

No. _____

In the Supreme Court of the United States

KEVIN YEUNG,

Petitioner,

v.

SHANNON HUMPHREY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

APPENDIX, VOLUME I

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AUGUST MMXXVI

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Appendix A

**FIFTH DIVISION
MCFADDEN, P. J.,
HODGES and PIPKIN, JJ.**

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.

<https://www.gaappeals.us/rules>

**October 29, 2025
NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A25A1330. YEUNG v. HUMPHREY.

MCFADDEN, Presiding Judge.

Kevin Yeung appeals from the trial court's grant of Shannon Humphrey's motion for summary judgment on Yeung's claim for nuisance.¹ Yeung contends that the court erred in refusing to consider purported expert reports on the basis that the reports were unsworn and constituted hearsay. But the rules of evidence generally apply on summary judgment, and Yeung has failed to show that the court abused its discretion in failing to consider the unsworn reports. Yeung also contends that the court erred in granting

¹ The trial court also granted summary judgment to Humphrey on Yeung's claim for negligence per se and denied Yeung's opposing motion for summary judgment. But Yeung has not challenged those rulings in this appeal.

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summary judgment on his nuisance claim. But Humphrey pointed to an absence of evidence on essential elements of the nuisance claim, and Yeung has failed to cite any evidence creating a genuine issue of material fact. So we affirm.

1. *Facts and procedural posture*

Yeung filed a pro se complaint against Humphrey, claiming that Humphrey's installation of a swimming pool on her property caused a nuisance of water flowing onto Yeung's neighboring property. Yeung and Humphrey filed opposing motions for summary judgment. After a hearing, the trial court denied Yeung's motion and granted Humphrey's motion.

In its summary judgment order, the trial court refused to consider three purported expert reports filed by Yeung that were unsworn. The court also found that Yeung had admitted in his deposition that he was simply assuming that erosion and dying vegetation on his property were caused by Humphrey's pool project, but that he did not actually have any evidence. The court concluded that Humphrey was entitled to summary judgment because Yeung had presented no competent evidence that the installation of the pool had caused excess water to flow onto his property. This appeal followed.

2. *Unsworn reports*

Yeung contends that the trial court erred in refusing to consider the unsworn reports. We disagree.

"[T]he admissibility of evidence on motion for summary judgment, whether contained in affidavits or otherwise, is subject to the rules relating to the admissibility of evidence generally, so that evidence

inadmissible on a hearing of the case would generally be inadmissible on motion for summary judgment.” *Atkinson v. City of Atlanta*, 325 Ga. App. 70, 72 n. 3 (725 SE2d 130) (2013) (citation and punctuation omitted). Accord *Goodhart v. Atlanta Gas Light Co.*, 349 Ga. App. 65, 72 (2) (a) (825 SE2d 465) (2019) (“The admissibility of evidence on motion for summary judgment is governed by the rules relating to form and admissibility of evidence generally.”) (citation and punctuation omitted). Indeed, “a court should consider only admissible evidence in connection with a motion for summary judgment[.]” *An v. Active Pest Control South*, 313 Ga. App. 110, 114 (720 SE2d 222) (2011). Thus, “[a]ll hearsay evidence, unsupported conclusions, and the like, must be stricken or eliminated from consideration in a motion for summary judgment.” *Goodhart*, *supra* (citation and punctuation omitted).

In this case, the “reports are hearsay themselves, and . . . are unsworn, unauthenticated documents. . . . Such reports must fit within a hearsay exception before they can be considered as substantive evidence in support of a claim. [But Yeung] has shown no such exception for these reports and they therefore have no weight or force whatsoever.” *Adamson v. General Elec. Co.*, 303 Ga. App. 741, 742 (1) (694 SE2d 363) (2010) (refusing to consider unsworn reports filed by plaintiff in opposition to defense motion for summary judgment). See also *Tselios v. Sarsour*, 341 Ga. App. 471, 474-475 (800 SE2d 636) (2017) (plaintiff presented no affidavits or other sworn documents, and unsworn pleadings do not constitute evidence and cannot be considered in addressing a motion for summary judgment); *Schluter v. Perrie, Buker, Stagg & Jones*, 230 Ga. App. 776, 778 (1) (498 SE2d 543) (1998) (unsworn

statements do not constitute competent evidence to support a motion for summary judgment). Yeung has made no argument in his brief as to any hearsay exception, has cited no evidence of any such exception, and has thus failed to show that he laid an adequate foundation for the admission of the three unsworn reports based on a hearsay exception. See *Maloof v. MARTA*, 330 Ga. App. 763, 765-766 (1) (b) (769 SE2d 174) (2015) (unsworn statement did not fall under exception to hearsay rule where appellant did not show that it had complied with the foundational requirements for such an exception).

Instead, Yeung cites *Hayes v. SNS Partnership*, 326 Ga. App. 185 (756 SE2d 273) (2014) to argue that his unsworn reports should have been considered by the trial court. But his reliance on *Hayes* is misplaced since it actually reaffirms that the unsworn reports in this case were properly excluded from consideration on summary judgment. Unlike the instant case, *Hayes* involved sworn statements that were in fact considered by a trial court on summary judgment. Moreover, in affirming the trial court's consideration of such sworn statements, we explained that the forms of evidence set out in OCGA § 9-11-56 (c) are not the exclusive means of presenting evidence on summary and that a "trial court may consider any material which would be admissible or useable at trial." *Hayes*, supra at 187 (1) (emphasis omitted). Since the sworn statements would be admissible at trial, we held that the trial court properly denied a motion to strike them from consideration on summary judgment. *Id.* Conversely, Yeung has made no showing that the unsworn reports in this case were admissible like the sworn statements in *Hayes*.

Nevertheless, Yeung argues, the trial court should have granted him an opportunity to put the unsworn and unauthenticated reports in proper form because of his pro se status. But Yeung has not shown that he made such a request in the trial court and “[w]e repeatedly have warned that one who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law.” *Forsyth County v. Mommies Props.*, 359 Ga. App. 175, 185 (2) (855 SE2d 126) (2021) (citation and punctuation omitted). Here, Yeung acknowledged at his deposition that he consulted several attorneys but decided to proceed without counsel. At a motions hearing, after the judge expressly informed Yeung that he would be bound by the rules of evidence and applicable laws, Yeung confirmed that he still wanted to represent himself. Moreover, defense counsel indicated at that hearing that Yeung had been a pro se litigant in other cases. Given these circumstances, Yueng has failed to show that he was not bound by the same evidentiary and procedural rules as any other party simply because he had chosen to proceed pro se. See *Harvey v. Sullivan*, 272 Ga. 392, 393 (1) (529 SE2d 889) (2000) (“Pro se parties are generally bound by the same rules of practice and procedure as a lawyer.”) (citation and punctuation omitted).

“We review a trial court’s decision regarding the admission or exclusion of evidence for an abuse of discretion.” *Goodhart*, *supra* (citation and punctuation omitted). We find no abuse of discretion since the unsworn reports could not “be considered [on] summary judgment . . . and were properly disregarded by the trial court.” *Wojcik v. Windmill Lake Apts.*, 284 Ga. App.

766, 769 (645 SE2d 1) (2007) (trial court correctly refused to consider uncertified, unauthenticated documents).

3. *Summary judgment on nuisance claim*

Yeung argues that the trial court erred in granting Humphrey's motion for summary judgment on the nuisance claim. We disagree.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." OCGA § 9-11-56 (c). A defendant moving for summary judgment may demonstrate that she is entitled to summary judgment by either presenting evidence negating an essential element of the plaintiff[s] claims or establishing from the record an absence of evidence to support such claims. Once the defendant has met this burden, the plaintiff[] must point to specific evidence giving rise to a triable issue or suffer summary judgment. We review a grant or denial of summary judgment de novo and construe the evidence in the light most favorable to the nonmovant.

Keng v. Keng, 375 Ga. App. 797, 798-799 (2) (917 SE2d 810) (2025) (citations and punctuation omitted).

In support of summary judgment, Humphrey has both presented evidence

negating essential elements of Yeung's claim and pointed to the absence of evidence showing that the

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swimming pool caused excess water to flow from her property onto Yeung's property. Humphrey cites Yeung's deposition testimony, during which he admitted that he has not observed the pool overflowing onto his property. When asked about the allegation in his complaint that pool water which drains into a pop-up emitter on Humphrey's property then goes onto his yard, Yeung admitted that he does not know if that allegation is true and that it is merely his assumption. When asked about his allegations that overflow water from Humphrey's property had damaged grass and a walkway on his property, Yeung admitted that he does not actually know what caused the purported damage and that he was simply assuming it was caused by Humphrey. When asked about his claim that chlorine from the pool had contaminated his soil, Yeung admitted that he does not have any evidence to support the claim, that he does not even know if chlorine is used in the pool, and that the claim was based on his assumptions. Yeung further deposed that he does not actually know how Humphrey's activity on her property has made anything worse on his property.

Humphrey has also pointed to the absence of any video or photographic evidence from Yeung showing water flowing from her property onto his. Conversely, Humphrey provided a video showing that during a rainstorm her drainage system properly directed water away from Yeung's property. Yeung admitted during his deposition that the video in fact showed that no water was coming from Humphrey's property onto his property.

Humphrey also submitted the affidavit of a civil engineer who testified that there was no overflow of water from Humphrey's property causing damage to

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Yeung's property, that Humphrey's drainage and storm water management system ensured that there would be no water runoff onto the Yeung lot, and that there was no flood risk to Yeung's property. The engineer further opined that the issues complained about by Yeung were the result of his failure to appropriately maintain his own lot and that Yeung had made inaccurate assumptions based on his land being downhill from Humphrey's property.

Humphrey also submitted affidavits from a code enforcement officer and from a building inspector who had both made many visits to the Humphrey and Yeung properties during construction of the pool. The code enforcement officer testified that he had never observed any evidence of damage to Yeung's property caused by overflow water from Humphrey's property; that the drainage system directed water toward a street and away from both properties; and that during a rain event he observed that water was flowing as intended through the drainage system and was not affecting Yeung's property. Similarly, the building inspector testified that she had not observed any condition that would cause water runoff and erosion from the Humphrey property onto the Yeung property, and that she had not seen any evidence of excess water running from the Humphrey property onto the Yeung property.

"To recover under a nuisance claim, the plaintiff must show the existence of the nuisance complained of, that he or she has suffered injury, and that the injury complained of was caused by the alleged nuisance." *Bord v. Hillman*, 335 Ga. App. 18, 21 (1) (780 SE2d 725) (2015) (citation and punctuation omitted). Given Humphrey's citation of evidence negating the

alleged nuisance of her pool installation causing excess water to flow onto Yeung's property, Yeung must point to specific evidence creating a genuine issue of material fact on his nuisance claim. See *Keng*, supra at 799 (2) (once the defendant has met her burden on summary judgment of negating an essential element of the plaintiff's claim, the plaintiff must point to specific evidence giving rise to a triable issue).

Yeung cites his own deposition testimony that modifications to Humphrey's property were causing water runoff issues. He argues that the trial court erred in ignoring this testimony and in relying instead on his other testimony in which he admitted, as discussed above, that he had not actually observed water flowing from the pool onto his property, that he had no evidence of the cause of the purported damage to his property, and that he had simply assumed the purported damage was caused by water from Humphrey's property.

"But to the extent that a party's sworn testimony is self-contradictory without offering a reasonable explanation for the contradiction, we apply the rule in *Prophecy Corp. v. Charles Rossignol, Inc.*, 256 Ga. 27, 28 (1) (343 SE2d 680) (1986), to discount the testimony that is more favorable to that party." 280 *Partners v. Bank of North Ga.*, 352 Ga. App. 605, 606 (1) (a) (835 SE2d 377) (2019). Yeung claims that contradictions in his testimony may have been due to his difficulty with the English language. But Yeung has not supported this claim with any citations to the record. He has not cited any evidence of a language difficulty, has not identified a specific instance during the deposition showing a language barrier, and has not shown he ever raised this issue below. On the contrary, the

record shows that Yeung filed numerous pro se legal documents in English that reveal no language difficulty, that he testified clearly in English during the deposition without any apparent deficiency, and that he expressly testified that he knew the purpose of the deposition and that there was nothing preventing him from giving his full attention to the proceeding.

Under these circumstances, Yeung's ostensible explanation for any self-contradictory deposition testimony is not reasonable. See *Merritt v. State Farm Fire & Casualty Co.*, 218 Ga. App. 652, 654 (463 SE2d 42) (1995) (to be reasonable, the explanation must show that an honest mistake has been made). "We therefore apply the *Prophecy* rule against [Yeung] and discount [his] testimony to the [extent it contradicts his testimony that he had not seen water flow from Humphrey's property onto his land and that he had simply assumed damages from an overflow]." *Hayward v. The Kroger Co.*, 317 Ga. App. 795, 799 (3) (a) (733 SE2d 7) (2012).

Yeung also cites his wife's affidavit testimony that one rainy day she observed water channeling down to their basement, which she had never seen before. But the affidavit did not state where the water came from or that the wife actually saw water flowing from Humphrey's property and onto Yeung's property. Likewise, photographs filed by Yeung also fail to show any water flowing from Humphrey's property onto his property.

"Although property must accept the natural runoff of water from neighboring lands, an artificial increase or concentration of water discharge may give rise to a cause of action." *Bord*, supra at 22-23 (1) (citation and punctuation omitted). And "when a surface-water

invasion has taken place, whether it amounts to a compensable tort is a question of fact for the jury.” *Id.* at 23 (1) (citation and punctuation omitted). But here, Yeung has not cited any competent evidence of even a negligible increase in water flow onto his property from Humphrey’s property. As discussed above, he actually deposed that he had not seen water overflowing from the pool and he has failed to point to any other evidence showing the alleged water runoff from the Humphrey property. Compare *Hayman v. Paulding County*, 349 Ga. App. 77, 82-83 (1) (825 SE2d 482) (2019) (noting that lay witness’ personal observations of water flow are probative of causation issues in nuisance cases where plaintiffs testified to observing such overflow onto their property from a clogged ditch); *Bord*, *supra* at 22-23 (plaintiffs’ personal observation that neighbor’s retaining wall had increased water on their property coupled with expert testimony demonstrating such an increase was sufficient to defeat defense motion for summary judgment on nuisance claim). Because Yeung has failed to point to any competent evidence showing triable issues as to the existence of the alleged nuisance or that the injury complained of was caused by it, “the trial court properly granted summary judgment to [Humphrey] on [the] nuisance claim.” *Bartenfeld v. Chick-fil-A*, 346 Ga. App. 759, 768 (4) (815 SE2d 273) (2018). See also *Grinold v. Farist*, 284 Ga. App. 120, 122-123 (2) (643 SE2d 253) (2007) (where record devoid of evidence that defendant maintained alleged nuisance, trial court properly granted summary judgment to defendant on nuisance claim).

Judgment affirmed. Hodges and Pipkin, JJ., concur.

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Appendix B



SUPREME COURT OF GEORGIA
Case No. S26C0493

March 31, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

KEVIN YEUNG v. SHANNON HUMPHREY.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur, except Warren, P.J., not participating.

Court of Appeals Case No. A25A1330

**SUPREME COURT OF THE
STATE OF GEORGIA**
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa S. Barnes, Clerk

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Appendix C



SUPREME COURT OF GEORGIA
Case No. S26C0493

April 21, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

KEVIN YEUNG v. SHANNON HUMPHREY.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Warren, P.J., not participating.

Court of Appeals Case No. A25A1330

**SUPREME COURT OF THE
STATE OF GEORGIA**
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes, Clerk

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Appendix D

[Filed: Oct. 22, 2024]

**IN THE SUPERIOR COURT OF
JACKSON COUNTY
STATE OF GEORGIA**

KEVIN YEUNG,	:	
	:	Civil Action File No.
Plaintiff,	:	22CV0988
v.	:	
SHANNON	:	
HUMPHREY,	:	
Defendant.	:	

**ORDER DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND GRANTING DE-
FENDANT'S CROSS MOTION FOR SUMMARY
JUDGMENT**

The record of the above-styled matter before this Court shows that the Plaintiff, Kevin Yeung, *pro se*, filed his *Motion for Summary Judgment* against the Defendant, Shannon Humphrey, on March 17, 2024. Defendant, Shannon Humphrey, timely replied to the Plaintiff's *Motion for Summary Judgment* by and through her counsel of record, Dave McDonald, who filed Defendant's *Response to Plaintiff Kevin Yeung's Motion for Summary Judgment and Brief in Support* ("Defendant's Opposition Response") on April 16, 2024.

Approximately one month later, and absent any judgment or order of this Court on Plaintiff's March 17, 2024 *Motion for Summary Judgment*, the Defendant, Shannon Humphrey, by and through counsel,

Dave McDonald filed a cross *Motion for Summary Judgment* against the Plaintiff, a *Brief in Support* thereof, and a *Statement of Material Facts To Which There Exists No Genuine Issue and Statement of Theory of Recovery* (collectively, the “Defendant’s *Motion for Summary Judgment*”) on May 17, 2024. Plaintiff, Kevin Yeung, timely filed his response to the Defendant’s *Motion for Summary Judgment* via the filing of his *Opposition to Defendant’s Statement of Material Facts to Which There Exists No Genuine Issue And Statement of Theory of Recovery and Motion for Summary Judgment*, (“Plaintiff’s Opposition Response”) on June 15, 2024.

Subsequently, a contested hearing was held, and the Parties appeared before this Court on September 5, 2024 to address a multitude of pending motions, which included both the Plaintiff’s *Motion for Summary Judgment* and the Defendant’s cross *Motion for Summary Judgment* against the Plaintiff. Plaintiff was self-represented at the contested hearing and the Defendant was represented by her counsel of record, Dave McDonald. At the hearing, this Court heard argument from each of the Parties in support of their respective briefs underpinning their motions for summary judgment and heard argument from each of the Parties in opposition to the other’s dispositive motion.

After thorough review of the Plaintiff’s March 17, 2024 *Motion for Summary Judgment* and the Defendant’s Opposition Response thereto, and after review of the Defendant’s May 17, 2024 cross *Motion for Summary Judgment* against the Plaintiff and the Plaintiff’s Opposition Response thereto, and upon consideration of the other pleadings, filings, and other evidence on record with the Clerk of this Court to date

and the arguments of the Parties presented to this Court at the September 5, 2024 contested hearing on the respective summary judgment motions, the Court makes the following findings:

BACKGROUND

Plaintiff commenced this matter with the filing of Plaintiff's *Complaint and Request for Injunction* against the Defendant on November 28, 2022. Defendant filed no counterclaims. Plaintiff appears to be seeking damages and injunctive relief against the Defendant under a theory of negligence *per se* incident to what Plaintiff alleges to be violations of a variety of federal, state, and local building and environmental laws by the Defendant and/or Defendant's contractors. Both the Plaintiff's Complaint and his *Motion for Summary Judgment* also appear to make claims against Defendant for continuing nuisance, and injunctive relief is requested.

Plaintiff's claims in Plaintiff's Complaint, which are reiterated subsequently in Plaintiff's *Motion for Summary Judgment* and in his Opposition Response to the Defendant's *Motion for Summary Judgment*, are underpinned by Plaintiff's assertions of unstipulated fact that Defendant and/or Defendant's contractors have artificially caused excess surface water to run off the Defendant's property and flow onto the neighboring Plaintiff's property, thereby damaging Plaintiff's real property and Plaintiff's rights therein. Plaintiff contends that the artificial condition upon Defendant's property alleged to be causing the excess runoff was created by a failure to comply with a variety of federal, state, and local building and environmental laws, and that Defendant has failed to cure the condition.

Plaintiff asserts that the alleged excess surface water runoff from the Defendant's property has been artificially created by the negligent or intentional acts of the Defendant and/or Defendant's contractors in connection with the construction of an in-ground swimming pool on the Defendant's property in the summer of 2022. Plaintiff further seeks injunctive relief against the Defendant to stop the alleged unnatural flow of excess water onto the Plaintiff's property, and to guard against the possibility of future excess runoff issues concerning the Defendant's pool. Plaintiff contends that his personal observations of siltation, erosion, periodic standing water, and dead/dying vegetation on his own property, as well as the existence of 'chloride' detected in soil samples taken from his property are evidence sufficient to create triable issues of fact. Plaintiff also contends that his personal interpretation of statutory and local ordinance requirements precluded the Defendant from performing any further work on Defendant's property during an alleged Tertiary Permit "hold", that the Defendant undertook land disturbing activities without a permit, and that Defendant failed to have their pool construction project properly permitted and inspected—particularly as it would pertain to the plumbing work performed during the life of the project. Plaintiff contends that he has sufficiently established damages.

Defendant argues that she is entitled to summary judgment because the Plaintiff has failed to place evidence on the record which proves each element of Plaintiff's negligence *per se* and nuisance claims. In particular, the Defendant argues that the Plaintiff has failed to demonstrate that Defendant has breached any duty owed to Plaintiff by personally

violating any statute or ordinance, or alternatively that Defendant knowingly and willingly adopted the negligent work product of her independent contractor that amounted to a nuisance. Defendant contends that neither her, nor her contractor were the actual and/or proximate cause of any of Plaintiff's perceived damages and Defendant disputes the existence of excess water runoff from Defendant to Plaintiff's property altogether because of Defendant's pool project or any other activity upon Defendant's property thereafter. Defendant argues that Plaintiff's failure to, at minimum, establish the existence of excess water runoff from Defendant's property onto the Plaintiff's is sufficient to defeat the breadth of Plaintiff's claims against the Defendant in the instant case, to include Plaintiff's entitlement under law to injunctive relief and that Plaintiff's evidence in support of Plaintiff's claims is largely inadmissible hearsay and assertions of unstipulated fact, unsupported by affidavit or other evidentiary materials that offer any probative value for this Court.

The uncontradicted facts show that at all times material to the above-styled case, the Plaintiff and the Defendant have resided in single family homes upon adjoining parcels of real property in the Traditions of Braselton neighborhood in Jackson County, Georgia. Plaintiff and Defendant are neighbors. The evidence shows that Plaintiff's property is lower in elevation than that of the Defendant's adjoining, higher-elevation property. The uncontroverted evidence of record also shows that in the summer of 2022, the Defendant hired Sandals Luxury Pools, Inc. to complete construction of an in-ground swimming pool upon the rear of Defendant's real property between the dates of July

19, 2022, and October 30, 2022. The evidence shows that Defendant's contractor, Sandals Luxury Pools, Inc. timely applied-for, and received, a building permit from Jackson County, Georgia, BLDR22-2503, and a Certificate of Completion was received from Jackson County, Georgia on December 19, 2022, and that Defendant never received any warning, citation, or stop work order during the life of the construction of Defendant's pool project.

In support of both the Defendant's Opposition Response to the Plaintiff's March 17, 2024 *Motion for Summary Judgment*, and Defendant's May 17, 2024 cross *Motion for Summary Judgment*, Defendant tendered into the record, a Certificate of Completion for the Defendant's pool project issued by Jackson County, Georgia, and four (4) lengthy and highly detailed affidavits from separate Jackson County officials who each testified under oath to their familiarity with the facts and circumstances of the above-styled case and with the Defendant and Defendant's pool project. In each affidavit the affiant described their qualifications, to include education and experience, which permit them to speak with authority on the matter in addition to their familiarity with the case at bar. The shortest among the several affidavits tendered by the Defendant was seven (7) pages in length. One affidavit tendered by the Defendant was from a professional civil engineer. The engineer's affidavit included his report, *a letter of opinion*, which contained the affiant's work product he had prepared for the Defendant in anticipation of litigation. His report, to which his affidavit spoke, included his measurements, his findings and his analyses following a site visit and inspection to the Defendant's property.

The Court takes note of the engineer's conclusion in his affidavit, based upon his report, that there is no overflow of water occurring along the side of the Humphrey property that is causing areas of standing water, sedimentation and erosion on the Yeung property, even though the Yeung property is downhill, and that there is NO flood risk to the Yeung property from the Humphrey property even in a once-in-a-century rain event. Plaintiff has produced no evidence in rebuttal.

Three (3) other affiants provided testimony as to the facts and circumstances with which they were familiar during the period of time just before, during, and shortly after the Defendant was having her pool constructed in 2022. In addition to the Certificate of Completion and the four (4) affidavits, Defendant further tendered an original, sealed deposition transcript of the Defendant's deposition of the Plaintiff, Kevin Yeung in February of 2024, and a flash-drive containing a video exhibit of a rain event referenced in the deposition of Plaintiff, Kevin Yeung. Defendant's Opposition Response to Plaintiff's *Motion for Summary Judgment* and Defendant's own cross Motion for Summary Judgment cite heavily to the affidavits that the Defendant supplied in support thereof, and to the deposition that the Defendant took of the Plaintiff.

The record is devoid of any sworn statements or affidavits filed by the Plaintiff and made available for consideration by this Court, either in support of the Plaintiff's *Motion for Summary Judgment* or in support of the Plaintiff's Opposition Response to the Defendant's cross *Motion for Summary Judgment* against him. No sworn statements or affidavits, other than that of the Plaintiff signing Plaintiff's own

pleadings, have been entered onto the record by Plaintiff in rebuttal against any evidence placed on the record by the Defendant—except for that which was entirely stricken from the record of this matter, and barred from review by this Court in September of 2024 upon the Court’s ruling on a Motion to Strike filed by the Defendant.

Plaintiff has tendered no deposition transcripts of any kind, nor any video evidence in support of Plaintiff’s claims, and Plaintiff has provided nothing of probative value to this Court from any purported expert witness, or any other Plaintiff’s witness. There are no citations to the contents of any hearing or deposition transcript in either the Plaintiff’s *Motion for Summary Judgment* or in Plaintiff’s Opposition Response to Defendant’s *Motion for Summary Judgment*. Plaintiff appears to have never exercised any right of entry or inspection of the Defendant’s property through the discovery process, and if he did, he *did not* place any such evidence on the record for this Court’s review. Plaintiff admits in Plaintiff’s deposition to never having entered-upon the Defendant’s property, and that he never obtained any samples of Defendant’s swimming pool water or any samples of the Defendant’s soils from Defendant’s property. Perhaps most importantly, Plaintiff has placed no photos or videos on record which depict excess water of any kind which can be observed to be in the act of actually flowing from Defendant’s property onto the Plaintiff’s. To the contrary, Defendant’s video exhibit submitted in support of Defendant’s Opposition Response and Defendant’s *Motion for Summary Judgment* shows a considerable flow of running water moving off the Defendant’s property during a rain event

out toward the street and away from the Plaintiff's property. The shared boundary line between Plaintiff and Defendant's properties is visible in Defendant's video exhibit and the Court does not observe any excess water flow in the video exhibit which is leaving the Defendant's property and entering upon the Plaintiff's property during this video. Plaintiff has placed no surveys or inspections of Defendant's property onto the record for this Court's review. If a deposition of any kind was taken by the Plaintiff of any witness, or of the Defendant herself, Plaintiff *did not* place such into the record of this case for the Court's consideration on the instant motions. This Court takes particular note that much of Plaintiff's evidence offered in support of Plaintiff's claims in Plaintiff's *Motion for Summary Judgment*, and in Plaintiff's Opposition Response to Defendant's *Motion for Summary Judgment*, are Plaintiff's own unsupported assertions of fact and interpretations of law, which lack any independent verification, analyses, or foundation.

The supporting evidence proffered by Defendant in the affidavits, documents, and video exhibit provided, first in support of Defendant's Opposition Response to Plaintiff's *Motion for Summary Judgment*, and again later relied-upon in support of Defendant's cross *Motion for Summary Judgment* against the Plaintiff, shows that the pool installation project was permitted by Jackson County, Georgia via permit #BLDR22-2503, that the permitted pool project was regularly inspected at certain intervals by BJ Smithmojica who is an authorized agent of the entity responsible for such inspections in Jackson County, Georgia—Bureau Veritas—to include an inspection of the plumbing work associated with the project, that no land-disturbance

permit was required for Defendant's pool project but the plumbing was inspected anyway, that there was no Tertiary Permit "hold" on the Defendant's property to preclude construction activity by Defendant, that no citation or stop work order was ever issued for the Defendant's pool project, that the Defendant's permitted pool project ultimately received a Certificate of Completion on December 19, 2022 from Jackson County Official, Hal Chitwood, and that there is no evidence that the Defendant's pool project has created any unnatural condition upon the Defendant's property which is causing any excess water flow from Defendant's property onto the Plaintiff's, or which represents a threat to Plaintiff's real property.

Consistent throughout the sworn testimony tendered by the Defendant in support of Defendant's Opposition Response to the Plaintiff's *Motion for Summary Judgment*, and again in support of Defendant's own later cross *Motion for Summary Judgment* against the Plaintiff, is the affirmation that Defendant's pool construction project *did not* run afoul of any applicable Federal, State or local law, and that there was and is no observable evidence of any excess flow of water leaving the Defendant's property and running onto the Plaintiff's. This is discussed in great detail in the affidavits of BJ Smithmojica, Steven Howard, and Guy Abernathy.

Perhaps most damning to Plaintiff's claims against Defendant is Plaintiff's free admission throughout Plaintiff's deposition that the Plaintiff is simply *assuming* that the problems the Plaintiff is experiencing on Plaintiff's own property concerning the alleged siltation, erosion, and dead and dying vegetation, *must be* because of the Defendant's pool project because of

what he can see with his own eyes, but that he has no real proof in support of his claims. In fact, Plaintiff states, “I don’t have any evidence”.

FINDINGS AND ANALYSIS

Both the Plaintiff and the Defendant have filed respective *Motions for Summary Judgment* against the other. Summary Judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Norton v. Cobb*, 284 Ga. App. 303 (2007); O. C. G. A. § 9-11-56(c). To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact. *Cowart v. Widener*, 287 Ga. 622, (2010). When the party moving for summary judgment is the plaintiff, they must make a *prima facie* showing that no material issues of fact exist and that they are entitled to judgment as a matter of law before the burden shifts to the defendant to establish a possible defense. *Tselios v. Sarsour*, 341 Ga. App. 471, 471, 800 S. E. 2d 636, 637 (2017). A *prima facie* case is one which has proceeded upon sufficient proof to that stage where it will support finding if evidence to contrary is disregarded or such as will prevail until contradicted and overcome by other evidence. *Peters v. Davis*, 214 Ga. App. 885, 885, 449 S. E. 2d 624, 625 (1994). Conclusory statements and opinions are insufficient to establish Plaintiff’s *prima facie* case in this regard. *Cornerstone Ministries & Christian Sch. v. Pitney Bowes Glob. Fin. Servs., LLC*, 359 Ga. App. 600, 859 S. E. 2d 562 (2021).

As summary judgment may pertain to the Defendant in this case, a defendant may prevail on summary

judgment by either presenting evidence negating an essential element of the plaintiff's claims or establishing from the record an absence of evidence to support such claims. Thus, the rule with regard to summary judgment is that a defendant who will not bear the burden of proof at trial need not affirmatively disprove the nonmoving party's case, but may point out by reference to the evidence in the record that there is an absence of evidence to support any essential element of the nonmoving party's case. *Id.* "Where a defendant moving for summary judgment discharges his burden of pointing out by reference to the evidence in the record that there is an absence of evidence to support any essential element of the nonmoving party's case, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue." *Id.* at 623.

Upon careful consideration of the pleadings, filings, and other evidence on record with the Clerk of this Court to date and the arguments of the Parties presented to this Court at the September 5, 2024, contested hearing on the respective summary judgment motions, it is the finding of this Court that Plaintiff has failed to presented a *prima facie* case of negligence *per se*, of a claim of continuing nuisance, or of entitlement to injunctive relief by pointing to specific, relevant evidence on the record, and rather it seems Plaintiff has relied solely on the uncorroborated, unverified, conclusory statements and opinions in his pleadings against the Defendant.

Turning to the Defendant's *Motion for Summary Judgment* against the Plaintiff, the Court considers Plaintiff's negligence *per se* claims. In evaluating whether there is "no genuine issue of a material fact"

in dispute, the Court finds that there are several elements Plaintiff must prove in a negligence action: duty, breach of that duty, causation, and damages. *Goldstein, Garber & Salama, LLC v. J. B.*, 300 Ga. 840 (2017). Conclusory statements by the Plaintiff are insufficient here to establish a *prima facie* case or to overcome Defendant's case. *Cornerstone Ministries & Christian Sch. v. Pitney Bowes Glob. Fin. Servs., LLC*, 359 Ga. App. 600, 859 S. E. 2d 562 (2021).

Further, under applicable Georgia law, negligence *per se* exists where: 1) a statute establishes a duty, 2) the injured person falls within the class of persons the statute was intended to protect and 3) the harm complained of was the harm the statute was intended to guard against. It is the Plaintiff's burden to establish each of these factors. *Nash v. Reed*, 349 Ga. App. 381 (2019).

In Plaintiff's Complaint, Plaintiff's *Motion for Summary Judgment*, and in Plaintiff's Opposition Response to Defendant's cross *Motion for Summary Judgment*, the Plaintiff alleges that the Defendant is liable in her individual capacity because her builder, Hillgrove Homes LLC, failed to appropriately resolve a Tertiary Permit matter by filing a Notice of Termination with the Environmental Protection Division of this state. As a result, a "hold" was purportedly placed upon the Defendant's property, and Plaintiff argues that further construction activity was prohibited by the "hold", thus Defendant's construction of her pool was violative of the "hold". According to the Plaintiff, the Defendant inherited liability for any construction activity upon Defendant's property as such was allegedly precluded by the Tertiary Permit "hold". The affidavit of Steven A. Howard tendered by the

Defendant directly contradicts Plaintiff's assertions in this regard. Mr. Howard says, in paragraphs 22, 23 & 24. of his affidavit, pgs. 10, 11 & 12, that "...the Plaintiff is referring to what is known as "tertiary permitting." "The tertiary permit that is applicable to the Humphrey property is included in the file with the building permit along with a certificate of occupancy, which would not have been issued if there were permit violations—to include the tertiary permit." "Jackson County Code Enforcement's records indicate that the building permit was completed. The only observable "holds" regarding construction activity pertaining to the Humphrey property were at the beginning of the permitting process when documents and information were being requested of the builder, like contractor licensing." "As far as the Humphrey property is concerned, all of the requirements concerning the applicable tertiary permit and the building permit have been met and there is nothing left outstanding. Additionally, the record reflects that the tertiary permit was paid in full by the applicant" and "there is no "hold" out there that would have prevented any construction activity on the Humphrey property, or anything of that nature. A certificate of occupancy was issued for the Humphrey property which would include satisfactory completion of any soil and water erosion concerns, like a tertiary permit." Plaintiff has not provided any evidence that this Court could consider which would contravene Mr. Howard's statements. Mr. Howard's statements are corroborated by similar representations in the affidavits of Christopher Sorrell and BJ Smithmojica, both placed on the record by the Defendant. Thus, the undisputed evidence of record demonstrates that the Defendant has

not breached a duty to the Plaintiff by conducting permitted construction activity on Defendant's property in violation of any Tertiary Permit "hold".

Plaintiff further alleges that no plumbing inspection was ever performed on the Defendant's pool construction project in violation of the International Building Code or International Residential Code. However, Defendant's evidence shows that even though a plumbing inspection is *not a requirement* for completion of a pool building permit in Jackson County, Georgia, the building inspector assigned to Defendant's permit *did perform* more than one plumbing inspection, at least once in the presence of the Jackson County Code Enforcement officer, Mr. Howard, and that no violations were ever found.

Plaintiff alleges that a pop-up drain emitter, which is an aspect of the Defendant's plumbing work that the Plaintiff complains of, is violative of applicable building setbacks and buffers per the Jackson County Unified Development Code. Yet, Plaintiff admits in Plaintiff's deposition to having taken no actual measurements to see how close Defendant's pop-up drain emitter actually was to the shared property line. Steven Howard and BJ Smithmojica provided testimony on behalf of the Defendant that the pop-up drain emitter Plaintiff complains of is sufficiently far enough from Defendant's property line that it is not in violation of any buffer or setback, and that, in fact, it is considered to be a best practice for controlling and restricting the flow of water and that it is something a homeowner may undertake in Jackson County, and is allowed to do so without a permit. Logically speaking then, this represents an additional prophylactic measure undertaken by the Defendants to control the

flow of water on their property that was *not required* of the Defendant, but the Defendants did so anyway as good stewards of their property. Furthermore, Defendant's evidence in the affidavits show that the pop-up drain emitter sits within the middle of a large swale that is channeling the flow of water along the side of the Humphrey home, away from Plaintiff, and out toward Traditions Way, which runs in front of the Humphrey and Yeung homes.

Additionally, Plaintiff complains that the Defendant undertook land disturbing activities without a requisite land disturbance permit in violation of Article 8 of the Jackson County Code. Defendant's evidence shows that, had Plaintiff undertaken simple due diligence prior to the filing of Plaintiff's Complaint, Plaintiff would have learned that not only is a land disturbance permit *not required* for Defendant's pool project, but that Defendant's property is not even capable of triggering the need for a land disturbance permit because it is .37 total acres. The Tertiary Permit was the land disturbance permit, and it was issued to the Defendant's home builder. The affidavits of BJ Smithmojica and Steven Howard, uncontroverted by Plaintiff, definitively state that Defendant was *not required* to obtain a land disturbance permit for the pool construction activity on her property.

Lastly, Plaintiff alleges that Defendant is liable for violations of the Clean Water Act, the Virginia Graeme Baker Pool and Spa Safety Act, OSHA, and the International Swimming Pool and Spa Code. Plaintiff fails to establish evidence on the record which shows that the Clean Water Act and Virginia Graeme Baker Pool and Spa Safety Act would apply to the Plaintiff and Defendant in the context of this

case, and if so, which particular sections of said acts have been specifically violated by the Defendant, and by what conduct. Plaintiff places no evidence on record for the Court's consideration as to how "OSHA" would apply under the circumstances. Defendant's evidence placed on the record refutes the Plaintiff's contention that the Defendant has violated the particular sections of the International Swimming Pool and Spa Code he references in his Complaint. Plaintiff cites these code sections to demonstrate Defendant's violation of applicable code by asserting that no plumbing inspections were performed during Defendant's pool construction project, but Defendant's evidence shows that multiple plumbing inspections were performed on the plumbing work undertaken during the construction of Defendant's pool project by the individuals qualified to do so.

Since the uncontradicted facts of the case show that Defendant herself *did not* perform the construction activity upon her property that the Plaintiff complains of, but instead the work was performed by that of independent contractors, namely, Sandals Luxury Pools, Inc., there are additional elements that Plaintiff must prove in order for liability for her contractor's alleged negligence to attach to her in her individual capacity. This includes a showing by the Plaintiff that Defendant exerted control over the tortfeasors, or that Defendant was a cause or a concurrent cause of the creation, continuance, or maintenance of the alleged excess flow of water—that Defendant exerted control over the cause of the harm. *Greenwald et al. v. Kersh et al.*, 265 Ga. App. 196 (2004). In support of Plaintiff's claims in this regard, Plaintiff is tasked with producing evidence that Defendant controlled

the timing, manner, and methods of her contractor's work, and/or alternatively, that Defendant accepted the work of her independent contractors and despite notice to her that her contractors' work constituted a nuisance. O. C. G. A. § 51-2-5(6) provides "An employer is liable for the negligence of a contractor: ...(6) If the employer ratifies the unauthorized wrong of the independent contractor." In this context, Defendant would be in the position of that of an employer.

The Supreme Court has held in cases involving interference with a landowner's rights caused by the flow of water, that if Defendant accepted the work as it was constructed by her independent contractor which amounted to a nuisance, Defendant became at once responsible for the existence of the nuisance, under a rule very similar to that which makes a principal responsible for unauthorized wrongs committed by his agent by ratifying them. *Greenwald et al. v. Kersh et al.*, 265 Ga. App. 196 (2004). The Court's ruling in *Greenwald* is predicated upon the idea that the Defendant could be *aware* that her independent contractor's work amounted to a nuisance and that she accepted the work, and therefore ratified the contractor's work despite knowing it amounted to a nuisance to the Plaintiff. *Greenwald*, and similar cases, would permit the Plaintiff to introduce evidence that the Defendant was *aware* of a nuisance created by an artificial routing of water onto the Plaintiff's property and thus be liable under the theory that the Defendant created, continued, or maintained the nuisance; and the law would therefore authorize a remedy which includes both injunctive relief and damages. *Greenwald et al. v. Kersh et al.*, 265 Ga. App. 196 (2004).

As it pertains to the instant case, the Plaintiff has failed to place any evidence on the record for this Court's consideration that the Defendant's independent contractors constructed her pool project in a manner so as to create a nuisance, and that Defendant in her individual capacity, Shannon Humphrey, was not only *aware* of any nuisance created to the Plaintiff by the independent contractor's routing of any water onto the Plaintiff's property, but that she knowingly accepted the work with that knowledge, thereby continuing and maintaining the nuisance. In fact, the Defendant's evidence, particularly the affidavits and Certificate of Completion presented by the Defendant in support of the Defendant's Opposition Response to the Plaintiff's *Motion for Summary Judgment* and the Defendant's own cross *Motion for Summary Judgment* against the Plaintiff, directly contradict this assertion by the Plaintiff in that the project was permitted, routinely inspected, and was issued a Certificate of Completion and there was no warning, citation, or stop work order issued to the Defendant or Defendant's contractor during the life of the pool construction project which would act to place the Defendant on notice that her independent contractor had completed work that amounted to a nuisance to the Plaintiff. Indeed in the affidavits submitted by Ms. BJ Smithmojica and Mr. Steven A. Howard, the affiants definitively state that the Certificate of Completion would not have issued if there were actionable nuisance issues caused by excess runoff onto the Plaintiff's property, which would have been noticed by County Officials in the multitude of visits made to the Yeung and Humphrey properties during the life of the Defendant's pool construction project. The affidavits

tendered by the Defendant demonstrate that no official with Jackson County notified the Plaintiff, or Defendant, that evidence of excess water flow had been observed leaving the Defendant's property and crossing onto the Plaintiff's property as a result of the pool construction.

Plaintiff's negligence *per se* claims having failed as a result of Plaintiff's failure to establish Defendant's breach of any duty imposed by the statutes, ordinances, and regulations he cites, Plaintiff's claims can only survive upon a showing of continuing nuisance.

Negligence is not a necessary ingredient of a cause of action arising out of nuisance. A nuisance may arise out of acts and conduct done within the pale of the law and executed with due care; and yet if the result attained injures the property or the individual rights of another by causing a nuisance, the maintainer must either abate the nuisance or else respond in damages. *Green v. Eastland Homes Inc. et. al.*, 284 Ga. App. 643 (2007). Thus, Plaintiff is tasked in this regard with showing that Defendant has not only contributed to the cause and maintenance of a nuisance, but that a nuisance is, in fact, occurring.

"In a nuisance action the complainant must show the existence of the nuisance complained of, that one has suffered injury, and that the injury complained of was caused by the alleged nuisance. *Asphalt Prods. Co. v. Marable*, 65 Ga. App. 877, 16 S. E. 2d 771, 1941 Ga. App. LEXIS 447 (1941). O. C. G. A. § 41-1-1 defines "nuisance", generally, in pertinent part as:

"...anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from

being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable man.”

Ga. Code Ann. § 41-1-1

The central question for the Court here is whether the Plaintiff has produced competent evidence of the existence of the nuisance the Plaintiff has complained of. For the within and foregoing reasons hereinabove, this Court finds that Plaintiff has not presented any evidence sufficient to create a question of fact as to the creation or maintenance of a nuisance by the Defendant individually, or that liability should attach to the Defendant by her ratification of her contractor’s work that amounted to a nuisance. A secondary consideration for the Court is whether the nuisance complained of, if it exists, is a direct or even proximate result of some undertaking on Defendant’s property.

Defendant is adamant that no nuisance exists, and that Plaintiff has patently failed to demonstrate so—particularly that Plaintiff has failed to demonstrate the existence of a nuisance to a summary judgment standard, if at all. Consider, *Green v. Eastland Homes, Inc.*, 284 Ga. App. 643, 644 S. E. 2d 479 (2007). As here, the question before the Court of Appeals in *Green* was “...whether Green presented evidence showing that Dozier and Eastland engaged in activities that artificially increased the water runoff from their upper land onto her lower land.” *Id.* at 645. The Court recalls the evidence of record that

Plaintiff's property is at a lower elevation than that of the Defendant's. In *Green*, the Appeals court determined that Mrs. Green had presented evidence sufficient to show that the defendants had artificially increased the flow of water onto her property through "an expert affidavit that the development of the upper property resulted in the flooding of Ms. Green's property." *Id.* at 645. Specifically, the expert provided sworn testimony for the trial court's review that he had prepared a Flood Inspection Report wherein he "...set forth in detail (with explanatory photographs) his observations concerning the substantial erosion of the two upper lots, which were barren of grass and groundcover with all topsoil having been scoured and washed away. Obvious gullies and channels on the lots directed the full force of rainwater down the hill towards Green's land, with a silt fence designed to impede erosion on the hillside having collapsed and been overrun by the sheer volume of the water cascading down the hill from the lots. A second expert confirmed these observations in another affidavit. The first expert went on to analyze the hydrology study relied on by Dozier and Eastland for the drainage plans for their property, which allegedly used a flawed method for calculating seepage of water into the ground in that it failed to account for rock outcroppings close to the surface of the hill, which would cause this surface to behave like a paved impervious surface once the slightest rain saturated the ground above the rock. He faulted further the removal of overburden soil from the upper lots." *Id.* at 646. The Court takes particular note of the Defendant's affidavit of Steven A. Howard in which he states, "There is no indication to this day that any stagnant water is

forming from the Humphrey property, or any rills, gullies, valleys or sedimentation occurring that would cause concern for the County.” Mr. Howard’s statements in this regard are buttressed by the personal observations expressed in the affidavits supplied by Mr. Guy Abernathy, a professional civil engineer who visited and inspected the Humphrey property, and Ms. BJ Smithmojica.

Moreover, the plaintiff’s expert in Green was deposed and testimony of the expert was available for the trial court’s consideration, specifically, testimony by plaintiff’s expert in Green that Dozier’s development activities in developing the infrastructure (initial clear-cutting and grading, building of impervious roads, and placing of in-ground facilities) contributed to the excessive runoff onto Green’s land. He also testified that Eastland’s activities in then grading the lots in a nonconical manner (so as to create areas where water was allowed to collect and then funnel down the hillside), in removing overburden soils, and in creating more impervious surfaces, further contributed to the excessive runoff.” *Id.* at 646. Further to this point, plaintiff in Green also “...presented nonexpert testimony that was consistent with the conclusions of her expert.” *Id.* at 646. “Green tendered an Eastland home inspection report on one of the lots from a date just prior to Eastland selling the lot, which reflected that the lot had substantial erosion problems at that time. *Id.* at 646, 647. Antithetical to the Green case, in the instant matter, Plaintiff has provided no reliable expert reports or analyses for consideration by this court which are not otherwise inadmissible hearsay, and no affidavits, deposition transcripts or any other non-hearsay witness statements

in support of his claims beyond his own conclusory statements of opinion. Admittedly Plaintiff states in his own deposition that he “has no evidence”.

Plaintiff has utterly failed to put causation at issue. “Causation is an essential element of nuisance, trespass, and negligence claims. To establish proximate cause, a plaintiff must show a legally attributable causal connection between the defendant’s conduct and the alleged injury. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. (Footnote omitted.) *Alexander v. Hulsey Environmental Svcs., Inc.*, 306 Ga. App. 459, 462 (3) (702 S. E. 2d 435) (2010). “The existence of proximate cause is a question of fact for the jury except in palpable, clear, and indisputable cases.” (Citation and punctuation omitted.) *Sprayberry Crossing Partnership v. Phenix Supply Co.*, 274 Ga. App. 364, 365 (1) (617 S. E. 2d 622) (2005).

In the instant matter, Plaintiff has failed in both Plaintiff’s Complaint and in Plaintiff’s *Motion for Summary Judgment* to provide any sworn testimony of any kind, by anyone which may demonstrate that a nuisance exists, and that the Defendant or any of the Defendant’s independent contractors—particularly, Sandals Luxury Pools, Inc.—are the cause of it. Plaintiff has provided no photo or video evidence of any rills, channels, gullies, or the like which the Court recognizes to be evidence of excess runoff and erosion, and the affidavits evidence supplied by the Defendant speak to the fact that none of this evidence has ever been observed on Defendant’s property. At minimum, Plaintiff has provided ZERO evidence of any

surface water crossing the boundary line between the Plaintiff and the Defendant. Plaintiff has also not put any expert report properly before the Court, so that any such report's contents can be given any gravity toward Plaintiff's Motion or Plaintiff's Complaint. The Court takes particular note of the fact that the Plaintiff could have produced even a single photo or video of water running off of the Defendant's property and onto the property of the Plaintiff, but the Plaintiff hasn't. Plaintiff has—in some instances by his own admission—done no inspections of Defendant's property, taken no measurements upon Defendant's property, performed no testing upon Defendant's property, and has presented no calculations to support Plaintiff's conclusions. The Plaintiff here has produced no such evidence in support of his claims other than unstipulated assertions of fact, unsupported by affidavit or other evidence of record.

As to Plaintiff's demand for injunctive relief, O. C. G. A. § 9-5-1 states:

“Equity, by a writ of injunction, may restrain proceedings in another or the same court, a threatened or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.” Ga.

Code Ann. § 9-5-1

In order for the demanded injunctive relief to issue, Plaintiff must demonstrate that there is a legitimate basis for the issuance of the injunction he seeks beyond that which is merely alleged by him, and that it is the only adequate remedy he has. He has failed to

do so. “Bare threat of injury to property offers no basis for equitable relief by injunction or otherwise. Allegations based on mere apprehension of injury and general conclusions, without alleging facts to show irreparable injury, are insufficient to authorize the grant of injunctive relief.” *Insurance Ctr., Inc. v. Hamilton*, 218 Ga. 597, 129 S. E. 2d 801, 1963 Ga. LEXIS 270 (1963). A mere apprehension of danger or injury will not require equitable relief. *Ellis v. Georgia Kraft Co.*, 219 Ga. 335, 133 S. E. 2d 350, 1963 Ga. LEXIS 452 (1963). It is the opinion of this Court that Plaintiff has failed to provide evidentiary support for any allegations of specific fact that would elevate Plaintiff’s claims above a mere apprehension of injury and general conclusions, and provide a basis for injunctive relief.

CONCLUSION

Based on the foregoing, the Court finds that the Plaintiff has failed to meet Plaintiff’s burden of making a *prima facie* case against the Defendant and that he has failed to prove each essential element of Plaintiff’s claims, that Defendant *did not* knowingly adopt or ratify any unauthorized wrongs of Defendant’s independent contractor who constructed the Defendant’s pool, that Defendant *did not* intentionally or negligently violate any applicable federal, state, or local rule, regulation, or applicable law which might impute liability to the Defendant under a theory of negligence *per se*, and that the Defendant’s pool construction project *did not* create an artificial condition upon Defendant’s property which is causing excess runoff onto the Plaintiff’s property. For these reasons, Defendant is not liable to Plaintiff for the claims asserted

by the Plaintiff against the Defendant in Plaintiff's Complaint.

Accordingly, Plaintiff's *Motion for Summary Judgment* against the Defendant is **DENIED** as to each and every count of Plaintiff's Complaint, and the Defendant's cross *Motion for Summary Judgment* against the Plaintiff is **GRANTED** as to each and every count of Plaintiff's Complaint.

The foregoing is a final order.

SO ORDERED this 22nd day of October 2024.

/s/ Nicholas Primm

Nicholas Primm,

Judge, Superior Court of Jackson County

Piedmont Judicial Circuit

Prepared by: (with Court revisions)

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Appendix E

[Filed: Sep. 18, 2024]

**IN THE SUPERIOR COURT OF
JACKSON COUNTY
STATE OF GEORGIA**

**KEVIN YEUNG,
Plaintiff,**

vs.

**SHANNON HUMPHREY,
Defendant.**

Case No: 22CV0988

**ORDER ON DEFENDANT'S
MOTION TO STRIKE**

THE PARTIES APPEARED before the Court on September 5, 2024, on *Defendant's Motion to Strike Plaintiff's Supplemental Expert Report, Jackson County Ordinance No. 17-012 And Brief In Support* (hereinafter "Plaintiff's Supplemental Expert Report").¹ After considering the law, argument and briefs by the parties, the Court finds as follows:

Under O. C. G. A. 9-11-12(f), upon motion made by a party within 30 days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Defendant contends that Plaintiff's Supplemental Expert Report should be stricken based on

¹ Additional Motions from Defendant and Plaintiff were also heard on September 5, 2024. This Order only addresses the Defendant's Motion to Strike.

untimeliness. Defendant filed its Motion for Summary Judgment on May 17, 2024. The Plaintiff filed a Reply to Defendant's Motion for Summary Judgment on June 15, 2024. Subsequently, Plaintiff filed its Supplemental Expert Report on July 4, 2024, purporting to supplement its earlier June 15, 2024 Reply to Defendant's Motion for Summary Judgment. Under Uniform Superior Court Rule 6.2, "... each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion. . . ." Plaintiff's Supplemental Expert Report filed on July 4, 2024 was filed 19 days after its Reply to Defendant's Motion for Summary Judgment. The lack of timeliness is exacerbated by the fact that the Plaintiff was previously sanctioned for not responding to discovery and he has persistently refused or failed to identify expert witnesses or to provide expert reports to the Defendant. The Court thus finds the Plaintiff's Supplemental Expert Report is untimely.

Defendant also contends that Plaintiff's Supplemental Expert Report should be stricken based on grounds of redundancy, immateriality and impertinence. One test as to whether matter in pleading is irrelevant, immaterial or impertinent is whether evidence in support of it would be admissible.² Defendant argues that the Plaintiff's Supplemental Expert Report should be excluded, or stricken, because the purported expert report is unauthenticated hearsay. "All evidence, unsupported conclusions, and the like, must be stricken or eliminated from consideration in a motion for summary judgment." *Goodhart v. Atlanta Gas Light Co.*, 349 Ga. App. 65 (2019). Plaintiff's purported expert report is unaccompanied by an

affidavit from the witness and is unsupported hearsay.

Plaintiff's Supplemental Expert Report also contains irrelevant information regarding a T. P. O. application.

Therefore, based on the untimeliness and the inadmissible hearsay evidence, the Court GRANTS Defendant's Motion to Strike. Plaintiff's Supplemental Expert Report is stricken from the record and shall not be considered in ruling on the motion for summary judgment.³

SO ORDERED this 18th day of September, 2024.

/s/ Nicholas Primm

Judge Nicholas Primm
Jackson County Superior Court
Piedmont Judicial Circuit

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Appendix F

[Filed: Mar. 17, 2024]

IN THE SUPERIOR COURT OF JACKSON
COUNTY

STATE OF GEORGIA

Kevin Yeung	)	
	)	
Plaintiff	)	
	)	Civil Action
vs.	)	
	)	File No. <u>22CV0988</u>
Shannon Humphrey	)	
	)	
Defendant,	)	
	)	
	)	

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGEMENT**

COMES NOW, Plaintiff, Kevin Yeung respectfully moves this Court, pursuant to O. C. G. A. §9-11-56, Ga. Comp. R. & Regs Rule 616-1-3-.19 and Rule 56 of the Federal Rules of Civil Procedure, for summary judgment on **Injunctive Relief** and seek order permanently to enjoin Defendant, Shannon Humphrey from causing further damages to plaintiff's property. Mandate Defendant to take Corrective Action to comply with Local, State and Federal Codes.

Ga. Comp. R.& Regs Rule 616-1-3-.19 **”(a)** *A party may move, based on supporting affidavits or other probative evidence, for summary judgment in its favor on*

any of the issues being adjudicated on the basis that there is no genuine issue of material fact for trial.”

Submitted with this Motion are Plaintiff’s Statement of Undisputed Material Facts, with Evidence, Documents, and Records to support motion.

BACKGROUND (RUN OFF)

1. Defendant has built an Inground Swimming Pool in 2022. In specific, **No** plumbing permit was ever applied to Jackson County Public Development. No Plumbing or Underground Plumbing Inspection was performed by Jackson County Inspector per Code Officer Alex and Building Inspector during the pool construction in 2021. See Exhibit “ A”
2. Defendant hired a contractor Sandal Luxury Pool to complete her swimming pool construction.
3. At the time of application, false information was submitted to obtain a pool permit. ”Search record” other than actual Qualified ID was uploaded. There was No certified erosion specialist retained to perform land excavation and grading on Defendant’s Site. See Exhibit “ B”
4. Under the agreement between Defendant and her Contractor, the following works are NOT included in the contract.
 - a) The routing of Downspouts and pool plumbing into a drainage pipe to release storm and pool water to a Pop Up Emitter located 3–5 feet (approximate) from property line 089P and 090P.
 - b) **No** Plumbing Permit
 - c) Certified Erosion Control Plan (Dirt to be left on site)

- d) Downspout Installation The work Scope of Sandal Luxury Pool is attached as Exhibit “ B”
5. After the installation of All Pool Plumbing, **NO Pressure Test** (Underground Pipes) or **Plumbing Inspection** was ever performed prior to Back-filling all the Underground Pipes. Jackson County Inspector’s last site inspection was on 08/10/22, after the inspector had left, Defendant immediately installed underground plumbing between 08/12 to 08/14. Poured Concrete to conceal pipes completely. See Exhibit “Z”

“An action for fraud and deceit must be based upon a representation (or concealment) which was made with the intention and purpose of deceiving the opposite party and for the purpose of injuring the party.” Conner v. Branch, 185 Ga. App. 565, 364 S. E. 2d 890, cert. denied, 185 Ga. App. 909, 364 S. E. 2d 890 (1988).

6. Then on 09/03/2022, alternation was made to pool plumbing by Defendant to disburse pool water, Wash out, pool overflow and stormwater 3 – 5 feet (Approximate without Actual measure) from property line. Plaintiff holds many photos but some limited to acceptance by PeachCourt. See Exhibit “ C “

The owner of the higher tract “has no right to concentrate and collect water and thus cause it to discharge upon the land of a lower property in greater quantities at a particular locality or in a manner different from that in which the water would be received by the lower property if it simply ran down upon it from the upper property by the law of gravitation. ” Sumitomo Corp. of America v. Deal, 256 Ga. App. 703, 704 (2002).

7. This modification is concentrating large quantity of water into a drainage pipe. Water then get released to a Pop Up Emitter, excess runoff ultimately flew onto Plaintiff's land damaging Plaintiff's walkway and caused flooding.
8. Multiple Outdoor Flooding occurred in Plaintiff's yard on Sept 2022, Jan 19th 2023, and July 7th, 2023.
9. In September 2022, shortly after the installation of Defendant's Pop Up and Alternation, Plaintiff had experienced First 1st Flood in lawn at midnight following a heavy thunderstorm. Water was puddling outside the basement area. Plaintiff has never experienced ANY flooding in the past.
10. Another big storm strike on 01/19/2023 resulting to a bigger 2nd flood around the same area again.
11. Plaintiff's 1st drain newly installed in July 2022 intended to take on and direct excess water did not help much. It was way too much of storm water.
12. On July 7, 2023. A major 3rd flood occurred outside of the basement area again.
13. Defendant has FULL control of ON/OFF Valve of her swimming pool. She is free to make determination as to when to drain pool, overflow, wash out, stormwater etc. She can decide how all of these plays out.
14. Pool Chlorine Water and Storm Water are supposed to be carried underground per Defendant's Site Plan, Georgia Law and International Swimming Pool and Spa Code.
15. Defendant deliberately not obtaining a Plumbing Permit or Plumbing Inspection. Allowed chlorine water to flow onto Plaintiff's land,

contaminated, damaged and devalued Plaintiff's property is Malicious Act.

16. A Good constructed Swimming Pool with Proper Plumbing can range between \$100,000 – \$150,000 (Approximate only depending on numbers of factors).
17. At Any time, Defendant can make a Choice, turn ON or OFF, Drain or Not Drain pool, redirect Pool and Stormwater to different location. In Control of ALL.
18. At Defendant's Will, she may make adjustment tomorrow or any other days.

BACKGROUND (EROSION)

19. Plaintiff experienced First Erosion on May 3, 2021 when Defendant's Builder HillGrove Home LLC did not implement adequate BMP Control in place during the construction at Defendant's Site. Builder Denied Any Wrong Doing.
20. Erosion is continuing and become more noticeable on Plaintiff's walkway in a particular portion of the walkway. The source is originated from Defendant's Site. See Exhibit "D"
21. Plaintiff's Undamaged, Normal walkway and Side Yard are shown as Exhibit "E"
22. Plaintiff's walkway was installed in Spring 2022 six months prior to Defendant's Swimming Pool Construction. During these times, only one portion of the walkway appeared to have Erosion as shown in Exhibit "D".
23. Moderate Erosion also noted across the property line between 089P and 090P more towards the back area than front of the lot. The damages

resulted from erosion often required time to become noticeable.

24. Erosion persisted even after Defendant's Swimming Pool Construction more appearance in Plaintiff's side and back yard. The grading of Defendant's Site after pool Construction was conducted by Defendant's husband Mr. Humphrey. See Exhibit "W"
25. On March 6, 2023 Defendant hired contractor to plant bushes across the property line and replaced grass with rocks around Pop Up Emitter as well as the pool plumbing area. This in result caused more erosion.
26. The fact that Rocks cannot absorb water into ground, this in effect caused more runoff onto Plaintiff's back yard. See Exhibit "F"
27. Due to excessive runoff, a new area in Plaintiff's side yard began to erode at present time. The reason will be explained in later argument below.

BACKGROUND (POLLUTION)

28. Chloride found in Plaintiff's walkway located in back yard. Soil was taken from walkway in The Summer 2023 to UGA Extension for testing. See Exhibit "G "
29. All Soil samples are tested by UGA EXTENSION located in multiple locations in Georgia.
30. Plaintiff continued to collect soil sample in various dates and location for testing.
31. The First 1st Soil Test with soil taken in Plaintiff's walkway did not contain any chloride <4.15 lbs/Acres per report dated July 17, 2023.

32. Plaintiff's soil was free of Chloride and Not contaminated prior to Defendant's Swimming Pool construction.
33. To date, Chloride still existed in Plaintiff's land.
34. Plaintiff contacted a Director at UGA for clarification of Chloride vs Chlorine. See Exhibit "H"
35. A container was placed underground beneath Defendant's Swale to catch water on property line between 089P and 090P. Even with the present of Swale, Contaminated Water still entered Plaintiff's Land.
36. After a rain event in 2023, Plaintiff tested water in that container under the Swale Immediately using a Pool test Paper. **CHLORINE** found on Pool test paper. This is supported by a Live Video taken.

*Please note PeachCourt does not accept video filing. If the Court finds a need to see the video, Plaintiff will promptly send via email or dropbox or any other ways.

PLAINTIFF SOIL REPORTS

(1st TEST July 17, 2023)

Less than **<4.15 lbs/Acres** of Chloride

(Soil taken in walkway sometimes in 2023)

This <4.15 means **NO** chloride which indicate Plaintiff's soil was not contaminated at the time.

Chloride: 40.48 lbs / Acres

(Soil taken in walkway in late June 2023 after Defendant was seen cleaning pool)

(2nd TEST August 4, 2023)

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Chloride: 5.747 lbs/Acres

(Soil taken in walkway again) .

This is a month later after the 1st Test. Chloride remained in the soil on Plaintiff's soil.

(3rd TEST Nov 30, 2023)

Chloride: 10 lbs/ Acres

(Soil taken in Plaintiff's side/back yard in a new eroded area)

Soil collected on Nov 15, 2023 and it is supported by Plaintiff's video.

(4th TEST Feb 13, 2024)

Chloride: 8.631 Lbs / Acre

(Soil sample taken in Plaintiff's side yard next to Driveway)

37. Plaintiff's Front landscape is unpolluted and clear of contamination apart from Defendant's site. The effect of Healthy vs Unhealthy Plants in Plaintiff's contaminated and uncontaminated area is illustrated as exhibit "Y"
38. Mr. Brent Wadlington, BS, CIEC, IH at Jah Environmental Safety & Health, LLC made a site inspection to Plaintiff's property on 02/20/2024. The report is forthcoming.

BACKGROUND (SEDIMENTS)

39. On March 6 2023, Defendant hired a contractor to plant bushes across the property line and replaced grass with rocks around Pop Up Emitter. Since then, tremendous amount of Fresh Dirt

landed on Plaintiff's walkway and between the gap/space of Plaintiff's concrete driveway.

40. The New Bushes planted areas are those without adequate Swale in place as a requirement of Defendant's site plan.
41. Plaintiff's lot received debris such as leaves, pine needle, mulch, rocks, chips etc. from Defendant's site on a continuous basis. Defendant denied debris originated from their site and never offered help to clean up. See Exhibit "J"

BACKGROUND (ALTERNATION)

42. A Plumbing alternation was made by Defendant on Sept 3, 2022 to concentrate large amount of water into a drainage pipe directing Pool and Stormwater to a Pop Up Emitter, installed within few feet from the property line. See Exhibit "K"
43. This modification has altered the natural flow of water and caused an increase of water flow onto Plaintiff's property which is not permitted by Georgia Stormwater Law.
44. Then on August 19, 2022, Defendant Unlawfully Created TWO (2) flows in back yard not permitted by Law per O. C. G. A. 44-8-1 and O. C. G. A. 51-9-7. Of which, one of the flows was directed within a few feet from Plaintiff's property line. Such flow has caused excessive runoff onto Plaintiff's side and back yard. See First Photo in Exhibit "L".

"An action for fraud and deceit must be based upon a representation (or concealment) which was made with the intention and purpose of deceiving the opposite party and for the purpose of injuring the party."

Conner v. Branch, 185 Ga. App. 565, 364 S. E. 2d 890, cert. denied, 185 Ga. App. 909, 364 S. E. 2d 890 (1988).

BACKGROUND (WATER FLOW)

45. In General concept, “Water flows downhill because gravity is a form of *potential energy* – and the water, or anything that falls or rolls downward – flows in response to differences in potential energy (from high to low)” *Authors: Michael Arthur and Demian Saffer Professors, The Pennsylvania State University University Park, Patrick Belmont Assistant Professor, Utah State University.*
46. During the summer time, Defendant often applied pesticides to kill weed on her property.
47. This chemical often landed on Plaintiff’s property per photos showing in Exhibit “M “
48. These photos also proved how Water actually Flows from Defendant’s Site to Plaintiff’s site.

WORK COMPLETED BY PLAINTIFF TO ADDRESS EACH ISSUE

49. 1st Drain installed 07/22 by basement area to release water 7–10 foot towards Street of Traditions Way.
50. 2nd Drain installed 09/27/2023 in Rear Yard releasing water 1 foot towards Street of Traditions Way.
51. New Concrete Landing completed on 08/29/2023 outside of the basement area by East Coast Concrete in Rosewell GA.
52. A small Retaining wall was built across the property line between 089P and 090P for Plaintiff’s protection on 05/09/2022. See Exhibit “N”

53. Multiple landscape changes were made by Plaintiff from 2021 to 2023 to handle each issue as he sees fit.
54. Defendant implemented no preventive or control measures, view these matters lightly. Defendant contended “**No Erosion**”, “**No Runoff**”, “**No Sediments**”, “**No Pollution**”, “**No Issues.**”
55. All that it takes are “Proper Planning” “Proper Control” and “Apply Preventive Measure.” to avoid Injuries to others and costly litigation.
56. Yet, Defendant is selfish, has little concern about her responsibilities, actions and obligations under Georgia law and as Homeowner. It further put Plaintiff’s property in danger willfully.

ARUMENT AND CITATION OF AUTHORITY

57. **Some Elements in this case are Proven knowledge.**
Defendant Argued 1) No ***Pool*** and ***Stormwater*** are flowing onto Plaintiff’s Property. 2) No ***Pool Overflow*** or ***Pool water*** is flowing towards Street. No discharge (water) to the street.
No discharge to Plaintiff’s Property and No discharge to the Building existing underground drainage (Never connected). If true, then the Stormwater, Pool Overflow, Washout, and Pool Water from Defendant’s Site would have no place to go during rain events.
58. **Defendant’s Legal Argument is Against scientific facts and gravity.**
Water will NOT Stop flowing downhill per USGS unless it is Retained or Redirected. Water is NOT going to flow over ‘the height of grass’ in normal

course which Defendant has been consistently auguring throughout the entire time.

59. **Georgia's General Stormwater Law Specifies That an Uphill Property Owner Cannot Do Anything to Increase the Volume or Concentration of Stormwater onto Downhill Property.** GA Code §44-8-1 explains that "running water belongs to the owner of the land on which it runs. A landowner does not have rights to divert water from its usual channel so to interfere and disrupt next owner's enjoyment." Defendant is liable for the diversion of surface water cause the natural flow of water was altered by artificial means; 1) Swimming Pool Construction on 08/12/2022; 2) Plumbing alternation on 09/03/22; 3) Unlawful Diversion of Flow on 08/19/22.
60. **Defendant may not endanger neighbor's property by diverting runoff.**
61. **Defendant's action is causing excess water to run onto Plaintiff's land.**
 - 1.Natural Flow Rule 2. Reasonable Use Rule 3. Civil Law Rule impose liability to the landowner when the natural flow of water is altered. Plaintiff is entitled to monetary award since Defendant has unreasonably changed the natural flow of surface water and caused multiple flooding to Plaintiff's property.

"Water runs and it ought to run in the manner in which it was accustomed to run." Goble v. Louisville & Nashville R.R., 187 Ga. 243, 200 S. E. 259 (1938).
62. **The General Rule of Water Rights, a Landowner is Obligated to Use Their Property In a**

**Fashion That Will Not Cause Harm to Other
Property Owners While Using it.
Per O. C. G. A. 51-9-7**

“The diverting of the stream in whole or in part from its natural and usual flow, or the obstructing thereof so as to impede its course or cause it to overflow or inquire the land through which it flows or any right appurtenant thereto, or the polluting thereof so as to lessen its value to the owner of such land shall constitute a trespass upon the property.”

**63. Defendant has a legal duty to retain water
on own property.**

Defendant breaches her duty by not keeping Chlorine and Storm water on her lot but chose to concentrate a large amount of water, allow it to flow onto Plaintiff's yard. Plaintiff has recourse to bring a new action and to recover damage suffered pursuant to

O. C. G. A. §51-1-6, O. C. G. A. §51-1-8.

**64. Property Law Gives Right to Plaintiff to
Enjoy Private Property Without the Interference
of Others.** Plaintiff has essential right to enjoy his own property. Georgia legislation enacts several statutes to protect landowners. A person should be held liable for interfering and causing harm to other landowners when such act interferes with the enjoyment of the land pursuant to

O. C. G. A. 51-9-1, O. C. G. A. 51-9-2, O. C. G. A. 51-9-3.

**65. O. C. G. A. 51-12-7 Recovery of Necessary
Expenses**

In all cases, the necessary expenses incur upon an injury are a legitimate item in estimating the damage costs.

66. Defendant's Nuisance is Ongoing and Continuing, Plaintiff is Entitled to Damages Per O. C. G. A. 51-12-5.1, O. C. G. A. 51-9-6.

The continuing nuisance is abatable by Defendant. "Every continuance of a nuisance which is not permanent, and which could and should be abated, is a fresh nuisance for which a new action will lie." Goble v. Louisville & N.R.R., 187 Ga. 243, 200 S. E. 259 (1938).

67. CO should NOT be issued to Defendant's residence per Jackson County Unified Development Code, Article 20, Building Regulation Sec. 2071 (b).

Defendant's residential building is not qualified to receive Certificate of Occupancy. Active 'Stop Work Order', no record of 'N.O.T.' State violation is still in place. CO must not issued until all of these violations have been properly addressed and the site meets compliance with local ordinances, construction codes and other applicable laws. (Ord. No. [17-003](#) , §1, 10-2-2017)

68. Office of Governor Brian Kemp Executive Order:

"The Uniform Codes Act is codified at chapter 2 of title 8 of The Official Code of Georgia Annotated. O. C. G. A. Section 8-2-20(9)(B). Below is a list of the current mandatory and permissive state codes. Each of these separate codes typically consist of a base code (e.g. The International Building Code as published by the International

Code Council) and a set of Georgia amendments to the base code.”

“The mandatory codes are applicable to all construction whether or not they are locally enforced and the permissive codes are only applicable if a local government chooses to adopt and enforce one or more of these codes”

- **International Building Code**
- **International Residential Code for One- and Two-Family Dwellings**
- **International Fire Code**
- **International Plumbing Code**
- **International Mechanical Code**
- **International Fuel Gas Code**
- **National Electrical Code**
- **International Energy Conservation Code**
- **International Swimming Pool and Spa Code**

<https://www.dca.ga.gov/local-government-assistance/construction-codes-industrialized-buildings/construction-codes>

69. **Under Georgia Law, Plumbing Permit and Inspection are required on Defendant’s In Ground Swimming Pool.**

Plumbing is an integrate part of the Swimming Pool Construction. This is to ensure all underground (Below Surface) pipes are installed properly, no leak, bear its rating, and for safety Concerns. A proper inspection will **Minimize**

Illnesses and Injuries associated with contaminated or hazardous conditions to the environment and other neighboring including Plaintiff's property.

70. The Uniform construction codes in State of Georgia are designed to help protect the life, health, and property of all Georgians.

These codes are to ensure that ALL Constructions are safe, sound, good structures and conditions to avoid high costs and risks in long run.

71. Defendant's swimming pool DID NOT follow Rules and Regulations set forth in 1) Georgia Department of Public Heath, 2) Georgia Swimming Pool Code, 3) International Plumbing Code, 4) International Swimming Pool and Spa Codes.

I. Section 302.2 Water Service and Drainage. Piping and fittings used for water service, makeup and drainage piping for pools and spas shall comply with the International Plumbing Code. It shall be approved for installation with the piping installed.(International Swimming Pool and Spa Code ISPSC 2018)

II. 302.4 Concealed Piping Inspection. Piping, including process piping, that is installed in trenches, shall be inspected prior to backfilling. (International Swimming Pool and Spa Code ISPSC 2018)

III. 302.6 Waste Water Discharge where wastewater from pools or spas, such as backwash water from filters and water from deck drains discharge to a building drainage

system, the connection shall be through an air gap in accordance with Section 102.7.1 (International Swimming Pool and Spa Code ISPSC 2018)

- IV. International Plumbing Code 301.3** Connections to Drainage System, plumbing fixtures, drains appurtenances and appliances used to receive or discharge liquid waste or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. (International Plumbing Code 2018)
- V. IPC 312.1 Required Tests.** The permit holder shall make the applicable tests prescribed in Sections 312.2 through 312.10 to determine compliance with the provisions of this code. The permit holder shall give reasonable advance notice to the code officer when the plumbing work is ready for tests. The equipment, material, power and labor necessary for the inspection and test shall be finished by the permit. (International Plumbing Code 2018)
- VI. International Building Code P2503.2** Concealment requires that a plumbing or drainage system, or part thereof, shall not be covered, concealed or put into use until it has been tested, inspected and approved by the

building official. (International Building Code P2503.2)

VII. 1101.2 Disposal. Rainwater from roof or stormwater from paved areas, yards, courts, courtyards shall drain to **Approved** place for disposal. (International Plumbing Code 2021)

72. Pipe Test is a Crucial Step. It is Piping Code Requirement Set Forth in 302.4 concealed Piping Inspection Mentioned Above.

This test must be followed to ensure all pipes are able to bear its rating pressures and no leaks. Defendant's pool equipment and all related plumbing pipes are located within approximately 10 to 20 feet from Plaintiff's structural building. A constant, ongoing pipe leak underground is going to have negative impact and create issues to Plaintiff's residence and all surrounding areas. The omission of plumbing inspection in Defendant's swimming pool should not be permitted for health and safety reasons.

73. Swimming pool Completion should not be issued to Defendant's pool without a proper Plumbing Inspection.

Without proper plumbing testing or inspection, Georgia Department of Public Health Rule 511-3-5-23 states that an operating permit shall Not be issued until appropriate inspections show compliance.

“(2) An operating permit shall not be issued until appropriate inspections show compliance with the requirements of this Chapter, with no violations noted on the inspection report.”

Georgia Department of Public Health
Rule Ga. Comp. R. & Regs. 511-3-5-
.23

74. Defendant conducted own Land Disturbing Activity

Defendant's husband Mr. Humphrey completed Land Disturbing Activity but did not obtain proper Permit or followed specific rules and regulations set forth by Georgia Erosion and Sedimentation Act of 1975.

75. Jackson County Code Ordinance Unified Development Article 8, Sec 827. – Regulation Responsibilities of permittees.

(b) "For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as at least one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and who meets the applicable education or training certification requirements developed by the state soil and water conservation commission present on site whenever land-disturbing activities are conducted on that site."

(c) "Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities."

(Ord. No. [17-003](#) , §1, 10-2-2017)

76. Georgia Erosion and Sedimentation Act of 1975 (GESA) .

GESA is State law enforced by the Local Issuing Authority Jackson County. It requires certified

individuals to be on site while land disturbing activity is taking place. Defendant's husband is not a certified individual to complete grading in his own back yard. Defendant's husband is not Blue Card ID holder and has not completed erosion or training course with GWSCC.

77. Defendant is not Exempt from obtaining Land Disturbance Permit

"The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development" per **O. C. G. A. 12-7-17** Both qualifications must meet to be exempted. It is essential given the multiple violations in place on Defendant's Site.

78. Land Disturbance Activities in State of Georgia O. C. G. A. 12-7-6

"The purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation....." published by the State Soil and Water Conservation Commission

"sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized.

"a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this chapter"

“Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surfaces of fills”

“Cuts and fills may not endanger adjoining property”

“ Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners”

O. C. G. A. 12-7-7 states “No land-disturbing activities shall be conducted in this state, except those land-disturbing activities provided for in Code Section 12-7-17, without the operator first securing a permit from a local issuing authority.

O.C.G.A 12-7-12 (c) (3) “All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.”

O. C. G. A. 12-7-13 “in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this chapter, the rules and regulations adopted pursuant to this chapter, or any order or permit conditions in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, he or she may make application to the superior court of the county where such person resides or, if such person is a nonresident of the state, to the superior court of the county in which the violative act or practice has been or is about to be engaged in for an order enjoining such act or practice or for an order requiring compliance with this chapter, the rules and regulations adopted pursuant to this chapter, or the order or permit condition. Upon a showing by the

director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.”

O. C. G. A. 12-7-15 “who negligently or intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this chapter shall be liable for a civil penalty not to exceed \$2,500.00 per day.”

See Exhibit “O” 2015 Unofficial Version (Key points Highlighted, Irrelevant pages deleted to preserve reader’s time)

**79. Defendant’s Nuisance is Ongoing and Continuing, Plaintiff is Entitled to Damages
Per O. C. G. A. 51-12-5.1, O. C. G. A. 51-9-6.**

The continuing nuisance is Ongoing and Continuing. ”Every continuance of a nuisance which is not permanent, and which could and should be abated, is a fresh nuisance for which a new action will lie.” Goble v. Louisville & N.R.R., 187 Ga. 243, 200 S. E. 259 (1938).

80. ”But For” the non-compliance of Defendant’s Construction Activities, Plaintiff would not have the damages it incurred.

81. ”But For” the runoff from Plumbing alteration, Unlawful Diversion and Chlorine water from Defendant’s Swimming Pool, Plaintiff’s Property would Not have Any Flooding or Erosion.

82. Punitive Damages.

Georgia law allows punitive damages when there is a finding of “willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of a conscious indifference to consequences.” O. C. G. A. §51-12-5.1(b).

83. Plaintiff is entitled to recover damages for Interference of Enjoyment Pursuant to O. C. G. A. 51-9-1.

“The right of enjoyment of private property being an absolute right of every citizen, every act of another which unlawfully interferes with such enjoyment is a tort for which an action shall lie.”.

84. Plaintiff is entitled to recover any damages per O. C. G. A. 51-6-2

“When there is fraud or breach of a legal or private duty accompanied by any damage, the law gives a right to recover damages, even only nominal damages, as compensation.” Holmes v. Drucker, 201 Ga. App. 687, 411 S. E. 2d 728 (1991).

85. Plaintiff’s Land has a fair market value of \$90,000 as of 2023. See Exhibit “P”

SCIENTIFIC BACKGROUND

86. Per USGS published by U. S. Government

“When rain hits saturated or impervious ground, it begins to flow downhill. It is easy to see if it flows down your driveway to the curb and into a storm sewer, but it is harder to notice it flowing over-land in a natural setting.”

*“When a storm lasting one hour occurs, one-half of the rainfall enters the stream, the rest is absorbed by the sponges. Now, **gravity** is still at play here, so the water in the sponges will start moving in a general downward direction, with most of it seeping out and into the streambanks during the next day or two.”* See Exhibit “Q”

87. Chlorine vs Chloride

Chlorine (Cl₂): Chlorine is a chemical element with the symbol Cl and atomic number 17. It exists as a diatomic molecule, meaning two chlorine atoms bonded together.

Chlorine gas is a greenish-yellow gas at room temperature and is highly reactive. It is commonly used in various industrial processes, including water purification, production of plastics, and manufacture of pesticides

Chloride (Cl⁻): Chloride is an ion formed when chlorine gains an electron, becoming negatively charged. It is represented by the symbol Cl⁻. (Jason Less Ph D)

Chlorine is gas and unable to be retained whereas Chloride can be detected. See Exhibit “H”

**VIOLATION OF LAWS BY DEFENDANT'S
ACTION AND SITE**

I. Defendant's Current Residential Building is an Unapproved Site Plan, obtained no Approval from State of Georgia

Defendant's building constructed by HillGrove Homes LLC is an Unapproved Building plan, a plan different from the proposed drawing that was originally submitted to GA State EPD and GSWCC for Approval. The Original Plan Approved by GA State is Not the same Plan as Defendant's Current Residential Building. The plan has been Modified and Changed by builder without first obtaining Approval from Authority. See Exhibit "R"

II. All changes or modification of a site plan shall be documented and resubmitted to Authority for Compliance per Ga. Comp. R. & Regs. 111-8-62-.12 (3)

Defendant's Residential building has been Modified and Changed without first obtaining prior Approval from Authority.

III. Stop Order was issued to Defendant's Site on 05/03/2021 by Local Issuing Authority.

GA Code Section 12-7-12 -(c) **(3)** *"All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has*

occurred.(d)All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls." OCGA §12-7-12 Amended by 2003 Ga. Laws 36, §5, eff. 7/1/2003. See Exhibit "

**O.C.G.A §12-7-12 Orders Directed to Violators,
Stop Work**

IV. Defendant has become the responsible party as Tertiary Permittee per GSWCC Guideline to deal with site issues, she failed to take corrective action.

“The Guide provides important information as to when an individual will become a Tertiary Permittee, if the Primary Permittee has filed NOT or the Primary Permittee cannot be determined. If the Primary Permittee cannot be determined, then the owner of the individual lot(s) will be a Tertiary Permittee.” (GSWCC Tertiary Guidance) See Exhibit “S” Defendant is the responsible party to make corrective actions under Georgia Law.

V. “Notice of Termination” NOT Yet Filed to Environmental Protection Division as a Requirement to satisfy soil stabilization and cease stormwater, erosion, pollution, sedimental issues.

As of today, no record of N.O.T. found in EPD for qualification to receive Certificate of Occupancy (C.O.) on Defendant’s Residence. The Stormwater Discharge on Defendant’s Site has not been terminated. This is Up to Date verified by Alexander Hoppersberger, the Environmental Compliance Specialist III GAEPD – Northeast District Office. See Exhibit “T” A properly Filed and Executed **Notice of Termination N.O.T.** will mark the status as “Terminated” Once a site is terminated, Certificate Of Occupancy will then be issued by local government.

VI. No permit on Defendant's Patio Extension.
(This Violation has been corrected)

Permit issued only after complaint was filed by Plaintiff's wife to Jackson County Code Officer in 2022. See Exhibit "U"

VII. No Plumbing Permit applied or Plumbing Inspection on Defendant's Swimming Pool during Defendant's Swimming Pool Construction from June to December of 2022.

Under Georgia Law, Plumbing Permit and Inspection are needed on Defendant's In Ground Swimming Pool. All Plumbing or underground Piping installation should be inspected to ensure all pipes are connected properly, no leak in pipes and whether they're connected to allowed or disallowed water lines.

Executive Governor Brian Kemp's order mandates, **All CONSTRUCTIONS** in the State of Georgia must adhere to Mandatory Codes including **International Swimming Pool and Spa Code** and **International Plumbing Code**. No exception even when Jackson County did not enforce this code.

<https://www.dca.ga.gov/local-government-assistance/construction-codes-industrialized-buildings/construction-codes>

VIII. Pool Inspection of Hall, Bank, Barrow, Jackson Counties

Other Counties in State of Georgia also require Plumbing permit and Plumbing inspections on Swimming Pool under Georgia Law. See Exhibit "V"

**O. C. G. A. §8-2-28 Adoption by municipality
or county enforcing construction code of
state minimum standard code**

**1X Georgia Erosion and Sedimentation Act of
1975 (GESA) .**

Defendant implemented NO BMP or Adequate Control until after Plaintiff's wife had made a call to Jackson County Code Officer. Even after the call, no Slit Fence installed in some areas still and those areas were left open.

X. Non-compliance with site plan requirement

Defendant's site does not meet Site Plan Requirement of "Grade 12" Berm and Swale to Direct Water away from 089P & Toward street; Tie downspouts into drainage pipe & Direct towards Street." Defendant's Swale does not meet 12inch of height. There is little to no swale when it comes toward the back. The 12 inch of height is for street view only. Defendant later planted bushes in those inadequate areas to conceal it.

**XI. Unlawful Diversion of Flow onto Plaintiff
and adjoining properties**

On August 19, 2022, Defendant unlawfully dug and rediverted (TWO) flows to the side and back of Defendant's Yard. 1st Flow created to divert flow towards their back yard. 2nd Flow created to divert flow a few feet parallel to Plaintiff's Property line.

The 2nd Flow in turn, has killed Defendant's own bushes and allowed more containment water Onto Plaintiff's side and back lawn. See Exhibit "L"

"the owner of the higher tract has no right to concentrate and collect water and thus cause it to discharge upon the land of a lower property "in greater quantities

at a particular locality or in a manner different from that in which the water would be received by the lower property if it simply ran down upon it from the upper property by the law of gravitation. ” Sumitomo Corp. of America v. Deal, 256 Ga. App. 703, 704 (2002).

The consequence of this action is shown in Exhibit “L”.

XII. Defendant may not endanger neighbor’s property by diverting runoff.

“The landowner has no right to divert the water from its usual channel nor may he so use or adulterate it as to interfere with the enjoyment of it by the next owner.” Per **O. C. G. A. 44-8-1**. The Georgia law defined Nuisance, as “anything that causes hurt, inconvenience, or damage to another.” **O. C. G. A. §41-1-1**.

XIII Defendant is liable for the diversion of surface water because the natural flow of water was altered by artificial means:1) Swimming Pool Construction, 2) Plumbing alternation on 09/03/22, 3) Unlawful Diversion of Flow on 08/19/22 per **O. C. G. A. 51-9-6, O.C.G.A 41-1-4**

XIV. Improper Grading performed by unlicensed contractor Mr. Humphrey

Defendant’s husband Mr. Humphrey had completed grading after swimming pool construction. He is not a Blue Card ID holder, did not complete any Training course or hold any erosion certification to complete grading in back yard. This action is causing more erosion and runoff onto Plaintiff’s land. see Exhibit “Plaintiff’s Second Request for Admission to Defendant.”

“All premises (except approved retention areas and reservoirs) shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of

stagnant water thereon, or within any structure located thereon.”

Jackson County Code Ordinance Unified Article 18
Nuisance and Property Maintenance III Sec 1822
Grading and GSWCC Erosion and Sediment Control
Program

XV Responsibility, Maintenance of Landscaping and General Nuisance on Private Property

1. Sec. 1815. – Responsibility

(a) “It is the duty of the owner of every dwelling, building, structure, or property within the unincorporated portion of Jackson County to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the jurisdiction including this article, or such ordinances which regulate and prohibit activities on property including this UDC, and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure, or property in violation of such codes or ordinances.” [Cross reference: O. C. G. A. §41-2-9]

Jackson County Code Ordinances Appendix A .UDC.
Article 18 Division II Sec 1815 Responsibility (Ord.
No. 17-003 , §1, 10-2-2017)

2. Sec 1260 - Maintenance of Landscaping

(c) “All landscape materials shall be maintained and shall be kept clear of refuse and debris.”

Jackson County Code Ordinances Appendix A .UDC.
Article 12 Division IV Sec 1260 Maintenance (Ord.
No. 22-010 , §1, 8-15-2022)

3. Sec 1805 - Public health hazard or general nuisance on private property.

“All provisions of this division shall be applied to private property where an accumulation of weeds, trash, junk, filth and other unsanitary or unsafe conditions shall create a public health hazard or a general nuisance of the persons residing in the vicinity. A finding by any governmental health department, health officer or building inspector that such property is a health or safety hazard shall constitute prima facie evidence that such property is in violation of this division and O. C. G. A. §§41-2-8—41-2-17.”

Jackson County Code Ordinances Appendix A .UDC. Article 18 Division I Sec 1805 (Ord. No. 17-003 , §1, 10-2-2017)

**SUMMARY OF NON- COMPLIANCE OF
DEFENDANT’S BUILDING**

- 88. Defendant’s Structural Residence is an Unapproved Building Plan NOT Authorized by State of Georgia.**
- 89. Stop Order issued 05/03/2021 by Local Issuing Authority.**
- 90. No N.O.T. filed on record for 2478 Traditions of Braselton verified by EPD.**
- 91. No Plumbing Permit and Plumbing Inspection performed by Jackson County on Defendant’s Inground Swimming Pool during the pool construction from June 2022 until CO issued of Dec 19, 2022.**

92. **No Permit for patio addition in April 2022**
(This violation has later been ratified by a permit)
93. **Defendant's Building does NOT meet the Site Plan Requirement**
"Grade 12 High Berm & Swale to Direct Water Away from Lot P89 & Towards Street; Tie Downspouts into Drainage Pipe & Direct Toward Street."
94. **Unlawful Diversion of Flow onto adjoining properties by Defendant**
95. **Increase of water flow by Defendant onto Plaintiff's property per Plumbing Alternation 09/03/22 and Unlawful Diversion 08/19/2022.**

EXPERTS PROFESSIONAL ANALYSIS

96. On Sept 26, 2023 Mr Elvin Acock made a site visit to Plaintiff's property.

Elvin Acock PE
Atlanta Engineering Services, Inc.
770-316-1720
918 Holcomb Bridge Road, Suite 201
Roswell, GA 30076

97. On Feb 20, 2024, Mr Bret visited Plaintiff's property.

Bret Thurmond PE
AMT Engineer
330 Research Drive
Suite A -240

Athens GA 30605
706-548-8211

98. On Feb 28, 2024, Mr Brent visited Plaintiff's property.

Brent Wadlington, BS, CIEC, IH
Jah Environmental Safety & Health, LLC
300 Peachtree St. NE
Suite CS2 PMB 1148
Atlanta, GA 30308-3565
Phone: 470-615-6653
<http://www.jesh.llc>

See Exhibits" I" Report from Atlanta Engineering Services.

* Other Two Reports are not yet available and received by Plaintiff at time of filing this motion. These reports are forthcoming and they fall under 'Work Product Doctrine.' Plaintiff will submit to Judge promptly (Please provide instruction for submission) or present at hearing shall this case proceed to hearing.

99. Defendant's Civil Engineer Report and Environmental Compliance are unreliable and misleading.
100. Both of the Defendant's Experts made their findings based on Personal Observation on site Visit of 01/11/24 absence the records of N.O.I. and N.O.T. on file.
- i) Defendant's Site N.O.I (Notice of Intend) that was **Filed** to State of Georgia vs the Actual Built Plan is Fraud.
 - ii) N.O.T. (Notice of Termination) that was **Not Filed** with EPD and GWSCC is Non Compliance

and Confirmed by Georgia Official Environmental Compliance Specialist.

101. Alex Hopersberger, Georgia Environmental Compliance specialist III stated that Defendant's site has no N.O.T. filed as of 02/27/24. This rebut any inconsistency Defendant's Compliance Expert Mr Greg Puckett's report may noted. See Exhibit " T"
102. Meeting Compliance is when work was done in consistent with the Original Approved Plan, that the Same Original plan has met compliance with Codes, Rules, and Regulations.
103. Defendant's Experts at time of site visit, did not see the draining of 18,000 gallons of Defendant's pool water.
104. At their time of visit, they did not see Defendant's draining of 18,000 gallons of pool water jointly together with many days of heavy thunderstorms settling.
105. Defendant's Experts only seen what Defendant wanted them to see.
106. Defendant has FULL control as to *Where* and *How* Chlorine Pool and Storm Water get release to per the plumbing alternation completed on 09/03/2022.
107. In addition, Defendant's Experts did not see the unlawful routing of Flow committed by Defendant on August 19, 2022.
108. These experts further did not see Defendant's plumbing pipes leak that happened sometimes in Sept or Oct of 2022 shortly after pool alternation, which Plaintiff's wife had witnessed. This resulted in some damages in Plaintiff's lawn measured 5 feet x 3 feet in size, appeared dark and wet.

That Area was returned to normal when dry. A man tried to fix the leak at that time. Pursuant to O. C. G. A. 51-9-9, “an unlawful interference with his rights, either below or above the surface, gives him a right of action.” O. C. G. A. 51-9-9 (2010)

109. Any of Defendant’s Pool Plumbing pipe leak (underground) will result in immediate damage onto Plaintiff’s land due to topography. How water flow is proven by Exhibit “M”
110. Mr. Elvin and Mr. Bret both reviewed the Inconsistency of Defendant’s site plan. Together with all other factors and data concerning Defendant’s site prior to the completion of the reports to summarize their findings.
111. Mr. Bret is the President of AMT Engineer firm licensed in 12 other States in the U. S. with Extensive Knowledge and Expertise. He is an adjunct engineering professor at University of Georgia.
112. Plaintiff’s Experts are all Active Georgia Licensed Civil Engineers, each has more than 25 years of experiences working in the field. Mr. Brent is active Licensed Council – Certified Environmental Consultant.
113. Mr. Bret, Mr. Elvin and Mr. Brent’s Professional opinions are Reliable and Trustworthy.

“district courts must act as ‘gatekeepers’ [admitting] expert testimony only if it is both Reliable and relevant.” *Rink v. Chemivnova, Inc.*, 400 F.3d 1286, 1291 (11th Cir. 2005).
114. Their knowledges are offered to assist the trier of fact and understand the principles of

- specialized fields of science, engineering or other potential risk implicated in this complex construction matter. Rule 703 and O.C.G.A 24-7-703 allows an expert to base an opinion on “facts or data that the expert has been made known to.”
115. Each expert captured records based on their awareness of Defendant’s Past Conducted Activities, Present Actions and Future Looking perspective. These are Non Hearsay statements per 801 (d) (2) (B)
 116. O. C. G. A. §24-8-803 (6) (8) Exception to Hearsay Rule. Plaintiff’s Experts are not “Hearsay” statements since their findings are based upon public records or data compilation or Records of Conducted Activates in the past.
 117. Their testimonies are Non hearsay and Admissible at Trial per Georgia Code Title 24 Evidence §24-8-801.
 118. For the reasons listed in 111 and 117, they’re Grounds for Plaintiff to refute Defendant’s accusation of Late Expert Disclosure. Which Plaintiff in response, filed “Plaintiff’s Motion for Reconsideration limited to the Purpose of Monetary Sanction Only” clarifying these experts were hired to prepare for Trial as “Work Product” and not testifying witnesses.
 119. Plaintiff shall have Rights to hire Expert Testifying Witness within the interval of time pending the Court’s Decision or should this case move to trial.
 120. Mr. Bret, Mr Elvin, and Mr. Brents’ reports are helpful guide to a better and clear understanding of Plaintiff’s complaints. These reports will

outline the impact, elements and other factors in the whole matter.

121. The Facts and Legal issues embodied in this case remained unchanged.

LAW AND CITATION TO AUTHORITY

122. **Jackson County Code Ordinances Appendix A .UDC. Article 18 Division II Sec 1815 Responsibility (Ord. No. 17-003 , §1, 10-2-2017)**
123. **Jackson County Code Ordinances Appendix A .UDC. Article 12 Division IV Sec 1260 Maintenance (Ord. No. 22-010 , §1, 8-15-2022)**
124. **Jackson County Code Ordinances Appendix A .UDC. Article 12 Division IV Sec 1260 Maintenance (Ord. No. 22-010 , §1, 8-15-2022)**
125. **Code of Ordinance Article 8, Sec-804 Exemption from Land Disturbance Permit**
126. **Jackson County Code of Ordinances, Unified Development Code, Article 20, Division IV, Sec.2071**
- 127.**Jackson County Code of Ordinance, Unified Development Code, Article 8, Soil Erosion Control, Sec. 803. – Land development approval required.**
128. **Jackson County Code of Ordinance Article 8, Sec-804 Exemption from Land Disturbance Permit.**

- 129. **Jackson County Code of Ordinances Appendix A – United Development Code ARTICLE 18. – Nuisances and Property Maintenance**
- 130. **Jackson County Code Ordinance Unified Article 18 Nuisance III Sec 1822 Grading**
- 131. **O. C. G. A. 44-8-1 Ownership of Running Water; Right to Divert or Adulterate Water**
- 132. **O. C. G. A. 12-17-1 Conservation and Natural Resources. Control of Soil Erosion and Sedimentation** 133.. **O. C. G. A. 41-1-4 Right of action for private nuisance generally.**
- 134. **O. C. G. A. 51-9-9, Interference with rights of owner above and below surface of property**
- 135. **O. C. G. A. §41-1-1 Nuisance**
- 136. **O. C. G. A. 51-12-7 Recovery of Necessary Expenses**
- 137. **O. C. G. A §41-2-4. Issuance of Injunction Where Nuisance About to Be Erected or Commenced Likely to Result in Irreparable Damage**
- 138. **O. C. G. A. 41-2-9 County or municipal ordinances relating to unfit buildings or structures**
- 139. **O. C. G. A. §8-2-28 Adoption by municipality or county enforcing construction code of state minimum standard code**
- 140. **O. C. G. A. §51-9-1, Cause of action for interference with enjoyment of property**

- 141. **O. C. G. A. §51-9-2, Recovery of possession of lands; damages**
- 142. **O. C. G. A. §51-9-3. Recovery for wrongful interference with possession of land**
- 143. **O. C. G. A. 51-9-6 Damages for Continuing Trespass**
- 144. **O. C. G. A. 51-9-7 Diversion, obstruction, or pollution of stream as trespass**
- 145. **O. C. G. A. 51-12-5.1 Punitive Damages**
- 146. **O. C. G. A. 51-6-2 Fraud and Deceit**
- 147. **O. C. G. A §41-2-4. Issuance of Injunction Where Nuisance About to Be Erected or Commenced Likely to Result in Irreparable Damage**
- 148. **Ga. Comp. R. & Regs. 111-8-62-.12 Home Design Requirements (Must enter . Dot before 12)**
- 149. **Governor Brian Kemp Executive Order**
- 150. **Department of Public Health**
- 151. **Natural Flow Rule**
- 152. **Reasonable Use Rule**
- 153. **Civil Law**
- 154. **International Swimming and Pool Code Section 302.4 Concealed Piping Inspection.**
- 155. **International Swimming and Pool Code Section 302.2 Water Service and Drainage.**
- 156. **International Swimming and Pool Code Section 302.6 Waste Water Discharge**

- 157. **International Plumbing Code P2503.2**
- 158. **International Plumbing Code 1101.2 Disposal Storm Water Drainage.**
- 159. **International Plumbing Code IPC 312.1 Required Tests.**
- 160. **Georgia Erosion and Sedimentation Act of 1975 (GESA)**

CASE REFERENCE

- 161. Last year, the Supreme Court of Georgia reiterated the law in this area: “In surface water runoff disputes where two lots adjoin, the lower lot owes a servitude to the higher, so far as to receive the water which naturally runs from it, provided the owner of the latter has done no act to increase such flow by artificial means.” (Punctuation omitted.) *Menzies v. Hall*. See *McMillen Dev. Corp. v. Bull*.
- 162. Thus, “[a]lthough property must accept the natural runoff of water from neighboring lands, an artificial increase or concentration of water discharge may give rise to a cause of action.” *Greenwald v. Kersh*.
- 163. See *Sumitomo Corp.*, *supra*, 256 Ga. App. at 707-708 (3) “construction of detention pond in lawful manner did not prevent pond from becoming a nuisance when increased water flow caused hurt and inconvenience to neighboring landowners.”
- 164. “Negligence is not . . . a necessary ingredient of a cause of action growing out of a nuisance. A

nuisance may arise through acts and conduct done within the pale of the law and executed with due care; and yet if the result attained injures the property or individual rights of another by causing a nuisance, the maintainer must either abate the nuisance or else respond in damages.” *City of Macon v. Roy*. 81 Ga. App. 310 (1950)

165. ”To be held liable for nuisance, defendant need only be creator of the nuisance; defendant does not have to be the current landowner. Thus, “[o]ne who creates a nuisance is liable for it even if he has sold the property containing the nuisance.” *West v. CSX Transp.* Accordingly, Green’s action to recover damages against the alleged creators of the water-runoff nuisance was authorized, regardless of their having sold the property. *Green Eastland Homes*, 284 Ga. App. 643, 649 (Ga. Ct. App. 2007)*v.*
166. ”the owner of the higher tract has no right to concentrate and collect water and thus cause it to discharge upon the land of a lower property “in greater quantities at a particular locality or in a manner different from that in which the water would be received by the lower property if it simply ran down upon it from the upper property by the law of gravitation. ” *Sumitomo Corp. of America v. Deal*, 256 Ga. App. 703, 704 (2002).
167. ”It is not necessary to directly own the land on which the nuisance is located to have liability for a nuisance. Instead, control over the land is the more important factor. To recover for a nuisance, the plaintiff must demonstrate that the defendant was “either the cause or a concurrent

cause of the creation, continuance, or maintenance of the nuisance.” *Sumitomo Corp. of America v. Deal*, 256 Ga. App. at 707.

168. “Because multiple parties may have control over a nuisance, multiple defendants may have liability for the nuisance. The obvious defendant is the party creating the nuisance. One who creates a nuisance is liable for it even if he has sold the property containing the nuisance.” *Green v. Eastland Homes, Inc.*, 284 Ga. App. 643, 644 S. E. 2d 479 (2007).

In other words, a defendant cannot escape liability for creating a nuisance by selling the property.

169. Personal Damages “Georgia law also allows a plaintiff injured by a nuisance to recover for personal injuries. Damages to the person include the discomfort, loss of peace of mind, unhappiness, and annoyance caused by the defendant as determined by the enlightened conscience of the jury.’ See *Waters*, 258 Ga. App. at 558, 574 S. E. 2d at 638; *Segars*, 255 Ga. App. at 296, 564 S. E. 2d at 878; *Baumann*, 243 Ga. App. at 528, 532 S. E. 2d at 472; *Jordan*, 231 Ga. App. at 519, 499 S. E. 2d at 902; *Hadaway*, 227 Ga. App. at 340, 489 S. E. 2d at 129; *Murphy*, 194 Ga. App. at 653, 391 S. E. 2d at 474.
170. “Because nuisance actions involve intentional torts, punitive damages are often awarded in these cases. Punitive damages may be awarded even when actual damages are small.” *Tyler*, 272 Ga. at 121.

- 1 7 1 “ Punitive damages can also be appropriate against defendants who maintained but did not create the nuisance.” *Ponce De Leon Condominiums*, 238 Ga. at 189-90.
172. ”The distinction between trespass and nuisance consists in the former being a direct infringement of one’s right of property, while in the latter the infringement is the result of an act which is not wrongful in itself, but only in the consequences which may flow from it. In the one case the injury is immediate; in the other it is consequential, and generally results from the commission of an act beyond the limits of the property affected.” *Baumann v. Snider*, 243 Ga. App. 526, 528, 532 S. E. 2d 468, 472 n. 4 (2000).
173. Plaintiff brought this litigation to preserve Plaintiff’s Human’s Rights.

PLAINTIFF’S BASIC RIGHTS

**State of Georgia Constitution,
Article I. Bill of Rights,
Section I. Rights of Persons**

*Paragraph I. **Life, liberty, and property.** No person shall be deprived of life, liberty, or property except by due process of law.*

*Paragraph II. **Protection to person and property; equal protection.** Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.*

*Paragraph XII. **Right to the courts.** No person shall be deprived of the right to prosecute or defend either in person or by an attorney, that person's own cause in any of the courts of this state.*

CONCLUSION

174. This Matter involves **Local, State and Federal Violations, Unpermitted Construction Activities, Misrepresentation, and Fraud.**

"In an action sounding in tort for damages resulting from fraudulent misrepresentation, the gist of the action is the deceit intended." Central Chevrolet, Inc. v. Campbell, 129 Ga. App. 30, 198 S. E. 2d 362 (1973).

"A material misrepresentation, constituting actual fraud, may give rise to an independent action in tort for deceit, to recover for damage thus occasioned." O. C. G. A. §51-6-2.

175. Defendant, Defendant's builder and her Contractors have a tendency not to follow **Laws, Codes, Rules and Regulations.** They do not care and understand the impact of their actions or activities that are causing to any neighboring or Plaintiff's Properties or the Environment. Defendant neglected her duties, continue to shirk own Responsibilities and Obligations under the Laws, inflict high costs, bond injuries and damages to Plaintiff's land.
176. Defendant has the knowledge to harm Plaintiff's property. Nuisance and trespass are intentional torts recognized under Georgia law and

both allow redress for invasions of Plaintiff's Property rights.

177. O. C. G. A. §41-1-1 defines a nuisance as "anything that causes hurt, inconvenience, or damage to another and the fact that the act done may be otherwise lawful shall not keep it from being a nuisance."
178. Evidence showed that Defendant has made Unlawful diversion of Flows causing excessive runoff to flow onto Plaintiff's Land on 08/19/2022.
179. Evidence showed that Defendant has concentrated large amount of water into a drainage pipe from pool plumbing alternation and released to a Pop Up between 3-5 feet (approximate) from Plaintiff's Property Line on 09/03/22.
180. Evidence showed that Defendant has increased water flow **Unreasonably** onto Plaintiff's property.
181. Plaintiff is under No obligation to receive the increased water run-off created by Defendant's Willful intention because it is "**Not Natural**."
182. Plaintiff is under no obligation to receive Any of Defendant's Pool Water.
183. Defendant has NO rights to Create Erosion, Sediments, Runoff, Pollution onto Plaintiff's Land.
184. The Absence of Pool Plumbing Inspection and other Unlawful actions of Defendant are endangering Plaintiffs property in Fact. Because these material facts cannot be disputed, Plaintiff is entitled to judgment as a matter of law.

"The standard on motion for summary judgment is whether any genuine issue of material fact exist and, if

not, the moving party is entitled to judgment as a matter of law. ” O. C. G. A. §9-11-56(c)

185. A court must grant summary judgment

“if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a)

186. Pursuant to O. C. G. A. §41-2-4,

“prevent an impending nuisance, continuing in nature, the consequences of which are reasonably certain.” “where the consequence of a nuisance about to be erected or commenced will be irreparable damage and such consequence is not merely possible but to a reasonable degree certain, an injunction may be issued to restrain the nuisance before it is completed.”

187. Plaintiffs is Entitled to Injunctive Relief since the Nuisance is continuing. The Court may authorize injunctions in causes where the nuisance is continuing.

188. Plaintiff is entitled to equitable relief to stop Defendant’s trespass and nuisance which are continuing upon Plaintiff’s land.

189. Plaintiff’s Injunctive Relief should be Granted as this will prevent any further damages to Plaintiff’s property caused by Defendant’s Site.

190. By Granting this motion, this will also reduce the burden of litigation on ALL parties and conserve judicial Time and resources.

For the foregoing reasons, Plaintiff, Kevin Yeung respectfully Prays this Honorable Court to **Grant** Plaintiff’s Injunctive Relief pursuant to **O. C.G.A §41-2-4.**

PROPOSED ORDER

1. All of Defendant's Swimming Pool's Pipes and Underground pipes (Below Surface) should be inspected by a Licensed Plumber or Authorized body, follow the rules and Regulations set forth in **International Swimming Pool and Spa Code** and **International Plumbing Code** under Governor Brain Kemp Executive Order.
2. Revoke the **Certificate of Occupancy** of Defendant's Inground Swimming Pool until Compliance.
3. Relocate Defendant's Pop Up Emitter no less than 10 feet from Property Line between 089P and 090P.
4. File Notice of Termination on Defendant's Site. Obtain **Land Disturbance Permit** and **Land Development Permit** on any land disturbing activities.
5. Properly drain Stormwater, Rain or Roof water, maintain a minimum of 10 feet away from the property line of Defendant and Plaintiff and Direct water Towards Street. Tie all downspouts in drainage pipe and direct Towards Street.
6. Properly Drain Pool Water, Wash Out, Overflow into sanitary drainage as allowed by regulatory law to ensure Chlorine Pool Water poses no danger to County sewer system, Plaintiff's lot, adjacent lots and the environment.
7. Award of Plaintiff's Paid Invoices on repair costs of all issues and the expenses incurred to bring a litigation.
8. Award of Punitive Damages and the REPAIR cost for Plaintiff to fix the ongoing current New Erode

area. There are Four Estimates to address the new erode area. (Iker Landscaping and Concrete, WoodRaven landscape, Sugar Hill Outdoor, Piedmont Landscape management)

9. Be responsible for the Repairs and Expenses costs to fix water damages resulted from Defendant's Non-compliance, Uninspected, Unsafe Swimming Pool **Prior to Completion of Full Compliance.**
10. Refrain Defendant from endangering Plaintiff's property for causing Further sedimental, runoff, erosion and pollution to Plaintiff's land.
11. Restrain Defendant from the Actions of **Threat, Intimidate, Injure, Harm** Plaintiff and his family.

App-92

IN THE SUPERIOR COURT OF JACKSON
COUNTY
STATE OF GEORGIA

Kevin Yeung	)	
	)	
Plaintiff	)	
	)	Civil Action
Vs.	)	
	)	File No. <u>22CV0988</u>
Shannon Humphrey	)	
	)	
Defendant,	)	
	)	

**UNIFORM RULE 5.2 CERTIFICATE OF
SERVICE**

I Certify that I have on this day serve a copy of the
foregoing

Plaintiff's Motion for Summary Judgement
upon party of record by STATUTORY ELECTRONIC
SERVICE through Peach Court Electronic Filing Sys-
tem addressed to:

WEINSTEIN & BLACK, LLC
Dave McDonald
167 Lee Street
Jefferson, GA 30549
Dave@WBlegal.net

This __17th __day of __March_____, 2024

/s/ Kevin Yeung
Kevin Yeung
P O BOX 911
BRASELTON,GA 30517

Exhibit “A”

- * Defendant Jackson County Record of No Plumbing
- * Code Officer Alex Note confirming no Plumbing performed by Inspector
- * Photos of Defendant’s Underground Plumbing Installation

App-94

Permit Number: BLDR - 22-2503

Permit Details | Tab Elements | Main Menu

Type:	Inground pool permit	Status:	Complete	Project Name:	
Applied Date:	06/02/2029	Issue Date:	06/08/2029		
District:	Jackson County	Expire Date:	06/19/2023		
Square Feet:	450.00	Valuation:	\$55,000.00	Finalized Date:	12/20/2022
Description:	15x30 Inground Gunite Pool with 475 sq Ft Patio				

Summary Locations Fees Reviews
 Attachments Contacts Sub-Records
 More Info

Existing Inspections | Request Inspections | Optional Inspections | Next Tab | Permit Details | Main Menu

Existing Inspections

View Inspection	Description	Status	Request Date	Scheduled Date	Inspector
025452-2022	Bas-ket In-spec-tion	Passed	07/22/2022	07/22/2022	1 In-spector
026128-2022	Elec-trical Bond	Passed	08/10/2022	08/10/2022	1 In-spector

App-95

030894 -2022	Final Pool	Passed	12/19/2 022	12/19/ 2022	1 In- spectator
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BLDG-22-0630 (2 emails and 1 photo)

- Opened 7/18/22
- Closed 10/11/22
- Status: Closed – Resolved
- Description: Received a complaint stating a pool was being installed and no silt fence or any other measures were installed to ensure the dirt dug up would stay on the property and not be washed away with the incoming rain.
- Note 1 (7/20/22): Case # 2022-447: On 07/18/22 I contact the contractor installing the pool who is listed on the permit and informed them of the situation and the incoming rain. The permitholder stated they would send someone out the same day to install the silt fence. I arrived at the dispatched location on 07/19/22 and inspected the area from the CP's property. The silt fence was installed correctly. The CP still has concerns about an area that they believe could still cause issues. In my professional opinion, given the topography, I do not believe this to create a concern but I will monitor the issue as needed. I spoke with the CP in great length about soil and erosion and the code section and felt the issue was resolved at this time.
- Note 2 (9/30/22): Received an additional email from CP. No new complaints were formally made and it appears it was more so to inform Christopher and myself of an impending civil suit. Email added to files for reference.

- Note 3 (10/11/22): Case # 2022-625: I received a forwarded email complaint from Jamie. Complaint was added to previous case for simplicity purposes. The complaint states that a swimming pool being installed has had no plumbing inspection, improper grading, and the downspout drains were connected to pool water drain are directly connected to the storm water system. There were also mentions of no land disturbance permit. The lack of land disturbance permit is due to this being well under 1 acre and not required. I took building inspector BJ Smithmonica with me to the property. There were talks about the system being connected to the county storm water system which this is not the case. The photos provided by the neighboring property shows a man installing black downspout drainage to direct the flow. Due to the extension of the awning, one of the downspout drains was already installed through the concrete to disperse storm water water into the yard and not directly into the pool and concrete. From the photo it appears the homeowner connected the two downspout drains to direct the flow away from the neighbors property towards the natural slope towards the stormwater system at the right of way. The pop up drain does appear to be sitting sloped incorrectly which could cause puddling but a rain event would be needed for further evidence. The downspout drains and stormwater drains are not directly connected. This would mean that this is not an illegal

connection at this time. When speaking with the original CP regarding the issue she stated that the pool drainage and downspout drains are all connected to the pop up drain. From the photos provided, of what I believe the location of the original drain, this would provided more adequate outflow being directed towards the stormwater system rather than pointing directly at the neighboring property. With regards to the complaint about the pop up outlet being 3-4 feet from property line. The structures themselves are roughly 10-15 ft apart currently giving limited options for placement. Per building inspector BJ, there have been inspections completed on the pool. From looking at the permit it appears an electrical bond and basket inspection have been completed. Per BJ a plumbing is inspected with the process of other inspections but there is not a specific inspection just solely for plumbing. The pool permit has not been finalized as of yet and requires additional inspections. The original CP made mentioned of winning a lawsuit in the beginning of September against the original builder Hillgrove Homes for her home and the neighboring property in the Hall county magistrate court. Currently there are no signs of erosion present or an illegal connection. Permanent vegetation and structural erosion control measures are in place. There are no current cuts or fills endangers an adjoining property. Also no current evidence of the constructed channels adversely

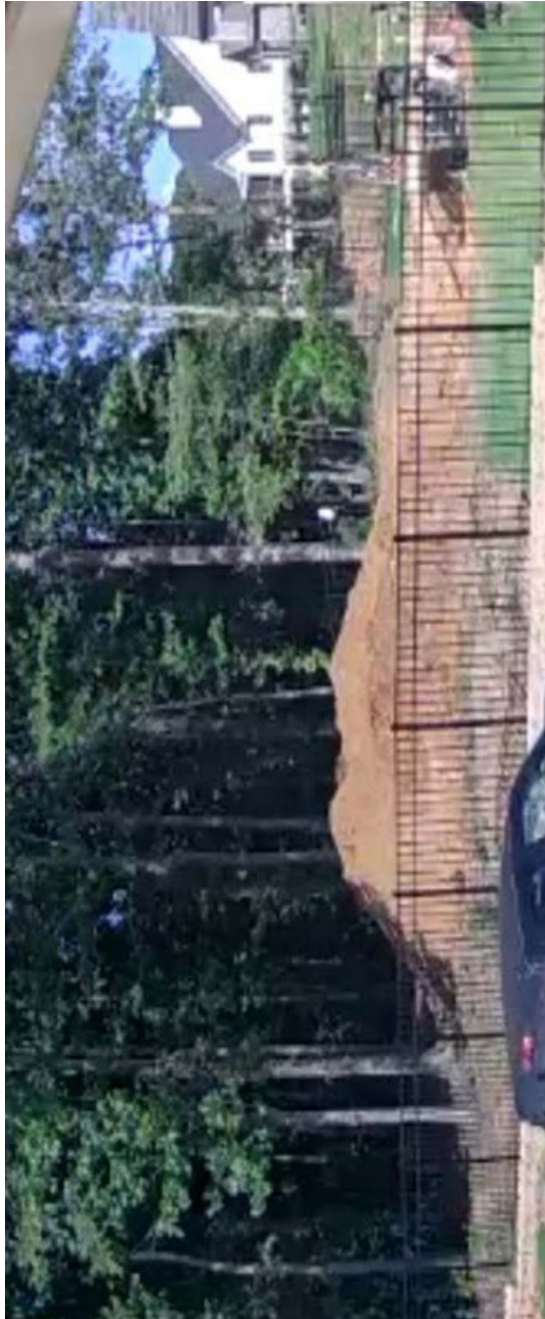
App-99

affecting other property owners. A further inspection will be completed during a rain event to observe any other possible issues. All applicable emails and photos have been added to this case file. Emails have photos already attached in them.

BLDG-22-0644 (11 photos)

- Opened 8/9/22
- Closed 8/9/22
- Status: Closed - No Violation Seen
- Description: Received email Regional Tip and/or Complaint - Georgia EPD -FY22-251727-3709-CV
- Note 1 (8/16/22): Inspected 2904 Muscadine Way 8/9/22. No evidence of silt fence failure/erosion onto property. There is some sedimentation around the path of the back porch, but no indication the sediment came from 2478 Traditions Way.

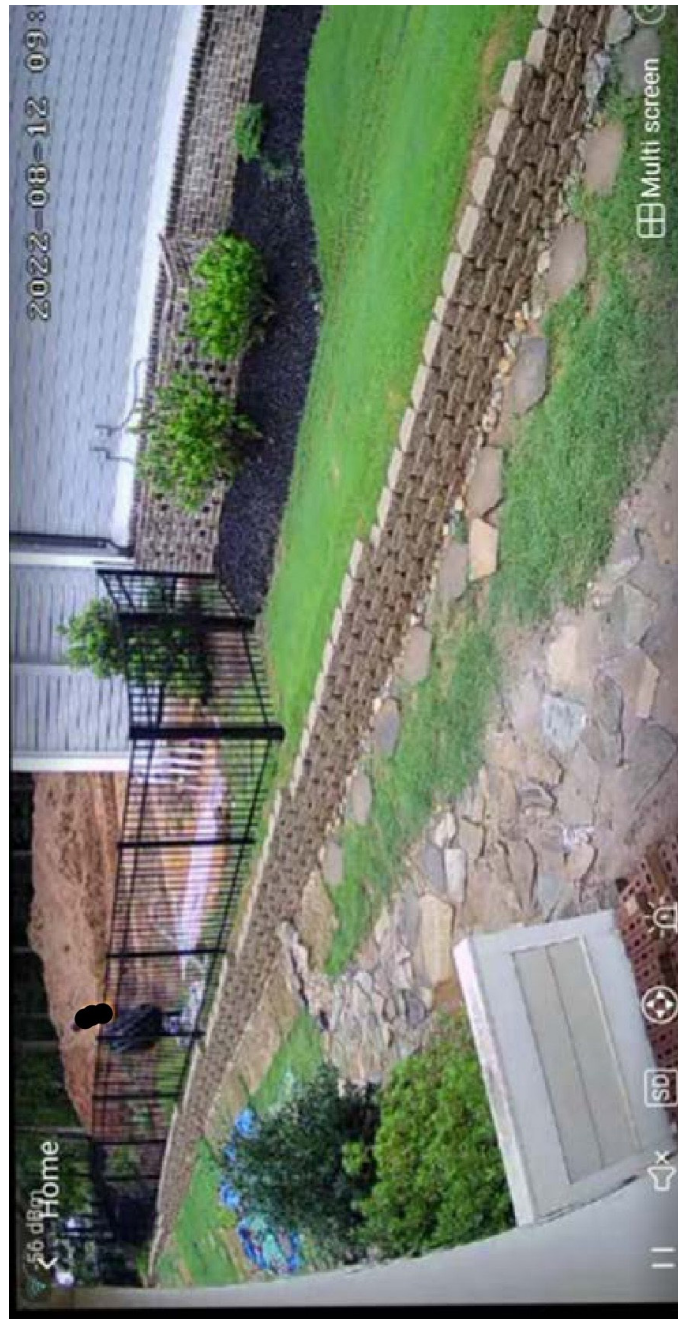
App-100



App-101



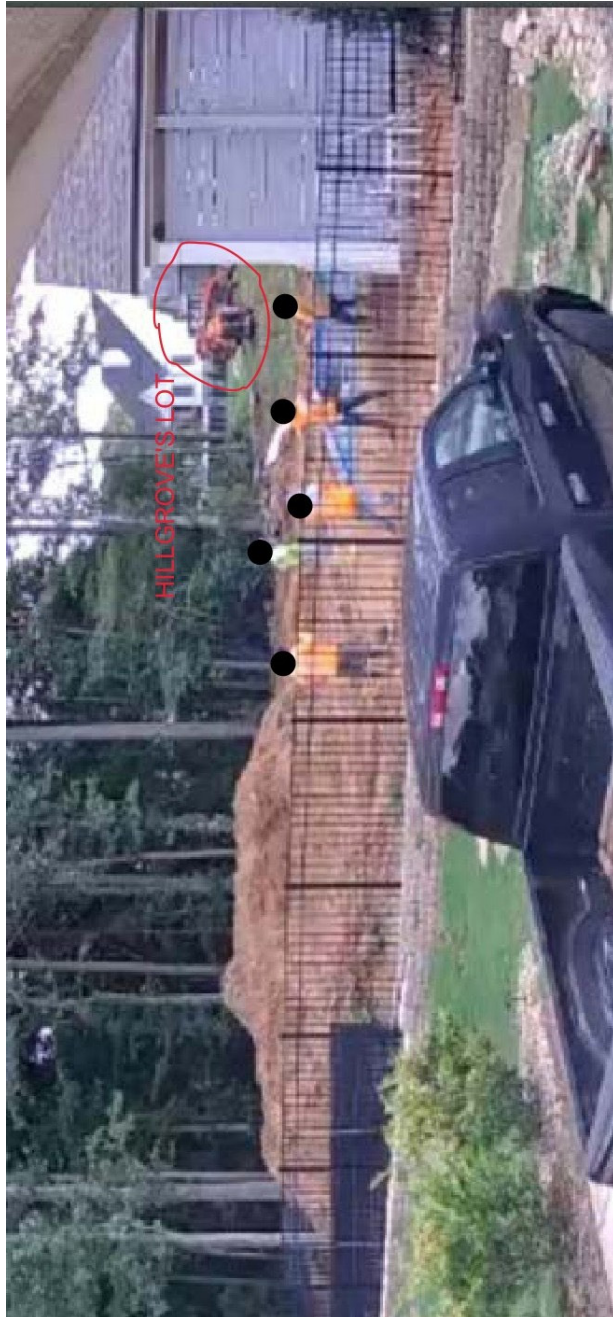


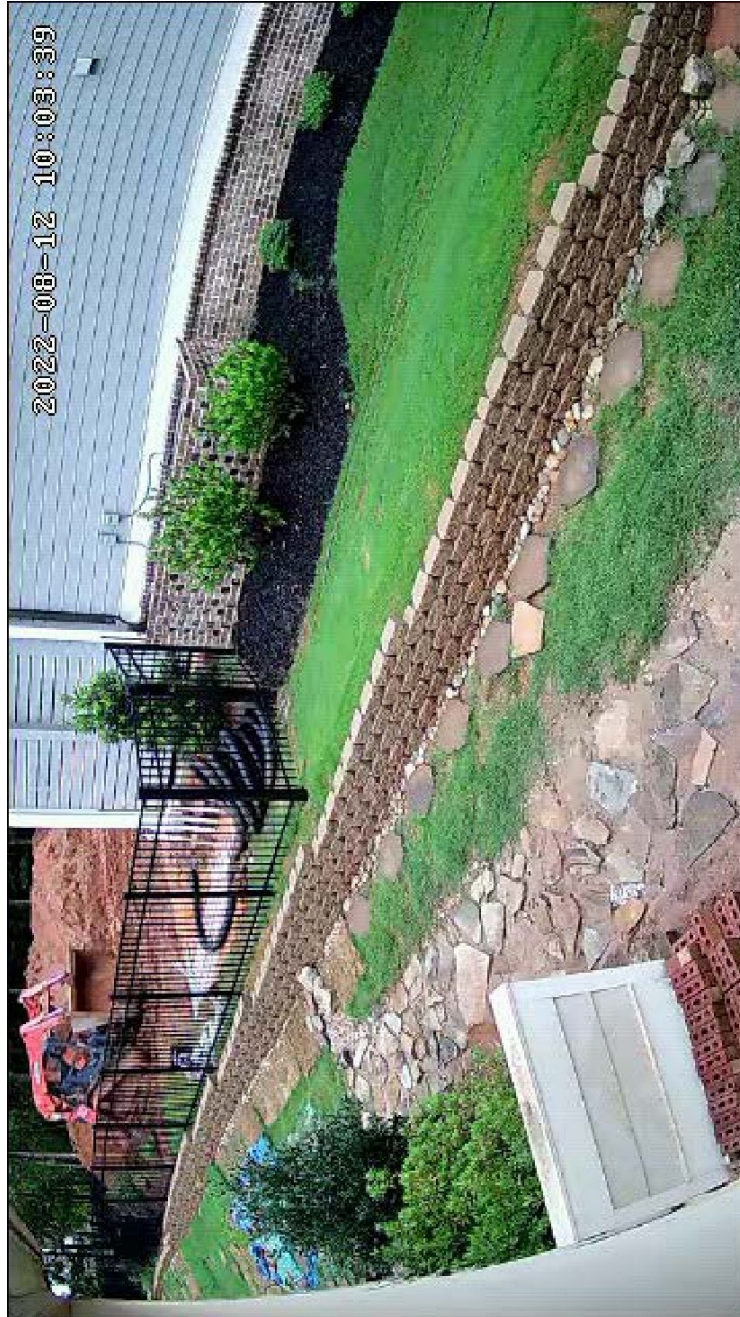


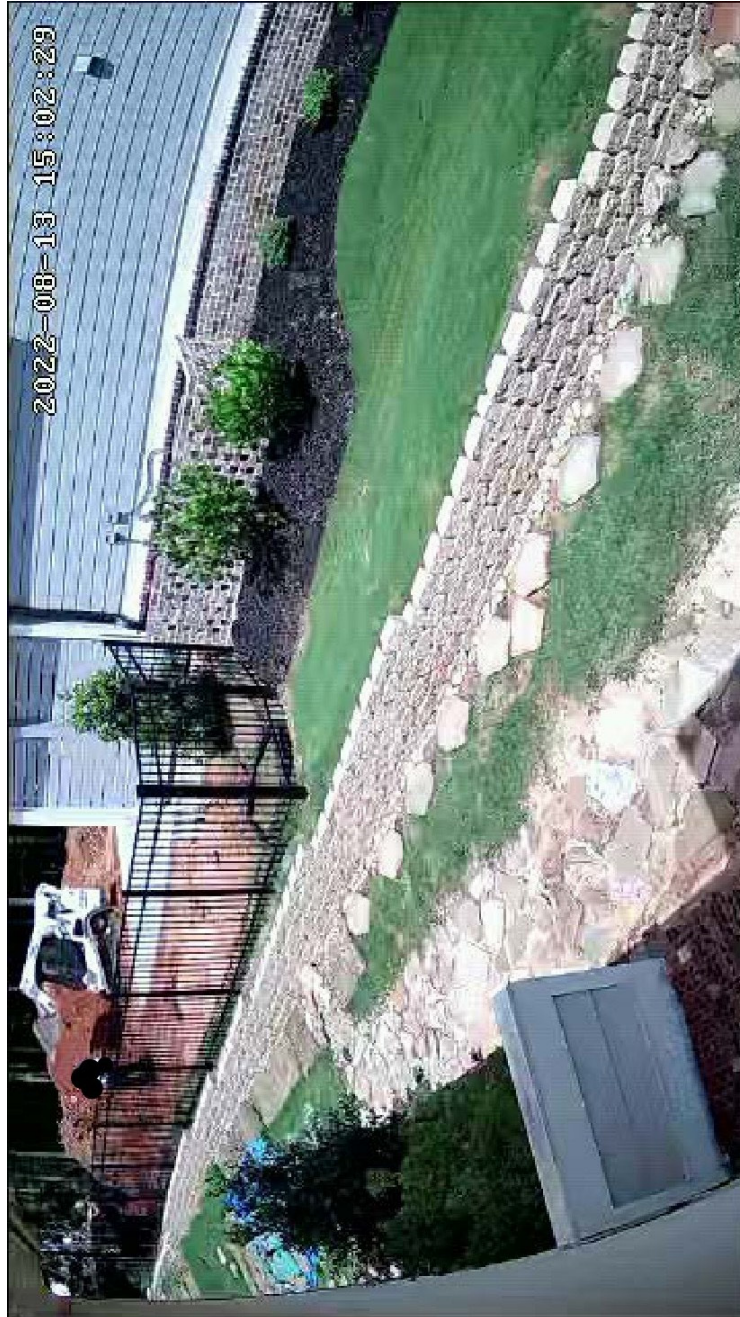


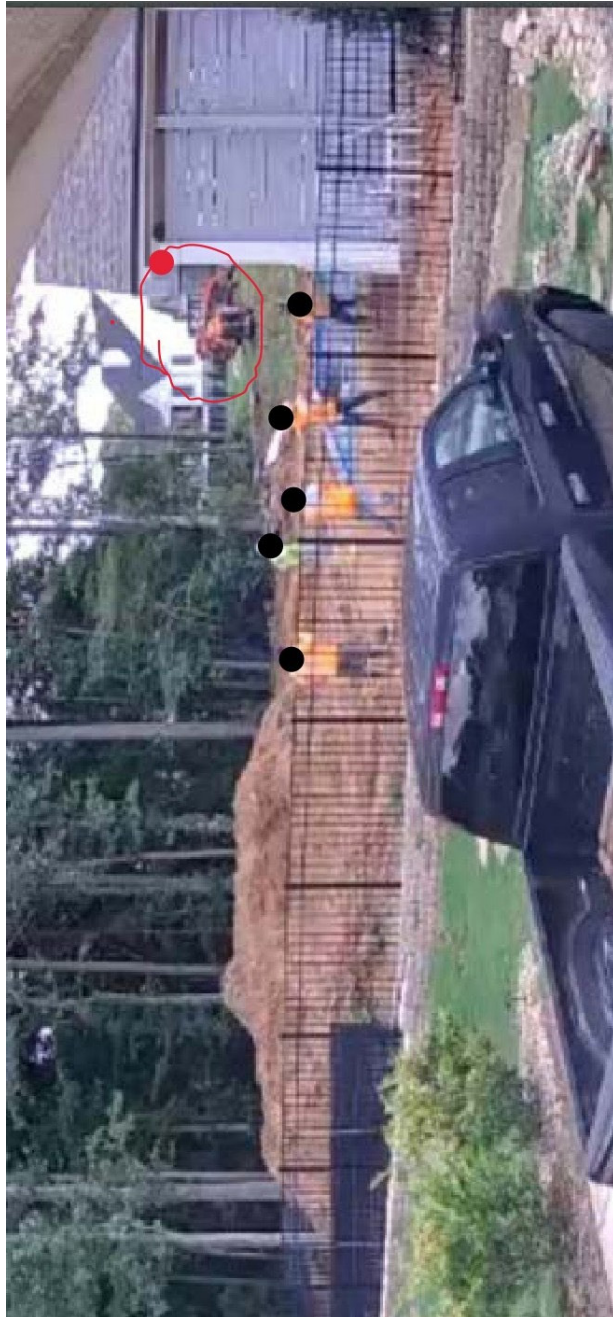
App-105

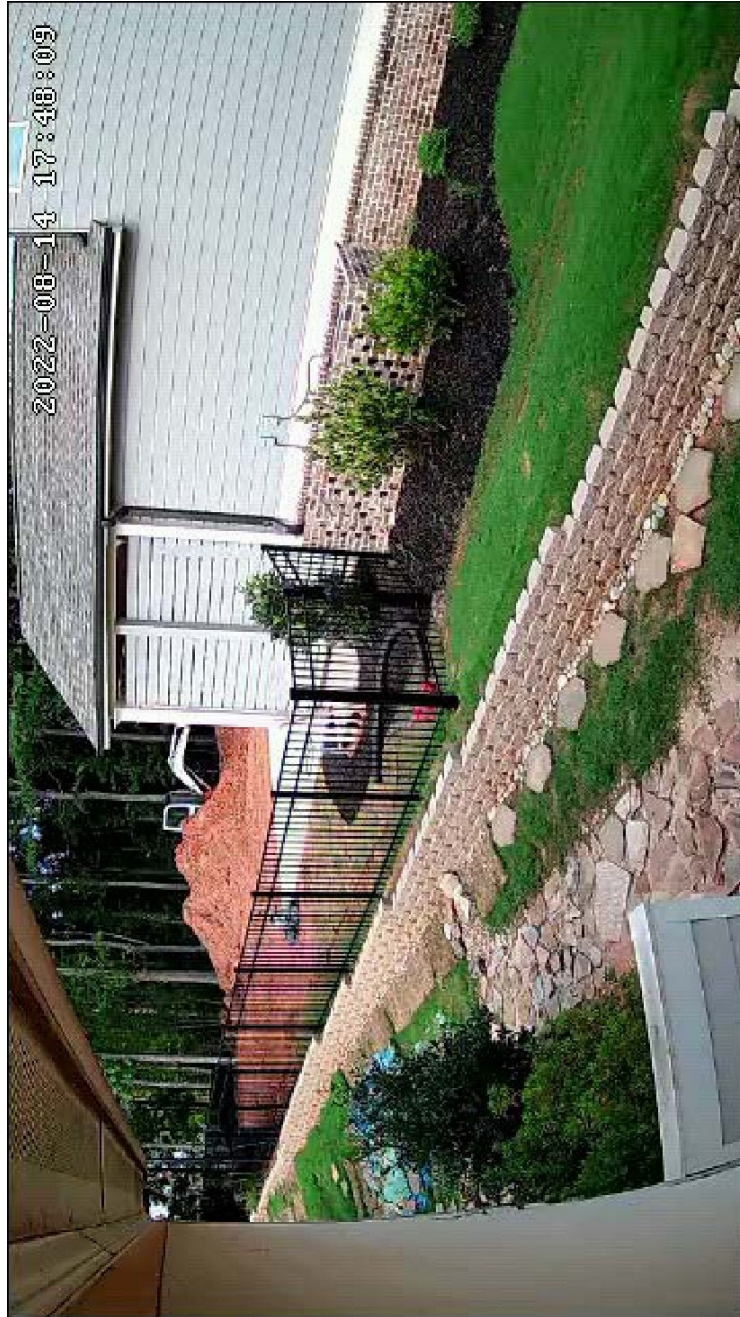












App-111

Exhibit “B”

Defendant’s Swimming Pool Contractor Agreement



5/31/22

Sandals Luxury Pools, Inc., agrees to build a swimming pool for **Andy And Shannon Humphrey** who hereby contracts for the price and terms set in the agreement. Installation shall be made at **2478 Traditions Way** in the city of **Jefferson**, county of **Jackson**, state of **Georgia**. Purchaser warrants that he/she is the owner of such property and gives contractor permission to perform work on property.

Contact Info: Damion – 678-878-8730

Email Address: Shannon.humphrey.1@gmail.com

SPECIFICATIONS

- A. Pool Shape: **Rectangle** - Per Design Approx **450SF**
- B. Pool Size And Depth: **Per Design** sq. ft. **79'** Perimeter, Pool Depth: **3'6"** and up to **8ft (Min Can Be Whatever)** Built Per Design
- C. Pool Type: **Shotcrete** With **Pebble Finish**
- D. Filter And Pump Type: **Sand** Pump: **1.65 H.P. Flo Pro**
- E. Filter to be located within **25** feet of the pool.
- F. Basic items included:

*Measurements are approximant and can differ from actual design depending on radius layout and terrain.

*This contract does not include any landscape.

Permitting:

- | | |
|-----------------------|------------------|
| -Environmental Health | -Building Permit |
| -Electrical Affidavit | |

Grading Specs:

- | | |
|----------------------------------|--------------------|
| -Pre Excavation Grading Provided | -Silt Fence |
| -Excavation Of Pool | -Dirt Left On Site |

*Dirt to be left on lot.

*Gutter drains not included.

Pool Specs:

- | | |
|--|--|
| -6" – 8" Rebar Reinforced Concrete Walls | -4000 PSI Shotcrete Construction |
| -6" – 8" Rebar Reinforced Concrete Floor | -Schedule 40 PVC Plumbing |
| -12" X 3 Bar Concrete Reinforced Bond Beam | -All Plumbing Pressure Tested |
| -Custom Designed Entry (Tan Ledge And Steps)(Optional) | -Skimmer/Returns/Dual Main Drains/2 Bubblers |
| -Pebble Finish Standard Colors | -3.5' Shallow End And 8' (No Min) Deep End |
| -6X6 Tile Any Color | -Stone Coping |
| -Deep End Bench Per Design | -Over Flow Grid |
| -Lifetime Structural Warranty | -1 Umbrella Hole |
| -Electrical Hook-Up | -Electrical Bonding |

*Depth can be up to 8'

Decking Specs:

- | | |
|-------------------------|-------------------|
| -675SF 3000Psi Concrete | -675SF Spray Deck |
| -Saw Cut Joints | -Decko Seal |

Specs. Continued –

Equipment Specs:

-Jandy Pump/Filter Sized For 8hr Circulation	-Jandy Neverlube Valves
-Jandy Controller With IQ20 Or PDA	-Salt for Pool (Start-Up)
-Jandy 1.65HP Flo Pro (Variable Speed)	-Adjustable Freeze Protection
-Jandy 24" Sand Filter	-Sand for Filter (If Needed)
-3 Hydrocool Color LED Lights (Includes Spa)	-Pole, Net, and Start Up Chemicals
-Jandy Epic Cleaner	-Water and Air Temp Sensors
-Jandy PLC1400 Salt Cell (40K Gallon Capability)	-2" Multiport Valve

*All pool equipment is to be hooked up to permanent power by a certified electrician. 75' Run Included

*Pool equipment to be within 25' of swimming pool.

*Autofill NOT included

SANDALS LUXURY POOLS WILL BEGIN TO OBTAIN PERMIT AND START PROJECT AS SOON AS FIRST PAYMENT IS RECEIVED. FIRST PAYMENT IS TO BE MADE WHEN CONTRACT IS SIGNED TO HOLD ANY CURRENT PRICES.

CONDITIONS

1. Owner understands how contractor will access project area.

App-115

2. Should the selected site prove unfit for normal installation due to rock content, water table problems or any other reasons, contractor may at his option discontinue installation and be paid for expenses incurred to that point, or with purchasers concurrence continue installation and be paid for additional cost. Both parties shall agree on price if work is to continue.
3. Owner understands the contractor will utilize heavy equipment that can cause damage to driveways, sidewalks, irrigation, plants, lawn, and anything that it may come in contact with during construction in the construction area or access route.
4. Water is not provided by contractor and only start up chemicals are included.
5. If pool must be drained and refilled, water will not be covered.
6. Contractor shall allow owner adequate time to choose tile color, interior finish color, and deck color.
7. Once the interior finish and start up chemicals have been installed it will be the responsibility of the owner to keep pool netted and brushed.

CONTRACT PRICE

TOTAL CONTRACT PRICE FOR ABOVE WORK IS
\$65,000.00

PAYABLE AS FOLLOWS:

1.	\$	1,500.00	DEPOSIT
2.	\$	15,625.00	ARRIVAL
3.	\$	15,625.00	EXCAVATION

App-116

4.	\$	15,625.00	SHELL
5.	\$	15,625.00	COPING
6.	\$	1,000.00	DEMO

This form and warranty hereof constitutes the entire contract and is subject to cancellation by contractor if not accepted within 10 days of date on contract.

OWNER _____
OWNER _____
PHONE _____ WORK _____

ACCEPTED BY:

BY *Trent Dove*
DATE 5/31/22

Here at Sandals Luxury Pools, we like to keep everyone in the know and stay on the same page. When we pour your patio we will invoice our last large draw and there will be work left to do, including but not limited to the pebble. Please note paying draws moves the pool to the next phase.

SANDALS LUXURY POOLS, INC. WARRANTY

1. Lifetime Structural Warranty - Pool shell will hold water for the lifetime of the pool or until pool is transferred to new owner assuming there has been a properly maintained interior finish and water chemistry throughout the life of the pool.
2. Manufacturer's Warranty – Sandals will honor all manufacturers' warranties on equipment, and

other devices. (Jandy 3 Year Warranty) (Polaris will include manufacturer's warranty)

3. Workmanship – All workmanship will be warranted for a period of one year from date pool is filled including stone breaks, plumbing leaks, tile cracks, and any other problem consisting of a defect in workmanship.
4. Concrete – Hairline cracks are not covered under this warranty and some should be expected due to expansion. Sandals will saw cut expansion joints to direct cracks to certain areas, but shall not warrant cracks when expansion joints fail.
5. Any fire pits included in this contract are not covered under any warranty unless the fire pit is fueled by natural gas and has an installed 24" fire ring to maintain a 9" distance from all sides.
6. Drains if included and other work that may require routine maintenance are only covered under first year of warranty for breaks and cracks. Clogged drains will not be covered under this warranty.
7. Jandy remotes and antennas may not work with your wifi, and the distance your equipment is from the house. Please note it is the responsibility of the homeowner to get wifi to our antenna. This is not a warranty issue.

All warranties contingent upon owner complying in full with terms, payments, and other conditions of this contract. Defects or failures caused by obvious mistreatment or neglect shall be repaired or serviced at the owner's expense.

*Remember there are two types of concrete, cracked concrete and one that is going to crack. Hairline cracks should be expected on every project no matter how many expansion joints or the PSI applied to the mix.

AGREED CONDITIONS

1. It is understood and agreed that this contract contains the entire agreement of both parties.
2. Contractor shall pay sales tax on all materials; shall pay for permits required on its work; shall pay necessary levies on its men.
3. Contractor agrees to do all work provided in this contract in a good and workmanlike manner, but shall not be responsible for delay or due to reasons beyond its control.
4. Owner shall furnish any necessary and association permits and fees if applicable unless otherwise specified in contract.
5. Owner understands the location of the swimming pool and other improvements according to the design provided by contractor. There shall be no liability on part of contractor for incorrect locations thereof. Shall pool need to be moved for any reason both contractor and owner will agree on location prior to any work taking place.
6. It is understood and agreed that if there are any obstructions or other issues not seen from a visual inspection of the surface such as rock or trash and extra work is needed to properly perform duties set forth in this contract a change order will be submitted for extra cost.
7. Owner is to provide any environmental approval from local health departments if septic system is

on property and if required by local codes or state laws unless specified in contract.

8. Contractor shall not wait on payments due to inspection results or lack of barrier. Final payment will be invoiced when work is complete. Owner will install salt 30 – 45 days after pool is completely filled to give the plaster time to cure and PH time to level out unless specified in contract. Final inspection must be called in by the owner once pool is full and the fence has been installed so inspector can check door alarms unless otherwise specified in contract. Sandals Luxury Pools is not responsible for any code violations due to the barrier or lack thereof.
9. Due to the way Sandals Luxury Pools, Inc. conducts our business to keep subcontractors and vendors paid our pay schedule is non-negotiable.
10. Owner and contractor have discussed work to be done. Any changes will be made by change order and signed by both parties to avoid unwanted surprises.
11. All changes and work added that is not included in this contract will be billed prior to work being performed.

Contract Revised 10/19/2011

BARRIER DISCLAIMER

1. Sandals Luxury Pools, Inc. is not liable for any existing barriers or lack thereof around any swimming pool project.
2. Existing Barriers should be inspected by the homeowner and should be compliant according to Georgia And County codes and regulations.

App-120

Some Georgia counties have more aggressive fence requirements than others and it is the homeowners responsibility to make sure the existing barrier meets these codes.

3. Any fence installed by Sandals Luxury Pools, Inc. will meet all codes and regulations.
4. All doors leading to pool will be required to have door alarms that meet code UL2017 and these alarms are to be installed by owner unless otherwise specified in contract.

PROJECT ACCESSIBILITY

1. Contractor will access project through shortest route possible.
2. Owner agrees contractor will not be responsible for any failure of driveways or other paved or improved areas caused by vehicles or equipment this also includes lawns, irrigation, and any other failures in construction area or access route.
3. Owner agrees contractor shall not be responsible for the failure or destruction of irrigation, drainage pipes underground, or anything not seen from the surface or otherwise in area between pool and equipment.
4. Contractor will use extreme caution and professionalism to avoid any damage to property listed herein.
5. Contractor will use pumps to convey concrete to pool area and avoid damage to lawns up to 100'.

*Sandals Luxury Pools, Inc., subcontractors, and employees will do our best to prevent damage to property and can avoid it most of the time, but it does happen

occasionally due to heavy equipment, dump trucks, digging, and sometimes just fluke cases where it simply just happens. Although we do our best, it does occasionally happen, and we cannot and will not be held responsible for these damages simply because we must access the project, dig holes, and work in order to complete the project.

OTHER STIPULATIONS

- 1) No special stipulations.
- 2) Price does not include door alarms and fencing.
- 3) Haul off is extra \$1500

I have read and understand the complete contract and stipulations and agree to all terms and conditions stated herein.

OWNER _____

OWNER _____

PHONE _____ WORK _____

ACCEPTED BY:

BY *Trent Dove*

DATE 5/31/22

Sandals Luxury Pools, Inc. would like to thank you for choosing us to build your dream pool. We will work diligently and professionally to install a luxury swimming pool that satisfies your needs and is above your expectations.

App-122

Sandals Contact Information

Remit Payments To:
Sandals Luxury Pools, Inc.
11335 Lewis Braselton BLVD
Braelton, Georgia 30517

Any Questions Please Call 770.771.1839

App-123

5/23/22, 2:14 PM

Certification Verification - Georgia Soil and Water
Conservation Commission

[Logos and pictures omitted]

**Erosion and Sedimentation Control Program
Certification Verification**

****Please note, if you have taken a recertification course, your expiration date will not be updated until one week before your initial certification expires.****

[Irrelevant contents omitted]

Cert. ID	Trainer ID	First Name	MI	Last Name	City	State	PW Rcvd	Level AW Expiration	Level 1A Expiration
0000016909		Brian	K	Dove	Braselton	GA	Y		09-20-2024
0000082952		Brian	W	Dove	Bethlehem	GA	Y		02-23-2021
0000074341		Brian	D	Dover	Lawrenceville	GA	Y		06-11-2024

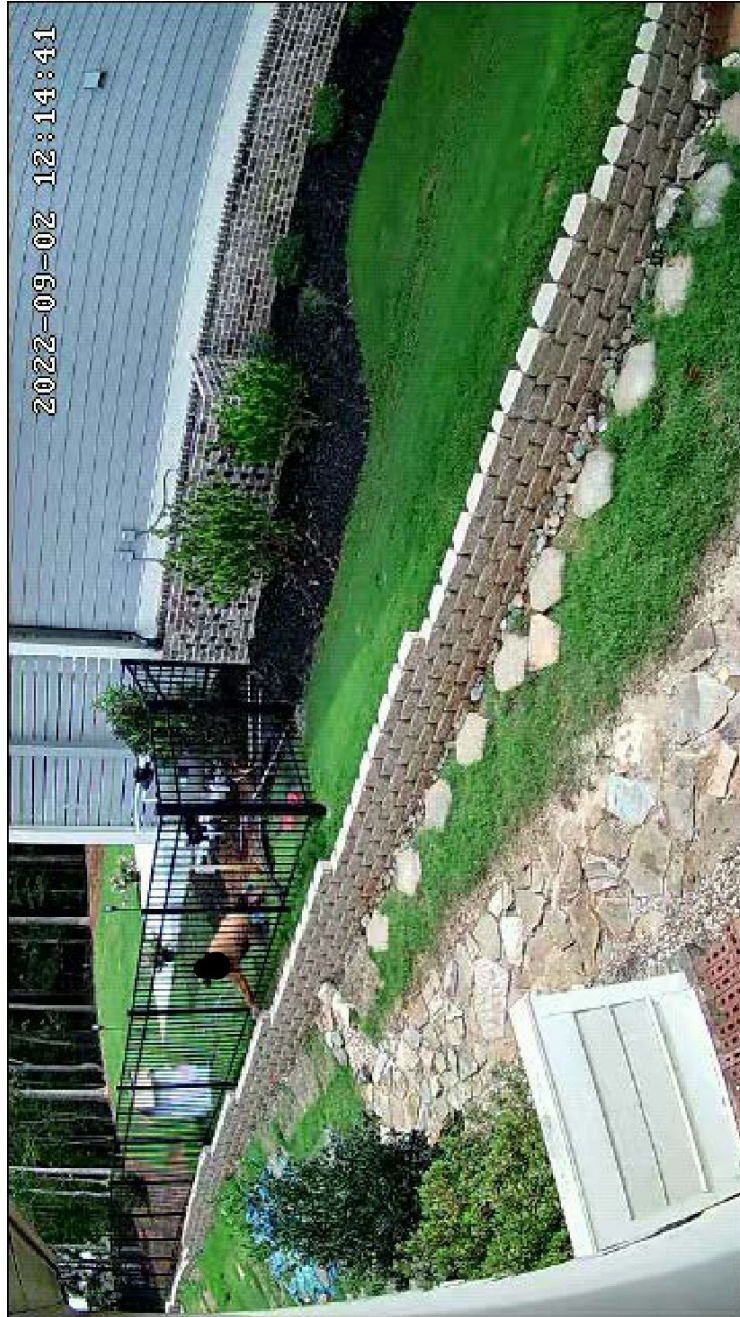
App-125

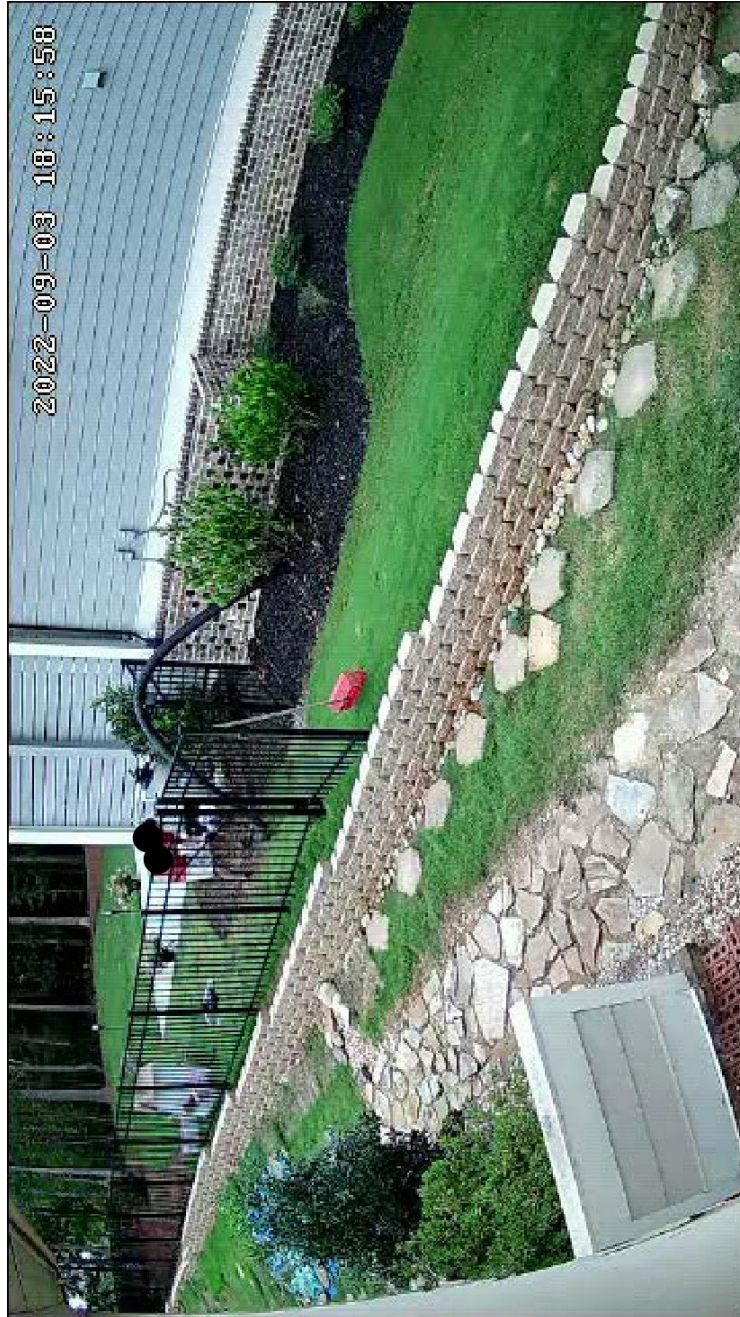
Exhibit “C”

Defendant’s Plumbing Alternation 09/03/2024



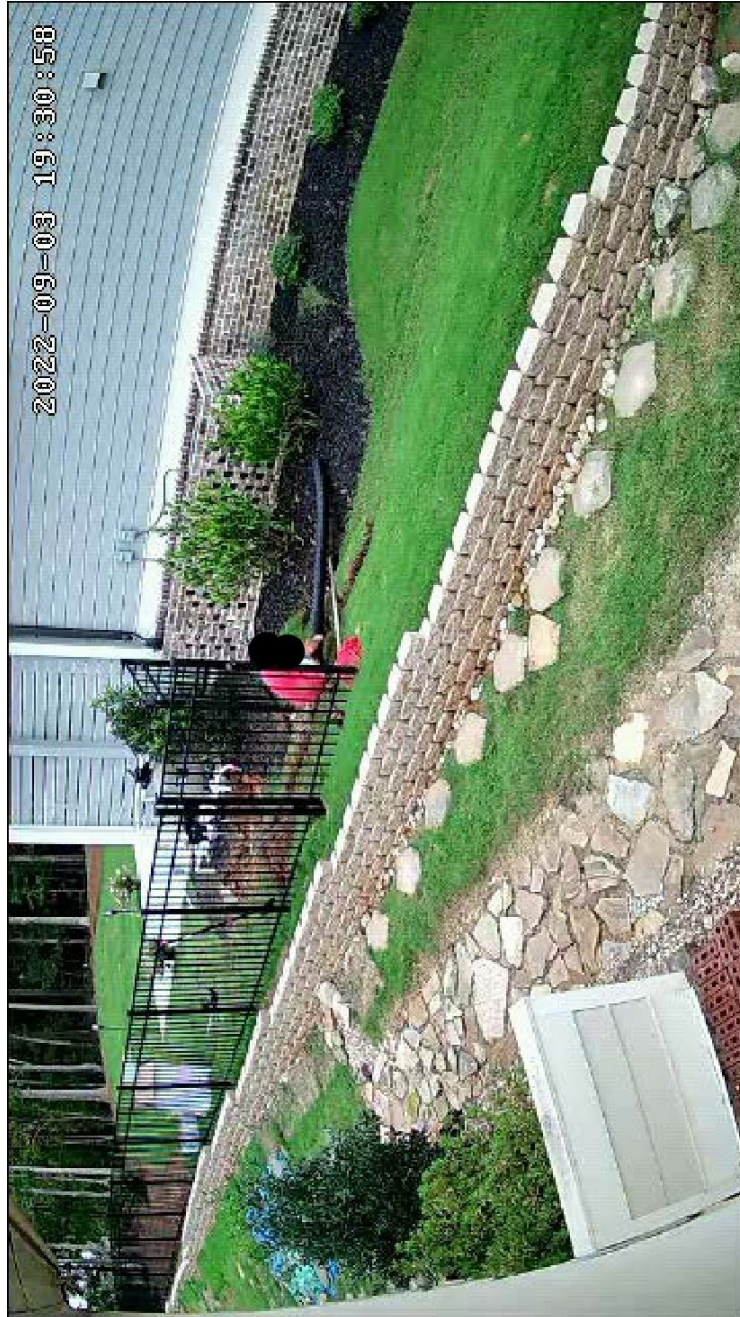
App-127



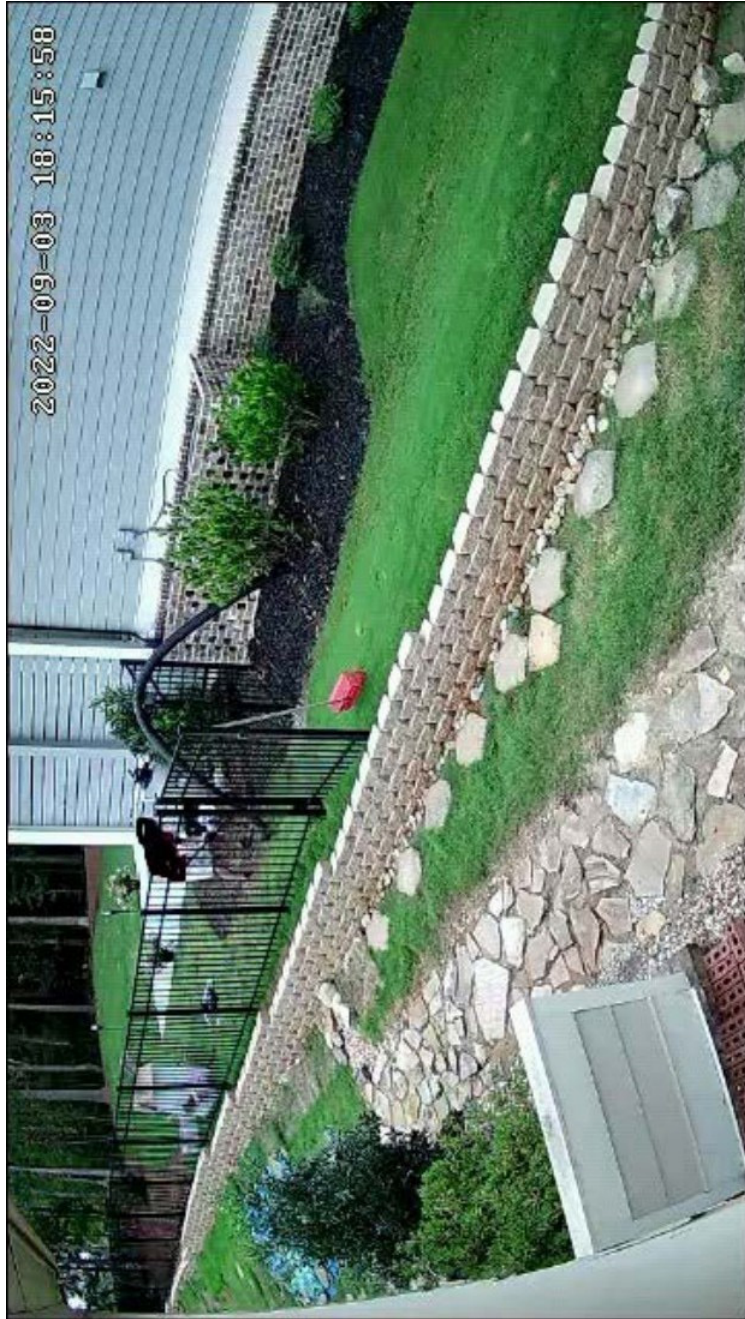




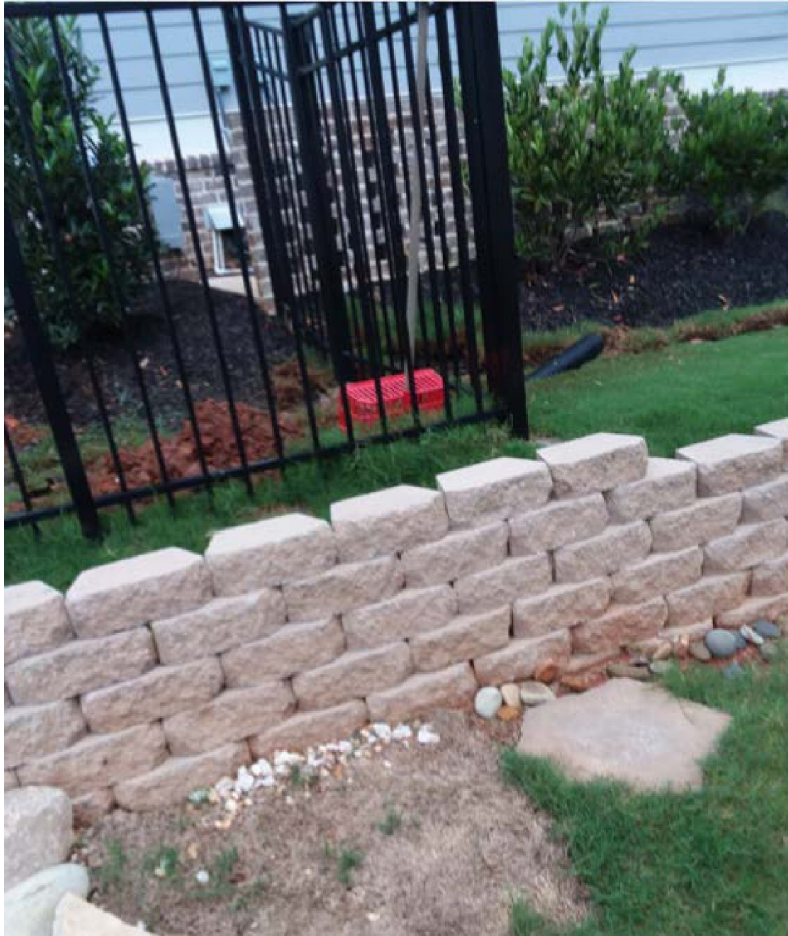




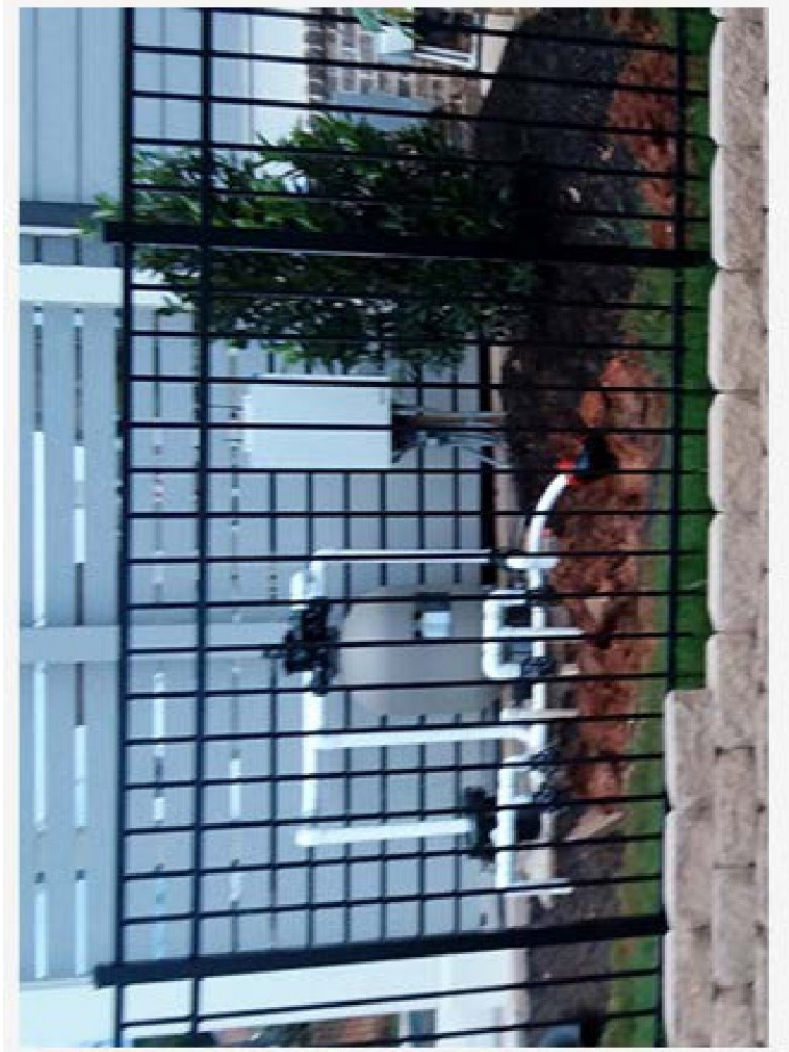




App-134



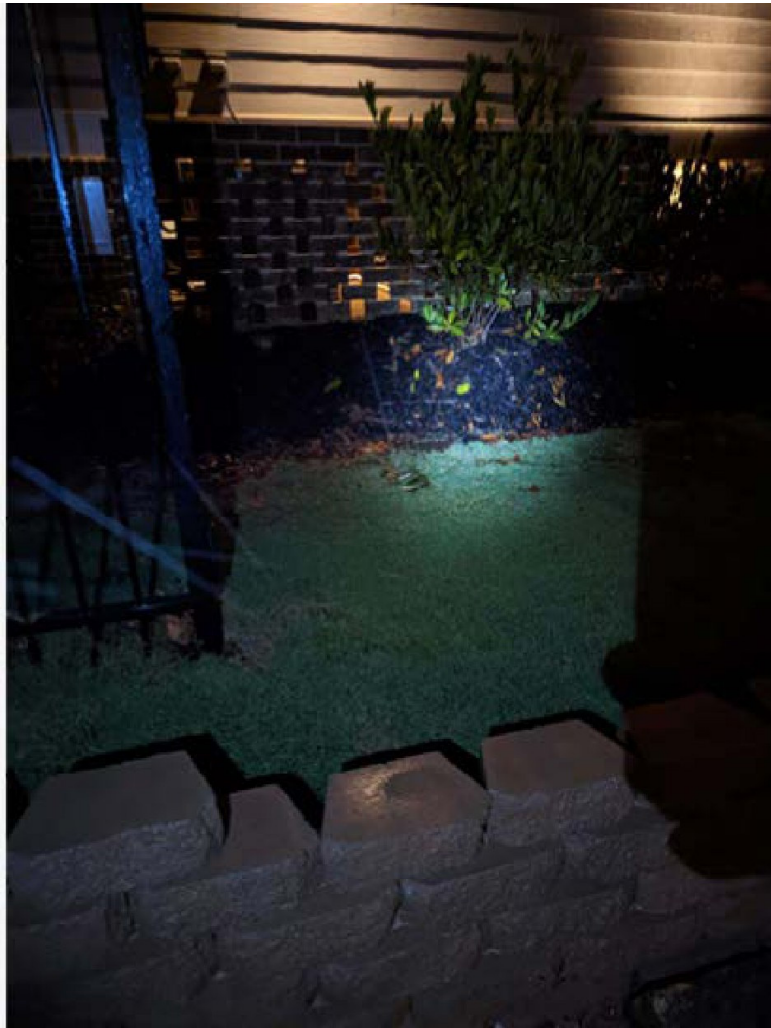
App-135



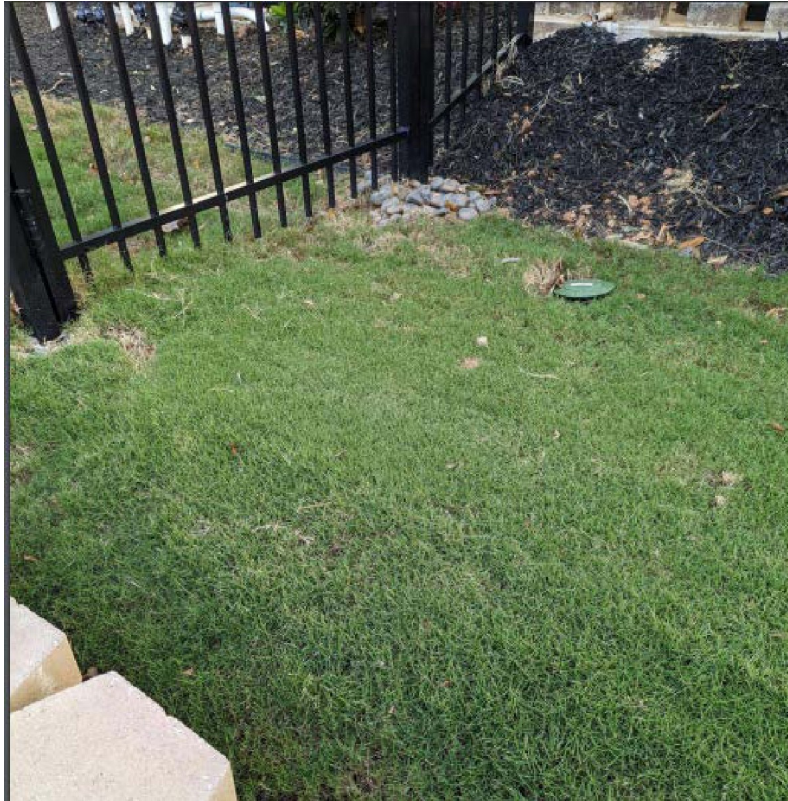
App-136



App-137



App-138



App-139

Exhibit “D”

Erosion in Plaintiff's Walkway

App-140



App-141

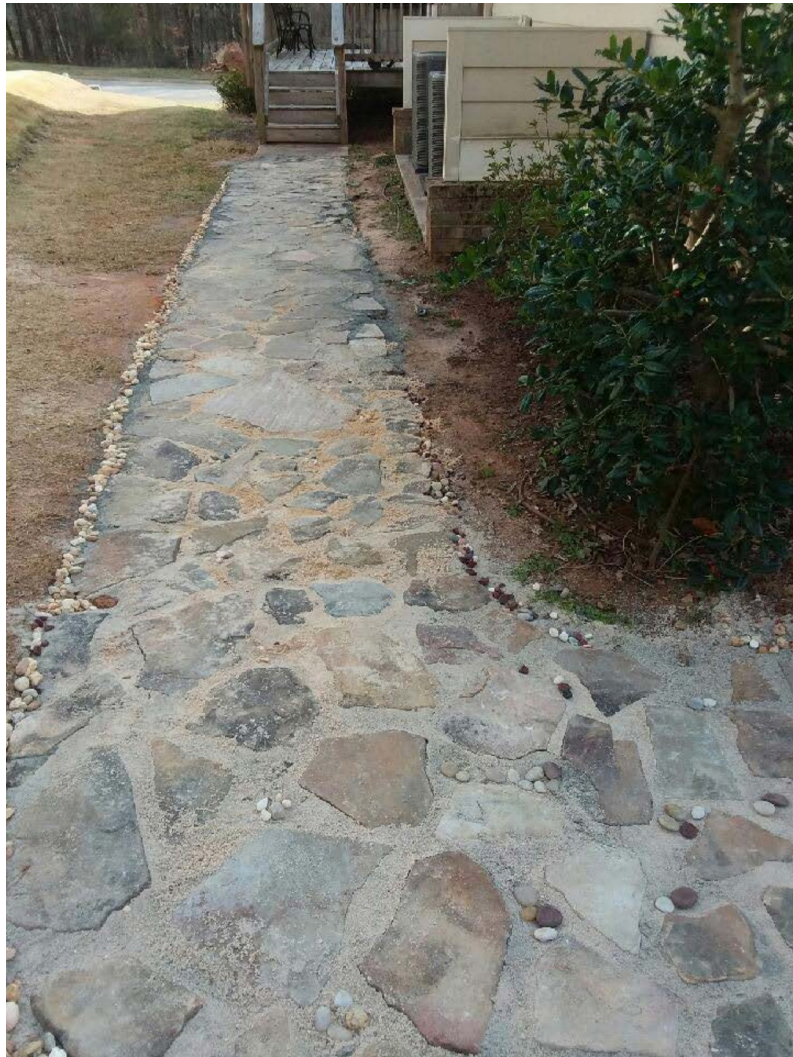


App-142

Exhibit “E”

Plaintiff's Normal Walkway and side Yard

App-143



App-144



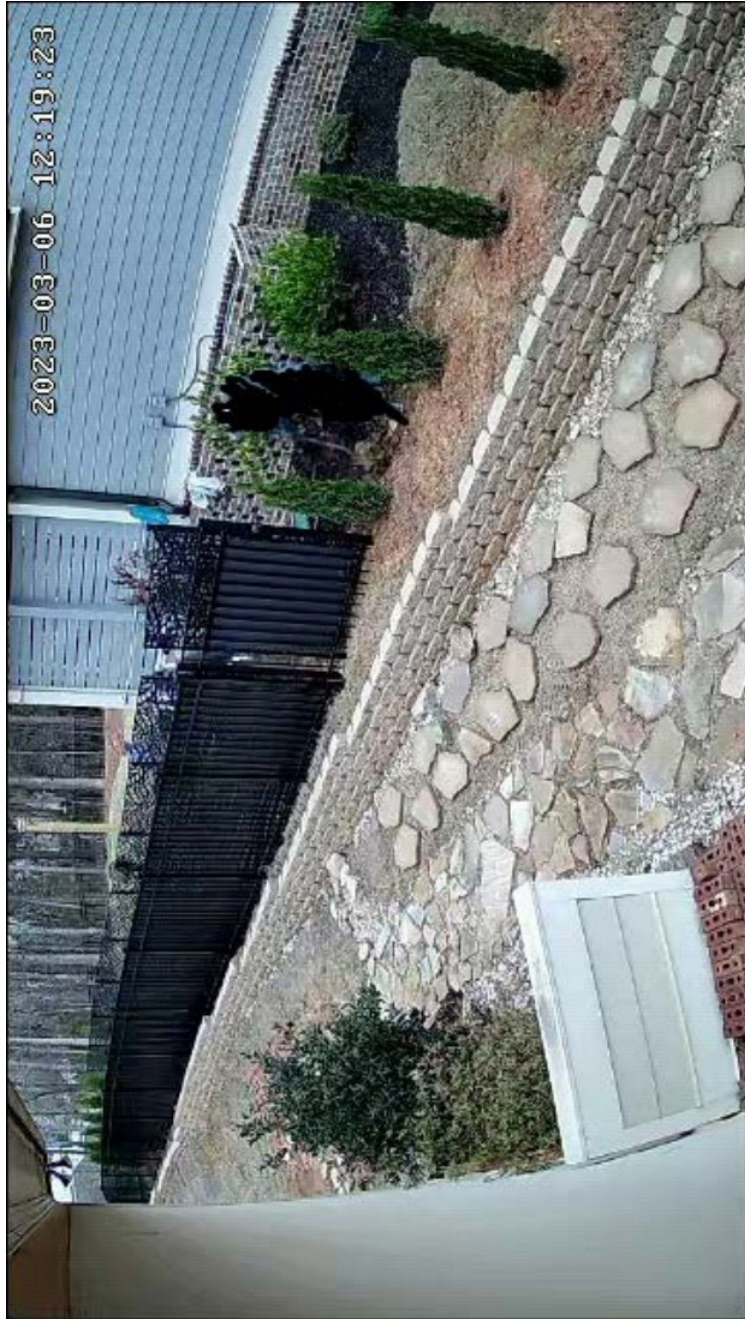
App-145

Exhibit “F”

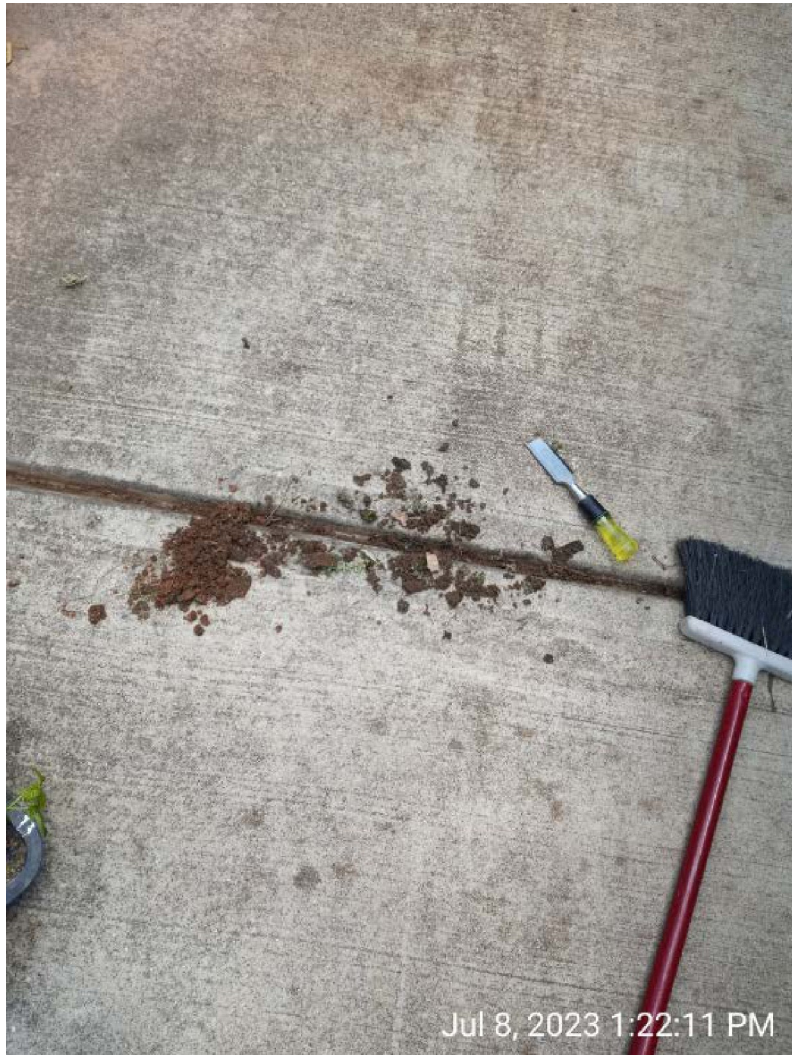
Bushes Planted and rocks replacement on 03/06/2023



App-147



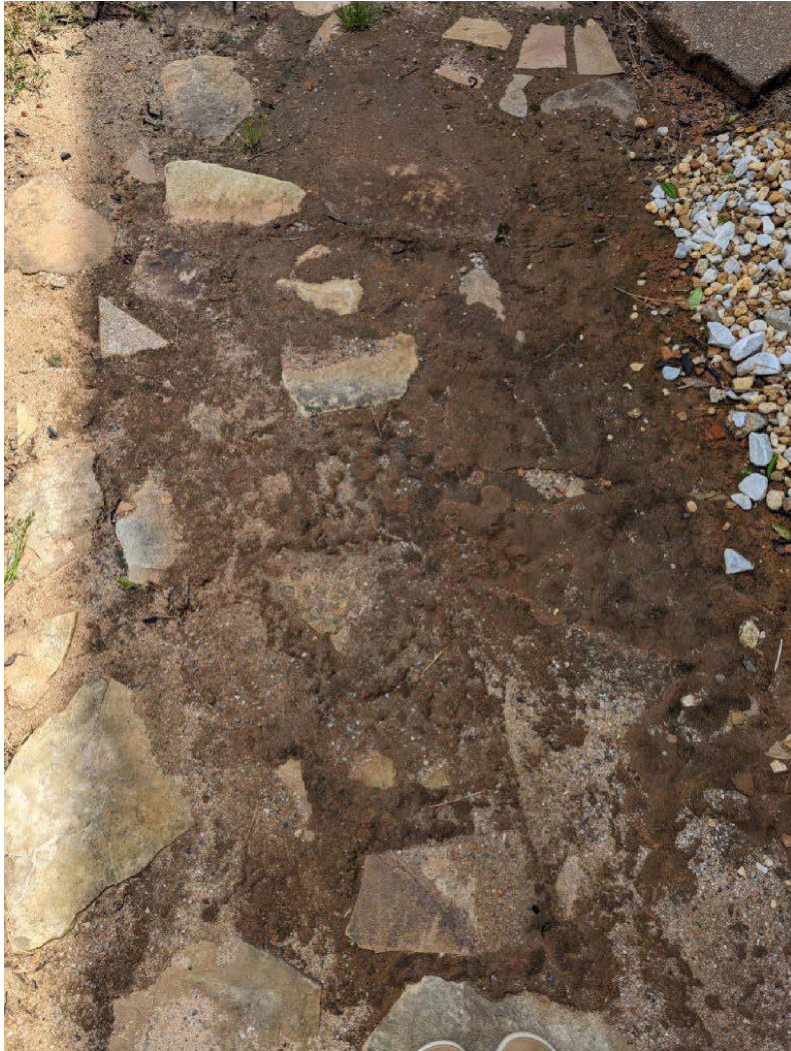
App-148



App-149



App-150



App-151



App-152



App-153

Exhibit “G”

Plaintiff’s Soil Reports

App-154

UGA Soil Report
Soil, Plant, and Water Laboratory

<i>Client Information</i> Yeung, Kevin P. O. Box 911 Braselton, GA 30517	<i>Lab Information</i> Completed: Jul 17, 2023 Tests: S22	<i>County Information</i> Gwinnett County 750 South Perry St., Suite 400 Lawrenceville, GA 30046 phone: 678-377- 4010 <u>e-mail:</u> <u>uge1135@uga.edu</u>
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Results

Lab	325
Sample	1
Cl (Chloride) (lbs/acre)	<4.15

App-155

UGA Soil Report
Soil, Plant, and Water Laboratory

<i>Client Information</i> Yeung, Kevin P. O. Box 911 Braselton, GA 30517	<i>Lab Information</i> Completed: Jul 17, 2023 Tests: S22	<i>County Information</i> Gwinnett County 750 South Perry St., Suite 400 Lawrenceville, GA 30046 phone: 678-377- 4010 <u>e-mail:</u> <u>uge1135@uga.edu</u>
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Results

Lab	326
Sample	1
Cl (Chloride) (lbs/acre)	40.48

App-156

UGA Soil Report
Soil, Plant, and Water Laboratory

<i>Client Information</i> Yeung, Kevin P. O. Box 911 Braselton, GA 30517	<i>Lab Information</i> Completed: Aug 4, 2023 Tests: S22	<i>County Information</i> Clarke County 2152 W. Broad Street Athens, GA 30606 phone: 706-613-3640 e-mail: uge1059@uga.edu
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Results

Lab	2893
Sample	S22
Cl (Chloride) (lbs/acre)	5.747

App-157

UGA Soil Report
Soil, Plant, and Water Laboratory

<i>Client Information</i> Yeung, Kevin P. O. Box 911 Braselton, GA 30517	<i>Lab Information</i> Completed: Nov. 30, 2023 Tests: S22	<i>County Information</i> Gwinnett County 750 South Perry St., Suite 400 Lawrenceville, GA 30046 phone: 678-377- 4010 <u>e-mail:</u> <u>uge1135@uga.edu</u>
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Results

Lab	19176
Sample	Extractable Chloride
Cl (Chloride) (lbs/acre)	10.56

App-158

UGA Soil Report
Soil, Plant, and Water Laboratory

<i>Client Information</i> Yeung, Kevin	<i>Lab Information</i> Completed: Feb 13, 2024 Tests: S22	<i>County Information</i> Gwinnett County 750 South Perry St., Suite 400 Lawrenceville, GA 30046 phone: 678-377- 4010 <u>e-mail:</u> <u>uge1135@uga.edu</u>
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Results

Lab	38267
Sample	Extractable Chloride
Cl (Chloride) (lbs/acre)	8.631

App-159

Exhibit “H”

Dr. Jason Explaining Chlorine vs Chloride

cl

Jason Thomas Lessl <jlessl@uga.edu>

Mon 2/26/2024 10:49 AM

Chlorine and chloride are related but distinct entities in chemistry:

Chlorine (Cl₂): Chlorine is a chemical element with the symbol Cl and atomic number 17. It exists as a diatomic molecule, meaning two chlorine atoms bonded together. Chlorine gas is a greenish-yellow gas at room temperature and is highly reactive. It is commonly used in various industrial processes, including water purification, production of plastics, and manufacture of pesticides.

Chloride (Cl⁻): Chloride is an ion formed when chlorine gains an electron, becoming negatively charged. It is represented by the symbol Cl⁻. Chloride ions are ubiquitous in nature and are essential for various biological processes, including maintaining proper fluid balance in the body and facilitating nerve transmission. Common sources of chloride ions include table salt (sodium chloride, NaCl) and various other salts found in soil, rocks, and seawater.

<https://www.eldoradosprings.com/blog/chlorine-vs.-chloride>

Jay Lessl, Ph.D.

Director | UGA Ag & Environmental Services Laboratories

Program Coordinator | UGA Soil, Plant, & Water Lab
2400 College Station Road | Athens, GA 30602

706-542-5350 | jlessl@uga.edu | aesi.ces.uga.edu



App-161

The difference between these two is 1 is the ionic form and one is the elemental form so chloride is what we see in sodium chloride or salt that is the ionic form. Chlorine is the elemental form.

Chlorine is an element on the periodic table, does not exist in its ion form. However, when chlorine becomes ionic, it becomes Chloride.

Chloride is created when Chlorine gains an electron and combines with other elements.

In Short Term

Chlorine = Gas

Chloride = Sodium Salt

App-162

Exhibit “T”

Plaintiff's Expert Reports

App-163



September 26, 2023

Kevin and May Auyeung
2904 Muscadine Way
Jefferson, GA 30549

Re: Drainage Report
Kevin and May Auyeung
2904 Muscadine Way
Jefferson, GA 30549

Dear Kevin and May,

On September 21, 2023, I made a site inspection of your property at 2904 Muscadine Way. Before arriving on the site, I reviewed USGS and GIS maps from public records. I also reviewed the documents furnished by you. I took photographs of your property and the property at 2478 Traditions Way, owned by Shannon Humphrey, according to county records.

My scope of work was to evaluate the drainage runoff from the neighbor's property and to recommend methods to handle the runoff from 2478 Traditions Way. Photos are attached to document this report further.

In this report, I will refer to your property at 2904 Muscadine Way as the Auyeung property and 2478 Traditions Way as the Humphrey property.

Site Inspection and Recommendations:

- Records show that the Auyeung house was constructed in 2014, and the Humphrey house was built in 2021. The Humphreys added a pool in 2022.
- The Humphrey property is several feet higher in elevation than the Auyeung property. Any water that is not contained or channeled away flows to the Auyeung Property. The area on the Auyeung property most affected is opposite the pool plumbing. The river rock placed in the swale reduces the capacity of the swale. Stormwater overflows the swale and flows onto the Auyeung property.
- The Site and Grading Plan-obtained from public records-shows flow arrows for the direction of stormwater flow across the Humphrey property. Stormwater from the Humphrey property flows from the right-rear corner of the house, across the rear yard of the Humphrey property, and toward the Auyeung property. The plan shows a swale to intercept the stormwater, directing the stormwater to the street. A note with an arrow to the swale says, "Grade 12" high berm & swale to direct water away from Lot P89 & toward street; Tie downspouts into drainage pipe & direct toward street."
- A pool in the backyard of the Humphrey property was being constructed August 12, 2022, per dated photos.

- Before the pool was constructed, the swale was grassed, and no rock was in the grassed swale, as seen in photographs. Rock was added to the grass swale adjacent to the pool plumbing. The addition of the rock occurred after the completion of the pool and the landscaping.
- The Site and Grading Plan specified the swale to intercept stormwater and direct the water to the street. A properly constructed and maintained swale would prevent stormwater from flowing to the Auyeung property and damaging the Auyeung property. A grassed and rock swale was constructed along the Humphrey property to direct stormwater flow. The grassed and rock swale starts in the rear yard of the Humphrey property. The swale does not meet the 12-inch depth requirement.
- Photos show a pop-up valve located in the swale near the pool plumbing. A pop-up valve allows stormwater to exit the end of an underground pipe. As per the Site and Grading Plan, the downspouts were to be connected to an underground pipe and carry stormwater to Traditions Way.
- Due to the lack of depth of the swale and the addition of the rock to the grassed swale, the swale's function has decreased efficiency and no longer functions as per the Site and Grading Plan direction.

App-166

- Because the swale does not function properly, stormwater flows to the Auyeung property and saturates the stone walkway. The water has caused discoloration of the stone, killed the grass, and made this area less desirable and usable. The water from the Humphrey property has devalued the property.
- Also, note that a retaining has been constructed on the Auyeung's property in an attempt to control the water from the Humphrey property. The wall did not solve the stormwater problem.
- An interim solution would be to add drop inlets to the area to collect the stormwater from the Humphrey property. The stormwater collected by the drop inlets should be piped down the slope toward Traditions Way. I recommend adding two 18-inch drop inlets with steel grates. The openings in the drop-inlets should be a minimum of 1-inch spacing. The top of the drop inlets should be a minimum of 6 inches below the ground surface. Connect the drop inlets with a 6-inch pipe, either PVC or HDPE. The interior of the 6-inch pipe should be smooth. A pop-up valve can be connected to the end of the pipe to discharge the stormwater.

Should you need additional information, don't hesitate to get in touch with me to discuss.

Material References:

App-167

The following publicly available data was referenced in the analysis in this report:

- Jackson County Public Records
<https://www.jacksoncountygov.com/256/GIS-Addressing>
- NOAA's National Weather Service Precipitation Frequency Data Server
<https://hdsc.nws.noaa.gov/hdsc/pfds/>
- Georgia Stormwater Management Manual, Volume 2
- Manual for Erosion and Sediment Control in Georgia

Accepted Engineering Practices:

I believe this report is consistent with the facts described above and with accepted engineering practice. I reserve the right to amend this report if additional facts become available, which are not now known.

I trust this report will be of help to you. If you have questions or desire to discuss this with me, please contact me at your convenience.

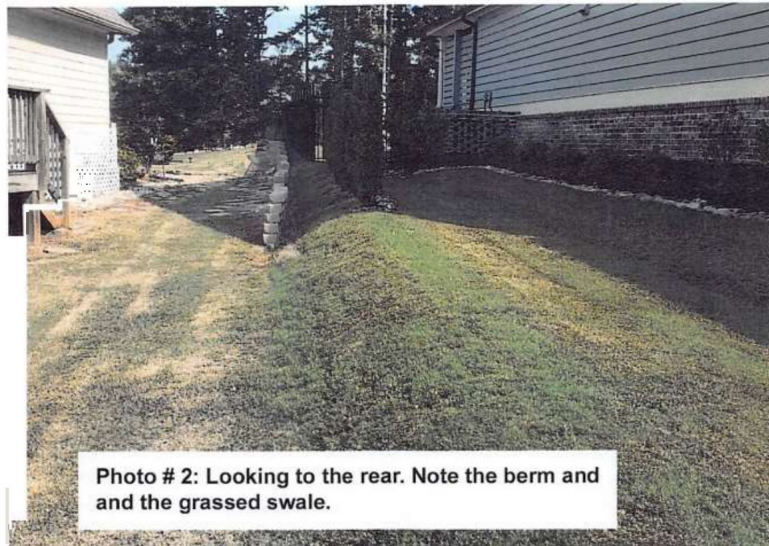
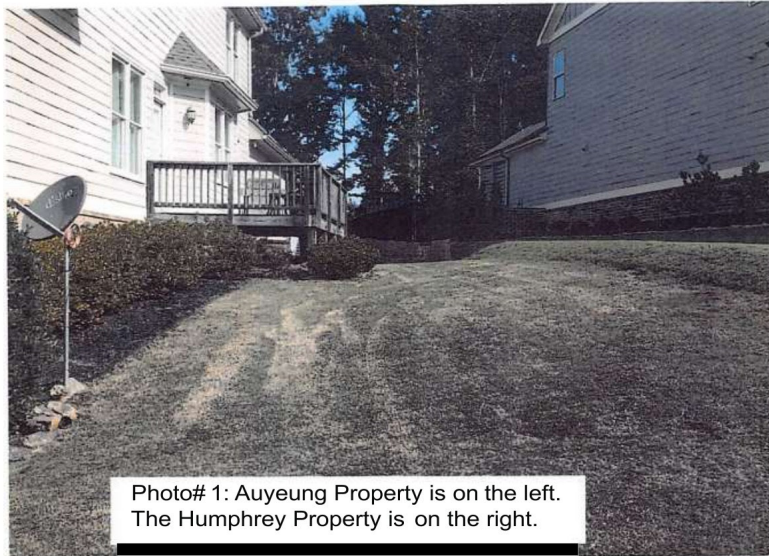
Sincerely,

? fltu;,1_

Elvin Aycock, PE, PH

Professional Engineer

Attachments



App-170



Photo# 3: Shows the grassed swale looking towards Traditions Way.



Photo # 4: Photo shows the grass swale and berm looking to the rear of the properties.



Photo# 5: Photo shows the retaining wall looking to the rear of the property.



Photo# 6: Auyeung's retaining wall viewed looking toward Traditions Wa .



Photo# 7: Photo shows the rock in the swale. Note the lack of height on the berm.



Photo\$ 8: The rock swale on the Humphrey property. The swale is very shallow and the rock blocks the flow of water.



Photo# 9: Photo shows the stone walkway. Note the area and the discoloration.



Photo# 10: The stone walkway along the Auyeung property. Note the wet area and the discoloration.

App-174

Exhibit “J”
Defendant’s Debris

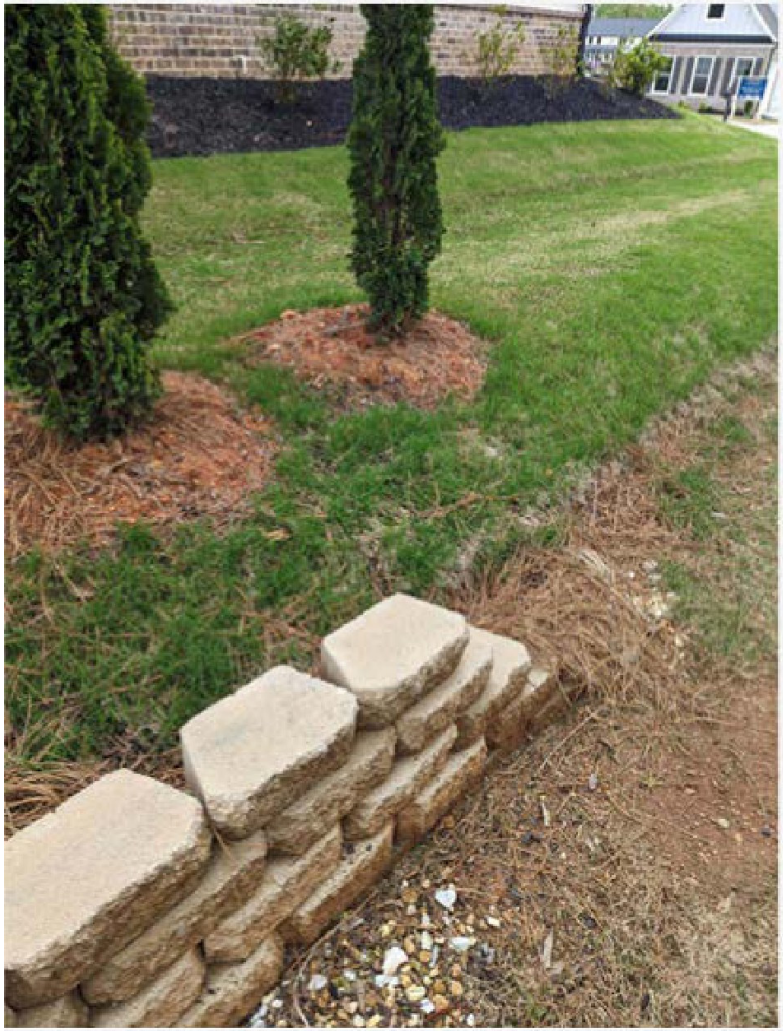
App-175



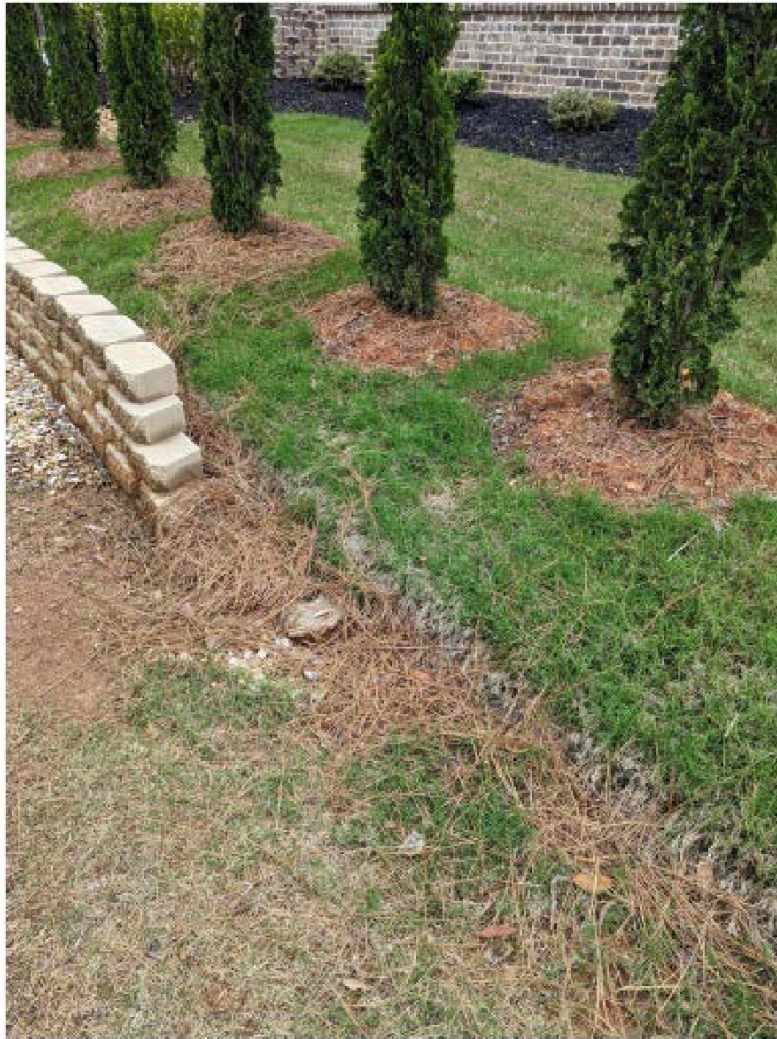
App-176



App-177

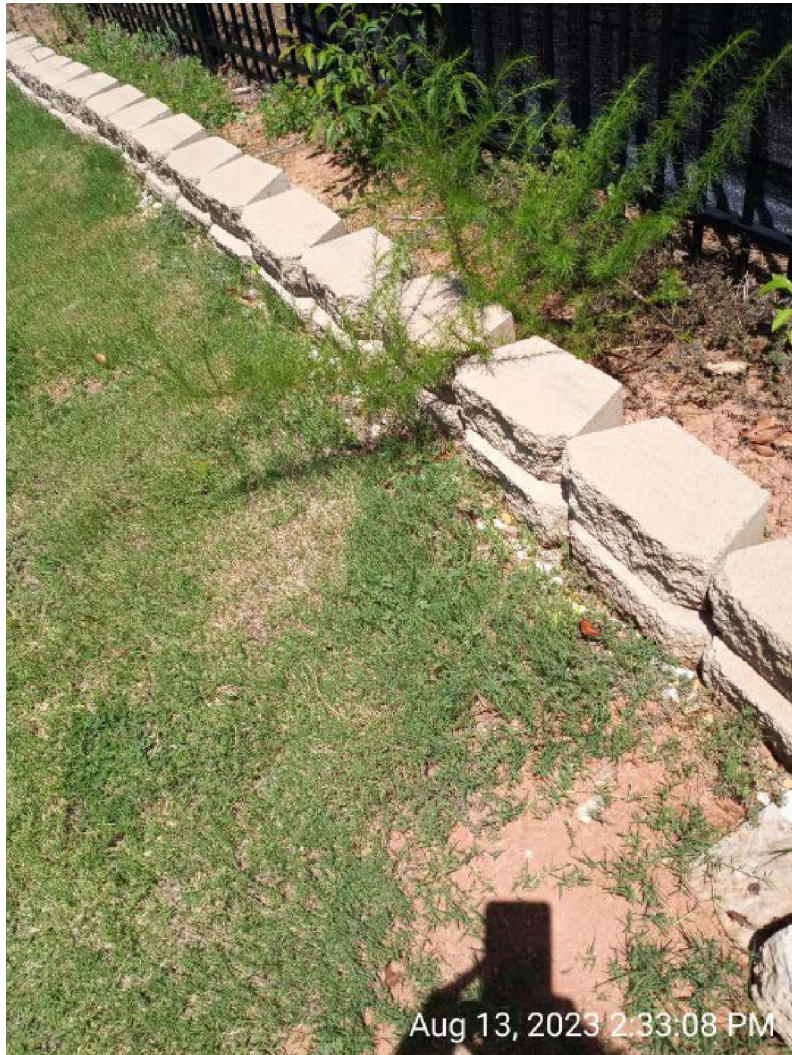


App-178





App-180



App-181

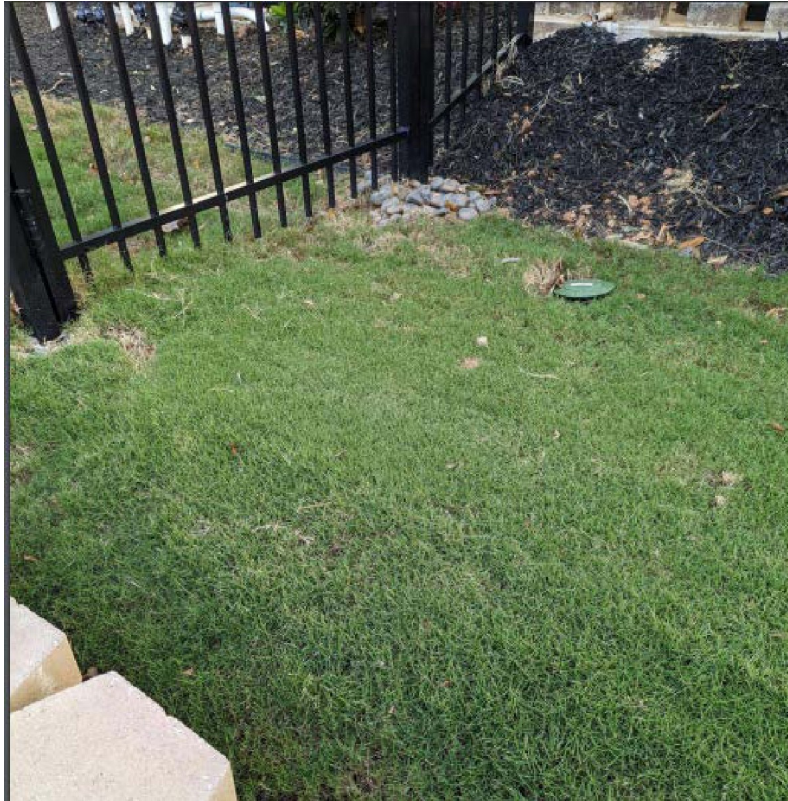


App-182

Exhibit “K”

Defendant Original and Current Pop Up Emitter

App-183



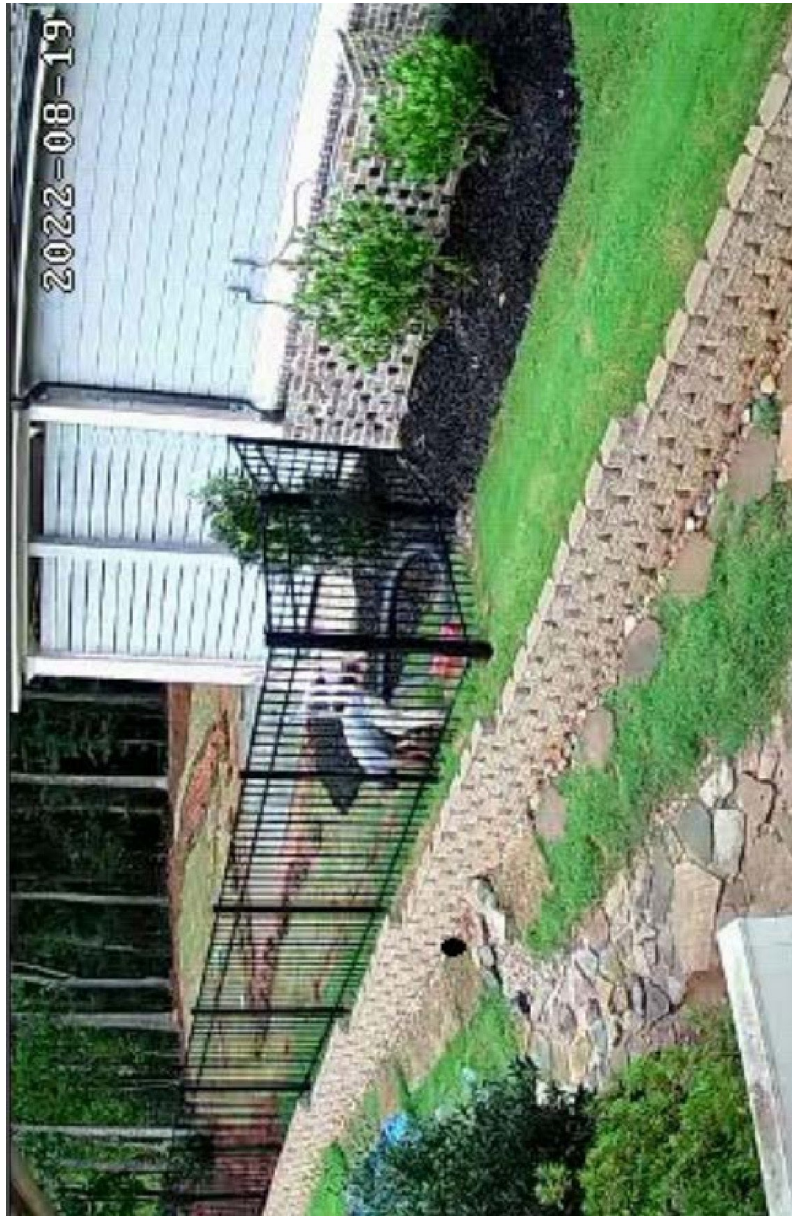
App-184



App-185

Exhibit “L”

Defendant’s Unlawful Diversion of Flow and the Result



App-187



App-188

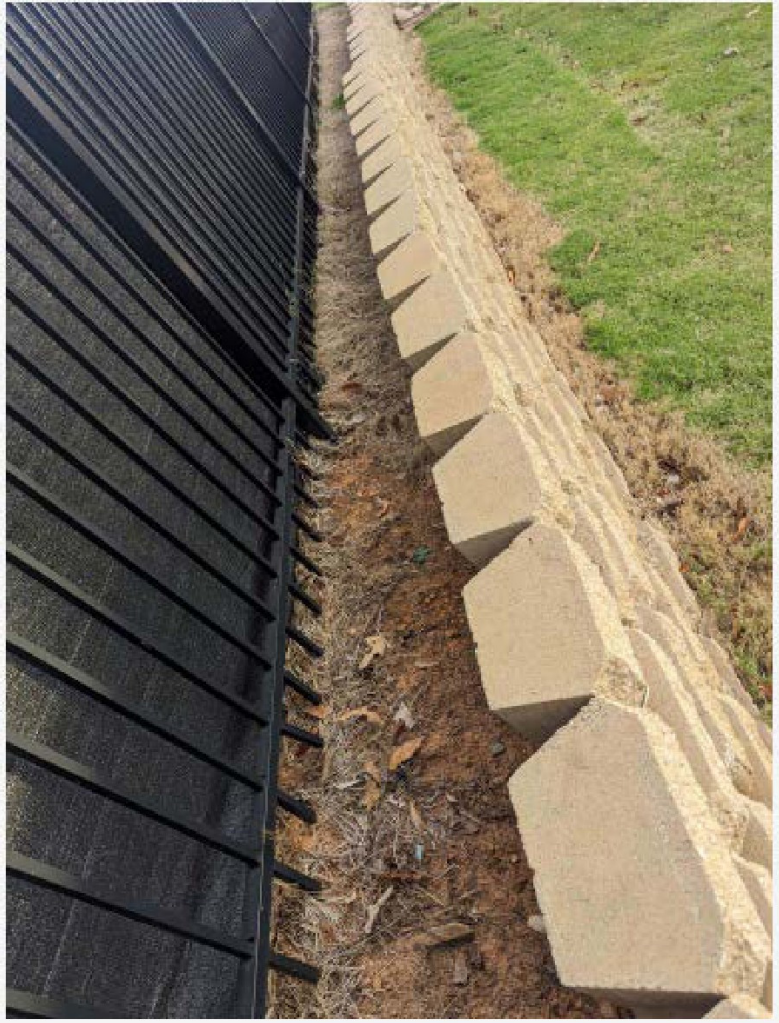


App-189

Exhibit “M”

How Water Flow from Defendant to Plaintiff's land

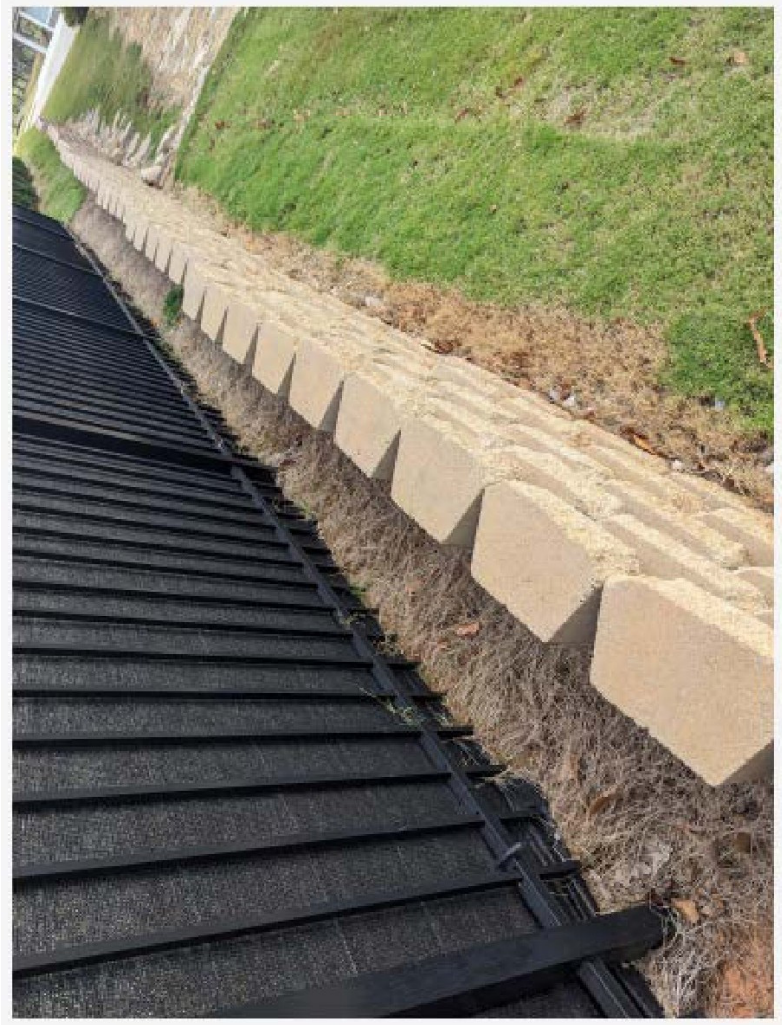
App-190



App-191



App-192



App-193

Exhibit “N”

Plaintiff's Completed Work Receipts and Estimates
to address New Erode Area.

Works needed to deal with all problems 2022 to 2023

1. Retaining Wall Completed April or May 2022

Material c3ts: Concrete Block	\$941.60
<u>Labor: (Magic Landscape)</u>	<u>\$800</u>
Total:	\$1,741.60

2. 1st Drain by Basement Completed July 22, 2022

Material costs: Pipes, Drain and other materials	\$147.63
<u>Labor: (Jose)</u>	<u>\$500</u>
Total:	\$647.63

3. Concrete Landing Completed on Aug 19, 2023

East Concrete	\$450
---------------	-------

4. 2nd Drain by Basement Completed 09/27/2023

David lawn Care Maintenance LLC	\$1100
---------------------------------	--------

Damaged Property

5. Stone Walkway Completed around 05/2022

Estimate Cost (Labor and Materials)	\$2500 to \$4,000
-------------------------------------	----------------------

App-195

Self Installed

Engineering Service

**Atlanta Enginerring Service (Civil Enginerring
Report) Completed on Sep 21/2023**

Cost

\$1,100

App-196

DAVID LAWN CARE & MAINTENANCE LLC

678 548 4787

P.O.BOX 66s8

GAINESVILLE, GA 30504

INVOICE #

TO: <i>May</i>	DATE: <i>09/27/23</i>
ADDRESS: <i>2909 Muscadine Way</i> <i>Jefferson GA 30599</i>	DATE REQUIRED:
PHONE:	MAP:

DESCRIPTION:	PRICE:
<i>Drainage Pipe</i>	<i>1,100</i>
	TOTAL: <i>\$1,100</i>

David Lawn Care & Maintenance LLC expert
professional care in the following areas

LANDSCAPE MAINTENANCE

LANDSCAPE DESIGN

RETAINING WALLS

SOD INSTALLATION

IRRIGATION SYSTEMS

GUTTER AND ROOF CLEANING

CUT AND TRIM TREES

Paid

Sept 27, 2023 Work Completed

App-197



\$450

paid

Invoice



Bill to:
Kevin and May Auyeung 2904 Muscadine Way Jefferson, GA 30549
Project Description:
Site Inspection and Report

Date:	Invoice #:	Project #:
09-28-2023	09-2023-3333	2023-3333
Make Checks Payable to:		
Atlanta Engineering Services, Inc. 8465 Steeplechase Drive Roswell, GA 30076		
Federal Tax Identification:		

Ser- vices	Description	Hours	Rate	Amount
Profes- sional Engi- neer/Hy- drologist	Site Inspection September 21, 2023 Kevin and May Auyeung 2904 Muscadine Way Jefferson, GA 30549			\$1100.00

App-199

	Kevin and May, thank you for your business. Elvin			
Terms:	Payments/	\$0.00	Total	\$1100.00
Net 15 Days	Credits:		Balance	
			Due:	
A finance charge of 1.5% per month or 18% annually will be charged on all past due accounts.				

App-200

Date Ordered: April 12, 2022

Order Number: [REDACTED]

Order Total: \$941.60

Scheduled Delivery

Delivered to

Kevin Kevin
2904 Muscadine Way
Jefferson, GA 30549

Product Information

Item	Qty	Price
Pavestone 4 in. x 11.75 in. x 6.75 in. Buff Concrete Retaining Wall Block Model # 81104 Store SKU # 166349	500 \$1.60/item	\$800.00

Cancelled Items

Product Information

Item	Qty	Price
Quikrete 10.1 oz. Construction Adhesive Model # 990210 Store SKU # 939846	3	\$0.00

Payment Information

App-201



Payment Details



Subtotal \$801.00

Shipping

Scheduled Delivery

Sales Tax \$61.60

Payment Method
HD Commercial | End-
ing in 

Order Total \$941.60

App-202



Order

Placed July 15, 2022 | \$53.35

Pickup Compete

Picked up Friday, Jul 15, 2022

Suwanee Lowe's
3260 Lawrenceville
Suwanee Rd.
Suwanee, GA, 20024

9-in dia cCatch Basin

Item #110869 Model #900BKIT

\$52.98/ea. QTY 1

~~\$52.98~~ \$50.33

Saved \$2.65 with Lcc % Off Discount

Payment Method	Order Summary	
Lowes Credit Card	Subtotal	\$50.33
**** * **** *	Tax	\$3.02
		\$50.35

Present or show this barcode for In-Store
returns:

[Bar code]

090707152022745670000000

App-203



How doers
get more done

**DOWNLOAD
OUR APP >**

**THANKS FOR YOUR ORDER,
KEVIN!**

Please review the details below to know what to expect next.

Check Order Status

Order Number	Order Date
	Jul. 16, 2022

Your Order

Ship to Home Items

You will receive a shipping email once your items have shipped.

Kevin Kevin
2904 Muscadine Way
Jefferson, GA 30549
929-206-8315

Item	Unit Price	Qty	Item Total
[Picture omitted] NDS 6 in. Plastic Round	\$8.47	1.00	\$8.47

App-204

Drainage Grate in
Green

Store SKU # 703370
Internet # 100377397
Est Arrival: Jul. 19

[Picture omitted]	\$14.97	1.00	14.97
NDS 6 in. Plastic			
Round			
Speed-D Styrene			
Drainage Catch Basin			

Store SKU # 703311
Internet # 100377394
Est Arrival: Jul. 19

Pick Up in Store Items

You will receive a notification when the following items are ready for pickup. Due to high volume, your order may take longer than usual.

Items requiring assembly may take longer. If you requested assembly for your order, please wait for a phone call from our store letting you know your order is ready for pickup.

Hamilton Mill #0161
2120 Hamilton Creek Pkwy
Dacula, GA 30019
770-945-7176

App-205

Item	Unit Price	Qty	Item Total
[Picture omitted] JM EAGLE 4 in. x 10 ft. PVC D2729 Sewer and Drain Pipe	\$21.76	3.00	\$65.28

Store SKU #
120088
Internet #
202280933

Subtotal	\$88.72
Shipping	FREE
Sales Tax	\$5.56
Express Delivery	\$0
Order Total	\$94.28

App-206

Fresh Cut Lawn Service LLC
PO Box 492602
Lawrenceville, GA 30049 US
(678) 863-4833
fc_ls@ymail.com

BILL TO
Kevin & Mae
2904 MuscadineWay
Jefferson, Ga 30548

INVOICE # KM1722
DATE 01/07/2022

TERMS Due on receipt

SERVICE MONTH
January

PRODUCT/ SERVICE	DESCRIPTION	AMOUNT
Delivery Fee	Supplies for walkway Installation	340.00

Manager Sig-
nature: _____

BALANCE DUE **\$340.00**

** Crush run and sand only*

WE APPRECIATE YOUR BUSINESS!

App-207

RECEIPT		No. 038100	
DATE <u>01-2021</u>			
FROM <u>Five hundred</u>		\$ 500-	
		DOLLARS	
☐ FOR RENT ☐ FOR <u>stone</u>			
ACCT.		☐ CASH	FROM _____ TO _____ BY _____
PAID		☐ CHECK	
DUE		☐ MONEY ORDER	
		☐ CREDIT CARD	
		A-2501 T-46820	

Stones purchased from a private party in 2021 (1 1/2 Pallet)	\$500
Stones Installation in Feb or March 2022 (Self installed for 6 weekend days) \$100 x 6	\$600
Dirt Disposal Fees (Many Months)	\$200
Other supplies Sand 10-12 bags	\$50
Fresh Cut Lawn Supplies Demand	\$340
	\$1690

*Normal cost of A Stone Walkway is \$3500

App-208

Drain Installation Labor

\$500



Payment to Jose

\$500

App-209

Magic landscapes
3001 Highway 326
Commerce, GA 30530
(678) 330-4641

To:	Invoice #	1074
Linda Barret	Invoice Date	05/12/2022
2904 Muscadine Way	Payment Term	Net 30
Jefferson, GA 30549	Amount Due	\$800.00

Item	Quan- tity	Price	Tax1	Tax2	Line Total
Land- scape - Install Land- scaping for Yard or Gar- den	1.0	\$800.00			\$800.00

Subtotal:	\$800.00
Tax:	\$0.00
Past Due Amount:	\$0.00
Amount Due:	\$800.00

Notes

Thank You For Your Business!

Ret. wall
A) Install a small ret wall by side of the garage parking pad (just labor)

App-210



**Jah Environmental Safety &
Health, LLC**
brentw@jesh.llc | 470-615-6653

Invoice
#2935

Issue date
Feb 27, 2024

Invoice #2935

Thank you for your business

Customer	Invoice Details	Deposit	Balance
May Yeung [REDACTED] 929-206-8315 2904 Musca- dine Way Jefferson, Georgia 30549	PDF created Febru- ary 28, 2024 \$499.00 Service date February 28, 2024	Due Feb 27, 2024 \$249.50	Due February 28, 2024 \$249.50

Items	Quantity	Price	Amount
On-site Environmen- tal Consulting <i>Conduct a Visual En- vironmental Assess- ment, regarding the property condition and erosion, provide a written report of find- ings with recommen- dations if applicable.</i>	1	\$499.00	\$499.00

App-211

Subtotal	\$499.00
Total Paid	\$499.00
Deposit	\$249.50
Paid • Due on Feb 27, 2024	
Balance	
Paid • Due on Feb 28, 2024	\$249.50
Payments	
Feb 28, 2024 (Discover [REDACTED])	\$249.50
Feb 27, 2024 (Mastercard [REDACTED])	\$249.50

App-212

INVOICE

Bill To

May
2904 Muscadine Way
Jefferson

Iker's Landscaping And Concrete LLC	Payment terms	Due upon
	receipt	
	Invoice	#278
Athens , GA 30601	Date	10/12/2023
Phone: (404) 437-5937		
Email:		
nzavala1994@gmail.com		

Description

Total

Concrete	\$3,100.00
Estimate to prepare, remove trees and pour sidewalk beside house. This estimate includes concrete, mate- rial and labor	

<u>Subtotal</u>	\$3,100.00
Total	\$3,100.00

App-213

WoodRaven Landscape
8302 Holland Pl
Lawrenceville, GA 30043 US
admin@woodravenlandscape.com

Estimate

ADDRESS	ESTIMATE	1065
May	DATE	02/04/2024
2904 Muscadine Way		

DATE	ACTIV- ITY	DE- SCRIP- TION	QTY	RATE	AMOUNT
	Pavers		595	0.57	339.15T
	Steps		14	90.00	1,260.00
	leuders				
	limestone				
	Gravel		2	200.00	400.00T
	Mortar		5	10.00	50.00
	mix				
	Paver		1	100.00	100.00T
	sand				
	Install- tion		1	4,200.00	4,200.00T

SUBTOTAL	6,349.15
TAX	0.00
TOTAL	\$6,349.15

Accepted By
Accepted Date

App-214



Sugar Hill Outdoors, llc
3276 Buford Drive | Suite 104 #312 |
Buford, Georgia 30519
770 326 6115 |
clint@sugarhilloutdoors.com |
www.sugarhilloutdoors.com

RECIPIENT:

Quote #728

May May
2904 Muscadine Way
Jefferson, Georgia 30549

Sent on Jan 10, 2024
Job: Landscape
Installation

Total \$4,000.00

Product/Service	Description	Qty.
3 gallon Plant	- 10 total 3 gallon plants	1
package	- 10 Long Needle Pine straw Bales	
	- Grading and Prep	

Total \$4,000.00

This quote is valid for the next 30 days, after which values may be subject to change.

Terms and Conditions

1. All labor, materials, equipment, supervision, insurance, and labor taxes will be the responsibility of and furnished by Sugar Hill Outdoors.
2. The quoted contract price shall be valid for 60 days from date of proposal.
3. Sugar Hill Outdoors will not be liable for loss or damage to plant material caused by persons not employed by our company or by extreme acts of nature

App-215



2475 Wirebridge Rd. **Estimate**
Arnoldsville, GA
30619
office.piedmont@ya-
hoo.com
[https://Piedmont-
LandscapeManage-
ment.com](https://Piedmont-LandscapeManagement.com)

ADDRESS
K. May 2904 Muscadine Way Jefferson, Ga 30549

ESTIMATE #	DATE	
163	01/05/2024	

DESCRIPTION	AMOUNT
Construct a segmented retaining wall approximately 60' in length. The wall will range in height from grade to 19". A drainage system consisting of 4" perforated drain tile and #57 aggregate will be installed behind the wall. Matching capstones will be installed. This estimate includes materials, tax, freight and labor to construct.	4,850.00

TOTAL \$4,850.00

Accepted By

Accepted Date

App-216

Exhibit “O”

Short Version of Erosion and Sedimentation Act of
1975

(Key points Highlighted, Irrelevant pages deleted)

O. C. G. A. §12-7-1

GEORGIA CODE
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All rights reserved.

*** Current Through the 2015 Regular Session ***

**TITLE 12. CONSERVATION AND NATURAL
RESOURCES**
**CHAPTER 7. CONTROL OF SOIL EROSION
AND SEDIMENTATION**

O. C. G. A. §12-7-1 (2015)

§12-7-1. Short title

This chapter shall be known and may be cited as the
“Erosion and Sedimentation Act of 1975.”

**§12-7-2. Legislative findings; policy of state
and intent of chapter**

It is found that soil erosion and sediment deposition onto lands and into waters within the watersheds of this state are occurring as a result of widespread failure to apply proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities and that such erosion and sediment deposition result in pollution of state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resource uses. It is therefore declared to be the policy of this state and the intent of this chapter to strengthen and extend the present erosion and sediment control activities and

programs of this state and to provide for the establishment and implementation of a state-wide comprehensive soil erosion and sediment control program to conserve and protect the land, water, air, and other resources of this state.

§12-7-3. Definitions

As used in this chapter, the term:

(1) “Board” means the Board of Natural Resources.

(2) “Buffer” means the area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

§12-7-5. Adoption of rules and regulations for localities without ordinances

The board, by appropriate rules and regulations, shall adopt the procedures governing land-disturbing activities which are conducted in those counties and municipalities which do not have in effect an ordinance conforming to this chapter. Such rules and regulations shall be developed by the division in consultation with the commission and shall contain provisions which meet those minimum requirements set forth in Code Section 12-7-6.

§12-7-6. Best management practices; minimum requirements for rules, regulations, ordinances, or resolutions

(a) (1) Best management practices as set forth in subsection (b) of this Code section shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management

practices shall constitute a complete defense to any action by the director or to any other allegation of non-compliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of Code Section 12-5-30. As used in this subsection, the terms “proper design” and “properly designed” mean designed in accordance with the hydraulic design specifications contained in the “Manual for Erosion and Sediment Control in Georgia” specified in subsection (b) of this Code section.

(2) A discharge of storm-water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to subsection (f) of Code Section 12-5-30 for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director. This paragraph shall not apply to any land disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.

(3) Failure properly to design, install, or maintain best management practices shall constitute a

violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to subsection (f) of Code Section 12-5-30 for each day on which such failure occurs.

(4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.

(b) The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control In Georgia" published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

(1) Stripping of vegetation, regrading, and other development activities shall be conducted in such a manner so as to minimize erosion;

(2) Cut and fill operations must be kept to a minimum;

(3) Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential;

(4) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(5) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;

(6) Disturbed soil shall be stabilized as quickly as practicable;

(7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;

(8) Permanent vegetation and structural erosion control measures must be installed as soon as practicable;

(9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this chapter;

(10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surfaces of fills;

(11) Cuts and fills may not endanger adjoining property;

(12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;

(13) Grading equipment must cross flowing streams by the means of bridges or culverts, except when such

methods are not feasible, provided, in any case, that such crossings must be kept to a minimum;

(14) Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (a) of this Code section;

(15) (A) There is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except:

(i) As provided by paragraphs (16) and (17) of this subsection;

(ii) Where the director determines to allow a variance that is at least as protective of natural resources and the environment;

(iii) Where otherwise allowed by the director pursuant to Code Section 12-2-8;

(iv) Where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented;

(v) Along any ephemeral stream. As used in this division, the term "ephemeral stream" means a stream:

(I) That under normal circumstances has water flowing only during and for a short duration after precipitation events;

(II) That has the channel located above the ground-water table year round;

(III) For which ground water is not a source of water; and

(IV) For which runoff from precipitation is the primary source of water flow; or

(vi) Where shoreline stabilization is installed; provided, however, that this exception shall be limited to the construction of bulkheads and sea walls only to the extent required to prevent the erosion of the shoreline. This exception shall be limited to Lake Oconee and Lake Sinclair and shall be limited to the duration of such construction.

§12-7-7. Permit or notice of intent required for land-disturbing activities; approval of application and issuance of permit; denial of permit; bond requirement

(a) No land-disturbing activities shall be conducted in this state, except those land-disturbing activities provided for in Code Section 12-7-17, without the operator first securing a permit from a local issuing authority or providing notice of intent to the division as required by this Code section.

§12-7-9. Applications for permits; erosion and sediment control plans and data; time for issuance or denial

(a) Applications for permits shall be submitted in accordance with this chapter and the rules and regulations, ordinances, and resolutions adopted pursuant to this chapter. Such applications shall be accompanied by the applicant's erosion and sediment control plans and by such supportive data as will affirmatively demonstrate that the land-disturbing activity proposed will be carried out in such a manner that the minimum requirements set forth in Code Section 12-7-6 shall be met. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan or that such a visit was not required in accordance with rules and regulations established by the board.

(b) No permit shall be issued to any applicant unless the local issuing authority affirmatively determines that the plan embracing such activities meets the requirements of Code Section 12-7-6. All applicable fees shall be paid prior to issuance of the land disturbance permit by the local issuing authority.

(c) Permits shall be issued or denied as soon as practicable after the application therefor has been filed with the local issuing authority, but in any event not later than 45 days thereafter.

§12-7-10. Referral of application and plan to district; time for action

Except as otherwise provided by Code Section 12-7-7, immediately upon receipt of an application for a permit the application and plan for sediment and erosion control shall be referred to the appropriate district wherein such land-disturbing activities are

proposed to take place, for its review and approval or disapproval concerning the adequacy of the erosion and sediment control plan proposed by the applicant. A district shall approve or disapprove a plan within 35 days of receipt. Failure of a district to act within 35 days shall be considered an approval of the pending plan.

§12-7-11. Statement of reasons for denial of permit required; conditions for approval; suspension, revocation, or modification of permit

(a) Within the time specified by Code Section 12-7-9, the local issuing authority shall issue or deny the permit. The local issuing authority, upon denial of a permit, shall state its reasons for the denial, setting forth specifically wherein such application is found to be deficient. Any land-disturbing activity permitted under this chapter shall be carried out in accordance with this chapter and the ordinance, resolution, or rules and regulations adopted and promulgated pursuant to this chapter. The local issuing authority shall specify on the permit the conditions under which the activity may be undertaken.

(b) The permit may be suspended, revoked, or modified by the local issuing authority, as to all or any portion of the land affected by the plan, upon a finding that the holder or his or her successor in title is not in compliance with the approved erosion and sediment control plan or that the holder or his or her successor in title is in violation of this chapter or any ordinance, resolution, rule, or regulation adopted or promulgated pursuant to this chapter. A holder of a permit shall notify any successor in title to him or her as to all or any portion of the land affected by the approved plan

of the conditions contained in the permit. §12-7-12. Orders directed to violators; stop work order procedures

(a) Except as provided in subsection (d) of this Code section, whenever the director has reason to believe that a violation of any provision of this chapter, any rule or regulation of the board, or any order of the director has occurred in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this chapter or the rules or regulations or order alleged to have been violated and may require that land-disturbing activity be stopped until necessary corrective action and mitigation have been taken or may require that necessary corrective action and mitigation be taken within a reasonable time to be prescribed in the order. Any order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request, in writing, a hearing pursuant to Code Section 12-7-16.

(b) Except as provided in subsection (d) of this Code section, whenever a local issuing authority has reason to believe that a violation of any provision of a local ordinance or resolution has occurred within the jurisdiction of the local issuing authority, the local issuing authority may require that land-disturbing activity be stopped until necessary corrective action and mitigation have been taken or may require that necessary corrective action and mitigation be taken within a reasonable time.

(c) The following procedures shall apply to the issuances of stop work orders:

(1) For the first and second violations of the provisions of this chapter, the director or the local issuing authority shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the director or local issuing authority shall issue a stop work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state, the director or local issuing authority shall issue an immediate stop work order in lieu of a warning;

(2) For a third and each subsequent violation, the director or local issuing authority shall issue an immediate stop work order; and

(3) All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

(d) When a violation of this chapter in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the local issuing authority or by the director or his or her designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the local issuing authority or by the director or his or her designee. All such stop work orders

shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

§12-7-13. Injunctions

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this chapter, the rules and regulations adopted pursuant to this chapter, or any order or permit conditions in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, he or she may make application to the superior court of the county where such person resides or, if such person is a nonresident of the state, to the superior court of the county in which the violative act or practice has been or is about to be engaged in for an order enjoining such act or practice or for an order requiring compliance with this chapter, the rules and regulations adopted pursuant to this chapter, or the order or permit condition. Upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

§12-7-14. Actions to restrain imminent danger; emergency orders; duration of effectiveness of orders

(a) Notwithstanding any other provision of this chapter to the contrary, upon receipt of evidence that certain land-disturbing activities occurring in a municipality or county which is not certified pursuant to subsection (a) of Code Section 12-7-8 are presenting an imminent and substantial danger to the environment or to the health of humans, the director may bring an action as provided in Code Section 12-7-13 to restrain immediately any person causing or contributing to the danger caused by such land-disturbing activities or to take such other action as may be necessary.

(b) If it is not practicable to assure prompt protection of the environment or the health of humans solely by commencement of such a civil action, the director may issue such emergency orders as may be necessary to protect the environment or the health of humans who are or may be affected by such land-disturbing activities. Notwithstanding any other provision of this chapter, such order shall be immediately effective for a period of not more than 48 hours, unless the director brings an action under subsection (a) of this Code section before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for such period of time as may be authorized by the court pending litigation or thereafter.

§12-7-15. Civil penalty

Any person who violates any provision of this chapter, the rules and regulations adopted pursuant to this chapter, or any permit condition or limitation established pursuant to this chapter or who negligently or intentionally fails or refuses to comply with any final

or emergency order of the director issued as provided in this chapter shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this chapter, notwithstanding any provision in any city charter to the contrary, municipal courts shall be authorized to impose a penalty not to exceed \$2,500.00 for each violation.

Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this chapter under county ordinances approved under this chapter shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

§12-7-17. Exemptions

This chapter shall not apply to the following activities:

(1) Surface mining, as the same is defined in Code Section 12-4-72;

(2) Granite quarrying and land clearing for such quarrying;

(3) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;

(4) The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of

development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in subsection (b) of Code Section 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of this title. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of Code Section 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the issuing authority;

(5) Agricultural operations as defined in Code Section 1-3-3 to include those practices involving the establishment, cultivation, or harvesting of products of the field or orchard; the preparation and planting of pasture land; farm ponds; dairy operations; livestock

and poultry management practices; and the construction of farm buildings;

(6) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of subsection (b) of Code Section 12-7-6, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after the completion of such forestry practices;

(7) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(8) Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided,

further, that nothing contained in this chapter shall prevent a city or county which is a local issuing authority from regulating any such project which is not specifically exempted by paragraph (1), (2), (3), (4), (5), (6), (7), (9), or (10) of this Code section;

(9) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both,

This is an unofficial copy prepared by the Georgia Soil and Water Conservation Commission. Its sole purpose is expediency in copying and distribution. The reader should refer to the Official Code of Georgia for the official text of this statute.

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Exhibit “P”

Plaintiff's Lot Value

Valuation

2023 Values are not certified and are subject to change.

	2023	2022	2021	2020	2019
Previous Value	\$431,100	\$413,100	\$348,200	\$320,560	\$320,560
Land Value	\$90,000	\$81,000	\$63,000	\$63,000	\$36,000
+ Improvement Value	\$445,400	\$350,100	\$350,100	\$285,200	\$284,560
+ Accessory Value	\$0	\$0	\$0	\$0	\$0
= Current Value	\$535,400	\$431,100	\$413,100	\$348,200	\$320,560

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Exhibit “Q”

USGS U. S. Government Publication on
Surface Water

USGS

science for a changing world

An official website of the United States government

Here's how you know

SCIENCE

PRODUCTS

NEWS

CONNECT

ABOUT

Latest Earthquakes

WATER SCIENCE SCHOOL

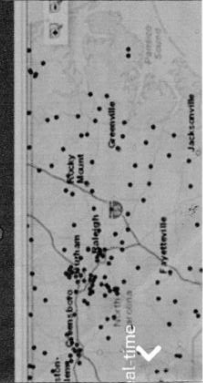
SCIENCE

Runoff: Surface and Overland Water Runoff

COMPLETED

By Water Science School

June 6, 2018



al-time

Surface Water Information by TOPIC

Learn more

When rain falls onto the landscape, it doesn't just sit there and wait to be evaporated by the sun or lapped up by the local wildlife-it begins to move (due to gravity). Some of it seeps into the ground to refresh groundwater, but most of it flows down gradient as surface runoff. Runoff is an intricate part of the natural water cycle.

. Water Science School HOME . SurfaceWater topics .

Runoff: Surface and Overland Water Runoff

When rain falls onto the earth, it just doesn't sit there, it starts moving according to the laws of gravity. A portion of the precipitation seeps into the ground to replenish Earth's groundwater. Most of it flows downhill as runoff. Runoff is extremely important in that not only does it keep rivers and lakes full of water, but it also changes the landscape by the action of erosion. Flowing water has tremendous power—it can move boulders and carve out canyons; check out the Grand Canyon!

Runoff of course occurs during storms, and much more water flows in rivers (and as runoff) during storms.

[Picture omitted]

** Key point highlighted*

Surface runoff is precipitation that runs off the landscape

[Picture omitted]

Sources/Usage: Public Domain. [Visit Media](#) to see details.

Surfaces that are not pervious, which means they do not allow water to pass through them, can include roofs of buildings, roads, driveway's, cars, sidewalks, parking lots, and more. Areas with impervious surfaces cause excessive runoff.

In our section about [water storage in the oceans](#) we describe how the oceans act as a large storehouse of water that [evaporates](#) to become [atmospheric moisture](#). The oceans are kept full by [precipitation](#) and also by runoff and discharge from rivers and [the ground](#).

A simple way to put it is: precipitation falls on the land, flows overland ([runoff](#)), and runs into rivers, which then empty into the [oceans](#). While much of the water in rivers comes directly from runoff from the land surface, they also gain and lose water to the ground.

When [rain](#) hits saturated or [impervious ground](#), it begins to flow overland downhill. It is easy to see if it flows down your driveway to the curb and into a storm sewer, [but it is harder to notice it flowing overland in a natural setting](#). During a heavy rain you might notice small rivulets of water flowing downhill. Water will flow along channels as it moves into larger [creeks, streams, and rivers](#). Surface runoff, especially when it

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runs across surfaces like roads, can pick up and then deposit particulate matter and sediment into the river (which isn't good for water quality).

** Key point highlighted*

Urban development and flooding

Urbanization can have a great effect on surface runoff and other hydrologic processes. Imagine it this way: in a natural environment, think of the land in the watershed alongside a stream as a sponge (more precisely, as layers of sponges of different porosities, or absorption capacities) sloping uphill away from the stream. When it rains, some water is absorbed into the stream (runoff). Let's do a thought experiment to understand the impacts of urban development on surface runoff. When a storm lasting one hour occurs, one-half of the rainfall enters the stream, the rest is absorbed by the sponges. Now, gravity is still at play here, so the water in the sponges will start moving in a general downward direction with most of it seeping out and into the streambanks during the next day or two.

** Key point highlighted*

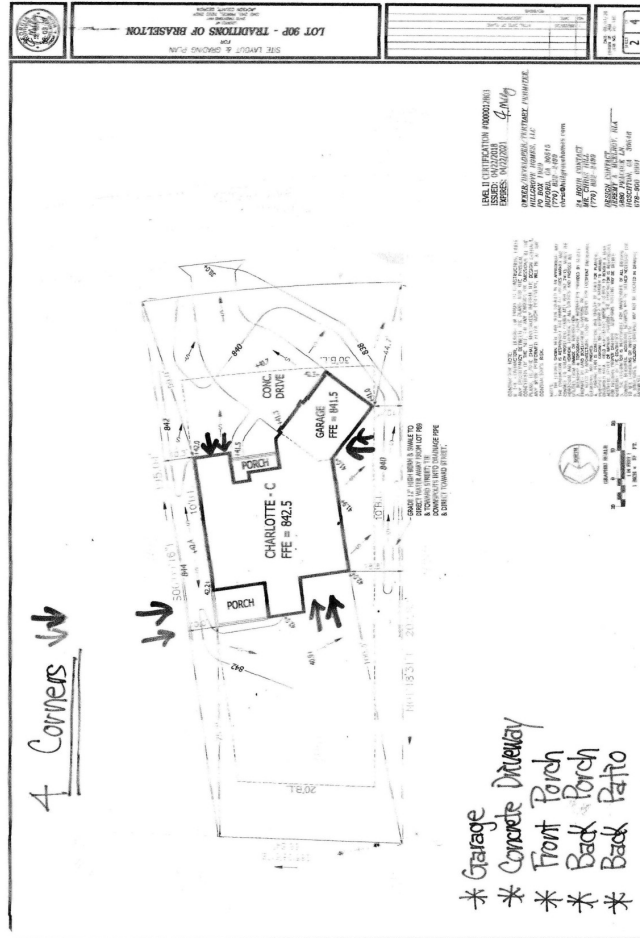
App-244

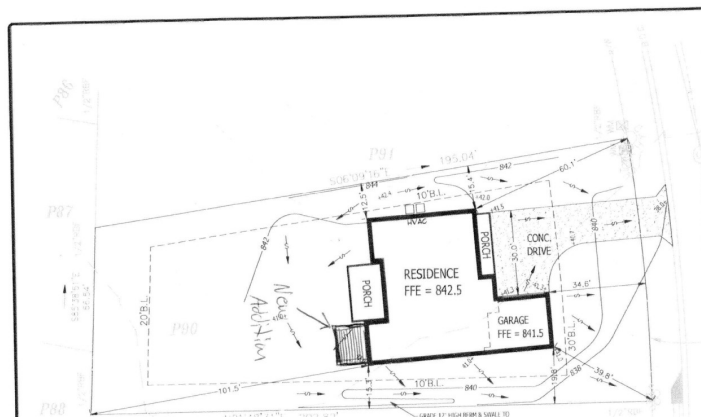
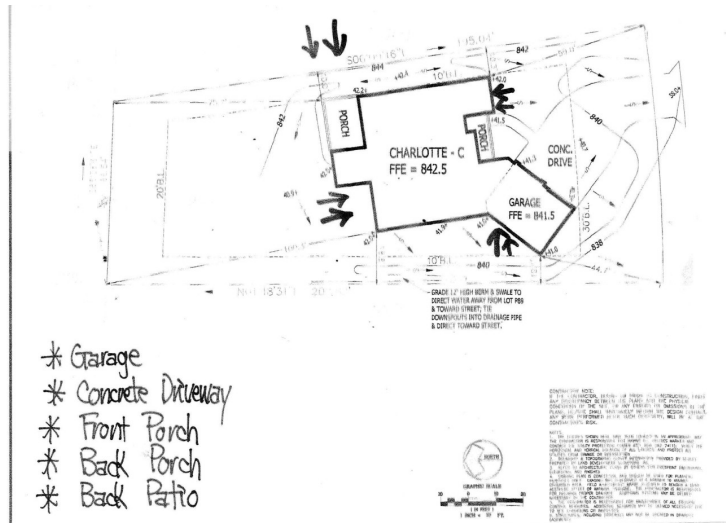
Exhibit “R”

Defendant Approved and Unapproved Site Plan

[illegible]

State Approved Plan





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Exhibit “S”

GSWCC Tertiary Guidance

Guidance Document for the Tertiary Permittee

In recent years, many common development projects (subdivisions) have been started and never completed. Many times the owner was unable to sell lots or ran out of financing to complete the project. Even though construction had ceased, the project's owner was still responsible for the requirements of the NPDES permit. In 2008, the NPDES permits were revised and provisions were added to GAR 100003 to address this issue.

The NPDES Permit GAR 100003 allows the Primary Permittee to file a Notice of Termination (NOT) for a common development when all of the following conditions have been met:

- The entire common development has undergone final stabilization.
- All storm water discharges associated with construction activity authorized by this permit (GAR 100003) have ceased
- Construction has ceased for a minimum of 90 days.

It is important for individuals to understand the applicable laws and requirements associated with land disturbing activities, especially when purchasing and developing lot(s) within an existing common development.

Please note:

- Tertiary Permittees do not pay the State General Permit fees, those fees have already been paid by the Primary Permittee.

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- The inspection requirements of the permit are applicable to all Tertiary Permittees (including lots that are less than 1 acre), however sampling requirements are only applicable to lot(s) with a planned disturbance equal to or greater than 5 acres.
 - The remaining lots within a common development permitted as a Tertiary Permittee would not afford the exemptions listed in O.C.G.A. 12-7-17(4) or O.C.G.A. 12-7-17(8) and the Erosion, Sedimentation and Pollution Control (ES&PC) Plan will require a technical review by the appropriate Soil and Water Conservation District.
Exemptions - Constructions of a single family residences, when such constriction disturbs less than one acre and is not part of larger common plan of development or sale with a planned disturbance of equal to or greater than one acre (O.C.G.A. 12-7-17(4) **or** any project less than one acre of disturbed area; provided however, that this exemption shall not apply to land disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than once acre or within 200 feet of the bank of any state waters O.C.G.A. 12-7-17(8).
- It is important to understand that an individual will become a Tertiary Permittee, if the Primary Permittee has filed an NOT or the Primary Permittee cannot be determined. To verify an NOT has been filed, please contact the local EPD District Office for the County in which the project is located. For the list of contact numbers visit www.gaepd.org, click

EPD Offices. If the Primary Permittee cannot be determined, then the owner of the individual lot(s) will be a Tertiary Permittee.

Applicable Laws and Permits

Georgia Erosion and Sedimentation Act of 1975 (GESA)

- State law, enforced by the Local Issuing Authority (LIA) (City or County)
- Requires a Land Disturbing Activity (LDA) Permit – issued only by an LIA
- Requires certified individuals to be on site while land disturbing activity is taking place
- Requires an Erosion, Sedimentation and Pollution Control (ES&PC) Plan, developed by a Certified Design Professional
- ES&PC Plans must be submitted to LIA along with LDA permit application. The LIA will forward the Plan to the Soil and Water Conservation District (SWCD) for review and approval. Once
- The design professional's report of the results of the inspection conducted in accordance with the permit.
- A copy of all monitoring information" results and reports required by the permit (if applicable)
- A copy of all inspection reports in accordance with the permit
- A copy of all violation summaries and violation summary reports generated in accordance with permit

- Daily rainfall information collected in accordance with the permit

D. Filing the Notice of Termination (NOT)

Once the project has been completed, the Tertiary Permittee is required to notify EPD by submitting a valid NOT via certified receipt mail to the local EPD District Office. A copy of the NOT should be submitted to the LIA, if there is one. In order to file an NOT the following conditions have to be met:

- All planned construction activities have ceased and final stabilization of the site has been implemented.
- All storm water discharges associated with the construction activities has ceased.
- The site is in compliance with the permit.

Definitions

1. Common Development means a contiguous area where multiple, separate, and distinct construction activities will be taking place at different times on different schedules under one plan development.
2. Final Stabilization means that all soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or equivalent

permanent stabilization measures (such as the use of rip rap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a seeding of target crop perennials appropriate for the region. Final stabilization applies to each phase of construction.

3. Primary Permittee means the Owner or the Operator or both of a tract of land for a construction project subject to this permit.
4. Secondary Permittee means an owner, individual builder, utility company, or utility contractor that conducts a construction activity within a common development.
5. Tertiary Permittee means either the Owner or Operator of a remaining lot(s) within a common development conducting a construction activity where the primary permittee and all secondary permittees have submitted a Notice of Termination in accordance with Part VI.A.2. of this permit (excluding utility companies and/or utility contractors working under a Blanket NOI).

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Exhibit “T”

EPD Alex and GSWCC Ben Responses to NOT

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From: Ruzowicz, Ben<ben.ruzowicz@gaswcc.ga.gov>
Sent: Thursday, January 19, 2023 5:17 PM
To: [REDACTED]
Subject: RE: Tertiary Permit

A Co can only be issued if a NOT was filed. Once
the CO is filed it is a civil issue.

[REDACTED]

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Questions Concerning 2478 Traditions Way

Hopersberger, Alex <Alex.Hopersberger@dnr.ga.gov>
Tue 2/27/2024 7:41 AM
To: kau88888@hotmail.com <kau88888@hotmail.com>

Dear Ms. Yeung,

As per our conversation, at 10:14 a.m. on February 27th I was unable to find a Notice of Termination filed on our GEOS website for 2478 traditions way. Please be aware however, that if the owners of this NOI submitted an NOT to GEOS it can take the system two to three days to update before it will show up. You should be able to check yourself using the link provided below and entering the address in the Site Address portion of the search bar. Please let me know if you have any further questions I can help with.

[GEOS - Public \(georgia.gov\)](https://georgia.gov)

Thanks!

Alexander Hopersberger
Environmental Compliance Specialist III
GAEPD – Northeast District Office
Cell #: 470-757-4486
Email: Alex.Hopersberger@dnr.ga.gov



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RE: Questions Concerning 2478 Traditions Way
Hopersberger, Alex <Alex.Hopersberger@dnr.ga.gov>
Mon 3/4/2024 5:15 AM
To: KEVIN YEUNG <kau88888@hotmail.com>

Good Morning,

Yes, a notice of termination should not have been issued, without final stabilization taking place and an inspection by the county or LIA to make sure that the site was stabilized. Once sold, the new owner then takes responsibility for the property making it a civil matter, from what I've been told.

From: KEVIN YEUNG <kau88888@hotmail.com>
Sent: Saturday, March 2, 2024 3:04 PM
To: Hopersberger, Alex <Alex.Hopersberger@dnr.ga.gov>
Subject: Re: Questions Concerning 2478 Traditions Way

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Alex,

Thank you for looking into this, I do appreciate your time.

Just a quick question, in a normal course Certificate of Occupancy should not be issued without Notice of Termination on record correct?

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Once CO issued, it all become civil matter???

Have a good weekend!

Kevin

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Exhibit “U”

Defendant’s Patio Construction without Permit

VIOLATION

Case #: 2022-218

Date: 9/27/22 Time: 3:47

Address: 2478 Traditions Way

Nature of Complaint: Article 20
Sec. 2021 - no permit for
building

 **JACKSON COUNTY
GOVERNMENT**

 **JACKSON COUNTY GOVERNMENT**
87 Atlanta Street
Jackson, Georgia 30246

ALEX HOWARD
Code Enforcement Officer

PHONE: 404-333-3333
FAX: 404-333-3333
EMAIL: alex.howard@jacksoncountypa.gov
WEBSITE: www.jacksoncountypa.gov

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Exhibit “V”

GA Governor Brian Kemp Executive Order Plumbing
Requirement for Swimming Pool (Hall, Barrow,
Bank, Jackson Counties)

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Construction Codes

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building professionals and citizens alike. The following is a general overview of Georgia's Construction Code Program, including enforcement, local amendments, current codes, and whom to call if you have questions regarding construction codes and related issues in Georgia.

In General

The Uniform Codes Act is codified at chapter 2 of title 8 of The Official Code of Georgia Annotated. O. C. G. A. Section 8-2-20(9)(B). Below is a list of the current mandatory and permissive state codes. Each of these separate codes typically consist of a base code (e. g. The International Building Code as published by the International Code Council) and a set of Georgia amendments to the base code. The mandatory codes are applicable to all construction whether or not they are locally enforced and the permissive codes are only applicable if a local government chooses to adopt and enforce one or more of these codes. These codes are as follows:

Mandatory Codes:

- **International Building Code**
- **International Residential Code for One- and Two-Family Dwellings**
- **International Fire Code**
- **International Plumbing Code**
- **International Mechanical Code**
- **International Fuel Gas Code**
- **National Electrical Code**
- **International Energy Conservation Code**

- **International Swimming Pool and Spa Code**
 - **For information and questions regarding the Life Safety Code (NFPA 101), IFC Georgia Amendments or the Georgia Accessibility Code please [contact the State](#)**
-
- **Disaster Resilient Building Code IBC Appendix**
 - **Disaster Resilient Building Code IRC Appendix**
 - **International Property Maintenance Code**
 - **International Existing Building Code**
 - **National Green Building Standard**

As noted above, the building, one and two family dwelling residential, fire, plumbing, mechanical, gas, electrical, energy, and swimming pool codes are mandatory codes, meaning that under Georgia law, any structure built in Georgia must comply with these codes, whether or not the local government chooses to locally enforce these codes.

In addition, since Georgia law gives the enumerated codes statewide applicability, it is not required that local governments have to adopt the mandatory codes. Local governments must, however, adopt administrative procedures in order to enforce them (O.C.G.A. Section 8-2-25(a)). However, the local government can choose which of the mandatory codes it wishes to locally enforce.

The remaining codes are referred to as permissive codes. Unlike the mandatory codes, in order for a local government to enforce one or more of these permissive codes, that code or codes must be adopted, either by ordinance or resolution, by the local jurisdiction. A copy of the ordinance or resolution adopted must be forwarded to DCA (O. C. G. A. Section 8-2-25 (b)).

Administration and Enforcement of the State Minimum Standard Codes

In order to properly administer and enforce the state minimum standard codes, local governments must adopt reasonable administrative provisions. The power to adopt these administrative procedures is set forth in O. C. G. A. Section 8-2-26(a)(1). These provisions should include procedural requirements for the enforcement of the codes, provisions for

**SWIMMING POOL (RESIDENTIAL) BUILDING
PERMIT**

REQUIREMENTS

City of Auburn
1369 4th Ave.
Auburn, GA 30011

The purpose of this document is to provide guidance in obtaining a building permit for a Residential Swimming Pool. A residential swimming pool is defined as “any structure intended for noncommercial swimming or recreational bathing that contains water over 24 inches deep, including in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas.

All swimming pools, spas, and associated improvements must adhere to the standards set forth in the 2012 International Swimming Pool and Spa Code w/ Georgia Amendments and the 2012 International Residential Code.

Step 1: Obtain approval from Barrow County Environmental Health.

If home is served by a private septic tank system, you must receive approval from the Barrow Environmental Health Services office before a permit can be issued.

Step 2: Submit swimming pool site plan and Auburn building permit application.

Site plan must show property boundaries and distances from proposed structures, pool and pool decking location, fence/barrier location,

access gate location, accessory pool structures, house footprint, easements (if applicable), and stream buffers (if applicable). Pools must be in the rear yard and set back from property lines according to city ordinances.

- **Fence/Barrier Requirement:** Swimming pools must be enclosed within a 4-foot high fence or barrier. Openings in any barrier shall not allow passage of a 4-inch diameter sphere. All access gates to the pool shall be self-closing and self-latching. Walls of a dwelling may serve as part of the barrier if one of the following is met: 1) the pool is equipped with a powered safety cover; 2) All doors with direct access to pool are equipped with an alarm; 3) other means such as self-closing doors and self-latching devices.
- If the walls of an above-ground pool are used as a barrier or where the barrier is mounted on top of the pool structure and means of access is a ladder or steps, then: 1) the ladder or steps shall be capable of being locked, secured, or removed to prevent access, or: 2) the ladder or steps shall be surrounded by a barrier.

Step 3: Site plan and application review

Swimming pool site plan and application will be reviewed and permit will be issued upon payment of permit fee.

- **Swimming Pool fee:** \$6.50 per \$1000 of estimated construction cost (minimum fee of \$120)

- **Additional Documents: Sub-Contractor certifications**
(plumbing, electrical, mechanical) required.

Step 4: Inspections:

Inspections will typically include electrical, plumbing, and mechanical(heating/gas line) if required. Inspections must be successfully passed and with required barriers in place prior to filling the pool with water and occupancy. Inspections are requested by calling **(770) 963-4002 ext. 229**.

- Swimming pools under construction and filled with water must have a temporary fence until permanent fence is installed.

Barrow Environmental Health Services
10 W. Williams St., Winder, Ga. 30680
(770) 307-3502

City of Auburn
1369 4th Avenue
Auburn, Ga. 30011
(770) 963-4002

Building Inspections Forms & Applications

To start the application for a building permit you must begin at Planning and Development unless you are attaching to an existing permit.

-For more information about how to obtain a building permit [click here](#).

*Please use the permit portal, **Accela**, to either apply for permits or upload supporting documents for your permit. This will ensure that Hall County will receive documents sent and applied to the correct permit file. We will need the following documents:*

- A completed sub-contractor affidavit
- Copies of your business and state licenses
- The appropriate permit fee page filled out with what the job entails.

Information Forms Only

- [Inspection Request Line Brochure](#)
- [Current Codes \(PDF\)](#)
- [General Information - English \(PDF\)](#)
- [Información General - En Español \(PDF\)](#)

Single Family Residential Only

- [Building Permit Requirements and Application](#)
- [New Construction Inspection Checklist \(PDF\)](#)
- [Sub-Contractor Affidavit \(PDF\)](#)
- [Residential Grading Requirements](#)

App-271

- [Authorized Agent Form](#)

Affidavit Requirements

These forms must be turned in before final inspection:

- [30-Day Gas Affidavit \(PDF\)](#)
- [30-Day Power Affidavit \(PDF\)](#)
- [Energy Affidavit \(PDF\)](#)
- [Insulation Affidavit \(PDF\)](#)
- [New Construction Homeowner Affidavit](#)
- [Existing Structure Homeowner Affidavit](#)
- [CMB \(Electrical/Plumbing/Mechanical\) Affidavit](#)

Electrical, Mechanical & Plumbing Permits

These permits and permit fees are not to be used for new single family residences:

- [Electrical Permit Fees \(PDF\)](#)
- [Mechanical Permit Fees \(PDF\)](#)
- [Plumbing Permit Fees \(PDF\)](#)

Swimming Pool Permits

Electrical, Mechanical and Plumbing Permits to be acquired separately under the master permit.

- [Swimming Pool Contractor Form](#)

Commercial Permits

- [Commercial Permit Information \(PDF\)](#)
- [Plan Review Application \(PDF\)](#)

App-272

- Special Inspections and Testing Agreement (PDF)
- Statement of Special Inspections (PDF)

Manufactured Homes

- Manufactured Home Requirements

Inspection Order According to Structure Type

Residential Single Family on Slab	Residential Acces- sory/Sheds/Barns
1. Site/Setback/T-pole 2. Under slab plumbing 3. Footing/Slab cover 4. Framing/Sheathing 5. House Wrap/Mois- ture Barrier 6. Rough MEPs 7. Insulation/Air seal 8. Permanent Power/Meter Release 9. Finals/Certificate of Occupancy	1. Site/Setbacks/T-pole 2. Footings/Slab Cover 3. Under Slab Plumb- ing (if applicable) 4. Framing/Rough MEPs (if applicable) 5. Permanent Power (if applicable) 6. Finals/Certificate of Completion
Residential Single Family on Base- ment	Pole Barn
1. Site/Setbacks/T-pole 2. Footings 3. Foundation Wall 4. Under Slab Plumb- ing 5. Slab Cover 6. Framing/Sheathing 7. House Wrap/Mois- ture Barrier 8. Rough MEPs 9. Insulation/Air Seal	1. Site/Setbacks/T- pole/Footings Slab Cover (if applicable) 3. Frame 4. Rough Electri- cal/Power (if applica- ble) 5. Final/Certificate of Completion
	Swimming Pool (in ground)

10. Permanent Power/Meter Release	1. Site/Setbacks/Basket
11. Finals/Certificate of Occupancy	2. Electrical Bond/Plumbing
	3. Deck Bond
	4. Final/Certificate of Completion
Residential Single Family on Crawl Space	Swimming Pool (above ground)
1. Site/Setbacks/T-pole	1. Site/Setbacks/Set up/Pump/Bonding
2. Footings	2. Final/Certificate of Completion
3. Framing/Sheathing	
4. House Wrap/Moisture Barrier	
5. Rough MEPs	
6. Insulation/Air Seal	Chicken Houses
7. Permanent Power/Meter Release	1. Site/Setbacks/Footings
8. Finals/Certificate of Occupancy	2. Framing
	3. Rough MEPs
Manufactured Home	4. Permanent Power/Meter Release
	5. Final/Certificate of Completion
1. Site/Setbacks/Footings	One Inspection Only
2. Setup/Tie-downs	
3. Permanent Power/Meter Release	
4. Final/Certificate of Occupancy	• Electrical Service Change
	• Wall Mounted Signs
	• Cell Towers

App-275

- Demolition/Final
Stablization
- Permanent Power
Poles
- HVAC Unit Change

** Inspection Order*

App-276

Banks COVID-19 and Influenza

BANKS COUNTY

Georgia

From the foothills to the crossroads...Simply the best!

Search

Building Inspection FAQs

[Show All Answers](#) [Hide All Answers](#)

I've purchased my land, how do I get started building my new home?

When do I get a 911 address?

Am I ready for an inspection?

Can I act as my own General Contractor/Sub-Contractor?

Do I need a permit to build a swimming pool?

Yes. Once a permit is issued, inspections are needed for plumbing pressure and electrical bonding. Also, a final inspection of the pool, fence, and locking gate will be required. Download the [Swimming Pool Permit Application](#).

How should I post my address?

What are the residential property setbacks?

What if I have questions that aren't answered here?

App-277

Exhibit “W”

Defendant admission to Grading

requires the responding party to marshal all of its available proof or the proof the party intends to offer at trial. To the degree that it is helpful and responsive to this Plaintiffs Request, Defendant has tendered to Plaintiff all of its available evidence not otherwise already known to, or in the possession of the Plaintiff, at this time.

REOUEST NO.4

All documents upon when any expert witness you intend to call attrail reviewed to form any opinions.

RESPONSE: Plaintiff is aware that Defendant has not identified any witnesses that Defendant intends to produce at trial at this time. Defendant objects to this Plaintiff s Request for Production of Documents as it calls for information the is in the possession of known to, or otherwise equally available to the Plaintiff. Defendant further objects as this Plaintiff s Request seeks documents and information that will not be known until the conclusion of further discovery, but Defendant is aware of Defendant's obligation to timely supplement this response and agrees to do so accordingly. Defendant further objects to this Plaintiff s Request because it requires the responding party to marshal all of its available proof or the proof the party intends to offer at trial. To the degree that it is helpful and responsive to this Plaintiff's Request, Defendant has tendered to Plaintiff all of its available evidence not otherwise already known to, or in the possession of the Plaintiff, at this time.

III. ADMISSIONS

ADMISSION NO.1

Admit that Defendant's husband Mr. Humphrey has completed the grading of Defendant's site after swimming pool construction in August 2022.

RESPONSE: Admit

ADMISSION NO. 2

Admit that Defendant's husband Andrew Humphrey has construction knowledge to perform grading of Defendant's site after pool construction and prepared the site of sod installation.

RESPONSE: Admit

ADMISSION NO. 3

Admit or deny that Defendant's Swimming Pool Contractor Sandals Luxury Pool Inc has added "Two NEW downspouts and reran downspouts" at Defendant's site.

RESPONSE: Deny

ADMISSION NO. 4

Admit that a final payment was made to Sandals Luxury Pool Inc. on 08123122 prior to the completion of the ^{job} ending in October 2022 and the issuance of Certificate of Occupancy in December 2022.

RESPONSE: Deny

App-280

Exhibit “X”

Plaintiff's Damages from 20221 until Present Time

App-281



App-282

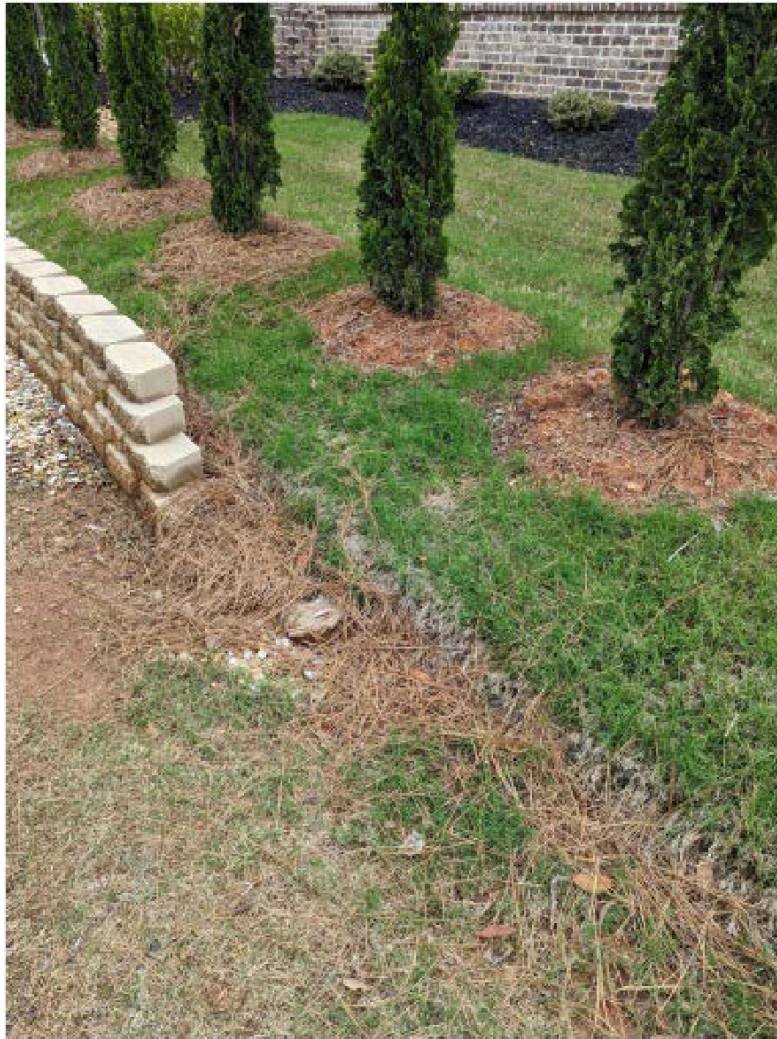


App-283



Jun 21, 2023 6:34:47 PM

App-284



App-285



App-286



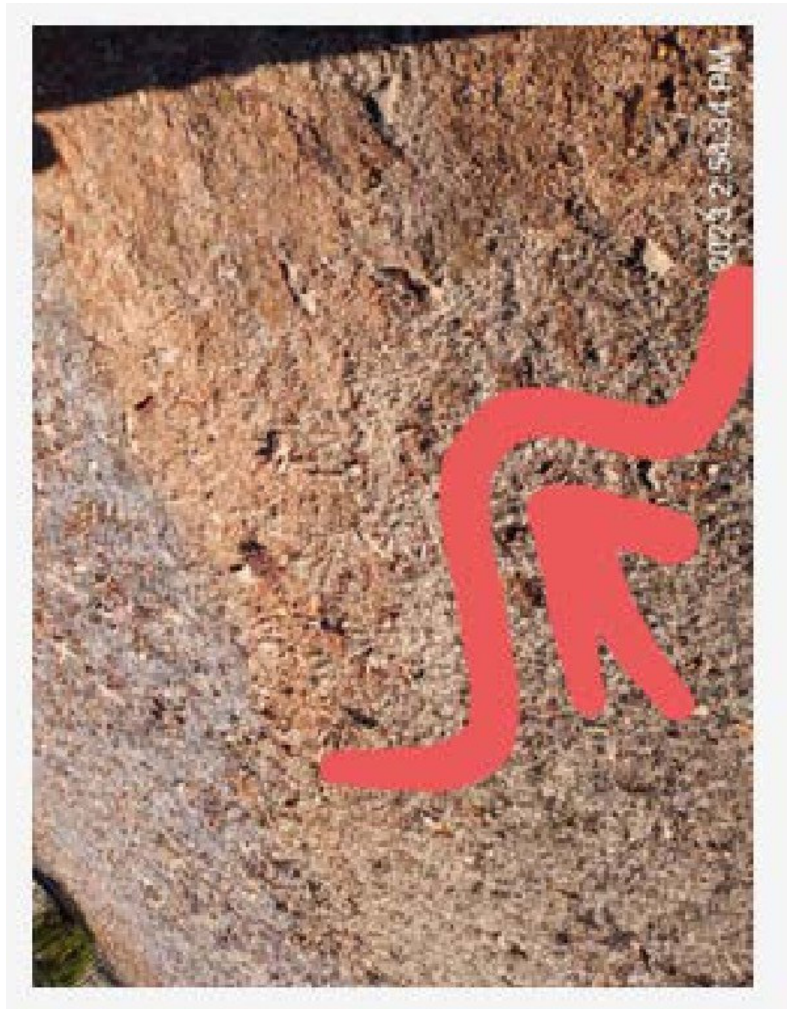
App-287



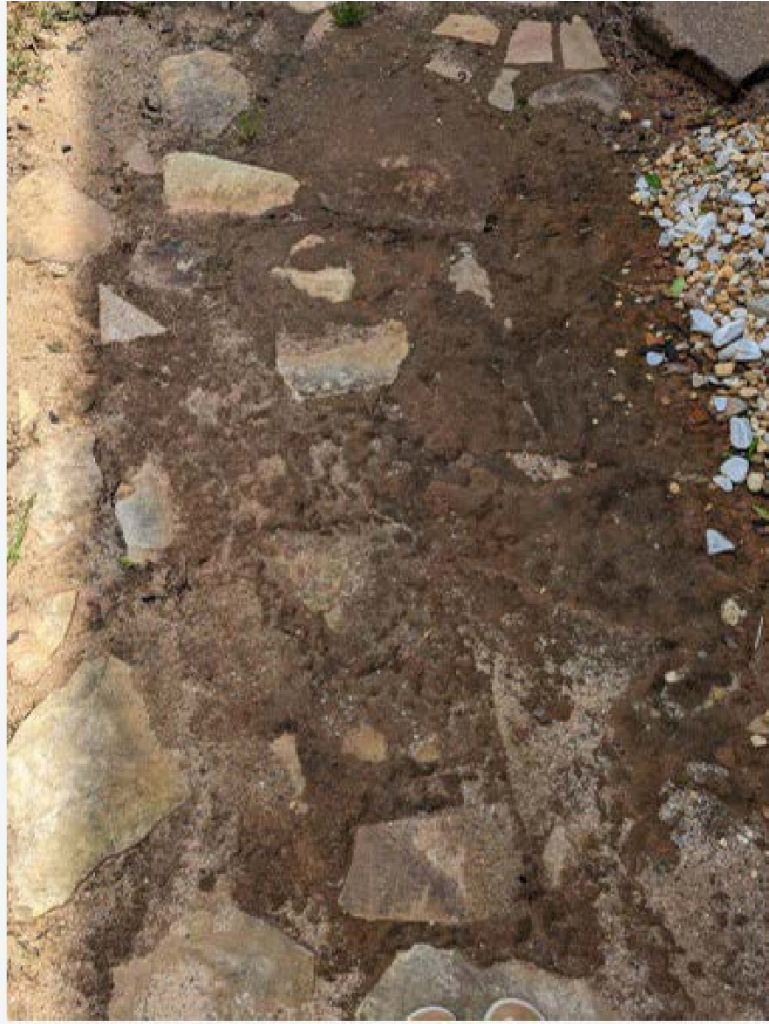
App-288



App-289



App-290



App-291

Drain Installation

Labor

\$500



Payment to Jose

\$500

App-292



App-293

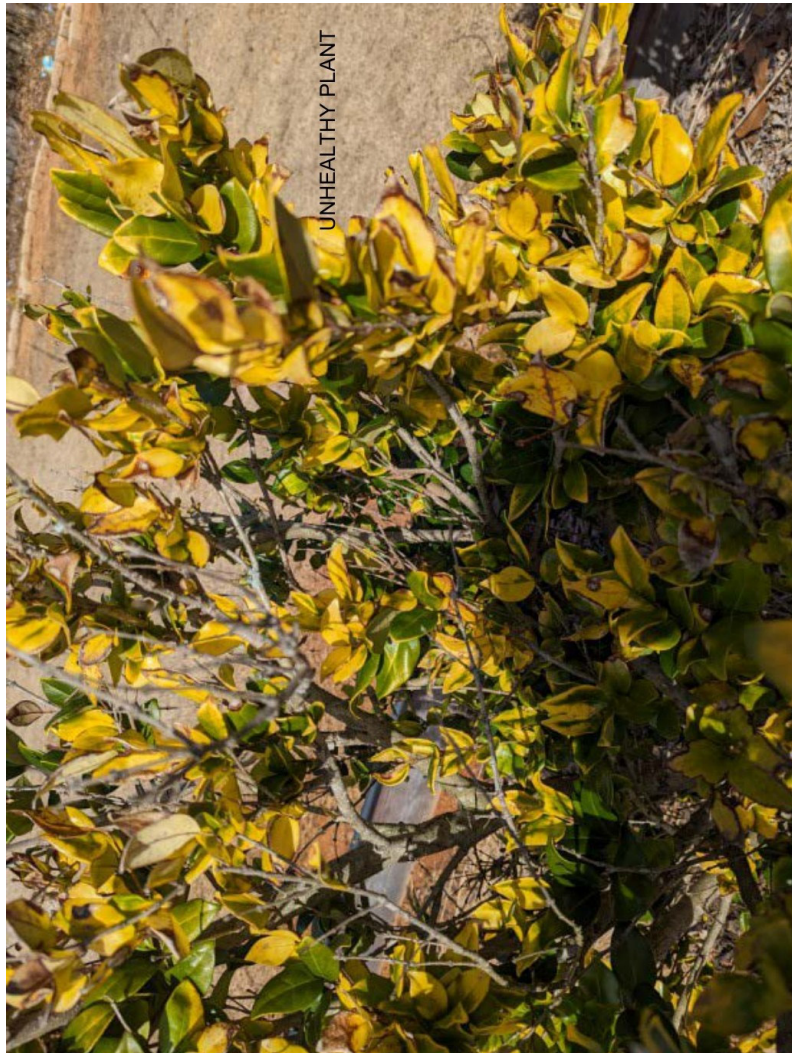
Exhibit “Y”

Plaintiff’s Healthy Plant (Far away from Defendant’s
Land) and Unhealthy plant (Contaminated area next
to Defendant)

App-294



App-295



App-296

Exhibit “Z”

Underground Pipes Concealment by Defendant

App-297

*****[c]tion Number: 026128-2022

Inspection Type: Electrical Bond

Inspection Status: Passed

Permit Number: BLDR – 22- 2503

Inspector Name: Inspector 1

Main Address: 2478 TRADITIONS WAY TRADI-
TIONS JEFFERSON,GA

Requested Date: 08/10/2022

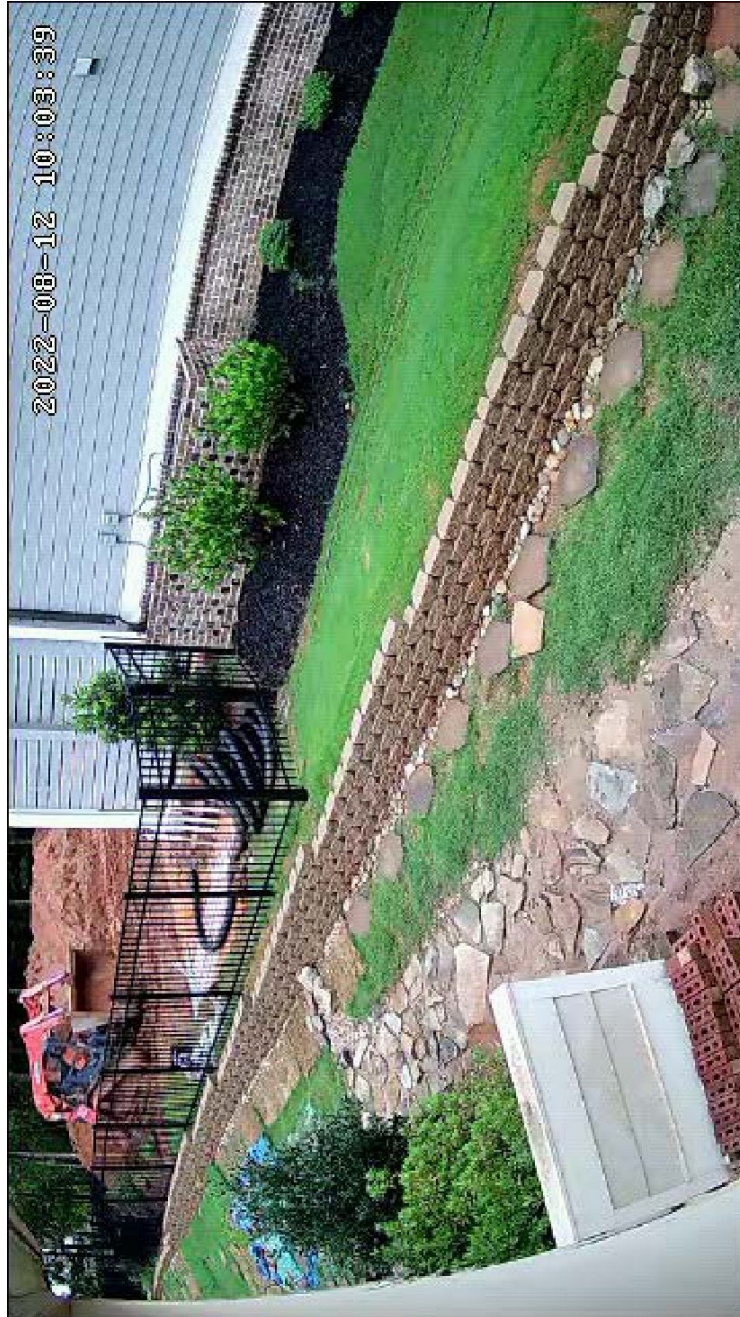
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Scheduled Date: 08/10/2022

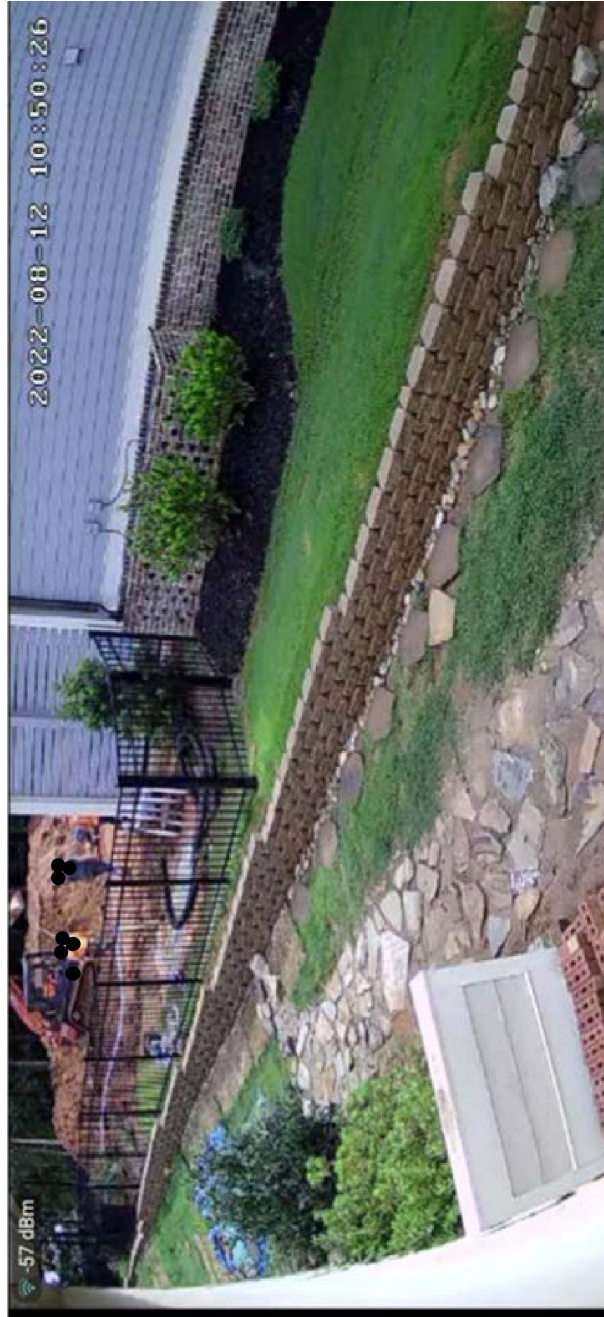
Completed Date: 08/10/2022

Completed Time: 12:14 PM

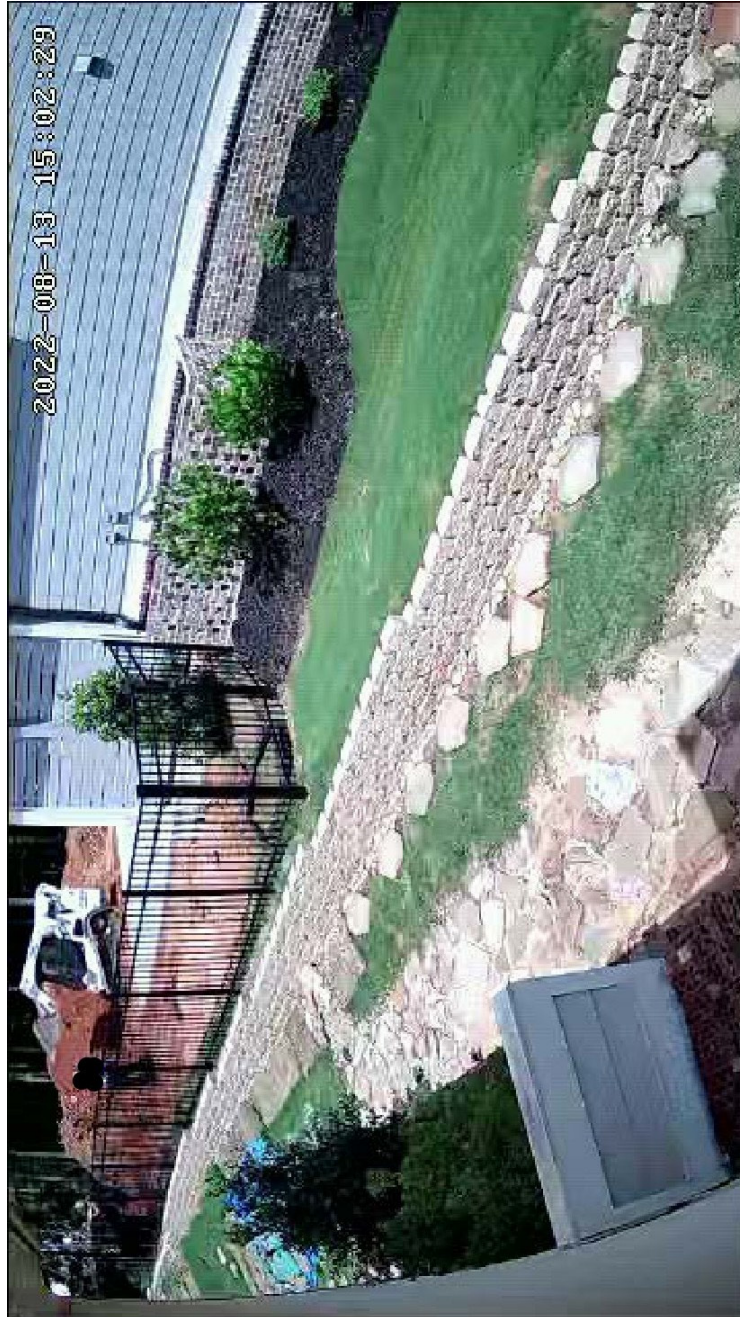
*****klist Item	De- scrip- tion	Passed	Comments	Order
*****ments		Yes	#8 copper, contin- uous bond perim- eter to equipment All bonding points secure BJ 706.362.5892	1



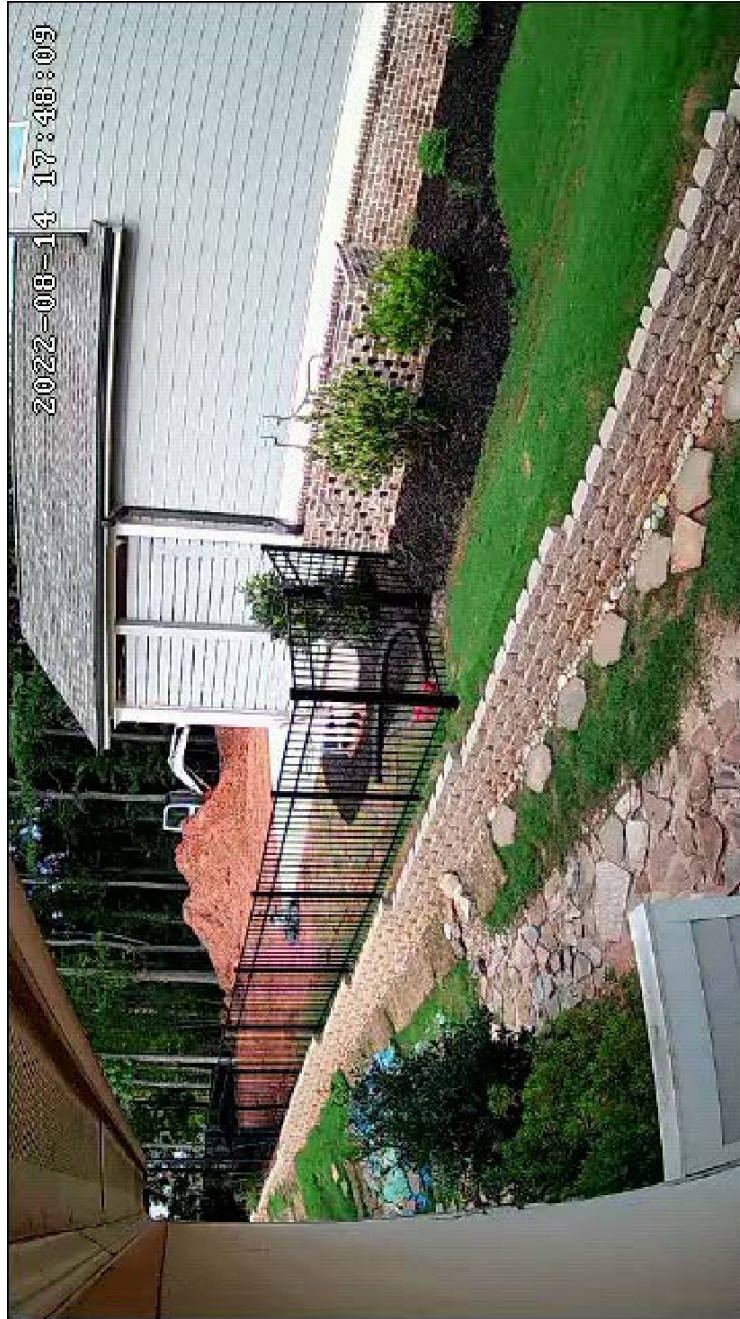
App-299



App-300



App-301



App-302

Appendix G

[Filed: May 17, 2024]

**IN THE SUPERIOR COURT OF JACKSON
COUNTY
STATE OF GEORGIA**

KEVIN YEUNG,	}	
Plaintiff,	}	
v.	}	Civil Action File No.
	}	22CV0988
SHANNON HUMPHREY,	}	
Defendant.	}	

**STATEMENT OF MATERIAL FACTS TO
WHICH THERE EXISTS NO GENUINE
ISSUE AND STATEMENT OF THEORY OF
RECOVERY**

COMES NOW, Defendant, Shannon Humphrey (hereinafter referred to as “Defendant” and/or “Mrs. Humphrey” as context may require) (“Plaintiff” and “Defendant” in the above-styled action collectively referred to as the “Parties”) in the above-styled action, by and through her undersigned counsel of record, and files this, her Defendant’s Statement of Material Facts to Which There Exists No Genuine Issue and Statement of Theory of Recovery, and respectfully shows this Honorable Court as follows:

1.

The Plaintiff, Kevin Yeung has filed a Complaint for damages (§ 16. of Plaintiff's Complaint) and Injunctive relief (see "WHEREFORE" of Plaintiff's Complaint, page 4, and introductory paragraph of Plaintiff's Motion) (See also, Plaintiff's Motion, generally) against Defendant, Shannon Humphrey. Plaintiff's Complaint alleges entitlement to relief due to what appears to be a theory of negligence *per se* and continuing nuisance.

2.

There is no evidence of record demonstrating that excess surface water runoff from Defendant's property is actually crossing the shared boundary line with the Plaintiff onto the Plaintiff's property as alleged.

3.

Plaintiff has no evidence that either the Defendant and/or Defendant's Pool have caused the presence of chloride in Plaintiff's soil samples taken from Plaintiff's yard. He is merely assuming. (Dep. Trans. Of Plaintiff, Kevin Yeung, pg. 200, lns. 3-25, pg. 201, lns. 1-3, pg. 202, lns. 2-5).¹

4.

Plaintiff has no evidence that his walkway has been damaged by any excess surface water runoff leaving the Defendant's property and crossing over the shared boundary line between Plaintiff and Defendant onto

¹ Please note that copies of these and other Exhibits have been previously filed with this Court in support of Defendant's Responsive pleadings to Plaintiff's prior Motion for Summary Judgment.

the Plaintiff's property. He is again merely assuming. (Dep. Trans. of Kevin Yeung, pg. 191, lns. 1-5).

5.

Plaintiff has taken no measurements and performed no calculations concerning the amount of, or the velocity of, the alleged increase in water flow from Defendant's property onto the Plaintiff's property. (Original & Copy Transcript of a Motion Hearing on 1/30/24 (Saved on Clerks Drive) Trans. pg. 19, lns. 24 & 25, pg. 20, lns. 1-8, and Dep. Trans. of Kevin Yeung, pg. 205, lns. 12-25, pg. 207, lns. 1-6). Plaintiff has never entered upon Defendant's property to perform any testing for water flow or depths on Defendant's property. (Dep. Trans. of Kevin Yeung, pg. 107, lns. 6-9).

6.

Although Plaintiff insists that dead and dying grasses and shrubs are circumstantial evidence of the alleged excess surface water runoff from Defendant's property onto the Plaintiff's property, Plaintiff does not know why any grasses or shrubs may be dead and dying on Plaintiff's side of the property line, he is merely assuming it is because of the Defendant. (Dep. Trans. of Kevin Yeung, pg. 163, lns. 22-25, pg. 164, lns. 1-3). Plaintiff admits that his dead or dying grass could be caused by any number of reasons. (Dep. Trans. of Kevin Yeung, pg. 164, lns. 4-6).

7.

Defendants hired a reputable pool contractor, Sandals Luxury Pools, to build them a swimming pool in Defendant's back yard at 2478 Traditions Way,

Jefferson, Georgia 30549. (See, Plaintiff's Exhibit, "B" submitted in support of Plaintiff's Motion for Summary Judgment, Pool Contract).

8.

Sandals Luxury Pools applied for and received a permit to construct the Defendant's swimming pool at the Defendant's home at 2478 Traditions Way, Jefferson, Georgia 30549. (Defendant's Exhibit, "C" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, Jackson County Code Enforcement, page 4, ¶ 8., Defendant's Exhibit, "D", submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, Jackson County Building Inspector with Bureau Veritas who inspected the Humphrey pool, page 3, ¶ 5.)

9.

Defendant's pool received a certificate of completion from the chief building official in Jackson County, Georgia at the time, Mr. Hal Chitwood indicating that the Defendant's pool was complete and that it passed all requisite inspections and has complied with minimum standards and various ordinances adopted by the State of Georgia and Jackson County regulating building construction or use. (Defendant's Exhibit, "E" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Certificate of Completion, & Defendant's Exhibit, "D", submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, Jackson County Building Inspector with Bureau

Veritas who inspected the Humphrey pool, pages 3 & 4, ¶ 6.).

10.

Not once in any visit to the Yeung and Humphrey properties or during any inspections by Code Enforcement or the Building Inspector did either see any evidence whatsoever of a violation, or of any excess runoff and erosion. (Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, Jackson County Code Enforcement, page 10, ¶20., page 13, ¶ 26., and Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, Jackson County Building Inspector with Bureau Veritas, page 10, ¶ 21.)

11.

A land-disturbance permit was not required for the Humphrey pool project. (Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, pages 12 & 13, ¶12, and Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, page 6, ¶12, & pages 8 & 9, ¶19).

12.

Regarding plumbing inspection and permit matters in Plaintiff's Complaint, see Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, page 4, ¶ 8, "A plumbing inspection is not a

requirement for completion of the pool building permit'. Nonetheless, the plumbing work associated directly with the Defendant's pool, and with the drainage system Plaintiff complains of involving French drains, downspouts, and the Defendant's pool pump were inspected by Code Enforcement and the Building Inspector assigned to the Humphrey pool construction permit. *See*, Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, page 4, ¶7, page 5, ¶ 8-10, page 6, ¶10 (cont.), pages 7 &8, ¶16, page 8, ¶17 & ¶19). Also, Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, page 7, ¶¶ 13-14, page 8, ¶¶15-17, page 9 ¶17 (cont)).

13.

Plaintiff has never entered upon the Defendant's property either before, or after the filing of Plaintiff's Complaint to inspect Defendant's property in any effort to confirm the allegations in Plaintiff's Complaint. (Dep. Trans. of Kevin Yeung, pg. 106, lns. 2-16, pg. 115, lns. 5-9—Court may take note of reporter's "(sic)" notation as "Plaintiff's property was intended to mean, "Defendant's property" in the deposition).

14.

Plaintiff alleges the non-existence of a proper swale on Defendant's property to accommodate surface water runoff, and that a pop-up drain emitter on Defendant's property is too close to Plaintiff's property line in violation of a setback, but Plaintiff has no measurements of any heights, widths, or depths of any soil or grasses on the Humphrey property and Plaintiff never

hired anyone to do so. (Dep. Trans. of Kevin Yeung, pg. 106, lns. 13-23).

15.

There is no overflow of water along the side of the Defendant's property that is causing areas of standing water or sedimentation and erosion onto the Plaintiff's property even though the Plaintiff's property is downhill. (Defendant's Exhibit, "A" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Guy Abernathy, Professional Civil Engineer, pgs. 4 & 5, ¶7).

16.

There is no legitimate flood risk to the Plaintiff's property from surface water runoff from the Defendant's property onto the Plaintiff's property, even in a once-in-a-century storm event. (Defendant's Exhibit, "A" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Guy Abernathy, Professional Civil Engineer, pg. 5, ¶ 8).

17.

Defendant has created a condition on Defendant's property that is keeping surface water runoff and pool drainage off of the Plaintiff's property and Defendant has maintained Defendant's own yard—to include Defendant's swale—in such a manner as to over-engineer the Defendant property to protect against excess surface water runoff from Defendant's property onto the Plaintiff's. (Defendant's Exhibit, "A" submitted in support of Defendant's Response to Plaintiff's

Motion for Summary Judgment, Aff. of Guy Abernathy, Professional Civil Engineer, pg. 6, ¶¶ 10 & 11 8).

18.

Defendant has never been cited for any violation of code or law connected to the construction of Defendant's pool. (See, generally, affidavits of Stephen A. Howard, BJ Smithmojica, Christopher Sorrell, and record of case).

THEORY OF RECOVERY

Defendant is entitled to summary judgment in their favor and a dismissal of all counts of Plaintiff's Complaint against her. There exists no evidence of record to support any cognizable, sufficient, and legally-supported claims of Negligence, Negligence *per se*, nuisance, trespass, fraud, or injunctive relief against Defendant as even remotely alleged in Plaintiff's Complaint, and Plaintiff has patently failed to legitimize or quantify Plaintiff's alleged monetary damages, or any of Plaintiff's other purported damages existing in any other form or context. The evidence of record shows that there is no genuine issue of material fact central to any count of Plaintiff's Complaint, therefore there is nothing to substantiate pursuant to applicable Georgia law that Defendant has any liability to Plaintiff on Plaintiff's claims, and that any action or non-action by Defendant was even a proximate cause of Plaintiff's damages, whatever those unsupported damages may be. Defendant is entitled to summary judgment as a matter of law.

This 17th day of May, 2024.

Respectfully submitted,

App-310

/s/ Dave McDonald
Georgia Bar No. 217778
Attorney for Defendant

WEINSTEIN & BLACK, LLC.
167 Lee Street
Jefferson, Georgia 30549
(404) 228-2629
Dave@WBLegal.net
Annika@WBLegal.net (Paralegal)

**IN THE SUPERIOR COURT OF JACKSON
COUNTY
STATE OF GEORGIA**

KEVIN YEUNG,	}	
Plaintiff,	}	
v.	}	Civil Action File No.
	}	22CV0988
SHANNON HUMPHREY,	}	
Defendant.	}	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within and foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, STATEMENT OF MATERIAL FACTS TO WHICH THERE EXISTS NO GENUINE ISSUE AND STATEMENT OF THEORY OF RECOVERY**, upon all parties and/or counsels of record by electronic filing in the PeachCourt electronic filing system addressed as follows:

Kevin Yeung, pro se
Plaintiff
P.O. Box 911
Braselton, GA 30517
Kau88888@hotmail.com
Kevin20530@hotmail.com

Brian T. Easley
Attorney for non-party Hillgrove Homes, LLC
Mahaffey Pickens Tucker, LLP
1550 North Brown Road

App-312
Suite 125
Lawrenceville, GA 30043
(770) 232-0000
Beasley@mptlawfirm.com

This 17th day of May, 2024.

WEINSTEIN & BLACK, LLC

/s/ Dave McDonald
Georgia Bar No. 217778
Attorney for Defendant

167 Lee Street
Jefferson, Georgia 30549
(404) 228-2629
Dave@WBLegal.net
Annika@WBLegal.net (Paralegal)

**IN THE SUPERIOR COURT OF JACKSON
COUNTY
STATE OF GEORGIA**

KEVIN YEUNG,	}	
Plaintiff,	}	
	}	Civil Action File No.
v.	}	22CV0988
	}	
SHANNON HUMPHREY,	}	
Defendant.	}	

**DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, Defendant, Shannon Humphrey (hereinafter referred to as “Defendant” and/or Mrs. Humphrey as context may require) (“Plaintiff” and “Defendant” in the above-styled action collectively referred to as the “Parties”) in the above-styled action, by and through her undersigned counsel of record, and files this, her Defendant’s Motion for Summary Judgment against the Plaintiff, pursuant to O. C. G. A. § 9-11-56, and hereby moves this Honorable Court for an Order granting her summary judgment on the total allegations of Plaintiff’s Complaint on the grounds that there is no genuine issue of material fact existing between the Parties on any count of Plaintiff’s Complaint and Defendant is therefore entitled to judgment as a matter of law. Upon consideration of motions and briefs, the record, and applicable law, Defendant asserts that Plaintiff has failed to demonstrate genuine issues of material fact on at least one element of each of his legal claims, and that the Defendant has

successfully disproved at least one element of each of Plaintiff's claims.

This Motion is supported by the pleadings filed to date and the supporting documents and exhibits thereto, and the following brief in support of this Defendant's Motion for Summary Judgment, the discovery that has been exchanged throughout the duration of the prior full six (6) month discovery process, and the exhibits filed concurrently herewith and with Defendant's prior Response to Plaintiff's Motion for Summary Judgment. In accordance with Uniform Court Rule 6.5, Defendant has also filed a separate Statement of Material Fact to Which There Exists No Genuine Issue and a Statement of Defendant's Theories of Recovery.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant her Motion for Summary Judgment on each count of Plaintiff's Complaint and enter judgment in favor of Defendant in dismissing each count of Plaintiff's Complaint.

**ORAL ARGUMENT ON BRIEFS IS HEREBY
REQUESTED**

This 17th day of May, 2024.

Respectfully submitted,
WEINSTEIN & BLACK, LLC.
/s/ Dave McDonald
Georgia Bar No. 217778
Attorney for Defendant

167 Lee Street
Jefferson, Georgia 30549
(404) 228-2629
Dave@WBLegal.net
Annika@WBLegal.net (Paralegal)

**IN THE SUPERIOR COURT OF JACKSON
COUNTY
STATE OF GEORGIA**

KEVIN YEUNG,	}	
Plaintiff,	}	
v.	}	Civil Action File No.
	}	22CV0988
SHANNON HUMPHREY,	}	
Defendant.	}	

**BRIEF IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, Shannon Humphrey (the “Defendant” and/or “Mrs. Humphrey” as context may require) (both “Plaintiff” and “Defendant” collectively referred to herein throughout as the “Parties”) in the above-styled action, and files this, her Brief in Support of Defendant’s Motion for Summary Judgment, and respectfully shows this Honorable Court the following:

BACKGROUND AND STATEMENT OF FACTS

“A. I don’t have any evidence.” (Dep. Trans. Of Plaintiff, Kevin Yeung, pg. 201, line 3.) This answer given by Plaintiff in his deposition is the central theme of Plaintiff’s case. Just prior to this answer given by Plaintiff in Plaintiff’s deposition, Plaintiff and Defendant’s counsel were discussing one of the central allegations of Plaintiff’s claim—that the excess surface water runoff alleged by Plaintiff is evidenced by contamination of the Plaintiff’s soil with chloride. Plaintiff was asked by Defendant’s counsel

if the Plaintiff was still going to leave his deposition that day believing he was correct on the allegations of his Complaint after admitting that he has based his allegations on assumption. (See, Dep. Trans. Of Plaintiff, Kevin Yeung, pg. 200, lns. 3-25, pg. 201, lns.1-3). "Q. But how can you believe it if it's just an assumption?", "A. Because I'm thinking my assumption is correct.", "Q. So you're still going to leave this deposition today after having experienced this and think you're still correct?", "A. Yes.", "Q. Without any evidence?", "A. I don't have any evidence.". "Q. And your testimony is you don't have any direct evidence that the Humphreys have caused chloride to be in your soil, right?", "A. I do not.". (Dep. Trans. Of Plaintiff, Kevin Yeung, pg. 202, lines 2-5).

The Plaintiff, Kevin Yeung has filed a Complaint for damages (§16. of Plaintiff's Complaint) and Injunctive relief (see "WHEREFORE" of Plaintiff's Complaint, page 4, and introductory paragraph of Plaintiff's Motion for Summary Judgment) (See also, Plaintiff's Motion for Summary Judgment, *generally*) against Defendant, Shannon Humphrey. Plaintiff's Complaint alleges entitlement to relief due to what appears to be a theory of negligence *per se*. This appears so based on Plaintiff's allegations that Defendant has altered Defendant's property artificially and in violation of applicable law. Alternatively, Plaintiff alleges that Defendant has adopted and ratified illegal alterations to Defendant's property by the Defendant's pool contractors, and that regardless, by simply altering the property, the Defendant has caused a concentration of increased surface water flow from Defendant's property onto the Plaintiff's property. Plaintiff alleges

that this has thereby damaged Plaintiff's home and created an on-going nuisance. Plaintiff failed to plead injunction with any particularity in Plaintiff's Complaint, rather, Plaintiff insists that Defendant did not abide by applicable law, that Plaintiff has been damaged by this failure, and that this failure is putting the Plaintiff's property at risk, and that consequently he is entitled to relief. (Plaintiff's Complaint & Plaintiff's Motion for Summary Judgment, *generally*). How? He and his wife just know it to be so. Plaintiff intends that you will just take his word for it.

From the very beginning, Plaintiff's case has been a house of cards. This is because each and every one of the Plaintiff's theories is predicated entirely on the central premise that, at all material times to Plaintiff's Complaint, there has been an existing and ongoing increase in water flow that is crossing the shared property line from the Defendant's property onto the Plaintiff's property. Plaintiff consistently alleges that the increased flow of surface water is unnatural and that it is a direct result of the construction of the Defendant's swimming pool in the summer of 2022 and the tie-in of some downspouts into a pop-up emitter drainage system. However, without *proof* of the actual existence of such an increase in water flow from Defendant's property onto the Plaintiff's property, as Plaintiff has alleged, Plaintiff's entire case and each of his claims therein tumbles and falls—even *if* Plaintiff were able to demonstrate that Defendant or Defendant's contractors had violated some applicable law in the pool construction or downspout re-routing activities (which Plaintiff has utterly failed to do, and to which Defendant does NOT concede).

In the nearly year and a half that has elapsed since the filing of Plaintiff's November 2022 Complaint, despite the multitude of both minor and significant storm events that have occurred over that time, and the number of times the Humphreys have maintained, backwashed and/or otherwise enjoyed their swimming pool, the Plaintiff has not produced even a single photo or video showing any concentrated water flow *actually* running from Defendant's property across the boundary line onto the Plaintiff's property. Still, it is understood that this Defendant's motion will be construed in a light most favorable to Plaintiff. Therefore, in an effort to give Plaintiff the ultimate benefit of the doubt, assuming, *arguendo* that maybe—just maybe—Plaintiff has simply been unlucky in Plaintiff's timing and technology and has therefore been unable to capture those moments in time that the excess surface water *is* actually flowing from Defendant's property onto the Plaintiff's property, Plaintiff still has yet to produce anything of any evidentiary value to provide the necessary context clues to show that such excess surface water flow is actually occurring or that it has occurred over time—rain events or not. To the degree that Plaintiff has produced any evidence that siltation, erosion, or sedimentation has occurred on Plaintiff's property, Plaintiff has altogether failed to link its causation to the Defendant, Defendant's contractors, or Defendant's property.

Instead of providing any sort of direct documentation of the flow of excess surface water itself from Defendant's property onto the Plaintiff's, Plaintiff instead relies on bits and pieces of entirely circumstantial evidence to support the existence of the alleged

runoff hoping this Court will simply accept that these things prove the existence and continuation of excess surface water that is running off of the Defendant's property across the shared boundary line and onto the Plaintiff's property. So, let's take a quick look at Plaintiff's "proof":

Alleged Soil Contamination

Plaintiff has alleged that Plaintiff's soil has been contaminated by chlorine water leaving the Defendant's pool and entering upon the Plaintiff's property. However, this allegation is based on pure speculation. (Dep. Trans. of Kevin Yeung, pg.193, lns. 6-25, pg. 194, lns. 1-25, pg. 195, lns. 1-25, pg. 196, lns. 1-25, pg. 197, lns. 1-25, pg. 198, lns. 1-25, pg. 199, lns. 1-25, pg. 200, lns. 1-25., pg. 201 lns. 1-3). No one, to include UGA Extension to whom Plaintiff took Plaintiff's soil tests has been able to confirm the origin of chloride found in Plaintiff's soil tests, and Plaintiff does not know. Like everything else, he assumes. (Dep. Trans. of Kevin Yeung, pg. 193, lns. 20-25, pg. 196, lns. 17-25, pg. 197, lns. 10-22). Plaintiff claims that Plaintiff does not know and has not actually confirmed whether this chloride is naturally occurring or not, but that he looked online and saw that it is not created naturally. (Dep. Trans. of Kevin Yeung, pg. 197, lns. 1-9). In Exhibit, "H" to Plaintiff's Motion for Summary Judgment, Plaintiff provided what appears to be email communication from a Mr. Jay Lessl, Ph.D., Director of UGA's Ag & Environmental Services Laboratories who specifically tells the Plaintiff that "Chloride ions are ubiquitous in nature and are essential for various biological processes, including maintaining proper fluid balance in the body and

facilitating nerve transmission” and that “[C]ommon sources of chloride ions include table salt (sodium chloride, NaCL) and various other salts found in soil, rocks, and seawater.” (Plaintiff’s Exhibit, “H” in support of Plaintiff’s Motion for Summary Judgment). Presumably this email was directed to Plaintiff, although for some odd reason, Plaintiff has redacted the email address to whom that communication was sent. Plaintiff took no samples from Defendant’s property, or from throughout his own property as a means of comparison, but instead only took samples from along the boundary line. (Dep. Trans. of Kevin Yeung, pg. 194, lns. 5-25, pg. 195, lns. 1-9). Plaintiff admits that the samples were inconsistent. (Dep. Trans. of Kevin Yeung, pg. 195, lns. 10-12). Plaintiff simply assumes that the presence of Chloride in some random soil samples from his yard is an indication of chlorine water entering his property from the Defendant’s property. (Dep. Trans. of Kevin Yeung, pg. 197, lns. 1-25, pg. 198, lns. 1-25). Plaintiff has not even established, at minimum, that the Defendant’s pool is, in fact, a chlorine pool. He has never been in the Humphrey pool, and has obtained no samples of the Humphrey’s pool water as a reference against his soil samples, or to support his theory. (Dep. Trans. of Kevin Yeung, pg. 198, lns. 22-25, pg. 199, lns. 1-2). Plaintiff admits he has not personally observed any of Defendant’s pool water flowing onto Plaintiff’s property. (Dep. Trans. of Kevin Yeung, pg. 199, lns. 25, pg. 200, lns. 1-8).

The Stone Walkway

“Q. Okay. And I believe your prior testimony was that you cannot actually be sure that it’s the

Humphreys that specifically caused the damage. You're just assuming?", "A. Yes." (Dep. Trans. of Kevin Yeung, pg. 191, lns. 1-5).

Since Plaintiff has no direct evidence of water actively flowing from Defendant's property onto the Plaintiffs, Plaintiff has alleged that the excess surface water runoff from Defendant's property complained of is also evidenced by a variety of ever-changing "damages" to a stone paver walkway in Plaintiff's back yard. (See, Exhibit 12 to Deposition of Plaintiff, Kevin Yeung, Interrogatory No. 28 and response thereto. See also, Original & Copy Transcript of a Motion Hearing on 1/30/24 (Saved on Clerks Drive) Trans. pg. 16, lns. 5-25, pg. 17, lns. 1- 25, and also, Dep. Trans. of Kevin Yeung, pg. 156, lns. 11-25, pg. 157, lns. 1-4). In discovery, Plaintiff supplied a variety of photos of the stone walkway at issue, and some of these photographs were discussed in Plaintiff's deposition. Plaintiff confirmed that Exhibit 13 (Dep. Trans. of Kevin Yeung, pg. 173, lns. 10-15), Exhibit 14 (Dep. Trans. of Kevin Yeung, pg. 173, lns. 5-9), Exhibit 15 (Dep. Trans. of Kevin Yeung, pg. 172, lns. 23-25, pg. 173, lns. 1-4) and Exhibit 16 (Dep. Trans. of Kevin Yeung, pg. 172, lns. 18-22) to Defendant's deposition of the Plaintiff to be photos that he supplied to Defendant in discovery as his evidence of the alleged damage to Plaintiff's stone walkway purportedly caused by the excess water runoff from the Defendant's property. (Dep. Trans. of Kevin Yeung, pg. 157, lns. 2-25, pg. 158, lns. 1-4, pg. 162, lns. 3-5). None of these photos conclusively demonstrate a causal connection between what is seen in the photos and some condition on Defendant's property, or some conduct by Defendant.

Plaintiff has at all times material to this action maintained that the alleged damage to Plaintiffs stone walkway that can be seen in Exhibits 13, 14, 15, & 16 to Defendant's deposition of Plaintiff is caused by the Defendant. However, Plaintiff has entirely failed to make any legitimate causal connection between the inconveniences he's experienced with his walkway and the Defendant's conduct or property. For example, Plaintiff admits to the presence of multiple operational sprinkler heads and sprinkler hosing on Plaintiff's property directly adjacent to the stone walkway at issue. (Dep. Trans. of Kevin Yeung, pg. 160, lns. 10-25, pg. 161, lns. 1-2). Additionally, Plaintiff confirms that in Exhibit 14, a photo Plaintiff himself supplied as his evidence of the damage caused by Defendant (Dep. Trans. of Kevin Yeung, pg. 162, lns. 3-5), that the end of a large black pipe can be seen which Plaintiff confirms was connected to one of Plaintiff's downspouts pointed directly at Plaintiff's walkway. (Dep. Trans. of Kevin Yeung, pg. 161, lns. 3-25). Plaintiff later admits to having the downspout extension pipe removed in an effort to mitigate damages to the walkway and alleges that Plaintiff is "still" having issues—a logical indication that some, if not all, of the damages to the walkway at the time Plaintiff's Exhibit 14 was taken, were of Plaintiff's own making. (Dep. Trans. of Kevin Yeung, pg. 162, lns. 17-25, pg. 163, lns. 1-2). It makes no logical sense to undertake efforts to remove and relocate pipework if it was not creating an issue for the walkway. Additionally, given Plaintiff and Mr. Christopher Sorrell's testimonies, we know that Plaintiff's walkway predated the construction of the Humphrey pool, and that Plaintiff, as described above, was experiencing light

sedimentation and siltation issues to his walkway even then—prior to the construction of the Humphrey pool. Consider this: Plaintiff is later shown in Defendant’s deposition of Plaintiff a photo that Plaintiff supplied to the Defendant in discovery which was marked as Exhibit 15 to Defendant’s deposition of the Plaintiff. (Dep. Trans. of Kevin Yeung, pg. 166, 17-25, pg. 168, lns. 16-23). Plaintiff confirmed that this tarp was placed directly adjacent to the stone walkway while the Plaintiff and his spouse removed dirt from the walkway. (Dep. Trans. of Kevin Yeung, pg. 167, lns. 7-25). This is the same tarp located directly adjacent to the purportedly damaged walkway that Christopher Sorrell describes in Paragraph 7. Of his Affidavit in support of Defendant’s Response to the Plaintiff’s Motion for Summary Judgment. If the Court will recall from prior pleadings, Mr. Sorrell visited the Yeung property for a stormwater complaint just before the start of the Humphrey pool construction project in August of 2022. (Exhibit, “B” in support of Defendant’s Response to Plaintiff’s Motion for Summary Judgment, Affidavit of Christopher Sorrell, ¶10). Plaintiff testified in Plaintiff’s deposition that Plaintiff has only had the stone walkway at issue for the last year or two. (Dep. Trans. of Kevin Yeung, pg. 175, lns. 19-22), so the timelines match up here quite well, although Plaintiff is largely evasive on the issue of when specifically the walkway was constructed. ”Upon visiting the Yeung and Humphrey properties, I viewed the area that the Yeungs had explained was the damaged area on their property—a stone walkway and some browning grass and bare patches in the lawn. I didn’t see any evidence of any excess flow upon my visit. I did see some areas that

could have caused some erosion, but it would have been very light erosion that didn't rise to the level of a code enforcement issue. **Upon my visit, I advised the wife, May Yeung, that they had a pile of loose dirt under a tarp directly adjacent to the purportedly damaged walkway and that if there was any sort of water coming toward the walkway from any part of the yard uphill, as will happen, the water flowing through it and picking up the loose dirt could have also been the culprit for the light sedimentation they were observing on their walkway**" (emphasis added) (Exhibit, "B" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Christopher Sorrell, ¶ 7). (See also, generally, Exhibit, "B" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Christopher Sorrell). "Q. Okay. And you put all that dirt that you dug out on top of that tarp at the end or you—I think you moved it and then put the tarp over the top of it, right?", "A. No. There's a tarp underneath it and a tarp on top of it." (Dep. Trans. of Kevin Yeung, pg. 185, lns. 9-14). Further to that end, the Court may recall the sworn statement of Mr. Stephen A. Howard with Jackson County Code Enforcement concerning Mr. Sorrell's visit. "On August 9 of 2022. A forwarded complaint was received from Georgia EPD, so this means the Yeungs contacted the State of Georgia about the issue this time. I did not personally respond to this complaint. I did not go out to this complaint. Instead, an MS4 stormwater specialist in Jackson County named Christopher Sorrell went out to the property and inspected it on August 9, 2023. The Traditions community is an MS4 area.

Upon reviewing the file, I can see Mr. Sorrell notated that he inspected it and found no evidence of silt fence failure or erosion onto the Yeung property from the Humphrey property. The notes indicate that there was some sediment on the path by the back porch, **but there is no evidence that the sediment came from the Humphrey property (2478 Traditions Way)**. This file and these notes are public record and available for review.” (emphasis added) (Exhibit, “C” in support of Defendant’s Response to Plaintiff’s Motion for Summary Judgment, Affidavit of Stephen A. Howard, ¶21).

Plaintiff has performed no measurements and no calculations concerning water flow allegedly coming onto Plaintiff’s walkway from Defendant’s property. (Dep. Trans. of Kevin Yeung, pg. 174, lns. 19-25, pg. 175, lns. 1-3). Plaintiff has supplied no photos or videos of water flowing from Defendant’s property onto Plaintiff’s walkway. Plaintiff admits in Plaintiff’s deposition that the walkway at issue was constructed to “help out with” pre-existing water issues created by Defendant’s builder, despite prior conflicting testimony that there were no water issues on Plaintiff’s property that were noticed in the location of the walkway before its construction. The Plaintiffs reasoning is merely the existence of grass growing before the installation of the walkway. (Dep. Trans. of Kevin Yeung, pg. 176, lns. 1-19). The truth is that the Plaintiffs testimony in this regard is waffling and evasive at best. (Dep. Trans. of Kevin Yeung, pg. 178, lns. 6-14). The walkway at issue was constructed by Plaintiff and Plaintiff’s wife by digging into ground in an area where Plaintiff admits they were already having issues from runoff erosion and

flooding issues because of Defendant's builder. (Dep. Trans. of Kevin Yeung, pg. 181, lns. 19-25, pg. 182, lns. 1-13, pg. 183, lns. 4-24). Plaintiff acknowledged that he was unsurprised by the idea that the condition of his walkway would be caused by Plaintiff's failure to maintain his own property—specifically a failure to grow grass elsewhere—because he admits he was specifically told that in his Magistrate case against Defendant's builder, Hillgrove Homes. (Dep. Trans. of Kevin Yeung, pg. 189, lns. 18-25, pg. 190, lns. 1- 25).

Dead Grass and Shrubs

Plaintiff points to the existence of dead and dying grass and shrubs at certain locations on his property as evidence of the excess surface water runoff from Defendant's property. "Q. So you don't know why the grass is dead?", "A. No". (Dep. Trans. of Kevin Yeung, pg. 163, lns. 3- 17—quote in lns. 16 &17). Plaintiff has no idea why his grass is dying, but without any evidence, assumes it is because of the Defendant. "Q. Because you don't know, right? And if you don't know why, you don't know that it's because of the Humphreys, correct?", "A. 'm assuming it's because of them". (Dep. Trans. of Kevin Yeung, pg. 163, lns. 22-25, pg. 164, lns. 1-3). Plaintiff admits that the dead or dying grass he has pointed to as evidence of Defendant's excess surface water runoff onto Plaintiff's property could be caused by any number of reasons. (Dep. Trans. of Kevin Yeung, pg. 164, lns. 4-6).

Even if there were to exist a flow of excess surface water from Defendant's property onto the Plaintiff's property, Plaintiff has failed to produce even a single

measurement of the amount or velocity of the alleged “excess” or “increased” flow of surface water from Defendant’s property onto the Plaintiff’s property and has admitted before this Court to having performed no measurements and no testing. Plaintiff has no data, no measurements, and no evidence by which to compare the volume and velocity of any water his property may receive from the Humphrey property. Plaintiff has no means by which he can measure any alleged increase in surface water flow onto his property due to the Humphrey pool project and cannot compare it now to the state of Plaintiff’s property beforehand. ”THE COURT: Well, so if you are claiming that your property receives increased runoff, more water than it otherwise would have, but for something that’s going on the Defendant’s property, he’s asking you if you’ve measured that. Like now you’re receiving, whatever, three inches of water runoff per hour whereas before it was an inch. Have you measured it in any regard?”, “Mr. YEUNG: No, I have not.”, THE COURT: So, it’s just an eyeball test?”, “MR. YEUNG: uh-huh (affirmative).” (Original & Copy Transcript of a Motion Hearing on 1/30/24 (Saved on Clerks Drive) Trans. pg. 19, lns. 24 & 25, pg. 20, lns. 1- 8). The aforementioned excerpts from the transcript of the Motion Hearing on 1/30/24 were specifically discussing Plaintiff’s answer in discovery to Defendant’s Amended Interrogatory No. 29, which asked the Plaintiff, given Plaintiff’s claims of increased and excessive runoff from the Defendant’s property, if the Plaintiff had ever “...measured the amount(s) of any alleged increase water flow onto your property from the Defendant’s property...”. (Original & Copy Transcript of a Motion Hearing on 1/30/24 (Saved on Clerks

Drive) Trans. pg. 19, lns. 12-21). The Plaintiff has done nothing to measure any increased flow. (Dep. Trans. of Kevin Yeung, pg. 205, lns. 12-23). Instead, Plaintiff insists that there must be an increase in flow from Defendant's property onto the Plaintiff's property because Plaintiff insists that Plaintiff never had a "flooding issue before the property was built next door." (Dep. Trans. of Kevin Yeung, pg. 205, lns. 24-25, pg. 206, line 1.). "Q. Okay. As far as this complaint goes though—because you didn't sue the builder again or add them as a party, you sued my client,—what have you done to measure what you say is an increase in flow from my client's property on to your property as a result of the construction activity that the Defendant has done in this case, the Humphreys?", "A. I did not make any measurements. I did not take any measurements." (Dep. Trans. of Kevin Yeung, pg. 206, lns. 23-25, pg. 207, lns. 1-6). "Q. So you don't actually know to what extent my client's pool building increased the flow of water on to your property, do you?", "A. I do not." (Dep. Trans. of Kevin Yeung, pg. 207, lns. 7-10). "Q. So the simple answer is, you don't actually know how my client's activity on their property has made anything worse, right?", "A. Yes." "Q. But you're still suing them?", "A. Yes." "Q. And you have no intention to not continue with the suit, even though you've admitted you don't know how their activity on that property has made the issue worse?", "A. Yes." (Dep. Trans. of Kevin Yeung, pg. 210, lns. 18- 25, pg. 211, lns. 1-3). Plaintiff goes on in Plaintiff's deposition to reiterate that he's done nothing to determine the increase in the flow other than mere eyeball observation, and that he was taking no steps to document the increase in

alleged flow, and that he's simply assuming that because he has seen certain things with his own eyes, the Defendant has caused an increased flow of surface water onto Plaintiff's property and damaged him. (Dep. Trans. of Kevin Yeung, pg. 211, lns. 9-21).

One would assume that the easiest and most efficient and effective way to put this matter to rest, even for a *pro se* litigant, would be for the Plaintiff to tender photos or videos—any photos or videos at all—showing the existence of any rills, gullies, channels, disturbed vegetation, subsidence, cracks along the slope between the properties, rivulets or anything which even a lay person might agree would plausibly support Plaintiff's claims of an increase in water flow from Defendant's property onto the Plaintiff's. At minimum, it is reasonable to assume Plaintiff could produce even one photo or video—any photos or videos at all—showing the alleged concentrated water actually flowing from the Defendant's property onto the Plaintiff's. But Plaintiff hasn't tendered any such evidence of water crossing the boundary line because he can't. He can't produce it because it isn't happening. In fact, to the degree that any party to this case has produced any videos at all, it is the Defendant's video demonstrating how surface water exits the property through a swale down toward the street in front of the Humphrey home during and after a rain event. (See, Exhibit No. 11(a) to Deposition of Plaintiff, Kevin Yeung—Video Rain Event. This is a video of storm-water runoff from the Humphrey property. The video has been tendered to this Court on thumb drive in support of Defendant's prior Response to Plaintiff's Motion for Summary Judgment. See also, Dep. Trans. of Kevin Yeung, pg. 14, lns. 1- 18, pg. 152, lns.

3-22). "Q. Would you agree with me you never sent any video of water crossing over on to your property, correct? A. Yes." (Dep. Trans. of Kevin Yeung, pg. 148, lns. 16-19). Throughout Plaintiff's deposition, Plaintiff is unable to recall if he tendered any photographs of excess surface water crossing over onto Plaintiff's property from that of the Defendant. Each time he was asked by Defense Counsel about the existence of any photos he has which might effectively demonstrate the surface water runoff, Plaintiff was evasive and referenced a need to look at his files at home. (See, Dep. Trans. of Kevin Yeung, pg. 148, lns. 1-15). The Court may recall that Plaintiff also failed to provide any photographs or videos with his Motion for Summary Judgment which demonstrate any excess surface water crossing over from the Defendant's property onto the Plaintiff's.

As the evidence in this case demonstrates, Plaintiff's claims are without merit and no reasonable or rational trier of fact could rule in Plaintiffs favor. If the complete and total absence of any evidence on record demonstrating a concentration of water flow from Defendant's property onto the Plaintiff's was not enough to convince the finder of fact that no nuisance exists, Plaintiff's own deposition testimony, responses in discovery, and Motion for Summary Judgment undercut his position.

The Evidence in this case demonstrates a simple and sad reality that Plaintiff's actual problems are due to his inability to appropriately maintain his own property, to admit that his issues are likely of his own making, and the reflexive urge to blame any inconvenience or maintenance obligation typical of that of any homeowner with a yard, upon the Defendant—

despite lack of evidence, or evidence to the contrary. All because the Defendant has a property uphill from him. (Defendant's Exhibit, "A" in support of Defendant's Prior Response to Plaintiff's Motion for Summary Judgment, Aff. of Guy Abernathy, Professional Civil Engineer, pages 7. & 8., ¶ 13.) (*See also*, Defendant's Exhibit, "B" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Christopher Sorrell, Jackson County Stormwater Specialist, pages 3-6, ¶¶ 6-12).

Plaintiff's home at 2904 Muscadine Way, Jefferson, Georgia 30549 and the Defendant, Shannon Humphrey's home at 2478 Traditions Way, Jefferson, Georgia 30549 adjoin/abut one another and share a common boundary line between their properties. (Dep. Trans. of Kevin Yeung, page 25, In. 24, page 144, lns. 11-15 & Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, page 2, ¶5.) The Plaintiff's home is downhill from the neighboring Defendant property. In summer, fall and winter of 2022, Defendant, Shannon Humphrey committed the cardinal sin of building a pool on her property. Having placed Defendant's property under near constant surveillance for the purpose of monitoring any construction activity on the Defendant's lot, (*See* Plaintiff's Exhibits to Plaintiff's Motion for Summary Judgment, "A", "C", "F", "L", & "Z"— each containing stills or screen shots from security cameras on Plaintiff's home, & Dep. Trans. of Kevin Yeung, pages 45-55), Plaintiff and Plaintiff's spouse, May Yeung, with an abundance of irrational fear and with layman's eyes, monitored the construction activity upon the Defendant's property, filing one frivolous code violation and

stormwater complaint after another, all along the way, with everyone from Jackson County Code Enforcement, to Georgia EPD. (Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, Jackson County Code Enforcement, generally, Defendant's Exhibit, "B" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Christopher Sorrell, Jackson County Stormwater Specialist, generally, and Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, Jackson County Building Inspector with Bureau Veritas, generally). Defendant is careful to point this Honorable Court toward the conspicuous absence of any code violation, citation, stop work order, or other sanction in the life of the construction of Defendant's pool on the record, or in any exhibit provided in support of Plaintiff's Motion for Summary Judgment, or in any supporting affidavit submitted therewith Defendant's Reply to Plaintiff's Motion. Yet, Plaintiff insists that Defendant has broken the law.

The Defendant hired a reputable pool contractor, Sandals Luxury Pools, to build them a swimming pool in their back yard at 2478 Traditions Way, Jefferson, Georgia 30549. (Plaintiff's Exhibit, "B" to Plaintiff's Motion for Summary Judgment). The Defendant's contractor applied for and received a permit to construct the pool at the Defendant's home. (Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, Jackson County Code Enforcement, page 4 ¶ 8., Defendant's Exhibit, "D", in support

of Defendant's Response to Plaintiff's Motion for Summary Judgment Aff. of BJ Smithmojica, Jackson County Building Inspector with Bureau Veritas, page 3, ¶ 5.). Subsequent completion of the Defendant's pool project, the Defendant's pool received a certificate of completion from the chief building official in Jackson County, Georgia, Hal Chitwood indicating that the Humphrey pool was complete and that it passed all requisite inspections and has complied with minimum standards and various ordinances adopted by the State of Georgia and Jackson County regulating building construction or use. (Defendant's Exhibit, "E" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Certificate of Completion, & Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, pages 3 & 4, ¶ 6.). During the extent of the Defendant's pool construction project, the Defendant's pool project was regularly visited and inspected by Jackson County Code Enforcement and the Building Inspector, BJ Smithmojica, who was attached to the Humphrey pool construction permit. Not once in any of those visits or inspections by Code Enforcement or the Building Inspector did either see any evidence whatsoever of a violation, or of any excess runoff and erosion. (Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, Jackson County Code Enforcement, page 10, ¶20., page 13, ¶ 26., and Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, Jackson County Building Inspector with Bureau Veritas, page 10, ¶ 21.) The Jackson County Stormwater

Specialist who visited the Yeung and Humphrey properties upon receipt of a stormwater complaint just prior to the construction of the Humphrey pool also saw no evidence whatsoever of any excess runoff or erosion from the Humphrey property onto the Yeung property and explained that, in his opinion, much of what the Yeungs were concerned about was resultant their own failure to adequately maintain their property. (Defendant's Exhibit, "B" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Christopher Sorrell, pages 5 & 6, ¶¶ 11-12). Each of these individuals testified in their sworn affidavits that they had the personal experience with Plaintiff and Defendant's properties to make such statements, and that they had the knowledge, training, and experience, as well as the authority, to enforce applicable law and sanction any violations of it appropriately.

For Plaintiff's "evidence" in support of Plaintiff's claims, Plaintiff cites, among other things, loose stones, discoloration, and siltation to a stone walkway he constructed as evidence of the damage caused by excessive runoff and erosion from Defendant's property (recall hereinabove). (Dep. Trans. of Kevin Yeung, page 156, lns. 11-21). He has filed a lawsuit in Jackson County Superior Court against the Defendant at great expense to the Defendant, even though Plaintiff admitted in his deposition that he is just assuming that the damage to his walkway is caused by the Defendant and that he cannot actually be sure it was caused by the Defendant. (Dep. Trans. of Kevin Yeung, page 191, lns. 1-5).

Plaintiff claims that Defendant has violated applicable law through the conducting of land disturbing

activities (principally, through the construction of Defendant's pool and grading activity) on Defendant's property without what Plaintiff insists is a requisite permit. However, the uncontroverted evidence on the record definitively demonstrates that, had Plaintiff spoken with Jackson County Code Enforcement and the Building Inspector assigned to the Humphrey pool construction permit, he would have learned prior to the filing of his Complaint that a land-disturbance permit was not required for the Humphrey pool project. (Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, pages 12 & 13, ¶12, and Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, page 6, ¶12, & pages 8 & 9, ¶19). Plaintiff has not only predicated his claims on the false assertion that there is actually runoff from the Defendant's property, but also upon a fundamental misunderstanding of the code, and failed to clarify his position with those who are charged with knowing this code and enforcing it.

Plaintiff's accusations that Defendant has somehow also violated applicable law by conducting work in violation of a tertiary permit hold and without a plumbing permit are also entirely without merit. (RE: Tertiary Permit matters, see Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, pages 10, 11 & 12, ¶¶ 22-24. and Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, page 6, ¶ 13.). Regarding plumbing permit matters, see Defendant's Exhibit, "C" in support of

Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, page 4, ¶ 8, "A plumbing inspection is not a requirement for completion of the pool building permit". Nonetheless, the plumbing work associated directly with the Defendant's pool, and with the drainage system Plaintiff complains of involving French drains, downspouts, and the Defendant's pool pump were inspected by Code Enforcement and the Building Inspector assigned to the Humphrey pool construction permit. See, Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of BJ Smithmojica, page 4, ¶ 7, page 5, ¶8-10, page 6, ¶10, pages 7 &8, ¶16, page 8, ¶17 & ¶19). Also, Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, page 7, ¶¶13-14, page 8, (¶¶15-17, page 9 ¶ 17 (cont)).

Plaintiff's claims of excess runoff and erosion are unsupported, conclusory statements based entirely on assumption and he knows this. His Claims lack merit. (Dep. Trans. of Kevin Yeung, page 211, lns. 9-21). This Defendant's Motion for Summary Judgment should be GRANTED.

As will be shown, Plaintiff has not put any material fact at issue, and the law is clear that Defendant is entitled to judgment as a matter of law. Because the evidence establishes the Defendant's prima facie case and no material facts are at issue, Defendant is entitled to the entry of summary judgment in their favor, and a complete dismissal of Plaintiff's claims against them.

ARGUMENT AND CITATIONS TO AUTHORITY

The Defendant hereby realleges and incorporates the entirety of the foregoing, to include Defendant's separately filed statement of material facts and theories of recovery, as if recited hereinbelow verbatim and as if fully set forth hereinafter.

I. The Summary Judgment Standard.

A. Generally

O. C. G. A. §9-11-56 provides for the entry of summary judgment in the event that matters considered by the court on motion for summary judgment disclose "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law...." For summary judgment purposes, the movant has the burden to establish that no genuine issue exists as to any material fact and where no such issue exists, the statute permits the immediate entry of judgment when the only issues to be decided are issues of law. *Holland v. Sanfax Corp.*, 106 Ga. App. 1 (1962); *Shockley v. Henslee*, 122 Ga. App. 163 (1970).

Georgia courts have long held that summary judgment is designed to provide an inexpensive method of disposing of any cause, eliminating the necessity for trial, when the pleadings and evidence of record clearly show that there are no issues of material fact although the allegations of the pleadings standing alone may raise such issues. *Tony v. Pollard*, 248 Ga. 86 (1981); *Maxey-Bosshardt Lumber Co. v. Maxwell*, 127 Ga. App. 429 (1972). The evidence of record in the present case clearly shows that there are no genuine issues as to any material fact and that the

Defendant is entitled to summary judgment as a matter of law.

B. When Defendant moving for Summary Judgment

As to the Defendant, “To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact, so that the party is entitled to judgment as a matter of law. A defendant may do this by either presenting evidence negating an essential element of the plaintiff’s claims or establishing from the record an absence of evidence to support such claims. Thus, the rule with regard to summary judgment is that a defendant who will not bear the burden of proof at trial need not affirmatively disprove the nonmoving party’s case, but may point out by reference to the evidence in the record that there is an absence of evidence to support any essential element of the nonmoving party’s case. *Cowart v. Widener*, 287 Ga. 622, 622, 697 S. E. 2d 779, 781 (2010). ”Where a defendant moving for summary judgment discharges his burden of pointing out by reference to the evidence in the record that there is an absence of evidence to support any essential element of the nonmoving party’s case, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue.” *Id.* at 623.

II. The Defendant is Entitled to Summary Judgment Because the Evidence of Record

**Does Not Support Any Legitimate Legal
Claim Against Defendant**

Defendant maintains that, if there is any theory of recovery under which the Plaintiff believes he is entitled that is even remotely consistent between the Plaintiff's Motion for Summary Judgment and Plaintiff's Complaint, despite Defendant's argument hereinabove, it can all be reduced to this: Plaintiff observed the Humphreys building a beautiful pool on their property in the summer, fall and winter of 2022, and that because the Plaintiff's property is downhill from the Humphreys, anything the Plaintiff considers to be an annoyance on Plaintiff's own property, or any maintenance obligation incumbent upon the Plaintiff—the same as any other homeowner with a yard—must be caused by the Humphrey pool, and nothing else. And how does Plaintiff know this? Because he just does.

With that said, notwithstanding Defendant's argument hereinabove, and without waiving or abandoning any of Defendant's argument made hereinabove, and out of an abundance of caution, Defendant presents the following arguments in support of this Defendant's Motion:

1. Presuming Plaintiff is Advancing On a Theory of Fraud, Plaintiff Has Utterly Failed To Prove Each Essential Element of Plaintiff's Claim of Fraud or Any Element of Plaintiff's Claim of Fraud

Notwithstanding the complete lack of evidence that any water is actually crossing the boundary line from Defendant's property onto the Plaintiff's, as well as the complete lack of *bona fide* legal argument in

Plaintiff's Motion for Summary Judgment or Plaintiff's Complaint in this regard, Defendant argues the following:

"The tort of fraud has five elements: a false representation by a defendant, scienter, intention to induce the plaintiff to act or refrain from acting, justifiable reliance by plaintiff, and damage to plaintiff. For an action for fraud to survive a motion for summary judgment, there must be some evidence from which a jury could find each element of the tort." *Kilroy v. Alpharetta Fitness, Inc.*, 295 Ga. App. 274, 274, 671 S. E. 2d 312, 313 (2008). "One challenging an assertion of fraud on a motion for summary judgment need show a complete lack of evidence as to only one of the elements of fraud." *Id* at 276.

Additionally, "[O].C.G.A. §9-11-9(b) requires that all allegations of fraud must be made with particularity and not averred generally. Notice pleading is the rule in Georgia, and under O. C. G. A. §9-11-9(b), allegations of fraud must be pled with particularity. It is well settled that a general allegation of fraud amounts to nothing — it is necessary that the complainant show, by specifications, wherein the fraud consists. Issuable facts must be charged." *Fairfax v. Wells Fargo Bank, N. A.*, 312 Ga. App. 171, 171, 718 S. E. 2d 16, 18 (2011).

Here, in the instant case, the closest the Plaintiff has come to making out a fraud claim is this idea he repeats between his Complaint and his Motion for Summary Judgment that the Defendants acted to "conceal" their efforts regarding the construction of the drainage system on their property (*See*, Plaintiff's Complaint, ¶9. & ¶¶ 5., 44., 84., 100.(i), 146., 174.). In each of those instances, Plaintiff specifically

references how the Defendant has attempted to conceal the work because of the need for a plumbing permit, which Plaintiff insists was required, but not obtained. However, presuming, *arguendo*, that Plaintiff's observations were correct (they are not and Defendant does not concede this point), it remains that the Defendant's acts of concealment would be to conceal, hide, or misrepresent some aspect of the work on the Defendant's property from an authority figure involved in the permitting, as pled, and not from the Plaintiff directly. Plaintiff never once argues, and he fails to present even a shred of evidence, that any act of concealment or misrepresentation regarding any plumbing work on Defendant's property, if true, was intended to conceal or misrepresent anything concerning the Plaintiff—the Plaintiff who, along with his wife, May, was observing the activity on the Plaintiff's property through the heavy surveillance they have conducted on the Defendant. (See, Plaintiff's Exhibits in support of Plaintiff's Motion for Summary Judgment, "A", "C", "F", "L", & "Z"—each containing stills or screen shots from security cameras on Plaintiff's home, pointed at the Defendant's lot). Additionally, not only is Plaintiff misguided in this regard, they are deliberately misrepresenting the matter to this Court. See, Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Building Inspector, Barbara Smithmojica, generally, & specifically, ¶¶. 5.-10., & 16.-20. See Also, Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Jackson County Code Enforcement Officer, Stephen Alex Howard, *generally*, & *specifically*, ¶¶ 13.-17.). As this Court can plainly see

from the affidavits, not only did Defendant not conceal any efforts, but the entire project—to include the drainage system Plaintiff complains of—were specifically inspected by those with the authority to do so.

“Although fraud must be pled with particularity under O. C. G. A. §9-11-9(b), a complaint alleging fraud should not be dismissed for failure to state a claim unless it appears beyond a doubt that the pleader can prove no set of facts in support of his claim which would entitle him to relief.” *Z-Space, Inc. v. Dantanna’s CNN Ctr., LLC*, 349 Ga. App. 248, 248, 825 S. E. 2d 628, 632 (2019).

Here, Plaintiff’s claims of fraud should not only be dismissed on summary judgment because of the complete absence of fraud in Plaintiff’s Complaint, but also because Plaintiff has patently failed to plead with specificity in both Plaintiff’s Complaint and in Plaintiff’s Motion for Summary Judgment, those facts, and has utterly failed to provide any supporting evidence, which demonstrates that the Defendant, (1) made a false representation, knowingly, for the purpose of inducing the Plaintiff to act, or refrain from acting, in some way, (2) to Plaintiff’s detriment, and (3) that the Plaintiff relied upon the Defendant’s false representation, and that (4) the Plaintiff’s reliance on the Defendant’s false representation damaged the Plaintiff specifically. In fact, Plaintiff has produced no evidence whatsoever that the Defendant even had the Plaintiff in mind—at all—when constructing the Defendant’s pool. There is no evidence submitted by Plaintiff, or argument made by Plaintiff, that the Plaintiff relied on any false representation by the Defendant to Plaintiff’s detriment. Plaintiff makes no claim that they acted, or refrained from acting, on any

false representation by the Defendant. Further, Plaintiff failed entirely to plead fraud, even generally, in Plaintiff's complaint. Thus, for the foregoing reasons, any fraud claim found through a liberal construction of Plaintiff's Complaint or in Plaintiff's Motion for Summary Judgment, upon which Plaintiff intends to recover against the Defendant, should be denied.

2. Presuming Plaintiff is Advancing On Theories of Nuisance and Trespass, Which Plaintiff Uses Interchangeable, Plaintiff Has Utterly Failed To Prove Each Essential Element of Plaintiff's Claim of Nuisance and Trespass, or Any Element of a Private Nuisance and/or Trespass Claim Against Defendant

Notwithstanding the complete lack of evidence that any water is actually crossing the boundary line from Defendant's property onto the Plaintiff's, as well as the complete lack of *bona fide* legal argument in Plaintiff's Motion for Summary Judgment, and no claim of nuisance or trespass exists in Plaintiff's Complaint in this regard, Defendant argues the following:

a. Nuisance Claims

O. C. G. A. §41-1-1 defines "nuisance", generally, in pertinent part as:

"...anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect

only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable man.”

Ga. Code Ann. §41-1-1

“In a nuisance action the complainant must show the existence of the nuisance complained of, that one has suffered injury, and that the injury complained of was caused by the alleged nuisance. *Asphalt Prods. Co. v. Marable*, 65 Ga. App. 877, 16 S. E. 2d 771, 1941 Ga. App. LEXIS 447 (1941). The central question for this Honorable Court here is whether the Plaintiff has produced competent evidence of the existence of the nuisance the Plaintiff has complained of. For the within and foregoing reasons hereinabove, Defendant maintains that Plaintiff has not presented any legitimate material fact as to nuisance at issue in this case. A secondary consideration for the Court is whether the nuisance complained of, if it exists, is a direct or even proximate result of some undertaking on Defendant’s property.

Defendant is adamant that no nuisance exists, and that Plaintiff has patently failed to demonstrate so—particularly that Plaintiff has failed to demonstrate the existence of a nuisance to a summary judgment standard, if at all. Consider *Green v. Eastland Homes, Inc.*, 284 Ga. App. 643, 644 S. E. 2d 479 (2007), a more recent case than the Sumitomo case upon which Plaintiff heavily relies. *Green* is a case that involved allegations of nuisance and trespass as it pertained to excessive water runoff which flowed onto the plaintiff landowner’s property from an adjacent, uphill property. In *Green*, the plaintiff, Karen Green, brought suit under theories of nuisance and trespass against a developer, Dozier Development

Company, who purchased the lot adjacent to and uphill from, Ms. Green in 1998 and the former neighbor who sold the property to Dozier. In a separate action, Ms. Green also sued Eastland Homes, a builder/contractor who subsequently purchased the lot(s) from Dozier to construct homes thereupon. The trial court in Green granted summary judgment to defendant, Dozier, the developer, and the plaintiff's neighbor who sold the lot to Dozier upon argument by those defendants that they did not have any liability to Ms. Green, and that no evidence had been presented by plaintiff, Ms. Green, that either Dozier, or the neighbor's activities had increased the flow of water onto Ms. Green's property. Defendant, Eastland too moved for summary judgment against Ms. Green, arguing that they did not have any liability and that no evidence had been presented by plaintiff, Ms. Green, that Eastland's activities had increased the flow of water onto Ms. Green's property. *Id.* at 644, 645. The trial court granted partial summary judgment to Eastland on Ms. Green's claims of personal injury, but otherwise denied Eastland's motion for summary judgment. The landowner, Ms. Green appealed from that ruling in favor of Dozier and her former neighbor, arguing that she had, in fact, presented competent evidence of the existence of a nuisance. In the second case, Eastland appealed from the award of only partial summary judgment. In the instant case, Plaintiff has patently failed to introduce any competent evidence of the existence of a nuisance or trespass created by the Defendant.

As here, the question before the Court of Appeals in Green was "...whether Green presented evidence showing that Dozier and Eastland engaged in

activities that artificially increased the water runoff from their upper land onto her lower land.” *Id.* at 645. On review, the Court of Appeals reversed the lower trial court’s grant of summary judgment to the developer, Dozier and affirmed the denial of summary judgment to Eastman because it found that Ms. Green had presented “some evidence” to show that Dozier and Eastman’s “activities contributed to the excessive water runoff” *Id.* at 645. Namely, Ms. Green had “...presented an expert affidavit that the development of the upper property resulted in the flooding of Ms. Green’s property.” *Id.* at 645. Specifically, the expert provided sworn testimony for the trial court’s review that he had prepared a Flood Inspection Report wherein he “...set forth in detail (with explanatory photographs) his observations concerning the substantial erosion of the two upper lots, which were barren of grass and groundcover with all topsoil having been scoured and washed away. Obvious gullies and channels on the lots directed the full force of rainwater down the hill towards Green’s land, with a silt fence designed to impede erosion on the hillside having collapsed and been overrun by the sheer volume of the water cascading down the hill from the lots. A second expert confirmed these observations in another affidavit. The first expert went on to analyze the hydrology study relied on by Dozier and Eastland for the drainage plans for their property, which allegedly used a flawed method for calculating seepage of water into the ground in that it failed to account for rock outcroppings close to the surface of the hill, which would cause this surface to behave like a paved impervious surface once the slightest rain saturated the ground above the rock. He faulted further the removal of

overburden soil from the upper lots.” *Id.* at 646. Moreover, the plaintiff’s expert in Green was deposed and testimony of the expert was available for the trial court’s consideration, specifically, testimony by plaintiff’s expert in Green that Dozier’s development activities in developing the infrastructure (initial clear-cutting and grading, building of impervious roads, and placing of in-ground facilities) contributed to the excessive runoff onto Green’s land. He also testified that Eastland’s activities in then grading the lots in a nonconical manner (so as to create areas where water was allowed to collect and then funnel down the hillside), in removing overburden soils, and in creating more impervious surfaces, further contributed to the excessive runoff.” *Id.* at 646. Further to this point, plaintiff in Green also “...presented nonexpert testimony that was consistent with the conclusions of her expert.” *Id.* at 646. “Green tendered an Eastland home inspection report on one of the lots from a date just prior to Eastland selling the lot, which reflected that the lot had substantial erosion problems at that time. Finally, Green presented numerous photographs displaying the gullies and channels beginning in the upper barren backyards and continuing down the hillside. *See Ponce de Leon Condo. v. DiGirolamo* 7 (jury could rely on nonexpert testimony and photographs regarding runoff to reject expert testimony to the contrary).” *Id.* at 646, 647. For the Appeals Court to say that Ms. Green had presented “some evidence”, was putting it mildly. *See also*, the Sumitomo case upon which Plaintiff relies to his detriment. (judgments entered in both cases in favor of landowners/neighbors affirmed upon finding that evidence showed willful disregard for developers’ actions

combined with evidence to show that a nuisance and trespass existed).

Plaintiff has utterly failed to put causation at issue. "Causation is an essential element of nuisance, trespass, and negligence claims. To establish proximate cause, a plaintiff must show a legally attributable causal connection between the defendant's conduct and the alleged injury. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. (Footnote omitted.) *Alexander v. Hulsey Environmental Svcs., Inc.*, 306 Ga. App. 459, 462 (3) (702 SE2d 435) (2010). "The existence of proximate cause is a question of fact for the jury except in palpable, clear, and indisputable cases." (Citation and punctuation omitted.) *Sprayberry Crossing Partnership v. Phenix Supply Co.*, 274 Ga. App. 364, 365 (1) (617 SE2d 622) (2005). In the instant matter, Plaintiff has failed in both Plaintiff's Complaint and in Plaintiff's Motion for Summary Judgment to provide any sworn testimony of any kind, by anyone which may demonstrate that a nuisance exists, and that the Defendant is the cause of it. Plaintiff has provided no photo or video evidence of any rills, channels, gullies, or the like which the Appeals Court recognizes to be evidence of excess runoff and erosion. At minimum, Plaintiff has provided ZERO evidence of any surface water crossing the boundary line between the Plaintiff and the Defendant. Plaintiff has also not put any expert report properly before the Court, so that any such report's contents can be given any gravity toward Plaintiff's Motion or Plaintiff's Complaint. At minimum, putting it bluntly, you would think that the Plaintiff could

produce even a single video of water running off of the Defendant's property onto the property of the Plaintiff, but they haven't. Plaintiff has—in some instances by his own admission—done no inspections of Defendant's property, taken no measurements upon Defendant's property, performed no testing upon Defendant's property, and has presented no calculations to support Plaintiff's conclusions. The Plaintiff here has produced no such evidence in support of his claims because no such evidence exists. It doesn't exist, because there is no nuisance.

To the contrary, Defendant has provided the exhibits attached to Defendant's Response to Plaintiff's Motion for Summary Judgment that are on the record of this case in support of Defendant's position that Plaintiff's claims are without merit. Take, for example, Defendant's Exhibit, "B" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Affidavit of former Jackson County Stormwater Specialist, Christopher Sorrell, *generally*, and specifically, ¶¶ 6.-12., Defendant's Exhibit, "D" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Building Inspector, Barbara Smithmojica, *generally*, & specifically, ¶ 20. & 21., Defendant's Exhibit, "C" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Jackson County Code Enforcement Officer, Stephen Alex Howard, *generally*, & specifically, ¶¶ 10.-14., 16.-18., 20.-21., & 26.-27., and Defendant's Exhibit, "A" in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Professional Civil Engineer, Guy Abernathy, *generally*, & specifically, ¶¶ 4.-13.

Then there exists the nature of the damages presented by Plaintiff. In *Green, supra.*, for example, the damages Plaintiff sustained as a result of the nuisance created was so severe, it exceeded that which could reasonably be considered to be “fanciful, or such as would affect only one of fastidious taste”. Contrary to the purported damages in the instant case, Ms. Green presented evidence of “...torrents of water cascading down the slope from the lots and onto Green’s backyard, immersing the backyard and patio and filling up the crawlspace under Green’s home, which damaged the furnace and air conditioner located in that space.” In the instant case, we don’t even have a photo of standing water in Plaintiff’s basement, regardless of the source. “other rainstorms have produced similar results and caused cracks in walls and structure of Green’s home and also resulted in an odorous mold and mildew under the house, which Green claims has caused her personal injury.” *Green*, at 644. Here, Plaintiff alleges that a walkway has received some silt, that there is at times some pooling of water near the Plaintiff’s home, and that some grass and bushes have been discolored or died.

Thus, for the foregoing reasons, any nuisance claim in Plaintiff’s Motion, upon which Plaintiff intends to recover against the Defendant, should be denied.

b. Trespass Claims

“The distinction between trespass and nuisance consists in the former being a direct infringement of one’s right of property, while in the latter the infringement is the result of an act which is not wrongful in itself, but only in the consequences which may flow from it. In the one case the injury is immediate; in

the other it is consequential, and generally results from the commission of an act beyond the limits of the property affected.” *Baumann v. Snider*, 243 Ga. App. 526, 526, 532 S. E. 2d 468, 471 (2000). “...a trespass is an intentional act.” *McDonald v. Silver Hill Homes, LLC*, 343 Ga. App. 194, 194, 806 S. E. 2d 651, 652 (2017).

“A trespasser is one who, intentionally or by mistake, enters upon the property of another without authority or permission from the owner to do so.” *Craig v. Bailey Bros. Realty, Inc.*, 304 Ga. App. 794, 794, 697 S. E. 2d 888, 890 (2010) (overruled in part on other grounds), citing *Crosby v. Savannah Elec. & Power Co.*, 114 Ga. App. 193, 196 (1) (150 SE2d 563)(1966). In Plaintiff’s Motion for Summary Judgment, Plaintiff theorizes that Defendant should be liable because Defendant has caused, or intended to cause, a trespass upon Plaintiff’s property, that the Defendant knows about it, and that Defendant refuses to cure it. “Under Georgia law, a trespasser is one who, though peacefully or by mistake, wrongfully enters upon property owned or occupied by another.” *Tacon v. Equity One, Inc.*, 280 Ga. App. 183, 183, 633 S. E. 2d 599, 600 (2006) citing, *Gomez v. Julian LeCraw & Co.*, 269 Ga. App. 576 (604 SE2d 532)(2004) at 578 (1)(a). Here, as in the foregoing analysis for nuisance above, the central question for this Honorable Court is whether a trespass has actually occurred from the Defendant’s property onto the Plaintiff’s.

Plaintiff has failed in both Plaintiff’s Complaint and in Plaintiff’s Motion for Summary Judgment to plead trespass, and has failed to provide any sworn testimony of any kind, by anyone which may demonstrate that a trespass has occurred and continues to occur.

Plaintiff has provided no photo or video evidence of any rills, channels, gullies, or the like which may plausibly, or causally, connect the Plaintiff's purported damages to any condition on the Defendant's property. Plaintiff has provided no photo or video evidence of any water crossing the shared boundary line between the Plaintiff and Defendant's properties. Plaintiff has also not put any expert report properly before the Court, so that any such report's contents can be given any gravity toward Plaintiff's Motion or Plaintiff's Complaint. Plaintiff took no depositions and obtained no affidavits. Again, at minimum, putting it bluntly, you would think that the Plaintiff could produce even a single video or photo of water actually trespassing onto Plaintiff's property from the Defendant's property, but he hasn't. Plaintiff has—in some instances by his own admission—done no inspections of Defendant's property, taken no measurements upon Defendant's property, performed no testing upon Defendant's property, and has presented no calculations to support Plaintiff's conclusions. The Plaintiff here has produced no such evidence in support of his claims because no such evidence exists. It doesn't exist, because there is no Trespass. Further, the affidavits of those who personally visited and inspected the properties in this case have never once found any evidence of excess surface water runoff from the Plaintiff's property onto the Defendant's property.

As discussed above, to the contrary, Defendant has provided the exhibits attached in support of Defendant's Response to Plaintiff's Motion for Summary Judgment to show that Plaintiff's claims are without merit. Take, for example, Defendant's Exhibit, "B" submitted in support of Defendant's Response to

Plaintiff's Motion for Summary Judgment, Affidavit of former Jackson County Stormwater Specialist, Christopher Sorrell, generally, and specifically, ¶¶ 6.-12., Defendant's Exhibit, "D" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Building Inspector, Barbara Smithmojica, generally, & specifically, ¶ 20. & 21., Defendant's Exhibit, "C" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Jackson County Code Enforcement Officer, Stephen Alex Howard, generally, & specifically, ¶¶ 10.-14., 16.-18., 20.- 21., & 26.-27., and Defendant's Exhibit, "A" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Professional Civil Engineer, Guy Abernathy, generally, & specifically, ¶¶ 4.-13.

3. Presuming Plaintiff is Advancing On Theories of Negligence & Negligence Per Se, Plaintiff Has Utterly Failed To Prove Each Essential Element of Plaintiff's Claim of Negligence & Negligence Per Se

Notwithstanding the complete lack of evidence that any water is actually crossing the boundary line from Defendant's property onto the Plaintiffs, as well as the complete lack of *bona fide* legal argument in Plaintiff's Motion for Summary Judgment, and claim of negligence or negligence *per se* exists in Plaintiff's Complaint in this regard, Defendant argues the following:

Although not pled with any specificity, a plain reading of Plaintiff's Complaint and Plaintiff's Motion for Summary Judgment seems to indicate that Plaintiff is proceeding under a theory of negligence—more specifically, negligence *per se*.

In twenty seven (27) paragraphs in Plaintiff's Complaint, and one hundred and ninety (190) paragraphs of Plaintiff's Motion for Summary Judgment, Plaintiff attempts to tell a story wherein Defendant has failed to abide by the law, and as a result, Defendant has both injured Plaintiff's property and that a condition exists upon Defendant's property that represents a significant threat of harm to the Plaintiff's property.

"Negligence is not susceptible to summary adjudication except where the evidence is plain, palpable, and indisputable that the respondent cannot present any slight evidence on each essential element of the action in rebuttal to create a jury issue." *Nash v. Reed*, 349 Ga. App. 381, 381, 825 S. E. 2d 853, 855 (2019). The Georgia Supreme Court reaffirmed long-standing tort law in the State of Georgia as recently as 2019 when it held that "...it remains well established that to recover for injuries caused by another's negligence, a plaintiff must show four elements: a duty, a breach of that duty, causation, and damages." *Tyner v. Matta-Troncoso*, 305 Ga. 480, 480, 826 S. E. 2d 100, 101 (2019). "It is well established that to recover for injuries caused by another's negligence, a plaintiff must show four elements: a duty, a breach of that duty, causation and damages. Thus, in order to recover for any injuries resulting from the breach of a duty, there must be evidence that the injuries were proximately caused by the breach of the duty." *Goldstein, Garber & Salama, LLC v. J. B.*, 300 Ga. 840, 840, 797 S. E. 2d 87, 88 (2017). Plaintiff has failed to show that the Defendant breached any duty owed to the Plaintiff and that, even so, *had* Defendant breached any such duty, that the injuries claimed by Plaintiff are proximately caused by any such breach.

Negligence *Per Se* exists where a statute, or ordinance, has itself imposed a legal duty. It is negligence as a matter of law. "Negligence *per se* arises when a statute or ordinance is violated. The violation of certain mandatory regulations may also amount to negligence *per se* if the regulations impose a legal duty." *Womack v. Oasis Goodtime Emporium I, Inc.*, 307 Ga. App. 323, 323, 705 S. E. 2d 199, 200 (2010). "Assuming that a violation of a statute or mandatory regulation has occurred, before negligence *per se* can be determined, a trial court must consider (1) whether the injured person falls within the class of persons it was intended to protect and (2) whether the harm complained of was the harm the statute was intended to guard against. Finally, if the trial court finds negligence *per se*, the plaintiffs must then demonstrate a causal connection between the negligence *per se* and the injury. And it is generally a jury question as to whether or not such negligence proximately caused the injury." *Id.* at 328, 329. Plaintiff in the instant case has provided nothing but hearsay as to Plaintiff's allegations that any law was broken or duty breached, and for the within and foregoing reasons stated hereinabove, Defendant maintains that Plaintiff has utterly failed to demonstrate that there is any causal connection between any possible breach by Defendant and Plaintiff's damages—because there is simply no concentration of excess surface water flow occurring from Defendant's property onto the Plaintiffs.

Plaintiff has failed to demonstrate that Defendant has violated any applicable statutes or ordinances that the Plaintiff complains of, namely that Defendant has violated the codes specifically referenced in

Plaintiff's Complaint and Motion for Summary Judgment: (1) International Swimming Pool and Spa Code; (2) International Residential Code; (3) International Plumbing Code; (4) Jackson County Code and a Tertiary Permit hold; (5) Jackson County Unified Development Code concerning buffers; (6) the Clean Water Act of 1972 (33 U. S. C. § 1251 et seq); and (7) the Virginia Graeme Baker Pool and Spa Safety Act and "OSHA" (¶ 26. of Plaintiff's Complaint).

Instead of engaging in the tedium of addressing each individual contention in Plaintiff's Complaint of violations of the foregoing laws, Defendant instead turns this Honorable Court's attention to the affidavit exhibits filed in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, the near totality of which are from licensed and qualified professionals who were in a position to cite the Defendant or Defendant's contractors for a violation of law, or to halt the project, and to sanction the Defendant. *See*, Defendant's Exhibit, "B" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Affidavit of former Jackson County Stormwater Specialist, Christopher Sorrell, generally, and specifically, ¶¶ 8. - 12., Defendant's Exhibit, "D" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Building Inspector, Barbara Smithmojica, generally, & specifically, ¶ 5.-21., Defendant's Exhibit, "C" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Jackson County Code Enforcement Officer, Stephen Alex Howard, generally, & specifically, ¶¶ 6.-26. and Defendant's Exhibit, "A" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of

Professional Civil Engineer, Guy Abernathy, generally, & specifically, ¶¶ 4.-13.

Conspicuously absent from any of the foregoing affidavits, or the record in general, is any indication that Defendants were cited for any activity relevant to Plaintiff's Complaint or Motion.

Additionally, and for the sake of good order, Plaintiff also patently fails to argue that any of these statutes and ordinances created a duty incumbent upon the Defendant to the Plaintiff and why, and that such duty created by these statutes is/was of the kind that are/were intended to protect the Plaintiff, and others like him, and for the reasons set forth in Defendant's nuisance and trespass analyses hereinabove, Defendant argues that Plaintiff has also patently failed to demonstrate that the Defendant, and Defendant's alleged violations of law, is/are the proximate cause of Plaintiff's damages. Namely because there is simply no excess surface water crossing the boundary from Defendant's property to the Plaintiff's, particularly as a result of any condition created by Defendant on Defendant's property.

Moreover, Plaintiff has utterly failed to put the actions of Defendant's contractors at issue as well, and has presented no evidence as to why liability for any alleged failure of Defendant's contractors to adhere to applicable law should be cast against the Defendant, when it is not in dispute that Defendant hired a reputable contractor to construct their pool. (*See Plaintiff's Exhibit, "B" in support of Plaintiff's Motion for Summary Judgment, Defendant's Swimming Pool Contractor Agreement*).

Presuming, *arguendo*, that Plaintiff had presented some fact or evidence to demonstrate that Defendant's contractors had violated some statute or ordinance (Defendant maintains any assertion to that effect is rebutted totally by the affidavits in support of this Defendant's reply), Defendant is not automatically liable to Plaintiff simply because the Defendant owns the property and has accepted the work performed by the Defendant's contractor. Consider, *Greenwald v. Kersh*, 265 Ga. App. 196, 593 S. E. 2d 381 (2004). "Under Georgia law, in order to be held liable for nuisance, ownership of land by the tortfeasor is not an element, but control is; the essential element of nuisance is control over the cause of the harm. The tortfeasor must be either the cause or a concurrent cause of the creation, continuance, or maintenance of the nuisance." (Citation and punctuation omitted.) *Greenwald* at 198, citing Plaintiff's case, *Sumitomo Corp. of America v. Deal*, 256 Ga. App. 703, 707 (2) (569 S. E. 2d 608) (2002). Operating off of the same basic hypothetical here which presumes Defendant's contractors had violated the law and created a trespass condition or a nuisance, the simple act of acceptance of the contractor's work product is not in and of itself sufficient to shift liability to the Defendant, rather the contractor must have performed work so as to amount to a nuisance, and Defendant would have had to have accepted the contractor's work knowing that a nuisance existed, or with some awareness of the nuisance condition. In *Greenwald*, the Court pointed out that the flaw in the Defendant's argument was that there was evidence that the Defendant accepted the work of the independent contractor **AND were on notice that the work constituted a nuisance.** Here,

Plaintiff has entirely failed to introduce any such evidence and there is none of record. As this Court may recall, Defendant's representations throughout the life of the case have always been that they have been surprised by Plaintiff's claims because of the distinct lack of belief that their pool contractor had done anything wrong, or that it was creating any issue for anyone, to include the Yeungs. Plaintiff has failed to specifically argue this point and most importantly, has provided no evidence in support of this theory. On the contrary, Defendant has provided significant evidence that the opposite is, in fact, true—that no violations throughout the life of Defendant's pool project ever occurred, and that there is no evidence to support the contention that any excess surface water is running from Defendant's property onto the Plaintiff's. See affidavits from BJ Smithmojica, Stephen Alex Howard, and Christopher Sorrell attached to Defendant's Response to Plaintiff's Motion for Summary Judgment.

For the foregoing reasons, any negligence claim, particularly any negligence *per se* claim, fails.

4. Presuming Plaintiff is Advancing On a Theory that Injunctive Relief is Necessary, Plaintiff Has Utterly Failed To Prove Each Essential Element Necessitating the Extraordinary Remedy of Injunction

A plain reading of Plaintiff's Complaint and of the Plaintiff's Motion for Summary Judgment indicates that Plaintiff is not pursuing injunction of an interlocutory nature, but rather Plaintiff seeks an "order" to "permanently enjoin Defendant, Shannon

Humphrey”. (Plaintiff’s Motion for Summary Judgment, page 1, ¶1).

Plaintiff’s burden in this regard is to demonstrate that, in the absence of any other remedy at law, the extraordinary remedy of permanent injunction is necessary to restrain Defendant from continuing illegal conduct or conduct contrary to equity and good conscience and for which no adequate remedy is provided at law.

O. C. G. A. §9-5-1 states:

“Equity, by a writ of injunction, may restrain proceedings in another or the same court, a threatened or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.”

Ga. Code Ann. §9-5-1

In order for the demanded injunctive relief to issue, Plaintiff must demonstrate that there is a legitimate basis for the issuance of the injunction he seeks beyond that which is merely alleged by him, and that it is the only adequate remedy he has. He has failed to do so. “Bare threat of injury to property offers no basis for equitable relief by injunction or otherwise. Allegations based on mere apprehension of injury and general conclusions, without alleging facts to show irreparable injury, are insufficient to authorize the grant of injunctive relief.” *Insurance Ctr., Inc. v. Hamilton*, 218 Ga. 597, 129 S. E. 2d 801, 1963 Ga. LEXIS 270 (1963). A mere apprehension of danger or injury will not require equitable relief. *Ellis v. Georgia Kraft Co.*, 219 Ga. 335, 133 S. E. 2d 350, 1963 Ga.

LEXIS 452 (1963). Both Plaintiff's Complaint and Plaintiff's Motion for Summary Judgment are nothing more than an exhausting, repetitive list of unsupported, conclusory statements which are exactly that "bare threat of injury to property" and "mere apprehension of danger or injury" contemplated by both the Insurance Ctr., Inc. and Ellis cases hereinabove. As described more fully hereinabove, Plaintiff has not even demonstrated at minimum that any excess surface water is running from Defendant's property to the Plaintiff's.

Despite the allegations of Plaintiff's Complaint and Motion for Summary Judgment, Plaintiff has failed to demonstrate that either Defendant, or Defendant's pool contractor, Sandals Luxury Pools, has committed any illegal act that is continuing. To the contrary, as this Honorable Court can see, the Defendant's evidence submitted in support of the Defendant's Response to Plaintiff's Motion for Summary Judgment clearly demonstrates that not only did Defendant and Defendant's pool contractor not engage in illegal conduct during or after the construction of the Humphrey pool, but instead that the Defendant's pool project was routinely inspected throughout the construction process by Jackson County Code Enforcement and the Building inspector with Bureau Veritas attached to Defendant's pool construction permit, and that no citations, stop work orders, or other sanctions were ever issued to Defendant or Defendant's pool builder concerning the construction of the Defendant's pool. At one point, just before breaking ground, a stormwater specialist was dispatched to the Yeung and Humphrey properties in response to a stormwater complaint filed with Georgia EPD by the Yeungs. He found no

evidence of runoff or erosion from the Humphrey property either, and sought no violation from Jackson County Code Enforcement. (*See*, Affidavits of Stephen A. Howard, Christopher Sorrell, & BJ Smithmojica attached therewith Defendant's Response to Plaintiff's Motion for Summary Judgment, generally). With the idea that Plaintiff will reflexively argue that the absence of citations and stop work orders is not dispositive of Defendant's obedience to the law, Defendant points out that this argument is, instead, an argument to Plaintiff's detriment—it simply highlights that Plaintiff has failed to meet their burden of proof.

To this point, as specifically stated in the supporting affidavit of Stephen A. Howard with Jackson County Code Enforcement, "In order to issue a citation for what the Yeungs have complained about on the Humphrey property, I have to be able to prove that there is some form of damage occurring, like the typical signs of erosion like rills, gullies, valleys, channels, excessive sedimentation or disturbed vegetation, or where I observe large amounts of sediment being dumped onto a neighboring property, or I would have to prove that the neighbor did something purposeful to direct water flow onto a neighboring property—particularly if it would appear that it is done because of a neighbor to neighbor dispute. I have never once observed any evidence of damage or evidence of intentional bad acts by the Humphreys in all of my many visits to the Yeung and Humphrey properties. None of that occurred in any way, shape, or form here." (Affidavit of Stephen A. Howard, page 10. ¶ 20.). Further, examine the sworn statement of the building inspector attached to the Humphrey pool permit: "My

reports from site inspections of the Humphrey pool project show that applicable provisions of the 2018 International Swimming Pool and Spa Code were followed, particularly as it applies to the necessity to inspect the pool piping that was installed prior to back-filling of the pool. If the Humphrey project did not meet applicable code, to include the International Codes and all Georgia State Amendments adopted by Jackson County, Georgia, it would not have passed inspection or received a Certificate of Completion—which it did.” (Affidavit of Building Inspector, BJ Smithmojica, pages 8 & 9, ¶ 19.)

Additionally, as was discussed at greater length hereinabove regarding Plaintiff’s potential nuisance and trespass claims, Defendant reiterates herein that Plaintiff has not even, at minimum, satisfied one of the most basic prerequisites to his demand for injunction, that is, that a harmful condition is even occurring to begin with, let alone *continuing*.

Further, the evidence demonstrates that what Plaintiff seeks via his demand for injunction has already been accomplished by both Defendant’s builder, Hillgrove Homes, and the Defendant, and any claim or representation in Plaintiff’s Motion for Summary Judgment or Plaintiff’s Complaint that Plaintiff did not experience excess runoff or erosion prior to the construction of the Defendant’s pool is a deliberate misrepresentation to this Court. Plaintiff seeks to enjoin the Defendant “...from causing further damages to plaintiff’s property. Mandate Defendant to take Corrective Action to comply with Local, State and Federal Codes.” (Plaintiff’s Motion for Summary Judgment, page 1, ¶1). The Plaintiff clarifies in Plaintiff’s Complaint and Plaintiff’s Motion, that the

“Corrective Action” he seeks is to prevent the flow of water onto the Plaintiff’s property and appropriately direct the water toward Traditions Way, which runs in front of the Yeung and Humphrey homes.

However, the evidence in support of the Defendant’s Response to Plaintiff’s Motion for Summary Judgment prior demonstrates that Plaintiff’s demand is moot and without merit. It shows that the Defendant and the Defendant’s home builder have more than adequately shaped the Defendant’s property to prevent any excessive runoff or erosion onto the Plaintiff’s property.

“Injunction will not be granted to restrain acts already completed.” *Georgia Pac. Ry. v. Mayor of Douglasville*, 75 Ga. 828, 1885 Ga. LEXIS 240 (1885); *Russell v. Napier*, 80 Ga. 77, 4 S. E. 857, 1887 Ga. LEXIS 325 (1887); *Simmons v. Lindsay*, 144 Ga. 845, 88 S. E. 199, 1916 Ga. LEXIS 144 (1916); *Shurley v. Black*, 156 Ga. 683, 119 S. E. 618, 1923 Ga. LEXIS 308 (1923); *Hapeville-Block, Inc. v. Walker*, 204 Ga. 462, 50 S. E. 2d 9, 1948 Ga. LEXIS 450 (1948); *Blackwell v. Farrar*, 209 Ga. 420, 73 S. E. 2d 203, 1952 Ga. LEXIS 528 (1952); *Scott v. Sherwood Mem. Gardens, Inc.*, 214 Ga. 25, 102 S. E. 2d 556, 1958 Ga. LEXIS 327 (1958); *Avis, Inc. v. Graham*, 217 Ga. 330, 122 S. E. 2d 245, 1961 Ga. LEXIS 440 (1961).

See, Defendant’s Exhibit, “C” “submitted in support of Defendant’s Response to Plaintiff’s Motion for Summary Judgment, Aff. of Stephen A. Howard, pages 8 & 9, ¶¶ 16.-18, (no indication of erosion or other violations, existence of properly functioning best management practices and swale) and Defendant’s Exhibit, “A” “submitted in support of Defendant’s Response to Plaintiff’s Motion for Summary Judgment, Aff. of Guy

Abernathy in support hereof—specifically, page 7., ¶13. of Mr. Abernathy’s affidavit, in which Mr. Abernathy, a professional civil engineer who personally inspected the Humphrey property states, “It is my professional opinion after personally visiting the Humphrey lot and performing measurements of the Humphrey topography, and after running several multi-variable/multi-factor calculations based on the data available, that there has been NO concentration of water flow onto the Yeung property created by the Humphreys. In fact, my observations, measurements and calculations demonstrate that the opposite is true. From an engineering perspective, the Humphreys and their home builder have gone above and beyond necessary measures regarding drainage and stormwater management to ensure that there is not excess runoff of water onto the Yeung lot which might cause any damage to the Yeung property. By my observation, much of what the Yeungs are complaining of is a failure to appropriately maintain their own lot, and a simple, but inaccurate assumption that anything negative they observe on their own property must be because it is downhill from the Humphrey lot.” (Aff. of Guy Abernathy, Professional Civil Engineer, page 7. ¶13.)

In July of 2022, Plaintiff in the instant case filed suit against the Defendant’s Home Builder, Hillgrove Homes, in the Magistrate Court of Hall County, Georgia under a nuisance theory. In Plaintiff’s magistrate complaint, Plaintiff complained that Hillgrove Homes failed to use adequate erosion control measures on the building site, which resulted in excess runoff and erosion onto Plaintiff’s property during rain events, damaging the Plaintiff.

(Defendant's Exhibit, "G" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Plaintiff's Magistrate Complaint.) That case was resolved in September of 2022 by way of a final Judgment For Plaintiff By Verdict. (Defendant's Exhibit, "G" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment). Defendant points this Honorable Court's attention to pages 1 &, ¶ 2. of the Magistrate Court's Judgment: "This Court finds that Defendant made efforts to minimize these issues and during the final construction stage took significant steps to prevent any further damage and/or issues to Plaintiff's residence. Plaintiff acknowledged that efforts made by Defendant have resulted in no further issues on the property. It is this Court's experience that the effort by Defendant, which are not always undertaken by builders, has minimized the possible damages to Plaintiff's property, both during construction and obviously in the future." (Defendant's Exhibit, "G" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Final Judgment pages 1 & 2, ¶ 2). Despite agreement in this regard, Plaintiff continued to complain about runoff and erosion issues from the Humphrey property even prior to construction of the pool, even though no evidence existed to support the Yeungs' complaints. *See*, Defendants Exhibit, "C" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, pages 3 & 4, ¶ 7., and Defendant's Exhibit, "B" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Christopher Sorrell, pages 5 & 6, ¶¶ 10.-12.).

Plaintiff has misrepresented to this Honorable Court that there exists a legitimate threat to Plaintiff's property due to ongoing nuisance and trespass matters resultant Defendant's creation of some artificial condition on the Humphrey property, which is simply untrue. Instead, Plaintiff's claims of excess runoff and erosion are based entirely on assumption. (Dep. Trans. of Kevin Yeung, page 211, lns. 9-21). Despite Plaintiff's insistence that issues persist, "[T]he public development record available to myself and the public in Jackson County shows that we have not been asked to return to the Yeung and Humphrey properties for any stormwater or code violation complaints since the last visits in 2022. I have not myself been asked by anyone to return to these properties for any further issues or complaints" (Defendant's Exhibit, "C" submitted in support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Aff. of Stephen A. Howard, pages 13 & 14 ¶ 27.)

In light of the foregoing, Defendant argues that Plaintiff's demand for permanent injunction lacks merit and should be denied.

CONCLUSION

The matter before this Court is precisely the type of case in which summary judgment is appropriate. Despite a significant amount of time and leeway granted for Plaintiff to prosecute Plaintiff's claims and conduct discovery, Plaintiff has patently failed to support the essential elements of Plaintiff's claims against the Defendant, and the record shows there is no genuine issue of material fact as to the essential elements of Plaintiff's claims. For the within and foregoing reasons, Defendant respectfully requests

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that this Court grant their Motion for Summary Judgment against all counts of the Plaintiff's Complaint.

This 17th day of May, 2024.

Respectfully submitted,

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