addison") and, pursuant to Rules 194 of the Texas Rules of Civil Procedure, timely responds to the Request for Disclosure served by Plaintiff Pat Milliken ("Plaintiff"). In support thereof, Addison respectfully shows the following:

194.2 (a) The correct names of the parties:

- ANSWER:** Plaintiff: Pat Milliken;
- Defendant: Town of Addison;
- Defendant: The Preston Group Designers and Builders;
- Defendant: Preston Homes, Inc.;
- Defendant: William Long; and
- Defendant: Jon B. Coleman

194.2 (b) The name, address, and telephone number of any potential parties:

ANSWER: Achariya K. Watters, 14911 Lake Forest Drive, Addison, Texas 75001.

194.2 (c) Legal theories and factual bases of the Defendant's claims and defenses:

ANSWER: Addison generally denies each and every allegation set forth by Plaintiff. Arguing further, and in the affirmative, Addison asserts the following affirmative defenses:

Sovereign Immunity. Addison asserts that Addison is immune from liability to Plaintiff. A municipality, such as Addison, is immune from liability arising its governmental functions. The planning and construction of drainage improvements is a governmental function. Therefore, Addison is immune from Plaintiff's claims arising from the planning and construction of drainage improvements.

No Waiver of Immunity under TEX.CIV.PRAC.&REM.CODE §101.021. Addison asserts that Addison has not waived its sovereign immunity for Plaintiff's negligence claims under the Texas Tort Claims Act. §101.021 of the Texas Civil Practice and Remedies Code provides the exclusive means by which a municipality may waive its sovereign immunity. Addison asserts that it has not waived its sovereign immunity under §101.021 for the reason that; i) there is no causal connection between the "operation or use of a motor-driven vehicle or motor-driven equipment" and the claimed injury; ii) the injury complained of by Plaintiff did not arise from negligence of an employee of Addison; and/or iii) the injury complained of by Plaintiff did not arise from the operation or use of a motor-driven vehicle or motor driven equipment by an employee of Addison. Therefore, Addison has not waived its sovereign immunity for Plaintiff's claims of negligence.

No Waiver of Immunity under TEX.CIV.PRAC.&REM.CODE §101.057. Addison asserts that Addison has not waived its sovereign immunity for intentional tort claims under

the Texas Tort Claims Act. §101.057 of the Texas Civil Practice and Remedies Code provides an explicit exception to the Texas Tort Claim Act's waiver of immunity from suit. Therefore, Addison has not waived its sovereign immunity for intentional tort claims asserted by Plaintiff, including Plaintiff's claim of trespass and damage to real property.

Comparative Negligence. Addison requests that this Court direct the trier of fact in this matter, after a trial on the merits, to determine the percentage of responsibility of Plaintiff, each defendant named in this suit and each responsible third-party, who may include the owner of the adjacent property immediately to the north of Plaintiff, pursuant to Chapter 33 of the Texas Civil Practice and Remedies Code.

Contributory Negligence. Addison asserts that any negligence found by the trier of fact to be a proximate cause of the damages claimed by Plaintiff which are attributed to the Plaintiff should be applied to diminish the liability and damages sought by Plaintiff from Addison.

Waiver and Estoppel. Plaintiff has waived, and is estopped from, asserting damages arising from the planning and construction of drainage improvements, including damages arising from the ingress and egress Plaintiff's property for that purpose, for the reason that Plaintiff implicitly and explicitly authorized, consented to or ratified such acts and Addison reasonably relied upon Plaintiff's authorization, consent or ratification.

Failure to Mitigate Damages. Addison asserts that any damages sought to recovered by Plaintiff should be reduced to the extent that Plaintiff has failed to take the reasonable steps that a person of ordinary prudence in a similar situation would have taken to avoid the claimed damages.

194.2(d) The amount and method of calculating economic damages.

ANSWER: Not applicable.

194.2(e) Name, address, and telephone number of persons having knowledge of relevant facts, and brief statement of each identified person's connection with the case:

ANSWER:

Pat Milliken
14905 Lake Forest Drive
Addison, Texas 75001
Plaintiff in the above-referenced cause.

Thomas H. Keen
Looper Reed & McGraw
1601 Elm Street, Suite 4100
Dallas, Texas 75201
214-954-4135
Attorney for Plaintiff. Communicated with Addison officials regarding remediation work.

Jon Coleman
The Preston Group
2301 Ohio, Suite 235
Plano, Texas 75093
214-824-9009
Defendant. Builder of property to the immediate south of Plaintiff.

William Long
The Preston Group Designers & Builders, Inc.
2301 Ohio, Suite 235
Plano, Texas 75093
469-241-9911
Defendant. Builder of property to the immediate south of The Preston Group property.

Michael E. Murphy, P.E.
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Director of Public Works for Addison. Knowledge of the condition of the Plaintiff's property at all times relevant to this lawsuit. Communicated with Plaintiff about complaints to the property and remediation efforts.

Steve Chutchian
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Assistant City Engineer. Knowledge of the condition of the Plaintiff's property at all times relevant to this lawsuit. Communicated with Plaintiff about complaints to the property and remediation efforts.

Ron Whitehead
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

City Manager for the Town of Addison. Responded to a telephone call from Plaintiff in the middle of the night.

Chris Terry
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Assistant City Manager for the Town of Addison. Met with Plaintiff to discuss remediation possibilities.

Lynn Chandler
Les Folse
Carmen Moran
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Building Inspection Department for Addison. Issued building permits to Defendant Builders and have knowledge of condition of the property.

Dave Wilde
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Inspector for the Town of Addison. Knowledge of the condition of the Plaintiff's property at all times relevant to this lawsuit. Took photographs of the property

Slade Strickland
Ron Lee
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Parks and Recreation Department for the Town of Addison. Have knowledge of the condition of the Plaintiff's property and trees.

Jim Bowman
Bowman Construction
10209 Plano Road
Dallas, Texas 75238
214-349-2884

Construction firm hired by Addison to perform remediation work on Plaintiff's property.

Larry F. Smith, P.E.
Brian C. Eubanks, M.S.C.E., E.I.T.
Larry Smith Engineering
2115 Teakwood Lane, Suite 450
Plano, Texas 75075
972-964-2161
Engineering firm retained by Defendant Builders.

Don Cross
Mike Phillips
C & C Engineering, Inc.
12021 Plano Road, Suite 190
Dallas, Texas 75243
972-680-2164
Engineering firm retained by Defendant Builders.

Christian D. Laettner
3325 Eagle Bluff Road
Mound, Minnesota 55364-8596
Former neighbor (to the immediate south) of Defendant The Preston Group
Designers & Builders, Inc.

Achariya K. Watters
14911 Lake Forest Drive
Addison, Texas 75001
Neighbor (to the immediate north) of Plaintiff.

Jim Pierce
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880
Assistant Director of Public Works for Addison. Knowledge of the condition
of the Plaintiff's property on June 29, 2004 at the time videotape (Bates
Labeled Addison 598) was recorded.

194.2 (f): Testifying experts:

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

ANSWER:

Michael E. Murphy, P.E.
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010
972-450-2880

Charles D. Johnson
4106 Courtshire
Dallas, Texas 75229
972-503-9314

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

Larry E. Dobbs, MAI

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

Mark W. Roberts, P.E.
Nathan D. Maier Consulting Engineers
8080 Park Lane, Suite 600
Dallas, Texas 75231
214-739-4741 phone
214-739-5961 fax

Robert F. Maris
Maris & Lanier, P.C.
10440 N. Central Expressway, Suite 1450
Dallas, Texas 75231
214-706-0920

Janice Moore
6011 Derek Trail
Dallas, Texas 75252
972-732-6000

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

ANSWER:

Mr. Murphy. Mr. Murphy is expected to provide rebuttal testimony to the opinions given by Plaintiff's experts on the sufficiency of the drainage plans and development by the Developer Defendants. In addition, Mr. Murphy is expected to provide expert testimony regarding the drainage system installed on the Property and the condition of the drainage on the Property at all times relevant to this litigation, including the present.

Mr. Johnson. Mr. Johnson is expect to provide expert rebuttal testimony to the opinions given by Plaintiff's expert on the cost to repair any physical damage to the Property.

Messrs. Randall. Messrs. Randall are expected to provide testimony about the reasonable and necessary costs to replace and/or repair the trees that the Plaintiffs claim were damaged. Messrs. Randall are further expected to provide testimony about the contribution of the drainage of the Property to any damages suffered by Plaintiff.

Mr. Dobbs and Mr. Shaw. Mr. Dobbs and Mr. Shaw are expected to provide testimony about the diminution in value, if any, of the Property.

Mr. Roberts. Mr. Roberts is expected to provide expert testimony about the sufficiency of the drainage plans, the sufficiency of the storm drainage system, and the effect (or lack thereof) of the construction by the Developer Defendants on the drainage on the Property.

Mr. Maris. Mr. Maris is expected to provide rebuttal testimony to the opinions given by Plaintiff's expert on the reasonableness of attorneys' fees allegedly incurred by Plaintiff in this litigation.

Ms. Moore: Ms. Moore will testify concerning the sale value of Plaintiff's property.

(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 to your control, documents reflecting such information;

ANSWER:

Mr. Murphy. Mr. Murphy is expected to testify that the drainage plans submitted by the Developer Defendants were sufficient to provide adequate drainage to the Property and to avoid flooding had they been installed properly and in a timely manner. Mr. Murphy is further expected to testify that the drainage problems, if any, experienced by the Plaintiff

existed from conditions unrelated to the Developer Defendants and in the control of the Plaintiff. Specifically, Mr. Murphy is expected to testify that the natural slope of the backyard of the Property, the configuration of the back part of the house, the location of the retaining wall between the Property and the Watters' Property and the ill-maintained condition of the gutters, down-spouts and french drains on the Property contributed to the collection of rain water falling on the Property, remaining on the Property and collecting on the rear patio of the Property that was the proximate cause of the Plaintiff's flooding. Mr. Murphy is further expected to testify that any drainage problems arising outside of the Property were remedied by the installation of the drainage system.

Mr. Johnson. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Messrs. Randall. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Dobbs and Mr. Shaw. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Roberts. See report attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Maris. It is Mr. Maris's opinion that the \$150,000.00 to \$200,000.00 range of attorneys fees estimated by Plaintiff's attorneys' fees expert is not a reasonable fee for this case. Subject to, and without waiving, the foregoing, Mr. Maris will testify that, based upon a review of the file, it is their opinion that Plaintiff has brought no legitimate claim upon which an award of attorneys' fees may be authorized and awarded. Therefore, it is Mr.

Maris's opinion that no attorneys' fees were reasonably incurred and should be awarded. Subject to, and without waiving, the foregoing, it is of the opinion of Mr. Maris that: 1) the hourly rate charged of \$175.00 per hour (\$75.00 assistant time), is a reasonable fee; 2) the reasonable and necessary amount of time that can expected to be expended by Plaintiff's attorney in the prosecuting of Plaintiff's claims is no more than fifty (50) hours; and 3) the total attorneys' fees and expenses incurred by Plaintiff through trial should not exceed \$6,750.00.

Ms. Moore: Ms. Moore will testify that given the neighborhood and developments surrounding Plaintiff's property, that the property located at 14905 Lake Forest Drive, Addison, Texas 75001 would sale for lot value only.

(4) if the expert is retained by, employed by, or otherwise subject to your control;

(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

ANSWER:

Mr. Murphy. Mr. Murphy's testimony is formed, primarily, from his personal observations of the Property. To the extent that Mr. Murphy reviewed documents, they may be made available at the law offices of Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon reasonable request.

Mr. Johnson. Mr. Johnson has reviewed the letter dated January 8, 1998 prepared by Mr. Bob Parker, PMS Property Services, as well as photographs taken of the Property on June 3, 2003, a videotape taken of the Property on June 3, 2003 and the appraisal

report prepared by Clyde Crum.

Messrs. Randall. Mr. Randall has relied upon his personal observations of the Property.

Mr. Dobbs and Mr. Shaw. Will supplement per Rule 11 Agreement with Plaintiff.

Mr. Roberts. Mr. Roberts has relied upon his personal observations of the Property, the drainage plans prepared by Kyle Corey and the storm drainage plan.

Mr. Maris. Other than the litigation file, of which Plaintiff should have a copy of all non-privileged documents, no documents have been reviewed or prepared at this time. At such time when documents become available, they may be made available at the law offices of Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon reasonable request.

Ms. Moore: Ms. Moore's opinion is based primarily on her personal experience and expertise in selling houses in the Addison area and specifically in Plaintiff's neighborhood. To the extent that Ms. Moore reviewed documents, they may be made available at the law offices of Maris & Lanier, P.C., 10440 N. Central Expressway, Suite 1450, Dallas, Texas 75231 upon reasonable request.

(B) the expert's current resume and bibliography.

ANSWER:

Mr. Murphy. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Johnson. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Messrs. Randall. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Mr. Dobbs and Mr. Shaw. For Mr. Dobbs, see resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure. Not available for Mr. Shaw.

Mr. Roberts. Not available, will supplement if becomes available.

Mr. Maris. See resume attached to Defendant Town of Addison's Second Supplemental Response to Plaintiff's Rule 194 Request for Disclosure.

Ms. Moore; See resume attached hereto.

194.2 (g) Indemnity and insuring agreements described in Rule 192.3(f):

ANSWER: Not applicable.

194.2 (h) Settlement agreements described in Rule 192.3(g):

ANSWER: Not applicable.

194.2 (i) Witness statements described in Rule 192.3(h):

ANSWER: None at this time. However, it is anticipated that depositions of parties and third-party witnesses will be taken. At such time, a copy of said depositions will be made available to each party.

194.2 (j) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

ANSWER: Not applicable.

194.2 (k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

ANSWER: Not applicable.

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 July 12, 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

REAL

Robert F. Maris

S:\MALITML\Miller - Addison\Discovery\disclosure4.rsp.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: July 12, 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 + 2

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 re: videotape.

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

214-706-0921 (FAX)

July 12, 2004

VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6836

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

VIA CERTIFIED MAIL NO. 7003 1680 0004 2873 6829

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 Tom and Zach:

Enclosed please find a videotape being produced by the Town of Addison, which has been bates labeled Addison 588. This videotape was taken by Mike Murphy on June 29, 2004.

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

Sincerely,

MARIS & LANIER, P.C.



Amy D. Walker
Legal Assistant to Robert F. Maris

Enclosure

bcc: VIA FACSIMILE
Mike Murphy
Public Works Department
Town of Addison
P.O. Box 9010
Addison, Texas 75001
(w/o encl.)