

and finish, warranty items and final inspections on work they completed. We would simply remove the remaining work (porches, stone, concrete, etc) to be done if you feel you don't like our craftsmanship and schedules. Liscott is not walking away from any project and will see them through, we want to give options to our customers, especially when they are struggling to make the payments needed to complete. Liscott is open to discussion on these options or we can continue on with our subs and schedules.

Cost to finish the home, at this time.

**After we notified Liscott of the defects in the home, they still wanted another \$100K.**



Outstanding Draw 13 \$48,897.00, at bank waiting for approval  
Balance of Change orders after draw 12, \$17,295.00 CO  
Balance of Site Work \$36,185.00 SOV land  
Total \$102,377.00 (minus \$27k for stone which is included in this figure)

Draw 13 will need approval and payment submitted for materials to be ordered. At this time, we will wait until you have directed us on how you want to move forward.

We want you to be happy with your home, we understand you need to verify it is correct and we appreciate that. Liscott is willing to work with you to get this project finished and behind us so you can move in and enjoy your home. Let us know if you need any additional information right now, we will update you on schedules once we hear back. Jon and myself will be out of town starting next week and have limited cell/email service.



**Rob Cowley**  
Project Manager

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**Ben Smith** <[ben@firesmithtools.com](mailto:ben@firesmithtools.com)>  
To: Rob Cowley <[rob@liscott.com](mailto:rob@liscott.com)>, Holly Smith <[hollysmith529@yahoo.com](mailto:hollysmith529@yahoo.com)>, Jon Reid <[jon@liscott.com](mailto:jon@liscott.com)>

Wed, May 4, 2022 at 6:32 PM

My notes are in red below

Ben Smith  
President  
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402-304-3685

On 5/4/2022 4:18 PM, Rob Cowley wrote:

Ben/Holly,

We will address everything from previous emails, text messages and update on progress as of this week. With storms rolling around, we are still waiting for confirmation for siding, roofing, etc. hopefully later this week (Thursday/Friday) will allow for siding and roofing. Electrician was onsite yesterday. Garage door company will be there Tuesday, May 10th to install doors, confirmed with them today. Obviously, weather has been an issue and continues to be this week, again out of our control and will cause further delays.

We have been in contact with Heritage for all of your concerns, daily for many hours. Door jams, short trim pieces, fit and finish of casings, etc. have all been addressed and correct materials have been ordered. Liscott can only install what Heritage sends to us, casings are wrong size, they will replace them. Baseboards are short, they will send new lengths, trim is warped, they will send more to replace, all of these items have been addressed with you during the walkthrough and orders already placed with Heritage. In discussions with Heritage (Bob) today, they are getting your order in place for materials and will follow up with an email, lead times are expected to be 8-12 weeks. Cabinets you will have to deal with Heritage directly and what they choose to do, we can try to adjust them. During our calls and review with Heritage it was determined all of the marriage lines, boxes, walls, floors, etc. have been installed per state and Heritage installation procedures. We addressed this in the walk through with you and said we would take care of leveling the home and making it correct, no arguments from us. Liscott immediately arranged for our set crew to drop what they were doing and plan to level home Thursday 5/5, you sent a text explaining not to proceed because you wanted a "qualified" engineer to look it over, at this time we canceled everyone. This is your choice and we understand you want opinions and to make sure corrections are made properly, however we will need to reschedule our crews to be onsite so Thursday will not be happening. We will reach out to everyone again, let them know the plan has not changed and we need to get back on their schedule as soon as possible.

**Yes, I was in contact with Bob and crew yesterday as well. I hope you understand the severity of this issue. The house was never properly leveled prior to being stitched together. This is a substantial screw up on your part. And yet, you proceeded to argue with me about this last week during a site visit. It wasn't until John and I brought out a straight edge and placed it on the floor you finally succumbed to the fact the center of the entire home had sunk by nearly 2". The reason the casings for the doors along the marriage line didn't fit properly is because the house sunk and the walls were no longer square. I have already talked with Heritage about getting replacement interior doors and cabinet doors. Something I shouldn't be doing, but since the oversight on this project has been so poor, it falls on my shoulders.**

This is an email

**EXHIBIT 161**

**LISCOTT 02448**

Door casings at the marriage line are the wrong ones, Heritage is ordering new and correct ones, 8-12 week lead time. The issue is the 5/8" sheet rock on both sides, this takes up any excess space to set the door so spacers had to be used. This will be corrected and the entire home leveled and supported upon your approval. This has been discussed with Heritage and they are having correct jams built, I assume they explained this to you?

Yes, they are replacing everything. But again, the walls are far from square. Rip out the trim in the upstairs marriage line and measure the actual width at the top and bottoms of the doors. In some cases the walls are 1" further apart at the bottom of the door jamb as compared to the top of the door jamb. The drywall has nothing to do with the fact that the walls themselves aren't square. With a bit of math and geometry, raising the home up to level it will not cause this 1" gap to disappear.

Garbage has been called in for a dumpster swap for two weeks, they are behind and weather does not help them. We called every other day and told us we are on the schedule so we will keep calling to get that thing swapped out. As everyone in construction, they are short labor and people so it takes time to get dumpsters swapped, toilets cleaned, anything basically. If you would like to find someone else in town that has a dumpster, please let us know as Timberline are the only ones. Considering we built most of your home through the winter and mud season, the site has remained cleaned. As discussed, the site needs to be cleaned up once the snow and weather allows for it, so we agreed to take care of all of these items. We will have someone there on Tuesday, May 10th (weather pending) to regrade the driveway, fill the holes in where the truck was stuck and look at site conditions to determine a time to backfill and grade.

I hope we can get the dumpster emptied. It's been overflowing for quite some time. The neighbors are pissed with all the debris blowing into their yards. As a point of reference, the dumpsters at the job site next door and down the street have been emptied.

In regards to your text this morning, we want to be clear this is the first time we have heard of you being this upset or unsatisfied. During our walkthrough, we felt like we addressed all the issues you had at that time and agreed they needed to be taken care of. The fact this is our "Final Opportunity" makes it sound like you have had nothing but issues with Liscott from the start, not true and not sure what you are trying to accomplish with this statement. As per your contract, Liscott uses Subcontractors for a large portion of their work and cannot guarantee schedules and timelines as they also have other projects in their schedules. Liscott has tried to work through all the weather delays without excess cost increase, this will no longer be the case and Liscott will wait for weather to be sufficient and allow for maximum productivity. Winter conditions are not part of the contract, this includes snow, rain, winds, mud, etc. any delays will be charged per contract moving forward. This week is a great example with weather and delays, nothing we can do and sets back the schedule on your job and all others.

Seriously?!? Perhaps I was being too polite. The project is significantly behind schedule, the quality of the site work is poor, the pace unacceptable. Again, the job right next door is being completed by a crew from the front range. They are making great progress and will have an entire stick built house done before ours. I may see a crew of 2-3 guys a day or two per week at our site if I'm lucky. The biggest issue I have at this point is lack of focus on quality construction. Trusses frozen to the ground, outside trim that doesn't line up. Birds living in the attic, interior trim that is terrible, soffit and fascia with gaps. etc. Do you understand that we are now living in my office because your crew couldn't meet a timeline we gave you months ago?

Liscott, as always, will work with their subs to get your project completed as soon as possible and in a satisfactory manner. Walls, floors, ceilings, etc. will be square, straight and the floor will be leveled per recommendation of all the "qualified" personnel involved. Liscott will stress to you and remind you once again, we are at the mercy of suppliers, vendors and manufacturers for materials, parts, doors, windows, etc. The structure of the home is not built by Liscott, we put it together. If you do not like the time lines, you are welcome to take it up with our suppliers and see if they will get you materials faster. We will do what we can to minimize delays but you are in construction, during unprecedented times and you need to accept the fact there are many things out of our control and yours.

Yes, I understand the state of affairs relating to materials and supply today. I deal with the same things in my daily life. However, I am quite satisfied with Heritage and the work they have done. They have also been quite helpful in addressing the few issues we have with portions of the job they were responsible for. We have paid for items to be completed. As such we expect them to be completed. The easiest solution to this problem is to ensure crews are on site getting things done, and properly.

The reason we have walk-throughs is to determine what you are not satisfied with and what needs to be corrected, this is what we did the other day. At no time did we indicate we would not be correcting any of your concerns or addressing them. We stated we would get with Heritage and subs and make corrections, order materials, level home and get back to you. You obviously have more concerns than this with the text and emails sent lately, sounds like you are not satisfied with anything. There will be more walkthroughs before this project is completed and everyone's home has corrections to deal with.

That's a blanket statement "not satisfied with anything" that is far from applicable. I realize every construction project has delays and issues. We certainly accept this reality and did expect to have some minor stuff to deal with. But, you've got to understand, the sheer significance of the problems we have uncovered in the past week are unbelievable. The lack of proper leveling is huge and should have been caught back in October. As a result, we are still months away from being able to live in a home we've been making mortgage payments on for 1.5 years. I now have to spend an additional \$5K per month, for who knows how long, to lease another property to house my family. My big concern is the continual lack of management and oversight has resulted in minor problems being overlooked and becoming major issues.

We have a couple options moving forward, we will let you decide what option works best for you:

One, Liscott will complete the contracted work in a timely manner and work with our subs on their schedules as well as material orders and replacement parts. Liscott will manage and oversee the project until complete with contract items, no additional items will be added to contract at this time. We have also decided to adhere to our contract (General Contracting Agreement, Item #5, paragraph C) and charge all change orders at cost plus 10%. Considering the median house price in Summit County is on the rise daily to cover inflation, fuel, materials and labor shortage this should not affect your bottom line equity once the home is completed.

Two, if you are so disappointed with Liscott we can balance the contract out now, refund all renaming items and close the contract out, you can finish as you want with your subs and at your discretion. Liscott would still be responsible for the leveling of the

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**LISCOTT 02449**

home, doors, casings, trim, fit and finish, warranty items and final inspections on work they completed. We would simply remove the remaining work (porches, stone, concrete, etc) to be done if you feel you don't like our craftsmanship and schedules. Liscott is not walking away from any project and will see them through, we want to give options to our customers, especially when they are struggling to make the payments needed to complete. Liscott is open to discussion on these options or we can continue on with our subs and schedules.

**Current costs of homes in our area have no bearing on the amount of services we contracted with you to provide. With \$100K in overruns, yes, this has become a huge financial burden. We can discuss all of the above once the home is properly leveled and repaired and all items we have already paid for have been completed to our satisfaction. Yes, we are disappointed in the quality of work provided. You and Jon have seen it first hand. Would you like your home to have the fit and finish our home currently has?**

Cost to finish the home, at this time.

Outstanding Draw 13 \$48,897.00, at bank waiting for approval  
Balance of Change orders after draw 12. \$17,295.00 CO  
Balance of Site Work \$36,185.00 SOV land  
Total \$102,377.00 (minus \$27k for stone which is included in this figure)

Draw 13 will need approval and payment submitted for materials to be ordered. At this time, we will wait until you have directed us on how you want to move forward.

**No additional draws will be authorized until the house is leveled, all appropriate repairs have been made and everything we have already paid for is completed.**

[Quoted text hidden]

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**Ben Smith** <ben@firesmithtools.com>

To: Rob Cowley <rob@liscott.com>, Holly Smith <hollysmith529@yahoo.com>, Jon Reid <jon@liscott.com>

Wed, May 4, 2022 at 7:47 PM

You know, the more I think about this the more irritated I become. Liscott has made some serious mistakes. We aren't discussing a hole in the drywall or a dent in an appliance. We are talking about a major oversight that has led to, not only more problems, but my entire family having to find other housing for months. You've offered exactly zero remedies to the fact that we need to waste more money on another rental property to house our entire family because we are still months away from occupying our home. Nowhere in your response did I see anything even remotely close to an appropriate response. Is there anything in the text below that says something along the lines of "sorry Ben and Holly, we made a mistake, how can we make the situation right"? Nope, nothing at all. I see excuses and passing the buck but absolutely zero ownership of a major oversight.

Ben Smith  
President  
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402-304-3685

On 5/4/2022 4:18 PM, Rob Cowley wrote:

[Quoted text hidden]

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**Ben Smith** <ben@firesmithtools.com>

To: Rob Cowley <rob@liscott.com>, Holly Smith <hollysmith529@yahoo.com>, Jon Reid <jon@liscott.com>

Thu, May 5, 2022 at 10:08 AM

**I want to address the below paragraph...**

**As the project devolved, we learned that Liscott is very good at blaming others for their own problems. They also aren't above lying to try to cover up their terrible performance as illustrated by the below exchange.**

<<<Garbage has been called in for a dumpster swap for two weeks. They are behind and weather does not help them. We called every other day and told us we are on the schedule so we will keep calling to get that thing swapped out. As everyone in construction, they are short labor and people so it takes time to get dumpsters swapped, toilets cleaned, anything basically. If you would like to find someone else in town that has a dumpster, please let us know as Timberline are the only ones. Considering we built most of your home through the winter and mud season, the site has remained cleaned. As discussed, the site needs to be cleaned up once the snow and weather allows for it, so we agreed to take care of all of these items. We will have someone there on Tuesday, May 10th (weather pending) to regrade the driveway, fill the holes in where the truck was stuck and look at site conditions to determine a time to backfill and grade. >>>

**I just got off the phone with Timberline. The last contact they had with anyone on our job was mid January. There are no records of anyone calling it to schedule a dumpster swap since Israel contacted them back in January. They are also not two weeks behind. I got the swap scheduled. It will be replaced with an empty dumpster either tomorrow or Monday.**

Ben Smith  
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On 5/4/2022 4:18 PM, Rob Cowley wrote:

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