

Uh oh!

Bob Rogers

John Wall and Associates

bob@johnwallandassociates.com

Not giving legal advice



Subpoena

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

South Carolina State Conference and Georgetown County)
Branch of the NAACP, et al.,)

Plaintiff,)

v.)

Georgetown County, a political subdivision of the State of)
South Carolina, and the members of the Georgetown County)
Council in their official capacities,)

Defendants.)

Civil Action No. 2:22-cv-04077-BHH

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR PERMIT INSPECTION OF
PREMISES IN A CIVIL ACTION**

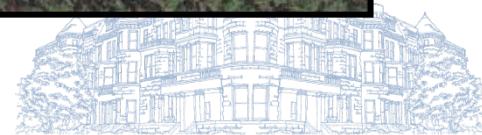
To: ATTN: John Wall and Associates, Post Office Box 1835, Seneca, SC 29679



Summary of the case

- SCSHFDA awarded credits in 2021; does not req. zoning at application
- Georgetown County (SC) turned down the re-zoning
- The developer and the NAACP sued under the Fair Housing Act and the equal protection clause of the 14th Amendment
- *“Plaintiffs allege that Defendants’ decision to oppose Porter’s Landing was not based on Georgetown County’s housing needs or sound land use planning but instead: was motivated by racism; has resulted in substantial and disproportionate harm to Black households; and will perpetuate existing patterns of racial segregation in Georgetown County. Plaintiffs seek declaratory, injunctive, and monetary relief in connection with their claims.”*









First steps

- We contacted our client
- They had their attorney call
- Attorney said probably nothing was privileged

- Subpoena didn't specify how to send the requested information; the requesting attorneys had a secure upload link like accountants use



Contents of Subpoena

- Legal “stuff” —definitions, rules, instructions, *etc.*
- 12 requests in these general areas
 - Correspondence, contracts, billing
 - Reports produced by us regarding this matter
 - Information used to write report
 - Other conclusions not in the study
 - Biographical information about us
 - Reference material



Request 1: All documents, emails, records exchanged between you, your corporation or any third party entity including but not limited to BlueLine Development, Inc. relating to *South Carolina State Conference and Georgetown County Branch of the National Association for the Advancement of Colored People, FourSix Development, LLC and We Do Good Work, LLC.*



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We searched our email accounts for our client name, project name, and city name

New client, and first time working in Georgetown, so not many emails to sort through



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All the emails are provided in PDF files. All the attachments referenced within the emails are in the “Misc” folder of the project folder (“GeorgetownSC_Porters”). In reviewing the email, I see that the client first contacted me via phone call. I probably made a note of the client’s name and the proposed city at the time but discarded it when the email arrived. All of the documents we sent or received via any method are in the folder mentioned above.



Request 2: Copies of all reports and notes written you, prepared by you, or prepared at your direction and included in your file with respect to a market analysis performed for Porter's Landing Tax Credit (Sec. 42) Apartments in Georgetown County, South Carolina dated May, 2021 (hereinafter called the "Market Analysis.")



Request 2: Copies of all reports and notes written you, prepared by you, or prepared at you direction and included in your file with respect to a market analysis performed for Porter’s Landing Tax Credit (Sec. 42) Apartments in Georgetown County, South Carolina dated May, 2021 (hereinafter called the “Market Analysis.”)

To the extent we have retained any notes, they are preserved in the project folder. All of our internal discussions regarding the Market Analysis, Porter’s Landing, Georgetown, or the client were via the emails provided above.



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[USPAP] **Definition of workfile:** documentation necessary to support an appraiser's analyses, opinions, and conclusions



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Draft reports (Rule 26)

Telephone conversations



Request 3: All information upon which you based your conclusions for the Market Analysis.



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The Market Analysis is intended to be self contained, so all the information upon which we based our conclusions should be found within the study.

[NCHMA] Market study: A comprehensive study of a specific proposal....

[ODE] comprehensive:

Including or dealing with all or nearly all elements or aspects of something
Of large content or scope; wide-ranging

One could base conclusions partly on media reports, conversations, or official publications that are referenced but not included in the study.



Request 4: Any and all other assumptions provided by the any third party that you considered and relied upon when forming opinions for the Market Analysis.



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We did not use any third party reports in producing the Market Analysis, so we don't have any third-party's assumptions.

ApartmentAdvisor

IREM

Novogradac

RealPage

Zillow



Expert Witness

- Federal Rules of Civil Procedure (FRCP) Rule 26
- Requests 5, 6, 7 & 10 are required disclosures for expert witnesses (some copied directly from the rule)

Rule 26 is 72 pages single spaced (and I haven't read it)

These questions might indicate we have been named as a potential expert witness



Request 5: If not in the Market Analysis, a complete statement of all conclusions you will express and the basis and reasons for them.



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All our conclusions are found on pages 11 and 12 in the Market Analysis. **My recollection is that the conclusions were easy to reach because the need was clear.**



Request 6: Copies of your publications authored in the previous 10 years (not including other market analysis's.)



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No one in our firm has authored a publication in the previous 10 years.



Request 7: A list of all cases in which, during the previous 10 years, you testified as an expert at trial or deposition. If available, please provide copies of those transcripts.



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No one in our firm has ever testified as an expert at trial or deposition.



Request 8: Scientific or other type articles upon which you relied in making conclusions about the Market Analysis.

Request 9: Scientific or other type texts, treatises, technical articles or other professional publications which were relied on when forming an opinion with respect to the Market Analysis



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Our firm follows the guidance of The National Council of Housing Market Analysts (we are a member in good standing). There is a “NCHMA” folder with current PDF files of the guidance documents. We do not have archival copies of those documents from the period of time when we were performing the studies, so we made the PDF files recently. Most of them haven’t changed since they were originally published. Our firm participated in creating some of them, and I am listed as an author on at least one.

SCSHFDA “Appendix A – Mkt Study Criteria.pdf” (in the top level of the zip file) requires adhering to NCHMA Terminology.



Request 8: Scientific or other type articles upon which you relied in making conclusions about the Market Analysis.

Request 9: Scientific or other type texts, treatises, technical articles or other professional publications which were relied on when forming an opinion with respect to the Market Analysis

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Request 10: Your retainer, fee agreement, contract or engagement letter for the Market Analysis.



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We provided our letter of engagement. It includes the following:

“Should we discover no demand at an early stage of the study, we will pull off for only what we have put into the report up to that point.”

What if one is operating under a verbal agreement?



Request 11: Complete time and billing records for the Market Analysis file.



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We bill a flat fee for our market analysis reports (which is typical in our industry), so we do not keep time or billing records.



Request 12: Your complete Market Analysis file, including communications with anyone related in any way to the Market Analysis.



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The folder “GeorgetownSC_Porters” is a complete file of all the work produced for this Market Analysis. The contents of the various sub-folders are described below

- We organize our computer files primarily by assignment, so sending them everything was fairly easy.
- We included database files in raw form, but also made pdfs showing records (apartments) that we omitted.
- We gave them geographic files (site and PMA)
- Some of what is in the files (report templates, database files, geographic files, *etc.*) can be cryptic so we explained them

