

TOWN MANAGER'S WEEKLY REPORT



UPCOMING MEETINGS & EVENTS ...

- ✓ **Town Council Meeting:** Wednesday, June 10th, 7:00 PM, Regular Meeting, Town Hall
- ✓ **Planning Commission:** Wednesday, June 17th, 6:00 PM, Town Hall
 1. Public Hearing
 - Revision to § 230-97. Accessory buildings.
 - Revision to §230-209. Category I site plan processing procedures.
 - Deletion of §230-210. Contents of concept plan submittals.
 - Revision to §230-211. Contents of preliminary site plan.
 2. Regular Meeting
 - Georgetown Elementary & Middle School – Relief from 10' x 20' to 9' x 18' parking spaces (BOA item)
 - Historic Review – 21 East Market Street (Sign)
- ✓ **Town Council Meeting:** Wednesday, June 24th, 6:45 PM, Public Hearing; 7:00 PM, Regular Meeting, Town Hall

UPDATES FROM DEPARTMENTS ...

Finance

- As of June 4th, the Town has collected \$813,860 (93%) of the April 2015 Utility Billing (\$877,309)
- As of June 4th, the Town has collected \$900,268 (60%) of the FY 2016 Tax Billing (\$1,511,679)
- Monthly Key Revenue Items Report (May 2015) – copy attached
- Facilitated candidate interviews for Part-time Cashier/Receptionist (Laura Givens, Jocelyn Godwin, Olga Holm)

Wastewater

- Lagoon depths: Large Lagoon is 12.75 feet and Small Lagoon is 6.75 feet
- Repaired seven (7) diffusers in Biolac® (see photo 1)
- Cut up two (2) large trees across access road at Pettyjohn Woods
- Changed heater in pump 2 at the Plaza pump station

Public Works

- Anticipate initiation of weed spraying once rainy weather subsides
- Delivered accumulated yard waste to Stockley Materials
- Meter reading for July utility billing started

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Police

- Significant Incident Reports and Press Releases distributed as prepared
- Weekly and Year to Date crime statistics (selected crimes) updated (copy attached)
- Code Enforcement Report – May 2015 issued and posted to website (copy attached)
- Finalizing arrangements to return the "Peace Keeper" to Ft. Meade
- Submitted the necessary paperwork to the LESO program coordinator to transfer the three (3) Humvee vehicles to NCCPD
- Community conversations have been held with Bernice Edwards, First State Community Action Agency, and Crystal Timmons-Underwood, La Esperanza
- Received two (2) proposals for the new front door and ballistic resistant glass for the reception area

Planning

- Board of Adjustment:
 - 20663 DuPont Boulevard (Burger King), seeking waiver of required loading space – **Granted**
- Building Permit Summary (May 2015)

Building Activity	May 2015	April 2015	May 2014
Permits Issued	19	32	18
Value of Improvements	\$1,469,054 ¹	\$2,105,652 ²	\$169,081
Permit Revenue	\$7,675	\$11,400	\$1,160

TOWN MANAGER'S UPDATE ...

- Met with DNREC to discuss land use alternatives for Brownfield sites within the Town (Stephani Ballard, Gene Dvornick)
- Held training session on Comcate Code Enforcement Suite (Gene Dvornick, David Hume)
- Followed up with DeIDOT regarding grass cutting along the median of DuPont Boulevard
- Attended Sussex County Association of Towns dinner meeting (Gene Dvornick, Rebecca Johnson-Dennis, Chris Lecates, and Bill West). Speaker was DeIDOT Secretary Cohan regarding two focus areas: Customer Service and Innovation

¹ Georgetown Plaza façade improvements - \$719,000; Georgetown Health Care - \$700,000

² Sussex Academy - \$1,425,000

TOWN MANAGER'S WEEKLY REPORT



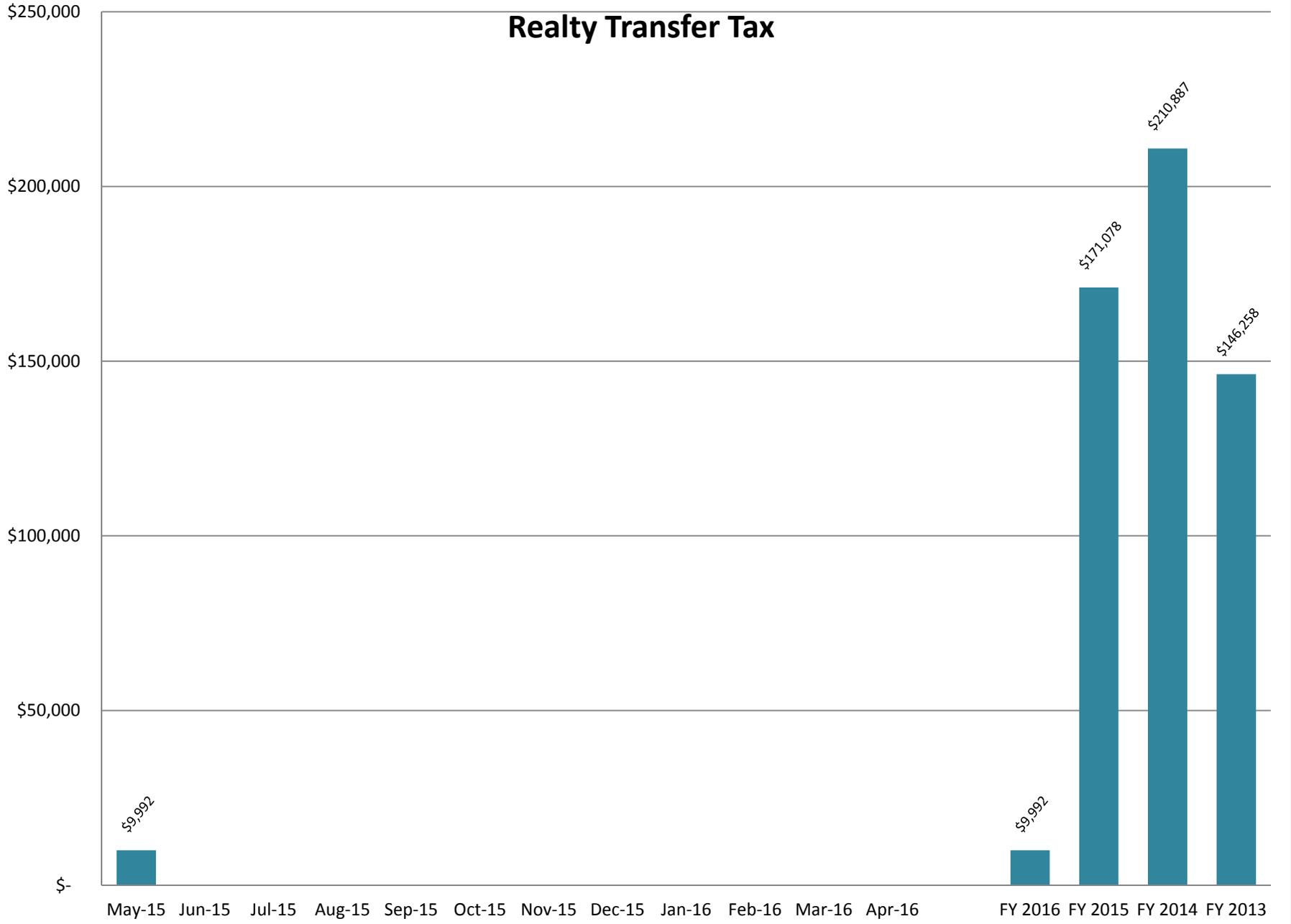
- Received briefing on enhancements to General Code application – formal training at a future date (Jamie Craddock, Gene Dvornick, Angie Townsend)
- Completed legal review and contract execution with Enterprise Fleet Management (Stephani Ballard, Gene Dvornick, Laura Givens)
- Attended SCAT Steering Committee (Gene Dvornick, Bill West) – discussion on the following:
 - ✓ Legislative update (Jamie Nutter)
 - Review of Realty Transfer Tax allocation
 - Services paid for by the State versus County or Municipality
 - ✓ Center for Inland Bays Council on Police Training (COPT) updates
 - Living Shorelines
- Town complaint against David A. Bramble, Inc. regarding Pettyjohn Woods filed in Sussex County Superior Court (S15C-06-005 ESB)



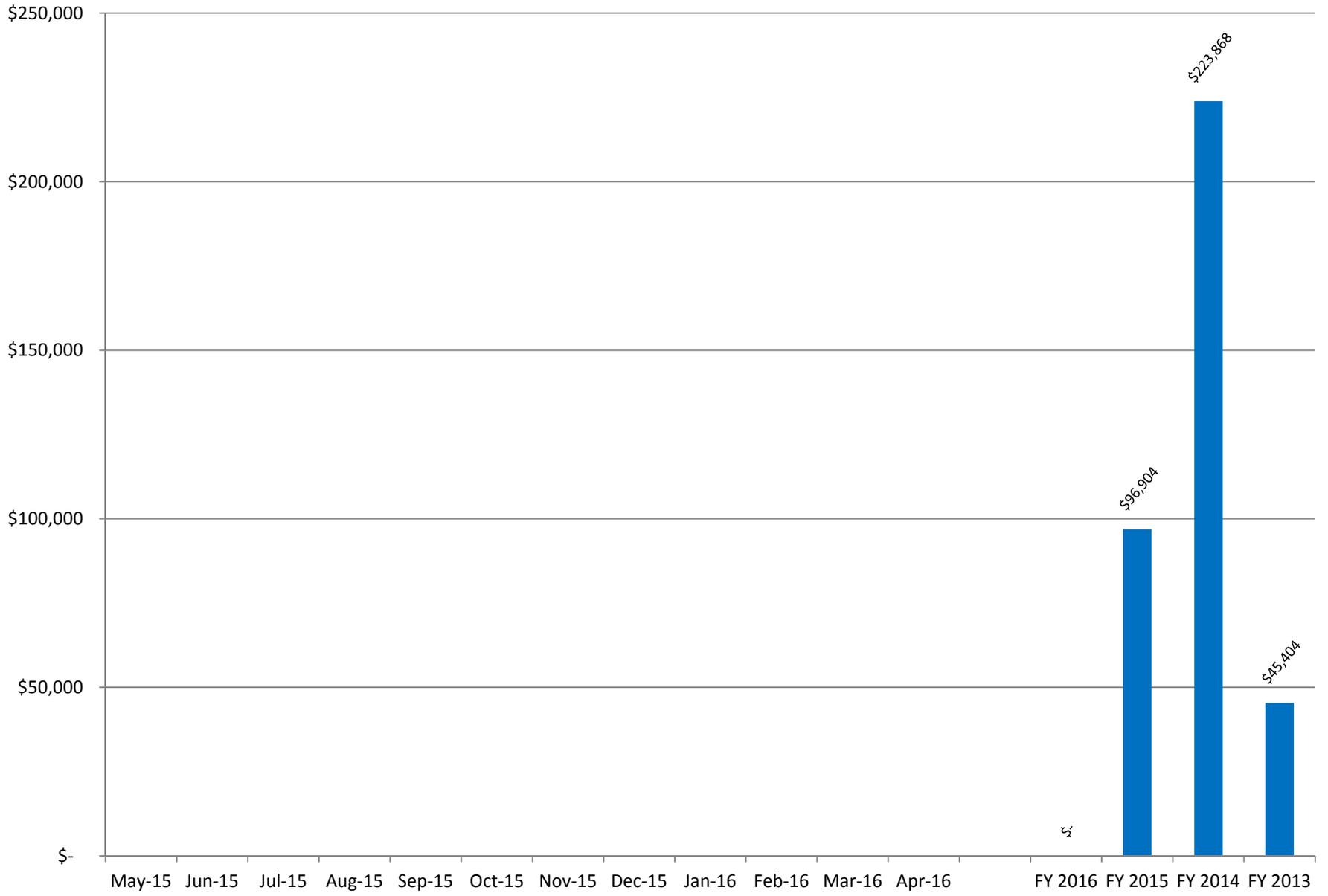
Photo 1 – Biolac® Diffuser Repairs

***THIS REPORT AND ANY ATTACHMENTS ARE ONLY BEING SENT
ELECTRONICALLY UNLESS OTHERWISE REQUESTED***

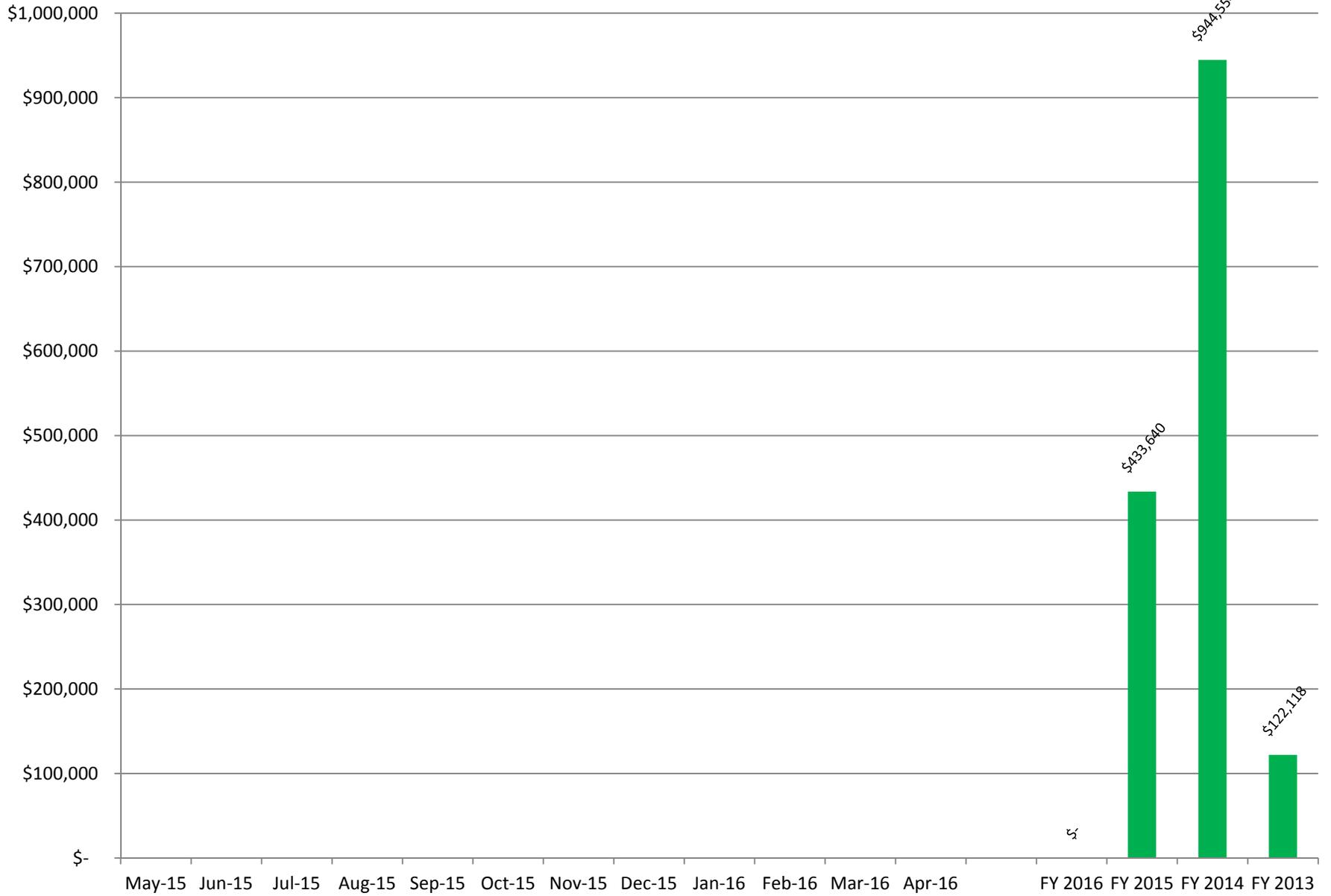
Realty Transfer Tax



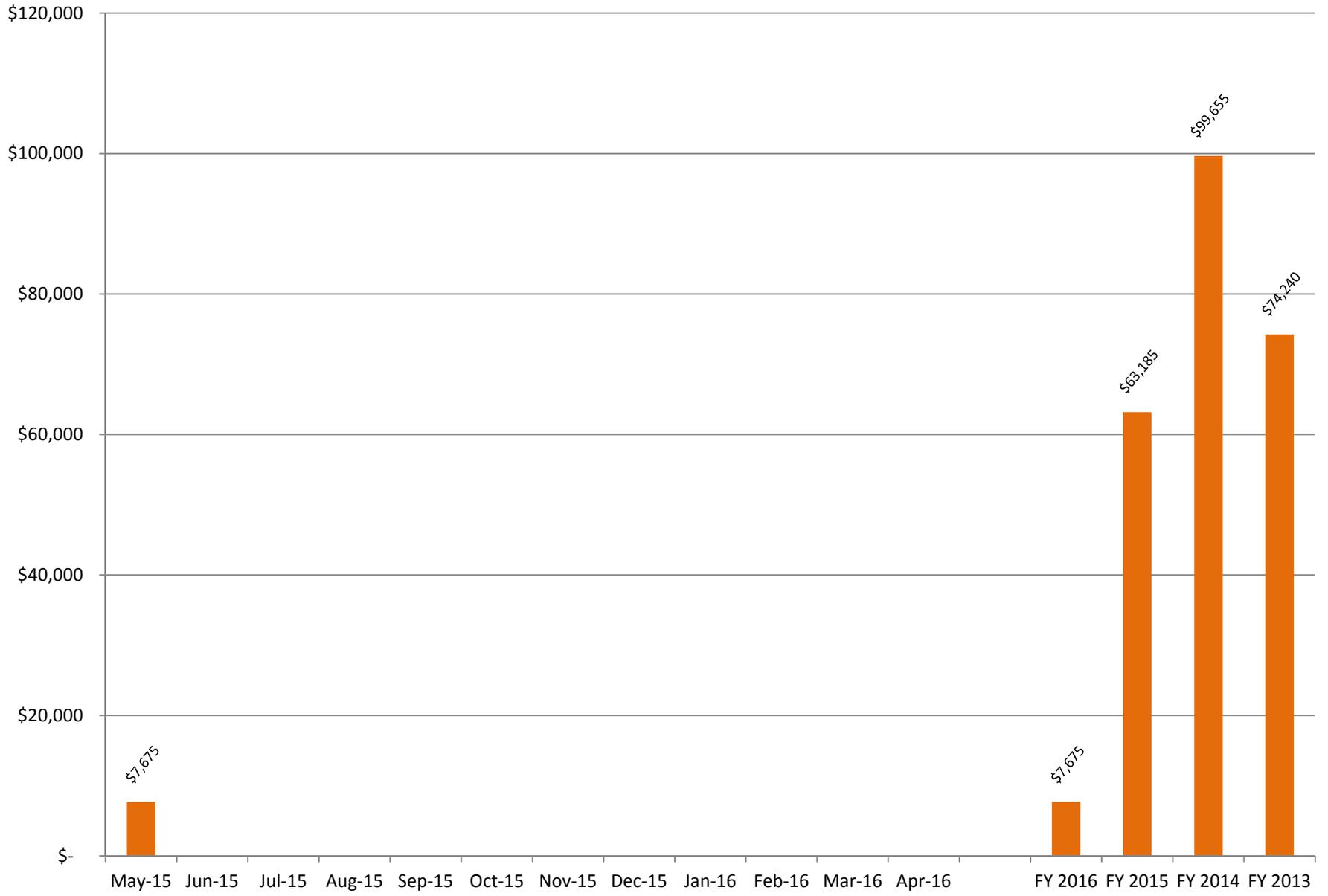
Water Impact Fees



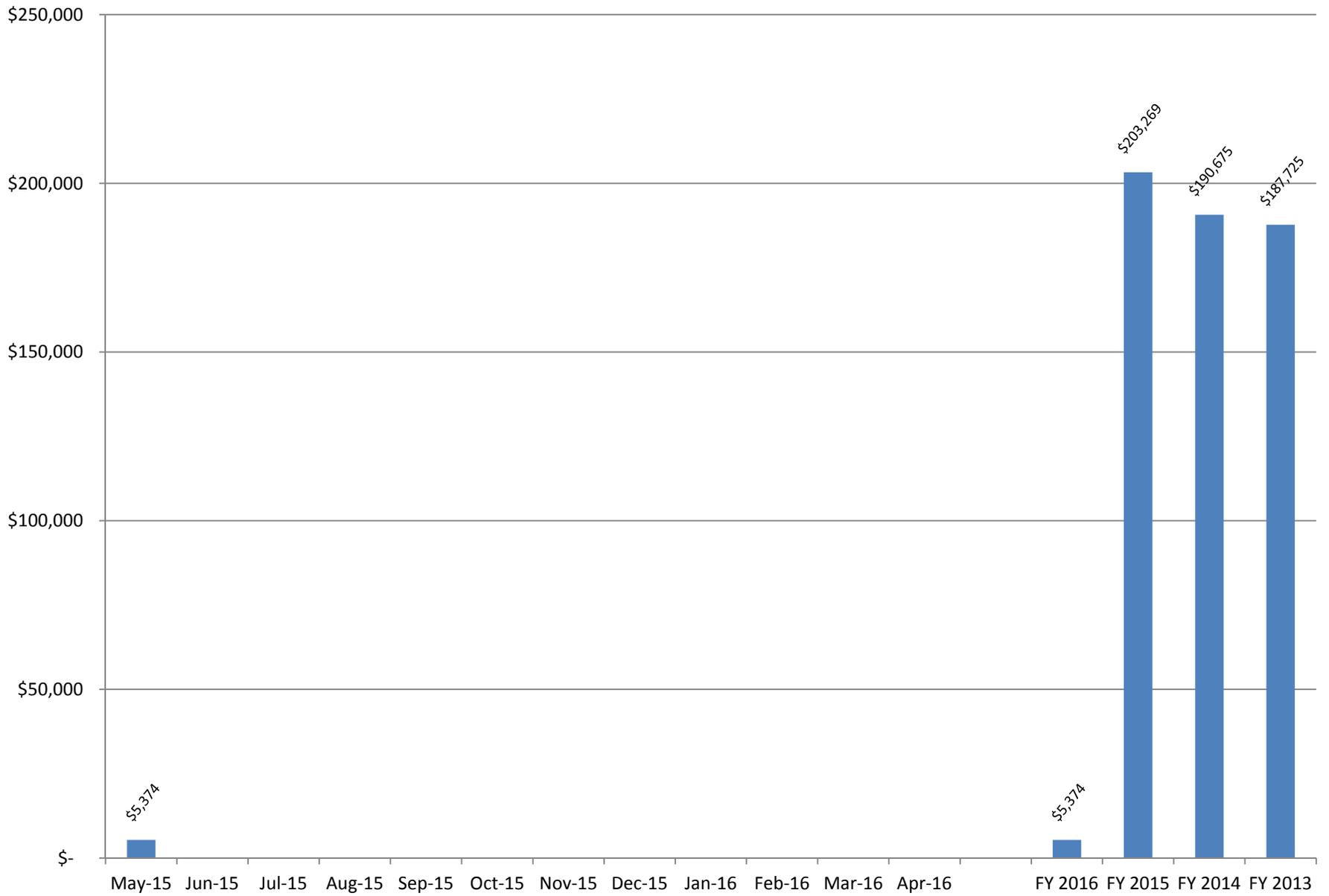
Sewer Impact Fees



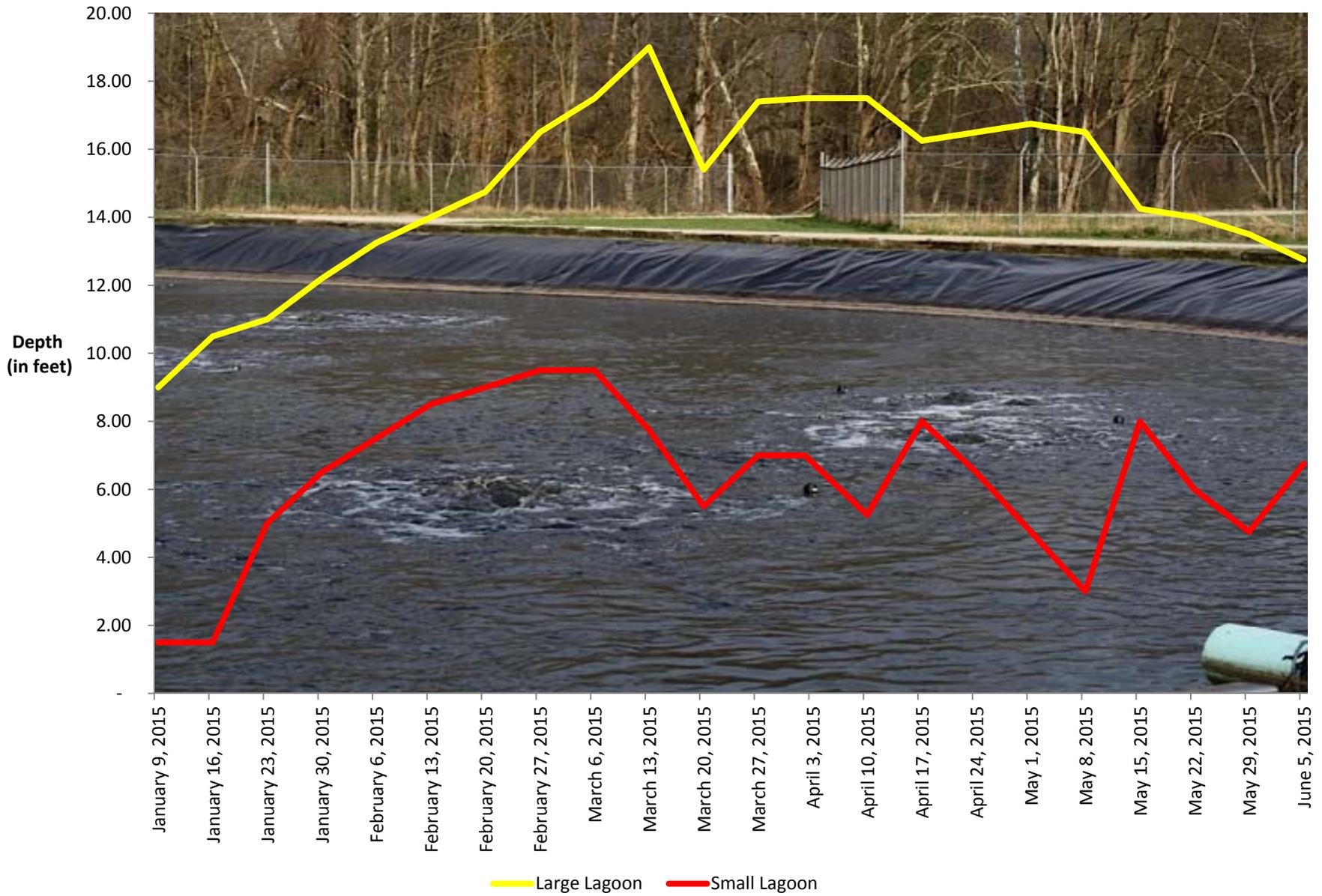
Building Permit Fees

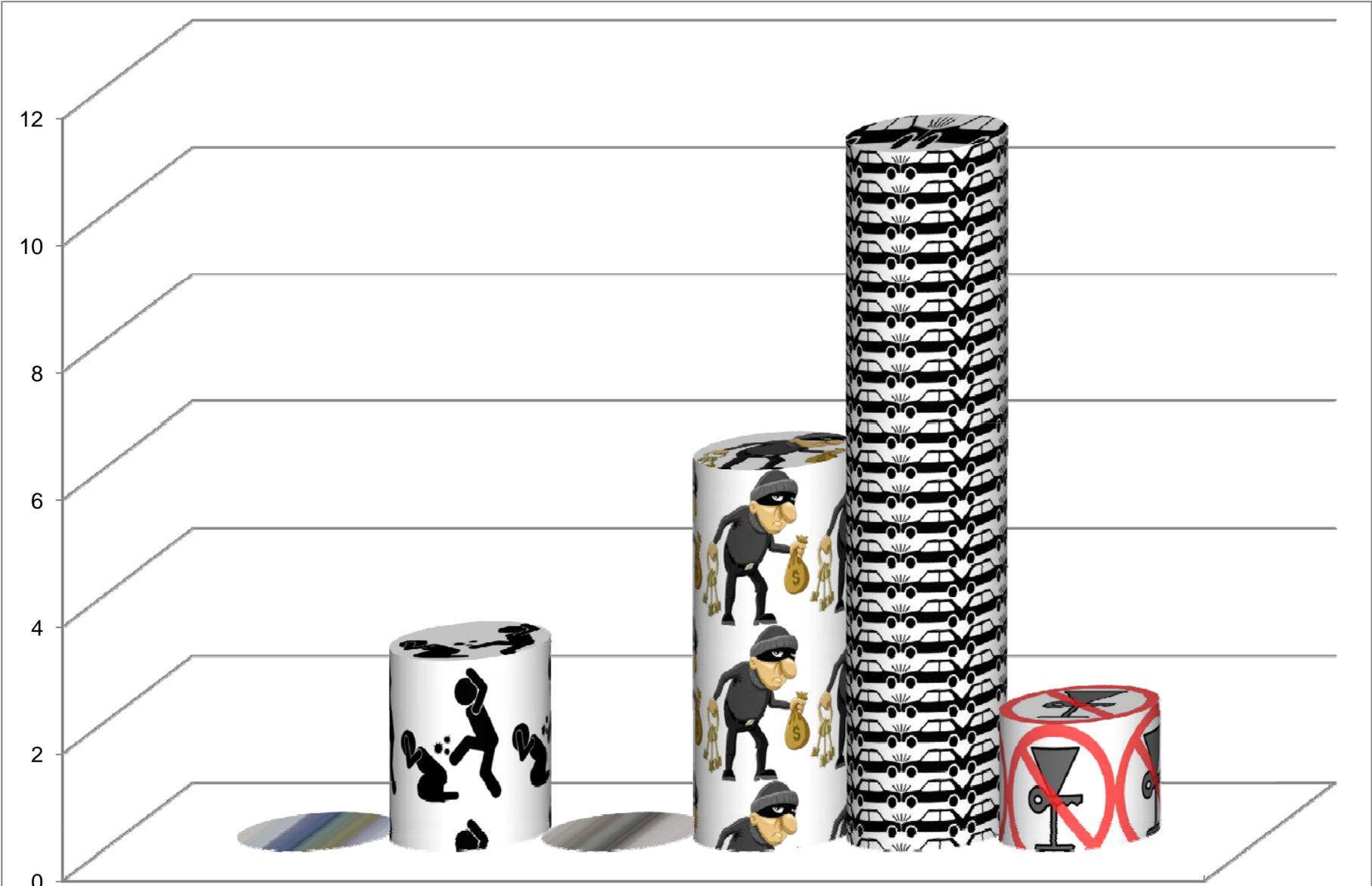


Business License Fees



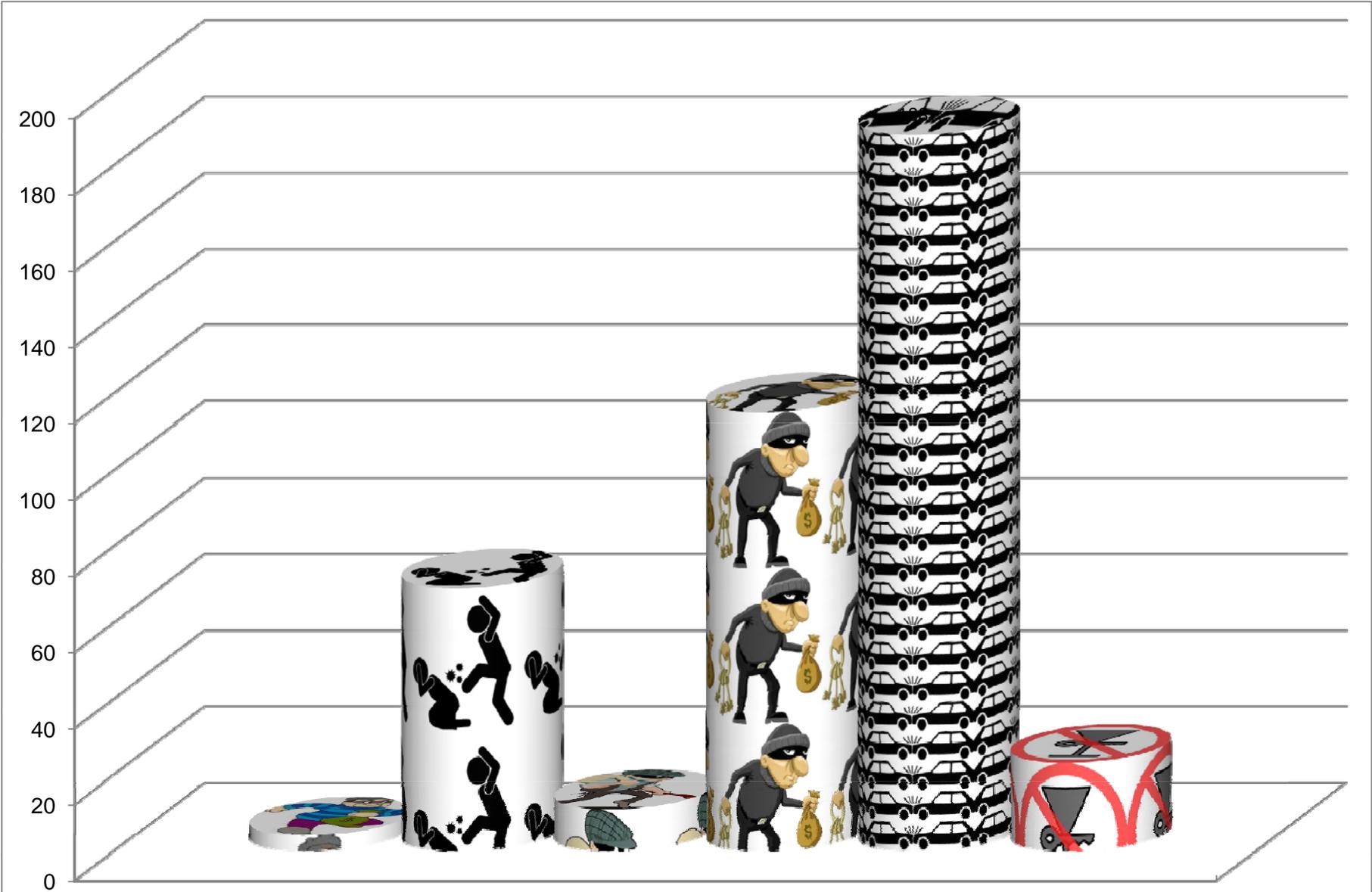
WWTF Lagoon Depths





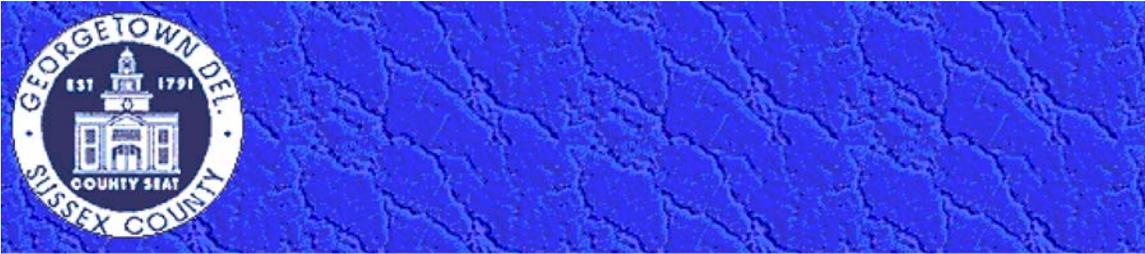
Weekly

■ Robbery
 ■ Assault
 ■ Buglary
 ■ Thefts
 ■ Collision
 ■ DUI



Year to Date

■ Robbery
 ■ Assault
 ■ Buglary
 ■ Thefts
 ■ Collision
 ■ DUI



Code Enforcement Activity Report

Report Criteria:

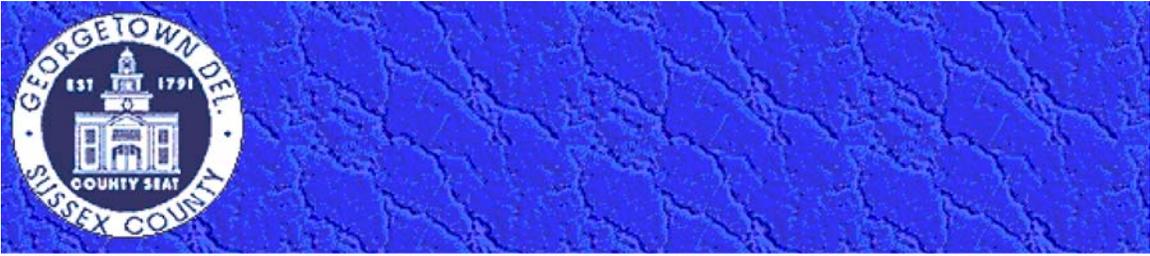
<i>Location Type</i>	<i>Location Field</i>	<i>Date From</i>	<i>To</i>
Ward	All	05/01/2015	05/31/2015

Case Activity:

	<i>Dvornick, Gene</i>	<i>Hume, David</i>	<i>Total</i>
New Cases	16	1	17
Closed Cases	16		16
Open Cases at start of period	33	1	34
Open Cases at end of period	33	2	35

Violation Activity

<i>New Violations Cited</i>	<i>Dvornick, Gene</i>	<i>Hume, David</i>	<i>Total</i>
Accessory Structures	2		2
Animals not allowed to be kept	1		1
Detrimental Objects	2		2
Failure of owner to pay Town; collection by Town.	1		1
Failure of property owner to remedy; action by Town.	1		1
Height limit of other vegetation	4		4
Height of Grass	12		12
Notice deemed effective for remainder of year.	11		11
Truck parking prohibited in residential zones.	1		1
Violations and penalties. (Grass, Bushes, Trees, Vegetation)	12		12
Totals	47		47



Code Enforcement Activity Report

Report Criteria:

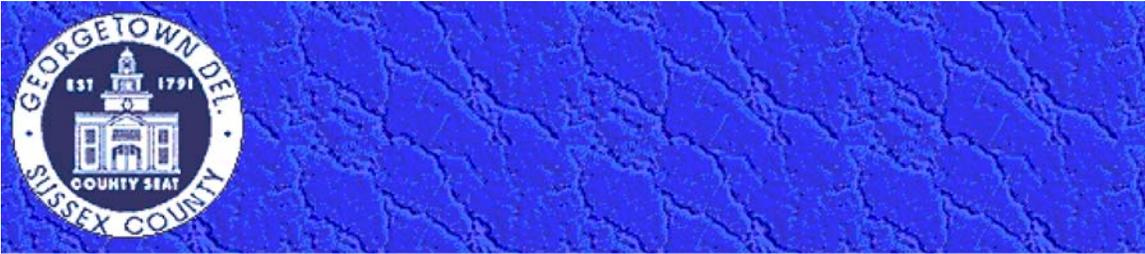
<i>Location Type</i>	<i>Location Field</i>	<i>Date From</i>	<i>To</i>
Ward	1	05/01/2015	05/31/2015

Case Activity:

	<i>Dvornick, Gene</i>	<i>Total</i>
New Cases	5	5
Closed Cases	3	3
Open Cases at start of period	12	12
Open Cases at end of period	14	14

Violation Activity

<i>New Violations Cited</i>	<i>Dvornick, Gene</i>	<i>Total</i>
Height limit of other vegetation	2	2
Height of Grass	5	5
Notice deemed effective for remainder of year.	5	5
Violations and penalties. (Grass, Bushes, Trees, Vegetation)	5	5
Totals	17	17



Code Enforcement Activity Report

Report Criteria:

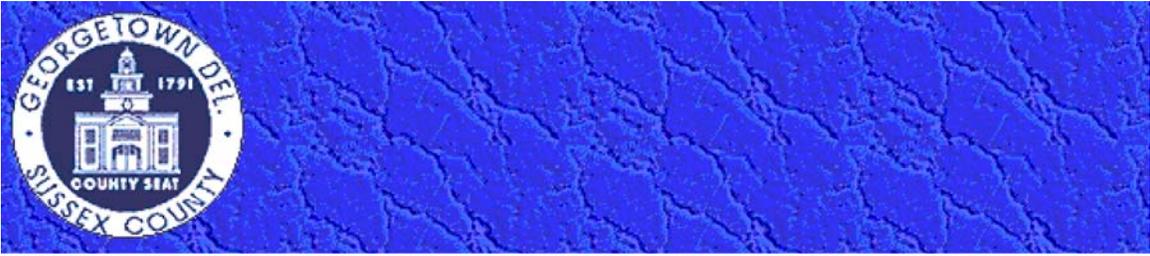
<i>Location Type</i>	<i>Location Field</i>	<i>Date From</i>	<i>To</i>
Ward	2	05/01/2015	05/31/2015

Case Activity:

	<i>Dvornick, Gene</i>	<i>Hume, David</i>	<i>Total</i>
New Cases	4	1	5
Closed Cases	9		9
Open Cases at start of period	16	1	17
Open Cases at end of period	11	2	13

Violation Activity

<i>New Violations Cited</i>	<i>Dvornick, Gene</i>	<i>Hume, David</i>	<i>Total</i>
Accessory Structures	2		2
Animals not allowed to be kept	1		1
Detrimental Objects	1		1
Failure of owner to pay Town; collection by Town.	1		1
Failure of property owner to remedy; action by Town.	1		1
Height limit of other vegetation	1		1
Height of Grass	2		2
Notice deemed effective for remainder of year.	1		1
Violations and penalties. (Grass, Bushes, Trees, Vegetation)	2		2
Totals	12		12



Code Enforcement Activity Report

Report Criteria:

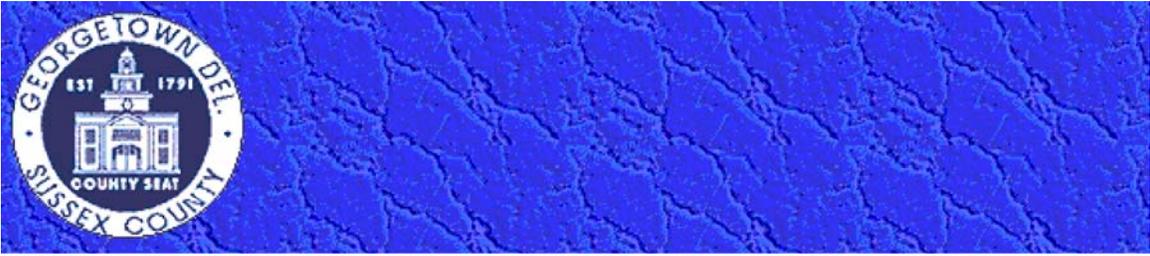
<i>Location Type</i>	<i>Location Field</i>	<i>Date From</i>	<i>To</i>
Ward	3	05/01/2015	05/31/2015

Case Activity:

	<i>Dvornick, Gene</i>	<i>Total</i>
New Cases	6	6
Closed Cases	4	4
Open Cases at start of period	4	4
Open Cases at end of period	6	6

Violation Activity

<i>New Violations Cited</i>	<i>Dvornick, Gene</i>	<i>Total</i>
Detrimental Objects	1	1
Height of Grass	4	4
Notice deemed effective for remainder of year.	4	4
Truck parking prohibited in residential zones.	1	1
Violations and penalties. (Grass, Bushes, Trees, Vegetation)	4	4
Totals	14	14



Code Enforcement Activity Report

Report Criteria:

<i>Location Type</i>	<i>Location Field</i>	<i>Date From</i>	<i>To</i>
Ward	4	05/01/2015	05/31/2015

Case Activity:

	<i>Dvornick, Gene</i>	<i>Total</i>
New Cases	1	1
Closed Cases		0
Open Cases at start of period	1	1
Open Cases at end of period	2	2

Violation Activity

<i>New Violations Cited</i>	<i>Dvornick, Gene</i>	<i>Total</i>
Height limit of other vegetation	1	1
Height of Grass	1	1
Notice deemed effective for remainder of year.	1	1
Violations and penalties. (Grass, Bushes, Trees, Vegetation)	1	1
Totals	4	4



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

TOWN OF GEORGETOWN, a	:	
Municipal Corporation,	:	C.A. No.:
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>TRIAL BY JURY DEMANDED</u>
DAVID A. BRAMBLE, INC., a	:	
foreign corporation, and LIBERTY	:	
MUTUAL INSURANCE	:	
COMPANY, a foreign corporation,	:	
	:	
	:	
Defendants	:	

COMPLAINT

1. The Plaintiff, Town of Georgetown (hereinafter referred to as “the Town,” “Owner,” or “Obligee”), is a duly incorporated municipality of the State of Delaware.

2. The defendant, David A. Bramble, Inc. (hereinafter referred to as “Bramble,” “Contractor,” or “Principal”), is a foreign corporation, licensed to do business in the State of Delaware, whose principal place of business is 705 Morgnec Road, Chestertown, MD, 21620, and whose Delaware Registered Agent is Schmittinger and Rodriguez, 4 The Green, Dover, DE 19901. [PLAINTIFF DEMANDS THAT THE DEFENDANT, DAVID A. BRAMBLE, INC., DENY THE ALLEGATIONS CONTAINED IN THIS PARAGRAPH, IF UNTRUE, BY AFFIDAVIT IN ACCORDANCE WITH PROVISIONS OF 10 DEL. C. §3915].

3. The defendant, Liberty Mutual Insurance Company (hereinafter referred to as “Liberty Mutual,” “Surety,” or “Guarantor”), is a foreign corporation authorized to transact insurance business in the State of Delaware. [PLAINTIFF DEMANDS THAT THE

DEFENDANT, LIBERTY MUTUAL INSURANCE COMPANY, DENY THE ALLEGATIONS CONTAINED IN THIS PARAGRAPH, IF UNTRUE, BY AFFIDAVIT IN ACCORDANCE WITH PROVISIONS OF 10 DEL. C. §3915].

The Pettyjohn Woods Spray Irrigation Project and the Contractual/Surety Relationship and Agreements of the Parties

4. In or around May, 2012, the Town of Georgetown issued a public advertisement for bids for construction of a solid set spray irrigation system known as the “Pettyjohn Woods Spray Irrigation Project” (hereinafter, the “Project”). The purpose of the system was to carry through the above-ground pipe, and periodically spray certain fields with, treated wastewater (“effluent”) from the Town’s wastewater treatment facility. The project was approved and funded by USDA. Contract and bidding documents were made available to all prospective bidders.

5. The Instructions to Bidders (ITB) provided, among other instructions, that it is the responsibility of each Bidder before submitting a Bid:

(a) to examine and carefully study the Bidding Documents and related data (ITB, §4.07(A));

(b) to visit the Site and become familiar with . . . the general, local and Site conditions that may affect cost, progress, and performance of the Work (ITB, §4.07(B));

(c) to obtain and carefully study (or accept consequences for not doing so) all data concerning conditions at the Site which may affect cost, progress or performance of the Work, or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Bidder (ITB, §4.07(E));

(d) to promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies the Bidder discovers in the Bidding Documents (ITB, §4.07(I));

(e) that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of Article 4, and that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work (ITB §4.08)); and

(f) that all questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing (ITB, §7.01).

5. A number of bids were received, including one by Defendant, David A. Bramble, Inc., as general contractor. Bramble gave no notice to the Project Engineer of any conflicts, errors, ambiguities or discrepancies in the bidding documents and submitted no questions about the meaning or intent of the Bidding Documents, nor expressed any other concerns about the scope or requirements of the Project, including, but not limited to, the above-ground piping system. Bramble did not perform, or request, a site visit prior to submitting its Bid.

6. The Project was awarded, in July 2012, to Defendant, Bramble in the amount of Bramble's total bid of \$1,212,786.85. [Copy attached as "Exhibit A" hereto and incorporated herein by reference.].

7. Defendant Bramble, as Contractor, entered into an "Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)" (hereinafter "Agreement" or "Contract") with Plaintiff, as Owner, on July 12, 2012, to complete the Pettyjohn Woods Project. [Copy attached as "Exhibit B" hereto and incorporated herein by reference.].

8. Defendant Bramble, as Principal, and Defendant Liberty Mutual, as Surety, entered into a Performance Bond, in the amount of \$1,212,786.95, as well as a Payment Bond, with Owner,

Town of Georgetown, as Obligee, on July 12, 2012. [Copy attached as “Exhibit C” hereto and incorporated herein by reference.].

9. The “Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)” (“Agreement”), which was part of the “Contract Documents,” provided, *inter alia*, that Contractor, Defendant Bramble, represented:

(a) that Contractor has examined and carefully studied the Contract Documents and related data identified in the Bidding Documents (Agreement (EJCDC C-520), §8.01(A));

(b) that Contractor has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work (Agreement (EJCDC C-520), §8.01(B));

(c) that Contractor has considered the information known to Contractor . . . information and observations obtained from visits to the Site; [and] the Contract Documents with respect to the effect of such information, observations and documents on . . . the performance of the work [and] the means, methods, techniques, sequences and procedures of construction to be employed by Contractor (Agreement (EJCDC C-520), §8.01(E));

(d) that Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents (Agreement (EJCDC C-520), §8.01(H));

(e) that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work (Agreement (EJCDC C-520), §8.01(I)).

10. The Standard General Conditions (“General Conditions”) of the Contract provided a mechanism for the Contractor to report any conflict, error, ambiguity or discrepancy

in the Contract Documents before proceeding with work, or during the performance of the work. (EJCDC C-700, §3.03).

11. At no time prior to or during the performance of the work did Defendant Bramble give notice to the Owner or Project Engineer of any conflicts, errors, ambiguities or discrepancies in the Contract Documents, nor did Bramble express any concerns about the scope, requirements or specifications of the Project.

12. The General Conditions of the Contract provided that “Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions.” (EJCDC C-700, §6.06(C)).

13. The General Conditions of the Contract provided that “Contractor shall submit Shop Drawings and Samples to Engineer for review and approval” and such Shop Drawings/Samples “will be complete with respect to . . . specified performance and design criteria . . . to enable Engineer to review the information for the limited purposes required by Paragraph 6.17D.” (EJCDC C-700, §6.17(A)).

14. The General Conditions provided that before submitting each Shop Drawing, Contractor shall have, among other requirements, “determined and verified the suitability of all materials offered with respect to the indicated application . . . pertaining to the performance of the Work; and determined and verified all information relative to Contractor’s responsibilities for means, methods, techniques, sequences and procedures of construction” (EJCDC C-700, §6.17(C)).

15. The General Conditions provided that the Engineer’s review and approval will be only to determine if the items covered by the [Contractor’s] submittals will . . . conform to the

information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.” (EJCDC C-700, §6.17(D)(1)).

16. The General Conditions provided that the Engineer’s review and approval “will not extend to means, methods, techniques, sequences, or procedures of construction. . .” (EJCDC C-700, §6.17(D)(2)).

17. The General Conditions provided that the Engineer’s review and approval “shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents,” except where Engineer has given specific written approval of each variation by specific written notation on the Shop Drawing. (EJCDC C-700, §6.17(D)(3)).

18. In the General Conditions, the Contractor “warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective.” (EJCDC C-700, §6.19(A)).

19. The General Conditions further provide that the “Contractor’s obligation to perform the Work in accordance with the Contract Documents shall be absolute” and such obligation shall not be relieved by, *inter alia*, “any review and approval of a Shop Drawing . . . submittal or the issuance of a notice of acceptability by Engineer.” (EJCDC C-700, §6.19(C)).

20. The General Conditions further provided that the Contractor agreed to indemnify and hold harmless Owner and Engineer “from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work . . . to the extent caused by any negligent act or omission of Contractor, any Subcontractor [or] any Supplier . . .” (EJCDC C-700, §6.20).

21. The General Conditions further provided for Contractor's prompt correction of all defective Work, including any Work found to be defective "within one year after the date of Substantial Completion", or any longer period of time specified in the Contract Documents. If Contractor does not promptly repair, Owner may have the defective Work corrected or repaired. (EJCDC C-700, §§13.06; 13.07; 13.09). Contractor is responsible for all claims, costs, losses and damages, including professional fees and court costs, arising out of or relating to the correction or repair of defective Work. *Id.*

22. The Agreement between Owner and Contractor enumerated the "Contract Documents" at Article 9, §9.01, and incorporated the Performance Bond, dated July 12, 2012, as part of the "Contract Documents." (EJCDC C-250, §9.01(A)(2)).

23. The Performance Bond dated July 12, 2012 provides that the Defendants, Contractor and Surety, jointly and severally, bind themselves and assign the Bond to Owner for the performance of the contract, including, but not limited to, the contractual provisions recited above.

24. The Performance Bond incorporated the Contract (Agreement) into the Bond by reference.

25. Contractor's obligation under the Bond accrued as a result of its default, by failure to properly perform the Work described in the Contract (Agreement), including, but not limited to, failing to provide a self-draining system, as more fully described herein.

25. Contractor's obligation under the Bond accrued as a result of its further default, in refusing to correct, and/or pay for the costs of correction of, the defective system, as required in the Contract Documents, including but not limited to defects found within the one (1) year correction period specified at General Conditions (EJCDC C-700, §§13.06, 13.07 and 13.09).

26. All preconditions giving rise to Surety's obligation under the Bond, as more fully described herein, were met, and Surety's obligation under the Bond accrued, as a result of Contractor's default.

27. The Performance Bond provides, *inter alia*, that, where Surety is obligated to Owner on the Bond, it shall, to the limit of the amount of the Bond, be obligated for correction of defective work, as well as additional legal, design, professional and delay costs resulting from Contractor's default and/or the actions or failure of Surety to act under the Bond. (Bond, §§5.1, 5.2, 5.3).

**The Contract Requirements and Defendant Bramble's Shop Drawing Submissions
re: Above-Ground Aluminum Pipe and Self-Draining System**

28. Both the Bid Documents and the Contract Documents contained specifications for various aspects of the irrigation system, including a three-page document entitled "Section 15952/Aluminum Irrigation Pipe, Fittings, and Sprinklers." These specifications were incorporated by reference into the "Contract Documents." (EJCDC C-520, Article 9).

29. The General Conditions of the Contract provided that "Contractor shall submit Shop Drawings and Samples to Engineer for review and approval. . . ." (EJCDC C-700, §6.17).

30. Section 15952 required "submittals" including manufacturer's product data for all materials in the specification, and "shop drawings for pipe and fittings, including material of manufacturer, wall thicknesses, pressure ratings, and dimensions."

31. Section 15952 required that aluminum pipe, fittings and sprinklers shall be those approved types distributed by "[1] Lee Rain, Inc., [2] Mid-Atlantic Irrigation Company, Inc., or [3] approved equal.

32. Section 15952 provided, *inter alia*, that both Six (6) inch manifold pipe, and Four (4) inch lateral pipe, were to be fitted with "approved self-draining gaskets."

33. On or about October 2, 2012¹, Bramble submitted a shop drawing (Shop Drawing No. 10), identifying, *inter alia*, materials to be used in accordance with Section 15952. The first page of this Shop Drawing bears a stamp in the upper left corner stating it was “Approved” by Defendant Bramble on 10/02/12 “By: JHS” for Specification Section “15952.”

34. The materials identified in Shop Drawing 10 were represented to be manufactured and/or supplied by Wade Rain/Wade Mfg. Co.

35. Shop Drawing 10 contained product data for a Wade Rain “Lateral Coupler Gasket,” which stated it was “Automatic Self-Draining.” This data further stated that the “gasket maintains its seal exclusively through hydraulic pressure. When the lateral line is turned off the gasket retracts from the tubing. This provides fast draining at each coupler along the full length of the lateral line”

36. Shop Drawing 10 contained further data about the “Wade Rain Coupler Design Functions” including “Free Floating Gaskets,” which stated that the “free float design allows the gasket to drain when there is no pressure and to pressure seal at low pressures.” This product data sheet represented that the 10-6-___L “Fast Drain” (specified) gasket type had a sealing pressure of 3-4 PSI. Thus, when the hydraulic pressure in the system dropped below 3-4 PSI, it was represented that the gasket would drain.

37. On or about October 8, 2012, following review, Bramble’s Shop Drawing 10 was stamped as “Approved” by Town Engineer, Davis Bowen & Friedel (“DBF”), and transmitted to Defendant Bramble. The October 8, 2012 Approval stamp noted that DBF’s “review [was] for general compliance with the contract documents.”

¹ Bramble had also submitted several prior Shop Drawings, some of which were incomplete, pertaining to submissions for Section 15952.

38. When Defendant Bramble submitted its bid, on or about June 14, 2012, it represented in its "Listing of Subcontractors" that its subcontractor for installation of above-ground aluminum pipe would be "Lee Rain, Inc."

39. Lee Rain, Inc. served as Defendant Bramble's subcontractor for installation of above-ground aluminum pipe, and associated fittings, including gaskets, for the project.

Construction Phase and Final Completion of the Project

40. On August 2, 2012, Plaintiff/Owner issued a written "Notice to Proceed" to Contractor, Defendant Bramble.

41. Work began on the project on or about August 20, 2012.

42. Lee Rain representatives visited the construction site in early December 2012 and advised they had no concerns about the site conditions.

43. Lee Rain performed its on-site work, as subcontractor for installation of the above-ground piping, on various dates from early January 2013 through mid-February 2013.

44. Plaintiff/Owner issued a "Certificate of Substantial Completion" for the project on February 19, 2013.

45. On or about May 2, 2013, DNREC issued a Spray Irrigation Permit for the Pettyjohn Woods site.

46. On June 7, 2013, DBF, on behalf of Owner, issued a letter to Defendant Bramble acknowledging June 7, 2013 as the date of Final Completion of the project. On or about June 7, 2013, Lee Rain issued its release of liens.

47. Also on June 7, 2013, DBF forwarded to Owner the final pay application for the Pettyjohn Woods Project. At this point all work was completed on the project.

48. Defendant Bramble was paid, in full, in accordance with the terms of the Contract, for all work done as Contractor on the Pettyjohn Woods project.

Drainage Problems Come to Light Within the First Year of System Operation

49. The spray irrigation system is not in continuous operation. It was and is used, as necessary, to spray treated effluent, for the purpose of irrigating the surrounding lands (approximately 90 acres) on which the system sits. When the system is shut down, and the effluent is no longer coming out of the spray nozzles, the hydraulic pressure in the above ground pipes is well below 3-4 psi, and the system is supposed to self-drain to at or near atmospheric pressure.

50. The system was operated (sprayed) for one day in October 2013.

51. The system was operated (sprayed) for three days in November 2013.

52. The system was not operated at all (no spraying) in December 2013.

53. The system was operated in January 2014 only between the following days: January 9-11, 2014 and January 13-17, 2014.

54. On or about January 16, 2014, several splits were noticed, by Owner's representatives, in some of the system piping joints.

55. In the second half of January and into early February, 2014, Owner's representatives continued to inspect the system, finding additional broken pipes and couplers. At this point it became apparent that this was not an isolated problem and that the system was not properly self-draining, as it should have been. It was also discovered at this time that the gaskets which had been installed were actually "10-6-4M" "slow drain" gaskets, and not the "10-6-4L" "fast drain" gaskets which had been specified in the shop drawing.

56. The problem was not limited to the winter months, but at later dates in 2014, when unaltered areas of the original piping system were examined and opened, they have been found to contain large amounts of water, even after periods of prolonged inactivity, due to the system's failure to drain.

57. Owner has, at its own expense, engaged in remedial measures to repair damages, assist drainage and limit further damage to the system, however the full extent of all necessary remedial measures is not yet known.

Plaintiff's Notifications to Defendants Bramble and Liberty Mutual Surety; Plaintiff's Attempts to Negotiate Resolution, and Defendants' Denial of Responsibility

58. The project representative, Scott Adkisson, of DBF, on behalf of Owner, first notified Defendant Bramble (Jay Silcox) of the discovery of fractured pipes, by letter dated February 3, 2014. The letter stated, *inter alia*, that the problem "appears to be the result of the gaskets on the pipe joints not draining properly." The letter further stated that the Town does not operate the irrigation system during freezing weather. The letter requested that Defendant Bramble investigate the problem and find a resolution.

59. On February 26, 2014, Mr. Adkisson again advised Mr. Silcox, via email, that Owner "feel[s] that the system should have drained as advertised and . . . we do not feel that the Town has any financial responsibility in resolving the issue."

60. Mr. Silcox responded by email the same day that he "under[stood] and you and I are more or less on the same page. As far as I see your role will be to approve any new alternates and our role will be to ensure the work gets corrected. Any financial issues should be limited to between DAB [Bramble] and Lee Rain [subcontractor]."

61. On March 18, 2014, Mr. Silcox forwarded Mr. Adkisson information on mushroom drains and pricing, with a quote for the cost of installing mushroom drains.

62. On March 28, 2014, Mr. Adkisson, on behalf of Owner, sent a letter to Mr. Silcox, on behalf of Bramble. That letter discussed the shop drawings which promised that the gaskets would drain at pressures twice as high as the highest pressure in the Pettyjohn system when it was shut down. On behalf of the Town, the letter demanded that Bramble assume responsibility for resolving the draining defect, and set forth several specific demands in this regard, including that the Town be reimbursed for the costs of temporary repairs and administrative costs already incurred.

63. On or about April 4, 2014, Bramble issued a letter to Lee Rain, forwarding Adkisson's March 28, 2014 letter, stating that the "position of David A. Bramble, Inc. is that these failures and issues directly relate to your sublet work on the project and are Lee Rain Inc's responsibility to correct at, Lee Rain's expense."

64. On or about May 2, 2014, Bramble issued a letter to Mr. Adkisson, stating that Lee Rain advised "the manufacturer is of the opinion that the cause of the damage . . . is the result of water hammer and not freezing."

65. On May 8, 2014, Mr. Adkisson sent an email to Mr. Silcox, advising that, assuming Lee Rain/Bramble's unfavorable position remained unchanged, pursuant to item 2.1 of the Performance Bond, the Town was considering declaring a Contractor Default and wished to arrange a conference with the Contractor and Surety.

66. On May 14, 2014, Mr. Adkisson followed up with a letter to Defendants Bramble and Liberty Mutual, on behalf of the Town, "going on record as officially notifying both parties of a potential Contractor default." The letter requested, *inter alia*, a formal response to the Town's demands and reimbursement of funds already expended by the Town for temporary repairs.

67. On May 30, 2014, Bramble issued a letter to Mr. Adkisson, copying Defendant Liberty Mutual, stating that any failures resulting from gaskets that were “not draining as advertised are not the responsibility of David A. Bramble, Inc. or its subcontractor.” The letter also requested dates for a meeting on the matter.

68. On June 6, 2014, DBF responded to Bramble’s May 30, 2014 letter. The letter noted DBF’s disagreement with Bramble’s conclusions, but nonetheless suggested a meeting, with a proposed date of June 19, 2014.

69. On June 11, 2014, the Surety (Liberty Mutual) acknowledged receipt of the May 14, 2014 correspondence, and stated that it would attend the proposed meeting.

70. Ultimately, the parties met, first for a site visit, on June 20, 2014, and subsequently for a meeting at DBF’s offices on June 23, 2014. The site visit of June 20, 2014 was Defendant Bramble’s first visit to the site since it had been notified, in early February 2014, of the problems and damages to the system. No representative of Surety attended either of these meetings.

71. At the site visit on June 20, 2014, a Lee Rain representative opened several pipes which were full of effluent, despite the fact that the system had not been in operation for more than one week prior to the visit. There was no evidence of a significant amount of solids in the pipes or gaskets.

72. At the office meeting on June 23, 2014, there was discussion, but no consensus, about potential causes and solutions for the problems. It was proposed that Lee Rain contact supplier Wade Rain for their opinion on the issue of pipe deflection.

73. On July 15, 2014, Bramble sent a letter to DBF, copying the Surety, stating “it is our position that the issues with the system are the result of design and operation of the system,

unrelated to performance under the Contract.” The letter failed to specify what design aspects were allegedly at fault. Bramble asserted other issues such as “variation in terrain”; “variation in interface”; alleged operation in sub-freezing temperatures and Owner’s alleged responsibility to “check” the pipes for drainage and “make sure the water was out of the system.”

74. The July 15, 2014 correspondence from Bramble further stated that Lee Rain could “prepare a recommendation of the necessary alterations to run the system year-round” at additional cost to Owner, and not as part of the contract. Finally Defendant Bramble requested the claim against Defendant Liberty Mutual be dropped.

75. On September 9, 2014, Counsel for Plaintiff issued a letter to Defendants Bramble and Surety, Liberty Mutual, addressing each issue raised in Bramble’s prior correspondence. Owner declared Contractor’s Default and advised that Owner would be consulting with necessary professionals to determine cause and remedy for all damages, known & latent, and further advised that Owner would seek to recoup all ancillary professional costs in connection with the claim under the performance bond.

76. On October 10, 2014, Bramble issued a letter to Owner, copying Surety, reiterating Bramble’s position and denial of responsibility.

77. On October 15, 2014, the Surety issued a letter to Owner, copying Bramble, advising that the “investigation” is still ongoing and that the cause may be “design in origin.”

78. On October 29, 2014, Owner issued a letter to Bramble, responding to Bramble’s October 10, 2014 letter (and an intervening email) which outlined the Town’s series of efforts to resolve the problems, and Bramble’s failure to properly respond to the claim against it. This letter reiterated Owner’s declaration of Contractor’s Default, Surety’s denial of liability and/or inaction on the claim, and the Town’s reservation of rights under the performance bond.

79. On November 10, 2014, the Surety issued a letter to Owner, stating that Surety “has not denied the Town’s claim” and is “fully engaged with Bramble to determine the cause of the failure.” Surety also reserved rights under the Bond.

**Further Damage, in the Form of Pinholes and Corrosion Within the Pipes, is Discovered
As a Result of the System’s Failure to Drain**

80. In or around September, 2014, Owner’s representatives at the site noted excessive standing water in some areas, and discovered pinhole perforations along the bottom of certain sections of aluminum pipe, and corrosion was discovered on the inside of certain pipes, when they were removed. The system was not in operation during the months of July or August 2014. As a result, a significant amount of water remained in the pipes, due to the apparently systemic drainage failure, and corrosion ensued as a result. Further areas of corroded pipe continued to be discovered later in 2014.

81. After some preliminary investigation by the Town into this new corrosion problem, the Surety was formally notified, by letter dated January 6, 2015, along with pictures of some of the corroded pipe, of this latest problem, apparently related to the system’s failure to drain. Surety was notified that this issue would constitute an additional item of damages under the Owner’s claim on the Bond.

82. Surety acknowledged the January 6, 2015 notice regarding corrosion via email dated January 12, 2015, and advised that the information had been forwarded to Bramble.

83. As of the filing of this Complaint, at least 90 pieces of pipe are known to have pinholes. Further damage, not yet discovered, is believed to exist within the system.

**Additional Communications among the Parties and
Defendants' Continued Denial of Responsibility**

83. Having failed to receive a substantive response from Bramble or Surety to the January 6, 2015 correspondence, Owner issued a letter to Surety on February 13, 2015, extending a final offer by Owner to meet and confer with Surety and Bramble to attempt to resolve the matter short of litigation. The February 13, 2015 correspondence also informed Defendants, that the corrosion issue was worse than originally noted, as pin holes had recently appeared in some of the 6-inch, as well as the 4-inch pipe.

84. On February 20, 2015, Surety emailed Owner's counsel, indicating that Defendants were willing to meet with Owner.

85. On February 23, 2015, Surety issued a letter to Owner, reiterating that Bramble believes the gaskets' failure to drain to be a "design issue," and that the corrosion issue needs further investigation. The letter stated that Bramble does not believe they are responsible for damages or costs to correct the system and that Surety believes "Brambles' [sic] position has a sound basis."

86. The parties, including Surety's representative, and Bramble's and Owner's counsel, met at the offices of DBF on March 25, 2015. This was Surety's first, and only, meeting with Owner since the problems arose more than one year prior. Owner provided information as to costs for actual (to-date) repair expenses and estimates of costs for repair/replacement of the system. Owner showed Defendants actual sections of pipe which had corrosion and pin-holes. At this brief meeting, it became apparent that the parties were at a complete impasse regarding who should assume responsibility for the costs of correcting the

defects in the system. Owner agreed to supply Defendants with a sample of aluminum pipe from the field, so that they could do testing on it.

87. On April 13, 2015, Bramble's counsel advised Owner's counsel that "Liberty [Surety] is in full agreement with Bramble's position in this matter," that the damages were [allegedly] the result of "design and maintenance errors".

88 On May 11, 2015, Owner's counsel sent a letter to Defendants clarifying that Owner had formally terminated the Contractor's right (if any) to complete the Contract, pursuant to the Performance Bond.

COUNT I
CLAIM AGAINST DEFENDANT BRAMBLE – BREACH OF CONTRACT
(AGREEMENT AND PERFORMANCE/SURETY BOND)

89. Paragraphs 1 through 88 are herein incorporated by reference.

90. In bidding on, undertaking to perform the Agreement, and accepting payment for performance of the Agreement with Owner, Defendant Bramble, as General Contractor for the Pettyjohn Woods Project, was obliged to exercise reasonable care, perform in a good and workmanlike manner, and employ the necessary professional skills and judgment of a reasonable Contractor undertaking to perform a public works construction contract of this nature.

91. In bidding on and accepting the award of the Contract from Owner, Defendant Bramble represented that it possessed the necessary professional skills and judgment to satisfactorily perform the contract in compliance with the Contract Documents.

92. Under the terms of the Agreement, Bramble was responsible for selecting competent subcontractors and suppliers, to perform the various types of work required under the Agreement, and is fully responsible to Plaintiff for the satisfactory performance of said subcontractors and suppliers.

93. Under the terms of the Agreement, Bramble is directly and vicariously liable for any acts and omissions of, negligence of, or deficient services or products provided by, subcontractors and suppliers.

94. Defendant Bramble, directly and/or vicariously through its subcontractors and suppliers, failed to provide appropriate materials, including but not limited to, self-draining gaskets, and failed to utilize appropriate means, methods, techniques, sequences and procedures of construction to achieve the bargained-for result of a self-draining system.

95. Defendant Bramble, directly and/or vicariously through its subcontractors and suppliers, failed to provide appropriate materials, including but not limited to, self-draining gaskets, and failed to utilize appropriate means, methods, techniques, sequences and procedures of construction to avoid standing water, and the associated risk of damage and corrosion to pipes in the system.

96. Defendant Bramble, directly and/or vicariously through its subcontractors and suppliers, materially breached its Agreement with Owner by, *inter alia*:

- a) failing to determine and verify the suitability of all materials used with respect to the intended application, and the specified performance and design criteria of the Agreement, including but not limited to, the selection, utilization and installation of fittings, gaskets and/or other materials to achieve a self-draining system in the above-ground piping;
- b) failing to provide “automatic self draining” gaskets as advertised and promised in the Shop Drawings;
- c) failing to honor its warranty and guarantee to Owner that the work would be in accordance with the Contract Documents, and not be defective;

- d) failing to indemnify and hold harmless Owner from and against all claims, costs, losses and damages, including ancillary costs, relating to the Work, caused by any negligent act or omission of Bramble, and/or any subcontractor and supplier;
- e) failing to honor its warranty to correct, or causing to be corrected, any Work found to be defective within the applicable warranty period(s) under the Agreement, and
- f) failing to comply with other terms and conditions of the Agreement.

97. Under the Performance Bond, Defendant Bramble bound itself to Owner, jointly and severally with Surety, for the performance of the contract, in the amount of the penal sum: \$1,212,786.85.

98. Defendant Bramble materially breached its Performance Bond with Owner by, *inter alia*:

- a) Committing a Contractor's Default by failing to properly and adequately perform under the Agreement, as described herein, which failure(s) were neither remedied nor waived, as noted herein;
- b) Failing to properly investigate and assess, when alerted by Owner to system failures within the warranty period;
- c) Failing to remedy, or compensate for remediation of, the defective work and damages to the system; and;
- d) Otherwise breaching or failing to perform its obligations under the Bond.

99. As a direct and proximate result of the Bramble's breaches of Contract, Plaintiff, Town of Georgetown, has incurred and will continue to incur substantial monetary damages and costs in connection with the damaged and defective system, including but not limited to:

a) expenses, including manpower and labor costs, for repair and correction of defects, and remediation of defects, in the Pettyjohn Woods system;

b) expenses, including manpower and labor costs, for repair or replacement of damaged or defective materials, including latent damages and defects, the full extent of which may still be unknown;

c) legal, engineering, testing, consulting and other professional costs and fees incurred as a result of Defendants' breaches, actions or inactions, delay, and denials of responsibility;

d) court costs, attorney fees and other costs of this action, and

e) other costs and damages.

COUNT II

CLAIM AGAINST DEFENDANT BRAMBLE – BREACH OF WARRANTY

100. Paragraphs 1 through 99 are herein incorporated by reference.

101. Plaintiff reasonably relied upon the express representations and warranties of Defendant Bramble by:

a) awarding the Pettyjohn Woods Project to Defendant Bramble, as successful bidder;

b) entering into the Agreement between Owner and Contractor for Defendant Bramble to complete all Work on the Project in accordance with the Contract Documents;

c) paying Defendant Bramble, in the amount of \$1,212,786.85 for Work done on the Project under the Agreement.

102. The representations and warranties made by Bramble in the bid documents and the Agreement, constituted an express warranty that Bramble would perform the Work in accordance with the Contract Documents, and in a good and workmanlike manner, including being responsible for the performance of its subcontractors and suppliers.

103. Defendant Bramble materially breached the express warranty extended to the Plaintiff in the Agreement by, *inter alia*:

- a) failing to honor its warranty and guarantee to Owner that the work would be in accordance with the Contract Documents, and not be defective;
- b) failing to indemnify and hold harmless Owner from and against all claims, costs, losses and damages, including ancillary costs, relating to the Work, caused by any negligent act or omission of Bramble, and/or any subcontractor and supplier;
- c) failing to honor its warranty of correcting, or causing to be corrected, any Work found to be defective within the applicable warranty period(s) under the Agreement, and
- d) otherwise breaching its express warranties to Plaintiff.

104. As a direct and proximate result of the Defendant Bramble's breaches of warranty, Plaintiff, Town of Georgetown, has incurred and will continue to incur substantial monetary damages and costs in connection with the damaged and defective system, including but not limited to:

- a) expenses, including manpower and labor costs, for repair and correction of defects, and remediation of defects, in the Pettyjohn Woods system;

b) expenses, including manpower and labor costs, for repair or replacement of damaged or defective materials, including latent damages and defects, the full extent of which may still be unknown;

c) legal, engineering, testing, consulting and other professional costs and fees incurred as a result of Defendants' breaches, actions or inactions, delay, and denials of responsibility;

d) court costs, attorney fees and other costs of this action, and

e) other costs and damages.

COUNT III
CLAIM AGAINST DEFENDANT LIBERTY MUTUAL – BREACH OF CONTRACT
(PEFORMANCE/SURETY BOND)

105. Paragraphs 1 through 104 are herein incorporated by reference.

106. Under the Performance Bond, Defendant Liberty Mutual Insurance Company, as Surety, bound itself to Owner, jointly and severally with Contractor, for the performance of the contract, in the amount of the penal sum: \$ 1,212,786.85.

107. Defendant, Surety, Liberty Mutual, materially breached and defaulted, under the Performance Bond with Owner, by *inter alia*:

a) Failing to take appropriate action under §3 of the Bond, including but not limited to, failing to undertake a prompt and adequate investigation of the alleged damages and failing to adequately remedy, or compensate for the remediation of, the damages caused by Contractor's Default;

b) Denying liability, in whole or in part, without adequate notice to Owner of reasons therefor, and without adequate investigation and information to form the basis of such a denial;

c) Failing to honor and abide by its obligations, under the Bond, to adequately remedy, or compensate for the remediation of, the defects in and damages to the Project, including, but not limited to, payment of additional legal, design, professional and delay costs accrued by Owner as a result of Contractor's Default, and resulting from the actions or failure(s) to act of Surety and Contractor; and

d) Otherwise breaching, denying, refusing or failing to honor its obligations under the Bond.

108. Owner has satisfied all conditions precedent to bringing its Bond Claim against Liberty Mutual.

109. Defendant Surety, Liberty Mutual, is jointly and severally liable to Owner, under the Bond, for all of Defendant Bramble's actions and breaches, as set forth herein.

110. As a direct and proximate result of Defendant, Liberty Mutual's breach of contract, under the Performance Bond, Plaintiff, Town of Georgetown has incurred and will continue to incur substantial monetary damages and costs in connection with the damaged and defective system, including but not limited to:

a) expenses, including manpower and labor costs, for repair and correction of defects, and remediation of defects, in the Pettyjohn Woods system;

b) expenses, including manpower and labor costs, for repair or replacement of damaged or defective materials, including latent damages and defects, the full extent of which may still be unknown;

c) legal, engineering, testing, consulting and other professional costs and fees incurred as a result of Defendants' breaches, actions or inactions, delay, and denials of responsibility;

d) court costs, attorney fees and other costs of this action, and

e) other costs and damages.

WHEREFORE, Plaintiff, Town of Georgetown, respectfully prays that this Honorable Court enter judgment in its favor, and against Defendants, Bramble and Liberty Mutual, jointly and severally, in an amount to be determined at trial, sufficient to compensate Plaintiff for any and all damages and losses sustained as a result of Defendants' conduct as aforesaid, together with pre and post-judgment interest at the legal rate, plus all costs, expenses and attorney's fees incurred by Town of Georgetown in the prosecution of this action.

LAW OFFICES OF STEPHANI J. BALLARD, LLC

/s/ Stephani J. Ballard

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DATED: June 3, 2015