

BEFORE THE ARBITRATION SERVICE OF PORTLAND, INC.

DAN HARRIS, ARBITRATOR

CITY OF STAYTON,)
)
)
 Plaintiff,)
)
 vs.) ASP No. 141222
)
 JCNW FAMILY, INC.,)
)
 Defendant.)

DEPOSITION OF STEVEN WARD

Taken in behalf of the Plaintiff

April 24, 2015

1 BE IT REMEMBERED THAT, pursuant to Oregon Rules
2 of Civil Procedure, the deposition of STEVEN WARD was taken
3 before Lisa J. Pace, Court Reporter and Notary Public for
4 Oregon, on Friday, April 24, 2015, commencing at the hour
5 of 1:04, the proceedings being reported in the law offices
6 of Schwabe, Williamson & Wyatt, PC, Portland, Oregon.

7 -:-

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23
24 Also Present: Bill Martinak

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8 Preliminary Plat

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9 1, 2A & 2B Storm Drain Plan

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10 2A Storm Drain Plan

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12 7/14/08 Email/Phase 1 Storm Drain Plan

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STEVEN WARD,

having first been sworn or affirmed, was examined and testified under penalties of perjury as follows:

EXAMINATION

BY MR. LIEN:

Q. Good afternoon. My name is Wally Lien. You and I have met on numerous occasions over the years. I think this is the first time I've taken your deposition, isn't it?

A. Yes, it is.

Q. But you've had your deposition taken before?

A. I have.

Q. So you're familiar with the drill?

A. Yes.

Q. Okay. The key, probably for today, is to make sure that your answers are verbal so that they make it onto the record, and that if we're going to take a break, make sure that we answer the questions beforehand.

Is there anything that would impede you from telling the whole truth today?

A. No.

Q. Okay. Not on any medication or anything?

A. No.

Q. Okay. And if I don't ask a question that you can

1 understand, make sure that you stop me and say, rephrase
2 it. I'm going to assume that if you answer the question
3 that you understood the question. Is that fair?

4 A. Fair.

5 Q. Can you state for the record your name and
6 address?

7 A. Steven Ward. My office address is Westech
8 Engineering, that's W-E-S-T-E-C-H, 3841 Fairview Industrial
9 Drive Southeast, Salem, Oregon, 97302.

10 Q. Give us your educational background.

11 A. Graduated from Oregon State University in 1978
12 with a Bachelor's in civil engineering.

13 Q. And any secondary college degrees or
14 certificates?

15 A. No, sir.

16 Q. And what's your work history since you graduated
17 from OSU?

18 A. Started at Westech right after graduation and
19 been there for 37 plus years now.

20 Q. And you're a registered professional engineer?

21 A. Yes.

22 Q. With a stamp?

23 A. Yes.

24 Q. And have always been such?

25 A. Well, since I got my stamp, yes.

1 Q. Okay. Have you ever had it revoked or suspended?

2 A. No.

3 Q. All right. We are here today -- I would guess
4 that you already are aware that we're talking about the
5 retention pond at the Phillips Estate. You're familiar
6 with that project?

7 A. Yes.

8 Q. How long have you been employed working on or
9 around that development, Phase I, Phase II, Tract A?

10 A. My memory is it goes back to around 2006.

11 Q. Would that have been shortly after Mr. Martinak
12 purchased it?

13 A. Correct.

14 Q. Did you have any contractual working relationship
15 with the Phillips family before they sold it to Bill?

16 A. No.

17 Q. And what was your involvement in 2006?

18 A. In 2006, if that's when it started, would have
19 been to prepare the preliminary plat, to obtain preliminary
20 plat approval from the City of Stayton.

21 Q. And did you draw those plans?

22 A. No.

23 Q. Who did?

24 A. One of my technicians.

25 Q. But Westech?

1 A. Westech prepared the plans.

2 Q. Are you the owner of Westech?

3 A. I'm a partial owner of Westech.

4 Q. Okay. So Westech was the one employed to perform
5 services for Mr. Martinak and his company?

6 A. For Mr. Martinak, yes.

7 Q. And the plans that were drawn in 2006 were in
8 anticipation of a land use application?

9 A. A subdivision application, yes.

10 Q. Okay. And did you participate in getting that
11 subdivision application approved?

12 A. Yes.

13 Q. The plans that you drew for the subdivision
14 application, how did they deal with storm water?

15 A. I can't remember.

16 Q. Okay. Do you remember if the plans showed water
17 going north to Mill Creek?

18 A. I can't remember.

19 MR. LIEN: Okay. Well, let's see if we can
20 refresh your memory.

21 Let's mark this as -- where are we at -- 8.

22 [Preliminary Plat, EXB. 8, marked]

23 Q. Do you recognize that drawing?

24 A. Do I recognize this drawing. This is a drawing
25 prepared by Westech, it appears. It's a long time ago.

1 Q. Has a date on it, doesn't it?

2 A. Let me look. June of '06.

3 Q. Does that help refresh your recollection as to
4 what plan was submitted to the City in 2006?

5 A. I don't know if this is the plan that was
6 submitted to the City or not, to be honest with you.

7 Q. This drawing shows a storm drain?

8 A. Well, I can't read it, it's too small.

9 Q. Okay. And you don't remember your drawing the
10 subdivision with drainage on it, subdivision map?

11 A. It was 2006.

12 Q. And you don't remember if this is one of those
13 pages?

14 A. This could be one of the pages, I just --

15 Q. And you don't recall what the design was for
16 storm water at the time?

17 A. No.

18 Q. Do you remember getting a copy of the subdivision
19 approval?

20 A. I'm sure I did. I don't remember getting it, but
21 I know I have it.

22 Q. Do you remember it has a condition that says
23 storm water has to be discharged north to Mill Creek?

24 A. I haven't read those conditions of approval for
25 years.

1 Q. So you don't remember that?

2 A. No.

3 Q. Do you need glasses or a magnifying glass or
4 anything to be able to see these documents?

5 A. A full size drawing would work.

6 Q. Well, we don't have a full size drawing. This is
7 what we have.

8 Do you have a magnifying glass or...

9 MR. LOISELLE: I could go try to find one,
10 but I don't have one here.

11 THE WITNESS: I don't want to try to assume
12 what this says.

13 Q. Okay. Let's show Mr. Ward what's been marked as
14 Exhibit 6.

15 Is that a document that's familiar to you?

16 A. I am familiar with this document.

17 Q. Can you tell me how it came to be that you had
18 Carlson Testing on the site?

19 A. We wanted Carlson Testing to do infiltration
20 testing in an area that we were going to use as a
21 temporary -- or temporary infiltration facilities, storm
22 water detention/retention facility.

23 Q. Who hired Carlson? Did you hire Carlson?

24 A. No.

25 Q. Were you on the site when Carlson did the

1 testing?

2 A. No.

3 Q. Did you direct Carlson where to put the test
4 pits?

5 A. No, I did not.

6 Q. Who would have done that?

7 A. It was a combination between Bill and myself.

8 And we knew where the detention basin was going to be, so
9 they were to be in the area of the detention basin.

10 Q. But you didn't have any conversation with Carlson
11 indicating, I want to you test here, here and here?

12 A. No.

13 Q. Do you know if Bill did?

14 A. I'm sure he did.

15 Q. Okay. Look at figure 2 in the report that was
16 received. Can you identify the three test pit locations?

17 A. I see them.

18 Q. When you received this report, was it the first
19 time that you knew where the test pit locations were dug?

20 A. Yes, that would be accurate.

21 Q. And this test, what did it show?

22 A. Well, if you read 7.0, the last paragraph and the
23 third to the last sentence, it says, "During the final hour
24 of the soaking period, no discernible drop in the water
25 level was observed (less than 1/16 inch total). After the

1 soaking period, we reviewed preliminary findings with our
2 client at the site."

3 So it basically showed less than one inch of
4 infiltration -- 1/8 of an inch infiltration, I'm sorry.

5 Q. When they said --

6 A. 1/16.

7 Q. -- "we reviewed the findings with our client,"
8 was that you?

9 A. No.

10 Q. Were you their client?

11 A. No.

12 Q. Who was their client?

13 A. Let's see who they're -- Well, the letter was
14 written to Mr. Bill Martinak at Emery & Sons.

15 Q. But it wasn't you, anyway? You weren't out on
16 the site, they didn't review the findings with you?

17 A. No.

18 Q. Okay. And then you wrote an email and
19 transmitted this result to Mr. Martinak on June 28th?

20 A. Correct.

21 Q. And you weren't very happy about it, huh?

22 A. Well, the infiltration testing, the whole goal
23 was to try to drain the storm water on site, and the
24 infiltration testing wouldn't allow that to happen at 1/16
25 of an inch an hour --

1 Q. So the --

2 A. -- in this location.

3 Q. So you're designing this facility and the design
4 of the facility to retain the water on site; is that
5 correct?

6 A. I'm designing the facility to enter into a storm
7 water detention facility and infiltrate into the ground.

8 Q. Okay. And there was a built-in weir, though,
9 designed at a certain elevation, correct?

10 A. There was a weir at the -- there is a weir at the
11 far northwest corner of the site, and that's part of the
12 design, yes.

13 Q. And the elevation of that weir is set to
14 accommodate what level of storm event?

15 A. Can't remember.

16 Q. Do you remember what the City standards are?

17 A. No.

18 Q. Okay. Would it have been a significant storm
19 event that that elevation was set at?

20 MR. LOISELLE: I'm going to object to the
21 form.

22 Do you understand what he means by
23 "significant"?

24 THE WITNESS: No.

25 Q. You understand the difference between a two-year

1 flood event and a 50-year flood event?

2 A. Yes, I do.

3 Q. Was the weir set for a two-year flood event?

4 A. I'm sure it was.

5 Q. Was it set for --

6 A. Well, hang on a second here. The detention --

7 The weir is part of a detention basin.

8 Q. Okay.

9 A. So the weir, the weir is an integral part of the
10 basin itself. And so the water is anticipated to rise to a
11 certain level during a storm event, whatever we design
12 towards, I can't remember.

13 Q. Okay. But you would have designed it to the City
14 standards, correct?

15 A. I designed it to a storm event that I was advised
16 I needed to design it to, whatever the City wanted at that
17 time.

18 Q. And if I were to tell you that those City
19 standards were a 50-year event, then your response would be
20 that's what you designed it to?

21 A. My response would be I'd look at my drawings and
22 my drawings would tell me what year storm event I designed
23 it to.

24 Q. Regardless of what the City standards were?

25 A. Yes.

1 Q. Okay. Then how are you going to get your plans
2 approved if they don't comply with City standards?

3 A. Because there were lots of negotiations on this
4 project, throughout this project. And so I'm not 100
5 percent convinced that the City followed their own
6 standards on anything on this project, so it's part -- it's
7 part of my project that we do that you end up -- you end up
8 designing projects. And the world is not this perfect
9 little world that we can design projects to meet every
10 standard, so it's part of a negotiation you do with the
11 City.

12 Q. The elevation of the weir was, in fact, designed
13 to retain water, not to allow water to just continue to run
14 on its natural flow, correct?

15 A. The -- there were -- it's -- there's a berm all
16 along the north and the west side. That berm is intended
17 to hold water back, yes, if that's your question.

18 Q. And at some point in time, the level of the water
19 within that facility will reach a level where it hits the
20 top of the weir, correct?

21 A. Yes.

22 Q. Okay. And then where does the water go when it
23 leaves the top of the weir?

24 A. The northeast corner -- northwest corner.

25 Q. And where does the water go once it leaves the

1 northwest corner?

2 A. There's a lot of debate about that.

3 Q. Do you know?

4 A. I've walked this entire basin more than once,
5 and --

6 Q. Do you know where this overflow water from that
7 weir goes?

8 A. I know it goes out the northwest corner of the
9 site.

10 Q. In your design, did you provide any structure
11 facility trenching, any kind of facility that when water
12 leaves the weir, that it would be conveyed north towards
13 Mill Creek?

14 A. My design stopped at the northwest corner of the
15 site.

16 Q. Okay. So once it left the weir, then there was
17 no further designing of what happens to the water after it
18 leaves the weir?

19 A. Well, it depends on which project you're talking
20 about. We have a design, it was not built.

21 Q. I'm talking about the one that was built. That's
22 what we're arguing about.

23 A. Okay. The one that was built, there was no
24 further improvements from the northwest corner.

25 Q. We have talked a little bit this morning with

1 Mr. Martinak about those two pipes that go through the
2 weir. Are you familiar with those?

3 A. I'm --

4 MR. LOISELLE: First of all, I'm going to
5 object. You mischaracterized Mr. Martinak's testimony.
6 There are not two pipes that go through the weir.

7 Go ahead and testify.

8 THE WITNESS: That's what I was going to
9 say, I'm not aware of two pipes going through the weir.

10 BY MR. LIEN: [Continuing]

11 Q. Let's take a look at Exhibit 5, about the third
12 page back. Do you see two pipes?

13 A. I see two pipes.

14 Q. Okay. What are those pipes for?

15 A. Well, I believe that the furthest pipe, the most
16 westerly pipe was put in as part of Phase I construction of
17 the subdivision, and that was put in at my direction so
18 that we could monitor flow leaving the northwest corner of
19 the site after Phase I of the subdivision was built.

20 Q. Okay. And what about the other pipe?

21 A. The closer pipe, the most easterly pipe, was put
22 in at my direction as part of the Phase II construction.

23 Q. It is at a lower elevation than the top of the
24 weir; is that correct?

25 A. Yes, it is.

1 Q. How much lower is the pipe from the top of the
2 weir?

3 A. I don't know.

4 Q. Does that pipe that you directed to put in the
5 weir -- and I guess I'm assuming based on all the
6 discussion a few minutes ago that the first pipe that you
7 had put in as part of Phase I does not go through the weir.
8 Is that correct?

9 A. The weir is the rock portion you're seeing in the
10 exhibit. And that's the most easterly pipe. The most
11 westerly pipe was just put in the original drainage basin
12 so that we could watch the flow.

13 Q. Okay. But it's not through the weir, only the
14 one pipe goes through the weir?

15 A. That's my opinion, yes.

16 Q. Okay. And you directed that the pipe that goes
17 through the weir to be installed for what reason?

18 A. Well, I've been doing this a long time, and so I
19 like to know in consequences of failure where water's going
20 to go, and I want to be able to control where the flow went
21 in the event of a failure. And so I wanted that pipe in
22 there to meter the flow in case the system didn't work as
23 designed.

24 Q. And when the pond starts to fill up, it will
25 outflow first from that pipe before it overtops the weir?

1 A. Correct.

2 Q. All right. Was that pipe on the first set of
3 construction drawings that you submitted to the City?

4 A. Well, no.

5 Q. Pardon me?

6 A. Well, are we talking about -- You need to be more
7 specific. The first set of construction drawings, what do
8 you mean by that?

9 Q. Well, you submitted a set of plans for this
10 project, right? Did you submit more than one set of plans?

11 A. Yes.

12 Q. Okay. It was different plans or the same plans
13 with modifications?

14 A. I submitted probably 30 sets of plans to the
15 City.

16 Q. Okay. And at some point in time, you hit the
17 time when you're moving forward to construction?

18 A. Are we talking Phase I? Phase II?

19 Q. Phase II.

20 A. Yes, at some point -- Wait. You need to ask that
21 question again. I want to make sure I understand it,
22 because I don't want to --

23 Q. Okay. When you are submitting plans for the
24 retention basin as a part of the completion of Phase II --

25 A. Yep.

1 Q. -- you're submitting those to the City?
2 A. Yep.
3 Q. How many of those plans were submitted to the
4 City?
5 A. I have no idea.
6 Q. More than one?
7 A. Oh, yes.
8 Q. And why were so many submitted?
9 A. It's hard to get plans approved in Stayton.
10 Q. Did, in fact, you ever have these plans approved
11 for construction?
12 A. By whom?
13 Q. By the City, any representative of the City.
14 A. In written form?
15 Q. Yes.
16 A. No.
17 Q. Okay. Plans were not stamped or signed off on by
18 the City engineer, correct?
19 A. Not in written form.
20 Q. Okay. In fact, you had a conversation with City
21 staff about the number of corrections and different plans
22 that were being done and expressed your frustration, didn't
23 you?
24 A. Probably had multiple conversations with City
25 staff on that.

1 Q. Did you, in late August, tell City staff that
2 you're going to start construction on Monday regardless of
3 whether they approved the plans or not?

4 A. Me?

5 Q. Yes.

6 A. No.

7 Q. You never said that to anybody?

8 A. I didn't build the subdivision.

9 Q. All right. Did you ever hear anybody else say
10 that to the City?

11 A. Man alive. I know the intent was to start
12 construction; how it was conveyed to the City, I don't
13 remember.

14 Q. Okay. Did you authorize construction to be
15 started without an approved set of construction drawings?

16 A. To whom?

17 Q. To the contractor who was building the project.

18 A. I didn't communicate with the contractor.

19 Q. Wasn't it your responsibility to monitor and
20 inspect the job as it was going forward?

21 A. I did inspections on the job, yes.

22 Q. So you had communication with, I guess it was,
23 Emery & Sons that did the work?

24 A. No. My communication was all with Mr. Martinak.

25 Q. But Mr. Martinak was acting then on behalf of

1 Emery & Sons?

2 A. My communication was with Mr. Martinak.

3 Q. You don't know who he was -- what hat he was
4 wearing at that time?

5 A. He was directing the contractor, I was
6 communicating with him.

7 Q. Okay.

8 A. That's all that mattered to me.

9 Q. Did you ever advise Mr. Martinak that he should
10 not proceed with construction until there was City approval
11 of the plans?

12 A. No, because from my perspective, the City knew we
13 were doing construction. We had a preconstruction meeting,
14 and the City didn't tell us to stop, so I -- There was no
15 reason, even though we didn't have written approval, there
16 was no reason not to build it.

17 Q. At the time construction started, you were aware
18 that Ashley had a memo to you listing a number of things
19 that he wanted changed on the plans?

20 A. There were multiple memos from Ashley, as I
21 recall.

22 Q. Do you remember when construction started?

23 A. No.

24 Q. Do you remember when you received the last memo
25 about the construction plans from Ashley?

1 A. When I received it or when I saw it?

2 Q. Well, you tell me what the answer is.

3 A. I believe the last memo I saw from Mr. Ashley was
4 at the time we were doing a final punch list on the
5 subdivision.

6 Q. And that would have been when?

7 A. I don't know. Fall.

8 Q. Okay. And he still hadn't approved the plans at
9 that point, had he?

10 A. I don't -- I -- My belief at that time is that
11 Mr. Kinney took that responsibility away from Mr. Ashley,
12 and Mr. Kinney was coming to me in an effort to try to
13 appease Mr. Ashley on any issues he may have as part of the
14 final construction.

15 Q. And what issues were those?

16 A. Don't remember.

17 Q. At some point in time, one of these pipes was
18 capped?

19 A. Are we talking about the pipes here, Exhibit 5?

20 Q. Yeah.

21 A. I believe so.

22 Q. Okay. Did you participate in the capping of
23 that?

24 A. Nope.

25 Q. Did you provide an engineering opinion as to the

1 effect of the capping of that pipe?

2 A. No.

3 Q. Okay. Do you know what happened after the
4 Carlson Testing that showed little or no infiltration in
5 the pond area?

6 A. Yes.

7 Q. What happened then?

8 A. Additional testing.

9 Q. Who ordered the additional testing?

10 A. I believe Bill and I did.

11 Q. And what were the instructions to Carlson?

12 A. Well, we have a big detention basin area here,
13 and my instructions to Bill were we need to do additional
14 testing that covered more than just this area of the
15 detention basin.

16 Q. Okay. At the time that you got the first report,
17 Exhibit 6, was -- and look at figure 2 of Exhibit 6, which
18 is that map. Those three test pits that were done in the
19 first set of Carlson Testing, were those, in your opinion,
20 within the design parameters of the retention pond?

21 A. I don't understand the question.

22 Q. You know how big the detention pond was and where
23 the berms that you talked about earlier were?

24 A. I do know how big the detention pond is, yes.

25 Q. Looking at that map, can you tell me if those

1 test pits are within the area of the retention pond as
2 constructed?

3 A. I believe they are.

4 Q. Okay. And they show no discernible infiltration,
5 correct?

6 A. That's what the report says.

7 Q. Okay. So then you ordered a second round of
8 testing; is that right?

9 A. I had a discussion with Mr. Martinak, and we
10 needed to do additional testing of the detention basin so
11 that we could confirm or have data to say whether we had
12 accurate testing. If it's all zero, that makes a
13 difference on the design. If there's infiltration, that
14 makes a difference on the design. These three tests are
15 relatively close together, they're at the far south end.
16 The detention basin was a big detention basin, I wanted
17 more data.

18 Q. And so you got more data. What is the new data
19 that you got?

20 A. If you'll show me the report, I'll tell you what
21 the new data is.

22 Q. It's Exhibit 7.

23 A. Is that the report dated 7/10 of '13?

24 Q. Yes.

25 A. So we have four tests, and the average from, it

1 looks like, 4 1/8 inches per hour to 5 5/8 inches per hour.

2 Q. From this report or from your personal knowledge,
3 do you know where this test pit was dug?

4 A. I don't know exactly where they were dug, I just
5 know they were dug within the detention area.

6 Q. Going back to figure 2 --

7 A. Of Exhibit 5.

8 Q. Of Exhibit --

9 A. 6.

10 Q. -- 6, can you identify as close as you can where
11 you think that the second round test pit was?

12 A. No.

13 Q. Okay. Were you out there on the site when they
14 did it?

15 A. No.

16 Q. Did you direct where the test pit was to be
17 located?

18 A. Only that they be located within the detention
19 basin.

20 Q. Okay. And did you review where they actually did
21 dig the test pit when you reviewed this second report?

22 A. Can you please repeat the question.

23 Q. The second report doesn't have a map or a figure
24 on it like the first report does.

25 A. Mm-hmm [affirmative response].

1 Q. So how do we know where the test pit was dug?

2 A. Because Carlson was directed to do test pits
3 within the detention basin.

4 Q. But you weren't there, so you don't know whether
5 he did that or not?

6 A. I do not know.

7 Q. You didn't dig the test pit?

8 A. No.

9 Q. You weren't on the site during the testing?

10 A. No.

11 Q. It is unusual for a report like this to come out
12 without a map?

13 A. No.

14 Q. That's standard operating procedure?

15 A. I didn't say that. I just said it was not
16 unusual.

17 Q. Since they gave you a map on the first one,
18 wouldn't you have expected a map on the second one?

19 A. Not necessarily.

20 Q. You designed the facility based on this second
21 report?

22 A. Mm-hmm [affirmative response].

23 MR. LOISELLE: Is that a "yes"?

24 THE WITNESS: Yes.

25 Q. Did you think that the second report was adequate

1 enough to provide you with information for the design?

2 A. Yes.

3 Q. And this was one test pit; is that right?

4 A. No.

5 Q. How many test pits happened on the second?

6 A. Well, I can help answer some of this, because
7 this says in the report it was in the vicinity of lots, 56,
8 57 and 59. So this test pit exploration is on the far
9 north end, so that's what -- So if you're concerned about
10 where these are located, they were located in this vicinity
11 right here. That's what the report is saying.

12 Okay. Based upon the results of those test
13 pits -- and what I think is that there's four test pits,
14 based on this, that was my belief at the time, that there's
15 four test pits in the vicinity of lots 56, 57 and 59.

16 Q. Okay. And you have that opinion based on this
17 report that you got, that there were four test pits?

18 A. Yeah, it's got trials one through four, and so
19 that was -- because they're different infiltration rates.
20 That was my belief that there were four test pits; I don't
21 know that for a fact, though.

22 Q. Four total on the second go-round of testing?

23 A. That's my belief.

24 Q. Okay. The measurements at ten-minute intervals
25 for a total of 40 minutes, is that standard infiltration

1 testing protocols?

2 A. I don't know.

3 Q. Did you direct them as to how to do infiltration
4 testing?

5 A. There's standard testing in our industry about
6 infiltration, and I directed them to follow the standard
7 procedures. I don't have those memorized.

8 Q. To determine an infiltration rate, is that
9 normally the job of the geotechnical engineer or the civil
10 engineer?

11 A. It's always the geotechnical engineer.

12 Q. But they didn't do that in this case?

13 A. They didn't?

14 Q. They didn't? That's my question. Did they?

15 A. That's what this report says. I'm not sure I
16 understand the question.

17 Q. Okay. In both reports, Exhibits 6 and 7, I
18 guess, the Carlson folks say, "It is recommended that the
19 infiltration system designer consult the appropriate design
20 manual prior to proceeding within filtration system design.
21 Design of storm water management plan rests with others."

22 So does that mean that Carlson is not
23 establishing the infiltration rate?

24 A. No.

25 Q. What does that mean?

1 A. It means that we're to take this data and use
2 this data and develop the infiltration testing and develop
3 the storm water detention system using this data. That's
4 my interpretation of it.

5 Q. Okay. And did you do that?

6 A. Yes.

7 Q. And you used 4.1?

8 A. Can't remember. If I had my drawings with me, I
9 could tell you.

10 Q. Okay. Now that you have a year plus of
11 experience, does, in fact, the system draw at 4.1?

12 A. I don't know.

13 Q. If it's at 4.1, how many inches of drop should
14 the pond have in a 24-hour period?

15 A. Is there storm water flow coming into it?

16 Q. Well, assume it's dry.

17 A. Assume there's no flow coming into it?

18 Q. Yeah, but it's at a certain level. How much is
19 it going to drop?

20 A. And there's no flow coming into the detention
21 basin?

22 Q. Correct.

23 A. It will drop -- well, it will drop 4.1 or
24 whatever inches per hour.

25 Q. So over a 24-hour period, that would be whatever

1 that number is, eight feet or something?

2 A. [Gesturing] Okay.

3 Q. Okay. When you were designing the system, what
4 information did you have with regard to the Quail Run water
5 that was being put into the pond area?

6 A. We were provided flow data by the City.

7 Q. And what does that flow data show?

8 A. They gave us a -- they gave us a flow rate, which
9 we were to assume coming into the detention basin.

10 Q. And did you use that?

11 A. Yes.

12 Q. So your design assumed an infiltration rate of
13 4.1 --

14 A. I -- If you'll show me my construction drawings,
15 I'll tell you what my design assumed.

16 Q. Okay.

17 A. I'm sure you guys have them here.

18 [1, 2A & 2B Storm Drain Plan, EXB. 9, marked]

19 [2A Storm Drain Plan, EXB. 10, marked]

20 Q. All right. Can you take a look at what we marked
21 as Exhibit 9.

22 A. Yes.

23 Q. And this is plan sheet ten. Is this something
24 that Westech produced?

25 A. Yes.

1 Q. Is it familiar to you?

2 A. Yes, it is.

3 Q. Okay. Does this tell you what the design rates
4 are and the design of the facility is?

5 A. It has the assumptions for the design rates, yes.

6 Q. And what are they?

7 A. Measured infiltrates in rate of 4.1 inches per
8 hour; the detention footprint, 57 square foot. Maximum
9 filtration rate, assuming 57,000 square feet at 4.1 inches
10 per hour, 12 inches per foot, one hour is 3600 seconds, the
11 maximum infiltration rate is 5.43 CFS. It appears there's
12 a mistake here but it's okay. Factor of safety, we divided
13 that by 2 and came up with 2.71. We should have been
14 dividing 5.43 by 2, not 5.69, there's probably a change
15 somewhere in the design.

16 So then it talks about detention required of
17 60,674 cubic feet, detention summary of 67,480 cubic feet,
18 and says there's a zero discharge with a factor of safety
19 of two to one.

20 The charts on the far right-hand side, and what
21 you can't read, tell you how the flow comes into the system
22 and show you how much detention storage is needed, but you
23 can't read those, so I can't tell you how that's working.

24 Q. Okay. The box that points to the northwest
25 corner, detention overflow elevation 426.5, do you see

1 that?

2 A. [Laughter] I'm sorry. Maybe.

3 Q. Assume that's what it says, if you can't read it.
4 Are you having trouble reading it? Is that the problem?

5 A. Well, I can see detention area, I can see GS, I
6 think it -- it could be, I don't know, 428, it's hard --

7 Q. The box above that.

8 A. You know, it could be 426.5.

9 Q. Okay. My question is: When you say "detention
10 overflow elevation," is that the top elevation of the weir
11 or the bottom elevation of the pipe that goes through the
12 weir?

13 A. That would be the top elevation of the weir.

14 Q. And I think you said earlier you're not sure how
15 much lower than the top elevation of the weir the pipe is?

16 A. I am not.

17 Q. Is it a foot? Is it more than a foot?

18 A. I've already answered the question.

19 Q. Well, give me your best guess.

20 A. I'm not going to guess.

21 MR. LOISELLE: He's not going to guess.

22 Q. Have you been out on the site? You ordered this
23 pipe to be put in, correct?

24 A. I directed Bill to put the pipe in, correct.

25 Q. And did you direct him to put it in a certain

1 level below the top of the weir?

2 A. Can't remember.

3 Q. Okay. Now, take a look at number 10. And number
4 10 -- Well, first of all, Exhibit 9, what is the date of
5 Exhibit 9?

6 A. Looks like June of '13, 2013.

7 Q. Okay. So this was a part of the plans that were
8 being submitted to the City that you talked about earlier,
9 correct?

10 A. I assume so, yes.

11 Q. Okay. And Exhibit 10 is labeled as an as-built;
12 is that correct?

13 A. Yes, it is.

14 Q. And when was it created -- or dated, I guess?

15 A. November 4th of 2013.

16 Q. And was the facility completed at that point?

17 A. No.

18 Q. How does an as-built get drawn before the
19 facility is complete?

20 A. The City directed this to be turned in to them.

21 Q. Did you advise them that the facility was not
22 complete?

23 A. No, because they already knew it.

24 Q. Okay. Is it normal to produce an as-built when
25 the facility isn't yet constructed?

1 A. We just did what the City asked us to do.

2 Q. Okay. On Exhibit 9, it shows the detention
3 infiltration basin area as 57,700 square feet with an
4 average depth of 1.5 feet. Is that correct?

5 A. Can you repeat the question, please.

6 Q. There's a box in the upper left-hand corner of
7 Exhibit 9 labeled detention infiltration basin. Do you see
8 that?

9 A. Yes.

10 Q. Can you read it?

11 A. Area of 59,700 square feet; average depth, 1.5
12 feet.

13 Q. Now, look at Exhibit 10, the same box, and tell
14 me what the size is.

15 A. I don't see the box. Where is it?

16 Q. On Exhibit 10.

17 A. Yeah. I mean, you're asking me to compare
18 drawing sheet 11 of -- 10 of 42 to 11 of 42, so I don't --

19 Q. That's because you got the wrong sheet.

20 A. Okay.

21 MR. LIEN: Mark this as 11.

22 I'm sorry about that.

23 What I've been talking about as 10 is
24 actually 11.

25 [1, 2A & 2B Storm Drain Plan, EXB. 11, marked]

1 THE WITNESS: Then I don't know if my
2 answers have been accurate or not.

3 BY MR. LIEN: [Continuing]

4 Q. Well, we haven't talked about Exhibit 11 yet. So
5 that's just where we're starting, so we did okay.

6 Now, do you see the box that we're talking about
7 on Exhibit 11?

8 A. Yes, I do.

9 Q. Okay. What is the size designated in that box?

10 A. It says area, 43,000 square feet; average depth,
11 1.5 feet; volume, 76,200 cubic feet.

12 Q. So between the drawing on Exhibit 9 and the
13 as-built on Exhibit 11, the area decreased. Why did it
14 decrease?

15 A. Can't tell you.

16 Q. Who would know? Somebody in your office?

17 A. It's not relevant.

18 Q. Well, it's not for you to determine what's
19 relevant.

20 The question is: Why did it shrink in size?

21 A. I have no idea.

22 Q. Okay. Now, again, comparing 9 and 11, the box
23 where it starts off with measured infiltration rate --

24 A. Okay.

25 Q. And those numbers are all different on the

1 as-built, 11, than they were on number 9. Do you know why
2 those numbers are different? For example, the 5.69 figure
3 is now 4.08 on safety factor division.

4 A. Can't remember.

5 Q. Detention required on Exhibit 9 on the earlier
6 set of plans shows 60,664 CF, and on the as-built it shows
7 73,337 CF. Do you know why the amount of detention
8 increased?

9 A. So let me just help you out and clear this up for
10 you, okay?

11 Q. Please do.

12 A. Please look at the revision block on Exhibit 9,
13 and tell me how many numbers or revisions there are in the
14 upper right-hand corner.

15 Q. I'm not being deposed, you are. So if you have
16 something to say, say it.

17 A. There's three revision blocks. Okay. So you're
18 showing me an exhibit that is not the proper exhibit. If
19 you look at Exhibit 11, there's five revision blocks. So
20 you're asking me to compare -- or you're asking me to
21 compare documents that are not even comparable.

22 Q. No, I'm not.

23 MR. LOISELLE: Let's take a break.

24 [Recess: 1:54 - 2:02]

25 BY MR. LIEN: [Continuing]

1 Q. Okay. We took a break, and I'm assuming you had
2 an opportunity to talk to Mr. Loiselles to sort out this
3 stuff. Is that true?

4 A. No.

5 Q. Okay. You talked about seeing big plans. Before
6 you came to the deposition today, did you review your plans
7 and your file on this matter?

8 A. No.

9 Q. Okay. Let's go back to my question with regard
10 to why the size of the pond increased from the drawing that
11 is Exhibit 9 to the drawing that is labeled as-built,
12 Exhibit 11.

13 A. Can you repeat the question, now that I'm on
14 track with you?

15 Q. Why did the pond size increase from the drawing
16 that is Exhibit 9 to the drawing that is Exhibit 11 labeled
17 as-built?

18 A. Are we talking about the box up here or are we
19 talking about the calculations in the lower left-hand
20 corner?

21 Q. Both.

22 A. Well, the box in the upper portion shows, from
23 Exhibit 9, that the volume went from 89,500 to a volume of
24 76,200, so it decreased. That's why I'm not sure I
25 understand your question.

1 Q. So my question is: Why did it decrease? Why did
2 it change?

3 A. I don't know.

4 Q. Okay. Who would know?

5 A. Well, you're missing an exhibit. If we had
6 revision four, we might be able to answer that question.

7 Q. What is revision four?

8 A. Per City review number three.

9 Q. Okay. So the answer is you don't know why the
10 change in CF from 89,500 to 76,200?

11 A. The answer is I don't have the information in
12 front of me to be able to answer that question.

13 Q. Okay. So right now today, you don't know?

14 A. I don't have the information to answer that
15 question.

16 Q. And then in the boxes below, do you know the
17 reason why there was a change in those numbers?

18 A. Which numbers do you want me to comment on?

19 Q. Detention footprint went from 57,000 square foot
20 on Exhibit 9 down to 43,000 square foot in Exhibit 11.

21 A. Okay.

22 Q. Why did the size of it shrink?

23 A. I'm assuming we as-built the size of the
24 detention basin.

25 Q. Would that difference have anything to do with

1 the elevation of the weir?

2 A. It could.

3 Q. Would it have anything to do with the placement
4 of that 10-inch pipe?

5 A. It could.

6 Q. But you don't know for sure?

7 A. Can't remember.

8 Q. Detention required changed from 60,664 CF to
9 73,337 on Exhibit 11. Can you tell me what --

10 A. Again, you're missing a page here, you're missing
11 plan revision four. My suspicion is on plan revision four,
12 you'll see that it's the same as the as-built, so that
13 while we were going through the plan revisions, which were
14 multiple, we modified the drawings in Exhibit 4 and then we
15 as-built them -- Excuse me. Modified the drawings in
16 revision four, which we don't have as an exhibit, that's a
17 drawing between Exhibit 9 and 11, and then on Exhibit 11 we
18 as-built it.

19 Q. In Exhibit 11, the statement is, detention
20 required, 73,337 CF. I'm assuming that's cubic feet; is
21 that correct?

22 A. Correct.

23 Q. So is that telling us that we need to detain that
24 much water?

25 A. That's a summary of the detention requirements,

1 yes.

2 Q. Okay. Yet in the earlier one, even though we're
3 maybe missing some in between, in this earlier drawing we
4 have as Exhibit 9, the detention required is only 60,664
5 cubic feet of water. So how is it that we need to detain
6 13,000 cubic feet of water more on Exhibit 11 than we were
7 taking into account on Exhibit 9?

8 A. Because we're trying to satisfy the City of
9 Stayton's requirements, and their plan review comments.
10 And they probably had us make assumption changes on the
11 drawings that caused these numbers to change. This was
12 all -- these are results of us attempting to satisfy
13 comments made by the City on the drawings.

14 Q. When you got the second Carlson report that
15 showed 4.1 infiltration as compared to no discernible
16 infiltration on the first report, did that raise a concern
17 to you?

18 A. No.

19 Q. Had you, before this Carlson report, made any
20 assumptions with regard to what the infiltration rate might
21 be out there --

22 A. No.

23 Q. -- in that area?

24 A. No.

25 Q. Were you surprised when you were able to use a

1 4.1 infiltration rate in that area?

2 A. No.

3 Q. Why?

4 A. I was surprised at zero.

5 Q. You were surprised at the first set of testing?

6 A. Not at the second set of testing.

7 Q. Did you have an opinion as to why the first set
8 of testing came out at zero?

9 A. I kind of -- I had an assumption.

10 Q. What was that?

11 A. It's in a low part, the very low part. And what
12 happens is it's an area that sets and so it was probably
13 silted up. And so it's -- This is all gravel alluvial out
14 here, and so I expected, based upon experience on Phase I,
15 we never even had water leave our site, practically,
16 because it infiltrated so well. And, I mean, lots more
17 than 4.1 inches per hour.

18 So I assumed the 4.1 was a pretty reasonable
19 number when I analyzed that and compared it to what we saw
20 physically happening with Phase I of the development.

21 Q. When you designed the size and depth of the
22 retention pond, did you assume 4.1 infiltration across the
23 entire geographical area of the pond?

24 A. Yes, I did.

25 Q. Even though you had data in front of you that

1 showed at least that southern part of the pond had zero
2 infiltration?

3 A. The lowest portion of the southern pond, correct,
4 and I used a factor of safety of two.

5 MR. LIEN: Okay. Somewhere we have -- Let's
6 see. Where are we at. Exhibit 12.

7 [7/14/08 Email/Phase 1 Storm Drain Plan, EXB. 12, marked]

8 Q. Can you identify that email?

9 A. It's an email dated July 14th, 2008 from me to
10 Bill.

11 Q. And Ryan. Who is Ryan?

12 A. Ryan would be my son.

13 Q. And he works with you at Westech?

14 A. No.

15 Q. Why was he copied on this email?

16 A. Because he was dealing with the archeological
17 guys.

18 Q. So he wasn't a part of Westech but was working
19 with Bill?

20 A. Yes.

21 Q. Okay. Can you read that into the record for me?

22 A. "Plans will be done 9:00 AM in the morning. I
23 had to assume an infiltration --"

24 MR. LOISELLE: Slow down.

25 THE WITNESS: "I had to assume an

1 infiltration rate of 1.8 inches per hour in the swale to
2 make the detention calcs work. We all know the results of
3 that assumption. You will have T bail me out if we get
4 caught. How many sets do you want?"

5 Q. And then it goes on.

6 A. "Ryan, don't forget to call the bone diggers."

7 Q. Let's work backward. What does that mean, bone
8 diggers?

9 A. My only assumption is that we had --

10 MR. LOISELLE: I don't want you to guess.
11 Do you know based on reviewing that?

12 THE WITNESS: I'm sure I know.

13 MR. LOISELLE: Okay. All right.

14 THE WITNESS: But I just want to make sure
15 that...

16 We're going through wetlands, we're going
17 through wetlands permitting, and part of the wetlands
18 permitting is you have to have archeological results.

19 Q. So you're reminding --

20 A. It's not dead bodies out there, just so you guys
21 know.

22 Q. You're reminding him that he has to do something
23 with the archeologists?

24 A. Yeah, that's going to be required, that's going
25 to be required as part of the wetland permit.

1 Q. Okay. And attached to this email there is a
2 drawing. Do you recognize the drawing?

3 A. Oh, yes. Oh, yeah. Recognize what?

4 Q. This drawing?

5 A. Yes, I do.

6 Q. Okay. Let's talk about both of those for a
7 second. Starting with the email, "The plans will be done
8 by 9:00 in the morning." And what plans were you talking
9 about at that point?

10 A. Phase I.

11 Q. Okay. And then you say, "I assumed an
12 infiltration rate--" Why did you assume an infiltration
13 rate. Why not have Carlson test?

14 A. Because we knew that the infiltration rate was
15 really good out here because of the alluvial gravels, and
16 so I wanted Bill to know that I had to make an assumption
17 on infiltration rate, and so that he knew that there might
18 be a risk if we didn't get that infiltration rate.

19 Q. Okay. Looking at the drawing, the swale that
20 you're talking about, can you point that out on the
21 drawing?

22 A. It is the swale that goes diagonally across the
23 property [indicating].

24 Q. And, now, she's not going to be able to see and
25 report that, so we need to perhaps --

1 A. Well, it starts out at lot 28 or thereabout, and
2 goes south -- southwesterly to the oak grove area, about
3 the middle of the oak grove area.

4 Q. Okay. For purposes of doing this, mark in red
5 sort of a circle as to where the swale that you're
6 referring to is located.

7 A. Well, it's not a circle, it's a line [complied].

8 Q. Okay. And let the record note that on page 2 of
9 Exhibit 12, the witness has marked the swale location in
10 red.

11 So in that swale location, you assumed an
12 infiltration rate of 1.8?

13 A. Mm-hmm [affirmative response].

14 MR. LOISELLE: Is that a "yes"? I'm sorry.

15 THE WITNESS: Yes. Sorry.

16 Q. The end portion in what you call the oak grove,
17 is that in the approximate location of where Carlson
18 Testing did their test bits and came up with zero
19 infiltration?

20 A. It's close.

21 Q. Okay. So how accurate was your assumption, now
22 that we have later data?

23 A. I was way too conservative. It should have been
24 much higher.

25 Q. Okay. You say, "we all know the results of that

1 assumption." What does that mean?

2 A. The assumption of 1.8 inches per hour, per my
3 calculations on page 2, show that we can discharge the
4 storm water and have it infiltrate into the ground.

5 Q. And is that what you actually did?

6 A. On Phase I, Bill built these infiltration swales,
7 and they worked better than what we assumed.

8 Q. Why do you say, you'll have to bail me out if we
9 get caught?

10 A. What I meant by that is I wanted him to know that
11 if we didn't get 1.8 inches per hour that we would have
12 water flowing in these areas, and then -- flowing into the
13 oak grove areas, okay, and we would have to manage that
14 water. Okay.

15 So the email to Bill is dealing with the 1.8
16 inches per hour, but as it turned out subsequently, we had
17 a lot more than 1.8 inches per hour and we actually
18 documented that multiple times of water flowing through
19 Phase I, it never hardly even makes it to the detention
20 basin.

21 Q. Now, the pond as constructed, has it performed as
22 expected?

23 A. I don't know.

24 Q. You haven't been out there?

25 A. Oh, yes.

1 Q. You tested it?

2 A. What do you mean by "expected"?

3 Q. Well, you used a design infiltration rate of 4.1
4 with a two safety factor, correct?

5 A. Correct.

6 Q. Has the pond lived up to your design
7 calculations?

8 A. I don't know.

9 Q. Why?

10 A. Because I think there's a lot more flow coming
11 into the pond than what we were advised was going to be
12 coming into the pond.

13 Q. In your opinion, does the pond work the way it
14 was designed?

15 A. I think the pond works great, in my opinion.

16 Q. Even though it's got water going over it, over
17 the weir?

18 A. There's water that goes over the weir in extreme
19 events.

20 Q. Have we had an extreme event since the pond has
21 been constructed?

22 A. I don't know what year events we've had since the
23 pond's been constructed.

24 Q. But everything's fine with the pond?

25 A. I don't -- the pond -- I wish I knew how much

1 water was coming in from Quail Run Subdivision, then I
2 could tell you more accurately.

3 Q. Is it your opinion that the water goes over the
4 weir because of the water coming in from Quail Run?

5 A. I think Quail Run is significantly impacting the
6 operation of this pond.

7 Q. To the point of what?

8 A. To the point of some folks perceiving it fails.

9 Q. You don't perceive it failed?

10 A. I think it's working pretty darn good. It
11 doesn't work as -- it doesn't work as -- Folks want it to
12 be a zero discharge, okay, it doesn't do a zero discharge,
13 we know that, we've known that for a long time, but it does
14 manage the flows very well. And if we wouldn't have put
15 the plug in the 10-inch pipe -- and you can see from
16 downstream events, there's not much water that leaves the
17 site, you know.

18 Q. Now, you say that you knew you wouldn't have zero
19 discharge for a long time. Tell me what "a long time" is.
20 It goes back to 2006?

21 A. No, no. Wait. That's not what I said.

22 Q. Okay. Tell me what you said.

23 A. I said, we knew that the pond didn't have zero
24 discharge, it has discharge. After the pond was built, we
25 knew it had discharge.

1 Q. Was it designed not to have discharge?

2 A. It was designed for zero discharge, yes.

3 Q. Okay. So all of these exhibits, 9, 10 and 11,
4 the design goal that you had was zero discharge?

5 A. Yes, based upon some significant assumptions.
6 One of those was how much water is coming in from Quail Run
7 Subdivision.

8 Q. Okay. And when did you come to the conclusion
9 that it was not going to act as a zero discharge retention
10 pond?

11 A. Can't remember.

12 Q. Was it shortly after it was built? Was it just
13 recently? Approximate the time.

14 A. It would have been the first winter after it was
15 built.

16 Q. Okay. And you don't remember when you saw the
17 water overtopping the weir the first time?

18 A. No.

19 Q. Did you see it yourself or did you just hear
20 about it from somebody else?

21 A. I think Bill showed me pictures of it.

22 Q. Okay. And did he ask you why it was doing that,
23 given it was supposed to be a zero discharge facility?

24 A. I don't remember us talking about that
25 specifically.

1 Q. Okay. Have you undertaken any subsequent work to
2 try to determine why it's not performing as per the design?

3 A. Well, Bill and I have worked together to try to
4 determine why it's not working as designed, yes.

5 Q. Okay. And what have you done?

6 A. Well, we're -- we are monitoring the groundwater
7 flow coming in from Quail Run Subdivision, we've looked
8 into manholes, we've looked at the storm water flow when
9 there's no rain, trying to estimate the amount of flow that
10 comes in from Quail Run Subdivision. Hard to estimate, you
11 can't really do it because it's submerged.

12 And so I've had Bill monitoring -- monitoring the
13 elevation. We put a staff gauge out in the detention
14 basin, Bill goes out there and monitors it on a regular
15 basis, and particularly after storms, so that we can see
16 how much rainfall -- you know, if we have an inch rainfall
17 event, how much does it go up and how long does it take to
18 go down. So we've been keeping data on that, and the City
19 has been providing us with rainfall data, and Bill takes
20 photographs and gives us staff gauge data so we can see how
21 it operates during various storm events.

22 Q. Now, Bill testified this morning about him going
23 out and doing the graphs and things. Do you have reports
24 or notes or anything with regard to the testing you're
25 performing at Westech on what's coming out of Quail Run?

1 A. Westech's not testing. I'm observing flows, and
2 I have not measured any flows because they're impossible to
3 measure.

4 Q. Okay. And why is it important to know how much
5 contribution Quail Run has as compared to Phases 1 and 2?

6 A. Quail Run, the assumption with the development is
7 Quail Run is going to contribute 13.3 CFS, I can -- Let me
8 verify that. It's on one of those exhibits.

9 Q. Well, what difference does it make if Quail Run
10 contributes more than that?

11 A. The detention basin isn't not going to -- the
12 detention basin infiltration won't work as designed.

13 Q. Okay. You sat in on these development agreement
14 negotiations, correct?

15 A. Yes.

16 Q. And you understood that we were -- the only way
17 to get out from under that planning condition that required
18 us to go north to Mill Creek with storm water discharge was
19 to have zero discharge on site, you knew that, correct?

20 A. I don't know that I would agree with that.

21 Q. Okay. Are you aware and do you know that as a
22 part of the agreements that JCNW agreed to accept, manage
23 and deal with the Quail Run water, whatever the volume was?
24 Would you agree with that?

25 A. I don't have an opinion on that.

1 Q. Okay. Early on, and I'm not sure what the dates
2 are, but you had conversations with John Ashley about
3 testing because John Ashley was concerned the pond was not
4 operating the way it was designed; is that right?

5 A. Correct.

6 Q. Okay. Tell me about what the conversations were,
7 because I understand at one point in time you expressed
8 confusion and concern about what was being asked about
9 testing.

10 A. It's very difficult from my standpoint, when John
11 Ashley tells me, I want you to do testing and show us that
12 this thing's going to work, whatever way. And I need
13 parameters, what do you want us to test. I mean, you know,
14 what parameters are you after so that we can document this
15 for you and provide you the data, what data do you want.

16 He was very aloof. He would never really answer
17 the questions. It was very frustrating to me -- it was
18 super frustrating, because all I wanted him to do was tell
19 us, what do you want for a testing protocol, we'll go out
20 and do it, but he wouldn't answer the question.

21 Q. Did ultimately he say, you create your own
22 protocol?

23 A. I think that's what he's after. And you need to
24 understand, when I have, you know, multiple, multiple
25 revisions from a guy and new revisions when I'm trying to

1 get plans approved, I might as well beat my head against
2 the wall when I develop a testing protocol and then I turn
3 it in, and I spend all winter doing the testing protocol,
4 and he goes, oh, no, this wasn't what I wanted, you need to
5 do this. Now I lose a winter.

6 So I didn't -- I was super frustrated through
7 this process because getting plans approved was difficult,
8 and I just wanted him to answer the question, what do you
9 want for a testing protocol, and we'll sit down and talk
10 about it and make sure we agree.

11 It is not normal to go in and he just say, you go
12 do your testing and then give it to us. It is much more
13 normal for the agency, the City and the developer to come
14 up with a testing protocol together and agree to it before
15 you do the testing, and he wouldn't do it.

16 Q. Did, in fact, you ever provide the City with any
17 testing protocol?

18 A. Nope.

19 Q. Did you ever provide the City with any data with
20 regard to measurements or any tests that were performed on
21 the performance of the pond?

22 A. No. That all got circumvented really quickly.

23 Q. Okay. But he did ask for testing, you just
24 didn't understand what he was asking for?

25 A. He asked for testing but would not be specific as

1 to what he wanted.

2 Q. Do you remember the time frame that he asked the
3 first time?

4 A. You mean the month or the day or the --

5 Q. Whatever. However close you can get.

6 A. It would have been the spring after Phase II was
7 built.

8 Q. So 2014?

9 A. I'm -- Bill's got a better memory than I do, you
10 should ask Bill that question.

11 Q. Okay. And so the pond had been built for a year
12 or so before the testing question started to arise?

13 A. The pond had been constructed, not fully
14 constructed, but the project had been substantially
15 constructed and gone through one winter.

16 Q. And the reason he wanted testing -- what did he
17 tell you why he wanted the testing?

18 A. He didn't think the pond was operating as
19 designed.

20 Q. Okay. And did you tell him that you agreed with
21 him?

22 A. Well, I knew that the -- I knew that there was
23 not zero discharge.

24 Q. Okay. And did you report that to him?

25 A. No.

1 Q. Okay. He was asking for testing in order to
2 prove that the pond was not zero discharge, is that what
3 you understood him to want?

4 A. He never would answer the question.

5 Q. Okay. You understood what he was looking for was
6 something that would show that the pond was performing as
7 designed or not performing as designed?

8 A. He wouldn't answer the question.

9 Q. Did you create any testing protocols, even though
10 you didn't maybe give them to the City, but did you do that
11 at Westech?

12 A. Bill and I created a protocol where we wanted to
13 measure the flow. As I previously testified, we wanted to
14 measure the staff gauge versus rainfall. That was a
15 baseline data that I wanted. Okay.

16 Q. When did the staff gauge go in?

17 A. I can't remember.

18 Q. Okay. And the staff gauge is essentially a big
19 ruler?

20 A. Sure.

21 Q. Stuck in the ground?

22 A. Yes.

23 Q. And the -- We have a picture of it, in Exhibit 5,
24 I just want to take a look.

25 A. Got it right here.

1 Q. Is that a picture of the staff gauge we're
2 talking about from Exhibit 5?

3 A. I would say it is.

4 Q. And --

5 A. Could be any staff gauge anywhere, though.

6 Q. Does it appear to be a staff gauge that was one
7 that you had put in?

8 A. You know, I don't know who took this picture, so
9 you're asking me to testify...

10 Q. The staff gauge that you're looking at, assume
11 for me that it is the one in the pond.

12 A. So I can tell you from this picture, which it's
13 not numbered, it's page -- it's the last page of Exhibit 5,
14 if that staff gauge is the same as the staff gauge in the
15 previous picture, we are looking at the same staff gauge.

16 Q. Make that assumption for me.

17 A. Okay.

18 Q. Okay. So looking at the other picture that's
19 December 24th, 2014, tell me what the measurement of the
20 water is at that point.

21 A. 6.5.

22 Q. So each one of these is an inch?

23 A. No.

24 Q. What is it?

25 A. Each one of these -- please describe what you

1 mean by "each one of these."

2 Q. Each one of these letters on the pole, on the
3 staff.

4 A. So the 7.0 is a foot. The 1, 2, 3, 4, 5, 6, 7 is
5 a tenth of a foot.

6 Q. Tenth of a foot, not an inch?

7 A. Not an inch.

8 Q. Okay. So at this level, the 6.0 hash tag is
9 under the water and then you measure up?

10 A. And this one is measuring at 6.65 inches at this
11 point in time.

12 Q. Okay. And then looking at the last page that you
13 looked at, also on 12/24 of 2014, does that depict the
14 pond?

15 A. That depicts the pond.

16 Q. And what direction is that looking at?

17 A. North.

18 Q. So if we assume that the picture, the close-up of
19 the staff gauge is the same staff gauge, the picture timed
20 at 9:20 AM would show that the level of the water at that
21 location was 6.65 feet?

22 A. 6.65 feet above some elevation, yes.

23 Q. Did you set this gauge?

24 A. No.

25 Q. Who did, do you know?

1 A. Don't know.

2 Q. Did you establish the location for it to be set?

3 A. It needed to be set, I advised Bill to set it in
4 a location that it could be easily read during a storm
5 event so that you -- You know, don't put it in the middle
6 of the pond, put it toward the edge of the pond.

7 Q. Okay. And you don't know what elevation, whether
8 the gauge starts at ground level, at zero or not?

9 A. No.

10 Q. Okay. You didn't have much of a relationship
11 with John Ashley, I take it?

12 A. You mean a personal or a professional or --

13 Q. Professional. I don't care about personal.

14 A. I just get frustrated when it's hard to get
15 drawings approved and it's hard to get answers to
16 questions.

17 Q. Do you believe that the memos that he sent you
18 asking for changes to the plans were not warranted?

19 A. I'd have to look at the memos again.

20 Q. Okay.

21 A. I believe John worries about a lot of details
22 that most of the world doesn't worry about.

23 Q. What has been your involvement with the pond
24 since January 1st of 2015? Have you done any studies,
25 anything like that?

1 A. I have not done any studies, no.

2 MR. LIEN: Okay. Let's take about a
3 five-minute break and then maybe we'll get you out of here.

4 THE WITNESS: Thank you.

5 [Recess: 2:34 - 2:43]

6 BY MR. LIEN: [Continuing]

7 Q. So we've got the design of the pond at zero
8 discharge, and it's not functioning that way. Is there a
9 way to make it function for zero discharge?

10 A. There could be.

11 Q. How?

12 A. Stop the groundwater from coming in from Quail
13 Run would be a good start.

14 Q. Okay. What else?

15 A. I don't know, because I don't know -- I don't
16 know how much groundwater is coming in. That's -- that --
17 the groundwater is kind of a key consideration. I know
18 there's a lot of groundwater.

19 I mean, when I look at the flow -- If we went out
20 there today and we looked at the flow coming out of Phase I
21 and Phase II, there's none getting to the pond. There's a
22 boat load getting there from Quail Run.

23 Q. Okay.

24 A. So that doesn't allow the pond to go up and down
25 as it was designed.

1 And I assume we're all familiar with the Quail
2 Run storm water system, that it was originally designed as
3 the infiltration system. The City's trying to plug it up,
4 but it's almost impossible to plug those things up. And
5 that's clearly been proven, at least by my observations of
6 the storm water system. It's got a lot of groundwater
7 leakage.

8 Q. So in this case, there isn't the ability to
9 create more storage by, say, digging it down, that doesn't
10 help?

11 A. Probably wouldn't help, no.

12 Q. Okay. And to enlarge the surface area, would
13 that help?

14 A. Oh, I'm sure it would.

15 Q. Okay. How big would it have to be in order to
16 reach the zero discharge?

17 A. Don't know.

18 Q. Okay. In your opinion, is there enough land in
19 Tract A to be able to create a zero discharge, even given
20 the fact that we've got Quail Run discharge going in?

21 A. I don't know what Tract A is.

22 Q. It is everything, basically, west of the
23 street -- I don't know what street that is -- the
24 undeveloped area.

25 A. Everything that's not developed? I don't know.

1 I don't know what the groundwater is. I mean, that's
2 the -- I mean, I've always wanted to know how much flow is
3 coming in from Quail Run, because I can quantify the flow
4 coming in from Phillips Estates, but I can't quantify the
5 flow from Quail Run.

6 MR. LIEN: All right. I don't have any
7 other questions; I don't know if Rick does or not.

8 MR. KUHN: No.

9 MR. LOISELLE: That's it.

10 [Deposition adjourned at 2:46]

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C E R T I F I C A T E

State of Oregon)

) ss.

County of Clackamas)

I, Lisa J. Pace, Court Reporter and Notary Public for Oregon, do hereby certify that STEVEN WARD personally appeared before me at the time and place mentioned in the caption herein; that the witness was by me first duly sworn on oath and examined upon oral interrogatories propounded by counsel; that said examination, together with the testimony of said witness, was taken down by me in stenotype and thereafter reduced to typewriting; and that the foregoing transcript, Pages 1 to 61, both inclusive, constitutes a full, true and accurate record of said examination of and testimony given by said witness, and of all other oral proceedings had during the taking of said deposition, and of the whole thereof.

Witness my hand at Lake Oswego, Oregon, this 3rd day of May 2015.

Lisa J. Pace
Court Reporter
Notary Public for Oregon