

CITY OF LAKE SAINT LOUIS
BUILDING APPEALS BOARD
APRIL 24, 2019, Wednesday
Lake Saint Louis City Hall
200 Civic Center Drive
REGULAR MEETING
10:00 A.M.
AGENDA

CALL TO ORDER:

ROLL CALL:	PRESENT	ABSENT
RUSTY GUNTHER, CHAIRMAN	X	
SANDY HARRIS	X	
RAY RUDY	X	

Paul Markworth, City Administrator
Louis Clayton, Director of Community Development
Derek Koestel, Director of Public Works
Mike Pavlakes, Chief Building Official
Matt Kuelker, Public Works
Michelle Debord, Permit Technician

Hearing

ITEM 1
Hawk Ridge on the Green Detention Basin

GENERAL DISCUSSION

ADJOURNMENT

HULL REPORTING
217 Glasgow Drive
Saint Charles, Missouri 63301
636-946-1354

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A P P E A R A N C E S

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For Hawk Ridge on the Green
Homeowners' Association

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1 (At 10:00 a.m., the following
meeting was had:)

2
3 CHAIRMAN GUNTHER: The Building Appeals Board
4 meeting has been called to order. I take a roll call.
5 Sandy Harris?

6 MS. HARRIS: Here.

7 CHAIRMAN GUNTHER: Ray Rudy?

8 MR. RUDY: Here.

9 CHAIRMAN GUNTHER: And myself, Rusty Gunther.
10 The City like to make their positions known prior to
11 this meeting?

12 MR. MURRAY: Yes. Good morning. I'm Harry M.
13 Mark Murray, IV, here for the City of Lake Saint Louis.

14 CHAIRMAN GUNTHER: Could you speak up?

15 MR. MURRAY: Sure, Harry M. Mark Murray, IV,
16 here for the City of Lake Saint Louis. I believe we --
17 Mr. James, who's representing the HOA, and I both would
18 like to make a brief opening statement, but Mr. James
19 has a Motion to Dismiss that he wanted to present before
20 doing so.

21 MR. JAMES: Good morning. My name is Mike
22 James. I represent the Hawk Ridge on the Green
23 Homeowners' Association. And I understand that we're
24 here today in connection with a request for a review by
25 this body of a decision that was made by the chief of

1 police making a determination that a detention basin
2 that's located in the Hawk Ridge on the Green
3 Subdivision is a nuisance and that the nuisance
4 condition that the chief determined to exist must be
5 abated within a certain period of time.

6 And we lodged a letter with this Board
7 requesting that you review that determination I believe
8 back in September of last year. And that's the purpose
9 of our being here before you today.

10 Prior to today, I filed with this Board a Motion
11 to Dismiss the underlying determination that was made by
12 the chief. That Motion was in writing. I do not know
13 if that was distributed to you or not. If it -- did you
14 receive a copy of that Motion?

15 CHAIRMAN GUNTHER: I have not.

16 MR. JAMES: Okay. Well, in that event, I will
17 deliver to you a copy of the Motion. And I will hand it
18 to the court reporter or whomever you direct, and I will
19 briefly outline the basis for my request that you make
20 that determination.

21 And essentially it boils down to some specific
22 legal challenges to the manner in which the underlying
23 determination was made. Principally in that respect,
24 I'm suggesting to this Board that the ordinances under
25 which the determination was made are unconstitutional.

1 I think you might say why am I raising that
2 issue with you? You're not the Supreme Court. My
3 opinion is that if I believe that there's a
4 constitutional defect in a city ordinance, I must raise
5 it at the earliest opportunity. And I believe this to
6 be the earliest opportunity that the Hawk Ridge on the
7 Green Subdivision would have to raise that issue
8 formally.

9 And the basis for that is that the ordinance
10 suggests that a nuisance can be determined based upon
11 some finding that the subdivision hasn't exercised a
12 reasonable degree of maintenance with respect to the
13 detention basin.

14 And our position is that the ordinance is
15 unconstitutionally vague as to what is required under
16 the ordinance or, in this case, the subdivision to
17 comply with what the ordinance requires.

18 And if you agree with that proposition that the
19 underlying ordinances are unconstitutionally vague, then
20 the whole proceeding is defective and the chief's
21 determination should be set aside. And, presumably, the
22 City will go back and rewrite its ordinances to correct
23 the constitutional defect.

24 And so -- and specifically I'm challenging
25 Sections 425.368 and 425.369 of the municipal code based

1 upon this -- the meaning of the phrase a reasonable
2 degree of maintenance.

3 I will note that in the code, there is a
4 indication that the City relies on a publication known
5 as the Stormwater Wet Pond and Wetland Management
6 Guidebook with respect to issues that relate to
7 maintenance of facilities of this kind.

8 However, the storm water facility that we're
9 talking about today is a dry pond. That's the way it's
10 denominated on the inspection reports that were prepared
11 by the City and that's how it's considered for purposes
12 of this proceeding.

13 The Stormwater Wet Pond and Wetland Management
14 Guidebooks specifically say that the guidelines that
15 they express do not apply to dry ponds. So even if you
16 were to say, well, the City attempted to address it in
17 its ordinance structure by incorporating this document,
18 this document doesn't provide the guidance that's
19 required with respect to maintenance of these
20 facilities.

21 So that's the principal reason why we're
22 challenging the underlying proceeding. But beyond that,
23 the ordinance structure, if you said the ordinances are
24 constitutional, then you have to look at how this
25 proceeding was conducted.

1 And we've taken issue with how the chief
2 exercised his jurisdiction that's provided for this
3 proceeding to take place before him. And I'm not going
4 to go through ever single issue that I've addressed in
5 my Motion. I'll leave that to you to read after you
6 have heard the case.

7 But fundamentally what happened was the chief
8 received some information at a couple of hearings. And
9 then he wrote a letter on September the 17th that said,
10 "If one of these two conditions exist, then I believe
11 that there would be a nuisance within the meaning of the
12 statute -- of the ordinance. But I'm going to defer to
13 the city engineer to make that determination."

14 And, in my opinion, that's a -- an improper
15 delegation of the authority that the ordinance vests in
16 the chief to make the determination under the way the
17 ordinance is lined out; that if the City believes
18 there's a nuisance and a hearing is held before the
19 chief, it's the chief's responsibility to make the
20 determination about it, not to kick it over to the city
21 engineer saying, "Tell me if there is a nuisance."

22 Essentially that's what happened here. The
23 chief basically delegated the determination to the city
24 engineer who wrote an e-mail in response to the chief's
25 letter saying, yes, that condition exists. And,

1 subsequently, the chief then wrote a letter stating
2 there's a nuisance and it must be abated.

3 So, in my opinion, the underlying proceeding
4 before the chief, when it got to that point, his
5 delegation to the city engineer was an impermissible act
6 and inconsistent with the City's own ordinance structure
7 in terms of how these proceedings are to be conducted.

8 So I will -- I'll highlight those matters within
9 my Motion and -- so before any proceedings are held, I
10 would simply ask that the Board dismiss the --

11 CHAIRMAN GUNTHER: Can you leave us a copy of
12 that?

13 MR. JAMES: Sure. Would you like me to leave it
14 with the court reporter or with you or with --

15 CHAIRMAN GUNTHER: Well, I'd -- we'd all like a
16 copy if we can get a copy of that. At this point, I
17 think we probably wouldn't be talking about that for a
18 while here so.

19 MR. JAMES: Right. It was filed electronically
20 with the City or delivered electronically to the City.
21 I believe Mr. Clayton was sent a copy of it last week.
22 So if you need additional hard copies --

23 CHAIRMAN GUNTHER: If we could have a hard copy,
24 I'm sure other people are going to be talking about it
25 this morning.

1 MR. JAMES: I'll leave my copy with you so.

2 The other preliminary matter I'd like to address
3 with you beyond that Motion is if the Board intends to
4 proceed with the hearing, I would ask that the Board at
5 the conclusion of the hearing -- I believe it's required
6 to do this anyway under the ordinance, but I'm going to
7 specifically file a request that you make written
8 findings of fact and conclusions of law with respect to
9 the matters that are before you today.

10 And I have a written request for that which I'll
11 hand you.

12 CHAIRMAN GUNTHER: Okay.

13 MR. JAMES: And I'll provide a copy to counsel
14 for the City. Those are the only preliminary matters I
15 have. I --

16 CHAIRMAN GUNTHER: Okay.

17 MR. JAMES: Do you want to go first, Mark?

18 MR. MURRAY: Sure. I address Mr. James's last
19 point, the City would also request you make findings of
20 fact and conclusions of law. And we would suggest that
21 after the conclusion of today's hearing, that both the
22 HOA and the City submit proposed findings of fact and
23 conclusions of law to you for your consideration.

24 I don't know if Mr. James has any objections to
25 that.

1 MR. JAMES: If that's the Board's pleasure,
2 we'll certainly do that.

3 MR. MURRAY: And with respect to Mr. James's
4 Motion to Dismiss, the City believes its ordinances are
5 valid. And there was a defect in our prior meeting
6 before the chief. That's why we're here today as a
7 curative effort to have this case reheard and redecided
8 by the Building Appeals Board.

9 So I'll go on with my opening very briefly. Mr.
10 James touched on it. This is a matter involving a
11 detention basin in Hawk Ridge on the Green, this
12 Detention Basin A. In December of 2015, the City
13 conducted an inspection of that basin and notified the
14 trustees of the HOA of defects concerning the condition
15 of the basin.

16 Since that time, there have been multiple
17 meetings involving the City and the HOA, counsel for the
18 City, counsel for the HOA in an attempt to resolve this
19 dispute and to have those deficiencies corrected.

20 To date, there are at least three remaining
21 conditions uncorrected from the December 2015 inspection
22 and as supplemented by conversations and e-mails and
23 correspondence between the parties after that date.

24 And so with that, the City would like to present
25 its first witness to the Building Appeals Board. We'd

1 like to call Doug Heinsohn, please.

2 MR. JAMES: Mark, do you want me to wait to give
3 my opening statement?

4 MR. MURRAY: Oh, I'm sorry, no. You want to
5 give yours?

6 MR. JAMES: Sure.

7 MR. MURRAY: Doug, go sit down, I'm sorry.

8 Also, I believe we can talk about this but we
9 stipulated that the City of Lake Saint Louis Municipal
10 Code would be admitted into evidence. Is that --

11 MR. JAMES: Right.

12 MR. MURRAY: And we produced it.

13 MR. JAMES: Right.

14 MR. MURRAY: And we have two or three other
15 documents I'll show you which will be stipulated to.
16 Otherwise, we'll go from there.

17 CHAIRMAN GUNTHER: Can you come up closer to the
18 mic, too, closer to the mic.

19 MR. JAMES: (Complied.)

20 CHAIRMAN GUNTHER: There you go.

21 MR. JAMES: So the specific document that
22 contains the chief's determination is a letter dated
23 September 21, 2018. And that letter specifically
24 states, "I find that the detention basin in question is
25 a nuisance based on it being a danger to public health

1 and safety from an unsafe condition because the city
2 engineer has determined that the basin does not properly
3 function due to its inability to hold the appropriate
4 volume of water which may cause a roadway to flood."

5 I believe it's that specific sentence that is at
6 the heart of what the analysis today will be about
7 setting aside the questions about the constitutionality
8 of the ordinance, setting aside the procedure that the
9 chief pursued to reach that conclusion.

10 I believe the information you will hear today
11 will establish that the detention basin actually does
12 function as it is -- these facilities are designed to
13 function. It detains water after a period of rain and
14 then releases it from the detention area through the
15 structures that are part of the detention facility
16 downstream.

17 And specifically we believe that after hearing
18 the information you will today, that you will reach the
19 conclusion that, in fact, there is no basis upon which
20 to reach the conclusion that the detention basin may
21 cause a roadway to flood. And it's the chief's concern
22 that if a roadway were to flood, that that would
23 potentially cause a risk of injury to persons because of
24 the inability to use the roadway.

25 So it -- again, I think the evidence you will

1 hear will establish that there is no risk of flooding
2 based upon the way the detention basin is operational
3 even considering the information that you'll hear from
4 the city engineer. Thank you.

5 MR. MURRAY: All right. The City would like to
6 call Doug Heinsohn, please, to the stand.

7 DOUG HEINSOHN,
8 produced, sworn and examined on behalf of the City,
9 testifies and says:

10 DIRECT EXAMINATION

11 BY MR. MURRAY:

12 Q. Can you state your name into the record, please.

13 A. Doug Heinsohn.

14 Q. And, Mr. Heinsohn, what is your occupation?

15 A. Construction inspector with the City of Lake
16 Saint Louis.

17 Q. How long have you been with the City of Lake
18 Saint Louis?

19 A. Approximately five years.

20 Q. And what are your responsibilities for the City
21 of Lake Saint Louis?

22 A. Storm water detention, retention basins
23 inspection, storm water protection.

24 Q. Does that include inspecting storm water
25 improvements?

1 A. Yes.

2 Q. Are you familiar with what's been referred to as
3 Hawk Ridge on the Green Detention Basin A?

4 A. Yes.

5 Q. If I refer to that as the detention basin, will
6 you understand that's what I mean?

7 A. Yes.

8 Q. Did you inspect the detention basin?

9 A. Yes.

10 Q. What was the approximate date of that
11 inspection?

12 A. December of 2015 as well as December of 2018.

13 (Exhibit No. 1 marked.)

14 Q. I hand you what's been marked as Exhibit 1. Can
15 you identify what Exhibit 1 is?

16 A. I'm sorry?

17 Q. Can you identify what Exhibit 1 is?

18 A. It's the letter I wrote with the deficiencies
19 involving the basin.

20 Q. And did that explain to the HOA your
21 understanding of the deficiencies of the basin at that
22 time?

23 A. Yes.

24 Q. And when was your last visit to the basin?

25 A. The last inspection, 2018 December.

1 Q. Did you take any pictures during that visit?

2 A. Yes.

3 (Exhibit No. 2 marked.)

4 Q. I'm going to hand you what -- I handed you
5 what's been marked as Exhibit 2. Is that a photo you
6 took in December 2018?

7 A. Yes.

8 Q. And what does that photo depict?

9 A. It's an overall basin view looking east, I
10 believe, towards the outfall structure.

11 Q. And can you describe what the -- what that path
12 of water in the middle of that picture is?

13 A. It's the channel that's been cut since the
14 2015 --

15 Q. Okay.

16 A. -- inspection.

17 Q. Okay.

18 (Exhibit No. 3 marked.)

19 Q. I handed you a picture marked as Exhibit 3. Did
20 you take that picture?

21 A. Yes.

22 Q. And can you describe what that picture is?

23 A. It's a view standing at the outfall structure
24 with -- showing debris accumulation on top of it looking
25 west towards the inflow structure, inflow point.

1 Q. And are these accurate pictures that -- are
2 these accurate copies of the pictures you took in
3 December of 2018, Exhibits 2 and 3?

4 A. Yes.

5 Q. And what is the main differences between the
6 conditions of the basin in 2018 as depicted in these
7 photos and what you saw in 2015?

8 A. Some of the sediment -- I mean some of the
9 vegetation, the vegetation has been removed. And
10 approximately a 5-foot wide channel has been cut for a
11 flow; whereas, before in 2015, it kind of meandered
12 throughout the basin until it found its way out of the
13 structure.

14 Q. And approximately how deep of a cut was made to
15 create that channel?

16 A. 2 or 3 feet would be my guess.

17 Q. That's all I have for you at this time.

18 CROSS-EXAMINATION

19 BY MR. JAMES:

20 Q. It's Mr. Heinsohn?

21 A. Yes.

22 Q. Could I ask you to refer to City Exhibit 1.

23 MR. JAMES: Is a copy of that document provided
24 to the Board?

25 MR. MURRAY: No, we've got copies.

1 CHAIRMAN GUNTHER: We're going to need --

2 MR. MURRAY: We'll get copies.

3 Q. (By Mr. James) So Exhibit 1 consists of not
4 only your cover letter but also a copy of a -- the
5 second page is a Pond/Wetland Maintenance Inspection
6 Form; is that correct?

7 A. Yes.

8 Q. And that's dated December 8, 2015; is that
9 right?

10 A. Yes.

11 Q. And you're listed as the inspector who conducted
12 the inspection and completed the form; is that right?

13 A. Yes.

14 Q. On the first -- on the top of the page, there's
15 a section for Type of Practice it looks like. Do you
16 see that?

17 A. No.

18 Q. It describes the type of structure that you're
19 evaluating; is that -- or inspecting?

20 A. Right, dry pond.

21 Q. I'm sorry?

22 A. Yes.

23 Q. It indicates that you're inspecting a dry pond;
24 is that right?

25 A. Correct.

1 Q. And, as I understand it, your -- the
2 deficiencies that you determined to exist by reason of
3 that inspection are those that are listed on the first
4 page in your letter; is that -- of Exhibit 1; is that
5 right?

6 A. Correct, that's a summary of the inspection
7 report.

8 Q. And there are three items listed, excessive
9 woody vegetation, No. 1; No. 2, excessive debris
10 accumulate at the outfall structure; and, No. 3, basin
11 needs to be regraded to the W inflow point where it is
12 ponding; is that correct?

13 A. Correct.

14 Q. Right. Is there any indication in your letter
15 that the detention basin does not hold an adequate
16 volume of water?

17 A. No.

18 Q. And is there any indication in your report
19 anywhere that the condition of the basin at the time
20 your inspection was performed would cause or contribute
21 to cause downstream flooding?

22 A. That's usually not a condition of the
23 inspection.

24 Q. I didn't ask that question. I asked you if in
25 your report, you made a determination based upon your

1 inspection that the condition of the basin at the time
2 you inspected it would cause or contribute to cause
3 downstream flooding?

4 A. No.

5 Q. And, to your knowledge, after you wrote this
6 letter, item No. 1 was excessive woody vegetation
7 throughout the basin, was your finding in that respect,
8 was that addressed? Was that condition abated, to your
9 knowledge?

10 A. When?

11 Q. At any point --

12 A. By the next --

13 Q. -- in time --

14 A. By the next inspection?

15 Q. At any point in time between the time of the
16 inspection and today, was that condition abated?

17 A. Yes.

18 Q. And the item No. 2 which is excessive debris
19 accumulation at the outfall structure, at any time after
20 your inspection, to your knowledge, was that condition
21 abated?

22 A. No.

23 Q. It was not?

24 A. No.

25 Q. And, finally, the last item, the basin needs to

1 be regraded at the W inflow point where it is ponding,
2 was there any grading done in the area of the W inflow
3 point where it was ponding?

4 A. No.

5 Q. All right.

6 A. The scour hole still exists.

7 Q. Scour still exists.

8 A. Yes.

9 Q. So the trench, there was some grading that was
10 done. But, in your opinion, that grading did not
11 address the item No. 3; is that right?

12 A. Correct.

13 MR. JAMES: I don't have any other questions for
14 him.

15 REDIRECT EXAMINATION

16 BY MR. MURRAY:

17 Q. Mr. Heinsohn, real quick, on the excessive
18 debris accumulation in your notice, do you know if some
19 of that debris had been removed prior to today but
20 there's additional debris out there today?

21 A. When I first visited in 2015, it was completely
22 covered and choked off. These pictures in 2018 show
23 that some of it's been removed, but I don't know if
24 that's by nature or if someone has actually gone in
25 there and maintained it.

1 Q. Okay.

2 MR. MURRAY: I have no other questions, but I
3 would move for the admission of Exhibits 1, 2 and 3.

4 MR. JAMES: I have no objection to Exhibit 1.
5 My objection to Exhibits 2 and 3 is that they depict a
6 condition in December of 2018 which is after the
7 nuisance violation notice was issued to the homeowners'
8 association in June of 2018, June 7 of 2018.

9 And it, in fact, is after the date that the
10 chief of police made his determination finding of a
11 nuisance on September 21 of 2018. So those pictures
12 could not accurately depict the condition of the basin
13 at the time the City wrote its original nuisance
14 violation letter in June of 2018.

15 It certainly couldn't depict whatever it was the
16 chief was observing or considering at the time he made
17 his decision. And so for that reason, I think that
18 those photographs are irrelevant. They don't provide
19 any information --

20 CHAIRMAN GUNTHER: Your objection's noted.

21 MR. JAMES: Thank you.

22 CHAIRMAN GUNTHER: Okay.

23 MR. MURRAY: Next, the City would like to call
24 Matt Kuelker, please.

25 MATT KUELKER,

1 produced, sworn and examined on behalf of the City,
2 testifies and says:

3 DIRECT EXAMINATION

4 BY MR. MURRAY:

5 Q. Can you state your name for the record, please.

6 A. Matt Kuelker.

7 Q. And, Mr. Kuelker, what is your occupation?

8 A. I'm a senior project manager.

9 Q. Are you a professional engineer as well?

10 A. I am.

11 Q. How long have you been with the City of Lake
12 Saint Louis?

13 A. I've been working for the City since 2011, been
14 in this position since 2014.

15 Q. And what was your prior position with the City
16 of Lake Saint Louis?

17 A. I was a construction inspector.

18 Q. As a senior project manager, what are your
19 responsibilities?

20 A. I manage storm water projects and review
21 construction plans for residential and commercial
22 developments within the City.

23 Q. Does that include inspecting storm water
24 improvements?

25 A. It does.

1 Q. Are you familiar with what they call Hawk Ridge
2 on the Green Detention Basin A?

3 A. I am.

4 Q. If I refer to that as the detention basin, will
5 you understand what I mean?

6 A. I will.

7 Q. Have you visited the detention basin?

8 A. I have.

9 Q. About how many times?

10 A. Four or five times.

11 Q. And what was the approximate date of your first
12 visit?

13 A. The first visit occurred approximately spring
14 2016.

15 Q. What did you see at that time of that visit?

16 A. I saw the conditions that were listed in the
17 inspection report of December 2015 as well as a buildup
18 of sediment in the bottom of the basin.

19 Q. Was Mr. Heinsohn with you at that visit in 2016?

20 A. I believe so.

21 Q. And what did you and he do in terms of
22 determining the amount of built-up sediment?

23 A. We took a inspection probe down to the bottom of
24 the basin and probed through the soil to see if we could
25 determine how deep it was from the top to the bottom

1 concrete channel that we believe is in there due to the
2 -- it being shown on the construction plans of the
3 subdivision.

4 Q. And about how many different points of the basin
5 did you do that in?

6 A. Five or six.

7 Q. And what did you do with the information you
8 observed and gathered at that site visit?

9 A. We then notified the HOA that there was sediment
10 buildup in addition to the items listed in the report.

11 Q. Do you recall if that was by e-mail or phone or
12 some other form of communications?

13 A. I believe it was by e-mail.

14 Q. Subsequent to that 2016 visit, have you had any
15 other meetings with HOA?

16 A. We've had several meetings, yes.

17 Q. What were the nature of the discussions you had
18 with the HOA since then?

19 A. They were all pretty similar in nature. It all
20 had to do with ways to go about correcting the
21 deficiencies that were listed on the report as well as
22 removing the buildup of sediment in the basin.

23 (Exhibit No. 4 marked.)

24 MR. MURRAY: I'm going to move for the admission
25 of Exhibit 4 which I will give you a copy of. I believe

1 Mr. James will stipulate that's the Notice of the
2 Nuisance Hearing from the chief and also included a copy
3 of the notice of violations achieved by the City.

4 MR. JAMES: Mine has got two copies of the
5 Notice of Nuisance Hearing.

6 MR. MURRAY: Here it is.

7 MR. JAMES: Oh, okay. That's fine, I have no
8 objection to Exhibit 4 other than it's hard to read.

9 (Exhibit No. 5 marked.)

10 Q. (By Mr. Murray) Mr. Kuelker, I've handed you
11 what's been marked Exhibit 5. Can you identify what
12 Exhibit 5 is?

13 A. Yes, this was a letter dated May 9, 2018, and a
14 -- I guess another attempt to contact the HOA from the
15 letter that was originally sent April 19, 2018, asking
16 them for a plan and schedule for completing the
17 detention basin work that they had started in the winter
18 of 2017, 2018.

19 So this letter is just asking for the schedule
20 that was requested in April 20 -- April 19 and advising
21 them that the basin is still currently in violation of
22 several City codes as it sat at that time.

23 Q. Is this a true and accurate copy of the letter
24 you sent?

25 A. It is.

1 Q. Is it a copy -- is this the letter a copy of --
2 it's a copy of a letter that you keep in the ordinary
3 course of the City's business?

4 A. It is.

5 MR. MURRAY: I move for admission of Exhibit 5.

6 MR. JAMES: I have no objection.

7 (Exhibit No. 6 marked.)

8 Q. (By Mr. Murray) Mr. Kuelker, I've handed you a
9 copy of what's been marked Exhibit 6. Can you identify
10 what that is, please.

11 A. Yes. This is a letter that was dated June 5,
12 2018, provides a brief summary of what deficiencies
13 exist in the basin and what needs to be addressed in
14 order to bring it into compliance with City's standards.

15 Q. Is that a true and accurate copy of the letter
16 you sent to HOA?

17 A. It is.

18 Q. And is this a document in the ordinary course of
19 the City's business?

20 A. It is.

21 MR. MURRAY: I move for the admission of Exhibit
22 6.

23 MR. JAMES: I have no objection.

24 Q. (By Mr. Murray) Mr. Kuelker, you mentioned
25 earlier that there had been some work by the HOA on the

1 creek basin.

2 A. Yes.

3 Q. And I should say detention basin, not creek
4 basin. Can you identify what work they did do?

5 A. Yes. They -- to my knowledge, they cut or
6 graded the channel in the center of the basin to
7 alleviate the standing water at the west most inflow
8 point, removed some of the woody vegetation that was
9 growing inside the basin and cleaned off the outfall
10 structure.

11 Q. And was that before the dated May 9, 2018,
12 letter, to your knowledge, that work?

13 A. May 9, yes. That work occurred in the winter of
14 2017, I believe.

15 Q. And, to your knowledge, did the HOA ever
16 complete the work addressed and the violation addressed
17 in your May 9 and June 5 letters?

18 A. Not all of the items listed have been fully
19 addressed, no.

20 Q. Thank you.

21 CROSS-EXAMINATION

22 BY MR. JAMES:

23 Q. So I want to focus on the last couple of
24 statements you made about things that have been
25 accomplished by the homeowners' association in response

1 to these inspections that were performed. And I'd like
2 you to look at the City's Exhibit 1, if you have that
3 there. It's the --

4 A. The inspection report?

5 Q. Correct.

6 A. Okay.

7 Q. The December 8, 2015, letter that includes the
8 Pond/Wetland Maintenance Inspection Form.

9 A. Okay.

10 Q. So if I direct your attention to the first page
11 of Exhibit 1, it lists three deficiencies in the middle
12 of that page.

13 A. Uh-huh.

14 Q. I thought I heard you just say that the
15 excessive vegetation had been removed; is that correct?

16 A. Correct.

17 Q. I thought I heard you say that the degree -- the
18 debris accumulated at the outfall structure had been
19 resolved; is that correct?

20 A. What was accumulated on there was cleaned off at
21 some point, yes.

22 Q. And I thought I also heard you say that a
23 channel was cut that alleviated the ponding.

24 A. Yes. There was standing water there that was
25 drained due to the channel being cut.

1 Q. So based upon your observation, the three items
2 that are listed on this December 8, 2015, letter had
3 been addressed and resolved at least at some point in
4 time during an inspection that you made.

5 A. In my opinion, 1 and 2 have been; 3 is not,
6 which was the basin graded at the west inflow for the
7 ponding.

8 Q. So --

9 A. It wasn't stabilized.

10 Q. I'm sorry?

11 A. It wasn't stabilized, though, but the water has
12 drained.

13 Q. So the water has drained so that there -- the
14 ponding condition that's identified in the letter has
15 been addressed; is that correct?

16 A. Correct.

17 Q. Now, you also indicated that on some occasion,
18 you -- I believe you indicated this occurred in the
19 spring of 2016 -- you took a probe and went out to the
20 basin and stuck it in the ground --

21 A. Correct.

22 Q. -- in various locations; is that correct?

23 A. Uh-huh.

24 Q. You believe at that time that there was a
25 concrete swale that had been constructed throughout the

1 middle of the basin; is that correct?

2 A. Correct.

3 Q. To your knowledge, your belief in that regard
4 was due to what?

5 A. A hard surf bottom that I was hitting with the
6 edge or the end of the metal tip of the probe.

7 Q. Had you reviewed any plans for the construction
8 of the basin to know whether or not a concrete swale was
9 to have been constructed as part of that facility?

10 A. All we have is the initial const -- design plans
11 that show a bas -- or a swale being there. We don't
12 have anything else with regard to that.

13 Q. So just so we're clear, my understanding is the
14 City has a record that was created at or about the time
15 that the detention pond was constructed that indicates
16 that a concrete swale was to be part of the construction
17 of the detention basin; is that correct?

18 A. Correct.

19 Q. As a subsequent inspection of that area, have
20 you determined whether or not a concrete swale exists?

21 A. It does not appear so.

22 Q. So what you were actually hitting with a probe
23 wasn't a concrete swale that had been installed. It was
24 apparently existing bedrock; is that right?

25 A. Correct.

1 Q. Did you perform any type of survey at any time
2 to determine the degree of any sedimentation of the
3 basin?

4 A. Can you elaborate or --

5 Q. Do you know what a survey --

6 A. I don't understand.

7 Q. -- is?

8 A. Yes.

9 Q. Surveys perform -- how do you perform a survey?

10 A. It depends on what you're looking for.

11 Q. You're trying to determine slopes and volumes
12 and things of that kind relative to the --

13 A. I have -- I did not do any survey work related
14 to that, no.

15 Q. So the -- other than taking the probe on this
16 one occasion and pushing it into the ground in an effort
17 to -- exactly what were you anticipating would occur
18 when you put the probe into the ground? I mean, did you
19 expect to hit something?

20 A. Yes, I expected to hit the concrete swale that I
21 believed to be at the bottom of the basin --

22 Q. All right.

23 A. -- which would give you your flow line of the
24 basin. And from there you would determine, you know,
25 how much sediment has actually accumulated in there so

1 it would give you your start point.

2 Q. All right. Did you do a calculation of the --
3 you didn't do a survey. We know that. Did you do a
4 calculation of the number of cubic feet of sediment that
5 you believe existed in the basin at the time you --

6 A. Yes.

7 Q. And you made that calculation.

8 A. Uh-huh.

9 Q. And how did you do that?

10 A. Took the area of the footprint, multiplied it by
11 the depth of what it -- the sediment was.

12 Q. And is that calculation contained within some
13 City record?

14 A. I'm not sure if that's in the official record or
15 not.

16 Q. In the communications that you indicated you
17 believe you said you sent an e-mail to someone about
18 sediment, you sent an e-mail to somebody on behalf of
19 the homeowners' association about that issue, do you
20 have a copy of that e-mail?

21 A. It was three years ago. I'm sure I probably do
22 somewhere. It's either on the server or printed out,
23 yeah.

24 Q. You don't have it with you here today.

25 A. No.

1 Q. Did that e-mail indicate the number of square
2 feet of sediment that you found based upon this
3 calculation?

4 A. I don't know the content of that e-mail.

5 Q. You do not recall the content --

6 A. It was --

7 Q. -- of that e-mail?

8 A. -- three years ago, yeah.

9 Q. You recall that the content of the e-mail
10 related to sediment but you don't recall anything else
11 about it.

12 A. Correct.

13 Q. Did the letter that was sent -- let me direct
14 your attention to Exhibit 6.

15 A. Okay.

16 Q. Exhibit 6 is a letter that you wrote on June 5,
17 2018; is that correct?

18 A. Correct.

19 Q. And does your letter indicate the amount of
20 sediment that, in your opinion, should be removed from
21 the basin?

22 A. Does not.

23 Q. Let me direct your attention to Exhibit 4,
24 actually the last page of Exhibit 4 which is on the
25 reverse side of the second page.

1 A. Okay.

2 Q. The last page of Exhibit 4 appears to be a
3 Nuisance Violation dated June 7, 2018, and it appears to
4 be signed by Louis Clayton; is that correct?

5 A. Correct.

6 Q. And Mr. Clayton at the time was the Director of
7 Community Development.

8 A. Correct.

9 Q. Does the Nuisance Violation letter dated June 7,
10 2018, indicate the amount of sediment that is to be
11 removed from the basin?

12 A. It does not look like it, no.

13 Q. Thank you. I don't have any other questions for
14 you.

15 MR. MURRAY: No further questions right now.
16 The City would like to call Derek Koestel.

17 DEREK KOESTEL,
18 produced, sworn and examined on behalf of the City,
19 testifies and says:

20 DIRECT EXAMINATION

21 BY MR. MURRAY:

22 Q. Can you state your name, please.

23 A. My name's Derek Koestel.

24 Q. And what is your occupation?

25 A. I'm the Director of Public Works for the City of

1 Lake Saint Louis.

2 Q. And how long have you been with the City of Lake
3 Saint Louis?

4 A. Since 2005.

5 Q. What are your responsibilities as the Director
6 of Public Works?

7 A. I manage the Public Works Department. The
8 Department's responsibilities are facility maintenance,
9 street and storm water maintenance. And we also do a
10 sanitary sewer and -- sanitary sewer lateral and a water
11 service entrance program.

12 Q. Do your duties include inspecting and managing
13 the storm water improvements in the City?

14 A. From time to time but, typically, I have other
15 staff members perform those day-to-day tasks.

16 Q. Are you a professional engineer with the City --
17 of the City of Lake Saint Louis?

18 A. I am.

19 Q. Are you licensed by the State of Missouri?

20 A. I am.

21 Q. Even though other people are performing the
22 day-to-day work on the storm water -- I'm sorry, are you
23 familiar with the requirements of the City of Lake Saint
24 Louis with respect to the storm water?

25 A. I am.

1 Q. Does the City of Lake Saint Louis have what's
2 called a NPDES permit?

3 A. We do.

4 Q. Can you explain what that is?

5 A. The NPDES permit stands for National Pollutant
6 Discharge Elimination program. It's a program that is
7 required by the US EPA. And in Missouri, it's
8 administered by the Missouri Department of Natural
9 Resources.

10 This is a permit that every city with storm
11 sewers or county, any governmental agency with storm
12 sewers has to set up through the State. It requires us
13 to do certain activities to reduce storm water
14 pollution.

15 And one of those is a regular inspection of all
16 the detention basins within the City to make sure that
17 they're performing properly.

18 Q. Is it fair to say that the NPDES permit the City
19 holds requires to engage in storm water management
20 within the City?

21 A. Yes.

22 Q. You heard mentioned here that -- mentioned a
23 concrete swale in a detention basin, right?

24 A. Yes.

25 Q. And if I say detention basin, you understand I'm

1 referring to the Hawk Ridge on the Green Detention Basin
2 A; is that -- do you understand that?

3 A. I do.

4 Q. Do you know if the concrete swale was depicted
5 on any plats or drawings of the Hawk Ridge Green
6 Subdivision?

7 A. I've seen it on the preliminary plat that was
8 part of the planning and zoning approval for the
9 subdivision. I've also seen it on a set of improvement
10 plans that are in the City's records. I believe that we
11 got those at some point through this process from the
12 design engineer, and we did not have them at the
13 beginning of the nuisance procedure.

14 Q. Is a concrete basin or con -- I'm sorry, pardon
15 me. Let me restate that. Is a concrete swale necessary
16 for a properly functioning detention basin?

17 A. It is not. It has no role in the storm water
18 attenuation, flood control or creek bank protection
19 functions of the basin.

20 Q. What's the primary purpose of having a concrete
21 swale then?

22 A. The concrete swale gives you a point at which to
23 grade to if the basin fills up with sediment. So it
24 gives you a clear indication of where the bottom of the
25 basin used to be.

1 A. It is. It's in the lower right-hand corner.

2 Q. And what is the date of that aerial image?

3 A. It says August of 2015.

4 Q. I'm going to ask you, can you draw on there with
5 a circle the detention basin? Circle the detention
6 basin.

7 A. (Witness complied.)

8 Q. Can you put an X by the inflow?

9 A. There are two inflows. The primary one is to
10 the west. There's a much smaller one that we really
11 haven't talked about that's kind of in the center of the
12 basin.

13 Q. And can you maybe put a star by the outflow?

14 MR. MURRAY: Mike, we'll get a copy.

15 CHAIRMAN GUNTHER: We've got a question here.

16 MR. RUDY: Could we please have those
17 adjustments on our photo as well?

18 MR. MURRAY: Yes, that's what I was going to
19 say. Mike will get you a copy of the marked up -- an
20 earlier copy of the marked up exhibit.

21 Q. (By Mr. Murray) Looking at Exhibit 7 there, can
22 you describe the general condition of the basin in the
23 August of 2015 photo?

24 MR. JAMES: Well, I'll just make an objection
25 for the record. The condition of the basin as of August

1 2015 is irrelevant to anything that would be determined
2 today. Subject to that, if the witness knows, I guess
3 he can tell us.

4 Q. (By Mr. Murray) You may answer.

5 A. From this photo, you can see the basin before
6 any work was done that was subsequent to our request for
7 remedial action. There are some meandering channels
8 that pass through the basins, trees that are growing in
9 the bottom of the basin. And that's really most of what
10 you can make out from the aerial photography.

11 (Exhibit No. 8 marked.)

12 Q. I've handed you what has been marked Exhibit 8,
13 and that's another aerial that I'll represent to you.
14 Can you -- is the detention basin located on that image?

15 A. It is.

16 Q. Can you circle it again for us?

17 A. (Witness complied.)

18 Q. And then can you put a -- crosses or x's by the
19 inflows and a star by the outflow again?

20 A. (Witness complied.)

21 Q. And what is the date of that aerial image on
22 Exhibit 8?

23 A. February 2018.

24 Q. And can you identify the -- or can you describe
25 the condition of the basin depicted on that image?

1 A. This basin in this photograph, you can see a
2 channel that was excavated through the center of the
3 basin connecting the primary inflow to the outfall.

4 MR. MURRAY: I move for admission of Exhibits 7
5 and 8.

6 MR. JAMES: Object to 7 on the basis that it
7 depicts a condition that's prior to the time that any
8 communication was sent to my clients about this. It
9 hasn't been related to the notice that was sent to my
10 client in June 2018 which was at that point almost three
11 years later.

12 And certainly there's no indication that it
13 bears any representation or depiction of what the chief
14 of police was considering at the time that he was called
15 upon to make a determination about the existence of a
16 nuisance. So, for that reason, I think Exhibit 7 is
17 irrelevant.

18 I don't recall if Exhibit 8 had been identified
19 in terms of point and time when it was taken. The
20 witness indicated he didn't take these photographs.
21 Somebody pulled these off the internet.

22 The document, itself, appears to be dated
23 February 2018. I won't make any objection to that
24 simply because it -- I think it speaks for itself. So
25 my objection just goes to Exhibit 7.

1 CHAIRMAN GUNTHER: Your objection is noted.

2 Q. (By Mr. Murray) How many times have you visited
3 the basin?

4 A. Probably a dozen.

5 Q. And you're familiar with the violations claimed
6 by the City of Lake Saint Louis?

7 A. I am.

8 Q. If you would sum up, what's the remaining issue
9 for the basin to be in compliance?

10 A. The primary concern I have with the basin is
11 that the accumulated sediment within the basin reduces
12 the storage volume of the basin and impacts its
13 function, makes it not work the way it was originally
14 intended.

15 Q. Can you explain about -- pardon me. Can you
16 explain why sediment buildup can cause the basin to
17 improperly function?

18 A. Sure. So whenever there's construction of new
19 impervious, new homes, commercial areas, we have
20 additional storm water runoff because of those
21 impervious, those rooftops.

22 We try to mitigate that by building a detention
23 basin. We store some of that extra runoff in a
24 detention basin. And we meter it out slowly through an
25 outfall structure.

1 Whenever part of that storage that's intended
2 for water is taking up -- taken up by sediment that's
3 collected after the fact, it's not there for water
4 anymore. So what happens is the water surface elevation
5 gets higher and you end up discharging water downstream
6 at a higher rate than was intended.

7 Q. And why is the discharge and release of water
8 too quickly a problem?

9 A. Well, what happens is a resort of -- result of
10 watershed organization. And what you end up with that
11 the basin doesn't work the way it was intended is that
12 you have creek bank erosion downstream of your
13 development, and you have increased flooding potential
14 downstream of the basin.

15 Q. Have you seen any evidence of erosion downstream
16 from the basin?

17 A. I have.

18 MR. JAMES: I'm going to object on this basis,
19 that the determination made by the chief of police does
20 not contain any finding relative to creek bank erosion
21 being caused by anything, whether that contributes to or
22 suggests a danger to public health or safety.

23 So on that basis, I believe any testimony from
24 the witness about creek bank erosion is irrelevant and
25 beyond the determination made by the chief.

1 CHAIRMAN GUNTHER: Objection is noted.

2 MR. JAMES: I'm assuming at some point in time
3 that the Board will deliberate about the objections and
4 receive some advice about how to determine those
5 matters, but I can speak to Mr. Murray about that
6 afterwards.

7 MR. REH: My thought is that that can be
8 something that's addressed --

9 COURT REPORTER: I'm sorry, I don't know your
10 name.

11 MR. REH: Matt, M-a-t-t, Reh, R-e-h.

12 COURT REPORTER: Thank you.

13 MR. REH: My thought is that if everybody is in
14 agreement, that's something that can be addressed by the
15 proposed findings of fact and conclusions of law that
16 can be submitted to the Board.

17 MR. JAMES: We can discuss that at the
18 conclusion.

19 Q. (By Mr. Murray) In your opinion, could the
20 detention basin -- let me restate that. In your
21 opinion, if the detention basin does not function as
22 designed, could that pose a risk of flooding on streets
23 in the city of Lake Saint Louis?

24 A. It does increase the risk of flooding on the
25 streets of Lake Saint Louis.

1 Q. How would it increase the risk of that flooding?

2 A. I prepared a report that was provided to the
3 chief of police and the homeowners' association where I
4 analyzed a downstream culvert that's downstream of this
5 basin. It passes under Freymuth Lane between Interstate
6 64 and Hawk Ridge Circle.

7 That culvert is under-designed smaller than our
8 current storm water and flood control guidelines would
9 require. Our current flood control guidelines require
10 that culvert -- structured culverts be able to pass the
11 50-year storm and leave 2 feet of free space between the
12 top of the water and the edge or shoulder of a roadway
13 on a 50-year storm.

14 This particular culvert is sized such that using
15 our standard design methodology, the road would go
16 underwater at 15 years on a 15-year recurrence interval.
17 That's a 1 in 15 chance each year is what that means.

18 That doesn't mean that it's going to flood every
19 15 years. I think the point there is that the City has
20 adopted a standard for flood control. That culvert is
21 quite a long way from meeting that standard, quite a bit
22 too small. And anything within the watershed that adds
23 additional water or runoff rate to that culvert is a
24 problem and it should be a concern.

25 Q. When was the last time -- hold on one second.

1 I'll get to that question. If that culvert along
2 Freymuth floods, what would the impact be on the Hawk
3 Ridge Subdivision?

4 A. Hawk Ridge on the Green Subdivision as well as
5 neighboring subdivision Oak Bluff Preserve, the only way
6 in and out of those subdivisions is via Freymuth Lane.
7 There's no other street that gets you to and from those
8 subdivisions.

9 So the residents within those subdivisions would
10 have their ability to get to and from home impacted.
11 Potentially emergency services would be impacted.

12 Q. When was the last time you were out at the
13 basin?

14 A. Yesterday.

15 Q. Did you take any photos when you were out there?

16 A. I did.

17 (Exhibit No. 9 marked.)

18 Q. I hand you what's been marked as Exhibit 9. Can
19 you identify that?

20 A. This is a photograph of the detention basin
21 we've been discussing.

22 Q. And is that a picture of the basin looking at
23 the outflow?

24 A. It looks like it is from mid point in the basin
25 on the bank looking towards the outfall.

1 (Exhibit No. 10 marked.)

2 Q. I hand you a photo marked Exhibit 10. Can you
3 identify that picture?

4 A. This is a photograph standing beside the outfall
5 structure looking upstream in the basin towards the
6 primary inflow of the basin.

7 Q. And did you take both of those pictures
8 yesterday?

9 A. Yes, I did.

10 Q. Are those both accurate and true copies of
11 pictures you took yesterday?

12 A. They are.

13 MR. MURRAY: I move for admission of photo -- of
14 Exhibits 9 and 10.

15 MR. JAMES: I'm going to object to the admission
16 of Exhibits 9 and 10. I believe the witness testified
17 these photographs were taken yesterday.

18 The decision that's the subject of this panel
19 for review is a decision by the chief made in September
20 2018. And there's no indication that the chief -- that
21 what's depicted in Exhibits 9 and 10 is the same as what
22 would have existed at the time the chief was called upon
23 to make his determination.

24 That's the basis of my objection. For that
25 reason, what it looked like yesterday is irrelevant.

1 Q. Right. And typically when a subdivision is
2 built and this is an improvement that is supposed to be
3 part of that development, whose responsibility is it to
4 construct the detention basin?

5 A. The developer.

6 Q. And whose responsibility is it to see that the
7 developer actually builds what the City has approved?

8 A. The City.

9 Q. All right. And is that -- so if the plans
10 depict a concrete swale, it would have been the
11 responsibility of someone on behalf of the City to
12 ensure the developer constructed the concrete swale as
13 part of the development; is that correct?

14 A. Or that some other means were in place to
15 provide the same function.

16 Q. In the absence of some other means being
17 designed to deal with that function, it would have been
18 the City's responsibility to ensure that the concrete
19 swale was installed; is that right?

20 A. I -- yeah, I guess so.

21 Q. So in this instance, we know there is no
22 concrete swale. That's what I think -- we've
23 established that a long time ago. You would agree with
24 that, correct?

25 A. That's correct.

1 Q. Now, you indicated that the concrete swale -- is
2 it your opinion the concrete swale serves no purpose at
3 all with respect to the function of the detention basin?

4 A. The concrete swale provides no impact to the
5 storm water attenuation of the detention basin.

6 Q. Well, it doesn't impact, in your opinion, storm
7 water attenuation. However, does it serve any other
8 purpose besides storm water attenuation?

9 A. It's primarily a maintenance function.

10 Q. Does it impact sediment depositing in the basin?

11 A. No.

12 Q. Not at all?

13 A. No.

14 Q. Then do you know why a concrete swale would have
15 been proposed to be part of this structure?

16 A. It was typical at the time this basin was
17 constructed to put a concrete swale on the bottom of
18 detention basins.

19 Q. Other than it was customary, you don't know why
20 it would have been installed?

21 A. It was customary at the time.

22 Q. Understanding that but there -- I mean, there is
23 some expense involved in pouring concrete. So if it's
24 just we did it because it was customary, it sounds like
25 it's -- it was a useless structure, if I understand what

1 you're saying.

2 A. Well, I think I already mentioned that it
3 provides future maintenance assistance in providing a
4 point to which you can dig to so that you can dig to
5 that concrete swale. You know that you have a slope
6 that drains towards the outfall structure and you know
7 when to stop digging.

8 It also aids in the day-to-day maintenance by
9 reducing soggy spots in the bottom of the basin, you
10 know, makes it easy for maintenance crews to come
11 through. Every time they mow, they can take a shovel
12 and take a bucketful of sediment out every time they mow
13 instead of waiting for 10 years for the whole thing to
14 silt and do maint -- do any maintenance.

15 Q. So it does serve some functional purpose.

16 A. It is primarily a maintenance -- aid in
17 maintenance. It is not -- it does not change the
18 performance of the basin in terms of flood control.

19 Q. So let's talk about the amount of sediment that
20 you contend that there is sedimentation that's occurred
21 in the basin. Have you made a calculation of the amount
22 of sediment that needs to be removed from the basin?

23 A. Not directly the amount of sediment that needs
24 to be removed, but I analyzed the basin based on the
25 contours that were in our drawings that we had in our

1 City records and the approximate depth of sediment that
2 was collected in the basin and evaluated the performance
3 of the basin between those conditions.

4 Q. Did you do a survey of the basin in its current
5 condition in connection with that analysis?

6 A. What I did was I --

7 Q. I didn't ask you what you did. I asked if you
8 did a survey.

9 A. In a manner of speaking, yes.

10 Q. In a matter of speaking.

11 A. I did not --

12 Q. Describe what you did.

13 A. I did not use survey instruments. What I used
14 was a stick ruler and measured the depth of the sediment
15 that was collected in the basin after this trench was
16 excavated through the basin.

17 You can see that that trench connects the
18 primary inflow pipe to the outfall structure on a
19 consistent grade that is very consistent with typical
20 detention basin design, the amount of fall that you
21 would have between the outfall structure and the in-fall
22 -- flow structure so you've got a consistent grade
23 without a great deal of pooling.

24 And I can see on that rock channel where someone
25 had broken rock away to form a channel into the bedrock.

1 So I measured from that bedrock up to the accumulated
2 sediment. And with that, by measuring that depth and
3 the distance between the outfall and the inflow
4 structure points, I was able to determine the amount of
5 sediment that had accumulated since, from inspection,
6 the bottom of the basin at the time that I inspected was
7 essentially flat although the contours show a V shape to
8 the channel. So I --

9 Q. So how much sediment did you determine had
10 accumulated expressed in cubic feet?

11 A. I didn't actually calculate a volume of
12 sediment. What I did was I calculated the storage
13 volume of the basin according to the drawings that we
14 have in our file and a storage volume of the basin after
15 I removed the volume of sediment that had collected.

16 Q. So how would I know how much sediment to remove
17 in order to -- so that the basin would hold the
18 appropriate volume of water?

19 A. What we asked for the homeowners' association to
20 do was to return it to as near as practical the original
21 condition, which the guidance that we provided was to
22 start at that channel that had been broken out through
23 the rock and from the rock and to grade back at a about
24 3-percent slope just enough to get drainage to that
25 center point of that channel back to the banks around

1 the basin that are steeper, 3 to 4 to 1 slopes; and that
2 that was by inspection what the contours on the plans
3 that we have in the record.

4 That's what was supposed to have been
5 constructed. So that's what we were asking them to do
6 is to try to restore that to that condition that was
7 shown in those drawings, which appears to be the
8 original construction of the basin because of, again,
9 how I determined how much sediment had been collected.

10 Q. Well, let me direct your attention to Exhibit 4.
11 Do you have that? Last page of Exhibit 4 which is the
12 Nuisance Violation notice dated June 7, 2018, do you
13 have that in front of you?

14 A. Yes, sir.

15 Q. And I'm going to direct your attention to
16 paragraph No. 4 which says, "Remove accumulated sediment
17 throughout the basin." Do you see that?

18 A. Yes, sir.

19 Q. How do I know from reading that letter how much
20 accumulated sediment I am supposed to remove from the
21 basin?

22 A. This letter --

23 Q. Does the letter tell me that?

24 A. This letter does not tell you that.

25 Q. Have you seen the letter written by the chief of

1 police which I don't think has been identified yet.

2 MR. JAMES: Do you intend to mark it or not?

3 MR. MURRAY: No.

4 MR. JAMES: You do not.

5 Q. (By Mr. James) Well, I'm going to hand you just
6 so you have it a letter that was written by the chief of
7 police on September 21, 2018. Have you seen that letter
8 before?

9 A. I have.

10 Q. And the chief in his letter says the last
11 sentence of the first paragraph, "The basin does not
12 properly function due to its inability to hold the
13 appropriate volume of water." Do you see that?

14 A. Yes.

15 Q. Is there anything in the letter that indicates
16 to the homeowners' association what the appropriate
17 volume of water is that should be held by the basin?

18 A. No.

19 Q. And -- okay. So you didn't do a survey using
20 surveying instruments to determine what the current
21 condition of the basin is, if I understand correctly; is
22 that right?

23 A. I did not use a level or total station or any of
24 those type of instruments. I used --

25 Q. I didn't ask you --

1 A. -- a ruler.

2 Q. I didn't ask you what you didn't use. You
3 didn't --

4 A. Well, I mean, a ruler is a sur -- a stick rule
5 or -- is a common surveying instrument. It's a device.

6 Q. So you prepared a -- and did you prepare a plat
7 showing survey grades and elevations on a diagram of any
8 kind?

9 A. I did not prepare a plat, no.

10 Q. And did you -- and you didn't make a calculation
11 of the number of cubic feet of sediment that would need
12 to be removed in order to achieve the result that you
13 think needs to be performed, correct?

14 A. Not directly.

15 Q. You did, however, prepare a report that you gave
16 to the chief; is that right?

17 A. Yes.

18 Q. And your report was dated August 15, 2018; is
19 that right?

20 A. Yes.

21 Q. And for purposes of that report, you -- and, if
22 I understand correctly, you're relying on the analysis
23 that was in that report to support the proposition that
24 there's an increased risk of downstream flooding.

25 A. That's correct.

1 Q. Now, if -- I believe one of the assumptions you
2 made for purposes of the analysis that you did that's
3 contained in that report was that the watershed was
4 fully developed; is that correct?

5 A. That is the common practice for sizing of storm
6 water facilities.

7 Q. Understanding that to be the case, you made that
8 assumption for purposes of your analysis --

9 A. Yes.

10 Q. -- that the watershed was fully developed.

11 A. Yes.

12 Q. Is the watershed fully developed?

13 A. It is not currently.

14 Q. It is not currently. What percentage of the
15 watershed that relates to this basin is developed or, in
16 your opinion, what was developed at the time the chief
17 made his decision last September?

18 A. I don't have a specific number. West of Lake
19 Saint Louis Boulevard, there's two primary properties
20 that are not yet developed. Those currently have
21 planning approvals for developments. One's through the
22 improvement plan process and one is in the improvement
23 plan process so construction of those sites is imminent.

24 Q. I didn't ask you about that but I appreciate you
25 sharing. Do you know what percentage of the watershed

1 is developed or what percentage of the watershed was
2 developed as of September 21, 2018?

3 A. I don't. I couldn't tell you.

4 Q. Less than 50 percent?

5 A. I do not believe it's less than 50 percent, but
6 I couldn't tell you.

7 Q. Less than 60 percent?

8 A. I can't tell you.

9 Q. You have no idea?

10 A. I -- it's been a year since I've put that report
11 together so I don't remember.

12 Q. Understanding it's been a year since you put the
13 report together, the important fact is that the
14 assumption you made in your analysis was that the
15 watershed was fully developed. And you will agree with
16 me that as of the time the chief made his determination,
17 the watershed was not fully developed.

18 A. That's correct.

19 Q. So things like future development, which you
20 mentioned, any other activity that might happen in the
21 future that could affect the function of this detention
22 basin or could affect the MODOT culvert, which we'll get
23 to in a minute, that's all based on stuff that we're --
24 we would have to crystal ball to know whether or not
25 it's going to occur because it hadn't happened, yet,

1 right?

2 A. I'm not sure I'm following your question.

3 Q. Your assumption is that the condition -- the
4 condition that you premised your analysis on has not
5 occurred, yet.

6 A. That's not correct.

7 Q. Well, you assumed that -- this happened last
8 time. I just want to make sure I'm clear. Did you or
9 did you not assume for purposes of your analysis that
10 the watershed was fully developed?

11 A. That is correct.

12 Q. You did. I think my question was did you or did
13 you not, and you said that's correct so I'm still --

14 A. I -- the typical design process for crossover
15 culverts which I followed in the analysis is to assume
16 that the entire watershed is developed.

17 Q. Thank you. In response to Mr. Murray's
18 questions, you expressed the opinion that the detention
19 basin, the condition of the detention basin, increases
20 the risk of flooding. So that implies that there's a
21 risk of flooding that exists independent of the
22 detention basin. Is that true?

23 A. There's always a risk of flooding.

24 Q. Always a risk of flooding. Okay. And the focus
25 of your analysis at least with respect to Freymuth Road

1 has to do with the fact that there is a culvert that's
2 maintained by MODOT that, in your opinion, is
3 undersized.

4 A. That is correct.

5 Q. So the risk of flooding that exists by reason of
6 the culvert maintained by MODOT is a consequence of the
7 manner in which MODOT's maintaining that culvert then;
8 is that correct?

9 A. No.

10 Q. Is there a risk of flooding to Freymuth Road
11 because of the size of the MODOT culvert?

12 A. Yes.

13 Q. And that risk exists whether or not there's a
14 detention basin in the Hawk Ridge on the Green
15 Subdivision.

16 A. That is correct.

17 Q. I think the other assumption that I believe you
18 indicated you made was that whatever was built
19 originally was built according to these plans that you
20 found, is that right, that the contours and size and
21 whatever would have been consistent with those plans; is
22 that correct?

23 A. I didn't just make that assumption, I did verify
24 it by overlaying the plans on aerial photography to do
25 that.

1 Q. I'm not sure I understand what that means but
2 I'll forget it for the moment. So do you know that what
3 was depicted on -- I think in the analysis, you referred
4 to some as-built plans; is that right?

5 A. That's correct.

6 Q. That's the way -- that was your terminology,
7 as-built plans.

8 A. That is correct.

9 Q. And those as-built plans showed the concrete
10 swale, correct?

11 A. They do.

12 Q. So what we know is that the concrete swale
13 didn't get built. But the assumption you're making is
14 that the rest of the structure was built according to
15 the as-built plans; is that right?

16 A. It is an assumption that I verified.

17 Q. And you verified it through what you said was
18 some aerial photography. Was it these pictures from the
19 internet that we got?

20 A. It's photography similar to these. I used a
21 computer program to take the contours that I took those
22 record drawings that we have, and I overlaid them over
23 the aerial photography and lined things up. And the
24 inflow structure and the outfall structure are the
25 correct distance apart to match the plans.

1 The berm surrounding the detention basin is in
2 the correct location in relation to all the other
3 structures. Everything when you lay them on top of each
4 other matches in the correct place.

5 Also, when you're at the basin, you can see that
6 the height of the outfall structure is approximately
7 correct and that it just generally appears that things
8 -- the hard improvements such as the flared end
9 sections, the pipes, the outfall structure and the berm
10 are all consistent with the record drawings.

11 Q. So the photograph -- these aerial photographs
12 that you're referring to, when were they taken?

13 A. They were just whatever I pulled off of Google
14 Earth.

15 Q. Okay. Well --

16 A. They're recent. I don't -- I don't know.

17 Q. You don't recall when the photographs,
18 themselves, were made? Was it at the time -- are you
19 comparing --

20 A. They were the most recent Google Earth photos at
21 the time that I did this work which was in the process
22 of preparing the report that we've been discussing.

23 Q. All right. So you're comparing aerial
24 photographs then in the summer of 2018 to the as-built
25 plans that were prepared at the time the subdivision was

1 built; is that right?

2 A. Yes.

3 Q. And the subdivision was built when?

4 A. About the year 2000, slightly before the public
5 improvements work. Home construction continued through
6 -- it was nearing completion in 2005 when I started
7 working here.

8 Q. So maybe I understood this incorrectly. By
9 comparing those photographs with the plans, you
10 determined that the condition of the basin was what was
11 depicted in the plans?

12 A. I determined that the pipes that flow into the
13 basin, the outfall structure and the berm all matched
14 the plans very closely which gave me confidence that --
15 and the height of the outfall structure appears to be
16 correct and the height of the berm by inspection, not by
17 surveying, appears to be -- match what's on the plans.

18 So that gave me confidence that what was on the
19 record drawings was consistent with what was constructed
20 there.

21 Q. For purposes of the letter that the chief of
22 police wrote on September 21, 2018, had the chief asked
23 you to express an opinion about whether or not there was
24 a condition of -- take that back.

25 Let me hand you a letter dated September 17,

1 2018, from the chief, the subject matter which is the
2 detention basin. Have you seen that letter before?

3 A. I have. It's been some time but, yes.

4 Q. And in response to that letter, what, if
5 anything, did you do?

6 A. I don't recall.

7 Q. You don't recall?

8 A. No. I -- I -- could I look at that letter?

9 Q. Sure.

10 A. Yeah, I'm not sure what I did in response to
11 this letter.

12 Q. Okay.

13 A. Do you have a specific thing --

14 Q. Sure.

15 A. -- that you think I did? Okay.

16 Q. Before you review that, the September 17, 2018,
17 letter from the chief says, "I'm going to find the
18 detention basin in a nuisance if one or more of the
19 following conditions exist as determined by the city
20 engineer," and then it lists these two items; is that
21 correct?

22 A. Okay. Yeah, I think I just misread it. I think
23 I thought I'd said that he found that it was a nuisance
24 because of that.

25 Q. I don't -- I want to make sure I'm not

1 misrepresenting what that letter says. I think we're
2 going to have to go ahead and mark it so you can read
3 it. And that's what the chief said.

4 A. Yes. Okay. Yes, it says if. I missed the if.

5 Q. And the two things that the chief's concerned
6 about, whether the basin lacks a gradual slope in order
7 to lessen the chance of an involuntary entry or it may
8 hinder easier exiting of the basin, that was one.

9 And the other one was the basin does not
10 properly function due to its inability to hold the
11 appropriate volume of water which may cause a roadway to
12 flood; is that --

13 A. That's correct.

14 Q. Those are the two items he addressed, correct?

15 A. That's correct.

16 Q. And in response to that, you wrote an e-mail to
17 the chief; is that correct?

18 A. That's correct.

19 Q. And I've handed you a copy of that e-mail; is
20 that correct?

21 A. That's correct.

22 Q. And you wrote that e-mail to the chief on
23 September 21, 2018, at about 10:15 in the morning,
24 right?

25 A. That's correct.

1 Q. And in that e-mail, you express your opinion
2 about the lack of storage volume for the basin which, in
3 your opinion, negatively affects flood protection
4 capacity downstream including crossroad culverts; is
5 that right?

6 A. That's correct.

7 Q. Are the opinion you expressed in your September
8 17 -- I'm sorry, your September 21, 2018, e-mail to the
9 chief, is that based upon the previous analysis that you
10 had done in August 2018?

11 A. It's based upon the report that you referenced
12 previously. I don't have a copy of it so I don't
13 remember the date.

14 Q. I'll just show it to you. You could confirm the
15 date, if you want, refresh your recollection.

16 A. August 15, 2018.

17 Q. So August 15, 2018, is the report that you
18 prepared in connection with this matter in which you did
19 this analysis including your calculation of the MODOT
20 culvert, correct?

21 A. Yes.

22 Q. All right.

23 MR. JAMES: I don't have any other questions for
24 the witness.

25 REDIRECT EXAMINATION

1 BY MR. MURRAY:

2 Q. Mr. Koestel, as part of keeping a NPDES permit,
3 does the City construct routine inspections of other
4 detention basins in the City?

5 A. We do.

6 Q. So it's not just an inspection of the Hawk Ridge
7 basin that was involved.

8 A. We inspect every basin in -- our policy is to
9 inspect every basin in the City once every three years.
10 So we -- as new basins come on line, we add them to the
11 list and rotate them every three years.

12 Q. As you do those inspections, do you encounter
13 other subdivisions with basins that require sediment
14 removal?

15 A. We do.

16 Q. And do they -- to your knowledge, do they
17 usually conduct a survey of their basin to determine the
18 precise amount of accumulated sediment to be removed?

19 A. They do not.

20 Q. Can you describe briefly what the usual
21 interaction is with you and the -- or with the City and
22 the subdivision with respect to removal of sediment in
23 those instances?

24 MR. JAMES: I'm going to object to the testimony
25 about what the City does in other instances to tell

1 people how much sediment to remove as --

2 CHAIRMAN GUNTHER: Overruled.

3 MR. JAMES: Sorry?

4 CHAIRMAN GUNTHER: Overruled the objection.

5 Q. (By Mr. Murray) You can answer.

6 A. Typically when we meet with -- typically when we
7 met with a subdivision that has remedial issues on their
8 detention basin, we go through those with them on site
9 and show them what we would like them to do.

10 When it comes to sediment removal, it's usually
11 pretty clear as here you can see where the basin side
12 slopes are consistent grade. You can compare those to
13 the as-built plans by inspection, by looking at the
14 plans and looking at, okay, we have consistent contours
15 here coming down. We can see we have a slope coming
16 down here.

17 And then that should have followed to a
18 particular point, but we can see by inspection that the
19 slopes in the field don't match the slopes on the plans.
20 So let's -- we ask them to make those slopes consistent
21 with what's on the plans.

22 So we will identify the sediment to be removed
23 by identifying key points within the basin that we can
24 see that haven't moved, that pilot channel, that
25 concrete swale or flared end sections, the outfall

1 structure.

2 And we say, well, we know this point hasn't
3 moved and we know this point hasn't moved, and the plans
4 show that it's a -- kind of a straight line grade. So
5 make it a straight line grade. Take the sediment out
6 here that's collected out. And that's always been
7 adequate in the past.

8 Q. You mentioned -- you testified that in
9 connection with your August of 2018 report, you made an
10 assumption that the watershed was fully developed; is
11 that correct?

12 A. That is correct.

13 Q. And that assumption, can you explain why you
14 made that assumption?

15 A. Yeah, and it's not just my assumption, it's that
16 is the process for sizing a culvert, a construction
17 culvert. And you do that because the culvert's going to
18 stay there for 50 years, a hundred years. And
19 eventually that area is going to fully develop so you
20 want to be able to accommodate those flows.

21 Q. So, in other words, to restate it, were you
22 following a normal standard industry practice in doing
23 that?

24 A. I was following our standard practices and the
25 -- and standard practice for -- standard engineering

1 practice.

2 Q. And you understood, obviously, that conditions
3 on the ground may have been different as a practical
4 matter but you were following a practice for engineers.

5 A. And the conclusion was not that the flood -- the
6 road would flood at any particular point. The
7 conclusion was that we have a culvert that is
8 substantially smaller than what our current design
9 guidelines would say it should be.

10 And so since it is substantially smaller, it has
11 an increased risk of flooding compared to what our
12 standard practice is. Adding more water into that
13 watershed at a higher rate than is allowed by the code
14 is adding risk for the public.

15 Q. Will that risk be removed by an additionally
16 sized culvert in the future by MODOT, do you know?

17 A. I do not think so. That culvert was there
18 before the Highway 40 was upgraded to Interstate 64.
19 They extended that culvert and kept it the same size
20 instead of replacing it. And it's unlikely that MODOT
21 would dig up Interstate 64 to replace that culvert
22 unless they absolutely have to.

23 Q. Thank you.

24 MR. JAMES: May I recross? I guess permitted.
25 Is it all right if I do?

1 CHAIRMAN GUNTHER: You can.

2 RE CROSS-EXAMINATION

3 BY MR. JAMES:

4 Q. So I understand that you made this assumption
5 about the watershed being fully developed because you're
6 trying to size the culvert, correct? That's the normal
7 assumption you would make when you're going through the
8 analysis about whether or not the MODOT culvert is
9 properly sized, as I understand it; is that correct?

10 A. I did the typical calculations for sizing the
11 culvert --

12 Q. Right.

13 A. -- for construction.

14 Q. Right. So have you notified MODOT that, in your
15 opinion, their culvert is undersized and, as a
16 consequent -- consequence of that, there is a risk of
17 flooding on Freymuth Road?

18 A. I have not because Freymuth Road is a City
19 street. None of the MODOT facilities are at elevated
20 risk of flooding because they're higher.

21 Q. Say that again so I understand.

22 A. The MODOT-owned facilities are higher than
23 Freymuth Lane at the point where we have the flood risk.
24 And Freymuth Lane at the point where there is the flood
25 risk is a City-owned facility.

1 Q. So even if an adjoining property owner, in this
2 case the State of Missouri, has a storm water facility
3 which, in your opinion, is creating a risk of flooding
4 to a City road, that's not something that you would
5 bring to the attention of MODOT and ask them to remedy.

6 A. I do not anticipate they would do anything to --

7 Q. Whether --

8 A. No, I did not bring that to their attention.

9 Q. Whether you anticipate they'll do anything or
10 not is a different question.

11 A. Well, that's why I didn't notify them because I
12 don't think they'll do anything.

13 Q. But if I understand your testimony correctly,
14 that culvert could be improved to a size that would
15 eliminate any risk of flooding to Freymuth Road.

16 A. Are you -- you're asking if it is possible to
17 upsize that culvert and you could upsize that culvert to
18 the point at which the flooded -- flood risk is within
19 our standards or higher than our standards, yes. We
20 never talk about no risk in engineering. It's a matter
21 of acceptable levels of risk.

22 Q. Acceptable levels of risk. Do you know to what
23 extent or what degree the operation of the detention
24 basin in the Hawk Ridge on the Green Subdivision
25 contributes to any increased risk of downstream

1 flooding?

2 A. If I understand your question correctly, I did
3 not determine how much deeper the water gets because of
4 that basin.

5 Q. Do you know how large an area the watershed is?

6 A. I don't know. Sitting here today, I don't. I
7 did when I prepared that report.

8 Q. You would agree with me it's over 20 acres.

9 A. Oh, sure.

10 Q. And the detention basin is approximately how
11 big?

12 A. The basin is less than an acre probably.

13 Q. So if I understand you correctly, you didn't try
14 to make any determination about how much, if any,
15 increase there might be to this flooding risk by reason
16 of the operation of the detention basin in terms of
17 volume of water.

18 A. The only determination was that we have a
19 structure downstream of the detention basin that is
20 substandard with respect to flood control, and that any
21 increase in discharge to that structure contributes to a
22 higher level of risk. Whether it's one drop or a
23 million gallons, it increases the risk to the public.

24 Q. Regardless of where that water comes from?

25 A. Every increased discharge to the basin that's

1 beyond what our code allows.

2 Q. Let's talk about one other thing that we haven't
3 brought up before and that is at the time that the
4 detention basin was constructed -- well, let's step back
5 for a minute. Is there a golf course that's upstream
6 from the detention basin?

7 A. There is a golf course that is adjacent to the
8 detention basin.

9 Q. And does that golf course -- does storm water
10 run off from the golf course and enter the channel that
11 flows into the basin?

12 A. A very small amount.

13 Q. It flows into the basin. In your opinion, it's
14 a small amount.

15 A. Well, the golf course is generally graded to go
16 a different route, but there is the edge of the golf
17 course does flow through the basin.

18 Q. Was the golf course built after the basin?

19 A. There was a City-owned golf course at that
20 location before the basin was constructed. A
21 subdivision -- that golf course was sold, and there was
22 some reconfiguration of the basin and a subdivision was
23 -- I'm sorry, there was reconfiguration of the golf
24 course to make it a smaller golf course, and some of
25 that land became Heritage at Hawk Ridge.

1 Q. And that flows into the detention basin, is that
2 correct, water from the golf course currently flows into
3 the detention basin?

4 A. Some of the golf course does.

5 Q. Okay.

6 MR. JAMES: No other questions for the witness.

7 MR. MURRAY: The City has no further witnesses.

8 MR. JAMES: Does the City have any other
9 evidence? Is that it?

10 MR. MURRAY: No.

11 MR. JAMES: Well --

12 MR. MURRAY: Do you want to take a break or --

13 MR. JAMES: No, I don't think so. I mean, it's
14 up to what they would like to do.

15 If that's the City's case, then I'm going to
16 make an oral motion at the close of the City's
17 presentation that the Board dismiss their determination
18 because the underlying determination that was the
19 subject of this proceeding hasn't been presented to you,
20 and that is the finding by the chief of police.

21 I don't know how in the world you would make a
22 determination that the finding by the chief should
23 either be upheld or not if it's not before you.

24 And the City hasn't offered the determination
25 letter from the chief to you. It hasn't offered his

1 earlier letter in which he asks the city engineer to
2 make some determination about this issue. It hasn't
3 offered the city engineer's e-mail responding to the
4 chief on the subject. They haven't offered the city
5 engineer's August 15, 2018, report to the chief about
6 the issue.

7 So in the absence of having the underlying
8 determination by the chief, which was made pursuant to
9 your ordinances, I don't know how this Board can make
10 any finding that's adverse to my client.

11 It seems to me you have to -- the City has
12 failed to put on a case to support the proposition that
13 there's a, as the chief determined, a danger to public
14 health or safety as a consequence of the detention basin
15 and a risk of downstream flooding.

16 MR. MURRAY: Respectfully, we're here today
17 because Mr. James filed an appeal from the determination
18 of the chief. And I would argue that if it's not here
19 before you now, that you could take notice of that. It
20 was submitted asking you to take notice of his decision.
21 That's the basis of why we're here today from that
22 appeal from the chief's decision.

23 Additionally, Mr. James elicited testimony from
24 Derek Koestel regarding the contents of the chief's
25 decision, the letter from Chief -- the chief to the

1 parties and Derek's subsequent e-mail back to the chief.
2 So I -- it's all before you today so we respectfully
3 request that you not dismiss this appeal and you take
4 notice of the chief's decision and why we're here today
5 is the appeal of that decision.

6 MR. JAMES: I don't have anything to add to my
7 earlier remarks. As I read the City's ordinances on
8 this matter, which if I can put my hand on it, I'm going
9 to refer to Section 220.160 of the City's code which
10 says, "Anyone who wishes to challenge the order of
11 abatement," this is an order of abatement issued by the
12 chief, "may do so provided that within seven -- a -- the
13 seven-day period, he or she (they) request a hearing on
14 the validity of the order under the State Administrative
15 Procedure Act, Chapter 536.

16 I don't know how you can conduct a hearing on
17 the validity of the order if you don't have the order.
18 And the fact that I referred to it in my examination of
19 the witness doesn't put it in front of you.

20 I didn't offer it to you. I was actually
21 waiting for the City to do that. So it seems to me that
22 if during the City's case, it had suggested that you
23 take notice of the chief's order and make it part of the
24 record, I would agree that that -- you might have the
25 authority to do that.

1 I'd have to think about it, but I don't know
2 that I would object. But I think the order has to be
3 before you. And I think the foundation for that order
4 are his prior letter to the city engineer and the city
5 engineer's e-mail, none of which are part of the record
6 before you for making a determination today so.

7 MR. MURRAY: I would request that if you think
8 that we need to have the order physically before you, if
9 it's not before you in the record, then we ask you to
10 give us an opportunity to submit that or to continue
11 this to obtain a copy from the chief's office.

12 CHAIRMAN GUNTHER: Anybody else like to speak
13 again?

14 MR. JAMES: I'm prepared to call a witness if
15 you want to proceed beyond this point with other
16 witnesses.

17 CHAIRMAN GUNTHER: How many witnesses do you
18 expect to call?

19 MR. JAMES: One, maybe two but likely only one.

20 CHAIRMAN GUNTHER: All right. Go ahead.

21 MR. JAMES: I will call Rich Musler to the
22 stand.

23 RICHARD MUSLER,
24 produced, sworn and examined on behalf of the
25 Homeowners' Association, testifies and says:

1 WITNESS: Is this the hot seat?

2 MR. JAMES: I think so.

3 DIRECT EXAMINATION

4 BY MR. JAMES:

5 Q. Could you please state your name for the record.

6 A. Richard Musler, M-u-s-l-e-r.

7 Q. Where do you live?

8 A. I live at Dardenne Prairie, Missouri.

9 Q. What do you do for a living?

10 A. I'm a civil engineer.

11 Q. Could you briefly describe what your civil
12 engineering practice consists of?

13 A. Well, I'm the President of Musler Engineering.
14 That's a firm here in St. Charles. We are a civil
15 engineering and land surveying firm. We -- I think
16 we're in our 28th year in business. And we've designed
17 and helped construct a lot of projects around St.
18 Charles.

19 I like to say we're primarily a new subdivision
20 design firm as we have performed a lot of different
21 subdivision designs.

22 (Exhibit C marked.)

23 Q. I'm going to hand you what's been marked for
24 purposes of identification as Exhibit C. Are you able
25 to identify Exhibit C as a copy of your curriculum

1 vitae?

2 A. It is.

3 Q. All right. And is the information that is
4 presented on your curriculum vitae current and accurate
5 as of today?

6 A. Yes.

7 Q. All right. And could you describe for the Board
8 your prior experience as it relates to storm water
9 management giving examples of prior engagements?

10 A. Well, I guess illustrative examples might be
11 during my work at Musler Engineering which, again,
12 that's been the last 28 years design of subdivisions
13 including storm water detention facilities throughout
14 this county.

15 We've done some, you know, under the rules and
16 regulations of St. Charles County Unincorporated, City
17 of St. Charles, City of St. Peters, City of O'Fallon,
18 City of Lake Saint Louis, City of Wentzville, maybe
19 Weldon Spring but I wouldn't swear to that. I don't
20 think we've done much in Weldon Spring.

21 Every city has a little bit different rules and
22 regulations. So it's our job as a design engineer to
23 design to the regulation of the governing authority.

24 Right now, I mean presently, an illustrative
25 example would be we have four subdivisions under

1 construction at one phase or another. Mill Creek is in
2 Lake Saint Louis. Jackson Estates is in St. Charles
3 County Unincorporated. West Haven is a subdivision in
4 the city of Wentzville. And we're just beginning one
5 that is also in St. Charles County Unincorporated that
6 is called Foristell Manors. So it's what we do. You
7 know, we design subdivisions including their storm water
8 management facilities.

9 I would also offer that prior to my starting
10 Musler Engineering 28 years ago, I worked for 9 years at
11 Bax Engineering. And Bax is another firm here in St.
12 Charles County. And my role at Bax was I was the person
13 who designed all of the storm water management
14 facilities for all of the subdivisions they designed.

15 Prior to that -- and this is like old home week
16 for me -- I was employed by the City of St. Peters.
17 Gary Turner was mayor when I worked at St. Peters. And
18 I reminded Gary a little earlier when he was mayor and I
19 was civil engineer, we wrote and adopted the first storm
20 water detention ordinance in this county. That was
21 about 1980.

22 And I'll tell you it was really controversial at
23 the time, but Gary took the political heat, I took the
24 engineering heat, and we adopted the ordinance. And I
25 think other municipalities have followed that.

1 MR. RUDY: Mr. James?

2 MR. JAMES: Yes, sir.

3 MR. RUDY: Could you please have your witness
4 directed more to the case at hand than a history and
5 resume?

6 MR. JAMES: Okay.

7 MR. RUDY: We would appreciate it.

8 MR. JAMES: All right. I wanted the Board to be
9 satisfied with his qualification to express the opinions
10 that I anticipate he's going to give. If you're
11 satisfied that he's done that by his answers thus far,
12 then I'll move on to something else.

13 But I do have one specific question I want to
14 ask him in that perspective.

15 Q. (By Mr. James) And that is: By reason of your
16 work history and experience, are you familiar with the
17 ordinances of the City of Lake Saint Louis that relate
18 to storm water management?

19 A. Yes, sir.

20 MR. MURRAY: The City will stipulate that Mr.
21 Musler is an engineering expert.

22 CHAIRMAN GUNTHER: Repeat the question.

23 MR. JAMES: I believe he said that the City
24 would stipulate that Mr. Musler is an engineer and an
25 expert for purposes of his testimony.

1 Is that correct?

2 MR. MURRAY: Yes.

3 CHAIRMAN GUNTHER: Okay.

4 Q. (By Mr. James) Were you engaged by the Hawk
5 Ridge on the Green Subdivision to consult with it
6 regarding to matters related to what is being referred
7 to in these proceedings as Detention Basin A in that
8 subdivision?

9 A. Yes, sir.

10 Q. So throughout my questions, I'll refer to the
11 detention basin. And when I do, I'm referring to the
12 Detention Basin A. Do you recall when you were
13 initially engaged for this purpose?

14 A. 2 January of this year.

15 Q. All right. And what did you do in connection
16 with your engagement? Could you describe for the Board
17 what steps you took related to your consultation with
18 Hawk Ridge on the Green?

19 A. Well, first, I went and looked at the basin, put
20 on my boots, tromped around with one of the trustees,
21 Mr. Tim McIntyre. I guess after the site visit, I was
22 provided with a number of written materials from either
23 Tim or from you, Mr. James.

24 And I guess primarily, I was provided the
25 Memorandum dated August the 15th of 2018 which was a

1 memorandum from Derek Koestel to Mr. Paul Markworth.
2 And I reviewed this memorandum. And I would tell the
3 Board that unless you were a civil engineer and versed
4 in hydrology and hydraulics, good luck understanding
5 what this memorandum says. I can. I'm sure Derek does
6 as he is the author. But to a layperson, this would be
7 like reading Greek.

8 Q. But you were able to read Mr. Koestel's report
9 and understand his analysis; is that correct?

10 A. Yes, sir.

11 Q. So did you prepare any diagrams or drawings
12 related to your work, for example, a diagram of the
13 watershed?

14 A. Yes, I did.

15 Q. Do you have that with you?

16 A. Yes, sir.

17 Q. Where is it?

18 A. Oh.

19 Q. Where is that diagram?

20 A. You want it, another copy?

21 Q. Do you have it in a large format that's --

22 A. I do.

23 Q. We could --

24 A. And I've got this on a board.

25 MR. MURRAY: I'll let you look at this. This is

1 the one I'll probably leave with them.

2 Q. (By Mr. James) So what we've put up on this
3 easel is -- can you tell us what this diagram is? For
4 purposes of identification, I'm going to refer to it as
5 Exhibit B.

6 (Exhibit B marked.)

7 Q. But what is shown on Exhibit B?

8 A. This is a drawing that I prepared with the help
9 of my professional land surveyor. And it is an aerial
10 photograph, first of all, taken from the St. Charles
11 County GIS system.

12 And then on that, I have drawn a red line which
13 is outlining the watershed that drains to the MODOT
14 culvert that is part of the analysis that Mr. Koestel
15 made.

16 Q. So to orient the Board members to this
17 photograph, could you -- would you be able to come up
18 and indicate by pointing the location of, first, the
19 detention basin?

20 MR. MURRAY: Do you mind if I come up?

21 WITNESS: First of all, this is the red line
22 that I just mentioned. This is more or less the
23 watershed that all drains down to that MODOT culvert.

24 The basin is right here. The black line you see
25 there is the outline of Hawk Ridge on the Green

1 Subdivision. So the basin would be located here. The
2 MODOT culvert would be located here.

3 Q. (By Mr. James) And how many acres approximately
4 are encompassed within the watershed?

5 A. I should have committed that to memory. My
6 estimate was 740 acres.

7 Q. Within the entire watershed?

8 A. Yes, the entire watershed draining to the MODOT
9 culvert is approximately 740 acres.

10 Q. And how large is the detention basin?

11 A. Well, the portion of the subdivision that drains
12 to the MODOT culvert is 23.7 acres.

13 Q. So 23.7 acres of the subdivision are part of the
14 740 acres of the entire watershed; is that correct?

15 A. That's correct.

16 Q. Okay.

17 A. That's my estimation.

18 Q. So you were describing what you did in
19 connection with your work. You reviewed Mr. Koestel's
20 report, prepared this diagram, read some other materials
21 that we provided to you related to the subject matter
22 that include the letter from the chief of police that
23 indicated that there was a risk of flooding.

24 A. Yes.

25 Q. All right. And after reviewing these materials,

1 did you reach any conclusions about the operation of the
2 detention basin?

3 A. Yes.

4 Q. And what conclusions did you reach?

5 A. Well, first of all, again, it was a review of
6 Mr. Koestel's Memorandum to the city administrator. I
7 didn't really count the pages. They're not numbered but
8 I'm going to say it's about a 75-page report.

9 Included in Mr. Koestel's report is his analysis
10 of how Detention Basin A actually performs. Does it
11 detain water or does it not detain water? I think in
12 looking at his analysis -- and I know Derek and I know
13 him to be a professional engineer duly licensed in
14 Missouri -- I think that I would accept what he
15 calculates.

16 Now, what he doesn't report in his Memorandum is
17 how much detention should this basin be providing.
18 What's the threshold at which it was designed for?
19 What's the threshold that would be reasonable and
20 customary for the time period in which it was designed
21 which was in 1998, 1999.

22 His report fails to mention that so I calculated
23 it. What should it be doing? And after I calculated
24 what the required detention would be, I then compared it
25 to the detention that it is providing per Mr. Koestel's

1 calculations.

2 Q. So let's step back for a minute just to kind of
3 set the conversation. The purpose -- maybe you should
4 just tell us -- well, it seems to be obvious. What's
5 the purpose of a detention basin in the first place?

6 A. Okay. I think there was some testimony to this
7 already. When undeveloped property exists in a
8 watershed, it has a fairly low rate of runoff. It's
9 vegetative. It's got trees. It has little to no
10 impervious areas.

11 But then when you develop it into a subdivision
12 such as Hawk Ridge on the Green, you change the
13 characteristic of the ground. You add streets. You add
14 driveways. You add patios. You add, in their case, big
15 houses with pretty big roofs. You add impervious area.

16 When you do that, you change the runoff
17 characteristic. And the rate of runoff in a
18 post-developed condition is greater than the rate of
19 runoff in its pre-developed condition. The difference
20 can be calculated.

21 And, in fact, I did calculate it. There are
22 rates of runoff that are commonly used in making that
23 estimation. The purpose of a detention basin then is to
24 gather that increased rate of runoff and cause ponding
25 to occur in your basin so that the rate leaving is equal

1 to or less than the pre-developed rate.

2 You don't make any water go away. It's all
3 still there. But you try to control the rate that it
4 leaves the basin. And, again, you're not making that
5 rate be some tiny, little amount. You're supposed to
6 ensure your rate of runoff is no greater than the
7 pre-developed rate.

8 So the pre-developed rate is important to know.
9 If you know the pre-developed rate, then you know how
10 much detention you're supposed to be providing.

11 Q. And for your purposes of your analysis, there
12 was information in Mr. Koestel's report from which you
13 were -- you made your independent determination about
14 the operation of the detention basin; is that correct?

15 A. I was able to read and understand Mr. Koestel's
16 report. And in his report, he does calculate the amount
17 of detention that this basin provides in what he calls
18 its silted condition, what I would call its existing
19 condition today. Is it providing detention or is it
20 not? He calculates that it does.

21 Q. And you assumed that his calculations were
22 accurate without expressing an opinion about the
23 underlying accuracy of the calculus, is that true, for
24 purposes of your report?

25 A. Yes, that is correct. I did not conduct an

1 independent analysis. I assumed that Mr. Koestel, being
2 a professional engineer, has the knowledge, skill and
3 ability to prepare an accurate report so I accepted it
4 as an accurate report.

5 Q. So what did you conclude about the issue of
6 contributing to a risk of downstream flooding based upon
7 the existing condition of the detention basin?

8 A. Well, my interpretation of his report is
9 different than Derek's. I am able to determine that the
10 basin is providing more detention than what would be
11 required to lower the rate of runoff to its
12 pre-developed condition.

13 Now, that's based upon my estimate of what the
14 pre-developed rate of runoff is and compared to Mr.
15 Koestel's evaluation of how much detention is actually
16 being provided. Now, I can give you numbers if you
17 want. That's kind of like the summary of it.

18 Let me at least give you an illustrative
19 example, if I could. In the case of a 15-year 20-minute
20 design storm, which is a common design storm used at
21 that time and one that Mr. Koestel calculates, I have
22 estimated that the basin should be providing 12.19 cubic
23 feet per second of detention.

24 That's just a number to you, folks, but 12.19.
25 And in its silted condition, Mr. Koestel calculates that

1 it is providing 45.39 cfs of detention; 12.19 required,
2 45.39 provided.

3 So if you accept those numbers, if you accept my
4 estimate of pre-developed rate of runoff and you accept
5 Mr. Koestel's calculation as to what's going on right
6 now, it's three mayb -- almost four times the amount
7 that would be required.

8 Now, what does that mean? Those are all just
9 numbers. But what it means is the basin is providing
10 detention. Even in its silted condition, the basin is
11 providing more than what would be required by the City's
12 ordinances at the time it was designed.

13 And it also means that the rate of runoff is
14 lower than the pre-developed condition.

15 Q. And --

16 A. Now --

17 Q. Go ahead.

18 A. So then if you accept those numbers, then it
19 would be my opinion that to assume that the basin is
20 causing a downstream flooding condition, I think that's
21 a stretch. I think that's a far stretch. If the basin
22 is, in fact, providing detention and lowering the rate
23 of runoff to lower than pre-developed conditions, I
24 don't know how it could have a causal effect on when's
25 going on downstream.

1 Q. Well, based upon your analysis, is it your
2 opinion that the detention basin is not causing or
3 contributing to cause downstream flooding?

4 A. That is my conclusion, yes, sir.

5 Q. And in calculating the pre-development rate of
6 runoff, which you say you did, you took into account
7 what you believed to be the calculus that would have
8 been applied at that time to the design of a detention
9 facility; is that correct?

10 A. That is correct.

11 Q. And then you compared that with the analysis
12 that Mr. Koestel did about the -- his findings about the
13 current operation or functioning of the detention basin,
14 correct?

15 A. That is also correct.

16 Q. And in doing so, your conclusion was the
17 detention basin is actually outperforming the original
18 design standard.

19 A. Correct.

20 Q. All right.

21 A. Now, I might add for -- just for the Board's
22 clarification, that at the time Hawk Ridge on the Green
23 was developed by Hayden Homes, the City's requirement
24 for detention was for the 15-year 20-minute design
25 storm. That was the requirement at that time.

1 dignify it by calling it a letter/report. It does
2 contain my analysis of the Koestel Memorandum. Exhibit
3 A, it contains my estimate of the pre-developed rates of
4 runoff.

5 And then Exhibit B contains my comparison of
6 pre-developed rates of runoff that I estimated to what's
7 actually occurring per Mr. Koestel's estimate. And the
8 one you handed me did not have Exhibit A and Exhibit B
9 on it so I don't know what you gave the chairman there.

10 Q. All right. You're talking about the Exhibit A
11 and B to your report which were not attached.

12 A. Well, it's attached to my copy.

13 Q. It's attached to your copy?

14 A. Yes.

15 Q. Well, then what we're going to do is --

16 A. And I think that's important for the Board if
17 you're going to read that stuff.

18 Q. I've got an exhibit sticker that I'll place on
19 this one.

20 A. Again, it may be Greek to you all but --

21 CHAIRMAN GUNTHER: Are we going to get a copy of
22 the plat report, too, Matt's report, that binder?

23 WITNESS: Oh, Derek's report?

24 CHAIRMAN GUNTHER: Yeah.

25 WITNESS: Mike, I don't know, do you --

1 MR. MURRAY: Mike, I guess --

2 WITNESS: I mean, the City didn't introduce it,
3 I don't think.

4 MR. JAMES: It wasn't my intention to introduce
5 Mr. -- the city engineer's report. That's, you know, it
6 --

7 MR. MURRAY: I would move that it did since Mr.
8 Musler's testified that he relied on it, in part, in
9 preparing his analysis.

10 CHAIRMAN GUNTHER: Would you like the report
11 included?

12 MR. JAMES: If the City wants to offer Mr.
13 Koestel's August 15, 2018, report in I suppose your
14 cross-examination of Mr. Musler, I'm not going to object
15 to that.

16 MR. MURRAY: Okay.

17 MR. JAMES: But I don't have an ex -- do you
18 have an extra copy of it or --

19 MR. MURRAY: I'll check.

20 MR. JAMES: I might.

21 Q. (By Mr. James) Just so I'm clear, the
22 conclusion that you reached is stated on the second to
23 last page of your letter/report which is that the
24 Detention Basin A "does not cause bank erosion to
25 downstream properties and does not cause flooding to the

1 MODOT or City culverts," is that correct?

2 A. That's correct. I don't know that -- I stepped
3 out of the room for a while. I don't know if it was
4 made clear that we don't drain to the Freymuth Road
5 culvert. We bypass the Freymuth Road culvert, the one
6 that Mr. Koestel speaks about is going to flood.

7 We drain to the MODOT culvert. Now, the fact of
8 the matter is they're right next to each other. I mean,
9 you could throw a baseball from one culvert to the
10 other.

11 So the MODOT culvert does influence the Freymuth
12 Road culvert, but we don't drain through the Freymuth
13 Road culvert. We bypass it and go to the MODOT culvert.

14 Q. So what that would tell me then is that the --
15 any flooding of the Freymuth Road culvert is a function
16 of the MODOT culvert backing up.

17 A. That's what Mr. Koestel concludes, I believe, as
18 I understand his report.

19 Q. All right. Well, that's one of those light bulb
20 moments for me because, apparently, I didn't understand
21 that the Freymuth Road culvert, which is the City street
22 that is the subject of a suggestion of flooding, is not
23 in the direct path of the --

24 A. Well, it's in -- it's on page 3 of my report.

25 Q. Well, I apparently failed to understand that --

1 A. Okay.

2 Q. -- when I read it.

3 A. Well, the Board can read it. It's on --

4 Q. Well --

5 A. -- the top of page 3.

6 Q. And I appreciate you pointing that out because I
7 believe that's a significant piece of information in
8 terms of the operation of the watershed where the
9 detention basin drains and how -- what relationship
10 there is between the MODOT culvert that Mr. Koestel
11 spoke about and Freymuth Road, the Freymuth Road
12 culvert.

13 Are the opinions expressed in your report based
14 upon a reasonable degree of certainty for a member of
15 your profession?

16 A. I think so.

17 MR. JAMES: I'd offer Exhibits A, B and C into
18 evidence here before the Board.

19 MR. MURRAY: What was B?

20 MR. JAMES: B is the diagram.

21 MR. MURRAY: Oh. And C is the curriculum vitae.

22 MR. JAMES: C is his curriculum vitae.

23 MR. MURRAY: No objection.

24 Q. (By Mr. James) I don't have any other questions
25 for you right now.

1 A. Okay.

2 CROSS-EXAMINATION

3 BY MR. MURRAY:

4 Q. Mr. Musler, you mentioned you did rely on Mr.
5 Koestel's report or Memorandum dated August 15, 2018;
6 that correct?

7 A. Yes, sir.

8 Q. Okay.

9 (Exhibit No. 11 marked.)

10 MR. MURRAY: I'm going to label this as Exhibit
11 11 and move for admission.

12 MR. JAMES: No objection at this stage for
13 purposes of questioning Mr. Musler.

14 Q. (By Mr. Murray) You testified that the
15 watershed for this area is about 700 acres; is that
16 right?

17 A. Yes, sir.

18 Q. Is this -- come around here and point, if you
19 don't mind. Hawk Ridge Trail, is this a ridge here
20 essentially where Hawk Ridge Trail runs?

21 A. No.

22 Q. No?

23 A. No, it's more like this road here.

24 Q. Can you repeat that, please.

25 A. The red indicates the estimation of the ridge

1 line, and it would be more along this road than Hawk
2 Ridge Trail. And I believe that's Orf. I could be
3 wrong.

4 CHAIRMAN GUNTHER: Can you explain that to us
5 now, too.

6 Q. (By Mr. Murray) Can you explain that to them
7 again?

8 A. The red line is my estimation of the top of the
9 watershed or the ridge line. Mr. Murray asked if Hawk
10 Ridge Trail was the ridge. My answer was no. It's more
11 closer to this road, which I believe would be Orf Road.

12 MR. RUDY: You have a dashed red line. What
13 does that signify?

14 WITNESS: Within the overall watershed, I had
15 dashed in the upstream area that actually flows into
16 Detention Basin A. So it's not simply Hawk Ridge on the
17 Green that flows into Detention Basin A. This area
18 upstream also flows into Detention Basin A.

19 MR. RUDY: Was that in your calculations as far
20 as the total watershed that goes into Detention Basin A?

21 WITNESS: It was in Mr. Koestel's calculations,
22 yes, sir.

23 MR. RUDY: As well as yours?

24 WITNESS: I didn't analyze Detention Basin A.

25 MR. RUDY: Understand.

1 WITNESS: I accepted Mr. Koestel's calculation.

2 MR. RUDY: Okay.

3 Q. (By Mr. Murray) So with respect to the matter
4 of the watershed, all the lines and squiggly lines on
5 there, can you tell us where you got those from?

6 A. The squiggly lines, yes, sir, that was from the
7 St. Charles County GIS system.

8 Q. You mentioned you did your calculation in the
9 pre-developed condition, correct? You made a
10 calculation of water runoff in the pre-developed
11 condition; is that correct?

12 A. Yes, sir, I did.

13 Q. And can you explain the methodology you used to
14 make the assumption you used in recreating the
15 pre-developed condition?

16 A. Sure. Unfortunately, Mr. James took my report
17 that had Exhibit A and Exhibit B on it.

18 MR. JAMES: Oh.

19 WITNESS: So I'm going to need to retrieve that
20 to answer your question.

21 MR. JAMES: May I take that?

22 WITNESS: Okay. Again, Mr. Murray, correct?

23 Q. (By Mr. Murray) Yes.

24 A. This is on Exhibit A to my letter/report and
25 that is my estimation of pre-developed rates of runoff.

1 In my estimation, I used -- well, first of all, I used
2 the rational method to make that estimation, not any
3 other method. That was consistent with the method that
4 Mr. Koestel had in his report.

5 Pre-developed rate of runoff was estimated at
6 1.7 cubic feet per second per acre. And these are just
7 going to be numbers to you but post-developed rate of
8 runoff was estimated at 2.1 cubic feet per second per
9 acre. Now, I'm speaking of the 15-year 20-minute storm.

10 So if you apply those rates and multiply it by
11 how many acres drain, you can arrive at a post-developed
12 total runoff rate, a pre-developed total runoff rate.
13 The difference would be required attenuation or required
14 detention. Was that too much?

15 Q. I'm not sure I understood it but we'll go on.

16 A. Okay.

17 Q. Is your testimony essentially that the detention
18 basin is oversized and over-engineered for a 15-year
19 20-minute storm?

20 A. It appears that way.

21 Q. Was this done by Bax, do you know?

22 A. I'm sorry?

23 Q. Was this done by Bax this year this plan --

24 A. No, sir.

25 Q. -- in 1999?

1 A. No, it was done by Pickett, Ray & Silver.

2 Q. Oh, Pickett, Ray & Silver. They're another
3 local --

4 A. Another local civil engineering firm.

5 Q. Why would they have designed this in such a
6 radically oversized, over-engineering manner, in your
7 opinion?

8 A. Mr. Murray, I'm not sure.

9 MR. JAMES: I'm going to object. That calls for
10 speculation on the part of the witness.

11 WITNESS: Yeah.

12 MR. MURRAY: I'm just asking him.

13 WITNESS: I don't think I know.

14 Q. (By Mr. Murray) Okay.

15 A. I would say this: It would be unusual to allow
16 a large upstream offsite drainage area to go into a
17 basin. That's unusual by today's standards. That's a
18 current here, though.

19 Q. Besides your current employment by the HOA, have
20 you ever been employed by another HOA with respect to
21 detention basin issues?

22 A. Repeat that, please.

23 Q. Besides your current employment by this
24 homeowners' association, have you ever been employed by
25 another homeowners' association with respect to

1 detention basin issues?

2 A. I have not.

3 Q. You said you visited the site; is that correct?

4 A. Yes, sir.

5 Q. How many times?

6 A. Twice.

7 Q. Did you notice the level of silt in the basin
8 when you were out there?

9 A. I did.

10 Q. How many feet do you think were in there based
11 on your observation?

12 A. I didn't probe it like Mr. Kuelker did. I'm
13 going to guess 2 feet. That's a guess. I don't really
14 know.

15 Q. Based on your experience as an engineer, would
16 you design a detention basin to have 2 feet of silt in
17 it?

18 A. No.

19 Q. That's all I have.

20 MR. JAMES: I don't have any other questions for
21 this witness.

22 (Discussion off record.)

23 MR. JAMES: I'm going to mark this copy of the
24 diagram that Mr. Musler referred to that was mounted
25 during his testimony as Exhibit B and leave this with

1 you since it's easier to carry --

2 CHAIRMAN GUNTHER: Okay. Thank you.

3 MR. JAMES: -- and -- if that's acceptable to
4 the Board. Otherwise, I can have him leave the --

5 CHAIRMAN GUNTHER: No, that's great. That will
6 be fine.

7 MR. JAMES: Did you take Exhibit A back with you
8 that had the --

9 (Discussion off record.)

10 MR. JAMES: Is the -- is Exhibit A marked?

11 CHAIRMAN GUNTHER: Yes, it is.

12 MR. JAMES: I just wanted to make sure you have
13 it in evidence. I don't have any other witnesses.

14 MR. MURRAY: Can we confer for just a minute?

15 (Discussion off record.)

16 MR. MURRAY: I don't believe we have any further
17 witnesses and I don't have any further witnesses. Mr.
18 James and I conferred about the chief's decision and the
19 correspondence, Mr. James's notice of appeal. And I
20 think we're going to stipulate that we can send you
21 copies or those are all in your record.

22 It will be the September 17 correspondence from
23 the chief asking if conditions existed, Mr. Koestel's
24 response to that, the chief's finding of the nuisance on
25 September 21 and Mr. James's notice of appeal would all

1 come into the record before you.

2 And I think we also would want to submit post
3 findings of fact and conclusions of law as well as
4 rulings on Mr. James's objections offered during the
5 course of today's appeal -- hearing today.

6 MR. JAMES: Agree with what he said.

7 CHAIRMAN GUNTHER: Okay. Thank you. Is there
8 anybody else that would like to speak today while we're
9 here?

10 MR. REH: Is there a time frame through which
11 you would like to receive those items?

12 CHAIRMAN GUNTHER: It's going to take us a while
13 to go through this. We're going to have to get copies
14 of the minutes and go through this as our time permits
15 and get together. It's been awhile for us to get
16 together.

17 MR. RUDY: Can we get a timeline of when we can
18 expect the minutes?

19 MR. REH: We can order it and I think we could
20 probably have it to you within 10 days.

21 Is that something that's doable for you?

22 COURT REPORTER: Yes.

23 MR. REH: We can have the transcript about
24 within 10 days.

25 (Discussion off record.)

1 MR. REH: So why don't we put down on the record
2 that our court reporter will take custody of the
3 original exhibits.

4 CHAIRMAN GUNTHER: We have a question, too.
5 Would either of you oppose us having -- sending you both
6 some questions after we start reviewing these documents?
7 We'll send you both the same questions.

8 MR. JAMES: If you want to send us questions, we
9 certainly can't stop you from doing that. I suppose
10 after you do, Mr. Murray and I will confer and decide
11 whether or not we are able to respond to your questions.

12 MR. MURRAY: I'm fine with that.

13 CHAIRMAN GUNTHER: You're opposed to that?

14 MR. MURRAY: No, you can send us questions.
15 Send us both at the same time and we'll figure out if
16 we're able to make a response.

17 MR. JAMES: I guess what we're saying is we
18 can't guarantee you that we'll be able to respond
19 because --

20 CHAIRMAN GUNTHER: That's fine.

21 MR. JAMES: -- it depends upon the nature of
22 your questions.

23 MR. MURRAY: And there are certainly some facts
24 and things we don't disagree about and we can, I'm sure.

25 MR. REH: What is the deadline by which you'd

1 like the parties to submit their proposed rulings and
2 orders for you and findings of fact and conclusions of
3 law? How much time do you think you need, guys?

4 MR. MURRAY: Maybe 15 days from the day the
5 transcript is received.

6 MR. JAMES: That's fine.

7 MR. REH: So 25 days from today.

8 CHAIRMAN GUNTHER: May 10.

9 MR. MURRAY: How about May 24?

10 (Discussion off record.)

11 MR. JAMES: Is May 31 acceptable?

12 MR. MURRAY: May 31 is fine with me.

13 MR. JAMES: That's not too far out?

14 CHAIRMAN GUNTHER: What date?

15 MR. JAMES: May 31.

16 CHAIRMAN GUNTHER: 21?

17 MR. JAMES: 31.

18 MR. MURRAY: 31.

19 MR. JAMES: 31. The reason I suggest that is
20 the 24th happens to fall at the end of the week where
21 I'm in trial.

22 CHAIRMAN GUNTHER: May 31.

23 MR. MURRAY: One final stipulation, we did agree
24 that the City's code is in the record before the Board
25 as well.

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MR. JAMES: Correct.

CHAIRMAN GUNTHER: Are we good?

MR. MURRAY: Thank you for your time today.

MR. JAMES: Thank you for your time.

CHAIRMAN GUNTHER: Ask for a motion to adjourn.

MS. HARRIS: I move to adjourn.

MR. RUDY: Second.

CHAIRMAN GUNTHER: All in favor aye.

MS. HARRIS: Aye.

MR. RUDY: Aye.

(The hearing concluded at

12:45 p.m.)

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REPORTER'S CERTIFICATE

I, LAURA LYNN MURPHY, CCR No. 764, Certified Court Reporter and Registered Merit Reporter, do hereby certify;

that the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

that the testimony of the witness, the questions propounded and all objections and statements made at the time of the examination were reported by stenographic means by me and were thereafter transcribed;

that the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties nor financially interested in the action.

I declare under penalty of perjury under the laws of Missouri that the foregoing is true and correct.

Dated this 6th day of May, 2019.

LAURA LYNN MURPHY, CCR No. 764

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