



Date: September 14, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Edward R. Venable, Manager of Engineering and Stormwater
Robert N. Joyner Jr., PE, Assistant Manager – Development Review
Subject: Response to Citizen Request to Appear (James Williams)

Stone Hill Estates is a multi-phase single family residential development located off of Freeman and Clayton Roads, just north of Wake Forest Hwy in Durham. The developer of the project was Durham Land Associates, LLC. The parent developer company for this project was Macgregor Development. In approximately 2008, the parent development company Macgregor Development filed for bankruptcy, leaving Durham Land Associates, LLC and several other companies it controlled insolvent.

Stone Hill Estates was protected by multiple Performance Bonds from two (2) separate bonding companies. Staff contacted the bonding companies and made claims on the performance bonds for the project. The bonding companies responded by sending out a representative to evaluate the project. This representative completed a punch list with staff on final asphalt course, base repairs, stormwater facilities and various other punch items. The representative for the bonding companies consolidated the data and acquired pricing from various local contractors. After receiving prices the bonding company representative contacted the City of Durham and indicated that it would only pay for certain items under the bonds as they believed that their liability was limited. The City of Durham disagreed with this assessment and made a full demand (again) upon all items through the City Attorney's Office (CAO). After some initial negotiations between the attorneys representing the bonding companies and the CAO, the bonding companies filed a complaint in the US District Court to determine its obligations under the bonds¹. The litigation is currently in the very early stages of discovery and will likely extend through next spring before any hearing or trial would be scheduled.

¹ On June 27, 2011, Developers Surety and Indemnity Company and Selective Insurance Company of America filed a Complaint for Declaratory Judgment in U.S. District Court for the Middle District of N.C.

The City of Durham (City) has met with the residents of Stone Hill Estates several times over the last year to provide them with lists of all of the punch lists items that are outstanding, and to discuss the totality of the repairs that need to be made to the subdivision prior to acceptance by the City.

The items that need to be repaired in the subdivision are typically as follows:

- Final lift of asphalt
- Repairs to base course of asphalt
- Repairs to the sidewalks; cracked sidewalk and curb replacement
- Adjustment of utility valves and manholes
- Fire hydrant repainting
- Stormwater facility construction and reconstruction.
 - Note - There are a total of 5 stormwater management facilities located in Stone Hill Estates Phases 1, 2 and 3. Only 1 of the 5 stormwater management facilities has been accepted by the City of Durham as Complete (Pond #2). The other 4 stormwater management facilities are in various states of decay with one of the stormwater facilities that have failed completely.

At this time, no repairs have been made by the street maintenance division of Public Works due to the pending litigation with the bonding companies. In addition, the Public Works department recommends that no repairs, be made by the City within Stone Hill Estates until the pending litigation with the bonding companies has been resolved.