

BEFORE THE ARBITRATION SERVICE OF PORTLAND, INC.

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

DEPOSITION OF KEITH CAMPBELL

Taken in behalf of the Respondent

Stayton, Oregon

April 21, 2015

Reported by Christine Shepard, RPR, CSR

1 BE IT REMEMBERED THAT, pursuant to Oregon Rules
2 of Civil Procedure, the deposition of KEITH CAMPBELL was
3 taken before Christine E. Shepard, a Registered
4 Professional Reporter and Certified Shorthand Reporter for
5 the State of Oregon, on Tuesday, April 21, 2015, at the
6 Stayton City Hall, 362 N Third Street, in the city of
7 Stayton, Oregon, commencing at the hour of 9:06 a.m.

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11 A P P E A R A N C E S

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32 Also Present:

33 Bill Martinak

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INDEX

DEPOSITION OF: Keith Campbell

PAGE

Examination by Mr. Loisel...4

--oOo--

EXHIBITS

NO.	ITEM	PAGE MARKED
101.	11/3/14 Email String Subject: Phillips Estates	87
102.	11/12/14 Email String: Subject Draft of Letter to New GB (2 pages)	91
103.	Statement of Claim (18 pages)	96
104.	12/2014 Email String: Subject: JCNW/City of Stayton: Mediator Selection (2 pages)	98

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REQUESTS FOR PRODUCTION:

Page/Line
 46/22 September 23 Meeting Agenda
 70/20 Copy of Contract, Personnel File

1 Q. Does he have any ongoing relationship with the
2 city?

3 A. Nothing formal that I'm aware of.

4 Q. Do you have a cordial relationship with him?

5 A. I would say so, in the conversations we've had.

6 Q. Okay. As the city administrator what are your
7 responsibilities?

8 A. I oversee the day-to-day operations of the
9 city.

10 Q. Why don't you give me the day in the life of
11 Mr. Campbell for the city administrator for the City of
12 Stayton.

13 A. The nature of the position, it's really not an
14 every day is the same type day position. I oversee all
15 the departments, meetings, drop-ins, so it's difficult to
16 say what an average day is.

17 Q. How many departments?

18 A. Five.

19 Q. What are they?

20 A. Water, Waste Water, Public Works, Library,
21 Police Department.

22 Q. Does each one of those departments have a
23 department head?

24 A. Yes.

25 Q. How many employees total for all five

1 departments?

2 A. I think we have 50 FTEs -- equivalent FTEs.

3 Q. And you oversee all of them?

4 A. That's correct.

5 Q. Other than the departments, what's your
6 relationship with the city council?

7 A. A good working relationship.

8 Q. I assume as a part of your responsibilities you
9 report to the city council?

10 A. That's correct.

11 Q. How often do you meet with your department
12 heads?

13 A. At least once a week.

14 Q. Do you have one regular meeting?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes. I'm sorry.

18 Q. That's all right. We'll talk about the rules in
19 a second. We haven't done that. I'm just trying to get
20 an idea what you do. Do you take meeting minutes?

21 A. At our department head meetings, no.

22 Q. Do you have an agenda?

23 A. No.

24 Q. How long do they last?

25 A. Half an hour to an hour and a half.

1 Q. Who is your department head for Water?

2 A. It would be -- the overseer would be the Public
3 Works director, would be Lance Ludwick.

4 Q. How long has he been in that role?

5 A. Two months.

6 Q. Prior to that?

7 A. Dave Kinney.

8 Q. How long was he in that role?

9 A. I believe five years.

10 Q. Why did Dave Kinney leave?

11 A. He resigned.

12 Q. Why did he resign?

13 A. I don't know.

14 Q. He didn't share with you why he was leaving the
15 city?

16 A. His resignation stated that he wanted more time
17 to be able to go to the East Coast and do other projects,
18 I believe, is my recollection.

19 Q. You didn't sit down with him over coffee and
20 chat about what his purpose was or why he resigned?

21 A. No.

22 Q. How about Waste Water?

23 A. It would fall under Lance's as well.

24 Q. Was Dave Kinney also responsible for that?

25 A. That's correct.

1 Q. How about Public Works?

2 A. Lance Ludwick.

3 Q. And again Dave Kinney prior to that?

4 A. That's correct.

5 Q. Library?

6 A. Katinka Bryk.

7 MR. KUHN: You might want to spell that for
8 Christine.

9 THE WITNESS: K-A-T-I-N-K-A, B-R-Y-K, I
10 believe.

11 BY MR. LOISELLE: (Continuing)

12 Q. We won't show her the transcript. And how long
13 has she been the head of Library?

14 A. Almost a year.

15 Q. Prior to that?

16 A. I don't recall. Louise Meyers.

17 Q. How long was she in that role?

18 A. I believe five years as well.

19 Q. Okay. Police head?

20 A. Rich Sebens.

21 Q. Can you spell his last name?

22 A. S-E-B-E-N-S.

23 Q. How long has he been your department head?

24 A. He's been the police chief for approximately six
25 years.

1 Q. Any other departments?

2 A. Finance.

3 Q. And who is the department head?

4 A. Christine Shaffer.

5 Q. How long has she been in that role?

6 A. I think this year will be ten years.

7 Q. Anybody else or any other departments?

8 A. Planning, Dan Fleishman.

9 Q. How long has he been in that role?

10 A. Approximately eight years.

11 Q. Any other departments?

12 A. No.

13 Q. And your city staff, who are your staff?

14 A. In city hall?

15 Q. Yes.

16 A. We have a receptionist who just started named
17 Randi; accounts payable, Cindy Chauran.

18 Q. Cindy what?

19 A. Chauran, C-H-A-U-R-A-N I believe is the last
20 name.

21 Q. Okay.

22 A. Elizabeth Baldwin does billing. Alissa Angelo
23 is the deputy recorder.

24 Q. What's her name again?

25 A. Alissa Angelo.

1 Q. How long has Alissa been the deputy recorder?

2 A. I believe six years.

3 Q. How about your receptionist, Randi? How long
4 has she been there?

5 A. She has just been there for a couple months.

6 Q. Who was prior?

7 A. Sandy was prior to that.

8 Q. How long was she?

9 A. Sandy had been here over ten years.

10 Q. Why did she leave?

11 A. She retired.

12 Q. And your accounts payable, I guess it's Cindy
13 Chauran?

14 A. Yes.

15 Q. How long has she been with you?

16 A. One year.

17 Q. And prior to that?

18 A. Prior to that was a lady named Jennifer, but she
19 was before my time.

20 Q. And billing was Elizabeth --

21 A. Baldwin.

22 Q. -- Baldwin. How long has she been with you?

23 A. Elizabeth has been with the city I believe over
24 ten years.

25 Q. Okay. We met for the first time this morning;

1 is that correct?

2 A. That's correct.

3 Q. Darien Loisel, and I represent JCNW in this
4 matter. I've asked for the opportunity to take your
5 deposition today. Did you have an opportunity to meet
6 with counsel before the deposition?

7 A. I did.

8 Q. Did you meet with both counsel?

9 A. Yes.

10 Q. And how much time did you have to prepare?

11 A. We spent approximately two hours.

12 Q. Okay. Do you have any questions regarding the
13 deposition process?

14 A. I don't.

15 Q. Have you had your deposition taken before?

16 A. I have not.

17 Q. Did you meet with anybody other than counsel in
18 preparation for your testimony today?

19 A. I did not.

20 Q. Did you review any documents?

21 A. I did.

22 Q. What did you review?

23 A. Correspondence in a file.

24 Q. Correspondence in your file?

25 A. Correct.

1 Q. Which file are you talking about?

2 A. I have a file related to the Phillips Estates,
3 the correspondence between my attorneys and -- and with
4 you as well.

5 Q. Okay. I'll ask you more details around that in
6 a second. Did you review anything else?

7 A. That's all I reviewed.

8 Q. How much time did you spend reviewing the
9 file?

10 A. Half an hour.

11 Q. Do you recall any of the correspondence?

12 A. I do.

13 Q. What do you recall?

14 A. Reading through the materials that have brought
15 us to this point.

16 Q. Such as?

17 A. Conversations back -- formal letters back and
18 forth between Wally and you.

19 Q. So letters exchanged between counsel?

20 A. Correct.

21 Q. Did you review any emails?

22 A. I did not.

23 Q. Just letters?

24 A. That's correct.

25 Q. Have you ever reviewed any emails between

1 counsel?

2 A. Between counsel?

3 Q. Between your counsel and me.

4 A. I reviewed the emails we provided as part of our
5 discovery.

6 Q. Okay. The emails you were provided as part of
7 the discovery, you are talking about emails that were
8 retained by the city?

9 A. Emails that were produced by the city.

10 Q. Okay. But as far as the other email exchanges
11 between your attorney and my office, you haven't had an
12 opportunity to review those?

13 A. I haven't reviewed those since they were
14 initially sent, no.

15 Q. When is the last time you had a conversation
16 with Mr. Martinak related to the circumstances related to
17 this dispute?

18 A. October 17th.

19 Q. Was that a telephone conversation or a meeting?

20 A. It was an in-person meeting.

21 Q. Where was it?

22 A. My office.

23 Q. What did you talk about?

24 A. What was going on with his pond.

25 Q. What did he tell you?

1 A. That the pond wasn't working. It didn't matter
2 how big we built it, it wasn't going to work. There was
3 no easy solutions, there was no cheap solutions, and that
4 he understood we shouldn't add any more impervious surface
5 until we fixed the property.

6 Q. How long did the meeting last?

7 A. Two hours.

8 Q. What else did you talk about?

9 A. Bill talked about the history of the pond in
10 Phillips Estates.

11 Q. What else?

12 A. His displeasure with the development agreement,
13 how he wished he hadn't signed it.

14 Q. What else?

15 A. I think that was basically the main crux of what
16 I remember of that conversation.

17 Q. Did you keep any notes?

18 A. I did not keep any notes during that meeting.

19 Q. Did you send any messages to any other city
20 staff?

21 A. I don't believe I sent any messages regarding
22 that meeting.

23 Q. Your recollection regarding that conversation is
24 based on the personal meeting you had and nothing else?

25 A. That's correct.

1 Q. I'll come back to that in a bit. We were just
2 starting to talk about the deposition process. I want to
3 make sure we clarify that. You understand you gave an
4 oath today?

5 A. I do.

6 Q. You understand this matter is scheduled for
7 arbitration?

8 A. I do.

9 Q. And if you testify in that matter you will be
10 asked to give an oath. Do you understand that?

11 A. I do.

12 Q. It will be the same oath that you provided
13 today.

14 A. I understand.

15 Q. I'm asking you to provide your best recollection
16 today.

17 A. Okay.

18 Q. Is there anything that would prevent you from
19 providing truthful answers today?

20 A. No.

21 Q. No medication?

22 A. Nope.

23 Q. Didn't have a sleepless night?

24 A. No.

25 Q. All right. You understand if your testimony at

1 arbitration is different than the testimony you provide
2 today that I can use the deposition transcript to impeach
3 your testimony?

4 A. Sure.

5 Q. Occasionally I will get a little bit casual and
6 my questions will slow down or stutter for a second. If
7 you will give me the courtesy of allowing me to finish a
8 question, I'll try to do the same when you're responding.
9 Okay?

10 A. I will.

11 Q. It's really hard for the court reporter to take
12 us talking at the same time, so we need to be patient.

13 A. I understand.

14 Q. Gestures don't show up very well in the
15 transcript either, so I'll ask you to respond audibly to
16 my questions. Okay?

17 A. Okay.

18 Q. And if I get an uh-huh or a huh-uh I'll ask you
19 to respond, and I'm not trying to be impolite.

20 A. I understand.

21 Q. Before we move onto the main part of this, I
22 want to go back to your meeting with Mr. Martinak on the
23 17th. Prior to the meeting on the 17th had you met with
24 Mr. Martinak concerning the storm water issues on the
25 project?

1 A. We had met on numerous occasions, yes.

2 Q. How many, do you think?

3 A. Two formal meetings and several, two or three,
4 informal conversations.

5 Q. Did you talk with him on the phone too?

6 A. We talked on the phone occasionally, but I don't
7 believe that was the main focus of our communication.

8 Q. How about by text or email?

9 A. We had some email conversations as well.

10 Q. If you needed to reach Mr. Martinak, did you
11 ever have trouble reaching him?

12 A. I did not.

13 Q. Was he responsive when you had questions?

14 A. He responded.

15 Q. I understand you may not have received the
16 information you sought, but he did in fact respond?

17 A. He responded.

18 Q. The two formal meetings, do you remember -- I
19 assume October 17th was one of them?

20 A. I actually consider that more of an informal
21 meeting.

22 Q. Okay. Tell me about the two formal meetings.

23 A. Formal meeting was May 8, 2014 and September
24 23rd of 2014. I believe both those dates are correct.

25 Q. What was the May 8th meeting about?

1 A. May 8th meeting was discussing Phase III plans,
2 but we brought up concerns with the pond, asking for
3 testing to be done.

4 Q. How about the September 23, 2014 meeting?

5 A. It was dealing with reimbursements, Phase III,
6 and we again brought up concerns with the pond and
7 testing.

8 Q. And you mentioned two to three informal
9 conversations, and I think you put the October 17 meeting
10 as one of those?

11 A. I consider formally scheduled meetings with the
12 staff. These were meetings that just occurred between
13 Mr. Martinak and I some were called -- October 17th I
14 asked for that meeting, and some were Mr. Martinak just
15 stopping in the office.

16 Q. And other than the October 17 meeting, do you
17 recall the dates of the others?

18 A. I don't. I can give a general time frame, but I
19 don't remember specific dates.

20 Q. Go ahead and give me the general time frame.

21 A. Several weeks after the May 8th meeting we had a
22 conversation as well about the testing of the pond.

23 Q. Any other meetings that you recall?

24 A. Not specifically, no.

25 Q. The May 8, 2014 meeting were there minutes

1 prepared?

2 A. I do not believe there were any minutes prepared
3 for that meeting.

4 Q. Was there an agenda?

5 A. I don't recall.

6 Q. And I think you mentioned that you discussed
7 Phase III development plans and issues related to the pond
8 testing?

9 A. 2A and 2B and Phase III, the city's position is
10 that there is no 2B, that 2B is Phase III. But
11 Mr. Martinak calls it Phase 2B, so I would say it's the
12 Phase 2B or III.

13 Q. I understand that over time the strategy for
14 rolling out the development has evolved. Do you
15 understand that?

16 A. I do.

17 Q. And that one time there was no phase
18 development. It was all one development. Do you
19 understand that?

20 A. Understand.

21 Q. And then later you broke it out into phases,
22 right?

23 A. I understand.

24 Q. And originally it was labeled Phase I, II, and
25 III?

1 A. I understand.

2 Q. Is that true?

3 A. That's my understanding, yes.

4 Q. And then it sounds like that changed at some
5 point, and Phase III was modified; is that true?

6 A. I'm not sure it was ever formally modified. My
7 understanding is that there was discussions of Phases 2A
8 and 2B.

9 Q. So Phase III was broken out into a 2A and a 2B;
10 is that how you understood it?

11 A. My understanding is that was what Mr. Martinak
12 was trying to do, yes.

13 Q. I'm just trying to get your understanding of
14 what the process was at this point.

15 A. Sure.

16 Q. Was that your understanding, that at some point
17 Phase III was modified or altered?

18 A. It's my position that Phase III is Phase 2 -- is
19 part of Phase 2B.

20 Q. Okay.

21 A. Essentially 2B was being put into Phase III.

22 Q. All right. Who was at the May 8th meeting?

23 A. John Ashley, Dave Kinney, Dan Fleishman, myself,
24 and Bill Martinak.

25 Q. How long did the meeting last?

1 A. Approximately an hour.

2 Q. Who called the meeting?

3 A. I believe Dave Kinney did.

4 Q. What was the purpose?

5 A. To discuss where we were at with the Phillip
6 Estates.

7 Q. Just storm water issues or all issues?

8 A. I believe it was additional issues as well.

9 Q. Do you remember what those were?

10 A. Discussion of adding additional lots into Phase
11 II from Phase III, and frontage requirements for lots as
12 well.

13 Q. Frontage?

14 A. How much frontage you need to have for a lot.

15 Q. Okay. So on this first issue related to the lot
16 change, will you explain to me what your understanding was
17 regarding alteration in the original development plan.

18 A. Mr. Martinak was trying to get additional lots
19 into Phase II that were initially part of Phase III.

20 Q. Do you remember how many?

21 A. I don't.

22 Q. Was it more than five?

23 A. I can't recall.

24 Q. Did he tell you why he wanted to do that?

25 A. I don't recall.

1 Q. What was your reaction?

2 A. I had no reaction at the time.

3 Q. Have you since had a reaction to it?

4 A. Since I understand what he was trying to do,
5 yes -- what I believe he was trying to do, yes.

6 Q. What do you believe he was trying to do?

7 A. Get additional lots into Phase II.

8 Q. Okay. But why? Why not develop them as part of
9 Phase III?

10 A. That would be a question for Mr. Martinak.

11 Q. You weren't curious why he wanted to alter the
12 plan?

13 A. It would be speculation on my part. But
14 specifically why he was doing it would be a question for
15 Mr. Martinak.

16 Q. I'm sure that your counsel will be able to ask
17 him on Friday. You don't recall having a conversation
18 with Mr. Martinak about his reasons or his basis for
19 moving or attempting to move Phase III lots into the Phase
20 II phase?

21 A. I don't specifically remember having a
22 conversation with him regarding that, no.

23 Q. Did you approve it?

24 A. No.

25 Q. Why?

1 A. There was nothing to approve at this time. It
2 was a discussion.

3 Q. Okay. If he had moved forward with that, would
4 you have been okay with it?

5 A. In what time frame sense?

6 Q. Let's say that a month after your May 8th
7 meeting he made a formal request. Would there have been a
8 reason to not allow him to do it?

9 A. I think that would be a question to ask the
10 Public Works director and the planner.

11 Q. Why is that?

12 A. Regarding land use issues.

13 Q. Basically Bill just broached the idea and shared
14 it with you, and there was no further discussion about
15 what it might take to get an approval for that?

16 A. At the time I was just getting involved in this.
17 I'm sure staff had other conversations, but I wasn't
18 directly involved with those.

19 Q. All right. And you mentioned other than the
20 idea of maybe moving some lots into different phases, you
21 also discussed the frontage of lots?

22 A. Correct.

23 Q. What exactly were you concerned about there?

24 A. The concern was -- or the issue as I recall is
25 there was requirements in our code about the amount of

1 frontage space you need to have in a home, and
2 Mr. Martinak was trying to create lots that might not meet
3 that requirement.

4 Q. Was he asking for a variance?

5 A. I don't recall.

6 Q. So was the initial concern raised by city staff
7 that Mr. Martinak was attempting to execute a plan that
8 had lots that didn't comply with your frontage
9 requirements?

10 A. I don't know what led to that meeting. I just
11 attended. That was one of the first meetings I attended
12 on this matter.

13 Q. And do you recall how that issue was resolved?

14 A. Nothing has been done with the Phase III, Phase
15 2B lots.

16 Q. So it was your understanding that you weren't
17 talking about the original Phase II development. This was
18 looking forward to the planned Phase III or the Phase 2B
19 process; is that correct?

20 A. This was seeing what additional lots could be
21 put into the Phase II, was my understanding, that were
22 initially part of Phase III.

23 Q. Other than the frontage issue and moving lots,
24 were there any other topics discussed on May 8?

25 A. Discussion of concerns the pond wasn't working

1 as designed.

2 Q. Who raised that issue?

3 A. City staff did.

4 Q. And how did city staff become aware that the
5 pond was not working as designed?

6 A. Late spring of 2014 staff noticed that water was
7 remaining in the pond and not draining at the rates that
8 were anticipated.

9 Q. Was a study undertaken?

10 A. No.

11 Q. What was the anticipated rate that the pond was
12 supposed to be drawing down?

13 A. 4.1 inches per hour, with a two-to-one safety
14 factor.

15 Q. 4.1 inches per hour with --

16 A. A two-to-one safety factor.

17 Q. What's a two-to-one safety factor?

18 A. Basically means that, my understanding, that the
19 pond was built with a safety factor of two-to-one, which
20 means that it would draw, worst case scenario, at two
21 inches per hour.

22 Q. And how did the city learn that it wasn't
23 drawing down at 4.1 inches per hour?

24 A. Visually inspecting the pond.

25 Q. Any other reasons?

1 A. That was the main reason at that time.

2 Q. Were there any conversations with Mr. Ward?

3 A. Mr. Ward was not at the May 8th meeting, so an
4 email was sent by John Ashley requesting the testing that
5 he wanted done.

6 Q. All right. And what did Mr. Martinak report
7 regarding the pond design issue that was raised on May
8 8th?

9 A. Steve Ward not being there, my recollection is
10 he had no comment.

11 Q. Did you receive any information from Mr. Ward?

12 A. No.

13 Q. Was this the first -- when was the first time
14 the city became aware that there was an issue with the
15 dissipation rate?

16 A. I can't speak for the city. That was -- right
17 before that meeting is when I became aware of the
18 concern.

19 Q. Who would be the person with the most knowledge?

20 A. Public Works staff, Mike Brash, Dave Kinney.

21 Q. So when did you first become aware?

22 A. Shortly before that meeting.

23 Q. And who told you?

24 A. Either Dave Kinney or Mike Brash. I don't
25 recall which.

1 Q. What did they tell you?

2 A. Essentially concerns that the pond wasn't
3 working as designed, so we wanted to do additional testing
4 to confirm it wasn't working.

5 Q. The dissipation rates that you described, the
6 4.1 per hour and the two-to-one safety factor, where did
7 you get that information that the pond was supposed to
8 perform at those requirements?

9 A. From city staff and from one of the set of
10 drawings.

11 Q. You reviewed a set of drawings?

12 A. I've seen the set of drawings, correct.

13 Q. And they provided that that was going to be the
14 dissipation rate?

15 A. Yes.

16 Q. And city staff, who told you that?

17 A. I don't recall. Again, probably Dave Kinney or
18 Mike Brash.

19 Q. Did they tell you what the basis for those
20 calculations were?

21 A. I should also -- John Ashley may have said
22 something to me as well, just to be clear. I don't recall
23 if they told me what the basis of those calculations
24 were.

25 Q. You don't recall if Mr. Ward or JCNW was relying

1 on information that was provided by the city concerning
2 the amount of water that was coming from the Quail Run
3 property?

4 A. I don't recall.

5 Q. Do you recall ever investigating that issue?

6 A. I did investigate the issue in concern with
7 looking at the percentage that the plans called for Quail
8 Run's water for the size of the pond and the subdivision
9 of Phillips Estates.

10 Q. You do recall looking at that?

11 A. Yes.

12 Q. And tell me when you looked at that.

13 A. Around this time frame. I don't remember a
14 specific date.

15 Q. All right. And did you go out and do a study?

16 A. We did not.

17 Q. Did you have any information about what you
18 thought the rates were, or the percentages that were from
19 Quail Run versus the Phillips Estates?

20 A. I was relying on the information that was
21 provided by the engineering from Westech.

22 Q. Do you know where they got their information?

23 A. I do not.

24 Q. Do you know if it was information provided by
25 John Ashley?

1 A. I do not.

2 Q. Or Mr. Kinney?

3 A. I do not.

4 Q. Do you know what the anticipated percentages
5 were for the Quail Run development versus the Phillips
6 Estate?

7 A. My recollection was 65 percent for Phillips, 35
8 percent for Quail Run.

9 Q. Do you know what that was based on?

10 A. Information regarding upsizing.

11 Q. I want to make sure we're talking apples to
12 apples. Was it your understanding that Quail Run was
13 contributing 65 percent of the water load?

14 A. 35 percent.

15 Q. Quail Run was 35 percent?

16 A. Correct.

17 Q. And that Phillips Estates was contributing 65
18 percent?

19 A. When it was fully built out, correct.

20 Q. And that was based upon what information that
21 you had?

22 A. The initial calculations provided by Westech
23 with their initial plans that they submitted.

24 Q. And do you know where they received the
25 information regarding the contribution from Quail Run?

1 A. I do not.

2 Q. Was the meeting with Mr. Martinak cordial on May
3 8th?

4 A. I believe so.

5 Q. Had you met him before then?

6 A. I believe I had.

7 Q. Was it another formal meeting or was it an
8 informal meeting?

9 A. It would have been an informal conversation.

10 Q. So what was your impression of him at that
11 time?

12 A. No real impression of him at all, quite
13 honestly.

14 Q. Do you know if Mr. Kinney kept notes of that
15 meeting?

16 A. I do not.

17 Q. How about Mr. Ashley?

18 A. I do not.

19 Q. All right. And then I believe you said that you
20 had some informal follow-up meetings directly with
21 Mr. Martinak?

22 A. Mr. Martinak frequented my office, so we had
23 quite a few conversations, but there are several that I
24 can recall.

25 Q. When you say he frequented your office, what do

1 you mean?

2 A. Mr. Martinak came into the office on a regular
3 basis.

4 Q. To share information about the progress of the
5 development?

6 A. I wouldn't classify it as that, no.

7 Q. How would you classify it?

8 A. Various concerns Mr. Martinak had.

9 Q. Such as?

10 A. Reimbursements, signing the plats, how wronged
11 he's been by the city in terms of expectations.

12 Q. So he was frustrated about the ongoing
13 development process?

14 A. Correct.

15 Q. You mentioned the reimbursements and the plat
16 signing. Anything else?

17 A. Mr. Martinak enjoyed talking about the history
18 of Phillips Estates.

19 Q. Was that prior to his ownership?

20 A. Up to -- from his ownership going forward.

21 Q. Anything else?

22 A. Right now that's all I recall.

23 Q. What was his concerns about the reimbursements?

24 A. The initial plans stated the pond would be a
25 certain size, and then there was additional oversizing

1 from the pond based on reimbursement requests.

2 Q. So was he trying to get a commitment from the
3 city regarding its reimbursements?

4 A. There was a dispute over what the reimbursement
5 percentage should be.

6 Q. Do you recall what that dispute was?

7 A. That Mr. Martinak had oversized the pond beyond
8 the initial plans, so the city shouldn't pay for the
9 additional oversizing he did beyond what the initial plans
10 called for.

11 Q. So you felt that he had over-engineered the
12 pond, and you weren't going to pay him for it?

13 A. I can't state that, that he over-engineered
14 it.

15 Q. It was larger, though, than what you had
16 originally approved?

17 A. It was larger than what the plans had called
18 for, correct.

19 Q. So the city was not going to pay for anything
20 above what the original plans called for?

21 A. The city was going to pay a percentage of the
22 requirements from Quail Run and the size of the pond
23 overall.

24 Q. Do you recall what the reimbursement percentage,
25 what you identified as the appropriate percentage?

1 A. My recollection is somewhere in the 27 percent
2 range.

3 Q. Do you know what that was based on?

4 A. A calculation of the percent needed for Quail
5 Run and the actual size of the pond as submitted by
6 Mr. Martinak.

7 Q. So was Mr. Martinak concerned that the city was
8 unwilling to contribute to the additional capacity that he
9 had built into the holding pond?

10 A. I think that was the dispute, correct.

11 Q. Okay. And why did he feel that the city should
12 reimburse him for that?

13 A. You would have to ask Mr. Martinak.

14 Q. He didn't share that with you? I'm sure he was
15 trying to persuade you, so what did he tell you?

16 A. My best recollection is that he wanted to go
17 with the initial size of the pond and disagreed with
18 changing the percentages because the pond had been
19 oversized.

20 MR. LOISELLE: Can you read that answer back?

21 COURT REPORTER: (Read as requested.)

22 BY MR. LOISELLE: (Continuing)

23 Q. I'm not sure I understand that response.
24 Mr. Martinak had built a pond larger than what was
25 originally called out for in the plans, right?

1 A. That he had initially submitted with the plans,
2 correct.

3 Q. And the city didn't want to pay for anything
4 beyond what the initial plans called for, right?

5 A. That's correct.

6 Q. So where did the city come up with its
7 percentage for what it originally had planned to reimburse
8 Mr. Martinak?

9 A. Initial size of the pond based off a percentage
10 of Quail Run and Phillips Estates. The pond was
11 oversized, so we went with the percentage of Quail Run as
12 now factored in with the overall size of the pond, which
13 lowered the percentage.

14 Q. Did you get that reimbursement issue resolved
15 with Mr. Martinak?

16 A. I believe we did.

17 Q. What was the final resolution?

18 A. Payment was made regarding the outstanding
19 invoice is my understanding.

20 Q. Are you the person with the best knowledge
21 regarding that?

22 A. I'm not.

23 Q. Who is?

24 A. Christine Shaffer.

25 Q. All right. So we talked about the

1 reimbursements, and you also mentioned that Mr. Martinak
2 was expressing frustration regarding the plat signing
3 process --

4 A. Correct.

5 Q. -- during these informal meetings. What was his
6 frustration?

7 A. That it was costing him money the longer the
8 plat was unsigned.

9 Q. Do you understand why he felt it was costing him
10 money?

11 A. I understand in general why that's a concern,
12 yes.

13 Q. Why?

14 A. Platting is important for the development of the
15 property.

16 Q. Why?

17 A. Platting shows infrastructure has been put in
18 place and approved, that easements are recorded,
19 right-of-ways, et cetera.

20 Q. So you agree that, based on your understanding,
21 the platting process is an important part of the overall
22 development process for a property developer?

23 A. Platting is part of the administrative process.
24 It is a part of development that is important, correct.

25 Q. And why did he feel that the city was costing

1 him money?

2 A. Because he wanted his plat signed and the city
3 hadn't signed it.

4 Q. And why had the city not signed it?

5 A. There was concerns about -- concerns about where
6 we were at with the construction and what had been
7 completed out on site.

8 Q. What were the concerns?

9 MR. LIEN: I've got a question. We're talking
10 about this plat, but what is the plat that we're talking
11 about? The plat for what?

12 MR. LOISELLE: I think that we're talking
13 generally about the platting process. We didn't isolate
14 this to one specific plat.

15 MR. LIEN: Okay. So all your line of
16 questioning then has been platting generally, not related
17 to a specific plat that wasn't signed?

18 MR. LOISELLE: We have not narrowed that down
19 yet.

20 MR. LIEN: Okay.

21 BY MR. LOISELLE: (Continuing)

22 Q. Okay. Did those questions cause you to change
23 your response in any way?

24 A. Talking in general platting terms, that's what
25 the purpose of the plat is.

1 Q. All right. Was there a specific plat that
2 Mr. Martinak was concerned about at this time period?

3 A. Phase II.

4 Q. And it was being held up because the city had a
5 variety of concerns, right?

6 A. Correct.

7 Q. And what were those concerns?

8 A. What I've learned since or at the time?

9 Q. Well, at that time.

10 A. The concerns were that there were no formally
11 approved plans.

12 Q. What else?

13 A. The engineer had concerns about issues with the
14 site as well.

15 Q. The engineer had concerns about the site?

16 A. Correct.

17 Q. What else?

18 A. That's the best of my recollection the main
19 issues that were there. Other people could give more
20 detailed answers on that.

21 Q. Well, I appreciate that I could get some more
22 information from others, but I'm going to ask for your
23 best recollection. And if you don't recall, that's a
24 perfectly fine answer. You said that the engineer had
25 site concerns. What were those site concerns?

1 A. I don't recall at that time.

2 Q. Do you recall now?

3 A. The concerns that -- the main concerns, I think
4 now recalling, is that there was no approved plans. How
5 do you --

6 Q. When you say there were no approved plans, are
7 you talking about for storm water?

8 A. For Phase II. For all of Phase II.

9 Q. Okay. And why were those plans not approved?

10 A. Because the developer and the engineer had never
11 submitted plans that met the city's regulations or specs
12 or code.

13 Q. Had they submitted plans?

14 A. He had.

15 Q. And they had been reviewed by the city?

16 A. Yes.

17 Q. And they had been rejected?

18 A. That's my understanding, correct.

19 Q. Do you know, was it Ashley that rejected them or
20 Mr. Kinney?

21 A. The city rejected them. I'm not sure
22 specifically who was the one. I would -- I can only
23 speculate.

24 Q. And I don't want you to speculate, and I don't
25 think your counsel does either. You don't recall why they

1 were rejected?

2 A. Most of this was before my time.

3 Q. I understand. I'm just asking for your best
4 recollection.

5 A. My best recollection is that the city had asked
6 for additional corrections to be made, and Mr. Martinak
7 continued to submit the plans basically with not making
8 any of the changes that were requested.

9 Q. Okay. So the city noted some requested changes,
10 Mr. Martinak resisted that. That's what you understood?

11 A. I wouldn't say resisted, but resubmitted the
12 plans without the noted corrections.

13 Q. And you don't recall what those were?

14 A. I don't.

15 Q. Did you ever dive into it to figure out what the
16 issue was?

17 A. Not specifically, no. It's not my area of
18 expertise.

19 Q. I understand. But it is under your
20 responsibility, right?

21 A. Correct.

22 Q. And if you have a dispute between your engineer
23 and a developer, one of your roles would be to try to
24 reconcile that dispute?

25 A. Correct.

1 Q. So what did you do to try to reconcile it?

2 A. Construction had already begun on Phase II prior
3 to my arrival. I didn't get involved until the platting
4 issue.

5 Q. I appreciate you clarifying when you got
6 engaged.

7 A. Sure.

8 Q. My question is a little different. I'm asking
9 you once you knew there was a dispute between Mr. Martinak
10 and your engineer regarding the city's noted changes, what
11 did you do to investigate the issue and attempt to resolve
12 it?

13 A. Met with city staff and asked staff to work with
14 Mr. Martinak and his engineer to try to address the
15 issues. The main concern we had was the pond working.

16 Q. Did you call up Mr. Ward?

17 A. Information was sent to Mr. Ward on May 9th, and
18 informal conversations I had with Bill requesting wherever
19 we were at with getting the testing done, being told
20 numerous times that at various times it was being worked
21 on, and they weren't quite ready to do it, and then at the
22 November 23rd meeting as well.

23 Q. Okay.

24 A. Or sorry, September 23rd. I apologize.

25 Q. I knew what you were talking about. I

1 appreciate the clarification, and I appreciate you being
2 careful. So you turned to your engineering staff and you
3 asked them to work with the developer to see if you could
4 resolve these issues?

5 A. We had asked the developer to provide the
6 testing needed to show that his pond was working as
7 designed.

8 Q. Other than that, did you do anything else?

9 A. At that point we were waiting for Mr. Martinak
10 and his developer or engineer to show the pond was working
11 as designed.

12 Q. Did they ask you for any information regarding
13 the Quail Run runoff?

14 A. Mr. Martinak had open records request that he
15 asked for, I believe, and was looking for information on
16 Quail Run.

17 Q. Did you supply him the information?

18 A. We did.

19 Q. Did you have information regarding runoff from
20 Quail Run?

21 A. The email -- there was emails that we provided
22 that discussed Quail Run, but I don't recall anything
23 specifically talking about the runoff from Quail Run.

24 Q. Did Mr. Martinak tell you that the information
25 he got from the city was erroneous regarding the runoff

1 from Quail Run?

2 A. Mr. Martinak has expressed that he is unhappy
3 with the provision, item number ten in the development
4 agreement with Quail Run.

5 Q. I'll look at that in a minute. I don't recall
6 that off the top of my own memory. My question, though,
7 was a little bit more specific. Did Mr. Martinak tell you
8 that the information that was supplied to him by the city
9 related to Quail Run runoff was inaccurate?

10 A. I don't recall him ever specifically saying
11 that, no.

12 Q. And you don't know if he shared that information
13 or his engineer shared that information with the city
14 engineer?

15 A. Not that I'm aware of, no.

16 MR. LOISELLE: Let's go ahead and take five
17 minutes.

18 (Recess taken.)

19 BY MR. LOISELLE: (Continuing)

20 Q. Go back on the record. We took a ten-minute
21 break. Did you have an opportunity to confer with counsel
22 during the break?

23 A. We didn't discuss anything related to this.

24 Q. It's a routine question.

25 A. Okay.

1 Q. You always give witnesses an opportunity to
2 confer with counsel, and if they want to change an answer
3 or clarify a response. Nothing?

4 A. No.

5 Q. Great. All right. So we were talking about the
6 concerns related to the testing, right?

7 A. Correct.

8 Q. And my understanding was that you were
9 requesting some additional information from JCNW and its
10 engineer related to the performance of the pond.

11 A. Correct.

12 Q. Was Mr. Martinak making efforts to secure
13 information to provide you with any information?

14 A. We didn't receive anything from Mr. Martinak,
15 but I can't speak to what he was doing.

16 Q. You don't know if he was conferring with your
17 engineer to get some more information so he could provide
18 you with the information you were requesting?

19 A. At the September 23rd meeting, Steve Ward, the
20 engineer for Westech, said that the request from our
21 engineer was too confusing and he couldn't understand it.

22 Q. Okay.

23 A. From the -- that's from the May 8th request for
24 more testing.

25 Q. Okay. And of course you knew I was going to ask

1 you about that meeting, so let's go ahead and jump to that
2 real quick. So between May 8th and September 23rd there
3 were informal meetings with Mr. Martinak related to his
4 ongoing compliance with the Phase II development
5 agreement?

6 A. Ongoing discussions with Phillips Estates of
7 various issues and topics, correct.

8 Q. And I think we talked about that. And the
9 reimbursements was a concern Mr. Martinak had?

10 A. Correct.

11 Q. And the signing of the plats?

12 A. Correct.

13 Q. And he expressed to you that the delay in
14 signing the plats was going to cause him some financial
15 harm if there was further delay, right?

16 A. That's what he said, correct.

17 Q. And you understand generally that time is money
18 in the development process?

19 A. I do.

20 Q. And you also mentioned that during a lot of
21 these informal meetings Mr. Martinak was sharing with you
22 the history of the Phillips Estate.

23 A. Mr. Martinak enjoys talking about the history of
24 Phillips Estates, correct.

25 Q. Would you say he's proud of his development?

1 A. I wouldn't speculate on that.

2 Q. But he was willing to share with you a lot of
3 information regarding the background and the history of
4 this project?

5 A. Correct.

6 Q. Do you know why he was doing that?

7 A. I wouldn't -- I couldn't speculate.

8 Q. Did you tell him to stop sharing all that
9 information?

10 A. No, I generally let Mr. Martinak talk about what
11 he wanted to. There were times when I more cut to the
12 chase, but generally speaking I let Mr. Martinak talk.

13 Q. Okay. Any of the information regarding the
14 history of the Phillips Estate that you felt was
15 inaccurate or misleading?

16 A. I don't understand your question.

17 Q. Thank you for asking me to clarify it.
18 Mr. Martinak had met with you informally many times?

19 A. Correct.

20 Q. During those informal meetings he would share
21 the history of the Phillips Estate?

22 A. Correct.

23 Q. Was there information that was supplied by
24 Mr. Martinak that was inaccurate or misleading related to
25 the history of this development process?

1 A. Mr. Martinak enjoyed talking about the history
2 and enjoyed talking about what he felt was a great benefit
3 that he was giving the city.

4 Q. Okay. Anything else?

5 A. His concerns over the length of time that it's
6 taken to do this and the number of people that had been
7 involved.

8 Q. Well, it sounds like between May 8th and
9 September 23rd there was information sought by JCNW and
10 information sought by the city related to this project,
11 and that culminated in another formal meeting September
12 23rd; is that right?

13 A. Correct.

14 Q. Who was at that meeting?

15 A. Christine Shaffer, myself, John Ashley, Bill
16 Martinak, Steve Ward, Mike Brash, as I recall.

17 Q. Was an agenda prepared?

18 A. I believe there was, yes.

19 Q. Have you produced that?

20 A. I don't recall if that was part of the
21 production or not.

22 Q. I'm going to ask you to look for the agenda
23 after the deposition today and produce it, and I'll have
24 the deposition transcript marked so that we won't forget
25 it.

1 MR. LOISELLE: Is that all right?

2 COURT REPORTER: Yes.

3 BY MR. LOISELLE: (Continuing)

4 Q. And were notes taken or minutes taken?

5 A. Yes.

6 Q. Who took those?

7 A. Kelly Stevens took those.

8 Q. And you have produced those?

9 A. Correct. I believe they were shared with
10 Mr. Ward and Mr. Martinak.

11 Q. Did you take any personal notes?

12 A. I did not.

13 Q. How long did the meeting last?

14 A. Approximately an hour.

15 Q. Was it here?

16 A. It was located in Public Works, across the
17 street.

18 Q. It sounds like one of the topics was Mr. Ward's
19 concerns that he didn't understand exactly what the city
20 was requesting as far as information.

21 A. That's correct.

22 Q. Did you attempt to clarify that during the
23 meeting?

24 A. What was agreed was that since Mr. Ward couldn't
25 understand what we were requesting, that he would come up

1 with a methodology, and the city would approve the
2 methodology to test the pond.

3 Q. So instead of resolving his concerns or his
4 confusion, you just asked him to come up with an all new
5 testing protocol?

6 A. That's correct.

7 Q. Did he agree to do that?

8 A. He did.

9 Q. And what was the testing protocol?

10 A. He never provided it.

11 Q. Did you ask him to?

12 A. At some point it was asked for Mr. Martinak
13 wherever we were at, and Mr. Martinak stated that they
14 weren't ready to share it yet, but I don't recall when
15 that was.

16 Q. Was that just an informal inquiry from you?

17 A. Yes, that would be an informal inquiry, I
18 believe.

19 Q. Did you ever have your lawyer send Mr. Martinak
20 a letter requesting the testing protocol?

21 A. Did not.

22 Q. Other than your informal inquiries, were there
23 any other follow-ups from city representatives?

24 A. There may have been, but I'm not aware.

25 Q. Do you recall how many times you asked for it?

1 A. Several.

2 Q. More than three?

3 A. I would say two to three times would be my best
4 estimate.

5 Q. Would those be emails or just a phone call?

6 A. There may have been emails. The time frame too
7 after this, I think there was one after the stop work
8 order as well, but --

9 Q. Okay.

10 A. We saw a stick up in the pond, and we asked -- I
11 know that was asked, you know, what the stick was related
12 to, and we were told it was -- they weren't ready to share
13 yet. A measuring stick.

14 Q. Who saw the stick in the pond?

15 A. I believe it was Mike Brash first saw it.

16 Q. This is the only chance I get to ask you
17 questions before we conduct the arbitration in this
18 matter, so I just want to make sure I have your full
19 understanding.

20 A. Sure.

21 Q. Other than the two or three times you followed
22 up with Bill informally to see where the testing protocol
23 was, there were no other inquiries that you are aware of
24 from city representatives to JCNW specifically seeking the
25 results of the -- or the testing protocol or the results

1 of any tests?

2 A. The city didn't feel -- I don't feel -- you
3 know --

4 Q. I appreciate you can explain your answer, but I
5 want you to answer the question first.

6 A. I'm not aware of other formal conversations,
7 no.

8 Q. All right. Now would you like to explain your
9 answer?

10 A. That's sufficient.

11 Q. Other than concerns raised by city
12 representatives or your engineers, were there any third
13 parties that were expressing concerns regarding the
14 performance of the pond?

15 A. Not that I'm aware of, no.

16 Q. The Water District didn't raise any issues?

17 A. No.

18 Q. As we sit here today, has the city received any
19 inquiries or probes from third parties related to the
20 performance of the ponds?

21 A. There has been representatives from the Home
22 Builders Association who has asked, and residents who have
23 asked that live in Phillips Estates.

24 Q. Who from the HBA inquired?

25 A. I had a conversation with Mike Erdelman (sic).

1 Q. Can you spell his last name?

2 A. I can't, but I have his card, and I'd be happy
3 to go get it.

4 Q. That's all right. Erdelman, you said?

5 A. I believe that's right.

6 MR. MARTINAK: There is no L.

7 THE WITNESS: Erdman.

8 BY MR. LOISELLE: (Continuing)

9 Q. So you had an inquiry from Mr. Erdman related to
10 the performance of the pond. And what was the nature of
11 his inquiry?

12 A. The nature of his inquiry was to notify me that
13 Steve Ward was a well-respected engineer, and I shouldn't
14 question his engineering.

15 Q. Okay. Anything else?

16 A. He threatened to go to the paper.

17 Q. Okay. Anything else?

18 A. That's all.

19 Q. Okay. So Mr. Erdman was expressing his opinion
20 about the performance of Mr. Ward?

21 A. That's correct.

22 Q. Did you follow up on his opinion of Mr. Ward's
23 reputation?

24 A. I haven't had any additional conversation since
25 that conversation with Mr. Erdman.

1 Q. Okay. How about independent of your
2 conversation with Mr. Erdman?

3 A. Let me clarify. I haven't had any conversation
4 with Erdman about Phillips Estates or the pond since that
5 time.

6 Q. I think I understood that, and I appreciate you
7 clarifying it. Followed up regarding Mr. Ward and his
8 reputation around the state?

9 A. I haven't followed up specifically with
10 Mr. Ward's reputation, no.

11 Q. So you don't know if he's generally regarded as
12 a qualified engineer or is a hack?

13 A. I'm aware there is a lawsuit ongoing with him
14 right now, but that's all I'm really aware of. And I'm
15 aware there is an ethics violation where he was found not
16 to be at fault.

17 Q. Okay. Where did you get the information
18 regarding the ethics violation?

19 A. I believe my Public Works director was aware of
20 that.

21 Q. Do you know what the nature of the ethics
22 concern was?

23 A. I don't.

24 Q. You don't know who raised it?

25 A. I believe it was the city. It was just an

1 informal conversation on research that the Public Works
2 director had done.

3 Q. And your understanding was the ethics inquiry
4 was resolved in Mr. Ward's favor?

5 A. That's my understanding.

6 Q. And you also mentioned there was a lawsuit that
7 he was involved in?

8 A. I'm aware of a lawsuit, yeah, that's currently
9 ongoing.

10 Q. Which lawsuit is that?

11 A. I don't really know all the details, honestly.
12 I really haven't researched it at all.

13 Q. Okay. Who told you about the lawsuit?

14 A. My attorney.

15 Q. Other than that inquiry with your attorney and
16 your Public Works director, did you perform any other
17 efforts to evaluate the reputation or performance of
18 Mr. Ward?

19 A. Mr. Ward's reputation doesn't concern me.

20 Q. That's not my question.

21 A. The answer is no, because Mr. Ward's reputation
22 doesn't concern me.

23 Q. I appreciate that you have an opinion why you
24 haven't done it. I just want to know if you actually did
25 it or not.

1 A. No.

2 Q. All right. You mentioned that Mr. Erdman had
3 made an inquiry related to the pond and its performance.
4 You also commented on some residents. Do you recall who
5 those folks were?

6 A. There was two residents. I believe one was Dan
7 Morgan, and I don't remember who the other one was.

8 Q. Who did Mr. Morgan contact?

9 A. City staff.

10 Q. Was it a phone call?

11 A. I'm not aware.

12 Q. Did the city staff take any notes regarding the
13 inquiry?

14 A. I'm not aware.

15 Q. And you don't recall who the other person was?

16 A. I do not.

17 Q. Do you recall what their concerns were?

18 A. Asking about what was going on with the
19 subdivision and potential flooding.

20 Q. Did the city respond?

21 A. The city at that point said the matter was being
22 dealt with in the legal course and had no comment, is my
23 understanding.

24 Q. Has there been any flooding?

25 A. Not that I'm aware of.

1 Q. Has there even been a concern that there is
2 going to be a flood?

3 A. Where?

4 Q. Phillips Estate or adjacent properties.

5 A. There was some concern expressed of whether the
6 elevations were correct with the plans, but no formal
7 testing was done.

8 Q. Any other concerns raised by third parties
9 related to the performance of the pond?

10 A. Not that I can recall.

11 Q. Let's go back to the September 23rd meeting.
12 Obviously you talked about establishing a new testing
13 protocol. What other issues were raised at the September
14 23, 2014 meeting?

15 A. Reimbursements.

16 Q. What else?

17 A. That's when the city first became aware there
18 was some sort of pipe running to the northwest.

19 Q. What else?

20 A. I believe there was discussion about Phase III
21 as well.

22 Q. Or do you recall 2B? Either one?

23 A. 2B, III, correct.

24 Q. Anything else?

25 A. That's all I recall from that meeting.

1 Q. All right. Thank you. What were the
2 discussions around the reimbursements?

3 A. It was based off of percentages. The amounts we
4 were discussing was pretty small. Initially Steve Ward
5 said, Who cares, let's just -- that's such a small amount.
6 But Bill was adamant that they needed to talk about it.

7 Q. So Mr. Ward and Mr. Martinak weren't necessarily
8 aligned on whether JCNW should be pursuing reimbursements
9 from the city for certain costs?

10 A. Once Bill made it clear to Mr. Ward his
11 concerns, Mr. Ward changed his tune and said they needed
12 more time to discuss it.

13 Q. What were the reimbursements that Mr. Martinak
14 was concerned about?

15 A. I don't specifically recall. I recall it was a
16 small dollar amount, but I don't recall specifically what
17 it was for.

18 Q. Anything else you can recall related to
19 reimbursements?

20 A. That's the basics of what I recall from that
21 meeting.

22 Q. How about the pipe running to the northwest?
23 What do you recall there?

24 A. At one point Bill got very angry and said that
25 he wasn't going to stop water from running to the

1 northwest.

2 Q. Okay. I think your earlier testimony was at
3 this meeting you learned for the first time there was a
4 pipe coming out of the pond or detention pond?

5 A. That's correct.

6 Q. Had the plat already been signed?

7 A. The plat had been signed at that point,
8 correct.

9 Q. So did the engineer review the site before the
10 plat was signed to confirm that the site conditions met
11 the plans? The approved plans?

12 A. You would have to ask the engineer.

13 Q. Isn't that usually a requirement before the plat
14 is signed, that the engineer confirms that the site
15 conditions meet the design?

16 A. My understanding is that item No. 11 in the
17 development agreement allowed the plat to be signed prior
18 to all the infrastructure being done.

19 Q. But there is usually an evaluation done by the
20 engineer to determine what needs to be done, and some kind
21 of an agreement if there needs to be some additional work
22 before the plat is signed.

23 MR. LIEN: Object to the form of the question.
24 I didn't understand it at all.

25 MR. LOISELLE: Well, thank you for clarifying

1 that.

2 BY MR. LOISELLE: (Continuing)

3 Q. Go ahead and answer it, if you can.

4 A. I'm sorry. Can you repeat the question again?

5 Q. You were talking about paragraph 11 of the
6 development agreement. Isn't it typical that the engineer
7 reviews the site conditions and confirms that the site
8 conditions meet the development agreement before signing
9 the plat?

10 A. Standard, yes.

11 Q. And did that occur here?

12 A. You would have to ask the engineer.

13 Q. Before the plat was signed, did the city raise
14 any concerns about additional work that needed to be
15 performed by JCNW to comply with the development
16 agreement?

17 A. That would be a question to ask other people
18 with the city.

19 Q. You don't have an opinion?

20 A. At that point I really wasn't engaged in this
21 project.

22 Q. I appreciate you weren't at that point. I'm
23 asking you today.

24 A. I can't speculate on what was done.

25 Q. Okay. So other than Mr. Martinak telling you

1 that he wasn't changing the configuration of the pipe or
2 its performance, were there any other issues raised
3 related to the pipe issue during your September 23rd
4 meeting?

5 A. Not during that meeting, no.

6 Q. Okay. Then you mentioned that Phase III was
7 discussed, correct?

8 A. Correct.

9 Q. What were you discussing about Phase III?

10 A. I don't recall specifically what was discussed
11 with Phase III at that meeting.

12 Q. Did Mr. Martinak indicate that he wanted to move
13 forward with Phase III?

14 A. He could have, but I don't recall.

15 Q. Did Mr. Martinak submit plans for Phase III?

16 A. At that time?

17 Q. At any time.

18 A. He has submitted plans for Phase III, correct.

19 Q. And what did the city do with them?

20 A. We sent them back to Mr. Martinak.

21 Q. Why?

22 A. Because the development agreement makes it clear
23 before we accept Phase III plans we do a new development
24 agreement, we sign a new development agreement.

25 Q. Did you initiate that process?

1 A. We sent numerous correspondence to Mr. Martinak
2 and told him what was going to be required before we
3 accept Phase III plans.

4 Q. Okay.

5 A. And offers were made to begin the negotiation
6 process if he would like to do so.

7 Q. Did he accept?

8 A. Not that I'm aware of, no.

9 Q. Did you send Mr. Martinak a note indicating that
10 you were prepared to negotiate those terms?

11 A. I may have, but I don't recall.

12 Q. Who else from the city would have?

13 A. Mike Brash could have. Our attorneys could
14 have. Dan Fleishman could have.

15 Q. Okay. The city issued a stop work notice,
16 correct?

17 A. Correct.

18 Q. Were you authorized to do that on behalf of the
19 city?

20 A. Correct.

21 Q. Prior to issuing the stop work notice, did you
22 review the development agreement?

23 A. I did.

24 Q. Is there any provision in the development
25 agreement that authorized the city to stop the development

1 project?

2 A. According to my attorney, yes.

3 Q. I don't want confidential attorney-client
4 communications between you and your attorney. I want your
5 understanding of what the development agreement allows you
6 to do. So I'm trying to be -- I understand that this is
7 a -- we run into this all the time.

8 A. Sure.

9 Q. I'm just trying to clarify to you what you can
10 and can't testify about. We don't want confidential
11 attorney-client communications. I want your understanding
12 as the city administrator who is authorized on behalf of
13 the city to issue the stop work notice, where in the
14 development agreement it says you are authorized to stop
15 work on the project.

16 A. I believe, based off of my authority, that I
17 was -- I was within my rights to issue the stop work
18 order.

19 Q. And what's the basis for that authority in the
20 development agreement? I'm going to ask you about other
21 places as well, but where in the development agreement?

22 A. I don't recall specifically in the development
23 agreement where it says the city can issue a stop work
24 order.

25 Q. Did you review the dispute resolution provisions

1 in the development agreement?

2 A. I did.

3 Q. What do you recall they provided as far as
4 dispute resolution is concerned?

5 A. Mediation and then arbitration.

6 Q. Okay. Before issuing the stop work notice, did
7 you make any attempt to initiate mediation?

8 A. I did not.

9 Q. Before you issued the stop work notice, did you
10 attempt to initiate arbitration?

11 A. I did not.

12 Q. Did you provide Mr. Martinak with any warning
13 that you were going to issue a stop work notice prior to
14 the time you actually issued it?

15 A. I did.

16 Q. When did you do that?

17 A. October 17th.

18 Q. How did you tell him? Was it by phone, by --

19 A. In person.

20 Q. What did you tell him?

21 A. I asked him what was happening with the pond.
22 When Mr. Martinak acknowledged the pond, there was no easy
23 solutions, there was no cheap solutions, and stated that
24 it didn't matter how big they built the pond, it wouldn't
25 work, I told Mr. Martinak we can't add anymore impervious

1 surface until we solved the pond, and he agreed to that
2 statement.

3 Q. Why did you believe you couldn't add any more?

4 A. Indications were the pond wasn't working, and
5 adding more impervious surface was going to exacerbate the
6 problem.

7 Q. So you had a conversation with Mr. Martinak
8 about this. Did you put anything in writing?

9 A. A stop work order.

10 Q. I appreciate that. Prior to issuing the stop
11 work order, did you send him a letter saying,
12 Mr. Martinak, we've had this discussion. We're going to
13 issue a stop work notice if you move forward on this
14 project?

15 A. No.

16 Q. Did you contact your attorney?

17 A. I did.

18 Q. Did you meet with representatives from the city
19 council?

20 A. I did.

21 Q. Did you receive authorization from the city
22 council to move forward with the stop work notice?

23 A. It's part of an executive session, so I don't
24 know if I should discuss that.

25 THE WITNESS: Wally?

1 MR. LIEN: No, you are not allowed to discuss
2 what happened in the executive session, only what happened
3 in the formal session after the executive session.

4 THE WITNESS: Okay.

5 BY MR. LOISELLE: (Continuing)

6 Q. What happened after the executive session? Did
7 you receive authorization?

8 A. The governing body took no action.

9 Q. What circumstances required you to issue a stop
10 work notice rather than initiate the dispute resolution
11 provisions in the contract?

12 A. The city didn't believe, and I didn't believe
13 that Mr. Martinak was trying to address the concerns with
14 the pond, so we were trying to make sure that was done
15 before any more impervious surface was added.

16 MR. LOISELLE: Please read my question back.

17 COURT REPORTER: (Read as requested.)

18 THE WITNESS: The city believed the pond wasn't
19 working, and it wasn't being addressed, and so we wanted
20 to make sure that it was addressed before more impervious
21 surface was added.

22 BY MR. LOISELLE: (Continuing)

23 Q. Did you consider initiating mediation prior to
24 issuing the stop work notice?

25 A. We discussed options internally.

1 Q. Who discussed it?

2 A. Discussed it with staff and with the city
3 attorney.

4 Q. Why did you decide to initiate the stop work
5 notice rather than request mediation or arbitration?

6 A. It was becoming critical to address the pond.
7 Mediation could be delayed or stalled, so --

8 Q. Why was it critical to address the issues with
9 the pond?

10 A. Because the city had evidence that the pond was
11 not working. We had waited five months for some sort of
12 testing to be done on the pond; and as they were
13 continuing to move forward with the impervious surface, we
14 didn't want to continue to exacerbate the problem.

15 Q. What was the problem?

16 A. The city didn't believe the pond was working.

17 Q. Why was it critical?

18 A. Managing of storm water is critical, and the
19 issue of water going to the northwest without an easement.

20 Q. Anything else?

21 A. That's the main reasons why we did what we did.

22 Q. I want all the reasons.

23 A. We felt the stop work order was the best way to
24 make sure we addressed the problems and got them solved
25 before we allowed any more impervious surface to be

1 included in that subdivision, and to make sure we weren't
2 in violation of the private property rights.

3 Q. Anything else?

4 A. I think that covers the crux of what we were --
5 our reasons were.

6 Q. Circumstances changed out there? Is the pond
7 still functioning the same way it was in October 2014?

8 A. The pond has since filled up and has remained
9 filled, and water has been spilling over the weir on a
10 regular basis.

11 Q. So is the answer yes or no?

12 A. (No response.)

13 Q. Would you like to have her read back the
14 question?

15 A. The question is was it working like it was
16 working in 2014 is my understanding.

17 Q. (Nodding head affirmatively.)

18 A. Existentially the answer is yes.

19 Q. Have you had a single inquiry from an adjacent
20 land owner expressing any concerns about water draining on
21 to their property?

22 A. No.

23 Q. No threats of a lawsuit?

24 A. No.

25 Q. No claims of trespass?

1 A. No.

2 Q. There has been a lot of press related to the
3 circumstances related to the stop work order since October
4 2014, right?

5 A. Correct.

6 Q. Showed up in the paper?

7 A. Correct.

8 Q. There have been potential buyers out there
9 looking at lots, true?

10 A. I'm unaware if buyers have been looking at lots.

11 Q. There have been some lots sold since October
12 2014. You are aware of that?

13 A. I'm aware that there was sales in place, yes,
14 that were going when the person came to talk to the
15 council meeting.

16 Q. Not a single inquiry?

17 A. No.

18 Q. Were you aware that Mr. Martinak and JCNW was
19 represented by counsel in October of 2014?

20 A. I don't recall.

21 Q. Were you aware that counsel had been involved in
22 earlier negotiations that led to the execution of the
23 development agreement?

24 A. I was.

25 Q. Was there any discussion about sending a letter

1 to council asking them to address the concerns related to
2 do the pond prior to issuing the stop work notice?

3 A. I recall numerous options. I believe that was
4 one of them.

5 Q. And you didn't think that would be dramatic
6 enough to get Mr. Martinak's attention?

7 MR. LIEN: Object to the form of the question.

8 BY MR. LOISELLE: (Continuing)

9 Q. Go ahead and answer.

10 A. I wasn't looking for dramatics. I was looking
11 to have the issue addressed and solved and be taken
12 seriously.

13 Q. And you don't think that initiating the formal
14 dispute resolutions in the contract would be serious
15 enough stuff to get Mr. Martinak's attention?

16 A. The concern was that it could take a significant
17 amount of time, and we didn't feel like we had time to
18 continue to allow impervious surface to be added while we
19 tried to address the -- or come to some sort of
20 resolution.

21 Q. Nothing has changed since October 2014. The
22 pond is still in the same configuration it was, still
23 performing the same way?

24 A. Mr. Martinak has put a plug in the ten-inch
25 outflow pipe that's to the northwest.

1 Q. Anything else?

2 A. Not that I can think of at this time.

3 Q. When you were balancing and weighing the options
4 you had, did you consider that a stop work notice might
5 affect third parties unrelated to JCNW?

6 A. Yes.

7 Q. Who did you think it might impact?

8 A. The builders of the homes, the workers doing the
9 work on those homes, and the individuals who were selling
10 those homes.

11 Q. Okay. Were you aware that entities other than
12 JCNW owned lots?

13 A. Yes.

14 Q. Did you consider to give them notice that there
15 were some concerns and have them follow up with the
16 developer?

17 A. Yes.

18 Q. But in your estimation, the best course of
19 action was the issue of the stop work notice prior to
20 initiating the dispute resolution provisions in the
21 contract?

22 A. My actions would indicate, yes.

23 Q. Other than -- well, we talked about the
24 development agreement and what in the development
25 agreement authorized you to do this. Is there any city

1 ordinance, state statute, that allows you to do that?

2 A. My authorization comes from the city charter,
3 the municipal code, and my contract, and advice of
4 counsel.

5 MR. LOISELLE: Will you read that back to me
6 real quick.

7 COURT REPORTER: (Read as requested.)

8 BY MR. LOISELLE: (Continuing)

9 Q. I can't ask you about the advice you received
10 from your attorney, but I can ask you about the other
11 three. You said that your contract provides you with
12 authorization?

13 A. If you review the charter, the municipal code,
14 and my city contract, yes.

15 Q. What provisions in your contract specifically
16 allow you to issue stop work notices?

17 A. My contract makes me in charge of the day-to-day
18 operations of the city and overseeing all contracts with
19 the city.

20 Q. I don't think I've seen copy of your contract, so
21 I'm going to ask you to produce that as well. Okay?

22 A. Okay.

23 Q. In fact, I'm going to ask for your entire
24 personnel file.

25 MR. KUHN: We don't give employee personnel

1 files, because those are maintained in confidence. The
2 contract probably would be provided with specific
3 financial information redacted.

4 MR. LOISELLE: Sure. I'll talk to you about the
5 personnel file.

6 MR. KUHN: Okay.

7 BY MR. LOISELLE: (Continuing)

8 Q. You mentioned the municipal code. You are
9 talking about the City of Stayton municipal code?

10 A. Correct.

11 Q. And what sections are you referring to?

12 A. I don't recall specifically right off the top of
13 my head. It's under "administration."

14 Q. It's what?

15 A. It's under "administration."

16 Q. You referred to the municipal code before you
17 initiated the stop work notice, right?

18 A. I'm aware of the provisions, the general
19 provisions of the administrative code, correct.

20 MR. LOISELLE: Please read my question back.

21 COURT REPORTER: (Read as requested.)

22 THE WITNESS: I don't specifically remember
23 directly at the time of issuing the stop work order if I
24 specifically reviewed the administrative code at that
25 time.

1 BY MR. LOISELLE: (Continuing)

2 Q. Okay. You also mentioned the city charter?

3 A. Correct.

4 Q. What sections of the city charter provide you
5 with authority to issue a stop work notice?

6 A. I don't recall off the top of my head the
7 specific sections.

8 Q. Did you refer to the city charter before you
9 issued the stop work notice?

10 A. I don't recall specifically looking at the
11 charter before issuing the stop work order notice.

12 Q. As you sit here today, do you know how much
13 water is leaving the site?

14 A. I do not.

15 Q. Have you attempted to investigate that on your
16 own?

17 A. The city has not spent any money investigating
18 the pond.

19 Q. Has Mr. Martinak invited you to come out and
20 actually observe the site?

21 A. He has.

22 Q. And you have declined those invitations?

23 A. I have.

24 Q. Why have you declined to go out and physically
25 observe what's going on at the site?

1 A. I don't believe Mr. Martinak can add anything
2 that would be beneficial.

3 Q. You don't think that actually seeing the
4 performance of the pond would be helpful to you and how
5 you address this dispute resolution process?

6 A. I've spent a significant time out at the pond.

7 Q. You have spent a significant time?

8 A. Correct.

9 Q. When?

10 A. Over the last six months, seven months, I've
11 been out at the pond probably every week, sometimes more
12 than that.

13 Q. Didn't Mr. Martinak want to show you the
14 contribution of the Quail Run discharge onto the
15 property?

16 A. Mr. Martinak, since -- I'm aware of Mr. Martinak
17 inviting folks out, and I think he made a general invite
18 in a public meeting. But he sent his request for an
19 on-site review to the governing body, and a member of the
20 governing body shared that email with me.

21 Q. So he didn't have a direct conversation with you
22 about this?

23 A. I don't recall a specific direct conversation,
24 no.

25 MR. LOISELLE: Let's go ahead and take another

1 five-minute break.

2 (Recess taken.)

3 BY MR. LOISELLE: (Continuing)

4 Q. Thanks for taking a break. Have you had a
5 chance to confer with counsel during the break?

6 A. I did.

7 Q. Any clarifications or anything you want to add
8 to the record?

9 A. Yes. One of the considerations of the stop work
10 order was the Water Control District and our memo of
11 understanding agreement with them and the agreement we
12 had, and concerns we had about the agreement.

13 Q. Had you had any contact from the Water District
14 prior to issuing the stop work notice?

15 A. We did not.

16 Q. Have you had any conversations with them to this
17 day?

18 A. I have.

19 Q. Who?

20 A. I've spoken with Brent Stevenson, who is the
21 manager of the Water Control District, and I've talked to
22 the Water Control District board.

23 Q. When did you talk to Brent Stevenson?

24 A. Shortly after the stop work order was put in
25 place, and then we've had ongoing conversations since that

1 time.

2 Q. And you mentioned the board?

3 A. The Water Control District board.

4 Q. Did you meet in front of the board?

5 A. I met with the board, yes.

6 Q. When did you do that?

7 A. I believe December, January, in that time frame,
8 but I don't remember exactly the month.

9 Q. December of 2014?

10 A. Yeah, or January of 2015.

11 Q. Was that an open session?

12 A. It was.

13 Q. What did you discuss?

14 A. The issues with the storm water at Phillips
15 Estates.

16 Q. What did you share?

17 A. That currently the water was going over the
18 northwest and going into their ditch in violation of the
19 agreement that Mr. Martinak has with them.

20 Q. And what did they tell you?

21 A. Mr. Martinak should have known, because he lives
22 -- or his -- Emery & Sons is right there, that that was
23 not going to be a viable location for a pond.

24 Q. Oh, so they commented on the original design?

25 A. Correct.

1 Q. Anything else?

2 A. They offered their support to the city in trying
3 to address the situation.

4 Q. What kind of support did they offer?

5 A. They had Brent Stevenson come to a council
6 meeting, where Mr. Stevenson said he hoped that the city
7 and Mr. Martinak could work out the issues.

8 Q. Anything else?

9 A. To this point that's all they've offered.

10 Q. Did they offer any financial support?

11 A. Not at this time.

12 Q. Have they indicated they are going to pursue any
13 independent claim against JCNW?

14 A. Not that I'm aware of.

15 Q. Have they expressed a view regarding whether Mr.
16 Martinak or JCNW are in compliance with his agreement with
17 the Water District?

18 A. They haven't specifically said whether they
19 believe he's in compliance or not.

20 Q. And just so we're clear, there was no directive
21 or request from the Water District for the city to take
22 any action related to the performance of the storm water
23 system on the Phillips Estate?

24 A. No.

25 Q. All right. Thank you. Anything else you want

1 to clarify for the record?

2 A. That's it.

3 Q. We didn't get a chance to talk about this. We
4 usually do. Can you tell me your educational background?

5 A. Sure. I have an undergraduate from the
6 University of Kansas in business administration with an
7 external coherent area of study in psychology. I also
8 have my masters in public administration from the
9 University of Kansas.

10 Q. When did you receive your masters?

11 A. Summer of 2008.

12 Q. And since 2008, tell me your employment history.

13 A. 2008 I was working for the county clerk in
14 Douglas County. I was the deputy county clerk. And then
15 I worked for the City of Shawnee as the city clerk from --
16 get the time frame right -- November of 2009 until I
17 started here.

18 Q. Any work in any other public administration
19 prior to 2008?

20 A. To clarify, it might have been 2010, now that
21 I'm doing the math backwards, November of 2010 until I
22 started here. I'm sorry. Can you repeat your next
23 question?

24 Q. Let's make sure the record is clear. It sounds
25 like you were the city clerk from November 2010 until you

1 started with the City of Stayton?

2 A. That's correct.

3 Q. My previous question was, did you have any other
4 public administration roles prior to 2008?

5 A. I worked for the -- I was working for the -- as
6 I was getting my masters degree I was working for Douglas
7 County as the deputy county clerk.

8 Q. Other than the position with Douglas County, any
9 other experience?

10 A. Not in this field. I was in the private sector
11 prior to that.

12 Q. Tell me about your private sector experience.

13 A. I worked for the University of Kansas for
14 several years as I was starting my MPA, prior to that I
15 worked for E-commerce web development companies, and prior
16 to that I worked for Sprint.

17 Q. You said you worked for the University of
18 Kansas?

19 A. I did.

20 Q. What did you do?

21 A. I worked in the student union activities office,
22 and I worked for the university theater.

23 Q. What did you do for the university theater?

24 A. I oversaw their administration office.

25 Q. Reservations? Ticketing?

1 A. Box office, productions, budgets, student staff.

2 Q. Then student union, same kind of activities?

3 A. Same kind of activities, yes.

4 Q. How long did you do that?

5 A. Between both of those, probably two-and-a-half
6 years. They were jobs I was working as I was getting my
7 masters. The university paid and provided time off.

8 Q. Sure. And then you mentioned that you were
9 working for an E-commerce web developer?

10 A. I worked for two separate e-commerce web
11 developers, correct.

12 Q. Who were they?

13 A. Global Image was one, and the previous one was a
14 company called Cephass Multimedia. Both of those companies
15 are no longer in business.

16 Q. Can you spell Cephass?

17 A. C-E-P-H-A-S.

18 Q. And were you a software developer?

19 A. I was not. I was a -- in both those jobs I was
20 the resource manager and project manager.

21 Q. What does a resource, project manager do?

22 A. Resource manager dedicates the staff needed to
23 work on web development sites. So programming time, sales
24 time. We also had graphic artists, graphic artist time.

25 Q. Sprint, what did do you for them?

1 A. Worked for the travel and entertainment
2 division.

3 Q. You book?

4 A. No, it was expense reports.

5 Q. What were the job duties for the deputy county
6 clerk for Douglas County?

7 A. I oversaw all the elections in Douglas County.

8 Q. Anything else?

9 A. That was my main role.

10 Q. And then you said you were a city clerk after
11 that, from 2010 until you took your present job?

12 A. Correct.

13 Q. City clerk for which city?

14 A. The City of Shawnee, Kansas. Douglas County is
15 also in Kansas.

16 Q. And what was the city clerk's responsibilities?

17 A. Overseeing the city clerk's office, business
18 licensing, payments, dog licensing, meetings. Did a lot
19 of work in codes, updating codes, municipal codes. Worked
20 a lot with the city attorney on writing policies, doing
21 things of that nature.

22 Q. How big is the county, or the city?

23 A. The city was 66,000 people, and the county is
24 105,000, if my memory serves correct. I'm confident on
25 the Shawnee. I'm pretty confident on the surrounding

1 county.

2 Q. All right. Any work in the trades?

3 A. No.

4 Q. Ever work for a real property developer?

5 A. No.

6 Q. Ever work for an engineering or design firm?

7 A. No.

8 Q. No engineering or --

9 A. No to both.

10 Q. -- architectural? I apologize for interrupting
11 you.

12 A. That's okay.

13 Q. You don't have any training or experience in
14 architecture or engineering?

15 A. No.

16 Q. So is it fair to say that your first work
17 experience interacting with architects and engineers has
18 been for the City of Stayton?

19 A. No.

20 Q. Okay.

21 A. I did some work as well in projects for Shawnee.

22 Q. What did you do?

23 A. TIF districts, urban renewal areas, things of
24 that nature.

25 Q. What was your role in the urban renewal process?

1 A. The legal requirements, attending meetings with
2 the engineers, the city engineers, with the developers.
3 There was I think three different TIF districts that we're
4 part of, so involved in some level with those.

5 Q. TIF district?

6 A. Yeah, tax increment financing. It's more common
7 in Kansas than here.

8 Q. Sure. Any other experience interacting with
9 architects or engineers?

10 A. No.

11 Q. Developers?

12 A. No.

13 Q. Now, after the stop work notice was issued, you
14 understand my office was engaged to assist JCNW in
15 attempting to resolve the dispute with the city?

16 A. Yes.

17 Q. In fact, we were on the phone several times
18 together. Do you recall that?

19 A. I believe twice, yes.

20 Q. Were you aware that your counsel and I were
21 engaged in the process of attempting to schedule
22 mediation?

23 A. Yes.

24 Q. And what was your understanding of how that
25 process unfolded?

1 A. November 3rd, Mr. Martinak came to council
2 meeting and requested that we go to mediation during
3 public comments. I asked counsel to send a letter to you
4 verifying if that's what you wanted to do. I believe that
5 was November 5th. And we waited I believe about ten days,
6 two weeks, and decided just to go ahead and request going
7 to mediation when we didn't hear anything from you.

8 Q. Request mediation or arbitration?

9 A. At that point request mediation.

10 Q. Okay. And you were aware that your counsel and
11 I were involved in attempting to schedule a mediator?

12 A. I'm aware that there was conversations about
13 trying to schedule mediation, yes.

14 Q. Were you aware that we actually had mutually
15 agreed to a mediator?

16 A. My understanding is we were going down that
17 path, correct.

18 Q. Were you aware that we had selected a mediator?

19 A. I don't recall if I was aware that a mediator
20 had been selected.

21 Q. Former Justice Ed Peterson ring a bell?

22 A. I can't say -- confirm it does or not.

23 Q. Were you aware that the only thing that held up
24 scheduling that was Mr. Peterson had indicated that he had
25 retired and wasn't doing any mediations anymore?

1 A. I am aware there was conversations about
2 mediation, but I'm not aware of all the specifics, so I
3 don't recall the specifics.

4 Q. Were you the person authorized on behalf of the
5 city to manage the dispute resolution process?

6 A. Yes.

7 Q. Is there anybody that would have better
8 knowledge than you about dispute resolution process for
9 the city?

10 A. My attorney.

11 Q. Other than your attorney. I don't want to
12 depose him.

13 A. I would say that I would have the most
14 experience. I'm not familiar with the other people in the
15 office and their experience with those processes.

16 Q. Okay. But in terms of actually managing this
17 process, were you the person that was authorized, the
18 point person, so to speak, for the city?

19 A. Correct.

20 Q. So I don't need to depose somebody else and ask
21 them about management of the dispute resolution process?

22 A. Correct.

23 Q. And as you sit here today, you don't know if we
24 had selected a mediator or not?

25 A. I don't recall if the mediator was selected, no.

1 Q. Were you the person that made the decision to
2 proceed with arbitration?

3 A. Yes.

4 Q. Why did you make that choice?

5 A. Didn't see progress being made on mediation, so
6 we decided just to go to arbitration.

7 Q. You didn't see progress?

8 A. The city staff felt like we weren't making
9 progress, correct.

10 Q. But you didn't even know we had actually
11 selected a mediator and the mediator was unavailable?

12 A. You sent a letter in late November stating that
13 you had received our demands for mediation, but you hadn't
14 had time to respond yet. That was about a month after our
15 initial conversation.

16 Q. Okay.

17 A. And several weeks later we hadn't seen any
18 progress, so decided just to go ahead and go to
19 arbitration.

20 Q. You were aware that I sent an email on December
21 7th indicating that we had agreed to mediate and Ed
22 Peterson would be a good choice? Were you aware of that?

23 A. I'm aware there was conversations going on with
24 trying to set up mediation, correct. But I don't recall
25 specifically that information, no.

1 Q. You don't recall an email exchange with your
2 counsel where Mr. Martinak had said, yes, mediation, and,
3 yes, Ed Peterson?

4 A. I don't recall that. No, I don't.

5 Q. Why did you serve Mr. Martinak a complaint on
6 the eve of Christmas?

7 A. I wasn't -- I don't factor in what time frame it
8 may be.

9 Q. Why was it so urgent to file a lawsuit on the
10 eve of Christmas?

11 A. I didn't consider Christmas as a factor in when
12 I should file or not file a lawsuit. I don't look at
13 holidays.

14 Q. You don't?

15 A. I don't. I don't see how it's germane.

16 Q. All right. As you sit here, did Mr. Martinak --
17 from your understanding, did he ever reject the mediation
18 request?

19 A. Never re -- no, he did not reject the mediation
20 request. He had initially requested mediation.

21 Q. Right. In fact, I was the one that did that
22 back when you issued the stop work notice. Do you
23 remember that?

24 A. I do.

25 Q. I urged the city to take a step back from the

1 stop work process and to follow the contract?

2 A. There was a request to go to mediation as part
3 of the process, correct.

4 Q. Okay. Do you recall receiving anything from
5 JCNW from my office indicating that we were not willing to
6 mediate?

7 A. No.

8 MR. KUHN: Christine, Off the record for a
9 second.

10 (Discussion off the record, whereupon Deposition
11 Exhibit No. 101 was marked.)

12 BY MR. LOISELLE: (Continuing)

13 Q. I'm showing you what we've now marked as Exhibit
14 101. It's an email exchange Bates labeled City002774.

15 A. Uh-huh.

16 Q. I'll give you a minute to look at that, and I
17 may have some questions.

18 A. Okay. (Reviewing document.) Okay.

19 Q. This appears to be two emails. The initial one
20 from you to a group of folks, and then a response from a
21 Ms. Niegel, N-I-E-G-E-L.

22 A. Niegel.

23 Q. Niegel. Okay. Do you recall this email
24 exchange?

25 A. I do.

1 Q. Let's first talk about your email to the group.

2 A. Uh-huh.

3 Q. This is an email dated November 3, 2014.

4 A. Correct.

5 Q. And the subject is Phillips Estate?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. Who are you sending this email to?

10 A. Members of the governing body, and I carbon
11 copied Alissa Angelo, who is the deputy recorder.

12 Q. Okay. And why did you send this note?

13 A. Because we anticipated Mr. Martinak coming to
14 try to exert political pressure on the governing body to
15 lift the stop work order.

16 Q. Why did you anticipate that?

17 A. Common sense.

18 Q. Why were you concerned that Mr. Martinak would
19 attempt to exert political influence or political
20 pressure?

21 A. I believe that's Mr. Martinak's best chance to
22 try to get the stop work order lifted.

23 Q. And you didn't want that to occur?

24 A. No.

25 Q. Had city representatives indicated they wanted

1 you to provide them with information concerning the stop
2 work process?

3 A. No.

4 Q. So why did you feel it was important to let the
5 city know that there may be some inquiry coming from
6 Mr. Martinak?

7 A. I do that with -- any time I'm aware of issues
8 that may come up, so the governing body is prepared to
9 address them.

10 Q. And the response from Ms. Niegel -- is that
11 right?

12 A. Niegel. The "I" is silent.

13 Q. It looks like she responded about an hour after
14 your email?

15 A. Uh-huh. Yes.

16 Q. Who is Ms. Niegel?

17 A. She's a council member. She's also an attorney.

18 Q. How long has she been a council member?

19 A. Prior to my time, but I believe she's five
20 years. That's a best guess.

21 Q. Was she a council member at the time the city
22 had its executive session to weigh and consider the
23 proposed stop work order that you initially -- that you
24 eventually issued?

25 A. She was.

1 Q. So she was there -- do you recall if she was
2 there at the time?

3 A. My recollection is she was there, yes.

4 Q. And do you recall her message back to you?

5 A. I do.

6 Q. It sounds like she was asking you to explore the
7 authority you had to issue the stop work notice; is that
8 right?

9 A. Correct.

10 Q. Did you ever provide her with any sort of
11 writing or memorandum indicating the authority you had?

12 A. I believe I had a personal discussion with Ms.
13 Niegel about this.

14 Q. But you didn't put anything in writing?

15 A. Not that I recall.

16 Q. What did you share with her?

17 A. The same thing I shared prior, which is that my
18 contract, charter, municipal code, and advice of attorney
19 said I did have the authorization.

20 Q. And what you did tell her regarding the amount
21 of storm water that was being drained onto a third party's
22 property?

23 A. That we were aware that water was flowing to the
24 northwest onto private property and eventually ending up
25 in the Salem ditch.

1 Q. Did you tell her how much?

2 A. I did not.

3 Q. Did you tell her whether you had contacted the
4 property owner to find out if they had questions or
5 concerns?

6 A. I did not.

7 Q. Have you ever done that?

8 A. We have not contacted the property owner.

9 Q. But you told them that it was a concern of yours
10 and that it was potentially causing property damage?

11 A. I don't know if I said property damage, but I
12 was concerned that it put us in liability, yes.

13 Q. So you don't recall any follow-up to this note
14 in writing?

15 A. No.

16 (Deposition Exhibit No. 102 was marked.)

17 BY MR. LOISELLE: (Continuing)

18 Q. Here is Exhibit 102. I'll give you a second to
19 review that.

20 A. (Reviewing document.) Okay.

21 Q. Exhibit 102 is again email exchanges Bates
22 labeled City002791. And the initial email appears to be
23 from you to Dan Fleishman, dated November 12, 2014, and
24 then the second email is his response; is that correct?

25 A. Correct.

1 Q. It looks like he responded about 45 minutes
2 after you sent your note out.

3 A. I agree.

4 Q. And while it doesn't show up really well on this
5 copy, it appears that Mr. Fleishman provided you with a
6 red line of a letter that you intended to send to city
7 council members.

8 A. He provided, that is correct.

9 Q. And we could tell that by either the different
10 colored type or the mark-out, correct?

11 A. I'm making that assumption, yes.

12 Q. What was your purpose behind your email?

13 A. This was to the incoming governing body members
14 to let them know what was going on and that we would be
15 calling executive session, and to remind them about
16 ex-parte contacts.

17 Q. And Mr. Fleishman provided his response?

18 A. Correct.

19 Q. I want you to take a look at the third paragraph
20 of your proposed message to new council members, starting
21 with, "Mr. Martinak has declared that he plans to
22 circumvent working with City Staff and the City's legal
23 representation."

24 A. Okay.

25 Q. Do you recall that?

1 A. I do.

2 Q. What did Mr. Martinak tell you?

3 A. Mr. Martinak had sent messages to previous
4 governing body members directly trying to do this. And
5 also there was a request, and I don't recall exactly when,
6 there was a request to meet directly with the governing
7 body to resolve this matter.

8 Q. I want to make sure I understand your response.
9 You saw email correspondence or other inquiries from
10 Mr. Martinak directly with the governing body members?

11 A. Yes.

12 Q. And in those messages, did Mr. Martinak declare
13 that he planned to circumvent working with city staff?

14 A. His actions were seeming to indicate that he was
15 looking to circumvent working with city staff and go
16 directly to the governing body.

17 Q. Okay. So when you say Mr. Martinak has
18 declared, you mean his actions suggest that he is not
19 going to work with you any longer?

20 A. Tacitly declared through actions, correct.

21 Q. Did he ever tell you he wasn't going to work
22 with you?

23 A. No.

24 Q. Did he ever tell you that he was going to
25 circumvent working directly with city staff and just work

1 directly with city council members?

2 A. No.

3 Q. So this was your impression after watching what
4 Mr. Martinak was attempting to do?

5 A. Correct.

6 Q. Did you clarify that to the city council
7 members, that Mr. Martinak never made a formal declaration
8 that he was abandoning efforts to talk directly with city
9 staff?

10 A. I don't recall ever making such a statement.

11 Q. Was there anything that prevented Mr. Martinak
12 from reaching out directly to city council members?

13 A. At this point we had a stop work order in place
14 and were going through a process, so it's been advised of
15 ex-parte contacts that ex-parte contacts could jeopardize
16 any sort of future negotiations.

17 Q. I don't see in here where you warned them that
18 that's an improper ex-parte contact.

19 A. "The Mayor and City Council is, by law,
20 constrained in its practices to avoid conflicts of
21 interest, bias and must declare that ex-parte contacts."
22 That's the fourth paragraph down, about the third
23 sentence.

24 And then I go on to discuss that "consequence in
25 rendering ultimate vote/decision on any given matter," and

1 David Rhoten's advice on that as well, "prudence when
2 issues of bias, conflict of interest and ex-parte contacts
3 arise, endeavor to maintain objectivity in their actions."

4 Q. All right. You mentioned that -- you say that
5 this declared approach by Mr. Martinak is "contrary to the
6 city's established procedures in handling any and all
7 administrative matters." What established procedures are
8 you referring to?

9 A. The setup of a council-manager form of
10 government with a weak mayor is that I handle all
11 administrative duties under the policy making body.

12 MR. LOISELLE: Will you read that back, because
13 I'm not sure I caught that.

14 COURT REPORTER: (Read as requested.)

15 THE WITNESS: And that they are a
16 policy-making -- that council is a policy-making body.

17 BY MR. LOISELLE: (Continuing)

18 Q. I guess I'm having a hard time understanding
19 that response, so I'm going to try to drill down. Are
20 there procedures in place, written procedures in place on
21 how to handle all administrative matters?

22 A. No, but this is advice based off of where we
23 were legally in this matter, and concerns about ex-parte
24 contacts occurring between Mr. Martinak and new members of
25 the governing body. And Mr. Martinak had approached

1 previous members of the governing body individually, so we
2 were trying to warn them about ex-parte contacts.

3 Q. You referred -- I want to make sure I
4 understand. So you are talking about a protocol you had
5 previously established with the prior governing body
6 related to this specific dispute with Mr. Martinak?

7 A. We had warned of ex-parte contacts, correct.
8 And we became aware that Mr. Martinak was approaching
9 individual council members, and they came to me with
10 concerns of the ex-parte contacts as well, and so we were
11 trying to eliminate that concern.

12 Q. Maybe I can ask the question a little bit better
13 this way. There was nothing in writing, some protocol
14 that you had in place, for handling administrative matters
15 such as the dispute with JCNW?

16 A. This was based off the advice of our city
17 attorney, David Rhoten, on how we should proceed and in
18 recommending of how the governing body should handle this
19 matter.

20 (Deposition Exhibit No. 103 was marked.)

21 BY MR. LOISELLE: (Continuing)

22 Q. I'm handing you what we've now marked as Exhibit
23 103. That is a Statement of Claim issued by the City of
24 Stayton against JCNW before the Arbitration Service of
25 Portland. Is that correct?

1 A. It seems to be.

2 Q. Have you seen this document before?

3 A. I have.

4 Q. Did you review it before it was signed and
5 executed?

6 A. I did.

7 Q. Did you authorize your counsel to file this on
8 behalf of the City of Stayton?

9 A. I did.

10 Q. Did the city council review this and approve it
11 before it was filed?

12 A. No.

13 Q. Has this document ever been shared with the city
14 council?

15 A. I don't believe so, no.

16 Q. Did you review the specific factual allegations
17 on page 1 and 2 and 3?

18 A. I have.

19 Q. Are they true and accurate?

20 A. I appreciate you assuming that I'm
21 omnibenevolent, but I believe them to be true.

22 Q. Paragraph roman numeral III, Refusal to Timely
23 Mediate?

24 A. I'm sorry. What page is that on?

25 Q. The third page.

1 A. Third page. Okay.

2 Q. Did you believe that JCNW was unwilling to
3 mediate the issues?

4 A. I'll let the document speak for itself, yes.

5 Q. I don't understand that response.

6 A. "Respondent has refused to cooperate in even the
7 establishment of a mediation schedule for a period of
8 nearly 7 weeks." I believe that to be true.

9 Q. And you believe that based on conversations you
10 had with your attorney?

11 A. And correspondence we had with -- yes.
12 Correspondence with the attorney, correct.

13 Q. Well, you saw where actually my office was the
14 one that recommended that the city mediate the dispute,
15 right? You agree that my letter actually was urging
16 mediation, it wasn't rejecting it?

17 A. I guess I'm confused, because mediation isn't
18 required as per the agreement, correct?

19 Q. That's true.

20 A. Okay.

21 Q. But this is your claim, and you claim that JCNW
22 refused to timely mediate.

23 A. I believe that to be true.

24 (Deposition Exhibit No. 104 was marked.)

25

1 BY MR. LOISELLE: (Continuing)

2 Q. I'm showing you some email exchanges. I don't
3 have these Bates labeled, and I apologize. My paralegal
4 pulled these off of our system. The first email is from
5 me to your attorney, Mr. Lien, dated December 9, 2014. I
6 think you are looking on the wrong page.

7 A. I'm sorry. I was reading this one.

8 Q. That's okay. Do you see that email?

9 A. I do.

10 Q. Had you seen that email prior to authorizing the
11 filing of the complaint in this matter?

12 A. I've seen the email. I don't recall when I saw
13 it.

14 Q. Well, do you believe this was a refusal to
15 timely mediate the matter? Did this play into your
16 analysis?

17 A. Many things played into my analysis, this
18 included.

19 Q. Okay. And there is an email dated December 24th
20 from my office to your attorney. Do you see that?

21 A. I do.

22 Q. Had you seen this email previously?

23 A. I recall seeing this email previous to this --
24 today.

25 Q. You authorized the filing of the complaint on

1 December 18, 2014?

2 A. Correct.

3 Q. The week before Christmas, right?

4 A. Correct.

5 Q. And then you had it served before the holiday,
6 right?

7 A. Correct. I didn't look at when Hanukkah was, to
8 be honest.

9 Q. You understand that you are under oath?

10 A. I do.

11 Q. And that there will an transcript of this.

12 A. I do.

13 Q. Okay. I just wanted to make sure you
14 understand.

15 A. Okay.

16 Q. I take this seriously.

17 A. I do too. I didn't factor in what
18 Mr. Martinak's religious affiliation was before sending
19 this.

20 Q. Was there anything that required you to have
21 this filed and served urgently prior to Christmas?

22 A. Again, that was not a factor in my decision.

23 Q. You just completely disregarded the holiday
24 before you did it?

25 A. I make no assumptions about people's beliefs or

1 holidays or birthdays or celebrations or anniversaries.

2 Q. Okay. Did the city council members know that
3 you were going to serve Mr. Martinak before Christmas?

4 A. City council was aware at some point that we
5 were looking to move forward to arbitration.

6 MR. LOISELLE: Please read my question back.

7 COURT REPORTER: (Read as requested.)

8 THE WITNESS: I can't say.

9 MR. LOISELLE: Give me a minute or two, Rick,
10 and Wally, and I may be done.

11 MR. KUHN: Okay.

12 (Recess taken.)

13 BY MR. LOISELLE: (Continuing)

14 Q. Back on the record real quick. Did you have a
15 chance to confer with counsel during the break?

16 A. I did.

17 Q. Do you want to change or alter any of your --

18 A. No.

19 Q. I'm done. You have a chance to review the
20 deposition transcript and ensure that it's accurate. It's
21 not a chance to change your testimony --

22 A. Okay.

23 Q. -- now, so that's set. But if the court
24 reporter missed a word or mistyped something, heaven
25 forbid --

1 A. I'm sure you didn't.

2 Q. It's more likely that we misspoke. -- you have
3 a chance to correct that.

4 A. Okay.

5 MR. LOISELLE: We're done.

6 MR. KUHN: Okay.

7 * * *

8 (Deposition concluded at 12:03 p.m.)

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CERTIFICATE

1
2 STATE OF OREGON)
3 County of Marion) ss.
4

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

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

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

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

18 WITNESS my hand and seal this 24th day of April,
19 2015.

20 _____
21 Christine E. Shepard, CSR, RPR
22 CSR No. 09-0412
23
24
25