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BEFORE THE ARBITRATION SERVICE OF PORTLAND, INC.

CITY OF STAYTON,)	ASP No. 141222
)	
Claimant,)	
)	
v.)	
)	
JCNW FAMILY LLC,)	
)	
Respondent.)	
_____)	

DEPOSITION OF MICHAEL DON BRASH

Taken in behalf of the Respondent

Stayton, Oregon

April 21, 2015

Reported by Christine Shepard, RPR, CSR

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DEPOSITION OF: Michael Don Brash

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EXHIBITS

NO.	ITEM	PAGE MARKED
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(NONE)

1 STAYTON, OREGON, TUESDAY, APRIL 21, 2015, 1:00 P.M.

2
3 MICHAEL DON BRASH,
4 produced as a witness at the instance of the Defendant,
5 having been first duly sworn, was examined and testified
6 as follows:

7
8 EXAMINATION

9 BY MR. LOISELLE:

10 Q. Mr. Brash, will you please state your full name
11 and spell your last name for the record.

12 A. Michael Don Brash, B-R-A-S-H.

13 Q. Good afternoon. I'm Darien Loiselles, and I
14 represent JCNW and Bill Martinak in this proceeding.
15 We've asked for the opportunity to take your deposition.
16 You and I just met moments ago; is that correct?

17 A. That's right.

18 Q. Have you ever had your deposition taken before?

19 A. One time.

20 Q. Did you have an opportunity to meet with counsel
21 before your deposition today?

22 A. Yes.

23 Q. Do you feel you understand what the process is
24 about?

25 A. I do.

1 Q. Real quick, I won't belabor it, you have good
2 counsel here. I know they did a nice job of preparing
3 you. This is our opportunity to learn a little bit more
4 about the details related to this project --

5 A. Uh-huh.

6 Q. -- and this claim. The oath you gave today is
7 the same oath you would provide if you testified at
8 arbitration. Do you understand that?

9 A. Yes.

10 Q. So we're asking you to provide us with truthful
11 answers today. Is there anything that would prevent you
12 from providing truthful answers?

13 A. Nope.

14 Q. And I'm not picking on you. That's a question I
15 ask everybody. It's amazing sometimes what I hear will
16 impair somebody's recollection. We've learned too much
17 sometimes. But I just want to make sure that we have an
18 adequate and complete record today. This isn't an
19 endurance contest, I don't anticipate this is going to
20 take all that long; but if you need to take a break, we
21 can do that. Do you understand?

22 A. Okay.

23 Q. And if I have a question pending, I'm going to
24 ask you to complete the response before you take the
25 break. Okay?

1 A. Yes.

2 Q. And if you want to confer with counsel, you have
3 that opportunity to do that.

4 A. Okay.

5 Q. You are doing a great job of allowing me to
6 finish my questions before you respond. It's important to
7 do that, because the court reporter has a hard time taking
8 us down at the same time.

9 A. I understand.

10 Q. At the end of this deposition, if we order the
11 transcript you will have the opportunity to review it to
12 ensure that it was accurately taken. Do you understand
13 that?

14 A. Yes.

15 Q. If you answer a question of mine, may I assume
16 you understood it?

17 A. Okay.

18 Q. The reason I say that is sometimes our questions
19 are not all that clear. If you don't understand a
20 question or just missed it because you were thinking about
21 your next project this afternoon, will you ask me to
22 repeat the question?

23 A. Okay.

24 Q. Okay. All right. How are you employed?

25 A. How am I employed?

1 Q. Yes.

2 A. I don't understand the question.

3 Q. Who are you employed by?

4 A. I'm employed by the City of Stayton, Public
5 Works Department.

6 Q. What's your position.

7 A. Senior engineering technician.

8 Q. And how long have you been in that role?

9 A. Since 2008.

10 Q. Are there other senior techs for the city?

11 A. No.

12 Q. And have you been the senior engineering
13 technician responsible for the Phillips Estate project?

14 A. Yes, specifically construction.

15 Q. And we'll ask you in just a few minutes about
16 your specific duties. Before we get into the meat of your
17 testimony, can you give me your educational background?

18 A. I've completed high school, and I have three or
19 four years in a community school for engineering and
20 forestry -- engineering courses and forestry.

21 Q. You said a community college?

22 A. Yes.

23 Q. Chemeketa?

24 A. Chemeketa.

25 Q. Did you receive a degree?

1 A. Yes, associate of arts degree in forestry.

2 Q. Licensed as an engineer?

3 A. No.

4 Q. Have you ever been licensed as an architect or
5 engineer?

6 A. No.

7 Q. When did you complete your associates
8 certificate?

9 A. 1972.

10 Q. You worked in the woods?

11 A. Yes.

12 Q. Did you fall timber?

13 A. No, presale marketing.

14 Q. Oh, okay. Going out on sites and taking scales
15 and determining whether you doing ads in it?

16 A. Yes. I worked for the U.S. Forest Service, and
17 that was specifically the job, was to presale marketing,
18 to line up, survey, and measure timber sales.

19 Q. My dad was a timber faller for 40 plus years, so
20 I'm a little familiar with the trade, just west of Salem.
21 When did you start working as an engineer?

22 A. I haven't been an engineer.

23 Q. I'm sorry. As an engineering technician.

24 A. I started in 1971.

25 Q. And can you give me a sketch of your work

1 history as it relates to the engineering technician
2 environment.

3 A. I worked as a technician 2, technician 3,
4 technician 4; then I moved into supervision; and then I
5 supervised the Engineering and Construction Department at
6 the City of Albany for a number of years.

7 Q. And then from there did you move to the City of
8 Stayton?

9 A. I retired from the City of Albany, I worked on a
10 year for my own, and then applied for and was hired by the
11 City of Stayton.

12 Q. Other than work as an engineering tech or in the
13 forestry environment, any other work experience?

14 A. Not since 1971.

15 Q. When you were working for the City of Albany,
16 did you have the opportunity to work with Emery & Sons on
17 projects?

18 A. Quite a bit.

19 Q. Did you work with Mr. Martinak?

20 A. Quite a bit.

21 Q. How many projects do you think you have been
22 involved in with Emery & Sons and Mr. Martinak?

23 A. Numerous jobs, projects. Large and small.

24 Q. A lot of them involving municipal projects for
25 the city?

1 A. They were all municipal projects for the city.
2 Capital improvement projects, not necessarily subdivision
3 projects.

4 Q. All right. Was there ever a project that Emery
5 & Sons started they didn't finish?

6 A. No.

7 Q. And generally how would you measure or evaluate
8 the overall competency of Emery & Sons?

9 A. They are pretty high up on my list. I've never
10 had any problems with Emery & Sons Construction.

11 Q. Okay. Work on capital improvements for the City
12 of Stayton with Emery & Sons?

13 A. No.

14 Q. The only project involving the Phillips Estate?

15 A. No. I believe that -- I can't put my finger on
16 any one, but I'm sure, you know, since 2008 they have done
17 some minor jobs, stuff under ten grand, pick them up to do
18 it.

19 Q. What was your role specifically on the Phillips
20 Estate project?

21 A. Construction inspection.

22 Q. So was it your job to ensure that the
23 construction met the permits, plans, and specifications?

24 A. Yes.

25 Q. And were you involved in all phases of the

1 project so far?

2 A. All phases of construction.

3 Q. I'm sorry. Thanks for clarifying that. Actual
4 execution of the project, correct?

5 A. I don't know that I understand what you are
6 aiming for there.

7 Q. Well, I wasn't really aiming for anything very
8 specific, so I appreciate you making me make a better
9 question. You understand that the project was broken out
10 into phrases?

11 A. Yes.

12 Q. Were you involved in Phase I?

13 A. Yes, construction inspection.

14 Q. And in Phase II?

15 A. Construction inspection. Pretty much the same
16 for both. The only difference between the two was I was
17 working for a private engineer. I was under contract with
18 the City of Stayton's -- the city engineer at the time of
19 Phase I. During Phase II, I was a City of Stayton
20 employee.

21 Q. Who did you work for under Phase I?

22 A. Ed Sigurdson.

23 MR. KUHN: Mike, you might want to spell that
24 for Christine, if you can.

25 THE WITNESS: I can't. Let's try

1 S-I-G-U-R-D-S-O-N, with no guarantee that that's correct.

2 MR. KUHN: I think that's right, yeah.

3 BY MR. LOISELLE: (Continuing)

4 Q. And this isn't a spelling contest. You won't be
5 held to that either. We'll find a way to correct the
6 record. And then on Phase II you were a city employee?

7 A. Yes.

8 Q. Did the work during Phase II comply with the
9 plans and specifications?

10 A. That's a complicated question, inasmuch as there
11 were no approved plans, so I had the latest -- I was using
12 the latest set of physical plans I had in my possession to
13 conduct inspections. And with the minor exception of a
14 rock spec, a technical spec on the rock that he was using,
15 that Emery was using.

16 And right now I can't think of anything other
17 than a minor problem with the rock that was out of spec,
18 that was actually out of specification from what was shown
19 on the plans. That and the pipe that appeared in the
20 outfall weir of the pond that wasn't shown on the plans.
21 Generally the remainder of the work met the plans that I
22 had in my possession.

23 Q. Okay. Did you have daily contact with Emery &
24 Sons during the work?

25 A. I had -- yes, with their on-site

1 representatives, yes.

2 Q. Okay. Do you remember who that was?

3 A. It was a variety of people. I -- under this
4 duress I do not know if I can remember names. There was a
5 guy named Brad Kindle. He was one of the main leaders out
6 there. And another fellow, a small crew -- he had several
7 small crews working out there. Another one was run by a
8 guy named Robin somebody.

9 And then there were employees that I wasn't
10 really familiar with, I hadn't seen a lot. And his pipe
11 crew, I was familiar with his pipe crew for the water and
12 sewer. I was familiar with them from capital projects in
13 years past. I knew most everybody on the job from years
14 previous.

15 Q. You called the out of spec rock issue out to
16 Emery & Sons?

17 A. Yes.

18 Q. And how was that issue resolved?

19 A. It wasn't resolved. That had to do with sand
20 equivalent in the rock specification. And it -- I
21 believed it to be minor, and I sold the city on that fact,
22 and that matter was dropped. However, we did require the
23 contractor to use fully acceptable specked out rock for
24 the road base. We allowed him to use the one that had the
25 sand equivalent problem. He used that in the trenches.

1 Q. Okay. So eventually a nonconforming use was
2 accepted on certain portions of the project?

3 A. Specifically in category to the rock. And it's
4 a very minor element in the rock spec, sand equivalent.
5 It's a -- I can't even get close to it. It was minor. I
6 can't remember ever waiving any other process or anything
7 out there, actually.

8 Q. Otherwise work proceeded as you expected it to?

9 A. Yes, consistent with my experience in the past
10 with the crews involved.

11 Q. You mentioned the pipe in the weir?

12 A. Yes.

13 Q. Did you call that out to Emery & Sons?

14 A. I don't think so.

15 Q. Why is that?

16 A. That -- there were issues that were going on
17 with the project, conflict at upper levels that I did not
18 wish to become involved with. I pointed the presence of
19 the pipe out to the then city or Public Works director,
20 Dave Kinney, and that was his problem from that point on
21 as far as I was concerned. I was a construction
22 inspector. I reported what I saw, and it was up to them
23 to either direct me to take action or to not do so.

24 Q. I understand. What they say oftentimes, you let
25 the suits take care of that problem?

1 A. Yes. It wasn't my -- it wasn't my position to
2 tell Emery anything about that pipe.

3 Q. Did you work with Ashley, John Ashley, in
4 evaluating the reimbursements that the city was
5 negotiating with JCNW on this project?

6 A. No, I couldn't be farther from that
7 conversation.

8 Q. Were you aware of a memorandum that Ashley
9 prepared that proposed an allocation of responsibility for
10 the costs of the improvements out on that project?

11 A. I'm aware that there was such a memorandum, but
12 I've never read it. I'm only aware of it from sitting in
13 meetings such as this, listening to people talk about it.

14 Q. Did you participate at all in developing the
15 methodology used to come up with an allocation formula?

16 A. No. I couldn't be more clear in saying that my
17 responsibilities for this project were clearly and
18 specifically --

19 Q. Construction?

20 A. -- construction inspection and reporting to the
21 city engineer and the Public Works director what was going
22 on.

23 Q. Have you had the opportunity to go out on the
24 site and observe the water discharge from the Quail Run
25 project?

1 A. To ad nauseam.

2 Q. Okay. Why have you done that?

3 A. Under the direction of the city.

4 Q. And do you know why they are asking you to do
5 that?

6 A. The city feels that the pond isn't functioning
7 as it should, so they -- as soon as Mr. Martinak installed
8 the gauge I took it upon myself to start taking -- reading
9 the gauge, and I started doing that in late November 2013
10 and 2014. And I just kept record of that and reported my
11 findings to the city management.

12 Q. And how are you maintaining those records?

13 A. The -- there are two ways I'm doing that. I
14 have a handwritten list in my office of the observations
15 that I made, and I also have photographic records of the
16 gauge. I took close-up photos of the gauge every day
17 during the time when we had dry and wet spells, dry and
18 wet spells. I kept a daily log. As soon as we started
19 stretching out into the longer periods of dry, I spaced
20 out my readings a little more, or my observations more.
21 But they are all photographed and handwritten.

22 Q. And were you just compiling data on the readings
23 or were you also asked to evaluate the performance of the
24 system?

25 A. I was just asked to record the data.

1 Q. As part of that effort to capture that, did you
2 attempt at all to manage or monitor the water that was
3 being dumped by the Quail Run development itself?

4 A. No, I didn't do any assessment of what the --
5 there is three ends, those peak into the pond. I didn't
6 pay any attention to any of them. Just recorded the level
7 of the water against the gauge, and then I took lesser
8 frequent observations of the weir.

9 Q. Did you ever observe water passing through the
10 pipe or over the weir?

11 A. Not through the pipe. The pipe has been plugged
12 since it was built or since it was installed, or pretty
13 much so. I have observed water go over the weir.

14 Q. How often have you observed that?

15 A. Water go over the weir?

16 Q. Yes.

17 A. How many different instances?

18 Q. Right.

19 A. Maybe four or five instances. Kind of hard
20 to -- I go over there every day. I don't know, you know,
21 if I'm -- if it's stayed running over two or three days in
22 a row. It's hard to say. It was every morning at nine
23 o'clock. And when there was a particularly interesting
24 event, a lot of rain or something there, then I would take
25 a video of the weir so that people could actually see the

1 movement of water.

2 Q. In terms of volume, would you be able to
3 estimate how much water was coming over maybe at the
4 highest moment?

5 A. No. I made no estimates of how much water was
6 actually -- a quantity of water passing over the weir.

7 Q. Was there enough water that it would get into
8 that -- I guess there is an open drain on the other side
9 of it, is that right, that runs north?

10 A. There is a drainage gradient. It's not a ditch
11 that you could see right away. There is a ditch farther
12 out through the brush. But, yes, you could see the water.
13 When it went over the weir, you could see the water
14 flowing down like in a little creek through the brush.

15 Q. Do you know if it was reaching the -- I guess it
16 would be the north side of the project, where it dumps
17 into the Mill Creek?

18 A. The water is going over the weir, and then going
19 to generally northeast to Golf Club Road, then it goes
20 north along the east side of Golf Club Road for aways,
21 then it goes west under the road to Mill -- to the Santiam
22 Water Control District's asset.

23 Q. All right. Do you have videotape of that?

24 A. No.

25 Q. You just have videotape of the --

1 A. Of the weir.

2 Q. -- of the weir itself?

3 A. Yes, and the water going over the weir. I don't
4 have no video or pictures downstream of the weir.

5 Q. Okay. And while you have been on site, have you
6 had occasion to talk to Mr. Martinak?

7 A. During the construction?

8 Q. No, during your observation from November on.

9 A. A couple of times he was there when I was
10 there.

11 Q. I assume that those conversations have been
12 cordial?

13 A. All of our conversations have been cordial.

14 Q. Do you have an opinion one way or the other as
15 an observing engineer -- I understand you are not a
16 licensed engineer, but as an engineering tech -- the
17 source of the water that you are seeing in the pond and
18 going over the weir?

19 A. Are opinions relevant?

20 MR. LIEN: You can answer.

21 THE WITNESS: I believe --

22 MR. LIEN: We'll determine relevancy later.

23 THE WITNESS: -- the water is coming from Quail
24 Run, from Cardinal, and from the Junco outlets, three
25 outlets.

1 BY MR. LOISELLE: (Continuing)

2 Q. Okay.

3 A. Cardinal, Quail Run, and Junco.

4 Q. Why do you believe that?

5 A. Because I saw them put the pipes in the ground,
6 and I saw the water coming out of them.

7 Q. Okay.

8 A. Do you understand the configuration of the
9 piping?

10 Q. I do. I do. Thank you for sharing that.

11 MR. LOISELLE: Why don't we take five minutes,
12 Rich.

13 MR. KUHN: Whatever you want to do.

14 MR. LOISELLE: Great.

15 (Recess taken.)

16 BY MR. LOISELLE: (Continuing)

17 Q. Back on the record. Good news is I'm not going
18 to keep you all that much longer, but I do have one other
19 line of inquiry I want to ask you about. You were
20 involved in the project prior to the agreement between the
21 city and JCNW to discharge the Quail Run water, storm
22 water, onto the site?

23 A. Yes, I came here in -- well, I was hired in
24 December 2008, and I was here for probably six months
25 before that, so it predates all of that stuff. I just

1 wasn't personally involved with it.

2 Q. How was the city managing the storm water prior
3 to the agreement to discharge the water onto the site?

4 A. The Quail Run water?

5 Q. Correct.

6 A. It was being pumped via a pump station that is
7 located a block or so south of Bill's property, and then
8 it was pumped south to a shaft, a gravity system, then it
9 was carried west.

10 Q. Do you know how long that system had been
11 placed?

12 A. No.

13 Q. Do you know who installed it?

14 A. No.

15 Q. And then were you involved at all in the
16 negotiations that led to the agreement between JCNW and
17 the city allowing the water to be discharged on the
18 Phillips Estate property?

19 A. No. But shortly after I got here I stepped in
20 it with Bill when I asked him if we could dump water onto
21 that, his property. I knew nothing at the time about what
22 was going on in this area. All I saw was that there was a
23 drainage gradient to the north, and the pipe was plugged
24 out of Quail Run.

25 And I determined that there was a foot

1 differential there to where the water could be lowered by
2 a foot and it wouldn't flood the street and would just run
3 northeast off his property, so I approached him about
4 that. And I'm not sure what happened after my
5 interactions with Bill on that.

6 Dave and Bill, or somebody, were talking about
7 the situation. And, for example, when they came up to the
8 city paying Bill to do some work, I was totally unaware of
9 that until they went to construct. Dave never talked to
10 me about any of that.

11 Q. Okay. But your recollection is it was your
12 initial strategy or thought to take that Quail Run water
13 and run it onto the Phillips Estate property and you
14 approached Bill?

15 A. The pump failed, and I started looking for ways
16 to lose the water, and I came up with that.

17 Q. All right. And then were you involved in the
18 construction of the outlet that allowed the water to drain
19 on the estate?

20 A. What do you mean by "involved"?

21 Q. Did you do any monitoring of the work?

22 A. No. I may have gone out there while they were
23 doing it, but it was all a temporary situation, and it was
24 just a results sort of thing. It wasn't a permanent
25 thing, so I didn't really pay that much attention to how

1 we got to the goal.

2 Q. You say it was a temporary or interim solution?

3 A. Interim inasmuch as you can't just leave a
4 24-inch pipe pointing north dumping out onto --
5 surcharging onto flat ground and taking off.

6 Q. Okay. I understand.

7 A. It was just something that -- a way I saw the
8 water could go, and it didn't -- I can't overemphasize how
9 I was totally not -- I was clueless as to this larger
10 scenario that was happening, how Quail Run got to be the
11 way it was, why that scenario was there to begin with.

12 I knew none of that. Just focused on the fact
13 that water could go onto Bill's property, so I asked him
14 if I could do that. And then all of a sudden he was doing
15 it and being paid for it.

16 Q. He was being paid to construct the line that --

17 A. Apparently.

18 Q. Okay. And you don't know the particulars
19 regarding that?

20 A. No, I do not.

21 Q. But what was built out there was designed to be
22 a temporary situation until the permanent storm water
23 system was in place?

24 A. Well, that was my impression. I didn't discuss
25 that with anybody specifically, but that was my

1 impression.

2 Q. Can you tell me how the system functioned up
3 until the holding or the detention pond was built?

4 A. The Quail Run system?

5 Q. The Quail Run system that discharged onto the
6 Phillips Estate.

7 A. It worked in a sense that it was surcharged all
8 the time. It was all full of water because of the
9 groundwater out there, but it never -- since Bill's
10 property was just 16 inches or so lower, it -- the water
11 would never -- it would go northeast before it would fill
12 up the street. So it was just that foot, that difference
13 there, inches of difference, made it work.

14 Q. Okay. And so the water flowed out onto the
15 Phillips Estate, and there was no detention of any kind,
16 and eventually it either perked or it went over and --

17 A. It was unimproved in the ground between Quail
18 Run and the -- and the northeast corner of Emery's yard
19 there where the outfall is now. That was natural, what I
20 would call natural ground.

21 It had probably been disturbed at one time, but
22 there were grasses, shrubs, trees growing on it. And you
23 couldn't see the water, but it was definitely flowing
24 across there. And you could see water at times in that
25 drainage, that swale that sits up in the northeast corner

1 of the property.

2 MR. KUHN: Northeast? Northwest?

3 THE WITNESS: Sorry. Northwest. Thank you.

4 BY MR. LOISELLE: (Continuing)

5 Q. So from the time the, I'll call it the interim
6 discharge was prepared and the time the detention pond was
7 constructed, water would flow out over that swale just
8 like it does today when you have a large rain event?

9 A. Well, yes, except that then there was not water
10 coming from -- as much water coming from Phillips. So you
11 had Phase I Phillips was dumping water into it at that
12 time along the north and the south side of the
13 subdivision, and then what was coming out of Quail Run.

14 Q. Okay.

15 A. I forgot, actually, what the question was. Did
16 I answer it?

17 Q. I think you did. I think my question was water
18 discharged off the site at or near the weir area. What
19 now has been built as a weir, water would discharge off
20 that in larger rain events and weather events just like it
21 does now.

22 A. Theoretically there would be no difference
23 between then and now, because the pond is there now, and
24 there wasn't a pond. But still, before the pond was there
25 you could tell that the ground was surcharged. So

1 presumably the same amount of water -- with the pond full,
2 the same amount of water that comes in is going to go over
3 the weir, obviously.

4 Q. Right.

5 A. So presumably, then, before the pond was built,
6 the same amount of water flowed across and went out. So I
7 would -- notwithstanding the construction of Phase II
8 Phillips, I would expect it's the same amount of water
9 going northeast.

10 Q. Okay. Great. Then do you understand what the
11 final planned solution was for the storm water?

12 A. What I understand about it is from the inception
13 of the project way back the intent was that the water was
14 going to go to discharge directly into Mill Creek via a
15 circuitous route along some property lines generally
16 north, from the northeast corner -- or northwest corner of
17 the project.

18 Q. And do you know what the agreement was or the
19 understanding was between the city and JCNW regarding
20 responsibility for the cost?

21 A. No.

22 Q. Do you have any idea what the budget was going
23 to be for that improvement?

24 A. No.

25 Q. So since 2009, during large weather events,

1 water has escaped into the swale every time. Is that
2 whether the detention pond is there or not?

3 MR. LIEN: What swale are we talking about?

4 MR. LOISELLE: I think we've only been talking
5 about one swale.

6 THE WITNESS: The swale that -- the shallow
7 swale running northeast, but on the other side of the
8 weir.

9 BY MR. LOISELLE: (Continuing)

10 Q. Correct. Exactly.

11 A. Say the question again, please?

12 MR. LOISELLE: Can you read back?

13 COURT REPORTER: (Read as requested.)

14 THE WITNESS: I don't know exactly how to answer
15 that. Everything is so exacting in this process. I did
16 not -- I cannot recall -- what I know is that water was
17 not impounded on the site. During the rain events, I did
18 not experience flooding on Quail Run, and I did not see
19 water impounded on that site except in the hole, the
20 relief hole that Bill dug at the end of the pipe.

21 That obviously filled up. But then when it came
22 out of that, the idea was it would fill that pit up and
23 then it would flow northwest. And that's what it did.

24 BY MR. LOISELLE: (Continuing)

25 Q. Okay.

1 A. But you couldn't see it, so it's hard to say
2 that it did it every time, because -- or I don't even know
3 if it reached that corner, because I didn't walk out there
4 to look.

5 Q. All right.

6 A. So I cannot testify to the fact that the water
7 actually made it to that other corner. I'm presuming it
8 did, because the soil was obviously saturated.

9 Q. Thank you. And I appreciate you being careful.
10 I asked you a little bit about your experience with Emery
11 & Sons and with Bill Martinak. Your experience with West
12 Tech Engineers and Steve Ward, I assume you have worked on
13 sewer projects with Steve Ward?

14 A. I don't care for Steve Ward or his outfit.

15 Q. You don't care for him?

16 A. No.

17 Q. Is that just a personality issue or is it a
18 professional standards issue?

19 A. It's -- I've had experience with his firm for
20 many years when I worked in Albany as well, and I just
21 don't like his style. I don't like his personality.

22 Q. All right. But as far as being a competent
23 engineer, do you have an opinion one way or another about
24 their competency?

25 A. I'm left wondering about how he got into this

1 mess that they are involved in, but I don't know the
2 particulars. I also know that I called him on two
3 occasions about problems with the plans and the staking
4 out there that he blew me off and wouldn't come out there
5 and help me with it. And Bill's staff and I are the ones
6 that kept the pipe going in the ground.

7 Q. Okay. Other than that comment, do you have any
8 observations or opinions about their competency?

9 A. No, not beyond what I just told you.

10 Q. Okay.

11 A. I'll clarify. The only time -- I do not like
12 their way of doing business or the way they have
13 interacted with the governmental agency that I've worked
14 for in the past. This project is the only one where I am
15 actually wondering about what they are thinking about that
16 pond.

17 The other -- all the other instances where I
18 have been dissatisfied working with that company have to
19 do with just their way of doing business, hard to get
20 along with. That's a matter of perspective, though.
21 Maybe I'm hard to get along with. But on this job I've
22 been left to wonder when he didn't help me with the
23 staking problem, it makes me wonder about the pond.

24 Q. And the staking problem, was that to locate some
25 of the utilities that were being installed?

1 A. No, that's construction staking, staking that he
2 did or caused to be done out there that was -- that
3 appeared to be flawed.

4 Q. Okay. Were you able to resolve those issues?

5 A. Yes. Bill's foreman and I were able to get the
6 line constructed as it was shown on the plans irrespective
7 of the sloppy staking.

8 MR. LOISELLE: Okay. Give me another minute,
9 and we may be done.

10 (Recess taken.)

11 MR. LOISELLE: We're done.

12 * * *

13 (Deposition concluded at 1:55 p.m.)

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CERTIFICATE

STATE OF OREGON)
) ss.
County of Marion)

I, CHRISTINE E. SHEPARD, a Registered Professional Reporter and Certified Shorthand Reporter in and for the State of Oregon, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter transcribed by means of computer-aided transcription, and that the foregoing transcript contains a full, true and verbatim record of the said deposition;

I further certify that I have no interest in the event of action.

WITNESS my hand and seal this 24th day of April, 2015.

Christine E. Shepard, CSR, RPR
CSR No. 09-0412